

Guidelines for making separation declarations

(prev. VAL/2002/337)

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Version 7.00

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Version History

Version	Date	Description/Comments
4.00	20/05/2003	Updated to reflect the situation where separate valuations are not to issue for sub leases of land leased from the State as provided for in the Land Legislation Amendment Act 2003.
4.01	06/06/2005	Conversion Project - New Word XML Template.
4.02	16/06/2005	Changed "Regional Manager, Natural Resource Management and Use" to "Regional Manager, Land and Vegetation Services".
4.03	11/01/2008	Updated: new template/new policy number and extended review date.
5.00	01/02/2011	<ul style="list-style-type: none"> • Changed access from 'Public' to 'Departmental' • Status 'Under Review' & removed Metadata Record from Internet until document updated.
5.01	18/03/2013	<ul style="list-style-type: none"> • Updated department reference • Updated staff titles • Updated Metadata - Contacts
6.00	31/05/2016	<p>All changes approved by Valuer-General, State Valuation Service.</p> <ul style="list-style-type: none"> • New version 6.00 due to major content change i.e. removal of content relating specifically to the current Telstra Federal Court case. • Updated to new DNRM template • Updated information including 'latest review' within title page, version history table and footer • ID update due to migration of document to a new policy register (previously VAL/2002/337) • Date of last review included in title and footer • Minor cosmetic updates of e.g. department name, policy names & IDs, legislation references, links & outdated references.

7.00	30 July 2019	<p>All changes approved by Valuer-General, State Valuation Service:</p> <ul style="list-style-type: none"> • New version 7 because of content change including: <ul style="list-style-type: none"> - removal of reference to section 53(2)(a)(ii) (removed by NROLA Bill 2019); - inclusion of discretion for separation declarations to be made for certain non-State leases - inclusion of status of balance of lot after part is separated as a declared parcel. - change to mirror the recent change made to the SUD policy in relation to detached dwellings where the LG requires occupancy by the one family • Updated to new DNRME template • Updated information including 'latest review' within title page, version history table and footer • Date of last review included in title and footer • Minor cosmetic updates of e.g. department name, policy names & IDs, legislation references, links & outdated references
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Approval

Position	Name	Signature	Date
Valuer-General	Neil Bray		15/06/2011
Valuer-General	Neil Bray		31/05//016
Valuer-General	Neil Bray		30/07/2019

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Purpose

This document has been prepared to provide:

- guidelines about the circumstances in which the Valuer-General may make a separation declaration under section 53 of the *Land Valuation Act 2010 (LVA)* that provides a separate valuation for a stated part of a lot.
- information on the status of the valuation of any parcels which were declared and valued separately under the repealed *Valuation of Land Act 1944 (VOLA)*.
- information on the reviews which are available to an owner who believes they have been disadvantaged by the issue of a 'separation direction'.

Rationale

Section 53 of the LVA provides for the Valuer-General to declare that a separate valuation will be made for a part of a lot. When this occurs, section 55 provides for the Valuer-General to issue a valuation notice that also forms notice of the separation declaration.

Section 54 of the LVA states that the Valuer-General may make guidelines about separation declarations and that the guidelines may be considered by the Valuer-General when deciding whether to make a separation declaration. If the guidelines are made they must be made available on the department's website.

Sections 276-279 of the LVA provide that any parcel or parcels of land that were valued separately in the valuation roll under the VOLA are valid valuations until the Valuer-General determines that they should no longer be separately valued.

Section 175(1)(c) of the LVA provides for a person adversely affected by a decision of the Valuer-General (to make a separation declaration) to seek an internal review by the Valuer-General and then external review by the Queensland Civil and Administrative Tribunal (QCAT).

In respect to declaring a separate valuation for part of a lot the LVA states:

Section 53 – Valuer-General's power

- (1) The Valuer-General may declare that a separate valuation, from the rest of a lot, will be made for a stated part of the lot (**a separation declaration**).

Note - See also chapter 5 (Internal and external reviews).

- (2) However, a separation declaration may be made only if:
- a) it is possible to lawfully subdivide the stated part from the rest of the lot; and
 - b) the Valuer-General considers circumstances relating to the value of the part make a separate valuation of it appropriate.

Example of circumstances for subsection (2)(b):

- (1) A building on the part is occupied separately, or adapted to being occupied separately, from the rest of the lot.
- (2) The part is used, or is suitable to be used, for a purpose different from the purpose for which the rest of the lot is used, or is suitable to be used.

