

NSW DEPARTMENT OF INDUSTRY—LANDS & WATER

Guideline—Sale of Crown land

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Guideline: Sale of Crown Land

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More information

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Overview

Decisions around the sale of Crown land are complex in nature and have permanent implications on land held in public ownership.

Sale of Crown land requires comprehensive investigations and assessments, as well as engagement with the community, before a sale application can progress. These guidelines provide interested persons with an understanding of how the NSW Government's Sale of Crown land policy IND-O-251 is applied.

These guidelines do not apply:

- to roads closures, Western Land leases or lease conversions where a tenure holder has a statutory 'right to convert'
- to acquisition of Crown land by government authorities or agencies with legislated acquisition powers
- where scale and complexity of decision-making is beyond the scope of the policy or these guidelines.

Recognition of Indigenous cultural value is an important consideration in assessing enquiries to purchase Crown land, and the sale of Crown land is only permitted where it is in the public interest.

The Sale of Crown land policy IND-O-251 establishes a governance framework for the NSW Department of Industry—Lands & Water to manage land sale activities on behalf of the NSW Government and the people of NSW.

Assistance

For assistance to make an application please contact:

NSW Department of Industry—Lands & Water

www.industry.nsw.gov.au/lands

Phone: 1300 886 235

Email: enquiries@crowmland.nsw.gov.au

Indigenous land rights and interests

Under both the NSW *Aboriginal Land Rights Act 1983* and the Commonwealth *Native Title Act 1993*, Aboriginal peoples may make claims over Crown land.

The *Native Title Act 1993* is Commonwealth legislation and any claims made under that act are assessed and determined by the National Native Title Tribunal. Native title primarily deals with whether indigenous rights and interests in Crown land exist or have been extinguished and involves extensive investigation and assessment. If native title is deemed to exist in an area, claims can be made over parts of that land.

Aboriginal land claims are determined by the NSW minister responsible for the *Crown Land Management Act 2016*, and decisions are made based on whether the claim meets the criteria specified in the NSW *Aboriginal Land Rights Act 1983*.

No sale of Crown land can progress until any Aboriginal land claims or native title claims over the land are reconciled with the sale proposal.

When an Aboriginal land claim is lodged over Crown land subject to a sale proposal, at any time prior to exchange of contracts, the sale will be deferred pending finalisation of that claim.

Sale of Crown land

All decisions and related actions undertaken by the NSW Department of Industry in relation to the proposed sale of any Crown land must comply with the *Crown Land Management Act 2016* and other legislation identified in the

Related Documents section of this guideline. The department must provide evidence of compliance with the *Crown Land Management Act 2016* at each key decision point.

Individuals, companies, or other legal entities can express their interest in purchasing Crown land by submitting a completed *Enquiry to Purchase Crown Land Form*, which is included at Annexure A of the policy document.

These guidelines should be considered when making a submission in order to properly address the policy criteria.

When a compliant application is received, the department will follow a multi-step sales assessment framework. At each stage, the application to purchase Crown land may be refused.

Sales assessment framework

An assessment framework is used to make decisions on all compliant applications. If, at any stage in the process, investigations identify that the land should remain in the Crown estate or should not be sold to the enquiring party, the proposal will not progress.

Step 1—Receipt of an enquiry to purchase Crown land form

1.1. Enquiry/Assessment

Investigating sale of Crown land is triggered by one or more of the following:

- receipt of a purchase enquiry form
- internal government request for land (i.e. residential land release)
- a recommendation from a Crown land manager for sale (i.e. land no longer meets a public need or retention costs are a justification for sale)

The enquiry to purchase Crown land form is provided in Annexure A and is also available from the department website.

1.2. *Confirmation of submission*

The department aims to acknowledge receipt of purchase enquiries within two days. Where a form is incomplete, it will be returned to the applicant.

Once a completed form has been reviewed, the department will contact the enquirer to advise that an initial assessment has started.

The department will endeavour to provide advice on initial assessments within two weeks of receipt of a compliant application.

The application may be discontinued at this step.

Step 2—Initial gateway assessment

2.1. *Initial assessment*

The initial gateway assessment identifies constraints that would prevent further consideration of the sale.

