

Part 36 – Carbon Abatement Interest

LAND TITLE PRACTICE MANUAL

Updated: 1 November 2021



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Part 36 – Carbon Abatement Interest¹

[36-0000] General Law

A carbon abatement interest is an interest in land which is created under legislation upon registration of a Form 36 – Carbon Abatement Interest. A carbon abatement interest provides for the exclusive legal right to the economic benefits of carbon sequestration on the land. A carbon abatement interest may be granted in land which is freehold, State leasehold, unallocated State land, State forest or reserve.

The provisions below provide for the creation and registration of carbon abatement interests.

- *Land Act 1994* Chapter 6 Part 4 Division 8C
- *Land Title Act 1994* Part 6 Division 4C
- *Forestry Act 1959* Part 6C
- *Nature Conservation Act 1992* Part 4 Division 2 Subdivision 4A

A carbon abatement interest in freehold land is registered under the registration provisions of the *Land Title Act* while a carbon abatement interest in any non-freehold land is registered under the registration provisions of the *Land Act*.

In relation to non-freehold land with respect to carbon abatement interests, the term ‘owner’ is defined in s. 373R of the *Land Act* and in relation to land within a nature conservation area or specified national park, the term ‘owner’ is defined in s. 39D of the *Nature Conservation Act*.

The grantor and grantee of a proposed carbon abatement interest may be the same person.

For freehold land, exclusive of a deed of grant in trust, the owner of the land holds the right to the carbon in the carbon abatement product. For non-freehold land (including unallocated State land) and deeds of grant in trust, the State, pursuant to s. 21 of the *Land Act*, issues the tenure subject to conditions and one of those conditions is the reservation of the right to the carbon in the carbon abatement product, to the State.

A carbon abatement interest may be created over the whole of a lot or part of a lot. For creation over part of a lot, see [36-2050].

A carbon abatement interest may only be registered if:

- a. the proposed grantor of the interest is the owner of the land; and
- b. the registrar/chief executive is satisfied the owner (proposed grantor) is the holder of the right to deal with the carbon abatement product for the land; and
- c. all holders of a registered interest in the land whose interest may be affected by the proposed carbon abatement interest consent to the proposed grant;
- d. there are no existing carbon abatement interests registered for part of the land to which the proposed carbon abatement interest relates

Once created, a carbon abatement interest may be amended, transferred, mortgaged, surrendered or passed to a beneficiary of the holder’s interest in the land and if concerning land which requires the consent of a relevant Minister, the transferor must obtain this consent pursuant to s. 373A(2) of the *Land Act*. See [36-2050].

A holder of a carbon abatement interest may apply to the administrator of a Commonwealth scheme for the declaration of an offsets project as an eligible offsets project on land under the *Carbon Credits (Carbon Farming Initiative) Act 2011* (Cth) (See [52-0125]).

[36-1000] Legislation

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

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

[36-2000] Practice

[36-2000] Requirements of a Carbon Abatement Interest

A carbon abatement interest is created by registering a Form 36 – Carbon Abatement Interest.

The grantor must be the registered owner of the freehold land or the owner of the non-freehold land which is to be the subject of the carbon abatement interest.

A carbon abatement interest may be registered over freehold land or non-freehold land (unallocated State land, State leasehold, State forest or reserves).

The grantee is the proposed holder of the carbon abatement interest and must be a person or legal entity that is entitled to hold an interest in land. The grantee may be the same person or entity as the grantor.

A termination date or an event that is certain must be stated and should allow a period of either 25 years or at least 100 years.

The full details of the consideration must be shown.

The terms of the carbon abatement interest must be set out in an attached schedule, a standard terms document or both. The standard terms document referred to must be of the appropriate class of document and must also be first registered.

The grantor and the grantee must properly execute the form and have the execution witnessed where necessary.

A duty notation is required.

[36-2050] Additional Requirements

Consent by Person with an Affected Registered Interest

A consent on Form 18 – General Consent from each person with a registered interest in the land whose interest may be affected by the proposed carbon abatement interest must be deposited.

Part of the Land

A plan of survey must be lodged and registered to identify the area the subject of a carbon abatement interest where the carbon abatement interest is for part of a lot. A plan must not describe a carbon abatement interest as proposed. There is no requirement for a carbon abatement interest to be lodged immediately after the plan. Survey plan requirements for a carbon abatement interest over part of a lot are set out in the Registrar's Directions for the Preparation of Plans. For further information see [21-2115].

