

Module CB

State Road Policy

**IS YOUR PROPOSED DEALING IN AN AREA THAT WAS OR IS VALIDLY
DEDICATED OR DECLARED AS ROAD?**

This Module helps you assess whether your proposed dealing will be in an area that was or is validly dedicated or declared as road.

If your proposed dealing will not be done in a current or former road area, proceed to the **next Module**.

TABLE OF CONTENTS

Part 1	Introduction.....	3
Part 2	How do I use this Module?	5
Division A Dedication Assessment Table		
Part 3	What is the Dedication Assessment Table?.....	6
Division B Dedication Assessment Guide		
Part 4	What is the Dedication Assessment Guide?	11
Division C Declarations of roads under various transport legislation		
Part 5	Declarations of areas as road	23
Part 6	Effect on native title by a declaration of areas as road	24
Division D Helpful hints and explanations		
Part 7	Off-alignment constructed roads	26
Part 8	Roads and watercourses.....	27
Part 9	Explanations and reasoning behind the Dedication Assessment Table	29
Division E Effect on native title, compensation and decision-making		
Part 10	What is the effect on native title?.....	31
Part 11	Is compensation payable for the effect on native title by the dedication?	32
Part 12	Who makes the decision whether this module applies?.....	32

Part 1 Introduction

The current State Road Policy is contained in Module CB. This Module replaces all previous policies about road dedications.

The State Road Policy is based upon the definition of a public work in section 253 of the NTA. Under this definition, a road constructed or established by or on behalf of the Crown is a public work. The use of the expression “constructed or established” means that roads established without also being constructed are also captured by the definition. It is the State’s view that a road is established by the dedication or declaration of an area of land as road.

The dedication or declaration of land as road is the process by which a particular area of land is opened to the public for use as a road. The box below lists the different ways in which land can become dedicated as road under the various land legislation or declared as road under various transport legislation.

Dedicated as road



A reserve for road purposes dedicated under various land legislation, eg. *Land Act 1962*, does NOT constitute a dedicated road.

An area is dedicated as road where-

- an area of unallocated State land (or vacant Crown land) has been dedicated or declared opened as road for public use by notification published in the Queensland Government Gazette – section 94 *Land Act 1994* and section 362(1) *Land Act 1962*;
- it has been created by virtue of a plan of subdivision of a freehold lot under section 51(2) of the *Land Title Act 1994* or section 119 of the *Real Property Act 1861*;
- an area of Crown land was distinctly delineated as “road”, on a plan of survey which has been registered and deposited in the office of the chief executive (surveys) and that plan has been subject of Executive Authority action (Governor in Council approval, for example, of a lease document referring to the plan showing the road) on or before 30 June 1995 – section 362(2) *Land Act 1962*;
- it is unsurveyed and was shown through a pastoral lease or occupation licence by being delineated by a dotted line on a map or plan published by the Department of Lands on or before 30 June 1995 and that map or plan has been subject of Executive Authority action on or before 30 June 1995 (Governor in Council approval, for example, of a pastoral lease document referring to the map or plan showing the road)– section 362(3) *Land Act 1962*; or
- it is shown on a lease that was in existence as at 1 July 1995 (the date on which the *Land Act 1994* commenced) or such lease mentions a plan which shows “road” as excluded, the

road is taken to be dedicated as road open to public use – section 96(1) *Land Act 1994*. If a better description of the location of the road becomes available the Minister, by gazette notice, may declare that the location of the road is amended by the description stated in the notice – section 96(3) *Land Act 1994*.

Declared as road

An area is declared as road where -

- the Governor in Council confirmed the recommendation of the Commissioner by declaring by Proclamation that a road, route or means of access was a State highway, main road, developmental road, secondary road, urban arterial road or urban sub-arterial road - section 11(3) *Main Roads Act 1920*;
- the Minister (on recommendation of the Corporation) by notification published in the Gazette declared a road, route or means of access to any land, or any part of a road, route or means of access, to be a declared road – section 3.1(1) *Transport Infrastructure (Roads) Act 1991*; or
- the Minister by gazette notice declared a road or route, or part of a road or route, to be a State-controlled road - section 21 *Transport Infrastructure Act 1994* (for the period 15 April 1994 to 30 June 1995) or 23(1) *Transport Infrastructure Act 1994* (for the period 1 July 1995 to 30 November 2003) or section 24 *Transport Infrastructure Act 1994* (for the period 1 December 2003 to present).

In the Full Federal Court decision in *Fourmile v Selpam* (“Selpam”)¹ it was held that the Crown’s dedication of land, under a statutory process, as a road extinguished native title. The Court held that upon dedication of the area as road, immediate enforceable rights of free passage are created in the public over the land that are wholly inconsistent with the continuation of native title –

*“... where the Crown, acting under statutory authority, constitutes wastelands of the Crown as a public road, ie, as a road open to immediate use as such by the public, that is an act that will, in all save an exceptional case, be wholly inconsistent with any continuing right to enjoy native title in those lands; it will be sufficient to extinguish native title for the reason that it is an act that creates in third parties (members of the public) the enforceable right of free passage over the lands and denies to all persons the right to use the land for any other purpose than free passage or a purpose incidental thereto...”*²

However, you must look to the NTA and not the common law³ (eg. Selpam) in order to ascertain the effect on native title of the valid dedication or declaration of an area as road. This is why

¹ (1998) 152 ALR 294.

² per Drummond J at 312.

³ The need to look to the NTA (statute law) for the effect on native title and not the common law has been made clear by the High Court in its decision in *Western Australia v Ward* (2002) 191 ALR 1. The majority held that at [25] “...it must be emphasised that it is to the terms of the NTA that primary regard must be had, and not the decisions in *Mabo [No.2]* or *Wik*. The only present relevance of those decisions is for whatever light they cast on the NTA.”

there are some **exceptions** to Selpam, that a dedication or declaration of land as road extinguishes native title. For example an area dedicated as road under section 24KA of the NTA does not extinguish native title.

Part 2 How do I use this Module?

Step 1

If you know your proposed dealing area was or is validly dedicated road.

If you have already established that your proposed dealing area was or is covered by a validly dedicated road, then use the **Dedication Assessment Table** at **Division A** to determine what effect the dedication had upon any native title rights and interests.

If you know your proposed dealing area was or is validly declared as road

If you have already established that your proposed dealing area was or is validly declared as road, go straight to Part 6 of **Division C** to determine what effect the declaration had upon any native title rights and interests.

If not, proceed to Step 2.

Step 2

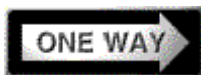
If you do not know whether your proposed dealing area was or is validly dedicated/declared as road.

To assess whether your proposed dealing area was or is, under State legislation, validly dedicated as road use the **Dedication Assessment Guide** at **Division B**.

To determine what effect the dedication had upon any native title rights and interests use the **Dedication Assessment Table** at **Division A**.

Read **Part 5** of **Division C** to assess whether your proposed dealing area was validly declared as road.

If your proposed dealing area was validly declared as road, read **Part 6** of **Division C** to determine what effect the declaration had upon any native title rights and interests.



If your proposed dealing area has NOT been validly dedicated or declared as road, then this **Module does not apply to your proposed dealing**. Proceed to and consider the **next Module**.

This Module is set out in the following divisions –

- A. Dedication Assessment Table;
- B. Dedication Assessment Guide;
- C. Declarations of roads under various transport legislation;
- D. Helpful hints and explanations; and
- E. Effect on native title, compensation and decision-making.

Division A. Dedication Assessment Table

Part 3 What is the Dedication Assessment Table?

If you are reading this Part, you will have established that you have a validly dedicated road under State legislation. The *Dedication Assessment Table* shows you what effect the dedication had on native title. **Please refer to Part 9 for a detailed explanation of the reasoning behind the *Dedication Assessment Table*.**

The *Dedication Assessment Table* is divided into different time periods. To determine which period applies, you will need to consider either –

- the time period in which the dedication **actually** occurred;
- OR
- the time period in which you have found **sufficient evidence** supporting dedication, even though the actual dedication may have occurred earlier in time.

Explanation

It is not essential to find evidence of the original dedication of the area as road.

For example if an area was dedicated as road in 1908, it would be sufficient for the purposes of making a decision under this Module to find the following evidence of dedication -

- The road is shown on a survey plan registered in 1925;
- Freehold titles for the land either side of the road have been located which were issued in 1977 and 1984 respectively;
- Both titles contain a reference to a survey plan registered in 1967 (and in one case there is a sketch of that plan on the title); and
- The 1967 plan superseded the 1925 plan and shows the same road as the 1925 plan.

