

Policy Position on the proposed Rural Leasehold Land Strategy

Developed by

Queensland Conservation Council (QCC)

In consultation with

**The Wilderness Society (TWS) and
WWF Australia (WWF)**

February 2005

Rural Leasehold Land Strategy Negotiating Position Retaining State Control of State lands

Background to position and recommendations

Two-thirds of Queensland (110 million hectares) is leasehold land; that is land for which the State Government are custodians on behalf of all Queenslanders. With this comes substantial responsibility to ensure this vast public estate is managed for the immediate and long-term benefit of all. A custodian is a protector. The Queensland Government must ensure this vast proportion of Queensland is protected from further degradation with strategies introduced to improve land condition. This means requiring that lessees do not degrade these values, that fair rents are paid, and that Indigenous interests in their country are respected. Under the present system, this is not being achieved: there is “consistent evidence of widespread and continuing land degradation,”¹ the median rent for term leases is just \$1500 a year, and most Indigenous Australians are prevented from accessing their traditional lands.

The Government needs to retain control of the leasehold estate. Proposals to move to rolling leases² will seriously reduce the state’s capacity to respond to change. Let us maintain flexibility with a tenure system responsive to changing conditions and better knowledge. This is security for Queensland.

Plans to protect the Reef from excessive sediment depend on the Government’s capacity to control erosion caused by grazing. To protect wildlife and livelihoods under climate change will also require responsive, science-based reform of land use. We are fortunate to have so much land still in state control as it gives us greater flexibility to respond to these massive challenges. However, proposals to move to rolling leases will seriously reduce the state’s capacity to respond to change. Let us maintain flexibility with a tenure system responsive to changing conditions and better knowledge. This is security for Queensland.

The Government must consider the economic costs of allowing leasehold land to further degrade (whether through weeds, soil loss, vegetation loss etc). Investment now in improving land condition will offset much greater remediation costs in the future. We reiterate our recommendation in previous submissions that the Government prepare an initial assessment of the extent and cost of rehabilitation of degraded land on the Queensland leasehold estate and through a rapid assessment process identify priority areas for rehabilitation including targeted incentives. The Government should use information about the costs of repair to motivate investment in preventing further environmental degradation of leasehold lands.

Remediation should be a target actively sought through the Strategy and supported by the Land Act. Remediation is required, not only to safeguard and improve productive capacity, but to ensure biodiversity value is not lost. There is an intrinsic and economic benefit to all Queenslanders to ensure biodiversity is not lost from our landscape.

¹ Department of Natural Resources and Mines (Dec 2001) *Managing State Rural Leasehold Land: a discussion paper*.

² A system whereby a lessee can top up their lease every 10 years with an extra 10 years, so that their lease term never comes to an end. This system would mean that a lease would never again be subject to a ‘most appropriate use’ assessment as currently required under the *Land Act 1994* when a lease is renewed.

Under section 159 of the Land Act before renewing a lease the Minister must consider a range of issues including the risk of land degradation and suitability of purpose. This is a critical assessment and we strongly urge the Government to actively use its mandate under sections 159 and 16 of the Land Act. Where land is found to be seriously degraded or at risk of serious degradation the Government should be prepared to retire the land from production and not issue/renew a lease.

We welcome the Government's intention to use the Rural Lease renewal process as a tool for improving the condition of the leasehold estate. It is an opportunity for real change on a vast scale. We wish to assist the Government in providing a policy which will deliver the intended outcomes and to this end must reiterate our position.

QCC, TWS and WWF wish to emphasize 4 key matters of principle:

1. The Government must maintain its control of the leasehold estate.

The Government's capacity to respond to future environmental, social and economic change will be seriously undermined by the introduction of rolling leases which indefinitely postpone the assessment of appropriate use under section 16 of the Land Act and the Government's opportunity to retire land non-resilient to grazing, protect high conservation values or meet social needs (section 159).

2. Land management performance should be regularly and independently reviewed.

It is in the public's interest that land is managed for the protection of wildlife and nature conservation both on leasehold property and further a field.³ Land Management Agreements must incorporate targets for achieving a reduction in off-farm impacts and include land management targets for biodiversity conservation. LMAs need to be directly linked to regional natural resource and biodiversity planning. Achieving landscape scale biodiversity and land condition targets cannot be achieved by implementing on-farm strategies developed at the farm scale alone.

We welcome the proposal to independently review LMA performance every 10 years but urge the Government to extend this requirement to all term leases. Additionally DNRM should audit this process to ensure rigour and independence.

