

Guideline

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Offsets in relation to State lands administered under the *Land Act 1994*

Purpose

The purpose of this document is to provide guidelines on when environmental offsets would be suitable for placement on State lands administered under the *Land Act 1994* (the Land Act). This guidance is from a Land Act or tenure perspective only; not whether the land is suitable to meet the requirements of the Queensland Environmental Offset Policy under the *Environmental Offsets Act 2014*.

Queensland Environmental Offset Policy

In all instances an environmental offset on State land must comply with the Queensland Environmental Offset Policy under the *Environmental Offsets Act 2014*.

Other State interests

The consideration of whether the land is suitable for an offset may take into account other State interests in the land such as minerals or petroleum, quarry material and commercial timber, an infrastructure or road corridor, cultural heritage or a dealing under the Land Act. While these issues may be relevant to determine whether an offset is appropriate, they are not a consideration for whether the type of tenure is suitable for an offset.

Native Title

Native title will also need to be addressed.

Lands suitable for an offset

Land Act leases

The following leases are considered suitable tenures for having an offset secured on them and do not need further reference to the Department of Natural Resources, Mines and Energy (DNRME) from a Land Act or tenure perspective to be considered for an offset:-

- Term (rolling) lease for pastoral purposes including, pastoral holding (PH), preferential pastoral holding (PPH), pastoral development holding (PDH) and stud holding (SH),
- Grazing homestead perpetual lease (GHPL)
- Grazing homestead freeholding lease (GHFL)

Notes: Although the above type of leases from a tenure perspective may be suitable for an offset, if an offset is to be secured by way of a covenant on a lease, the Chief Executive's approval to the covenant will be required under section 373B of the Land Act. Further, other types of leases may be considered on a case by case basis by the Regional Manager in consultation with the Director, Land Services, Land and Native Title Services.

Trust land

Trust land is land dedicated as a reserve or granted in trust for:-

1. a community purpose as listed in Schedule 1 of the Land Act e.g. park, recreation, open space; or
2. operational purpose trust land set apart under the repealed *Land Act 1962* for a public purpose that is not a community purpose e.g. school, hospital, police, local government water supply.

A significant number of community purpose trust land is under the control of local governments as trustee.

Local governments have indicated to the department an interest in offsets on these trust lands, and taking into account the requirements of the Land Act, offsets required by local government will only be supported on trust land that has a compatible land use or where the offset could be used to protect vegetation along degraded riparian/wetland areas within the trust land where local government is trustee.

Therefore only the approved community purposes listed below and with local government as trustee are suitable tenures for offsets without further reference by the local government as trustee to DNRME provided native title and the requirements listed below are satisfied by the local government when considering an offset for particular trust land.

Further, it is the obligation of local government, including as trustee from a Land Act or tenure perspective (and not a DNRME responsibility), to ensure that these requirements are satisfied when local government is considering trust land for an offset.

Approved community purposes

The following are the approved community purposes –

- beach protection
- buffer zones
- coastal management
- environmental purposes
- gardens
- natural resource management
- open space
- parks

- recreation
- scenic purposes

Native Title

Native title will also need to be addressed by the local government, with particular regard where a reserve was dedicated as a low impact future act under section 24LA of the *Native Title Act 1993 (Cth)*.

Requirements for local government as trustee

The following considerations apply to all “offset” proposals by local governments on trust land:-

1. only where the local government is trustee.
2. The local government has addressed native title – an offset will not be suitable for a reserve that has been dedicated as a low impact future act under section 24LA of the *Native Title Act 1993 (Cth)* as if there is a subsequent native title determination for the land, the reserve may need to be revoked, and the offset would also come to an end.
3. The local government has undertaken an assessment of its “public use land/ reserves”, held both in trust (i.e. reserves and deeds of grant in trust) under the Land Act and as freehold, to ensure the long term availability of open space, parks, recreation and associated activities for the community will not be diminished by offsets.
4. The offset is complimentary to, and does not diminish the purpose of, particular trust land. For example open space areas remain available for park, recreation and associated activities.
5. The local government or proponent (including if the local government) must not gain any additional benefit; i.e. the offset must be negotiated and secured as if the offset was to be provided on private land. It is essential that by allowing an offset on State land it is not seen as subsidising a development, whether undertaken by local government or a private proponent.
6. The Environmental Offset Policy requires ongoing management of the offset in accordance with the approved Offset Delivery Plan. The Offset Delivery Plan, which outlines the management intent and outcomes for the offset area, will also need to include the location of proposed community use facilities such as walkways and bike paths, or any other relevant management activities that may have an impact upon the offset achieving the management outcomes. The offset delivery plan will be shown on the offset register as required under the *Environmental Offsets Act 2014*.
7. The offset may be secured by a voluntary declaration with a PMAV under the *Vegetation Management Act 1999*; or another relevant mechanism under the *Environmental Offset Act 2014*. A covenant may be considered for reserves under the Land Act subject to consent of the trustee and approval by the Chief Executive.
8. If local government determines that activities and facilities, e.g. walkways, bike paths, should be placed in the offset area at a later date, another offset will need to be provided in accordance with the Queensland Environmental Offset Policy.

