

# Procedural guide

## Visitor Management

### Expressions of interest for commercial activities on QPWS-managed areas

*Procedural guides further define complex decision-making processes or requirements of the Queensland Parks and Wildlife Service (QPWS) of the Department of Environment and Science (DES). Procedural guides provide guidance and information to assist staff in the completion of specific tasks or in making certain judgments. Procedural guides are for internal use only.*

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## Purpose

This guide outlines the process to be used when calling for expressions of interest (EOIs) for the conduct of commercial activities on QPWS-managed areas.

## Background

In keeping with the *National Competition Policy* and the principles of equity, ethical behaviour and natural justice, QPWS does not favour any particular commercial operator or operators when allocating authorities to conduct commercial activities on QPWS managed areas. The majority of these authorities are granted through a process of assessing unsolicited applications which are dealt with on a “first come first served” basis. However some circumstances require QPWS to actively seek prospective operators to conduct identified commercial activities, and to assess these operators in a single, consolidated process.

Where the number of commercial operators in an area will be limited in accordance with applicable management plans, and policies, where the opportunity may otherwise only be accommodated on a limited basis, or where new opportunities or sites become available which are likely to attract significant commercial interest, any new or additional operator/s will be identified and selected through a fair and open EOI process.

The *Nature Conservation (Administration) Regulation 2006* (Part 3, Division 2), the *Recreation Area Management Act 2006* (Part 5, Division 2), and the *Marine Park Regulation 2006* (Part 4, Division 2) empower QPWS to grant a Commercial Activity Agreement by following an EOI process (it is noted that a Commercial Activity Permit cannot be granted through an EOI process). The processes detailed in this procedural guide are consistent with these provisions of the legislation.

When specialist tourism expertise is required, QPWS may choose to work in partnership with Tourism and Events Queensland or the relevant Regional Tourism Organisation to develop and present the commercial opportunity in a way that best meets industry needs, and to conduct an informed assessment of the commercial elements of proposals received.

## Ethics, probity, and accountability

Public sector employees have an obligation to act in an ethical manner at all times. The *Code of Conduct for the Queensland Public Service* sets out the standards of conduct required of employees to meet these ethical obligations.

Probity is the evidence of ethical behaviour in a particular process. All EOI processes must be conducted with the utmost probity, with probity principles incorporated into the process at all stages. The four inter-linked principles of probity are:

- fairness and impartiality
- accountability and transparency of process
- confidentiality and security of information and materials
- effective management of conflicts of interest.

Although EOIs for commercial activities on QPWS managed areas do not usually comprise a “procurement” process as such, the *Queensland Procurement Policy* and associated *Better Purchasing Guides*, and the Department’s *General Procurement Policy and Procedures* provide useful guidance to ensure that the EOI process is conducted with procedural rigour and in accordance with the four principles of probity.

Relevant provisions of these policies and guides have been detailed in the *Probity Guidelines – Expressions of Interest, Commercial activities on QPWS managed areas* and incorporated into this procedural guide where

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appropriate. All Departmental officers involved in an expressions of interest process should read the probity guidelines to develop a full appreciation of probity and accountability practices and their own probity obligations.

### Consultation with Traditional Owners

If there is Traditional Owner interest in the management of an area subject to an EOI, QPWS should involve the Traditional Owners in the process. This may involve:

- Consultation during Step 1 of the process to ensure that the interests of the Traditional Owners of the sites are properly considered during the development of the opportunity being offered
- An invitation to a Traditional Owner representative to be either an Assessment Panel member or an advisor to the Assessment Panel
- Facilitating any consultation required between the proponents and the Traditional Owners in regard to how the activities are conducted at sites or how Traditional Owners may be involved in the delivery of the services.

It should be noted that the management of commercial activities on the following national park areas is subject to specific procedural requirements in regard to dealing with the allocation and authorisation of commercial activities that must be followed. In the event of any conflict between this procedural guide and the IMA or ILUA, the provisions of the IMA or ILUA prevail:

- National parks on Cape York Peninsula Aboriginal land are subject to the provisions of Indigenous Management Agreements (IMA) which have been negotiated for each of these national parks.
- Naree Budjong Djara National Park on Minjerribah (North Stradbroke Island) is subject to the provisions of an Indigenous Management Agreement (IMA).

