



Land Allocation: Public Purpose Reservations PUX/901/112

SLM/2013/480

Version 2.04

Last reviewed 22/06/2016



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Version History

Version	Date	Description/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

Approval

Position	Name	Date
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Purpose

To provide guidelines on reservations for public purposes, including in relation to allocation and sale of such reservations.

Rationale

Reservations for public purposes

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

A reservation for a public purpose is an area reserved to the State for the particular public purpose e.g. road, in the freehold or lease, for possible future public requirements.

Although a reservation has an exact area (size) e.g. 2.04 hectares, the reservation could be in a fixed location i.e. "a fixed reservation", or in an undefined location i.e. "a floating reservation".

A deed of grant in trust may also be subject to a reservation for a public purpose.

However, as the Land Act (section 16) provides for assessment of the most appropriate tenure and use having regard to planning strategies and policies prior to land being allocated under that Act, all foreseeable public requirements e.g. dedication of an esplanade or a community purpose reserve along the coast, or the opening of a road, are generally to be provided at the time of allocation.

The State also has acquisition powers, primarily the *Acquisition of Land Act 1967* for freehold, and the Land Act for leasehold, if a public purpose for the land allocated is identified in the future.

Historical Reference

During settlement of the State, reservations for public purposes were also provided in freehold and leases for possible future public requirements.

The first type of reservation was for esplanade purposes as early communication and transport was by sea and boat - usual practice was for a reservation of a strip of land 100 feet wide above high water mark for esplanade purposes.

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 for public purposes were also created to meet needs occurring at various times. The legacy of this practice is that today there are reservations for various purposes and with the changing times, many of these areas may never be needed for the purposes originally envisaged - although a road reservation is the most common form of reservation, there may be other reservations including for railway, telegraph etc.

In many cases, reconfiguration of a lot (subdivision) has now occurred and the reservation allocated to a certain lot in the subdivision. This may result in the final lot, e.g. for residential purposes, containing a large reservation, particularly for road, of no use.

Further dealing with reservations for public purposes

Although the owner, lessee or trustee may have the "right" to use/have possession of the reservation, the owner, lessee or trustee has no "interest" in the reservation, and therefore may not deal with the reservation e.g. a freehold owner may not allocate a reservation to a lot created by a plan of subdivision, or "dedicate" the reservation, including a road reservation, for the "reserved" public purpose.

As the area is reserved to the State, the State is the only party that may deal with the reservation.

The State however, may only deal with the reservation in accordance with the Land Act i.e.

- allocate the reservation in terms of section 23A of that Act,
- sell the reservation in freehold or a freeholding lease (section 24), or
- dispose of the reservation under section 26A for a deed of grant in trust, or a term or perpetual lease.

In 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 i.e. no land value is paid for the area of the reservation which has been reserved to the State.

Note that the State is also unable to "dedicate" the reservation, including a road reservation, for the "reserved" public purpose.

Allocation or sale of a "floating reservation" for public purposes

Freehold

Under section 23A, an owner that proposes a reconfiguration of a freehold lot (subdivision) may apply for a "floating reservation" to be allocated to a subdivided lot or lots.

If the reservation is no longer needed, the area may be dealt with under section 24 e.g. an application made to purchase the area, and not allocated.

As the owner may not deal with the reservation, and the area is reserved to the State, it is not inappropriate for the State to decide that a reservation that is no longer needed is to be sold to the owner, and not allocated, particularly if the proposed subdivision is for commercial benefit.

Further, it is considered that an owner should not continue to have use at no cost of an area reserved to and no longer needed by the State.

There may be some limited special circumstances though where it may be appropriate for the State to allocate the reservation (that is no longer needed) to a lot or lots i.e. if the subdivision is not instigated by the owner, or family hardship applies.

However, allocation of a reservation for public purposes that is no longer needed should only be considered once, as the State has previously allowed special circumstances.

Further, should the local government or the Department of Environment and Heritage Protection require an area to be surrendered for public use land during a subdivision of a freehold lot action, the Land Act does not allow for the State to consider an "offset" in respect of the reservation, including if the purpose of the reservation is the same as the proposed public use land.

The requirement for the public use land is also under a separate legislative process, and any "offset" in effect would be the State subsidising the development e.g. if 2 lots of similar area adjoin, one lot with a reservation and one without, and a similar area of public use land was required from each lot in subdivision action, the State in providing any "offset" would in effect be subsidising the owner of the lot with the reservation – it would also be inequitable to the owner of the lot without the reservation.

Freeholding lease

Similarly, when further dealing with a freeholding lease containing a "floating reservation" that is no longer needed, the reservation is required to be sold under section 24, unless special circumstances as outlined above exist. (Note that family hardship though is unlikely to apply to a freeholding lease, due to the lessee's limited capacity to subdivide - see Policy [Lease Subdivision PUX/901/528](#))

A sale of a reservation to a lessee of a freeholding lease is required by way of a one off payment, as the reservation area was not part of the leased area originally converted, and therefore the lessee is unable to pay the purchase price by (adjustment of the) instalments.

Deed of grant in trust

In further dealing with a deed of grant in trust containing a reservation, and the reservation is no longer needed, the reservation should be disposed of in terms of section 26A to "perfect" the deed of grant in trust.

For a deed of grant in trust for an operational purpose, although land required for an operational purpose is usually required to be purchased, a trustee of a deed of grant in trust is unable to dispose of any area of that trust land, nor is able to subdivide the land - action in respect of a deed of grant in trust is usually instigated by the State e.g. for a road opening.

Accordingly, no payment is required for the value of the reservation. 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.

