

Allocation of land to State Government Departments and Constructing Authorities PUX/952/088

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Version History

Version	Date	Description/Comments
3.00	01/08/2005	Endorsed
3.1	11/06/2009	Conversion Project - New WORD/XML template
3.2	11/06/2009	Minor amendment to procedure area
4	13/06/2007	Replaces Version 3 - Updated to reflect amendments in <i>Land Act 1994</i>
4.1	12/07/2007	Minor amendment to correct typing errors
5	21/11/2008	Amended to include Notification's 006 and 046
5.1	11/02/2009	Amended status of Notification from "NRW only" to "Public access"
6	15/07/2009	Amended to omit requirements of EPA for the transfer of USL and updating the department to DERM
7	06/11/2009	Amended to include requirements for sale of USL in priority to a local government for a public purpose
7.1	12/11/2009	Minor amendment to Concession Purchase Price Provisions
7.3	13/07/2011	Minor amendment to include ULDA Discount
7.4	07/09/2012	MOG changes from DERM to DNRM
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Approval

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Purpose/Scope

With the various scenarios involved in land allocation under the *Land Act 1994* together with sales undertaken through the Government's Land Disposal Policies, there is a need to clarify what tenure and payment arrangements are appropriate when making land available to a State Government department or a constructing authority.

Note: The State is a constructing authority for the purposes of section 122(2) of the *Land Act 1994*.

Rationale

Prior to the *Land Act 1994*, land legislation provided for unallocated State land (USL) to be dedicated as a reserve for a public purpose (also referred to under this notification as operational trust land), e.g. school, police station, local government etc. This provision is no longer available within the *Land Act 1994*, which only enables USL to be dedicated for community purposes (refer to Schedule 1 of the *Land Act 1994*).

Land that is held or required by a State Government department or a constructing authority for a public purpose, but not a community purpose, is deemed to be operational land. This operational land is land required for the ordinary service delivery functions of a State Government department or a constructing authority and which (i.e. the land) has low intrinsic community value should the service be discontinued or relocated. Typical examples are hospitals, schools, emergency services, libraries, water treatment plants, depots, etc. Additionally, if the Department of Transport and Main Roads requires land for road purposes, this would be considered land required for the service delivery function of that department.

In the past the Department has made low value land (\$5,000 or less) available to State Government departments and other statutory authorities at nil cost with the applicant paying a service provision fee. This practice no longer applies as the department needs to account for the actual market value of any land allocated.

Subject to the Allocation Provisions detailed hereafter, the payment of full market value is required to be applied for all allocations/disposals of trust land and USL (which includes permanently closed roads).

As land acquired by a local government for a public purpose under the *Acquisition of Land Act 1967* may not be immediately on sold to a third party, similar requirements must apply when dealing with sale of USL in priority to a local government for a public purpose.

It would also be inequitable and inappropriate to offer land in priority to a local government for urban development if the proposal would deny other legitimate development interests in the region an opportunity to participate in an open and accountable process for the purchase and development of the land.



Procedure

Under Government Land Policies, approved by the Property Management Committee (PMC), a number of relevant policy decisions have been made which influence the manner in which State land is transferred to other Government agencies. These are summarised below:

1. In the absence of specific approval to the contrary, market values should be realised on the sale or lease of Government assets. Also where a Government agency acquires real estate already in Government ownership, the acquiring agency shall be required to pay compensation on the basis of the current market value of the land and any improvements that add value to the land.
2. Government land is categorised as either community or operational (also referred to as public purpose land) for determining appropriate tenure. In summary, reserve tenure is applied to community land, (that is land required for a community purpose under the *Land Act 1994*) and freehold tenure is applied to operational category land, (which is land not required for a community purpose). Leasehold tenure is only retained as an option where government finds retention under leasehold tenure necessary, or the surrounding landscape does not support freehold.

Dealings with State land are to be processed in accordance with the following arrangements:

- **Recording on the Government Land Register** - USL together with reserves not held by a State government department or Government Owned Corporation, are to be recorded on the Government Land Register (GLR) as an administered asset of the Department of Natural Resources and Water.
- **Surplus State Land** - If any USL or reserve recorded on the GLR is found to be surplus to requirements (that is, it is not required to be held for leasing, a reserve or other purposes provided for under the *Land Act 1994*) it should be recorded as being "surplus" on the GLR and processed in accordance with Government Land Policy guidelines.

Tenure

Land Planning Guidelines for freehold and leasehold land should always be considered when evaluating the most appropriate future use and tenure of land to be allocated.

When making USL available to a State Government department or a constructing authority (as defined in the Acquisition of Land Act 1967) for a public purpose (other than a "Community Purpose" as defined in Schedule 1 of the *Land Act 1994*) in most instances the appropriate tenure to be offered will be freehold title.

