



Conversion of Leasehold tenure PUX/952/121

SLM/2013/397

Version 4.00

Last reviewed 24/05/2016



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Version History

Version	Date	Author	Description/Comments
1	13/09/2013	State Land Administration, SLAM, Operations Support	New DNRM template and inclusion of content withdrawn from PUX/901/334, PUX/952/113 and PUX/952/115
2	27/06/2014	State Land Administration, SLAM, Operations Support and Native Title Policy unit, Aboriginal and Torres Strait Islander Land Services	Endorsed by Andrew Luttrell and Greg Coonan. Updated to include amendments due to LOLA 2014
3	5/09/2014	State Land Administration, SLAM, Operations Support	Amended to exclude the option for freeholding leases
3.01	21/10/2014	State Land Administration, SLAM, Operations Support	Minor amendment to correct error in calculation of instalment example
4.00	24/05/2016	Operations Support - Land	Amended to include changes to Native Title requirements

Approval

Position	Name	Date
A/Director, Operations Support -Land	Amanda Kearnan	24/05/2016



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Purpose

To provide guidelines for dealing with applications to convert term leases and perpetual leases to freehold.

The document also includes information in relation to payment, including by instalments, for commercial timber on conversion.

This document does not relate to any of the handful of miners homestead tenures that may be remaining.

Rationale

Conversion of tenure as provided for under the *Land Act 1994* (LA) to a more secure tenure should be allowed as long as the prescribed criteria have been satisfied and such tenure is consistent with the most appropriate use of the land.

It is necessary to clarify the circumstances in which a freeholding lease may be issued. Terms are not provided to support freeholding of leases issued under the provisions of the LA, as it is inappropriate for the Department to assume the role of a financier/banker where there are clearly ample market place services available. Except in the statutory circumstances when freeholding leases may issue as listed in this document, lessees converting to freehold must convert directly to a deed and therefore are responsible for securing any necessary financial service in the open market place.

There may be inappropriate conditions such as timber clearing on particular leases - allowance needs to be made when dealing with conversion applications if a condition is inappropriate.

If public requirements are identified from a lease during consideration of a conversion application, it is reasonable that the lessee is responsible for providing a plan of survey of both the area to be converted and the public requirements area. This is supported by the following:

- The lessee has no right to conversion, only to apply for conversion.
- The chief executive must consider if there are any public requirements from the lease.
- Any offer of conversion may be subject to conditions

However, the provision in the LA requiring consideration of public requirements should not be used to rectify the placement of existing infrastructure, which was not secured at the time from the lease by appropriate means, such as by surrender from the lease or acquisition of the required area.

Legal access to land is a reasonable expectation by landholders. If a lease is being converted and has no dedicated access, instances may occur when it is not possible or may not be feasible to provide dedicated access, and it is desirable that some other form of “legal access” be provided.

The provision of constructed access is a matter for the local government and lack of constructed access is not a matter that should preclude freeholding.

Policy

General

The conversion of tenure provisions of the LA do not apply –

- to a lease over a reserve (i.e. a State lease); or
- to a licence or permit to occupy; or
- if the conditions of a lease or the conditions of a class of lease or the LA prohibits an application for conversion to be made or a particular type of conversion to be made.

A lessee may only apply to convert a –

- (a) perpetual lease to freehold land;
- (b) term lease (issued for pastoral purposes) to a perpetual lease or freehold
- (c) term lease (not issued for pastoral purposes) to freehold land;

See [Land Holdings – Leases Early Renewal, Rolling Term Lease Extensions and Conversion \(Special Circumstances\)](#) Policy PUX/901/335 for guidelines on when special circumstances exist.

The Department may also consider conversion of a lease when assessing the most appropriate tenure of the land as part of the process for dealing with an application for renewal of a lease (section 159A of the LA).

Landholders will be provided with tenure allowed under the LA and that will support the most appropriate use of the land as well as being consistent with the surrounding tenure landscape, as required to be assessed under section 167 of the LA. Whilst the conversion of a term lease for pastoral purposes to a perpetual lease is an option available to lessees, freehold is the State's preferred tenure, where appropriate.

Any conversion under this Policy is subject to the lessee appropriately addressing native title under the Commonwealth *Native Title Act 1993* (NTA).

