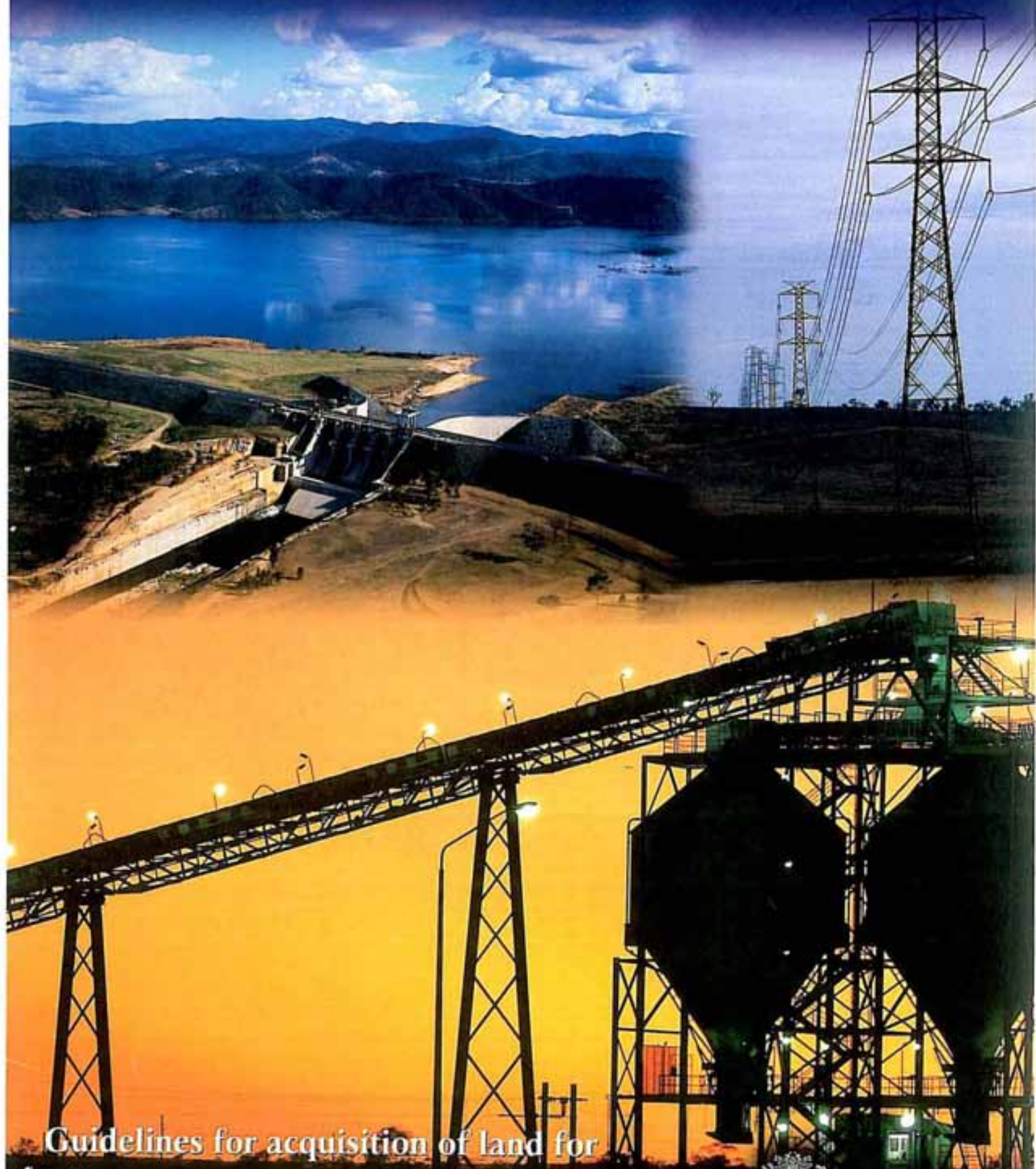


State Development and Public Works Organisation Act 1971

Creating a State of Opportunity for
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Guidelines for acquisition of land for
infrastructure projects by persons
other than the state



State
Development

SEPTEMBER 1999

**State Development and Public Works
Organisation Act 1971**

Guidelines

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by

persons other than the State

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.

