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Crown Land Management Reform in Queensland

A White Paper which outlines principles
for Crown land legislation

December 1992



CROWN LAND MANAGEMENT REFORM IN QUEENSLAND

A White Paper which outlines principles for Crown land legislation

Department of Lands

Queensland Government

December 1992

SUMMARY

This White Paper embodies policies that emerged from the 1990 review of land policy and administration in Queensland (the Wolfe Report), refined through further consultation and endorsed by Government. The Paper will be tabled in Parliament.

Comment on issues relating to the implementation of these policies, and the drafting of new Crown land legislation that embodies these policies, is invited.

Any comments may be directed to the Director-General, Department of Lands, Locked Bag 40, Coorparoo DC 4151, and clearly marked "White Paper - Crown Land Management Reform".

It is intended to commence drafting the legislation in March 1993. It will be difficult to incorporate any comments received after this date.

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PART A INTRODUCTION

A1 PREAMBLE

Since 1859 a large number of Acts and amendments to Acts have been introduced in Queensland to meet the particular land management needs or policy directions of the times. Over the years, this has created an extremely complex collection of laws governing the management of Queensland's Crown land.

There is a growing and necessary desire in the community for:

- . clarity of approach, in understandable legislation;
- . equitable and effective use of Queensland's land resources;
- . a consistent and co-ordinated approach by Government;
- . decision making which takes into account sustainable land use principles;
- . flexible, participatory management planning;
- . community involvement in decision making;
- . increased openness and accountability in decision making;
- . clear avenues for understanding decisions and a right of appeal against unjust decisions.

The policies and the approach outlined in this Paper work toward achieving these desires.

At a State level "Crown land management" involves a reconciliation process between the different, but not mutually exclusive, demands placed upon the land. Such management entails determining the balance between: preservation and development; community and private benefit; recognition of indigenous rights; revenue neutral and revenue generating allocation; and directed (interventionist) action and free market forces. Such management must be based upon a system which brings together State government, local government, private interests and the community, to plan jointly for the future.

In dealing with individual parcels of land, "Crown land management" is seen as stewardship of the land which is held in trust for future generations. This is a combination of Crown and lessee responsibilities. For the Crown such management includes decisions on: ensuring sustainable use of the land; the most appropriate use or purpose for a particular parcel of land; the form in which the land should be held; the

rights and obligations that should attach to that holding; and the allocation of land. For the lessee such management includes responsibility for those decisions directly relating to the use of the land, business decisions and land condition decisions.

A2 BACKGROUND

The impetus for Crown land management reform stems from a number of recent reviews, specifically the Review of Land Policy and Administration in Queensland (the Wolfe Report), various reports of the Electoral and Administrative Reform Commission (EARC) and the Public Sector Management Commission (PSMC), and the internal Department of Lands review of legislation and regulation being undertaken under the auspices of the Business Regulation Review Unit (Department of Business, Industry and Regional Development). This section looks at some of these reviews.

Considerable work has already been undertaken in implementing Crown land management reform, including the recent amendments to the *Land Act 1962* and other associated Acts (through the *Lands Legislation Amendment Act 1991* and the *Lands Legislation Amendment Act 1992*), as well as changes to Departmental procedures and structure. The policies and strategies outlined in this Paper build on this work, and bring the issue to its logical conclusion - new Crown land legislation.

A2.1 The Wolfe Report

On 5 February 1990, the Queensland Government decided that there would be a review of land policy and administration in Queensland. Copies of the terms of reference for the review were distributed to industry groups and associations and upon request to individuals.

On 27 March 1990, a Committee was appointed to conduct the review, and to report and make recommendations to the Minister for Land Management. Advertisements seeking written submissions were placed in approximately 50 newspapers throughout the State. All interested persons were invited to respond. A high level of community interest in the review was evident and more than 300 submissions were received.

Committee members also held meetings in Cairns, Coen, Cooktown, Townsville, Mt. Isa, Blackall, Longreach, Roma, Charleville, Emerald, Charters Towers, Gympie and Rockhampton. On average 30-40 people attended each gathering. Information was also sought from Governments in other States.

On the 7 September 1990 the Committee delivered its report to the Minister for Land Management. That report is now generally known as the "Wolfe Report", after Committee Chairperson Ms PM Wolfe.

The Wolfe Report contains 103 recommendations covering aspects of the types, terms and conditions of Crown leases, freeholding, rental determination and grievance mechanisms. Many of these recommendations have now been implemented. Those recommendations relating to freeholding and rent were recently implemented in the *Lands Legislation Amendment Act 1991* and the *Special Freeholding of Leases Act 1991*. The Department is in the process of implementing the recommendations relating to grievance and advisory mechanisms that require no legislative change. A review of the grievance/appeals process, stemming from recommendations of the Wolfe Report and from other sources (in particular EARC reports No.s 14 and 18 concerning appeals from administrative decisions) is underway and may result in changes to the Land Court and Land Appeal Court.

The development of new Crown land legislation will complete the implementation of the Wolfe Report recommendations.

A2.2 Public Sector Management Commission

The Department of Lands was reviewed by the Public Sector Management Commission (PSMC) in March-July 1991. A number of the recommendations resulting from that review affect Crown land management.

The recommendations of particular relevance are:

- . All legislation administered by the Department of Lands be reviewed with a view to increasing the penalties for failure to comply with lease conditions and for other transgressions.
- . The *Valuation of Land Act* and the *Land Act* be rewritten with the aim of establishing one valuation system, and, if appropriate, amalgamate the valuation issues into one Act.
- . The *Land Act 1962* be amended so that authority for decision making now held by the Governor in Council or the Minister be examined to determine whether it can be vested in the Minister or Director-General respectively.
- . The Land Administration Commission be abolished.

The *Lands Legislation Amendment Act 1992* implements the recommendations relating to penalties and the Land Administration Commission.

A2.3 Electoral and Administrative Review Commission

Since the release of the Wolfe Report, there have been a number of Electoral and Administrative Review Commission (EARC) reviews and recommendations which directly affect Crown land administration. These reviews have resulted in:

- . Freedom of Information legislation, which places a clear onus on the Department to make decision making as accessible as possible; and
- . Judicial Review legislation, which provides an obligation for the Department to disclose the reasons for decisions and a mechanism to appeal decisions.

EARC Issues Papers No. 14 and 18 (concerning appeals from administrative decisions) review appeal rights, structures and processes. These reviews, together with the Wolfe Report recommendations, have caused the Department of Lands, together with the Department of Housing, Local Government and Planning, to investigate the concept of an integrated Land, Planning and Environment Court to deal with appeals on land, planning and environment legislation (subject to consideration of the recommendations of the Litigation Reform Commission). This investigation is continuing.

The EARC report on appeals on administrative decisions is not yet available. When available the relevant parts of this White Paper will be reviewed, in light of the EARC findings.

A2.4 Business Regulation Review

In September 1991 the Queensland Government endorsed a program for the systematic review of business legislation and regulations, as part of a program of micro-economic reform.

Some of the objectives of the review are:

- . to review all Queensland State Government business legislation and regulations to ensure an effective, efficient and (where appropriate) minimalist regulatory regime;
- . to reduce the regulatory burden on the State by removing unnecessary regulatory impediments to the development of an efficient economy;
- . to ensure Departmental resources are not wasted on the administration of inefficient and ineffective regulatory regimes.

In December 1991 the Department submitted a legislative review strategy to the Business Regulation Review Unit, as a part of the review program. This strategy includes a plan to review all of the Lands portfolio legislation over the next 2-3 years,

with the objective of producing a clear, consistent and complementary compilation of lands legislation. This White Paper is a part of that strategy.

A2.5 Government Land Management System

To improve the management of Queensland Government land holdings, in 1990 the Government decided that a register should be compiled of all land held or used by State Government Departments, statutory authorities and other agencies constituted under State legislation. This register is now referred to as the Government Land Register. In addition the Government allocated to the Minister for Lands the responsibility of implementing a management system for Government real estate (in consultation with all interested agencies).

The management system took effect in July 1991, and is referred to as the Government Land Management System (GLMS). Its purpose is to streamline and improve the management of Government real estate and it contains three key features:

- . a Government Land Register;
- . a process for the management of excess Government real estate (overseen by the Property Review Committee);
- . revenue sharing guidelines (overseen by the Treasury Department).

The policies of the GLMS reflect (among other things) a difference of approach that is required between land that is held for the community ("community category land"), and land that is held to provide a site for a service that is delivered to the community ("operational category land"). The contrast can be illustrated by comparing a National Park (where the land is critical) with a police station (where the service is critical, rather than the actual parcel of land on which the office is located). Therefore, different manners of holding the land (different tenures), and thus different abilities to deal with the land, may be appropriate for community category land compared to operational category land. It is suggested that operational category land is most appropriately held as leasehold or freehold, whereas community category land should be held as reserve.

This approach to land that would previously have been all held as "reserve", has been incorporated into this White Paper.

A2.6 Development Approval and Land Use Planning

The Government is committed to the development of a planning system which accommodates environmental, social and economic policy considerations relevant to a given project, and which delivers quick, efficient and credible decisions. The Government is undertaking a number of major initiatives to achieve such a planning system. Those initiatives that have the greatest impact on Crown land management are the proposals:

- . to introduce an Integrated Development Approval System (IDAS) to streamline processes and expedite approvals. This reform will eliminate unnecessary and ineffective regulation and provide an efficient, open and accountable decision making process;
- . to introduce a new planning system including simplified planning appeals.

The policies outlined in this White Paper have been developed in a manner which aims to support these initiatives.

A2.7 Recognition of Common Law Native Title

In June 1992 the High Court of Australia delivered its decision in the Mabo case. The Court overturned the doctrine of *terra nullius* and held that a system of native title did exist at common law on Murray Island in the Torres Strait. The Court recognised that the principle underpinning the majority decision could possibly be extended to other parts of the Australian land mass. The Court also recognised that native title had been extinguished over significant areas of the country in the period since European settlement.

The consequences of the High Court decision will require a consistent and national response. The Commonwealth Government is co-ordinating a national assessment. Any implications for the system of land tenure in Queensland resulting from this assessment will be addressed.

The interests of those who may hold native title and associated rights are yet to be addressed in relation to the matters covered in this Paper.

The proposed legislation foreshadowed in this Paper will be prepared and administered so as to ensure its provisions do not unwittingly erode or extinguish any native title that may continue to exist.

A3 GOALS OF THE REFORM PROJECT

The following statements reflect the goals of the Crown land legislative reform project.

1. To develop new legislation and integrated, documented policies for Crown land which:
 - . provide for the management, development, assessment and conservation of Crown land having regard to a defined set of principles of Crown land management and resource use sustainability;

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- . provide a simple, streamlined framework for Crown land management, outlining the conditions under which Crown land is permitted to be occupied, used, sold, leased, licensed or otherwise dealt with;
 - . set out the rights and obligations of all parties with a legal interest in land, consistent with accepted economic, social and environmental goals;
 - . provide for adequate processes of community consultation, and decision making which is open and accountable;
 - . place an emphasis on education, incentive and performance-based decision making criteria;
 - . provide for preservation of the existing rights of holders of current tenures, through transitions, savings and maintenance as continued tenures; at the same time as providing incentives to transfer leases to new Crown land legislation leases wherever possible;
 - . complement and facilitate other related legislation (for example real property statutes) and Government policy initiatives (for example IDAS, see section A2.6), and addresses cross-legislative issues in a simple, efficient manner.
2. To inform the community on the issues involved, new and planned legislation, planned changes, and their various rights and obligations.

A4 APPROACH

For legislation to be written so that the majority of people can understand it, an approach which embodies a logical structure is required.

