

Land surrender for coastal management

Guideline for coastal development

EPP/2017/3945

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1 Introduction

This guideline details the process for land surrender under the *Coastal Protection and Management Act 1995* (Coastal Act). It is intended to assist land owners and government agencies understand their roles and responsibilities when considering the surrender of land to the State for coastal management purposes.

The objectives of the Coastal Act are to:

- ensure decisions about land use and development safeguard life and property from the threat of coastal hazards and
- provide for the protection, conservation, rehabilitation and management of the coastal zone and coastal resources.

To achieve this, the Coastal Act identifies areas vulnerable to coastal erosion and declares these as erosion prone areas. In a [coastal management district](#) the preferred land use outcome for an erosion prone area, where coastal landforms and processes are relatively intact, is that the area be maintained development free. This is so that – as much as is reasonably possible – development is not exposed to coastal erosion, the natural physical processes of the coast are maintained, and coastal vegetation is protected.

If development is located in an erosion prone area, protection works may be required in the future. Construction of sea walls and other erosion control structures disrupt natural coastal processes. This can lead to the loss of a public beach or the transfer of the erosion to other properties further along the coast.

The Coastal Act includes land surrender provisions under Part 6 'Land surrender and artificial waterways'. These provision enables the government, in certain circumstances, to require coastal land to be surrendered to the State for coastal management. To achieve coastal management, land surrender powers under the Coastal Act seek to place land that is vulnerable to coastal erosion and unsuitable for development into State ownership and be dedicated as a Reserve for Coastal Management.

Land surrender is only required where a land owner proposes to subdivide land to create new lots and all or part of the land is within a declared erosion prone area and a coastal management district (**prescribed land**). Prescribed land is identified when a development application or a **change application** for reconfiguring a lot is made through the development assessment system, administered by the State Assessment and Referral Agency under the *Planning Act 2016*.

In most instances local government will become trustee of the coastal management reserve to ensure it is appropriately managed. Under these arrangements, future development or use of the land is limited to minor works for passive recreation purposes, coastal resources are protected, and any necessary restoration or rehabilitation can be undertaken.

Surrender of erosion prone land to the State achieves coastal management by:

- maintaining coastal processes and the protective function of vegetation and landforms in perpetuity
- maintaining an undeveloped buffer zone of sufficient width to protect development further inland from erosion and inundation from sea level rise
- ensuring new development in the area is not put at risk from erosion from coastal processes or inundation from sea level rise, and the need for costly property protection works in the future is avoided
- avoiding the construction of coastal defensive works that may negatively impact on physical coastal processes and lead to the loss of beaches.

NOTE: Throughout this guideline words in **bold** are specific defined terms that are defined in legislation. See the Explanation of terms section at the end of this guideline for the meaning of these terms and information on where they are defined in full.

2 Land surrender process

2.1 Land surrender powers under the Coastal Act

Under the Coastal Act, Part 6 'Land surrender and artificial waterways', a land owner may be required to surrender all or part of **prescribed land** to the State for coastal management when applying to subdivide a lot. The Minister has the power to approve a **land surrender requirement**. The **prescribed land** must be in a coastal management district (CMD); and in an erosion prone area or within 40m of the foreshore; and be the subject of a development application for reconfiguring a lot (RoL). No compensation is payable for the land surrendered, and the land owner must comply with the **land surrender requirement** or penalties may be applied.

2.1.1 Timeframes for land surrender under the Coastal Act

Timeframes for the land surrender process are outlined below and shown in Figure 1. These may be shorter where they must be integrated within the development assessment process

A **proposed surrender notice** must be given by the chief executive under the Coastal Act (chief executive, or delegate) to the following parties within 15 business days after the RoL development application is properly made:

- applicant and owner of the land (if the owner of the land is not the applicant)
- State Assessment and Referral Agency (SARA)
- assessment manager for the application if not SARA (in most cases, the local council)
- the responsible entity for a **change application**, if none of the above apply.

The **proposed surrender notice** advises all parties that the land has attributes that can benefit coastal management and the State needs to consider whether a surrender is required.

After issuing a **proposed surrender notice** the chief executive will make a decision.

If a decision is made **not** to require surrender, the chief executive must provide written advice of the decision to all parties within 30 business days (plus 10 extra days extension if the owner agrees in writing) after the **proposed surrender notice** was given. A copy of the **land surrender requirement** must also be provided to all other parties.