Note: The effect of the declaration is that the part becomes a parcel itself - see the schedule, definition parcel, paragraph (b). (**For clarity this is provided after section 55 below).

- (3) This section applies to leased land if the lease is:
- a) from any of the following of land leased, by the following, from the State:
 - (i) a local government;
 - (ii) a department;

- (iii) an entity representing the State; or
- (b) from a GOC or rail government entity of land leased by the GOC or rail government entity from:
 - (i) the State; or
 - (ii) a lessee of the State.
- (4) Otherwise, this section does not apply to land leased from the State.
- (5) The part that is the subject of the declaration is a declared parcel.
- (6) To remove any doubt, it is declared that subsection (2)(a) does not require that a subdivision has been sought or made for the stated part.

Section 54 - Guidelines for making separation declaration

- (1) The Valuer-General may make guidelines about the circumstances in which the Valuer-General will make a separation declaration.
- (2) The guidelines:
 - a) must be consistent with section 53; and
 - b) are not subordinate legislation.
- (3) In deciding whether to make a separation declaration, the Valuer-General may consider, but is not bound by, the guidelines.
- (4) The Valuer-General must keep a copy of the guidelines, as in force from time to time, on the department's website.

Section 55 - Notice and taking of effect of separation declaration

- (1) The Valuer-General may give notice of a separation declaration for a declared parcel only in a valuation notice for the parcel.
- (2) A separation declaration:
 - a) has effect and is taken to have always had effect for the valuation; and
 - b) continues in effect for the declared parcel until the declaration is repealed.

Example of when a separation declaration might be repealed:

because of a change in circumstances mentioned in the examples for section 53(2) and the subsequent issue of a valuation notice.

The Dictionary contained in the LVA defines the term 'parcel' as:

- a) land that is a lot; or
- b) a part of a lot that is a declared parcel.

In respect to any existing parcels that were valued separately in the valuation roll under the VOLA the LVA says:

276 Application of sdiv 2

- (1) This subdivision applies if:
 - a) immediately before the commencement, a direction of the chief executive under the repealed Valuation Act was in force that parcels of land are to be valued separately (a separation direction); and
 - b) the parcels were valued separately under the repealed Valuation Act.
- (2) This subdivision applies whether or not a separation declaration could be made for the parcels.
- (3) For subsection (1), a record in a relevant valuation roll to the effect that a parcel is to be valued separately is evidence that a separation direction was in force at that time for the parcel.

(4) In this section:

direction includes a purported direction, whether or not it could lawfully have been made under the repealed Valuation Act.

relevant valuation roll means a valuation roll under the repealed Valuation Act in force immediately before the commencement.

277 Validation of separation directions

Each separation direction is taken to have—

- a) been validly made under the repealed Valuation Act; and
- b) always been validly in force under that Act.

278 Parcel becomes a declared parcel

- (1) On the commencement, each parcel the subject of a separation direction becomes a declared parcel.
- (2) However, subsection (1) does not affect the continued operation of the saved former provisions.
- (3) Also, for applying the saved former provisions, a declared parcel is taken to be a parcel the subject of a separation direction.

279 Converted declared parcel direction may be repealed

- (1) This section applies to a declared parcel under section 278.
- (2) To remove any doubt, it is declared that section 278(1) does not affect the Valuer-General's power under section 53 to declare that the parcel is no longer a declared parcel.

Procedure

Separation declarations under the LVA will only be issued for valuations effective 30 June 2011 or later.

Freehold Land

A separate valuation for a part of a lot may be made in the following circumstances:

- where it is possible to lawfully subdivide (see note 1) the stated part (this does not require that a subdivision has been sought or approved for the stated part) and
- where the Valuer-General considers circumstances exist that make it appropriate to separately value the part.

Examples of appropriate circumstances include the following:

- where a building on a part of a lot is occupied separately, or could be occupied separately from the rest of the lot or
- part of a lot is or could be used for a purpose that is different from the purpose for which the rest of the lot is or could be used.

Examples of circumstances that would not be considered appropriate to provide a separate valuation for a part of a lot include:

- where there are a number of buildings on the one lot and the buildings are let to one person or no buildings are let or
- where the separately leased parcels form part of an integrated development and the individual use in a single building is dependent on activities or services provided in another part of the building e.g. car parking, air conditioning and lifts.