Leasehold tenure should only be offered where the overall tenure landscape supports this as the preferred or only option available, or where government finds retention of leasehold tenure necessary.

A Permit to Occupy or a road licence is not appropriate as the primary tenure for the use of State land by a State Government department or a constructing authority for a public purpose.

The State Government department's or a constructing authority's budgetary constraints (if any) should not be a consideration for the Department in determining the appropriate tenure.

Where a reallocation of an administered USL asset is approved this will need to be reflected in the Land Register (ATS) by the lodgement of a Form 14 General Request transferring the asset, for example from The State of Queensland (represented by Department of Natural Resources and Mines) to The State of Queensland (represented by Department of National Parks, Recreation, Sport and Racing).

State owned land, which is to be set aside under the *Land Act 1994* for a community category purpose, e.g: Park Reserve under the Local Government trusteeship is not to be deemed to be transferred and is not excess to requirements. The trustees of community reserves are not required to purchase the land.

Allocation Provisions

If USL required by a State Government department or a constructing authority is independently viable, has legal access (e.g. via a dedicated road or an access easement) and not required for a community purpose, then subject to the findings of a most appropriate use and tenure evaluation (section 16 of the *Land Act 1994*) and is found to be required for a public purpose under sections 121 or 122 of the *Land Act 1994*, the land may be allocated as a:

- i. Deed of Grant and the allocation is to occur at market value, unless one of the Market Value Exception Provisions (listed below) apply; or
- ii. Term Lease and the prescribed rental provisions of the Land Regulation 1995 will apply.

The sale of USL to a local government must be supported by a Statutory Declaration from the local government declaring:

1. the intended use (public purpose) for the land; and
2. that the local government will itself use the land for the stated public purpose and that there is no current or planned action to dispose of the land to a third party, other than if the land is required for urban development as outlined below.

The Statutory Declaration is to be provided as part of any submission to sell USL to a local government.

If the land is required for the public purpose of urban development, be it for commercial, industrial or residential subdivision, the local government must do the subdivision and development - the Statutory Declaration must state that the local government will do the development. After the subdivision/development is completed, the local government may then on sell the developed allotments, as the local government has fulfilled the requirement to use (develop) the land for the intended purpose of urban development.

Further, allocation of USL to a local government in priority for urban development could only be supported where the private sector does not have the capacity to satisfy demand or no competition exists for land development.

If the proposal would deny other legitimate development interests in the region an opportunity to participate in an open and accountable process for the purchase and development of the land, then a sale in priority to local government would not satisfy the Administration Object of the Land Act 1994 for impartial dealings, and the land would need to be made available by competition e.g. by tender.

Sale of USL in priority to a local government for urban development would generally apply in communities where the local government is the only one who is interested in providing this development to advance the town (e.g. in remote communities).

Additionally, land may be allocated as road where the Department of Transport and Main Roads requires USL for road purposes as part of their service delivery function. This allocation is to occur at market value.

For trust land (reserve or a Deed of Grant in Trust [DOGIT]), which has legal access and is held for a public purpose (other than a "Community Purpose" as defined in Schedule 1 of the *Land Act 1994*) and is required by the State Government department or a constructing authority trustee to be held under freehold tenure, then subject to sections 16, 28 and 341 (for the whole of the reserve), or 33 (for part of the reserve) or section 55 (surrender of DOGIT) and 122 of the *Land Act 1994* the land may be re-allocated to the State Government department or a constructing authority as a Deed of Grant. The allocation is to occur at market value, unless one of the Market Value Exception Provisions applies.

However, if the area cannot stand alone, then it must be added to the adjoining land in accordance with the following:

- a. **If the adjoining land is freehold** action should be taken in terms of section 358 of the *Land Act 1994*. For inclusion of the USL parcel and payment must be made for the USL parcel at market value as well as payment for all contingent costs (i.e. survey).
- b. **If the adjoining land is a reserve for a 'public [operational] purpose'** (other than a "Community Purpose" as defined in Schedule 1 of the *Land Act 1994*), the USL may be included in the reserve provided the State Government department or a constructing authority pays this Department the market value for the USL parcel and bears all contingent costs (survey, etcetera). No service provision fee is payable. Note; there is no provision under the *Land Act* for USL to be added into a DOGIT for a 'public [operational] purpose' (other than a "Community Purpose" as defined in Schedule 1 of the *Land Act 1994*). In the event that an operational reserve, which has been amended in accordance with this clause, is proposed to be 'converted' to freehold, the purchase price payable for the reserve, if required, is to be calculated on the market value of the reserve exclusive of the USL.
- c. **If the adjoining land is trust land for a community purpose** (as defined in Schedule 1 of the *Land Act 1994*) the USL parcel may be included in the community trust land and no payment is required for the USL parcel. However, the trustee will be responsible for all contingent costs (i.e. survey)
- d. **If the adjoining land is a perpetual lease** held by a State Government department as lessee (e.g. a transport corridor lease, or boat harbour) the USL parcel may be included in the perpetual lease provided the State Government department lessee pays this Department the market value of the USL parcel and bears all contingent costs (survey, etcetera). No service provision fee is payable.
- e. **If the adjoining land is a term lease**, the USL parcel is to be added to the lease and the annual rent of the lease adjusted for the additional area, as appropriate. No service provision fee is payable. However, the lessee will be responsible for all contingent costs (survey, etcetera).
- f. **If the adjoining land is an existing freeholding lease** the USL parcel may be included in the freeholding lease provided the State Government department or a constructing authority lessee pays this Department the market value of the USL parcel and bears all contingent costs (survey, etcetera). No service provision fee is payable.

