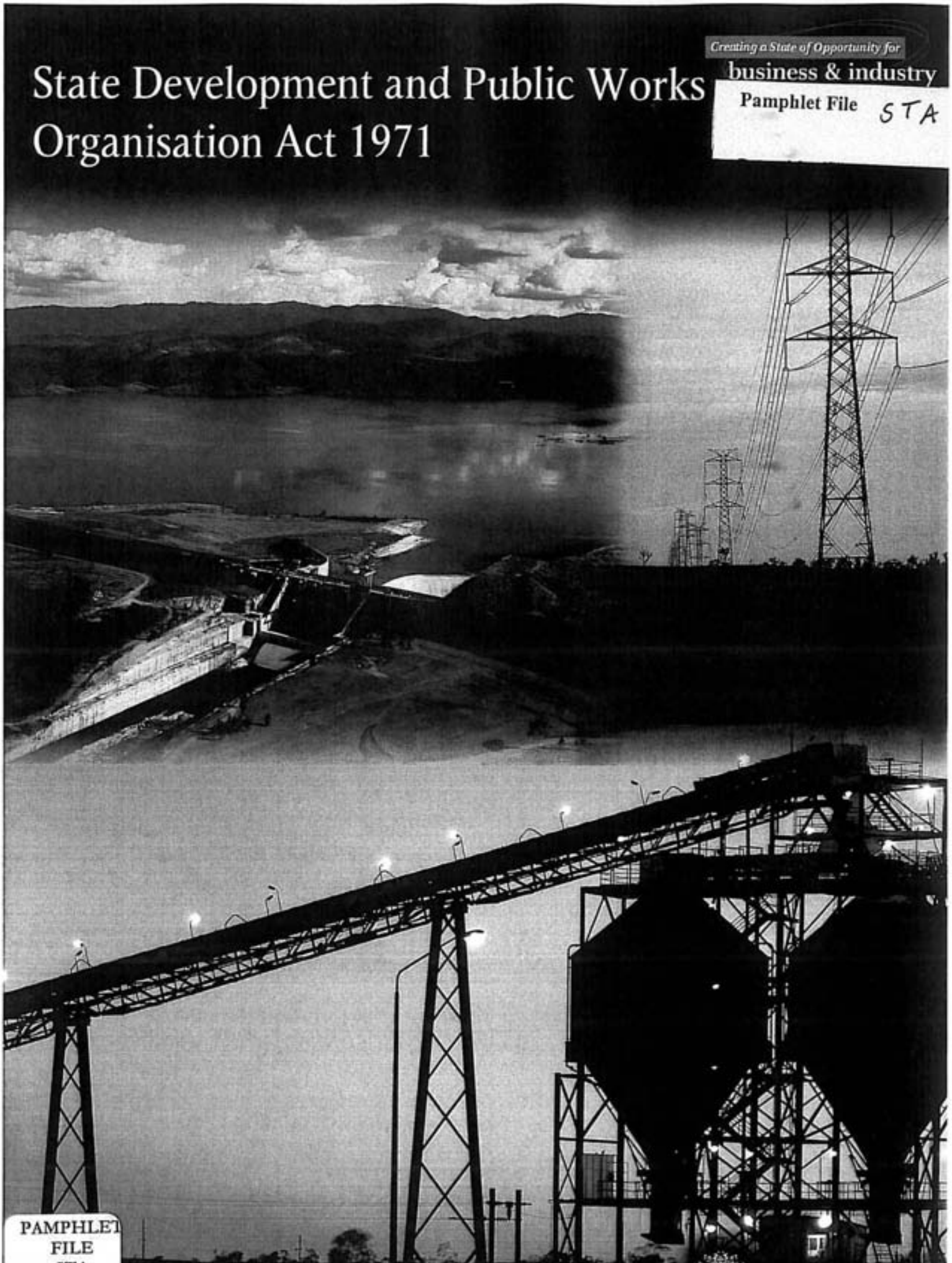
State Development and Public Works Organisation Act 1971



lines for consultation and ation with native title interests

State Development

SEPTEMBER 1999

State Development and Public Works Organisation Act 1971

Acquisition of land for infrastructure projects:

Guidelines

for

consultation and negotiation with native title interests

Introduction

There are national and international trends for the increased involvement of the private sector in the construction, ownership, operation and maintenance of public infrastructure. Governments are developing policies that will open up opportunities for private sector provision of infrastructure. These policies acknowledge that infrastructure, however financed, will provide benefits to parties other than the proponent.

The State Development and Public Works Organisation Act 1971 (SD&PWOA) allows for the compulsory taking of land for an infrastructure facility as defined within section 78(5) of that Act. The Coordinator-General can only take rights or interests in land for a facility within this definition for the purposes of section 78(1)(f) of that Act; and only with Governor in Council approval. This definition is similar to but not identical to that provided in section 253 of the *Native Title Act 1993 (Cth) (NTA).*

The Coordinator-General must not compulsorily acquire any interest in the land for an infrastructure facility unless the proponent has taken reasonable steps to acquire land by agreement. This is to reinforce the strong preference that the land be acquired through commercial negotiations. If native title exists on land to be acquired, reasonable steps must be taken to form an indigenous land use agreement ('ILUA').