If a decision is made that the **prescribed land** should be surrendered for coastal management and the Minister approves the proposed requirement, the chief executive must give the land owner a **land surrender requirement** within 30 business days (plus an extension of 10 business days if the owner agrees in writing). A copy of the **land surrender requirement** must also be provided to all other parties.

The owner may make a submission on the **proposed surrender notice** within 15 business days after receiving a **land surrender notice**. If this timeframe is not long enough, the owner should apply for an extension of time.

2.1.2 What happens if the development is not approved or the development approval lapses?

If the development application is refused or the approval stops having effect, then any actions or decisions made in relation to land surrender have no further effect.

2.1.3 Can the land surrender process be fast tracked?

Persons intending to apply for the RoL of **prescribed land** are encouraged to engage with the Department of Environment and Science (DES) by emailing IndustryandDevelopment.Assessment@des.qld.gov.au prior to making a development application, to identify if a land surrender may be sought. This can prevent delays in the development assessment process, especially if a **land surrender requirement** is issued and there is a need to have the development application changed (i.e. the subdivision plan) to ensure it can comply with a **land surrender requirement**.

Voluntary land surrender may also be considered at this time and this is provided for under section 115A of the Coastal Act. This avoids the need for consideration of a **land surrender requirement** during the development assessment for a RoL.

2.2 Land surrender and the development assessment process

Through the *Planning Act 2016* the land surrender provisions and SARA development assessment processes have been linked. Reconfiguring a lot and related **change applications** under SARA are now also considered to be a relevant application for the purpose of applying land surrender provisions under the Coastal Act. The State Development Assessment Provisions (SDAP) provide that a **land surrender requirement** must be considered in assessing the development application. Otherwise, the two processes operate independently and a **land**

surrender requirement is not a condition of a development approval.

2.2.1 Development applications and the land surrender process

A relevant application under the Coastal Act is a development application or **change application** for a RoL that is completely or partly in a CMD, which links to Schedule 10, Division 3, Table 5 of the Planning Regulation 2017 (the RoL trigger). The lot to be reconfigured has to include **prescribed land** for a land surrender provision to be considered under the Coastal Act.

The land surrender administrative process and linkages with the SARA development assessment and decision process is provided in Figure 1 and detailed below:

