

Leasing Aboriginal Land Manual

A manual for trustees of land transferred under the
Aboriginal Land Act 1991

Version 1

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This manual

The purpose of this manual is to assist the trustees of Aboriginal land fulfil their responsibilities under the *Aboriginal Land Act 1991* to effectively manage the leasing of land and contribute to the sustainable social and economic development of their communities.

A map showing where Aboriginal land is located in Queensland is available to view through Queensland Globe.

Using this manual

Effective corporate governance

Trustees should use this manual whenever they consider an Expression of Interest (EOI) for a lease of Aboriginal land. This manual will assist trustees of Aboriginal land to operate according to good corporate governance practices, fulfil their trustee leasing role and meet their corporate governance responsibilities as set out under relevant legislation.

Manual content

Parts 1–3 describe:

- the roles of trustees as land managers and their leasing responsibilities,
- the relevant legislation and statutory compliance trustees must consider when leasing Aboriginal land, and
- some leasing options and lease conditions.

Part 4 provides an overview of the steps involved in considering an expression of interest (EOI) for the grant of a lease and then provides a detailed description of the leasing procedures that trustees should follow when considering the grant of a lease.

The necessary forms, lease templates and other materials to support trustees consider the grant of a lease can be found on the department's website.

Definitions

Aboriginal land

For the purposes of this manual, Aboriginal land is defined as land that has been transferred under the provisions of the *Aboriginal Land Act 1991* and is held for the benefit of Aboriginal people particularly concerned with the land and their ancestors and descendants or the native title holders of the land.

Aboriginal person

A person of the Aboriginal race of Australia (*Aboriginal Land Act 1991*).

Eligible Person

- An Aboriginal person; or
- A person who is not an Aboriginal person if the person is:
 - The spouse or the former spouse of an Aboriginal person
 - The spouse or the former spouse of an Aboriginal person who is deceased; or;
 - The holder of another type of lease granted by the trustee (eg a commercial lease)

Home Ownership Lease

A lease granted to an eligible person for a term of 99 years for residential use.

Instrument of lease

An instrument of lease is a document which describes the terms and conditions of a lease, as agreed between a lessor and a lessee.

A standard terms document may be used as the instrument of lease. Standard terms documents describe the standard terms and conditions for types of leases. Standard terms and conditions could include, for example, clauses providing for public liability and indemnity insurance.

A survey plan identifying the parcel of land the lease refers to will need to accompany the instrument of lease — except in the rare circumstance where the lease is over an entire pre-existing lot that has already been surveyed to an acceptable standard.

A schedule may also be attached to a standard terms document detailing additional terms or conditions of a lease.

Lease

A lease is an enforceable agreement between a lessor and lessee that creates a legal interest in land. A lease provides a lessee with exclusive access to and use of a parcel of land, (according to the terms and conditions of the lease), and gives security, certainty and confidence to a lessee to develop and use the land for an agreed purpose and period of time.

Local government

A local government is a body established under the *Local Government Act 2009*.

Registered interest

All leases must be registered with Titles Queensland.

After an instrument of lease is recorded in the appropriate register, the lease becomes a registered interest. A registered interest means a legal interest has been created in the title. This legal interest will show up in title searches.

A registered interest provides the lessee certainty and eliminates doubt about the existence of the lease. Provided the lessee uses the lease land in accordance with the terms of the lease, the lessee's use of the land cannot be overridden unless the lessee is in breach of a regulation or legislation.

Standard Lease

A lease granted under Part 10 of the *Aboriginal Land Act 1991*:

- To any person or entity
- For any purpose
- For any term up to 99 years

Trustee

A trustee is a registered entity appointed by the Minister for the *Aboriginal Land Act 1991* and responsible for the management of the Aboriginal land.

List of acronyms

ATL	Agreement to lease
DNRMMRRD	Department of Natural Resources and Mines, Manufacturing and Regional and Rural Development
EOI	Expression of Interest
HCE	Housing Chief Executive, Department of Housing and Public Works
PA	<i>Planning Act 2016</i>

Part 1: Trustee leasing roles and responsibilities

1.1 Aboriginal land and trustees

The *Aboriginal Land Act 1991* provides for the transfer of land to Aboriginal people to enable them to manage the land according to their tradition or custom. Transferable land includes Deeds of Grant in Trust land (DOGIT), Aboriginal reserve lands and available State land declared to be transferable land.

When land is transferred, the trustee holds the land for the benefit of Aboriginal people particularly concerned with the land and their ancestors and descendants or the native title holders of the land. The title to the land is 'inalienable freehold', which means the land can never be sold. Land that has been transferred under the *Aboriginal Land Act 1991* can be referred to as Aboriginal land or transferred land.

In the past, land trusts were established to hold this land for the benefit of Aboriginal people.

New land trusts are no longer being established, and land is now granted to corporations registered under the Australian Government's *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSIA) or to existing land trusts.

Existing land trusts continue to function as usual and are administered under the *Aboriginal Land Act 1991*. Existing land trusts have the option of establishing a corporation and transferring all land and assets to the corporation.

Other features of land transferred under the *Aboriginal Land Act 1991* include that:

- The land cannot be mortgaged by the trustee
- There are restrictions regarding leasing on the land
- Native title interests are not extinguished by the transfer.

The Queensland Government retains ownership of the minerals and petroleum on all land in Queensland. It also retains certain rights regarding forest products and quarry materials on some land transferred under the *Aboriginal Land Act 1991*.

