

Guideline

SLM/2013/480
Formerly PUX/901/112
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Public Purpose Reservations

Purpose

To provide guidelines on the allocation, disposal and sale of reservations for public purposes.

Rationale

Reservations for public purposes

A deed of grant (freehold), a deed of grant in trust or a lease may contain a reservation for a public purpose under section 23 of the *Land Act 1994* (the Land Act).

A reservation for a public purpose (reservation) is an area reserved to the state for the particular public purpose. For example, a lease may contain a reservation for road purposes, which is set aside for possible future road requirements.

A reservation has an exact size (e.g. 2.04 hectares) and lies within the boundaries of a lot. Reservations can be 'fixed' (i.e. they are in a fixed, defined location) or 'floating' (i.e. they are contained within a lot, but are not in a defined location).

Historical Reference

During settlement of the state, reservations were provided for possible future public requirements.

The first type of reservation was for esplanade purposes, as early communication and transport was by sea and boat. In these instances, the usual practice was for a reservation of a strip of land 100 feet wide above high water mark.

Reservations for road purposes (road reservations) were provided as future road requirements could not always be foreseen, nor the pattern of development reasonably anticipated. The location of these reservations was generally undefined (i.e. a floating reservation).

Over time, reservations were also created to meet other needs occurring at the time. As a result, there are now reservations located in areas that may never be needed, including reservations for road, railway and telegraph purposes.

Guideline

Current practice

Reservations are no longer created. Instead, planning strategies and policies are considered prior to land being allocated under the Land Act. All foreseeable public requirements (e.g. dedication of an esplanade or a community purpose reserve, or the opening of a road), are generally provided at the time of allocation.

If a public purpose for the allocated land is identified in the future, the state has acquisition powers, primarily the *Acquisition of Land Act 1967* for freehold, and the Land Act for leasehold, to acquire the land.

Further dealing with reservations

Further dealings with reservations usually arise because of reconfigurations of a lot (subdivision), where the original lot to be subdivided contains a reservation.

The state is the only party that may deal with the reservation and must do so in accordance with the Land Act. This includes:

- allocating the reservation (section 23A)
- selling the reservation (section 24)
- disposing of the reservation (section 26A).

In further dealings, consideration must be given to whether the reservation is still needed. Where the reservation is still needed, it may be allocated. Where the reservation is no longer required, the reservation may in some circumstances be allocated, otherwise it is to be sold or disposed. The following table outlines different tenures and decisions under the Land Act to deal with reservations.

Tenure	Decisions under the Act
Freehold	<ul style="list-style-type: none">• Sell the reservation (Section 24)• Allocate the reservation (Section 23A)
Freeholding lease	<ul style="list-style-type: none">• Sell the reservation (Section 24)• Allocate the reservation (Section 23A)
Deed of grant in trust	<ul style="list-style-type: none">• Dispose of the reservation (Section 26A)• Allocate the reservation (Section 23A)
Term lease or perpetual lease	<ul style="list-style-type: none">• Dispose of the reservation (Section 26A)• Allocate the reservation (Section 23A)

In limited circumstances, the state may also resume possession of the reservation under section 24 or section 229 of the Act, compensating for improvements only. No land value is paid for the area of the reservation which has been reserved to the state.

Fixed reservations

The ability to allocate a reservation under section 23A only applies to floating reservations.

A fixed reservation still requires investigation to determine if a constructing authority wishes to immediately utilise the reservation. If not required for its public purpose at the time of investigation, the fixed reservation should be disposed or sold to the applicant in accordance with section 24 or section 26A of the Land Act.

Is the reservation still needed?

In considering whether the reservation is still needed, the decision-maker should seek the views of relevant agencies to determine:

- whether there is a clear requirement for the reservation in the foreseeable future; and
- that the area is not able to be immediately dedicated for that public purpose.

The following table lists examples of relevant agencies for different reservation purposes.

Purpose of reservation	Examples of relevant agencies
Road	Local Government Department of Transport and Main Roads
Railway	Department of Transport and Main Roads

If an agency advises that the reservation should be retained, and for a floating reservation, should be reallocated at that time due to the requirement for a future use of the reservation, the agency should advise a timeframe for the future use.

Where it is determined that a reservation is no longer needed by the state, the reservation may be:

- allocated (limited circumstances only)
- disposed
- sold.

Allocation of a floating reservation (section 23A of the Land Act)

Under section 23A of the Land Act, a person seeking to have a plan of subdivision registered in relation to a deed of grant, deed of grant in trust or a lease may apply for a floating reservation in the land to be allocated to a lot or lots created by the plan.

In making a decision to allocate a reservation, the decision-maker must consider the provisions of section 23A and have regard to:

- the purpose of the reservation
- the likely future use of the land
- where the reservation is most likely to be needed.

