



MINERAL HOUSE, 100 PLAIN STREET
EAST PERTH, WESTERN AUSTRALIA 6004

PROCESSING OF MISCELLANEOUS LICENCE AND GENERAL PURPOSE LEASE APPLICATIONS THAT ARE INFRASTRUCTURE FACILITY TENEMENTS UNDER THE NATIVE TITLE ACT 1993 (NTA)

Categories for Infrastructure

1. Where a miscellaneous licence (L)/general purpose lease (G) application affects native title and it is for a purpose/s that falls within following categories, as described under Section 253 of the NTA it must for NTA purposes be processed in accordance with Section 24MD(6A) and (6B) of the NTA.

Infrastructure facilities defined under Section 253 as: -

- a. a road, railway, bridge or other transport facility;
- b. a jetty or port;
- c. an airport or landing strip;
- d. an electricity generation, transmission or distribution facility;
- e. a storage, distribution or gathering or other transmission facility for:
 - i. oil or gas; or
 - ii. derivatives of oil or gas;
- f. a storage or transport facility for coal, any other mineral or any mineral concentrate;
- g. a dam, pipeline, channel or other water management, distribution or reticulation facility;
- h. a cable, antenna, tower or other communication facility;
- i. any other thing that is similar to any or all of the things mentioned in paragraphs (a) to (h) and that the Commonwealth Minister determines in writing to be an infrastructure facility for the purposes of this paragraph.

Note: *A search for groundwater is considered not to fall under Section 253 but under Section 237, ie. an act attracting the expedited procedure..*

The application must be restricted to these purposes; if a purpose not included in the above definition is sought, the application will have to be processed under the expedited procedure or right to negotiate process of the NTA.

Section 24MD(6A) and (6B) of the NTA

2. These provisions require two processes to be followed:
 - i. Firstly Section 24MD(6A) provides that registered native title claimants and holders have the same procedural rights as they would have in relation to the grant of a L or G on the assumption that they instead held freehold title to the land concerned, including the right to be notified (by the tenement applicant) and the right to object to the Warden.

Procedural rights for the owner of a freehold title when that land is affected by a mining tenement application include the right to be notified, ie. the applicant serves the owner and occupier with a copy of the Form 21 and a plan (Section 33).

- ii. Secondly Section 24MD(6B) provides that the Department notifies native title holders/claimants and representative bodies of the L or G application and the claimants/holders have two months to object.

Application Action Section 24MD(6A) and Procedural Rights

3. The title applicant is required to provide native title claimants or holders with procedural rights under Section 24MD(6A).

One way to do this is to send by registered post a copy of the Form 21 and a plan within 14 days of lodging the application to each native title claimant/holder affected. The Mining Registrar will return copies of the application for service and/or holder will also provide a copy of a Tengraph 'quick appraisal' to assist in determining what native title claims/holder are affected. It should be noted that the onus is on the applicant to be satisfied as to what native title claims are affected. Claimant/holder details and the address for notices can be obtained from the National Native Title Tribunal, Perth Principal Registry, 1 Victoria Avenue Perth 6000, Freecall 1800 640 501, phone [08] 9268 7272, fax [08] 9221 7158, website, <http://www.nntt.gov.au>.

Proof of service should be provided to the Mining Registrar in the same way that proof of service on a pastoralist is given, ie. copy of the registered post slip and including details in the affidavit normally returned to the Mining Registrar.

Note: *Native title claimants may object under Mining Act provisions, on the basis that the Act provides that any person can object and these objections will be heard by the Warden.*

Department of Mines and Petroleum (DMP) Action, Section 24MD(6B)

4. For 'infrastructure facility' applications the Department will take action to comply with the requirements of Section 24MD(6B), once the application is Mining Act compliant, i.e.; -
 - i. Send written notification of the application to native title claimants/holder and representative bodies; and
 - ii. Set a two-month period during which objections (under s.24 (6B)) may be lodged.

The Department will notify all parties should an objection be lodged and accepted.

Note: Objections made under s.24 (6B) (d) must be lodged with the Department's Tenure and Native Title Branch Perth office; and under s.24 (6B) (f) objections may be heard by an independent person/body appointed by the State.

Obligation to Consult

5. Where an objection is lodged, under Section 24MD(6B) of the Native Title Act the tenement applicant must consult with the objecting claimants/holder about ways of minimizing the act's impact on registered native title rights and interests in relation to the land or waters and, if relevant, any access to the land or waters or the way in which any thing authorised by the Act might be done.

Comments from Warden's decisions

For further information please contact the **Senior Native Title Officer** at the Department of Mines and Petroleum on [08] 9222 3828 or Fax [08] 9222 3439.