

NSW DEPARTMENT OF INDUSTRY—LANDS & WATER

Guideline—management of Crown land leases

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Guideline for the management of Crown land Leases

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More information

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Overview

These guidelines support the *Leasing of Crown Land Policy* and provide further information on the process used by the NSW Department of Industry—Lands & Water (the department) to ensure that leases granted are appropriate, consistent and transparent.

Managing the leasing of Crown land

A lease is an authority granted by the department under the *Crown Land Management Act 2016* (CLM Act), which gives permission to exclusively occupy and use Crown land for a specified purpose and term.

These guidelines provide guidance in respect to the management of the following activities affecting Crown leases:

- transfer (assignment) of Crown land lease
- mortgage of Crown land lease
- sublease of Crown land lease.

Crown landholders must comply with the direction relevant to their activity.

These guidelines contain references to the department's website, relevant policies, other guidelines, forms and relevant information that assist applicants and any other interested party.

This guideline should be read in conjunction the *Guideline for the allocation of Crown land leases*.

Assistance

For assistance, please contact the department's Business Centre

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

Telephone: 1300 886 235

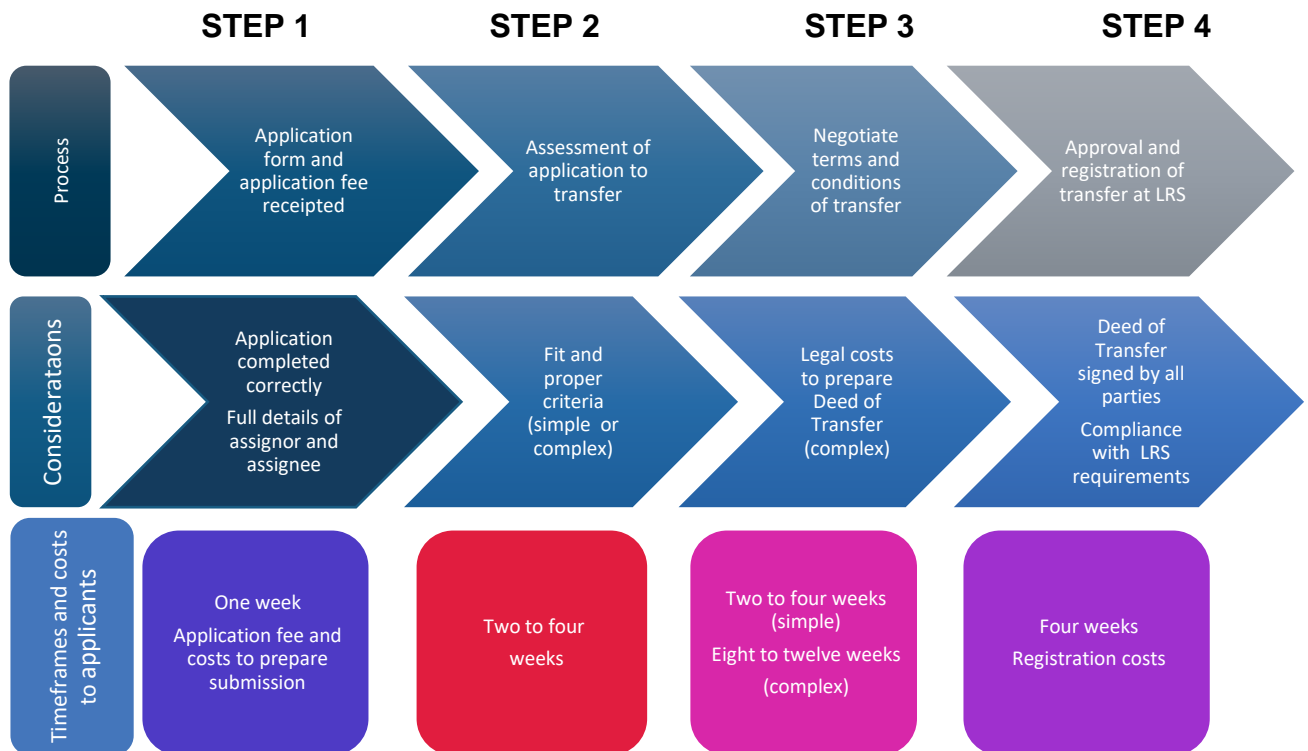
Email: cl.leases@crowmland.nsw.gov.au

Minister's consent to transfer/assign a Crown land lease

Depending on the conditions of the lease and notifications on the NSW Land Registry Services (LRS) 'Lands Title Register', it may be necessary to obtain the consent of the minister to transfer or assign a Crown land lease.

The department can deny an application at any stage during the application assessment process.

Timeline



Procedure

Step 1—Application form and application fee received

All applications are to be made using the *Consent to transfer a Crown holding application* form available from the department's website industry.nsw.gov.au/lands/use/leases.

The department receipts completed application forms and associated application fees and assigns these to the Crown Property Services (CPS) leasing team for assessment.

Applications must include all supporting documentation as detailed in the explanatory notes.

The department will send the applicant a letter acknowledging receipt of the application, as well as information regarding processing timeframes and confirmation the department will complete a detailed investigation of the proposal.

Step 2—Assessment of application to transfer

The department will undertake an initial assessment of the application to determine if there are any obvious objections to the transfer of the lease.

Applications will be assessed as either 'simple' or 'complex'.

Simple transfers are undertaken when the lease being assessed is generally minimum rent, and for a community type purpose.

