



Government of **Western Australia**
Department of **Mines, Industry Regulation and Safety**

GUIDELINES

Guidance statement – Excision of areas of land upon the grant of an application for exploration licence

DRAFT

Version 0.1

October 2023

Document Hierarchy

Legislation	<i>Mining Act 1978</i>
Guidelines	This document outlines the position of DMIRS with regard the excision of areas of land upon the grant of an application for an exploration licence.

Version History

Version	Date	Changes
0.1	October 2023	Draft for consultation

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1. Purpose

The purpose of this guideline is to state the position of DMIRS with regard to the excision of areas of land upon the grant of an application for an exploration licence.

A glossary of definitions and acronyms is provided in Appendix 1.

2. Objectives

The objective of this document is to advise applicants and objectors that the Minister does not have the power to:

- excise areas of land from a block; or
- excise whole blocks

from the grant of an application for an exploration licence.

3. Scope

This document relates to the grant of applications for exploration licences.

4. Background

The Supreme Court of Western Australia made a decision on *Blue Ribbon Mines Pty Ltd v Roy Hill Infrastructure Pty Ltd* [2022] WASC 362 relating to matters in this guideline.

5. Guidance on areas of land tenure being excised from exploration licences on grant

5.1 Excision of part block

The Minister does not have the power to excise areas of land the subject of a miscellaneous licence or private land from the grant of an application for an exploration licence, in the sense that the Minister may not grant an exploration licence over part of a block.¹

The basic scheme of the *Mining Act 1978* (the Mining Act) is that there should not be competing mining tenements over the same ground and that the rights conferred by them should be exclusive.² There are, however, exceptions. Such an exception to this basic scheme is a miscellaneous licence. The Mining Act provides for a miscellaneous licence to be granted over land the subject of another mining tenement, and vice versa.³

The Mining Act also provides for a mining tenement to be granted over private land. Mining tenure and the private land holder's rights apply concurrently to the same land in that case.⁴

The Minister may only grant an exploration licence over an area that consists of an entire block or blocks, unless an exception under the Mining Act applies.⁵

Given the legislative potential for different land tenures to exist concurrently with various mining tenements, section 117 of the Mining Act makes express provision for the protection of existing mining tenements from the effects of later grants of land tenure, including mining tenements.

The effect of section 117 is that any grant of a mining tenement is deemed to contain a reservation that it shall not have the effect of revoking or injuriously affecting any existing mining tenement.

Given the Minister cannot grant an exploration licence over part of a block, applicants should not request the excision of any land from within a block.

¹ *Blue Ribbon* decision [9] [117]

² *Blue Ribbon* decision [79]

³ *Blue Ribbon* decision [80]

⁴ *Blue Ribbon* decision [82]

⁵ Under section 57 of the Mining Act

5.2 Excision of whole block or blocks

It is the position of DMIRS that the Minister does not have the power to grant an exploration licence for fewer blocks than have been applied for, other than in circumstances where an application for an exploration licence is made over an area which includes land that is not open for mining.

There are no specific powers in the Mining Act which allow for an exploration licence to be granted for a lesser number of blocks than applied for in the original application. The only exception to this is the specific circumstance provided for in subsection 57(2b), which applies when another mining tenement is granted after an application for an exploration licence is made, but before the licence is granted.

This is in contrast to the provisions in the Mining Act applying to other mining tenement types, which allow the grant of an area that is less than applied for.⁶

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⁶ Sections 70B(4)(b), 73 of the Mining Act. Only exploration licences are based on blocks. Other tenement types are not based on blocks, but can be delineated through marking out, for example.

Appendix 1: Glossary

Block	Refer to section 56C of the Mining Act for the meaning of a block. In essence it is a specific area of land 1 minute of latitude by 1 minute of longitude
Blue Ribbon decision	<i>Blue Ribbon Mines Pty Ltd v Roy Hill Infrastructure Pty Ltd [2022] WASC 362</i>
DMIRS	Department of Mines, Industry Regulation and Safety
Mining Act	<i>Mining Act 1978</i>
Mining tenement	Defined in section 8 of the Mining Act
Minister	The Minister for Mines and Petroleum
Private land	Defined in section 8 of the Mining Act

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