These constraints include, but are not limited to the following:

- Title—if not Crown land the application will not progress
- If the land is subject to an Aboriginal Land Claim (ALC)—the application will not progress
- If native title exists
- If the land is contaminated
- If the land is reserved for a purpose that is not consistent with sale
- If sale of the land would cause access issues for adjoining land owners
- If the land is subject to a Crown tenure or debt relating to the tenure
- Where the sale would be inconsistent with zoning
- If transaction costs to sell the site are greater than the value of the land unless selling is in the public interest to do so.

If the initial gateway assessment identifies the sale should not progress, the applicant will be advised and no further assessment will be undertaken.

2.2. *Formal response to the enquirer*

Where an initial assessment identifies constraints or restrictions that prevent the sale of the Crown land, the applicant will be contacted and advised of the outcome.

- Where initial gateway assessment supports further investigation toward sale, this will be confirmed in correspondence to the applicant within 14 working days of acknowledgement.
- Noting further assessment or prioritisation of the application may require further investigation.

The application may be discontinued at this step.

Step 3—Detailed disposal assessment

The detailed disposal assessment considers applications against criteria outlined in Sale of Crown land policy IND-O-251 and other factors identified during investigations.

This step may make a recommendation to seek the community's view about the sale proposal through the community engagement strategy.

The application may be discontinued at this step.

Step 4—Community engagement

The *Crown Land Management Act 2016* introduces the Crown land Community Engagement Strategy (CES), which provides a framework for consulting and engaging with the community on decisions that affect their use and access to Crown land.

The CES, as it applies to sale proposals, will be used to:

- obtain public submissions and seek community feedback about how the proposal would impact on the community
- manage further engagement appropriate to the impact and issues identified in public submissions.

The application may be discontinued at this step.

Step 5—Decision

Decisions to sell Crown land are made after detailed investigation and in consultation with the community through the CES unless exempt.

A delegate of the Minister for Lands and Forestry will make a final decision on the sale of the land and whether to apply restrictions or conditions on the sale.

Applicants will be informed in writing of the outcome of their submission and the details of the decision.

All sales will be displayed publically on the Department of Industry website.

The application may be discontinued at this step.

Step 6—Sale execution

Where Crown land is determined as suitable for sale it will be prioritised against other proposals and will proceed on its merits against other proposals.

Where sale of Crown land is approved and the land is reserved, a parallel process is required to remove the reservation from the land.

Indicative timeline

Progression of an application generally follows the indicative timeline shown below in Figure 2, but may be discontinued at any point.