Complex transfers are those types of leases where there is a commercial return or the structure of the lease contains obligations that, if unfulfilled would result in a breach of the lease conditions.

If there are no issues, the application is assessed to determine if the transfer of the lease is in the interests of the Crown. The assessment considers third party interests, statutory criteria and other relevant matters. These considerations must be addressed for an application to proceed.

The application may be denied at this stage if the transfer of the lease is not in the interest of the Crown.

Contact CPS Leasing before submitting an application to find out if the application will be considered simple or complex and to understand the application requirements.

Step 3—Negotiate terms and conditions of transfer

If the transfer is considered simple, the department will issue a letter of approval to the assignor and assignee.

If the transfer is considered complex, the terms and conditions of a Deed of Assignment are negotiated and agreed between the department, assignor and assignee.

For all approved applications, the leaseholder is issued with an original letter of minister's consent. This letter includes an expiry date for the lease.

Step 4—Approval and registration of transfer

For leases which require ministers approval the applicant will be provided with written consent.

The applicant must lodge the documentation for recording the proposed transfer of Crown land lease with NSW Land Registry Services for inclusion on the register.

The applicant is responsible for the registration of the transfer of lease.

Explanatory notes

Assignment/transfer of a Crown lease

A lease of Crown land can be bought and sold during the lifecycle of the lease.

Assigning a Crown lease involves the seller (assignor) transferring their rights under the lease to the purchaser (assignee) through a *Deed of consent to an assignment of lease* incorporating lessor's consent (Deed of Assignment).

The deed is a legal document that places the new tenant in the position of the former tenant for the remaining term of the lease. The new tenant must comply with all the lease obligations as if they were the original tenant.

The deed of assignment will be an agreement between the three parties as:

1. lessor—the State of New South Wales
2. assignor—the seller
3. assignee—the purchaser.

In some instances, such as a lease for a community purpose, simply a letter of consent from the department may be enough to approve the transfer—this will be determined on a case-by-case basis.

Assessment

Applications are assessed on their individual merits. Any decision regarding the eligibility of an application must:

- be lawful
- offer natural justice
- be based on evidence
- give reasons and provide accountability.

The decision must be consistent with the *Crown Land Management Act 2016* (CLM Act) and any other applicable law(s).

Requirements

A lease will only be assigned to an acceptable person or entity that:

- meets the 'fit and proper' criteria as detailed in the *Leasing of Crown Land Policy* (IND-O-25)
- is legally able to hold land.

