



# LEASES OF CROWN LAND POLICY

September 2017  
Version 3.0

<b>Definitions</b> .....	<b>3</b>
<b>1 Introduction</b> .....	<b>4</b>
<b>2 Aim</b> .....	<b>4</b>
<b>3 Key Considerations for Leases of Crown Land</b> .....	<b>4</b>
<b>4 Relevant Legislation</b> .....	<b>5</b>
<b>5 General Conditions for Leases of Crown Land</b> .....	<b>5</b>
5.1 Lease Extensions .....	5
5.2 Variations to Lease Conditions .....	6
5.3 Transfer of Leases .....	6
5.4 Surrender of Leases.....	7
<b>6 Crown Leases for Commercial Purposes</b> .....	<b>7</b>
6.1 Rent .....	7
6.2 Conversion to Freehold Title .....	8
<b>7 Crown Leases for Community Purposes</b> .....	<b>8</b>
7.1 Conversion to a Further Lease .....	8
7.2 Use for Commercial Purposes.....	8
7.3 Conversion to Freehold Title .....	9
<b>8 Special Purposes Leases</b> .....	<b>9</b>
<b>9 Corporate Information</b> .....	<b>9</b>
9.1 Where to Get Additional Information.....	10

## Definitions

Community Groups	Community based, non-government organisations undertaking one of the following in the Northern Territory:  activities relating to a religious, educational, benevolent or charitable purpose; or  promotion or encouragement of literature, science, art or a cultural activity; or  activities relating to sport and recreation.
Community Infrastructure	Facilities, items or services used by the community. Community Infrastructure may generate income for Community Groups but will not be commercial in nature.
Crown Lease	Leases of Crown land granted under the <i>Crown Lands Act</i> where an entity leases land owned by the Crown.
Special Purposes Leases	Leases of Crown land granted under the <i>Special Purposes Leases Act</i> where an entity leases land owned by the Crown.
Department	Department of Infrastructure, Planning and Logistics
Prescribed property	This term has the meaning given in the <i>Associations Act</i> .
Minister	Minister responsible for the administration of <i>Crown Lands Act</i> and the <i>Special Purposes Leases Act</i> .
Territory	Northern Territory of Australia
Crown Land	All lands of the Territory, including the bed of the sea within territorial limits of the Northern Territory, and including an estate in fee simple in the name of the Territory but does not include reserved or dedicated land.

# 1 Introduction

The below policy applies to the administration of existing Crown Leases granted under the *Crown Lands Act* and Special Purposes Leases granted under the *Special Purposes Leases Act*.

Information on eligibility criteria and how to apply for a new lease of Crown land can be obtained from the Department of Infrastructure, Planning and Logistics (refer to Section 9.1).

# 2 Aim

To administer leases of Crown Land in a way that:

- is fair, consistent and transparent in accordance with the *Crown Lands Act* and the *Special Purposes Leases Act*, and
- promotes development of the Northern Territory and the ongoing provision of community services.

# 3 Key Considerations for Leases of Crown Land.

The following are key considerations in the administration of Leases of Crown Land granted under the *Crown Lands Act* (Crown Leases) and the *Special Purposes Leases Act* (Special Purposes Leases):

- Crown land is a valuable public asset.
- Leases of Crown Land are granted to support development for commercial or community use.
- Leases of Crown land are typically granted as Crown Leases under the *Crown Lands Act*. However, Special Purposes Leases may be granted under the *Special Purposes Leases Act* where the land is subject to a reservation.
- All leases of Crown Land are granted for a specific term (i.e. period of time which may include in perpetuity) and purpose and are subject to lease conditions. Lease purposes, terms and conditions may be varied in certain circumstances where it will enhance the development and/or use of the land.
- Leases of Crown Land for commercial purposes may contain conditions allowing for the conversion of the lease to freehold title upon completion of development.
- Leases of Crown Land for community purposes may be granted approval to undertake limited complementary commercial uses in certain circumstances and where rent/funds obtained from this use are used to support or enhance the continued provision of community services.
- Compliance with legislation and probity considerations are essential to all dealings on Crown land. All lease administration processes must be fair, open and impartial.

## 4 Relevant Legislation

- *Crown Lands Act*
- *Special Purposes Leases Act*
- *Land Titles Act*
- *Planning Act*
- *Associations Act*
- *Native Title Act*
- *Stamp Duty Act*

## 5 General Conditions for Leases of Crown Land

The conditions contained in Section 5 pertain to all Crown Leases and Special Purposes Leases, whether granted for commercial or community use.

