

## Leasing of Crown Land

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### Policy Statement

This policy provides for how the department will lease Crown land in accordance with *the Crown Land Management Act 2016* to optimise the social, environmental and economic benefits to the State and provide for the ongoing development and improvement of Crown land. It provides for the sustainable use and access to Crown land for a range of uses in a cost effective and transparent manner.

Our approach to leasing Crown land provides clarity and confidence to stakeholders that they will receive consistent and fair treatment when assessing lease applications, negotiating terms and conditions, including market rent and providing certainty for lessees in the ongoing management of the lease.

### Scope

This policy applies to the NSW Department of Industry – Lands & Water (the department) and sets out a framework for the appropriate and consistent determination of lease applications under the *Crown Land Management Act 2016* (the Act).

This policy does not apply to the granting of a lease by a Crown land manager under 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 legislation.

### Requirements

A lease may be issued under the Act for the exclusive occupation or use of Crown land for specified purposes.

The department will apply the following criteria before making a final decision about granting a lease over Crown land.

#### 1. General

A lease may be issued where one or more of the following apply:

- a. Exclusive possession of the land and a secure term is required
- b. Other non-exclusive users can be readily relocated
- c. Substantial structures are to be constructed on the land
- d. Substantial improvements are proposed to be made to the land
- e. Substantial Crown improvements are to be maintained on the land.

A lease will only be granted to an acceptable proponent that:

- a. Is considered acceptable proponent with regard to the 'fit and proper' criteria at Annexure A
- b. Is legally able to hold land.

The department will not progress a lease application if any of the above conditions are not met to its satisfaction.

Refer to the Guideline for the Allocation of Crown Land Leases and the Guideline for the Management of Crown Land Leases for further information on how the department issues and manages leasing of Crown land.

## 2. *Considerations and assessment*

The department will review the current and future use of specific parcels of Crown land in accordance with the department's policies, guidelines and procedures. A review may be undertaken in response to an approach from a proponent.

Requests from a proponent, including those invited by the department, must be received using the correct application form. Where requests are invited by the department, the proponent must provide additional information in the nominated format and to the required timeframe.

The department will consider the following when assessing an application for a lease:

- a. The objects of the Act
- b. The principles of crown land management
- c. The relevant provisions of the Act
- d. Relevant provisions of any other relevant legislation
- e. Requirements of the Crown lands community engagement strategy
- f. Current, permitted or potential uses of the land, including consultation with the relevant crown land manager or government agency
- g. Requirements of the *Native Title Act 1993*
- h. Pending Aboriginal land claims lodged under the *Aboriginal Land Rights Act 1983*
- i. The proponent's proposed use, financial capacity and expertise to satisfy the lessee obligations under the lease.

## 3. *Competitive process and direct negotiations*

Crown land that is available to be leased will be allocated by a competitive process, unless circumstances, as specified in the Sale or Lease of Crown Land by Direct Negotiation Policy (IND-O-182), warrant entering into direct negotiation with a proponent.

The competitive process may be either unrestricted and open to everyone to apply, or limited to a select group of proponents.

A limited competitive process will be appropriate in certain circumstances where:

- a. The parcel of land is of material benefit to only adjoining owners
- b. The parcel of land can be accessed only by adjoining owners or tenure holders, or
- c. The department can evidence, under special circumstances, that there is a genuine, limited number of proponents able to provide a submission due to the specialist nature of a site.

An unsolicited proposal will be assessed by the department in accordance with the requirements set out in the Sale or Lease of Crown Land by Direct Negotiation Policy (IND-O-182).

Refer to the Guideline for the Allocation of Crown Land Leases for information on the requirements for a business case and how the department allocates and processes a lease by direct negotiation or competitive process, and the required steps for both procedures.

## 4. *Term*

Generally leases may be granted by the department for a term of up to 25 years (including any option to renew) based on the assessment of information supplied in the business case.

Any proposal that seeks a term greater than 25 years, or to vary the term of a lease will require a more detailed business case to substantiate the request.

A business case will not be required if the grant of a lease is necessary as a result of the exclusion or excise of an area from a perpetual lease.

## 5. *Rent*

A market-based rent will be applied with reference to Part 6 of the Act. The lessees may be eligible for concessions in accordance with the Crown Land Financial Concessions Policy (IND-O-254)

## 6. *Existing leases*

A lease that contains provisions for transfer/assignment can be transferred by application.

