

CHAPTER 4

STATUTORY FRAMEWORK



ANGAS PROCESSING FACILITY

MISCELLANEOUS PURPOSES LICENSE APPLICATION

2019/0826



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4 STATUTORY FRAMEWORK

This chapter describes the applicable legislative requirements at Commonwealth, State and local level for the proposed Miscellaneous Purposes Licence (MPL) for the Angas Processing Facility (APF), as part of the Bird in Hand Gold Project (BIHGP or Project), including all required primary and select key secondary approvals. A review of the proposed MPL against the local and State strategic policy framework is also provided.

4.1 APPROVALS PROCESS

The proposed MPL will be assessed under the *Mining Act 1971 (SA) (Mining Act)*. The *Mining Act* is an “Act to regulate and control mining operations; and for other purposes” in South Australia and is regulated by the Department of Energy and Minerals (DEM) on behalf of the Minister for Energy and Minerals (Minister).

Unless specified otherwise, the Project components within the boundary of the proposed MPL will be assessed under the *Mining Act*.

4.1.1 STATE LEGISLATIVE REQUIREMENTS

This section provides an overview of State legislation and strategic policy directions that are of relevance to the proposed MPL in addition to the *Mining Act*.

Assessment under the *Mining Act* is a two-stage process, which includes:

- A MPL application on the prescribed form, accompanied by a MPL proposal (this document); and
- A Program for Environment Protection and Rehabilitation (PEPR).

Approval under the *Mining Act* is the primary statutory approval required for the proposed MPL. However other approvals (for instance under the *Environmental Protection Act 1993* and the *Work Health and Safety Act 2012*) will be required prior to operation of the Processing Facility.

Part 8 of the *Mining Act* provides the statutory framework for obtaining a MPL. Such an application must be made in a manner and form determined by the Minister and must be accompanied by a MPL application. Section 52 of the *Mining Act* outlines that a MPL licence may be granted for any of the following purposes:

- (a) for the carrying on of any business that may conduce to the effective conduct of mining operations or provide amenities for persons engaged in the conduct of mining operations; or
- (b) for establishing and operating plant for the treatment of ore recovered in the course of mining operations; or
- (c) for drainage from a mine; or
- (d) for the disposal of overburden or any waste produced by mining operations; or
- (e) any other purpose ancillary to the conduct of mining operations,

In accordance with regulations 30(3) and 49(3) of the *Mining Regulations 2011*, Ministerial Determination 006 was gazetted by the South Australian Government on the 12th July 2012, titled “*Minimum information required to be provided in a mining proposal and/or management plan for a mineral lease (ML) and any associated miscellaneous purposes licence (MPL) applications for metallic*”

and industrial minerals (excluding coal and uranium)". This MPL has been prepared in accordance with the aforementioned determination (MD006).

A checklist against this determination is located in Appendix A1.

Pursuant to Section 53 of the *Mining Act*, DEM is required to provide written notice of the MPL and provide copies to the relevant District Council, in this case, the Alexandrina Council, and to any owners of land to which the application relates. The written notice provides an invitation to those parties to submit written representations on the application to the Minister within a specified time frame. When considering whether to grant or refuse the MPL, the Minister is required to have regard to any representation made by the landowners and Council.

In addition, the Minister will publish a notice in the South Australian Government Gazette, in a newspaper circulated generally throughout the State (The Advertiser), in a regional or local newspaper circulated within that part of the State in which the proposed MPL is located (such as The Southern Argus) and on the DEM website. That notice must:

- Describe the land to which the application relates;
- Specify a place at which the application may be inspected; and
- Invite members of the public to make written submissions in relation to the application within a specified time frame.

When determining whether to grant or refuse the MPL, the Minister must have regard to any representations made in response to the invitation set out in the notice.

As part of the consultation process, DEM will also forward copies of the MPL proposal to all relevant State Government agencies and seek comment from those agencies within a specified time frame. When assessing the MPL and considering appropriate terms and conditions, DEM will take into account all of the comments and representations received as a result of the Government consultation process.

