

# Unauthorised structures on unallocated State land PUX/901/658

**SLM/2013/583**

**Version 1.02**

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## Version History

| Version | Date       | Description/Comments                                      |
|---------|------------|---|
| 1.00    | 14/05/2013 | Endorsed by the Minister                                  |
| 1.01    | 12/03/2014 | Updated to new DNRM template                              |
| 1.02    | 21/06/2016 | Minor amendment to review and insert text on new template |

## Approval

| Position                                   | Name           | Date       |
|--|----------------|------------|
| Acting Director, Operations Support – Land | Amanda Kearnan | 21/06/2016 |

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## Executive Summary

Unauthorised structure on USL will be managed in accordance with the following:

- **structures in existence prior to 1 January 1994; and**
  - land is not required by the State for another use such as road, reserve for community purpose or has environmental or natural features and/or resources that need to be protected; and
  - not a permanent or semi-permanent residence (is not used as the applicants residential home); and
  - not abandoned or unclaimed

It can be considered appropriate to issue a permit to occupy over the USL, which 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.

- **structures in existence from 1 January 1994 and up to and including 30 March 2013; and**
  - land is not required by the State for another use such as road, reserve for community purpose or has environmental or natural features and/or resources that need to be protected; and
  - not a permanent or semi-permanent residence (is not used as the applicants residential home);  
and
  - not abandoned or unclaimed.

It can be considered appropriate to issue a permit to occupy over the USL, which will require removal of the unauthorised structures on or before 10 years from the date of issue of the permit to occupy after which no further permit to occupy will issue.

- **structures erected on or after 1 April 2013** are to be dealt with as a trespass action and prompt removal of any unauthorised structures is to occur.

## Purpose

To provide guidelines on dealing with unauthorised structures on unallocated State land to ensure consistency on a State-wide basis and to prevent an increase in unauthorised structures.

## Rationale

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.

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).

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.

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

## Policy

The purpose of this policy is to provide guidance for decision making in relation to unauthorised structures on unallocated State land.

Section 404 of the *Land Act 1994*, states that a person must not unlawfully, do any of the following things (a trespass related act) in relation to non-freehold or trust land—

- a. occupy or live on it;
- b. enclose it;
- c. build, place or maintain any structure, improvement, work or thing on it;
- d. clear, dig up or cultivate it;
- e. depasture stock or cause stock to be depastured on it.

The mere making of an offer under this Act in relation to non-freehold or trust land does not make it lawful for the offeree to do a trespass related act in relation to the land.

Additional information on land allocation is available from the department's policy - [Land Allocation: Deciding Most Appropriate Use, Tenure and Management PUX/901/101](#).

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.

### **Criteria for decision makers**

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.

Unauthorised structures on USL will be managed in accordance with the following:

- **structures in existence prior to 1 January 1994;** and
  - land is not required by the State for another use such as road, reserve for community purpose or has environmental or natural features and/or resources that need to be protected; and
  - not a permanent or semi-permanent residence (is not used as the applicants residential home); and
  - not abandoned or unclaimed.

It can be considered appropriate to issue a permit to occupy over the USL, which 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.

Attachment A provides a list of the conditions for a permit to occupy - Category 12— residential – weekend/holiday, with structures requiring authorisation erected prior to 1 January 1994.

- **structures in existence from 1 January 1994 and up to and including 30 March 2013;** and
  - land is not required by the State for another use such as road, reserve for community purpose or has environmental or natural features and/or resources that need to be protected; and
  - not a permanent or semi-permanent residence (is not used as the applicants residential home); and
  - not abandoned or unclaimed.

It can be considered appropriate to issue a permit to occupy over the USL, which will require removal of the unauthorised structures on or before 10 years from the date of issue of the permit to occupy after which no further permit to occupy will issue.

If the tenure holder surrenders the tenure before the end of the period, the earlier date becomes the date by which the unauthorised structures must be removed.

- **structures erected on or after 1 April 2013** are to be dealt with as a trespass action and prompt removal of any unauthorised structures is to occur.

A permit to occupy 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.

Attachment B provides a list of the conditions for a permit to occupy - Category 12— residential – weekend/holiday, with structures requiring authorisation erected between 1 January 1994 and up to and including 30 March 2013.

## Definitions

**Unallocated State Land (USL)** - unallocated State land refers to land above and below HWM that is not freehold land or land contracted to be granted in fee simple by the state; is not a road or reserve; and is not subject to a lease, licence or permit issued by the state.