These Guidelines describe the necessary steps to negotiate an agreement (ie. an ILUA) over land on which native title exists. Under section121A of the SD&PWOA, the Guidelines are a statutory instrument for the purpose of the *Statutory Instruments Act 1992.* The provisions within these Guidelines must be followed.

The intent of these Guidelines is to provide assistance to proponents in dealing with native title holders for the acquisition of land for an infrastructure facility while safeguarding the interests of native title holders and claimants.

These Guidelines describe the steps by which a party, other than the State, may seek to enter into an ILUA over land with native title parties, for the purpose of an infrastructure facility.

The Queensland Government's preferred position in the future management of land where native title may still exist is through comprehensive agreements such as an ILUA, which could allow for the non-extinguishment of native title. The NTA provides for the coverage and a framework for three different types of ILUAs and these are outlined within these Guidelines. By promoting a preference within the SD&PWOA for an ILUA, the Queensland Government provides an enhancement of the process with respect to native title rights and interests than that contained within the NTA.

However, in the event that agreement cannot be reached within a reasonable time, the Coordinator-General may move to acquire compulsorily (and compensate) native title consistent with the acquisition process for infrastructure facilities prescribed within Commonwealth and State legislation.

Compulsory acquisition will only occur in the event that reasonable steps have first been taken to negotiate native title matters over land for an infrastructure facility through an ILUA and that those steps have been shown to the Coordinator-General to have been unsuccessful.

Before any compulsory acquisition of land (including native title) is considered, the Governor in Council must approve that the proposed infrastructure facility is of significance, particularly economically or socially, to Australia, Queensland or the region in which it is to be constructed. That is, infrastructure is provided not for its own sake but to enable other activities to occur.

This decision by the Governor in Council enlivens the head of power for compulsory acquisition to occur for a particular project. Only under these specific circumstances will the Coordinator-General be authorised to acquire the rights or interests in land for a person other than the State.

If acquisition is to occur, the NTA provides the legislative process for acquisition of native title. Section 24MD(6B) provides a particular process if these interests are to be acquired for an infrastructure facility as defined within section 253 of the NTA. If these interests are acquired for such an infrastructure facility, native title holders and any registered native title claimants must have the same procedural rights as they would have in relation to the act on the assumption that they instead held ordinary title to the land. Thus, in the event that an ILUA was unsuccessful, native title would be acquired under the *Acquisition of Land Act 1967*.

Under section 78B of the SD&PWOA, jurisdiction has been granted to the (Queensland) Land and Resources Tribunal to hear objections arising from the acquisition of native title. Section 78B also provides for the constitution of the Tribunal to hear any objections. Any objections by non-native title holders to the taking continue to heard by the constructing authority or its representative.

If the infrastructure facility is not defined in section 253 of the NTA, the right to negotiate will apply for native title interests on land where the facility is to be located.

There are separate guidelines describing the steps to be taken to gain access to land to investigate its suitability for an infrastructure project and to acquire the non-native title rights or interests in land.

In developing these Guidelines an opportunity was provided for stakeholders including rural producer groups, bodies representative of native title interests and the infrastructure industry to comment. This approach was chosen to ensure that there is clear understanding of the required processes. These Guidelines will be reviewed in 12 months to ensure that they are meeting the needs of all stakeholders. However they will only be changed after consultation with all stakeholders.

Ross Rolfe
Coordinator-General

Overview of access and acquisition process
By persons other than the State

An overall outline of the *State Development and Public Works Organisation Act 1971* (SD&PWOA) on access and acquisition of land for infrastructure facilities provided by persons other than the State is as follows:

(a) A permit to enter for investigative purposes may be granted by the Coordinator-General under Division 6 of the Act in the following circumstances:

- The infrastructure is one that is likely to have significance, particularly economically or socially, for Australia, Queensland or the region in which it is to be constructed.
- The project is likely to be viable and the applicant is of substance.
- The applicant has been unable to gain access on a negotiated basis and is able to demonstrate a genuine attempt at negotiations.

If these conditions are satisfied the Coordinator-General may in turn grant an investigator's authority subject to conditions designed to minimise impacts on the landholder and ensure that any loss or damage associated with the investigation is rectified quickly and effectively.

(b) Compulsory acquisition however will only be available for the benefit of persons other than the State pursuant to section 78 of the Act in the following circumstances:

- The Governor in Council has determined that the infrastructure facility is of significance, particularly economically or socially, to Australia, Queensland or the region in which it is to be constructed.
- The proponent is able to demonstrate that reasonable steps have been taken to acquire the necessary land by agreement. For land other than native title these reasonable steps are essentially those expected in a normal commercial negotiation. For native title, there must be a genuine attempt to negotiate an indigenous land use agreement (ILUA).

(c) Land acquisition through this process will be dealt with according to normal policies for the procurement of land associated with infrastructure. When it is the strategic interest of the State to retain long term control of such land, leasehold title will usually be offered to the infrastructure provider.

Acquisition of land for infrastructure projects: Guidelines for consultation and negotiation with native title interests relate to the steps by which a party, other than the State, seeks to form an ILUA, only in the acquisition of land under section 78 of the SD&PWO Act for an infrastructure facility.

