



The Coordinator-General



# Private infrastructure facility

Statutory guideline

21 December 2012



Queensland  
Government

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# Introduction

The *State Development and Public Works Organisation Act 1971* (SDPWO Act) establishes a process for a private infrastructure facility and taking of land for a private infrastructure facility. This process reflects the principle that a proponent must try to reach agreement with registered owners and have completed a satisfactory environmental assessment before seeking approval for the Coordinator-General for a private infrastructure facility and the taking of land. This process can be summarised in the following steps:

## **Step 1—Notice and negotiations**

The proponent of the project must give notice to, and negotiate with the registered owners of the land required for the project and—if native title exists—negotiate an indigenous land use agreement. The proponent must take reasonable steps to purchase the land and the negotiations must be carried out in accordance with clause 5 of this guideline.

## **Step 2— Making an application**

If the parties are unable to reach agreement and an environmental assessment process has been completed for the project, the proponent may apply to the Coordinator-General for approval of the project as a 'private infrastructure facility' and to subsequently consider taking land required for the facility. The requirements for making an application are set out in clause 7 of this guideline.

## **Step 3—Consultation**

The Coordinator-General will seek submissions about the project from affected persons and undertake consultation with the registered owners of the land that the proponent has asked the Coordinator-General to take.

## **Step 4—Deciding the application**

The Coordinator-General will assess the application and make a recommendation to the Governor in Council. The Governor in Council will then decide whether to approve the project as a private infrastructure facility.

## **Step 5—Final negotiations with owner of land**

If the project is approved as a private infrastructure facility, the proponent must negotiate with the registered owner and any holders of native title rights and interests one final time. The proponent must also make a final unconditional offer to purchase the land or enter into an ILUA. The requirements for the final unconditional offer to purchase are set out in clause 8 of this guideline.

### **Step 6—Acquisition of land**

If agreement cannot be reached between the proponent and registered owners of the land, the Coordinator-General may take the land for the private infrastructure facility if satisfied that all of the requirements of the SDPWO Act and the guideline have been met.



**Barry Broe**  
**Coordinator-General**  
**21 December 2012**

# 1. About this guideline

- 1.1 This guideline has been made under section 174 of the *State Development and Public Works Organisation Act 1971* (SDPWO Act). The guideline must be read in conjunction with the SDPWO Act.
- 1.2 The following guidelines have been repealed—
- *Guidelines for access to land for infrastructure projects by persons other than the state* (September 1999).
  - *Guidelines for dealing in the way mentioned in section 79A with the taken land* (September 1999).
- 1.3 This guideline does not apply retrospectively to infrastructure facilities of significance approved under former section 125(1)(f)(ii) of the SDPWO Act or to applications for approval as an infrastructure facility of significance made prior to the commencement of section 153AC of the SDPWO Act. For infrastructure facilities of significance, please refer to the following guidelines:
- *Guidelines for consultation and negotiation with native title interests* (September 1999).
  - *Guidelines for acquisition of land for infrastructure projects by persons other than the state* (September 1999).

# 2. Definitions

- 2.1 The dictionary in the schedule defines particular words used in this guideline.
- 2.2 Other words used in this guideline have the meaning given in the SDPWO Act.

# 3. How this guideline deals with native title

- 3.1 Where native title rights and interests exist in relation to land to be taken for a private infrastructure facility, it may be necessary for native title rights and interests to be compulsorily acquired by the State. The proponent should consult the Coordinator-General at the earliest possible time to determine whether it is necessary to compulsorily acquire native title rights and interests.
- 3.2 If native title rights and interests are to be compulsorily acquired, section 24MD(6A) of the *Native Title Act 1993* (Cwlth) (NTA) requires that the native title holders and any registered native title claimants are entitled to the same procedural rights in relation to the acquisition of the native title rights and interests as they would have if they instead held freehold title to the land.
- 3.3 The SDPWO Act requires that a proponent provide certain procedural rights to a registered owner of land in relation to the taking of land for an infrastructure facility. For a compulsory acquisition of native title rights and interests to

comply with the NTA, the procedural rights which the proponent is required under the SDPWO Act to provide to a registered owner of the land must also be provided by the proponent to native title holders and any registered native title claimants.

