

Part 7 – Lease

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Part 7 – Lease

General Law

Preliminary

[7-0000]

A lease is a contract between a lessor and a lessee whereby the lessor as registered proprietor grants to the lessee an estate or interest in land for a fixed term in consideration of the lessee paying rent. The lessee holds the leasehold estate during the term of the lease and the lessor holds the reversion, being the lessor's estate in the land subject to the lease. The leasehold estate is an asset of the lessee and may be assigned during the lessee's lifetime or upon his/her death.

The lessee acquires exclusive possession of:

- all or part of a lot as defined in s. 4 of the *Land Title Act 1994*; or
- all of a water allocation as defined in the *Water Act 2000*.

¹The building or land being leased is called 'the demised premises'.

Section 64 of the Land Title Act authorises registration of a lease or sub-lease over the whole or part of a lot and the Water Act authorises registration of a lease or sub-lease over the whole of a water allocation. A lease may therefore cover:

- the whole of a lot or water allocation;
- ¹part of a lot;
- ¹the whole of a building erected on a lot;
- ¹part of a building erected on a lot;
- ¹the whole of a lot in a building units plan or group titles plan;
- ¹part of a lot or the common property in a building units plan or group titles plan;
- ¹part of the common property in a community titles scheme.

A lease does not require registration to be valid (s. 71 of the Land Title Act).

¹However, if the initial term of the lease exceeds three years it must be registered to achieve indefeasibility (ss. 184 and 185(1)(b) of the Land Title Act).

The relationship of lessor and lessee is governed by a wide range of statutory controls affecting different aspects of the relationship. These substantially restrict the parties' freedom to negotiate the terms of the lease contract. Statutory controls operate by regulating:

- certain types of tenancies (e.g. *Property Law Act 1974*, *Retail Shop Leases Act 1994*, *Residential Tenancies Act 1994*);
- aspects of land use, resumption and planning controls;
- the recovery of possession (e.g. *Property Law Act*); and
- the relationship of the contracting parties (e.g. *Racial Discrimination Act 1975* (Cth)).

The trend is of increasing statutory controls over these aspects of leases.

Capacity to Grant and Accept Lease

Lessor

[7-0010]

The lessor must be the registered owner of the fee simple or of a water allocation or a share in the fee simple or a water allocation being leased. If a sub-lease, the sub-lessor must grant the sub-lease from its leasehold estate.

Section 78 of the *Land Title Act 1994* coupled with Part 7 of the *Property Law Act 1974* permits 'a proprietor' to grant a lease. The definition of 'proprietor' in schedule 2 of the *Land Title Act* includes a mortgagee in possession. Because of the lack of specific legislative authority in Queensland, the mortgage must give the mortgagee express authority to lease the mortgaged property.

A trustee of a bankrupt's estate or an Official Trustee in Bankruptcy, is authorised by s. 134 of the *Bankruptcy Act 1966* (Cth) to lease any property of the bankrupt.

A person, or two or more persons may lease to himself/herself/themselves (ss. 14(3), (4) and (5) of the *Property Law Act*). A person may also grant a lease over his/her fee simple estate or water allocation to himself/herself jointly with another (s. 14(2) of the *Property Law Act*).

If a joint tenant, the lessor may lease to a co-joint tenant or to another, without severing the joint tenancy (*Cowper v Fletcher* (1865) 122 ER 1270; *Frieze v Unger* [1960] VR 230). Such action does, however, suspend the joint tenancy (Butt, P, *Land Law*, 2nd edn, Law Book Company, 1988, p 203). A joint tenant can sever the joint tenancy by transferring his/her interest in the joint tenancy to himself/herself or to a third party if the other joint tenants are notified (see part 1, esp [1-2300]).

If the lessor is a trustee or personal representative, there must be no prohibition against executing the lease in the will or trust instrument. If there is no such prohibition, but no specific power to lease, s. 32(1)(e) of the *Trusts Act 1973* gives the trustee authority to lease.

¹A trustee or personal representative or the registered proprietor may grant a lease over a lot which is the subject of a life estate with the consent of the life tenant.

There is no authority for a minor to execute a lease as lessor. Accordingly, a lease by a minor either as a sole lessor or as one of several lessors is not acceptable unless a Court Order authorises a person to execute the lease on behalf of the minor.

Unless prior written approval has been received from the Titles Registry, where multiple titles (not being titles for a share of the one lot) are involved in a single transaction, each of these titles must be held in the same name such that the registered proprietor is consistent as lessor for each lot. For example, if Party A owns one lot on one title and Party B owns another lot on another title and they are leasing to a mutual lessee, separate forms are required for each lot. See also [51-2115].

Lessee

[7-0020]

A lease to a minor (i.e. a person less than 18 years of age) is valid unless repudiated by the minor within a reasonable time after he/she attains majority. The execution for a minor as lessee must be by his/her legal guardian or the solicitor for the legal guardian, e.g. 'AB, father and legal guardian of DE' or 'XY, solicitor for AB, father and legal guardian of DE'. The normal witnessing requirements for an individual or a solicitor apply to this type of execution. There is nothing to prevent a lease to a minor being registered on the indefeasible title, however, the endorsement will include reference to this fact.

If more than one lessee, the lessees will hold either as joint tenants or tenants in common. In a joint tenancy, each tenant's interest devolves to the other/s on death (if a natural person) or on dissolution (if a corporation). As a tenant in common, each lessee holds separate interests in land capable of transmission by will. (For more information on joint tenancy and tenancy in common, see part 4, esp [4-0000].)

A lessee may be a corporation. Section 34 of the *Property Law Act 1974* permits a corporation to be a lessee, or a corporation and a natural person to be joint lessees.

A foreign person or foreign corporation may be a lessee.

A lessee may be a trustee or personal representative appointed under a will. A trustee may renew a lease pursuant to s. 39 of the *Trusts Act 1973*.

Term

[7-0030]

A lease must be for a definite term so that the commencement and termination dates are capable of being fixed with certainty. A lease may commence on a date in the past or in the future. A future lease will be void and not registrable if it takes effect later than 21 years from the date of the instrument purporting to create it (s. 102(3) of the *Property Law Act 1974*). The term of a future lease to a different lessee must not be coincident with the term, including further terms under options to renew, of a current lease, unless a concurrency is intended and expressed.

Leases expressed for a duration of short periods, whether the periods are continuous or otherwise, are capable of registration. Examples include leases for:

- certain hours of the day or night;
- specified days over a number of years; or
- the life of the lessor, the lessee or a named third person.

If granted by a trustee, a lease cannot exceed 21 years (s. 32(1)(e) of the *Trusts Act 1973*) unless the trust deed authorises leases for a greater term.

The term of a lease can be extended, either by lodging a new lease or by amending the term prior to the expiration of the term (s. 67 of the *Land Title Act 1994*).

(For the term of retirement village leases see [7-2130].)

Note: Only the initial term and first option period of the lease are recorded on the relevant title.

Mortgagee's Consent

[7-0040]

If there is a registered mortgage of the lot (as defined in ss. 4 and 38 of the *Land Title Act 1994*), the mortgagee's consent to a subsequent lease or amendment of lease is required for the lease or amendment to be valid against the mortgagee (s. 66 of the *Land Title Act*). This does not affect the validity of the lease against third parties, but protects the rights of the lessee if the mortgagee takes possession of the lot. However, the consent is not a prerequisite for registration and the lease will be registered on the assumption that the lessee does not intend to seek the consent.

¹Local Government Approval

[7-0050]

All approvals required under the *Land Title Act 1994* or other Acts must be in accordance with that Act.

Local government approval is required for:

- a lease of part of land for a term exceeding ten years (inclusive of further term/s pursuant to option/s to renew); or
- a lease of any part of a building which includes **part** of the land outside the building for a term exceeding ten years (inclusive of further term/s pursuant to option/s); or
- a lease of part of a lot in a building unit plan or group title plan or part of the common property (ss. 8 and 22 of the *Building Unit and Group Titles Act 1980*). This applies to only those developments that relate to a specified Act referred to in the *Body Corporate and Community Management Act 1997* which are:
 - (a) the *Integrated Resort Development Act 1987*; or
 - (b) the *Mixed Use Development Act 1993*; or
 - (c) the *Registration of Plans (H.S.P. (Nominees) Pty. Limited) Enabling Act 1980*; or
 - (d) the *Registration of Plans (Stage 2) (H.S.P. (Nominees) Pty. Limited) Enabling Act 1984*; or
 - (e) the *Sanctuary Cove Resort Act 1985*;

(s. 65(3A) of the Land Title Act and schedules 19 and 26 of the Sustainable Planning Regulation 2009).

