

# Conversion of Leasehold Tenure PUX/901/334 Version 3

SLM/2002/104 – Version 3

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by Scott Spencer, Director General Director-General's office

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## Version history

Version	Date	Comment
1.0	24/12/1997	Original
2.0	18/10/2005	Revision
3.0	12/03/2008	Update
3.1	15/02/2011	Updated to DERM
3.2	30/06/2011	Minor Amendments

## Purpose | Scope

To provide guidelines for dealing with applications to convert term leases to perpetual lease or freehold and perpetual leases to freehold.

This policy does not relate to any of the handful of miners homestead tenures remaining.

## Rationale

Conversion of tenure as provided for under the *Land Act 1994* (LA) to a more secure tenure should be allowed as long as the prescribed criteria have been satisfied and such tenure is consistent with the most appropriate use of the land.

It is necessary to clarify the circumstances in which a freeholding lease, including a grazing homestead freeholding lease, may be issued. Terms are not provided to support freeholding of leases issued under the provisions of the LA, as it is inappropriate for the Department to assume the role of a financier/banker where there are clearly ample market place services available. Except in the statutory circumstances when freeholding leases may issue as listed in the policy, lessees converting to freehold must convert directly to a deed and therefore are responsible for securing any necessary financial service in the open market place.

There may be inappropriate conditions such as timber clearing on particular leases. This policy provides for allowance to be made if a condition is inappropriate.

If public requirements are identified from a lease during consideration of a conversion application, it is reasonable that the lessee is responsible for providing a plan of survey of both the area to be converted and the public requirements area. This is supported by the following:

- The lessee has no right to conversion, only to apply for conversion.
- The chief executive must consider if there are any public requirements from the lease.
- Any offer of conversion may be subject to conditions

However, the provision in the LA requiring consideration of public requirements should not be used to rectify the placement of existing infrastructure, which was not secured at the time from the lease by appropriate means, such as surrender from the lease or acquisition of the required area.

Legal access to land is a reasonable expectation by landholders. If a lease is being converted and has no dedicated access, instances may occur when it is not possible or may not be feasible to provide dedicated access, and it is desirable that some other form of legal access be provided.

The provision of constructed access is a matter for the local government and lack of constructed access is not a matter that should preclude freeholding.

A Forest Entitlement Area is a reservation in title for the long-term management of timber. Access to the timber by officers of the agency administering these Areas or other authorised persons is covered by the *Forestry Act 1959* and/or the terms of an agreement. It is neither necessary nor desirable to provide dedicated access in this situation.

# Policy

## General

The conversion of tenure provisions of the LA 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.

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

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.

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

See Land Holdings – Leases Early Renewal and Conversion (Special Circumstances) Policy PUX/901/335 for guidelines on when special circumstances exist.

Further, a renewal application may be treated as a conversion application (as allowed under the conversion of tenure provisions of the LA as outlined above) if a decision is made under section 159A LA that another form of tenure is more appropriate.

Landholders will be provided with tenure allowed under the LA and that will support the most appropriate use of the land as well as being consistent with the surrounding tenure landscape, as required to be assessed under section 167(7) LA.

## Future Conservation Area

As mentioned, a lessee may not apply to convert a lease if the lease contains a reservation that all of the lease land is a future conservation area.

Further, if a lease contains a reservation that part of the lease land is a future conservation area the chief executive cannot offer a new lease or a deed of grant for that part of the lease.

## When may a perpetual lease be issued for conversion?

As outlined, 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.

Therefore, for a conversion application of an existing lease, a perpetual lease may only be issued for conversion of a term lease issued for pastoral purposes.

## Rural leasehold land

An offer of a perpetual lease for rural leasehold land as defined under the LA must include a condition that the lessee must enter into a land management agreement, and the lease is subject to conditions that there must be a current land management agreement, and the lessee must comply with the agreement.

## When may a freeholding lease be issued?

A freeholding lease (i.e. a lease which allows the lessee to pay the purchase price by instalments) may only be issued for conversion of-

- a non-competitive lease (s.471 LA); or
- a special lease (s.478 LA),

both of these types of leases being issued under the (repealed) *Land Act 1962*.

In addition, a grazing homestead freeholding lease may be issued for conversion of a grazing homestead perpetual lease (s.469 LA), which is also a type of lease issued under the repealed Act.

There is no other provision for the issue of a freeholding lease under the LA.

For conversion to freehold of a term or perpetual lease issued under the LA, the purchase price must be paid in full (i.e. by a single payment) and a deed of grant issued. A freeholding lease cannot issue.

