

Guideline

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Permit to occupy

Purpose

This document provides guidance on permits to occupy issued under the *Land Act 1994* (Land Act).

Rationale

Section 177 of the Land Act states that the Chief Executive may issue a permit to occupy over unallocated state land (USL), reserve or a road. A permit to occupy gives personal permission to use the land; it does not create an interest in land – the base tenure remains USL, reserve or road.

Permits to occupy should only be considered for matters of a:

- Minor nature, for example pump sites and bore sites or apiary sites; or
- Temporary nature, for example an entrance ramp to a building site during construction, parking of vehicles, storage or grazing.

Because of the short-term nature of permits, structural improvements are generally not appropriate. In exceptional circumstances a permit to occupy over a local road may be considered where:

- There is a building encroachment that does not affect the road use and public safety is not compromised;
- It is not practical to require its removal; and
- It is unable to be dealt with by permanent road closure and subsequent sale or lease of the land.

An agreement relating to an existing fence may be required in accordance with section 179 of the Land Act.

A permit to occupy may be issued:

- For two or more reserves only if the reserves are for the same purpose and with the same trustee; or
- If it is for one type of tenure; if a permit to occupy is required for two different types of tenure, two separate permits to occupy will need to be issued.

If a permit to occupy is to issue for land that is 'seaward of the tidal boundary' (i.e. land on the same side of a boundary that is a tidal boundary or right line tidal boundary as the water subject to tidal influence), including for a tidal river, creek, etc., the requirements of section 178 of the Land Act must be satisfied.

A permit to occupy may not be transferred, sublet or mortgaged and may be cancelled as per section 180 of the Land Act.

Native title should be addressed in accordance with the Queensland Government Native Title Work Procedures.

Public liability insurance

Public liability insurance is a mandatory requirement for all permits to occupy (including short term permits) issued over a reserve or roads as the public generally still has the right of access. Public liability insurance is also required for a permit to occupy (including a short term permit) issued over unallocated state land where the public may have access to the permit area, and/or where the activity undertaken has a level of risk.

Evidence of the public liability insurance is to be sighted before issuing the permit to occupy.

Reserves

Regard must be given to the Policy - Leases over Reserves (SLM/2013/495) when considering an application for a permit to occupy over a reserve i.e. whether the trustee should issue the authority (trustee permit or trustee lease). If the trustee is not prepared to or able to grant a tenure, a permit to occupy may be a more appropriate tenure than a State lease.

The tenure options, in order of preference, (subject to the requirements for apiary sites, and stock routes and associated reserves used by the travelling stock as outlined in this document) are:

1. Trustee permit (if the proposed use meets the trustee permit requirements of the Land Act);
2. Trustee lease (if the proposed use meets the trustee lease requirements of the Land Act);
3. Permit to occupy (if the proposed permit to occupy meets the requirements of the Land Act, particularly section 177(4) regarding improvements); and
4. In limited situations, a State lease, i.e. where the proposed use requires extensive development or a significant level of investment.

Stock Routes and associated reserves for travelling stock

Refer to the Policy – Land dealing affecting the stock route network (SLM/2013/363) for detailed information when dealing with stock routes and associated reserves.

Roads

Refer to the Guideline – Roads under the *Land Act 1994* (SLM/2013/725) for detailed information when dealing with roads.

Unless there are state interest considerations or the application is for grazing, applications for permits to occupy for local roads are to be referred to the local government to consider authorising the proposed use under a local law or as temporary closure of the road under the section 69 of the *Local Government Act 2009*.

Any application for a permit to occupy relating to a state controlled road is to be referred to the Department of Transport and Main Roads to consider/authorise. A permit to occupy under the Land Act should not be considered.

Apiary Sites

Permits to occupy may be issued for apiary sites under section 177 of the Land Act.

The department can issue permits to occupy for apiary sites over unallocated state land. Factors considered when deciding whether to issue a permit include:

- Public safety;

- The requirement that a trustee permit must not be inconsistent with the purpose of the reserve; and
- The requirements of the Land Regulation 2009.

Applicants are required to be a registered 'Bee Keeper' with the Queensland Beekeepers' Association to ensure that the applicant is the person who owns and operates the hive.

Under the provisions of the Biosecurity Regulation 2016, apiary sites are not to be located within a specified distance from each other.

A permit to occupy may issue over two apiary sites if situated on one lot/plan.

All apiary sites on USL must include access from a dedicated road.

A permit to occupy for proposed apiary sites requires consultation with the Apiary section of the Department of Agriculture and Fisheries.

The trustee or road manager should authorise the use on reserves and roads, including stock routes.

