

# Mining Act – Revocation of Suspension Notice & Variation of Authorisation

Reasons for decision



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<b>Authorisations</b>	1. Mining Lease No. 1322 (Act 1992) ( <b>ML 1322</b> ) 2. Exploration Licence No. 8697 (Act 1992) ( <b>EL 8697</b> ) 3. Exploration Licence No. 8716 (Act 1992) ( <b>EL 8716</b> )
Licence Holder	AUS GOLD MINING GROUP PTY LTD ACN 603 575 917 ( <b>AUS GOLD</b> )
Issue	Whether to cancel ML 1322, EL 8697 and EL 8716 Whether to revoke the notice of suspension for ML 1322 Whether to vary conditions of authorisation for ML 1322, EL 8697 and EL 8716
Legislation	Section 125 of the <i>Mining Act 1992</i> Section 240AA and 240B of the <i>Mining Act 1992</i> Clause 12 of Schedule 1B of the <i>Mining Act 1992</i>
Decision maker	Garvin Burns Executive Director, NSW Resources Regulator Department of Regional NSW

## DECISION NOT TO CANCEL AUTHORISATIONS

As authorised by Section 125 of the *Mining Act 1992* (**Act**), I Garvin Burns, having delegated authority from the Minister, have decided **not** to cancel ML 1322, EL8697 and EL 8716.

## DECISION TO VARY AN AUTHORISATION

As authorised by Clause 12 of Schedule 1B of the Act, I Garvin Burns, having delegated authority from the Minister, have decided to:

- A. **Omit** the following conditions from ML 1322:
  - a. Condition 3 'Mining Operations Plan and Annual Rehabilitation Report' which was attached at the time of transfer on 26 June 2015.
  - b. 'Non-Compliance Reporting' Condition attached on 19 February 2018.

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B. **Attach** the following 15 conditions on ML 1322 contained within the attached instrument of variation (**Annexure A**):

Condition #	Title	Category
1	Rehabilitation to occur as soon as reasonably practicable after disturbance	Rehabilitation
2	Rehabilitation must achieve final land use	Rehabilitation
3	Rehabilitation risk assessment	Rehabilitation
4	Rehabilitation management plans	Rehabilitation
5	Rehabilitation outcome documents	Rehabilitation
6	Forward program and annual rehabilitation report	Rehabilitation
7	Amendment of rehabilitation outcome documents and forward program	Rehabilitation
8	Times at which documents must be prepared and given	Rehabilitation
9	Records demonstrating compliance	Rehabilitation
10	Certain documents to be publicly available	Rehabilitation
11	General requirements for documents	Rehabilitation
12	Nominated contact person	Regulatory compliance
13	Report on non-compliance	Regulatory compliance
14	Mandatory Audit Condition	Regulatory compliance
15	Financial Audit Condition	Financial capacity

**Attach** the following two conditions on EL 8697 and EL 8716 contained within the attached instruments of variation (**Annexure B – EL 8697** and **Annexure C – EL 8716**):

Condition #	Title	Category
1	Mandatory Audit Condition	Regulatory compliance
2	Financial Audit Condition	Financial capacity

The omission and attachment of these conditions takes effect from **the date of this decision**.

## DECISION TO REVOKE SUSPENSION NOTICE

As authorised by Section 240AA and 240B of the Act, I Garvin Burns, having delegated authority from the Secretary of the Department of Regional NSW (**Secretary**), have decided to **revoke** suspension notice, file number NCN0005911, issued on 4 February 2019 in relation to ML 1322.

This revocation takes effect from **the date of this decision**.

## REASONS FOR DECISION

### Legislation

#### Cancellation

1. Section 125 of the Act provides that the decision-maker may cancel an authority as to the whole or any part of the land to which it relates if satisfied that one or more specified grounds have been met.
2. Section 125(1) of the Act sets out the grounds for cancellation of an authority. This includes if the decision-maker is satisfied that the holder of the authority has contravened a provision of the Act (whether or not the person is prosecuted or convicted of any offence arising from the contravention).
3. Section 380A(1)(c) of the Act provides that a decision to cancel a mining right (including an exploration licence) can be made on the ground that, in the opinion of the decision-maker, a holder of a mining right is not a fit and proper person.
4. For the purposes of determining whether a person is a fit and proper person, section 380A(2) of the Act specifies what matters the decision-maker may take into

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- consideration (but without limiting the matters that can be taken into consideration for that purpose).
5. Section 126 of the Act also provides that the decision-maker must not cancel an authority unless the holder of the authority has been given at least 28 days in which to make representations with respect to a notice of proposed cancellation that contains details of the grounds for the proposed cancellation, and any such representations have been taken into consideration.
  6. Section 363(1) of the Act provides that the Minister may delegate any functions conferred under the Act to another person; and the Minister has delegated the functions to cancel an authority under section 125 of the Act to the Executive Director of the NSW Resources Regulator (**Regulator**).

