

Operational policy

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Formerly PUX/901/100
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Land Allocation: Granting Land Volumetrically

Purpose

To provide guidance on deciding on volumetric (in strata) allocation, including a volumetric deed of grant, lease or reserve, i.e. allocation of land either above or below the surface of land that is either unallocated state land (USL), road, trust land (reserve and deed of grant in trust) or leasehold, noting that a term lease and not freehold is the most appropriate tenure.

This policy applies to any application under the *Land Act 1994* (Land Act) for allocation of land either above or below the surface of USL, road, trust land or leasehold, and for the conversion to freehold of a volumetric lease.

Note a deed of grant may not be issued for land seaward of a property, including whether above or below the surface of the land, unless lawfully reclaimed - section 14 of the Land Act.

This policy does not apply to:

1. volumetric allocation over existing freehold title (other than a deed of grant in trust) which is dealt with under the provisions of the *Land Title Act 1994* (Land Title Act) and *Body Corporate and Community Management Act 1997* (Body Corporate and Community Management Act); or
2. the issue of a perpetual lease for 'transport land' as defined in Schedule 6 for the purposes of Chapter 6 of the Land Act; or
3. the grant of freehold specifically provided for under another Act e.g. section 477A of the *Transport Infrastructure Act 1994*.

Note: The term 'in strata' and terms of volumetric allocation, lot, deed, lease or similar term in this policy document is of a lot of 3 dimensions on a volumetric format plan.

Rationale

The Land Title Act provides for airspace subdivision (reconfiguration of a lot) of freehold land and the creation of indefeasible titles for airspace lots. The lots are defined by three-dimensional co-ordinates (i.e. volumetrically).

The State of Queensland (state) has decided that for some projects of significance e.g. development of railway stations, tunnel tollway, specific legislation will provide for the required tenure arrangements, without certain provisions of the Land Act applying.

The idea that ownership of land goes from 'heaven to hell' is not interpreted literally but is generally interpreted to mean that land ownership ceases at the point the landowner may no longer make actual, beneficial use of the airspace and sub-surface space. However, land ownership is generally three-dimensional with the actual height and depth specifications not stated.

There are some exceptions including in the Ipswich area where there are depth restrictions due to coal mining.

Land volume above and below the surface is still deemed to be 'land', and the principles and provisions of the Land Act and other Acts (e.g. the *Native Title (Queensland) Act 1993*, *Native Title Act 1993* (Cwlth) and *Coastal Protection and Management Act 1995*) still apply.

However, as the volumetric area is likely to be used for some other purpose than the surface land, the basic requirement is that the use of the surface land must not be unduly interfered with.

Further, a concern could be the proliferation of volumetric allocation (i.e. it may be difficult to visually identify both ownership and position), and the long term planning and management problems that may be generated. To counter this possible concern volumetric allocation would need to be associated with or integral to the use of the adjoining surface-based land.

It would also be undesirable to allow volumetric title to exist where there was no ability to reach it from the surface i.e. no dedicated access and/or no clear surface area on which to construct supports etc. Therefore it is desirable that any allocation of a volumetric lot be 'tied' by statutory covenant to an adjoining freehold lot or perpetual lease that contains enough land to enable appropriate structural support and access to the surface of the land - being 'tied' by covenant to a term lease may not be sufficient as that lease could eventually revert to the state.

A covenant pursuant to section 373A of the Land Act and section 97A of the Land Title Act may be registered to prohibit separate sale of lots subject to that covenant.

For land under the Body Corporate and Community Management Act, it would be sufficient to covenant to a freehold title (lot) which does not necessarily have direct 'surface' connections, because under the Body Corporate and Community Management Act's requirements the lot would have these access and support requirements through common areas. Alternatively, if the volumetric area was a common area, then the covenant would be to the common lot.

A significant difference between leasehold and freehold is, leasehold (including airspace and sub-surface volumetric leases), may include conditions (over and above any development conditions that a local government or state government agency may be able to require), including in relation to safety and the removal or maintenance of structures, and for a bond or bank guarantee to protect the state against risk. Under current legislation, the state is not able to include similar conditions on the issue of freehold title. Accordingly, a term lease and not freehold is the most appropriate tenure.

Further, it is not appropriate planning or management of the state's land asset to utilise volumetric freehold title including not to legalise illegal uses or temporary uses. (for example, where there is an encroachment or overhang of a structure onto USL, road, trust land or leasehold, then legalising this

by a volumetric deed would create a continuing interest in land. This is not considered appropriate land allocation practice. Where such encroachments, etc. cannot be removed in the short term, an appropriate tenure would be a tenure that ceases once the structure is removed).

Policy

Volumetric allocation will require the area either above or below the surface to be surrendered from a lease or deed of grant in trust, revoked from a reserve, or if road, permanently closed, other than possibly for the issue of a volumetric permit to occupy.