1.00 Indigenous Land Use Agreement

1.01 What is an ILUA?

An Indigenous Land Use Agreement (ILUA) is prescribed by sections 24BA, 24CA and 24DA of the Native Title Act 1993(Cth) (NTA).

There are three types of ILUAs: Body Corporate Agreement; Area Agreement; and Alternative Procedure Agreement. Generally, an ILUA is concerned with mapping out an agreed process for future activities or acts associated with development proposals.

An ILUA may cover, among other things:

- doing of acts that affect native title;
- the surrender of native title;
- compensation for past, intermediate or future acts;
- the relationship between native title and non-native title rights and interests and how they are to be exercised;
- doing anything that could not be done under the NTA (including validating otherwise invalid future acts); and
- giving native title parties different procedural rights to those which they are entitled under the NTA.

An ILUA, once agreed, must be registered through the National Native Title Registrar, which will make such agreements binding and provide legal certainty and security for all parties. A registered ILUA is binding on all native titleholders affected, including native titleholders who were not identified at the time the agreement was made, even if some were not signatories to the final document.

1.02 What are the types of ILUAs that may be negotiated? The NTA provides for three types of ILUAs:

- Body Corporate Agreement (BCA) where there has been an approved determination of native title over all of the areas concerned (see subdivision B of division 3 of the NTA, part 2)
- Area Agreements (AA), where there has not been a determination of native title over all of the areas concerned (see Subdivision C of Division 3 of the NTA, part 2); and
- Alternative Procedure Agreements (APA), which can be large scale, regional agreements (see Subdivision D of Division 3 of the NTA, part 2).

1.03 Which type of ILUA should be used?

Table 1 shows how each type of ILUA may be applied against a particular circumstance.

A BCA can be used where there are registered native title bodies corporate in relation to all of the area that is intended to be the subject of the ILUA (see section 24BC of the NTA). "Registered native title body corporate" is defined in section 253 of the NTA to mean either of the following:

- A prescribed body corporate whose name and address are registered on the National Native Title Register (NNTR) under subparagraph 193(2)(d)(iii); or
- A body corporate whose name and address are registered on the NNTR under subparagraph 193(2)(d)(iv).

Therefore, a registered native body corporate is a body registered on the NNTR and either holds the native title on trust or acts as the agent or representative of the native title holders in relation to particular land or waters once native title has been determined. Consequently, a BCA cannot be used unless there has been a determination of native title over the area.

An APA cannot be made unless there is at least one registered native title body corporate in relation to the land or water in the area or at least one representative Aboriginal/Torres Strait Islander body for the area (see section 24DD(2) of the NTA).

In circumstances where there is no registered native title body corporate or one or more representative Aboriginal/Torres Strait Islander body which covers the entire area, the only available ILUA is an AA.

1.04 What matters can be dealt with by an ILUA?

An ILUA may include provision in relation to the following matters:

- The doing of future acts or classes of future acts;
- Future acts (other than intermediate period acts) or classes of future acts which have already been done;
- Withdrawing, amending, varying or doing any other thing in relation to a native title or compensation application;
- The relationship between native title rights and interests and other rights and interests in relation to the area;
- The manner of exercise of any native title rights and interests or other rights and interests in relation to the area;
- Compensation for any past act, intermediate period act or future act; and
- Any other matter concerning native title rights and interests in relation to the area.

If the agreement is in relation to an act to which the right to negotiate would otherwise apply, it has to include a statement to the effect that the right to negotiate is not to apply in order to avoid the obligations of that process (see section 24EB(1)(c) of the NTA).

In addition to the above matters BCAs and AAs may deal with the extinguishment of native title and changing the effect of Intermediate Period Acts. AAs and APAs may deal with statutory access on non-exclusive pastoral and agricultural leases. APAs may additionally provide a framework for other agreements.

In circumstances where it is intended that the non-extinguishment principle may apply any of the ILUAs may potentially be used.

1.05 Who should be a party to the ILUA?

Table 2 sets out the compulsory parties for each of the three types of ILUA outlined above.

In relation to a BCA or AA, the Queensland Government must be a party to the ILUA where native title is to be surrendered. However, for the purposes of section 78A of the SD&PWOA, the Government's strong preference is to be involved as a party to an ILUA even if the non-extinguishment principle is adopted.

An APA can be made even where there are registered native title claimants for the area who are not parties to it. However, all registered native title bodies corporate and representative bodies must be parties. Although not necessary, registered native title claimants may be a party to the APA (see section 24DE of the NTA). The State Government may also be a party to an APA even though non-extinguishment must apply to this form of ILUA. As stated above, the Queensland Government has a preference to be included within all ILUAs.

1.06 Registration requirements

For a future act done in accordance with an ILUA to be valid under section 24EB of the NTA, at the time of the doing of the act the agreement must be registered on the Register of Indigenous Land Use Agreements and include a statement to the effect that the parties have consented to the doing of the act or a class of acts into which the particular act falls (see section 24EB(1)(b) of the NTA).

Any party to an ILUA may, if all the other parties agree, apply in writing to the Registrar for the agreement to be registered on the Register of ILUAs. For detailed information on registration requirements, see section 24BG(1) of the NTA in relation to

BCAs, section 24CG(1) of the NTA in relation to AAs and section 24DH(1) of the NTA in relation to APAs.

