

**GUIDELINES FOR DHB DISPOSAL OF LAND
OR
LEASE/LICENCE OF LAND FOR A TERM OF
MORE THAN FIVE YEARS**

December 2010

INTRODUCTION

This document outlines the guidelines for DHB disposal of land or lease/licence of land for a term of more than five years. The guidelines have been written to provide greater clarity to DHBs around the application and assessment process.

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BACKGROUND

DHBs require approval from the Minister of Health before they may sell or exchange DHB land, or before they enter into any lease of DHB land with a term longer than five years, including renewals (clause 43 of Schedule 3 of the New Zealand Public Health and Disability Act (NZPHD) applies).

Process for land sale

When land is disposed of through sale, there are established clearance processes (eg for land compulsorily acquired under the Public Works Act or gifted). In particular, the Protection Mechanism process ensures that the Crown's obligations to Maori are recognised and reflected in the disposal. The Protection Mechanism allows for land to be acquired by the Crown and used in Treaty settlements, in appropriate instances. There is also potential for sites of significance to Maori to be identified and appropriately protected.

Process for lease of land

Leases are not permanent alienations of land, the ultimate control of the land remains with the DHB. Leases do not result in the land being beyond the reach of the Crown for any use in future in meeting Public Works or Treaty settlement obligations etc.

Long term leases enable a DHB to use their land in a way that is flexible and enables them to adapt to changing models of care. For example, to enable collaboration and co-location such as that associated with Integrated Family Health Centres (IFHCs).

A frequent model proposed for IFHC's involves the potential lease of DHB land and/or buildings to a separate entity who will develop and manage the health centre. This provides a base for health services to be provided within the community, but minimizes the development risk faced by the DHB, allowing the DHB to focus on its core functions. The entity undertaking the redevelopment or building process requires certainty of lease tenure in order to justify the significant amounts of capital being invested, and in order to provide security for access to commercial financing. In these circumstances, a long term lease, such as up to 35 years, would likely be appropriate.

THE PROCESS

When is the approval of the Minister required?

The prior written approval of the Minister of Health is required when a DHB intends to:

- sell, exchange, mortgage or charge land, or
- grant a lease or licence over land for a term of more than five years. Note that the term of the lease or licence includes the total period for which any person is entitled to have the lease or licence renewed. Thus, for example, a four year lease with two four-year period rights of renewal qualifies as a lease for twelve years, and requires Ministerial approval.

The requirement for approval from the Minister of Health is contained in Clause 43 of Schedule 3 of the New Zealand Public Health and Disability Act 2000.

What process should I follow to seek Minister's approval?

DHBs should send their request for sale, exchange, mortgage or charge of land, or for granting of a lease of licence for more than five years, to the Ministry of Health. Current contact details are:

Mhairi Mchugh
Team Leader
Capital and Operating
National Health Board
Ministry of Health
1 The Terrace
Wellington

Email: mhairi_mchugh@moh.govt.nz
Phone: (04) 496 2399

The supporting information required is outlined in Table One and Appendix One of these guidelines.

The Ministry of Health will action the DHB request, and will provide a report and recommendation to the Minister of Health regarding whether approval should be granted. If approved, the Minister of Health will send a letter to the DHB confirming the granting of approval.

What information do I need to provide?

Table One (following) identifies the information usually required to support applications for sale/exchange of land, and for any lease/licence of land for a period of more than five years. Long term leases (being leases of a term of twenty years or longer, or leases that are close to this length and have similar risks attached), have additional requirements, as noted in Table One. Note that leases for a term of longer than 35 years would generally not be approved because such a term triggers a presumption that the land is actually surplus (see for example, the Resource Management Act 1991).

Please note that further information may be required for any sale/exchange or lease application depending on the detail of the request.

Some information is required by statute (see appendix one for relevant excerpts from the New Zealand Public Health and Disability Act 2000 (NZPDH)). Other information is required in order that the Ministry of Health can adequately advise the Minister of Health on the scope, risks etc of the DHB proposal. (As noted above, the decision as to whether to approve the DHB request is made by the Minister of Health, based on recommendations made by the Ministry of Health.)

The Minister has discretion in regard to giving an approval, and may require specific information to support the decision making process.

