

**DEPARTMENT OF NATURAL RESOURCES and MINES
RESOURCE MANAGEMENT PROGRAM**

**HANDBOOK OF
LAND PLANNING GUIDELINES**

GUIDELINE G1

LAND ETHICS

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Purpose of this Paper

This paper explains the principles which staff of the Department of Natural Resources and Mines should apply in the public interest in dealing with State land.

Staff administering and managing State land should understand the ethical reasoning behind the legislation they apply.

1. BACKGROUND

1.1 What values should be applied when we make decisions about the way land is to be used?

Land is a finite resource. We have a responsibility to future generations to protect the usefulness of the land resource. If that usefulness is diminished, then future generations will suffer - through economic loss, damaged environmental quality and social dysfunction.

1.2 In other words, decisions about the use of land are fundamental to the well-being of our society. They determine whether our residential neighbourhoods are pleasant, our agricultural properties are productive, our environment is protected and the economy operates efficiently.

1.3 The expectations of society are translated by the Government into legislation. Legislation incorporates the collective Departmental experience gathered over many years, input from industry and interest groups, advancing knowledge of land science, awareness of the importance of sustainability and modern concepts of public governance. The legislation is explained in Departmental policies and procedures to further guide staff when making decisions.

1.4 This guideline describes the principles which are to be followed by Departmental staff when they make decisions about the use of State land on behalf of all Queenslanders. These principles are set down in Section 4 of the *Land Act 1994*. Their foundation is the duty of the State Government to *protect the public interest*.

2. WHY A LAND ETHIC IS NEEDED

2.1 In summary, the object of the *Land Act* is effective stewardship of State land. Land stewardship requires a principled rather than simply a procedural, administrative approach to land dealings. This principled approach is expressed in a *land ethic*, which provides the conceptual framework - the sense of purpose - for making land-related decisions..

2.2 The ethical principles embedded in the lands legislation are values which help to answer in a consistent way the questions: 'will this decision protect the land; and will it benefit the community?'.

2.3 'Protection of the public interest' is a strong theme running through the lands legislation. Ever since the Department was established, it has aimed not only at settling the State, but also at ensuring that State land was not appropriated for excessive private gain at the expense of the welfare of the broader community.

2.4 The public interest is difficult to define. In land administration, it includes the stake

which society has in the condition of its land assets. It includes the economic, social, cultural, recreational, environmental and heritage interests of the public. For leasehold land, it requires careful framing of conditions of tenure. It requires consideration of the interests of both our indigenous and non-indigenous communities.

- 2.5 The determination of what is in the public interest is made by the State Government on the basis of representations from clients, business, interest groups and the community at large, integrated with advice from the public service.

3. THE TENURE OF LAND

- 3.1 The area of Queensland is some 1,727,000 sq. km. Some 20% has been sold to people or companies as **freehold** or is in the process of freeholding. Freehold land is not considered further in this Guideline.
- 3.2 Most of the remaining 80% is **State land**. About 10% of Queensland is **reserved** in the form of national parks, State forests, roads, railways or reserves for a number of purposes. Some 68% has been **allocated** in the form of perpetual lease, term lease, licence or permit to occupy. The residual **unallocated State land** occupies the remaining 2% of Queensland.
- 3.3 In addition, native title may still exist over areas of unallocated State land and reserves, as well as other areas. Where native title does exist, the native title holders should generally be given the same procedural rights as the holders of freehold land.

3.4 The Leasehold System

- 3.4.1 The State Government is responsible for ensuring that State land is managed in the best interests of the community, both now and for future generations. The leasehold system of land tenure was intended to achieve this by allowing land settlement to proceed in an orderly way and suitable conditions of use to be set.
- 3.4.2 The logic for leasehold has not rested on any notion that the State is a 'better manager' than a private owner, because unquestionably occupiers are responsible for the management of their land, irrespective of tenure. Rather, the logic for leasehold has rested largely on the recognition that governments must serve public purposes which are not adequately satisfied through market forces. Leasehold has been seen as appropriate where the State Government has wished to achieve some public interest outcome, such as facilitating development, influencing patterns of settlement or providing infrastructure.

