



Land Management Planning for Reserves or Deeds of Grant in Trust

Information Kit

Purpose of the Land Management Planning Information Kit

The purpose of this document is to guide trustees in the development of Land Management Plans for Trust land (being land comprising a reserve or deed of grant in trust), inform trustees of the general criteria the Department of Natural Resources and Mines (NR&M) will use in assessing the Land Management Plan and guide Departmental staff when assessing the Land Management Plan.

The Information Kit is divided into three sections. The first section provides general information for trustees regarding what a Land Management Plan is, when one is required, outlines a process to follow in developing the plan, lists other relevant Departmental policies and guidelines for further reading, contains a glossary of important terms used throughout the Information Kit, and lists the addresses of NR&M offices across Queensland where further advice is available and where the Land Management Plans should be lodged.

The second section details the general criteria that departmental officers will use to assess the Land Management Plans. These criteria include:

- the impact of the proposed use/s on the strategic value of the site;
- the consistency of the proposal with the primary use of the land (if applicable);
- the impact of the proposal on the State's interests;
- the degree of forward planning undertaken in relation to the site and the risk of incremental progression;
- the proposal's relationship with the Local Government planning scheme (Town Plan); and
- the degree of commerciality and exclusivity associated with the proposal.

Section three contains examples of both a "Full" and a "Basic" Land Management Plan to guide the trustees in the development of their plan. These examples cover all the information required by NR&M to assess the Land Management Plan and can be used as a template on which Land Management Plans for Trust land can be based. It is important for trustees to note that the level of detail described in the examples is for guidance only. The amount of detail required in the Land Management Plans by NR&M should be consistent with the size and associated level of impacts of the individual proposal.

Section 1 - Land Management Plan Guide for Trustees

What is 'Trust Land'?

'Trust land' is a collective term used to describe State land which has been previously reserved or granted in trust under the [Land Act 1962](#) or dedicated as a reserve or granted in fee-simple in trust as a deed of grant in trust (DOGIT), for one or more of the community purposes set out in Schedule 1 of the [Land Act 1994](#). Some 22,000 reserves and deeds of grant in trust have been set aside for purposes including recreation, water and camping reserves on stock routes, showgrounds, cemeteries, sporting stadiums and public halls.

When trust land is set aside, trustees are appointed to manage the land on behalf of the State. Under the *Land Act 1994*, a trustee may be:

- (a) a statutory body;
- (b) an incorporated body;
- (c) a group of individuals functioning under an official name ("trustees of...") approved by the Minister;
- (d) a named individual; or
- (e) the holder of a named position (eg: Director-General of ..., or Mayor of the ...).

Trust land should be managed by the trustees with the State's interests in mind for the benefit of the people of Queensland by having regard to the *Land Act 1994* principles of sustainability, protection, consultation and community purpose.

What is 'Land Management Planning'?

'Land Management Planning' deals with the sustainable use, development and management of Trust land. Land Management Planning is the process by which the trustees identify the attributes of the trust land relating to:

- social values;
- environmental values; and
- economic values;

and records in a document called the 'Land Management Plan', the trustees future intentions necessary to:

- manage land according to its gazetted use;
- identify future intentions for the trust land in accordance with the local government planning schemes;
- identify priorities (including social);
- manage the impacts of the use of the land – on and off-site;
- prevent pollution and/or land degradation;
- improve the efficiency of land use; and
- identifying responsibilities for financing and implementation.

Each of these actions must have the State's, regional and local interests in mind.

It is important the proposed use reflected in the Land Management Plan is consistent with the future intentions for the site and the relevant local government planning scheme.

When is a 'Land Management Plan' needed?

When a trustee submits an application to NR&M for a secondary use lease or permit of trust land, in accordance with [Land Act 1994 Policy PUX/901/209](#), an assessment should be made as to whether a 'Land Management Plan' should be submitted in accordance with that policy and guideline.

When an application is submitted to NR&M for a primary use of trust land (eg: dedication of a new reserve), it is *optional* as to whether the trustee prepares and submits a 'Land Management Plan'. However, in accordance with the *Land Act 1994*, the Minister for Natural Resources and Minister for Mines (the Minister) *can request a 'Land Management Plan' at any time, if considered necessary*. The following instances are the main reasons the Minister would request a 'Land Management Plan' be prepared for the primary use of trust land:

- the trust land has sensitive/significant environmental, social or economic features/values;
- the current trust land use/s are largely unplanned or unmanaged; or
- the community has strong views on how the trust land should be used.

However, many more reasons other than those mentioned above, may apply, at the Minister's discretion. Although the Minister can request trustees to prepare a 'Land Management Plan' for primary use applications, it is preferable that the trustee takes the initiative of preparing a plan, because of the benefits that planning can bring to the trustee, the trust land and the community.

The 'Land Management Plan' will provide NR&M with information to support an application for use of an area of trust land. The plan will also provide the State with a basis for ensuring the trustee, lessee or permittee, being the land steward of the trust land under their control, will be maintaining the trust land for its dedicated purpose on behalf of the State and to the State's satisfaction.

Why prepare a 'Land Management Plan'?

The primary reasons for preparing a 'Land Management Plan' are as follows:

(1) **Fulfilling the Duty of Care**

The *Land Act 1994* states that trustees have a 'duty of care' for the land in their trust. 'Duty of Care' is all encompassing and requires the occupier of the land to maintain the land in a good condition. This would entail preventing land degradation and contamination and requires the implementation of good management practices. Through land management planning, trustees can define what this responsibility means to the trust land under their control and how that responsibility will be discharged.

Our understanding of natural systems is better now than in the past and we are more aware of the damage that can be done through insensitive works or failure to protect the natural attributes/features. For example, poorly sited tracks can result in soil erosion, grazing can adversely impact the flora and fauna habitats, costly picnic facilities if wrongly sited may lie unused, acid sulphate soils if disturbed can pollute aquatic habitats and the absence of firebreaks can allow bushfires to spread. Also, planning encourages a strategic view that allows the managers to resist short-term pressures to misuse the trust land. Communities today demand high standards from the managers of trust land and can be intolerant of mistakes that would have been avoided with careful land management planning and attention to the entrusted land stewards responsibility for ‘Duty of Care’.

