

Operational policy

Visitor Management

Commercial activity authorities – requirements for authority holders when selling a business

Operational policies provide a framework for consistent application and interpretation of legislation and for the management of non-legislative matters by the Department of Environment and Science. Operational policies are not intended to be applied inflexibly in all circumstances. Individual circumstances may require a modified application of policy.

Purpose

The purpose of this policy is to provide guidance to Queensland Parks and Wildlife Service (QPWS) officers and the holders of commercial activity permits (CAPs), commercial activity agreements (CAAs) and marine park permissions (MPPs) when a business authorised to conduct commercial activities under a CAP, CAA or MPP is being sold or acquired.

It informs both the seller and buyer about relevant legislation, policy and procedures for consideration prior to negotiating such a transaction.

Background

Authorising the buyer is not automatic

Commercial activities conducted on QPWS managed areas are authorised under CAPs, CAAs or MPPs. If a holder of such an authority decides to sell their business, a major consideration should be whether QPWS will allow the prospective buyer to continue conducting the same activities post-sale as those conducted by the seller pre-sale.

The decision will depend on a range of considerations including:

- current legislation and policy (which may have changed since the original authority was issued);
- recent site visitor capacity (SVC) studies in the relevant location in question; and
- other applicable QPWS planning processes, such as Queensland Eco and Sustainable Tourism (QuEST) (see below).

If approved, either: (1) the existing authority would be transferred to the buyer; or (2) a new authority issued to the buyer on the same terms. However, approval is not automatic.

Where appropriate, the default position will be that QPWS will consider granting an authority to the buyer of a business authorising them to conduct commercial activities on a 'like for like' basis, that is, allowing the buyer to undertake the same activities and visit the same sites at the same frequencies and capacity levels as the seller under a new CAP, CAA or MPP subject to certain conditions.

Transfer or re-issue?

While a CAA is transferable, the rules for a CAP differ depending on the tenure in question. An MPP issued under the *Marine Parks Act 2004* (MPA) is transferable (subject to certain conditions), while a CAP issued under the *Nature Conservation (Administration) Regulation 2006* (NC Admin Reg) and the *Recreation Areas Management Act 2006* (RAM Act) is not transferable. This means that a CAP must be re-issued as a new

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authority to the buyer (if approved). A CAP issued under the *Forestry Act 1959* (FA) is not transferable unless written consent is secured from the Chief Executive.

Requirement for authority

It is an offence to conduct a commercial activity in a terrestrial QPWS managed area without a CAP or CAA: section 96 of the Nature Conservation (Protected Areas Management) Regulation 2006 (NC PAM Reg); section 111 of the RAM Act; and section 73B(1) of the FA.

Similarly, it is an offence to enter the marine park without an authority under Section 44 of the MPA, where an authority is deemed required for a specific commercial activity to be undertaken in accordance with a relevant Marine Parks Zoning Plan.

Accordingly, the buyers of businesses must secure the relevant authority (i.e. CAP, CAA or MPP) before commencing operations.

Procedures

Surrender and re-issue of a CAP (non-QuEST location): NC Admin Reg, RAM Act and FA

Where the holder of an existing CAP (seller) enters into negotiations to sell their business and the prospective owner (buyer) is seeking authorisation from QPWS to conduct the same activities as those authorised under the seller's CAP, the following procedures apply:

1. The seller must submit written notification formally advising QPWS of their intention to sell their business to a nominated prospective buyer. The notification must also include confirmation that, if QPWS approves the buyer's application for a new CAP, the seller will surrender and return their existing CAP to QPWS.
2. The buyer must submit separate written advice to QPWS advising of their intention to purchase the business from the seller, and also submit a completed application form (online) for a new CAP to conduct the same activities as those authorised under the seller's CAP. The application must be submitted at least 40 business days prior to the proposed settlement date, be signed by an executive officer of the relevant legal entity, and the application fee paid.
3. The application for a new CAP submitted by the buyer will then be subject to QPWS's standard assessment processes.
4. Following the assessment process, the matter will be referred to the relevant QPWS delegate for decision to approve or refuse the application.
5. Where QPWS decides to approve the application, the seller will be required to surrender their CAP as per Step 1 above. Any surrender notice submitted by the seller must be signed as follows:
 - for an individual or individual trustee - by the individual;
 - for a company or corporate trustee - two directors of the company; or a director and the company secretary;
 - for a company with a sole director who is also the sole secretary – that director;
 - for a partnership - all partners.

Note: QPWS will not accept the surrender notice until the seller has submitted (online) all returns of operation associated with the period up to and including the effective surrender date and paid any associated fees. A new CAP will not be issued to the buyer until these matters are resolved.

