

Issue of Permit to Occupy PUX/901/386 Version 3

SLM/901/386 – Version 3

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Version history

Version	Date	Comment
1	24/12/1997	Endorsed
1.1	04/07/2005	Conversion Project - New WORD/XML template
2	02/01/2008	Updated to reflect Land Act amendments
3	05/03/2008	Updated to clarify stock route process
3.1	15/07/2010	Minor amendment to include additional stock route requirements
3.2	21/07/2010	Minor amendment to update to Land Regulation 2009
3.3	27/01/2011	Updated to DERM

Purpose

LEGISLATIVE BASIS:

Section 177 of the *Land Act 1994* (Land Act) states that the chief executive may issue a permit to occupy over unallocated State land, reserve or a road.

A permit to occupy though may be issued

- a. for 2 or more reserves only if the reserves are for the same purpose and with the same trustee; or
- b. if it is for 1 type of land i.e. if a permit to occupy is required for a reserve and road, then 2 separate permits to occupy will need to issue, 1 over the reserve and another over the road.

If a permit to occupy is to issue over a reserve, the trustee of the reserve must be consulted, and if the purpose of the permit to occupy is inconsistent with the purpose of the reserve, no improvements, other than boundary fences, are to be built by the permittee.

A permit to occupy for not more than 12 months does not need to be registered.

An agreement relating to an existing fence may be required in accordance with section 179 of the Land Act.

If a permit to occupy is to issue below high water mark, the requirements of section 178 of the Land Act must be satisfied.

A permit to occupy may not be transferred sublet or mortgaged and may be cancelled as provided for in section 180 of the Land Act.

Native title and cultural heritage need to be addressed.

Scope

This policy applies to consideration of all applications for a permit to occupy over unallocated State land, reserves or roads.

The policy also provides guidelines on considerations for the issue of permits to occupy in specific instances, including for permits to occupy for not more than 12 months.

However, consideration to applications for a permit to occupy over a reserve must first have regard to Leases over Reserves Policy PUX/901/210

<http://www.derm.qld.gov.au/services_resources/item_details.php?item_id=100442&topic_id=16> which provides guidelines for trustees to authorise use of reserves under a trustee lease where appropriate.

Further, any application for a permit to occupy relating to a State controlled road is to be referred to the Department of Transport and Main Roads to consider/authorise. A permit to occupy under the Land Act should not be considered.

Rationale

A permit to occupy gives personal permission to use the land; it does not create an interest in land - a permit to occupy is still unallocated State land, reserve or road.

The ability to issue a permit to occupy is included in the Land Act to allow for

1. minor uses where the exclusive use of a site is not required,
2. and/or where the requirement to use the land is short term and temporary in nature.

Because of the nature of permits, structural improvements are generally not appropriate.

Reserves

Where the trustee is not to lease the reserve under a trustee lease as provided for under Leases over Reserves Policy PUX/901/210 http://www.derm.qld.gov.au/services_resources/item_details.php?item_id=100442&topic_id=16 and the proposed use is appropriate for the reserve, a permit to occupy may be a more appropriate tenure than a State lease.

Where the application is for the renewal of a State lease to graze a reserve the tenure options, in order of preference, are to be:-

1. Trustee permit;
2. Trustee lease provided the term of the trustee lease is for no more than 5 years; and
3. State lease provided the term of the lease is for no more than 5 years and the lease has a condition (C400) prohibiting the renewal of the lease.

Public liability insurance

Where the public still have the right of access to the land, or the activity conducted will be open to members of the public, and/or have a level of risk, sufficient protection for the State and the public is required.

Bond

The State should not be expected to bear costs for land restoration.

Advertising signs

Whilst realising the demands on unallocated State land, reserves and roads as sites for advertising signs, and the financial benefits which may flow from the approval of signs on these lands, they should not be encouraged on environmental and aesthetic grounds.

Apiary sites

A policy allowing authority and fee charging for commercial operations for apiary sites on unallocated State land, reserves and roads needs to be consistent with the approach taken for such sites on State Forests and Timber Reserves, National Parks and other conservation tenures.

