

# Guideline

SLM/2013/480  
Formerly PUX/901/112  
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## Public Purpose Reservations

### Purpose

To provide guidelines on the allocation, sale and disposal of reservations for public purposes (reservations).

**Note:** this Guideline does not specifically deal with a reservation for a forest entitlement area. The department responsible for the commercial timber provisions of the *Forestry Act 1959* must be consulted on any further dealing with a forest entitlement area.

### Rationale

#### Reservations for public purposes

A deed of grant (freehold), a deed of grant in trust or a lease may contain a reservation for a public purpose under section 23 of the *Land Act 1994* (the Land Act).

A reservation for a public purpose (reservation) is an area reserved to the state for the particular public purpose. For example, a freehold lot may contain a reservation for road purposes, for possible future road requirements.

A reservation has an exact area (e.g. 2.04 hectares) and lies within the boundaries of a lot. Reservations can be 'fixed' (i.e. they are in a fixed, defined location) or 'floating' (i.e. they are contained within a lot, but are not in a defined location).

#### Historical Reference

During settlement of the state, reservations were provided for possible future public requirements.

Reservations for road purposes (road reservations) were provided as future road requirements could not always be foreseen, nor the pattern of development reasonably anticipated. The location of these reservations was generally undefined (i.e. a floating reservation).

Over time, reservations were also created to meet other needs occurring at the time. As a result, there are now reservations that may never be needed, including reservations for road, railway and telegraph purposes.

Also in some instances, reconfigurations of a lot (subdivisions) may have resulted in a lot (for example used for residential purposes) containing a reservation no longer of practical use.

## Guideline

### Current practice

Reservations (other than for a forest entitlement area) are no longer created. The most appropriate tenure and use must be decided prior to land being allocated under the Land Act. All foreseeable public requirements (e.g. dedication of an esplanade or a community purpose reserve, or the opening of a road), are generally provided at the time of allocation. If it is identified that a public purpose for the allocated land is required in the future, the state has acquisition powers, primarily the *Acquisition of Land Act 1967* for freehold, and the Land Act for leasehold, to acquire the land instead.

### Further dealing with reservations

The state is the only party that may deal with the reservation and must do so in accordance with the Land Act. This includes:

- allocating the reservation (section 23A)
- selling the reservation (section 24)
- disposing of the reservation (section 26A).

The following table outlines different tenures and decisions under the Land Act to deal with reservations.

Tenure	Decisions under the Land Act
Freehold	<ul style="list-style-type: none"><li>• Sell the reservation (Section 24)</li><li>• Allocate the reservation (Section 23A)</li></ul>
Freeholding lease	<ul style="list-style-type: none"><li>• Sell the reservation (Section 24)</li><li>• Allocate the reservation (Section 23A)</li></ul>
Deed of grant in trust	<ul style="list-style-type: none"><li>• Dispose of the reservation (Section 26A)</li><li>• Allocate the reservation (Section 23A)</li></ul>
Term lease or perpetual lease	<ul style="list-style-type: none"><li>• Dispose of the reservation (Section 26A)</li><li>• Allocate the reservation (Section 23A)</li></ul>

In some limited circumstances, the state may also resume possession of the reservation under section 24 or section 229 of the Land Act, compensating for improvements only. No land value is paid for the area of the reservation which has been reserved to the state. Please see Procedure [Resumption in relation to land under the Land Act 1994 PUX/952/119](#).

#### Notes:

The state is unable to “dedicate” a reservation including a road reservation, for the reservation’s purpose.

The state (including for another state agency, a local government or owner, lessee or trustee) is unable to offer a reservation as an “offset”, whether or not the purpose of the reservation is the same purpose as the land required. The owner, lessee or trustee is unable to deal with a reservation, for

example a freehold owner may not allocate a reservation to a lot on a plan of subdivision or “dedicate” the reservation, including a road reservation, for the reservation’s purpose.

## Is the reservation still needed?

Prior to further dealing with a reservation for a public purpose, it needs to be decided if the reservation is still needed.

In considering whether the reservation is still needed, the decision-maker should seek the views of relevant agencies to determine:

- whether there is a clear requirement for the reservation now or in the foreseeable future; and
- that the area is not able to be immediately required for that public purpose.

The following table lists examples of relevant agencies for different reservation purposes.

Purpose of reservation	Examples of relevant agencies
Road	Local Government Department of Transport and Main Roads
Railway	Department of Transport and Main Roads

If an agency advises that the reservation should be retained, the agency should advise a timeframe for the foreseeable future use so that a decision can be considered to reallocate a floating reservation due to the requirement for a future use of the reservation.

Where it is determined that a reservation is no longer needed by the state, the reservation may be:

- allocated (limited circumstances only)
- disposed of
- sold.

## Allocation of a floating reservation (section 23A of the Land Act)

Under section 23A of the Land Act, a person seeking to have a plan of subdivision registered in relation to a deed of grant, deed of grant in trust or a lease may apply for a floating reservation in the land to be allocated to a lot or lots created by the plan.

In making a decision to allocate a reservation, the decision-maker must consider the provisions of section 23A and have regard to:

- the purpose of the reservation
- the likely future use of the land
- where the reservation is most likely to be needed.

Please note that a reservation **MUST** always be within a lot or lots subject to (of) the original deed containing the reservation.

For example, if freehold lots are being subdivided and one of the lots contains a floating reservation, and it is decided that the reservation is to be allocated, the reservation **must** be allocated to the newly subdivided lot or lots subject to the original deed containing the reservation.

If the applicant is not the owner, trustee or lessee of the land (e.g. a constructing authority), the decision-maker must afford natural justice to the owner, trustee or lessee prior to making a decision on the allocation of the reservation.

