

Operational policy

Excluding land subject to native title from resource authorities

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Version 2.00

Purpose

This policy provides information to industry about the department's position on when resource authorities can be granted by excluding land subject to native title over exclusive and non-exclusive¹ native title areas. If the area of an application for grant of a resource authority is land that is subject to native title, the policy applies regardless of whether the area is unclaimed, claimed or determined.

This policy applies to the following resource authorities:

- Exploration permits (EPs) and mineral development licences (MDLs) under the *Mineral Resources Act 1989* (MRA); and
- Authorities to prospect (ATPs) and petroleum leases (PL) under the *Petroleum and Gas (Production and Safety) Act 2004* (P&G Act).

This policy does not apply to the grant of resource authorities administered under the *Geothermal Energy Act 2010* and the *Greenhouse Gas Storage Act 2009*.

This policy does not apply to section 275 of the MRA. Where an application is made for additional surface area to be included in the area of a mining lease (ML), and the additional area is subject to native title, the future act provisions of the NTA apply.

The information in this policy reflects current departmental practices and does not limit the exercise of discretion or override legislative requirements. These practices may change from time to time with changes to be published through a revised version of this policy.

The department is committed to respecting, protecting and promoting human rights. Under the *Human Rights Act 2019* (HR Act), the department has an obligation to act and make decisions in a way that is compatible with human rights and when making a decision, to give proper consideration to human rights. To the extent an act or decision under this document may engage human rights under the HR Act, regard will be had to that Act in undertaking the act or making the decision.

¹ Exclusive land refers to land where native title has been extinguished (e.g. freehold land). Non-exclusive land is land that may be subject to native title (e.g. pastoral holding), including land which is subject to an application for native title that has not yet been determined.

Background

The grant of a resource authority over land subject to native title is a future act under the NTA.²

To ensure the grant of a resource authority is valid with respect to native title, one of the following is required:

- an ILUA;
- a right to negotiate (RTN) process has been undertaken; or
- an expedited procedure process (for exploration activities which have minimal impact on native title rights and interests on exploration permits (EPs) and mineral development licences (MDLs)).

To facilitate the expeditious grant of a resource authority and enable faster land access, the department may exclude land that is subject to native title from the area of the resource authority. Resource activities are **not** permitted on any excluded areas.

Excluding land subject to native title under this policy ensures the grant can proceed, while allowing the excluded land to be added back in later once native title has been addressed. In certain circumstances, this policy is an alternative to the requirement for the resource authority holder to complete a native title process over land subject to native title.

To access the excluded area in the future, the resource authority holder **must** undergo a native title process, lodge an application to add the excluded land, and have the application approved.

Policy determination

Excluding land at grant

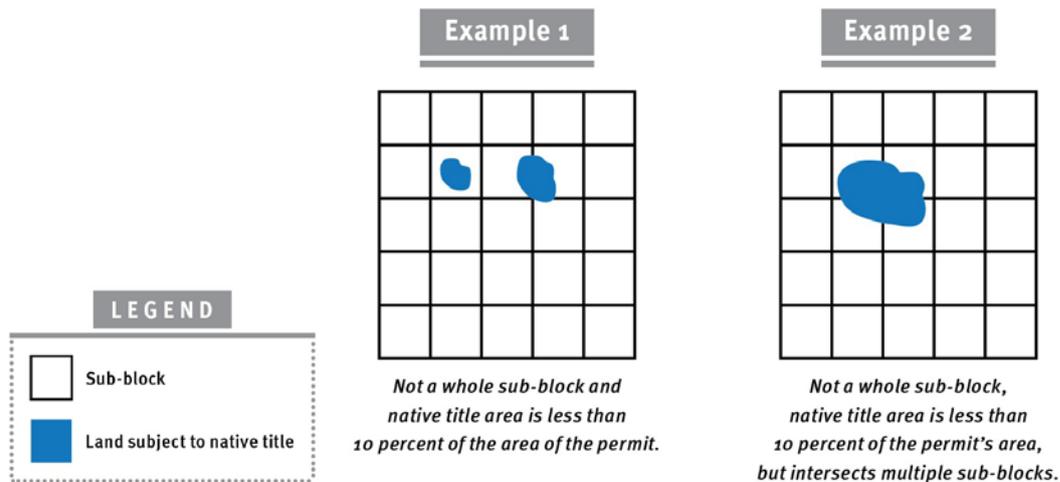
The resource Acts allow land that was excluded for the grant of the resource authority to be added back in later.