These Guidelines describe the steps by which a party, other than the State, proposes to seek compulsory acquisition of land for the purpose of an infrastructure project. As per section 121A of the *State Development and Public Works Organisation Act 1971* (SD&PWOA), these Guidelines are a statutory instrument for the purpose of the *Statutory Instruments Act 1992*. Provisions within the guidelines must be followed.

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

In the event that the Governor in Council approves an infrastructure facility as having significance, the Coordinator-General must prepare a statement giving reasons why the infrastructure facility was approved and publish a copy of the statement in the Gazette. Within three sitting days the Minister will table this statement in the Legislative Assembly. The gazetted notice 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 land for a person other than the State.

Before considering the compulsory acquisition of land, the Coordinator-General must be satisfied that reasonable attempts have been made to acquire the land through voluntary agreements with owners. In all cases, the strong preference is for voluntary agreements based on normal commercial negotiations. In the event that any land is compulsorily acquired, the Coordinator-General must prepare a statement giving details of the negotiations by the person with the owners of the land to acquire the land by agreement. This statement must be tabled in the Legislative Assembly within 3 sitting days of the taking of the land.

The intent of these Guidelines is to provide assistance to proponents in making an application to the Coordinator-General for the compulsory acquisition of land while safeguarding the interests of landowners. To this end, the Guidelines have been developed in consultation with stakeholders including rural producer groups, bodies representative of native title interests and the infrastructure industry. This approach was chosen to ensure that there is clear understanding on the required processes.

These Guidelines will be reviewed in 12 months to ensure that they are meeting the needs of all involved parties. However, no changes will be made without further consultation with 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.

Guidelines for acquisition of land for infrastructure projects by persons other than the State relate to the steps by which a party, other than the State, seeks compulsory acquisition of land for the purpose of an infrastructure facility.

Application of the Guidelines

Compulsory acquisition

- | 1.00 Application | Section Reference* |
|--|---------------------------|
| 1.01 These Guidelines relate to compulsory acquisition of all land, irrespective of ownership and tenure, for the development, by persons other than the State, of an infrastructure facility. These Guidelines apply not only to negotiations for freehold and leasehold land but also to roads, reserves, deeds of grant in trust, unallocated State land and vested land. The Guidelines must be read in conjunction with the <i>State Development and Public Works Organisation Act 1971</i> (SD&PWOA). These guidelines do not apply to negotiations if there is native title on land. These are subject to a separate Guideline. | 125, 126, 127, 128 |
| 1.02 Other Guidelines are available for: <ul style="list-style-type: none">• <i>Access to land for infrastructure projects by persons other than the State</i>• <i>Acquisition of land for infrastructure projects: guidelines for consultation and negotiation with native title interests</i>• <i>Dealing with land taken in the way mentioned in section 79A</i> | |
| 2.00 Stages of the acquisition process | |
| 2.01 The stages involved in compulsorily acquiring land may include: <ul style="list-style-type: none">• Project identification;• Negotiation period in which the person proposing the infrastructure facility seeks agreement on entry with owner;• Application to investigate potential infrastructure facility if agreement on entry is not possible;• Mandatory consultation with owner;• Granting the authority to investigate;• Conduct of investigations;• Negotiation period in which the proponent seeks agreement on acquisition with the owner; | |

* *State Development and Public Works Organisation Act 1971*

- Application to acquire land if agreement is not possible (refer Figure 1);
 - Governor in Council approval of the significance of the infrastructure facility; and
 - Compulsory acquisition of land.
- 2.02 Not all stages, or all parts of a stage, apply to all applications to acquire land compulsorily. The sequence of steps may vary from those listed in 2.01.

