

Allocating Most Appropriate Use and Tenure of State Land in Coastal Areas PUX/952/096 Version 2

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Table of Contents

<i>Version history</i>	1
<i>Procedure</i>	2
<i>Responsibilities</i>	5
<i>Definitions</i>	6
<i>References</i>	7
<i>Legislation</i>	8

Version history

Version	Date	Comment
1	01/11/2004	Endorsed
1.1	04/07/2005	Conversion Project - New WORD/XML template
2	08/09/2008	Updated to reflect Land Act amendments
2.1	11/02/2009	Amended status of Notification from "NRW only" to "Public access"
2.2	11/02/2011	Updated to DERM

Procedure

Synopsis - allocation of state-owned coastal land

The allocation of tenure and use over land in coastal areas should proceed upon the presumption that the preservation of the public's right of access should prevail over other interests. In both urban and rural coastal areas, USL should not be allocated to HWM for private use - specific consideration however may be given to allocating USL to HWM for projects of State significance (see note 1 at end of section).

Before making a decision to allocate tenure to land in the coastal zone, a land planning evaluation must be carried out in accordance with section 16 of the *Land Act 1994* (see note 2 at end of section) to determine the most appropriate tenure and use for the land. The land planning evaluation must include a suitable consultation strategy to ensure that relevant stakeholder views are sought and considered. DERM regions must consult with Indigenous Services in relation to relevant native title, in accordance with the NTA. Existing commitments of the State may be taken into consideration in determining the extent of the land planning evaluation work required (see note 3 at end of section).

Depending on the planning issues identified for particular coastal land and the views of stakeholders, a recommendation of most appropriate use and tenure may support:

- Dedication of USL as an esplanade to provide for access by the general public;
- Dedication of a community purpose reserve with the appointment of suitable trustees to oversee the management of the land;
- Dedication of land as a protected area under the *Nature Conservation Act 1992* ;
- Regulation of land as transferable land under the *Aboriginal Land Act 1991* or *Torres Strait Islander Land Act 1991*. (Excluding areas immediately adjacent to the HWM which may be allocated as - esplanade, reserve for a community purpose under the *Land Act*, or dedication of land as a protected area under the *Nature Conservation Act 1992*.)

Background

Section 16 of the *Land Act 1994* requires that before land is allocated (apart from the grant of rail land in fee simple to the State), the Chief Executive must carry out an evaluation to assess the most appropriate tenure and use for the land.

The special and unique characteristics of coastal areas means that a thorough land planning evaluation is critical in supporting land allocation decisions.

It has been a long-held principle that land along the coast should not be allocated to private use, except in very limited circumstances - in order to preserve the public's access to the sea for transport and fishing purposes. As well, in a contemporary sense, many people in the community are desirous of access to foreshores, beaches and coastal lands for pursuits such as active and passive recreation, natural resource management, tourism and environmental protection activities.

However, with the rapid development of Queensland's urban areas, there have been many instances where tenure has been allocated for private use with a coastal boundary. In some instances public access has been restricted or denied as a result of allocating tenure near the coast. This practice is not generally supported by current government policy, such as the State Coastal Management Plan.

This document provides guidance on the protection and management of land and the environment in coastal areas, including the issue of public access to foreshores. The document is supported by the provisions of the *Coastal Protection and Management Act 1995* and the *Environment Protection and Biodiversity Conservation Act 1999 (Cwth)*, and must be considered in any land planning evaluation carried out prior to allocating land in the coastal zone.

As a general rule, it is in the wider public interest to retain land in coastal locations as public land unless there is an overriding need for the land to be allocated for another purpose. Accordingly, greater interest of the public should prevail.

Issues

Proposed dealings with State land in coastal areas

In urban coastal areas (e.g. Brisbane, Sunshine Coast, Gold Coast, Townsville and Cairns), there has been extensive allocation of coastal land to HWM for public and private purposes. Tenure has been granted abutting and below HWM for a variety of private uses. While many of these uses, by their very nature, require a coastal location, the effects of granting tenure to private interests in these locations can produce detrimental impacts upon natural processes (e.g. dune formation, littoral drift) and fragmentation of public access to the coast. In non-urban areas, though development pressures are lower, it is important to protect the coastal zone in order to maintain natural processes, biodiversity, special features and public access.

In both urban and non-urban coastal areas, USL should not be allocated to HWM for private use although consideration may be given to the allocation of USL to HWM for a project of State significance. That is, where a project is endorsed by Cabinet, or where a State-sponsored project has a particular requirement for facilities such as port, marine and essential infrastructure and private use is an essential component of a project to provide such facilities. Consideration is also to be given to existing commitments of the State as specified in section 16.

In addition to satisfying the above criteria, a proponent must be able to demonstrate priority for a grant of tenure in terms of the *Land Act 1994*.