- specific examples of developments where separate valuations for a part of a lot are not to be provided are:
 - district, neighbourhood or regional shopping centres, industrial sheds, educational institutions;
 - a dwelling that has been extended to provide for a 'granny flat' as part of the one structure;
 - a dwelling and a secondary detached residence which the local government has classified as a subordinate dwelling and where both dwellings are restricted to occupation by the same household;
 - an integrated tourist resort complex (this is a complex which shares major infrastructure such as water, power, airfield and access roads etc.).

Note 1: Before a separation declaration for freehold land is made, the relevant local government will be requested to advise in writing if they believe it would be possible to lawfully subdivide a stated part from the rest of a lot. No separation declaration is to be made until the written advice from the local government is received.

Land leased from the State

Where a lot is leased from the State a separate valuation for a part of the lot may only be made in the following circumstances:

- where the lease is from a Government Owned Corporation (GOC) or rail government entity of land leased by the GOC or rail government entity from the State or from a lessee of the State.
- where the lease is from a department of the State or an entity representing the State, of land leased by the department or entity from the State.
- where the lease is from a local government that is leasing the land or holds the land in trust from the State.

Land leased from an entity other than the State:

The Valuer-General may exercise discretion and issue a separation declaration for the leased area of land where the following applies:

- The local government requests the Valuer-General to issue a separation declaration for the leased area of land (this can result from the Valuer-General initially referring the matter to the local government); and
- The lease's term, or the term together with any period of renewal available under the lease, is longer than five years; and
- The instrument of lease is registered under the *Land Title Act 1994* and is for reconfiguring a lot within the meaning of the *Planning Act 2016* which required the approval by:
 - if the lot is in a priority development area—Minister for Economic Development Queensland; or
 - if the lot is in a State development area and the reconfiguration is regulated by an approved development scheme—the Coordinator-General; or
 - otherwise—the relevant local government; and
- The use associated with the lease has commenced with the effective date for the separation declaration reflecting the commencement of the use.

Notification of separation declaration

The valuation notice that issues for the separate valuation is also notice of the separation declaration, however the following should also occur:

- the owner should be contacted prior to the issue of the valuation notice for the separation declaration and provided with reasons for the decision and advice that, on receipt of the notice,

the owner has the right to lodge an application for internal/external review and/or lodge an objection to challenge the issue of the separation declaration.

- a written statement of reasons, including advice of internal/external review and objection rights should be prepared and forwarded to the owner to ensure that it is received prior to (or at the same time as) the owner receiving the notices of valuation.
 - the owner should be advised that an application for internal review must be made within 28 days after they have been given their notice of valuation (Note: the date given is the date that the notice would have been delivered in the ordinary course of post unless the owner can prove that the decision was delivered at a later date).
 - The owner should also be advised that details of their objection rights will be included in the notice of valuation.

Status of balance of lot after part is separated as a declared parcel.

The balance of the lot is not the subject of the separation declaration and is not a declared parcel. The balance of the lot should be treated as a lot for the purposes of the LVA.

Parcels declared as separate under the Valuation of Land Act 1944

The LVA provides that parcels that were valued separately under the *Valuation of Land Act 1944* continue to be valued separately under the LVA. The parcels will continue to be valued separately until circumstances change and the Valuer-General believes that they should no longer be valued separately.

Internal and external reviews

Chapter 5 of the LVA provides that where an owner believes they have been adversely affected by the decision to separately value a part of a lot they may seek an internal review by the Valuer-General. Once the owner receives a decision about the internal review they may apply to the Queensland Civil and Administrative Tribunal (QCAT) for an external review of the decision.

For more details on internal and external reviews please refer to DNRME's policy VAL/2013/255

Responsibilities

It is the responsibility of the **Valuer-General, Deputy Valuer-General State Valuation Service and Area Managers** of the State Valuation Service to ensure delegated staff comply with this direction.

References

Colonial Sugar Refining Co Ltd vs the Valuer-General (1970) 37CLR176

A. H. Raynbird vs the Valuer-General - Shire of Pine Rivers (V79 - 887/91)

RE & GD Callow vs the Valuer-General - Shire of Wambo (V81-125)

RW Brabon vs Chief Executive Department of Lands - Thuringowa City Council (AV95-385 & Ors)

Legislation

Land Valuation Act 2010, sections 53 to 55, 175 to 179 and 276 to 279