



Requirements for Minister's Approval to Sublease PUX/952/104

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Version History

Version	Date	Description/Comments
1	01/03/2006	Endorsed
2	11/11/2008	Updated and reviewed
2.1	11/02/2009	Amended status of Notification from "NRW only" to "Public access"
2.2	09/02/2011	Updated to DERM
2.3	14/06/2013	Minor amendments to reflect MOG changes
2.04	14/05/2014	Updated to the new DNRM template
2.05	20/06/2016	Minor amendment to review and insert text on new template

Approval

Position	Name	Date
Acting Director, Operations Support - Land	Amanda Kearnan	20/06/2016



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Purpose

The State has issued leases for various purposes to provide for substantial development, particularly,

1. below high water mark, where legislation does not generally provide for the issue of freehold; and
2. for islands located off the coast, or other areas of the State of high intrinsic scenic, heritage, conservation or other sensitive values, eg. The Spit on the Gold Coast, where only long term or perpetual leases have issued due to long standing government policy of restricting the issue of freehold for these areas.

Therefore, as freehold has not issued, subject to the purpose and conditions of the lease, e.g. to provide for a residential subdivision development, or a marina, a lessee will need to gain the Minister's approval to sublease to facilitate the 'sale' of individual (subdivided) lots.

In some cases, a lessee has sought to sublease the lease to finance the development of the lease. As a result, the sublessees will have acquired an interest in an uncompleted development and are therefore accepting a risk that the development will be satisfactorily completed.

In other instances, a lessee may wish to sublease for the sublessee to provide the necessary development.

The Minister in administering land under the [Land Act 1994](#) (Land Act) has a responsibility to ensure that when land is made available through a lease, it is made available to persons (a lessee) who will facilitate its most appropriate use e.g. develop the land in accordance with the purpose of the lease.

Given that a lease would be granted to a specific lessee to develop the area for the leased purpose, the department:

- a) needs to ensure that the lessee (and not a sublessee) provides the development to enable the lease to be used for its intended purpose, and
- b) therefore requires all relevant matters to be considered, including that necessary approvals be obtained and infrastructure satisfactorily completed prior to considering approval to any future subleasing.

In addition, although generally vegetation clearing issues would be assessed under the [Sustainable Planning Act 2009](#) (SPA), due to exemptions under that Act, vegetation clearing for a proposal to sublease will not always be subject to later assessment under SPA and therefore vegetation clearing issues are to be considered as part of any future subleasing.

Rationale

Although generally vegetation clearing issues would be assessed under SPA, due to exemptions under that Act, vegetation clearing for a proposal to sublease will not always be subject to later assessment under SPA. For example, if an application for sublease is for a residential subdivision development, vegetation clearing is assessed if the proposal requires a material change of use (MCU) under SPA. However, if a MCU is not required, vegetation clearing may not be assessed under SPA for the individual sublease lots i.e. the creation and registration of subleases for residential/urban development would allow for exempt clearing.

It is therefore inappropriate for the Minister, when having regard to section 4, the Object of the Land Act and the public interest, to decide on an application to sublease if vegetation clearing issues are not adequately addressed, particularly for leases with high intrinsic scenic, heritage, conservation or other sensitive values.

The Minister is also required to consider others matters e.g. pest plants and animals, and marine park zoning, that would not be considered under SPA, to ensure a proposal meets section 4, the Object of the Land Act and the public interest.

In addition, a certain proposal to sublease may have similar characteristics to a subdivision development of freehold or a development lease issued under the Land Act, where the freehold owner or lessee is required to obtain the necessary approvals to ensure that all requirements of the Commonwealth, State and local government are satisfied, and to provide the supporting infrastructure so that the land may be used for its intended purpose.

A lease issued under the Land Act, particularly when legislation or government policy has restricted the issue of freehold, to provide for a similar subdivision development should be subject to similar requirements -i.e. it is contrary to the administration and section 4, the Object of the Land Act, and the public interest, for the Minister to approve a sublease where the lessee has not obtained the necessary approvals, and completed works, including supporting infrastructure, to enable the leased land to be used for its intended purpose.

Further, in many cases a development style lease is awarded following a tender process that involved an assessment of the lessee's managerial and financial capabilities. The reason for these assessments is to help ensure the success of the development (usually significant development). In such cases, it would be inequitable to allow a lessee to sublease to provide for the development.

