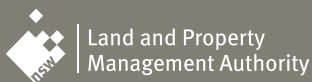


NSW Crown land

Perpetual lease purchase application kit



Application to purchase checklist

- Have you used a separate application form for your perpetual lease?
- Have you included the prescribed \$398.00 fee for each application?
- Have you completed all parts of the form?
- Have you signed the form? The form must be signed by all registered holders.
- Have you gained consent and the signature/letters of concurrence from all mortgagees?

Please check that all details are correct as the form will be returned if information is missing. Upon completion post the form/s and fee/s to your local Crown Lands district office. To find your nearest office visit www.lpma.nsw.gov.au.

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1. General information

1.1 Leases that apply to this application kit

The information detailed in this application kit applies to all perpetual leases not subject to periodic rent redeterminations.

Holders of eligible perpetual leases may apply to convert to freehold at a purchase price of 3% of the current land value or the notified capital value, whichever is the lesser amount, under new legislation introduced in 2004. The purchase price is not payable by annual instalments.

Holders of perpetual leases subject to periodic rent redeterminations may still be eligible to make application to convert to freehold. However, the purchase price will be either the notified capital value recorded in the Land and Property Management Authority's (LPMA) records or the market value of the land.

1.2 Timeframe for lodging an application

Applications lodged prior to 9 March 2009 will continue to pay the current annual rental (subject to Minimum Rent provisions) on their perpetual lease account while their application is processed.

An application to convert to freehold lodged after 9 March 2009 will still be accepted. However, the rent for the perpetual lease account will change to a market-based rent and will be subject to LPMA's statutory minimum rent provisions, pending completion of the application.

1.3 Why should I apply to purchase my perpetual lease?

By converting to freehold you own the land outright and are no longer required to pay an annual rent to LPMA.

Should you elect not to apply to convert your perpetual lease to freehold prior to 9 March 2009, the rent for the perpetual lease account will change to a market based-rent and will be subject to LPMA's statutory minimum rent provisions.

2. Perpetual lease purchase fee schedule

This special purchase offer only applies to perpetual leases NOT subject to rent redetermination.

2.1 What are the standard fees?

There is a prescribed application fee of \$398.00 which is non-refundable in the event the application is not successful. GST does not apply to this application fee.

A \$92 registration fee will apply to register the dealing on title to finalise the purchase.

2.2 What additional fees may be required?

Survey costs and stamp duty may apply. The applicant will be advised as part of the application process if either of these costs is incurred and when payment is due. Stamp duty is calculated on the determined purchase price.

2.3 How is the purchase price calculated and when is it due?

The purchase price is determined as at the date the application is lodged.

The purchase price to convert will be the lesser of either:

- 3% of the current land value based on information provided by the State Valuation Office

- the notified capital value as recorded by LPMA plus quarterly CPI adjustments from 1 May 1990.

The notified capital value is the value of the land determined as the date the lease was originally granted plus quarterly CPI adjustments from 1 May 1990.

The applicant will receive a 'letter of offer' detailing the purchase price to convert their perpetual lease to freehold title. Payment of the purchase price will be required in full within six (6) weeks of the date of this advice. Penalties may apply if full payment is not received within the specified time frame. The new legislation does not provide for the payment of the purchase price by way of annual instalments.

2.4 Is GST incurred?

GST may apply depending on the nature and use of the subject land and/or premises. GST is calculated on the determined purchase price.

2.5 Will I continue to pay rent?

Any rental arrears and/or fines outstanding on the perpetual lease account must be paid prior to an application being approved.

3. The purchase/ conversion process

When your application is received it will be checked to ensure you have provided all the required information. If the form is not complete, it will be returned to give you an opportunity to lodge a valid application. When your application is accepted you will receive a letter of acknowledgement.

3.1 Initial investigations

Once the application to purchase has been lodged, LPMA must obtain certain information that will be used to determine if stamp duty or survey fees will apply to your application. This information will also be required for other stages of the purchase process. The preliminary investigation includes:

- determining the current land status
- obtaining the current land value
- verifying structures and usage
- identifying any covering reserves
- ensuring consent has been obtained from mortgagees.