(2) Investigating Secondary Use

Trustees with the prior approval of the Minister, may lease or issue a permit over a part or the whole of the trust land to another person or body if the arrangement is in the public interest. Such activities are referred to as ‘secondary use’ and a ‘Land Management Plan’ must be prepared in the circumstances set out in [Land Act 1994 Policy PUX/901/209](#), before any lease or permit is issued. A secondary use must not diminish the purpose for which the trust land was set aside.



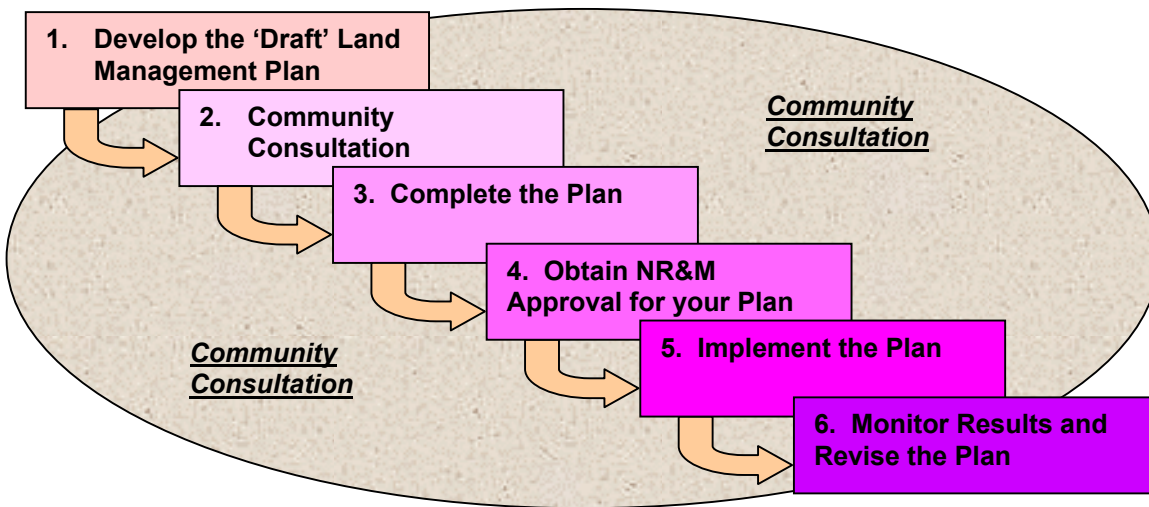
Refer to Section 2 for the criteria for assessing applications for the most appropriate uses.

(3) Benefits

Through planning, trustees can identify measures to reduce costs and increase revenue. For example, a plan can show where services such as roads and water pipes can be located most economically. A plan might also include a schedule for efficient maintenance and can identify projects that may attract external funds. Energy-saving or water wise measures may pay for themselves many times over.

The process for preparing a ‘Land Management Plan’

There are six (6) stages involved in developing an effective ‘Land Management Plan’. While ‘community consultation’ is shown in the following figure as a separate stage in the planning process, it is considered the community consultation should occur throughout all stages of the process, as illustrated below:



Each of the 6 stages are explained in detail below:

(1) Develop the ‘Draft’ Land Management Plan

The ‘Land Management Plan’ will be an important document outlining exactly how the trustee/s will address the ongoing management and enhancement of the trust land.



Refer to Section 3 for an example structure of a basic and a full ‘Land Management Plan’.

Steps involved in developing the draft plan include:

- (a) *Forming your Working Group*

This working group should include as many as 6 stakeholder representatives of groups affected by the management of the trust land. The group should include the trustees, community representatives, etc, as required.

(b) *Setting Goals*

The plan should identify clear/concise goals and/or objectives, to provide a framework for detailed site planning, decision-making and implementation strategies. The goals need to reflect the trust lands capabilities and the community's priorities. Goals also must allow the trust land to be developed and maintained in accordance with its gazetted purpose, the intended future use of the site and the relevant local government planning schemes. These could include goals for maintenance of features and infrastructure as well as goals for capital development, management of the State's interests (eg: riparian zones), relevant issues (eg: waste and noise management) and make reference to other management plans (eg: tree management plans and pest management plans).

(c) *Assessing the environmental features*

It is necessary to describe and analyse/evaluate the trust land's environmental features and capabilities from a social, ecological and economic point of view, so that a clear picture of the uses that are sustainable can be developed. Social attributes could include recreation, Aboriginal interest, historical sites and 'atmosphere'. Ecological attributes could include flora and fauna, proximity to waterways and landscape features. Economic attributes could include potential for fee revenue and likely costs for capital works and maintenance. The 'Land Management Plan' should include an assessment of environmental issues such as:

- a description of the current uses (eg: structures and improvements), history, features, resources and condition of the trust land;
- issues which need to be addressed including local or regional trends;
- the identified impacts of the current use on and off site;
- previous decisions by governments or the trustees, including Secondary Uses; and
- native title considerations.

(d) *Evaluating alternative uses*

Approval will not be given to a use of trust land which is either inappropriate for the capability of the land or would jeopardise the public interest in the land by a use which is substantially exclusive and/or commercial in nature. The only inconsistent uses permitted, in accordance with [Land Act 1994 Policy PUX/901/209](#), are:

- government buildings or parts thereof; or
- Grazing for pasture management. The trustee leasing of Camping Reserves and Water Reserves adjacent to Stock routes will not be allowed; or
- Where the proposed use of the land provides an essential community service and does not diminish the purpose and amenity of the trust land.

Sound and realistic alternative uses should be evaluated and submitted to the community and other stakeholders in Step 2 (Consultation) for their input. Offering alternatives to the community leads to a considered approach and more informed decision-making.

To decide appropriate options for how the trust land should be managed, it is necessary to consider the primary and secondary uses which most suits:

- the capability of the land;
- best meets the needs of the local area community which it serves; and
- is consistent with the local government planning scheme.

The *most appropriate uses* are those which take into account significant features, site capabilities, community preferences and, of course, the purpose for which the trust land was set aside. The most appropriate uses must be ecologically sustainable and, as such, may not necessarily be the trust land's most intensive or most economically advantageous uses. If the most appropriate use determined is considered to be inconsistent with the designated use of the trust land, the trustee should confer with NR&M for further advice ie: whether to excise the area from the trust land as a lease under the *Land Act 1994* or to change the purpose of the trust land to a more appropriate community purpose in keeping with the present or proposed use and future intentions of the trust land.

