

# CHAPTER 06

## SALES, LEASES, LICENCES, ETC. OF CROWN LAND

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# 6. SALES, LEASES, LICENCES, ETC. OF CROWN LAND

## 6.1. INTRODUCTION

Before the *Land Administration Act 1997* (LAA) commenced operation on 30 March 1998, the *Land Act 1933* provided a method to dispose of interests in Crown land. Subject to the provisions of other written law, Crown land could only be sold into the freehold or leased in accordance with the provisions of that Act.

The general power to dispose of a fee simple interest in Crown land under the *Land Act 1933* was by way of a grant by the Governor in Executive Council. Two of the more common methods to dispose of a fee simple interest in Crown land was by way of auction or, by inviting applications for the purchase in fee simple of Crown land.

Once the proposed purchaser had applied (by way of an application in a prescribed form) for the fee simple interest in a parcel of Crown land, and that application was duly processed and if approved by the Minister for Lands, a Licence to Occupy was issued upon the payment of a deposit. Upon full payment and satisfaction of any relevant building or other conditions contained in the Licence to Occupy, a Crown Grant for the land was then made by the Governor and registered with the Registrar of Titles under the Transfer of Land Act 1893 (TLA).

The LAA has simplified the process to purchase fee simple interests in Crown land by using conventional freehold conveyancing processes – a person can now purchase Crown land by entering into a Contract of Sale for the purchase of a fee simple interest comprising a defined parcel of Crown land and after settlement receive a certificate of title for that interest by registering a transfer under the Transfer of Land Act.

## 6.2. WHO CAN SELL AND LEASE CROWN LAND

### 6.2.1. GENERAL

On 3 May 2001, the Premier of Western Australia stated that the land development function carried out by the then Department of Land Administration's (DOLA) Operations Directorate on behalf of the Crown would be transferred to the Western Australian Land Authority established under the *Western Australian Land Authority Act 1992*, more commonly known as LandCorp.

The effect of this transfer of function did not change any of the other land related work or functions carried on by DOLA, functions which were transferred to RDL's Lands Division.

In particular, the Lands Division continues to maintain its role in Government land administration including -

- actions provided for under the LAA;
- land assembly of Government land;
- provision of advice and solutions on Government land issues where subdivision through capital expenditure is not contemplated;
- leasing and licensing of Crown land and the sale of sundry Crown lots.

### 6.2.2. WHAT IS THE LAND DEVELOPMENT FUNCTION?

The land development program, operated by DOLA and before it by the Department of Lands and Surveys, generally comprised all capital works projects for urban, commercial and industrial lots developed out of the Crown estate where those lots were sold to the public in freehold.

The land development program included, amongst other functions, the following main types of projects:

- the subdivision of Crown land parcels and the provision of lots for residential, industrial and commercial use in regional towns along with provision of land for basic physical and social infrastructure;
- The creation of land parcels at strategic sites (usually on the coast) for key tourism development like caravan park sites and holiday accommodation.

Following the Premier's statement, all identified "Capital Works" projects were transferred to LandCorp. These projects included:

- staged ongoing and new subdivision projects;
- all new projects as defined in the 5-year out program;
- all proposals to service lots for sale to the public.

### 6.2.3. LANDCORP'S ROLE

Since 1 July 2001, LandCorp has continued as the State's agency for the creation and sale of serviced Crown land on a commercial basis. LandCorp is now responsible for subdivision and development of Crown land for sale to the public. The Crown land for subdivision is sold to LandCorp and transferred as freehold land:

Land that has been earmarked for future development by LandCorp will remain Crown land administered by RDL. The land will not be sold to LandCorp until:

- RDL has completed all the land assembly requirements relating to the land;
- Resolved Native Title Issues
- A Crown land title has issued for the Crown land; and
- The purchase price for the land has been paid.

### 6.2.4. RDL'S CONTINUING ROLE IN THE CROWN ESTATE

RDL is the principle administration of Crown land and carries out the following functions for Crown Land:

- administer Crown land;
- conduct land assembly for Government land;
- support and advise other agencies in relation to Government land tenure issues under the LAA;
- provide advice and input on land solutions over Government land;
- liaise with LandCorp to complement the roles of the respective agencies;
- sell Crown land to other government agencies, local governments and private customers.

### 6.2.5. LEASES OVER CROWN LAND

RDL's Lands Division will continue to retain and manage the Crown lease portfolio of Special Leases created under the *Land Act 1933*, and general and other leases created under the LAA.

### 6.2.6. LAND ASSEMBLY REQUIREMENTS

Before Crown land can be transferred into the freehold, it should be brought back to unallocated Crown land, assembled as a lot, where any native title rights and interests are found not to have been extinguished over the land, the future acts processes under the *Native Title Act 1993* must be followed in accordance with current State Government policies. RDL will carry out all investigations in relation to the land, preparing all relevant conveyancing documentation to achieve the required transaction.

### **6.2.7. ADMINISTRATIVE SUBDIVISIONS OF CROWN LAND**

RDL provides a service in relation to Crown land that is managed by Government agencies and local government to enable effective management of Crown land. In addition, where Government agencies do not have a legal or legislative basis to dispose or deal in land, RDL provides services to assist in the disposal of land assets or negotiating subdivisions and assembly of land tenure.

Where administrative subdivisions of Crown land are carried out by RDL over managed Crown land, any minor capital works will be funded by the agency requesting the work on a cost recovery basis.

## 6.3. SALE OF FEE SIMPLE INTERESTS IN CROWN LAND

### 6.3.1. GENERAL

Primary tenure allocation Policy 1.2.3.4 in the Government Land Policy Manual (please note this manual is not available on this website – please contact RDL’s Lands Division for further information) establishes principles for appropriate tenure. The general rule is that if land is to be used for operational, service-delivery, commercial or private purposes, it should be sold or leased at market value.

See also Policy 6.3.1.1 in the Government Land Policy Manual (please note this manual is not available on this website – please contact RDL’s Lands Division, State Land Services for further information) in connection to this.

The LAA provides for different methods by which a fee simple interest in Crown land may be purchased from the State of Western Australia. The powers of the Minister in relation to the sale of Crown land is set out in Division 2 of Part 6 of the LAA.

Section 74 of the LAA sets out the general powers of the Minister to sell Crown land. Where the Minister proposes to sell Crown land under section 74 of the LAA and subdivision is necessary, section 27(5) of the LAA must be complied with. Section 27(5) provides that where Crown land is subdivided or subdivided and developed for the purpose of selling that Crown land under section 74 of the Act, provisions as set out in Part X of the PDA applies to Crown land.

The application of the relevant parts the PDA means that the requirements and processes for subdividing and developing freehold land under the approval of WAPC apply equally to Crown land being subdivided for sale into the fee simple under section 74 of the LAA.

[Policy 6.2.1 in the](#) Government Land Policy Manual (please note this manual is not available on this website – please contact RDL’s Lands Division, State Land Services for further information) provides some general principles on sales.

### 6.3.2. MINISTER’S DISCRETIONARY POWERS

In exercising Ministerial power to sell any Crown land into the freehold, under section 74(2) of the LAA, the Minister may determine or alter, at any time prior to the sale:

- conditions and covenants;
- prices;
- reserve prices;
- terms and conditions; and
- interest rates and penalty interest rates.

In addition to the above, under section 74(2) of the LAA, the Minister may also require a performance bond in respect of such sale, select successful applicants by way of a ballot and pay a commission to any person acting on behalf of the Minister in the sale of Crown land.