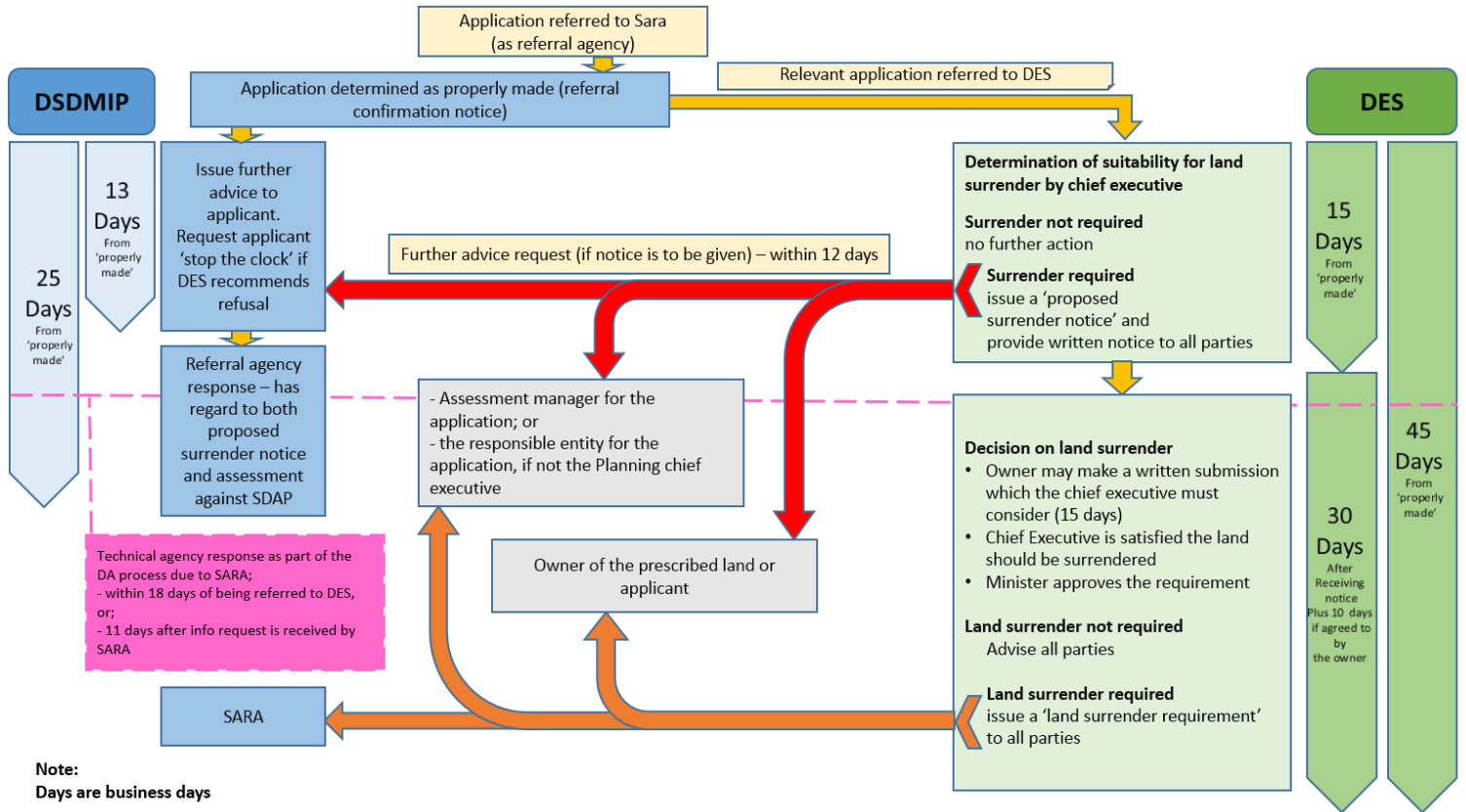


Figure 1: Land surrender process and linkages to the RoL development assessment process

2.2.2 Timeframes for land surrender and the development assessment process

Land surrender timeframes under the Coastal Act do not align with the SARA operational or statutory timeframes. To ensure land surrender meets the SARA operational and statutory timeframes, the following process has been agreed with the Department of State Development, Manufacturing, Infrastructure and Planning (DSDMIP).

- DSDMIP refers all applications triggered under the RoL trigger to DES for both assessment of a **land surrender requirement** and technical agency development assessment advice.
- In parallel with its technical agency assessment, DES considers if land surrender is required.
- Where land surrender is considered necessary, DES issues a further advice request to DSDMIP within 12 business days advising that a **proposed surrender notice** is to be given. A copy of the **proposed surrender notice** must be attached to DES's request.
- DSDMIP issues further advice to the applicant advising that they may wish to stop the referral agency's statutory decision time to enable the applicant to respond to the **proposed surrender notice**.
- If the applicant chooses to stop the **current period** and the land surrender process is completed, DSDMIP issues the referral agency response within the time remaining in the **current period** (note that the completion of the land surrender process may be the issue of a **land surrender requirement** or advice from DES that the land surrender process did not receive Ministerial approval).
- If the applicant chooses not to stop the **current period** and the land surrender process is not completed, DSDMIP will issue a referral agency response within standard SARA operational timeframes.

2.2.3 How does a proposed surrender notice or land surrender requirement affect SARA's

assessment?

Depending on which stage the land surrender process is in, DSDMIP case officers may have a **proposed surrender notice** or a **land surrender requirement** to consider as part of their assessment.

2.2.4 Proposed surrender notice

In instances where a **proposed surrender notice** has been issued and the applicant does not wish to stop the **current period** (i.e. the land surrender process is not completed), it is desirable for the referral agency response and the outcome sought by the **proposed surrender notice** to be consistent. The referral agency response must therefore be based on the SDAP assessment benchmark, and the **proposed surrender notice** is a matter that DSDMIP has regard to in making its decision.

2.2.5 Land surrender requirement

If the **current period** is stopped and the land surrender process is completed, the referral agency will issue a response. In this instance, DSDMIP will ensure the referral agency response and the **land surrender requirement** are consistent.

2.2.6 Land surrender and change applications

A relevant application for which land surrender can be considered also includes a **change application** to:

- change a development approval that already approves RoL that is completely or partly within a CMD, or
- a **change application** to approve RoL that is completely or partly within a CMD where not already approved.

