

Licensing of Crown land

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AUTHORISED BY: Executive Director Crown Lands

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Policy Statement

This policy provides for how the department will licence Crown land to occupy and use Crown land for a specified purpose in accordance with the Crown Land Management Act 2016.

Licensing of Crown land facilitates multiple uses of Crown land to support its economic, social, cultural and environmental value, while ensuring its appropriate use and management.

Our approach to the licensing of Crown land provides clarity and confidence to stakeholders that they will receive consistent and fair treatment when licence applications are assessed.

Scope

This policy applies to the NSW Department of Industry – Lands & Water (the department).

This policy is drawn from the *Crown Land Management Act 2016* (CLMA), the *Crown Land Management Regulation 2018* and the *Roads Act 1993* (RA).

The department reserves the right not to grant a licence despite the requirements of this Policy.

This policy does not apply to the granting of a licence by a Crown land manager under the *Crown Land Management Act 2016* (the Act) or the *Local Government Act 1993* and does not remove any requirement for a proponent to obtain approvals under the *Environmental Planning & Assessment Act 1979* or other applicable legislation.

Requirements

A licence is an authority issued under the Act (including those pursuant to the *Roads Act 1993*) for the occupation or use of Crown land for specified purposes.

1. General

- a. A licence may be issued where one or more of the following apply:
 - the occupation/use of the land is to be for a short, temporary or intermittent term
 - security of tenure is not a significant factor
 - a lease is not financially viable for the department or the proponent or is not appropriate under the Leasing of Crown Land Policy (IND-O-253) – for example water supply infrastructure, oyster facilities and extractive industry operations
 - there are currently multiple occupiers/users of the land or multiple use/occupation will be required in the future – for example waterfront facilities
 - communication infrastructure is proposed or existing
 - These categories do not limit the circumstances in which a licence may be granted.
- b. A licence must only be granted to either:
 - an acceptable proponent as determined with regard to the matters listed at Annexure A
 - an unauthorised user or occupier under Section 5.26 of the Act

2. *Considerations and assessment*

The department will consider each of the following when assessing an application for a licence:

- a. The Objects of the Act
- b. Relevant requirements of the *Environmental Planning and Assessment Act 1979*
- c. Requirements of the Crown land Community Engagement Strategy
- d. Current, proposed or potential uses of the land, including through consultation with the relevant Crown land manager or government agency
- e. Requirements of the *Native Title Act 1993*
- f. Pending Aboriginal land claims lodged under the *Aboriginal Land Rights Act 1983*
- g. The suitability of the proponent or requirements of Section 5.26 (as noted at 1.b above)

3. *Competitive process and direct negotiations*

Licences are non-exclusive tenures that are terminable at will by the department, subject to section 5.23 of the Act. A licence will be granted by direct negotiation where it meets one of the following categories:

- a. Where a delay in granting the licence would threaten public health, safety, or the environment or create a serious financial or other risk to the department
- b. The licence provides an essential service to the proponent or benefit to the community of New South Wales
- c. The licence is of a unique nature and the proponent is the only person who can feasibly use the Crown land for the purpose of the proposed licence
- d. The licence is of low value and would not provide a value for money return if granted via a competitive process.

The department may decide not to proceed through direct negotiation even though direct negotiation may be allowable under one or more of the above categories. Such a decision will only be made where an overriding, exceptional circumstance is determined to exist.

Licences that do not meet the direct negotiation categories must be granted via competitive process, allowing other parties to lodge their interest.

Refer to the Licensing of Crown Land – Guidelines for information on how the department determines if the licence is granted by direct negotiation or competitive process.

4. *Term*

Short-term licences issued for a purpose prescribed in the *Crown Land Management Regulation 2018* will be granted for a maximum term of 12 months.

Licences for domestic waterfront facilities will be granted for a term of 20 years or the life of the structure/s – whichever is lesser.

Licences for communication infrastructure will be granted for a term of 20 years.

