

Western Australia

Special Lease (Stirling Estate) Act 1916

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Special Lease (Stirling Estate) Act 1916

Contents

1.	Short title	1
2.	Power to grant lease	1
3.	Authority to construct railway	1
4.	Land may be reserved and acquired for railway	2
5.	Power to run traffic on railway	2
6.	By-laws	2
7.	Power to grant dredging license	2
8.	Conditions	3

The First Schedule

Second Schedule

Third Schedule

Notes

Compilation table	12
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Special Lease (Stirling Estate) Act 1916

An Act to enable a Special Lease to be granted under the *Land Act 1898*, of a portion of the Stirling Estate; to authorize the construction of a Railway from the demised land to Capel on the South-Western Railway, and to enable a License to be issued to the Lessee to dredge for Shell in the estuary of the Swan River.

1. Short title

This Act may be cited as the *Special Lease (Stirling Estate) Act 1916*.

2. Power to grant lease

The Governor may grant to Henry James Scott a Special Lease under the *Land Act 1898*, of an area of 50 acres of the Stirling Estate in the South-West Division of the State, in the terms of the draft Lease set out in the First Schedule to this Act, for the purpose of working lime deposits and the manufacture of lime for agricultural purposes and cement.

3. Authority to construct railway

It shall be lawful for the lessee under the said lease, or his transferees, to construct and maintain a railway, with all necessary, proper, and usual works and conveniences in connection therewith along the line described in the Second Schedule to this Act, to connect the demised land with Capel on the South-Western Railway.

4. Land may be reserved and acquired for railway

The Minister for Lands may set apart and reserve such portions of unalienated Crown lands as may be required for the construction of the said railway, and may, under and subject to the provisions of the Public Works Act, compulsorily acquire any alienated land that may be required for public purpose.

5. Power to run traffic on railway

It shall be lawful for the lessee and his transferees, under and subject to the provisions of the said lease, to use on the said railway locomotive engines consuming any kind of fuel, subject to the approval of the Minister for Lands, and to draw or propel thereby wagons, trucks, carriages, and other vehicles thereon.

6. By-laws

The Minister for Lands may make by-laws for the regulation of traffic on the said railway, and may impose penalties not exceeding Twenty pounds for the breach thereof.

7. Power to grant dredging license

- (1) It shall be lawful for the Minister for Lands to grant to the said Henry James Scott and his transferees a license under Section 154 of the *Land Act 1898*, to dredge for and remove shell from the bed of that portion of the estuary of the River Swan known as Melville Water, described in the Third Schedule to this Act, subject to the payment of an annual rent of Fifty pounds, and a royalty at the rate of Threepence per ton upon all shell raised.
- (2) Such license shall be renewed annually during the term of the Special Lease granted under the authority of this Act, so long as such lease continues, and shall be held subject to regulations made under the *Land Act 1898*, and in force for the time being.
- (3) The license shall be granted subject to the conditions that the dredging operations shall be carried out under the supervision

and to the satisfaction of the Minister for Lands or such other responsible Minister of the Crown as the Governor may appoint, and that navigation shall not be interfered with, and for the prevention of the pollution of the river, and the accumulation of silt upon or damage to or disfigurement of the foreshore; and the Governor may make regulations binding on the licensee for the due observance of such conditions.

8. Conditions

The said Henry James Scott and his transferees shall not hold or have any interest in any lease or license granted in pursuance of the *Special Lease (Lake Clifton) Act 1916*, and shall carry on all works and the dredging and prevention of pollution and obstruction of traffic of the Swan River to the satisfaction of the Minister, and shall submit plans of all buildings to be erected for the approval of the Minister; and shall supply lime from the special lease to be granted under this Act to the public so far as there is demand for same in such quantities as the Minister may direct.

The First Schedule

The First Schedule

[Sec.2.]

Western Australia

Special Lease

(Under Section 152, of “*The Land Act 1898*,” and the Special Lease (Stirling Estate) Act 1916 and registered under “*The Transfer of Land Act Amendment Act 1909*.”)

