



DISPOSAL AND MANAGEMENT OF CROWN LAND

1. Purpose

The Position Statement has been prepared by the Town of Port Hedland (Town) to assist users in understanding the Town's policy position and rationale when responding to statutory referrals for the disposal and management of Crown Land.

A separate Position Statement has been prepared for Mining Tenements.

The purpose of the position statement is to:

1. Outline the Town's position and rationale when responding to a statutory referral for an application for the grant and / or management of Crown Land.
2. Provide underlying principles for the applicant to consider in applying for, or carrying out activities under, Crown Land tenure within the Town.

2. Underpinning Principles

The position paper is founded on the following principles:

Orderly and proper planning – coordinated land use and infrastructure planning to achieve ecologically sustainable development and ensure sensitive and incompatible land uses are minimised.

Investment, innovation, and industry diversification – are encouraged, with applications comprehensively merit assessed and potential opportunities and impacts for the community, proponents, and the State Government, effectively managed.

Quality information – enhances the Town's capacity to provide considered and evidence-based information on a statutory referral for an application for Crown Land tenure and / or management.

Strategic interests are considered - a balance is achieved between the social, cultural, economic, and environmental needs of the community, applicant(s), and State Government's strategic priorities.

Consistency, efficiency, fairness, probity, and transparency – are achieved in the State Government's allocation and the management of Crown Land.

Genuine community engagement - opportunities are afforded for community feedback on disposal and management of Crown Land tenure deemed to be of significant community interest.

Sound and rationalised asset management - Government and local government strategic investment in infrastructure is recognised, and the efficient use of existing and planned infrastructure is maximised.

Sufficient regard to legislative objectives - local government referral provisions for disposal of Crown Land pertaining to sound land-use planning and management principles and community amenity are given due weight.

3. Application

The Position Statement applies to the entire municipality of the Town of Port Hedland. It does not bind the Council of the Town of Port Hedland in responding to a statutory referral for an application for, or management of, Crown Land tenure.

The Planning and Development Act 2005 empowers the Western Australian Planning Commission (WAPC) and local governments to prepare planning instruments that establish development controls. The primary planning instruments developed pursuant to the Act that are relevant to, and should be read in conjunction with, the Position Statement are:

- *Town of Port Hedland Local Planning Strategy* (the Strategy)
- *Town of Port Hedland Local Planning Scheme No.7* (the Scheme)
- *Town of Port Hedland Mining Tenements Position Statement*
- *Town of Port Hedland Workforce Accommodation Position Statement*
- *Town of Port Hedland LPP/05 Workforce Accommodation*
- *Town of Port Hedland LPP/06 Social Impact Assessment*

The West End Improvement Scheme No.1, gazetted on 18 September 2020, and managed by the WAPC replaces the Town's planning controls within the Improvement Scheme Area, including Development Approvals. The WAPC has committed to alignment of the statutory planning framework under the Improvement Scheme with both State and local government broader strategic objectives for Port Hedland's West End. Statutory requirements exist for consultation with local governments on applications for Crown Land within the local government district. Crown Land referrals for the West End will be assessed against the objectives of the Town's Strategy.

Statutory referrals external to the West End Improvement Scheme area are assessed in the context of both the objectives and/or provisions of the Town's Strategy and Scheme and broader planning framework, this includes but is not limited to, land reserved for Port operations and future Port growth at the Port of Port Hedland, located adjacent to the West End Improvement Scheme area.

The Town recognises that local governments' role in State Government statutory referrals on an application for Crown Land tenure or Crown Land management under the *Land Administration Act 1997*, the *Planning and Development Act 2005* or relevant State government agency (or statutory authority) legislation is advisory, and therefore the policy positions within the Position Statement cannot unilaterally bind the relevant agency in imposing local government advice on those dealings.

Proponents of a Crown Land grant are subject to various compliance requirements in relation to management of Crown Land under various statute and the local planning framework.

It is not intended for the Position Statement to be applied retrospectively to existing grants of Crown Land tenure, except where applications are made for variations to those approvals, where lease or licence extensions are sought (and these are not considered by the Town to be minor matters) or where compliance matters require rectification.

