

Subdivision of a Western Lands Lease

December 2015

A Western Lands Lease can comprise one or several parcels of land e.g. lots or portions. The boundaries of each parcel have usually been defined by survey.

General

Provision exists under s.18FA of the *Western Lands Act 1901* for the holder of a lease to subdivide the land comprised in the lease. Subdivision cannot be effected without the approval of the Minister administering the Act.

Subdivision of a lease is usually necessary when a lessee wishes to:

- sell part of the lease
- change the purpose of part of the lease
- divide leasehold lands for some other reason such as estate planning.

On subdivision, new leases are created for each part of the subdivided holding.

Where the reason for the subdivision is to alter the lease purpose of part of the land, the fact sheet titled *Alteration of purpose or conditions of a western lands lease* should be read in conjunction herewith.

Applications

Application for subdivision must be made by the registered lessee/s on the approved form, accompanied by the application fee. Every application is fully investigated and assessed on its merits. Approval cannot be assumed or guaranteed.

Local Planning Considerations

The consent of the local council may be required for a proposed subdivision. In many circumstances the council (under its Local Environmental Plan) may require the lessee to obtain development consent for the proposed subdivision. This would require the lodgement of a Development Application with the council for consideration and determination and the subsequent issue of a subdivision certificate to authorise the registration of a plan of subdivision in accordance with the *Environmental Planning and Assessment Act 1979*.

Where the development is on Crown land (which includes land held under lease) any Development Application must in the first instance, be authorised for lodgement by the Department of Primary Industries - Lands (the Department) as the owner of the land.

Amongst many other environmental considerations, the Development Application for the subdivision may also be subject to bushfire risk assessment if the land has been classified by the council as bushfire prone. Assessment would be undertaken in accordance with the provisions of the *Planning for Bushfire Protection Guidelines 2001* and *Rural Fires Act 1997*. In some cases requirements under the *Environmental Planning and Assessment Act 1979* will necessitate council referring the Development Application to the NSW Rural Fire Service for approval/concurrence.

Survey

Where the lines of subdivision follow existing parcel boundaries (that is, the lease comprises more than one parcel and it is intended to excise one or more of those parcels from the lease), survey will not be necessary. Survey will be necessary in almost all other circumstances.

Any required survey must be affected by a Registered Surveyor and it is the lessee's responsibility to arrange for the survey. Instructions for survey are prepared by the Department and the survey must not commence until these instructions have been issued.

Lease purpose and conditions

Except for the land description, area and the annual rent, leases created on subdivision are identical to the lease being subdivided.

The lessee, purpose, term and conditions of a lease created on subdivision remain unaltered.

Annual Rent

Rent of Western Lands Leases is determined by both legislation and policy in the following manner.

- Grazing, pastoral, agriculture, cultivation or similar leases are classified as 'rural' leases for the purpose of assessing rent and the rent is determined according to property size, land use and rehabilitation areas.
- Residence and business leases are classified as 'urban' leases for the purpose of assessing rent and rent is determined at 3% and 6% respectively of land value.

Where a 'rural' lease is subdivided, the total rent for the property remains unaltered following subdivision. The rent will only alter when part of the property is sold or the land use changes.

Where the lease subdivided is classified as an 'urban' lease the annual rent payable on the leases created on subdivision will be assessed on a percentage of the land value having regard to the purpose of the lease (as outlined above). In this circumstance it is usually necessary to have a registered valuer value each of the subdivided parcels to calculate the rent for each.

Cost

For current fees, please refer to the [Fee schedule](#) on the Department's website or contact the Department.

If the application is approved, other costs may be payable for field inspection and reporting, valuation for rental purposes and dealing lodgement with the Department. Costs may not necessarily be limited to the above and can vary dependent on the application.

If a survey is necessary, the lessee will be responsible for all costs charged by the surveyor in addition to costs for plan approval and lodgement with the Department.

More information

For more information, please contact:

Department of Primary Industries - Lands

PO Box 2185
DANGAR NSW 2309

T: 1300 886 235 (Australia wide)

T: 61 2 9842 8200 (International)

F: 02 4925 3517

E: enquiries@crowmland.nsw.gov.au

W: www.crowmland.nsw.gov.au

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