In addition, a balance must be reached between detailed prescriptive legislation and objective-based non-prescriptive legislation. Prescribing in detail how things are to be done is not only tedious and voluminous, it can also stifle innovation and change; however, legislation which tends to concentrate on why rather than how can lead to legal "fuzziness", drawn out litigation and reliance on case law for interpretation. The approach that will be taken for new Crown land legislation will be one in which it is attempted to find that balance.

It is proposed to structure the new legislation using a framework which has a logical sequence of principles, objectives, powers, and duties. The principles provide the foundation on which decision making is based. Objectives indicate the reason or purpose behind each section of the legislation. Powers are required to fulfil the objectives, and the various duties or responsibilities of the Minister, the Director-General

and the clients in the exercise of those powers are specified.

Below the Act are the Regulations, the policies and the procedures. Regulations deal with items such as dates and fees and other details specified in the legislation as being prescribed. Policies set out the detail on how the Minister and the Director-General and other delegated officers will undertake their duties under the legislation. Such policies must be clearly and concisely defined, and made available to the public in a form such that the public have ready access to them and are able to understand them.

The day to day exercise of the powers and duties, governed by the set of promulgated policies, should be accompanied where necessary by procedures. Documented procedures will facilitate the delivery of quality assured products and services.

Decision making power should be vested in the most appropriate body with regard to the nature of the decision and its effect on the community and community interest in the Crown estate. Decision making that relates to the alienation of Crown land or that in any way alters the manner of holding of Crown land (e.g. freeholding, granting, leasing, reserving, forfeiting) should be undertaken by the Crown's representative - the Minister. Decision making "below" this level of action - i.e. that does not change the manner of holding of the land - should be undertaken by the Director-General (e.g. issuing licences, setting conditions of use).

Decisions which affect Government revenue (e.g. the quantum of rent to be applied, forgiveness of debts), or concern the necessary further refinement of legislation, should be taken by the Governor in Council. Such further refinement relates to substantial issues which would be in the legislation except that they may require regular change. They are issues that are critical to consistency of decision making, and that need to be clearly before the public. Such Governor in Council decisions are generally by Regulation.

This break-up of decision making responsibilities aligns with an appeals process such that:

- * Governor in Council decisions are not appealable.
- * Except where there is a major public interest element (e.g. powers to enter and other emergency powers), or with issues of a minor or trivial nature, a lessee should be able to appeal against any other decision (of the Minister or chief executive) that affects the lease (such appeals can generally be made through the judicial review legislation; however, any appeal rights will be influenced by the pending results of the EARC investigation into appeals on administrative decisions).

Finally, the approach taken in this Paper supports and facilitates the objectives of the integrated development approval system, allowing for possible delegation of actions to the officer or agency at which the delegation is most appropriate to ensure fulfilment of client needs.

This Paper does not represent draft legislation. It presents the major issues in this "objective-power-duty" structure. Legislation will be built upon the policy framework outlined in this Paper.

A5 EXISTING TENURES

This Paper describes a new tenure and land management system for Queensland Crown land; however, in introducing this new system, it is not intended to transfer all existing tenures into the new system. In some instances, the rights and obligations of the owners of existing tenures will find no equivalent in the new system. Consequently it is intended to introduce either "Continued Tenures" legislation, concurrently with the new Crown land legislation, or one Crown Land Act with two clear sections (one on new Crown land legislation and the other on continued tenures).

Continued tenures legislation will contain provisions to maintain the existing rights and obligations of current lease holders and holders of other Crown tenures. The continued tenures are discussed again in section B12.

A6 PREAMBLE TO PART B

In line with the discussion raised in section A4 above, Part B of this Paper is intended to reflect the major objectives around which a new Land Act would be based. The re-written legislation is referred to in this Paper as the Crown Land Act and the Crown Land (Continued Tenures) Act.

As indicated in section A2.4, this review of the *Land Act* forms a part of a wider review of Lands portfolio legislation ("lands legislation"). Reviews of other Acts which affect the *Land Act* are also underway or planned for the near future. These include the *Valuation of Land Act*, *Acquisition of Land Act*, *Surveyors Act*, *Cemetery Act*, *Sale of Land to Local Authorities Act* and others. Thus, various elements of the existing *Land Act* that affect those Acts, or are more appropriately placed into those Acts, have not been considered at this stage or in this Paper. Lands legislation is currently very complex, and this Paper is an element of the streamlining and simplification of that part of the legislation relating to Crown land.

The issues which are not covered in this Paper, for the reasons outlined above, are indicated at section A6.1.

It should be noted that administrative arrangements between Departments (consultation, advice, opinions, liaison) are an essential element of good decision making; however, they are an element of the process most appropriately included in policy and procedure and not in the main objectives or issues of a new Act. Hence administrative arrangements between Departments are not generally mentioned in the following pages.

A6.1 Issues Not Covered

The following issues or items are not covered in this Paper:

- . Issues stemming from the Mabo case (see section A2.7 for further detail).
- . The Land Court and Land Appeal Court

This is being dealt with in the context of a wider examination of administrative appeals through EARC, the Litigation Reform Commission, the Department of Lands, Department of Housing, Local Government and Planning and the Department of Environment and Heritage.

Depending on the outcome of these examinations, a Crown Land Act may or may not establish an appeals mechanism; hence sections such as those in the *Land Act 1962* that establish the Land Court and Land Appeal Court may or may not be included in a Crown Land Act.

If such sections are required, then consideration of the necessary provisions will take place in a separate forum, and the provisions herein will be changed accordingly.

- . The Land Administration Commission

The *Lands Legislation Amendment Act 1992* abolishes the Land Administration Commission, and vests all of its powers and responsibilities in the Director-General of the Department of Lands. This Act will be proclaimed in the near future.

- . Valuations of Crown Land

As a part of the legislative review strategy of the Department, all issues relating to the valuation of land are being brought together into the one Act - the *Valuation of Land Act*. If this has not happened prior to the introduction of new Crown land legislation, then the new Crown land legislation will incorporate the action necessary to carry out that integration.

- . The Compulsory Acquisition of Crown Land

As a part of the legislative review strategy of the Department, issues relating to the acquisition of land are being brought together into the one Act - the *Acquisition of Land Act*. If this has not happened prior to the introduction of new Crown land legislation, then the new Crown land legislation will incorporate the action necessary to carry out that integration.

. The Definition of Parish/County/Town Boundaries and their Names

As a part of the legislative review strategy of the Department, all issues relating to portfolio responsibilities for administrative boundaries and place names are being reviewed. It is anticipated that this action will be completed prior to the introduction of new Crown land legislation; hence no mention is made in this Paper of the definition of Parish/County/Town Boundaries and their naming.

. Actions under the *Irrigation Areas (Land Settlement) Act 1962*

This Act is being reviewed by the Department of Primary Industries (DPI). Any issues not adequately covered by the provisions suggested in this Paper, will be taken care of in consultation with DPI after its review of the Act.

. Aboriginal and Torres Strait Islander Deeds of Grant in Trust (DOGIT)

These DOGITs are in the process of being transferred in freehold title under the provisions of the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991*. If this process is not complete by the time this Crown Land Act is introduced, then provisions will be made for the remaining DOGITs to continue through continued tenures legislation. The provisions will maintain all the present rights and obligations associated with such DOGITs, until such time as they are transferred.

. Issues or changes that may arise out of reviews of the Cemetery Acts, the Sale to Local Authorities Land Act, Rural Lands Protection Acts and associated Acts. The review of these Acts forms a part of the Department's legislative review strategy, which entails a large component of public consultation. New lands legislation will incorporate any appropriate items arising out of these reviews.

PART B CROWN LAND MANAGEMENT ISSUES

Part B covers the *major issues* which new Crown land legislation will address, in terms of the objectives, and associated powers and duties. It is not draft legislation. After public comment is received and assessed on the implementation of these major issues, the issues will be fleshed out, technical details included, minor issues and associated issues that flow from the major objectives added, and a comprehensive set of drafting instructions prepared for further detailed consultation.

B1 PURPOSE

The purpose of Crown land legislation is to provide for the proper management of Crown land within Queensland.

B2 PRINCIPLES OF CROWN LAND MANAGEMENT

The following statements outline the principles of Crown land management to be included in the legislation.

(i) Land Sustainability

The principles of sustainable land use and development will be observed to ensure that future generations' equity in the State's land resource is not diminished.

(ii) Land Evaluation

Land evaluation based on the appraisal of land capability and the consideration and balancing of the various economic, environmental, cultural and social opportunities and values attached to the land, will be undertaken.

(iii) Land Development

When land is to be made available, it shall be leased or sold to those who will facilitate its most appropriate use, providing financial rewards to users for their labour and investment, and supporting the economic and social development of the State. In addition land development will be in accordance with modern standards of good land use planning and design.

(iv) **Community Purposes**

Land required for community purposes will be retained by the Crown in a manner which protects and facilitates the community purpose.

(v) **Protection**

Environmentally and culturally valuable and sensitive areas and features will be protected by the Crown.

(vi) **Impartiality**

Dealings with Crown land will be consistent, impartial and equitable.

(vii) **Due Process**

Existing interests in land will not be alienated without lawful processes being observed.

(viii) **Information-Based Decision Making**

Land management will be based on comprehensive information and assessment, incorporating community attitudes, scientific information, Government policies, and potential environmental, social, cultural and economic impacts.

(ix) **Efficiency, Openness and Accountability**

Administration of Crown land will be efficient, open and accountable.

(x) **Revenue Policy**

The degree of community benefit in any dealing will be assessed, justified and recognised as such. The Crown will seek a fair financial return from dealings in land, commensurate with the levels of private versus community benefit.

B3 GENERAL ISSUES

This section outlines a number of general provisions relating to Crown land and its management.

B3.1 Objective

To manage Crown land and Crown land holdings in Queensland in a way that provides for the greatest continuing benefit to the State and its people.

(a) Power

Subject to the Act, the Minister may grant in fee simple, or lease (including in strata) for a term of years or in perpetuity, set aside as reserve or road, or deal otherwise with any Crown land within Queensland. This power is subject to the provisions of the *Aboriginal Land Act* and the *Torres Strait Islander Land Act* regarding available Crown land.

(i) Duty

In administering the Act the Minister must act consistently with the principles of Crown land management as outlined in the Act.

(ii) Duty

It is the duty of a lessee, a licensee or a trustee of a reserve, to observe sound land management principles, to prevent degradation of the land, and to maintain and if possible improve the condition of the land.

This power is a general enabling provision which exists in much the same form in the present Land Act.

B3.2 Objective

To enable the Crown in the right of the State of Queensland to hold freehold title in its own name.

(a) Power

The Crown may hold land in fee simple under the name "Queensland Government".

This power currently exists by virtue of the *Queensland Government (Land Holding) Amendment Act 1992*, which by amendment inserted a similar clause in the *Land Act*. It facilitates a whole of Government approach to the management of Government land (for further detail see section A2.5). There are also some Government agencies which may hold land in fee simple in their own right.

B3.3 Objective

To reserve the Crown's interest in timber and quarry materials, when a deed of grant is issued.

(a) Power

The Minister may make reservations in a deed of grant for timber and quarry materials.

A power similar to this one currently exists in the *Land Act*. In some instances, timber or quarry materials are of such significance on a parcel of land, that the issue of a deed of grant is considered not to be in the public interest. This

provision, however, enables such land to be freeholded (if otherwise suitable), without compromising the public interest in the timber and quarry materials. For example, if quarry materials are necessary for the construction of a road in the vicinity of a parcel of land with such a reservation, then the cost of that construction will be significantly decreased, thus the reservation will have been of benefit to the general community.

It should be noted that a reservation in a deed of grant is not the same as a reserve (see section B4).