1.2 Trustee land management responsibilities

Under the *Aboriginal Land Act 1991*, the main responsibility of trustees of Aboriginal land is to manage the land in a manner consistent with achieving the purpose for which the land was granted—that is, for the benefit of Aboriginal people particularly concerned with the land, and their ancestors, and descendants or for the native title holders of the land.

This responsibility includes:

- controlling pests, plants and animals
- protecting and maintaining any improvements on the land
- exercising a duty of care for the land and taking all action necessary for its maintenance and management
- obtaining a vegetation clearing permit before destroying any vegetation on the land
- actioning commitments contained in an indigenous land management agreement (if one exists)
- complying with all local, State and Commonwealth statutory requirements relating to land management.

In addition, trustees:

- may lease all or part of the Aboriginal land
- must not mortgage Aboriginal land
- are not permitted to sell Aboriginal land
- must maintain adequate public liability insurance for the benefit of the trustee, and any member of the public who may use the Aboriginal land
- may consult with other parties and enter into management arrangements (e.g. with conservation groups) provided the agreement does not permit activities which do not provide benefit for Aboriginal inhabitants or for Aboriginal purposes
- may not use, sell or lease quarry material, forest products or mineral and petroleum products found on or below the surface of transferred land because they are reserved to the State under the *Forestry Act 1959*, *Mineral Resources Act 1989* and *Petroleum Act 1923*.

1.3 Trustee responsibilities when leasing land

If seeking to grant a lease over Aboriginal land, trustees:

- have no power to bind the State
- are responsible to ensure compliance with the *Native Title Act 1993* (Cth)
- must abide by the *Planning Act 2016* for proposed development of the land
- must comply with any directions issued by the Minister
- continue to bear the responsibility to ensure the Aboriginal land is managed for the benefit of Aboriginal people particularly concerned with the land and their ancestors

and descendants or the native title holders of the land and cannot delegate that responsibility

- should ensure that trustee land management responsibilities (listed above) are passed on to lessees through the conditions of the lease.

After the grant of a lease:

- payment received from a lease of land must be spent by the trustees on the maintenance or enhancement of the Aboriginal land
- payment received for an existing dwelling on a private residential lease (if the dwelling was previously used to provide subsidised housing for residential use) must be spent by the trustee on housing services for Aboriginal inhabitants of the transferred land.

1.4 Informed responsibility

To fulfil their leasing responsibilities in an informed and effective manner, trustees of Aboriginal land need to have comprehensive knowledge about:

- the values of and appropriate uses for the land,
- existing interests in the land,
- community opinion about proposed leases.

Trustees of Aboriginal land need to have internal policies relating to the leasing of land. Trustees should also raise the awareness of potential lessees about leasing options and processes.

Planning

Trustees should have access to comprehensive information about appropriate and desirable uses for Aboriginal land and refer to this information when making decisions about granting a lease. This is to ensure that a lease is not granted for an unsuitable purpose for a particular piece of land. A planning scheme, compliant with the *Planning Act 2016*, is the best source of information about land-use suitability since that Act requires planning schemes to be developed through a process involving extensive public participation to comprehensively identify existing values and constraints on land, and the desired outcomes of development.

Trustees should contact their local government body for further information regarding the planning scheme for their area.

Community consultation

Trustees are not required under the *Aboriginal Land Act 1991* to consult with the community when considering an expression of interest to lease their land. Although there is no

legislative requirement to do so, it is good practice to seek the views of the community to establish that the community generally agrees with the grant of the lease prior to making any long-term decisions about trust land.

The trustee should give a suitable opportunity to the Aboriginal people to express their views and identify any issues. Trustees should develop internal policies and processes appropriate to their community to determine how they will undertake this consultation.

Record keeping

Trustees should establish a system to record and manage leases granted over Aboriginal land. The following information should be included:

- details of existing interests—leases and licences, their locations, terms and conditions
- a register of interests for financial reporting and lease management purposes
- details of existing land use

Awareness raising

Trustees should make information available to potential lessees (including members of their local community) about leasing options and the processes for expressing an interest in, and being granted, a lease. Trustees should include advice about land that is most suitable for various purposes and would receive the most favourable consideration. This advice could be based on the planning scheme or land use plan.

Trustees should be aware that that expression of interest forms and other suitable materials are available to download from the DNRMMRRD website.

Part 2: Leasing land

2.1 Background to leasing

The *Aboriginal Land Act 1991* is the principal legislation for regulating land tenure arrangements on Aboriginal land through provisions for land administration and land dealings, for example an EOI to lease Aboriginal land. The *Aboriginal Land Act 1991* provides for the creation of a registered interest in land through the granting of leases.

Trustees must satisfy their roles and responsibilities and effectively administer their leasing powers under the *Aboriginal Land Act 1991* when considering the grant of a lease on Aboriginal land.

Granting a lease means that a trustee agrees to allow exclusive access to and use of a parcel of Aboriginal land by another party for an agreed purpose, period of time, price/rent, and

other terms and conditions. The lease is created when the lessee registers the lease with Titles Queensland. The trustee is then known as the lessor and the other party is known as the lessee.

A registered lease provides lessees with the long-term security and confidence required to commit to home ownership, develop a business, install and operate infrastructure, or undertake other activities. In return, leases provide trustees with a source of income, and the sharing of responsibility and expenses associated with land management. Leasing will also be of general benefit to Aboriginal communities through the diversification of land use and stimulation of activities to improve social and economic wellbeing.

2.2 Statutory issues when considering the grant of a lease

When considering an EOI for the grant of a lease over Aboriginal land, trustees are responsible for ensuring compliance with statutory processes before the lease can be granted. These considerations may prevent the grant of a lease or place conditions on the lease that constrain certain activities.

