



## DEPARTMENT OF NATURAL RESOURCES

### NATIVE TITLE WORK PROCEDURES

**APPROVED FOR OPERATIONAL USE AS AT 30 SEPTEMBER 1998**

Approved by

Paul Smith  
Director  
Native Title Services  
Dept of the Premier & Cabinet

Issued by

Yolanda Susic  
Manager  
Native Title Policy Unit  
Department of Natural Resources

Date:

Date:

Issue No. : Version 1

Page 1 of 70

Date : Amended 12 June 2003

Doc No. PAT/301/000

## AMENDMENTS

Amend. No.	Date	Description of Amendment	Author	Approved

# TABLE OF CONTENTS

<b>1.0 INTRODUCTION .....</b>	<b>6</b>
1.1 PURPOSE.....	8
1.2 SCOPE.....	8
1.3 OVERVIEW .....	8
<b>2.0 REFERENCES .....</b>	<b>8</b>
<b>3.0 RESPONSIBILITIES AND DELEGATIONS.....</b>	<b>9</b>
<b>4.0 WORKPLACE HEALTH AND SAFETY .....</b>	<b>10</b>
<b>5.0 CLIENT SERVICE STANDARDS.....</b>	<b>10</b>
<b>6.0 DEFINITIONS.....</b>	<b>10</b>
<b>7.0 PROCESS.....</b>	<b>16</b>

# INDEX OF WORK INSTRUCTIONS AND ATTACHMENTS

ATTACHMENT 1 - PROCESS FLOW CHART .....	18
<b>Work Instruction 1.0: Dealings That May Proceed Without Further Reference to Native Title .....</b>	<b>19</b>
ATTACHMENT 1.1 DEALINGS THAT MAY PROCEED WITHOUT FURTHER REFERENCE TO NATIVE TITLE .....	20
<b>Work Instruction 2.0: Dealings That Can Proceed Because Native Title is Extinguished .....</b>	<b>21</b>
ATTACHMENT 2.1 WHEN PREVIOUS EXTINGUISHMENT IS TO BE DISREGARDED .....	23
ATTACHMENT 2.2 PREVIOUS GRANTS OF EXCLUSIVE POSSESSION THAT EXTINGUISH NATIVE TITLE .....	24
ATTACHMENT 2.3 PREVIOUS USES AND DEVELOPMENTS THAT HAVE EXTINGUISHED NATIVE TITLE .....	25
ATTACHMENT 2.4 OTHER PREVIOUS GRANTS THAT EXTINGUISH NATIVE TITLE .....	26
<b>Work Instruction 3.0: Dealings That Can Proceed Without Notifying Native Title Holders .....</b>	<b>27</b>
Sale of Forest Products (timber & gravel etc.) from Reserves Granted for that Purpose .....	27
Dredging to Obtain Sand and Gravel.....	27
ATTACHMENT 3.1 CERTAIN LOW IMPACT FUTURE ACTS AND CERTAIN PERMISSIBLE FUTURE ACTS.....	28
ATTACHMENT 3.2 CERTAIN PRIMARY PRODUCTION ACTIVITIES ON CERTAIN PASTORAL LEASES.....	29
ATTACHMENT 3.3 SALE OF FOREST PRODUCTS (TIMBER & GRAVEL ETC.) FROM RESERVES GRANTED FOR THAT PURPOSE .....	31
<b>Work Instruction 4.0: Dealings That Require Notification and Consideration of Responses or Other Procedural Rights Before Proceeding.....</b>	<b>33</b>
ATTACHMENT 4.1 LEGALLY ENFORCEABLE RIGHTS, OFFERS, ETC. ....	34
ATTACHMENT 4.2 PRIMARY PRODUCTION ACTIVITIES WHICH REQUIRE NOTIFICATION BEFORE PROCEEDING.....	35
ATTACHMENT 4.3 ACTS PERMITTING OFF-FARM ACTIVITIES DIRECTLY CONNECTED TO PRIMARY PRODUCTION ACTIVITIES (EG. ACTIVITIES ON ADJOINING RESERVES & STOCK ROUTES ETC).....	36
ATTACHMENT 4.4 GRANTING RIGHTS TO THIRD PARTIES (INCLUDING LESSEES) ON NON- EXCLUSIVE AGRICULTURAL OR PASTORAL LEASES .....	37
ATTACHMENT 4.5 MANAGEMENT OF WATER AND AIRSPACE.....	38
ATTACHMENT 4.6 RENEWALS, EXTENSIONS ETC OF LEASES, LICENCES, PERMITS OR AUTHORITIES .....	39
ATTACHMENT 4.7 DEVELOPMENT OF RESERVES OR LEASES FOR PUBLIC PURPOSES.....	42
ATTACHMENT 4.8 FACILITIES FOR SERVICES TO THE PUBLIC.....	45
ATTACHMENT 4.9 ACTIVITIES WHERE ADJOINING OR CO-EXISTING OWNERS HAVE A PROCEDURAL RIGHT TO BE NOTIFIED.....	46
ATTACHMENT 4.10 ACTS THAT PASS THE FREEHOLD TEST .....	47