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6. Where QPWS decides to refuse the application, the delegate will formally advise the applicant (buyer) and seller of the decision via an information notice, including reasons for the refusal.

Surrender and re-issue of a CAP for activities in a QuEST location

Where the sale/acquisition of a business is proposed involving activities:

- conducted under a CAP; and
- in a QuEST location

QPWS will consider granting a CAP to the buyer, subject to certain conditions.

Application of latency rules may affect site capacity allocated under buyer's CAP

Approval of the surrender of an existing CAP by the seller and re-issue of the CAP to the buyer (see Steps 1, 2 and 4 above) will be conditional upon the buyer applying for the same authorisations (including sites, capacity and frequency) as those authorised under the seller's CAP. While there is some scope for minor variations, these will not be permitted if they exceed SVC thresholds.

In addition, in QuEST locations where there are concerns around SVC thresholds, the latency rules for QuEST locations may be applied to the allocated site capacity recorded in the seller's CAP. This will involve QPWS reviewing the returns of operation submitted by the seller for the previous five years. Where it is determined that latency rules are to be applied, new site allocations (annual) for inclusion in the buyer's CAP will be determined by identifying the calendar year of highest annual use under the seller's CAP, and a margin for growth within sustainable limits, will be added. The total allocated capacity will not exceed the capacity contained in the original CAP.

NOTE: In these circumstances, both the seller and buyer should be aware that allocated site capacity as determined by QPWS for inclusion under the buyer's CAP may be significantly reduced from that which applied to the seller's CAP.

Terms and conditions of buyer's CAP may be re-considered before transition from CAP to CAA

The buyer's CAP will also be subject to further review during the process of transitioning the CAP to a long term CAA (which is required under QuEST). This process will include the introduction of a "capacity table" in the CAA that will set out Daily and Annual Capacity, Persons At One Time, Passengers per Vehicle and Vehicles At One Time on a per site basis.

Transfer of authorisation under a CAA - NC Admin Reg. RAM Act, FA and MPA

Where the holder of an existing CAA (seller) wishes to transfer all or part of the authorisation under the agreement to another person (buyer), the following procedures apply:

1. The seller must submit written notification to QPWS formally requesting the transfer of all or part of the authorisation under the agreement to a nominated prospective buyer. Notification submitted by the seller must be signed as follows:
 - for an individual or individual trustee - by the individual;
 - for a company or corporate trustee - two directors of the company; or
 - a director and the company secretary;
 - for a company with a sole director who is also the sole secretary – that director;

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- for a partnership - all partners.
- 2. The buyer must submit separate written advice and a completed application form for a CAA to QPWS requesting transfer of all or part of the authorisation under the seller's CAA. The application must be submitted at least 40 business days prior to the proposed settlement date, be signed by an executive officer of the relevant legal entity, and the application fee paid.
- 3. Where the seller intends transferring part of their authorisation, they must ensure that the sum of the capacity held within the original authority *plus* the proposed capacity to be transferred is not greater than the original capacity. As part of the assessment process, QPWS will evaluate the detail of both the original and proposed capacity to ensure they do not adversely affect SVC thresholds
- 4. The application submitted by the buyer will then be subject to QPWS's standard assessment processes.
- 5. The Chief Executive may approve the transfer only if satisfied that the buyer is a 'suitable person' to hold the CAA (as defined in the relevant legislation).
- 6. Following the assessment process, the matter will be referred to the relevant QPWS delegate for decision to approve or refuse the application.
- 7. Where QPWS decides to approve the transfer, it will not be effected until the seller has submitted (online) all returns of operation associated with the period up to and including the effective transfer date and paid any associated fees.
- 8. Where QPWS decides to refuse the application, the delegate will formally advise the applicant (buyer) and seller of the decision via an information notice, including reasons for the refusal.
- 9. If the seller is transferring all of the authorisation under the CAA, the Chief Executive must then give effect to the transfer by:
 - cancelling the seller's agreement; and
 - if the buyer is the holder of an existing CAA, amending that CAA to reflect the transfer; or
 - if the buyer is not the holder of an existing CAA, entering into a new CAA with the buyer which authorises the commercial activity/s the subject of the seller's agreement.
- 10. If the seller is transferring only part of the authorisation under the CAA, the Chief Executive must give effect to the transfer by:
 - amending the seller's agreement to reflect the transfer; and
 - if the buyer is the holder of an existing CAA, amending that CAA to reflect the transfer; or
 - if the buyer is not the holder of an existing CAA, entering into a new CAA with the buyer which authorises the commercial activity/s the subject of the seller's agreement.