Market Value Exception Provisions

Exemptions from payment of full market value may be applicable under the following circumstances:

1. Treasurer's written approval is obtained to allocate/dispose of land at less than market value.
2. **For trust land held for a public [operational] purpose (other than a "Community Purpose" as defined in Schedule 1 of the *Land Act 1994*) by a State Government department**, as trustee, the land may be granted in freehold to the State Government department at nil consideration provided the State Government department:
 - is registered as the trustee on the current title for the trust land; and
 - has provided a native title assessment of the land, in accordance with government's Native Title Work Procedures, that concludes that native title has been adequately dealt with to support the issue of a Deed of Grant; and
 - the Government Land Register shows the subject parcel of land as being an asset of the applicant.
3. **For trust land held for a public [operational] purpose (other than a "Community Purpose" as defined in Schedule 1 of the *Land Act 1994*) by a local government**, as trustee, and required by the local government for the same or a different public purpose, the land may be granted in freehold to the local government at full market value provided the local government provides this Department with -
 - a Statutory Declaration certifying the current and proposed use of the land; and
 - a statement declaring the local government has no plans to sell the property.

In accordance with Revenue Share Policy for Local Government Operational Trust Land PUX/901/211, in particular the section that deals with essential operational trust land, an offer to reallocate the trust land as a deed of grant will initially require the local government to pay a purchase price for the land, equivalent to the full current market value for the land. Payment of GST, Stamp Duty and other statutory costs (e.g. survey) are also to be a requirement of the offer.

Following issue of the deed of grant, 50% of the purchase price, less this Department's fee (\$1,200 plus GST) is to be remitted to the respective local government.

Note: In the event that the Department determines that native title rights and interests may continue to exist over the trust land, the local government will be required to take appropriate action to secure the surrender or compulsory acquisition of these rights and interests to facilitate the issue of a deed of grant.

For trust land held for a public [operational] purpose (other than a "Community Purpose" as defined in Schedule 1 of the *Land Act 1994*, which we now refer to as an operational reserve) by Energex, Powerlink and Ergon (Constructing Authorities) as trustee, the Treasurer granted approval on 5/2/2004 for this trust land to be made available to these entities as a Deed of Grant at nil consideration.

If the entity has obtained approval from the Commissioner, in terms of the Duties Act, to waive payment of Stamp Duty; or is exempt under the Duties Act, a copy of this advice must be provided to this Department. Otherwise, the application to obtain freehold tenure over the trust land must be accompanied by a recent market valuation of the land and the offer of the deed must include payment of Stamp Duty calculated on this market valuation.

In addition, the entity is required to -

- be the registered trustee on the current title for the trust land; and
- provide this Department with a native title assessment of the land, in accordance with government's Native Title Work Procedures, that concludes that native title has been adequately dealt with to support the issue of a Deed of Grant; and
- make payment of any regulatory fees and charges (i.e. issue of a Deed of Grant).

Prior Acquisition - where the State Government department or a constructing authority (which includes a Local Government) can provide written evidence that the land was purchased in the past by the agency and the previous prevailing government policies did not allow for freehold title to be held by the agency, then in these situations, the land can be made available to the State Government department or a constructing authority for payment of the service provision fee (\$1,200 plus GST) only.

Transport land - where Transport land (as defined in schedule 6 of the *Land Act 1994*) is surrendered from the perpetual lease and becomes USL, the land may be granted in freehold to the Department of Transport and Main Roads at nil consideration. The Department of Transport and Main Roads is required to pay the service provision fee (\$1,200 plus GST) only.

Acquired leasehold land - where an agency acquires a lease administered under the *Land Act 1994*, for its ordinary service delivery, the agency must pay this Department the residual value of the land. The residual value will be calculated as the difference between the value of the land as a freehold land parcel and the value of the land as a lease issued in accordance with the *Land Act 1994*. The valuation must be determined by this Department, and any payment made by the acquiring agency to the lessee, to acquire the lease, will have no effect on the residual value. Acquisition may include resumption in accordance with the *Acquisition of Land Act 1967* or acquisition by agreement (i.e. contract transfer).