## Legislation

The *Land Act 1994*

- Section 4 Object and Principles of the *Land Act 1994*
- Chapter 4, Part 4, Section 177 - 180H - Permits to Occupy
- Chapter 7, Part 2, Division 1 and Division 2 – Section 404 – 413 – Unlawful occupation

The Land Regulation 2009

- Part 4 Rents, section 26 - 39

**Attachment A** - Conditions for Permit to Occupy – Structures requiring authorisation erected prior to 1 January 1994

**SPECIFIED CONDITIONS FOR:** Permit to Occupy - Category 12—residential – weekend/holiday

**Note –**

- The Permittee may not use the Permit to Occupy as a residential home
- A Permit to Occupy for this purpose cannot be issued over a Reserve or road.

**STATUTORY CONDITIONS:**

Statutory conditions are the general mandatory conditions of a Permit to Occupy and binds the Permittee in accordance with Part 2 Division 1 of the Land Act.

1. **Permitted Use:** The Permittee must use the land only for the purpose for which the tenure was issued under the Land Act 1994.
2. **Duty of Care:** The Permittee has the responsibility for a duty of care, for the land. This duty of care includes taking all reasonable steps to do the following in relation to the land : –
  - (a) avoid causing or contributing to land salinity that –
    - (i) reduces its productivity; or
    - (ii) damages any other land;
  - (b) conserve soil;
  - (c) conserve water resources;
  - (d) protect riparian vegetation;
  - (e) maintain pastures dominated by perennial and productive species;
  - (f) maintain native grassland free of encroachment from woody vegetation;
  - (g) manage any declared pest;
  - (h) conserve biodiversity

3. **Rent:** The Permittee must pay the annual rent in accordance with the Land Act 1994 and the Land Regulation 2009.

For further information on how annual rent is determined, refer to the department's website.

4. **Noxious plants:** The Permittee must keep noxious plants on the land under control. If the Permittee does not comply with this condition, the Minister may bring the noxious plants under control, the cost of which will be recovered from the Permittee.
5. **Information to Minister:** The Permittee must give the Minister administering the Land Act 1994, information the Minister asks for about the tenure.
6. **Monies for Improvements:** No money for improvements is payable by the State on the termination of this Permit to Occupy but money may be payable if the State receives payment from an incoming Permittee or buyer for the improvements on the land. However, the previous Permittee may apply to the Minister to remove the improvements that belong to the Permittee, within a period of 3 months from the date of the termination of this Permit to Occupy. The Permittee may only undertake the removal of the improvements in the presence of an authorised representative of the department, if



required by the Minister. The Permittee may only remove those improvements if all monies due from the Permittee to the department under this Permit to Occupy have been paid.

7. **No sublease/disposal/transfer:** A permit to occupy cannot be subleased, disposed, transferred or mortgaged.

#### **MANDATORY IMPOSED CONDITIONS:**

A departmental mandatory imposed condition relates to a Permit to Occupy, in accordance with Part 2 Division 2 of the Land Act.

1. **Indemnity:** The Permittee indemnifies and agrees to keep indemnified the Minister administering the *Land Act 1994*, and the State of Queensland, [Free Text 1] (the "Indemnified parties") against all actions, suits, proceedings, claims, demands, costs, losses, damages and expenses ("Claim") arising out of or in any way connected to or resulting from the granting of this Permit to Occupy to the Permittee or which is connected to or resulting from the Permittee' use and occupation of the land (all of which are referred to as "the indemnified acts or omissions") save to the extent that the Claim arises as a result of any negligent act or omission of the Indemnified parties, however, any negligent act or omission of one of the Indemnified parties does not negate the indemnity to any of the other Indemnified party/ies.

The Permittee hereby releases and discharges the Indemnified parties from any claim relating to the indemnified acts or omissions which may be made against the Indemnified party/ies

2. **Public Liability:** The Permittee must effect a public liability insurance policy with an insurer authorised under the *Insurance Act 1973* (Commonwealth) or, in any other case, to the satisfaction of the Minister administering the *Land Act 1994*, naming the Permittee as the insured covering legal liability for any loss of, or damage to any property and for the injury (including death) to any person arising out of anything done or omitted on or about the land or any improvements thereon and against all claims, demands, proceedings, costs, charges and expenses whatsoever in respect thereof subject to the terms and conditions of the insurance policy. Such policy must:
- a) be for an amount of not less than [Free Text 2] in respect of all claims arising out of a single event or such higher amounts as the Minister may reasonably require;
  - b) be effected on a "claims occurring" basis so that any claim made by the Lessee under the policy after expiration of the period of policy cover but relating to an event occurring during the currency of the policy will be covered by the policy subject to the claim meeting the policy's other terms and conditions;
  - c) be effected on such other reasonable terms and conditions as may be required by the Minister; and
  - d) be maintained at all times during the currency of the tenure.

