



Land Allocation: Deciding Most Appropriate Use, Tenure and Management PUX/901/101

SLM/2013/481

Version 4.01

Last reviewed 06/07/2016



This publication has been compiled by Operations Support – Land, Department of Natural Resources and Mines.

© State of Queensland, 2016

The Queensland Government supports and encourages the dissemination and exchange of its information. The copyright in this publication is licensed under a Creative Commons Attribution 3.0 Australia (CC BY) licence.

Under this licence you are free, without having to seek our permission, to use this publication in accordance with the licence terms.



You must keep intact the copyright notice and attribute the State of Queensland as the source of the publication.

Note: Some content in this publication may have different licence terms as indicated.

For more information on this licence, visit <http://creativecommons.org/licenses/by/3.0/au/deed.en>

The information contained herein is subject to change without notice. The Queensland Government shall not be liable for technical or other errors or omissions contained herein. The reader/user accepts all risks and responsibility for losses, damages, costs and other consequences resulting directly or indirectly from using this information.

Version History

Version	Date	Description/Comments
1	16/04/1999	Endorsed
1.1	11/10/2005	Conversion to XML template
2	02/01/2008	Updated to reflect Land Act amendments. Endorsed by Scott Spencer, Director-General, Department of Natural Resources and Water
3	01/12/2010	Updated and reviewed to include most appropriate management. Endorsed by Chris Robson, Assistant Director-General, Land and Indigenous Services, Department of Environment and Resource Management
3.1	21/10/2012	Minor updates to reflect departmental name change to DNRM
3.2	07/02/2013	Minor updates to change Delbessie to SRLLS
3.3	13/03/2013	Updated to change government logo
3.4	28/06/2013	Minor update due to LOWLA amendments
3.5	19/08/2013	New DNRM template
4.00	01/08/2014	Updated to include amendments due to LOLA 2014
4.01	06/07/2016	Updated to new template

Approval

Position	Name	Date
Acting Director, Operations Support - Land	Amanda Kearnan	06/07/2016





Table of contents

Executive Summary	1
Purpose	2
Legislative basis in the <i>Land Act 1994</i>	2
Background	2
Regulatory framework for land in Queensland	3
Policy	4
Most appropriate use	4
Most appropriate tenure.....	6
Most appropriate management	8
Legislation	10
Related policies.....	10
Responsibilities	10
Appendices	11
Appendix 1 – Legislative basis under the Land Act 1994	11
Appendix 2 – Addressing the Object of the Land Act in Evaluating Land	14



Executive Summary

State land administered under the *Land Act 1994* (Land Act) (e.g. leasehold, reserves, licences, roads and USL) accounts for some 70% of the land area of Queensland, with the other 30% being held under conservation estate tenures such as national park and State forest, or under freehold tenure by private owners or government agencies.

State land under the Land Act is an important natural resource which the Department of Natural Resources and Mines (the Department) administers on behalf of the Queensland Government having regard to the objects of the Act. The Department strives to ensure that the land is managed sustainably and that resources are conserved for the benefit of future generations. In administering State land the Department must meet the expectations of, and its obligations to the Queensland public and the government.

When allocating land for an appropriate use the Department will consider retaining the land as leasehold or a reserve where it has determined that there is a need for additional oversight of the management and use of the land. This occurs where the values inherent in the land are not adequately protected by the surrounding regulatory framework. The need to retain land as a tenure under the Land Act may alter with time as land use and settlement patterns change, as community values change, and as sustainable land management knowledge and practice evolves.

Where land and its values are adequately protected by the regulatory framework freehold tenure can be applied. It is important to note, however, that registered interests to which the land may be subject (e.g. a covenant for the purpose of preserving a native animal or plant) will continue if the land is converted to freehold (unless the reason for the covenant no longer applies and the covenant is released). Accordingly, where conversion to freehold does occur, covenants and other instruments can be used to protect or manage natural resources, cultural heritage, or other significant values. Interests in State land conveyed through the allocation of tenure provide certain rights, impose certain restrictions, and carry responsibilities for caring for values inherent in the land. These tenure-related rights, restrictions and responsibilities (including proprietary controls) for non-freehold tenure are expressed in the allocated purpose, use and tenure, and by the lease conditions and any relevant management plans, agreements and covenants over the land.

State land is widely variable in relation to its values and its capacity to support particular activities or uses. Each land dealing is unique, often with competing and conflicting interests of stakeholders, as well as various tenure options. The principal outcome of land allocation is therefore the best alignment between the most appropriate use, most appropriate tenure and most appropriate management which can be achieved in each State land dealing. For example, if a parcel has values that would make it suitable to set aside as a reserve for community purposes but a trustee is not immediately available, consideration could be given to the issue of a permit to occupy over the land with conditions to protect the relevant values until a suitable trustee is found.