## Terms of Repayment for Freeholding Leases

In accordance with sections 469, 471 and 478 LA, lessees of those grazing homestead perpetual leases, non-competitive leases and special leases that existed at the commencement of the LA may elect, if successful in gaining approval to convert to freehold, to pay the purchase price by instalments.

For these leases, the terms in the schedule hereunder apply.

For conversions of GHPL's only (i.e. not non-competitive leases and special leases), lessees are entitled to the discount shown in the schedule hereunder on the purchase price if they elect to pay it in full. This discount does not apply if the GHPL has a higher value than for grazing or agriculture.

Purchase Price	Deposit	Number of annual instalments	Discount Percentage (from Schedule 3 of Land Reg) (for GHPL's only)
\$5001 to \$25,000	50%	2	4.05%
\$*25,001 to \$100,000	25%	5	7.66%
\$100,001 to \$250,000	15%	10	12.80%
\$250,001 to \$500,000	10%	20	20.41%
\$500,001 +	5%	30	25.36%

\* Amounts to \$5,000 need to be paid in full.

Example: Purchase price is \$200,000. As the term of the lease will be 10 years, the discount allowed is 12.80% which is \$25,600.

The exception to the above is the terms of freeholding leases issued by an arrangement under the *Industrial Development Act 1963*. Agreement to the terms of the proposed offer to freehold must be sought from the Property Services Group of the Department of Infrastructure and Planning. A 10% deposit is required with a term of no longer than 10 years, unless the Minister administering that Act requests alternative arrangements.

Refer to Notification PUX/952/113 for guidelines on payment of commercial timber by way of terms.

## Conditions of Existing Lease

An application for conversion of tenure may proceed, regardless of the compliance or otherwise with a condition, if the condition:

- is contrary to sustainable land use; or
- is one relating to fencing that has not been satisfied in some minor respect; or
- is one from which the lessee had previously been exempted.

## Survey

Survey of the area is required for the issue of a deed of grant or a freeholding lease. The preparation of the plan is the responsibility of the lessee.

If during the conversion assessment it is determined that part of a lease is required as a reserve or for dealing with under the LA or another Act, the lessee is responsible for providing a survey plan of the area to be converted and also the balance public requirement area(s). The matter of who pays the cost of survey is a matter between the lessee and the local government or agency which has identified the public requirements. However, where the survey of public requirements is to identify the location of existing infrastructure (that is, infrastructure that is located on the leased land prior to the date of application for conversion), the local government or agency would be expected to be responsible for the survey costs of the land required for such infrastructure. This is however an issue that the lessee may take up with the respective local government or agency.

## Access

Dedicated access should be available before any lease is converted to freehold. However, if this is not possible, the following options are acceptable:

- Easement access to be arranged over adjoining land with dedicated access i.e. freehold, perpetual lease or freeholding lease (but not a term lease) or a reserve, when there is a high level of certainty of the reserve remaining in existence, however, consideration must be given to Easements Policy PUX/901/527.
- Grant by the Supreme Court in terms of the *Property Law Act 1974* of a statutory right of user order for an access right in perpetuity imposed upon servient land (freehold only) and registered.
- A covenant under section 373A of the LA and/or section 97A of the *Land Title Act 1994* to "tie" the deed of grant to be issued (or freeholding lease) to provide for no separate transfers to adjoining freehold, freeholding lease or perpetual lease with dedicated access and owned or leased by the lessee of the lease being converted.
- If a deed of grant is to issue, a freehold survey plan amalgamating the lessee's adjoining freehold land with dedicated access is prepared and lodged with State Land for future lodging in the Land Registry at

the time of issue of the deed of grant for the converted lease.

- Note: the lease being converted is not to be amalgamated as unallocated State land (i.e. a priority sale) with any adjoining land, as amongst other things, the effective date, rights of appeal and registered interests that apply to a conversion application are lost.
- The provision of constructed access is a matter for the local government and lack of constructed access is not a matter that should preclude freeholding. Therefore, a local government's objection to conversion of tenure of a lease on the grounds of lack of constructed access will not be upheld.

Dedicated access to Forest Entitlement Areas (FEA) is not required

## Responsibilities

Officers of the Department advising lessees on the conversion to freehold of leases under the LA and officers holding delegations from the chief executive in respect of conversion matters.

## Definitions

Department – the Department of Environment and Resource Management (DERM) and its successors.

LA – *Land Act 1994*.

## References

*Land Act 1994 sections 159A, 165 to 173, 373A, 469, 471, 478*

# Legislation

*Land Act 1994*