

Native Title Work Policy and Procedure for:
Granting rights to take timber and quarry materials on non-
exclusive pastoral leases
(*Commonwealth Native Title Act 1993: s.24GE*)

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TABLE OF CONTENTS

POLICY **3**

RELEVANT LEGISLATION **3**

IMPORTANT CONSIDERATIONS **3**

 VALIDITY OF THE DEALING 3

 THE DEALING IS VALID IF IT MEETS ALL FOUR NATIVE TITLE ASSESSMENT REQUIREMENTS IN THIS MODULE. 3

 EFFECT ON NATIVE TITLE 3

 PROCEDURAL RIGHTS 3

 COMPENSATION..... 4

ASSESSMENT PROCESS **4**

 REQUIREMENT 1: PROPOSED DEALING OR AREA NOT IN THE EXCLUSIONS LIST..... 4

 REQUIREMENT 2: TENURE TEST – THE PROPOSED AREA IS A NON- EXCLUSIVE PASTORAL LEASE 5

 REQUIREMENT 3: VALIDITY TEST - NON-EXCLUSIVE PASTORAL LEASE MUST BE VALID 5

 HELPFUL TIPS..... 6

 REQUIREMENT 4: DEALING TEST – PROPOSED DEALING IS IN THE DEALINGS TABLE 6

FINALISING YOUR ASSESSMENT..... **7**

HUMAN RIGHTS..... **7**

FURTHER SUPPORT OR INFORMATION **7**

Policy

This policy applies to proposed dealings which permits any person (including the lessee) on a non-exclusive pastoral lease, granted on or before 23 December 1996 (including as renewed one or more times), to:

- (1) cut **and** remove timber; **or**
- (2) extract, obtain or remove sand gravel, rocks, soil or other quarry materials, provided this activity is not mining under the Commonwealth Native *Title Act 1993* (NTA); **and**
- (3) the activity does not have to be connected to the pastoral activity.

Relevant legislation

Your proposal meets the requirements of section 24GE of the NTA and falls under either:

- the *Forestry Act 1959* or
- the *Water Act 2000*;

Important considerations

Validity of the dealing

The dealing is valid if it meets all four native title assessment requirements in this Module.

Effect on native title

Any dealing assessed in accordance with Module GE, the effect on native title will be non-extinguishment. Native title rights and interests are suspended for the duration of the project. The ability to exercise affected native title rights and interests is restored once the project is completed.

Procedural rights

For the purposes of this Module, the following types of organisations would be the most appropriate 'native title parties' to engage to under this section:

- Prescribed Body Corporate – In areas where there is a native title determination
- Legal representative – In areas where there is a native title claim
- Native Title Representative Bodies – In areas where there is no native title claim or determination.

The process of engagement with the relevant native title parties should be commenced soon as reasonably practical with a notification letter which invites comments and further consultation if requested. This notification should provide a description of the proposed activity and invite the native title parties to comment on reasoning for the conclusion that the proposed quarrying would be consistent with the requirements of section 24GE of the NTA.

Before impacting native title rights and interests, it is important that native title parties are given meaningful opportunities to discuss and influence how the act is carried out, not merely to be informed of it.

Engagement should be undertaken in good faith and with cultural awareness, ensuring native title parties have adequate time and information to consider the proposal and respond.

Departments and proponents are encouraged to seek advice on appropriate engagement protocols, potential costs, and culturally appropriate communication methods, to support respectful and effective participation by native title parties.

In all scenarios, Native Title Representative Bodies for that region must also be notified.

Compensation

Compensation for impacts on native title rights under Module GE is payable if a claim succeeds. Therefore, the proponent should proactively consider and address the impact of any compensable act during the project planning and implementation.

By engaging early and beyond the minimum procedural requirements, proponents can identify and manage potential impacts in a more timely, culturally safe and economically efficient manner. Effective engagement helps build trust, uncover site-specific or cultural considerations that might otherwise lead to future claims and allows issues to be resolved collaboratively before they escalate into compensation liabilities.

