

PERMIT TO OCCUPY FOR AGISTMENT

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This Permit to Occupy is between the Western Downs Regional Council and the designated Permittee to provide access to Land with respect to the agistment activities identified within.

Land:

Lot/Plan(s): Lot 4 on SP127085

Address: Kents Road, Jimbour East

Designated Use: Freehold

Term of Agreement:

Commencement Date: _____

Expiry Date: _____

Term: 3 Year

EXECUTED on behalf of WESTERN DOWNS REGIONAL COUNCIL (Owner):

- as an agreement;
- pursuant to Local Government Act section 236;
- by the Mayor / a Council delegate, who certifies he/she is the proper officer to sign;
- in the presence of a witness:

Delegate (Position) Signature

Jodie Taylor
Chief Executive Officer

Full Name [printed]

Date

Witness Signature

Full Name [printed]

Date

EXECUTED as the Permittee:

- as a deed; and
- in the presence of a witness:

Permittee Signature

Full Name [printed]

Date

Witness Signature

Full Name [printed]

Date

Permittee Signature

Full Name [printed]

Date

Witness Signature

Full Name [printed]

Date

Background

- (a) The Owner (identified at Item 7 of the Reference Schedule) is or is entitled to be the registered owner or Trustee of the Land.
- (b) The Permittee (identified at Item 8 of the Reference Schedule) wants to use the Land and the Owner agrees to grant the Permittee a Permit to Occupy to use the Land, subject to the terms in this document.

Agreed Terms

1 Grant

1.1 Permit

The Owner grants a non-exclusive Permit to Occupy to the Permittee to use the Site for the Permitted Use detailed in the Schedule, with the number of head not to exceed the number of head stated in Item 6 of the Schedule during the Term on the terms in this document.

1.2 Term

This Permit to Occupy starts on the Commencement Date and ends on the Expiry Date, with no option to renew, unless terminated earlier in accordance with this document.

2 Permit fee

The Lessee must pay rent to the Lessor in the amount set out in **Item 4** for the number of Lease Years set out in **Item 2**. The rent must be payable in advance, with the first payment being made (if it has not already been paid) on the signing of this Lease by the Lessee and afterwards at the beginning of each interval as set out in **Item 4**.

3 Improvements

3.1 Installation of Improvements

- a) The Permittee is not to install, adjust or undertake any activities of a permanent nature without prior Owner written approval.
- b) All permanent Improvements belong to the Owner absolutely as soon as they are erected or made, and the Permittee is not entitled to seek any compensation or reimbursement from the Owner in relation to such Improvements.

3.2 Enclosures and Holding Yards

The Permittee may erect at their own expense, enclosures and holding yards on the Land as may be approved in writing in advance by the Owner, with such Approval not to be unreasonably refused.

3.3 Fencing

Suitable fencing for the depasture and agistment of head, and fence maintenance is to be provided by the Permittee at their expense.

3.4 Temporary Fencing

The Permittee may erect and demolish temporary and electric fencing.

3.5 Removal of Permittee's Improvements

If the Permittee erects any fixed improvements or installs any plant or machinery on the Land during the Term of this Permit to Occupy, then they may, at the expiration of the Term, remove the same from the Land provided there shall be no existing breach by the Permittee in the observance of the terms of this Permit to Occupy which has not been remedied and would be of a nature entitling the Owner to terminate the Permit to Occupy, and provided any damage caused by such removal shall be immediately reinstated by the Permittee and this section shall consequentially be deemed to be a modification of section 155 of the *Property Law Act 1974* (Qld).

4 Access

4.1 Access Rights

During the Term of this Permit to Occupy, the Permittee or the Permittee's agent/s, employee/s, contractor/s, or representative/s, have the right to occupy the Land for the managing, breeding, removing, replacing and supporting of livestock for agistment purposes (subject to the limitation on the number of livestock contained in Item 6 of the Schedule).

