



QUEENSLAND GOVERNMENT

Department of Environment and Heritage

NATIVE TITLE WORK PROCEDURES

COPY

Approved by

Michael Whittaker
Acting Director-General
Department of Environment and
Heritage
Date:

Issued by
Cultural Heritage Branch
Department of Environment and
Heritage

Date:

Paul Smith
Director
Legal Branch
Dept of the Premier & Cabinet

Date:

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AMENDMENTS

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1.0 INTRODUCTION

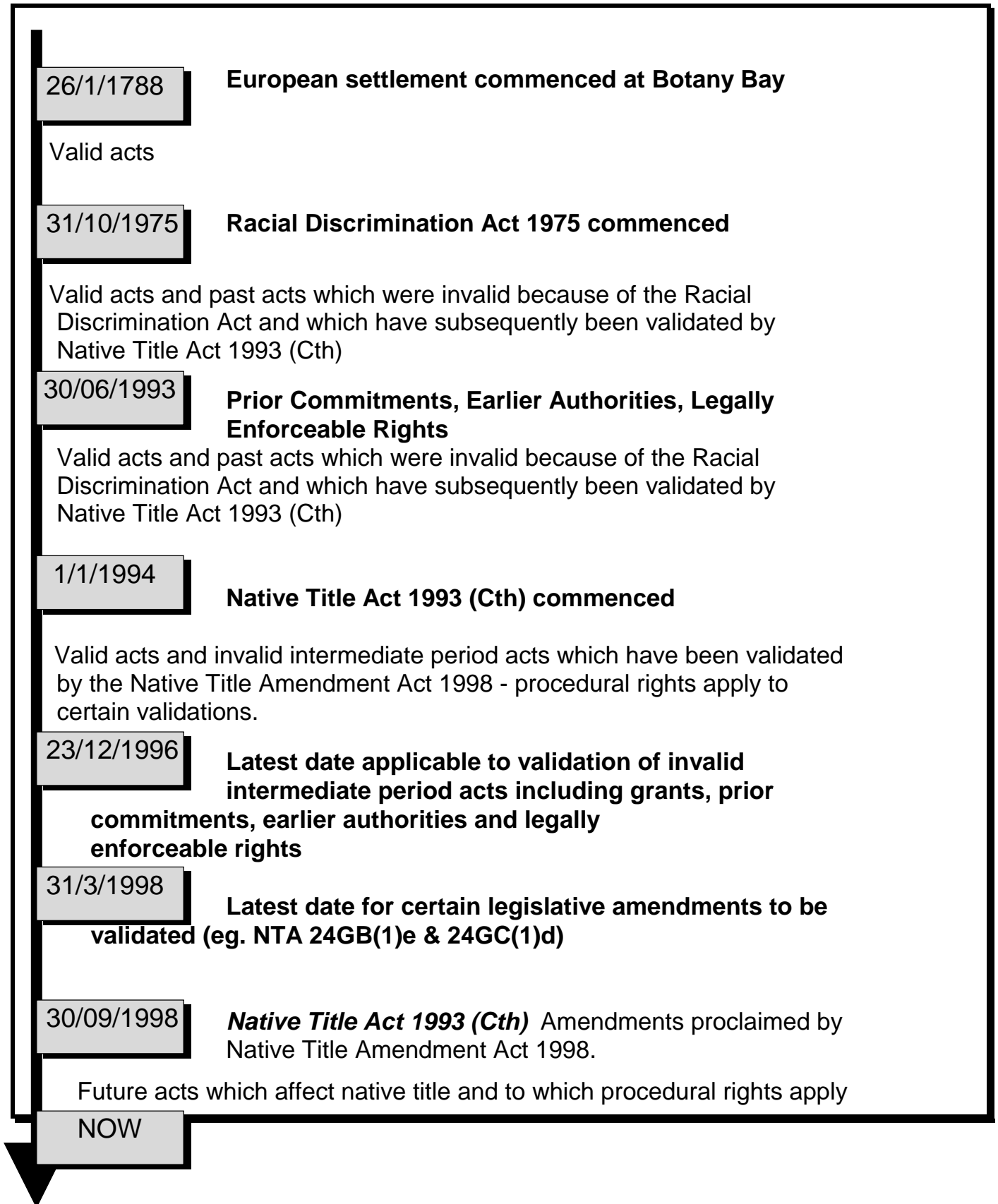
The Commonwealth's *Native Title Act 1993* (NTA) recognises and protects native title. Amongst other things, it establishes a regime under which actions related to waters, land and natural resources which may affect native title, must occur in order to be valid. Following the High Court's *Wik* decision, which established that native title might exist more widely than was previously believed, native title procedures were introduced into most State government departments. These were essentially aids to decision making and were designed to allow the business of departments to proceed while appropriately considering native title and satisfying the requirements of the NTA.

The Commonwealth has legislated to amend the NTA. To ensure the legality of its decisions the State is required to operate in accordance with the provisions of the amended NTA. A number of the amendments impact upon the State's administration of water, land and natural resources and the use of land (such as reserves) for public purposes. As an example, in certain circumstances, they impose additional requirements for the notification of registered native title holders, registered native title claimants and Aboriginal and Torres Strait Islander Representative Bodies before departments can undertake certain types of activities. In addition, the NTA has scheduled certain valid leasehold tenures as grants that provide rights of exclusive possession which extinguish native title. Where any of these tenures currently exist or where they existed in the past, the State will normally be free to deal in land and natural resources without further reference to native title. There is one exception - extinguishment is to be disregarded where land is occupied by indigenous people and the current tenure of the land is unallocated State land or the land is held by or used for the benefit of Aboriginal people or Torres Strait Islanders. This is discussed in detail in Work Instruction 2.0; Attachment 2.1.

The amendments also introduce some new concepts into the NTA, such as the concept of intermediate period acts. Grants of land, approvals, licences etc. were made by the State to private parties between 1 January 1994 (the commencement of the NTA) and 23 December 1996 (the *Wik* decision). In some cases, these grants were made on the assumption that native title did not exist; that it had been extinguished by the grant of a pastoral lease, for example. This assumption was open to challenge following the *Wik* decision, which held that native title is not necessarily extinguished by the grant of a pastoral lease. Particular amendments provide for the validation of those intermediate period acts that might otherwise have been invalid following the *Wik* decision.

Accordingly, because of changes to the NTA, the previous Native Title Operating Procedures are no longer appropriate. Therefore, they have been withdrawn and have been replaced by this document, effective from 30 September 1998.

This procedure is based on the following understanding of the key dates in the development of native title legislation:



1.1 PURPOSE

This Procedure provides a mechanism for appropriately incorporating consideration of native title into land, waters and natural resource management decisions. In doing so, it satisfies the requirements imposed by the NTA and ensures that actions proceed lawfully.

1.2 SCOPE

This Procedure applies to all actions undertaken by the Department of Environment and Heritage, both in the administration of its own estate and in the consideration of authorisations, licences, permits, etc. to other parties.

1.3 OVERVIEW

This Procedure provides a flow chart (Attachment 1 - Page 14) that sets out sequentially, the broad questions that must be asked when assessing native title implications for a proposed action. Once a decision has been made to proceed with a proposed action in accordance with the steps in the flow chart, there is no need to continue to work through the chart.

The remainder of the document is comprised of 5 Work Instructions (which consist of various Attachments) and a number of separate Attachments (Attachments 100+,) that deal with various, mostly administrative, matters. Each flow chart box directs the user to a specific Work Instruction (one of Work Instructions 1 - 5). In turn, the Work Instructions contain specific Attachments that set out relevant considerations and actions in detail. The Work Instructions and their Attachments support and expand the flow chart. They provide information that must be applied when determining whether or not a proposed action may proceed.

Attachments 111 to 120 provide a quick reference guide to assessing some of the more common actions encountered by DEH staff. However, these attachments are to be used as a guide only and each assessment must be undertaken by working through the flow chart step by step.

All decisions (apart from some minor exceptions - Work Instruction 1.0) made under this Procedure must be appropriately supported, recorded and filed. Attachment 100 sets out in some detail the type of documentation that could be used to support a decision. The Native Title Assessment Sheet (Attachment 101) should be used to record the decision.

Amongst other things, the procedure also defines relevant terms and sets out the levels of responsibility and authority for decision making.

2.0 REFERENCES

Legislation

General

Acquisition of Land Act 1967

Native Title Act 1993 (Cth)

Native Title Amendment Act 1997

Native Title (Queensland) Act 1993

Racial Discrimination Act 1975 (Cth)

Administered Totally or in Part by DEH

Aboriginal Land Act 1991

Beach Protection Act 1968

Canals Act 1958

Coastal Protection and Management Act 1995

Contaminated Land Act 1991

Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987

Environmental Protection Act 1994

Marine Parks Act 1982

Nature Conservation Act 1992

3.0 RESPONSIBILITIES AND DELEGATIONS

This procedure is **NOT** designed to avoid or ignore native title issues. On the contrary, it is specifically designed to enable legitimate native title considerations to be embedded within the administrative process.

Which agency is responsible?

The Government Agency with the responsibility for authorising a proposed action (eg. issuing an authority, licence, permit etc.) is required to assess the impact of the proposed action on native title. DEH is not required to consider the impact on native title simply because the Department's views have been sought on a proposal. However, if DEH is granting an interest or authorising an interest in land or waters, this procedure must be followed.

At what stage is native title considered?

To avoid unnecessary work, the impact on native title should be assessed as a final step in an approval process. ie. If a proposed action is to be refused on other grounds, there is no need to consider the impact on native title.

Who is delegated to make an assessment of the impact on native title?

The officer normally delegated to make a decision as to whether or not an action can proceed, must consider the impact of that action on native title before making the decision.

A decision to proceed with an action using a Future Act Option (Step 5 of the Procedures) can only be authorised by a Regional Director or Executive Director after consultation with officers of Native Title Services, Department of the Premier and Cabinet.

4.0 WORKPLACE HEALTH AND SAFETY

Workplace health and safety issues have been considered for the operations contained in this procedure; no specific workplace health and safety practices apply. For any issues of concern please refer to the Department of Environment and Heritage Policy 17.

5.0 CLIENT SERVICE STANDARDS

All statutory timeframes for the processing of applications must be adhered to. In general, decisions on whether or not to proceed with a proposed action should be made within one month of receipt of all documentation necessary to support the decision.

6.0 DEFINITIONS

The following definitions are provided to assist in the application of this procedure and for no other purpose.

DO NOT rely on the definitions provided here when giving effect to an action under a piece of legislation other than the one from which the definition has been taken. Please check all definitions against those provided in the legislation that is being dealt with.

Agricultural Activity involves the cultivation of land, including crop-raising and the planting and growing in the land of trees, vines or vegetables. For this Procedure, agricultural activity does not include development of areas for improved pasture.

ATSILCS is the Aboriginal and Torres Strait Islander Land Claims System (ATSILCS) established by DNR to record and provide information about the native title claims and native title considerations involved with land and natural resource dealings.

Aquacultural Activity involves the breeding, keeping and harvesting of fish or shellfish and the propagation, maintenance, cultivation and harvesting of aquatic plants. (As explained in the Explanatory Memorandum to the *Native Title Amendment Bill 1997*)

Dealings is used to collectively describe, amongst other things, approval of grants, leases, licences etc relating to land and natural resources.

Forest Operations is the planting or tending, in a plantation or native forest, of trees intended for felling or the felling of such trees. (s.253 NTA)

Future Act Options are compulsory acquisition, right to negotiate, ILUA and non-claimant application.

Horticultural Activity means commercial cultivation of fruit, vegetables and flowers (The Macquarie Concise Dictionary). Under the NTA this includes propagation or maintenance, as well as cultivation. It also includes propagation, maintenance or cultivation of seeds, bulbs, spores or similar things or of fungi and extends to horticulture in environments other than in soil, whether natural or artificial. (s.253 NTA)

Indigenous Land Use Agreement (ILUA) is a registered agreement with indigenous people regarding particular dealings in land and resources. (See. NTA Sec 24 B,C and D)

Industrial Lease is a lease which may be used for industrial purposes.

Just Terms section 51 of the NTA states that native title holders are entitled to compensation on just terms for any loss, diminution, impairment or other affect of the act on their native title rights and interests (s.51 NTA).

Major Earthworks means earthworks (other than in the course of mining) whose construction causes major disturbance to the land, or to the bed or subsoil under waters (s.253 NTA).

Mine includes:

- a) explore or prospect for things that may be mined (including things covered by that expression because of paragraphs (b) and (c)); or
- b) extract petroleum or gas from land or from the bed or subsoil under waters; or
- c) quarry. (see the definitions of quarry)

Native Title or Native Title Rights and Interests means the communal, group or individual rights and interests of Aboriginal peoples or Torres Strait Islanders in relation to land or waters, where:

- a) the rights and interests are possessed under the traditional laws acknowledged, and the traditional customs observed, by the Aboriginal peoples or Torres Strait Islanders; and
- b) the Aboriginal peoples or Torres Strait Islanders, by those laws and customs, have a connection with the land or waters; and
- c) the rights and interest are recognised by the common law of Australia (s.223 NTA).

Examples of native title rights and interests include hunting, gathering, or fishing. In the case of the Murray Islands, the native title found to be held by the Miriam People was the entitlement as against the whole world to possession, occupation, use and enjoyment of most parts of the Island of Mer.

Native Title Assessment is an assessment of whether a proposed action can proceed after considering native title implications in accordance with the Process Flow Chart (Attachment 1).

Native Title Holder means:

- a) if a prescribed body corporate is registered on the National Native Title Register as holding the native title rights and interest in trust - the prescribed body corporate;
or
- b) in any other case - the person or persons who hold the native title (s.224 NTA).

NTA is the Commonwealth *Native Title Act 1993* and includes amendments under the NTAA.

NTAA is the *Native Title Amendment Act 1998*.

NNTT is the National Native Title Tribunal.

NTPU means the Native Title Policy Unit within the Department of Natural Resources. Contact No (07) 3406 2963.

NT(Q)A is the *Native Title (Queensland) Act 1993*.

Natural Resources includes the land, quarry materials, water, forest products and the like for which the Department of Natural Resources has administrative responsibility.

Non-proprietary Interest means an interest of any person or entity which is not a proprietary interest (eg. a member of the public who may have a right to access a beach or a park).

Offshore Place means any lands or waters other than land or waters in an onshore place. (s.253 NTA).

Onshore Place means land or waters within the limits of Queensland (s.253 NTA).

Ordinary Title means freehold title other than that granted by or under a law that grants freehold title only to or for the benefit of Aboriginal Peoples or Torres Strait Islanders (s.253 NTA).

Pastoral Lease means:

- a) a lease that permits the lessee to use the land or waters covered by the lease solely or primarily for maintaining or breeding sheep, cattle or other animals or any other pastoral purpose (other than agricultural, etc).
- b) a lease that contains a statement to the effect that it is solely or primarily a pastoral lease or that it is granted solely or primarily for pastoral purposes. (Commonwealth *Native Title Act 1993* s.248).

A list of these leases would include:

Pastoral Holdings

Pastoral Development Holdings

Preferential Pastoral Holding

Stud Holdings

Term Leases for Pastoral Purposes

Term Leases for Grazing Purposes including leases over Reserves and State Forests

Term Leases for Grazing and "Horticultural" Purposes and the like where the predominant use of the land is grazing ie. the lease does not fit the requirements of an Exclusive Tenure

Special Leases for Grazing Purposes including leases over Reserves and State Forests.

Primary Production Activity means:

- a) cultivating land
- b) maintaining, breeding or agisting animals
- c) taking or catching fish or shellfish
- d) forest operations (defined above)
- e) horticultural activities defined above
- f) aquacultural activities (defined above)

- g) leaving fallow or de-stocking any land in connection with the doing of any thing that is a primary production activity.

but does not include mining.

Proprietary Interest any person or interest with established legal rights such as a lessee, permittee, licensee.

Public Purpose means a purpose for (as defined by Land Act 1994) which land may be taken under the "Acquisition of Land Act 1967" or a community purpose.

Public Work means a building, or other structure, that is a fixture; or a road, railway or stock route; or any major earthworks; constructed or established by or on behalf of the Crown, or a statutory authority of the Crown, in any of its capacities (Commonwealth *Native Title Act 1993 s.253*).

Quarry does not include extract, obtain or remove sand, gravel, rocks or soil from the natural surface of land, or of the bed beneath waters, for a purpose other than:

- a) extracting, producing or refining minerals from the sand, gravel, rocks or soil; or
- b) processing the sand, gravel, rocks or soil by non-mechanical means (see also definition of "mine")

Railway Corridor is an area of land on or within which rail transport infrastructure is situated. (Rail transport infrastructure is defined under Schedule 3 of the *Transport Infrastructure Act 1994*).

Residential Lease is a lease that permits the lessee to use the land or waters covered by the lease solely or primarily for constructing or occupying a private residence. (s.249 NTA).

Road means an area of land, whether surveyed or unsurveyed:

- a) dedicated, notified or declared to be a road for public use; or
- b) taken under an Act, for the purpose of a road for public use.

The term includes:

- a) a street, esplanade, reserve for esplanade, highway, pathway, thoroughfare, track or stock route; and
- b) a bridge, causeway, culvert or other works in, on over or under a road; and
- c) any part of a road.
(*Land Act 1994 s.93*).

