

Annexure J
Noongar Land Base Strategy

1. Definitions

1.1 Definitions by reference to the Settlement Terms

In this Strategy, any capitalised term for which a definition is not included in clause 1.2 of this Strategy will, where the term is defined in the Settlement Terms, have the same meaning as given to it in the Settlement Terms.

1.2 Other definitions

In this Strategy:

- (a) **ALT** means the Aboriginal Lands Trust.
- (b) **Aboriginal Lands Trust** means the body corporate established under section 20 of the *Aboriginal Affairs Planning Authority Act 1972*.
- (c) **ALT Managed Reserves** means land that has been reserved for persons of Aboriginal descent and placed under the control and management of the ALT.
- (d) **Allocation** means:
 - (i) the conveyance of Crown land or freehold land held by the State in any of its capacities or agencies to the Land Sub in freehold title; or
 - (ii) the creation of a reserve and the making of management orders in accordance with Part 4 of the LAA; or
 - (iii) the grant of leasehold interests in accordance with Part 6 of the LAA,and other grammatical forms of that word or phrase have a corresponding meaning.
- (e) **Box** means a numbered box in the Implementation Process Chart.
- (f) **Freehold Implementation Process Chart** means the Implementation Process Chart for the Freehold Implementation Process.
- (g) **Implementation Process Charts** means the charts attached as Annexure K to the Settlement Terms.
- (h) **LAA** means the *Land Administration Act 1997 (WA)*.
- (i) **Lost Lands** means the land included in the DAA 2003 Lost Lands Report.
- (j) **Managed Reserves Implementation Process Chart** means the Implementation Process Chart for the Managed Reserves Implementation Process.

- (k) **NLE** means the land Allocated to the Noongar people pursuant to clause 8 of the Settlement Terms and this Strategy.
- (l) **State Transaction Costs** means the costs associated with the conversion of Crown land into the tenure form determined in accordance with this Strategy being any fees payable in respect of the approval process in clause 8 of this Strategy, the costs of survey of land, stamp duty and lodgement fees.
- (m) **Strategy** means this Strategy for the Establishment of the Noongar Land Estate.
- (n) **Trust Transaction Costs** means any other costs associated with the conversion of Crown land into the tenure form determined in accordance with this Strategy including but not limited to:
 - (i) any establishment costs including the provision or relocation of services to the land including road upgrades, service connections and headworks charges; and
 - (ii) all holding costs including local government rates and all other taxes that are normally borne by the land holder.
- (o) **UCL** means unallocated Crown land.
- (p) **UCL and UMR Implementation Process Chart** means the Implementation Process Chart for the UCL and UMR Implementation Process.
- (q) **UMR** means unmanaged reserve.

2. Principles underpinning this Strategy

- (a) The State acknowledges that land is intrinsically linked to the spiritual, social and economic wellbeing of the Noongar community.
- (b) The establishment of the NLE under this Agreement provides a significant opportunity for the Noongar community to achieve sustainable economic, social and cultural outcomes. The State recognises that the creation of an economic and culturally sustainable NLE is in the long term interest of both the State and the Noongar community.
- (c) The State, SWALSC and the Native Title Agreement Groups recognise that the creation of the NLE is a fundamental part of this Agreement and all parties commit to working together to maximise Noongar outcomes in regards to the NLE. It is the intention of all parties that the NLE reach the maximum hectare targets for transfer set out in this Strategy.
- (d) The State, SWALSC and the Native Title Agreement Groups acknowledge that the creation of the NLE is unprecedented in Australia, and will only reach its full potential if all Parties engage in the process in a spirit of cooperation. In particular, any concerns about inclusion of parcels of land in the NLE must be resolved in a timely and cooperative manner, with no Party placing unrealistic expectations on another.

- (e) The State commits to develop long-term and productive partnerships with the Trustee and the Regional Corporations to assist in achieving these outcomes.
- (f) The State recognises the role of the Trustee and the Regional Corporations in representing the interests of the Noongar people, who are the custodians and traditional knowledge holders of the Settlement Area.

3. Legislation

- (a) The Allocation of land to the NLE is subject to all relevant State laws and policies including the LAA, the *Mining Act 1978 (WA)* (**MA**), the *Transfer of Land Act 1893 (WA)* (**TLA**), and the *Planning and Development Act 2005 (WA)* (**PDA**).
- (b) The proposed use and development of land in the NLE is subject to all relevant Commonwealth and State laws and policies.

4. Retention of the Statutory Rights, Powers and Duties

- (a) The Allocation of land to the NLE does not fetter the later exercise of any statutory rights, powers and duties including the:
 - (i) right to take land under Part 9 and 10 of the LAA; or
 - (ii) revocation of management orders, or the forfeiture etc. of a lease.
- (b) In the event that:
 - (i) the Trustee agrees that the order by which the care, control and management of a reserve is placed with the Land Sub (management order) should be revoked under section 50(1)(a) of the LAA; or
 - (ii) the Minister for Lands considers that revocation of a management order is in the public interest under section 50(2) of the LAA; or
 - (iii) the management order is revoked under Part 9 of the LAA,

in order that the land may be used for a public work or a public purpose, the State must consult with the Trustee and seek to reach agreement on whether to provide to the Trustee either alternative reserve land or compensation comprising the current unimproved value of the land as determined by the Valuer General. If no agreement can be reached, the State will decide whether alternative reserve land or monetary compensation will be provided and its decision is final.

