Community Guide to Mining Law
Savage River mine, Tasmania. Photo by Dan Broun
# Table of Contents

**PART 1 – Introduction**  
9

**CHAPTER 1 - Overview**  
10

About EDO Tasmania  
10

Scope and Purpose  
10

How to use the Guide  
11

Acronyms and Abbreviations  
12

**CHAPTER 2 - Introduction to Mining**  
13

What is mining?  
13

Prospecting, exploration or mining?  
13

What is “Unconventional gas”?  
14

Environmental Impacts  
14

**CHAPTER 3 – Mining in Tasmania**  
15

History of the mining industry in Tasmania  
15

Legacy Sites  
15
Chapter 13 – Judicial Review

Supreme Court of Tasmania

What is judicial review?

How long do I have to make an application for review?

How do I apply for a statement of reasons?

Federal Court

Chapter 14 – What should I consider before taking legal action?

What level of involvement do I want to have?

What am I objecting to or appealing against?

What will my grounds of objection/appeal be?

Self-represented or legal representation?

Do I need expert assistance?

What are the risks and benefits of legal action?

How do I run a case?

Chapter 15 – Compliance and Enforcement

Mining

Who enforces compliance with Mining Laws?

Will land be rehabilitated after mining activities cease?

What enforcement powers are available to MRT?

Permit conditions

Mining without a permit
Who enforces compliance with planning permits for mining? 78
Environmental offences 79
What enforcement powers are available to the EPA? 79
Environment Protection Notice 79
Enforcement of water issues 80
Enforcement under the EPBC Act 81
What can I do if a mining company commits an offence or breaches the EPBC Act? 81
Can I enforce mining and environmental law? 81
How do I commence proceedings? 81
Nuisance – noise, dust and other disturbance 82
References 83
Chapter 16 – Useful Contacts 84
Chapter 17 – Templates and Examples 86
Acknowledgements and Thanks 99
Queenstown, Tasmania. Photo by Isla MacGregor
PART 1 – Introduction
CHAPTER 1 - Overview

About EDO Tasmania

EDO Tasmania is a non-profit community legal centre advising on public interest environmental and planning law issues. Our aim is to increase public awareness of environmental laws and remedies, and help the community to secure a healthy, sustainable Tasmania.

Scope and Purpose

Mining projects can bring employment and other benefits to regional communities. The introduction of mining operations into an area can also cause concern amongst community members, and potentially long term social, economic and environmental impacts. Laws exist to try to prevent, minimise and manage these impacts.

The legal framework regulating mining and unconventional gas in Tasmania is complex and difficult to navigate, particularly for those who are unfamiliar with the system. This has been expressed by community groups, environmental groups, farmers and landholders.

The Community Guide to Mining Law (the Guide) provides a useful source of information which outlines the legal rights and responsibilities of landholders under the laws and policies governing mining in Tasmania. The purpose of the Guide is to provide clear, consistent and practical information to landholders, community groups and individuals to help them address issues in regards to mining on their property or in their local community. By understanding their rights, individuals and groups are better able to engage with the legal process to achieve more sustainable outcomes.

The Guide aims to provide criteria and explain procedures so individuals and groups can access relevant information easily. However, the Guide cannot cover every individual situation that may arise. Where you are unclear about your particular situation, please contact EDO Tasmania for specific advice.

If you would like EDO Tasmania to visit your area to conduct a free workshop on the topics covered in this guide, please contact us on 6223 2770 or email edotas@edo.org.au. This publication is also available free online – http://www.edotas.org.au.
How to use the Guide

The Guide aims to empower the community to engage effectively in the decision-making and appeals process by providing a comprehensive overview of the system. It explains how you can find information about applications, licences or leases and outlines potential opportunities to comment.

The Guide follows a logical progression, beginning with an overview of mining in Tasmania. Part 2 covers the decision making process and opportunities for members of the public to comment and participate in the assessment process. Part 3 provides detailed instructions about how to access important information. Part 4 outlines the avenues to challenge a decision or to make sure permit conditions are complied with and enforced.

Rather than being a book that you read cover to cover, the Guide is divided into sections which address particular stages or issues. This should allow you to easily find the information you are interested in. For example, if you want to know more about mining leases, refer to Chapter 5 – Mining Lease and Production Licences. However, this Guide also provides an overview of mining law in Tasmania and, when read in its entirety, will provide you with a good understanding of the system.
## Acronyms and Abbreviations

<table>
<thead>
<tr>
<th>Acronym</th>
<th>Terms</th>
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<tbody>
<tr>
<td>AMD</td>
<td>Acid and Metalliferous Drainage</td>
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<tr>
<td>DOE</td>
<td>Department of Environment (Commonwealth)</td>
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<td>DPIPWE</td>
<td>Department of Primary Industries, Parks, Water and Environment</td>
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<td>DOSG</td>
<td>Department of State Growth</td>
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<td>DPEMP</td>
<td>Development Proposal and Environmental Management Plan</td>
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<td>EER</td>
<td>Environmental Effects Report</td>
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<td>EMPCA</td>
<td>Environmental Management and Pollution Control Act 1994 (Tas)</td>
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<td>EPA</td>
<td>Environment Protection Authority</td>
</tr>
<tr>
<td>EPBC Act</td>
<td>Environment Protection and Biodiversity Conservation Act 1999 (Cth)</td>
</tr>
<tr>
<td>EPN</td>
<td>Environment Protection Notice</td>
</tr>
<tr>
<td>FPA</td>
<td>Forest Practices Authority</td>
</tr>
<tr>
<td>FOI</td>
<td>Freedom of Information Act 1982 (Cth)</td>
</tr>
<tr>
<td>LUPAA</td>
<td>Land Use Planning and Approvals Act 1993 (Tas)</td>
</tr>
<tr>
<td>MNES</td>
<td>Matters of national environmental significance</td>
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<td>MECOP</td>
<td>Mineral Exploration Code of Practice</td>
</tr>
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<td>MRDA</td>
<td>Mineral Resources Development Act 1995 (Tas)</td>
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<td>MRT</td>
<td>Mineral Resources Tasmania</td>
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<tr>
<td>NOPSEMA</td>
<td>National Offshore Petroleum Safety and Environmental Management Authority</td>
</tr>
<tr>
<td>PWS</td>
<td>Parks and Wildlife Service</td>
</tr>
<tr>
<td>RAA</td>
<td>Reserve Activity Assessment</td>
</tr>
<tr>
<td>RMPAT</td>
<td>Resource Management and Planning Appeal Tribunal</td>
</tr>
<tr>
<td>RTI</td>
<td>Right to Information Act 2009 (Tas)</td>
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<tr>
<td>TIGER</td>
<td>Tasmanian Information on Geoscience and Exploration Resources</td>
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<tr>
<td>WMA</td>
<td>Water Management Act 1999 (Tas)</td>
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What is mining?

Mining can involve exploring for and extracting mineral resources including metals, rock, oil, gas and geothermal resources. Mining can be undertaken on land which is public, private or leased. Mining companies cannot access the minerals until they have obtained relevant approvals from the State and local government (in some cases a Commonwealth approval may also be required – see Chapter 8). Different types of authorities are required depending on the type of mining activity. These rights are referred to as mineral tenements.1

Prospecting, exploration or mining?

Prospecting involves fossicking for minerals using hand tools. A person who wishes to ‘fossick’ needs a ‘prospectors licence’.2 Prospecting licences do not authorise the disturbance of trees and shrubs, cutting of tracks, the damage or removal of Aboriginal or historic artefacts or using mechanical equipment or explosives to find minerals.3 A prospecting licence does not allow the holder to fossick on private land, unless the landowner gives permission.4

Exploration is the first stage of mining. Before a company will invest money to extract minerals, they undertake research and conduct testing to identify where minerals are located, in what volumes and how to extract them. An exploration licence is required before any activity can be undertaken. Licences and can initially be granted for up to 5 years, and extended indefinitely.5

An exploration licence can be granted over different areas depending on the mineral type, as follows:

- Metallic minerals, coal and gold - up to 250km²
- Geothermal resources - 500km²
- Oil (including shale gas) - an area determined by the Minister.6

Mining is defined very broadly under the legislation and includes any activity (excluding fossicking or prospecting) carried out to obtain minerals including geothermal, oil and gas.7 It generally involves the extraction of minerals which can then be processed for sale commercially.

A lease/licence is required before any activities can be undertaken. Mining leases may be issued over areas of public or private land for any period that the Minister determines.8 A licence may be issued for a maximum of 10 years after which an extension may be permitted.9

Other mineral tenements are included in the MRDA that are not covered in detail in this Guide. For example:

- special exploration licences may be issued when the maximum number of exploration licences has been exceeded. These may be extended to a maximum of ten years at the discretion of the Minister.
- retention licences allow holders of exploration licences to preserve their exclusive rights over potential mining sites while further studies are conducted to assess the commercial viability of extraction or production.

If you would like more information about these mineral tenements, please contact EDO Tasmania or visit the MRT website.

1 Section 3 MRDA
2 Section 3 MRDA
3 Sections 2, 107, 108 and 116 MRDA
4 Section 112(1)(d)
5 Section MRDA
6 Section 21 MRDA
7 Mining operations - Section 3 MRDA; Mineral - Section 3 MRDA
8 Section 85(1) and 78(1) MRDA
9 Section 67O and 67P MRDA.
What is “Unconventional gas”?

Coal seam gas, shale gas and tight gas are all types of unconventional gas. Shale gas and coal seam gas are often confused with one another. While much of the controversial exploration and extraction activities on mainland Australia relate to coal seam gas, applications for unconventional gas exploration in Tasmania have been for shale gas. No viable shale gas resources have been found to date, and it is not clear whether sufficient resources will be found to warrant extraction.

Shale gas is methane held within shale layers, rather than a coal seam. Coal is lithified (turned to rock) organic material, whereas shale is dominantly mineral, usually a lithified former mud or clay. Those shales which are gas bearing usually have a high organic content. Shales tend to be impermeable and generally much harder than coal consequently; deep shale requires fracturing (‘fracking’) to allow the gas to flow.10


What is fracking?

Hydraulic fracturing, more commonly known as fracking or fraccing, is used to crack or ‘fracture’ the shale layer and accelerate the flow of gas.12 The process involves high pressured injection of sand, water and chemicals into the shale gas well.13 The injection causes fractures in the shale layer allowing the gas to flow to the surface.14

Shale gas is extracted by drilling a hole (well) vertically through rock strata until reaching the shale layer, at which point the ‘well’ may also be drilled out horizontally to increase access to the gas.11 Shale gas wells are drilled through soil, rock strata and aquifers to reach the shale, the wells must be lined with layers of steel and cement casing to isolate the gas flow from the aquifers in an effort to prevent cross-contamination.


Environmental Impacts

Mining activities can extend over large land areas (e.g. open cut mining) and have aggregated and cumulative environmental impacts through surface disturbance, clearing of native vegetation, and contamination of ground and surface water sources.15 There are also a range of concerns about the potential impacts of unconventional gas extraction, including contamination of ground water, subsidence and fugitive gas emissions.16

Mining may also have an impact on cultural heritage (Aboriginal or historic heritage), cultural landscapes and broader heritage values. Therefore, mining activities need to be effectively assessed and managed to avoid or minimise these impacts.

12  Hunter, above n 10
13  Ibid
14  Ibid
15  Ibid
16  Cook, P et al., above n 11
CHAPTER 3 – Mining in Tasmania

History of the mining industry in Tasmania

Mining in Tasmania started in the early 1800s when coal was first exploited commercially at Plunkett Point in 1834. This development was followed by tin mining at Mt Bischoff in 1871, then further exploitation of gold, copper, zinc, lead and silver in the north of the State. These early mines were largely unregulated and operated with little understanding of environmental impacts or of the need for ‘rehabilitation’. This created a legacy issue of pollution and acid mine drainage in Tasmania that is still being dealt with today.

Mining occurs in many areas of Tasmania. MRT has reported that as of May 2014, there were 561 mining leases, 154 exploration licences, 31 retention licences, and 3 special exploration licences active within Tasmania.¹ The extent of mining licences and leases (including exploration licences) across Tasmania is illustrated by the following map (see Map 1). It represents as at July 2014, coal, mineral and petroleum (including Shale gas) titles and applications.

Legacy Sites

The term ‘legacy site’ describes a site that contains acid and metalliferous drainage (AMD – commonly referred to as acid rock drainage) created by previous mining activities where the mining company no longer has responsibility for the site (e.g. because of bankruptcy etc). This can occur because of poor past practices and limited environmental regulations and mean that there are lasting environmental, health and safety impacts which need to be managed, even if mining operations ceased many years ago. There are believed to be 681 abandoned mine sites in Tasmania.²

Acid Mine Drainage

Abandoned mine sites may contain hazards to humans, flora and fauna, including risks from abandoned shafts and workings, acid produced by old workings and stockpiles, erosion and land instability. It is estimated that 215 abandoned mines in Tasmania contain rock that is potentially acid producing and risks impacting water systems.³

“*It is estimated that 215 abandoned mines in Tasmania contain rock that is potentially acid producing and risks impacting water systems.*”


² Tasmanian Minerals Conference media release 10 May 2011, Tasmanian Minerals and Energy Council

³ Ibid
Map 1: The extent of mining licences and leases (including exploration licences) across Tasmania

Mining leases and licenses

Data Sources:
Tas Tenements 07July2014
Base imagery:
TASMAP (www.tasmap.tas.gov.au)
© State of Tasmania

Map supplied by Nofis.net.
Rehabilitation of Abandoned Mining Lands Trust Fund

The Rehabilitation of Abandoned Mining Lands Trust Fund (the Rehabilitation Fund) was established in 1996 to fund the rehabilitation and management of land affected by former mining or exploration activities.\(^4\)

In 1994, the mining and quarrying industry agreed to a 1% increase in royalties, on the condition that the proceeds would be used to clean up mining legacy sites.\(^5\) The Rehabilitation Fund is not only funded by royalties but also forfeited security deposits and money received from the sale of any building, machinery or property vested in the Crown and any other funds provided for that purpose.\(^6\)

A Committee provides advice to the Minister on the management of the Rehabilitation Fund. The committee is comprised of representatives from:\(^7\)

- Mineral Resources Tasmania
- Department of Primary Industries, Parks, Water and Environment
- Parks and Wildlife Service
- Forestry Tasmania
- Crushed Stone and Sand Association, and
- Tasmanian Minerals Council

The Minister for Resources may require any abandoned mining land or land affected by former exploration activities to be rehabilitated.\(^8\)

The selection criteria for allocations from the Rehabilitation Fund are:

1. The site is to be on Crown Land (sites on private property will not be considered);
2. The site is to have been worked by private enterprise, not by government;
3. The site must be abandoned, with the responsibility for rehabilitation resting with the Crown (e.g. no individual, company or organisation can be held responsible);

Additional factors that may be taken into consideration include:

4. Threats to the safety or health of the public or native flora/fauna;
5. Pollution impacts on adjoining properties or catchments;
6. Erosion or land degradation on and off site;
7. Loss of visual amenity;
8. Public concerns/complaints.

Sites which meet all of the first three criteria and most of points 4-8 can be considered for rehabilitation. There are insufficient rehabilitation funds to deal with all the abandoned mines in Tasmania.\(^9\) Therefore, if you have concerns about a particular site, you should think about these criteria before approaching MRT.

If you have concerns regarding an acid mine drainage problem from a legacy site, contact the relevant government authority. For more information, refer to Chapter 15 – Compliance and Enforcement.

\(^4\) Section 3 MRDA and s181 MRDA
\(^6\) Section 181 MRDA
\(^8\) s180 MRDA
\(^9\) In 2013 Mining Conference, a representative of the EPA Board acknowledged that rehabilitating the various sites containing rock that is potentially acid-producing was unlikely even to be funded through the Rehabilitation Fund. Tasmanian Minerals Conference media release 10 May 2013, Tasmanian Minerals and Energy Council http://www.tasmanianmining.com.au/news/tasmanian_minerals_conference_media_release_on_10_may_2013_they_mined_they_messed_they_messed_they_messed_they_messed
Strategic Prospectivity Zones

The Mining (Strategic Prospectivity Zones) Act 1993 (Tas) provides for areas identified as having very high potential for mining and mineral extraction to be declared Strategic Prospectivity Zones. The aim is to ensure continuing access for mining purposes by preventing re-zoning of these areas to allow uses which are not compatible with future mining (e.g. residential).

Eight Strategic Prospectivity Zones have been established:

- Adamsfield Strategic Prospectivity Zone;
- Arthur Strategic Prospectivity Zone;
- Balfour Strategic Prospectivity Zone;
- Beaconsfield Strategic Prospectivity Zone;
- Cape Sorell Strategic Prospectivity Zone;
- Mt Read Strategic Prospectivity Zone;
- North East Strategic Prospectivity Zone; and
- Zeehan Waratah Strategic Prospectivity Zone.

Who owns the minerals and gas in Tasmania?

Private land

The Tasmanian government owns most of the minerals, gas and petroleum in Tasmania even when they are found beneath private freehold land. This means that, with few exceptions, you almost certainly don’t own any minerals or petroleum found under your property. As discussed in Chapters 5 and 11, you may be given an opportunity to object to mining on your property and may be entitled to compensation if mining proceeds.

Public land

The government owns minerals, gas and petroleum found on and below the surface of public land. In general, exploration and mining activities on public land including reserves, will be subject to assessment under the MRDA. However, the Minister can declare that any specified area or any specified mineral is exempt from the MRDA.

See Chapter 5 for more information about the assessment of mining activities in public forests and reserves.

Royalties

Mining companies extracting the resource pay the State government fees for the benefit of the licence or lease. These fees are called “royalties”. The Mineral Resources Regulations 2006 (the Regulations) prescribe the current royalty rates and the method by which royalties are calculated.

