

# Operational policy

## **Revenue Share Policy for Local Government Operational Trust Land**

**SLM/2013/579 (Formerly PUX/901/211)**

**Version 3.00**

**Date: 06/07/2022**

## Approval

Position	Name	Effective Date
Director, Land and Operations Support	Anita Haenfler	06/07/2022

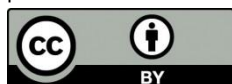
## Version History

Version	Date	Comments
1	05/07/2007	Replaces Government Land Disposal Policy 9 - Revenue Share Policy for Surplus Local Government Operational Reserve Land (GLP/2004/1418 Version 1)
1.1	12/07/2007	Minor Amendment to correct typing errors
2	24/12/2007	Updated to reflect Land Act amendments, Endorsed by Scott Spencer, Director-General, Department of Natural Resources and Water
2.1	10/03/2008	Minor amendment to correct GST in Attachment B
2.2	15/10/2008	Minor amendments to correct GST in Policy
2.3	27/08/2009	Minor change to wording due to amendments in the Acquisition of Land Act 1967
2.4	31/01/2011	Minor updates to reflect departmental name change to DERM
2.5	03/10/2012	Minor updates to reflect departmental name change to DNRM
2.6	13/03/2013	Updated to change government logo
2.07	19/03/2014	Updated to new DNRM template
2.08	21/06/2016	Minor amendment to review and insert text on new template
2.09	28/07/2017	Minor amendment to add "saleyards" to attachment A
3.00	06/07/2022	Full review and updated template to Department of Resources

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## Purpose

To provide improved opportunities for the rationalisation of under-performing and surplus existing operational reserve and deed of grant in trust land assets controlled by local governments, as trustee; and assist local governments with the transition to a more appropriate tenure to manage essential operational reserve and deed of grant in trust land assets.

## Rationale

In 1991, the Queensland Government introduced a series of policies to encourage state government departments to actively pursue a measured asset rationalisation program. This program has and continues to be successful in the identification of real property assets that are no longer required by Queensland government departments for the delivery of core services.

This contemporary asset management practice has scope for wider application to other state-owned property controlled by local governments.

Local governments control, as trustee, state land that has been set apart under the repealed *Land Act 1962* and precedent Acts for the service delivery functions and purposes of local governments. These properties, generally referred to as operational trust land, consist of reserves or deeds of grant in trust for purposes such as local government, depots, workshops and car parks, etcetera and a list of these operational purposes is as per Attachment A.

The quality of the state's trust land portfolio should, in general, reflect areas of state land that are of state and local significance. As such, the portfolio would be enhanced as an outcome of an assessment to determine more appropriate uses and tenure for local government operational trust land.

## Surplus operational trust land

From a property asset review process and as a consequence of a most appropriate use assessment it could be expected that operational trust land surplus to the service delivery requirements of a local government may be reallocated to a community purpose. In other instances where the nature of the property, surrounding tenure environment and/or strategic public requirements indicates that the land should not be allocated for sale or use for community purposes, then offering the land for lease under the *Land Act 1994* (Land Act) (to a third party) will most likely provide the most appropriate land management outcome. In addition to the aforementioned opportunities, there will be the economic incentive from a property asset review process to generate revenue to the state and the local government from the sale of surplus operational trust land.

## Essential operational trust land

From time to time a local government's use of operational trust land for its gazetted (dedicated) purpose may diminish and the local government may determine that the land is required for another essential public purpose (e.g. building/administration centre) that will facilitate the local government's service delivery functions. The Land Act generally does not support the use of operational trust land for a purpose that is inconsistent with the dedicated purpose. The Land Act also does not have

provision for the dedication of land as a reserve for a public purpose. However, in these instances there is provision under the Land Act for the land to be sold as freehold, without competition, to the local government.

(Operational trust land is also used for purposes which under contemporary tenure principles freehold tenure is preferred for better management of the land. In recognition of this Queensland government policy, the Land Act provides for the sale of the land to the local government in instances where freehold tenure would be more appropriate for the purpose for which the land is used).

## Outcomes

Outcomes of a program to allocate local government operational trust land to more appropriate uses and tenure include:

- a more efficient reserve portfolio;
- a more appropriate tenure for the future management of the land;
- surplus land allocated to more appropriate uses; and
- a financial return on the state's equity in operational trust land.

## Policy

Local governments, as trustee of trust land\* dedicated for the purposes and service delivery functions of local governments (referred to under this policy as operational trust land), are eligible to receive 50% of the revenue (after costs) from the sale of all local government operational trust land.

