

Creation of Trust Land PUX/901/207 Version 3

SLM/901/207 – Version 3

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Version history

Version	Date	Comment
2	24/12/1997	Endorsed
2.1	01/07/2005	Conversion Project - New WORD/XML template
3	02/01/2008	Updated to reflect Land Act amendments
3.1	11/11/2008	Minor amendment to change public liability insurance amount
3.2	09/02/2011	Updated to DERM

Purpose

To address the issues of grant or dedication of trust land (i.e. reserves or deeds of grant in trust) under the *Land Act 1994*, the appointment of trustees of trust land and access requirements for trust land.

Rationale

Following an assessment of the most appropriate tenure and use, an area of unallocated State land may be dedicated as a reserve or granted in trust (i.e. a deed of grant in trust) under the *Land Act 1994* for a community purpose as defined under Schedule 1 of that Act, and a person (a trustee) appointed to manage the trust land.

However, the issue of a deed of grant in trust is not supported.

A deed of grant in trust was issued under the repealed *Land Act 1962* generally only to enable the trustee to mortgage the trust land (a trustee was and is still unable to mortgage a reserve) to raise funds for the enhancement of the trust land.

Also, trust land could be granted for an operational purpose under the repealed Act.

Although the *Land Act 1994* still provides for the issue of a deed of grant in trust, a deed of grant in trust first issued under that Act may not be mortgaged, and trust land may now be only for a community purpose.

Therefore, it is now considered that any area required for a community purpose is more appropriately managed under a reserve.

For a person to be appointed as a trustee, that person must have some particular association or expertise with the trust land and its purpose, or with the local community and may be the following:-

- a. the State
- b. a statutory body (includes a local government)
- c. an incorporated body
- d. a named individual

Appointment of a single entity may provide for more effective decision making.

Incorporation provides increased protection for individual trustees from personal liability.

As a trustee is taken to be the owner of the trust land for legal proceedings, the trustee should have public liability insurance.

A suitable plan of the land is required to clearly identify the trust land in accordance with existing survey requirements.

An area may be shown as public use land on a plan of subdivision of freehold land, with the intent that the public use land is to be dedicated as a reserve for a community purpose, however a suitable trustee is required.

As public use land is generally for the benefit of the public, access is required. Access is also required to enable the trustee to manage and maintain the trust land.

Policy

A reserve is considered the most appropriate tenure for an area of unallocated State land that is required for a community purpose - a deed of grant in trust is not to be considered.

The department's preferred position, is for a trustee (other than State authorities or local governments) to be a single entity and that the trustee be an incorporated body.

The trustee must have some particular association or expertise with the trust land and its purpose, or with the local community.

The trustee being appointed (apart from the State or a local government, both which have public liability insurance arrangements) is required to demonstrate that public liability insurance to the satisfaction of the department has been obtained and will be maintained.

The amount of the insurance needs to be at least twenty (20) million dollars.

In the case of urban land, or where structural improvements are to be erected, survey is required.

In other circumstances a suitable survey plan is required with the necessity for survey being determined having regard to the locality and any improvements proposed to be effected.

If a lot shown as public use land is identified as a community purpose under Schedule 1 of the Land Act, the area is dedicated as a reserve for that community purpose upon registration of the plan, provided the Minister has consented to the plan.

The Minister will only consent to the plan if a person suitable to the Minister, usually the local government, has accepted trusteeship of the proposed reserve.

In relation to freehold land, section 51A of the *Land Title Act 1994* requires that a plan of subdivision dedicating a lot as public use, other than a road, may be registered only if that lot has access by way of a road or public thoroughfare easement, or the Minister has approved that the plan may register without access to the lot being available.

The Minister would only approve a plan with a lot (as public use land) that is proposed to be a reserve and does not have access if that lot adjoins an existing

- a. reserve for the same or similar community purpose and that reserve has access, and the same trustee;
or
- b. area of public use land that has access and is to be dedicated as a reserve for the same or similar community purpose and the same trustee is to be appointed.

Note: section 290JB of the Land Act is similar to section 51A of the Land Title Act. A plan of subdivision under the Land Act though follows approval of an action under that Act, unless authorised under another Act e.g. the *Urban Land Development Authority Act 2007*. Access requirements to the public use land will be considered as part of that approval.

Legislation

Sections 16, 30, 31, 44, 91 290JA and 290JB of the *Land Act 1994*

Sections 51 and 51A of the *Land Title Act 1994*