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10 Section 6 MRDA. All minerals held in private ownership at the commencement of the act remain in private ownership. All category 3 minerals (e.g. sand, rock, stone, gravel and clay used in constructions, bricks and ceramics – s3 MRDA) are owned by the owner of the private land.

11 Section 5(9) MRDA.

12 Section 5(4) MRDA.
What are the main government agencies involved in regulating mining in Tasmania?

The government authorises the extraction and production of the resources through the licence/lease system. An assessment of various factors is undertaken before approval will be granted. If you are interested in having your say on a mining project, it is important that you understand the main agencies involved in the assessment process.

**Mineral Resources Tasmania (MRT)**

MRT is the government department that processes applications for exploration licences, mining leases and production licences, monitors compliance and manages the government’s information about mineral resources in Tasmania.

As of 1 July 2014, MRT, which previously sat within the Department of Infrastructure, Energy and Resources, is now housed within the new Department of State Growth (DOSG).

There are two key positions within MRT:

- **Director of Mines;** and
- **Registrar of Mines.**

The Director of Mines is the head of MRT and has responsibility for making a recommendation to the Minister regarding the granting of licences and leases.

The Registrar of Mines is a more administrative role and involves accepting and acknowledging receipt of applications, objections and other documents. The Director may authorise a person employed in MRT to perform the functions and exercise the powers of the Registrar.13

**Environment Protection Authority (EPA)**

The EPA is Tasmania’s principal agency responsible for regulating the environmental aspects of mining activities in Tasmania. The EPA sits within the Department of Primary Industries, Parks, Water and Environment (see below). The EPA Board (the Board) is an independent statutory authority which is advised by the EPA and makes the final decision regarding environmental assessments. The Director of the EPA is a board member.

The EPA is also responsible for issuing and enforcing the environmental conditions for mining projects. For more information on about environmental assessment, see Chapter 7 – Development Assessment.

**Department of Primary Industries, Parks, Water and Environment (DPIPWE)**

The EPA Division within DPIPWE provides advice and technical support to the Board of the EPA. DPIPWE is also responsible for administering other relevant legislation including the Threatened Species Protection Act 1995, the National Parks and Reserves Management Act 2002 and the Water Management Act 1999. DPIPWE includes a number of relevant units:

- **Resource Management and Conservation Division;**
- **Parks and Wildlife Service;**
- **Crown Land Services;** and
- **Water and Marine Resource Division.**

In practice, the EPA Division leads the environmental assessment of mining activities and seeks internal advice from these other divisions within DPIPWE. However, the Parks and Wildlife Service (PWS) are responsible for managing regional reserves and conservation areas, in which mining may occur. Management responsibility for many former forest reserves was transferred from Forestry Tasmania to the PWS as part of the Tasmanian Forests Agreement.14

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13 Section 8(2) MRDA

14 Forest Management Act 2013 or the Tasmanian Forests Agreement Act 2013
Local Councils / Planning Authorities

Local councils (also called ‘planning authorities’) have responsibility for assessing the majority of development applications under the development assessment framework, including smaller (Level 1) mining operations, such as small quarries. For larger (Level 2) mining operations, the assessment is undertaken by the EPA. While the local council remains responsible for issuing planning permits, the council must follow the directions of the EPA in respect of environmental conditions to be imposed on a permit relating to a Level 2 mining activity. For more information about development assessment, see Chapter 7 – Development Assessment.

Forestry Tasmania

Forestry Tasmania has the statutory responsibility for the management of 1.5 million hectares of public forest land. This land contains 39% of Tasmania’s forests.15

Forestry Tasmania manages quarrying activities within permanent timber production zones. Where quarrying relates to forestry activities (such as for building roads into forestry areas), a forest practices plan is required.

Forest Practices Authority

The Forest Practices Authority (FPA) is an independent statutory body that is responsible for overseeing and enforcing compliance with the forest practices system. The FPA administers the Forest Practices Code, trains Forest Practices Officers and oversees the administration of Private Timber Reserves (with support from Private Forests Tasmania).

The FPA (through Forest Practices Officers) certifies forest practices plans for forestry activities, including quarrying relating to forestry.

Commonwealth government – Department of Environment

Under the Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act), the Commonwealth Department of Environment (DOE) regulates projects which affect matters of national environmental significance (MNES), such as listed threatened species. In addition to permits required under Tasmanian legislation, Commonwealth approvals may also be required for certain mining projects if the project occurs on Commonwealth land or if there is likely to be a significant impact on a MNES. For more information about the Commonwealth approval process see Chapter 8 – Commonwealth Approvals.

The Commonwealth government regulates all offshore petroleum and greenhouse gas storage activities within Commonwealth waters.16 The DOE administers the Offshore Petroleum and Greenhouse Gas Storage Act 2006 (OPGGS Act) (Cth) and associated regulations. In Tasmanian coastal waters (to the three nautical mile limit), petroleum activities are governed by the Petroleum (Submerged Lands) Act 1982 (Tas) and associated regulations.

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16 In early 2014, the Environment Minister authorised the National Offshore Petroleum Safety and Environmental Management Authority (NOPSEMA) to undertake assessments for proposed offshore petroleum projects for the purposes of the EPBC Act. The Commonwealth government endorsed the National Offshore Petroleum Safety and Environmental Management Authority’s (NOPSEMA) environmental authorisation process under the Part 10, section 146 of the EPBC Act.
Savage River mine, Tasmania. Photo by Dan Brown
CHAPTER 4 – Notification and Opportunities for Public Comment

What are the notification requirements and opportunities for public comment for mining activities?

There are various legal notification requirements and opportunities for public comment throughout the assessment and approval process for mining activities. However, some mining companies may go beyond formal notification requirements and consult affected communities prior to submission of a formal development application. You should try to have input in shaping the project as this can provide better environmental outcomes.

**Exploration licence**

1. **Recommendation** – following assessment of the application by MRT, if the Director of Mines decides to recommend that the licence be granted, only the applicant will be personally notified.¹ A notice must also be placed in a local newspaper circulating in the relevant area.² The notice is to include the name of the applicant, the area of land subject to the proposed licence and other relevant details.³

2. **Objection** - any person with an interest or estate in land may object to the granting of the application for an exploration licence.⁴ The objection must be lodged within 28 days of the licence application being advertised in a local newspaper.⁵

3. **Granting of licence** – if the Minister decides to grant the exploration licence, only the applicant will be notified.⁶ Landowners are not required to be personally notified if an exploration licence is granted on their property.⁷

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¹ Native Title holders are also required to be notified. Section 14(2)(a) MRDA
² Section 14(2)(b) MRDA
³ Section 14(3) MRDA
⁴ Section 15(1) MRDA
⁵ Section 15(2)(d) MRDA
⁶ Section 17(3) MRDA
⁷ Section 14(2)(a) MRDA
“Landowners are not required to be personally notified if an exploration licence is granted on their property.”

Mining lease

1. Marking out (see Chapter 5) – landholders must be notified within 7 days of the mining company ‘marking out’ an area on private property over which they intend to apply for a mining lease.\(^8\) The area must be marked out before an application for a mining lease can be made.\(^9\)

2. Application stage – mining lease applications are not publically advertised and notice is not required to be given to affected landowners. If the Director of Mines intends to recommend that an application for a mining lease be granted, only the applicant, and lease holders are required to be personally notified.\(^10\)

3. Objection - any person with an interest or estate in land may object to the granting of the application for a mining lease.\(^11\) The objection must be lodged within 28 days of the date of marking out.\(^12\)

4. Granting of lease – if the Minister grants the lease, only the applicant will be notified.\(^13\)

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8 Section 72(2A) MRDA
9 Section 70 (c) (f) MRDA
10 Native Title holders are also required to be notified. Section 75 MRDA
11 Section 76(1) MRDA
12 Section 76(2)(c) MRDA
13 Section 78(3) MRDA
Production licence

1. **Application stage** – applications for production licences are publically advertised, however landholders do not need to be personally notified. Following assessment of the application by MRT, if the Director intends to recommend that a production licence be granted, then the applicant will be personally notified.\(^{14}\) A notice must be placed in the newspaper circulating in the relevant area.\(^{15}\)

2. **Objection** - any person with an interest or estate in land may object to the granting of the application for a production licence.\(^{16}\) The objection must be lodged within 28 days of the date of the licence application being advertised in a local newspaper.\(^{17}\)

3. **Granting a licence** - if the Minister intends to grant a production licence, only the applicant will be notified.\(^{18}\)

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Environmental impact assessment

1. **Assessment stage** – where a mining project requires environmental impact assessment by the EPA (that is, where it is a Level 2 activity or a Level 1 that has been ‘called in’), the EPA will direct the applicant to prepare a Development Proposal and Environmental Management Plan (DPEMP) or an Environmental Effects Report (EER).

   For some large projects, the EPA may (but is not required to) invite public comments on the specific guidelines for the DPEMP (that is, the guidelines setting out what issues must be addressed in the environmental impact assessment). If public comments are invited, the comments will be taken into account before the final guidelines are issued to the applicant.

2. **Representation** – once the EPA is satisfied that the DPEMP meets the requirements of the relevant guidelines, the EPA will direct the local council to advertise and release the application for public comment for the following periods (see Chapter 7):\(^{19}\)
   
   a. For 2A activities, **14 days**
   
   b. For 2B activities, **28 days**
   
   c. For 2C activities, **42 days**

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\(^{14}\) Native Title holders are also required to be notified. Section 67D (2) (a) MRDA

\(^{15}\) Section 67D(2)(b) MRDA

\(^{16}\) Section 67E(1) MRDA

\(^{17}\) Section 67E(2)(d) MRDA

\(^{18}\) Section 67H(3) MRDA

\(^{19}\) Section 27G(1) and (2) EMPCA
All adjoining landowners will be notified that the application has been made, and that the environmental impact assessment is available for inspection. A notice will also be posted in the local newspaper, on the EPA website and on the public boundaries of the mining site.20

Unlike objections under the MRDA, any member of the public can make a written submission (known as a representation) providing comments on the environmental assessment.21

3. **Granting a permit** – if a permit is granted, the applicant and any person who made a representation in respect of the mining proposal will be notified in writing.22

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**Activity referred to EPA**

**Advertised and released for public comment**

**Notice given to all adjoining landowners and posted on the public boundaries of the site**

**Representation can be made by any person**

**Applicant and any person who made a representation will be notified**

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“Objections must be lodged within 28 days.”

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20 Section 57(3) LUPA; Regulation 8 (Land Use Planning and Approvals) Regulation 2004. Director of the EPA will direct the local council to advertise the application and call for public submissions: Section 27G(1)(a) EMPCA

21 Section 57(5) LUPA

22 Section 27(6)(a) LUPA; Section 57(7) LUPA
Development assessment

1. **Application stage** – If the proposed activity is on your property, the applicant will only need to show that you have been notified about the application. They do not need your permission (if mining lease granted – landholder will NOT be notified of application).

Depending on the planning scheme that applies to the land, a mining activity may be classified as ‘permitted’, ‘discretionary’ or ‘prohibited’. If the activity is ‘permitted’, the permit application does not need to be publically advertised and neighbours will not be notified.

If the mining activity is ‘discretionary’, notice of the application will be given to each adjoining neighbour, posted at the public boundaries of the application site and advertised in the local newspaper. Any person may make a representation relating to the planning application within 14 days from the date that notice is given.

2. **Granting a permit** – if a planning permit is granted for a discretionary use, the applicant and any person who made a representation in respect of the mining proposal will be notified in writing.

NOTE: The environmental assessment is integrated into the development assessment regime. If the mining activity is assessed by the EPA then there will only be one opportunity to make a representation. In practice, a mining project will be publically advertised by the local council once instructed to do so by the EPA.

Commonwealth Assessment

1. **Application stage** – if a project has been referred to the Federal Environment Minister for assessment under the EPBC Act, notice of the referral will be published on the DOE website and public comment invited on whether the project is likely to have a significant impact on a MNES.

2. **Assessment stage** – if the Minister decides to assess the mining project, the mining company will need to submit an environmental impact statement. Once this is submitted, the Minister will publish a notice on the DOE website and invite further public comments about the proposal.

3. **Granting an approval** – if the Minister grants approval for the mining project, notice of the approval will be published on the DOE website and the applicant will be directly notified.

NOTE: Under the Assessment Bilateral Agreement between the Tasmanian government and the Commonwealth government, the Commonwealth may accept the assessment of mining proposals undertaken under Tasmanian laws. If this is the case, no further assessment will be required under the EPBC Act and no further opportunities for public comment will be provided.

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23 Section 57(3) LUPAA; Regulation 8 Land Use Planning and Approvals Regulation 2004
24 Section 57(5) of the Land Use Planning and Approval Act 1993
25 Section 57(7) LUPAA
26 Sections 74(3) and 170A EPBC Act
27 These other types of assessment that may be required – e.g. a public environment report; sections 96-100 EPBC Act
28 Section 103 EPBC Act
29 Part 9 deals with approvals; section 113 EPBC Act
30 Section 133(3)
PART 2 – Legislative Framework
CHAPTER 5 – Mineral Resource Development in Tasmania

Exploration

What is exploration?

The MRDA defines explore as “to determine existence, quality, and quantity of minerals for the purpose of commercial exploration” by various techniques.¹

What type of exploration techniques can be undertaken?

There are three main types of exploration methods employed:

- desktop analysis;
- airborne methods; and
- ground-based methods.

An important and widely used method of exploration is desktop studies/research. This may involve a review of existing data and historical work, including reviewing information managed by MRT, such as seismic surveys or their library of core samples.

Airborne methods involve a low flying aircraft that takes measurements of the Earth’s natural magnetism. Satellite imagery may also be used in mineral exploration. These techniques are regulated by aviation laws, and do not involve entry to property.

Ground-based techniques may involve mapping the surface geology or drilling wells to take small samples for geochemical analysis. It may involve using a truck-mounted or smaller drill to test for mineral deposits.

Small settling ponds may also be constructed during exploration.

Ground-based exploration cannot occur within 100 metres of any dwelling or other substantial building, any natural or artificial lake, any dam, reservoir, water-producing well or artificial pond unless the owner or occupier of the land or building has given their consent.²

Who can undertake exploration activities?

Only companies or individuals over 18 years that have been granted an exploration licence can undertake exploration activities.³

Prior to the granting of an exploration licence, the applicant must satisfy the Minister that s/he:⁴

- is a fit and proper person to hold the licence;
- intends to comply with the MRDA;
- has an appropriate program of work;
- is likely to be able to finance the proposed work; and
- has provided the performance and/or rehabilitation bond(s) recommended by the Director of Mines (known as a security bond).

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¹ Section 3 MRDA
² Section 19 MRDA
³ Section 176(1)(c)(i) MRDA
⁴ Section 17A MRDA
Who grants exploration licences?

MRT is the government department responsible for issuing exploration licences once approved by the Minister. MRT are responsible for the approval of on-ground exploration works programs. The EPA or local council are not involved in issuing exploration licences.5

How can an exploration licence be applied for and how are they assessed?

The process of getting an exploration licence begins with an application to MRT, including supporting information addressing the criteria listed above (e.g. financial capacity and an appropriate works program). Following consultation with MRT staff, the Director of Mines will decide whether to recommend to the Minister that the licence be granted. If the Director decides to recommend that the licence be granted, a notice must be placed in the newspaper (See Chapter 4 - Notification Requirements).6

Once the Director of Mines has made a recommendation, the Minister will decide whether to grant or refuse the licence. Before making this decision, the Minister must consider the application, the recommendation of the Director and any determination of the Mining Tribunal.7

Exemptions

Unlike mining activities, mineral exploration activities do not require a planning permit.8 However, the Minister can only grant an application for an exploration licence after sufficient information has been provided regarding the likely impact on the environment.9 Generally, exploration activities are not assessed by the EPA.10 However, some activities such as bulk sampling may require environmental approval, depending on the circumstances.11

Vegetation clearing for the purposes of exploration is exempt from the requirement to obtain a certified Forest Practices Plan.

5 Section 20(7)(b) LUPA
6 Section 14(3)(b) MRDA
7 Section 17(1) MRDA – Mining Tribunal determination relates to objections made.
8 Section 20(7)(b) LUPA
9 Section 17A MRDA
10 Section 20(7)(b) LUPA
11 Section 27(2) EMPCA
“You must submit your objection to MRT within 28 days of the date the notice of the exploration licence is published in the paper.”

Will the application be publically advertised?

If the Director of Mines decides to recommend that the exploration licence be granted, MRT must place a notice in the newspaper. The notice will invite persons with an “interest or estate” in the exploration area to object before the Minister decides whether the exploration licence will be granted.

The advertisement must be placed in a local newspaper circulating in the relevant area, being:

- Southern Tasmania - The Mercury
- Northern and North East Tasmania - The Examiner
- North West and West Coast - The Advocate.

The notice must include the name of the applicant and describe the area of land to which the application applies.

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12 Section 14(2)(b) MRDA
13 Section 15 MRDA
14 Section 14(2)(b) MRDA
16 Section 14(3) MRDA
Can I object to an exploration licence?

Any person claiming an “interest or estate in land” within the area subject to the licence application may object to the granting of an application.\(^{17}\) You must submit your objection to MRT within 28 days of the date the notice of the exploration licence is published in the paper.\(^{18}\)

Whether you have an interest or estate will depend on the circumstances, including the nature of the exploration and the tenure of the land. The Courts have traditionally taken a narrow view on who has an interest or estate, limiting it to people with direct property or financial interests. This can make it difficult for community groups, neighbours, downstream landowners or conservation organisations to object to exploration licences.

For more information about who can claim an “interest or estate”, see Chapter 11 – Mining Tribunal. If you are unsure whether you have a right to object, contact EDO Tasmania for specific advice.

MRT will often consider comments made by interested people during the assessment process, even if the person does not have a formal right to object.\(^{19}\) Such comments may encourage the mining company to amend their proposal, encourage MRT to recommend refusal or influence any conditions that are imposed on the licence.