### 6.3.3. METHODS FOR THE SALE OF CROWN LAND

The different methods for selling Crown land into the fee simple are set out below:

An important principle, as set out in Policy 6.2.7 in the Government Land Policy Manual (please note this manual is not available on this website – please contact RDL’s Lands Division, State Land Services for further information) is that public competition is the preferred method of selling Crown land.

#### 6.3.3.1. INVITING EXPRESSIONS OF INTEREST

Section 74(1)(a) of the LAA empowers the Minister for Lands to sell Crown land by inviting expressions of interest.

An advisory panel may be appointed by the Minister to assist in making the recommendation for the successful expression of interest if required.

#### 6.3.3.2. BY OFFER FOR SALE

Section 74(1)(c) of the LAA allows the Minister to advertise for the sale of Crown land. Interested parties may approach RDL’s Lands Division directly, or through an advertised real estate agent as the case requires.

In the event that two or more applications to purchase the same parcel of Crown land are received on the same day, at the close of business on that day a ballot will be conducted to determine the successful applicant.

Policy 6.2.10.1 in the Government Land Policy Manual (please note this manual is not available on this website – please contact RDL’s Lands Division for further information) establishes the rules for offering Crown land for sale. This is an important policy, with substantial procedural guidelines, and the policy and associated background paper need to be read and rigorously applied.

Policy 6.2.11 in the Government Land Policy Manual (please note this manual is not available on this website – please contact RDL’s Lands Division for further information) deals with balloting.

#### 6.3.3.3. BY PUBLIC AUCTION, PUBLIC TENDER OR PRIVATE TREATY

Section 74(1)(f) of the LAA empowers the Minister for Lands to sell Crown land by public auction, or make a direct offer to sell a fee simple interest in Crown land by private treaty or sell Crown land by public tender.

##### SALE BY AUCTION

In the case of an auction, the auction will generally be conducted in the same fashion and under similar requirements as an auction of privately owned land.

On behalf of the Minister for Lands, a government employee (as defined in the *Public Sector Management Act 1994*) may sell land by auction without holding an auctioneer’s licence under the *Auction Sales Act 1973*. This is also confirmed in section 84 of the LAA. However, as a matter of policy and to enable auctions to be conducted at the highest standard, government employees are encouraged to qualify for an auctioneer’s licence.

Non-government employees may also be used where the circumstances are appropriate.

Section 84 of the LAA sets out the specific requirements for Crown land to be either leased or sold by public auction.

For further policy requirements relating to the sale or lease of Crown land by public auction, see Policy 6.2.5 in the Government Land Policy Manual

#### SALE BY PRIVATE TREATY

Sales by private treaty are not the usual way Crown land is sold. There are instances where general interest considered very low or where in other instances the Minister may direct such an offer be made, the direct offer may be initiated.

Policy 6.2.7 in the Government Land Policy Manual (please note this manual is not available on this website – please contact RDL's Lands Division, State Land Services for further information) relates to sales by private treaty.

#### SALE BY PUBLIC TENDER

The Minister can invite or call for tenders to purchase the fee simple in Crown land under section 74(1)(f) of the LAA. Section 74(1)(b) of the LAA enables the Minister for Lands to call for tenders to purchase the freehold in a parcel of Crown land. As is the case for inviting expressions of interest, an advisory panel may be appointed by the Minister to make a recommendation to the Minister for the successful tenderer. In some circumstances a panel may be appointed at the commencement of the process to assist the determination of selection criteria and related procedures.

Tenders are generally called for single special purpose releases where a significant investment may be required to develop the land. For example, developments in the nature of shopping centres, units, holiday resorts etc.

Where a public tender is proposed, the principles and procedures established for Government Tender of Services should be used. This includes giving all interested parties the same information, timeframes and standards of submissions. In addition, minimum information and criteria should be stipulated in advertising material to ensure that all potential tenderers are given the same opportunity to supply competitive information on the same criteria.

For more information on the tender processes, see RDL's Policy 6.2.6 in the Government Land Policy Manual.

#### 6.3.3.4. USE OF AGENTS

RDL's Lands Division may use real estate agents to sell or lease Crown land, with commissions being paid (whether a fixed amount or a percentage of the land value). RDL is accountable for the actions of its agents, and where they are used, the Managers within State Land Services need to regularly monitor their performance and ensure they are familiar with necessary procedures.

Policy 6.2.10.2 in the Government Land Policy Manual (please note this manual is not available on this website – please contact RDL's Lands Division, State Land Services for further information) relates to the employment of agents.

#### 6.3.3.5. PERFORMANCE BONDS

Performance bonds or bank guarantees may be used to ensure compliance with conditions of sale. Generally, they will be used only in the case of high value, high-risk developments, and situations where the State may be left with substantial costs if the purchaser cannot complete development.

Policy 6.2.9 in the Government Land Policy Manual (please note this manual is not available on this website – please contact RDL’s Lands Division, State Land Services for further information) relates to performance bonds and bank guarantees.

#### 6.3.3.6. PRICING

It is very important to note that there are rigorous controls in place in relation to the exercise of pricing powers under sections 11(3), 74(2)(a), 75, 161, 168, 169 and 190(7) of the LAA.

Section 11(3), dealing with land exchanges, requires the Minister to consult with the Valuer General on the respective values of the exchange parcels.

Section 190(7), dealing with sale of surplus land acquired for a public work, requires the holding authority to take the advice of the Valuer General in setting the price.

Regulation 4 of the *Land Administration Regulations 1998* requires that if the Minister delegates powers pursuant to section 9(1) of the Act to transfer Crown land in fee simple then:

- (a) regard should be had for the advice of the Valuer General in setting the price, or
- (b) the land should be sold by competitive process, or
- (c) if sold by private treaty, the price should not be less than 90% of the price determined on the basis of the Valuer General’s advice, or
- (d) the land may be sold by advisory panel recommendation.

Regulation 12 requires that in determining prices under section 74(2)(a) of the Act, regard must be had for the advice of the Valuer General, except in relation to land in closed private roads and pedestrian access ways (under specified circumstances) and low value land in remote areas.

Delegations of pricing powers in relation to section 161(1)(d), dealing with disposal of surplus public works land, are subject to a requirement that the price be set at no less than 90% of the value advised by the Valuer General.

Delegations of pricing powers in relation to section 169, dealing with purchase of land for public works, are subject to a requirement that the price be set at no more than 10% above the value advised by the Valuer General.

There are then a number of policies in the Government Land Policy Manual (please note this manual is not available on this website – please contact RDL’s Lands Division, State Land Services for further information) which deal with pricing of Crown land for disposal. The more important ones are:

Policy 6.2.4	Delegation of Ministerial Powers
Policy 6.2.3	Pricing of Crown land
Policy 6.2.3.1	Pricing to Government Agencies
Policy 6.2.7	Private Treaty
Policy 6.4.6	Conversion of Leases to Freehold

The critical features are these:

- Pricing Policy 6.2.3 specifies that fresh valuations must be regularly obtained prior to sales agreements being entered into. Acceptable periods for currency of valuations are specified and depend on whether the land is particularly valuable, the local market is volatile, or the proposed sale is of a sensitive nature.
- Policy 6.2.3.1 provides that Crown land required by government agencies in fee simple or for commercial or operational operations, be sold at market value, as advised by the Valuer General.
- Sales delegations Policy 6.2.4 outlines principles to be employed in delegating sales powers, and differentiates between situations where powers can be given to lower-level officers, and where they should be retained at a higher level.
- Policy 6.2.7 provides guidance for situations where public competition is not appropriate and private treaty can be employed.
- Policy 6.4.6 outlines procedures to be followed in converting existing leaseholds to freehold. It notes the requirements of Regulation 14 and pricing Policy 6.2.3.