Dedication Assessment Table

Time period – This is the period for which you have sufficient evidence showing the area was dedicated as road.	Dedication action	Extra requirements	Effect on native title
Before 1 January 1994	Dedication of an area as road.	None	Extinguishment of native title
On 1 January 1994 to & including 23 December 1996	Dedication of an area as road NOT involving compulsory acquisition of native title rights and interests.	The dedication is VALID only if at least part of the area covered by the dedication was, at any time prior to the dedication, subject to – <ul style="list-style-type: none"> ▪ a valid freehold estate; ▪ a valid lease (other than a mining lease); or ▪ a valid public work. 	Extinguishment of native title (if requirement met)
On 1 January 1994 to & including 29 September 1998	Dedication of an area as road in this period after compulsory acquisition of native title rights and interests in this period.	None	Extinguishment of native title
On 24 December 1996 to & including 29 September 1998	Dedication of an area as road which was a pre-existing right-based act and falling within section 24IB (transitional provisions of the NTA).	None	Non-extinguishment principle
On 24 December 1996 to & including 29 September 1998	Dedication of an area as road not involving compulsory acquisition and falling within section 24KA of the NTA (transitional provisions of the NTA).	None	Non-extinguishment principle
On and after 30 September 1998	Dedication of an area as road not involving compulsory acquisition and done under section 24KA of the NTA	None	Non-extinguishment principle
	Dedication of an area as road which was a pre-existing right-based act under section 24IB of the NTA.	None	Non-extinguishment principle
	Dedication of part of a reserve as road under section 24JA of the NTA.	If the dedication you are considering has been purportedly done under section 24JA, please refer all details to your NTCO who will then refer the matter to ATSILS for consideration.	Not applicable
	Compulsory acquisition of native title rights and interests for road purposes and subsequent dedication of an area as road in this period.	None	Extinguishment of native title
	Compulsory acquisition of native title rights and interests for road purposes before 30 September 1998 and subsequent dedication of an area as road on or after 30 September 1998	None	Extinguishment of native title



1. **If the dedication extinguished native title**, then complete your Native Title Assessment Form – **Annexure 7.1**. and proceed with your proposed dealing without further reference to native title.

2. **If –**
 - **the dedication is subject to the non-extinguishment principle; AND**
 - your proposed dealing is the **use** of that dedicated area where that use is consistent with it being a road,

then the dedication of an area as road will also cover the road's valid use. The valid use of the road is derived directly from the fact that it is a road. Complete your Native Title Assessment Form – **Annexure 7.1** and you may proceed with your dealing without further reference to native title.

Example

In May 2000, the proposed dealing area was dedicated as road under section 24KA of the NTA to which the non-extinguishment principle applied. In October 2002, Mr Chris McTavish, an adjoining property owner to the road, applied to the then Department of Main Roads (“DMR”) for an ancillary works and encroachments (AWE) approval under section 47 of the *Transport Infrastructure Act 1994* to put in a water pipeline which would run alongside the bitumen to his property.

DMR was able to rely upon the section 24KA dedication for this approval because –

- the dedication of the area as a road under section 24KA of the NTA will have fully suppressed all native title rights and interests (if any) over the area. Therefore, the AWE approval for the water pipeline could not affect any native title rights and interests as all rights and interests are suppressed;
- the AWE approval is derived directly from the fact that the area is a State controlled road which was dedicated as a road under section 24KA of the NTA; and
- the AWE approval is therefore consistent with the area being a road.

3. **If the dedication does not fit within the above two options**, then native title has not been extinguished and you will need to proceed to the **next Module**.



The following is an *example* of how to complete the sections of the Native Title Assessment Form dealing with Module CB. The Native Title Assessment Form is found at Annexure 7.1.

Native Title Assessment Form

Information about this Form -

1. This form is mainly based upon the "Path through Native Title Assessment".
2. To correctly complete this form, you will need to have read the relevant Modules and Annexures of the Native Title Work Procedures.
3. You must complete each part of the **Assessment Section** of this Form until you reach a **Go to Reason for Decision**.
4. Where there is a tick box, please make your selection either manually or by clicking on the box with your mouse. Where there is a blank section, please type or write in the relevant details.
5. All the relevant parts of the **Decision Section** of this Form must be completed.
6. Where a Module only applies to part of your proposed dealing area, tick the "Part of the proposed dealing area" box. Then proceed through the form for the balance/remaining area of your proposed dealing area. In these instances, a diagram should be attached to this Form to distinguish between the different areas.

Assessment Section

Module AA. Proposed Dealing

The grant of a permit to construct and operate a structure in a Marine Park under section 16 of the *Marine Park Regulation 2006* and *Marine Parks Act 2004*.

Location – Proposed Dealing Area

Lot: _____ Plan _____

Parish: Mangrove County: Ocean

Current Tenure: Marine Park

Locality Description:

The intertidal area of west shore of Lagoon Island in the Whitsunday Marine Park approximately 50 metres south of the rock wall. Lagoon Island is described as Lot 1 on NPW 157 and lies due east of the town of Seaforth.

Plan/Map:

Maps are attached of Lagoon Island showing the location of the proposed new jetty (hatched). Also attached is a map of the Whitsunday Marine Park showing the location of Lagoon Island.

Module AB. Is this a dealing that can proceed without further reference to native title?

- Yes** Dealing is not a future act
Activities done in accordance with a valid lease, licence, permit or authority
Emergency action

Go to **Reason for Decision** box

No

Module AC. Is there a registered ILUA that covers the proposed dealing?

Yes Go to **Reason for Decision** box Part of the proposed dealing area

No

Module AD. Is there a determination of native title that covers the proposed dealing area?

Yes Part of the proposed dealing area

No

IF YES, does the determination state that native title does not exist over the proposed dealing area?

Yes Go to **Reason for Decision** box
No Go to **Chapter 5** as native title will exist over the proposed dealing area unless subsequently extinguished by a later act.

Module BA. Is there or has there been a grant or vesting of exclusive possession over the proposed dealing area?

Yes Go to **Reason for Decision** box Part of the proposed dealing area

No

Module BB. Can I rely upon the extinguishing effect of the PEPA?

Yes Go to **Reason for Decision** box

No

Module CA. Was or is there a valid public work over the proposed dealing area?

Yes Go to **Reason for Decision** box Part of the proposed dealing area

No

Module CB. Was or is the proposed dealing area dedicated or declared as road?

Yes Go to **Reason for Decision** box Part of the proposed dealing area

No

IF YES, can the dedication or declaration be relied upon to carry out the proposed dealing?

Yes Go to **Reason for Decision** box
No

Reason for decision

On 27 January 1970, the proposed dealing area formed part of a larger area that had been dedicated as road, ie. an esplanade. It was dedicated for public use by notification published in the Queensland Government Gazette (27.1.1970, page 243) under section 362(1) *Land Act*

1962. A copy of the gazettal notification is attached. The road is shown on plan HR1971 which is also attached.

Due to a cyclone in 2000, the esplanade was eroded away and was closed.

The Dedication Assessment Table provides that the dedication extinguishes native title as it was done before 1 January 1994. Therefore native title has been extinguished over the proposed dealing area.

NB. Extract from Native Title Assessment Form

Division B. Dedication Assessment Guide

Part 4 What is the Dedication Assessment Guide?

The Dedication Assessment Guide provides a step by step process to establish whether your proposed dealing area was validly dedicated as road. To make the Guide as practical as possible, it also includes example plans, gazette notifications and title documents.

When does land become dedicated as road? For example, an area is dedicated as road where-



A reserve for road purposes dedicated under various land legislation, eg. *Land Act 1962*, does NOT constitute a dedicated road.

- an area of unallocated State land (or vacant Crown land) has been dedicated or declared opened as road for public use by notification published in the Queensland Government Gazette – section 94 *Land Act 1994* and section 362(1) *Land Act 1962*;
- it has been created by virtue of a plan of subdivision of a freehold lot under section 51(2) of the *Land Title Act 1994* or section 119 of the *Real Property Act 1861*;
- an area of Crown land was distinctly delineated as “road”, on a plan of survey which has been registered and deposited in the office of the chief executive (surveys) and that plan has been subject of Executive Authority action (Governor in Council approval, for example, of a lease document referring to the plan showing the road) on or before 30 June 1995 – section 362(2) *Land Act 1962*;
- it is unsurveyed and was shown through a pastoral lease or occupation licence by being delineated by a dotted line on a map or plan published by the Department of Lands on or before 30 June 1995 and that map or plan has been subject of Executive Authority action on or before 30 June 1995 (Governor in Council approval, for example, of a pastoral lease document referring to the map or plan showing the road) – section 362(3) *Land Act 1962*; or

- it is shown on a lease that was in existence as at 1 July 1995 (the date on which the *Land Act 1994* commenced) or such lease mentions a plan which shows “road” as excluded, the road is taken to be dedicated as road open to public use – section 96(1) *Land Act 1994*. If a better description of the location of the road becomes available the Minister, by gazette notice, may declare that the location of the road is amended by the description stated in the notice – section 96(3) *Land Act 1994*.

Generally, your investigation into whether your proposed dealing area has been validly dedicated as road is dependent upon evidence relating to the adjoining land tenures. This is because it will be the tenure documents (eg. lease instruments, freehold title instruments, etc) of the adjoining lots that are the most accessible evidence of the road having been dedicated.

Lease instruments and title documents are prepared under Executive Authority (ie. Governor in Council approval of the grant evidenced by the Governor’s signature on the lease or title document) and should clearly identify the road by describing it –

- in the description of the land subject to the grant;
- by a sketch plan shown on the instrument or document; or
- by reference to a survey plan.

However, you will **not** need to look at the tenure documents for adjoining lots where a copy of the gazettal for the road dedication can be found.

You will now need to proceed through the Dedication Assessment Guide using the following steps until you have sufficient evidence of a valid dedication in relation to the proposed dealing area.

Step 1

Obtain a copy of the current SmartMap for your proposed dealing area and identify the adjoining lots.

