

From: [Lisa Desmond](#)
To: [State Development Infrastructure and Industry Committee](#)
Subject: FW: Call for submissions - The future and continued relevance of Government land tenure across Queensland
Date: Thursday, 2 August 2012 8:22:43 AM

Hi Rhia

Thankyou for your email of 26 June, 2012, in relation to the above matter.

Please find below the Fraser Coast Regional Council's submission in relation to future and continued relevance of Government land tenure across Queensland:

1. Council is seeking a review of the length of lease terms provided on crown land for trustee leases. The existing restrictions to a maximum of 30 years prohibits commercial viable tourism and infrastructure investment within regions. Example within Fraser Coast include café leases on foreshore and Urangan Boat Harbour leases. Proposal is to seek extending maximum lease terms to up to 99 years or option to freehold.

2. Often the State Government directs strategic planning documents and conditions developments, to dedicate environmentally sensitive land or coastal areas with the expectation that Local Government will become trustee and ultimately responsible for the management and on-going maintenance costs. This undue impost on Local Government who do not have the resources or expertise, is resulting in may Local Authorities declining to take on the responsibility of trustee unless there is a significant community benefit. It is requested that should the State require parcels of land, that either a State Agency be responsible for the trustee and management of the land, or alternatively if a Local Government is trustee that the State provide funding for the management of the land. There is also often restrictions placed on Trustee's to enable management of the land without seeking State Government Approvals, which are costly and time consuming. It would be prudent to enter into management agreements which allow the Trustee to undertake the necessary maintenance and management of the land without the requirement for State Approval.

In this regard, trusteeships for council are generally all obligation, no authority.

(1) Powers and obligation of the trustee as prescribed by the **Land Act 1994**

Division 6 Powers of trustee

52 General powers of trustee

(1) The trustee of trust land may take all action necessary for the maintenance and management of the land.

(2) However, the action must be consistent with—

(a) the purpose for which the reserve was dedicated or the land was granted in trust; and

(b) this Act; and

[s 52A]

Land Act 1994

Chapter 3 Reserves, deeds of grant in trust and roads

Part 1 Reserves and deeds of grant in trust

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(2) Pursuant to to the commentary to the land act as recently supplied by an officer from SLAM,

- *A trustee is the owner of the land for the purpose of Duty of Care - s 46(2) Land Act 1994;*
- *A trustee of trust land may take all action necessary for the maintenance and management of the land - (s 52(2) LA;*
- *A trustees powers to manage trust land are statutory powers. Section 23 (1) of the Acts Interpretation Act 1954 provides- If an Act confers a function or power on a person or body, the function may be performed, or the power may be exercised as occasion requires.*
- *As it is the trustee's function to manage the trust land consistent with achieving the purpose of the trust (s 46(1)(a)) a trustee must take action when the action is necessary for the maintenance and management of the land. In common law, Section 52 does not mean the trustee has a discretion not to take action- the trustee is empowered to go as far as necessary (subject to s 52 (2)*

Council as trustee of coastal infrastructure, Public Land reserved for coastal protection Purposes, Bathing Reserves, Foreshore Reserves, Unconstructed Esplanades, Open space reserves, park reserves etc are considered to be the owner of the land accepting all responsibility. Yet to carry out essential management, repairs and damage/risk mitigation required to maintain community use and values, council must still acquire

permits for maintenance/ minor works under a suite of state legislation. Even the instigation of emergency works requires a subsequent development application for anything on the foreshore. The resultant cost and time delays are becoming a burden. Where that burden is considered greater than the public benefit, Councils will continue to say no to such trusteeships.

3. The escalating cost of managing reserves is extraordinary. Council would like to encourage a rationalisation of park reserves through an audit with the view of consolidating these reserves and selling those that are of little community recreational benefit and direct the proceeds of sale to embellish existing parks. I understand that there is a process for this to occur however the State retains 50% of the proceeds and I would encourage the State to enable 100% of these funds to be directed back to Local Government for embellishment of parks and reserves within the local region.

4. There continues to be an issue around property owners rights of legal access to their block through a road reserves however in the event that the road reserve is not formed and therefore not maintained by Council, the property owner has no ability to maintain that access as it is on road reserve. This issue also refers to forestry roads which were originally maintained by forestry however when transferred, the expectation that a Local Government will continue that maintenance regime.

5. The impact and application of the State Planning Policy - Biodiversity Policy and its requirements for offsets on freehold land is constraining to the development industry and we urge the Government to review the intent and application of the Policy to ensure a more sustainable outcome. The current offset policies do not recognise that in certain circumstances, a academically suitable solution may not be available. It is noted that the coastal plan has broadened its approach for 'coastal dependant Development' and it is recommended that the whole of the policy be reviewed along similar lines.

6. If Council has a requirement to acquire land or easements over State land (e.g. for road, drainage etc), the Acquisition of Land Act does not allow Council to resume from the State. Council requests greater cooperation from the State where there is a requirement to take land or easements for operational purposes which have a broad community benefit where Council has no other option.

7. If Council has a requirement to close a road (or take land) often the State applies market value which Council has to pay. However, if Main Roads takes land from Council, Council received no payment. Again, if the land is needed for a broad community benefit, the ratepayers should not have to pay market value.

8. If Council requires advice on the Unimproved Capital Value of a Council property, it would be preferable if the State could provide this valuation free of charge and not at commercial values rates.

Should you have any queries on the items above, please do not hesitate to contact myself.

Kind Regards

Lisa

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