However, local government approval is not required for a lease of part of a lot in a lower plan under the Registration of Plans (H.S.P. (Nominees) Pty Limited) Enabling Act or the Registration of Plans (Stage 2) (H.S.P. (Nominees) Pty Limited) Enabling Act.

An approval is current for six months from the date it was given (s. 50(4) of the Land Title Act).

Duty

[7-0060]

Under the provisions of s. 11 of the Revenue Legislation Amendment Act 2005 lease duty was abolished from 1 January 2006. This makes lease duty inapplicable in some circumstances. For an instrument of lease where the term commences on or after 1 January 2006 lease duty does not apply and is not required to be stamped. For a lease where the term commenced prior to 1 January 2006, lease duty will apply and the instrument will need to be stamped.

Under s. 426 of the *Duties Act 2001* the State is not liable to pay duty. However when a lease to the State commenced before 1 January 2006 it still must be properly stamped. In effect the lease must bear a notation by either the Office of State Revenue or an authorised registered self assessor.

Covenants

[7-0070]

Sections 105, 106 and 107 of the *Property Law Act 1974* imply obligations on the lessor and lessee and powers on the lessor. These will have the same force and effect as if set out in the lease unless negated or modified by express covenant contained in the lease or another instrument (s. 49 of the Property Law Act).

In practice, covenants and conditions are contained in the lease itself or incorporated in either a Form 20 – Schedule or by reference to a registered ‘standard terms document’ in terms of ss. 169 and 170 of the *Land Title Act 1994*, or both.

Concurrent Lease

[7-0080]

A lease granted by a lessor from its reversion of an existing lease over the same land and for an identical, longer or shorter period as the existing lease, is a concurrent lease. A concurrent lessee is not granted exclusive possession, but a lease of the lessor's reversion for the duration of the concurrent lease.

It may be granted by a lessor from its reversion as an owner of the lot or by a sub-lessor over the leasehold reversion on a sub-lease. A concurrent lease is valid if unregistered.

²However such a lease for a period greater than three years should be registered to be indefeasible.

If A leases to B and then grants a concurrent lease to C, for the duration of the concurrency of the two leases:

- C is B's lessor;
- B's rent is payable to C; and
- C may recover possession of B's lease (not A).

¹Easement

[7-0090]

Where the land being leased has the benefit of an easement, the lessee takes the benefit of such easement, whether or not this entitlement is recited in the lease. If the lessee is granted an easement over another part of the lessor's land in terms of covenants contained in the lease, the lessee can be granted a separate instrument documenting that easement for registration. Ancillary rights contained in lease covenants may refer to the use of lifts, passageways, toilets etc, but these are not capable of being registered as easements.

Merger of Lease

[7-0100]

If a lessee acquires the reversion (i.e. the fee simple or water allocation) or if the registered owner acquires an assignment of a lessee's interest, a merger of the lease occurs. Such a merger is not, however, automatic, as a merger by operation of law will only occur if the beneficial interest of the lessee's estate merges or is extinguished in equity (s. 17 of the *Property Law Act 1974*). A merger will not occur in equity unless it is intended by the parties. A sub-lease is not terminated on the merger of the head-lease in the fee simple or water allocation (s. 115 of the *Property Law Act*). To effect a merger, a Form 14 – Request to Record a Merger on the title is required (see part 14, esp [14-2070]).

¹Option to Purchase

[7-0110]

An option to acquire the fee simple or other reversionary interest on or after the expiry of a lease (whether or not contained in a 'short lease' as defined in s. 4 of the *Land Title Act 1994*), must be registered to achieve indefeasibility (ss. 184 and 185(2) of the *Land Title Act*).

Amendment of Lease

[7-0120]

A registered lease may be amended by registering an instrument of amendment of lease (s. 67 of the *Land Title Act 1994*) (see part 13, esp [13-2000]).

Option for Renewal

[7-0130]

If a lease contains an option for renewal, the option may be for a period longer than the initial term of the lease. There is no limit to the number of options a lease can contain.

¹Options to renew contained in:

- a registered lease with an initial term of more than three years; or
- a ‘short lease’ (as defined in s. 4 of the *Land Title Act 1994*) having an initial term which, together with further term/s pursuant to option/s, exceeds three years,

are indefeasible by registration (ss. 184 and 185(2) of the *Land Title Act*).

¹An option contained in an unregistered short lease is not indefeasible (s. 185(1)(b) of the *Land Title Act*).

¹A right to exercise an option for renewal is indefeasible by registration of the lease. If extensions of the lease term are unregistered (i.e. they are not made the subject of a new lease), the lessee loses the protection of indefeasibility in respect of any further options for renewal (see also [7-0120] and [7-2150]).

Sub-Lease

[7-0140]

A sub-lease is a lease granted by the lessee from its leasehold estate. The term of the sub-lease must be less than the duration of the head lease. The termination date for the sub-lease must be at least one day before the termination date for the head lease. If the period is equal to or greater than the duration of the head lease, it will constitute an assignment and will not operate as a sub-lease, as there is no reversion to the head lease.

If a head lease is surrendered and renewed it is not necessary to surrender and renew any sub-lease as it is determined that the new lease would be as good and valid to all intents and purposes as if all the sub-leases had likewise been surrendered at or before the taking of such new lease (s. 113 of the *Property Law Act 1974*).

A sub-lease is not surrendered if the head lease is surrendered or merged in the fee simple or water allocation (s. 115 of the *Property Law Act*), but the sub-lease will take the reversion of the surrendered head-lease.

An option for renewal contained in a sub-lease cannot extend the term of the sub-lease beyond the duration of the head lease. In practice, an option contained in a sub-lease is exercised subsequent to and conditional upon the exercise of any option contained in the head lease.

¹Lease of Common Property under the *Building Units and Group Titles Act 1980* for Specified Acts

[7-0150]

The introduction of the *Body Corporate and Community Management Act 1997* limits the application of the *Building Units and Groups Titles Act 1980* to those developments under the provisions of the specified acts referred to in the *Body Corporate and Community Management Act*. The specified acts are:

- (a) the *Integrated Resort Development Act 1987*; or
- (b) the *Mixed Use Development Act 1993*; or
- (c) the *Registration of Plans (H.S.P. (Nominees) Pty. Limited) Enabling Act 1980*; or

- (d) the *Registration of Plans (Stage 2) (H.S.P. (Nominees) Pty. Limited) Enabling Act 1984*; or
- (e) the *Sanctuary Cove Resort Act 1985*.

Subject to the approval of the local government (see [7-0050]) and pursuant to a resolution without dissent, the body corporate may:

- grant a lease over part of the common property not leased to it for the purpose of creating additional common property; and
- grant a sub-lease over part of the common property leased to it as additional common property.

There is no provision in the Building Units and Group Titles Act which allows for the grant of a lease over the entire common property in a building units or group titles plan.

Legislation

[7-1000]

^{2,3}Application of the *Land Title Act 1994* to the *Water Act 2000*

Under the provisions of the Water Act, an interest or dealing may be registered in a way mentioned in the Land Title Act, subject to some exceptions.

A relevant interest or dealing may be registered in a way mentioned in the Land Title Act:

- (a) as if a reference to the freehold land register is a reference to the water allocations register; and
- (b) as if a reference to freehold land or land is a reference to a water allocation; and
- (c) as if a reference to a lot is a reference to a water allocation; and
- (d) with any other necessary changes.

Reference to the registrar of titles in the *Land Title Act 1994* and *Land Act 1994* and reference to the registrar of water allocations in the *Water Act 2000*

Refer to [0-8100] and [0-8200] and [0-8300].

Practice

Lease

[7-2000]

To be registered, a lease is prepared in Form 7, together with covenants and conditions contained in a Form 20 – Annexure or a registered standard terms document identified by dealing number, or a combination of these.

Only one copy of the lease is to be presented for registration.

