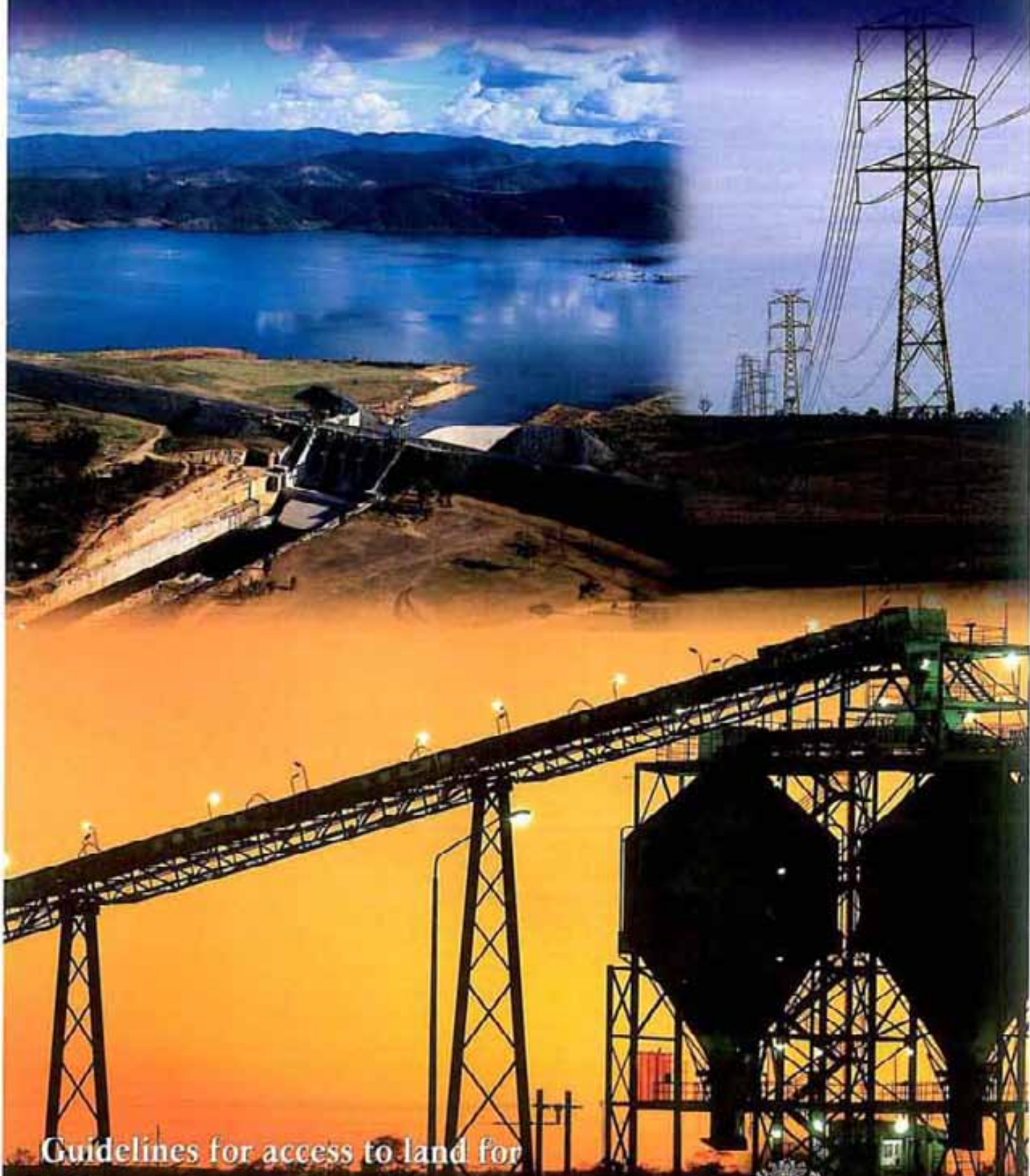


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State Development and Public Works Organisation Act 1971



**Guidelines for access to land for
*infrastructure projects by persons
other than the state**



**State
Development**

SEPTEMBER 1999

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Guidelines

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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, may seek an investigator's authority for the purpose of an infrastructure project. These Guidelines are a statutory instrument for the purpose of the *Statutory Instruments Act 1992*.