Evaluating alternative uses should be undertaken first for the whole trust land area and then in relation to the local area. For example, it may be more appropriate for the proposed secondary use to be located on another site, which may be more suitable for that use. This will yield a conclusion as to whether the original purpose of the trust land is still appropriate. It can usually be assumed that this is so, but in localities where urban development is advancing, it may be desirable to confirm this. If there is any doubt, the trustees should consult NR&M. If the current purpose is accepted, the range of possible uses within the trust land can then be evaluated.

One method of evaluating alternatives is to list the positive impacts compared with the negative impacts of each possible use in a matrix format. This should include social, as well as ecological and economic impacts.

(e) Listing necessary actions

The management plan should indicate all specific actions or strategies necessary to achieve the *most appropriate uses*. This component, which can be called an “action plan” or ‘doing list’, should indicate the actions necessary to manage impacts, such as:

- removal of rubbish;
- erosion and weed control;
- fencing and rehabilitation of bush vegetation;
- capital works such as car parks, walking tracks, signage and landscaping;
- maintenance; and
- any other actions that need to be undertaken as an outcome of issues identified.

A broad budget for approximately the next five (5) years can be included. *NOTE: Do not include an annual budget in the ‘Land Management Plan’, as that would cause the plan to go out of date very quickly.*

(f) Drafting the ‘Land Management Plan’

The ‘Land Management Plan’ needs to be written in plain English, taking into account the findings from all of the above steps.

A base map should be prepared at a suitable scale and preferably from a satellite image or from aerial photographs or, for small sites, from the relevant survey plan. *NOTE: Suitable maps and aerial photographs are available at your local district NR&M office – see the ‘Further Information’ section for contact details.* Features to be shown on the base map should include:

- physical / cadastral boundaries of the trust land (eg: coastal, riverbanks, fencelines, etc);
- biophysical features such as drainage lines and wetlands, ponds or lakes, vegetation, pest plants, hills, ridgelines, rocky outcrops, flood line;
- all built features including walking tracks, routes for vehicular traffic, access points, car parks, buildings, overhead powerlines, underground pipelines, etc; and
- any easements.

Additional maps and overlays (of clear plastic) can be used to indicate different categories of information including the intended uses/alternatives, any facilities to be constructed, surrounding land use/s, etc. The number of overlays should be sufficient to achieve a clear, uncluttered presentation.

NOTE: The local Senior Land Officer from NR&M will be able to further assist you with the preparation of the document and suitable maps.

(2) Community Consultation

Community participation in the planning process will lead to community support and ownership for the trustees’ program. The community should be made aware that a ‘Land Management Plan’ for the trust land is being prepared. Some ways of consulting with the community are to:

- Place a notice in the local newspaper, with a contact name and relevant phone/fax numbers (Mandatory);
- Hold a public meeting to show the Land Management Plan to interested members of your community;
- Leave copies of the Land Management Plan on public display at various places (eg: local libraries, government offices, shopping centres, etc) for people to see the plan and comment on it prior to completion;
- Consult experts such as local naturalists or historians who can contribute technical knowledge about the trust land and;

- Consult government departments and the relevant local government who have regulatory responsibilities (particularly local government town planners, open space/recreation planners and engineers regarding future planning intentions for adjoining areas, future infrastructure, etc)

If there are divergent views among the trustees or the community about how the trust land should be managed, they should, where possible, be resolved during this consultation phase.

All issues raised during the consultation step should be recorded and the key points that emerged (eg: what the issues were and how they were resolved/addressed) should be referenced in the 'Land Management Plan'.

(3) Completing the plan

To ensure the plan contains all the necessary information for NR&M to consider the proposal, complete the checklist below.

Task or Aspect of your Land Management Plan	Yes / No
Have you completed the assessment?	
Is further field work required?	
Are additional supporting studies required?	
Do the base maps (at a suitable scale) show all the relevant features?	
Are the overlays clearly showing the planned uses?	
Do the goals/objectives for the site reflect its land capability?	
Do the goals/objectives for the site reflect the community's priorities? Has the community had sufficient opportunity to provide input?	
Is the plan consistent with the Local Government policies and planning scheme?	
Have alternative uses been evaluated? That is, has the most appropriate use/s been determined?	
Is there a strategy and timetable for monitoring the implementation of the plan and updating it?	

(4) Obtaining NR&M Approval for the plan

The plan should then be submitted to NR&M for approval. NR&M will evaluate the 'Land Management Plan' by taking into consideration all factors presented that will impact on the capability and quality of the trust land and how these impacts will be managed. If NR&M considers additional information or improvements are required to the 'Land Management Plan', the trustee will be requested to make the improvements prior to approval being given.

(5) Implementation of the plan

Once approval has been given, the work the trustee must perform to manage the trust land now commences in accordance with the 'Land Management Plan'. If applicable, trustees are to advise lessees of the content of the Land Management Plan for the relevant trust land and ensure that the lessee does not undertake actions or seek to gain any licences (for example liquor or gaming licences) which are inappropriate to the plan and the community use of the trust land.

(6) Monitoring and revising the plan

The 'Land Management Plan' is not static, but requires monitoring and reviewing at appropriate intervals/times. For example:

- the 'goals'/objectives' section of the plan should be reviewed approximately every 5 years;
- the action component should be updated annually; and
- an inspection of the trust land and an evaluation of the progress made in implementing and complying with the 'Land Management Plan' should be performed annually.

The monitoring and revision step is all about continuous improvement ie: the review process may require going back to Step (1) to establish some new goals and revising the whole process again as the need arises. *NOTE: It is not the plan, but the planning process which is important and which continues from month to month and year to year. The plan is simply the record of the planning process, which is under way at a particular time.*

Relevant Legislation and Policies

[Relevant Legislation](#)

Chapter 3, Part 1 of the *Land Act 1994* – Reserves and Deeds of Grant in Trust
 Part 2 of the *Land Regulation 1995* – Reserves and Deeds of Grant in Trust

[Relevant NR&M Policies](#)

