

³Part 21 – Plans and Associated Documents

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³Part 21 – Plans and Associated Documents

General Law

[21-0000]

The term ‘plan of survey’ (or ‘survey plan’ as it is also called) includes all surveys undertaken by a cadastral surveyor as defined by the *Surveyors Act 2003* and for the purpose of:

- subdividing one or more lots;
- dedicating land to public use;
- redefining a lot;
- amalgamating two or more lots to create a smaller number of lots;
- defining an area for an easement, lease or profit a prendre; and
- any other purpose that the Registrar may require the registered proprietor to undertake.

Plan of Subdivision

[21-0010]

The definitions relevant to a plan of subdivision that may be registered in the Land Registry are as follows:

- ‘Lot’ is defined in Schedule 2 of the *Land Title Act 1994*.
- ‘reconfiguring a lot’ is defined in s 1.3.5 of the *Integrated Planning Act 1997*.

Section 49 of the *Land Title Act 1994* provides that, by registering a plan of subdivision, one or more lots may be divided, two or more lots may be amalgamated to create a smaller number of lots, land may be dedicated to public use or a lot may be redefined.

Preparation of Plan

[21-0020]

The general requirements for plans are set out in s 50 of the *Land Title Act 1994*. These are explained in greater detail by the Registrar of Titles Directions for the Preparation of Plans.

Local Government Approval

[21-0025]

The manner for local government approval to a plan of subdivision is determined by the legislative provisions in effect at the time the development application was made. If application was initially made prior to 30 March 1998, the certificate must be signed and sealed as required by the *Local Government (Planning and Environment) Act 1990*. If the application was on or after 30 March 1998, the certificate should be signed as required by the *Integrated Planning Act 1997*.

For plans under the *Integrated Planning Act 1997* the local government certificate on the Form 21 – Survey Plan should be marked ‘Approved’ with the date of the application and the name of the Act under which the approval was given.

Section 52(i) of the Australian Constitution provides the Commonwealth of Australia with exclusive power to make laws for all places acquired by the Commonwealth for public purposes. This means that State legislation (i.e. the *Land Title Act 1994*, the *Integrated Planning Act 1997*) can not control the Commonwealth's use of its property, including the right to subdivide. Therefore, plans of survey of freehold land where the registered owner is the 'Commonwealth of Australia' do not require local government approval.

Under the above provision, an entity related to or owned by the Commonwealth of Australia (examples include CSIRO, Defence Housing Australia, Australian Broadcasting Corporation and the Indigenous Land Corporation) may be provided the rights, powers and immunities of the Commonwealth. However, these are to be considered on a case by case basis. Where exemption from local government approval is sought, written advice of the specific legislative exemption or the specific authority that provides the entity with the entitlement to the rights, powers and immunities of the Commonwealth must be provided.

Consent under the *Local Government (Planning and Environment) Act 1990*

[21-0030]

Exceptions to the consent requirements are provided in the *Local Government (Planning and Environment) Act 1990* for plans prepared before 30 March 1998:

- on behalf of the State or a government instrumentality; or
- to amalgamate two or more lots to create a smaller number of lots; or
- to redefine a lot on a survey; or
- as a requirement of an approved planning scheme.

In the last case, a letter from the local government or other evidence that explains the plan is required under an approved planning scheme must be deposited.

The local government certificate on a Form 21 – Survey Plan may only contain a conditional approval if given under the provisions of the *Local Government (Planning and Environment) Act 1990*.

Approval under the *Integrated Planning Act 1997*

[21-0035]

Local government approval to a plan of subdivision under the *Integrated Planning Act 1997* is required if the Act under which it is being registered or recorded requires an approval (s 3.7.7 of the *Integrated Planning Act 1997*). Section 50 of the *Land Title Act 1994* requires local government approval to plans of subdivision.

Section 50(h) of the *Land Title Act 1994* provides that a plan of amalgamation of two or more lots to create a smaller number of lots does not require local government approval. However, a plan of amalgamation that also dedicates part of the land as road is considered a reconfiguration of a lot, within the meaning of the *Integrated Planning Act 1997* and therefore requires the approval of the local government.

An exception to the approval requirements is provided for a plan of subdivision for the acquisition of land for a public purpose as set out in the *Acquisition of Land Act 1967*, schedule 2. However, if the plan includes a lot that is not being acquired for a public purpose, local government approval to the plan is required.

Approvals to plans under the *Integrated Planning Act 1997* must be unconditional as all conditions have to be complied with prior to endorsement of the local government approval.

Restrictions on Registration

[21-0040]

The *Coastal Management and Other Legislation Amendment Act 2001* (No 93 of 2001) was assented to on 10 December 2001, but the substantive provisions, including s 25, did not commence until 20 October 2003 (the commencement date). Section 25 repealed the *Beach Protection Act 1968* and the *Canals Act 1958*.

The transitional provisions in Division 4 of Part 2 of Chapter 6 of the *Coastal Protection and Management Act 1995* refers to applications in progress. In particular s 179(2) makes reference to processing a number of applications as if the Act under which the application was made had not been repealed. Where the application predates the commencement date the plan requirements and certificates that existed under the repealed legislation continue to apply:

- For the subdivision of land within a coastal management control district the consent of the Governor in Council is required (s 45 of the *Beach Protection Act 1968*).
- When a canal is to be constructed as part of the subdivision the approval of the Governor in Council is required (s 9 of the *Canals Act 1958*).

Where the application is made on or after the 20 October 2003 requirements under the *Coastal Protection and Management Act 1995* apply (see ¶[21-2175]).

Part 10A of the *Natural Resources and Other Legislation Amendment Act 2005* assented to on 6 February 2006 requires the Registrar, in certain circumstances, to refuse to register a tidal boundary plan of subdivision. However, the provisions are interim for a period of three years commencing 8 November 2005 to allow a long-term policy and legislative response involving survey plans with tidal boundaries is formulated.

In general terms, the amendments require the Registrar to not register survey plans lodged on or after 8 November 2005 that depict the tidal boundary in a different location to that shown on the most recently registered plan of subdivision, without the approval of the Minister.

Plans of freehold land approved under s 3.7.6 of the *Integrated Planning Act 1997* before 8 November 2005 and lodged on or after 8 November 2005, are exempt from the amendments.

