

CROWN LANDS POLICY FOR TOURIST & ASSOCIATED FACILITIES ON CROWN LAND



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CROWN LAND POLICY
COMMERCIAL TENURES – TOURIST FACILITIES

1 BACKGROUND

Tourist facilities, including caravan parks, are important elements of the tourist industry of New South Wales. These developments are often on or adjoin Crown land. This Policy is consistent with the commercial policies, business rules, directives and operations applied to these developments following the formation of the Department of Lands. The Policy has been developed to further explain the framework and practices applied, and to strengthen the partnership between the Crown, which is the owner of the land, and private and public sector organisations that develop and operate these facilities. In some cases, these facilities use both freehold and Crown land. Accordingly, this Policy recognises the complex history behind the development of these facilities and the resultant land ownership pattern.

The New South Wales Department of Lands is responsible for the administration of all Crown land in New South Wales under the provisions of the *Crown Lands Act 1989*. Under the *Crown Lands Act* Crown land resources are to be shared equitably in accordance with the principles of environmental protection, conservation and ecological sustainability, public use and enjoyment, as well as encouraging multiple use of the land.

The *Crown Lands Act 1989* contains the following principles for managing Crown land:

- environmental protection principles are observed in the management and administration of Crown land;
- natural resources of Crown land (including water, soil, flora, fauna and scenic quality) are conserved, wherever possible;
- public use and enjoyment of appropriate Crown land is to be encouraged;
- multiple use of Crown land is to be encouraged, where appropriate;
- Crown land should be used and managed so its resources are sustained in perpetuity, where appropriate; and
- Crown land is to be occupied, used, sold, leased, licensed or dealt with in the best interests of the State, consistent with the above principles.

This Policy addresses issues associated with the development or redevelopment of Crown lands for tourist facilities, including caravan parks. The Policy has been developed to reinforce ongoing maintenance obligations, to promote redevelopment of such facilities, and to guide the creation of new and renewed tenures for tourist facilities in accordance with the requirements of the *Crown Lands Act 1989*, the principles of Crown Land Management, and the wider policy considerations reflected in ICAC guidelines and government business directives such as the National Competition Policy.

The Policy applies to all Crown land in New South Wales where Crown land is involved. In this regard, under current planning controls in New South Wales, where a new tourist facility, or a major redevelopment or a change to an existing facility is proposed in the coastal zone,

the development may be considered a State significant development and in such cases the Minister for Planning is the Consent Authority.

Holders of Crown tenures will continue to be subject to legislative controls exercised by other state government agencies and local government for the protection of the environment, the maintenance of a safe workplace, and orderly development. The Department will encourage industry to develop codes of best practice and their implementation on Crown Lands to which this policy pertains.

2. INTENT OF THE POLICY:

The State Government recognises the economic and social importance of the tourist industry and related commercial tenures of Crown land. The on-going need to provide commercial opportunity, and to improve existing facilities, including the provision of new facilities for the tourism industry is also recognised.

The intent of this Policy is to provide benefits to New South Wales by:

- Ensuring that the commercial tenure (leasing and licensing) of Crown lands is consistent, transparent, fair and impartial;
- Encouraging the sound environmental management of Crown land in New South Wales;
- Encouraging the ongoing development and improvement of existing and new tourist facilities to ensure the availability of high quality infrastructure and accommodation for tourists;
- Encouraging the use of suitable Crown land for public use and enjoyment¹;
- Securing a market return² from the commercial use of Crown land and the best outcome for the State;
- Recognising that major redevelopment works for tourist facilities requires some provision of certainty for the holders of Crown tenures in a commercially secure environment; and
- Promoting and encouraging the operation of market forces in the development and operation of Crown tenures by removing unnecessary restrictions on commercial transactions.

Within this policy, the following should also be noted:

- Individual provisions are contained within sections. However there are inter-relationships between provisions and sections. Therefore, the policy needs to be read as a whole.

¹ In this context “use” does not necessarily mean ‘free use of’. Where a lessee is required to permit public access through leased Crown lands, e.g. as a thoroughfare, the return to Crown will reflect total cost and any benefit of such required public access.

² See 6.6 ‘Rental Determination’.