This provision is intended to complement those within the *Forestry Act*. For some land (such as that made available under the Aboriginal and Islander Land Acts), such reservations are not appropriate.

B3.4 Objective

To enable prosecution of people who enter without authority or right, damage or illegally use Crown land, roads or reserves.

(a) Power

The Director-General has the power to take action to have people stopped and prosecuted for offences on Crown land, road or reserve. Such offences include:

- . trespass
- . malicious damage
- . theft and unlawful destruction
- . illegal or without right use.

In addition to this provision, the *Forestry Act* specifically deals with offences concerning forest products and quarry materials.

B3.5 Objective

To enable removal of people who occupy Crown land, roads or reserves without authority or right.

(a) Power

The Director-General has the power to take action to remove people who, without authority or right, occupy Crown land, roads or reserves.

(b) Power

The trustee of a reserve has the power to take action to remove people who, without authority or right, occupy that reserve.

These powers would be operationalised through the justice system, where the justice/magistrate would hear and determine the matter and, if satisfied, issue a warrant for such removal. Such a procedure would need to be specified in the legislation.

B3.6 Objective

To enable the Crown to dispose of or otherwise deal with items that are, without authority or right, on Crown land, road or reserves.

(a) Power

After reasonable inquiry and time for removal, the Director-General has the power to take action to dispose of or otherwise deal with fixtures and chattels that are, without authority or right, on Crown land, roads or reserves. The fixtures and chattels become the property of the Crown to dispose of or otherwise deal with them.

(b) Power

The Director-General has the power to recover, through Court action, all reasonable expenses involved in the removal, disposal and/or legal costs, as a debt due to the Crown.

B3.7 Objective

To enable the Crown to properly administer all the State's land resource.

(a) Power

The Director-General has the power to undertake inspections of any land in Queensland.

(i) Duty

It is the duty of the land holder to allow the Director-General or the Director-General's representative to enter and inspect the land. *Penalties for interference.*

(ii) Duty

It is the duty of the Director-General to give prior notice of an inspection, except in emergency or urgent circumstances.

This power is currently available in the *Land Act*. It particularly relates to Crown land, leases, licences and reserves, and inspections for compliance with conditions, non-authorised occupation or improvements, compliance with permits to clear trees, and so forth. However, there are circumstances where, for administrative purposes relating to valuations, acquisition, registration, contamination, degradation issues, etc., inspection on any and all land is necessary. In most circumstances prior notice would be a normal courtesy; however, it should not be a standard requirement as inspection may need to be undertaken when, say, illegal activity is thought to be occurring (e.g. illegal destruction of trees).

B4 RESERVES

There are certain parcels of land which, in the public interest, it is desirable to reserve from sale or disposal and to not give over to exclusive private use or commercial use. The public interest reasons, or community purposes, for which such land should be reserved are numerous and varied (for example the parcel's unique fauna, or the local community need for a recreation area). Such land is designated as reserve.

Some very specific types of reserves, such as National Parks, and State Forests are governed by separate legislation (*Nature Conservation Act* and *Forestry Act* and the like). The more general community purpose reserves are governed by Crown lands legislation.

Established under lands legislation, for a specific community purpose, such parcels of land may be managed by persons or organisations "in trust" for the benefit of the community. Hence these managers are called the trustees. Trustees can include Government agencies, local authorities or groups of interested people. But whoever is the trustee of a reserve the basic tenet remains: that the land is set aside for a specific community purpose. It is not a way of obtaining free land for a commercial activity.

The need for a reserve with a particular community purpose would be either identified or confirmed by proper land use planning studies.

If the community purpose is no longer required or no longer appropriate for that site then a more appropriate designation should be placed on the parcel (e.g. changing the purpose of the reserve or revoking the reserve and making the land available for lease, or for sale, etc.).

Depending on the purpose of the reserve, there will be some instances where the public use and enjoyment of that purpose will not be diminished or may be enhanced by the issue of a licence or lease over part or all of the reserve. In other cases, a lease or even a licence over part or whole of the reserve may be totally inappropriate and compromise the integrity of the purpose. In other cases a lease or a licence will form part of an agreement to acquire the land for the public purpose (e.g. a short term grazing lease over land acquired for National Park).

To ensure that the community purpose is not being diminished, leases issued by trustees need to be approved by the Minister. Any licence should also be approved, unless issued under a delegated authority under the Act. Alternatively, the Department may issue a lease over a reserve. In both cases the lease's primary purpose must be to further the community purpose. Any commercial or business enterprise must be a secondary or ancillary consideration.

Where a lease or licence is issued by the trustees (and it would only be approved if it did not diminish or did enhance the integrity of the purpose), then any return (fees or rents) must be used by the trustees for the maintenance or enhancement of the reserve (or for a specific group of reserves).

The basis of the approach is:

- . that reserve allocation, revocation, leasing and licensing will be managed by the Department, in conjunction with the trustees, in a planned way;
- . that the purpose and hence reason for a reserve, and any decisions taken regarding the reserve, must be for the benefit of the community generally;
- . that commercial activities that restrict the free use and enjoyment of the reserve for its purpose are not appropriate for a reserve;
- . that any secondary interests granted or approved over the reserve must not compromise, and should preferably enhance, the integrity of the purposes for which it was reserved;
- . that the present list of public purposes for which land can be reserved needs to be reviewed and amended.

The present "public purpose" list is essentially that included in the Act in 1910. Society's requirements, the amount of available land, and the requirements of Government have changed since then.

It is suggested that the following list of community purposes for which land may be reserved is appropriate to today's requirements:

1. Aboriginal purposes
2. cemeteries and burial grounds
3. coastal management
4. drainage
5. environmental purposes
6. future development (e.g. town expansion needs, industrial needs)
7. government (non-commercial) purposes
8. heritage, historical or cultural purposes (including memorials, museums)
9. natural resource management
10. navigation purposes
11. open space and buffer zones
12. parks and gardens
13. public boat ramps, jetties, landing places (air and sea)
14. public halls
15. public toilet facilities

16. scenic purposes
17. scientific purposes
18. showgrounds
19. sport and recreation
20. stock requirements (camping and water)
21. Torres Strait Islander purposes
22. water management
23. watering places

This list reflects a change in approach to Government land holdings and service delivery under the Government Land Management System. Whereas before the reserve status was utilised for a wide range of Government purposes - both site specific and otherwise - it is now intended to use the reserve status for purposes relating to community use, and not for ordinary government service delivery. Thus the change in name to "community purpose" (this will also reserve the term "public purpose" for compulsory acquisition purposes, where community purpose forms a sub-set of public purpose).

Land for Government service delivery (for example a hospital or police station) may be held as freehold in the name of the Queensland Government, or any other appropriate tenure. This will enable a greater flexibility in dealing with the land as appropriate to the most effective service delivery. In such cases it is the service delivery, rather than the actual land, that is critical to the community.

Where land is required for a purely commercial venture and/or an exclusive use, it is suggested that perpetual lease or term lease or freehold should be utilised.

If an exclusive use and/or commercial venture is considered most appropriate for a parcel of land currently reserve or deed of grant in trust (other than Aboriginal or Islander), then the Department will go through the process of considering whether revocation of the reserve or trust is warranted. This process would include local community consultation. The underpinning consideration is whether or not the land is required for a community purpose, and this consideration will be based primarily on local community views and local and State planning policies and land use plans; however, an identification and consideration of any possible rights that may exist at common law, in accordance with national principles, would also be critical.

Current *Land Act* leases over reserves will continue under continued tenures legislation. Current trustee leases over reserves will continue until their expiry or until the reserve is revoked (if appropriate). Existing reserves for purposes not under the provisions outlined here will continue until some action is required relating to that reserve, or until some land use planning study is undertaken or program initiated, at which time the status of individual reserves, and the most appropriate action, will be considered.

B4.1 Objective

To enable land of a community nature or required for community purposes to be designated and managed as such.

(a) Power

The Governor in Council, by Regulation, may determine those purposes for which land may be reserved.

It is suggested that by having the list of community purposes in Regulation, they may be able to be kept relevant, more easily.

(b) Power

The Minister has the power to reserve land required for a community purpose by notification in the Government Gazette.

(i) Duty

It is the duty of the Minister not to approve any action under the Act relating to a reserve, that does not serve, facilitate or enhance the purpose of that reserve.

B4.2 Objective

To enable the Crown to revoke reserves when no longer required (this may be as a result of changed land use plans or changed community requirements, changed knowledge about the land or changed environmental circumstances).

(a) Power

The Minister has the power to revoke a reserve in whole or part by notification in the Government Gazette. The revoked reserve reverts to Crown land.

(i) Duty

In exercising this power it is the duty of the Minister to consider the following:

- . the views of the trustee
- . the views of any authorised occupant
- . land planning considerations
- . the views of the community and local authority
- . environmental issues
- . any other relevant factors.

According to the circumstances, the most appropriate way of obtaining the views of the community may be to write to all adjoining owners and to advertise in a local newspaper. In some cases the reservation or revocation may be a part of a wider land planning exercise, with community consultation and input. Hence, the views of the community could be considered to have been obtained already.

(ii) Duty

It is the duty of the Minister to notify the general community of any revoked reserve.

Policies would identify how this notification should occur, and to whom (e.g. to all those who objected or commented).

Where the Minister has the power to reserve land or revoke a reserve, it follows that the public has the right to request the Minister to undertake either of these actions. Policy documents (available to the public) would indicate what factors are to be considered and in what circumstances the request is likely to be successful or otherwise.

B4.3 Objective

To have reserve land managed by a person or people with some particular association or expertise with the parcel and its purpose, or with the local community. The reserve must be managed in a way that is consistent with, and operates to the fulfilment of, the purpose of the reserve, and within the trustee's conditions of appointment.

(a) Power

The Minister has the power to place land reserved under the Act under the control of trustees, with specific conditions of appointment, or to leave a reserve under the control of the Crown, in which case the Director-General is considered to be the trustee.

(i) Duty

Other than when the trustee is a Government agency, it is the duty of the trustee to maintain appropriate current public risk insurance.

In future, trustees will normally need to be incorporated associations or clubs, a statutory body or authority, or a government agency or office. Incorporation is primarily to protect the trustee. When a change is required to existing trustees, incorporation will be encouraged.

(ii) Duty

It is the duty of the trustees to fulfil their trust within their conditions of appointment, and to take only those decisions regarding the reserve that are consistent with the purpose of the reserve.

(iii) Duty

It is the duty of the Minister to notify the general community of the appointment and change of trustees.

(b) Power

The trustees of a reserve have the power to enter into a conservation or protection agreement.

(i) Duty

It is the duty of the trustees to obtain the Minister's approval before entering into any such agreement.

This would allow trustees to enter into an agreement, for example, under the *Nature Conservation Act*.

(c) Power

The trustees of a reserve do not have the power to sell or transfer or mortgage any reserve land under their control.

(d) Power

The Minister has the power to revoke the appointment of trustees:

- . if the trustees do not comply with the conditions of appointment
- . if the trustees directly or indirectly cause serious degradation of the reserve
- . if the trustees are undertaking any illegal activity on the land (under any statute)
- . if the trustees no longer wish to be trustees
- . or under any other appropriate circumstance.

(e) Power

The Minister has the power to take any necessary action associated with the revocation of the appointment of trustees.

B4.4 Objective

To ensure that allowed activities over a reserve (this includes leases and licences) enhance the purpose for which the land was reserved.

(a) Power

The Minister has the power to require, as a condition of appointment of trustees under the Act, that any money received from leases or licences over a reserve (or a specified group of reserves) is spent on the maintenance or enhancement of that reserve (or group of reserves).