A decision to allocate tenure is a reviewable decision in terms of the *Judicial Review Act 1991* and a decision maker must be able to provide an adequate statement of reasons for a decision.

Further, allocation and other dealings under the Land Act are subject to Native Title being satisfactorily addressed - sections 7, 27 and 28 of the *Land Act 1994* (Land Act) apply.

Purpose

The purpose of this policy is to provide guidance for decision making in relation to the allocation of State land to its most appropriate use and tenure under the most appropriate management (management controls and manager) in accordance with the Land Act.

This policy applies to all State land dealings relevant to the allocation of unallocated State land (USL) (including the issue of a permit to occupy), renewal of an existing tenure, other than a rolling term lease extension, and conversion or amendment of tenure (including revocation and changing purposes of reserves, subdivision and amalgamation of leases, and approval of additional purpose/s) and the allocation of unallocated State land for dealing with under another Act, eg *Nature Conservation Act 1992* (Nature Conservation Act), *Aboriginal Land Act 1991* (Aboriginal Land Act) and *Torres Strait Islander Land Act 1991* (Torres Strait Islander Act).

Note: This policy only applies to the Land Act and therefore does not apply to an authority under another Act that provides for the allocation of land, e.g. section 240 of the *Transport Infrastructure Act 1994* which provides that where land is acquired for a rail transport corridor and such land becomes unallocated State land, the land must be leased to the State.


Legislative basis in the Land Act 1994

The key sections of the Land Act which specify the requirements for assessment of the most appropriate tenure, use and management of land which is being allocated are:

- **S4** - the object of the Act provides the foundation for deciding appropriate use, tenure and management.
- **S16** - before land is allocated under the Act the land must be evaluated to assess the **most appropriate tenure and use**, and the evaluation must take account of State, regional and local planning strategies and policies and the object of the Act. Under section 16 special consideration must be given to Cape York agreement land, and any development scheme or interim land use plan under the *Urban Land Development Authority Act 2007* that applies to the land. Section 16 however does not apply to the grant of freehold to the State for rail land as defined under the Land Act.
- **S159** - before making a decision to offer a new lease the chief executive must consider, among other things, whether part of the lease has a **more appropriate use** from a land planning perspective, and also whether a new lease is the **most appropriate form of tenure** for the lease land.
- **S167** - before making a decision to offer to **convert a lease**, the chief executive must consider, among other things, whether part of the lease has a **more appropriate use** from a land planning perspective, and the **most appropriate form of tenure** for the lease land.
- Refer to **Appendix 1** for a comprehensive list of the sections of the Land Act relevant to this policy.

Background

The State is the ultimate owner of all State land. Under the statutory authority of the Land Act, interests and rights in State land can be conveyed to individuals or organisations through the allocation of tenure.



In addition to the grant of freehold tenure over land no longer required to be retained as State land, the main tenure types under which State land can be held are leases and reserves.

Secondary tenures such as subleases, trustee leases and easements may be granted over these respective tenure types. State land may also be dedicated as road for public use over which licences and permits may be issued. State land which has not been allocated a tenure type is USL. A permit to occupy, which grants a personal, short-term, non-exclusive right of occupation only may be issued over USL, reserve or road but the land remains USL, reserve or road.

Interests in State land are allocated under the Land Act for a particular purpose and use (e.g. lease for grazing and agricultural purposes, reserve for recreation purposes) to an appropriate manager who may be an individual or company (e.g. for a lease), or a local government or community organisation (e.g. for a reserve).

On allocation of a tenure the landholder does not have unrestricted rights over the land but is subject to rights and obligations under the Land Act applying to the tenure (e.g. for a reserve - a duty of care under section 46; for a lease - conditions of lease).

USL may also be allocated under another Act e.g. the Nature Conservation Act, Aboriginal Land Act and Torres Strait Islander Act.

As previously mentioned, the most appropriate use and tenure may alter with time as land use and settlement patterns change, as community values change, and as sustainable land management knowledge and practice evolves. Land characteristics also change from parcel to parcel. Therefore each time a land application is processed under the Land Act, the land must be evaluated to assess its most appropriate use, tenure and management for the land, as specified under the Land Act. The exception is rolling term lease extensions.

Regulatory framework for land in Queensland

In accordance with the powers given under the *Constitution of Queensland 2001*, a legislative framework has been created that provides for the State to regulate the use of State land by statutory or proprietary means of control, i.e. the oversight the State retains for the use and development of land.