- Footnotes to this policy are to help understand the application of the policy. However, they do not alter the policy. If there is any inconsistency between a Footnote and the policy the policy prevails to the extent of that inconsistency.

3. THE CROWN LANDS ACT 1989

The Crown Lands Act 1989 (the Act) regulates the manner in which Crown land is dealt with (occupied, used, sold, leased, or licenced). The Act empowers the Minister, in achieving the objects of the Act, to sell, lease or licence Crown land. As a general principle, not all Crown land is able to or should be sold and accordingly this Policy only relates to provisions of the Act relating to creation and administration of leases and licences of Crown land.

The Act contains provisions which establish the powers of the Minister to address the following matters:

- The term and conditions of a lease or licence (S34).
- The transfer, sub-leasing or other dealing of leases and licences (S44).
- The forfeiture of a lease or licence if the holder fails to comply with a provision of the Act, any other Act, or a condition of the holding (S129 & S174).³
- The withdrawal of land from a lease or licence for a public purpose (S136).
- The removal or alteration of conditions (S139 & S140).
- The principles of rent determination and redetermination (S143).

This Policy provides guidance for industry and the Department on the manner in which tenures of commercial premises, including tourist and related facilities on Crown land will be created and administered under the provisions of the Act.

4. PROBITY REQUIREMENTS

The Department requires the highest standard of probity from its staff and those it does business with. The Department may engage an independent probity auditor to assist the Department in ensuring compliance with relevant ICAC and Government guidelines.

5. DEFINITIONS

In this Policy

Crown land has the same meaning as in the *Crown Lands Act 1989*.

Department means the Department of Lands

³ Note S174 Ownership of improvements on forfeiture etc

(1) *On forfeiture, surrender or other determination of a holding all improvements on the land become, subject to this section and any provision or condition of the holding, the property of the Crown and no compensation is payable for those improvements.*

For the purposes of S 174 (1) of the Act 'all improvements' means fixtures and includes roads and underground services, but does not include relocatable buildings, cabins or any other property, which may include intellectual property and good will, owned by the lessee or licensee.

Land Assessment is the evaluation of Crown land to determine the land's capability, and includes the identification of suitable and preferred uses of Crown land under Part 3 of the Crown Lands Act 1989.

Lease and Licence have the same meaning as in the Crown Lands Act 1989.

Major Redevelopment is where a site is to be extensively remodelled or developed, and the present improvements upon or across the whole site are agreed (by lessee and lessor) to add little or no value to the proposals justifying business case.

Public interest test includes (but is not limited to) consideration of the following matters, and at the discretion of the Crown, may include advertising before a decision is made:

- Whether the proposal is consistent with the Principles of Crown Land Management;
- Whether the proposal will provide improved public access to⁴ the tenanted facilities and other public lands, particularly for the disabled.
- Whether the proposal will facilitate the introduction of new skills, technology or services.
- Whether the proposal represents value for money – including improved risk management, whole-of-life costing, innovation, costs to government and improvements to whole-of-government outcomes.
- Whether the proposal will lead to an undesirable increase in market dominance.
- Whether the proposal would unreasonably interfere with other current or future uses of adjoining Crown land or Crown land within the immediate area.
- Whether the proposal provides positive initiatives to improve environmental protection and management.
- Whether alternative uses or designs of the proposal should be contemplated before the proposal is accepted by the Crown.
- Whether the proponent has the required probity, financial and operational capacity.

Residual Value of Improvements means the value of the tenant's improvements⁵ at the end of the lease, as may be determined in accordance with established accounting and valuation practices⁶, or as may be agreed between the parties.

Tenure includes a lease or a licence.

Tourist Facility means a facility that provides accommodation and related services and infrastructure for tourists and includes a caravan park within the meaning of State Environmental Planning Policy No. 21 – Caravan Parks.

⁴ See Footnotes 1 & 2.

⁵ See Footnote 2 & 6.8 'Ownership and maintenance of existing and new improvements'.

⁶ See Treasury Guidelines for the Valuation of non-current assets.

6. EXISTING CROWN TENURES

In renewing existing tenures, the Department will reference industry best practices in seeking not only a viable commercial arrangement but one which protects the environment and meets broad community needs.