3.2 Referencing authorities

LPMA has a statutory obligation to reference other agencies. This consultation ensures environmental, conservation and vegetation values, amongst other things, are taken into consideration when assessing your application.

3.3 Environmental consideration

An assessment is carried out to identify environmental values. This may include a property inspection to verify any findings and to discuss management options with the landholder.

Where LPMA identifies significant conservation values, covenants are placed on the title of the freehold land to protect environmental values prior to the conversion to freehold.

Further environmental protective measures will see restrictions on subdivision, and/or restrictions on the separation of multiple lots, imposed on certain titles upon conversion.

3.4 Administrative procedures

Once all initial investigations, referencing and environmental considerations are completed various administrative procedures need to be performed by LPMA such as:

- determination of the purchase price
- preparation of dealings for lodgment
- revocation of any covering reserves where required
- advising authorities and mortgagees of the proposed purchase.

4. Lodging the application form

Applications must be made using the specified application form which can be:

- obtained from a Crown Lands Division district office
- downloaded from www.lpma.nsw.gov.au.

A separate application form must be lodged for each perpetual lease account. Multiple applications for leases held by the same registered holder will only incur one application fee provided they are lodged at the same time.

You must gain the consent of your mortgagee/s prior to lodging an application. If there is more than one mortgagee all mortgagees are to sign the application or provide an accompanying letter of concurrence.

4.1 Accompanying notes

Introduction

These notes are designed to assist you complete that part of the application relating to the category of the supply of land being purchased for GST purposes. They provide preliminary guidance only and should not be relied on as advice. It is recommended that

you seek your own professional advice before you complete your application.

LPMA will not be liable for any loss you may suffer as a result of relying on the information contained in these notes. You will also be liable for any loss LPMA suffers if you do not provide accurate information.

Farmland

Special GST rules apply in some cases where farmland is sold. The rules apply if:

- a government agency (such as LPMA) is selling the land to you
- it is land on which a 'farming business' is the predominant activity that has been performed on the land
- the 'farming business' has been carried on for at least the period of five years before the sale
- you intend to carry on, or to continue to carry on, a 'farming business' on the land.

These rules are set out in section 38-480 of *A New Tax System (Goods and Services Tax) Act 1999*. There is no definition of 'farmland' in the GST rules. However, if a 'farming business' is the predominant activity performed on the land in the last

five years before the sale, the land will generally be 'farmland' for these purposes.

A 'farming business' exists when an entity (i.e. person, company, etc):

- (a) carries on a business, which means that the activities performed are not in the form of a hobby or a private recreational pastime. The activities should be conducted, amongst other things, with a profit motive, in a consistent and regular way and involve trade
- (b) the business involves:
 - cultivating or propagating plants, fungi or their products or parts (including seeds, spores, bulbs and similar things) in any physical environment
 - maintaining animals for the purpose of selling them or their bodily products (including natural increase)
 - manufacturing dairy produce from the raw material that the entity produced
 - planting or tending trees in plantation or forest that are intended to be felled.

Unimproved land

Special GST rules may apply if unimproved Crown land is sold. Therefore, it is very important that you determine whether your intended purchase involves land with improvements or is unimproved land for GST purposes.

Land with improvements

The following are considered to be examples of 'improvements on land'.

- Houses, town houses, stratum units, separate garages, sheds and other outbuildings.
- Commercial and industrial premises.
- Farmhouses, farm outbuildings, internal fencing, stockyards, wells and bores, excavated tanks, dams, surface drains, culverts, bridges, sown pasture, formed internal roads and irrigation layouts.
- Formed driveways, swimming pools, tennis courts and walls.
- Any other similar buildings or structures.

Where improvements such as these exist on the land to be purchased, the supply **will not qualify** as a supply of unimproved land.

