



Western Australia's Pastoral Lands Tourism Development

The growth of regional tourism throughout Western Australia has brought increased visitor numbers and growing demand for commercial tourism activities on pastoral lands. The following information provides a guide for commercial operators or others wishing to access pastoral leasehold land for tourism purposes.

DIVERSIFICATION PERMITS

The *Land Administration Act 1997* (LAA) stipulates that a pastoral lessee must not use a pastoral lease for purposes other than pastoral, unless in accordance with a permit that has been granted for the specified purpose.

However, the Pastoral Lands Board (PLB) is able to issue a Diversification Permit to pastoralists to carry out other activities, provided that those activities, are purely supplementary to the pastoral activities on the lease.

Important points to consider when applying for a Diversification Permit are:

- A Diversification Permit is for the exclusive use of the pastoral lessee, meaning that third party commercial interests are not permitted to develop or to own infrastructure established as a result of the permit
- The type of intended activity is important. In particular, tourism permits must be based on pastorally-related tourism activities
- All persons employed in the tourism activity established as a result of the permit, are required to be employees of the pastoral lessee
- Diversification Permit's cannot authorise or allow any tourism activity that involves observing activities or cultural works of Aboriginal people

The pastoral leaseholder may charge an access fee for people passing through the pastoral lease. This fee is only to cover the costs incurred as a result of providing access (e.g. signage, rubbish collection, grading tracks). Pastoralists providing a service for a fee (e.g. meals, tours or accommodation) must have a pastoral Diversification Permit for that service.

Pastoral lessees wishing to apply for a diversification permit should contact the Pastoral Lands Board or go to www.lands.rdl.wa.gov.au

LEASE AND LICENCE OPTIONS

Pastoral lessees do not have the right to 'allow' third parties to undertake activities on pastoral leases. They only have the right to use the land for pastoral purposes and activities specified under a Diversification Permit.

However, the *Land Administration Act 1997* (LAA) and Regulations contain a range of options that can be applied to allow third parties to conduct tourism activities on Western Australian pastoral lands.

The use of a Section 91 licence

Section 91 of the LAA can be used to permit a non-exclusive right in the form of a licence for a specified tourism activity. These licences are generally for short periods and can be issued to a third party.

A Section 91 licence does not involve the application of the full native title future act process and would therefore normally involve shorter timeframes for processing.

A Section 91 licence provides right of access and a right to conduct an activity but does not permit ground disturbance or the development of structures.

A commercial tour operator is required to have all other legal compliance in place (e.g. appropriate vehicle licence plates and public liability insurance cover) before a Section 91 licence can be allocated.

Excision from a pastoral lease

Section 79 of the LAA allows for the excision of land from a pastoral lease and the issue of leasehold tenure to a tourist operator. This process gives direct tenure of land and allows for tourism development by a third party. The issuing of tenure would normally occur through a competitive tender process.

A landholding created through excision allows for the issue of a lease or other tenure, in the process introducing obligations such as future act negotiations under the *Native Title Act 1993* (NTA). It may be possible for a developer to enter into an Indigenous Land Use Agreement (ILUA).

An ILUA is a voluntary agreement between a native title group and others about the use and management of land and waters that allows people to negotiate flexible, pragmatic agreements to suit their particular circumstances.

ILUAs can be made separately from the formal native title process but they may also be part of a native title determination, meeting the requirements under the NTA. They may include provisions that prevent acts that might otherwise extinguish native title (in other words destroy the native title so that it cannot exist any more).

