



# **Lease Subdivision PUX/901/528**

**SLM/2013/428**

**Version 4.01**

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## Version History

Version	Date	Author	Description/Comments
1	20/12/2004		Replaces PUX/901/526
1.1	01/07/2005		Conversion Project – New WORD/XML template
2	13/12/2007		Updated to reflect Land Act amendments. Endorsed by Scott Spencer, Director-General, Department of Natural Resources and Water
2.1	04/02/2011		Minor updates to reflect department name change
2.2	25/10/2012		Minor updates to reflect department
2.3	19/03/2013		Updated to change government logo
2.04	21/03/2014		Updated to new DNRM template
3.00	12/06/2014		Updated to include amendments due to LOLA 2014 effective 1/7/2014
4.00	23/06/2016		Amended to include subdivision of rolling term leases
4.01	20/09/2017		Updated to insert – Planning Act 2016 to replace Sustainable Planning Act

## Approval

Position	Name	Date
Director – Operations Support – Land	Rod Kent	20/09/2017



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## Purpose

This policy applies to all applications for the subdivision of leases made under the *Land Act 1994* (Land Act).

The document provides direction to the Minister's delegates as to the limited circumstances in which an approval will be granted to subdivide a lease under the subdivision provisions of the Land Act.

## Rationale

A lease under section 175 of the Land Act may only be subdivided if (amongst other things) that Act or a condition of the lease does not prohibit subdivision.

The Land Act prohibits the subdivision of the following leases

- (a) an auction perpetual lease that is a perpetual country, suburban or town lease issued under the repealed Act, part 7, division 2;
- (b) a perpetual lease selection issued under the repealed Act, part 4, division 2;
- (c) an agricultural farm issued before 31 December 1991 under the repealed Act, part 4, division 1;
- (d) a freeholding lease that has less than the amount prescribed under the *Land Regulation 2009* to be paid before the deed of grant may issue.

Further, under section 176B of the Land Act, the chief executive must consider whether the proposed subdivision is appropriate, taking into account State, regional and local planning strategies and the objects of that Act.

## Freeholding leases (other than the leases listed above)

A freeholding lease (subject to section 154 of the Land Act regarding additional or fewer purposes) must be used for the purpose of the lease originally converted e.g. if the lease converted was a term lease for residential purposes, the freeholding lease must be used for that purpose, or a grazing homestead freeholding lease (converted from a grazing homestead perpetual lease) must be used for grazing or agriculture, or both.

Although still a lease under the Land Act, the State has sold the "freehold" of the land to the lessee who had elected, in lieu of a single payment, to pay the freehold purchase price on terms by way of an annual instalment i.e. once the lessee has paid the purchase price in full, the lessee is entitled to the issue of a deed of grant i.e. freehold (subject to the conditions of the lease being fulfilled, payment of any other fees e.g. a deed fee, and the registration of any required survey plan).

Further, although the State may wish to ensure that the leased land is still used, including in a sustainable way, for the purpose of the lease, the lessee may elect to pay the lease to freehold at any time, and therefore the State's oversight on the use of the land under a tenure arrangement is diminished.

Notwithstanding the State has sold the "freehold", a lease under the Land Act is not subject to the provisions of the *Planning Act 2016* (Planning Act) for reconfiguration of a lot (subdivision).

Exemptions for subdivision may therefore apply, including in relation to vegetation clearing, or local government requirements for the provision of services, that may not have applied if the lessee had elected to pay to "freehold" in a single payment and a deed of grant issued.

Accordingly, it would be against the objects of the Land Act (and the public interest) to approve the subdivision of a freeholding lease under the provisions of that Act, and if the lessee wishes to subdivide the land, the lessee will need to pay the lease to freehold and make application for

reconfiguration of a lot under the Planning Act.

## **Term and Perpetual lease**

A lessee has been granted or holds a term or perpetual lease in priority only for the purpose of that lease and must use the lease for that purpose (subject to section 154).

If the lessee wishes to subdivide the lease, including for private sale, the lessee has in effect indicated that part of the lease is surplus to the lessee's requirements for the purpose for which the lease issued.

As the State is the owner of the land, it is the State's prerogative and responsibility to further deal with any area that may be determined as surplus to the lessee's requirements (for the purpose of the lease) and not the lessee.

The State is required to ensure that when further dealing with such land, the land is allocated fairly i.e. decide whether a person may have priority to the land, or whether the land should be made available by public competition.

In addition, the most appropriate tenure and use of any land must be assessed - section 16 of the Land Act.

The Department of Natural Resources and Mines (DNRM) on behalf of the State is also required to financially account for the State's land asset.

Therefore, a subdivision of a term or perpetual lease is generally not supported, as it would be against the objects of the Land Act (and the public interest) unless there are State interest considerations, specifically in respect of rural leases.