All other licences will be granted for an indefinite term, unless a defined term is specified.

5. *Rent*

A market-based rent will be applied – with reference to Part 6 of the Act, except where a recommendation made by the Independent Pricing and Regulatory Tribunal has been adopted or a licence, or class of licences is exempt from the market values principles.

Licensees may be eligible for concessions in accordance with the Crown Land Financial Concessions Policy (IND-O-254).

The proceeds of rent in respect of a licence granted under the provisions of section 2.18 of the Act will be paid into the consolidated fund, unless directed otherwise by the Minister for Lands and Forestry.

6. *Existing licences*

A Crown land licence will automatically transfer under section 5.27 of the Act if the licence provides a benefit to freehold or leasehold land that has been transferred. The transfer occurs automatically

at the time of transfer of the benefitting land and the transferee will become liable for compliance with the terms and conditions of the licence and payment of rent and other fees – including any arrears.

A licence that contains provisions for transfer can be transferred upon application in accordance with section 5.24 of the Act.

Licences that do not provide a benefit to freehold or leasehold land or that do not contain provisions for transfer cannot be transferred. The licence must be terminated and a new licence granted to the successful applicant. The termination of the existing licence and grant of a new licence will be simultaneous on an agreed date by the incoming and outgoing parties. Any new licence must be granted in accordance with the requirements of this policy.

7. *Renewal*

Licences cannot be renewed upon expiration. A licensee must apply for a new licence to continue occupation.

8. *Alteration*

Generally, a licence will only be altered in accordance with section 7.3 of the Act where the proposed alteration is to:

- a. Reduce the area of the licence,
- b. Remove a purpose of the licence,
- c. Add a new purpose (that does not increase the impact or usage of the land), or
- d. Amend conditions in a manner that does not increase the impact or usage of the land.

However, licences for extractive purposes may be altered in any manner permitted under the Act.

9. *Termination*

Licences may be terminated by the department under section 5.23(1) of the Act or upon request of a licensee and approval by the department. Common triggers for termination include:

- a. The licensee has failed to comply with the terms and conditions of the licence
- b. The land under licence has been sold or compulsorily acquired
- c. A native title consent determination has been made, an Aboriginal land claim has been granted or the ratification of an Aboriginal land agreement or Indigenous Land Use Agreement

Unless directed otherwise by the department, the licensee must:

- a. Return the land to its former condition
- b. Ensure compliance with all terms and condition of the licence
- c. Pay all outstanding rent and any other amounts if applicable

A licensee is not entitled to receive any compensation in the event a licence is terminated.

10. *Crown roads*

Under section 152A of the *Roads Act 1993*, the department may only grant a licence over a Crown road if the proposed purpose of the licence does not obstruct the right of passage and access for the road.

Where the rites of passage and access are obstructed, a licence may only be granted if an alternative rite of passage is provided that the department accepts is substantially as convenient as access along the existing Crown road. Alternative access may be via another Crown road or other land within the vicinity.

Roles and responsibilities

- *The department:*
 - a. Initiates the grant of a licence under section 5.26 in respect to unauthorised occupation
 - b. Reviews and responds to licence requests in accordance with this policy and associated procedural guidance.
- *Proponents:*

- a. Will provide true and accurate advice and information when applying for a licence
- b. Will respond in accordance with reasonable timelines and requirements set by the department
- *Licence holders:*
 - a. Will comply with the terms and conditions of their licence agreement, including the payment of rent

