Land Management Plans - inconsistent uses on reserves

With a view to reducing the number of Land Management Plans (LMP) required to be developed and the timeframes on preparing and approving LMPs, the Department of Natural Resources and Mines (DNRM) has streamlined the process and an LMP will only be required where the reserve (or part of the reserve) is being used for purposes inconsistent with the reserve.

1. The State or Local Government as Trustee (The Trustee) will apply the principles of DNRM’s policy PUX/901/209 Secondary Use of Trust Land relative to secondary uses on trust land.

2. A Land Management Plan will be required that suitably addresses all uses on the reserve, including those inconsistent for clarity on the capacity of the reserve.

3. Where the Trustee considers it appropriate, the Trustee will undertake Master Planning processes for its trust land.

4. Trustee will determine which of the two agreed formats the LMP will take (refer to page 3).

5. Where an LMP is submitted to DNRM for approval in terms of s.48 of the Land Act 1994 (the Act), comment or approval of the LMP will be referred back to the Trustee within 20 business days of receipt of the properly made application in DNRM.

6. Where an LMP is not approved in the first instance and comments are referred back to the Trustee seeking further advice or amendments to the LMP, the Trustee will refer the revised LMP back to DNRM within 20 business days of receipt of DNRM’s correspondence to the Trustee.

7. Where the LMP has been duly revised and returned to DNRM, and DNRM considers that its requirements are met, the plan will be approved and the Trustee advised within 20 business days of receipt of the Trustee’s correspondence in DNRM.

8. Should the Trustee consider that in the particular circumstances an LMP is not necessary (e.g. fresh trustee lease for an existing long term secondary use that is inconsistent), then the Trustee will write to the DNRM seeking support to operate outside of the policy guidelines and the Trustee’s reasoning in this regard. DNRM will make a decision on whether an LMP is required and will advise the Trustee in writing within 10 business days of receipt of the trustee’s correspondence.

9. Section 27 of the Land Act 1994 states that that land administered under this Act must be dealt with in a way not inconsistent with the Native Title Act 1993 (Cwlth) and the Native Title (Queensland) Act 1993.
Streamlining:

The two minimum formats are available on the DNRM webpage.

Headings such as History of the Subject Land, Local Area Description, Constraints and Opportunities of the proposed uses, Exclusivity and Restrictions, Commerciality, Infrastructure, Goals, Budget, Monitoring and Revision have been removed.

DNRM's Information Kit - Land Management Planning for Reserves or Deeds of Grant in Trust requires that officers assess an LMP on the following criteria:

- The impact of the proposed use/s on the strategic value of the site;
- The inconsistency of the proposal with the primary use of the land (if applicable);
- The impact of the proposal on the State’s interests;
- the degree of forward planning undertaken in relation to the site and the risk of incremental progression;
- the proposal’s relationship with the Local Government planning scheme; and
- the degree of commerciality and exclusivity associated with the proposal.

The revised formats of the LMPs requires the DNRM officer to concentrate on:

- Consistency/inconsistency of the proposal with the primary use of the trust land; and
- that the Trustee has addressed the community’s support/interest relative to the secondary use/s or where the Trustee considers that community consultation is not required, that the Trustee has included the rationale for the Trustee’s position in regard to not undertaking community consultation.

The Trustee as trustee will take responsibility for ensuring the following criteria have been considered in determining the uses proposed on the reserve are appropriate, including adequate address of community aspirations and concerns in these matters:

- impact of the secondary use on the strategic value of the site
- the degree of forward planning undertaken in relation to the site and the risk of incremental progression
- the proposal’s relationship with the Local Government planning scheme
- the degree of commerciality and exclusivity associated with the proposal.

The criteria, ‘the impact of the proposal on the State’s interest’, that DNRM officers are expected to assess under the Information Kit guidelines is a matter for the trustee and the relevant State agency. Under Government Land Policies, State departments are to secure land required for operational purposes on a market footing. Each State department is required to independently identify land that may be needed to discharge its functions.

