

# MINING ON PRIVATE LAND – A ROUGH GUIDE

## 1. Pre 1899 land

Land originally granted in title by the Crown **before 1 January 1899** is **excluded** from the Mining Act 1978. The owner of the land owns the minerals in it (unless they have already been sold to a third party). If the local Town Planning Scheme permits “Mining” the owner can negotiate his own arrangements with a prospector/miner for exploration or mining of the minerals. The owner is entitled to a royalty on the minerals extracted.

All environmental and other laws apply to any exploration/mining activity on pre-1899 land and the processing and transport of those minerals from the property.

## 2. Mining Act land (granted post 1.1.1899)

A prospector eg. Bauxite Resources Ltd (BRL) can get a Permit to enter your land to “peg” for a mining tenement and take rock samples – but NOT disturb the surface ie. Not drill or dig.

### Exploring

The prospector may then apply for an Exploration Licence from the Mining Registrar. As owner/occupier/mortgagee you **MUST** be informed. You can object to the Mining Registrar. If you do not consent to the grant of the Exploration Licence it will be granted **excluding the top 30 metres of the land**. The Mining Registrar will not issue an Exploration Licence for the top 30 metres of your land without your written consent. If you do not want exploration on your property you can refuse your consent on the grounds that it will impact on your livelihood/your business.

If you wish to give your consent to the prospector having access to the top 30 metres you will need to enter into a written agreement with the company (which should be drawn up by a lawyer of your choice at the prospector’s expense) to allow for exploration eg. Drilling/digging and should include compensation for your time, inconvenience, legal costs, damage to fixtures/fences/crops/livestock etc.

### Mining

If the prospector wishes to mine your land he may then apply for a Mining Lease . Again you **Must** be informed as owner /occupier/ mortgage/local authority (shire) and can object to the Mining Registrar. Mining is a different activity to exploration – consent to exploration **does not** mean you have to consent to mining. The Mining Registrar will not issue a Mining Lease for the top 30 metres of your land without your written consent. If you do not want mining on your property you can refuse your consent on the grounds that it will impact on your livelihood/business.

If you wish to give your consent to the prospector mining the top 30 metres you will need to enter into a written agreement to allow for mining which includes appropriate compensation for your time, inconvenience, legal costs, damage to fixtures/fences/crops/livestock etc.

## 3. Other points to consider

- 1) The areas of your land which **cannot** be included in an Exploration Licence or Mining lease under the Mining Act without your consent are:
  - (a) land which is in *bona fide* and regular use as a yard, stockyard, garden, orchard, vineyard, plant nursery or plantation or is land under cultivation;

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- (b) land which is the site of a cemetery or burial ground;
- (c) land which is the site of a dam, bore, well or spring;
- (d) land on which there is erected a substantial improvement;
- (e) land which is situated within 100 metres of any private land referred to in paragraph (a), (b), (c) or (d); or
- (f) land which is a separate parcel of land and has an area of 2 000 square metres or less.

Note that on most farms, all land used for cropping or grazing is “land under cultivation” in some form under paragraph (a)

- 2) Any legal agreement with a prospector/miner should state that all statutory and common law liability for the Prospector/miner’s acts or omissions on your land are born by the prospector/miner and the agreement should include a full indemnity in your favour to protect you from that liability
- 3) Any agreement should contain clear obligations on the prospector/miner to rehabilitate your land to a standard acceptable to you. You may require a bond to be deposited in escrow which can only be released to the miner when rehabilitation is completed to your satisfaction
- 4) Any agreement should oblige the prospector/miner to comply with all laws and not be negligent in its acts/omissions. You do not want to be responsible for the results of their illegal or negligent acts which might affect the public or your neighbours.
- 5) The prospector should pay any legal costs you incur
- 6) Include provisions to protect your water supply from depletion and contamination
- 7) Compensation should cover your time, inconvenience, damage, disturbance to your normal activities, loss of use of your land etc
- 8) Any written agreement should include a “sunset” clause and rite to terminate the agreement during the “exploration” phase
- 9) You should NOT accept any liability
- 10) Be aware of bio-security issues eg. Weeds spread by vehicles, dieback, water contamination.

**If you do NOT want exploration or mining on your land, you can refuse your consent. A prospector/miner cannot force you to consent.** Anyone wanting clarification of this issue can contact Department of Mines and Petroleum – Titles Division tel: 9222 3119.