\*Trust land is defined in the Land Act as being land that comprises a reserve or a deed of grant in trust, and a reference to operational trust land in this policy is taken to be a reference to part or the whole of the land.

Note: This policy does not apply to trust land dedicated for a community purpose as defined in Schedule 1 of the Land Act; for example, gardens, park, public hall, recreation, sport, etcetera.

The sale of all local government operational trust land must be undertaken and managed by the Department of Resources (the department).

The policy may be applied to the following dealings:

1. sale of surplus operational trust land to the public or private sector; or
2. sale of essential operational trust land to the current local government trustee for a public purpose for which land may be lawfully taken by the local government under the *Acquisition of Land Act 1967*.

Where a local government no longer has a requirement for operational trust land and a decision is made that the land is needed in the public interest for a different use (in terms of s. 33 of the Land Act) for example, the land is to be offered for lease or set apart for a community purpose under the Land Act, this policy will not apply and the local government will not be entitled to any revenue.

## **Guiding principles for application of the policy**

1. Local governments, as trustee of operational trust land, are not authorised to sell the land (s. 54 of the Land Act).
2. The provisions of the Land Act and the Queensland government's land disposal policies are the guiding principles for managing and administering government owned property assets. The principles pertaining to the allocation of property assets require that properties must be assessed and evaluated to determine their most appropriate tenure and use before an allocation decision is made.
3. To the extent practicable, the most appropriate tenure and use and subsequent allocation should achieve ecological sustainability by balancing and integrating the following elements:
  - a. the protection of ecological processes and natural systems;
  - b. optimum financial return to and economic development of the state; and
  - c. the enhancement of the cultural, economic, physical and social wellbeing of people and communities.

## **Surplus operational trust land**

1. When a local government declares operational trust land as being surplus to its service delivery requirements, the department will manage a program of assessment, allocation and disposal of the surplus property in accordance with the Land Act and Queensland government's land disposal policies.
2. The assessment of surplus operational trust land to determine its most appropriate use will have regard to native title rights and interests, if any. No decision will be taken to reallocate land to an alternative use where such use would adversely impact on native title rights and interests that may exist over the land.
3. The department will, when it is considered appropriate, seek required amendments to the planning scheme to reflect the assessed most appropriate use; or will condition the sale of the land to ensure that the purchaser obtains local government planning approval to achieve the property's most appropriate use.
4. Local governments electing to avail themselves of the state's revenue share policy will be required to agree that in the event the assessment of surplus operational trust land finds that the most appropriate use is for a community purpose, as defined under Schedule 1 of the Land Act , the local government will unconditionally accept trusteeship of the property or provide the state with an acceptable name e.g. an appropriate incorporated body to effectively manage the reserve in accordance with the Land Act.
5. In the event of a sale of surplus operational trust land (with or without competition; or to a public sector agency) and after settlement, 50% of the purchase price (excluding GST), less the department's fee and any other costs (as per Attachment B) will be remitted to the respective local government.

6. The responsibilities of local governments and the department in dealing with surplus operational trust land are set out in general terms on Attachment C, together with identified outcomes from dealing with surplus operational trust land.

## **Essential operational trust land**

Although a local government as trustee may apply for a deed of grant over an operational reserve under section 34I of the Land Act, and essential operational trust land may be used for an inconsistent action, subject to the provisions of section 52(3), local government must purchase the trust land in accordance with government policy as provided for hereunder:

1. A local government trustee may apply to the department to have essential operational trust land reallocated to the local government as a deed of grant (freehold).
2. The local government will be required to provide the department with a statutory declaration certifying the current and proposed use of the land; and include a statement declaring the local government has no plans to sell the property.
3. The department will consider the relevant provisions of the Land Act (sections 16 and 28, section 34I for the whole of a reserve, sections 33 and 122) and determine if it is appropriate to make an offer to the local government to have the land reallocated as a deed of grant.
4. Note: In the event that the department determines that native title rights and interests may continue to exist over the essential operational trust land, the local government will be required to take appropriate action to secure the surrender or compulsory acquisition of these rights and interests to facilitate the issue of a deed of grant.
5. An offer to reallocate the operational trust land as a deed of grant will require the local government to pay a purchase price for the land, equivalent to the full current market value for the land. Payment of GST, stamp duty and other statutory costs will where applicable also be a requirement of the offer. The local government will also be required to provide the department with a plan of survey of the subject area, if needed for the issue of a deed of grant.
6. Following issue of the deed of grant, 50% of the purchase price (excluding GST), less the department's fee (as per Attachment B) will be remitted to the respective local government.
7. However, if the local government can provide written evidence that the operational trust land was purchased in the past by the local government and the previous prevailing government policies did not allow for freehold title to be held by the local government, then in these situations, the operational trust land can be made available to the local government for payment of the service provision fee of \$1,200 plus GST only.