Requirements for trust land where local government is not trustee

Offsets on other trust land may be suitable, however may be subject to similar considerations as outlined above. Additional considerations, depending on the proposal may be required as well as a management plan for the trust land under the Land Act.

If a State government department or an electricity entity (i.e. Powerlink, Energex or Ergon) requires an offset on operational purpose trust land for which it is trustee, it is expected that the trustee will seek the issue of a deed of grant over the trust land for the offset to be considered freehold.

Lands not suitable for an offset

Occupation Licences (OL) are licences to occupy State land only, may be cancelled without payment of compensation and therefore are not suitable for offsets.

Permits to occupy (PO) provide a personal right of occupation only and do not create any interest in the land, and by definition are still road, reserve or unallocated State land (as applicable), and therefore not suitable for securing an offset.

Unallocated State land (USL). Before USL can be allocated, a decision on the most appropriate tenure and use and whether the land may be made available in priority to a person or by competition needs to be made. Accordingly, offsets on USL are not supported.

Dedicated roads are for public access and may be developed for their purpose, and therefore not suitable for offsets, including for road licences which issue over temporarily closed roads i.e. the licence area is still road only temporarily closed to the public.

Land Act

DNRME in deciding the suitability of lands under the Land Act for offsets from a tenure perspective considered a number of issues, including the following:-

Objects of the Land Act

The land is to be managed by having regard to the object of the Land Act (section 4) with the principles of Sustainability and Protection in particular relevant.

Further, for trust land (i.e. reserves and deeds of grant in trust), the object under section 30 (in part) is to ensure that the

- land is managed in a way that is consistent with the purposes of the land; and
- community purpose of the land is not diminished by granting inappropriate interests over the land.

Duty of care

A mandatory condition of leases, licences and permits to occupy is a duty of care for the land.

The duty of care for leases issued for agricultural, grazing or pastoral purposes is a wider duty of care including to conserve biodiversity under section 199(2) of the Land Act.

Leases for other purposes, and licences and permits to occupy are subject to a more general duty of care under section 199(1) of the Land Act.

A trustee also has a duty of care for the trust land under section 46(2) of the Land Act.

Permitted use

Land has been allocated or dedicated for a particular purpose under the Land Act, and subject to the objects and duty of care, may only be used for that purpose, for example, a

- lease for grazing purposes may only be used for that purpose (subject to section 154 of the Land Act regarding additional or fewer purposes); or
- reserve for recreation purposes may only be used for that purpose (although an inconsistent use may be approved if that use does not diminish the reserve purpose).

Land Act and Offsets

Leases, particularly in rural areas, may have values that are managed as part of the lessee's activities or operations consistent with the object of the Land Act and the lessee's duty of care obligations for the land. For example, a grazing lease with an area of natural features will be protected or enhanced by the lessee as part of management of the lessee's grazing activities consistent with the use of the lease.

Similarly for some trust land, the land may have values that the trustee will protect and/or enhance consistent with the objects of the Land Act and the trustee's duty of care obligations for the land, and not inconsistent with the purpose of the trust land.

Offsets in these contexts may provide land managers such as lessees and trustees with additional assistance or resources in managing and maintaining the land.

Further, local governments are trustees of a significant proportion of trust land. Offsets could provide local governments with increased opportunities to assist in managing and maintaining trust land, which is consistent with government policy of increased autonomy for local governments.

Another consideration is that the provisions to secure offsets such as the voluntary declaration provisions of the *Vegetation Management Act 1999* may be considered as separate and independent provisions that may apply to the Land Act, similar to the separate easement provisions of the Land Act.

Taking into account all of the above considerations, the arrangements for offsets on lands under the Land Act (from a Land Act or tenure perspective only) are outlined above.

Legislation

Land Act 1994

Environmental Offsets Act 2014

Vegetation Management Act 1999

Nature Conservation Act 1992

Approval

Position	Name	Date
Director, Land Services, Land and Native Title Services	Anita Haenfler	08/10/2019

Version history

Version	Effective Date	Comments
1.00	30/09/2014	State Land Administration
1.01	28/01/2015	Minor amendment to the notes in Land Act leases
1.02	23/01/2017	Minor amendment to insert text on new template
2.00	28/07/2017	Amended due to LOLA 2017 changes to covenants over non-freehold land
2.01	08/10/2019	Updated to reflect amendment to Land Act

Further information

- Contact your nearest business centre (https://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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