Trustees of Aboriginal land must comply with the requirements of the *Aboriginal Land Act 1991*, *Native Title Act 1993* (Cth) and the *Planning Act 2016*. Other Acts that require statutory processes must also be complied with.

The 2015 amendments to the *Aboriginal Land Act 1991* amongst other things, removed the requirement, under legislation, for the trustee to consult with the community or to seek the Minister's consent to the grant of any lease.

2.2.1 Planning Act 2016

The purpose of the *Planning Act 2016* is to seek to achieve ecological sustainability by coordinating and integrating planning at the local, regional and State levels; managing the process by which development occurs and managing the effects of development on the environment (including managing the use of premises). Mechanisms to achieve ecological sustainability include planning schemes developed for a local government area and the State Assessment and Referral Agency (SARA) which ensures a coordinated whole-of-government approach to the state's assessment of development applications. SARA may be either the assessment manager or a referral agency for development applications where the state has a jurisdiction.

Under Schedule 2 of the *Planning Act 2016*, the granting of a lease for a period of over ten years over land that is part of a larger lot is defined as reconfiguring a lot (that is, 'subdivision of the land') and therefore assessable development as identified by Planning Regulation 2017 Part 10, Schedule 14 reconfiguring a lot. This means that when an expression of interest to lease Aboriginal land that is part of a larger lot for a term of over ten years is received, the trustee must request that the local government authority grants development approval to reconfigure a lot before the trustee can decide on and grant the lease.

When the local government authority is considering a development application to reconfigure a lot, they must fulfil the requirements of the *Planning Act 2016* by ensuring it follows the assessment and approval processes and advising of any referrals to SARA. This will require the assessment manager to consider the proposed lease and land use against the planning scheme (if one exists), or other land use plan, to determine if the proposed land use is consistent with the objectives and desired outcomes for land use in that area. If SARA is involved in the assessment, it will consider the proposal against the State Development Assessment Provisions (SDAP). SDAP defines the state's interest in development assessment and includes the assessment benchmarks or matters SARA will assess an application against.

The local government authority, as assessment manager, may coordinate the consideration of the proposed lease against the requirements of other legislation by liaising with SARA and seeking advice on the development application. Other approvals or licences may be required under other legislation in addition to approvals required under the *Planning Act 2016*. Some of the key Acts that may need to be considered by state agencies and may influence the granting or conditioning of a lease, include but are not limited to the *Vegetation Management Act 1999* and *Aboriginal Cultural Heritage Act 2003*.

Schedule 2 of the *Planning Act 2016*:

<https://www.legislation.qld.gov.au/view/pdf/inforce/current/act-2016-025>

Part 10 of the Planning Regulation 2017:

<https://www.legislation.qld.gov.au/view/pdf/inforce/current/sl-2017-0078>

2.2.2 Corporations (Aboriginal and Torres Strait Islander) Act 2006

The *Corporations (Aboriginal and Torres Strait Islander) Act 2006* (CATSIA) is the legislation that establishes the role of the Registrar of Indigenous Corporations and allows Aboriginal and Torres Strait Islander groups to form corporations.

The CATSIA delivers modern corporate governance standards but still provides measures to suit the needs of Aboriginal and Torres Strait Islander people. Examples of this are the requirements for the majority of directors and the majority of members to be Aboriginal and Torres Strait Islander people. This means corporations will always be owned and controlled by Aboriginal and Torres Strait Islander people.

Registration under the CATSIA is mostly voluntary. However, some corporations – for example, ‘prescribed bodies corporate’ set up under the *Native Title Act 1993* – are required to register under the CATSIA.

Roles and responsibilities of CATSIA Corporations

The Australian Government office of the Registrar of Indigenous Corporations (ORIC) support and regulate corporations. Information for CATSIA Corporations can be found at www.oric.gov.au/for-corporations.

The roles and responsibilities of CATSIA Corporations can be found at www.oric.gov.au/for-corporations/roles-and-responsibilities.

Corporations that are Registered Native Title Body Corporate's (RNTBC's) have special provisions under the CATSIA. Information can be found at www.oric.gov.au/for-corporations/native-title-and-rntbcs.

Vegetation Management Act 1999

Any lease issued should be conditioned by the trustee so that activity on the leased land does not contravene the *Vegetation Management Act 1999*.

Aboriginal Cultural Heritage Act 2003

Lessees should be made aware that they have a duty of care to protect Aboriginal cultural heritage that exists on leased land and take steps to manage their activities to avoid or minimise harm to Aboriginal cultural heritage.

2.2.3 Native Title Act 1993 (Cth)

The *Native Title Act 1993* (Cth) provides for the recognition and protection of native title and establishes ways in which future land and resource dealings affecting native title may proceed and sets standards for the dealings.

Where the registration of a lease is a future act—that is, the lease may impact on the enjoyment or exercise of native title—the trustee is required to perform a native title assessment in accordance with the *Native Title Act 1993* (Cth). The native title assessment will:

- determine whether native title may exist over the land proposed to be leased—that is, whether native title has been wholly extinguished
- identify what action needs to be taken if native title may exist, such as providing procedural rights under a future act provision, or the negotiation of an Indigenous land use agreement
- identify what party is responsible for undertaking the identified action. In most cases the potential lessee will be responsible to fulfil the required action, such as the negotiation of an Indigenous land use agreement.

Where housing and infrastructure already exists on Aboriginal land, the native title assessment may find that native title has been extinguished and that no further action (such

as the negotiation of an Indigenous land use agreement) is required before the lease can be granted.

