

Guideline

Roads off alignment and undedicated roads – A guide for local government

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1 Purpose

This guideline has been developed in consultation with the Local Government Association of Queensland. It is intended to assist local governments in addressing problems associated with roads off alignment or undedicated roads. The document includes step-by-step processes for local governments to refer to when addressing these issues.

2 Scope

A road is any area of land set aside or dedicated by legislation for the use of the travelling public. Not all roads are used by vehicles or pedestrians, and some may never be constructed and used for that purpose. Some constructed thoroughfares have never been dedicated. This document deals with roads maintained by local governments for a public purpose.

2.1 What are 'Roads off alignment'?

'Roads off alignment' describes the situation where a public road or part of a public road is constructed outside of the land dedicated as a road.

This may arise due to:

- insufficient survey information being available at the time a road is constructed
- past land allocation practices that did not specify or accurately determine boundaries for leasehold lands
- a track that over time becomes a constructed road but no formal dedication or road opening has been undertaken
- diversions of a constructed road made to bypass flooded lands, creek crossings, tree falls etc.
- incremental widening or realignments made to the constructed road (e.g. at bends).

2.2 What are 'Undedicated roads'?

An 'undedicated road' is a constructed road that exists in the absence of evidence the road has been dedicated, gazetted, notified or declared as a public road.

2.3 Why worry about roads off alignment and undedicated roads?

Off alignment and undedicated roads may bring uncertainty for local governments. Confusion may arise over the respective legal responsibilities of local governments and property owners/lessees. Considerable costs and complex process may accompany rectification of problems. In addition, funding mechanisms such as the Disaster Recovery Funding Arrangements (DRFA) may not be applicable to roads not constructed within their dedicated alignment.

2.4 Focus of the guideline

In each case, potential solutions will reflect considerations including land tenure, properties affected and negotiations with property owners or lessees.

The guide's focus is on information collection as well as appropriate and adequate stakeholder consultation.

3 Guideline

3.1 Identifying roads off alignment

The Digital Cadastral Database (DCDB) is a free spatial tool that provides a general indication of road details and boundaries. The DCDB is the spatial representation of every parcel of land in Queensland, including its Lot on Plan description and relevant attributes. It provides the map base for systems dealing with land-related information. The DCDB is a graphical representation of the Queensland cadastre and is not survey accurate. It is not the point of truth for a legal property boundary or related attribute information. The point of truth will always be the plan of survey, the related titling information and administrative data sets. The DCDB is not an authoritative source as to whether a road has been opened, closed or is within its dedicated alignment.

The DCDB was originally created by digitising cadastral 'Working Maps'. It is updated and/or revised as information becomes available (such as new survey plans or adjusted survey information). The DCDB exhibits differing degrees of accuracy dependent on location and thus the process of identifying a road off alignment may vary from place to place. There will be instances, particularly in rural or remote areas, where the DCDB graphical representation of boundaries is not correct in relation to the base imagery.

Councils can access the DCDB through:

- Queensland Globe - <https://qldglobe.information.qld.gov.au>
 - Queensland Globe is the department's free mapping and data online interactive tool with access to hundreds of spatial data layers including the DCDB, topography, mining and exploration, land valuations, natural resources (vegetation, water, soil etc.) and more.
 - Queensland Globe is a useful tool in identifying constructed roads in satellite imagery relative to the DCDB boundaries.
- QSpatial - <http://qldspatial.information.qld.gov.au>
 - QSpatial provides Queensland Government spatial data including the DCDB. The DCDB can be downloaded as a shapefile or tabfile, or the DCDB web map service can be linked directly to a Geographic Information System (GIS).

Another Queensland Government free spatial tool that can also assist in identifying roads off alignment is:

- QImagery - <https://qimagery.information.qld.gov.au/>
 - QImagery is an online collection of aerial photographs dating back to the 1930s. These images can assist in determining the location of constructed 'roads' over time.

Many local governments have GIS-containing road-related data. This may include Global Navigation Satellite Systems (GNSS) data showing current road formation location. GNSS is the collective name for satellite positioning systems, of which the Global Positioning System (GPS) is the best known. Such data may be compared with the DCDB and satellite imagery to identify constructed roads not aligned with boundaries in the DCDB.

Where the constructed road does not align with the DCDB alignment, data may be compared to source information defining the road dedication. This can help to determine if there may be an error in the DCDB representation of the road boundaries. Such an error may arise in the relevant gazette notice, survey plan, administrative plans or other documents administered by the department.

