



Transfer of Leases, Licences and Subleases PUX/901/521

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Last reviewed



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Version History

Version	Date	Description/Comments
2	15/07/2003	Updated
2.1	01/07/2005	Conversion Project - New WORD/XML template
3	13/12/2007	Updated to reflect Land Act amendments. Endorsed by Scott Spencer, Director-General, Department of Natural Resources and Water
3.1	02/02/2011	Minor updates to reflect departmental name change to DERM
3.2	24/10/2012	Minor updates to reflect departmental name change to DNRM
3.03	14/03/2014	Updated to DNRM template
4.00	12/06/2014	Updated to include amendments due to LOLA 2014
4.01	1/08/2014	Minor amendment to correct wording
4.02	24/01/2017	Minor amendment to insert text on new template
5.00	28/07/2017	Amended to include LOLA 2017 changes to transfer of road licences

Approval

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



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Purpose/Scope

This policy provides guidelines on requirements for consideration of applications to transfer a lease, licence or sublease under the *Land Act 1994* (Land Act).

The Minister's approval is required under section 322 of the Land Act for the transfer of a lease, licence or sublease.

The Minister's approval to transfer

1. may be on conditions, include payment of any rent or charges owing; and
2. lapses unless the transfer is lodged in the land registry within 6 months (or a later date if approved) after the Minister's approval.

A transfer includes

1. if a lease, licence or sublease is held as tenants in common, a transfer by 1 or more of the tenants in common of all or part of their interest to someone else;
2. if a joint tenant (the **severing party**), unilaterally severs the joint tenancy. Note: the transfer need only be executed by the severing party who becomes entitled as a tenant in common with the other joint tenants immediately before the transfer.

The transferee must be eligible to hold the lease, licence or sublease.

If a lease, licence or sublease is transferred, the transfer must be registered. Unless registered, no legal interest is created.

However, a lease, licence or sublease may not be transferred if a provision of the Land Act or a condition of the lease, licence or sublease prohibits the transfer.

If a road licence is tied to adjoining freehold land by covenant, the Minister's approval to the transfer of the road licence is not required, if the requirements of section 322(2) of the Land Act are satisfied.

Further, the Minister's approval is not required to transfer a sublease

- if the lessee has a section 333 (Land Act) general authority to sublease, or
- under section 390A of the Land Act for transport land or a perpetual lease to the State for marine facility purposes.

Note: A permit to occupy is unable to be transferred.

The Minister's approval is not required to transfer a mortgage.

Rationale

ELIGIBILITY

To hold an interest in land, a person must be eligible to hold land under the Land Act.

The person should also be an appropriate person to hold the land.



ADDITIONAL AREAS

Additional areas are granted for the purpose of farm build-up and are "tied" to a parent lot by a covenant under section 373A of the Land Act or lease condition. It is logical that any separate transfer of such leases at a later date should only be approved if they are again used for farm build-up purposes.

COMMERCIAL TIMBER

On conversion of tenure to freehold, commercial timber is owned by the lessee, unless subject to a forest entitlement area or an agreement with the Minister administering the *Forestry Act 1959*.

Whilst a lessee may have elected to pay for the commercial timber on terms over a period of years, there is no

- restriction (subject to any necessary vegetation clearing requirements/approvals) as to when the timber may be harvested and sold; and
- obligation for the State to provide an incoming lessee with similar terms.

Accordingly, it is not unreasonable that a condition of approval to transfer is the balance outstanding should be paid.

CONVERSION OF TENURE APPLICATION

An application for conversion of tenure may only be lodged by a lessee. However, it is reasonable to permit an application to be continued or ceased by a transferee and advice is needed of the transferee's intentions.

COVENANTS AND "TIED" CONDITIONS (I.E. NO SEPARATE TRANSFERS)

A condition of a road licence is that if a licensee transfers or sells the land for the benefit of which the road licence is issued, the licensee must

- I. also transfer the road licence to the new registered owner or lessee of the land;
or
- II. surrender the road licence at the time the sale is settled.

A lease may also be 'tied" to other land under a condition of lease.

A covenant though as a registered dealing against the lease or licence is (more) appropriate to "tie" leases and licences.

INDIGENOUS LAND USE AGREEMENT (ILUA)

A rural leasehold lease may be subject to an Indigenous Land Use Agreement (ILUA).

LAND MANAGEMENT AGREEMENT

A lease may be subject to a land management agreement.

Existing land management agreements may be cancelled, with the lessee's agreement, if the Minister is satisfied the land management agreement is no longer required.



