

GLP - PMC - Property Tenure

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by PMC, Property Management Committee, Queensland Government

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Version history

Version	Date	Comment
1	01/01/2000	Endorsed
1.1	05/07/2005	Conversion Project - New WORD/XML template
1.2	18/12/2006	Fix Typo
1.3	13/06/2007	Update Department name
1.4	04/02/2008	Edit policy title
2.0	20/06/2008	Update to administrative procedure consistent with current legislation
2.1	21/10/2008	Update Department name and correct spelling mistake
3.0	26/03/2009	Update reference to style name to include reference to relevant Act for administered assets
3.1	12/04/2010	Correct Department Name

Purpose

To arrange the orderly regularisation of tenures over government land holdings using the categorisation process to consistently apply appropriate tenures.

Rationale

The area of Queensland is some 173 million hectares. Some 20 percent has been allocated to private persons or companies as freehold or is in the process of freeholding.

The remainder of Queensland is State land. Some 68 percent has been allocated in the form of perpetual lease, term lease, licence or permit to occupy. Another 10 percent of Queensland is set aside as reserved State land in the form of national or conservation parks, State forest, road, railway or reserve for any of a number of purposes. The residual unallocated state land takes up about 2 percent of Queensland.

Strictly, the term "tenure" refers only to instruments such as leases which convey possession for a defined term. For simplicity, in the Manual, the term is used to also embrace permits to occupy, licences and reserves.

This policy assesses the determination of land tenure for an underlying or primary purpose whether by a private or public entity.

The Department of Environment and Resource Management has adopted the following guiding principle for the allocation of primary tenure in Queensland.

The guiding principle in allocating tenure is that the form of tenure must reflect the value that the community places on a land parcel. This value will be based on the inherent features and capability of the land and not on the operations carried out on the land.

When decisions are made it is intended to ensure that land is assessed in terms of its inherent features and capabilities, (in other words, the land planning considerations are assessed) and that tenure be allocated consistently for all land in Queensland.

It is the ultimate intention that all government controlled land will be held as reserve, leasehold or freehold tenure depending on its categorisation. Deeds of Grant in Trust and vesting of land for government controlled purposes will be phased out.

Policy

To facilitate appropriate tenure allocation for government land holdings, land is categorised as either community category land or operational category land. The two categories are defined as follows:

Community Land

- Land which should be preserved and maintained for the benefit of present and future generations. This is primarily because of its natural resources, its environmental, recreational, historical, social or cultural significance, or because it has special value for present or future generations. Typical examples include Recreation Reserves, National Parks, Timber Reserves and Fish Habitat Reserves. (Reserve tenure is usually applied to this type of community category land), or
- Land over which the State wishes to retain oversight for land planning reasons. Its value does not require the high level of protection offered by reservation, but the State needs to maintain a higher level of control over the use of this land than is possible under freehold title. Often this land can be used by the private sector for uses compatible with the land's capability. Typical examples include highly vulnerable land (mulga lands), lands in a sensitive water catchment or land that readily degrades or land of importance to possible future infrastructure development. (Leasehold tenure issued under the *Land Act 1994* is usually applied to this type of community category land).

Operational Land

Land which is not required to be retained under either reserve or leasehold tenure. That is land required for ordinary government business which has low intrinsic value should the government operation or service be discontinued or moved to an alternative site. Typical examples are hospitals, police stations, offices and depots, providing those operate on land, without high intrinsic value. (Freehold tenure is usually applied to operational category land. Leasehold tenure is retained as an option and may be used where Government finds retention under leasehold tenure necessary).

Where there is doubt as to whether a parcel should be reserved or leased, preference will be given to reservation. Where there is doubt as to whether a parcel should be leasehold or freehold, preference will be given to leasehold.

It should be noted that this form of categorisation is not based on the type of public use or community service conducted on the land but on the land's inherent features and capability. This approach should not be confused with the strategic value associated with services conducted on the land which are often highly important to the public but which are a separate issue to the determination of primary tenure.

Guidelines

1 - Implementation of tenure rationalisation

Tenure rationalisation of government controlled land will occur gradually, necessary changes in the tenure of affected land parcels being made whenever dealings in government land occur. This approach will minimise the impact on the resources of the Department of Environment and Resource Management and other government agencies. Once tenure rationalisation reaches an advanced stage however, a project to rationalise all remaining inappropriate tenure at the one time may be undertaken.

Note: See Procedures, part 1 titled "Obtaining freehold title in the style name "The State of Queensland" for guidelines for obtaining freehold tenure over operational category land.

In addition, for unallocated State land that a department administers on behalf of the State Government without discretion, the style name should also include reference to the relevant Act under which the department administers the land.

For example, unallocated State land administered by the Department of Environment and Resource Management -

- The State of Queensland (represented by the Department of Environment and Resource Management - Nature Conservation Act)
- The State of Queensland (represented by the Department of Environment and Resource Management - Forestry Act)
- The State of Queensland (represented by the Department of Environment and Resource Management - Land Act)

2 - Leasehold versus freehold

The determination of when leasehold tenure should be used in preference to freehold tenure involves the consideration of relevant land use planning issues. Relevant examples would be where:

- It is desirable to impose detailed conditions of use under a lease (e.g. an environmentally sensitive site or a site which will have some continuing public use requirement). Disposal as leasehold should also be considered in the case of heritage precincts of major significance whether or not the property has a particular heritage listing.
- It could be desirable for the property to revert to the State Government at some time (e.g. a site where there is potential for site consolidation with other government property in the future, continued control of strategic infrastructure such as rail corridors).
- The site may be required for future public purposes such as schools or hospitals, in future development areas or areas likely to experience increased development as a result of urban consolidation.
- Small parcels which are not surveyed and due to remoteness cost of survey is not economic.
- Land is subject to bad infestations of weeds, salination, erosion or other forms of degradation.
- Land is subject to inundation, contamination, conservation order or similar constraints (in order to allow the State to exercise more leverage in giving effect to the terms of the order).
- Land has marine or water course frontage (so that the option of retrieving an esplanade at a later stage is retained).