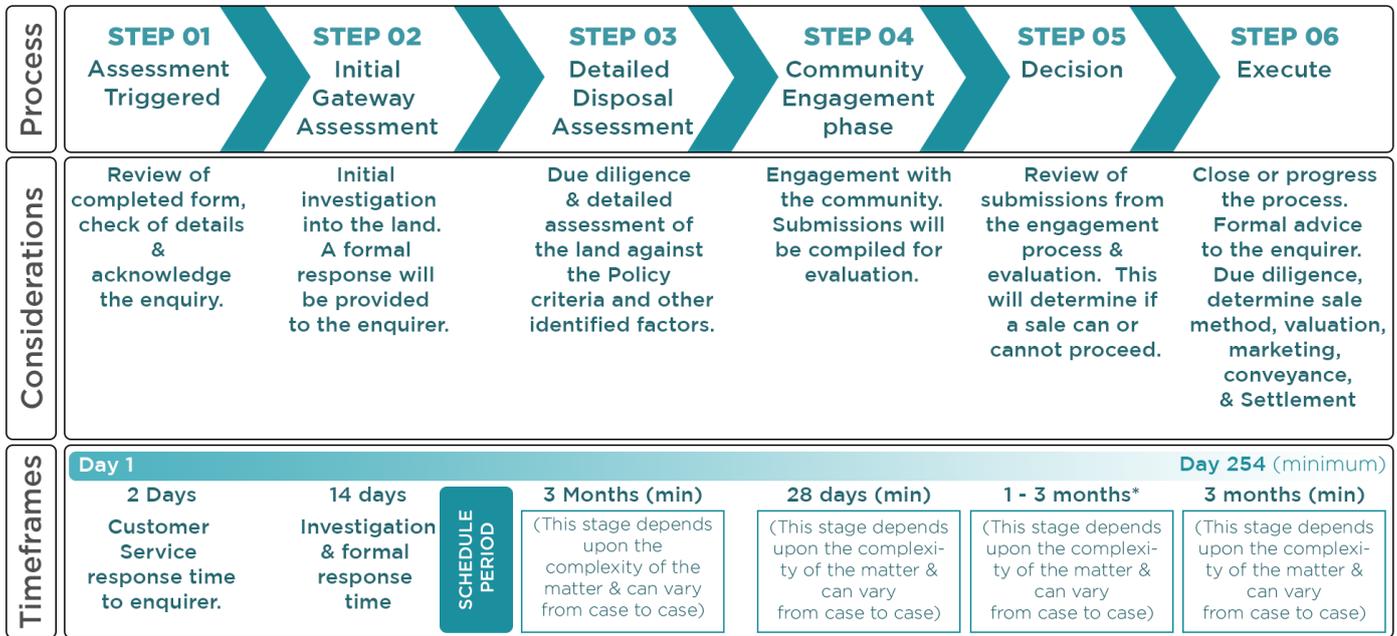


Figure 1 Sales assessment timeline

Probity

Probity relates to proper and ethical conduct, and propriety in dealings with the market. One of the goals of recent reforms to the management of Crown land in NSW is to embed high levels of probity into the system. A key component of this is to ensure sales of Crown land achieve value-for-money for the people of NSW.

To maintain a high standard in managing the Crown estate, disposal of Crown land will not progress where any of the following attributes are not evident:

- value for money
 - the cost to complete the proposal outweighs the benefits
- transparency and fairness
 - a tenure holder is in debt to the government or is in any form of administration
 - the proposed purchasers are not in good standing
 - tenants in common do not agree to the sale
- promotion of effective competition and ample opportunities to do business with government
 - preferring public competition where appropriate.

Disputes

Where the sale of Crown land is approved, the transaction will be bound by obligations under a contract for sale and purchase of land and its conditions.

Where the sale is by direct negotiation, the department also requires execution of a negotiation protocol.

A negotiation protocol establishes the boundaries for negotiations and ensures amicable relations between parties. The negotiation protocol includes provisions for settling disputes.

Any cost incurred in obtaining and providing evidence to support a dispute will be the responsibility of the purchaser.

Definitions

Please refer to the Sale of Crown land policy IND-O-251 for definitions of key words used within these guidelines. The *Crown Land Management Act 2016* provides definitions in section 1.5, and where a contradiction exists, the definition in the act will prevail. Table 1 defines key words used in these guidelines that are not referenced within the policy or act.

Table 1: Definitions of key terms used in this guideline

Word or phrase	Meaning
Acquisition	Obtaining ownership of land, asset, or business Crown land is often acquired by other authorities such as councils using powers granted to them under the provisions of their respective legislation. This can occur without the department's consent, although compensation is payable.
Governance	The system that controls the operations and the mechanisms by which a country, state or region, and its people, are held to account. Ethics, risk management, compliance and administration are all elements of governance.
Probity	The evidence of ethical behaviour Probity can be defined as complete and confirmed integrity, uprightness and honesty in a particular process.

Related Documents

- Crown land Community Engagement Strategy
- *Crown Land Management Act 2016*
- Crown Land Management Regulations 2018
- Enquiry to Purchase Crown Land Form
- General Information FAQ [refer to Annexure C]
- Sale of Crown land policy: IND-O-251
- Policy IND-O-182: Direct Negotiations Policy for the sale or lease of Crown land

Transactions involving Crown land may also be affected by and/or require compliance with other legislation, including but not limited to:

- *NSW Aboriginal Land Rights Act 1983*
- *NSW Contaminated Land Management Act 1997*
- *Conveyancing Act 1919*
- *NSW Land Acquisitions (Just Terms Compensation) Act 1991*
- *Federal - Native Title Act 1993*
- *Property NSW Act 2006*
- *Real Property Act 1900*
- *Roads Act 1993*
- *Valuation of Land Act 1916*

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