If access to the land or the granting of an investigator's authority may affect native title rights and interests, any native title holders and registered native title claimants in relation to the land have the same procedural rights as they would have on the assumption that they instead hold ordinary title to the land. (See sections 24MD(6A) of the *Native Title Act 1993 (Cth)*). Therefore the term "owner" in these guidelines also includes any native title holders and registered native title claimants in relation to the relevant land.

Before considering approving an investigator's authority, the Coordinator-General must be satisfied that reasonable attempts have been made to access the land through voluntary agreements with owners. In all cases, the strong preference is for voluntary agreements based on commercial negotiations.

The Coordinator-General will only consider granting an investigator's authority if 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.

The intent of these Guidelines is to provide assistance to proponents in making an application to obtain access to land for investigative purposes while safeguarding the interests of owners. 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.

The 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, to 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 landowner 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 in 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 access to land for infrastructure projects by persons other than the State relate to the steps that an applicant must undertake before the Coordinator-General grants an investigator's authority for the purpose of an infrastructure project.

Application of the Guidelines

Granting an Investigator's Authority

1.00 Application

Section reference*

141 – 146

These Guidelines relate to the granting of an investigator's authority for the development, by persons other than the State, of an infrastructure facility. The Guidelines must be read in conjunction with the *State Development and Public Works Organisation Act 1971*.

1.01 These Guidelines do not relate to the acquisition of land for an infrastructure facility. Separate Guidelines are available for:

- Acquisition of land for infrastructure projects by persons other than the State
- Acquisition of land for infrastructure projects: Guidelines for consultation and negotiation with native title interests
- Dealing in the way mentioned in section 79A with the land taken

2.00 Stages

2.01 The stages involved in granting an investigator's authority may include the following:

- Project identification;
- Negotiation period in which the investigator seeks agreement on entry with the owner;
- Application to investigate potential infrastructure facility if agreement on entry is not possible (refer Figure 1);
- Mandatory consultation with owner; and
- Granting the authority to investigate.

2.02 Not all stages, or all parts of a stage, apply to all applications for an investigator's authority. The sequence of stages may vary from that in 2.01

3.00 Investigation of a potential infrastructure facility

3.01 The Guidelines only apply to applications for an investigator's authority under section 91C of the *State Development and Public Works Organisation Act 1971* and not to other Acts which provide alternative access arrangements.

* *State Development and Public Works Organisation Act 1971*

3.02 If, because of section 24MD(6A) of the *Native Title Act 1993* (Cth) or any other law of the State, native title holders have a procedural right that requires another person to notify them of an act and there has been no approved determination of native title, then one way in which the person may give the required notification is by notifying the following that the act is to take place:

- any representative Aboriginal/Torres Strait Island bodies for the area concerned; and
- any registered native title claimants in relation to the land or waters concerned. (See section 24MD(7) of the *Native Title Act 1993* (Cth).

If required, parties should attempt to enter into a common law agreement on the access.

3.03 If, because of section 24MD(6A) of the *Native Title Act 1993* (Cth) or any law of the State, native title holders have a procedural right that requires another person to do any thing in relation to the native title holders and there has been no approved determination of native title, then one way in which the person may give effect to the requirement is:

- by doing the thing in relation to any registered native title claimant in relation to the land or waters concerned; or
- if there are no registered native title claimants – by ensuring that any representative Aboriginal/Torres Strait Island bodies for the area concerned have an opportunity to comment on the doing of the act. (See section 24MD(8) of the *Native Title Act 1993* (Cth).

3.04 If the proponent of an infrastructure project seeks to access the land to determine its suitability for the project, the owner may agree to enter a voluntary common law agreement. If such an agreement between the proponent and the owner is not possible then the proponent may apply to the Coordinator-General for an investigator's authority to access the land. The strong preference is for the proponent and the owner to reach a common law agreement using normal commercial negotiations.

3.05 The Coordinator-General will only grant an investigator's authority for infrastructure facilities of potential significance, particularly economically or socially, to Australia, Queensland or the region in which the facility is to be constructed (refer Appendix A).