Pursuant to section 12.13 of the Act, a lease may not be transferred if there is a debt to the Crown on the lease.

Refer to the Guideline for the Management of Crown Land Leases for information on how the department manages requests for variations, assignment, sub-leasing, mortgaging and other dealings.

## 7. *Perpetual Leases*

A perpetual lease may be granted over Crown land in the Western Division.

Part 3 Division 2, Schedule 3 of the Act sets out conditions that are taken to be included in all Western Lands leases, including perpetual Western Lands' leases.

Rental for perpetual Western Lands' leases must be calculated in accordance with the rental formulae prescribed in the *Crown Land Management Regulation 2018* (and determined by whether the lease is classified as rural or urban).

## 8. *Access*

The grant of a new lease will only be considered when legal access can be provided. Access can be in the form of direct access to a public road or by a registered easement.

## **Guidelines**

The following documents are available to download on the Crown Lands website:

- Guideline for the Management of Crown Land Leases
- Guideline for Leasing of Crown Land

## **Roles and responsibilities**

- *The department:*
  - a. Reviews and responds to lease applications in accordance with this policy and associated procedural guidance
  - b. Will comply with all legislative, policy and delegation requirements relating to lease transactions
  - c. Responds to proponents in a timely manner with information that is truthful and accurate.
- *Proponents:*
  - a. Respond to the department in a timely manner with information that is truthful and accurate
  - b. Will abide by the terms of leasing processes, including probity requirements, whether by competitive process or direct negotiation.
- *Lease holders:*
  - a. Will comply with the terms and conditions or their lease agreement.

## **Delegations**

- The delegations of the Minister for Lands and Forestry pursuant to the provisions of the Act are relevant to the implementation of this policy.
- This policy does not change, remove or add delegation to any officer.

## **Definitions**

Except for the definitions below, this policy uses the definitions contained within the Act.

- Acceptable proponent – a proponent considered acceptable, having regard to the 'fit and proper criteria' (See Annexure A)

- Competitive process – a non-exclusive process designed to introduce competition between more than one party
- Direct negotiation – negotiating directly with one proponent in accordance with the criteria specified in the Sale or Lease of Crown Land by Direct Negotiation Policy
- Proponent – a person or organisation that submits an application to lease Crown land
- Proposal (or application) – a request to lease Crown land

### Legislation

The implementation of this policy will have regard to the provisions of:

- *Aboriginal Land Rights Act 1983*
- *Crown Lands Management Act 2016.*
- *Crown Land Management Regulation 2018*
- *Environmental Planning & Assessment Act 1979*
- *Independent Commission Against Corruption Act 1988 (ICAC Act)*
- *Native Title Act 1993 (Cwlth)*

This policy is relevant to:

- *Conveyancing Act 1919*
- *Real Property Act 1900*

### Related policies

- Crown Land Financial Concession Policy (IND-O -254)
- Delegation of Authority for Crown Lands (IND-O-179)
- NSW Department of Industry Code of Conduct (IND-P-184)
- NSW Department of Industry Conflicts of Interest Policy (IND-P-183)
- NSW Department of Industry Procurement Policy (TI-A-169)
- Sale or Lease of Crown Land by Direct Negotiation Policy (IND-O-182)

### Other related documents

- Guideline for the Management of Crown Land Leases
- Guideline for the Allocation of Crown Land Leases
- ICAC Guidelines for Managing Risks in Direct Negotiations (2006)

### Superseded documents

In combination with Licensing Crown land Policy, this Policy replaces:

- Crown Lands Caravan Park Policy April 1990
- Crown Lands Policy for Marinas and Waterfront Commercial Tenures 2005
- Policy for Leasing and Licensing under s34A *Crown Lands Act 1989*
- Western Lands Leases Tenures and Conditions 2014

### Revision history

Version	Date issued	Notes	By
1.0	01/07/2018	Developed to support the <i>Crown Land Management Act 2016</i>	Director Crown Property Services

**Contact**

NSW Department of Industry – Lands & Water, Crown Property Services, Leasing

Telephone: 1300 886 235

Email: [cl.leases@crowmland.nsw.gov.au](mailto:cl.leases@crowmland.nsw.gov.au)

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

In assessing whether an individual, who is an applicant for a lease, 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 lease, 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 or insolvency.

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

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