

# **<sup>1</sup>Part 21 – Plans and Associated Documents**

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## **<sup>3</sup>Part 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 by resurvey;
- amalgamating two or more lots to create a smaller number of lots;
- defining an area for an easement, lease, profit a prendre or covenant; and
- any other purpose that the Registrar may require the registered proprietor to undertake.

A plan of survey does not include a sketch plan.

### **Definitions**

[21-0010]

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

1. ‘lot’ is defined in Schedule 2 of the *Land Title Act 1994*, Schedule 6 of the *Land Act 1994* and Schedule 2 of the *Planning Act 2016*.

2. ‘plan of subdivision’ is defined in s. 49 of the Land Title Act and s. 290E of the Land Act.

There is a definition of ‘plan of subdivision’ in Schedule 24 of the *Planning Regulation 2017*. This term is intended to be similar to ‘plan of subdivision’ under the Land Title Act and Land Act, but is to be used in the context of assessing a planning body approval.

3. ‘reconfiguring a lot’ is defined in Schedule 2 of the Planning Act

4. ‘planning body’ means the relevant local government, or where applicable, the Minister for Economic Development Queensland or the Coordinator-General (s. 50(6) of the Land Title Act).

[21-0020] to [21-0040] deleted

### **Legislation**

[21-1000]

#### **Reference to the registrar of titles in the *Land Title Act 1994* and *Land Act 1994***

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

# Practice

## Plan of Survey

[21-2000]

A plan of survey is a diagrammatic representation of a parcel or parcels of land showing location and dimensions. A plan may also show monuments, both natural (e.g. a lake, stream or cliff) and artificial (e.g. 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 and approved by the planning body, if required, the plan is lodged in the Land Registry.

On registration by the Registrar, plans become part of the relevant register.

The freehold land register records details about ownership and other interests on the indefeasible title for a lot. It provides a record of all registered surveys and the unique identifier ('Lot [number] on [Plan reference]') of each lot. It also facilitates the lodgement of dealings with individual lots and interests.

## Preparation of Plan

[21-2010]

Plans of survey must be prepared on the approved form; Form 21 – Survey Plan (Main Plan), Form 21B – Survey Plan (Administration Sheet) and if required, multiple Form 21A – Survey Plan (Additional Sheet).

A plan of survey in paper form must be printed on paper that is international sheet size A3 and of a density at least 80gm to a square metre.

All plans of survey must be drawn to the requirements set down in the Registrar of Titles Directions for the Preparation of Plans and the Cadastral Survey Requirements, and must comply with the requirements of s. 50 of the *Land Title Act 1994* and other relevant legislation.

## Plan Formats

### Format

[21-2020]

Standard, Building, Volumetric and Explanatory format plans use the same plan form, however the requirements for preparation of each format differ and are set out in the Registrar of Titles Directions for the Preparation of Plans.

The spatial characteristics of the lots or interests depicted on a plan are derived from the format of the plan used.

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.

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'.

**Standard Format Plan****[21-2030]**

A standard format plan defines parcels two dimensionally, at ground level. The new parcel will be 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).

A standard format plan cannot subdivide a single building format lot or a single 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****[21-2040]**

A building format plan creates lots bounded by structural elements. 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.

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****[21-2050]**

A volumetric format plan creates lots that are defined by three dimensional co-ordinate geometry and are fully defined by bounding surfaces (e.g. a cube). The lots may be above, below or partly above and partly below ground level.

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****[21-2060]**

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

The purpose of an explanatory format plan is to provide a depiction of 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.

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.

Every explanatory format plan to be lodged in the Land Registry must have been approved by the Registrar of Titles in writing prior to lodgement. The approval of the Registrar is required to be deposited with the plan upon lodgement.

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

## Plan of Subdivision

[21-2070]

A plan of subdivision is a plan of survey that may provide for 1 or more of the following:

- division of 1 or more lots;
- amalgamation of 2 or more lots to create a smaller number of lots;
- dedication of land to public use;
- redefinition of a lot on a resurvey.

A plan of subdivision may require the approval of the relevant planning body (see [21-2130]). Additional approvals to the plan may be also required in some cases (see [21-2140] to [21-2210]). Where the land is affected by a mortgage, lease, easement, profit a prendre or statutory covenant, consents of relevant parties may be required (see [21-2230]). The plan must be consented to by the registered owner by way of completion of a Form 18A – Registered Owners/Lessees Consent to Survey Plan and all relevant items must be completed by the appropriate person (see [21-2220] and [21-4010]).

Where the title to land being subdivided is noted with a Road Licence (RDL) endorsement this will not prevent the registration of the plan. On registration of plan the (RDL) endorsement will be recorded on all the new titles created for the land that abuts/adjoins the Road Licence. It is suggested that lodgers contact State Land Asset Management (SLAM) to address the issue of the Road Licence prior to lodgement of the plan.

## Plan of Survey for Easement

[21-2080]

### When is a plan of survey required?

Note: this section about when a plan of survey is required does not apply to high-density development easements under Part 6 Division 4AA of the *Land Title Act 1994*.

