

**Land Holdings: Leases – Early Renewal,
Rolling Term Lease Extensions and
Conversions (Special Circumstances)
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Version History

Version	Date	Author	Description/Comments
2	24/12/1997		Endorsed
2.1	10/10/2005		Converted to new XML template
3	24/12/2007		Updated to reflect Land Act amendments, Endorsed by Scott Spencer, Director-General, Department of Natural Resources and Water
3.1	10/10/2008		Minor amendment to correct wording
3.2	27/01/2011		Minor updates to reflect departmental name change to DERM
3.3	18/09/2012		Minor updates to reflect departmental name change to DNRM
3.4	19/03/2013		Updated to new DNRM template
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4	12/06/2014		Updated to include amendments due to LOLA 2014 effective 1/7/2014
4.01	03/07/2014		Minor amendment to correct wording
4.02	27/11/2014		Minor amendment to include special circumstances
4.03	27/04/2015		Minor amendment to include current term
4.04	04/11/2015		Minor amendment to clarify the term of rolling term lease
5.00	28/07/2017		Updated to include amendments due to LOLA 2017 effective 1/7/2017.



Approval

Position	Name	Date
Director , Operations Support - Land	Rod Kent	28/07/2017



Table of contents

Version History.....	3
Approval	4
Purpose	1
Rationale	1
Policy	2
EARLY RENEWAL, ROLLING TERM LEASE EXTENSION AND CONVERSION.....	2
Legislation	3



Purpose

To provide guidelines on how to deal with early applications for renewal of a lease, rolling term lease extensions or for conversion of a term lease for pastoral purposes to a perpetual lease or freehold i.e. to "define" special circumstances.

Note: although the Policy provides guidance on "defining" special circumstances each application for an early renewal, rolling term lease extension or conversion (of a term lease for pastoral purposes to a perpetual lease or freehold) will still need to be considered on its merits.

Rationale

Renewal application

A lessee may apply to renew a lease unless

- a condition of the lease or the Land Act prohibits its renewal or
- the lease contains a reservation that all of the lease land is a future conservation area.

An application for renewal also may be made only after 80% of the existing term of the lease has expired unless special circumstances are considered to exist.

An existing term of the lease does not include an extension under section 155A or 155B of the Land Act of the term of the lease.

Rolling term lease extension application

A lessee can apply for an extension to their rolling term lease at any time during the **current term** of the lease.

A rolling lease extension (Section 164F (1) (b)) does not take effect until the current term expires. Upon expiry, the extension becomes the current term of the lease.

Example


Original term of a 30 year lease runs from 1/1/2015 to 31/12/2045. Lessee can apply to extend the lease by an additional 30 years, i.e. up to 1/1/2075 at any point during the original term of the lease. The next extension the lessee can apply for cannot be before 31/12/2045, i.e. until the original lease has expired.

A lessee cannot apply for a lease extension if they previously entered an agreement to surrender the whole lease at the end of the term; or a condition of the lease or the Land Act prohibits its extension.

Conversion application

The conversion of tenure provisions of the Land Act 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

A conversion application may not be made for a lease if it contains a reservation that all of the lease land is a future conservation area.

An existing term of the lease does not include an extension under section 155A or 155B of the Land Act of the term of the lease.

Special circumstances therefore needed to be defined if an application for early renewal or conversion (of a term lease for pastoral purposes to a perpetual lease or freehold) is received.

The policy for applying early renewal or conversion of a term lease for pastoral purposes to a perpetual lease or freehold reflects that such action needs to be in the public interest.

Policy

EARLY RENEWAL, ROLLING TERM LEASE EXTENSION AND CONVERSION

An application for a renewal of a term lease is not supported if received earlier than the last 20% of the term of the lease. The term of a rolling term lease may be extended at any time during the current term of the lease but not more than once in the current term of the lease or more than once in each subsequent term of the lease.

Special circumstances for early renewal may include:

Indigenous

- Negotiation of an Indigenous use and access agreement to enhance Indigenous access to, or use of, leased land.
- Agreement to surrender an area of land required for the protection and management of cultural heritage.
- Agreement to surrender an area of land required for the management and use of traditional owners.

Natural resource management

- Agreement to surrender a significant area of land required for resource protection and management by the state (e.g. State forest).
- Negotiation of a statutory covenant providing substantial natural resource protection over the whole property of a significant part of it.
- Agreement to remediate a major degradation problem.

Enterprise reconstruction

- Agreement to surrender a part of the lease for use in an approved additional area build-up scheme or new settlement.

- To facilitate the voluntary amalgamation of sub-standard leases or the rearrangement of a larger aggregation of leases that results in an enterprise enhancing its economic and environmental sustainability.

The above circumstances particularly apply to rural leasehold land.

Major Investment

Where there is a proposed major investment

- consistent with the purpose of the lease benefiting both the public and lessee's interest. (Note: a lease may only be renewed or converted for the same purpose of the lease expiring or being converted); and
- where the balance of the term of the lease
 - is significantly less than the term that would generally be considered for a lease where a lessee proposes a similar level of investment; and
 - is not adequate to enable finance to be secured e.g. by way of a registered mortgage (if finance is required to be raised); and /or
 - is not sufficient to enable a suitable return to the lessee on the level of investment

Carbon abatement interests

A lessee may apply for a carbon abatement interest to be registered under the Land Act. These applications are where the lessee is participating in a carbon sequestration project with the Clean Energy Regulator under the *Carbon Credits (Carbon Farming Initiative) Act 2011 (Cth)*.

Carbon abatement interest projects can have either a 25 or 100 year term, which creates potential for projects to be contracted beyond the current term of a term lease

In these circumstances and where the agreement is proposed to be registered over a rolling term lease the lessee may apply to extend their lease during the current term of the lease.

For tenures that are not rolling term leases, the Land Act provisions allow for an early renewal application to be made only after 80% of the existing term of the lease has expired or if in the Minister's opinion, special circumstances exist. The "special circumstances" for early renewal of a lease will be deemed to have been met in instances where the lessee has the project declared as an Emissions Reduction Fund project with the Clean Energy Regulator.

Legislation

Sections 157A and 158 (renewal) and sections 164 (extension), 165, 165A and 166 (conversion), Division 8C (carbon abatement interests) of the *Land Act 1994*.