(i) Duty

It is the duty of trustees of a reserve (or specified group of reserves) to use all money raised through leases or licences over the reserve (or group of reserves) for the maintenance and/or enhancement of that

reserve (or group of reserves), except where the trustee is a Government agency.

(b) Power

The Director-General has the power to approve the grouping of reserves with the same purpose and trustees, where such a grouping will enhance the financial and general management of the reserves within their purpose.

The provision regarding "group of reserves" would enable local authorities (for example) to spend money gained from one high return reserve, on other reserves which have a low or nil income.

B4.5 Objective

To enable the trustees to properly and effectively carry out their trust.

(a) Power

The trustees have the power to do all those actions necessary for the maintenance and management of the reserve, consistent with their conditions of appointment and the purpose of the reserve.

(b) Power

The trustees have the power to make by-laws concerning the reserve, and to set and enforce penalties for breaches of these by-laws. Such by-laws have no force of law unless they have been approved by the Governor in Council.

(i) Duty

It is the duty of the Director-General to provide a set of model by-laws to assist trustees in drawing up their own by-laws.

(ii) Duty

It is the duty of the trustees to make known to the public all approved by-laws concerning the reserve.

B4.6 Objective

To ensure that the specified community purpose of a reserve is not diminished through the occurrence of inconsistent interests being granted over the reserve land.

(a) Power

A trustee has the power to issue a short term lease or licence over a reserve.

-
- (i) Duty
It is the duty of the trustees to obtain the Minister's approval before issuing any lease or licence over a reserve.
 - (ii) Duty
It is the duty of the trustees to obtain the Minister's approval before any lease over a reserve is transferred.
 - (iii) Duty
It is the duty of the trustees and the lessees to obtain the Minister's approval before issuing any sublease over a reserve.

(b) Power

The Minister has the power to issue a term lease or a licence over whole or part of a reserve, at the request of the trustees or otherwise. The lease may not carry with it a contract for conversion to any other form of tenure.

- (i) Duty
It is the duty of the Minister to consider the views of the trustees before issuing any lease or licence over a reserve, and in setting the conditions of the lease or licence.
- (ii) Duty
It is the duty of the Minister to issue or approve only those leases that facilitate or enhance and do not diminish the purpose for which the land was reserved, and which are consistent with the purpose for which the land was reserved. An exception to this is where the lease forms part of a special agreement with the Queensland Government that has Governor in Council approval (e.g. the purchase of land for State Forest or National Park).
- (iii) Duty
It is the duty of the Minister to approve only those leases where the primary purpose relates to the community purpose, and any commercial or business purpose is a secondary consideration.

If delegated the authority under section B7, a trustee may issue licences over reserves without further reference to the Minister or Director-General.

(c) Power

Where a lease or licence is issued by a trustee, or where a licence is issued by trustees under delegation, the trustees have the power to receive any rent from the lease or fee from the licence.

(i) Duty

It is the duty of the trustees to receive a quantum of rent from the lessee, which is the highest reasonable rent.

This duty is in the present Act. Highest reasonable rent refers to a rent which is struck with regard to the use, and type of lessee or licensee. Thus if the lessee is Lifeline, then the "highest reasonable rent" would probably be quite a low figure.

B4.7 Objective

To ensure that a reserve is not unduly encumbered by an interest.

(a) Power

The Director-General has the power to include as a condition of a lease over a reserve, that the land of the lease or any part of the land, may be resumed at six months notice, with compensation for improvements only.

It is current policy to insert such a resumption clause in special leases over reserves.

(b) Power

On the revocation of a reserve, the Minister has the power to terminate any lease issued by a trustee, with no compensation payable.

This is the present situation with trustee leases over reserves ("343 leases"). This clause is made clear to the lessee. It also serves to ensure that a lessee will not undertake major works over the reserve land.

B4.8 Objective

To ensure that a reserve is being managed for its public purpose, and within the provisions of the Act and the conditions of appointment of the trustees.

(a) Power

The Minister has the power to require trustees to provide regular reports to the Minister including:

- . the audited financial accounts relating to a reserve (or group of reserves)
- . a management plan (if considered necessary)
- . any other issues.

(i) Duty

It is the duty of trustees to have financial accounts audited annually by an accredited auditor.

(ii) Duty

It is the duty of the trustees to allow an authorised Government representative to audit the trustee's financial accounts, on request.

Policy would be developed to indicate the situations when a management plan might be required. The type of situations involved would be for large or complex reserves, or where the special features of the land may require special management. The Department would have available model management plans for reserves to assist those trustees who may be required to develop such a plan.

There are trustees who receive significant Government funds, particularly in respect to some reserves for sport and recreation purposes. This second duty enables the State to ensure that the money is being managed appropriately.

B5 ROADS

The need for an effective road network is similar in many ways to the requirements for reserves; the community has a very high level of interest in such land, and it needs to be identified and reserved from sale or lease for the benefit of the whole community. Roads also have a legal entity as well as a community purpose, they form a part of a State wide network, and they provide legal access to parcels of land.

The strategic management of the State's road network is the responsibility of the Department of Transport; however, dedicating, opening and closing roads are responsibilities under lands legislation (which may or may not be delegated as appropriate).

The term road, as used here, refers not only to the formed or bitumen surface, but to the entire strip or parcel of land which has been dedicated as road.

Roads are opened when required and closed or temporarily closed when no longer needed or not needed for the present time. The terms "open" and "closed" when used here, do not refer to whether or not an agency has restricted the use of a road (for instance where recent flooding makes it susceptible to major damage), they are the terms used when a piece of land has been designated as a road, and when that road ceases to be designated as a road and becomes, once again, a piece of Crown land. An open road in this sense is not necessarily formed or even passable.

Opened and temporarily closed roads may have legal occupations over them. Such occupations occur through action taken under lands legislation. However, in general, the management, construction (where appropriate), maintenance and control of roads rests with either the local authority (by virtue of the *Local*

Government Act) or the Department of Transport (*Transport Infrastructure (Roads) Act*) for State controlled roads (declared roads). Therefore the granting of any such occupations needs to occur in consultation with these bodies.

Land above and below a road is Crown land, and if some form of tenure is necessary and appropriate for such air-space (e.g. for a monorail), then a term lease or licence may be appropriate (with no contracts to convert).

B5.1 Objective

To enable land required for road purposes to be dedicated as such.

(a) Power

The Minister has the power to dedicate and open Crown land as road by notification in the Government Gazette.

Responsibilities with respect to dedication of a road declared to be a State controlled road under the *Transport Infrastructure (Roads) Act*, will be dealt with in policy, to ensure that wherever possible procedures are streamlined.

B5.2 Objective

To enable a road to be utilised for an additional purpose, when the additional purpose does not interfere with or undermine the public's safety or opportunity to use the road.

(a) Power

The Director-General has the power to issue a licence to occupy a road for non-exclusive use.

(i) Duty

It is the duty of the Director-General to issue such a licence only where the intended use is compatible with the public's being able to continue to use the road for thoroughfare and/or legal access.

(ii) Duty

It is the duty of the Director-General to consult with the managing authority of the road before issuing any licence.

Further information on licences can be found in section B7.

B5.3 Objective

To enable the Crown to provide for exclusive and/or private use of a road when the road is not required as a road for the time being.

(a) Power

The Director-General has the power to temporarily close a road by notification in the Government Gazette.

(i) Duty

In exercising this power it is the duty of the Director-General to consider the following:

- . land planning considerations
- . community opinion/public comment
- . local authority views
- . the views of other relevant statutory authorities
- . environmental issues
- . the effectiveness of the remaining road network
- . alternative and available dedicated access
- . any other relevant factors.

The most appropriate way of obtaining public comment may be to write to all adjoining owners and/or to advertise in a local newspaper.

(b) Power

The Director-General has the power to issue a licence to occupy a temporarily closed road for exclusive use.

(i) Duty

It is the duty of the Director-General to issue a licence over temporarily closed road, for exclusive use, only where the road is temporarily not required as road.

(ii) Duty

It is the duty of the Director-General to consult with the managing authority of the road before issuing any licence.

Where a road is temporarily not required it may be appropriate to issue a licence for agricultural purposes (e.g. cane growing).

B5.4 Objective

To enable the Crown to close a road when no longer required.

(a) Power

The Minister has the power to close a road by notification in the Government gazette. The closed road reverts to being Crown land.

This reversion to Crown land may simply be a very short transitional phase, before some form of holding is issued.

(i) Duty

In exercising this power it is the duty of the Minister to close roads only where:

- . the closure is necessary for some public or community reason
- . the closure is necessary as an integral part of a development
- . the closure is necessary for government purposes
- . or in other special circumstances.

Roads constitute a major public resource, and should generally be maintained in a form in which they can easily be retrieved when the need arises. In the long term this may avoid the need for some compulsory acquisition of land, and hence cost to the tax payer.

(ii) Duty

Subject to duty (i), in exercising this power it is the duty of the Minister to consider the following:

- . land planning considerations
- . community opinion/public comment
- . local authority views
- . the views of other relevant statutory authorities
- . environmental issues
- . the effectiveness of the remaining road network
- . alternative and available dedicated access
- . any other relevant factors.

As for temporarily closed roads, according to the circumstances, the most appropriate way of informing affected parties may be to write to all adjoining owners and/or to advertise in a local newspaper, in addition to publication in the Gazette.

(iii) Duty

It is the duty of the Minister to notify the general community of the closure of a road.

The public are able to readily discover the basis on which the decision to close a road was made, utilising either informal inquiries or more formal *Judicial Review Act* or *Freedom of Information Act* provisions. Nevertheless, this section establishes that the Minister has the final say on whether or not a road is closed.

Where the Minister or Director-General has the power to dedicate and open land as road or to close or temporarily close a road, it follows that the public has the right to request the Minister or Director-General to undertake any of these actions. Policy documents (available to the public) would indicate what factors are to be considered and in what circumstances the request is likely to be successful or otherwise.

B6 LEASES

Approximately 20% of the State of Queensland is held in either fee simple (that is, freehold title, which is, essentially, exclusive private ownership) or as a freeholding lease (that is, a term purchase of land which will result in a deed of grant being issued). About 70% is leased by the Crown to companies or people (leasehold land), with approximately 10% being roads, reserves or Crown land.

Over certain types of land and in certain regions there are particular reasons for freehold title being considered inappropriate. These include where the land is in a strategic locations, has special characteristics, such as islands, has a high community interest, is sparsely utilised or fragile, is required for future uses or where it is desirable to be able to direct land utilisation patterns.

In many instances, the Crown's decision not to freehold does not inhibit the land from being made available under some other form of holding (e.g. a lease). The most appropriate form of holding will depend upon various features, such as: the reason for freehold not being desirable; the land's capability; the various interests in the parcel by people, the community, and local, state and federal Government; the need to provide incentives for people to occupy, use or develop the land; and the need for the State to be able to direct land utilisation patterns aimed at protecting the land and facilitating future land use requirements. Assessing the most appropriate tenure for a parcel of land is further considered in section B11.

At present there are a large number of different tenures, both within the current Land Act as well as in other Acts. The Wolfe Report recommended decreasing the number of leasehold tenures to a small number, grouping those that are similar and phasing out other types. The policies indicated in this Paper extend this streamlining process by eliminating one further type of lease, and by a further grouping of similar types of lease.

The policies outlined in this Paper establish two types of leases over Crown land: the perpetual lease (not 99 years but in perpetuity) and a term lease. However, a term lease can carry with it a contract to convert to another type of lease or freehold on the fulfilment of specified terms and conditions.