5. Administration

5.1 Agency Responsibility

- (a) DoL is charged with the responsibility for administering Crown land under the LAA on behalf of the Minister for Lands for the State of Western Australia.
- (b) DoL is, and will continue to be, the agency coordinating and facilitating the creation of the NLE in so far as the creation relates to UMR and UCL in the Crown estate, whilst also liaising with other departments and agencies with respect to managed reserves that may be included in the implementation process, and freehold land that may be Allocated and included in the NLE as set out in clause 6(a) of this Strategy.
- (c) DoL will report to the State as part of the implementation process. DoL will also refer any key strategic or policy issues to the State for advice.
- (d) DoL must work closely with the Trustee to facilitate the creation of the NLE in accordance with this Strategy.
- (e) The State must provide current land cadastre information to the Trustee to assist with selection, and Allocation to the Trust of suitable parcels of UCL and UMR for inclusion in the NLE.

5.2 Priority Land Meetings

- (a) The State must facilitate meetings between representatives of DoL and the Trustee once every 3 months (**Priority Land Meetings**) until the end of the fifth year following the Trust Effective Date for discussions about areas of UCL and UMR identified and/or selected by the Trustee as land that is potentially eligible for inclusion in the NLE (**Priority Land**), but which have been determined by DoL to be ineligible for inclusion:
 - (i) after taking into account identification criteria referred to in clause 8.1 of this Strategy and UCL and UMR Implementation Process Chart Box 2a and 2c; or
 - (ii) after DMP assessment and consideration of the comments provided by State agencies and local government referred to in clauses 8.2, 8.4 and 8.5 of this Strategy and UCL and UMR Implementation Process Chart Box 10 and 13 ; or
 - (iii) prior to and after preparing Terms of Allocation referred to in clause 8.6 and 8.7 of this Strategy and UCL and UMR Implementation Process Chart Box 19 and 23.
- (b) The aim of the Priority Land Meetings is to discuss ways of accommodating the Noongar community's request that those parcels of Priority Land that are of significance to the Noongar community are included in the NLE, for example by way of amended tenure request or joint management. Whilst the State and the Trustee must use all reasonable endeavours to reach agreement, there is no guarantee that they will do so. There is also no obligation on the State to enter into secondary negotiations about these matters.

- (c) During the 3 month period between each Priority Land Meeting, DoL must advise the Trustee of any parcel of land that is deemed ineligible for inclusion in the NLE as soon as practicable after that decision is made as indicated in UCL and UMR Implementation Process Chart Box 2c, 4c, 10, 13, 19 and 23 (**Ineligibility Decision**), providing brief written reasons for the ineligibility to both the Trustee and the State.
- (d) Following receipt of an Ineligibility Decision or where otherwise expressly provided for in this Strategy, if the relevant land parcel is of significance to the Noongar community, the Trustee may notify the State that it wants discussion about that parcel of land included on the agenda for the next Priority Land Meeting. The notice must include brief written reasons why the parcel should be reconsidered for inclusion in the NLE.
- (e) At least 3 weeks prior to the quarterly meeting, the State must confer with the Trustee about inviting representatives from other agencies or local government to the quarterly meeting to assist the discussions and, if agreed, such representatives will be invited to attend.
- (f) The State must prepare an agenda for endorsement by the Trustee and DoL representatives which prioritises matters for discussion and resolution by reference to:
 - (i) the importance of resolving an issue regarding a particular land parcel to the Trust (or the Noongar community);
 - (ii) the time that it may take to resolve an issue (those requiring less time taking priority); and
 - (iii) the resources available to devote to the particular issue (e.g. the extent to which further investigations are required and may divert resources from ongoing NLE related work priorities).
- (g) If further negotiations about inclusion of Priority Land in the NLE are required between the Trustee and representatives from government agencies or local government, those negotiations will take place outside the Priority Land Meeting process, but the outcome of those negotiations must be reported to the State by the Trustee so that, if appropriate, the relevant land can be included in the NLE. Bilateral discussions between the Trustee and government agencies and local government about the inclusion of Priority Land in the NLE must be initiated through the Priority Land Meetings, and further negotiations with respect to decisions of government agencies or local government about the inclusion of Priority Land in the NLE require the consensus of DoL and the State before they proceed.
- (h) Where any parcel of Priority Land has been referred under this Strategy to a Priority Land Meeting and no agreement has been reached to include the parcel in the NLE, if the Trustee acting reasonably considers there has been a material change to the circumstances that previously prevented the parcel of Priority Land from being included in the NLE, the Trustee may notify the State that it wants further discussion about that parcel of Priority Land included on the agenda for the next Priority Land Meeting. The notice must include a brief written statement of the

material change in circumstance which the Trustee considers applies to the land.