The department will not progress an application if any of the above conditions are not met to the department's satisfaction.

Outstanding debt

All outstanding debt must be paid before the department will progress the request for transfer. S12.13 of the CLM Act prohibits a transfer of a lease if there is any debt owing to the Crown.

Legal and other costs

Prior to the assessment of the application, the assignor must agree to pay:

- a. the department's reasonable legal costs in connection with the assignment of the lease, with payment to be made promptly when requested

- b. any stamp duty payable on the deed and any document in connection with the deed, including penalties and fees.

Other costs may be payable by the leaseholder as part of this process. These may include:

- dealing costs with NSW Land Registry Services
- inspection costs
- costs associated with the production of certificates of title
- other consultancy costs.

Supporting documentation

The following supporting documentation is required as part of the application form and prescribed fee:

- details of the proposed assignee
- Australian Securities Investment Commission (ASIC) current and historical company extract of the proposed assignee
- demonstration of financial capacity to operate commercial business in line with the lease purpose, including, but not limited to:
 - financial statements for the past three years
 - certified copy of the contract of sale
 - registered power of attorney where applicable
 - credit report
 - public liability insurance certificate of currency
- details of relevant skills and experience aligned to the proposed activity by the proposed assignee
- evidence of the proposed assignee's capacity to satisfy the financial obligations under the lease including rent, make good, proposed capital works (if any) and maintenance
- copy of the contract for sale of the business, or the contract for the transfer of capital as agreed between the parties to the transfer of the business
- copy of all development consents, permits and/or approvals relating to the business and other relevant activities carried out, or proposed to be carried out on the property
- details of any other associated agreements to be assigned in addition to the main agreement.

The department may request any other information reasonably required for the purpose of determining whether or not the proposed assignee is a fit and proper person.

Registered clubs

For any requests for the transfer of a lease related to a registered club, the department will consult Liquor and Gaming NSW (L&G NSW) before undertaking any further assessment.

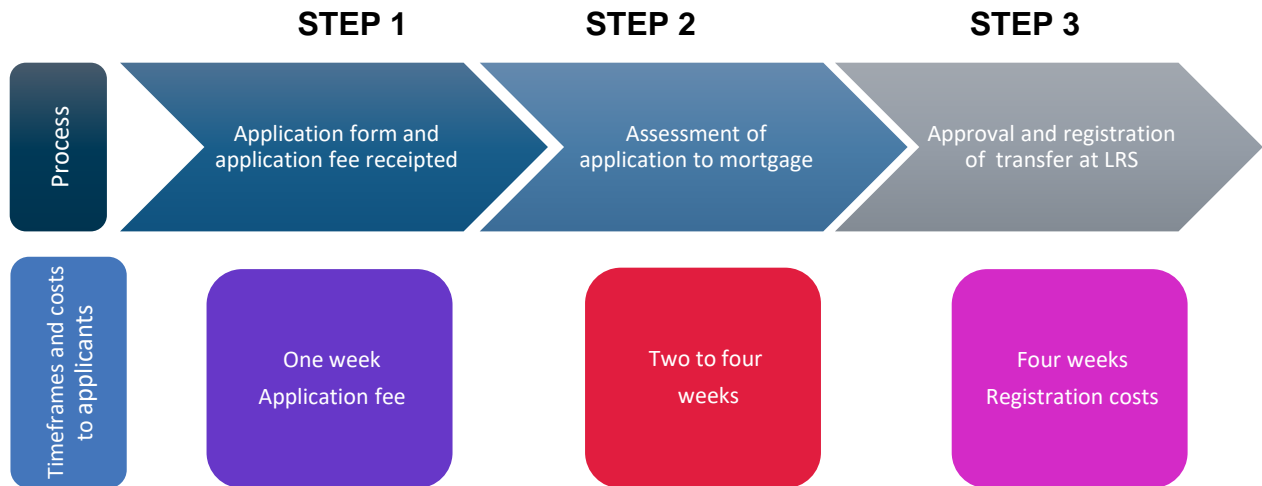
When L&G NSW responds, the department will progress the transfer and include any conditions received from L&G NSW.

