



Department of
**Primary Industries and
Regional Development**

Investment Ready Regulatory Pathways for Agricultural Projects

Regulatory Approvals Pathways and
a Regulatory Approval Action Plan



Contents

Introduction	3
The Regulatory Approvals System for Agricultural Projects	3
Regulatory Approvals Action Plan for Agricultural Development Projects	10
Regulatory Approvals Action Plan	10

List of Tables

Table of Permits, Departments, Legislation and Guidelines	14
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List of Figures

Figure 1: Overview of Approvals Process (October 2017)	6
Figure 2: Approvals Process for Freehold Land	7
Figure 3: Approvals Process for Permits	8
Figure 4: Approvals Process with Land Tenure Change	9
Figure 5: Regulatory Approvals Action Plan	11

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Department of Primary Industries and Regional Development. 2018.

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Introduction

Agricultural and pastoral lands in Western Australia are subject to a variety of regulations that cover both new projects and the expansion and operation of existing projects. Primarily these regulations exist to manage flora and fauna, environmental amenities and water resources, and to protect Indigenous rights and interests.

This document describes the range of regulatory approvals that you might be required to obtain for an agricultural intensification project. While the full suite of possible approvals required is considered, each project is different and not all approvals will be relevant for each project. The approach provided suits larger and more complex agricultural projects while recognising that in the case of a simple expansion of an existing enterprise a subset of this information may apply.

There are two sections to this document. The first describes the approvals pathways, as specified in the relevant legislation, and the procedural steps that must be followed to obtain approval.

Projects vary in their scale and in their economic, social, and environmental complexity. Some approval processes take considerably longer than others. The approvals pathways highlight what needs to be done but are not prescriptive on all aspects of how to achieve approvals. The use of a regulatory action plan will assist in managing the approvals process.

The second section of the document outlines a Regulatory Approvals Action Plan. This represents the combination of informal and formal steps that you should take in planning for and working through the approvals process. The Action Plan can be used in conjunction with regulatory guideline documents.

There is no obligation on you to follow the Regulatory Approvals Action Plan when developing your project. However, having such a plan is likely to be the best way to efficiently manage your project through the regulatory process.

Project proponents are encouraged to engage early and often with regulatory agencies so both parties have a clear understanding on the project, requirements, process and timeframes.

The Regulatory Approvals System for Agricultural Projects

In the existing system of approvals there is a significant difference between the approvals processes for proposals on freehold land in the South West and other areas where freehold land ownership exists and those areas in the North West where pastoral lease is the primary form of land tenure. The key differences between the two generally relate to the potential requirement for tenure change and Native Title.

If the project is on pastoral land and if you are a pastoralist, you must decide whether to apply for a tenure change or a diversification permit. Which one you choose will depend on the nature of the project and potentially the financing arrangements.

In cases where the creation of a new pastoral lease is sought on Crown Land, a specific application must be made to the Department of Planning, Lands and Heritage (DPLH).

Clearing can be a significant issue in the North West, most notably in pastoral lands where new irrigation developments are proposed.

Addressing Native Title and negotiation of an Indigenous Land Use Agreements (ILUA) may be required, principally in the North West.

Native Title involves the recognition of pre-existing rights and interests of Aboriginal people and Torres Strait Islanders in relation to land and waters, in accordance with the Commonwealth's *Native Title Act 1993* (NTA). Unless Native Title has previously been extinguished over the relevant land, the grant of leases or freehold and any associated easements for the proposed irrigated agricultural project may constitute future acts for the purposes of the NTA. Compliance with the NTA is required in order to validate the new tenure. This can be achieved in two ways: 1) ILUA (preferable), or 2) arbitrated validation (less preferable, alternative position, which may be considered in some instances).

Projects may occasionally include land included in the Register of Heritage Places, otherwise known as the State Register. Before determining an application relating to these places, the decision-maker is required to refer the matter to the Heritage Council of Western Australia for advice.

If your project area includes any State Registered place it is recommended that you contact the DPLH to seek information and assistance in the early stages of project planning. Projects that propose substantial change to a State Registered place should be informed by a suitably qualified heritage consultant. The *Aboriginal Heritage Due Diligence Guidelines* (DPLH) provide land users with information on their responsibilities under the *Aboriginal Heritage Act 1972*.

The following flow charts show the structure of approvals in the current regulatory approvals system. Figure 1 is a broad overview of the operation of the system. Figure 2 shows the system for freehold lands. Figure 3 shows the system for diversification permits under pastoral leases and Figure 4 shows the system when land tenure change is sought for pastoral leases. For further information refer to the Land Tenure Pathway for Irrigated Agriculture¹.

These flow charts reflect, as much as possible, the approvals system as at January 2018. Subsequent discussion will refer to the approvals processes as they relate to individual permits and approvals (e.g. clearing and water) and not to government agencies per se.

Additional approvals may be required under Commonwealth legislation (e.g. under the Foreign Investment Review Board; *Environment Protection and Biodiversity Conservation Act 1999*, etc.) and specific requirements will need to be identified by project proponents.

It is important to note that there is no single submission point for applications for approval. Each approval requires a separate application be delivered to the relevant agency and is governed by the specific legislation administered by that agency and the associated approvals and appeals processes.