As part of the registration process, the NTA allows for a 3 month notification period; and there are obligations within the NTA on how and to whom this notification should occur.

The registration process essentially provides that persons who will be affected by the agreement but are not parties to it are to be notified of the potential registration of the agreement. Those persons are entitled to object.

The ILUA once registered is taken to have contractual effect between the parties and binds all native title holders for the area regardless of whether they are parties to the ILUA (see section 24EA of the NTA).

Section 24EB(4) to (7) of the NTA sets out provisions dealing with the circumstances in which, and the persons to whom, compensation is payable.

1.07 Non-extinguishment principle

Generally, the non-extinguishment principle applies to a future act validated under the ILUA provisions. Section 24EB(3) of the NTA provides that unless the ILUA contains an express provision stating that a surrender is intended to extinguish native title rights and interests then the non-extinguishment principle will apply.

Section 238 of the NTA deals with the non-extinguishment principle and essentially provides that where an act effects native title it does not extinguish the native title but merely suppresses the native title to the extent of the inconsistency. Where an act or its effects are later wholly removed or cease to operate the native title rights and interests will again have full effect.

It is the clear preference of the Queensland Government that, in relation to native title, an ILUA is preferred to compulsory acquisition of native title interests. To this end, an ILUA for land over an area on which an infrastructure facility is to be constructed should, where practicable, adopt the non-extinguishment principle.

2.00 Negotiation of an ILUA — **Section Reference***

2.01 The *State Development and Public Works Organisation Act 1971** section 78A, provides that before any compulsory acquisition of rights or interests in any land (including native title) there must be demonstrated attempts to acquire such rights or interests by agreement. This applies only for infrastructure projects of significance, particularly economically or socially, to Australia, Queensland or the region in which the facility is to be constructed and where the right or interest in land is to be conferred onto a person other than the State. (Refer Appendix A) — 78(A), 78(B)

2.02 If the land being acquired contains native title, then reasonable steps (refer Appendix B) must have been taken to enter into an indigenous land use agreement (ILUA) to which the non-extinguishment principle may apply. — 78A(2)(c)

This additional requirement to negotiate native title interests by agreement for an infrastructure facility is a significant enhancement of the process prescribed with the *Native Title Act 1993 (Cth)*, which allows quite specifically for the compulsory acquisition and extinguishment of native title.

The following stages of these guidelines should not be read in isolation from section 121A(3) and section 121A(4) of the SD&PWOA and the *Native Title Act 1993 (Cth)*. — 121A(3), 121A(4)

3.0 Stages of the ILUA Process

3.01 For the purposes of these guidelines, and to maintain consistency with the process envisaged within the Native Title Act 1993(Cth), the following framework may be followed in assessing if reasonable steps have been taken to form an ILUA.

- Public notification of infrastructure facility to be constructed and proposed ILUA (as per Native Title (Notices) Determination 1998);
- Deciding parties to the agreement;
- Initial deciding of matters to be included within the agreement;
- Consultation and negotiation between parties; and
- Registration, Notification, Objection

3.02 In the event that there is a failure to negotiate an ILUA for a particular infrastructure facility, the Coordinator-General will need to be satisfied that reasonable attempts have been made to follow this framework. The Coordinator-General may decide to acquire compulsorily native title only if there is no prospect of forming an ILUA within a reasonable time period.

This is consistent with a similar (though not identical) process that will need to be demonstrated to the Coordinator-General

before there is any compulsorily acquisition of the rights or interests in land from non-native title landowners.

The process by which the Coordinator-General may make this determination on the failure of an ILUA is included within these Guidelines. (Refer Appendix B)

4.00 Public Notification and consultation and negotiation

4.01 The proponent must give a written notice about the proposed infrastructure project to the following.

- Any registered native title body corporate (a **native title party**) in relation to the land or waters; and
- Any registered native title claimant (also a **native title party**) in relation to the land or waters; and
- Any representative Aboriginal/Torres Strait Islander body in relation to the land or waters.

The proponent must also make sure that a public notice, containing the information contained in the written notice, is published in the following:

- A newspaper circulating generally in the area of the land; and
- A relevant special interest publication.

The written notice must state the following:

- A clear description of the land, and its location and the proposed acquisition of the land for the proposed infrastructure project;
- A description of the nature of the proposed infrastructure project;
- That the native title parties have a right:
  - ❑ to be consulted about the proposed infrastructure development;
  - ❑ to object to a compulsory acquisition; and
  - ❑ to negotiate with a view to reaching agreement about the proposed infrastructure development.
- How further information about the proposed infrastructure project can be obtained from the proponent;
- That it is the intention of the proponent to reach agreement through consultation and negotiation to acquire the land, but that if agreement can not be reached, the land may be compulsorily taken;
- The following days for the consultation and negotiation period for the proposed taking of the land:

- ❑ The day for starting the consultation and negotiation period, which must be at least 1 month after the notice is given; and
- ❑ The day the consultation and negotiation period ends, which must be at least 4 months after the consultation and negotiation period starts.