TABLE ONE: GENERAL REQUIREMENTS FOR SALE/EXCHANGE OF LAND OR LEASE OF LAND

Requirement	Applies to Sale or Exchange of Land	Applies to Lease /Licence > 5 years	Rationale/Authority and Comment
DHB Board decision to declare the land surplus <ul style="list-style-type: none"> • Date of meeting • Copy of the minutes of the decision 	Yes	Yes in certain circumstances*	Confirmation that the Board is aware of the proposal, prior to Ministerial approval being sought. * Compulsory for all long term leases and for any leases that are potentially controversial. Some routine leases of short term (eg six year lease to health provider) will not require board approval. Please contact the Ministry of Health if you are unclear what category your lease falls into.
DHB to include details of description of the land; including <ul style="list-style-type: none"> • Street address • Search copy of Certificate of Title • Latest Ratable Value or Valuers Report 	Yes	Yes	Enables land to be identified clearly in all correspondence and approvals
DHB to provide details of current use of the land – is it bare land, or buildings? Currently occupied?	Yes	Yes	Supports understanding of the implications of land being disposed of/leased.
DHB to search title <ul style="list-style-type: none"> • How was land obtained? Public Works, Purchase, Gifted • Is there any known Maori interest to be declared? 	Yes	Yes	When disposing of land, DHBs must comply with offer-back provisions of the Public Works Act 1981, which includes requirements relating to the Maori Protection Mechanism and the Sites of Significance process when disposing of surplus properties.
DHB must have advertised intention to dispose of land <ul style="list-style-type: none"> • Copy of the public notice • Named newspapers, dates of insertions, dates for expressions of interest 	Yes	Not usually required	In accordance with Clause 43 (4)(a) of Schedule 3 of the NZPHD 2000, the Minister must be satisfied that the DHB concerned is, as a result of its resident population, aware of the views within the population about the proposed sale or exchange

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Requirement	Applies to Sale or Exchange of Land	Applies to Lease /Licence > 5 years	Rationale/Authority and Comment
<ul style="list-style-type: none"> Public responses received (and comment, if appropriate) 			
<p>Communications</p> <ul style="list-style-type: none"> If the disposal/lease etc is part of a larger project, it may be appropriate to provide project milestones, dates of publications, details of previous public/media attention etc 	Yes, when applicable	Yes, when applicable	<p>Where appropriate, informs Minister on the wider purpose to be achieved by the proposed dealing with land.</p> <p>For long term leases, it will often be useful to the Minister's decision process if DHBs engage with their local populations (including local Iwi) at appropriate points of the development process, and are aware of the view of their population. In particular, engagement early in the development process will often help minimize the risk of later delays. The Minister may, in some instances, require additional more formal engagement dependent on the type of proposal that the lease relates to. For example, for Integrated Family Health Centres (IFHC) and similar community developments, will often have already involved some level of engagement with local populations and Iwi groups (there is no need to duplicate this process). IFHC and similar developments may also identify mechanisms for reflecting community involvement on an on-going basis.</p>
<p>Financial implications</p> <ul style="list-style-type: none"> Quantify expected proceeds (and note that will be included in district Annual Plan) Details of the intended use of the proceeds received 	Yes	Yes	<p>Informs the Minister of the financial implications of the proposed dealing with land.</p> <p>For sale or exchange of land, in accordance with clause 43(4)(b) of Schedule 3 of the NZPHD, the Minister must be satisfied that the sale or exchange of land will assist the DHB to meet its objectives under section 22 of the NZPHD.</p> <p>Clause 43(5) of Schedule 3 of the NZPHD requires that every DHB must use the proceeds of a sale of land, and any payments received in connection with an exchange of land, for the purchase, improvement or extension of publicly-owned facilities for health purposes unless the Minister, by written notice to the DHB, approves a different use of the proceeds of payments.</p> <p>For leases, and particularly for long term leases, the fiscal implications of the lease will be relevant to the risk assessment: the DHB must show that the overall proposal</p>

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Requirement	Applies to Sale or Exchange of Land	Applies to Lease /Licence > 5 years	Rationale/Authority and Comment
			relating to the lease is financially prudent and sustainable and consistent with the DHB's asset management planning.
Indications that DHB is aware of and has considered the implications of relevant legislation on the proposed transaction.	Yes	Yes	<p>Informs the Minister that the DHB has considered and complied with relevant legislation relating to proposed dealing with land.</p> <p>Examples of relevant legislation include:</p> <ul style="list-style-type: none"> • Public Works Act 1981 (s40) • Health Sector (Transfers) Act 1993 • Sensitive Land (Overseas Investment Act 2005) • Local Government Reserves Act 1977 • Other (Ngati Whakaue etc)
Copy of lease documentation and details of the purpose of the lease.	N/A	Yes	<p>Informs the Minister that the DHB has considered and complied with relevant lease documentation relating to proposed lease or licence, and that the lease is consistent with DHB objectives.</p> <p>Long term leases must be supported by detailed information regarding the intended use of the site. This is because a lease of a long term gives rise to the possible perception that the land is surplus to the DHBs requirements.</p> <p>Therefore, for long term leases:</p> <ul style="list-style-type: none"> ○ The DHB must clearly demonstrate why a long-term lease is preferred over possible sale of the land. The DHB must demonstrate why retention of the land is consistent with the DHB's long term plans. The DHB must support their application with sufficiently detailed information relating to long-term service planning and demographic growth assumptions. ○ Generally the lease should be solely or primarily for health-related purposes. If the land is being used for something other than health-related purposes, the DHB must provide evidence to rebut the presumption that the land is surplus. ○ Lease documentation must clearly demonstrate continued DHB control/safeguards over the site, and its continued use/availability for health purposes and/or activities consistent with the initial reason for granting the

TABLE ONE: GENERAL REQUIREMENTS FOR SALE/EXCHANGE OF LAND OR LEASE OF LAND			
Requirement	Applies to Sale or Exchange of Land	Applies to Lease /Licence > 5 years	Rationale/Authority and Comment
			lease.

