

Allocation of Crown land policy

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AUTHORISED BY: Deputy Secretary Crown Lands	AUTHORISED DATE: 27/02/2020
ISSUED BY: NSW Department of Planning, Industry and Environment – Crown Lands	EFFECTIVE DATE: 27/02/2020
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Policy Statement

There are several options for how we deal with Crown land. It may be dedicated, reserved, tenured, or ultimately retained in the Crown Estate. To choose the best option, the land must be evaluated and any applications to deal with the land must consider:

- the objects and principles of the *Crown Land Management Act 2016*
- the characteristics of the land
- NSW Government priorities and decisions.

Scope

This policy applies to Crown land that is subject to the provisions of the *Crown Land Management Act 2016* (the CLM Act).

1. In Scope

Allocation of land decisions relating to:

- reservation
- dedication leasing
- vesting
- appointment of a Crown land manager
- easements by agreement
- acquisitions and sale.

2. Out of scope

Decisions and dealings outside the scope of this policy

Decisions and dealings	Reasons
Decisions and dealings relating to Crown roads	Crown roads are not Crown land and are dealt with under other legislation.
Decisions and dealings relating to licences (except at the discretion of the Chair in exceptional circumstances)	Licences are terminable at will; are generally low impact and are low risk from an allocation perspective.

Applications by lessees to purchase their leases where the lessees have purchase rights under legislation or their lease	Specific legislated processes and purchase rights apply to these leases.
Decisions and dealings by public authorities relating to easements (that is easements that are not by agreement)	These easements are under separate legislation, procedures and guidelines.
Decisions and dealings relating to compulsory acquisitions by third parties	Compulsory acquisitions occur under separate legislation.
Decisions and dealings relating access and leases under the <i>Mining Act 1992</i>	Access agreements for exploration and Assessment Mining Leases are dealt with under the <i>Mining Act 1992</i> .
Land Negotiation Program decisions	Subject to separate decision-making process approved by government
Granting and vesting of land in freehold to Aboriginal Land Councils pursuant to the <i>Aboriginal Land Rights Act 1983</i> (ALR Act).	Specific legislated process
Vesting of land in freehold to a native title holding body pursuant to a decision of the Federal Court.	Complying with a court order or decision
Vesting of land in freehold to a native title holding body under an existing Indigenous Land Use agreement.	Complying with a contract approved and executed by the government

Requirements

1. Guiding Principles

All decisions about the use and management of Crown land must be guided by the objects of the CLM Act, including the principles of Crown land management.

2. Considering the characteristics of the land

The following environmental, social, cultural and economic characteristics must be considered:

a. Environmental characteristics:

- habitat for threatened species or threatened ecological communities as defined in the *Biodiversity Conservation Act 2016*
- areas that are declared to have outstanding biodiversity value
- areas that form part of a state or regional biodiversity corridor
- constitutes part of a state or regionally significant environmental system or network (for example coastal wetlands, littoral rainforests, high conservation grasslands or groundcover, protected riparian land, rainforests and/or old growth forests)
- core koala habitat identified in a plan of management under State Environmental Planning Policy No. 44—Koala Habitat Protection (SEPP 44)
- whether the land contains any beach, coastal or estuary areas, or adjoins contiguous foreshore lands (the potential future effects of climate change need to be considered)

- any other significant environmental features of the land
- b. Social characteristics:
 - sporting, camping, fishing, boating, bushwalking or recreational activities by groups
 - open space that is used and accessed by the community
 - community health and wellbeing of people in the local area
 - required for core government services, infrastructure or planned future requirements
 - constitutes part of a state or regionally significant social system or network (for example racecourses, showgrounds)
 - any other significant features of the land that provide for public use and enjoyment of the land
- c. Heritage characteristics:
 - items of heritage value, including as listed in the Heritage Register or a council's Local Environmental Plan
- d. Cultural characteristics and known Indigenous aspirations:
 - items of Aboriginal cultural heritage, including artefacts and culturally significant areas
 - the capacity of the land to meet known Indigenous aspirations, including economic development
 - any other significant features of the land that relate to an Aboriginal's group's culture and identity
- e. Economic characteristics:
 - income generated by the land or identified potential to generate significant revenue for the benefit of the community
 - value of the land
 - value of assets on the land
 - value of businesses operated from the land.

