



Government of **Western Australia**
Department of **Treasury**

Strategic Asset Management Framework

Land Asset Sales Program



Government of **Western Australia**
Department of **Treasury**

Strategic Asset Management Framework

Land Asset Sales Program

Contents

INTRODUCTION	1
Purpose	1
Scope	2
Governance.....	2
IMPLEMENTATION	4
Principles.....	4
Participation.....	5
General Government Agencies	5
Government Trading Enterprises.....	5
Approach.....	6
Due Diligence.....	6
Department of Lands	6
Agencies	7
Net Sale Proceeds	8
Overview	8
General Government Agencies	8
Government Trading Enterprises.....	9
Further Guidance	9

Introduction

This module explains the principles, requirements and governance arrangements for the Government's Land Asset Sales Program (LASP).

As directed by Cabinet and as conveyed in Premier's Circular 2015/06, all agencies (including public non-financial corporations¹) are required to actively cooperate with the Department of Lands to achieve the LASP objectives.

Purpose

The LASP reflects the Government's commitment to implement an orderly program for the sale or lease of surplus and underutilised State-owned land. Cabinet has directed that the LASP is to be led by, and coordinated through, the Department of Lands under the direction and delegation of the Minister for Lands.

The objectives of the LASP are to:

- coordinate the efficient identification and sale of land that is not being used or held for its highest and best purpose;
- identify opportunities for land to be used for another Government priority;
- coordinate and facilitate the preparation of land in order to optimise the return on investment that can be achieved having regard to any constraints that might apply (such as native title, heritage, zoning and site contamination);
- clarify the key issues associated with the preparation of land for sale including the benefits, costs, timing and risks; and
- reduce the levels of debt held by the State and by agencies through the timely sale of land that is no longer required.

To achieve these objectives, the LASP enables productive liaison and negotiation among the Department of Lands and the agencies that manage land, in order to provide high quality advice to the Minister for Lands and Cabinet on appropriate land sale items, including their scale and timing and the extent of the net sale proceeds that will be achieved.

¹ Public Non-Financial Corporations include Government Trading Enterprises such as utilities providers and the ports. A full list is in State Budget Paper No.3, Economic and Fiscal Outlook, Appendix 1, Note 8, Composition of Sectors.

Scope

The LASP covers land that is owned by the Crown. There is no impediment on the State's ability to sell Crown land held by an agency, unless a contrary legal agreement exists pertaining to its use and disposal. The scope of the LASP is not restricted to Crown land that has been identified solely by an agency as surplus to requirements.

A similar approach is taken to freehold land that is held by a general government agency. However, the sale of freehold land that is held by a Government Trading Enterprise (GTE) may require more detailed discussion.

The LASP scope includes land as part of a real property package, encompassing other assets such as buildings that are situated on the site in question.

Governance

In order to achieve the LASP objectives, the Government has established a governance framework under which the:

- Minister for Lands, as the custodian of all Crown land (under the *Land Administration Act 1997*) has ultimate responsibility for advice to Cabinet on the best value for money result that can be achieved from a Crown land sale, based on advice from Ministers and agencies;
- Department of Lands provides advice to the Minister for Lands and agencies on the arrangements for the disposal of Crown land. Within the Department, the Land Asset Management Unit identifies and coordinates surplus land for disposal through the LASP;
- Treasury reviews an agency's strategic disposal plan and provides independent advice on the business case for a proposed land sale; and
- LandCorp, the Department of Lands and the Metropolitan Redevelopment Authority (MRA) may undertake the sale of real property, including value adding activities, when surplus property is not required (except when Cabinet agrees that the sale can be achieved by an agency in-house).

The LASP framework includes a consultative body called the Land Asset Management Advisory Group (LAMAG). The Group is chaired by the Director General of the Department of Lands and comprises senior representatives from the Departments of the Premier and Cabinet, Treasury, Finance, Planning and Housing, and from LandCorp, Landgate, the State Heritage Office, the MRA and the Western Australia Planning Commission.

To support LAMAG discussions, the Land Asset Management Unit prepares a:

- report on completed land sale items, including the amounts achieved and the distribution of the net sale proceeds;
- forecast and status report on properties that have been endorsed for sale as well as additional properties that are under consideration;
- list of properties that have potential for reuse, which other agencies may seek to obtain before the properties are transferred to the Department of Lands, LandCorp or the MRA for divestment; and
- a divestment case for each proposed property sale which covers issues including the potential value to the private market, the indicative sale price and timing, the preparation arrangement and the costs and issues to be addressed (such as zoning constraints and site decontamination).

Before LAMAG meetings, the Land Asset Management Unit liaises with agencies on the pros and cons of the disposal from the agency's perspective.