4. CORPORATE OUTCOMES

- 4.1 The Corporate Plan sets down the outcomes of the activities of the Department:
- protection of rights and interests in land, water and native vegetation;
 - sustainable use of land, water and native vegetation;
 - availability of land-related information;

- economic growth through development and management of natural resources and provision of information;
 - informed and satisfied clients who have confidence in our ability to meet their needs;
 - staff who take pride in responding to client needs and delivering quality services.
- 4.2 Protection of rights and interests in *land transactions* requires the Department not only to honour previous agreements with lessees but also to be attentive to the needs of all its clients, which means all the people of Queensland. Responding to demands from applicants is by itself not sufficient. Pressure from interest groups and individuals needs to be moderated by the long-term vision which the State Government is required to adopt.
- 4.3 In promoting *sustainable* use of land, the Department must apply the latest technical knowledge. Any single case can have far-reaching social, environmental or economic consequences so decisions must be soundly based. Technical expertise by itself, however, is not enough. The Department must also respect the practical knowledge of lessees and must ensure that its system of tenure is administratively effective and equitable.
- 4.4 In supplying *land information*, which includes maps and all forms of spatial geographic information, records of ownership, surveys and valuations, the Department is required to take not just a mechanical, lowest-cost approach. The Department must ensure that the long-term public stake in reliable information is protected. And important land records must be archived securely, in perpetuity.
- 4.5 In facilitating *economic growth*, the Department must remove unnecessary impediments to investment and must give landholders security and certainty. But cooperation with particular developers by itself is not enough. The Department must ensure that competitors, both existing and potential, have a fair chance to obtain land on equivalent terms.

5. COMPONENTS OF THE LAND ETHIC

- 5.1 The Department's land ethic is incorporated in the object of the *Land Act* and embraces seven principles:
- 5.2 **Sustainability - (1)**
- 5.2.1 *Sustainable resource use and development to ensure existing needs are met and the State's resources are conserved for the benefit of future generations.*
- 5.3 **Comment:**
- 5.3.1 Some land uses, while having a current or apparent benefit, might incur significant long-term costs. Inappropriate use of land can lead to its deterioration, leaving future generations the legacy of a degraded, diminished or less productive resource. A major feature of land administration is the permanence of many of its decisions.

- 5.3.2 Non-sustainable land use often results in significant off-site economic costs. Increased turbidity in rivers leads to declining fisheries and higher costs for water treatment. Providing infrastructure to remote subdivisions may impose unforeseen costs to local governments. Degraded landscapes mean lost opportunities for tourism.
- 5.3.3 Land degradation is the price paid for inappropriate management of properties and may be evidenced by weeds, high populations of pest animals, erosion and salinity. Lessees are responsible for the management of their holdings and are encouraged to participate in voluntary initiatives (such as property management planning) which tackle degradation.
- 5.3.4 Sustainability is not just an environmental issue; it also embraces the *economic* sustainability of Queensland's resources and its rural and other industries.

5.4 **Evaluation - (2)**

- 5.4.1 *Land evaluation based upon the appraisal of land capability and the consideration and balancing of the different economic, environmental, cultural and social opportunities and values of the land.*

5.5 **Comment:**

- 5.5.1 Decision-making about the use of a parcel of land must be based on the best information available about the land's capability. This in turn is based upon a scientific assessment of the attributes of the property.
- 5.5.2 The technical assessment is then moderated by submissions made and the interests held by various parties. Departmental planners must also make sensible predictions about such issues as environmental change, the restructuring of rural industries, the directions in which towns will grow and trends of thinking in society.
- 5.5.3 This process, through which a planning judgement is made, is called *land evaluation*. (This should not be confused with *land valuation*, which is an estimation of the economic worth of land).
- 5.5.4 Although comprehensive statutory (town) planning controls may be in place to *regulate* the use of land, the Department must still evaluate lands in public ownership carefully so that its decisions to *allocate* land are taken wisely.
- 5.5.5 Also, before the Department releases a parcel of public land for development, clearances in principle must be obtained from the local government and other regulatory authorities. It is a waste of the purchasers' time and money to have to resolve major inconsistencies between the planning intentions of the various governmental authorities. (But of course, applicants must still obtain all necessary permits).
- 5.5.6 Flexibility is an objective when deciding how to allocate land. Society is constantly changing; it is impossible to predict what pressures might arise in the future. Allocating land for a particular purpose often commits that land irrevocably, especially where

capital-intensive developments are constructed. Where there is great uncertainty as to whether a given project is desirable, a decision **not** to develop the site is the more flexible, because it means that the land is still available for development when a better proposal arises.

- 5.5.7 When evaluating the acceptability of a potential use, the prospect that the proposed use might expand after becoming established should be considered. Establishing a use legitimises that use and makes later intensification easier. Conversely, small size does not make a use acceptable: even small-scale earthworks, for example, can disrupt drainage patterns and billboards, for another example, can blight a vista, though occupying only a few square metres of ground.