Further, re-surveys and subdivisions will not be affected if there is no change to the location of the depicted boundary.

For further survey requirements see the department's Cadastral Survey Requirements.

Lodgement of Plan

[21-0050]

Plans must be lodged for registration within six months of local government approval. If a plan is lodged outside this period it will be refused registration (s 5.3(6) of the *Local Government (Planning and Environment) Act 1990* and s 3.7.6 of the *Integrated Planning Act 1997*).

A plan approved under the *Local Government (Planning and Environment) Act 1990* that is not lodged for registration within six months from the date of notation of local government may be resubmitted to the local government (s 5.3(8) of the *Local Government (Planning and Environment) Act 1990*).

The date of lodgement for registration for the purposes of both the *Local Government (Planning and Environment) Act 1990* and the *Integrated Planning Act 1997*, is the date that the plan is first lodged in the Land Registry. If a plan is withdrawn and re-entered under s 159 of the *Land Title Act 1994*, the time between local government approval and lodgement is calculated from the date the plan was first lodged, not the date of re-entry (s 53 of the *Land Title Act 1994* and s 5.3(7) of the *Local Government (Planning and Environment) Act 1990*).

If a plan is rejected, under s 157(2) of the *Land Title Act 1994*, the date it is re-lodged is used to calculate the time since approval by the local government (see the *Acts Interpretation Act 1954* for calculation of time).

Plan Formats

[21-0052]

The *Land Title Act 1994* provides for registration of plans in four formats being:

- standard; or
- building; or
- volumetric; and
- explanatory.

The format to be used for a plan depends on how the plan is to define the land to which it relates.

It is not permissible to create parcels of different format types on the same plan, other than in the case of easements or remainder lot(s) on a volumetric or building format plan.

Each format of plan is prepared on the same plan form, however, the requirements for each differ. These requirements are detailed in the Registrar of Titles Directions for the Preparation of Plans.

When common property is created, regardless of format, a community titles scheme and its body corporate are created if they do not already exist (see part 45 for creating community titles schemes).

Standard Format Plan

[21-0054]

A standard format plan defines parcels two dimensionally, at ground level and unlimited in height and depth. They can be defined by natural monuments and/or marks placed on the ground. The plan must include dimensions and area(s).

Examples of marks – Pegs in the ground.

Common property may only be created by a standard format plan if the plan also creates two or more lots or if the common property created is in addition to that already existing in a community titles scheme.

A standard format plan cannot subdivide a building format lot or a volumetric format lot.

For further information of the survey requirements for a standard format plan see direction 8 of the Registrar of Titles Directions for the Preparation of Plans.

Building Format Plan**[21-0056]**

A building format plan creates lots within an existing structure. Lots generally are defined by floors, walls and ceilings. However, some variations are addressed in direction 9 of the Registrar of Titles Directions for the Preparation of Plans.

Two or more building format lots and common property must be created by the plan unless it amalgamates two or more lots on a registered building format plan or creates common property additional to that already existing in a community titles scheme. In any case of amalgamation the resultant scheme must have at least two lots and common property.

The boundaries between building format lots and common property are the centre of the floors, walls and ceiling, unless otherwise specified in direction 9 of the Registrar of Titles Directions for the Preparation of Plans.

Generally a building format plan cannot subdivide a base parcel that consists of both standard and volumetric lots. Exceptions to this are explained in direction 9.16 of the Registrar of Titles Directions for the Preparation of Plans.

Volumetric Format Plan**[21-0058]**

A volumetric format plan creates lots that are fully defined by bounding surfaces in three dimensions (eg a cube). The lots may be above, below or partly above and partly below ground level and are defined by surveyed dimensions and levels.

Common property for a community titles scheme may only be created by a volumetric format plan if the plan also creates two or more lots or if the common property created is in addition to that already existing in a scheme.

A volumetric format plan may divide a lot or lots and/or common property on a standard, building or volumetric format plan of subdivision.

For further information on the survey requirements for a volumetric format plan see direction 10 of the Registrar of Titles Directions for the Preparation of Plans.

Explanatory Format Plan**[21-0059]**

An explanatory format plan provides a cost effective means to define the boundaries of an encumbrance effecting the land.

The purpose of an explanatory format plan is to provide a graphical representation of an interest in an entity to create a secondary interest without any field survey. The plan is based upon mathematical calculations so that, if required in the future, the interest could be identified and marked on the ground

The plan may be used for easements or covenants over State Tenure land or leases, easements, covenants or profits a prendre over freehold land.

Every explanatory format plan to be lodged in the Land Registry must have been approved by the Registrar of Titles prior to lodgement.

For further information on the survey requirements for a explanatory format plan see direction 20 of the Registrar of Titles Directions for the Preparation of Plans.

¶[21-0060] to ¶[21-0160] deleted

Practice

Plan of Subdivision

Introduction

[21-2000]

A survey plan is a diagrammatic representation of a parcel or parcels of land showing location and dimensions. A plan may also show monuments, both natural (eg, a lake, stream or cliff) and artificial (eg, a peg, fence or building) found or placed in connection with the survey.

A plan of survey is prepared by a cadastral surveyor in accordance with the *Survey and Mapping Infrastructure Act 2003* and the *Surveyors Act 2003* and associated regulations and standards. Once the survey has been completed, endorsed by the surveyor and approved by the local government, if required, the plan is lodged in the Land Registry.

On registration by the Registrar of Titles, plans become part of the Land Registry.

Plans of survey enable the development of land to proceed in an orderly manner. They give developers of land and those engaged in property related professions (such as lawyers, surveyors, valuers, estate agents and purchasers of developed land) a base on which to represent and gauge the extent, location and value of individual parcels of land.

The Freehold Land Register serves several purposes. It records details about ownership and other interests on the indefeasible title for a lot and facilitates the issue of Certificates of Title (if requested) and the lodgement of dealings with individual parcels of land. It also provides a record of all registered surveys. The unique identifier ('Lot [number] on [Plan reference]') base of land parcels existing in the Freehold Land Register facilitates the maintenance of a computerised file of land information. In conjunction with other departments, any land related information (such as use, valuation, soil type, etc) can be correlated to this base.