PUX/901/209 – Secondary Use of Trust Land

Glossary of Terms

Community Purpose	<p>Means a purpose in Schedule 1 of the Land Act 1994 including:</p> <ul style="list-style-type: none"> • Aboriginal purposes • Beach Protection and Coastal Management • Cemeteries, crematoriums and mortuaries • Drainage • Environmental purposes • Heritage, historical and cultural purposes • Natural resource management • Navigational purposes • Open space and buffer zones • Parks and gardens • Public boat ramps, jetties and landing places • Public halls • Public toilet facilities • Roads • Scenic Purposes • Showgrounds • Sport and Recreation • Strategic land management • Torres Strait Islander purposes • Travelling stock requirements • Watering-places
Dedicated	Refers to the legal action of setting aside land for some specific purpose under an Act
Deed of Grant in Trust	<p>A Deed of Grant in Trust (DOGIT) is:</p> <p>(a) Land granted in fee simple in trust by the State; or</p> <p>(b) The document evidencing the grant, including an indefeasible title under the Land Title Act 1994.</p>
Multiple Use	Means more than one secondary use on an area of trust land. NOTE: The primary use of the trust land still applies.
Principles of the Land Act 1994	<p>As defined in Section 4 of the Land Act 1994</p> <p>In administration of this Act, land to which this Act applies must be managed for the benefit of the people of Queensland by having regard to the following principles –</p> <p><i>Sustainability – Sustainable resource use and development to ensure existing needs are met and the State’s resources are conserved for the benefit of future generations.</i></p> <p><i>Evaluation – Land evaluation based on the appraisal of land capability and the consideration and balancing of the different economic, environmental, cultural and social opportunities and values of the land.</i></p> <p><i>Development – Allocating land for development in the context of the State’s planning framework, and applying contemporary best practice in design and land management.</i></p> <p><i>Community purpose – 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.</i></p> <p><i>Protection – Protection of environmentally and culturally valuable and sensitive areas and features.</i></p> <p><i>Consultation – Consultation with community groups, industry associations and authorities is an important part of the decision making process.</i></p> <p><i>Administration – Is (a) consistent and impartial dealings, (b) efficient, open and accountable administration; and (c) a market approach in land dealings, adjusted when appropriate for community benefits arising from the dealing.</i></p>
Primary Use	Means the community / public purpose for which the original reserve / deed of grant in trust was gazetted and cannot in law be used for any other purpose.
Public Interest	Includes the cultural, environmental, heritage, land protection, planning, recreational, social and strategic interests of the public.
Public Purpose	Means a purpose for which land may be taken under the Acquisition of Land Act 1967.
Reserve	Land set aside for a community purpose under the Land Act 1994 or a public purpose under the Land Act 1962.
Secondary Use	Means a use that is to be made of the whole or part of an area of the original reserve / deed of grant in trust by a third party (ie: other than the State or trustee of the primary use of the trust land). A secondary use is authorised under the Land Act 1994 by the issue of a trustee lease/permit over the whole or part of a reserve or deed of grant in trust, by the trustee with the approval of the Minister, to a trustee lessee/permittee. IMPORTANT NOTE: The Land Act 1994 requires a secondary use must be consistent with the gazetted primary use or where approval is given by the Minister for an inconsistent use with the gazetted primary use, that use must not diminish the purpose of the trust land.

Land Management Planning for Reserves or Deeds of Grant in Trust – Information Kit

Statutory Body	<i>Is a government entity within the meaning of the Government Owned Corporations Act 1993, a local government and a port authority.</i>
Trustee	<i>People assigned to properly and effectively manage the trust land in a way that is consistent with the purpose for which the reserve was dedicated or the land was granted in trust.</i>
Trustee Lease	<i>Means a lease given by the trustee of trust land</i>
Trustee Permit	<i>Means a permit given by a trustee of trust land</i>
Trust Land	<i>Means the land comprising a reserve or deed of grant in trust</i>

Further Information

For further information about the preparation of 'Land Management Plans' for trust land contact your local office of the Department of Natural Resources and Mines. NR&M has Regional Land Planners, Senior Land Officers, and various other professional officers in each office that can assist you in the preparation of 'Land Management Plans'. A listing of NR&M offices can be viewed at http://www.nrm.qld.gov.au/about/contactus/service_centres.html.

END OF SECTION 1

SECTION 2 - SATISFYING TRUST LAND USE CRITERIA

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 qualities and capabilities of the original 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:

- Strategic value;
- Consistency with primary use (if applicable);
- Commerciality;
- Exclusivity; and
- Incremental progression and forward planning.

These criteria are not exhaustive and should be considered in conjunction with land planning issues relevant to the locality including the State's interests and the relevant Local Government Planning Scheme. The criteria are further detailed below:

1. Criteria for Assessing Strategic Value

'The proposed use should be appropriate to the strategic value of the land's capabilities'

As this section deals with the assessment of the secondary use of trust land it will be assumed that the subject reserve or deed of grant in trust has sufficient intrinsic value to warrant retention for its gazetted community purpose. If, in a particular case there is any doubt about that assumption, the appropriateness of the purpose of the trust land should be reviewed prior to further action.

However, apart from inherent intrinsic value, some trust land may also have a "strategic" value, which is derived from the land's strategic location rather than its intrinsic characteristics. Where land has a high strategic value, the State may decide to strictly control any proposal to use that land for purposes that may reduce/diminish/compromise that strategic value.

The following questions are intended to provide an indication of the existence of strategic value in State land. While they are normally used when considering primary use, they can also be used to assess the most appropriate use of trust land.

Assessing Strategic Value

- Are there issues associated with the land that require negotiation with the Commonwealth and/or implementation of nation-wide agreements on the use of land and resources?
- Is the land required in order to enable one or more State authorities to discharge their functions? For example, does the land have potential for essential operational or community purposes? (Examples: the land may be required for future schools, hospitals or open space in areas of potential urban growth OR it may have potential significance for construction/expansion of road, rail or other infrastructure).
- Does the land have potential for consolidation with other Government properties?
- Is the land required by Government for strategic planning reasons, such as to influence the extent or direction of growth in a locality by orderly planning? (Examples: large parcels of State land around the fringes of settlements may be held back from release to either avoid premature subdivision or meet public open space needs).
- Are the consequences of a faulty land use decision so far-reaching, serious or irreversible that the involvement of the State is necessary to ensure that the decision has regard to the strategic importance of the land? (Examples: the freeholding of prime river frontage sites or the "sterilising" of an area required for a major State project).
- Is the land, while of little intrinsic value, sufficiently fragile or subject to constraints that it should not be left to the private sector to manage? (Examples: land within an urban area but known to suffer major physical constraints which limit its suitability for development; such as flood prone land; or land which is subject to bad infestations of weeds, salinisation, erosion or other forms of degradation, or is at serious risk of same).