4.02 Consultation and Negotiation

For native title interests, a decision must be made as to the type of ILUA that will be applied, on a project by project basis (ie. BCA, AA or APA – see Table 1). This will depend on the circumstances of the agreement, and the parties to that agreement. This decision should be decided as a priority at the commencement of the consultation and negotiation period.

The parties to the consultation and negotiation for the ILUA may include the proponent, native title parties and the State Government. A list of the compulsory parties may be found in Table 2. It is the preference of the Queensland Government to be a party to any ILUA.

4.03 Issues to be included within an ILUA

The framework within the *Native Title Act 1993 (Cth)* should be followed in terms of forming an ILUA. However, as per that Act, issues that may be discussed within the consultation and negotiation period for the ILUA may include but not be limited by:

- The doing of future acts or classes of future acts;
- Future acts (other than intermediate period acts) or classes of future acts which have already been done;
- Withdrawing, amending, varying or doing any other thing in relation to a native title or compensation application;
- The relationship between native title rights and interests and other rights and interests in relation to the area;
- The manner of exercise of any native title rights and interests or other rights and interests in relation to the area;
- Compensation for any past act, intermediate period act or future act; and
- Any other matter concerning native title rights and interests in relation to the area.

4.04 Requirement for consultation and negotiation

In the consultation and negotiation period the parties must consult and negotiate with a view to obtaining the agreement of each of the registered native title parties to form an ILUA which would allow the building and operation of an approved infrastructure facility.

Notwithstanding any matters that may be included within the ILUA, as part of the consultation and negotiation period, the proponent must consult with native title parties about ways of minimising the impact of the proposed infrastructure facility on their registered native title rights and interests in relation to the land.

4.05 Content of negotiation

The parties must make reasonable steps to reach agreement on the issues identified.

It will be up to the parties involved in the consultation and negotiation of the ILUA to decide which issues should or should not be included within the matters to be covered within the agreement. The previous section outlined the range of issues that could be included; and the NTA should also be used as a guide (with range of issues dependent upon the type of ILUA negotiated).

The parties are not required to negotiate about matters unrelated to the impact of the facility on the registered native title rights and interests of native title parties.

Proponents should be willing to provide for all parties to the negotiation the following information:

- the proponent should give each native title party a true copy of the application for the proposed infrastructure facility (with the exception of commercial in confidence information).
- convene at least 1 meeting to provide a reasonable opportunity for all native title parties to be given a presentation about the proposed infrastructure facility.
- A consultation may be in the town or city where the infrastructure facility is to be located; or in a town or city in which there is an office of the representative Aboriginal/Torres Strait Islander body for the area that includes the land, or at another place agreed between the parties.

However, any consultation meeting should be convened at a time and place suitable for maximising attendance.

- The presentation should be directed at providing native title parties with an understanding of the anticipated nature, extent and impact of the project.

If the proponent has convened a consultation meeting for all native title parties as outlined above, the meeting is taken to have happened even though not all, or none, of the native title parties attended the meeting.

Each native title party should advise the other parties about the impact the party considers the infrastructure facility will have on the party's native title rights and interests. Failure to do so however will not prejudice the negotiations.

Without limiting the scope of the consultation and negotiation, the nature and extent of the following may be taken into account during the consultation and negotiation stage:

- the existing non-native title rights and interests in relation to the land
- existing use of the land by persons other than the native title parties
- the practical effect of the exercise of any existing non-native title rights and interests mentioned above on the exercise of native title rights and interests in relation to the land.

4.06 Request for mediation

At any time during the consultation and negotiation period, a party may ask for mediation to help in resolving issues to the consultation and negotiation.

If a party asks for mediation, mediation must be conducted by a mediator chosen by the parties; or if the parties are not able to agree on a mediator - on a mediator chosen by an independent panel (see clause 6.09 and Appendix B). However, the mediation should not extend the consultation and negotiation period unless this is agreed to by all parties to the agreement.

The mediation may end at any time by decision of the mediator or by agreement of the parties.

In any event, any party may request only one mediation session. The mediation is to have been held within 14 days of receipt of a request by the party to hold mediation.

5.00 Registration and Notification

5.01 For a future act done in accordance with an ILUA to be valid under section 24EB of the NTA, at the time of the doing of the act the agreement must be registered on the Register of Indigenous Land Use Agreements and include a statement to the effect that the parties have consented to the doing of the act or a class of acts into which the particular act falls (see section 24EB(1)(b) of the NTA).

5.02 Any party to an ILUA may, if all the other parties agree, apply in writing to the National Native Title Registrar for the agreement to be registered on the Register of ILUAs. Depending upon the type of ILUA negotiated, the NTA provides for how this process of registration should proceed.

5.03 As part of the registration process, the NTA allows for a 3 month notification period and there are obligations within the NTA on how and to whom this notification should be given. The National Native Title Registrar is responsible for the notification process.

5.04 The registration process essentially provides that persons who will be affected by the agreement but who are not parties to it are to be notified of the potential registration of the agreement. Those persons are entitled to object.

5.05 The ILUA once registered is taken to have contractual effect between the parties and binds all native title holders for the area regardless of whether they are parties to the ILUA (see section 24EA of the NTA).

