



application guidelines

Subdivision of a lease

This fact sheet explains how to apply for a subdivision of a lease, and how the Department of Natural Resources and Water (NRW) assesses applications under the *Land Act 1994*.

When you can apply

It is recommended an applicant should first read Lease Subdivision Policy PUX/901/528 before lodging an application for subdivision.

An application cannot be made if the:

- *Land Act 1994* or a condition of the lease prohibits subdivision, or
- lease is tied by condition or covenant to another lease or freehold.

Otherwise, as leaseholder, you can apply to subdivide a lease at any time during the tenure.

Subdivision of a rural leasehold land may be considered:

- where a leaseholder wishes to dispose of, or surrender, a portion of the lease to the state, and retain the balance as a single pastoral, grazing or agricultural operation
- to facilitate build-up by the disposal of the entire lease within the same locality
- to rearrange adjoining lots to provide for improved cadastre or natural resource management.

Applications to subdivide other term or perpetual leases will be determined on their individual merits following investigation.

This will include an assessment as to whether leasehold is the most appropriate tenure. If not and the circumstances allow, an application to convert the existing lease to freehold may be required for a subsequent reconfiguration of a lot (subdivision) under the *Land Title Act 1994* and *Integrated Planning Act 1997*.

An application may not be made to subdivide a freeholding lease if any of the following apply:

- the minimum instalment payable is \$500 or less and the lessee is receiving a hardship

concession or if the subdivision is for a family member

- all other instances where the unpaid balance of purchase money is less than \$5000.

For freeholding leases generally, if circumstances allow, the existing lease should be freehold and subsequently dealt with as a subdivision under the *Land Title Act 1994*.

How to apply

To subdivide a lease, you must submit:

- subdivision of a lease application form, with both parts A and B completed
- the prescribed application fee.

Though you can submit an application at any NRW office, it is preferable to do so at the one nearest the property involved, where staff can also advise you of the correct application fee.

If all parts of the form are not filled out accurately, it may be returned to you for completion, which will delay the process. It is therefore advisable to discuss your application with NRW staff before lodgement, if you have any queries.

See the NRW <www.nrw.qld.gov.au> for a list of NRW offices and application fees, or contact the department.

What NRW considers

When assessing your application against the requirement of the Land Act, NRW will also:

- use relevant NRW policies, procedures and guidelines
- seek the views of relevant stakeholders, for example other state government agencies and local government authorities
- consider native title issues
- ensure that all outstanding rent on the lease is paid.

An NRW officer may also inspect the leased land. If an application for subdivision is approved, the new leases issued will be the same type and purpose as the original lease, unless otherwise agreed by the leaseholder and Minister for Natural Resources and Water.

If the existing lease is subject to a mortgage, sublease or sub-sublease, written consent regarding the subdivision will be required from the registered mortgagee, sublessee or sub-sublessee.

Native title

As part of the process, NRW will undertake a native title assessment of the leased land to determine if, and how native title may need to be addressed.

Depending upon the outcome the leaseholder (as a condition of the offer) may be required to satisfactorily address native title issues for the proposed tenure offered.

Notice of the decision

NRW will notify applicants of the decision in writing when it has investigated all issues, including native title.

If an application for subdivision of lease is refused solely on the basis that the leaseholder has not fulfilled the lease conditions, the leaseholder can appeal against the decision

Requirements of an offer

If an application is approved, the written offer sets out various conditions such as:

- the rent and rental category of the new leases
- the conditions applicable to the new leases
- lodgement of a plan of survey, if needed
- payment of all regulatory fees and charges.

If the existing lease is subject to a mortgage, sublease or sub-sublease, the written consent to the subdivision must be obtained from the registered mortgagee, sublessee or sub-sublessee.

The offer will also include a notification of acceptance form that must be completed and returned to NRW within the timeframe specified in the offer. The offer will lapse unless all conditions are met within the timeframe specified in the offer.

Issue of new tenure

It is the Governor-in-Council or Minister that grants the new tenure and NRW will seek approval to issue the new tenure in the leaseholder's name, when all the requirements and conditions of the offer have been satisfied.

The new tenure will be issued subject to all the relevant limitations to which the previous lease was subject and in the same priority order.

Also the new leases will not be able to be transferred for the first five (5) years, unless special circumstances exist.

More information

For more information subdivision of a lease, contact the nearest NRW office or visit the website at <www.nrw.qld.gov.au>.