Example

Cook Shire Council is Queensland's largest local government area encompassing 115,000 km², some 80% of the Cape York Peninsula. In parts of the shire, the DCDB is accurate to 0.5 metre. However, for the greater part of the shire the maximum error rating is much higher—in the order of 140 metres. In such circumstances the DCDB is NOT a satisfactory spatial indicator.

3.2 Prioritisation and timing

Roads identified as off alignment and/or undedicated should be prioritised and dealt with through a local government's normal decision making processes, ensuring proper consideration of financial and logistical constraints.

In arriving at a decision, local governments will need to consider:

- potential survey, registration and land transfer costs
- potential for compensation liabilities
- how best to aggregate costs where multiple lots may be affected.

3.3 The issue of legal liability

Local governments might be approached by property owners with concerns regarding legal liability for off-alignment roads that encroach upon their property. A particular concern is the scenario of potential traffic accidents. Will liability attach to the property owner or local government if defects are identified in the road structure?

To avoid any conflict at a later stage, it is recommended that the agreement be in writing detailing the obligations of the parties as agreed, including any indemnity requirements.

Local governments may consider indemnifying property owners concerned over the legal liability issue. This would mean that council or the property owner would undertake to bear any liability arising in the above circumstances.

If the local government decides to provide an indemnity, advice can be obtained from Local Government Mutual Liability (LGM Liability) around the local government's liability cover in the event of a loss, specific to the proposed indemnity.

Legal advice should be sought by the local government where this option is under consideration.

1. Were the local government to proceed, formal agreement with the landowner detailing responsibilities of each party will be required.
2. Any proposed agreement and its accompanying legal advice should be forwarded to LGM Liability.

3.4 Survey standards

To assist local government, the department strives to deliver minimum survey standards in rectifying roads off alignment and undedicated roads. These will be unique to each case. The standard of plans providing for the regularisation of roads off alignment will depend primarily on the survey status of affected land.

The scenarios described in the guide contain basic information on the survey standards required. The Registered Cadastral Surveyors undertaking survey work are familiar with the survey standards and guidelines (the various Acts and subordinate legislation such as the Cadastral Survey Requirements and the Registrar of Titles Directions for the Preparation of Survey Plans). These publications are available on the department's website.

However it is recommended local government officers seek pre-lodgement advice from State Land Asset Management officers before commencing any survey work to ensure the appropriate standard is applied in each case. Registered Cadastral Surveyors are also encouraged to make contact with the department's local Principal Surveyor regarding survey requirements for each dealing.

3.5 Native title and Indigenous cultural heritage

Native title considerations must be assessed where native title is not clearly extinguished.

Procedures under the *Native Title Act 1993* (Cth) must be observed before either new road dedications are registered or lessee compensation is finalised. This guide attempts to illustrate where responsibility rests with the State and where it rests with local governments. Further information concerning native title is contained at Appendix A.

The guide does not detail requirements of the *Aboriginal Cultural Heritage Act 2003* (Qld) or *Torres Strait Islander Cultural Heritage Act 2003* (Qld).

In any road realignment scenario, a local government should fulfil its statutory duty of care to take measures to avoid detriment to Indigenous cultural heritage.

3.6 Recommended actions for local governments

Each case of roads off alignment or undedicated roads will be unique. Solutions must recognise statutory obligations, incorporate best available information and be cognisant of local government priorities. Local governments should develop a systematic and prioritised program for rectification of undedicated roads and roads off alignment where appropriate.

4 Procedures

Solutions to problems arising from roads off alignment or undedicated roads will incorporate consideration of:

- land tenure
- the extent of misalignment
- the history of the misalignment
- legislation applying at the time of the misalignment

- stakeholder features of the case.

4.1 Where to begin?

1. Local governments should first identify the position of the constructed 'road' to an acceptable standard. This may require GNSS data, light detection and ranging remote sensing and/or satellite imagery. This identification is compared with Queensland Globe data and/or a current DCDB extract, to determine if the constructed 'road' aligns with road boundaries in the DCDB. Where misalignment is identified, data may be compared to source information defining the road dedication, such as the gazette notice, survey plan, administrative plans or other documents held by the department. QImagery is a spatial application of historical aerial photography and imagery for Queensland and may be helpful in this respect.
2. If the constructed road in fact appears to be on the dedicated alignment as per the source information these findings should be submitted to the department with a request to amend the DCDB. While the DCDB strives for accuracy there will be instances, particularly in rural or remote areas, where the DCDB requires revision.
3. If the constructed road appears to be off its dedicated alignment as per the source information, it may be categorised into one of three groups:
 - a. There is no evidence of the local government realigning the constructed road (i.e. through roadworks), and therefore it may be incorrectly shown on plans and/or maps.
 - b. The local government has built a road or repositioned the constructed 'road' through roadworks, but survey plans defining the location of the road have not been registered.
 - c. The local government or another party has constructed a road that has not been gazetted or dedicated.
4. Local governments should categorise roads off alignment into one of the following tenure groups:
 - a. Leasehold
 - b. Freehold
 - c. Other Tenures: for example, Reserve, Protected Area Estate etc.
5. Local governments should then aggregate information, incorporating other related documentation such as construction history, previous agreements with landowners and/or lessees.