4.2 Interference

During the Term of this Permit to Occupy, the Permittee and their agent/s, employee/s, contractor/s or representative/s shall not interfere with the Owner, the Owner's agent/s, employee/s, contractor/s, representative/s or other person/s appointed by the Owner in the enjoyment of any powers or rights granted to the Owner.

4.3 Inspection by Owner

The Licensee will permit and allow the Owner, the Owner's agent/s, employee/s, contractor/s, representative/s or other person/s appointed by the Owner to enter upon the Land at all reasonable times to examine them or in connection with their official duties or to exercise any of the powers, rights or remedies conferred on the Owner by this Licence without being liable to reimburse the Licensee for any inconvenience or Loss howsoever arising which is suffered by the Permittee as a consequence of the entry.

5 Supplies

5.1 Provision of Supplies

The Permittee shall provide all necessary agents, stock-in-trade, rations and supplies necessary to carry out the agistment of the Land.

6 Expenses

6.1 Permittee's Expenses

The Permittee shall bear all expenses incurred in working the Land and managing the livestock.

7 Water supply

7.1 Sufficiency of Water Supply

The Permittee has inspected the Land and acknowledges they have a responsibility to source and organise a water supply agreement with the Owner. The Permittee does not have any rights against the Owner until a sufficient water supply agreement is executed, and the Permittee is to provide all water for the agistment and depasture of livestock under the terms of this Permit to Occupy.

7.2 Water Troughs

The installation of permanent water troughs or other similar devices is prohibited unless the Permittee receives the Owner's prior written consent.

8 Depasture

8.1 Depasture of Livestock

- (a) The Permittee shall during the Term of this Permit to Occupy have the sole right to depasture the livestock on the Land and use the grass, and vegetation on the Land for that purpose.
 - (i) maintain stocking levels in order to prevent erosion, leaching, salination and other deterioration of the Land; or
 - (ii) reduce stock numbers when the vegetation is reduced to 40% coverage.
- (b) Council reserves the right to direct the Permittee to reduce stock numbers to restrict grazing in selected areas of the agistment area to enable the vegetation to recover or to prevent damage to the Land.

9 Pests and Diseases

9.1 Pest and Noxious Weed Control

The Permittee shall take all reasonable steps to keep the land free of declared pests and other vermin, and noxious weeds.

9.2 Bio-Security Plan

The Permittee must develop and maintain a Bio-Security Plan for events held at this property. A copy of the plan is to be forwarded to the Owner at the commencement of this Permit and within 30 days following any change(s) to the plan.

9.3 Infectious Diseases

The Permittee must give notice of all infectious illnesses to humans and livestock to Council and all relevant public authorities and comply with at its own expense all requirements of all public authorities regarding fumigation, disinfection, eradication, and prevention of such diseases.

9.4 Quarantining of Livestock

The Permittee must comply with all requirements regarding the quarantining of livestock.

10 Use of the Land

10.1 Suitability of Site

The owner does not expressly or impliedly agree or warrant the suitability:

- (a) as to the use to which the Land may be put; or
that the Land will be suitable or adequate for the Permittee's purposes, and the Permittee must satisfy itself in this regard

10.2 Permittee's obligations

The Permittee must:

- (a) use the Land only for the Permitted Use detailed in the Schedule and must not allow the Land to be used for any other purpose without the prior consent of the Owner;
- (b) comply on time with the law and with the requirements of all Authorities relating to the Land and its use or occupation;
- (c) at all times hold current licences or permits from all relevant Authorities relating to the Land and its use or occupation;
- (d) keep the Land clean, tidy;
- (e) carry out all necessary maintenance and repairs to keep the Land in at least the same condition as at the Commencement Date, other than work required due to fair wear and tear;
- (f) on entering or leaving the Land, securely lock any external gate used to gain access to the Land (the Permittee may install their own padlock, but it must be installed so that the Owners padlock can still be used by the Owner to gain access to the property when required);
- (g) protect the Land, or any vegetation on the Land, from damage and promptly repair and make good to the Owner's satisfaction any damage caused to the Land by the Permittee; and
- (h) comply with the Owner's reasonable requirements relating to the Site.

