



Department of Planning,  
Lands and Heritage

# 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 land and waterways across Western Australia. The Department is committed to reconciliation to improve outcomes for Aboriginal and Torres Strait Islander peoples and to work together to provide a culturally-safe and inclusive environment.

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# 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 proposed lease use(s) can coexist with other land uses.

## Minimum considerations

2. A diversification lease may co-exist with other rights, including:
  - a. those afforded under the *Mining Act 1978* and the *Petroleum and Geothermal Energy Resources Act 1967*;
  - b. native title rights; and
  - c. 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 possible, the grant will provide social, cultural and economic opportunities to Aboriginal peoples/communities; and
- e. the proponent:
  - i. has demonstrated the capability, capacity and experience to deliver the intended outcome; or
  - ii will be able to demonstrate the capability, capacity and experience to deliver the 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).

## Indigenous Land Use Agreement

5. Native title rights and interests will not be extinguished for the grant of a diversification lease, unless the native title parties agreed to surrender their rights.
6. Predominantly an Indigenous Land Use Agreement (ILUA) will be the only option to satisfy the future act requirements of the *Native Title Act 1993* (Cth) (NTA), unless another provision of the NTA applies. Where native title exists or may exist, the diversification lease proponent is required to negotiate an ILUA with the relevant native title party(s) which needs to be registered prior to the grant of a diversification lease. The State will need to be a party.
7. ILUA negotiations between the native title party and the proponent should include:
  - a. how native title rights and practices can continue during the course of the diversification lease; and
  - b. all of the land uses for which the diversification lease is to be granted. These land uses must be expressly permitted by the ILUA.
8. To assist the parties in addressing the State's requirements, a template ILUA will be provided on request.

## Granting diversification leases

9. The Minister for Lands may grant a diversification lease by:
  - a. private treaty; or
  - b. competitive process.
10. In determining which method, the Minister for Lands will have regard for:
  - a. demand for land in the region; and
  - b. the value (including economic, community, conservation etc.) of the location.

High value or highly competitive locations may warrant a lease grant via competitive process (such as public auction or public tender) to provide an equal opportunity to all interested parties and identify the most suitable applicant capable of realising the value of the land.
11. The grant of an option to lease may be considered by the Minister for Lands in cases where required consents or agreements are yet to be received or negotiated. An option to lease may be subject to relevant conditions, including:
  - a. the negotiation and registration of an ILUA providing consent for the grant of the proposed diversification lease;
  - b. the approval of the Minister for Mines and Petroleum under section 16(3) of the *Mining Act 1978* to the grant of the lease; and
  - c. the obtaining of all environmental or other statutory approvals required for the proposed use(s).
12. Diversification lease applicants who meet the definition of “foreign person” or “foreign government investor” under the *Foreign Acquisitions and Takeovers Act 1975* should meet the requirements of the Foreign Investment Review Board as part of the application process. This requirement may be included as a condition in an option to lease.
13. 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.
14. 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;
  - d. the proponent’s record in engaging with Aboriginal people and communities, their capacity to provide social and economic benefits to Aboriginal people and communities in the long term, and a record of respecting and protecting Aboriginal culture and heritage; and
  - e. any other considerations the Minister may deem relevant.
15. Before a diversification lease can be granted by the Minister for Lands, the Minister for Mines and Petroleum must first give approval for the grant of the lease, including:
  - 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.
16. Referrals will be made to relevant Government agencies for their advice where the agency has an interest in the land. For example, an application for a diversification lease will be referred in most cases to the Minister for Environment where there is potential for environmental impact on the land.
17. If during the lease term the lessee requests to:
  - a. vary the permitted use(s) of the diversification lease; and/or

- b. change the location of substantial structures,

a new approval will be required from the Minister for Lands and the Minister for Mines and Petroleum.

The Minister for Lands may also carry out referrals with relevant government agencies who have an interest in the land, to provide advice and/or approve of the proposed variation.

The proponent may also be required to complete a further future act process under the NTA if the existing ILUA does not cover the variation.

- 18. A lessee will require consent from the Minister for Lands to transfer, sublease, or mortgage a diversification lease.
- 19. Where a diversification lease is transferred during the lease term, the incoming lessee must agree to:
  - a. be bound by and perform obligations under the lease;
  - b. be bound by any ongoing obligations under the ILUA (for example, if benefits are to be paid over a long period of time); and
  - c. ensure that there are no current breaches of the lease such as rent arrears, and if there are, to remedy same.