The Permittee must, as soon as practicable, inform the Minister [Free Text 3], in writing, of the occurrence of any event that the Permittee considers is likely to give rise to a claim under the policy of insurance effected and must ensure that the [Free Text 4] kept fully informed of subsequent actions and developments concerning the claim.

The Permittee must renew such policy, at the Permittee's expense, each year during the currency of this Permit to Occupy and forward a certificate of currency to the [Free Text 5] within 14 days of the commencement of each respective renewal period.

Upon receipt of a Notice of Cancellation, the Permittee must immediately effect another public liability policy in accordance with the provisions of this condition.

This condition will be satisfied if the Permittee is the State of Queensland or a statutory authority eligible for cover under the Queensland Government Insurance Fund and is insured and continues to be insured by the Queensland Government Insurance Fund.

This condition will be satisfied if the Lessee is the Commonwealth of Australia or a statutory authority eligible for cover under the Comcover Insurance Fund and is insured and continues to be insured by Comcover.

3. **GST:** The parties acknowledges that GST may be payable in respect of a supply made under or in connection of a Permit to Occupy ("GST" means the goods and services tax under the *Goods and Services Tax Act 1999* and the related Acts which constitute the Commonwealth taxation, reform.
4. **Access:** The provision of access, further access or services to the land will not be the responsibility of the State.
5. **Survey Costs:** If the land needs to be surveyed or re-surveyed the Permittee must do this at their own cost under the *Survey and Mapping Infrastructure Act 2003*. This survey plan must be lodged in the land registry within the specified time.
6. **Development & Use:** The Permittee must ensure that the development and use of the land meets with the Planning Scheme, Local Laws and requirements of the [Government Organisation Lookup], binding the Permittee.
7. **Cancellation:** The Permit to Occupy may be cancelled after giving the Permittee reasonable notice in writing, in accordance the *Land Act 1994*.
8. **Pest Management:** The Permittee must keep control of all declared pests, plants and animals on the land, in accordance with the *Land Protection (Pest and Stock Route Management) Act 2002* and the Local laws and requirements of the Local Government.
9. **Jurisdiction:** The Permit to Occupy is subject to the Land Act and all other relevant Queensland and Commonwealth legislation.
10. **Compliance with Laws -** the Permittee must comply with all lawful requirements of the –
  - (a) Local Government; and
  - (b) any department within the Queensland or Commonwealth governments (including the department administering the *Land Act 1994*), local authority or statutory instrumentality having jurisdiction over the land, or the

development, use and occupation of the land, in regard to its use, occupation and development of the land.

### **SPECIAL CONDITIONS:**

These conditions relate to this Permit to Occupy.

#### **Care, sustainability and protection of the land**

1. The Permittee must remove the improvements and rehabilitate the area to the satisfaction of the Chief Executive of the *Land Act 1994* [Free Text 6], from the date of termination of the tenure.

#### **Improvements or development on or to the land**

1. The Permittee must not affect any structural or further structural or excavation improvements [Free text 7] on the land, without the approval of the department administering the *Land Act 1994* and any other relevant authority, having been first obtained.
2. If the Permittee fails to remove the improvements and rehabilitate the area as above, the Chief Executive of the *Land Act 1994* [Free Text 6], can remove the improvements and rehabilitate the area and is hereby authorised to do whatever is necessary to effect the said removal and rehabilitation. The department may recover from the Permittee the total cost incurred in the said removal and rehabilitation.

#### **Provision of reasonable services, roads and infrastructure external to but servicing the land**

1. The provision of [Free text 8] to the land will not be the responsibility of [Government Organisation Lookup and] the State.

#### **Termination**

1. This Permit to Occupy will be terminated immediately on the death of the Permittee.

**Note** - If the Permit to Occupy is terminated on the death of the Permittee or voluntary surrender, and a decision is made by the Chief Executive that another Permit to Occupy may be issued for the same purpose, the new Permit to Occupy will be issued only to the Permittee's spouse, their children, their children's spouses, their grandchildren and like descendants of them or any of them.

