

Comparison of Land Uses and Crown Land Tenures

For information on Roads and Accessways refer to:

www.dplh.wa.gov.au/information-and-services/crown-land/crown-land-roads-and-accessways

and for licences refer to www.dplh.wa.gov.au/information-and-services/crown-land/licences-to-use-crown-land

Version 1.3 – July 2020

Tenure/ Land Use	Pastoral Lease (Part 7 of the <i>Land Administration Act 1997</i>)		Lease for Specified Purpose (Tenure) (Part 6 of the <i>Land Administration Act 1997</i>)	Crown Reserves (Tenure) (Part 4 of the <i>Land Administration Act 1997</i>)
	Pastoral Lease (Tenure)	Diversification Permit - specified activity (Land use)		
Overview	<ul style="list-style-type: none"> Commercial grazing of authorised stock; agricultural, horticultural or uses supplementary to grazing of authorised stock; ancillary activities. See Pastoral Purposes Framework for more detailed information. Carbon sequestration projects using the Human-Induced Regeneration (HIR) of a permanent even-aged forest methodology may be established on suitable pastoral leases. See www.agric.wa.gov.au/carbon-farming/hir-carbon-farming-pastoral-lease-lands for further information. Annual rent payable. Transferable and potentially renewable. 	<ul style="list-style-type: none"> Can only be held by pastoral lessee. Not transferable to other parties. Not a registerable interest. 	<ul style="list-style-type: none"> Usually applied to land over which the State wishes to retain oversight for strategic land use planning or other reasons. Term and conditions appropriate to use, with or without option to freehold. Permitted use agreed and specified in lease conditions. Rent usually applies depending on the type of lease and applied in accordance with lease conditions. Transferable and renewable (if an option in the lease conditions permit). Instances where leasehold tenure is likely to apply include highly vulnerable land; environmental, social and/or economic value(s) on the land require protection which cannot be provided via existing regulatory mechanisms; land that readily degrades; or land of importance to possible future provision of infrastructure. Leases are usually granted when exclusive use of the land is required for longer term commercial ventures. Examples: large agricultural projects; State Agreement leases; utility providers; strategic tourism purposes; light industrial; marina sites and caravan parks. 	<p>Multiple and varied uses of reserves in the public interest.</p> <p>(a) Holds intrinsic community value or of high conservation value that should be preserved and maintained for the benefit of future generations;</p> <p>(b) For core business/service delivery needs of general sector State agencies and local governments.</p> <p>Rent not payable. If leases are granted by the Management Body of a reserve or by the State over an unmanaged reserve, rent may be payable under that lease. A condition may be included in the Management Order which requires the income generated by the use of the reserve to be used by the Management Body for the upkeep, maintenance and repair of the reserve.</p> <p>Management of Reserves: Once created, a reserve is usually placed under the care, control and management of an appropriate management body, typically a State Government agency, local government or other organisation which can hold land and which has perpetual succession.</p> <p>A Management Order under the <i>Land Administration Act 1997</i> provides for management of the reserve for the designated purpose but does not convey ownership of the land. A reserve can only be used and leased (by the management body) in accordance with the purpose of the reserve and conditions in the Management Order.</p> <p>Management Order conditions may range from specific land management restrictions to granting leasing or licencing powers. Ministerial consent is generally required for the grant of interests over reserves such as leases and mortgages.</p> <p>For more information regarding reserve classifications including Class "A" reserves</p> <p>www.dplh.wa.gov.au/information-and-services/crown-land/crown-land-reserves</p>