3 - Type of freehold to be held by government agencies

- State budget sector agencies are progressively moving towards holding operational land as freehold in the name "The State of Queensland (represented by Department of)" and relying on the powers created under Part 12 of the *Acts Interpretation Act 1954* to deal with land held under this style name.

- All new freehold deeds will issue in the style name "The State of Queensland (represented by Department of)". Role of Government Agencies Standards S1 provides guidelines for issuing delegations under Part 12 of the *Acts Interpretation Act 1954* to deal with freeholding land held in the style name "The State of Queensland".
- Agencies with existing powers to hold and deal with land under their own legislation may continue to deal with existing freehold title as corporate soles but will usually migrate to the new arrangements when their legislation is next reviewed.
- Non-budget sector agencies will usually hold freehold in their name through them being created corporate soles under their legislation.

Procedures

1 - Obtaining Freehold Title in the Style Name "The State of Queensland"

Obtaining freehold title in the style name "The State of Queensland" can occur under a number of different circumstances:

- the issue of deeds of grant over operational land held under a *Land Act 1994* reserve
- the conversion (transfer) of existing freehold titles held in various style names (Queensland Government or Corporate Sole names of the holding agencies, e.g. The Minister for Education of Queensland) to the style name "The State of Queensland (represented by Department of Education and Training) for continued management
- the purchase of existing freehold properties in the market place for operational needs in the style name "The State of Queensland"
- the acquisition of land under a compulsory acquisition statute for operational needs.

2 - Application for a Deed of Grant Over Operational Sites held under a reserve.

A property holding state government agency may apply to the Department of Environment and Resource Management (DERM) for a Deed of Grant over an operational property held under reserve tenure.

An operational property is a reserve that was set apart under the *Land Act 1962* (repealed) for a public purpose but does not include a reserve dedicated for a community purpose under the current *Land Act 1994*. Examples of possible operational properties include reserves for departmental & official, health, police stations or state school purposes.

An application to issue a Deed of Grant over an operational property may be made at any time to DERM provided :

- the applicant is registered as the trustee on the current title for the reserve
- the applicant provides evidence that a native title assessment of the land, undertaken in accordance with government's Native Title Work Procedures, has determined that native title has been adequately dealt with to support the issue of a Deed of Grant.
- the Government Land Register shows the subject parcel of land as being an asset of the applicant.

An application for a Deed of Grant over an operational property must be made on DERM's standard application form titled 'Application for Deed of Grant over an operational reserve', with both parts A and B completed.

Application forms are available from the DERM website at <www.derm.qld.gov.au>, which also has information on where to submit an application.

1. Agencies which are consolidated funded are not required to purchase the land over which the deed of grant issues but are required to meet associated costs, eg survey. Agencies which are fully or substantially self funded are required to purchase the land and to meet associated costs.
2. In the event that there are leases or permits issued over a reserve the applicant must secure the surrender of these leases and permits. A deed of grant cannot be issued until such leases or permits are surrendered.

3 - Purchase of properties in the style name "The State of

Queensland"

If the property to be purchased is operational category land it should be **transferred** to "The State of Queensland (represented by Department of) " using the Land Titles Forms 1 to 100.

However, if the property is to be used for community purposes the forms 1 and 100 should indicate the **surrender** of the property to the State. This would then convert the parcels to the status of unallocated State land so that it may be dealt with under the *Land Act 1994* or some other Act for reservation, e.g. as a National Park under the *Nature Conservation Act*.

In this instance the transferee should be shown as -

- The State of Queensland (represented by the Department of Environment and Resource Management - Nature Conservation Act)
- The State of Queensland (represented by the Department of Environment and Resource Management - Forestry Act)
- The State of Queensland (represented by the Department of Environment and Resource Management - Land Act)

4 - Compulsory Acquisition of property

If an agency is using the powers of compulsory acquisition to acquire a property and the property is operational category land then the resuming proclamation should vest the property in "The State of Queensland" in fee-simple.

5 - Recording and control of agency land holdings.

1. Having the title recorded in the style name "The State of Queensland (represented by Department of) " precludes the need to have an administrative advice attached to the title to indicate the name of the controlling agency.
2. Searches of information contained within the Land Registry can be made on a number of different access criteria:
 - Title reference - CT18878116
 - Property description - Lot 1 RP876754
 - Owners name - The State of Queensland
 - Dealing number for a particular transaction, e.g. transfer - 78912342
 - Dealing with titles within the Land Registry, e.g. transfers, leases and easement can be done by utilising the prescribed Land Title Regulation Forms.

Once a property has been acquired by an agency, that agency will enter or arrange for entry of the details of that property into the Government Land Register.

Legislation

Land Act 1994

Acts Interpretation Act 1954