Section 83 of the *Land Title Act 1994* requires that, 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 extent of the easement is defined by the registered plan depicting the lot.

Section 83A(1) of the *Land Title Act* 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.

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*).

### When is Planning Body approval required?

A plan of survey depicting an easement that gives access to a lot from a constructed road is the reconfiguring of a lot under the *Planning Act 2016*, and must have the approval of the planning body concerned, when the implementing easement instrument is lodged.

Notwithstanding that the easement is for another purpose in addition to access, the registered plan of survey will still require the approval of the planning body.

In the majority of cases, planning body approval is required for each plan of survey 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, planning body approval is required for each plan.

As there is no legislated definition for a ‘constructed road’, it is sufficient to require approval by the planning body concerned, if the road has been dedicated.

#### **What form should the planning body approval take?**

Where the plan of survey, depicting the easement, is unregistered at the time of lodgement of the easement instrument, planning body approval must be lodged with the plan of survey and:

- for plans of survey prepared using Form 21B Version 2, must be endorsed on Form 18B – Planning Body Approval of Survey Plan; or
- for plans of survey prepared using the previous Form 21B Version 1, must be endorsed on either:
  - Form 21B Version 1 in Item 2; or
  - Form 18B – Planning Body Approval of Survey Plan.

Where the plan of survey, depicting a proposed easement, has already registered at the time of lodgement of the easement instrument, planning body approval must be lodged with the easement instrument in Form 18B – Planning Body Approval of Survey Plan.

In any of the above cases, consent in Form 18 General Consent lodged with the easement instrument will continue to be acceptable.

In cases where an easement gives access to a lot from a constructed road, but the parties consider that planning body approval is not required, sufficient evidence must be deposited with the easement and Part 3 of Form 18B – Planning Body Approval of Survey Plan must be completed.

#### **General**

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. The depiction of an easement may be included with a survey of lots on a plan of subdivision.

A plan must not depict an easement in parts.

The plan must be accompanied by a duly completed Form 18A Registered Owners/Lessees Consent to Survey Plan.

Lodgement fees for a plan are payable.

## **Plan of Survey for Lease**

[21-2090]

Where part of a lot or part of common property which is external to a building is to be leased a plan of survey must be registered to define the boundaries of the area to be subjected to the lease (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.

One plan may be used to define any number of separate leases.

An area identifying a lease may be included with a survey of lots on a plan of subdivision.

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

A plan must not depict the lease in parts.

The plan must be accompanied by a duly completed Form 18A.

Lodgement fees for a plan are payable.

See also Part 7 Lease, [7-0050] and [7-2205].

## Plan of Survey for Profit a prendre

[21-2100]

Plans for profit a prendre purposes are required to define the boundaries of the area to be subjected to the profits a prendre when only part of a lot is involved (s. 97F (1)(b) of the *Land Title Act 1994* and s. 373I(1)(b) of the *Land 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.

A plan must not depict the profit a prendre in parts.

Plans of survey for profits a prendre do not require approval by the planning body.

The plan must be accompanied by a duly completed Form 18A.

Lodgement fees for a plan are payable.

## Plan of Survey for Covenant

[21-2110]

Plans for covenant purposes are required to define the boundaries of the area to be subjected to the covenant when only part of a lot is involved (s. 97B(1)(b) of the *Land Title Act 1994* and s. 373B(1)(b) of the *Land 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 or the Land Act 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 as proposed and there is no requirement for a covenant to be lodged immediately after the plan.

A plan must not depict the covenant in parts.

Plans of survey for covenants do not require approval by the planning body.

The plan must be accompanied by a duly completed Form 18A.

Lodgement fees for a plan are payable.

## Plan of Survey for Carbon Abatement Interest

[21-2115]

Plans for carbon abatement interest purposes are required to define the boundaries of the area to be subjected to the carbon abatement interest when only part of a lot is involved (s. 97O(3) of the *Land Title Act 1994* and s. 373S(3) of the *Land Act 1994*). These plans must comply with directions 4.8.2 and 24 of the Registrar of Titles Directions for the Preparation of Plans. One plan can be used to define any number of separate carbon abatement interests.

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

A carbon abatement interest may be included with a survey of lots on a plan of subdivision.

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

A plan must not depict the carbon abatement interest in parts.

Plans of survey for carbon abatement interests do not require approval by the planning body.

The plan must be accompanied by a duly completed Form 18A.

Lodgement fees for a plan are payable.

## Plan of Survey for Resumption

[21-2120]

### Generally

A constructing authority, defined in s. 2 of the *Acquisition of Land Act 1967*, may take land or an interest in land (for example, an easement) for a purpose stated in the schedule of the Act.

The Acquisition of Land Act provides that where part of a lot or an interest in a lot is to be taken, the land or interest to be taken must be identified on a plan of survey. If the whole of a lot is to be taken it may be described by reference to an existing description.

A plan of survey for a resumption action does not require the approval of a planning body (see [21-2130]) nor the consent of the mortgagee or other registered proprietors.

Lodgement fees are applicable except where the constructing authority is the State.