Terramin is required to respond in writing to DEM, in a timely manner, on all matters that have been raised as a result of the consultation process (i.e. a formal Response Document). Subject to DEM being satisfied with the responses, an approval is drafted, including all of the conditions relating to the granting of the MPL to ensure protection of the environment surrounding the MPL. The final decision on whether or not to grant the MPL will then be made by the Minister and the approval may include MPL conditions. The company applying for the MPL then has 7 days to respond to any conditions, and once accepted by the applicant, the MPL is granted.

If the MPL is granted, a further stage of DEM assessment is undertaken that requires the preparation of a Program for Environment Protection and Rehabilitation (PEPR). The PEPR will be developed by Terramin and must be approved by the Minister before mining operations (including construction) can commence. The PEPR must set out environmental management procedures for operation and closure of the proposed project and outline key measurable criteria against which the environmental outcomes for the proposed MPL will be evaluated. The PEPR provides the management and measurement criteria required to satisfy the conditions set out in the MPL.

4.1.2 ENVIRONMENT PROTECTION ACT 1993

The *Environment Protection Act 1993 (EP Act)* has been established to promote ecologically sustainable development through the use, development and protection of the environment. Long- and short-term economic, environmental, social and equity aspects are considered when determining matters in relation to environmental protection, restoration and enhancement. Section 25 of the *EP Act*

establishes a general environmental duty, requiring that activities that pollute or might pollute the environment must not be undertaken unless all reasonable and practicable measures to minimise harm are implemented.

Section 36 of the *EP Act* requires that works to construct a building or structure for use for an activity of environmental significance must not be undertaken without an environmental licence. Activities of environmental significance relevant to the proposed MPL are outlined in Table 4-1.

The *EP Act* does not apply in relation to “wastes produced in the course of an activity (not being a prescribed activity of environmental significance) authorised by a lease or licence under the *Mining Act 1971*, when disposed of to land and contained within the area of a miscellaneous purposes licence under that Act adjacent to the area of the lease” (as outlined in section 7 (c) and Schedule 1, Part A Section 3 (4)(w) and (x) of the *EP Act*). Significantly, this includes the Tailings Storage Facility.

TABLE 4-1 | ACTIVITIES OF ENVIRONMENTAL SIGNIFICANCE – *EP ACT*

Activity Type	Proposed Activity	EP Act Reference
Petroleum, Storage or Processing Works or Facilities	Fuel storage facilities providing capacity for up to 50 000 L of storage exist at the proposed project site.	Schedule 1; 1 – Petroleum and Chemical (5)
Manufacturing and Mineral Processing	Mineral works to processing gold ore to produce a gold mineral concentrate.	Schedule 1; 2 – Mineral Works (9)

4.1.3 NATURAL RESOURCES MANAGEMENT ACT 2004

The *Natural Resources Management Act 2004 (NRM Act)* promotes the sustainable and integrated management of the State's natural resources and to make provision for the protection of the State's natural resources.

The *NRM Act* provides the guiding principles for Natural Resources Management in South Australia through an integrated & sustainable framework. It establishes the Natural Resources Management (NRM) Council as the state-wide peak body for administration of the Act, and authorises the eight Regional NRM Boards across South Australia. The APF is located within the Eastern Mount Lofty Ranges NRM Board region. These Boards assist the NRM Council to monitor & evaluate the condition of natural resources across the State, promote public awareness & understanding of sustainable, regional NRM, provide grants to researchers, farmers & engineers (among others) to undertake NRM projects, develop a Natural Resources Management Plan for their region which may include water, weed, pest & animal management, salinity control, biodiversity enhancement, and landholder advice & incentives. NRM Boards also develop, implement and monitor Water Allocation Plans for their respective regions, if located within a Prescribed Water Resource Area (PWRA).

4.1.4 OTHER SOUTH AUSTRALIAN LEGISLATION

Terramin is required to comply with other South Australian Acts and Regulations relevant to the proposed MPL. In addition, there will be a requirement to obtain secondary approvals including those summarised in Table 4-2. Note that this list is not exhaustive.

