



NSW National Parks and Wildlife Service

Property leasing and licensing guidelines

**For retail, commercial and general leases and licences granted under
section 151 of the *National Parks and Wildlife Act 1974***



Acknowledgement of Country

Department of Climate Change, Energy, the Environment and Water acknowledges the Traditional Custodians of the lands where we work and live.

We pay our respects to Elders past, present and emerging.

This resource may contain images or names of deceased persons in photographs or historical content.

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Artist and designer Nikita Ridgeway from Aboriginal design agency – Boss Lady Creative Designs, created the People and Community symbol.

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Introduction

The NSW National Parks and Wildlife Service Leasing and Licensing Program contributes to 'fostering public appreciation, understanding and enjoyment of nature and cultural heritage and their conservation', which is an object of the NSW *National Parks and Wildlife Act 1974*.

Under the Leasing and Licensing Program, the National Parks and Wildlife Service grants leases and licences of land, buildings and structures to provide services and facilities that encourage people to visit parks and enhance visitor experience.

This includes leases and licences related to:

- food and events, such as cafés and bookable venues
- recreation, such as ski facilities and marinas
- short-term accommodation, such as heritage accommodation and holiday parks
- education, such as museums, educational facilities and sporting facilities
- safety, such as arrangements with the NSW Rural Fire Service, Surf Life Saving and Australian Maritime Safety Authority
- heritage sites.

The program also secures investment in infrastructure by lessees and licensees, supports the conservation of heritage sites, generates revenue for reinvestment in park management and contributes to regional economic development by attracting visitors, creating employment and stimulating local business.

These guidelines set out National Parks and Wildlife Service processes in relation to the grant of retail, commercial and general leases and licences under section 151 of the National Parks and Wildlife Act.

Legislation and policy framework

Under section 151 of the National Parks and Wildlife Act, the Leasing and Licencing Program must comply with a range of legislative and policy requirements.

National Parks and Wildlife Act

Under this Act, leases and licences can be granted for uses that are:

- permissible under the Act, including that it gives effect to the objects (section 2A) and is for a purpose for which a lease or licence can be granted (section 151A)
- compliant with the management principles for the park (part 4) and the NSW National Parks and Wildlife Regulation 2019
- consistent with the park's plan of management and, if applicable, conservation management plan.

The National Parks and Wildlife Act also sets out:

- what the minister must consider before granting a lease or licence (section 151B)
- when the minister must refer a proposed lease or licence to the National Parks and Wildlife Advisory Council, the Aboriginal Cultural Heritage Advisory Committee or the Karst Management Advisory Committee for advice (section 151G)
- when and how a proposal to grant a lease or licence must be advertised for public comment (section 151F).

Other legislation and policies

Other applicable legislation, policies and objectives include:

- Conveyancing Act 1919 (NSW)
- Environmental Planning and Assessment Act 1979 (NSW)
- Environment Protection and Biodiversity Act 1999 (Cth)
- Heritage Act 1977 (NSW)
- Protection of the Environment Operations Act 1997 (NSW)
- Real Property Act 1900 (NSW)
- Retail Leases Act 1994 (NSW)
- Wilderness Act 1987 (NSW)
- Guidelines for preparing a review of environmental factors
- Construction assessment procedures
- Sustainability guidelines for visitor use and tourism in NSW national parks
- Sustainability assessment criteria for visitor use and tourism in NSW national parks
- Independent Commission Against Corruption, Direct negotiations: guidelines for managing risks (PDF, 6.37MB)
- NSW Government Procurement Policy Framework
- NSW Government objectives.

Probity

Probity principles

Probity is a fundamental part of every aspect of the Leasing and Licensing Program. All processes and dealings must be probity rich, fair and uphold the key principles outlined below.

Table 1 Probity principles

Accountability and transparency	Processes and dealings must be open, clear, defensible, and supported by robust record management practices.
Impartiality and objectivity	Processes and dealings must be impartial, unbiased and objective.
Conflicts of interest	Conflicts of interest and gifts and benefits must be appropriately managed.
Decision making	Decisions must consider value for money based on assessment of a range of financial and non-financial factors, including financial return, capability, capacity, risk, public benefit and achievement of conservation outcomes. Decisions must be based on competent and comprehensive analysis of all relevant information and supported by objective reasons.
Confidentiality	Where appropriate, information must be kept confidential to protect the integrity of the process and give proponents the confidence to do business with government. This includes the content of proposals, intellectual property and proponents' pricing and profit structures.

Proponents must also meet the minimum expectations and behaviours set out by the National Parks and Wildlife Service.