PREVIOUS APPROVALS

There is a need to progress a later transfer proposal of a lease if a previous transfer proposal is no longer to proceed. However, reasonable safeguards to ensure propriety are required.

RENT AND INSTALMENT PAYMENTS

The State wishes to ensure any outstanding amounts be paid prior to transfer, including if a deferral for hardship had been approved for a lease or licence or a residential hardship concession had been approved for a lease.

Policy

ELIGIBILITY

A person, including if acting as a trustee

1. must be eligible to hold a lease, licence or sublease under the Land Act, including through transfer or transmission or if a lease is sold by a mortgagee, local government or the chief executive under the provisions of the Land Act; and
2. should be appropriate to hold the land.

- see [Eligibility and assessment to Hold Land Policy PUX/952/120](#)

COMMERCIAL TIMBER

Where the value of commercial timber on a freeholding lease is being paid over a term of years, the balance outstanding must be paid as a condition of the approval to the transfer prior to the registration of a transfer, unless the transfer is to a member or members of the transferor's family.

CONVERSION OF TENURE APPLICATION

Where an application has been lodged for conversion of tenure of a lease and the lease is subsequently transferred, the transferee is required to advise if it is desired to proceed with the application.

If no advice is received, the application for conversion of tenure will lapse upon registration of the transfer. This requirement, depending on the circumstances, could equally apply to other applications under the Land Act e.g. renewal of lease application.

COVENANTS AND "TIED" CONDITIONS (I.E. NO SEPARATE TRANSFERS)

If a lease or licence to be transferred is "tied" (i.e. separate transfer is not permitted) to other land e.g. to a lease or freehold, then all the lands held together must be transferred, including for a transfer of a tenant in common or for severing a joint tenancy, unless it is agreed to accept a surrender of a road licence that is no longer needed.

Further, if a lease or licence is "tied" by a condition, and the lease or licence is not subject to a covenant, then a condition of approval to a transfer is that the lessee or licensee is to enter into a covenant under section 373A of the Land Act to provide for no separate transfers for all the lands "tied".



INDIGENOUS LAND USE AGREEMENT (ILUA)

If the lease is a rural leasehold lease, on transfer, the new lessee is a party to any Indigenous Land Use Agreement (ILUA) for the lease and accepts the rights and responsibilities of the lessee under that agreement.

The new lessee must also advise the native title group/parties to the ILUA and the native title registrar of the transfer within 28 days.

Refer to section 325 of the Land Act.

LAND MANAGEMENT AGREEMENT

If the lease is subject to a land management agreement, on transfer, the new lessee is a party to that agreement and accepts the rights and responsibilities of the lessee under that agreement. However existing land management agreements may be cancelled, with the lessee's agreement, if the Minister is satisfied the land management agreement is no longer required.

Refer to section 325 of the Land Act.

PREVIOUS APPROVALS

Where a prior approval has been given to a transfer and that approval has not lapsed, a fresh application for a consent to transfer to a different party will be considered only if a Statutory Declaration is lodged by the vendor (lessee) detailing that the earlier sale is no longer proceeding.

RENT AND INSTALMENT PAYMENTS

It will be a condition of transfer that all outstanding rent or instalment (and any penalty) owing is paid.

In addition, any amounts owing as a result of a deferred or residential hardship approval are to be paid.



Deferral for Hardship

Section 40F of the Land Regulation 2009 (Land Regulation) provides that if a lease or licence is transferred

- a deferral of rent or instalments approved under section 40E of the Land Regulation ceases to apply from the day of the settlement of the transfer; and
- it is a condition of the approval to a transfer that the deferred rent or instalments and deferred interest owing on the deferred rent or instalments must be paid to the State at settlement.

Hardship Concession (Residential)

If a lease is transferred, a residential hardship concession applying to the lease does not apply from the day of the transfer, under

1. section 40B of the Land Regulation for rent on a residential lease; and
2. section 459 of the Land Act for instalments on a pre-Wolfe freeholding lease.

Although section 459 does not specifically provide for payment, a condition of approval to a transfer is to require any amounts owing as a result of an approved residential concession under that section are to be paid at settlement - the Minister's approval to transfer may be on conditions, and such condition is consistent with the requirement under section 40B of the Land Regulation.

Legislation

Land Act 1994, particularly section 301, and sections 322 to 325 dealing with transfer, section 391A and sections 40F, 40E, 40B of Land Regulation 2009.