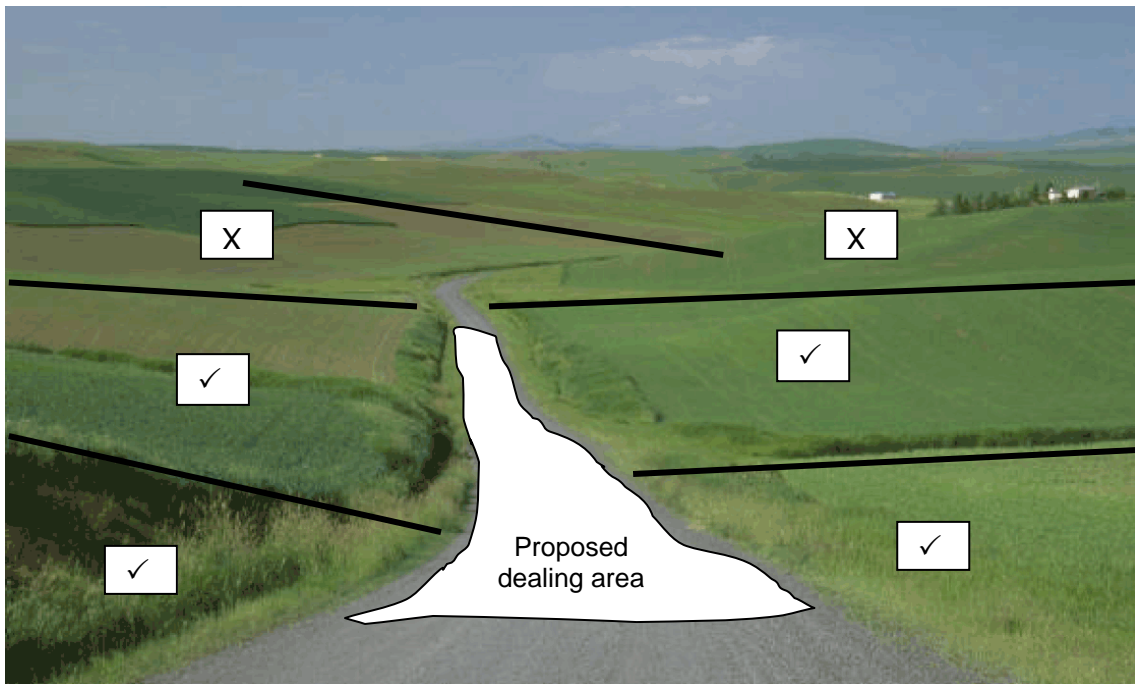
The SmartMap is a good starting point for your investigation as it provides you with information about the existing status of an area. The SmartMap will allow you to identify the adjoining lots, eg. Lot 1 on SP123456, Lot 3 on RP14678, etc. Please refer to **Example A**.



The fact that a road is shown on the SmartMap is not sufficient evidence to show that a road has been dedicated. For example, it is possible that a road shown on a SmartMap has never been dedicated.

IMPORTANT

You will only need to identify the lots **adjoining** your proposed dealing area. For example, in the below diagram you will need to consider the lots ticked but not the lots crossed.



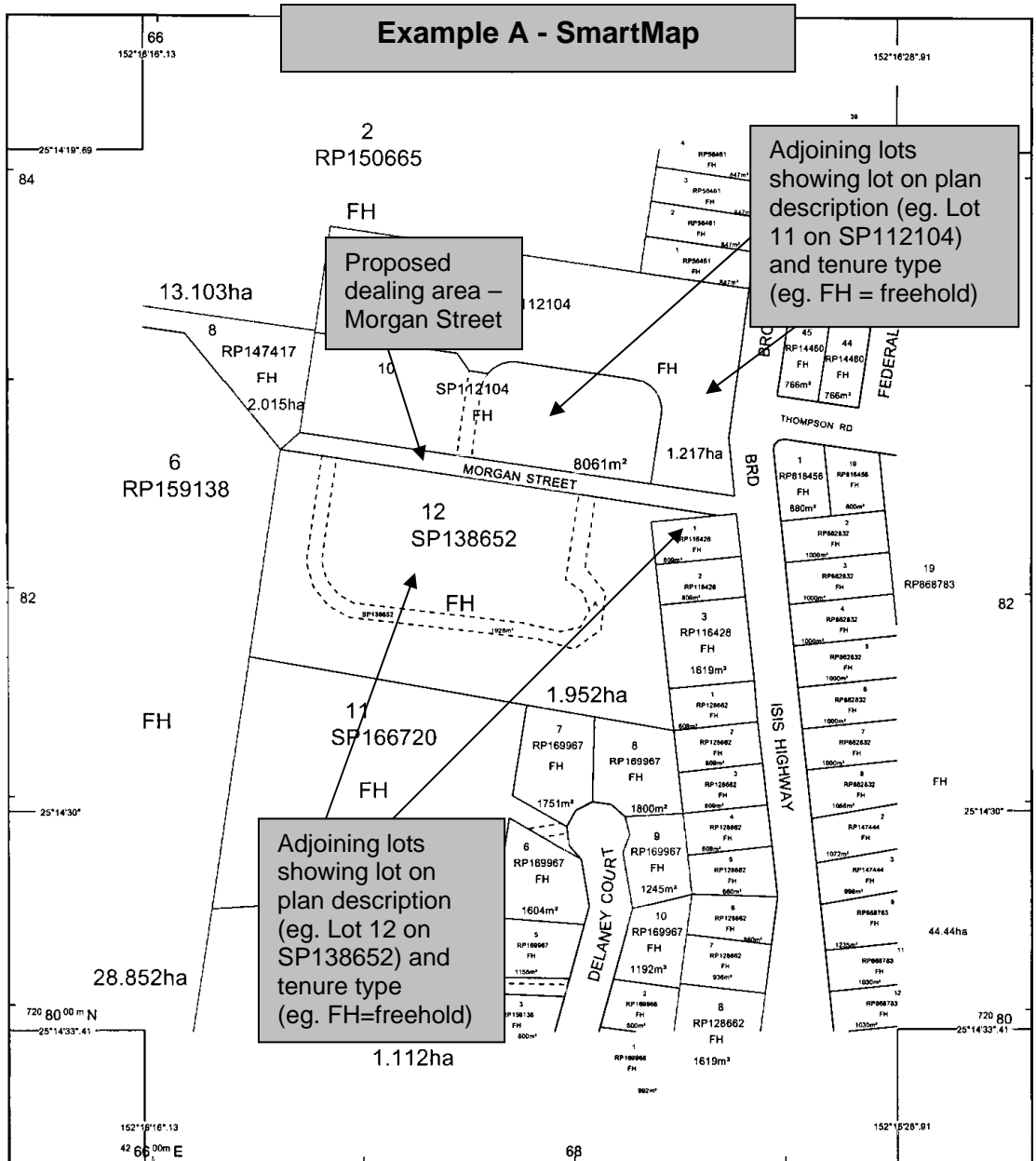
How do I obtain a SMARTMAP?



DERM Officers: Access the database SMIS which will allow you to print a SMARTMAP for your proposed dealing area.

Officers of other Agencies: If you do not have access to SMIS you will need to go to a DERM Client Service Centre and purchase a SmartMap.

“SMIS” is a departmental tool which enables users to access certain datasets and attributes in relation to land parcels within Queensland.



STANDARD MAP NUMBER
9347-13332



MAP WINDOW POSITION & NEAREST LOCALITY



SUBJECT PARCEL DESCRIPTION

DCDB	No Lot/Plan Selected.
Lot/Plan	No Lot/Plan Selected.
Area/Volume	No Lot/Plan Selected.
Tenure	No Lot/Plan Selected.
Local Government	No Lot/Plan Selected.
Locality	No Lot/Plan Selected.
Parish	No Lot/Plan Selected.
County	No Lot/Plan Selected.
Parcel/Segment	No Lot/Plan Selected.

CLIENT SERVICE STANDARDS

PRINTED (dd/mm/yyyy) 25/01/2005

DCDB 24/01/2005

Users of the information recorded in this document (the Information) accept all responsibility and risk associated with the use of the Information and should seek independent professional advice in relation to dealings with property.

Despite Department of Natural Resources, Mines and Energy (NRM&E)'s best efforts, NRM&E makes no representations or warranties in relation to the Information, and, to the extent permitted by law, exclude or limit all warranties relating to correctness, accuracy, reliability, completeness or currency and all liability for any direct, indirect and consequential costs, losses, damages and expenses incurred in any way (including but not limited to that arising from negligence) in connection with any use of or reliance on the Information.

For further information on SmartMap products visit <http://www.nrm.qld.gov.au/property/mapping/blinmap>

SmartMap

An External Product of SmartMap Information Services
Based upon an extraction from the Digital Cadastral Data Base



Queensland Government

Step 2

Obtain a copy of all current survey plans and all preceding plans for each adjoining lot.

IMPORTANT

This Step provides examples where the notations on survey plans relating to gazettal actions or the grant of tenures may help you find proof of the dedication of an area as road. Survey plans themselves are **not** sufficient evidence of dedication.

The SmartMap you obtained at Step 1 indicates the lot on plan description of each parcel of land adjoining the area of road. The current survey plan for each of these parcels of land is the focus of the next part of your investigation.

A road shown on a survey plan is also not in itself sufficient evidence of dedication. Therefore you will need to search for lease instruments and title deeds of the adjoining lots which clearly identify the road or the gazettal.

- (a) Identify the earliest survey plan that shows the road.

How do I obtain the earliest Survey Plan that shows the road?



DERM Officers: Access the database SMIS and carry out a search under Applications/**Survey Search - CISP**. Search using the lot/plan reference for the land adjoining the road then repeat for any other adjoining lot/plan.

Officers of other Agencies: If you do not have access to SMIS, you will need to go to a DERM Client Service Centre and purchase a Survey Search.

IMPORTANT

ATSVIEWER may not provide original copies of survey plans, ie. plans may have been imaged with subsequent notations and markings.

