

HTW RURAL LEASE TENURE RENEWAL SEMINAR

22nd May 2008

Speaker:
David Kempton
Land Tenure Services
Cairns

HOW SECURE IS LEASEHOLD TENURE

Lease Renewals: Legal Aspects, case examples and potential pitfalls.

Presentation

I have spent most of my professional life in Cape York working on behalf of the pastoral industry throughout Queensland in respect of land tenure issues. I have owned and managed a cattle property affected by the WIK claim and have tested Government policy and legislation in the Courts on many occasions. I am, however, a strong advocate of resolution by negotiation and only use the Courts as a port of last call.

I should say at the outset that many of the issues I raise in this discussion paper are opinion only based upon my experience and may well, in practice or as a result of judicial intervention, eventuate to a different outcome than that I suggest. Put more simply, I might be wrong.

I have, however, deliberately put in issue some of the concepts of the State Rural Leasehold Land Strategy in a hope that the pastoral industry and its representative bodies will be a more vigilant in protecting future security of tenure and will address in advance some of the problems of implementation of the strategy.

Security of tenure is after all a cornerstone of the cattle industry.

Tenure types in Queensland.

There are two distinct types of tenure in Queensland.

The Land Act 1994 recognizes tenure in the form of Freehold (an estate in fee simple), and

Crown leasehold (which covers 80% of Queensland and a vast majority of the rural properties.)

There are now only two types of leasehold: term leases and perpetual leases.

Within the next 5-10 years most of the leases in Queensland will be due for renewal.

A change in direction

There were two significant events in the early 1990's which began a process of change in land tenure and the manner in which State land was administered in Queensland.

The first was the enactment of the *Nature Conservation Act 1992* and the second was the amendments to *the Land Act 1994*.

This process saw the gradual shift of the responsibility for land management of certain estates to the Environmental Protection Agency (EPA) with the ownership and administrative function being left with the Department of Natural Resources and Water (NRW as it is presently known.)

Since the early 1990's there have been a raft of policy decisions, regulations and Acts of Parliament, including the 2008 amendments to the *Land Act 1994*, which have seen this management process metamorphose.

There is no doubt that prior to this time (and it is still the case today) there are land management practices throughout the State which required intervention and positive management.

These include salination, broad scale tree clearing, land degradation, loss of rare and threatened species and biodiversity.

The legislative response to these issues has too often been at the behest of non government lobby groups for political expediency rather than based upon sound principles of sustainability and good management.

Management by Regulation versus Co operation

I have advocated for many years that with few exceptions farmers are the best managers of rural lands and should be encouraged to undertake more appropriate management practices by cooperation rather than coercion.

Examples of this can be seen in Land Care and in the studies that lead to the Wild Rivers Act 2005 it was stressed the codes of practice should be voluntary not mandatory.

There are many advantages to the cooperative approach including flexibility to deal with local considerations, cost effectiveness, enduring outcomes, positive stakeholder involvement and ownership.

Compulsion often fails to engage landholders and does not produce the best long term outcomes.

Case examples of diminution of tenure by policy and legislation.

In 1996 the Goss Government announced it would compulsorily acquire 11 pastoral lease properties in Cape York to be included in the East Coast Wilderness Zone.

This proposal arose from collaboration between the State, The Wilderness Society and representatives of Aboriginal interests, without any consultation with pastoralists.

The Lessee's argued there had been no scientific study undertaken to identify the special features that the proposal was trying to protect and the Hill family sought have the decision reviewed by the Supreme Court. The State resisted the action however when the Court ordered the documents evidencing the science behind the proposal be produced, the proposal was scrapped.

In the late 90's the State entered into regional forest agreements with Green groups that would see all State Forests and Timber Reserves in Queensland included in the National Park estate. These agreements provided that upon expiry grazing leases would not be renewed and would be replaced with grazing permits. There had been no consultation with the Lessees affected.

The P and L families from Kilkevan who had purchased their leases in good faith and borrowed substantial amounts of money against the leases sought to have this decision reviewed by the Supreme Court on the basis that the Minister for NRW had refused to renew the leases at the behest of the EPA.