However, if an Indigenous land use agreement is required it must be negotiated prior to registration of the lease to develop agreement between native title parties and the potential lessee that the proposed land use and management on the leased land are appropriate. If native title rights and interests are to be surrendered through an Indigenous land use agreement, then the State must be a party to the Indigenous land use agreement.

If an Indigenous land use agreement is required, but cannot be negotiated, the trustee must not grant the lease.

2.3 Statutory issues after granting a lease

While considering the grant of a lease, trustees should advise the potential lessee that additional processes may need to be satisfied after the lease has been granted and before a desired activity or development may take place on the land. This is because the grant of a lease provides a right to occupy and use the land, but it is not an approval for all activity on the land. Certain activities will require approval from the local government or other parties or may be constrained by statutory requirements. The *Planning Act 2016* is the main Act that applies to the assessment and approval of development on leased land.

Under the *Planning Act 2016*, development is defined as:

- carrying out building work
- carrying out plumbing or drainage work
- carrying out operational work
- reconfiguring a lot
- making a material change of use of premises.

A potential lessee should be advised that before undertaking any of these actions they should check with their local government to confirm whether development approval is required, or if codes need to be followed in undertaking any of these activities. For example, building an average house will not require development approval but will require compliance with the relevant code. However, if a more significant building was proposed it may require development approval.

Native title considerations also apply to additional approvals required for a project. If an Indigenous land use agreement is required before the grant of the lease, the native title considerations associated with additional activities should also be addressed and consented to during the negotiation of the Indigenous land use agreement.

2.4 A proactive approach to leasing

There is a range of actions that trustees can undertake to create a land administration system on Aboriginal land that is conducive to granting leases. If these actions are undertaken it will make the leasing process much simpler, faster and less expensive for potential lessees and trustees.

Actions that trustees should consider undertaking are to:

- raise awareness within the community of the leasing opportunities that are available and indicate where the trustee would prefer people to apply for leases for private residential or other purposes
- develop a register of existing leases and other interests in land, including areas where an application has been made or a lease granted under the *Aborigines and Torres Strait Islanders (Land Holding) Act 1985*
- negotiate an Indigenous land use agreement over developed areas and areas where development is anticipated to occur, and where native title may exist, so that individual Indigenous land use agreements are not required to be negotiated for private residential leases in these areas in the future
- survey existing lots and do a mass reconfiguration of the Aboriginal land to create separate lots. This will mean that a survey and an application to reconfigure the lot will not be required for leases over existing lots in the future, although leases over 'greenfield' sites will still require survey and reconfiguration
- develop policies about issues they can anticipate will arise with private residential lease applications, such as:
 - how to respond if more than one expression of interest is received for the same piece of land, or land and house
 - how to engage with the Aboriginal people particularly concerned with the land to discuss the proposed lease
 - whether leases on unserviced land will be considered, or under what circumstances the council would be prepared to provide services to leases on currently unserviced land - how large a block of land will be allowed for a private residential lease.

Part 3: Leasing options and conditions

3.1 Leasing options

The trustees of Aboriginal land have power under the *Aboriginal Land Act 1991* to grant the following lease types on their land for a term up to 99 years to anyone:

- Standard lease
- Home ownership lease

However, home ownership leases on Aboriginal land may only be granted to Torres Strait Islanders or Aboriginal people:

3.2 Lease conditions

Suggested terms and conditions for leases for various purposes are available at <https://www.qld.gov.au/firstnations/environment-land-use-native-title/connecting-with-country/leasing-indigenous-land/leasing-information-for-trustees>. Note that the lease terms and conditions for a particular lease type are recommended terms and conditions only and are not mandatory terms and conditions that must be applied to every lease. These standard lease terms were prepared by DNRMMRRD to assist trustees and lessees of Aboriginal land to condition leases.

However, most of the recommended terms and conditions are based on statutory requirements. Any amendments to the terms and conditions must ensure that all relevant statutory requirements are satisfied, and that trustee and lessee interests are protected by the terms and conditions.

Important standard conditions for all lease types are that:

- All leases can be amended, transferred, mortgaged, cancelled and have secondary interests created
- Note – the template lease document conditions the lessee to obtain prior written approval from the trustee to transfer or create another interest in the lease. This is a recommendation only but is considered good practice when administering trust land.
- All leases can include an option to be renewed. Other standard conditions relate to warranties; inspection by lessor; nuisance; pest plants and animals; removal of trees; quiet enjoyment; environmental protection; compliance with laws and environmental requirements; access, utilities and services; improvements and repairs; costs; insurance; release and indemnity; default; damage and destruction; removal of improvements when lease ends; surrender; miscellaneous; and cancellation of lease
- The lease can be cancelled for the breach of conditions

- Trustees may include additional conditions in a Schedule depending upon the particulars of the lease and the outcomes of considerations prior to the execution of the lease.

Additional important standard conditions for standard leases are that:

- Lessees must pay ongoing periodic rental payments to the trustee for an amount agreed in the lease, based upon (i) payment for exclusive access to and use of the land, and (ii) payment to cover the costs of local government service charges and other statutory levies and charges.

Additional important standard conditions for Home Ownership leases are that:

- The lease must be for a term of 99 years

The consideration payable for the lease must include, as a lump sum payment to the trustee prior to the grant of the lease, an amount equal to the value of the lease land, as decided by the trustee using a valuation methodology decided by the DNRMMRRD chief executive.

Currently the purchase price is determined using a 'nominal' based valuation.