Minor change applications are decided in a shorter time period than development applications. To ensure SARA meets its operational and statutory timeframes, the following process has been agreed with DSDMIP:

- DSDMIP refers all applications under the RoL trigger to DES
- as part of its technical agency assessment, DES determines if land surrender is required
- DES provides a response on the minor change to DSDMIP within 14 business days. The scope of the DES response is limited to the change proposed to the condition
- where DES requires a land surrender, a copy of the **proposed surrender notice** must be attached to DES's technical agency response
- where a copy of the **proposed surrender notice** is attached to DES's technical agency response, the DSDMIP case officer contacts the applicant (telephone call or email) to advise that if the applicant requests an extension to the assessment period¹, to allow more time to respond to the **proposed surrender notice**, SARA will agree to the request
- if the applicant and SARA agree to extend the assessment period and the land surrender process is completed, SARA issues a decision notice within the extended timeframe
- if the applicant does not request an extension to the assessment period, and the land surrender process is not completed, SARA issues a decision notice within the standard operational timeframes
- DSDMIP's decision on a minor **change application** is limited under the *Planning Act 2016* to amending the development condition or refusing to make the change. DSDMIP is only to have regard to a **proposed surrender notice** or **land surrender requirement** where the condition that is proposed to change relates to **prescribed land** under the Coastal Act.

The operational and statutory timeframes for an 'other' **change application** are the same as those for a development application.

¹ Subject to section 82 of the *Planning Act 2016*, the responsible entity and the applicant may agree to extend the period to decide the application.

3 Land surrender decision making process

The screening process below is used to identify if all or part of the **prescribed land** should be surrendered to the State for coastal management.

