

PASTORAL LEASE PERMITS and ALTERNATIVE LAND TENURE OPTIONS

To assist you in understanding the present options available under the *Land Administration Act 1997* for proposals for a new business venture in the pastoral land estate and broader Crown lands of rangeland Western Australia, please read this introductory fact sheet and then make contact with the Department of Planning, Lands and Heritage.

PERMITS TO DIVERSIFY

Under section 106 of the *Land Administration Act 1997* (LAA), pastoral leases can only be used for pastoral purposes, except in accordance with a Permit issued under Part 7 Division 5.

The Pastoral Lands Board (PLB) can issue Permits to pastoral lessees seeking to carry out any other activity on the lease other than the primary pastoral use of livestock grazing of native vegetation.

Two types of Permits may be issued to the pastoral lessee under the following sections of the LAA.

1. Pastoral Use Permits

Section 119

Sowing of non-indigenous pastures

To sow and cultivate approved varieties of non-indigenous pasture on specified lease land area(s). Under this section a permit may include the sale of any produce of the pasture permitted.

Section 120

Agricultural uses of land under a lease

For the lessee to use specified lease land for crop, fodder, horticultural or other specified kind of agricultural production if the proposed use is reasonably related to the pastoral use of the land.

Section 121

Low-key pastoral-based tourism

To allow the pastoral lessee to use specific land area(s) for pastoral-based tourist activities of a specified kind if the activities will be purely supplementary to the pastoral use of the lease.

Section 122A

Keep or sell prohibited stock

To keep prohibited stock on the land under a pastoral lease and/or sell prohibited stock. Prohibited stock are those classes of animals not 'authorised'.

2. Non-Pastoral Permits

Section 122 - Non-pastoral use of enclosed and improved land

The use of specified lease land for any non-pastoral purposes if the land has been enclosed or improved. An application must specify the use proposed, any facility proposed to be constructed, and the areas of land proposed to be used.

Native Title Act 1993 and relationship to Permits

Generally (but not exclusively), Permits for pastoral use purposes issued under sections 119, 120, 121 and 122A of the LAA, do not entail a 'future act' and as such are permitted under the *Native Title Act 1993*. Non-pastoral activity however covered by section 122 of the LAA, does require assessment to determine its native title status.

Government Approvals that may be required

Section 117 of the LAA stipulates that the PLB is not to issue a Permit unless environmental conservation requirements are satisfied.

As such there is a requirement that any additional government approvals that may be required for the proposed activity, must also be secured by the pastoral lessee prior to commencing any activity permitted by the PLB.

The Department of Planning, Lands and Heritage (DPLH) can provide you with advice on these requirements as they apply to your proposal.

These additional government approvals often include but are not limited to one or more of the following:

- Local Government Planning and/or construction approval;
- Department of Water and Environmental Regulation (DWER) permit to clear leased land and/or remove native vegetation;
- Department of Primary Industries and Regional Development plant weed risk assessment;
- DWER licence for water allocation and/or extraction; and/or
- Department of Fisheries aquaculture licence.

Annual Permit Rent

The standard pastoral lease annual rental is for the right to graze the native vegetation. As Permit activities are additional to this, they may incur additional Permit annual rental.

Any additional Permit annual rental is calculated by the Valuer Generals Office at Landgate and charged separately to the standard annual pastoral lease rental.

ALTERNATIVE LAND TENURE OPTIONS

Where proposed activities over land comprised in a pastoral lease are not eligible under a Permit, then these alternative tenures under the LAA may be considered:

Section 79 – General Lease

The Minister for Lands may grant a Lease over a parcel of Crown land for any purpose and subject to any conditions. The Minister may require a performance bond for any such lease. For a section 79 lease to be issued, the affected land would need to be surrendered out of the relevant pastoral lease and legal access be determined.

A general lease may contain conditions including:

- a) Option to renew (or extend).
- b) Option to purchase the fee simple in the Crown land that is the subject of the lease.

In line with National Competition Policy, preference is for competitive release, but under certain circumstances the DPLH may enter into a private treaty arrangement. In the assessment of a general lease application, it is not assumed that a pastoral lessee of the land to be excised, is the best operator of the activity proposed and to this extent a justified business case and development plan is required. The DPLH can advise you on whether this applies to your proposal.

Section 83 – Lease for the benefit of Aboriginal people

Section 83 empowers the Minister to grant leases for a fixed term or in perpetuity for the purpose of advancing the interests of any Aboriginal person or persons to that person or persons or an approved body corporate (as defined in section 83(3)). The affected land would need to be surrendered out of the relevant pastoral lease prior to a section 83 lease being granted.

What could be involved in applying for a Lease?

Depending on the complexities of the proposal, the time taken to finalise each Lease or Licence varies considerably from case to case with determination factors including the following:

- a) Consultation with a range of planning and regulatory bodies (e.g. DWER, Department of Biodiversity Conservation and Attractions, Western Australian Planning Commission, Department of Mines, Industries and Regional Development, relevant local governments and relevant community groups);
- b) Impact of the new tenure on the commercial production area of the remaining pastoral lease;
- c) Survey and/or plan production;
- d) Determination of a legal access route if the area to be excised is not adjacent to a public road;
- e) Assessment of and agreement in relation to, rental (new tenure is often valued higher than a pastoral lease);
- f) Procedural requirements of the Native Title Act 1993 (Commonwealth). May include a requirement for the proponent to pay any negotiated costs;
- g) Changes to existing tenures; and
- h) An examination of the broader policy and legal issues relevant to the proposal.

DPLH can advise you on these matters as they relate to your proposal.

Licence co-existence with Pastoral Leases

Section 91 – Licence

The Minister may grant a licence that is a contractual, non-exclusive right authorising a use of land to do an act which would otherwise be a trespass or illegal. The Minister will determine the fees and conditions to be applied and may fix or extend the duration of such agreements.

Licences can co-exist with pastoral leases and with the agreement of the pastoral lessee, can be held by third parties. Recent examples of Licences issued over specified areas of pastoral leases have included walking tours and four-wheel drive recreational operations.

NEED FURTHER INFORMATION ?

Initial enquiries should be made to:

Department of Planning, Lands and Heritage

Telephone: 08 6552 4574

Email: pastoralapprovals@dplh.wa.gov.au