The contents of Policy 6.2.3 are critically important for staff involved in pricing while Regulation 12 provides important exceptions.

#### 6.3.3.7. SALE OF FEE SIMPLE INTEREST SUBJECT TO CONDITIONS

Crown land may be sold into the fee simple subject to conditions in accordance with section 75 of the LAA. The land is known as “conditional tenure land”.

WHAT IS CONDITIONAL TENURE LAND?

Conditional tenure land is fee simple land subject to conditions of use of the land registered against the certificate of title. The conditions are such conditions determined by the Minister for the use of the land, usually requiring that the land be used only for a designated purpose.

Conditional tenure land may be transferred either for nominal value, or for a discounted price; and is generally granted reflecting the restrictions placed on the land’s use or the value to the community of the service provided on the land (e.g. aged persons’ home, or church). The State’s equity in the land consists of the difference between the land’s unimproved market value at the time of transfer, and the price paid by the recipient of the title for the land. Where a nominal price was paid, the State’s equity is 100%

Conditional tenure land replaced “Crown Grants in Trust” formerly issued under section 33(4) of the *Land Act 1933* over reserved land, limited to a specific purpose, and such grants are henceforth referred to as Conditional land tenure.

When Conditional tenure is granted under section 75 to secure performance and to guard against uncontrolled transfers, memorials are to be lodged pursuant to section 16, or in exceptional circumstances covenants lodged under powers conferred by section 74(1)(e) of the LAA. For more information on memorials, see paragraph 2.5 of this Manual. For information on the types of positive and restrictive covenants that should be created for conditional tenure land, see [Chapter 2](#) of this manual.

Grants of conditional tenure should be used very sparingly. The circumstances justifying the use of this tenure are now extremely limited. Treasury policy encourages full costing and transparent accounting for service-delivery. Conditional tenures are a form of hidden subsidy.

#### EFFECT OF CONDITIONAL TENURE LAND

While conditional tenure land provides a fee simple interest to the purchaser, the effect of any breach of the conditions attached to the land means that the fee simple interest can be forfeited by the Minister under section 35 of the LAA. The State's equity in the land and any purchase price or nominal value paid for the land can be recovered subject to the formula set out in section 75(4) of the LAA.

Under this formula, the Minister can recover the whole or proportionate balance of the unimproved value of the land (depending on whether or not any consideration or value has been paid prior to the grant of the Conditional tenured into the fee simple) from the holder of the Conditional tenure land at the time the conditions relating to the land are removed.

Conditional tenure land cannot be licensed, mortgaged, charged or otherwise encumbered without the written permission of the Minister for Lands under section 75(6) of the LAA.

Under section 75(7a) the Minister may, in prescribed circumstances and with the Treasurer's prior approval, waive whole or part of this payment. No circumstances have been prescribed as yet (March 2008). It is intended that section 75(7a) should be used very rarely, as circumstances justifying its use will be very limited (e.g. removing the use restriction from Local Government endorsement land, subject to the local government paying 50% of the lands unimproved value).

If Section 75 LAA Land is to be surrendered because it is of no further use to the grantee, then s.11 (1)(c) of the LAA is the appropriate provision to use. No reference should be made to S.75 of the LAA. The condition as to use does not need to be removed to permit surrender, and reversion into the Crown estate.

The S.75 tenure, being a lesser estate, merges into the Crown estate, the higher estate, upon surrender, thereby extinguishing the S.75 condition (which was placed on the title to govern the way in which the title holder used the land, and has no relevance to the Crown).

Where a fee simple owner wishes any conditions relating to conditional tenure land to be removed, an application should be made to the Minister together with payment of the balance of the unimproved value of the conditional tenure land in accordance with section 75(4)(b)(i) or (ii) of the LAA. If the Minister agrees to all the conditions being removed, the conditions and covenants registered against the certificate of title may be removed by a cancellation of the conditions lodged pursuant to section 15 of the LAA.

If the minister specifies that conditional tenure is subject to the condition that due performance of other conditions by the holder of freehold is to be secured by a charge of that land, then under section 16 of the LAA the Minister may lodge a Memorial. When such a Memorial is registered it is a Charge on the land for the benefit of the Minister.

#### POLICY REQUIREMENTS

There are a number of policy papers issued by RDL in relation to conditional tenure land. See Policies 6.2.12, 6.2.12.1, 6.2.12.3, 6.2.12.5, and the background paper to Policy 6.2.12.1 in the Government Land Policy Manual (please note this manual is not available on this website – please contact RDL's Lands Division, State Land Services for further information) for more detail on these policy requirements.

#### 6.3.3.8. DEVELOPMENT AND SALE BY JOINT VENTURE

Section 78 of the LAA empowers the Minister to enter into a joint venture with another person for the purpose of developing and selling Crown land in accordance with regulation 13 of the *Land Administration Regulations 1998*.

In a joint venture proposal, the Minister for Lands and the other joint venturer may agree to share the expenses and income of that joint venture: section 78(2) of the LAA.

The Minister must have regard to the advice of the Valuer General as to the market value of any Crown land proposed to be developed by way of a joint venture under section 78 of the LAA.

The powers of the Minister to enter into joint ventures are limited to certain other joint venturers only.

#### PERMISSIBLE PARTNERS IN JOINT VENTURES

Regulation 13 of the *Land Administration Regulations 1998* only allows the Minister to enter into joint ventures with certain classes of persons. Joint ventures can only be entered into with another person who –

- is a local government or State instrumentality;
- is a person who is the holder of the freehold of the land adjoining Crown land to be developed and sold by joint venture and the financial circumstances and professional standing are considered by the Minister to be satisfactory for the purposes of the joint venture; or
- is determined by a public tender process or such other process where the public has been given an opportunity to participate in.

### 6.3.4. CONVEYANCING PROCESS AND SETTLEMENT PROCEDURE

#### 6.3.4.1. GENERAL

Where a fee simple interest in Crown land is sold by the State using any one of the above methods, settlement is effected by check searching the certificate of Crown land title (CLT) at LANDGATE and if appropriate, the purchaser handing over the balance of the purchase monies to the relevant representative for the State in exchange for a duly stamped and executed Transfer of Land Form signed by or on behalf of the Minister for Lands and the purchaser. The settlement process is relatively simple with no rates and taxes adjustment required. The Crown does not pay rates and taxes on Crown land. For more information as to the State's representative for disposals of fee simple interests in Crown land, see [Paragraph 6.2.](#)

Instead of applying for the issue of a Crown grant as under the *Land Act 1933*, purchasers, can now search a certificate of Crown land title (if one has been created) and prepare a Transfer of Land Form and have it assessed for Stamp Duty by the Office of State Revenue or a Local Court for the fee simple interest. At the time of settlement, a duplicate certificate of title for the fee simple interest in the land being purchased will not be available.