Statutory means of control (that is, oversight by a provision of an Act) includes, for example:

- regulatory oversight of the use and development of **all** land (State land and freehold land) under legislation such as the *Sustainable Planning Act 2009* (SPA) and *Environmental Protection Act 1994* (EP Act); and
- statutory oversight of the use of land by mandatory responsibilities and conditions applying to a trustee or lessee under the Land Act such as the duty of care provision (s 46 and s 198C and 199 respectively).

Proprietary means of control (oversight) includes, for example:

Under the Land Act:

- the granting of a term lease that is subject to imposed conditions (conditions that may be specific to a lease and in addition to the mandatory conditions) about the care, sustainability and protection of the lease land (s 203);

- registration of a covenant aimed directly at preserving a natural or physical feature of lease land that is of cultural or scientific significance (s 373A(4)(b)(ii)).

Under the Nature Conservation Act:

- a conservation agreement (s 45); or

Under the *Vegetation Management Act 1999* (VMA):

- a voluntary declaration.

Policy

The principal responsibility of the Department in managing the State land portfolio, on behalf of the Queensland Government, is to provide the oversight and control of the allocation of land to the most appropriate tenure, use and management. An allocation of land under the Land Act to the most appropriate tenure should ensure that the land will be used for the most appropriate use or purpose under the most appropriate management (management controls and manager).

Prior to the allocation of land, the Land Act requires an assessment of the most appropriate tenure and use of that land.

At the broadest level such assessment must first determine the inherent values of the land, and whether any of those values require specific protection.

Most appropriate use

Before deciding on tenure, the assessment officer must undertake an evaluation of the land to assess its most appropriate use. The most appropriate use assessment should be regarded as the foundation which underpins the tenure decision-making process. The land evaluation must take account of State, regional and local planning strategies and policies, and the object of the Act.

The assessment officer may rely on expert advice in undertaking a land evaluation. Interested parties (e.g. State government agencies, including business units within the Department) can be seen to be giving expert advice on legislative requirements or other issues under their jurisdiction or within their expertise. For example, in relation to fauna issues, the business unit/s within the Department that administer the relevant nature conservation legislation and is recognised as holding the expertise; and for Aboriginal and Torres Strait islander interests Indigenous Services is the appropriate business unit for providing advice.

The use of State land does not necessarily imply developmental or agricultural use, but can also mean conservation of the land in its natural state.

Refer to **Appendix 2** for information on how the object of the Act is to be taken into account in the allocation of State land.

An assessment of the most appropriate use of the land should give due consideration to:

- attributes of the land,
- views and rights of interested parties, and
- government policy.

Attributes of the land include the economic, environmental and social values of the land, and opportunities and constraints based upon land capacity (capabilities) and condition. This will require an assessment of (among other things) natural resources, environmental values, culturally valuable and sensitive areas and features, biodiversity, community needs, and the location of the land with respect to existing and future needs for public infrastructure and services.

Views and rights of interested parties – this may require a consideration of interest holders' views (including lessees, native title holders, secondary interest holders such as a grantee of an easement, holders of rights and interests under the *Mineral Resources Act 1989*) and consideration of the views of interested parties such as State and local government agencies and, at times, conservation groups, community groups and adjoining property owners or managers. At a minimum the consultation process will include requesting views of local government, other relevant government agencies and assessing the status of native title and indigenous cultural heritage over the land.

Strategies and policies e.g. regional plans and local government planning schemes need to be checked as expert advice will be largely relied upon to provide information – for example, the relevant local government agency will provide advice on whether a proposed use is consistent with its planning scheme and policies.

Land evaluation information, upon which the most appropriate use decision will be based, will be accessed from a range of sources, including planning strategies and policies, views of interested parties, departmental databases, government laws and policies, previous planning studies, and from a physical inspection of the subject land.

Appropriate use of land

Community use - is the most appropriate where the land is found to have significant inherent values that warrant specific protection for and/or access by current and future generations. The factors which justify the retention and dedication of land to community use will normally reflect the intrinsic value and benefit that those parcels of land bring to the community. Community use values include, for example: the protection of unique environmental, historical or cultural attributes; the community need for open space or recreational areas; and the practical and aesthetic benefits which public parkland brings to the community.

Private use - examples where private use is the most appropriate are when there are -

- i. no significant inherent community use values in the land, for example cleared land that is located within an industrial area; or
- ii. community values that may not warrant protection under a community purpose, but may require protection by proprietary means of control; for example
 - the issue of freehold (conversion) for a tourist development with a public thoroughfare easement over part providing continued public access, or
 - the issue of freehold over an englobo parcel for urban development where the environmental values will be adequately protected under the existing planning scheme and or via statutory oversight such as SPA,
 - a Land Act lease for grazing subject to a covenant (eg. nature refuge agreement) to protect the environmental values of the land.