- Leases are subject to lease conditions as well as the requirements of the *Crown Lands Act* or the *Special Purposes Leases Act*.
- Leased land must be used in accordance with the lease purpose and conditions. Failure to comply with the lease conditions (including failure to pay rent); to use the land; or use of the land for an alternative purpose without prior approval of the Minister, can lead to forfeiture of that lease.
- Where applicable, development conditions will be contained in the lease conditions or in a development agreement to be entered alongside the lease.
- Lessees are responsible for all costs associated with the lease including (but not limited to) any costs related to approvals to use or develop the land and administrative costs, such as document preparation and lodgement fees, for lease extensions, transfers, variations, conversions or any other administrative actions.
- Lessees are responsible for ensuring compliance of their activities with all relevant laws.
- Lessees must not transfer, mortgage, sublet, grant licences over or in any way deal with the lease without the written consent of the Minister.
- If consent is granted for a sublease, the sublease must be registered against the title at the Land Titles Office within three months of the consent being granted, otherwise the consent will lapse.
- Consent will not be provided in advance for option periods contained within subleases.
- Leases granted at no cost for community purposes to associations incorporated under the *Associations Act* are prescribed property for the purpose of that Act.

### 5.1 Lease Extensions

- Crown Leases cannot include option periods but they can be extended by the Minister on application during the term. Special Purposes Leases cannot be extended (refer to Section 7).

- Lessees are responsible for seeking a lease extension where required. Lessees may apply in writing for an extension to the lease before the commencement of the last year of the lease, or at a later date with approval from the Minister.
- An application for an extension does not constitute a right to an extension.
- Compliance with lease conditions will be a key consideration when assessing an extension request. If the lessee has not complied with lease conditions, including development commencement and completion dates, detailed information on why the lease conditions have not been complied with must be provided with the extension application.
- Any extension granted to a lessee that has not complied with the lease conditions shall be for a period no longer than one calendar year except in exceptional circumstances.
- No more than three extensions (in total) shall be granted for leases where development of the land has not substantially commenced.
- If a lease extension is not approved due to non-compliance with the lease conditions, no compensation for the value of the land will be payable and the lessee has no future rights over the land.
- Leases granted for a period of 12 years or more (including where the original term is less than 12 years, but is extended, so that the aggregate of the original plus extended term is for 12 years or more) will require a subdivision under the *Planning Act*. Where subdivision is required, applicants (with the exception of land granted a nil cost for community infrastructure) will be asked to pay costs associated with that subdivision.

## 5.2 Variations to Lease Conditions

- A lessee may apply to vary the conditions of their lease of Crown land in order to meet changes in market forces or community needs.
- An application for a variation does not constitute a right to a variation.
- An application to vary lease conditions must be accompanied by detailed information on the reason the variation is required, including where applicable a revised development timeframe and/or proposal for the land.
- Any variations to the proposed development must comply with the land's zoning under the Northern Territory Planning Scheme.
- Where a variation request would require significant changes to a large number of the lease conditions consideration may be given to the grant of a new lease over the land, subject to Ministerial approval, to ensure lease conditions remain relevant, clear and easy to understand.
- Applications to materially vary the lease purpose or conditions will not be considered where the land has been released by a public competitive process.

## 5.3 Transfer of Leases

- The transfer of a Crown Lease or a Special Purposes Lease requires the consent of the Minister under the relevant legislation.
- An application for transfer of a lease must provide details on the entity the lease is to be transferred to and any payment being made (e.g. purchase price) for the transfer.

- Where the lease was granted at no cost for community purposes, the entity the lease is being transferred to must meet the Community Land Grant eligibility criteria. Information detailing the receiving entity's eligibility is to be provided with the application for consent to transfer the lease.
- Where a lease has been granted at no cost, any payment for the transfer of the lease shall be restricted to payment for improvements made to the land only.
- Prior to the grant of consent to transfer, the entity accepting transfer of the lease must provide written confirmation that it has seen and agrees to abide by the conditions or intent of the lease.
- Where applicable, any outstanding rent must be paid prior to consent being granted for the transfer.
- A transfer of a lease may be subject to stamp duty, payable by the purchaser.
- Where consent to transfer a lease is provided, this consent will be valid for a period of six months.

## 5.4 Surrender of Leases

- A lessee may choose to surrender all or part of the lease it no longer requires.
- Payment of compensation for the surrender of a lease is at the discretion of the Minister. Compensation, if any, is restricted to the value of improvements to the land and is not payable where the improvements were largely funded by Government (either Territory or Federal).
- Where a partial surrender is approved, any costs associated with the survey and subdivision of the land are to be borne by the lessee.

# 6 Crown Leases for Commercial Purposes

## 6.1 Rent

- Commercial Crown Leases granted without payment of purchase price will be subject to an annual rent.
- Commercial Crown Leases where a purchase price has been paid may contain a condition that if development milestones are not met, rent will be invoked. Once rent has been invoked it will remain in place for the remainder of the lease term. Rent is based on a percentage of the purchase price (or current market value where a purchase price is not paid) as follows:
  - five (5) percent of purchase price in urban areas;
  - three (3) percent of purchase price for semi-rural and small (less than 10 km<sup>2</sup>) rural parcels; and
  - two (2) percent of purchase price for large rural parcels.
- Rents will include an annual escalation based on a set percentage rate or the Consumer Price Index.
- Rent valuations will be sought from independent Valuers with Certified Practising Valuers (CPV) accreditation or from the Valuer General.
- Crown Lease rents are reviewed every 10 years in accordance with the *Crown Lands Act*.