#### 6.3.4.2. SALE AND SETTLEMENT PROCESS

The sale and settlement process will usually be as follows:

The purchaser will be required to pay a prescribed deposit (usually 10%) and complete a Contract of Sale in duplicate at the time of making an offer. This will be the day of the auction, if the sale is by auction, the day that Expressions of Interest or Tenders are submitted to the State's representative, or the date upon which the Minister for Lands sells the land. It is suggested that, in all cases, the purchaser nominate a conveyancer to act on the purchaser's behalf on the Contract of Sale.

An authorised delegate of the Minister for Lands will sign the Contract of Sale if the offer is accepted. The original copy of the Contract will be forwarded to the purchaser's conveyancer to enable settlement to be processed in accordance with normal conveyancing requirements. As is usual, the purchaser's conveyancer is responsible for preparing the Transfer of Land document and arranging for an assessment and payment of stamp duty.

The stamped Transfer of Land document should be forwarded to the State's representative, who is currently the Manager – Lands Division, State Land Services within the relevant region, no less than 10 days prior to the settlement date to enable the Transfer document to be signed by the Minister for Lands (or a duly authorised delegate of the Minister) on behalf of the State of Western Australia as transferor.

Settlement will usually be held at RDL's Lands Division offices, unless otherwise arranged. At settlement, the State's representative will hand over the fully executed and stamped Transfer of Land form in exchange for the balance of purchase monies. Customers should again note that a duplicate certificate of title would not be available at settlement. It will be the responsibility of the purchaser's conveyancer to lodge the Transfer of Land document with the Registrar of Titles at LANDGATE's Midland, Bunbury or Perth offices. Lodgement may be made personally or by post.

Registration of the Transfer of Land document will result in the creation of a certificate of title for the land in fee simple in the name of the purchaser and cancellation of the corresponding certificate of Crown land title. A duplicate certificate of title will issue to the lodging party or to the party instructed on the Transfer of Land document.

## **6.4. SALE AND AMALGAMATION**

### **6.4.1. GENERAL**

The Minister for Lands has specific power under section 87 of the LAA to sell the fee simple interest in Crown land or lease Crown land for subsequent amalgamation with adjoining land in certain outlined circumstances.

### **6.4.2. EXERCISE OF THIS POWER**

This power should only be exercised in circumstances where the Minister considers that a parcel of Crown land is unsuitable for retention as a separate lot, or subdivision and retention of the land as a separate lot is not considered suitable because of its geographic location, potential use, size, shape or any other good land use planning reason: section 87(2) of the LAA.

This power is most commonly used when roads or private roads are closed and amalgamated into adjoining freehold land. [Chapter 5](#) of this manual sets out the processes for using the sale and amalgamation powers of the Minister.

This power can only be exercised with the consent of the holder of the adjoining land who is prepared to purchase or Lease the Crown land adjacent to its property

Where the Minister proposes to exercise this power, RDL will prepare and lodge a Conveyance and Amalgamation Order (Form LAA-1003 or Form LAA-1003A) for lodgement with the Registrar of Titles.

#### **6.4.2.1. SURVEY REQUIREMENTS**

Business rules for SmartRegister and SmartPlan now require that a section 87 order should only be exercised where a survey of the amalgamated lot has been prepared.

### **6.4.3. EFFECT OF ENCUMBRANCES AND OTHER INTERESTS**

Section 87 of the LAA provides that, upon amalgamation of the parcel of Crown land with the adjoining land, that parcel of Crown land takes on the tenure of the adjoining land and becomes subject to any encumbrance of the adjoining land: section 87(5) of the LAA. For example, if the adjoining land is freehold land subject to a mortgage, the Crown parcel, on amalgamation, becomes freehold land and will also be subject to that mortgage.

The Registrar of Titles will create a new certificate of title for the amalgamated lot the subject of a deposited plan, which has been prepared and approved by the WAPC before the lodgement of the Conveyance and Amalgamation Order.

## 6.5. LEASE OF CROWN LAND

### 6.5.1. BACKGROUND – CROWN LEASES GRANTED UNDER THE LAND ACT 1933

Before the introduction of the LAA and the implementation of a single registration system enabling titles to be created and registered under the TLA, a lease granted for terms greater than 5 years under the *Land Act 1933* was registered under the TLA as Crown leases as a title for the leasehold interest in a parcel of Crown land. Under the LAA, a lease created under the LAA is now dealt with as a lease document, registered against a Crown land title. The transitional provisions of the LAA mean that there is no difference between the rights of a lessee under a Crown lease granted under the *Land Act 1933* and a lessee under a lease of land granted under the LAA. Both lessees continue to hold a leasehold interest in Crown land. The only difference is in the registration requirements of that leasehold interest. In most instances Landgate has now moved these Crown leases onto Crown land titles.

A Crown lease was the term applied to every lease of Crown land granted by the Minister for Lands under the *Land Act 1933* for a leasehold term for conditional purchase, homestead, farm, pastoral or any other purpose as set out in that Act that was registered under the TLA. Crown lease in a TLA form. Special lease in a form describing a lease granted under page 116 of the *Land Act 1993* which upon registration under the TLA became a Crown lease. Crown leases were:

- since 1909, leases for a five (5) year term or longer, were issued in duplicate by the Minister for Lands and forwarded to the Registrar to be registered as Crown leases under section 53 of the TLA. One copy was marked as the original and retained by the Registrar and the Registrar delivered the other copy, the duplicate, to the person entitled to receive it (the lessee or, where there was a mortgage over the leasehold interest, to the mortgagee).
- From 1989, for administrative convenience, leases from the Crown for a term of less than five years were also lodged at LANDGATE in sequential numbering order together with Crown leases with a term of five (5) years or over to enable the creation of Crown land records and to make searching all leases of Crown land easier through LANDGATE's computer searching facilities. Although these leases had a sequential number similar to Crown leases lodged for registration with the Registrar of Titles under the TLA, these leases (that is leases under 5 years) were not registered under the TLA but were actually registered under the provisions of the *Land Act 1933*.

As a result, customers should be aware that there are two types of Crown leases shown on the Register:

- Leases of Crown land for a term of five (5) years or more (defined in the TLA as a "Crown Lease") registered under Part IIIA of the TLA; and
- Leases of Crown land for a term under five (5) years (not "Crown Leases" as defined in the TLA) which have been given a Crown lease (year) number for searching purposes but were registered under section 151 of the *Land Act 1933*.

All leases of Crown land were entered in a Register of Leases and numbered consecutively in years, for example: No. 16/1976.

Since the proclamation of the LAA, both Crown leases and leases granted and registered under the *Land Act 1933*, were deemed leases in Crown land created under the LAA and where for terms greater than 12 months, registered under the TLA. All new leases of Crown land are now given an alpha numeric dealing number used for all registered dealings lodged with the Registrar of Titles, for example, H123456.

For the purposes of the LAA, leases for any term over 12 months granted by the Minister for Lands are commonly known within RDL as a State lease or general lease.

Subject to Ministerial approval, leases can be mortgaged or be the subject of other commercial dealings.

## 6.5.2. CROWN LEASES ISSUED PRE-LAA

### 6.5.2.1. GENERAL

Crown leases created under the *Land Act 1933* and registered under the TLA are still current and valid and taken to be issued under the LAA.

As mentioned at [Paragraph 6.4.1](#), a Crown lease was previously registered under the TLA as a form of title for the leasehold interest in the relevant parcel of Crown land before the LAA was proclaimed.