Most appropriate tenure

After the most appropriate use for the land is determined, the specific oversight that the State wishes to retain will need to be decided to ensure that the tenure type which will achieve and maintain the use is allocated. Tenure here generally refers to any mode of holding land under the Land Act.

However, where it is decided that the most appropriate use of the land would be best achieved by the issue of tenure to Aboriginal people or Torres Strait Islanders particularly concerned with the land, then in this instance consideration should be given to the issue of a deed under the Aboriginal Land Act or the Torres Strait Islander Land Act.

The ability of a person to pay for the land is not a factor in determining appropriate tenure.

A **reserve** is usually the most appropriate tenure where there is an overriding community interest and the land is required to be retained for present and future generations and managed for a community purpose (as defined in Schedule 1 of the Land Act).

A reserve for a community purpose is appropriate where the land value is high because of its natural resources or its environmental, recreational, historical, social or cultural significance, or because the land possesses some special value such as a strategic location, or meets a particular local community need.

If the land has values of local significance, those interests may best be protected by allocating the land as a reserve under the Land Act. However alternative tenures may be considered if the values will be adequately protected via statutory oversight such as SPA or through instruments such as covenants.

Note: If the land has values of State or regional conservation or environmental significance, those interests would usually be protected by making the USL available for a protected area (such as a national park) under the Nature Conservation Act. Similarly, if the land has a particular indigenous cultural significance consideration could be given to allocating the land under the Aboriginal Land Act or Torres Strait Islander Land Act.

However, where a most appropriate manager cannot be found (see section on Most Appropriate Manager hereafter), it may be appropriate to issue a permit to occupy over the land for a low impact activity (e.g. grazing) until such time as a suitable manager can be found, provided there is minimum or no risk of detrimentally affecting the values requiring protection. Given that a permit to occupy does not change the USL status, it can be viewed as a short term 'holding tenure'.

For any application for a secondary interest over a reserve (e.g. trustee lease, easement), a land evaluation for the secondary interest must ensure that:

- a. the community purpose for which the reserve was dedicated or the land was granted in trust is not diminished by granting inappropriate interests over the reserve or land granted in trust - section 30(c) of the Land Act; and
- b. a State lease over a reserve would be consistent with the purpose for which the land was reserved, or would facilitate or enhance the purpose for which the land was reserved; or if inconsistent, (amongst other things) the State lease would not diminish the purpose of the reserve - section 32 of the Land Act; and
- c. a trustee lease or trustee lease sublease would be consistent with the purpose for which the land was reserved or granted in trust and would facilitate or enhance the

purpose for which the land was reserved or granted in trust; or if inconsistent, (amongst other things) the trustee lease or trustee lease sublease would not diminish the purpose of the reserve or land granted in trust - section 59 of the Land Act (Note: does not apply to a construction trustee lease).

Further, under section 52 of the Land Act, the Minister may approve action by the trustee that is inconsistent (inconsistent action) with the purpose for which the reserve was dedicated or the land was granted in trust if (amongst other things) the Minister is reasonably satisfied the inconsistent action will not diminish the purpose for which the reserve was dedicated or the land was granted in trust.


Permit to occupy can be issued over USL, reserve or road, and gives a personal, non-exclusive right of occupation only. Importantly the issue of a permit to occupy does not change the underlying tenure of the land, which remains as USL, reserve or road. A permit to occupy cannot be transferred and should only be considered for low impact, short term uses such as grazing of State land that may be required for a future public (including community) purpose. A permit is generally not appropriate for structural improvements. As discussed above, a permit to occupy can also be used as a holding/transitional tenure while long term tenure and manager issues are being resolved.

Leasehold may be the most appropriate tenure where the State needs to retain oversight of the use of the land because:

- specific legislation does not allow the issue of freehold, e.g. land seaward of a tidal boundary, other than land that has been reclaimed under section 127 of the Land Act (section 14(3) of the Land Act); or
- there is specific government policy to retain oversight of land by the State, e.g. on islands (see Criteria and Method for Disposal of Unallocated State Land Policy PUX/901/315), or where it is desirable in the public interest to place some condition or requirement upon a volumetric title (see Policy Land Allocation: Granting Land Volumetrically PUX/901/100); or
- environmental values or natural features and/or resources on or associated with the site require management which cannot be adequately provided via existing regulatory mechanisms (e.g. SPA or EPA Act); or
- the State wishes the development on the land to proceed in a certain and timely manner; or
- the most appropriate use and tenure has not yet been finally determined, or a suitable long term manager is not yet available, and a short term, interim tenure provides a temporary management arrangement.

Leasehold would also be an appropriate tenure where freehold is not supported if the lease land suffers from, or is at risk of land degradation or the lessee is not fulfilling the lessee's duty of care for the land. In this case, if the lease has issued for agricultural, grazing or pastoral purposes (rural leasehold land) the Minister may require a land management agreement to ensure that the land condition is improved and maintained.

