

Crown Land Extractive Industry Licence in the Western Division

December 2015

A licence is a right granted by the Minister, which at law, gives permission to occupy and use Crown land for a specified purpose (such as extractive industries) and term, which otherwise would not be permitted or would constitute trespass.

General

Provisions exist under Sections 34 and 34A of the *Crown Lands Act 1989* (Crown Lands Act) and Section 50A of the *Western Lands Act 1901* (Western Lands Act) for the Minister to grant a licence over Crown land in such manner and subject to such terms and conditions as the Minister determines.

Licences may be granted in respect of:

- Crown land not subject to any tenure;
- Crown land subject to a lease or licence granted under the *Crown Lands Act* and the *Western Lands Act*;
- Crown land reserved from sale; and
- Crown land reserved for a gazetted purpose (with the consent of the trustee if a trustee has been appointed).

Applications for an Extractive Industry Licence

To operate a quarry to extract materials such as sand, soil or gravel from Crown land you will need an Extractive Industry Licence.

An application for an Extractive Industry Licence can be made to the Department of Primary Industries-Lands ('the Department'). The Department promotes equitable access to, and allocation of Crown land. Therefore, any new Extractive Industry Licence will need to be offered by way of public competition, such as an Expression of Interest, unless circumstances warrant entering into direct negotiations. A number of factors are determined by the Department prior to deciding on which method of allocation to use.

A licence does not grant the licence holder exclusive possession and use of the Crown land. The Department retains ownership and may grant more than one licence over the same parcel of land.

Given this, it is recommended that once a site has been identified, proponents should notify / advise the Department of the desire for a licence.

Making an Application

1. Contact your nearest [Office](#) or call 1300 886 235 (Press 3 for licence and lease and then Press 4 for Western Lands enquiries) to discuss your proposal.
2. Complete an '**Extractive Industry Enquiry Form**' and post the application to:
Department of Primary Industries- Lands
PO Box 2155, DANGAR NSW 2309
3. Receipt of your extractive industry enquiry will trigger the Extractive Industry Licence application process.

Extractive Industry Licence Application Process

The Department's process of granting an Extractive Industry Licence requires a number of steps to take place as outlined below:

1. Receipt of a written Extractive Industry Enquiry Form from one or more proponent(s).
2. Preliminary investigation of land tenure and status, history of use, access etc.
3. Public competition process, such as Expression of Interest, whereby the Department will seek submissions with a view to obtaining sufficient information to facilitate the selection of a list of preferred proponent(s) with whom further negotiations will take place.

The Department's objectives for the public competition process include, but are not necessarily limited to, the following:

- i. Providing the general public, business and other interested parties the opportunity to licence the Crown land for the purpose of extractive industry operations;
- ii. Seeking proposals that demonstrate competence in and commitment to meeting the Government's needs on the site(s), which may include a business plan that covers technical and financial management, economic development (eg. contracts), employment opportunities and overview of environmental management (including sound land and natural resource management practices and rehabilitation works);
- iii. Nomination of rent, royalties and security deposit;
- iv. Consideration of land use proposals against the best interests of the public and State and consistency with the principles of Crown land management as defined in Section 11 of the *Crown Lands Act 1989* (shown in the extract below); and

Section 11 (Principles of Crown land management)

For the purposes of this Act, the principles of Crown land management are that:

- (a) *environmental protection principles be observed in relation to the management and administration of Crown land,*
- (b) *the natural resources of Crown land (including water, soil, flora, fauna and scenic quality) be conserved wherever possible,*
- (c) *public use and enjoyment of appropriate Crown land be encouraged,*
- (d) *where appropriate, multiple uses of Crown land be encouraged,*
- (e) *where appropriate, Crown land should be used and managed in such a way that both the land and its resources are sustained in perpetuity, and*
- (f) *Crown land be occupied, used, sold, leased, licensed or otherwise dealt with in the best interests of the State consistent with the above principles.*

