

Procedure

Making and Managing Offers

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Position	Name	Date
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Version history

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1	17/10/2005	Endorsed
2	21/06/2007	Updated to include all offer types
3	19/06/2008	Updated to include ILUA requirements and provide further clarity
3.1	12/11/2008	Minor amendment to include requirements of state government departments
4	05/06/2009	Rename and include clarification of required monies
5	13/10/2009	Clarification on approval for extensions
6	03/03/2011	Amended to include conversion to term lease
7	02/06/2011	Amended to include details on full purchase price
7.1	01/11/2011	Minor amendment to change purchase to sale of USL
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9.01	22/06/2016	Minor amendment to review and insert text on new template
10.00	05/04/2019	Amended to review and insert GST withholding requirements

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Purpose

While section 442(4) allows the Minister to extend the time for acceptance of an offer, either before or after it has lapsed, there is no standard practice to accept and/or extend offers. There is a need to define an appropriate practice.

Procedure

An applicant must be given written notice (an offer) setting out the terms and conditions of the proposed dealing and the requirements they will need to meet if the offer is to be accepted.

A standard offer to an applicant will include –

- Cover letter
- Offer document -Conditions and notification of acceptance of offer
- Conditions Report -that provides the applicant with the conditions of any proposed new tenure, if applicable
- Account -lists the costs, GST if applicable and the prescribed fees payable
- Drawing/Plan of the subject land, if applicable
- Land Series Factsheet for relevant dealing, if applicable
- Any other requirements

Standard Requirements

The standard requirements for inclusion in all **offer documents** are the following:

1. return of the **Offer document - Conditions and notification of acceptance of offer** form, duly completed within 20 business days from the date of the letter of offer, and
2. payment of **required money** (see definition below) within **20 business days** from the date of the letter of offer.
3. all the other conditions of offer, including payment of the amount on the offer account, less any of the **required money** paid under 2 above must be satisfied within the nominated period, but this period must be no longer than 3 months from the date of the letter of offer e.g if the letter of offer is dated 20 January 2013, the nominated period must not be later than 20 April 2013.
4. the offer documents **MUST** also inform the applicant that if all conditions of the offer are not complied with within the timeframes stated and the applicant does not apply for an extension of time to fulfil the conditions by the due date, then the offer will lapse.
5. the offer documents **MUST** also inform the applicant that if they are unable to comply with **any** of the conditions of offer by the due dates, they should apply in writing for extension of time. Any applications for extension of time should be made **before** the offer dates lapse and must address the following:-
 - what action has been taken to comply with the offer conditions; **and**
 - why the conditions cannot be complied with by the due dates; **and**
 - the time for which the extension of time is requested, including reasons for the amount of time required.

6. if the applicant does not apply for an extension of time and the offer lapses, a fresh application and payment of the required application fee will be required. If a new application is accepted, the application will be re-investigated and include re-assessment of all conditions and requirements applicable to the dealing, including any annual rent or purchase price. This re-investigation may also result in the application being refused.
7. if the offer does lapse –
 - the applicant is to be advised that the offer has lapsed and that if a new application is made, the application will be re-investigated and include re-assessment of all conditions and requirements applicable to the dealing, including any annual rent or purchase price. This re-investigation may also result in the application being refused.
 - if the applicant is occupying the land, a 'Warning Notice' under the Trespass provision of the *Land Act 1994* should also accompany the letter advising that the offer has lapsed.
 - all monies paid in relation to the offer account to be refunded (note: an application fee is a statutory fee and is unable to be refunded).
 - eLVAS case finalised and the action status changed to **rejected by client** and the case closed.

Trespass provisions to be followed through to address any unlawful occupation.

Should the applicant wish their application to be re-activated after being advised that the application has lapsed, the eLVAS case is to be reopened and fresh application fee is payable. Fresh views, if relevant and a valuation where the date of valuation is older than 6 months are to be obtained.