### Procedure

The process for calling for EOIs for commercial activities should follow the steps detailed below.

#### Step 1 Identify the commercial opportunity and secure approval

Identifying the nature and scope of the commercial opportunity being made available is fundamentally important to achieving a successful outcome for the EOI process. In some cases, the commercial opportunity will be for standard activities with well-established management arrangements and this first step will be straightforward. In other cases, considerable thought will be required to define the type and scope of commercial activities that are suitable for a particular location, and to determine the arrangements for managing these activities. The opportunity being offered should align with the relevant management plans or statements. Where substantial and valuable commercial opportunities are being offered, it may be worthwhile to undertake a comprehensive assessment of the economic value of the opportunity.

Expert advice may be very useful in developing the commercial opportunity and should be sought at this early stage from various sources, including QPWS staff involved in managing similar commercial activities in other locations, industry bodies or associations, trustees, the relevant regional tourism organisation and/or Tourism and Events Queensland. The aim of this consultation is to ensure that the tourism opportunity being presented will achieve optimal uptake and benefit for the commercial tourism industry. Issues for consultation may include the commercial feasibility of the opportunity, the available commercial visitor capacity at sites, and the optimum number of operators, infrastructure development options, and suitable arrangements for managing the activities.

The scope of the commercial opportunity must be clearly defined to ensure all parties understand what is/ is not included. External requirements that are integral to a viable commercial opportunity, but are not being offered to the proponent as part of the EOI, must be clearly stated within the EOI documentation. For example, the template for the EOI guidelines contains a general disclaimer that it is the responsibility of the selected

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proponent to gain all necessary permits and approvals. However, where it is known that another authority or the ability to use a location outside of QPWS estate is required, these requirements should be specifically noted as being excluded from the EOI.

Once the commercial opportunity has been identified, in-principle approval to call an EOI should be sought from the relevant QPWS Director or Regional Director, who should be provided with the following advice:

- the background details of the proposed opportunity or variation to existing opportunity, including any setting and site constraints
- the potential demand and commercial value of the opportunity
- whether or not the EOI process will be limited only to the existing authority holders for the activity in that area
- the potential management and revenue benefits
- any significant cost to QPWS of providing the commercial opportunity, including ongoing administrative, park management, or maintenance costs, and any necessary capital works expenditure
- expected outcomes
- the proposed plan for the management of the EOI process—this should be in the standard DES Project Plan format and clearly identify the QPWS officer who will be the project manager, and the timeframe and milestones that are expected to apply. The DES project plan template is available on the intranet.

### Required outputs from Step 1:

- Approval from the relevant QPWS Director or Regional Director to proceed with an EOI process
- Approval of the Project Plan from the relevant QPWS Director or Regional Director
- Ongoing consultation with Traditional Owners

### **Step 2 Develop expression of interest documents**

After approval is granted, the nominated project manager is responsible for developing the following documentation:

1. Draft *Expressions of Interest – Guidelines for Submission*
2. Draft application form
3. Draft advertisement text
4. Draft briefing note to Minister advising that an EOI will be called

The *Expressions of Interest – Guidelines for Submission* is the key document in the EOI process. It informs potential proponents of the nature and scope of the opportunity being offered, details the information and material that must be provided by proponents, and outlines the process that will be used to assess proposals and determine the outcome. A standard format has been developed that should be used in drafting the *Expressions of Interest – Guidelines for Submission* document. This addresses the probity requirements of the EOI process and provides clarity to prospective proponents. The project manager should customise this document by providing details of the particular opportunity being offered and the submission requirements.

As with the *Expressions of Interest – Guidelines for Submission* document, all other documents referred to above should be customised with the particular details that apply in each case. Electronic versions of these templates are available from the Assessments and Approvals unit.

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The documents prepared during Step 2 above form the EOI “package”. The package requires written approval from the relevant QPWS Director or Regional Director before the EOI is publicly released.