- (i) Matters that are referred under this Strategy to a Priority Land Meeting for discussion and possible resolution are not subject to dispute resolution in accordance with the dispute resolution provisions in clause 15 of each Agreement.

5.3 Enquiries through DoL

- (a) The Trustee must direct all enquires related to the NLE (other than in relation to ineligible Priority Land) to DoL in the first instance.
- (b) DoL must then direct these enquiries to other agencies as required.
- (c) If a disagreement arises in relation to any enquiry referred to in clause 5.3(a) and 5.3(b) of this Strategy, and either DoL or the relevant agency is unable to resolve the disagreement with the Trustee, the matter must be referred to the State for further discussion with the Trustee.

6. What the NLE will Comprise

- (a) Subject to the various conditions being met and standard statutory approvals, clearances etc., being obtained as specified in this Strategy, the State must from:
 - (i) Crown land parcels comprising UCL and UMR (including land identified by the State, SWALSC or the Trustee), and
 - (ii) State held freehold and managed reserves identified by Government departments or agencies, which are identified as being eligible by the State for Allocation:
 - (iii) subject to clauses 6(b) and 6(f) and 7.2(c) of this Strategy, create reserves and issue management orders over reserves (including land that is to be reserved for this purpose), or grant leases, to be held by the Land Sub, of a minimum of 200,000 hectares and a maximum of 300,000 hectares of land within the period of 5 years commencing on the day after the Trust Effective Date; and
 - (iv) subject to clauses 6(c), 6(d) and 6(e) and 7.2(d) of this Strategy, transfer a minimum of 10,000 hectares and a maximum of 20,000 hectares of land in freehold within the period of five years commencing on the day after the Trust Effective Date to the Land Sub.
- (b) If the maximum amount of reserves, management orders or leaseholds have not been created, issued or granted by the end of the fifth year after the Trust Effective Date from the land identified for Allocation by the end of the fourth year after the Trust Effective Date, then reserves, management orders or leaseholds up to:
 - (i) the maximum of 300,000 hectares; or

- (ii) 50,000 hectares (whichever is less)

may be created, issued or granted during the period from the beginning of the sixth year after the Trust Effective Date to the end of the seventh year after the Trust Effective Date from the land identified for Allocation by the end of the fourth year after the Trust Effective Date;

- (c) If the maximum amount of land in freehold has not been selected by the Trustee from the land identified for Allocation by the end of the fourth year after the Trust Effective Date and transferred by the end of the fifth year after the Trust Effective Date, then the Trustee may seek to convert up to:

- (i) the maximum amount of 20,000 hectares; or
- (ii) a further 5,000 hectares, whichever is less,

to freehold from the reserves or leasehold land Allocated under this Strategy during the ten year period commencing at the beginning of the eighth year after the Trust Effective Date and finishing at the end of seventeenth year after the Trust Effective Date subject to the following conditions:

- (iii) other than the costs specified in clause 12 of this Strategy, no further consideration will be payable by the Trustee;
- (iv) the Trustee must obtain all approvals and undertake all referrals as requested by DoL specified in clause 8 of this Strategy;
- (v) the State does not guarantee that all approvals will be obtained to allow conversion up to the maximum amount;
- (vi) if approved pursuant to clause 6(c)(iv) of this Strategy, the Trustee will be required to make an application under the LAA for the land tenure to be changed and the freehold title to be granted;
- (vii) any decision to convert the land tenure is subject to the approval of the Minister for Lands; and
- (viii) once the cap of 20,000 hectares has been reached, the State will no longer fund the Trustee in meeting the purchase and other costs associated with conversion of land to freehold tenure.

- (d) During the ten year period commencing at the beginning of the eighth year after the Trust Effective Date and finishing at the end of seventeenth year after the Trust Effective Date the State must facilitate the conversion of a further 5,000 hectares of freehold from the existing reserve, or leasehold land Allocated under this Strategy subject to the following conditions:

- (i) other than the costs specified in clause 12 of this Strategy, no further consideration will be payable by the Trustee;

- (ii) the Trustee must obtain all approvals and undertake all referrals as requested by DoL specified in clause 8 of this Strategy;
 - (iii) the State does not guarantee that all approvals will be obtained to allow conversion up to the maximum amount;
 - (iv) if approved pursuant to clause 6(d)(ii) of this Strategy, the Trustee will be required to make an application under the LAA for the land tenure to be changed and the freehold title to be granted;
 - (v) any decision to convert the land tenure is subject to the approval for the Minister for Lands; and
 - (vi) once this cap of 5,000 hectares has been reached, the State will no longer fund the Trustee in meeting the purchase and other costs associated with conversion of land to freehold tenure.
- (e) If the Trustee does not meet the targets for selection and acceptance of freehold land set out in clause 7.2(b) of this Strategy for possible Allocation the State does not guarantee that a minimum of 10,000 hectares of land in freehold will be Allocated.
 - (f) If the Trustee does not meet the targets for selection and acceptance of land identified by the State for creation of reserves and management orders or grant of leaseholds (as the case may be) set out in clause 7.2(b) of this Strategy for possible Allocation the State does not guarantee that a minimum of 200,000 hectares of reserved or leasehold land will be Allocated.