125, 125(1A), 125(1B)

- 3.06 Whilst no specific regional boundaries have been identified, for the guidance of proponents and stakeholders, 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).
- 3.07 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 is likely to make to agricultural, industrial, resource or technological development in Australia, Queensland or the region in which the facility is to be created is a relevant consideration. 125(1A), (1B)
- 4.00 Application to investigate potential infrastructure facility** **141**
- 4.01 A person may apply to the Coordinator-General for an investigator's authority for the land if the person proposing the infrastructure can not successfully negotiate entry to the land with the owner. 143(1), 143(2)
- 4.02 The Coordinator-General must be satisfied that the applicant is genuinely considering the construction of an infrastructure facility. The application must be in writing and state the following details. 143(3), 143(4)
- Details of the proposed facility including the land on which the proposed facility is to be located;
 - The likely demand for the services associated with the proposed facility;
 - Advice as to how the proposed facility would satisfy an identified need;
 - Details of the applicant's financial and technical capacity to implement the proposed facility;
 - Details of the steps the applicant has taken, or tried to take, to satisfy its obligations under 91C.(1);
 - The land intended to be entered under the authority;
 - The purpose for which the authority is sought;
 - Details of the nature of the activities proposed to be conducted on the land;
 - The period for which the authority is sought; and
 - Any other information the Coordinator-General considers necessary to assess the application.

- 4.03 The applicant must give the Coordinator-General details of the applicant's efforts to secure access by agreement. Details of actions to gain voluntary access must be documented (refer Appendix B). 143(3)(e) & (f)
- 4.04 The applicant must demonstrate that the land for which the proposed authority is sought is no more extensive than is reasonably needed. 145(4)
- 4.05 The Coordinator-General may require the applicant to give additional details in support of its application. The application may be rejected if this additional information is not available within a stated reasonable time of not less than 28 days. 144(2)
- 4.06 The Coordinator-General must advise the owner that an application has been made to access the land concerned.
- 4.07 This notification will advise the powers that a person granted an investigator's authority could exercise. 143(5)
- 5.00 Granting Investigator's Authority**
- 5.01 The Coordinator-General, before deciding an application, must within a reasonable time, consult with the owner about the proposed entry (refer Appendix C). 144(1)
- 5.02 The Coordinator-General may grant an investigator's authority, with or without conditions, or refuse the application. As a guiding principle, the owner should not be financially disadvantaged by the investigator's activities. A bond or security deposit may be required to be lodged with the Coordinator-General. 145(3)
- The size of the bond or security deposit will be determined by the Coordinator-General having regard to the activities proposed to be undertaken by the investigator and the potential of such activities to cause loss or damage and may include:
- third party cost of rehabilitation and repair of all damage to land and property;
 - any conditions attached to the investigator's authority;
 - loss of crop, if applicable; and
 - disturbance to stock, if applicable.
- 5.03 If the Coordinator-General refuses to grant the investigator's authority, the Coordinator-General must give the applicant written reasons for the refusal. 145(2)

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|------|---|--------------|
| 5.04 | The investigator's authority must be in writing. The details of what is to be included in the authority are given in Appendix D. | 146(1) |
| 5.05 | Before land is entered for the first time under the investigator's authority, the investigator must give written notice, together with a copy of the authority, to the owner. The details of the content of the notice are given in Appendix E. | 147(1) |
| 5.06 | Before the investigator allows an associated person to act under the investigator's authority, the investigator must issue the associated person with identification of the type required by section 91H(2) of the Act. | 148(1) & (2) |
| 5.07 | The investigator and associated persons of the investigator must take as much care as is practicable to minimise damage to the land or inconvenience to the land's owner. | 150 |
| 5.08 | The owner may require the investigator to rectify or pay compensation for any loss or damage to the land arising out of the investigator's activities. | 151(1) |
| 5.09 | It is an offence not to adhere to the conditions of the authority without a reasonable excuse. | 146(4) |

Appendix A

Economic and social significance of projects (refer Clauses 3.05, 3.06 and 3.07)

To assist in assessing the potential 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 significance to Australia, Queensland or the region in which it is to be constructed. Relevant supporting documentation must also be provided including:

- Details of the proposed facility including the land on which the proposed facility is to be located;
- The likely demand for the services associated with the proposed facility;
- Advice as to how the proposed facility would satisfy an identified need;
- Details of the applicant's financial and technical capacity to implement the proposed facility;
- Direct and indirect benefits associated with the project.
- Preliminary financial analysis;
- Proposed timing of project or service delivery;
- 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 obtain access by agreement
(refer Clause 4.03)

The underlying principles to be used in determining whether an investigator's authority will be approved are:

- (1) the applicant must first have taken reasonable steps to obtain voluntary agreement on access; and
- (2) the owner will not be financially disadvantaged by the investigator's activities.

