



Resource Tenure Division

Position Paper

Issued: 22 May 2020

SECTION 40F MINING ACT 1978 – REMOVAL OF CROWN LAND FROM OPERATION OF SECTION 40E

In light of the relaxation of regional travel restrictions that came into effect from 18 May 2020, the Department of Mines, Industry Regulation and Safety allowed individuals to make applications for permits to prospect on Crown land that is the subject of an exploration licence (Section 40E permit), permitting individuals to prospect for minerals within their respective regions.

Whilst the regional boundaries have been revised to broaden the regional areas under phase two of the Government's roadmap to recovery, consideration must be given to protecting the members of the community that remain at greater risk of coronavirus, including Aboriginal and Torres Strait Islander people and remote Aboriginal communities. We all need to take extra steps to protect those most at risk.

The Minister has therefore declared that section 40E does not apply to specified areas of the State, including the area of the State the designated Biosecurity area declared by the Federal Minister for Health on 26 March 2020 under section 477(1) of the *Biosecurity Act 2015* (Cth), and sixty one pastoral leases currently leased by Aboriginal corporations. Details of the Minister's declaration are published in the Government Gazette dated 22 May 2020.

This means that a section 40E permit cannot be issued in the areas specified in the Minister's declaration.

How do I know where the specified areas are?

Details of the specified areas are attached to this document.

Details of the specified areas are also displayed in TENGRAPH Web, the Department's mining cadastre mapping system, as File Notation Areas. Graticular blocks in the subject exploration licence that fall within the FNA will not be included in a section 40E permit. Individuals are responsible for checking for specified areas before making an application for a section 40E permit.

What if part of a graticular block falls within a specified area?

The area of land in respect of which a section 40E permit is issued is to be a graticular block or blocks but not exceeding 10 blocks, and the area must be contiguous. Where a graticular block intersects a specified area, the block will be included in the permit but access to the specified area is not permitted for any purposes authorised under the permit. The specified areas are out of bounds.

What if I have applied for a permit before the specified area was declared?

If the permit has not been issued before the declaration comes into effect on 22 May 2020, the permit will not be issued over the specified area of land. If the entire area of the application is a specified area the mining registrar will refuse to issue the section 40E permit.



What if I have a permit that was issued over a specified area prior to the Minister's declaration being made?

Technically the permit is valid. Section 40E permit holders should however consider if it is appropriate to enter a specified area under the permit. People still need to take extra steps to protect those most at risk.

Will I get my application fee back if I have applied for a permit over a declared specified area?

The Mining Act does not make provision for the refund of the section 40E permit application fee.

The Minister for Mines and Petroleum has been delegated by the Treasurer, under the provisions of the *Financial Management Act 2006*, the authority to approve an amount to be paid to a person even though the payment would not otherwise be authorised by law. Such a payment may be made subject to conditions.

If an application for a section 40E permit is made immediately prior to 22 May 2020 and is for land entirely within a declared specified area, a request for the recovery of the application fee is likely to be favourably considered.

Are there any other COVID-19 restrictions being imposed on section 40E permits?

Existing regional border restrictions under the COVID-19 state of emergency directions apply to individuals travelling across regional Western Australia. A person must not enter a regional area from another regional area unless meeting the exceptions outlined in the direction.

To avoid any doubt, section 40E permits issued whilst the regional border restrictions direction is in force is the subject of the condition that the permit is not to be relied upon as reason for exemption to cross regional borders.

Details of the prohibition on regional travel directions can be found on the WA Government website.

https://www.wa.gov.au/sites/default/files/2020-05/EMA-Prohibition-on-Regional-Travel-Directions-No-2_0.pdf

Individuals are reminded that the state of emergency continues in effect and the Remote Aboriginal Communities Directions made under section 56 of the *Emergency Management Act 2005* remain in force, restricting access to remote Aboriginal communities. Penalties apply for failing to comply with the state of emergency directions, with fines of up to \$50,000 for individuals.

Details of the remote aboriginal communities' directions can also be found on the WA Government website, including the schedule of Aboriginal communities.

<https://www.wa.gov.au/sites/default/files/2020-04/Schedule%20to%20Directions21-3.pdf>



MINING ACT 1978
SECTION 40F
DECLARATION OF CROWN LAND REMOVED FROM OPERATION OF SECTION 40E

The Minister for Mines and Petroleum declares that section 40E of the *Mining Act 1978* does not apply to the Crown land specified below –

Description of Land

The designated area in Western Australia described in schedule 1 to the Biosecurity (Human Biosecurity Emergency) (Human Coronavirus with Pandemic Potential) (Emergency Requirements for Remote Communities) Determination 2020 made under subsection 477(1) of the Biosecurity Act 2015 (Cth);

AND

The following pastoral leases granted under section 100 of the *Land Administration Act 1997* -

Lease Name	Lease Number	Lease Name	Lease Number
ADELONG	N050386	MANGAROON	N050359
BELELE	N049563	MAROONAH	N050477
BILLILUNA	N049567	MILLIE WINDIE	N049708
BOHEMIA DOWNS	N049593	MILLIJIDEE	N049802
BOW RIVER	N049619	MORAPOI	N049728
BUTTAH	N049656	MOWANJUM	N049743
CARDABIA	N049635	MOWLA BLUFF	N049413
CARRANYA	N049659	MT ANDERSON	N049745
CARSON RIVER	N343260	MT BARNETT	N049749
COGLA DOWNS	N049690	MT DIVIDE	N049420
COONGAN	N049539	MT PIERRE	N049790
COONGAN	N049544	MT WELCOME	N049462
DOON DOON	N049571	MT WITTENOOM	N049470
DURACK RIVER	N049589	MULGUL	N049800
ELVIRE	N049706	MYROODAH	N049814
FAIRFIELD	N049621	NINGHAN	N049518
FRAZIER DOWNS	N049664	NOONKANBAH	N049848
FRAZIER DOWNS	N049665	PEEDAMULLA	N050350
FRAZIER DOWNS	N049666	PINJIN	N049526
FRAZIER DOWNS	N049667	PIPPINGARRA	N049843
GIBB RIVER	N049688	ROBERTSON RANGE	N049546
GILROYD	N049693	ROEBUCK PLAINS	N049900
GLEN HILL	N049794	STRELLEY	N050091
GLENORN	N049808	TABLELAND	N049569
HOME VALLEY	N049716	TOWRANA	N049969
KANGAN	N049839	ULLAWARRA	N049994
KARBAR	N050049	WALAGUNYA	N049404
KARUNJIE	N049409	WINDIDDA	N049460
KOONGIE PARK	N049860		
LAKE GREGORY	N049428		
LAMBOO	N049432		
LEOPOLD DOWNS	N050061		
LOUISA DOWNS	N049737		