## **Rural leases**

As a result of closer settlement and previous misconceptions of the sustainable capacity of the State's agricultural lands, substantial areas of Queensland have been subdivided into rural lots that are too small to generate adequate profits to adjust to fluctuations in market and seasonal conditions that are commonly experienced by our agricultural industries. Coupled with other economic pressures, maintaining production targets beyond ecological desirability has contributed to the degradation of many smaller rural leases.

In addition major concerns have now emerged about long-term climate trends. It is recognised that climate variability will have a major impact on the economic value of the State's agricultural sector. This may further increase the risks associated with agricultural production on smaller properties.


In view of the over-abundance of smaller lots to cater for any perceived market for such properties (either to provide "starter" blocks or rural lifestyle opportunities) and the impact of long-term climate variability, decisions about future land reconfiguration can be approached on a precautionary basis without a significant impact on the agricultural sector. Therefore the further subdivision of rural leasehold properties is not favoured.

## ***RURAL LEASE GUIDELINES:***

### **Facilitating Build-up**

When assessing a subdivision application the primary test is to be - would the State allocate the land in a manner similar to that proposed in the subdivision application? That is would the State be satisfied that the rearrangement of lots would be the most appropriate configuration.

For instance, subdividing a lease in one locality in order to tie to land located in another locality is more likely than not going to limit opportunities for better outcomes where the lease is located. From a land planning perspective, build-up in a locality where small properties exist is desirable; to subdivide a property in one of these localities simply to tie the subdivided parts to other properties



outside the locality is unlikely to provide any additional outcomes that couldn't be achieved by the market mechanisms already operating. In these circumstances it would be less risky to leave the lease as is and refuse subdivision.

Whilst defining a locality will vary in different areas of the State, an upper limit of 100 kilometres via the best practical local government maintained access should be applied when considering applications that involve the tying of properties. Past experience suggests that the concept of a "reasonable working distance" varies greatly between individuals and with successive owners, or the passage of time, and pressure to remove the tie (either covenant or lease condition) inevitably comes.

Proposals that result in amalgamated leases are preferable. In more closely settled areas, the distance may be reduced as localities can be better defined.

Limiting subdivision to a locality may reduce market place competition thus reducing the potential profit to the lessee. However, the State does not have an obligation to assist lessees to maximise profits and therefore it is not a pertinent consideration.

## **Closer Settlement/Additional Areas**

Lands legislation has constrained individual lessees' attempts to subdivide large leases so as to profit from distributing "surplus" land. Though many existing pastoral leases (i.e. leases issued prior to the commencement of the Land Act) contained a covenant (s.473) entitling an offer of a new lease for pastoral purposes if the expiring lease is to be renewed, this entitlement is limited to a maximum of a single living area. The State had previously retained a right to re-allocate those lands that are substantially in excess of a living area at the expiration of individual leases or upon an application for conversion. Priority in the past has been given to closer settlement to allow the State to provide additional blocks so as to bring more families and capital into an area to improve the economic viability of the region. However as closer settlement slowed or was discontinued, emphasis was given to assisting landholders with less than a living area (additional areas).

The State, not individual lessees, will decide the most appropriate use on a case by case basis.. However the retention of large leases, not smaller, is preferable in the circumstances clearly facing the agricultural sector. Recent market transactions have revealed that the competition for such leases is high, emphasising the importance of leases with economic certainty. The continued subdivision of large holdings, without acknowledging the past legacy, further undermines the long-term sustainability of the rural leasehold estate.

## **Policy**

### **Freeholding Leases**

Subdivision under the provision of the Land Act of freeholding leases is not supported, and the lessee will need to pay the lease to freehold with any subdivision to proceed under the provisions of SPA as a reconfiguration of a lot application.

### **Term and Perpetual; Leases other than Rural Leases.**

Similarly, subdivision under the provisions of the Land Act of term and perpetual leases is not supported and should not be approved, other than for rural leases for State interest considerations as provided for in this policy.

The lessee though may offer to surrender a (surplus) area of a lease to the State for further dealing under the Land Act. Considerations in further dealing with the land will include assessment of the most appropriate tenure and use, and whether the land is to be made available with or without competition - see sections 121,122 and 123 of the Land Act and [Allocation of Land in Priority in Terms of the Land Act 1994 Policy PUX/901/316](#)

Prior to accepting any such surrender, DNRM will need to ensure that

1. the balance of the lease is still sufficient in area to be used for the purpose of the lease (e.g. if a residential lease, then the balance area of the lease will still conform to the planning scheme, or if the lease is situated on an industrial estate, the required industry, including any foreseeable future expansion on the site, may still be undertaken), and
2. the surplus land is also adequate (including in area and condition) with which to further deal i.e. sufficient in area to be a stand-alone parcel, or if not, is able to be amalgamated with adjoining land, and there is no other reason (e.g. erosion) that may prevent the use of the land.