To demonstrate that the above principles have been rigorously applied, the applicant must produce written documentation outlining the following:

- Initial advice from applicant to the owner of the land outlining:
 - The details of the project;
 - Potential impact of the project on the land;
 - Applicant's guarantees with respect to abiding by the conditions on a voluntary common law agreement;
 - The timing and manner in which the applicant will act on the land; and
 - Future course of action by the applicant to identify specific needs of the owner.
- Written evidence confirming receipt of advice or detailed written evidence of all attempts to make contact;
- Written correspondence and details of attempted contacts following the initial correspondence;
- Evidence that the applicant has paid, or offered to pay, reasonable direct costs and out-of-pocket expenses of the owner (but not including owner's time) in forming a voluntary agreement;
- Evidence that the applicant gave the owner a copy of these Guidelines;
- of any further correspondence with the owner outlining proposed activities or responses to issues raised;
- Details of attempts to reach agreement in respect of native title rights and interests where these rights have not been extinguished
- Details of any proposed voluntary common law agreements with owners of other parcels of land affected by the project; and
- Details of reasons why it was not possible to reach agreement on access.

Appendix C

Coordinator-General's consultation process **(refer Clause 5.01)**

Before deciding the application, the Coordinator-General must consult with owners about the proposed entry to the land and may require the applicant to supply additional information about the proposed entry.

Specific actions that the Coordinator-General may undertake and issues that he/she may address include the following:

- Tenure search to identify owner(s) including searches of the Native Title Register and the Native Title Claims Register where native title has not been extinguished. Consultation should also occur with the relevant Representative Aboriginal/Torres Strait Islander Body/ies, if native title has not been extinguished, in an endeavour to include any additional owners who may not have made an application for the determination of native title;
- In section 91B of the SDPWOA, an owner also includes a person who to the knowledge of the Coordinator-General is an occupier of land.
- Invitation to owner to put forward any valid reasons why an investigator's authority should not be granted;
- Assessment of whether there are any valid reasons to refuse entry to investigate;
- Provide opportunity to owner to identify preferred timing and locations of investigations to minimise disruption to operations;
- Identification of any additional conditions which the Coordinator-General, following consultation with the owner, agrees should be attached to the investigator's authority including the following:
 - The amount of the bond will be determined on a case by case basis by the Coordinator-General taking into account the extent of the proposed investigation, potential for the investigator to cause damage and any conditions to be attached to the investigator's authority;
 - Liability insurance (for both the owner's and investigator's exposure) to the satisfaction of the Coordinator-General;
 - Guidelines on usage of signage, fires and the prevention of the spread of weeds;

- Quality Assurance procedures to ensure that the entry conditions are adhered to;
- Necessary temporary enhancements to existing roads, culverts, grids and other infrastructure to enable the investigations to proceed;
- Camping and ablution arrangements;
- Specific rectification measures to apply following completion of investigations; and
- Limitations on the number of people on site at any one time, if relevant.

Appendix D

Investigator's Authority

(refer Clause 5.04)

The investigator's authority must be in writing and state the following:

- A description of the land to which it applies;
- The purpose for which it is granted;
- When it expires;
- Any conditions imposed on the authority which may include, but not limited to, the following:
 - Size of bond and conditions under which it may be used;
 - Number of people on the land at any one time;
 - Guidelines on usage of signage, fires and the prevention of the spread of weeds;
 - Timing and location of investigations;
 - Liability insurance (for both the owner's and investigator's exposure) to the satisfaction of the Coordinator-General;
 - Quality Assurance documentation for the control of weeds and pests;
 - Compliance with appropriate cultural heritage legislation;
 - Disposal of contaminants;
 - Temporary enhancement to existing infrastructure such as roads, grids and culverts to enable the investigations to take place; and
 - Rectification actions following the completion of investigations.

