

Resumption in relation to land under the *Land Act 1994* PUX/952/119

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Version History

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Approval

Position	Name	Date
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Purpose

To provide guidelines for the resumption of term leases under a condition of lease and guidance as to when resumption of possession of all or part of a reservation for a public purpose in a lease, deed of grant (freehold) or deed of grant in trust will be considered under the *Land Act 1994* (Land Act) .

Resumption of a lease under a condition of the lease - in terms of section 208 of the Land Act, a condition may be placed on a lease that all or part of the lease may be resumed giving the lessee 6 months notice and compensating for (lawful) improvements only.

The process for effecting such resumption is under sections 223 and 227 of the Land Act.

This policy does not apply to development leases e.g. at Kawana Waters, or similar leases where a condition of lease may require that parts of the lease are to be made available for particular public purposes.

Resumption of a reservation for a public purpose - a reservation for a public purpose has an exact area (size) e.g. 2.04 hectares, but could be in a fixed location i.e. "a fixed reservation", or in an undefined location i.e. "a floating reservation".

Possession of all or part of a reservation for public purposes may be resumed with compensation payable for lawful improvements only – refer to sections 229 and 230 of that Act.

Note: a reserved road is a road for public use, and not a reservation for a public purpose - please refer to [Roads under the Land Act 1994 PUX/952/122](#) for further details.

Rationale

Resumption of a lease under a condition of the lease - Criteria and Method for Disposal of Unallocated State Land Policy PUX/901/315 provides guidance as to when the resumption condition should be included in a lease.

There are some cases where a lease may be subject to the resumption condition and resumption under the conditions of lease may not be equitable. The test to be considered is whether a resumption condition would be placed on the lease in accordance with [Criteria and method for disposal of unallocated State land Policy PUX/901/315](#).

Resumption of a reservation for a public purpose – a resumption under the Land Act must be for the benefit of the community.

A reservation for a public purpose has been reserved to the State for future use for that particular purpose.

Although the land in a reservation has been reserved to the State, and therefore the State is not required to compensate for the land value, it may be inequitable to resume possession of a "floating" reservation if the lessee, owner or trustee demonstrates undue hardship, particularly if a claim for severance could have been made if the area was acquired under the lease resumption provisions of the *Land Act 1994* or the *Acquisition of Land Act 1967*.

Reference should also be made to [Land Allocation: Public Purpose Reservations PUX/901/112](#)

Policy

Resumption of a lease under a condition of the lease will proceed on the following basis -

- where term leases contain a specific resumption condition, resumption may be carried out in terms of the conditions of lease, if the condition would still be included on the lease as per the criteria set out in [Criteria and method for disposal of unallocated State land PUX/901/315](#)
- where term leases contain a resumption condition, but the condition would not have been included on the lease as per the criteria set out in [Criteria and method for disposal of unallocated State land PUX/901/315](#) resumption is to occur under the resumption of lease or easement provisions of the *Land Act 1994* (or the *Acquisition of Land Act 1967* if able) despite the lease containing the specific resumption condition.

Resumption of a reservation for a public purpose in a lease, freehold or deed of grant in trust will only be considered –

1. if the resumption is
 - for the public i.e. for the benefit of the community as a whole; and
 - required for the purpose of the reservation; and
2. if the reservation for public purposes is for
 - road, the area is required for widening of an existing road or connection to an existing or future road network; or
 - another purpose, the area will have dedicated access, or is proposed to be included in an adjoining
 - area for the same purpose e.g. if the reservation is for railway purposes, the area will be included in an existing or new railway.

Further, resumption of possession of a "floating reservation" should not be considered if the lessee, owner or trustee sufficiently demonstrates that –

- the area to be resumed is not of the average qualities and capabilities of all the land in the lease, freehold or deed of grant in trust, and consequently the resumption would have a significant adverse impact on the use of the balance of the lease, freehold or deed of grant in trust; or
- the proposed resumption would result in undue severance or significantly affect access to the balance of the lease, freehold or deed of grant in trust.

and consideration could be given to acquiring the required area under other provisions of the *Land Act 1994* or the provisions of the *Acquisition of Land Act 1967*.

Reference should also be made to [Land Allocation: Public Purpose Reservations PUX/901/112](#)

Legislation

Land Act 1994, Chapter 5, Part 3, Divisions 2 and 3

- Resumption of a lease under a condition of the lease – sections 223 to 227
- Resumption of a reservation for a purpose – sections 228 to 233