If the applicant is not the owner, trustee or lessee of the land (e.g. a constructing authority), the decision-maker must afford natural justice to the owner, trustee or lessee prior to making a decision on the allocation of the reservation.

When allocation of a floating reservation may be appropriate

There are some circumstances where it may be appropriate for the state to allocate the reservation to a lot or lots. This can include where the subdivision is not instigated by the owner, trustee or lessee; where the reservation will be required by a constructing authority in the foreseeable future; or where family hardship applies.

A subdivision that is not instigated by the owner, trustee or lessee could include:

- a road realignment at the request of the local government or Department of Transport and Main Roads where the constructing authority has not utilised the existing reservation.
- a minor boundary adjustment relating to encroachments.

In these circumstances the local government, Department of Transport and Main Roads or constructing authority must notify the registered owner that an application to allocate the reservation has been made and provide evidence of this with its application to Department of Natural Resources, Mines and Energy for the allocation of the reservation.

A family hardship could include where an elderly person may need the support of a family member and that member's family, and due to local government restrictions, the land would need to be subdivided to enable a separate dwelling for that family. (Note: Family hardship is unlikely to apply to a freeholding lease, due to the lessee's limited capacity to subdivide - see Policy [Lease Subdivision PUX/901/528](#))

Where a reservation is to be allocated:

- generally the reservation should be allocated to a lot with dedicated access, taking into account the views of any relevant agency.
- for a road reservation, the reservation should be allocated to a lot that adjoins a major thoroughfare, taking into account the views of any relevant agency. This is because, if a lot has access to a more significant road (i.e. if a lot fronts a major thoroughfare and another lot fronts a "local" road), the future road requirements are more likely to be required for the major thoroughfare.
- consideration should be given to an appropriate lot size to contain the reservation.

Where allocation is not appropriate, the reservation should be sold or disposed of.

Sale or disposal of a floating reservation (sections 24 and 26A of the Land Act)

Freehold and a freeholding lease

A reservation that is no longer needed is required to be purchased by the owner or freeholding lessee following application under section 24 of the Act. The purchase is to be by

way of a one off payment at the unimproved value of the land as decided under section 25 of the Act. [Note: For a freeholding lease, the reservation area was not part of the leased area originally converted, and therefore the purchase price is not to be included in the outstanding balance of the freeholding lease payment.]

The unimproved value though must be decided without regard to the commercial value of the timber.

Deed of grant in trust, term lease and perpetual lease

A reservation that is no longer needed is to be disposed of under section 26A of the Act.

In relation to the disposal of a reservation in a deed of grant in trust, this may proceed without the requirement for the trustee to pay the unimproved value. The reason is that a trustee of a deed of grant in trust is unable to dispose of an area of the trust land, and is unable to subdivide the land. An action in respect of a deed of grant in trust is usually instigated by the state (e.g. for a road opening). If the deed of grant in trust is sold at a future date, the state may recover the value of the reservation at that time.

In relation to the disposal of a reservation in a term lease or perpetual lease, an increase in rent, if any, should in the majority of instances, prove to be minor and no impost on the lessee.

"Exclusion" from title

In some instances there may be an area in a "fixed" location reserved within a freehold lot that may not be a reservation, but an area that is totally excluded i.e. is not part of the title, similar to a title that states that a surveyed road is excluded - the Department of Natural Resources, Mines and Energy may need to seek further advice in these instances, although a **reserved road** is a road for public use - please refer to Guideline [Roads under the Land Act 1994 PUX/952/122](#)

Public use land

Should the local government or a government agency require an area to be surrendered for public use land e.g. road, esplanade, park for subdivision of a freehold lot, the state is unable to consider an "offset" in respect of the reservation, including if the purpose of the reservation is the same as the public use land.

Legislation

Land Act 1994

Related documents

Policy – Lease Subdivision SLM/2013/428

Guideline – Roads under the *Land Act 1994* SLM/2013/725

Approval

Position	Name	Date
Executive Director, Land and Native Title Services	Graham Nicholas	18 September 2019

Version history

Version	Effective Date	Comments
1	16/04/1999	Endorsed
1.1	04/07/2007	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	19/11/2009	Minor amendments mainly to reference PUX/952/059
2.2	02/11/2012	Minor updates to reflect departmental name change to DNRM
2.3	3/12/2013	New DNRM template
2.04	22/06/2016	Minor amendment to review and insert text on new template
3.00	18/09/2019	Updated to new DNRME template and content edited

Further information

- Contact your nearest business centre (<https://www.dnrme.qld.gov.au/our-department/contact-us/state-land-lodgement-offices>), or
- Refer to <https://www.qld.gov.au/environment/land/state>, or
- Call 13 QGOV (13 74 68).

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