<b>Work Instruction 5.0: Other Future Act Options .....</b>	<b>49</b>
ATTACHMENT 5.4 DEVELOPMENTS FOR A PUBLIC PURPOSE -COMPULSORY ACQUISITION..	51
<b>Practice Attachments .....</b>	<b>53</b>
ATTACHMENT 100 EXAMPLES OF DOCUMENTATION WHICH MUST BE OBTAINED TO SUPPORT DECISIONS (DEALING APPROVED OR NOT APPROVED).....	53
ATTACHMENT 101 NATIVE TITLE WORK PROCEDURES - DOCUMENTED DECISION/RESPONSIBILITIES.....	54
ATTACHMENT 102 DELEGATED AUTHORITY .....	55
ATTACHMENT 103 PROPOSED AMENDMENTS FORM .....	56
ATTACHMENT 104 NOTIFYING NATIVE TITLE HOLDERS.....	57
ATTACHMENT 105 CONSIDERING COMMENTS BY REGISTERED NATIVE TITLE BODIES CORPORATE, REGISTERED NATIVE TITLE CLAIMANTS AND ABORIGINAL AND TORRES STRAIT ISLANDER REPRESENTATIVE BODIES .....	58
ATTACHMENT 106 CONTACT LIST - QUEENSLAND NATIVE TITLE REPRESENTATIVE BODIES AND ACCOMPANYING MAP .....	59
ATTACHMENT 107 NATIVE TITLE AND THE INTEGRATED PLANNING ACT 1997 .....	60
ATTACHMENT 108 INFORMATION REGARDING COST BENEFIT ANALYSIS SUPPORTING RECOMMENDED FUTURE ACT OPTION.....	61
ATTACHMENT 109 INDIGENOUS LAND USE AGREEMENTS.....	65
ATTACHMENT 110 GOVERNMENT LAND MANAGEMENT SYSTEM DEALINGS .....	66
ATTACHMENT 111 CONSTRUCTION OF BOAT RAMPS, JETTIES AND PONTOONS.....	70

## **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 dealings, in 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 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 bodies corporate, registered native title claimants and Aboriginal and Torres Strait Islander Representative Bodies before departments can undertake certain types of permissible future acts. 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, with 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 or set aside 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 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 Work Procedures for Decision Making (PAT/101/000) are no longer appropriate. Therefore, they have been withdrawn and have been replaced by this document, effective from 30 September 1998.

These procedures are based on the following understanding of the key dates relevant to the development of native title legislation:

**26/1/1788**

**European settlement commenced at Botany Bay**

Valid acts

**31/10/1975**

**Racial Discrimination Act 1975 commenced**

Valid acts and past acts which were invalid because of the Racial Discrimination Act and which have subsequently been validated by the Native Title Act 1993 (Cth)

**30/6/1993**

**Prior Commitments, Earlier Authorities, Legally Enforceable Rights**

Valid acts and past acts which were invalid because of the Racial Discrimination Act and which have subsequently been validated by the Native Title Act 1993 (Cth)

**1/1/1994**

**Native Title Act 1993 (Cth) commenced**

Valid acts and invalid intermediate period acts which have been validated by the Native Title Amendment Act 1998 - procedural rights apply to certain validations.

**23/12/1996**

**Latest date applicable to validation of invalid intermediate period acts including grants, prior commitments, earlier authorities and legally enforceable rights**

**31/3/1998**

**Latest date for certain legislative amendments to be validated (eg. NTA 24GB(1)e & 24GC (1) (d) )**

**30/09/1998**

**Commencement of the *Native Title Amendment Act 1998* (Cth)**

Future acts which affect native title and to which procedural rights apply

**NOW**

## **1.1 PURPOSE**

This Procedure provides a mechanism for appropriately incorporating consideration of native title implications into land and natural resource management decisions. In doing so, it satisfies the requirements imposed by the NTA and ensures that dealings in land and natural resources are made validly.

## **1.2 SCOPE**

This Procedure applies to all dealings in land and natural resources undertaken by the Department of Natural Resources.

## **1.3 OVERVIEW**

This Procedure provides a flow chart (Attachment 1, Page 17) that sets out sequentially the broad questions that must be asked when assessing native title implications for a dealing. Once a decision to proceed has been made with a dealing in accordance with the steps in the flow chart there is no need to continue to work through the flow 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 dealing may proceed.