Figure 1 is a high-level overview of the regulatory approvals process. Logically, it divides into four layers as follows:

- Project documentation and application preparation
- Submission of applications for approval
- Post approval processes
- Project final decision.

By way of preparation the proponent needs to have enough information on the project to enable an application for the relevant approvals to be made. Taking a broad view, at a minimum this would include:

- A pre-feasibility or feasibility study
- A full description of the project, including the quantities of main outputs and inputs
- A listing of potential environmental and neighbourhood impacts
- A listing and prioritisation of all permits and approvals required.

An early determination on the need for an ILUA will allow for engagement with Native Title parties and interests from the onset of the project.

Where a tenure change is sought a 'Crown Land Enquiry Form' (CLEF) must be submitted to the DPLH. This must contain a dimensional sketch and/or GPS coordinates of the proponent's area of interest (including proposed access route) and written support from all registered primary interest holders, including approval from the pastoral lessee (if applicable). Essentially this is a test as to whether a tenure change can be supported, not an assessment of project viability or the proponent's preparedness to proceed through the approvals processes.

For Crown land tenure change projects, the DPLH provides proponents with sample referral letters, which combined with information the proponent has, is the suggested basis for commencing the approvals process. No CLEF is required where a diversification permit is sought or where land is freehold.

It is not mandatory for proponents to consult with an agency and preliminary consultation does not commit the agency to an approval. Ultimately, the proponent must consider advice provided and decide what consultations they will undertake and when they have enough information to submit the relevant applications.

¹ Departments of Water, Regional Development, Lands, Agriculture and Food. 2016. Land Tenure Pathway for Irrigated Agriculture.

Therefore, as indicated in Figure 1, the initial project development and documentation stage can result in considerable variation in the details associated with projects submitted to agencies for approval. Where information is deficient agencies will respond to a submission with requests for more information. Hence a proponent can lodge a simple proposal and wait for feedback and direction from agencies or undertake more extensive project preparation including consulting with agencies and using an experienced consultant. In theory, the payoff for the latter course of action is a smoother path through the approvals process.

It is important to note that agencies interact with each other when considering an application. This interaction can be both formal and informal. One advantage of preparing more fully and having initial consultations with DPIRD and other relevant agencies is that the proponent will be better informed about the submission and appeals process and whether coordination in decision-making between agencies is required.

Under the approvals process shown in Figures 1 to 4 proponents must submit all the required applications independently to the relevant agencies in accordance with specific application guidelines. The exact suite of approvals required may be few or many depending on the project and its location.

If a project is rejected by one or more agencies, the choices for the proponent are (a) keep the project as originally specified but appeal the decision(s) or (b) redefine the project to take account of the reasons given by agencies for rejection and re-submit.

In summary, in following the current approvals procedures, proponents need to:

- Determine which approvals they need based on their project specification
- Assemble all information for each application, and
- Prioritise submissions based on the criticality and complexity of applications.

Informal consultation with approval agencies can assist a proponent to understand what information is needed, which approvals are critical and how best to submit including which applications should be submitted together and which can be submitted sequentially. Again, it should be noted that, it is up to the proponent to initiate the process.



Once a project has all the necessary approvals, it can proceed. For a freehold land project, a key step is often a public consultation process organised through the Local Government Authority (LGA). For a diversification permit final sign off is through the Pastoral Lands Board (PLB) once Native Title considerations are in place (i.e. nearly all permits are future acts under the *Native Title Act, 1993*) and appropriate process are followed. For a project with a change in land tenure, there is a further process related to the tenure change itself. This involves consultation with regulatory agencies and all relevant interest holders including LGAs, and may involve concurrent assessment across agencies. Detailed approvals process flowcharts are shown below for freehold (Figure 2), diversification permits (Figure 3) and tenure change cases (Figure 4). As Figures 1 to 4 show, Western Australia does not have a single lodgement point for projects. Proponents lodge directly with agencies. In the same vein, there is no single decision-making agency for a project. A proponent needs to secure all the relevant approvals to proceed. Appeals are dealt with through the process defined for the permit or authorisation sought. There is no single appeals process.

