

Operational policy

Corporate Management

Bequests and bequeathed property

Operational policies provide a framework for consistent application and interpretation of legislation and for the management of non-legislative matters by the Department of National Parks, Sport and Racing. Operational policies are not intended to be applied inflexibly in all circumstances. Individual circumstances may require a modified application of policy.

Policy issue

What is the policy of the Queensland Parks and Wildlife Service (QPWS) on bequests and accepting and dealing with bequeathed property?

Background

From time to time, the Department of National Parks, Sport and Racing (NPSR) is bequeathed property (i.e. land, with the intent that such land be conserved in perpetuity as a protected area) and/or money in order to help QPWS increase the level of nature conservation within the State. While the bequest of such property is both supported and appreciated, QPWS has recognised the need to have commercial flexibility in dealing with bequeathed land to ensure the best use of the land is achieved, especially if the property is not suitable for inclusion in the protected area estate.

Policy statement

Bequests of property fall under two broad categories – bequests from people who have contacted QPWS before completing their will, and bequests that have been made without prior reference to QPWS.

Bequests from people who have contacted the Queensland Parks and Wildlife Service before completing their will

For entities (e.g. people or legal agents) who contact QPWS before a will has been completed, the position of QPWS is as follows:

Firstly, QPWS does accept bequeathed property to be used in a way consistent with furthering the objects of legislation QPWS administers. These objects include the conservation of nature and the protection of the environment.

Secondly, when such contact is made, QPWS will conduct an initial assessment of the subject property to determine:

- the conservation significance of the property;
- the likely on-going management cost QPWS may incur if the bequest is accepted and the property is not to be on-sold; and
- any other relevant facts, such as cultural heritage considerations, native title implications, and the relationship between the property and neighbouring lands and waters.

The result of this assessment will be provided as considered advice back to the individual wishing to bequeath the property.

Thirdly, any person wishing to bequeath property to QPWS is advised to seek independent legal advice or to contact the Queensland Law Society or the Public Trustees' Office for further information and assistance. Any general information about the bequest of property provided by QPWS to a person making an enquiry must not be considered or interpreted as constituting legal advice.

Fourthly, any enquiry made by a legal practitioner on behalf of a client making a will involving the bequest of property to QPWS will be met with assistance by QPWS. QPWS will endeavour to provide information to the legal practitioner to enable the practitioner to draft an appropriate clause consistent with the instructions the legal practitioner has received from the client.

Bequests where there has been no prior contact

In cases where QPWS receives a bequest of property from a will without prior contact, QPWS will consider the most appropriate course of action based on the following factors:

- the intent of the bequest as it is able to be determined from the will
- the conservation significance of the property
- the likely on-going management cost QPWS may incur if the bequest is accepted and the property is not to be on-sold
- any other relevant facts, such as cultural heritage considerations, native title implications, and the relationship between the property and neighbouring lands and waters.

As a fundamental principle, QPWS will do all that is reasonable and prudent to honour the wishes of the deceased as expressed in the will.

Procedure

All dealings regarding bequeathed property (if it is proposed to retain the property as a protected area) and/or infrastructure contained on the property must be approved by the Deputy Director-General, Queensland Parks and Wildlife Service.

The following standard clauses may be used for the bequest of property in a last will and testament.

Clause 1

I give my property at [insert address] and described as [insert real property description] together with all improvements thereon to the Crown in Right of the State of Queensland to be administered by the Department of National Parks, Sport and Racing or such other entity responsible for the administration of the Nature Conservation Act. I express the wish without creating any binding trust or legal obligation in that regard that the property be used for [insert purpose].

Clause 2

I give my property [insert description of real property together with the words "together with all improvements thereon" or description of personal property] and the sum of \$_____ [if a bequeath of monies is also involved] to the Crown in right of the State of Queensland to be administered by the Department of National Parks, Sport and Racing or such other entity responsible for the administration of the Nature Conservation Act or any subsequent legislation replacing it to be applied to the purchase of land within the State of Queensland either in whole or in part for gazettal as National Park or an equivalent tenure under the Nature Conservation Act or any subsequent legislation replacing it and for no other purpose.

Care should be taken in the application of these clauses as they may require amendment depending on the circumstances of the individuals preparing the will and the property involved. By omitting the bequest of property from the above clause, a bequest of money alone may be given.

Other issues to consider

Bequeathed infrastructure such as houses, sheds, commercial or industrial premises will be put to best use. Options for using bequeathed infrastructure that will be considered include:

- applying such infrastructure to operational purposes such as management bases, public access facilities, or staff accommodation as appropriate in the circumstances
- seeking a commercial or community use for the property and associated infrastructure by calling publicly for expressions of interest from a third party to manage and use the property and infrastructure for an appropriate purpose
- disposal (i.e. sale) of the bequeathed infrastructure and the proceeds used for purposes specified in the bequest or otherwise as NPSR sees fit in the demonstrable interests of nature conservation or environment protection.

Disclaimer

While this document has been prepared with care, it contains general information and does not profess to offer legal, professional or commercial advice. The Queensland Government accepts no liability for any external decisions or actions taken on the basis of this document. Persons external to the Department of National Parks, Sport and Racing should satisfy themselves independently and by consulting their own professional advisors before embarking on any proposed course of action.

Approved By

Andrea Leverington

Signature

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Date

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