Plan Formats

Introduction

[21-2003]

Standard, Building, Volumetric and Explanatory format plans use the same plan form, however, the requirements for preparation of each format differ. These requirements are detailed in the Registrar of Titles Directions for the Preparation of Plans. Plans must comply with the applicable requirements of the:

- 1 *Land Title Act 1994*;
- 2 *Land Act 1994*;
- 3 *Local Government (Planning and Environment) Act 1990*, for development applications prior to 30 March 1998;
- 4 *Integrated Planning Act 1997*, for development applications on or after 30 March 1997;
- 5 *Surveyors Act 2003* and the *Surveyors Regulation 2004*;
- 6 *Survey and Mapping Infrastructure Act 2003*;

- 7 *Body Corporate and Community Management Act 1997*;
- 8 *Mixed Use Development Act 1993*;
- 9 various site specific Acts; and
- 10 the Registrar of Titles Directions for the Preparation of Plans.

Format

[21-2006]

The Format of the plan must be shown in the 'Format' field on the first sheet of the plan.

Lots are not qualified by the adjectives 'Building', 'Remainder', 'Restricted', 'Standard' or 'Volumetric'.

For an explanatory format plan the words 'SURVEY PLAN' on the top of the form must be crossed out and the words 'EXPLANATORY PLAN' placed beneath.

Easement Plan

[21-2010]

Section 83 of the *Land Title Act 1994* requires for an easement over part of a lot to be registered, the easement must first be designated on a registered plan of survey. If an easement is over the whole of a lot, no new plan is required as the lot and therefore the easement are defined by the registered plan.

Section 83A of the *Land Title Act 1994* allows for the defining of boundaries of a proposed easement by registration of a plan in the appropriate format. A plan that depicts an easement may show the easement as proposed whether or not the easement document that grants the easement is lodged with the plan. However, if an easement document is not lodged with the plan, the word 'proposed' must be shown on the plan.

Plans for easement purposes must comply with direction 4.8.2, and either direction 6, 8 or 10 of the Registrar of Titles Directions for the Preparation of Plans. An easement may be included with a survey of lots on a plan of subdivision.

The registration of a plan does not create an easement. An easement can only be created by registering an instrument of easement (s 82(1) of the *Land Title Act 1994*).

Any registered easement is not affected by a subsequent plan of subdivision unless the easement is intersected by a boundary of a lot created by that survey. The effect is that where a subsequent plan has been registered cancelling a lot over which an easement has been surveyed, that easement, whether granted or not, may be subsequently or further granted, provided the easement has not been intersected by a boundary of a subsequently created lot.

A plan of survey depicting an easement that gives access from a lot to a constructed road must have the approval of the local government concerned when the implementing easement instrument, executed after 25 May 2001, is lodged.

In cases where the plan of survey was registered prior to the lodgement of the easement instrument, the plan of survey still requires approval of the local government. Where the plan of survey is not approved by the local government, the local government must give approval to the plan on a Form 18 – General Consent that refers to the plan of survey and easement. The consent must then be deposited with the easement.

Notwithstanding the easement is for another purpose in addition to access, the registered plan will still require the approval of the local government.

In the majority of cases, local government approval is required for each plan depicting the extent of an easement that gives access to a constructed road, regardless of whether or not the easement actually abuts the road. For example, where a lot gains access through a number of easements over adjacent lots, and those easements are depicted on separate plans of survey, local government approval is required for each plan.

In certain cases the approval of the local government to the plan may not be required. In situations where parties consider that local government consent may not be required, a written submission must be made to the Registrar for determination prior to lodgement of the easement.

As there is no legislated definition for a ‘constructed road’ until further notice it is sufficient to require approval by the local government concerned, if the road has been dedicated.

The certificate of title, if one exists, is required to be deposited. Lodgement fees for a plan are payable.

¶[21-2020] to[21-2025] deleted

Lease Plan

[21-2030]

Where part of a lot which is external to a building is to be leased a plan of survey is required to positively define the boundaries of the area to be subjected to the lease and external to buildings (s 65(2)(b) of the *Land Title Act* 1994). These plans must comply with direction 4.8.2 and either direction 8 or 10 of the Registrar of Titles Directions for the Preparation of Plans.

If the lot is to be the subject of two or more leases of different parts of the lot these areas may be defined on the one plan.

A lease may be included with a survey of lots on a plan of subdivision.

This applies to any lease executed after 2 November 1998 over part of a standard or volumetric format lot or part of a lot in a building format plan that includes a private yard. If the lot is to have a number of leases over various parts, they may all be included on one plan.

A plan must not describe a lease as proposed and there is no requirement for a lease to be lodged immediately after the plan.

Sketch plans are acceptable for leases of part or parts of a building only, (ie no area external to the building is included in the lease). Sketch plans must comply with the standards set by the Registrar (see part 7 – Freehold Lease, esp ¶[7-2210]).

Plans of survey for leases of parts of lots do not require approval by the local government. However, if the term of a lease (including any options to renew) over part of a lot exceeds ten years the approval of the local government to the instrument of lease is required (see also part 7 – Freehold Lease, esp ¶[7-0050]).

The certificate of title, if one exists, is required to be deposited. Lodgement fees for a plan are payable.

¶[21-2040] deleted

Resumption Plan and Associated Documents

[21-2050]

Resumption plans define land to be resumed for various public purposes, such as roads, parklands and schools.

Section 10(3) of the *Acquisition of Land Act 1967* provides that where land is to be resumed, if the land to be resumed cannot be described by reference to an existing description, it is to be identified in a plan of survey certified as correct by a cadastral surveyor.

Resumption plans must be accompanied by a Form 14 – General Request and the relevant gazette notice. The Form 14 – General Request must have a duty notation. Lodgement fees are payable on both the Form 14 – General Request and the plan except where the resuming authority is the State.

The resumption plan must:

- deal only with the resumption action;
- show all resumed areas as a lot or easement;
- not dedicate any new road; and
- be signed by the constructing authority.

Resumption plans are registered without production of the Certificate of Title (if one has been issued).

The gazette notice lodged with the resumption plan determines by whom the estate in fee simple in the land is to be controlled, if it is not resumed as unallocated State land or road.