- Is the land subject to a contamination or conservation order or similar ecological or other constraints? If so, will retention give the State greater ability to achieve the terms of that order.
- Is the land of particular significance to Aboriginal or Torres Strait Islander peoples or likely to be subject to claims under the Aboriginal and Torres Strait Islander Land Acts? **NB:** *There is no requirement to assess whether there is likely to be a claim under native title legislation.*

2. Guidelines for Assessing Consistency for Use

'The proposed secondary 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'

The assessment of whether a proposed use is consistent, is based on three interrelated considerations. The first and most fundamental consideration is whether the proposed use is appropriate and matches the capability of the land. If the use is appropriate from a land planning perspective, the second and third considerations relate to whether the use is either substantially commercial or exclusive in nature.

Scale of Consistency

For ease of understanding, consistency can be graded along the following scale:

consistent (as of right use) >>not inconsistent (permissible use) >>inconsistent (prohibited use)

To demonstrate this grading, the following assessments are applied to a hypothetical reserve for recreation purposes which is under the control of trustees and occupied in part by a sporting group. These assessments will determine where a proposed use or development is placed on the scale of consistency:

- Is the proposed use **essential** or **necessary** to enable the reserve purpose to be fulfilled? For example the provision of public toilets and changing rooms on a sporting or recreation reserve is necessary for the achievement of the reserve's gazetted purpose. Therefore, this use is **consistent** with the purpose of the reserve.
- If the proposed use is not essential to fulfil the gazetted purpose of the reserve, will it actually impair or reduce the ability of the reserve to fulfil its purpose? If not, (eg, a grassed area used for car parking associated with a clubhouse) that use is **not inconsistent** with the purpose of the reserve.
- If the proposed use is contrary to the gazetted purpose of the reserve in that it wholly or partly inhibits or negates the public's use of the reserve for its gazetted purpose, then the proposed use is **inconsistent** with the purpose of the reserve. Inconsistent use implies that such use could continue under its own momentum, as a separate entity, even if the underlying reserve was revoked. An example may be licensed clubrooms with gaming machines located on a recreation reserve.

Dealing with Inconsistent Uses on Reserves

The fact that a reserve is being used for a purpose other than the one for which it was allocated is not necessarily undesirable. The original reserve purpose may now be redundant, or the reserve may be capable of fulfilling multiple objectives. But "consistency" needs to be assessed because it will show whether there is a real or potential mismatch between an underlying primary tenure and an existing or proposed secondary occupation. If a mismatch is identified, the primary tenure can be reassessed. If that tenure is confirmed as appropriate, then the secondary occupation must be either abandoned, modified or, if the secondary use is good land use and not detrimental to the public interest, it may be tolerated within specific limits.

If an inconsistent secondary use of a reserve is entirely of a non-profit or public nature, little or no action may be necessary. For example, a reserve for stock watering purposes may be valuable for nature conservation or passive recreation (fishing) while still performing its primary function.

However, where an inconsistent secondary use is of a commercial or exclusive nature, it is necessary to exercise much greater caution. It must be remembered that trust land is specifically set aside for the benefit of the community and therefore, a proposal to use the land for commercial or exclusive uses is *prima facie* evidence that the public interest in that trust land is being subordinated to private interests.

3. Criteria for Assessing 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'

There is no single criterion that provides conclusive evidence as to whether a given land use proposal by an individual, club or company is a form of commercialisation. This is partly because there is often a fine distinction between public and private benefit. A number of aspects can indicate the level or extent of the commerciality of any activity. Therefore, as no single criterion will give sufficient support to any decision in this matter, the assessing officer must weigh them all and make a balanced judgement.

The following criteria show how a hypothetical reserve under control of trustees and occupied in part by a hypothetical sports club is assessed to ascertain whether the occupation is commercial or non-profit.

a. what is the motivation for fund-raising from activities on the reserve?

Evidence of commercial use: Where much of the revenue is applied to building more facilities with a view to earning more revenue, or where revenue is siphoned away from the maintenance and further development of the land.

Evidence of non-profit use: Funds are levied primarily to maintain or develop the facilities for the purposes of the reserve or to provide a service for the public.

b. what is the scale of income generated?

Evidence of commercial use: Net income (after contributions to charitable and community groups and the development and maintenance of facilities) is excessive in relation to the purpose of the reserve and its reasonable use and enjoyment by club members.

Evidence of non-profit use: Income is moderate, relates to and is derived from activities carried out in accordance with the purpose of the reserve.

c. what proportion of the land is occupied by commercial operations?

Evidence of commercial use: A large proportion of the area is occupied by profit-making facilities; advertising signs for consumer products are prominent from neighbouring streets or the public areas of the park.

Evidence of non-profit use: Small area occupied by profit making facilities, advertising signs confined to the exterior of buildings. However, it cannot be assumed that a commercial operation is acceptable simply because it occupies only a small proportion of the area.

d. does the financier of any new facilities have a proprietary interest in them?

Evidence of commercial use: Joint venture arrangement with a private firm or a major sponsor of a club. This means more than simply the engagement of a contractor to construct a building project, but implies that a person or organisation other than the club has a continuing partnership eg, by holding the liquor or gaming licences).

Evidence of non-profit use: Financier is a bank or institution with an arm's length approach to the transaction through normal lending practices.

e. whether the club pays an adequate rent to the trustees?

Evidence of commercial use: Club pays nil or nominal rent and does not contribute to the maintenance or development of public facilities on the reserve (that is, facilities not directly connected with the club's activities).

Evidence of non-profit use: Club pays a substantial contribution towards the management of the reserve generally.

4. Criteria for Assessing Exclusivity

'Exclusive use refers to secondary occupation which excludes use by the wider community'

Similar to the test for commerciality, there is no single criterion which provides conclusive evidence as to whether a given lease proposal by an individual, club or company is likely to exclude the public. Again, this is partly because the distinction between public and private activity is often a fine one and often intangible. A number of aspects can indicate the extent of an activity's exclusivity and the assessing officer must weigh them all and make a balanced judgement.