- (b) Using Survey Search (CISP) for a particular parcel will provide you with a list in chronological order (beginning with the most recent) of every survey plan. Examine

these plans and locate the earliest one that clearly shows the road and states that the area is “road”. Refer to **Example C**.

- (c) Look on the plan for notations indicating anything about the possible origin of the road, such as the gazettal date, road case file number (eg. RC 12345), etc. Refer to **Example C**.

- (d) If there is a reference to a road case file then DERM may hold the file in archival storage. DERM may be requested to search this file to see if the action noted on the plan was a road opening and if so whether there is a copy of the gazettal notice on the file. **If a copy of the gazettal for the road opening is obtained then there is no need to proceed to STEP 3 as this is sufficient evidence that the road was dedicated.** Refer to **Example B**.



How do I obtain access to the road case file?



DERM Officers: Search **RECFIND** for the particular road case file. When you have identified the file and where it is kept (e.g. Rockhampton Depot, which is a secondary storage of files which are no longer active) contact the DERM office where the file is located to arrange for the file to be sent to you. If the file is located at the State Archives you must send an Email to “File Request” giving appropriate information from RECFIND to enable the file to be identified and located e.g. file no., name, barcode, disposal code.

Officers of other Agencies: In order to view files owned by DERM you will need to contact a DERM Client Service Centre, request a search for the file and apply for approval to view the file. For some files, DERM may require that a Freedom of Information officer decide what information may be viewed and copied. A search fee is payable for non-DERM business

- (e) If you find a reference on the survey plan to a lease instrument, you can request DERM to search the relevant leasehold file to see if there is a copy of the particular lease instrument. Refer to **Example C**.

Example B - Notice in the Government Gazette that the lands described in the Schedule are opened as roads, ie. dedicated as road.

Department of Lands,
Brisbane, 8th April, 1965.
It is hereby notified, in pursuance of the provisions of "The Land Act, 1962 to 1964," that the lands described in the First Schedule are hereby opened as roads, and it is hereby notified that the roads described in the Second Schedule are hereby closed.

FRANK NICKLIN,
For the Minister for Lands.

FIRST SCHEDULE
THE BRISBANE LAND AGENT'S DISTRICT
County of Ward, parish of Palen
Crown land

The whole of the south-eastern severance of portion 111V, Reserve 93-94.

THE CLERMONT LAND AGENT'S DISTRICT
County of Clermont, parish of Retro

Portion 11, Settlement Farm Lease No. 2308 (Leon James Herden, lessee)

An area of 3 acres 2 roods 11 perches, being a strip of varying width along and within the north-western corner of the portion as shown on plan Clm. 337 deposited in the Survey Office.

Road Case 27384.

THE GOONDIWINDI LAND AGENT'S DISTRICT
County of Carnarvon, parish of Minnet

Portion 17, Grazing Homestead No. 3662 (Edgar Giltrow and Betty Giltrow, his wife as tenants in common, lessees)

An area of 5 acres 3 roods 19 perches, being a strip of varying width along and within the northern boundary of the portion as shown on plan Cvn. 195 deposited in the Survey Office.

Road Case 25480.

THE INNISFAIL LAND AGENT'S DISTRICT
County of Cardwell, parish of Rockingham

Portion 195, Reserve for Landing Ground for Air Craft, Tully (R. 397)

A strip generally three chains wide commencing at the south-eastern corner of portion 233 and extending north-easterly for a distance of about twenty-six chains sixty links through portion 195 as shown on plan Cwl. 1862 deposited in the Survey Office.

A strip generally one chain wide commencing at the north-western corner of portion 551 and extending south-easterly through portion 195 for a distance of about five chains fifteen links as shown on plan Cwl. 1862 deposited in the Survey Office.

Road Case 29435.

THE IPSWICH LAND AGENT'S DISTRICT
County of Churchill, parish of Rosewood
Crown land

An area of about 32.7 perches, being a strip of varying width abutting the south-western boundaries of portion 178 and contained within the following boundaries:—commencing at the south-western corner of the portion and bounded by lines bearing about 270 degrees about one chain eighty-two links, about 9 degrees about two chains, about 19 degrees about eighty-six links and thence south-easterly by the south-western boundaries of the portion to the point of commencement.

Road Case 29097.

THE ROCKHAMPTON LAND AGENT'S DISTRICT
County of Humphrils, parish of Springton

Portion 16, Grazing Farm 9016. (Edward Drake and Margaret Beryl Draper, wife of Reginald Daniel Draper, lessees)

An area of 4 acres and 35.9 perches being a strip two chains wide in the south-eastern corner of the portion as shown on plan Ht. 171 deposited in the Survey Office.

Portion 22, Grazing Homestead 8508 (William Henry Cragg, lessee)

An area of 49 acres and 30 perches being a strip two chains wide through the portion as shown on plan Ht. 171 deposited in the Survey Office.

Road Case 28464.

THE ROMA LAND AGENT'S DISTRICT
County of Westgrove, parish of Beilba

Portion 3, Grazing Homestead No. 7439 (The Union Trustee Company of Australia Limited and Lucy May Ward, widow, as Executors, lessees)

Areas totalling 37 acres 2 roods 9 perches, being strips of varying width intersecting the portion, as shown on plan Wt. 201 deposited in the Survey Office.

Portion 4, Grazing Farm No. 7310 (The Union Trustee Company of Australia Limited and Lucy May Ward, widow, as Executors, lessees)

Areas totalling 67 acres 2 roods 9 perches, being strips generally three chains wide intersecting the portion as shown on plan Wt. 202 deposited in the Survey Office.

Portion 5, Grazing Homestead No. 7387 (Robert John Kendall, lessee)

Areas totalling 69 acres 3 roods 12 perches, being strips generally three chains wide intersecting the portion as shown on plan Wt. 203 deposited in the Survey Office.

County of Westgrove, parish of Mellish

Portion 8, Grazing Homestead No. 7350 (Edward Arthur Alexander, lessee)

Areas totalling 40 acres 1 rood 11 perches, being strips generally three chains wide intersecting the portion as shown on plan Wt. 204 deposited in the Survey Office.

Road Case 27816.

SECOND SCHEDULE

THE BRISBANE LAND AGENT'S DISTRICT
County of Stanley, parish of Toombul

An area of 1 acre and 2.6 perches, being the part of the road (part of Harbour Road, Hamilton) abutting the north-eastern boundary of portion 269 contained within stations 7, 10, 13, 16, 12 and 7 on plan Sl. 4627 deposited in the Survey Office.

Batch 1408-221.

THE BUNDABERG LAND AGENT'S DISTRICT
County of Cook, parish of South Kolan

An area of about 4 perches, being the part of the road separating resubdivision 1 of subdivision 6 of portion 59 from the Kolan River, now established as portion 175 on plan Ck. 1821 in the Survey Office.

Road Case 28951.

THE CHARLEVILLE LAND AGENT'S DISTRICT
County of Langlo, parish of Moruga

The road separating portion 2 from portion 3.

The road abutting the eastern boundaries of portions 2 and 3.

The ten chain road intersecting surrendered Caerleon Pastoral Development Holding and its continuation north-westerly, being twenty chains wide, exclusive of a strip three chains wide along the track in use.

Caerleon 3631.

THE CLERMONT LAND AGENT'S DISTRICT
County of Rutledge, parish of Clyde

The road intersecting portion 2 exclusive of a strip three chains wide along the track in use.

The road separating portion 2 from portion 3 exclusive of a strip three chains wide along the track in use.

Clyde Vale 3817.

THE INNISFAIL LAND AGENT'S DISTRICT
County of Cardwell, parish of Rockingham

The road abutting the southern boundary of portion 195 exclusive of three chains at its western extremity and its continuation northerly to a point about forty-three links southerly from the north-western corner of subdivision 4 of portion 14.

Road Case 29435.

THE JUNDAH LAND AGENT'S DISTRICT
County of Warhreccan, parish of Chaunsit

The road abutting the northern boundary of portion 17.

Selvas 3567.

THE ROMA LAND AGENT'S DISTRICT
County of Westgrove, parish of Beilba

Areas totalling 157 acres and 9 perches, being strips of the road intersecting portions 3, 4 and 5 as shown on plans Wt. 201, Wt. 202 and Wt. 203 deposited in the Survey Office.

County of Westgrove, parish of Mellish

Areas totalling 39 acres 2 roods 27 perches, being strips of the road intersecting the portion as shown on plan Wt. 204 deposited in the Survey Office.

Road Case 27816.

Road Case number

Date of Government Gazette and page number.

Gov. Gaz., 10th April, 1965, pages 1204-5

- (f) If you find a reference on the survey plan to a freehold grant (e.g. C.12345), you can obtain a copy of the freehold grant from the Automated Titling System (ATS). ATS is an electronic registry of title records of freehold, leasehold, licences and permits over land and is maintained by DERM. If you have the Volume and Folio number of the freehold grant, DERM staff can convert the number to an ATS reference number and retrieve a copy of the grant from ATS.

Step 3

Obtain copies of the title and lease documents for the other adjoining lots.

These documents made under Executive Authority may provide proof of the existence of the dedication of the area as road or lead you to further tenure information which will provide the necessary proof. For example, a deed or lease instrument adjoining one or more boundaries of the road may –

- show or refer to a map, plan or survey plan; or
- show a sketch on the instrument showing the lot and annotated with the word 'road'.

Freehold



If you find a freehold grant made on or before 30 June 1995 and there is a reference to the survey plan, which you located which clearly shows the area is road and states the area is “road”, then this is sufficient evidence that the road was dedicated provided the survey plan was registered and deposited on or before 30 June 1995.