- Special Purposes Lease rents are reviewed every 20 years in accordance with the *Special Purposes Leases Act*.

## 6.2 Conversion to Freehold Title

- Where a Crown Lease contains a condition providing a right to conversion to freehold title, freehold title will be granted upon completion of development of the land in line with the lease conditions.
- Completion of development means development of the whole of the land unless prior approval has been provided by the Territory for areas of the land to remain undeveloped (e.g. conservation corridors, areas restricted by land constraints, landscape features, buffer zones). Where the development contains buildings or other structures, completion also means obtaining any certification required under the *Building Act* (e.g. a Certificate of Occupancy).
- Where the lease conditions require the leased land to be consolidated with an adjoining freehold title, freehold may need to be granted prior to finalisation of the consolidation due to *Land Titles Act* requirements. In such cases, a paper freehold title over the subject land will be held by the Territory until such time as the consolidation is completed.
- Where applicable, any outstanding rent must be paid prior to conversion to the grant of freehold title.

## 7 Crown Leases for Community Purposes

### 7.1 Conversion to a Further Lease

- Where a Crown Lease contains a condition providing a right to a further lease over the subject land, the new lease will be granted upon completion of development of the land in line with the lease conditions.
- Completion of development means development of the whole of the land. Where the development contains buildings or other structures, completion also means obtaining any certification required under the *Building Act* (e.g. a Certificate of Occupancy).

### 7.2 Use for Commercial Purposes

Government recognises that many community groups struggle to maintain land holdings and the provision of community services without financial support.

In some situations it may be appropriate for organisations to be able to use land granted at no cost, or a reduced cost, to generate a financial return and/or to increase the level of service it provides to the community.

Ministerial consent is required for any commercial use of a lease granted for community purposes, including the collection of rent for a sublease of the land.

Ministerial consent for commercial use of community land may be considered in the following circumstances:

- the commercial use does not prevent the lessee from continuing to use the land for the purpose for which it was granted;



- the lessee can demonstrate that any funds received as a result of the commercial use will be used for community purposes, including maintenance of the leased land and improvements and provision of community services in line with the lease purpose; and
- the use is consistent with strategic land use plans for the area and the Northern Territory Planning Scheme.

All applications for approval to undertake a commercial use on a lease granted for community purposes should be submitted in writing and include:

- a detailed description of the proposed use, including a copy of the draft sublease where applicable;
- information on the anticipated income to be generated, including timeframes (i.e. will this produce an ongoing income stream or is it only for a specific period of time);
- information on how the funding obtained will be used; and
- information on any Government funding (Territory and Federal), including grant funding, provided to the lessee over the last five years and whether or not the commercial use will reduce the organisation's reliance on Government funding.

Where approval is granted for a commercial use the lessee will be responsible for obtaining all relevant approvals, including but not limited to any required planning, environmental, heritage, native title and sacred site clearances and approvals. Any costs associated with obtaining these approvals will be borne by the lessee.

Consent for commercial use of community land may be subject to a return to Government in the form of rent for the subject Crown lease. This will be assessed on a case by case basis.

### 7.3 Conversion to Freehold Title

- Leases granted at no cost, or at a reduced cost, for community purposes do not contain any rights for conversion to freehold title.

## 8 Special Purposes Leases

- In accordance with the *Special Purposes Leases Act*, Special Purposes Leases cannot be extended or subdivided.
- Holders of a Special Purposes Lease may, however, apply for a further lease over the land. Any such application must be submitted during the six months prior to the lease expiry date.
- Applications for a further Special Purposes Lease shall be subject to the lease extension criteria at Section 5.1.
- Commercial use for Special Purposes Leases granted for community purposes requires approval from the Minister in line with the criteria at Section 7.2.
- Special Purposes Leases do not provide any rights to conversion to any other forms of tenure. However, consideration can be given to the conversion of a Special Purposes Lease to a Crown Lease for the same purpose to contemporise the lease where the underlying land tenure is unencumbered vacant Crown land (e.g. not reserved land or land held in escrow).

## 9 Corporate Information

*Approved by:*

*Date approved:*

*Commencement date:*

*Review date:*

*Legislation*                      [Crown Lands Act, Land Titles Act, Planning Act, Associations Act, Native Title Act, Stamp Duty Act,](#)

*Related documents:*

### 9.1 Where to Get Additional Information

For further information about the Leases of Crown Land Policy contact the Crown Land Estate Unit in your region		
<b>DARWIN</b> 5 <sup>th</sup> Floor, Energy House 18-20 Cavenagh St DARWIN NT 0801 Ph: 8999 6886	<b>KATHERINE</b> 1 <sup>st</sup> Floor, Government Centre First Street KATHERINE NT 0850 Ph: 8973 8924	<b>ALICE SPRINGS</b> Ground Floor, Green Well 50 Bath Street ALICE SPRINGS NT 0870 Ph: 8951 9235