If there is a prior registered mortgage, the mortgagee's consent will not be a prerequisite to registration.

The lease must be noted with duty, if applicable (see [7-0060]). Lodgement fees are payable.

Execution

[7-2010]

The lessor and lessee must execute Items 8 and 9 of the Form 7, respectively.

For executions see part 50 – Companies and Corporations, esp [50-0130] [50-0140] and [50-2000] and part 61 – Witnessing and Execution of Instruments or Documents, esp [61-3000].

Rental

[7-2020]

Item 7 of the Form 7 provides for rental to be stated. If there is insufficient space, Item 7 may show ‘See Schedule’ or ‘See Document No ...’. Failure to insert rental details will prevent registration of the lease.

Consent

[7-2030]

Consents should be prepared on Form 18. All consents to a lease should be bound into the lease. Consents to a lease or amendment of lease are required by:

- any mortgagee of the fee simple or water allocation if the lease is to be valid against the mortgagee (s. 66 of the *Land Title Act 1994*). However, consents of mortgagees are not a prerequisite to registration.
- ¹a life tenant, if a lease is granted by a trustee, personal representative or registered proprietor and a charge for a life estate is registered.

¹Local Government Approval

[7-2035]

Approval of the relevant local government is required for leases and some instruments that affect leases of any part of a lot external to a building. Approval is required to a lease of:

- part of a lot;
- part of the common property in a community titles scheme;
- part of a lot or part of the common property, in a building units or group titles plan for those developments that relate to a specified Act referred to in the *Body Corporate and Community Management Act 1997* (see [7-0050]);

if the term of the lease (including option/s to renew) is more than ten years.

Approval is required to any amendment of a lease that extends the term (including option/s to renew) beyond ten years if the lease has not been approved.

The instrument of lease or amendment must be lodged within six months of the local government approval.

Note: Leases of the whole or part of a building, irrespective of the number of the floors, or the term of the lease, do not require local government approval unless part of the land outside the building is also included.

Lease of Water Allocation – Special Requirements

[7-2036]

Water Allocation Managed under a Resource Operations Licence

In addition to other relevant requirements for a lease, a lease of a water allocation managed under a resource operations licence must be accompanied by a Form W2F152 — Notice to registrar of water allocations of existence of water supply contract.

Water Allocation Not Managed under a Resource Operations Licence

In addition to other relevant requirements for a lease, a lease of a water allocation not managed under a resource operations licence must be accompanied by a Water Allocation Dealing Certificate.

¹Lease by Body Corporate for a Community Titles Scheme

[7-2037]

When the body corporate of a community titles scheme executes a lease of the common property as lessor a certificate, in accordance with the scheme's regulation module, authorising the transaction must be deposited with the instrument of lease.

Requirements Specific to Lessee

Co-Lessees

[7-2040]

If there is more than one lessee, Item 3 of the Form 7 must show how the lessees intend to hold the lease between them. Where the lease does not show whether the co-lessees are to hold as tenants in common or as joint tenants, the lease will be requisitioned for the item to be completed. If holding as tenants in common, the share each lessee intends to hold must also be shown.

Trustee

[7-2050]

If the lessee is to be recorded as a trustee, the words 'as trustee' must be inserted after the lessee/s name/s in Item 3 (refer to [7-4030]).

There is no longer a requirement to provide details of the trust instrument when lodging a lease to a trustee lessee (e.g. by depositing a certified copy of the trust deed or referring to a previous dealing where the trust deed was deposited).

For the specific requirements in relation to the transfer of a lease interest to a trustee lessee using a Form 1 – Transfer – see Part 1, esp [1-2390].

Where a lessee holds as trustee and wishes to appoint a new trustee, this should be done by using a Form 1 – Transfer (see Part 1, esp [1-2400] to [1-2430]).

Foreign Person or Foreign Corporation

[7-2060]

If a lessee is a company incorporated outside of Australia that is not registered in Australia under the *Corporations Act 2001* (Cth) (with an ARBN), evidence of incorporation from that country must be lodged, together with a translation by an acceptable interpreter if the evidence of incorporation is in a language other than English.

If the lease is to a foreign government, an Order in Council in terms of s. 4(1) of the *Foreign Governments (Titles to Land) Act 1948* authorising the lease and a certificate in terms of s. 4(4) of that Act if the lessee is a nominee of the foreign government, are required.

¹If the term of a freehold lease or sub-lease of State leasehold to a foreign person (foreign individual, foreign corporation or trustee of a foreign trust as defined in the *Duties Act 2001*) exceeds 25 years (inclusive of further term/s available under any option/s), a Form 25 – Foreign Ownership Information must be lodged with the Form 7 for noting on the Foreign Ownership of Land Register (see Part 25 and the *Foreign Ownership of Land Register Act 1988*). Please note that a foreign individual does not include a permanent resident of Australia.

Mortgagee in Possession

[7-2070]

A mortgagee in possession may only grant a lease if there is express authority to do so in the mortgage instrument as there is no specific legislative authority in Queensland. Before a mortgagee in possession may lease the mortgaged property, evidence by way of a declaration of the mortgagor's default and of service of a notice of demand must be produced. The mortgagee's lease in Form 7 must be accompanied by a declaration as to the default and service of the notice on the mortgagor (preferably in Form 20), with a copy of the notice attached. Where a mortgagee enters into subsequent leases, evidence of any continuing default by the mortgagor must be produced.

One of the effects of the mortgagee acting in this manner is to encumber the mortgagor's right to redemption. Accordingly, if the mortgage is redeemed, the registered lease (granted by the mortgagee) remains as an encumbrance over the property affected. Similarly, where the property is sold or the mortgagee exercises its power of sale, any registered lease granted by the mortgagee remains as an encumbrance on the title of the purchaser.

Where a mortgagee in possession has granted a lease:

- the mortgagee in possession may deal with, or execute a surrender of, the lease as lessor; or
- a person other than the mortgagee in possession may obtain an order of the court to remove the lease.

Where the mortgage is no longer registered on title, the current lessor may deal with the lease.

[7-2080] deleted

Merger of Lease

[7-2090]

Where there is a merger of lease, the lessee may make application in Form 14 – Request to Record Merger to record the merger of lease. This is a purely voluntary application and will not be requested by requisition.

The consent of any mortgagee of the lease must also be deposited. A duty notation is not required. However, lodgement fees are payable.

Concurrent Lease

[7-2100]

To register a concurrent lease on the indefeasible title, the examiner will inspect the lease to ensure that one of the following has been included:

- (a) the consent (in Form 18) of the original lessee to the concurrent lease; or
- (b) the words 'concurrent with Lease No ...' (inserted following the description of the leased area in Item 5 of the Form 7); or
- (c) a covenant to that effect (inserted in the schedule of covenants).

Both the original and concurrent leases will remain on the title.

Prior Registered Lease

[7-2110]

The following table determines the requirements for surrender, cancellation or removal of registered leases, in cases where a lease is lodged ('New Lease') and there is a prior registered lease on the indefeasible title or water allocation title ('Existing Lease').

- 'Extensions' refers to any period for which the initial term of the lease has been extended pursuant to a Form 13 – Amendment of Lease;
- 'Option Period' refers to the period of a further term pursuant to an option to renew.

This table only applies when the New Lease is over the same premises or interest (being a lot, a water allocation, or part of a lot) as the Existing Lease. ¹It does not apply to a lease of a different part of a lot (e.g. a different shop in a shopping centre, or a different Lease area on a Survey Plan).

Where an Existing Lease is being surrendered by operation of law – a letter from the lessee or the lessee's solicitor should be deposited confirming that written notice of the surrender by operation of law has been given to each registered mortgagee or sub-lessee of the Existing Lease including the date and method by which each notice was given (s. 69(3) of the *Land Title Act 1994* and s. 328(4) of the *Land Act 1994*). If a Form 18 – Consent from a registered mortgagee or registered sub-lessee of the Existing Lease is deposited this will be accepted as evidence that the required notice has been given to the consenting party.

