

NSW DEPARTMENT OF PLANNING, INDUSTRY & ENVIRONMENT –
CROWN LANDS

Guideline - Purchasing Crown Leasehold Land to Obtain Freehold Title

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Purchasing Crown Leasehold Land to Obtain Freehold Title Policy - Guideline

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More information

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Foreword

This guideline sets out a framework to enable appropriate and consistent determination of purchase applications under the *Crown Land Management Act 2016* (the Act).

This guideline applies to Department of Planning, Industry – Crown Lands (the department) and operates in unison with the policy - Purchasing Crown leasehold land to obtain freehold title' IND-O-242)

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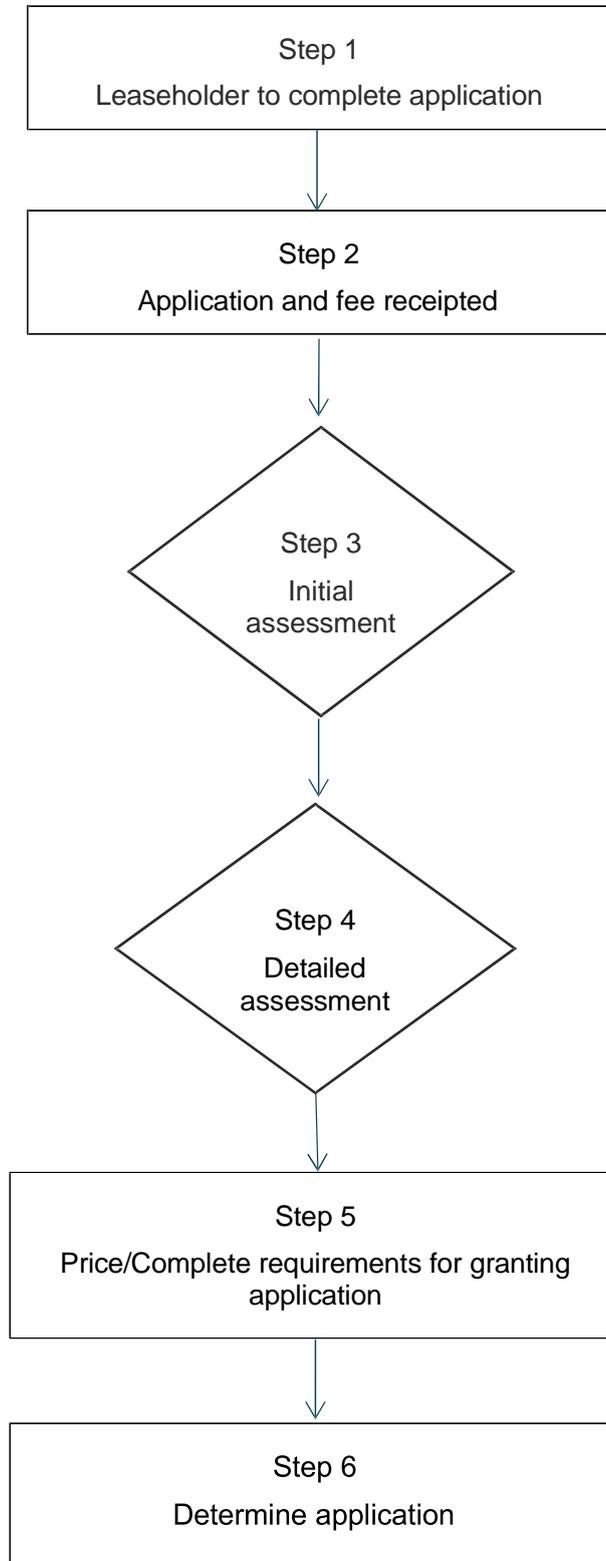
Overview

There are numerous provisions in the Act that provide holders of certain leases the ability to apply for the purchase of their lease. This is the process whereby a leaseholder converts their leasehold interest in their land to freehold. There are many factors that must be considered by the department when determining an application. These factors will be largely dependent on the information that is provided by the leaseholder and the criteria for eligibility set out in the Act.

Assistance

For assistance please contact the Department of Planning, Industry and Environment – Crown Lands Business Centre Phone 1300 886 235.

Procedure



Step 1 – Leaseholder to complete application

Leaseholder completes a purchase application and pays the required fee using the relevant prescribed form being either:

- “Purchasing Western Lands Lease(s) to obtain freehold title” (for Western Lands leases)
- “Purchasing Crown leasehold land to obtain freehold title” (for leases that were previously administered under the *Crown Land (Continued) Tenures Act 1989* (CLCT Act), *Crown Lands Act 1989*, *Wentworth Irrigation Act 1890* or the *Hay Irrigation Act 1902*).

