

# Operational policy

## **Secondary use of trust land under the Land Act**

**SLM/2013/493 (Formerly PUX/901/209)**

**Version 7.00**

**Date: 04/07/2023**

## Approval

Position	Name	Effective Date
A/Director, Land Operations Support, Lands Policy and Support	Sandra Flanagan	04/07/2023

## Version history

Version	Date	Comments
2	14/01/2005	Endorsed
3	02/01/2008	Updated to reflect Land Act amendments
4	12/03/2008	Updated to include Caravan Park policy amendments
5	25/02/2010	Updated to include advice on traditional indigenous activities and advertising signage
6.00	02/05/2017	Major revision on reformatted new template and more detail on fencing requirements.
6.01	8/10/2019	Updated to reflect amendments to Land Act
6.02	20/06/2022	Updated template and department name to Department of Resources
6.03	01/03/2023	Updated to include amendments due to LOLA 2022
7.00	04/07/2023	Updated to include zero emission vehicle charging stations

This publication has been compiled by Land Operations Support, Lands Policy and Support, Lands Division, Department of Resources.

© State of Queensland, 2023

The Queensland Government supports and encourages the dissemination and exchange of its information. The copyright in this publication is licensed under a Creative Commons Attribution 4.0 International (CC BY 4.0) licence.



Under this licence you are free, without having to seek our permission, to use this publication in accordance with the licence terms. You must keep intact the copyright notice and attribute the State of Queensland as the source of the publication.

Note: Some content in this publication may have different licence terms as indicated.

For more information on this licence, visit <https://creativecommons.org/licenses/by/4.0/>.

The information contained herein is subject to change without notice. The Queensland Government shall not be liable for technical or other errors or omissions contained herein. The reader/user accepts all risks and responsibility for losses, damages, costs and other consequences resulting directly or indirectly from using this information.

### Interpreter statement:



The Queensland Government is committed to providing accessible services to Queenslanders from all culturally and linguistically diverse backgrounds. If you have difficulty in understanding this document, you can contact us within Australia on 13QGOV (13 74 68) and we will arrange an interpreter to effectively communicate the report to you.

## Table of contents

<b>Operational policy</b> .....	<b>1</b>
<b>Approval</b> .....	<b>2</b>
<b>Version history</b> .....	<b>2</b>
<b>Purpose</b> .....	<b>4</b>
<b>Rationale</b> .....	<b>4</b>
<b>Policy</b> .....	<b>4</b>
Term of trustee leases .....	5
Determining an appropriate rent for trustee leases and trustee permits .....	5
Public Access.....	6
Access for Traditional Activities .....	6
Inconsistent uses with the purpose of the trust land.....	7
Commercial uses .....	10
Management and protection of assets.....	11
Limit on intensive development.....	12
Making decisions about secondary use of trust land .....	14
Secondary uses .....	14
Clubs, liquor licences, gaming machines and entertainment .....	14
Common lake areas .....	16
Local government services and utility infrastructure.....	16
Community markets .....	16
Periodic uses.....	17
Telecommunications facilities .....	17
Third party signage .....	18
Trust land management plans .....	18
Advice to Trustee Lessees.....	20
<b>Definitions</b> .....	<b>20</b>
<b>Legislation</b> .....	<b>22</b>
<b>Related documents</b> .....	<b>22</b>
<b>Human Rights</b> .....	<b>22</b>
<b>Further information</b> .....	<b>23</b>
<b>Attachment A – When is a Trust Land Management Plan required?</b> .....	<b>24</b>

## Purpose

To clearly define the circumstances in which secondary uses of trust land will be allowed and existing uses managed. It also provides for when inconsistent uses with the purpose of the trust land under sections 52(3) and 60(3) of the *Land Act 1994* (Land Act) will be allowed.

Where the context permits, secondary use also includes a reference to an inconsistent action undertaken by the trustee.

**Note:** This policy does not address –

- Term Leases (state leases) and permits to occupy issued by the Department of Resources (department) over reserves.
- Construction trustee lease to the state for the construction of transport infrastructure and the provision of transport services on trust land.

## Rationale

The secondary use of trust land is authorised by the issue of a trustee lease or trustee permit in accordance with sections 57 and 60 of the Land Act.

It is recognised that legitimate secondary uses generate revenue important to the maintenance of the trust land.

The department conducts a rigorous assessment of land prior to its dedication as trust land for a community purpose. Having determined that community purpose trust land is the most appropriate tenure, there needs to be a strong partnership between the department, trustees and the community for the ongoing management and maintenance of the trust land.

Therefore a similar assessment of the effect of the proposed secondary use must also occur to ensure a state wide approach is taken to:

- retain the primary use of the trust land for community purposes; and
- the allocation and management of tenure to allow secondary uses of trust land.

A trustee of trust land under the Land Act may only authorise the secondary use of that trust land by a person or organisation under a trustee lease or trustee permit (Chapter 3, Part 1, Division 7 of the Land Act).

## Policy

This policy applies particularly to reserves and deeds of grant in trust (DOGITS) dedicated and granted for community purposes and also has application to reserves set aside for an operational purpose as per the repealed *Land Act 1962*.

**Note:** This policy excludes reserves and DOGITS granted for the benefit of Aboriginal and Torres Strait Islander Inhabitants, or for Aboriginal or Torres Strait Islander purposes or the provision of services beneficial to Aboriginal people or Torres Strait Islanders particularly concerned with land as leasing of these lands are dealt with under the *Aboriginal Land Act 1991* and the *Torres Strait Islander Land Act 1991*.

Before issuing a trustee lease to authorise the use and occupation of trust land by third parties, the trustee must obtain the approval of the Minister administering the Land Act (Minister). For the trustee lease to be valid it must be registered in the Queensland Land Registry (see s 57(7) of the Land Act).

State or local government trustees do not need to obtain approval for a trustee lease if the conditions in [Written Authority No. 1 \(2020\) – Section 64 of the Land Act 1994](#) are met.

One of the objects of the Land Act is that 'if land is needed for community purposes, the retention of the land for the community in a way that protects and facilitates the community purpose'.