### 6.5.2.2. CROWN LEASES WITH A TERM OF 5 YEARS OR MORE

As Crown leases (for terms over 5 years) created under the *Land Act 1933* are registered under the TLA as Crown leases, a guaranteed and indefeasible certificate of Crown land title may be immediately created for that interest in Crown land provided that all approved interests relating to that lease have been registered. A check of LANDGATE records will determine if any approved interests have not been registered against the Crown lease. However, unlike dealing under the LAA there was no obligation for interests to be registered to be effective under the *Land Act 1933*.

### 6.5.2.3. CROWN LEASES WITH A TERM UNDER 5 YEARS

Pre-LAA Crown leases (with a term under 5 years) were only lodged with the Registrar and recorded on a Crown land record to provide a useful searching mechanism for the public. Under the LAA, a Crown land record is taken to be a Qualified certificate of Crown land. Where that Qualified certificate of Crown land title needs to be validated, the validation process contained in [Chapter 2](#) of this manual should be followed.

As leases of Crown land issued under the *Land Act 1933* with a term of less than five (5) years were not registered under the TLA, the validation process contained in this manual must be followed to enable a certificate of Crown land title to be created. Until then, the Registrar will only issue a Qualified certificate of Crown land title for the land parcel containing that lease.

Any subsequent instrument creating an interest in the lease will be registered and endorsed:

- in the case where the leased land is comprised within the subject of a digital title, only on the digital Crown title;
- in the case where the leased land is comprised within the subject of a paper title, on the lease document itself and on the relevant paper Crown title.

### 6.5.2.4. ANNUAL RENEWABLE LEASES

In the past, LD has issued a large number of annual renewable leases generally under sections of the *Land Act 1933*. As a matter of administrative practice, these leases were not renewed on an annual basis, and legal advice held that the lessees maintained occupation of the land as tenants at will.

With the commencement of the LAA, to be effective all Crown land dealings had to be registered in accordance with the TLA. Internal legal advice at that time concluded that where these annual renewable leases could still be said to have a legal existence, they had been transitioned by Schedule 2 of the LAA. However, as clause 38 of Schedule 2 provides

that any leases transitioned from the *Land Act 1933* cannot be renewed, these leases (where still valid) expired on the date they were next due to be renewed.

Any future annual renewable leases must be formally renewed upon expiry, unless the terms of the lease provide for holding over for indefinite periods (subject to termination notice).

Annual leases and other leases issued under the *Land Act 1933* cannot be renewed; they can be replaced by new LAA leases for terms longer than the initial term.

Annual leases issued under Sections 32, 116 and 117 of the *Land Act 1933* are exclusive possession leases.

Rental adjustments should only occur from the date the new lease is issued.

### 6.5.3. CROWN LEASES ISSUED POST-LAA

#### 6.5.3.1. GENERAL

Under the LAA and amendments to the TLA, with the implementation of the single registration system, all leases and subleases of Crown land with a term of twelve (12) months or more can be registered as an interest (by way of a document) against the relevant Crown title in the same way as freehold leases. There is no longer a need to create a separate title for leasehold interests formerly known as a Crown lease.

The single registration system now enables the Minister for Lands to apply to the Registrar to have a Crown title created. On the registration of that Application, the Registrar will create and register a Crown title and the details of the lease, being the current registered lessee and encumbrance holders, will be registered against that parcel of Crown land and endorsed on that Crown title. This process does not change any terms or conditions in the lease nor any rights accruing to the lessee. The lessee the subject of a lease of Crown land (granted post-LAA) and registered against the relevant parcel of Crown land are identical in every respect. The only change has been to the requirement for registration of that lease under the TLA.

#### 6.5.3.2. LEASES OF CROWN LAND (STATE LEASES)

The Minister for Lands has the power under the LAA to lease unallocated Crown land and unmanaged reserves to a person or corporation for a particular purpose in the form of a lease. Leases are given effect by the preparation of document signed by both parties and registered with the Registrar of Titles under the TLA.

WHAT IS A STATE LEASE?

To distinguish a lease issued by the Minister for Lands under the LAA from other leases of Crown land which may be issued by management bodies and other holders of Crown land, RDL commonly considers State leases as being any lease of Crown land granted by the Minister for Lands under the LAA for periods longer than twelve (12) months. State leases, like any other lease of Crown land, can be registered under the TLA on a Crown title: section 81 Q of the TLA.

The one distinguishing feature of a State lease is that it is shown as the primary interest on the Crown land title and as such, is endorsed in the First Schedule of a certificate of Crown land title.

Where a person wishes to lease a parcel of unallocated or unmanaged Crown land, that person should apply in writing (a letter is sufficient) to the relevant Manager, State Land Services for a State lease setting out the area of land required and the purpose for which it is required. RDL's Land Division staff will process the application and may, using the formal delegations in place, on behalf of the Minister for Lands, approve the grant of such lease if it is in accordance with the legal requirements and Government policies set by the Minister for Lands. For more information on the power to lease Crown land, see [Paragraph 6.5](#).

### 6.5.4. EFFECT OF MINING TENEMENTS OVERLAPPING LEASES AND EASEMENTS

It is important to note that section 90 of the LAA provides that where an area to which a lease and an easement proposed to be granted under the LAA are over the same area of land or overlap with the area of an existing mining tenement (as defined under the *Mining Act 1978*), that lease or easement can be granted without the need to surrender the mining tenement either in whole or in part under section 95 of the *Mining Act 1978*. It is a requirement of Section 16(3) of the Mining Act that approval under that Act is obtained before any lease is granted in a mineral field.

## 6.6. LEASES ISSUED OVER CROWN LAND

### 6.6.1. GENERAL

Under section 79 of the LAA, the Minister for Lands has discretionary power to lease Crown land for any purpose. The LAA now provides four methods by which leases of Crown land may be granted:

- by public tender;
- by offer for lease;
- by public auction;
- by private treaty.

In addition to the general methods to obtain a lease of Crown land, there are 5 main types of State leases that can be granted by the Minister for Lands under the LAA:

- Conditional purchase lease: section 80 of the LAA;
- General lease: section 79 of the LAA;
- Lease of an unmanaged reserve: sections 47 and 48 of the LAA;
- Lease of, under, or over a road: section 57 of the LAA;
- Pastoral lease: section 101 of the LAA;
- State Agreement lease under agreements made pursuant to the *Government Agreements Act 1979s*.

Leases may also be given over land acquired for a public work, but not immediately required for that purpose under section 192 of the LAA. This may include both freehold and Crown land, under particular circumstances.

The Minister for Lands under delegation, will determine the type of lease to be granted. The following policies in the Government Land Policy Manual (please note this manual is not available on this website – please contact RDL's Lands Division, State Land Services for further information) deal with:

- Policy 6.3.1.1 - providing general guidance for appropriate use of leasing as a tenure option (as against sale).
- Policy 6.3.2 - establishing rentals.
- Policy 6.3.4 - methods of release.
- Policy 6.3.8 - performance bonds, penalties and premiums.
- Policy 6.3.10 - options to renew
- Policy 6.3.11 - options to purchase.
- Policy 6.3.12 - extending and varying lease terms and conditions.
- Policy 6.3.14 - leasing of discontinued railways.
- Policy 6.3.17 - aquaculture leases.
- Policy 6.3.21 - maximum lease terms.

## 6.6.2. CONDITIONAL PURCHASE LEASES

### 6.6.2.1. WHAT IS A CONDITIONAL PURCHASE LEASE

The Minister for Lands can grant a conditional purchase lease for any term and subject to any conditions that the Minister determines under section 80 of the LAA. RDL's Lands Division officers should refer to Policy 6.3.13 in the Government Land Policy Manual (please note this manual is not available on this website – please contact RDL's Lands Division, State Land Services for further information).

