

Operational policy

Excluding land subject to native title

Policy number 6/2012
October 2012
Version 1.01

Application

This policy relates to the following permits and resources legislation:

- *Exploration Permits for Coal, Exploration Permits for Minerals, Exploration Permits for a Specified Mineral, and Mineral Development Licences made under the Mineral Resources Act 1989 (MRA)*
- *Authorities to Prospect and Petroleum Leases made under the Petroleum and Gas (Production and Safety) Act 2004 (P&G Act)*
- *Greenhouse Gas Exploration Permits and Greenhouse Gas Injection and Storage Lease made under the Greenhouse Gas Storage Act 2009*
- *The Native Title Act 1993 (Cth)*

Purpose

The purpose of this policy is to provide guidance and set out the principles to be followed regarding permit applications over extinguished and non-exclusive native title areas.

This policy is written to:

- provide guidance and clarity to both applicants and departmental officers;
- promote consistency of permit administration and regulation across resource legislation;
- promote the purpose and objectives of the resource legislation;
- minimise land use conflict with respect to prospecting, exploring and mining;
- provide a mechanism to allow for more timely grant of resource permits where an applicant is willing to exclude native title areas from the permit area;
- minimise situations in which land is not made available for exploration by other parties as part of a grant of a resource permit, where no resource activity is proposed on that land;
- balance the department's objective with the requirements under the *Native Title Act 1993 (Cth)* for applicants for the grant of resource permits to address native title rights and interests that may exist on non-extinguished land within the applicant's proposed resource permit area; and
- allow permits to be granted where it is provided that non-exclusive land tenures are specifically excluded from the grant.

The information provided in this policy **does not limit the exercising of discretion** nor does it override legislative requirements when considering excluded areas where native title applies. It reflects current practices within the department which may change from time to time. All changes will be published through a revised version of this policy.



Applications over native title (extinguished and non-exclusive) areas

The future act provisions of the *Native Title Act 1993 (Cth)* will not be required to be met where permit applications are received for areas where native title has both:

- (a) been extinguished over part of the area
- (b) for non-exclusive land tenures where native title may still exist over other parts of the permit area but is excluded from the grant.

Where native title may or continues to exist over the permit area except where that area is excluded from the grant the provisions of the *Native Title Act 1993 (Cth)* will need to be complied with before grant.

Provision is made for permits to be granted over areas where native title has both:

- (a) been extinguished over part of the area
- (b) for non-exclusive tenures where native title may still exist over other parts of the permit area, under the following conditions:

- 1) Where an application is made for a permit area, and:
 - a. Less than or equal to 10% of the area applied for is subject to native title
 - b. The area subject to native title does not include a whole sub-block

The application may progress, with the area subject to native title being excluded from the area of the permit at time of grant. As the area is excluded from the permit, no resource activities are permitted on this land.

The excluded land may be added back into the permit area at a later date under provisions to “add excluded land” under the applicable Resource Act.

- 2) Where an application is made for a permit area, and:
 - a. Greater than 10% of the area applied for is subject to native title; or
 - b. The area subject to native title is equal to or greater than a whole sub-block (or whole block in the case of an Authority to Prospect (ATP)) and the applicant wishes to include the sub-block (block) within the permit area*;

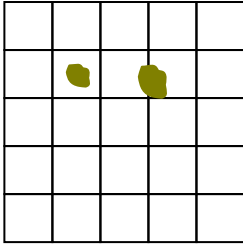
Then the application must progress through a native title process, pursuant to the *Native Title Act 1993 (Cth)*. For further information about native title, please refer to www.ntt.gov.au or contact the Native Title Services Unit at the enquires email address below.

*In recognition that ATPs do not have expedited processes for native title, the inclusion of a sub-block in the excluded land will be permitted where it does not exceed more than 10% of the permit area or a complete block (refer example three below).

Examples

Example 1

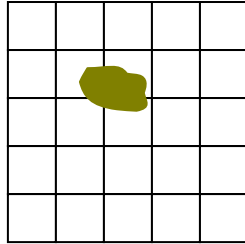
✓ Policy can be applied to all permit types



Not a whole sub block and native title area is less than 10% of the area of the permit

Example 2

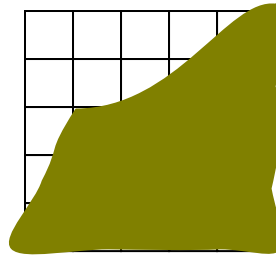
✓ Policy can be applied to



Not a whole sub block, native title area is less than 10% of the area of the permit, but intersects multiple sub blocks.

Example 3

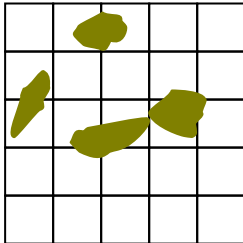
✓ Policy can be applied to



ATP can include sub-block where total area does not exceed 10% of the area of the permit.

Example 4

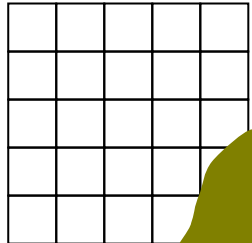
✗ Policy cannot be applied



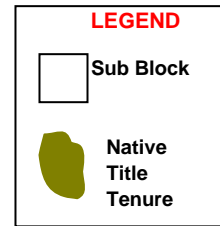
Not a whole sub block but native title area is greater than 10% of the area of the permit.

Example 5

✗ Policy cannot be applied,



Native title area covers a whole sub block (may be greater or less than 10%)



Adding excluded land

The various Resource Acts, with the exception of the *Geothermal Energy Act 2010*, contain provisions to add excluded land at a later stage. It is important to note that adding excluded land is considered a new application under the various Resource Acts and will be subject to the approval process and legislation at the time the application is made.

Andrew Cripps MP
Minister for Natural Resources and Mines
21 October 2012



Enquiries:

For help, information and technical support contact the MyMinesOnline helpdesk.

8.30am – 4.30pm (AEST) Monday to Friday on Queensland business days.

Telephone: +61 7 3199 8133

Email: mines_online@dnrm.qld.gov.au

Disclaimer

The purpose of these policies 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.* While this document has been prepared with care it contains general information and does not profess to offer legal, professional or commercial advice. The Queensland Government accepts no liability for any external decisions or actions taken on the basis of this document. Persons external to the Queensland Government should satisfy themselves independently and by consulting their own professional advisors before embarking on any proposed course of action.