All decisions (see some 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. Decisions must be recorded in ATSilCS. Attachment 101 may be used in addition to, but not instead of, ASTSilCS.

Amongst other things, the procedure also defines relevant terms and sets out the levels of responsibility and authority for decision making. Authority and responsibility can be delegated, when appropriate, as set out in Work Instruction 3.0.

## **2.0 REFERENCES**

### Legislation

*Acquisition of Land Act 1967*

*Forestry Act 1959*

*Land Act 1962*

*Land Act 1994*

*Land Regulation 1995*

*Native Title Act 1993 (Cth)*

*Native Title Amendment Act 1998*  
*Native Title (Queensland) Act 1993*  
*Racial Discrimination Act 1975 (Cth)*  
*River Improvement Trust Act 1940*  
*Statutory Instruments Act 1992*  
*Transport Infrastructure Act 1994*  
*Water Resources Act 1989*

### **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 native title considerations to be embedded within the administrative process.

The following delegations will apply to decisions made under this procedure.

Within the scope of this Procedure, District Managers (in respect of dealings processed in the Districts) and the Manager, Native Title Policy Unit (NTPU) (in respect of dealings processed in CHQ) are responsible for deciding:

- in accordance with Work Instructions 1 - 5, whether or not a dealing should proceed;
- in accordance with Work Instruction 4, what procedural rights should be provided to registered native title bodies corporate or registered native title claimants and Aboriginal and Torres Strait Islander Representative Bodies and what action should be taken to consider any comments that may arise from the provision of procedural rights. In this regard, the normal requirements of judicial review will apply;
- in accordance with Work Instruction 5, when recommendations for the use of a Future Act Option will be made;

District Managers and, where necessary, the Manager NTPU (as the case may be) are responsible for ensuring that the relevant documentation and factual information relied upon in making any decision is appropriately filed at the time the decision is made. The decision must be recorded in ATSilCS. (Refer also to Attachment 100). Attachment 101 may be used in addition to but not instead of ATSilCS.

The District Managers and the Manager NTPU may delegate in writing, any of their responsibilities as defined in this procedure to an appropriate senior operative within the Department of Natural Resources (see Attachment 102). The District Managers and the Manager NTPU (as the case may be) and the persons to whom responsibilities are delegated are accountable for the decisions delegated.

Regarding ILUAs, the Manager NTPU is responsible for both:

- coordination of submissions to the Department of the Premier and Cabinet for approval to enter into negotiation to establish an ILUA; and
- dissemination of relevant information to operational staff of DNR in regard to ILUAs which may impact upon dealings in land or natural resources, or any of the matters considered in these Procedures.

District Managers (via the Manager NTPU) and/or the Manager NTPU are responsible for referring any sensitive or significant issues to the Department of the Premier and Cabinet for advice, consideration, approval or information as appropriate.

The issues may be identified by unusual aspects such as the extent or complexity of an issue or known indigenous interests.

If any issue arises in regard to the need for clarification or suggested changes to this procedure, refer to Attachment 103.

#### **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 Natural Resources' safety manual.

#### **5.0      *CLIENT SERVICE STANDARDS***

Flow chart Step 1 - 1 week from the date of commencement of Step 1.

Flow chart Step 2 - 1 month from the date of commencement of Step 2.  
If Native Title Services research is required, 3 months from the date of their commencement of native title considerations.

Flow chart Step 3 - 1 week from the date of commencement of Step 3.

Flow chart Step 4 - 1 week from the date of commencement of Step 4.

Flow chart Step 5 - Regions: 1 month from the date of commencement of Step 5.  
Native Title Policy Unit: 1 month from the date of receipt of all material from the relevant region.

Flow chart Step 6 - Regions: 1 week from the date of commencement of Step 6.  
Native Title Policy Unit: 1 month from the date of receipt of all material from the relevant region.

#### **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 a dealing 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 to record and provide information about 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*).

**CHQ** means Central Headquarters, Department of Natural Resources.

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

**DP&C** means the Department of the Premier and Cabinet.

**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).

**ILUA** means Indigenous Land Use Agreement.

**Indigenous Land Use Agreement (ILUA)** is a registered agreement with indigenous people regarding particular dealings in land and resources. (See ss.24BA & ff, 24CA & ff and 24DA & ff NTA).

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

**Just Terms:** 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;

but 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:

- 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. (s.253 NTA).

In other words, “mine” excludes quarry except where the purpose of the quarrying is to extract, etc. minerals and except where the quarrying is effected by cutting and/or blasting.