### Resumption of an Easement

Where a constructing authority is taking an easement, which is over part of a lot, a plan of survey depicting the easement is required to be registered.

The plan must:

- deal only with the taking of easement action;
- identify the taken area as an easement (a proposed easement is not permitted); and
- be accompanied by a Form 18A duly completed by the constructing authority.

The plan must be accompanied by a Form 14 – General Request to register resumption (see [14-2320])

### Resumption of Land

Where a constructing authority is taking part of a lot, a plan of subdivision depicting as new lots the land to be taken and the land not taken, is required to be registered.

The resumption plan must:

- deal only with the taking of land action;
- identify as a lot/s the area taken and identify the area remaining as a lot/s;
- not dedicate any new road; and
- be accompanied by a Form 18A duly completed by the constructing authority.

The plan must be accompanied by a Form 14 – General Request to register resumption (see [14-2320]).

### Approval by Planning Body

[21-2130]

A plan of subdivision that provides for the division of 1 or more lots, or the dedication of land to public use land must be approved by the relevant planning body, for example the local government or where relevant, the Minister for Economic Development Queensland (MEDQ) or the Coordinator-General (s. 50(1)(i) of *the Land Title Act 1994*).

The form of the approval by the planning body is by completing an accompanying Form 18B – Planning Body Approval of Survey Plan.

Where the plan of subdivision provides only for:

- the amalgamation of 2 or more lots to create a smaller number of lots; or
- the redefinition of a lot on a resurvey; or
- under the *Body Corporate and Community Management Act 1997*, chapter 2, part 3, division 2, the incorporation of a lot with common property or conversion of lessee common property within the meaning of that Act;

the approval of the relevant planning body is not required (s. 50(1)(h) of the Land Title Act).

Subsections 50(1)(h) and (i) of the Land Title Act do not apply to a plan of subdivision that, other than for s. 50(3) of the Land Title Act, would have been required to have been approved by the relevant planning body if—

- for a plan that would have required approval by the MEDQ—the plan is not a plan of subdivision as defined in the *Economic Development Act 2012*, s. 104; or
- for a plan that would have required approval by the relevant local government—the plan is not a plan for which a process for approving the plan is provided under the *Planning Act 2016*, s. 397.

Also ss. 50(1)(h) and (i) of the Land Title Act do not apply to a plan of subdivision that, under the provision of another Act, is a plan that is not required to be approved by the relevant planning body (s. 50(4) of the Land Title Act).

An approval of a plan of subdivision is current for 6 months from the date it is given (s. 50(5) of the Land Title Act).

Where land contained in a plan of subdivision is located within a number of planning body areas, separate planning body approvals are required. For example this would occur where land is located within more than one local government area.

The Planning Regulation 2017 provides for the approval of a plan of subdivision for reconfiguring a lot. Schedule 24 of Planning Regulation 2017 provides that the following reconfigurations are not included, which are therefore exempt from local government approval:

- (i) the acquisition of land, including by agreement, under the *Acquisition of Land Act 1967*, by a constructing authority or an authorised electricity entity, for a purpose for which land may be taken under that Act; or
- (ii) the acquisition of land by agreement, other than under the *Acquisition of Land Act 1967*, by a constructing authority or an authorised electricity entity, for a purpose for which land may be taken under that Act; or
- (iii) land held by the State, or a statutory body representing the State, that is being reconfigured for a purpose for which land may be taken under the *Acquisition of Land Act 1967*, whether or not the land relates to an acquisition; or
- (iv) the acquisition of land for water infrastructure; or
- (v) a lot that is, or includes, airport land, strategic port land or Brisbane core port land; or
- (vi) a plan lodged under the *Acquisition of Land Act 1967* section 12A, as a result of a reconfiguration stated in paragraph (i) above.

If a plan is withdrawn and re-entered under s. 159 of the Land Title Act or s. 308 of the Land Act, the time between planning body 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 and s. 290L of the Land Act).

If a plan is fully withdrawn or rejected and is presented for re-lodgement, the date it is re-lodged is used to assess the currency of the planning body approval (see the *Acts Interpretation Act 1954* for calculation of time).

### **Exemption from Approval**

Where a plan is exempt from local government approval under the provisions of regulation 69 and schedules 18 and 24 of the Planning Regulation 2017, for example a plan by a constructing authority for a resumption action, the plan must be accompanied by a duly completed Form 18B, signed by an appropriately authorised person, citing the relevant statutory authority for the exemption. The following statement is provided as an example:

This plan is exempt from local government approval under regulation 69 and schedules 18 and 24 of the Planning Regulation 2017.

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 cannot 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 and Australian Broadcasting 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.

## Additional Approvals

### Coastal Management

[21-2140]

The *Coastal Protection and 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 provisions in Division 4 of Part 2 of Chapter 6 of the *Coastal Protection and Management Act 1995* refer to planning 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).
- 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).

Where the application is made on or after the 20 October 2003 requirements under the Coastal Protection and Management Act apply (see [21-2170]).