Fees and conditions need to be commensurate with those of other authorities.

Bore sites

A bore wherever possible should be located on the owner's land and not State controlled lands, particularly a dedicated road as such infrastructure is not commensurate with road use.

Significant Development

A significant development usually entails a number of investigations prior to commencement. This policy enables these investigations to be undertaken with a short term tenure in place until a decision is made on whether the development is to proceed.

Stocks Routes and associated reserves for travelling stock

Stock routes and associated reserves e.g. reserves for camping and water, are primarily for use by travelling stock.

Further, the *Land Protection (Pest and Stock Route Management) Act 2002* provides for an enhanced local government role in management of stock routes through the requirement of a stock route network management plan for the forty (40) local governments prescribed under the Land Protection (Pest and Stock Route Management) Regulation 2003

<<http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/L/LandPrPSRMR03.pdf>> .

These plans must be consistent with the State stock route network management strategy. Camping and water reserves and other reserves with a purpose consistent with the requirements of travelling stock (e.g. trucking, pasturage) form part of this network.

The issue of permits to occupy over these areas may adversely impact the capacity of these areas to be used for their primary purpose.

Policy

General

Permits to occupy should only be considered for matters of:

- a minor nature, for example pump sites and bore sites or apiary sites;
- a temporary nature, for example an entrance ramp to a building site during construction, parking of vehicles, storage or grazing.

An exception to this is the issue of a permit to occupy over a road may be considered where there is a building encroachment that does not affect the road use and public safety is not compromised, and it is not practical to require its removal and it is unable to be authorised by permanent or temporary road closure for sale, lease or licence of the land.

Short Term Permit

A permit to occupy for a period of not more than 12 months (short term permit) may be issued to persons or organisations requiring the use of an area of land for a short period for a specific purpose. The short term permit may be issued over unallocated State land, reserves or road areas for purposes such as

- transitory grazing
- travelling circuses and shows
- batching plants
- stockpile sites and
- where contractors are engaged in road building or major projects.

Reserves

1. Subject to the requirements for stock routes and associated reserves for travelling stock as outlined in this policy, if the trustee is not to undertake the leasing of a reserve (see Secondary Use of Trust Land Policy PUX/901/209 <http://www.derm.qld.gov.au/services_resources/item_details.php?item_id=100478&topic_id=16> and Leases over Reserves Policy PUX/901/210 <http://www.derm.qld.gov.au/services_resources/item_details.php?item_id=100442&topic_id=16>) a permit to occupy rather than a State lease may be the more appropriate tenure (including in deciding a renewal application*) particularly for short term grazing and the only improvements required (allowed) to be built by the permittee are boundary fences - see section 177 of the Land Act <<http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/L/LandA94.pdf>> , as
 - a reserve, particularly for a community purpose if for the benefit of the whole community
 - a permit to occupy, particularly for grazing, is more acceptable to permit the non exclusive use of a reserve
 - as the issue of a permit to occupy does not create an interest in the community/State land;
 - whereas a lease may be transferred and mortgaged and therefore may provide the lessee with a perception of "ownership" of land that is community/State land.

The above is to be considered when dealing with any application for a State lease over a reserve, including a renewal application.

*in deciding whether a new (State) lease is the most appropriate tenure under section 159(1)(m) of the Land act, section 16 of that Act applies with necessary changes - see section 159A(1) and (2) of the Land Act <<http://www.legislation.qld.gov.au/LEGISLTN/CURRENT/L/LandA94.pdf>> .

Public liability insurance

Public liability insurance is to be a mandatory requirement for all permits to occupy (including a short term permit) issued over reserves and roads as the public generally still has the right of access.

Public liability insurance is also required for a permit to occupy (including a short term permit) issued over unallocated State land where the public may have access to the permitted activity, and/or where the activity undertaken has a level of risk.