3.00 Acquisition of land

- 3.01 This section of the guidelines should not be read in isolation from section 121A of the SD&PWOA. *Guidelines for the acquisition of land for infrastructure projects by persons other than the State* do not apply to the acquisition of native title rights and interests. **173**
- 3.02 The proposed infrastructure project may involve the acquisition of native title rights and interests. In this case, *Acquisition of land for infrastructure projects: Guidelines for consultation and negotiation with native title interests* are to be followed. **127**
- 3.03 If the proponent of an infrastructure project seeks to acquire the land, the owner may agree to enter a contract or agree to terms that may include an agreement to take land. In these circumstances, the owner shall deliver title free of encumbrances unless the encumbrance poses no fetter to the development. The strong preference is for the proponent and the owner to reach agreement using normal commercial negotiations.
- 3.04 The proponent must give a written notice about the proposed infrastructure project to the owner. The proponent must also publish one (1) only written notice per project in a newspaper circulating generally in the area of the land. It is anticipated that this written notice will occur shortly after the Governor in Council declaration of project significance by gazette notice. **174(3)**
- 3.05 The written notice must state the following: **174(3)**
- 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;
- How further information about the proposed infrastructure project can be obtained from the proponent;
- That it is the intention of the proponent to reach, through consultation and negotiation, a commercial agreement with the owner to acquire the land, but that if a commercial agreement can not be reached, the land may be compulsorily taken;
- That if the land is to be compulsorily acquired by the State, then the acquisition process set out in the *Acquisition of Land Act 1967* will apply;
- The following days for the consultation and negotiation period for the proposed acquisition 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.

3.06 During the consultation and negotiation, the proponent must make a genuine attempt to consult and negotiate with the owner with a view to obtaining agreement about the acquisition of the land. If the parties agree, consultation and negotiation can also occur during the 1 month notice period.

3.07 After 2 months of the consultation and negotiation period, the proponent may apply to the Coordinator-General to acquire the land compulsorily.

3.08 The Coordinator-General will only consider compulsory acquisition of land 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).

125, 125(1A)

- 3.09 Whilst 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).
- 3.10 Bearing in mind that in considering whether an infrastructure facility is of significance, the assessment of the 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 in which it is to be constructed is a relevant consideration. **125(1A) & (1B)**
- 3.11 In assessing the significance of the project, the Coordinator-General will seek submissions from persons affected by the infrastructure facility .
- 3.12 If the project is assessed as an infrastructure facility of significance, particularly economically or socially, to Australia, Queensland or the region in which it is to be constructed 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 responsible for the SD& PWOA must table the statement in the Legislative Assembly within 3 sitting days of the declaration. **125(1D)**
- 3.13 There must be a consultation and negotiation period of at least 4 months. **174(3)(d)**
- 3.14 Following Governor in Council approval by gazette notice but prior to considering acquiring the land, the Coordinator-General must be satisfied that the proponent has taken reasonable steps to purchase the land by agreement. Details of steps taken to purchase by agreement within the consultation and negotiation period must be documented (refer Appendix B). **126(1), 126(2)**
- 3.15 Before an application to acquire land is granted or refused, the Coordinator-General may consider the opinion of an independent person as to whether reasonable steps have been taken to acquire the land by agreement. The independent person will come from a panel of independent persons drawn from the following:

- Nominees of the President of the Bar Association of Queensland
- Nominees of the President of the Institute of Arbitrators
- Nominees of the President of the Queensland Law Society Incorporated
- Nominees of the President of the Australian Property Institute
- Nominees of the 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.

3.16 If the Coordinator-General believes that reasonable steps have been taken to acquire the land by agreement within the consultation and negotiation period, and that the land should be acquired in accordance with section 78(1) of the SD&PWOA, then the process stated in the *Acquisition of Land Act 1967* for the taking of land and the payment of compensation for the land taken applies.