Division.

Lease No. /152.

GEORGE THE FIFTH, by the Grace of God, of the United Kingdom of Great Britain and Ireland, and of the British Dominions beyond the Seas, King, Defender of the Faith, Emperor of India. To all whom these presents shall come, greeting: Know Ye that we of Our special Grace and in consideration of the rent hereinafter reserved and to be paid by Henry James Scott, of Adelaide, in the State of South Australia, his executors, administrators, and assigns (hereinafter called and referred to as “the lessee”), and of the conditions hereinafter expressed and to be observed and performed by the Lessee, do by these presents demise and lease to the Lessee all that piece or parcel of land situate in the Stirling Estate, in the South-West Division of Our State, and marked and distinguished in the maps and books of the Department of Lands and Surveys² as Stirling Estate Lot 941, and containing fifty acres, as the same is delineated on the plan drawn hereon and coloured green, with the appurtenances: to have and to hold the premises hereby demised subject to the powers, reservations, and conditions herein and in “*The Land Act 1895*,” contained: And with all the rights, powers, and privileges conferred by the said Act as are applicable hereto, unto the Lessee for the term of twenty-one years to be computed from the day , One thousand nine hundred and , for the special purpose of working lime deposits on the demised premises and for the manufacture of lime for agricultural purposes and cement and for treatment works in connection therewith: Yielding and paying during the said term unto Us, Our heirs and successors, the yearly rent of Fifty pounds sterling from the date of the passing of the *Special Lease (Stirling Estate) Act 1916*, by equal payments half-yearly in advance on the first day of March and the first day of September in every year, such rent to be paid to the Minister for Lands of Our

The First Schedule

said State. And it is hereby declared that this Lease is granted subject to the following conditions: —

1. That the Lessee duly pays the rent hereby reserved at the times and in the manner aforesaid.
2. That the Lessee works the land continuously and *bona fide* for the purpose for which it is demised, to the reasonable satisfaction of Our Minister for Lands.
3. That the Lessee shall within one year from the commencement of this Lease expend in buildings and machinery on the demised land, or with the approval in writing of Our Minister for Lands on other land in the State of Western Australia held by the Lessee and used in connection with the works established by the Lessee on the land hereby demised, or the dredging works used in connection with the license granted under the said Act, the sum of Ten thousand pounds to the satisfaction of Our Minister for Lands for the time being. And that the Lessee shall within the next following two years expend in buildings and machinery as aforesaid a further sum of Ten thousand pounds.
4. That the Lessee shall at all times during the term of this Lease supply to the public ground limestone equal to one-half the total output for the time being of the demised premises, and of not less than eighty per cent. carbonate for agricultural purposes at a price not to exceed twelve shillings per ton pulverised finely enough to pass through a forty-inch mesh or such lesser number mesh as the expert of the Department of Agriculture may determine after tests, and delivered on railway trucks at Capel, such ground limestone being the product of the demised premises.
5. That the lessee may construct a railway from the demised premises to connect with Capel on the South-Western Railway along such line as may be approved by Our Minister for Lands, such railway to be laid out and constructed under the supervision and to the reasonable satisfaction of the Engineer-in-Chief or such other officer of the Department of Public works as may be acting under him.
6. That so far as the railway extends over unalienated Crown land such land, one chain in width, will be reserved, and so far as it extends over alienated or demised land the same to the extent of one chain in width will be acquired by the Government subject to the payment by the