Instances when public liability insurance will be required for a permit to occupy issued over unallocated State land include

- when the general public attend eg circus
- gathering of a group of people eg function and
- operation of machinery, vehicles and aircraft

Evidence of the public liability insurance is to be sighted before issuing the permit to occupy.

Bond

A bond may also be required, particularly for a short term permit and where the proposed use of the permit to occupy area could result in costs to the department to return the area to its former state.

A cash bond is not usually accepted by the department, however, for a short term permit, a cash bond is acceptable on the condition that the department is unable to pay interest.

Advertising Signs

The use of unallocated State land, reserves and roads for advertising signs is not supported and will be discouraged.

Secondary Use of Trust Land Policy PUX/901/209

http://www.derm.qld.gov.au/services_resources/item_details.php?item_id=100478&topic_id=16 outlines restrictions on advertising signs under a trustee lessee or trustee permit - similar considerations should apply when dealing with an application for a permit to occupy for advertising signs on a reserve.

Where advertising signs are to be permitted on State controlled lands, approval will be subject to compliance with local government requirements.

Apiary Sites

For State Forests, Timber Reserves, National Parks and other conservation tenures, the applicant is to be referred to the agencies responsible for these lands, being the department's Forest Products business unit for State Forests and the Environmental Protection Agency for the other lands.

For unallocated State land, reserves and roads, including stock routes (refer to the requirements for stock routes outlined in this policy) a permit to occupy for proposed apiary sites, requires consultation with the relevant local government, the Apiary Section of the Department of Primary Industries and Fisheries, and (if applicable) the trustee of a reserve.

The views and requirements of the Environmental Protection Agency should be sought in respect of any request to site beehives on roads through or adjoining a National Park, State Forest or other conservation tenure, or on unallocated State land or reserve adjoining these lands.

Fees for apiary sites on unallocated State land, reserves and roads, including stock routes shall be

commensurate with the fees charged for equivalent apiary sites on State Forests or Timber Reserves etc within the locality, subject to the requirements of the Land Act and *Land Regulation 2009* regarding fees and rent.

One permit to occupy is to issue for each separate apiary site.

Bore sites

Before a permit to occupy is granted for a bore site, the applicant needs to demonstrate that it is not possible to locate the bore on their own land.

If proposed to be located on a road, consideration will only be given to the issue of a permit to occupy if road use is not affected and public safety is not compromised.

Significant Development

Where initial site investigation over an area of unallocated State land is required for a significant development, a permit to occupy is to issue. The annual rental will be set at an amount equal to 1% of the highest and best current land use value, excluding the potential use under investigation. No development work is to be undertaken until an appropriate tenure, either a lease or freehold, has issued - see Criteria and method for disposal of unallocated State land Policy PUX/901/315
<http://www.derm.qld.gov.au/services_resources/item_details.php?item_id=100465&topic_id=16> .

Stock Routes and associated reserves for travelling stock

Permits to occupy should not issue over primary and secondary stock routes where there has not previously been a permit to occupy issued.

However where a permit to occupy over a primary or secondary stock route is to be cancelled/surrendered as result of a change of ownership of the adjoining land, favourable consideration may be given to the issue of a new permit to occupy to the new owner of the adjoining land. The offer of the new permit must be issued with a notice stating that the permit may be cancelled pending the outcome of a review into the management and use of the stock route network. If applicable, the notice should also state that upon cancellation of the permit the permittee will be required to remove the existing fencing on the stock route.

Views of the department's Stock Route Management Unit and the local government must be sought when assessing applications for permits to occupy on other classifications of stock route.

A permit to occupy for grazing over reserves e.g. camping and water reserves adjacent to stock routes will not be allowed if the local government stock route network management plan precludes such grazing - views of the department's Stock Route Management Unit and the local government must also be sought on these applications.

Applications for permits to occupy over stock routes for purposes other than grazing, where the occupancy may impede travelling stock or stock watering, are also to be forwarded to the department's Stock Route Management Unit.

Legislation

Land Act 1994

Land Regulation 2009