

Public Works Projects on Reserve Land

Legal Issues

- Requirements under the *Land Act 1994*.

Policy Issues

- Government land management and *Land Act* policies.

Practices & Procedures

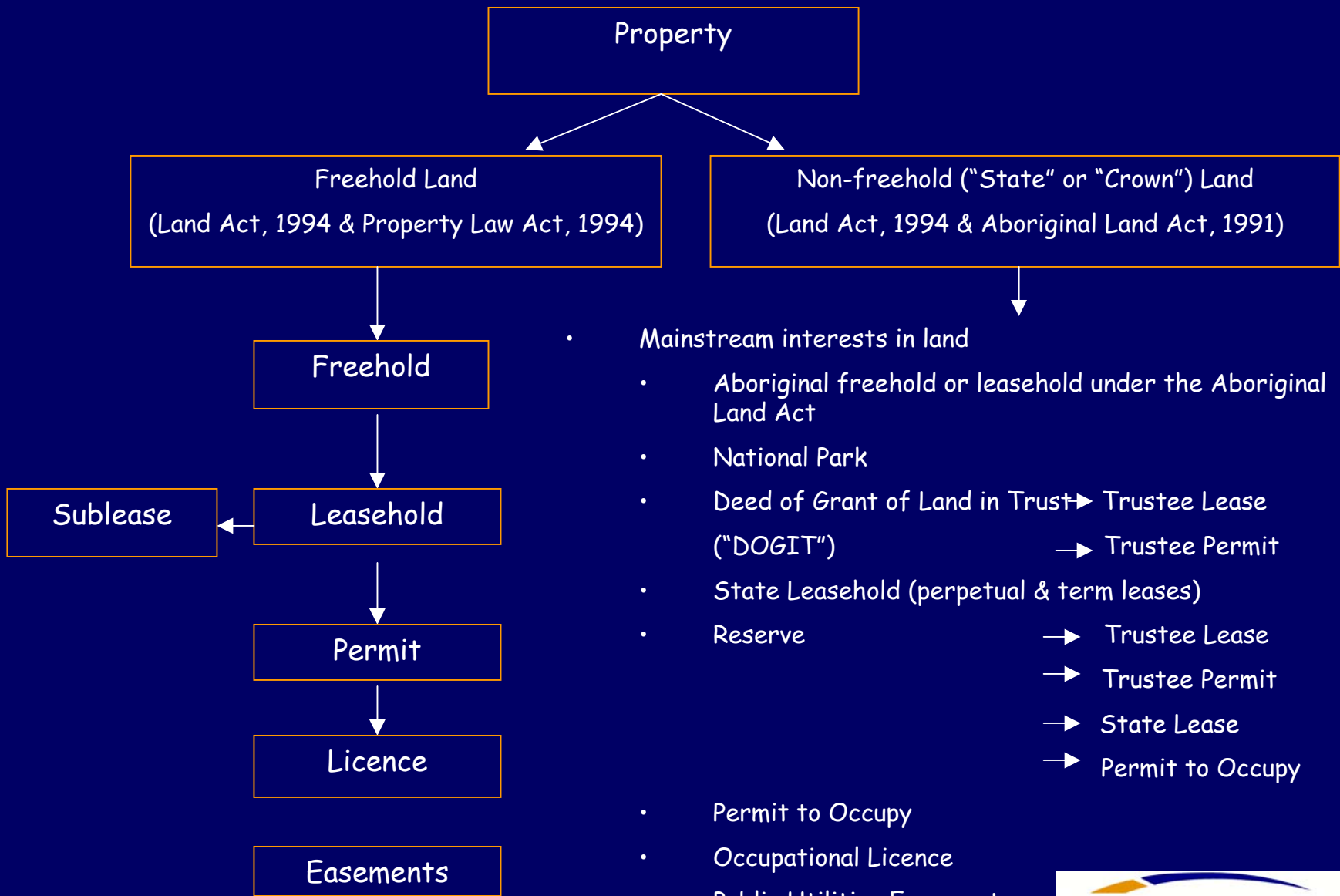
- Procedures & practices of DNRM&E in administering reserve land dealings.