Unusable structures

However, in certain limited circumstances where these structures exist on land, the land may still qualify as 'unimproved land'. These circumstances are where the structures on the land are in all respects unusable and/or subject to a demolition or similar order made by an appropriate authority and are fully removed before the supply of the land is made.

Public improvements

Public improvements which exist beyond the boundaries of the land in question will not be taken into account in determining whether land is land on which there are no improvements. Public improvements include such things as paved roads, kerbing, channelling and water supply infrastructure.

Fencing

Internal fencing (that is fencing constructed within the boundaries of a parcel of land) will be considered as improvements on land. However, 'external' fencing which comprises a dividing fence (that is a fence which has been constructed to delineate the perimeter or boundary of a parcel of land) will not be an improvement for these purposes.

Land with no improvements

Examples where work performed on land is not regarded as 'improvements' for GST purposes include:

- external fencing
- clearing of timber, scrub or other vegetation
- excavation, grading or levelling of land, including manholes
- drainage of land including interallotment drainage pits
- building up of soil fertility
- removal of animal pests, rabbit burrows etc.
- removal of rocks, stones or soil
- filling of land
- infrastructure for the reticulation of utilities.

These works performed on land (sometimes referred to as site improvements or site works) are not 'improvements' for the purposes of the GST legislation. Therefore, land with these sorts of site works **will qualify** as unimproved land.

Please note that the various examples referred to above are not meant to be exhaustive. They are designed to assist in the identification of improvements 'on' land for GST purposes. In all cases it will be the particular facts of the case which will determine whether there is an improvement 'on' the land.

Residential premises

Special GST rules apply to sales of residential premises. For a supply to qualify as a supply of residential premises for the purposes of GST law, two conditions must be satisfied. These are:

- (a) that the premises are currently occupied as a residence, or are intended to be and are capable of being occupied as a residence
- (b) you, as the purchaser, intend that the premises will be used predominantly as residential accommodation after the sale (whether personally living there or someone else taking up residence).

For the first of these conditions to be fulfilled, the Australian Taxation Office states that:

- a building must be affixed to the land
- the building must have the physical characteristics that enable it to be occupied or be capable of occupation as a residence. These characteristics will generally include sleeping accommodation and basic facilities for daily living even if for a short term, which includes areas for eating and bathing.

The premises can be in any form (detached or semi detached, apartments, strata title or single rooms) provided that they have the appropriate physical characteristics of a residence.

Whether these physical characteristics exist will always be a matter of fact. However, these characteristics must also be considered in the context of the intended usage of the premises and the extent to which the premises are capable of being used for residential accommodation if the premises are to qualify as residential premises.

For example:

- dilapidated residential buildings will not be 'residential premises' because they are not capable of being used for residential accommodation
- houses that have been fitted out for business or commercial use will generally not be residential premises because they are not intended to be used for residential accommodation
- despite land zoning requirements to the contrary, a residence has been built. While residential accommodation in these circumstances is not authorised, these premises can still qualify as residential premises if the physical characteristics are present and the premises are capable of and intended to be occupied as a residence.

New residential premises

Supplies of 'new' residential premises are subject to different GST rules to residential premises. The definition of new residential premises for GST purposes is quite technical and is unlikely to apply to the majority of intended purchases from LPMA. Therefore, you should take great care and seek further advice if you intend to nominate this category of supply on your application.

In summary, the GST law provides that new residential premises means premises that either:

- (a) have not been previously sold as residential premises and have not previously been the subject of a long term lease
- (b) have been created through substantial renovations of a building
- (c) have been built, or contain a building that has been built, to replace demolished premises on the same land.

However, the premises are not new residential premises if the premises have been used for making input taxed supplies of residential rent for the period of at least five years since the premises either:

- (a) first became residential premises, where the residential premises have not previously been sold as residential premises and have not previously been the subject of a long term lease
- (b) were last substantially renovated, where premises have been created through substantial renovations of a building
- (c) were last built, where the premises have been built or contain a building that has been built to replace demolished premises on the same land.

5. FAQ

1. How do I know if the purchase price for my perpetual lease is a notified capital value or 3% of the current land value?