### Required outputs from Step 2:

- Final drafts of the four documents detailed above
- Written approval from QPWS Director or Regional Director

### **Step 3 Approval for public release**

Prior to public release of the EOI, a final version of the ministerial briefing note created in Step 2 must be provided to the relevant QPWS Director or Regional Director for progressing to the Minister through the Director-General.

### Required outputs from Step 3:

- Final version of the Ministerial briefing note submitted for approval

### **Step 4 Establish the assessment panel and the assessment plan**

The assessment panel is responsible for evaluating the proposals received and recommending the successful proponent/s. The chairperson of the assessment panel is responsible for managing the assessment process, including the development and implementation of a suitable Assessment Plan, the Assessment Panel Evaluation Report (refer to step 8), and for negotiating authorisations for the successful proponents.

The assessment panel must have at least three members, but may have up to five, depending on the circumstances. The panel may include a combination made up of the parties listed in the table below.

<b>Compulsory</b>	<b>Where relevant / appropriate</b>
<ul style="list-style-type: none"> <li>• Chairperson - QPWS representative and usually the nominated project manager</li> <li>• QPWS representative with sound local knowledge of the QPWS managed area (may be Chairperson)</li> </ul>	<ul style="list-style-type: none"> <li>• Industry representative</li> <li>• Indigenous representative (if native title is not resolved, this may be offered in an advisory capacity only)</li> <li>• External Government agency representative</li> <li>• Other external representative</li> </ul>

Industry representatives often provide knowledge and expertise which is not available within QPWS and can be extremely valuable in forming sound assessments of proposals. An industry or other external representative should be used where there is potential for perceived bias in the assessment panel. Assessments and Approvals can assist with identifying an appropriate industry representative.

The assessment panel should be nominated by the project manager (who will usually be the chairperson) and formally approved by the relevant QPWS Director or Regional Director.

The chairperson of the assessment panel should develop a suitable Assessment Plan to guide the panel in the assessment process. The Assessment Plan is a critical document in achieving probity and accountability in the EOI process. It provides information about how the assessment process will be managed, how proposals and communication with proponents will be handled and details the scoring system and benchmark statements for each selection criterion, to ensure that all panel members apply a consistent method of evaluation.

An Assessment Plan template is available from Assessments and Approvals. In particular, the project manager should ensure benchmark statements provide relevant standards for the particular project.

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### Required outputs from Step 4:

- Approval of assessment panel by relevant QPWS Director or Regional Director
- Assessment Plan prepared

### **Step 5 Advertising**

Prior to arranging the advertisement for the EOI, the project manager must first seek approval from the Director-General by progressing a briefing note through MECS.

On receipt of approval from the Director-General, the Project Officer should liaise with Corporate Communication Services for assistance with placing the advertisement. A draft proof of the advertisement and quote should be provided to the Director for approval. Information regarding the EOI should also be displayed on the department's website.

A period of six weeks should occur between the date of advertising and the closing date for proposals, excluding public holidays. This period may be reduced to a minimum of four weeks in exceptional circumstances.

The address for the lodgement of proposals and the closing date and time will be nominated in the advertisement and *Expressions of Interest – Guidelines for Submission* document.

Often there will be commercial operators who, through previous enquiries or existing operations, are known to be interested in the opportunity to be offered. As a courtesy, when the *Expressions of Interest – Guideline for Submission* document becomes available for public release and advertisement, it should also be forwarded to these interested parties with a letter inviting a proposal. To facilitate this, a record must be kept of the names and addresses of people who, prior to release of an opportunity to EOI, contact QPWS seeking an authority to operate in the relevant area or an EOI package.

Any advice provided to proponents outside of the *Expressions of Interest – Guideline for Submission* should be in accordance with the EOI probity guidelines.

### Required outputs from Step 5:

- Approval to advertise from the Director-General
- Liaise with Corporate Communications Services about advertising
- Draft proof of advertisement and quote approved by Director
- Advertisement published in newspapers and department's website

### **Step 6 Receipt of proposals**

The Chairperson of the assessment panel is responsible for ensuring that incoming proposals are correctly receipted, registered and securely stored. At this stage, the project manager may assist by contacting the Procurement Team to establish the secure tender box for lodgement of submissions. The following practices should be adopted in regard to receiving proposals:

- All proposals should be received at a designated point, and must be kept secure and unopened prior to the time nominated for opening; if the receiving office has access to a "tender box" then this facility should be used to store proposals as they are received.
- Before opening, information concerning the identity or the number of proposals received should not be made available.
- If a sealed proposal is opened in error, the person who opened the proposal should annotate the envelope with their name, position, time and date and deliver the offer to the nominated storage place.