State means the Queensland government and all of its emanations such as Local Authorities, Statutory Authorities, Statutory Corporations and State Instrumentalities, which include Government Owned Corporations (for example QRAIL, Port of Brisbane Corporation, ENERGEX, the Water Boards, the Sugar Corporations, etc).

Stock Route means a road or route ordinarily used for traveling stock or declared under an Act to be a stock route - schedule 6 dictionary of the *Land Act 1994*.

Subterranean Water see underground water.

Tenure History Investigations are those activities undertaken to investigate the history of a parcel of land to allow assessment of any implications the dealing may have for native title. A tenure history investigation may also include investigation of present and historical usage of the land.

Underground water means water that occurs naturally or is introduced artificially below ground level (*Water Resources Act 1989 s.2*).

Valid means valid in every respect, including native title; a dealing is presumed to be valid unless it is evident from the relevant file, work procedure or from other sources that the dealing is not valid. If in doubt, refer to the NTPU.

Waters includes:

- a) sea, a river, a lake, a tidal inlet, a bay, an estuary, a harbour or subterranean waters; or
- b) the bed or subsoil under, or airspace over, any waters (including waters mentioned in paragraph a)); or
- c) the shore, or subsoil under or airspace over the shore, between high and low water.
(s.253 NTA)

7.0 PROCESS

Whilst as at 30 September 1998, the date of commencement of these procedures, there are no Indigenous Land Use Agreements (ILUA's) they may be expected to be developed in the near future . Consequently, it is important to note that it will be necessary to ensure that no ILUA, relevant to the action under consideration, applies prior to working through the flowchart. Staff involved with assessing proposed actions will need to be informed of the terms of any such agreements which may impact on their areas of responsibility. Provision of information in regard to ILUA's is the responsibility of the Director, Cultural Heritage.

The flow chart (Attachment 1) is the key element of this procedure. It sequentially sets out the considerations necessary to arrive at an appropriate decision. It has six parts (each numbered in bold at the left of the chart) comprised of flow chart boxes. Part 2 is not a pre-requisite for Part 3 (that is, Parts 2 and 3 may be used as alternatives). Each of flow chart boxes 1 - 5 calls for a specific decision to be made and is directly linked to one or more related Work Instructions and associated Attachments that provide the detailed information that may be needed in reaching a decision or providing procedural rights.

Accordingly, the flowchart should be used to determine whether or not a dealing can proceed given appropriate considerations of native title and the operation of the NTA. Start with the first part and work down the chart until directed to a course of action. Courses of action are either to:

- proceed with the proposed action; or
- proceed with the proposed action following provision of appropriate procedural rights and consideration of any comments received as a result of providing those rights; or
- recommend a Future Act Option to the Regional Director or Executive Director
- refuse the proposed action.

Once you have been directed to a course of action, there is no need to continue to work through the chart. All that remains is to appropriately document your decision and put that course of action in place. Certain actions under Work Instruction 1.0 do not require documentation for this procedure.

Using the flow chart (that is, when deciding whether or not a proposed action should proceed) the following information may need to be considered:

- Tenure information of the land or waters on which the proposed action is to take place (to determine if native title has been extinguished or impaired, current tenure information or the tenure history of the subject parcel may be required);
- The terms of any current tenure (so as to identify any rights which may be inconsistent with the continued existence of native title);
- Any known Aboriginal or Torres Strait Islander interest (in particular, whether Aboriginal people or Torres Strait Islanders occupy or use the land);
- Land use information (to determine the affect of current or previous uses of the land on native title; ie, to determine if native title has been extinguished or impaired);
- Details of the action that is proposed, (including technical details to determine if it constitutes a "low impact future act".
- Whether the use of a Future Act Option is appropriate.

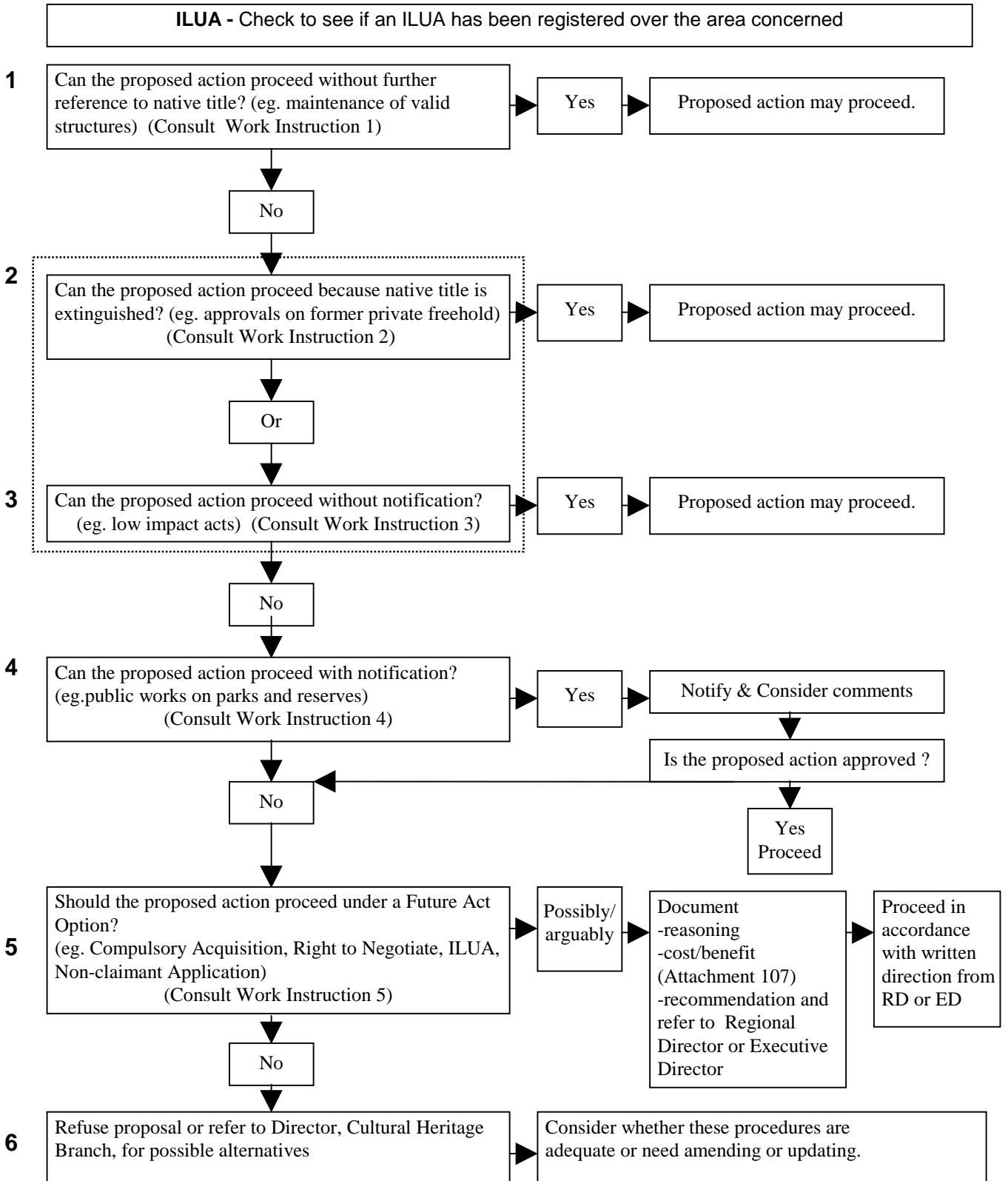
It is essential that the relevant documentation and factual information relied upon in making the decision is appropriately filed at the time the decision is made. The type of documentary evidence required in supporting decisions is outlined in Attachment 100. The decision must be recorded and filed using the Native Title Assessment Sheet (Attachment 101)

If the proposed action is such that it is not clearly catered for by this procedure, it should be referred to the Regional Director or Executive Director together with recommendation and supporting material. If considered appropriate, further advice can be sought from Director, Cultural Heritage Branch and Native Title Services, Department of the Premier and Cabinet. Further, if the total value of a proposed project exceeds \$10 million, the assessment must be referred to Native title Services, Department of the Premier and Cabinet, through Director, Cultural Heritage for consideration.

PROCEDURE AUDITS:

The Department of the Premier and Cabinet will carry out both random and prearranged audits of the implementation and applications of the Native Title Work Procedure. Appropriate systems should be maintained to simplify audit requirements.

ATTACHMENT 1 - PROCESS FLOWCHART



Note: For all decisions, apart from those cases where there is no impact on native title, a Native Title Assessment Sheet (Attachment 101), is to be completed and filed, together with supporting documentation. The order in which Parts 2 & 3 are used can be reversed as required..

***Work Instruction 1.0: Proposed Actions That May Proceed
Without Reference to Native Title***

This Work Instruction has one Attachment:

- Attachment 1.1 - Dealings That May Proceed Without Further Reference to Native Title.

The attachment deals with those activities which either have no impact or effect on native title or are necessary for public health and safety, environmental protection or to deal with emergency situations.

ATTACHMENT 1.1 - PROPOSED ACTIONS THAT MAY PROCEED WITHOUT FURTHER REFERENCE TO NATIVE TITLE

(NOTE: NOTIFICATION/CONSULTATION REQUIREMENTS OF OTHER LEGISLATION MUST CONTINUE TO BE MET)

The following actions may proceed without further reference to native title:-

- creation or maintenance of a firebreak to protect life, property or the environment;*
- any emergency action required to protect life, property or the environment;*
- excavation or clearing that is reasonably necessary for the protection of public health or public safety;
- tree lopping, clearing of noxious or introduced animal plant species, foreshore reclamation, regeneration or environmental assessment or protection activities.
- maintenance of existing valid improvements regardless of tenure;*(eg. repairs to buildings, track maintenance, camp ground maintenance; but not extensions to buildings, major track upgrades, re-alignments, etc.)
- River Improvement Trust Works to protect against flooding and erosion;
- renewal of valid leases, permits, authorities, etc but only on the same terms and conditions and under the following circumstances:
 - a) where the renewal creates an interest in:
 - the same person; or
 - another person who has acquired the interests of the first person (by assignment, succession or otherwise); and
 - in relation to the whole or part of the land or waters to which the earlier act relates; AND
 - b) where the renewal commences before or immediately after the interests created by the earlier dealing cease; AND
 - c) where the renewal only allows activities of a similar kind to those permitted by the earlier dealing.

Renewals are considered in more detail in Work Instruction 4.0; Attachment 4.6. That Attachment considers some variation in terms and conditions at renewal.

- private sale or transfer of a property; *
- subdivision and/or amalgamation of equivalent tenures where no upgrading occurs (that is, where the rights and interests relating to any resultant leases are no greater than for the existing leases);
- registration or release of mortgage over a property; *

*** There is no need to complete a Native Title Assessment Sheet for these actions**

Work Instruction 2.0: Proposed Actions That Can Proceed Because Native Title is Extinguished

This Work Instruction has four Attachments:

- Attachment 2.1 - When Previous Extinguishment is to be Disregarded.
- Attachment 2.2 - Previous Grants of Exclusive Possession that Extinguish Native Title.
- Attachment 2.3 - Previous Uses and Developments that Extinguish Native Title.
- Attachment 2.4 - Other Previous Grants that Extinguish Native Title.

Where native title has been extinguished, actions will normally be able to proceed without any further consideration of native title. However, there is an exception. Extinguishment is to be disregarded when the land is occupied by indigenous people and the current tenure of the land is unallocated State land, or the land is held or set aside, or used by or for the benefit of, indigenous people.

Under the NTA, native title has been extinguished where a grant of tenure before 24 December 1996 provided rights of exclusive possession or where extensive use or development of land for public purposes has occurred (that is, by a previous exclusive possession act). The extinguishment will only apply where these dealings, uses or developments are valid (refer Attachments 2.2 and 2.3). In addition, the NTA provides that the grant of certain tenures that do not provide rights of exclusive possession will also have extinguished native title but only in specific circumstances (refer Attachment 2.4).

The key factors in determining whether or not native title has been extinguished are:

- the date the grant, use or development occurred;
- the validity of the grant, use or development. The NTA validates any of these done before 24 December 1996 where native title was affected by the grant, use or development and native title holders were not treated as if they instead held freehold. Native title can be considered to have been affected by the grant of tenure if the rights granted were more than those rights applicable to the regrant or renewal of a tenure that had previously existed over the land;
- whether the grant, use or development was a previous exclusive possession act;
- whether the grant of tenure did not convey rights of exclusive possession but met other specific criteria for extinguishment set out in the NTA (See Attachment 2.3);
- whether the land is unallocated State land or land held or set aside or used by or for the benefit of indigenous people and whether indigenous people occupy the land.

Information relied upon to decide that native title no longer exists must be documented and placed on file at the time a decision is made. A Native Title Assessment Sheet should be completed to record the decision. A synopsis of the major reasons for the decision only needs to be provided.

ATTACHMENT 2.1 - WHEN PREVIOUS EXTINGUISHMENT IS TO BE DISREGARDED

The NTA (s.47) sets out particular circumstances where prior extinguishment is to be disregarded. In this regard, two important criteria that must be met are the land must:

- (i) either be:
 - held or set aside or used for the benefit of Aboriginal people or Torres Strait Islanders or;
 - unallocated State land; AND
- (ii) occupied by Aboriginal people or Torres Strait Islanders.

Where these criteria are met it is possible that, despite anything that has occurred, native title is not extinguished. Accordingly, before proceeding with any proposed action over land referred to in both (i) and (ii), the matter should be referred to the Director, Cultural Heritage Branch, for further consideration.

Note: Where people who claim to be, or allege that they are, native title holders and are occupying unallocated State Land, any proposal to initiate action which may lead to their removal requires the approval of the Department of the Premier and Cabinet. Submissions for approval must be coordinated through the Director, Cultural Heritage Branch.

ATTACHMENT 2.2 -PREVIOUS GRANTS OF EXCLUSIVE POSSESSION THAT EXTINGUISH NATIVE TITLE

The following valid private freehold and leasehold grants of exclusive possession act to extinguish native title. However, it should be noted that:

- **extinguishment will not apply in all circumstances as previously discussed (Attachment 2.1); and**
- **grants of freehold, leasehold, vested land or reserves granted by the State to the various Departments, Statutory Boards, Government owned Corporations or Local Governments do not affect or extinguish native title (refer Attachment 109).**

2.2.1 Valid Freehold Grants

The following valid private freehold grants extinguish active title:

- Private freehold land granted prior to 31 October 1975;
- Private freehold land granted on or after 31 October 1975 and before 1 January 1994 and still in existence as at 1 January 1994;
- Private freehold land granted on or after 1 January 1994 and before 24 December 1996 and still in existence on 23 December 1996.

2.2.2 Valid Leasehold Tenures Granting Rights of Exclusive Possession.

Valid leasehold grants (listed below) in 2.2.3 extinguish native title if they were granted:

- prior to 31 October 1975;
- on or after 31 October 1975 and before 1 January 1994 and still in existence at 1 January 1994;
- on or after 1 January 1994 and before 24 December 1996 and still in existence on 23 December 1996.

2.2.3 INDEX TO EXCLUSIVE LEASEHOLD TENURES

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In the list of purposes under Item A9, "grazing and horticulture" is listed as an exclusive tenure purpose. This relates to leases which are primarily for a horticultural purpose with incidental grazing, not leases which are primarily for grazing purposes.

In the list of purposes under Item A9, purposes which are exclusive include those which are obviously the same even though there may be a slight typographical variation. For example "Boy Scouts hall" is listed but would also include purposes shown as "Boy Scout hall" and "boyscouts hall". Purposes which are exclusive also include those which are obviously the same even though a different word may be used. For example, 'church' is listed but would also include a purpose shown as "religious building".

Similarly, the generic terms of "tourism" and "recreation" are not on the list as there are passive or community uses such as parks including national parks and environmental parks which may be used for such purposes. Those specific purposes which are considered as exclusive are listed and specifically stated.

It is important to consider every lease individually.

Some leases are granted for one or more of the purposes listed under Item A9, as well as for a purpose which is not listed under Item A9. For example, a lease granted for the purpose of "Manufacturing, industrial, residential or business" purposes. Whilst, "manufacturing", "industrial" and "residential" purposes are listed under Item A9 (that is, grants of exclusive possession), "business" is not. Therefore, if a lease is for business purposes it will also be necessary for it to have ONE of the alternative purposes (ie manufacturing, residential or industrial) in order for it to be a grant of exclusive possession and thereby extinguish native title.

It is also important to note that the conditions of a lease must be read as part of the purpose of the lease to establish what the real purpose is. For example, a Special Lease for the purpose "Industrial, manufacturing, residential or business" which also has a condition requiring that it be used for "Grazing purposes only" is a Special Lease for "Grazing Purposes" which is not listed on the schedule of exclusive purposes under Item A9 and therefore does not extinguish native title or is not an exclusive tenure. The lease must genuinely be an exclusive tenure when the purpose and conditions are considered as a whole in accordance with the list of purposes under A9.