Step 2– Application and fee receipted

The completed application form and application fee are receipted by the department and then forwarded to the relevant Business Unit for assessment.

Step 3 – Initial assessment

An initial assessment of the application is completed to determine if the lease is purchasable. If any issue is identified with the application, this will be communicated to the leaseholder. Refusal of an application may occur at this stage if the lease is not purchasable. Any applications fees will not be refundable.

Step 4 – Detailed assessment

After determining the initial eligibility of the application, a detailed assessment will be completed. This assessment will consider third party interests, statutory criteria and other relevant matters. These considerations must be addressed for an application to proceed.

Step 5 – Price/Complete requirements for granting application

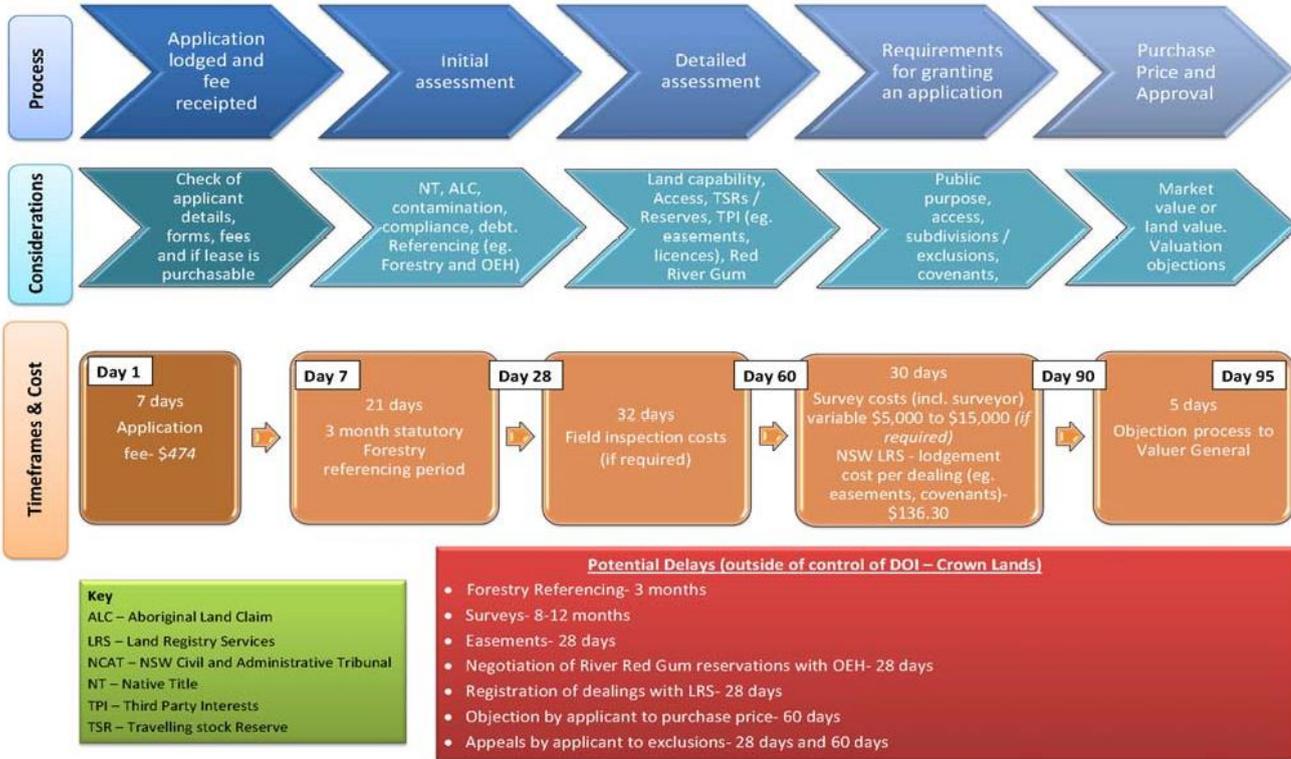
Purchase price will be calculated and any action required to facilitate the purchase of the land (i.e. survey may be required) will be completed.

Step 6 – Application determined

If a purchase application is determined as approved, the purchase price will be payable to the department and freehold title will be provided to the leaseholder.

NB: An application may be refused from Step 2 onwards

Purchasing Crown leasehold land to obtain freehold title



The above timeline is representative of the process for purchasing a Crown Lease to obtain freehold title. The time to process an application is highly variable and dependent on the complexity of the application and the number of applications on hand with the department.