Definition - required money:

- where the purchase price is \$10,000 or less -payment of an amount equivalent to the total amount of the offer. (This applies to all sales including conversions)
- where the purchase price is more than \$10,000 -payment of an amount equivalent to the total of all prescribed fees and charges, the calculated GST, plus \$10,000 (This applies to all sales including conversions)
- for a lease/licence/permit -all prescribed fees and charges, GST and first year's rent
- where the Australian Tax Office (ATO) GST withholding obligations apply to a purchase of a state land transaction, the GST amount must be excluded from the "required money" and paid by the applicant directly to the ATO. The payment by the applicant to the ATO is not required until after all offer conditions have been submitted.

Important note: Owner's consent is not to be given for a development application until at least the applicant has lodged the **Notification of acceptance of conditions of offer** form, duly completed and paid the **required money**.

Purchase Price

All non-freehold land dealt with under the *Land Act 1994* is owned by the State and the Department administering the *Land Act 1994* (representing the State) has a responsibility under the government's land transaction policy to realise fair market value on the disposal/sale or grant of an interest in State land, unless the specific approval of the Treasurer is otherwise obtained.

Dealings with a purchase price can include –

- Disposal of reservations by sale
- Reclaimed land
- Permanent road closure
- Sale of unallocated State land

All dealings resulting in a purchase price other than Conversion (s.172), Sale of reservations in title (s.24) and Sale of reclaimed land (s.127) the relevant date of the valuation is the date of the valuation report. If the date of the valuation report is older than 3 months, a review of the valuation is to be sought and obtained before approval of the relevant dealing (refer to [Valuations for Dealings under the *Land Act 1994* notification -PUX/901/656](#)).

The valuation (including for the rent if the offer is for a lease) is to be determined no less than 3 months from the date of the offer and the money paid no later than 3 months after the date of the offer, effectively meaning that 6 months could transpire between when the valuation is made and when the money is paid. In a buoyant market the valuation of the land could significantly increase in this timeframe.

For dealings resulting in payment of a purchase price, the applicant must comply with the standard offer requirements as detailed in 1, 2 and 3 under the heading '**Standard Requirements**' however as part of any approval for an extension of time to comply with the offer, the applicant is to be given the option of paying the purchase price (less the **required money**) at the -

- **nominated period** (but this period must be no longer than 3 months from the date of the letter of offer) under 3 under the heading '**Standard Requirements**'; or
- **time of compliance** (i.e. at the date of any approved extension of time) of all the outstanding offer requirements and subject to a review of the valuation.

The option to pay the full purchase price at the **nominated period** provides certainty for both the applicant and the State and facilitates a timely resolution of the matters to which the offer is conditioned.

However if the applicant elects to pay the purchase price, (less the **required money**) at the **time of compliance** the applicant is also required to acknowledge that the purchase price is subject to review and will need to pay any revised purchase price and increase in associated fees as a condition of offer.

When later advised by the applicant of compliance with ALL conditions, the Department will -

- review the valuation to ensure the State receives market value for an asset at the time of allocation of that asset (e.g. immediately prior to approval being sought from the Governor in Council)

- provide the applicant in writing advice regarding payment of any revised purchase price (less the **required money**) and give the applicant up to 2 months to comply with payment of any revised purchase price and any associated fees.

If compliance with the payment of any revised purchase price and any associated fees is not met within 10 business days from the required period, the case must be escalated to the Manager for a decision on the case.

Conversion for Category 11 Tenures

For Category 11 tenures the purchase price is determined on the date of receipt of a properly made application and is the net present value.

Indigenous Land Use Agreement (ILUA)

If a condition of an offer requires an ILUA this offer condition is treated no differently to any other condition of the offer. The relevant representative for the native title parties though, will be required to provide in writing, through the applicant, within 3 months from the date of the letter of offer, their agreement to enter into ILUA negotiations. It is expected that the applicant will apply for an extension of time to fulfil the ILUA condition and if this extension of time is agreed to, it should be for no more than 6 months.

Where the dealing relates to the grant of a lease the applicant must be advised that the valuation for lease rental purposes will be reviewed upon registration of the ILUA and that a further account may be sent out requiring additional monies to be paid.

Where the dealing relates to conversion of term lease or sale of unallocated State land, the applicant must comply with the standard offer requirements as detailed in 1, 2 and 3 under the heading '**Standard Requirements**', however as part of any approval for an extension of time to comply with the offer, the full purchase price is not required until compliance with the native title condition i.e. the applicant may elect to pay the purchase price (less the **required money**) at the **nominated time** or the **time of compliance**.