The following specific considerations will apply to existing Crown tenures under this Policy.

6.1 Land Assessment and Leasing Review

Subject to the Act's requirement for a land assessment, which addresses the capability and suitability of the land for a continuation of existing and/or alternative uses, existing Crown tenures covered by this Policy may be renewed on or before expiry without public competition. A Land Assessment and Leasing Review (including a public interest test) will be undertaken by the Department prior to a lease covered by this policy being renewed. The Review will generally take place not less than 2 years prior to the expiry of the lease or on application for a new lease by the existing lessee⁷. The Review will establish whether the existing land-use should continue and whether there is any strategic, commercial or operational reason why the existing tenure should not be renewed.

Subject to the Review, a new tenure will be offered to the existing tenant with conditions appropriate to the proposed purpose of the tenure and to ensure a more up-to date tenure than the one it replaces in line with the Government's environmental, statutory or commercial objectives. It is intended that all new tenures will be commercially based.

At the termination or expiration of an existing tenure, the Crown reserves the right to renew or replace an existing tenure if there are sufficient strategic, commercial or operational reasons by way of public competition. Without limiting future Government discretion, public competition may be required to achieve identified land management objectives.

The Department may engage an independent probity auditor and other expert assistance to aid the Department in ensuring compliance with relevant ICAC and Government guidelines and to assist in the Land Assessment and Leasing Review.

If an existing tenure is not renewed, compensation may be provided for the residual value of improvements (if any) at the end of the term. Compensation would not be paid where:

- Rent is substantially in arrears; or
- A breach(es) of a significant condition(s) has occurred which has continued and failed to be rectified within a reasonable time of being given notice to remedy during the previous tenure; or
- The improvement is unlawful; or
- The improvement has been fully amortised during tenure.

Where an enterprise operates at a particular location under multiple Crown tenures (eg, Crown lease(s) and/or Crown licence(s)), consideration will be given to replacing these multiple tenures with a single tenure when the primary tenure terminates and is replaced by a new tenure.

⁷ For the sake of clarity, this review may also be undertaken at any time during the fixed term of the lease.

6.2 Requirement for an Australian Business Number

The Department will require that the holder of a new tenure has an Australian Business Number (ABN) and maintains it during the term of the lease.

6.3 Term of New Tenures⁸

All new tenures will be negotiated on a site by site basis and provide for a term which is reflective of the nature, size and complexity of any proposed development or redevelopment and the need for the lessee to amortise agreed development establishment costs over the term of tenure; to receive a commercial return having regard to the value of the existing site, and any agreed initiatives to provide particular public benefits, services or facilities. Where a land assessment of the land indicates that a change of use or a significant intensification of use should occur in the foreseeable future, the new term may be limited to reflect the timing of the proposed planning horizon. Similarly, where the land assessment indicates that the current use or operation is not achieving the Department's objectives for Crown land, a short term lease only may be offered to ensure the required outcome is achieved.

6.4 Purpose of Leases and Licences

All future tenures will be for *business purposes* with separate condition(s) to define the limits (if any) to the use(s) of particular holdings.

6.5 Lease Boundaries

The Department reserves the right to alter the boundaries of a tenure, through negotiation during a tenure, and when the lease is renewed to achieve land management objectives. Compensation will not be available for alterations to the boundary of a lease when the lease is renewed.

6.6 Rental Determination

All rentals will be market based and reflect and reference the value of the Crown's improvements, the purpose of the tenure, the area of the premises and other relevant rental determination matters as provided by Section 143 of the Crown Lands Act. Valuations for rent determinations will be established on a basis that reflects a fair and equitable return for the lessor and lessee and could include the use of turnover, unimproved capital value (UCV) or other appropriate methodologies.

6.7 Development / Redevelopment or Change of Use

All development/redevelopment of Crown tenures involving a change of use or a significant intensification of use may involve a public interest test. Applicants will be required to meet the Department's reasonable costs in assessing development/redevelopment proposals.