Delegations

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

Definitions

- Aboriginal land agreement – an agreement between the minister and one or more Aboriginal Land Council (ALC) that may provide for the exchange, transfer or lease of land or an undertaking by an ALC not to lodge a claim, or withdraw a claim, in relation to specific land
- Acceptable proponent – a proponent considered acceptable having regard to the “Fit and Proper” criteria (See Annexure A)
- Benefit – a benefit in respect to section 5.27 of the Act is a licence that provides a benefit to freehold or leasehold land. Examples include the use of a waterfront, nature reserve, a recreational facility or the licences provide a service to benefitting land.
- Competitive process – a non-exclusive process designed to introduce competition between more than one party
- Crown land – land defined as such in section 1.7 of the Act and Crown road defined under the *Roads Act 1993*
- Direct negotiation – negotiating directly with one proponent and not via competitive process.
- Domestic waterfront facility – includes jetties, boatsheds, berthing areas, boat ramps, slipways, pontoon, reclamation works (submerged Crown land filled or drained for the purposes of reclaiming the land) and seawalls and other waterfront structures for private use and occupation.
- Essential service – a system, structure or infrastructure that supplies an essential need or service, such as water supply, electrical supply or residence.
- Indigenous Land Use Agreement – a voluntary agreement between a native title group and others about the use of land and waters
- Minister – the Minister administering the Act
- Proponent – a person or organisation that submits an application to licence Crown land
- Proposal (or application) – a request to licence Crown land for the proponent
- Termination – has the same meaning as ‘revocation’ in the Act
- Transferee – the person or person/s that is the new owner/s or lessee/s of freehold or leasehold land that benefits from a Crown land licence

Legislation

- *Aboriginal Land Rights Act 1983*
- *Crown Land Management Act 2016*
- *Crown Land Management Regulation 2018*
- *Environmental Planning and Assessment Act 1979*
- *Native Title Act 1993 (Cwlth)*
- *Roads Act 1993*

Related policies

- Crown Land Financial Concession Policy

- Delegation of Authority Policy under the Crown Land Management Instrument of Delegation 2018
- Leasing of Crown Land Policy

Other related documents

- Automatic licence transfer – Guidelines
- Community Engagement Strategy
- Domestic waterfront licences – Guidelines
- IPART review of the current method of rent determination for domestic waterfront tenancies in NSW (May 2012)
- IPART review of rental arrangements for communication towers on Crown land – other industries – Final Report July 2013
- Licensing of Crown Land – Guidelines

Superseded documents

In combination with the Leasing of Crown Land policy (IND-O-253), this policy replaces the policy for Leasing and Licensing under s34A of the *Crown Lands Act 1989*.

Revision history

Version	Date issued	Notes	By
1.0	01/07/2018	Developed to support the <i>Crown Land Management Act 2016</i>	Alison Pepper, Director Tenure & Business Programs

Contact

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'FIT AND PROPER' CRITERIA**Individuals:**

In assessing whether an individual, who is an applicant for a licence, meets the 'fit and proper' criteria, the department must consider the following:

- a. Whether the individual is over the age of 18 years
- b. Whether the individual has been declared bankrupt or sought protection from bankruptcy laws in the past 10 years, and
- c. Whether the individual has been committed in Australia or overseas of an offence that resulted in at least 12 months imprisonment.

Where the individual has previous dealings with the department, the following must also be considered:

- a. Whether the individual had a former Crown tenure terminated for non-compliance or has had compliance action undertaken against them, and
- b. Whether the individual has had debt management action pursued with them for the non-payment of rent for a prior or existing Crown tenure.

In considering these criteria, the severity and nature of the matters must also be considered.

Entities:

In assessing whether an entity, which is an applicant for a licence, meets the 'fit and proper' criteria, the department must consider the following:

- a. Whether the entity is currently registered in Australia
- b. Whether any of the currently appointed directors and/or company secretaries have been registered as banned and disqualified individuals with the Australian Securities and Investment Commission
- c. Whether any of the currently appointed directors and/or company secretaries have been disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2016*, and
- d. Whether the entity or any affiliated entities, have entered into voluntary administration, receivership, liquidation of insolvency.

Where the entity has had past dealings with the department, the following must be considered:

- a. Whether the individual has had a former Crown tenure terminated for non-compliance or has had compliance action undertaken against them, and
- b. Whether the individual has had debt management action pursued with them for the non-payment of rent for a prior or existing Crown tenure.