Therefore, even if you cannot establish an “interest or estate”, it is a good idea to write to the Director of Mines outlining your concerns about the exploration proposal and providing any relevant information. However, if you do not have an interest or estate, you cannot apply to the Mining Tribunal regarding the exploration proposal.

On the basis of past decisions, MRT may advise you about whether they consider that you have an interest or estate. However, only the Mining Tribunal has the power to determine whether a person has an interest or estate in the exploration area. If you believe that you have a valid interest, you can ask that your objection be referred to the Mining Tribunal for a determination. You should consider the information in Chapter 11 when thinking about whether you can establish an interest or estate in the relevant area.

Objections can be personally lodged with the Registrar of Mines or sent to – The Director of Mines, PO Box 56, Rosny Park TAS 7018. If you are sending the objection by post, you should ensure the objection is sent well before the 28 day time frame. The objection form can be found on the MRT website. The application fee must be paid at the time of submitting the objection.

See Chapter 11 – Mining Tribunal for more information about possible grounds of objection. For an example objection see Chapter 17 – Templates and Examples.

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\(^{17}\) Section 15(1) MRDA

\(^{18}\) Section 15(2)(d) MRDA


“... even if you cannot establish an “interest or estate”, it is a good idea to write to the Director of Mines outlining your concerns about the exploration proposal ...”
“There is no legal requirement for the mining company or MRT to notify you if an exploration licence is granted over your property, even if you made an objection.”

How will I know if there has been an exploration licence granted?

There is no legal requirement for the mining company or MRT to notify you if an exploration licence is granted over your property, even if you made an objection. If the Minister decides to grant the exploration licence, only the applicant is required to be notified. You can check the MRT’s website for updates on the status of a pending application or call MRT directly for more information (See Chapter 9 – Access to information).

Are there any restrictions on exploration?

The following categories of land will generally not be included in an exploration licence:

- an area for which an exploration licence has already been granted for the same category of mineral;
- land exempt from the provisions of the MRDA such as ‘exempt areas’;
- Land reserved under the Aboriginal Relics Act 1975, and lands listed in the Aboriginal Lands Act 1995;
- Public reserves under the Crown Lands Act 1975 which have been specifically excluded from the MRDA; and
- Commonwealth land, Telstra installations and land leased to the Commonwealth for military purposes.

The Mineral Exploration Code of Practice provides that the following land will also be excluded from an exploration licence:

- State Reserves
- National Parks
- Historic Sites
- Nature Reserves
- Game Reserves
- Some Conservation Areas (for example Central Plateau, Marble Hill, Adamsfield and Southport Lagoon conservation areas)

Exploration is permitted in other reserve categories including regional reserves and most conservation areas (see Chapter 7 – Mining in Reserves).

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20 S14(2)(a) MRDA - If the Director intends to recommend to the Minister that the application be granted, then only the applicant and Native Title holders will be notified. Landholders will not be notified.
21 S17(3) MRDA
23 Section 5(4) MRDA
Mineral Exploration Code of Practice

The Mineral Exploration Code of Practice (MECOP) is an important document which regulates the way exploration is conducted. The MECOP is an approved Code under Section 204 of the MRDA. Compliance with MECOP provisions is included as a standard licence condition in all exploration licences, therefore explorers must comply with its provisions. Breaching these requirements may result in suspension or revocation of the licence.

If you think that the Code has been breached, you should contact the mining company in the first instance. If you are not happy with the mining company’s response, notify MRT. If the MECOP has been breached, or if environmental harm occurs (or is likely to occur), a number of options exist. For example, an Environment Protection Notice (EPN) may require the mining operator to take certain action to address the harm and remediate any damage caused (see Chapter 15 – Compliance and Enforcement).

Work Program Approval

The MECOP requires a work program to be approved before exploration can take place.25

Once an exploration licence has been granted the holder must apply for approval to conduct exploration works. No work (ground or air) may be undertaken without written approval.

There is no requirement to notify the public or affected landowners that a works approval has been granted, or to provide a copy of the works approval. However, some people have been able to negotiate with MRT and the mining company to include a licence condition requiring them to be provided with a copy of a works approval.

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“... the fact that a landowner objects to exploration will not always prevent the exploration licence from being granted.”

Exploration on Private land

Owners of land within a proposed exploration area can object to the grant of an exploration licence over their land (see above).26 However, the fact that a landowner objects to exploration will not always prevent the exploration licence from being granted.27

While an exploration licence can be granted despite objections from an affected landowner, access to private land to actually carry out exploration activities is subject to further restrictions (see Chapter 6 – Access to Private Land).

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26 Section 15(1) MRDA

Mining Lease and Production Licence

If an exploration operation finds an economically viable quantity of the mineral, the mining company may apply for a mining lease or production licence. These authorities give the company permission to extract and sell mineral resources. It is unlawful to extract minerals and sell them without a mining lease or production licence.28

The MRDA contains 6 categories of minerals, as outlined in the diagram below.

<table>
<thead>
<tr>
<th>Category</th>
<th>Resources</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Metallic mineral and atomic substance (uranium, thorium)</td>
</tr>
<tr>
<td>2</td>
<td>Coal, peat, lignite, oil shale and coal seam gas</td>
</tr>
<tr>
<td>3</td>
<td>Rock, stone, gravel, sand and clay used in construction, bricks and ceramics</td>
</tr>
<tr>
<td>4</td>
<td>Petroleum products including oil and shale gas (excluding oil shale)</td>
</tr>
<tr>
<td>5</td>
<td>Industrial mineral, precious stones and semi-precious stone</td>
</tr>
<tr>
<td>6</td>
<td>Geothermal substance</td>
</tr>
</tbody>
</table>

What is a Mining Lease?

A mining lease is a permit to extract minerals and, in some cases, process those materials. A mining lease gives the holder the right to carry out mining operations (access, excavation and treatment) within the confines of the mining lease, subject to conditions set out in the lease. A mining lease applies to solid minerals such as gold, copper, tin and coal etc.29

What is a Production Licence?

A production licence permits production of petroleum, geothermal substances or gas. A production licence applies to petroleum, some gases (including shale gas) and geothermal energy.30

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28 Sections 67U (production) and 69 (mining) MRDA
29 Section 3 MRDA
30 Section 3 MRDA
What does mining/production mean?

Mining operations involve any work carried out on a lease/licence area:31

- to obtain or treat minerals; or
- to store or contain minerals or waste material generated by mining on that lease area or another lease area; or
- involving production activities associated with mining of some minerals.

Production activities in regards to category 4 minerals,32 namely petroleum, involves carrying out an activity to release or recover petroleum from a petroleum reservoir, the injection of some product into a petroleum reservoir or any other kind of activity that is prescribed by the regulations.33 Under a production licence, the mineral is considered ‘produced’ when it reaches the surface. 34

Who can undertake the mining/production?

The holder of a valid mining lease or production licence is permitted to undertake mining/production as long as they have all other necessary permits. A mining lease / production licence may be granted only if the mining company: 35

- demonstrates the existence of an economic mineral resource;
- intends to mine and comply with the Act;
- has an appropriate mining/production plan;
- has sufficient financial and technical resources for the operation (mining only);
- has provided sufficient information regarding potential environmental impact;
- has a compensation agreement with the landowner,36 and
- has provided a security deposit.

How are applications for mining leases/production licences assessed?

**Mining Lease**

The Director of Mines will consider a number of factors when assessing an application for a mining lease, including:37

- what type of mining will be carried out;
- the financial and technical resources available to the applicant to carry out the mining; and
- the cost of the mining operation.

There are a number of stages of assessment that an application for a mining lease must go through. Chapter 7 – Development Assessment will provide more detail about the process for obtaining any necessary planning permits and environmental approvals.

Generally, small operations (producing less than 1,000 tonnes of mineral or 5,000 m³ of sand or stone each year or less than 1,000 m³ of processed minerals)38 are classified as a ‘Level 1’ operation and require a planning permit from the local council. Larger scale (‘Level 2’) operations also require a planning permit, however the permit will only be granted following assessment by the EPA (See Chapter 7 – Development Assessment).

**Production Licence**

A mining company can apply for a production licence if a viable source of petroleum, gas or geothermal substance is found during exploration.39 The Director of Mines will consider a number of factors when assessing an application for a production licence, including:40

- what type of production activities will be carried out;
- the financial and technical resources available to the applicant to carry out the production;
- the cost of the mining operation; and
- the likely impact on the environment of activities under the licence41

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31 Section 3 MRDA
32 See section 3B MRDA for category 6 activities.
33 Section 3 MRDA – see also section 3B MRDA
34 Section 3B(4) MRDA
35 Section 78A(1) MRDA for mining lease. Section 67I(1) for production licence
36 Section 78A(2)(a) – mining. Sections 67I(4)(a) – production.
37 Section 70(2)(c) MRDA
38 Schedule 2 EMPCA
39 Section 67A MRDA
40 Section 67A(4)(c) MRDA
41 Section 67I(1) (d) MRDA
Unlike mining leases, the Director of Mines is specifically required to consider any likely impact on the environment from activities under a production licence when deciding whether to grant the application.42

Environmental, social and planning issues are generally considered as part of the development assessment. Traditional mining activities that meet the threshold and production activities related to petroleum are Level 2 activities and will be assessed by the EPA.43

However, the requirement for an EPA assessment is less clear in relation to production licences for unconventional gas projects. As gas is not generally measured in tonnes or cubic metres, and no applications for production licences have been made to date, it is not clear how these provisions will apply.

In practice, it is likely that the EPA will use its powers to “call in” an application relating to a production licence for unconventional gas and assess it as if it were a Level 2 activity. If you are concerned about a proposed production licence, you should contact the EPA.

**Will the application be publically advertised?**

**Mining Lease**

An application for a mining lease will NOT be publically advertised.44 If the Director intends to recommend that a mining lease be granted, s/he will notify the applicant, Native Title holders and any other leaseholders.

Before making an application for a mining lease, the company must mark out the area (that is, install markers showing the proposed lease area).45

As part of the marking out process the mining company must post a notice on the land stating the following:

(i) the purpose of the lease;
(ii) any category or type of mineral to be covered by the lease;
(iii) the area of the land;
(iv) the position of the notice in relation to the land;
(v) the date of the marking out;
(vi) the name and address of the applicant for the lease;
(vii) the name and address of the person marking out the land.

Any person who “intends to apply” for a mining lease may enter land (including private property) for the purpose of marking out.47

The company does not need to give prior warning to the landholder, but must notify the landowner within 7 days of marking out.48

If you prevent a person from marking out a lease area, the mining company can apply for a court order preventing further obstruction. You can make a claim to the Mining Tribunal for any damage done to your property during marking out.49

**Production Licence**

If the Director intends to recommend that a production licence be granted, s/he must:

- place a notice in the newspaper; and
- directly notify the applicant and Native Title holders.50

42  Section 67I(1)(d) MRDA
43  Production licence activities may be covered under Schedule 2B(1) (Petroleum and Chemical) EMPCA, mining activities are covered by Schedule 2(5).
44  Section 75 MRDA
45  Section 72(1) MRDA
46  Section 5(1) Mineral Resources Regulation 2006
47  Section 72(2) MRDA
48  Section 72 (4A)MRDA
49  Section 72(2) MRDA. A sample of ‘Notice of Marking Out’ is available on the MRT website.
50  Section 67I(1)(d) MRDA
The notice must include the name of the applicant and the area of land covered by the licence.51

**Can I object to a lease/licence?**

Any person with an **interest or estate** in land covered by a proposed lease or licence can object to the granting of a mining lease or production licence. Any objection must be received within **28 days** of:

- for a mining lease, the land being marked out;
- for a production licence, notice of the application being published in the newspaper.52

Whether you have an interest or estate will depend on the circumstances, including the nature of the mining activities and the tenure of the land. The Courts have traditionally taken a narrow view on who has an interest or estate, limiting it to direct property or financial interests. This can make it difficult for community groups, neighbours, downstream landowners or conservation organisations to object to mining operations.

MRT may consider comments made by interested people during the assessment process, even if the person does not have a formal right to object. Such comments may encourage the applicant to amend their proposal, encourage MRT to recommend refusal or influence any conditions that are imposed on the lease or licence.

Therefore, even if you cannot establish an “interest or estate”, it is a good idea to write to the Director of Mines outlining your concerns about the proposal and providing any relevant information. However, if you do not have an interest or estate, you cannot apply to the Mining Tribunal regarding the mining activities.

For more information about who can claim an “interest or estate” and what grounds you may want to consider in your objection, see Chapter 11 – Mining Tribunal. For an example objection see Chapter 17 – Templates and Examples.

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51  Section 67D(3) MRDA

52  Section 67E MRDA – production licence; Section 76(2)(d) MRDA – mining lease

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“Any person who “intends to apply” for a mining lease may enter land (including private property) for the purpose of marking out. The company does not need to give prior warning to the landholder, but must notify the landowner within 7 days of marking out.”
How will my objection be dealt with?

Valid objectors (that is, people who can demonstrate an “interest or estate”) will be given an opportunity to discuss concerns with MRT and the company. This process may resolve concerns by agreeing to remove certain land from the lease/licence area or agreeing to special conditions (e.g. requiring landowner notification when a work plan is approved or specifying the location of an access road).

If no agreement can be reached, the Mining Tribunal will hold a hearing and make a determination about your objection (see Chapter 11 – Mining Tribunal). If the Mining Tribunal upholds your objection, the mining company will be given a further opportunity to exclude your property from the lease/licence area.53

Regardless of the outcome of the Mining Tribunal, the Minister ultimately decides whether to grant a mining lease. The Minister makes this decision after considering any recommendation of the Director and any decision of the Mining Tribunal.54 There is no obligation to abide by a determination of the Mining Tribunal (to date the Minister’s decisions have been consistent with the Tribunal’s decision).

The considerations for production licences are slightly different. The Minister will decide whether to grant a production licence after considering any recommendation of the Director and subject to any decision of the Mining Tribunal.55 It is not clear whether this means that the Minister is bound by a decision of the Mining Tribunal.

Further opportunities to provide comments on the mining operation are provided during the development assessment process (see Chapter 7 – Development Assessment).

How will I know if a Mining Lease or Production Licence is granted?

Only the applicant will be directly notified if the Minister grants a mining lease or production licence.56 Notice is not given to affected landowners or objectors. If you are concerned about a proposal, you should regularly check the status of the application on the TIGER database or contact MRT for more information (see Chapter 9 – Access to Information).

The Minister can only grant a mining lease or production licence over private land if arrangements have been made for compensation to affected landowners.57 Therefore, in practice you will be contacted prior to a lease or licence being granted over your property in order to discuss compensation.

Are there any restrictions on Mining?

There are some areas in Tasmania where mining leases or production licences cannot be granted. Some of the more common limitations on mining activities are listed below.

Private Land

There are certain restrictions on mining activities on private land (See Chapter 6 – Access to Private Land).

Reserves

Mining in reserve areas is subject to any restrictions outlined in the management plan for the reserve. Mining is specifically allowed in some reserves (such as regional reserves) but is generally prohibited by the management plans for National Parks in Tasmania (See Chapter 7 – Mining in Reserves).

World Heritage Areas

Mining is generally considered to be inconsistent with World Heritage values, making it very unlikely any new mining projects would be approved within Tasmania’s World Heritage Areas (See Chapter 8 – Commonwealth Approvals).

Heritage

A mining lease or production licence cannot be granted over Aboriginal land, within the meaning of Aboriginal Lands Act 1995 (Tas), without the agreement of the Aboriginal Land Council of Tasmania.58 Also the Aboriginal Relics Act 1975 prohibits the disturbance of Aboriginal relics by mining activities unless a permit is issued.

53 Section 77(1) MRDA (mining lease); Section 67G (production licence) MRDA
54 Section 78 MRDA
55 Section 67H MRDA – different wording to exploration licence and mining lease. Minister doesn’t just have to consider any Mining Tribunal determination, the Minister’s decision is subject to such a decision.
56 Section 67h(3) MRDA – production licence. Section 78(1) MRDA – mining lease.
57 Section 67h(4) – production licence. Section 78A(2) – mining lease.
58 Section 179 MRDA
Under the *Historic Cultural Heritage Act 1995*, if a mining project may impact on heritage values of a property on the Tasmanian Heritage Register, the local council will refer the development to the Heritage Council as part of the assessment process.

### Quarrying

The term ‘quarry’ includes all extractive pits from which building, construction, landscaping and road making materials (including sand, soil and clay) are obtained. Quarries that are close to homes and properties can create significant nuisance problems in local neighbourhoods, such as noise (including vibration) and dust.

#### What approvals are needed to conduct quarrying activities?

Most quarries are ‘Level 1’ activities that require a planning permit from the local council (annually less than 1,000 tonnes of mineral or 5,000 m³ for sand or stone). Larger quarries will also require EPA assessment.

Operators of quarries must hold a mining lease to extract stone or other materials. However, a mining lease is not required for quarries on private land where the landowner uses all the material or sells less than 100 tonnes each year.

If the quarry supports forestry activities (for example, if the quarry will provide material for forestry roads), the operator may also require a forest practices plan.

#### What conditions will the quarry be subject to?

The [Quarry Code of Practice](#) sets out the assessment standard for quarrying operations and outlines best practice operating procedures. Permits should not be granted for quarry proposals which cannot satisfy the requirements of the Code.

Permit conditions generally require a quarry operator to comply with the Code.

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59 Schedule 2(5) EMPCA – quarrying (rock or gravel) and extractive pits (sand or clay) are defined separately.

60 Section 3 MRDA – Category 3 mineral.

61 Sections 5 (6) and 7 MRDA.
Can I prevent mining companies from coming onto my property?

Under current Tasmanian law, private landowners do not have a right to prevent mining operations from being approved on their land. While landowners can object to exploration and mining proposals and request that their land be excluded from lease / licence areas, the Minister has power to authorise mining or exploration activities on their property despite their objection.

