



## CORPORATE POLICY STATEMENT NO. 8

### NEGOTIATING COMMERCIAL DEVELOPMENT AND ACTIVITIES

April 2016

#### 1. OBJECTIVE

To give guidance on negotiating commercial development and activities on land to which the *Conservation and Land Management Act 1984* applies (CALM Act land) and when to apply a competitive selection process.

#### 2. SCOPE

This policy applies to commercial development and activities on CALM Act land by the private sector. It is applicable to leases and licences issued under the *Conservation and Land Management Act 1984* (CALM Act).

#### 3. CONTEXT

The Department of Parks and Wildlife (the department) recognises that private sector development and activities on CALM Act land can benefit the Western Australian public by providing additional infrastructure and services that improve and broaden visitor experiences and contribute to recreation and tourism.

This policy has been informed by the Department of Lands *Unsolicited bids guideline for the sale or lease of State-owned land* (2016) and a Productivity Commission research paper *Australia's International Tourism Industry* (2015). The Productivity Commission states:

'many national parks are hampered by tired infrastructure and persistent funding shortfalls. Greater user charging and more private sector investment would provide an additional source of funding and facilitate innovation in the provision of tourism-related infrastructure'.

Where a restricted commercial opportunity may exist on CALM Act land, the department has two options in investigating it and facilitating it to fruition if appropriate. It may:

- run a publicly-advertised competitive process such as an expression of interest; or
- negotiate directly with a proponent.

The granting of a lease or licence does not fall within the requirements of the *State Supply Commission Act 1991* as it does not constitute the State purchasing goods or services. Therefore, there is no requirement for the department to undertake a competitive process. However, a competitive process would usually be run in order to mitigate the risk of the department being accused of not being open and transparent in facilitating these types of commercial opportunities.

Alternatively, the department may enter into direct negotiations with a proponent in circumstances where it believes this will deliver an improved outcome for the State. This approach can reduce 'red tape' and be more efficient and cost effective. This approach is supported by the Productivity Commission, which recommends negotiating directly with proponents in response to unsolicited proposals, as well as ensuring that development assessment frameworks are risk-based and as thorough as necessary to ensure legislative objectives are met, in order to benefit the tourism industry and the economy more broadly.

This policy provides guidance on when the department is to adopt a competitive process and when negotiations may be progressed directly with proponents.

#### **4. LEGISLATION**

The department uses leases and licences under the CALM Act and Conservation and Land Management Act Regulations 2002 (CALM Regulations) to manage commercial development and activities within parks and reserves.

Part VIII of the CALM Act enables the provision of leases and licences and Part 7 of the CALM Regulations provides for the granting of a commercial operations licence.

#### **5. POLICY**

- 5.1 The department may facilitate commercial development and activities on CALM Act land where they provide public benefit and where impacts on environmental and culture and heritage values and the amenity of the land can be adequately managed.
- 5.2 The department will ensure all commercial development and activities on CALM Act land are compatible with the reserve purpose and relevant CALM Act management plan. In the absence of a CALM Act management plan, all commercial developments and operations will be undertaken in a manner consistent with compatible operations, as defined in the CALM Act.
- 5.3 Development and tour operator proposals will be subject to consultation with the responsible body and approval by the Minister under the CALM Act and Regulations where relevant. The proponent will be responsible for obtaining any other applicable approvals under Commonwealth or State legislation, and for meeting applicable local government requirements.
- 5.4 All negotiations with the private sector will be undertaken with probity, which means the department will maintain impartiality, maintain accountability and transparency, manage potential or perceived conflicts of interest, implement fair procedures and avoid bias, maintain confidentiality and obtain value for money.
- 5.5 Decisions on whether or not to apply a competitive selection process to facilitate developments will be based on a risk management approach and will require approval by the Director General.
- 5.6 A competitive process will be undertaken to issue a lease or licence where:
  - an opportunity is identified and its realisation is initiated by the department or the Government; and/or
  - the department wishes to gauge the breadth of opportunities that may be developed; and/or

- it is understood that there is likely to be more than one proponent interested in the opportunity and there is a need to assess the benefits of one over another to ensure the best outcome is achieved; and/or
- it is considered that there is significant environmental, social or economic risk to the department in not running a competitive process.

5.7 The department may negotiate directly with a proponent where:

- the proposal will result in an economic, social or environmental benefit to the State and is consistent with State Government policy; and
- the department has undertaken an appropriate level of due diligence and is satisfied that the proponent is acting in a bona-fide manner and has the experience, capability and capacity to deliver the desired outcome; and
- it is considered that there is a manageable level of environmental, social and/or economic risk in not running a competitive process; and
- it is considered that no other party could reasonably deliver the same outcome with the same value for money and timeframe; and/or
- it is considered that running a competitive process, costing the department substantial time and money, would not likely result in any additional or superior bids; and/or
- a proponent has approached the department with an innovative and feasible proposal, and the viability of the proposal or the proponent's intellectual property may be jeopardised if details are released to the broader market by way of a competitive process; and/or
- the proponent is an enterprise owned or part-owned by the recognised traditional owners, or will deliver employment outcomes with traditional owners, in a way that results in demonstrably greater traditional owner involvement in the management of CALM Act lands.

5.8 In circumstances where the department negotiates directly with a proponent, the department will make it clear to the proponent that:

- no contract exists or will be implied between the department and the proponent unless and until suitable documentation is executed with the department; and
- the department has no contractual or other legal obligation to the proponent with respect to the consideration, the evaluation, the acceptance or the rejection of any submission or the failure to consider, evaluate or accept any submission.

5.9 In circumstances where the department negotiates directly with a proponent, the department may require the proponent to enter into an agreement that outlines the terms of the negotiations.

5.10 Monitoring and evaluation will be applied to developments on CALM Act land to ensure the department's objectives are met.

**6. POLICY IMPLEMENTATION STRATEGIES**

6.1 On a case by case basis, the proposed approach to facilitating the realisation of restricted commercial opportunities on CALM Act land will be submitted to the Director General for approval along with justification.

**7. CUSTODIAN**

Director Parks and Visitor Services.

**8. PUBLICATION**

This policy will be made available on the department's website and intranet.

**9. KEY WORDS**

Facilitating; development; parks; proponent; private sector; expression of interest.

**10. REVIEW**

This policy will be reviewed no later than April 2021.

**11. DIRECTOR GENERAL APPROVAL**

Approved by



Jim Sharp  
DIRECTOR GENERAL

Effective date: 26 April 2016