There was no scientific study supporting the inclusion of the areas in the national park estate and the reason for inclusion was entirely tenure based.

The lease areas had been grazed for many years and are viable cattle properties. There was no suggestion of land degradation and no special conservation features were identified that would warrant the leases not being renewed.

It was a conservation land grab based on tenure alone.

The decision was overturned and the leases were renewed.

The lease areas were ultimately included in the National Park Estate and continue to be managed in a profitable and sustainable manner by the Lessee's today.

There are, however, many Lessees across the State that have had their leases reduced to grazing permits through this process.

In 2004 the H family from Georgetown purchased a property for over 20 million dollars. They made the usual enquiries and obtained the Ministers consent to the transfer of the lease.

Imagine their surprise when just one year later they received notice that over 1 million acres of the property would be included in a declaration under the new *Wild Rivers Act 2005*.

Initially the declaration prohibited all but simple grazing and did not recognize the need for infrastructure such as roads fences, dams, yards and so on.

The Wild Rivers Act was the brainchild of green groups and again there had been no consultation with affected Lessees.

The H family sought review of this decision in the Supreme Court on the basis that there was no scientific basis for the proposal and the legislative requirements could not be satisfied. They were successful having the initial declaration invalidated. A fresh declaration was challenged however before it could be determined by the Court the State legislated making the declaration valid and taking away all rights of consultation and review.

Following further representations the State did however amend the legislation to allow Lessees to enter into a voluntary property management plan to replace the compulsory codes of conduct.

In 2005 a company C purchased a station near Mt Garnet which included a term lease and a special lease over a reserve. An application to renew the special lease was in place at the time of purchase. The usual enquiries were made and the Ministers consent obtained. The special lease was a pivotal part of the enterprise and was taken as security by the bank.

The company has recently been advised the special lease will not be renewed and they will be offered in its place a grazing permit which cannot be transferred, mortgaged or sublet.

The company intends to seek a review of this decision.

On the day the floods inundated Emerald earlier this year the B family were advised their lease over a state forest would not be renewed and they would be offered a grazing permit.

The B family have owned the lease for 15 years and have invested their life savings into what was a run down block to turn it into a viable and sustainable cattle enterprise.

This family stand to lose their home and family property without offer of compensation.

The decision not to renew the lease was not based upon any scientific study or in fact on any study at all but an email from an officer of EPA who was simply stating policy without any actual knowledge of the property

The B family will seek review of that decision.

There are several points arising from these case examples

- Lease tenure is under constant review in Queensland, and
- The pastoral lessees can no longer assume that leases will, as a matter of course, be renewed
- The EPA now figures as a very dominant player in respect of the management and control of all rural leasehold land in Queensland.

The Lease renewal process

In the early 90's the lease renewal process was relatively simple. After 80% of the lease term expired the lessee could apply for a new term pursuant to s158 Land Act. It was just a matter of filling out a Form 204 and paying the relevant fee.

The applications were generally dealt with at the regional level and following a property inspection and input from some referral agencies the Minister or his delegate made a decision.

S159 Land Act 1994 sets out the matters the Minister had to consider when making a decision to renew a lease.

These included¹

- Interests of Lessee
- Forestry Act requirements
- Public interest
- Environmental and conservation needs
- Land degradation
- Compliance with lease conditions
- Appropriate use from a planning perspective
- Special features
- Public purpose
- Required to build up other lease area
- Subdivision issues

The Minister had to make a decision and notify the lessee².

¹ Section 159 (a) to (l) Land Act 1994

² Section 160 Land Act 1994

It was not unusual for roads to be re aligned and small excisions for public purposes to occur however by and large the leases were renewed as a matter of course irrespective of the underlying tenure.

The State Rural Leasehold Strategy (also known as the Delbessie Agreement) is encapsulated in the amendments to the Land Act 1994 which were passed into law earlier this year.

The NRW fact sheets provide a very good summary of the strategy so I will confine my comments to the renewal issues.

The agreement was reached in collaboration with NRW, Agforce and the Australian Rainforest Conservation Society and I am of the view that on this basis without consultation with the vast majority of affected leaseholders in Queensland.

The two types of tenure term leases and perpetual leases are retained.

