

Leases and licences for oyster farming on Crown land

Important

This fact sheet is for the oyster farming industry. It gives general information about land tenures (leases and licences) for land-based oyster farming activities on Crown land.

This fact sheet does not cover aquaculture leases (water leases) or permits under the *Fisheries Management Act 1994*. Please visit the NSW Department of Primary Industries and Regional Development – Fisheries website for information about [aquaculture leases and permits](#).

The NSW Department of Planning, Housing and Infrastructure issues land tenures (leases and licences) under the *NSW Crown Land Management Act 2016* (CLM Act). The department is committed to working with the oyster industry to provide opportunities for oyster farming activities on Crown land.

The department assesses applications for using Crown land for oyster farming activities on merit. We consider a range of factors when we assess applications, such as:

- compliance with the CLM Act
- land capability
- native title
- Aboriginal land claims
- the Community Engagement Strategy for Crown land
- the [Department of Primary Industries and Regional Development’s ‘Oyster Industry Sustainable Aquaculture Strategy’](#).

We have streamlined our lease and licence processes for oyster farming activities so new tenure agreements are consistent.

While you may prefer a lease to a licence, it may not be possible to lease certain Crown land sites. This fact sheet gives the industry information about issues we consider when leasing or licensing Crown land.

Leases

A Crown land lease gives the holder exclusive possession to occupy and use Crown land for a specified term and purpose.

A lease is a registrable dealing, which means that it can be recorded on the title for the land.

Generally, to be registered, the leased area must be identified as 'one or more lots' on a registered plan of the land. We cannot lease a site if it has not been surveyed and is not identifiable in a registered deposited plan.

Environmental planning restrictions can prevent the subdivision of land, which in turn inhibits the creation of a separate title. Without a registered plan and title, we cannot lease the land.

If you are proposing a substantial development on the Crown land that involves significant capital investment, a lease may be more appropriate than a licence, if there are no constraints that stop the department from granting a lease.

Consent for lease transfer

You will usually need the consent of the minister responsible for Crown land before the transfer of a lease. You cannot transfer a lease if there is any debt to the Crown outstanding on the lease.

For more information on leases, visit the department's website at:

<https://www.crownland.nsw.gov.au/licences-leases-and-permits/do-i-need-licence-or-lease>

Licences

A Crown land licence does not give the holder exclusive use and possession of Crown land. Other people can also use the land. A licence gives the holder authority to occupy and use Crown land for a specified purpose and term.

The minister administering the CLM Act can end a licence at will. Unlike leases, licence areas do not need to be identified by surveyed lot boundaries and may be defined by diagram.

Licences may accompany a lease site, to authorise jetties or infrastructure connected with oyster farming operations extending outside the leased area .i.e. below the mean high-water mark.

Licences are not transferable.

Sites for land-based oyster farming activities

Oyster land-based sites on Crown land are currently limited to those already existing under tenure.

If you have recently purchased, or taken over an existing oyster business associated with a Crown land licence, you will need to apply for a new licence before you occupy and use the site. Please visit our webpage [Revocation of an existing licence and issue a new licence | Crown Lands \(nsw.gov.au\)](#)

For more information on licences, visit the department's website at <https://www.crownland.nsw.gov.au/licences-leases-and-permits/apply-or-manage-licence>

Considerations for licensing and leasing on Crown lands

Native title

Native title is the recognition by Australian law that some Indigenous people have rights to and interests in their land that come from their traditional laws and customs.

The Commonwealth *Native Title Act 1993* (NT Act) sets out how native title rights are recognised and protected in Australia.

When assessing Crown land tenure applications, we consider if:

- there is evidence that native title is extinguished (meaning native title holders cannot fully exercise their traditional rights in the area), or
- the proposed use of the land is allowed under the NT Act, and
- there are any procedures we must follow relating to native title groups or representative bodies, such as notifying the groups or giving them the right to comment.

Native title can be a key reason why we cannot issue a lease over Crown land. In such cases, it may be possible to issue a licence to authorise occupation of a site for oyster farming activities.

Refer to the fact sheet '[How native title rights affect oyster farming tenures on Crown land](#)' for more information about native title and how this relates to oyster farming activities on Crown land.

Aboriginal land claims

The NSW *Aboriginal Land Rights Act 1983* recognises the rights of Aboriginal people in NSW. The legislation allows Aboriginal land councils to lodge land claims over Crown land. The relevant minister determines the land claim.

The department generally will not authorise any dealing in land, such as a lease or licence, if there is an Aboriginal land claim and the dealing will:

- stop the land being transferred to a claimant land council if it is found to be claimable
- impact the physical condition of the land.