**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 dealing 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).

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

**Non-extinguishment Principle** means that in law native title is not extinguished:

- (a) If the act/dealing affects native title in relation to the land or waters concerned, the native title is nevertheless not extinguished either wholly or partly.
- (b) If the act/dealing is wholly inconsistent with the continued existence, enjoyment or exercise of native title rights and interests, the native title continues to exist in its entirety but the rights and interests have no effect in relation to the act/dealing.

- (c) If the act/dealing is partly inconsistent with the continued existence, enjoyment or exercise of native title rights and interests, the native title continues to exist in its entirety but the rights and interests have no effect in relation to the act/dealing to the extent of the inconsistency.
- (d) If the act/dealing or its effects are later wholly removed or otherwise wholly cease to operate, the native title rights and interests again have full effect.
- (e) If the act/dealing or its effects are later removed only to an extent, or otherwise cease to operate only to an extent, the native title rights and interests again have effect to that extent. (s.238 NTA).

**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).

**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*.

**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); or
- 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. (s.248 NTA).

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. (s.24GA NTA).

**Proprietary Interest** means the interest of any person or entity 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**

- 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. (s.253 NTA).

**Quarry** includes 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*).

**Representative Body** means a representative Aboriginal/Torres Strait Islander body (s.253 NTA; see also Work Instruction 5.0, Attachment 106).

**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.
- (s.93 *Land Act 1994* ).

**Routine Management** means those activities associated with tree management as referred to in ss.268 and 269 of the *Land Act 1994* and as prescribed in ss.24I, 24J and 24K of the *Land Regulation 1995*.

**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 travelling 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 (usage report).

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

**Usage Report** means an investigation of present and historical usage of the land.

**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; or
- c) the shore, or subsoil under the airspace over the shore, between high water and low water. (s.253 NTA)

## **7.0 PROCESS**

Whilst as at 30 September 1998, the date of the commencement of these procedures, there are no Indigenous Land Use Agreements (ILUAs) 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 dealing under consideration, applies prior to working through the flow chart. Staff involved with processing land and resource dealings 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 ILUAs is the responsibility of the Manager NTPU.

The flow chart (Attachment 1) is the key element of this procedure. It sequentially sets out what considerations must be made 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 prerequisite for Part 3 (that is, Parts 2 and 3 may be used as alternatives). However, both Parts 2 and 3 are prerequisites for Part 4. 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 flow chart 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 dealing; or
- proceed with the dealing 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 NTPU; or
- refuse the dealing.

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 dealings under Work Instruction 1.0 do not require documentation for this procedure.

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

- Tenure information (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);
- 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 in ATSILCS. Attachment 101 may be used in addition to, but not instead of, ATSILCS.

If the dealing is such that it is not clearly catered for by this procedure the dealing must be referred to the Manager NTPU, with recommendation and supporting material, for advice. Further, any dealing to which Work Instructions 3, 4 or 5 apply must be referred to NTPU for consideration before approval if the total proposed project value is in excess of \$10M.

#### **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 Procedures. Appropriate systems should be maintained to simplify audit requirements.

**ATTACHMENT 1 – PATH THROUGH NATIVE TITLE ASSESSMENT**

**SEE PATH THROUGH NATIVE TITLE ASSESSMENT POSTER AT**

**[nrm.qld.gov.au/nativetitle/pdf/policy/assessment\\_path.pdf](http://nrm.qld.gov.au/nativetitle/pdf/policy/assessment_path.pdf)**

***Work Instruction 1.0: Dealings That May Proceed Without  
Further Reference to Native Title***

SUPERSEDED

REFER TO CHAPTER ONE INTRODUCTION OF NEW PROCEDURES

**ATTACHMENT 1.1 DEALINGS THAT MAY PROCEED WITHOUT FURTHER  
REFERENCE TO NATIVE TITLE**

**THIS ATTACHMENT HAS BEEN SUPERSEDED BY  
MODULES AA – AD IN THE NEW NATIVE TITLE WORK  
PROCEDURES FROM 3 MARCH 2003.**

## ***Work Instruction 2.0: Dealings 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, dealings 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 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 (see 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 (see 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. ATSILCS must be used to record the decision.

Attachment 101 may be used in addition to, but not instead of, ATSilCS. A synopsis of the major reasons for the decision only needs to be provided.

**THIS ATTACHMENT HAS BEEN SUPERSEDED BY  
MODULE BB IN THE NEW NATIVE TITLE WORK  
PROCEDURES.**

**THIS ATTACHMENT HAS BEEN SUPERSEDED BY  
MODULE BA IN THE NEW NATIVE TITLE WORK  
PROCEDURES.**

### 2.3.1 PUBLIC WORKS

**THIS ATTACHMENT HAS BEEN SUPERSEDED BY MODULE CA IN THE NEW NATIVE TITLE WORK PROCEDURES.**

### 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.

However, an assessment of extinguishment by private development or use will be rare as there will generally have been exclusive tenures granted in such situations.

