

Operational Policy - Competing Licence Applications

**Assessment under section 23 of
the Mineral Resources (Sustainable
Development) Act 1990**

Version 1.0

Interim Operational Policy

Approved 3 June 2019



Jobs,
Precincts
and Regions

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AUTHORISATION

Title	Operational Policy – Competing Licence Applications
Issuing Division/ Branch	Earth Resources Regulation
Date Effective	10 June 2019
Enquiries	customer.service@ecodev.vic.gov.au
Contact	136186
Approved by	Minister for Resources

1. OBJECTIVES, PRINCIPLES AND SCOPE

This operational policy sets out the factors that will be considered in ranking more than one valid application for an exploration licence in respect of the same land that is received on the same day, under Section 23 of the *Mineral Resources (Sustainable Development) Act 1990* (MRSDA).

The highest ranking must be given to the application that the Minister (or Ministerial delegate) believes best furthers the objectives of the MRSDA after considering:

- The relative merits of the applications, and
- The likely ability of each applicant to meet the requirements specified in Section 15(6) of the MRSDA, namely:
 - genuinely intend to undertake work with an appropriate program,
 - be a fit and proper person to hold a licence and intend to comply with the Act, and
 - finance the proposed work and site rehabilitation.

The overall objective of this operational policy is to enable applicants who demonstrate the greatest competency to conduct effective exploration programs to gain exclusive access to the State's mineral resources, which if successful, have the potential to generate investment and job opportunities, particularly in regional areas.

This operational policy also:

- Reaffirms assurances for land holders, government and the wider community that operators are likely to fulfill their regulatory obligations and social responsibilities to protect people, land, infrastructure and the environment, from the start of the mining life cycle, and
- Provides upfront guidance to prospective licence applicants on how all applications will be assessed in a transparent, fair and consistent way.

The following scalable components will be assessed and scored in considering the relative merits and appropriateness of each competing applicant's proposed work program. Further details are shown in Section 2 of this operational policy document.

- Understanding of the prospective minerals in a geological setting,
- Exploration activities and timetable relevant to the prospective minerals and geological setting,
- Exploration team's qualifications, expertise and experience relevant to the prospective minerals and geological setting,
- Expenditure commitments to deliver the exploration work program, and
- Interconnection with any adjoining mining activities conducted by the applicant under a current licence in a contiguous or likely contiguous geological formation.

A range of other relevant factors that will be considered are shown in section 3 of this operational policy document.

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The overall process will be used to determine the highest ranked applicant for subsequent assessment under the relevant licensing requirements in the MRSDA, without regard to anything contained in applications having a lower ranking. The highest ranked application under Section 23 will not be automatically granted a licence.

The principles of competitive merit and procedural fairness will be applied in assessing competing applications.

Extracts of the objectives, sustainability principles and sections of the MRSDA and Regulations relevant to assessing competing licence applications are shown in Appendix A.

This operational policy will be reviewed in consultation with industry participants following the assessment of several existing competing licence applications. Consultation to date has been limited to Earth Resources Regulation's Stakeholder Reference Group to ensure the neutrality of the ranking process.

2. ASSESSMENT OF APPLICANT'S PROPOSED WORK PROGRAM

The following scalable components will be assessed and scored in considering the relative merits of each competing applicant's proposed work program, within the context of the prevailing subordinate Regulations.

General descriptions and examples are provided to characterise and score each component, as guidance for applicants. The descriptions are not exclusive and applicants can propose other appropriate work. Work activities that are comparable with each description and example provided below will be assessed and scored accordingly.

In general, the more advanced the proposed work program, the higher the applicant will score in the assessment process.

Geological Rationale and Mineral Targets	Score
<p>Rate the applicant's description and rationale for the mineral targets they are trying to discover, which may include the type of mineral, the style of mineralisation and the host rock.</p> <p>Basic – explanation based on previous/historic mining and or exploration activity in the area</p> <p>Standard – explanation includes geophysical structural interpretation, relationships to known deposit styles</p> <p>Advanced – explanation includes detailed geological rationale, interpretation of multiple geophysical datasets, clear understanding of geological setting and mineralisation styles of geological province</p>	<p>None = 0 Basic = 5 Standard = 10 Advanced = 20</p>
Nature of work to be undertaken	Score
<p>Rate the office-based activities in the proposed program of work for each year</p> <p>Basic – activities may include: literature search; general research</p> <p>Standard – activities may include: database compilation; computer modelling; reprocessing of data</p> <p>Advanced – activities may include: database compilation; computer modelling; reprocessing of data; geological and geophysical interpretation; mineral resource/reserve estimate</p>	<p>None = 0 Basic = 10 Standard = 25 Advanced = 50</p>