Minister's consent to mortgage a Crown land lease

Overview

Depending on the conditions of the lease and notifications on the Lands Title Register, it may be necessary to obtain the consent of the minister to mortgage a Crown land lease.

Timeline



Procedure

Step 1—Lodge application

All applications are to be made using the *Consent to transfer a Crown holding application* form available from the department's website www.industry.nsw.gov.au/lands/use/leases.

The department receipts completed application forms and associated application fees and assigned these to the Crown Property Services leasing team for assessment.

Applications must include all supporting documentation as detailed in the explanatory notes.

The department will send the applicant a letter acknowledging receipt of the application, as well as information regarding processing timeframes and confirmation the department will complete a detailed investigation of the proposal.

Step 2—Assessment

The department's initial assessment of the application will determine if there are any obvious objections to the proposed mortgage of the lease. The department may refuse the application at this stage if the mortgage of the Crown land lease is not in the interests of the Crown. Any application fees will not be refundable.

Once the initial eligibility of the application is confirmed, the department will assess the application in detail. This assessment includes a review of supporting documentation and may include negotiation of any other document in connection with the application.

A list of supporting documentation can be found in the explanatory notes.

Step 3— Approval and registration of mortgage

For leases which require ministers approval the applicant will be provided with written consent.

The applicant must lodge the documentation for recording the proposed mortgage of Crown land lease with NSW Land Registry Services for inclusion on the Register.

Assessment

Applications are assessed on their individual merits. Any decision regarding the eligibility of an application must:

- be lawful
- offer natural justice
- be based on evidence
- give reasons and provide accountability.

The decision must be consistent with the CLM Act and any other applicable law(s).

Costs

Please note that other costs may be payable by the leaseholder as part of the mortgage of Crown land lease process. These may include:

- dealing costs with NSW Land Registry Services
- inspection costs
- costs associated with the production of certificates of title
- consultancy costs.

Supporting documentation

The following documentation should accompany the application form and prescribed fee:

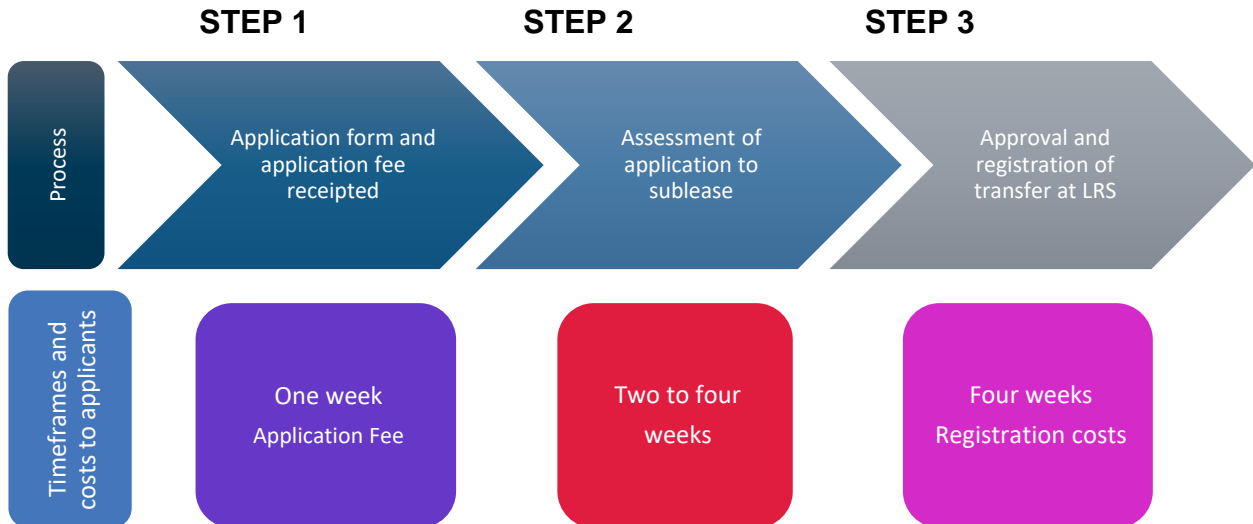
- ASIC current and historical company extract of the proposed mortgagee
- certified copy of the proposed mortgage
- any ancillary agreements connected to the mortgage of Crown land lease
- certified copy of registered power of attorney where applicable.

