Department of **Planning, Lands and Heritage**

GOVERNMENT OF WESTERN AUSTRALIA

Diversification Leases and Mining Interests

Information Sheet for Lessees and Prospective Lessees

This information sheet explains how mining tenure and mining activity can affect diversification leases over Crown land in Western Australia. It is for people who hold, or are considering applying for, a diversification lease.

In this information sheet, **LAA** means the *Land Administration Act 1997 (WA)*, **Mining Act** means the *Mining Act 1978 (WA)*, **Department** means the WA Department of Planning, Lands and Heritage, **DMPE** means the WA Department of Mines, Petroleum and Exploration, and **GHG** means greenhouse gas substance.

Important Information

This information sheet provides general information only and does not constitute legal advice. It does not replace the terms of any diversification lease, approval, legislation or other legal instrument.

The Department can explain the diversification lease process; however, it does not provide legal advice about rights, obligations or commercial risks. Lessees and applicants should obtain their own legal, technical and commercial advice and carry out appropriate due diligence investigations.

Main Points

- A diversification lease is a type of non-exclusive lease over Crown land. It allows use of that land for approved use(s), but only on the terms set out in the lease and any approvals.
- A diversification lease does not give the lessee rights to minerals, petroleum or other resource interests. Those rights are dealt with under separate legislation.
- A diversification lease does not give exclusive possession of the land. Other rights and interests may continue over the same land.
- Existing mining or other regulated resource interests are not removed or invalidated because a diversification lease is granted. A diversification lease also does not prevent new mining or other regulated resource tenure from being applied for or granted within the lease area.

- A diversification lease does not automatically protect the approved use, or any associated infrastructure, from mining. Any protection depends on the Mining Act and, for substantial structures, the relevant land being identified in the diversification lease.
- Section 20(5) of the Mining Act protects some specific areas and things on Crown land from mining activity. For substantial structures that are not otherwise covered by those categories, limited protection may apply under section 20(5AA), but only if the relevant land is identified for the purposes of section 92C(4) of the LAA.

What is a Diversification Lease?

A diversification lease is a non-exclusive lease over Crown land that may be granted by the Minister for Lands under Part 6A of the LAA. It may allow the land to be used for suitable activities such as renewable energy, carbon farming related activities, tourism, grazing or other broadscale land uses. These leases are intended for large areas of land.

The lease document will set out the approved use of the land. The lessee must comply with the lease and any other approvals required by law.

What a Diversification Lease Does Not Give You

A diversification lease does not give the lessee rights to minerals, petroleum or other regulated resources. Those rights are dealt with under separate legislation.

A diversification lease does not give exclusive possession of the land. It gives permission to use Crown land for the approved use but remains subject to other rights and interests that apply to the land, including rights under the LAA and other legislation.

Mining Tenements May Continue Over the Land

Land subject to a diversification lease remains Crown land for the purposes of the Mining Act. This is different from some other leases over Crown land, which may be treated as private land for the purposes of the Mining Act and may restrict mining. Granting a diversification lease does not remove land from a mining tenement, invalidate an existing mining tenement, or prevent future mining tenure from being applied for or granted under the Mining Act.

Lessees and applicants should check with DMPE to establish whether the lease area, or proposed lease area, is affected by existing or proposed mining tenure. Different rights and restrictions may apply depending on the tenure and proposed activities.

Other Resource Interests May Also Affect the Land

A diversification lease does not give the lessee rights to petroleum, regulated substances, geothermal energy resources, potential GHG storage formations or potential GHG injection sites[1]. These resources and formations are dealt with under separate petroleum, geothermal, GHG storage and pipeline legislation.

[1] Some of these terms are defined in the *Petroleum, Geothermal Energy and Greenhouse Gas Storage Act 1967 (WA)*.

Land under a diversification lease may still be affected by petroleum, geothermal, GHG storage or pipeline titles or operations. Those regimes have their own rules. The position under the Mining Act should not be assumed to apply in the same way to those interests.

Lessees and applicants should check with DMPE to establish whether any of these interests affect the land and obtain their own advice about the requirements that may apply.

Section 16(3) Mining Act Approval Before Grant

Before a diversification lease can be granted, the Department must obtain approval from the Minister for Mines under section 16(3) of the Mining Act.

Section 20(5) Mining Act and Limited Protection from Mining Activity

Section 20(5) of the Mining Act gives limited protection from some mining related activities for protected areas and things on Crown land. It does not stop land from being included in a mining tenement or remove an existing mining tenement. It may restrict activities such as prospecting, fossicking, exploration, mining on or under, or otherwise interfering with, those areas or things.

Section 20(5) protects listed categories of areas and things, including crops, yards, gardens, cultivated fields, airstrips, cemeteries, certain water infrastructure, permanent electrical or fibre optic cables, and some buildings or structures. Lessees should not assume all land, improvements or infrastructure on the lease area will be protected.

For diversification leases, section 20(5) also protects land that is the site of, or within 100 metres of, a substantial structure not already covered by another category in section 20(5). This protection only applies if the land is identified in the diversification lease for that purpose.

