



Department of Planning,
Lands and Heritage

Exposure Draft

Proposed Policy Framework guiding the use of Diversification Leases on Crown land under the *Land Administration Act 1997*

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The Department of Planning, Lands and Heritage acknowledges the traditional owners and custodians of this land. We pay our respect to Elders past and present, their descendants who are with us today, and those who will follow in their footsteps.

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Proposed Policy Framework guiding the use of Diversification Leases on Crown land under the *Land Administration Act 1997*

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Purpose of a diversification lease

1. The purpose of a diversification lease is to provide for proponents to conduct single, or multiple, land uses on a large area of Crown land, where the primary land use can coexist with other land uses.

Minimum considerations

2. A diversification lease will co-exist with other rights, including mining, native title, and the right for Aboriginal people to access unenclosed and unimproved parts of the lease.
3. Diversification lease applications will be considered by the Minister for Lands on a case-by-case basis and may be granted where:
 - a. the proponent requires a large area of Crown land;
 - b. the proposed use(s) provide(s) social, economic or environmental benefits to the State, the relevant region or locality;
 - c. the land is appropriate for the intended use(s);

- d. if applicable, the grant will provide social and economic opportunities to Aboriginal peoples/communities;
 - e. the proponent has demonstrated the capability, capacity and experience to deliver the intended outcome. The rigour behind a proponent's submission is needed to reflect the intensity, significance and expected investment required.
4. Where activities proposed on a diversification lease could be carried out on a smaller land area and/or the activities will be predominantly intensive, consideration should be given to a more appropriate form of (exclusive) tenure such as a lease granted under section 79 of the *Land Administration Act 1997 (LAA)*.

Granting diversification leases

5. The Minister for Lands may grant a diversification lease by:
 - a. private treaty; or
 - b. competitive process (such as public auction or public tender) to provide an equal opportunity to all interested parties.

The grant of an option to lease may be considered by the Minister for Lands in cases where specific project details and/or the affected land area(s) are yet to be confirmed. An option to lease may be subject to relevant conditions.

6. Lease conditions will be appropriately tailored according to the permitted use(s).
7. A diversification lease may be granted to enable a range of activities that are associated with or ancillary to intensive activities on land outside the diversification lease area.
8. Where there are competing applications for a diversification lease over the same area, the process for identifying a preferred proponent will be at the Minister for Lands' discretion, taking into account a number of factors including:
 - a. the benefits to the State, the relevant region or locality;
 - b. the rights and interests of existing land users/interest holders;
 - c. ensuring a diversity of investment; and
 - d. any other considerations the Minister may deem relevant.
9. Native title rights and interests will not be extinguished for the grant of a diversification lease, unless the native title holders agreed to surrender their rights.

10. Where native title exists or may exist, the diversification lease proponent is required to negotiate an Indigenous Land Use Agreement (ILUA) with the relevant native title party(s), to which the State is a party, unless another provision of the *Native Title Act 1993* (Cth) applies. All of the land uses for which the diversification lease is to be granted must be expressly permitted by the ILUA.
11. Before a diversification lease can be granted by the Minister for Lands, the Minister for Mines and Petroleum must first approve of:
 - a. the uses proposed under the diversification lease, including the locations of those uses within the lease area; and
 - b. the locations of any substantial structures to be erected on the diversification lease.
12. If during the lease term the lessee requests to:
 - a. vary the permitted use of the diversification lease; and/or
 - b. change the location of substantial structures or infrastructure,a new approval will be required from the Minister for Mines and Petroleum before the Minister for Lands will consider approving the variation. The proponent will also be required to complete a further future act process under the NTA if the existing ILUA does not cover the variation.
13. A lessee will require consent from the Minister for Lands to transfer, sublease, or mortgage a diversification lease.
14. A diversification lease can have multiple sub-leases to different sub-lessees for different purposes. The areas of sub-leases for different purposes can overlap if the uses are not mutually exclusive.
15. There is no minimum or maximum allowable area for a diversification lease, however as a matter of policy, the Minister for Lands may consider a number of factors in granting the lease, including:
 - a. the proponent's financial and management capacity to commence the intended use in a timely manner; and
 - b. whether the grant is likely to result in a concentration of control over Crown land such as to be against the public interest.
16. All diversification lessees will be required to manage the soil and the vegetation on the land to the satisfaction of the Minister for Lands. In addition, all diversification lessees will be required to:
 - a. prevent or minimise the risk of fire in accordance with the *Bushfires Act 1954*;
 - b. control declared plants and animals under the *Agriculture and Related Resources Protection Act 1976* and declared pests under the *Biosecurity and Agriculture Management Act 2007*;
 - c. maintain the condition (soil and native vegetation) of the land in compliance with the *Soil and Land Conservation Act 1945* and the *Environmental Protection Act 1986*; and
 - d. comply with all other applicable legislation and any conditions in the lease specific to the nature of the permitted land uses.

