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# ADMINISTRATION OF MINING LEGISLATION IN NSW IN THE LIGHT OF THE COMMONWEALTH'S NATIVE TITLE ACT 1993

## ***INTRODUCTION***

The New South Wales mining and petroleum legislation must be administered in accordance with the Commonwealth Native Title Act 1993 (CNTA), which came into effect on 1 January 1994. The primary effect of this Act on exploration and mining approvals is to provide native title parties with rights to negotiate about the grant and some renewals by governments of exploration and mining titles. The process whereby these rights are afforded is informally known as the "right to negotiate" process (see Part 2 of this document for details). The legislation must also be administered in accordance with various subsequent decisions of the courts, and in particular, the Wik decision of the High Court in December 1996.

**Part 1** of this document outlines the procedures which the Department adopts when granting or renewing the various forms of exploration and mining titles over potential native title land, and specifies what the Department expects, in these circumstances, of applications for grants and renewal.

**Part 2** of the document comprises general information about the "right to negotiate" process.

Both case law and changes to legislation require the Department to regularly review its procedures. The procedures outlined herein largely reflect the result of amendments made to native title legislation following the Wik decision.

Throughout this document the term "State mining legislation" means the Mining Act 1992 or an exploration licence or special prospecting authority under the Petroleum (Onshore) Act 1991.

The term "mining title" means an assessment lease, mining lease, or mineral claim under the Mining Act 1992 or an assessment lease or production lease under the Petroleum (Onshore) Act 1991.

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## **PART 1 PROCEDURES**

### ***WHEN THE PROCEDURES APPLY***

The Department will apply the following procedures when it proposes that an onshore exploration or mining title which affects potential native title land is to be granted or renewed. (The procedures do not apply to the grant or renewal of offshore titles, where the “right to negotiate” provisions of the CNTA do not apply).

In this context, “potential native title land” is land where native title has not been extinguished by an incompatible land tenure, either current or historic (**see appendix 1** – Guidelines for determining when land may be Native Title Land).

In general, the Department will not take into consideration whether or not there are any Aboriginal or Torres Strait islander people who are likely to be able to establish native title rights over the area.

The procedures do not apply to the renewal of mining titles granted in the period 31 October 1975 and 31 December 1993, because it is not necessary to pursue the “right to negotiate” process for these transactions.

The procedures do not apply to the grant or renewal of mineral claims or opal prospecting licences in the Lightning Ridge and White Cliffs Mineral Claims districts.

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### ***GRANT OR RENEWAL OF EXPLORATION TITLES (OTHER THAN LOW IMPACT EXPLORATION LICENCES)***

The Department will generally assume that the grant or renewal of any exploration title will affect some potential native title land and therefore that the requirements of the CNTA will have to be satisfied in every case. (Because of the generally large area of exploration titles, it is impractical in most cases for the Department to attempt to identify the status of any of the affected land).

Applications for grant or renewal of exploration titles will be dealt with in one of two ways, depending on the wishes of the applicant.

1. a title including the “Minister’s consent condition” will be granted or renewed, without the “right to negotiate” process first having been pursued; or
2. a title free of the “Minister’s consent condition” will be granted after the “right to negotiate” process has been pursued. If this

process results in there being any native title claims over the proposed title area, the application will have the choice of either:

- a) excluding the area of the native title claims from the exploration title (in which case negotiations with the native title parties will not be necessary), or
- b) negotiating agreements with the native title parties and the Government to allow the inclusion of the claimed areas in the title.

Applicants will be required to pay the advertising costs associated with notification under the “right to negotiate” process, whether undertaken before the grant or renewal of title, or arising from a request for Ministerial approval on “Minister’s consent condition” exploration licences.

Any negotiations arising from the process will be conducted in accordance with guidelines developed by the Department.

Where a renewal is excluded from the “right to negotiate” process, by section 26D of the CNTA, the Department will renew the exploration title without the “Minister’s consent condition”.