If the applicant elects to pay at the time of compliance the applicant is also required to acknowledge that the purchase price is subject to review and will need to pay any revised purchase price and increase in associated fees as a condition of offer. When the Department is later advised of compliance of the native title condition, the Department will -

- review the valuation for the sale of unallocated State land* to ensure the State receives market value for an asset at the time of allocation of that asset (e.g. immediately prior to approval being sought from the Governor in Council)
- provide the applicant in writing advice regarding payment of any revised purchase price (less the **required money**) and give the applicant up to 2 months to comply with payment of any revised purchase price and any associated fees.

(*The purchase price for conversion is the date the conversion application is received)

Outstanding Offers

If the applicant has **not complied** with the initial requirements of the offer within **20 business days** from the date of the offer letter

- 1 contact the applicant to remind them of the offer expiry date. This can be done by telephone, email or by letter
- 2 if this contact does not result in a request for an extension of time and 10 business days has lapsed since the nominated 20 business days from the date of the letter of offer, the case must be escalated to the Manager for a decision to lapse the offer and advise the applicant, the case will then be closed.

If the **Agreement to Offer -Requirements and notification of acceptance of offer** form, duly completed and payment of **required money** has been received by the Department and all the other conditions of the offer have **not** been complied within the nominated period and an application for extension of time has not been made -

- 1 contact the applicant to remind them of the outstanding offer requirements. This can be done by telephone, email or by letter
- 2 if this contact does not result in a request for an extension of time and 10 business days has lapsed since the nominated period, the case must be escalated to the Manager for a decision to lapse the offer and advise the applicant, the case will then be closed.

Any contact made with the applicant must be recorded as an interaction and if relevant, a copy of the email or letter attached to the case document list.

If the offer does lapse -

- the applicant is to be advised that the offer has lapsed and that if a new application is made, the application will be re-investigated and include re-assessment of all conditions and requirements applicable to the dealing, including any annual rent or purchase price. This re-investigation may also result in the application being refused.
- if the applicant is occupying the land, a 'Warning Notice' under the Trespass provisions of the *Land Act 1994* should accompany the letter advising that the offer has lapsed.
- all monies paid in relation to the offer account to be refunded (note: an application fee is unable to be refunded).
- eLVAS case finalised and the action status changed to **rejected by client** and the case closed.

Trespass provisions to be followed through to address any unlawful occupation.

Should the applicant wish their application to be re-activated after being advised that the application has lapsed, the eLVAS case is to be reopened and fresh application fee is payable. Fresh views, if relevant and a valuation where the date of valuation is older than 6 months are to be obtained.

Offers to a State government department or constructing authority, subject to resolution of native title

Where an 'in principle' offer for the sale of land has been made to a State government department or a constructing authority, in particular a local government, and that offer is subject to the purchaser dealing with the native title rights and interests under a compulsory acquisition Act; or a negotiated ILUA that provides for the surrender of native title, then there is no requirement to apply the above **Standard Requirements** until the native title requirements have been satisfied. [Allocation of land to State Government Departments and Constructing Authorities PUX/952/088](#) -Concessional Purchase Price Provision refers.

Conversion (s.172), Sale of reservations in title (s.24), sale of reclaimed land (s.127) offer letters -

As the purchase price for the conversion of a lease is subject to internal review and appeal to the Land Court, the applicant is to be given 42 days to request an internal review of the purchase price.

For tenures other than Category 11 the Agreement to Offer conversion of a lease – Requirement and notifications of acceptance of offer form includes options for the applicant to either indicate that they accept the purchase price and the offer conditions or that they accept the offer conditions but wish to request an internal review of the purchase price. This form must be returned duly completed within **20 business days** from the date of the letter of offer, together with payment of **required money** (see *mentioned definition*) detailed on the offer account.

An internal review request must be made using the appropriate form - **Application for internal review of an original decision LA14**. (The Acceptance of Offer form is not the means by which an internal review is sought).

If an internal review request has been made the applicant should be advised that the due date for completion of the conditions of the offer will be deferred until outcome of the review is known, whereupon a revised date for completion of all the conditions of the offer will be communicated.