5.06 Section 24EB(4) to (7) of the NTA sets out provisions dealing with the payment of compensation.

6.00 Compulsory Acquisition

6.01 After 2 months of the consultation and negotiation period, the proponent may apply to the Coordinator-General to acquire native title interests compulsorily. The compulsory acquisition of native title, if triggered, will be based on procedures established within Commonwealth and State legislation. 78(1A), 78(1B)

6.02 The Coordinator-General will only compulsorily acquire land (including land on which there may be native title interests) for infrastructure facilities of significance, particularly economically or socially, to Australia, Queensland or the region in which the facilities are to be constructed, and approved by the Governor in Council, by gazette notice, as having that significance (refer Appendix A);

6.03 While no specific regional boundaries have been identified, for the guidance of proponents, a region is taken to be an area equivalent in size to and/or having the economic characteristics of a Statistical Division (as defined by the Australian Bureau of Statistics).

6.04 Bearing in mind that in considering whether the infrastructure facility is of significance, the assessment of the economic or social significance of any infrastructure facility will consider the facility's potential to contribute to community wellbeing and economic growth or employment levels. The contribution the facility makes to agricultural, industrial, resource or technological development in Australia, Queensland or the region is a relevant consideration. 78(1A)&(1AA)

6.05 In assessing the economic and social significance of the project, the Coordinator-General will seek submissions from persons affected by the infrastructure facility.

6.06 If the project is assessed as an infrastructure facility of economic and social significance to Australia, Queensland or the region and the Governor in Council approved its significance by gazette notice, then the head of power for compulsory acquisition will be enlivened. A statement giving reasons why the infrastructure facility was approved must be published in the gazette by the Coordinator-General. The Minister must table this statement in the Legislative Assembly within 3 sitting days after the gazette notice. 78(1D)

6.07 There must be at least 2 months of consultation and negotiation after the statement has been published in the gazette. 121A(3)

6.08 Following Governor in Council approval by gazette notice but prior to considering acquiring native title interests, the Coordinator-General must be satisfied that the applicant has taken reasonable steps to negotiate an ILUA. Details of the steps taken to form such an agreement must be documented (refer Appendix B). 78A.(1), 78A.(2)

6.09 Prior to acquiring the native title rights and interests, the Coordinator-General will consider the opinion of an independent person from the panel described in Cl 1.02 of Appendix B.

If the Coordinator-General is satisfied that reasonable steps have been taken to attempt to form an ILUA, and that those attempts have been unsuccessful, native title interests may be acquired in accordance with S78(1) of the *State Development and Public Works Organisation Act* 1971 through the process stated in the *Acquisition of Land Act* 1967 (ALA). Any additional procedures in the acquisition process as required under State or Commonwealth legislation must also be followed. (See particularly section 24MD(6B) of the Native Title Act).

6.10 A Notice of Intention to Resume under the ALA must not be given until at least 2 months after the consultation and negotiation period has started. 121A(3)

6.11 Prior to the issuing of a notice of intention to resume, the proponent must confirm with the Coordinator-General that the project will proceed within reasonable timeframes. The proponent must also deposit with the Coordinator-General, sufficient guarantees to fund acquisition and compensation for the native title interests.

These guarantees must be one or more of the following types of security from an approved security provider:

- A banker's undertaking;
- Cash;
- Government bonds and inscribed stock;

- Insurance bonds or guarantee policies; and
- Interest bearing deposits.

or alternatively a guarantee in a form acceptable to the Coordinator-General.

Alternatively, the Coordinator-General may enter into contractual arrangements with the proponent, which address issues such as payment of compensation and costs associated with any acquisition of native title.

6.12 The Coordinator-General must prepare a statement giving details of negotiations to reach an ILUA. 78(1E)(a)

6.13 This statement must be tabled in the Legislative Assembly by the Minister within three sitting days of the Proclamation under Section 43(1) of the *Acquisition of Land Act.* 78(1E)(b)

6.14 A native title party may lodge an objection to the Land and Resources Tribunal against the proposed acquisition pursuant to section 7(3)(d) of the *Acquisition of Land Act 1967* and section 24MD(6B) of the *Native Title Act 1993 (Cth).* 121A(3)

Objections will be heard by the Land and Resources Tribunal.

Appendix A

Economic and social significance of projects

As a basic principle, infrastructure is provided not for its own sake but to enable other activities to occur.

To assist in assessing the significance (particularly economically or socially) of an eligible infrastructure facility, the project's proponent will be required to provide a statement demonstrating how the facility is of economic and social benefit to Australia, Queensland or the region in which it will be constructed addressing specifically the requirements of Section 78(1A & 1B). Relevant supporting documentation must also be provided including:

- Details of the infrastructure facility including land on which the proposed facility is to be located;
- Demand projections for the services associated with the infrastructure;
- Advice as to how the proposal would satisfy identified needs;
- Direct and indirect benefits associated with the project with specific reference to the requirements of sections 78(1A) and 768(1B);
- Details of the proponent's financial and technical capacity to implement the proposed facility;
- Preliminary financial analysis;
- Proposed timing of project or service delivery;
- Advice as to possible environmental impacts, the steps taken to identify those impacts and to develop strategies to manage them.
- Results of any investigations of the required land;
- Advice as to any special requirements from Government; and
- Advice as to possible environmental impacts, the steps taken to identify those impacts and to develop strategies to manage them.