Where information is lacking, local governments should utilise spatial applications such as Queensland Globe and QImagery and request incidental departmental information. For example there may be a land inspector's report that is of assistance.

4.2 Scenarios

Consideration of land tenure will guide the process of rectifying roads off alignment.

Specific cases may not align with the scenarios described here. For example, a particular case may hinge on past correspondence or understandings between a local government and a property owner or lessee.

The following scenarios are characterised under the categories of Leasehold, Freehold, and Other Tenures. Other Tenures may include Protected Area Estate, Deed of Grants in Trust (DOGIT), Reserves and Unallocated State Land (USL).

Landowners, lessees and trustees must be consulted. In some instances, the landowner may be the local government, the department or another legal entity.

4.2.1 Scenario 1: Leasehold

This scenario relates to leasehold land. Leasehold land is predominantly located in rural areas and is the tenure category where roads off alignment are most commonly encountered.

Leasehold land must be described on a survey plan, but frequently is not in a fully surveyed state. When making changes to leasehold land, such as for road actions, the same requirements to not undertake full survey may apply. In many situations the new survey plan may be office compiled by a registered cadastral surveyor using the best information available to describe the actions (such as road opening) e.g. hand held GNSS data and satellite imagery.

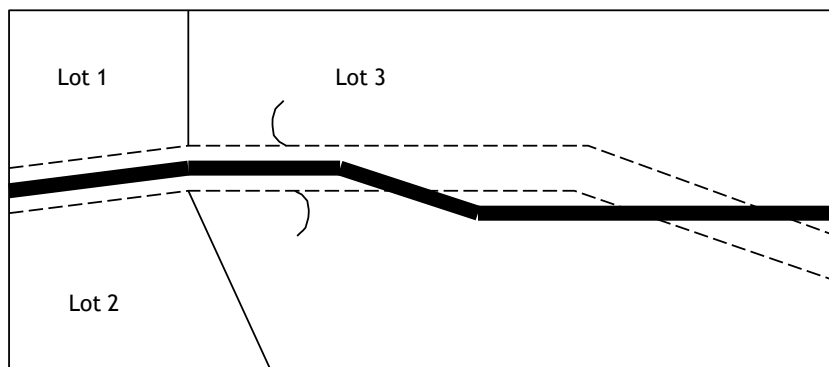
Rectification on leasehold land may entail a road opening or simultaneous road opening and closure. The following diagrams reflect these situations.

4.2.1.1 Simultaneous road opening and closure:

This scenario is applicable when both the following apply:

- a constructed road exists
- the constructed road at one or more locations does not align with the dedicated road corridor.

Image 1:



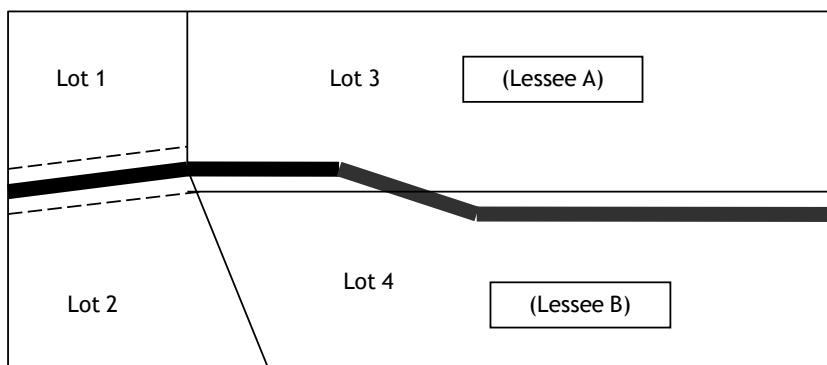
- Constructed road
- - - - - Dedicated road corridor

4.2.1.2 Road opening only:

This scenario is applicable when all the following apply:

- a constructed road exists
- there is no evidence that a road dedication has been performed
- no road is shown on current survey plan of the lease(s).

Image 2:



- Constructed road
- - - - - Dedicated road corridor

4.2.1.3 Procedure

Where a local government intends to rectify both instances shown at 4.2.1.1 and 4.2.1.2, it is recommended the following procedure be followed.

