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Department of Regional NSW



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AU Exploration Pty Ltd

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1. Introduction

1.1. Background

Exploration licence 8296 (1992) was granted to AU Exploration Pty Ltd on 20 August 2014. An application to renew the licence was lodged in August 2022 and was pending determination. The exploration area was about 65 kilometres north of Broken Hill in far western NSW.

Although owned by separate entities, AU Exploration operates EL8296 in partnership with NBH Resources Pty Ltd who hold the adjacent tenement EL8905. The companies share exploration personnel and the 2 exploration licences are operated together as one project – the North Broken Hill project.

As part of the compliance audit program, a desktop audit of the exploration activities associated with the North Broken Hill exploration project within E8296 was undertaken on 31 October 2023 by the Resources Regulator within the Department of Regional NSW.

1.2. Audit objectives

The objectives of the audit were to:

- undertake a compliance audit of the AU Exploration activities against the requirements of the *Mining Act 1992* and the conditions of the exploration licence and activity approvals issued pursuant to that Act.
- assess the operational performance of the exploration activities and the ability of the licence holder and/or its operator to implement management systems and controls to provide for sustainable management of the operations.

1.3. Audit scope

The scope of the audit included:

- the exploration activities associated with the North Broken Hill exploration projects including:
 - exploration activities within EL8296 including a selected sample of exploration drillholes
 - borehole sealing and rehabilitation activities for selected drilling activities undertaken since October 2020
- A review of documents and records pertaining to the exploration operations for the period commencing 1 November 2021 and ending 31 October 2023.

1.4. Audit criteria

The audit criteria against which compliance was assessed included:

- *Mining Act 1992*, specifically, Sections 5, 30, 140, 163C to 163E, 163G, 378D
- Mining Regulation 2016, specifically clauses 59 to 68
- Conditions attached to EL8296 (granted 20 August 2014, last renewed 10 March 2017)

- Exploration code of practice: Environmental management (Version 4, June 2021 and Version 5, March 2022)
- Exploration code of practice: Rehabilitation (Version 4, June 2021 and Version 5, March 2022)
- Exploration code of practice: Community consultation (Version 2.0, October 2022 and Version 2.1, May 2023)
- Exploration code of practice: Produced water management, storage and transfer (Version 3, September 2017, Version 4, June 2021 and Version 5, March 2022)
- Exploration Reporting: A guide for reporting on exploration and prospecting in New South Wales (Version 3, October 2021 and Version 4, January 2022)
- Exploration Guideline: Annual activity reporting for prospecting titles (Version 3.0, December 2020 and Version 4, October 2022) published by Department of Regional NSW

1.5. Publishing and disclosure of information

This audit report was published on the Regulator’s website consistent with:

- Section 365 of the *Mining Act 1992*
- Resources Regulator’s [Public comment policy](#)
- *Government Information (Public Access) Act 2009*.

2. Audit methods

The audit process involved the interview of site personnel, a review of documentation and samples of records provided by the licence holder and/or operator to determine the level of compliance of the operations and assess the status of the operational performance. The audit process and methodology are described in more detail in the sections below.

2.1. Opening meeting

An opening meeting was held at the Maitland office of the Regulator on 31 October 2023. The audit team was introduced, and the scope of their responsibilities was conveyed to the auditees. The objectives and scope of the audit were outlined. The methods to be used by the team to conduct the audit were explained, including the interview of personnel, review of documentation, examination of records and a site inspection to assess specific compliance requirements.

2.2. Site interviews and inspections

2.2.1. Data collection and verification

Where possible, documents and data provided during the audit process were reviewed electronically on the day.

All information obtained during the audit process was verified by the audit team where possible. For example, statements made by site personnel were verified by viewing documentation and records, including site photographs, where possible. Where suitable verification could not be provided, this has been identified in the audit findings as not determined.

2.2.2. Site inspections

A site inspection was not conducted because on ground exploration operations on the tenement were not undertaken in the last 5 years.

2.3. Closing meeting

A closing meeting was held at the Maitland office of the Regulator on 31 October 2023. The objectives of this meeting were to discuss any outstanding matters, present preliminary findings and outline the process for finalising the audit report.