Note: -The Minister's responsibilities under the Land Act and the lessee's responsibility to develop the lease are separate considerations to any subsequent assessment and conditions of development under the SPA.

Procedure

Leases to which the following requirements apply include-

- a) on islands located off the Queensland coast; and
- b) for development purposes in other areas of the State, requiring the lessee to provide for a particular development under the terms and conditions of the lease e.g. a marina or tourism development.

[Note: These requirements do not/cannot apply to a development lease issued under the *Land Act 1962* as a development lease **must not be subleased** under section 479 of the Land Act.]

- i. In considering applications to sublease (other than for a lease below high water mark where there is no associated development proposed above high water mark), the application is firstly to be referred to Vegetation Management for advice regarding the requirements for vegetation clearing.
- ii. If vegetation clearing issues for the proposal to sublease would not be considered during any later assessment under SPA, and Vegetation Management advise that a vegetation clearing application would not usually be approved if assessed under SPA, the application to sublease should be refused.
- iii. Further, prior to deciding on a sublease, the application should also be referred to any relevant areas whose interests are not addressed in development assessment under SPA e.g. for a water allocation under the [Water Act 2000](#) or requirements relating to pest plants and animals or requiring a marine park permit.

Subject to the requirements of clauses I, ii and iii, the conditions the Minister considers appropriate for approval to sublease (see examples below) other than a lease issued to the State of Queensland or a port authority (See Note 1 below) are to include the following .

- all necessary approvals, including vegetation clearing are obtained and works, including infrastructure such as roads, power and other services e.g. water, to support the proposed use of the lease are satisfactorily completed (supporting infrastructure, such as water, though may not always be located within the lease). Supporting infrastructure, in addition to the above, may also include a marina, or golf course, and would need to be satisfactorily completed, including if the (balance of the) lease is being developed in stages; and
- the lease, if not already subject to similar conditions, is to be amended to include conditions of lease similar to a lease issued for development purposes (i.e. providing for necessary approvals to be obtained and satisfactory completion of works, including supporting infrastructure), prior to the Minister considering a sublease. (Section 203 of the Land Act provides for lease conditions about improvements or development on or to the land, or the provision of reasonable services, roads and infrastructure external to but servicing the land, and about the sublease of a lease, and section 210 provides for a change to the imposed conditions of lease with the agreement of the lessee).

Further, any current section 333 authority issued to a lessee to sublease without seeking the Minister's approval will need to be reviewed to provide for these requirements.

Examples:

- the marina infrastructure is satisfactorily completed, but a sublessee may provide the individual "finger"/berth; or
- a residential subdivision is satisfactorily completed, including all infrastructure e.g. roads, power, water and any supporting infrastructure such as a marina or golf course, prior to approval to sublease individual lots for the sublessee to provide a residence; or
- a hotel complex eg. Versace has been completed prior to approval to sublease individual apartments.

Note 1:

Although leases issued to the State of Queensland, or a port authority, are subject to the requirements in clauses i, ii and iii above, such leases are not subject to the conditions the Minister considers appropriate for approval to sublease – these leases are issued to the State for strategic reasons, e.g. for transport corridor purposes or in a boat harbour, or to a port authority within the limits of a port, to provide for essential services and industry, and associated developments, including in partnership with private industry, and accordingly, a sublessee may provide for the development of the lease.

Responsibilities

State Land Asset Management officers with the relevant delegations under the Land Act.

References

Land Act 1994

Sustainable Planning Act 2009

Legislation

Land Act 1994

Sustainable Planning Act 2009

A lease issued under the Land Act may only be subleased under section 332 with the Minister's written approval, (unless a general authority under section 333 has issued) and to a person who is eligible to hold the sublease.

Section 332 does not state the issues the Minister is to consider when deciding on an application to sublease, although the purpose of the sublease must be consistent with the purpose of the lease.

The Minister may approve a sublease though on the conditions the Minister considers appropriate - section 332(3)(b).

The Minister may also refuse a sublease, or approve the sublease unconditionally -section 332(3). Without limiting subsection 332(3)(a), the Minister may refuse to approve a sublease of a lease if the Minister is satisfied that the subleasing would be inappropriate, having regard to the purpose and conditions of the lease -section 332(8). This power of the Minister is therefore discretionary and the Minister is entitled to consider section 4, the Object of the Land Act and the public interest when deciding on an application to sublease. The Minister must also ensure that leases are used for the purpose for which they were issued.