Approval should not be given for a trustee lease or trustee permit which is:

- an inappropriate use for the purpose and qualities of the trust land; or
- not in the public interest; or
- substantially exclusive and/or commercial in nature.

## **Term of trustee leases**

The maximum term for trustee leases and trustee subleases is 30 years.

Trustee leases for sporting clubs or for charitable purposes will be for a maximum term of 20 years unless otherwise approved by the Minister.

Historically the majority of clubs operating on community purpose trust land require a lease term of not more than 20 years.

## **Determining an appropriate rent for trustee leases and trustee permits**

Any proposed rent for secondary use of trust land (including operational trust land) is to be established with consideration of management objectives for the trust land and community benefit. In accordance with section 63(2) of the Land Act the most appropriate rent is to be charged, having regard to the use of the land and community benefit.

The rental charged for any trustee lease or trustee permit shall be consistent with and have regard to the level of intensity of the use, the rent paid for similar uses on private land, the viability of the activity, the benefit to the community of the activity and the trustee lessee's or trustee permittee's particular circumstances.

While the determination of appropriate rent is a matter between the trustee and any trustee lessee or trustee permittee, the chief executive may request a report on the financial activities of a trust to ensure that appropriate rental is being charged.

The trustee will therefore, need to retain relevant records to prove that the proceeds are used for the development and maintenance of the trust land or for other grouped trust land in the area.

Trust funds usage is at full disclosure to the public.

Peppercorn rental (minimal rent) is not considered appropriate where a user group has the ability to contribute to the cost of maintenance of the reserve or the specific area it utilises.

The option of trustees receiving a minimal rent or, alternatively, an in-kind contribution through maintenance works or provision of facilities may be appropriate in some circumstances. Such commitments in lieu of rent is to be recognized in the conditions of trustee leases or trustee permits.

With the approval of the chief executive under section 62 of the Land Act, trust land with the same or complementary purposes may be grouped for the purpose of enhancing the financial and general management of the trust lands. In the case of management plans that deal with a network of trust lands, approval may be sought from the department to apply rental collected from secondary use on reserves within a group of reserves to other reserves within that grouping.

## **Public Access**

Access by the public to community purpose trust land, provided the community purpose does not restrict the right of the public to be there, is to be maintained and protected.

Exclusion of the public from particular areas of community purpose trust land resulting from the placement of facilities for the benefit of specific user groups will be discouraged unless, following appropriate consultation, it is clear that the community supports the establishment of such facilities.

Activities that can adversely affect community access to community purpose trust land are:

- The establishment of facilities that exclude the general public;
- Management practices and intensive use of playing fields such as frequent scheduling of sports training and competition;
- The fencing of playing fields to enable charging on match days and exclusion of the public at other times;
- Fencing for security and safety purposes.

Fencing for exclusive use of one group of people, and management practices which discourage access by the general public to fields and similar facilities, will not be permitted, except in the limited circumstances described in the section of this policy entitled 'Management and Protection of Assets'.

Due to significant levels of capital investment in community and sporting facilities these premises will require on-site management and security for a significant part of the day. Management and security practices tend to further discourage public access including from areas (such as adjoining playing fields) which the public do have a genuine right of access over.

The importance of preserving public access to appropriate community purpose trust land is promoted in the community purpose object of the Land Act. The term 'public access' includes the right of individuals to access trust land as well as the right of community organisations and legitimate users of trust land.

## **Access for Traditional Activities**

Access by Indigenous Australians to community purposes trust land for the purpose of carrying out organised traditional activities is allowed, provided the traditional activity does not pose an unreasonable risk to the health or safety of any person.

The duration of the organised traditional activity should in most instances not exceed one (1) day; and two (2) consecutive days is the likely maximum time required to conduct the traditional activity.

In considering applications for conducting organised traditional activities on community purposes trust land, the trustee lease may require the indigenous party to demonstrate that they are members of the traditional owners to the land.

Any authority given to access community purpose trust land for the purpose of conducting a traditional activity must be conditioned on the following -

- Use of firearms - There will be no firearms brought onto the community purpose trust land.
- Lighting of fires - There will be no lighting of fires unless, where it is required by Law, the indigenous person has an authority of permit to light a fire; and the lighting of fires is for the performance of traditional ceremonies; and public safety or property is unlikely to be endangered; and the trustee has consented to the indigenous person lighting the fire.

The use of community purpose trust land for the purpose of carrying out traditional activities may be subject to the provision of a management plan.

## **Inconsistent uses with the purpose of the trust land**

An inconsistent use of trust land is where a secondary use conflicts with the purpose for which the trust land has been dedicated, for example, a reserve for park purposes which has a licensed clubhouse situated on it.

An inconsistent action is not to adversely affect any business in the area surrounding the trust land.

Activities that currently occur on community purpose trust land which are inconsistent with the purpose of the reserve are to be progressively removed from the trust land if their continued presence will interfere with the general public's enjoyment of the trust land.

Some activities may be located on community purpose trust land as a result of historical circumstances and the use may be well established in a particular location. Consideration to their retention may be given on a case-by-case basis. Such consideration is to take into account community views, potential costs to the trustee lessee and the community of relocation and the availability of alternative trust land in the locality to meet community needs.

**Note:** A trustee permit must not be inconsistent with the community purpose of the trust land and the requirements prescribed under the Land Regulation 2020 including that a trustee permit must not allow the construction of structural improvements, although existing structural improvements on the trust land may be used or modified. However, a trustee permit may be inconsistent with the purpose of the trust land if an approved land management plan identifies the potential impacts of the permit and states how the permit does not diminish the purpose of the trust land.

Factors that may be taken into account when considering inconsistency of secondary use include:

- The extent to which the inconsistent use supports the maintenance of the trust land, and
- Previous positive involvement in development of the trust land for general public use (e.g. provision of infrastructure, range of community activities provided and outcomes in terms of improving the quality of life for the community).

An existing inconsistent secondary use may continue in circumstances where:

- It can be demonstrated that the requirement for a secondary use to discontinue is not feasible on technical or planning grounds; and
- The community has not raised valid concerns; and
- The requirements of a management plan are addressed; and
- The trustees declare that they are satisfied that the occupation does not diminish the purpose of the trust.

