

**COMMERCIAL LEASING/LICENSING  
CROWN LAND BUSINESS DIRECTIVE**

**INFORMATION TO ASSIST YOU IN ADDRESSING THE  
PUBLIC INTEREST TEST REQUIREMENTS**

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*The Department of Lands developed specific business rules for the commercial leasing of Crown land, in response to the Government's commitment to the National Competition Policy (NCP), providing the framework for public competition ensuring that the commercial leasing is a fair, open, impartial and transparent process.*

*If there is sufficient justification, a request to deal one-on-one with a proponent may be considered. Direct dealing will only be considered where there is a substantial public benefit to be derived.*

*Assessment of the appropriateness for a direct dealing will include –*

- *A Public Interest Test (as a threshold test )*
- *Essential Criteria relating to the proponent; and*
- *Assessment of the proposal viability and returns, plus social, economic and environmental impacts.*

*Below you will find the a list of the benefits identified by the ACCC as being appropriate to consider in a public interest test –*

**Public Interest Test**

- *Fostering business efficiency, especially when this results in improved international competitiveness;*
- *Expansion of employment or prevention of unemployment in efficient industries or employment growth in particular regions;*
- *Promotion of industry cost savings resulting in contained or lower prices at all levels in the supply chain;*
- *Promotion of competition in industry;*
- *Promotion of equitable dealings in the market;*
- *Assistance to efficient small business;*
- *Industrial harmony;*
- *Improvement in the quality and safety of goods and services and expansion of consumer choice; and*
- *Supply of better information to consumers and business to permit informed choices in their dealings.*
- *Establishing best operator and service to the community*

*Source: Trade Practices Act, S90 [1540.25]*

*Notwithstanding a public interest test that must be assessed favourably, there are a number of criteria that must also be satisfied, including but not limited to –*

### **Essential Criteria**

- *Probity and integrity;*
- *The relationship between the government and the proponent;*
- *Disclosure and transparency;*
- *The standing and substance of the proponent;*
- *Any rights and protection of confidentiality; and,*
- *Intellectual property.*

*Source: Property Advisory Council, [June 1999 report to Australian Capital Territory Government]*

*In addition to and notwithstanding the public interest test and the essential criteria a rigorous assessment of the proposal and proponent must be undertaken. This assessment should include, but again not be limited to –*

### **Project Assessment**

- *The protection of Crown Lands and Departments interests;*
- *A full due diligence;*
- *Security;*
- *Risk assessment;*
- *Economic and environmental impacts;*
- *Best practice & development benchmarks;*
- *Value for money; and,*
- *Innovation.*

*Source: Property Advisory Council, [June 1999 report to Australian Capital Territory Government]*

Following are some things to consider which may assist you in completing the public interest test, essential criteria and project assessment. As you will see from the information below, many of the points will cross through a number of the requirements, so keep in mind that there is no problem with reinforcing key points.

The information below is only a guide to assist you in completing your submission. There may be many additional things that you wish to include.

## ***Public Interest Test***

### **Fostering Business Efficiency & Competition –**

- **Erection of improvements on site – did you call for tenders or obtain a number of quotes from various tradespeople?**
- **Does your existing use compete with other businesses of this nature?**
- **In attracting clientele to the site, does this have an impact in creating other competition for surrounding businesses, for example, overnight accommodation, suppliers to the business.**

- How can competition with the “flow-on” industries promote business efficiency within your operation and those of others.

### **Expansion of Employment or Prevention of Unemployment in Efficient Industries or Employment Growth in Particular Regions**

- Does your business encourage tourism?
- Does your business compete with similar facilities in the area?
- What type and numbers of tradespeople were engaged to construct the improvements on site (you could also include consultants in this section)?
- How many people does your business currently employ?
- Do other local businesses benefit from your business?
- What flow-on effects does your business generate?
- Do you operate in conjunction with other businesses to supply ‘package’ deals.
- In getting your business up and running, what tradesmen, consultants etc did you use?
- If you are proposing expansion/upgrading your business, how will this assist in preventing unemployment/assist in employment?

### **Promotion of Industry Cost Savings Resulting in Contained or Lower Prices at all Levels in the Supply Chain**

- How does your business create competition, thereby resulting in competitive pricing and lower prices at all levels in the supply chain.
- Are the employees all local?
- What are the social benefits of employing local people and how could this impact on cost savings within the supply chain.
- Are deliveries to your business obtained from local suppliers?

### **Promotion of Competition in Industry**

- How and what industries does your business promote competition in (e.g suppliers of goods and services)?

### **Promotion of Equitable Dealings in the Market**

- How would you ensure equitable dealings in the market if you were to sublet the premises?
- If you have tenants, how have your dealings ensured that they are considered equitable?