Guiding documents:

NSW Government Procurement Policy Framework

NSW Government, Supplier code of conduct

NSW Government, Code of ethics and conduct

Probity advisers or auditors

National Parks and Wildlife Service may engage a probity adviser or auditor to observe, review and/or provide guidance on the probity of a process or dealing, including where:

- the integrity of the process (or part of it) may be called into question
- the process is extremely complex, politically sensitive, controversial or vulnerable to corrupt practices
- there could be a perception of bias or favouritism

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- there are substantial costs involved in preparing submissions or there is substantial government funding involved.

Guiding document:

NSW Government, *How to engage an external probity adviser or auditor*

Leasing and Licensing Program

Leasing and licensing opportunities

Competitive processes

National Parks and Wildlife Service leasing and licencing opportunities will be made available to the open market through a competitive process unless exceptional circumstances justify direct negotiations. This includes new opportunities as well as opportunities arising because of the expiry of a lease or licence.

Each competitive process will be tailored to the specific opportunity, but will typically include:

- a call for expressions of interest published on tenders.nsw.gov.au and/or realcommercial.com.au
- evaluation against specific criteria
- negotiation with the preferred respondent/s
- confirmation of an in-principle agreement with the successful respondent
- approval from the minister or delegated authority
- finalisation of the lease or licence documents.

Competitive processes build trust in the Leasing and Licencing Program, safeguard probity and drive fair and ethical behaviour. Competitive processes also cultivate innovation, value for money and support market sustainability.

Direct negotiations

Direct negotiations refer to exclusive dealings between National Parks and Wildlife Service (NPWS) and a proponent without first undergoing a competitive process.

NPWS will generally avoid direct negotiations unless there are exceptional circumstances. In determining the appropriateness of direct negotiations, NPWS will have regard to the criteria set out in Independent Commission Against Corruption guidelines and must be satisfied that the direct negotiations process will maintain a high level of integrity.

In circumstances where direct negotiations relate to a current lessee or licensee, NPWS will consider the proponent's history of:

- compliance with terms in its existing lease or licence, including rental payments and any significant breaches or non-compliance issues
- compliance with environmental, heritage and maintenance requirements
- customer feedback and complaints.

If NPWS determines to proceed with direct negotiations, it will undertake negotiations in accordance with the probity principles outlined in this document and with regard to Independent Commission Against Corruption guidelines.

Guiding document:

Independent Commission Against Corruption, *[Direct negotiations: guidelines for managing risks](#)*

Unsolicited proposals

An unsolicited proposal is an approach to the government from a proponent with a proposal to deal directly with the government over a commercial proposition where the government has not requested the proposal. The process for unsolicited proposals is set out in the NSW Government *Unsolicited proposals: guide for submission and assessment*.

Guiding document:

NSW Government, *Unsolicited proposals: guide for submission and assessment*

Evaluation and assessment

Evaluation criteria

Evaluation criteria for leasing and licensing proposals will be tailored to the specific opportunity, but will include:

- permissibility of the proposed use under the National Parks and Wildlife Act (including consistency with the objects of the Act, plan of management and conservation management plan)
- demonstrated positive social, economic and environmental benefits arising from the proposed use
- suitability and objectives of the proposed use
- demonstrated financial and economic viability of the proposed use
- demonstrated financial capacity of the proponent
- capability of the proponent to execute the proposal
- general credentials of the proponent including skills, experience and expertise
- demonstrated history of compliance by the proponent with the terms of any past lease or licence and demonstrated history of customer service.

Sustainability assessment

The impact of the activities proposed in a lease or licence must meet the sustainability assessment criteria set under section 151B(3) of the National Parks and Wildlife Act.

The *Sustainability guidelines for visitor use and tourism in NSW national parks* provide guidance on interpreting and applying the sustainability criteria to a lease or licence proposal.

Guiding documents:

Sustainability assessment criteria for visitor use and tourism in NSW national parks

Sustainability guidelines for visitor use and tourism in NSW national parks

Public consultation and referral

If required under the National Parks and Wildlife Act, the National Parks and Wildlife Service must:

- publish a notice of the proposed lease or licence for public comment (section 151F)
- refer the proposed lease or licence to the National Parks and Wildlife Advisory Council as well as the Aboriginal Cultural Heritage Advisory Committee or the Karst Management Advisory Committee for advice (section 151G).

Determination

The National Parks and Wildlife Act sets out the process for granting leases and licences, including matters that must be considered by the decision maker before granting a lease or licence (section 151B).

The decision to grant a lease or a licence may be made by the minister administering the Act or positions within National Parks and Wildlife Service to which the minister has delegated the authority.

National Parks and Wildlife Service may decide not to proceed with a lease or license process at any stage. Reasons may include:

- terms and conditions for the lease or licence cannot be agreed
- the rent or prevailing market conditions do not provide for a sufficient financial benefit for the government
- there is insufficient interest in the opportunity
- there is a conflict of interest or other probity concern with the process
- the outcomes for environmental and cultural heritage values are not acceptable
- public consultation demonstrates that the community is not supportive of the lease or licence
- there is a change in government policy.