Where it is determined that an existing secondary use is inconsistent with the purpose of the trust land options for consideration includes:

- Allowing the use to continue under a trustee lease if it does not diminish the purpose of the trust land, in terms of section 59(2) of the Land Act and relevant policy; or
- If it can be demonstrated that the whole or part of the trust land is no longer required for its gazetted purpose:
  - Revocation of the trust land, or excision of the area from the trust land for further dealing under the Land Act; or
  - Changing the purpose of the trust land to a more appropriate community purpose that would accommodate the existing secondary use; or
- Cancelling the trustee lease (or trustee permit) and/or requiring the existing secondary use to discontinue.

The purpose of trust land may be changed through application by the trustee, provided a full management plan has been completed, including extensive community consultation, and the requirements of the Land Act are satisfied, including section 16 of that Act.

The purpose and intent of community purpose trust land to meet public interest will be demonstrated through the management plan and its implementation. The need for a proposed change in the intent and purpose of community purpose trust land will be demonstrated through a full management plan at the time of request of the change.

Some local government operational activities take place on community purpose trust land. These may be permitted to remain where no alternative site is available. Their existence needs to be documented in the management plan.

Cancellation of an existing trustee lease or requiring a secondary use which is not subject to a lease to discontinue may be considered when the use is clearly detrimental to the purpose of the trust land.

The user and trustee must be consulted prior to making any decision as to cancellation or removal of a secondary use.

Generally, land within the boundaries of community purpose trust land should not be excised for the purpose of commercial or other inconsistent activity.

Any excision of an area from trust land must have regard to other provisions of the Land Act, particularly relating to assessment of most appropriate tenure and use, and priority.

Secondary use of trust land for purposes not consistent with the purpose of the trust may be permitted, in the following circumstances:

- Government buildings or parts thereof.
- Grazing for pasture management. However, secondary use of camping reserves and water reserves or similar trust land used by travelling stock adjacent to stock routes will not be allowed if the local government stock route network management plan precludes such secondary use.
- Where the proposed use of the land provides an essential community service or comprises essential utility infrastructure and does not diminish the purpose and amenity of the trust land.
- Zero Emission Vehicle (ZEV) charging stations, where it has been determined that there are no other suitable tenure options e.g. road, freehold or operational reserve and the ZEV charging station does not diminish the purpose of the trust land. A trust land management plan will need to be undertaken to demonstrate how the proposed ZEV charging station will be managed to minimise impacts on the dedicated use of the trust land, including issues such as accessibility and public safety. Examples of ZEV charging stations which could be considered may not diminish the dedicated use of trust land include:
  - An existing car park which will continue to cater for users of the trust land while appropriately accommodating a ZEV charging station.
  - The proposed location of the charging station will not affect or impede the communities access to or use of the land.
  - Showground or recreational land with approval for short term public camping, where the charging of vehicles is ancillary to and will have no greater impact due to the permissible use.
- If the use is periodic/short term in nature e.g. as well as at show time, a showground reserve could be used for camping at other times but only for the travelling public and taking into account relevant issues including having regard to the department's operational policy – [Caravan Park policy \(SLM/2013/490 = PUX/901/102\)](#) and the following:
  1. There is no suitable alternative site and there is a genuine need for the camping in the area;
  2. The use must not diminish the purpose of the trust land or adversely affect any local licensed caravan and/or tourist park owners;
  3. The views of the Queensland Chamber of Agricultural Societies Inc could be sought on the use of part of the showgrounds for camping outside of the show period;
  4. The camping is to be provided for the travelling public only and any stay be limited to no longer than 3 nights which may be extended to no more than 7 nights with the proviso that there is no adverse effect on local licensed caravan and/or tourist park owners (for example as an overflow of existing private/business caravan parks);

5. Camping, in today's terms, includes a stay in a caravan;
6. The area should clearly be a camping area, not a caravan park as such, with the facilities provided consistent with a camping area i.e. benches, rubbish bins, toilet facilities, tap water, showers;
7. On-site accommodation and facilities such as kiosk, laundry and associated facilities are not to be available (the travelling public should use the facilities within the town/area) - a concern is that additional improvements may be provided that would tend towards a commercial caravan park which is not appropriate; and
8. A management plan is required whether the area is to be managed by the trustee (by issue of trustee permits) or by a lessee under a trustee lease. Some of the considerations of the management plan could include, depending on the location etc.
  - sanitation
  - litter control
  - weed and bushfire management
  - water quality particularly if near a waterway or underground water
  - land degradation
  - length of stay for campers
  - type of camping facilities to be provided

The option of excising an area from the trust land should be given careful consideration as it is often preferable for the trust land to remain intact for the community purpose for which it was originally dedicated and to tolerate an interim use that can be phased out or to leave an existing secondary use to continue uninterrupted.

Where conflicts cannot be resolved between inconsistent uses on trust land and other community uses it may be appropriate to exclude these from the body of the trust land. This may be achieved by partial revocation of the reserve and allocation of a more appropriate tenure to the inconsistent use.

Revoking part of trust land may be a consideration where freehold land owned by a trustee adjoins trust land and a lease is required for a use that overlaps the reserved and freehold land (e.g. two types of leases - trustee lease and lease over freehold). Subject to the Minister being satisfied that the affected part of the trust land is no longer required, rationalisation of the tenures through revoking part of the trust land will simplify leasing arrangements in those instances.

Additional information about considering the matter of inconsistent use is contained in the department's Land Management Planning for Reserves or Deeds of Grant in Trust guide, available at: <http://www.qld.gov.au/environment/land/state/reserves/planning/>

## Commercial uses

A secondary use with a commercial component will only be considered where it is consistent with the current purpose of the trust land and does not overpower or dominate the trust land.

Commercial uses should not unreasonably exclude the public and must not be the most substantial or significant use of the reserve.

Defining commerciality on community purpose trust land is made difficult by the diversity of organisations which operate on these lands and which obtain a revenue stream through commercial activities.

In simple terms, 'commercial' may mean the exchange of money for goods and services regardless of what the money is used for.