126(1), 126(2)

3.17 At any time after 2 months into the consultation and negotiation period, any party can approach the Coordinator-General and seek compulsory acquisition of land. However, the Coordinator-General must be satisfied that reasonable steps have been taken before agreeing to acquire land.

174(3)

3.18 Prior to the issuing of a notice of intention to resume, the proponent must confirm with the Coordinator-General that guarantees to enable the purchase of the land have been finalised and the project will proceed within reasonable timeframes.

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 land resumption.

Once a notice of intention to resume is issued, then any other owner, whose land is also to be compulsorily acquired for the project, can demand that the land be resumed at the same date.

- | | | |
|------|---|-----------|
| 3.19 | The Coordinator-General must prepare a statement giving details of negotiations to acquire the land by agreement. | 125(6)(a) |
| 3.20 | This statement must be tabled in the Legislative Assembly by the Minister with responsibility for the SD&PWOA within three sitting days of the gazette notice that the land is taken under the <i>Acquisition of Land Act 1967</i> is published. | 125(6)(b) |
| 3.21 | If the Notice of Intention to Resume is issued after 2 months of the consultation and negotiation period, then the holder of an interest in land has 2 months to lodge an objection (pursuant to section 7(3)(d) of the <i>Acquisition of Land Act 1967</i>) to the proposed acquisition. The process stated in the <i>Acquisition of Land Act 1967</i> for the taking of land and payment for compensation applies. | 174(3) |
| 3.22 | In relation to the costs associated with the acquisition of land and the disposal of land, refer to the Guidelines titled " <i>Dealing with the land in the way mentioned in section 79A</i> ". | |

Appendix A

Economic and social significance of projects (refer Clauses 3.08 and 3.10)

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 or social benefit to Australia, Queensland or the region in which it is to be constructed. Relevant supporting documentation must also be provided including:

- Details of the infrastructure facility including land on which the facility is to be located;
- Demand projections for the services associated with the infrastructure facility;
- Advice as to how the proposed infrastructure facility would satisfy identified needs;
- Direct and indirect benefits associated with the infrastructure facility with specific reference to the requirements of 78(1A) and 78(1B);
- Details of the proponent's financial and technical capacity to implement the proposed facility;
- Preliminary financial analysis;
- Proposed timing of the infrastructure facility or service delivery;
- 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

Reasonable steps to purchase land by agreement (refer Clause 3.14)

The underlying principles guiding the Coordinator-General in assessing whether consideration will be given to acquiring land are:

- (1) The strong preference is for the proponent and the owner to reach agreement through normal commercial arrangements; and
- (2) The proponent must first have taken reasonable steps to obtain voluntary agreement on acquisition using normal commercial negotiations.

If native title has not been extinguished on the land being acquired, reasonable steps must have been taken to enter an indigenous land use agreement (ILUA) to which the non-extinguishment principle may apply (refer *Acquisition of land for infrastructure projects: Guidelines for consultation and negotiation with native title interests*).

- (3) The proponent must have acted genuinely and commercially in all dealings with the owner.

To demonstrate that the above principles have been rigorously adhered to, the proponent will be required to produce the following documentation:

- Initial advice from the proponent to the owner outlining:
 - The details of the project;
 - land to be acquired;
 - proposed actions to be taken by the proponent to purchase the land by agreement.
- Written evidence confirming receipt of advice or detailed written evidence of all attempts to make contact;
- Evidence that the proponent supplied the owner with a copy of these Guidelines

- If the proponent obtained an investigator's authority to access the land to assess its suitability for the project, a report demonstrating that the proponent adhered to the conditions of the investigator's authority or, in the case of access by agreement, to conditions agreed to by the owner.
- A summary of follow-up actions with the owner after the initial advice.
- An offer to provide, at no cost to the owner, a valuation of the land to be acquired, mediation (if requested) and meaningful participation in the mediation services.
- Formal letter, to all owners of land which could not be acquired by normal commercial negotiations, making an offer to purchase, the conditions of which are restricted to the grant of any statutory approvals required for the purchase – for example, subdivision approval, *Land Sales Act* exemption, foreign investment approval.