Appendix B

1.00 Assessing Reasonable Steps **Section Reference***

1.01 After two months of the consultation and negotiation period, any party to the proposed ILUA (with the exception of the State) may approach the Coordinator-General seeking a decision if that party considers that despite reasonable efforts, it is unlikely that the parties will form an indigenous land use agreement (ILUA) within the timeframe for the infrastructure facility. 78A

1.02 The Coordinator-General must take into consideration the conduct of all parties in the consultation and negotiation period, measured against procedures that parties are required to perform as outlined in these Guidelines.

1.03 A person or persons nominated from an independent panel established for the purpose of these Guidelines may be asked to assess the steps taken and provide an opinion to the Coordinator-General if:

- There have been genuine attempts by all parties to enter into negotiations on the proposed ILUA;
- Notification periods and requirements have been adhered to, unless otherwise agreed by the parties;
- Parties have met their obligations in terms of the process for consultation and negotiation, particularly in terms supply of information agreed to be provided to parties;
- There has been a genuine offer for mediation; and
- There has been a genuine offer of compensation offered by the proponent.

1.04 The independent person(s) may recommend that there is no likelihood of an agreement being reached within the consultation and negotiation period.

1.05 The composition of the independent panel may include:

- ❑ Nominees of President of the Bar Association of Queensland
- ❑ Nominees of President of the Institute of Arbitrators
- ❑ Nominees of President of the Queensland Law Society Incorporated
- ❑ Nominees of President of the Australian Property Institute
- ❑ Nominees of President of the Institution of Engineers Australia Queensland Division
- ❑ Persons appointed by the Minister who have qualifications equivalent to presiding members of the Land and Resources Tribunal.

* *State Development and Public Works Organisation Act 1971*

1.06 If the Coordinator-General is satisfied that reasonable steps have been taken to negotiate an ILUA, and that agreement is unlikely within the timeframe required for the infrastructure facility, native title interests in the land may then be acquired through the process stated in the *Acquisition of Land Act 1967*. Also, other relevant Commonwealth and State native title legislation for the taking and the payment of compensation applies. The section 24MD(6B) process is only followed if the infrastructure concerned is as defined within section 253 of the NTA. Under that process, native title holders must be given the same procedural rights as the owners of freehold under the *Acquisition of Land Act 1967*, as well as additional procedures within s24MD (6B) of the NTA.

1.07 While the Commonwealth law recognises it is inappropriate for acquisitions for infrastructure to be subject to the right to negotiate provisions of the NTA, it does allow the native titleholders to be given additional rights to ensure the special nature of their rights can be taken into account.

If the facility is not defined within section 253 of the NTA, then it may be subject to the right to negotiate provisions of that Act.

Appendix C

Coordinator- General's Statement
Pursuant to Section 78(1D)

The Coordinator- General's statement may include the following:

- Details of the type of infrastructure facility proposed including land on which the facility is to be located;
- Summary of submissions from affected persons
- Summary of the following information:
  - Demand projections for the services associated with the infrastructure;
  - Need which this facility would meet;
  - Advice as to how the infrastructure would satisfy the identified need;
  - Timing of project or service delivery;
  - Special assistance required from Government other than land acquisition;
  - Financial analysis including project risk/return;
- Possible environmental effects;
- Details of financial and technical capacity of the proponent to implement the project;
- Details of investigations on the land in question and the conduct of such investigations;
- The findings of material questions of fact;
- Reference to the evidence or other material on which those findings were based; and
- The reasons for the decision

The Statement of Reasons will not include information of a sensitive nature relating to the owners' commercial affairs.