In the case of clubs, they are not-for-profit organisations. This is because all net proceeds of clubs must be expended on the provision of facilities and services and other benefits to the club membership and the local community. Therefore, no individual or group is able to derive personal profit from the operations of a club, except under normal commercial arrangements for the provision of goods and services.

Enterprises such as a kiosk within a botanical gardens reserve are commercial in nature but may be complementary to the primary purpose of the trust land. This is an alternative to excising the land containing the commercial use from the community purpose trust land. Where a secondary use with a commercial component appropriately services the activity of the patrons of trust land, that enterprise may operate under trustee lease (or trustee permit) at an appropriate return to the trustee.

An appropriate return to a trustee for a trustee lease (or a trustee permit) for a use with a commercial component which appropriately services the activity of the patrons of trust land means that the rent charged, in accordance with section 63 of the Land Act, is to be the most appropriate rent having regard to the use and the community benefit and purpose of the trustee lease or trustee permit.

For trust land that is used for recreation by the public, commercial uses must not result in exclusivity for individuals or groups or clubs.

A 'stand-alone commercial enterprise', for the purpose of the policy, is one which obtains the majority of its business from customers who are not necessarily reserve users e.g. passing trade on a highway adjoining a reserve. Use of community purpose trust land by a stand-alone commercial enterprise that makes a profit for the benefit of the owner or shares the profits with private shareholders is inconsistent with the purposes of the community purpose trust land and will not be allowed.

For existing activities with a substantial commercial component on community purpose trust land, careful consideration is to be given to expansion or redevelopment proposals before approval can be given to trustee leasing or excision from trust land.

## **Management and protection of assets**

Fencing for security and safety purposes will be accepted on trust land. Fencing is permitted in the following instances:

1. To protect the safety of participants, spectators and the public from danger or adverse consequences of uses of community purpose trust land. Safety measures such as fencing are sometimes necessary at sporting facilities for the safety of both players and spectators. Examples include existing shooting facilities (gun clubs, rifle ranges, archery fields, etc.); high fencing on sports areas, such as baseball and softball diamonds safety fencing, tennis courts,

and restricted entry to areas which may be dangerous such as swimming pools; fencing around areas used for vehicular activities including racing of cars and motorcycles; and areas used for animals such as horses and dogs. The purpose is separation for safety reasons.

2. To restrict vehicular movement onto and within the community purpose trust land. The purpose is management of vehicular activities within the community purpose trust land, such as vehicle parking, access to locations, and through traffic. Additionally, it may be used to separate vehicle, human and animal activities, as may be the case for a recreation reserve with a pony club use.
3. To protect significant capital works/infrastructure investment on the community purpose trust land. Often where there has been significant investment in facilities, such as synthetic surfaces for hockey and athletics, multi-purpose and indoor sport and recreation facilities, there is a management imperative to deter vandalism and protect infrastructure from inappropriate use due to the cost to the community of replacement. Fencing and security patrols may be introduced as protective measures.
4. To manage crowds at events, when fencing is of a temporary nature including sporting events, carnivals, festivals, triathlons, etc. This allows for the charging of an entry fee, the management of the activity, and the security of patrons during the event.
5. To delimit the boundary of the trust land where the adjoining land use requires limited public access. Examples include freehold land for residential and commercial activity adjoining community purpose trust land; reserves for operational purposes such as sewage treatment and water reticulation and drainage adjoining community purpose trust land; and transport corridors.

Where fencing is erected for the above reasons, the trustee and the trustee lessee are required to provide notification on the fencing or gate posts of either the hours the trust land is open to the public such as at a botanic garden, or the hours of exclusive use for training and events, such as at a football ground.

Guidelines are available from Queensland Police Service on design of buildings and fencing for reduction of crime.

Restriction of access across or within community purpose trust land has occurred in the past but is not permitted under the Land Act. Flexibility in the policy acknowledges situations where limiting or restricting access is in the public interest or to the benefit of the community.

## **Limit on intensive development**

The term 'intensive secondary use' of community purpose trust land refers to uses of trust land such as club buildings (licensed or otherwise), halls and pavilions, and specialised sporting facilities (e.g. bowling greens, tennis courts, hockey fields, netball courts, skate parks). The meaning of this term is as opposed to low impact use of community purpose trust land such as unfenced sporting arenas, undeveloped open space, bushland, nature trails and children's playgrounds.

Generally, there will be access restrictions imposed upon 'intensive' uses due to the nature of these activities i.e. security and management of facilities and premises is necessary.

The extent of intensification of use and development through secondary use can comprise any combination of uses, including existing uses, consistent with the community purpose of the trust land.

As a general guide, a proportion of the land area of community purpose trust land may be used for intensive secondary use, where this supports the better management of the trust land in accordance with its primary purpose and/or is in the best interest of the community.

This will be determined by taking into account community need determined through the land management planning process.

Intensification of use does not include sporting fields and unfenced areas, provided these areas are available to the general public without undue interruption or obstruction.

An appropriate level of infrastructure development may be permitted provided it has been determined as part of the land management planning process and will service the purposes of the community purpose trust land. Intensification should be consolidated in one area of community purpose trust land rather than scattered throughout. This will maximise the availability of the balance of the community purpose trust land for unrestricted public access.

A greater proportion of an area of trust land may be used more intensively if it forms part of a network of community purpose trust land in an area and there is adequate other land for community purposes in the entire area.

An existing trust land network will contain a hierarchy of developed infrastructure to support the purpose of individual reserves and DOGITs comprising that network.

An assessment of the capability of community purpose trust land to accommodate intensification of secondary use should follow a land management planning exercise which takes into consideration other land available for the community in the wider area. The 'wider area' may be the whole or part of a local government area and the community must be consulted as part of the land management planning exercise. Reference could be made to existing local government recreation and open space plans.

Historically it was required that the more intensive secondary uses (e.g. licensed clubs) be excised from community purpose trust land following termination of trustee leasing arrangements and a term lease issued to the secondary user. However, experience has shown that excisions of this type result in fragmentation of the land area of the community purpose trust land and erosion of the land available for community purposes.