### Revocation of suspension

7. Section 240AA(1) of the Act provides that the Secretary may, by written notice (a **suspension notice**), direct a responsible person to suspend (for such period as is specified in the direction or until further notice) all, or any specified operations under an authorisation or suspend any activity approval relating to the operations if the Secretary considers that:
  - a. circumstances exist that could constitute a ground for cancellation of the authorisation under section 125(1)(b)-(g), 203(1)(b)-(e) or (h) or 233(1)(b)-(d), or
  - b. circumstances exist that could constitute a ground for cancellation of the authorisation under section 125(1)(h), 203(1)(i) or 233(1)(f), in relation to a breach of a direction under section 240 only.
8. Section 240B of the Act provides that the Secretary may vary or revoke a suspension notice by issuing a subsequent direction.
9. Section 363(2) of the Act provides that the Secretary may delegate any function under the Act to any person, except this power of delegation or any function delegated to the Secretary by the Minister. The Secretary has delegated the functions to issue a suspension notice (including its variation or revocation) to the Executive Director of the Regulator.

### Variation of authorisation

10. Clause 12(1) of Schedule 1B of the Act provides that the relevant decision-maker may vary an authorisation (including the conditions of an authorisation).
11. Clause 12(2)(a) of Schedule 1B of the Act provides that a variation of an authorisation may include the attaching of a condition (whether or not any conditions have already been attached).

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12. Clause 12(3) of Schedule 1B of the Act enables the authorisation to be varied on the initiative of the relevant decision-maker.
13. Clause 12(4) of Schedule 1B of the Act enables the authorisation to be varied at any time during its currency.
14. Clause 12(5) of Schedule 1B of the Act requires the decision-maker to:
  - a. give the holder of the authorisation notice of the decision, and
  - b. invite the making of submissions to the decision-maker about the proposed decision and provide at least 28 days to make a submission, and
  - c. take into consideration any such submission after the submission period has expired.
15. Clause 12(6) of Schedule 1B of the Act requires the decision to be given in writing to the licence holder.
16. Section 363(1) of the Act provides that the Minister may delegate any functions conferred under the Act to another person. The Minister has delegated the functions to vary an authority under Clause 12(1) of Schedule 1B of the Act to the Executive Director of the Regulator.

## Background

### Authorisation details

17. ML 1322 was first granted on 23 July 1993 for the purposes of prospecting and mining for arsenical pyrites, bismuth, cadmium, copper, gold, granite, lead, platinum, silver, sulphur, wolfram and zinc.
18. On 11 June 2014, ML 1322 was renewed until 22 July 2024. The minerals included arsenical pyrites, bismuth, cadmium, copper, dimension stone, gold, granite, lead, platinum, silver, sulphur, tungsten and its ores, zinc.
19. On 26 June 2015, the Secretary registered the transfer of ML 1322 to AUS GOLD. The transfer was subject to the schedule 2 Mining Lease Condition 2013.
20. On 19 February 2018, condition 4 'Non-Compliance Reporting' and condition 5 'Environmental Incident Report' were varied.
21. EL 8697 was granted to AUS GOLD on 1 March 2018 in respect of Group One (1) minerals and is due to expire on 1 March 2024. EL 8697 is subject to the conditions set out in schedule 2 (General Conditions) and schedule 3 (Additional Conditions) of the Instrument of Grant.
22. EL 8716 was granted to AUS GOLD on 27 March 2018 in respect of Group One (1) minerals and is due to expire on 27 March 2024. EL 8697 is subject to the conditions

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set out in schedule 2 (General Conditions) and schedule 3 (Additional Conditions) of the Instrument of Grant.

### Suspension of ML 1322

23. On 4 February 2019, the Chief Compliance Officer of the Regulator issued a suspension notice under section 240AA of the Act, file number NCN0005911 (**Suspension Notice**), directing AUS GOLD to:

*“Immediately suspend all operations under Mining Lease No. 1322 (Act 1992), with the exception of those activities required to maintain a safe workplace or to undertake environmental rehabilitation of the mining lease.”*