Time Relating to Existing Lease			
	Lodged During Initial Term (including Extensions)	Lodged During First Option Period	Lodged When Initial Term (including Extensions) and Option Period have Expired
New Lease to Same Lessee	<p>New Lease for residual, longer or shorter period than term or term plus Extensions:</p> <p>A letter from the lessee or the lessee's solicitor confirming that written notice of the surrender by operation of law has been given to each registered mortgagee or registered sub-lessee of the Existing Lease (including the date and method by which each notice was given).</p> <p>(If a Form 18 – Consent from a registered mortgagee or registered sub-lessee is deposited this will be accepted as evidence that the required notice has been given to the consenting party)</p> <p><u>Existing Lease surrendered by operation of law.</u></p> <p>Existing Lease and associated dealings (except sub-leases) removed from title.</p>	<p>New Lease for residual, longer or shorter period than the Option Period:</p> <p>A letter from the lessee or the lessee's solicitor confirming that written notice of the surrender by operation of law has been given to each registered mortgagee or registered sub-lessee of the Existing Lease (including the date and method by which each notice was given).</p> <p>(If a Form 18 – Consent from a registered mortgagee or registered sub-lessee is deposited this will be accepted as evidence that the required notice has been given to the consenting party)</p> <p>Existing Lease and associated dealings (except sub-leases where surrendered by operation of law) removed from title.</p>	<p>No additional requirement.</p> <p><u>Existing Lease expired.</u></p> <p>Existing Lease removed from title.</p>

	Lodged During Initial Term (including Extensions)	Lodged During First Option Period	Lodged When Initial Term (including Extensions) and Option Period have Expired
New Lease to Different Lessee	New Lease for residual, longer or shorter period than term or term plus Extensions: Concurrent lease if indicated by New Lease or if existing lessee acknowledges New Lease (Form 18 – General Consent). Both leases remain on title. If not concurrent lease, either surrender (Form 8*) or determination (Form 14**) of Existing Lease required. Existing Lease removed from title by surrender or determination.	New Lease for residual, longer or shorter period than the Option Period: Concurrent lease if indicated by New Lease or if existing lessee acknowledges New Lease (Form 18 – General Consent). Both leases remain on title. If not concurrent lease, complete item 8 – the option has not been exercised or a declaration by lessor that option has not been exercised; surrender of Existing Lease (Form 8*); or determination of Existing Lease (Form 14**) required. Existing Lease removed from title.	No additional requirement. <u>Existing lease expired.</u> Existing Lease removed from title.
No New Lease – Lessor wants Existing Lease Removed from Title	Surrender (Form 8*) or determination (Form 14**) of Existing Lease required. Existing Lease removed from title by surrender or determination.	Surrender (Form 8*) or determination (Form 14**) of Existing Lease or Request to Remove Lease from title with declaration by lessor that option not exercised (Form 14**). Existing Lease removed from title by surrender, determination or Request to Remove Lease.	Request to Remove Lease from title (Form 14 – no lodgement fee is payable and no duty notation is required). Existing Lease removed from title.

* A lodgement fee is payable (see the Titles Fee Calculator available online) and a duty notation is required.

** A lodgement fee is payable (see the Titles Fee Calculator available online) and a duty notation is required if the lease commenced before 1 January 2006.

Amendment of Lease

[7-2120]

A registered lease is amended by lodging a Form 13 – Amendment of Lease (see part 13, esp. [13-2000]).

¹Retirement Village Lease

[7-2130]

Retirement village leases are usually granted for a term of years or the life of a lessee (or the surviving joint lessee). The latter leases terminate upon the death of the lessee (or surviving lessee). In leases with this term, the words relating to the termination date in Item 6 of the Form 7 may be deleted and the words ‘or on the death of the lessee’ as appropriate, inserted together with or in place of the termination date. Item 6 must not state words such as ‘refer to clause [number] in the lease’.

Retirement village leases often contain a power of attorney clause, where the lessee grants power to the lessor to surrender the lease if an event occurs that would end the lease. Such powers of attorney cannot be used to execute documents in cases of death or mental incapacity of the lessee unless they are irrevocable in terms of s. 10 of the *Powers of Attorney Act 1998* (see further part 16 – Request to Register Power of Attorney or Revocation of Power of Attorney).

Death of Lessee

[7-2140]

On the death of a joint lessee, a Form 4 – Request to Record Death should be lodged. On the death of a sole lessee or a lessee tenant in common, a Form 5, 5A or 6 – Transmission by Death Application should be lodged. In either case, no copy of the lease will be required to accompany the application.

If a sole or surviving lessee of a lease for the life of a lessee dies during the currency of the lease, the death of the lessee must be recorded, by lodging a Form 4 – Record of Death, to extinguish the lease from the register. This request must be made either by the personal

representative or the registered owner if authority to do so is contained in the lease. Such request must be supported by evidence of the death of the lessee and the applicant's authority to act in that capacity (e.g. the original probate).

For more information see part 4, esp [4-4060] or part 5.

Option for Renewal

[7-2150]

The exercise of an option to renew a lease may be registered by registering a new lease for the term specified in the option to renew in the original lease.

Duty must be noted, if applicable (see [7-0060]). Lodgement fees are payable.

The Registrar does not automatically remove expired leases from the title.

(For more information on the removal of leases from the register, see [7-2110] and [7-2200].)

Option to Purchase

[7-2160]

No reference is made to options to purchase in lease endorsements on the indefeasible title, nor is an enquiry made by the Registrar whenever a subsequent transfer is lodged to ensure that the option has not been disregarded.

Sub-Lease

[7-2170]

The formalities required for the creation and registration of a sub-lease are similar to those for a lease. Leases may contain covenants prohibiting or restricting sub-letting, but the Registrar will not review the head-lease to ensure that such prohibitions or restrictions are observed. If a sub-lease is presented in registrable form, it will be registered without investigation. The sub-lease must be in Form 7 with the covenants contained in an annexed Form 20 – Schedule or incorporated by reference to a registered 'standard terms document', or a combination of both.

Duty must be noted, if applicable (see [7-0060]). Lodgement fees are payable.

A Form 18 – General Consent from any mortgagee of the lot may be obtained and lodged but this is not a prerequisite to registration.

¹It was previous practice, when a lot was subject to a number of leases (e.g. shopping centres), to record all transactions relating to a lease on the original copy of the registered lease held in the register and not on the indefeasible title. To ensure that all recordings for leases registered prior to April 1994 are identified, it is prudent to search both the indefeasible title and the registered original lease.

Transfer of Lease

[7-2180]

See part 1 – Transfer, esp [1-2480].

Dealing with Expired Lease

[7-2190]

Where a dealing with a lease is lodged after the initial term and any first unexercised option period, it will be registered if it was executed **in** the initial term.

Where a dealing with a lease is lodged after the initial term and any first unexercised option period, it will not be registered if it was executed **after** the initial term.

Where a dealing with a lease is lodged in the first option period which has not been exercised, the following will apply:

- if the dealing has been executed in the initial term, the dealing may be registered
- if the dealing has been executed in the first option period which has not been exercised the dealing must be preceded by a Form 13 – Amendment to extend the term of the lease.

An amendment of a lease must not be lodged after the lease's term (which includes any first unexercised option period) has ended (s. 67(2)(c) *Land Title Act 1994*).

Cancellation of Expired Lease

[7-2200]

The Registrar does not automatically remove expired leases from the title. However, where the appropriate form is lodged an expired lease will be removed (see [7-2110] for details).

Where a new lease over:

- the same lot; or
- ²same part of a lot

is lodged, the Registrar will remove an existing lease, in which the initial term and options have expired, in conjunction with an examination and registration of the new lease.

Where there is no option to renew or the period equivalent to a further term available under an option to renew has expired and no amendment has been lodged to extend the lease, the registered owner may at any time apply in a Form 14 – General Request to cancel the lease and remove it from the title. No lodgement fee is payable.

Where the lease contains an option for renewal and the period equivalent to a further term available under the option has not expired, the Form 14 – General Request to remove the lease from the title must be accompanied by a Form 20 – Declaration by the lessor confirming that the option was not exercised by the lessee. A solicitor or other authorised agent of the lessor may also make this statutory declaration provided the wording used in the statement reflects that they are authorised to do so. The Request may deal with multiple leases on one title or one lease on multiple titles. Lodgement fees are payable.

