

Procedure

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Formerly PUX/952/119
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25/05/2022

Resumption in relation to land under the *Land Act 1994*

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 the Land Act.

Note: A reserved road is a road for public use, and not a reservation for a public purpose - refer to Guideline – [Roads under the *Land Act 1994* \(SLM/2013/725 = PUX/952/122\)](#) for further details.

Rationale

Resumption of a lease under a condition of the lease – Guideline – [Land allocation and specific requirements \(SLM/2018/4386 = PUX/901/315\)](#) 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 Guideline – [Land allocation and specific requirements \(SLM/2018/4386 = PUX/901/315\)](#).

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 or the *Acquisition of Land Act 1967* (Acquisition of Land Act).

Reference should also be made to Guideline – [Public Purpose Reservations \(SLM/2013/480 = PUX/901/112\)](#).

Procedure

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

1. 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 Guideline – [Land allocation and specific requirements \(SLM/2018/4386 = PUX/901/315\)](#).
2. 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 Guideline – [Land allocation and specific requirements \(SLM/2018/4386 = PUX/901/315\)](#) resumption is to occur under the resumption of lease or easement provisions of the Land Act (or the Acquisition of Land Act if appropriate) 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
 - a. for the public i.e. for the benefit of the community as a whole; and
 - b. required for the purpose of the reservation; and
2. if the reservation for public purposes is for
 - a. road, the area is required for widening of an existing road or connection to an existing or future road network; or
 - b. another purpose, the area will have dedicated access, or is proposed to be included in an adjoining
 - c. 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 or the provisions of the Acquisition of Land Act.

Reference should also be made to Guideline – [Public Purpose Reservations \(SLM/2013/480 = PUX/901/112\)](#).

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

Related documents

Guideline – [Roads under the Land Act 1994 \(SLM/2013/725 = PUX/952/122\)](#)

Guideline – [Land allocation and specific requirements \(SLM/2018/4386 = PUX/901/315\)](#)

Guideline – [Public Purpose Reservations \(SLM/2013/480 = PUX/901/112\)](#)

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

Position	Name	Effective Date
Acting Director, Operations Support - Land	Amanda Kearnan	17/06/2016

Version History

Version	Date	Comments
1.00	19/06/2013	First edition
1.01	17/06/2016	Minor update to review and insert text on new template
1.02	25/05/2022	Updated template and department name to Department of Resources

Further information

- Contact your nearest business centre (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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