24. In making this decision, AUS GOLD was advised that consideration would be given to revoking the Suspension Notice once AUS GOLD completed all the following steps:
- a. *“Commission a suitably qualified independent person, to the satisfaction of the Secretary, to conduct a review of AUS GOLD systems and processes for meeting its compliance obligations under the Act. The review is to consider causal factors for the non-compliance and make recommendations for improvement.*
  - b. *Commission a suitably qualified independent person, to the satisfaction of the Secretary, to undertake a review of AUS GOLD’s current and ongoing financial capacity. This review must set out the findings of the review and any recommendations concerning the financial capacity of AUS GOLD to meet their future obligations under the Act. The review must be carried out by a qualified party that is independent to AUS GOLD’s normal accountants*
  - c. *Submit a detailed report, to the satisfaction of the Secretary, that details:*
    - i. *Key findings and responses to any issues and recommendations arising from the reviews undertaken at point 1 and 2 above (including copies of both reports);*
    - ii. *Likely financial and other compliance obligations arising from the reviews; and*
    - iii. *Systems and processes in place to ensure future and ongoing compliance with such obligations.*
  - d. *Comply in full with statutory notice, reference number NTCE0001179.*
  - e. *Appoint a technically competent person to manage activities or work authorised under ML 1322.*
  - f. *Demonstrate that it can achieve compliance with the Act and Mining Regulation 2016.*

- g. Demonstrate that it has the financial capacity to manage activities or work authorised under ML 1322.”<sup>1</sup>*

## Considerations and findings – Revocation of Suspension Notice

25. Since the issue of the suspension notice, the Regulator has actively monitored the actions taken by AUS GOLD to achieve compliance and issued a range of correspondence to AUS GOLD in relation to its compliance and financial performance.
26. In response, the Regulator has received a range of submissions and independent reports from AUS GOLD which confirm compliance with the requirements of the suspension notice and confirm that AUS GOLD has the ongoing financial capacity to manage the activities authorised by ML 1322.
27. These remedial actions demonstrate a willingness by AUS GOLD to comply with the requirements of the Act into the future.
28. Having considered all the information before me, I am satisfied that the requirements of the suspension notice have been met by AUS GOLD.

## Considerations and findings – Variation of Authorisation

29. On 8 July 2021, I issued a notice to AUS GOLD proposing to vary the conditions of authorisations for ML 1322, EL 8697 and EL 8716.
30. AUS GOLD was given until 5.00pm on 6 August 2021 to make submissions.
31. Submissions were received from AUS GOLD on 12 July 2021 accepting the proposed variations.
32. I am satisfied that the requirements of clause 12(5) of Schedule 1B to the Act have been met that AUS GOLD was provided an opportunity to make a submission in response to my proposed decision to vary the conditions of authorisation for ML 1322, EL 8697 and EL 8716.
33. The proposed variations will place strict conditions on AUS GOLD to ensure future compliance with the Act and enable the Regulator to take strong regulatory action should further non-compliance be detected.

## Conclusion

34. Based on the material before me, I have decided **not** to cancel ML 1322, EL 8679 and EL 8716.
35. I am satisfied that it is appropriate to **vary** the conditions of authorisation for ML 1322, EL 8679 and EL 8716, and that these variations will provide safeguards to identified risks and reduce the likelihood of non-compliances moving forward.

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<sup>1</sup> [Suspension Notice](#) DOC19/41699, dated 4 February 2019.

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36. I therefore **vary**:
- a. ML 1322 by **omitting** the 'Mining Operations Plan and Annual Rehabilitation Report' and 'Non-Compliance Reporting' conditions, as detailed in Annexure A.
  - b. ML 1322 by **attaching** the following conditions as detailed in Annexure A:
    - i. Rehabilitation to occur as soon as reasonably practicable after disturbance
    - ii. Rehabilitation must achieve final land use
    - iii. Rehabilitation risk assessment
    - iv. Rehabilitation management plans
    - v. Rehabilitation outcome documents
    - vi. Forward program and annual rehabilitation report
    - vii. Amendment of rehabilitation outcome documents and forward program
    - viii. Times at which documents must be prepared and given
    - ix. Records demonstrating compliance
    - x. Certain documents to be publicly available
    - xi. General requirements for documents
    - xii. Nominated contact person
    - xiii. Report on non-compliance
    - xiv. Mandatory Audit Condition
    - xv. Financial Audit Condition
  - c. EL 8697 by **attaching** the 'Mandatory Audit Condition' and 'Financial Audit Condition', as detailed in Annexure B.
  - d. EL 8716 by **attaching** the 'Mandatory Audit Condition' and 'Financial Audit Condition', as detailed in Annexure C.
37. I also **revoke** the Suspension Notice, reference number DOC19/41699 issued on 4 February 2019.
38. This decision take effect from **the date of this decision**.
39. This decision in no way precludes the Regulator from taking any other action against AUS GOLD in relation to this and any other matters.



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Date of decision: **20 August 2021**

A handwritten signature in black ink, appearing to read 'G Burns'.

**Garvin Burns**

Executive Director

NSW Resources Regulator

**Note:** In accordance with its Public Comment Policy, a copy of this decision will be published on the NSW Resources Regulator's website: [www.resourcesregulator.nsw.gov.au](http://www.resourcesregulator.nsw.gov.au)