An agency can also register an expression of interest with the Unit to obtain surplus land that has been listed by another agency. This provides an opportunity for an agency to identify in advance the land that could become part of its service delivery model, including holdings that could be obtained at fair market value.

Overall, the LASP governance framework enables:

- open discussion of the merits of a proposed disposal and the counter-arguments against it;
- recognition of any special provisions pertaining to the land which may complicate or preclude its sale;
- probity checks and balances, such as the requirement that the approval of the Minister for Lands and Cabinet must be obtained before a sale price below the current market value is pursued; and
- sound preparation for final arbitration by Cabinet as a last resort, if the Department of Lands and an agency cannot agree that a significant site should be retained, sold or leased.

It is important that the Department of Lands, Treasury and agencies engage as early as possible through the LASP governance framework when land disposal is envisaged. This enables a reasonable, joint approach to identify the best way through any complications from the State's and an agency's perspective.

Implementation

Principles

The regular, objective review of whether to retain or dispose of an asset is an important part of strategic investment planning and the normal life cycle of an asset.

To that end, Cabinet has endorsed the following LASP principles:

- The State, rather than individual agencies, is the owner of all Crown land real property assets;
- Assets are to be used for their highest and best purpose; and
- Assets are to be made available for core agency business.

The 'highest and best purpose' is considered from the perspectives of the State, the agency involved and potential private market interest in a site. Key issues include the:

- service delivery objectives expected of an agency under legislation and Government direction – to which the use of land should be directed;
- balanced consideration of social, environmental and financial issues;
- alternative service objectives that another agency may pursue if it were to hold the land;
- potential value that the private sector may seek to achieve should it purchase the land; and the
- additional return to the State that could be gained from further investment in the site prior to sale (such as to demolish ageing buildings) or to change current usage limits (such as through re-zoning to enable residential development by the private sector).

In the LASP context, the determination of 'highest and best purpose' also involves consideration of long-term planning issues. For example, it may be appropriate to retain a site for some years to ensure that it remains available and unencumbered for use by an agency on behalf of the Government. Examples include the retention of a vacant site for the extension of utilities infrastructure or to maintain a buffer zone around a road or railway line.

Participation

General Government Agencies

In most cases, the treatment of Crown land and freehold land held by a general government agency is straightforward. Ultimate responsibility for advice to Cabinet on whether to proceed with a land sale rests with the Minister for Lands, based on advice from Ministers and agencies.

However, in some circumstances the divestment potential may be complicated or precluded by exemptions based on the agency's enabling legislation which may allow an agency to retain or sell land and to re-direct the sale proceeds directly to the acquisition of similar property to support core service delivery.

Government Trading Enterprises

The LASP also takes into account the unique conditions surrounding the operation of a GTE, particularly the powers and responsibilities assigned to the governing board through its enabling legislation.

Common provisions in the legislation of a GTE include that the agency:

- can acquire, hold, manage, improve, develop and dispose of real property;
- must act in accordance with prudent commercial principles; and
- must consult with the Minister before engaging in a major initiative.

In addition, a GTE is empowered to initiate real property disposals when the property is part of its investment portfolio, for example, a commercial or office building that was acquired for investment purposes.

Overall, in the LASP context, the broad implications are that the:

- board cannot readily agree to sell freehold land, if it considers that the sale would adversely affect the performance of the agency; and the
- board must consider prior undertakings to development partners (for example, if a private developer cleared the land and transferred it to the agency in return for continued access to port or rail infrastructure).

On that basis, the sale of freehold land is likely to be a major initiative and is best achieved by the Department of Lands through negotiation and consent.

Approach

Given the potential complications that may affect an agency's participation in the LASP, the preferred approach is to reach a consensus position on whether a property should be retained or sold. Under this approach the:

- objectives, costs and benefits of a proposed disposal are discussed openly at the LAMAG and during prior liaison between the Department of Lands and the agency involved;
- reasons for retaining land are considered closely in term of its highest and best future purpose;
- costs of disposal may be shared by an agency and the Department of Lands (through its divestment fund); and an
- agency may gain access to a portion of the net sale proceeds based on a submission during the Budget process that demonstrates the benefits of reinvesting the funds in other capital assets.

Through the LASP, an agency benefits by engaging in an efficient system to identify and divest itself of unnecessary liabilities, including expensive holding costs that relate to property that is no longer needed.

When the Land Asset Management Unit coordinates the disposal of property on an agency's behalf, the agency can focus its funds and staff on its core business, rather than divert resources to disposal preparation.

Overall, the LASP approach is more likely to achieve the timely identification and sale of surplus land, and to obtain funds that can be used to invest in other assets, or to reduce debt.

Due Diligence

To optimise the use of land, the Department of Lands and agencies commit to a transparent due diligence approach.