Prior to the LAA, conditional purchase leases were restricted to use in relation to farming land, usually sold over a 25 or 30-year period with the purchase price being paid off in regular instalments ("rent"). The LAA offers much greater flexibility. Conditional purchase leases can now be used in any relevant situation. They were used to dispose of townsite lots subject to building conditions over short periods of time, although they have many other applications.

The attraction of a Conditional purchase lease is it provides certainty of freehold title and allows flexibility in the commercial terms of the lease. Under the LAA, this form of lease enables the Crown land to be conditionally sold into the fee simple on payment of an agreed rent subject to the completion of construction of identified improvements to a specified level within an agreed time frame.

Once these conditions have been met, a fee simple interest will be transferred and a certificate of title created and registered for the land. When taken in the context of LANDGATE's current residential leases, essentially, a conditional purchase lease is a form of contract for sale subject to agreed conditions which entitles the purchaser to enter into possession of the land to complete improvements and pay an agreed rental.

Under a conditional purchase lease -

- the rental instalments may be applied as part payment of the purchase price (similar to a terms contract): section 80 (4)(c) of the LAA,
- the rental instalments may be in addition to the purchase price, without reducing it (similar to a lease with option to purchase), and
- interest may be charged as compensation for deferred payment of the purchase price, and for default under any terms of the lease. Where interest is charged, interest should be set at the current rate applicable to the Commonwealth Bank's "Better Business Local" plus a client margin ranging between 0.5% and 5%, depending on risk factors. This is to be factored into lease rent payments. Interest should not be deducted from the purchase price unless the lease so provides and this would be an unusual situation.

### 6.6.2.2. CONVEYANCING REQUIREMENTS FOLLOWING COMPLETION OF CONDITIONS

In all cases, the purchaser/lessee is required to complete any improvements, comply with all conditions, covenants, and reservations and pay the full purchase price before the Crown land will be transferred in to fee simple to that purchaser/lessee.

At that stage and upon payment of the purchase price, the Minister for Lands must transfer the fee simple interest for that land to the lessee. At the time of the transfer, any encumbrances against the leasehold interest will be carried forward to the fee simple interest. Interests already existing in the Crown land and registered on the Crown title can be carried forward on the Transfer document into the freehold in accordance with the provisions set out in sections 19 and 22 of the LAA.

In general, the lease and settlement process for a conditional purchase lease for Crown land currently granted will be as follows:

- The lessee will be required to pay a deposit and complete a lease application form.
- A RDL Land Division officer will prepare the lease document and the original and duplicate copies will be forwarded to the lessee for signing.
- The lessee will be responsible for signing both copies of the lease document and arranging assessment and payment of stamp duty.
- Both copies of the signed and stamped lease document must be forwarded to RDL's Lands Division in Midland for signing by the Minister for Lands (or a delegated RDL officer) on behalf of the State of Western Australia as lessor and stamped on behalf of State Revenue.
- A RDL Lands Division officer will then lodge both the original and duplicate lease with Registration Services Branch for registration by the Registrar of Titles. RDL's Lands Division should retain a file copy before it is lodged and after it is registered to show the LANDGATE registered document number. On completion of the registration process, the duplicate copy of the signed and registered lease will be forwarded to the lessee or its agent for its records.
- Rental is to be paid in accordance with the conditions of the lease.

This process may vary. The purchase price may be paid in a series of rental instalments over, for example, a 5-year period or may not be paid until the completion of all conditions.

### 6.6.3. GENERAL LEASES

The Minister for Lands may grant a general lease over a parcel of Crown land for any purpose and subject to any conditions. The Minister for Lands may also require a performance bond for any such lease: section 79 of the LAA.

A general lease may contain conditions including:

- Option to renew (or extend).
- Option to purchase the fee simple in the Crown land the subject of the lease.

Under section 79 of the LAA, the Minister for Lands may determine rentals. In setting rental for leases over Crown land, RDL's Lands Division officers assisting the Minister for Lands should apply the lease rental policies set out in Policy 6.3.2 in the Government Land Policy Manual (please note this manual is not available on this website – please contact RDL's Lands Division, State Land Services for further information).

In general, where the Minister for Lands through RDL's Lands Division has made the decision and grants the lease, the leasing process for a lease for Crown land will be as follows:

- The lessee will be required to complete a lease application form.
- A RDL Lands Division officer will prepare the lease document and the original and duplicate copies will be forwarded to the lessee for signing.
- The lessee will be responsible for signing both copies of the lease document.
- Both copies of the signed lease document must be forwarded to RDL's Lands Division in Midland for signing by the Minister for Lands (or a delegated RDL officer) on behalf of the State of Western Australia as lessor.
- A RDL Lands Division officer will then mark the document exempt from stamp duty and lodge both the original and duplicate lease with Registration Services Branch for registration by the Registrar of Titles. RDL's Lands Division should retain a file copy before it is lodged and after it is registered to show the LANDGATE registered document number. On completion of the registration process, the duplicate copy of the signed and registered lease will be forwarded to the lessee or its agent for its records.

### 6.6.4. CROWN LEASES OF UNMANAGED RESERVES

The Minister for Lands may grant a lease for a parcel of Crown land in an unmanaged reserve for a purpose that is in accordance with the purpose of the reserve: Section 47 of the LAA.

A lease granted for a purpose that is in accordance with the purpose of the reserve may be mortgaged with the prior approval of the Minister for Lands: Section 47(2) of the LAA.

The Minister for Lands may also grant a lease for a parcel of Crown land in an unmanaged reserve for a purpose which is different from but which is compatible with or ancillary to the current purpose of the reserve: Section 48 of the LAA.

A lease granted for a purpose that is different from the purpose of the reserve **cannot be mortgaged**: Section 48(2) of the LAA.

The leasing process for these leases is the same as for general leases.

Policies 4.5.1, 4.5.2 and 4.5.3 in the Government Land Policy Manual (please note this manual is not available on this website – please contact RDL's Lands Division, State Land Services for further information) relate to leases of unmanaged reserves.

### 6.6.5. PASTORAL LEASES

The Minister for Lands may grant a Pastoral lease under section 101 of the LAA for a parcel of Crown land in accordance with the requirements of the LAA.

The Minister for Lands will act under the advice of the Pastoral Lands Board in relation to conditions and procedure for the release process of Crown land subject to pastoral leases.

The leasing process for pastoral leases is the same as for general leases. For more information on pastoral leases, see [Chapter 7](#) of this manual.

### 6.6.6. LEASING OF CROWN LAND FOR TELECOMMUNICATIONS PURPOSES

There is a greater requirement for leasing land for telecommunications purposes following the introduction of the *Telecommunications Act 1997* (Commonwealth).

This Commonwealth Act empowers telecommunications carriers to install “low impact facilities” on any land. Certain facilities cannot be “low impact”:

- designated overhead lines
- a tower not attached to a building
- a tower attached to a building and more than five metres high
- an extension to a tower that as previously been extended
- an extension to a tower, if the extension is more than five metres high.

RDL's, Lands Division officers should consider Policies 22.30.1 and 22.30.2 in the Government Land Policy Manual (please note this manual is not available on this website – please contact RDL's Lands Division, State Land Services for further information) for more detail in this connection.

