

# Guideline

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## Diversification of leases for agricultural purposes

### Purpose

This guideline provides advice on the types of commonly proposed diversified activities that may be suitable to be carried out on an agricultural lease. It supports the operational policy, 'Diversification of leases for agricultural purposes' SLM/2013/575.

### Rationale

Lessees may undertake new activities complementary to the original agricultural purposes issued for the lease, provided the activities conform to the operational policy and this guideline. The new activities may or may not require approval as an additional purpose, depending on their nature. The activity, criteria and the considerations for the proposed new activities are included in this guideline.

### Guideline

#### Applicable tenure

This guideline applies to agricultural leases (i.e. leases that permit agricultural purposes<sup>1</sup>). These are:

1. Term leases used for:
  - a. Pastoral purposes; including pastoral holdings, preferential pastoral holdings, pastoral development holding or stud holding, or
  - b. Agricultural purposes;

or

2. Freeholding and Perpetual leases used for agricultural purposes, including:
  - a. Grazing Homestead Perpetual Lease, or
  - b. Grazing Homestead Freeholding Lease.

Consequently this guideline does not apply to:

- 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.

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<sup>1</sup> For definition of "agriculture" see Schedule 6 of the Land Act.

## Incremental Progression

It is essential that diversification of leases not be used to support incremental progression of an additional use 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* (Land Act). It could result in the following negative consequences:

- a lessee not paying a fair rental for the land, which could discriminate against and disadvantage other lessees
- 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*.

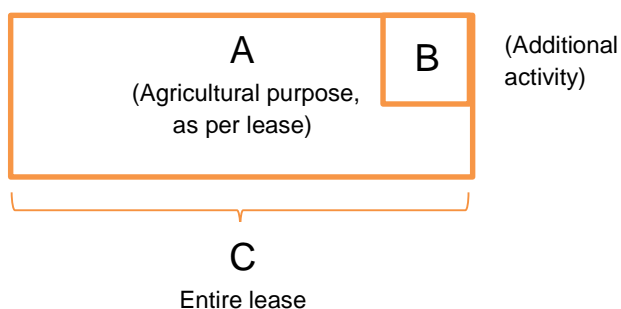
Mechanisms for monitoring and regulating this include the provisions of the *Planning Act 2016* (where an inconsistent use will trigger a material change of use and require the state's consent) and the inclusion of suitable conditions in the lease.

## Sub-leasing

Section 332 of the Land Act provides for subleases to be issued over a lease. However, where an additional activity is proposed on a lease for agricultural purposes, subleasing may only occur where:

- the entire lease (area C below) is subleased; AND
- most of the new sublease is still being used for the originally intended agricultural purposes (area A).

This is shown in the diagram below:



Subleasing of *only* the area covered by the additional activity (area B) is not supported (see exception below). This limits the risk of an additional activity becoming a business entity in its own right (i.e. an activity being operated and managed in isolation from the balance of the lease).

Consequently, where an additional activity is approved for a lease (area C), the conditions of that lease will be altered (under section 210 of the Land Act) to preclude future subleasing of only the area approved for the additional activity (area B).

Where the additional activity is for vocational training in pastoral activities, an exception may be made to allow subleasing only over the additional activity area (B). This may help facilitate the construction and operation of the accommodation and associated facilities for the vocational training.

## Impacts to the lease

Diversification of an agricultural lease may or may not be deemed to be an additional purpose to the lease, depending on the nature of the diversification. A diversification proposal may have any one of the following impacts on the lease:

Possible impacts on agricultural lease from diversification	Comments	Examples (See Attachment 1)
no change whatsoever	No approval required	Documentaries and film making
a change in only the conditions of the lease	Application and approval required	Nature conservation
an allowable additional purpose being added to the lease	Application and approval required Refer to 'Additional Purposes of a lease' SLM/2013/425 for additional information	Low key tourism Vocational training in pastoral activities

## Rental category remains unchanged

Due to the small-scale nature of additional uses allowed on agricultural leases, there is no justification to change rental categories.

## 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. 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.

## Multiple additional uses

Multiple additional uses may be supported by the department where:

- each use conforms with the requirements of this guideline and the operational policy, and
- the aggregation of the additional uses do not become the main use, and
- the lessee demonstrates that the uses require low capital investment and have a low environmental impact.

## 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.

Lessees are encouraged to consult with the Department of Agriculture and Fisheries, Forest Products business unit before progressing their proposal. This is because in most cases, the State owns and controls native remnant and regrowth vegetation and quarry materials.

**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 only be considered if the scale of intended use was consistent with this guideline.

## Native Title

Under current legislation, native title is not a consideration for lessees of grazing homestead perpetual leases and grazing homestead freeholding leases or on leases where native title has been extinguished.