Reserve Land in Context

Statistics

- Area of Queensland – 173,660,000 hectares
- Freehold land (or in the process of freeholding) - 20%
- State Land:
 - Perpetual Leasehold - 13%
 - Term Leasehold - 53%
 - National Parks - 4%
 - Licences and Permits - 1%
 - State Forest and timber reserves - 3%
 - Other reserves - 3%
 - Unallocated State Land - 3%
- Approximately 20,000 reserves in Queensland
- Reserves under Council trusteeship usually the largest category of property holding (in area) in the property portfolios of most Councils.

Structure of Property Interests



- Mainstream interests in land
 - Aboriginal freehold or leasehold under the Aboriginal Land Act
 - National Park
 - Deed of Grant of Land in Trust (DOGIT)
 - Trustee Lease
 - Trustee Permit
 - State Leasehold (perpetual & term leases)
 - Reserve
 - Trustee Lease
 - Trustee Permit
 - State Lease
 - Permit to Occupy
 - Permit to Occupy
 - Occupational Licence
 - Public Utilities Easement
- Native title rights and interests

Reserve Land in Context

Characteristics of Reserve Land

- Reserves do not give the trustee “ownership” of land.
- Characteristics of a reserve:
 - State land dedicated for public use.
 - Land held by a trustee on behalf of the State under a statutory trust.
 - Trustee assumes powers of management and control of the reserve for public purpose.
 - Incidental power to construct public works.
 - Trustee assumes statutory power to grant limited interests in the reserve land to third parties.
 - State retains statutory powers to deal with reserve land itself.
 - Reserves are generally perpetual but the State retains power to revoke.
- Distinctions exist between reserves, road reserves, forestry reserves and nature conservation reserves.

Reserve Land in Context

Government Land Management Strategy

- Reserves are regulated by statute and associated Government policies.
- History of reserves pre-dates property statutes in Australia. Goes back to the early administrative policy of “reserving” or “setting apart” Crown land from sale.
- Most reserves which currently exist in Queensland:-
 - were dedicated under the *Land Act, 1962*.
 - are deemed to continue as reserves under the *Land Act, 1994* (even if not for a “community purpose”).
- A decade of reforms has dramatically changed State land management in Queensland:-
 - 1990 – Wolfe Committee Report.
 - 1992 – Crown Land Management Reform White Paper.
 - 1995 – *Land Act 1994* commenced (“State” land instead of “Crown” land).
 - 1995 to 2004 – Land management and other policies adopted by Government.

State Land Management Strategy

Some Guiding Policy Objectives

- **Resource sustainability** – Balancing the needs of present and future generations may mean “unlocking” reserves not currently needed for their dedicated purpose (see Government Land Management Policies – Disposal).
- **Financial return** – State land is a Government asset. Government should receive a return on that asset where an interest in the land is to be granted for non-community purposes (see Government Land Management Policies – Disposal).
- **Indigenous interests** – No dealings with State land (including reserves) can be inconsistent with the requirements of native title legislation (s28 of the *Land Act*) and entry onto State land (including reserves) subject to indigenous interests must take Aboriginal traditions and Islander customs into account (s29 of the *Land Act*).

State Land Management Strategy

What Does it Mean for Reserves?

- **Rationalisation of tenures** – The *Land Act 1994* consolidated legislation that previously dealt with State land. It also rationalised and streamlined the different types of new tenures. It included a rationalisation of the purpose for which new reserves can be dedicated.



- Distinction between reserves for “community purposes” and those for “operational purposes.”
- Distinction between the “primary use” of reserves (use by the trustee consistent with purpose) and the “secondary use” (use of reserve by a third party consistent with purpose).

Purpose of Reserves

- Ascertaining the true purpose of a reserve is critical to:-
 - Deciding what a trustee can use the reserve land for.
 - Determining secondary uses.
- **Before 1995** reserves could be dedicated for any purpose (community purpose or operational purpose) as long as it was a public purpose. Those reserves that existed at 1 July 1995 can continue to be used for their original public purpose.
- **After 1995** new reserves can only be dedicated for a community purpose.