A. Leases under various Land Acts etc.

1. A lease under section XII of the *Alienation of Crown Lands Act 1860*.
2. A lease under section 51 of the *Crown Lands Alienation Act 1868*.
3. A special lease under section 69 of the *Crown Lands Alienation Act 1868*, section 70 of the *Crown Lands Alienation Act 1876* or section 188 of the *Land Act 1897*.
4. A lease under the *Gold Fields Town Lands Act 1869*.
5. A lease under section 28 of the *Crown Lands Alienation Act 1876*.
6. A perpetual town allotment lease under the *Land Act 1897*.
7. A perpetual suburban allotment lease under the *Land Act 1897*.
8. A lease under section 119A of the *Land Act 1910*.
9. A lease under subsection 185(2) of the *Land Act 1910*, section 343 of the *Land Act 1962* or subsection 57(1) of the *Land Act 1994*, a special lease under the *Land Act 1910* or the *Land Act 1962*, a lease for a term of years or a perpetual lease under section 22B of the *State Housing Act 1945*, or a term lease or perpetual lease under the *Land Act 1994*, that permits the lessee to use the land or waters covered by the lease solely or primarily for any of the following:

[A] abattoir; accommodation; accommodation paddock adjoining an abattoir; aerodrome; aeromodellers club; aged persons' home; agricultural and horticultural society showground; agriculture; air traffic control facilities; aircraft hangar site; aircraft hangar, repair and administration building; aircraft landing ground; airfield; airstrip; airstrip and terminal; all sports complex; amphitheatre; amusement and entertainment park and pub; animal refuge boarding kennel; animal refuge home; Apex club; archery club; archery range; arts and craft centre; automatic telephone exchange; aviation building;

[B] band hall site; bank; basketball; basketball club; basketball court; beacon; boat building; boat hire; boat pilot base and wharf; boat ramp; boat repair, boat sales; boat shed; boating and fishing club; bowhunting; bowhunting club; bowhunting range; bowling club; bowling green; bowls club; Boy Scouts hall; Boys Brigade hall; British Australian club; broadcasting tower, mast or facility; building encroachment; building or repairing

boats; bulk fuel depot; bulk storage; bulk storage depot; burning of sawmill waste; bus depot; butchery;

[C] cafe; cafeteria; cane employees' accommodation; car parking; car storage; car wrecking yard; caravan park; catamaran club; cattle transport depot or yard; causeway; change rooms and associated facilities; charitable organisation; child care centre; church; church and church hall; church school; city band hall; civil aviation anemometer site; civil aviation visual omni range; clubhouse; clubhouse for the Grand Lodge of the Royal Antediluvian Order of Buffaloes; coast guard facilities; coffee growing; coffee shop; coke works; commercial building development; communal bore; communal dam; communal storage building; communal tank; community centre; compressor station site; concrete batching plant; concrete manufacturing and storage of earthmoving equipment; conservatorium of music; coral art display and sales shop and residence; coral art display and sales shop or centre; crane hire; cricket; cricket club; cricket ground; cricket ground and grandstand; crocodile farm; croquet club; croquet pitch; culture centre;

[D] dairy; dam; dam site and agriculture; dance hall; dart playing hall; delicatessen-snack bar; depot; development office; dining hall; dip site; dog training; drive-in picture theatre; driver training; drug and alcohol rehabilitation centre; dry dock;

[E] educational institution; electricity generator and depot; electricity substation; electricity transmission tower; elevated passenger cable way pylons and building; Endeavour workshop; engineering workshop; equestrian and general sporting purposes; equestrian club; equestrian field; equestrian or pony field; explosive magazine; explosive manufacture, testing and storage; export game meat receival and kangaroo pet food depot;

[F] fast food outlet; feed lot; ferry terminal; fertiliser storage depot; fibre board plant; field archery range; fire brigade station; fire observation tower; fish depot; fishing club; flood mitigation dam or canal; flying field and soaring/gliding building; football; football club; football ground; freight terminal and barge ramp; fruit growing; fruit storage; fuel and garage facilities; fuel depot; fuel storage;

[G] game collection centre; game fishing club; garage; gas compressor; gas offtake and pressure regulating system; gas storage tank; gas treatment plant; general engineering workshop; general store; Girl Guides hall; golf club; golf course; golf links; grain handling facilities; grain storage depot; gravel treatment; grazing and horticulture; grocery shop; gun club;

[H] heavy engineering and fabrication; helipad site; historical museum; hockey club; hockey pitch; holiday unit; home unit; horse and pony club; horse stabling; horticulture; hostel; hotel; hotel-casino; housing purposes;

[I] indoor sports centre; industrial development; industrial purposes;

[J] Jaycees room; jetty; judo;

[K] kindergarten; kiosk; knackery;

[L] land-based aquaculture; land-based aquaculture inlet canal; land-based mariculture; licensed club; light industrial purposes; lighthouse; line depot; log storage; lot feeding;

[M] machinery shed; maintenance depot; manufacturing; marina; marine stadium; marine workshop and slipway; market garden; market gardening; Masonic lodge; mechanical workshop; medical centre; memorial club; metal fabrication; microwave radio feeder station; microwave radio tower, mast or building; microwave repeater station; milk depot; mobile telecommunications tower, mast or building; mobile two way radio tower, mast or building; monorail train operation; motel; motocross track; motorbike sales and service; motorbike track; motor club; motorcycle club; motorcycle raceway; motor raceway; motor racing; motor sports; multi-unit residential development; multi-purpose family centre; music hall;

[N] netball; netball club; netball court; newsagency; nursery;

[O] office; offtake and pressure regulating station; oil depot; on-shore boat house; optical fibre repeater station; orchard;

[P] pharmacy; piggery; pine plantation; pipe band hall; pistol club; pistol range; plant nursery; playground; Police Citizens Youth Club; polocrosse; polocrosse club; polocrosse field; pony club; pony field; post office; pottery club; power and sailing boat club and launching, storage and preparation area; power station; power substation; prawn receiving depot; pre-school; preparation and distribution of meals; private school; produce store; professional fishing base, building and wharf; Progress Association hall; pump site and agriculture; pump station; pumping plant; pumping station;

[Q] quarry depot;

[R] racecourse; racecourse and showground; radio communication tower, mast or building; radio station; radio telephone station; radio transmitter; radio-telephone

transmitter; rail transport infrastructure; railway; railway loop and train loading facilities; reclamation; repeater station; residential building development; residential flats; residential purposes; restaurant; restoration of historical structure and tourist accommodation and facilities; retail liquor outlet; retail shopping; retail shops and/or commercial office; retirement village; Returned Services League club; rice growing and small crops; rifle club; rifle range; roadhouse; roadside stall; rodeo ground; rowing club; rugby league clubhouse; rural training school; rural youth hall;

[S] sailing club; saleyard; salt production; sand blasting workshop; sawmill; sawmill products storage; school; school playground; sea cadets hall; secondary school; seed storage; service and maintenance depot; service station; settling pond; sewage disposal; sewage treatment plant; sewage treatment works; shed; shooting range; shop premises; shopping centre; shopping complex; shop; show society and associated sporting ground; showground; showroom; single person's quarters; skating rink; skeet shooting range; ski club; slaughterhouse; sleeper sawmill; slipway and associated facilities; small bore rifle range; soccer club; speedway and associated purposes; sporting complex; sporting field; sports club or complex; sports ground, field, pitch, stadium or oval; spray painting and mechanical repair; spraypainting; squash court; State Emergency Service purposes; stockpiling gravel; stockpiling sand and gravel; stock trucking yard; storage and milling of rice; storage of boats; storage of containers; storage of electrical equipment; storage of ilmenite; storage of plant and machinery; storage shed; sugar cane growing; sugar mill pumping site; sugar storage; supermarket; surf life saving facility; swimming club; swimming pool;

[T] tank site; tannery; tannery and knacker; target bowhunting; telecommunications tower, mast or building; telephone optical fibre repeater site; television tower site; television translator; television transmitting tower, mast or building; tennis club; tennis court; theatre; theatre or hall; timber storage; timber yard; tobacco growing; toll bridge; tourist accommodation; tourist accommodation and facilities; train loading facilities; tramway; tramway loading siding; transformer site; translator broadcasting station; transport depot; transport terminal; travel agency; tropical science field station; truck and machinery depot; trucking depot; trucking yard;

[U] union office and associated facilities;

[V] vehicle parking; vehicle service and maintenance; vehicle traffic ramp and loading dock; vehicle wrecking yard; vehicles and machinery depot; vineyard; voltage regulator site;

[W] war graves; war veterans' home; warehouse; warehouse storage; water activity centre for Scouts; water bore site; water dissipation plant; water pumping station; water ski club; water storage facilities; waterfront shop; weighbridge; welding workshop; well site; wheat storage and handling depot; wheat storage shed or silo; wholesale plant nursery; workers' accommodation and marshall yard; workshop; workshop for handicapped persons;

[Y] yacht club; youth hall.

10. A development lease under the *Crown Land Development Act 1959* or the *Land Act 1962* that permits the lessee to use the land or waters covered by the lease solely or primarily for manufacturing, business, industrial, residential or tourist and recreational purposes.

B. Freeholding Leases

1. A freeholding lease under the *State Housing Act 1945*.
2. A grazing homestead freeholding lease under the *Land Act 1962* or the *Land Act 1994*.
3. A freeholding lease as defined in Schedule 6 to the *Land Act 1994*.

C. Homestead Interests

1. A homestead lease under the *Gold Fields Homestead Act 1870*, the *Gold Fields Homestead Leases Act 1886* or the *Mineral Homesteads Leases Act 1891*.
2. A homestead selection under the *Homestead Areas Act 1872* or the *Crown Lands Alienation Act 1876*.

3. An agricultural homestead under the *Land Act 1897*, the *Special Agricultural Homesteads Act 1901* or the *Land Act 1910*.
4. A free homestead under the *Land Act 1897* or the *Land Act 1910*.
5. A miner's homestead perpetual lease under the *Miners' Homestead Leases Act 1913*.
6. A miner's homestead lease under the *Miners' Homestead Leases Act 1913*, the *Mining Act 1898* or any Act repealed by the *Mining Act 1898*.
7. A grazing homestead under the *Upper Burnett and Callide Land Settlement Act 1923*.
8. A grazing homestead perpetual lease under the *Land Act 1962*.

D. Settlement Farm Leases

1. A settlement farm lease under the *Closer Settlement Act 1906*, the *Land Act 1910*, the *Brigalow and Other Lands Development Act 1962*, the *Land Act 1962* or the *Irrigation Areas (Land Settlement) Act 1962*.
2. A designed settlement farm lease under the *Land Act 1910*.

E. Agricultural Farms

1. An agricultural farm under the *Crown Lands Act 1884*, the *Agricultural Lands Purchase Act 1894*, the *Agricultural Lands Purchase Act 1897*, the *Land Act 1897*, the *Special Agricultural Selections Act 1901*, the *Closer Settlement Act 1906*, the *Land Act 1910*, the *Brigalow and Other Lands Development Act 1962*, the *Irrigation Areas (Land Settlement) Act 1962* or the *Land Act 1962*.

F. Perpetual Lease Selections

1. A perpetual lease selection under the *Land Act 1897*, the *Closer Settlement Act 1906*, the *Land Act 1910*, the *Discharged Soldiers' Settlement Act 1917*, the *Upper Burnett and Callide Land Settlement Act 1923*, the *Sugar Workers' Perpetual Lease Selections Act 1923*, the *Tully Sugar Works Area Land Regulations Ratification Act 1924*, the *Irrigation Acts Amendment Act 1933*, the *Brigalow and Other Lands Development Act 1962*, the *Irrigation Areas (Land Settlement) Act 1962* or the *Land Act 1962*.

G. Perpetual Town Leases

1. A perpetual town lease, including an auction perpetual lease that is a perpetual town lease, under the *Closer Settlement Act 1906*, the *Land Act 1910*, the *Discharged Soldiers' Settlement Act 1917*, the *Workers' Homes Act 1919*, the *Tully Sugar Works Area Land Regulations Ratification Act 1924*, the *Irrigation Acts Amendment Act 1933*, the *State Housing Act 1945*, the *Irrigation Areas (Land Settlement) Act 1962* or the *Land Act 1962*.
2. A perpetual town lease without competition under the *Land Act 1910*, the *Irrigation Areas (Land Settlement) Act 1933*, or the *City of Brisbane (Flood Mitigation Works Approval) Act 1952*.
3. A perpetual town lease (non-competitive lease) under the *Irrigation Areas (Land Settlement) Act 1962* or the *Land Act 1962*.

H. Perpetual Suburban Leases

1. A perpetual suburban lease, including an auction perpetual lease that is a perpetual suburban lease, under the *Closer Settlement Act 1906*, the *Land Act 1910*, the *Discharged Soldiers' Settlement Act 1917*, the *Workers' Homes Act 1919*, the *Tully Sugar Works Area Land Regulations Ratification Act 1924*, the *State Housing Act 1945*, the *Irrigation Areas (Land Settlement) Act 1962* or the *Land Act 1962*.
2. A perpetual suburban lease without competition under the *Land Act 1910*, the *Irrigation Areas (Land Settlement) Act 1933* or the *City of Brisbane (Flood Mitigation Works Approval) Act 1952*.
3. A perpetual suburban lease (non-competitive lease) under the *Irrigation Areas (Land Settlement) Act 1962* or the *Land Act 1962*.

I. Perpetual Country Leases

1. A perpetual country lease, including an auction perpetual lease that is a perpetual country lease, under the *Closer Settlement Act 1906*, the *Land Act 1910*, the *Tully Sugar Works Area Land Regulations Ratification Act 1924*, the *Irrigation Areas (Land Settlement) Act 1962* or the *Land Act 1962*.
2. A perpetual country lease without competition under the *Land Act 1910* or the *City of Brisbane (Flood Mitigation Works Approval) Act 1952*.
3. A perpetual country lease (non-competitive lease) under the *Irrigation Areas (Land Settlement) Act 1962* or the *Land Act 1962*.

J. Prickly Pear-Related Interests

1. A prickly pear frontage selection under the *Land Act 1897*.
2. A prickly pear infested selection under the *Land Act 1897*.
3. A prickly-pear selection under the *Prickly Pear Selections Act 1901* or the *Land Act 1910*.
4. A perpetual lease prickly-pear development selection under the *Land Act 1910* or the *Prickly-pear Land Acts Amendment Act 1930*.
5. A prickly-pear development selection under the *Land Act 1910* or the *Prickly-pear Land Acts Amendment Act 1930*.

K. Leases Under Agreements Given the Force of Law

1. Any special lease granted to Amoco Australia Pty Limited under clause 3 of the Agreement that is given the force of law by section 3 of the *Amoco Australia Pty Limited Agreement Act 1961*.
2. The lease granted to Austral-Pacific Fertilisers Limited under clause 4(b) or 4(c) of the Agreement that is given the force of law by section 3 of the *Austral-Pacific Fertilisers Limited Agreement Act 1967*.
3. Any special lease granted to Austral-Pacific Fertilisers Limited under clause 4(d) of the Agreement that is given the force of law by section 3 of the *Austral-Pacific Fertilisers Limited Agreement Act 1967*.
4. The special lease granted to the Gateway Bridge Company Limited under clause 1(5) of Part III of the Agreement that is given the force of law by section 4 of the *Gateway Bridge Agreement Act 1980*.

5. The special lease granted to the Sunshine Motorway Company Limited under clause 1(4) of Part III of the Agreement that is given the force of law by section 4 of the *Motorways Agreements Act 1987*.

L. Various Interests

1. A lease under the *Leasing Act 1866*.
2. A lease under the *Gold Fields Homestead Act Amendment Act 1880*.
3. An unconditional selection under the *Crown Lands Act 1891*, the *Land Act 1897*, the *Closer Settlement Act 1906* or the *Land Act 1910*.
4. A designed agricultural selection under the *Land Acts Amendment Act 1952*.
5. A perpetual lease under section 8 of the *Clermont Flood Relief Act 1917*.
6. A sugar workers' agricultural farm under the *Tully Sugar Works Area Land Regulations Ratification Act 1924*.
7. A lease under section 64A of the *Harbours Act 1955*.
8. A purchase lease under the *Brigalow and Other Lands Development Act 1962*.
9. An auction purchase freehold under the *Land Act 1962*, including a lease under section 176 of that Act.
10. A special lease purchase freehold under the *Land Act 1962*, including a lease under subsection 207(7) of that Act.
11. A sub-lease under subsection 6A(2) of the *Industrial Development Act 1963*.
12. A lease under paragraph 24(b) of the *Industrial Development Act 1963*.
13. A mining titles freeholding lease under the *Mining Titles Freeholding Act 1980*.

Tenure information relied upon to decide that native title no longer exists must be documented and placed on file at the time a decision is made. A synopsis of the major reasons for the decision need only be provided.

ATTACHMENT 2.3 - PREVIOUS USES AND DEVELOPMENTS THAT HAVE EXTINGUISHED NATIVE TITLE

2.3.1 PUBLIC WORKS

The NTA provides that in certain specific circumstances, constructed or established public works, extinguish native title. For extinguishment to occur, the public work must:

- be valid. As discussed in Work Instruction 2.0, this would include those uses or developments validated by the NTA; and
- were constructed or commenced to be constructed or established before 24 December 1996.

Native title will be extinguished only over the area affected by or used for construction or development (that is, on the area of land or waters on which the work was or is situated). **Note that extinguishment will not apply in all circumstances; see Attachment 2.1.**

Under the NTA public works are defined as:

- a) any of the following that is constructed or established by or on behalf of the Crown, or a local government body or other statutory authority of the Crown, in any of its capacities:
 - a building, or other structure (including a memorial), that is a fixture; OR
 - a road, railway or bridge; OR
 - a well, or bore, for obtaining water; OR
 - any major earthworks; OR
- b) a building that is constructed with the authority of the Crown, other than on a lease. For these procedures this is taken to mean public buildings such as schools, hospitals and Court Houses. It does not mean a private sporting club house.