For all other leases, native title must be considered when assessing any diversification of an agricultural 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 proposed 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
- 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. The 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 that native title issues, if any, are addressed.

## Application process

If lessees wish to undertake an additional purpose on their agricultural lease, they should complete the relevant application form (LA13) at <https://www.qld.gov.au/environment/land/state/forms> or contact their nearest State Land Business Centre (see below for details).

## Examples of commonly proposed additional uses

Commonly proposed additional uses, related criteria and considerations are at **Attachment A**. Other uses may be identified in future and will be considered for inclusion in this guideline after investigation.

## Legislation

Land Act, section 154 – Minister may approve additional purpose.

Land Act, section 210 – Changing and reviewing imposed conditions.

Land Act, section 334 – When subleasing is totally prohibited.

*Aboriginal Cultural Heritage Act 2003.*

*Torres Strait Islander Cultural Heritage Act 2003.*

*Planning Act 2016.*

## Related documents

Operational Policy - Diversification of leases for agricultural purposes (PUX/901/337 = SLM/2013/575)

Operational Policy – Additional purpose of a lease (PUX/901/333 = SLM/2013/425)

Guideline – Additional Purpose of a lease (SLM/2019/5110)

Application Form LA13 - Change of purpose of a lease and/or conditions of a lease, licence or permit to occupy.

## Approval

Position	Name	Date
Executive Director, Land and Native Title Services	Graham Nicholas	5 Sept 2019

## Version history

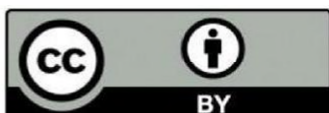
Version	Effective Date	Comments
1.00	5/9/2019	Revision of the previous policy (SLM/2013/575 Ver 2.05 =PUX/901/337) resulted in new Operational Policy and this Guideline.

## Further information

- Contact your nearest business centre ([https://www.dnrme.qld.gov.au/?contact=state\\_land](https://www.dnrme.qld.gov.au/?contact=state_land)), or
- Refer to <https://www.qld.gov.au/environment/land/state>, or
- Call 13 QGOV (13 74 68).

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## Attachment A - Examples of commonly proposed additional uses

ADDITIONAL PURPOSE	CRITERIA	CONSIDERATIONS
<p><b>Low Key Tourism</b></p>	<ul style="list-style-type: none"> <li>• 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.)</li> <li>• 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.</li> <li>• If cultural heritage sites are involved.</li> </ul>	<ul style="list-style-type: none"> <li>• This is an additional use for low key tourism activities.</li> <li>• Sub-purpose and conditions to be added to the lease.</li> <li>• Allows use for low key tourism, subject to requirements of the <i>Planning Act 2016</i>.</li> <li>• Ideally a heritage assessment of older buildings should be undertaken in consultation with the Department of Environment and Science (DES).</li> <li>• 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>.</li> </ul>
<p><b>Documentaries and film making</b></p>	<ul style="list-style-type: none"> <li>• Short term (up to 1 month), little or no impact and no disturbance (e.g. nature study series).</li> <li>• More substantial productions - longer than 1 month will require special individual consideration on a 'case by case' basis; e.g. where environmental concerns exist and/or structural improvements are required or site restoration issues exist.</li> <li>• If cultural heritage sites are involved.</li> </ul>	<ul style="list-style-type: none"> <li>• There is no requirement for an additional purpose or condition to be added.</li> <li>• Can be covered by way of written agreement where appropriate, incorporating all requirements of all agencies e.g. DES, indemnity for the state, public liability insurance and bonds.</li> <li>• 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>.</li> </ul>

ADDITIONAL PURPOSE	CRITERIA	CONSIDERATIONS
<b>Nature Conservation</b>	<ul style="list-style-type: none"> <li>• Conservation activity that supports good management and will improve long-term productivity of the property, for example to de-stock to allow re-vegetation with natural grasses.</li> <li>• 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.</li> </ul>	<ul style="list-style-type: none"> <li>• If necessary, insert condition or add a sub-purpose to the lease.</li> <li>• In most cases native remnant vegetation, 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.</li> </ul>
<b>Vocational Training in Pastoral activities</b>	<ul style="list-style-type: none"> <li>• If required, additional structures/infrastructure of up to four accommodation units catering for up to 16 participants will be allowed; accommodation for supervisors and catering and amenities buildings will be allowed.</li> </ul>	<ul style="list-style-type: none"> <li>• This is for an additional activity that may be undertaken by the lessee or another person.</li> <li>• A sub purpose and new conditions will need to be added to the lease.</li> <li>• In the case of another person or organisation running the vocational training, subleasing will be required but generally only over 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.</li> </ul>