

Licensing of Crown land

Policy IND-O-252 Version 3.0

Policy statement

This policy provides for how the NSW Department of Planning, Housing and Infrastructure – Crown Lands (the department)¹ may grant a licence to authorise the use and occupation of Crown land in accordance with the *Crown Land Management Act 2016* (the Act).

Licensing allows the department to facilitate multiple uses of Crown land to deliver economic, social, cultural and environmental value, while ensuring its appropriate use and management. This policy will help ensure that the department's approach to licensing is consistent and equitable across the State and meets the diverse needs of community and stakeholders.

Scope

This policy only applies when the department grants a licence to occupy and use Crown land under the Act². It does not extend to licences for unauthorised users or occupiers of Crown land issued under section 5.26 of the Act.

This policy does not affect any requirement for an applicant to obtain relevant approvals under the *Environmental Planning & Assessment Act 1979* or other applicable legislation.

The department retains the discretion to grant or not grant a licence despite anything in this policy.

Requirements

When a licence may be granted

The department may grant a licence under this policy where at least one of the following apply:

- the occupation/use of the land is for a common purpose set out in Annexure A or for any other purpose that the department, in its discretion, may consider appropriate
- the occupation/use of the land is for a short, temporary or intermittent term

¹ Under delegation from the Minister responsible for the *Crown Land Management Act 2016*

² This policy does not apply to Crown land managers granting a licence under the *Crown Land Management Act 2016* or the *Local Government Act 1993*. For guidance about how Crown land managers may grant licences refer to reservemanager.crownland.nsw.gov.au

- there are multiple users of the land
- multiple use and occupation of the land will be required in the future
- a lease is not appropriate under the *Leasing of Crown Land Policy* (IND-O-253).

The above does not limit the circumstances in which the department may grant a licence.

Granting a licence by direct negotiation

When considering whether to grant a licence, the department will generally undertake a competitive process that allows other parties to express their interest.

However, the department may grant a licence by direct negotiation, rather than a competitive process, where for example one or more of the following applies:

- any delay in granting the licence would threaten public health, safety or the environment or create a serious financial or other risk to the department
- the licence is of a unique nature and the applicant is the only person who can feasibly use the Crown land for the purpose of the licence
- the licence is of low value and would not provide a value for money return if granted via a competitive process.

In any case, the department retains the discretion to undertake a competitive process to grant a licence even if one or more of the above applies.

Assessing licence applications

The department will only assess complete licence application forms where the applicant has submitted all required documentation in the manner and form specified by the department.

In assessing a licence application, the department will consider the requirements of the Act and other relevant legislation including the *Environmental Planning and Assessment Act 1979*, *Native Title Act 1993 (Cth)* and *Aboriginal Land Rights Act 1983*. The department will also consider the suitability of the applicant using the 'fit and proper' criteria at Annexure B.

Term

Licence type	Term
Short-term licences granted under section 2.20 of the Act for a prescribed purpose in clause 31 of the <i>Crown Land Management Regulation 2018</i>	Up to the maximum term prescribed in clause 31 of the <i>Crown Land Management Regulation 2018</i>

Licence type	Term
Licences for domestic waterfront facilities	20 years or the life of the domestic waterfront facilities, whichever is less
Licences for communication infrastructure	20 years
All other licences	Assessed on a case-by-case basis

Rent

A market-based rent will apply to all licences with reference to Part 6 of the Act, except where:

- an Independent Pricing and Regulatory Tribunal recommendation has been adopted,
- a licence is exempt by its terms and conditions, or
- the department has granted a licence holder a concession under the *Crown Land Financial Concessions Policy* (IND-O-254).

Transfer of licences

Licences generally not transferrable

Most licences cannot be transferred. Instead, an existing licence must be revoked, and a new licence applied for. The department will assess the new application in accordance with relevant legislative requirements and this policy. If the department grants a new licence it will commence on a date agreed by the department and incoming and outgoing licence holders.

Automatic transfer of licences that provide a benefit to freehold or leasehold land

If a licence provides a benefit to freehold or leasehold land, it will automatically transfer under section 5.27 of the Act when the freehold or leasehold land transfers (unless the Minister has, on the application of the existing licence holder, revoked the licence before the freehold or leasehold land transfers). The transferee will automatically become the licence holder from the date of transfer and will become liable for compliance with the terms and conditions of the licence and payment of rent and other fees, including any arrears. The transferee must provide notice to the Minister of the transfer of the freehold or leasehold land within 28 days of the transfer.

Licences containing transfer conditions

If a licence contains conditions allowing transfer it may be transferred in accordance with section 5.24 of the Act. Transfer can be requested by the incoming or outgoing licence holder with agreement from both parties.

Renewal of licences

Licences cannot be renewed upon expiry. A licence holder must apply for a new licence to continue use and occupation of the land.