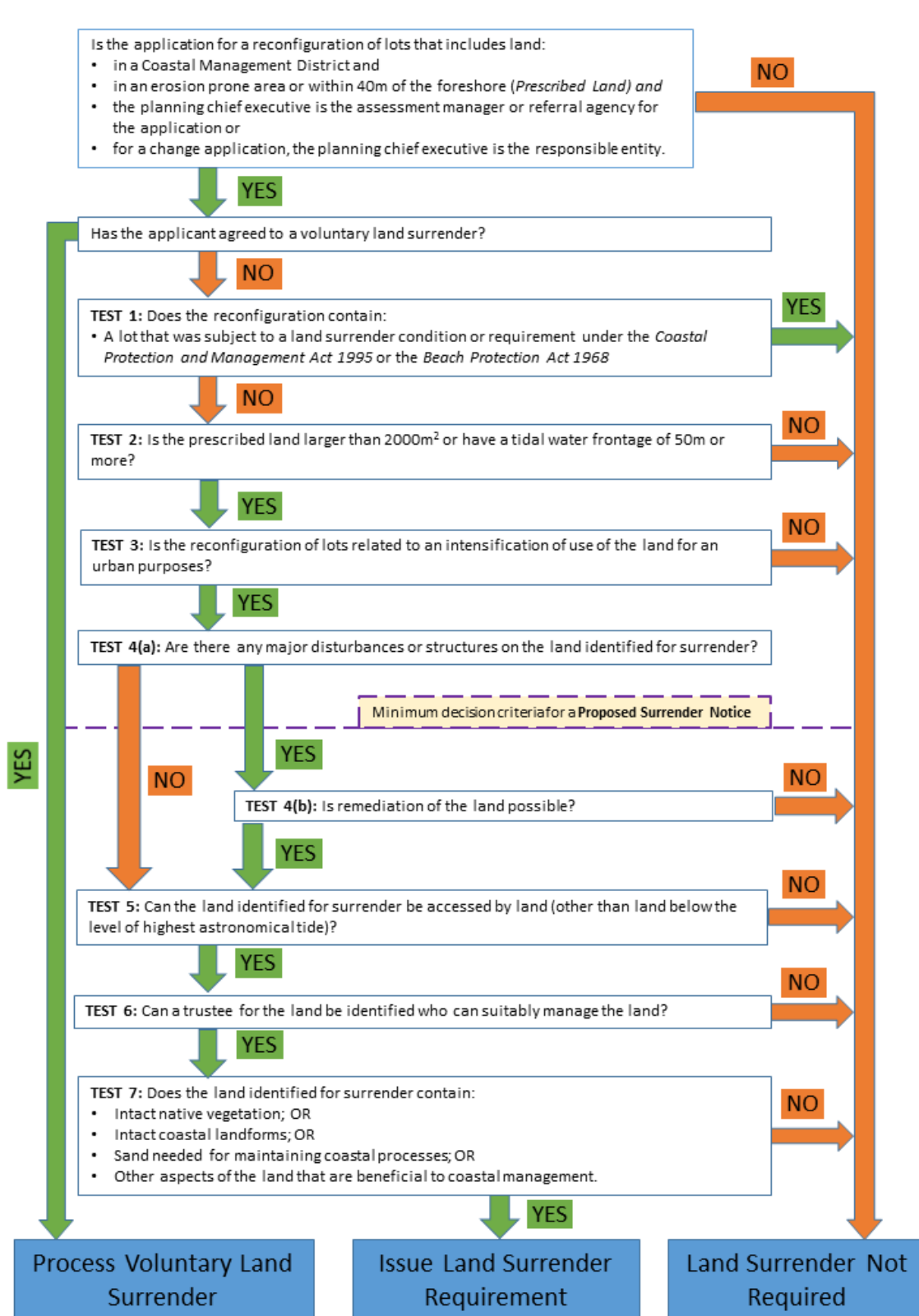


Figure 2: Land surrender decision tool

3.1 Decision tests for land surrender

Test 1—When can a land surrender requirement not be lawfully given for land?

Under sections 115 and 115A of the Coastal Act, a **land surrender requirement** cannot be given if the land was part of a lot which was subject to a previous land surrender condition of requirement and specifically:

- for a relevant application, if the lot to be reconfigured was part of another lot that was subject to a land surrender condition under the Coastal Act or the repealed *Beach Protection Act 1968*
- for a relevant application that is a **change application**:
 - if part of the lot to be reconfigured was surrendered to the State under a land surrender condition included in the development approval for the **change application**; or
 - under a **land surrender requirement** given in relation to the application for the development approval.

If an applicant proposes to voluntarily surrender land and the development application supports this, then a **land surrender requirement** need not be given.

Test 2—Is the land of adequate size to benefit coastal management?

The land to be surrendered will generally need to be part of a lot greater than 2000m² in area or have a frontage to the sea of 50m or more, to enable coastal management benefits to be achieved.

Test 3—Does the RoL relate to intensification of use of the land for urban or future urban purposes?

Land surrender provisions are not intended to target lots where there is no future urban development potential or which does not result in an intensification of land use. This includes large rural lots: which are being reconfigured for the benefit of rural enterprise, are well away from urban areas; and the parent and reconfigured lots are quite large. It also includes situations where there are relatively minor boundary changes for a lot and no new lots are created.

Peri-urban rural lots (lots immediately surrounding a city or town) may be examined more closely and land surrender applied if there is a coastal management benefit. Surrender may also be considered for large subtidal land areas on large lots, and in this case the land would be managed only by the State.

Test 4—Does major development or disturbance exist on the land?

4(a): Land surrender will not be of benefit for coastal processes for example where:

- the RoL is being carried out to rationalize existing significant development on the land (such as Indigenous housing on a Deed of Grant in Trust (DOGIT) lot or for a community title over existing development); or
- the land has been extensively filled with imported material unsuitable for continuation of coastal processes and remediation is not practical. This would likely be the case for reclaimed land.

4(b): Land that has a major disturbance can still be considered for surrender where the land is considered suitable for rehabilitation. Land that can provide benefits to coastal processes once rehabilitated should be considered with regards to the level of disturbance and potential for successful rehabilitation.

Test 5—Is lawful access to the surrendered land possible?

If there is no road or easement access to allow a trustee to access and manage the land, or no possibility that this access can be established, then surrender cannot be considered. In the case where land is below the level of the highest astronomical tide, surrender can still be considered with the State as manager. In this case the land may remain as unallocated State land as is the case with most other subtidal land.

Test 6—Can management of the land be arranged?

If a trustee for the land cannot be identified, especially if the local government has advised that it would under no circumstances act as a trustee for a Reserve, then surrender cannot be considered. Whilst the State may take on trusteeship this will only occur in rare cases where the land has some significant attribute. For example, where the land is adjacent to, and suitable for inclusion in, the National Park; or for subtidal land. Test 6 is more appropriately considered at the decision stage for a **land surrender requirement**, unless a local government has clearly indicated it would not accept the land as a trustee.