The perpetual lease exists now, though in various different names. Similarly the term lease exists now in a similar form, under various names. Some names refer to the manner in which the lease was obtained (without competition or otherwise), or the location of the lease (town, country), or the purpose of the lease (pastoral, grazing homestead, miners' homestead). A table is attached at the end of the Paper to indicate the present lease types (Appendix B).

There is no new "freeholding" lease included in these policies. A freeholding lease (such as an "APF") is actually a term purchase of Crown land, where not rent but instalments are paid, so paying off the purchase price. There may also be conditions attached, the fulfilment of which are required before a deed will be issued. The elimination of this freeholding lease does *not* mean that there will be no freeholding of Crown land. Where appropriate, a lease should still be able to be freeholded. The difference is that the Department will not generally be the financing agent.

Those situations where an existing lessee has the right to apply for a freeholding lease (for example a Grazing Homestead Perpetual Lease) are discussed in the section B12. In such instances a freeholding lease will still be available.

B6.1 Perpetual Lease

Objective

To provide for a form of land holding where:

- . land use planning indicates a particular most appropriate purpose and indicates that the land is unlikely to be required for an alternative purpose, and
- . there is a need to monitor the condition and use of the land (e.g. where it is highly susceptible to degradation).

(a) Power

The Minister has the power to lease land in perpetuity.

(b) Power

The Minister has the power to set a purpose for a perpetual lease.

With such an objective, it is appropriate that the form of tenure should carry with it a very high level of security. The perpetual lease exists now, and is generally utilised for the grazing lands of the State. A perpetual lease will carry a purpose. If it is to be used for other than that purpose then a new lease must be obtained. In line with the Crown land management principles, State input into the care and development (if appropriate) of the land will be enabled through the initial setting of conditions and the ability to review those condition on a regular (10 to 15 year) basis.

(c) Power

The Minister has the power to approve additional purposes for a perpetual lease which are incidental to, and do not interfere with, the main purpose.

For example, small scale tourism activities that a lessee may wish to combine with grazing activities.

(d) Power

The Minister has the power to require the survey of a perpetual lease, with costs to be borne by the lessee.

B6.2 Term Lease

B6.2.1 Objective

To enable the term of a term lease to be set such that the term of the lease reflects, among other things:

- . the level of investment and or the time required to effectively use the land for its specified purpose
- . the time before the land is likely to be required for another use.

(a) Power

The Minister has the power to set the term of a term lease, up to a maximum of 50 years, except for a lease for a major project which may be up to a maximum of 100 years.

(i) Duty

In carrying out this power it is the duty of the Minister to consider:

- . the level of investment required to effectively use the land for its specified purpose
- . the time before the land is likely to be required for another use
- . any other relevant factors.

At present the terms of leases vary. The current Special Lease can be for a terms ranging from 30 to 75 years. Pastoral leases tend to be about 50 years. However, leases can be as short as 5 or 10 years if appropriate. Policies will outline the lengths of terms for various purposes and circumstances of lease.

In some circumstances, the Department of Lands acts as an agent, issuing leases over Crown land or reserve for other Government agencies. In such cases, the other agency's requirements and various objectives, are the major consideration in the setting of the term and any conditions.

B6.2.2 Objective

To provide for a form of land holding where land use planning indicates a particular most appropriate purpose and indicates that the land will or may be required for an alternative use in the future.

(a) Power

The Minister has the power to lease land for a term of years.

(b) Power

The Minister has the power to set a purpose for a term lease.

With such an objective, it is appropriate that the form of tenure in such circumstances enables the lessee to utilise and derive benefit from the land while at the same time enabling the State to retrieve the land at a specified future time (end of lease term) for an alternative use or a reconsideration of the most appropriate use. The term lease exists now, and is generally utilised for leases in pastoral area as well as in town and city areas. Small parcels of land and/or land for residential purposes should be generally freehold, or if appropriate to the special qualities of the land, perpetual lease.

A term lease will carry a purpose. If it is to be used for other than that purpose then a new lease must be obtained. In line with the Crown land management principles, State input into the care and development (if appropriate) of the land will be enabled through the setting of lease conditions.

A lessee should be able to apply for a new lease at any time; however, policy would indicate when applications would generally be considered (i.e. other than in special circumstances). Policy may be that applications for a new lease will not generally be considered before 75% of the term of the lease has passed.

(c) Power

The Minister has the power to approve additional purposes for a term lease which are incidental to, and do not interfere with, the main purpose.

For example, small scale tourism activities that a lessee may wish to combine with pastoral activities.

B6.2.3 Objective

To provide for a form of land holding which facilitates land development by making land available for lease, with an ability to obtain a more secure form of tenure (perpetual lease or freehold title), or obtain a new term lease, on the fulfilment of specified conditions.

(a) Power

The Minister has the power to lease land for a term of years, embodying a contract to issue a perpetual lease, term lease or deed of grant (freehold title) as specified in the contract, on the fulfilment of specified conditions and payments.

(i) Duty

When a lessee of such a term lease has complied with the terms of the contract it is the duty of the Minister to issue the contracted form of holding.

Compliance with the terms of the contract will include such elements as:

- . fulfilled all the conditions to the Minister's satisfaction
- . owes no rent on the lease
- . paid any specified fees and charges or purchase price.

Similar types of leases exist now, though some have less certainty, allowing the lessee to merely apply for conversion or a new lease. The basis of this type of lease is good land use planning. It requires a decision to be made on the land at the time of issue of the lease. If a decision is not able to be made for various reasons, or some uncertainty exists as to future requirements in a certain area, then no such contract should be included.

No form of appeal is included here, as the normal avenues for appealing against a breach of contract would apply.

(b) Power

When a lessee of a term lease with a contract to obtain a deed of grant has:

- . fulfilled all the conditions to the Minister's satisfaction and
- . owes no rent on the lease

but is unable or unwilling to pay the specified purchase price and any relevant fees and charges, the Minister has the power to issue a perpetual or term lease instead of the contracted deed of grant.

B6.2.4 Objective

To enable the holder of a lease to be able to convert each sub parcel individually, where a term lease has conditions which incorporate subdivision.

(a) Power

Where lease conditions incorporate an approval of the Minister to subdivide a term lease, the Minister has the power to grant or issue the contracted form of holding or title to each parcel individually on fulfilment of the terms of the contract.

B6.3 Dealings

B6.3.1 Objective

To enable a lessee to surrender a lease where necessary or desirable.

(a) Power

A lessee has the power to surrender a lease to the Crown in full or in part. The surrendered land becomes Crown land.

(b) Power

The Minister has the power to reject a partial surrender where the Minister is not satisfied that the remaining lease will form a viable unit.

B6.3.2 Objective

To make provision for mortgages and mortgagees rights.

(a) Power

A lessee has the power to mortgage the lessee's lease.

The Act would need to outline the necessary powers and duties with respect to mortgages, powers of sale, bankruptcy, rights of the mortgagee, etc..

B6.3.3 Objective

To allow a lessee to sublease where appropriate.

(a) Power

A lessee has the power to sublease the lessee's lease.

(i) Duty

It is the duty of the lessee to obtain Ministerial approval before sub-letting the lessee's lease. Failure to obtain such approval will be considered a breach of condition.

B6.4 Renewal of Leases

If at some time a lessee wishes to find out whether the lessee might be able to renew a term lease, then there will first need to be an assessment of public interest factors (see B11), and whether the existing purpose or use is still the most appropriate purpose or use. Applications for renewal would, in general, be considered only after 75% of the lease term has passed.

If the assessment indicates that over part or all of the existing lease:

- . the same purpose is appropriate for some determined new term, and**
- . the existing lessee has fulfilled the terms and conditions of the lease to the Minister's satisfaction**

then a new lease should be offered to the existing lessee (be it the whole or part of the existing lease) in preference to any other applicant. As it is a new lease, new terms and conditions would apply.

B6.4.1 Objective

To facilitate continuity of occupation where appropriate.

(a) Power

The Minister has the power to offer Crown land as a lease or licence to an applicant who was the immediate previous lessee or licensee of that land (or a larger parcel of which the new parcel is a part) respectively, when the applicant fulfilled the terms and conditions of the earlier lease or licence to the Minister's satisfaction.

(i) Duty

When a parcel of land that is all or part of an immediately previous lease or licence is to be made available in the same purpose as the immediately previous lease or licence respectively, it is the duty of the Minister to offer that new lease (or if subdivided, one of the new leases) to the immediate previous lessee. This duty applies only if the immediate previous lessee or licensee fulfilled the terms and conditions of the lease or licence to the Minister's satisfaction.

B6.4.2 Objective

To minimise potential costs to a lessee when, due to circumstances beyond the Department's or the lessee's control, an assessment on whether or not to renew a lease cannot be concluded before the expiry of the lease.

(a) Power

The Minister has the power to extend the term of a lease for pastoral purposes, for a period of 12 months.

(i) Duty

It is the duty of the Minister to commence consideration of whether or not to renew a term lease for pastoral purposes, a minimum of 12 months prior to expiry.

B6.5 Conditions on Leases

If the principles of Crown land management are to be adhered to, then conditions need to be placed on leases, and compliance with those conditions is necessary.

However, conditions should be for the benefit of the State, the land and the lessee. Thus condition setting and review should be based on a partnership approach between the lessee and the Crown. Instead of a system based upon prescriptive improvement and development conditions, often with assessment

based on the expenditure of a \$ value, conditions should generally be based on objectives of what is to be achieved and the manner in which the conditions will be met; that is, "performance-based" or "objective-based" conditions, rather than prescriptive conditions. In addition, property planning will be encouraged, and performance-based conditions should facilitate such planning.

The assessment of condition compliance should be facilitated by a regular (2-5 year) reporting mechanism (which could be informally linked to a review of a land management plan), with associated checks by Departmental officers. This places the management emphasis on the lessee, allowing Departmental resources to be directed at those leases where breaches are occurring and leaving good lessees to manage with minimal interference. Such inspections and reporting may be undertaken within the provisions of the present Land Act.

If the Crown is to have an on-going commitment to the principles of Crown land management outlined in this Paper, then a regular review of conditions on perpetual leases and longer term leases is necessary.

The Wolfe Report recommended a regular review of conditions. With a condition review period set at 10 to 15 years, it is considered appropriate that any lease with a term greater than twice the review period should be subject to such regular reviews. That is, any lease with a term greater than 20 years.

In addition, a condition review should also be able to be instigated by the lessee at any time.

At present, there is no review of lease conditions. Thus a perpetual lease issued in 1950 will still have its 1950-relevant conditions, unless some specific negotiations have been instigated and undertaken between the holder and the Department and it is agreed by all parties to change the conditions (developmental conditions only). Thus there are some leases with inappropriate or irrelevant conditions. However, it is not intended to impose a compulsory 10 to 15 year review of conditions on existing lessees; thus the regular review of conditions would only apply to new Crown Land Act leases. If existing lessees wish to negotiate new conditions or a new lease under the Crown Land Act, then this will be encouraged.

Not all conditions should be reviewable. Non reviewable conditions would include: term; purchase price or principles or formulae for freehold price; resumption conditions; and other conditions which significantly affect the public interest, or the holder and his/her equity, as distinct from affecting the condition of the land or the progress of a development.

Ultimately, the Crown must make the decisions on appropriate conditions (within the provisions of the Act); however, if the management of Crown land is to be a

partnership between the lessee and the Crown, then the lessee must have an effective role and input. To ensure that this will occur, the policies indicated in this Paper establish a process such that if agreement on reviewed conditions cannot be reached between the Department and the lessee, an independent mediator can be called in to preside over a conference between the lessee and the Department, at which some negotiated solution should be attempted to be reached.

If agreement is still not reached after mediation, then the Director-General needs to have the power to set new conditions. These can then be appealed against formally. Meanwhile, the new conditions will apply.