Minister's Consent where Interest is in Non-Freehold Land or Freehold Land held as Deed of Grant in Trust

The consent of the relevant Minister on Form 18—General Consent is required to be deposited:

- a. if a lessee is dealing with the carbon abatement interest and the land is within a State forest, timber reserve or forest entitlement area—the Minister administering the *Forestry Act 1959*;
- b. if the proposed carbon abatement interest is in unallocated State land freehold land held as a deed of grant in trust, land subject to a lease or land subject to a licence or a reserve—the Minister administering the *Land Act 1994*.
- c. if an appointed trustee for the land is dealing with the carbon abatement interest and the land is within a nature conservation area or specified national park – the Minister administering the *Nature Conservation Act 1992*.

Alternatively, if the State is a party to the Carbon Abatement Interest (i.e. a grantor), the consent on a Form 18 is not required.

Interest granted by the Lessee of a Term Lease or Licensee of an Occupational Licence

If the carbon abatement interest is being granted by the lessee or licensee and the proposed term of the carbon abatement interest is for a period greater than the remaining term of the lease or licence e.g. the term lease is for 30 years and the carbon abatement interest is for 100 years, the State must be a party to the interest and approve the terms of the document (s. 373V of the *Land Act 1994*). The Form should be completed as indicated at [36-4010 to 36-4070] with the following variations:

- Item 1 of the form must show the lessee or licensee **and** The State of Queensland (represented by [name of department]) as reversionary owner as grantors (e.g. Bill Smith and The State of Queensland [represented by the Department of (Name of relevant department)] as reversionary owner);
- Item 6 may refer to a standard terms document that contains details identifying what will happen to the carbon abatement interest on ending of the term lease or licence; and
- Item 6 must be executed by the lessee/licensee **and** The State of Queensland (represented by [name of department]) as grantors.

Interest granted over a Perpetual lease, a Reserve or a Deed of Grant in Trust

- If the carbon abatement interest is being granted by the lessee of a perpetual lease, or the trustee of a reserve or the trustee of a deed of grant in trust, the form should be completed as indicated in part [36-4010] to [36-4070].

The Minister administering the *Land Act 1994* must approve the terms of the document on a Form 18—General Consent.

Interest granted by the Lessee of a Term Lease where the Lease has been granted over a State Forest

If the carbon abatement interest is being granted by the lessee of a term lease over a State forest and the proposed term of the carbon abatement interest is for a period greater than the remaining term of the lease e.g. the term lease is for 30 years and the carbon abatement interest is for 100 years, the State must be a party to the interest and approve the terms of the document (s. 373V of the *Land Act 1994*). In these instances, two Form 36 – Carbon Abatement Interests are required to be lodged, with one Form 36 identifying the grantor as the lessee of the term lease recorded over the State lease title and the second Form 36 identifying the grantor as the State of Queensland (represented by [name of department]) recorded over the State Forest title. The Forms should be completed as indicated in part [36-4010] to [36-4070] of the Land Title Practice Manual with the following variations:

- Item 1 of the first Form 36 must show the lessee as the grantor and Item 1 of the second Form 36 must show the State of Queensland (represented by [name of department]) as the grantor;
- Item 6 of the first Form 36 may refer to a standard terms document identifying what will happen to the carbon abatement interest on the lessee ceasing to be the lessee; and
- Item 6 of the first Form 36 must be executed by the lessee and Item 6 of the second Form 36 must be executed by the State of Queensland (represented by [name of department]) as grantors.

The Minister administering the *Forestry Act 1959* must approve the terms of the first Form 36 on a Form 18—General Consent.

Note: When a carbon abatement interest, granted over a term lease over a State forest, is being either fully or partially surrendered, two Form 37s are required to be lodged with one Form 37 dealing with the surrender from the State lease title and the other Form 37 dealing with the surrender from the State forest title.

Interest granted by the State of Queensland over Unallocated State land

- If the carbon abatement interest is being granted by the State, the form should be completed as indicated in part [36-4010] to [36-4070].

[36-2100] Surrender of a Carbon Abatement Interest

A carbon abatement interest may be surrendered by registering a Form 37 – Surrender of Carbon Abatement Interest. The interest may be partially surrendered to the extent shown in the form or fully surrendered.

For more information see part 37 – Surrender of Carbon Abatement Interest.