Assessment process

Ensure all four native title assessment requirements in the following table are met. Then, save supporting evidence in your agency's record system and complete the **Native Title Online Assessment Form**.

If any of the requirements are not satisfied, then Module GE does not apply, and you should proceed to **Module H**.

Requirement 1: Proposed dealing or area not in the exclusions list

Table 1 lists dealings not permissible under Module GE. If your proposed dealing or proposed dealing area is listed in Table 1, Module GE does not apply. Go to **Module H**.

Table 1 - Exclusions list

Criteria	Type of dealing
Dealing type	<p>The proposed dealing is mining. To mine includes:</p> <ul style="list-style-type: none"> (a) explore or prospect for things that may be mined (including things covered by that expression because of paragraphs (b) and (c) below); or (b) extract petroleum or gas from land or from the bed or subsoil under water. (c) quarry - but does not include extract, obtain, or remove sand, gravel, rocks, or soil from the natural surface of the land, or of the bed beneath waters, for a purpose other than: <ul style="list-style-type: none"> i. extracting, producing, or refining minerals from the sand, gravel, rocks or soil; or ii. processing the sand, gravel, rocks, or soil by non-mechanical means. <p>This means that quarrying is 'mining' under the NTA where it:</p> <ul style="list-style-type: none"> (a) goes beyond the natural surface of the land or (b) does not go beyond the natural surface of the land but is done for the purpose of extracting, etc., minerals or processing the material by non-mechanical means.
	The proposed dealing is the grant of a lease.
	<p>The proposed dealing involves the cutting of timber without the removal of the timber from the lease area.</p> <ul style="list-style-type: none"> (a) cut includes to: <ul style="list-style-type: none"> • penetrate with a sharp-edged instrument. • divide with a sharp-edged instrument; sever; carve. • hew or saw down; fell: to cut timber. • detach with a sharp-edged instrument; lop off. • hollow out; excavate; dig; cut a trench. (b) remove includes to: <ul style="list-style-type: none"> • move from a place or position; take away; take away; take off. • move or shift to another place or position.

	<ul style="list-style-type: none"> • move from one place to another, esp. to another locality or residence.
Dealing area	The proposed dealing area is a non-exclusive pastoral lease granted for the first time after 23 December 1996 .

Requirement 2: Tenure test – The proposed area is a non-exclusive pastoral lease

The proposed dealing must take place on a non-exclusive pastoral lease which was granted on or before 23 December 1996 (including as renewed once or more times).

A lease is a non-exclusive pastoral lease if it:

- (a) permits the lessee to use the land or waters covered by the lease solely or primarily for:
 - (i) maintaining or breeding sheep, cattle, or other animals; or
 - (ii) any other pastoral purpose.
- or**
- (b) contains a statement to the effect that it is solely or primarily a pastoral lease or that it is granted solely or primarily for pastoral purposes.
- and**
- (c) does not give a right of exclusive possession to the lessee or is not a Scheduled Interest.

Table 2 offers guidance on tenures that meet the definition of a non-exclusive pastoral lease.

Table 2 – Tenure types

Tenure examples	
1	Pastoral holding
2	Preferential pastoral holding
3	Pastoral development holding
4	Stud holding
5	Special lease/term lease for grazing purposes
6	Special lease for business (grazing) purposes
7	Special/term lease for grazing purposes over a state forest
8.	Term lease for grazing purposes

If you are unable to satisfy Requirement 2, Module GE does not apply. Go to **Module H**.

Requirement 3: Validity test - Non-exclusive pastoral lease must be valid

Unless there is evidence to the contrary, the non-exclusive pastoral lease will be assumed to be valid under State legislation. However, this lease must also be valid in relation to native title. In this regard, Table 3 sets out the validation rules.