The First Schedule

- Lessee of the cost of acquisition, and such compensation (if any) as may be payable to the owner or lessee.
7. That the land so reserved or acquired for the purpose of the railway will be demised to the Lessee for the term of this Lease without the reservation of any additional rent.
 8. That the whole of the cost of surveying, laying out, constructing, and maintaining the railway, including labour and materials, shall be borne by the Lessee, and that the Lessee shall at all times during the term of this Lease keep the railway in good and substantial repair.
 9. That connection of the said railway with the Government Railway at Capel shall be subject to the conditions of the usual siding agreement as required by the by-laws of the Commissioner of Railways in force for the time being.
 10. That notwithstanding that the Railway is intended primarily for the carriage of the product of the lessee's works, the lessee will, if so required by Our Minister for Lands, during the term of this lease carry goods and passengers over the said Railway, at freights to be approved by Our Minister for Railways (not being less per mile than the freight in force on the Government Railways) and subject to such reasonable conditions as such Minister may from time to time prescribe, and if any question shall arise as to whether any such conditions are reasonable or otherwise such question shall be referred to arbitration as hereinafter provided.
 11. That if and when Our Minister for Lands shall receive information to the effect that any portion of the Railway or any engine, car, or carriage used or for use on the Railway is dangerous from erroneous construction or want of repair or from any other cause or whenever circumstances may arise which in this opinion render it expedient, he may cause an inspection or examination of the Railway or the works connected therewith or the engine and other rolling stock in use thereon to be made, and upon such inspection may condemn the Railway or any portion thereof or any of the rolling stock or other appliances used thereon and may require any change or alteration therein or in any part thereof or the substitution of any material, engines, or rolling stock for the Railway, and thereupon the lessee shall, after notice thereof in writing, signed by Our Minister for Lands, proceed to make good or remedy the defects, or shall make

such change, alteration, or substitution hereinbefore referred to as has been required in the manner aforesaid.

12. That if at any time in the opinion of Our Minister for Lands it is dangerous for traffic to pass over the Railway or any portion thereof until alterations, substitutions, or repairs have been made thereon or that any particular car, carriage, or locomotive should be run or used Our Minister for Lands may forthwith forbid the running of any train or vehicle over the Railway or portion of Railway or the running or using of any such car, carriage, or locomotive by delivering or causing to be delivered to the lessee a notice in writing to that effect, will his reasons therefor, in which he shall distinctly point out the defects or the nature of the danger to be apprehended.
13. That our Minister for Lands or any person appointed by him to inspect the Railway or works may at all reasonable times enter upon and examine the Railway and the stations, fences, or gates, roads, crossings, cattle guards, works and buildings, and the engines, cars, and carriages belonging thereto.
14. That any time during the currency of this lease it shall be lawful for Us, Our Heirs and Successors, to purchase the said Railway at sum equal to the cost of construction less depreciation as determined by the actual condition of the line. For the purposes of this provision the cost of construction and such depreciation shall be fixed by the Engineer-in-Chief or such other officer as for the time being shall be in charge of the construction of Government Railways. In the event of our purchasing the Railway provision shall be made for the carriage thereon of limestone and other products of the lessee's works for the lessee at rates not to exceed the current rates for the time being on Government Railways, and facilities of transit equal to those existing at the date of such acquisition shall be continued.

PROVIDED NEVERTHELESS that it shall at all times be lawful for us, Our heirs and successors, or for any person or persons acting in that behalf by Our or their authority, to resume and enter upon possession of any part of the said lands which it may at any time by Us, Our heirs, and successors, be deemed necessary to resume for roads, tramways, railways, railway stations, bridges, and generally for any other works or purposes of public use, utility, or convenience, and for the purpose of exercising the power to search for minerals and gems hereinafter reserved, and such land so resumed to hold to Us, Our heirs and successors, as of Our or their former estate, without making to the Lessee, his heirs and