Term or perpetual lease

Also when further dealing with a term or perpetual lease under the Land Act (e.g. renewal, conversion, amendment of area), a reservation no longer needed should be disposed of under section 26A as the increase in rent, if any, should in the majority of instances, prove to be minor and no impost on the lessee. - as mentioned above, a lessee should not continue to have use for no cost of land reserved to and no longer needed by the State.

Is the reservation still needed?

Prior to deciding whether the reservation is no longer needed, relevant agencies need to be consulted.

If a reservation is to be allocated, the reservation needs to be allocated to be of most use.

"Fixed reservations" for public purposes

A "fixed reservation" being in a defined location for a freehold lot will not need an application for allocation under section 23A, as the reservation will simply be within the respective freehold subdivision lot or lots. However, should the plan of subdivision be referred to the department, the same requirements for a "floating reservation" particularly regarding the purchase of the reservation, applies.

As a plan of subdivision for a freeholding lease, deed of grant in trust, term or perpetual lease will need the Minister's consent, the requirements as outlined above for a "floating reservation" also apply equally for a "fixed reservation".

"Exclusion" from title

In some instances, a "fixed" area may have been reserved from a freehold lot and may not be a reservation, but an "exclusion" from the title - the Department may need to consider the status of such areas on an individual basis, although a **reserved road** is a road for public use - please refer to Notification [Roads under the Land Act 1994 PUX/952/122](#)

During settlement of the State, reservations were made in leases and titles to cater for possible future public requirements. These should be extinguished if no longer required as many lessees / owners are not aware of their existence and other mechanisms exist to acquire land for public purposes.

Policy

Reservations for public purposes

A reservation for a public purpose in the issue of a deed of grant (freehold), deed of grant in trust or lease under section 23 of the Land Act will only be supported where there is a clear requirement for its use in the foreseeable future and for some particular reason, the area is not able to be immediately dedicated for that public purpose (e.g. an area opened as road now may not form part of an road network, but there is proposed further dealing with other land that will provide continuity of the road network in the foreseeable future. A road reservation may therefore be considered for inclusion in a new deed).

Further dealing with reservations for public purposes


A reservation may not be "dedicated" by a proposed action e.g. a road reservation may not be "dedicated" as a proposed new road as part of subdivision of freehold, either by the owner or State - the Land Act does not provide for such action.

Allocation or sale of a "floating reservation" for public purposes

Freehold and a freeholding lease

Subject to usual requirements, including native title and cultural heritage, and except in limited special circumstances where the action is not instigated by the owner, or family hardship applies, allocation under section 23A of the Land Act of an reservation no longer needed in a freehold lot, or in a freeholding lease, is not supported, and the area of the reservation is required to be purchased by the owner or freeholding lessee following application under section 24 of the Land Act.

Action not instigated by the owner or lessee could include a road realignment at the request of the local government or Department of Transport and Main Roads, or a minor boundary adjustment relating to encroachments.



A family hardship relating to a freehold lot could include where an elderly person may need the support of a family member and that member's family, and due to local government restrictions, the land would need to be subdivided to enable a separate dwelling for that family.

Family hardship is less likely to apply though to a freeholding lease which may not be subdivided in a similar way to a freehold lot.

However, allocation of a reservation for a public purpose that is no longer needed should only be considered once, as the State has previously allowed special circumstances - it is considered that an owner or lessee should not continue to have use at no cost of an area reserved to and no longer needed by the State.

Further, should the local government or the Department of and Heritage Protection require an area to be surrendered for public use land e.g. road, esplanade, park for subdivision of a freehold lot, the State is unable to consider an "offset" in respect of the reservation, including if the purpose of the reservation is the same as the public use land. If the reservation is not needed, the requirements as outlined above apply.

A sale of a reservation, including to the lessee of a freeholding lease, is to be by way of a one off payment at the unimproved value as decided under section 25 of the Land Act. The unimproved value though must be decided without regard to the commercial value of the timber - see section 434(2) of that Act.

Deed of grant in trust, term lease and perpetual lease

When further dealing with a deed of grant in trust, or a term or perpetual lease, under the Land Act, a reservation for a public purpose that is no longer needed is to be disposed of in terms of section 26A.

The disposal of a reservation in a deed of grant in trust for an operational purpose may proceed without the requirement for the trustee to pay the unimproved value.

Is the reservation still needed?

Prior to deciding whether the reservation is no longer needed, relevant agencies need to be consulted e.g. if a road reservation, the local government views need to be sought, and if in a "fixed" location, appropriate enquiries within the definition of section 100(5) of the *Land Act 1994* are also to be made, or where there may be a possible requirement for a State controlled road, the Department of Transport and Main Roads; or for a railway reservation, the Department of Transport and Main Roads.


If the reservation is to be allocated, either as the reservation is still needed or for special circumstances as listed above, generally the reservation should be allocated to a lot with dedicated access, taking into account the views of any relevant agency.

Further, for a road reservation, if a lot has access to a more significant road e.g. if a lot fronts a major thoroughfare and another lot fronts a "local" road, as the future road requirements are more likely to be required for the major thoroughfare, the road reservation should be allocated to the lot that adjoins that thoroughfare - again, taking into account the views of any agency.

"Fixed reservations" for public purposes

The above requirements apply equally to a floating or fixed reservation except to the extent that section 23A (allocation) does not apply to a fixed reservation.

"Exclusion" from title



Note: 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 Notification [Roads under the *Land Act 1994* PUX/952/122](#)

Definitions

Department – Department of Natural Resources and Mines

Legislation

Land Act 1994