Permitted land use

17. When a diversification lease has been granted, the lessee is expected to commence using the diversification lease within a reasonable period of time and in accordance with the lease. Failure to do so can result in lease termination.
18. All activities on a diversification lease will be authorised under the lease conditions, and the conditions will be tailored to each particular lease.
19. The permitted land uses can be varied and flexible to include multiple land uses on the one diversification lease.

20. A diversification lease will not be granted solely for:
 - a. a highly intensive land use;
 - b. grazing authorised stock as defined in section 93 of the LAA (i.e. cattle, sheep, and goats); or
 - c. mining purposes.
21. A diversification lease will not be granted to improve a party's negotiating position in relation to third party proposals and should meet the minimum considerations required by the Minister for granting of the lease.

Infrastructure and improvements

22. The right of a diversification lessee to develop and construct infrastructure (including cables) as required to conduct/complement uses of their business will be recognised.
23. Where substantial structures are to be located on an area of the diversification lease that will render physical access by other parties impractical and/or unsafe, the area will be protected under section 20 of the *Mining Act 1978*. Similarly, both underground and surface laid cables will be protected under section 20.

24. The lessee will need to engage in discussions with the Department of Mines, Industry Regulation and Safety as to the location of any substantial structures and/or cables at an early stage.

Access and exclusivity

25. A diversification lease will not enable use of the land to the exclusion of all others.
26. Mining tenement holders may enter onto land under a diversification lease to undertake mining activities.
27. Aboriginal persons, including native title holders and Traditional Owners, have the right to enter any unenclosed and unimproved parts of the land under the diversification lease to seek their sustenance in their accustomed manner, and to undertake activities consistent with their rights under the NTA.
28. Access to the land may be granted to others under a section 91 LAA licence with the consent of the diversification lessee and native title holders, provided the Minister does so without adversely affecting the interest holders (including the diversification lessee).

Interaction with pastoral (and other) leases

29. Where a diversification lease is to be granted over the whole or part of Crown land that is already the subject of a lease under the LAA, that land must first be surrendered from the existing lease.
30. Where part of a pastoral lease is to be surrendered for the grant of a diversification lease, the proposal will be referred to the Pastoral Lands Board for advice on the effect of the surrender on the balance of the lease and whether that balance would be able to be worked as an economically viable and ecologically sustainable pastoral business unit.

Term

31. The term of a diversification lease will be considered on a case-by-case basis and granted for any length of term that is appropriate for the permitted use.
32. Long lease terms may be supported for long-term land uses (e.g. carbon sequestration, environmental offsetting).
33. Lease renewal will be considered on a case-by-case basis and investigations into a lease renewal will commence before expiry, or in accordance with conditions set out in the lease.

Rent

34. Market rent will apply to all diversification leases and will be assessed by the Valuer-General.
35. The valuation by the Valuer-General will consider the permitted uses set out in the lease.
36. Where the permitted uses are varied or added to the lease, the rent payable must be assessed by the Valuer-General.
37. Lessees will be required to make a payment of 6 months' rent in advance, in addition to the document preparation fee (complex) and registration fees on acceptance of the lease.
38. The rent will be reviewed on the dates set out in the lease and in the manner set out in the lease, based on commercial considerations.

Post-diversification lease arrangements

39. All diversification leases will include conditions requiring the lessee to yield up and rehabilitate the land on expiry or termination of the lease. Such conditions will require the lessee to, amongst other things:

- a. promptly remediate any contamination, pollution or environmental harm on the land which has arisen as a direct result of the land use(s);
 - b. leave agreed remaining improvements in a state of safe repair and condition; and/or
 - c. remove any stock from the land.
40. When a diversification lease ends, the land will revert to unallocated Crown land or unmanaged reserve. Any improvements will vest in the Crown, unless the lease contains an express provision to the contrary.
 41. Where the lease states that the improvements do not vest in the Crown upon termination, the lessee may seek to have any improvements left on the land valued and be paid the price of those improvements by an incoming lessee or purchaser of the land, subject to approval from the Minister for Lands.
 42. The lessee is not entitled to any compensation from the State for improvements left on the land after the diversification lease has ended.

FEEDBACK AND ENQUIRIES

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FURTHER INFORMATION

DPLH website