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## ***GRANT AND RENEWAL OF LOW-IMPACT EXPLORATION LICENCES***

An applicant may request the Minister to grant a low impact exploration licence. Before such a licence may be granted or renewed \*notice must be served on all:

- a) Registered native title bodies corporate, and
- b) Registered native title claimants
- c) Ntscorp Limited (formerly NSW Native Title Services Ltd).

\*The notice to Ntscorp Limited must be served at least 4 months before the grant or renewal of a low impact licence.

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## ***GRANT OR RENEWAL OF MINING TITLES***

Applications for grant of mining titles will be dealt with in accordance with the “right to negotiate” process unless:

1. it can be demonstrated that Native Title has been extinguished;  
or
2. the grant is excluded from the “right to negotiate” provisions by Section 26(2) of the CNTA; or

3. the title is for the sole purpose of the construction of an infrastructure facility as defined in Section 253 of the CNTA.

Applications for renewal of mining titles will also be dealt with in accordance with the “right to negotiate” process unless:-

1. the title was granted between 31<sup>st</sup> October 1975 and 31 December 1993; or
2. it can be demonstrated that native Title has been extinguished; or
3. the renewal is excluded from such process by section 26D of the CNTA; or
4. the renewal is excluded from such process under a Registered Indigenous Land Use Agreement; or
5. the title is for the sole purpose of the construction of an infrastructure facility, as defined in section 253 of the CNTA.

Applicants will be required to pay the advertising and search costs associated with notification under the “right to negotiate” process.

Any negotiations arising from the process will be conducted in accordance with guidelines developed by the Department.

Where a renewal is excluded from the “right to negotiate” process, by section 26D of the CNTA, the Department will deal with the renewal bearing in mind the restrictions imposed by that section.

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## **NATIVE TITLE AND EXPLORATION LICENCES**

The Mining Act 1992 provides for two types of exploration licences. A standard licence and a special class of licence called a low-impact exploration licence.

### **STANDARD EXPLORATION LICENCES**

Standard licences are not restricted to the prospecting operations determined by the Minister for low-impact licence (see attached Schedule - Appendix B – Kinds of Prospecting). Standard licences permit additional activities such as costeaning.

Most exploration licence areas have potential to affect native title land. As a result, the provisions of the Commonwealth’s Native Title Act 1993 (CNTA) must be addressed when dealing with an application for or renewal of a standard licence.

There are two options available to you as to how your “standard” application is dealt with. The options are:

### **OPTION 1 - “Minister’s Consent”**

Granting or renewing a licence with a condition requiring the Minister’s consent before any prospecting operations are carried out on native title land. The Minister’s consent may only be given after the “right to negotiate” process has been carried out.

This option benefits explorers where the proposed exploration program is unlikely to affect native title land. Under this option the “right to negotiate” process is postponed from the grant or renewal stage to the time when the holder wishes to prospect on native title land.

### **OPTION 2 - “Right to Negotiate”**

Granting or renewing a licence after the “right to negotiate” process under the Native Title Act has been undertaken. The “right to negotiate” process involves:

- Identification of any registered native title body corporate or registered native title claimants;
- Service of notices on:-
  - any registered native title body corporate or registered native title claimants
  - Ntscorp Limited (formerly NSW Native Title Services Ltd)
  - the applicant/holder; and
  - the arbitral body.
- Publication of at least two newspaper notices
- Possible negotiations if by the end of the notification period of 4 months there is a registered native title body corporate or registered native title claimant.

This option benefits explorers if there are areas of potential native title land on which exploration is likely to be carried out. Compliance with the “right to negotiate” also excludes the first or next renewal of the licence from the “right to negotiate” process. However, subsequent renewals may again need to comply with the “right to negotiate” process.

### **LOW-IMPACT EXPLORATION LICENCES**

Low-impact exploration licences are excluded from the “Right to Negotiate” provisions of the Commonwealth Native Title Act 1993. This means that subject to obtaining an “Access Arrangement” with any registered native title body corporate or registered native title claimants and other landholders prospecting operations authorized by the licence may be conducted.