The ability of trustees to apply rental obtained through trustee leasing arrangements to the management of the trust land is also removed when areas are excised from the trust land in this way. Where continuation of trustee leasing arrangements is considered appropriate and is supported by the community, the department will not insist upon excision of existing intensive secondary uses from community purpose trust land. Excision may be appropriate in circumstances described in the section entitled 'Inconsistent uses with the Purpose of the Trust'.

Given that trends in recreation activities and community needs change over time, the land parcel should remain a component of the community purpose trust land allowing for its use to change over time. Each case is to be assessed in its own right.

## **Making decisions about secondary use of trust land**

The key element for consideration when assessing an application for secondary use of trust land is whether the proposed secondary use is appropriate to the purpose the trust land was set aside. This same assessment is performed when determining the primary use for trust land.

The consideration and determination of whether the use is the most appropriate, or simply an appropriate use, can be a complex process and requires the gathering of significant data and the balancing of many factors.

To assess an application for use of trust land, the following five (5) criteria can be used:

1. Strategic value - the proposed use should be appropriate to the strategic value of the land's capabilities.
2. Consistency with primary use (if applicable) - the proposed use should be consistent with the designated purpose of the trust land and should also facilitate or enhance, not diminish, the purpose of the trust land.
3. Commerciality - the strength of the commercial motive behind the proposed use and whether it will have a negative effect on the public interest, needs consideration.
4. Exclusivity - refers to secondary occupation which excludes use by the wider community.
5. Incremental progression and forward planning - the proposed use may contribute to an incremental chain of events that lead to a final outcome quite different from that initially intended.

Detailed comments on the application of the above criteria are set out in section 2 of the department's Land Management Planning for Reserves or Deeds of Grant in Trust guide, available at:

<https://www.qld.gov.au/environment/land/state/reserves/planning>.

## **Secondary uses**

### **Clubs, liquor licences, gaming machines and entertainment**

Club activities may be considered an appropriate use where community benefit is demonstrated, and the community accepts the location of such a club on trust land.

It is considered that a supporter's club does not always have to be located at the same site as the primary club activity and as such may be better located on tenures other than community purpose trust land.

Bowls clubs and the like have a long tradition of being located on community purpose trust land. Some of these clubs may experience financial difficulties through changing community preferences and other circumstances beyond their control. In some instances where several clubs exist in a locality, and are experiencing similar difficulties, they may be encouraged to amalgamate so that the benefit of their activity remains within the community. The land management planning process identifies possible uses through the consultation process.

Surf lifesaving is considered to be an essential service to the community. The primary need for this user group is access to the beach to undertake the activity. Additional facilities to support the

lifesaving activities are generally located in close proximity to the beach access point. Any structures are subject to local laws and other legislation. These facilities will be allowed on community purposes trust land.

Appropriate facilities to service the activity needs of Surf Life Saving Queensland clubs (boat storage, training, lookout towers etc) will continue to be allowed on community purpose trust land.

Major club venues with liquor licences and permits, gambling facilities (**Note:** Generally, KENO and TAB facilities are not permitted, unless KENO and TAB facilities are present on the trust land and have previously been authorised by the department), entertainment and the like could be seen by some as inconsistent with the purposes of community purpose trust land and their continued location on such land is to be managed.

It is recognised that a considerable number of these venues already exist in Queensland on trust land. Established clubs may remain on community purpose trust land if they are well established and accepted by the community. A management plan may be required for trust land on which existing clubs are situated.

It is preferred that major club venues be issued with a trustee lease with an appropriate rental to the trustee instead of excising the land from the trust land and issuing a term lease. The size and scale of the existing establishment and the intent of the venue should guide the decision.

Major expansion of existing clubs on community purpose trust land, and the associated issue of a trustee lease, will only be permitted following appropriate community consultation as part of a land management planning process.

Proponents of new clubs of major size on community purpose trust land should not have an expectation that they will be given preference in the allocation of such trust land. Consideration may be given, however, to the issue of a trustee lease following appropriate community consultation as part of a land management planning process to determine whether the use is appropriate for the trust land.

Alternatively, for proposed new clubs of major size, consideration may be given to excision of part of the community purpose trust land for the purposes of allocating a term lease or freehold tenure, following appropriate community consultation to determine whether the trust land is still required for its dedicated purpose, and the other relevant requirements of the Land Act are satisfied.

Any management plan required in response to new or existing club activities should identify future planned developments on the site for all sport and recreation activity areas and clubhouses. A management plan requires community consultation on acceptable uses of the community purpose trust land and this public opinion will be considered in the approval of uses of the trust land.

A management plan for the trust land may also be required for venues that have or are considering the introduction of liquor licences and permits and gaming machines. The circumstances in which a management plan may be required in relation to liquor licences or permits or gaming are shown in Attachment A of this policy.

## **Common lake areas**

Any existing common lake areas in a reserve under the Land Act are available for the unrestricted use of the public for the purpose for which they are reserved (e.g. recreation) and any structures to be affected on the reserve under any leasing arrangement (jetties, pontoons, etc.) should not restrict the public use.

Leases over common lake areas are also not to include conditions permitting the trustee to charge maintenance or usage fees to the owners of lakeside subdivision lots.

## **Local government services and utility infrastructure**

Local government may approve the placement of 'essential utility infrastructure' (as defined in Definitions) on trust land under the trusteeship of that local government provided there are no viable or practical alternatives for such infrastructure. Such uses, if approved, are to be supported by an appropriate management plan.

Local governments may be permitted to place on trust land specialised services compatible with a trust land environment, such as a tourist information booth, provided an appropriate management plan is prepared. If operated by persons other than the local government, a trustee lease will be required.

Car parking facilities may be placed on trust land provided the facilities enhance the enjoyment of the trust land for the community purpose for which it was set aside. They must not be intended to service adjacent commercial development on non-trust land or to be a standalone commercial facility.

Services that relate to local government's operational business, such as local government offices, libraries and depots must not be placed on community purposes trust land. They can be placed on operational trust land with an appropriate purpose.

Minor operational facilities, such as a site maintenance depot within a botanical gardens reserve, are permissible secondary uses of trust land if identified within a management plan for the trust land.