The authority will describe the actions:

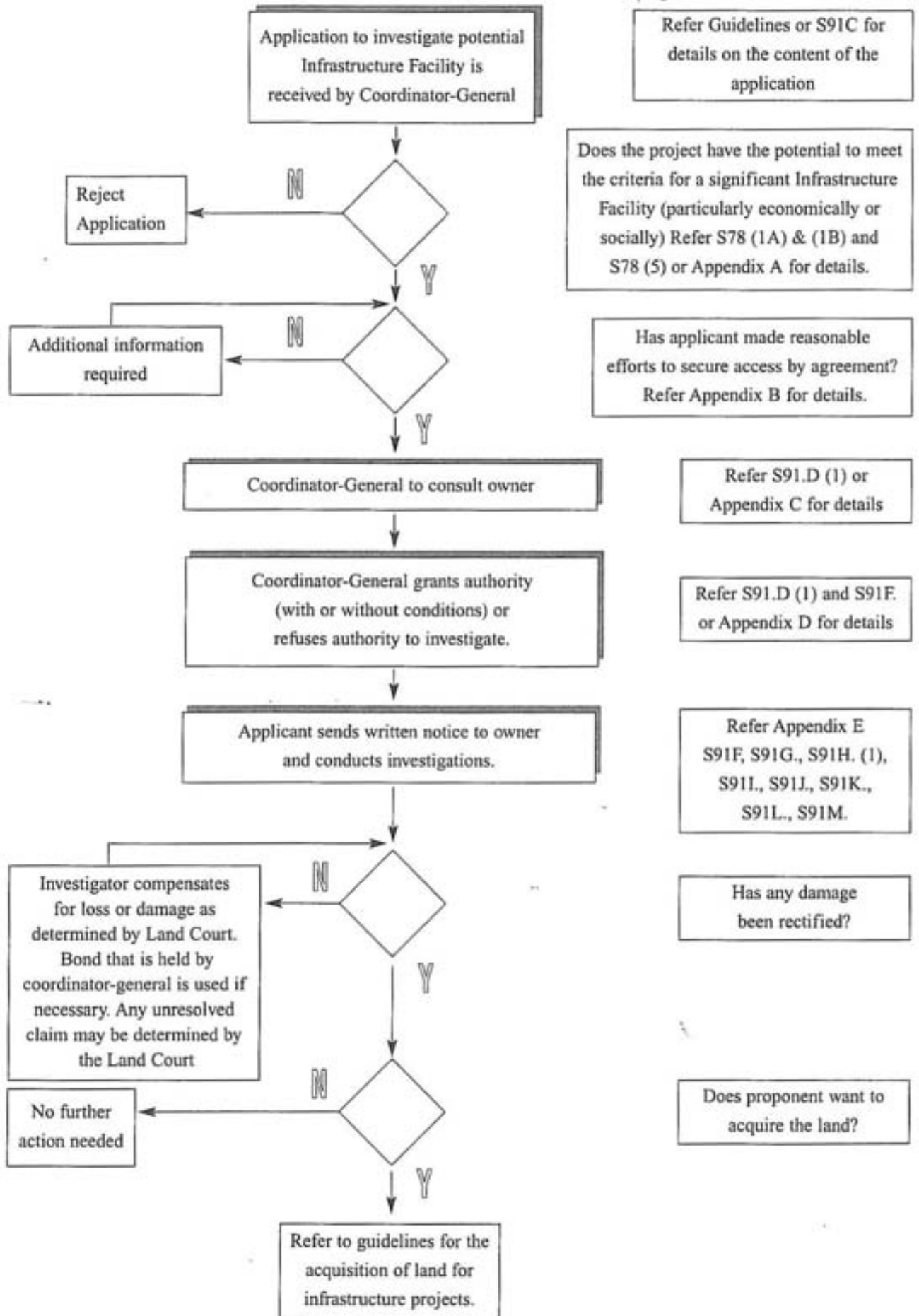
- that the investigator and associated persons of the investigator are authorised to do under the authority; and
- intended to be done on the land, including the construction of any temporary works, for example an access track.

Appendix E
Initial notice
(refer Clause 5.05)

Before the land is entered for the first time under the investigator's authority, the investigator must give a written notice, together with a copy of the authority, to the owner. The notice must state the following:

- The investigator has been granted the investigator's authority;
- The things that the investigator and associated persons of the investigator are authorised to do under the authority;
- A general outline of the things intended to be done on the land, including the construction of any temporary access track;
- The approximate period for which the land is to be entered under the authority;
- The rights of the owner under section 91K and section 91L for the rectification of, or compensation for, any loss or damage suffered during the investigation; and
- The grant of the authority is not an indication of a commitment or approval by the State, the Coordinator-General or any other person in relation to any proposal, and in particular, does not commit the State to acquiring any land for construction of the infrastructure facility.