3. Government priorities and decisions

The use and allocation of Crown land is guided by the priorities and decisions of government, including any State Strategic Plan for Crown land. The allocation must be consistent with the *Native Title Act 1993*.

4. Allocation of land options

Allocation of land option	When it may be appropriate	When it may not be appropriate
Reservation/dedication	Reserving or dedicating the land for a particular public purpose would be appropriate given the use of the land and the objects of the CLM Act.	If the proposed reserve/dedication purpose is inconsistent with the objects of the CLM Act and the public interest, or otherwise not achievable due to incompatibility with other legislation such as the <i>Native Title Act 1993</i> (NT Act) and ALR Act.
Vesting in a government agency	If it is in the public interest or the functions of the agency make it an appropriate manager of the land. If the land is subject to an Aboriginal Land Claim under the ALR Act and the relevant Aboriginal Land Council consents to the vesting.	If there is no linkage or synergy between the relevant agency and the current or future use of the land. If the land is subject an Aboriginal Land Claim made under the ALR Act and the relevant Aboriginal Land Council does not consent to the vesting. Incompatibility with the NT Act.

Allocation of land option	When it may be appropriate	When it may not be appropriate
Appointment of Crown land manager (CLM)	<p>If management by a CLM will ensure the values of the land are realised.</p> <p>If management by a CLM will ensure the department and minister are not responsible for managing the land.</p> <p>If there is an available CLM with the capability and capacity to perform the care, control and management functions required under the CLM Act.</p> <p>Appointment of Native Title Prescribed Body Corporate (PBC) or Land Council Crown Land Manager (CLM) via a negotiated outcome in an Indigenous Land Use Agreement (ILUA) or Aboriginal Land Agreement (ALA).</p>	<p>If the land is reserved or used exclusively for a business or commercial purpose.</p> <p>If the CLM does not have the capability and capacity to perform all of the care, control and management functions this option is not appropriate.</p>
Leasing	<p>An arrangement is required that conveys exclusive possession to a tenure holder, in return for economic return (that is rent) or social/cultural outcomes (for example lease to a charity for provision of social services).</p> <p>Exclusive possession is generally required where:</p> <ul style="list-style-type: none"> • exclusive use of the site is required • security of tenure is required • substantial structures exist or need to be constructed • commercial operations are undertaken • the income stream is significant. <p>Public safety considerations may also require exclusive use or restricted access.</p> <p>If the purpose of the lease is:</p> <ul style="list-style-type: none"> • consistent, incidental or ancillary to the reserve purpose, or • in the public interest and does not materially harm the existing reserve purpose 	<p>Exclusive possession by the tenure holder is not required.</p> <p>If the purpose of the lease is inconsistent and there is no incidental or ancillary relationship with the purpose of the reserve.</p> <p>If the lease is likely to materially harm the use of the land for the reserved purpose.</p> <p>If the land is subject to an Aboriginal Land Claim (ALC) made under the ALR Act and the proposed activity is outside existing policy for dealing in land subject to an ALC.</p> <p>Incompatibility with the NT Act.</p>

