

Purchasing Crown leasehold land to obtain freehold title

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Policy Statement

This policy sets out a framework to enable appropriate and consistent determination of purchase applications (being applications to convert Crown leasehold land to obtain freehold title) under the *Crown Land Management Act 2016* (the Act).

This policy applies to the Department of Industry - Crown Lands (the department).

Scope

The policy is relevant to three purchase transactions: continued incomplete purchases (but only in respect to forfeiture or transfer), pending tenure purchases and new tenure purchase applications pursuant to Schedules 1, 2, 3 and 4 of the Act. It does not apply to any other type of purchase of Crown land other than conversions. This policy is subject to the Act and does not negate any provisions, of the Act or any other associated instrument.

Requirements

1. Assessment of applications- whole (multiple leases) or as individual leases

In addition, to the right to apply for the purchase of a single lease, perpetual Leaseholders may apply for the purchase of more than one lease using a single application, if the leases are adjoining and the leases are all held by the same holder

Each application will be assessed on its merits. If an application relates to more than one lease, the application will be assessed holistically. If a lease is sold whilst an application is pending assessment, the application can be transferred to the new leaseholder, with their consent.

2. Transitional arrangements

Transitional arrangements of two years and five years applies to perpetual and term leases respectively that were granted under the *Crown Lands (Continued Tenures) Act 1989*, *Western Lands Act 1901*, *Hay Irrigation Act 1902* and the *Wentworth Irrigation Act 1890*. These affect whether the Minister or delegate may or must grant certain applications.

3. Native Title

In determining a purchase application, the department will be required to consider Native Title interests that may exist for the land subject to the application in accordance with the *Native Title Act 1993* (Cth).

4. Aboriginal Land Claims

In determining a purchase application, the department will be required to consider any Aboriginal Land Claims that may exist for the land subject to the application in accordance with the *Aboriginal Land Rights Act 1983* (NSW).

5. Eligibility (Schedule 4 and right to apply)

- a. The ability for leaseholders to purchase their lease and obtain freehold title arises from either a right to convert or a right to apply. A right to convert is a higher right than a right to apply.

A right to apply does not infer a right to purchase. Any application relating to a right to apply must be assessed by the department on its merits in a transparent manner and no guarantee of success can be provided to the leaseholder.

b. Section 5.9 considerations for leases in the Western Division

The ability of the Minister or delegate to sell or dispose of land subject to a Western Lands Lease or a new perpetual lease is restricted by section 5.9 of the Act. Terminology used in section 5.9 that is critical to assess the eligibility of a purchase application is defined in the Definitions section of this policy.

c. Disputes about eligibility and Land and Soil Capability (LSC) classes

Any dispute regarding eligibility should be made in writing by the leaseholder and will be assessed on its merits.

d. 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.

e. Compliance and Contamination

If there is a compliance or contamination matter identified by the department on the land subject to a purchase application, this may require consideration as part of the purchase process.

6. *Exclusions*

The Minister or delegate has the ability to exclude land from a purchase application in certain situations. A leaseholder may appeal to the NSW Civil and Administrative Tribunal regarding any proposed exclusions. Any area excluded from land subject to a purchase application will not be considered when determining eligibility pursuant to section 5.9 of the Act.

7. *Forestry*

In accordance with the *Forestry Act 2012*, forestry rights must be preserved for applicable leases. A statutory referencing period to Forestry Corporation NSW of three months will apply.

8. *Access*

In determining a purchase application, it must be established that legal access is available to the land to which the application relates.

9. *Third Party Interests*

All third party interests should be identified and considered prior to the determination of the purchase application (examples include Travelling Stock Reserves, and interests of other tenure holders such as easements etc.).

10. *Property Vegetation Plans (PVPs)*

If a PVP is in effect over a lease, the department can require the plan to be registered on the title for the land prior to the application for purchase being granted (if eligible).

11. *Purchase Price*

Other than where transitional arrangements apply as set out below, 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.

The department's policy is that Part 1, section 6A of the *Valuation of Land Act 1916* will be used as the default basis for determining the purchase price. This method of valuation excludes any improvements made by the leaseholder and is considered to be the most cost effective, transparent and consistent approach for leases with relatively low dollar per hectare values within a defined geographic area.

This 6A mass valuation methodology may not be appropriate for individual leases with unique characteristics with relatively high value within metropolitan or coastal areas. A relatively small number of purchase applications are therefore likely to have their purchase price determined using market value practices in accordance with the *Australia and New Zealand Valuation and Property Standards*.

Leaseholders may object to the determination of the purchase price.