Non-compliance with conditions will incur either penalties or forfeiture.

B6.5.1 Objective

To ensure that land is used and managed such that future generations' equity in the land is not diminished.

(a) Power

The Director-General has the power to place land sustainability, protection and use conditions on all Crown leases. Without limiting this power, conditions may include:

- . rehabilitation measures
- . timber management
- . water management
- . pest management
- . soil management
- . fencing
- . the provision of a land management plan
- . management in accordance with a land management plan.

Conditions may include such issues as those relating to the maintenance of a percentage ground cover, leaving part of the lease unused for a certain amount of time, and so forth. Not all leases will automatically contain conditions relating to all these topics, the conditions will be included as appropriate to the land and the purpose. Existing leases will not have these conditions imposed upon them.

B6.5.2 Objective

To ensure that development is undertaken in a planned and appropriate manner.

(a) Power

The Director-General has the power to place developmental conditions on all Crown leases, consistent with the purpose of the lease. Without limiting this power, conditions can include:

- . structural and landscape improvements
- . road and reserve preparation
- . reclamation and earthworks
- . time frames for the completion of works
- . provision of related external infrastructure
- . survey.

Not all leases will automatically contain conditions relating to all these topics, the conditions will be included as appropriate to the land and the purpose. Existing leases will not have these conditions imposed upon them.

B6.5.3 Objective

To ensure that Crown land subdivisions are generally in accordance with planning policies of State and local government.

(a) Power

Where the conditions of a lease include an ability to subdivide, the Minister has the power to place certain conditions on the subdivision. Without limiting this power, the conditions may include:

- . that certain land (specific or in area) be surrendered to the Crown to meet Crown and community purpose requirements, at no charge for the land, before a deed of grant or a new lease is issued
- . that external infrastructure work reasonably associated with the subdivision be undertaken or a specified contribution to such infrastructure work be made
- . that the local authority requirements are met.

(i) Duty

In considering an application to subdivide, it is the duty of the Minister to take into consideration the planning policies of the State and, wherever possible, the planning policies of the local authority.

B6.5.4 Objective

To reserve to the Crown the right to resume part of land held under a lease where that land is required for a public purpose arising from the nature of the development on the land.

(a) Power

The Minister has the power to resume a specified part of a lease, or a maximum specified area, where that specified part or area is required for a public purpose arising from the nature of the development on the parcel.

(i) Duty

It is the duty of the Minister to pay compensation (under power (a)) for any lawful improvements situated on the land resumed and for any severance and injurious affection to operations on the balance of the land caused by excising the land resumed.

B6.5.5 Objective

To provide conditions in certain leases which allow maximum flexibility when it is anticipated that the land may be required for an alternative use in the near future.

(a) Power

The Minister has the power, over short term leases for grazing or primary production, to include as a condition of the lease that all or part of the land of the lease may be resumed on six months notice with no compensation.

Short term involves a lease of less than 20 years. This power exists at present, and policy is for the lessee to have a right to remove moveable improvements within a period of three months after the resumption.

B6.5.6 Objective

To enable advances in knowledge and technology, changes in climate, soils and the like, and the effect of other external changes, to be incorporated into the management of the land.

(a) Power

The Director-General has the power to regularly review conditions on all Crown leases issued under the Act, except for the following conditions:

- . term
- . purchase price or principles or formulae for calculating purchase price or compensation
- . resumption conditions
- . purpose.

(b) Power

The Director-General has the power to set a review period as a condition of the holding.

Such a review period will be 10 to 15 years.

B6.5.7 Objective

To ensure that a lessee has a significant input into any change in conditions.

(a) Power

If on review, agreement on new conditions cannot be reached between the lessee and the Crown, the Director-General has the power to appoint an independent mediator to hold talks between the lessee and the Director-General.

(b) Power

On the Crown and the lessee reaching agreement on reviewed conditions, the Director-General has the power to replace the existing conditions of holding with the accepted new conditions. If agreement on reviewed conditions cannot be reached after mediation, the Director-General has the power to replace existing conditions of holding with the conditions the Director-General believes to be appropriate.

(i) Duty

It is the duty of the Director-General to notify the holder of the new conditions prior to the new conditions coming into effect.

(c) Power

A lessee has the right to appeal against changes to conditions, where negotiation and mediation has failed to reach agreement and new conditions have been imposed.

The basis for such appeals would need to be specified.

(d) Power

A lessee has the right to appeal against changes to conditions, where the lessee believes that other than the agreed-to conditions have been included.

Appeal to whom is not specified here, but would probably be to the Land Court or similar. Current legislation allows lease conditions to be changed on agreement of the lessee and the Department.

B6.6 Compliance with Conditions

B6.6.1 Objective

To provide a mechanism for assessing that conditions are being fulfilled.

(a) Power

The Director-General has the power to require a lessee to furnish regular reports on the progress of compliance with lease conditions, the land condition, and desired future works.

A similar power exists in the current *Land Act*. The reports may take the form of a land management plan. If another Government agency is involved in the leasing (for example the Department of Business Industry and Regional Development) then inter-agency arrangements (such as delegations of power under this Act or agreements between agencies) would ensure that only one report is required of the lessee, and not one to each agency involved.

Policies would specify the required regulatory of reporting for different types of lease (e.g. development versus pastoral uses). Penalties would cover misrepresentation and false reports which could constitute a breach of condition. Reporting mechanisms could be related to land management plan reviews.

(i) Duty

It is the duty of the lessee to comply with lease conditions.

B6.6.2 Objective

To ensure that the cost of non-fulfilment of conditions is borne by the lessee not the community.

(a) Power

The Minister has the power to require a lessee to provide performance security, when conditions include a requirement for major development works to be carried out.

The type of development to which this power is directed is for large scale tourist or industry developments and the like. Non-fulfilment of development conditions may lead to partially and/or inadequately completed projects. To fix the problems caused by such non-fulfilment may cost State and/or local government (and hence the community) a considerable sum of money - for restoration, repair or completion. Such costs should be borne by the defaulter rather than the community. Policies will be developed to indicate what is considered to be a major development and the level of security required.

(b) Power

The Minister has the power to require an incoming lessee to provide a statutory declaration indicating that the incoming lessee is aware of:

- . the condition of the land
- . the level of compliance with conditions
- . the existence of any land management plan or tree management plan, prior to considering a transfer application.

This will ensure that an incoming lessee is fully aware of their obligations and responsibilities with respect to the lease and the condition of the land. If there has been non-compliance with conditions, then the non-compliance should not be allowed to hold up a transfer, as the existing lessee is not a desirable lessee. If

the non-compliance has related to financial problems, then trying to penalise a lessee further with fines at the transfer stage would not serve any end.

It is suggested that within such a clause there is scope for extension regarding the lessee indicating awareness of other encumbrances not to be found on the lease document or associated administrative advices file. These might include the existence and effect of any Conservation Plan that covers the area, or the existence of a Nature Refuge Agreement.

(c) Power

The Minister has the power to require a land management plan be presented prior to considering an application to transfer a lease.

This is an existing policy which will take effect from 1/1/1995.

B6.6.3 Objective

To enable the Crown to take action over non-compliance with conditions.

(a) Power

Where it is discovered that a lessee has not complied with the conditions of a lease, the Minister has the power:

- . to impose monetary penalties and/or
- . to not return or only partially return any security money and/or
- . to not renew a lease and/or
- . to charge the lessee reasonable compensation for loss and/or
- . to impose new conditions on the lease.

Penalties for non-compliance will need to be specified, both in the Act (for general conditions) as well as in the lease (for specific conditions). Forfeiture is dealt with later.

(b) Power

A lessee has the power to appeal against the Minister's determination that the lessee has not complied with conditions.

B6.6.4 Objective

To enable the Crown to take action when a lessee has caused degradation through overstocking all or part of a lease.

(a) Power

The Minister has the power to charge a lessee compensation for damage to land where the Minister is satisfied that detriment has been caused to the land through overstocking.

This is a power that exists in the current *Land Act* in a similar form. It is considered that having a maximum (or minimum) stocking level as a condition of a lease is inappropriate. A lessee is the best judge of stocking levels, as appropriate to particular seasonal and extraordinary conditions. However, a lessee should not be permitted to stock the land in a way which causes the land to be degraded, and some power is considered necessary to penalise those who do damage to the land through overstocking.

B6.6.5 Objective

To ensure that a debt owing to the Crown is paid.

(a) Power

The Minister has the power to require outstanding penalties to be paid prior to considering an application to transfer, or to be noted against the lease as a first charge.

(b) Power

Where there is a charge against a lease due to previous non fulfilment of conditions, an incoming lessee may negotiate with the Minister and the Minister may agree to suspend and ultimately drop the charge, when the incoming lessee has repaired any damage caused by the non-fulfilment.

If an incoming lessee is prepared (by for example leaving certain parts of a lease unused) to take active measures to repair damage caused by a previous lessee who had not paid outstanding penalties, then the Crown should be willing and able to drop that penalty; it is the repair or restoration of the land that is the important issue rather than the penalty money. However, a lessee should not be able to use such an agreement to simply suspend payment of the charge.

B6.7 Forfeiture

B6.7.1 Objective

To enable a lease to be forfeited where appropriate.

(a) Power

The Minister has the power to request a court to forfeit a lease:

- . when there has been significant or consistent non-compliance with conditions of the lease or any permit issued
- . when the lease has been obtained by misrepresentation or deception.

(b) Power

A lessee has the power to appear before the court to oppose the forfeiture in power (a).

(c) Power

The Minister has the power to forfeit a lease for non payment of rent.

As currently exists, forfeiture for non payment of rent does not have to occur through a court.

The legislation would need to set out issues such as mortgagee rights, showing cause, etc..

B7 LICENCES

A licence is a form of occupancy which does not create a legal interest in the land but is a personal right that allows someone to occupy and use a parcel of land under certain terms and conditions. A licence may be given over Crown land, a reserve or a road.

B7.1 Objective

To provide a form of legal occupancy over Crown land, road or reserve where the land is not otherwise needed for the time being or where occupancy under licence is not incompatible.

(a) Power

The Director-General has the power to issue a licence for the exclusive use of a parcel or part of a parcel of Crown land, reserve or temporarily closed road. The licence may be terminated at any time. The licence may or may not have a set termination date or circumstance.

(b) Power

The Director-General has the power to issue a licence for non-exclusive use of a parcel of Crown land, road or reserve. The licence may be terminated at any time. The licence may or may not have a set termination date or circumstance.

(c) Power

The Director-General has the power to attach conditions and fees to a licence.

(d) Power

The Director-General has the power to sue a licensee for compensation for any damage to land associated with non-fulfilment of licence conditions.

(e) Power

The Director-General has the power to delegate the powers under this subsection (7.1) to the trustee of a reserve, for use over the reserve.

(i) Duty

Where the powers under this section have been delegated to a trustee, and the trustee issues or terminates a licence, it is the duty of the trustee to notify the Director-General.

Policies would indicate the various other aspects of licences such as uses, standard conditions and normal notice for termination.

B7.2 Objective

To enable people to carry out short term and minor activities on Crown land which are of benefit to the community or the land.

(a) Power

The Director-General has the power to give written permission for an activity to be carried out on Crown land, subject to such conditions as the Director-General deems fit, in cases where the activity is of very limited extent or a minor nature such as to be inappropriate to the issue of some form of lease or licence.

What is envisaged is allowing a community group to hold, say a 1 day fete, etc.. In such circumstances anything more complex is unnecessary, though a statement of the rights and responsibilities would be necessary.

B8 TREE MANAGEMENT

B8.1 Objective

To manage trees on leases, reserves, deeds of grant in trust, licences and other permissive occupancies consistent with the following:

- . the timber is the property of the Crown
- . trees are a critical link in land sustainability
- . the timber may be a source of revenue
- . any relevant State or National timber strategies.