Minister's consent to sublease

Overview

Depending on the conditions of the lease and notifications on the Lands Title Register, it may be necessary to obtain the consent of the minister to sublease a Crown land lease.

Timeline



Procedure

Step 1—Application lodgement

All applications are to be made using the *Consent to transfer a Crown holding application* form available from the department's website www.industry.nsw.gov.au/lands/use/leases.

The department receipts completed application forms and associated application fees and assigns these to the Crown Property Services leasing team for assessment.

Applications must include all supporting documentation as detailed in the explanatory notes.

The department will send the applicant a letter acknowledging receipt of the application, as well as information regarding processing timeframes and confirmation the department will complete a detailed investigation of the proposal.

Step 2—Assessment

The department's initial assessment of the application will determine if there are any obvious objections to the proposed sublease of the lease. The department may refuse the application at this stage if the sublease of the Crown land lease is not in the interests of the Crown. Any application fees will not be refundable.

Once the initial eligibility of the application is confirmed, the department will assess the application in detail. This assessment includes a review of supporting documentation and may include negotiation of any other document in connection with the application. A list of supporting documentation can be found in the explanatory notes.

Step 3— Approval and registration of sublease

For leases which require ministers approval the applicant will be provided with written consent.

The applicant must lodge documentation for recording the proposed sublease of Crown land lease with NSW Land Registry Services for inclusion on the Register.

Explanatory notes

Supporting documentation

The following supporting documentation should accompany the application form and prescribed fee:

- certified copy of the proposed sublease
- certified copy of the registered power of attorney where applicable
- ASIC current and historical company extract of the proposed sublessee
- confirmation from the sublessor that it considers the proposed sublessee
 - is a fit and proper person
 - has the business acumen and financial capacity to operate the business and meet the terms and conditions of the sublease
 - holds or will be able to obtain all relevant licenses, approvals, and/or registrations to operate from the site
 - holds or will be able to obtain an insurance policy that meets the sublessee's risk and indemnity requirements as per the provisions of the sublease.
- Sublessee must provide a copy of a current search of the National Personal Insolvency Index for the sublessee.
- The Sublease document should contain provisions to ensure that the sublessee is aware of and bound by the terms and conditions contained within the Crown tenure.
- The following clauses are recommended for inclusion in subleases;
 - a) The Sub-Lessee hereby acknowledges and agrees that the Sub-Lessee has read and is aware of the terms, conditions and covenants on the part of the parties to Lease ?????? - Dealing ?????? (the "Head Lease") between the State of New South Wales as Lessor of the one part and the Sub-Lessor (as Lessee) of the other part.
 - b) The Sub-Lessee hereby covenants and agrees to observe, perform and comply with the covenants and agreements contained in the Head Lease subject to and for the purpose of this Sub-Lease.
 - c) The Sub-lessee covenants with the Sub-lessor to keep the Lessor indemnified against any liability under the covenants and conditions in the Head lease so far as they are applicable to the Premises
 - d) In the event of and to the extent of any such conflict or inconsistency the provisions of the Head Lease shall prevail and the Lessor shall prevail and take precedence. In the event that the Lessor taking action whereby the Head Lease is terminated then the Sub-Lessor shall be entitled to terminate this Sub-Lease and in such event the Sub-Lessee shall not claim nor shall the Lessor be liable for any compensation whatsoever by reason of termination of this Sub-Lease.

Related documents

- *Crown Land Management Act 2016*
- Crown Land Management Regulation 2018.