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- Proposals should be collected promptly at the set closing time and opened as soon as practicable by two officers; the details of all proposals received should be recorded on a register held by the chairperson of the assessment panel (name, company, date received, amount of monies enclosed).
- Proposals received after the closing time, received by facsimile, or not accompanied by the relevant fee are to be clearly marked with time and date of receipt etc. and included on the register of proposals.
- Once the proposals have been registered, the application fees must be receipted (including those received with late applications). Receipt details (date, receipt number, amount) should be recorded in a prominent place on the documents.
- An acknowledgment letter should be sent to each proponent along with the original receipt.

### Required outputs from Step 6:

- Secure storage and opening of all proposals received
- Enter details in a register—proposals received and fees paid
- Acknowledgement letters and fee receipts sent to all proponents

### **Step 7 Assessment of proposals**

The objectives of the assessment process are to:

- Establish the merit and relative ranking of proposals based on the criteria outlined in the *Expressions of Interest – Guidelines for Submission* document
- Identify the proponent/s, in order of merit, who will be invited to enter into commercial activity agreements to conduct the commercial activities
- Ensure that the decisions made during the assessment process are objective and defensible
- Ensure that adequate records of the assessment process are kept so that there is an audit trail should a review of the assessment process be necessary.

After the proposals have been opened and registered, the chairperson should forward a copy of each proposal and the Assessment Plan to each member of the assessment panel. The assessment panel should meet to confirm the details of the assessment process and discuss any issues relating to the assessment.

Each member of the assessment panel must complete a Declaration of Confidentiality and Conflict of Interest Form and forward to the chairperson. This declaration is located within the *Probity Guidelines for Expressions of Interest – Commercial activities on QPWS managed areas*. Please refer to the section below regarding managing conflicts of interest in the assessment process.

The evaluation of proposals should be conducted in accordance with the processes detailed in the Assessment Plan. At the end of the assessment process the panel should have reached agreement on the outcomes of the process and have identified any issues that need to be resolved during the negotiation stage.

Any proposals received after the closing time and date and/or not accompanied by the required fee must not be considered.

### Required outputs from Step 7:

- Completed Conflict of Interest Declaration for each panel member
- Assessment and handling of proposals in accordance with the Assessment Plan
- Panel members' scores and summary of comments about proposals compiled by the chairperson

### Step 8 Assessment panel evaluation report

When the assessment process has been completed the chairperson shall produce the Assessment Panel Evaluation Report (Assessment Report) which recommends the successful proponent/s and documents the selection process and the results, including selection criteria scores and supporting notes for each proposal. The report should also note whether any invalid proposals were received and how those proposals were treated, and must be signed by each panel member.

An Assessment Report template is available from Assessments and Approvals.

The completed Assessment Report should be forwarded to the relevant QPWS Director or Regional Director for approval of the recommendations.

#### Required outputs from Step 8:

- Completed Assessment Report signed by all members of the assessment panel
- Assessment Report provided to the relevant QPWS Director or Regional Director

### Step 9 Advice to proponents and negotiation of agreements

After the Assessment Report recommendations have been approved, the operator/s that will be offered a commercial activity agreement should be formally advised that they have been successful.

Within **14 days** of approval of the Assessment Report recommendations, each unsuccessful proponent must be advised in writing that their proposals were unsuccessful and be invited to contact the chairperson for further details of the reasons why they were unsuccessful. Where a proposal is not considered by reason of being invalid for failure to include the full required fee and/or being received after the closing time and date, fees paid should be refunded.

The chairperson of the assessment panel is responsible for liaising with the relevant Assessments and Approvals officers in regard to the development of the suitable commercial activity agreement/s. The chairperson is responsible for any negotiations with successful proponents that are required in order to establish final arrangements for the conduct of the commercial activities. The preparation and administration of the authorisations should be managed jointly between the chairperson of the panel and the relevant Assessments and Approvals officer.

