



# **Mortgage of a Deed of Grant in Trust PUX/901/222**

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**Version 2.05**

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## Version History

Version	Date	Description/Comments
1	24/12/1997	Endorsed
1.1	01/07/2005	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	09/03/2011	Minor updates to reflect departmental name change to DERM
2.2	07/09/2012	Minor updates to reflect departmental name change to DNRM
2.3	13/03/2013	Updated to change government logo
2.04	12/03/2014	Updated to new DNRM template
2.05	22/06/2016	Minor amendment to review and insert text on new template

## Approval

Position	Name	Date
Acting Director, Operations Support - Land	Amanda Kearnan	22/06/2016



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## Purpose

To provide guidelines as to when approval will be given to mortgage land granted in trust.

## Rationale

Land granted in trust is public land and careful consideration needs to be given to the desirability of mortgaging the land and the trustee's ability to repay the loan.

Should a trustee default, the mortgagee may sell the trust land free of the trust, and the State may lose a valuable community resource.

Further, a trustee, in the capacity as trustee, is a statutory body for the *Statutory Bodies Financial Arrangements Act 1982*.

## Policy

Deeds of Grant in Trust (DOGIT) that issued under the *Land Act 1962* were continued as Deeds of Grant in Trust by section 451 of the *Land Act 1994*.

As part of that continuation, those existing DOGITs that were originally issued under the provisions of the *Land Act 1962* has retained the ability to be mortgaged with the approval of the Minister.

In addition, a Deed of Grant in Trust may be mortgaged -

- a. because of a surrender under Section 358 and the DOGIT surrendered was issued before the commencement of the *Land Act 1994* or
- b. if the DOGIT was issued under Section 493 of the *Land Act 1994*

**IMPORTANT:** However, a DOGIT that is first issued under the *Land Act 1994* cannot be mortgaged. Section 67 of the Land Act applies. Consideration will be given to an application to mortgage applicable land which was granted in trust as outlined above provided:

- the proposed mortgagor is the trustee/s as appointed (exactly) on the deed of grant in trust;
- Evidence of approval of (or intention to approve) the proposed loan detailing the reason for the loan, as well as a copy of the proposed mortgage document must have been received from the proposed mortgagee.
- The proposed mortgagee and terms and conditions of the proposed mortgage must be acceptable, including that the terms and conditions of the proposed mortgage are consistent with the provisions of the *Land Act 1994*, and do not affect the State's interests in the deed of grant in trust.
- The funds of the loan must be used on the trust land for the purpose for which the trust was granted as required under section 67(6) of the Land Act;
- An assessment (by the Department) of the trustee's financial ability to repay the proposed loan must be undertaken.
- A suitable land management plan must be in place/been lodged for the deed of grant in trust.
- A condition of any Minister's approval to mortgage is that the mortgage must be registered (in the Land Registry).

The approval from the Treasurer to the borrowings as required under the *Statutory Bodies Financial Arrangements Act 1982* will also be required.

## Legislation

*Land Act 1994*