

Introduction

The *Renewal of mineral and coal exploration licences policy* complements the NSW Government's Mineral and Coal Exploration Statement, as part of the broader NSW Government mineral and coal exploration framework, which aims to:

- set firm expectations on the working of mineral and coal exploration licences to encourage the efficient, timely and sustainable development of the state's mineral and coal resources
- ensure the progressive relinquishment and where appropriate, 'turn over' of ground subject to exploration licences, to allow other explorers to apply their own concepts, skills or technologies.

Purpose

This policy applies to the renewal of mineral and coal exploration licences granted under the *Mining Act 1992* and the criteria for renewing mineral and coal exploration licences under sections 114 and 114A of the Mining Act. It is designed to benefit both the resources industry and the community by providing certainty about the renewal of mineral and coal exploration licences in NSW. It aims to:

- encourage and reward the timely acquisition of quality geoscientific data to facilitate prospect definition and resource discovery and development
- ensure that exploration tenure is explored effectively and to its full potential within reasonable timeframes
- ensure the progressive relinquishment of non-prospective area under exploration licences to increase certainty for landholders and the community, promote competition and minimise land banking
- provide licence holders and the community with clear and simple criteria for renewal of exploration licences that supports consistent and equitable decision-making and gives greater certainty and confidence to landholders and the community in the likelihood of exploration licence retention and ongoing resource development.

Specifically, this policy clarifies:

- the Department's position that to be considered for renewal under section 114 of the Mining Act, mineral and coal exploration licence holders must have completed their approved work program over the term of the licence they seek to renew (i.e. work the area subject to the licence effectively)
- the 'extenuating factors' a mineral or coal exploration licence holder may identify as valid reasons for non-completion of their work program over the term of the licence they seek to renew
- the 'special circumstances' a licence holder may identify to retain greater than 50 per cent of the area subject to the licence at renewal (section 114A of the Mining Act); and
- how the relevant decision-maker may use their discretionary renewal powers under the Mining Act on a case-by-case basis.

This policy is one of the considerations under the Mining Act that the decision-maker takes into account as part of a broader merit assessment of an application (e.g. compliance history, information requirements and the payment of fees and levies). Some of these considerations may

be relied upon as grounds to support a decision to refuse applications for exploration licences generally.¹ This may include renewal applications.

Failure to meet the mandatory renewal criteria set out in this policy may be used as a basis for refusal of a renewal application.

To further the objects of the Mining Act, this policy supports an outcomes-based framework for effective and sustainable mineral and coal exploration. The Department assesses primary geoscientific data contained in the work program, annual reports and the renewal justification statement to determine exploration licence holder performance and the merits of renewing an exploration licence in accordance with the Mining Act.

Policy principles

The following policy principles underpin this policy:

1. Mineral and coal exploration licences are renewed in accordance with the need to:
 - support the efficient, sustainable and timely mineral and coal resource discovery and development
 - balance the importance of certainty of tenure for iterative mineral and coal exploration programs with clear and firm performance expectations, and
 - recognise and uphold the rights and responsibilities conferred on licence holders, and
2. Depending on the maturity of the exploration program, mineral and coal exploration licences are renewed where the holder has completed their approved work program over the term of the licence and by doing so, can demonstrate a commitment to geoscientific data acquisition that either:
 - supports the discovery and development of the state's mineral and coal resources, or
 - at the very least, contributes to the state's geoscientific knowledge base.

Relationship with other legislative requirements, policies and guidelines

This policy forms part of the Department's exploration framework including:

- [Mineral prospecting minimum standards](#)
- [Mineral and coal prospecting work program form](#)
- [Exploration Guideline: Work programs for prospecting titles](#)
- [Exploration reporting: a guide for reporting on exploration and prospecting in NSW.](#)

¹ See for example the express grounds for refusal in clause 6 of Schedule 1B of the Mining Act.

This policy relates to the five-stage prospecting model referred to in the Mineral prospecting minimum standards (Minimum standards) in that a work program is considered completed where the exploration licence holder meets the success criteria of the nominated exploration stages.²

The Department uses the five-stage model to benchmark work program objectives and proposed outcomes according to an exploration program's maturity. The geoscientific data contained in annual reports demonstrates whether the success criteria has been met (i.e. the exploration licence has been worked effectively).

All exploration licences in NSW are granted with a standard condition that the operations and any other activities described in the approved work program be fulfilled. That is, the exploration licence holder must complete their approved work program over the term of the licence. The Department considers meeting the success criteria of the nominated exploration stages in an approved work program as fulfilment of this standard condition.