Step	Action	Agency responsible
1.	Contact the department seeking pre-lodgement advice on the status of the road and proposed actions. In providing pre-lodgement advice, the department will require information as previously outlined in 4.1. In most instances, a local government will be required to lodge an application with the department for processing.	Local government
2.	Notify lessee/s and other parties with an interest (e.g. mortgagee) that administrative actions will be required to accurately describe the location of the constructed road, to close the road (if required) and to amend the description of the lease accordingly. If considered a low priority, a local government may defer action until the next dealing of lease (for example at lease renewal or conversion).	Local government
3.	Once written lessee agreement is received, this is to be forwarded to the department with accompanying property details. Proceed to Step 4. If written agreement is not obtained three options are open to a local government:	Local government

	<ul style="list-style-type: none"> Negotiate compensation with each lessee in return for written agreement. Apply to the department to take action under the Land Act to resume land required for the new dedicated road corridor (Lessee B in the diagram). The local government is liable for costs, including survey costs. Also, any compensation payable for this action will be the responsibility of the local government. If not a priority, delay the road realignment and deal with the matter upon renewal or conversion of the lease. 	
4.	Collect details required for preparation of a plan to better describe the location of the formed road and area of road to be closed.	Local government
5.	Lodge application for road action with the department.	Local government
6.	The department then will assess native title in accordance with the Queensland Government native title work procedures prior to undertake actions to reflect the correct road alignment. Refer to Appendix A for further information about native title.	Department
7.	Department to issue letter of offer.	Department
8.	Implement requirements of the department's offer. Engage a Registered Cadastral Surveyor to prepare a survey plan showing the area of road to be opened, area to be closed and the balance of the lease to reflect the correct road alignment. Survey requirements will be stated in the letter of offer. In most instances of leasehold land, the survey plan can be prepared in office using the best available information to describe the lease and road action (e.g. current lease description, GPS data of the formed road and rectified satellite imagery).	Local government
9.	When all offer requirements have been satisfied, the survey plan and Land Registry forms can be lodged at the department's Titles Registry. The road actions occur on registration of the survey plan.	Department
10.	The DCDB and lease are amended to reflect the new details.	Department

4.2.2 Scenario 2: Freehold

This scenario relates to freehold land. Freehold land is predominantly located in and around town areas. In recent times more state leasehold land has been converted to freehold, so there are now large freehold parcels used for pastoral purposes.

Freehold land is fully surveyed and must remain so when actions occur, to continue to be included in the freehold land register. A field survey must be undertaken by a registered cadastral surveyor to accurately identify the boundaries of the road.

In many instances, approvals for actions affecting freehold land (such as road opening), are dealt with under the *Planning Act 2016* and are the responsibility of local governments.

There are instances where roads off alignment on freehold land will be dealt with as simultaneous road opening and closure under the *Land Act 1994* and therefore the department is involved in the approval process. The procedure for this process is outlined below.

4.2.2.1 Procedure

If a local government proceeds to rectify a road, the following procedure is recommended.

Step	Action	Agency responsible
1.	<p>Contact the department seeking pre-lodgement advice on the status of the road and proposed actions to rectify any roads off alignment or undedicated roads.</p> <p>As part of the pre-lodgement advice, the department will require information as outlined in 4.1.</p> <p>In most instances of simultaneous road opening and closure, a local government will be required to lodge an application (with landholder consent).</p>	Local government
2.	<p>A local government should notify the registered owner and other parties with an interest in the property (e.g. mortgagees) that an action will be required to amend the real property description by way of subsequent survey plans showing the existing constructed road and closing the current dedicated/gazetted road. Written agreement should be sought from the owner for surrender of the area containing the constructed road and inclusion of current dedicated road corridor into the freehold lot.</p>	Local government
3.	<p>Once written agreement of the owner is received, this should be forwarded to the department with property details. Then proceed to Step 4.</p> <p>If written agreement is not forthcoming two options are open to a local government:</p> <ul style="list-style-type: none"> • Negotiation of compensation in return for written agreement. • Resumption of the land required for the new road corridor, with compensation payable in accordance with the <i>Acquisition of Land Act 1967</i>. <p>The <i>Land Act 1994</i> only provides for a simultaneous road opening and closure action on freehold land under section 109A if the new road is replacing the old road and:</p> <ul style="list-style-type: none"> • the owner of the land affected by the new road opening is the recipient of the closed road, and/or • road opening and closure actions apply to adjoining lots. <p>If both dot points above apply, a simultaneous road opening/closure action can be initiated with the department by a local government. The local government is liable for costs including survey costs.</p> <p>If the owner does not agree to assume ownership of the current dedicated road area, no action can be taken by the department to close or open a new road under the <i>Land Act 1994</i>. The current road area will remain as a dedicated road. Dedication of the new road alignment will not be dealt with under the <i>Land Act 1994</i>, but as a plan of subdivision under the <i>Planning Act 2016</i> – therefore steps 4 to 9 will not apply.</p>	Local government

