

How are exploration activities conducted under the native title protection conditions?

1. Information stage

The explorer must inform the native title party of the exploration activities, and provide a program of works which describes the exploration activities that the explorer intends to undertake over a period of 12 months, within a particular area of the exploration permit.

In response, the native title party must advise the explorer whether it requires a meeting, a field inspection or both.

If the native title party does not have any requirements or does not respond, the explorer can commence their program of works.

2. Meeting stage

The explorer must arrange a meeting if requested by the native title party.

The explorer can commence the program of works:

- if the native title party does not attend the meeting, or
- if the native title party has no requirements in relation to the exploration activities.

Alternatively, the native title party can notify the explorer that a field inspection is required.

3. Field inspection stage

Where required, the explorer must arrange the field inspection. If the activities proposed under the program of works are all agreed exploration activities (these are defined in the NTPCs—they are mostly low impact activities), the native title party is not entitled to a field inspection.

The field inspection provides an opportunity for the native title party to relate the program of works to the land and to determine whether or how the program of works should be modified to protect areas of significance under their traditional law and custom.

The native title party can nominate up to eight inspectors to comprise the field inspection team

and, if necessary, an anthropologist or archaeologist. The explorer must pay the daily rate for up to four inspectors. The explorer can agree to pay for the anthropologist or archaeologist.

The explorer (or explorer's representative) accompanies the field inspection team and also provides the transportation, meals and accommodation.

Following the field inspection, the native title party may provide an inspection report to the explorer. The report may contain recommendations for:

- exclusion zones
- minimising the impact of the proposed exploration activities
- site-protection measures
- monitoring.

The explorer can commence their exploration activities if:

- the native title party does not provide the inspection report
- there are no recommendations
- the explorer accepts the recommendations and modifies the program of works.

If the explorer does not intend to comply with the recommendations, a dispute resolution process involving the Land and Resources Tribunal applies.

When does monitoring occur and what is involved?

Monitoring occurs in those circumstances set out in clause 7 of the NTPCs. The purpose of monitoring is to identify potential cultural heritage finds during certain activities conducted under the exploration permit.

The explorer must pay for the costs of monitoring only where the activities are identified in the inspection report and involve ground disturbance in the vicinity of aboriginal sites or objects.

The explorer must provide transportation, meals and accommodation for the monitors.

What if there is a cultural heritage find during exploration activities?

A cultural heritage find is an object of significance to the native title party in accordance with their traditional law and custom, or an artefact or other evidence that is likely to be such an object.

If there is a cultural heritage find by the explorer during exploration activities, the explorer must notify the native title party and immediately take all reasonable steps to preserve and protect the find from damage.

If applicable, the explorer must meet the representative nominated to deal with the cultural heritage find and attempt to agree upon a way of dealing with it. A dispute resolution process is provided where agreement is not possible.

What payments are made by explorers?

Once a native title party has notified the explorer of their nominated body, the explorer must pay on invoice an annual administrative payment of \$850 to be distributed equally by the explorer between each nominated body for each native title party.

The explorer must also pay on invoice:

- a daily fee of \$300 for each member of the inspection team (up to a maximum of four members)
- costs of an anthropologist or archaeologist, as agreed or decided
- a daily fee of \$300 for each monitor.

All fee amounts and the annual administrative payment are for the financial year 2003/2004 and are adjusted annually by the consumer price index.

Does the explorer need to be aware of cultural heritage?

Yes. Before exploration activities commence, the explorer should ensure that all persons carrying out the exploration activities are given information about the traditions and culture of the native title party, as well as their obligations under the NTPCs and the law regarding cultural heritage.

The explorer should consult with the native title party about this information and involve them in the preparation and direction of its presentation to exploration staff.

How are disputes resolved?

Where a dispute arises, the parties are usually required to attempt to reach agreement before the explorer can refer the dispute to the Land and Resources Tribunal for resolution.

The tribunal is an independent statutory body that deals with disputes concerning land management issues, including native title, mining and exploration matters.

What if there is a breach of the native title protection conditions?

Where a native title party thinks the explorer is in breach of the NTPCs, the mining registrar in that district must be advised in writing. The mining registrar must investigate the complaint. The Minister can penalise the explorer or cancel the exploration permit.

This publication is a guide only and should be read in conjunction with the native title protection conditions. It should not be treated as legal advice.

Further information can be found at:

Department of Natural Resources and Mines
<www.nrm.qld.gov.au>

Native Title and Indigenous Land Services
Locked Bag 40, Coorparoo DC QLD 4151
phone: (07) 3896 3354
fax: (07) 3238 3743

Tenures Support
South East Region (Mines)
PO Box 1475, Coorparoo DC QLD 4151
phone: 1800 053 123
fax: (07) 3405 5349



A guide to the native title protection conditions for exploration permits granted under the expedited procedure

Native title protection conditions

Native title protection conditions (NTPCs) are tenure conditions of an exploration permit for minerals and coal granted under the expedited procedure.

The NTPCs identify:

- which native title party or parties the explorer must engage
- what the explorer and the native title party must do before and during any exploration
- what occurs when timeframes specified in the NTPCs are not met.

A copy of the NTPCs can be found at www.nrm.qld.gov.au/nativetitle.

What is the expedited procedure?

The expedited procedure is available to the state as an alternative to the right to negotiate process under the Commonwealth *Native Title Act 1993* (NTA).

The state can use the expedited procedure to address native title for the grant of an exploration permit when the exploration activities are:

- not likely to involve major disturbance to the land
- not likely to interfere with areas or sites of particular significance to the native title holders
- not likely to interfere with the community or social activities of the native title holders

The state commences the expedited procedure by issuing a notice that it intends to grant an exploration permit under the expedited procedure subject to the NTPCs.

This public notice must be placed—by the state (at the exploration permit applicant’s expense) or by the exploration permit applicant—in both a regional and an indigenous newspaper. The notice advises how any native title party must respond in order to become part of the process.

A native title party—a determined holder of native title, or a registered native title claimant within four months from the notification day in the notice—can lodge an objection against the state’s use of the expedited procedure with the National Native Title Tribunal (NNTT).

Where there is no objection from a native title party, or where an objection is either withdrawn by the native title party or dismissed by the NNTT, the state may then grant the exploration permit. The NTPCs become conditions of the exploration permit upon grant.

If the NNTT upholds an objection from a native title party then the right to negotiate process under the NTA applies.

Where an agreement between the explorer and the native title party is obtained within four months of the notification day then, subject to that agreement fulfilling certain requirements, the state may instead rely upon the agreement to grant the exploration permit without the NTPCs.

What occurs first after grant?

After the grant of the exploration permit, the explorer issues a request to each native title party to provide contact details of a nominated body that will issue invoices and receive payments.

Once these details are supplied, the explorer pays on invoice the annual administrative fee which is distributed equally—by the explorer—between the nominated bodies for each native title party.

This flowchart, in conjunction with the native title protection conditions, sets out the processes that the explorer must follow before commencing their program of works.

If the exploration activity notice contains ‘agreed exploration activities’ those activities are NOT subject to a field inspection or monitoring.

Monitoring can be recommended in specific circumstances. Refer to clause 7 of the native title protection conditions.

In some cases time frames may be extended by agreement.

Words capitalised in the flow chart are defined terms in schedule 1 of the native title protection conditions.