- 20. A diversification lease can have multiple sub-leases to different sub-lessees for different uses provided those uses are permitted under the diversification lease and the consent of the Minister for Lands is obtained before the sub-lease(s) is granted.

- 21. The Minister for Lands may exempt a sublease from forfeiture in the event that the diversification lease is forfeited.

- 22. There is no minimum or maximum allowable area of land 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;
- b. whether the grant is likely to result in a concentration of control over Crown land such as to be against the public interest; and
- c. advice from government agencies or statutory boards such as the Pastoral Lands Board (PLB) where applicable.

- 23. 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

24. When a diversification lease has been granted, the lessee is expected to commence using the diversification lease within the time period stated in the lease and in accordance with the lease. Failure to do so can result in lease termination.
25. All activities on a diversification lease will be authorised under the lease conditions, and the conditions will be tailored to each particular lease.
26. The permitted land uses can be varied and flexible to include multiple land uses on the one diversification lease.
27. Diversification lease applicants are encouraged to consider:
  - a. a project area that has lower environmental values or that has been cleared previously (e.g. post mining land); and/or
  - b. possible environmental offsets; and
  - c. a project area with low mining prospectivity.
28. A diversification lease will not be granted solely for:
  - a. a highly intensive land use where a section 79 LAA lease may be more appropriate;
  - b. grazing authorised stock as defined in section 93 of the LAA (i.e. cattle, sheep, and goats) as this would more appropriately be carried out under a pastoral lease; or
  - c. mining purposes.
29. A diversification lease will not be granted to improve a party's negotiating position in relation to third party proposals (e.g. where the proponent applying for the diversification lease over an existing LAA lease area is not the leaseholder) and should meet the minimum considerations required by the Minister for granting of the lease.
30. 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.
31. Where substantial structures are to be located on an area within the diversification lease, where approved, the area will be protected from mining within 100m under section 20 of the *Mining Act 1978*. Both underground and surface laid permanent electrical and fibre optic cables will also be protected under section 20 but will not require specific approval. Substantial structures, underground and surface laid permanent electrical and fibre optic cables will be spatially identified in the diversification lease.
32. The proponent will need to engage in discussions with the Department of Mines, Industry Regulation and Safety as to the location of any substantial structures at an early stage.
33. A diversification lease will not enable use of the land to the exclusion of all others.
34. Mining tenement holders must obtain consent from the diversification lessee to access the areas on the lease which are subject to buffer zones under section 20 of the *Mining Act 1978*, however they may otherwise enter onto land under a diversification lease to undertake mining activities.
35. Despite the presence of buffer zones, where access to those areas for mining exploration is subject to agreement between a diversification lessee and mining tenement holder, the State Government's expectation is that as much activity as possible should occur within the buffer zones.

## Infrastructure and improvements

## Access and exclusivity

36. Aboriginal persons, including native title parties 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.
37. Access to the land may be granted to others under a section 91 LAA licence with the consent of the diversification lessee, native title holders and relevant State approvals.

## Interaction with pastoral (and other) leases

38. 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 be voluntarily surrendered from the existing lease.  
  
The State has no present intention to compulsorily acquire interests in land to grant a diversification lease.

40. The Minister for Lands will seek advice from the PLB on the proposed grant of a diversification lease that:
  - a. contains a grazing component; and
  - b. requires the surrender of all or part of an existing pastoral lease.  
This advice will focus on land management issues associated with a diversification lease, and any effects the surrender of a pastoral lease (in whole or in part) will have on the viability of the remaining part of the pastoral lease as an economically viable and ecologically sustainable pastoral business unit.

## Term

41. 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 and which is authorised under the agreed ILUA (if applicable).
42. Long lease terms may be supported for long-term land uses.
43. 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

44. Market rent will apply to all diversification leases and will be determined by the Valuer-General based on the income stream likely to emanate from the proposed permitted diversification lease uses.
45. Where the permitted uses are varied or added to the lease, the rent payable must be assessed by the Valuer-General.
46. 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.
47. 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

48. 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.
49. When a diversification lease ends, the land will revert to unallocated Crown land. Any improvements will vest in the Crown, unless the lease contains an express provision to the contrary.
50. 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.
51. 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

**Email:** [info@dplh.wa.gov.au](mailto:info@dplh.wa.gov.au)

## Further information

**Website:** [www.wa.gov.au/dplh](http://www.wa.gov.au/dplh)