[36-2200] Removing a Carbon Abatement Interest

Where a request is made, a carbon abatement interest may be removed from the relevant title:

- where the period of time for which the interest was intended to exist has ended (as stated at Item 4 of the Form 36); or
- where an event upon which the interest was intended to end has happened (as stated at Item 4 of the Form 36); or
- under an Act of the Commonwealth.

For more information see part 14 – General Request, esp. [14-3015]).

[36-2300] Amending a Carbon Abatement Interest

A carbon abatement interest may be amended by registration of a Form 13 – Amendment of Carbon Abatement Interest.

For more information see part 13 – Amendment of Lease, Easement, Mortgage, Covenant, Profit a prendre, Building Management Statement or Carbon Abatement Interest, esp. [13-2160].

[36-4000] Forms

[36-4000] General Guide to Completion of Forms

For general requirements for completion of forms see part 59 – Forms.

Dealing Number

Duty Imprint



OFFICE USE ONLY

Privacy Statement

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

| | | | |
|--|-------------|--|--|
| 1. Grantor | | Lodger (Name, address, E-mail & phone number) | Lodger Code (if any) |
| BILL JONES | | JONES & CO SOLICITORS | 490 |
| THE STATE OF QUEENSLAND (REPRESENTED BY THE DEPARTMENT OF RESOURCES) AS REVERSIONARY OWNER | | 54 ADELAIDE STREET BRISBANE QLD 4000 mail@jonesco.com.au (07) 3227 9850 | |
| 2. Description of Carbon Abatement Interest/ Lot on Plan | | Title Reference | |
| Carbon Abatement Interest A on SP123456 | | 14621222 | |
| 3. Grantee | Given names | Surname/Company name and number | (include tenancy if more than one) and interest if not fee simple) |
| JASON SCOTT | | SMITH | |
| 4. Termination date or Event | | | |
| 01/10/3013 | | | |
| 5. Consideration | | | |
| \$66,000.00 | | | |
| 6. Grant/Execution | | | |
| The Grantor grants to the Grantee for the above consideration a Carbon Abatement Interest and the Grantor and Grantee covenant with each other in terms of:- *the attached schedule; * the attached schedule and document no. 720123123; *document no. _____ | | | |
| * delete if not applicable | | | |

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

..... signature

..... full name

..... qualification

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

..... signature

..... full name

..... qualification

Witnessing Officer

(Witnessing officer must be in accordance with Schedule 1 of Land Title Act 1994 eg Legal Practitioner, JP, C Dec)

/ /
Execution Date

.....
Grantor's Signature

/ /
Execution Date

.....
Grantee's Signature

Title Reference [14621222]

(The terms and conditions of the agreement are to be set out here)

SAMPLE

Guide for Completion of Form 36

[36-4010] Item 1

Insert the full name(s) of all grantor(s) of the carbon abatement interest (e.g. the owner, see [36 0000] or the owner and The State of Queensland (represented by The State of Queensland) as reversionary owner, see [36-2050].

[36-4020] Item 2

Whole of the Land

Insert the 'Lot on Plan' descriptions and title references of all lots subject to the carbon abatement interest.

Part of the Land

If the carbon abatement interest applies to only part of the lot, then the carbon abatement interest must be described in a manner similar to the following:

'Carbon Abatement Interest A on SP 123567'.

The title reference of the relevant lot must also be included.

In such cases, a plan of survey is required to be first registered in the land registry.

[36-4030] Item 3

Insert the full name(s) of the grantee(s) and tenancy (if applicable).

[36-4040] Item 4

Insert the termination date or a reference to the event that terminates the carbon abatement interest.

[36-4050] Item 5

Insert monetary or other consideration.

[36-4060] Item 6

Complete where indicated and execute as required.

[36-7000] Case Law

Nil.

[36-8000] Fees

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

[36-9000] Cross References and Further Reading

Part 13 – Amendment of Lease, Easement, Mortgage, Covenant, Profit a prendre, Building Management Statement or Carbon Abatement Interest

Part 14 – General Request

Part 37 – Surrender of Carbon Abatement Interest

Part 52 – Administrative Advices

[36-9050] Notes in text

Note¹ – This part does not apply to water allocations.

Note² – This numbered section, paragraph or statement does not apply to State land.

Note³ – This numbered section, paragraph or statement does not apply to freehold land.