2.4. Compliance assessment definitions

The reporting of results from the compliance audit was determined based on the definitions presented below in Table 1.

Table 1 Compliance assessment definitions

Assessment	Criteria
Compliance	Sufficient and appropriate evidence is available to demonstrate the particular requirement has been complied with.
Non-compliance	<p>Clear evidence has been collected to demonstrate the particular requirement has not been complied with. There are three subcategories of non-compliance reflecting the severity and level of risk associated with the non-compliance:</p> <p>NC1 – the absence of planning or implementation of a required operational element which has the potential to result in a significant risk.</p> <p>NC2 – an isolated lapse or absence of control in the implementation of an operational element which is unlikely to result in a significant risk.</p> <p>NC3 – an administrative or reporting non-compliance which does not have a direct environmental or safety significance.</p> <p>Note: The identification of a non-compliance in this audit may or may not constitute a breach of, or offence under, the <i>Mining Act 1992</i>. Non-compliances identified in this audit report may be further investigated by the Regulator and regulatory actions may be undertaken.</p>
Observation of concern	<p>Where an auditee may be compliant at the time of the audit but there are issues that exist that could result in the potential for future non-compliance if not addressed.</p> <p>Observation of concern was also used where an issue may not have particular compliance requirements, but which was not conducive to good management or best practice.</p>
Suggestion for improvement	Where changes in processes or activities inspected or evaluated at the time of the audit could deliver improvement in relation to risk minimisation, sustainable outcomes and management practices.
Not determined	<p>The necessary evidence has not been collected to enable an assessment of compliance to be made within the scope of the audit.</p> <p>Reasons why the audit team could not collect the required information include:</p> <p>insufficient information on the file relating to the period covered by the audit or insufficient evidence collected to reach a conclusion</p> <p>the wording on the criteria (approval condition) meant that no evidence could be gathered, or it was too difficult to gather the evidence.</p> <p>A 'not determined' assessment was also made where the condition was outside the scope of the audit.</p>
Not applicable	<p>The circumstances of the authorisation or licence holder have changed and are no longer relevant (e.g. no longer mining, mining equipment and plant has been removed).</p> <p>An invoking element in the criteria was not activated within the scope of the audit.</p>

2.5. Reporting

Following completion of the audit, the audit checklists were completed, and audit notes were reviewed to compile a list of outstanding matters to be noted in the audit report. This report was prepared to provide an overview of the operational performance of the site in relation to the exploration activities and identify any non-compliances or observations of concern noted by the auditors during the documentation review and interviews.

The draft audit findings were forwarded to AU Exploration for comment. Consideration was given to the representations made during the finalisation of the audit report as discussed in the audit findings.

3. Audit findings

3.1. Work program

Condition 1 of EL8296 required the licence holder to carry out the operations described in the approved work program. Work program WP- EL8296-2017-2022 was in force during the audit period.

It was noted that no on ground work was undertaken on the tenement in the past 5 years.

The AU Exploration geologist monitored and reviewed the work program for each title through the annual activity reporting process. Exploration data was noted to be maintained by the AU Exploration geologist and submitted to Mining, Exploration and Geoscience (MEG) with the annual activity reports as required.

3.2. Access arrangements

Section 140 of the *Mining Act 1992* stated, ‘the holder of a prospecting title must not carry out prospecting operations on any particular area of land except in accordance with an access arrangement or arrangements applying to that area of land’. The access arrangement was required to be agreed in writing between the holder of the prospecting title and each landholder of that area of land.

The AU Exploration geologist advised a land access agreement was not in place for EL8296, but exploration works were not being undertaken on that tenement. Plans were in place to seek a land access agreement with the land holder of EL8296 before further exploration works are undertaken.

3.3. Native title and exempted areas

Condition 2 of EL8296 required the licence holder to obtain the prior written consent of the Minister before carrying out any activities on land on which native title had not been extinguished. Similarly, Section 30 of the *Mining Act 1992* required the consent of the Minister before a licence holder undertook any activities within an exempted area.