Whereas previously leases for pastoral purposes could be for a term of up to 50 years (there are still some pre 1994 leases for 53 years) a lease for rural leasehold land cannot be granted for more than 30 years unless the Minister is satisfied the land is in good condition³ in which case a term lease for 40 years may be issued.

Further if the Minister considers the land is in good condition and if he considers the land should be the subject of a nature conservation agreement or covenant⁴ and if the Minister considers it appropriate there is to be an indigenous access and use agreement a lease may be issued for 50 years⁵.

It is interesting that in the case of a 40 year lease the Minister must be **satisfied** that the lease land is in good condition⁶ which means he must take into account all the relevant material and satisfy himself as a matter of fact that the lease land is in good condition whereas in the case of a 50 year lease the Minister need only **consider** that the land is in good condition⁷ and does not have to be **satisfied** that it is in good condition.

I cannot imagine this distinction was intentional and may be the result of sloppy drafting.

It appears term leases over rural leasehold land may be extended if there is a land management agreement⁸ but not by more than 10 years.

³ Section 155 (4) Land Act 1994

⁴ Section 45 Nature Conservation Act

⁵ Section 155 (5) Land Act 1994

⁶ Sections 155 (4) Land Act 1994

⁷ Section 155 (5) (a) Land Act 1994

⁸ Section 155A and 155B Land Act 1994

The old section 159 lease renewal conditions have been maintained with some very important new conditions⁹ and by the inclusion of a new subsection¹⁰. This will be discussed later.

The following tables indicate the relative differences in the lease renewal process prior to and after the Delbessie agreement and amending legislation.

Pre Delbessie

2007	30 yrs Renewal	50 yrs Renewal	50 yrs Conversion	Perpetual Conversion
LMA	No	No	No	No
ILUA	No	No	Yes	Yes ¹¹
NCA	No	No	No	No
UAA	No	No	No	No
EPA consent	Referral agency	Referral agency	Referral agency	Referral agency

Post Delbessie

2008	30 yrs	40 yrs	50 yrs	50 yrs Renewal	Perpetual Conversion
LMA	Yes	Yes	Yes	Yes	Yes
ILUA	No ¹²	Yes	Yes	No ¹³	Yes
NCA	Maybe	Maybe	Yes	Yes	Yes
UAA	Maybe	Maybe	Yes	Yes	Yes
EPA consent	Yes ¹⁴	Yes	Yes	Yes	Yes

⁹ Section 159 (m),(n) and (o) Land Act 1994

¹⁰ Section 159 (2) Land Act 1994

¹¹ The conversion of a term lease to a perpetual lease is a permitted future act pursuant to the Native Title Act 1993. The NTA provides a notification and objection process 24IC, 241D, 24MD(6B). The State will not apply these provisions and requires the lessee to obtain the native title parties consent by way of an ILUA

¹² By virtue of section 155 (5) Land Act 1994 the Minister may apply those conditions relating to 50 year leases to 40 and 30 year leases .This relates equally to NCA's and UAA's

¹³ An ILUA may be required if the Minister requires the consent of native title parties to a conservation agreement

¹⁴ Section 159 (2) Land Act 1994

Analysis

LMA means “Land Management Agreement”
ILUA means “Indigenous Land Use Agreement”
NCA means “Nature Conservation Agreement”
EPA means “Environmental Protection Agency”
UAA means “Indigenous Use and Access Agreement”

In the Delbessie model where the word “Yes” appears in the NCA and UAA columns the Minister does have a discretion.¹⁵

Land Management Agreement

A land management agreement is required for all new and renewed leases over rural leasehold land.

The agreement will require as a minimum

- an assessment to identify natural and physical features
- an assessment of condition of land at time
- management to improve or maintain good condition
- identify land degradation
- agreed management conditions
- cultural heritage protection
- monitoring and reporting
- performance assessment
- dispute resolution
- review¹⁶

A land management agreement may take many years to complete and will be expensive to prepare and implement. I have been involved in the development and negotiation of many similar agreements throughout Cape York and Queensland and they are far from simple.

The agreements are be mandatory and the onus is upon the Lessee to bear most of the cost and responsibility for implementation.

