

Additional purposes of lease PUX/901/333

SLM/2013/425

Version 3.05

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Version History

Date	Version	Author	Description/Comments
24/12/1997	2		Endorsed
01/07/2005	2.1		Conversion Project – New WORD/XML template
24/12/2007	3		Updated to reflect Land Act amendments. Endorsed by Scott Spencer, Director-General, Department of Natural Resources and Water.
14/07/2010	3.1		Updated to include Land Regulation 2009 amendments
07/09/2012	3.2		Minor updates to reflect departmental name change from DERM to DNRM
19/03/2013	3.3		Updated to change government logo
05/12/2013	3.4		Updated to new DNRM template
04/05/2015	3.05		Minor amendment to update links

Approval

Director-General, Office of Director-General	24/12/2007
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Purpose/Scope

To provide guidelines as to when a lease may be used for additional or fewer purposes, or the purpose of a Special Lease may be changed.

Land under the Land Act is administered in accordance with the objects of that Act - section 4.

Further, under section 199A of the *Land Act 1994* (Land Act), a lease, licence or permit to occupy may be used only for the purpose of the lease, licence or permit to occupy.

There is no provision under the Land Act to change the purpose of a lease, licence or permit to occupy, other than section 477 which allows a lessee to apply to change the purpose of a Special Lease issued under the repealed *Land Act 1962*.

A lessee however may make application to use a lease (not a licence or permit to occupy) for additional or fewer purposes under section 154 of the Land Act.

An additional purpose must be complimentary to and not interfere with the purpose for which the lease was originally issued.

Further, the imposed conditions of the lease may need to be changed under section 210 of the Land Act, having regard to the proposed purposes for which the lease is to be used, or to reflect the present requirements of the Department administering the *Land Act 1994* (department) regarding lease conditions.

The policy also provides guidelines on a residence on a lease for grazing purposes.

This policy does not apply to leases that may be used for agricultural purposes as provided for under **Diversification of leases for agricultural purposes Policy PUX/901/337**

<https://www.dnrm.qld.gov.au/our-department/policies-initiatives/our-policies>

Rationale

Additional purposes

Although section 154(2)(b) of the Land Act relates to a change of rental category, when considering the provisions of that Act and the *Land Regulation 2009* (regulation) as a whole, a significant change to the lease that would result in a change in category for an additional purpose is not supported.

i.e. when having regard to the categories for rental purposes under the regulation, a change of a category would be in effect a change in the purpose which is not permissible under the Land Act. For example, a change in category for a residential lease to a commercial lease would also need to be a change in purpose (that is not allowed).

An exception could be where the change is to a sub category e.g. the operations of a sporting club may change that would result in that club's lease being allocated to another sub category within the relevant rental category.

Change of purpose of a Special Lease issued under the repealed Land Act 1962

Special Leases may have been granted in priority for a particular purpose, or the lessee holds the lease in priority for that purpose only. Consent to change the purpose therefore may not be

equitable.

Although section 477 of the Land Act provides for an application to be made, the section does not stand alone. Administration of the Land Act is subject to the objects of the Act (section 4); and the public interest.

Further, a change in purpose is in effect at the grant of the lease, and therefore, a section 16 assessment of the most appropriate use is required, as well as consideration of priority i.e. would the lessee be dealt with in priority for the issue of a lease for the proposed new purpose.

An exception are Special Leases that issued for manufacturing, industrial, residential or business purposes, but have been categorised for the actual purpose for which the lease is being used.

A lease may only be renewed or converted for the same purpose.

Grazing leases

State land is usually leased for grazing purposes only to enable consideration to be given to land planning and highest and best use for the land at the expiry of such leases. It is not envisaged that the land could, or would be used for residential purposes and lessees who have constructed dwellings thereon without consent would be considered to be in breach of the purpose condition restricting the use of the land to grazing only.

Policy

ADDITIONAL PURPOSES

An additional purpose should not result in a significant change i.e. to a "lesser" purpose or an upgrade of the lease.

The additional condition (that is required to be complimentary to the original purpose of the lease), would need to be assessed in accordance with the provisions of the Land Act, particularly the objects, and any requirements of the local government.

Any additional purpose that requires a change to the imposed conditions should ensure that the lease conditions also reflect the department's present requirements for conditions i.e. possible addition of conditions e.g. indemnity, or removal of conditions e.g. requiring clearing of timber.

Further, the application is to be accompanied by the written consent of all persons with a registered interest in the lease.

CHANGE OF PURPOSE OF A SPECIAL LEASE ISSUED UNDER THE REPEALED LAND ACT 1962

A purpose of other Special Leases may be changed if:

- i. the change is in accordance with the objects of the Land Act as set out in Section 4 of the *Land Act 1994*; and
- ii. the proposed new purpose is the most appropriate use under section 16 of the Land Act including that the purpose conforms to or is consistent with sound land use planning techniques; and
- iii. the lessee would normally satisfy the priority criteria for the issue of a lease for the proposed new purpose – refer **Allocation of land in priority in terms of**

- the Land Act 1994 Policy PUX/901/316.** <https://www.dnrm.qld.gov.au/our-department/policies-initiatives/our-policies>
- iv. the change does not represent a significant change (i.e. to a “lesser” purpose or an upgrade) to the lease.

The purpose of Special Leases issued for manufacturing, industrial, residential or business purposes will need to be changed to the actual purpose for which the lease is being used particularly prior to renewal or conversion.

Alternatively, action could proceed under section 154 of the Land Act for the lease to be used for fewer purposes.

GRAZING LEASES

Where a lease, including a Special Lease has issued for grazing purposes only (including a Special Lease issued for manufacturing, industrial, residential or business purposes categorised for grazing) and is not subject to a condition restricting the erection of structural improvements, approval will only be given to erect a dwelling to enable conduct of the business of grazing if

- the leased land is not required by the State for another purpose at expiry; and
- the dwelling is essential, (i.e. not only for the convenience of the lessee), for the management of the grazing enterprise carried out on the leased land only. If the leased land is used in conjunction with another grazing property or properties, any required residence should be located on the other property; and
- erection of the dwelling is not in conflict with local authority town planning laws or local laws.

NOTE: a residence would be inappropriate where a lessee holds a small leased area which could not be regarded as a "stand alone" grazing enterprise for the district locality.

Term Leases require the conditions of lease to be reviewed to ensure the above is clearly understood. Appropriate action should be initiated with a view to including a condition which restricts the construction of improvements on the land if the lease is not subject to such a condition.

Legislation

Land Act 1994

Land Regulation 2009



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