TABLE 4-2 | SUMMARY OF OTHER APPLICABLE SOUTH AUSTRALIAN LEGISLATION

Legislation	Objective	Relevance	Requirements
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<i>Aboriginal Heritage Act 1988</i>	To protect and preserve Aboriginal heritage including sites, objects and remains.	The proposed MPL may include areas of Aboriginal heritage significance (refer Chapter 20).	If any Aboriginal sites, objects or remains were found, authorisation would be required before damaging, disturbing or interfering with them.
<i>Climate Change and Greenhouse Gas Emissions Reduction Act 2007</i>	To support ecologically sustainable development by addressing climate change through the reduction in greenhouse gases and an increase in renewable energy.	The APF has a medium energy requirement (see Chapter 3). Where practicable, renewable energy sources will be used and energy efficiency measures incorporated.	No approval required
<i>Dangerous Substances Act 1979</i>	To regulate the keeping, handling, transporting, conveyance, use and disposal and the quality, of dangerous substances.	Dangerous substances will be used in a number of instances to support construction and operation of the proposed Project ML and APF. Explosives will be stored at APF and transported to BIH until magazine is constructed underground at BIH.	A licence may be required to keep or transport prescribed dangerous substances.
<i>Explosives Act 1936</i>	To control the use of explosives.	The proposed ML would require the use of explosives in the preparation of the site for construction and mining. The explosives are to be stored at APF until the underground magazine is constructed at the BIHGP.	Approval would be required to purchase, store, transport, use or dispose of explosives.
<i>Heritage Places Act 1993</i>	To make provision for the identification, recording and conservation of places and objects of non-Aboriginal heritage significance and to establish the South Australian Heritage Council.	There are no Heritage Places located within the proposed MPL (refer Chapter 20).	Obligation to not damage a heritage place, or reduce or destroy the heritage significance of a heritage place.
<i>Local Government Act 1999</i>	To establish a system of local government that ensures services and facilities are provided to the community.	No alterations to Council or SPTI roads and infrastructure are needed to accommodate the proposed MPL. Existing entrance constructed to the appropriate standard during construction of AZM under ML6229.	Not applicable.
<i>Mine and Works Inspection Act 1920</i>	To provide for the regulation and regular inspection of mines and works.	Once operational, including site refurbishment, the ML and MPL activities would be subject to health and safety inspections.	Once the APF is operational, Terramin will facilitate inspections and comply with the directions of inspectors for both the ML and MPL.

<i>Native Title (South Australia) Act 1994</i>	To recognise and protect native title.	There are no known Native Title considerations within the vicinity of the proposed MPL as of April 2018.	Not applicable. The proposed MPL is comprised of freehold land and public road reserves and native title has therefore been extinguished.
<i>National Parks and Wildlife Act 1972</i>	To manage public reserves, conservation parks and sanctuaries and to conserve wildlife in a natural environment.	A number of conservation parks and reserves are located within the Fleurieu Peninsula.	No requirements as the footprint of the proposed MPL is not within the boundaries of a conservation park or reserve and is similar to the existing ML6229.
<i>Native Vegetation Act 1991</i>	To provide incentives and assistance to landowners and proponents in relation to the preservation and enhancement of native vegetation and to control the clearance of native vegetation.	Removal of native vegetation within the boundary of the proposed MPL will not be required as it utilises existing infrastructure.	No clearance of vegetation required for the MPL.
<i>Public Health Act 2011</i>	To protect, improve and promote public health.	Operation of the APF will utilise the existing approved sewage treatment system.	Not applicable. Operation of the APF will utilise the existing approved sewage treatment system.
<i>Road Traffic Act 1961</i>	To consolidate and amend certain enactments relating to road traffic.	The proposed MPL does not include the transportation of over-dimensional loads.	An approval or exemption may be required to if there is an unforeseen requirement for the transport of over-dimensional loads, i.e. during refurbishment and/or site closure.

4.2 COMMONWEALTH LEGISLATIVE REQUIREMENTS

This section provides an overview of Commonwealth legislation and strategic directions of relevance to the proposed MPL.

