

PROTOCOL FOR EVIDENCING PROOF OF EXTINGUISHMENT OF NATIVE TITLE

Purpose

This protocol applies where an applicant for a mining title asserts that native title has been extinguished to the whole of the area of the mining title

The Minister for Industry, Resources and Energy must independently determine whether native title has been extinguished, based on documents provided by the applicant. This protocol assists the Minister in evaluating whether the CNTA applies to an Authorisation or Title including:

- a Mining Lease Application (MLA) or a Petroleum Production Lease Application (PPLA);
- an Assessment Lease Application (ALA) or Petroleum Assessment Lease Application (PALA);
- applications for Exploration Licences and PSPAs that do not include the condition described in section 4(1) of the Native Title (Right to Negotiate (Exclusion) — NSW Land) Determination No. 1 of 1996.

This information / documents referred to in this protocol should be provided in hard copy and digitally on compact disc (CR-ROM) or USB.

Exclusive Possession Acts

The most common extinguishing acts in NSW are previous exclusive possession acts. This includes certain, valid acts that took place on or before 23 December 1996 and can include:

- (a) the grant of a freehold estate,
- (b) the granting of a “lease in perpetuity” under section 23(A) of Western Lands Act 1901 (NSW) for grazing purposes,
- (c) the construction or establishment of a public work, or
- (d) a “Scheduled Interest” for New South Wales as listed in Schedule 1 of the CNTA.

See section 5A and **Appendix 2** of the *Industry Guidelines* for further detail.

Information to be provided

The DRE requires that the following information be provided:

1. Statement by the Applicant

A statement is required from the applicant as to:

- whether the applicant believes the CNTA will or will not apply to the application area of the mining title;
- the reason as to why the applicant asserts that the CNTA will or will not apply to the mining title.

This statement should be accompanied by supporting information such as legal advice where applicable. If an indigenous land use agreement (ILUA) applies to the ALA or MLA area, a copy of the ILUA should also be provided.

2. Land tenure schedule

A template for the land tenure schedule is attached. The land tenure schedule must generally set out:

- the current title reference for all of the land the subject of the application area of the mining title;
- the current lot/plan description;
- land tenure
- the owner of the land;
- relevant historical title references;
- whether the applicant asserts native title has been extinguished;
- reasons why the applicant asserts native title has been extinguished.

3. Identification map

The identification map must show the boundary of the application area of the mining title.as well as:

- underlying land ownership boundaries;
- the lot and plan numbers; and
- a scale and north facing arrow.

4. National Native Tribunal Report

A copy of a report from the National Native Title Tribunal must be provided disclosing whether any native title claimant application is before the Federal Court, or whether a determination of native title has been made by the Federal Court in relation to any of the land within the application area.

An Indigenous Land Use Agreement (ILUA) is of no relevance unless the applicant is a party to the ILUA.

5. Supporting documents

Supporting documents are required from the applicant to support the information contained in the statement by the applicant and the tenure schedule. The supporting documents may include the following:

- Maps relevant to Crown roads

When asserting native title over a Crown road has been extinguished, the parish map charted to the date most relevant in time (but pre dating) to the commencement of the *Roads Act 1993* (NSW) (being 1 July 1993) must be provided.

- Original documents

Where available from the Land & Property Information division of the Office of Finance and Services, copies of documents that evidence extinguishment of native title are required (e.g. a copy of the Crown grant deed or a copy of a Scheduled Interest). Provision of a later document which purports to record such a grant is not acceptable. The whole of the relevant document should be provided in sufficient resolution to be readable – extracts of the document are insufficient. There is no need to provide documents that evidence partial extinguishment as the right to negotiate process must be complied with in this situation.

- Title searches

A copy of the current and historic title searches for each parcel of land referred to in the tenure schedule must be provided.

Timing for provision of information

If an Authorisation or Title is to be granted on the basis that native title has been extinguished, the DRE must be satisfied that native title has been extinguished prior to an Authorisation or Title being granted.

The information may be provided to the DRE any time during the application process. However, applicants should be aware that completion of the assessment process may become protracted where it is necessary to seek further information from the applicant. Applicants are encouraged to provide the proof of extinguishment of native title either with the application or as early in the application process as possible.

Presentation

The applicant must present the information in a logical manner. Where land tenure documents are applicable to more than one lot and plan, cross-references should be used making it clear.

Documents provided must be of sufficient resolution and quality such that all information including dates and title identifiers (such as the Lot or portion numbers, or the volume and folio reference) are legible.

Certification

Certified copies of documents relied upon by the applicant are not required to be provided at the making of the application. However, if the department so requests, the applicant must provide certified copies of the documents identified.

The cost of the provision of the certified copies is to be borne by the applicant.

Contact details

The DRE may have further questions or require additional information. Contact details must be provided for the relevant person to whom enquiries can be directed.

Land and native title extinguishment assessment

[Insert details of ALA or MLA]						
No.	Current Title Reference (Lot and DP)	Tenure	Owner	Historical Title Reference (e.g. tenure and grant date)	Is native title extinguished?	Reasons as to why native title is extinguished

Attachments

[List all attachments provided as evidence to the above schedule]

This document is to be read in conjunction with Industry Guidelines - Native title and the administration of exploration and mining legislation in New South Wales.