However, there are some restrictions on when and how mining operators can enter private land to carry out mining and exploration activities. Outside of the situations discussed below, mining companies have rights to access private land and you may face large fines if you attempt to obstruct them from carrying out authorised activities.¹

**Exploration**

An exploration licence holder can enter on, or pass over and explore on private land, subject to the following restrictions:²

- before a licence holder enters private property, the landowner must be given at least 14 days written notice (unless the owner has agreed to allow earlier access);³ (see Chapter 17 for a sample notice) and

- no exploration activities can occur within 100 metres of any dwelling, substantial building, well or water body without the consent of the landowner.⁴ Landowners are **not** obliged to give this consent.

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¹  Section 23(3) MRDA exploration; Section 84(2) MRDA mining lease; Section 67N(3) MRDA production licence
²  On 28 August 2013, the House of Assembly passed a motion which the following comment “access to private land for oil or gas exploration will be dependent on landowner permission”. This is not currently a legal requirement, however future amendments may reflect this. Explanatory memorandum can be referred to where ambiguity exists in the legislation.
⁴  Section 19 MRDA
**Mining**

If a mining company intends to apply for a mining lease, they may enter onto private land to mark out the proposed lease area (see Chapter 5 – Mining Lease and Production Licence). They are not required to notify or get consent from the landowner before entering private property (although they must notify the owner within 7 days of marking out 5). The landowner may claim compensation for any damage caused by the marking out (see Chapter 10 - Compensation).

Once the mining lease has been granted, a mining company is only permitted to enter private land to undertake works if:

- there is a negotiated compensation agreement in place (see Chapter 10 – Compensation); 6 or
- the Mining Tribunal has made a compensation determination. 7

A landowner may refuse to negotiate a compensation agreement. A landowner may also object to a compensation determination being made. However, if the Mining Tribunal issues a compensation determination, the mining company will be able to enter private land to carry out mining activities, despite the landowner’s objection.

A mining company must also obtain consent before carrying out any mining operations on private land within 100 metres of any dwelling, substantial building, well or body of water. 8 Landowners are not obliged to give this consent.

Mining companies are not required to notify landowners before applying for a planning permit if the mining lease has been granted. 9 Consequently, you will not be able to prevent a mining company from applying for a planning permit over your property (though you may be able to make a representation to the local council opposing the application).

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**Production**

Once the production licence has been granted, the licence holder can enter private land without entering into a compensation agreement. However, the production licence holder must give the landowner at least 14 days written notice 10 before entering their property (unless the landowner has agreed to allow earlier access). 11

A mining company will need to get your consent to undertake exploration for gas, oil or geothermal energy within 100 metres of dwellings, buildings, wells or water bodies. 12 You are not obliged to give this consent. However, it is unclear whether ‘explore’ would include the drilling of new production wells.

If a planning permit is required to undertake the production operations (see Chapter 7), the mining company must notify you of the intention to make the planning application. 13 You cannot refuse to consent to the application – the company is only required to notify you. Consequently, you will not be able to prevent a mining company from applying for a planning permit over your property (though you may be able to make a representation to the local council opposing the application).

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“**No exploration activities can occur within 100 metres of any dwelling, substantial building, well or water body without the consent of the landowner. Landowners are not obliged to give this consent.”**

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5 Section 72 (2A) MRDA
6 Section 84(1)(c) MRDA
7 Section 128 MRDA
8 Section 79 MRDA
9 Section 52(1A) LUPA
10 Section 67N(2) MRDA
11 Section 67 N - Production licence – no requirement for valid compensation agreement to be in place. See section 84(1)(c) – Mining lease requirement for compensation agreement to be in place before entry.
12 Section 67K MRDA – states only exploration is prohibited without consent. This does not mean that production, undertaken in accordance with the licence cannot be undertaken.
13 Section 52(1) LUPA – the exception is for mining leases only. Therefore production licences require notification of an application for a permit.
CHAPTER 7 – Development Assessment

There are a number of pieces of legislation that regulate mining activities in Tasmania. How these pieces of legislation apply and interact will varying depending on the particular mining project. This section explains the development assessment process and how it applies to mining projects.

Development Assessment Flowchart
Resource Management and Planning System (RMPS)

The RMPS is an integrated system of laws, policies and procedures. Its aim is to ensure that all decisions about the use and development of land and natural resources in Tasmania are sustainable. This is achieved by ensuring that various pieces of legislation share sustainable development objectives.

While the Guide deals with planning permits and environmental authorities separately, in practice they are components of a single integrated assessment process. The EPA’s assessment informs the development assessment undertaken by the local council.

Is a planning permit required?

The mining project must comply with the relevant planning scheme for the area in question and will generally require a planning permit. A planning permit is not required for exploration activities where the activities are carried out in compliance with the MECOP (see Chapter 5 Mineral Resource Development in Tasmania).²

If a permit is required, the mining company must apply to the local council for the planning permit.³ It is an offence to commence mining activities (excluding exploration) without a permit.⁴

Planning schemes categorise use and development into three categories:

1. Permitted – use and development in this category must be approved, but can be subject to conditions regulating the mining activity (e.g. hours of operation)

2. Discretionary – use and development in this category will be assessed by the planning authority (often with input from the EPA – see below) and can be approved or refused.

3. Prohibited – use or development in this category must be refused (although the company may also apply to amend the planning scheme to allow the development).⁵

Depending on their size and proposed location, many mining projects will be classified as discretionary or prohibited. However, some quarries or smaller operations in rural zones may be permitted. The remainder of this Chapter focusses on applications for discretionary use and development (‘discretionary applications’).

See Chapter 9 – Access to information – for information about local planning schemes.

Planning Permits

Planning Schemes provide the basic rules for proposed new uses and developments in Tasmania and are administered by local councils. Planning schemes must be prepared in accordance with the RMPS and Land Use Planning and Approvals Act 1993 (LUPAA) objectives, State Policies, and having regard to the environmental, social and economic consequences of planning decisions.¹

Planning schemes usually divide the council area into different zones (e.g. General Residential, Rural Resource) and determine what types of activities (called ‘uses’ and ‘developments’) are allowed within each zone. Planning schemes also set out the standards that proposed developments must comply with.

In 2014, the State government appointed the Tasmanian Planning Reform Taskforce to develop the single Statewide planning scheme and a standard set of procedures and documents for all applications and permits.

“Planning permits and environmental authorities ... are components of a single integrated assessment process”

¹ Section 20 LUPAA
² Section 20(7)(b) LUPAA
³ Section 51(1A) LUPAA
⁴ Section 63(2) LUPAA
⁵ Division 2, LUPAA deals with planning scheme amendments. If the planning authority supports a proposal to amend the planning scheme, the application will be advertised and referred to the Tasmanian Planning Commission for assessment. For more information about this process, refer to the Environmental Law Handbook.
Will the planning application be publically advertised?

If a discretionary application is made for a mining activity the local council must provide public notice of the application by:

- advertising in a daily newspaper circulating in the relevant area;
- displaying a copy of the public notice in the local council’s office;
- displaying a public notice on all boundaries of the site of the proposed mining activity;
- directly notifying all adjoining owners. 6

The notice must describe the content of the development proposal (including description of environmental impacts) and the location of the affected area. The notice must also set out who representations must be addressed to and the date by which they must be received.7

For any application over private land, the landowners must be informed before a mining company applies for a planning permit over their property (see Chapter 6 – Access to Private Land).8 The mining company only needs to notify the landholder, they are not required to get landholder permission.

However, if a mining company already holds a mining lease, the company can apply for a planning permit over private land without giving further notice to the landowner. 9 This exception does not apply to production licences (see Chapter 6 – Access to Private Land).

Can I have my say on the planning application?

If a discretionary application is advertised, landowners and any other persons (including community groups, conservation organisations, downstream landowners or affected businesses) can make a representation to the local council in relation to the proposed mining activities.10 You do not have to have an “interest or estate” in the land to make a representation.

Representations must be received within 14 days of the date that the discretionary application is advertised.11

The local council will consider the planning scheme requirements, all issues raised in representations and any recommendations of the EPA (see below) before deciding whether to grant a permit.


Environmental impact assessment

The environmental impacts of a mining project are considered as part of the planning approval process. Where an application has been made under LUPAA for a permit in respect of a Level 2 mining operation, the application must be referred to the Board of the EPA (the Board) for assessment.

The role of the Board is to administer and enforce the provisions of the Environmental Management and Pollution Control Act 1994 (EMPCA). In particular, the Board plays an important role in determining development applications for Level 2 activities (see below). In practice, the EPA Division within DPIPWE assess and review the application and relevant material and provide information to the EPA Board to assist them in making a decision. The Board will advise the local council of its recommendation before the council makes its final decision about whether to grant a permit or not.13 If the Board recommends refusal, the local council cannot grant a permit for the mining activity.

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6  Section 57(3) LUPAA and Regulation 8 Land Use Planning and Approvals Regulation 2004
7  Regulation 8(3) Land Use Planning and Approvals Regulation 2004
8  Section 52(1) LUPA
9  Section 52(1A) LUPA
10 Section 57(3) LUPAA and Regulation 8(3)(b) Land Use Planning and Approvals Regulation 2004
11 Section 57(3) LUPAA and Regulation 8(3)(b) Land Use Planning and Approvals Regulation 2004
12 Section 61(5) LUPAA
13 Section 24 and 25 EMPCA
Will environmental impact assessment be required?

Whether environmental impact assessment will be required is determined by the potential impacts and the nature and size of the mining project.\(^{14}\) Exploration licences do not require planning permission or environmental authority (except in exceptional circumstances).\(^{15}\)

Mining operations will be classified as ‘Level 2’ activities if they fall within any of the categories listed in Schedule 2 of EMPCA. Smaller scale operations are classified as ‘Level 1’ activities.

**Level 1 Activities**

Level 1 mining proposals are generally assessed by local councils rather than the EPA.

However, the Director of the EPA can request that the local council refer a Level 1 operation to be assessed as if it were a Level 2 activity.\(^ {16}\) This will occur in instances where, despite lower production volumes, the potential environmental impacts of a proposed mining activity are significant enough to warrant a more detailed assessment by the Board.

There is no formal process for concerned citizens to refer a proposal to the Board for assessment, however you can write to the Director to request that a mining project be ‘called in’ and assessed as a Level 2 activity. Your letter or email should clearly set out the likely environmental impacts associated with the mining proposal.

**Level 2 Activities**

Level 2 operations are assessed and regulated by the EPA.\(^ {17}\) When a discretionary application for a Level 2 activity is made to a local council, the council must refer the application to the EPA Board for consideration.\(^ {18}\)

All mining applications referred to the Board must be assessed in accordance with the Environmental Impact Assessment Principles and in consultation with the local council.\(^ {19}\)

Level 2 activities in relation to mining, include:\(^ {20}\)

- Petroleum and chemical activities;\(^ {21}\)
- Mineral works, including works for processing mineral ores, sands or earths processing that involve 1000 tonnes or more per year of raw materials;\(^ {22}\)
- Quarries and extractive pits, including the extraction of sand, rock, gravel or clay producing 5000 cubic metre or more per year;\(^ {23}\)
- Mines, including the extraction of any minerals and producing that involve 1000 tonnes or more of minerals per year;\(^ {24}\)
- Materials handling, including processing by crushing, grinding, milling or separating of:\(^ {25}\)
  - rock, ores or minerals at a rate in excess of 1000 cubic metres per year.
  - coal handling and washing with a total handling or washing capacity of 100 tonnes or more per day.

Level 2 activities are divided into different classes based on the expected level of impact the activity will have. These classes are subject to different levels of assessment:

- Class 2A activities (small scale project with local environmental impacts), the developer will need to prepare an *Environmental Effects Report* (EER);
- Class 2B activities (environmental impacts of regional significance); and
- Class 2C activities (environmental impacts of State significance).

For both class 2B and 2C activities, the developer must submit a *Development Proposal and Environmental Management Plan* (DPEMP), which is generally prepared by a consultant on behalf of the developer.

\(^{14}\) Schedule 2 EMPCA  
\(^{15}\) Section 20(1) LUPAA  
\(^{16}\) Sections 24(1) and 27(2) EMPCA  
\(^{17}\) Section 25(1) EMPCA  
\(^{18}\) Section 25(1) EMPCA  
\(^{19}\) Section 25(2)(a) EMPCA  
\(^{20}\) Schedule 2(5) EMPCA  
\(^{21}\) Schedule 2(1) EMPCA  
\(^{22}\) Schedule 2(2)(e) EMPCA  
\(^{23}\) Schedule 2(5)(a) and (b) EMPCA  
\(^{24}\) Schedule 2(5)(a) EMPCA  
\(^{25}\) Schedule 2(6) EMPCA
While some small mining proposals with relatively minor impacts may be assessed by way of an EER,26 mining project proponents are most often required to prepare a DPEMP.27 DPEMPs require more detail than EERs, including management plans for ongoing monitoring, reporting and compliance.

The DPEMP must be prepared in accordance with the general DPEMP guidelines. The EPA may also issue project specific guidelines for each proposal.

The developer must submit a satisfactory EER or DPEMP within 12 months of receiving the terms of reference for the assessment.28 Once the EPA is satisfied that the document addresses the relevant guidelines, the EPA will direct the local council to release the documents for public comment.29

Will the environmental impact assessments be publically advertised?

All mining operations that are referred to the EPA for assessment (including Level 2 activities, and Level 1 activities called in by the EPA) will be publically advertised.30

Once the EPA is satisfied that an EER or DPEMP satisfies the requirements of the relevant guidelines, the documents are publically advertised and released for public comment for the following periods:

- For 2A activities, 14 days
- For 2B activities, 28 days
- For 2C activities, 42 days

This public comment period is not additional to the public comment period for planning permits – it will occur simultaneously. For example, if a mining proposal is classified as Level 2B, the application will be open for comment for a total of 28 days (not 14 days + 28 days).

During the public comment period, copies of the EER or DPEMP are available for inspection at the local council, the EPA office or Service Tasmania. A hard copy may also be available for purchase directly from the mining company or their consultant. Current and past DPEMPs are also available on the EPA website (see Chapter 9 – Access to Information).

Can I have my say on the environmental impact assessment?

Unlike objections under the MRDA, any member of the public can make a written submission (known as a representation) providing comments on an environmental impact assessment.32 For some large projects, the EPA will also invite public comments on the specific guidelines for the DPEMP.

The EPA has a guide to preparing a representation. It is important to make a representation during the comment period to ensure you have an opportunity to appeal the decision at a later point, if you decide to. It is also important to ensure that you check how the representation can be made (post, email etc.) This will be outlined in the advertisement and varies depending on the local council.

After the public comment period closes, the EPA conducts the environmental impact assessment by reviewing all the development documents and all representations. If the EPA is satisfied that the mining project should go ahead, they will recommend to the local council that a planning permit be issued33 and will propose conditions to be imposed34. It is still open for the council to refuse the development. However, if the local council approves the mining project, the permit must include any conditions that the EPA has specified.35 Any additional conditions imposed by the local council must not be inconsistent with the EPA conditions.36

If the EPA recommends that the development should not proceed,37 the local council cannot issue a permit for the mining project.

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26 Section 5 EMPCA
28 Section 27F EMPCA
29 Section 27G(1) EMPCA
30 Section 27G EMPCA
31 Section 27G(2) EMPCA
32 Section 57(5) LUPA
33 Section 25(5) EMPCA
34 Section 25(6) EMPC Act - The conditions may reflect commitments made by the mining company, as set out in the DPEMP.
35 Section 25(8)(a) EMPCA
36 Section 25(8)(b) EMPCA
37 Section 25(8) EMPCA
Projects of State or Regional Significance

Projects of State Significance

Under the *State Policies and Projects Act 1993*, the Premier can declare a project to be a Project of State Significance if the development can be shown to be in the interest of Tasmania. The order making such a declaration must be approved by both Houses of Parliament.

Such projects are classified as ‘Level 3’ developments, and are subject to a separate approval process. The fundamental difference between Projects of State Significance and other development applications is that the assessment process is conducted by the Tasmanian Planning Commission and the final decision is made by the government, instead of the local council.

The public are given an opportunity to make submissions and appear at public hearings in relation to the proposed development. Following the hearing, the Tasmanian Planning Commission makes a recommendation to the Premier about the proposed development, including any conditions that should be imposed. The Premier will then make a recommendation to the Governor regarding approval or refusal of the project. The Premier is not bound to follow the recommendations of the Commission, but any decision that is contrary to those recommendations must be approved by both Houses of Parliament.

Unlike normal planning applications, decisions in relation to Projects of State Significance are not subject to appeal.

Projects of Regional Significance

A mining company or a local council can apply to the Minister for Planning for a declaration that a project is a Project of Regional Significance. The application is to include a ‘statement of intent’ outlining key aspects of the project, including the anticipated timeline, likely environmental, social and economic impacts and details of studies to be carried out in relation to the impacts.

Projects of Regional Significance are assessed by a specially appointed panel in accordance with project-specific guidelines.

As of July 2014, no projects have been assessed under this process. For more information, refer to the Environmental Law Handbook.

Mining in Reserves


The reserve categories in Tasmania include:

- National Park
- State Reserve
- Nature Reserve
- Game Reserve
- Conservation Area
- Nature Recreational Area
- Regional Reserve
- Historic Site

Each of the different categories of reserves offers a different level of protection, specifying management objectives and particular activities that are allowed (or not allowed) to take place within that class of reserve.

Mineral exploration is explicitly included in the management objectives for reserves classed as Regional Reserves, Conservation Areas, Nature Recreation Areas and Public Reserves. Mining is not explicitly prohibited within National Parks. However, it can only occur if it is consistent with the management objectives (which focus on the natural heritage and cultural landscape values) or any management plan for the National Park. Management plans set out the specific activities and developments that may or may not take place within a National Park.