- 3.4 This guideline provides guidance on how these obligations under the NTA may be satisfied. The NTA will prevail over this guideline to the extent of any inconsistency. A proponent must satisfy itself that the NTA has been complied with.
- 3.5 Some procedural rights relate to the requirement in sections 153AC(2)(g)(i) and 153AE(1)(a) of the SDPWO Act for a proponent to attempt to purchase land by agreement. As it is not possible for a proponent to purchase native title rights and interests, this guideline seeks to provide this procedural right to native title holders by requiring the proponent to attempt to obtain consent to the surrender of the native title rights and interests in an indigenous land use agreement.
- 3.6 For the avoidance of doubt, where there is no registered native title body corporate, procedural rights granted to native title holders in this guideline can be satisfied in the manner provided in section 24MD(7) and section 24MD(8) of the NTA.

## **4. Investigating a proposed private infrastructure facility**

### **Application for investigator's authority**

- 4.1 A person proposing to apply for approval of a project as a private infrastructure facility may apply to the Coordinator-General for access to private land for investigations under section 143 of the SDPWO Act if the person has been unable to successfully negotiate entry onto the land with the owner of the land. Under section 142 of the SDPWO Act, the owner of land includes a person who, to the knowledge of the Coordinator-General, is an occupier of the land.
- 4.2 Under section 174(1) and schedule 1B, section 1 of the SDPWO Act, the Coordinator-General may make guidelines about investigating—under part 6, division 7, subdivision 1 of the SDPWO Act—the potential of land for infrastructure facilities.
- 4.3 In addition to the requirements under section 143 of the SDPWO Act, an application for an investigator's authority may also include the following –
  - (a) details of the proposed facility including –
    - (i) information about the direct and indirect benefits associated with the facility;
    - (ii) a preliminary financial analysis of the facility; and

- (iii) information about the proposed timing of the facility or service delivery;
- (b) the proponent's registered business name, ABN, telephone number, email address and business address;
- (c) details of the work proposed to be undertaken on the land, including locations, numbers of personnel required, proposed timetable and work schedule and equipment requirements;
- (d) evidence demonstrating that the land over which the investigator's authority is sought is no more extensive than is reasonably needed; and
- (e) example or details of access agreements, if any, that have been entered into with neighbouring properties.

4.4 For section 143(3)(e) of the SDPWO Act, details of the steps taken by the proponent to negotiate entry to the land may include –

- (a) a signed copy of the initial letter sent to the owner of the land requesting access, that outlines the –
  - (i) details of the project;
  - (ii) potential impact of the project on the land;
  - (iii) proponent's commitment to negotiations to reach agreement on conditions of access;
  - (iv) timing and manner in which the proponent will act on the land; and
  - (v) the action the applicant proposes to take to identify the specific needs of owner;
- (b) copies of all correspondence and meeting notes relating to access to the land;
- (c) written evidence confirming receipt of advice or detailed written evidence of all attempts to make contact;
- (d) evidence that the proponent has paid, or offered to pay reasonable direct costs and out-of-pocket expenses of the owner (but not including the owner's time) in negotiating access to the land;
- (e) evidence that the proponent provided the owner with a copy of this guideline;
- (f) details of reasons why attempts to negotiate access with the owner have failed; and
- (g) details of how the proponent intends to manage the interference on the land, e.g. temporary fencing and any assistance required from the landowner.

4.5 The proponent must give the Coordinator-General:

- (a) 2 hard copies of the application; and
- (b) an electronic version of the application.

## Granting an investigator's authority

- 4.6 Under section 145 of the SDPWO Act the Coordinator-General may grant an investigator's authority with or without conditions.
- 4.7 Such conditions may include, but are not limited to the following –
- (a) the amount of any bond and the conditions under which the bond may be used;
  - (b) the number of people permitted on the land at any one time;
  - (c) the use of signage;
  - (d) fire management;
  - (e) preventing the spread of weeds;
  - (f) the timing and location of investigations;
  - (g) liability insurance (for both the owner's and investigator's exposure) to the satisfaction of the Coordinator-General;
  - (h) quality assurance documentation for the control of weeds and pests;
  - (i) compliance with appropriate cultural heritage legislation;
  - (j) the disposal of contaminants;
  - (k) temporary enhancement to existing infrastructure such as roads, grids and culverts to enable the investigations to take place; and
  - (l) rectification actions following the completion of investigations.
- 4.8 For the purposes of clause 4.7(a), the Coordinator-General may, in deciding the amount of any bond or security, have regard to the activities to be undertaken by the investigator and the potential for such activities to cause loss or damage. As a guiding principle, the owner should not be financially disadvantaged by the investigator's activities.