For sites already developed for oyster farming activities, we would only consider a Crown land application if you have a letter of consent from the claimant Aboriginal land council. The claimant land council is under no obligation to grant such a request and may prefer to have the claim fully investigated and determined.

Refer to the fact sheet [Information for Crown land tenants about Aboriginal land claims](#). Aboriginal land claims are separate and distinct from native title.

Competitive process

Fair and transparent decision-making processes are integral requirements of government.

Where there is a demand for Crown land sites, a competitive process is required for a new opportunity to lease or licence Crown land, such as calling for expressions of interest.

It may be appropriate for us to negotiate directly with an applicant to grant or renew a Crown land tenure. Do not assume we will be able to enter into direct negotiations to issue a new licence where an oyster business has changed hands. Consult with the department prior to considering a sale.

The following department policies outline the criteria under which direct negotiations may happen:

- For licences see [Licensing of Crown land \(nsw.gov.au\) policy](#)
- For leases, see [Sale or lease of Crown land by direct negotiation \(nsw.gov.au\) policy](#)

Term of lease or licence

The term of a land-based lease for oyster farming activities is 25 years, as stated in the [Department of Primary Industries and Regional Development's 'Oyster Industry Sustainable Aquaculture Strategy'](#). Leases for oyster farming activities may also have an option for a further 25 years, if they meet criteria set out in the lease.

We are working towards adopting a standard term for land-based oyster licences of 25 years, consistent with the Department of Primary Industries and Regional Development's strategy and the term for leases for oyster farming activities.

Licences cannot be transferred. Instead, a licence holder applies to cancel the existing tenure and have a new licence issued to a new holder. During this process, any new licence we issue will usually start with a new 25-year term.

Work plans

Leases and licences for oyster farming activities may have work plans associated with them. Work plans are documented agreements developed by the department in consultation with the tenure holder. These ensure that sites are managed appropriately and in an environmentally sustainable way. The department may impose a security bond for the site, if you do not fulfil the requirements of a work plan or there is no work plan in place. We may also act to ensure tenure holders follow the work plan through compliance actions.

Tenure holder responsibilities

Tenure agreement

A tenure holder has responsibilities under the terms and conditions of their tenure agreement. This includes:

- using the site in keeping with the permitted use
- paying rent
- complying with environmental obligations and other relevant laws
- holding current insurances.

A holder of a Crown tenure for oyster farming activities must be a bona fide oyster farmer and hold a current:

- aquaculture permit under the *Fisheries Management Act 1994*
- Food Authority Licence under the Food Regulation 2015 to cultivate and/or harvest oysters (including spat).

Subletting or sale

We encourage you to have early discussions with us if you are considering selling or subletting a leased premises or wish to sell your business when you hold either a Crown land lease or licence. Consent of the minister is required to approve any subletting of a lease.

Sublicensing is not allowed on sites licensed for oyster farming activities. In many cases, tenures are not directly transferrable.

Environmental planning approvals

As a tenure holder, you must get all necessary environmental planning, development, building, and operating approvals for structures and activities on tenured Crown land.

You may need development consent or other approvals from local councils for any proposed construction or demolition of:

- buildings
- retaining walls
- jetties
- tar pits
- onsite sewerage management systems.

In most cases, you will need landowner's consent from the department before you apply to do such works.

The Landowner's consent application form gives the requirements.

Agency approvals

You may need approvals from other agencies such as Transport for NSW or the Department of Primary Industries and Regional Development – Fisheries and the NSW Food Authority to carry out activities associated with oyster farming.

As the tenure holder, it is your responsibility to ensure you are aware of these requirements and have all the necessary approvals.

Hardship

The department may consider financial hardship applications for rent payments. To negotiate an appropriate payment plan with the department, apply as soon as you have difficulties paying the rent.

Further information on hardship is available on the Financial Assistance webpage.

Prospective tenants

Due diligence

If you are thinking of buying an oyster farming business associated with a land-based tenure, it is your responsibility to investigate it thoroughly before going ahead.

Contact us early in the process to ensure that we can consider an application to transfer or reissue a tenure to occupy Crown land.

Your due diligence enquiries may also include:

- conducting an identification survey to check that all existing occupation and structures are within the approved tenure area
- investigations to ensure that any access to the site is within a legal access corridor
- checking that all structures and uses have appropriate planning and building consents and approvals
- checking there are no contamination or waste issues on the site.

More information

For general information about leases and licences, visit the Crown Land's website at crownland.nsw.gov.au or call 1300 886 235.