7. Mandatory Targets for Identification, Selection and Acceptance of Land

7.1 Minimum amounts of land to be identified by the State

- (a) Minimum amount of freehold land to be identified by the State: The State must pursuant to clauses 8.1 and 8.2 of this Strategy identify a minimum of 20,000 hectares of land which is potentially eligible to be transferred in freehold for selection by the Trustee by the end of the fourth year after the Trust Effective Date.
 - (b) Minimum amount of leasehold land and reserve land to be identified by the State: The State must pursuant to clauses 8.1 and 8.2 of this Strategy identify a minimum of 300,000 hectares of land which is potentially eligible to be reserved, or for which management orders may be issued, or which may be granted in leasehold, for selection by the Trustee by the end of the fourth year after the Trust Effective Date,
- ((a) and (b) together, **Minimum Identified Amount**).
- (c) A minimum percentage of land which is potentially eligible to be Allocated must be identified by the State by the Trust Effective Date and for each year for the four years after the Trust Effective Date. That is:

- (i) a minimum of 10% (2,000 hectares) in freehold and 15% (45,000 hectares) in leasehold or reserve for combined minimum total of 47,000 hectares must be identified by the Trust Effective Date;
- (ii) a minimum of 10% (2,000 hectares) in freehold and 15% (45,000 hectares) in leasehold or reserve for combined minimum total of 94,000 hectares must be identified within the first year after the Trust Effective Date;
- (iii) a minimum of 35% (7,000 hectares) in freehold and 30% (90,000 hectares) in leasehold or reserve for combined minimum total of 191,000 hectares must be identified within the second year after the Trust Effective Date;
- (iv) a minimum of 35% (7,000 hectares) in freehold and 30% (90,000 hectares) in leasehold or reserve for combined minimum total of 288,000 hectares must be identified within the third year after the Trust Effective Date; and
- (v) a minimum of 10% (2,000 hectares) in freehold and 10% (30,000 hectares) in leasehold or reserve for combined minimum total of 320,000 hectares must be identified within the fourth year after the Trust Effective Date.

There is no maximum cap on how much land can be identified by the State in each year. If the State has identified 20,000 hectares of land which is potentially able to be transferred in freehold and 300,000 hectares of land which is potentially able to be reserved or granted in leasehold before the expiry of the periods specified in clauses 7.1(c)(i) to (v) of this Strategy, the State has no obligation to continue identifying land in accordance with this clause 7.1(c), but may do so. This is the case regardless of whether or not the Trustee has agreed to the Allocation of the minimum target percentages of land in accordance with clause 7.2(b) of this Strategy.

7.2 Minimum and maximum targets for selection and acceptance by the Trustee from identified land

- (a) The Trustee must select and accept the Allocation from land identified for Allocation under clause 7.1 of a minimum of 210,000 hectares and up to a maximum of 320,000 hectares of land by the end of the fourth year after the Trust Effective Date for inclusion into the NLE. No further land can be identified for Allocation after the end of the fourth year after the Trust Effective Date.
- (b) A minimum target percentage of land must be selected and accepted by the Trustee for Allocation under this Strategy from land identified for Allocation for each year for the four years after the Trust Effective Date, being:
 - (i) a minimum of 10% (1,000 hectares) in freehold and 15% (30,000 hectares) in leasehold or reserve for combined minimum total of 31,000 hectares must have been accepted by the Trustee for Allocation from land selected for Allocation by

the Trust Effective Date for Allocation after the Trust Effective Date;

- (ii) a minimum of 10% (1,000 hectares) in freehold and 15% (30,000 hectares) in leasehold or reserve for combined minimum total of 62,000 hectares within the first year after the Trust Effective Date;
 - (iii) a minimum of 35% (3,500 hectares) in freehold and 30% (60,000 hectares) in leasehold or reserve for combined minimum total of 125,500 hectares within the second year after the Trust Effective Date;
 - (iv) a minimum of 35% (3,500 hectares) in freehold and 30% (60,000 hectares) in leasehold or reserve for combined minimum total of 189,000 hectares within the third year after the Trust Effective Date; and
 - (v) a minimum of 10% (1,000 hectares) in freehold and 10% (20,000 hectares) in leasehold or reserve for combined minimum total of 210,000 hectares within the fourth year after the Trust Effective Date;
- (c) if the minimum target percentage for Allocation in leasehold or reserve is not met by the Trustee in any period specified in clauses 7.2(b)(i) to (v) of this Strategy, the minimum target amount of leasehold or reserve for the relevant period will be subtracted from the minimum amount that must be transferred by the State in accordance with clause 6(a)(iii) of this Strategy; and
- (d) if the minimum target percentage for Allocation in freehold is not met by the Trustee in any period specified in clauses 7.2(b)(i) to (v) of this Strategy, the minimum target amount of freehold for the relevant period will be subtracted from the minimum amount that must be transferred by the State in accordance with clause 6(a)(iv) of this Strategy.

