

NSW DEPARTMENT OF PLANNING, HOUSING AND INFRASTRUCTURE

Guideline—Sale of Crown land

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Overview

Crown land is not ordinarily available for purchase.

Decisions around the sale of Crown land are complex in nature and have permanent implications on land held in public ownership.

Any potential sale of Crown land requires comprehensive investigation and assessment, as well as engagement with the community, before it may progress. These guidelines provide interested persons with an understanding of how the NSW Government's *Sale of Crown land policy* (IND-O-251) is applied.

These guidelines do not apply:

- to roads closures, Western Land leases or lease conversions where a tenure holder has a statutory 'right to convert'
- to acquisition of Crown land by government authorities or agencies with legislated acquisition powers
- where scale and complexity of decision-making is beyond the scope of the policy or these guidelines.

The objects and principles of the *Crown Land Management Act 2016* (the Act) are important considerations in assessing Crown land sale enquiries. Sale of Crown land is only permitted where it is in the public interest.

The *Sale of Crown land policy* establishes a governance framework for the Crown Lands division of the NSW Department of Planning, Housing and Infrastructure (the department) to manage land sale enquiries on behalf of the NSW Government and the people of NSW.

Assistance

For assistance please contact:

NSW Department of Planning, Housing and Infrastructure

www.crownland.nsw.gov.au

Phone: 1300 886 235

Email: enquiries@crowland.nsw.gov.au

Sale of Crown land

All decisions and actions undertaken by the NSW Department of Planning, Housing and Infrastructure in relation to the sale of Crown land must comply with the Act and other relevant legislation, identified in the Related Legislation section of this guideline. The department must provide evidence of compliance with the Act at each key decision point.

Individuals, companies, or other legal entities can enquire about the sale of Crown land by submitting an on-line enquiry form via our website.

These guidelines should be considered when making an enquiry to properly address the policy criteria.

When a compliant enquiry is received, the department will follow a multi-step sales assessment framework. At any stage, the Crown land sale enquiry may be refused.

Aboriginal land rights and interests

Under both the *Aboriginal Land Rights Act 1983* (NSW) and the *Native Title Act 1993* (Cth), Aboriginal peoples may make claims over Crown land.

No sale of Crown land can progress until any Aboriginal land claims or native title claims over the land are reconciled.

When an Aboriginal land claim is lodged over Crown land subject to a sale proposal, at any time prior to exchange of contracts, the sale will be deferred pending finalisation of that claim.

Sales assessment framework

An assessment framework is used to make decisions on all compliant enquiries. If, at any stage in the process, investigations identify that the land should remain in the Crown estate or should not be sold to the enquiring party, the matter will not progress.

Step 1—Receipt of a Crown land sale enquiry

1.1. Enquiry/Assessment

Assessing the potential sale of Crown land is triggered by one or more of the following:

- receipt of a sale enquiry on-line form, available on the department's website
- internal government request for land
- a recommendation from a Crown land manager for sale (i.e., land no longer meets a public need or retention costs are a justification for sale)

1.2. Confirmation of submission

The department aims to acknowledge receipt of completed sale enquiries within two weeks.

Once a completed form has been reviewed, the department will contact the enquirer to advise that an initial assessment has started and discuss next steps.

The enquiry may be discontinued at this step.

Step 2—Initial gateway assessment

2.1. Initial assessment

The initial gateway assessment identifies constraints that would prevent further consideration of the sale.

These constraints include, but are not limited to the following:

- Title—if enquiry does not relate to Crown land it will not progress
- If the land is subject to an Aboriginal Land Claim (ALC)—the enquiry will not progress
- If native title exists
- If the land is contaminated
- If the land adjoins land reserved or dedicated for public recreation or a waterway
- If the land is reserved for a purpose that is not consistent with sale
- If sale of the land would cause access issues for adjoining land owners
- If the land is subject to a Crown tenure held by another party
- If the enquirer has outstanding debt with Crown Lands
- Where the sale would be inconsistent with zoning
- If transaction costs to sell the site are greater than the value of the land, unless proceeding with the sale is in the public interest.