The Minister for Mineral Resources has determined the kinds of prospecting operations listed in the attached Appendix 2 “Kinds of Prospecting” that can

be authorized by a low-impact exploration licence. These methods may cover your needs.

As an applicant for an exploration licence you may request a low impact licence be granted in satisfaction of your application.

In addition, exploration licences granted **before 1<sup>st</sup> March 1999** may be converted to low-impact exploration licences. This conversion may be for the whole licence or part of the licence. When only part of the licence is to be converted the area in question must be a readily identifiable discrete area based on the “unit” system.

Licences granted on or **after 1<sup>st</sup> March 1999** cannot be converted. The holder of any such licence would need to lodge a new exploration licence application in order to obtain a low-impact licence. Where a new low-impact licence is granted in these circumstances, the underlying standard exploration licence “ceases to exist” immediately the new licence is granted.

Before a low-impact licence may be granted or a licence is converted notice must be served on all registered native title bodies corporate, registered native title claimants and New South Wales Native Title Services td.

These notices are served by the Department of Primary Industries – Minerals Division. The notice to the Ntscorp Limited (formerly NSW Native Title Services Ltd) must be given at least 4 months before the grant of or conversion of a low-impact licence.

The holder of a low-impact exploration licence may at any time apply for a variation of the prospecting operations authorized under the licence to allow other kinds of prospecting operations. Any variation would apply to the whole of the licence area and the licence would then cease to be a low-impact licence. The “right to negotiate” provisions of the Commonwealth Native Title Act 1993 apply to any proposed variation of a licence. If other than “low impact” activities are desired to be conducted on part only of a low-impact licence it may be more appropriate to lodge a new exploration licence over the area concerned.

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## **PART 2 – “RIGHT TO NEGOTIATE’ PROCESS**

### ***INTRODUCTION***

The “right to negotiate” process applies inter alia, when the Department proposes to grant, and in some cases, renew an exploration or mining title over native title land or where the Minister’s consent has been sought pursuant to the “exclusion condition” on the exploration title. The process is initiated by the Department. In no circumstances is it initiated by applicants or title holders. They will only be directly involved if negotiations are required with native title holders or claimants.

The process is designed to ensure that indigenous people who profess an interest in the affected land have the opportunity to express this interest formally, and to negotiate with the Government and the applicant about the proposed grant or renewal, or a consent to access native title land (hereinafter collectively referred to as an “act”).

In summary the process provides for:

- **Notification and advertisement**, to alert existing and potential native title parties to the Government’s intention to do the proposed act;
- **Negotiation** between any registered native title claimants, the Government and the applicant to seek agreement about the act;
- **Mediation** where appropriate, by the arbitral body to assist in agreement being reached;
- Where agreement cannot be reached, **determination** by the arbitral body as to whether or not the act may proceed and under what conditions; and
- **Overruling** by the relevant Minister of the arbitral body’s determination if that determination is considered not to be in the national interest.

The arbitral body for NSW matters is currently the National Native Title Tribunal and the relevant Minister is the Commonwealth Minister with responsibility for the Commonwealth Native Title Act 1993.

### **PROCEDURES**

The procedure the Department must follow are briefly set out below.

- Identification of any registered native title bodies or registered native title claimants.
- Service of notices on:
  - Any registered native title body corporate or registered native title claimants;
  - Ntscorp Limited (formerly NSW Native Title Services Ltd)
  - the applicant/holder; and

- the arbitral body.
- Publication of newspaper notices. (It should be noted that publication of notices is not required if there is a registered native title body corporate in relation to all of the land or waters that will be affected – see 29(3) of the CNTA).
- 4 months after “notification day”, the act may proceed provided there is no registered native title bodies corporate or registered native title claimant at the time. Any subsequent claimant would not be entitled to negotiation rights in respect of the proposed act.