- v. Due consideration to whether Native Title and any Aboriginal Land Claim affects the Crown land before appropriate disposal action (including licencing) can be undertaken by the Department.
4. Letter will be sent to lessee advising that the Department is considering granting an Extractive Industry Licence and requesting advice on land management issues including access and property management.
5. Receipt of submissions from proponents.
6. Assessment and review of submissions received by an Evaluation Panel, which then reports on the findings of the assessment, and recommends the preferred proponent(s) for approval by the Department.
7. Letters will then be sent to all applicants advising if they are the preferred proponent(s) or if they were unsuccessful.
8. Negotiation of an Extractive Industry Licence agreement with the successful proponent (including providing the successful proponent with sufficient time to complete environmental assessments, and obtain development consent and other necessary approvals).
9. Receipt of an **application for an Extractive Industry Licence** on the approved '**Licence Application Form**' from the successful proponent(s), accompanied by the application fee and supporting

information. **The application fee is currently \$383.60.** The application form and cheque or money order should be posted to PO Box 2155, DANGAR NSW 2309. Supporting information required includes (but is not limited to):

- A Statement of Environmental Effects or an Environmental Impact Statement (if required) for the entire proposal, which is to include an Environmental Management and Rehabilitation Plan (EM&RP) for all areas to be disturbed.

The annual volume and total volume of proposed extraction, together with the total area and certain distances, are key components in determining if the proposal is considered to be designated development. If the proposed works are considered to be designated development then an Environmental Impact Statement (EIS) is required to be prepared for the relevant site(s) before the Department can assess and determine the application under Part 5 of the Environmental Planning and Assessment Act 1979. If an EIS is required then the EM&RP can be incorporated with the EIS document.

- A location diagram of the proposed site(s) and work(s), preferably including GPS boundary coordinates (the datum system used must be specified);
- A statement from the local Aboriginal community regarding the presence or otherwise of matters that may be of concern to them within each of the proposed sites (including features such as scarred trees, burial sites, ceremonial sites);
- Development Consent from Council (if required). If Development Consent is required, then the completed Development Application (DA) document, together with an application for Landowner's Consent, must be forwarded to the Department for Landowner's Consent (with payment of \$65.70, being the application fee for Landowner's Consent).

The Department is the consent authority for development applications in the Unincorporated Area of NSW under Part 3A of the *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007*. If Development Consent is required, then the completed application for Landowner's Consent must be forwarded to the Department for Landowner's Consent (with payment of \$65.70, being the application fee for Landowner's Consent).

- The Department strongly recommends that the proponent(s) consult with and obtain the consent of the lessee, where proposed activities impact upon Western Lands Leases, regarding issues such as access routes, maintenance of access roads, operation of gates, dust suppression, hours of operation, planned grazing/farm operations and impacts from extraction activities etc. In the case whereby the proponent is the holder of the affected Western Lands Lease, then a statement to that effect will be sufficient.
- If the proposed site(s) is likely to impact upon native vegetation, the proponent(s) is required to seek and obtain approval from the relevant Local Land Services (LLS) for any clearing that may be required. If no approval is required from the LLS, then written evidence from the LLS is required to this effect.
- If material from the proposed site(s) is to be transported using public roads, a statement from the Roads and Maritime Service (RMS) detailing requirements for signage, road and/or track upgrades, and any other associated matters is to be provided. Any conditions stipulated by the RMS are also to be provided to the Department. *(Note: Only required for proposals in the Unincorporated Area, including transportation).*
- If the proposed site(s) are within a watercourse, approval or concurrence from the Department of Primary Industries - Water (DPI - Water) is required for under either the *Water Act 1912* or the *Water Management Act 2000*, which may include a Controlled Activity Approval and/or conditions of concurrence. If no approval or concurrence is required from DPI - Water, then written evidence from DPI - Water is required to this effect. *(Note: Only required for proposals in the Unincorporated Area, including transportation).*
- A statement from the NSW Environmental Protection Authority (EPA) is required that details the approval or concurrence of the activity. If no approval or concurrence is required, then written evidence is to be provided to the Department to this effect. *(Note: Only required for proposals in the Unincorporated Area, including transportation).*

The *Environmental Planning and Assessment Regulation 2000* and *State Environmental Planning Policy (Mining, Petroleum Production and Extractive Industries) 2007* outline the factors that classify designated development with respect to extractive industries. The proponent is required to consider each of these factors and provide an EIS for the site(s) that fit the criteria of designated development.