## 5. Private infrastructure facility application—Notice and negotiations

- 5.1 Under section 174 and schedule 1B, section 4(1) of the SDPWO Act, the Coordinator-General must make guidelines about negotiations to be undertaken before a proponent makes a private infrastructure facility application.
- 5.2 Under section 153AC(2)(g)(i) of the SDPWO Act, a proponent seeking approval of a project as a private infrastructure facility must first negotiate, in accordance with the guidelines, for at least 6 months with each registered owner of the land required for the proposed infrastructure facility for the purchase of the land.
- 5.3 The requirements for carrying out these negotiations are set out below.

## Notice of proposed infrastructure facility

- 5.4 The proponent must –
- (a) give written notice to the registered owner of the relevant land;
  - (b) where native title rights and interests are proposed to be acquired, give written notice to the native title holders and any registered native title claimants for the relevant land; and
  - (c) publish a notice at least once in a newspaper circulating generally in the locality of the infrastructure facility.
- 5.5 The written notice to the owner and native title holders or any registered native title claimants must –
- (a) include full details of the proposed infrastructure facility;
  - (b) include a detailed plan which shows the location of the infrastructure facility on the relevant land and sufficiently identifies the land which the proponent is seeking to purchase;
  - (c) identify the interest required in the land (and where that interest is an easement, include the easement terms);
  - (d) state a contact telephone number for the proponent for information about the proposed infrastructure facility;
  - (e) state that it is the intention of the proponent to reach, through negotiation –
    - (i) an agreement with the registered owner of the relevant land to purchase the land; and
    - (ii) where native title rights and interests are proposed to be acquired, an agreement with the native title holders and any registered native title claimants to bring about the surrender of native title rights and interests;
  - (f) state the period of at least 6 months after the notice is given during which the negotiations will be carried out; and
  - (g) state the steps the proponent proposes to take to reach an agreement mentioned in paragraph (e). This must include an offer at the end of the negotiation period to purchase the land.
- 5.6 The notice to be published in the newspaper in the locality of the infrastructure facility must –
- (a) include details of the proposed infrastructure facility;
  - (b) include a plan which shows the location of the infrastructure facility;
  - (c) state a contact telephone number for the proponent for information about the proposed infrastructure facility;
  - (d) state that it is the intention of the proponent to reach, through negotiation –

- (i) an agreement with the registered owner of the relevant land to purchase the land; and
- (ii) where native title rights and interests are proposed to be acquired, an agreement with the native title holders and any registered native title claimants to bring about the surrender of native title rights and interests.

## Steps to reach agreement

- 5.7 The proponent must take each of the steps stated in the notice and mentioned in clause 5.5(g), including making an offer at the end of the negotiation period.
- 5.8 The offer to the owner or native title party must include all terms and conditions of the proposed purchase or ILUA and the owner or native title party must be given sufficient time to consider the offer and seek advice, if required.

## Payment of costs

- 5.9 The proponent must offer to and pay the registered owner the following costs reasonably incurred by the owner during negotiations –
- (a) the costs of obtaining a land valuation;
  - (b) mediation costs; and
  - (c) the costs of obtaining legal advice about the proposed purchase.
- 5.10 Where native title rights and interests are proposed to be acquired, the proponent must offer to and pay the following costs reasonably incurred by the native title holders or any registered native title claimants during negotiations –
- (a) the costs of obtaining a valuation of the land to which the native title rights and interests relate;
  - (b) mediation costs; and
  - (c) the costs of obtaining legal advice about the proposed surrender of native title rights and interests.

## Change of owner

- 5.11 If the registered owner of the relevant land changes before a private infrastructure facility application is made, the proponent must again comply with clauses 5.4(a) and (b), 5.5, and 5.7 to 5.10 for the relevant land.

## 6. Easements

- 6.1 Where the proposed taking of relevant land involves only taking an easement over the relevant land, and it is not necessary to compulsorily acquire native title rights and interests in relation to the relevant land, the proponent must

take reasonable steps to enter into an indigenous land use agreement that provides for the non-extinguishment principle to apply to the taking of the easement.

- 6.2 Where the non-extinguishment principle is to apply, clauses 7.3(m), 8.4 and 8.5 of the guideline apply, subject to all such modifications and adaptations as are necessary.