The determination under this policy is that at grant, land subject to native title can be excluded from a resource authority if the following conditions are met:

- generally, no more than 10% of the area of the tenure will be excluded;
- the area of an EP, MDL or PL to be excluded is not a whole sub-block; or
- the area of an ATP to be excluded is less than a whole block.

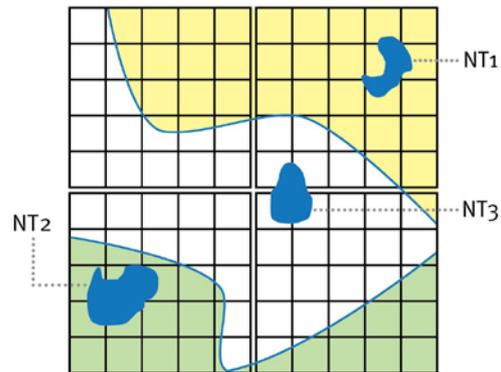
² For further information about native title, please refer to www.nntt.gov.au or visit the department's website <https://www.business.qld.gov.au/industries/mining-energy-water/resources/minerals-coal/authorities-permits/applying/native-title/mining-resources>

Examples 1 and 2 show how the policy can be applied to EPs, MDLs, PLs and ATPs:



Example 6

Native Title excluded
in area of NT3



Example 6 shows how the policy applies if there is more than one native title party.

For example, ATPs can cover large areas that may encompass several native title parties.

Up to 10% of the area may be excluded, which can encompass one or more native title parties' claim areas.

Applying for higher forms of tenure

An EP holder may apply to the Minister to add excluded land to the existing EP, pursuant to section 176A of the MRA. Similarly, an MDL holder may apply to the Minister to add excluded land to the existing MDL, pursuant to section 226AA of the MRA. Before applying for an ML for coal, the holder of the prerequisite (either EP or MDL) must satisfy the native title requirements under the NTA and then apply to have the excluded land added to the area of the EP or MDL if the applicant wishes those land parcels to form part of the ML.³

An ATP holder may apply for a PL over all or part of the area of underlying ATP, pursuant to section 117(1) of the P&G Act. Land that is excluded from the ATP is land excluded for the PL, pursuant to section 99(6)(b) of the P&G Act.

In making the application for a PL over the area of an ATP the holder may either:

- apply to have the PL granted with the land that is subject to native title excluded (with the option of adding the excluded land back into the area post-grant); or
- finalise a native title process to have the PL granted with the excluded land.

The holder may then apply to the Minister to amend the PL by adding the excluded land for the lease, pursuant to section 170 of the P&G Act.

If a conjunctive native title agreement has been finalised to add excluded land into the area of an exploration authority and this agreement provides for the grant of a higher form of tenure, any, or all, of the excluded land that was added back to the area of the exploration authority will be included in the grant of the higher form of tenure. If this has not happened and the applicant for the higher form of tenure wishes to include any, or all, of the excluded land, a native title process is required.

Renewals

At renewal, the relevant consideration for the department is the practicality of implementing the proposed stated work program.

The department does not consider it an impediment to renew where the proportion of native title excluded land increases following relinquishment.

³ *Mineral Resources Act 1989*, s 232(2).

Document information

Availability and location: External – Business Industry Portal

Owner and approver: Deputy Director-General, Georesources Division

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Contacts: For help and information about this policy, please contact the Coal Assessment Hub on (07) 4936 0169 or email: CoalHub@resources.qld.gov.au; Mineral Assessment Hub on (07) 4447 9230 or email: MineralHub@resources.qld.gov.au or the Petroleum Assessment Hub on (07) 3199 8118 or email: PetroleumHub@resources.qld.gov.au. For assistance with native title, contact the Native Title Services Unit on (07) 4936 0128 or email: nativetitleservices@resources.qld.gov.au

Disclaimer

The purpose of this policy is to provide a framework for consistent application and interpretation of the legislation administered by the department. Policies may be applied flexibly where individual circumstances require an alternative application of policy. Where this policy, or part of this policy, is inconsistent with relevant legislation, the legislation will prevail to the extent of the inconsistency.

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