²It is recommended that instruments that require the creation of an indefeasible title be preceded by a Form 14 – Request to Remove all expired leases. The Request should be made by the registered owner (lessor) and should include all leases:

- (a) where the initial term, including any extensions registered by a Form 13 – Amendment of Lease, has expired and no option for renewal exists;
- (b) where the initial term and any period equivalent to a further term available under an option to renew have expired; and
- (c) with an option to renew that was not exercised by the lessee.

No lodgement fees are payable for leases in (a) or (b). Lodgement fees are payable for leases in (c). A Request relating to leases in (c) must be supported by a declaration by the registered owner (lessor) to the effect that the option was not exercised. No duty notation is required for requests for leases in (a) or (b). A duty notation is required for a request for a lease in (c) if the term of the lease commenced prior to 1 January 2006.

A single Form 14 – Request to Remove expired leases may be used for multiple leases over any number of lots owned by one registered owner.

See Example 4 in Part 14 – General Request for an example of a Request to remove an expired lease from the title.

¹Survey requirements of a lease over part of a lot

[7-2205]

Item 5 of the Form 7 contains a description of the demised premises (the leased area). If the demised premises comprise the whole of a lot, no further means of identification is required.

If part of a lot is leased, a plan of survey or explanatory format plan identifying the part of the land must be lodged to precede the instrument of lease. If part of a building and part of the lot outside the building is leased, a sketch of the part of the building must be deposited and a plan identifying the part of the land is required to be lodged to precede the instrument of lease. The plan must be prepared in accordance with direction 4.8.2 and either direction 8 or 10 of the Registrar of Titles Directions for the Preparation of Plans.

A sketch plan contained in a prior registered lease is not acceptable for identifying a leased area in a new lease of part of a lot.

Leases are to be described on plans by an alpha descriptor, for example – lease A (etc) in lot [number] on [Plan type and number] (e.g. Lease A in Lot 1 on SP123456). For the requirements describing leases on plans see direction 4.8.2 of the Registrar of Titles Directions for the Preparation of Plans (see also part 21 – Plans and Associated Documents, esp [21-2090]).

¹Sketch

[7-2210]

If part of a building on a lot is leased, the premises must be sufficiently identified, either by means of a description satisfactory to the Registrar or a sketch, which conforms to the standards, required by the Registrar (s. 65 of the *Land Title Act 1994*). An additional fee is payable for the examination of a sketch. For specific information on the requirements for a sketch, see Direction 5 of the Registrar of Titles Directions for the Preparation of Plans.

A lease sketch must only hatch, hachure or boldly outline that area which is the subject of the lease. Additional hatched/hachured/outlined areas not specified in Item 5 of the Form 7 – Lease are not permitted to be included on the sketch.

Where a relaxation of the above requirement is sought, as two or more leased areas have been hatched, hachured or outlined on the one sketch plan, a letter from the solicitor who prepared the lease is required. The letter should be on firm letterhead, confirming that only the leased area/s shown in Item 5 are being leased, include a description of the leases (including real property description) and be signed by a solicitor.

When the roof of a building is leased, it is regarded as being a lease of land. Consequently, the plan must define the roof height and the leased area as a volumetric parcel. The plan must be drawn to conform with the usual standards required for a volumetric plan of part of the land and the normal local government approval requirements apply.

The lease of space for signage on the wall of a building will require similar attention.

[7-2220] to [7-2340] deleted

¹General Comments

[7-2350]

Architectural or building plans are not acceptable.

Sketches must be securely bound into the lease document, i.e. with one staple in the top left corner.

Prior to registration, when an original sketch plan in an instrument is deficient and is replaced by a new one, the original sketch plan should be marked 'cancelled' and initialled by all parties. The new sketch plan should be signed by all parties and both sketch plans securely bound into the lease document.

Amendments to the area of a registered lease are not permitted (s. 67(3) of the *Land Title Act 1994*).

Approval of the relevant local government on Form 18 is required to some leases (see [7-2035]).

Note: Leases of the whole or part of a building, irrespective of the number of the floors, or the term of the lease, do not require local government approval unless part of the land outside the building is also included.

¹Master Sketch

[7-2355]

When a title is affected by multiple leases, the Registrar may request the deposit of a master sketch showing all the leased areas of the centre/complex. The master sketch is not to be included as part of the lease lodged for registration. See Direction 5.3.9 of the Registrar of Titles Directions for the Preparation of Plans for the standards for a master sketch.

[7-2360] deleted

¹Examples of Sketches

[7-2370]

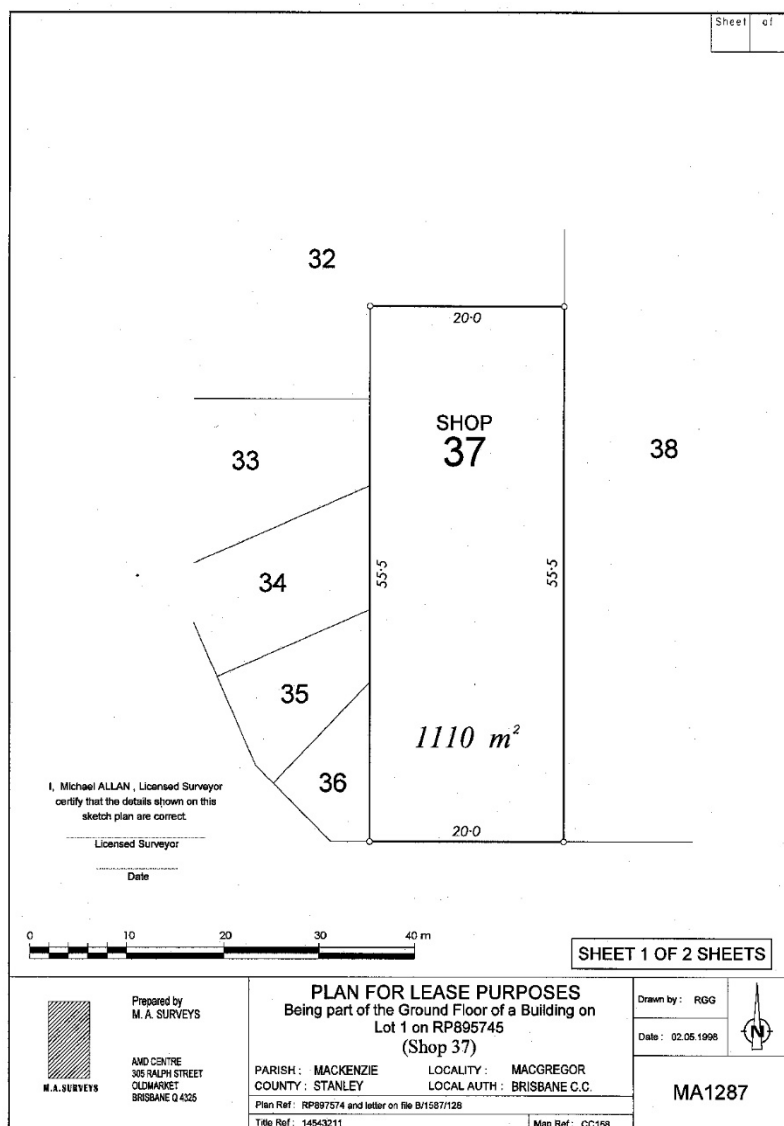
The following examples of sketches are set out below:

- (1) lease of part of a building with a high value and/or long term, lodged with a site plan;
- (2) site plan by direct connection;
- (3) site plan by offsets;
- (4) master sketch for multiple leases;
- (5) identifier table to accompany a master sketch for multiple leases;
- (6) sketch for a lease of part of a building with a high value and/or long term;
- (7) sketch for a lease of part of a building with low value and short term.