Leasehold



If you find a lease which was granted on or before 30 June 1995 and there is a reference to a survey plan, which you located which clearly shows the area is road and states the area is “road”, then this is sufficient evidence that the road was dedicated provided the survey plan was registered and deposited on or before 30 June 1995. Refer to **Example D**.



If you find a pastoral lease granted on or before 30 June 1995 and there is reference to a map or plan published by the Department of Lands on or before 30 June 1995 which shows an unsurveyed road delineated by a dotted line through the pastoral lease, this is sufficient evidence that the area was dedicated as road.

Where the width of the road is not shown on the map or plan it is deemed to be 3 chains.⁴



If you find a lease that was in existence on 1 July 1995 and the lease contains a sketch plan showing the road on the lease or there is a reference to a plan which shows the road as being excluded from the lease, this is sufficient evidence that the road was dedicated.

Where the width of the road is not shown on the map or plan it is deemed to be 60 metres.⁵

How do I obtain a copy of these title and lease documents?



1. **DERM Officers:** If an adjoining lot on the SmartMap you obtained at STEP 1 is freehold land or leasehold land you can –
carry out a current title and historical tenures search of ATS using the Lot on Plan descriptions from the SmartMap or current (registered) survey plan; or
2. search for an image of a freehold or leasehold instrument from ATSViewer (you need to know the title reference from ATS to do this); or
3. carry out a manual search of DERM files for the original instruments if they were produced.

Freehold and leases are now issued as 'paperless' titles in ATS and therefore there will not be an image of a lease instrument issued post 2000 and there will not be an image of a freehold grant issued post April 1994. If there are no images of the current titles, you can carry out an historical search of the previous titles over the lands that adjoin the area of road. Once a previous title reference has been located you may be able to get an image of the previous title and check whether the road is shown on that title.

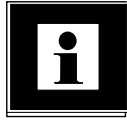
If there is no image of the previous title and the land was leasehold OR the land is freehold which was converted from leasehold, you will need to search the relevant leasehold file for a copy of the previous instrument of lease. From leasehold files, it may be possible, in some instances, to locate a copy of a road opening gazettal notice if the road was previously part of the lease and the area was surrendered for road opening purposes.

Officers of other Agencies: If you do not have access to ATS, you will need to contact a DERM Client Service Centre to purchase a current or historical title search and an imaged copy of the relevant title or lease document.

⁴ Section 362(3)(a) *Land Act 1962*

⁵ Section 96(2) *Land Act 1994*

If the adjoining lot on your SmartMap (obtained at STEP 1) is –



- **reserved land**, you can obtain current details of the reserve through a search of the ATS reserves database. Although there is an ATS record for each reserve, a reserve does not have a “title”. In order to search other material about the dedication and use of the reserve, you will need to obtain access to the relevant reserve file.

From reserve files, it may be possible, in some instances, to locate a copy of a road opening gazettal notice if the road was previously part of the reserve or a previous reserve.

- **unallocated State land (USL)**, a current title search for USL can be obtained from ATS. Your interrogation of Survey Search - CISP will provide you with information about any previous description of the USL and you should also look for references to road cases, leases, freehold grants, etc. as notations on these plans.

If there is USL on one side of a road and another existing tenure such as leasehold or freehold existing on the other side of the road, focus your investigations on the side of the road where there is an existing tenure. You are more likely then to find evidence of a grant of tenure containing a reference to the road or a sketch plan of the land showing the adjoining road.

How do I obtain access to the leasehold or reserve files?



DERM Officers: Search **RECFIND** for the particular leasehold or reserve file. When you have identified the file and where it is kept (e.g. Rockhampton Depot, which is a secondary storage of files which are no longer active) contact the DERM office where the file is located to arrange the file to be sent to you. If the file is located at the State Archives you must send an Email to “File Request” giving appropriate information from RECFIND to enable the file to be identified and located e.g. file no, name, barcode, disposal code.

Officers of other Agencies: In order to view files owned by DERM you will need to contact a DERM Client Service Centre, request a search for the file and apply for approval to view the file. For some files, DERM may require that a Freedom of Information officer decide what information may be viewed and copied. A search fee is payable for non-DERM business.

Example C - Survey Plan

SL3772 V0 REGISTERED Page 1 of 1

Ref: L.N.

FOR OPENING NOTIFICATIONS SEE BACK

Plan No	Farm No	Selector	Remarks	Plan No	Farm No	Selector	Remarks
269	SL 25647		The Corporation of the Under Secretary, Dept of Labour & Industry.				
	269	N.C.L. 1779					
	817	S.L. 27112	The Queensland Cold Storage Co-operative Federation Limited.				

SURVEY OFFICE
No. 3896 L.S.W.
Date 20.6.61.
QUEENSLAND

Traverses and Saccats

Line	Bearing	Dist.
1-2	122° 34'	10.95
2-3	83° 32'	65.13
4-3	187° 43'	170.09
4-5	187° 43'	102.15
7-9	189° 29'	7.85
8-8	187° 43'	8.3
9-9	187° 33'	11.0
9-8	97° 32'	983.6
9-7	97° 43'	186.45

Iron Pins

3"	Iron	pin	# of
3"	Iron	pin	# of
3"	Iron	pin	# of
3"	Iron	pin	# of
3"	Iron	pin	# of

For Additional Plan & Document Notings Refer to CISP

Reference
Cor. Bearing

Date plan deposited in survey office

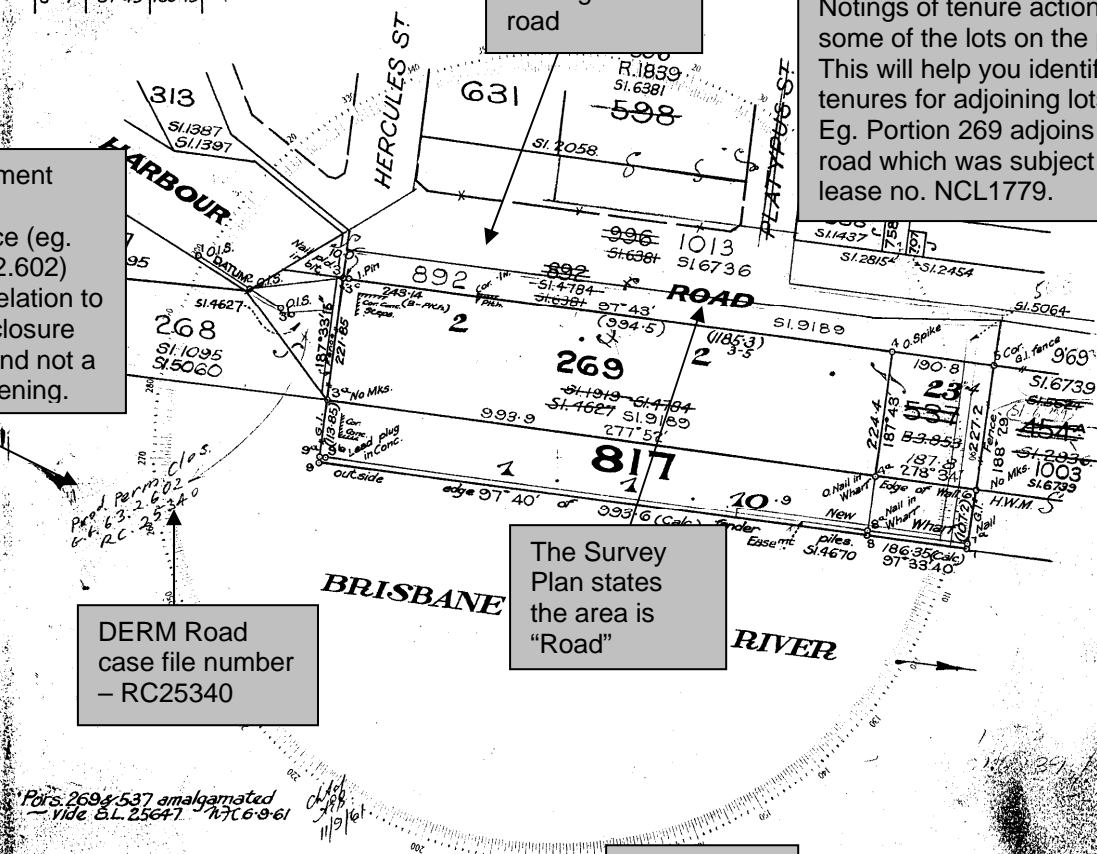
Proposed dealing area - road

Notings of tenure actions for some of the lots on the plan. This will help you identify tenures for adjoining lots. Eg. Portion 269 adjoins the road which was subject to lease no. NCL1779.

Government Gazette reference (eg. GG 63.2.602) NB. in relation to a road closure action and not a road opening.

DERM Road case file number - RC25340

The Survey Plan states the area is "Road"



Ports 269 & 537 amalgamated - vide G.L. 25647 - 1776-9-61

Noted on Hamilton Lands key map

Adjustments

Plan	Reference	Previous Area	Date	Chartered
269	SL 25647	2.0.35	17.9.61	

I hereby certify that I, in person made, and on the 7. 6. 1961 completed the survey represented by this plan, on which are written the bearings and lengths of the lines surveyed by me, and that the survey has been executed in accordance with the existing regulations of the Surveyor General's Department.