The Land and Property Management Authority (LPMA) will determine the current land value as at the date the application is received by using valuation information provided by the State Valuation Office.

The notified capital value is the value of the land determined as at the date the lease was originally granted plus quarterly CPI adjustments from 1 May 1990.

LPMA will compare the notified capital value (if applicable to your lease) with 3% of the current land value. A letter of offer to purchase the perpetual lease will then be sent, with the purchase price being the lesser of these two (2) amounts.

2. How does LPMA determine what covenant/s are to be placed on title?

- A covenant is a legal obligation or restriction that is attached to the title of the land.
- The decision to include any covenants or restrictions on the title of a converted perpetual lease will be determined by the Minister

and based on conservation, cultural, heritage or other significant values as assessed by LPMA.

- In the case of some leases (Crown leases, prickly pear leases and settlement leases) the Department of Environment and Climate Change has a statutory consultation protection role and will therefore have reviewed the individual assessment and proposed protection mechanisms (i.e. apply covenants or refuse application). The final decision is with the Minister for Lands (or delegate).
- There is no provision for appeal/objection against the decision to include covenants on the title of a converted perpetual lease. However, if the applicant does not agree with the terms of the covenant, the conversion application may be withdrawn and the perpetual lease will have a market-based rent applied, subject to statutory minimum rent provisions.

3. In what form will the covenant/s and/or restriction on subdivision be?

- The covenant/s and/or restriction on subdivision will be in the form of a restriction on use or notation in the Second Schedule of your Certificate of Title.

4. How can the covenant/s and/or subdivision restriction be removed?

- Covenants cannot be removed from title without the consent of all parties, including the Minister for Lands. As the covenant will be imposed to protect identified conservation and/or environmental attributes, it is not envisaged that the Minister will consent to the removal of any covenant.
- An application may be lodged to remove the restriction on subdivision from title. A decision to remove the restriction on subdivision will consider the impact of the proposal on conservation and/or environmental attributes. The Minister for Lands must also obtain the concurrence of the Minister for Climate Change, Environment and Water before a restriction on subdivision is removed from title.

5. Will there be any exclusions and/or easements?

- Currently, the only public purpose for which an exclusion may be made, other than for roadway, is access.

6. How will perpetual leases formerly affected by the ‘moratorium’ be dealt with under the new legislation?

- In the 1980s and 1990s, a ‘moratorium’ on the sale of perpetual leases was put in place to freeze or put on hold conversions until the environmental values of individual leases were appropriately assessed.
- Holders of those perpetual leases formerly affected by the ‘moratorium’ can still apply to convert to freehold.
- As with previous legislation, conversion of such perpetual leases will still require consultation with other government agencies, such as Forests NSW and the Department of Environment and Climate Change, and may not result in approval to convert.
- The new legislation still allows for land to be retained in public ownership for the protection of significant conservation or environmental values.

- The legislative changes have made provision for the Minister for Lands to place covenants on the land as part of the conversion process from perpetual lease to freehold to protect the land from subdivision without the Minister's consent and/or for the specific protection of environmental or other significant values.
- A covenant is a legal obligation or restriction that is attached to the title of the land.

7. LPMA had previously entered into agreements regarding 'moratorium' type leases. What will happen to my application, as it is yet to be finalised?

- All such applications will need to be re-referred to an environmental assessing process in accordance with the 2004 legislation.

8. I can't afford to pay the purchase price in one lump sum. Can I pay it off?

- The purchase price is required to be paid in full within six (6) weeks of the date of the letter of offer. Applicants may seek alternative means of financing their purchases of perpetual leases within the private sector.

- Penalties will apply if full payment is not received within the specified time frame.

9. If my application to convert is refused will I be forced to pay a market-based rent?

- If an application to convert is refused you will continue to pay the same rent as you are currently charged, subject to LPMA's statutory minimum rent provisions.

10. Can I object to the purchase price?

- An applicant cannot object to the purchase price determined to convert their perpetual lease to freehold title.

For more information

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