

Diversification of Leases for Agricultural Purposes PUX/901/337

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Version History

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1	17/12/2004	Replaces PUX/901/336
1.1	01/07/2005	Conversion Project - New WORD/XMLI template
2	24/12/2007	Updated to reflect Land Act amendments, Endorsed by Scott Spencer, Director-General, Department of Natural Resources and Water
2.1	27/01/2011	Minor updates to reflect departmental name change to DERM
2.2	19/09/2012	Minor updates to reflect department name change to DNRM
2.3	19/03/2013	Updated to change government logo
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Approval

Position	Name	Date
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Purpose

To facilitate diversification by lessees of agricultural leases into other activities, in a manner that is complementary to and not interfering with the main purpose of the lease.

To provide a clear direction on diversification by clarifying the way the relevant provisions of the *Land Act 1994* are interpreted and by providing a set of guidelines for each identified diversification activity in the form of a practice guideline to guide applicants and decision makers.

Scope

This policy provides guidance to decision-makers about the types of additional uses that may be allowed on agricultural leases and the allowable scale of those activities.

Rationale

There is an increase in applications from lessees of agricultural leases to diversify into various other activities to assist with the economic viability and sustainable use of properties.


Under the *Land Act 1994* lessees of agricultural leases are able to undertake all forms of primary production. Therefore diversification applications on these types of leases will only be required for activities of a non-primary production nature.

The Minister may approve an application by a lessee that a lease be used for additional purposes but any additional purpose must be complementary to, and not interfere with, the purpose for which the lease was originally issued.

In most cases, if the "complementary" test is satisfied, the other test of "not interfering with the original purpose of the lease" is also met. Under the *Forestry Act 1959*, the State in most cases owns and controls native remnant and regrowth vegetation and quarry materials on Crown holdings. Any proposal to diversify into an additional use should be considered with this in mind so that the State's rights in respect of these resources are not compromised. The Department of Agriculture, Fisheries and Forestry's, Forest Products business unit should be consulted as part of the decision making and approval process where these resources are possibly affected e.g. an eco-tourism or conservation use should not in any way limit the State's access to these resources, such as timber and gravel.

Policy

When considering applications by lessees to use agricultural leases for additional purposes, a proposed activity may be considered to be complementary, even if it is not related to agriculture. If such activity contributes to the viability and ecological sustainability of the enterprise and allows the activity of agriculture to flourish where otherwise it may not have.



For this to occur, the activity must be of sufficiently small scale to ensure that it does not become the dominant or principal activity.

Should a lessee wish to expand the new activity to the extent where it becomes the dominant activity, other options such as applying to freehold the lease or excise an area for the new activity may be considered. In such cases all relevant legislative, policy and planning requirements will need to be considered, including that this department may need to assess the most appropriate tenure and use of the land and whether the land is to be made available with or without competition.

To limit the risk of an additional use becoming an entity in its own right applications for additional purposes will be subject to the applicant agreeing to change the imposed conditions of lease (s.210) to preclude the future sub-leasing (s.334) of that part of the lease in isolation from the balance of the lease.

An exception though relates to the additional purpose of vocational training in pastoral activities undertaken by a person other than the lessee, with sub-leasing of an area to that person for accommodation and associated facilities.

Responsibilities

Officers with the delegated responsibility for making decisions in terms of section 154 of the *Land Act 1994*

Definitions

Agricultural leases - means leases able to be used for agricultural purposes that are:

- a. Term leases used for -
 - Pastoral purposes; including pastoral holdings, preferential pastoral holdings, pastoral development holding or stud holdings
 - Agricultural purposes
- b. Freeholding and Perpetual leases used for agricultural purposes, including -
 - Grazing Homestead Perpetual Leases
 - Grazing Homestead Freeholding Leases

References

Related Policies and Notifications:

- Policy No. PUX/901/333: Land Holding - Leases - Additional/Fewer Purposes of Lease
- Native Title Work Procedure



PRACTICE GUIDELINES

The attached practice guideline on diversification of land use on agricultural leases provides a set of guidelines for each identified diversification activity to assist applicants and decision makers.

