

January 2023

## Fact sheet

# Access management: Opal prospecting

## Opal prospecting

Exploring for opals is referred to as opal prospecting and is performed under an opal prospecting licence or mineral claim issued under the *Mining Act 1992*. The Act defines prospecting as carrying out works on land, or removing samples from land, for the purposes of testing its mineral-bearing qualities and/or potential to recover minerals. This document explains the process required for an opal prospecting licence or mineral claim holder to obtain access to land in order to undertake prospecting.

## Opal prospecting licences and mineral claims

Opal prospecting can only be done in accordance with an opal prospecting licence or mineral claim issued by Mining, Exploration and Geoscience (MEG). An opal prospecting licence or mineral claim can only be granted over land defined as an Opal Prospecting Block (OPB) within an area designated under the Act as an Opal Prospecting Area (OPA). A map of Opal Prospecting Blocks in NSW can be viewed at <https://minview.geoscience.nsw.gov.au/> - select 'Add View' and scroll down to apply the 'Opal Prospecting Block' filter.

The majority of OPBs are located within 4 OPAs within the Narran-Warrambool Reserve at Lightning Ridge. There is also a small number of OPBs near White Cliffs. Maps of all OPBs can also be obtained from MEG's office at 41 Opal Street, Lightning Ridge, NSW or via email at [lightningridge.office@regional.nsw.gov.au](mailto:lightningridge.office@regional.nsw.gov.au). The office also displays a noticeboard showing which OPBs are under licence. Enquiries can also be made to the office by phone during business hours at 02 6820 5200.

## Land access arrangements

### Access management plans

Under the Act, MEG can declare any land within an OPA as an access management area. Within these areas, where an access management plan (AMP) is in effect, opal prospecting on that land is done in accordance with the registered AMP. Where no AMP is in effect, the right of way is to be indicated:

- by marker posts along the route of the right of way in the manner set out below under Rights of way, or
- or described in such other manner as is agreed in writing by the landholder and the holder of the opal prospecting licence or mineral claim.

An AMP is to make provisions for matters such as:

- the rights of access to the land, including rights in relation to access points to the land, routes of access across the land, and the time periods within which these rights apply,
- the conditions that apply to the access rights in relation to maintaining routes of access, preserving the safety of people and stock, and avoiding interference with land management practices,

- environmental protection, and
- dispute resolution.

The landholder and the relevant miner's representative prescribed in the Mining Regulation 2016 may negotiate an AMP. The miner's representative may commence the process by issuing the landholder a notice of intent to negotiate an AMP. The notice of intent must include a plan and description of the land over which access is sought and a description of the intended prospecting method. If the landholder and 'miner's representative' reach agreement on the terms of an AMP, the agreement must be documented in writing and lodged with MEG for registration. MEG is required to give public notice of the AMP and keep copies available for public inspection.

If the landholder and miner's representative are unable to reach agreement on an AMP within 60 days of the notice of intent being issued, either party may apply to MEG to determine an AMP. The party making the application to MEG must provide a copy of the application to the other party. Before making a determination, MEG must consult with both parties and give due consideration to submissions arising from the consultation process. Once MEG makes its determination it must issue copies to each party. At any time during its considerations, MEG may choose to not make a determination and provide written notice to each party of that fact.

If MEG declines to make a determination either party can apply to the NSW Land and Environment Court (LEC) to make a determination. The LEC's determination is final, and copies of the determined AMP must be provided to each party.

Either party can also make an application to the LEC to review a MEG-made determination. The application must be lodged within 14 days of MEG issuing the determination. The applicant must provide copies to both the other party and MEG.

MEG is not a party to any proceedings before the LEC regarding an AMP but may choose to make a submission, which the LEC must consider before making its determination. Each party is responsible for bearing its own costs for participating in any LEC proceedings.

## Access to Lightning Ridge OPAs

All OPAs at Lightning Ridge are in a declared Access Management Area for which the Lightning Ridge Miners Association or Glengarry Grawin Sheeppark Miners Association have been prescribed as the 'miner's representative'. Copies of Access Management Plans in force within this area can be obtained from the Department's Lightning Ridge Office.

## Access to White Cliffs OPA

The OPA at White Cliffs is not within a declared Access Management Area and therefore an AMP is not able to be implemented.

## Permit to enter land

Any person can apply for a permit from MEG issued under section 254 of the Act to inspect an opal prospecting block or to mark out and inspect a mineral claim or to comply with a condition of a mineral claim or opal prospecting licence. The holder of a section 254 permit may enter the land to which the permit relates to do whatever is reasonably necessary for the purposes of inspecting or marking out an OPB or complying with the conditions of any mineral claim or opal prospecting licence. A permit to enter is granted for a maximum 28 days.