7.3 Other matters

- (a) If the Trustee requests further freehold grants in accordance with clause 6(c) and (d) of this Strategy, a minimum of 10% of the total amount to be transferred over the 10 year period must be accepted by the Trustee for Allocation each year from land selected for Allocation and if the Trustee does not do so the State does not guarantee that the amounts of land specified in those clauses will be Allocated.
- (b) The land selection schedule can be modified by agreement between the State, in consultation with DoL, and the Trustee in consultation with the Regional Corporations and the Central Services Corporation. A land selection schedule, as modified by agreement, may include Allocation of land after the end of the fifth year after the Trust Effective Date in circumstances where there are compelling reasons why there was a delay in the Allocation of a particular parcel or parcels of land.

8. Implementation Process

This clause 8 should be read in conjunction with the UCL and UMR Implementation Process Charts.

8.1 Initial Identification of UCL and UMR (Boxes 1 – 3, 27 and 28 UCL and UMR Implementation Process Chart)

- (a) DoL and SWALSC have been, and DoL and the Trustee will continue to be, involved in a process of identification of UCL and UMR, which, if eligible, will be included in the list of land for Allocation.
- (b) Lost Lands that are either UCL or UMR can be considered for identification, selection and assessment. No other Lost Lands, particularly freehold parcels, will be considered.
- (c) Departments and agencies which currently hold management orders over reserves and freehold may identify managed reserves and freehold that may be eligible for inclusion in the list of land for Allocation.
- (d) The State will not take, acquire or purchase any land or any rights in land for Allocation to the NLE.
- (e) All land identified and included in the list must be wholly located within the boundaries of the Settlement Area.
- (f) There is no obligation on the State to include land in the list where, for example:
 - (i) the parcel of land is subject to a lease, a contract or option to sell or lease, or is a Class A Reserve; or
 - (ii) the parcel of land is subject to a Notice of Intention to Take or taken and designated for a public work under section 161 or section 165 of the LAA; or
 - (iii) requirements for land under other State legislation have the effect of excluding the application of the LAA to particular parcels; or
 - (iv) State policy applies, such as for example, the requirement for coastal buffer zones; or
 - (v) preliminary assessment rules out a parcel on the basis of flora conservation plans, forest management programs, physical and legal access, public access requirements, soil erosion and salinity issues and/or geographic constraints.
- (g) These and other matters will be taken into account in compiling the list of land that may be eligible for Allocation. If any UCL and UMR identified for inclusion in the list by SWALSC or the Trustee is not subsequently included in the list, those parcels of significance to the Noongar community may be referred to the Priority Land Meeting in accordance with clause 5.2(d) of this Strategy and dealt with accordingly.

8.2 Indicative assessments from DMP and preparation of List of Identified Lands (Boxes 4 and 5 UCL and UMR Implementation Process Chart)

- (a) Following compilation of a list of potentially eligible land by DoL (taking into account the matters set out at clause 8.1 of this Strategy), DoL will refer this list to DMP for an indicative assessment under section 16(3) of the MA. At this stage DMP may suggest tenure options for land parcels that are more likely than not to receive a final section 16(3) clearance.
- (b) Upon receipt of the indicative assessment under section 16(3) from DMP, DoL will prepare a list of identified lands (**List of Identified Lands**) which will include details of DMP's indicative assessment and preferred tenure type for each parcel. This list will be sent to the Trustee.
- (c) DMP may impose conditions on any proposed Allocation.
- (d) If any parcel of land initially identified by the Trustee is not included in the List of Identified Lands, those parcels of significance to the Noongar community may be referred to the Priority Land Meeting in accordance with clause 5.2(d) of this Strategy and dealt with accordingly.

8.3 Selection of land and tenure choice by the Trustee (Boxes 6, 27 and 28 UCL and UMR Implementation Process Chart)

- (a) Upon receipt of the List of Identified Lands the Trustee must:
 - (i) select parcels from that list that it would like to be included in the NLE, and
 - (ii) specify for each parcel selected the preferred tenure, within the range of tenures indicated by DMP.
- (b) Notice of the selected land and preferred tenures must be provided to DoL by the Trustee within 60 Business Days of its receipt of the List of Identified Lands.