10.3 Permittee's prohibitions

The Permittee must not:

- (a) create or allow to be created any nuisance in, upon or about the Land;
- (b) have or store on the land any chemicals or other hazardous substances (in whatever form or state) except of a nature and in a quantity that are normally required to agist or depasture the number of livestock permitted under clause 1 and Item 6 of the Schedule.

11 Breach of Permit to Occupy

11.1 Breach

If the Permittee breaches a term of this Permit to Occupy, the Owner has the right to:

- (a) Issue a written notice to the Permittee requiring remedy of the breach within a reasonable amount of time; and
- (b) In the case of default by the Permittee in the payment of the Permit Fee or in the payment of any other money payable under this Permit to Occupy, the Permittee acknowledges and agrees that seven (7) days is a reasonable time to remedy the breach.

11.2 Compensation

The Permittee must compensate the Owner for any losses suffered as a result of breach or default by the Permittee of the terms of this Permit to Occupy, where applicable. The Permittee's obligation to compensate the Owner is not in substitution for or in derogation of any other right which the Owner has.

12 Disputes

12.1 Reasonable Endeavours

Except where interim, injunctive, or urgent interlocutory relief is sought, prior to the commencement of any legal proceedings in a Court of Law, the parties agree to use reasonable endeavours to resolve a Dispute in accordance with this clause.

12.2 Notices

If a party considers that a Dispute exists, then that party must give written notice to each other party that it considers a Dispute exists specifying the dispute, including any event, matter, or omission that the party relies on as giving rise to the Dispute.

12.3 Meeting

The disputing parties must meet, preferably either with an experienced stock and station agent or registered mediator, within fourteen (14) days of the date of notice given under clause 12.2 for the purpose of resolving the Dispute (Resolution Period).

12.4 Legal Proceedings

If the Dispute is not resolved by the disputing parties during the Resolution Period, then any of the disputing parties may commence legal proceedings in respect of the Dispute.

12.5 Performance of Obligations

The existence of a Dispute does not excuse any party from performing its respective obligations under this Permit to Occupy (except those in respect of which the dispute exists).

12.6 Definition of Dispute

In this clause "Dispute" means a dispute, controversy or claim between any of the parties as to:

- (a) the construction of this Permit to Occupy;
- (b) the rights or obligations of a party under this Permit to Occupy; and
- (c) any other matter arising out of or relating to this Permit to Occupy.

13 Compliance

The Permittee or the Permittee's agent/s, employee/s, contractor/s, or representative/s, must comply with all laws applicable to the use of the Premises, including but not limited to, Workplace Health and Safety Act, and all local government, state and federal legislative requirements and regulations.

14 Owner's rights

14.1 Sale of goods

If the Permittee leaves goods or other items on the Land at the expiration of the term of this Permit to Occupy, the Owner may remove those goods or other items at the risk of the Permittee, place them in storage and, if necessary, authorise their sale for non-payment of storage charges.

14.2 Owner may perform Permittee's obligations

If the Permittee fails to perform an obligation under this Permit to Occupy to the Owner's reasonable satisfaction after being given reasonable notice by the Owner, the Owner may perform that obligation at the Permittee's cost.

14.3 Payment of services

The Permittee must pay all costs, charges, and expenses for all services separately metered or provided to the Land:

- (a) by or on behalf of the Owner, on demand by the Owner; and
- (b) by third party providers, on time.

15 Insurance

15.1 Permittee's insurance

The Permittee must take out and maintain insurance cover:

- (a) for public liability to cover legal liability to third parties in respect of the Land or the Permittee's use or occupation of the Land for an amount of at least \$20,000,000 for any one claim, or any other amount the Owner may reasonably require from time to time;
- (b) as required by law; and
- (c) for any other risks the Owner may reasonably require from time to time.