Alteration of licences

A licence holder may apply to alter a licence or the department may alter a licence. The department will only alter licences to:

- reduce the area of the licence
- remove a purpose of the licence
- add a new purpose that does not increase the impact on the land, or
- amend conditions in a manner that does not increase the impact on the land.

Revocation of licences

The department may revoke a licence at will under section 5.23 of the Act or upon consideration of a request from a licence holder.

A licence holder is not entitled to receive any compensation in the event a licence is revoked. Prior to the date of revocation, unless directed otherwise by the department, a licence holder must:

- return the land to its condition on commencement of the licence
- ensure all terms and conditions of the licence have been complied with
- pay all outstanding rent and any other amounts if applicable.

Crown road considerations

Under section 152A of the *Roads Act 1993*, the department³ may grant a licence over a Crown road if:

- the proposed purpose of the licence is consistent with the right of passage and access for the road, or

³ Under delegation from the Minister responsible for the *Crown Land Management Act 2016*

- an alternative right of passage is provided that the department accepts is substantially as convenient as passage through the existing Crown road.

Roles and responsibilities

The department:

- Will receive, assess and determine licence applications and respond to other licence requests in accordance with this policy and the *Licensing of Crown Land Guidelines*

Applicants:

- Will provide true and accurate advice and information when applying for a licence
- Will respond within reasonable timelines and follow application requirements set by the department.

Licence holders:

- Will comply with the terms and conditions of their licence agreement, including the payment of rent

Delegations

This policy does not change, remove or add delegation to any officer. Specific delegations exist for the Act and financial decisions also apply, which must be adhered to.

Legislation

- *Native Title Act 1993* (Cth)
- *Aboriginal Land Rights Act 1983* (NSW)
- *Crown Land Management Act 2016* (NSW)
- *Crown Land Management Regulation 2018* (NSW)
- *Environmental Planning and Assessment Act 1979* (NSW)
- *Roads Act 1993* (NSW)

Related policies

- Administration of Crown roads Policy IND-O-250
- Crown Land Financial Concession Policy IND-O-254

- Delegations of Authority for Crown Land Policy IND-O-179
- Leasing of Crown Land Policy IND-O-253

Other related documents

- Automatic licence transfer – Guidelines
- Domestic waterfront licences – Guidelines
- Licensing of Crown Land – Guidelines
- Short-term licence – Guidelines
- Community Engagement Strategy

Revision history

Version	Date issued	Notes	By
1.0	01/07/2018	Developed to support the <i>Crown Land Management Act 2016</i>	Director Tenure & Business Programs
2.0	22/02/2020	Policy updated to reflect machinery of government changes	Policy team
3.0	08/07/2024	Revised and updated as necessary	Policy team

Contact

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Annexure A – Common purposes that a licence may be granted for

- Communication infrastructure
- Domestic waterfront facilities (as set out in the Domestic Waterfront Licences – Guidelines)
- Extractive industries (i.e. to operate a quarry to extract sand, soil or gravel)
- General purposes, including, but not limited to:
 - Aboriginal cultural activities
 - access
 - community facilities
 - irrigation
 - pump site and pipelines
 - site investigations
 - storage
 - structures
- Grazing
- Oyster farming activities
- Short term purposes as set out in clause 31 of the Crown Land Management Regulation 2018

Annexure B – ‘Fit and proper’ criteria for licence applicants

A licence applicant must be either:

- an individual over the age of 18, or
- a registered company or an incorporated association (an entity)

In assessing an individual, the department will consider whether:

- The individual has been declared bankrupt or sought protection from bankruptcy laws in the past 5 years,
- The individual has had a prior licence or other tenure granted by the department terminated for non-compliance or has had compliance action undertaken against them, and
- The individual has had debt management action pursued against them for the non-payment of rent under a licence or other tenure granted by the department.

In assessing an entity, the department will consider whether:

- The entity is an Australian registered company or an incorporated association,
- Any currently appointed directors and/or company secretaries:
 - have been registered as banned and disqualified individuals with Australian Securities and Investment Commission; or
 - are subject to prosecutions which have been commenced by Australian Securities and Investment Commission or any other relevant authority and are yet to be completed,
- Any currently appointed directors and/or company secretaries have been disqualified from managing corporations under Part 2D.6 of the *Corporations Act 2016*,
- The entity or any affiliated entities, have entered into voluntary administration, receivership, liquidation of insolvency,
- The entity or its currently appointed directors have had a prior licence or other tenure granted by the department terminated for non-compliance or has had compliance action undertaken against them, and
- The entity or its currently appointed directors have had debt management action pursued with them for the non-payment of rent for a licence or other tenure granted by the department.

In assessing the suitability of an applicant and considering the above criteria, the severity and nature of any matters will be taken into account.