- Methodology. The current nominal value is \$4,000 for leases up to 2,000 m² and that for each additional 100m² the price would increase by \$100. The nominal value is expected to be reviewed every three years and likely increase in line with the consumer price index.
- If a social housing dwelling exists on the land, the consideration payable must also include a lump sum payment to the trustee prior to the grant of the lease for an amount equal to the value of the dwelling, as decided by the trustee using a valuation methodology agreed between the trustee and the Housing Chief Executive (HCE), Department of Communities, Housing and Digital Economy.
- An annual rent, for an amount of not more than one dollar per annum, must be charged
- The lessee must pay the costs of local government service charges and other statutory levies and charges directly to the local government or other service providers
- The lease may be forfeited for breach of conditions of the lease, although breach of conditions will not result in automatic forfeiture
- If a dwelling suitable for residential purposes is not situated on the lease land, the lessee must ensure that a private residential premises is built on the land within eight years after the grant of the lease
- A secondary interest may be created under the lease only if the interest is created through a residential tenancy agreement, or a mortgage of the lease.

Part 4: Specific leasing procedures

Summary of leasing processes for all lease purposes

EOI consideration and decision-making steps	Rejection of EOI
<p>Step 1: Expression of Interest (EOI)</p> <p>The potential lessee submits an EOI by completing the relevant form and providing any required supporting information or documents.</p> <p>The trustee acknowledges receipt of the EOI.</p>	
<p>Step 2: Receipt and review of the EOI</p> <p>The trustee reviews the EOI to check that form has been correctly completed by an eligible person and any required supporting information or documents have been supplied.</p> <p>Additional consideration:</p> <p>99-year home ownership leases can only be applied for by an eligible person as defined under the <i>Aboriginal Land Act 1991</i>.</p>	<p>If the EOI has not been correctly made, the trustee advises the potential lessee to correct the EOI.</p>
<p>Step 3: Consideration of the EOI</p> <p>After receipt of a correctly made EOI, the trustee takes actions to confirm:</p> <ul style="list-style-type: none"> • confirm there are no known conflicts with existing interests in the land; <p>Additional processes:</p> <ul style="list-style-type: none"> • If appropriate, undertake consultation or provide notice to the community of the trustee's intention to consider the EOI and allow time for comment to be provided and considered. • For home ownership leases, if a dwelling is present on the land, the trustee must confirm that the dwelling is available for purchase. 	<p>If the trustee is unable to confirm any Step 3 considerations, the trustee should advise the potential lessee that the EOI cannot proceed and reject the EOI.</p>

<p>Trustees should seek advice on tenure, planning and native title information, which can be provided through the Department of Women, Aboriginal and Torres Strait Islander Partnerships and Multiculturalism or through an independent consultant.</p>	
<p>Step 4: Confirmation to proceed (Approval or non-approval of the EOI)</p> <p>If not approved, the Trustee should record a resolution showing this and the send written advice to the applicant.</p> <p>If the EOI is approved, the Trustee should record a resolution, showing approval and advise the applicant of the next steps.</p>	
<p>Step 5: Preparation of the Agreement to Lease (ATL)</p> <p>The trustee takes action to:</p> <ul style="list-style-type: none"> • assess whether native title exists and, if so, identify how it should be addressed • identify local government services to the land and their indicative costs • determine the annual rent • identify any further registration requirements, including survey of the lot • for all leases over 10 years over land that is part of a larger lot, the trustee must seek development approval to reconfigure the lot unless an exemption applies. <p>Additional processes:</p> <ul style="list-style-type: none"> • For homeownership leases, the trustee must determine the lump sum consideration payable for the lease of land. • For home ownership leases if a dwelling is present on the land, the trustee must obtain written confirmation from the Housing Chief Executive that the dwelling is available for purchase and determine the lump sum consideration payable for the dwelling. 	

<p>The trustee then records the outcomes of these actions in the ATL as conditions.</p>	
<p>Step 6: Offer of the ATL</p> <p>The trustee offers the ATL to the potential lessee, which:</p> <ul style="list-style-type: none"> • confirms Step 3 considerations and the outcomes of Step 5 actions • identifies any further actions required of the potential lessee prior to the grant of the lease • identifies the costs and conditions of the lease if it was to be granted. 	
<p>Step 7: Consideration of the ATL</p> <p>The prospective lessee considers the ATL and advises the trustee whether they accept the ATL and intend to undertake the actions required by the ATL, if any, (such as an Indigenous land use agreement, survey or preparation of a business plan).</p> <p>The prospective lessee may wish to seek professional legal advice when considering the ATL.</p>	<p>If the prospective lessee does not accept the ATL, they should advise the trustee and withdraw the EOI.</p>
<p>Step 8: Fulfilment of the ATL</p> <p>After advising the trustee that the ATL is acceptable, the prospective lessee fulfils actions required by the ATL, if any.</p>	<p>If the prospective lessee is unable to fulfil the requirements of the ATL, the trustee must reject the EOI.</p>
<p>Step 9: Execution of the lease</p> <p>After fulfilment of the ATL actions the trustee and prospective lessee must execute the lease by endorsing the lease document. That is the lease document is signed by the trustee and prospective lessee.</p>	
<p>Step 10: Registration of the lease</p> <p>The prospective lessee registers the endorsed lease with Titles Queensland.</p> <p>Additional processes:</p>	

For home ownership leases, the trustee must give the housing chief executive notice of the registration of the lease.	
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Detailed description of leasing processes for all lease purposes on Aboriginal land

Step 1: Expression of interest (EOI)

The potential lessee obtains the appropriate EOI form for the proposed lease purpose from the trustee or from the DNRMMRRD website, <https://www.qld.gov.au/atsi/environment-land-use-native-title/leasing-indigenous-land/trustees>.