## Rural Leases

In general, subdivision of rural leases is not supported

The subdivision of rural leases may be approved only where-

1. a part of the lease is to be surrendered (see note 1 below) to enable the State to obtain land –
  - a. for a public purpose (see note 2 below); or
  - b. for use in a property build-up scheme; or
  - c. for new settlement or an additional area to be distributed through Chapter 4 Part 1 of the Land Act
2. the lease is to be subdivided in a minimalist (see note 3 below) manner to enable the disposal of the entire lease to assist the build-up (see note 4 below) of other pastoral, agricultural or grazing lands in the locality in which the lease is located.
3. the subdivision is to rearrange contiguous lots to provide for improved cadastre (see note 5 below) or natural resource management (see note 6 below).

## Rolling term lease

If a rolling term lease is subdivided, each new subdivided lease is a rolling term lease even if the subdivided leases are less than 100ha - refer to section 176A(3) of the Land Act.

Note .The rolling term lease extension registered on title does not commence until the current lease term expires).

Therefore any registered rolling term lease extension that has not yet commenced for the lease being subdivided does not continue to the new subdivided leases.

Generally, the terms of new subdivided leases would be for the remaining term of the lease being subdivided (i.e. the term up to the expiry date of the current term and not the rolling term lease extension date), but a longer term may be considered in accordance with section 176A of the Land Act.

For example

- I. If the original term of the lease being subdivided was 30 years, and
- II. has 15 years left to run (i.e. before the rolling term lease extension takes effect),

the subdivided leases may issue for up to 30 years from a native title and Land Act perspective.

However, section 159(1) of the Land Act needs to be considered as if the action is a renewal – please see section 176B(b) of that Act, and the delegate will need to demonstrate and document why a longer term is being considered.



Note: If the new subdivided leases issue only for the balance term of the lease being subdivided, any later rolling term lease extension for the subdivided leases may only be for the term of those leases. For example if the balance term of the rolling term lease being subdivided is 15 years and the subdivided leases issued only for that term, a later rolling term lease extension could only be for 15 years. In this instance, the lessee could be seen as being disadvantaged by the subdivision.

**Notes:**

1. Surrender may occur voluntarily or as part of a formal acquisition process.
2. It is desirable that the balance of the lease -
  - a. Remains a viable entity; or
  - b. Is amalgamated or tied to other lots within the aggregation
    - If this is not achievable and public ownership is paramount, each case should be determined on its individual merit however the public interest will have precedent.
3. The creation of more than two lots should not be approved.
4. Amalgamation of lots is required. If amalgamation is legislatively unobtainable then a covenant is to be used to prevent the future separate sale of the lots.
5. No net increase in lots is to result. This scenario will often be best addressed through section 360A(2)(c).
6. Fencing to land types, more practical watercourse management etc. No net increase in lots is to result. To ensure that the lease is subdivided and disposed of for build-up (build-up is defined in Definitions of this policy), the lease proposed to be subdivided must be held by the lessee who requires the build-up i.e.
  - i. all the lands, including the lease to be subdivided, are held by the same lessee in exactly the same interests, or
  - ii. Lessee A holds a lease/land, and Lessee B holds a further lease/land, and together they hold a separate lease that is proposed to be subdivided for build-up for those lessees' separate leases/land.



## Definitions

DNRM - Department of Natural Resources and Mines

Rural Leases: Land Act tenures used for pastoral, grazing or agricultural purposes, including rural leasehold land but excludes -

a. freeholding leases;

or

b. term leases that are:

- issued over a reserve dedicated under the Act; or
- issued over a State Forest or Timber Reserve declared under the *Forestry Act 1959* or
- issued over a protected area as defined by section 28 of the *Nature Conservation Act 1992*; or

c. occupation licences; or

d. road licences; or

e. permits to occupy.

Public purpose: means a purpose for which land may be taken under the *Acquisition of Land Act 1967* or a community purpose under the Land Act

Build-up: means the integration of additional land, from within the locality, into the management of a sub-standard agricultural business enterprise to increase its long-term viability, productivity and profitability within the sustainable capacity of the land.

Amalgamated leases: means the amalgamation of 2 or more contiguous leases of the same type held by the same lessee/s in exactly the same interests ("contiguous" includes leases separated only by a road or watercourse\*) into one lease of the same type.

Tying: means where for legislative reasons amalgamation is not permitted the "tying" of leases and/or lots by use of a covenant (s.373A)

Example of "where for legislative reasons amalgamation is not permitted" include-

1. where leases of the same type are separated by a distance greater than that of a road or watercourse;

or

2. where leases are of different types; or
3. where the parcels are of a different tenure – please see section 176K(1A) of the Land Act ; or
4. the Land Act or a condition of lease prohibits amalgamation; or
5. where there is a registered mortgage over only part of the lease land

\* An amalgamation of leases must not affect the status of a boundary watercourse - if 2 or more lots separated by a boundary watercourse are to be amalgamated, any new lot is to be joined by vinculum.

## **Responsibilities**

Officers holding delegations from the chief executive for the subdivision provisions of the Land Act

## **Legislation**

*Land Act 1994*

*Acquisition of Land Act 1967*

*Forestry Act 1959*

*Nature Conservation Act 1992*

*Land Regulation 2009*

*Planning Act 2016*