

# Operational policy

SLM/2013/495  
Formerly PUX/901/210  
Version 4.02  
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## Leases over Reserves

### Purpose

To support the role of reserve trustees by:

- Establishing a clear policy position in respect of leasing of reserves;
- Clearly recognising the roles and responsibilities of trustees in the leasing of reserves; and
- Facilitating more effective and efficient leasing of reserves by trustees.

This policy deals primarily with leases over reserves under the *Land Act 1994* (Land Act). Leases over protected areas (e.g. national parks), State forests and timber reserves must only be dealt with at the direction of the business unit responsible for the *Nature Conservation Act 1992* and/or the *Forestry Act 1959* - they may wish to issue an authority under legislation under their control, or request that State Land Asset Management consider the issue (renewal) of a lease under the Land Act.

### Rationale

The policy on the secondary use of trust land (PUX/901/209) provides clarification on circumstances in which trustee leases and trustee permits may be issued in respect of trust land. Trust land includes reserves and deeds of grant in trust set aside and granted for a community purpose under the Land Act or an operational purpose under the *Land Act 1962*.

Note: deeds of grant in trust are not dealt with under this Policy - a State lease or a permit to occupy is unable to issue over a deed of grant in trust.

The Minister is able to issue State leases over reserves in terms of sections 15 and 32 of the Land Act. There are many existing State Leases over reserves, typically over camping and water reserves and the like in rural areas. The chief executive is also able to issue a permit to occupy over a reserve under section 177 of the Land Act. Often these leases and permits to occupy have been issued to enable the reserved lands to be used for grazing purposes.

Trustees of reserves, with the Minister's or Chief Executive's approval in terms of sections 57 and 59 of the Land Act may issue a trustee lease for uses which are consistent (or in some circumstances inconsistent) with the reserve's purpose.

A trustee may also issue a trustee permit under section 60 of the Land Act but subject to the requirements of that section and the Act, and section 13 of the Land Regulation 2009, including that the trustee permit must be for no more than 3 years (and must be registered if more than 1 year), must not be inconsistent with the community purpose of the trust land, and must not allow any structural improvements.

When existing State leases over reserves become due for renewal, on receipt of an application from the lessee in terms of section 158 of the Land Act, the Department of Natural Resources, Mines and Energy (the Department) commences an investigation to determine whether or not a further lease should issue. Local government and the trustees of the reserve are consulted as part of this process.

Past practice has been such leases will be renewed if the provisions of section 159 of the Land Act\* are satisfied.

Further, the Department may also need to consider the “re issue” of an existing permit to occupy over a reserve. However, trustees, such as local governments, have been appointed to care for and manage the reserves, and could alternatively lease or if the circumstances allow, issue a trustee permit for the land and re-invest the revenue from leasing or issue of a trustee permit into managing the land.

It would be inappropriate for the Department to continue to deny revenue opportunities to trustees by issuing State leases or permits to occupy over reserves which could otherwise be issued as trustee leases or trustee permits and managed by the trustee.

It would be inappropriate for the Department to set aside the views of its trustees on reserve leasing matters unless the Department has to respond to overriding State interest considerations.

The *Stock Route Management Act 2002* provides for an enhanced local government role in management of stock routes through the requirement of a stock route network management plan for the twenty-four (24) local governments prescribed under the Stock Route Management Regulation 2003.

These plans must be consistent with the State stock route network management strategy. Camping and water reserves and the like form part of this network. The trustee leasing of or issuing of a trustee permit for Camping Reserves and Water Reserves adjacent to Stock Routes will not be allowed if the local government stock route network management plan precludes such leasing or issuing of a trustee permit.

\*in deciding whether a new (State) lease is the most appropriate tenure under section 159(1)(m), section 16 of the Land Act applies with necessary changes, and the trustee of the reserve must be consulted - see section 159A(1) and (2) of the Land Act.

If there are State interest considerations, or the trustee does not wish to undertake the leasing, or issuing a trustee permit, a permit to occupy, particularly if the use is for grazing, may be decided as the most appropriate tenure, in lieu of a State lease issuing.

Where a lease is being renewed and the trustee is unable to authorize the grazing, the lease can be renewed for the term of the expiring lease.

This Policy does not address whether a State lease or permit to occupy is the most appropriate tenure. This issue is addressed in Permit to Occupy Policy.

## **Policy**

For the purposes of this Policy only, reference to leasing by the Department or the State includes a State lease or a permit to occupy.

Trustees of reserves are responsible for the care and good management of those reserves held under their trusteeship.

In carrying out these responsibilities, trustees make decisions about the management and use of reserves including such things as regulating public access and determining when trustee leasing or a trustee permit for the reserve is appropriate. Trustees operating at the local level are well placed to plan for and manage the use of the reserves.

Where a trustee determines that a reserve should be leased, the trustee can choose either to issue a trustee permit (if the circumstances allow) or the lease itself (trustee lease) or it may request that the Department undertake the leasing.

In order to offset the costs of performing management responsibilities, trustees should be able to obtain revenue from trustee permits or leases over reserves where a trustee permit or such leasing is appropriate.

A trustee lease (or if the circumstances allow, a trustee permit) issued by the trustee is preferred to leasing of the reserve by the Department in most cases.

When existing State leases over reserves come up for renewal, the Department writes to the lessees to ascertain if they wish to apply to renew the lease under section 158 of the Land Act (if the lessee has not already made an application).