In resumptions by the State, if the gazette notice is ‘the land is taken by [Name of Department] as constructing authority for the State of Queensland for [a public purpose] purposes as from [Date] and vests in the State of Queensland’, the lot ceases to be freehold and is no longer recorded in the Freehold Land Register. If, on the other hand, the wording of the gazette notice is ‘taken for [specified] purposes as from the [Date] and is vested in [Name of Department] for an estate in fee simple’, an indefeasible title will be created in the name of the State with reference to the department.

Once land has been resumed there may be following action to dedicate the land as road (see [21-2210])

A plan of survey for a resumption action does not require the approval of the local government.

¶[21-2060] deleted

Profit a prendre Plan

[21-2063]

Plans for profit a prendre purposes are required to positively define the boundaries of the area to be subjected to the profits a prendre when only part lots are involved (s 97F (1)(b) of the *Land Title Act 1994*). These plans must comply with directions 4.8.2 and 19 of the Registrar of Titles Directions for the Preparation of Plans. One plan can be used to define any number of separate profits.

A plan of survey or explanatory format plan is required to precede a profit a prendre if the interest affects part of a lot. If the profit a prendre is for the whole of a lot, no plan is required.

A profit a prendre may be included with a survey of lots on a plan of subdivision.

A plan must not describe a profit a prendre as proposed and there is no requirement for a profit a prendre to be lodged immediately after the plan.

Plans of survey for profits a prendre do not require approval by the local government.

The certificate of title, if one exists, is required to be deposited. Lodgement fees for a plan are payable.

¶[21-2066] deleted

Covenant Plan

[21-2067]

Plans for covenant purposes are required to positively define the boundaries of the area to be subjected to the covenant when only part lots are involved (s 97B(1)(b) of the *Land Title Act* 1994). These plans must comply with directions 4.8.2 and 21 of the Registrar of Titles Directions for the Preparation of Plans. One plan can be used to define any number of separate covenants.

A plan of survey or explanatory format plan is required to precede an instrument of covenant under the *Land Title Act* 1994 or the *Land Act* 1994 if it affects part of a lot. If the covenant is over the whole of a lot, no plan of survey is required.

A covenant may be included with a survey of lots on a plan of subdivision.

A plan must not describe a covenant a proposed and there is no requirement for a covenant to be lodged immediately after the plan.

Plans of survey for covenants do not require approval by the local government.

The certificate of title, if one exists, is required to be deposited. Lodgement fees for a plan are payable.

¶[21-2068] deleted

Plans of Subdivision – Prior to Lodgement

Preparation of Plan

[21-2070]

Plans are prepared on a Form 21 Version 2 – Survey Plan. They must be drawn to the conventions set down in the Registrar of Titles Directions for the Preparation of Plans and must comply with the requirements of s 50 of the *Land Title Act* 1994.

Lots can be subdivided, amalgamated, dedicated to public use or redefined by a plan of subdivision. Subdivision may be undertaken:

- by a standard format plan of subdivision into one or more lots within a parcel that are two-dimensional at ground level;
- by a building format plan of subdivision for parcels within a structure which are defined by floors, walls and ceilings;

- by a volumetric plan of subdivision into parcels that are fully enclosed by bounding surfaces which may be above, below or partly above and partly below the surface of the ground.

Signing by the Registered Owner

[21-2080]

All registered owners must sign the plan (s 50(b)(i) of the *Land Title Act* 1994).

If a person signs the plan on behalf of the registered owner under a power of attorney, the power of attorney must be registered in the Land Registry prior to the registration of the plan. If the power of attorney is not a general power of attorney, it must grant the attorney power to subdivide. If the attorney has a power to sell, this will be accepted as sufficient authority to subdivide.

When the subject land is owned by a corporation, the official designations of the persons signing on behalf of the corporation must be shown. The Australian Company Number should be included as part of the registered owners name and in the seal if one is affixed (see part 50 – Corporations and Companies and part 60 – Miscellaneous for more details).

Only registered owners should sign the plan. Signatures other than the registered owners will be questioned, as the additional signature may be that of a person who is entitled to be a registered owner by virtue of an instrument not yet lodged/registered. The plan would need to be withdrawn and re-entered to follow lodgement of that dealing or the extra signature would need to be deleted and initialled.

A mortgagee in possession can execute a plan of subdivision on behalf of the registered owner. Evidence of default and service of the notice of demand is required to be deposited. The appropriate manner to recite in the registered owner's panel is 'XY as mortgagee in possession under Mortgage No [number]'. No reference to the registered owner's name appears on the plan, however, the new indefeasible titles will be created in the name of the registered owner (s 50(b)(ii) of the *Land Title Act* 1994) subject to the registered mortgage.

Consent of Mortgagee, Lessee or Grantee of an Easement

[21-2090]

The consent of all registered mortgagees of each lot must be obtained to any plan of subdivision (s 50(j) of the *Land Title Act* 1994). The consent of all other registered proprietors (for example a lessee, or the grantee of a profit a prendre or an easement), whose interests are affected by a plan of subdivision are also required.

The consent must be on a Form 18 – General Consent, except in the case of a consent by a mortgagee who may instead deposit a current Certificate of Title.

Where registration of the plan of survey will dedicate land as road and a registered proprietor's interest is affected, their consent is required except where the interest is an easement for access and is over the land being dedicated for new road. The consent of the grantee of that easement is not required because their right of access still exists, even though it will be by the new road instead of by means of the easement. In this case, the extent of the easement absorbed by the new road is extinguished.

A lessee's consent is required to a plan of subdivision if part or all of the leased land is dedicated as road.

For more information see [21-2140] and [21-2210].

Plans of Subdivision – Upon Lodgement

Certificate of Title

[21-2100]

If a Certificate of Title has issued, then it must be lodged with the survey plan for cancellation.

Plan Registration Compliance Checklist

[21-2105]

A survey plan with a certification on the face of the plan by a cadastral surveyor dated on and from 1 July 2005 and not endorsed in Panel 11 on the reverse of the plan by an accredited surveyor must be accompanied by a Form 10 – Plan Registration Compliance Checklist under the *Survey and Mapping Infrastructure Act 2003* when lodged.