By way of providing examples, native title has been extinguished on/by:

- a hospital built on a hospital reserve. Native title is extinguished over the area of the hospital buildings and curtilage area including the carpark, walk ways, surrounding lawns and gardens which is ordinarily enclosed with a fence but may continue to exist over any undeveloped part of the hospital reserve;
- a ranger's residence built on a National Park. Native Title is extinguished over the area of the residence but is likely to continue to exist over any undeveloped part of the park.
- those parts of the area of a Crown to Crown freehold grant which have been extensively developed through the construction of public works and used in a manner inconsistent with the continued existence of native title eg. the construction of buildings or other fixtures;
- those parts of the area of a road, either dedicated or otherwise legally available for public use which have been extensively developed and used for road purposes and/or related incidental purposes where these are inconsistent with the continued existence of native title. For these purposes, roads must be formed. Road verges including associated drains, etc within the 60m boundary are included for example:
 - a) Where the width of the road is up to 60 metres, it is considered that if developed for road purposes inclusive of infrastructure services then the whole of the road from boundary to boundary is inconsistent with the continued existence of native title and all dealings may proceed.
 - b) A stock route, on the other hand may be quite different - native title is considered to be extinguished over the areas used in a manner inconsistent with the continued existence of native title (ie road formation) usually up to 60 metres wide - not from boundary to boundary. For example, if there is a constructed road within the boundaries, then native title is extinguished over the area of construction and over the necessary area adjacent (eg. 30m

each side of center line) to each side of the constructed road because of usage during construction and maintenance of the formation.

- the construction of railways;
- the construction of artificial harbours, (eg. constructed with break walls, dredging and filling) and canals.

2.3.2 OTHER DEVELOPMENTS

Native title may also be extinguished by extensive valid private development. For example, developments which by their nature prohibit or substantially restrict public access or use will extinguish native title except **in the circumstances outlined in Attachment 2.1.**

Broad scale clearing and/or the conduct of agriculture on a non-exclusive lease IS NOT sufficient to extinguish native title. The construction of buildings (homestead, quarters, etc) will only extinguish over the areas used for the buildings.

EPA staff must not assess whether or not valid private development on non-exclusive tenures has been sufficient to extinguish native title. If it is believed that native title has been extinguished by valid private development the relevant supporting evidence, including photographs, should be sent to the Director, Cultural Heritage Branch, for consideration.

ATTACHMENT 2.4 - OTHER PREVIOUS GRANTS THAT EXTINGUISH NATIVE TITLE

There may be a small number of non-exclusive pastoral leases and agricultural leases which extinguish native title.

These are pastoral leases or agricultural leases:

- granted after 30 October 1975 and before 1 January 1994; and
- which were still in existence as at 1 January 1994; and
- which were invalid because of the existence of native title but validated by the past act provisions of the NTA.

The lease will be "invalid" provided that the grant of that lease had a greater affect on native title than any previous grant over that land. This will require full historic tenure research to establish.

Some examples to illustrate:

- if , for example, there was no grant other than a reserve previously over the land, then the grant of a lease is invalid;
- if there was a prior lease granted on identical or similar terms, then it is doubtful that the lease has had any greater affect on native title - the grant of the lease is not invalid;
- if there was no previous grant greater than an occupation licence ever granted over the land then the lease is invalid.

As such cases will be uncommon and involve legal interpretation, refer the matter to the Director, Cultural Heritage Branch, enclosing a copy of the lease and copies of all previous tenures over the land for cases where such assessment is considered appropriate and necessary.

Note that extinguishment will not apply in all circumstances; see Attachment 2.1.

Work Instruction 3.0: Proposed Actions That Can Proceed Without Notifying Native Title Holders

This Work Instruction has four Attachments:

- Attachment 3.1 - Certain Low Impact Future Acts
- Attachment 3.2 - Certain Primary Production Activities on Certain Pastoral Leases
- Attachment 3.3 - Dredging to obtain sand and gravel
- Attachment 3.4 - Sale of forest products (Timber and Gravel etc.) from reserves granted for that purpose

One of the key functions of the NTAA is to provide clarity in relation to the conduct of activities on land or water in which native title may co-exist with other rights and interests. Consequently, some activities which were previously thought to be permissible future acts on the basis that they were low impact future acts may now only proceed after providing potential native title holders with notification of the proposal to do an activity and after providing an opportunity for them to comment on that activity (refer Work Instruction 4.0).

Care must be taken when considering whether or not an activity can proceed as a low impact future act. Attachment 3.1 outlines the hierarchy by which the NTA requires specific dealings to be considered. If the proposed action you are considering is listed on the hierarchy before (ie. above) low impact future acts, the process described in the Attachment relevant to that proposed action MUST BE followed regardless of whether or not you consider the proposed action to be a low impact future act.

In addition, certain dealings can proceed without notification even where native title is not extinguished. For example,

- the carrying out of certain primary production or related activities on leases for pastoral purposes that do not extinguish native title (preferential pastoral holding, pastoral holding, pastoral development holding, stud holding and special and term leases for grazing or pastoral purposes) may proceed without notification as outlined in Attachment 3.2.

ATTACHMENT 3.1 - CERTAIN LOW IMPACT FUTURE ACTS

One of the key functions of the NTA is to provide clarity in relation to the conduct of activities on land or water in which native title may co-exist with other rights and interest. Consequently, some activities which were previously thought to be permissible future acts on the basis that they were low impact future acts may now only proceed after providing potential native title holders with notification of the proposal to do an activity and after providing an opportunity for them to comment on that activity (refer Work Instruction 4).

Care must be taken when considering whether or not an activity can proceed as a low impact future act. Attachment 3.1 outlines the hierarchy by which the NTA requires specific dealings to be considered. If the proposed action you are considering is listed on the hierarchy before (ie. above) low impact future acts, the process described in the Attachment relevant to that proposed action MUST BE followed regardless of whether or not you consider the proposed action to be a low impact future act.

HIERARCHY OF ACTIVITIES

NTA SECTION	ATTACHMENT	TYPE
24FA		future acts where procedures indicate absence of native title - eg non claimant process previously applied
24GB	3.2 and 4.2	primary production activities eg. a tree clearing permit for the purpose of developing cash crop agriculture (eg. wheat, sorghum, sunflower etc) on a pastoral lease
24GD	3.2 and 4.3	acts permitting off-farm activities directly connected to primary production activities eg permit to graze on adjoining area
24GE	4.4	granting rights to third parties (including lessees) on non-exclusive agricultural or pastoral leases eg permit to take timber
24HA	4.5	management of water and airspace eg granting water licences.
24IA	4.6	renewals, extensions, etc of leases, licences permits or authorities
24JA	4.7	development of reserves, leases, etc for public purposes
24KA	4.8	certain facilities for services to the public

If the activity you are contemplating is NOT identified on the above list but meets the requirements of a low impact future act as outlined below, it may proceed without notification. Generally, low impact future acts are those which

- have a minimal impact upon native title; AND
- are capable of being stopped when a determination of native title is made.

Proposed actions can proceed as low impact future acts without providing notification to registered native title holders, registered native title claimants or Aboriginal and Torres Strait Islander Representative Bodies where native title has not been extinguished provided they do NOT consist of, authorise or otherwise involve any of the following:

- the grant of a freehold estate in any of the land or waters;
- the grant of a lease over any of the land or waters;
- the conferral of a right of exclusive possession over any of the land or waters;
- the excavation or clearing of any of the land or waters concerned (**with two exceptions which are permitted to occur under the NTA:**

- i) **excavation or clearing that is reasonably necessary for the protection of public health or safety; and**
 - ii) **tree lopping, clearing of noxious or introduced animal or plant species, foreshore reclamation, regeneration or environmental assessment or protection activities);**
- mining (other than fossicking by using hand-held implements);or
 - construction or placing on the land, or in the waters of any building, structure or other thing (other than fencing or a gate) that is a fixture; or
 - disposal or storage, on the land or in the waters, of any garbage or any poisonous, toxic or hazardous substance; or
 - an act permitting primary production on non-exclusive agricultural or pastoral leases (See Work Instruction 3.0, Attachment 3.2 and Work Instruction 4.0, Attachment 4.2); or
 - an act permitting off-farm activities directly related to primary production activities (See Work Instruction 4.0, Attachment 4.3); or
 - an act granting rights to third parties including lessees, etc on non-exclusive agricultural or pastoral leases (See Work Instruction 4.0, Attachment 4.4); or
 - an act relating to the management of water and air space (See Work Instruction 4.0, Attachment 4.5); or
 - upgrades of tenure; or
 - an act involving the development of reservations or other lands for public purposes (See Work Instruction 4.0, Attachment 4.7) or the development of facilities for services to the public (See Work Instruction 4.0, Attachment 4.8).

It is important to note that any licence, permit or authority issued as a low impact future act must be terminable at will (as it may be required to cease once there is an approved determination of native title over the subject area). In this regard, any improvements may then be required to be removed. In order to make this position clear when granting permission for a proposed action to proceed as a low impact future act the following wording should be added to the authorisation:

Should it be determined at some future date by any Court or Tribunal that native title exists over the subject land or waters, this licence etc. may be terminated and the licensee (or any subsequent licensee) may be required to remove any works established under this licence at the licensee's (or any subsequent licensee's) own cost, expense and risk. In that event, no compensation for works, development costs or loss of income shall be payable to the licensee (or any subsequent licensee) by the State of Queensland.

ATTACHMENT 3.2 - CERTAIN PRIMARY PRODUCTION ACTIVITIES ON CERTAIN PASTORAL LEASES

This Attachment applies to those pastoral leases validly granted before 24 December 1996 that **DO NOT** provide rights of exclusive possession (non-exclusive agricultural and pastoral leases). The NTA permits the carrying on of certain primary production activities or activities associated with or incidental to primary production on these leases without notification of registered native title holders, registered native title claimants and Aboriginal and Torres Strait Islander Representative Bodies provided that:

- *the majority of the area covered by the lease is used for primary production activities (these include, maintaining, breeding or agisting animals; leaving fallow or de-stocking any land in connection with these activities); AND
- considering the conditions of particular leases and the legislation under which they were granted, the activity could have been done prior to 31 March 1998 either as a result of rights granted by the interest held or as a result of permitting processes which existed under any legislation then in force; AND
- the activities are not related to forest operations (plantation or native), horticultural and aquacultural activities, or the use of a non-exclusive pastoral lease (as defined in this procedure) for agricultural purposes. These activities can only proceed after the notification process outlined in Attachment 104 has been followed. (See work instruction 4.0; Attachment 4.2).

In addition, farm tourism activities can be undertaken on non exclusive Pastoral tenures (eg Pastoral Holding, Pastoral Development Holding, Stud Holding, Special Lease for Grazing Purposes, Term or Perpetual Lease for Grazing or Pastoral Purposes) provided:

- the activities do not involve observation of activities or cultural works of Aboriginal people or Torres Strait Islanders; AND
- the majority of the area covered by the lease is used for primary production activities permitted by the lease.

***NOTE: The majority of a pastoral lease must be used for pastoral purposes if it has an area greater than 5000ha. (see 24GB(4)(a))**

Tree Clearing Permits

A tree clearing permit for the improvement of native pasture or to sow improved pasture is a primary production activity which does not require notification.

However, tree clearing to allow cultivation or agriculture which would involve the sale of harvested products off farm (eg wheat, sorghum, sun flower) would be considered as preparation for cultivation and therefore would require notification.

Water Harvesting

- Granting Water Licences for Bores or Referable dams which are for stock or domestic use only on Leases for Pastoral or Grazing purposes do not require notification. This does not apply if the water is being obtained from a source "off" the lease unless it is:
- Granting "Riparian Right" permits or licences, that is, applications for water with "as of right" approvals for stock and domestic water supply which are granted in order to protect the water course environment, can proceed without notification.

NB: Grants, licences or permits for the allocation and management of water for agriculture on a pastoral basis (eg. Irrigation of cash crops) requires notification. These are covered under Attachment 4.5

Certain other activities for which notification is required are considered in Work Instruction 4.0, Attachment 4.2

ATTACHMENT 3.3 - DREDGING TO OBTAIN SAND AND GRAVEL

Dredging of sand and gravel for concrete aggregate and construction material from rivers or tidal areas does NOT require notification.

Refer to Attachment 4.7 for dredging to construct or maintain navigational channels.

ATTACHMENT 3.4 - SALE OF FOREST PRODUCTS (TIMBER & GRAVEL ETC.) FROM RESERVES GRANTED FOR THAT PURPOSE

Reserves which are set aside or granted for the specific purpose of harvesting or extracting resources (not minerals or activities which are classed as mining) may be used for that purpose without notification.

Example 1:

a forestry licence to harvest timber from a State Forest or Timber Reserve may be granted to a third party without notification.

Example 2:

a permit to extract gravel from a gravel reserve may be granted provided such extraction is not classed as quarrying which is included in the definition of mine under the NTA (see the definition of mining in 6.0 Definitions).

Note: The State is of the view that notifications for the issue of permits and licences to extract resources from reserves for those purposes are not required. However, it is proposed that such notifications to third parties on reserves such as State Forests, Timber Reserves and Gravel Reserves, may be implemented at the earliest agreed date in practice, as a matter of courtesy. (See work instruction 4.0, Attachment 4.4).

Work Instruction 4.0: Proposed Actions That Require Notification and Consideration of Responses or Other Procedural Rights Before Proceeding

THIS ATTACHMENT SUPERSEDED.

SEE NEW PROCEDURES.

- Chapter 5 – Future Acts - Introduction

ATTACHMENT 4.1 - LEGALLY ENFORCEABLE RIGHTS, OFFERS, ETC.

Under the NTA, some dealings may proceed as an exercise of a legally enforceable right or because of a previous written offer, arrangement or undertaking made or given in good faith.

The NTA imposes particularly tight restrictions on the use of such legally enforceable rights or offers. Amongst other things, these restrictions impose particular time periods that must be satisfied and additional requirements that relate to the validity of the dealing and/or the effect of the dealing on native title.

Because the question of whether or not a legally enforceable right, or an offer, arrangement, commitment or undertaking exists may be difficult to determine and in most cases will involve legal interpretation, officers should not proceed with an approval action on the basis of this Attachment without first referring the matter to the Director, Cultural Heritage Branch. If necessary, legal advice will be sought from Native Title Services, Department of the Premier and Cabinet.

ATTACHMENT 4.2 - PRIMARY PRODUCTION ACTIVITIES WHICH REQUIRE NOTIFICATION BEFORE PROCEEDING

Activities related to forest operations, horticultural, aquacultural or agricultural activities on a non-exclusive pastoral lease can only proceed if the provision of notification outlined in Attachment 104 has been followed and any relevant comments received in response to the notification have been considered. See Work Instruction 3.0 attachment 3.2 for those activities which do not require notification.

Forest Operations means:

- a) the planting or tending, in a plantation or forest, of trees intended for felling; or
- b) the felling of such trees

Note: The definition can apply to native forest or plantation forest.

ATTACHMENT 4.3 - ACTS PERMITTING OFF-FARM ACTIVITIES DIRECTLY CONNECTED TO PRIMARY PRODUCTION ACTIVITIES (EG. ACTIVITIES ON ADJOINING RESERVES & STOCK ROUTES ETC)

This Attachment deals with activities which may be permitted subsequent to notification by the holder of a freehold estate, an agricultural lease or a pastoral lease validly granted before 24 December 1996. Such activities may include grazing or access to water.

The activity:

- **MUST BE** directly related to the carrying on of any primary production activity on the area covered by the freehold estate or the agricultural lease or pastoral lease;
- **MUST NOT** prevent native title holders to the land or waters from having reasonable access to the land or waters;
- **MUST ONLY** proceed subsequent to **notification** of native title holders and due consideration of comments;
- **MUST NOT** involve the grant of a lease or any conferral of exclusive possession over the land; and
- **WILL NOT** extinguish native title.

Activities under this Attachment can only proceed after provision of the notification process outlined in Attachment 104 has been followed and any relevant comments received in response to the notification have been considered.

ATTACHMENT 4.4 - GRANTING RIGHTS TO THIRD PARTIES (INCLUDING LESSEES) ON NON-EXCLUSIVE AGRICULTURAL OR PASTORAL LEASES

This Attachment relates to an existing agricultural lease or a pastoral lease validly granted before 24 December 1996 and applies when permission is sought by a lessee or a third party to:

- cut and remove timber (this relates to sale of timber products and not clearing); or
- extract and remove gravel; or
- quarry for and remove rocks; or
- obtain and remove sand, soil or other similar natural resources (except so far as it constitutes mining).

Such activity can only proceed:

- subsequent to providing notification as outlined at Attachment 104 and after giving due consideration to any comments received; AND
- if the activity DOES NOT amount to the grant of a lease; AND
- if the activity does not constitute mining.

Under the NTA, mining includes certain types of quarrying (e.g when blasting is involved) but DOES NOT include the extraction, obtaining or removal of sand, gravel, rocks or soil from the natural surface of land, or of the bed beneath waters, except when:

- extracting, producing or refining minerals from the sand, gravel, rocks or soil; or
- processing the sand, gravel, rocks or soil by non-mechanical means.