The following briefly summarises the types of statutory referrals for an application for Crown Land tenure or Crown Land management referred to the Town for advice. Further information on Crown Land tenure can be located at <https://www.dplh.wa.gov.au/information-and-services/crown-land>

Crown Leases – an agreement between the State and a lessee over Crown Land and waters which allows for a person or organisation to have exclusive right to occupy that specific portion. This includes Crown Lease proposals, extensions and sub-leases. Leases can be granted for varied purposes, including industry, Pastoral Leases, commercial enterprises, and for the delivery of social services. These are typically granted for terms up to 21 years, although Pastoral Leases are generally subject to longer periods of tenure.

Pastoral leases – grants the lessee the right to graze authorised livestock on the natural vegetation and undertake supplementary and ancillary uses. Pastoral Leases are for terms not exceeding 50 years.

Under Part 7 of the *Land Administration Act 1997*, the Pastoral Lands Board can approve Diversification Permits for 'small scale' activities primarily related to pastoralism such as non-Indigenous pastoral activities, agriculture, low key tourism activities, and to keep or sell prohibited livestock. Some non-pastoral uses are also allowed on enclosed or improved land. These permits are not generally referred to local government for advice but are being more frequently utilised to improve economic outcomes for pastoral stations. Local government planning requirements may apply to Diversification Permits.

Crown Reserves – land reserved for a particular purpose in the public interest such as land deemed to be of high conservation value requiring preservation for future generations or for core business/service delivery needs of State Government agencies and authorities (i.e. emergency services' facilities and utilities) and local governments (i.e. foreshore and road reserves or recreational facilities). Reserves managed by the Town have generally been granted for indefinite terms.

Crown Licences – grants the person or organisation the right to use a portion of Crown Land for a specific purpose and period (i.e. event, telecommunications infrastructure, environmental rehabilitation, or site investigations). These are generally granted for short-term, non-exclusive uses.

Crown Land Sales – where State-owned land determined to be surplus to government requirements, is sold to private ownership, based on achieving the highest and best use of the land in the interests of the State (i.e. aquaculture, agriculture, agribusiness, renewable energy and other innovative enterprises).

Crown Land developments - Development of public works on Crown Land undertaken by State Government entities or specified authorities¹ and proponent developments associated with Crown Land tenure.

Compliance on a grant of Crown Land tenure – Compliance requirements for the management of a grant of Crown Land principally exist pursuant to the *Land Administration Act 1997*, *Planning and Development Act 2005*, *Building Act 2011*, *Local Government Act 1995*, Commonwealth and State environmental legislation and State Government imposed proponent agreements or conditions pertaining to the grant and management of Crown Land tenure. The State Government and the Town work independently and collaboratively, to investigate and rectify alleged complaints of non-compliance, depending on the nature of the complaint. The State Government will sometimes request that the Town investigate a matter on its behalf.

4. Position Statement

While the Town's advice on statutory referrals for Crown Land tenure and management is informing not binding on the State Government, the quality of that advice underpins Government's decision-making capacity regarding those referrals.

Prior to making an application to the State Government for Crown Land tenure, applicants are strongly encouraged to review the Town's Strategy and Scheme and seek advice from the Town's Planning and Development Team on the Town's local planning framework.

The following details the Town's considerations and general position on statutory referrals for applications for, or management of, Crown Land tenure:

Crown Leases

¹ Western Australian Planning Commission, *Planning Bulletin 94: Approval Requirements for Public Works and Development by Public Authorities*, November 2008. Available at: https://www.dplh.wa.gov.au/getmedia/26a58501-7026-4b06-8f88-a3cc46bdf727/PB_94_Approval_Requirements_for_Public_Works

The Federal and State Governments and the Town have invested substantially to ensure the sufficient availability of quality industrial and residential land within the Town of Port Hedland townsite boundary. Collectively, these sites have been developed to stimulate commercial enterprise, city centre activation and amenity; provide access to key infrastructure, including social infrastructure, utilities, and safe transport corridors for heavy and light vehicles; and to ensure appropriate buffers are in place to manage sensitive land uses.