## **Responsibilities**

All officers with appropriate delegations under the Land Act in Land and Surveying Services.



## Definitions

**Trust land** is defined in the Land Act as being land that comprises a reserve or a deed of grant in trust.

**Operational Trust Land** - is trust land which was set aside under the repealed *Land Act 1962*, unless its purpose is a community purpose as defined in Schedule 1 of the Land Act. It is then 'community purpose trust land'. Examples of operational trust land are reserves for local government purposes and library purposes.

**Community Purpose** - is the primary purpose for which a reserve or a deed of grant in trust may be used in accordance with the Land Act.

## Legislation

*Land Act 1994*

The repealed *Land Act 1962*

## Related documents

Guideline – [Allocation of land to state government departments and constructing authorities \(SLM/2013/418 = PUX/952/088\)](#)

## 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.

## Further information

- Contact your nearest business centre ([https://www.resources.qld.gov.au/?contact=state\\_land](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).

## Attachment A

<b>Purposes of operation trust land controlled by local governments as trustee – the purpose listed MUST relate to a local government function, not a state function</b>	
Abattoir	Pipe Line
Aerodrome	Port and Harbour
Aged Peoples Home	Pound
Ballast	Pumping Station
Building	Quarry
Departmental and Official	Rubbish/Refuse Disposal
Education	Reservoir
Electrical Works	Saleyards
Fire Brigade	Sand
Gravel/Road Metal	Sanitary
Health	Sewerage
Hospital	Shire Hall
Kindergarten	Stock Control
Landing Ground/Place for Aircraft (not boats)	Stock Dip
Library	Stock Trucking
Local Government	Storage of Water
Magazine	Water Supply/Waterworks
Municipal	Wharf
Museum	Car Parking

## Attachment B

**Surplus operational trust land** - In accordance with the following fee structure approved by Queensland Treasury, the department will retain from any sale proceeds (purchase price) a fee to cover costs incurred by the department in managing the disposal of surplus operational trust land.

Purchase/Sale Price	Fees for Disposal via the Land Act and or Open Market	Fees for Inter-Agency** Transfer/Sale
Up to \$4,000	Fee equivalent to the sale price	Fee equivalent to the sale price but no more than \$1,200
\$4,000 to \$50,000	\$4,000 flat fee.	\$1,200 flat fee.
\$50,000 to \$1M	8% of purchase price.	4% of purchase price.
\$1M to \$3M	8% of first \$1M plus 7% of purchase price in excess of \$1M, to a maximum fee of \$210,000.	\$40,000 plus 4% of purchase price in excess of \$1M, to a maximum fee of \$80,000.
\$3M to \$5M	7% of first \$3M plus 6% of purchase price in excess of \$3M to a maximum fee of \$300,000.	Maximum fee of \$80,000.
\$5M to \$10M	6% of first \$5M plus 5% of purchase price in excess of \$5M, to a maximum fee of \$550,000.	Maximum fee of \$80,000.
Above \$10M	By negotiation.	By negotiation.

\*\*For the purpose of calculating the appropriate fee, inter-agency transfer/sale is defined as a transfer of land to a state government department, Queensland Government owned corporation, Australian Government department, local government and statutory authority.

The department's fee will cover costs incurred, including:

- Real estate agent's commission;
- Cadastral survey;
- Valuation service;
- Market research;
- Advertising;
- Legal advice;
- Property maintenance, clearing/slashing;
- Material change of use costs.

All other costs incurred in preparing and presenting the property for sale will be deducted from the gross sale proceeds and 50% of the net sale proceeds will be remitted to the respective local government.

**Essential operational trust land** – For the reallocation of essential operational trust land to a local government as a deed of grant (freehold), the department will only retain from the sale proceeds (purchase price) the minimum fee of \$1,200 to cover costs incurred by the department in managing the action.

**PROCESS FOR DEALING WITH SURPLUS LOCAL GOVERNMENT OPERATIONAL TRUST LAND**