Table 3 - Validity test

Grant/creation date	Validation requirements
Pre-1 January 1994	The non-exclusive pastoral lease is valid
Between 1 January 1994 and 23 December 1996	The non-exclusive pastoral lease will be validated if a part or whole of the non-exclusive pastoral lease was at some point prior to 1 January 1994, covered by one of the following: <ul style="list-style-type: none"> a) freehold estate; or b) lease (other than a mining lease); or c) valid public work.
Post-23 December 1996	The non-exclusive pastoral lease will be valid if the requirements of Module IC were satisfied in respect of the renewal etc. If not, Module GE does not apply. Go to Module H. Important: If there was a gap between the expiry of the previous non-exclusive pastoral lease and the grant of the current lease, you must confirm whether the relevant legislation allowed the lease to be renewed, re-granted, or re-made to meet Module IC requirements.

Helpful tips

To validate a non-exclusive pastoral lease granted during the intermediate period:

- Check the Specific Parcel Report in QNTIME under the Tenure Administration System heading for your proposed area. This might show if there was a prior tenure.
- Review the survey plan for any reference to any previous tenure.
- Examine the lease instrument to see if it mentions a prior tenure

Does the lease used to validate the intermediate period tenure have to be a previous exclusive possession act (PEPA)

No. Provided the lease is not a mining lease and was granted prior to 1 January 1994, it could be any other type of lease e.g. a pastoral holding.

Examples of how to validate an intermediate period lease

Option 1

Check if any part of the lease was a validly dedicated before 1 January 1994 as per Module CB.

If yes, the road's location within the lease area doesn't matter; it validates the entire non-exclusive pastoral lease as its dedication establishes a public work.

Option 2

Was any part of the area before 1 January 1994 held as freehold or lease (other than a mining lease)?

If yes, its location within the lease area doesn't matter; it validates the entire lease.

If you are unable to satisfy this requirement, Module GE does not apply. Go to **Module H**.

Requirement 4: Dealing test – Proposed dealing is in the dealings table

The proposed dealing must be the grant of a licence, permit or authority, over any area covered by the non-exclusive pastoral lease that provides a right to:

- (a) cut and remove timber, or
- (b) extract, obtain or remove sand, gravel, rocks, soil, or other quarry materials (provided it is not mining under the NTA).

Note: other quarry materials include clay, stones, and earth.

If the proposed dealing listed in Table 4 or if similar dealing is listed, **Module GE** applies.

Table 4 – Dealings test

Example	Comments
Timber	
The grant of a sales permit under the <i>Forestry Act 1959</i> to the lessee or a third party for the sale of timber from a non-exclusive pastoral lease which will involve the cutting and removing of timber from the lease area.	<ol style="list-style-type: none"> 1. Timber must be removed from the lease area. 2. Timber includes standing or fallen trees/branches but would not include wildflowers or foliage. 3. There is no requirement to have the timber material removed from the proposed dealing area. The material can remain or be removed.
Quarry materials	
The grant of a sales permit under the <i>Forestry Act 1959</i> to a local government to extract, obtain or remove sand or gravel for use in roadworks from the natural surface of land within a non-exclusive pastoral lease.	<ol style="list-style-type: none"> 1. Dealing must not permit mining (see requirement 1). 2. Procedural rights have been afforded to the native title parties and any views provided are properly considered. 3. There is no requirement to have the quarry material removed from the proposed dealing area. The material can remain or be removed.
The grant of a sales permit under the <i>Forestry Act 1959</i> to a landscaping business to permit the collection of stones and rocks which are lying on the surface of the land within a pastoral holding.	
The grant of a Quarry Material Allocation notice under the <i>Water Act 2000</i> .	

If you are unable to satisfy this requirement, Module GE does not apply. Go to **Module H**.

Finalising your assessment

If all the requirements of Module GE are met, finalise your Native Title Assessment and save all the supporting evidence using the **Native Title Online Assessment Form**.

Human Rights

The department is committed to respecting, protecting and promoting human rights. Under the *Human Rights Act 2019*, the department has an obligation to act and make decisions in a way that is compatible with human rights and, when deciding, to consider human rights. All acts and decisions under this document may engage human rights under the *Human Rights Act 2019*, and consideration must be given to relevant human rights when making decisions.

Further support or information

If you require further information or clarification on this module. Email nativetitle@nrmmrd.qld.gov.au.