

## Sale of Crown land

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AUTHORISED BY: Executive Director Crown Lands	AUTHORISED DATE: 20/09/2018
ISSUED BY: Department of industry—Lands & Water	EFFECTIVE DATE: 20/09/2018
CATEGORY: Operations and Industry	REVIEW DATE: 20/09/2021

### Policy Statement

This policy provides for how the NSW Department of Industry—Lands & Water (the department) will sell Crown land in accordance with the *Crown Land Management Act 2016* (the Act).

This policy provides clarity and confidence to stakeholders that high standards of transparency and detailed statutory and risk assessments will be applied to assess sale proposals in a consistent and fair manner. To ensure outcomes are aligned with the broader public interest the department will also consider economic, social, cultural and environmental values.

### Scope

This policy applies to the department and relates to Division 5.4 of the Act.

This policy applies to sale of Crown land as defined by the Act, including land held in the name of Her Most Gracious Majesty, or land that can be dealt with as if it is Crown Land.

This policy does not apply to sale of Crown roads under the roads program, conversions of Crown land leases or disposal of Crown land under other sections of the Act or other Acts, for example the *Land Acquisition (Just Terms Compensation) Act 1991*.

Nothing in this policy requires the department to proceed with or complete a sale.

### Requirements

Where Crown land is being considered for sale, the department will apply the following criteria before making a final decision about completing or withdrawing the sale.

#### 1. General

All sales will be considered and progressed in the context of the:

- objects of the Act
- relevant provisions of the Act
- relevant provisions of any other relevant legislation

#### 2. Considerations and assessment

The department will use a quadruple bottom line approach—involving social, economic, cultural and environmental considerations—when assessing the merits of selling a particular parcel of land.

Considerations will include the criteria outlined at Annexure A as well as factors specific to the land and its location.

Engagement required under the Crown land Community Engagement Strategy (CES) will be undertaken and considered when deciding whether to proceed with a sale.

The sales process will not be initiated unless the department is satisfied that it is in the interests of the state to do so. Crown land will generally not be sold where it is required for a public purpose.

### 3. Sales process

Sales will generally proceed through an open and competitive process. Direct negotiation may be undertaken in appropriate circumstances as specified in the Sale or lease of Crown land by direct negotiation policy IND-O-182.

Market value will generally be sought for all sales. This does not preclude a below market transaction where there is justification.

The department may establish temporary or permanent ongoing conditions over the sale where there is justification.

Probity and confidentiality arrangements will generally be required to progress sale proposals.

Data on completed sales transactions will be publicly released.

#### **Guidelines**

The Guideline—sale of Crown land provides further information to support compliance with this policy.

#### **Roles and responsibilities**

- *The department:*
  - a. review and respond to all Crown land sale requests in accordance with this policy and associated procedural guidance
  - b. gather information to assess eligibility for sale of Crown land
  - c. complies with all legislative, policy and delegation requirements relating to sales transactions
  - d. responds to proponents in a timely manner with information that is truthful and accurate.
- *Proponents:*
  - a. responds to the department in a timely manner with information that is truthful and accurate
  - b. abide by requests of the department to assist in providing information that ensures assessment is whole, complete and unimpaired
  - c. abides by the terms of sales processes, including probity requirements—whether competitive or direct negotiation.

#### **Safety considerations**

Where land is contaminated or presents a hazard to the community, regard must be had to safety when considering the sale of Crown land in accordance with the *Contaminated Land Management Act 1997*.

This policy does not negate any work Health and safety requirements.

#### **Delegations**

This policy does not change, remove or add delegation to any officer. Specific delegations exist for the Act and financial decisions also apply.

#### **Definitions**

For the purpose of this policy, the definitions below are not provided for by the Act, and are defined in this policy to provide guidance and ensure consistency.

- **Competitive process:** a non-exclusive process designed to introduce fairness, transparency and competition between more than one party
- **Direct negotiation:** an exclusive process used without undergoing public competition where there is justification. Refer to Sale or lease of Crown land by direct negotiation policy IND-O-182
- **Indigenous rights:** a term used to reflect the rights of indigenous peoples under the *Native Title Act 1993* and the *Aboriginal Land Rights Act 1983*
- **Market value :** the estimated amount for which an asset should exchange on the date of valuation between a willing buyer and a willing seller in an arm's length transaction, after proper marketing, and where the parties had each acted knowledgeably, prudently and without compulsion.