Note: The State is of the view that notifications for the issue of permits and licences to extract resources from reserves for those purposes are not required. However, it is proposed that such notifications to third parties on reserves such as State Forests, Timber Reserves and Gravel Reserves, may be implemented at the earliest agreed date in practice, as a matter of courtesy. (See Work Instruction 3.0, Attachment 3.3).

ATTACHMENT 4.5 - MANAGEMENT OF WATER AND AIRSPACE

**THIS ATTACHMENT SUPERSEDED.
SEE NEW PROCEDURES – MODULE H**

ATTACHMENT 4.6 - RENEWALS, EXTENSIONS ETC OF LEASES, LICENCES, PERMITS OR AUTHORITIES

Renewal of tenures on the same terms and conditions is considered briefly in Work Instruction 1.0, Attachment 1.1. This Attachment deals with:

1. renewals on the same terms and conditions; and
2. extensions of terms and changes of conditions,

of a lease, licence, permit or authority.

A lease, licence, permit or authority can be;

- renewed;
- re-granted or re-made; or
- extended,

without notification, provided that ALL of the following five conditions are met.

1. The original lease, licence, permit or authority ("the original act") was valid.

- This includes those original acts made valid by the past act or intermediate period act provisions of the NTA; **AND**

Note: Any permit, licence etc. which was issued for the first time post 23 December 1996 without the appropriate notification required by this procedure would not be classed as valid when it is due for renewal. In that case notification will be required for the renewal as if it were being issued for the first time.

2. The original act:

- was created prior to 24 December 1996; or
- complies with these provisions itself; or
- was a "PRE-EXISTING RIGHTS BASED ACT" (see below); or
- was created by an act covered by Attachments 4.2, 4.3, 4.4 and 4.5.; **AND**

[PRE-EXISTING RIGHTS BASED ACTS are an extension of the previous "legally enforceable right" and "prior commitment" provisions of the NTA. An act is a pre-existing rights based act if it takes place:

- in the exercise of a legally enforceable right created by any valid act done before 24 December, 1996; or
- in good faith in giving effect to an offer, commitment, arrangement or undertaking made or given to a private party before 24 December, 1996 (evidenced in writing).]

3. The renewal, re-grant, etc ("the new act") does not:

- confer a right of exclusive possession; or
- create a proprietary interest in the land or waters larger than that created by the original act; or
- create a proprietary interest in the land or waters where the original act did not confer a proprietary interest. (In the case of a pastoral lease of more than 5000 hectares it must not permit more than half of the new lease to be used for non-pastoral purposes.); **AND**

4. If there was a reservation or condition in the original act for the benefit of indigenous people, that reservation or condition must be repeated in the new act; AND

5. If the original act did not permit mining then the new act must not permit mining.

Other changes which can also be made between the original act and the new act WITHOUT NOTIFICATION are as follows:

- the new act can cover the same or a smaller area; and
- the new act can be for a longer term.
- the original act can be subdivided (e.g. creating two leases out of one)
- in the case of non-exclusive pastoral leases, the new act can authorise additional primary production activities, or activities incidental to it, provided the majority of the area is used for pastoral activities. If the activities relate to agriculture, aquaculture or horticulture native title holders still need to be notified (as set out in Attachment 4.2).

Changes where NATIVE TITLE HOLDERS MUST BE NOTIFIED are as follows:

1. If the "new act" is a non-exclusive pastoral lease and the additional primary production activities involve agriculture, aquaculture or horticulture, native title holders must be notified in accordance with Attachment 104.
2. Where the "new act" is giving effect to a right to a grant of freehold or the conferral of a right of exclusive possession as a "pre-existing rights based act" (see previous page), then notification as per Attachment 104 must be provided.
3. Where the "new act" is in relation to a non-exclusive pastoral lease or a non-exclusive agricultural lease and the new lease will be for a longer term, or will be upgraded to a perpetual lease, then special notification is required. This notification is more extensive than required under Attachment 104.

The required notification is given to:

- any Representative Body in the area;
- all registered native title bodies corporate;
- all registered native title claimants; and
- any native title claimants whose claim has been accepted by the NNTT.

Those notified have 2 months to object to the doing of the act so far as it affect their interests. The State must then consult with all objectors in order to try to minimise the impact of the act on native title and access to the land or waters concerned. The objector can require the matter to be heard by an independent body, whose determination can only be disregarded if:

- the State Minister who has responsibility for Indigenous Affairs is consulted and that Minister's views are taken into account; and
- it is in the interest of the State not to comply with the determination.

ATTACHMENT 4.7 DEVELOPMENT OF RESERVES OR LEASES FOR PARTICULAR PURPOSES

This Attachment deals with land held by the State, Statutory Authorities, Government Owned Corporations and Local Government for a particular purpose by way of:

- reservation,
- proclamation,
- dedication,
- condition, permission or authority (including roads),
- lease; or
- vesting.

Examples of these would be State Forests, National Parks, esplanades, or land otherwise vested for a particular purpose. All of these will be referred to as Reserves for the purposes of this Attachment.

Normal maintenance of existing valid improvements on a Reserve can proceed because such activities would have no greater affect on native title.

4.7.1 Development of a Reserve

A Reserve can be developed provided the following conditions are met :

- I. the Reserve was created (either by gazettal etc or by legislation) before 24 December 1996;
- II. the Reserve was valid (this includes it being validated by it being a past act or intermediate period act);
- III. the development of the Reserve is done in good faith under or in accordance with the reservation.

Note: New Development of Reserves where native title has not previously been extinguished will require notification: eg construction of public works such as a new hospital on a hospital reserve, or a camp ground on a National Park, will require notification (see Attachment 104).

Section 24JA(7) of the NTA specifies that the creation of a management plan intended to preserve the natural environment of an area is an act that requires notification.

The NTA states a PUBLIC WORK, means:

- any of these works that are constructed or established by or on behalf of the Crown, or a local government body or other statutory authority of the Crown, in any of its capacities:
 - a building, or other structure (including a memorial), that is a fixture; or
 - a road, railway or bridge; or
 - a well, or bore, for obtaining water; or
 - any major earthworks (this is considered to include dredging for shipping channels and navigational purposes.

Or

- a building that is constructed with the authority of the Crown, other than on a lease.

Notification must be provided in accordance with Attachment 104. Any relevant comments received in response to the notification must be considered before the activity proceeds.

Additionally, with regard to Aboriginal and Torres Strait Islander DOGITs and Reserves, an attempt should be made in good faith to obtain consensus amongst the residents, the relevant Community Council (if any) **and** native title holders.

A few points to note:

- Existing valid improvements on reserves may be maintained without notification.
- No reference is made to reserves, etc created after 23 December, 1996. The NTA does not provide any authority to use these reserves without full and proper consideration of native title. Such reserves should not be used or developed unless native title has been considered.
- In relation to Crown vested land or leasehold, the purpose of any relevant vesting or lease must be **evidenced in writing prior to 24 December, 1996.**
- With regard to Crown Freehold there is a need to consider the circumstances of each case to ensure that authority exists for the development as proposed (see Attachment 109).
- Reserved or vested land may only be Converted to Crown Freehold or Crown Leasehold, or disposed of if native title has been extinguished (refer to Attachment 109 for more details in regard to dealing with Reserves and Work Instruction 2.0 in regard to extinguishment of native title).
- With regard to State Forests, National Parks and Timber Reserves, notification is required prior to preparation of fire management plans. Wherever possible, notification should be given immediately prior to undertaking prescribed burning. Notification is not required in emergency situations.
- Notification and consideration of responses is necessary prior to development of a management plan for a national park or similar reserve. S24JA(7).

4.7.2 Activities which can proceed without notification

Activities which DO NOT involve construction or establishment of public works or structures or major earthworks may proceed on a Reserve as long as they are in keeping with the purpose for which the area was set aside. (Structures and major earthworks would include sporting club houses, fields, ovals etc). the activities which do not require notification involve use rather than development.

The purpose of most leases will be evidenced in writing about the time the lease is granted. There may be a rare occasion where the lease is drawn up after the date it commences. If any doubt exists the matter should be referred to the Director, Cultural Heritage Branch.

With regard to State Forests, National Parks and Timber Reserves, consultation should take place with appropriate indigenous people prior to preparation of fire management plans. Wherever possible, notification should be given immediately prior to undertaking prescribed burning. Notification is not required in emergency situations.

ATTACHMENT 4.8 - FACILITIES FOR SERVICES TO THE PUBLIC

**THIS ATTACHMENT SUPERSEDED.
SEE NEW PROCEDURE – MODULE K**

ATTACHMENT 4.9 - ACTIVITIES WHERE ADJOINING OR CO-EXISTING OWNERS HAVE A PROCEDURAL RIGHT TO BE NOTIFIED

If adjoining or co-existing owners or the public at large have a procedural right to be notified of an activity;

- whether the activity is being considered for approval; or
- whether approval is subject to notification,

similar procedural rights should be provided to native title holders. Accordingly, where notification is required, use Attachment 104 in addition to any other notification processes that may exist.

Work Instruction 5.0: Other Future Act Options

This work instruction deals with the following Future Act options:

- Indigenous Land Use Agreements (Attachment 5.1)
- Right to Negotiate (Attachment 5.2)
- Non Claimant Application (Attachment 5.3)
- Compulsory Acquisition of native title rights and interests (Attachment 5.4)

The NTA provides these options to allow certain actions to proceed subsequent to following the prescribed process.

The options may only be commenced with the approval and co-ordination of the Department of the Premier and Cabinet through the Director, Cultural Heritage Branch. Attachment 107 sets out the information which may be required by the Director, Cultural Heritage Branch to determine whether or not a Future Act option should be undertaken.

***Indigenous Land Use Agreements.** These may be useful in relation to major developments, issues of regional importance or those that cut across the responsibilities of a number of departments. They will, therefore, not be available for all circumstances and will be coordinated by the Department of the Premier and Cabinet.

In the cases where acquisition may be for the benefit of a private or third party, the Right to Negotiate will probably apply. As explained above, approval and co-ordination of the Department of the Premier and Cabinet will be required in such cases.

***Right to Negotiate** This will apply in certain circumstances (for example, compulsory acquisitions for the benefit of a private party and for mining including where quarrying is defined as mining).

Under the NTA mining "does not include extracting, obtaining or removing sand, gravel, rocks or soil from the natural surface of land, or of the bed beneath waters, for a purpose other than:

- (d) extracting, producing or refining minerals from the sand, gravel, rocks or soil; or
- (e) processing the sand, gravel, rocks or soil by non-mechanical means."

Accordingly, hard rock quarrying involving cutting and blasting is mining, while dredging is not.

***Non-claimant Application.** This option is applicable only where there is no native title claim or determination over the land. In practice it will generally only be an effective option where there has been prior consultation with the Representative Body and/or potential native title claimants and such consultation indicates a reasonable prospect of a successful process.

Compulsory Acquisition (See Attachment 5.4). This option is available only if there is relevant State legislation which would permit compulsory acquisition if the land were instead private freehold land. In general, this applies only to acquisitions for public works and not to acquisitions for private or third parties.

Note: *The Director, Cultural Heritage will coordinate submissions to the Department of the Premier and Cabinet for approval where this option is considered appropriate.

ATTACHMENT 5.4 - DEVELOPMENTS FOR A PUBLIC PURPOSE -COMPULSORY ACQUISITION

Native title rights and interests may be compulsorily acquired by the State of Queensland where the acquisition is for a public purpose. For the purposes of the NTA, the "State" means the Queensland Government and all of its emanations such as Local Authorities, Statutory Authorities, Statutory Corporations and State Instrumentalities, which include Government Owned Corporations (for example QRAIL, Port of Brisbane Corporation, ENERGEX, the Water Boards, the Sugar Corporations, etc).

In some cases, it is possible to establish public works without using a compulsory acquisition process. However, such opportunities are limited and restricted under the NTA (See Work Instruction 4.0, Attachment 4.7). Some works may be established without resorting to the compulsory acquisition process but only under very restricted circumstances (see Work Instruction 4.0, Attachment 4.8).

Section 24MD of the NTA provides for the compulsory acquisition of native title rights and interests. As with freehold, it is generally not lawful to compulsorily acquire native title rights and interests, or indeed any interest, where the purpose of the acquisition is for other than a public purpose.

Where it would not be possible to compulsorily acquire freehold land for a particular purpose it would similarly not be possible to compulsorily acquire native title rights and interests for that purpose.

The *Acquisition of Land Act 1967* allows interests in land to be compulsorily acquired by the Crown, a local authority or a constructing authority for a variety of purposes listed in Schedule 2 of that Act. The NT(Q)A provides an additional power whereby native title interests may be similarly acquired. Accordingly, native title rights and interests may be compulsorily acquired for those public purposes.

Under the *Acquisition of Land Act 1967* landholders must be notified of the proposed acquisition and have a right to object and be heard in relation to that objection and to compensation for the loss of their interest in the land. Accordingly, native title holders must be notified of the proposed acquisition, be allowed to object and be heard and compensation must be paid for any acquisition of their native title rights and interests.

Upon the taking, the interest is converted to a right to claim compensation.

If the constructing authority is normally responsible for the payment of compensation for a compulsory acquisition of freehold, the constructing authority will similarly be responsible for the payment of compensation for the compulsory acquisition of native title rights and interests.

Section 23HA of the NTA provides that, where there has been no approved determination of native title in relation to the area, one way a person may give the required notification to native title holders for a compulsory acquisition of their rights and interests is by doing all of the following:

- notifying, in the way determined in writing by the Commonwealth Minister, any representative Aboriginal body for the area concerned that the act is to take place; and
- notifying, in the way determined in writing by the Commonwealth Minister, any occupier of the land concerned that the act is to take place; and
- placing notices in the way determined in writing by the Commonwealth Minister on any land concerned that the act is to take place; and
- notifying the public in the determined way (see section 252 of the NTA) that the act is to take place.

Once this procedure, together with the procedure outlined by the *Acquisition of Land Act 1967* for the acquisition of land from freeholders have been followed, the acquisition for the public purpose may proceed.

The *Native Title (Notices) Determination No.1 of 1996* outlines the procedures to be followed to ensure that proper notification has been given in accordance with the above.

Failure to follow these steps will leave the acquisition at risk of invalidity.

To ensure a coordinated Queensland approach to the compulsory acquisition of native title rights and interests, please contact the Director, Cultural Heritage Branch who will liaise with the Native Title Services, Department of the Premier and Cabinet.

PRACTICE ATTACHMENTS

ATTACHMENT 100 - EXAMPLES OF DOCUMENTATION TO SUPPORT DECISIONS (WHETHER APPROVED OR NOT APPROVED)

It is **ESSENTIAL** that the relevant documentation and factual information relied upon in making the decision is noted and recorded on file. The Native Title Assessment Sheet Attachment 101 should be used to record decisions. In some instances a statutory declaration or other written statements may also be required. A synopsis of the major reasons for the decision need only be provided.

Documentation to support the evaluation may include:

- a copy of the permit/authority application
- a copy of the title from the Automated Titling System;
- aerial photographs or a sketch plan of the development;
- construction drawings of proposed structures
- a copy of an existing lease, permit or licence document;
- an inspection report describing the nature and extent of development;
- a copy of a gazettal notice or other documentation proving the dedication of a road;
- a copy of the gazettal notice proving the reservation of a reserve;
- any other evidence attesting to the restricted or controlled use of the area;
- statutory declarations or statements of known interests in the land, connection to the land and past or present usage; and
- description of any Aboriginal or Torres Strait Islander interest, if relevant.

Step 4. In your opinion can the proposed action proceed after notification and consideration of responses? (eg. construction of a public work, capital works on national parks; permits involving aquatic resources; renewal of a lease under different conditions to the original lease that may have a greater impact on native title.)

Initial either yes or no

Yes

No

Reason: (Attach additional pages if necessary)

.....
.....
.....

If yes, follow the notification procedure, consider any responses and record the reasons for your decision. (See Attachment 105 of the Native Title Work Procedures)

Step 5. Either refuse the proposed action or complete the following recommendation:

RECOMMENDATION TO REGIONAL DIRECTOR OR EXECUTIVE DIRECTOR

It is recommended that: (Strike out the one not required)

1. One of the Future Act Options should be used to progress the proposal. (Refer to Attachment 107 of Native Title Work Procedures.)
2. The matter should be referred to Legal Branch, Department of the Premier and Cabinet through the Deputy Director-General and Director, Cultural Heritage for further advice.

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.....

Signature of Assessing Officer:

Date:

Regional Director or Executive Director

The recommendation is supported/ not supported
Reason (if necessary):

.....
.....
.....
.....
.....

Signature:

Date:.....

Position:

ATTACHMENT 103 - PROPOSED AMENDMENTS FORM

To: Director
Cultural Heritage Branch
Department of Environment and Heritage
PO Box 155
BRISBANE ALBERT STREET Q 4002

DETAILS OF PROPOSED AMENDMENTS

Native Title Work Procedures

Work Instruction No. and/or Attachment No. & Title:

Name of Officer Submitting Amendment:.....

Position of Officer:.....

Date:.....

Contact Telephone No.:.....

