

# Additional Area Covenants and Conditions PUX/901/529 Version 2

SLM/2005/1929 – Version 2

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## Version history

Version	Date	Comment
1	30/11/2004	Replaces PUX/901/423
1.1	10/10/2005	Conversion to new XML template
2	02/01/2008	Updated to reflect Land Act amendments
2.1	02/02/2011	Updated to DERM

## **Purpose**

To provide direction to Minister's delegates as to the limited circumstances in which an approval to allow the separate transfer of lots the subject of additional area ties may be granted.

## **Scope**

This policy applies to all applications for the separate sale of lots subject to additional area ties.

## Rationale

Applications to break ties should in general be refused because the tie was imposed in order to secure some concession from the State, such as an additional lease, approval to privately subdivide or an interest subsidy under a restructure scheme. Removal of the tie undermines the original contractual commitment or policy intent and in effect amounts to a gift of the extra value that this action adds.

The concept of additional areas was introduced in 1927 to enable lands reverting to the State to be made available as a separate lease to build-up smaller properties. The leases were made available on condition that they could not be sold separately from the parent property. Originally the additional area had to be contiguous but this was later replaced with "in the neighbourhood" and for many years was interpreted as within 50 kilometres to an upper limit of 100 kilometres of the original property, depending on the locality.

Ties have also been utilised as a condition of private subdivision. In instances where uneconomic blocks were derived from the private subdivision of leases the State required that the subdivided lease be amalgamated or worked in conjunction with other lands that together constituted an economic enterprise unit. A condition precluding separate sale was added to the lease or leases.

More recently the use of lease conditions or covenants to prevent separate sale has been utilised as a requirement of regional revival schemes, specifically the South West Strategy and the Desert Uplands Build-up and Development Strategy. The provision of financial assistance to assist with property build-up was subject to the applicant agreeing to the inclusion of the sale restriction.

## Policy

The separate sale of lots will be approved only to facilitate the dispersal of all lots to assist the build-up\* of other pastoral, agricultural or grazing lands in the locality in which the lease is located.

(\* Amalgamation of lots is required. If amalgamation is legislatively unobtainable then a covenant is to be used to prevent the future separate sale of the lots.)

For reference: If a lease is approved to be subdivided under section 175A of the Land Act, and issued in terms of section 176G, the new leases are subject to a mandatory condition under section 176H that they cannot be transferred, unless special circumstances exist, for 5 years from when the terms of the leases start - reference Transfer of Leases, Licences and Subleases Policy PUX/901/ 521  
<[http://www.derm.qld.gov.au/services\\_resources/item\\_details.php?item\\_id=100454&topic\\_id=19](http://www.derm.qld.gov.au/services_resources/item_details.php?item_id=100454&topic_id=19)> and Lease Subdivision PUX/901/528  
<[http://www.derm.qld.gov.au/services\\_resources/item\\_details.php?item\\_id=100452&topic\\_id=19](http://www.derm.qld.gov.au/services_resources/item_details.php?item_id=100452&topic_id=19)> .

## Responsibilities

Officers holding delegations from the Minister and chief executive in terms of sections 176A, 210, 322, and 373A of the *Land Act 1994* including to approve the separate sale of lots tied by covenant or lease condition.

## Definitions

Additional area ties: means where the transfer of two or more lots separately of each other is not permitted due to the existence of a covenant (s.373A) or a lease condition (s.205 & 521A).

Example of activities resulting in "additional area ties" include-

1. grants of an additional area to lessees of subsisting leases under section 269 of the *Land Act 1962* or similar provisions of former Acts; or
2. the restriction on separate transfer as a result of government assistance under regional revival schemes such as the South West Strategy and the Desert Uplands Build-up and Development Strategy; or
3. the restriction on separate transfer as a result of an approval to subdivide a lot to facilitate build-up.

Private subdivision: means the subdivision of a lease by the lessee to realise additional lots rather than by the State upon lease renewal or conversion to assist closer settlement or provide additional areas.

## References

This policy should be read in conjunction with PUX/901/528 - Lease Subdivision

# Legislation

## ***Land Act 1994***

Section 175 - when lease may be subdivided

- a lease may only be subdivided, amongst other things, if the Act or condition does not prohibit subdivision and the lease is not tied by a covenant or condition,

Section 205 - Tied condition

- a lease may be subject to a condition that it is tied to other land.

Section 210 - Changing imposed conditions

- the Minister may change imposed conditions of a lease with the agreement of the lessee.

Section 322 - Requirements for transfers

- a lease may be transferred only if the Minister has given written approval to the transfer; and
- the lease may not be transferred if a provision of the Act or a condition of the lease prohibits the transfer.

Section 373A - Covenant by registration

- enables a covenant to register to prevent the separate sale of lots.

Section 521A - Lease of additional areas under repealed Act

- additional areas granted under the repealed Act are taken to be issued on the condition that the land is tied to the parent lease.