Perpetual Lease – under s 15(3) of the Land Act, allocation of USL as a perpetual lease may occur only if required by another Act, or where the Land Act allows for the issue of a perpetual lease (s 17(2) or for an additional area under s 132), or where it is considered to be in the interest of the State (e.g. for strategic port land) - therefore, the issue of a perpetual



lease for allocation of an area of USL to a person other than the State (or in some instances to a statutory body) is not otherwise supported by the Land Act.

Freehold (issue of a deed of grant) is the most appropriate tenure where the State does not need to retain oversight of the way the land parcel is used (other than the regulatory oversight to which all land is subject). Freehold is appropriate particularly where freehold is the predominant tenure in the area and land is not required for a community purpose.

Further, freehold may be the most appropriate tenure where it is decided through a renewal action that the State has no further requirement for oversight other than a regulatory requirement (e.g. a lease for residential or industrial purposes in an urban area may no longer be best held as leasehold). In this case conversion to freehold would be appropriate. Freehold may also be suitable where the most appropriate use of the land can be ensured through non-tenure related instruments (e.g. planning schemes, covenants, or agreements).

Where values exist that will not limit the intended use, but conversion under the Land Act to freehold will remove regulatory oversight of those values, a covenant or similar may be appropriate to allow the conversion to proceed while ensuring those values are protected and maintained. For example, there are more stringent requirements for clearing *of concern* regulated regrowth vegetation on agriculture and grazing leasehold land than on some freehold land. This vegetation can be protected by a covenant or voluntary declaration before the land is converted to freehold. The Department's Vegetation Management Officers are able to provide the most appropriate option for protecting vegetation under the VMA

Where a covenant or similar to protect existing values in the land is not possible, the land may not be suitable for conversion to freehold.

A deed may also issue under the Aboriginal Land Act or the Torres Strait Islander Land Act if it is decided that the most appropriate use of the land would be best achieved by the issue of tenure to Aboriginal people or Torres Strait Islanders particularly concerned with the land.

Most appropriate management

The term 'most appropriate management' refers to the most appropriate manager (e.g. trustee, lessee, permittee, etc.) and the most appropriate management controls or proprietorial controls over a reserve, lease or permit.

Most appropriate manager

The object of the Land Act includes the provision that when State land is allocated it is allocated to persons who will facilitate its most appropriate use. Such uses must accord with any tenure and use restrictions, and agreements and applicable regulatory controls.

The most appropriate manager is a person who is willing and able to be accountable for complying with the purpose of the tenure, conditions and statutory responsibilities, any land management agreements, covenants etc and is capable of fulfilling their financial responsibilities (e.g. rent payments and/or any required performance bond).

Under s 420E of the Land Act, the chief executive may ask an applicant to provide stated information in support of an application or a statutory declaration verifying any information included in the application. Under this section, a reasonable request may be made of the applicant to provide evidence of their capacity to effectively manage the land or respond to an issue.

The use and development of State land held under reserve and lease tenure, including use and development by secondary interest holders (e.g. trustee leases over reserves), is the responsibility of appointed managers who are accountable for managing the subject land.

Reserve

The most appropriate trustees of community use reserves are preferably enduring organisations such as statutory bodies, (e.g. local government or the State) that have some particular association or expertise with the reserve land and its purpose or with the local community (s 30 of the Land Act). It is highly desirable that trustees be incorporated bodies.

The trustee of a Land Act reserve is recognised as the most appropriate manager for that reserve. Therefore, when secondary use occurs on reserves, the secondary use should be directly managed by the land manager (trustee) and not the Department, except where there are overriding State interest considerations.

Lease

Before the land is allocated as a lease, the appointed manager (lessee) must agree to undertake certain activities with respect to the lease land. The lessee is obligated to manage the land in accordance with the rights, restrictions and responsibilities imposed by the tenure and purpose, lease conditions, and any other management plans, agreements, including a land management agreement for certain rural leasehold land, or covenants over the land, including the statutory duty of care.

The above equally applies to permits to occupy and road licences as appropriate.

Section 129 of the Land Act requires that for an application for a lease for a significant development, an independent assessment of the applicant's financial and managerial capabilities must be undertaken.

Most appropriate management control


Management controls may apply to both freehold and State land.

To protect values on leasehold land, agreements with lessees on how these values will be protected are incorporated into leases and impose rights, restrictions and responsibilities on the lessee.

The purpose for which a leasehold tenure is issued is the primary tool for controlling the use of that parcel of State land.