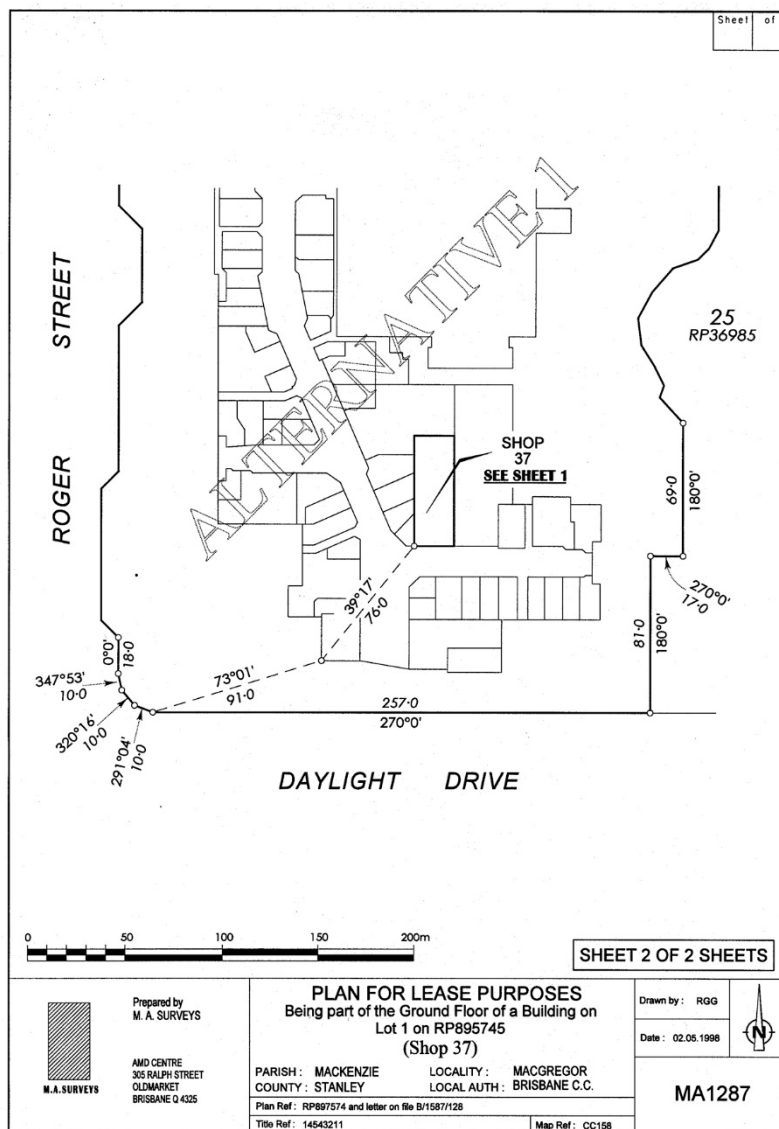
Example of a sketch for a lease of part of the ground floor of a building with multiple leases of high value and/or long term

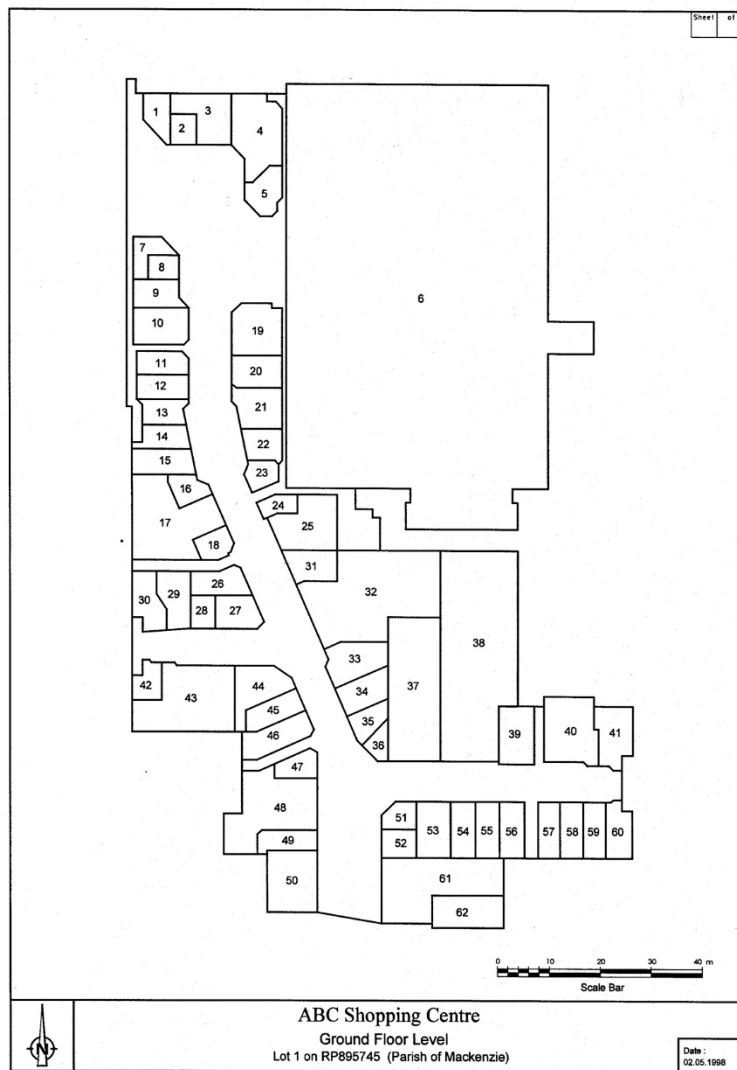
NOTE:

- 1 A sketch plan of a lease of high value and/or long term must be certified by a Licensed Surveyor.
- 2 Scale may be indicated by a ratio or by a barscale or by both. The sketch may be photo reduced only when the barscale is used.
- 3 This sketch must be accompanied by a location sketch. For examples see Alternatives 1 or 2.



Example of location by direct connection

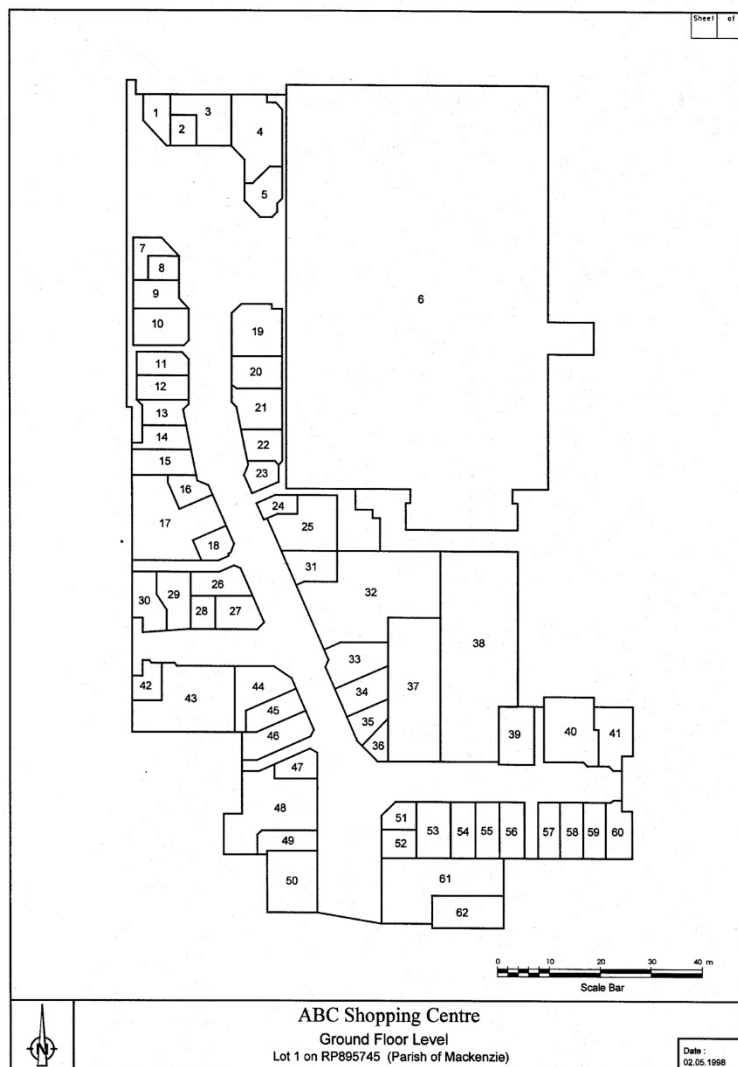


Example of location by offsets

Example of master sketch of multiple leases

NOTE:

This sketch must be drawn on paper that is no larger in size than International A1 and may be drawn over a number of sheets.