Accordingly, DNR staff must not assess whether or not valid private development 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 NTPU for consideration and recommendation if appropriate to the DP&C for assessment.

**THIS ATTACHMENT HAS BEEN SUPERSEDED BY  
MODULES BA IN THE NEW NATIVE TITLE WORK  
PROCEDURES.**

<p><b><i>Work Instruction 3.0: Dealings That Can Proceed Without Notifying Native Title Holders</i></b></p>
---

This Work Instruction has three Attachments:

ATTACHMENT	Type of Activity
• Attachment 3.1	- Certain Low Impact Future Acts and Certain Permissible Future Acts
• Attachment 3.2	- Certain Primary Production Activities on Certain Pastoral Leases
• Attachment 3.3	- Sale of Forest Products (timber & gravel etc.) from Reserves Granted for that Purpose
• Attachment 3.4	- Dredging to Obtain Sand and Gravel

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 (see 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 dealing you are considering is listed on the hierarchy before (ie. above) low impact future acts, then the process described in the Attachment relevant to that dealing MUST BE followed regardless of whether or not you consider the dealing 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 pastoral leases that do not extinguish native title may proceed without notification as outlined in Attachment 3.2.

**ATTACHMENT 3.1 CERTAIN LOW IMPACT FUTURE ACTS AND CERTAIN PERMISSIBLE FUTURE ACTS**

**THIS ATTACHMENT HAS BEEN SUPERSEDED BY  
MODULE L IN THE NEW NATIVE TITLE WORK  
PROCEDURES.**

<b>ATTACHMENT 3.2      CERTAIN PRIMARY PRODUCTION ACTIVITIES ON CERTAIN PASTORAL LEASES</b>
---

This Attachment applies to 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 bodies corporate, 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 leases 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. (s. 24GB(4)(a) NTA)**

### **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, sunflower) would be considered as preparation for cultivation and therefore would require notification (see Work Instruction 4.0, Attachment 4.2).

### **Water Harvesting**

- Granting Water Licences for bores or referable dams which are for stock or domestic use 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 in Work Instruction 4.0, Attachment 4.5.**

**\* See Work Instruction 4.0, Attachment 4.3 for instances where notification is required for water being obtained from a source “off” the lease.**

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

<b>ATTACHMENT 3.3 SALE OF FOREST PRODUCTS (TIMBER &amp; GRAVEL ETC.) FROM RESERVES GRANTED FOR THAT PURPOSE</b>
---

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 the type quarrying which is included in the definition of mine under the NTA (see the definition of mine in 6.0 Definitions).

Discussions are currently taking place in regard to the provision of notification for the sale of forest products from reserves on a courtesy basis. Consequently, this work instruction may be subject to change.

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

**THIS ATTACHMENT HAS BEEN DELETED.**

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

**THIS WORK INSTRUCTION HAS BEEN SUPERSEDED BY CHAPTER 5 - INTRODUCTION IN THE NEW NATIVE TITLE WORK PROCEDURES.**

## **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 a dealing on the basis of this Attachment without first obtaining the agreement of the NTPU.**

**A copy of any such approval by the NTPU is to be forwarded to the DP&C for information, or, if in any doubt, the approval of the DP&C is to be obtained.**

<b>ATTACHMENT 4.2      PRIMARY PRODUCTION ACTIVITIES WHICH REQUIRE NOTIFICATION BEFORE PROCEEDING</b>
---

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.**

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

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 off-farm land or waters from having reasonable access to the off-farm 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.

Note 1: An example of such an off-farm activity is an irrigation channel over a stock route. This requires the temporary closure of a road with the subsequent issue of a road licence. To comply with the requirements of this Attachment 4.3, the grant of the road licence should contain a condition that does not prevent native title holders from having reasonable access to the subject area. The use of the channel for the provision of water to the freehold estate, agricultural or pastoral lease would take precedence.

Note 2: Off-farm agricultural activities do not fall within this Attachment 4.3, eg. a temporary road closure and subsequent road license which permits sugar cane growing because that may confer a right of exclusive possession.

Note 3: The non-extinguishment principle applies.

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.

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

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 (eg. when cutting and/or 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 not of the view that notifications for the issue of permits and licences to extract resources from reserves for those purposes are required. However, such notifications in respect of reserves such as State Forests, Timber Reserves and Gravel Reserves, are proposed to be implemented at the earliest agreed date which can be implemented in practice, as a matter of courtesy. (See Work Instruction 3.0, Attachment 3.3).