THIS ATTACHMENT SUPERSEDED. SEE NEW PROCEDURES –

- **Annexure 7.2 - Notification and Opportunity to Comment Process for Certain Future Acts**
- **Annexure 7.3 – Future Act Notification Template, Sample and Explanation**

**ATTACHMENT 105 - CONSIDERING COMMENTS BY REGISTERED NATIVE
TITLE HOLDERS, REGISTERED NATIVE TITLE CLAIMANTS AND
ABORIGINAL AND TORRES STRAIT ISLANDER REPRESENTATIVE BODIES**

**THIS ATTACHMENT SUPERSEDED.
SEE NEW PROCEDURES**

- **Annexure 8.5 – Consideration of Comments and Submissions in Response to Future Act Notifications**

**ATTACHMENT 106 - CONTACT LIST - QUEENSLAND NATIVE TITLE
REPRESENTATIVE BODIES AND ACCOMPANYING MAP**

**THIS ATTACHMENT SUPERSEDED – SEE NEW
PROCEDURES**

- **Annexure 8.4 – Queensland Native Title
Representative Bodies and Areas**

**ATTACHMENT 107 - INFORMATION REGARDING COST BENEFIT ANALYSIS
SUPPORTING RECOMMENDED FUTURE ACT OPTION**

The following details are relevant to a decision about whether it is appropriate to proceed with the recommended Future Act Option. As far as possible, this information should be provided to the Director, Cultural Heritage when recommending that a Future Act Option should proceed.

- 1) Date:
- 2) What is the name of grantee/third party:
- 3) What government party is proposing to make the grant:
- 4) Is the grantee/third party willing to pay the application fee for the future act if required? [Refer also to (16)].
- 5) Application for future act option:
 - a) Has the grantee/third party formally requested the future act option?
- 6) What is the DEH file reference?

Information Regarding Project:

- 7) What is the proposed development?
 - a) Provide a description of the proposed development.
- 8) Description of the subject Land:

Lot: _____ Plan: _____

- a) What is the area (ha) of the Subject Land:
- 9) What is the proposed lease, authorisation or permit to be issued:
(NB. This should include any special terms and conditions that are to be attached.
- 10) What is the local authority area/s in which the proposed project is to occur?
- 11) Plans of the proposed development:

(NB. Plans of the area in its current state and a plan of the proposed development should be provided)
- 12) Photographs of the subject site where applicable:

(These may take the form of aerial and on the ground photographs accompanied by a written description. Also a comparison of recent and historical photos in an effort to establish development is often advantageous. In some instances a video may also be required.)

13) The following financial information is required:

- a) The estimated market value of the area in question. [eg. \$x]
- b) The estimated cost of the proposed development. [eg. \$x to construct]
- c) The expected return to the developer. [eg. \$x per annum]
- d) The expected return to the State or community. [eg. \$x annual rental or sale price]
- e) Other information including the number of jobs expected to be created by the proposed development and the reasons why the proposed development would be of a benefit to the State or community.

Note that:

- Market value of the area may be available from valuers within DNR.
- Other information may be obtained from the developer.

A record of where the information has been obtained should be made.

Where the information supplied is an estimate only, the delegated officer should state this.

In relation to Government Land Management System disposals where the Department of Natural Resources acts as agent, the information in paragraphs (b) - (e) is not usually available. In those situations, only the information, which is available, is required to be supplied initially.

The delegated officer must ensure that he/she is reasonably satisfied that the figures and information provided reflect the scale of development as far as practicable, irrespective of whether that information is derived from departmental sources or from the applicant.

14) The following tenure information is required:

- a) The current and proposed tenure should have been provided above.
- b) A tenure history should have been completed to identify if there was a previous extinguishing tenure. The tenure history should be attached to this document.
- c) An Usage Report (including photos if they are not provided) should be provided with this document. It should identify the areas of development, which may have affected native title, and to what extent they have effected native title.

15) Information Regarding Indigenous Issues:

- a) Provide information regarding any known information of indigenous interests in the land. (eg. from relevant DEH files)

16) Information Regarding Funding:

- a) Has the grantee party indicated the scope of any offer it may be prepared to make to native title claimants during a negotiation process? If so please provide details:

- b) Is the government party proposing to make the grant in a position out of its own resources to make any contribution to native title claimants? If so please provide details:
- c) Have other government departments been approached regarding contributions that they may be able to make to the process? If so please provide details:
- d) If not, is it proposed to contact relevant departments?
- e) Is it proposed to seek a special allocation from Queensland Treasury for a negotiated package with native title claimants?
- f) Has any contact been made with Treasury?

Note: Ordinarily funding will be met from the relevant Department's budget. Only in the most exceptional cases should it be necessary to make a special request to Treasury.

17) Recommendation:

What is the recommended Future Act Option? (eg Compulsory Acquisition, Right to Negotiate, Non-claimant Application, Indigenous Land Use Agreement)

Name: _____
(Please print)

Position: _____

Signature: _____

ATTACHMENT 108 - INDIGENOUS LAND USE AGREEMENTS

To date, the State's ability to enter agreements under the NTA has been limited because of the uncertainty as to the identity of native title holders given that there have only been two determinations of native title in Queensland. Although quite a number of claims are currently in mediation it may still be some time until those claims are resolved.

The NTAA provides more certainty for agreements with registered native title claimants. This being the case, the amendments in relation to the making of Indigenous Land Use Agreements ('ILUA's) provide greater scope for the achievement of acceptable and workable outcomes in mediation and in State development projects.

Under the NTAA, ILUA's may be about:

- the doing of future acts or future acts included in particular classes;
- withdrawing, amending, varying or doing any other thing under Division 1 of Part 3 (ie section 61 of the NTA which outlines the types of native title and compensation claims which can be lodged);
- particular future acts or future acts (other than intermediate period acts) included in classes, that have already been done;
- changing the effects, that are provided for by section 22B (ie validation of intermediate period acts);
- the relationship between native title rights and interests and other rights and interests;
- the manner in which native title rights and interests may be exercised;
- extinguishment of native title rights and interests by surrender;
- any other matter about native title rights and interests in the area; and
- any other matter concerning native title rights and interests conferred by Division 3Q (which gives native title claim groups with registered claims rights of access to non-exclusive agricultural and pastoral leases).

ILUA's may be a valuable tool in achieving outcomes in mediation. Similarly, it is envisaged that agreements about particular classes of activity may be entered into by the State with representative bodies registered native title holders and registered native title claimants. These will be negotiated by or with approval of officers from the Department of the Premier and Cabinet.

Consequently, it will be necessary for officers to establish whether or not any registered ILUA's have implications for the proposed action or the resources, land or waters which will be affected by the proposed action. The Director, Cultural Heritage Branch will provide information in regard to ILUA's when they are registered.

The negotiation of such agreements will be coordinated by the Department of the Premier and Cabinet.

ATTACHMENT 109 - GOVERNMENT LAND MANAGEMENT SYSTEM DEALINGS

Prior to dealing with areas of land under the Government Land Management System (GLMS) native title implications must be addressed.

A. GOVERNMENT LAND MANAGEMENT UNIT REQUESTS

The Government Land Management Unit presently requests district offices to:-

- **issue freehold titles** in the name of The State of Queensland represented by [name of particular government department] over land which has been declared essential to the operations of a particular department. This is because the Government Land Management System encourages agencies to dispense with reservations and hold the land as freehold (where the land is considered an essential part of that agency's core business); or
- **dispose** of surplus government land.

The **disposals** can be broken down further into the following categories:-

- (a) surplus government land in which an interest has been expressed by another government department/organisation where the Department of Natural Resources acts as agent;
- (b) surplus government land in which no other interest has been expressed; and
- (c) surplus government land in which an agreement has been made with a private party for the land.

There are also disposals of surplus government land in which an interest has been expressed by another government department or organisation but DNR does not act as agent.

All government departments have their own procedures for assessing native title implications in relation to their dealings. In some cases it will be the responsibility of DNR to assess native title implications and, in others, it will be the responsibility of the other department concerned.

Therefore the following processes are to be adopted for GLMS work:-

The issue of freehold titles in the name of The State of Queensland represented by [name of government department] over land which has been declared essential to the operations of a particular department

In these cases the particular department has forwarded a Property Management Plan to the Government Land Management Unit together with a request that a freehold title be issued over the area in place of the existing reserve. The government department, requesting the title, will have to address native title implications in accordance with their own native title procedures as approved by the Department of the Premier and Cabinet. Confirming advice that native title has been extinguished, must be lodged together with the original request.

If native title has not been extinguished by a previous inconsistent grant, development or use the dealing cannot proceed under Work Instruction 2. (*NB - Any decisions based on extinguishment by private development will require the approval of DP&C in accordance with Work Instruction 2.*) It is the responsibility of the particular department to address native title implications under a Future Act Option, should they wish to pursue that avenue. (Refer to Work Instruction 5).

Disposal of surplus government land in which an interest has been expressed by another government department or statutory body where DNR acts as agent

In these particular cases, the areas have been declared surplus to requirements and the matter has been forwarded to the district via the Government Land Management Unit with a request that the district take the appropriate action for the disposal of the property, in priority, to the interested government department or statutory body.

Native title implications must be assessed by DNR. If native title has not been extinguished by a previous inconsistent grant, development or use the dealing cannot proceed under Work Instruction 2. (***NB - Any decisions based on extinguishment by private development will require the approval of DP&C in accordance with Work Instruction 2.***) If native title has not been extinguished it will be necessary for consideration to be given as to whether the dealing can proceed under a Future Act Option. (Refer to Work Instruction 5). DNR Staff will initiate consideration of this matter.

Disposal of surplus government land in which no other interest has been expressed

Districts are requested to take action for the disposal of surplus land from other government agencies through the Government Land Management Unit.

In these cases a native title assessment must be undertaken by DNR. If native title has not been extinguished by a previous inconsistent grant, development or use the dealing cannot proceed under Work Instruction 2. (***NB - Any decisions based on extinguishment by private development will require the approval of DP&C in accordance with Work Instruction 2.***) If native title has not been extinguished it will be necessary for consideration to be given as to whether the dealing can proceed under a Future Act Option. (Refer to Work Instruction 5). DNR Staff will initiate consideration of this matter.

Disposal of surplus government land in which an agreement has been made with a private party for the land

A native title assessment must be undertaken by the department handling the disposal. If DNR is involved in the process of disposal **or** only involved in the process of issuing a Deed of Grant to facilitate the disposal, DNR must ensure that native title implications have been addressed. If native title has not been extinguished by a previous inconsistent grant, development or use, the dealing cannot proceed under Work Instruction 2. (***NB - Any decisions based on extinguishment by private development will require the approval of DP&C in accordance with Work Instruction 2.***) If native title has not been extinguished it will be necessary for consideration to be given as to whether the dealing can proceed under a Future Act Option. (Refer to Work Instruction 5). DNR Staff will initiate consideration of this matter.

Disposal of surplus government land in which an interest has been expressed by another government department/organisation but DNR does not act as agent

In these particular cases there is no requirement on DNR to undertake a native title assessment when DNR is not involved in the process. However, if DNR is involved in the process of issuing a Deed of Grant to facilitate the disposal, DNR must ensure that native title implications have been addressed by requiring such advice in writing from the vendor.

B. DEALING WITH SPECIFIC APPLICATIONS FROM A GOVERNMENT DEPARTMENT OR AGENCY

Following a specific application from a government department or agency, eg State Emergency Services in the case of a Rural Fire Brigade to lease or purchase an area of land (road, reserve, unallocated State land, existing lease, etc), native title implications must be assessed by DNR.

If native title has not been extinguished by a previous inconsistent grant, development or use, the disposal cannot proceed under Work Instruction 2. *(NB - Any decisions based on extinguishment by private development will require the approval of DP&C in accordance with Work Instruction 2.)* If native title has not been extinguished it will be necessary for consideration to be given as to whether the dealing can proceed under a Future Act Option. (Refer to Work Instruction 5). DNR Staff will initiate consideration of this matter.

**ATTACHMENT 109(a) - (A) RESERVE ISSUES CONSIDERED
(B) STATE FREEHOLD ISSUES CONSIDERED**

(A) RESERVES (includes all forms of State held grants "for a particular purpose")

The Native Title Act 24JA (1)(d) uses the following terminology to define "Reservations" - "contained, made or conferred a reservation, proclamation, dedication, condition, permission or authority (the reservation) under which the whole or part of the land or waters was to be used for a particular purpose;"

The definition **will include** land commonly known as Reserve, National Park, Vested Land, Road and Freehold Deed of Grant in Trust and State Leasehold land **but will not include** unrestricted State Freehold (ie. Freehold without any restrictive purpose). The term "reserve" below is used in this context.

Notes:

1. Where "extinguishment of native title" is discussed below in terms of Work Instruction 2.0, and reference is made to private grants and public works as extinguishing events, there is also the recognition that in some cases there may be valid private works of development which extinguish native title (such as sporting stadiums) on recreation reserves. However, the use of such will be rare as there will generally be exclusive leases which cover such situations. Any decisions based on extinguishment by private development will require the approval of DP&C in accordance with Work Instruction 2.0.
2. The comments below in this attachment assume that the reserve is valid; eg. validly created or set apart prior to 23.12.96, or established over land where native title is extinguished (say acquired from private freehold land), or permissible in accordance with the NTA by substituting the original purpose for a purpose of similar or lesser impact on native title (see dot point 2 of Dealing item 1 below).
3. Consideration of native title is a matter for the relevant Agency approving the dealing or development. DEH staff should provide written advice to DNR that native title issues have been appropriately considered before requiring DNR staff to register a dealing which may affect native title. This simply provides a final check that appropriate consideration and approval has been made. On the other hand, if DNR is the approving Agency, DNR will assess the native title implications.
4. The permitted purposes of new Reserves created under the *Land Act 1994* are "Community Purposes" only as per Schedule 1 of that Act. This is a greatly reduced list of possible purposes than those which have been created in the past. That said, those reserves which have previously been validly created may continue as valid reserves notwithstanding that the purpose may not be a Community Purpose.

Examples of the types of dealings, development and use of reserves, together with the matters which must be considered are as follows:

DEALINGS:

1. **Disposal of a reserve to another Agency as it is no longer required by the trustee for its gazetted purpose.** The relevant questions to be considered in order to make a decision as to whether the dealing may proceed are as follows:
 - Has native title been extinguished by a previous grant or development for public works (see Work Instruction 2.0)? If "yes" the dealing may proceed?

- If "no"; Will the proposed use of the land have a greater impact on native title than the current purpose? If "no" does State legislation permit the disposal? For example a "showground reserve" could be regazetted for use as a "sport and recreation reserve". In this case the development for either usage would have a similar effect on native title and both are community purposes under the *Land Act 1994*. A "showground reserve" could also be regazetted for use as a "parks and garden reserve" as development of the latter would arguably have a lesser impact on native title than development of the former. However, this could not happen in reverse as the impact of the latter development would arguably have a greater impact on native title than the former.
 - On the other hand, the NTA gives the following example in Section 24JA (1)(e)(ii) as something which is permitted; "Example 3: ...land was reserved as a hospital site before 23 December 1996, and instead a school is later built on the land." However, this cannot happen because State legislation does not permit the gazettal of land as a school reserve as it is not a community purpose and the trustee of land which is held for a hospital purpose cannot use the land for a school purpose. In other words, State legislation does not permit a dealing which the NTA permits.
2. **Disposal of a reserve to private interests (eg. sale on open market) as it is no longer required for its gazetted purpose.** This may only happen if native title has previously been extinguished by a private freehold or exclusive possession grant or development for a public work (see Work Instruction 2.0).
 3. **Conversion of a reserve to State Freehold or Leasehold in accordance with the Government Land Management System (GLMS).** This may only happen if native title has previously been extinguished by either a private freehold or exclusive possession grant or development for a public work (see Work Instruction 2.0).

DEVELOPMENT:

4. **Development of a reserve for a public work (eg. hospital, school, road etc.) in accordance with the purpose of the reserve.** The following must be considered in order to make a decision as to whether the dealing may proceed:
 - Has native title been extinguished by a previous grant or development for public works (see Work Instruction 2.0)? If "yes" the development may proceed?
 - If "no"; notification and the opportunity to comment must be provided in accordance with Attachment 104 prior to the development proceeding.
5. **Development of a reserve for a private purpose (eg. sporting club house or oval etc.) in accordance with the purpose of the reserve.** The following must be considered in order to make a decision as to whether the dealing may proceed:
 - Has native title been extinguished by a previous grant or development for public works (see Work Instruction 2.0)? If "yes" the development may proceed?
 - If "no"; notification and the opportunity to comment must be provided in accordance with Attachment 104 prior to the development proceeding.
6. **Development or use of a reserve for a purpose other than in accordance with the purpose of the reserve.** The following must be considered in order to make a decision as to whether the dealing may proceed:
 - Does State legislation, other than native title considerations, permit the proposed development (eg. does the proposal contravene the Land Act)? If it does contravene State legislation the development would be invalid and therefore cannot be approved.

If the development does not contravene State legislation, consider the questions below which relate to native title.

- Has native title been extinguished by a previous grant or development for public works (see Work Instruction 2.0)? If "yes" the development or use may proceed?
- Is one of the dealing options (see 1 to 3 under the Dealings heading above) appropriate?
- If "no" to both of these questions; Have appropriate options been considered and approved (see Work Instruction 5).