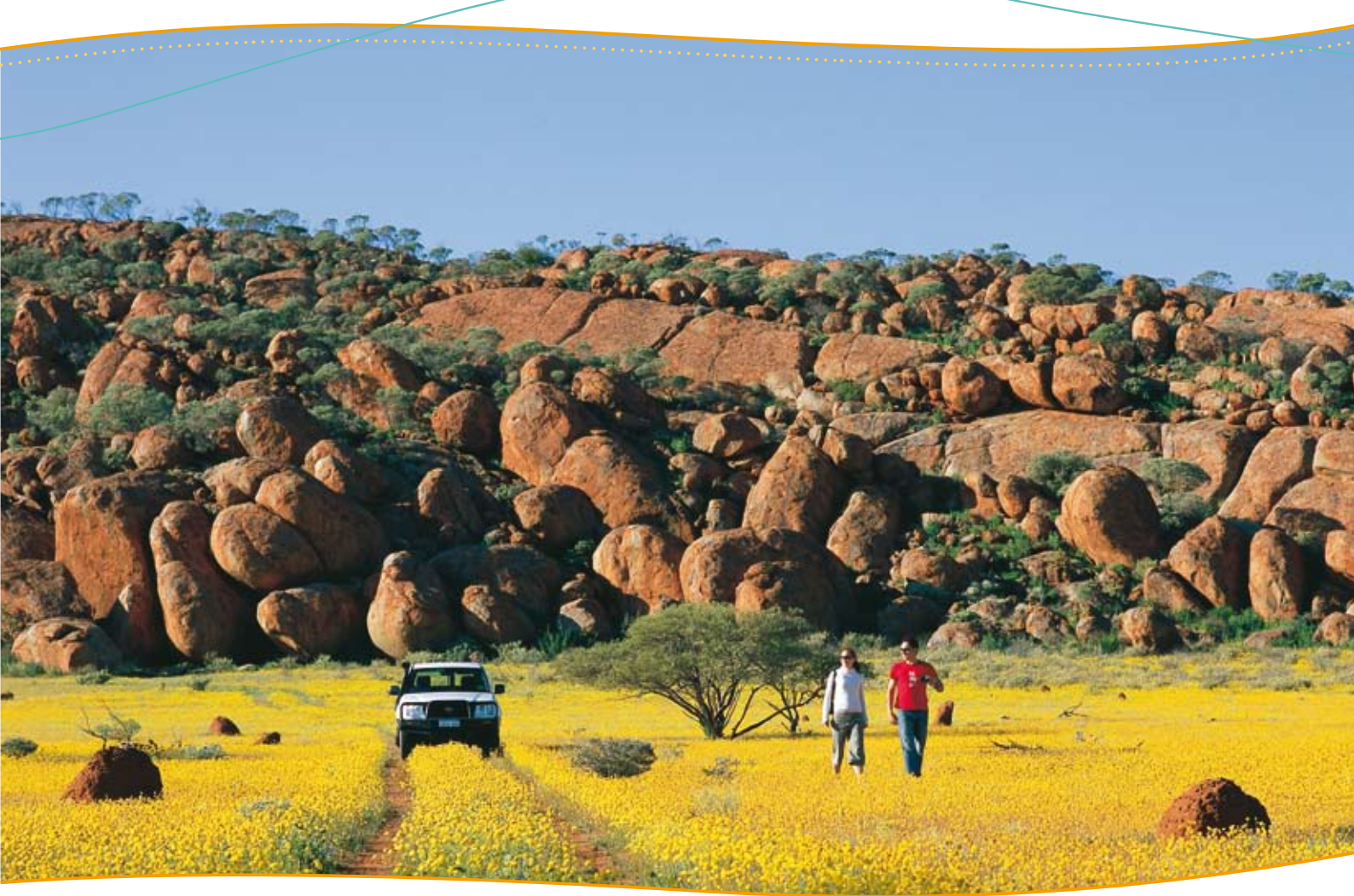
Even where an ILUA has been made, it will still be necessary to obtain other relevant approvals (such as planning approval).

For more information on ILUAs, refer to fact sheets published by the National Native Title Tribunal at www.nntt.gov.au

Any land dealing considered a future act under the NTA provides procedure rights to the native title party. Future acts can in some instances extinguish all native title rights and interests.

In other instances they will have a temporary extinguishing effect due to the "non extinguishing principle" which suppresses the rights and interests only during the term of the tenure.





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Compulsory acquisition is an option open to the State Government but it is used in certain instances. Compulsory acquisition may be used to facilitate agreements between native title holders and government.

An ILUA can be applied making use of the non-extinguishing principle instead of a compulsory acquisition. Once an ILUA has been registered the land can be used for what the proponent intended with native title rights and interests suppressed for the duration of the interest in land.

The timeframe required to achieve an excision is normally two to three years.

A Public Access Route

Provision for Public Access Routes through pastoral lands is a mechanism that can be used to legalise access to important visitor attractions for both tour groups and self-drive travellers.

This provision has not to date been used to improve access to visitor attractions and is being reviewed.

For more information, please contact the Pastoral Lands Board or State Lands Services through the Department of Regional Development and Lands at www.lands.rdl.wa.gov.au or telephone 08 9347 5000.

For information on mining obligations and requirements go to the Department of Mines and Petroleum at www.dmp.wa.gov.au

For information on starting a tourism business contact Tourism Western Australia's Regional Manager for the area. Contact details can be found at www.tourism.wa.gov.au

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*The information in this paper was compiled with the assistance
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