What will happen when my request is received by the Ministry?

A Ministry representative will contact you to confirm that your request has been received. If the Minister or the Ministry requires further information to understand and consider your request, the Ministry will give written notice of what further information is required.

Who do I contact if I have any questions about the process?

Please contact Mhairi Mchugh at the Ministry of Health.

How long will it take for a decision, and how will I know when a decision has been made?

Please allow six weeks from the time that you have made your request and provided all required information. The actual time taken for the approval process will depend on the priorities of the Ministry and the Minister's Office.

If there is a reason for urgency (eg related to a particular development), please supply supporting documentation and explanation.

The Minister of Health will advise his/her decision in a letter to the DHB. The Minister has authority to apply conditions to any approvals. If the request is approved, the letter will outline any conditions of the approval

The letter of approval should be tabled at the next Board meeting of the DHB.

APPENDIX ONE: EXCERPTS FROM THE NEW ZEALAND PUBLIC HEALTH AND DISABILITY ACT 2000

Schedule 3

43 Dealings with land

- (1) No DHB may sell, exchange, mortgage, or charge land without the prior written approval of the Minister.
- (2) No DHB may grant a lease or licence for a term of more than 5 years over land without the prior written approval of the Minister.
- (3) For the purposes of subclause (2), the term of a lease or licence includes any period (or, if the lease or licence provides for more than 1 such period, the total period) for which any person is entitled to have the lease or licence renewed.
- (4) Before approving the sale or exchange of any land under subclause (1), the Minister must be satisfied that—
 - (a) the DHB concerned is, as a result of consultations with its resident population, aware of the views within the population about the proposed sale or exchange; and
 - (b) the sale or exchange of the land will assist the DHB to meet its objectives under section 22; and
 - (c) the DHB will comply with any applicable requirement under subclause (5).
- (5) Every DHB must use the proceeds of a sale of land, and any payments received in connection with an exchange of land, for the purchase, improvement, or extension of publicly-owned facilities for health purposes unless the Minister, by written notice to the DHB, approves a different use of the proceeds or payments.
- (6) Any approval under this clause may be subject to any conditions the Minister specifies, and may be given in respect of any land of a class the Minister specifies.
- (7) A DHB that receives a written approval under this clause must, as soon as practicable, table the approval at a meeting of the DHB.
- (8) In this clause, DHB includes a [Crown entity] subsidiary of a DHB.
- (9) To avoid any doubt, the matters to which the Minister may have regard in giving an approval under subclause (2) in relation to any land include the question of the application to the land of clause 3 of Schedule 1 of the Health Sector (Transfers) Act 1993.

New Zealand Public Health and Disability Act 2000

22 Objectives of DHBs

- (1) Every DHB has the following objectives:
 - (a) to improve, promote, and protect the health of people and communities:
 - (b) to promote the integration of health services, especially primary and secondary health services:
 - (c) to promote effective care or support for those in need of personal health services or disability support services:
 - (d) to promote the inclusion and participation in society and independence of people with disabilities:
 - (e) to reduce health disparities by improving health outcomes for Maori and other population groups:
 - (f) to reduce, with a view to eliminating, health outcome disparities between various population groups within New Zealand by developing and implementing, in consultation with the groups concerned, services and programmes designed to raise their health outcomes to those of other New Zealanders:
 - (g) to exhibit a sense of social responsibility by having regard to the interests of the people to whom it provides, or for whom it arranges the provision of, services:
 - (h) to foster community participation in health improvement, and in planning for the provision of services and for significant changes to the provision of services:
 - (i) to uphold the ethical and quality standards commonly expected of providers of services and of public sector organisations:
 - (j) to exhibit a sense of environmental responsibility by having regard to the environmental implications of its operations:
 - (k) to be a good employer [in accordance with section [118](#) of the Crown Entities Act 2004].
- (2) Each DHB must pursue its objectives in accordance with its district strategic plan, its annual plan, its statement of intent, and any directions or requirements given to it by the Minister under [section [33](#) of this Act or section [103](#) of the Crown Entities Act 2004, or under section [107](#) of the Crown Entities Act 2004].