DIVERSIFICATION OF LAND USE ON AGRICULTURAL LEASES

The types of leases covered by the guideline

This guideline applies to:

Term leases that may be used for -

- Pastoral purposes; including pastoral holdings, preferential pastoral holdings, pastoral development holding or stud holdings
- Agricultural purposes

Freeholding and Perpetual leases that may be used for agricultural purposes, including -

- Grazing Homestead Perpetual Leases
- Grazing Homestead Freeholding Leases

The types of leases not covered by the guideline -

- Leases issued over Reserves, Protected Areas and State Forests
- Leases that do not allow agricultural use
- Leases not included in rental category 11
- Leases conditioned to limit land use to grazing "only"
- Permits and licences

Rental

The small-scale nature of permissible additional uses on leases that allow agricultural activities will allow rental categories to remain unchanged. The low impact nature of farm-based tourism, filmmaking and nature conservation does not justify re-categorisation.

Compliance with other legislation

Where an additional use is permitted on a lease, the lessee will still need to comply with all relevant State and Commonwealth legislation, government policies and other relevant policy and planning instruments.

Note: If a proposed additional use requires development approval/material change of use, the State would not agree (including not providing evidence of resource entitlement to any development application) if the scale of intended use exceeded the guideline.



Incremental Progression

It is essential that the guideline not be used to support incremental progression of additional uses to the point where such additional use becomes the dominant use. Such a use would not meet the complementary requirements of the *Land Act 1994* and as such, could not be lawfully condoned. It would also result in a lessee not paying a fair rental for the land, which could discriminate against and disadvantage other lessees. It could, on leases where native title may continue to exist, impact on native title in a manner inconsistent with the provisions of the *Native Title Act 1993(Cth)(NTA)* and the *Native Title (Queensland) Act 1993*, which is unlawful and cannot be allowed.

Mechanisms for monitoring and regulating this include the provisions of the *Sustainable Planning Act 2009* (SPA) and the inclusion of suitable conditions in the lease. Under SPA, if the proposal is for development for a material change of use, the consent of the State is required. In the case of a lease, where the lessee is not the State, owner's consent to the development application is required from this department under section 263 of SPA.

Also a condition of any consent for an additional purpose could be the inclusion of a condition or conditions in the lease limiting the scope of the new activity.

Multiple additional uses

It is possible that lessees may wish to pursue multiple additional uses. In principle this is acceptable provided each use conforms with the requirements of this policy and the aggregation of the additional uses do not become the main use i.e. the additional uses do not overtake the primary use of the lease.

Other options

If the proposed additional use is assessed as being not complementary to the primary purpose of the lease (agriculture), then the application will usually be refused in the first instance, but alternative methods of handling the proposal could be examined to enable a diversified use to become a major use, such as:

- excision of part of the existing lease and the issue of a term lease over that part, with or without competition;
- surrender of the whole lease and the issue of a new term lease or leases over the whole property, with or without competition; or
- conversion of the lease to freehold tenure.

In such cases it is important to recognise that all relevant legislative, policy and planning requirements will need to be considered, including that this department may need to be considered, including that this department may need to assess the most appropriate tenure and use of the land and whether the land may be made available with or without competition, and native title issues if any will need to be addressed.



Sub-leasing

To limit the risk of an additional use becoming a business entity in its own right, that is an activity being operated and managed in isolation from the balance of the lease, sub-leasing of the area covered by the additional use will not be supported.

Consequently the Minister's approval to add additional purposes will be subject to the applicant agreeing to change the conditions of lease (S.210) to preclude the future sub-leasing of that part of the lease.

However an approval for a sub-lease over the entire lease may still be allowed. An exception though relates to the additional purpose of vocational training in pastoral activities.

Other than the lessee, another person may be allowed to undertake this valuable community service, with sub-leasing of an area to that person for accommodation and associated facilities.

Native Title

Generally speaking, under current legislation, native title is not an issue for lessees of grazing homestead perpetual leases and grazing homestead freeholding leases and will not be an issue on other leases where native title has been extinguished.

On other leases, in particular most term leases for pastoral purposes, native title is an issue that must be addressed in a manner consistent with the provisions of current legislation and the Department's Native Title Work Procedures.

It is important that each case be treated on its individual merits to ensure that native title issues are appropriately addressed and this department's Indigenous Services should be consulted where any uncertainty regarding such issues exists.

Agricultural Uses

Horticulture, viticulture, broad hectare cropping, feedlots, aquaculture, farm forestry and the farming of pigs and poultry are considered "as of right" uses under the definition of agriculture in the *Land Act 1994*. As such, diversification by lessees to these forms of primary production within agricultural leases irrespective of the scale of the enterprise do not require Land Act approval.

Note: Lessees must be reminded to ensure that all other legislative requirements are addressed before additional primary production activities are commenced.