5.6 **Development - (3)**

- 5.6.1 *Allocating land for development in the context of the State's planning framework, and applying contemporary best practice in design and land management.*

- 5.6.2 *When land is made available, allocation to persons who will facilitate its most appropriate use that supports the economic, social and physical wellbeing of the people of Queensland.*

5.7 **Comment:**

- 5.7.1 Since statehood in 1859, the predecessors of the Department of Natural Resources and Mines have worked to achieve the orderly development of the State. Land policy has had a long-established role in closer settlement and also in enabling families to occupy land on progressive terms.
- 5.7.2 Land policy for State land should support the economic and social development of the State and, in particular, should assist the Government to provide public infrastructure such as railways, ports and electricity supply.
- 5.7.3 Lessee developers of State land are required to observe all planning requirements for new projects and obtain all relevant consents from the local government and other departments. Impact assessment may be required where a developmental proposal is likely to have substantial economic, social or environmental consequences.
- 5.7.4 Although the economic risk associated with a business enterprise rests with the entrepreneur and not the Government, the Department does have a responsibility for checking the capabilities and credit-worthiness of applicants for leases for major developments over State land and also for confirming that their particular projects will be of genuine benefit to the community. For example, any one of five proposals to build a holiday resort in one locality may individually be an acceptable use, whereas a cluster of five resorts would be a waste of the land resource.

5.7.5 The equity which lessees have in their holdings must be respected. Although renewal of term leases at their expiry is not automatic, the holders are usually made an offer of a new lease if the land is to be leased again for the same purpose, provided that they have been satisfactory tenants.

5.8 **Community Purpose - (4)**

5.8.1 *If land is needed for community purposes, the retention of the land for the community in a way that protects and facilitates the community purpose.*

5.9 **Comment:**

5.9.1 Even the very first Queensland land statute, the *Alienation of Crown Land Act 1860*, included a provision to withhold land from sale. Thus 138 years ago, parliamentarians saw the need to provide for the public interest in the future by reserving land for public purposes. Land may be reserved for its natural resources, its environmental, recreational, historical, social or cultural significance, or because it has special strategic or locational value.

5.10 **Protection - (5)**

5.10.1 *Protection of environmentally and culturally valuable and sensitive areas and features.*

5.11 **Comment:**

5.11.1 A comprehensive system of national parks and other reserves has been established to protect places of high scenic interest and of high conservation or cultural value. But the community expects **all** land to be managed protectively. Lessees are encouraged to participate in off-park conservation and trustees are required to prevent damage to their reserves. Lessees and trustees all have a duty of care for their land.

5.12 **Consultation - (6)**

5.12.1 *Consultation with community groups, industry associations and authorities is an important part of the decision making process.*

5.13 **Comment:**

5.13.1 The collective knowledge of the community is invaluable and should be considered and incorporated into decision-making on land use matters. Local consultative groups may be established to advise on major land use studies. This will help to ensure that the knowledge, aspirations and concerns of individuals and interest groups may be taken into account.

5.13.2 For the convenience of applicants and community groups, most dealings can be finalised in district offices without reference to Brisbane.

5.14 **Administration - (7)**

5.14.1 *Consistent and impartial dealings*

5.14.2 *Efficient, open and accountable administration*

5.14.3 *A market approach in land dealings, adjusted when appropriate for community benefits arising from the dealing.*

5.15 **Comment:**

5.15.1 *Consistent and impartial dealings:*

5.15.1.1 Decision-makers in the public service must not be biased or show favouritism. Clients must have opportunities to present their views. A consistent approach to dealings must be taken, regardless of which office is handling them.

5.15.2 *Efficient, open and accountable administration:*

5.15.2.1 The Department continually endeavours to improve its efficiency in handling dealings. Dealings need to be conducted in an open and accountable manner, consistent with protecting commercial and Cabinet confidentiality. Quality and timely service are objectives underpinning all Departmental functions.

5.15.3 *A market approach in land dealings, adjusted when appropriate for community benefits arising from the dealing:*

5.15.3.1 Sites subject to development or other proposals will go to public auction or tender, unless they satisfy strict prerequisites for exclusive handling.

5.15.3.2 The Department has established procedures whereby land surplus to State Government requirements is re-allocated to more productive Government uses or offered for disposal. The income from sales of real assets is put to new capital works or redeeming debt, not to offsetting recurrent costs.

5.15.3.3 The public interest requires a fair financial return from privatisation of public assets. Land is not to be released from the public estate unless planning considerations and market conditions are favourable.

6. CONCLUSION

6.1 The Department aims to make land available to those who will use it most appropriately, providing rewards to the holders in return for their labour or investment and supporting the economic and social development of Queensland. At the same time, development must be in accordance with accepted principles of land planning and resource sustainability.

- 6.2 The Department is also responsible for protecting the public interest in any dealing and securing land for a wide variety of public purposes. Further, dealings must be carried out in an impartial, efficient, open and consultative manner.
- 6.3 The land ethic described above expresses the Department's commitment to exercising stewardship over the land which it manages in trust on behalf of the people of Queensland.

End of G1

Minor edits 2 July 2002 to reflect Departmental name change