If the initial gateway assessment identifies the sale should not progress, the enquirer will be advised and no further assessment will be undertaken.

2.2. Formal response to the enquirer

Where an initial assessment identifies constraints or restrictions that prevent the sale of the Crown land, the enquirer will be contacted and advised of the outcome.

Where initial gateway assessment supports further investigation toward sale, this will be confirmed in correspondence to the enquirer. Noting further assessment or prioritisation of the enquiry may require further investigation.

The enquiry may be discontinued at this step.

Step 3—Detailed disposal assessment

The detailed disposal assessment considers enquiries against criteria outlined in *Sale of Crown land policy* and other factors identified during investigations.

This step may require seeking the community's view about the sale proposal as part of our Crown land Community Engagement Strategy (CES).

The enquiry may be discontinued at this step.

Step 4—Community engagement

The CES, provides a framework for consulting and engaging with the community on decisions that affect their use and access to Crown land.

The CES, as it applies to sale proposals, will be used to:

- obtain public submissions and seek community feedback about how the proposal would impact on the community
- manage further engagement appropriate to the impact and issues identified in public submissions.

The enquiry may be discontinued at this step.

Step 5—Decision

Decisions to sell Crown land are made after detailed investigation and in consultation with the community through the CES, unless exempt.

A delegate of the Minister¹ will make a final decision on the sale of the land and whether to apply restrictions or conditions on the sale.

Enquirers will be informed in writing of the outcome of their submission and the details of the decision.

All sales will be displayed publicly on the department's website.

The enquiry may be discontinued at this step.

Step 6—Sale execution

Where Crown land is determined as suitable for sale it will be prioritised against other proposals and will proceed on its merits against other proposals.

Where sale of Crown land is approved and the land is reserved, a parallel process is required to remove the reservation from the land.

Probity

Probity relates to proper and ethical conduct, and propriety in dealings with the market. A key component of this is to ensure sales of Crown land achieve value-for-money for the people of NSW.

To maintain a high standard in managing the Crown estate, disposal of Crown land will not progress where any of the following attributes are not evident:

- value for money
 - the cost to complete the proposal outweighs the benefits
- transparency and fairness
 - a tenure holder is in debt to the government or is in any form of administration
 - the proposed purchasers are not in good standing
 - tenants in common do not agree to the sale
- promotion of effective competition and ample opportunities to do business with government
 - preferring public competition where appropriate.

Contract for sale

Where the sale of Crown land is approved, the transaction will be bound by obligations under a contract for sale and purchase of land and its conditions.

Where the sale is by direct negotiation, the department also requires execution of a negotiation protocol.

A negotiation protocol establishes the boundaries for negotiations and ensures amicable relations between parties. The negotiation protocol includes provisions for settling disputes.

Any cost incurred in obtaining and providing evidence to support a dispute will be the responsibility of the purchaser.

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

Definitions

Please refer to the *Sale of Crown land policy* for definitions of key words used within these guidelines.

Related Documents

- Crown land Community Engagement Strategy (CES)
- *Sale of Crown land policy*: IND-O-251
- *Sale or lease of Crown land by direct negotiation policy*: IND-O-182
- *Leasing of Crown land policy*: IND-O-253

Related Legislation

- *Native Title Act 1993* (Cth)
- *Crown Land Management Act 2016* (NSW) and Crown Land Management Regulation 2018
- *Aboriginal Land Rights Act 1983* (NSW)
- *Contaminated Land Management Act 1997* (NSW)
- *Conveyancing Act 1919* (NSW)
- *Land Acquisitions (Just Terms Compensation) Act 1991* (NSW)
- *Property NSW Act 2006* (NSW)
- *Real Property Act 1900* (NSW)
- *Roads Act 1993* (NSW)
- *Valuation of Land Act 1916* (NSW)

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