Community Purposes

- Aboriginal purposes
- Beach protection & coastal management
- Cemeteries, crematoriums & mortuaries
- Drainage
- Environmental purposes
- Heritage, historical & cultural purposes
- Natural Resource Management
- Navigational purposes
- Open space & buffer zones
- Parks & Gardens
- Public boat ramps, jetties & landing places
- Public halls
- Public toilet facilities
- Roads & scenic purposes
- Scientific purposes
- Showgrounds
- Sport and recreation
- Strategic land management
- Torres Strait Islander purposes
- Travelling stock requirements
- Watering places

Creation of New Reserves

Some relevant points:-

- Generally the community purpose for which a new reserve is sought must be a **present** purpose rather than an anticipated **future** need.
- Minister creates (“dedicates”) a new reserve by gazette notice.
- Purpose of an existing reserve can be changed by gazette notice.
- Boundaries of, or area contained in, a reserve can be changed by gazette notice.
- Application made to relevant regional office.
- If there is not an existing registered lot for the proposed reserve, a new survey plan will need to be registered creating a new lot.
- New reserves can only be created over unallocated State Land.
- Any native title over the area needs to be addressed before a new reserve is granted

Public Works Projects on Reserves

Legal Implications

Project Site on Existing Reserve	Project Site on Proposed New Reserve
<ul style="list-style-type: none"> • Purpose:- <ul style="list-style-type: none"> ▪ Project must be compatible with existing purpose. ▪ If not, purpose of existing reserve can only be changed to a community purpose. • Area:- <ul style="list-style-type: none"> • Is the area of the existing reserve large enough to accommodate the project? • If not, the boundaries and area of the existing reserve might be capable of expansion by gazette notice (additional area to be included would need to be USL). • Third party interests proposed? <ul style="list-style-type: none"> • If a third party is to be involved in operating, managing or using the project after construction, they can only obtain secure tenure through a lease or permit. 	<ul style="list-style-type: none"> • Purpose:- <ul style="list-style-type: none"> • Can only dedicate a new reserve for a community purpose. Is the project limited to, and consistent with, a community purpose? • Area:- <ul style="list-style-type: none"> • Can only dedicate a new reserve over USL (can extend to areas below high-water mark). • If proposed area is not currently USL may need to negotiate, surrender, or compulsory acquire, existing interests. • Ensure that the proposed area and reserve boundaries are adequate to accommodate the project works and ancillary project activities. • Third party interests proposed? <ul style="list-style-type: none"> • If a third party is to be involved in operating, managing or using the project after construction, they can only obtain secure tenure through a lease or permit.

Public Works Projects on Reserves

Legal Implications

Project Site on Existing Reserve	Project Site on Proposed New Reserve
<ul style="list-style-type: none"> • Suitability having regard to other legal characteristics of a reserve:- <ul style="list-style-type: none"> ▪ Trustee does not “own” the reserve land. ▪ Reserve can be revoked by Minister where deemed no longer needed for any community purpose. ▪ If reserve is revoked, Minister may allow improvements to be removed. Any trustee leases or permits are automatically cancelled and there is no entitlement to compensation. ▪ Trustee assumes responsibility for a duty of care for the reserve. ▪ Trustee assumes other statutory responsibilities:- <ul style="list-style-type: none"> – Control noxious weeds. – Protecting and maintaining improvements. – Comply with Minister’s directions. 	<ul style="list-style-type: none"> • Sustainability having regard to other legal characteristics of a reserve:- <ul style="list-style-type: none"> • Trustee does not “own” the reserve land. • Reserve can be revoked by Minister where deemed no longer needed for only community purpose. • If reserve is revoked, Minister may allow improvements to be removed. Any trustee leases or permits are automatically cancelled and there is no entitlement to compensation. • Trustee assumes responsibility for a duty of care for the reserve. • Trustee assumes other statutory responsibilities:- <ul style="list-style-type: none"> – Control noxious weeds. – Protecting and maintaining all improvements. – Comply with Minister’s directions.