(B) STATE FREEHOLD (State held unrestricted freehold which is not restricted by a particular purpose and will therefore not include DOGIT lands)

DISPOSAL: It is important to note that a grant of freehold by the State to one of its Agencies should not be considered to extinguish native title (see the definition of State in 6.0 Definitions). Similar considerations apply to the disposal of State held freehold as explained above for reserves; eg.

- Has native title been extinguished by a previous private grant or development of public works?
- If "yes" disposal may occur;
- If "no" disposal to a private party may not occur without following an appropriate process as per Work Instruction 5.0. However, disposal to another Government Agency may proceed. Disposal or transfer of State owned freehold from one Government Agency to another Government Agency does not affect native title.

What should be considered if an Agency wishes to acquire freehold title when the current tenure is not unrestricted State freehold? (Examples may be, acquisition of unrestricted State freehold title where the land is currently a reserve, vested land, non-exclusive leasehold etc, and there has been no extinguishing public work.)

- Is the land required for a public purpose (eg. Education Department seeking to acquire an unused hospital reserve to build a school)? An appropriate option as set out in Work Instruction 5.0 must be followed such as ILUA or compulsory acquisition etc..

Note: *The department requiring the land (in this example Education) would be responsible for instigating or ensuring the relevant native title process is followed in accordance with its legislative power (eg. Just as Education Department would instigate the process to acquire private freehold interests if such land were required for a school it would also deal with native title interests. Whilst another Department may implement the necessary action the implementing decision rests with the acquiring Department. Put another way, in the case of the quoted example, just as the Health Department would not instigate acquisition proceedings on behalf of the Education Department if the land were private freehold it would also not instigate a process to acquire any native title rights and interests.*

However, following the same example, because each Agency has an approved native title work procedure, the disposing Agency (ie. Health Dept. in this example) should make an assessment as to whether or not native title has been extinguished and advise the gaining agency of its assessment, before making the land available for transfer or disposal.

DEVELOPMENT: Similar considerations apply to new development on State freehold as explained above for reserves; eg. Consider;

- Is native title extinguished by a previous private grant or development of public works?
- If "yes", new development may occur;
- If "no", new development may occur only after notification in terms of Attachment 104. (Renovation/refurbishment of existing improvements may occur without notification.)

**ATTACHMENT 110 - CONSTRUCTION OF BOAT RAMPS, JETTIES AND
PONTOONS**

THIS ATTACHMENT IS DELETED.

If native title has not been extinguished over the subject area, consider whether Module H applies.

BEACH PROTECTION ACT

GUIDE TO COMMON ISSUES

This is a guide only. As each situation may vary significantly, assessments must always be undertaken by working through the Work Procedures step by step. Before using this table, ensure that the proposed activity is not dealt with by Work Instruction 1 (proposed actions that may proceed without further reference to native title) and Work Instruction 2 (previous grants of exclusive possession or valid public works that have extinguished native title).

Proposed Action	How to Deal with Native Title Issues	References
Issue of a s.47 permit to interfere with sand etc. (Where the work is to take place below high water mark.)	Notify under s.24HA and consider any comments received.	Refer to Module H. Permits related to the management or regulation of water, are caught by s.24HA(2) of the NTA. Notification & an opportunity to comment are required for these acts.
Issue of a s.47 permit to interfere with sand etc. (Where the work is to take place on a valid reserve, esplanade, park etc. that was Gazetted on or before 23 December 1996)	<p>Assess in this order:</p> <ol style="list-style-type: none"> 1. If the activity is related to the management of water, notify under s.24HA and consider any comments received. (eg. Construction of revetment walls, stormwater outlets, erosion protection measures.) 2. If the work is a “public work” notify under s.24JB and consider any comments received. (See Work Instruction 4.7 for a definition of “public work”.) 	<p>Refer to Module H. Permits related to the management or regulation of water, are caught by s.24HA(2) of the NTA. Notification & an opportunity to comment are required for these acts.</p> <p>Refer to Attachment 4.7, Work Instruction 4. “Reserves” are described in s.24JA of the NTA as any land or water dedicated etc by Government for a particular purpose on or before 23 December 1996. Permits that allow activities that are lawful in a reserve are valid. However s.24JB requires that if the work is a “public work”, notification & an opportunity comment are required.</p> <p>Refer to Attachment 4.7, Work Instruction 4. “Reserves” are described in s.24JA of the NTA as any land or water dedicated</p>

	<p>3. If the work is not a “public work”, no notification is required. (See Work Instruction 4.7 for a definition of “public work”.)</p>	<p>etc by Government for a particular purpose on or before 23 December 1996. Permits that allow activities that are lawful in a reserve are valid. On a reserve the only works that require notification are “public works”. Private works that can validly take place on a reserve do not require notification.</p>
<p>Issue of a s.47 permit to interfere with sand etc. (Where the work is to take place on USL or on a non-exclusive tenure not covered above.)</p>	<p>Assess in this order:</p> <ol style="list-style-type: none"> 1. Where the permit allows work that is related to the management of water, notify under s.24HA and consider any comments received. (eg. Construction of revetment walls, stormwater outlets, erosion protection measures.) 2. Where the permit allows the establishment of a facility that is a “facility for services to the public” (see Module K for the definition) the matter should be referred to the Principal Policy Officer (Native Title), Central Office, for assessment. 3. Where the permit allows an activity that is a “low impact future act” (see Work Instruction 3.1 for the definition) no notification is required. However, a condition must be included in the permit that the permit will cease immediately there is a successful determination of native title over the land/waters involved. 	<p>Refer to Module H. Permits related to the management or regulation of water, are caught by s.24HA(2) of the NTA. Notification and an opportunity to comment are required for these acts.</p> <p>Module K lists those activities classed by s.24KA of the NTA as “facilities for services to the public”. Special procedural rights may apply if activities fall into this category. If you think this section applies, refer the matter to the Principal Policy Officer (Native Title), Central Office, for assessment. Section 24KA notifications must be recorded in a register held by Department of the Premier and Cabinet.</p> <p>Attachment 3.1 provides a list of those things that are not low impact acts. Everything else is a low impact act and may proceed without notification.</p>

	<p>4. If you could validly issue the permit on freehold land or waters adjoining freehold land, then you can validly issue the permit on land where native title may continue to exist or the waters adjoining the freehold land. However, the native title holders and registered native title claimants are to be given the same rights as if they held freehold title to the land or to the land adjoining the waters concerned. (If, under this Act, the written consent of a freehold landholder would be necessary before you could issue the permit, then the written consent of native title holders or registered native title claimants will be necessary. If no rights apply to a freehold landholder, no rights apply to registered native title claimants/native title holders.)</p>	<p>Attachment 4.9 and s.24M of the NTA deal with the “freehold test”.</p>
<p>Declaration of a Coastal Management Control District</p>	<p>This may proceed without notification as the declaration itself will not affect native title.</p>	<p>Such declarations are acts that do not affect native title and therefore are not future acts.</p>
<p>Preparation and amendment of Coastal Management Plans & Erosion Prone Area Plans</p>	<ol style="list-style-type: none"> 1. Invite native title parties to participate in the plan development as part of the normal consultation process under the Beach Protection Act. 2. No formal notification is required under the NTA. 	<p>Preparation and amendment of such plans are acts that do not affect native title and therefore are not future acts and accordingly may proceed without further consideration of native title.</p>

MARINE PARKS ACT AND REGULATIONS

GUIDE TO COMMON ISSUES

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Proposed Action	How to Deal with Native Title Issues	References
Preparation of Management Plans & Zoning Plans for Marine Parks.	Notification is not required. However, native title parties should be invited to be included in the consultation process.	Refer to Module H of the Native Title Work Procedures and s.24HA of the NTA. As such plans are statutory instruments they are included in the acts covered by s.24HA(1) of the NTA. These acts are valid. Notification is not required for these acts.
Issue and “renewal” of tourist program permits for swimming, snorkelling, scuba diving, fish feeding, passenger transfers/camper drop-offs, beach hire, motorised water sports, non-motorised water sports, bare boat hire, glass-bottom boat/semi-submersible viewing, whale watching, non-tourist commercial charters, aircraft landings in Marine Parks.	If the activity could affect native title rights in any way, notify under s.24HA. If there is no effect on native title rights, notification is not required.	Refer to Module H of the Native Title Work Procedures and s.24HA of the NTA. S.24HA (2) requires notification and an opportunity to comment prior to any approval related to the management or regulation of water, a living aquatic resource or airspace.
Issue and “renewal” of tourist program permits for fishing, game fishing etc.	Notify under s.24HA	Refer to Module H of the Native Title Work Procedures and s.24HA of the NTA. S.24HA (2) requires notification and an opportunity to comment prior to an approval related to the management or regulation of water, a living aquatic resource or airspace.
Issue of research program permits.	Research that comprises observation and recording only (non-manipulative) is not an act that would affect native title and accordingly permits can be issued without notification.	Acts which do not affect native title are not future acts and are not caught by the requirements of the NTA.

	Research that involves the taking of a living aquatic resource (manipulative) requires notification under s.24HA.	Refer to Module H of the Native Title Work Procedures and s.24HA of the NTA. S.24HA (2) requires notification and an opportunity to comment prior to an approval related to the management or regulation of water, a living aquatic resource or airspace.
Issue of permits for the construction of moorings, pontoons, jetties, boat ramps and similar structures.	Notify under s.24HA	Refer to Module H of the Native Title Work Procedures and s.24HA of the NTA. S.24HA (2) requires notification and an opportunity to comment prior to an approval related to the management or regulation of water, a living aquatic resource or airspace.
Permits to collect for educational or scientific purposes and permits for commercial collecting.	Notify under s.24HA	Refer to Module H of the Native Title Work Procedures and s.24HA of the NTA. S.24HA (2) requires notification and an opportunity to comment prior to an approval related to the management or regulation of water, a living aquatic resource or airspace.
Permits for aquaculture/mariculture (where the activity is directly connected to primary production activities on adjacent freehold land, pastoral or agricultural lease and involves gaining access to or taking water)	Notify under s.24GD	Refer to Attachment 4.3, Work Instruction 4. Section.24GD of the NTA provides that notification and an opportunity to comment be given for gaining access to water under these circumstances. Permits issued should contain a condition that allows native title holders reasonable access to the waters concerned.
Other permits for aquaculture/mariculture	Notify under s.24HA	Refer to Module H. As these acts are related to the management of a living aquatic resource, they are caught by s.24HA(2) of the NTA. Notification and an opportunity to comment is required for these acts.
Permits for traditional hunting	Notify under s.24HA (There may be opportunities to set up local arrangements with native title holders/claimants and Rep Bodies on how to deal with applications for these permits.)	Refer to Module H. As these acts are related to the management of a living aquatic resource, they are caught by s.24HA(2) of the NTA. Notification and an opportunity to comment is required for these acts.

Permits to discharge waste from a fixed structure.	Notify under s.24HA	Refer to Attachment 4.5, Work Instruction 4. As these acts are related to the management of water, they are caught by s.24HA(2) of the NTA. Notification and an opportunity to comment is required for these acts.
Permits for the construction of marinas.	All major projects (\$10 million or more) should be referred to the Principal Policy Officer (Native Title), Cultural Heritage Branch, Central Office, for assessment. If not a major project, notify and provide an opportunity to comment under section 24HA(2) of the NTA.	
Permits to dredge for extractive industry. (ie. to obtain sand, coral etc for construction purposes). Application lodged by non-government organisation.	Notification is not required	Refer Attachment 3.3, Work Instruction 3.
Permits to dredge for extractive industry. (ie. to obtain sand, coral etc for construction purposes). Application lodged by a government agency or authority, or on behalf of a government agency or authority.	Notify under s.24J	Refer Attachment 4.7, Work Instruction 4. Under s.24JB notification and an opportunity to comment is necessary if the works are “public works”. The definition of public works includes any major earthworks.
Permits to dredge for navigation or reclamation purposes. (New Works)	Notify under s.24HA	Refer to Module H. Notification and an opportunity to comment is required for these acts.
Permits to dredge for navigation or reclamation purposes. (Maintenance Works)	If it can be substantiated that valid public works have taken place on the site on or before 23 December 1996 or whilst it has been a marine park, notification will not be necessary. If not, treat as for new works above.	Refer to Attachment 2.3, Work Instruction 2. Valid public works have acted to extinguish native title in the footprint of the works. Valid means legal in all respects. (eg. that all necessary approvals were in place at the time.)
Permits to reclaim land from the sea.	Notify under s.24HA	Refer to Module H. As these acts are related to the management of water, they are caught by s.24HA(2) of the NTA. Notification and an opportunity to comment is required for these acts.

TRANSPORT INFRASTRUCTURE ACT

(continuing the provisions of ss.67, 86, 91 & 92 of the Harbours Act)

GUIDE TO COMMON ISSUES

This is a guide only. As each situation may vary significantly, assessments must always be undertaken by working through the Work Procedures step by step. Before using this table, ensure that the proposed activity is not dealt with by Work Instruction 1 (proposed actions that may proceed without further reference to native title) and Work Instruction 2 (previous grants of exclusive possession or valid public works that have extinguished native title).

Type of Sanction	How to Deal with Native Title Issues	References
To make alterations to existing validly established facilities. (Provided there is no extension outside existing footprint.)	No notification required	Attachment 1.1
To dredge for extractive industry only .	No notification required	Attachment 3.3
To dredge to maintain existing validly established navigation channels .	No notification required	Attachment 2.3.1 where the original dredging was a public work. Attachment 2.3.2 where the original dredging was non-government work (NB. requires NTS approval)
To establish facilities associated with an aquaculture project. - (Where the facilities are for the purpose of gaining access to or taking water and are directly connected to aquaculture activities on adjoining or near freehold land, agricultural or pastoral lease.)	Notify under s.24GD (A condition of the sanction must allow native title holders to have reasonable access to the waters concerned.)	Attachment 4.3
To establish facilities associated with an aquaculture project. (Where the operation and facilities to be sanctioned are both located below HWM.)	Notify under s.24HA	Module H

To dredge to create new navigation channels or to reclaim land.	Notify under s.24HA	Module H
To dispose of spoil or to reclaim land.	Notify under s.24HA	Module H
To undertake beach replenishment works or construct an artificial reef, below the HWM.	Notify under s.24HA	Module H
To construct underwater service crossings.	Notify under s.24HA	Module H
To construct swimming enclosures.	Notify under s.24HA	Module H
To construct any of the following: <ul style="list-style-type: none"> • jetties, • wharves, • piles, • bridges, • decks, • walkways, • pontoons, • boat ramps, • barge ramps, • slipways, • buildings, • lifting devices, • mooring buoys, • navigational markers, • tide gauges, • revetment walls, • groynes, • steps, • overhead service crossings, • other facilities similar to the above. 	Notify under s.24HA	Module H
To construct inlet/outlet structures eg. stormwater outlets.	Notify under s.24HA	Module H
To construct a marina, underwater observatory, or any major project (total value \$10 million or more).	Refer application and supporting documentation to Principal Policy Officer (Native Title), Cultural Heritage Branch, Central Office, for assessment. If not a major project, notify and provide an opportunity to comment under s24HA(2) of the NTA.	Section 7.0 "PROCESS"

CULTURAL RECORD ACT

GUIDE TO COMMON ISSUES

This is a guide only. As each situation may vary significantly, assessments must always be undertaken by working through the Work Procedures step by step. Before using this table, ensure that the proposed activity is not dealt with by Work Instruction 1 (proposed actions that may proceed without further reference to native title) and Work Instruction 2 (previous grants of exclusive possession that have extinguished native title).

Proposed Action	How to Deal with Native Title Issues	References
Issue of a permit to survey, research, or examine.	<p>A permit may be issued without a formal native title notification.</p> <p>(Note that the Cultural Record Act requires that sufficient consultation has taken place with Aboriginal people prior to the issue of a permit.</p> <p>Issue of permit over State Land In addition, where the land is State land and it is occupied by Aboriginal people, the consent of those people is necessary or the permit will be of no force or effect.)</p>	<p>Provided there is no excavation or disturbance to the land or waters, surveying, researching and examining are considered actions which do not affect native title. Attachment 1.1 of the <i>Native Title Work Procedures</i>.</p>
Issue of a permit to excavate or collect.	<p>On exclusive tenures (see Attachment 2.2) A permit may be issued without a formal native title notification.</p> <p>(Note that the <i>Cultural Record Act</i> requires that sufficient consultation has taken place with Aboriginal people prior to the issue of a permit.)</p> <p>On non-exclusive tenures where a native title claim has not yet been determined. A permit may be issued without a formal native title notification on the basis it is a “low impact future act”. However under these circumstances a condition must be included that the permit may be terminated if there is a</p>	<p>Native title has been extinguished by the issue of a valid exclusive tenure. Attachment 2.2 of the <i>Native Title Work Procedures</i> identifies the tenures that have extinguished native title.</p> <p>A permit to excavate is a “low impact future act” which must cease upon a successful determination of native title. Attachment 3.1 of the <i>Native Title Work Procedures</i> for the wording of and s.24LA of the Native Title Act.</p>

	<p>successful determination of native title over the area concerned. (See Attachment 3.1 for the wording.)</p> <p>(Note that the <i>Cultural Record Act</i> requires that sufficient consultation has taken place with Aboriginal people prior to the issue of a permit.</p> <p>Issue of Permit over State Land In addition, where the land is State land and it is occupied by Aboriginal people, the consent of those people is required.)</p> <p>On non-exclusive tenures where there has been a successful determination of native title. The consent of the registered native title body corporate or the native title holders (where no body corporate) are required prior to the issue of a permit.</p>	<p>Once there has been a determination of native title, s.24LA of the Native Title Act no longer applies. Section 24M applies and this provides that the native title holders are entitled to the same rights as if they owned freehold title to the land. As the Cultural Record Act requires the consent of a land owner prior to the issue of a permit, the consent of the native title holder is also required.</p>
<p>Declaration of a Designated Landscape Area.</p>	<p>Refer the matter to the principal Policy Officer (Native Title), Cultural Heritage Branch, Central Office for assessment.</p>	<p>The assessment may be complex depending on the underlying tenure of the land.</p>

HERITAGE ACT

GUIDE TO COMMON ISSUES

This is a guide only. As each situation may vary significantly, assessments must always be undertaken by working through the Work Procedures step by step. Before using this table, ensure that the proposed activity is not dealt with by Work Instruction 1 (proposed actions that may proceed without further reference to native title) and Work Instruction 2 (previous grants of exclusive possession or valid public works that have extinguished native title).