Conditions under the Land Act are another means of controlling how a lessee uses the land. **Mandatory conditions** (s 198 and 199) such as duty of care are a statutory imposition on the use of the land. **Imposed conditions** (s 203) are a proprietary means of control of the use of a particular parcel of lease, licence or permit land. Imposed conditions relating to the use, care, sustainability and/or protection of the subject land compels its protection by the lessee. **Regulated conditions** are also statutory conditions that apply to leases, licences and permits.

Management plans (s 48) for trust land, specifying how the land should be used and managed, can be a requirement under the Land Act. Approved management plans for trust land are an agreement on how the values of the trust land will be protected by the trustee.



Land management agreements (s 176U) for certain rural leasehold land, specifying how the land should be used and managed, can be a requirement under the Land Act. A land management agreement is a written agreement made by the Minister with the lessee about the use and management of that rural leasehold land.

A covenant (s 373A Land Act) is a voluntary agreement entered into by the parties. A covenant can relate to the use of the land, or part of the land or buildings, or can be aimed at conserving biodiversity, or a significant physical or cultural feature of the land. On registration, a covenant complying with the legislation attaches to the land, and binds the owner and all successors in title until it is released. The covenant can remain even if the tenure is converted from leasehold to freehold. Other conservation agreements include the voluntary declaration process under the VMA, which provides a framework for landholders voluntarily seeking to protect native vegetation on their land.

Legislation

- *Land Act 1994*, in particular, sections 4, 15, 16, 159 and 167

Related policies

- PUX/901/207 - Creation of Trust Land
- PUX/901/209 - Secondary Use of Trust Land
- PUX/901/210 - Leases over Reserves
- PUX/952/122 – Roads under the *Land Act 1994*
- PUX/901/315 - Criteria and Method for Disposal of Unallocated State Land
- PUX/901/316 - Allocation of Land in Priority in Terms of the *Land Act 1994*
- PUX/952/120 Eligibility and assessment to hold land PUX/901/333 - Additional Purposes of Lease
- PUX/952/121 - Conversion of Leasehold Tenure
- PUX/901/335 - Land Holdings: Leases - Early renewal, Rolling term lease extensions and Conversion (Special Circumstances)
- PUX/901/337 - Diversification on Leases for Agricultural Purposes
- PUX/952/118 Permit to Occupy
- PUX/901/528 - Lease Subdivision

Responsibilities

Officers with the appropriate delegations under the Land Act for evaluating land to assess the most appropriate tenure and use of land administered under that Act.

Appendices

Appendix 1 – Legislative basis under the Land Act 1994

Note: The following is summary of the respective provisions of the Land Act - reference needs to be made to the actual sections in that Act.

Most Appropriate Use and Tenure

S4 - Object of the Act - State land must be managed for the benefit of the people of Queensland having regard to the following principles:

- **sustainability** - sustainable resource use and development to ensure existing needs are met and the State's resources are conserved for the benefit of future generations
- **evaluation** - based on the appraisal of land capability
- **development** - allocating land in the context of the State's planning framework, and when land is made available, allocation to persons who will facilitate its most appropriate use
- **community purpose** - if the land is needed for community purposes, the retention of the land for the community in a way that protects and facilitates the purpose
- **protection** - of environmentally and culturally valuable and sensitive features
- **consultation** - consultation with community groups, industry associations and authorities as an important part of the decision making process
- **administration** – consistent and impartial; efficient, open and accountable; a market approach to land dealings, adjusted when appropriate for community benefits arising from the dealing.

S16 - before land is allocated under the Act the land must be evaluated to assess the most appropriate tenure and use for the land, and the evaluation must take account of State, regional and local planning strategies and policies and the object of the Act.

S30(c) - ensure that the community purpose for which the reserve was dedicated or the land was granted in trust is not diminished by granting inappropriate interests over the reserve or land granted in trust

S32 - the issue of a State lease over a reserve would be consistent with the purpose for which the land was reserved; or would facilitate or enhance the purpose for which the land was reserved; or if inconsistent, (amongst other things) the State lease would not diminish the purpose of the reserve.

S52 - the Minister may approve action that is inconsistent (inconsistent action) with the purpose for which the reserve was dedicated or the land was granted in trust if (amongst other things) the Minister is reasonably satisfied the inconsistent action will not diminish the purpose for which the reserve was dedicated or the land was granted in trust

S59 - the trustee lease or trustee lease sublease would be consistent with the purpose for which the land was reserved or granted in trust, and would facilitate or enhance the purpose for which the land was reserved or granted in trust; or if inconsistent, (amongst other things) the trustee lease or trustee lease sublease would not diminish the purpose of the reserve or land granted in trust.

S101 - refusal of road closure on the grounds that the road is still needed

S121 - a lease of unallocated State land may be granted without competition if, among other things, the Minister decided the intended use is the most appropriate use of the land.