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38  Section 18(2) *State Policies and Projects Act 1993*
39  Section 26 *(EMPCA)*; Section 20 *State Policies and Projects Act 1993*
40  Section 26 *State Policies and Projects Act 1993*
41  Section 26 (7), (8) and (9) *State Policies and Projects Act 1993*
42  Division 2A - Section 60D(1) *LUPAA*
43  Section 60F *LUPAA*
44  Public reserves are a class of reserve under the *Crown Land Act 1976*
Although several management plans recognise the limited continuation of mining leases existing at the time of the parks creation (e.g. Douglas Apsley National Park), no management plans for National Parks in Tasmania currently allow for mining activities to occur. The approval of both Houses of Parliament would be required to amend management plans to allow for mining.

In practice, any proposed mining development in a National Park or reserve will be subject to the standard planning process (discussed above), however the local council or the EPA will be required to have regard to the relevant management plan.

Before a planning application can be lodged, the mining company must obtain written consent from Parks and Wildlife Service (PWS), Crown Land Services or Forestry Tasmania, depending on the reserve class the land is within. For reserves managed by the PWS, a Reserve Activity Assessment (RAA) for activities in reserve areas will be undertaken before written consent will be provided. Consent should not be given if the proposed mining activity is not consistent with the legislated management objectives for that reserve type.

Mining on Forestry Land

Quarrying on forestry land

Quarrying in a permanent timber production zone is largely outside the scope of the MRDA, provided the quarrying activity:

- is for the purpose of forestry activities (such as building roads into forestry coupes); or

- results in the sale of less than 100 tonnes per annum.

Such forest quarries do not require a mining lease or planning permit. However, quarrying activities in permanent timber production zones will require a certified forest practices plan to be obtained from the Forest Practices Authority (FPA). The FPA may consult with the EPA before certifying the plan. Once certified, all work carried out under the forest practices plan must comply with the terms of the plan, and the provisions of the Forest Practices Code.

Forestry related quarrying activities on other public reserves and Crown land will require both a forest practices plan and a planning permit from the local council. Larger quarries on forestry land may require assessment by the EPA.

Assessment of mining on forestry land

Mining activities undertaken on permanent timber production zone land under the Forestry Management Act 2013 will generally be assessed in the same way as all other mining activities.

48 Section 5(5) MRDA
49 Section 7 MRDA; Section 5(6) MRDA – except if the material is sold at a rate higher than 100 tonnes per annum
Groundwater

The use of groundwater can also be relevant for mining activities. A permit is generally required for any activity that may affect the natural flow or quality of water in a groundwater resource (such as an aquifer).

Dams

A mining project may require a storage dam for water supply depending on the location of the project and distance from an available water source. The mining project may also require a tailings dam. Tailing dams are often constructed to store waste products associated with mining operations, including potentially acid-forming wastes (AMD). In order to prevent the uncontrolled release of tailings material into the environment, mines usually have a disposal facility such as a dam or pond. Appropriate storage and management of tailings is critical to minimise environmental impacts.

The WMA contains special provisions for assessing an application for a dam structure. A storage dam for water supply will require a dam permit. However, dams constructed for the primary purpose of storing waste (e.g. tailing dams) do not require a dam permit. Instead, conditions relating to tailing dams are generally imposed as part of the environmental assessment.

Water Access Approvals

What approvals are required to take water for mining purposes?

Mining operations use varying quantities of water during extraction and processing, depending on the mineral and the method of extraction. The environmental impacts of water consumption needs to be considered as part of the environmental assessment process.

Management and disposal of wastewater and water contamination from mining activities must also be considered. This will not be covered in detail in this Chapter (see Chapter 15 – Compliance and enforcement).

Water licence and water allocation

Under the Water Management Act 1999 (WMA), a licence is required to take water from a watercourse or lake, other than for specified purposes. ‘Specified purposes’ includes drilling as part of the approved work plan under an exploration or production licence. For all other purposes, a mining company will need to get a licence before extracting water for use in mining operations.

Water licences must only be granted when the Minister has determined that taking the water is not likely to cause environmental harm (such as reduced flows, deterioration of water quality or erosion) or adversely impact other people who use the watercourse or downstream commercial operations.

The Minister can specify the conditions under which water can be taken. If DPIWPE is satisfied that the volume of water being taken from a watercourse for mining activities is causing material or serious environmental harm, the licence may be varied to reduce the authorised volume or to impose other conditions.

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58 Section 134A and section 135(2)(c) Water Management Act 1999
59 Part B Water Management Act 1999: The construction of dams and weirs in Tasmania are not generally subject to the normal planning approval processes that apply to most other developments: Section 60A(1) LUPAA
60 Tailing dams Waste depot under Schedule 2(3)(b) EMPA, Section 137(1)(c) Water Management Act 1999. However, tailing dams are subject to the dam safety provisions under Part BA WMA.
61 Section 3 Water Management Act 1999 - Water is defined under the WMA as residue, by-product, surplus or reject material which is to be, or is required to be, disposed of in a manner.

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53 Section 168 MRDA - A licensee may use surface water sufficient for drilling if drilling is part of a work program. Also section 48(1)(e) Water Management Act 1999.
54 Section 54 Water Management Act 1999
55 Section 56 and 58 Water Management Act 1999
56 Section 56 Water Management Act 1999
57 EMPA Act
Some mining and production activities will need Commonwealth approval. This is in addition to any approval required at the State level (e.g., mining lease or planning permit). These approvals are granted under the *Environment Protection and Biodiversity Conservation Act 1999* (Cth) (EPBC Act). In practice, many mining projects will undertake one environmental impact assessment at the State level which will also address Federal issues (e.g., listed threatened species).

In 2013, the Federal government proposed the delegation of Commonwealth approval powers to State governments. Currently, the Federal Environment Minister makes the final decision on mining projects that have or are likely to have a significant impact on a matter of national significance. A draft Approval Bilateral Agreement for Tasmania was released for comment in August 2014. Once finalised, mining projects approved under the State process will no longer require approval from the Commonwealth Minister under the EPBC Act.

Tasmania already has an Assessment Bilateral Agreement in place which allows certain State environmental impact assessment processes to be accredited and used by the Federal Minister for a determination under the EPBC Act. A revised Assessment Bilateral Agreement was released for public comment in August 2014.

### What mining projects need Commonwealth approval?

Approval under the EPBC Act is required if a new mining project or the expansion of an existing mining project would be classified as a ‘controlled action’. A controlled action is an action that is likely to have a **significant impact on a matter of national environmental significance** (MNES).

These MNES are also known as ‘triggers’ because they trigger the application of the EPBC Act and therefore the need for a Commonwealth approval.

The triggers (MNES) include:

- World heritage values of a World Heritage property;
- Listed National Heritage and Commonwealth Places;
- Wetlands of international importance (Ramsar wetland);
- Listed threatened species and ecological communities;
- Listed migratory species;
- Nuclear activities (including uranium mines);
- Commonwealth marine areas;
- Great Barrier Reef Marine Park; and
- Water resources (where impacted by coal seam gas development and large coal mining projects).

If an activity is likely to have a significant impact on one or more of these triggers, it must be referred to the Federal DOE for assessment. For example, if an iron ore mine proposed on land that is close to a World Heritage property could have a significant impact on the World heritage values of that area, the proposal would trigger the need for a Commonwealth approval. The decision to approve or reject the project is made by the Federal Minister for Environment on advice from the DOE.
How do I find out whether a mining project will trigger the EPBC Act?

You may already be familiar with some of the triggers in your area or in the area of the proposed mining project (e.g. habitat for threatened species such as the Tasmanian devil or a listed Ramsar wetland). To find out more about any MNES potentially impacted by a mining proposal, check the Protected Matters Search Tool on the Department of Environment website. This helpful website contains maps showing the location of Ramsar wetlands, threatened species and ecological communities, migratory species and heritage places.

How will I know if an activity is likely to have a significant impact?

As outlined above, a mining project will need to be referred to DOE for assessment if the proposal is likely to have a significant impact on one or more MNES. Significant impact is not defined in the EPBC Act. However, the Courts have found a significant impact is “important, notable or of consequence, having regard to its context or intensity”. The DOE have also published Significant Impact Guidelines to assist you in determining whether a mining project is likely to have a significant impact on a MNES.

How is a project referred to the Commonwealth?

There are 3 ways that a mining project can be referred to the Commonwealth:

- The mining company can refer the proposal themselves – which is expected of them.
- A Commonwealth or Tasmanian government agency (including a local council) responsible for assessing the proposal can refer it.
- The Federal Minister can request that the mining company refer the proposal to them (this is called “calling in”).

Members of the public cannot directly refer projects. However, if you are concerned that a mining project has not been referred to the Minister, you should first raise it with the mining company. If the company does not refer the project, then contact a State government agency (e.g. DPIPWE) and ask them to refer the proposal, or request that the Federal Minister for Environment ‘call in’ the project for assessment.

Can I have a say on whether it’s a

1. Section 67A EPBC Act
2. Booth v Bosworth (2001) 14 FCR 39
3. Section 72 EPBC Act – sets out the form and content of the referral; The EPBC Regulation 2000 - sets out further detail that must be included
4. Section 68 EPBC Act
5. Sections 69 and 71 EPBC Act
6. Section 70 EPBC Act; if no referral is made within a stipulated timeframe the Minister can deem the action to be referred (S70(3)EPBC Act)
“A controlled action is an action that is likely to have a significant impact on a matter of national environmental significance.”

controlled action?

All referrals received by the Federal Minister for Environment must be published on the Federal government website. Members of the public will then have 10 business days to comment on whether the proposed action is a ‘controlled action’. It is important to comment at this stage because if the Minister decides that the proposal is not a controlled action, the Commonwealth government will no longer have any power to assess or regulate the mining proposal.

When making your comments you should:

- read the referral documents carefully and point out any missing or incorrect information e.g. any listed threatened species not mentioned;
- attach any evidence or reports to support your comments (e.g. lists of threatened species spotted in the area);
- make reference to the Significant Impact Guidelines, explaining why you believe the potential impacts of the mining activity amount to a significant impact;
- comment on the type of environmental assessment that you think the project should be subject to (e.g. environmental impact assessment); and
- focus comments on MNES covered by the EPBC Act - other matters, such as planning issues or impacts on local heritage issues, will not be considered under this assessment process.

What happens if the activity is a controlled action?

The Minister may decide that an activity:

- is a controlled action;
- is not a controlled action; or
- is not a controlled action, provided the activity is carried out in a particular manner (often, this will require the activity to be carried out in accordance with conditions imposed by a State regulatory agency).

If the Minister believes that there is insufficient information to make an informed decision about whether the proposal is a controlled action, s/he can request additional information.

If the Minister determines that the proposal is a controlled action, it has to be assessed by the DOE. Commonwealth approval will be required before the project can proceed. When assessing the project, the Federal Minister must take into account:

- the principles of ecologically sustainable development;
- the environmental assessment material and any later reports;
- public comments; and
- comments from other Ministers.

What sort of environmental assessment will be carried out?

If the Federal Minister determines that the proposal is a controlled action, s/he must also decide what kind of environmental assessment will be applied to the controlled action. For example, the Minister might decide that a detailed environmental impact statement needs to be prepared, or may consider that the potential impacts are limited and the referral information submitted is sufficient to assess the proposal. The Minister has 20 business days from the date of the referral to decide what type of

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7 ss 74(2) and 170A EPBC Act
8 ss 74(3)(b), 75(1A)(b) EPBC Act
9 Sections 87 EPBC Act
10 Section 82 EPBC Act
11 Section 75 EPBC Act e.g. Arthur River Road
12 Section 136 EPBC Act
13 Section 3A EPBC Act
14 Section 136(2)(f) EPBC Act
15 Section 87 EPBC Act
16 Sections 101-105 EPBC Act; EPBC Regs cl 5.04.
17 Sections 83-85 EPBC Act
assessment is to be carried out. This decision must be published on the internet.

For large coal mining projects, the Minister must seek advice from the Independent Expert Scientific Committee on Coal Seam Gas and Large Coal Mining Developments.

The Minister may accept the environmental assessment prepared under the State legislation (for example, a DPEMP), rather than requiring new assessment documents where the assessment was undertaken in compliance with one of the accredited processes. This is commonly what happens. The Minister will refer to the environmental assessment documents, including any public submissions that formed part of the State assessment process, and decide whether or not the controlled action should be approved.

NOTE: In August 2014, a draft Approval Bilateral Agreement for Tasmania was released for comment. This would allow a project approved under State legislation to avoid the need for Commonwealth approval.

Can I have a say?

If the applicant is required to prepare an environmental impact statement or a similar report, it will be publicly exhibited for at least 20 business days. During this time any person can comment in writing. If the mining project is assessed under the Assessment Bilateral Agreement, then the project is advertised under the normal EPMCA advertising requirements which can require the proposal to be publically advertised for up to 42 days (see Chapter 7 – Development assessment).

Before a decision can be made, the Minister must publish the proposed decision on the DOE website. If the Minister proposes to approve the project, any conditions must also be published. The Minister must invite the general public to comment on the proposed decision and any conditions. The public will only have 10 business days to submit comments on the proposal. Comments must be in writing.

What can the Minister decide?

If the Minister approves the project, conditions can be attached to the approval (these will be additional to any conditions imposed on the planning permit or mining lease issued by the State government). Conditions might relate to:

- bonds or guarantees to pay for costs of damage to the site;
- preparation and implementation of management plans;
- ongoing monitoring of the site.

The Minister may decide not to approve the mining project. If this happens, the project cannot go ahead, even if all approvals required under Tasmanian legislation have been granted. The only way for the development to proceed would be for the mining company to amend the project to ensure it will not have a significant impact on any MNES.

Can I challenge the Minister’s decision?

There is no right to appeal against the Minister’s decision to approve a controlled action (unlike a decision to issue a planning permit).

Any person affected by the decision, including landowners, neighbours or conservation organisations that have existed for at least two years can seek judicial review of the Minister’s decision. For more information about challenging the Minister’s decision, see Chapter 13.

For more information on the Commonwealth assessment process refer to the Environmental Law Handbook.
PART 3 –
Accessing Essential Information
How can you find out more information about mining activities?

A number of resources are available if you want to know more about mining activities in your area. Information in this Chapter is divided into three areas:

1. Finding out more about a mining activity;
2. Finding out more about the environmental impacts/conditions of a proposed or existing mining activity;
3. Finding out more about the development assessment process.

How do I find out information about mining activities?

If you want to find out information in respect of mineral exploration licences, production licences and mining leases in Tasmania, the Tasmanian Information on Geoscience and Exploration Resources (TIGER) database is a good starting point. TIGER, managed by MRT, is a comprehensive, searchable website.

TIGER includes lots of useful information, but is not always easy to navigate and you may have difficulty finding what you’re looking for. To find a lease or licence, follow this step-by-step process:

1. Go to the Mineral Resources Tasmania webpage.
   

2. Click on the database search button on the home page.

3. If you already know the tenement reference number, or the details of the holder of the tenement, you can immediately click on Tenement Search.

4. If you wish to search geographically to see what mining tenements are in a particular area, click on Tenement Search – Browse Map.

5. This will show you a map with all the layers of mining tenements in Tasmania. The key on the right hand side explains the types of tenement.
6. By dragging the cursor over a particular area you can zoom in to see the details of the mining tenements that exist over that area. By clicking on the boxes on the right hand side, you can add or remove different layers that cover different types of mining tenements. For example if you are interested in mining leases – you can clearly see all the dark pink areas throughout Tasmania.

7. If you’re looking for a specific tenement, once you have located it using the search function, take note of the tenement reference number – in this case 3M/2011.
8. From the original TIGER Database page, click on Tenement Search.

9. Enter the tenement reference number and click search.

10. You will then see a brief summary of the mining tenement.

11. If you click on the highlighted tenement, you will be able to see further details.

12. If you want to find out more about the Holder or Operator, go back to the original TIGER Database page, click on Tenement Search. Enter their details in the Operator and click search. You will be able to see what other tenements are owned or operated by that person or company.
MRT does not currently provide public access to application material or advertise opportunities to comment on their website. Notifications are advertised in the local paper, but are not advertised online.

If you would like more information about activities at a mining / exploration site, you should contact MRT and request a copy of the lease, licence or other tenement.

If you are not provided with a copy of the documents in the first instance, you can make an application for ‘assessed disclosure’ under the Right to Information Act 2009 (refer to Right to Information section below). You should clearly outline, in writing, what information you are seeking. Provide as much detail as possible (e.g. lease holder, address of site, licence number). You should also explain why it is in the “public interest” to provide access to the particular document that you are requesting.

**How can I find out more about the environmental impacts/conditions of a proposed mining activity in Tasmania?**

Subject to restrictions on commercially sensitive information, the EPA must publish all information relating to the environmental impact of a mining project as part of the assessment process (see Chapter 7 – Development Assessment).1

The EPA website has a dedicated ‘Assessments in Progress’ page which provides details of projects which the EPA has determined will require assessment, and all proposals which are currently open for public comment. It also provides information regarding upcoming assessments, including assessment timeframes and milestones. For example:

<table>
<thead>
<tr>
<th>Client</th>
<th>Premises</th>
<th>Description</th>
<th>Milestone</th>
</tr>
</thead>
<tbody>
<tr>
<td>AUSTRALIAN MINES LIMITED</td>
<td>MACQUARIE ST, CAMPBELL TOWN TAS 7210</td>
<td>a mine</td>
<td>2B Guidelines provided 19/06/2013</td>
</tr>
</tbody>
</table>

The website provides access to draft and completed EERs and DPEMPs which provide detailed information about environmental impacts of projects. See Chapter 7 for information about how to make comments about these documents.

**Completed assessments**, including the EPA’s final report and recommended conditions, are also available on the website. This information can be helpful to access details about previous mining projects, check the conditions that were imposed on mining activities in your area and to see how the EPA has assessed the impact of mining projects in the past.