Careful consideration must therefore be given to applications for tenure and whether they may lead to environmental harm, incremental reduction of public land adjoining the coast and consequent exclusion of the public e.g. privately enclosed developments and building encroachments. The requirements of the State Coastal Management Plan and associated regional coastal management plans (approved under the *Coastal Protection and Management Act 1995*), must be taken into account. If land below HWM is to be leased it must be tied with adjoining land which is above HWM (Policy PUX/901/315 - Criteria and Method for Disposal of Unallocated State Land), or held under the one lease (one lot for land above HWM and one for land below HWM).

Proposed dealings with land under the Aboriginal Land Act 1991 or the Torres Strait Islander Land Act 1991 in coastal areas.

A land planning evaluation in terms of section 16 of the *Land Act 1994* is required to determine whether it is appropriate that land be regulated as transferable land. The evaluation must include a careful assessment of existing stakeholder and registered interests. Should the evaluation suggest that the land is appropriate for dealing with under the provisions of these Acts, it is to be supplemented by additional information sought by ATSI LAB, so as to permit regulation to proceed. If it is identified under the section 16 evaluation that part of the land is not appropriate for dealing with under the provisions of the *Aboriginal Land Act 1991* or the *Torres Strait Islander Land Act 1991*, it should be excluded from further consideration in terms of utilising those Acts.

Tenure options for coastal land

A most appropriate use assessment may indicate that an area of coastal land requires ongoing government oversight to ensure that the area is managed appropriately. The State has a variety of tenure, legislative and policy tools to achieve this, including:

- Reserving the land for a community purpose (in terms of the *Land Act 1994*) or for other purposes under other Acts such as the *Nature Conservation Act 1992* or *Forestry Act 1959*);
- Regulatory controls under legislation such as the *Environmental Protection Act 1994* and the *Integrated Planning Act 1997* ;
- Agreements (for example, under the *Nature Conservation Act 1992*);
- Statutory covenants (for example, under the *Land Act 1994* and *Land Title Act 1994*); and
- Management plans (for example, under the *Land Act 1994* or *Nature Conservation Act 1992*)

A beach and foreshore area may be dedicated as esplanade or road to preserve and ensure public access. In cases where native title rights and interests may exist, such dedication will not extinguish native title if the dedication occurs in terms of section 24KA of the NTA and native title parties will, along with other members of the community, be able to use the dedicated road to access and use adjoining areas and exercise their native title rights and interests in these areas.

Alternatively, a reserve for a community purpose, such as Beach Protection, Environmental or Recreation purposes, with a local government, a State Government agency or suitable other incorporated body as trustee, may be considered.

Native title must be addressed in accordance with the NTA, following a recommendation as to most appropriate use and prior to any allocation decision, such as retention of coastal areas under State ownership eg. a reserve or national park. Where native title has not been extinguished, it will need to be addressed in accordance with the provisions of the NTA and may include an ILUA providing for exchange of native title - Notification PUX952/091 Exchange of State Land for Native Title Interests).

NOTES:

1. State significance means: - a project is endorsed by cabinet, or where a State-sponsored project has a particular requirement for facilities such as port, marine and essential infrastructure and private use is an essential component of a project to provide such facilities.
2. Refer to SLAM notification PUX/952/106 "Deciding the most appropriate use and tenure of State land".
3. Section 16 requires an evaluation a) to take into account commitments and undertakings for Cape York agreement land, and b) must take account, and give primary consideration in respect of an urban development area. In respect of dealings in Cape York, the Cape York Tenure Resolution Task Force should be contacted for its views, together with other relevant government agencies.

END OF NOTIFICATION

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State Land Asset Management

Responsibilities

Implementation by all operational staff dealing with allocating State land in coastal areas.

Definitions

Coastal land/ coastal area

Land in the coastal zone - see s15, Coastal Protection and Management Act 1995.

State Coastal Management Plan

Acronyms

USL	Unallocated state land
DERM	Department of Environment and Resource Management
ATSILAB	Aboriginal & Torres Strait Islander Land Acts Branch (DERM)
DOGIT	Deed of Grant in Trust
HWM	High Water Mark
ILUA	Registered Indigenous Land Use Agreement
NTA	Native Title Act 1993 (Commonwealth)

References

PUX/901/315 "Criteria and Method for Disposal of Unallocated State Land"

Legislation

Forestry Act 1959

Land Act 1994

Land Title Act 1994

Integrated Planning Act 1997

Coastal Protection and Management Act 1995

Environmental Protection Act 1994

Nature Conservation Act 1992

Environment Protection and Biodiversity Conservation Act 1999 (Cwth)

Native Title Act 1993 (Cwth)

Aboriginal Land Act 1991

Torres Strait Islander Land Act 1991