Fees

[21-2110]

The assessment of fees is based on a standard lodgement fee for plans, with a fee for each additional lot. The number of lots is determined by counting all the lots on the plan and any subsidiary interests which form part of the survey. However, areas of new road are not included in this assessment.

A new title fee is charged for any lots on the plan for which an indefeasible title is to be created, excluding any lot identified on the plan as being dedicated to public use. The new indefeasible titles are created without separate documentation being lodged (s 52 of the *Land Title Act 1994*).

Similarly, lots dedicated to public use become unallocated State land on registration of the plan without any further action. Registration of a plan that shows new road operates to dedicate the road and open it for the *Land Act 1994* without anything further (s 51 of the *Land Title Act 1994*).

Conditions of Local Government Approval

[21-2120]

If a development application was made prior to 30 March 1998 under the provisions of the *Local Government (Planning and Environment) Act 1990*, the local government may approve plans of subdivision subject to conditions. However, the conditions must be satisfied before registration can be effected and the implementing documentation must be lodged and be capable of registration at the same time as the plan. Any conditions of approval will be endorsed on the plan as part of the local government approval, however, the transfer of lots to the local government is not acceptable as a condition.

Conditions imposed by a local government attach to the land and bind successors in title (s 5.4(3) of the *Local Government (Planning and Environment) Act 1990* and s 3.5.28 of the *Integrated Planning Act 1997*).

If the development application was made on or after 30 March 1998 under the provisions of the *Integrated Planning Act 1997* the local government cannot include conditions of approval in its certificate on the Form 21 – Survey Plan. Under the *Integrated Planning Act 1997*, all conditions for the approval must be complied with prior to the local government endorsing its approval on the plan.

Easements

[21-2130]

Instruments of easement granting access to a constructed road that are executed on or after 30 March 1998 are registrable without the endorsement of the local government's approval or consent being presented with the instrument of easement. Similar easements executed prior to that date are subject to the *Local Government (Planning and Environment) Act 1990*, which requires local government approval for registration (s 5.12(11) of the *Local Government (Planning and Environment) Act 1990*).

Any other easement which is not required as a condition of local government approval will not require separate approval. Approval to easements giving access to roads may be by:

- (a) consent of the local government in a Form 18 – General Consent; or
- (b) a letter from the local government stating that approval has been granted in accordance with s 5.1 of the *Local Government (Planning and Environment) Act 1990*; or
- (c) a condition on a plan that is approved by the local government requiring the granting of the easement; or
- (d) a letter from the local government confirming that the easement is required to be effected as a condition of approval granted by a local government in respect of an application made pursuant to a planning scheme (s 5.12 of the *Local Government (Planning and Environment Act) 1990*).

The above requirement will remain applicable until the transitional provisions of the *Integrated Planning Act 1997* no longer apply (s 6.1.25 of the *Integrated Planning Act 1997*).

The usual lodgement fees are payable and the instrument must have a notation of the payment of transfer duty.

Public Use Land

[21-2140]

The dedication of land to 'public use land' on registration of a plan of subdivision:

- is for the whole of the registered proprietor's interest in the lot, except for any part of the lot reserved to the registered proprietor, (s 51(1) of the *Land Title Act 1994*);
- dedicates and opens any roads for the purposes of the *Land Act 1994* without anything further, (s 51(2) of the *Land Title Act 1994*);
- dedicates lots as unallocated State land under the *Land Act 1994* without anything further, (s 51(3) of the *Land Title Act 1994*).

A plan of subdivision that includes land to be dedicated for a public use may identify the area being surrendered on the face of the plan by endorsing on it any of the following:

- ROAD (or New Road)
- Lot number and 'PARK'
- Lot number and 'RESERVE'
- Lot number and 'PUBLIC USE LAND'.

In the cases of ‘reserve’ and ‘public use land’ the purpose may also be shown on the lot. The purpose of the ‘public use land’ shown on the plan must be consistent with the community purposes listed in schedule 1 of the *Land Act* 1994. If approval of the plan is under the *Integrated Planning Act* 1997 the dedication of public use land must not be shown as a condition of the approval of the plan. However, for approval under the *Local Government (Planning and Environment) Act* 1990, the dedication and purpose for reserves and public use lands may be included in the approval.

If a lot that is the subject of dedication to public use is affected by registered encumbrances, additional instruments (such as partial releases of mortgages and surrenders of easements and leases) are not required to be lodged. However, for the dedication to occur on registration of the plan, the following requirements must be satisfied:

- (a) A lot that is subject to mortgage – the consent to the plan of the mortgagee (in Form 18 – General Consent) must be deposited. Deposit of the certificate of title (if issued) is taken as the consent of the first mortgagee only (s 50(j) of the *Land Title Act* 1994).
- (b) A lot that is subject to an easement – the consent of the grantee to the plan (in Form 18 – General Consent) must be deposited (s 50(j) of the *Land Title Act* 1994). However, in the case of a public utility easement over freehold land that is to become unallocated State land the easement may continue over the unallocated State land if the approval of the Minister is obtained and deposited (s 372(4) of the *Land Act* 1994).
- (c) A lot that is subject to lease – the consent to the plan of the lessee (in Form 18 – General Consent) must be deposited (s 50(j) of the *Land Title Act* 1994).

Transfer to Local Government in Fee Simple

[21-2150]

A Local government has no authority to require the transfer of a lot to it as a condition to its approval of a plan of subdivision.

If a lot is transferred to a local government in fee simple, other than as trustee, s 117 of the *Trusts Act* 1973 requires the transferor to provide a statutory declaration under the *Oaths Act* 1867 that the land is not being transferred to the local government as sole trustee.

See ¶[1-2580] for information on preparation of a transfer to a local government in fee simple.

Transfer to Local Government as Trustee

[21-2160]

For development applications made prior to 30 March 1998 a local government may not require the transfer of a lot to it as trustee as a condition to its approval of a plan of subdivision.

Land may be transferred to a local government for a public, charitable, recreation or other leisure time purpose and held by the local government **as trustee**.

For development applications on or after 30 March 1998, a local government may require the applicant to give to the local government, in fee simple, part of the land for local community purposes (s 5.1.12(2) of the *Integrated Planning Act* 1997). That land must be transferred to the local government in trust (s 5.1.12(5) of the *Integrated Planning Act* 1997).