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1 Such as commercial in confidence or undue risks to threatened species, see s74(7) EMPCA
The EPA must also keep a register of environmental management and enforcement instruments, including environment protection notices and management plans. You can request copies of documents on this register – the copy must be provided, however a fee may be charged.

**How can I find out more about an existing mining activity?**

Development applications (including all supporting documents) relating to mining activities must be made available for inspection at the local council office during the public consultation period (see Chapter 7 – Development assessment). Many local councils also make the information available on their website.

Once the public comment period has closed, the local council is not required to make the development application and supporting material available. You should ask the local council to provide the material, but may need to make a Right to Information request (see below) if they refuse to provide a copy.

You can request a copy of a planning permit from the Council at any time, or inspect the permit at the local council office. In practice, most councils will require you to submit a Right to Information request before providing a copy of the permit.

It will also be helpful to obtain a copy of the relevant planning scheme to see how it regulates mining operations. Anyone can view planning schemes at your local council office or at the Tasmanian Planning Commission. Many planning schemes are also available on the local council’s website, although you should check that the web version of the planning scheme is up-to-date.

**How can I find out about water issues?**

You can contact DPIPWE for more information about water licensing and allocations.

The Water Information System of Tasmania (WIST) database is a very helpful source of information for issues relating to water licences, water allocations and dams permits etc.

If you want to know more about potable water and waste water management for mining projects, contact TasWater.

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2 Other than where the information discloses trade secrets, s22 and 23 EMPCA
How can I find out information about the Commonwealth Environmental Approvals process?

The Commonwealth DOE's website provides a range of information including:

- detail of referrals open for public comment, and developments requiring Commonwealth approval currently open for public comment: [http://www.environment.gov.au/cgi-bin/epbc/epbc_ap.pl?name=invitation_to_comment;limit=7;text_search=](http://www.environment.gov.au/cgi-bin/epbc/epbc_ap.pl?name=invitation_to_comment;limit=7;text_search=)

How can I find out information about cultural heritage issues?

Aboriginal occupation of Tasmania has continued for thousands of years and Aboriginal cultural heritage, both tangible and intangible, is found throughout the State.

The Tasmanian Aboriginal Site Index (TASI) database, managed by the state government agency, Aboriginal Heritage Tasmania (AHT), includes information for nearly 12,000 Aboriginal heritage sites recorded in Tasmania. To search this database, complete a request from and submit it to AHT.

NOTE: The Tasmanian Aboriginal community does not consider TASI to be an exhaustive or accurate list of heritage places. You can contact ALCT or the Tasmanian Aboriginal Centre for a more detailed assessment of cultural heritage values present in an area in which a mining activity is proposed.


For a list of Local Heritage Places in your area, refer to the relevant local planning scheme.

Other documents

Hard copies of the *Mineral Exploration Code of Practice* and *Quarry Code of Practice* can be obtained from MRT or through Service Tasmania. They are also available on-line for free.

The EPA produces a range of brochures that outline Tasmania's environmental control system – these documents are available from Service Tasmania centres or on-line for free at [http://epa.tas.gov.au/epa/](http://epa.tas.gov.au/epa/)

EDO Tasmania's Environmental Law Handbook provides an overview of resource management and planning laws.
Right to information requests

The Right to Information Act 2009 (RTI) gives members of the public a legally enforceable right to be provided with information held by a public authority or a Member of Parliament unless that information is ‘exempt’.

Exempt information includes commercially sensitive information, and information affecting National or State security, defence or international relations.\(^3\)

The RTI refers to four types of disclosure, including:

- **Required disclosures** - disclosures required by law e.g. annual reports.
- **Routine disclosures** - made by public authorities in relation to information it decides may be of public interest.
- **Active disclosures** - disclosures in response to a request made other than under the RTI Act, such as an informal request for information by telephone.
- **Assessed disclosures** - disclosures made in response to a formal request under the RTI Act for information in the possession of a public authority or State Minister of Parliament that is not otherwise available.

This section deals with applications for ‘assessed disclosure’ under the RTI. You should try to obtain the documents through a direct enquiry with the relevant agency before resorting to assessed disclosure.

**How do I make an RTI request?**

An ‘assessed disclosure’ involves a formal request for government to provide the information you require. Requests must be made in writing. You do not have to use an RTI Assessed Disclosure form, however it can be useful. If you do not use the form, make sure your application specifically requests assessed disclosure under the RTI Act (see Chapter 17). You should clearly outline what information you are after.

Applications must be accompanied by an application fee and sent to the RTI contact at the relevant agency. For example, the Right to Information Co-ordinator at DPIPW can be contacted at:

GPO Box 44
Hobart TAS 7001

Phone: 03 6165 3133
Email: right2info@dpipwe.tas.gov.au

Each local council or other State government department will have a separate RTI contact.

\(^3\) Part 3 of the RTI Act
What if my RTI request is refused?

If your RTI request is refused by the public authority, you can make an application to the principal officer within the authority for internal review. If you are still unhappy with the results of the internal review, you may appeal to the Ombudsman. For more information, go to the Ombudsman website.

For advice about challenging a decision to refuse your RTI application, contact EDO Tasmania.

How can I get information from the Commonwealth government?

If you are seeking information from a Federal government agency (such as DOE), you will need to make a Freedom of Information request under the Freedom of Information Act 1982 (Cth). Fees for FOI requests can be considerable so check the costs before submitting an FOI request. Visit the DOE’s website for more information about these FOI requests.
PART 4 – Legal Actions
Community participation early in decision-making processes can improve development outcomes and community acceptance for mining projects. However, sometimes legal action is necessary. If you are considering taking any legal action, it is important that you seek legal advice before doing so.
CHAPTER 10 - Compensation

Compensation is payable to the owner or occupier of land for loss suffered (or likely to be suffered) as a consequence of exploration or mining. There are a number of ways that compensation can be claimed for what is referred to as “compensable loss”.

Compensation relates to damage to land or restrictions on access, rather than any payment for the value of the minerals extracted. In most cases the minerals are owned by the State and do not form part of your private property (see Chapter 3 – Mining in Tasmania).

Compensation can be claimed for:
- loss of the use, occupation, and possession of land subject to the mining lease;
- actual and prospective damage to the surface of the land, or to any buildings or other property of the owner, caused by the mining operations;
- severance of any part of the land;
- loss or damage arising from the use of any right-of-way or easement; and
- all other damage consequent upon, or directly flowing from, any mining operation on the land.

A Compensation Agreement is an agreement between a landowner and a mining company which describes the compensation the landowner will receive. If agreement cannot be reached between the parties as to the appropriate level of compensation, or the landholder refuses to enter into a Compensation Agreement, the dispute will be determined by the Mining Tribunal (see Chapter 11 – Mining Tribunal).
What should I know before entering into a Compensation Agreement?

The Compensation Agreement outlines the amount of compensation payable and includes the following matters: 7

- description, the location and the area upon which the work/mining will be undertaken;
- the anticipated date of commencement and duration of the proposed work/mining;
- the agreed point/s of entry/exit from the land for the purposes of the work/mining;
- the number and type of vehicles, plant and equipment involved; and
- a description of the facilities and sanitary arrangements to be provided on the land.

There is no requirement for a Compensation Agreement to be in place before a mining company can enter private property for the purpose of undertaking activities under an exploration licence.

In contrast, the Minister cannot grant a mining lease or production licence over private land unless: 8

- a Compensation Agreement has been made between the mining company and the landowner; or
- the Mining Tribunal has determined the rate of payment to the private landowner.

If you have entered into a Compensation Agreement, you cannot later refuse access to your land. If you refuse to negotiate a Compensation Agreement, the matter will be referred to the Mining Tribunal to decide what amount of compensation must be paid.

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7 Section 145(2) MRDA
8 Section 76A(2) MRDA – mining lease. Section 67I(4) MRDA – production licence.
CHAPTER 11 - Mining Tribunal

What is the Mining Tribunal?

The Mining Tribunal is a specialist division of the Magistrates Court, set up to hear matters relating to various activities under the MRDA. These matters include, but are not limited to: 2

- The right to occupy land under a licence or lease;
- The right to use water for exploring or mining;
- Trespass on, or injury to, land;
- Damages arising out of exploring or mining;
- The amount of compensation payable; and
- Any appeals and objections under the MRDA.

The Mining Tribunal is intended to be accessible and is not bound by the same strict legal rules as other Courts. Parties cannot be represented by a solicitor, unless they get special permission from the Tribunal.3

The Magistrates Court ‘advice to self-represented parties’ page on their website provides more information about the Court process.

Can I object to the Mining Tribunal?

Any person with an interest or estate in land may object to a proposal to grant an exploration licence, production licence or mining lease over that land.6

‘Interest or estate’ has been interpreted narrowly by the Courts. The test requires an objector to demonstrate that they have an interest in the land that is greater than the general public. That has been held to be limited to people who can demonstrate a financial or proprietary interest in land covered by the licence / lease.

In Stow v Mineral Holdings (Australia) [1979] HCA 30, a conservation group representing bushwalkers, campers and naturalists objected to an application for a special prospector’s license in a National Park. The High Court of Australia held that the group’s interest in the application was a public one, rather than a private interest and was not sufficient to claim an “interest or estate”. Therefore, the Court held that the group did not have a right to object to the application.

This decision has been upheld in relation to more recent objections. For example,

- In The Matter of an Application for Exploration Licence EL46/2004 AND In The Matter of Objections of DK Crawford and P & G de Burgh-Day, the Tribunal held that an “estate or interest” meant an “estate or interest” of a ‘proprietary nature in the land’, including freehold or leasehold title, or an easement over the land. The Court found that Mr Crawford had standing as a landowner but the de Burgh-Days, who raised amenity issues, did not.

- In Frontier Resources Ltd v Tarkine National Coalition [2011] TASMC, the Tribunal held that a group with the aim of protection and conservation of the natural environment did not have an ‘interest or estate’ in land subject to an exploration licence. The conservation organisation was also ordered to pay the other parties costs.

It is yet to be tested whether adjoining or downstream landowners concerned about the impact of water contamination on their stock or crops, or loss of value of their property would be considered to have an interest or estate.

If you are not sure whether you have an ‘interest or estate’ in land affected by a licence / lease application, you should seek legal advice.

If you have concerns about environmental impacts, these concerns may be more appropriately dealt with through the environmental assessment (see Chapter 7 – Development assessment) and Resource Management and Planning Appeal Tribunal (see Chapter 12).

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1 Section 3 MRDA
2 Section 128 MRDA
3 Section 131(4) MRDA
4 Section 15 MRDA
5 Section 67E MRDA
6 Section 76 MRDA
How do I object to the Mining Tribunal?

Objections must be lodged within 28 days of the licence application being advertised in a local newspaper or the date of ‘marking out’ for a mining lease. The objection must:

- be in writing;
- specify the reasons for objecting to the licence/lease (known as the grounds);
- be accompanied by the prescribed fee (check the MRT website for the current fee); and
- be lodged with the Registrar of Mines (sits within MRT).

Objections can be personally lodged with the Registrar of Mines or sent to – The Director of Mines, PO Box 56, Rosny Park TAS 7018. If you are sending your objection by post, make sure the objection is sent well before the 28 day time frame. The objection form can be found on the MRT website. For an example objection see Chapter 17 – Templates and Examples.

What happens to my objection?

All objections sent to the Registrar of Mines will be referred to the Director of Mines within 7 days of the objection being lodged. The Director of Mines must attempt to resolve objections before there is a formal hearing by the Mining Tribunal. To do this, the Director usually convenes an informal meeting between the parties to discuss relevant issues and how they might be resolved.

If the matter cannot be resolved to the satisfaction of all the parties at the informal meeting, it will be referred to the Mining Tribunal. If you are unhappy with the outcome of the Mining Tribunal hearing, you may be able to appeal to the Supreme Court (refer below). You should seek advice before commencing any legal proceeding.

Grounds of objection

If you are considering lodging an objection (or providing comments to MRT), review the mining proposal and think about the environmental impacts. Some things to consider include:

- the potential impacts on your land;
- tourist operations within the area;
- location of water resources (ground and surface);
- other mines/industries in the area;
- amenity, noise, dust and traffic issues;
- reserve areas within the licence/lease area;
- impacts on your livestock;
- access to your property;
- Aboriginal relics/ cultural heritage; and
- critical habitat, ecosystems, species and other environmental impacts.

For exploration licence objections, if you do not believe that proposed exploration activities will be able to comply with any provisions of Minerals Exploration Code of Practice (the MECOP – refer above), you should notify MRT and explain your concerns.

See Chapter 14 for more information of grounds of objection. For an example objection, see Chapter 17 – Templates and Examples.

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7 Sections 15 and 67E and 76(d)(3) MREIA
8 Section 15(2)(a)-(d) MREIA
9 Section 129(2) MREIA
10 Section 130 MREIA
11 Section 15(3) MREIA

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See Chapter 14 for more information of grounds of objection. For an example objection, see Chapter 17 – Templates and Examples.
CHAPTER 12 - Resource Management and Planning Appeal Tribunal

This is a brief overview of how the Resource Management and Planning Appeal Tribunal (RMPAT) operates. For more information, refer to EDO Tasmania’s publication: Going it Alone: A Practical Guide for Unrepresented Litigants in the Resource Management and Planning Appeal Tribunal.

What is RMPAT?

RMPAT is a specialist Tribunal established to review a number of resource management and planning decisions made by local councils and government agencies. RMPAT will not review decisions in relation to applications for mining leases or production licences, but may review decisions to grant a planning permit for mining activities and any associated environmental conditions. RMPAT can also hear applications for civil enforcement where permit conditions are not being complied with (see Chapter 15 – Compliance and Enforcement).

Who can lodge an appeal?

The mining company and any person who made a representation during the public comment period (see Chapter 7 – Development assessment) can lodge an appeal.1

An appeal to RMPAT will only address planning or environmental considerations related to the permit, rather than the decision to grant the licence / lease. If you wish to object to the granting of the licence / lease, see Chapter 11 – Mining Tribunal.

The RMPAT also hears civil enforcement proceedings (see Chapter 15).2

How do I appeal to RMPAT?

To commence an appeal, you need to lodge a form known as a notice of appeal with RMPAT (see Chapter 17 – Templates and Examples). All representors will receive a letter advising that a planning permit has been issued (or refused). You must lodge your appeal within 14 days of the date of that letter (regardless of the date on which you actually receive the letter).3

On what grounds can I appeal?

The grounds of appeal are the reasons why you think the decision needs to be reviewed. At the hearing, you will generally only be able to raise the grounds you included in your notice of appeal so you should ensure that they are specific and relevant to matters that RMPAT can consider.

Your grounds should focus on any provisions of the relevant planning scheme or State Policies that you believe that the mining activity will conflict with (see Chapter 17 for an example). You cannot raise issues in relation to the granting of the mining lease. For more information about grounds of appeal, see Chapter 14 – what should I consider before taking legal action.

How will my appeal be heard?

Appeals to RMPAT involve merits review. This means the Tribunal considers the decision to grant the planning permit for a mining project as if it was the original decision-maker.4 RMPAT is entitled to take account of new material and can inform itself of any matter in any way that it considers appropriate.5

After hearing evidence and reviewing all relevant material, RMPAT can confirm the decision to issue the permit, change any conditions attaching to the permit or overturn the decision.6

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1 Section 61 LUPAA
2 48 EMPCA
3 Section 61 LUPAA
4 Section 16(c) Resource Management and Planning Appeals Tribunal Act 1993
5 Section 16(c) Resource Management and Planning Appeals Tribunal Act 1993
6 Section 23(2) Resource Management and Planning Appeals Tribunal Act 1993
Supreme Court of Tasmania

What is judicial review?

Judicial review is about challenging the process by which government decisions are made. These proceedings do not assess the merits of the case, only whether the decision was lawful and whether the correct legal procedure was followed. That is, a judicial review does not look at whether a decision is a "good" decision, only whether the decision is one which the decision maker was lawfully able to make.

For example, a judicial review challenging the Minister’s decision to issue a mining lease would not specifically consider whether the proposal would have adverse environmental impacts, it would only consider whether the Minister followed the correct process and had enough evidence to satisfy herself or himself that all the criteria in the MRDA have been established.

Judicial review proceedings are useful in limited instances. If the Court agrees that a legal error has been made, it can void the decision to grant the mining lease. However, the Court may also decide to simply refer the application back to the Minister to reconsider or may allow the mining company to amend the application and re-apply.

Judicial review can be extremely complex and technical. We strongly recommend that you seek legal advice before commencing proceedings.

Who can apply for Judicial Review?

To apply for judicial review, you must be a ‘person aggrieved’ by the decision you are challenging. A person aggrieved is defined as ‘a person whose interests are adversely affected by the decision’.  

This test is broader than ‘interest or estate’ under MRDA. The Tasmanian Supreme Court recently held that a conservation organisation (the Tarkine National Coalition) was a person aggrieved by a decision in relation to a mine in the Tarkine.  

How long do I have to make an application for review?

You have 28 days to file a judicial review application from the date you receive notice of the decision. If you have asked for a statement of reasons for the decision (see below), your application must be filed within 28 days of receiving the statement.

What is a statement of reasons?

If you are considering commencing a judicial review proceeding, it is a good idea to obtain a statement of reasons. A statement of reasons sets out the information relied on by the decision maker and the reasons why the decision maker made the decision. This allows you to identify the factors that the decision maker considered, the weight those factors were given and any facts relied on. This information will help you to assess whether the decision was lawfully made.

How do I apply for a statement of reasons?

If a statement of reasons for the decision is not provided with the decision, you should make a written request for them as soon as possible.
It costs nothing to request a statement of reasons. To apply for a statement of reasons you must make a written request to the decision maker (see Chapter 17 – Examples and Templates). If the decision maker refuses to provide a statement of reasons, you can apply to the Court for an order that the decision maker provide you with reasons.

Federal Court

There is no right to appeal against the Minister’s decision to approve a controlled action under the EPBC Act.

