



# PASTORAL BOARD GUIDELINE

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## Title

### Pastoral Board Guideline – Use of Pastoral Land for Non-Pastoral Purposes

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## Background

This Guideline provides a guide for Pastoral Board (the Board) decision-making when considering applications for the use of pastoral land for non-pastoral purposes.<sup>1</sup>

Under section 22(1)(b)(iii) of the *Pastoral Land Management and Conservation Act 1989* (PLMC Act) it is a lease condition of all pastoral leases that lessees do not use the land for any purpose other than pastoral purposes, except with the prior approval of the Board.

Section 22(6)(c) and 22(6)(d) of the PLMC Act allows the Board to approve the use of pastoral land for non-pastoral purposes.

In making any decision under the PLMC Act, the Board must comply with the statutory duty in section 5 of the PLMC Act to:

- Act consistently with, and seek to further the objects of the PLMC Act;
- Have regard to plans or guidelines established by Government agencies, regional landscape boards and planning authorities that are applicable to pastoral land; and
- Have regard to the relevant terms of any Indigenous Land Use Agreement (ILUA).

The Objects of the PLMC Act are copied below in the ‘Legislative Context’ section.

This Guideline does not apply to non-pastoral purposes on pastoral land that is regulated by other legislation, such as mining activities.

Depending on the nature of an application, approvals may also be required under other legislation.

All applications will be assessed on a case-by-case basis.

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## Disclaimer

This Guideline provides a framework for Board decision-making, but it is not a legally enforceable or a binding policy instrument. The Board reserves the right to amend or remove this Guideline at any time.

This Guideline also identifies lessee’s obligations under the PLMC Act and informs lessees and other applicants about the information that should be provided in applications to use pastoral land for non-pastoral purposes. Nothing in this Guideline should be taken to be legal advice and lessees should seek their own legal and/or other advice where required.

Any person using the information contained in this document does so at their sole risk and is responsible for assessing the accuracy, currency, completeness and relevance of the information for their own purposes. The State of South Australia does not warrant or make any representation, express or implied,

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<sup>1</sup> This Guideline does not apply to wind farms.



regarding the accuracy, reliability, suitability, currency or completeness of the information in this Guideline and accepts no liability arising for any consequences resulting from any use or reliance on the information in this document.

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## Definitions

The words and phrases used in this Guideline have the meanings below:

**Pastoral purposes:** Has the same meaning as in the PLMC Act and means the pasturing of stock and other ancillary purposes (section 3, PLMC Act).

To avoid doubt, the Board considers that the act of de-stocking the land during dry conditions or drought to prevent stock losses, maintain stock health or to rest or rehabilitate the land, is an activity or use of the land which is ancillary to the pasturing of stock and is therefore a pastoral purpose.

**Ancillary purposes:** Includes purposes which are associated with, connected to, or support the pasturing of stock, but does not include purposes that are remotely or indirectly connected to the pasturing of stock.

**Stock:** Has the same meaning as in the PLMC Act and means any species of animal permitted by the terms of a pastoral lease to be pastured by the lessee on the land as part of the commercial enterprise of the lease (section 3, PLMC Act). This currently includes only sheep and/or cattle.

**The Board:** Has the same meaning as in the PLMC Act and means the Pastoral Board of South Australia established under the PLMC Act. References to the Board in this Guideline include a delegate of the Board.

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## Assessment procedure

The Board's approval is only required for the use of pastoral land for non-pastoral purposes.

The Board will consider all written applications and advise the applicant in writing if either:

1. The Board considers that the proposed purpose is:
  - a pastoral purpose, permitted under the terms of the pastoral lease and that no approval is required; or
  - a non-pastoral purpose, and that approval under section 22(6)(c) or 2(6)(d) of the PLMC Act is either provided or not provided.
2. If the Board considers that any approval should be subject to conditions, the Board will consult with the applicant regarding any proposed conditions prior to making any final approval.
3. The Board will comply with notification and/or consultation requirements under the *Native Title Act 1993* and any ILUA in place covering the lease in considering a change of purpose request.

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## Non-pastoral purpose applications

Section 22(6)(c) of the PLMC Act provides that the Board may *approve the use of land subject to a pastoral lease for a purpose other than pastoral purposes*.

Section 22(6)(d) provides that the Board may *set aside from use for pastoral purposes land, or a part of the land, subject to a pastoral lease, and approve the use of the land set aside for the primary purpose of traditional Aboriginal pursuits, conservation purposes or other purposes as specified by the Board*.