Accordingly, unless an Act states otherwise, all the requirements of the Land Act in allocating surface land also apply to the allocation of land above or below the surface, with additional considerations relating to the special nature of airspace or sub-surface parcels, as well as the added complications that multi-layered tenure and use may bring to the management of the state land.

In that context, as indicated earlier, a term lease and not freehold is the most appropriate tenure.

Section 15 of the Land Act must be considered for the issue of any lease seaward of a property, and section 178 in respect of a permit to occupy. All Land Act provisions and relevant government policies (e.g. preferred tenure on islands) also apply.

Appropriate agencies will need to be consulted, planning schemes considered and local government views sought.

Allocation also in no way guarantees, replaces or implies development approval.

Any allocation must not unduly restrict the purpose of, and continuing enjoyment of, the surface-based land, including for anyone with a secondary interest in that land e.g. an easement, nor with foreseeable future uses and the future utility of the land, and in relation to:

- Unallocated state land - have any material impact on the state further dealing with the surface of the land, or on access particularly for management and maintenance.
- Road - not interfere with the use of the land below or above the land (as applicable) as a road, including any public infrastructure considerations and transport network future requirements (e.g. water pipelines, transport tunnels) road maintenance, overhead signs/lights etc. In addition, consideration of driver safety (e.g. visual distraction or obstruction) is obviously important.
- Trust land - not unduly interfere with the use of the land for its purpose and could include considerations as the amenity of the general locality, drainage, light for sporting activities or plant growth, tree roots, unimpeded access for birds and other fauna, access for management. The trustees would need to be consulted on the trustee's short and long term plans for the use of the trust land.

Further, the proposed use of the volumetric title would have to be acknowledged and catered for in any management plan for the trust land.

- Lease - not interfere with the use of the land for the purpose of the lease.

In general, volumetric allocation also needs to be associated with, or, integral to, the use of adjoining surface-based land and the adjoining parcel must be of sufficient size (or have sufficient common property) to enable appropriate support and physical access to be constructed, used and maintained.

Accordingly, any volumetric allocation must be subject to a covenant that prevents it from being sold separately from an adjoining surface-based freehold title or perpetual lease or adjoining freehold lot in a scheme under the Body Corporate and Community Management Act .

However, individual circumstances need to be taken into account when dealing with the requirements of other government agencies, for example, volumetric allocation for a pedestrian bridge that may be dedicated as a reserve with the state as trustee and is not specially associated with any other land.

Further, if it is desirable in the public interest to place some condition or requirement upon a volumetric title, such as a bond, or if there are public liability issues e.g. a walkway between commercial buildings over a road, the appropriate tenure of the land is a volumetric lease, (for a volumetric parcel required between two lots in separate ownership, a jointly held volumetric lease is considered the appropriate tenure).

Legislation

Body Corporate and Community Management Act 1997

Coastal Protection and Management Act 1995

Land Act 1994

Land Title Act 1994

Native Title Act 1993 (Cwlth)

Native Title (Queensland) Act 1993

Survey and Mapping Infrastructure Act 2003

Transport Infrastructure Act 1994

Related documents

Guideline - [Land allocation and specific requirements \(SLM/2018/4386 = PUX/901/315\)](#)

Procedure – [Covenants providing for no separate transfers \(SLM/2013/681 = PUX952/066\)](#)

[Cadastral Survey Requirements](#)

[Registrar of Titles directions for the preparation of plans](#)

Human Rights

The department is committed to respecting, protecting and promoting human rights. Under the *Human Rights Act 2019*, the department has an obligation to act and make decisions in a way that is compatible with human rights and, when making a decision, to give proper consideration to human rights. To the extent an act or decision under this document may engage human rights under the *Human Rights Act 2019*, regard will be had to that Act in undertaking the act or making the decision.

Approval

Position	Name	Effective Date
Director, Land Operations Support	Anita Haenfler	30/06/2022

Version History

Version	Date	Comments
1	16/02/1999	Endorsed
1.1	11/10/2005	Converted to XML template
2	13/12/2007	Updated to reflect Land Act amendments. Endorsed by Scott Spencer, Director-General, Department of Natural Resources and Water.
2.1	11/02/2011	Minor updates to reflect departmental name change to DERM
2.2	24/10/2012	Minor updates to reflect departmental name change to DNRM
2.3	13/03/2013	Updated to change government logo
2.4	10/10/2013	New DNRM template
2.05	21/06/2016	Minor amendment to review and insert text on new template
3.00	30/06/2022	Full review and updated template to Department of Resources

Further information

- Contact your nearest business centre
(https://www.resources.qld.gov.au/?contact=state_land), or
- Refer to <https://www.qld.gov.au/environment/land/state>, or
- Call 13 QGOV (13 74 68).

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