

# Guideline for State, Statutory Body and Local Government Trustees

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## Managing actions consistent and inconsistent with the purpose of trust land

### Purpose

This document provides guidance to local government trustees to assist them to:

- determine whether actions, trustee leases and trustee permits are consistent with the purposes of trust land, and
- where these are inconsistent, consider and address diminishment and adverse impacts on the public interest through a management plan.

This guideline is relevant to local government trustees taking trustee actions to maintain and manage trust land (sections 52 – 52AB), granting trustee leases (section 57) and issuing trustee permits (section 60) under the Act.

Trustees who are the State, a statutory body as defined under the *Land Act 1994* (the Act) or have a Written Authority under section 64 of the Act may also find this guideline useful.

It does not apply to trustees who are not the State or a statutory body, to trustee leases (construction) granted to the State for the construction of transport infrastructure and the provision of transport services on the trust land, or for leasing Aboriginal or Torres Strait Islander trust lands as defined under the *Aboriginal Land Act 1991* or the *Torres Strait Islander Land Act 1991*.

### Background

Local governments are the largest group of trustees in Queensland, responsible for managing and maintaining a network of reserves and Deeds of Grant in Trust (DOGITs) for a wide range of purposes benefiting the local community, the environment and service delivery. These lands are collectively known as “trust land”.

Together with State agencies and government-owned corporations, local governments are Statutory Bodies under the Act and in most cases can take actions and grant interests over trust land without the Minister’s involvement. Trustees can take all action necessary to manage and maintain trust land consistent with:

- the purpose for which the land is dedicated as a reserve or granted in trust;
- the Act; and
- any conditions of appointment of the trustee.

State and statutory body trustees can also take actions and grant trustee leases that are **inconsistent** with the purpose of the trust land without needing to seek the Minister's approval, where it would not **diminish the purpose** of the trust land and would not **adversely affect the public interest** where provided for in a **management plan**. This enables local governments greater flexibility to manage trust land effectively for their communities.

The community purpose categories (Schedule 1 of the Act) also allow for a wide range of potentially consistent activities on certain trust lands, providing more opportunities for local government as trustee to diversify activities and engage users.

Trustees are responsible for ensuring their actions (including granting trustee leases and trustee permits) are consistent with the Native Title framework and for satisfying the requirements of section 28 of the Act.

## Guideline

### Consistent vs inconsistent with the purpose

An action, trustee lease or trustee permit is likely to be **consistent** with the purpose of the trust land if it aligns with the achievement of the land's purpose. Local government trustees do not need to prepare a management plan in these instances. Consider if:

- the proposal is necessary to practically achieve or deliver the trust land's purpose, or
- a reasonable person could expect it to occur as part of achieving the land's purpose.

On the other hand, an action, trustee lease or trustee permit is likely to be **inconsistent** with the purpose of the trust land if it would not lead to achievement of the land's purpose. It may contradict, inhibit or appear incongruous with the purpose, or otherwise not be consistent. Consider if:

- a reasonable person would find its presence out of place or jarring with the land's purpose,
- it would threaten the achievement of the purpose of the land or would require adequate management action to reduce the risk to the purpose, or
- it would otherwise not be considered consistent.

Some proposals may be clear to a trustee as being consistent or inconsistent, however it is a subjective test requiring the local government trustee to use discretion.

Trustees are encouraged to use the ordinary meanings of purposes in determining consistency. Trustees can consider the action or interest's consistency with an existing land management plan if available. If the trustee is unsure, there is no issue in treating an action or interest as inconsistent.

### **My trust land has a prescribed former schedule 1 purpose or a transitioned purpose – which purpose do I consider for determining consistency?**

Under sections 555 to 560 of the Act, certain trust land purposes are "taken to be" a corresponding community purpose for dealings under the *Land Act 1994*. These community purposes are designed to be broader and more flexible. In these instances, trustees consider consistency of the proposal with the trust land's relevant community purpose, not the purpose on title. However, a native title assessment must always be based on the purpose on title. For further information refer to <https://www.qld.gov.au/environment/land/state/trust-land/community>.

## **Can something consistent with the community’s aspirations but inconsistent with the purpose of the trust land meet the consistency test?**

No, but the trustee can prepare a management plan to manage the impact of the inconsistent action or interest.

If the land’s purpose no longer reflects the community’s needs, or the trustee believes a new purpose would deliver benefits more effectively, trustees can apply to the Department of Resources to add or change a community purpose.

## **When a proposed action, lease or permit is inconsistent**

A trustee may find a proposed action, trustee lease or trustee permit is inconsistent with the purpose of the trust land and will need to prepare a **management plan** to undertake it. In doing so the trustee will consider how or whether an action or lease would **diminish the purpose** of the trust land or **adversely affect the public interest**. Diminishing the purpose is also relevant to address when preparing a management plan for inconsistent permits.