When may a freeholding lease be issued?

A freeholding lease (i.e. a lease which allows the lessee to pay the purchase price by instalments) may only be issued for conversion of-

- a non-competitive lease (section 471 of the LA); or
- a special lease (section 478 of the LA),

where the lease category is not for primary production, both of these types of leases being issued under the (repealed) *Land Act 1962*.

There is no provisions in the *Land Act 1994* which would allow for the issue of a freeholding lease.

Therefore all tenures that have been issued under the Land Act 1994 (term or perpetual lease, including a grazing homestead perpetual lease), if conversion to freehold is approved, must pay the purchase price in full by way of a single payment and a deed of grant issued.

Note – a primary production (**category 11**) **tenure** that is a special lease, grazing homestead perpetual lease or non-competitive lease must pay the purchase price in full by way of a single payment and a deed of grant issued.

The previous entitlement to pay the purchase price of a converted category 11 tenure by instalment was based on a purchase price calculated by the unimproved value methodology which produced markedly higher purchase prices than the current net present value of the rental stream methodology.

Terms of Repayment for Freeholding Leases

In accordance with sections 471 and 478 of the LA, lessees of those non-competitive leases and special leases that existed at the commencement of the LA may elect, if successful in gaining approval to convert to freehold, to pay the purchase price by instalments.

For conversion of **non-competitive leases** and **special leases for all categories other than Category 11**, the terms in the schedule below apply.

Purchase Price	Deposit	Number of annual instalments
\$*5,001 to \$25,000	50%	2
\$25,001 to \$100,000	25%	5
\$100,001 to \$250,000	15%	10
\$250,001 to \$500,000	10%	20
\$500,001 +	5%	30
*Amounts to \$5,000 need to be paid in full.		

For example the purchase price is \$400,000 then the offer would be –

- by way of a single payment - purchase price of \$400,000 paid as a single payment, **no discount**.
- by way of instalments - 10% deposit = \$40,000, term of freeholding lease would be 20 years (20 annual instalments for balance of purchase price of \$360,000 at the prescribed interest rate).

Note - Instalments will include interest at the Suncorp business rate, which as at 1 July 2015 is 7.25%.

The exception to the above is the terms of freeholding leases issued by an arrangement under the *Economic Development Act 2012* (as outlined above though, freeholding leases may only issue for leases issued under the repealed *Land Act 1962* i.e. a freeholding lease may not issue for conversion of a term lease or perpetual lease issued under the LA).

Agreement to the terms of the proposed offer to freehold must be sought from the Property Services Group of the Department of State Development, Infrastructure and Planning. A 10% deposit is required with a term of no longer than 10 years, unless the Minister administering that Act requests alternative arrangements.

Note - Commercial timber (as outlined below) and other relevant fees and charges also apply.

Calculation of terms for sale of Commercial Timber on Conversion to Freehold

Further, the purchase price for the conversion of a lease is an amount equal to the total of the unimproved value of the land and the market value of any commercial timber that is the property of the State on the land. The market value of the commercial timber is calculated at the day the conversion application was received, or if the value is appealed, the day the appeal is decided.

If a freeholding lease is permitted to issue as outlined above, the lessee may also pay the market value of the commercial timber by instalments. The maximum term for paying timber by instalments however is 10 years. There is no discount on the purchase price of the timber whether it is paid in full or by instalments.

If there is commercial timber for a conversion, when determining the deposit and terms for repayments for a freeholding lease using the 2 schedules in the section **Terms of Repayment for Freeholding Leases** above, the purchase price is the total of the land and commercial timber value. The schedule below though is to be used to determine the deposit and separate term of the timber instalments.

Purchase Price	Deposit	Number of annual instalments
\$1 to 25,000	50%	2
\$25,001 to \$100,000	25%	5
\$100,001 +	15%	10

Example: If the purchase price for the conversion of a Special lease is \$275,000, being \$250,000 for land and \$25,000 for timber, the deposit for the land is assessed using the total price of \$275,000. Therefore it would be 10% deposit and 20 year term for the freeholding lease but a 50% deposit and 2 year term for the timber instalments.