OVERVIEW OF APPROVALS PROCESS

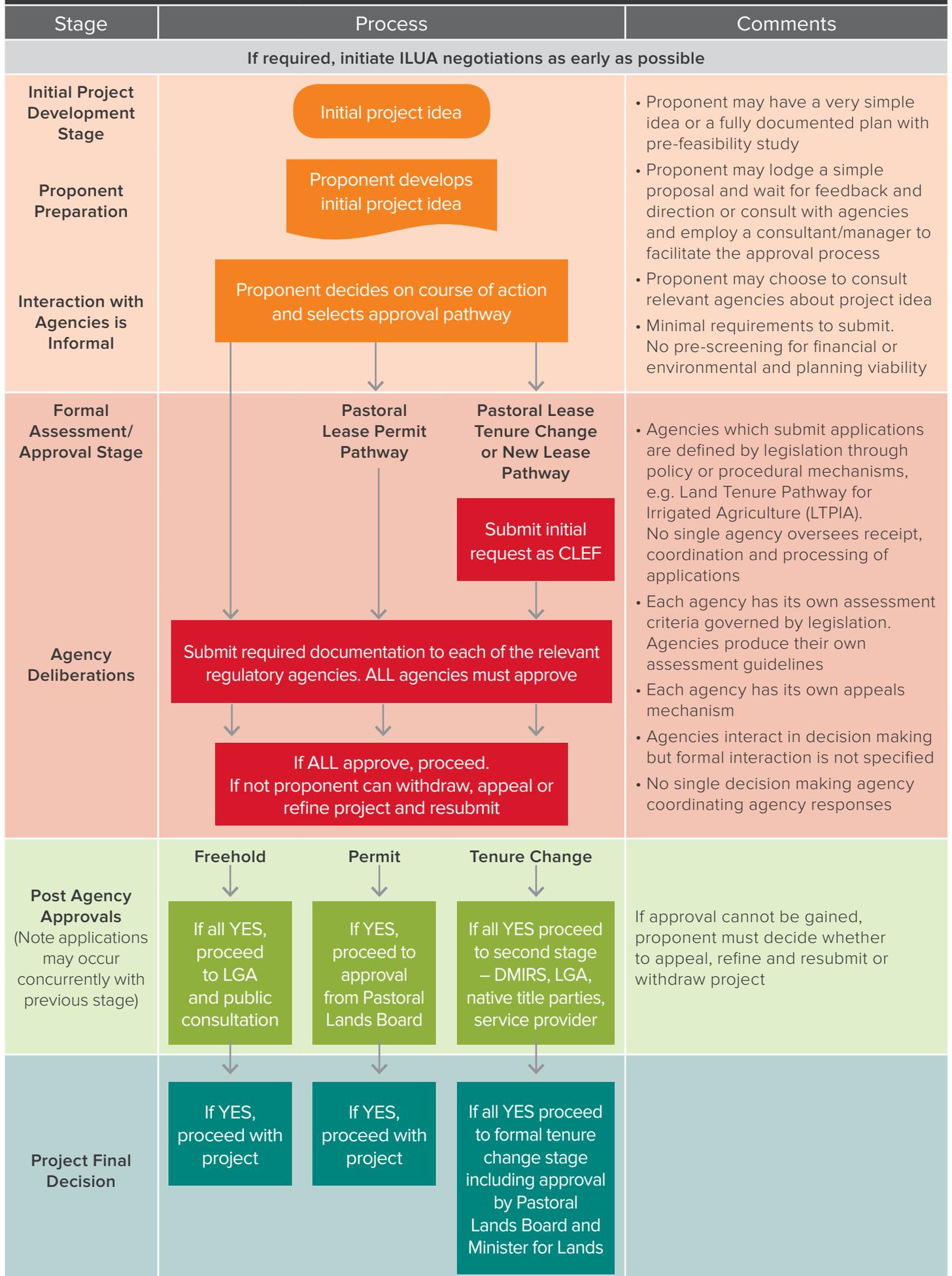


Figure 1: Overview of Approvals Process (January 2018)