Allocation of land option	When it may be appropriate	When it may not be appropriate
Licencing	<p>An arrangement is required that facilitates multiple use and possession of land. Includes where an arrangement should be:</p> <ul style="list-style-type: none"> • non-exclusive • terminable at will • flexible and cost effective • suitable for multiple uses of the land • for short-term or intermittent use with limited property rights and interests. <p>The proposed purpose of the licence is:</p> <ul style="list-style-type: none"> • consistent, incidental or ancillary to the reserve purpose; or • in the public interest and does not materially harm the existing reserve purpose • with limited property rights and interests. <p>Licencing to a Native Title PBC via a negotiated outcome in an ILUA</p>	<p>Exclusive possession by the tenure holder is required.</p> <p>If the purpose of the licence is inconsistent and there is no incidental or ancillary relationship with the purpose of the reserve.</p> <p>If the licence is likely to materially harm the use of the land for the reserved purpose.</p> <p>If the land is subject to an Aboriginal Land Claim (ALC) made under the ALR Act and the proposed activity is outside existing policy for dealing in land subject to an ALC.</p> <p>Incompatibility with the NT Act.</p>
Easements by agreement	<p>Easements are required by private parties in response to the needs of development projects such as residential and industrial subdivisions, infrastructure projects or large-scale agricultural developments. Easements by agreement for electricity, water, sewerage, drainage, any other infrastructure or access may be granted subject to a credible business case.</p>	<p>Alternative viable solutions exist for the easement or the granting of the easement is not in the public interest.</p> <p>If the land is subject an Aboriginal Land Claim (ALC) made under the ALR Act and the proposed activity is outside existing policy for dealing in land subject to an ALC.</p> <p>Incompatibility with the NT Act.</p>
Sale	<p>The income generated by the sale is more beneficial to the people of NSW than retention of the land in the Crown Estate.</p> <p>The highest order of ownership is required given the zoning and intended land use and there are no environmental, social or cultural values remaining in the land that warrant retention in the Crown Estate.</p> <p>The sale of the land will unlock benefits to the people of NSW that could not be accessed while the land remains in the Crown Estate.</p>	<p>The income generated by the sale is less beneficial to the people of NSW than retention of the land in the Crown Estate.</p> <p>The sale of the land will not unlock benefits to the people of NSW compared to the benefits of retaining the land within the Crown Estate.</p> <p>If the land is subject to an Aboriginal Land Claim made under the ALR Act.</p> <p>Incompatibility with the NT Act.</p>

Allocation of land option	When it may be appropriate	When it may not be appropriate
Vesting with Aboriginal Land Councils or Prescribed Body Corporates	Where land is identified as being required for the negotiation of ILUAs under the NT Act, ALAs under the ALR Act, or required to reach a consent determination of Native Title, the land may be identified as appropriate to ensure that it is not used in ways that would hinder its potential utility for negotiations or the ability for the land to be transferred to the relevant NT holders or Aboriginal land council.	Where the land is not deemed necessary for the negotiation of ILUAs, ALAs or the settlement of Native Title litigation.

Procedures

The following procedures/forms support this policy:

- Allocation of land Procedure [DOC18/265121]
- Allocation of land Assessment Form [DOC19/163612]

Roles and responsibilities

- *The department:* makes decisions regarding the retention, sale, lease, licence, exchange, easement, vesting, reservation, appropriation or transfer

Safety considerations

Not applicable

Delegations

This policy does not change, remove or add delegation for any officer. Staff must comply with all relevant delegations, including those made under the CLM Act and the *Public Finance and Audit (Special Delegations) Instrument of Delegation 2016* under the *Government Sector Finance Act 2018*.

Legislation

The allocation of Crown land in accordance with this policy will be made with consideration of the provisions of the:

- *Aboriginal Land Rights Act 1983*
- *Biodiversity Conservation Act 2016*
- *Crown Land Management Act 2016*
- *Environmental Assessment and Planning Act 1979*
- *Heritage Act 1977*
- *Local Government Act 1993*
- *Native Title Act 1993 (Cth)*

Related policies

Note: The Allocation of Crown Land Policy does not interfere with the due diligence necessary to consider and process a dealing. Due diligence includes compliance with:

- Administration of Crown roads policy IND-O-250
- Leasing of Crown land policy IND-O-253
- Licensing of Crown land policy IND-O-252
- Purchasing Crown leasehold land to obtain freehold title policy IND-O-242
- Sale of Crown land policy IND-O-241
- Sale or lease of Crown land by direct negotiation policy IND-O-182

Other related documents

- Aboriginal Land Claims Procedure: *Section: 47.6.10- Restriction on dealing with land subject to an ALC* [DOC13/036553]

Superseded documents

Not applicable

Revision history

Version	Date issued	Notes	By
1	27/02/2020	New Policy	Donal O'Shea

Review date

This policy is due to be reviewed within six months, following an initial pilot period, of publication date or as legislation and business needs arise.

Contact

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