[21-2150] deleted

### Artificial Waterways

#### Application made prior to 20 October 2003

[21-2160]

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

Any plan of survey creating a canal under the *Canals Act 1958* must show the canal as a separate lot and be marked as 'CANAL', including complete metes and bounds and an area. 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 planning body by way of a duly completed Form 18B, and then endorsed with the consent of the Governor in Council (s. 9(1)(e) of the Canals Act). The endorsement by the Executive Council will be signed by the Clerk of the Executive Council, and will be way of a duly completed Form 18B.

#### Application made after 20 October 2003

[21-2170]

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 on the face of the plan whether the artificial waterway is canal, artificial waterway or access channel.

The term ‘CANAL, ‘ARTIFICIAL WATERWAY’ or ‘ACCESS CHANNEL’ must be repeated wherever the lot number appears on the face of the plan, e.g.:

<b>Lot 37</b>		<b>Lot 85</b>		<b>Lot 106</b>
	or		or	
CANAL		ARTIFICIAL WATERWAY		ACCESS CHANNEL

In addition to the planning body approval to the subdivision, the completed Form 18B, the local government must certify on the Form 18B 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. Releases of any mortgages are not required for the canal lot(s).

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

A lot that is an artificial waterway or access channel is to be dealt with as a normal fee simple lot, i.e.:

- 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.

## Access

[21-2180]

The Registrar is not obliged to ensure that a lot has access to a public road except where the lot is to be dedicated to the State for public use. Where a lot is being dedicated for public use, other than as a road, non-tidal watercourse or a lake, s. 51A(a) of the *Land Title Act 1994* and s. 290JB(a) of the *Land Act 1994* apply. Access to the lot may be by way of:

- an abutting public road; or
- a public thoroughfare easement.

If a plan does not appear to comply with the above requirements, the Minister may, upon application, under s. 51A(b) of the *Land Title Act* or s. 290JB(b) of the *Land Act* approve a plan of subdivision providing for dedication of a lot without access being available. Generally in these cases access is through an adjacent reserve and:

- the adjacent reserve has dedicated access; and
- the adjacent reserve is for the same purpose as the public use land being dedicated; and
- the trustees of the public use land being dedicated are the same as the trustees of the adjacent reserve.

The Minister may grant the approval by letter or Form 18 – General Consent.

### **Reservation for a Public Purpose under s. 23 of the *Land Act 1994***

[21-2190]

Where a lot is the subject of a plan of subdivision and the indefeasible title for the lot contains a reservation for a public purpose under s. 23 of the Land Act and the location of the land reserved is not identified in the grant, prior to lodgement the plan must be referred to the Land and Surveying Services area of the relevant department for action. If the chief executive, under s. 23A of the Land Act, allocates the floating reservation to some or all of the lots created by the plan, a certificate to this effect will be made on the face of the plan and signed by a delegate of the chief executive. Alternatively, the chief executive's delegate can authorise the reservation allocation by way of a Form 18 – General Consent. The allocation certificate wording will still be shown on the face of the plan but the signature by the delegate will be provided on an accompanying Form 18.

For further information about the certificate see 2.9.2 of the Cadastral Survey Requirements.

### **Agreement under the *Local Government (Planning and Environment) Act 1990* or the *Local Government Act 1936***

[21-2200]

Agreements under the now repealed Local Government (Planning and Environment) Act or the Local Government Act, between the registered owner and the local government, were lodged for registration as a condition of the approval of a plan of subdivision. Typically the agreements related to lots to be held by the same registered owner.

There is no similar provision under the Planning Act 2016. However, s. 97A(3)(c) of the *Land Title Act 1994* and s. 373A(3) of the *Land Act 1994* allow for the registration of an instrument of covenant, which may contain similar conditions (see part 31 – Covenants).

An agreement may be cancelled with the approval of the relevant local government.

Where an agreement is cancelled in conjunction with a new plan of subdivision, a letter from the relevant local government approving cancellation must be deposited with the plan. On registration of the plan, the agreement will be removed from relevant indefeasible titles.

Where an agreement is to be cancelled and there is no new plan of subdivision lodged, an application in a Form 14 – General Request, signed by the registered owner, and the approval of the local government on a Form 18 – General Consent are required. Lodgement fees are applicable.

[21-2210] deleted

### **Consent by the Registered Owner/Lessee of a State lease**

[21-2220]

All registered owners/lessees must consent to the plan, by way of a duly completed Form 18A – Registered Owners/Lessees Consent to Survey Plan (s. 50(1)(b)(i) of the *Land Title Act 1994* or s. 290J(1)(g)(ii) of the *Land Act 1994*).

If a person consents to the plan, by way of a duly completed Form 18A, on behalf of the registered owner/lessee under a power of attorney, the power of attorney must be registered in the Titles 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 been delegated power to sell, this will be accepted as sufficient authority to subdivide.

When the subject land is owned/leased by a corporation, the official designations of the persons signing on behalf of the corporation must be shown on the Form 18A. The Australian Company Number should be included as part of the registered owner's name and in the seal if one is

affixed on the Form 18A (see Part 50 – Corporations and Companies and Part 61 – Witnessing and Execution of Instruments or Documents for more details).

