

# Guideline

SLM/2018/4386  
Formerly PUX/901/315  
Version 1.02  
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## Land allocation and specific requirements

### Purpose

This policy provides guidance on specific cases when issuing a deed of grant or leasing state land. It does not cover the methods or other considerations when disposing of state land.

### Guideline

#### General requirements for releasing land

##### Access

When land is allocated (e.g. deed of grant, lease or reserve) the provision of dedicated access is a fundamental principle. In the event that this is not possible or feasible, the following options are acceptable:

- If to be granted as freehold, the land is amalgamated with adjoining freehold that has access and held by the person offered the land.
- If to be offered as leasehold, amalgamation with that person's adjoining lease which has access.
- If the land cannot be amalgamated e.g. if land with access is freehold, and the tenure offered to the owner of that freehold is a lease, a covenant under section 373A of the *Land Act 1994* (Land Act) is required to 'tie' the freehold and lease to provide for no separate transfers.
- Easement access to be arranged over adjoining freehold, perpetual lease or freeholding lease or an operational reserve, when there is a high level of certainty of the reserve remaining in existence; however, consideration must be given to Operational policy - Easement (SLM/2013/410 = PUX/901/527). Easement access to freehold or leasehold land will not be provided over a community purpose reserve.
- Access is required to trust land to facilitate the public use of the reserve (if appropriate) and also for management and maintenance purposes. If a community purpose reserve does not have dedicated access, access may be gained via an adjoining community purpose reserve that has dedicated access.

##### Improvements

The state or previous owner is entitled to receive payment for improvements upon further leasing or sale of the land. Determining a not negotiable value for what may be regarded as minor improvements reduces administration processes and permits early finalisation of a sale or lease.

Where there are improvements on the land to be made available section 139 of the Land Act allows for a provisional value or not negotiable value. If the value of the improvements is estimated to be \$5,000 or less a not negotiable value for improvements will be stated. If the value of the improvements is estimated to be more than \$5,000 a provisional value will be applied.

Refer to Guideline - Valuations for dealings under the *Land Act 1994* (SLM/2013/656= PUX/901/656).

## **Occupation fee**

Section 405B of the Land Act allows a fee to be charged if a person has been unlawfully occupying land and an offer is made for tenure of that land. It is not unreasonable for the state to require a person to pay a fee if that person was occupying the land prior to the issue of tenure.

A fee is to be charged from the date it is determined that the unlawful occupation started until the deed or lease, or other tenure issues. The fee, including on a pro rata basis if applicable, is to be equivalent to rent that would have been payable for the intended use of the land.

## **Leases for particular purposes**

A lease must issue for a purpose, and with suitable conditions. Lease conditions include mandatory conditions and regulated conditions (i.e. all leases are subject to these conditions) which cannot be changed, and imposed conditions i.e. conditions that are considered appropriate for the particular lease.

- Mandatory conditions – refer to Chapter 5 Part 2 Division 1 of the Land Act;
- Regulated conditions – refer to Chapter 5 Part 2 Division 3A of the Land Act and section 20 of the Land Regulation 2020; and
- Imposed conditions - refer to Chapter 5 Part 2 Division 2 of the Land Act.

## **Grazing**

A term lease for grazing will be subject to a condition of lease that the lessee must not affect any structural improvements other than fencing, temporary yards and minor watering infrastructure including troughs and pipelines on the leased land, without the approval of the Chief Executive having been first obtained.

## **Leases for Recreational Purposes**

Where a term lease is to be issued for recreational purposes (e.g. golf and other sporting clubs) a single lease will issue to cover both the clubhouse land and the balance area. Splitting the land into a clubhouse lease and a balance lease should not occur.

## **Oyster Farms**

A term lease for aquaculture (oyster production) will only be issued to applicants who hold a complementary resource allocation authority issued under the *Fisheries Act 1994*. The lease will be conditioned so that only minor structural improvements are allowed e.g. storage shed. The lease will not allow for the development of a residence or other major structural improvements.

## Islands

Apart from those residential islands already leased or subdivided for residential purposes, further land on islands will not be leased or sold in freehold for private residential purposes. New term leases only will be granted on islands for tourist developments.

The requirements for dedicated and/or constructed access may not apply in these circumstances as access can be achieved via the water.

*Tourist developments on existing tenures, including existing perpetual lease, are not affected.*

## Lease below high water mark

Leases below high water mark at times have no dedicated access and are issued for use in conjunction with the adjoining land above high water mark. If they are considered separately to the parent dry land, there may be on going management difficulties.

If land below high water mark is to be leased, it must be tied by covenant to provide for no separate transfer with the adjoining land which is above high water mark, refer to section 373A of the Land Act.

## Resumption condition of a lease

A resumption condition (under section 208 of the Land Act) giving the lessee 6 months' notice and compensating, for lawful improvements only, should be included in a lease over:

1. a reserve (i.e. a State Lease), particularly grazing; or
2. unallocated state land where it has been determined that the land will be required by the state for a different purpose, including a public purpose in the short to medium term and where the conditions of the lease:
  - do not allow any structural improvements;
  - allow only improvements of a minor nature e.g. fencing, stock yards, sheds, girl guides hut, canteen, change rooms, toilets; or
  - allow for development work e.g. for a sports field.

## Legislation

*Fisheries Act 1994*

*Land Act 1994*

Land Regulation 2020

## Related Documents

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

Guideline - [Valuations for dealings under the Land Act 1994 \(SLM/2013/488 = PUX/901/656\)](#)

## 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, Land and Native Title Services | Roslyn Hooper | 26/08/2019     |

## Version history

| Version | Effective Date | Comments  |
|---------|----------------|---|
| 1.00    | 15/08/2018     | Updated to new document type – ‘Policy’ to ‘Guideline’. Previously “Criteria and method for disposal of unallocated State land”; Updated to new template and new format ‘Significant development’ information has been removed and included in a new Guideline – Significant developments |
| 1.01    | 26/08/2019     | Updated to reflect amendments to Land Act.  |
| 1.02    | 17/03/2022     | Updated to new template and changed department name to the Department of Resources  |

## 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).

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