3. Incentives must be attractive, flexible and encourage genuine engagement

Extending the base-term of leases by 10 years creates insufficient incentive in to adequately encourage leaseholders to negotiate both Conservation Agreements and Indigenous Land Use Agreements. Including financial incentives in the form of rental subsidies will substantially improve participation the incentive scheme.

Incentives for entering into CAs and ILUAs are actually diminished in the context of the universal upgrade of term leases to near perpetual, which will be the net effect of

³ The Reef Water Quality Protection Plan establishes the links between leasehold land management practices, land use planning and water quality.

introducing a rolling lease/ lease extension scheme. As such, the proposed strategy will actually deter, not encourage leaseholders to negotiate ILUAs or CAs.

An additional opportunity to provide incentives for CAs and ILUAs is offered by very early lease renewal. Currently, under the Land Act lease renewals are only available to lessees within the last 20% of the lease term i.e. when more than 80% of the term has expired. Very early lease renewals, that is lease renewals outside of the last 20% of the lease term, should be made available systematically to leaseholders if they enter into both ILUAs and conservation agreements. This is a cost neutral incentive that provides significant tenure certainty for the leaseholder and a very effective incentive for meeting the objectives of the RLLS.

4. Traditional Owners should see their Native Title rights and interests advanced through the strategy

'Certainty' over the terms and conditions of lease tenures, and of Native Title rights and interests, is a critical issue for both lessees and Indigenous Traditional Owners. The Government suggests that rolling leases will offer a level of security approaching that of perpetual leases – that it will create de facto perpetual leases. The manner in which the Government implements a rolling lease system and grants lease extensions has significant implications regarding the rights of Native Title claimants and may affect progress towards resolution of Native Title across the leasehold estate.

While the Strategy puts considerable emphasis on lessee's interests and concerns, it does very little to ensure clarification of Native Title holder's rights and interests, or to make clear how it will facilitate the development of Indigenous Land Use Agreements or other binding arrangements.

It is essential that the Government negotiate with Indigenous Traditional Owners and their representatives regarding the proposed Strategy. It must explain how it will facilitate the resolution of Native Title with respect to leasehold lands in which co-existent rights and interests apply.

The Strategy should offer adequate incentives to leaseholders to gain their cooperation in the development of agreements. Along with lessee entitlements, these agreements should ensure the rights and interests of Traditional Owner's, including access to homelands, natural resource use, cultural activities and heritage protection.

Position and recommendations

1. Retaining State Control of State Lands

Recommendations:

1.1 Abandon any proposal to offer lease extension or rolling leases of any kind. These would create perpetual-style leases, reducing the incentive to extend a base term through a Conservation Agreement (CA) or Indigenous Land Use Agreement (ILUA)⁴ and severely restrict opportunities for the state to conduct most appropriate land use assessments.

1.2 Ensure that land condition assessments, most appropriate use and tenure assessments (under sections 159 and 16 of the Land Act) are carried out at regular periods, based on base-terms.

The proposal to introduce lease top-up every 10 years has been compared by the Government itself in the draft strategy to a near-perpetual lease. By offering lease security approaching that of a perpetual lease, the Government is surrendering its capacity to review appropriate use and properly manage the leasehold estate. Lease extensions indefinitely postpone the assessments required under sections 159 and 16⁵ of the Land Act and thereby the Government would lose its opportunity to respond to change and its responsibility to ensure land use is in the best public interest.

The appropriateness of land use at any one time can only be assessed in terms of the current environment, economic and social circumstances. For example, climate change will have a dramatic effect on rural land. It will increase drought, change weather patterns and significantly increase the number of days over 35 degrees centigrade. Such impacts will dramatically alter land condition and require land use purposes to change. It is therefore imperative that the Government has the flexibility to adapt Queensland to those future conditions.

Rolling leases will diminish the participation in any incentive scheme based on term extensions alone. It is unclear why a leaseholder would negotiate a CA and ILUA for an additional 10 years to their base term when they can secure an additional 10 years regularly through lease extensions. Incentives for entering into CAs and ILUAs will therefore be diminished if lease extensions are introduced.

⁴ ILUAs or other legally binding agreements with indigenous people.

⁵ Sections 159 and 16 of the Land Act come into effect when a lease period is to be renewed. These are critical assessments through which the Government can assess the risks facing leasehold lands and determine whether there is a more appropriate use for the land. If leases are extended rather than renewed they will not reach an end period and the legal requirements of sections 159 and 16 will effectively be by-passed.