The views and requirements of the agency administering the *Nature Conservation Act 1992* should be sought in respect of any request to site beehives on roads through or adjoining a National Park, or other conservation tenure, or State Forest or on USL or reserve adjoining these lands.

For apiary sites located within state native forests the Department of Agriculture and Fisheries are the appropriate authority to issues permits, under section 35(1) of the *Forestry Act 1959*.

For apiary sites located within plantation forests, on state owned land, HQPlantations are the appropriate authority to issues permits, under section 56 of the *Forestry Act 1959*.

For apiary sites located within National Parks and other conservation tenures Queensland Parks and Wildlife Services are the appropriate authority to issues permits, under the *Nature Conservation Act 1992*.

Bore Sites

Wherever possible, a bore should be located on the owner's land rather than state land.

A permit to occupy will only be considered where the local government is unable to authorise the bore on the local road. A proposal for a bore on a state controlled road is a matter for the Department of Transport And Main Roads.

If an applicant can demonstrate that it is not possible to locate the bore on their own land, a permit to occupy may be granted. If the proposed bore is to be located on a road, consideration will only be given to an application for a permit to occupy if:

- the road use is not affected; and
- public safety is not compromised.

Advertising signs

Despite the demand to use USL, reserves and roads as sites for advertising signs (and the financial benefits that may flow from the use of the land), they are not encouraged on environmental and aesthetic grounds.

The Policy - Secondary Use of Trust Land (SLM/2013/493) restricts advertising signs under a trustee lessee or a trustee permit. Similar considerations apply to an application for a permit to occupy for advertising signs on a reserve.

Any proposal for advertising on local roads should first be referred to the relevant local government to consider. Any advertising on state controlled roads is a matter for the Department of Transport and Main Roads and not the department.

Where advertising signs are to be permitted on state land, approval is subject to compliance with local government requirements.

Significant Development

Refer to the 'Guideline – Significant development' for detailed information when dealing with significant developments.

A significant development usually entails a number of investigations prior to commencement. These investigations are to be undertaken with a short term tenure in place until a decision is made on whether the development is to proceed.

The grant of a permit to undertake investigation is not a significant interest under Section 123 of the Land Act.

Short Term Permits

Short Term Permits to Occupy (STPO) may be issued to persons or organisations requiring the use of an area of land or water for a short period for a specific purpose. These purposes typically are:

- transitory grazing;
- travelling circuses and shows;
- community events;
- temporary stockpiling;
- Defence (short term exercises); and
- site investigations.

The STPO may be issued over USL, reserves or road areas. STPO should only be considered by the department over USL. The reserve trustee and the road manager are better placed to authorise the use of reserves and roads. One exemption is when the proposed use is for grazing on a road and the road manager is unable to authorise this use.

A STPO is issued for less than twelve months and is not registered in the Land Registry, with the exception of permits issued for apiary purposes.

Bond and rent requirements

The State is entitled to receive fair market return for the use of state land. Section 36C of the Land Regulation allows an officer to set the rent for a STPO in cases when a rental valuation has not been made.

The State should not be expected to bear costs for land restoration. Therefore, a bond may be required where the proposed use could result in costs (to the department) to return the area to its former condition. The bond is to be in the form of cash, cheque or unconditional bank guarantee. The department does not pay interest on cash or cheque deposits.

Refer to **Attachment 1** for calculating STPO rent and bond requirements.

Recording the death of one of the Permittees (and other ‘name changes’)

When one permittee has died, the remaining permittees are not required to apply for the issue of a new permit to occupy. It is considered that a permittee may have ‘*the right of survivorship*’ similar to if the deceased held land or an interest in land with another or others as ‘joint tenants’. The right of survivorship means that the person’s death results in a vesting of their interest in the land in the names of the surviving joint tenant/s. If a parent block to the permit to occupy was held as ‘Tenants in Common’ or any tenancy arrangement other than ‘Joint Tenants’, the permittee of the permit is considered to have ‘*no right of survivorship*’.

Table 1

Type of Tenancy Arrangement	Is there a right of survivorship?	New Permit Required?
Joint tenants	Yes = Vesting	No
Tenants in Common or any other tenancy arrangement	No = Transfer	Yes

New permits to occupy

A new permit to occupy must be issued when:

- A different person is to be added to the permittees of a permit, as a result of the death of one of the permittees. This in effect is a transfer and transfers of a permit to occupy are not permitted under the Land Act;
- The permit attaches to a parent block, which is held in any tenancy arrangement other than ‘Joint Tenancy’; or
- The permit has a condition stating ‘On the death of a permittee, the permit will be cancelled’.