The AU Exploration geologist advised that exploration activities were generally being conducted in areas of freehold or leasehold land within EL8296. A review of mapping data showed that no holes had been drilled in any exempted areas within EL8296. No further approvals under section 30 of the *Mining Act 1992* were required.

The AU Exploration geologist advised that most of the licence area was under leasehold title where native title had generally been extinguished. Although not a compliance requirement, confirmation of extinguishment had not been sought from MEG. No further approvals under Condition 2 of the licence were required for EL8296.

3.4. Community consultation

Condition 3 of EL8296 required the licence holder to carry out community consultation in relation to the planning and conduct of exploration activities. Community consultation was required to be

carried out in accordance with the requirements of Exploration code of practice: Community consultation.

An assessment against the mandatory requirements of the code of practice was undertaken as documented in the following sections.

3.4.1. Risk assessment

Mandatory requirement 1 of the code of practice required the licence holder to conduct a risk assessment to identify and consider the range of opportunities and potential threats associated with community consultation and engagement.

It was noted that a community consultation risk assessment was not required for EL8296 because exploration operations were not conducted on the tenement in the past 5 years. A risk assessment would be required before further exploration operations are conducted on EL8296.

3.4.2. Community consultation strategy

Mandatory requirement 2 required the preparation of a community consultation strategy to manage the risks identified in the risk assessment. Mandatory requirement 3 set out the requirements for preparation of the community consultation strategy.

It was noted that exploration operations were not conducted on EL8296 for the past 5 years. A community consultation strategy would be required before further exploration operations were undertaken on the tenement.

3.4.3. Implementation and reporting

Mandatory requirement 4 required the licence holder to implement, monitor and report annually on the community consultation strategy.

Evidence was available to confirm that AU Exploration was undertaking some limited community consultation. Given the location of exploration activities remote from sensitive receptors, liaison with landholders on EL8296 was the key consultation undertaken.

It was noted that some records of consultation activities were maintained by the company. As suggestion for improvement number 1, AU Exploration should consider the development of a consultation register to record and collate the consultation activities that were undertaken.

Up until the change to the code of practice in October 2022, annual community consultation reports were prepared and submitted by AU Exploration, generally in accordance with the reporting guidance in Appendix 2 of the code of practice.

3.5. Exploration activity approvals

Section 23A of the *Mining Act 1992* required the holder of an exploration licence to obtain an activity approval prior to carrying out assessable prospecting operations.

No applications for assessable prospecting operations were required for EL8296 because no surface disturbing exploration operations were undertaken on the tenement in the past 5 years.

3.6. Environmental management

Condition 4 of EL8296 required the licence holder to prevent or minimise so far as is reasonably practicable, any harm to the environment arising from the activities carried out under the licence. Condition 2 of the exploration activity approval required the licence holder to carry out the activity in compliance with Part B of the Exploration code of practice: Environmental management.

A site inspection was not conducted as part of the audit. A full assessment against mandatory requirements 1 to 11 of the Exploration code of practice: Environmental management was not completed. It was noted that AU Exploration had not carried out exploration operations on EL8296 for several years.

3.6.1. Risk assessment

Mandatory requirement 12.1 required the licence holder to monitor the risks associated with activities and, if the risk associated with an activity changes, implement revised environmental management controls.

Given that no exploration activities were in progress on EL8296, an environmental risk assessment was not required.

3.7. Security deposit

Condition 5 of EL8296 required the licence holder to provide a security deposit to secure funding for the fulfilment of obligations under the licence.

The security amount required for EL8296 was \$10,000, which department records confirmed was held.

3.8. Rehabilitation

Condition 6 of EL8296 required the licence holder to carry out rehabilitation of all disturbance caused by activities carried out under the licence in accordance with the requirements of the Exploration code of practice: Rehabilitation.

An assessment against the mandatory requirements of the code of practice was undertaken for the exploration activities as documented in the following sections.

3.8.1. Risk assessment

Mandatory requirement 1 required the licence holder to conduct a risk assessment to evaluate the range of potential threats and opportunities associated with rehabilitating disturbed areas to a condition that could support the intended final land use.

A risk assessment was not required for EL8296 because no exploration activities were being conducted on the tenement.