A mortgagee in possession can execute a Form 18A on behalf of the registered owner(s)/lessee(s). Evidence of default and service of the notice of demand is required to be deposited. The appropriate manner to recite in Item 2 on the Form 18A is ‘XY as mortgagee in possession under Mortgage No [number]’. No reference to the registered owner’s name appears on the Form 18A, however, the new indefeasible titles will be created in the name of the registered owner, subject to the registered mortgage.

## Consents

### Consent of Mortgagee, Lessee, Covenantee or Grantee of an Easement, Carbon Abatement Interest or of a Profit a Prendre

[21-2230]

Section 50(1)(j) of the *Land Title Act 1994* requires that a plan of subdivision (see definition of *plan of subdivision* in s. 49 of Land Title Act) must be consented to by:

- all registered mortgagees of each lot the subject of the plan; and
- all other registered proprietors (for example a lessee, covenantee or the grantee of an easement or of a profit a prendre), whose interests are affected by a plan.

The term ‘affected’ in this context means, the spatial extent of a registered interest is intersected by the spatial extent of new road or a new lot (including a lot for public use) depicted on a plan. The registered interest is partly or wholly extinguished to the extent intersected.

The consent must be on a Form 18 – General Consent unless otherwise stated below.

The following matrix shows where a consent is required by a registered proprietor whose interest is affected (see the definition above) by a plan of subdivision. The table does not apply to plans prepared under the *Acquisition of Land Act 1967*.

Consent of registered proprietor of affected interest required			
Affected interest	Plan depicts new lots but no public use land shown	Plan depicts new lots and shows public use land other than road	Plan depicts new road
Mortgage	Yes*	Yes*	Yes*
Lease	No	Yes	Yes
Easement (including a high-density development easement) – other than public utility easement	No	Yes	Yes No – if easement only for right of way
Easement – public utility	No	Yes No – if Minister’s approval granted (by way of Statement of Intent, letter or Form 18)	Yes No – if grantee is the local government that approves the plan No – if easement only for public thoroughfare
Profit a prendre	No	Yes	Yes

Affected interest	Plan depicts new lots but no public use land shown	Plan depicts new lots and shows public use land other than road	Plan depicts new road
<b>Covenant – preservation or use of land</b>	No	Yes  No – if the grantee is the local government approving the plan	Yes
<b>Covenant – binding ownership of lots</b>	Release of covenant required	Release of covenant required	Release of covenant required
<b>Carbon Abatement Interest</b>	No	Yes	Yes

\*A chargee of a recorded statutory charge is not required to consent to the registration of a plan unless there are specific provisions in the relevant legislation identifying the right of possession or redemption under the charge.

## Consent of other parties

[21-2235]

### **Nature Conservation Act 1992**

Section 50(1)(k) of the *Land Title Act 1994* and Section 290J(1)(l)(iv) of the *Land Act 1994* require that a plan of subdivision (see definition of plan of subdivision in s. 49 of *Land Title Act* and s. 290E of *Land Act*) that affects land the subject of a conservation agreement under the *Nature Conservation Act* must be consented to by the chief executive of the department in which that Act is administered. Conservation agreement is defined in the schedule to the *Nature Conservation Act*. The consent must be on a Form 18 – General Consent.

### **Wet Tropics World Heritage Protection and Management Act 1993**

Section 50(1)(l) of the *Land Title Act 1994* requires that a plan of subdivision (see definition of plan of subdivision in s. 49 of *Land Title Act*) that affects fee simple land in the wet tropics area under the *Wet Tropics World Heritage Protection and Management Act*, must be consented to by the executive director of the *Wet Tropics Management Authority*. Land within the wet tropics area is identified by the recording of an administrative advice, *Wet Tropics Notice*, on the relevant title/s. The consent must be on a Form 18 – General Consent. See [52-0170] for further information about a *Wet Tropics Notice*.

[21-2240] and [21-2250] deleted

## Fees

[21-2260]

Lodgement fees and fees for the creation of new indefeasible titles must be paid unless there is a statutory exemption (see [60-0892]).

The assessment of fees is based on a lodgement fee with a fee for each additional lot. The number of lots is determined by identifying all the new lots on the plan and all new secondary interests on the plan. However, areas of new road or common property 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. Indefeasible titles are not created for public use lots. The new indefeasible titles are created on registration of the plan but in some instances additional documentation may be required to complete this process for example, transfers to resolve ownership or collateral mortgages.

## Public Use Land

[21-2270]

### Dedication of Land

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 (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)(a) of the *Land Title Act* or s. 290JA(2)(b) of the *Land Act*); or
- dedicates and opens the new non-tidal boundary watercourse or lake (s. 51(2)(b) of the *Land Title Act* or s. 290JA(2)(c) of the *Land Act*); or
- dedicates lots identified on the plan as reserves for a community purpose/s under the *Land Act*, if the plan has been consented to by the Minister (s. 51(2)(c) of the *Land Title Act* or s. 290JA(2)(a) of the *Land Act*); or
- otherwise—the lot becomes unallocated State land under the *Land Act* (s. 51(2)(d) of the *Land Title Act* or s. 290JA(2)(d) of the *Land Act*).