15.2 Permittee's insurance policies

All insurance policies for the cover taken out under clause 15.1 must:

- (a) be with an insurer approved by the Owner, with that approval not to be unreasonably withheld;
- (b) be in the name of the Permittee and note the respective rights and interests of the Owner;
- (c) not have any exclusions, endorsements, or variations without the Owner's prior consent; and
- (d) be for an amount, cover the risks and contain terms that are acceptable to or required by the Owner, acting reasonably, from time to time.

15.3 Evidence of insurance

For each insurance policy for the cover taken out under clause 15.1, the Permittee must give:

- (a) a copy of that policy;
 - (b) the receipt for the last premium; and
 - (c) a certificate of currency,
- to the Owner promptly when requested.

15.4 Owner's insurance

The Permittee must not allow any circumstance to arise that might result in:

- (a) any of the Owner's insurance cover being voided or prejudiced;
- (b) a claim by the Owner being refused;
- (c) the Owner being required to pay an increased premium on any of its insurance cover, unless the Permittee pays that increased premium on demand by the Owner;

- (d) the Owner being in breach of any law or the requirements of any Authority relating to fire prevention; or
- (e) any actual or potential fire hazard being created in or near the Land.
- (f) protect the Land, or any vegetation on the Land, from damage and promptly repair and make good to the Owner's satisfaction any damage caused to the Land by the Permittee; and
- (g) comply with the Owner's reasonable requirements relating to the Site.

16 Release and indemnity

16.1 Release

- (a) The Permittee uses and occupies the Land entirely at the Permittee's own risk.
- (b) The Owner is not liable to the Permittee for, and the Permittee releases the Owner from any claim, loss, cost, or expense paid, suffered, or incurred by or available to the Permittee relating to its use or occupation of the Land, except to the extent it is caused by the Owner's wilful act or omission.

16.2 Indemnity

The Permittee is liable for and indemnifies the Owner against any claim, loss, cost, or expense paid, suffered, or incurred by or available to the Permittee and that is wholly or partly due to or arising out of:

- (a) damage or loss of property or injury or death of any person caused or contributed to by the Permittee or their agent/s, employee/s, contractor/s, or representative/s;
- (b) any accident on or about the Land not caused by the Owner caused or contributed to by the Permittee or the Permittee's agent/s, employee/s, contractor/s, or representative/s;
- (c) the entry into or escape from the Land of water, gas, electricity or other substance or thing;
- (d) the failure of the Permittee to notify any damage to or defect in the Land to the Owner as soon as reasonably practicable after the Permittee becomes aware of it;
- (e) the Permittee being in default under this Permit to Occupy; or
- (f) any breach by the Permittee of a law or the requirements of any public authority, except to the extent, it is caused by the Owner's wilful act or omission.

16.3 Owner not responsible

The Owner is not responsible to the Permittee for any theft, loss or damage during their occupation and use of the Land.

17 Dealings

This Permit to Occupy is personal to the Permittee and is not transferable. The Permittee must not dispose of or otherwise deal with this licence.

18 Expiry or termination of Permit

18.1 Termination

Either party may terminate this Permit without cause and providing fourteen (14) days notice in writing to the other party.

18.2 Removal of Equipment

On or before the expiry or termination of this Permit to Occupy, the Permittee must:

- (a) remove any items owned by the Permittee located on the Land;
- (b) remove or reinstate any alterations made to the Land by the Permittee so that the Land is converted to the condition and configuration as existed at the commencement date of the Permit to Occupy unless otherwise agreed by the parties

- (c) make good any damage of the Permittee caused by any removal or reinstatement carried out under this clause 18;
- (d) leave the Land clean and free of rubbish; and
- (e) comply with the Owner's reasonable requirements relating to the removal of its items or reinstatement of the Land.

