



Government of **Western Australia**
Department of **Mines, Industry Regulation and Safety**

GUIDELINES

Guidelines for Assessing Hot Spots for Exploratory Titles

Expedited Procedure

Version 1.0

Effective from 1 June 2022.

Related Documents

| Document Title | Link |
|-----------------------------|---|
| Expedited Procedure Reforms | http://www.dmp.wa.gov.au/Minerals/Expedited-Procedure-Reforms-30446.aspx |

Version History

| Version | Date | Changes |
|---------|------|---------------------|
| 1.0 | 2022 | Initial Publication |

PURPOSE

The intent of these guidelines is to provide guidance on how the Department of Mines, Industry Regulation and Safety (Department) will determine if an application is within an area 'at risk' of failing a National Native Tribunal (NNTT) inquiry into whether the expedited procedure applies.

BACKGROUND

Under section 29 of the *Native Title Act 1993 (Cth)* (NTA), the Department is required to give notice (S29 Notice) of its intention to grant certain tenements (future acts). These notices may include a statement made under section 29(7) of the NTA that the Department considers the act is an act attracting the 'expedited procedure' under section 237 of the NTA (expedited statement). Section 237 of the NTA provides that an act attracts the expedited procedure if:

- a. the act is not likely to interfere directly with the carrying on of the community and social activities of the persons who are the holders of native title in relation to the land or waters concerned; and
- b. the act is not likely to interfere with areas or sites of particular significance, in accordance with their traditions, to the persons who are holders of the native title in relation to the land or waters concerned; and
- c. the act is not likely to involve major disturbance to any land or waters concerned or create rights whose exercise is likely to involve major disturbance to any land or waters concerned.

Prior to 2022, State policy on the inclusion of the expedited statement in S29 Notices applied a 'blanket approach' to the application of the expedited statement to exploratory title applications. However, reforms adopted in 2022 allow the Department greater discretion in the application of the expedited statement to such tenements.

GUIDELINES

When considering whether the expedited procedure should apply to the grant of a particular tenement, the Department will undertake an early risk assessment and triage process. In undertaking this assessment, the Department will use a 'heat map' to identify specific areas of the State that were considered in previous determinations by the NNTT. These areas are known as 'Hot Spots'.

The Department may consider the following matters when determining whether an area is a Hot Spot:

1. Whether there are any relevant previous decisions by the NNTT at the date of the assessment that the expedited procedure *does not* apply to a Hot Spot that overlaps or is connected with the area of the tenement applied for being assessed by the Department. The Department considers that a relevant previous decision must be made in relation to an objection pursuant to section 32(4) of the NTA lodged after 27 July 1998.
2. Land where the expedited procedure statement asserted in a notice given under section 29 of the NTA has been withdrawn on a previous occasion.
3. Any site(s) known to the Department and considered particularly significant pursuant to section 237. Examples being (Weld Range, Lake Nabberu, Lake Wells).

FREQUENTLY ASKED QUESTIONS

Q. Will any decision that the expedited procedure (EP) does not apply (adverse decision) cause an area to be treated as a Hot Spot, or will DMIRS consider the decisions on a case by case basis before classifying an area as a hot spot?

A. Any area that has been the subject of an adverse decision will be treated as a Hot Spot. This will trigger the Department to further assess the area. Land identified as a Hot Spot will not automatically result in all applications over that land being notified without the expedited statement included.

Q. Will Hot Spots have different risk ratings depending on the area, or will all Hot Spots be treated the same?

A. Yes, the number, age and reasoning of previous decisions will all be taken into account. For example, ground that has been subject to four adverse decisions in the ten years to 2022 will be have greater weight in the Department's assessment of whether the application should be considered to attract the expedited procedure than ground that has had one adverse decision in 2007.

Q. Can Native Title Parties petition for an area to be identified as a Hot Spot after there has been a decision that the EP does not apply?

A. Native Title Parties can make submissions for the State to not include the expedited statement in relation particular areas. Any ground subject to previous adverse decisions will be considered a Hot Spot.

Q. If an area the subject of an application is identified as a Hot Spot, will DMIRS consider the particulars of the application to be assessed against the reasons why that area is a Hot Spot before deciding whether to include the expedited statement in the S29 Notice for that application?

A. Any application made over ground identified as a Hot Spot will be assessed on its own particulars. The applicant will also have the option to make a submissions as to why the Expedited Statement should be included after the assessment has been performed.

Q. Will DMIRS use all previous adverse decisions to identify an area as a hot spot or only new decisions?

A. All decisions made after 27 July 1998 are considered, but more recent decisions will be given more weight. However, the weight to be given to each decision will also depend on the reasons for the decisions - for example, decisions that were made in cases involving non-participation by a previous grantee party will be given limited weight.

Q. What aspects of an adverse decision will DMIRS look for to decide whether an area will be identified as a Hot Spot?

A. The Department will assess the grounds of the application made as well as any adverse decisions, including considering the location of any areas or sites of particular significance identified in the adverse decision/s in relation to the new application. For example, if a previous adverse decision was made due to a finding of the existence of a particular site of particular significance to a native title party, but that site is well outside the external boundaries of the current application, the previous decision will be given a less weight.

Government of Western Australia

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8.30am – 4.30pm

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