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 ‘PUBLIC USE LAND’;
- Lot number and ‘PUL’;
- Lot number and ‘PUBLIC USE LAND’ together with the purpose.

### Statement of Intent

Statement of Intent forms are State Land Asset Management forms that provide for and give Ministerial approval to action under the *Land Act* associated with plans of subdivision lodged under the *Land Act* or the *Land Title Act*. A Statement of Intent form is completed by a State Land Asset Management officer and signed by a delegate of the Minister.

The Statement of Intent – Plan Lodgement under the *Land Title Act 1994* form provides for and gives Ministerial approval to the dedication of freehold land as a reserve pursuant to sections 31, 31A and 44 of the *Land Act*. The form may only be used where the purpose of the reserve is shown on the face of the plan. The completed form is given to the registered owner of the subject land for deposit with the plan when lodged.

The Statement of Intent – Plan Lodgement under the *Land Act 1994* form provides for and gives Ministerial approval to the dedication of unallocated State land as road pursuant to s. 94 of the *Land Act*.

### Public Use Land other than Road

[21-2280]

Lots dedicated to public use become unallocated State land on registration of the plan without any further action.

The dedication of public use land must not be shown as a condition of the approval of the plan.

If the plan depicts public use land and a community purpose listed in schedule 1 of the *Land Act 1994* is shown on the face of the plan and the action is approved by the Minister by way of a Statement of Intent – Plan Lodgement under the *Land Title Act 1994* form, on registration of the plan the lot is dedicated as a reserve.

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. For the dedication to occur on registration of the plan consents may be required (see [21-2230]).

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(5) of the *Land Act*). If a Statement of Intent is being used to provide approval to the dedication of the public use land as reserve, the approval to the continuation of easements may be included on the Statement of Intent. Where a Statement of Intent is not being used the approval must be by a letter or a Form 18.

### **Public Use Land – Road**

[21-2290]

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(2)(a) of the *Land Title Act 1994*).

New road depicted on a plan of subdivision may be either a standard format parcel or a volumetric format parcel.

There are a number of alternative methods outlined below to dedicate the whole of a lot to new road.

#### **For the Dedication of Fee Simple Land as Road under s. 54 of the *Land Title Act 1994***

A registered owner of a lot may dedicate the whole of 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. See [14-2315] for additional information.

#### **For the Dedication of Fee Simple Land as Road 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. See [14-2315] for additional information.

#### **For the Dedication of Fee Simple Land as Road, under s. 327 of the *Land Act 1994***

A registered owner may absolutely surrender the whole of their land by way of a Form 1 – Transfer to the State of Queensland stating in Item 4 ‘a surrender pursuant to s. 327 of the *Land Act 1994* and to dedicate by way of s. 94 of the *Land Act 1994* the land as road’. See [1-2470] for additional information.

## **2<sup>Creation of Indefeasible Title</sup>**

[21-2300]

Generally, indefeasible titles are created for all lots on plans of subdivision when the plan is registered. The only exceptions are:

- lots dedicated to public use; and

- common property for a body corporate created pursuant to a specified Act under the *Body Corporate and Community Management Act 1997* or the *South Bank Corporation Act 1989*.

Where an instrument, such as a Form 1 – Transfer or a Form 9 – Easement, is to be lodged to immediately follow a plan of subdivision, the previous title reference from which the new lot will be created should be shown. Reference to ‘Deed to Issue’ may also be included however this is not mandatory.

## **<sup>2</sup>Transfer to Local Government in Fee Simple**

[21-2310]

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

## **<sup>2</sup>Transfer to Local Government as Trustee**

[21-2320]

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, the *Planning Act 2016* provides that a local government may require the applicant to give to the local government, in fee simple, part of the land for local community purposes. The land must be transferred to the local government on trust.

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.

The requirement to transfer the land must not be included as a condition in the planning body approval on the Form 18B – Planning Body Approval of Survey Plan.

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

## **Realignment of Lot Boundaries**

[21-2330]

When a change of lot boundaries creates a situation where:

- the ownership arrangement of one or more of the lots is unresolved; and/or
- if there is a mortgage registered over one or more of the lots – the interest(s) of mortgagee(s) becomes uncertain;

documents resolving ownership and/or mortgagee(s) interest(s) must be lodged with the plan.

Please note that this requirement is in addition to all the other normal practice requirements that apply to a survey plan including the requirement for the deposit of necessary consents (for example, see [21-2230] and [21-2240]).

The following two cases are provided as examples.