S159 - before making a decision to offer a new lease the chief executive must consider, (among other things), (1)(h) whether part of the lease has a more appropriate use from a land planning perspective, and (1)(k) whether a new lease is the most appropriate form of tenure for the lease land.

S167 - before making a decision to offer to convert a lease, the chief executive must consider, (among other things), (1)(h) whether part of the lease has a more appropriate use from a land planning perspective, and (1)(k) the most appropriate form of tenure for the lease land.

S176B and 176M - consideration is required whether a proposed subdivision or amalgamation is appropriate, taking into account State, regional and local planning strategies and the object of the Act - (these sections do not require an assessment of the most appropriate tenure but only whether the subdivision or amalgamation is appropriate).

S420E - (1) The chief executive may, by written notice, ask an applicant to - (b) give the chief executive - (i) stated information in support of the application; or (ii) a statutory declaration verifying any information included in the application or any additional information required under subparagraph (i).

S420G - (1) This section applies if another provision of the Act permits or requires a person, who may or must decide an application, to consider particular criteria in making the decision.

(2) To remove any doubt, it is declared that the person may, in making the decision, consider any other criteria the person considers relevant.

Most appropriate Manager and Management controls

S4 - Object of the Act - as outlined in the section ***Most Appropriate Use and Tenure*** immediately preceding


S30 - ensure that reserves and land granted in trust are properly and effectively managed by persons (the trustees) who have some particular association or expertise with the reserve land and its purpose, or with the local community, including under any approved management plan.

The basis for the Department requiring a management plan for trust land is specified in:

- **S44** - The Minister may appoint a trustee of trust land subject to conditions.
- **S48** -The trustee for trust land must, if asked by the Minister, apply for the approval of a management plan for the trust land.

S115 - conditions applying to sale by public auction include that the buyer must be eligible to hold the interest under this Act and meet all other restrictions stated in the sale notice.

S123 - priority criteria that describe who has priority in obtaining an interest in State land.



S129 - for an application for a lease for a significant development, an independent assessment of the applicant's financial and managerial capabilities must be undertaken.

S130 - for an application to transfer a lease for a significant development, an independent assessment of the applicant's financial and managerial capabilities may be undertaken.

S142 and 143 - a person is eligible to apply for, buy or hold land under this Act only if the person is an adult. An officer of the Department is not eligible to acquire land under this Part (of the Land Act) without the Minister's written approval.

S159 - lease renewal criteria which state that the interests of the existing lessee must be considered before making a decision to offer a new lease. It also states that existing degradation and whether lease conditions have been complied with are relevant considerations.

S167- lease conversion criteria which state that existing degradation, and whether lease conditions have been complied with, are relevant considerations.

S199 - all leases, licences and permits are subject to the condition that the lessee, licensee or permittee has the responsibility for a duty of care for the land. If a lease is issued for agricultural, grazing or pastoral purposes, the lessee's duty of care includes that the lessee must take all reasonable steps to conserve and protect the values of the land.

S199A - lease land, licence land or permit land may be used only for the purpose for which the lease, licence or permit was issued (subject to s 154).

S200 - all leases, licences and permits are subject to the condition that the lessee, licensee or permittee must keep noxious plants on the land under control.

S213 - a lessee, licensee or permittee must perform all of the conditions of the tenure to the satisfaction of the designated officer.

S214 - the Minister may give a lessee or licensee a written notice (a remedial action notice) to take stated remedial action.

S420E - (1) The chief executive may, by written notice, ask an applicant to - (b) give the chief executive - (i) stated information, in support of the application; or (ii) a statutory declaration verifying any information included in the application or any additional information required under subparagraph (i).

S420G - (1) This section applies if another provision of this Act permits or requires a person who may or must decide an application to consider particular criteria in making the decision. (2) To remove any doubt, it is declared that the person may, in making the decision, consider any other criteria the person considers relevant.



Appendix 2 – Addressing the Object of the Land Act in Evaluating Land

Section 16 requires that the object of the Act (section 4) be taken into account when evaluating the land to determine its most appropriate tenure and use. Section 4 sets out the object of the Act, which is to manage land in accordance with the Act for the benefit of the people of Queensland, having regard to a set of defined principles described under the broad headings: sustainability, evaluation, development, community purpose, protection, consultation and administration. The object and principles of the Act set a framework for decision making under the Act.

Sustainability

- **sustainable resource use and development to ensure existing needs are met and the State's resources are conserved for the benefit of future generations**

This principle refers to the concept of protecting and preserving State land as a natural resource so that existing needs are satisfied, as well as ensuring that it may be used and enjoyed by future generations for identified purposes. This principle recognises that land is an important but fragile resource which needs to be managed correctly to ensure it is conserved for the benefit of future generations. The term sustainability places emphasis on a need to respect processes at work in an ecosystem.