The requirement to transfer the land must not be included as a condition in the certificate of approval on the Form 21 – Survey Plan.

The consideration shown on the transfer must not refer to an access restriction strip. The transfer must be lodged with the plan of subdivision because any conditions imposed for the approval must be complied with before the local government approval to the plan is endorsed on the plan.

Land may be transferred to a local government for a public, charitable, recreation or other leisure time purpose and held by the local government as trustee separately from a development application.

See ¶[1-2570] for information on preparation of a transfer to a local government as trustee.

Other Consents and Requirements to be Complied With

Canal Plan

[21-2170]

The following requirements apply to plans of subdivision where the application to the local government was made prior to 20 October 2003.

If a plan contains a lot or lots that are to be canals, under the *Canals Act 1958*, the lot is marked 'CANAL' on the face of the plan. A transfer of canal lots to the State is required and must be capable of registration before the plan can be registered.

The plan should be approved by the local government, and then endorsed with the consent of the Governor in Council (s 9(e) of the *Canals Act 1958*). The endorsement by the Executive Council will be signed by the Clerk of the Executive Council.

Specific requirements for artificial waterways where the application is made after 20 October 2003

[21-2175]

Any plan of survey creating an artificial waterway must show the artificial waterway as a separate lot, including complete metes and bounds and an area, and indicate whether the artificial waterway is a 'canal', an 'artificial waterway' or an 'access channel' on the face of the plan.

The term 'canal', 'artificial waterway' or 'access channel' must be repeated wherever the lot number appears on the face of the plan, eg:

Lot 37		Lot 85		Lot 106
Canal	or	Artificial Waterway	or	Access Channel

In addition to the local government approval to the subdivision, panel 2 on the reverse of Form 21, the local government must certify on the plan that:

- (a) the waterway, and any access channel associated with the waterway, is constructed in accordance with the development approval for the waterway; and
- (b) if the waterway is not a canal – the local government is satisfied arrangements have been made, or will be made, for the maintenance and management of the waterway (s 119 of the *Coastal Protection and Management Act 1995*).

If the lot is a 'Canal' then a Form 1 – Transfer and surrender to the State must be lodged to follow the plan. The transfer to the State must be capable of registration before the plan can be registered.

The transfer and surrender to the State is registered over the indefeasible title created. The consideration must show a reference to the relevant legislation (eg s 9 of the *Canals Act 1958* or s 120 of the *Coastal Protection and Management Act 1995*).

A lot that is an ‘**Artificial waterway**’ or ‘**Access channel**’ is to be dealt with as a normal fee simple lot, ie:

- a indefeasible title is created for the lot;
- the lot is not required to be surrendered to the State; and
- all secondary interests may remain on the title.

Common Lake Areas

[21-2180]

Further conditional consents concern subdivisions of land with a common lake area (s 5.10 of the *Local Government (Planning and Environment) Act 1990*).

A common lake area may remain in private ownership in fee simple by a company whose memorandum and articles of association comply with the requirements of s 5.10(5) of the *Local Government (Planning and Environment) Act 1990*. The transfer to the company must be lodged with the plan (s 5.10(4) of the *Local Government (Planning and Environment) Act 1990*).

If the common lake area is to be under the control of the local government as trustee, the Registrar must not register the plan without a Form 1 – Transfer that surrenders the lot or lots comprising the common lake area to the State being lodged and capable of registration (s 5.10(9) of the *Local Government (Planning and Environment) Act 1990*).

Access

[21-2190]

The Registrar is not obliged to ensure that a lot has access to a public road unless the lot is to be surrendered to the State for public use. Examiners must ensure that any public use lot has access, unless exempted by the Minister (s 51A of the *Land Title Act 1994*). Access may be by way of:

- an abutting public road; or
- through an adjacent reserve if the reserve is for the same purpose as the public use land being dedicated and the adjacent reserve has dedicated access; or
- a public thoroughfare easement.

Separated Lots

[21-2200]

Where a deed of grant has issued with a road or watercourse reserved to the State within its boundaries and the land is subsequently divided, indefeasible titles can issue for any lots created, despite the fact that one or more of these lots may consist of separated parts on either side of the road or watercourse (s 54 of the *Land Title Act 1994*). Such a lot does not include the reserved road or watercourse, even though it may be within the boundaries of the lot.

However, the Registrar may create a single indefeasible title for two or more such lots if he/she considers it appropriate (s 39 of the *Land Title Act 1994*).

Road Dedication

[21-2210]

The only method to dedicate land as road under the *Land Title Act* 1994 is by registration of a plan of survey.

The dedication occurs on registration of the plan (s 51(2) of the *Land Title Act* 1994). The approval of the local government to the plan of subdivision extends to its acceptance of responsibility for maintaining the road.

Where new road is created on a plan of survey and the new road absorbs the whole or part of an encumbrance easement, the consent of the benefiting registered proprietor is required in a Form 18 – General Consent (s 50(j) of the *Land Title Act* 1994).

However, the consent is not required:

- where the easement only provides access (including a public thoroughfare). The extent of the easement absorbed by the new road is extinguished (s 51(5) of *Land Title Act* 1994); or
- where the benefited party to the easement is the local government approving the plan.

Where a lot or lots have the benefit of an easement for access purposes only, is dedicated as road, a notation to cancel the easement is recorded on the indefeasible title for the burdened lot.

Where an easement for access purposes only, over a burdened lot, is wholly or partly dedicated as road, a notation is recorded on the indefeasible title for the benefited lot or lots as to the extent of the cancellation.

If the dedication involves land over which a lease has been registered, the lessees consent is required in a Form 18 – General Consent (s 50(j) of the *Land Title Act* 1994). However, the lessees consent is not sufficient if the whole of a lease is being dedicated as road. In this case a Form 8 – Surrender of Lease is required.

The production of the Certificate of Title by a mortgagee is accepted as evidence of the mortgagee's consent to a road dedication, therefore a Form 18 – General Consent is not required if the Certificate of Title is deposited.

A road dedication may be limited to a specified depth below the surface of the land by way of volumetric survey, in which event the land below that depth remains in the name of the registered owner (s 51(1) of the *Land Title Act* 1994).