## **Community markets**

The use of community purpose trust land for community markets is allowed but will be subject to the provision of a full management plan.

Prior to approval being given for commercial operators to operate stalls, consideration must be given to the impact such operations may have on locally established businesses and the views of the community as determined through the land management planning process.

The rent obtained from commercial operators at community markets should reflect the nature of the commercial use.

Markets should generally be restricted to:

- the sale of cottage industry and craft products such as hand-made leather goods, pottery, woodworking, sewing, cooking etc. and locally grown plants, fruits and vegetables, made or grown by the stallholder or their family;
- the sale of second hand goods;
- the sale of refreshments; and
- children's rides.

Local governments often have guidelines for the management of community markets. These are to be used for the management of the community markets on trust land, and should be discussed in the management plans.

A commercial operator, for the purpose of this policy, is defined as a person who runs a registered business, any profit from which is kept by that operator or shared with private shareholders. Usual operations of the business may occur from a fixed location or be carried out in mobile form.

## **Periodic uses**

Periodic uses will be allowed on community purpose trust land. The scale of the event or activity may require restriction of public access through placement of temporary fencing or barriers. The trustees are encouraged to charge an appropriate fee for the use of the land for the period of usage.

Some examples of periodic uses include carnivals, festivals, circuses, conventions, and the like.

Grazing of stock on undeveloped trust land is considered an acceptable land management practice in rural locations, provided environmental harm does not result from the activity. However, the secondary use of camping reserves and water reserves or similar trust land used by travelling stock adjacent to stock routes will not be allowed if the local government stock route network management plan precludes such secondary use.

In determining the effect of a periodic use that may be inconsistent with the purpose of the trust land, the extent and impact of any inconsistency is to be considered. Impact includes effects on the physical environment, and the social and economic impact of the activity on the local community. Consideration is to be given to the impact of events of short-term duration as against the regular land use.

An appropriate fee for the use of the land should be compared to other rents, fees and charges by the local government for similar activities.

## **Telecommunications facilities**

Development of telecommunications facilities on community purposes trust land will be discouraged unless a direct public benefit to the surrounding community can be demonstrated.

Telecommunications facilities are more appropriately sited on tenures other than community purpose trust land, such as freehold, leasehold issued for telecommunication purposes or reserves for operational purposes. However, there are situations where the establishment and/or maintenance of telecommunications facilities on trust land is required to directly service or provide enhanced

telecommunications coverage or local network capacity to the surrounding community. In such circumstances consideration may be given to the location of telecommunications facilities on trust land where the proponent is able to demonstrate that the placement of such facilities represents a superior siting option on technical or planning grounds to other alternatives considered in the locality.

The trustee lease will include appropriate conditions for the return of the site to its original condition following the decommissioning of the facility or when a further trustee lease is not issued upon expiry.

A suitable management plan would be required in these circumstances.

## **Third party signage**

Third party signage (other than sponsorship signage), including freestanding billboards and advertising structures of all sizes are considered to be an inconsistent use of community purpose trust land and will not be allowed. Existing structures for third party signage on community purpose trust land will be phased out.

Directional, interpretative, place name and operational signage will be accepted on community purpose trust land, provided it relates to the community purpose trust land, approved secondary uses or adjoining public facilities. The design of this signage should be consistent with the relevant requirements of the local government.

Sponsorship signage will be accepted, including freestanding or on the internal and external fencing of sports ovals and on associated buildings and structures. External fencing refers to fencing on the external boundaries of the community purpose trust land. In addition to the sponsor's name, the signage may display the sponsor's contact details.

Political signage is not acceptable on trust land. An exception is if the local member is a patron of or sponsors the club - signage to that effect is acceptable e.g. Tony Smith, Member for Brisbane sponsors the Cougar Soccer Club.

All signage is to comply with local government planning schemes, local laws and policies.

This policy does not apply to third party signage on operational trust land.

## **Trust land management plans**

Land management planning is necessary to identify the qualities and appropriate use of community purpose trust land and involve the community in decisions about the use of this community resource.

A trust land management plan (management plan) may be required at the discretion of the department in the following circumstances:

- Upon initial dedication or grant of land in trust for community purposes where it is in the public interest (e.g. significant conservation values). Trustees, on appointment, may be requested by the state to prepare and implement a management plan (park contributions from a reconfiguration of a freehold lot i.e. subdivisions not included); or
- For any community purpose trust land with an existing secondary use where community consultation is considered appropriate.

Management plans will be required for an inconsistent use e.g. section 60(3) of the Land Act.

In accordance with section 48 of the Land Act the chief executive or their delegate may ask the trustee to apply for approval of a management plan for the trust land. The preparation and implementation of a management plan is consistent with trustees' administrative functions defined in section 46 of the Land Act.

Management plans are to be prepared by the trustee and the costs of doing so are the responsibility of the trustee.

Trustees are encouraged to consult with the department prior to progressing a management plan.

It is recognised that the costs of preparing management plans for trust land may appear prohibitive for some trustees. However, it is considered consistent with the objects of the Land Act that a land management planning regime in respect of individual reserves/DOGITS or a network of trust land is appropriate.

Where there are many reserves/DOGITS with the same or complementary purposes within a local government area there may be a need for a management strategy or trust land network approach over a part of or the whole local government area to minimize costs and unnecessary duplication.

A local government may prepare a management plan for an approved group or groups of community purpose trust land with the same or complementary purposes within its jurisdiction (e.g. all reserves for recreation/sport purposes within the local government area).

Such a management plan will require wide community consultation and be developed and implemented in consultation with the department. This network plan may include land of varying tenures (including non-trust land) used for related purposes.

Where the department requires more detail for a particular area of trust land within a network management plan, a full management plan as appropriate may be prepared for that area and become an attachment to the network management plan.

Where there is a requirement under the *Planning Act 2016* (Planning Act) for approval to be obtained for a material change of use (MCU) in conjunction with an application for secondary use, if timed with the preparation of the management plan, community consultation processes under the Planning Act may substitute for all or part of a management plan consultation process appropriate to the particular case.