The Crown reserves the right to determine whether a development/redevelopment proposal constitutes a new development based on the scale and nature of the proposed development. Such sites will be dealt with as a New Development Site under this Policy (see Section 7). However, the requirement for a public interest test will not be applied where redevelopment is undertaken to meet new statutory requirements imposed on the holder or to achieve industry wide reforms agreed to by the government.

⁸ See Footnote 5

Owner's consent must be obtained from the Department for the lodgement of a development application where development consent is required.

Approval condition(s) for a change of use(s) or to the term(s) of tenure may include a rent reappraisal.

6.8 Ownership and Maintenance of Existing and New Improvements

All structures and fixtures on the land, unless otherwise provided by a condition of the holding, are the property of the Crown at the end of the tenure if it is not renewed for a major redevelopment.

In circumstances warranted and supported by the Department where a capital improvement is proposed, which is not a major redevelopment, and the available or remaining term of tenure is insufficient to allow full amortisation, either an extension of term or an agreed residual value of the improvement may be negotiated to enable the capital improvement to be fully amortised, or reflect the holder's interest at the end of the tenure. This residual amount would be taken into account in subsequent rental determinations or for compensation purposes if the holder's interest is not renewed.

All structures are to be maintained to the Department's satisfaction by the holder during the term of the tenure .

6.9 Power to Sub-let⁹

All sub-leases, sub-licences or agreements will require the consent of the Department. However, licences or agreements for non-commercial activities or short-term activities as permitted by conditions of the tenure will not require separate approval from the Department.

All sub-leases, sub-licences or agreements must be consistent with the purpose and conditions of the head-lease/licence.

6.10 Variation to the Form of Tenure⁶

The Department may require or allow the conversion of a licence to a term lease where significant structures and/or large areas are involved. The Department will consider applications for conversion of a licence to a lease from existing holders. The holder will be required to meet the Department's reasonable costs involved.

6.11 Right to Change, Transfer or Assign Ownership⁶

All transfers or assignment of a lease or the issue of a new licence to a new holder will require the consent of the Department and the proposed holder must satisfy the Department in terms of financial capacity, experience and probity. If the existing tenure is within 5 years of its termination date a Land Assessment may be required.

Where the holder is a company, partnership or other structure involving multiple interests the Department's consent will be required to any change that results in a change of ownership. This will be a requirement of all leases.

⁹ The Department proposes to act reasonably in exercising its rights under clauses 6.9, 6.10 & 6.11.

On application for transfer, where there are sound land management reasons for doing so, the Department may require the replacement of the existing lease with a new lease. All costs associated with the new lease will be borne by the applicant.

6.12 Mortgages, Other Interests and Security Deposits etc

Registered interests to third parties may be approved by the Department but such interests will be limited to an agreed value based on the remaining term of the lease. All such interests will merge at the end of the lease.

A suitable security deposit may be required that reflects the tenant's obligation to comply with removal of improvements at the end of the tenure.

7 NEW DEVELOPMENT SITES

The Department from time to time may identify new areas of Crown land for lease or licence for tourist facilities and related commercial development. As indicated in Sections 6.1 and 6.7, a Land Assessment and Review and/or a public interest test may also establish that the development/redevelopment of a new site or the site of an existing tenure should also be treated as a new development site.

7.1 Public competition

All new development sites will generally be subject to public competition and a registration of interest and/or a tender process. The Department may engage an independent probity auditor and other expert assistance to assist the Department in ensuring compliance with relevant ICAC and Government guidelines.

7.2 Private Treaty Negotiations

Direct negotiations for a commercial tenure of a new development site will only be considered where the only practical access is available from the adjoining land, or a significant public benefit can be demonstrated in accordance with Government Policy. In all cases a public interest test will be applied.

7.3 Crown Improvements

Where a development site has been materially improved by the Crown, or contains fixtures owned by the Crown, the incoming tenant may be required to pay to the Crown an agreed amount for these improvements.

7.4 Previous Tenant's Improvements

Where a tenure has expired, or the site is an existing holding that is to be treated as a new development site, the former tenant may be entitled to the Residual Value of the Improvements (if any) reflecting the nature of the improvements and residual term of the lease, or some other previously agreed value, for example, as determined by a condition of a lease arising from a redevelopment of the property under Sections 6.7 &/or 6.8.