8.4 Assessment of Selected Land (Boxes 7 – 10, 27 and 28 UCL and UMR Implementation Process Chart)

- (a) Upon receipt of the Trustee's selection of parcels and tenure preferences (**Selected Lands**), DoL will commence the following assessment process on the basis of the tenure preferences provided:
 - (i) consultation with local government under section 14 of the LAA including any:
 - A. future proposals for the land;
 - B. proposed planning scheme amendments that may affect the land;
 - C. proposals for future expansions of current reserves etc. that may affect the land;

- D. land management issues such as contamination of which local government is aware; and
 - E. other comments the local government may have on the proposal;
- (ii) consultation with the DoP and DPaW and any other department or agency, as required, including in relation to zoning, future requirements, any interests in the land or protection issues;
 - (iii) DoL will request responses from local government and government departments within 40 Business Days from the date it seeks comment under sub-clauses (i) and (ii); and
 - (iv) upon receipt of responses from local government and government departments DoL will consider whether parcels continue to be assessed or not.
- (b) If any parcel of land from the Selected Lands is to be removed from the Implementation Process at this point, those parcels of significance to the Noongar community may be referred to the Priority Land Meeting in accordance with clause 5.2(d) of this Strategy and dealt with accordingly.

8.5 DMP s16(3) Clearance (Boxes 11 – 13, 27 and 28 UCL and UMR Implementation Process Chart)

- (a) Following consultation with State agencies and local government, DoL will refer the Selected Lands to DMP for approval of the Minister for Mines and Petroleum under section 16(3) of the MA ("final section 16(3) clearance").
- (b) DMP may give a final section 16(3) clearance that is different from the earlier indicative assessment, or approval may not be given. If any parcel of land Selected Lands is to be removed from the implementation process at this point, those parcels of significance to the Noongar community may be referred to the Priority Land Meeting in accordance with clause 5.2(d) of this Strategy and dealt with accordingly.
- (c) If the final section 16(3) clearance is given for the Selected Lands to be Allocated in the selected tenure, DMP will register a notation in Tengraph to identify that there is a proposed change of land tenure and DoL will continue on to the final assessment and referrals.

8.6 Final checks and referrals (Boxes 14 – 19, 27 and 28 UCL and UMR Implementation Process Chart)

- (a) Following a final section 16(3) clearance DoL will undertake further assessment and referrals including:
 - (i) check that there is existing legal access to the land. The State is under no obligation to secure access for land that is land locked;

- (ii) referral to servicing authorities (e.g. Telstra, Western Power, Water Corporation) to find out whether there are services or infrastructure on the land that need protecting, e.g. by way of easement; and
 - (iii) referral for assessment under the Contaminated Sites Act 2003 (WA) for any lots that are proposed to be taken in freehold or leasehold.
- (b) Following these checks and referrals, DoL will collate all of the information and decide whether Allocation can proceed. If any parcel of Selected Lands is to be removed from the Implementation Process at this point, those parcels of significance to the Noongar community may be referred to the Priority Land Meeting in accordance with clause 5.2(d) of this Strategy and dealt with accordingly.

8.7 Terms of Allocation (Boxes 20 – 23, 27 and 28 UCL and UMR Implementation Process Chart)

- (a) If the land can be Allocated, DoL will prepare terms of allocation (**Terms of Allocation**) and provide these to the Trustee for acceptance. The Terms of Allocation will include but will not necessarily be limited to:
- (i) for freehold land – refer to Annexure L to the Settlement Terms (Part A – Deed in relation to Allocation of Freehold Land);
 - (ii) for leasehold land – terms and conditions to be agreed between DoL and the Trustee; and
 - (iii) for reserve purposes and management orders –
 - A. the reserve purpose will be “Noongar Social, Cultural and Economic Benefit” or such other purpose as agreed between the State and the Trustee;
 - B. terms and conditions referred to in Annexure L to the Settlement Terms (Part B – Deed in relation to Management Order for Reserve Land and Annexure A to Management Order for Reserve Land),
 and will further deal with:
 - (iv) existing encumbrances and interests; and
 - (v) any new encumbrances and interests to be created;
- (b) If the Trustee does not accept the Terms of Allocation for a parcel of Selected Lands within 40 Business Days of the Terms of Allocation being given to it, that parcel may be referred to the Priority Land Meeting in accordance with clause 5.2(d) of this Strategy and dealt with accordingly.

8.8 Allocation (Boxes 24 – 26 UCL and UMR Implementation Process Chart)

- (a) If the Trustee accepts the Terms of Allocation DoL will:

- (i) arrange to have a survey undertaken as appropriate having regard to the selected tenure;
 - (ii) arrange for creation of a deposited plan and approval of this by Landgate; and
 - (iii) arrange for the land to be quarantined from further dealings pending its transfer to the Land Sub, perhaps by placing Memorials on title under section 17 of the LAA.
- (b) Once the processes above are completed, DoL will refer the land parcels to Landgate's Valuation Services for compulsory valuation before Allocation in accordance with the requirements of the Land Administration Regulations 1998.