The following additional procedures apply where there is a registered native title bodies corporate or registered native title claimant or where a claim is made during the notification period:

- The Department and the applicant/holder must negotiate with the native title holder or claimant unless the act is modified so that it will no longer affect native title (eg the land to which the native title or claim relates is excluded from any title granted or renewed).
- If agreement cannot be reached, any negotiation party may, after 6 months from the notification day, apply to the arbitral body for a determination of the matter.

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## **APPENDIX 1 - GUIDELINES FOR DETERMINING WHEN LAND MAY BE NATIVE TITLE LAND**

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### **INTRODUCTION**

The following guidelines are designed to assist exploration and mining title applicants and holders to determine if land may be native title land. It is envisaged that they will be useful to:

- mining title applicants in assessing if their applications are likely to be subjected to the “right to negotiate” process;
- applicants for grant or renewal of standard exploration titles, in deciding whether to request a “right to negotiate” title or a “Minister’s consent” title; and
- holders of “Minister’s consent” exploration titles in assessing their need to seek the Minister’s consent to explore on native title land.

In issuing these guidelines, the Department does not purport to assert that any class of land is or is not native title land, or that any “act of government” has necessarily extinguished native title. In cases where there is uncertainty, applicants and holders are encouraged to seek their own legal advice.

In all cases, holders of “Minister’s consent” exploration titles should, before entering an area of land that may possibly be subject to native title, check the National Native Title Register and the Register of Native Title Claims and should consult with the Native Title Registrar as to whether any determinations of native title or native title claims have been made over the area. If a determination has been made that native title exists over the area, or if a claim for native title has been made over the area, the holder should seek prior written consent from the Minister before entering the area.

If no determinations or claims are recorded then holders of “minister’s consent” exploration titles should, before entering an area of land that may be subject to native title, investigate the current and if necessary, historic tenure of the land to assist in determining whether native title has been extinguished.

Native title in land will continue to exist where indigenous people have maintained a connection with the land in accordance with traditional law and custom and there has been no valid act, which has extinguished that title. However, in developing the guidelines, the Department did not take into consideration whether or not there are indigenous people who have maintained a connection with the land in accordance with traditional law and custom. Rather, it has considered only what types of current or historic land tenures are likely to have resulted from valid acts, which have extinguished native title.

## **WHEN MIGHT NATIVE TITLE HAVE BEEN EXTINGUISHED?**

Native title is unlikely to exist in land where:

- the land had a freehold estate granted over it prior to 31 October 1975;
- the land had a freehold estate granted over it between 31 October 1975 and 1 January 1994 and that estate was still in existence on 1 January 1994; and was not a grant to the Crown or a grant under the Aboriginal Land Rights Act or similar legislation;
- the land is or had been subject to a perpetual western lands lease;
- the land had, prior to 1 January 1994, been appropriated, reserved or dedicated for a public purpose and used for such purpose where the use is inconsistent with the continued existence, enjoyment or exercise of native title, eg roads, schools or other public works;
- a prior use of the land (before 31 October 1975) is such as to be clearly inconsistent with continued existence, enjoyment and exercise of native title, eg the extent and duration of some mining operations may be such that native title was extinguished by those operations;
- all interests in the land had been compulsorily acquired after 28 November 1994 under the Land Acquisition (Just Terms Compensation) Act and an act which gives effect to the purpose of the acquisition is inconsistent with the continued existence, enjoyment or exercise of native title.
- all land subject to the classes of leases listed below:

### ***1 Crown Lands Occupation Act 1861***

A lease for special purposes under section 30 of the Crown Lands Occupation Act 1861.