Types of uses covered

Based on experience at the time this policy was first implemented, three major types of additional uses had been identified.

These were:

Low Key Tourism Documentaries and Film Making Nature Conservation

An additional use has since been identified. This is the provision of training facilities for indigenous youth to provide them with training in pastoral activities, to assist them to obtain life and vocational skills. In addition to the lessee, this training may also be provided by another person. This use may also be extended to include such training for non-indigenous youth and older persons, both indigenous and non-indigenous, who would benefit from this type of training.

Other uses may be identified and will be considered for inclusion in the guidelines after investigation.

Criteria for assessing proposed uses

Criteria and guidelines are provided in the attached schedule to assist lessees wishing to make an application and decision makers assessing such applications to arrive at a decision that accords with the *Land Act 1994*. The criteria should be applied in accordance with the overall philosophy of the policy and these guidelines.

SCHEDULE

ACTIVITY DATE	CRITERIA	APPROVAL CONSIDERATIONS
Low Key Tourism	<ul style="list-style-type: none"> Use of existing infrastructure with minimal capital investment. (eg renovations to existing homestead, old shearers' sheds and workers cottages, camping in tents, fencing, walking tracks etcetera). 	<ul style="list-style-type: none"> Allow. Add sub-purpose and conditions
	<ul style="list-style-type: none"> Some additional structures/infrastructures - up to four accommodation units (catering for up to 16 guests), and an amenities building. These would be in addition to use of the existing homestead, shearers' sheds or workers cottages. 	<ul style="list-style-type: none"> As above, subject to <i>Sustainable Planning Act 2009</i> requirements. Lessee should be encouraged to prepare a Property Management Plan. Lessee should be encouraged to undertake a heritage assessment of older buildings and consult with the EHP
	<ul style="list-style-type: none"> If cultural heritage sites are involved. 	<ul style="list-style-type: none"> Cultural heritage impact will need to be considered in accordance with the <i>Aboriginal Cultural Heritage Act 2003</i> or the <i>Torres Strait Islander Cultural Heritage Act 2003</i>.

ACTIVITY DATE	CRITERIA	APPROVAL CONSIDERATIONS
Documentaries & Film making	<ul style="list-style-type: none"> • Little or no impact, temporary structures of a very minor nature and no site disturbance (eg for nature study series). 	<ul style="list-style-type: none"> • No approvals necessary - i.e. at the invitation of the lessee.
	<ul style="list-style-type: none"> • More substantial productions -will require special individual consideration. Look at on a 'case by case' basis, eg where environmental concerns may exist and/or more substantial temporary or structural improvements are required or possible site restoration issues. 	<ul style="list-style-type: none"> • Consultation with the Department of Natural Resources and Mines will be required.
	<ul style="list-style-type: none"> • If cultural heritage sites are involved. 	<ul style="list-style-type: none"> • Cultural heritage impact will need to be considered in accordance with the <i>Aboriginal Cultural Heritage Act 2003</i> or the <i>Torres Strait Islander Cultural Heritage Act 2003</i>.
Nature Conservation	<ul style="list-style-type: none"> • Conservation activity that supports good management and will improve long-term productivity of the property, for example to destock to allow re-vegetation with natural grasses. 	<ul style="list-style-type: none"> • No approvals necessary.
	<ul style="list-style-type: none"> • Conservation activities that are specific and appropriate to the conservation of nature, i.e. protecting and enhancing natural values, ecosystem integrity and services and biological diversity. For example where the exclusion of an area from agricultural use is paramount to achieve the desired environmental outcome. 	<ul style="list-style-type: none"> • Allow – insert condition if necessary or sub- purpose if requested. • In most cases native remnant and regrowth vegetation and quarry materials on Crown holdings are owned and controlled by the State under the <i>Forestry Act 1959</i>. Nature conservation under these guidelines does not exclude the State from harvesting such resources.
Vocational Training in Pastoral activities	<ul style="list-style-type: none"> • If required, additional structures/infrastructure of up to four accommodation units catering for up to 16 participants, accommodation for supervisors and catering and amenities buildings will be allowed. 	<ul style="list-style-type: none"> • Allow - the activity may be undertaken by the lessee, or another person. • Add sub purpose and conditions. • In the case of another person (i.e. not the lessee) , subleasing will be required but generally only of the area on which the accommodation and associated facilities are located/to be constructed - the terms of the sub-lease may include wider use of the lease for the day to day training activities



Legislation

The relevant sections of the *Land Act 1994* are as follows:

- Section 4 - Object of the Act
- Section 16 - Deciding appropriate tenure
- Section 27 - Dealing with Native Title
- Section 121 and 122 - Granting leases and freehold without competition
- Section 123 - Priority Criteria
- Section 154 - Additional or fewer purposes
- Section 199A - Use/purpose of lease
- Section 210 - Changing imposed conditions
- Section 334 - When subleasing is totally prohibited
- Section 468 - Purpose of Grazing Homestead Perpetual Lease
- Section 472 - Purpose of Pastoral Lease

The relevant sections of the *Native Title Act 1993 (Cth)* are:

- Sections 24GA, GB, JA and LA



PRACTICE GUIDELINES

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The types of leases covered by the guideline

This guideline applies to:

Term leases that may be used for -

- x Pastoral purposes; including pastoral holdings, preferential pastoral holdings, pastoral development holding or stud holdings
- x Agricultural purposes

Freeholding and Perpetual leases that may be used for agricultural purposes, including -

- x Grazing Homestead Perpetual Leases
- x Grazing Homestead Freeholding Leases

The types of leases not covered by the guideline

- x Leases issued over Reserves, Protected Areas and State Forests
- x Leases that do not allow agricultural use
- x Leases not included in rental category 1 or 2
- x Leases conditioned to limit land use to grazing “only”
- x Permits and licences

Rental

The small-scale nature of permissible additional uses on leases that allow agricultural activities will allow rental categories to remain unchanged. The low impact nature of farm-based tourism, filmmaking and nature conservation does not justify re-categorisation.

Compliance with other legislation

Where an additional use is permitted on a lease, the lessee will still need to comply with all relevant State and Commonwealth legislation, government policies and other relevant policy and planning instruments.

Note: If a proposed additional use requires development approval/material change of use, then the consent of the State (the State Government as lessor) would not be given if the scale of intended use exceeded the guideline.



Incremental Progression

It is essential that the guideline not be used to support incremental progression of additional uses to the point where such additional use becomes the dominant use. Such a use would not meet the complementary requirements of the *Land Act 1994* and as such, could not be lawfully condoned. It would also result in a lessee not paying a fair rental for the land, which could discriminate against and disadvantage other lessees. It could, on leases where native title may continue to exist, impact on native title in a manner inconsistent with the provisions of the *Native Title Act 1993(Cth)(NTA)* and the *Native Title (Queensland) Act 1993*, which is unlawful and cannot be allowed.

Mechanisms for monitoring and regulating this include the provisions of the *Sustainable Planning Act 2009 (SPA)* and the inclusion of suitable conditions in the lease. Under SPA, if the proposal is for a development involving the building of structures, the consent of the State is required. In the case of a lease, the owner is the State represented by this Department. Also a condition of any consent for an additional purpose could be the inclusion of a condition or conditions in the lease limiting the scope of the new activity.

Multiple additional uses

It is possible that lessees may wish to pursue multiple additional uses. In principle this is acceptable as the permissible uses require low capital investment and have a low environmental impact.

Other options

If the proposed additional use is assessed as being not complementary to the primary purpose of the lease (agriculture), then the application will usually be refused in the first instance, but alternative methods of handling the proposal could be examined to enable a diversified use to become a major use, such as:

- x excision of part of the existing lease and the issue of a term lease over that part, with or without competition;
- x surrender of the whole lease and the issue of a new term lease or leases over the whole property, with or without competition; or
- x conversion of the lease to freehold tenure.

In such cases all relevant legislative, policy and planning requirements will need to be considered and native title issues will need to be formally addressed.

Sub-leasing

To limit the risk of an additional use becoming a business entity in its own right, that is an activity being operated and managed in isolation from the balance of the lease, sub-leasing of the area covered by the additional use will not be supported.

Consequently the Minister's approval to add additional purposes will be subject to the applicant agreeing to change the conditions of lease (S.210) to preclude the future sub-leasing of that part of the lease. However an approval for a sub-lease over the entire lease will be allowed.



Native Title

Generally speaking, under current legislation, native title is not an issue for lessees of grazing homestead perpetual leases and grazing homestead freeholding leases and will not be an issue on other leases where native title has been extinguished.

On other leases, in particular most term leases for pastoral purposes, native title is an issue that must be addressed in a manner consistent with the provisions of current legislation and the Department's Native Title Work Procedures PAT/301/000.