#### **Legislation**

- *Aboriginal Land Rights Act 1983*
- *Contaminated Land Management Act 1997*

- *Crown Land Management Act 2016*
- Crown Land Management Regulation 2018
- *Native Title Act 1993 (Cwlth)*
- *Real Property Act 1900*
- *Roads Act 1993*

#### **Related policies**

- Administration of Crown roads IND-O-250
- Delegations of authority for Crown lands IND-O-179
- Licencing of Crown land IND-O-252
- Sale or Lease of Crown Land by Direct Negotiation IND-O-2182

#### **Other related documents**

- Community Engagement Strategy
- Guideline—sale of Crown land Internal procedures – Sales

#### **Superseded documents**

- Sales and disposal of Crown lands 2010

#### **Revision history**

<b>Version</b>	<b>Date issued</b>	<b>Notes</b>	<b>By</b>
1.0	01/072018	Developed to support the <i>Crown Land Management Act 2016</i>	Dennis Buttigieg, Director Crown Property Services
2.0	20/09/2018	Minor update made to policy	Dennis Buttigieg, Director Crown Property Services

#### **Contact**

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## Annexure A

### Sale of Crown land - assessment criteria\*

Criteria	Why it is a consideration?
Objects of the Act	All decisions must be in accordance with the Objects of the Act
Land that is zoned or reserved for recreation	Where land is used for public recreation the impact to the community may be significant so it may not be in the interest to sell that land.
Land that is zoned or reserved for environmental purposes	Where land has significant environmental value it may not be appropriate to sell that land unless the sale improves environmental outcomes.
Land that has significant cultural and heritage value	Where land has significant cultural and heritage value it may not be appropriate to sell that land unless the sale improves cultural and heritage value and protection.
Sale of land to a tenure holder in debt or subject to compliance action	Probity considerations. Effective property management is a key responsibility of NSW government. It may not be appropriate to sell Crown land the subject of compliance action.
Land that is contaminated	Risk management issue. Effective property management is a key responsibility of NSW government. Considerations on whether to sell contaminated Crown land include but are not limited to responsibility for ongoing management and remediation of the site.
Land that is the subject of a government program	Where land is used or required by the government, it may not be in the public interest to sell that land.
Land that adjoins a public recreation reserve	The land may provide a greater benefit as an addition to a public reserve rather than sale.
Land that is subject to, or likely to be subject to a Local Land Agreement (LLA)	Local land will be transferred to local government councils under the Act via LLA's.
Land that is subject to, or likely to be subject to an Aboriginal Land Agreement (ALA)	On 1 July 2015, the NSW Government enacted Section 36AA of the <i>Aboriginal Land Rights Act 1983</i> , which provides for ALA's.
Land that is subject to an Aboriginal Land Claim under the <i>Aboriginal Land Rights Act 1983</i>	In recognition of the inchoate interest in a registered land claim, land will not be sold unless the claim is withdrawn or determined.
Land that if sold will create an access issue for the purchaser or adjoining land holders.	Land will not be sold if it creates an access issue for adjoining land holders.
Land that is of a lesser value than the transaction cost to sell the land.	Where land value is low, and the cost to progress the transaction is higher than the land value, it is not in the public interest to sell that land due to the resource implications. This does not preclude a sale where there is further justification.

Criteria	Why it is a consideration?
Land sold by direct negotiation (in accordance with policy) will only proceed on the basis the proposed purchaser agrees to pay all the costs.	Direct negotiation sales are usually at the purchaser's instigation. It is appropriate for the instigator of the sale to fund purchase costs.
Extinguishment of Native Title	If evidence cannot be found regarding previous acts of exclusive possession then a Non claimant application or an Indigenous Land Use Agreement will be required in accordance with the <i>Native Title Act 1993</i> and this becomes a consideration if the sale should proceed.

\* Each parcel of land has its own circumstances which will be investigated and dealt with on its merits