### ***2 Crown Lands Act 1884***

- (1) A conditional lease under the Crown Lands Act 1884
- (2) A special lease under section 89 of the Crown Lands Act 1884
- (3) A special lease under section 90 of the Crown Lands Act 1884 permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:  

agriculture; bakery; bee and poultry farm; boiling down works; brick-kiln; bridge; building or repairing ships or boats; construction of a drainage canal; construction of an irrigation canal; cricket; cultivation of eucalyptus; dairying; dam; erection of machinery; factory; ferry; freezing works; graving dock; inn; irrigation or drainage canal; lime-kiln; mail station; night soil depot; nursery garden; patent slip; pig and poultry farm; punt-house; residence; saw-mill; sericulture; sheep and cattle yard; show ground; site for storage of explosives; skin drying and skinpacking; slaughterhouse; slaughterhouse accommodation paddock; smelting works; smithy; storage; store; tank; tannery; tobacco growing; tramway; vegetable garden; wattle growing; well; wharf; wool washing establishment.
- (4) A special lease under section 92 of the Crown Lands Act 1884 that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:

- (a) irrigation or drainage canals;
- (b) forming and maintaining tramways and crossings and other necessary approaches and works in connection with forming and maintaining tramways and crossings.

**3 *Western Lands Act 1901, Crown Lands Consolidation Act 1913 and other land Acts***

- (1) A residential lease (whether an original or an additional holding) under section 48 of the Crown Lands Act 1889, section 50 of the Crown Lands Act 1895 or section 80 of the Crown Lands Consolidation Act 1913.
- (2) A homestead selection or grant (whether an original or an additional holding) under the Crown Lands Act 1895 or the Crown Lands Consolidation Act 1913.
- (3) A settlement lease (whether an original or an additional holding) under the Crown Lands Act 1895 or the Crown Lands Consolidation Act 1913, other than a lease that:
  - (a) permits the lessee to use the land or waters covered by the lease solely or primarily for grazing or pastoral purposes; and
  - (b) does not permit the lessee to use the land or waters solely or primarily for agriculture, horticulture, cultivation, or similar purpose.
- (4) A lease under section 23 of the Western Lands Act 1901 that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:

agriculture or any similar purpose; agriculture (or any similar purpose) and grazing combined; mixed farming or any similar purpose other than grazing.
- (5) A conditional lease under the Western Lands Act 1901 or the Crown Lands Consolidation Act 1913.
- (6) A special lease under section 28A of the Western Lands Act 1901 or section 75 or 75B of the Crown Lands Consolidation Act 1913 that permits the lessee to use the land or waters covered by the lease solely or primarily for a business purpose of any of the following:

accommodation building; bus depot; cafe; caravan and camping park; concrete batching plant; factory; feedlot; fish marketing and processing; fuel depot; garage; holiday accommodation; hospital; hotel; kiosk; manufacturing works; marina; motel; motor repair facility; nursing home; office accommodation; oyster depuration; oyster processing; processing plant; restaurant; retail shop; retirement village; service station; showroom; storage; tourist accommodation and facilities; workshop.
- (7) A special lease under section 28A of the Western Lands Act 1901 or section 75 or 75B of the Crown Lands Consolidation Act 1913 that permits the lessee to use the land or waters covered by the lease solely or primarily for a waterfront business of a marina, slipway, retail shop or food sales.
- (8) A special lease under section 28A of the Western Lands Act 1901 or section 75 or 75B of the Crown Lands Consolidation Act 1913 that permits the

lessee to use the land or waters covered by the lease solely or primarily for any of the following:

