

Operational policy

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Formerly PUX/901/207
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Creation of trust land

Purpose

This policy addresses the dedication of a reserve or grant of trust land (i.e. a deed of grant in trust) under the *Land Act 1994* (Land Act), the appointment of trustees of trust land and access requirements for trust land.

Rationale

An area of unallocated state land (USL) may be dedicated as a reserve (an assessment as to the most appropriate tenure is not required under the Land Act to dedicate a reserve) or following an assessment of the most appropriate tenure under section 16 of the Land Act, granted in trust (i.e. a deed of grant in trust) for a:

- a. community purpose as defined under Schedule 1 of the Land Act, noting that the whole of the community purpose in Schedule 1 is the community purpose. (For example, conservation, scenic and land management is the community purpose, and a reserve for instance could not be dedicated for a community purpose only of conservation), or
- b. purpose that is the provision of services beneficial to Aboriginal people particularly concerned with the land, or
- c. purpose that is the provision of services beneficial to Torres Strait Islanders particularly concerned with the land, or
- d. purpose, other than a purpose mentioned above, that is for the community, having regard to community need and the public interest.

For the purposes mentioned in b. and c. the USL must be transferable land under the respective indigenous Land Acts.

A trustee is to be appointed to manage the trust land.

Native title **MUST** be assessed on the intended purpose of the trust land i.e. the purpose for which the reserve is to be dedicated or deed of grant in trust is granted.

Native title is not to be assessed on the intended facility, activity etc on the land.

For example, Module K is unable to be used for a reserve that is being dedicated for a community facility purpose where the intended facility is a public boat ramp carpark - community facility is a too broad and general purpose for Module K to apply. Similar Module L could not be used for instance for the community purpose of parks and recreational.

Due to the very broad and general nature of the community purposes in Schedule 1 of the Land Act, Modules such as K and L will not apply and where native title exists, an indigenous land use agreement is likely to be required.

For a person to be appointed as a trustee, that person must have some particular association or expertise with the trust land and its purpose, or with the local community and may be the following:

- a) the state
- b) a statutory body (includes a local government)
- c) an incorporated body
- d) a named individual.

Appointment of a single entity may provide for more effective decision making.

Incorporation provides increased protection for individual trustees from personal liability.

As a trustee is taken to be the owner of the trust land for legal proceedings, the trustee is required to have public liability insurance.

A suitable plan of the land is required to clearly identify the trust land in accordance with existing survey requirements.

As trust land is generally for the benefit of the public, access is required. Access is also required to enable the trustee to manage and maintain the trust land.

Policy

The preferred position of the Department of Resources (department) is for a trustee (other than state authorities or local governments) to be a single entity and that the trustee be an incorporated body. The trustee must have some particular association or expertise with the trust land and its purpose, or with the local community.

The trustee being appointed (apart from the state or a local government, both which have public liability insurance arrangements) is required to demonstrate that public liability insurance to the satisfaction of the department has been obtained and will be maintained. The amount of the insurance needs to be at least twenty (20) million dollars.

In the case of urban land, or where structural improvements are to be erected, survey is required. In other circumstances a suitable survey plan is required with the necessity for survey being determined having regard to the locality and any improvements proposed to be affected.

If a lot shown as public use land on a freehold plan under section 51 of the *Land Title Act 1994* (Land Title Act) is identified as a community purpose under Schedule 1 of the Land Act, the area is dedicated as a reserve for that community purpose upon registration of the plan, provided the Minister has consented to the plan.

As the requirement under the *Planning Act 2016* is that land required by local government as a condition of development must be taken as freehold, the Minister would only consent to the plan if in the State interest, and a person suitable to the Minister, usually the local government, has accepted trusteeship of the proposed reserve, including for the purposes of section 51A of the Land Title Act (i.e. dealing with access to public use land).

Further freehold land as part of a subdivision may be surrendered under the *Coastal Protection and Management Act 1995* for conservation, scenic and land management purposes. The agreement between the department and the Department of Environment, Science and Innovation is that land surrendered under that Act will only be considered by that agency if the land has access and an agreed trustee, generally the local government for the area.

Note: Section 290JB of the Land Act is similar to section 51A of the Land Title Act. A plan of subdivision under the Land Act though follows approval of an action under that Act, unless authorised under another Act e.g. the *Economic Development Act 2012*. Access requirements to the public use land will be considered as part of that approval.

Legislation

Economic Development Act 2012

Land Act 1962 (repealed)

Land Act 1994

Land Title Act 1994

Related documents

Standard – [Cadastral survey requirements \(SIG/2021/5792\)](#)

Human Rights

The department is committed to respecting, protecting and promoting human rights. Under the *Human Rights Act 2019*, the department has an obligation to act and make decisions in a way that is compatible with human rights and, when making a decision, to give proper consideration to human rights. To the extent an act or decision under this document may engage human rights under the *Human Rights Act 2019*, regard will be had to that Act in undertaking the act or making the decision.

Approval

Position	Name	Effective Date
A/Director, Land Services	Roslyn Hooper	12 Sep 2019

Version history

Version	Date	Comments
2	24/12/1997	Endorsed
2.1	01/07/2005	Conversion Project – New WORD/XML
3.0	13/12/2007	Updated to reflect Land Act amendments. Endorsed by Scott Spencer, Director-General, Department of Natural Resources and Water
3.1	11/11/2008	Minor amendment to change public liability insurance amount

3.2	09/02/2011	Updated to DERM
3.3	26/10/2012	Minor updates to reflect department name change to DNRM
3.4	15/10/2013	New DNRM template
3.05	20/06/2016	Minor amendment to review and insert text on new template
3.06	12/09/2019	Updated for corporate branding only
3.07	14/06/2022	Updated template and department name to Department of Resources
3.08	01/11/2023	Minor amendment to update DOGITS
3.09	30/04/2024	Updated for LOLA (No 2) 2023 amendments

Further information

- Contact your nearest business centre (https://www.resources.qld.gov.au/?contact=state_land), or
- Refer to <https://www.qld.gov.au/environment/land/state>, or
- Call 13 QGOV (13 74 68).

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