Once the existing lessee has applied for renewal, the provisions of sections 159 of the Land Act must be considered including to ascertain if it is appropriate to re-lease the land. Part of this process involves writing to the trustee (normally the local government) and at this stage the views of the trustee about issuing a trustee permit or a trustee lease instead of leasing by the Department should be canvassed, unless State interest considerations are known and dictate that the State should retain control of the leasing.

Therefore, where the application is for the renewal of a State lease to graze a reserve, the tenure options, in order of preference, are to be-

- trustee permit (grazing for the purposes of the issue of a trustee permit is considered as not being inconsistent with the community purpose of the reserve as grazing may assist the trustee in the maintenance of the reserve);
- trustee lease and for a reserve that forms part of the stock route network, the term of the trustee lease is to be for no more than 5 years;

and where the trustee is not to authorise the grazing, the lease can be renewed for the term of the expiring lease.

If the trustee is unable to authorise the grazing and no previous lease exists then a permit to occupy is the more appropriate tenure.

Note: Any "leasing" of a reserve that is part of stock route network must consider the requirements for stock routes outlined in this Policy and PUX/901/238, Land Dealings affecting the Stock Route Network.

Where a trustee determines that a reserve should not be leased, the State would not exercise its powers to lease unless there is a State interest consideration that needs to be addressed.

Having ascertained that the land or part of the land is available for leasing though, and there are no State interest considerations, the following apply -

1. If the trustee wishes to issue a trustee permit (if circumstances allow), or a trustee lease or a trustee permit may be considered the most appropriate tenure for the purposes of section 159A as it would not be in the public interest or the object of the Land Act to deny a trustee appointed by the State to manage the land the opportunity to manage the "leasing". The application for renewal of the State lease may be refused on these grounds and the lessee should be advised accordingly and referred to the trustee for further action; or
2. If the trustee prefers the Department to undertake the leasing, continue with the application for leasing by the Department.

Note; any leasing should be undertaken by the Department if there are State interest considerations, either known at the time when the application was made, or determined through investigation of the application.

The Minister's approval is not required for a trustee to issue a trustee permit, but as mentioned previously, a trustee permit must meet the requirements of the Land Act, particularly sections 60 and 61, and section 13 of the Land Regulation 2009.

The approval of the Minister or Chief Executive however is required for trustee leases in accordance with sections 57 and 59 of the Land Act and the policy entitled "Secondary Use of Trust Land" (PUX/901/209).

To achieve greater administrative efficiency, trustees responsible for multiple reserves and/or leases, in particular local governments, are encouraged to fully utilise the reserve planning guidelines [http://www.dnrme.qld.gov.au/data/assets/pdf\\_file/0014/110426/land-management-information-kit.pdf](http://www.dnrme.qld.gov.au/data/assets/pdf_file/0014/110426/land-management-information-kit.pdf) issued by the department and to enter into standard lease term arrangements with the Department.

The State has from time to time issued term leases over land excised from reserves. If, prior to expiry of the lease, a proposal is submitted by the trustee of the reserve to include the lease land back into the reserve, then this may be approved provided the lessee is prepared to surrender the lease, the key decision required to be made is whether the lease land should be added back into the reserve on the grounds that this is the most appropriate tenure and use for the land.

This approach applies to any land being considered for inclusion in a reserve irrespective of any former reserve status. The revenue considerations are not a deciding factor as allocation of the land to its most appropriate use and tenure is the key driver under the Land Act. Once most appropriate tenure and use is decided, the revenue issues, such as obtaining appropriate lease rental from leases, come into play.

## Definitions

### State Lease

- a lease issued over a reserve under section 15(2)(b);or
- a special lease issued over a reserve under section 203(b) of the repealed Act.

**Trustee Lease** - a lease given by the trustee of trust land with the Minister's approval, under section 57 of the Land Act.

**Trustee Permit** - a permit given by a trustee of trust land

## Legislation

*Land Act 1994* sections 15,32,57,59, 60, 61,158,159,159A, 160,177.

Sections 32, 159A and 177 require that the trustee must be consulted prior to any State lease or permit to occupy is issued.

Land Regulation 2009, section 13 in particular

## Related documents

Secondary Use of Trust Land Policy SLM/2013/493

Permit to Occupy Policy SLM/2013/482

Deciding the Most Appropriate Tenure of state land SLM/2014/1012

Land Dealings affecting the Stock Route Network SLM/2013/363

## Approval

Position	Name	Date
A/Director, Land Services, Land and Native Title Services	Roslyn Hooper	26/08/2019

## Version history

Version	Effective Date	Comments
1	01/02/2005	Endorsed
1.1	01/07/2005	Conversion Project – New WORD/XML template
2	13/12/2007	Updated to reflect Land Act amendments, Endorsed by Scott Spencer, Director-General, Department of Natural Resources and Water
2.1	26/02/2008	Correction to Policy Hyperlink 101 to 386
2.2	03/02/2011	Minor updates to reflect departmental name change to DERM
3	17/12/2012	Amended to include information on trustee permits
3.1	13/03/2013	Updated to change government logo

3.02	07/03/2013	Minor update to include reference to the Stock Route Network policy
4.00	18/12/2014	Updated to reflect changes to the Stock Route Network policy
4.01	23/01/2017	Minor amendment to insert text on new template
4.02	26/08/2019	Updated to reflect amendments to Land Act.

## Further information

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