## **When allocation of a floating reservation may be appropriate**

For a freehold subdivision, a reservation that is no longer needed must be sold, and not allocated, other than for limited circumstances as outlined immediately below.

There are some circumstances where it may be appropriate for the state to allocate the reservation to a lot or lots. This can include where:

- the reservation will be required by a constructing authority now or in the foreseeable future as outlined in this Guideline under the above heading **“Is the reservation still needed?”**
- the subdivision is not instigated by the owner, trustee or lessee; or
- family hardship applies.

A subdivision that is not instigated by the owner, trustee or lessee could include:

- a road realignment at the request of the local government or Department of Transport and Main Roads where the constructing authority has not utilised the existing reservation.
- a minor boundary adjustment relating to encroachments.

In these circumstances the local government, Department of Transport and Main Roads or constructing authority must notify the owner, trustee or lessee that an application to allocate the reservation has been made and provide evidence of this with its application to the department for the allocation of the reservation.

A family hardship could include where an elderly person may need the support of a family, and due to local government restrictions, the land would need to be subdivided to enable a separate dwelling for that family. (Family hardship will not apply to a freeholding lease, due to the lessee's limited capacity to subdivide - see Policy [Lease Subdivision \(SLM/2013/428 = PUX/901/528\)](#)).

Where a reservation is to be allocated:

- generally, the reservation should be allocated to a lot with dedicated access, taking into account the views of any relevant agency.
- for a road reservation, the reservation should be allocated to a lot that adjoins a major thoroughfare, taking into account the views of any relevant agency. This is because, if a lot has access to a more significant road (i.e. if a lot fronts a major thoroughfare and another lot fronts a "local" road), the future road requirements are more likely to be required for the major thoroughfare.
- consideration should be given to an appropriate lot size to contain the reservation.

Where allocation is not appropriate, the reservation is to be sold or disposed of.

Further, where a reservation was allocated due to limited circumstances a further allocation should not be considered and a reservation that is no longer needed is to be sold. The state has previously allocated the reservation.

## **Sale or disposal of a floating reservation (sections 24 and 26A of the Land Act)**

### **Freehold and a freeholding lease**

A reservation that is no longer needed is required to be purchased by the owner or freeholding lessee following application under section 24 of the Land Act. The purchase is to be by way of a one-off payment at the unimproved value of the land as decided under section 25 of the Land Act and the Land Regulation 2020.

The unimproved value of the land is subject to appeal provisions in terms of Section 25(2) of the Land Act.

The unimproved value does not include the value of any commercial timber.

### **Deed of grant in trust, term lease and perpetual lease**

A reservation that is no longer needed in a deed of grant in trust, a term lease or perpetual lease is to be disposed of under section 26A of the Land Act.

In relation to the disposal of a reservation in a deed of grant in trust, this may proceed without the requirement for the trustee to pay the unimproved value. The reason is that a trustee of a deed of grant in trust is unable to dispose of an area of the trust land. An action in respect of a deed of grant in trust is usually instigated by the state (e.g. for a road opening). If the deed of grant in trust is sold at a future date, the state may recover the value of the reservation at that time.

In relation to the disposal of a reservation in a term lease or perpetual lease, the increase in rent, if any, should in the majority of instances, prove to be minor and no impost on the lessee.

### **Fixed reservations**

The ability to allocate a reservation under section 23A only applies to floating reservations i.e. a fixed reservation is already in a fixed location.

A fixed reservation still requires investigation to determine if a constructing authority wishes to immediately utilise the reservation. If not required for its public purpose at the time of investigation, the fixed reservation should be sold to an applicant or disposed of in accordance with section 24 or section 26A respectively of the Land Act.

### **"Exclusion" from title**

In some instances there may be an area in a "fixed" location reserved within a freehold lot that may not be a reservation, but an area that is totally excluded i.e. is not part of the title, similar to a title that states that a surveyed road is excluded - the department may need to seek further advice in these instances, although a **reserved road** is a road for public use - please refer to Guideline [Roads under the Land Act 1994 \(SLM/2013/725 = PUX/952/122\)](#).

## Legislation

*Acquisition of Land Act 1967*

*Land Act 1994*

## Related documents

Policy – [Lease Subdivision \(SLM/2013/428 = PUX/901/528\)](#)

Guideline – [Roads under the Land Act 1994 \(SLM/2013/725 = PUX/952/122\)](#)

Procedure - [Resumption in relation to land under the Land Act 1994 PUX/952/119](#)

## Approval

Position	Name	Effective Date
A/Director, Land Operations Support	Sandra Flanagan	14/04/2022

## Version history

Version	Date	Comments
1	16/04/1999	Endorsed
1.1	04/07/2007	Conversion Project – New WORD/XML template
2	13/12/2007	Updated to reflect Land Act amendments. Endorsed by Scott Spencer, Director-General, Department of Natural Resources and Water
2.1	19/11/2009	Minor amendments mainly to reference PUX/952/059
2.2	02/11/2012	Minor updates to reflect departmental name change to DNRM
2.3	3/12/2013	New DNRM template
2.04	22/06/2016	Minor amendment to review and insert text on new template
3.00	18/09/2019	Updated to new DNRME template and content edited
4.00	14/04/2022	Updated template and full review

## Further information

- Contact your nearest business centre ([https://www.resources.qld.gov.au/?contact=state\\_land](https://www.resources.qld.gov.au/?contact=state_land)), or
- Refer to <https://www.qld.gov.au/environment/land/state>, or
- Call 13 QGOV (13 74 68).

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