The Board will use the following criteria when considering a request to use pastoral land for non-pastoral purposes under section 22(6)(c) or 22(6)(d) of the PLMC Act.



## **Section - 22(6)(c)**

In deciding whether or not to approve the use of land for a non-pastoral purpose pursuant to section 22(6)(c), the Board will consider the degree to which the non-pastoral purpose would:

- Be secondary to the primary pastoral purpose but still facilitate the pursuit of the pastoral purpose;
- Be consistent with the primary pastoral purpose;
- Contribute to sustaining or improving the resilience of the pastoral enterprise; or
- Limit or prevent the pasturing of stock on the land.

The following will also be considered with each of the criteria above:

- The area of the proposed purpose over the pastoral lease; and
- The period of time for the proposed purpose.

## **Section - 22(6)(d)**

The proposed non-pastoral purpose considered under section 22(6)(d) does not need to be directly related to pastoralism; however, the Board will not set aside land from use for pastoral purposes and approve the use of that land for a non-pastoral purpose under section 22(6)(d) if the non-pastoral purpose would:

- Be inconsistent with the objects of the PLMC Act; or
- Exclude the use of pastoral land for pastoral purposes over an extensive portion of the pastoral lease and/or for a significant period of time.

The following will also be considered with each of the criteria above:

- The area of the proposed non-pastoral purpose over the pastoral lease;
- The period of time for the proposed non-pastoral purpose; and
- The nature of the remaining pastoral purpose on the lease.

## **Other considerations:**

If relevant, the following will be considered in relation to assessing the above criteria for non-pastoral use applications under section 22(6)(c) and 22(6)(d):

- The Board will not approve the use of pastoral land for non-pastoral purposes that would:
  - override the pastoral purpose of a pastoral lease;
  - exclude large portions of a pastoral lease being used for pastoral purposes;
  - exceed a period beyond the current lease term (maximum lease term is 42 years); and
  - interfere with the statutory rights of Aboriginal and other people under the PLMC Act.
- Any associated agreements or plans the lessee enters into with third parties, and whether the proposed non-pastoral use described in any agreement or plan is inconsistent with the PLMC Act (noting that the Board is not bound by the terms of any agreement between a lessee and another party);
- Potential impacts on the condition of the land and its capacity to support pastoralism in the future after the non-pastoral use has ceased;
- Whether a pastoral lease is the appropriate tenure for the proposed non-pastoral use;
- Who will benefit from the proposed non-pastoral use, for example - the pastoralist, a third party or the community at large;
- The potential off-lease impacts of the non-pastoral use, including on neighbouring pastoral leases and how these will be managed;



- Any relevant unique characteristics of the pastoral lease that need special consideration (e.g. existing viability, current management arrangements, registered interests on the lease);
- If the proposed purpose may require a variation to land management conditions on the lease;
- Outcomes of most recent lease assessment or compliance inspections;
- Any relevant history of lease condition compliance by the lessee;
- If the non-pastoral use may impact the lessee's ability to comply with the pastoral lease's conditions now and in the future, including the effect of other legislation (e.g. *Native Vegetation Act 1991*);
- The outcomes of any Board consultation with other State Government bodies and/or other parties who may be adversely affected by the Board's decision;
- The outcomes of any consultation that the lessee has conducted with neighbouring lessees (noting this isn't a requirement of a lessee under the PLMC Act); and
- The outcomes of Board notification and/or consultation requirements under the *Native Title Act 1993* and any relevant ILUA.

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### ***Minimum information required for application***

The following information will be required as a minimum for the Pastoral Board to consider non-pastoral purpose applications:

- Full description of the proposed activities and any other specific information relating to the proposal (including the purpose/activities; proposed term; impacts on grazing regimes, pastoral production and pastoral infrastructure);
- Whether any pastoral lease land is proposed to be excluded from pastoral purposes, its location on the lease and the size of the proposed area to be excluded;
- Map of the activity area within the pastoral lease;
- Evidence of lessee consent, if application is from a third party;
- Copies of any associated management plans, agreements or contracts with the lessee or third parties relating to the proposed use; and
- Outcomes of any consultation conducted by the proponent with Native Title holders and other affected parties, regarding the proposed change of purpose.

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### ***Roles and responsibilities***

#### **Pastoral Board**

1. Act consistently and seek to comply with and further the objects of the PLMC Act in considering non-pastoral purpose applications.
2. Consider non-pastoral purpose applications pursuant to section 22(6)(c) or 22(6)(d) of the PLMC Act.
3. The Board may consider approving an application with imposed conditions pursuant to section 22(7) of the PLMC Act but will consult with the applicant prior to making any approval subject to the conditions.
4. The Board will comply with notification and/or consultation requirements under the *Native Title Act 1993* and any ILUA in place covering the lease.
5. The Board will consult with other agencies, statutory authorities and/or other parties who may be adversely affected by the Board's decision.