The formal letter also will highlight the need for the owner to obtain an independent valuation and to seek appropriate legal advice.

The letter must clearly state that, if the land is compulsorily acquired by the Coordinator-General by agreement pursuant to *Acquisition of Land Act 1967* and sold to the proponent but the project does not proceed, for whatever reason, then wherever practicable, the land shall be offered for sale to the former owner in accordance with section 41 of the *Acquisition of Land Act 1967*.

- Evidence that the owner has been provided with time to consider the offer and to obtain independent advice. If the owner and the proponent are unable to agree on a timeframe for negotiations, the Coordinator-General, who may take advice from an independent person as defined in Clause 3.15, will determine if reasonable steps have been taken to acquire by agreement.
- Evidence that mediation, if requested by the owner, had been tried but proved to be unsuccessful. For example, if mediation is requested by the owner, the proponent must have arranged and participated in, or offered to arrange mediation with the owner at its expense. Mediation is to be conducted by a suitably qualified person appointed by agreement between the proponent and the affected owners and is to have been held within 14 days of agreement to hold a mediation meeting. In any event the owner may request only one mediation session. If the parties are not able to agree on a mediator, a mediator will be chosen by an independent panel (refer clause 3.15).

- Evidence that the proponent:
 - provided the owner with its own valuation, and had paid or offered to pay reasonable valuation fees so that the owner may engage his/her own valuer;
 - made an offer or offers for purchase of the land whose conditions are only restricted to the grant of any statutory approvals required for the purchase;
 - reimbursed, or offered to reimburse, the owner's reasonable direct costs and out-of-pocket expenses (but not including owner's time) incurred in responding to the acquisition proposals; and
 - has the financial capacity to meet its obligations under the offer to purchase.

The proponent will be required to reimburse the owner's reasonable costs as they occur. Existing industry standards will be used to judge reasonable costs for items such as land valuation, legal advice, taxation advice, or other costs as agreed.

- Copies of any further correspondence between the proponent and the owner that may assist the Coordinator-General in his/her assessment.
- Where the proponent acquired the land under an agreement on a commercial basis and the project does not proceed for whatever reason, there is no requirement on the proponent to offer this land for sale to the original owner.
- If the project does not proceed and there is willingness by the former owner to purchase the land from the proponent, the land's value will be determined either by agreement between the proponent and the owner or by the Department of Natural Resources, if agreement on value is not possible.

Appendix C

Coordinator-General's statement pursuant to section 125(6)

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 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; and
 - Financial analysis including project risk/return.
- Possible environmental effects;
- Details of financial and technical capacity of the proponent to implement the project;
- Details of negotiations to acquire the land by agreement by the proponent and the owner;
- Details of investigations on the land in question and the conduct of such investigations;
- A summary of the public submissions on the significance (particularly economically or socially) of the project;
- 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.