3.8.2. Rehabilitation objectives and completion criteria

Mandatory requirement 2 required the licence holder, not later than 14 days before the commencement of surface disturbing activities, to provide to the Secretary a copy of clear, specific, achievable and measurable rehabilitation objectives and completion criteria (ROCC). For higher risk prospecting operations, a rehabilitation management plan was required to be prepared and submitted with the rehabilitation objectives and completion criteria.

ROCCs were not required for EL8296 because no exploration activities were being conducted on that tenement.

3.8.3. Rehabilitation program

Mandatory requirement 3 required the licence holder to develop, implement and complete a rehabilitation program (which includes a monitoring program) to rehabilitate disturbed areas to a condition that could support the intended final land use. Mandatory requirement 4 required the licence holder to commence rehabilitation of a site as soon as reasonably practicable following the completion of activities on that site.

It was noted that previous exploration drilling on EL8296 had achieved satisfactory rehabilitation sign-off from the Regulator.

3.9. Annual activity reporting

Section 163C of the *Mining Act 1992*, clause 59 of the Mining Regulation 2016 and condition 8 of EL8296 required the licence holder to submit an activity report annually within one calendar month following grant anniversary date. Annual activity reports were required to be prepared in accordance with the Exploration guideline: Annual activity reporting for prospecting titles.

During the audit scope period, AU Exploration submitted annual activity reports comprising:

- annual geological report
- environmental rehabilitation and compliance report
- community consultation report (up to October 2022).

3.10. Core and sample storage

Section 163G of the *Mining Act 1992* required the licence holder to collect any samples of strata, minerals, water or any other thing required by the regulations. Clause 65 of the Mining Regulation 2016 required the holder of an authority to, so far as is reasonably practicable, collect, retain and preserve:

- all drill cores remaining after sampling
- characteristic samples of the rock or strata encountered in any drill holes.

All core and samples collected were required to be labelled, stored and managed in a manner that preserved the integrity of the core or samples.

RC drilling programs were noted to be completed on EL8296. During discussions with the AU Exploration geologist, it was noted that no representative samples of the rock or strata encountered

in the drill holes were collected. This was raised as non-compliance number 1. It was noted that neither section 163G of the Act or clause 65 of the Regulation contain offense provisions for failing to comply with this requirement. However, AU Exploration must collect and retain characteristic samples of the rock or strata encountered during drilling programs.

3.11. Record keeping

Sections 163D and 163E of the *Mining Act 1992* related to the creation and maintenance of records required under the Act, the Regulations, or a condition of title. Records must be kept in a legible form for production to any inspector and must be maintained for a period of 4 years after the expiry or cancellation of the title. Specific requirements for the types of records to be maintained for exploration activities were detailed in the mandatory requirements of the exploration codes of practice as follows:

- mandatory requirement 6 of the rehabilitation code of practice
- mandatory requirement 13.1 of the environmental management code of practice
- mandatory requirement 5 of the community consultation code of practice.

Records reviewed during the audit demonstrated AU Exploration were generally maintaining records as required by the licence conditions. Records maintained included:

- land access agreements and records of negotiation with landholders
- before and after photos of exploration operations and rehabilitation.

Mandatory records under the codes of practice were generally not required for EL8296 because no active exploration works were undertaken on the licence area in the past 5 years. However, it was noted that AU Exploration did not have the systems in place to collect and maintain those records when they are required. As suggestion for improvement number 2, AU Exploration should review the mandatory record requirements of the codes of practice and develop systems to collect and maintain all required records.

4. Compliance management

4.1. Identifying compliance obligations

Identifying compliance obligations is a critical step in the development of an effective compliance management system. Compliance obligations for an exploration project can include:

- regulatory requirements (for example, the *Mining Act 1992*)
- conditions imposed on the grant, renewal, or transfer of exploration licences
- exploration activity approvals
- exploration codes of practice
- specific commitments made by the organisation (for example, commitments made in the approved exploration activity application).

Once identified, compliance obligations should be reviewed periodically to identify any changes in those obligations (for example, changes in legislation).