Transfer of marine park permissions – Marine Parks Regulation 2006 (MP Reg)

Where the holder of an existing marine parks permission (state marine locations only) wishes to transfer the permission to another legal entity, the following procedures apply:

1. The holder (the seller) and the proposed transferee (the buyer) must apply to the Chief Executive for approval of the transfer. The transfer application must be in the approved form, signed by the respective executive officers of the legal entities that are the holder and the proposed transferee, and provided to the Chief Executive at least 28 days before the day on which the transfer is intended to take effect.

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2. In considering a transfer application, the Chief Executive must have regard to the following:
- whether the proposed transferee (the buyer) is a 'suitable person' to hold the permission (as defined in schedule 6 of the MP Reg, and taking into account the matters mentioned in Schedule 5);
 - whether the seller or the proposed transferee owes any fee or other monies payable under the MPA;
 - for developments, the capacity of the proposed transferee to satisfactorily develop the project; and
 - all matters relevant to ensuring the orderly and proper management of the marine park to which the permission applies.

Additionally, the Chief Executive will consider any other matter relevant to the applicant's ability to carry out the approved program in a competent and ethical way.

3. Where QPWS decides to approve the transfer, the holder's permission will be cancelled and must be returned to QPWS. A new permission will be issued to the transferee for the remaining term of the existing permission. However, any change is likely to trigger Native Title notification and is therefore only considered appropriate in limited circumstances where such a change is considered to be important.
4. Where QPWS decides to refuse the application, the delegate will formally advise the applicant (buyer) and seller of the decision via an information notice, including reasons for the refusal.

NB. Where a marine park permission includes the (Commonwealth) Great Barrier Reef Marine Park, an application for transfer should be made to the Great Barrier Reef Marine Park Authority—not QPWS. A transfer application can be found on its website at: www.gbrmpa.gov.au

Reference materials

Operational Policy – Commercial tourism and recreation activities in QPWS managed areas

Queensland Eco and Sustainable Tourism (QuEST) Policy: available at www.des.qld.gov.au

Definitions and abbreviations

Definitions of key terms and abbreviations used in this policy are as follows:

'Chief Executive' – includes a person who has been delegated the powers of the Chief Executive under a statutory instrument.

'Commercial activity authority' – for the purposes of this policy includes a commercial activity permit, commercial activity agreement and marine park permissions for commercial activities where an approval is required in accordance with a relevant Marine Parks Zoning Plan.

'Latency / latent capacity' means the amount of allocated site capacity under a commercial tour operator's CAP that has not been used.

'Marine Parks Zoning Plan' means the Marine Parks (Great Barrier Reef Coast) Zoning Plan 2004, the Marine Parks (Great Sandy) Zoning Plan 2006 or the Marine Parks (Moreton Bay) Zoning Plan 2008.

'prescribed commercial activity' means a commercial activity as prescribed under the provisions of section 77 of the NC PAM Reg, section 97 of the RAM Act or section 102 of the MP Reg.

'QPWS managed area', for the purposes of this operational policy, includes the following areas:

- protected areas (State land) under the *Nature Conservation Act (NCA) 1992*;
- State forests and other lands managed under the FA; and

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- recreation areas under the RAM Act.
- marine parks dedicated under the MPA.

'QuEST location' includes Fraser Island Recreation Area, Moreton Island Recreation Area, Whitsunday Islands area, Daintree National Park and Cooloola Recreation Area.

'CAA' means a commercial activity agreement

'CAP' means a commercial activity permit

'FA' means the *Forestry Act 1959*

'MPA' means the *Marine Parks Act 2004*

'MPP' means a marine parks permission

'MP Reg' means the Marine Parks Regulation 2006

'NCA' means the *Nature Conservation Act 1992*

'NC Admin Reg' means the Nature Conservation (Administration) Regulation 2006

'NC PAM Reg' means the Nature Conservation (Protected Areas Management) Regulation 2006

'QuEST' means Queensland Eco and Sustainable Tourism

'RAM Act' means the *Recreation Areas Management Act 2006*

'SVC' means Sustainable Visitor Capacity

Disclaimer

While this document has been prepared with care, it contains general information and does not profess to offer legal, professional or commercial advice. The Queensland Government accepts no liability for any external decisions or actions taken on the basis of this document. Persons external to the Department of Environment and Science should satisfy themselves independently and by consulting their own professional advisors before embarking on any proposed course of action.

Approved By

Ben Klaassen

Signature

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Date

Deputy Director-General
Queensland Parks and Wildlife Service

Enquiries:
Assessments and Approvals
Email: parkaccess@des.qld.gov.au