A permit may not be granted over:

- land on which a dwelling-house is situated that is the principal place of residence of the person occupying the land, or land within 200 metres of the dwelling-house, or
- land on which a garden is situated, or land within 50 metres of the garden.

A permit may not be granted over land where 'significant improvements' are situated. The Act defines a 'significant improvement' as a work or structure that meets all of the following criteria:

- is a substantial and valuable improvement to the land
- is reasonably necessary for the operation of the landholder's lawful business or use of the land
- is fit for its purpose (immediately or with minimal repair)
- cannot reasonably co-exist with the exercise of rights under the authorisation or the access arrangement without hindrance to the full and unencumbered operation or functionality of the work or structure
- cannot reasonably be relocated or substituted without material detriment to the landholder, and
- includes any work or structure prescribed by the regulations for the purposes of this definition but does not include any work or structure excluded from this definition by the regulations.

Unless the permit specifies otherwise, a permit holder and any employee, or their agent, may only enter the land between the hours of 9am to 5pm from Monday to Friday (excluding public holidays). The permit holder must comply with all reasonable landholder requests in relation to the manner and time of entry, provided the requests do not prevent the permit holder from carrying out the activities authorised by the permit. In entering the land that is the subject of the permit, the permit holder must have the permit in their possession and produce it if requested to do so by the landholder. The application form for a Section 254 permit can be downloaded [here](#).

## Rights of way

An opal prospecting licence or mineral claim holder is entitled to a right of way between the OPB and a public road. Where practicable, the right of way should follow existing roads or tracks and must comply with the conditions of any registered AMP applying to the land. A right of way must be indicated by marker posts along the route, unless agreed to in writing by an alternate means between the landholder and the permit holder.

Marker posts must be installed at the start and end of the route, at intervals of no more than 250 metres and at each point where the route changes direction. Each marker post must display position coordinates as well as the licence number or identification code for the licence being granted the right of way. The licence holder must cover the cost of installation and maintenance of marker posts and also provide the relevant landholder(s) with a map showing their right of way.

Other conditions applying to a right of way include:

- It must not pass over any garden, orchard or land under cultivation, or any land on which is situated a 'significant improvement', unless consent is otherwise provided by the landholder,
- It cannot be used by the licence holder before 7am or after 6pm, unless consent is otherwise provided by the landholder,
- It cannot be used during or less than 24 hours after rainfall unless consent is otherwise provided by the landholder,
- The licence holder must ensure that gates and/or grids, as required by the landholder, are in place wherever fences are intersected by the right of way. This includes ensuring that any rabbit/marsupial/dog-proof gates are placed at all intersections with existing rabbit/marsupial/dog-proof fences. A fine of up to \$5,500 may apply if the licence holder fails to meet this requirement, and
- The costs of installing and maintaining any such gates or grids along the right of way must be met by the licence holder.

If a dispute arises regarding a right of way, either the licence holder or the landholder may apply to the LEC to seek a determination of the matter.

## Frequently asked questions

### Can an AMP be replaced?

Subject to its provisions, an AMP can be replaced and a new AMP remade. If an AMP was determined or reviewed by the LEC, it can only be replaced or remade by the LEC.

### What is the duration of an AMP?

An AMP will terminate over the land if the existing landholder for any reason ceases to continue to be the landholder. If the land is sold and ownership transferred, the AMP must be replaced.

### Where can copies of an AMP be viewed?

Once registered, MEG will cause notice of the AMP in the local newspaper from the area in which the land is located. The notice must indicate where copies of the AMP may be viewed or purchased. Copies of existing AMPs can be obtained from MEG's Office at 41 Opal Street, Lightning Ridge NSW.

### What are the costs associated with opal land access arrangements?

#### Access management plans

The miner's representative and the landholder must bear their own costs for participating in negotiations regarding an AMP, including in circumstances where the AMP is ultimately determined by MEG or the LEC.

#### Permit to enter land

There are no costs associated with acquiring a permit to enter land. If damage is caused by the permit holder while on the land, the landowner is entitled to a reasonable amount of compensation.

#### Rights of way

In the event that the LEC is required to make a determination on a right of way, each party must cover their own costs for participating in LEC proceedings.

### More information

Further information on land access and the mediation and arbitration processes can be found at [www.regional.nsw.gov.au/meg](http://www.regional.nsw.gov.au/meg)

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