Tenure/ Land Use	Pastoral Lease (Part 7 of the <i>Land Administration Act 1997</i>)		Lease for Specified Purpose (Tenure) (Part 6 of the <i>Land Administration Act 1997</i>)	Crown Reserves (Tenure) (Part 4 of the <i>Land Administration Act 1997</i>)
	Pastoral Lease (Tenure)	Diversification Permit - specified activity (Land use)		
Freehold (refer to page 5)	✗ Not applicable.	✗ Not applicable.	✓ If stipulated in lease conditions and subject to Minister's consent.	✗ Not applicable.
Sub-leasing	✓ May be subleased.	✗ Not applicable.	✓ If in accordance with the lease conditions and the purpose of the lease and subject to the Minister's consent.	✓ If power to lease is stipulated in the Management Order and the lease granted by a Management Body or the State permits same.
Term	Varied terms (currently restricted to 50-year maximum term).	Usually same as the relevant pastoral lease unless special conditions are stipulated. The term of diversification permits is at the discretion of the Pastoral Lands Board. At present, the majority of diversification permits are issued for the term of the relevant pastoral lease, but some permits are issued for shorter terms.	Standard term is typically 21 + 21 years.	Generally, a Management Order is not granted for a term but can be in rare circumstances. If the Management Order has a condition allowing power to lease, it may allow for lease terms of greater than 21 years and it can be no greater than the term provided for in the Management Order. Under other statutes such as the <i>Port Authorities Act 1999</i> , Management Orders with power to lease conditions may be longer.
Native Title interests	Unless native title has been extinguished or does not exist: 1. the renewal, re-grant or re-making of a pastoral lease will constitute a future act under the <i>Native Title Act 1993</i> ; 2. the grant of a pastoral lease will constitute a future act under the <i>Native Title Act 1993</i> and be subject to a future act process. Noting that in both of the above cases, native title is suppressed for the term of the pastoral lease.	Unless native title has been extinguished, the grant of the permit will constitute a future act under the <i>Native Title Act 1993</i> and be subject to a future act process. The applicable future act process depends on the nature of the permit activity. See Pastoral Purposes Framework for more detailed information.	Unless native title has been extinguished or does not exist the grant of a lease will constitute a future act under the <i>Native Title Act 1993</i> and be subject to a future act process. The applicable future act process depends on the nature of the permitted use of the land.	Unless native title has been extinguished or does not exist the creation of a Reserve and Management Order may constitute a future act under the <i>Native Title Act 1993</i> .
Grazing stock	✓ Authorised stock - cattle, sheep, horses and managed goats.	✓ Grazing prohibited stock (i.e. animals other than authorised stock) requires a permit.	✓ If permitted under the conditions of the lease.	✗ Lease would be more appropriate tenure.
Horticulture/agriculture	✓ Limited to horticultural uses of land inseparable from, essential to, or normally carried out in conjunction with the grazing of authorised stock, including the production of stock feed.	✓ Must be either: <ul style="list-style-type: none"> related to the pastoral use of the land; or located in an enclosed or improved part of the pastoral lease. May require other approvals, such as clearing permits and water licences.	✓ If permitted under the conditions of the lease.	✗ Lease would be more appropriate tenure.

Tenure/ Land Use	Pastoral Lease (Part 7 of the <i>Land Administration Act 1997</i>)		Lease for Specified Purpose (Tenure) (Part 6 of the <i>Land Administration Act 1997</i>)	Crown Reserves (Tenure) (Part 4 of the <i>Land Administration Act 1997</i>)
	Pastoral Lease (Tenure)	Diversification Permit - specified activity (Land use)		
Residential	✓ The lessee and family, staff, etc. may reside on a pastoral lease.	✓ Generally not applicable. However, Pastoral Lands Board may issue permits under s122 of the <i>Land Administration Act 1997</i> to allow residential use for non-pastoral workers in enclosed / improved areas.	✓ If consistent with purpose and conditions of the lease.	✗ Lease would be more appropriate tenure.
Tourism	✗ Not applicable.	✓ Must be either: <ul style="list-style-type: none"> pastoral-based and purely supplementary to pastoral activities on the land; or located in an enclosed or improved part of the pastoral lease. May require other approvals.	✓ If permitted under the conditions of the lease. Likely to be intensive, such as a substantial fixed permanent accommodation facility involving significant investment.	✓ If in accordance with the reserve purpose and any Management Order conditions - must be generally consistent with preservation of the natural resource(s) of the land.
Aboriginal use and benefit	✗ However, Aboriginal people may at all times enter upon any unenclosed and unimproved parts of pastoral leases to seek their sustenance in their customary manner.	✗ Not applicable.	✓ If permitted under the conditions of the lease.	✓ If in accordance with the reserve purpose and any Management Order conditions or Native Title rights and interests.
Environmental offsets / land rehabilitation	✓ The Pastoral Lands Board encourages pastoral lessees to maintain and restore land and ecosystems.	✓ Restoration activities may include destocking paddocks, fencing off degraded areas or active rehabilitation, such as earthworks, rakes and bunds. In general terms, the Pastoral Lands Board considers that no additional approvals are required to conduct restoration activities, so long as the activities are consistent with the pastoral lessee's requirements under section 108 of the <i>Land Administration Act 1997</i> .	✓ If permitted under the conditions of the lease; conditions may include restoration or rehabilitation of land under the <i>Land Administration Act 1997</i> or the <i>Soil and Land Conservation Act 1945</i> .	✓ If in accordance with the reserve purpose and any Management Order conditions. In addition, conditions may include restoration or rehabilitation of land under the <i>Land Administration Act 1997</i> or the <i>Soil and Land Conservation Act 1945</i> .
Lifestyle or recreational	✓ The Pastoral Lands Board considers pastoralists, their family and their staff residing at a homestead as pastoral purposes, and no additional permissions are required. However, pastoral lessees are required to be compliant with their requirements under the pastoral lease and the <i>Land Administration Act 1997</i> .	✓ Where a lifestyle or recreational use is not consistent with pastoral purposes, the Pastoral Lands Board may consider issuing a permit for pastoral-based tourism, or for non-pastoral use of an enclosed or improved part of the pastoral lease.	✓ If permitted under the conditions of the lease.	✓ If in accordance with the reserve purpose and any Management Order conditions.