4.2.1 ENVIRONMENT PROTECTION AND BIODIVERSITY CONSERVATION ACT 1999

The *Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act)* is the primary Commonwealth legislation relevant to the proposed MPL. It was established to protect and manage nationally and internationally important flora, fauna, ecological communities and heritage places. Actions anticipated to have a significant impact on matters of national environmental significance are required to obtain approval prior to being undertaken. The nine matters of national environmental significance protected by the *EPBC Act* are:

- World heritage properties;
- National heritage places;
- Wetlands of international importance (listed under the RAMSAR Convention);
- Listed threatened species and ecological communities;

- Migratory species (protected under international agreements);
- Commonwealth marine areas;
- Great Barrier Reef Marine Park;
- Nuclear actions (including uranium mines); and
- Water resources (in relation to coal seam gas and large coal mining development)

If an action has the potential to have a significant impact on a matter of national environmental significance, the proposed action is referred to the Department of the Environment by the proponent to determine the requirement for formal assessment and approval under the *EPBC Act*. If the action is determined to have a significant impact on a matter of national environmental significance, it is regarded as a controlled action. Controlled actions are assessed using one of the following approaches:

- Accredited assessment (bilateral agreements);
- Assessment on referral information (assessment is undertaken solely on the information provided in the referral);
- Assessment on preliminary documentation (assessment is undertaken on the information in the referral and other relevant material as identified by the Minister);
- Assessment by Environmental Impact Statement or Public Environment Report; and
- Assessment by public enquiry.

A referral of the proposed AZM ML pursuant to Section 68 of the *EPBC Act* was made on 29th September 2006 for the Angas Zinc Mine (ML 6229). The proposed AZM ML was declared to be not a controlled action on the 1st November 2006. As the proposed MPL activities no different in nature to the existing ML6229 approved activities apart from the addition of a cleared grazing paddock with an EPA approved landfill operation to the MPL, Terramin do not consider the activities proposed to include actions that have, or are likely to have, a significant impact on a matter of national environmental significance.

The EPBC letter from the Commonwealth of Australia is included in Appendix P2.

4.2.2 OTHER COMMONWEALTH LEGISLATION

The Commonwealth legislation which is relevant to the conduct of activities pursuant to the proposed ML is summarised in Table 4-3.

TABLE 4-3 | OTHER RELEVANT COMMONWEALTH LEGISLATION

Legislation	Objective	Relevance	Requirements
<i>Aboriginal and Torres Strait Islander Heritage Protection Act 1984</i>	To preserve and protect areas and objects in Australia and in Australian waters of particular significance to Aboriginals in accordance with Aboriginal tradition.	The proposed MPL does not contain identified items or places of Aboriginal significance.	General duty to comply with the requirements of the Act; however no approvals are required.
<i>Australian Jobs Act 2013</i>	Ensure Australian entities have full, fair and reasonable opportunity to bid for the supply of key goods and/or services.	Terramin must have a strategy to ensure local Australian suppliers, manufacturers and contractors are provided full, fair and reasonable opportunity to obtain contracts relating to the APF and the Project.	Terramin will prepare an Australian Industry Participation Plan which will be approved by the Australian Industry Participation Authority.

<p><i>National Greenhouse and Energy Reporting Act 2007</i></p>	<p>To introduce a single national reporting framework for reporting and dissemination of information related to greenhouse gas emissions, greenhouse gas projects, energy consumption and energy production of corporations.</p>	<p>The greenhouse gas emissions resulting from the APF are not expected to trigger a requirement for reporting greenhouse gas emissions, energy production and consumption.</p>	<p>Terramin will report in accordance with the Act if required.</p>
<p><i>Native Title Act 1993</i></p>	<p>Among other things: To provide for the recognition and protection of native title. To establish ways in which future dealings affecting native title may proceed and to set standards for those dealings.</p>	<p>There is no native title claim made in relation to the proposed MPL. The Native Title Act is not relevant.</p>	<p>There is no requirement in relation to the Native Title Act as the proposed MPL comprises freehold land, which has extinguished native title rights and interests.</p>