General renewal criteria

Taking into account all relevant considerations set out in the Mining Act,³ including compliance with exploration licence conditions and obligations, the relevant decision-maker may renew an exploration licence for a term of up to six years where the renewal applicant:

1. Has completed their approved work program over the previous term of the exploration licence (i.e. worked the licence effectively).
2. Meets the Minimum standards with respect to their proposed work program for the proceeding term and their technical and financial capability to carry out the proposed work program for the term being applied for.
3. Nominates the area subject to the exploration licence proposed for relinquishment.

An exploration licence may be renewed for a term that is reasonably required to complete the proposed work program, but licence terms cannot be longer than six years. A licence may also be subject to special conditions.

At renewal, licence holders are required to relinquish 50 per cent of the area subject to the exploration licence.⁴ Explorers may retain greater than 50 per cent of the area subject to the exploration licence where the decision-maker is satisfied that special circumstances exist to justify doing so.⁵ The partial relinquishment requirement follows the notion that as an exploration program progresses, the prospectivity of the area under the licence becomes clearer and the focus area narrows. In addition, the partial relinquishment requirement provides certainty to landholders, minimises land banking and, where appropriate, ensures that ground is made available for other explorers to apply their own concepts, skills or technologies. The relevant decision-maker may direct a licence holder as to which portions of the land subject to the exploration licence are to be relinquished.

² See Appendix 1.

³ Mining Act s 114.

⁴ Mining Act s114A (1).

⁵ Mining Act s114A (2).

Extenuating factors for not meeting general renewal criteria

When seeking renewal, mineral and coal exploration licence holders may identify in their renewal justification statement valid extenuating factors that prevented them from completing their work program over the term of the authority (i.e. working the tenure effectively). If the relevant decision-maker is satisfied that extenuating factors prevented the licence from being worked effectively, they may grant the renewal notwithstanding exploration performance. The onus is on the licence holder to demonstrate, through evidence, the nature and timing of the extenuating factor and the extent to which it prevented the licence holder from undertaking exploration work during the term of the licence.

The relevant decision-maker will consider extenuating factors within the context of the licence holder's circumstances. This includes the level of exploration completed at the time the extenuating factor is claimed to have prevented exploration work from being undertaken.

Licence holders must provide evidence of the extenuating factor and what reasonable steps they are taking, or have taken, to remedy the situation so that satisfactory exploration can occur over the new term.

Extenuating factors for not meeting exploration licence renewal criteria

The Department considers the following to constitute extenuating factors:

1. Native Title procedural requirements.
2. Protracted and complex land access negotiations.
3. Unforeseen events (i.e. 'force majeure').
4. The exploration licence in question forms part of a 'project'.
5. Commercial arrangements.

Further detail on each of the extenuating factors is provided below.

Native title

Where native title has not been extinguished, the licence holder must demonstrate that they:

- have commenced the 'right to negotiate' process and are in negotiation with native title claimants in good faith, or
- are taking reasonable steps through other processes to achieve compliance with the *Native Title Act 1993* (Cth), or
- due to land access issues, have confirmed that they are identifying suitable areas to explore where native title has been extinguished.

There may be circumstances beyond the control of the exploration licence holder such as delays due to determinations as to the identification of the appropriate native title claimants. The Department will consider this an extenuating factor where the exploration licence holder has proactively communicated such an issue to the Department. In addition, in the event that negotiations with native title claimants have stalled for a period of three years or more, the exploration licence holder must have referred the matter to the National Native Title Tribunal for stalled negotiations to be considered an extenuating factor.

Land access

The licence holder must demonstrate that they are taking reasonable steps to gain access to land by supplying supporting documentation. Where a land access arrangement remains unresolved following private negotiations, the Mining Act enables the licence holder and the landholder in question to enter into mediation and, if necessary, arbitration in accordance with the Government's land access arbitration framework. Where a licence holder raises land access as an extenuating factor, they must have activated the Department's arbitration framework (e.g. step through the process of negotiation, mediation, arbitration, etc) where they have been unable to reach a land access arrangement through private negotiations.

Unforeseen events (force majeure)

For unforeseen events such as bushfire, flooding, earthquake (or landslips), health pandemics or policy or legislative decisions by government, the licence holder must evidence how the unforeseen event or 'force majeure' has directly and materially prevented the completion of the work program, including where and when the force majeure event impacted on the ability of the licence holder to carry out the work program and the period of time in which exploration was prevented from occurring. This may include being prevented from accessing prospecting sites, social distancing restrictions, etc.

Project status

A licence holder may nominate to have the licence considered as part of a 'project' where it forms part of a group of authorities (including mining leases) that:

- have been granted for the same group of minerals, and
- are located in the same geological province, and
- are targeting the same mineralisation style (not applicable for coal), and
- are commonly held by licence holders or joint venture partners, and
- are located partially or wholly within a maximum radius of 50 km of one another.