APPROVAL PROCESS WITH FREEHOLD LAND

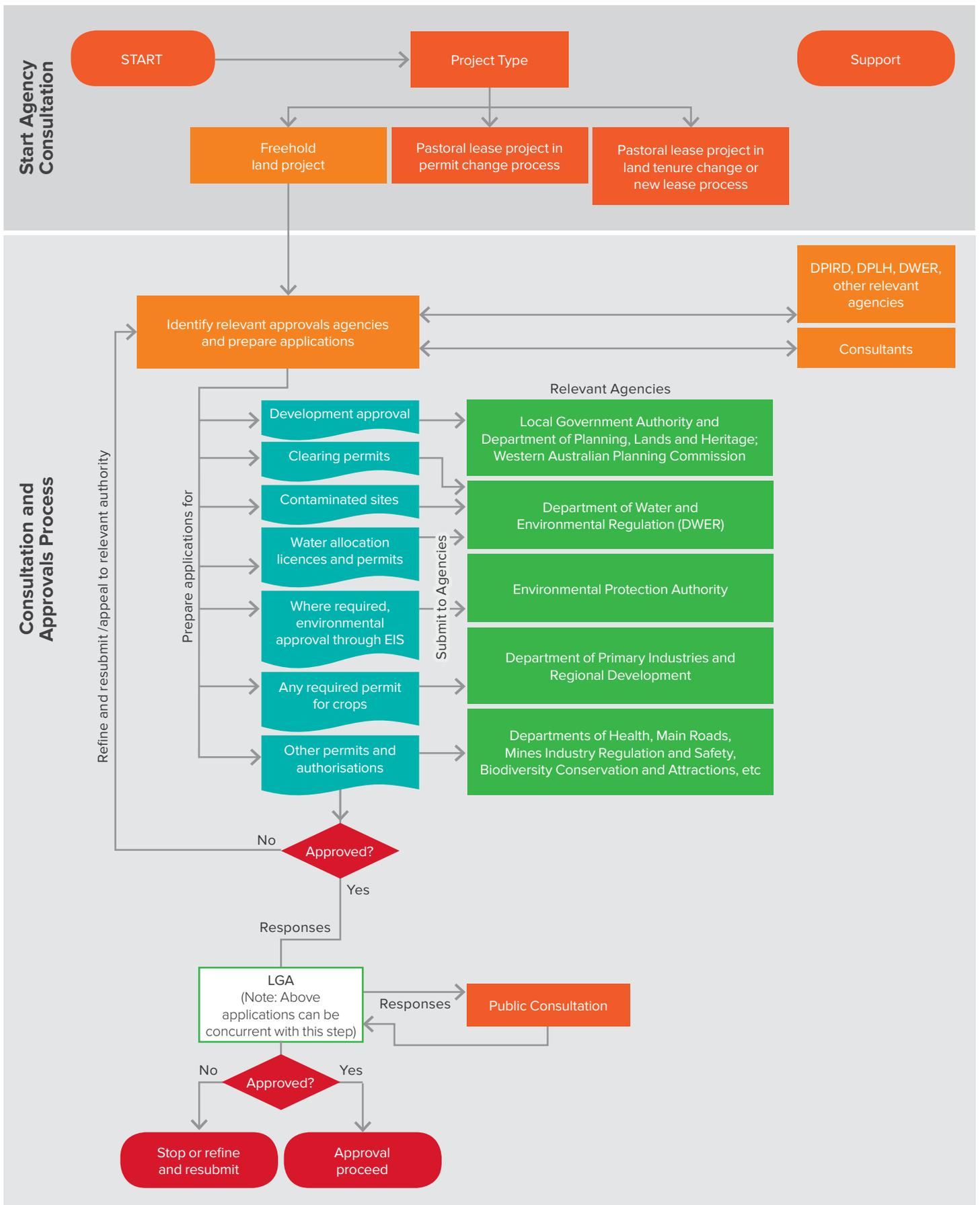


Figure 2: Approvals Process for Freehold Land (January 2018)

APPROVAL PROCESS WITH PASTORAL LEASE PERMITS

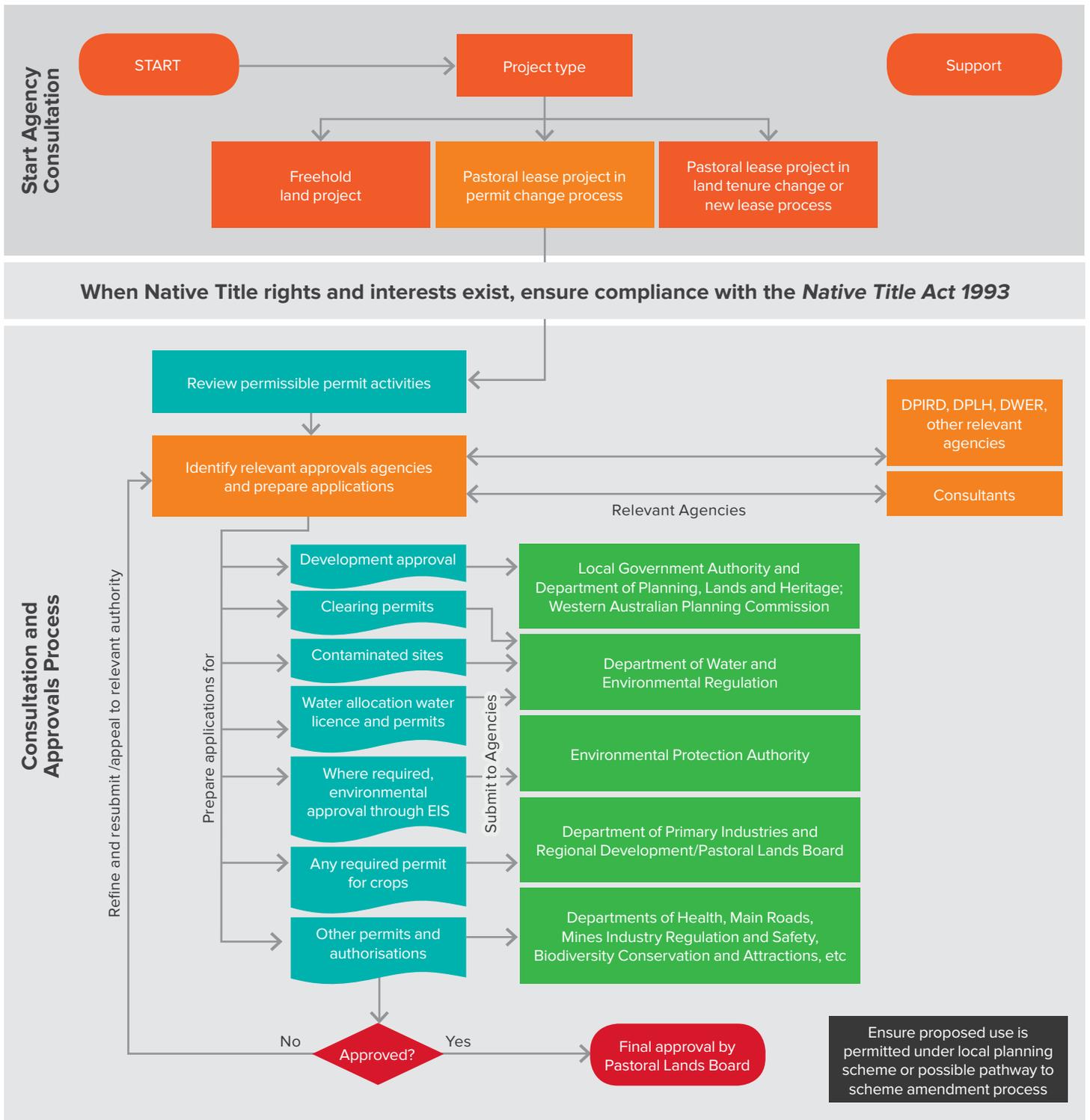


Figure 3: Approvals Process for Permits (January 2018)

