

Operational policy

SLM/2013/397
Formerly PUX/952/121
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01/03/2023

Conversion of leasehold tenure

Purpose

This policy provides advice on matters to be considered when deciding to convert term leases and perpetual leases to a more secure tenure.

Rationale

Leasehold land under the *Land Act 1994* (Land Act) may be converted to a more secure tenure. Sections 165B and 167 of the Land Act sets out the mandatory requirements when considering a conversion of leasehold tenure. The tenure should be consistent with the most appropriate use of the land meeting the provisions of the Land Act.

There are additional matters that should also be considered, where relevant, when deciding a conversion of leasehold tenure.

Policy

Preferred tenure

Other than for a lease mentioned in section 165 of the Land Act, a lessee may apply or the department may initiate the conversion of a lease to convert the following, but freehold is the state's preferred tenure where appropriate:

- perpetual lease to freehold
- term lease to freehold
- term lease to a perpetual lease, only if the
 - lease is for pastoral purposes; or
 - lease is for tourism purposes on a regulated island.

Initiation of lease conversion by Department of Resources

Conversion of a lease may be initiated where:

- conversion of the lease is not prohibited by the Land Act or a lease condition
- the lessee has not entered into an agreement to surrender all or part of the lease

- for a lease over protected area estate (National Park or State Forest), or a reserve issued under the *Land Act 1994*.

An application for conversion of a lease is not required to commence an initiated conversion process.

Survey

The leased land must be in a surveyed state for the issue of a deed of grant or freeholding lease.

Access

Dedicated access (not necessarily formed or constructed) should be available before any lease is converted to freehold tenure, including a freeholding lease. If this is not possible, the following options are acceptable:

- Easement access to be arranged over adjoining land with dedicated access where the adjoining land is freehold, a perpetual lease, a rolling term lease or a freeholding lease (but not a term lease) or a reserve, however, consideration must be given to Operational policy – [Easement \(SLM/2013/410 = PUX/901/527\)](#).

Easement access over a reserve should only be considered where there is a high level of certainty of the reserve remaining in existence and there is unlikely to be a material impact on the reserve.

- 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 *Land Act* 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. The covenant must tie to adjoining freehold, a perpetual lease, a rolling term lease or a freeholding lease with dedicated access, which is owned or leased by the lessee in exactly the same name/s and interests of the lease being converted.

Stock route network

The conversion of leasehold tenure should ensure no material impact on Queensland's stock route network. Where the land adjoins or is intersected by a stock route, the conversion of leasehold tenure will be supported subject to the relevant stock route(s) having a width that is consistent with Operational policy - [Land Dealings affecting the Stock Route Network \(SLM/2013/363 = PUX/901/238\)](#) and with the surrounding stock routes of the same classification.

Roads off alignment

If a road off alignment has been identified within the lease, the dedicated alignment of the road must be addressed to correct the constructed alignment as part of the conversion.

Native title

The conversion of leasehold tenure requires native title to be extinguished, surrendered or determined not to exist.

Commercial timber

Commercial timber is the property of the state. Where commercial timber is present on the leased land, advice must be sought from the agency responsible for the commercial timber provisions of the *Forestry Act 1959* as to how the commercial timber is to be dealt with before the conversion of leasehold tenure.

Note: stamp duty is paid on the value of any commercial timber.

Compliance with conditions of the lease

The lessee's compliance with existing lease conditions and the Land Act is required to be considered when assessing a conversion of leasehold tenure. However, lack of compliance, will not in itself, be a ground to refuse a conversion of leasehold tenure where the condition/s is:

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

Legislation

Forestry Act 1959

Land Act 1994

Land Title Act 1994

Native Title Act 1993 (Cwlth)

Property Law Act 1974

Related documents

Operational Policy - [Easement \(SLM/2013/410 = PUX/901/527\)](#)

Operational Policy - [Land Dealings affecting the Stock Route Network \(SLM/2013/363 = PUX/901/238\)](#)

Procedure - [Covenants providing for no separate transfers \(SLM/2013/6/1 = PUX/952/066\)](#)

Guideline - [Plan requirements for state land dealings \(SLM/2014/1069\)](#)

Human Rights

The department is committed to respecting, protecting and promoting human rights. Under the *Human Rights Act 2019*, the department has an obligation to act and make decisions in a way that is compatible with human rights and, when making a decision, to give proper consideration to human rights. To the extent an act or decision under this document may engage human rights under the *Human Rights Act 2019*, regard will be had to that Act in undertaking the act or making the decision.

Approval

Position	Name	Effective Date
A/Director, Land Operations Support	Sandra Flanagan	12/04/2022

Version history

Version	Date	Comments
1.00	13/09/2013	New DNRM template and inclusion of content withdrawn from PUX/901/334, PUX/952/113 and PUX/952/115
2.00	27/06/2014	Updated to include amendments due to LOLA 2014
3.00	05/09/2014	Amended to exclude the option for freeholding leases
3.01	21/10/2014	Minor amendment to correct error in calculation of instalment example
4.00	24/05/2016	Amended to include changes to native title requirements
4.01	12/09/2019	Updated for corporate branding only
4.02	23/06/2020	Amended interest charged for instalments
5.00	04/11/2020	Reviewed as per Operational Policy CHB/2018/4177. Restructure of information into Operational Policy and a new 'Procedure – Conversion of leasehold tenure'. Includes a new section about referral of an application.
6.00	12/04/2022	Updated template and reviewed for currency
6.01	01/03/2023	Updated to include amendments due to LOLA 2023

Further information

- Contact your nearest business centre (https://www.resources.qld.gov.au/?contact=state_land), or
- Refer to <https://www.qld.gov.au/environment/land/state>, or
- Call 13 QGOV (13 74 68).

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