Proposed Action	How to Deal with Native Title Issues	References
Listing a place on the Heritage Register.	May proceed without notification.	Attachment 1.1 and s.24AA, NTA. The listing itself does not affect native title and is therefore not a “future act”.
Approval of a management plan for a listed place.	<p>On freehold or other exclusive tenure May proceed without notification.</p> <p>On a “reservation” (incl. National Parks, State Forests, Local Govt Reserves etc.) dedicated/gazetted on or before 23 December 1996 If the management plan affects native title rights (eg. preventing access) and is intending to preserve the natural environment of the area. notification and an opportunity to comment is required.</p> <p>On other non-exclusive tenures If the management plan affects native title rights (eg. preventing access), the native title holders are to be given the same rights as if they held freehold title to the land.</p>	<p>See Attachment 2.2 for a list of exclusive tenures. Native title is considered to be extinguished on exclusive tenures.</p> <p>Attachment 4.7 and s.24J, NTA.</p> <p>Attachment 4.9.</p>
Approval of maintenance work on a listed place.	<p>On freehold or other exclusive tenure May proceed without notification.</p>	See Attachment 2.2 for a list of exclusive tenures.

	<p>On non-exclusive tenure May proceed without notification provided the work is within the existing footprint and adjacent area that was/is used for the construction, establishment or operation of the work If not, see “Approval of new development” below.</p>	<p>Attachment 1.1 - Native title will not be affected by such work.</p>
<p>Approval of new development outside the existing footprint and adjacent area that was/is used for the construction, establishment or operation of the work of a listed place.</p>	<p>On freehold or other exclusive tenure May proceed without notification.</p> <p>On a “reservation” (incl. National Parks, State Forests, Local Govt Reserves etc.) gazetted/dedicated on or before 23 December 1996 If the work is a “public work”, notification and an opportunity to comment is required.</p> <p>On other non-exclusive tenure Refer details of the proposal to Principal Policy Officer (Native Title), Cultural Heritage Branch, Central Office for assessment.</p>	<p>See Attachment 2.2 for a list of exclusive tenures.</p> <p>Attachment 4.7 will apply.</p> <p>The assessment may be complex.</p>

NATURE CONSERVATION ACT AND REGULATIONS

GUIDE TO COMMON ISSUES

This is a guide only. As each situation may vary significantly, assessments must always be undertaken by working through the Work Procedures step by step. Before using this table, ensure that the proposed activity is not dealt with by Work Instruction 1 (proposed actions that may proceed without further reference to native title) and Work Instruction 2 (previous grants of exclusive possession or valid public works that have extinguished native title).

Note: The notification requirements set out below must be undertaken in addition to any QPWS consultation arrangements that may apply.

Proposed Action	How to Deal with Native Title Issues	References
Gazettal of a protected area	Refer to Principal Policy Officer, Native Title, Central Office.	
Preparation of Management Plans	<p>Areas Gazetted on or before 23 December 1996</p> <ol style="list-style-type: none"> 1. Consult throughout the process. 2. Provide formal notification and an opportunity to comment at the final draft stage and consider any responses received. <p>Areas Gazetted after 23 December 1996 Refer to Principal Policy Officer, Native Title, Central Office.</p>	Attachment 4.7 and s.24JB(7), NTA, require notification and an opportunity to comment for management plans intended to preserve the natural environment.
Maintenance of existing facilities on protected areas eg. mowing lawns, cleaning, painting visitor facilities, maintaining existing walking tracks, repairs (but not extensions to) visitor facilities.	May proceed without notification as these are activities that do not affect native title.	Attachment 1.1 refers to acts that do not affect native title.
Construction of minor new works on protected areas. eg. fencing (not involving use of earthmoving machinery), building small BBQs, erection of signs and interpretive information	<p>Areas Gazetted on or before 23 December 1996</p> <p>May proceed without notification as they are valid but do not fall within the definition of “public work” under the NTA.</p>	Attachment 4.7 and s.24JB provide that lawful activities on a “reservation” (established on or before 23 December 1996) are valid. However, “public works” require notification.

boards that are easily removed etc.	<p>Areas Gazetted after 23 December 1996 May proceed without notification as they are classed as “low impact acts”. However, this work must cease if there is a determination that native title exists over the area,</p>	Attachment 3.1 and s.24LA, NTA list those acts that are not classed as “low impact”. Everything else is “low impact” and, provided it has not been caught in earlier subdivisions, can proceed without notification.
Construction of a replacement structure on exactly the same site as a previously validly constructed public work (eg. building a replacement toilet block in place of an existing one).	May proceed without notification as native title has been extinguished by the previous structure. However, in keeping with QPWS policy, consultation with traditional owners is appropriate for all major works on protected areas	Attachment 2.3 and s.24JB, NTA
Construction of new visitor facilities, toilets, walking tracks, roads etc. (including walking track re-alignments).	<p>Areas Gazetted on or before 23 December 1996 Notification and an opportunity to comment are required.</p> <p>Areas Gazetted after 23 December 1996 If native title has not been extinguished by prior tenure, these works may only proceed with the consent of native title holders or if native title rights have been compulsorily acquired. Refer such cases to the Principal Policy Officer (Native Title), Central Office for advice.</p>	Attachment 4.7 and s.24JB provide that lawful activities on a “reservation” (established on or before 23 December 1996) are valid. However, “public works” require notification and an opportunity to comment. Work Instruction 5.
Weed control, feral animal control, tree lopping, regeneration or environmental assessment or protection activities.	<p>Areas Gazetted on or before 23 December 1996 May proceed without notification provided they are lawful acts.</p>	Attachment 4.7 and s.24JB provide that lawful activities on a “reservation” (established on or before 23 December 1996) are valid. However, “public works” require notification and an opportunity to comment.

	<p>Areas Gazetted after 23 December 1996 May proceed without notification provided they are “low impact acts” (see Attachment 3.1). However, they must cease if there is a determination that native title exists over the area.</p>	Attachment 3.1 and s.24LA, NTA list those acts that are not classed as “low impact”. Everything else is “low impact” and, provided it has not been caught in earlier subdivisions, can proceed without notification.
Use of earthmoving equipment to construct fence lines, firebreaks etc.	<p>Areas Gazetted on or before 23 December 1996 Notification and consideration of responses is required.</p> <p>Areas Gazetted after 23 December 1996 If native title has not been extinguished by previous tenure, these works may only proceed with the consent of native title holders or if the native title rights are compulsorily acquired. Refer such cases to the Principal Policy Officer (Native Title), Central Office for advice.</p>	Attachment 4.7 and s.24JB provide that lawful activities on a “reservation” (established on or before 23 December 1996) are valid. However, “public works” require notification. Work Instruction 5.
Renewal of existing validly issued permits, licences and approvals (but only on exactly the same terms and conditions and in exactly the same location as the previous valid permit, licence etc.). Note: The original permit will only have been validly issued if it was issued on or before 23 December 1996 or if its issue complied with Native Title Act requirements.	May proceed without notification. However great care must be taken to ensure that the previous permit was validly issued and that the renewal is under exactly the same terms and conditions and in exactly the same area as the earlier permit.	Attachment 1.1 and Attachment 4.6.
Issue of the following new permits: <ul style="list-style-type: none"> • to camp, • graze stock, • to muster stock, • for stock to traverse, • to enter a national park (scientific), 	<p>Areas Gazetted on or before 23 December 1996 May proceed without notification provided they are lawful acts.</p>	Attachment 4.7 and s.24JB provide that lawful activities on a “reservation” (established on or before 23 December 1996) are valid. However, “public works” require notification and an opportunity to comment.

<ul style="list-style-type: none"> • to use recreational craft, • to conduct rafting, • to conduct coach tours, • to conduct guided walks and camping tours, • to land an aircraft in a protected area, • to film in a protected area • to conduct research (other than that involving the taking of a living aquatic resource). 	<p>Areas Gazetted after 23 December 1996 May proceed without notification as they are classed as “low impact acts”. However a condition must be included that the permit will cease if there is a determination of native title over the area concerned.</p>	Attachment 3.1 and s.24LA, NTA list those acts that are not classed as “low impact”. Everything else is “low impact” and, provided it has not been caught in earlier subdivisions, can proceed without notification. However the special condition shown in Attachment 3.1 must be included in the permit.
Issue of the following new permits: <ul style="list-style-type: none"> • to fish, • to conduct research involving the taking of a living aquatic resource. 	Notification and an opportunity to comment are required before the issue of the permit.	Module H deals with the management of water, living aquatic resources and airspace. Section 24HA(7), NTA requires notification and an opportunity to comment for permits related to these activities.
Issue of a permit to construct a telecommunication facility on a protected area.	Refer these cases to the Principal Policy Officer (Native Title), Central Office.	The assessment of how to deal with these acts can be complex and will depend on the following: <ul style="list-style-type: none"> • past land tenure • when the protected area was Gazetted, • who is the constructing authority, and, • whether or not the facility is for the use of the general public.
Issue of macropod harvesting permits	<p>Freehold land and other exclusive tenures May proceed without notification as native title has been extinguished.</p> <p>Non-exclusive tenures where there has been no determination of native title May proceed without notification as they are classed as “low impact acts”. However a condition must be included that the permit will cease if there is a successful determination of native title over the area.</p>	Attachment 3.1 and s.24LA, NTA list those acts that are not classed as “low impact”. Everything else is “low impact” and, provided it has not been caught in earlier subdivisions, can proceed without notification. However the special condition shown in Attachment 3.1 must be included in the permit.

<p>Development of fire management strategies.</p>	<p>Protected Areas Gazetted on or before 23 December 1996</p> <ol style="list-style-type: none"> 1. Consult throughout the strategy development process. 2. Provide formal notification and an opportunity to comment at the final draft stage and consider any responses received. <p>Protected areas Gazetted after 23 December 1996 Refer to Principal Policy Officer, Native Title, Central Office.</p>	<p>Section 24JB, NTA requires notification and an opportunity to comment for management plans intended to preserve the natural environment</p>
<p>Undertaking prescribed burning.</p>	<p>Protected Areas Gazetted on or before 23 December 1996 May proceed without notification as it is a lawful activity on a protected area. However, as many traditional owners have a particular interest in the use of fire on their traditional lands, every effort should be made to inform them of when and where prescribed burning is proposed to take place.</p> <p>Protected Areas Gazetted after 23 December 1996 Provided there has not been a successful determination of native title over the area, it may proceed without notification as the burning is classed as a “low impact act”. However, as many traditional owners have a particular interest in the use of fire on their traditional lands, every effort should be made to inform them of when and where prescribed burning is proposed to take place.</p>	<p>Attachment 4.7 and s.24JB provide that activities on a “reservation” (established on or before 23 December 1996) are valid. However, “public works” require notification and an opportunity to comment.</p> <p>Attachment 3.1 and s.24LA, NTA list those acts that are not classed as “low impact”. Everything else is “low impact” and, provided it has not been caught in earlier subdivisions, can proceed without notification.</p>
<p>Emergency fire control.</p>	<p>Back-burning, construction of firebreaks etc. that must be done immediately to protect life, property or the environment, may proceed without notification.</p>	<p>Attachment 1.1</p>

WET TROPICS PLAN**GUIDE TO COMMON ISSUES**

This is a guide only. As each situation may vary significantly, assessments must always be undertaken by working through the Work Procedures step by step. Before using this table, ensure that the proposed activity is not dealt with by Work Instruction 1 (proposed actions that may proceed without further reference to native title) and Work Instruction 2 (previous grants of exclusive possession or valid public works that have extinguished native title).

Note: The notification requirements set out below must be undertaken in addition to any QPWS consultation arrangements that may apply.

For most activities, use the Guide for the Nature Conservation Act (Attachment 117).

Additional activities:

Proposed Action	How to Deal with Native Title Issues	Reference
Issue of a permit to keep bees	May proceed without notification as this is considered a “low impact future act”. However, any permit issued must contain a condition that the permit may be cancelled and the hives removed upon an approved determination of native title.	Refer to Attachment 3.1 and s.24LA, NTA.
Issue of permit to use a vehicle on presentation or management roads.	If the road is a valid public work, then native title is extinguished and the permit can be issued. May proceed without notification as this is considered a “low impact future act”.	Refer to Attachment 2.3 and Attachment 4.7 (if on a reserve) Refer Attachment 3.1 and s.24LA, NTA.
Issue of a permit to interfere with a watercourse s.34(e) WTMP.	Provide notification and an opportunity to comment under s.24HA and consider any comments received.	Module H

ATTACHMENT 120

ENVIRONMENTAL PROTECTION ACT **GUIDE TO ENVIRONMENTAL AUTHORITIES**

Deal with Environmental Authorities for environmentally relevant activities (ERAs) as follows:

1. Assess in accordance with Work Instruction 1 and Work Instruction 2 of the Native Title Work Procedures. (Note that if the ERA is to take place on an exclusive tenure granted on or before 23 December 1996, native title is no longer an issue, irrespective of conditions that may be included in the Environmental Authority to manage possible off-site impacts.)
2. If the ERA is listed in the following table, deal with it as indicated.
3. If the ERA is not listed in the table, irrespective of land tenure, it may be dealt with without further consideration of native title. (Generally this will be because the ERA will not itself affect native title but merely condition other approval/s necessary.)

Environmentally Relevant Activity	Notification Requirements
Aquaculture	<ul style="list-style-type: none"> • If the ERA is for an operation totally confined to a non-exclusive agricultural or pastoral lease - notify and provide an opportunity to comment under s.24GB and consider any comments received. (See Attachment 4.2 of Native Title Work Procedures.) • If the ERA is for an operation on freehold land, an agricultural lease or a pastoral lease and it involves taking water from a nearby creek, river or the sea - notify under s.24GD and consider any comments received. (See Attachment 4.3 of Native Title Work Procedures.) • If the ERA is for an operation that is on any other non-exclusive tenure (including in the sea) - notify under s.24HA and consider any comments received. (See Module H of the Native Title Work Procedures.)
Municipal Water Treatment Plant	Notify and provide an opportunity to comment under s.24HA and consider any comments received. (See module H of the Native Title Work Procedures.)
Dredging or quarrying for extractive industry (except quarrying where blasting is involved). 1. On a non-exclusive agricultural or pastoral lease (including from a	Notify under s.24GE and consider any comments received. (See Attachment 4.4 of the Native Title Work Procedures.)

<p>non-boundary watercourse within that lease).</p> <p>2. On a “reservation” that was Gazetted on or before 23 December 1996 (including a road reserve, gravel reserve, State Forest, National Park, Marine Park etc.)</p> <p>3. From a boundary watercourse, a river, the sea etc.</p>	<p>Provided that the dredging or quarrying is otherwise lawful (ie. can be done on the particular reservation):-</p> <ul style="list-style-type: none"> • If it is a “public work” (see definitions) notify under s.24JB and consider any responses received. (See Attachment 4.7 of the Native Title Work Procedures.) • If it is not a “public work”, the licence may be issued under s24JB without further consideration of native title. <p>The licence may be issued without further consideration of native title. (See Attachment 3.3 of the Native Title Work Procedures).</p>
<p>Dredging or excavating material from the bed of any waters for any other purpose, eg. to create new navigation channels or to reclaim land.</p>	<p>Notify under s.24HA and consider any responses received. (See Module H of the Native Title Work Procedures.)</p>
<p>Hard Rock Quarrying (eg. where blasting is involved).</p>	<p>Special “right to negotiate” procedural rights apply. Contact the Principal Policy Officer (Native Title), Central Office for advice.</p>
<p>Mining</p>	<p>Special “right to negotiate” procedural rights apply. Contact the Principal Policy Officer (Native Title), Central Office, for advice.</p>
<p>Mineral Exploration</p>	<p>Special procedural rights apply. Contact the Principal Policy Officer (Native Title), Central Office, for advice.</p>
<p>Operating a Port</p>	<p>Notify under s.24HA. However, if this is a major project (total value \$10 million or more) it must be referred to Department of the Premier and Cabinet, through the Principal Policy Officer (Native Title), Central Office, for assessment-</p>
<p>Operating a Marina or facility for mooring sea-planes.</p>	<p>Notify under s.24HA. However, if this is a major project (total value \$10 million or more) it must be referred to Department of the Premier and Cabinet, through the Principal Policy Officer (Native Title), Central Office, for assessment.</p>