Department of Lands

For its part, the Department of Lands:

- ensures that land sale proposals are consistent with Government policies and decisions, such as to cancel or defer the disposal of a particular site;
- considers closely the aspects of an agency's enabling legislation that are relevant to a decision either to retain or to dispose of a site;

- explains why a disposal will achieve overall value for money for the State;
- when appropriate, seeks independent advice on the viability of a land sale, the merits of value optimisation and the likely return on investment; and
- leads in clarifying the land sale costs and the funding source.

Importantly, the Department recognises that a one-size-fits-all approach to land acquisition, retention and divestment across agencies will not be effective given that an agency's portfolio may have evolved over decades, based on legacy arrangements and residual issues that can only be addressed on a case-by-case basis.

Agencies

In turn, an agency commits to advise and share information with the Department of Lands, including to:

- provide evidence to support its case for acquisition, retention or divestment, with particular reference to the justification in its strategic asset plan, including the future service delivery and financial benefits²;
- as appropriate, demonstrate why a land parcel should be retained and left idle in order to meet a medium-term service delivery objective;
- provide copies of legacy arrangements and obligations that would preclude or complicate a land sale, for example, with the State or other agencies, including at the local Government level;
- provide copies of the legal documents pertaining to the land (such as titles and covenants); and
- advise of any significant sale preparation issues and risks that should be addressed, for example, to conduct site maintenance and refurbishment, and to engage with stakeholders.

² The Strategic Asset Management Framework contains guidance on the preparation of an agency's strategic asset plan, which should be underpinned by a ten-year disposal plan.

Net Sale Proceeds

The LASP enables a similar, transparent approach to achieve a shared, informed understanding of the proceeds that will result from the sale of land, and the proportions of the net sale proceeds that will return to the Consolidated Account or be distributed to the agency involved³.

Overview

From the State's perspective, the Department of Lands assists in the planning and realisation of the proceeds from a sale. The objective is to:

- reduce the opportunity cost of holding land that is no longer important for agencies' service delivery success;
- release funds to support asset reinvestment decisions by the Government;
- help contain the levels of debt held by the State and its agencies; and
- maintain the integrity of the LASP by openly tracking the realisation and distribution of the net sale proceeds according to agreements reached among the parties.

To further reinforce the integrity of the LASP, it is incumbent on the Department of Lands, assisted by Treasury, to explain in advance why it is better for the State to reduce its debt burden directly through the return of proceeds to the Consolidated Account or, for example, to allow a GTE to retain the proceeds, pay down its debt, minimise further borrowings and thereby reduce State debt indirectly.

The clear explanation of the proposed treatment of the sale proceeds and the benefits in each case also helps to sustain the willingness of agencies to participate in the LASP, based on a high degree of confidence that the system is sound and equitable.

General Government Agencies

Consistent with Cabinet's direction, the net sale proceeds from the disposal of State land are returned to the Consolidated Account (unless an agency has legislative authority to retain the proceeds, or LandCorp has purchased the property to enable its disposal). This approach is consistent with Cabinet's overarching principle that the State is the land owner.

³ Net sale proceeds are defined as the: gross sale proceeds minus land assembly costs and costs for items such as residual maintenance.

As a general rule, a general government agency should therefore not assume that it will automatically retain the net proceeds or a percentage of the amount from a land sale. Should an agency wish to receive an appropriation for part or all of the proceeds, it is required to submit a business case to Cabinet through the LAMAG. The proposal should demonstrate that value for money will be achieved by reinvesting the proceeds in a high priority capital enhancement or acquisition project. Such cases are kept to a minimum when State Budget funds are tight.

Government Trading Enterprises

The treatment of net sale proceeds from the sale of Crown land held by a GTE is similar to that outlined above for a general government agency.

The treatment of the proceeds from the sale of freehold land is more complex and precludes the automatic return of the proceeds to the Consolidated Account. In the GTE context, the appropriate amount is determined based on consideration of the overall effects on the financial health of the agency, including the adequacy of its capital holdings, consistent with sound commercial practice.

The main factor is that a GTE already makes an annual dividend payment to the Government (comprising a percentage of its after tax-equivalent profit) which is distributed to the Consolidated Account based on prior agreement with the State and adjustments agreed with the Treasurer. The question therefore arises as to whether the land sale proceeds should be considered to be part of the agreed dividend or an adjustment.

Other complexities may include whether:

- compensation should be paid to the GTE if the agency purchased the land using funds derived from earnings and incurred debt;
- the GTE used its freehold land as collateral to obtain broader portfolio investment funds; or
- whether a joint venture agreement with the MRA or LandCorp to develop and/or hold the land entitles the partner to a portion of the sale proceeds.

Further Guidance

The Land Asset Management Unit maintains guidance on the processes for handling major land sale transactions, including in partnership with LandCorp or the MRA. The advice is available on the public internet site of the Department of Lands.

