LEA-02 Leases of Land - variations of and to

Version 2 – 25/03/2020

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1 Transfer of Lease

See TFR-05 Transfers – of Mortgage, Charge or Lease.

2 Sub-Lease

A lease of a lease (sub-lease) may be prepared using the electronic Record Interest – Sub-Lease form for a sub-lease of freehold land or a sub-lease of Crown land (available via Landgate’s Land titling forms webpage).

Alternatively, the following forms may be used:

- Sub-Lease for a sub-lease of freehold land form; or

- Sub-Lease of Crown Land for a sub-Lease of Crown Land form.

A duplicate copy of a sub-lease may be lodged for registration along with the original.

It is desirable but not essential that the duplicate title (if any) be provided when a sub-lease is registered.

There is no requirement for the duplicate lease to be provided.

2.1 Term of the Sub-Lease

The sub-lease may be for any part of the lease, not less than three years for a sub-lease of a lease
of freehold land and not less than 12 months for a sub-lease of a lease of Crown land.

It is acceptable for the term of the sub-lease to be for the whole of the term of the lease, less one day.

Where a sub-lease is for the whole of the term of the lease, it would operate as a transfer of the lease and for that reason would be unacceptable as a sub-lease.

2.2 Consents

Any consent required by the terms of the lease must be endorsed on the sub-lease. In general, encumbrances registered against the title of the lessor do not prevent dealings by the lessee.

Encumbrances lodged against the lease must either be removed or shown as encumbrances on the sub-lease form.

2.2.1 Minister's Consent

For transactions over Crown land, unless the Crown land is vested for purposes of another Act, consent of the Minister for Lands will be required under section 18 of the LAA (see Paragraph 12.1.7 of the Land Titles Registration practice manual).

2.2.2 Mortgagee Consent

A sub-lease lodged after an existing mortgage on the head lease should include consent of the mortgagee to prevent any removal of the sub-lease on any default of the mortgage. A sub-lease lodged before any new mortgage on the head lease is not wiped on any default of that mortgage.

Consent by the sub-lessee is not required for any mortgage or caveat by the sub-lessee unless it is expressed in the sub-lease.

2.3 Variations

A sub-lease may include variations to the lease, however any variations included cannot alter the lease area or the term of the lease. The lessor must be a party to any variations of the lease.

3 Concurrent Lease

After a lease has been granted, another lease for the same land or building may be granted, for a term beginning before the expiration of the first lease. The second lease, known as a concurrent lease, may end either before or after the first lease. For example, the owner of a shopping centre may lease out several or all of the shopping units in the centre for a variety of terms, then lease again the whole centre to another party.

The effect of a concurrent lease is that the lessee of the concurrent lease acquires rights and duties of the lessor in relation to the other lease(s). It does not require all the lessor's rights under an existing lease to be transferred.

To create a valid, registerable concurrent lease, please ensure all of the following:

- specify that the lease is a concurrent lease, and that is has been granted subject to the existing
lease(s);

- that the concurrent lessee is a different person or corporation from the prior lessee(s) (if the concurrent lessee is also a prior lessee, the prior lease must be surrendered);

- specify a term that must commence within the term(s) of the lease(s) already lodged, and may extend beyond the expiry date of the earlier lease(s);

and

- show the existing lease(s) as an encumbrance.

A concurrent lease may be mortgaged, and the terms of the lease (if any) or the terms of the prior leases will set out the nature of any consents required before the lessee can do so.

A relevant lease granted prior to a concurrent lease may be granted an extension by the registered proprietor of the land or by the concurrent lessee. As the full extent of rights under a concurrent lease are not determined by the Registrar, the consent to the extension from the other part not shown as granting the extension is to be provided to ensure the parties agree with the extension and are aware of their rights and responsibilities under the concurrent lease arrangement.¹

¹ Added 25/03/2020

4 Extension of Lease

The term of a registered lease may be extended by the registration of an extension of lease. The extension of lease may be prepared using the electronic Modify Interest - Lease form (available via Landgate’s [Land titling forms](#) webpage).

Alternatively, the following forms may be used:

- [Extension of Lease for an extension of lease of freehold land form](#); or

- [Extension of Lease of Crown Land for an extension of lease of Crown land form](#).

The duplicate freehold title (if any) must be provided with an extension of freehold lease. There is no requirement for the duplicate lease to be provided.

Note: Where the names of any of the parties to the lease being extended has changed, the appropriate documents will need to precede registration of the extension (e.g. Application to Amend Name, Transfer).

4.1 Consents

As the extension is an instrument, encumbrances affecting the leased land recorded after the lease, must be shown on the form, and the consents (if any) required by the terms of the lease obtained. Where a concurrent lease has been registered, an additional consent is to be provided for an extension of a relevant lease granted prior to the concurrent lease. (Please see Section 3 Concurrent Leases).¹

¹ Added 25/03/2020
4.1.1 Minister's Consent

For transactions over Crown land, unless the Crown land is vested for purposes of another Act, consent of the Minister for Lands will be required under section 18 of the LAA (see Paragraph 12.1.7 of the Land Titles Registration practice manual).

4.1.2 Mortgagee Consent

Consent of the Mortgagee may be required pursuant to the terms of the lease and/or the mortgage. A search of the relevant lease and/or mortgage should be made to determine if consent is required.

Where a certificate of title is encumbered by a mortgage and no duplicate certificate of title has been issued, a letter of consent to subsequent lodgement should also accompany the lease. Please see COT-02 Duplicate Title.

4.2 Variations

An extension of lease may include variations to the lease, however any variations included cannot alter the lease area or the parties to the lease.

Where a deed of variation has been prepared it must be included and form part of the extension.

5 Variation of Lease

Where a Lease of Crown land is to be varied, a Variation of Lease form may be used. A variation of lease cannot alter the leased area, the term of the lease or the parties to the lease.

There is no requirement for the duplicate lease to be provided.

Where the area of the leased premises is to be varied, a surrender of lease form should be used where the leased premises are being decreased, and a new lease granting the additional area of land is to be prepared where the leased premises are being increased.

Where the term of a lease is to be increased, an extension of lease form should be used. Where the parties to the lease are to be varied, a transfer of lease form should be used.

Note: A variation document for a freehold lease cannot be accepted for registration. Please note however, that variations to a freehold lease can be included in an extension of lease, sub-lease or transfer of lease document.

6 Also see

- LEA-01 Leases of Land