

# Land Holdings: Leases - Early Renewal and Conversion (Special Circumstances) PUX/901/335 Version 3

SLM/901/335 – Version 3

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## Version history

Version	Date	Comment
2	24/12/1997	Endorsed
2.1	10/10/2005	Converted to new XML template
3	02/01/2008	Updated to reflect Land Act amendments
3.1	10/10/2008	Minor amendment to correct wording
3.2	27/01/2011	Updated DERM

## Purpose

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

Note; although the Policy provides guidance on "defining" special circumstances each application for an early renewal or conversion (of a term lease for pastoral purposes to a perpetual lease) 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.

## 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 not issued for pastoral purposes only to freehold land

(c) term lease issued for pastoral purposes only to a perpetual lease, and only after 80% of the existing term on the lease has expired unless special circumstances are considered to exist.

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) is received.

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

# Policy

## EARLY RENEWAL AND CONVERSION

An application for a renewal of a term lease or conversion of a term lease for pastoral purposes to a perpetual lease is not supported if received earlier than the last 20% of the term of the lease unless in the Minister's opinion there are special circumstances which may include:

### ***Environmental***

- Agreement to surrender land required for nature conservation or environmental purposes (e.g. national park).
- Negotiation of a conservation agreement resulting in declaration of a nature refuge under the *Nature Conservation Act 1992* over the whole property or a significant part of it.

### ***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

# Legislation

*Sections 157A and 158 (renewal) and sections 165, 165A and 166 (conversion) of the Land Act 1994*