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<p>Rate the on-ground activities in the proposed program of work for each year</p> <p>Basic – activities may include: geological field mapping</p> <p>Standard – activities may include: ground and airborne geophysical surveys; remote sensing</p> <p>Advanced – activities may include: rock and soil sampling (and related geochemistry and mineralogy); implementing new technologies for the mineralisation style (e.g. seismic for gold)</p>	<p>None = 0 Basic = 25 Standard = 50 Advanced = 100</p>
<p>Rate the sub-surface evaluation activities in the proposed program of work for each year</p> <p>Basic – activities may include: trenching; air core and/or RAB drilling including related geochemistry; mineralogy and metallurgy</p> <p>Standard – activities may include: RC or diamond drilling, including related geochemistry, mineralogy and metallurgy</p> <p>Advanced – activities may include: bulk sampling or underground development including related geochemistry, mineralogy and metallurgy</p>	<p>None = 0 Basic = 50 Standard = 100 Advanced = 200</p>
<p>Location and timing of activities</p>	<p>Score</p>
<p>Has the applicant included location and geological maps showing the locations of their target areas or where they plan to carry out the exploration work?</p>	<p>Yes = 5 No = 0</p>
<p>Rate the details of the proposed timing schedule of the exploration program</p> <p>Basic – Provides generalised information on the timing for the proposed work program activities for each year</p> <p>Standard – Provides information on the planned timing for the proposed work program activities for each season or quarter; demonstrates how the timing of activities will progress from initial office-based activities through to subsurface activities</p> <p>Advanced – Specifies detailed planning for the delivery of the work program activities with clear milestones for each month, season or quarter; involves undertaking subsurface activities earlier in the program schedule (e.g. drilling)</p>	<p>None = 0 Basic = 5 Standard = 10 Advanced = 20</p>

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Exploration expertise experience	Score
<p>Rate the qualifications and experience of the applicant's technical advisors (staff or contractors) in the mineralisation style and proposed exploration activities</p> <p>Basic – university degree in geology/geophysics with up to five years of relevant exploration experience</p> <p>Standard – university degree in geology/geophysics and a member of a related industry association (eg AusIMM or AIG) with greater than 10 years of relevant exploration experience</p> <p>Advanced – university degree in geology/geophysics and a member of a related industry association (eg AusIMM or AIG) and JORC competent in exploration for the target mineral(s) with greater than 20 years of relevant exploration experience</p>	<p>None = 0 Basic = 25 Standard = 50 Advanced = 100</p>
Expenditure commitment	Score
<p>By what percentage does the total expenditure exceed the prevailing minimum requirement per graticule, as specified by Earth Resources Regulation#, over the life of the proposed work program?</p>	<p>0.5 points for every percentage over the minimum expenditure requirement per graticule, capped at a maximum of 250 points</p>
Interconnection with an applicant's other licences	Score
<p>Rate the potential interconnection with any adjoining mining and exploration activities conducted by the applicant under a current licence in a contiguous or likely contiguous geological formation</p> <p>Basic – Adjoining one or more Exploration Licences targeting related geological formations</p> <p>Standard – Adjoining one or more Mining Licence or Retention Licences with likely geological target extension into the application area, but no mining activities currently being undertaken</p> <p>Advanced – Adjoining one or more Mining Licence with expected orebody extension into the application area, with open cut or underground mining activities active and commercially producing</p>	<p>None = 0 Basic = 50 Standard = 100 Advanced = 200</p>
Community engagement expertise and activities	Score
<p>Rate the applicant's commitments to engage proactively, openly and fairly with land holders, Native Title parties and local communities beyond their minimum legislative obligations.</p> <p>Above standard – activities may include: adoption of the Commercial Consent Agreement for Access to Private Land in Victoria (or equivalent); periodic public communications (eg newsletters); participation in local community events and activities</p> <p>Advanced</p> <ul style="list-style-type: none"> – activities may include: adoption of the land access agreement developed by the Minerals Council of Australia and the Victorian Farmers Federation (or equivalent); periodic public communications (eg newsletters, local media releases); participation in local community events and activities; open or field days; continuing one-on-one engagement activities; operation of a local office accessible to community members; procurement of goods and services from local businesses 	<p>Above Standard = 25 Advanced (without IAP2 engagement officer) = 50 Advanced (with IAP2 engagement officer) = 100</p>

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– expertise may include a trained community engagement officer with International Association for Public Participation (IAP2) certification	
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Note: # Earth Resources Regulation publishes the required minimum expenditure on its website: [Minimum expenditure requirements for exploration](#).