Registering a Record of Death

When the permittees involved in the permit arrangement are only being changed to reflect the death of one of the permittees, a ‘Record of Death’ may be registered in the land registry. This is not classed as a transfer of a permit, and is therefore allowed, including when the permit attaches to a parent block which is held in a ‘Joint Tenancy’ arrangement.

In addition to any other registration requirements, the surviving permittees must lodge the following with the department to register a ‘Record of Death’ in the land registry:

- A completed Form 4 – Request to Record Death;
- A certified copy of the relevant Death Certificate; and
- The relevant lodgement fee.

Recording a change of name

A change of name such as that following marriage or the change in name of a company is not considered a transfer, as the permit to occupy is still held by the same person or company.

A similar procedure to that of recording the death of a permittee, is used to record the change of name of a permittee by marriage or any other reason allowed for in the Land Title Practice Manual (including a change of name of a company).

To register a 'Change of Name' in the land registry, in addition to any other registration requirements, the permittee must lodge the following with the department:

- A completed Form 14 – Request to Record Change of Name
- A completed Form 20 – Declaration
- Relevant change of name documentation
- The relevant lodgement fee

Death of Sole Permittee

Upon the death of a sole permittee the permit must be cancelled, as permits cannot be held in the name of deceased estates (i.e. executors, trustees, or a beneficiary etc.).

Legislation

Land Act 1994

Land Regulation 2009

Local Government Act 2009

Transport Infrastructure Act 1994

Transport Operations (Road Use Management) Act 1995

Biosecurity Regulation 2016

Stock Route Management Act 2002

Nature Conservation Act 1992

Forestry Act 1959

Related documents

“Procedure – Escalation of delegations for processing of certain permits to occupy as low impact future acts (SLM/2017/4069)”

“Guideline – Leases over Reserves (SLM/2013/495 = PUX/901/210)”

“Policy – Land Dealings affecting the Stock Route Network (SLM/2013/363 = PUX/901/238)”

“Guideline – Roads (SLM/2013/725 = PUX/952/122)”

“Policy – Secondary use of trust land under the Land Act (SLM/2013/493 = PUX/901/209)”

“Guideline – Significant developments”

“Queensland Government Native Title Work Procedures”

Approval

Position	Name	Date
Executive Director, Land and Native Title Services	Graham Nicholas	15/08/2018

Version history

Version	Effective Date	Comments
1	15/03/2013	First edition
1.1	04/03/2014	Minor amendment to refer to Stock Route Network Policy
2.00	18/12/2014	Updated to reflect changes to the Stock Route Policy
3.00	24/05/2016	Amended to include changes to apiary sites
4.00	17/08/2017	Updated to include changes to Acts and apiary sites
5.00	15/08/2018	Change of document type – “Policy” to “Guideline” Significant development information has been included in a new Guideline –Significant developments

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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Attachment 1

Table 1 – How to calculate rent and bond for short term permit to occupy

Purpose	Short term permit can be considered	Rent	Bond
Transitory grazing generally associated with drought situations	Yes	Minimum rent as defined by the Land Regulation	Not required
Environmental e.g. Landcare, conservation works e.g. tree planting and/or weed control	Yes	Minimum rent as defined by the Land Regulation	Not required
Weekend fishing competitions	Yes	Less than 7 days - minimum rent as defined by the Land Regulation	\$1000
Community and charity events e.g. Markets, fete, sporting events, temporary storage and car parking	Yes	Minimum rent as defined by the Land Regulation	<ul style="list-style-type: none"> • 1 day - \$1000 • less than a 7 days - \$5000 • anything more requires detailed assessment
Commercial or promotional event e.g. expos, home shows, hot rod or car events	Yes	Less than 7 days - minimum rent as defined by the Land Regulation.	<ul style="list-style-type: none"> • 1 day - \$1000 • less than 7 days - \$5000
Production of a television show or movie	Yes	Anything more requires a detailed assessment and may require input from State Valuation Services if in a high profile high value location	<ul style="list-style-type: none"> • anything more requires detailed assessment
Travelling circus or show	Yes		
Site investigation – Public Utility provider	Yes	Minimum rent as defined by the Land Regulation	<ul style="list-style-type: none"> • 1 day - \$1000 • less than 7 days - \$5000 • anything more requires detailed assessment

Stockpile sites and batching plants	No - A permit to occupy registered on title is the appropriate tenure	Not applicable	Not applicable
Apiary sites	No - A permit to occupy registered on title is the appropriate tenure	Not applicable	Not required
Wedding ceremonies	No - Not suitable on USL	Not applicable	Not applicable