Once the internal review process has been completed and the applicant has been advised of the results of that review (either that the purchase price stands or it has been amended), the applicant may be given up to 2 months (from the date of advice to the applicant on the outcome of the review) to comply with all the outstanding offer requirements.

If the applicant subsequently refers the matter to the Land Court for determination, all other conditions of the offer must be fulfilled within the nominated timeframe, unless an extension of time is applied for and granted.

Note: For Category 11 tenures the purchase price is the net present value, which is not subject to internal review.

Extension of Time

Extensions of time should only be considered when the applicant can demonstrate that they have taken action to comply with the requirements of the offer and the delay is due to circumstances beyond their control.

Decisions for extension of time are to be escalated to:

- 1st extension -Senior Land Officer responsible for the powers under the *Land Act 1994*
- 2nd or any further extensions -Manager, responsible for the powers under the *Land Act 1994*
- Example of acceptable circumstances for granting an extension of time include:
- requirement for survey or relocation of public utility infrastructure and due to remoteness or climatic or other conditions, it will be impossible for the work to be undertaken within the time stated.
- applicant has lodged an application for development approval and that approval has not yet been granted.
- ILUA negotiations

Applications for extensions of time must be made **before** the offer lapses and must address the following:

- what action has been taken to comply with the offer conditions; **and**
- why the conditions cannot be complied with by the due date; **and**
- the time for which the extension of time is requested, including reasons for the amount of time required.

In these circumstances, an extension of up to 3 months (up to 6 months for ILUAs or development approvals) may be granted. **However, as outlined previously in this document, if an extension of time is granted it must be subject to either a requirement that the purchase price (less the required money)**

- be paid in full by the original offer compliance date i.e. nominated period (if the nominated period has expired, the applicant may be given up to a further 20 business days to pay), or
- at the time of compliance i.e. the applicant is also required to acknowledge that the purchase price is subject to review and will need to pay any revised purchase price and increase in associated fees as a condition of offer.

If the applicant has indicated they will pay the purchase price in the time of compliance then the requirements set out under the heading "Purchase Price" must be undertaken e.g. subject to a review of the valuation (other than for Conversion (s. 172), Sale of reservations in title (s24), sale of reclaimed land (s.127).

Further extensions should only be granted if the applicant can demonstrate that they have been diligent in taking action to comply with the outstanding offer conditions.

Prescribed fees

Prescribed fees are levied having regard to the subordinate legislation applicable at the time of making an offer. Prescribed fees are generally indexed annually.

In the period leading up to the date of effect of the amended prescribed fees many offers are made, which in all likelihood will not be accepted until after the date of effect of the amended

prescribed fees.

Having regard to the value of the prescribed fee increase per offer and the administrative cost of invoicing the applicant for this fee increase per offer and the administrative cost of invoicing the applicant for this fee increase, it is deemed uneconomic to apply the amended prescribed fee to an approved offer made prior to the date of effect of the amended prescribed fee.

Therefore payment of fees as notified on 'offer accounts' approved and made prior to the date of effect of new prescribed fees will be considered as full and final payment.

However, if from the date of effect of the new prescribed fees the Minister's delegate grants an extension of time to accept an offer made prior to the date of effect of the new prescribed fees, and the prescribed fees in full have not been paid by the applicant, the extension of time must be subject to payment of fees based on the new prescribed fee structure. In this regard a new 'offer account' must be created and forwarded to the applicant.

Responsibilities

All regional State Land Asset Management officers.

Definitions

Required Money:

- where the **purchase price is \$10,000 or less** -payment of an amount equivalent to the total amount of the offer. (This applies to all sales including conversions)
- where the **purchase price is more than \$10,000** -payment of an amount equivalent to the total of all prescribed fees and charges, the calculated GST, plus \$10,000 (This applies to all sales including conversions)
- for a lease/licence/permit -all prescribed fees and charges, GST and first year's rent
- where the Australian Tax Office (ATO) GST withholding obligations apply to a purchase of a state land transaction, the GST amount must be excluded from the "required money" and paid by the applicant directly to the ATO.

References

Section 24 of the *Land Act 1994*

Section 127 of the *Land Act 1994*

Section 172 of the *Land Act 1994*

Section 442 of the *Land Act 1994*

Legislation

- *Land Act 1994*