8.9 Process for execution of documents etc.

Once the processes in clauses 8.1 to 8.8 of this Strategy are completed:

- (a) For freehold land, DoL will prepare and submit to the Trustee the following documents:
 - (i) a Deed in relation to Allocation of Freehold Land reflecting the Terms of Allocation;
 - (ii) a transfer of land document; and
 - (iii) any ancillary documents such as easements and restrictive covenants,

and the Trustee must cause the Land Sub to execute and return these documents to DoL within 40 Business Days of their receipt (which timeframe may be extended by mutual agreement of the State and the Trustee in writing). DoL will then arrange for execution of these documents by the Minister for Lands, have the documents stamped if necessary, and make all reasonable endeavours to lodge the transfer of land document for registration at Landgate within 40 business days of receiving all relevant executed documents from the Trustee, or as soon as reasonably practicable thereafter.

- (b) Where the Trustee fails to cause the Land Sub to execute and return the documents to DoL within this timeframe (as extended as the case may be) the State will provide the Trustee with a written notice of that fact and will provide the Trustee with a further 40 Business Days to cause the Land Sub to return the duly executed documents to DoL. If the Trustee fails to cause the Land Sub to return the duly executed documents to DoL within this further 40 Business Day period:
 - (i) the State will no longer be under any obligation to quarantine the land from future dealings; and
 - (ii) the State is under no obligation to ensure the land remains available for Allocation to the Land Sub; and
 - (iii) the land will be deducted from the Minimum Identified Amount;

- (c) For leasehold land, DoL will prepare and submit to the Trustee a deed of lease reflecting the Terms of Allocation. The Trustee must cause the Land Sub to execute and return the deed of lease to DoL within 40 Business Days of its receipt (which timeframe may be extended by mutual agreement of the State and the Trustee in writing). DoL will then arrange for execution of the deed of lease by the Minister for Lands, have it stamped if necessary, and submit it to Landgate for registration.
- (d) Where the Trustee fails to cause the Land Sub to execute and return the deed of lease to DoL within this timeframe (as extended as the case may be) the State will provide the Trustee with a written notice of that fact and will provide the Trustee with a further 40 Business Days to cause the Land Sub to return the duly executed deed of lease to DoL. If the Trustee fails to cause the Land Sub to return the duly executed deed of lease to DoL within this further 40 Business Day period:
 - (i) the State will no longer be under any obligation to quarantine the land from future dealings; and
 - (ii) the State is under no obligation to ensure the land remains available for Allocation to the Land Sub; and
 - (iii) the land will be deducted from the Minimum Identified Amount.
- (e) For reserves and Management Orders, DoL will prepare and submit to the Trustee the following documents:
 - (i) a Deed in relation to Management Order for Reserve Land reflecting the Terms of Allocation; and
 - (ii) a Management Order with Annexure A to Management Order for Reserve Land reflecting the Terms of Allocation.
- (f) The Trustee must cause the Land Sub to execute and return the documents to DoL within 40 Business Days of its receipt (which time may be extended by mutual agreement of the State and the Trustee in writing). DoL will then arrange for the execution of the documents by the Minister for Lands, have them stamped if necessary, and submit all registrable documents to Landgate for registration.
- (g) Where the Trustee fails to cause the Land Sub to execute and return the documents to DoL within this timeframe (as extended as the case may be) the State will provide the Trustee with a written notice of the fact and will provide the Trustee with a further 40 Business Days to cause the Land Sub to return the duly executed documents to DoL. If the Trustee fails to cause the Land Sub to return the duly executed documents to DoL within this further 40 Business Day period:
 - (i) the State will no longer be under any obligation to quarantine the land from future dealings;
 - (ii) the State is under no obligation to ensure the land remains available for Allocation to the Land Sub; and
 - (iii) the land will be deducted from the Minimum Identified Amount.

8.10 If target reached early

If the total Allocated hectarage reaches the maximum of 300,000 ha of reserve land and 20,000 hectares of freehold land sooner than the end of the fifth year after the Trust Effective Date then the land identification and Allocation process will cease at the time the maximum figure is achieved.

9. ALT and other State freehold

- (a) This section should be read in conjunction with the Freehold Implementation Process Chart.
- (b) The State must, upon request from the Trustee, Allocate all ALT freehold land (not subject to a lease, a contract or option to sell) and other freehold land (if any) identified for inclusion in the NLE by departments or agencies that is suitable for Allocation within the five year period after the Trust Effective Date.
- (c) All ALT freehold land that is Allocated and other freehold land identified by departments or agencies that is suitable for Allocation is to be counted as part of the NLE for the purposes of clause 6(a) of this Strategy.
- (d) Freehold land including ALT freehold land will usually be Allocated in freehold.
- (e) Departments and agencies will prepare terms of Allocation for submission to the Trustee.