An alternative and preferred method of dedication of fee simple land as road, other than under the provisions of the *Land Title Act* 1994, is under s 12B of the *Acquisition of Land Act* 1967. A constructing authority having acquired fee simple land for road purposes under the *Acquisition of Land Act* 1967 may dedicate a lot as road by registering a dedication notice. A dedication notice must be made on a Form 14 –General Request and be for the whole of a lot. Item 6 of the form must request that 'the within land be dedicated as road pursuant to s 12B of the *Acquisition of Land Act* 1967'. The form must be executed by the constructing authority or their solicitor. A duty notation is not applicable.

A further option, that is sometimes used but is not preferred by the Registrar, is set out below:

- an absolute surrender to the State is effected by registering a transfer pursuant to s 327 of the *Land Act* 1994 and signed by the State—the land will be unallocated State land (USL);

- a road dedication, signed by an officer of State Asset Land Management of the department, is lodged for registration on the title for the USL lot—on registration the lot becomes road.

Agreement under the *Local Government (Planning and Environment) Act 1990*

[21-2215]

These instruments were lodged for registration as a condition of the approval of a plan of subdivision pursuant to the (now repealed) *Local Government (Planning and Environment) Act 1990*. The agreements were covered in two sections of the Act: s 5.8(3) and s 4.17.

There is no similar provision under the *Integrated Planning Act 1997*. However, s 97A of the *Land Title Act 1994* allows for the registration of an instrument of covenant, which may contain similar conditions (see part 31 – Covenants).

Agreement under s 5.8(3)

[21-2220]

Section 5.8(3) of the *Local Government (Planning and Environment) Act 1990* permitted a local government to approve a plan with a lot/s with an area that was less than a pre-determined minimum area, subject to an agreement. The agreement was:

- between the registered owner and the local government; and
- required that the minimum area lot not be transferred or dealt with in any way separately from another lot, such other lot being as designated in the terms of the agreement.

It is not permissible to transfer/dispose of one of the lots subject to an agreement separately from the other/s.

Agreement under s 4.17

[21-2230]

Section 4.17 of the *Local Government (Planning and Environment) Act 1990* also included provisions allowing for the tying together of two or more lots. The sub section applied to non-contiguous parcels of land that were held in the same ownership, and were not more than 500 metres from each other. It is not permissible to transfer/dispose of one of the lots subject to an agreement separately from the other/s.

Cancellation of Agreement

[21-2240]

For various reasons it may be necessary at some stage to cancel an agreement under s 5.8(3) or s 4.17 of the *Local Government (Planning and Environment) Act 1990*.

In both cases, an application in a Form 14 – General Request, signed by the registered owner, and the consent of the local government on a Form 18 – General Consent are required.

¶[21-2250] deleted

Survey of Land Affected by s 174 of the *Land Act 1994*

[21-2260]

Prior to the enactment of the *Land Act 1994*, this provision was contained in s 147A of the *Land Act 1962*.

When a perpetual lease for agricultural or grazing purposes is converted to a deed of grant, the indefeasible title created is subject to a covenant under the provisions of s 174 of the *Land Act* 1994. A notation to that effect will be made on the indefeasible title.

An indefeasible title created for a lot by any subsequent survey of land subject to the provisions of s 174 of the *Land Act* 1994, will be noted accordingly irrespective of the area of the new lot.

The registered owner of a lot created with an area of less than 2,500 hectares subject to the provisions of s 174 of the *Land Act* 1994 may apply to State Land Asset Management for its removal.

Irrespective of the area, the Governor in Council may determine that the s 174 of the *Land Act* 1994 covenant no longer applies. A Form 14 – General Request to remove s 174 of the *Land Act* 1994 covenant, signed by a delegated State land assets management officer, quoting the Executive Minute that authorises the removal must be lodged. The certificate of title, if one exists, is not required to be deposited (s 154(2)(e) of the *Land Title Act* 1994).

Plans of Subdivision – After Lodgement

[21-2270]

When a cadastral surveyor has certified the survey content of a plan, the following requirements must be satisfied:

- (1) If the plan was certified under the *Surveyors Act* 1977 it must be lodged within 12 months of the date of certification, unless the provisions of s 76A of the *Surveyors Act* 1977 apply.
- (2) If the plan was certified on or after 1 August 2003 there is no limitation on when the plan may be lodged.
- (3) The local government's approval must be endorsed if applicable and lodgement must occur within six months of approval.
- (4) The relevant Certificates of Title must be lodged, if issued.
- (5) If part or the whole of an easement is absorbed in new road on the plan, the consent of the grantee of the easement is generally required. The consent of the grantee of the easement is not required if:
 - the grantee is the local government that approved the plan; or
 - the purpose of the easement is for right of way only and therefore does not conflict with the new road.
- (6) That all allocation notations have been completed on the plan.
- (7) If a change of boundaries creates a situation where:
 - one or more lots are held in different ownership; or
 - causes the priority of mortgages to be uncertain;documents resolving ownership and/or priority must be lodged with the plan.

Notation on Plan

[21-2280]

Any allocations required must be made by the surveyor who certified the plan.

¶[21-2290] deleted

Creation of Indefeasible Title on Plan

[21-2300]

Generally, indefeasible titles are issued for all lots on plans of subdivision. The only exceptions are:

- lots dedicated to public use; and
- common property for a community titles scheme created pursuant to a specified act under the *Body Corporate and Community Management Act 1997*.

Realignment of Lot Boundaries

[21-2310]

The ownership of any lot/s that, as the result of a survey, is/are partly owned by two or more different registered owners must be resolved by lodgement of documentation before indefeasible titles can be created, even though the new title fee has been paid on the plan.

