

## Section 91 of the *Land Administration Act 1997* Policy

### Objective

To set out the Shire of East Pilbara's policy position when responding to referrals from the Department of Planning, Lands and Heritage (DPLH) in respect of a proposed grant of Section 91 of the *Land Administration Act 1997* (LAA) Licence.

To help minimise any identified operational impacts of the grant of Section 91 LAA Licence on neighbouring land uses and infrastructure.

### Definition

**Profits à prendre** is a right to take something from the land.

### Background

The LAA is Western Australia's primary legislation dealing with the management of Crown land. The LAA is administered by the Minister for Lands ("the Minister"), through DPLH.

Access for preliminary investigations and feasibility study purposes is typically secured by negotiating a licence (such as a section 91 licence or an access licence), before securing long-term land rights for development and operations such as leases.

Diversification Leases are a new category of land tenure created by section 92B (1) of the LAA to allow for a more diverse range of land uses on the Crown land estate. Diversification Leases operate akin to pastoral leases, as they vest non-exclusive land use in the lessee and allow for non-exclusive single or multiple land uses to coexist on Crown land. There is a range of permitted land uses, including but not limited to, grazing, agriculture, environmental offsets and renewable energy. Diversification Leases have gathered particular interest as a land tenure solution for large scale, distributed renewable energy projects such as windfarms.

Section 91 of the LAA authorises the Minister to grant licenses and profits à prendre over Crown land. These grants are for specific purposes and can be for a fixed duration, with the Minister for Lands having the power to amend, review, or terminate them under certain conditions.

Once the feasibility of developing a land use on the land has been established, then a variety of long-term land access options are available for the development and operation of the land use, depending on whether the underlying land is Crown land or freehold land.

Key aspects of Section 91:

- **Granting Authority:**

The Minister can grant licenses and profits à prendre for any purpose on Crown land.

- **Duration and Terms:**

The Minister can set the duration, fees, and conditions of these grants, and can also amend or terminate them.

- **Licences vs. Profits à Prendre:**

A licence is a non-exclusive right to use Crown land for a specific purpose, while a profit à prendre is a right to take something from the land.

- **No Exclusive Possession:**

Licenses generally do not grant exclusive possession of the land.

- **Intersections with Other Tenures:**

Section 91(5) clarifies that licenses and profits à prendre can exist simultaneously with mining, petroleum, or geothermal energy rights.

- **Native Title Considerations:**

When dealing with Crown land, the Minister must consider existing native title rights and interests.

- **Renewable Energy Projects:**

Section 91 licenses are often used by renewable energy proponents to conduct investigative studies on Crown land.

After it has received the proposal, DPLH will commence its standard, staged due diligence referral process (which includes consulting the Shire and other third parties with interests in the proposed land parcel).

The Shire's advice on Section 91 informs rather than binds the State Government.

## Policy

Prior to making an application to the State Government for the grant of a Section 91 application, proponents are strongly encouraged to review the Shire of East Pilbara Local Planning Scheme and Local Planning Strategy, as well as seek advice from the Shire's Planning team on the prevailing planning framework and the information required for the Shire to make an informed assessment on a referral for an application for a mining tenement.

Delegated officers may do the following, without referral to Council:

1. Respond to correspondence with respect to applications for mining tenements and all other issues as required under the LAA.
2. Authority to lodge objections to the granting of a Section 91 application that may affect Council property or the orderly and proper planning of the Shire.
3. Authority to negotiate/impose conditions or other requirements to the granting of a Section 91 application in order to protect the Council's interest in that property.

## Authorisation Details

References:	Land Administration Act 1997 Shire of East Pilbara Register of Delegations and Authorisations		
Authorised by:	Council		
Date:	22 August 2025	Minute No.	2025/224
Review/Amendment Date		Minute No.	
Next Review	Every four years		
Responsible Directorate	Regulatory Services		
Responsible Officer	Manager Strategic and Statutory Planning		
File No.			