## 7. Requirements for private infrastructure facility applications

- 7.1 Under section 174 and schedule 1B, section 2 of the SDPWO Act, the Coordinator-General must make guidelines about requirements for making private infrastructure facility applications. Section 153AA(2)(a) of the SDPWO Act provides that a private infrastructure facility application must address any requirements relevant to making the application stated in the guidelines.
- 7.2 If section 153AA(1)(b) of the SDPWO Act applies to a private infrastructure facility application, the application must include evidence that adequate environmental assessment has been carried out for the project in accordance with an environmental assessment process under a Queensland Act or Commonwealth Act and must include the document and approval (environmental impact statement or similar and conditions or evaluation report or similar) to which the process relates.
- 7.3 For the purposes of section 153AA(2)(a) of the SDPWO Act, a private infrastructure facility application must also include the following –
- (a) the proponent's registered business name, ABN, telephone number, email address and business address;
  - (b) full details of the infrastructure facility, including –
    - (i) the name and address of all registered owners of the land identified under section 153AA(2)(c) of the SDPWO Act (the *relevant land*); and
    - (ii) where native title rights and interests are proposed to be acquired, the name and address of all native title holders and any registered native title claimants for the relevant land;
  - (c) a single plan which shows all of the following –
    - (i) the area of land assessed in the environmental impact statement or other environmental assessment process;
    - (ii) the proposed location of the infrastructure facility on the relevant land using GIS coordinates, and a description of the nature of that infrastructure; and
    - (iii) the location of other infrastructure on the relevant land;
  - (d) a plan which sufficiently identifies the land which the proponent is asking the Coordinator-General to acquire;

- (e) evidence to demonstrate that the area of land and the interest to be acquired is no more than is reasonably required for the infrastructure facility;
- (f) demand projections for the infrastructure facility;
- (g) a preliminary financial analysis of the infrastructure facility;
- (h) information about the direct and indirect benefits associated with the infrastructure facility;
- (i) information about the proposed timing of the infrastructure facility or service delivery;
- (j) the results of any investigations of the relevant land;
- (k) details of any resource interests on the land on which the infrastructure facility is proposed to be located;
- (l) information about the steps taken by the proponent to purchase the relevant land, including –
  - (i) information about all dealings with the registered owner;
  - (ii) a statement about whether any valuations of the land were provided by the proponent to the registered owner;
  - (iii) details of any mediations between the proponent and the registered owner;
  - (iv) evidence that an offer to purchase was made;
  - (v) information about whether the proponent has the financial capacity to meet its obligations under any offer to purchase; and
  - (vi) information about why agreement could not be reached with the registered owner;
- (m) where native title rights and interests are proposed to be acquired, information about the steps taken by the proponent to bring about the surrender of native title, including –
  - (i) information about all dealings with the native title holders and any registered native title claimants;
  - (ii) a statement about whether any valuations of the land to which the native title rights and interests relate were provided by the proponent to the native title holders and any registered native title claimants;
  - (iii) details of any mediations between the proponent and the native title holders and any registered native title claimants;
  - (iv) information about whether the proponent has the financial capacity to meet its obligations under any offer of compensation for the surrender of native title rights and interests;
  - (v) evidence that an offer of compensation for the surrender of native title rights and interests was made;
  - (vi) information about why agreement for the surrender of native title rights and interests could not be reached with the native title holders and any registered native title claimants;

- (n) where an indigenous land use agreement has been agreed with native title holders and any registered native title claimants, evidence of the finalised indigenous land use agreement;
- (o) evidence of compliance with clause 5, including evidence that notice of the infrastructure facility has been given under clause 5.4; and
- (p) any other information the Coordinator-General considers is necessary to assess the application.

7.4 The proponent must give the Coordinator-General –

- (a) 2 hard copies of the application; and
- (b) an electronic version of the application.

## **8. Final unconditional offer to purchase**

8.1 Under section 174 and schedule 1B, section 4(2) of the SDPWO Act, the Coordinator-General must make guidelines about how the proponent must make the registered owner of the relevant land a final unconditional offer to purchase the land.

8.2 Section 153AE(1)(a) of the SDPWO Act requires the proponent to, after the project is approved as a private infrastructure facility, make the registered owner a final unconditional offer to purchase the land in accordance with the guidelines.