Trustees have flexibility in the form, content and level of detail provided in a management plan or to amend existing management plans.

The management plan needs to include the following to meet the minimum requirements of the Act (see sections 52AB, 57(6), 60(3) and 64(3) of the Act as relevant):

- Clearly identifies any inconsistent action, trustee lease or trustee permit subject to the management plan.
- For an inconsistent trustee permit, identifies the potential impacts of the trustee permit being inconsistent with the purpose of the trust land.
- States how the inconsistent action, trustee lease or trustee permit would not diminish the purpose of the trust land.
- For an inconsistent action or trustee lease, states how the action or trustee lease would not adversely affect the public interest.

The action, trustee lease or trustee permit also needs to comply with this management plan.

## **What does “diminish the purpose” mean?**

An action, trustee lease or trustee permit could **diminish a trust land’s purpose** where its presence, scale or activity would permanently overshadow or reduce the trust land’s ability to achieve its purpose. Consider the following:

- What are the potential impacts of the action or interest due to being inconsistent with the trust land’s purpose? Can these be mitigated through management actions, lease/permit conditions or other approval processes (e.g. development approval)?
- Will this action or interest change the nature and use of the land in such a way that an ordinary person would no longer recognise the trust land for its purpose?
- Will this action or interest reduce the ability to use the trust land for its purpose in the future?

These considerations can be translated into the management plan and should be adequate to demonstrate that any impact the action or interest poses to the land's purpose can be suitably managed.

An individual action or interest may be inconsistent with the land's purpose, but with adequate management can contribute to facilitating or enhancing the purpose of the trust land such as by diversifying the capacity, experiences or services for existing and new users of the land and/or generating revenue for the land's ongoing management.

If no amount of management action can avoid diminishing the purpose of the trust land, it is unlikely to satisfy the Act requirements.

## **What does “adversely affect the public interest” mean?**

The **public interest** is a high-level concept that considers the common well-being and interests of the community.

Whether the public interest will be adversely impacted can be identified by the trustee through a practical consideration of:

- the scale and nature of the impacts from the proposed action or trustee lease,
- management action or controls proposed in response to impacts,
- the community's views and values, and
- the inherent nature of the land (e.g. the uniqueness and values of the land).

The trustee may have gathered some of this information through other processes.

The public interest is a broad concept and the Act includes *the cultural, economic, environmental, heritage, land protection, planning, recreational, social and strategic interests of the public* in its definition. These factors can help inform the trustee in identifying matters but are not exhaustive. Trustees should not feel compelled to catalogue all real and potential interests of the public in the land but consider those that become relevant to and adversely impacted directly by the proposal.

It is up to the trustee to adequately consider both the public interest and whether the proposed action or trustee lease will adversely impact the public interest, including whether consultation with land users, stakeholders or the broader community is needed for the nature of the proposal and the form any consultation would take.

If the action or lease cannot manage or avoid adverse impacts on the public interest, it is unlikely that it would satisfy the Act requirements.

## **Approvals**

### **Do I need to submit my management plan for approval?**

Management plans prepared by a local government trustee for inconsistent actions and inconsistent trustee leases that are consistent with the Act requirements, do not require approval from the Department of Resources or the Minister. See sections 52AB, 57(6) and 64(3) of the Act.

Local government trustees only need approval for a management plan under section 48 of the Act:

- Before issuing an inconsistent trustee permit, or

- Where the Chief Executive has requested the trustee apply for approval of a management plan under this section.

### **Is the Minister’s approval required for any State or statutory body trustee actions or trustee leases?**

Where actions or trustee leases meet the requirements of the Act and Regulation, Ministerial approval is not required unless specified (e.g. where a trustee lease is required in an operational DOGIT for more than 30 years and meets section 61(2)). Inconsistent permits require approval from the department of the management plan as described above.

### **Does this process affect requirements under other Acts for actions, leasing, permits or subsequent development?**

No, this does not remove or reduce a trustee's obligations under any other Act or other sections of the Land Act. This includes Native Title, Human Rights, obtaining development or building approvals, environmental authorities, liquor and gaming licences, and other local and state permits and authorisations.

Actions, including leasing and permits, taken by a trustee of trust land must be consistent with the *Native Title Act 1993 (Cwlth)* and the *Native Title (Queensland) Act 1993*. The trustee is responsible for assessing and addressing native title matters prior to taking an action, including granting trustee leases or permits. Native title is assessed on the purpose of the trust land shown on the title itself, not any corresponding community purpose under transitional arrangements in 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**

<b>Position</b>	<b>Name</b>	<b>Effective Date</b>
Director	Simon Hausler	24 April 2024

## **Version history**

<b>Version</b>	<b>Date</b>	<b>Comments</b>
1.00	24/04/2024	Document created

## **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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