10. Offer of the draft Extractive Industry Licence to the successful proponent(s).
11. Receipt of the signed licence offer, following which the Department then executes the licence and sends the licence document back to the successful proponent(s).

Licence Terms and Conditions

Licence conditions help to clearly explain what the land can be used for and what you are required to do with your licence for that use. They give peace of mind to both you as the licence holder and to other people who may have dealings with that land. They also help to ensure that all licence holders have the same responsibilities to manage their licence area, consistent with industry best practice. As with any contract or lease, the conditions also make clear the rights of both the licensee (you) and the landlord (the Department).

There are two sets of conditions in an Extractive Industry Licence. One set is standard, which applies to all NSW Crown Extractive Industry Licences, and the other set is a group of additional special conditions that may apply to the licence area based on the specific site you are applying for.

Environmental conditions are required to ensure that you understand both the environmental regulations that apply to Crown land, and also help you to make your licence area more productive by following established best extractive industry practices.

Annual Rent, Royalties and Security Deposits

Extracted materials (including gravel, sand, loam and hard rock) are considered to be valuable Crown assets that are expected to obtain a suitable economic return to the Government to fund ongoing management and care of the Crown land estate.

The successful proponent(s) may also be required to prepare a business plan outlining the purpose of the proposal, the benefit to be gained by the proponent, as well as the forecast or planned annual volume of extraction to be undertaken at the site (such as a cost-benefit analysis). The business plan will be used to determine the feasibility of the proposal.

Any business plan may be used to determine the annual rental and/or a minimum monthly royalty payable to the Department. Royalties on any additional material extracted over and above the minimum royalty amount will be payable at the end of each calendar year.

If the licence is approved, the holder will also be responsible for paying annual rent to the Department. Annual rent payable will be adjusted in line with the Consumer Price Index (CPI).

The holder will also be required to provide the Department with an appropriate security deposit to ensure compliance with the conditions of the licence, ongoing maintenance and environmental management and rehabilitation.

Compliance

It is a condition of the Extractive Industry Licence that the holder must comply with all terms and conditions of the extractive industry licence.

Failure to comply may lead to direction from the Minister for the licence holder to cease operations on the land under licence and/or remedy at his/her cost. Should licence holders not comply with directions provided by the Minister, the licence may be terminated.

“Transfer” of a Licence

There are restrictions on the transfer of a licence under Section 48 of the [Crown Lands Act](#). Many proposals that purport to seek “transfer” of the interest in a licence may only be dealt with, at the discretion of the Minister, by revocation of the existing licence and the grant of a new licence as a separate entity.

While parties may enter into a private contract and lodge an application for ‘revocation of existing tenure and issue of a new licence’, the Department will determine whether public competition will be invited

where a request to transfer an existing extractive industry licence has been received or whether the request can be treated as an application for a direct deal/negotiation.

At the sole discretion of the Minister a new licence may be offered to the incoming party with rent, terms and conditions considered appropriate.

Termination of a Licence

A licence may be terminated at any time by the Minister and no compensation is payable.

A licence may be terminated at any time by the holder subject to the area being deemed to be in a satisfactory condition and rehabilitated in accordance with the EM&RP prepared for the extraction site.

It should be noted that any application for an extractive industry licence will be investigated by the Department and will be assessed on its merits. **No guarantee to the success or otherwise of the application can be given.**

More information

For further information regarding Crown land licences, go to www.crownland.nsw.gov.au

For information specific to Extractive Industry Licences in the Western Division, email clwestern.region@crownland.nsw.gov.au or call 1300 886 235 (press 3 for licence and lease enquiries and then press 4 for Western Lands enquiries).

Other Resources

- Local Land Services: www.lls.nsw.gov.au
- Department of Primary Industries: www.dpi.nsw.gov.au
- Office of Environment and Heritage: www.environment.nsw.gov.au
- Soil Conservation Service: www.scs.nsw.gov.au

For updates go to www.crownland.nsw.gov.au

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