**THIS ATTACHMENT HAS BEEN SUPERSEDED BY  
MODULE H IN THE NEW NATIVE TITLE WORK  
PROCEDURES.**

<b>ATTACHMENT 4.6</b>	<b>RENEWALS, EXTENSIONS ETC OF LEASES, LICENCES, PERMITS OR AUTHORITIES</b>
-----------------------	---

Renewal of tenures on the same terms and conditions is considered briefly in Work Instruction 1.0, Attachment 1.1. This Attachment 4.6 also deals with renewals. It 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.

**NOTIFICATION NOT REQUIRED:**

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 (ie. is a renewal under this Attachment 4.6); 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 (eg. 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).

**NOTIFICATION REQUIRED:**

**The following changes can proceed with notification to native title holders:**

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 (see Attachment 4.2).
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 what is 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.

<b>ATTACHMENT 4.7      DEVELOPMENT OF RESERVES OR LEASES FOR PUBLIC PURPOSES</b>
--

This Attachment deals with land held by the State, Statutory Authorities, Government Owned Corporations, Local Government or other Trustee 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 and National Parks or land otherwise vested for a particular purpose. All of these will be referred to as Reserves for the purpose of this Attachment.

This Attachment **does not** deal with unrestricted State Freehold (ie. freehold without any restrictive purpose).

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 which Requires Notification**

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.

#### **New Development of Reserves Where Native Title Has Not Previously Been Extinguished**

*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 cricket field on a recreation reserve, will require notification (see Attachment 104).*

The NTA defines a PUBLIC WORK TO mean:

- 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 will include dredging for shipping channels/navigational purposes);

OR

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

### **Changing Purpose of a Reserve**

A reserve can be regazetted for another purpose so long as the proposed purpose would not have a greater effect on native title than the current purpose.

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.

### **Management Plans**

This applies to a State park intended to preserve the natural environment of an area, eg. a State forest intended to preserve the natural environment of an area; a reserve for environmental purposes.

Before creating a management plan over such an area, native title parties must be notified and provided with an opportunity to comment.

It is important to note that whilst generally a management plan does not in itself affect native title when giving effect to anything recommended by the plan it will be necessary to consider native title implications before proceeding. For example, capital works proposed in a management plan must not proceed until potential native title holders have been notified and provided with the opportunity to comment.

**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.

## **Aboriginal and Torres Strait Islander DOGITs and Reserves**

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 (registered native title bodies corporate, registered native title claimants, all relevant Representative Bodies, and common law 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**. 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 NTPU.
- 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.
- 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 Work Instruction 2.0).
- With regard to State Forests, National Parks and Timber Reserves, appropriate notification should be given as a matter of courtesy for planned fuel reduction controlled burning. This would not apply to emergency situations such as back burning to fight bush fires.

### **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.
- Existing valid improvements on reserves may be maintained without notification.

**THIS ATTACHMENT HAS BEEN SUPERSEDED BY  
MODULE K IN THE NEW NATIVE TITLE WORK  
PROCEDURES.**

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

If adjoining or co-existing owners 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.

Where the public at large, rather than specific adjoining or co-existing owners, have a procedural right to be notified of an activity, no extra notification is required.

## ATTACHMENT 4.10 ACTS THAT PASS THE FREEHOLD TEST

A dealing can occur on the basis of passing the freehold test if:

1. the dealing is not a legislative act; AND
2. the dealing relates to an onshore place; AND
3. (a) it could be done in relation to the land concerned if the native title holders instead held ordinary title to it; OR  
(b) the dealing could be done in relation to the waters concerned if the native title holders concerned held ordinary title (ie. freehold title) to the land adjoining, or surrounding, the waters; AND
4. State or Commonwealth legislation (such as the *Cultural Record (Landscapes Queensland and Queensland Estate) Act 1987*) makes provision for the protection of any areas or sites that may be in the area in which the act is to be done and are of particular significance to Aboriginal or Torres Strait Islander people.

Note 1: Any proposed dealing which is a legislative act, ie. consists of the making, amendment or repeal of legislation, must be referred to the NTPU for consideration.

Note 2: This Attachment does not apply to the compulsory acquisition of native title (see Work Instruction 5.0).

Note 3: This Attachment does not apply if there is an approved determination of native title over the subject area. Contact NTPU for advice if the area is subject to an approved determination of native title.

### **Notifying native title holders**

Native title holders and any registered native title claimants must be afforded the same procedural rights as if they were ordinary title holders (ie. freeholder title holders) to the land concerned, or to the land adjoining or surrounding any waters concerned.

If the only right that would exist is a right to be notified, this can be satisfied as outlined in Attachment 104.