Figure 1: Process to obtain authority to investigate



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ASPLEY QLD 4034

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6 Paxton Street
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205 Bourbong Street
BUNDABERG QLD 4670

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

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33 Goonoon Street
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Gold Coast
26 Marine Parade
SOUTHPORT QLD 4215

Hervey Bay
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50-54 Main Street
PIALBA QLD 4655

Ipswich
26 East Street
IPSWICH QLD 4305

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Cnr Gordon and Nelson Streets
MACKAY QLD 4740

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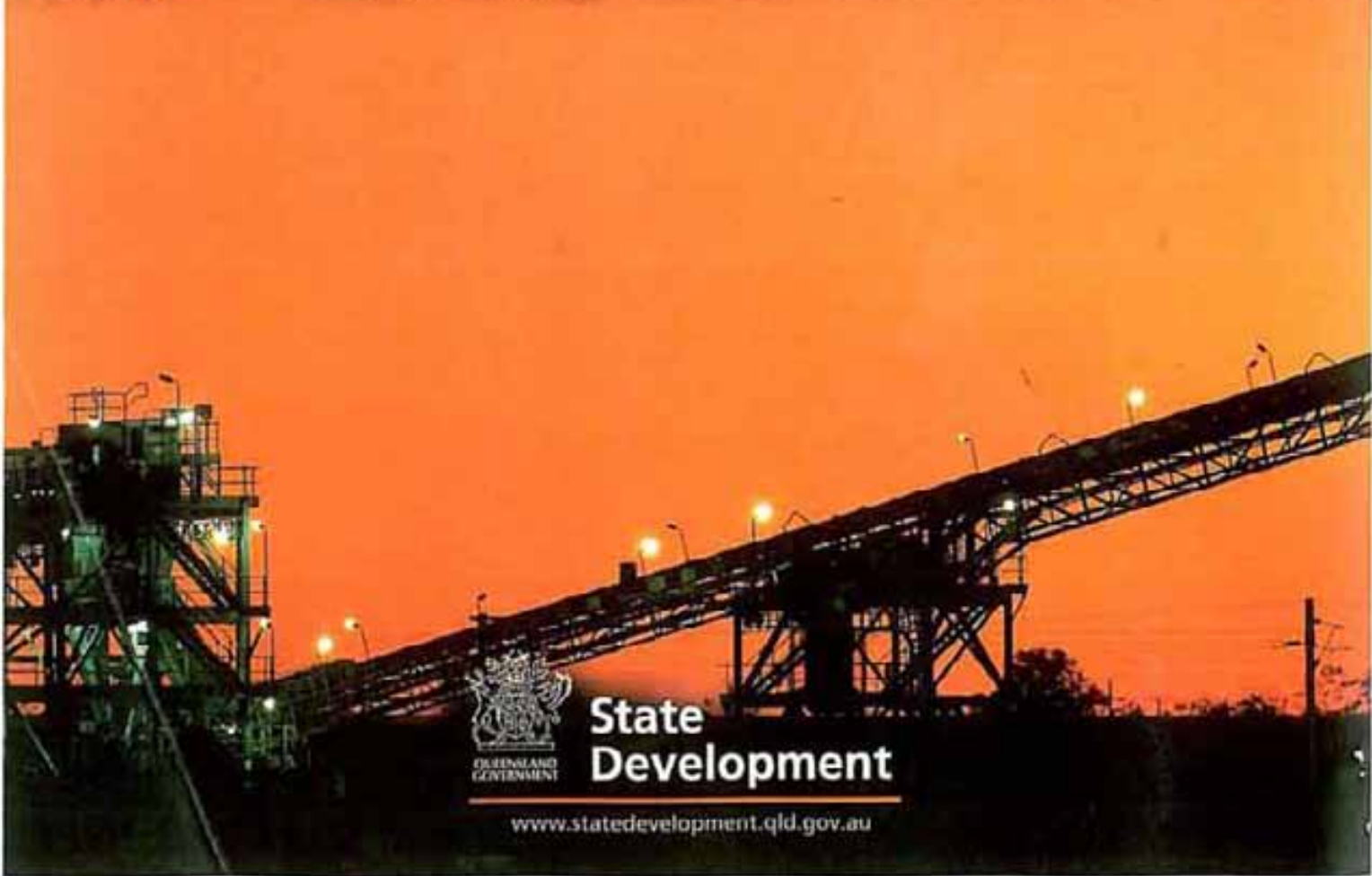
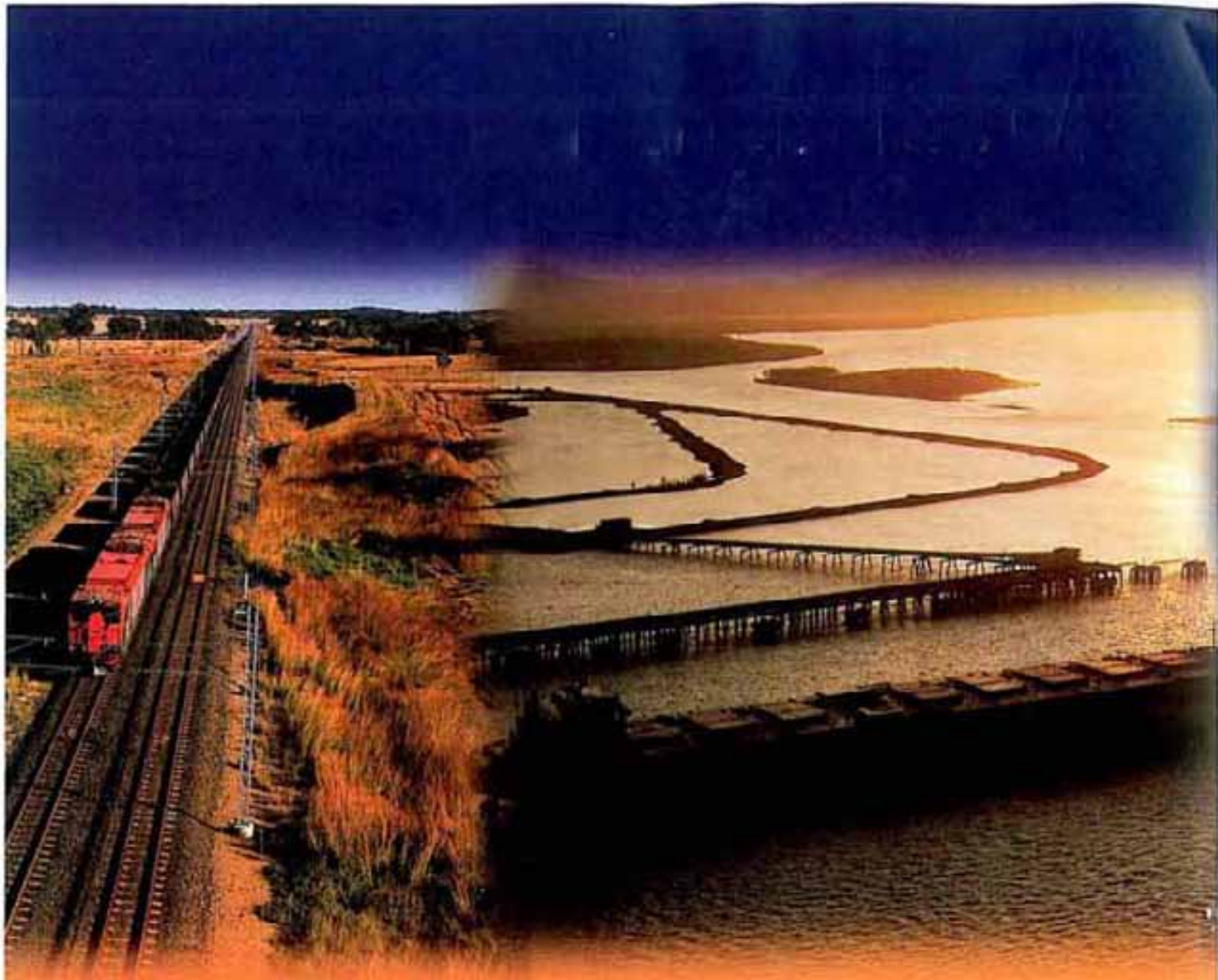
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