When read in conjunction with the “duty of care” provisions¹⁷ the Lessee will need to

- maintain pastures dominated by perennial and productive species
- maintain native grasslands free of encroachment from woody weeds
- protect riparian vegetation
- control or eradicate declared pests

¹⁵ Section 155 (5) (b) and (c) Land Act 1994

¹⁶ Section 176W Land Act 1994

¹⁷ Section 199 Land Act 1994

- avoid causing or contributing to salinity that reduces productivity or causes damage
- conserve soil, water resources and biodiversity.

What exactly biodiversity means in this context and who will determine it is anyone's guess.

Indigenous Land Use Agreements (ILUA's)

ILUA's are essentially a voluntary agreement between the Lessee and the relevant native title party providing consent of native title holders to an act affecting native title that would otherwise be unlawful. ILUA'S often include the State as a party.

Such an act is called a future act and might be conversion of a lease to freehold, more intense land use and so on.

These agreements are enshrined in the *Native Title Act 1993* and are designed to be voluntary.

Extensions of lease terms, were what are called permissible future acts and do not require the consent of the native title parties.

The Native Title Act 1993 provides for a notification and objection process in respect of an increase in the term of a lease however the State considers this would result in the acquisition of native title rights and have indicated they will not follow the process set out in the Native Title Act

Instead the State will pass that responsibility to the Lessee by requiring future act consent and an ILUA.

I have negotiated many ILUA'S for pastoral properties in (for example) the WIK, Bar Barrum and Yalanji claims.

ILUA's require an exhaustive consultation, authorisation and registration process and can take many years to complete. In my experience they can be very costly.

What makes it even more difficult in the case of a lease extension application is the engagement of the native title claimants in a lengthy process in respect of which they have no interest in the outcome.

Use of and access to pastoral leases, in the past, has not proven to be a sufficient drawcard to enter into negotiations in view of the resources required to negotiate an ILUA.

If there are no native title parties or if there is no claim over the leases then the added problem of who to deal with emerges.

This legislation contemplates that you can simply walk into a supermarket and pluck an ILUA off the shelf.

I am unsure what an “indigenous access and use agreement” looks like.

What I am sure of is that it will not provide for future act consent.

I would advocate the negotiation of regional use and access protocols (based upon the WIK model) which could be applied to all properties and included as a lease conditions.

That the State has imposed a future act regime in respect of the extension of pastoral leases where none previously existed beggars belief.

As it stands the extension of the term of a lease or the conversion of a term lease to a perpetual lease is a permissible future act and does not require the consent of the native title parties.

On current policy the State intends to require the consent of the native title holders as a condition of offer of any extension of term. It is my view that such a condition is unlawful and will be subject to legal challenge in due course.

In the meantime the way forward for Lessees is far from clear.

Nature Conservation Agreements

The creation of such an agreement involves the declaration of the area as a nature refuge pursuant to the Nature Conservation Act¹⁸ and the entering into of an agreement with the EPA¹⁹ for the preservation of special features through management practices. A NCA can attract funding from various sources.

The catch is that the Nature Conservation Act requires consultation with landholders before an area can be declared²⁰. Landholder includes a person having interest in the land.²¹

The State considers native title holders to be landholders and this includes the nebulous group known as “traditional owners.”

Whilst the nature conservation agreement is made between the Lessee as landholder and the State, and the Act only requires notification to and submissions from persons having an interest in the land²², the State will not enter into a nature conservation agreement without the consent of the “traditional owners”.

¹⁸ Section 44 Nature Conservation Act 1992

¹⁹ Section 45 Nature Conservation Act 1992

²⁰ Section 44 Nature Conservation Act 1992

²¹ Section 44(6) Nature Conservation Act 1992

²² Section 44 (3) (4) Nature Conservation Act 1992

The State has indicated that this consent must be in the form of an ILUA.

A nature conservation agreement is clearly not a future act as contemplated by the Native Title Act.

Again there is no incentive for aboriginal people to expend resources on negotiating an ILUA for a conservation agreement in respect of which they have no interest in the outcome with the exception maybe for some cultural heritage mapping.