Example of table of leases to accompany master sketch

IDENTIFIER	DEALING NUMBER	IDENTIFIER	DEALING NUMBER
1		50	
2		51	
3		52	
4		53	
5		54	
6		55	
7		56	
8		57	
9		58	
10		59	
11		60	
12		61	
13		62	
14			
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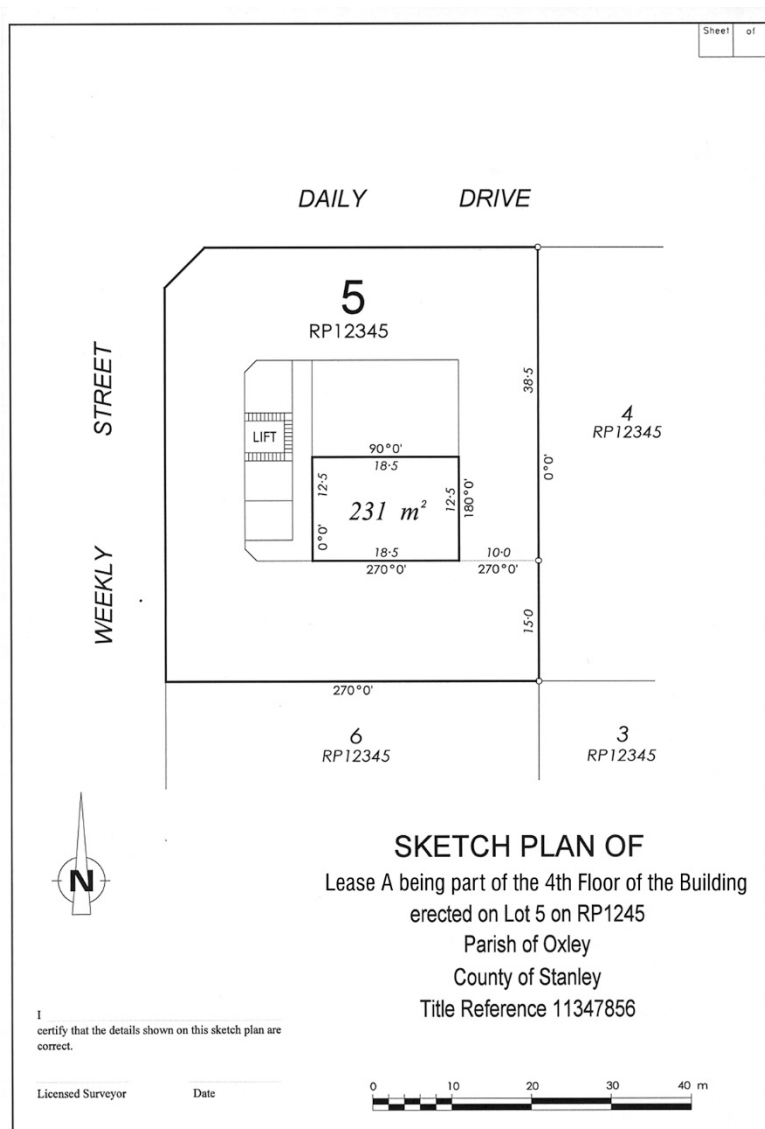
ABC Shopping Centre
Ground Floor Level
 Lot 1 on RP895745 (Parish of Mackenzie)

Date:
 02.05.1998

Example of a sketch for a lease of part of a building with low value and short term

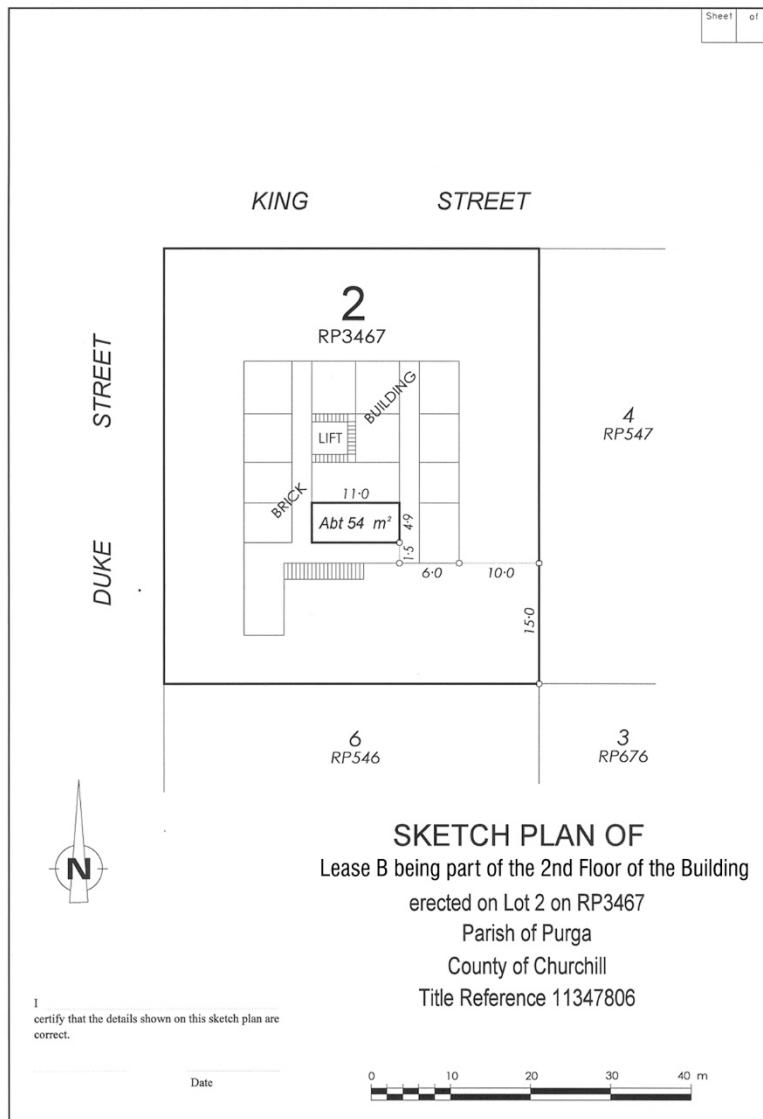
NOTE:

- 1 A sketch plan of a lease of high value and long term must be certified by a Licensed Surveyor.
- 2 Scale may be indicated by a ratio or by a barscale or by both. The sketch may be photo reduced only when the barscale is used.



Example of a sketch for a lease of part of a building with high value and/or long term**NOTE:**

- 1 *A sketch plan of a lease of high value and long term must be certified by a Licensed Surveyor.*
- 2 *Scale may be indicated by a ratio or by a barscale or by both. The sketch may be photo reduced only when the barscale is used.*



Forms

General Guide to Completion of Forms

[7-4000]

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

Dealing Number



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Collection of information from this form is authorised by legislation and is used to maintain publicly searchable records. For more information see the Department's website.

1. Lessor	Lodger (Name, address, E-mail & phone number)	Lodger Code
SUBURBAN SHOPPING CO PTY LTD ACN 685 742 321	SACHS & CO. SOLICITORS 45 ALBERT STREET BRISBANE QLD 4000 mail@sachsco.com.au (07) 3227 9850	102

2. Lot on Plan Description	Title Reference
LOT 42 ON RP99332	13431166

3. Lessee	Given names	Surname/Company name and number	(include tenancy if more than one)
PARKER JAMES		SCRIVNER	AS JOINT TENANTS
AQUILLA NEIL		SCRIVNER	

4. Interest being leased
FEE SIMPLE

5. Description of premises being leased
PART OF THE GROUND FLOOR OF THE BUILDING (LEASE A) AS SHOWN ON THE SKETCH HEREIN

6. Term of lease	7. Rental/Consideration
Commencement date/event: 1/12/2007 Expiry date: 30/11/2011 and/or Event: #Options: 2 x 3 years #Insert nil if no option or insert option period (eg 3 years or 2 x 3 years)	SEE STANDARD TERMS DOCUMENT 700144350

8. Grant/Execution
The Lessor leases the premises described in item 5 to the Lessee for the term stated in item 6 subject to the covenants and conditions contained in:- *the attached schedule; *the attached schedule and document no. ; * document no. 700144350.....; *Option in registered Lease no. 712589347..... has not been exercised. * delete if not applicable

Witnessing officer must be aware of his/her obligations under section 162 of the Land Title Act 1994

.....signature	(seal) or Full name	J Thomas, Director JOHN PETER THOMAS
.....full name	of company to be shown	P Dean, Secretary PAUL IAN DEAN
.....qualification	1/12/2007
Witnessing Officer (Witnessing officer must be in accordance with Schedule 1 of the Land Title Act 1994 eg Legal Practitioner, JP, C Dec)	Execution Date	Lessor's Signature

9. Acceptance		
The Lessee accepts the lease and acknowledges the amount payable or other considerations for the lease.		
<i>E E Shield</i>		
.....signature		
EGERTON ELI SHIELD		<i>P J Scrivner</i>
.....full name		
JUSTICE OF THE PEACE (QUALIFIED) #22345		<i>A N Scrivner</i>
.....qualification	28/11/2007
Witnessing Officer	Execution Date	Lessee's Signature
(Witnessing officer must be in accordance with Schedule 1 of the Land Title Act 1994 eg Legal Practitioner, JP, C Dec)		

Guide to Completion of Form 7

Item 1

[7-4010]

Insert the full name of lessor or, in the case of a sub-lease, the full name of the lessee under the head-lease.

