

# Guideline

## Dealings (including compensation) with Easements

**SLM/2013/419 (Formerly PUX/952/072)**

**Version 7.00**

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## Approval

Position	Name	Effective Date
Director, Land Operations Support	Anita Haenfler	30/03/2022

## Version history

Version	Date	Comments
4.00	28/10/2004	Updated
4.01	28/06/2005	Conversion project - New WORD/XML template
5.00	19/12/2008	Reviewed and updated
5.01	10/02/2009	Amended status of Notification from "NRW only" to "Public access"
5.02	04/08/2009	Amended to clarify compensation where existing infrastructure and to change from NRW to DERM
5.03	31/05/2011	Minor amendment for clarification
5.04	01/05/2013	Minor updates to reflect department logo and name
5.05	28/03/2014	Updated to the new DNRM template
5.06	17/06/2016	Updated to the new DNRM template
6.00	28/07/2017	Amended to include changes to compensation over a reserve held by a state government as trustee
6.01	04/03/2019	Minor amendment to remove reference to PMC and include correct reference to Government Land Transaction Policy
6.02	26/08/2019	Updated to reflect amendments to Land Act
7.00	30/03/2022	Reviewed for currency and updated to include information about battery storage

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## Table of contents

<b>Guideline</b> .....	1
<b>Dealings (including compensation) with Easements</b> .....	1
<b>Approval</b> .....	2
<b>Version history</b> .....	2
<b>Purpose</b> .....	5
<b>Rationale</b> .....	5
<b>Guideline</b> .....	5
Padmount transformers (including ring main units) providing electricity to the community. ....	5
Padmount transformers (including ring main units) providing electricity to a premises only .....	6
Substations .....	7
Consideration for easements .....	7
New easement .....	7
New easement over a reserve that is subject to a Land Act lease (i.e. a state lease). ....	8
Easement over existing infrastructure .....	8
Continuing easement .....	9
<b>Process</b> .....	9
Objection by applicant.....	11
<b>Legislation</b> .....	12
<b>Related documents</b> .....	12
<b>Human Rights</b> .....	12
<b>Further information</b> .....	12

## Purpose

To provide a guideline for the calculation of suitable compensation for the creation of easements over non-freehold land, other than a road, and a deed of grant in trust.

## Rationale

Pursuant to Section 362 of the *Land Act 1994* (Land Act), the creation of an easement over non-freehold land, other than a road, and a deed of grant in trust, requires the Chief Executive's written approval.

Under section 363 of the above Act, the state - Department of Resources (the department) administering the Land Act is the owner of unallocated state land (USL) and reserves i.e. as the grantor or grantee of an easement in respect of those lands.

In accordance with [Operational Policy Easement \(SLM013/410 = PUX/901/527\)](#), easements are to be granted only on determination of suitable consideration.

In addition to the above Operational Policy, government policy, in the context of the [Queensland Government Land Transaction Policy](#), requires government agencies to receive fair market value when disposing of or granting an interest in land. This policy binds all state agencies in their dealings with other state agencies, Commonwealth and local government, Government Owned Corporations (GOCs) and the private sector.

If compared with an acquisition of an easement in privately held land the applicant would have to pay all contingent costs, including the value of the easement interest. Therefore, to ensure that the state receives suitable consideration for an easement due regard must be given to the diminution in value of the land and the department's contingent/administrative costs.

In this regard, a minimum consideration of \$500.00 is deemed to be appropriate to grant an easement where the diminution in value of the land is nominal.

## Guideline

The following requirements relate to creation of easements over USL and reserves (and state freehold where that freehold is administered by the department).

This guideline generally only deals with consideration for an easement once a decision is made that an easement over the state land is appropriate. Prior to agreeing to any easement over state lands, regard must be made to the requirements of the Land Act and Operational Easement policy.

For dealing with the 3 electricity entities, Powerlink, Ergon and Energex, the following usages would not be suitable for easement purposes:-

### **Padmount transformers (including ring main units) providing electricity to the community**

Padmount transformers (grey rectangular boxes, generally for an area of about 6m X 3 m) require a minimal footprint with no boundary fencing.

Through the freehold subdivision/planning framework process, the department prefers, and the electricity entity is strongly encouraged to have their padmount transformers located on road areas, i.e. as an indentation in a lot.