### **Other procedural rights**

If there are other procedural rights that require another person to do any thing in relation to the native title holders (by affording them the same procedural rights as if they were ordinary title holders (ie. freeholder title holders) to the land concerned, or to the land adjoining or surrounding any waters concerned, then the person may give effect to the requirement:

- (a) by doing the thing in relation to an registered native title claimant in relation to the subject area; OR
- (b) if there are no registered native title claimants - by ensuring that any Representative Body for the subject area has the opportunity to comment on the doing of the act.

If comment is made by any Representative Body in accordance with paragraph (b) above, then those comments must be considered before doing the thing required to be done.

**The non-extinguishment principle applies to a dealing which proceeds under this Attachment 4.10.**

## ***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 dealings to proceed subsequent to following the prescribed process.

Compulsory acquisition, if appropriate, may be carried out with the approval of the Native Title Policy Unit. The remaining three options (Right to Negotiate, Non-claimant Application and Indigenous Land Use Agreement) however, will involve issues relevant to other departments and may only be commenced with the approval and co-ordination of the Department of the Premier and Cabinet through the NTPU. Attachment 108 sets out the information which may be required by the NTPU when it determines 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.

**\*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 NTPU will coordinate submissions to the Department of the Premier and Cabinet for approval where this option is considered appropriate.*

<b>ATTACHMENT 5.4 DEVELOPMENTS FOR A PUBLIC PURPOSE - COMPULSORY ACQUISITION</b>
--

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, native title is extinguished and 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 approach to the compulsory acquisition of native title rights and interests, please contact the NTPU to discuss the proposed acquisition.

## *Practice Attachments*

### **ATTACHMENT 100    EXAMPLES OF DOCUMENTATION WHICH MUST BE OBTAINED TO SUPPORT DECISIONS (DEALING 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 ATSilCS Attachment 101 may be used in addition to, but not instead of, ATSilCS. 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 title from the Automated Titling System;
- a copy of the lease document;
- a copy of a permit or licence document;
- an inspection report describing the nature and extent of development;
- aerial photographs or a sketch plan of the 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, indigenous connection to the land, and past or present usage; and
- description of any Aboriginal or Torres Strait Islander interest, if relevant.

**ATTACHMENT 101 NATIVE TITLE WORK PROCEDURES - DOCUMENTED  
DECISION/RESPONSIBILITIES**

NB. This Attachment may be used in its current form or incorporated with another approval document used by the Department. This form does not remove the need to enter decisions and data into ATSILCS.

**Subject Parcel:** Lot \_\_\_\_\_ **Plan** \_\_\_\_\_

**County** \_\_\_\_\_

**Local Authority** \_\_\_\_\_

**Area:** \_\_\_\_\_

**Current Tenure:** \_\_\_\_\_

**Commenced:** \_\_\_\_\_

**Proposed Dealing:** \_\_\_\_\_

**Decision:** [proceed/ proceed with notification/ recommend Future Act Option to  
NTPU/ refuse dealing]

**Basis for Decision:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

**Name of Decision Maker:** \_\_\_\_\_

**Position:** \_\_\_\_\_

**Signature:** \_\_\_\_\_

**Date:** \_\_\_\_\_

**I, (insert name), pursuant to the responsibilities as set out in the Native Title Work Procedures, do, by this Instrument of Delegation, delegate to the Officers of the Department of Natural Resources the powers, authorities and functions as set out hereunder:**

**OFFICER(S)**

**POWER, AUTHORITIES and FUNCTIONS.**

A. G. Employee  
A. Nother

In accordance with steps 1- 3 of the flow chart in Attachment 1 of the Native Title Work Procedures, deciding whether or not a dealing should proceed. (OR)

In accordance with step 4 of the flow chart in Attachment 1 of the Native Title Work Procedures, deciding when procedural rights should be provided and what action should be taken to consider any comments that may arise from the provision of these rights. (OR)

A. N. Employee

In accordance with step 5 of the flow chart in Attachment 1 of the Native Title Work Procedures, deciding whether the compulsory acquisition of native title is an option and is warranted. (OR)

In accordance with step 5 of the flow chart in Attachment 1 of the Native Title Work Procedures, deciding when to make recommendations for the use of a Future Act Option other than the compulsory acquisition of native title. (OR)

In accordance with step 6 of the flow chart in Attachment 1 of the Native Title Work Procedures, deciding whether to refuse a dealing, or to consult with the Native Title Policy Unit.

Dated at \_\_\_\_\_ this  
[signed]  
A. Manager  
District Manager  
[insert appropriate district]

[insert date] day of [insert month] 1998

**ATTACHMENT 103 PROPOSED AMENDMENTS FORM**

To: Manager  
Native Title Policy Unit  
Department of Natural Resources  
Locked Bag 40  
**COORPAROO DC QLD 4151**

DETAILS OF PROPOSED AMENDMENTS

Document No.