abattoirs accommodation paddock; abattoirs and resting paddock; accommodation house; aerodrome; agriculture; agriculture or any similar purpose; agriculture (or any similar purpose) and grazing combined; archery ground; bakery; basketball court; bee and poultry farm; boatshed; boiling down works; bowling green; brick kiln; bridge; building and repairing boats; building and repairing boats or ships; building or repairing of ships; bushfire brigade facilities; cable station; church and school site; community centre; construction of drainage canal; construction of irrigation canal; council chambers; council depot; council office; coursing ground and plumpton; cricket; cultivation; cultivation of eucalyptus; Country Women's Association rest rooms; dairying; dam; dam, weir or tank; day care centre; depot; dog and animal pound; dog racing course; domestic garden; driver training ground; equestrian grounds; erection of building; erection of coke oven; erection of dwelling; erection of machinery; factory; feedlot; ferries; freezing works; golf course; graving dock; gymnasium; horse racing course; horticulture; inn; kindergarten; land-based aquaculture; library; lime-kiln; mail station; manufacture of eucalyptus oil; market garden; mixed farming or any similar purpose other than grazing; motel; motor car and bike racing track; motor sports activities and facilities; neighbourhood depot; night soil depot; nursery garden; orchard; parking area; patent slip; pig and poultry farm; piggery; planting; poultry farm; power house, engine house, boiler house, bathroom, loading facilities or coal washery in connection with coal mining; pre-school; punt house; railway siding; railway station and depot; reclamation; refreshment room; refuse tip site; research centre; residence; residential development; residential subdivision; retirement village; rifle and pistol range; sale yard; sawmill; school and church site; school or other educational institution; septic tank; sericulture; sewage farm; sheep and cattle yard; showground; site for storage of explosives; skin drying and skin packing; slaughterhouse or abattoirs accommodation paddock; slaughterhouse; slip; smelting works; smithy; sporting club building; sporting ground; sporting ground and facilities; stable; storage of explosives; storage purposes; store; sugar cane growing; surf life saving club; swimming pool; tank; tannery; telecommunications or broadcasting tower, mast or building; tobacco growing; tramway; tree farming; vegetable garden; vegetable garden and nursery; velodrome; vineyard; volunteer rescue facilities; waste depot; water race; water storage; wattle growing; weighbridge; well; whaling station; wharf; wool washing establishment.

- (9) A conditional purchase lease (whether an original or an additional holding) under the Crown Lands (Amendment) Act 1905 or the Crown Lands Consolidation Act 1913.
- (10) A Crown lease (whether an original or an additional holding) under the Crown Lands (Amendment) Act 1912 or the Crown Lands Consolidation Act 1913, other than a lease that:
  - (a) permits the lessee to use the land or waters covered by the lease solely or primarily for grazing or pastoral purposes; and

- (b) does not permit the lessee to use the land or waters solely or primarily for agriculture, horticulture, cultivation, or a similar purpose.
- (11) A suburban holding (whether an original or an additional holding), a town land lease within an irrigation area, a homestead farm (whether an original or an additional holding), an irrigation farm lease or a non-irrigable lease, under the Crown Lands (Amendment) Act 1912 or the Crown Lands Consolidation Act 1913.
- (12) A week-end lease under the Crown Lands Consolidation Act 1913.
- (13) A special conditional purchase lease (whether an original or an additional holding) under the Crown Lands Consolidation Act 1913.
- (14) A lease under section 69A of the Crown Lands Consolidation Act 1913 that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:
  - army depot; artillery range; beacon site; bombing range; firing range; lighthouse; naval facilities; pilot station; pistol range; quarantine station; rifle range; Royal Australian Air Force base; telecommunications or broadcasting tower, mast or building; training facility.
- (15) A special lease under section 74 of the Crown Lands Consolidation Act 1913 that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:
  - artificial reef; boatshed; building and repairing boats; dam; erection of a building; erection of machinery; floating dock; jetty; pier; reclamation; waterfront business for the purpose of a marina, retail shop, restaurant or boat repairs; whaling station; wharf.
- (16) A special lease under section 76 of the Crown Lands Consolidation Act 1913 that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:
  - irrigation or drainage canal; forming and maintaining tramways and crossings and other necessary approaches and works in connection with forming and maintaining tramways and crossings.
- (17) A lease of town land under section 82A of the Crown Lands Consolidation Act 1913.

#### ***4 Returned Soldiers Settlement Act 1916***

A lease under section 4 of the Returned Soldiers Settlement Act 1916.

#### ***5 Closer Settlement Amendment (Conversion) Act 1943***

A group purchase lease, closer settlement lease or settlement purchase lease, under the Closer Settlement Amendment (Conversion) Act 1943.