Where the Concession Purchase Price Provisions hereunder apply.

Protected Area Estate

If USL is to be allocated to the Department of National Parks, Recreation, Sport and Racing (DNPRSR), either as a stand-alone parcel, or for inclusion into adjoining land, for management under the *Nature Conservation Act 1992* or being set apart as a State Forest or Timber Reserve under the provisions of the *Forestry Act 1959*, the allocation of the USL parcel may occur at nil consideration provided, where required, the PMC endorses such transfers.

The PMC's endorsement is not required if the USL has an asset value in the ([Land Asset Management System (LAMS)] of less than \$2,000,000 and the Department is satisfied that the land is required to be managed to preserve and maintain the natural resource values. [Government Land Disposal Policy #3 - PMC Review of Certain Surplus Property Dealings, details the requirements for the transfer of community category land between this Department and DNPRSR]. Whilst the transfer may occur at nil consideration, DNPRSR is required to pay the Department's service provision fee of \$1,200.00 plus GST and is responsible for any associated contingent costs (e.g. survey).

The specific land parcels should be identified on the GLR as a surplus property asset, prior to the transfer.

Concession Purchase Price Provisions

In accordance with Cabinet Budget Review Committee (CBRC) decision of 5 November 2003, when dealing with an application for USL encumbered by native title and a decision has been made to allocate the USL, in freehold, to a State Government department or a constructing authority that is also a public sector entity, as defined in the Public Sector Ethics Act 1994, then upon production of evidence by the State Government department or a constructing authority requiring the land that it has adequately addressed native title to allow the dealing to proceed, the purchase price for the land may be determined at an amount equivalent to no **less than 50 percent of market value**.

CBRC's approval is subject to the following:

- a. properties valued at more than \$250,000 must be referred to the Property Management Committee for consideration and determination of the purchase price;
- b. properties valued at \$250,000 or less may be transferred at a purchase price equivalent to no less than 50 per cent of market value without reference to the Property Management Committee;
- c. transactions are to be limited to public sector entities as defined in the Public Sector Ethics Act 1994 - the policy must not in any way be able to be used for land dealings directly with the private sector;
- d. where the USL is needed to be allocated for a public purpose as defined in the Schedule of the Acquisition of *Land Act 1967*; and
- e. the acquiring agency shall be responsible for addressing native title issues associated with the transferred land.

The CBRC approval only applies in circumstances where the State Government department or the constructing authority requiring the land has either:


- Acquired the native title rights and interests under a compulsory acquisition Act; or
- Negotiated an Indigenous Land Use Agreement (ILUA) that provides for the surrender of native title. Under the ILUA the State Government department or the constructing authority that requires the land must be responsible for any consideration payable to the native title parties arising from the ILUA. The ILUA must be registered with the National Native Title Tribunal before the land may be allocated under this policy.

Note: The Treasurer of Queensland approved on 28 June 2011 that the Urban Land Development Authority (ULDA) as defined in the Urban Land Development Authority Act 2007 are entitled to the exemption approved by CBRC for a discount in the purchase price of up to 50% of the market value for land that has adequately addressed native title to allow the dealing to proceed.

The assessment of the market value and the subsequent determination of the concessional purchase price must be at a date no earlier than the date of either (i) acquisition of native title; or (ii) registration of the ILUA.

Additionally, the relevant date of the valuation must not be older than 3 months as at the date of approval of the relevant action. Where the valuation is older than 3 months, a current valuation is to be obtained, prior to the final offer being made. (See Policy PUX/901/656 - Valuations for dealings under the *Land Act 1994*.)

The CBRC decision applies only to an approved dealing e.g. an ILUA signed by the State after 5 November 2003 and/or where an offer to purchase has been made after 5 November 2003.



For accounting purposes, under the CBRC decision the concessional purchase price (as determined in accordance with (a) or (b) above will be shown on the offer account against the property value (exclusive of GST). GST, if applicable, will be assessed on the concessional purchase price, as will any applicable Stamp Duty.

Where an easement is required over State land and the native title interests have been dealt with as per (i) or (ii) above, then the CBRC decision will also apply to considerations for grants of easements as per State Land Asset Management (SLAM) notification PUX/952/072 (Compensation for easements granted over USL and reserves in terms of the *Land Act 1994*), but the minimum consideration remains at \$500.00 plus GST.

Responsibilities

Officers with the Ministerial delegation for recommending to the Governor in Council, the grant or leasing of land under the Land Act 1994.

Officers with the Ministerial delegation for the grant of land under the Land Act 1994.

Legislation

Land Act 1994

Acquisition of Land Act 1967

Nature Conservation Act 1992

Forestry Act 1959

Public Sector Ethics Act 1994