Conditions of Existing Lease

An application for conversion of tenure may proceed, regardless of the compliance or otherwise with a condition, if the condition:

- is contrary to sustainable land use; or
- is one relating to fencing that has not been satisfied in some minor respect; or
- is one from which the lessee had previously been exempted.

Survey

Survey of the area is required for the issue of a deed of grant or a freeholding lease. The preparation of the plan is the responsibility of the lessee.


If during the conversion assessment it is determined that part of a lease is required as a reserve or for dealing with under the LA or another Act, the lessee is responsible for providing a survey plan of the area to be converted and also the balance public requirement area(s). The matter of who pays the cost of survey is a matter between the lessee and the local government or agency which has identified the public requirements.

However, where the survey of public requirements is to identify the location of existing infrastructure including a constructed road (that is, infrastructure that is located on the leased land prior to the date of application for conversion), the local government or agency would be expected to be responsible for the survey costs of the land required for such infrastructure. This is however an issue that the lessee may take up with the respective local government or agency.

Access

Dedicated access should be available before any lease is converted to freehold. However, if this is not possible, the following options are acceptable:

- Easement access to be arranged over adjoining land with dedicated access i.e. freehold, perpetual lease or freeholding lease (but not a term lease) or a reserve, when there is a high level of certainty of the reserve remaining in existence, however, consideration must be given to Easements Policy PUX/901/527.
- Grant by the Supreme Court in terms of the *Property Law Act 1974* of a statutory right of user order for an access right in perpetuity imposed upon servient land (freehold only) and registered.
- A covenant under section 373A of the LA and/or section 97A of the *Land Title Act 1994* to "tie" the deed of grant to be issued (or freeholding lease) to provide for no separate transfers to adjoining freehold, freeholding lease or perpetual lease with dedicated access and owned or leased by the lessee of the lease being converted.

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- If a deed of grant is to issue, a freehold survey plan amalgamating the lessee's adjoining freehold land with dedicated access is prepared and lodged with the Department (State Land Asset Management) for future lodging in the Land Registry at the time of issue of the deed of grant for the converted lease.

Note: the lease being converted is not to be amalgamated as unallocated State land (i.e. a priority sale) with any adjoining land, as amongst other things, the effective date, rights of appeal and registered interests that apply to a conversion application are lost.

Further, the provision of constructed access is a matter for the local government and lack of constructed access is not a matter that should preclude freeholding. Therefore, a local government's objection to conversion of tenure of a lease on the grounds of lack of constructed access will not be upheld.

Dedicated access to Forest Entitlement Areas (FEA) is not required.

Native title requirements for conversion of a term lease issued for pastoral purposes to a perpetual lease for pastoral purposes or freehold

Where the department offers a perpetual lease, it will not grant a perpetual lease for pastoral purposes subject to the non-extinguishment principle. Neither will the department grant freehold subject to the non-extinguishment principle.

Before making any conversion offer, the department assesses whether native title is wholly extinguished over the lease area by carrying out a native title assessment under the NTA. Native title may have been extinguished by historical exclusive tenures, public works or acquired under an acquisition Act. The Federal Court or High Court may determine that native title does not exist. Native title can be surrendered under a registered Indigenous land use agreement.

Where native title is not wholly extinguished or surrendered, the only ways under the NTA to appropriately address native title for the conversion is by way of:

- a) a registered ILUA, negotiated by the lessee, which evidences the native title party's consent to the surrender of native title over the conversion area. The State must also be a party to this ILUA; or
- b) an order of the Federal Court under the Native Title Act 1993(Cwlth) that determines native title does not exist in relation to the land being converted.

Any native title requirements will be outlined in the department's letter of offer and will form a condition of offer. NB. These native title requirements also apply to all other conversions dealt with in this Policy.

For more information on native title requirements refer to the [Queensland Government native title work procedures](#).



Responsibilities

Officers of the Department advising lessees on the conversion of leases under the LA and officers holding delegations particularly from the chief executive in respect of conversion matters.

Definitions

Department – the Department of Natural Resources and Mines (DNRM) and its successors.

LA – *Land Act 1994*.

NTA – *Commonwealth Native Title Act 1993*

Legislation

Land Act 1994 sections 159A, 165 to 173, 373A, 471, 478

Commonwealth Native Title Act 1993 - Subdivisions B, C, E and F, Division 3, Part 2,