Explanatory Notes

Assessment of applications

The Act provides leaseholders with the ability to apply for the purchase of more than one lease (if adjoining). Applications will be assessed on their individual merits. If an application relates to more than one lease, the application will be assessed as an entire property. Any decision regarding the eligibility of an application must: be lawful; offer natural justice; be based on evidence; give reasons and provide accountability.

The decision must be consistent with the Act and any other applicable law.

Other relevant considerations include (not limited to):

- access
- third party interests
- compliance
- debt
- Aboriginal land claims
- Native Title
- forestry rights
- requirements for the land to be utilised for a public purpose.

Any relevant interests in the land identified during the assessment may require preservation.

Price (including interest, GST and stamp duty)

The price to be paid for the conversion of a lease is dependent on the type of lease and when the application is lodged. The Act has transitional arrangements for price, which are time limited, being two years for CLCT Act perpetual leases (excluding Western Lands leases) and five years for certain term leases.

If an application was lodged prior to the Act commencing, or within the transitional time period, the purchase price will be calculated in accordance with the relevant repealed Act.

Other than where transitional arrangements apply, the Act provides that the minister or delegate must determine the purchase price using either the market or land value. This value will be as at the date of application.

Purchase price will generally be the unimproved market value of the land, or a percentage of that value as provided for in the Act. This value will be determined in accordance with the Act and guided by the principles of the *Australian and New Zealand Valuation and Property Standards* as published by the Australian Property Institute.

The minister may elect to determine the purchase price using land value in lieu of market value. Matters which might influence this decision include the geographic location of the land, the relative economics or practicality of obtaining a market value or the type of lease or the purpose for which it is held. A land value in this instance is that which is assessed in accordance with the *Valuation of Land Act 1916*.

Leaseholders may object to the determination of the purchase price.

Interest

Where a leaseholder elects to pay by instalments, interest must be paid with respect to the purchase price as prescribed by the Crown Land Management Regulation 2018.

GST

GST may be applicable for purchases. The department has the right to determine if the sale is a taxable supply. It is expected that the majority of purchases will be subject to GST. Leaseholders are required to

advise the department regarding GST status using the application form to assist the department's determination of whether GST applies.

Stamp duty

Stamp duty is payable by the leaseholder in accordance with the requirements of Revenue NSW.

Payment options

Leaseholders can either pay the full purchase price within 28 days of acceptance of the purchase offer or by instalments with the department.

A leaseholder may be permitted to repay instalments over a period of up to 20 years, with a minimum annual instalment of \$2,500. Please note: if the purchase price is less than the minimum instalment, then payment in full will be required within 28 days of acceptance of the purchase offer.

The leaseholder may secure private financing to pay the price in full.

Other costs

Please note that other costs may be payable by the leaseholder as part of the purchase process. These may include:

- plan lodgement and dealing costs with NSW Registry Services
- inspection costs
- survey costs
- costs associated with the production of certificates of title
- consultancy costs

Access

An application to purchase cannot proceed unless legal access has been provided to the land. Legal access is defined as direct access to a public road (either crown or dedicated public road) or via an easement for access to the nearest public road.

For land in the Western Division of NSW, if there is doubt as to the provision of legal access to the land, it is recommended you contact the department's Legal Road Network project team:

Phone: 02 6883 5400;

Email: clwestern.region@crowmland.nsw.gov.au.

Third party interests

All third party interests must be identified as part of the process of assessing a purchase application. When it is demonstrated that a third party interest requires protection, the department will, as much as is practicable, protect the interest, including by requiring that appropriate interests are registered on title to the land at the applicant's cost. Examples of third party interest include: Travelling Stock Reserves, pumps and pipelines and access routes to neighbouring properties.

Survey

Survey may be required for subdivision, exclusion or delineation of land to which a purchase application relates, and/or the creation of easements.

A subdivision may be required when:

- only part of the land to which a purchase application relates is purchasable, and/or
- an exclusion is required

All costs that relate to a survey of land to which a purchase application relates are to be borne by the leaseholder (including plan preparation and lodgement). This is irrespective of whether the survey is required by the leaseholder or the Crown as part of the process of purchasing land. Survey instructions will be provided to the leaseholder by the department.

Covenants

The Minister may impose a restriction or covenant on land to which an application to purchase relates. The use of this discretionary power is to be narrowly applied and will only be used to protect a significant interest in the land. An example of when a covenant may be appropriate is for the conversion of rural Western Lands Lease with a purpose of conservation and this purpose is required to be carried forward.

Depth limitation on title

The Minister may impose a depth limitation on land to which an application to purchase relates. The use of this discretionary power is likely to only be used, when required, to protect a significant interest in the land.