Assessing Exclusive Use -v- Public Use

Using the following criteria, a hypothetical reserve that is under the control of trustees and occupied in part by a sporting group, is assessed to ascertain whether the occupation is an exclusive or a public one.

a. **what is the extent of the public's right of access; ie, what proportion of the reserve is fenced out from general, casual public use?**

Evidence of exclusive use: Human-proof fence, around most or all of the reserve, prime playing areas or facilities are fenced or secured in daylight, large tracts of the reserve given over to car parking which services the clubhouse and removes green space from public access.

Evidence of public use: Fences are less than 1m tall or constructed to exclude motor vehicles; only a small portion of the reserve is fenced (eg, primarily for facilities essential to the functioning of the reserve, such as stores for equipment); car parking spaces on the reserve is not more than required to service the public use. However, it cannot always be assumed that a fenced exclusion may be acceptable simply because it takes up only a small proportion of the area.

b. **what is the extent of the public's right of access; ie., for what periods of time and at what frequency is the reserve fenced out from general, casual public use?**

Evidence of exclusive use: Gates closed at most times other than for "fee-for-entry" events; hours of public access are significantly limited having regard to the purpose of the reserve.

Evidence of public use: Gates closed only at night for reasons of public safety and security of infrastructure.

c. **what are the objects of the club:**

Evidence of exclusive use: The predominant objects of the club's constitution relate to furthering the welfare of the club or its members; emphasis on social activities (whether for members or their families or even for the community generally); promotion of the **team**.

Evidence of public use: The predominant objects of the club's constitution relate to furthering the welfare of the local community; emphasis on education, training and other forms of community development carried out on the reserve; promotion of the **sport**.

d. **whether there is any limitation on the numbers or category of members which the club may enrol:**

Evidence of exclusive use: The constitution establishes classes of membership and restricts full membership to persons who meet specific criteria or qualifications; social membership open to a broad range of persons who have no direct connection to the club and who would otherwise be ineligible to join. In practice, full membership costs are usually high.

Evidence of public use: Membership has few restrictions, is open and inexpensive.

e. **who are the beneficiaries of the reserve's income:**

Evidence of exclusive use: Application of the income of the club to the operations of the **club** as distinct from the operation of the reserve. Examples would include payment of players, end-of-season holidays, promotions of the **club**, payment of honoraria to club members or officials; club members receive privileges not available to other public users of the reserve.

Evidence of public use: Application of income to the management of the **reserve**, training sessions open to the public, training for community service, or promotions of **sport**; any payment to club officials is restricted to out-of-pocket expenses; membership does not confer undue privileges.

f. **the composition of the trustees:**

Evidence of exclusive use: The trustees are predominantly from one or more clubs (whether formally through representation, through trusteeship by club members who may not formally be representing the club).

Evidence of public use: The majority of trustees include members of the general public elected at a public meeting, or representatives of non-aligned public authorities.

- g. **how difficult is it for a non-affiliated club or group (that is, one which is not a lessee or licensee of the reserve) to gain incidental use of the reserve:**

Evidence of exclusive use: Non-affiliated groups have substantial difficulty in gaining bookings, given reasonable notice, so that they can stage their own events.

Evidence of public use: Non-resident groups can readily gain bookings given reasonable notice.

- h. **the strength of the connection between the reserve and the activities which are conducted on it:**

Evidence of exclusive use: The facilities could be located on a similar area of land from any class of tenure without detriment to the activities of the lessee, (eg. a licensed clubhouse could feasibly be located on leasehold or freehold land in the immediate vicinity of the playing fields but not necessarily on the same parcel of trust land).

Evidence of public use: The facilities utilise the intrinsic natural or other features of the land or the environment of the reserve (eg. a clubhouse for surf lifesaving purposes); the location of the land encourages utilisation by the non-affiliated public.

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'

Matters progress by incremental steps, each of which is logical considering the circumstances and the motives of the key players at the time. However, the actual outcome of a chain of events may be quite different from that intended or expected at the beginning. This phenomenon is known as "incremental progression".

If applied to the development of a parcel of land, incremental progression will cause, in its aggregated form, a greater impact on the land than might have been envisaged at any individual stage. In fact many developments achieved by incremental progression would not have been allowed if the full impact had been foreshadowed at the commencement of development. This is not to say that this phenomenon is always the result of deliberately staged activities. The valuable features of a parcel of land may be lost just as readily by a lack of active protection as by deliberate destruction. To retain valued resources such as patches of bushland, recreation areas, open space, an intimate "village" atmosphere in a small town or attractive landscapes, *sustained* attention must be given by the regulatory authorities *from one decade to another*.

If the management plan for the site includes all current and proposed uses on the site (including all future uses) then this should decrease the potential for incremental progression occurring on the site.

The steps in the following table apply the phenomenon to a hypothetical area of trust land set apart for recreation purposes under the *Land Act 1994*:

(see over page)

Status of trust land	Action by trustees
Vacant bush, with walking tracks	Trustees are local citizens, no club envisaged.
Unfenced sports oval levelled in one corner	Permission given to develop an oval
Changing rooms and toilets, both open to public at all hours	Trustee builds facilities, no tenure requested or granted
Sports club seeks to build clubrooms, mainly for storing equipment	Sports club given a "permit to occupy" by trustees
Oval upgraded and human-proof fence erected around oval for security and control of access.	Sports club given a trustee lease, a right to charge entry, and conditions of lease allowing a low-key building
Clubrooms expanded to include basic function rooms, limited liquor licence granted for functions and limited trading hours.	<ul style="list-style-type: none"> • The majority of trustees are affiliated with the club. • Club lobbies for upgraded tenure to give greater security to financial backers or mortgagees.
New clubrooms constructed to meet the requirements for a full club liquor licence and allow for future gaming licence application.	Trustees support excision of clubhouse from trust land to enable grant of Land Act term lease or freehold to club.
Gaming licence granted and club looks to financing ongoing expansion of club facilities.	Public access to the trust land is seriously reduced and capability of the trust land to service the community is affected.
Other clubs embark on the same process elsewhere on the trust land.	Pressure for revocation and issue of separate term leases to various clubs.

END OF SECTION 2

SECTION 3

EXAMPLE 'FULL' TRUST LAND MANAGEMENT PLAN

Trust Land Management Plan

Land Management Plan applies to:
(Tick which is applicable)

- A specific parcel of trust land detailed in 3 below;**
or
 A class of trust land, being *(Insert relevant class eg: school reserves);*
or
 Trust land within a specific locality or regional area, being
(Insert relevant locality or regional area).