APPROVAL PROCESS WITH LAND TENURE CHANGE

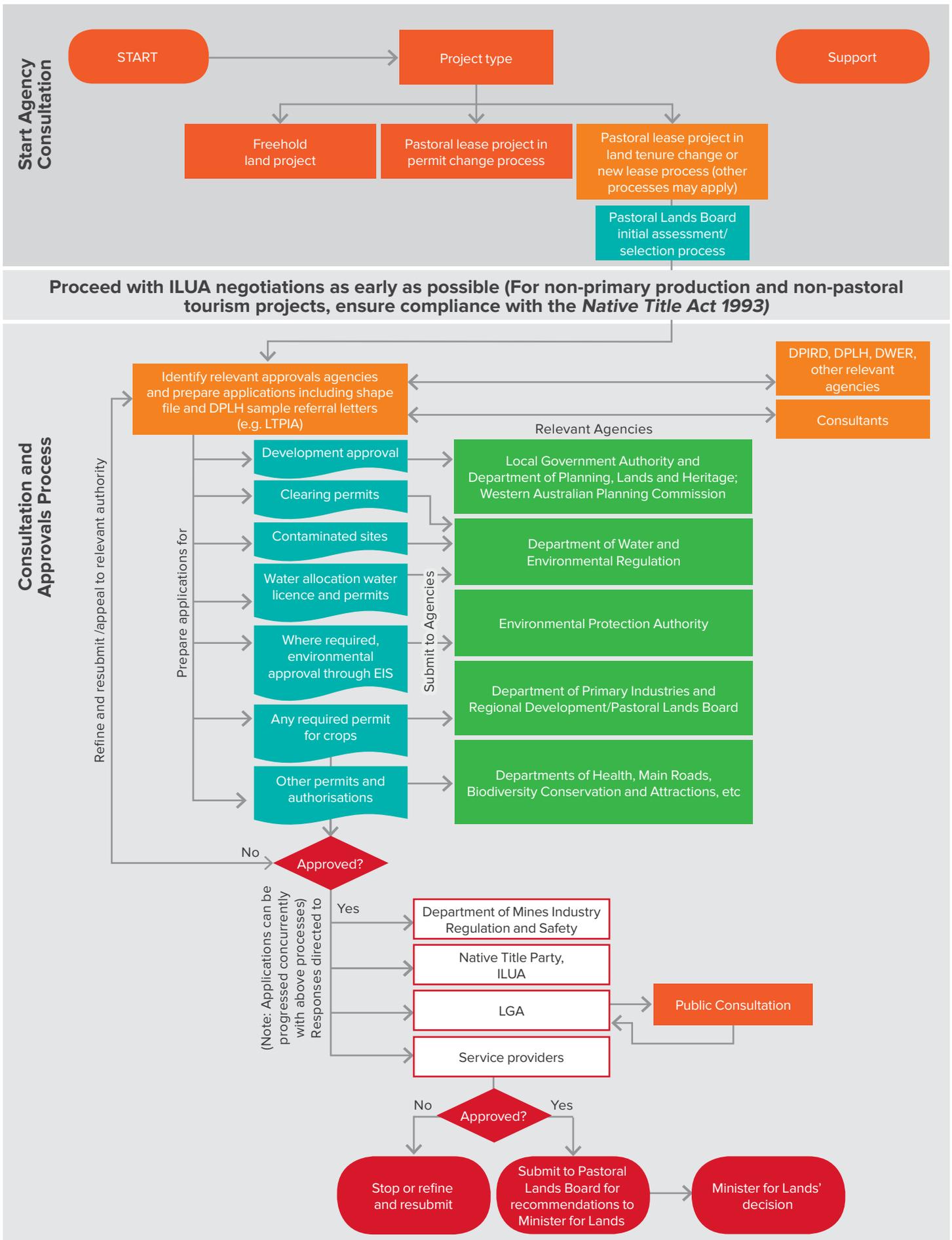


Figure 4: Approvals Process with Land Tenure Change (January 2018)

Regulatory Approvals

Action Plan for Agricultural Development Projects

Regulatory Approvals Action Plan

The system as described above, represents the formal system for regulatory approvals. It specifies the approvals needed and the steps required in the approvals process, including appeals.

However, it does not give any guidance on the preliminary work that should be undertaken to ensure you are properly prepared before entering the formal approvals process. Being properly prepared will give you the best chance of success by enabling a thorough and timely evaluation by the regulatory agencies. It will also assist you identify opportunities for parallel approvals, and those approvals which are sequential to other approval processes.

This preliminary work should also assist you in examining the technical and financial feasibility of your project and in the development of a business plan to guide implementation.