### **Example 1**

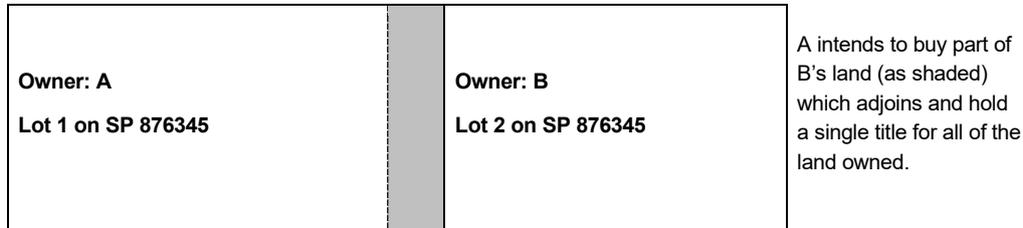
#### **Diagram 1 – Existing Situation**

##### **Jones Street**

Title: 12345067 Owner: A	Title: 15432178 Owner: B
-----------------------------	-----------------------------

A owns Lot 7 on SP 800543 in Title: 12345067.

<b>Lot 7 on SP 800543</b> <b>Mortgage to XYZ Bank</b>	<b>Lot 8 on SP 800543</b> <b>Mortgage to ABC Bank</b>	B owns Lot 8 on SP 800543 in Title: 15432178.
--	--	---

**Diagram 2 – Desired Outcome****Jones Street**

The documents required to achieve the desired outcome are:

- (a) **Plan of survey**  
a plan of survey (shown as plan SP 876345 in diagram 2). Indefeasible titles will be created for:
- lots that have changed in shape due the addition of transferred land in the names of both owner A and B with no tenancy shown that is Lot 1 on SP 876345; and
  - lots that have changed in shape due to disposal of land with no change of ownership i.e. Lot 2 on SP 876345.
- (b) **Release**  
Where land is being transferred from a lot which is subject to a registered mortgage(s), a release(s) must be lodged for the land being transferred. In the example, a partial release is required from ABC Bank for the part of Lot 1 on SP 876345 being transferred.
- (c) **Transfer**  
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 changed in shape due to the addition of transferred land. In the example, both A and B join in a transfer of Lot 1 on SP 876345 in Title 12345067 and title 15432178 to A).
- (d) **Mortgage**  
Where mortgagee(s) interests are affected, collateral mortgage(s) will be required to be registered over any new lot(s) which includes transferred land. In the example, a collateral mortgage is required from A to XYZ Bank for Lot 1 on SP 876345.

The plan of survey will not be registered until all relevant documents are lodged and capable of simultaneous registration.

**Example 2**

**Diagram 1 – Existing Situation****Jones Street**

<b>Title: 12345067</b>	<b>Title: 15432178</b>	A owns Lot 7 on SP 800543 in Title: 12345067.
<b>Owner: A</b>	<b>Owner: B</b>	
<b>Lot 7 on SP 800543</b>	<b>Lot 8 on SP 800543</b>	B owns Lot 8 on SP 800543 in Title: 15432178.
<b>Mortgage to XYZ Bank</b>	<b>Mortgage to ABC Bank</b>	

**Diagram 2 – Desired Outcome****Jones Street**

<b>Title: 12345067</b>	<b>Title: 15432178</b>	A intends to buy part of B's land (as hatched) and hold a single title for all of the land owned
<b>Owner: A</b>	<b>Owner: B</b>	
<b>Lot 1 on SP 876345</b>	<b>Lot 2 on SP 876345</b>	B intends to buy part of A's land (as shaded) and hold a single title for all of the land owned.

The documents required to achieve the desired outcome are:

- (a) **Plan of survey**  
a plan of survey (in the example shown as plan SP 876345 in diagram 2). Indefeasible titles will be created in the names of both owners A and B with no tenancy shown for the lots that have changed in shape due the addition of transferred land, in the example:
- Lot 1 on SP 876345; and
  - Lot 2 on SP 876345.
- (b) **Release**  
Where land is being transferred from a lot which is subject to a registered mortgage(s), a release(s) must be lodged for the land being transferred. In the example above, partial releases are required from:
- ABC Bank for the part of Lot 1 on SP 876345 being transferred; and
  - XYZ Bank for the part of Lot 2 on SP 876345 being transferred.
- (c) **Transfer**  
a transfer(s), which 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 changed in shape due to the addition of transferred land. In the example, the following transfers are required:
- both A and B join in a transfer of Lot 1 on SP 876345 in Title 12345067 and title 15432178 to A; and
  - both B and A join in a transfer of Lot 2 on SP 876345 in Title 12345067 and title 15432178 to B.
- (d) **Mortgage**  
Where mortgagee(s) interests are affected, collateral mortgage(s) will be required to be

registered over any new lot(s) which includes transferred land. In the example the following collateral mortgages are required

- from A to XYZ Bank for Lot 1 on SP 876345; and
- from B to ABC Bank for Lot 2 on SP 876345.

The plan of survey will not be registered until all relevant documents are lodged and capable of simultaneous registration.