Even where this protection applies, it does not create a complete exclusion zone. For example, the Mining Act may still allow access across protected buffer areas to reach other land, and underground mining at sufficient depth.

Substantial Structures

“Substantial structure” is not defined in the Mining Act. In this information sheet, it is used to refer to important fixed infrastructure that a lessee wants identified in the lease for substantial structures protection under section 20(5AA) of the Mining Act.

For diversification leases, section 20(5) may protect land that is the site of, or within 100 metres of, a substantial structure on the lease. This protection only applies if the land is identified in the diversification lease under section 92C(4) of the LAA for the purposes of section 20(5AA) of the Mining Act.

In practice, the relevant land is identified through a Substantial Structures Plan prepared by the lessee. The plan should identify the relevant structures, where they will be located, and the land within 100 metres of them. The plan must be approved under section 16(5) of the Mining

Act by the Minister responsible for that Act, approved by the Minister for Lands for the purposes of the diversification lease, and attached to the lease.

If the relevant land is not identified in the lease under section 92C(4) of the LAA for the purposes of section 20(5AA) of the Mining Act, the specific mining protection for substantial structures will not apply to that land.

Examples of substantial structures may include significant buildings, renewable energy generation infrastructure, fixed plant or other substantial fixed works that are not otherwise within one of the protected categories in section 20(5) of the Mining Act. It is for the lessee to identify the structures it wants protected and obtain its own advice about the effect of the Mining Act and the risks of relying on that protection.

The lessee or applicant should raise proposed substantial structures early, so the structures, their locations and the land within 100 metres of them can be considered before the lease is granted.

Approval of the Substantial Structures Plan is separate from approval under section 16(3) of the Mining Act to grant the lease. Later changes to the plan or identified land will need to be assessed and may require a lease variation and further approval under section 16(5) of the Mining Act.

Changes to Approved Uses or Substantial Structures

A diversification lease is granted for the approved use described in the lease. If the lessee wants to change that use or the Substantial Structures Plan, the change will need to be assessed by the Department. A change to the Substantial Structures Plan will require a lease variation under the LAA and may require further approval under section 16(5) of the Mining Act.

The lessee should contact the Department if it wants to change the approved use or the Substantial Structures Plan, or if a proposed change may require the lease to be varied.

Compensation Under the Mining Act

Compensation for mining impacts is dealt with under the Mining Act, not the diversification lease. If compensation is payable, it is payable under the Mining Act by the miner or other person carrying out the mining activities.

Whether compensation is available, and how much is payable, will depend on the legal interest of the person claiming compensation, the loss claimed, who is carrying out the mining activities, and the compensation provisions and limits in the Mining Act.

What to Consider Early

Lessees and applicants should consider these matters as early as possible:

- check with DMPE to identify any existing or proposed mining tenements, petroleum titles, geothermal titles or pipeline licences affecting the lease area or proposed lease area;

- check the type of tenure or application and the legislation that applies to it;
- identify the proposed use or uses for the diversification lease and how they are proposed to be undertaken within the lease area;
- ask the Department whether any approval under the Mining Act is required before the lease can be granted, varied or changed;
- identify any proposed substantial structures and the land within 100 metres of those structures;
- consider whether a Substantial Structures Plan is required;
- consider access, safety, buffers, infrastructure protection and operational issues;
- engage early with relevant tenure holders where there may be an overlap or practical conflict;
- understand that mining access and activity may continue unless restricted by the Mining Act;
- obtain their own legal, technical and commercial advice and undertake all necessary and prudent due diligence investigations.

Department Assessment and Referrals

The Department considers whether the proposed use can operate alongside other rights and interests. This includes the proposed use, lease area, known overlapping tenure, proposed substantial structures, access, safety and any approvals required under the Mining Act or other legislation.

Before deciding whether a proposal can proceed, the Department undertakes tenure investigations and referrals. Referrals may be made to government agencies, local government, management bodies, service providers, interest holders, native title parties and others who may be affected by, or have information relevant to, the proposal.

The Department consults other government agencies as part of its assessment, including the agency responsible for administering the Mining Act.

The Department relies on information provided by lessees and applicants to undertake referrals and consultation. Lessees and applicants are therefore encouraged to provide detailed information regarding any proposed land use, developments, overlaps, substantial structures, proposed changes to the Substantial Structures Plan, and any other relevant matters. The Department may require additional information before a lease can be granted or amended.

A referral response, or the absence of an objection, does not by itself mean that a diversification lease will be granted or varied. The Minister for Lands must still consider the proposal under the LAA and any other relevant legislation.

How to Apply or Make an Enquiry

Enquiries or applications about Crown land leases under the LAA should be lodged with the Department. Information about making a Crown land enquiry is available on the Department's "Submitting a Crown land enquiry" webpage at www.wa.gov.au/government/document-collections/submitting-crown-land-enquiry.

Enquiries about mining tenements, petroleum titles, geothermal titles, GHG storage titles or pipeline licences should be directed to DMPE.