With respect to metals exploration especially, project status allows a company to prioritise activities on some exploration licences, which may progress at different rates. For example, a significant discovery may be made on one exploration licence in the project, justifying reallocation of budget, focus and resources to other authorities for a period of time. The lower priority licences should be identified as those for which 'lesser activities' will be undertaken over the term of the licence and justified according to the exploration rationale set out in the respective work program. The relevant decision-maker will consider whether the objects of the Mining Act are best served by renewing an exploration licence forming part of a project despite delays in exploration progress. Factors for consideration include the time horizons for developing particular resources (e.g. metal discoveries typically take longer than coal or petroleum), the depths in which a licence holder is exploring and whether the licence holder has a conceptual plan to work the lower priority licences over time.

Commercial arrangements

Finalising commercial arrangements associated with licence transfers, share sales/joint ventures or offtake agreements can interrupt exploration progress. For example, where a transfer occurs toward the end part of a term and a work program is paused, pending finalisation of a transaction or deal or securing an offtake agreement with a third party. Where a licence holder identifies commercial arrangements as an extenuating factor, they must be operating in at least stage 4 of

the Department's 5-stage prospecting model. That is, the exploration program is sufficiently advanced to have identified a JORC Inferred Resource or equivalent. The licence holder must also provide evidence of the commercial negotiations supporting a predicted timeframe for any delays and the likely result of commercial negotiations.

Matters and events that are not extenuating factors

The following are examples of matters or events that the Department would not normally consider to be extenuating factors:

1. Protracted timeframes owing to standard administrative or state or federal statutory requirements or approvals (i.e. the delay must be additional to standard timeframes).
2. An inability to raise sufficient capital over the term of the authority to finance the exploration program, irrespective of broader economic factors such as commodity prices (unless the licence holder is at an advanced stage of prospecting (see above)).
3. An inability to enter into a land access arrangement generally (e.g. protracted land access disputes where efforts have not been made by the licence holder to commence mediation or arbitration)
4. An inability to allocate qualified labour or technical expertise to the prospecting operations.
5. An inability to secure or allocate appropriate machinery (e.g. drill rigs) and/or geological or geophysical equipment (e.g. seismic testing equipment) to the prospecting operations on the authority.

Special circumstances justifying retention of greater than 50 per cent of area subject to an exploration licence at renewal

The Mining Act mandates that an exploration licence cannot be renewed over an area greater than 50 per cent of the area subject to the licence. However, the decision-maker may renew an exploration licence with greater than 50 per cent of the area subject to the licence where they are satisfied that special circumstances exist to justify doing so.⁶

While it is the Department's general expectation that progressive relinquishment will occur at renewal, mineral and coal exploration licence renewal applicants may identify 'special circumstances' that justify the retention of greater than 50 per cent of the area subject to their licence at renewal. Like extenuating factors, the onus is on the licence holder to demonstrate that special circumstances exist.

Special circumstances for area retention at renewal

A licence holder claiming special circumstances and seeking to renew an area greater than 50 percent must demonstrate one or more of the following:

1. The licence holder has gathered significant geoscientific data on targets or prospects during the term of the authority in accordance with the nominated exploration stages, expected outcomes and activities in their work program and:

⁶ Mining Act s114A (2).

- a. needs to change the exploration concepts it has been applying, which will result in a substantial increase in the spatial extent of exploration activity, warranting the retention of greater than 50 per cent of ground; or
 - b. has other ranked targets or prospects remaining to be tested on the ground subject to the authority, requiring the retention of greater than 50 per cent of ground.
2. The licence holder has gathered sufficient geoscientific data to demonstrate resource potential over greater than 50 per cent of the ground subject to the respective authority.
 3. A valid extenuating factor (as described above) has prevented the licence holder from completing their work program, warranting retention of greater than 50 per cent of the area subject to the licence. For example:
 - a. land access issues have affected the licence holder's ability to access greater than 50 per cent of the ground subject to the authority
 - b. greater than 50 per cent of the ground subject to the authority is subject to native title
 - c. unforeseen events have prevented access to greater than 50 per cent of the ground subject to the respective authority.

With respect to criterion (2) above, the relevant decision-maker must be satisfied that the exploration licence in question is working in at least stage 3 of the five-stage prospecting model and through annual geological reports, can demonstrate that targets are being tested and that there is broad prospectivity over the remaining ground they are seeking to retain. In these instances, the Department recognises that exploration intensity and capital investment increase significantly during stage 3 as a licence holder seeks to obtain sufficient geoscientific data to identify a JORC or JORC-equivalent resource. In these circumstances, the Department will afford the licence holder a grace period to allow for the identification of options to facilitate the progression to mining.