However, where it is absolutely essential to locate a padmount transformer that services the community's needs on an existing reserve, the location is to have minimal impact on the reserve and its use. If the location is adjacent to a road then with concurrence of the trustee and the local government the subject area should be excluded from the reserve and dedicated as road. The department service provision fee of \$1,200 plus GST will be payable by the electricity entity for this action.

If the location of the padmount transformer is not located adjacent to a road, the electricity entity will be required to obtain a trustee lease over the area occupied by the transformer. Easements may be granted over the reserve to the electricity entity to secure its interest in the electricity cables and access requirements to and from the padmount transformer; however easements are not appropriate to secure the electricity entity's interest in the land for padmount transformers.

**Note:** the requirements of this guideline document for padmount transformers providing electricity to the community may apply equally for Energy Queensland's (Energex and Ergon) battery storage systems providing electricity to the community. Battery storage systems associated with renewable energy are rectangular in shape, sit on a concrete pad, must be unfenced but may be protected by posts (bollards), and to occupy an increased (not significant) area of approximately 5m x 9m.

## **Padmount transformers (including ring main units) providing electricity to a premises only**

It is the department's position in respect of padmount transformers to provide electricity only to a premises on trust land (a reserve or deed of grant in trust) or a lease similar to the requirements as outlined above.

The department would prefer that a padmount be located outside the trust land or lease boundary.

However, if this is not possible and if an electricity entity requires "tenure", a trustee lease (for trust land) or a sublease (for a lease) is the most appropriate "tenure", provided the padmount is for electricity supply only for the premises located on that state land.

A condition of the trustee lease or sublease is to be that the supply of electricity is only for the premises located on that land (Note: a sublease for a padmount is appropriate if the supply of electricity is only to the premises on the lease, as a lessee is entitled to services).

An easement for the padmount is not to be considered.

### **Exception to the above**

If Ergon or Energex are able to demonstrate that a padmount is unable to be located other than on a freeholding lease, an easement for a padmount will be acceptable.

## **Basis**

Although a freeholding lease is still a lease under the Land Act, the land will inevitably become freehold tenure, and outside the administration of that Act.

Accordingly, if the padmount is unable to be located elsewhere, an easement over a freeholding lease will be considered appropriate.

As mentioned, a request for an easement over other state land tenures for a padmount is not to be considered by the department.

## **Substations**

Substations consist of more substantial infrastructure requiring larger areas, including a buffer, with a need for security fencing.

Where necessary, in new subdivisions, land required for a substation is to be taken by the electricity entity as freehold.

If it is essential to locate a substation that services the community's needs on reserve land, the location is to have the minimalist impact on the reserve and its use. If the department finds that the electricity entity's needs are best met by locating the substation on the reserve land and with the concurrence of the trustee and provision of appropriate access, action will need to be taken to excise the area from the reserve and offer the land in freehold to the electricity entity. The electricity entity will be responsible for all costs, including the payment of the market value for the land, and survey etc.

The excising of land from a community reserve to accommodate a substation should only be considered when all other options for location of the substation have been exhausted.

## **Consideration for easements**

The consideration for an easement over two or more separate lots must be assessed for each individual lot, as each lot has its own asset value. The minimum consideration, if applicable, can only be attributed to each separate lot and not the aggregate of lots.

If an application is received for two or more easements over the one lot, including if over the same area of the lot, consideration for the easements should be assessed having regard to the diminution in value of the land in respect of each easement separately.

Further, the requirements under the heading Concession Purchase Price Provisions of Guideline [Allocation of land to state government departments and constructing authorities \(SLM/2013/418 = PUX/952/088\)](#) for where native title interests have been dealt with as outlined under the above heading, apply.

## **New easement**

Subject to the above requirements,

1. Compensation for an easement over a reserve held by a state government department, as trustee, will be negotiated between the trustee department and the applicant, but only where:

- a) the reserve is an operational purpose reserve and the reserve is listed as the state government department's asset on the GLR and its asset register; or
  - b) the state government department provides evidence that it had earlier paid for the land prior to the land being dedicated as a reserve, (either for a community or operational purpose).
2. An easement may only be granted by the department over such a reserve held by a state government department, as trustee, provided the department has received the required Form 18 General Consent completed by the trustee department.
  3. For all other reserves, the trustee may only negotiate compensation for any improvements adversely affected by the easement. With regard to the land, the trustee is not entitled to any compensation and the applicant must negotiate with the department as to the quantum of compensation.