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

Name of Officer Submitting Amendment \_\_\_\_\_

Position of Officer: \_\_\_\_\_

Date: \_\_\_\_\_

Contact Telephone Number: \_\_\_\_\_

Name and position of reviewing officer: \_\_\_\_\_

Feedback provided to submitting officer: YES / NO

**THIS ATTACHMENT HAS BEEN SUPERSEDED BY  
ANNEXURES 7.2 AND 7.3 IN THE NEW NATIVE TITLE  
WORK PROCEDURES.**

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

**THIS ATTACHMENT HAS BEEN SUPERSEDED BY  
ANNEXURE 8.5 IN THE NEW NATIVE TITLE WORK  
PROCEDURES.**

**THIS ATTACHMENT HAS BEEN SUPERSEDED BY  
ANNEXURE 8.4 IN THE NEW NATIVE TITLE WORK  
PROCEDURES.**

**ATTACHMENT 107 NATIVE TITLE AND THE INTEGRATED PLANNING ACT**

**1997**

If DNR is required to give its written consent to an application, as “owner” of the land, native title implications must be assessed in accordance with these Procedures **prior to giving any consent**.

Where native title has not been extinguished by a tenure or use which is inconsistent with the continued existence of native title (see Work Instruction 2.0), **then**, DNR must attend to the notification under these Procedures (see Work Instruction 4.0) and must not sign its consent to the application until such time as the process prescribed under these Procedures has been fully performed.

Where notification under these Procedures is required and the application covers a variety of dealings (eg. on a larger development):

- (a) all dealings are to be dealt with in one notification rather than multiple notifications;
- (b) further, if the application involves a variety of dealings for which different departments, including DNR, have administrative responsibility, one notification is to be used for all departments. DNR is to coordinate this notification on behalf of itself and other relevant departments.

<b>ATTACHMENT 108      INFORMATION REGARDING COST BENEFIT ANALYSIS SUPPORTING RECOMMENDED FUTURE ACT OPTION</b>
---

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 NTPU when recommending that a Future Act Option should proceed.

- (1) Date:
- (2) DNR file reference:
- (3) Name of proposed grantee/third party:
- (4) Government party proposing to make the grant:
- (5) Has the grantee/third party formally requested the Future Act Option?
- (6) Is the grantee/third party willing to pay the application fee for the future act if required? [Refer also to (16)].

**Information Regarding Project:**

- (7) Description of the proposed development:
- (8) Description of the subject land and/or waters:  
  
Lot: \_\_\_\_\_ Plan: \_\_\_\_\_  
  
Area (ha) of the subject land: \_\_\_\_\_
- (9) Proposed tenure/interest to be issued:  
(NB. This should include any special terms and conditions that are to be included in the terms and conditions of the tenure/interest).
- (10) 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:

In most instances, the information will be readily available from:

- Valuers within the Department of Natural Resources - in respect of the information required in paragraph (a); and
- The relevant file - in respect of the information required in paragraphs (b) - (e).

If the information is not readily available from valuers within the Department of Natural Resources and/or the relevant file, then the applicant should be asked to provide the information.

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) A usage report (including photos if not already 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 or available information of indigenous interests in the land. (eg. from relevant DNR files)

(16) Information regarding funding:

- (a) Has the proposed grantee/third party indicated the scope of any offer it may be prepared to make to native title claimants during a negotiation process? If so, 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, provide details:
- (c) Have other government departments been approached regarding contributions that they may be able to make to the process? If so, 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: \_\_\_\_\_

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 (ILUAs) provide greater scope for the achievement of acceptable and workable outcomes in mediation and in State development projects.

Under the NTAA, ILUAs 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 (i.e. s.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 s.22B (i.e. 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).

ILUAs 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 bodies corporate 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 ILUAs have implications for the proposed dealing or the resources, land or waters which will be affected by the proposed dealing. The Manager NTPU will provide information in regard to ILUAs when they are registered.

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 been extinguished by a previous inconsistent grant, development or use the dealing can 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 by a previous inconsistent grant, development or use, then disposal or transfer of unrestricted State freehold to another government department or statutory authority may proceed as this will not affect native title. (see Attachment 1.1).

Note: If the disposal is a disposal of a Reserve to another government department as it is no longer required by the trustee for its gazetted purpose, and native title has not been extinguished by a previous inconsistent grant, development or use, consider whether the proposed use of the land will have a greater impact on native title than the current purpose. If not, check whether State legislation permits 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.

If native title has not been extinguished, or the disposal of a Reserve can not proceed in accordance with the preceding paragraph, 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 111 CONSTRUCTION OF BOAT RAMPS, JETTIES AND PONTOONS**

**THIS ATTACHMENT HAS BEEN DELETED.**