It is important that each case be treated on its individual merits to ensure that native title issues are appropriately addressed and the Native Title and Indigenous Land Services Policy Unit should be consulted where any uncertainty regarding such issues exists.

Agricultural Uses

Horticulture, viticulture, broad hectare cropping, feedlots, aquaculture, farm forestry and the farming of pigs and poultry are considered "as of right" uses under the definition of agriculture in the *Land Act 1994*. As such diversifications by lessees to these forms of primary production within agricultural leases do not require Land Act approval.

Note: Lessees must be reminded to ensure that all other legislative requirements are addressed before additional primary production activities are commenced, including the Native Title Act 1993(Cth).

Types of uses covered

Based on experience to date, three major types of additional uses have been identified.

These are:

Low Key Tourism
Documentaries & Film Making
Nature Conservation

Other uses may be identified and will be considered for inclusion in the guidelines after investigation.

Criteria for assessing proposed uses

Criteria and guidelines are provided in the attached schedule to assist lessees wishing to make an application and decision makers assessing such applications to arrive at a decision that accords with the *Land Act 1994*. The criteria should be applied in accordance with the overall philosophy of the policy and these guidelines.

Criteria for assessing proposed uses

Criteria and guidelines are provided in the attached schedule to assist lessees wishing to make an application and decision makers assessing such applications to arrive at a decision that accords with the *Land Act 1994*. The criteria should be applied in accordance with the overall philosophy of the policy and these guidelines.

Criteria for assessing proposed uses

Criteria and guidelines are provided in the attached schedule to assist lessees wishing to make an application and decision makers assessing such applications to arrive at a decision that accords with the *Land Act 1994*. The criteria should be applied in accordance with the overall philosophy of the policy and these guidelines.

ACTIVITY TYPE	CRITERIA	APPROVAL CONSIDERATION
<p>LOW KEY TOURISM</p>	<p>x Use of existing infrastructure with minimal capital investment. (e.g. renovations to existing homestead, old shearers' sheds and workers cottages, camping tents, fencing walking tracks etc.)</p> <p>x Some additional structures/infrastructures-up to four accommodation units (catering for up to 16 guests), and an amenities building. These would be in addition to use of the existing homestead, shearers' sheds or workers cottages.</p> <p>x If cultural heritage sites are involved.</p>	<p>x Allow.</p> <p>x Add sub-purpose and conditions.</p> <p>x As above, subject to <i>Integrated Planning Act 1997</i> requirements.</p> <p>x Lessee should be encouraged to prepare a Property Management Plan.</p> <p>x Lessee should be encouraged to undertake a heritage assessment of older buildings and consult with the EPA.</p> <p>x Cultural heritage impact will need to be considered in accordance with the <i>Aboriginal Cultural Heritage Act 2003</i> or the <i>Torres Strait Islander Cultural Heritage Act 2003</i>.</p>
<p>DOCUMENTARIES & FILM MAKING</p>	<p>x Short term (up to 1 month), little or no impact and no disturbance (e.g. nature study series).</p> <p>x More substantial productions - longer than 1 month will require special individual consideration. Look at on a 'case by case' basis. e.g. where environmental concerns exist and/or structural improvements are required or site restoration issues exist.</p> <p>x If cultural heritage sites are involved.</p>	<p>x No approvals necessary.</p> <p>x Covered by way of written agreement where appropriate, incorporating all agencies requirements (e.g. Environmental Protection Agency), indemnity for the State, Public liability insurance and bonds.</p> <p>x Cultural heritage impact will need to be considered in accordance with the <i>Aboriginal Cultural Heritage Act 2003</i> or the <i>Torres Strait Islander Cultural Heritage Act 2003</i>.</p>

ACTIVITY TYPE	CRITERIA	APPROVAL CONSIDERATIONS
<p>NATURE CONSERVATION</p>	<p>x Conservation activity that supports good management and will improve long-term productivity of the property, for example to destock to allow re-vegetation with natural grasses.</p> <p>x Conservation activities that are specific and appropriate to the conservation of nature i.e. protecting and enhancing natural values, ecosystem integrity and services and biological diversity. For example where the exclusion of an area from agricultural use is paramount to achieve the desired environmental outcome.</p>	<p>x No approvals necessary.</p> <p>x Allow - insert condition if necessary or sub-purpose if requested.</p> <p>In most cases native remnant and regrowth vegetation and quarry materials on Crown holdings are owned and controlled by the State under the <i>Forestry Act 1959</i>. Nature conservation under these guidelines does not exclude the State from harvesting such resources.</p>