18.3 Items not Removed

If the Permittee does not remove any of their items from the Land under clause 18.2, the Owner may, subject to the law, treat any of the Permittee's items remaining as abandoned and deal with them as it sees fit in its absolute discretion at the Permittee's cost.

19 Notices

19.1 General

A notice, demand, certification, process, consent, request, waiver, agreement, or other communication relating to this document must be in writing in English and may be given by an agent of the sender and is not effective unless it is in writing.

19.2 How to give a communication

In addition to any other lawful means, a communication may be given by being:

- (a) personally delivered;
- (b) left at the party's current delivery address for notices;
- (c) sent to the party's current postal address for notices by pre-paid ordinary mail or, if the address is outside Australia, by pre-paid airmail;
- (d) sent by fax to the party's current fax number for notices; or
- (e) emailed to the email address last notified by the addressee.

20 Miscellaneous

20.1 Statements

A notice by the Owner stating any amount payable or determined or any other thing to be done or not done under this document is sufficient evidence of that fact unless manifestly wrong.

20.2 Binding on parties

This document binds all of the parties to it whether or not all of the parties have executed or properly executed the document.

21 General

21.1 Amendment

This document may only be varied or replaced by a document executed by the parties.

21.2 Waiver and exercise of rights

- (a) A single or partial exercise or waiver by a party of a right relating to this document does not prevent any other exercise of that right or the exercise of any other right.
- (b) A party is not liable for any loss, cost or expense of any other party caused or contributed to by the waiver, exercise, attempted exercise, failure to exercise or delay in the exercise of a right.

21.3 Rights cumulative

Except as expressly stated otherwise in this document, the rights of a party under this document are cumulative and are in addition to any other rights of that party.

21.4 Further steps

Each party must promptly do whatever any other party reasonably requires of it to give effect to this document and to perform its obligations under it.

21.5 Jurisdiction

This document is governed by and is to be construed in accordance with the laws applicable in Queensland.

21.6 Counterparts

This Deed may be executed in any number of counterparts and the counterparts taken together shall constitute one instrument.

21.7 Execution by electronic mail

- (a) An exchange of executed counterparts of the agreement by email constitutes a valid and binding contract between the parties. For the avoidance of doubt, the failure to exchange executed counterparts following an exchange by email will not affect the binding nature of the contract.
- (b) For the purposes of the *Electronic Transactions (Queensland) Act 2001* (Qld) the parties irrevocably consent to an exchange of executed counterparts by email.

Reference Schedule

- 1 Land:** Lot 4 on SP127085
Kents Road, Jimbour East
- 2 Term: (Clause 1.2)** Three (3) Years
- 3 Commencement Date:**
- 4 Permit Fee:** \$TBD per annum (GST inclusive)
(Clause 2)
- 5 Permitted Use (Clause 1.1)** The agistment and depasturing of livestock, in accordance with the provisions of this document.
- 6 Number of Head Permitted** 15 Head
(Clause 1.1)
Permittee is responsible for ensuring that the number of head does not exceed the carrying capacity of the pasture.
- 7 Council's Address for Notices** **By hand delivery:**
(Clause 19)
The Chief Executive Officer
Western Downs Regional Council
30 Marble Street
Dalby, Qld 4405
By registered post:
The Chief Executive Officer
Western Downs Regional Council
PO Box 551
Dalby, Qld 4405
By facsimile: (07) 4679 4099
By email: info@wdrc.qld.gov.au
- 8 Permittee's Address for** **To:**
Notices (Clause 19) **By hand delivery:**
By email:
Mobile:

ANNEXURE A - SITE LOCATION

The following illustration has been provided as a guide as to the location of the applicable area.



ANNEXURE B – PHOTOGRAPHIC PLAN

The following illustration has been provided as a guide as to the location of the applicable area