I do not raise these issues in any way to diminish the importance of determining the rights and interests of native title holders but rather to draw attention to the complexity of the new tenure arrangements.

A nature conservation agreement can be an insurance policy against future compulsory conservation regimes however the implications of the declaration as a nature refuge should be considered.

Access

Upon renewal land may be excised from the lease to allow public access to places of interest or community significance. This power has existed for some time and is of no real consequence to the renewal process

Future involvement of EPA.

The 2008 amendments to section 159 *Land Act 1994* provide:

- The lease land must be assessed for its most appropriate form of tenure.²³ It would be quite open in the future to reduce pastoral leases to grazing permits if it were considered this were more appropriate (as in the case of leases over state forests)
- The level of compliance with the Land Act is a now direct issue to be considered upon renewal.²⁴ This clause consolidates the Ministers powers on renewal in the event the Lessee has not complied with any part of the Land Act any condition imposed or any agreement reached in accordance with the Act
- The natural environmental values of the land.²⁵ The Minister must seek and take into account the view of the EPA when considering the lease renewal application²⁶.

It is now beyond doubt that the Minister must seek and take into account the views of the EPA when renewing leases over rural leasehold land in Queensland.

²³ Section 155(m) Land Act 1994

²⁴ Section 155 (n) Land Act 1994

²⁵ Section 155 (o) Land Act 1994

²⁶ Section 159(5) Land Act 1994

Summary

The amendments to the Land Act may on first consideration seem simple enough however

30 year lease

- Where a Lessee previously held a 30 year lease he can now apply to renew it for a further term of 30 years provided he has a land management agreement.
- The Minister may also decide to require a nature conservation agreement, an ILUA, a use and access agreement and
- The Minister must consider the views of the EPA.

40 year lease

- The Lessee may seek a 40 year term however the land must be in good condition, and
- The Lessee must have a land management agreement, and
- The Minister will require an ILUA as he considers the additional 10 years to be a future act, and
- The Minister may also require a nature conservation agreement and a use and access agreement.
- The Minister must consider the views of the EPA.

50 year lease

- The Lessee may seek a 50 year term however the land must be in good condition, and
- The Lessee must have a land management agreement, and
- The Minister may require a nature conservation agreement and a use and access agreement, and
- The Minister will require an ILUA as he considers the additional 20 years and the nature conservation agreement to be future acts, and
- The Minister must consider the views of the EPA.

50 year lease

Many current leases are for terms of 53 years and are due to expire in the foreseeable future.

Where prior to the Delbessie amendments the Lessee could have sought a lease for a further 50 years he could not now do so unless

- the land is in good condition, and
- The Lessee must have a land management agreement, and
- If required by the Minister nature conservation agreement and a use and access agreements, and

- The Minister will require an ILUA for a nature conservation agreement as he considers such agreements to be future acts, and
- The Minister must consider the views of the EPA

Conversion to perpetual lease

The NRW notes on the Delbessie agreement indicate a conversion to perpetual lease might be available if native title has been determined. In reality the Lessee will also need an ILUA as the Minister treats the conversion as a future act requiring the consent of native title holders. (Quite wrongly in my view)

Buying a rural property (caveator emptor)

I would strongly suggest anyone purchasing a rural leasehold in Queensland irrespective of the time left to run on the lease to make far greater enquiry than in the past.

Specific information should be sought as to whether the EPA has any specific plans for the lease area, that the Lessee is compliant with the lease conditions, the Land Act and any agreement entered into with the State, and whether the lease or any tenure forming part of the aggregate is unlikely to be renewed by virtue of any current or pending policy and whether NRW is aware of any other matter affecting the renewal of the lease.

There is no obligation on the Minister in giving consent to transfer to advise the incoming tenant of any matters affecting or that might impact upon the lease tenure.

These are only examples and full review of the amended Act should be undertaken.

Developing a leasehold strategy.

With the introduction of the Delbessie amendments to the Land Act what was a relatively straight forward lease renewal process is now so complex pastoral lessees will need to engage Indiana Jones to achieve even a simple renewal.

I strongly recommend all rural leaseholders in Queensland irrespective of tenure type and remaining term to obtain a copy of their lease and to work out a strategy to achieve the longest possible tenure available in the shortest time frame.