### Other matters to consider

#### Information sessions

After an EOI has been advertised, it may be worthwhile to conduct an information session for potential proponents to provide detailed information about the opportunity being offered and the requirements for submitting a proposal. The time and location of the information session and the relevant contact details should be included in the EOI advertisement. The information session should be held as soon as practicable after advertising to allow proponents the maximum time possible to prepare their proposals.

#### Website advertising

Consideration should be given to publishing the *Expressions of Interest – Guidelines for Submission* document on the DES website, so the proponents can download the information directly. Similarly, Tourism and Events Queensland may also be approached to publish the document on the Tourism and Events Queensland website when the advertisement appears in the newspapers.



## Managing conflicts of interest

The *Better Purchasing Guide - Ethics, Probity and Accountability in Procurement*, produced by Queensland Purchasing, and the *Code of Conduct and Conflict of Interest Guideline* provide detailed information for declaring and managing conflicts of interest for assessment panel members in the EOI process.

There are three types of conflict of interest to be aware of:

- An actual conflict of interest – where a person is in a position to be influenced by their private interests when doing their job as an assessment panel member
- A perceived conflict of interest – where a person is in a position to appear to be influenced by their interests when doing their job as an assessment panel member
- A potential conflict of interest – where an officer is in a position where they may be influenced in the future, by their private interests when doing their job as an assessment panel member.

Conflicts of interest are not wrong in themselves, but they should be properly identified and declared, and effectively and transparently managed. When a conflict of interest has been ignored, improperly acted upon, or has influenced actions or decision making, the conduct (not the conflict itself) could be seen as misconduct, abuse of office or even corruption.

Each member of the assessment panel must declare any conflicts of interest when they complete the Declaration Confidentiality and Conflict of Interest Form referred to in Step 7 above. The chairperson will then need to determine how any conflict of interest should be dealt with and should seek further advice from senior managers if necessary.

There are several management strategies available for dealing with conflict of interest, with the most appropriate options for EOI processes most likely to be either:

- Registration – where details of the conflict of interest are declared and registered (in low-risk situations this single strategy may be sufficient)
- Restriction – where restrictions are placed on the person's involvement in the process
- Recruitment – where a disinterested third party is used to oversee part or all of the process that deals with the matter
- Removal – where the person chooses, or is requested, to be removed completely from the matter.

## Use of Probity Advisor

Where substantial and valuable rights are being offered or where there is likelihood of contention regarding the outcome of an EOI process, the engagement of a probity advisor should be considered. The probity advisor is not part of the assessment panel but an independent observer of the process.

A probity advisor provides opinions and guidance on probity risks and issues that may arise during the process, and confirms in writing whether the process is consistent with the requirements outlined in a probity plan as well as general probity fundamentals. If probity requirements are not being or have not been met, the advisor identifies the non-conformities and any reasons for these in a written report, and if necessary, suggests solutions and monitors their implementation.

A probity advisor's primary concern is the integrity of the procedures and processes adopted. That is, the focus is on the means, not the ends of the project. The advisory role is essentially preventive. For this reason, a probity advisor is usually engaged at an early stage to assist with project establishment and before any serious procurement integrity issue may develop.

The Business Development Branch can provide advice regarding suitable probity advisors.

**Reference material**

- *Operational Policy: Commercial tourism and recreation activities on QPWS managed areas*
- *Queensland Purchasing: Better Purchasing Guide - Ethics, Probity and Accountability in Procurement*
- *Queensland Purchasing: Better Purchasing Guide - Developing Specifications for Purchasing*
- *Queensland Purchasing: Better Purchasing Guide - Evaluating offers in Purchasing*
- *DES Conflict of Interest Procedure*

**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
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Signature

31 January 2017
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Date

Deputy Director-General  
Queensland Parks and Wildlife Service

**Enquiries:**  
Assessments and Approvals  
[parkaccess@des.qld.gov.au](mailto:parkaccess@des.qld.gov.au)

## APPENDIX A

### Expression of Interest (EOI) process for commercial activities in QPWS managed areas