## Forms

### General Guide to Completion of Forms

[21-4000]

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

Dealing Number



**OFFICE USE ONLY**

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Print one-sided only

**Lodger** (Name, address, E-mail & phone number)

COATES & SULLIVAN  
SOLICITORS  
210 ELIZABETH STREET  
BRISBANE QLD 4000  
mail@coatessullivan.com.au  
(07) 3227 5280

**Lodger Code**

320

**1. Plan Number**

SP333333

**Title References**

16560051  
16560052

**2. No of New Lots**

4

**No of Public Use Lots**

0

**No of Secondary Interests** (e.g. Easements)

1

**3. Directive Worksheet**

DEPARTMENTAL OFFICE USE ONLY		LOTS	Standard	Volumetric
Encumbrances:			Building Format	Crown
			Standard with Common Property	Explanatory
			QLD Globe	CTS Name check
			Survey Certificate	Building Format Item 6 completed
			Barcode Label	Development Approval date
			Format of Plan	Dealing Notes
			Form 18 Mortgagee Consent	Form 10
			Form 18A Registered Owner	Ambulatory Boundary
			Form 18B Planning Body Approval	Email Surveyor / Survey Group
			All sheets lodged	CISP lodgement
			Fees checked	Data entry
			Allocations checked	New Title directives
			Public Use Land	
			Park	Access YES/NO
			Road	YES/NO
		<b>No of NEW TITLES</b>		
		<b>Secondary Interests</b>		

Associated Dealings:

0 50m 100m 150m State copyright reserved

Scale:

Format:

LOCAL  
GOVERNMENT:

LOCALITY:

Meridian:

Survey  
Records





## Guide to Completion of Forms 21Z/21/21A/21B

[21-4010]

### Plan Cover Sheet – Form 21Z

The Form 21Z – Plan Cover Sheet must be used with the Survey Plan when it is lodged.

#### Item Requirements

##### Lodger details and Lodger Code:

The name, address, contact phone number, email address, reference and lodger code (if applicable) should be completed by the person/firm actually lodging the plan for registration, and contain the minimum information necessary for positive identification and contact by correspondence (email) and telephone.

##### 1 Plan Number and Title References:

Insert the Plan Number and all of the Title References affected by the survey plan.

##### 2 No of New Lots, No of Public Use Lots and No of Secondary Interests

Insert the number of new lots, the number of public use lots and the number of secondary interests.

##### 3 Directive Worksheet

(Completed by the Titles Registry)

### Survey Plan (Main Plan [21], Administration Sheet [21B] and Additional Sheet/s [21A])

A Survey Plan can only be completed by a cadastral surveyor registered under the *Surveyors Act 2003*, except for Items 3, 4 and 7 on the plan administration sheet (Form 21B).

Each plan and each sheet of the plan must be numbered and labelled in accordance with the requirements set out in Direction 4 of the Registrar of Titles Directions for the Preparation of Plans.

A plan of survey in paper form must be printed on paper that is international sheet size A3 and of a density at least 80gm to a square metre.

#### Administration Sheet Item Requirements (Form 21B)

##### 1 Lot allocations and interest allocations:

(Completed by surveyor)

##### 2 Original grant allocation:

(Completed by surveyor)

##### 3 References:

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

##### 4 Lodger details:

The name, address, contact phone number, email address, reference and lodger code (if applicable) should be completed by the person/firm actually lodging the plan for registration, and contain the minimum information necessary for positive identification and contact by correspondence (email) and telephone.

**5 Passed and endorsed:**

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

**6 Building format plans certificate of encroachment/non-encroachment:**

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

**7 Lodgement Fees**

(Completed by the Titles Registry)

**8 Insert plan number:**

(Completed by surveyor)

**Consent of registered owners or lessees - Form 18A Registered Owners/Lessees Consent to Survey Plan**

All registered owners/lessees must consent to a survey plan by way of a duly executed Form 18A – Registered Owners/Lessees Consent to Survey Plan deposited with the Survey Plan (see [21-2220]).

Refer to [18-4060] for the Guide to Completion for the Form 18A.

Please note that in Item 1 the full name, trust capacity (if applicable) and signature of each registered owner/lessee must be completed and for a corporation, the name and ACN or ARBN must be shown.

**Planning Body Approval – Form 18B Planning Body Approval of Survey Plan**

Where an approval to a plan of subdivision is required to be given by a planning body, the approval must be given by way of a Form 18B – Planning Body Approval of Survey Plan deposited with the Survey Plan (see [21-2130]).

Refer to [18-4080] for the Guide to Completion for the Form 18B.

Please note that Item 2 of the Form 18B must be completed by:

- stating the name of the relevant planning body and the legislative authority relevant to the approval; and
- being signed and dated by an appropriately authorised person with their authority stated.

[21-4020] and [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.

[21-7010] deleted

## Fees

[21-8000]

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

[21-9000]

Part 1 – Transfer

Part 7 – Lease

Part 9 – Easement

Part 14 – General Request

Part 18 – General Consent

Part 29 – Profit a Prendre

Part 31 – Covenants

Part 36 – Carbon Abatement Interest

Part 45 – Community Title Schemes

Registrar of Titles Directions for the Preparation of Plans

## Notes in text

[21-9050]

Note <sup>1</sup> – This part is not applicable to water allocations.

Note <sup>2</sup> – This numbered section, paragraph or statement does not apply State Land.

Note <sup>3</sup> – This numbered section, paragraph or statement does not apply to freehold land.