Diagram 1 – Existing Situation

Jones Street

<p>Title: 12345067</p> <p>Owner: A</p> <p>Lot 7 on SP 800543</p>	<p>Title: 15432178</p> <p>Owner: B</p> <p>Lot 8 on SP 800543</p>	<p>A owns Lot 7 on SP 800543 in Title: 12345067.</p> <p>B owns Lot 8 on SP 800543 in Title: 15432178.</p>
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Diagram 2 – Desired Outcome

Jones Street

<p>Owner: A</p> <p>Lot 1 on SP 876345</p> <p>(Issue of new title relies on documentation)</p>		<p>Owner: B</p> <p>Lot 2 on SP 876345</p> <p>(New title to be created on registration of plan)</p>	<p>A intends to buy part of B's land (as shaded) which adjoins and hold a single title for all of the land owned.</p> <p>B is willing to sell it to A.</p>
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The documents required to achieve the desired outcome are:

- (a) a plan of survey (shown as plan 876345 in diagram 2). Indefeasible titles will be created for the lot that has increased in size in the names of both owner A and B with no tenancy shown (ie Lot 1 on SP 876345 in diagram 2) and for the lot that has decreased in size with no change of ownership (ie Lot 2 on SP 876345 in diagram 2); and
- (b) a transfer, that states at item 4 the true and full consideration that was given or undertaken, from all the owners to the eventual owner of the lot that increased in size (ie both Owner A and Owner B join in a transfer of Lot 1 on SP 876345 in Title 12345067 and title 15432178 to Owner A).

Note: The plan of survey will not be registered until the transfer in (b) above is lodged and is capable of simultaneous registration.

The mortgage structure on the titles being subdivided may also require the lodgement of a partial release or a collateral mortgage in conjunction with the creation of the new lots.

¶[21-2320] to ¶[21-2520] deleted

Forms

General Guide to Completion of Forms

[21-4000]

For general requirements for completion of forms see part 59 – Forms, esp ¶[59-2000].

SURVEY PLAN

0		50m	100m	150m	Scale copyright reserved
					Scale
					Format
PARISH: COUNTY:					Plan Status
					Mentions

Guide to Completion of Forms 21/21A (reg 3(3) *Land Title Regulation 2005*)

[21-4010]

A Plan and any additional sheet must be in Form 21 version 2 for sheet 1 of the plan and Form 21A version 1 for any additional sheet and must meet the criteria set out in Direction 3 of the Registrar of Titles Directions for the Preparation of Plans.

Each plan must be numbered by obtaining a bar-coded label from the Department or a supplier approved by the Department.

The number only from the bar-coded label is to be inserted in the space provided on the face of the plan, in a prominent font, prior to the affixing of the bar-coded label. The bar-coded label must then be affixed over the written number. (This will allow for the possibility of the label becoming detached).

The number only from the bar-coded label will be placed horizontally in the space provided on the reverse of the Form 21 and the face of each Form 21A.

Each sheet comprising the plan is to be numbered consecutively in the space provided at the top right hand corner commencing with one on the Form 21 and showing the total number of sheets.

The full given and surname of each registered owner must be shown in the certificate on the reverse of the Form 21.

The Lodger details and lodger code (if applicable) must be included in the space provided on the reverse of the Form 21 and contain the minimum information necessary for positive identification and contact by correspondence (mail) and telephone.

Item Requirements

1 Certificate of registered owners or lessees:

Full name(s) and signature(s) of the registered owner(s)/lessees are to be completed and if a corporation, name and ACN or ARBN shown.

Signing must be in accordance with s 161 of the *Land Title Act 1994*. No witnessing is required (s 161(5) *Land Title Act 1994*).

2 Local government certificate(s):

This certificate must be completed in the form appearing in item 2 to satisfy the requirements of the various provisions of the Act requiring local authority approval.

Plans in all formats must be lodged for registration in the land registry within six months (s 5.3 (6) of the *Local Government (Planning and Environment) Act 1990* or s 3.7.6 of the *Integrated Planning Act 1997*).

3 Plans with Community Management Statement:

The Name of Community Titles Scheme relevant to the plan and any CMS number previously allocated to the scheme is to be shown in this item. (Completed by the Surveyor)

(Note: For a plan lodged with a **First** CMS the scheme number will be completed by the Land Registry)

4 References:

(Optional – Completed if required by the relevant person/agency)

5 Lodger details:

The name, address, contact phone number and lodger code (if applicable) should be completed by the person/firm actually lodging the plan for registration.

6 Title reference of cancelled lot(s) and created lots/easements/road:

The title reference(s) for the lot(s) cancelled by the plan and new lots created in relation to previous lots, are to be shown in this item by the surveyor.

7 Portion allocation:

(Completed by surveyor)

8 Map Reference:

(Completed by surveyor)

9 Locality:

(Completed by surveyor)

10 Local Government:

(Completed by surveyor)

11 Passed and endorsed:

(Completed by the Accredited Surveyor or ruled through if the plan is prepared by a non-accredited surveyor)

12 Building format plans certificate of encroachment/non-encroachment:

(Completed by the surveyor in accordance with Registrar of Titles Directions for the Preparation of Plans)

13 Lodgement Fees:

(Completed by Land Registry)

14 Insert plan number:

(Completed by surveyor)

¶[21-6000] deleted

Case Law

***Rock v Todeschino* [1983] Qd R 356**

[21-7000]

In this case and in *Hutchinson v Lemon* [1983] Q Conv R 54-072, it was held that the registration of a plan indicating an easement was sufficient to grant that easement. No instrument of easement was required to effect registration of the easement.

The effect of these decisions is now negated by s 83A of the *Land Title Act* 1994, which expressly states that the registration of a plan of easement does not create the easement or evidence a present intention to create an easement.

***Mareen Development Pty Ltd v Brisbane City Council* [1972] Qd R 203**

[21-7010]

In this case it was held that where land is to be transferred to a local government as a condition of approval of a subdivision, that land must be transferred to the local government as trustee under s 112 of the *Trusts Act* 1973.

Fees

[21-8000]

Fees payable to the land registry are subject to an annual review.

See the current *Land Title Regulation* 2005 – Schedule 2, item numbers 1, 2(h), 2(m), 8(a) and 8(b).

Cross References and Further Reading

[21-9000]

Part 1 – Transfer

Part 5, 5A, 6 – Transmission Applications

Part 7 – Freehold Lease

Part 10 – Easement

Part 14 – General Request

Part 15 – Request for Amalgamation

Part 18 – General Consent

Part 45 –Community Title Schemes

Registrar of Titles Directions for the Preparation of Plans

Notes in text

[21-9050]

Note ³ – This part is not applicable to water allocations or the Water Allocations Register.