2. This Permit to Occupy is issued on the clear understanding that should the structure thereon be destroyed by whatever means, no further structural improvements on the land will be allowed and the Permit to Occupy cancelled.
3. Should it be determined at some future date by any Court that native title exists over the subject land, this Permit to Occupy may be terminated and the Permittee or any subsequent Permittee may be required to remove any works established under this Permit to Occupy at the Permittee's or any subsequent Permittee's own cost, expense and risk. In that event, no compensation for works, development costs or loss of income shall be payable to the Permittee or any subsequent Permittee by the State of Queensland.

| <b>User variable list</b> |                           |   |
|---------------------------|---------------------------|---|
| <b>No.</b>                | <b>Variable</b>           | <b>Description</b>  |
| 1.                        | [Government Organisation] | Insert – Local Government code  |
| 2.                        | [Free text 1]             | Insert the trustee (name) if lease/permit over reserve<br>Insert and the relevant Local Government (name) and any affected public utility provider if electricity line is within permit to occupy over dedicated road or if lease/permit is in strata over road |
| 3.                        | [Free Text 2]             | Not less than \$20 million  |
| 4.                        | [Free Text 3]             | Eg: and trustee   |
| 5.                        | [Free Text 4]             | Eg: minister and trustee is/are   |
| 6.                        | [Free Text 5]             | Eg: minister and/or the trustee   |
| 7.                        | [Free Text 6]             | Insert – eg. and the <i>Forestry Act 1959</i>   |
| 8.                        | [Free text 7]             | Insert – other than.... , within a distance of, etc.  |
| 9.                        | [Free text 8]             | Insert – eg. access, further access or services   |

**Attachment B** – Conditions for Permit to Occupy – Structures requiring authorisation erected between 1 January 1994 and up to and including 30 March 2013.

**SPECIFIED CONDITIONS FOR:** Permit to Occupy - Category 12—residential – weekend/holiday

**Note –**

- The Permittee may not use the Permit to Occupy as a residential home
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Note – This permit to occupy is issued for the removal of the unauthorised structures and will cease on or before 10 years from the date of issue of the permit to occupy; if the tenure holder surrenders the tenure before the end of the 10 year period, the earlier date becomes the date by which the improvements must be removed.

2. **Duty of Care:** The Permittee has the responsibility for a duty of care, for the land. This duty of care includes taking all reasonable steps to do the following in relation to the land : –
  - a) avoid causing or contributing to land salinity that –
    - i) reduces its productivity; or
    - ii) damages any other land;
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  - c) conserve water resources;
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  - b) be effected on a "claims occurring" basis so that any claim made by the Lessee under the policy after expiration of the period of policy cover but relating to an event occurring during the currency of the policy will be covered by the policy subject to the claim meeting the policy's other terms and conditions;
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This condition will be satisfied if the Lessee is the Commonwealth of Australia or a statutory authority eligible for cover under the Comcover Insurance Fund and is insured and continues to be insured by Comcover.

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  - a) Local Government; and
  - b) any department within the Queensland or Commonwealth governments (including the department administering the *Land Act 1994*), local authority or statutory instrumentality having jurisdiction over the land, or in regard to its use, occupation and development of the land.

### **SPECIAL CONDITIONS:**

These conditions relate to this Permit to Occupy. –

#### **Care, sustainability and protection of the land**

1. The Permittee must remove the improvements and rehabilitate the area to the satisfaction of the Chief Executive of the *Land Act 1994* [Free Text 6], from the date of termination of the tenure.

#### **Improvements or development on or to the land -**

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#### **Provision of reasonable services, roads and infrastructure external to but servicing the land**

1. The provision of [Free text 8] to the land will not be the responsibility of [Government Organisation Lookup and] the State.

#### **Termination**

1. This Permit to Occupy will be terminated immediately on the death of the Permittee.

**Note** - If the Permit to Occupy is terminated on the death of the Permittee or voluntary surrender, and a decision is made by the Chief Executive that another Permit to Occupy may be issued for the same purpose and before 10 years from the date of issue of the permit to occupy, the new permit to occupy will be issued only to the Permittee's spouse, their children, their children's spouses, their grandchildren and like descendants of them or any of them.

2. This Permit to Occupy is issued on the clear understanding that should the structure thereon be destroyed by whatever means, no further structural improvements on the land will be allowed and the Permit to Occupy cancelled.
3. Should it be determined at some future date by any Court that native title exists over the subject land, this Permit to Occupy may be terminated and the Permittee or any subsequent Permittee may be required to remove any works established under this Permit to Occupy at the Permittee's or any subsequent Permittee's own cost, expense and risk. In that event, no compensation for works, development costs or loss of income shall be payable to the Permittee or any subsequent Permittee by the State of Queensland.



| <b>User variable list</b> |                                  |  |
|---------------------------|----------------------------------|--|
| <b>No.</b>                | <b>Variable</b>                  | <b>Description</b>   |
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| 2.                        | [Free text 1]                    | Insert the trustee (name) if lease/permit over reserve<br>Insert and the relevant Local Government (name) and<br><br>any affected public utility provider if electricity line is within permit to occupy over dedicated road or if |
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| 4.                        | [Free Text 3]                    | Eg: and trustee  |
| 5.                        | [Free Text 4]                    | Eg: minister and trustee is/are  |
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