Form of agreements

Preceding agreements

If certain events (conditions precedent) must occur prior to a lease or licence being granted, National Parks and Wildlife Service may offer an agreement, such as an agreement to lease or works licence, until the conditions precedent are satisfied. Conditions may include obtaining planning approval and completing capital works.

Leases and licences

Agreements offered under the Leasing and Licencing Program can be broadly divided into 3 categories, based on the proposed use of the subject land, building or structure:

- **Retail leases** – business operations captured by the *Retail Leases Act 1994*
- **Commercial leases and licences** – business operations that are not captured by the Retail Leases Act
- **General leases and licences** – operations that provide services to visitors and the local community but are primarily non-commercial in nature (for example, Surf Life Saving clubs)

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National Parks and Wildlife Service uses standardised lease and licence documentation where appropriate to foster consistency, efficiency, cost savings and reduce ambiguity.

Standard terms and conditions

Table 2 Standard terms and conditions

Length of lease or licence (term)	<p>The term will generally be determined during the negotiation process and may include an initial term and option terms.</p> <p>In assessing the term, National Parks and Wildlife Service (NPWS) will consider:</p> <ul style="list-style-type: none">• ability to fund, resource and manage the lease or licence over the proposed term• level of capital investment• purpose of the proposed activities• demonstrated public social, economic and environmental benefits• demonstrated direct return to NSW Government• requirement of the government to go back to market within a reasonable period• relevant legislation, including the <i>Retail Leases Act 1994</i>.
Rent	<p>Rent is generally made up of a base rent plus a percentage of turnover and must reflect market rent.</p> <p>The assessment of market rent will consider:</p> <ul style="list-style-type: none">• response from the market to any competitive process• independent market valuation (if any)• general terms and conditions of the proposed lease or licence• level of capital investment proposed by the lessee• length of the lease or licence• nature of operation• comparative rents paid by comparable businesses. <p>Where NPWS obtains an independent valuation to guide it in working out the appropriate return to government, the valuation is confidential and generally not disclosed.</p>
Rent review	<p>Rent will generally be increased by the consumer price index annually, with a market rent review typically undertaken at least every 5 years and on exercise of any option.</p>
Security deposits or bank guarantees	<p>Security deposits or bank guarantees are required for all leases and licences. Generally, the security deposit or bank guarantee will be the equivalent of 6 months' rent paid in advance. However, NPWS may require a higher amount to protect its interests and mitigate any risks.</p> <p>NPWS may also require additional security if capital works are proposed. The security will reflect the scope and nature of the works.</p>

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Personal performance guarantees by company directors

Where the party taking up a lease is a private company, a deed of guarantee executed by the company's directors will generally be required.

Insurance

Insurances will be required to be maintained in respect of the premises. This generally includes public liability insurance, insurance of building and improvements against loss, damage or destruction from any insurable risk, plate glass insurance and workers compensation insurance.

Holdover

Leases or licences may provide for the continuation of the agreement on a month-by-month basis at expiry of the term with consent from NPWS. Under the holdover provisions, the lease or licence will generally be terminable at any time by either party by giving one month's notice.

Renewals and extensions

Existing lessees and licensees do not have a right of renewal or extension at expiry. Instead, at the expiry of the term, the lease or licence opportunity will generally be offered to the market through a competitive process.

Costs

The lessee or licensee is generally responsible for NPWS' costs and expenses in connection with the lease or licence. This includes costs associated with deed preparation and registration as well as costs associated with requests for approval or consent made by the lessee or licensee under the lease or licence.

Retail leases

The terms and conditions of retail leases will be subject to the *Retail Leases Act 1994*. This includes specific disclosure obligations prior to entry into a retail lease.

Other types of leases

Residential leases

A residential lease will only be considered in the limited circumstances set out in section 151I of the National Parks and Wildlife Act, including for the occupation of buildings in a historic site reserved under Part 4A.

Opportunities for a residential lease will generally:

- be advertised through realestate.com.au
- consider the ability of the applicant to pay the rent and look after the property
- take the form of a standard residential lease template with special conditions relating to the site
- be placed on periodic agreement at the end of the fixed term.

Further information

You can view current leasing and licensing opportunities at:

- nationalparks.nsw.gov.au/about-npws/properties-for-lease
- realcommercial.com.au.

Some opportunities can also be viewed at [NSW eTendering](#).

You can view the National Parks and Wildlife Service register of current leases, easements and rights of way at the [Environment and Heritage website](#).

If you have any questions, please contact us at:
commercial.enquiries@environment.nsw.gov.au.