TABLE 1:
Application of various Indigenous Land Use Agreements

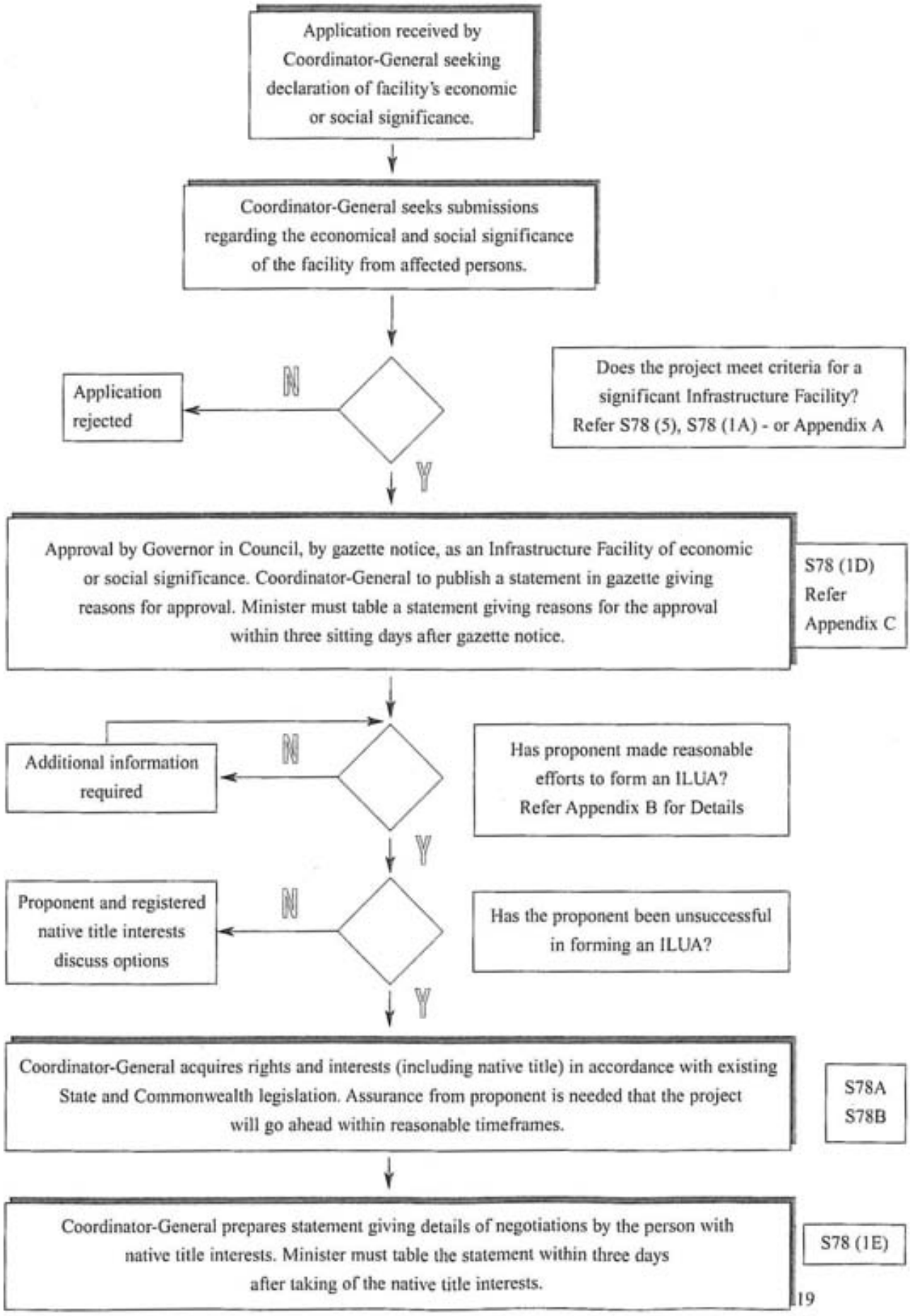
WHERE	BCA	AA	APA
There is a body corporate for the entire area.	Yes	No	No
There is a body corporate for some of the area.	No	Yes	Yes
No body corporate in the area or representative body for the entire area	No	Yes	No
Native Title is to be extinguished by agreement.	Yes	Yes	No
The agreement changes the effect of Intermediate Period Acts.	Yes	Yes	No
The agreement provides a framework for other agreements.	No	No	Yes
The agreement provides for statutory access on non-exclusive pastoral and agricultural leases.	No	Yes	Yes

BCA = Body Corporate Agreement
AA = Area Agreements
APA = Alternative Procedure Agreements

TABLE 2
Compulsory parties to Indigenous Land Use Agreements

TYPE OF ILUA	COMPULSORY PARTIES
BCA	1. All of the registered native title bodies corporate in the area. 2. The Government where the ILUA provides for extinguishment of native title. Note: a Representative Body need not be a party but must be notified of the agreement.
AA	1. If there is a registered native title claimant or a registered native title body corporate. ➢ All registered native title claimants; and ➢ All registered native title bodies corporate; and ➢ If, for any part (the non-claimed/determined part) of the land or waters in the area, there is neither a registered native title claimant nor a registered native title body corporate, one or more of the following: • any person who claims to hold native title in relation to the land or water; or • any Representative Body for the non-claimed/determined part. 2. If there is no registered native title claimant or registered native title body corporate ➢ Any person who claims to hold native title in relation to the land or water; and ➢ The Representative body. 3. The Government where the ILUA provides for the extinguishment of native title.
APA	1. All registered native title bodies corporate in relation to the land or water. 2. All representative Bodies. 3. The relevant State Government (unless the area is outside of the State's jurisdictional limits in which case the Commonwealth must be a party).

Figure 1: Acquisition of Land for Infrastructure projects: Consultation and Negotiation with native title interests



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Christies Homebase Centre
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ASPLEY QLD 4034

Brisbane Southside
6 Paxton Street
SPRINGWOOD QLD 4127

Bundaberg
205 Bourbong Street
BUNDABERG QLD 4670

Cairns
Ground Floor
Cairns Port Authority Building
Cnr Hartley and Grafton Streets
CAIRNS QLD 4870

Gladstone
The Old Gladstone Post Office Bldg
33 Goondoon Street
GLADSTONE QLD 4680

Gold Coast
26 Marine Parade
SOUTHPORT QLD 4215

Hervey Bay
Ground Floor
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50-54 Main Street
PIALBA QLD 4655

Ipswich
26 East Street
IPSWICH QLD 4305

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Floor 1
Cnr Gordon and Nelson Streets
MACKAY QLD 4740

Maryborough
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Wide Bay-Burnett Electricity
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97-99 Adelaide Street
MARYBOROUGH QLD 4650

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75 Camooweal Street
MOUNT ISA QLD 4825

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