3. OTHER CONSIDERATIONS

Applicants for a licence must satisfy the Minister or Ministerial delegate with respect to the following matters.

3.1 Applicant’s Status as a Fit and Proper Person

The likelihood of an applicant being a fit and proper person to hold a licence will be assessed in accordance with the *Operational Policy – Fit and Proper Person*.

3.2 Applicant’s Intent to Comply with the MRSDA

A binary ‘yes or no’ checklist will be used to confirm (or otherwise) that an applicant intends to comply with the MRSDA, particularly with respect to the principles of sustainable development specified in Section 2A. Each applicant will be requested to complete and submit the checklist in the form of a signed attestation for this purpose.

3.3 Applicant’s Genuine Intent to do Work

Applicants are required to demonstrate that they genuinely intend to undertake their proposed work program.

Earth Resources Regulation will consider any relevant written evidence provided by an applicant, such as (but not limited to):

- the delivery of previous minerals exploration programs in Australia or a comparable overseas jurisdiction,
- completion or efforts to negotiate Native Title agreements with respect to their other relevant work programs,
- proactive engagement with local communities with respect to their other relevant work programs.

Earth Resources Regulation will also consider an applicant’s previous history of fulfilling any work commitments under any licence granted under the MRSDA.

3.4 Applicant’s Finance for Work Program

Applicants are required to demonstrate that they are likely to be able to finance their proposed work program and any site rehabilitation.

At a minimum, applicants must demonstrate at the time of their application that they:

- hold enough funds to rehabilitate any land subject to their proposed work program for the period of a licence (in addition to any rehabilitation bonds held by the Department), and
- hold or control enough funds to conduct the first two years of their proposed work program, and
- demonstrate a clear and firm pathway to source further funds to complete their proposed work program

Earth Resources Regulation will consider any relevant written evidence provided by an applicant, such as (but not limited to):

- cash in reserve;
- listed shares owned by the applicant;
- a line of credit from a recognised financial institution licensed to operate in Australia; and
- contractual farm-in agreements for exploration in the area subject to the application, which are solely exercisable by the applicant.

Earth Resources Regulation may also request an applicant to provide the following types of additional information in writing to help to substantiate their financial capacity to deliver their proposed work program:

- business plan setting out financial resources,

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- level of borrowing and borrowing history, and
- a credit reference check.

The assessment of an applicant's overall financial capacity to fulfil their proposed work program will include consideration of the level of debt and/or existing committed funds required to fulfil their other commitments.

4. GENERAL PROCEDURES

4.1 Procedural Fairness

All applications for a licence must be made in accordance with the licensing requirements under the MRSDA and subordinate Regulations to be valid.

Applications must be complete and valid on the day of application.

Only valid applications accepted by Earth Resources Regulation will be ranked in accordance with Section 23 of the MRSDA.

The ranking process will be conducted based on the written information and any supporting evidence provided with each application. Any information received after the application date will not be considered in the ranking process.

Earth Resources Regulation will not request any subsequent information after the application date, except written evidence required to assess a person's status as fit and proper to hold a licence.

Applicants will be informed in writing of any decision and the reasons for the decision with respect to their competing licence application.

4.2 Highest ranked applicant

An applicant who receives highest ranking is not automatically granted a licence. The highest ranked applicant is assessed against the relevant section of the MRSDA and must fulfil any Native Title requirements before a licence can be granted.

4.3 Other lower ranked applicants

On notice of ranking, the lower ranked applications do not proceed further with assessment.

A lower ranked applicant may choose to:

- Withdraw their application;
- Amend the application area to remove any overlapping areas with the competing application, if relevant. Their application for the residual area will be progressed through the standard application process; or
- Retain the application pending grant or refusal of a licence to the highest ranked applicant. Any lower ranked application(s) will be refused, if the highest ranked applicant is granted a licence.

4.4 Compliance after Licence Grant

Earth Resources Regulation will hold the highest ranked applicant who is subsequently granted a licence accountable to deliver their full work program.

Proactive written requests from a licence holder to vary their exploration work program before milestones pass will be considered on merit. For example, variations will be considered based on:

- a clear exploration rationale drawing on the results obtained via the work program to date, and a commitment to undertake a comparable exploration program (including level of expenditure) over the remaining licence period, or
- a clear explanation of any likely substantive delay in delivering exploration milestones due to natural causes (eg prolonged adverse weather impeding on-ground exploration activities) or establishing land access arrangements after exercising best and fair endeavours with relevant parties.