In accordance with Operational Policy Easement, an easement is to be granted only on determination of suitable consideration. The quantum of this consideration sought must be equivalent to the diminution in value of the land determined by a registered valuer. Notwithstanding the valuer's assessment, the consideration payable to the department must not be less than \$500.

4. Compensation for an easement over USL under the control of another state government department will be negotiated between the grantee and that department. The department has to receive a Form 18 General Consent completed by the controlling department in order to grant the easement.

In regard to the situations in 1 to 3 above, the department will be the grantor, as well as requiring to approve the easement under section 362 of the Land Act.

### **New easement over a reserve that is subject to a Land Act lease (i.e. a state lease)**

Where an easement is required over a reserve that is the subject of a Land Act lease for grazing purposes only (refer Operational Policy Easement), the grantee may, after being granted the easement over the lease, seek a similar easement over the reserve, and the principles as above for new easements will apply.

### **Commencement of Works**

Approval is not to be granted for the commencement of works prior to the grant of easement.

### **Easement over existing infrastructure**

An easement over existing infrastructure may be granted on payment to the department of the minimum consideration of \$500 where existing infrastructure for a public utility was constructed with the prior approval of the department and prior to February 2001 on/over/under USL or a reserve not held by another state government department, as trustee, and due to past practices (including that the legislation at the time may not have provided for an easement to be registered over USL or a reserve), an easement was not sought, or was lost due to tenure changes. If the existing infrastructure is located on/over/under USL or a reserve that is held by another state government



department, as trustee, no consideration is to be sought by the department. However, the department will require the public utility owner to provide the department with the required Form 18 duly executed by that other department prior to approval and granting any easement.

## **Continuing easement**

When a deed of grant in trust, lease or license ends or a reserve is revoked (which was encumbered by a public utility easement) and the public utility owner applies to the Minister for continuation of the easement, the public utility owner must pay suitable consideration to the department for the easement. In relation to the revoked reserve, compensation is only required when the state has previously not received compensation of market value as set out in this guideline.

The quantum of consideration payable to the department must be equivalent to the diminution in value of the land determined by a registered valuer having regard to the future use of the land.

Notwithstanding the valuer's assessment, the consideration payable to the department must not be less than \$500.

When an area of freehold land is proposed to be surrendered to the state for the purpose of being set apart as a reserve (generally as a consequence of a reconfiguration of a lot/ subdivision application to the local government) and the land proposed to be surrendered is encumbered by a public utility easement, no compensation is payable to the department for continuation of the easement over the proposed reserve.

However, the grantee of the subject easement must agree to terms and conditions of the existing easement being replaced by the terms and conditions required by the department. Insofar as relates to electricity easements, the department required terms and conditions are as per Standard Document No. 711950329 lodged in the Land Registry. (Note: in very limited circumstances and for electricity works to be located below the ground only, dealing No. 711950324 may be requested to be used by one of the electricity entities).

NOTE: Only a public utility easement may be continued over state land.

## **Process**

The following process is to be followed when the department is the "owner" of USL and reserves, and for state freehold where that freehold is administered by the department.

- I. For an application for an easement, the quantum of consideration needs to be determined. The valuation to determine the effect the easement has on the land is to be in line with normal accepted easement valuations on freehold land.
- II. Initially, the state land officer is required to obtain a 'desktop' valuation (exclusive of GST) from SVS to determine the diminution in value of the land should the easement be granted.
- III. For the purpose of the 'desktop' valuation, regard should be had to the department's asset value in LAMS, departmental file records, local knowledge and if considered necessary, preliminary discussions with the applicant's valuer. In this regard the SVS valuer should liaise with the applicant's valuer to gain an understanding of the impact of the proposed easement on the land, what agreement, if any, has been reached with the adjoining landholders and the valuation methodology used by the applicant. (Insofar as relates to Powerlink\*, Energex and

Ergon each party has been advised that when seeking an easement it should provide the name and contact number of its valuer.)

