

Disposal of Reclamations Procedure

1. Aim of the procedures

These procedures outline the process for the potential disposal of reclaimed land in Roads and Maritime's (RMS)'s ownership.

2. Application

These procedures apply to all reclamations owned by RMS except those associated with the Port Corporations.

These procedures will be applied by RMS unless the Chief Executive determines in writing that circumstances exist which justify a departure.

These procedures are effective from 2 August 2010 and replace any previous procedures with respect to the potential disposal of reclamations on RMS's land. These procedures will be routinely reviewed at five-yearly intervals.

3. Types of reclamations

As at 1/7/09 there were approximately 600 reclamations on RMS's land, 90% of which were associated with adjoining residential land and not accessible by the public.

The majority of reclamations on RMS's land are small, with a median size of approximately 25m².

4. Legislative and policy context

Sections 41(1)(c) and 41(3)(a) of the Ports and Maritime Administration Act 1995 provide the legislative power for RMS to manage and dispose of the land which it owns. The Environmental Planning and Assessment Act 1979 applies to the excision of a reclamation from RMS's title and its consolidation with the adjoining purchaser's title.

These procedures should be read in conjunction with:

- NSW Treasury and GAMC property disposal guidelines and procedures;
- the Independent Commission Against Corruption's (ICAC's) guidelines on Direct Negotiations in Procurement and Disposals;
- ICAC's Guidelines for Managing Risks in Direct Negotiations;
- the NSW Government Procurement Guidelines - Disposals, prepared by the Department of Department of Services, Technology and Administration;
- RMS's Procedure for the Removal of Private Waterfront Structures;
- RMS's Code of Conduct and Ethics;
- relevant laws of the Commonwealth and the State of NSW; and
- other relevant policies, guidelines and directions of the NSW Government.

5. General procedures

The following general procedures apply to reclamations on RMS's land:

1. A person may not occupy RMS's land without its written permission, and RMS will generally require the occupier to enter into a lease.
2. Normally, disposal of RMS's land to the private sector will be considered only when such negotiations are initiated by the adjoining landowner.
3. For an approved application to proceed to settlement, it is a requirement that all debts which may be owed to RMS are paid in full, including any outstanding rental for the subject reclaimed land or any structures.
4. Nothing in this procedure obliges RMS to dispose of any land, or to offer any land for disposal on the same or similar terms as any previous disposal or in accordance with any externally-generated criteria.
5. All costs (including all of RMS's costs) associated with any disposal must be borne by the purchaser/lessee provided this is not contrary to the terms of any current tenure agreement.
6. All subdivision and other planning issues and all associated costs are the responsibility of the prospective purchaser. Disposal of a reclamation by RMS does not imply that it supports any subsequent rezoning or alternative use of the land.

6. The disposal process

Application forms and fees

Applications to purchase a reclamation may only be made where the subject reclamation is leased to the applicant or it immediately and principally adjoins the applicant's freehold property.

Applications to purchase a reclamation must be made on the appropriate form and forwarded to the Manager, Domestic Property Branch, RMS. Applications must be accompanied by a \$5,500 (includes GST) deposit and include written agreement by the applicant to pay any additional costs associated with assessment and finalisation of the application.

The deposit accompanying the application will be used to cover legal, administration and valuation expenses relevant to finalising the application. Where the deposited amount exceeds these costs, the balance will be refunded to the applicant. Where the deposited amount is insufficient to cover these costs, the applicant will be requested to provide additional funds. If the applicant at any time elects to terminate the application process, they will be refunded any uncommitted deposit funds.

Initial Assessment

RMS will conduct an initial assessment of applications according to the following criteria:

1. any potential contribution of the reclamation to the working harbour;
2. any marine safety issues; and
3. any alternative public uses of the land, including the potential (if any) for increased public foreshore access.

Applications satisfying these initial criteria may, at the discretion of RMS, proceed to financial assessment. Applications not satisfying these criteria will be refused and the balance of deposited funds returned to the applicant.

Financial Assessment

Applications approved for financial assessment will be considered against the financial interests of RMS in proceeding with the prospective disposal, against the net return from retaining the land as perpetual leasehold.

RMS will generally obtain an independent valuation of the land having regard for the highest and best use via a “before and after” current valuation methodology. The valuation will include the value of any land improvements but will not include the value of general improvements such as boatsheds, swimming pools, tennis courts and the like.

Applicants would be offered an opportunity to provide relevant additional information beyond that outlined in their application materials, prior to finalisation of the valuation. A copy of the final valuation would be provided to the applicant. Should the valuation satisfy RMS’s financial interests, as outlined in clause 6.1, the land may be offered for the valued amount.

Where RMS estimates the land value at less than \$8,000 (in 2009), it may (but is not obliged to) dispense with an independent valuation, and instead apply the estimated value.

Within 30 days of receiving the valuation, or determining that the land value is less than \$8,000, RMS will either:

- offer the land for disposal to the applicant for a proposed value; or
- advise the applicant that it is not willing to proceed with the sale.

Offers for disposal will remain current for 90 days. Offers not finalised within this 90-day period may be deemed to have lapsed unless both parties agree to an extension of time.

RMS is not obliged, under any circumstances, to sell any land or offer any land for sale at any price similar to any previous offer or on any previous terms.

Noting that most reclamations are not publicly accessible, RMS will direct the proceeds of any reclamation disposals to the facilitation of public access to and along the waterway within which the reclamation exists (broadly, Sydney Harbour and its tributaries, Newcastle Harbour or Port Kembla).

7. Requirements relating to seawalls

Where a seawall exists along the reclamation, any disposal by RMS would include that seawall on an “as is” basis.

Ongoing maintenance of the seawall, including the portion below mean high water mark, would be the responsibility of the purchaser and any successors in title. Where the toe of the seawall is on RMS’s land, RMS may require an appropriate easement having regard to the nature of the structures upon its land.

8. Statutory planning matters

RMS’s agreement to dispose of a reclamation does not imply that RMS supports any subsequent applications for rezoning or development approval over the subject land.

Any subdivision or other planning approvals are the responsibility of the prospective purchaser including RMS’s subdivision or other development approval costs, if any.

9. Definitions

Adjoining landowner means the owner of freehold land which directly adjoins RMS's reclamation.

Independent valuation means a valuation conducted by a member of a panel of independent valuers appointed by RMS as a result of an expression of interest process. All independent valuers must be NSW registered, be Certified Practising Valuers and members of the Australian Property Institute.

Land improvements have the meaning given to them in the Valuation of Land Act 1916 and therefore include retaining walls, filling or other works associated with the reclamation of land.

Reclamation means any of RMS's land which was formerly submerged but has been filled or drained for the purposes of reclaiming it as dry land.

Valuation report means a valuation report prepared in accordance with the Australian Property Institute's reporting standards.