

Procedure

Issue of tenures to a Port Authority/Corporation

SLM/2013/582 (Formerly PUX/952/062)

Version 5.04

Date: 12/08/2022

Approval

Position	Name	Effective Date
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Version history

Version	Date	Comments
3	27/08/2004	Endorsed
3.1	30/06/2005	Conversion Project - New WORD/XML template
4	16/12/2008	Updated and reviewed
4.1	10/02/2009	Amended status of Notification from "NRW only" to "Public access"
5	31/07/2012	Additional information regarding market rent
5.1	13/06/2013	Updated to reflect MOG changes
5.02	04/04/2014	Updated to new DNRM template
5.03	21/06/2016	Updated to new DNRM template
5.04	12/08/2022	Updated to new template and department name

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Table of contents

Procedure	1
Approval	2
Version history	2
Purpose	4
Rationale	4
Definition of Strategic Port land	4
Procedure	5
Strategic Port Land	5
Freehold	6
Perpetual Lease	6
Reservation	7
Non-Strategic Port Land	7
Future Strategic Port land	8
Legislation	8
Human Rights	8
Further information	9

Purpose

The purpose of this procedure is to provide guidance on dealing with land that is held by Port Authorities/Corporations. This procedure sets out the process for port land designated by the Port Authorities/Corporations for reallocation under their land use plans to freehold, leasehold or reserve land.

Rationale

Port authorities provide land and other basic infrastructure to port users and port-related industries. Most Queensland ports are structured on a 'landlord' model. Specific exceptions to the landlord model include Gladstone Ports Corporation Limited which owns and operates the RG Tanna Bulk Coal Handling Terminal and the Port of Brisbane Corporation Ltd which enters into Tactical Partnerships with port customers to construct new port facilities.

In essence, port authority dealings involve the leasing of land above and below the high water mark (HWM) to developers who provide the infrastructure necessary for the operations of the port. Certain facilities, such as wharves, jetties and mooring berths are provided by the Port Authority whilst the majority of infrastructure above HWM is developed by port lessees.

At present, port authorities hold land under various forms of tenure including freehold, reserve, lease and vested. The differing requirements for each form of tenure affect the efficiency of land dealings and ultimately the cost of port operations.

With regard to these various forms of land tenure, the following occurred:

- legislation allowing vesting of land expired on 30 June 1997;
- legislation permitting dealings with vested land has expired;
- the *Land Act 1994* (Land Act) does not provide for dedication of land as reserves for operational uses.

Rationalisation of these land tenures is accommodated under the provisions of section 504 of the Land Act. In this regard, Cabinet by decision of 2 September 1997 approved the following preferred tenure arrangements for **strategic port land**:

- freehold for land above HWM;
- perpetual lease for land below HWM;
- reserves or leases where appropriate as environmental buffer areas.

Definition of Strategic Port land

The *Transport Infrastructure Act 1994* provides for port authorities to prepare land use plans defining strategic port land which will not be subject to local government planning.

Note: A port authority must, at least every 8 years, prepare a land use plan in relation to the port authority's land for approval under section 286 of the *Transport Infrastructure Act 1994*.

The land use plans - which include a schedule of lots within these areas - have been approved by the Minister for Transport and is the basis for application for new title. Copies of these plans have

previously been forwarded to Land Services in the Department of Resources (the department) to assist with the rationalisation process.

To be considered 'strategic' the subject land must have been held as at September 1997 by the Port Authority and the land must be on or near the interface between the land and the waters within the limits of the port and that is used or may be used:

- for domestic or international trade; or
- by industries requiring close proximity to a port; or
- for the integration of sea transport with other transport modes; or
- as port buffer lands; or
- as a boating facility; or
- for other purposes of a port authority prescribed under a regulation.

Procedure

Officers of the department are required to address the following three scenarios in relation to land under the control of port authorities:

- **Strategic Port Land**
- **Non-Strategic Port Land**
- **Future Strategic Port Land.**

Strategic Port Land

Copies of the Port Authorities/Corporations land use plans and a schedule of properties approved by the Minister for Transport have previously been sent to Land Services in the department.

Note: Since the time these land use plans were lodged for approval with the Minister for Transport, some further properties have been vested and some have been deleted from the list of desired properties and therefore the approved schedule of properties may have varied from that in the land use plans.

The majority of strategic port land has now been dealt with however; there may still be some properties yet to be reallocated due to various issues.

In time, the relevant Port Authority/Corporation will lodge requests for the issue of freehold, perpetual lease or dedication of reserve or issue of a lease for buffer zones for these remaining properties.

When lodging a request, the following must be provided by the relevant Port Authority/Corporation:

- confirmation that the lot is on the approved schedule;
- **written confirmation that the Department of Transport has assessed native title implications in accordance with government's Native Title Work Procedures and in that regard native title is not an impediment to the dealing proceeding;**

- plan of survey (where an existing lot is both above and below HWM then a new plan is required showing the respective areas i.e. showing one lot for the area above HWM and a separate lot for the area below HWM);
- Government Land Register (GLR) reference;
- confirmation that the holder of any existing interest has been informed of the application;
- form of surrender for vested land.