R.C. Wilkinson
Auct. Surveyor
R.C. Wilkinson

Survey Plan Number

CROWN COPYRIGHT RESERVED S.L. 25647 S.L. 16318 S.L. 60787

Meridian Observations

Date	Lat.	Long.	Magnetic
Meridian of S.L. 1919			


PLAN OF
PORTION No 817 & 269
PARISH OF TOOMBUL
County of Stanley
Land Agents Brisbane
District of

Evidence indicating registration of plan - "Examined by" and Chartered by" both have dates inserted

SL 3772 CISP

Example D – Lease Instrument

DUTY STAMP
STAMP
DUPLICATE
ORIGINAL STAMP
BRISBANE


QUEENSLAND

Perpetual Suburban Lease No. 1779 N.C.L.

**Perpetual SUBURBAN Lease under
"The Land Acts, 1910 to 1961."**

Elizabeth the Second, by the Grace of God, of the United Kingdom, Australia, and Her other Realms and Territories, Queen, Head of the Commonwealth, Defender of the Faith:

To All to whom these Presents shall come, Greeting:


Whereas,
INDUSTRY

in Our State of Queensland, in pursuance of the provisions of Section 175B of "The Lands Acts, 1910 to 1961", hereinafter referred to as "the said Acts"), is now entitled to a lease in Perpetuity of the Land described in the Schedule endorsed on these presents: Now Know Ye, that in consideration of the premises, and of the payment previous to the issue hereof of the prescribed deposit, survey fee, and value of the improvements, rental hereby reserved, We, in pursuance of the said Acts, DO HEREBY

etc

Description of land covered by lease by reference to the Schedule

IN TESTIMONY WHEREOF We have caused this Our Lease to be Sealed with the Seal of Our said State.


Seal of the State of Queensland and signature of the Governor. The lease is granted under executive authority.

1962 Our Trusty and Well-beloved Sir HENRY ADRIAN SMITH, Governor and Commander of Our Most Distinguished Order of Knights of the British Empire, Knight on the Honoured List of the Corps of Household Cavalry, Knight Commander of Our Royal Victorian Order, Companion of Our Distinguished Service Order, Governor in and over Our State of Queensland and its Dependencies, in the Commonwealth of Australia, at Government House, Brisbane, in Queensland, aforesaid, this
Eleventh day of January, in the twentieth year of Our Reign and in the year of Our Lord One thousand nine hundred and sixty-two

1962

SCHEDULE.

Perpetual Suburban Lease No. 1779 N.C.L.
County Stanley Parish Toombul

Portion Two hundred and sixty-nine

Pctd Area Two acres two roods twenty-three and four-tenths perches

Description of land

Refers to Plan No. SL3772.
Refer to **Example C.**



If your proposed dealing area was validly dedicated as road go back to **Division A** to assess what effect the dedication had on native title.



If your proposed dealing area was not validly dedicated as road, consider whether it may have been declared as road - go to **Division C.**

Division C. Declarations of roads under various transport legislation

Part 5 Declarations of areas as road

Division B dealt with areas **dedicated** as road under various land legislation. This Division deals with areas **declared** as road under various transport legislation. An area is or was declared as road if –

1. the Governor in Council (on the recommendation of the Commissioner) declared by Proclamation that a road, route or means of access was a State highway, main road, developmental road, secondary road, urban arterial road or urban sub-arterial road -

- section 11(3) *Main Roads Act 1920*. Refer to **Example E**;
2. the Minister (on recommendation of the Corporation) by notification published in the Gazette declared a road, route or means of access to any land, or any part of a road, route or means of access, to be a declared road – section 3.1(1) *Transport Infrastructure (Roads) Act 1991*; or
 3. the Minister by gazette notice declared a road or route, or part of a road or route, to be a State-controlled road - section 21 *Transport Infrastructure Act 1994* (for the period 15 April 1994 to 30 June 1995), section 23(1) *Transport Infrastructure Act 1994* (for the period 1 July 1995 to 30 November 2003) or section 24 *Transport Infrastructure Act 1994* (for the period 1 December 2003 to present).



Must the notification or proclamation specify the name and section of the relevant legislation?

The notification or proclamation must specify the name of the legislation authorising the declaration but does not need to specify the section of the legislation.

Is an amending declaration sufficient evidence?

The original notification or proclamation is the best evidence of declaration. However, an amending declaration in relation to the relevant section of road will be sufficient evidence if:

- (a) it came into force before 1 January 1994; or
- (b) it came into force on or after 1 January 1994 but before 24 December 1996 and there is evidence that the whole or part of the area covered by the amending dedication was at any time prior to 1 January 1994 subject to a valid freehold estate, a valid lease (other than a mining lease) or a valid public work.



If your proposed dealing area was validly declared as road go to **Part 6** to assess what effect the dedication had on native title.



If your proposed dealing area was not validly declared as road or dedicated as road, proceed to and consider the **next Module**.

Part 6 Effect on native title by a declaration of areas as road

The **Dedication Assessment Table** back at **Division A** can be used to assess the effect of the declaration on native title. **Just substitute “declaration” for “dedication”.**



Where the area declared as road was also dedicated as road, you can choose to rely upon either the dedication or the declaration.

Example E – Proclamation in Government Gazette – declaration of a road

A PROCLAMATION

By His Excellency the Honourable Sir Walter Benjamin Campbell, one of Her Majesty's Counsel learned in the law, Governor in and over the State of Queensland in the Commonwealth of Australia.

[L.S.]

W. B. CAMPBELL,
Governor

IN pursuance of the powers and authorities in me vested by the provisions of the *Main Roads Act 1920-1985*, and of all other powers and authorities in me vested, I, Sir Walter Benjamin Campbell, the Governor aforesaid, acting by and with the advice of the Executive Council, do, by this my Proclamation, publish and confirm the recommendation made by The Commissioner of Main Roads in pursuance of the *Main Roads Act 1920-1985*, as set forth in the schedule to this my Proclamation.

Given under my Hand and Seal at Government House, Brisbane, this twentieth day of November, in the year of our Lord one thousand nine hundred and eighty-six, and in the thirty-fifth year of Her Majesty's reign.

By Command, R. J. HINZE
God Save the Queen!

The Schedule

RECOMMENDATION OF THE COMMISSIONER OF MAIN ROADS ABOVE REFERRED TO

The Commissioner of Main Roads appointed under the provisions of the *Main Roads Act 1920-1985*, hereby recommends to the Governor in Council that on and from the 22nd November, 1986, the descriptions of each and every road specified in Appendix I hereto, as amended by inserting in lieu thereof, respectively, the descriptions specified in Schedules I, II, III and IV, of Appendix II hereto, respectively, under and for the purposes of the *Main Roads Act 1920-1985*.

The Commissioner also recommends that the road as described in Appendix III hereto be declared a Main Road under and for the purposes of the *Main Roads Act 1920-1985*.

Appendix I

Name of Road	Classification	Date of Proclamation Relevant to Road
No. 17B Cunningham Highway (Ipswich-Warwick) Ipswich City	State Highway	15th November, 1980
No. 17B Cunningham Highway (Ipswich-Warwick) Moreton Shire	State Highway	15th November, 1980
No. 17B Cunningham Highway (Ipswich-Warwick) Boonah Shire	State Highway	15th November, 1980
No. 17B Cunningham Highway (Ipswich-Warwick) Glengallan Shire	State Highway	23rd June, 1984
No. 17B Cunningham Highway (Ipswich-Warwick) Warwick City	State Highway	15th November, 1980
No. U13A Gateway Arterial Road (Upper Mount Gravatt-Murarie) Brisbane City	Urban Arterial Road	21st December, 1985
No. U91 Redland Sub Arterial Road Brisbane City	Urban Sub-Arterial Road	1st July, 1983
No. 2020 Beechmont Road Beaudesert Shire	Secondary Road	31st January, 1981
No. 2020 Beechmont Road Albert Shire	Secondary Road	31st January, 1981

Gov. Gaz., 22 November, 1986, No. 59, pages 1676-7

Appendix II

Schedule I—State Highway

No. 17B

CUNNINGHAM HIGHWAY
(Ipswich—Warwick)
State Highway
Ipswich City

From the north-eastern corner of resubdivision 34 of portion 237, parish of Goodna, to the north-eastern corner of portion 237 at a point on the northern boundary of portion 237, distant about 250 metres east from the north-eastern corner of that portion, by the route shown on the plans under seal held by The Commissioner of Main Roads and identified by the registration numbers RD17B-1-F, RD17B-2-F and RD17B-3-F.

Length 8.49 kilometres (approximately)
144/17B/1

No. 17B

CUNNINGHAM HIGHWAY
(Ipswich—Warwick)
State Highway
Moreton Shire

From the city boundary at a point on the north-western corner of portion 215, parish of Ipswich, distant about 22 metres from the north-western corner of that portion to the north-western corner of subdivision 22 of portion 215, parish of Normanby, by the route shown on the plans under seal held by The Commissioner of Main Roads and identified by the registration numbers RD17B-3-H, RD17B-4-6-C and RD17B-7-E.

Length 35.42 kilometres (approximately)
85/17B/1

No. 17B

CUNNINGHAM HIGHWAY
(Ipswich—Warwick)
State Highway
Boonah Shire

From the shire boundary at the most southern corner of subdivision 22 of portion N1, parish of Normanby, to the shire boundary at Cunningham's Gap near the north-western corner of R.670, parish of Fassifern, by the route shown on the plans under seal held by The Commissioner of Main Roads and identified by the registration numbers RD17B-7-F and RD17B-8-F.

Length 36.12 kilometres (approximately)
58/17B/1

No. 17B

CUNNINGHAM HIGHWAY
(Ipswich—Warwick)
State Highway
Glengallan Shire

From the shire boundary at Cunningham's Gap near the north-western corner of R.670, parish of Fassifern, to the shire boundary at the north-eastern corner of subdivision 11 of portion 258, parish of Warwick, by the route shown on the plans under seal held by The Commissioner of Main Roads and identified by the registration numbers RD17B-9-10-C and RD17B-11-D.