(a) Power

The Director-General has the power to issue a tree clearing permit to a lessee, licensee or trustee. The permit may be subject to conditions.

(i) Duty

It is the duty of a lessee, licensee or trustee not to clear or destroy trees in breach of a permit or without a permit. *Penalties for clearing without a permit or in breach of the conditions of a permit.*

(b) Power

The Governor in Council may prescribe trustees who are exempt from the requirement for a tree clearing permit.

Prescribed trustees will be listed in regulations. Government departments and agencies are the most likely type of prescribed trustees.

(c) Power

The Director-General has the power to cancel a tree clearing permit.

(d) Power

A court has the power to order a lessee convicted of a breach of a tree clearing permit, or of clearing without a permit, to pay any penalty imposed as well as:

- . the cost of any remedial work or rehabilitation necessary
- . the value of the trees cleared or destroyed.

8.2 Objective

To encourage tree management to be a planned undertaking wherever possible or practical.

(a) Power

The Director-General has the power to require a tree management plan to assist in the consideration of an application for a tree clearing permit.

(i) Duty

Where a tree management plan is required it is the duty of the lessee to manage timber in accordance with the approved plan. To do otherwise is a breach of permit condition.

(ii) Duty

It is the duty of the Director-General to continue a tree clearing permit in force for the benefit of a transferee of a lease if:

- . a tree management plan was approved when the permit was issued
- . a transferee gives notice that the transferee is aware of and agrees to the conditions of the permit.

B8.3 Objective

To make allowance from the need for a permit for the minor routine rural management operations relating to tree clearing.

(a) Power

The Governor in Council may permit the clearing of trees for prescribed routine management purposes on leases used for agriculture or grazing purposes, without the need for a permit.

(i) Duty

It is the duty of a lessee, licensee or trustee clearing under the prescribed exemptions of power (a), not to:

- . remove trees from the lease
- . clear prescribed trees
- . clear in critical areas. *Penalties attached.*

These powers mirror those in the *Lands Legislation Amendment Act 1992*. Prescribed trees may be valuable fodder trees or valuable commercial or endangered trees. Critical areas will be those vulnerable to degradation or protected areas under nature conservation legislation and the like.

The *Lands Legislation Amendment Act 1992*, sets out details regarding the duration of a permit, as well as the things that must be considered in issuing a permit. The exemptions for routine rural management operations will be prescribed in the near future.

B9 RENT, PAYMENTS AND PRICE

Rent levels on Crown holdings have been considered in the *Lands Legislation Amendment Act 1991*, and the policies of that Act are followed here.

B9.1 Objective

To enable the Crown to receive appropriate levels of revenue on leases.

(a) Power

The Minister has the power to charge rent on leases issued under lands legislation.

(b) Power

The Minister has the power to categorise leases for the purpose of rent assessment.

(c) Power

The Governor in Council may prescribe the level of rent on prescribed categories of Crown leases, as a percentage of the statutory valuation of the lease.

The statutory valuation is the valuation made pursuant to the Valuation of Land Act. At present the statutory valuation is UCV (Unimproved Capital Value).

(d) Power

The Governor in Council may prescribe a minimum rent.

(e) Power

Where the Minister considers it appropriate, the Minister may set a concessional rent.

(f) Power

Where there is an appeal lodged against a statutory valuation on which rent is calculated, the Minister has the power to require that the lessee pay the new rent until the appeal has been determined.

(i) Duty

Where an appeal against a statutory valuation on which a rent is calculated is won by the lessee, it is the duty of the Minister to take action to ensure that any rent paid in excess of the appropriate rent based on the new statutory valuation, is repaid.

This power exists now. It reflects normal business practice.

B9.2 Objective

To enable the Crown to make short term variations in rent levels that will facilitate the development of Crown land.

(a) Power

Where development conditions are extensive and costly, for up to the first five years of a Crown lease the Minister has the power to set the rent at a concessional level.

B9.3 Objective

To make provision for those times when a holder may find it extremely difficult to pay the rent due.

(a) Power

The Minister has the power to reduce or defer rent in cases of hardship where the concessions are warranted.

(b) Power

The Governor in Council may forgive a debt to the Crown or waive annual rent under the Act.

Policy will need to be in place on what constitutes hardship, etc. to accompany this power, as well as a policy on the level of concession that will be recommended.

B9.4 Objective

To enable the Crown to take action to recover rent owing, or any other payments owing to the Crown under the legislation.

(a) Power

The Minister has the power to sue on behalf of the Government for rent, charges or payments required under the legislation, and interest owed to the Crown, in lieu of forfeiture action.

Policies will be developed regarding when such action should be taken in preference to forfeiture, in particular such action could be used when the lease is long term and the lessee has been in occupation for a substantial part of that term. Some further power regarding reinstatement upon payment may be appropriate.

B9.5 Objective

To encourage prompt payment of rent and any other payments required under the Act.

(a) Power

The Minister has the power to charge a prescribed level of interest on any payments or rent in arrears.

(b) Power

The Minister has the power to allow a discount for payment of money by the due date.

B9.6 Objective

To enable a lessee or licensee to be credited any overpaid rent or payments.

(a) Power

The Director-General has the power to credit overpaid rent or payments to a lessee or licensee, on any lease or licence held by that lessee.

B9.7 Objective

To enable the Crown to obtain an appropriate return for a sale of land.

(a) Power

The Minister has the power to determine an upset price, or principles or a formulae for determining the purchase price, of any lease or licence.

Policy would indicate how the figure should be obtained or what type of principles or formulae should be used.

B10 ALLOCATION OF LAND

In the allocation of land there are a number of issues. There are the land planning issues relating to what land is made available and in what tenure and for what purpose. Once a parcel of land is identified as appropriate to be allocated, then the considerations are how best to allocate it, and do there need to be any restrictions on the person who should hold it?

The method of allocation depends on what is trying to be achieved. For instance, is the land being opened up to encourage people into farming, is it being allocated to provide a source of revenue, is it being allocated to facilitate some State development?

The questions that relate to who should get it (or eligibility) are:

- . will the person care for the land
- . will the person utilise it appropriately
- . will the person fulfil conditions
- . does anyone have any common law rights in the parcel?

B10.1 Eligibility

Eligibility can be managed in two ways: firstly, in the issuing of the lease or deed of grant or licence; and secondly, through a requirement for Ministerial approval of a transfer.

B10.1.1 Objective

To enable the Crown to restrict the holding of a lease to people eligible under the Act.

(a) Power

The Minister has the power to refuse an application for a lease or refuse an application to transfer a lease on the basis of eligibility criteria set out in the Act.

(i) Duty

It is the duty of a lessee to obtain Ministerial permission to transfer a lease.

Ministerial approval is currently required prior to a lease being transferred.

B10.1.2 Objective

To ensure that land is available to a wide number of people for the greater benefit of all Queenslanders, by restricting the total aggregation of Crown leases held by any one person.

(a) Power

The Minister has the power to reject an application for a lease or an application to participate in a ballot or to refuse permission to transfer a lease on the basis of the aggregation of Crown leasehold land held by the applicant or proposed transferee.

Aggregation controls currently exist for certain types of leases. The amount of land that triggers non approval currently involves consideration of the number of living areas held. A new measure may be used in future, or the living area measure may be retained. Aggregation controls could apply only to certain types of leases as considered appropriate or necessary.

B10.1.3 Objective

To foster family farms.

(a) Power

The Minister has the power to prohibit corporations from holding Perpetual Leases for pastoral, grazing or agricultural purposes.

In the current *Land Act* corporations may not hold Grazing Homestead Perpetual Leases.

B10.1.4 Objective

To facilitate property build-up for land rehabilitation or protection measures.

(a) Power

The Minister has the power to restrict eligibility to apply for any particular Crown lease to those people who are, in the particular case, approved to participate in property build-up, rehabilitation or protection initiatives.

In some instances, it may be desirable to restrict the purchase of a holding to someone who will use the property as a part of a larger property thus constituting

a sustainable operation. Where the land is degraded or at serious risk of degradation, this may place less pressure on a parcel, if it is not supporting a farm business alone, thus serving to guard against degradation.

10.2 Making Land Available

Land can be made available in any of the following ways: auction; tender; ballot; and in priority ("in priority" is another way of saying "without competition"). Each method has a different objective, and the choice of method should be directly related to what is trying to be achieved.

B10.2.1 General

Objective

To enable the most appropriate method of making a parcel of land available to be chosen.

(a) Power

The Minister has the power to determine the most appropriate method of making land available.

(i) It is the duty of the Minister to take into account:

- . the objectives of the various methods relative to the purpose of making the land available
- . the principles of Crown land management
- . fairness to all potentially interested applicants
- . any other relevant factors.

B10.2.2 Sale at Auction

Objective

To have a method of making land available in a way which will enable the Crown to realise the price which the market will pay for the parcel or the holding.

(a) Power

The Minister has the power to offer land for sale in fee simple. The method of sale can be through acceptance of the highest bid at auction, or acceptance of an offer which is not less than the upset price, after auction.

The upset price is simply the Crown reserve price. If the parcel does not sell, it could be re-auctioned with a lower upset price.

(b) Power

The Minister has the power to offer land as a lease or licence under the Act. The method of sale can be through acceptance of the highest bid at auction. The bid to be on the basis of a cash premium. The normal annual rent or fee for that type of lease or licence would apply.

(i) Duty

It is the duty of the Director-General to ensure that a sale or auction of Crown land under this provision is advertised to the public.

(ii) Duty

It is the duty of the Director-General to ensure that all conditions of the sale or lease or licence are made known to the public.

Policies would cover: what is entailed in advertisement; what is to be stated in the notice of offer, (rent, term, aggregation, conditions); up front payments; commencement date; who pays for survey; etc..

B10.2.3 Tender

Objective

To enable the Crown to make Crown land available in a way which recognises the development potential of a site.

(a) Power

The Minister has the power to offer at tender, and dispose of or allocate through tender, a lease, licence or a deed of grant.

(i) Duty

It is the duty of the Minister to ensure that the parcel of land goes to the most appropriate person who has submitted a tender. The most appropriate person will be the applicant who:

is assessed as being most able to fulfil the objective and conditions of the holding, or whose plans for the land will best enhance the land (within local, regional or State development policies and objectives),

at the same time ensuring that the Crown receives the most appropriate price for the land or rent or fee and or payment for the holding.

Policies will cover factors to be considered in the evaluation, time frames of lodgement and assessment and offer validity.

B10.2.4 Ballot

Objective

To provide a method of making land in fee simple or a lease or licence available to people at a predetermined and advertised price or rent.

(a) Power

The Minister has the power to conduct a ballot to determine who should hold a lease or licence over Crown land or obtain Crown land in a deed of grant.

- (i) It is the duty of the Director-General to advertise the price or rent of the land, circumstances of the ballot, and any eligibility criteria.

Policies would cover the conduct of the ballot.

B10.3 Priority Leasing

A priority lease is one where an applicant or lessee is treated exclusively, with all other parties being excluded from competing for the parcel of land; thus it is obtained "non-competitively". There are a number of circumstances in which such exclusive treatment is appropriate. These circumstances are outlined in the objectives below.

B10.3.1 Objective

To provide land to those who will facilitate its proper development, supporting the economic and social development of the State.

(a) Power

The Minister has the power to offer Crown land in priority as a lease or licence as appropriate, when:

- . the land is not required for any public purpose, and
- . the intended use is the most appropriate use of the land (consistent with the planning and development requirements of State and local government), and
- . the prospective lessee has, or has arranged, the financial and managerial capability necessary to undertake the proposed development, and
- . exposure to public competition (calling for expressions of interest or tender) is considered inappropriate (for example when an applicant has undertaken substantial pre-feasibility investigations).