However, you may be able to commence judicial review proceedings under the Administrative Decisions (Judicial Review) Act 1977 (Cth) if you believe that the Minister did not follow the proper legal process.

To be able to commence judicial review proceedings, you must establish that you are an “interested person”. An interested person includes:

- an individual7 or organisation8 whose interests are directly affected by the decision,
- an individual who has been engaged in activities to protect the environment during the previous two years; or
- an organisation with objects and purposes that relate to environmental protection that has been engaged in relevant activities during the previous two years.

Judicial review actions commenced in the Federal Court can be very complex and expensive. We strongly recommend that you seek legal advice before commencing proceedings.

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7 Section 475(6) EPBC Act
8 Section 475 (7) EPBC Act

Savage River mine, Tasmania. Photo by Dan Brown
Chapter 14 – What should I consider before taking legal action?

What level of involvement do I want to have?

Running a legal proceeding can be very expensive and time consuming, including engaging experts and lawyers, seeking information and preparing documents.

Before deciding to take legal action, you should consider:

- what do you want to achieve? Are there other options to achieve those outcomes?
- how much time are you willing or able to commit?
- do you want to engage a lawyer?
- are there other concerned people you can join with?
- what level of financial commitment can you make?

What am I objecting to or appealing against?

It is very important to decide whether you will object to the granting of the lease/licence or appeal against the decision to grant a planning permit.

If you wish to raise issues in relation to the size of a proposed lease area, duration or intensity of the proposed mining practices on your property or the impact of access arrangements, you may choose to object to the mining lease or production licence.

However, if you are concerned about the effects of mining operations on a river, control of dust emissions, protection of habitat or other environmental impacts, appealing against a planning permit (and associated environmental conditions) or seeking review of a Commonwealth approval will be the most appropriate legal action.

What will my grounds of objection/appeal be?

Your grounds of appeal/objection will be the most important aspect of the legal proceedings. They form the basis of what you can argue.

In general, your arguments will be restricted to the grounds outlined in your objection/notice of appeal and the Court will not permit you to produce evidence or raise other issues that have not been addressed in those documents. If your grounds are too narrow you will restrict the arguments you can rely on.

However, it is also important to restrict your grounds to arguments that are supported by evidence and address the relevant legislation. Putting forward irrelevant or unsubstantiated objections will reduce the persuasiveness of your argument.

You should seek legal advice when preparing your grounds of appeal/objection. Refer Chapter 11 for objections and Chapter 12 for grounds of appeal.

Self-represented or legal representation?

Whether you decide to get legal representation will depend on what you want to achieve and the complexity of the legal action that you are pursuing. For example, if you believe that your concerns about the footprint of the mine are easily addressed, you may prefer to make your objection to the Mining Tribunal without a lawyer.

In contrast, it is highly desirable to have legal representation if you decide to commence judicial review proceedings.
Do I need expert assistance?

Expert evidence in many cases is crucial to support your grounds of appeal or objection. For example, if you wish to argue that a mine will have a significant impact on a threatened species, you should present evidence about what the impacts will be, and why they are significant for the affected species.

Engaging an expert to prepare evidence can be expensive.

What are the risks and benefits of legal action?

Legal action involves a degree of risk – it is very rare that the outcome of a case can be guaranteed. There is a risk that if you lose the case, not only will the mining project go ahead but you may also have to pay the other parties’ legal costs.

Other than in the RMPAT, the general rule is that the unsuccessful party pays the costs incurred by the other side (as well as their own costs). These costs can be substantial. In the RMPAT, the general rule is that each party pays their own costs, regardless of the outcome. However, the RMPAT can make orders that one party pays another party’s costs in some circumstances.

In the event that an application for costs is made, the Court or Tribunal will consider a range of factors, including:

- the merits of your case (including any evidence you presented);
- whether you had reasonable prospects of success; and
- whether your case was brought in the public interest.

One of the main ways you can reduce the risk of having to pay the other sides’ costs, as well as reducing your own costs, is to be open to alternative methods for resolving the dispute. For example, the informal discussions facilitated by the Director of Mines may resolve objections relating to exploration licence (e.g. by removing your land from the exploration area), and mediation opportunities exist in the RMPAT and Supreme Court. Don’t assume your only recourse is to take the matter to Court - mediation or informal discussion can be very helpful in resolving problems or narrowing down the issues.

Other tips for reducing the cost risks include:

- ensure you stick to all Court timeframes and deadlines. If you miss a deadline, the other side can apply for costs resulting from the delay.
- Get legal advice and expert advice as early on in the process as possible. This will help you to assess your prospects of success, narrow your grounds and reduce costs and delays.

How do I run a case?

For more information about how to run an appeal in the Resource Management and Planning Appeal Tribunal refer to EDO Tasmania’s publication: *Going it Alone: A Practical Guide for Unrepresented Litigants in the Resource Management and Planning Appeal Tribunal*
Chapter 15 – Compliance and Enforcement

Mining

This section outlines the relevant enforcement and compliance powers under the MRDA.

Who enforces compliance with Mining Laws?

MRT are given power under the MRDA to take enforcement action in relation to breaches of mining laws.

Unlike LUPAA and EMPCA, there are no provisions for members of the public to take enforcement action (see Civil Enforcement below).

Will land be rehabilitated after mining activities cease?

Any application for a mining lease or production licence must be accompanied by a mining plan or field development plan (for production licences). The mining / field development plan must outline any proposed rehabilitation of land. A closure plan is also required before approval will be granted.

Rehabilitation is generally also required by the environmental conditions imposed by the planning permit.

Operators are required to rehabilitate any land disturbed by the carrying out of exploration or production works. For exploration activities, the MECOP outlines the rehabilitation requirements that must be adhered to. The rehabilitation work is monitored by Inspectors of Mines.

Rehabilitation works should be carried out during exploration and throughout the life of the mine. It is important that a sufficient security bond be required at the outset to cover the cost of any areas that are not adequately rehabilitated, or a situation where the mining company goes bankrupt. Where more damage is suffered than anticipated, it can be difficult to require further work to be done.

What enforcement powers are available to MRT?

Offences

There are a number of offences under the MRDA, including:

- undertaking mining activity without a valid mining lease;
- exploring without a licence;
- carrying out production activities without a licence.

MRT can initiate prosecutions of any operators found to be committing any of these offences. Offences attract fines and, in some cases, up to 6 months in prison. While there is no specific offence provision for failing to comply with lease conditions, the lease itself will generally include conditions requiring compliance.

1 Section 3 MRDA
2 Sections 26, 67T, 43A and 60B MRDA – Refer to the Mineral Exploration Code of Practice: Fifth Edition which is available for more detail about rehabilitation after exploration activities.
4 Section 69 MRDA
5 Section 30 MRDA
6 Section 67U MRDA
7 Section 69 MRDA
All exploration licences include, as part of their conditions, a requirement to comply with an agreed work program and expenditure requirements. Failure to meet work program commitments may result in the cancellation of the licence.

‘Entry to land’ powers

Authorised officers from MRT can enter onto land to undertake any geological, geophysical or other scientific investigation. They are allowed to enter the land with or without assistants, vehicles or drilling machinery and may:

- open fences and gates;
- dig or drill holes;
- let off explosives; and
- do anything else necessary for those purposes.

The authorised officer conducting investigations must give notice to the occupier/owner before entering onto the property. Compensation must be paid to the owner or occupier for any damage caused as a result of the entry and any operations undertaken.

A police officer or inspector may remove a person from the land under a mineral tenement if they are mining or are taking minerals from the land without the consent of the mining company. In exercising this power, the police officer may use any force that is reasonable to remove the person.

What is a security deposit?

A security deposit is money provided in the form of bond to cover damage to private property, failure to meet work program commitments or to mitigate damage to the environment from the mining or exploration activities.

A security deposit is required to be provided by the mining company for any activity undertaken under an exploration licence, mining leases or production licences. The Minister may require the mining company to forfeit the security deposit if they fail to comply with a condition of the licence or lease. It may also be forfeited if the Minister revokes the licence or lease or for any other reason determined by the Minister.

False and misleading statements in regards to mining

It is an offence, if a person, in giving information or providing information under the MRDA makes a false or misleading statement knowingly. It is also an offence if a person omits information from a statement knowing that without that matter that statement is misleading.

Revocation of licence/lease

The Minister may revoke an exploration licence, a mining lease or a production licence if the mining company fails to comply with, or contravenes any provision of the MRDA or any condition of the lease.
Permit conditions

Mining without a permit

If a planning scheme requires a planning permit for mining activities, it is an offence to commence the mining activities without the appropriate planning permit. A mining company operating without a permit can be fined and ordered to undertake rehabilitation work to return the land to the state it was in before the unlawful mining operations. In practice, the company would often be given an opportunity to apply for planning permit to retrospectively authorise the mining work. If granted, the permit may include conditions requiring rehabilitation.

Who enforces compliance with planning permits for mining?

The local council and the EPA both have responsibility for monitoring and enforcing certain parts of the mining project (see Chapter 7). For Level 1 activities the local council is solely responsible. For Level 2 activities (or Level 1 activities that have been called in), the EPA is responsible for enforcing environmental conditions while the local council is responsible for enforcing other conditions (such as road works or construction of site buildings).

What can I do if there has been a breach of the permit conditions?

It is an offence to fail to comply with any condition of a planning permit. If you’re concerned about a mining company’s activities, it is important to obtain a copy of the permit (including any variations) to ensure that you know exactly what is required of the company.

The local council maintains a record of all permits issued in its municipal area. You can inspect these permits at the local council office. Refer to Chapter 9 – Access to information, for more information about how to get a copy of the permit. If you are having difficulty understanding the conditions, contact EDO Tasmania for advice.

Once you have a copy of the planning permit, you can assess whether the company has in fact breached their permit conditions. If you believe that the mining company has not complied with the permit conditions, there are a number of steps you can take:

1. contact the company directly to discuss your concerns with them.
2. contact the local council and ask them to investigate whether there has been a breach. If the local council is reluctant to investigate, remind them that they have an obligation to enforce their planning scheme.
3. if the condition you are concerned about relates to an environmental condition, contact the EPA (see below).

If you believe that an offence has been committed, provide as much information and evidence as possible (photographs, notes etc) to the local council or EPA to support your concerns and encourage them to investigate.

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24 Section 51 (1) LUPA
25 The application would go through the normal development application process outlined in Chapter 7
26 Section 63(2) (c) and (d) LUPA
27 Section 63A LUPA
If you are not satisfied with the local council or the EPA’s response, you can consider taking civil enforcement action, seeking an order that the condition be complied with (and, if necessary, that any damage be addressed). See the Civil Enforcement Proceedings section for more information.

Environmental offences

What enforcement powers are available to the EPA?

**Environmental Offences**

The main environmental offences in Tasmania are outlined in the *Environmental Management and Pollution Control Act 1994* (EMPCA). These include:

- causing serious environmental harm;
- causing material environmental harm;
- unlawfully depositing a pollutant where environmental harm may be caused;
- contravening permit conditions;
- causing environmental nuisance.

Mine sites that are no longer undertaking ‘mining’ can also pose serious risks to ecosystems and may result in environmental harm. If you are concerned about ongoing harm resulting from legacy sites contact MRT or the EPA (see Chapter 3 - Mining in Tasmania).

**What do I do if an environmental offence is committed?**

If you are concerned about a breach of environmental conditions, raise your concerns with the mining company and ask them to address the issue. If this is not successful, contact the EPA and ask them to investigate the situation. Provide the EPA with as much information as you can about the alleged breach.

If you have noticed a pollution incident that requires urgent attention, contact the EPA to inform them of the incident as soon as possible. The EPA has a **24 hour Pollution Incidents & Complaints Hotline**: 1800 005 171 (freecall).

If the EPA is satisfied that a breach has occurred, they have a number of options. The EPA may:

- negotiate a course of action with the mining company to stop the breach and remediate the damage;
- issue an Environment Protection Notice requiring a particular action to be taken.
- issue an environmental infringement notice. An environmental infringement notice is generally a fine that the offender pays which does not involve criminal proceedings.
- commence prosecution proceedings.
- commence civil enforcement proceedings to seek orders to require action to be taken (or not taken), including requiring remediation.

**Environment Protection Notice**

An Environment Protection Notice (EPN) is issued by the Director of the EPA and can require a mining company to take measures to prevent, control, reduce or remedy environmental harm.\(^{31}\)

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\(^{28}\) Division 4, MRDA

\(^{29}\) Section 44 EMPCA

\(^{30}\) Section 67 EMPCA - Environmental Management and Pollution Control (Environmental Infringement Notices) Regulations 2006

\(^{31}\) Section 44 EMPCA
An EPN may require a mining company to:\(^{32}\)

- discontinue, or not commence, a specified activity
- limit the times or conditions under which the activity is carried out, or
- take specified action.

An EPN may also be issued to vary the environmental conditions of a permit. This may occur where it becomes clear that damage is being caused that is not effectively regulated by the current permit conditions.

If you are concerned that environmental harm is being caused by mining activities, you can ask the EPA to investigate and consider issuing an EPN.

**Civil enforcement**

Where a person engages in an activity that breaches EMPCA (including failing to comply with permit conditions) or has refused to take any required action, the Minister, the local council or a person with a “proper interest” in the matter can apply to the RMPAT for civil enforcement orders (see below).

If a mining company fails to comply with an order issued by the RMPAT, they can be fined. In addition, the EPA can do any rehabilitation work required by the order and recover the cost of the work from the mine operator.

**How can I find out about compliance?**

Prosecutions in the Magistrates Court are not reported. However, the EPA, MRT and Forestry Tasmania include information about prosecutions and compliance matters in their annual reports.

RMPAT decisions are available from Austlii’s [website].

For more information about EPA prosecutions, visit the EPA [website] and refer to their [compliance and enforcement policies] for information about how and when enforcement will occur.

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**Enforcement of water issues**

Impacts of mining activities (including unconventional gas extraction) on surface water and groundwater quality will generally be dealt with under the environmental conditions of the planning permit.

As outlined in Chapter 7, mining companies may also require licences to take water for their operation. Where a mining company breaches any condition of a water licence, DPIPWE can take the following actions:

- ‘Water Infringement Notice’ - An authorised officer can serve a [Water Infringement Notice],\(^{33}\) imposing a fine and/or demerit points.

- Ministerial direction - The Minister may direct a person who fails to take reasonable steps to prevent damage to a watercourse to rectify any damage. It is an offence not to comply with these directions.\(^{34}\)

- Suspension or cancellation of water licence - If a licensee accrues a prescribed number of demerit points (currently 12), their water licence can be suspended or cancelled. The Minister can also suspend or cancel a water licence if the licensee is convicted of an offence under EMPCA or fails to pay licence fees.\(^{35}\)

The Minister or a local council can also prosecute any person who does not comply with a provision of the WMA.\(^{36}\)

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‘An EPN may also be issued to vary the environmental conditions of a permit. This may occur where it becomes clear that damage is being caused that is not effectively regulated by the current permit conditions.’

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\(^{32}\) Section 44(3)(d) EMPCA

\(^{33}\) Part 13 and Schedule 5 of the Water Management Regulations 1999

\(^{34}\) Section 280D(1) Water Management Act 1999

\(^{35}\) Section 259 Water Management Act 1999

\(^{36}\) Part 15, Division 1 Water Management Act 1999, including licence conditions (s. 82)
Enforcement under the EPBC Act

What can I do if a mining company commits an offence or breaches the EPBC Act?

The EPBC Act sets out a number of offences for controlled actions taken without approval, or carried out in breach of approval conditions. 37

The Federal Minister can take a range of actions in response to offences, including revoking or suspending the approval, entering into an enforceable undertaking or prosecuting the mine operator.

Can I enforce mining and environmental law?

Tasmania

In the event that you are not happy with the response of the local council or the EPA to concerns you have raised about breaches of planning and environmental legislation, you may decide to take legal action yourself. Individuals or community groups who have a ‘proper interest’ in the alleged breach (such as a neighbour who is affected by dust pollution or downstream landowners affected by reduced water flows) can apply to the RMPAT for orders preventing mining activities that breach permit conditions or unlawfully cause environmental harm. 38 These actions are called Civil Enforcement proceedings.

The RMPAT can make orders which require the mine operator to refrain from doing specified activities or to undertake certain actions to remedy the breach or rehabilitate affected land or water. It is an offence to fail to comply with an order of the RMPAT.

For more information about how to commence civil enforcement proceedings, refer to EDO Tasmania’s publication: Going it Alone: A Practical Guide for Unrepresented Litigants in the Resource Management and Planning Appeal Tribunal (see Chapter 17 - Templates and Examples).

Commonwealth

In some cases, members of the public can also take action to remedy or restrain a breach under the EPBC Act. An interested person 39 can apply for an injunction to stop any activity that breaches (or threatens to breach) the EPBC Act. 40

How do I commence proceedings?

You can download an Application Form from the RMPAT website to commence enforcement proceedings under EMPCA. The Federal Court website has more information about how to commence enforcement action under the EPBC Act (see chapter 14 for more information about what to consider when deciding whether to take legal action).

We strongly advise you to seek legal advice before commencing any legal proceedings. Contact EDO Tasmania for advice, or the Law Society for a referral to another lawyer with experience with these types of proceedings.

38 Section 48 EMPCA
39 An interested person is an individual (S475(6) EPBC Act) or organisation (Section 475(7) EPBC Act) whose interests are affected, or who has been engaged in activities to protect the environment during the previous two years and in the case of an organisation, its objects and purposes relate to environmental protection.
40 Division 14 EPBC Act
Nuisance – noise, dust and other disturbance

All landholders have the right to reasonable use and enjoyment of their land. If you are experiencing problems with noise, dust or other disturbances from a mine near your property, you should talk to the mine operator. In many instances this may resolve the problem. Where this informal contact is not sufficient to resolve your concerns, further action may be required.