Length 43.93 kilometres (approximately)
56/17B/1

No. 17B

CUNNINGHAM HIGHWAY
(Ipswich—Warwick)
State Highway
Warwick City

From the city boundary at the north-eastern corner of subdivision 11 of portion 258, parish of Warwick, to Wood Street at its intersection with Wallace Street at the south-western corner of section LVII, city of Warwick, parish of Warwick, by the route shown on the plan under seal held by The Commissioner of Main Roads and identified by the registration number RD17B-11-E.

Length 5.37 kilometres (approximately)

Gazette details

Proclamation by the Governor with the advice of the Executive Council (ie. Governor in Council)

Governor confirms recommendation of the Commissioner of Main Roads

Declaration of the area described in Appendix III declared a main road.

Reference to the authorising legislation.

Amendments of declared roads

Schedule II—Urban Arterial Road

No. U13A

GATEWAY ARTERIAL ROAD
(Eight Mile Plains—Murarrie)
Urban Arterial Road
Brisbane City

Commencing at its junction with the South East Arterial Road at a point distant about 120 metres west of the south-eastern corner of Lot 3 on R.P. 112320 parish of Yeerongpilly, to the start of the Gateway Bridge Franchise area distant about 100 metres south of the most southern corner of the northern severance of portion 15, parish of Bulimba, including all ramps shown, by the route shown on the plans under seal held by The Commissioner of Main Roads and identified by the registration numbers RDU13A-(1-5)-D.

Length . . . 15.75 kilometres (approximately)
140/U13A/1

Schedule III—Urban Sub-Arterial Road

No. U91

REDLAND SUB-ARTERIAL ROAD
Urban Sub-Arterial Road
Brisbane City

From its junction with the Logan Sub-Arterial Road at the intersection of Logan Road and Mount Gravatt-Capalaba Road, parish of Bulimba, to the shire boundary at the bridge over Tingalpa Creek at the south-eastern corner of Lot 2 on R.P. 117007, parish of Tingalpa, by the route shown on plans under seal held by The Commissioner of Main Roads and identified by the registration numbers RDU91-(1-4)-B.

Length . . . 12.35 kilometres (approximately)
140/U91/1

Schedule IV—Secondary Road

No. 2020

BEECHMONT ROAD
Secondary Road
Beaudesert Shire

From a point near the north-western corner of resubdivision 1 of subdivision 3 of portion 26, parish of Witheren, to the shire boundary near the north-eastern corner of subdivision 2 of portion 21V, parish of Witheren, having a boundary section with Alburt Shire between the distances of 16.63 kilometres and 17.30 kilometres, half the length of which is credited to each local authority, by the route shown on the plans under seal held by The Commissioner of Main Roads and identified by the registration numbers RD2020-1-C and RD2020-2-E.

Length . . . 21.16 kilometres + ½ boundary section (0.34 kilometre) = 21.50 kilometres (approximately)
13/2020/1

No. 2020

BEECHMONT ROAD
Secondary Road
Albert Shire

From the shire boundary near the north-eastern corner of the north-western severance of portion 6V, parish of Numinbar, to the shire boundary near the north-eastern corner of subdivision 1 of portion 37V, parish of Witheren, being a boundary section with Beaudesert Shire, and from the shire boundary near the north-eastern corner of subdivision 2 of portion 21V, parish of Witheren, to its intersection with the Nerang-Murwillumbah Road at a point distant about 0.3 kilometre south of the north-eastern corner of subdivision 9 of portion 80, parish of Nerang, having a boundary section with Beaudesert Shire between the distances of 16.63 kilometres and 17.30 kilometres, half the length of which is credited to each local authority, by the route shown on the plans under seal held by The Commissioner of Main Roads and identified by the registration numbers RD2020-2-F and RD2020-3-B.

Length . . . 12.20 kilometres + ½ boundary section (0.33 kilometre) = 12.53 kilometres (approximately).
91/2020/1

Appendix III

No. 127

BEERBURRUM ROAD
Main Road
Caboolture Shire

From its intersection with the D'Aguilar Highway and the Burpengary - Caboolture Road near the north-eastern corner of portion 23A, town of Caboolture, parish of Canning, to the shire boundary near the south-eastern corner of portion 864, parish of Beerwah, by the route shown on the plans under seal held by The Commissioner of Main Roads and identified by the registration numbers RD127-(1-2)-A.

Length . . . 13.52 kilometres (approximately)
25/127/1

No. 127

BEERBURRUM ROAD
Main Road
Landsborough Shire

From the shire boundary near the south-eastern corner of portion 864, parish of Beerwah, to its intersection with the Glasshouse Mountains Road near the north-western corner of S.F. 525, parish of Beerwah, by the route shown on the plan under seal held by The Commissioner of Main Roads and identified by the registration number RD127-2-B.

Length . . . 1.60 kilometres (approximately)
76/127/1

The official seal of The Commissioner of Main Roads was affixed at Brisbane, this fourteenth day of November, 1986.

E. FINGER
Commissioner of Main Roads

Descriptions
of areas
declared as
Main Road

Division D. Helpful hints and explanations

Part 7 Off-alignment constructed roads

If a constructed road is not within its dedicated/declared alignment boundaries, then, besides finding evidence of the dedication of the road, native title has to be addressed in respect of the

area constructed off the alignment in the adjoining tenure, eg. leasehold, reserve, etc. In remote areas, such diversions were normally due to physical constraints encountered at the time of constructing the road.

You cannot treat the off-alignment section as if it is validly dedicated/declared, even if there was an error by the authority in constructing the road there. However, the constructed off-alignment section may be a validly constructed public work in certain cases, where the requirements of Module CA are satisfied.

Go back and consider Module BA and Module CA if you have not already done so.

Part 8 Roads and watercourses

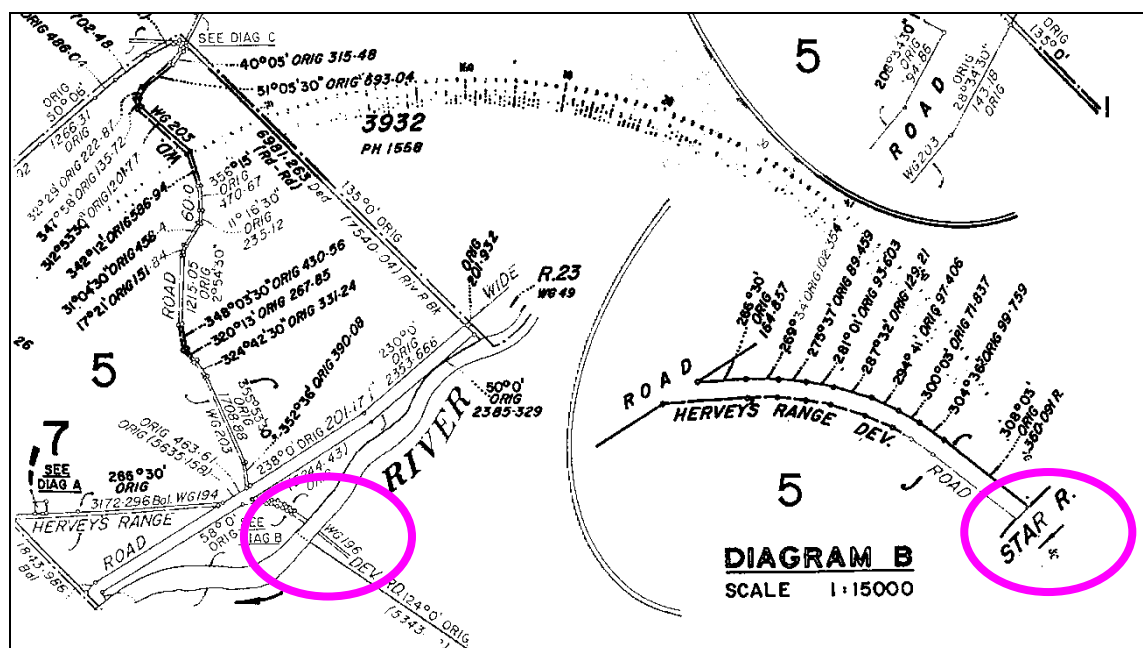
Constructed roads

A constructed road crossing over a watercourse, which is not defined on a survey plan nor validly dedicated by gazettal or other means, is not a dedicated road. The watercourse will remain unallocated State land and native title may still exist. However, a bridge or concrete crossing constructed over a watercourse in such instance may be a public work which extinguished native title. Go back and consider Module CA if you have not already done so.