The First Schedule

assigns, any compensation in respect thereof, so nevertheless, that the lands so to be resumed shall not exceed one-twentieth part in the whole of the lands aforesaid, and that no such resumption the made of any part of the said lands upon which any buildings may have been erected or which may be enclosed and in use for the more convenient occupation of any such buildings, without compensation. PROVIDED ALSO that it shall be lawful at all times for Us, Our heirs and successors, or for any person or persons acting in that behalf by Our or their authority, to cut and take away any such indigenous timber, and to search and dig for and carry away any stones or other materials which may be required for making or keeping in repair any roads, tramways, railways, and generally for any other works or purposes of public use, utility, or convenience, without making to the Lessee, his executors, administrators, and assigns, any compensation in respect thereof. And we do hereby save and reserve to Us, Our heirs and successors, all mines of gold, silver, copper, tin, or other metals, ore and mineral or other substances containing metals, and all gems and precious stones, and coal or mineral oil, in and under the said land, with full liberty at all times to search and dig for and carry away the same, and for that purpose enter upon the said land or any part thereof. PROVIDED ALSO that if the Lessee shall during the term hereby created at any time make default in payment of the rent hereby reserved or any part thereof, or shall fail to duly observe the conditions under which this Lease is granted or any of them, this Lease and the Lease of the said Railway shall be liable to forfeiture and it shall thereupon be lawful for Us, Our heirs and successors, into and upon the said demised premises or any part thereof in the name of the whole to re-enter and the same to have again, re-possess and enjoy, as if this deed poll had never been executed, and the provisions of Section 15 of The *Land Act Amendment Act 1900*, whereby a notice in the *Government Gazette* is equivalent to re-entry shall apply. PROVIDED FURTHER that before any action is taken with the view to the forfeiture of this Lease for alleged breach of the conditions, notice in writing of such alleged breach and of the intention to forfeit shall be given to the Lessee, and if the Lessee disputes the alleged breach of conditions, he may within one month of the service of such notice require the question to be referred to an arbitrator to be mutually agreed upon, or to two arbitrators (one to be nominated by Our Minister for Lands and the other to be nominated by the Lessee) or their umpire, and the provisions of the *Arbitration Act 1895*, or any Act in force for the time being in substitution for the same shall apply, and be award of the arbitrator or arbitrators or their umpire shall be final on the question whether a breach of conditions sufficient to justify the forfeiture of this lease has been committed by the Lessee. PROVIDED FURTHER, that as

The First Schedule

security for the due performance by the Lessee of his obligations hereunder, he shall deposit with Our Minister for Lands the bond of a surety to be approved by Our Minister for Lands in the form to be likewise approved, but limited to the sum of One thousand pounds, or he shall deposit with Our Minister for Lands the sum of One thousand pounds. But if in lieu of the bond the sum of One thousand pounds is deposited, such sum will be returned to the Lessee so soon as it is proved to the satisfaction of Our Minister for Lands that the Lessee has expended an equal amount under the provisions of Clause 3 hereof.

[Plan]

In witness, etc.

Second Schedule

Second Schedule

[Sec.3.]

Description of line of Railway

Starting from the north-west corner of the boundary of the land demised by the Special Lease set out in the First Schedule and extending in a south-easterly direction to the Capel Station on the Bunbury-Busselton line of railway, as delineated on a map marked Department of Lands and Surveys², 3612/15, deposited as provided by 2 Edwd. VII., No. 47. Length about — 2 1/2 miles.

Third Schedule

[Sec.7.]

Dredging area

Bounded by lines starting from a beacon in Melville Water situate about 62 chains south and about 35 ½ chains west from the south corner of Perth Town Lot L57 and extending about 205 ° about 77 ¼ chains to another beacon situate near Pelican Point, thence about 115 ° 22 chains 73 links, thence about 25 ° about 77 ¼ chains, thence about 35 ° 22 chains 73 links, thence about 295 ° 22 chains 73 links, and thence about 215 ° 22 chains 73 links to the starting point. Area being about 226 acres.

Notes

- ¹ This is a compilation of the *Special Lease (Stirling Estate) Act 1916* and includes all amendments effected by the other Acts referred to in the following Table.

Compilation table

Short title	Number and year	Assent	Commencement
<i>Special Lease (Stirling Estate) Act 1916</i>	10 of 1917	28 Mar 1917	28 Mar 1917

- ² Maps and books formerly held by the Department of Lands and Surveys are now being held by the Western Australian Land Information Authority (see the *Land Information Authority Act 2006* s. 100).