Land Management Plan Duration: *(Insert expected life of the 'Land Management Plan' eg: from the date of approval to the expiry of the trustee lease or trustee permit)*

1. COMPLIANCE WITH LEGISLATION, PLANNING SCHEMES, etc

(Insert details of the Land Management Plan's compliance with relevant provisions of the Land Act 1994, local government's planning schemes and other regulations which affect or control the trust land and its proposed use)

2. TRUSTEE DETAILS

Trustee's Name/s	Trustee's Address/s
_____	_____
_____	_____
_____	_____

3. EXISTING TENURE OF THE SUBJECT LAND *(Only complete this section when the 'Land Management Plan' is for a specific parcel of trust land. Otherwise a schedule of land comprising the plan should be attached).*

Trust Land Description: *(Insert purpose of reserve and reserve details eg: Res 12345 etc)*

Lot: *(Insert Lot)* **Plan:** *(Insert Plan Reference)*

Parish: *(Insert Parish Name)* **County:** *(Insert County Name)*

Local Government: *(Insert Local Government Name)*

Area of land (in hectares): *(Insert Area)*

Conditions of Tenure: *(Insert all conditions/statutory obligations of the above mentioned existing tenure)*

4. EXISTING DESCRIPTION OF THE SUBJECT LAND

History of the Subject Land: *(Insert details of:*

- *previous ownership and usage of the subject land eg: mining activities;*
- *previous decision made by the government or trustees regarding the trust land; and*
- *zoning details including compatible and restricted uses and as of right uses.)*

Local Area Description: *(Insert description of the local area as per the local town plan and planning intentions/trends for the area and details of land use in the locality eg: uses of nearby land which are likely to affect the trust land, for example, the use of lights on tennis courts at night may interfere with an adjacent residential use.)*

Existing 'Uses' (Primary and Secondary): *(Insert details of existing uses, both Primary and Secondary of the subject land, including multiple uses as well as details as to whether the existing primary use caters adequately for the multiple uses of the existing infrastructure on the land.)*

Existing Interests: *(Insert details, including conditions, of any existing interests over the subject land eg: leases, licences, easements, etc and details of their associated uses eg: daily usage, liquor licences, gaming machine,*

etc.)

Exclusivity & Restrictions of Existing Interests: *(Insert details of exclusivity and restrictions of existing interests eg: access, security, club membership, schools right to use, etc.)*

Existing Infrastructure: *(Insert details of existing infrastructure on, above and below ground level and which use they support eg: buildings, car parks, playing fields, underground pipelines, etc.)*

Detailed Site Description: *(Insert details of :*

- *Current site condition;*
- *Natural and Cultural elements (eg: topography, natural wetlands, watercourses, drainage lines, soils (including potential ASS), GQAL, springs, waterlogged areas, saline areas, flood prone areas (eg: ground water /shallow water tables, recharge areas), description of remnant vegetation, including rare / threatened fauna / flora);*
- *Special features (eg: visual amenity and aesthetic values (of the surrounding area to the site and the site on the surrounding area) and cultural heritage values); and*
- *Areas of degradation (eg: weeds, pests, erosion))*

Native Title Status: *(Insert details of Native Title considerations made. NOTE: an application cannot proceed if Native Title is an issue and it cannot be resolved.)*

5. PROPOSED USE/S OF THE SUBJECT LAND

Proposed 'Use/s' of the subject land: *(Insert details of the proposed 'most appropriate' uses of the subject land and why they are proposed eg: the use will match the natural attributes of the subject land or enhance the primary use of the trust land by the community. This should be presented in the form of an evaluation of all alternatives for the most appropriate use proposed for each part of the subject land. The evaluation should take into account the most appropriate use from a local area perspective, not only for the individual site. Include details of how the proposed secondary use is consistent with the future use intentions for the site. Discuss if there is any intention to modify or restrict the primary use of the trust land and any safety considerations made, including public liability.*

(Secondary Use Land Management Plans Only)
Q: Is the proposed or existing secondary use consistent with the primary use of the trust land?
(Tick which is appropriate)

Yes
 No – *In this case the trustee should confer with NR&M for further advice ie: whether excision for the area from the trust land as a lease under the Land Act 1994 or to change the purpose of the trust land to a more appropriate community purpose in keeping with the present or proposed use of the trust land.*

Constraints and Opportunities Of the proposed use/s: (existing & future) *(Insert details of the constraints and opportunities for the subject land (existing and future) eg: the proposed use will create or potentially create an adverse impact on the amenity of the balance of the trust land on adjacent land or the locality or any positive or negative social, economic or ecological impacts on and offsite (measures and plans to reduce these impacts need to be included in the action plan, plus methods of rehabilitating any problem areas, such as eroded gullies or weed infestations)*

Development intended: *(Insert details of the development intended (eg: facilities, car parking, access, etc) to be carried out and does the trustee intend to carry out further development on the trust land. If so, what is the longer-term development proposal and is there a master plan (including proposals, funding and staging of development in accordance with the local government planning schemes and the State's interest). What planning has been undertaken to ensure that the most efficient and effective layout of the development is being adopted).*

Exclusivity & Restrictions of proposed use and associated development: *(Insert details of the possible exclusivity and restrictions posed by the proposed use and associated development, for example details of:*

- *placing and height of fences;*
- *locking of gates and timings;*
- *if a club, the goals of the club and membership rules and the ease of use of facilities by non-affiliated and non resident clubs; and*
- *the composition of trustees.)*

Commerciality: *(Insert details of any relevant commerciality issues, for example, details of:*

- *beneficiaries of the reserves income generated;*
- *activities held regularly with commercial operators;*
- *proportion of income used for ongoing maintenance;*
- *expected income generated;*
- *proportion of the land used for commercial activity;*
- *relationship of the financier to the proposal / trust; and*
- *amount of rent paid to trustees.)*

6. COMMUNITY CONSULTATION

(Insert details of the consultation that has taken place to sound out the views of the community in relation to the proposed use of the trust land – what issues were identified, how they influenced the 'Land Management Plan' and what actions have been taken as a result)

7. GOALS OF THE LAND MANAGEMENT PLAN

Goal Statement <i>(These goals need to reflect the trust lands capabilities and the communities priorities and allow the trust land to be developed and maintained in accordance with its gazetted purpose)</i>	Issue/s Goal is to solve or manage	Relevant Actions <i>(To ensure compliance with the plans goals & to mitigate possible negative impacts – how the trust land will be managed eg: relevant policies and arrangements)</i>	Key Performance Indicators <i>(To demonstrate that the goal has been achieved)</i>	Completed By (Date)	Who is responsible for the action

8. BUDGET STATEMENT

Actions <i>(Actions detailed in 7 above)</i>	Budget Allocated (\$)	Relevant Financial Year

9. MONITORING AND REVISION

Intended Monitoring and Revision Timetable:

(Insert the timeframes appropriate and what will be monitored and revised in the 'Land Management Plan' when eg: Annually at the AGM – this can be used to evaluate the trustees' compliance with the 'Land Management Plan'). NOTE: At least annual inspections of the Trust land should be performed.