2. Land Management Agreements, monitoring and review

Recommendations:

LMA must:

2.1 include targets for reducing practices that have off-farm impacts, for example to meet targets identified in the Reef Water Quality Protection Plan.

2.2 be mandatory and include alignment with regional NRM plans and state biodiversity strategies.

2.3 include a biodiversity component to the Land Condition Assessment, ensure land assessment is not only tied to suitability of land for production.

2.4 be subject to periodic performance review with leaseholder self-assessment at 5 yearly intervals and independent assessment every 10 years.

Additionally-

2.5 We recommend that a minimum 5% of the independent assessments should be audited by DNRM each year to ensure appropriateness and rigour.

2.6 Criteria for monitoring should take into account ecosystem health in the broader context and not be reliant on, or substituted with, industry models.

We support the requirement for an independent Land Condition Assessment at lease renewal and the wholesale introduction of Land Management Agreements which spell out in detail, with targets and performance indicators, the responsibilities of both lessee and government to ensure that land is managed to achieve the purposes of the Land Act and other relevant legislation and policy. However the government currently lacks a comprehensive planning basis for LMAs. The major proposed vehicle for reform at the property level need clear landscape context targets and criteria. In particular as a priority the Government should develop a State-wide landscape ecology and biodiversity strategy that can be integrated into management plans at property level and natural resource management plans at regional level.

Similarly off-farm impacts of on-farm activities should be assessed and targets for reduction set in the LMA. In this regard the Strategy should be integrated with other legislation and policy, such as the Reef Water Quality Protection Plan. The Reef Water Quality Plan clearly establishes the connection between land management practices and water quality and includes the potential to make declarations and undertake other actions for appropriate high risk sub-catchments within the Reef catchment with the aim of preserving and improving water quality and regulating inappropriate land use.⁶

⁶ Reef Water Quality Protection Plan, 2003, section E1.

DNRM has been proposing that leaseholder performance should be independently assessed in order for them to qualify for the rolling lease scheme. In fact independent third party performance assessment is a minimum requirement for ensuring the effectiveness of LMAs on any tenure base (and not kept as a requirement for lease extension applications). Industry bodies are not independent and therefore should not be accredited assessors of performance. To ensure that independent assessments are indeed independent, the government should audit at least 5% of them each year.

We fully support the requirement for an independent Land Condition Assessment at lease renewal to provide the basis for performance targets and assessment. It is currently unclear what criteria will be used for benchmarking land condition. Industry models designed to assess land condition for production will not adequately assess the broader range of natural resource issues. For example, land covered in an exotic grass may be considered in good productive condition but this does not equate to a healthy or balanced ecosystem. Land Condition Assessments must therefore address ecosystem health including biodiversity measures and the impact of land management practices in the broader landscape context.

3. Lease terms and incentives

Recommendation

- 3.1 **Develop a more flexible and attractive incentives program based on both subsidised rentals and lease term extensions**
- 3.2 **Desist from offering extensions to base terms which creates perpetual-style leases and will reduce the incentive to negotiate conservation agreements or indigenous land use agreements**
- 3.3 **Structure incentives so that leaseholders can benefit from putting into place ILUAs and CAs and are not put in the position of choosing one rather than the other.**

The Government's intended approach to achieve vital conservation and social justice outcomes on leasehold land relies on an incentives approach which will probably have only limited uptake. To date, the Government has failed to define any targets for the proposed incentives program. We doubt that the proposed incentives are attractive or flexible enough to achieve the substantial conservation and social justice reforms needed.

Critically, the reward of a 40 or 50 year base lease for entering into these agreements is only an incentive in the context of the existing term lease system where the base term was important because it would not be topped up, nor become perpetual or rolling, as is proposed.

The incentives scheme should be structured in such a way that leaseholders are encouraged to enter into **both** CAs and ILUAs. If a maximum period of 10 years can be achieved for either or both type of agreement, leaseholders have no incentive to enter into both types of arrangement, invariably disadvantaging one or the other.

To improve the incentives approach, we recommend that both term extensions and rental subsidies are offered in various flexible combinations that fairly reward public good activities. We recognise that rent levels will be reviewed in 2005 separately to this strategy however we urge the Government to agree to the policy of offering financial reward for public good activities. With median rents of \$1500 a year (\$30 a week) for term leases, it is obvious that rent is currently highly subsidised by the community. Such subsidies should be used in the community's interest to encourage leaseholders to enter into agreements for conservation and social justice outcomes.