

Alteration of purpose or conditions of a Western Lands Lease

October 2015

All Western Lands Leases are granted for a specified purpose and include a set of conditions of use. The land subject to lease cannot be used for any other purpose or contrary to any condition of the lease.

General

From time to time, western lands lessees identify potential alternative uses for their land. In many circumstances, this change of use requires an alteration of lease purpose and/or conditions to accommodate and legally validate the new use.

Provision exists under s.18J of the *Western Lands Act 1901* for any purpose or condition attaching to a lease to be varied, modified or revoked. These alterations cannot be effected without the consent of the lessee and approval of the Minister administering the Act.

Where it is intended to use only part of a lease for another purpose, a subdivision may also be necessary and the fact sheet titled 'Subdivision of a Western Lands Lease' should be read in conjunction with this information.

Applications

Application to change lease purpose or alter conditions must be made by the registered lessee/s on the approved form, accompanied by the prescribed fee.

Every application is fully investigated and assessed on its merits. Approval cannot be assumed or guaranteed.

Environmental and planning considerations

In many circumstances a local council (under its Local Environmental Plan) may require the lessee to obtain development consent for the proposed new land use/activity. This would involve the lodgement of a Development Application with the council, who will then be the consent authority under *Part 4* of the *Environmental Planning and Assessment Act 1979* (EPAA). However, where the development is on Crown land (which includes land held under lease from the Crown) any Development Application must in the first instance be authorised for lodgement by the Department of Primary Industries – Lands (the Department) as owner of the land.

Where a council is not the consent authority for a proposed development, the responsibility for determination rests with the Department under *Part 5* of the Act.

Under the *Part 5* provisions, the Department is required to take into full consideration all possible matters affecting or likely to affect the environment due to the proposed new land use/activity.

In order for the Department to complete this assessment, the lessee is required to prepare a Statement of Environmental Effects (SEE). This document must address all matters listed at *Clause 228* of the *Environmental Planning and Assessment Regulation 2000* (EPA) and includes (but is not limited to) the following.

- State, regional and local planning instruments e.g. Local Environmental Plan.
- Physical description of the activity.
- Vegetation, soils and land capability.

- Water resources.
- Cultural heritage (Indigenous and European).
- Biodiversity, endangered or threatened species and ecosystems.
- Socio-economic benefits and costs.
- Pollution of the environment.
- Cumulative impacts.

Upon consideration of the SEE, if the proposed activity is, or is likely to have, a significant effect on the environment or threatened species, populations or ecological communities, or their habitats, then an Environmental Impact Statement (EIS) must be prepared in accordance with the provisions of the EPA.

Details concerning the preparation of this documentation can be obtained from the Department. Many lessees engage the services of an environmental consultant to compile the necessary data and information on their behalf.

The above mentioned information is usually only required when the proposed activities will substantially alter the environment from its current natural state. Examples of this include changing the purpose of a lease from grazing to cultivation or intensive agriculture/irrigation or to business (e.g. an abattoir).

For low impact land use changes (e.g. to farm tourism), a simple description of the proposed activity and potential environmental impacts is usually sufficient.

Native title considerations

Native title does not need to be considered in any proposal to vary the conditions or purpose of the lease if native title in the land is deemed to be extinguished. The grant of various leases, freehold estates and other acts by the Crown can extinguish native title. Native title is considered to be extinguished on perpetual western lands leases for grazing or for agriculture.

Where native title is not deemed to be extinguished, the state must, prior to altering the purpose or conditions of an affected lease, give consideration to the provisions of the *Commonwealth Native Title Act 1993*. This may include giving the New South Wales native title representative body and any claimant for native title over the land the opportunity to comment on the change of purpose or conditions.

Annual rent

The annual rent payable on a lease upon change of purpose is dependent on the proposed new purpose. Rent on Western Lands Leases is determined by both legislation and policy in the following manner.

- Grazing, pastoral, agriculture, cultivation or similar leases are assessed according to property size, land use and rehabilitation areas.
- Residence leases are assessed at 3% of the land value.
- Business/commercial leases are assessed at 6% of the land value.
- Land value excludes improvements on the land.

Where a lease is held for mixed purposes, the higher rate applies e.g. a lease for 'residence and business' attracts a rent of 6% of the land value.

Conditions

Application can be made to alter the conditions attaching to a lease.

Circumstances where this action may be necessary include buffer exchanges to offset cultivation consents and the addition of new cultivation areas on leases already approved for 'grazing and cultivation'.

It may also be necessary to alter the conditions of a lease because of a change of lease purpose, to regulate the new land use.

No alteration of lease conditions can be effected without the lessee's agreement.

Cost

The application fee is currently \$160.00 and is payable on lodgement. If the application is approved, other costs may be payable for field inspection and reporting, valuation for rental purposes and dealing lodgement with the Department and Land and Property Information NSW. Costs may not necessarily be limited to the above and can vary dependent on the application.

The fee for owner's consent to lodge a Development Approval is \$65.70.

Any costs charged by a consultant (engaged by a lessee) are the lessee's responsibility, as are any costs imposed by local councils for the Development Application process.

More information

For more information, please contact the Department:

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