Test 7—The land overall is deemed adequate for achieving coastal management outcomes

This requires a more detailed assessment of specific attributes of the land and how the surrender would avoid or minimize detrimental impacts on coastal management. Test 7 is more appropriately considered at the decision stage for a **land surrender requirement**.

3.2 Addressing owners' submissions on a notice

A **proposed surrender notice** must be given to the owner of the land within 15 business days after the application is properly made. In deciding whether or not to require the surrender of land, the chief executive must consider any written submission made by the owner of the land. The owner's submission would be assessed against the tests above or new material considered with respect to coastal management. The owner may also wish to undertake a review or technical re-assessment of the erosion vulnerability of the land. This could take considerable time and the owner may need to extend the assessment period through SARA.

4 Giving effect to land surrender

Section 115B of the Coastal Act 'Surrendered land to be dedicated for coastal management purposes' sets out how land identified in a **land surrender requirement** is to be dealt with to effect the surrender. The basic requirements are:

- the plan of subdivision under the *Land Titles Act 1994* giving effect to the surrender must dedicate the surrendered land for coastal management - the plan of subdivision must show the land specified in the land surrender requirement as a single lot and clearly marked 'To be surrendered to the State for coastal management purposes'
- on registration of the plan of subdivision the surrendered land is dedicated as a Reserve under the *Land Act 1994* (Land Act) for coastal management.

4.1 Trusteeship and management of surrendered land

The trustee of the reserve is to be either:

- the local government for the area in which the surrendered land is situated where the local government has endorsed the plan of subdivision with its acceptance of the trusteeship, or
- the State.

Local government are generally the most appropriate trustee of public use land as they are in the best position to manage the land.

Trustees are appointed under the Land Act by the Minister for that Act, and are recorded in the Land Titles Register. The trustee has a duty of care for the trust land and is responsible for:

1. acting on behalf of the State as the legal guardian of the land, and
2. managing the trust land to achieve the purpose of the trust.

As trustees, local government may develop local laws to govern public use of the land. The trustee may also develop a land management plan for the Reserve. Land management plans provide a tool to guide future site management (refer to https://www.dnrm.qld.gov.au/__data/assets/pdf_file/0014/110426/land-management-information-kit.pdf). DES can provide support and guidance with respect to the coastal management components of any land management plan. The plan should:

- recognize the land's vulnerability to erosion and/or tidal encroachment
- identify management priorities (including social) and critical areas (e.g. areas of high biodiversity value or highly susceptible to erosion or inundation) requiring specific attention
- manage impacts from the use of the reserve including by provision of controlled public access to the foreshore, and
- rehabilitate any degraded areas.

The main objectives of managing beach protection and coastal management reserves are to allow natural coastal processes to continue on land vulnerable to shoreline movements, and minimise detrimental impacts on coastal resources. This is achieved by retaining the land in a relatively natural state and free from permanent or non-expendable development.

Explanation of terms

Change application — *Planning Act 2016* section 78(1) — an application to change a development approval.

Current period — see [Development Assessment Rules](http://betterplanning.qld.gov.au/resources/planning/better-planning/da-rules.pdf) on the DSDMIP website <http://betterplanning.qld.gov.au/resources/planning/better-planning/da-rules.pdf> — the period that is active at the time a notice is given. It does not include any period that has already ended or any period that is yet to commence.

Land surrender requirement — *Coastal Protection and Management Act 1995* section 113(2) — a written notice from the Coastal Act chief executive requiring the owner to surrender the **required land** to the State for coastal management if:

- the Coastal Act chief executive is satisfied the **required land** should be surrendered for coastal management; and
- the Minister approves the proposed requirement.

Prescribed land — *Coastal Protection and Management Act 1995* section 110(b) — is land within the lot to be reconfigured that could be required to be surrendered. It can only be land that is:

- in a coastal management district; and
- in an erosion prone area or within 40m of the foreshore and
- the planning chief executive is the assessment manager or referral agency for the development application or change application.

Proposed Surrender Notice — *Coastal Protection and Management Act 1995* section 111(2) — a written notice given by the Coastal Act chief executive advising the owner of **prescribed land** that all or part of the **prescribed land** may be required to be surrendered to the State for coastal management.

Required land — *Coastal Protection and Management Act 1995* section 113(1) — the land that the Coastal Act chief executive is satisfied should be surrendered to the State for coastal management.