Techniques to be used to assess the quality of management and condition of the Trust land:

(Insert details of the techniques to be used to assess the quality of management and condition of the Trust land)

Timetable and methods to be used to obtain community feedback on the Trust land management:

(Insert the timetable and suitable methods determined necessary to obtain community feedback on the Trust land)

10. SUMMARY AND RECOMMENDATIONS

(Insert a summary of the 'Land Management Plan' and relevant recommendations)

11. APPENDICES

Number the following Appendices as applicable:

- Locality Map** at a scale of XX (Mandatory);
- Site Map** at a scale of XX – *indicating for example details of the proposed use, any existing interests (eg: leases), infrastructure (eg: buildings, fences, roads, pipelines), any significant natural features – overlays (of clear plastic) can be used;*
- Sketches of plans / proposed development;**
- Tree Management Plan;**
-

EXAMPLE 'BASIC' TRUST LAND MANAGEMENT PLAN

Basic Trust Land Management Plan

Land Management Plan Duration: *(Insert expected life of the 'Land Management Plan' eg: from the date of approval to the expiry of the trustee lease or trustee permit)*

1. COMPLIANCE WITH LEGISLATION, PLANNING SCHEMES, etc

(Insert details of the Land Management Plan's compliance with relevant provisions of the Land Act 1994, local government's planning schemes and other regulations which affect or control the trust land and its proposed use)

2. TRUSTEE DETAILS

Trustee's Name/s

Trustee's Address/s

3. EXISTING TENURE OF THE SUBJECT LAND

Trust Land description: *(Insert purpose of reserve and reserve details eg: Res 12345)*

Lot: *(Insert Lot)* **Plan:** *(Insert Plan Reference)*

Parish: *(Insert Parish Name)* **County:** *(Insert County Name)*

Local Government: *(Insert Local Government Name)*

Area of land (in hectares): *(Insert Area)*

4. EXISTING DESCRIPTION OF THE SUBJECT LAND

Site Description: *(Insert details of current site condition and special features, including history of the land if readily available and applicable i.e. areas of cultural and heritage significance)*

Local Area Description: *(Insert description of the local area as per the local town plan and planning intentions/trends for the area and details of land use in the locality eg: uses of nearby land which are likely to affect the trust land, for example, the use of lights on tennis courts at night may interfere with an adjacent residential use.)*

Existing 'Uses' (Primary and Secondary): *(Insert details of existing uses, both Primary and Secondary of the subject land.)*

Existing Interests: *(Insert details, including conditions, of any existing interests over the subject land eg: leases, licences, easements, etc and details of their associated uses and the level of exclusivity of these uses eg: daily usage, liquor licences, etc.)*

Existing Infrastructure: *(Insert details of existing infrastructure on, above and below ground level and which use they support eg: buildings, car parks, playing fields, underground pipelines, etc.)*

Native Title Status: *(Insert details of Native Title considerations made. NOTE: an application cannot proceed if Native Title is an issue and it cannot be resolved.)*

5. PROPOSED USE/S OF THE SUBJECT LAND

Proposed 'Use/s' of the subject land: *(Insert details of the proposed uses of the subject land.)*

Q: Is the proposed or existing secondary use consistent with the primary use of the trust land? **Yes**
 No – *Trustee should confer with NR&M.*
(Tick which is appropriate)

Development intended: *(Insert details of the development intended eg: facilities, car parking, access, etc. to be carried out and does the trustee intend to carry out further development on the trust land.)*

Exclusivity & Restrictions of proposed use and associated development: *(Insert details of the possible exclusivity and restrictions posed by the proposed use and associated development, for example details of:*

- *placing and height of fences;*
- *locking of gates and timings;*
- *if a club, the goals of the club and membership rules and the ease of use of facilities by non-affiliated and non resident clubs; and*
- *the composition of trustees.)*

Commerciality: *(Insert details of any relevant commerciality issues, for example, details of:*

- *beneficiaries of the reserves income generated;*
- *activities held regularly with commercial operators;*
- *proportion of income used for ongoing maintenance;*
- *expected income generated;*
- *proportion of the land used for commercial activity;*
- *relationship of the financier to the proposal / trust; and*
- *amount of rent paid to trustees.)*

6. COMMUNITY CONSULTATION

(Insert details of the consultation in relation to the proposed use of the trust land. Consultation need not be on the same level as that required for a full Management Plan eg signage on the land, newspaper advertisement, advice that the use is a continuation of existing use that has raised no community concern, or other means may suffice. Advise how community concerns have been addressed.)

7. OBJECTIVES AND PROPOSED ACTIONS

(Insert details of the objectives of the Land Management Plan and any proposed actions to achieve those objectives.)

8. MONITORING AND REVISION

Intended Monitoring and Revision Timetable: *(Insert the timeframes appropriate and what will be monitored and revised in the 'Land Management Plan' when eg: Annually at the AGM – this can be used to evaluate the trustees' compliance with the 'Land Management Plan'). NOTE: At least annual inspections of the Trust land should be performed.*

9. SUMMARY AND RECOMMENDATIONS

(Insert a summary of the 'Land Management Plan' and relevant recommendations)

10. APPENDICES

Number the following Appendices as applicable:

- Locality Map** at a scale of XX (Mandatory);
- Site Map** at a scale of XX – *indicating for example details of the proposed use, any existing interests (eg: leases), infrastructure (eg: buildings, fences, roads, pipelines), any significant natural features – overlays (of clear plastic) can be used;*
- Sketches of plans / proposed development;**
- Tree Management Plan;**
-

END OF SECTION 3