Tenure/ Land Use	Pastoral Lease (Part 7 of the <i>Land Administration Act 1997</i>)		Lease for Specified Purpose (Tenure) (Part 6 of the <i>Land Administration Act 1997</i>)	Crown Reserves (Tenure) (Part 4 of the <i>Land Administration Act 1997</i>)
	Pastoral Lease (Tenure)	Diversification Permit - specified activity (Land use)		
Conservation purposes	✓ The Pastoral Lands Board encourages pastoral lessees to maintain indigenous plants and improve ecologies. In general, the Pastoral Lands Board considers that no additional approvals are required to conduct conservation activities, so long as the activities meet the criteria of pastoral purposes and are consistent with the pastoral lessee's obligations under section 108 of the <i>Land Administration Act 1997</i> . In particular, this includes activities aimed at restoring soils or rangeland condition, such as constructing pastoral infrastructure to exclude feral animals and livestock on ecologically sensitive areas, or installing measures to slow down the flow of water.	✓ Where the activity is not consistent with pastoral purposes, a permit under section 122 of the <i>Land Administration Act 1997</i> , or alternative tenure may be required. For instance, an intensive activity aimed at fostering the conservation of native wildlife may require a section 122 permit, if the activity does not result in restoring soils or rangeland condition.	✓ If permitted under the conditions of the lease.	✓ If in accordance with the reserve purpose and any Management Order conditions.
Commercial	Commercial grazing of authorised stock, and certain supplementary uses and ancillary activities.	✓ If permitted under the conditions of the diversification permit.	✓ If permitted under the conditions of the lease and in line with lease purpose.	✗ Not generally permitted. Only considered under certain circumstances and usually only when ancillary to the reserve's purpose. Generally, a lease would be more appropriate tenure.

Freehold tenure

Conditional freehold

- Primarily for community benefit and not primarily for commercial purpose.
- Fee simple (freehold) is subject to conditions that are registered against the certificate of title.
- Perpetual term.
- Cannot be transferred, licensed, mortgaged, charged or otherwise encumbered without written permission from the Minister for Lands.
- Conditional freehold tenure may be granted at a nominal price or a discounted price if a community benefit is to be provided by the proposed development of the conditional tenure land for the specified use. Example: Church.
- While freehold, the title contains conditions that restrict the use of the land. These restrictions can be removed either by the payment of an amount equal to the unimproved value of the land at the time of payment (where the land was granted at a nominal price) or an amount calculated in accordance with the formula set out in s75(4)(b) (ii) of the *Land Administration Act 1997* (where the land was granted at a discounted price) unless the Minister, in prescribed circumstances, with the prior approval of the Treasurer, waives in whole or in part the payment of the relevant amount.
- Can be forfeited under the *Land Administration Act 1997* for non-compliance with the designated condition(s).

Freehold vs Leasehold

Freehold tenure is usually applied to land which is not required to be retained by the Crown under either reserve or leasehold tenure, subject to considerations of development and planning controls. Public competition is also a consideration.

Freehold is the highest form of tenure. Any grant of freehold (of Crown land) is subject to the discretion of the Minister for Lands.

Although the preferred form of tenure for most applicants is believed to be freehold, there may be several considerations to the State in being able to grant this level of tenure such as:

- Native title implications under the *Native Title Act 1993*.
- Competing mining, petroleum and geothermal interests; approval from the Minister for Mines is required to enable any disposition of land.
- Strategic significance of the land, for example, as an area of high conservation value.
- Section 89 of the *Land Administration Act 1997* prevents the direct conversion of pastoral leases to freehold.
- Standard referrals by the department – a process that is designed to identify if the subject land is of strategic or other significance and if there is a future use or existing circumstance that needs to be protected. For example, if the State needs to retain control of a site through long-term leasehold.
- If there is an option to freehold stipulated in the lease, and the proponent has met all the conditions of the lease and has paid the purchase price in full, then freehold tenure may be granted.
- Proximity of land near the coastline. For example, if land is in close proximity to the coastline, leasehold tenure would be the State's preferred option as opposed to freehold because leasehold provides for management of responsibilities and compensation liability arising from coastal erosion and management of requirements in accordance with the *State Planning Policy 2.6 – Coastal Planning*.

Disclaimer

This document has been produced by the Department of Planning, Lands and Heritage. Any representation, statement, opinion or advice expressed or implied in this publication is made in good faith and on the basis that the Government, its employees and agents are not liable for any damage or loss whatsoever which may occur as a result of action taken or not taken, as the case may be, in respect of any representation, statement, opinion or advice referred to herein. The contents do not constitute legal advice, are not intended to be a substitute for legal advice and should not be relied on as such. You should seek legal advice or other professional advice should be obtained before applying the information contained in this document to particular circumstances.