The key elements of this preliminary phase are the preparation of a comprehensive project description, early meetings with relevant regulatory agencies and the preparation of a detailed project document.

A Regulatory Approvals Action Plan, summarised in Figure 5, provides a systematic guide to working through this preliminary phase in the approvals process.

Working through this Action Plan can be quite demanding. However, the key personnel in the regulatory agencies will be more responsive and the best outcome will be achieved if you establish a strong working relationship with them. This relationship should be based on trust and a willingness to work cooperatively.

REGULATORY APPROVALS ACTION PLAN

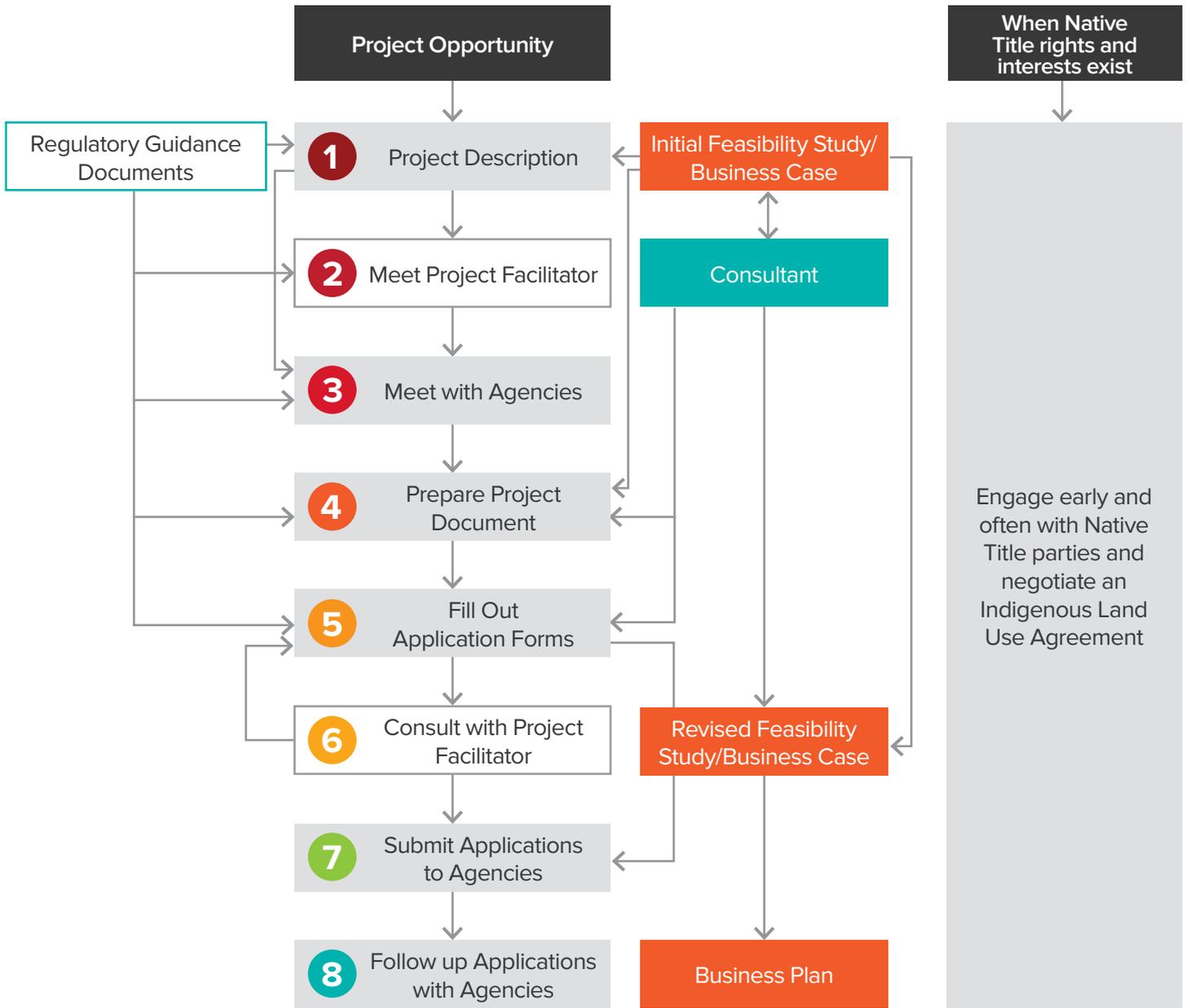


Figure 5: Regulatory Approvals Action Plan

The following is a detailed description of each step in the Action Plan and an outline of the information you need to assemble in preparing your approvals applications. The two boxes labelled 2 and 5 in Figure 5 (i.e. 2 - *Meet Project Facilitator and 5 - Consult with Project Facilitator*) are supported by DPIRD's Regional team and DPIRD's Agribusiness and Food Investment team and supporting program areas.

Step 1 – Develop a comprehensive description of your project, including (but not necessarily limited to):

- Proposed enterprise and product
- Locality
- Target market
- Investment and scale (including the area of land involved)
- Any processing requirement (may include a requirement for prescribed premises under the *Environmental Protection Act, 1986*)
- Transport, roads and access
- Water, power and infrastructure requirements
- Potential impacts
- Economic feasibility.