RDL's policy is essentially one of RDL's Lands Division on behalf of the Crown (rather than a management body due to the inconsistency between this management order and the purposes of the lease) granting tenure for tower sites direct to carriers, in the form of leases and (where necessary) easements for access and services, at commercial rates. A standard form of lease has been developed for this purpose.

### 6.6.7. LEASING FOR AQUACULTURE

RDL's Lands Division has a memorandum of administrative arrangements (MAA) with Fisheries WA in relation to the grant and registration of tenure in coastal waters. In part, this MAA provides that Fisheries WA (FWA) will continue to issue leases under their Act for pearling and aquaculture in:

- (i) WA Waters (within the meaning of the *Fish Resources Management Act 1994* (FRMA) or the *Pearling Act 1990*); or
- (ii) in respect to land vested for aquaculture purposes in the Minister for Fisheries, with the exercise, where necessary, of the delegated powers of the Minister for Lands.

Pearling and aquaculture leases will only be issued following assessment of applications in accordance with the consultative process outlined in FWA Ministerial Policy Guideline No. 8 (MPG 8). Leases issued under the FRMA and the *Pearling Act 1990* will be registered under the *Transfer of Land Act 1893*.

The Minister for Lands will issue leases to aquaculture licensees pursuant to section 79 of the LAA, over Crown land, other than WA Waters or land vested for aquaculture purposes in the Minister for Fisheries.

Policy 6.3.17 in the Government Land Policy Manual (please note this manual is not available on this website – please contact RDL's Lands Division, State Land Services for further information) provides guidelines for the leasing of Crown (non-submerged) land for support of the aquaculture industry. The details of this policy should be read and applied to all aquaculture leasings.

### 6.6.8. LEASES OVER TENURES

In addition to the above types of leases, leases over tenures may also be granted under the LAA.

#### 6.6.8.1. LEASES OVER RESERVES

The Minister for Lands has power to lease Crown land in an unmanaged reserve for a purpose that accords with the purpose of that unmanaged reserve under section 47 of the LAA. Further information on leases over reserved land can be obtained from [Chapter 4](#) of this manual.

In addition, a management body, where it has power to lease land in a management order (known as a management order lease) or, has power to lease land under its own written law, may also lease reserve land provided the lease accords with the purpose of the reserve and subject to the approval of the Minister for Lands under section 18 of the LAA. For more information on the consent of the Minister under section 18, see from [Chapter 2](#) of this manual.

#### 6.6.8.2. LEASES UNDER AND ABOVE ROADS

Section 57 of the LAA empowers the Minister to grant a lease in respect of land above, on or below a road. The Minister may also grant leases over three-dimensional roads in appropriate instances. In cases where leases under and above roads are proposed to be granted, the consent of the relevant local government must be obtained. Depending on the case, consent of the Commissioner of Main Roads or the Minister responsible for administration of the *Public Works Act 1902* must also be obtained.

Where it is proposed to provide for the granting of a lease over a three dimensional road, an isometric plan setting out the height, depth, width and length of the affected land is required together with a reference to Australian Height Datum (AHD). Any queries in relation to this type of plan should be made to the relevant LANDGATE officer or, surveyor. This also applies to three-tier leases involving underpasses, surface area and overpasses.

Policies 5.1.7, 5.1.7.1 and 5.1.7.2 in the Government Land Policy Manual (please note this manual is not available on this website – please contact RDL’s Lands Division, State Land Services for further information) deal with this area.

#### 6.6.8.3. LEASES OVER SUBMERGED LANDS

The LAA definition of land includes territorial waters (out to the three nautical mile limit). There is also an agreement between RDL’s Lands Division and Fisheries WA in relation to the management of land over and under waters.

RDL should ensure the grant of a lease does not conflict with the agreement with Fisheries WA. The Minister for Lands has power to grant leases over water in appropriate circumstances.

In every case, an appropriate plan (sometimes isometric) is required clearly identifying the area of water and seabed leased.

LAA leases can not be granted in areas proclaimed under the *Port Authorities Act 1999*. In such instances the area will have to be de-proclaimed before a LAA lease can be granted.

As with all grants of tenure over Crown land, the approval of the Minister for Mines is required under section 16(3) of the *Mining Act 1978* prior to any leases being granted over submerged lands.

### 6.6.9. STAMP DUTY IMPLICATIONS FOR LEASES OF CROWN LAND

All leases of Crown land granted by the State are exempt from stamp duty under the *Stamp Act 1921*. The exception to this rule is the conditional purchase lease because the lease is considered by State Revenue to be a contract to purchase the land subject to a lease and other conditions.

### 6.6.10. LEASING UNDER RATIFIED STATE AGREEMENT ACTS

There are a number of instances, particularly in the 1960's where the State entered into agreements with entities to develop large projects such as the North West shelf or the Pilbara projects. These agreements, when executed by the parties were ratified by Parliament in the form of a particular Agreement Act.

In most cases, the particular Agreement Act made amendments to the Land Act and Section 18 of the Land Act or the LAA in their application for land tenures required to be granted by the State under the Agreement, be they leases, licences or easements.

One very common amendment is to disapply the transfer approval provisions under Section 143 of the LA and to require transfers of interests in such tenures to be at the approval only of the Minister responsible for the administration of the particular Agreement Act (the Act Minister).

Before any proposal by an Agreement Act participant is given tenure under the LA or the LAA, the proposal needs to be first approved by the Act Minister via the Department of Industry and Resources. All land proposals under an Agreement Act receive tenure pursuant to that Act and the LAA. It is noted that no Agreement Act was included in legislation amended by the Acts Amendment Land Administration Act 1997 and as a consequence of this oversight, Agreement Acts still refer to the Land Act. In such instances the equivalent provisions of the LAA are operative sections.

Land Act lease issued under Agreement Acts can be renewed by virtue of clause 38(2) of LAA schedule 2.

## **6.7. CONVERSION OF STATE/CROWN LEASES INTO THE FREEHOLD**

### **6.7.1. GENERAL**

A lessee of Crown land (other than a pastoral lessee) may, under section 89 of the LAA, apply to the Minister for Lands to purchase the fee simple interest of the Crown land that is currently being held in leasehold. The application is purely subject to the discretion of the Minister and if granted, may be made subject to such conditions prescribed under regulation 14 of the *Land Administration Regulations 1998*.

### **6.7.2. CONVEYANCING PROCESS**

Where a lessee is successful in his or her application to have the leasehold interest converted into a fee simple interest, the following process will enable the conversion to be carried out.

A current State or Crown lessee's interest is converted into a freehold estate by creating and registering a certificate of title for the fee simple interest and cancelling the lease. Any encumbrances registered or lodged on the lease will be carried forward to the certificate of title unless the encumbrances are removed or renegotiated. The conversion to a freehold estate will be subject to compliance with the lease conditions and payment of purchase monies required by the Minister.

The conversion process can be achieved by way of a transfer of a fee simple interest from the State of Western Australia to the current lessee. The Transfer of Land document must include an endorsement that the lease to be merged with and extinguished by the grant of the freehold title. The request to merge and extinguish the lease should be endorsed on the Transfer of Land form itself and signed by the lessee or the lessee's agent.

Suitable words for the request endorsed on the Transfer of Land form is:

“The transferee requests that (specify lease number, for example: Lease H123456 or 1/1999) be merged and extinguished in the fee simple on this Transfer”.