Evidence of owners' consent from the department (other than for trust land where the trustee is another state department) will be required prior to a MCU development application being lodged under the Planning Act – owners' consent may be given once the trustee and/or applicant accept the (conditions of) offer.

Therefore, a condition of approval to and offer for the secondary use (e.g. trustee lease or an inconsistent action) is that a suitable management plan is required, including evidence of community consultation being provided to the department on submission of the management plan, prior to any secondary use being allowed.

Community consultation in the development of a management plan for trust land will be appropriate to local requirements. It will be guided by the trustee local government or, where a trustee is not a local government, in consultation with the relevant local government and in accordance with any direction from the department appropriate to the particular circumstances.

Where a master plan has been prepared for the trust land, the management plan will be attached as an appendix to a [land management plan template](#) when submitting for approval.

The master planning process will have considered broader community requirements and included a suitable level of public consultation. Submissions put forward by the community and stakeholders will have been considered by the trustee in its resolutions.

Additional guidance on the preparation of a management plan is available –

- departmental webpage - <https://www.qld.gov.au/environment/land/state/reserves/planning>.
- Attachment A within this document, which sets out when a management plan is required.

The department will rely on the trustee in its role as trustee to have undertaken an appropriate level of planning to determine the capacity of the trust land, any multi-use opportunities and the community's interests and aspirations for particular uses in particular locations and to also have suitably addressed any community concerns relating to any proposed secondary uses on the trust land.

The trustee will identify the level of consultation required and will advise on the outcomes of the consultation and confirm that the trustee has addressed any feedback received.

Community consultation should allow for disclosure about the proposed distribution or re-distribution of revenue from lease rental towards the trust land or other trust land (grouped with the trust land) in the locality as well as any intended investment by the trustee lessee (or a trustee permittee) in the balance of the trust land or other trust land in the locality (grouped with the trust land).

Consultation may include, for example:

- Short management plan - consultation with trust land users and adjoining owners (e.g. letters, meetings); advertising in local newspapers; and a community meeting.
- Detailed management plan - consultation with trust land users and adjoining owners and businesses in the area (e.g. letters, meetings); distribution of information brochures; advertisements in local and regional newspapers; a series of community meetings; requests for written submissions; workshops to develop planning objectives and strategies; and public display of the proposed management plan.

Where the trustee has not undertaken community consultation then the trustee will include comment on why this has not been considered necessary.

Management plans should be reviewed periodically in accordance with changing use patterns and changing community expectations.

## **Advice to Trustee Lessees**

Trustees are to advise trustee lessees and trustee permittees of the content of the management plan for the relevant trust land and ensure that the trustee lessees and trustee permittees comply with the plan's requirements.

## **Definitions**

**Community purpose** - is the primary purpose for which a reserve or DOGIT may be used in accordance with the Land Act.

**Community purpose trust land** - is trust land dedicated or granted for a community purpose as defined in Schedule 1 of the Land Act e.g. gardens, parks, recreation, showgrounds and sport.

**Department** - the department administering the Land Act and that department's successors.

**Essential utility infrastructure** - facilities, services and works which are required as a public service but which would not diminish the purpose, amenity and enjoyment of the community purpose trust land. Examples could include pump sites, generators, switchboards, and drainage works or telecommunications facilities but would not include major public utility installations such as water supply dams, sewage treatment works, electricity substations and the like.

**Existing inconsistent uses** – inconsistent uses and infrastructure that are of a historical nature and were generally in place prior to the commencement of the Land Act.

**Not-for-profit (or non-profit)** - referring to organisations established in terms of legislation including the *Associations Incorporation Act 1981* (Qld) or a company limited by guarantee under the *Corporations Act 2001* (Cwlth), means an entity established for some motive other than the hope of making a profit for individual gain.

**Operational business (local government)** - includes libraries, health and welfare facilities, aged care facilities, tourist information centres, water supply, sewage treatment works, aerodromes, electrical works, local government offices, pounds, quarries, refuse disposal facilities and works depots.

**Operational purpose** - is the purpose for which a reserve or DOGIT set aside under the repealed *Land Act 1962* may be used (e.g. reserve for local government purposes) other than where its designated purpose is a community purpose.

**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 school reserves.

**Secondary use of trust land** - occurs when a person or organisation, other than the appointed trustee, obtains approval from the trustee to use the trust land under a trustee lease or trustee permit, or where the context permits, an inconsistent action undertaken by the trustee.

**Traditional Activity** - means the following activities carried out in accordance with the relevant Indigenous Australian tradition:

- hunting, fishing, gathering or camping;
- performing rites or other ceremonies; and
- visiting Significant Aboriginal Areas.

**Trustees** - are appointed by the Minister to manage trust land consistent with achieving the purpose of the trust and other duties as required under the Land Act.

**Trustee lease** - is a lease of trust land issued by a trustee to a trustee lessee, with the Minister's approval under the Land Act.

**Trustee permit** - is a permit to use trust land issued by the trustee to a trustee permittee in accordance with the Land Act and the guidelines prescribed in the Land Regulation 2020.

**Trust land** - includes reserves and deeds of grant in trust (DOGITS) dedicated or granted for a community purpose in terms of the Land Act , including those in existence at the commencement of the Act (i.e. community purpose trust land), and reserves and DOGITS set aside for an operational purpose in terms of the repealed *Land Act 1962* (i.e. operational trust land), but for the purpose of this policy, excludes reserves and DOGITS granted for the benefit of Aboriginal and Torres Strait Islander Inhabitants, or Aboriginal or Torres Strait Islander purposes, or the provision of services beneficial to Aboriginal people or Torres Strait Islanders particularly concerned with land. Refer also to the definitions of 'community purpose trust land' and 'operational trust land'.