The Town has adopted a coordinated approach to urban land management that maximises planning or infrastructure investment and minimises land use conflicts.

The Town supports the location of commercial or general, light, and heavy industry, and residential settlement, in areas dedicated by reserves or zones for the corresponding purpose under the Scheme, for both new Crown Leases and extensions to existing Crown Leases.

The Town does not support the creation of satellite industrial estates outside the gazetted townsite boundary given the potential to undermine investment in Town-based industrial zones and local supply chain opportunities.

The Town supports agricultural activities being conducted in rural areas in compliance with the Scheme. Agribusiness, aquaculture, renewable energy and other innovative enterprises, will be considered on a case-by-case basis with due consideration given to ensuring appropriate separation distances from sensitive land use areas.

Crown Reserves

Crown reserves that facilitate land use or infrastructure for a community purpose, such as national parks, coastal reserves, conservation reserves, parks and gardens, roads, energy and other utilities, contribute substantially to the prosperity and liveability of towns and regions, and the sustainability of environmental values.

In assessing whether to support a Crown Lease or Crown Licence on a Crown Reserve, the Town will give consideration to whether the latter will enhance or adversely impact, the existing reserve purpose and use, and surrounding land uses. Considerations will include, but are not limited to, the impact of the Crown Lease or Crown Licence on planned or established infrastructure, community use and enjoyment, small business viability and environmental or natural features and resources.

Where it is proposed by the State Government to reserve land under a new Management Order and where the proposed use is consistent with the Scheme and any relevant approvals, then the Town will consider the referral favourably.

The Town will consider on a case-by-case basis support for a Crown Lease or Crown Licence on a Town managed reserve for commercial and other activities that activate a precinct.

Where the Town invests substantial capital and / or ongoing operational funding in a reserve that substantially benefits commercial or other developments located on, or in relative proximity to, the site, the Town may consider financial returns that ensure the sustainable management of the reserve.

Crown Licences

The grant of Crown Licences can substantially value-add to community liveability and economic outcomes. The Town will consider a referral for advice on a Crown Licence on a case-by-case basis in accordance with the local planning framework.

In applying for a Crown Licence, proponents are encouraged to give due consideration to managing or ameliorating potential adverse impacts of licence-related activities on townsites, urban settlements or sensitive land use areas, and to ensuring the safety of workers and residents.

Crown Land Sales

The Town supports a coordinated and strategic approach by State Government agencies to residential, commercial and industrial land disposal that gives due regard to reservations or zoning under the Scheme and completed or committed structure plans for subdivision in the townsites of Port and South Hedland.

Terms and Conditions

The sustainable and commercial management of Crown Land is a key State Government responsibility. The Town as a local government authority is an integral partner in the delivery of outcomes under the State's Strategic Planning Framework.

To ensure agreed outcomes for grants of Crown Land tenure are achieved, the Town supports inclusion of terms and conditions in contractual agreements that require the occupation, construction and operations associated with the permitted use, to be delivered within a specified period from the commencement date of the Crown Land Lease agreement or Crown Land sale.

Crown Land Developments

A public works referral and Development Application process facilitates building design standards to better withstand natural and other hazards; ensures that environmental, infrastructure and community impacts are effectively planned for and managed; and (where required), that buildings meet compliance standards under the Scheme.

With the exception of public works referrals by State Government agencies and authorities (or a representative body) and construction on mining tenements, proponents in an application for Crown Land tenure or where applicable, a Diversification Permit on a Pastoral Lease, are required to submit a Development Application to a local government authority to establish a discretionary land use or construct/modify built form on the land.

Proponents of Crown Land developments may be required to access additional approvals through the Town or other statutory authorities, including Aboriginal heritage and Native Title, environmental or health approvals, and other legislative requirements.