The project description should be in sufficient detail to enable the relevant regulatory agencies and others to understand what you plan to do and identify the necessary approvals you will require.

For larger projects, much of this information has most likely been gathered in the development of the project feasibility study/business case.

Depending on the complexity of your project, you may wish to obtain the services of an experienced consultant to assist you in assembling the required information and filling out the relevant approvals application forms. The consultant may also help you in refining your feasibility study/business case, especially if it is to support a request for finance.

Step 2 (optional) – Meet with the Project Facilitator to review your proposal and receive guidance as to the necessary approvals you will require, the information you will likely need to complete in the approvals application forms (see the information requirements under Step 4), and the names of the contact persons in the various regulatory agencies you should meet with to

discuss your project. This meeting will also provide an opportunity to discuss likely obstacles in the approvals process. You may request advice on project facilitation through DPIRD's Agribusiness and Food Investment team (ph: 6552 2111) or enquire through DPIRD's regional offices.

You should also include the relevant local government authority in your conversations to ensure your project is consistent with local and State planning schemes.

Step 3 – Meet with the relevant regulatory agencies to discuss any concerns you have about the regulatory requirements of your project.

Step 4 – Prepare a comprehensive Project Document by adding any information gained from discussions with the Project Facilitator and relevant agencies to the Project Description prepared in Step 1. This information will be used to complete the relevant approvals application forms (which can be downloaded from the agencies' websites) and should include:

- Your name, address, contact details (including the name of the key contact) and business details (i.e. registered business address, ABN/ACN)
- The proposed agricultural enterprise
- Locality and site details
- Land details:
 - Ownership
 - Land tenure
 - Land zoning
 - Land use
 - Adjacent land use
- Potential impacts:
 - Flora and fauna
 - Broader environmental impacts
 - Impact on environmentally sensitive areas
 - Impact on the coastal zone and marine areas
 - Impact on rivers, creeks, wetlands, estuaries, and protected water catchments
 - Impact on hydrology and water supply



- Native Title
- Aboriginal heritage
- Heritage sites
- Emissions
- Noise
- Offsite impacts
- Waste storage, treatment or disposal
- Soils
- Safety
- Community infrastructure
- Public health, Transport.

Guidance documents for regulatory approvals provide more comprehensive advice on the type of information you will need to assemble under the above headings. You should check against all the up-to-date and relevant agency approvals guideline documents and application forms to ensure you have collected the relevant information. If you have not already done so, you may wish to engage an experienced consultant to assist you in the preparation of the project document.

For most projects, DPIRD, DWER and DPLH can all provide guidance and contact information, depending on the specific nature of your enquiry and your location.

The additional information gathered in this step may also be used to revise the projects feasibility study/business case.

Step 5 – Fill out the relevant approvals application forms using information from the Project Document prepared in Step 4.

Step 6 (optional) – Discuss the completed draft applications with the Project Facilitator for informal review on any changes or additional information you may need in your applications. Refine your applications in light of discussions with the Project Facilitator before formal submission. This step is designed to minimise possible delays in the formal assessment of your application.

Step 7 – Submit your approvals applications to the relevant agencies for formal assessment.

Step 8 – Follow up with the agencies to keep track of the progress of the assessment of your application.

Table of Permits, Departments, Legislation and Guidelines

The following table shows the types of permits and authorisations potentially needed for a project. The web links to agencies and individual policy documents, assessment criteria and application forms are given. To ensure information accessed is up to date, project proponents are encouraged to check with regulatory agencies.

Agency	Relevant Act	Web Link
Landgate	<i>Land Information Authority Act 2006</i>	www.landgate.wa.gov.au
Department of Planning Lands and Heritage; Western Australian Planning Commission	<i>Land Administration Act 1997 (LAA)</i>	www.planning.wa.gov.au
	<i>Planning and Development Act 2005</i>	www.planning.wa.gov.au
	<i>Aboriginal Heritage Act 1972 (AHA)</i>	
	<i>Heritage of Western Australia Act, 1990</i>	www.stateheritage.wa.gov.au

Reason	Links for Specific Issues
Land title Plans Registered interests	
Land tenure options	https://pathwayforirrigatedagriculture.lands.wa.gov.au/about/about-the-ltpia
Crown Land enquiry form	www.lands.wa.gov.au/l%20want%20to%20know%20about/Pages/Crown-land-enquiry-form.aspx
Crown Land enquiry form	www.planning.wa.gov.au/Publications/Documents/Enquiry_Crown_land_form_guide.pdf
Pastoral Lease renewals permits	www.lands.wa.gov.au/Leases/Pastoral-Purposes-Framework/Pages/default.aspx
To improve understanding of legislative land use planning processes under the Planning and Development Act 2005 and Development (Local Planning Scheme) Regulations 2015	www.dplh.wa.gov.au
Land use planning	www.dplh.wa.gov.au
Heritage sites guidelines	www.daa.wa.gov.au/heritage/aboriginal-heritage/sites/?epieditmode=true
Heritage site inquiry	www.daa.wa.gov.au/heritage/aboriginal-heritage/sites/?epieditmode=true
Identify whether project area includes any historic heritage site, including State Registered places	www.inherit.stateheritage.wa.gov.au/public