8.3 The final unconditional offer to purchase the relevant land must –

- (a) be in writing;
- (b) be signed by the proponent and dated;
- (c) offer to purchase the land subject only to the grant of any statutory approvals required for the purchase;
- (d) state the amount the proponent is offering to pay for the purchase of the land;
- (e) if the interest required is an easement, include the final terms of the easement;
- (f) recommend that the registered owner obtain an independent valuation of the owner's land and legal advice about the offer;
- (g) state that the registered owner must respond to the offer within a specified period from the day the offer is received (such period to be a reasonable timeframe but not less than 10 business days);
- (h) include an offer to pay the following costs reasonably incurred by the registered owner in relation to the final unconditional offer –
  - (i) the costs of obtaining a land valuation;
  - (ii) the costs of obtaining legal advice; and
- (i) be delivered by hand to the registered owner or sent by registered post addressed to the owner at the owner's residence.

- 8.4 Where native title rights and interests are proposed to be acquired, the proponent must make the native title holders and any registered native title claimants a final unconditional offer of compensation in relation to the surrender of native title rights and interests.
- 8.5 The final unconditional offer of compensation under clause 8.4 must –
- (a) be in writing;
  - (b) be signed by the proponent and dated;
  - (c) offer to pay compensation for the surrender of native title rights and interests subject only to the entry into an indigenous land use agreement and any additional statutory requirements relating to the surrender of native title rights and interests;
  - (d) state the amount the proponent is offering to pay as compensation for the surrender of native title rights and interests;
  - (e) recommend that the native title holders and any registered native title claimants obtain an independent valuation of the land to which the native title rights and interests relate, and legal advice about the offer;
  - (f) state that the native title holders and any registered native title claimants must respond to the offer within a specified period from the day the offer is received (such period to be a reasonable timeframe but not less than 10 business days);
  - (g) include an offer to pay the following costs reasonably incurred by the native title holders and any registered native title claimants in relation to the final unconditional offer –
    - (i) the costs of obtaining a valuation of the land to which the native title rights and interests relate;
    - (ii) the costs of obtaining legal advice; and
  - (h) subject to clause 3.6, be delivered by hand to the native title holders and any registered native title claimants or sent by registered post addressed to the native title holders and any registered native title claimants.
- 8.6 The proponent must obtain a receipt for the delivery of the final unconditional offer to purchase.

## **9. Reasonable time frames**

- 9.1 To demonstrate how a project will proceed within reasonable time frames under section 153AH(1)(b) of the SDPWO Act., the proponent may provide the following –
- (a) information about the design of the project, including –
    - (i) details of any proposed accommodation works;
    - (ii) an indicative construction program;
    - (iii) a contractor procurement program;

- (iv) a program for obtaining any approvals required for the project and a status report on the progress of obtaining those approvals;
- (b) a description of all land to be affected by the proposed infrastructure facility, including unregistered interests that are proposed to be acquired;
- (c) details of any arrangements entered into with the providers of other services or utilities required for the project;
- (d) an estimate of capital cost of the infrastructure facility; and
- (e) the steps and timetable for reaching financial close or a final investment decision.

## **10. Arrangements about payment of costs and compensation**

- 10.1 Prior to acquiring any land for a private infrastructure facility, the Coordinator-General may require the proponent to enter into a cost and compensation agreement with the Coordinator-General which addresses issues such as the payment by the proponent of compensation and costs associated with the proposed acquisition.
- 10.2 The Coordinator-General may also require a guarantee or other security in a form acceptable to the Coordinator-General which covers the estimated compensation payable.

## Schedule—Dictionary

**ABN** means an ABN (Australian Business Number) under the *A New Tax System (Australian Business Number) Act 1999* (Cwlth).

**indigenous land use agreement** means an indigenous land use agreement as defined in section 24BA, section 24CA or section 24DA of the *Native Title Act 1993* (NTA).

**resource interest** means any lease, licence, permit or other instrument authorised under the –

- (a) *Greenhouse Gas Storage Act 2009*; or
- (b) *Geothermal Energy Act 2010*; or
- (c) *Mineral Resources Act 1989*; or
- (d) *Petroleum Act 1923*; or
- (e) *Petroleum and Gas (Production and Safety) Act 2004*

**native title rights and interests** has the meaning given by section 223 of the NTA.

**native title holders** has the meaning given by section 224 of the NTA.

**NTA** means the *Native Title Act 1993* (Cwlth).

**registered native title claimants** has the meaning given by section 253 of the NTA.

**relevant land** see clause 7.3(b)(i).

**SDPWO Act** means the *State Development and Public Works Organisation Act 1971*.

**surrender of native title rights and interests** means an extinguishment of native title rights and interests by surrender to the State provided for in an indigenous land use agreement.

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