There are transitional arrangements in the Act for some lease types that provide concessional pricing for limited timeframes after commencement. Separately, for Western Lands leases and new perpetual leases, if the Minister or delegate is satisfied that the land is predominantly used for primary production (including for grazing, agricultural, pastoral or mixed farming purposes), the purchase price will be 3 percent of the unimproved land value.

12. Instalments and payments

A purchase can be paid by instalments for a period of up to 20 years. The minimum annual payment is \$2,500 (interest will be applicable at the rates prescribed in the *Crown Land Management Regulation 2018*).

If the purchase price is less than the minimum annual instalment of \$2,500, payment of the full purchase price will be required within 28 days after the leaseholder has accepted the purchase offer. Savings and transitional arrangements apply for some continued incomplete purchases.

13. Stamp Duty

Stamp duty is payable by the leaseholder to Revenue NSW for all purchases, except where an exemption to the *Duties Act 1997* applies.

14. Other costs / Fees

- a. An application fee applies to all purchase applications as prescribed by the *Crown Land Management Regulation 2018*. Fees must accompany an application.
- b. GST may apply to a purchase as prescribed by the *A New Tax System (Goods and Services Tax) Act 1999*.
- c. Fees and costs which will be borne by the leaseholder include those related to:
 - any required survey, subdivision or plan registration
 - any independent valuation
 - fees associated with amendments to certificates of title
 - inspection of the land
 - any other related activity required to assess or determine the application.

15. Covenants, easements, rights of way and notations on title

A covenant, easement, right of way or any other notation can be placed on the title prior to sale of the purchased land if required by the Minister or delegate.

16. Transfer of Incomplete Purchases

Incomplete purchases are subject to restrictions regarding transfers. The holder will be required to pay the balance of purchase monies within 3 months of transfer, unless an exemption applies under the Act. Any purchase monies outstanding beyond the initial 3 months will be subject to additional interest rates.

17. Forfeiture

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

Guidelines

A separate Guideline, "Purchasing Crown leasehold land to obtain freehold title", provides general information which may be of assistance in understanding and/or complying with this policy.

Roles and responsibilities

- *The department:*
 - receive and process purchase applications in accordance with the Act, Regulations and any other departmental policy
 - procure and provide 6A valuations and determine objections to the purchase price as necessary
- *Leaseholders:*
 - may lodge an application to purchase Crown leasehold land to obtain freehold title in accordance with this policy
 - must use the relevant prescribed form and provide additional information (if required) and pay all fees/costs as required by the department.

- *NSW Civil and Administrative Tribunal*: consider appeals from leaseholders relating to an exclusion of land relating to a purchase application
- *NSW Valuer General*: determine any objections received from leaseholders regarding the 6A valuations
- *Forestry Corporation NSW*: provide advice to the department on Crown timber rights relating to an application

Safety considerations

This policy does not negate any Work Health and Safety requirement.

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

For the purpose of this document the following definitions will apply:

- Definitions for the operation of section 5.9 of the *Crown Land Management Act 2016*: The definitions below are not provided for by the Act. They are defined in this policy to provide guidance and ensure consistency to the department's application of s 5.9 of the Act.

Business Purposes	Where the land is used predominantly as a business that is not a primary production business. The onus of proof of the business purpose is on the applicant and requires consideration of (but is not limited to), Local Environmental Planning (LEP) zoning and Australian Business Number (ABN) registration. This could also include a Western Lands lease granted for business purposes.
Community Purposes	A community purpose is a purpose which generally is for the benefit of a community. Community is defined as <i>a group of people living in the same place or having a particular characteristic in common</i> . The onus on showing that the land is an area required for community purposes rests on the applicant.
Economic Growth of the Region	A tangible economic benefit to the community in the region to which the application relates. Community is defined as <i>a group of people living in the same place or having a particular characteristic in common</i> . The land subject to the application must be within 20 kilometres of an Urban Area, being the prescribed distance set by the <i>Crown Land Management Regulation 2018</i> . The onus on showing that the sale will contribute to the economic growth of a region rests on the applicant.
Industrial Purposes	Where the land is used predominantly for an activity permitted by Local Environmental Planning (LEP) zoning for an industrial activity and the activity is not a primary production business. The onus of proof of the industrial purpose is on the applicant and requires consideration of the nature and extent of the activity on the land subject to the application.
Predominantly	Mainly, or for the most part.
Residential Purposes	Where the land is used predominantly as a normal place of abode or residence and/or the lease is granted for the specific purpose of residence.
Rural Area	An area in the Western Division of NSW that is not an Urban Area. The Western Division is defined in section 1.6 of the Act.
Substantial	For the purposes of section 5.9 (1)(e) - (f) of the <i>Crown Land Management Act 2016</i> , a substantial area can be one or both of the following: <ul style="list-style-type: none"> - an area that is one third or greater of the subject area, or - an area of considerable importance, size or worth.
Urban Area	An area listed as an Urban Centre, Locality or Special Purpose Locality for the purposes of the Australian Census (as determined by the Australian Bureau of Statistics).
Urban Expansion	Land in an area where there is a demonstrated requirement to expand the adjacent or nearby Urban Area. The onus on showing that the land is an area required for urban expansion rests on the applicant.