The potential lessee completes the EOI form providing as much detail about the proposed lease as possible and signs all required sections.

The potential lessee lodges the fully completed EOI form and any necessary supporting information in person or by mail with the trustee.

Step 2: Receipt and review of the EOI

The trustee should review the EOI and check that it has been correctly completed.

Note: EOIs for home ownership leases can only be accepted from an eligible person.

To confirm that the EOI has been correctly completed requires the trustee to check that the potential lessee has fully completed the EOI form and submitted the necessary supporting information as required by the EOI form.

Recommended maximum timeline: The trustee should review the EOI and advise the potential lessee whether the EOI was correctly made by an eligible person or party within 14 days from lodgement of the EOI.

If the EOI has been correctly made the trustee should acknowledge receipt of the correctly made EOI, provide it to the potential lessee, and then move to Step 3, Consideration of the EOI.

If the EOI has not been correctly made, the trustee should return the EOI form and any supporting information to the potential lessee for correct completion. The trustee must advise the potential lessee where the EOI has not been completed correctly. The potential lessee should complete and re-lodge the EOI, and the 14-day review period recommences. This step should be repeated until the trustee is satisfied that the EOI has been correctly made, and all necessary information has been provided.

If an EOI is submitted by a second potential lessee after a correctly made EOI has already been received for an area of land, they should be informed that their EOI cannot be considered until a decision has been made on the existing EOI.

Trustees should make their own policy about how to respond to a second potential lessee, should they lodge an EOI for an area of land that has already had an EOI lodged for it.

Step 3: Consideration of the EOI

When the trustee is satisfied that a correctly made EOI has been lodged, the trustee should consider the EOI, following steps 3.1–3.4, and then advise the potential lessee whether the EOI can proceed to the next step.

Recommended maximum timeline: The trustee should complete Step 3 and advise the potential lessee whether the EOI can proceed within 90 days from the receipt of a correctly made EOI.

3.1 Confirm that the proposed lease would benefit Aboriginal people particularly concerned with the land

Aboriginal land can be granted for the benefit of Aboriginal people particularly concerned with the land or for the native title holders of the land. Trustees of Aboriginal land are appointed on the basis that they have the capacity to properly and effectively manage the land because they have a particular association relevant to the land, have expertise in managing land for the benefit of Aboriginal people, and knowledge of the local community to carry out these responsibilities.

When an application is submitted, seeking the grant of a lease over Aboriginal land, trustees must consider whether:

- granting the lease would be for the benefit of Aboriginal people
- leasing that land would contribute to achieving land management objectives for the land.

Before participating in a decision-making process about the grant of a lease, an individual trustee must decide if they have a conflict of interest. A conflict of interest could exist where the potential lessee is a close relative, friend or business associate of an individual trustee, or is closely connected to an individual trustee in some other way. If a conflict of interest does exist, the individual trustee should declare it to other trustees and exclude themselves from the decision-making process.

If the trustee decides that granting the lease would not be for the benefit of Aboriginal people or for Aboriginal purposes, the trustees must advise the potential lessee that the grant of the lease would not be beneficial and reject the EOI.

3.2 Confirm that there are no overlaps or conflicts with existing registered or known interests in the land

Trustees can identify registered interests by contacting DNRMMRRD and requesting:

- a title search to identify registered interests in the land
- a search for the dealing numbers for each registered interest in the land so that information, such as survey plans or sketch plans, can be gathered to indicate the location of the registered interests.

The trustee must use this information to determine whether a registered interest already exists over the area for which the EOI has been submitted. This can be done by comparing the survey plans of registered interests with the sketches or plans of the land proposed to be leased, which are provided by the potential lessee as part of the EOI.

The Trustee should review their existing records of EOIs to verify that there are no other EOIs lodged.

If a registered or known interest exists over the land proposed to be leased and the conflicting interests in land cannot be resolved, the trustee must advise the lessee that the land is unavailable and reject the EOI.

Additional processes for leases for a particular purpose as follows:

3.3 For all leases over 10 years over land that is part of a larger lot

Granting a lease for over 10 years over land that is part of a larger lot is defined as reconfiguring a lot (that is, subdividing the land) under the *Planning Act 2016*, and therefore assessable development. In other words, if land the subject of an EOI for a lease has not previously been subdivided out and identified as a separate lot then approval for reconfiguration of the lot is necessary before the lease may be granted. Reconfiguring a lot is required to be assessed and approved by the assessment manager, usually the local government.

As the owner of the land, the trustee must ensure that development approval for the reconfiguration of a lot has been provided by the assessment manager (local government authority) prior to granting a lease. Development application forms can be downloaded from the Department of Local Government, Water and Volunteers website www.dlgwv.qld.gov.au.

Until the local government makes a decision about the reconfiguration of the lot, the trustee cannot make a decision about the grant of the lease. If development approval is granted, the trustee should record this approval and associated conditions in the ATL.

If the local government authority does not approve the reconfiguration of the lot, the trustee must advise the potential lessee that development approval was not granted and reject the EOI.

3.4 For private residential leases if a dwelling is situated on the land

If a dwelling is situated on the land proposed to be leased, the trustee must confirm if the dwelling was constructed using public funding and used to provide subsidised housing, and if so, whether the dwelling is available for purchase. The lease may not be granted without the written approval of the housing chief executive to confirm the dwelling is available for purchase and until after the lessee has paid for the dwelling.