Sustainability involves the consideration and application of proper land management practices by all parties throughout all stages of any dealing with State land, because those dealings have the potential to have significant and often permanent impacts on the social, environmental and economic capacity of the state.

Evaluation

- **land evaluation based on the appraisal of land capability and the consideration and balancing of the different economic, environmental, cultural and social opportunities and values of the land**

This principle requires that decisions about the allocation of State land must be based on a consideration of the values of the land that need to be protected, and the capacity of the land to sustainably support contemplated uses. This principle brings together the considerations under the other six principles of the object of the Act in the form of a land evaluation which assesses the environmental, cultural and social values, and any limiting factors relevant to the land parcel.

Land evaluation can require input from land planners, regional cultural heritage coordinators and appropriate stakeholders and technical experts. The information gathered from these sources should be considered in conjunction with other relevant information about the land and its capacity.



Development

- **allocating land for development in the context of the State's planning framework, and applying contemporary best practice in design and land management**

This principle supports the requirement of s 16 to take account of State, regional and local planning strategies and policies in evaluating the land. In administering State land, relevant strategies and policies (e.g. regional plans and local government planning schemes) need to be checked to determine whether the proposed use is inconsistent with a use under the applicable strategies and policies. The development principle also emphasises the commitment of the Act to contemporary best practice in planning design and land management.

- when land is made available, allocation to persons who will facilitate its most appropriate use that supports the economic, social and physical wellbeing of the people of Queensland

The development principle also recognises that when an interest in land is made available under the Act it should be made available to persons who will use the land in a manner which is consistent with the capacity of the land to support a use which is the 'most appropriate' for the land. In other words, when land is allocated it is expected that the person is capable of, and agreeable to, managing it in accordance with the rights, restrictions and responsibilities relating to the tenure.

Community purpose


- **if land is needed for community purposes, the retention of the land for the community in a way that protects and facilitates the community purpose**

The community purpose principle recognises that land is often needed for community purposes (defined in Schedule 1). It is appropriate that such land be retained by the State and/or placed under the management of responsible persons (known as trustees) as reserve or trust land. The high community values that will warrant protection of the resource for community use will include unique environmental, historical or cultural attributes (including indigenous cultural heritage), open space and recreational areas, or special strategic or locational value. Public access is an important and desired requirement of some community purpose land (e.g. parks, public boat ramps, sport, etc.). Alternatively, public access may be restricted over community reserves with particular values (e.g. beach protection, buffer, environmental, etc.).

Protection

- **protection of environmentally and culturally valuable and sensitive areas and features**

As the agency administering the Land Act, the Department is well placed to take proactive measures to identify and protect areas of State land which possess the features stated in



this principle. In these cases the Department can dedicate identified areas for community purposes including: environmental, natural resource management, open space and buffer zones, scenic, scientific, beach protection, historical and heritage (including indigenous cultural heritage).

The Department can also protect areas defined in this principle through proprietary controls under the Land Act such as covenants, management plans, land management agreements, and lease conditions.

Where the preservation of significant environmental values is desirable, the Department may make land available for allocation under the Nature Conservation Act.

Consultation

- **consultation with community groups, industry associations and authorities is an important part of the decision-making process**

As assessment of the most appropriate use and tenure of State land relies on evaluation of the attributes of the land, the views of relevant stakeholders, and relevant plans and strategies, it is necessary that the assessing officer obtain information from the relevant parties and authorities to enable an effective decision to be made.

Administration

- **consistent and impartial dealings**
- **efficient, open and accountable administration**

This principle recognises that for the integrity of the land allocation and land management systems under the Land Act to be sustained, dealings in land must be carried out in a consistent and impartial manner. The practical application of this principle requires that departmental officers who exercise decision-making responsibilities in relation to State land dealings must comply with the following points:

- all State land dealings are to be based on relevant legislation and policies,
- decisions are to be consistent, justifiable and based on sound evaluation of information collected through consultation and feedback,
- all decisions (and reasons) are to be fully documented,
- decision making must be timely, undertaken with impartiality and equitable treatment of all stakeholders involved,
- natural justice must underpin departmental decision making where those decision affect the interests of persons or corporations, and
- to achieve efficient and effective land dealings, assessment officers must make maximum use of all corporate systems and resources.
- **a market approach to land dealings, adjusted when appropriate for community benefits arising from the dealing**

In making interests in land available, a market approach is adopted so that the State may receive a fair return on its assets, and parties competing for interests are dealt with equally. The principle recognises, however that dealings in land should be made available without competition primarily to government agencies where it is clear there is some community benefit in making the interest available in that manner.