Amendments

Amendments to Guidelines made 12 August 1999

Date of Change

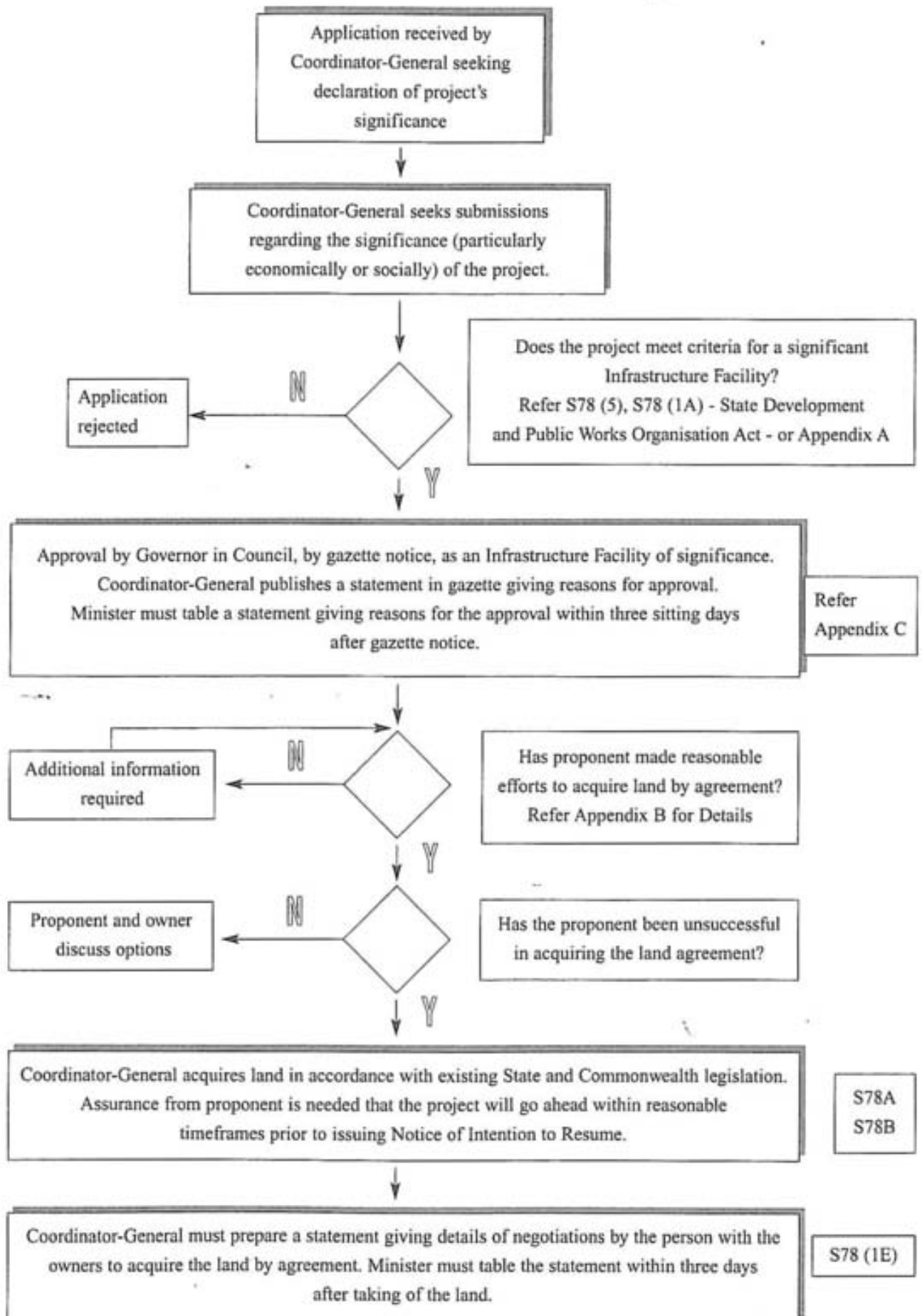
Amendment No 1

24 August 1999

The first sentence of the second paragraph of Clause 3.03 was deleted, namely;

“If voluntary agreement between the proponent and owner has not been successfully negotiated, the proponent may apply for consideration by the Governor in Council of the significance of the infrastructure project.”