The housing chief executive may decide that the dwelling is no longer required to provide subsidised housing for residential use (that is, no longer required as a rental property) and advise the trustee that the dwelling is available for disposal. Alternatively, the housing chief executive officer may decide that the dwelling should remain available to provide subsidised housing for residential use (that is, remain a rental property) and advise the trustee that the dwelling is not available for disposal.

To receive written approval that the dwelling is available for purchase:

- the trustee must give the housing chief executive written notice of the intention to grant the lease
- the housing chief executive must give the trustee written notice stating whether the dwelling has been used to provide social housing and whether it may be disposed of through sale as part of a residential lease— within 28 days of receiving the notice.

If the housing chief executive decides that the dwelling is unavailable for purchase, the trustee should advise the potential lessee that the dwelling is not available for sale and reject the EOI.

Step 4: Confirmation to proceed

After confirming Step 3 considerations, the trustee should advise the potential lessee that there is no preliminary reason why consideration of the EOI cannot continue.

Step 5: Preparation of Agreement to Lease (ATL)

After considering the requirements of Step 3 and confirming that there is no preliminary reason why consideration of the EOI cannot continue, the trustee should take further actions to consider the EOI and prepare a ATL.

Recommended maximum timeline: The trustee should complete Step 5 and offer the potential lessee a ATL within 90 days from the completion of Step 4.

5.1 Native title issues

The trustees of Aboriginal land must comply with the *Native Title Act 1993* (Cth). To fulfil this responsibility, when an EOI is received to lease land, the trustees must conduct a native title assessment to identify whether native title exists or may exist. If native title does or may exist, the provisions of the *Native Title Act 1993* (Cth) must be followed.

In some cases, native title can be addressed through a notification and opportunity to comment, or submission process. For example, if the trustee lease was for the purpose of a telecommunications facility to be operated for the public, it could proceed in relation to native title under Section 24KA of the *Native Title Act 1993* (Cth).

However, if the *Native Title Act 1993* (Cth) requires an Indigenous land use agreement, the consent of the relevant native title party to the proposed lease will need to be obtained through the Indigenous land use agreement.

The trustee must advise the potential lessee about the outcome of the native title assessment and any required actions arising from the assessment. The trustee must include these required actions in the ATL and require that the potential lessee fulfils the required actions before the lease is granted.

The time taken to negotiate an Indigenous land use agreement depends on how quickly the parties can reach agreement. The time taken for registration varies from a minimum of one month for a body corporate Indigenous land use agreement to a minimum of three months for an area agreement Indigenous land use agreement.

Further information about Indigenous land use agreement can be found on the National Native Title Tribunal website www.nntt.gov.au. A guide to negotiating Indigenous land use agreement can also be found on the DNRMMRRD website www.qld.gov.au/firstnations/environment-land-use-native-title/indigenous-land-use-agreements.

5.2 Services and ongoing service charges

As part of the liaison with the local government regarding approval to reconfigure a lot, the trustee should also seek advice about the services the local government authority is prepared to provide to the land proposed to be leased, and the typical cost of these services. Local government services provided are typically water, sewerage and waste collection.

In established town areas, the services provided to land proposed to be leased and their costs should not be difficult to determine. However, in non-serviced areas, the local government will have to consider if it is prepared to provide services to the land proposed to be leased. It is possible that the costs of these services, if provided to non-serviced areas, will be higher than in areas where they are already established, and a significant connection fee may be charged to establish the service. The local government may make a decision not to

provide services outside the town area, if this is the case the Trustee should consider making the provision of the services the responsibility of the lessee.

The local government services that will be provided and their indicative costs should be outlined in the ATL document so that the potential lessee can consider this cost in deciding whether to proceed with the lease application.

5.3 Registration requirements

The trustee should advise the potential lessee of any further requirements that need to be satisfied to register the lease with Titles Queensland. This will include requirements for survey of the land to be leased.

5.4 Annual rent

The trustee must determine the annual rental amount for the lease. This is because a key criterion of any lease for any purpose in Queensland is that an annual rent must be paid on the lease.

For private residential leases to a Aboriginal person, the trustee must set a rent on the lease of not more than one dollar per annum, to be collected on demand (rent for private residential leases to a Aboriginal person is set at this peppercorn rate because the major consideration payable for these leases is paid as a lump sum prior to the grant of the lease).

For leases to other lessees the trustee should seek the highest rent they can achieve.

The trustee must outline the annual rental amount for the land to be leased in the ATL so the potential lessee can consider this cost in deciding whether to proceed with the lease application.

5.5 For private residential leases

Only after a consideration equal to the value of the land proposed to be leased has been paid to the trustee can the trustee grant a lease for private residential purposes. The consideration payable is decided by the trustee using a valuation methodology decided by the DNRMMRRD chief executive. Currently the purchase price is determined using a 'nominal' based valuation methodology. The nominal value is \$4,000 for leases up to 2,000 m² and that for each additional 100m² the price would increase by \$100.

The current land valuation methodology can be found on the DNRMMRRD website www.nrmmrrd.qld.gov.au.

The trustee must identify the consideration payable for the land to be leased in the ATL so the potential lessee can consider this cost in deciding whether to proceed with the lease application.

5.6 For private residential leases if a dwelling is present on the land

Where a dwelling exists on land proposed to be leased for private residential purposes, the consideration payable for the lease must include, as a lump sum payment prior to the grant of the lease, an amount equal to the value of the dwelling, in addition to the value of the land.