Agency	Relevant Act	Web Link
Department of Water and Environmental Regulation	<i>Rights in Water and Irrigation Act 1914</i> (RIWI Act)	www.dwer.wa.gov.au One Stop Shop link
	<i>Environmental Protection Act 1986</i>	
	<i>Part V of the Environmental Protection Act 1986</i> (EP Act)	
	<i>Contaminated Sites Act 2003</i> (CS Act)	
Environmental Protection Authority	<i>Environmental Protection Act 1986</i> (EP Act)	www.epa.wa.gov.au
Department of Biodiversity Conservation and Attractions	<i>Biodiversity Conservation Act 2016;</i> <i>Conservation and Land Management Act 1984</i>	www.dbca.wa.gov.au
Department of Primary Industry and Regional Development	Various acts	www.dpir.wa.gov.au
	<i>Soil and Land Conservation Act 1945</i>	

Reason	Links for Specific Issues
Water licences and permits	www.water.wa.gov.au/licensing/water-licensing
Check if you need a water licence?	www.water.wa.gov.au/maps-and-data/maps
Water trading	www.water.wa.gov.au/licensing/water-trading
Water permit application	www.water.wa.gov.au/licensing/water-licensing/the-water-licensing-process/applying-for-a-licence-or-permit
Clearing permit guidelines	www.der.wa.gov.au/our-work/clearing-permits/48-guidelines-clearing-permits
Clearing permits	www.der.wa.gov.au/our-work/clearing-permits
Clearing permit application	www.der.wa.gov.au/our-work/clearing-permits/46-clearing-permit-application-forms
Contaminated sites	www.der.wa.gov.au/your-environment/contaminated-sites
Contaminated sites guidelines	www.der.wa.gov.au/your-environment/contaminated-sites/61-contaminated-sites-guidelines
Works approvals and prescribed premises	www.der.wa.gov.au/our-work/licences-and-works-approvals
Environmental impact assessments	Statement of Environmental Principles, Factors and Objectives Instructions for the referral of a proposal under s38 of the EP Act 1986.
Conserving the State's natural environment	www.dpaw.wa.gov.au www.dpaw.wa.gov.au/images/documents/plants-animals/threatened-species/database-search-request-information-sheet.pdf
Permitted crops	www.dpaw.wa.gov.au/plants-and-animals/plants/weeds
Protect environmental values	naturemap.dbca.wa.gov.au/default.aspx
Conservation significant lands	
Native flora and fauna	www.dpaw.wa.gov.au/Plants-and-animals/Threatened-species-and-communities
Wetland protection	www.dbca.wa.gov.au/management/wetlands
Management of State forests and timber reserves	
Food production policy	Contact Department
Soil suitability	Contact Department
Permitted crops	Contact Department
Water requirements for your proposed irrigation	www.agric.wa.gov.au/irrigation-calculator
Soil conservation and land drainage regulation	

Agency	Relevant Act	Web Link
Department of Mines, Industry Regulation and Safety	<i>Mining Act 1978; Mining Regulations Act 2003</i>	www.dmirs.wa.gov.au
Native title enquiries, National Native Title Tribunal (NNTT)		www.nntt.gov.au
Local Government Authority (LGA)	<i>Local Government Act 1995</i>	Relevant LGA site

The above are the major agencies that you will likely need to contact to secure approvals for your project. However, each project is different and a range of other approvals may also be needed depending on the project. For example, some transport approvals may be required from Main Roads and Health Approvals related to food processing are arranged through the Department of Health.

Main Roads WA	www.mainroads.wa.gov.au/ Pages/default.aspx
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Department of Health	www.health.gov.au
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Reason	Links for Specific Issues
Check mining interests, petroleum and geothermal on land	www.dmp.wa.gov.au/GeoView-WA-Interactive-1467
Native title enquiries	
Indigenous land use	
Agreements (ILUAs)	
Planning requirements	Check individual LGA web sites and policies
Local government structure planning	

Other approvals and permissions

If project impacts on the road network you should contact Main Roads for advice on any necessary approvals and requirements. Possible impacts include:
 Project Land Development
 Project works that impinge on roads

www.mainroads.wa.gov.au/OurRoads/Pages/DevelopingLandorProjects.aspx
www.mainroads.wa.gov.au/OurRoads/Pages/WorksOnMainRoads.aspx
www.mainroads.wa.gov.au/OurRoads/Facts

Managing pesticides ww2.health.wa.gov.au/Articles/A_E/A-guide-to-the-management-of-pesticides-in-local-government

Required separation between residential and type of agricultural activities ww2.health.wa.gov.au/Articles/F_I/Guidelines-for-separation-of-agricultural-and-residential-land-uses



The Agribusiness & Food Investment Team is here to connect investors and Western Australian agriculture, fisheries and food companies for the purpose of supporting the development and delivery of commercially sustainable investment projects. As a government agency, we focus on the pre-deal stage of the investment process, where our services and support can best assist the establishment of an investment ready project and investment opportunities.

Are you looking for investment or seeking an investment opportunity in Western Australia?

Our team of experienced industry professional are here to help.

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