Noise, dust and other disturbances from mining activities may amount to:

- a breach of an environmental permit condition;
- an environmental nuisance under the EMPCA; or
- nuisance under common law.

You should get a copy of the environmental permit authorising the mining activity to check the specific conditions to see what is allowed (refer Chapter 9 – Access to information). You may find that the permit conditions allow the mining company to create that level of noise/dust. If you believe that there has been a breach, you should contact the EPA and ask them to investigate the matter.

If noise, dust or other disturbances (e.g. foul odours, unwanted light etc.) are not authorised and amount to a common law nuisance, you may be able to seek an injunction ordering the company to stop the nuisance, or to claim damages for the disturbance.

You should seek legal advice before commencing a nuisance action. Such actions can be very complex and difficult to run as a self-represented litigant.

“You may find that the permit conditions allow the mining company to create that level of noise and dust.”
References


Environmental Defenders Office Tasmania. 2013. Mining and Access to Private Land in Tasmania


Chapter 16 – Useful Contacts

Commonwealth Department of Environment:
GPO Box 787
Parkes ACT 2600
Ph: 02 6274 1111

Aboriginal Heritage Tasmania
Department of Primary Industries, Parks, Water and Environment
G.P.O Box 771, Hobart Tas 7001
ANZ Centre, 22 Elizabeth Street
Ph 6216 4471 or 1300 135 513 Fax: (03) 6233 5555

EPA Division, DPIPWE:
134 Macquarie Street, Hobart GPO Box 44A Hobart 7001 Ph: 6233 6518
1 Civic Square Launceston 7250 Ph: 6336 2236
Ph: 1300 135 513 (statewide) Fax: 03 6233 3800

Forest Practices Authority:
30 Patrick Street, Hobart 7000
Ph: 03 6233 7966 Fax: 03 6233 7954
Email: info@fpa.tas.gov.au

Forestry Tasmania:
79 Melville Street, Hobart 7000
Ph: 03 6233 8203 Fax: 03 6233 8156
Email: Forestry.Tasmania@forestrytas.com.au

Heritage Tasmania:
103 Macquarie Street, Hobart TAS 7000
GPO Box 618, Hobart TAS 7001
Ph: 1300 850 332 or 03 6233 2037
Email: enquiries@heritage.tas.gov.au

Land Titles Office
134 Macquarie Street, Hobart 7000
Ph: 03 6233 6467

Mineral Resources Tasmania:
30 Gordons Hill Road, Rosny Park
PO Box 56, Rosny Park 7018
Ph: 03 6233 8377 Fax: 03 6233 8338
Email: info@mrt.tas.gov.au
Parks and Wildlife Service:
134 Macquarie Street, Hobart 7000
GPO Box 44A, Hobart 7001
Hobart Ph: 03 6233 8011 Fax: 6233 3477
Launceston Ph: 03 6336 5312

Primary Industries & Water Division
1 Franklin Wharf, Hobart
GPO Box 44, Hobart 7001
Ph: 1300 368 550 (statewide)

Private Forests Tasmania:
78 Patrick Street, Hobart 7000
Ph: 03 6233 7445

Resource Management and Planning Appeal Tribunal
144-148 Macquarie Street, Hobart 7000
Ph: 03 6233 6464

Tasmanian Heritage Council:
GPO Box 618, Hobart TAS 7001
Ph: 03 6233 2037 Fax: 03 6233 3186

Tasmanian Planning Commission
144-148 Macquarie Street, Hobart 7000
Ph: 03 6233 2795

Law Society of Tasmania
28 Murray Street, Hobart 7000
Ph: 03 6234 4133 or Freecall: 1800 001 180
Fax: 03 6223 8240
Email: info@taslawsociety.asn.au

Planning Aid
c/- Hobart Community Legal Service
166 Macquarie Street, Hobart 7000
Ph: 03 6223 2500

Planning Institute of Australia
19A Hunter Street, Hobart
GPO Box 977, Hobart 7001
Ph: 03 6231 1842
Email: tas@planning.org.au

Tasmanian Farmers and Graziers Association:
Cnr Charles & Cimitiere Streets
PO Box 193, Launceston 7250
Ph: 1800 154 111 (Freecall) Fax (03) 6331 4344

Rural Alive and Well (RAW)
9 Blackwell Road
Melton Mowbray 7030
Ph: (03) 6259 3014
Website: http://www.rawtas.com.au/
“The proposed route of the access road across our property will reduce the area available for crops, limit access for our machinery and increase the risk of spreading Phytophthera.”

“We are concerned that waste released from the mine site will contaminate Clean River, from which we draw water for irrigation. Such contamination may threaten our organic certification.”
OBJECTION TO A MINERAL TENEMENT

FULL NAME AND POSTAL ADDRESS OF PERSON LODGING THE OBJECTION

Given Name (s): Peter
Surname Concerned
Postal Address
45 Farmland Road
Postcode: 7245
Phone No.: Mobile No.: 0400 020 232
Email Address: concerned@gmail.com Fax No.: 

Mineral Tenement Application which is the subject of this objection 6M/2014

Specify your interest in the land which is the subject of the Mineral Tenement Application
I am co-owner of an organic cherry farm within the area marked out for the mining lease.

Specify the grounds of the objection
1. Proposed vegetation clearing on the mine site will reduce habitat for native fauna. We are concerned about the impact on threatened fauna species. We are also concerned that habitat loss on adjoining properties will drive browsing animals onto our farm to feed.

2. The proposed route of the access road across our property will reduce the area available for crops, limit access for our machinery and increase the risk of spreading Phytophthera.

3. We are concerned that waste released from the mine site will contaminate Clean River, from which we draw water for irrigation. Such contamination may threaten our organic certification.

Signature of Objector Concerned

I hereby consent to Mineral Resources Tasmania releasing the grounds of this objection specified in this form, and my contact details, to the tenement applicant in order for the tenement applicant to attempt to resolve the objection prior to mediation under section 130 of the Mineral Resources Development Act 1995.

Signature of Objector Concerned

Form C2 July 2014

Objection Form
The application fee of $41.44 must accompany all applications.

Applications made through Service Tasmania: **STaRS Code: MR7**

Amount paid ___________________________ Receipt Number ___________________________

Cashier (Initial & date) ___________________________

Cost allocation: 892010.45.4602

Registry use: Time and date received ___________________________

Receiving officer ______________________________________

---

**ADDRESS FOR CORRESPONDENCE AND LODGEMENT OF FORMS**

Registrar of Mines
Mineral Resources Tasmania

Postal Address: PO Box 56 ROSNY PARK TAS 7018
               ROSNY PARK TAS 7018

Street Address: 30 Gordons Hill Road ROSNY PARK TAS 7018

---

**FURTHER ADVICE**

Further advice may be obtained by contacting Mineral Resources Tasmania:

Telephone: (03) 6165 4800 Facsimile: (03) 6233 8338

Email: info@mrt.tas.gov.au Internet: www.mrt.tas.gov.au

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Personal information we collect from you for registration and tenement administration processes will be used by the Director of Mines for that purpose and may be used for other purposes permitted by the Mineral Resources Development Act 1995 and associated laws. Your personal information may be disclosed to contractors and agents of the Director of Mines, law enforcement agencies and other public sector bodies or organisations authorised to collect it.

This information will be managed in accordance with the Personal Information Protection Act 2004 and may be accessed by you on request to the Department. You may be charged a fee for this service. Failure to provide this information may result in your application not being processed or records not being properly maintained.
# Right to Information Act 2009

## Application for Information Disclosure

### Applicant's Details:

<table>
<thead>
<tr>
<th>Name:</th>
<th>Joanna Smith</th>
<th>Title:</th>
<th>Ms</th>
</tr>
</thead>
</table>

**Date of Birth (optional):**

**Postal Address:** 48 Bauxite Lane  
Mount Roland TAS  
POSTCODE: 7389

### Daytime contact information:

<table>
<thead>
<tr>
<th>Telephone:</th>
<th>Business</th>
<th>Home</th>
<th>Mobile</th>
<th>0412 345 678</th>
</tr>
</thead>
</table>

**Email:** j.smith@hotmail.com

### Public Authority or Minister applied to:

Director, EPA

### General topic of information applied for:

(one sentence summary of information requested)

Water management plan and monitoring reports in relation to Xtraction Ltd’s mining operations at Bauxite Plains.
Description of efforts made prior to this application to obtain this information:

e.g. have you looked at our website?

I have requested copies of monitoring reports from Xtraction Ltd and DPIPWE officers, but the reports have not been provided. The information is not available on the EPA, DPIPWE or MRT websites.

Application Fee or Application to Waive the Fee:

Application fee included (please tick)
(cheque or money order for $37.00 (fee current as at 1 July 2014)

Office Use: Fee Received and Receipted:

OR

<table>
<thead>
<tr>
<th>Application for waiver:</th>
<th>Member of Parliament, in relation to official business</th>
<th>Financial Hardship (eg holder of a Centrelink or Veterans Affairs Card)</th>
<th>General public interest or benefit (you will need to show that you intend to use the information for this purpose)</th>
</tr>
</thead>
</table>

Reason Application fee should be waived:

(If there is insufficient room in the space provided please attach further details.)

Proof of Identity:

If application is for release of your personal information you must provide proof of identity before we can release the information – if lodging by email or mail you will need to provide certified copies. (please tick if you are required to provide proof of identity)

Office Use: Proof of Identity Sighted/Received and Acceptable
Details of the Information sought:

I request copies of the following documents:

- any soil and water management plan approved by the EPA, DPIPWE or MRT in relation to Xtraction Ltd’s mining operations at Bauxite Plains (7M/2014) (“the Mine”);

- details of any monitoring programmes in place for the Mine, including downstream sampling of Clean Creek;

- any water quality monitoring reports and supporting documents submitted to the EPA or EPA Division in relation to the Mine between 1 January 2014 and 31 August 2014. This information includes, but is not limited to, sampling records and results, ecology assessments and details of monitoring programmes;

- any correspondence between the EPA or EPA Division and Xtraction Ltd in relation to water quality monitoring from 1 January 2014 to 31 August 2014;

- details of any enforcement action taken by the EPA or EPA Division in relation to the Mine, including compliance notices, infringement notices or Environment Protection Notices.

(If there is insufficient room in the space provided please attach further details.)

Applicant’s Signature:  

[Signature]

Date: 3 September 2014

Example Right to Information Request
NOTICE OF INTENTION TO ENTER PRIVATE LAND

The holder of an exploration licence is required to give private landowners 14 days notice before entering upon or passing over private land for the purposes of conducting exploration activities. This notice is issued in accordance with Section 23 of the Mineral Resources Development Act 1995.

Name and address of land owner(s):
____________________________________________________________________________________________________________________________
____________________________________________________________________________________________________________________________
Postcode: ___________________________________

Property over which access is sought:
____________________________________________________________________________________________________________________________

Name and contact of licence holder/agent undertaking the exploration program:
____________________________________________________________________________________________________________________________
____________________________________________________________________________________________________________________________
Postcode: ___________________________________
Phone No.: _______________ Mobile No.: _______________
Email Address: __________________________________ Fax No.: ___________________________________

Signed: ____________________________ Date _______________

Mineral tenement: ____________________________

Date access required from _______________ to _______________

A description of the exploration proposed and an indication of the times when the proposed activities are to be carried out are set out in the work program on the reverse of this page.

Further information
Further information may be obtained by contacting Mineral Resources Tasmania:

Telephone: (03) 6165 4800
Facsimile: (03) 6233 8338
Email: info@mrt.tas.gov.au
Internet: www.mrt.tas.gov.au

Form C4 July 2014
Proposed work program

Description and date(s) of proposed activities.
Concerned resident
PO Box 101
Hobart TAS 7000
cconcernedresident@tas.au

Hon Paul Harriss MHA
Minister for Resources
10th Floor, Executive Building
15 Murray Street
Hobart TAS 7000

paul.harriss@parliament.tas.gov.au

24 July 2014

Dear Minister

Request for Statement of Reasons – grant of mining lease 9M/2014

We refer to your decision to grant a mining lease to Mega-mine Limited for the proposed iron ore mine at Mt Pristine (9M/2014). Pursuant to section 29 of the Judicial Review Act 2000 (Tas) (the JR Act), we request that you provide us with a statement of reasons as to your decision to grant the lease.

The decision to grant the lease is one to which Part 5 of the JR Act applies.

We contend that we are a person aggrieved by the decision to issue the mining lease, pursuant to section 7 of the JR Act and are entitled to a statement of reasons for this decision.

We look forward to your response.

Yours faithfully,
Concerned Resident
TO: The Resource Management & Planning Appeal Tribunal  
GPO Box 2036  
HOBART TAS 7001  
(1st Floor, 144-148 Macquarie Street, Hobart)  
Email: rmpat@justice.tas.gov.au  
Phone: (03) 6165 6794  Fax: (03) 6224 0825

NOTICE OF APPEAL

The Tribunal has issued Practice Directions which are available on the Tribunal website at www.rmpat.tas.gov.au. They are also available in hard copy form at the Tribunal Registry.

PLEASE ENSURE YOU READ THE TRIBUNAL’S PRACTICE DIRECTIONS BEFORE COMPLETING AND SUBMITTING THIS FORM.

Early attention should be given to Practice Directions 1, 2, 3, 4 and 11 in preparing this form. The other Practice Directions must be read as well.

LAND USE PLANNING AND APPROVALS ACT 1993

I/We....................................................................................................................................................................................................................

(insert name)
of .................................................................................................................................................................  Post Code  ...................................

(insert residential address)

Hereby appeal against the decision of the .................................................................................................................................................................  

(insert name of planning authority)
in relation to Application No: .................................................................................................................................................................  

(insert application number)
dated ..............................................................................................................................................................................  and received on ..............................................................................................................................................................................  being:

(insert date shown on notification letter)  (insert date you received letter)

#1) A requirement by a planning authority for additional information (S.61(3));

#2) A refusal to grant a permit (S.61(4));

#3) The grant of a permit subject to conditions or restrictions (S.61(4));

#4) The grant of a permit (the appellant being a person who has made representation) (S.61(5));

#5) The grant of a permit requiring that an agreement be entered into under S.58A (S.61(6));

#6) The failure of the Planning Authority to determine the application within the period applicable under the Land Use Planning & Approvals Act 1993 (S.59(3));

#7) Other decision (please specify) .................................................................................................................................................................  

..............................................................................................................................................................................................  

..............................................................................................................................................................................................  

..............................................................................................................................................................................................  

CONTINUED OVERLEAF

Notice of Appeal
LOCATION & DESCRIPTION OF DEVELOPMENT OR USE

NO ..................... ROAD/STREET ...................................................................................................................................................................
TOWN/LOCALITY Mining Town ...................................................................................................................................................................
NAME OF APPLICANT Xtraction Ltd .....................................................................................................................................................
ADDRESS OF APPLICANT Bauxite Plains .............................................................................................................................................
DESCRIPTION OF DEVELOPMENT OR USE Mining operation (6M/2014) ........................................................................................................

GROUNDS OF APPEAL

1. The proposed mining operation is not consistent with the objectives of the Rural Resources Zone, as it converts prime agricultural land to a non-agricultural use and will adversely impact the long term productive capacity of adjoining agricultural land.

2. The proposed mining operation does not satisfy P2.1 of clause 26.3.1, as the applicant has not demonstrated that the location is reasonably required for operational efficiency or that there is any overriding benefit to the region.

(Additional Grounds may be attached)

Dated the 3rd day of September 2014

Signature of Appellant / Agent: ............................................................................................................................................................
Postal Address: 45 Farmland Road 7245
Telephone: 0400 020 232 Fax: 
Mobile: 0400 020 232 Email: concerned@gmail.com

PLEASE NOTE: If you provide an email address you consent, pursuant to Section 6 of the Electronic Transactions Act 2000 to the Tribunal using that address as its primary method of contact and provision of information and notification and the Tribunal will not forward hard copy documentation unless specifically requested. It is vital that you ensure you provide the Tribunal with your correct email and that you check your email account on a daily basis in the event of important communications from the Tribunal.

FEES ARE PAYABLE UPON LODGMENT OF THIS FORM.
PLEASE REFER TO THE TRIBUNAL WEBSITE FOR FURTHER DETAILS.

SEE OVER FOR PERSONAL INFORMATION PROTECTION STATEMENT
Ex Parte Application Under SECTION 48 of the

NAME OF APPLICANT(s) … Teresa Green

OF (ADDRESS) … 117 Daffodil Close, Maydena

PHONE … 62 646 767
FAX …

APPLIES FOR AN ORDER THAT:

NAME OF RESPONDENT(s) … Company X

ADDRESS OF RESPONDENT(s) … 666 Good Intentions Lane, South Hobart

PHONE … 62 666 333
FAX … 62 333 667

BE (insert details of order sought) … that the respondent replace vegetation removed from the
land adjoining the quarry site.

By reason of the following alleged contravention of or failure to comply with (delete which is
inappropriate)

S.45 - Environmental Protection Notice
S.50 - Serious Environmental Harm
S.51 - Material Environmental Harm
S.53 - Environmental Nuisance (light by not appearance)

Or other: Section: ……………

of the Environmental Management and Pollution Control Act 1994 by the respondent, as follows: (insert
details of alleged contravention etc)

Address of contravention … 14 Excavation Place, Maydena

Date(s) of contravention: … 13 June, 2014

Nature of contravention: … Removal of vegetation at the site without approval, leading to
increased stormwater run-off and subsidence on my land.

Dated the … 4th day of … August 2014

APPLICANT

TO: Resource Management and Planning Appeal Tribunal
GPO Box 2036 HOBART
TAS 7001

DX 50 HOBART
Acknowledgements and Thanks

The Community Guide to Mining has been produced with funding from the Solicitors’ Guarantee Fund. EDO Tasmania gratefully acknowledges the contribution made by the following people:

Author: Sarah Wilson

Desktop Publishing: Brave Agency Tasmania

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