A licence may be cancelled or not renewed if a licensee does not deliver their exploration program commitments in full (or approved variation) or is non compliant with respect to their other licence obligations, in fairness to unsuccessful applicants and to deter ambit proposals. Earth Resources Regulation will review the licensee's performance periodically.



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Any former licence areas will be made available to future applicants subject the requirements under the MRSDA.

APPENDIX A: EXTRACTS OF THE MINERAL RESOURCES (SUSTAINABLE DEVELOPMENT) ACT 1990 AND SUBORDINATE REGULATIONS

Section 2 - Objectives

- (1) *The objectives of this Act are—*
- (a) *to encourage and facilitate exploration for minerals and foster the establishment and continuation of mining operations by providing for—*
 - i. an efficient and effective system for the granting of licences and other approvals; and*
 - ii. a process for co-ordinating applications for related approvals; and*
 - iii. an effective administrative structure for making decisions concerning the allocation of mineral resources for the benefit of the general public; and*
 - iv. an economically efficient system of royalties, rentals, fees and charges; and*
 - (b) *to establish a legal framework aimed at ensuring that—*
 - i. risks posed to the environment, to members of the public, or to land, property or infrastructure by work being done under a licence or extractive industry work authority are identified and are eliminated or minimised as far as reasonably practicable; and*
 - ii. consultation mechanisms are effective and appropriate access to information is provided; and*
 - iii. land which has been mined or from which stone has been extracted or removed is rehabilitated; and*
 - iv. just compensation is paid for the use of private land for exploration or mining; and*
 - v. conditions in licences and approvals are enforced; and*
 - vi. dispute resolution procedures are effective; and*
 - (c) *to recognise that the exploration for, and mining or extraction of, mineral resources and stone must be carried out in a way that is not inconsistent with the Native Title Act 1993 of the Commonwealth and the Land Titles Validation Act 1994.*

Section 2A – Principles of Sustainable Development

- (1) *It is the intention of Parliament that in the administration of this Act regard should be given to the principles of sustainable development.*
- (2) *For the purposes of this Act, the principles of sustainable development are—*
- (a) *community wellbeing and welfare should be enhanced by following a path of economic development that safeguards the welfare of future generations;*
 - (b) *there should be equity within and between generations;*
 - (c) *biological diversity should be protected, and ecological integrity maintained;*
 - (d) *there should be recognition of the need to develop a strong, growing, diversified and internationally competitive economy that can enhance the capacity for environment protection;*
 - (e) *measures to be adopted should be cost effective and flexible, not disproportionate to the issues being addressed, including improved valuation, pricing and incentive mechanisms;*
 - (f) *both long and short term economic, environmental, social and equity considerations should be effectively integrated into decision-making;*

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- (g) if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation and decision-making should be guided by—
 - i. a careful evaluation to avoid serious or irreversible damage to the environment wherever practicable; and
 - ii. an assessment of the risk-weighted consequences of various options;
- (h) development should make a positive contribution to regional development and respect the aspirations of the community and of Indigenous peoples;
- (i) decisions and actions should provide for community involvement in issues that affect them.

Section 23 – Ranking Applications

S. 23(1) amended by No. 64/2012 s. 21(2).

(1) If more than one application for a [licence](#) in respect of the same land is received on the same day, the Minister must rank those applications in accordance with this section.

S. 23(2) amended by No. 64/2012 s. 21(3).

(2) The Minister must give the highest ranking to the application that he or she believes will best further the objectives of this Act after considering—

- (a) the relative merits of the applications; and
- (b) the likely ability of each applicant to meet the requirements specified in [section 15\(6\)](#).

S. 23(3) amended by No. 64/2012 s. 21(4).

(3) Once an application has been given the highest ranking, any further assessment of the application must be made without regard to anything contained in applications having a lower ranking.

Mineral Resources (Sustainable Development) (Mineral Industries) Interim Regulations 2018 - Schedule 1

Clause 13 of Schedule 1 lists the details of the proposed program of work for each year of the licence:

- (a) the nature of the work to be undertaken in the following areas -
 - (i) office-based activities;
 - (ii) on-ground exploration activities (including, for example, geological mapping, rock and soil sampling (and related geochemistry and mineralogy), ground and airborne geophysical surveys, and remote sensing);
 - (iii) subsurface evaluation activities (including, for example, drilling, trenching, bulk sampling, underground development, and related geochemistry, mineralogy and metallurgy); and
- (b) as far as is practicable, an indication of the location and focus of the proposed activities with location maps; and
- (c) a description of the nature of the targets that the program seeks to delineate; and
- (d) a description of the geological rationale behind the proposed program; and
- (e) a proposed timing schedule of the exploration program.

RECORDS MANAGEMENT

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