AU Exploration had identified some of the compliance requirements for exploration activities, but the non-compliance and suggestions for improvement identified during the audit suggested exploration personnel were not familiar with the range of compliance obligations for exploration, particularly the exploration codes of practice.

It was noted that AU Exploration had a history of previous non-compliances. The Regulator undertook enforcement action for these non-compliances and penalty infringement notices were issued.

A more robust identification of compliance requirements and tracking of completion status may assist in preventing future non-compliances. As suggestion for improvement number 3, AU Exploration should consider using tools such as the Regulator's self-audit checklist for explorers, to increase familiarity with the compliance obligations and undertake its own compliance assessment. Case studies and other guidance material available on the Regulator's website may provide further guidance to the companies in fulfilling their compliance obligations.

4.2. Contractor management

Contractors are often used to undertake specialist tasks, for example, exploration drilling. Whilst the responsibility for compliance or the implementation of environmental controls is often passed to the contractor, the licence holder will retain accountability for compliance with its licence conditions and other compliance obligations. It is important that the licence holder exercises management control of its contractors by specifying contract requirements, providing oversight of contracted works, and evaluating the performance of the contractor during the contracted works.

AU Exploration used contract drillers to complete the exploration drilling programs. Drilling was completed several years before the audit and an assessment of the management of contractors was not undertaken.

4.3. Inspections, monitoring and evaluation

An effective inspection, monitoring and evaluation process is required to:

- monitor the implementation of the risk controls
- evaluate the effectiveness of those controls based on an assessment of inspection and monitoring data
- implement an adaptive management approach if monitoring shows that controls may be ineffective.

It was noted that AU Exploration completed no on ground works over the last few years. It was also noted that AU Exploration had no evidence to demonstrate that effective inspection and monitoring programs were implemented on exploration operations. Some inspections were reported to be undertaken but these were not documented. As suggestion for improvement number 4, AU Exploration should consider the development of an inspection and monitoring program for exploration operations before further works are undertaken. The inspection and monitoring program should be designed to confirm the implementation of identified risk controls and assess compliance to the requirements for exploration. Use of the Regulator’s self-assessment checklist for explorers would be a good starting point for the development of an inspection and monitoring program.

Evaluation of the inspection and monitoring results should be used to identify where changes to controls or management strategies may be required. As suggestion for improvement number 5, AU Exploration should consider the development of a process to evaluate the effectiveness of the risk controls implemented, with revised controls identified where those risks changed, or controls were identified as being ineffective.

5. Audit conclusions

From the evidence reviewed during the audit, it was concluded that AU Exploration was not compliant with all the requirements of the exploration licence. No evidence was available to demonstrate that systems and processes were developed to identify and manage compliance requirements. It was acknowledged limited exploration activities were undertaken on EL8926 in the past 5 years.

One non-compliance and 5 suggestions for improvement were identified as summarised in Table 2, Table 3 and Table 4.

Table 2 Summary of non-compliances

Non-compliance No.	Description of Issue	Recommendation
1	It was noted that no representative samples of the rock or strata encountered in the drill holes were collected.	AU Exploration must collect and retain characteristic samples of the rock or strata encountered during drilling programs.

Table 3 Summary of suggestions for improvement

Suggestion for Improvement No.	Description of Issue
1	It was noted that some records of consultation activities were maintained by the company. As a suggestion for improvement, AU Exploration should consider the development of a consultation register to record and collate the consultation activities that were undertaken.
2	AU Exploration should review the mandatory record requirements of the codes of practice and develop systems to collect and maintain all required records.
3	AU Exploration should consider using tools such as the Regulator's self-audit checklist for explorers, to increase familiarity with the compliance obligations and undertake its own compliance assessment. Case studies and other guidance material available on the Regulator's website may provide further guidance to the companies in fulfilling their compliance obligations.
4	AU Exploration should consider the development of an inspection and monitoring program for exploration operations before further works are undertaken. The inspection and monitoring program should be designed to confirm the implementation of identified risk controls and assess compliance to the requirements for exploration.
5	AU Exploration should consider the development of a process to evaluate the effectiveness of the risk controls implemented, with revised controls identified where those risks changed, or controls were identified as being ineffective.