Compliance on a grant of Crown Land Tenure

Given the complexity and breadth of compliance matters considered under statute and /or Crown Land tenure agreements, the Town will consider its response to these matters on a case-by-case basis. Proponents are strongly encouraged to apprise themselves of specific compliance requirements relative to their grant of Crown Land tenure.

5. Documentation

Sufficiently detailed documentation is required to assist the Town in providing considered and accurate advice on a statutory referral for Crown Land tenure and / or Crown Land management.

Documentation includes (where relevant), a detailed site plan; building floor plans; a written submission on the proposal including business details, core activities and hours of operation; and key site management plans, and statements and reports. Examples of the latter reports include dust, noise, stormwater and/or bushfire management plans, waste management plan, utility connection details, heritage impact, environmental impact, and site rehabilitation.

For large-scale developments subject to a long-term lease, the following additional information should be provided in the form of a detailed business case/plan:

- the strategic importance and economic, social and environmental costs and benefits of the proposal, at a local, regional and state level;
- timetable for implementation of the proposal;
- the proponent's capacity to meet the financial and administrative requirements of the agreement;
- relevant statutory approvals pertaining to the proposal;

- community consultation processes including, the conduct of a Social Impact Assessment and Social Impact Management Plan;
- identified risks and mitigation or amelioration of those risks; and
- proposed terms and conditions of the agreement.

For Development Applications and compliance requirements under the remit of the Town of Port Hedland, please visit 'planning, building and environment' on the Town of Port Hedland website, available at <https://www.porthedland.wa.gov.au/planning-building-and-environment/planning.aspx>

6. Background

Crown Land is owned by the State Government and is an invaluable economic, social, cultural, and environmental resource for Western Australia.

Crown land comprises almost a quarter of the total land mass of Australia and approximately 92 percent of land in Western Australia, including unallocated crown land and land subject to reservation, dedication or leasing.² As at 2018, 14.78 million hectares in the Pilbara were subject to pastoral leases.³ The majority of land outside the Town of Port Hedland townsite boundary is Crown Land, although significant tracts of vacant and managed Crown Land also exist within the townsite boundary.

Historically, Crown Leases were granted for a fixed term in the Town of Port Hedland during a time when the Planning Framework had not fully matured, or in response to inadequate industrial and residential land supply required to meet demand during the previous mining boom (2009-2014). In a number of instances, this has resulted in non-conforming land uses under the Scheme and various planning and development compliance issues. Both during and since the last mining boom, land deficits have been substantially addressed with significant Federal, State, and local government investment in industrial and residential land supply, critical infrastructure, and community amenity.

Statutory referral requirements to local government authorities for Crown Land tenure and management are collectively founded on ensuring that referrals give due regard to sound land use and development principles, the Scheme, compliance requirements (where applicable) and community amenity.

Local government planning frameworks consider a range of strategic interests such as economic development, physical and social infrastructure, environment and security, and include evidenced-based strategies and policies to generate better planning outcomes. The Town's capacity to provide quality advice on a referral for Crown Land tenure realises the desired outcomes outlined in the principles underpinning this Position Statement.

7. Definitions

For the purposes of this policy, the following definitions apply:

"Crown Land" is defined under Section 3 of the LAA Act as 'all land, except for alienated land.'

"Crown Land tenure" involves granting interests in, or transferring the title of, Crown Land.

"Crown Land management" involves the Crown Land's use and management i.e. government building, industrial or residential development or for agriculture.

² Australian Government, Austrade, *Land Tenure*. Accessed 30 April 2020. Available at: <https://www.austrade.gov.au/land-tenure/Land-tenure/crown-land>

³ Government of Western Australia, *Status of the Western Australian Pastoral Rangelands*, 2018. Available at: <http://www.drd.wa.gov.au/Publications/Documents/Status%20WA%20Pastoral%20Rangelands.pdf>

8. Further information

Proponents intending to apply for Crown Land tenure or who have a question about Crown Land management requirements under the control of the Town of Port Hedland, are encouraged to consult with Planning and Development staff on the proposal on 9158 9300 or via eplanning@porthedland.wa.gov.au