6. The Board may consider varying lease conditions, with consent of the lessee, if necessary for compliance purposes.

#### DEW

1. Support the Board in the decision-making process.
2. Provide lessees any required information regarding applications for non-pastoral use.
3. May, under delegation, make decisions under the PLMC Act.
4. Facilitate required tenure administration or consultation with registered interests.

#### Lessee

1. Must obtain approval from the Board to use pastoral land for any purpose other than pastoral purposes.
2. Should contact DEW if considering submitting an application for non-pastoral purposes.
3. Provide the Board with an application in writing, providing information as per this Guideline.

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### ***Legislative Context***

#### ***Pastoral Land Management and Conservation Act 1989***

##### **Section 3(1) - Interpretation**

“pastoral purposes” means the pasturing of stock and other ancillary purposes.

##### **Section 4—Objects**

The objects of this Act are as follows:

- (a) to ensure that all pastoral land in the State is well managed and utilised prudently so that its renewable resources are maintained and its yield sustained; and
- (b) to provide for—
  - (i) the effective monitoring of the condition of pastoral land; and
  - (ii) the prevention of degradation of the land and its indigenous plant and animal life; and
  - (iii) the rehabilitation of the land in cases of damage; and
- (c) to provide a form of tenure of Crown land for pastoral purposes that is conducive to the economic viability of the pastoral industry; and
- (d) to recognise the right of Aboriginal persons to follow traditional pursuits on pastoral land; and
- (e) to provide the community with a system of access to and through pastoral land that finds a proper balance between the interests of the pastoral industry and the interests of the community in enjoying the unique environment of the land; and
- (f) to provide for the operation of wind farms on pastoral land, concurrently with the land being used for pastoral purposes.

##### **Section 5—Duty of the Minister and the Board**

The Minister and the Board, in administering this Act and in exercising any other power or discharging any other function in relation to pastoral leases—

- (a) must act consistently with and seek to further the objects of this Act; and
- (b) must have regard to plans or guidelines established by Government agencies, regional landscape boards and planning authorities that are applicable to pastoral land; and
- (c) must have regard to the relevant terms of any ILUA.

##### **Section 22(1)(b) - Conditions of pastoral leases**



(iii) the lessee's obligation not to use the land for any purpose other than pastoral purposes, except with the prior approval of the Board.

#### Section 22(6)(c)-(d) - Conditions of pastoral leases

- (6) Board may, at the request or with the consent of the lessee—  
(c) approve the use of land subject to a pastoral lease for a purpose other than pastoral purposes; and  
(d) —  
(i) aside from use for pastoral purposes land, or a part of the land, subject to a pastoral lease; and  
(ii)ove the use of the pastoral land set aside for the primary purpose of traditional Aboriginal pursuits, conservation purposes or other purposes as specified by the Board.

#### Section 22(7) - Conditions of pastoral leases

- (7) Approval of the Board under subsection (6) must be in writing and may be subject to conditions.

#### 47—Rights of Aboriginal persons

- (1) Despite this Act or any pastoral lease granted under this Act or the repealed Act, but subject to this section, an Aboriginal person may enter, travel across or stay on pastoral land for the purpose of following the traditional pursuits of the Aboriginal people.
- (2) Subsection (1) does not give an Aboriginal person a right to camp—  
(a) within a radius of one kilometre of any house, shed or other outbuilding on pastoral land; or  
(b) within a radius of 500 metres of a dam or any other constructed stock watering point.
- (3) An ILUA in force in relation to particular pastoral land may—  
(a) confer a right to enter, travel across or stay on the land in addition to the rights conferred by subsection (1); or  
(b) remove or qualify, or make any other provision in relation to, the rights conferred by subsection (1).

#### ***Native Vegetation Act 1991 (Regulations)***

##### Schedule 1, Part 3, Clause 26 - Grazing of domestic stock

Clearance of vegetation by grazing domestic stock on land in a manner, and at a rate, that will not cause permanent degradation of the native vegetation on the land where Part 1 clause 5 does not apply because the manner and rate of grazing is not consistent with the manner in which, and the rate at which, the land has previously been grazed by domestic stock of the same species during the previous 10 years, provided that -

- (a) guidelines relating to clearance of that kind have been adopted by the Council in accordance with section 25 of the Act;  
(b) the person undertaking the clearance complies with those guidelines.