- IV. If the assessed diminished value of the land is \$10,000 or less (exclusive of GST) no further valuation advice is required and an offer may be made in accordance with clauses v. and vi. hereunder. Otherwise the following applies:-
- a) If the 'desktop' valuation determines that the diminished value of the land is greater than \$10,000 (exclusive of GST) and if in the opinion of the valuer the 'desktop' valuation represents a fair and reasonable assessment of the diminution in value of the land, the state land officer may make an offer to the applicant in accordance with clause vi. hereunder.
  - b) However, if in the opinion of the valuer, a full valuation is required to adequately address the diminution in value of the land, the state land officer is to obtain a written quote from SVS to provide a full valuation of the effect of the easement on the land.
  - c) Notwithstanding clauses a. and b., a full valuation must be obtained when the 'desktop' valuation has assessed the diminution in value of the land to be \$50,000 or more.
  - d) In respect of clauses b. and c., upon receipt of the quote the applicant is to be advised that the department will need to obtain a valuation to determine a suitable consideration and any reasonable costs incurred in obtaining this valuation will be borne by the applicant. The applicant is to be advised of the cost of the valuation as per the written quote from SVS.
  - e) Upon receipt of a written acceptance from the applicant to bear the reasonable cost of the valuation in this matter, the state land officer is to request a valuation report of the diminution in value of the land (exclusive of GST).
  - f) When the valuation is completed the state land officer may make an offer to the applicant in accordance with clause v.
- V. The Offer account in eLVAS must contain details of the following (and proceed as follows):
- easement consideration (including GST);
  - easement consideration (exclusive of GST);
  - GST on easement; and if applicable valuation recovery costs (if a valuation report was requested as per clauses iv. b and c., the quoted cost of the valuation must be sought as part of the offer).
  - In the 'Offer note' insert relevant comments to describe the easement, for example Easement A in Lot 123 on RP89756".
  - The account is then forwarded to the applicant with a request for payment due in 20 business days.
  - The consent of the Chief Executive (or delegate) to the grant of the easement is not to be provided until the offer has been accepted and the consideration and any valuation costs paid in full.

- As a consequence of granting the easement, the value of the property may be diminished (refer to SVS report) and if so, the state land officer must take appropriate action to notify QVAS of the diminished land value.

VI. All applications to grant an easement must be processed in eLVAS and the consideration sought must be in accordance with the table hereunder.

<b>Valuation of Effect of Easement on Land</b>	<b>Consideration Payable</b>
If the valuation (exclusive of GST) is less than or equal to \$500	\$500 (plus 10% GST) (This is the minimum consideration payable.)
If the valuation (exclusive of GST) is greater than \$500	Amount equivalent to valuation (plus 10% GST)
<b>Examples:</b>	
Valuation = \$300	Consideration = \$500 (plus GST) (minimum payable)
Valuation = \$1,250	Consideration = \$1,250 (plus 10% GST)
Valuation = \$15,000	Consideration = \$15,000 (plus 10% GST)

## **Objection by applicant**

If the applicant objects to the consideration sought by the department the following procedure will apply.

- The department's minimum consideration for granting an easement is \$500 and no negotiations are to be entered into with the applicant to waive or reduce this amount.
- For the purposes of considering the applicant's objection the valuer who provided the initial valuation is to be requested to liaise with the applicant with a view to having the issue resolved.
- If this approach fails to achieve a satisfactory resolution the matter should be dealt with formally and the department should obtain a full valuation, if not already done so.
- Upon receipt of the full valuation a "without prejudice" conference should be held to discuss and resolve the issue.
- If through this process the matter of compensation cannot be resolved, the provisions of the Queensland Government Land Transaction Policy Section 3.4 Disposals, Inter-Agency Transfers valuation requirements should be applied.
- As a consequence of this process any costs incurred by SVS or any other valuer engaged by the department will be initially borne by the department and reimbursement of these costs must be obtained from the applicant. The easement is not to be granted until the department has been paid the agreed amount of consideration and also has been reimbursed by the applicant for the SVS/valuers costs.

This guideline applies generally to Powerlink, however, that organisation has a separate arrangement with the department where the Land Services unit of the department is responsible for all new easements required by Powerlink.

## Legislation

*Land Act 1994*

## Related documents

[Queensland Government Land Transaction Policy](#)

Guideline [Allocation of land to state government departments and constructing authorities \(SLM/2013/418 = PUX/952/088\)](#)

Operational Policy [Easement \(SLM/2013/410 = PUX/901/527\)](#)

## 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.

## Further information

- Contact your nearest business centre ([https://www.resources.qld.gov.au/?contact=state\\_land](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).