(b) Power

Where a priority lease is for a major development, the Director-General has the power to request an independent assessment of the applicant's financial and managerial capabilities.

Major projects include those for commercial, residential, industrial or tourism purposes which have a significant impact on the economic and social development of the locality, the region or the State. These projects will in all cases involve a high level of investment and a substantial development period.

B10.3.2 Objective

To provide a way of making land available which allows for the most practical allocation solution.

(a) Power

The Minister has the power to offer Crown land in priority as a lease or licence as appropriate, when:

- . the land is not required for any public purpose, and
- . the intended use is the most appropriate use of the land (consistent with the planning and development requirements of State and local government), and
- . one of the following criteria apply:
 - * where the applicant is the adjoining landholder, and leasing to anyone else would be considered inequitable, or
 - * where no other persons are likely to be interested, or
 - * where there is no dedicated access and the only practical access is through the applicant's land, or
 - * where the area has been surrendered from the lessee's lease for pastoral purposes, and has been reserved as State Forest or National Park.

This provision covers pieces of land such as those left after a road re-alignment.

B10.3.3 Objective

To provide a way of making land available which recognises a local community's need for public facilities.

(a) Power

The Minister has the power to offer Crown land in priority as a lease or licence as appropriate, when

- . the land is not required for any public purpose, and
- . the intended use is the most appropriate use of the land (consistent with the planning and development requirements of State and local government), and

the land is required for some form of public facility (for example a local authority or State Government project or infrastructure development).

B10.3.4 Objective

To facilitate the activities and projects of Government.

(a) Power

The Minister has the power to offer land in priority, for sale or lease as appropriate, when the land is required for a Government activity or project.

B10.4 Speculation

Objective

To deter speculation in the trading of Crown leases.

(a) Power

Where a lessee applies to transfer any interest in a lease without having completed all pre-determined conditions of the lease, the Minister has the power to require the lessee to pay the present value of the difference between any (existing) concessional rent and the appropriate Crown lease rent for the expired period of the term of the lease, as a condition of transfer.

Perceptive entrepreneurs are able to make money from the development of land. In doing so, they not only make money for themselves but they will also probably create wealth for the State (in terms of facilities, jobs, etc). This is appropriate. However, it is inappropriate to trade in leases and make profits without adding any value to the land or to the public estate. Thus speculation in the trading of Crown leases should be discouraged. This power is to discourage such speculation.

(b) Power

A lessee who is required to pay under power (a) has the power to appeal against the Minister's determination that all pre-determined conditions of the lease have not been fulfilled.

(c) Power

The Minister may include a condition of personal residence for a minimum term of seven years, for land that has been made available under the ballot option.

Land is put up for ballot so that people who otherwise might not have had a chance to obtain land and start a business or build a home will get a chance. It is inappropriate if land obtained at ballot is then used for speculation. A condition of personal residence will discourage speculation. Such a condition can be placed on balloted land under the current *Land Act*.

B11 TENURE AND CHANGE IN TENURE

This section deals with ascertaining what is the most appropriate tenure for a parcel of land: freehold, perpetual lease or term lease (with or without a contract to convert). Or should it be reserve or road or left as Crown land?

This question can arise when (for example):

- . an entrepreneur knows of a parcel of suitable land and wishes to undertake some development.**
- . a lessee (with no contract to convert) wishes to seek a change in the tenure of their lease, e.g. seeks to obtain freehold or a perpetual lease, or renew their lease.**
- . the State wishes to make some land available (e.g. for housing).**

The issue is essentially a land use planning issue, and is a critical aspect of implementing Crown land management.

B11.1 Objective

For the tenure of a parcel of land to be appropriate to the special attributes of the parcel, and the requirements of the community.

(a) Power

The Minister has the power to determine, within the provisions of the Act, the tenure and configuration of a parcel of Crown land, unless other legislation specifically designates a process for determining such issues.

The Aboriginal and Islander Lands Acts, for example, specify how available Crown land is to be considered and dealt with.

(i) Duty

It is the duty of the Minister to ensure that the following have been taken into consideration in determining the tenure:

- . restrictions placed under any other Act (e.g. Coastal Protection legislation)**
- . environmental and conservation factors**
- . degradation or risk of degradation**
- . State and local planning considerations**
- . historical and cultural significance**
- . the capability of the land**
- . the potential of the land**
- . optimum size and configuration**
- . any special attributes of the land (such as timber and quarry materials, location, topography, geology, accessibility, aesthetic**

- appeal)
- any other relevant factors

An assessment to determine the most appropriate tenure of a parcel may be undertaken as a part of a local land use planning study or in an ad hoc manner (on application, for instance) (until such time as land use planning covers the State). Various people or agencies will need to be consulted, and this will be indicated in policy.

"Size and configuration" refer to the subdivision, boundary adjustment or amalgamation of land if relevant to a change in tenure. "Optimum" entails consideration of what area a land manager may require to develop and maintain a sustainably viable unit, taking into account regional differences and purpose.

While a proper land planning assessment will have been undertaken, it is still the Minister's discretion to determine the tenure of a parcel of land, as in some cases it may be necessary to determine between equally valid competing uses.

B12 CONTINUED TENURES

This section indicates how existing tenures are to be considered in the new scheme. There are a number of strategies for dealing with the existing tenures:

Translation

Where there is a very close or identical match between a particular new and old tenure, transfer to the new system would occur and will be essentially automatic and transparent to the holder. There may simply be a change of the tenure name. Consideration of any common law rights will be significant in deciding whether translation is appropriate.

Savings

Where an existing holding will automatically expire in time, and where there are no further rights or obligations after such expiry (for example on the issue of a deed of grant after a freeholding lease is paid off; or, on the expiry of a term lease where no right of renewal or conversion is included in the lease), then such holdings will generally be allowed to follow their course without interruption.

Continuation

Where no such translation or savings can accommodate an existing tenure, then the rights and obligations of the holders will be maintained, almost as if no new tenure system had come into existence. However, in many cases there will be benefits for a holder of such a tenure to transfer onto the new system.

In some cases an existing lease carries with it a right to apply for a type of lease (e.g. a freeholding lease) which is a lease type that will be no longer issued in new legislation. In these cases there will be special provision to issue the new lease per the right. Thus there will be some new freeholding leases issued.

Freehold

Holders of residential perpetual leases will be encouraged to apply for freehold where no reason otherwise exists to persist with the perpetual lease. This is currently underway for Miners' Homestead and associated leases.

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GLOSSARY OF TERMS

Community land category	Land which should be preserved and maintained for the benefit of present and future generations. This is primarily because of its natural resources, its environmental, recreational, historical, social or cultural significance, or because it has special strategic value for present or future generations.
Crown land	All land in Queensland, except land which is, for the time being: (a) lawfully granted or contracted to be granted in fee-simple by the Crown; or (b) reserved for or dedicated to public purposes or community purposes; or (c) subject to any lease or licence lawfully granted by the Crown: however land held under occupation licence shall be deemed to be Crown land.
Crown lands legislation	Any legislation that results from the further development of this White Paper (such as a Crown Land Act and a Crown Land (Continued Tenures) Act), as well as any land legislation which will be repealed as a result of the further development of this White Paper. This includes the current Land Act 1962.
Department	Refers to the Department of Lands
Director-General	Refers to the chief executive of the Department of Lands
Lease	A lease issued over Crown land or reserve, under Crown lands legislation.
Licence	A licence issued over Crown land, reserve, or road under Crown lands legislation.

Minister	Refers to the Minister for Lands
Operational land category	Land required for ordinary government business where the land has limited intrinsic community value should the government operation or service conducted on the land be discontinued or sited on an alternative convenient site.
Reserve	Unless otherwise specified, the word reserve is used to refer to any land which is reserved under Crown lands legislation, as distinct from land reserved under, for instance, nature conservation legislation or forestry legislation.
Road	<p>Any road, whether surveyed or unsurveyed, dedicated or notified or declared in any manner to be road for public use. The term includes:</p> <ul style="list-style-type: none">(a) any road, street, esplanade, reserve for esplanade, parade, promenade, avenue, crescent, drive, lane, highway, pathway, footway, thoroughfare, track or stock route; and(b) any part of any road or any bridge, causeway, culvert.
Sub-lease	A lease issued over a Crown lands legislation lease.

PRESENT TENURES

PRESENT TENURE	CHARACTERISTICS OF PRESENT TENURE
Pastoral Holding (PH)	Pioneer tenure for grazing & agricultural purposes. Term up to 50 years. Some rights to a new lease.
Preferential Pastoral Holding (PPH)	Cannot be held by Corporations, Agents etc.. Over better class pastoral lands. Used when not surveyed or when maximum area limitations should apply. Term up to 50 years. Some rights to a new lease.
Pastoral Development Holding (PDH)	Used where development costs were abnormally high. Term up to 60 years. Some rights to a new lease.
Stud Holding (SH)	Used to facilitate the production of stud stock. Term up to 75 years. All leases expire 31/12/2058.
Grazing Homestead Perpetual Lease (GHPL)	Primary tenure for grazing & agricultural purposes. Cannot be held by Corporations, Agents, etc.
Non-Competitive Lease (NCL)	Used where a lease in priority in perpetuity is desired.
Special Lease (SL)	Multi purpose tenure. Term up to 30 years or 75 years for high cost developments or where conversion to freehold not allowed.
Development Lease (DL)	Used to encourage development of Crown land by private enterprise generally for residential purposes. Percentage of realised selling price of developed allotments to Crown.

PRESENT TENURE	CHARACTERISTICS OF PRESENT TENURE
Permit to Occupy (PO)	Permits the use of Crown land, Reserve or road while preserving the underlying lawful usage. No term - terminable at will by Minister.
Occupation Licence (OL)	Usually issued over expired Pastoral Holdings while further dealing is being considered. Renewed yearly by payment of annual rent.
Road Licence (RL)	Licence over area of temporarily closed road granted to an adjoining owner. Renewed yearly by payment of rent. Licensee may fence and exclude public.
Miners' Homestead Perpetual Lease (MHPL) Miners' Homestead Lease (MHL) Residence Area (RA) Business Area (BA) Market Garden Area (MGA)	Tenures under Miners' Homestead Leases Act - current campaign to encourage freeholding.
Perpetual Lease Selections (PLS)	Became a freeholding lease in 1981, to be paid out over 40 or 60 years.
Perpetual Town, Suburban, Country Lease (PTL, PSL, PCL)	Became a freeholding lease in 1981, to be paid out over 30 years.
Perpetual Town, Suburban, Country Lease (Converted) [PTL(c), PSL(c), PCL(c)]	Perpetual Leases converted to freeholding leases prior to 1981 amendment.
Non Competitive Lease (Converted) [NCL(c)]	Freeholding tenure as a result of a NCL being converted.

PRESENT TENURE	CHARACTERISTICS OF PRESENT TENURE
Agricultural Farm (AF)	Freeholding tenure previously used for freeholding Perpetual Lease Selections, etc.
Grazing Homestead Freeholding Lease (GHFL)	Freeholding lease as a result of conversion of a Grazing Homestead Perpetual Lease (GHPL).
Auction Purchase Freehold (APF)	Freeholding tenure. Provides mechanism for selling land as freehold.
Special Lease Purchase Freehold (SLPF)	Freeholding tenure as a result of conversion of a Special Lease.
Purchase Lease (PL)	Freeholding tenure under the Brigalow Scheme.
Mining Titles Freeholding Lease (MTFL)	Freeholding tenure as a result of MHPLs etc being converted.