Should a State department require land for potential or essential operational or community purposes then the relevant agency should make its requirements known to the trustee and to DNRM. The trustee will then be suitably informed and can consider any future use requirements of the site in its planning for the trust land and its support for any secondary uses (e.g. may support a lesser term). DNRM can flag its tenure file accordingly so that an officer will be aware to consider this factor in assessing any applications for secondary uses or LMPs over the trust land.
LAND MANAGEMENT PLAN – Format Options

1. Where a Master Plan has been prepared for the trust land and where the Trustee seeks approval
   of the LMP under s.48 of the Act the Master Plan will form the basis of the LMP and will attached
   as an Appendices to a ‘Master Plan LMP format – Inconsistent Use’ when submitting for
   approval.

   **Rationale:** The Master Planning process will have considered broader community requirements and
   included a suitable level of public consultation. Submissions put forward by the community and
   stakeholders will have been considered by the Trustee in its resolutions.

2. For all other LMPs the ‘Short LMP format – Inconsistent Use’ is to be applied. This revised LMP
   format will provide basic details about the trust land (e.g. description and location) and will
   highlight existing and proposed uses and community consultation details.

   **Rationale:** Management of trust land for its dedicated purpose is the responsibility of the Trustee.
   DNRM will rely on the Trustee in its role as trustee to have undertaken an appropriate level of planning
   to determine the capacity of the trust land, any multi-use opportunities and the community’s interests and
   aspirations for particular uses in particular locations and to also have suitably addressed any community
   concerns relating to any proposed secondary uses on the trust land. The Trustee will identify the level of
   consultation required and will advise on the outcomes of the consultation and confirm that the Trustee
   has addressed any feedback received. Where the Trustee has not undertaken community consultation
   then the Trustee will include comment on why this has not been considered necessary.

BACKGROUND

Legislation:

**Land Management Plans - Section 48(1)** of the *Land Act 1994* (the Act) states that the trustee of
trust land must, if asked by the Minister –

(a) Apply for the approval of a management plan for the trust land; and

(b) At all reasonable times, make all trust records available for inspection by the Minister and
   allow copies and notes of the records to be made.

**Section 48(2)** of the Act states that if a management plan mentioned in subsection (1)(a) is
approved, the plan may be registered in the appropriate register.

**Trustee leases - Section 57** of the Act requires the trustee to firstly obtain the Minister’s written ‘in
principle’ approval to a trustee lease (provided by way of letter), that the approval of the Minister
can be subject to conditions and the trustee lease must be endorsed with the Minister’s approval
before it is registered (provided by way of a Form 18 General Consent).

**Basis of Ministerial approval - Section 59(1)** of the Act states that the Minister may approve a
trustee lease only if the trustee lease is consistent with the purpose of the trust land and if the
trustee lease will facilitate or enhance the purpose for which the trust land was dedicated.

**Section 59(2)** of the Act states that the Minister may approve a trustee lease where the purpose is
inconsistent with the purpose of the trust land only if the lease would not diminish the purpose of
the reserve and all further improvements built or placed by the trustee lessee on the part of the
trust land that is leased or subleased are first approved by the Minister (this requirement is
reflected in the conditions of the trustee lease).
Trustee Permits - Section 60 of the Act states that a trustee may issue a trustee permit over the whole or part of the trust land and that a trustee permit must not be inconsistent with the reserve. A trustee permit must not be longer than 3 years and if longer than 1 year must be registered.

Policy and Procedure:

Departmental policy PUX/901/209 supports the legislative provisions for trustee leasing and provides guidance on a trustee’s use of trust land for inconsistent uses of the trust land.

The policy advises that land management planning is necessary to identify the qualities and appropriate use of community purpose trust land and involve the community in decisions about the use of this community resource.

The policy includes a table as a quick reference guide to when an LMP is required and whether the LMP should be a ‘basic’ or a ‘full’ LMP. The difference being that a broader scope of detail is required in a full LMP, including constraints and opportunities of the proposed uses, commerciality goals and budgets.

Information Kit - Land Management Planning for Reserves or Deeds of Grant in Trust

The information kit is divided into three sections. The first provides information for trustees regarding what an LMP is, when one is required and developing the LMP, the second sets out criteria that DNRM officers will use to assess the LMP and the third includes examples of a ‘Basic Trust Land Management Plan’ and a ‘Full Trust Land Management Plan’.