### **Assistance to Efficient Small Business**

- How have the improvements provided assistance to the tenants, if any?
- Does your business have any arrangements with other local businesses (such as ferry operators, local accommodation suppliers) which support their business?

## **Industrial Harmony**

- During the construction phase of the improvements, were they carried out without industrial incident?
- Are you or your tenant a member of any industry association (thereby observing the rules which govern such)?
- How will you aim to prevent industrial disharmony?

## **Improvement in the Quality and Safety of Goods and Services and Expansion of Consumer Choice**

- Have you improved the parking or access to the property, which allows safer and better use of the area?
- What environmental improvements have you carried out which will improve the use of any Crown land sites, reserves or waterways?
- Are staff all adequately trained in OH&S, First Aid, RSA etc which ultimately leads to the improvement the quality of goods and services provided?

## **Supply of Better Information to Consumers and Business to Permit Informed Choice in their Dealings**

- Have you erected conspicuous signage that alerts potential patrons to the facilities on offer?
- What marketing strategies have you put in place to draw consumers to your premises and the services offered?
- What training has your staff had to ensure consumers are well informed about the services on offer?

## **Establishing Best Operator and Service to the Community**

- What experience do you have in operating a business of this nature, or any other venture?
- Are you involved in any community groups/organisations?
- How are you the best operator for this site?
- How can you show that you are a responsible environmental manager?
- What plans do you have that will result in the highest and best use of the site?

## ***Essential Criteria***

### **Probity and Integrity**

- In this section you will need to show the Department that you are a person of honesty and integrity and it is in the interests of the Department to deal with you personally.
- You could mention projects that you have been involved with, community organisations, charitable events etc.

- You will also need to show that you are aiming at achieving an equitable balance between the environment and your business interests.

### **The Relationship between the Government and the Proponent**

- Have you discharged all of your liabilities to Federal, State and Local governments?
- Do you have any outstanding matters or issues with any levels of government?
- Do you consider that you have a good working relationship with various government departments as a result of past dealings?

### **Disclosure and Transparency**

- Have you made full disclosure to the Department of all factors relating to your current application?
- Do you have any connections with any members of the Department of Lands or any other department whose consent may be required for any future development?

### **The Standing and Substance of the Proponent**

- Much of the information required in this section will reinforce that stated in the *Probity and Integrity* requirement.
- Detail your experience in business (this should be done for each director of the company) and your current financial viability.
- ***Any Rights, Intellectual Property and Protection of Confidentiality.***
- You will need to advise the Department of rights to any intellectual property that you may have commissioned from consultants.
- Financial information will not be supplied to any parties other than Departmental officers required to review your submission.

## ***Project Assessment***

### **Protection of Crown Lands and Departments Interests**

When assessing a proposal involving Crown land, the Department is always mindful of satisfying the 'triple bottom line' requirement, i.e. social, financial and environmental considerations.

- What environmental measures will you take to protect the Crown's asset, i.e. the land?
- You should provide details of your economic/financial outcomes for the previous three (3) years, which will attest to your financial viability.
- What commitments do you make to the social aspects of the proposal and how will that benefit the local community?
- Are there any independent reviews/reports on your business/operation that support your continued use of the site?

## ***A Full Due Diligence***

- Are you satisfied that you have investigated the matter fully and are aware of any constraints that the site may have?

## ***Security***

The Department requires that where a tenant is under an obligation to comply with conditions regarding the use and occupation of a site, a security against the non-performance of those conditions should be sought.

The prime purpose of the security is to ensure that there will be sufficient money available to undertake any necessary work on expiry/forfeiture/surrender of a lease. In setting the amount, regard should be taken to the realistic cost of remedying any breach of the conditions.

- In this section you need to consider what you think the best form of security may be and what you consider a fair and reasonable amount to satisfy the requirements stated above.

## ***Risk Assessment***

- Have you considered all risks in taking on a lease for the site?
- Do you consider that there is a lesser risk by granting a new lease to you as opposed to a new tenant, and if so, why?

## ***Economic and Environmental Impacts***

These issues may have been canvassed elsewhere in your submission, but you can reiterate them in this section.

Economic Impact –

- How is your business beneficial to the local community?
- How has it created competition in industries?
- How has your business promoted employment?

Environmental Impact –

- Demonstrate how you are a responsible environmental manager.
- How have your environmental measures created beneficial social and environmental effects.

## ***Best Practice and Development Benchmarks***

- Has your development been carried out in accordance with best practice benchmarks?
- What is innovative about your development?
- Detail any uniqueness about your development.

- What is the broad attraction of your development?
- Is your development environmentally sustainable?

### **Value for Money**

- How are you obtaining 'value for money' by leasing the site at a market rental?
- How is the community getting 'value for money' by the Department offering you a new lease.

### **Innovation**

- How has your developed enhanced the site and surrounding areas?
- What is innovative about your development and use of the site?
- What diverse functions have you incorporated in the development?