Forestry

Crown land held as a lease is subject to existing rights to the Crown and other parties. One of these interests relates to timber (known as Crown timber rights), which may require consideration as part of assessing a purchase application.

To determine whether timber rights need to be preserved, the department is required under statute to reference the Forestry Corporation of NSW.

Preservation of Crown Timber Rights - Profit a Prendre or Exclusion

When a purchase application for a prescribed lease is granted, a notation is required to be placed on the Certificate of Title preserving the Crown's rights to timber. This is known as a Profit a Prendre.

If the Forestry Corporation requires the land to be dedicated as a State Forest, either the purchase application may be refused or that part of the application to which the interest relates may be excluded.

Property Vegetation Plans (PVPs)

Where a PVP exists for the subject land and the PVP:

- is noted on the certificate of title, no further action is required by the department. The notation on title will be carried forward on title if the application is successful
- is not noted on the certificate of title, the PVP will need to be noted on title if the purchase application is successful
- was entered into by a previous leaseholder, and the PVP is not noted on the certificate of title, the department will refer the matter to Local Lands Services for consideration.

Debt

All debt relating to any account with the department held by the leaseholder must be paid in full prior to a purchase application being granted.

Objections, appeals and disputes

The Act provides objections processes for price and exclusions, leaseholders may also appeal other decisions regarding their eligibility.

Objections to purchase price

The Act affords leaseholders the ability to object to the way purchase price has been determined. Price can be calculated using either unimproved market or unimproved land value, with the process for objecting to the price being dependent on the valuation method used.

If market value is used, the leaseholder may lodge an objection to the Minister or delegate administering the Act using the approved form within 60 days of notification of the purchase price.

If the land value has been provided by the Office of the Valuer General from the Register of Land Values under *the Valuation of Lands Act 1916* a leaseholder may lodge an objection with the Valuer General. This process is set out in the Act and the department will receipt these objections on behalf of the Valuer General.

Appeals to proposed exclusions for roadways and other public purposes

The Minister or delegate may, when granting a purchase application, exclude areas from the land for roadways and other public purposes, modify the boundaries of the land in any other way, or create an easement for public access.

Any areas that are excluded from a purchase application are surrendered to the Crown. The leaseholder has the right to appeal a decision to exclude land or create an easement for public access to the NSW Civil and Administrative Tribunal.

Disputes generally

If an application for purchase is assessed and deemed ineligible, the leaseholder may dispute the determination. A leaseholder in dispute must stipulate the grounds for which they want the decision to be reviewed. The request for review must be written and forwarded to the department with all material relevant to the review of the determination attached. The review of the dispute will be made based on the information supplied by the leaseholder and the outcome will be at the discretion of the department.

Please note any cost of obtaining and providing evidence to support a dispute will be borne by the leaseholder.

Disputes about Land and Soil Capability class (specific to Western Lands leases)

In determining a dispute to a classification of land in accordance with the Land and Soil Capability classes, the following evidence or information may be considered relevant and is to be supplied by the leaseholder in writing:

- an existing Cultivation Permit, Irrigation purpose, other relevant lease purpose (including land capability/Drainage Irrigation Management Plan assessment information)
- size of cropping area in relation to definition of substantial
- duration of cropping activities
- frequency of cropping
- soils tests and agronomical reports.

Disputes about other section 5.9 criteria

There are several aspects to determining an application pursuant to section 5.9 of the Act that may be disputed by the leaseholder. Things that may be contested include any ruling on the eligibility of an application determined in accordance with section 5.9 of the Act.

Incomplete purchases

An incomplete purchase (IP) is established when an application is granted and the leaseholder elects to pay the price by instalments.

Incomplete purchases are subject to restrictions regarding transfers. The holder will be required to pay the balance of purchase monies within three months of transfer, unless an exemption applies under the Act. Any purchase monies outstanding beyond the initial three months will incur additional financial penalties.

An IP can be forfeited by the Minister or delegate if the holding is in debt, and/or contravenes the Act or any other instrument.

Definitions

The definitions contained in the Policy - '*Purchasing Crown leasehold land to obtain freehold title*' apply to this Guideline.

Related documents

- Policy - 'Purchasing Crown leasehold land to obtain freehold title'
- Policy - Objection to purchase price or property information when purchasing Crown leasehold land
- *Crown Land Management Act 2016* <https://www.legislation.nsw.gov.au/#/view/act/2016/58>
- *Crown Land Management Regulation 2018*
- Application Form - Purchasing Western Lands Lease(s) to obtain freehold title
- Application Form - Purchasing Crown leasehold land to obtain freehold title
- Factsheet - Purchasing a Western Lands Lease to obtain freehold title
- Factsheet – Purchasing Crown leasehold land to obtain freehold title