²If the lessor is a body corporate under a community titles scheme then insert ‘Body Corporate for [name of scheme] community titles scheme [scheme number]’ e.g. ‘Body Corporate for Seaview community titles scheme 1234’.

If the lessor holds on trust or as a personal representative, then this must be stated, e.g. ‘[name of lessor] as Trustee’ or ‘[name of lessor] as personal representative’.

Item 2

[7-4020]

¹Freehold Description

The description of the relevant lot/s should always read ‘Lot [no.] on [plan reference]’. Plan references must contain the appropriate prefix (e.g. ‘SP’ for a survey plan, ‘RP’ for a registered plan, ‘BUP’ for a building units plan, ‘GTP’ for a group titles plan or the relevant letters for Crown plans). The area of the lot/s is not shown.

The entire panel of Item 2 must be completed.

e.g.	Lot on Plan Description	Title reference
	Lot 27 on RP 204939	11223078

Item 2 must contain the description of the lot or lots and the title reference or references for the land that is affected by the lease, for example:

- for a multi-lot title, include only the descriptions of the lot or lots that the lease area spatially affects;
- where the lease is of part of a building and the building is situated on more than one lot or one title include only the lot or title that the lease area spatially affects.

Water Allocation Description

A water allocation should be identified as ‘Water Allocation’, ‘Allocation’ or ‘WA’. All plans referring to water allocations are Administrative Plans. Administrative Plan is abbreviated to AP as the prefix of the plan identifier.

All information needed to complete Item 2 will appear on a search of the water allocation title.

e.g.	Lot on Plan Description	Title reference
	WA 27 on AP 7900	46012345

Item 3**[7-4030]**

Insert the lessee's full name and tenancy if there is more than one lessee.

If holding as tenants in common, the share each lessee intends to hold must also be shown.

If the lessee is to be recorded as a trustee, the words 'as trustee' must be inserted after the lessee/s name/s in Item 3.

For example:

3. Lessee	Given names	Surname/Company name and number	(include tenancy if more than one)
	PARKER JAMES	SCRIVNER	AS TRUSTEE

¹If the lessee is a body corporate under a community titles scheme then insert 'Body Corporate for [name of scheme] community titles scheme [scheme number] e.g. 'Body Corporate for Seaview community titles scheme 1234'.

Item 4**[7-4040]**

Insert 'fee simple' or 'water allocation' or, if a sub-lease, the head lease number.

Item 5**[7-4050]**

Where the whole of every lot/s or the whole of every water allocation/s in the title/s described in Item 2 is being leased, insert in Item 5 'the whole of the land', 'the whole of the lot/s' or 'the whole of the water allocation/s'.

¹Where the whole of a lot or lots but not all of the lots on a multi-lot title described in item 2 is being leased insert in Item 5 the lot on plan description/s of only the lot or lots which are the subject of the lease.

¹If only part of the land described in Item 2 is being leased, insert in Item 5 'Lease [identifier] on SP [number] (must be a survey plan that is recorded in the registry)' eg, 'Lease A on SP976123'. Further, if the title consists of multiple lots but only one lot is affected by the part of land lease, then this lot should be included in the description (e.g. Lease A on SP123456 so far as relates to Lot 1 on RP281091 only).

¹If only part of the floor of a building including part of a building format lot described in Item 2 is being leased, insert eg, 'Part of the xth floor of the building being Lease [identifier] as shown on the sketch herein'.

Where a lease is of part of a building and the building is situated on more than one lot, the description of the premises being leased should also include reference to the lot/s that the lease physically affects e.g. 'Part of the xth floor being Lease [identifier] so far as relates to lot [number] on SP [number] only'.

Note: It is a requirement that the description of the lease area shown in Item 5 aligns with the description shown on the sketch.

Item 6**[7-4060]**

Complete the dates in full e.g. 16/10/2007 or events on which the lease commences and expires. The details of the option/s must be completed. Where the lease does not contain an option/s, insert Nil.

Item 7**[7-4070]**

Rental may be set out in a Form 20 – Schedule attached to the Form 7 or a supplementary document, in which case the panel should contain the words ‘see [Schedule/Document No. [number]]’.

Item 8**[7-4080]**

Complete as indicated and execute as required.

Item 9**[7-4090]**

Execute as required.

[7-6000] deleted

Case Law

***Broons & Lennox Hatfield Nominees Pty Ltd v Registrar of Titles* (unreported, OS No 285 of 1989)**

[7-7000]

A lease by a registered owner to himself/herself cannot contain enforceable covenants.

***Cowper v Fletcher* (1865) 122 ER 1270**

[7-7010]

A joint tenant may lease his/her interest to another without severing the joint tenancy.

***Sinclair v Connell* [1968] 1 NZLR 118**

[7-7020]

The term of a lease can be granted for the life of a lessor, a lessee or a named third person. This was followed in *Borambil Pty Ltd v O’Carrol* [1972] 2 NSWLR 302.

***The Center Pty Ltd v Thomas Magnus Pty Ltd* [1969] Qd R 452**

[7-7030]

The local government’s consent to a lease of part of a building erected on the land is only required if the leased premises comprise land outside of the building.

***Daniher v Fitzgerald* (1919) 19 SR (NSW) 260**

[7-7040]

Consent of a mortgagee does not affect the validity of a lease against third parties, but protects the lessee if the mortgagee takes possession of the fee simple.

***Mercantile Credits Ltd v Shell Co Aust Ltd* (1976) 136 CLR 326**

[7-7050]

An option to renew contained in a registered lease is protected by registration of that lease.

***Friedman v Barrett, Ex p Friedman* [1962] Qd R 498**

[7-7060]

Option/s to renew a short lease beyond three years from the commencement of the original term must be registered to achieve indefeasibility.

***Medical Benefits Fund of Australia Ltd v Fisher* [1984] 1 Qd R 606**

[7-7070]

The registered owner of a new indefeasible title holds its interest free from all interests not notified on the new indefeasible title.

Re Eastdoro Pty Ltd [1990] 1 Qd R 424**[7-7080]**

Where a registered lease contains options for renewal, the options are indefeasible interests. Therefore the due exercise of each of the options for renewal is enforceable against a proprietor who becomes registered after registration of the lease.

Massart v Blight (1951) 82 CLR 423**[7-7090]**

The lack of lessor's consent will not prevent the valid passing of a leasehold estate.

Fees**[7-8000]**

Fees payable to the Titles Registry are subject to an annual review. Refer to the Titles Fee Calculator available online or see [60-8000].

Cross References and Further Reading**[7-9000]**

See part 8 – Surrender of Lease for details relating to:

- surrender of lease by operation of law, [8-0020]
- surrender of lease by the lessee, [8-0030]
- disclaimer of lease, [8-0050] and [8-2010]
- surrender of lease under power of attorney to surrender, [8-0060] and [8-2020]
- determination of lease by re-entry by lessor, [8-0070] and [8-2030]

Duncan and Vann, *Property Law and Practice in Queensland: being a commentary on the Property Law Act 1974*, Law Book Co, 1982.

Halsburys: Laws of England (4th edn), Butterworths, 1973-1987.

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Notes in text**[7-9050]**

Note ¹ – This numbered section is not applicable to water allocations or the Water Allocations Register.

Note ² – This paragraph or statement is not applicable to freehold land.