10. ALT and other Managed Reserves

- (a) This section should be read in conjunction with the Managed Reserves Implementation Process Chart and the UCL and UMR Implementation Process Chart.
- (b) As specified in clause 8.1 of this Strategy, departments and agencies which currently hold management orders over reserves will identify managed reserves that may be eligible for inclusion in the list of land for Allocation. All managed reserves that are identified by departments or agencies that are suitable for Allocation are to be counted as part of the NLE for the purposes of clause 6(a) of this Strategy (Boxes 1 and 2 Managed Reserves Implementation Process Chart).
- (c) If:
 - (i) the Trustee requests the land in a higher tenure (eg freehold);
 - (ii) the Trustee requests the power to lease or to licence and this was not formerly a condition of the management order for the reserve;
 - (iii) there is a change in the proposed purpose of the reserve; or
 - (iv) the reserve was formerly for a fixed term but it is proposed to become a reserve in perpetuity,

then the reserve will require a section 16(3) indicative assessment (Box 5 Managed Reserves Implementation Process Chart) and will thereafter follow the UCL and UMR Implementation Process Chart from Box 4a of that Chart and clauses 8.2 to 8.9 of this Strategy.

- (d) All managed reserves to which clause 10(c) of this Strategy does not apply, will be referred to local government for comment on the change of management, and to servicing authorities (e.g. Telstra, Western Power, Water Corporation) to find out whether there are services or infrastructure on the land that need protecting (Box 6 Managed Reserves Implementation Process Chart). If any managed reserves selected by the Trustee are to be removed from the Implementation Process at this point, those parcels that are of significance to the Noongar community may be referred to the Priority Land Meeting in accordance with clause 5.2(d) of this Strategy and dealt with accordingly.
- (e) If Allocation can proceed, DoL will prepare Terms of Allocation, and provide these to the Trustee for acceptance in accordance with clause 8.7 of this Strategy.
- (f) If the Trustee does not accept the Terms of Allocation, that reserve may be referred to the Priority Land Meeting in accordance with clause 5.2(d) of this Strategy and dealt with accordingly.
- (g) If the Trustee accepts the Terms of Allocation, Allocation will proceed as set out in clauses 8.8 and 8.9 of this Strategy (Boxes 13, 14 and 15 Managed Reserves Implementation Process Chart).

11. Land remains available for acceptance after initial rejection

UCL, UMR, ALT Managed Reserve and ALT freehold land initially rejected by the Trustee may remain available for acceptance until the end of the fourth year after the Trust Effective Date provided that if:

- (a) an expression of interest in the UCL or UMR land is received by DoL from a party other than the Trustee;
- (b) an expression of interest in the ALT Managed Reserve or ALT freehold land is received by the ALT from a party other than the Trustee; or
- (c) any State department or agency requires use of the land for any purpose inconsistent with Allocation,

DoL or the ALT, as the case may be, will give notice to the Trustee of that fact. The Trustee must request Allocation of the land to the Land Sub within 30 Business Days of receiving the notice from DoL if the land is required for the NLE. If the Trustee again rejects the land or does not respond within that 30 Business Day period DoL or the ALT, as the case may be, may deal with the relevant land without further reference to the Trustee and it will no longer be available for Allocation.

12. Land Costs

- (a) At the time of the first Allocation of a land parcel to the Land Sub:

- (i) the State will meet the State Transaction Costs; and
 - (ii) the Trustee will meet the Trust Transaction Costs.
- (b) Where land is to be converted to freehold tenure under clause 6(c) and 6(d) of this Strategy, the Trustee must pay both the State Transaction Costs and the Trust Transaction Costs.
- (c) Where the Trustee wishes to convert further land to freehold tenure, beyond the cap and timeframes identified in clause 6(c) and 6(d) of this Strategy, the Trustee must pay all of the costs associated with the conversion to freehold including the State Transaction Costs, the Trust Transaction Costs and any purchase price of the land.

13. Deemed delivery of documents

Where in this Strategy, reference is made to one Party delivering or submitting documents to another Party any such documents will be deemed to have been received:

- (a) in the case of delivery in person, when delivered; and
- (b) in the case of delivery by post, 2 Business Days after the date of posting.

14. SWALSC to fulfil role of Trustee

Pending declaration of the Trust pursuant to clause 2 of the Settlement Terms, SWALSC must perform the role of the Trustee referred to in this Strategy in the selection of land for Allocation.

15. Land previously selected for Allocation

Annexure X to the Settlement Terms contains a list of land that has been selected by the Native Title Agreement Groups (through SWALSC) for Allocation prior to the Execution Date for Allocation after the Trust Effective Date. This land will be deducted from land that must be accepted by the Trustee for Allocation under clause 7.2(b)(i) and is to be counted as part of the NLE for the purposes of clause 6(a) of this Strategy.

16. Land taken "as is"

Land will be Allocated in its available state ("as is") including:

- (a) subject to any existing positive or restrictive covenants, interests and easements and other encumbrances;
- (b) the State cannot guarantee the land will be free from contamination;
- (c) the State does not guarantee that the land is otherwise fit for purpose;
- (d) in relation to any fixtures on the land, the State will require the Trustee to indemnify the State in relation to any liability arising from the existence of fixtures on the land.