As a minimum Lessees should immediately

- obtain an independent property assessment as to land condition and conservation considerations
- develop a property management plan to be incorporated into a land management agreement, and
- ensure they are compliant with the new provisions of the Land Act and the terms of the lease, and
- Consider entering into a nature conservation agreement, and

- obtain independent advice as to the implications of the Delbessie amendments (I mean no disrespect to Agforce or NRW officers in making this comment).

In conclusion where the green groups and conservation interests historically influenced tenure and management issues involving pastoral leases by subsidiary legislation and policy they have now been successful in directly influencing amendments to the Land Act.

The tenure landscape in Queensland is undergoing a major transformation.

Addendum. 24th May 2008

Following the conference on the 22nd May 2008 two very important issues emerged which require further consideration

1) Future Conservation Areas

The State speaker said that where EPA decided an area had high conservation value in a lease area it would be reserved as a future conservation area in the lease and the end of the lease period any further lease that might issue would not include that area.

This can be found in the new section 159(3) *Land Act 1994*

“If the lease contains a reservation that part of the lease land is a future conservation area the chief executive can not offer a new lease for that land”

How this works is that when any lease over rural leasehold land comes up for renewal from 1st January 2008 as part of the renewal process NRW will seek advice from EPA [as it now must see section 159(5)] as to whether any part of the land might be required for future conservation purposes.

If EPA decides there is such an area then it provides a map to NRW and upon renewal the lease must contain a reserve to the effect that once the renewed lease expires any new renewed lease cannot include the future conservation area.

The speaker was asked if there was a register of such conservation areas a current or prospective lessee might search. There is no register.

The speaker said the term high conservation value is defined (it is not defined in the Land Act or the Nature Conservation Act)

The speaker said EPA would not impose such areas without consultation, negotiation and agreement (EPA does not undertake any consultation or negotiation with lessees)

We might consider high conservation values to mean pristine rain forest, special features, habitat for rare and threatened species and so on.

We need look no further than the Wild Rivers Act for an example of how this is not the case.

The Wild Rivers Act is designed to protect wild rivers by declaring “high preservation areas” on the basis these so called areas have “high conservation values”.

No one will be surprised to learn EPA made declarations on the basis of high conservation values on waterways in the Gulf that are non existent.

I would suggest any lease area having a riparian area for example may have such a reservation imposed.

Hypothetical example

Mr Andrews wishes to purchase “Legacy Downs” for \$12,000,000 plus cattle.

All the usual enquiries are made and a specific enquiry of EPA does not reveal the existence of any proposed future conservation area at the time of purchase.

The land is rural leasehold land and the lease expires in 2102 and is for grazing purposes.

Mr Andrews borrows \$10,000,000 from AWN bank secured by a 10 year mortgage over the lease.

Both Mr Andrews and his bank assume the lease will be renewed in 2012.

Mr Andrews plans to spend a further \$10,000,000 improving the carrying capacity of the property over the next 20 years or so.

At the time of purchase no application has been lodged to renew the lease so Mr Andrews makes immediate application for a further 30 years as he feels the 40 and 50 year requirements are too uncertain.

Mr Andrews extends his loan from AWN bank for a further \$5,000,000 and extends the term of the loan to 20 years.

Two years after settlement and before the application to renew has been determined Mr Andrews receives notification that ½ of his property will be declared a wild river under the Wild Rivers Act.

One year later NRW advise him that his lease will be renewed for a further term of 30 years however there are conditions

- Mr Andrews must enter into a Land Management Agreement within 6 months
- EPA have advised that the wild rivers area is to be a future conservation area and any future renewal will not include this ½ of the lease.

- EPA have indicated Mr Andrews will be able to apply for a Stock Grazing Permit over the conservation area.

Mr Andrews advises the bank of this decision and revises his capital expansion program accordingly.

AWN bank revises its security and is concerned about default on the loan in the last 10 years of the 20 year loan period. The bank is of the view that if Mr Andrews defaults in this period the lease will not be able to be readily sold to recover the debt as up to ½ of the lease area cannot be renewed. The bank is aware a Stock Grazing Permit cannot be mortgaged.