- Covenant: is a form of agreement that creates an obligation. If the covenant affects land it remains in force regardless of any change of proprietorship. A restrictive covenant, also known as a negative covenant, creates an obligation to refrain from doing something. A positive covenant creates an obligation to do something. Only a prescribed authority can create a positive covenant pursuant to section 88D or section 88E of the *Conveyancing Act 1919*. A positive covenant created in favour of a prescribed authority may not have land benefited by the covenant. See Part 6 of the *Conveyancing Act 1919*.
- Crown timber Land: has the same meaning as defined at section 3 of the *Forestry Act 2012*.
- Crown's rights to timber and forest products on purchase-tenure land: has the same meaning as defined at Clause (5) of Schedule 1 of the *Forestry Act 2012*.
- Cultivation consent: is a consent issued in accordance with the requirements of Section 18DA of the *Western Lands Act 1901* and is continued pursuant to Clause 48 of Schedule 3 of the Act, or is a cultivation consent granted in accordance with the requirements of Clause 44 of Schedule 3 of the Act.
- Eligible lease: is a lease for which a leaseholder has a right to convert or a right to apply.
- Incomplete Purchase: is when a purchase application is granted and the leaseholder elects to pay the price by instalments.
- Land value - has the same meaning as defined at section 6A of the *Valuation of Land Act 1916*.
- Market value – will be determined in accordance with the *Australia and New Zealand Valuation and Property Standards*.
- Pending tenure purchase: is an application to purchase an eligible lease made prior to commencement of the *Crown Land Management Act 2016* that has not yet been determined by the department. It includes:
 - pending tenure purchases referred to in Division 4 of Part 2 of Schedule 1 to that Act
 - pending irrigation lease purchases referred to in Division 2 of Part 2 of Schedule 2 to that Act
 - pending Western Lands lease purchases referred to in Division 2 of Part 2 of Schedule 3 to the Act.
- Profit à prendre: is a right to take from the land owned by another person part of the natural produce grown on that land or part of the soil, earth or rock comprising the land. Like an easement a profit à prendre may be enjoyed as an appurtenance to other land or it may exist in gross. An instrument creating a profit à prendre has limited enforceability unless it indicates the land which is subject to the burden and the land to which the benefit is appurtenant see s.88AA *Conveyancing Act 1919*.
- Property Vegetation Plan (PVP): is a voluntary, legally binding agreement between a leaseholder and the Local Land Services that was approved before the repeal of the *Native Vegetation Act 2003*.
- Purchase application: means an application to convert an eligible lease (held by the registered lessee) to freehold title.
- Right to apply: is a reference to an eligible leaseholder's ability to apply to purchase land and the Minister responsible for determining the application may grant the application.
- Right to convert: is a reference to an eligible leaseholder's ability to apply to purchase land and the Minister responsible for determining the application must grant the application.
- Travelling Stock Reserves (TSR): as defined in section 61 of the *Local Land Services Act 2013* means:
 - Travelling
 - any route or camping place reserved for travelling stock route or camping place under the *Crown Lands Act 1989*, or
 - any reserve for travelling stock, water reserve, reserve for access or crossing (where the reserve is for the purpose of providing travelling stock with access to or a crossing of water, whether expressly notified for that purpose or not), or
 - any stock watering place

Legislation

This policy is relevant to:

- *Conveyancing Act 1919*
- *Crown Land Management Act 2016*
- *Crown Land Management Regulation 2018*
- *Forestry Act 2012*
- Any other relevant legislation repealed by the *Crown Land Management Act 2016*

Related policies

- Delegations of Authority for Crown Lands (Interim) Policy IND-O-179 V3.0
- Objection To Purchase Price When Purchasing Crown Leasehold Land Policy IND-O-241 V1.0

Other related documents

- Guidelines – Purchasing Crown Leasehold Land to Obtain Freehold Title

Superseded/Repealed Documents

This policy replaces:

- Technical Instruction - T06/01
- Technical Instruction - T05/02
- Technical instruction - T05/04

Revision history

Version	Date issued	Notes	By
1.0	19/03/2018	New policy to support the <i>Crown Land Management Act 2016</i>	Area Manager Far West, Department of Industry – Lands & Water

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