These applications will then be processed as follows:-

1. Create a case for the application in the electronic Land and Vegetation Administration System (eLVAS).
2. Undertake an initial review of the request to ascertain if all appropriate information has been supplied in order for the action to proceed.
3. Complete relevant Native Title annexure.
4. If it is decided that the request may not proceed because it does not agree with the approved schedule of lots or for other reasons, advise the relevant Port Authority/Corporation.
5. If to proceed, prepare Order in Council -Refer to section 504 of the Land Act.
6. Prepare cancellation or amendment of reserve if applicable.
7. Register and process surrender of Land Act lease if applicable.
8. Issue tenure as follows:

Freehold

- request the issue of a Deed of Grant in the name of the relevant Port Authority/Corporation, deed fee only is payable;
- record existing interest as requested (see note hereunder);

Where the Port Authority/Corporation performs reclamation on land that is currently held as vested strategic port land and provided that all native title issues have been addressed before such reclamation had taken place then the reclaimed land will be converted to freehold without further cost to the Port Authority/Corporation other than survey costs and deed fee.

Perpetual Lease

- Issue the lease subject to existing interests (see note hereunder);
- Leases are subject to condition A96
[Clause (3) of Condition A96 regarding annual rent has been amended - this rental condition is a special case and applies only to perpetual leases issued over strategic port land in accordance with this procedure];
- The purpose of the lease being port and transport related purposes;
- Send all advices to the relevant parties;

Note: Section 504(3) of the Land Act allows for all interests over the port areas current prior to the issue of the new tenure to continue. For leasehold, this will be achieved by recording the particular interest on the lease. However, because of the provisions of the *Land Title Act 1994*, recording of the interest on the freehold title does not have to occur. In some instances the Port Authority/Corporation will wish to protect the confidentiality of some of their commercial dealings and may be reluctant to have these interests recorded. However, Land Services should strongly recommend to the Port Authority/Corporation that they have these interests recorded to ensure that the rights created under such interest are protected.

Reservation

- Areas of strategic port lands required as buffer areas between adjoining land use areas are to be set aside as Reserve for Environmental Purposes, Reserve for Open Space or Reserve for Buffer Zone or Reserve for Strategic Land Management, or in some cases as leases depending on the circumstances;
- The normal procedures for setting land apart as reserves will apply;
- Negotiations with the Port Authority/Corporation will be needed to ascertain who will be trustees of the reserve. It may be that the Port Authority/Corporation will be joint trustees with the local government or the Department of Environmental and Science (DES).

Non-Strategic Port Land

1. Land currently held as non-freehold title by the Port Authority/Corporation and not included in the approved land use plan may be dealt with in two ways:
 - if the Port Authority/Corporation can establish priority under the Land Act over non-strategic land then the Port Authority/Corporation may apply in the normal manner for freehold tenure for land above HWM or leasehold below HWM . Payment for the land will be at market value as assessed by the department's valuation officers. However, equity in the land e.g. filling can be offset against the purchase price. These applications are to be dealt with on a case by case basis,
 - if priority cannot be established, the land should be surrendered to the state for further dealing at its discretion. The Port Authority/Corporation may claim reimbursement for any value added (such as by reclamation) to these properties following disposal of this land by the state depending on the circumstances. Any claims for reimbursement should be referred by the Port Authority/Corporation to the Department of Transport and Queensland Treasury.
2. For land which is not currently held by the Port Authority/Corporation then the usual priority criteria in the Land Act (Sections 121 - 123) will apply. All land purchases will be at market value. If priority is not established, they will have to stand in the market place to purchase the land like any other potential purchaser. If the land is to be leased then rental is to be determined in accordance with the provisions of the Land Act .

For non-strategic port land Native title implications are to be assessed by the department.

Future Strategic Port land

Land that was not deemed as strategic port land as at 1997 is dealt with as future strategic port land.

If the Port Authority/Corporation is seeking land in priority as future strategic port land then the Department of Transport must indicate it is prepared to recommend that the land applied for be included in the Port Authority/Corporation's land use plan as strategic port land.

If the Department of Transport indicates that approval of the land's strategic designation is likely to be given by their Minister (Ministerial approval can be given where no strong objections to the designation are received during their consultation process), a deed of grant may issue at market value so that the port has tenure to the land which is a prerequisite to obtaining strategic designation.

If on the other hand there have been strong objections (possibly from the local government) the decision to designate the land requires Governor in Council approval. In these cases a permit to occupy only should issue.

The issue of a permit to occupy is necessary because again, the Port Authority must have some form of tenure over the land before the Governor in Council's approval can be given. If approval is given by the Governor in Council, a deed of grant may issue. The land will be sold at market value.

Land below HWM may be offered to the Port Authority/Corporation as a new perpetual lease at market rent (not the minimum rent) or added to an existing perpetual lease if that lease is also subject to a market rent, unless there are strong objections as outlined above, in which case a permit to occupy should only be offered until the land is designated as strategic port land.

Note: Where the future strategic port land adjoins a Port perpetual lease that issued for strategic port land as outlined above in the section on Strategic Port Land and is subject to the minimum rent, the future strategic port land will not be able to be included in that lease and a separate lease will need to issue for the future strategic port land at market rent).

For future strategic port land Native title implications are to be assessed by the Department.

Legislation

Land Act 1994

Land Title Act 1994

Transport Infrastructure Act 1994

Human Rights

The department is committed to respecting, protecting and promoting human rights. Under the *Human Rights Act 2019*, the department has an obligation to act and make decisions in a way that is compatible with human rights and, when making a decision, to give proper consideration to human rights. To the extent an act or decision under this document may engage human rights under the *Human Rights Act 2019*, regard will be had to that Act in undertaking the act or making the decision.

Further information

- Contact your nearest business centre (https://www.resources.qld.gov.au/?contact=state_land), or
- Refer to <https://www.qld.gov.au/environment/land/state>, or
- Call 13 QGOV (13 74 68).