#### ***6 Crown Lands Act 1989***

A lease under section 34 of the Crown Lands Act 1989 that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:

agriculture; aquatic centre; boatshed; building for the use of charitable or community service organisation; bushfire brigade facilities; cafe; caravan and camping area; childcare facilities; commercial retail purposes; community centre; council depot; day care centre; equestrian centre; factory; feedlot; golf course; hotel; industrial depot; kindergarten; kiosk; library; marina; motel; office accommodation; registered club; residential purposes; restaurant; rifle and pistol range; sporting club; sporting ground; sporting ground and facilities; storage area; telecommunications or broadcasting tower, mast or building; tennis court; tourist accommodation and facilities; volunteer rescue facilities; youth organisation facilities.

### ***7 National Parks legislation***

- (1) A lease under subsection 11(3) of the Kosciusko State Park Act 1944.
- (2) A lease under paragraph 30(1)(a) or (b) of the National Parks and Wildlife Act 1967.
- (3) A lease under paragraph 151(1)(a), (b), (c), (d) or (e) of the National Parks and Wildlife Act 1974.

### ***8 Various Acts***

A lease under section 5 of the Public Parks Act 1854, section 6 of the Public Parks Act 1884, section 7 of the Public Parks Act 1902, Part IIIA or Division 3 of Part IIIB of the Crown Lands Consolidation Act 1913, Schedule 9A to the National Parks and Wildlife Act 1974 or Division 5 of Part 5 of the Crown Lands Act 1989 that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:

accommodation house; amusement centre; art gallery; boat storage; boatshed; bowling green; building for use by community and charitable bodies; cafe; caravan park and camping ground; craft centre; day care centre; dog racing course and facilities; driver training ground; entertainment centre; football; golf course; Guide hall; historic building, structure and display; horse racing course and facilities; jetty; kindergarten; kiosk; launching ramp; marina; museum; restaurant; retail shop; retirement village; Scout hall; sporting club; sporting ground; sporting ground and facilities; sports stadium; swimming pool; tea room; telecommunications or broadcasting tower, mast or building; tourist information centre; volunteer rescue organisation; wharf; wharf and jetty; youth club; youth organisation facilities.

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## **APPENDIX 2 - KINDS OF PROSPECTING OPERATIONS AUTHORISED BY A LOW - IMPACT EXPLORATION LICENCE**

The following kind of prospecting operations are authorised by a low-impact exploration licence:-

- (a) aerial surveys;
- (b) geological and surveying field work that does not involve clearing (as defined below);
- (c) sampling by hand methods;
- (d) ground-based geophysical surveys that do not involve clearing;
- (e) drilling and activities associated with drilling and the establishment of a drill site, that do not involve clearing or excavation (as defined below), other than the minimum necessary to establish a drill site;
- (f) environmental field work that does not involve clearing.

For the purposes of paragraph (e) the following are not permitted:-

- side hill excavation for access or drill pads, as would be necessary on steep slopes;
- drilling in a watercourse or any stream diversion;
- cutting down or pushing over trees;
- clearing or excavation for the purpose of obtaining access to drill sites, and

For the purposes of this condition, the terms “clearing”, “excavation” and “topsoil horizon” have the following meanings:

### Clearing

- (a) in the case of grass, scrub or bush, “clearing” means the removal of vegetation by disturbing root systems and exposing underlying soil, but does not include:
  - the flattening or compaction of vegetation by vehicles, where the vegetation remains living;

- the slashing or mowing of vegetation to facilitate access tracks, provided root systems remain in place and vegetation remains living; or
  - the clearing of noxious or introduced plant species.
- (b) in the case of trees, “clearing” means cutting down, ringbarking or pushing over trees.

### Excavation

“Excavation” means the use of machinery to dig below the ‘topsoil horizon’, but does not include:

- minor levelling of a site to allow a drill rig to operate on a level surface for safety reasons e.g. to provide a safe working area or for fire prevention; or
- the construction of a small sump for operational purposes.

### Topsoil horizon

The “topsoil horizon” means the top level or layer of soil which is generally less than 30cm thick.