With respect to criterion (3) above, the onus is on the licence holder to demonstrate that such extenuating factors have prevented the holder from exploring the ground the holder is seeking to retain. In accordance with the special circumstances criteria, the licence holder must also demonstrate that they are taking reasonable steps to remedy the situation.

Factors not considered to be special circumstances

The Department does not consider the following to be special circumstances:

1. A licence holder has not yet explored over the full extent of their exploration licence at the time of renewal.
2. A licence holder wishes to retain the full extent of their tenure for reasons unrelated to prospecting (e.g. using the licence as a commercial/marketing tool).
3. A licence holder has not initiated the right to negotiate and/or land access arbitration processes with relevant landholder and/or traditional owner group within a reasonable time frame.

Decisions on renewal

Where extenuating factors are identified, the relevant decision-maker may consider a variety of options for managing performance under the exploration licence. For example, the relevant decision-maker may grant a renewal with:

- special conditions such as:
 - imposing mandatory audits on the work program at the licence holder's expense
 - additional reporting requirements
- a reduced renewal term (i.e. 2-3 years), depending on the required timeframe to complete proposed work program.

Where the relevant decision-maker does not consider a licence holder's circumstances to meet the criteria for extenuating factors, they may refuse to renew the licence. If refused, an applicant may need to consider a more appropriate form of tenure where the circumstances permit, such as an assessment lease

CONSULTATION DRAFT

Appendix 1 - The five stages of mineral and coal prospecting

Table 1. The five stages of mineral and coal prospecting

Stage	1. Reconnaissance	2. Target definition	3. Prospect testing	4. Advanced prospect testing	5. Resource definition
Initial status:	Licence holder identifies a target commodity and establishes the exploration rationale.	Licence holder has identified broad geochemical or geophysical anomalies, historic or conceptual targets and/or unvalidated targets identified.	Licence holder has confirmed the mineral potential, warranting prospect scale assessment.	Licence holder has identified a significant mineral deposit, warranting more intensive assessment of its potential as a Mineral Resource.	Licence holder has confirmed the Mineral Resource as an informal global resource or possibly an initial Inferred JORC Resource.
Objective:	<ul style="list-style-type: none"> Available data prepared and collated Exploration targets identified. 	<ul style="list-style-type: none"> Validate the presence of mineral potential and refine targets. Prioritise targets. 	<ul style="list-style-type: none"> Test prospects to identify presence of significant quantum and tenor of mineral potential. Prioritise prospects for assessment. 	<ul style="list-style-type: none"> Assess the quantum, tenor and continuity of mineral potential. Characterise the mineral potential. 	<ul style="list-style-type: none"> Define Resource or Reserve Increase Resource or Reserve confidence Characterise ore Assess feasibility Mine planning
Typical activities:	<ul style="list-style-type: none"> Project generation Tectonic assessment Literature review Data compilation & validation 	<ul style="list-style-type: none"> Land access negotiation Data/geophysics reprocessing Target validation Semi-targeted broad empirical 	<ul style="list-style-type: none"> Land access negotiation Detailed targeted geological mapping Reprocessing prospect scale geophysics 	<ul style="list-style-type: none"> Community consultation and land access negotiation Extensive geochemical sampling or trenching 	<ul style="list-style-type: none"> Community consultation Intensive systematic drill testing Developing or revising resource estimations or geological models

Exploration licences

Renewals policy



	<ul style="list-style-type: none"> Remote sensing data acquisition Land access negotiation Regional scale non-targeted empirical geophysical or geochemical surveying Low impact reconnaissance or regional geological mapping Regional mineral vectoring studies. 	<p>geophysical or geochemical surveying</p> <ul style="list-style-type: none"> Localised geological mapping Local scale mineral vectoring studies Empirical drill testing Review exploration priorities. 	<ul style="list-style-type: none"> Targeted geophysical or geochemical surveying Geochemical sampling or trenching Initial sporadic targeted drill testing Downhole geophysics Early characterisation studies. 	<ul style="list-style-type: none"> Systematic targeted drilling (RC or diamond) Systematic characterisation studies Developing geological or mineral potential models Possible bulk sampling. 	<ul style="list-style-type: none"> Metallurgical and geotechnical testing Ore characterisation Bulk sampling Validating models Feasibility studies EIS studies Environmental monitoring Marketing studies Mine planning studies.
Outcome / criteria for progression:	Licence holder has identified broad geochemical or geophysical anomalies, historic or conceptual targets and/or unvalidated targets	Licence holder has confirmed the mineral potential, warranting prospect scale assessment	Licence holder has identified a significant mineral deposit warranting more intensive assessment of Mineral Resource potential	Licence holder has confirmed resource potential as an informal global resource or possibly an initial Inferred JORC Resource	Titleholder has categorised the informal global resource into a JORC or JORC equivalent Inferred, Indicated and/or Measured Resource or Ore Reserve.

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