Figure 1 Process to acquire land



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6 Paxton Street
SPRINGWOOD QLD 4127

Bundaberg
205 Bourbong Street
BUNDABERG QLD 4670

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Cairns Port Authority Building
Cnr Hartley and Grafton Streets
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The Old Gladstone Post Office Bldg
33 Goondoon Street
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26 Marine Parade
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Floor 1
Cnr Gordon and Nelson Streets
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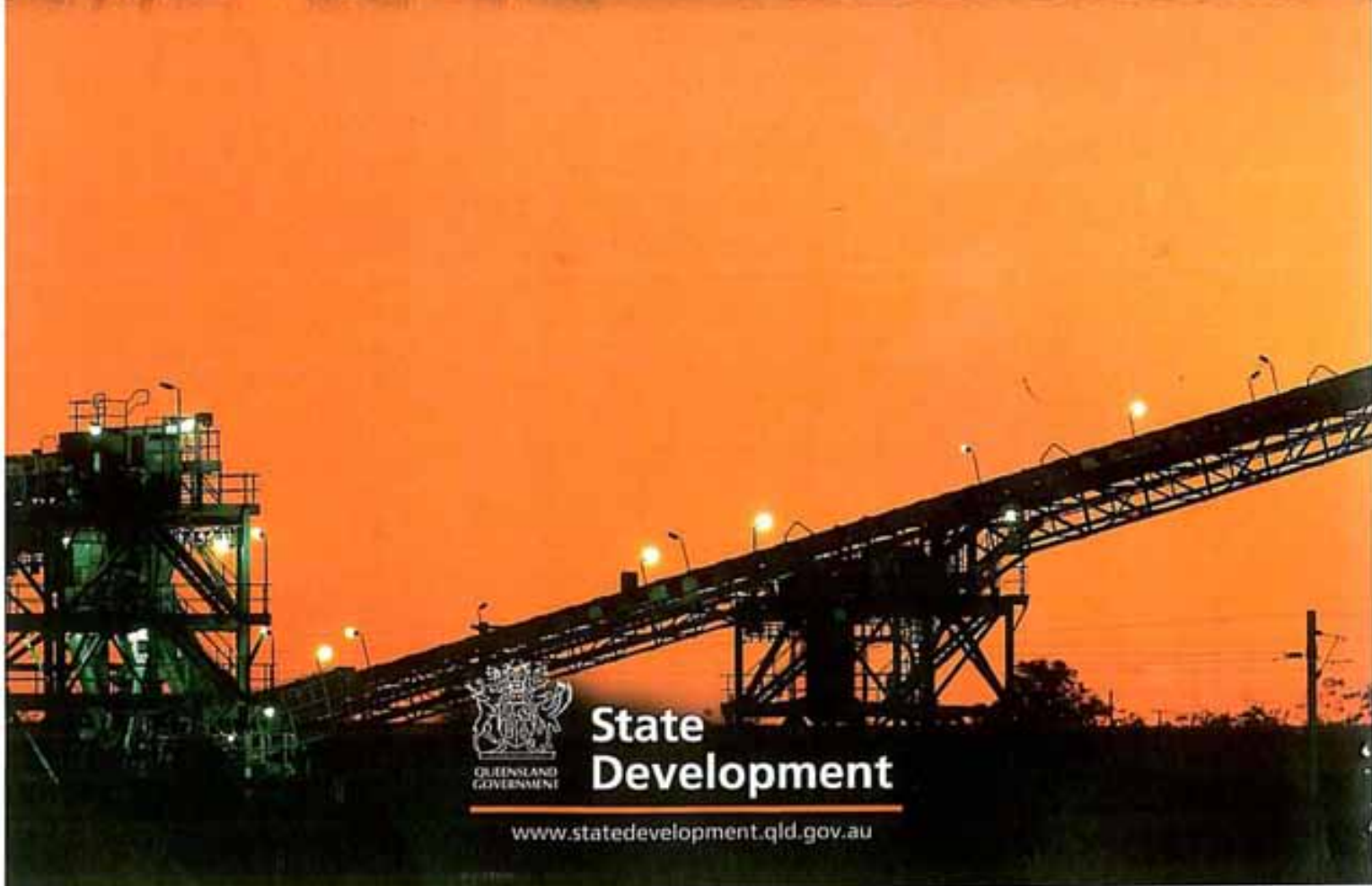
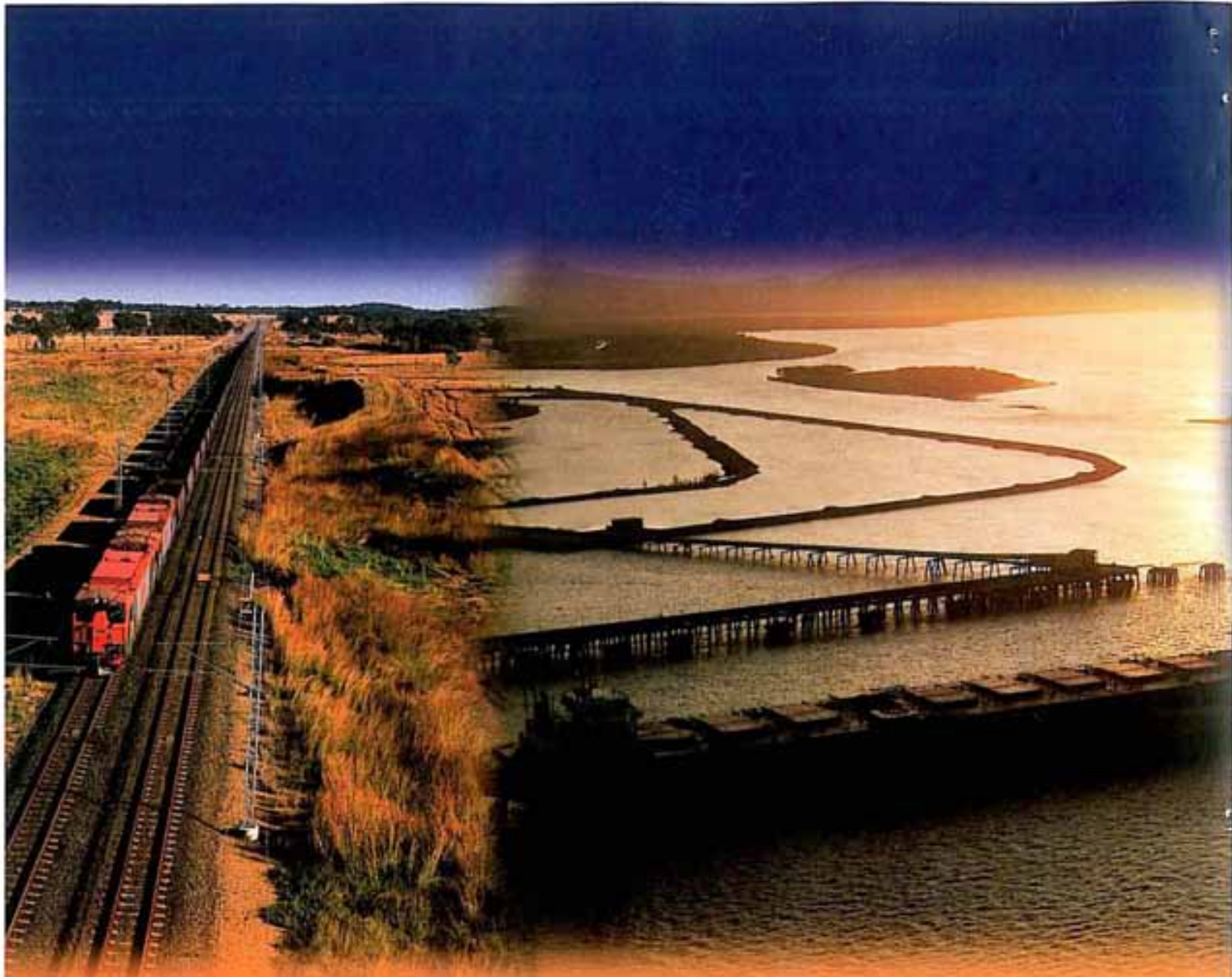
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