## Legislation

*Aboriginal Land Act 1991*

*Associations Incorporation Act 1981*

*Corporations Act 2001 (Cwlth)*

*Environmental Protection Act 1994*

*Coastal Protection and Management Act 1995*

*Land Act 1962 (Repealed)*

Land Regulation 2020

*Planning Act 2016*

*Torres Strait Islander Land Act 1991*

*Land Act 1994*

## Related documents

Operational policy – [Caravan Park Policy \(SLM/2007/3127 = PUX/901/102\)](#)

Operational policy – [Land dealings affecting the stock route network \(SLM/2013/363 = PUX/901/238\)](#)

Guideline – [Land Management Planning for Trust Land \(SLM/2021/5632\)](#)

Model by-law – [Trust land Consumption of Liquor Model By-law](#)

## 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 – When is a Trust Land Management Plan required?

Management Plan - Not Required	Basic Management Plan Required - Some consultation (see Guidelines)	Full Management Plan Required - Extensive consultation (see Guidelines)
<p><b>Criteria</b></p> <ul style="list-style-type: none"> <li>• No change, or minimal change to an existing use consistent with the trust land</li> <li>• Small reserve managed as part of a network with a full management plan in place for the reserve network</li> <li>• New lease for an existing secondary use of low intensity</li> <li>• No liquor permit other than for specific events</li> <li>• No gaming machines on premises</li> <li>• No community concerns have been raised</li> <li>• No environmental concerns have been identified</li> <li>• Grazing for pasture and environmental management</li> </ul>	<p><b>Criteria</b></p> <ul style="list-style-type: none"> <li>• Minor intensification of an existing secondary use</li> <li>• New secondary use of low intensity</li> <li>• Community Other-Liquor licence</li> <li>• Existing gaming machines on premises with a proposed increase of fewer than 20 machines</li> <li>• Use by indigenous persons for conducting an organised traditional activity for periods of 3 days or more at any one time</li> <li>• Some exclusive use and public exclusion is evident in the secondary use</li> <li>• Community consultation is desirable</li> <li>• Minor essential utility infrastructure and/or specialised services</li> <li>• Examples of intensification include               <ul style="list-style-type: none"> <li>• Night lighting</li> <li>• Extension of hours of operation</li> <li>• Activities where the effect of noise needs to be considered</li> <li>• Activities which generate increased vehicular traffic</li> </ul> </li> </ul>	<p><b>Criteria</b></p> <ul style="list-style-type: none"> <li>• Significant intensification of an existing secondary use</li> <li>• New lease for an existing secondary use of high intensity</li> <li>• New secondary use of high intensity</li> <li>• Commercial Hotel, Community Club or Commercial Special Facility Liquor Licence</li> <li>• Existing gaming machines on premises with a proposed increase of 20 or more machines</li> <li>• Exclusive use and public exclusion is evident</li> <li>• Community markets</li> <li>• Community consultation is essential and serious concerns might already have been expressed</li> <li>• Essential utility infrastructure and/or specialised services</li> <li>• Proposed change in the purpose of the reserve</li> <li>• Where an existing use is inconsistent with the purpose of the reserve</li> <li>• Examples of intensification include:               <ul style="list-style-type: none"> <li>• Potential multi-purpose conflicts</li> <li>• Conservation issues</li> <li>• Contaminated land issues</li> <li>• Use threatens visual and scenic amenity</li> <li>• Use for major events on regular basis</li> <li>• Community markets going from say monthly to weekly</li> <li>• Expansion of buildings</li> <li>• Effects on local businesses</li> </ul> </li> </ul>
<p>Example: New lease for an existing small sports club lease with no intensification of use</p>	<p>Example: Existing tennis club on a Recreation reserve wants to install court lighting to enable night competition</p>	<p>Example: Proposed major building extension to Licensed Leagues Club situated on trust land for recreation purposes</p>

Uses supported	Inconsistent uses that may be considered as part of a Management Plan	Inconsistent uses NOT supported
Existing major club venues with liquor licences and permits, gambling facilities	Community markets are allowed	Commercial car parking
Directional, interpretative, place name and operational signage, provided it relates to the community purpose trust land	Independent educational facility (to be located in an existing building)	Third party signage (other than sponsorship signage), including freestanding billboards and advertising structures
Car parking facilities for the sole benefit of the patrons	Pre-existing permanent caravan sites on a showground may be allowed subject to the provision of a management plan showing appropriate timelines for removal	Political signage
Grazing of stock on undeveloped trust land is considered an acceptable land management practice in rural locations	Existing operational local government infrastructure allowed	Local government offices and depots
	Existing environmental education facility allowed	Libraries
	Overflow of educational facility recreation/playground area allowed	Telecommunications facilities
	Non-commercial increases e.g. commercial – function rooms, bars, restaurants etc.; non-commercial – surf club storage, first aid, nippers areas etc.	Increase in commercial aspects of existing Clubs (e.g. Surf Clubs)
	Commercial uses that provide a highly desirable service to reserve users such as kiosks and cafes (the foods service limited to snacks and light meals)	Private Clubhouse (e.g. Veteran Motorcycle) where the public is unable to join and the proposed use is better utilised on freehold land (e.g. allowing members to reside on the premises)
	Commercial recreation events such as trade shows, fairs, festivals, seasonal outdoor cinemas and weekend markets, which are open to the public and which do not rely on the construction of new and extensive permanent structural improvements or which involve limited improvements intended for temporary use that do not adversely impact on the primary purpose of the trust land	Commercial Restaurants and/or cafes/ Kiosks/coffee shops/coffee carts
	Commercial/contracted management of swimming pools and halls subject to the provision of a management plan	Cultivation

Uses Supported	Inconsistent uses that may be considered as part of a Management Plan	Inconsistent uses NOT supported
	Telecommunications facilities where a direct public benefit to surrounding area can be demonstrated	Industrial operations (e.g. produce organic compost and fertiliser)
	Temporary short-term camping on a showground or recreation reserve subject to the provision of a management plan	Tourist operation business
	Uses such as ice-cream vendors and equipment hire (e.g. sailboards, surf-skis, etc.) which are required to be licensed and controlled in accordance with a local government local law.	Commercial gyms
	Caretakers residences are generally no longer considered necessary, however, may be considered only where it can be identified that in isolated areas, there is no immediate emergency services and there is a definite security risk to the reserve. This will be assessed on a case by case basis.	Commercial training/educational facilities
	Indoor recreation – dance, martial arts, taekwondo etc. within an existing facility	Commercial office space (e.g. physios, dietician etc.
	Professional tennis coaching agreements or professional management of trust land for this purpose	