

Guideline

SLM/2018/4386
Formerly PUX/901/315
Version 2.00
30/06/2022

Land allocation and specific requirements

Purpose

This policy provides guidance on specific cases primarily when issuing a deed of grant (freehold) or leasing state land. It does not cover the methods or other considerations when disposing of state land. Where appropriate, freehold is generally the preferred tenure.

Guideline

General requirements for allocating land

Eligibility

A person must be eligible to hold land under the *Land Act 1994* (Land Act). Refer to Operational Policy [Eligibility to hold land Policy SLM/2013/584 \(formerly PUX/952/120\)](#) - although that policy generally applies to land under the Land Act, note that as only an adult (as an individual) is able to apply for land under the Land Act, freehold may only issue to an adult, and not a minor.

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 and section 97A of the *Land Title Act 1994* is required to 'tie' the freehold and lease to provide for no separate transfers.
- If dedicated access or the options listed above are not viable, only then may easement access be arranged over adjoining freehold, perpetual lease, a rolling term 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 though 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 for a similar or compatible purpose and with the same trustee and that reserve 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 not negotiable value or a negotiable value (i.e. provisional 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 \(SLM/2013/488= PUX/901/656\)](#)

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 including if freehold is to issue.

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.

- General 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 and Schedule 1 of the Land Regulation 2020; and
- Imposed conditions - refer to Chapter 5 Part 2 Division 2 of the Land Act.

Volumetric lease

For a lease of a lot on a volumetric format plan (volumetric lease) a bond/bank guarantee, of an amount suitable for the maintenance, completion, demolition and removal, and restoration of the structure/area, will be required as a condition of the lease. The amount of the bond is to be reviewed every two years and amended, if required, as provided for under the lease condition - section 209 of the Land Act.

Guideline – [Roads under the Land Act 1994 \(SLM/2013/725 = PUX/952/122\)](#) also provides guidelines for roads closed volumetrically.

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.

Grazing

As indicated, generally land is to be allocated as freehold.

If there is an opportunity though to lease an area of unallocated State land for an interim period for grazing e.g. for management of the land until the land is required for a later use, the term lease 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.

Note: If a lease is to be considered over a reserve, the same conditions of lease are to be included

A lease of unallocated State land **MUST** also include a condition that an application for conversion is unable to be made.

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.

The lease is also to include a condition that an application for conversion is unable to be made.

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.

Section 35 of the Land Regulation 2020 sets out the calculation of the rent for the land on which the club house and any associated amenities are situated and for the rest of the land.

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 necessarily 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 i.e. seaward of a property

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

If land seaward of a property is to be leased, it must be tied by covenant to provide for no separate transfer with the adjoining land landward, refer to section 373A of the Land Act and section 97A of the *Land Title Act 1994*.

Significant Developments

A significant development is defined under section 128 of the Land Act.

A significant development usually entails a number of investigations prior to commencement. Once it is decided that the development may proceed, there is a need to assess the proponent's ability to deliver the project. Consequently, section 129 of the Land Act requires that an assessment of the proponent's financial and managerial capability (FMC) must be done prior to the issue of a lease.

A note is to be made in the appropriate register under section 130A of the Land Act.

A FMC is also required, if the lease is to be transferred or there is a significant change to the lessee more particularly if the lease conditions to develop the lease land have not been satisfied.

The term of a lease to undertake a significant development is to be no longer than the expected time to complete the development e.g. 5 years. Section 129A of the Land Act then provides sufficient certainty to the lessee for the issue of the longer-term tenure (freehold or lease) once the development has been completed in accordance with the lease conditions.

Investigation

Where initial site investigation is required for a significant development, a permit to occupy is to issue. The annual rental will be fixed at an amount equal to 1% of the highest and best current land use value, excluding the potential use under investigation.

Performance guarantee bond

If a lease is issued after investigation, a performance bond, is required. This requirement is to be included as a condition of the lease. Refer to section 209 of the Land Act.

The bond is to be of an amount sufficient for the maintenance, completion, demolition and removal, and restoration of the structure/area. The developer is to bear any cost incurred in the assessment for the value of the bond.

The bond is to cover the period from the commencement of the lease, to at least until the completion of the relevant development conditions and the longer term tenure is issued.

Purchase price

If a term lease for a 'significant development' includes a condition setting the purchase price for the land, based on a predetermined value, the condition must provide for the purchase price to be increased as per the standard lease condition "Grant in fee simple upon compliance with conditions" as part of "Other conditions the Minister considers appropriate".

If an application is made, under section 210(2) of the Land Act, to amend a condition of the lease the nominated purchase price must also be reviewed.

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 \(SLM/2013/488 = PUX/901/656\)](#)

Operational policy - [Land allocation: deciding most appropriate use, tenure and management \(SLM/2013/481 = PUX/901/101\)](#)

Guideline - [Allocating most appropriate use and tenure of state land in coastal areas \(SLM/2013/420 = PUX/952/096\)](#)

Operational policy - [Allocation of land in priority in terms of the Land Act 1994 \(SLM/2013/499 = PUX/901/316\)](#)

Guideline - [Permit to occupy \(SLM/2013/482 = PUX/952/118\)](#)

Operational policy - [Creation of trust land \(SLM/2013/479 = PUX/901/207\)](#)

Procedure – [Resumption in relation to land under the Land Act 1994](#)

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
Director, Land Operations Support	Anita Haenfler	30/06/2022

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
2.00	30/06/2022	Full review and updated to new Department of Resources template ‘Significant development’ information reinstated in this document.

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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