Public Works Projects on Reserves

Policy Implications

- In addition to statutory requirements under the *Land Act 1994* reserve land dealings are affected by:-
 - *Land Regulations 1995.*
 - **Local Laws.**
 - **Model By-Laws.**
 - **Policies.**
 - **Native Title Work Procedures.**
- Relevant policies endorsed by the Minister or Director-General in relation to State land dealings are of two types:-

Land Act Policies

Land Allocations

Reserves, Roads &
DOGIT's

Land Holdings

Matters affecting Land
Holdings

Registrations and Dealings

Continued Rights &
Tenures

Government Asset Management System (GAMS) Policies

Acquisition policies

Secondary use policy

Disposal policies

Valuation policy

Property tenure policy

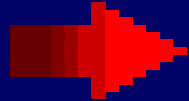
Information technology
policy

Public Works Projects on Reserves

Policy Implications - First Example

- **Native Title Work Procedures:-**
 - The construction of a public work on a reserve where native title exists will affect the native title. Such works can only proceed validly under the *Native Title Act, 1993* if done in accordance with relevant “future act” compliance provisions.
 - Previous “public works” validly constructed on a reserve prior to 23 December 1996 will have wholly extinguished any native title. If that can be demonstrated native title will not be an issue for future works on the reserve.
 - “Public works” are any of the following constructed by or on behalf of the Crown, a local government body or a statutory authority:-
 - a building or other structure (including a memorial), that is a fixture;
 - a road, railway or bridge;
 - a well or bore for obtaining water;
 - any major earthworks;
 - a building constructed with authority of the Crown other than on a lease.

- “Major earthworks” are any earthworks (other than in the course of mining) whose construction causes major disturbance to the land or to the bed or subsoil under waters.



Clarification in the Native Title Works

Procedures about major earthworks:-

- The reclamation of a tidal area is major earthworks.
- Dredging of a river is major earthworks.
- A road constructed through cutting and filling is major earthworks.
- Mining includes a quarry where the quarrying goes beyond the natural surface of the land. Therefore where quarrying goes beyond the natural surface of the land, it is excluded from the definition of major earthwork.

Public Works Projects on Reserves

Policy Implications - Second Example

- **GAMS – Disposal Policy # - Inter-Agency Transfers:-**
 - The allocation of an interest in State land to a Commonwealth or State Government agency or to a local government is called an inter-agency transfer.
 - The change of boundaries of a reserve for operational purposes to include adjacent USL is an example of an inter-agency transfer.



Clarification in GAMS Disposal Policy #4

- Such transfers occur on a “market-value footing”.
- Where multiple agencies have an interest in acquiring the same area, State Government agencies receive priority over local government and Commonwealth agencies.

Exceptions to the requirement for transfer at market value include:-

- Treasurer approves transfer at less than or no market value.
- Land of little use and nominal value (less than \$50,000.00), may be transferred at less than or no market value.
- A discount of up to 50% of the market value is to be given where:-
 - The agency seeking the transfer is a local government or public sector agency and the agency is seeking land which is currently USL.
 - The agency compulsory acquires any native title over the land and hence incurs any native title compensation liability.

Public Works Projects on Reserves

Practices & Procedures

- DNRM has a substantial body of procedures to achieve uniformity in the way in which it administers State land dealings. Such procedures are formalised in writing and, like Departmental policies, are given an identification number.
- For many aspects of Departmental administration of State land dealings there are no formal procedures. Officers have an element of discretion in the way in which they conduct State land dealings.

Public Works Projects on Reserves

Practices & Procedures

- **Easements over Trust Land (Procedure LTP/2004/1624).**
 - Sometimes infrastructure for one purpose (eg. water pipelines, drains, sewerage pipelines etc.) are constructed on reserve land.
 - The *Land Act* provides for public utilities easements to give tenure security to infrastructure of that kind. There was uncertainty as to whether a public utilities easement could be registered over reserve and other trust land.



Clarification in Procedure for Easements over Trust Land

- Land Registry's requirements for registration of easements over non-trust land now apply to easements over trust land (including reserves).
- The State is the owner of the reserve land.
- The Minister's written approval through the delegated State Land Asset Management officer is required before the easement may register.
- Upon revocation easement may continue over USL with Minister's approval.