The bank calls in half of its loan to protect its interests.

Mr Andrews is concerned that if he had known of this position he may not have completed the purchase and would not have borrowed such a large amount of funds.

Mr Andrews is reluctant to develop the future conservation area as even though he can remove improvements he will receive no compensation for improvements when the lease expires. He is not sure that fences, dams, roads, pasture, firebreaks and so on can be readily removed.

His entire venture has been cast into doubt.

2) Lease strategy

I was asked if there was a strategy to deal with the implications of the Delbessie agreement and I set out the following suggestions

As a minimum Lessees should immediately

- obtain an independent property assessment as to land condition and conservation considerations
- develop a property management plan to be incorporated into a land management agreement, and
- ensure they are compliant with the new provisions of the Land Act and the terms of the lease, and
- Consider entering into a nature conservation agreement, and
- obtain independent advice as to the implications of the Delbessie amendments.

Upon reconsideration Mr Andrews may have been more prudent to **apply for a conversion to a perpetual lease** rather than a renewal.

There may be more cost and time involved however the security will be well worth the effort.

There is no more involved in obtaining a perpetual lease than there is in achieving a 50 year term lease however there is one very important distinction.

If a current term lease does not contain a reservation for a future conservation area then s159 (5) Land Act will not apply. It can only be included in a lease applied for after 1st January 2008. Once reservation is included that lease cannot be renewed for a further term over the reservation area.

So a current 30 year lease when renewed for 30 ,40 or 50 years can have a reservation that will prevent the renewal of a future conservation area.

This is not the case for a perpetual lease.

If a current lease is converted to a perpetual lease and there is no conservation reservation in the current lease then s 167(4) Land Act will not apply.

It can only apply when a **current** lease is renewed for a 30, 40 or 50 year term and a reservation is made in the renewed lease and the lessee later applies to convert the new lease to a perpetual lease.

On this basis Mr Andrews would be well advised to convert the **current** lease to a **perpetual lease** (section 166 Land Act) as at no time could the perpetual lease not be renewed by virtue of section 159 (3) or 167(4) Land Act 1994.

If a lease from a 30 year term to a 40 or 50 year term is a permissible future act not requiring the consent of native title parties then a perpetual lease is also a permissible future act.

If the Minister is of the view that a perpetual lease is a future act requiring the consent of native title parties then so is a renewal of a 30 year lease to a 40 or 50 year lease a future act requiring the consent of native title parties.

There is no doubt Mr Andrews and AWN bank would be happy to invest on the basis of a perpetual lease and there is no threat of the tenure being diminished by a politically reactive nature conservation agenda.

To overcome the effect of section 167 Land Act 1994 Mr Andrews would also at the time of making the application

- obtain an independent property assessment as to land condition and conservation considerations
- commence negotiations with the State for a land management agreement, and
- ensure compliance with the provisions of the Land Act and the terms of the lease, and
- If there are conservation considerations enter into negotiations for a nature conservation agreement, and

- Undertake a n investigation as to the nature and extent of any native title interests in the lease area.

Whether or not Mr Andrews embarks upon ILUA negotiations depends entirely upon whether the Minister treats the conversion as a permissible future act or a future act.

If the Minister is of the view that a renewal of a 30 yr lease to a 40,or 50 yr or perpetual lease is a permissible future act then he will have to follow the notification and objection provisions of the Native Title Act 24IC,24ID and the compensation provisions 24MD(6B) apply.

The long shot is that to the extent the permissible future act diminishes the native title rights and interests the State will be responsible for the compensation payable (if any).

If the Minister if of the view that that a renewal of a 30 yr lease to a 40 or 50 year or perpetual lease is a future act requiring an ILUA then it is likely that to the extent the future act diminishes the native title rights and interests the Lessee will be responsible for the compensation payable(if any).

All lessees of rural leasehold land in Queensland should give consideration to making an application for conversion to perpetual leases immediately upon their leases reaching 80% of the current term.

Disclaimer

This paper has been prepared and presented to promote discussion on the rural leasehold land strategy. It should not be relied upon by any person as legal advice and any party having an interest in rural leasehold land should obtain their own independent legal advice.