Dedicated/declared roads

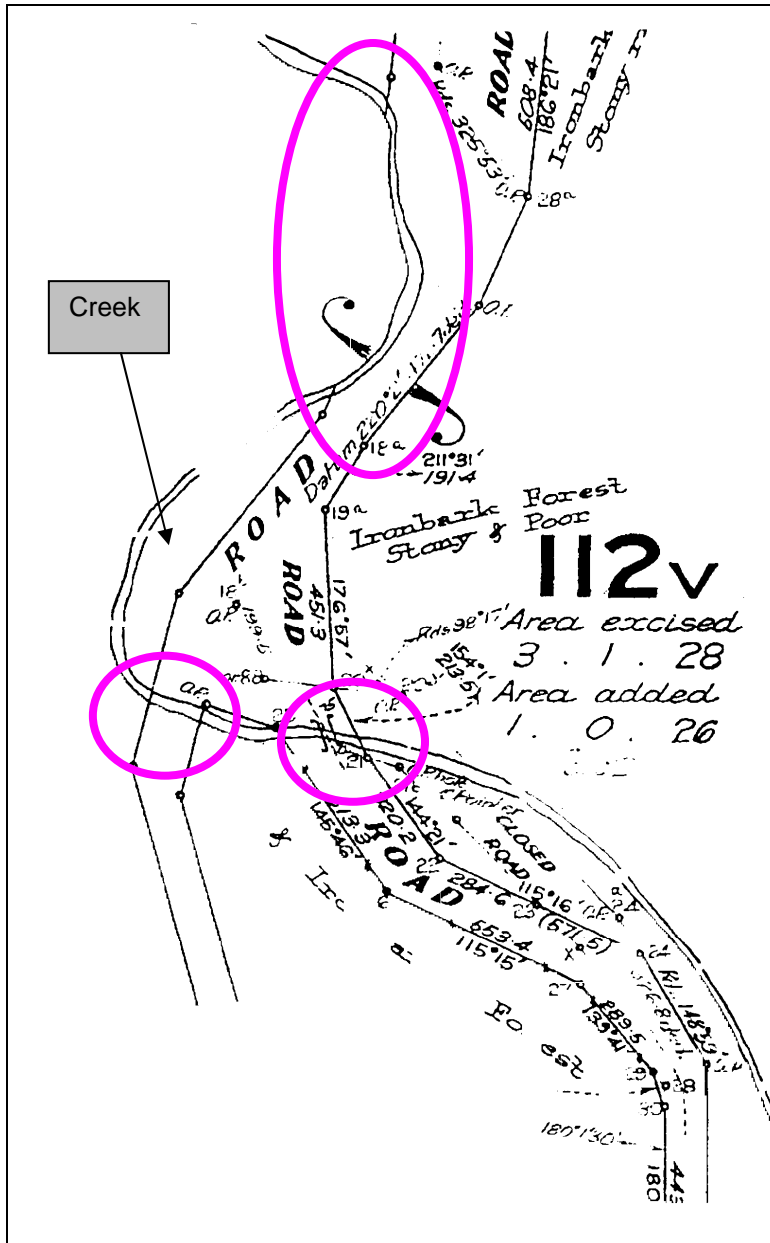
A dedication/declaration may or may not continue over a watercourse as can be seen in the following examples -

- Example 1 – Dedication does NOT continue over the watercourse.



In the above survey plan, the Hervey's Range Developmental Road crosses over the Star River. However, as can be seen on this survey plan the dedication for that road clearly stops on each side of the river and therefore the river remains as unallocated State land.

▪ **Example 2 – Dedication does continue over watercourse**



This survey plan shows the creek crossing the road in different places. It is clear that the dedication covers the creek crossings as the line of the dedication crosses the creek and the creek is shown within the boundaries of the dedication.

Part 9 Explanations and reasoning behind the Dedication Assessment Table

Time period This is the period for which you have sufficient evidence showing the area was dedicated as road.	Action/Dealing	Explanation/reasoning	Effect on native title
Before 1 January 1994	Dedication of an area as road	The dedication of an area as road is considered to be the establishment of a public work and therefore is a previous exclusive possession act under the NTA - section 23B(7) of the NTA and section 21 of the NTQA.	Extinguishment of native title
On 1 January 1994 to and including 23 December 1996	Dedication of an area as road not involving compulsory acquisition of native title rights and interests	The dedication of an area as road is considered to be the establishment of a public work and therefore is a previous exclusive possession act under the NTA - section 23B(7) of the NTA and section 21 of the NTQA. However, to ensure that the dedication was valid the <i>whole</i> or <i>part</i> of the area covered by the dedication must have, at any time prior to the dedication, been subject to— <ul style="list-style-type: none"> ▪ a valid freehold estate; ▪ a valid lease (other than a mining lease); or ▪ a valid public work. 	Extinguishment of native title
On 1 January 1994 to and including 29 September 1998	Subsequent dedication of an area as road after compulsory acquisition of native title rights and interests in this period	The non-extinguishment principle applies to the acquisition itself – section 23(3)(a) of the original NTA. However, section 23(3)(b) provides that nothing in the NTA prevented any act done to give effect to the purpose of the acquisition from extinguishing the native title rights and interests. Therefore, as the dedication of a road for the public extinguishes native title rights and interests at common law, the effect of dedicating the acquired area as road will extinguish native title.	Extinguishment of native title
On 24 December 1996 to and including 29 September 1998	Dedication of an area as road which was a pre-existing right-based act and falling within section 24IB (the transitional provisions of the NTA)	The dedication done in this time period must be based upon a legally enforceable right or a prior commitment etc made on or before 23 December 1996. Under the transitional provisions of the NTA, if the dedication takes place after 23 December 1996 but before 30 September 1998, section 24ID will apply to the dedication as if the dedication was a permissible future act under the NTA.	Non-extinguishment principle

		Section 24ID of the NTA provides that the conferral of a right of exclusive possession or the grant of a freehold estate will extinguish native title. Since the dedication of an area as road does not fall into either category, the non-extinguishment principle will apply to the dedication.	
On 24 December 1996 to and including 29 September 1998	Dedication of an area as road not involving compulsory acquisition and falling within section 24KA of the NTA (transitional provisions of the NTA)	Under the transitional provisions of the NTA, if the dedication takes place after 23 December 1996 but before 30 September 1998, section 24KA will apply to the dedication as if the dedication was a permissible future act under the NTA as it was in force at 29 September 1998.	Non-extinguishment principle
On and after 30 September 1998	Dedication of an area as road not involving compulsory acquisition and done under section 24KA of the NTA	Section 24KA of the NTA would apply to the dedication of an area as road.	Non-extinguishment principle
	Dedication of an area as road which was a pre-existing right-based act under section 24IB of the NTA	Section 24ID of the NTA provides that the conferral of a right of exclusive possession or the grant of a freehold estate will extinguish native title. Since the dedication of an area as road does not fall into either category, the non-extinguishment principle will apply to the dedication.	Non-extinguishment principle
	Dedication of part of a reserve as road under section 24JA of the NTA	<p>It is not possible to validly dedicate part of a reserve as a road under section 24JA.</p> <p>Dedications of areas as roads have been purportedly done under section 24JA of the NTA on the basis that the dedication was either in accordance with the purpose of a reserve or in the area covered by the reservation there would have no greater impact than what could already be done on the area covered by the reserve. However, these purported dedications have probably not been effective. The reason why the dedication was ineffective is explained in the example set out below.</p> <p>Example – in 1968, the land was reserved for public purposes under which the dedication of a road was in accordance with the purpose for which the land was reserved. However, as the reserved land over which the road was to be dedicated would have needed to have been first excised from the reserve and revert to unallocated State land, it could not have</p>	Not Applicable

		been done in accordance with the reservation or in the area covered by the reservation as that reservation no longer existed for that particular area. Therefore, section 24JA is not the applicable section and native title will not have been extinguished under section 24JA by the establishment of a public work, ie. the dedication of the area as road. If the dedication you are considering has been done under section 24JA, please refer all details to your NTCO who will then refer to matter to ATSILS for consideration.	
	Compulsory acquisition of native title rights and interests for road purposes and subsequent dedication of an area as road in this period	Section 24MD of the NTA applies to compulsory acquisitions of native title rights and interests. The effect of a compulsory acquisition is extinguishment of native title.	Extinguishment of native title
	Compulsory acquisition of native title rights and interests for road purposes before 30 September 1998 and subsequent dedication of an area as road on or after 30 September 1998	The non-extinguishment principle applies to the acquisition itself – section 23(3)(a) of the original NTA. However, section 23(3)(b) provides that nothing in the NTA prevented any act done to give effect to the purpose of the acquisition from extinguishing the native title rights and interests. Therefore, as the dedication of a road for the public extinguishes native title rights and interests at common law, the effect of dedicating the acquired area as road will extinguish native title.	Extinguishment of native title

Division E. Effect on native title, compensation and decision-making

Part 10 What is the effect on native title?

The Dedication Assessment Table provides you with the effect that the dedication/declaration had on native title.

Non-extinguishment principle

This means that native title rights and interests affected by the doing of the future act continue to exist and are not extinguished. However, while the future act exists, those native title rights and interests inconsistent with the future act are not able to be exercised or enjoyed.

Extinguishment

Extinguish means permanently extinguish. This means that after the extinguishment the native title rights and interests cannot revive, even if the act that caused the extinguishment ceases to have effect.

Part 11 Is compensation payable for the effect on native title by the dedication?

Compensation is payable by the State (where it is attributable to the State) if there is a successful claim for compensation for the extinguishment of native title rights and interests caused by a dedication of an area as road that was done on or before 23 December 1996 and is a previous exclusive possession act. The payment of compensation is subject to the requirements of section 27 of the NTQA.

For dedications done after 23 December 1996 which were future acts, compensation will be payable for the effect of the dedication on any native title rights and interests.

Part 12 Who makes the decision whether this Module applies?

There are no actual delegations to make decisions in relation to native title under the Native Title Work Procedures, the NTA or the NTQA.

The native title assessment process is just one part of your decision-making process when making a decision under legislation, eg. a decision to grant a permit. By carrying out a native title assessment, you are ensuring your decision complies with the NTA.

If the decision-maker is unsure how to proceed, your NTCO must be contacted for advice. If the NTCO is unsure how to proceed, the NTCO must contact ATSILS for advice.

If this Module does not apply to the proposed dealing,
please proceed to the next Module.