A memorandum to that effect will be endorsed both on the certificate of Crown land title and the relevant State or Crown lease where the subject land is subject of a paper title. If the land is the subject of a digital title, the lease is digitally removed from the current title and moved to the title's history file.

## 6.8. LICENCES AND PROFITS Á PRENDRE GRANTED OVER CROWN LAND

Licences and profits á prendre over Crown land may be granted by the Minister for Lands under section 91 of the LAA or under section 48 in relation to reserved land. Where it is proposed to grant a licence or profit á prendre over the same area of Crown land as an existing mining or petroleum right, an agreement must be entered into between the relevant Ministers to show the consent of the Minister for Mines and all interest holders must be consulted: Section 91(5) of the LAA.

Policy 6.4.8 in the Government Land Policy Manual (please note this manual is not available on this website – please contact RDL’s Lands Division, State Land Services for further information) should be referred to when considering the granting of licences or profits á prendre.

### 6.8.1. LICENCES OVER CROWN LAND

Licences are, at common law, a personal right between two or more persons authorising the doing of a certain act for example the right to enter upon land which would otherwise be a trespass. A licence is not an interest in land, and a mere licence is always revocable.

The Minister for Lands has power to grant licences in respect of Crown land under section 48 and 91 of the LAA.

Further details of licences over unmanaged reserves can be obtained from [Chapter 2](#) of this manual.

Local Government has power to grant licences under its powers in the *Local Government Act 1995* and with the consent of the Minister for Lands under section 18 of the LAA.

Being merely a contractual right and not an interest in land, licences cannot be registered under the TLA, nor can a caveat be lodged to protect any claim relating to a licence.

### 6.8.2. PROFITS Á PRENDRE

A profit á prendre is a right to take natural produce or part of the soil from the land of another person. It is an interest in land and can be registered under the TLA. A common form of profits á prendre involves the planting of forest on land with a portion of the timber sale proceeds being paid to the landowner.

The Minister for Lands has power to grant profits á prendre under sections 48 and 91 in respect of Crown land.

When a profit á prendre is proposed to be registered against a Crown title, approved Form LAA-1038. *Please note forms are prepared and lodged by RDL staff only.*

## **6.9. EFFECT OF IMPROVEMENTS ON TERMINATION OF LEASE OR LICENCE**

### **6.9.1. GENERAL**

Where a lease or licence granted by the Minister under Part 6 of the LAA terminates, section 92 of that Act provides that the property in any of the improvements made on Crown land and not removed in accordance with the conditions of the lease vests in and becomes the property of the Crown.

However, where the lease is subject to an option to renew the lease, the lease is renewed pursuant to an option to renew or, the Minister and the lessee have agreed to the transfer of the fee simple interest in the Crown land to the lessee, the improvements do not automatically vest in the Crown: section 92(2) of the LAA.

Despite this, the lessee may, with the permission of the Minister, as in the case of most commercial leases as provided for in the lease, remove all fixtures from the Crown land within 3 months after the termination of the lease or, if specifically agreed by the Minister, have the improvements valued and those monies paid to that lessee by an incoming lessee or purchaser of the Crown land: section 92(3) of the LAA.

Provisions may also be made in the lease for “holding over”, for a period of time under specified circumstances. These provisions need to be used with care. The lessee will generally remain as a tenant at will; with one month’s notice being required to terminate the tenancy.

## 6.10. GENERAL DISPOSITIONS PROVISIONS

### 6.10.1. INTRODUCTION

The term “disposition” applies to all conveyances of land (e.g., transfers, surrenders, revestments), grants of tenure (e.g., lease, licence, easement, freehold), or other forms of setting land aside for a purpose, such as reservation, issue of management orders, dedication under an Act to a particular purpose, dedication as a road, and taking for a public work; as well as the associated actions of cancelling or varying such dispositions.

In this paragraph, the term relates to sales, leasing, revestments and associated actions. Part 6 of the LAA has certain provisions under Division 4 which are not restricted to either sale or leasing of Crown land.

### 6.10.2. REVESTMENTS

Section 82 of the LAA provides for revestment of land in the Crown, with or without encumbrances.

Policy 1.4.1.1 in the Government Land Policy Manual (please note this manual is not available on this website – please contact RDL’s Lands Division, State Land Services for further information) deals with revestments. The key issue for Crown land managers is to ensure that undesirable encumbrances (e.g., restrictive covenants, mortgages, and CMS Parmelia easements) should not carry forward to the Crown estate; and that land reverting in the Crown is not contaminated.

Having regard for the onerous requirements of the *Contaminated Sites Bill 2001*, it is very important that rigorous safeguards are established and observed, prior to allowing land to revert to State ownership.

While section 82 provides a way for land to return to the Crown, there are in fact numerous ways in which freehold or other land may come into State ownership or control, for example:

- surrender
- termination of lease
- forfeiture
- vesting via the town planning process
- revocation of management orders
- cancellation of dedication under an Act
- acquisition for a public work
- action under an Act, such as disclaimers in bankruptcy under the (*Commonwealth Bankruptcy Act 1933*)
- revestment for non-payment of Local Government rates
- return of Commonwealth lands (e.g., lighthouses, rifle ranges, bombing ranges)

Similar care as for revestments should be applied to all forms of reversion of land to the State.

### 6.10.3. GRANTS TO ABORIGINAL PERSONS OF THE LAA

Section 83 of the LAA provides for grants of freehold or leasehold to Aboriginal parties.

This is a special area, and is linked to government’s policies. Policy 6.4.1 in the Government Land Policy Manual (please note this manual is not available on this website – please contact

RDL's Lands Division, State Land Services for further information) relates to such dispositions, but action should not be taken under section 83 without reference to the Principal Policy Officer, Native Title.

#### **6.10.4. SUPERLOTS**

Section 85 of the LAA provides for the sale or leasing of Crown land as a superlot, for progressive subdivision and development. Policy 6.4.2 in the Government Land Policy Manual (please note this manual is not available on this website – please contact RDL's Lands Division, State Land Services for further information) deals with superlot developments, and should be referred to when considering using this provision.

This has proven to be a valuable tool in conveying land to LandCorp to facilitate timely development.

#### **6.10.5. DISPOSITIONS TO THE COMMONWEALTH, STATE GOVERNMENT AGENCIES, OR LOCAL GOVERNMENT**

Section 86 of the LAA provides for the sale or lease of Crown land to the Commonwealth, State or Local Government.

Policies 6.4.3 and 6.4.3.2 in the Government Land Policy Manual (please note this manual is not available on this website – please contact RDL's Lands Division, State Land Services for further information) relate to this provision. The general principle is that sale or leasing should be at market value.

Policy 1.2.3.4 establishes the principles for appropriate tenure, while Policy 6.4.3.2 reinforces the principle that land required by a State government agency for operational or service-delivery purposes should not be reserved; but should be sold at market value to the agency.

#### **6.10.6. OPTIONS**

Section 88 of the LAA empowers the Minister to grant options to purchase or lease Crown land.

Section 89 enables a lessee (other than a pastoral lessee) to apply to purchase the leased land, or for an option to purchase the leased land.

Options provide great flexibility to would-be-developers or investors to fully test and examine a project or proposal, safe in the knowledge that they can secure a lease or freehold title to the site if they comply with all option pre-conditions and then elect to exercise the option granted to them.

Policies 6.4.5 and 6.4.6 in the Government Land Policy Manual (please note this manual is not available on this website – please contact RDL's Lands Division, State Land Services for further information) deal with these two provisions.