If the housing chief executive has confirmed that a dwelling on the land proposed to be leased has been used to provide subsidised housing for residential purposes, and that house is available for sale, the trustee must, before the lease is granted, decide the value of the dwelling using a methodology agreed between the trustee and the housing chief executive.

The trustee must give the housing chief executive written notice of the intention to grant the lease.

The housing chief executive must provide advise to the Trustee on whether the dwelling is available for sale/lease and a sale price as per the agreed sale price mythology between the chief housing executive and the Trustee.

The housing chief executive will provide the trustee with a valuation for the dwelling so the trustee can decide the consideration to be paid.

For further information concerning the sale price for dwellings the trustee should contact the Director-General, Department of Housing and Public Works.

The trustee must identify the consideration payable for the dwelling in the ATL so the potential lessee can consider this cost in deciding whether to proceed with the lease application.

Step 6: Offer of the ATL

After considering the requirements of Step 5, and if it is confirmed that there is no reason why the lease should not be granted, the trustee should conditionally offer a lease to the potential lessee. In offering the conditional lease the trustee should provide the potential lessee with a:

- ATL
- draft lease
- standard terms document relevant to the purpose of the lease, amended if necessary, according to the specifics of the particular lease

The lease document (Form 7) and standard terms document (Form 20) will become the instrument of lease for the purpose of registration.

Go to <https://www.qld.gov.au/firstnations/environment-land-use-native-title/connecting-with-country/leasing-indigenous-land/leasing-information-for-trustees> for lease documents.

The ATL will:

- confirm that there are no existing interests in the land
- confirm if a development application for the reconfiguration of the lot is required
- outline native title requirements to be fulfilled prior to the grant of the lease (e.g. whether an Indigenous land use agreement is required)
- identify whether a survey of the land is required to be completed by the potential lessee to satisfy registration requirements
- at the appropriate time require the applicant to provide evidence that they can afford the sale price
- identify annual rental costs
- identify ongoing service charges
- confirm that the dwelling is available for purchase, for private residential (home ownership) leases where a dwelling exists on the land
- identify up-front lump-sum cost of the lease, including for a dwelling where one exists, for private residential (home ownership) leases
- identify any additional requirements of the lessee such as a business plan or a land management plan for example might be required for some leases
- alert the potential lessee to Aboriginal cultural heritage duty-of-care requirements
- identify potential lessee reporting requirements to the trustee regarding the fulfilment of requirements of the ATL.

Step 7: Consideration of the ATL

The potential lessee must consider the ATL, lease document and standard terms, and if the potential lessee is satisfied with these documents, the potential lessee advises the trustee of their acceptance by counter-signing the ATL and returning it to the trustee.

Step 8: Fulfilment of the ATL conditions

The potential lessee fulfils any requirements of the ATL. If an Indigenous land use agreement is required, it must be registered with the National Native Title Tribunal before the trustee and potential lessee can rely on consents contained within the Indigenous land use agreement.

Recommended maximum timeline: The potential lessee should fulfil any requirements of the ATL, unless an Indigenous land use agreement or survey is required, within 90 days from the date of counter-signing the ATL. If an Indigenous land use agreement or survey is required the potential lessee has a total of two years to satisfy the requirements of the ATL and may negotiate an additional 12 months, if necessary.

If the potential lessee cannot satisfy ATL requirements within the initial 90 days, the trustee may require the potential lessee to provide the trustee with a letter every three months describing their progress in fulfilling ATL requirements.

If the potential lessee cannot satisfy the requirements of the ATL within two years and cannot negotiate an additional 12 months; or if the trustee is not satisfied that sufficient progress is demonstrated in the potential lessee's three-monthly letters, then the trustee should advise the potential lessee that insufficient progress is being made and the EOI is being rejected.

Step 9: Execution of the lease

Once the trustee is satisfied that the potential lessee has fulfilled the requirements of the ATL, the potential lessee and the trustee must execute the lease (Form 7) document.

The trustee must sign the back of the survey plan.

The trustee should make copies of the original versions of the executed lease, standard terms and endorsed survey plan for their records.

The original copies of the executed lease (Form 7), standard terms document (Form 20) and endorsed survey plan must then be given to the potential lessee for lodgement with Titles Queensland.

Step 10: Registration of the lease

The potential lessee must lodge the correctly completed and executed lease documents, and evidence of Ministerial consent, if necessary, with the Titles Queensland.

If the lease documentation is lodged and contains errors, it may be 'requisitioned'. A requisition notice will identify what corrections need to be made to the documentation for the registration to proceed. A small fee applies to all requisitions.

After the documents are lodged and registration fees paid, the potential lessee will receive a lodgement receipt. This receipt will have two dealing numbers, one for the lease and one for the survey plan. The receipt is an important document which must be kept in a safe place by the potential lessee.

The lease documents and survey plan are examined by a title examiner before they can be passed and registered. This process takes approximately five working days to complete. A requisition will be issued at this stage if documents are not in order.

Once the documents have been examined and passed a confirmation statement will be mailed to the potential lessee confirming registration of the lease.

At this point the potential lessee ceases to be a potential lessee and becomes the lessee. The lessee is then free to use the leased land in accordance with the conditions of the lease.

Additional processes for private residential (home ownership) leases:

For private residential leases to an Aboriginal person:

Within 28 days after lease registration, the trustee must give the housing chief executive notice of registration of the lease.

The letter will state:

- the day the lease was registered
- the name of the parties to the lease
- evidence of the lump sum amount paid for the dwelling
- evidence of the lump sum amount paid for the lease land.