

Authorisation	Mining Lease No. 1616 (Act 1992) (ML 1616)
Lease Holder	Australian Magnetite Mines Pty Ltd (ACN 647 754 443)
Issue	Whether to cancel ML 1616 Whether to revoke the notice of suspension for ML 1616
Legislation	Section 125 of the <i>Mining Act 1992</i> Section 240AA and 240B of the <i>Mining Act 1992</i>
Decision maker	Peter Day Executive Director, NSW Resources Regulator Regional NSW

DECISION NOT TO CANCEL AN AUTHORITY

As authorised by Section 125 of the Mining Act 1992 (**Act**), I Peter Day, having delegated authority from the Minister, have decided **not** to cancel ML 1616.

SECTION 240AA & 240B – REVOCATION OF SUSPENSION NOTICE

As authorised by Section 240AA and 240B of the *Mining Act 1992* (**Act**), I Peter Day, having delegated authority from the Secretary, Regional NSW, have decided to **revoke** suspension notice RRAR-2017/00014 issued in relation Mining Lease No. 1616 (Act 1992) (**ML 1616**) on 7 March 2018.

This revocation is effective 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

Reasons for decision

- contravened a provision of the Act (whether or not the person is prosecuted or convicted of any offence arising from the contravention).
3. 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 representation have been taken into consideration.
 4. 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

5. 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.
6. Section 240B of the Act provides that the Secretary may vary or revoke a suspension notice by issuing a subsequent direction.
7. Section 363(2) of the Act provides that the Secretary may delegate any functions conferred 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.

Background

8. ML 1616 was first granted on 31 March 2008 for a term of 21 years. ML 1616 was granted for the purposes of prospecting and mining for agricultural lime, iron minerals and limestone.
9. ML 1616 is 33.91 hectares in size and is located about 17.44km west-south-west of Cowra. The Broula Magnetite and Limestone Mine operated on ML 1616.
10. On 3 August 2011, ML 1616 was transferred to the previous lease holder, Abterra Australia Pty Ltd (ACN 150 010 763) (**Abterra**).

Reasons for decision

11. On 16 November 2017, the then Chief Compliance Officer (**CCO**) with the Regulator, as a delegate of the Minister first proposed the cancellation of ML 1616 to the then lease holder, Australia Pty Pty Ltd (**Abterra**).
12. On 7 March 2018, after considering the representations made by Abterra and having regard to the regulatory option available, the then CCO, as a delegate of the Secretary of the then Department of Planning and Environment directed Abterra to immediately suspend all operations on ML 1616 with the exception of those activities required to maintain a safe workplace or to undertake environmental rehabilitation of the mining lease.
13. Suspension Notice RRAR-2017/00014 was issued on Abterra. This notice outlined the grounds for suspension and identified several actions required to be completed before consideration would be given to revoking the suspension notice.
14. On 22 August 2022, Abterra entered voluntary administration, with the administrator subsequently being appointed as the liquidator on 4 March 2019.
15. On 24 August 2018, the then CCO again proposed the cancellation of ML 1616 following further contraventions of the Act.
16. Following the receipt of submissions, on 23 January 2019, an initial decision was made by the then CCO to defer any decision pending the proposed sale of ML 1616. This decision remained to allow for the sale of ML 1616.
17. ML 1616 was subsequently sold to Australian Magnetite Mines Pty Ltd (**AMM**), and on 12 August 2022 a transfer application was submitted.
18. On 28 November 2022, the transfer application to AMM was approved by Mining, Exploration and Geoscience (**MEG**).
19. On 31 January 2023, an application to register the transfer was lodged with MEG pursuant to section 122 of the Act.
20. On 1 February 2023, MEG registered the transfer.

Representations

21. On 6 October 2022, Scott Murray, the acting Executive Director with the Regulator wrote to both the Liquidator for Abterra and AMM proposing:
 - a. not to cancel ML 1616, and
 - b. Issue a direction to revoke the suspension notice once the transfer has been registered in accordance with section 122 of the Act.
22. Both AMM and the Liquidator were invited to make submissions in relation to the proposed decision.
23. A representative of AMM responded by email on this day stating, "AMM has no objection to the proposed revocation of the suspension notice".

24. No submissions were received from the Liquidator.

Considerations and findings

25. Since issuing the Suspension Notice, representatives from MEG, including the Regulator, have been actively monitoring the proposed sale of ML 1616 and the associated land and have engaged regularly with both the liquidator for Abterra and AMM in relation to the sale of ML 1616 and the outstanding security deposit.

26. Based on the material before me, I am satisfied that the sale of ML 1616 presented the best opportunity to recommence mining and in doing so ensuring both effective rehabilitation of the mining lease and a social and economic benefit to New South Wales, which are objects of the Act.

Conclusion

27. Having regard to the material before me, I have decided **not** to cancel ML 1616.

28. I also **revoke** the Suspension Notice RRAR-2017/00014 issued on 7 March 2018.

29. These decisions take effect immediately.

Date of decision: 2 **February 2023**



Peter Day

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