4.	<p>Section 109A of the <i>Land Act 1994</i> allows for simultaneous opening and closure if the road being opened is replacing the road being closed. An offset for the value of the road being opened against the value of the road being closed (i.e. exchange) can only be allowed if the proposed road realignment is at the instigation of the local government or Department of Transport and Main Roads.</p> <p>There can be no offset of values if the road opening and closure is due to a proposal for subdivision of the land. Offsetting values can only occur if the road realignment is for a community benefit.</p> <p>Section 109A may be applied to the opening and closure to ensure continuity of a road network, but full value of the road being closed must be paid by the owner. If unsure if the offsetting of values will apply, please seek further guidance from the department.</p>	Local government
5.	Road opening/closure action may then be initiated. A local government will lodge an application for simultaneous road closure/opening with the department.	Local government
6.	The department will assess native title in accordance with the Queensland Government native title work procedures prior to undertaking actions to reflect the correct road alignment. Refer to Appendix A for more information regarding native title.	Department
7.	Following assessment, the department may issue a letter of offer.	Department
8.	<p>A local government must comply with the requirements of the department's offer.</p> <p>A local government must arrange for a registered cadastral surveyor to prepare a survey plan. The survey requirements will be stated in the letter of offer.</p>	Local government
9.	Once offer requirements have been satisfied, the survey plan and Land Registry forms are to be returned to the department for lodgement with the Titles Registry.	Local government & Department
10.	Upon registration the DCDB and Title will be amended to reflect the new details.	Department

4.2.3 Scenario 3: Other Tenures

4.2.3.1 Scenario 3.1 – Protected area estate

In most cases, actions in protected areas estates are initiated by the department administering the Nature Conservation Act (NCA department). Where a local government has initiated action to rectify a road within a protected area estate it will bear the costs. The processes detailed below only apply where a local government instigates a change.

4.2.3.1.1 Procedure

If a local government resolves to proceed to rectification, certain processes should be observed.

1. Dedication of an area as a new road:

Step	Action	Agency responsible
1.	A local government should approach the department and the NCA department seeking pre-lodgement advice on the status of the road and proposed actions to rectify any roads off alignment or undedicated roads. As part of the pre-lodgement advice, the department and the NCA department will require certain information as outlined in 4.1 of this guide.	Local government
2.	Liaise with the NCA department to seek agreement in principle to the revocation of the road area from the protected area/forestry estate.	Local government
3.	Proceed to lodgement of an application for road opening with department. Lodgement should follow the NCA department in principle approval, in order for the road opening action to be ready to occur closely after the revocation has occurred.	Local government
4.	The department will then process the road opening application.	Department
5.	The department will assess native title in accordance with the Queensland Government native title work procedures. This assessment can be used by local government to satisfy the NCA department's requirements.	Department
6.	The department will subsequently issue a letter of offer. The offer will advise that upon native title being suitably addressed (if required) and revocation occurring, the road opening action can be finalised.	Department
7.	A local government must address any native title requirements and other matters such as cultural heritage prior to the NCA department undertaking revocation action.	Local government
8.	Preparation of the required plan of survey for revocation action which is provided to the NCA department. The plan is to describe the road area as a lot, not as a road to be opened.	Local government
9.	The NCA department prepares the balance plan for the protected area/forestry estate. In some instances, the local government may be required to provide a balance plan of the protected area estate.	NCA department
10.	The NCA department completes protected area/forestry estate revocation (DCDB and protected area/forestry estate title amended) and notifies local government.	NCA department
11.	DCDB and title amended to reflect the new details. The excised area will be shown as unallocated state land.	Department
12.	A dedication notice (road opening) will be lodged in the Queensland Titles Registry for the unallocated state land.	Department

2. Closure of road area and inclusion into protected areas/forestry estates:

Step	Action	Agency responsible
1.	Liaise with the NCA department to agree to area of dedicated road being closed and included into adjoining protected area/forestry estate.	Local government
2.	Upon notification of NCA department agreement, the local government may lodge an application for road closure with the department.	Local government
3.	The department will assess native title in accordance with the Queensland Government native title work procedures for the road to be closed. Note: USL (in the name of the NCA department) can be included into national park without further reference to native title).	Department
4.	The department will issue a letter of offer.	Department
5.	The local government should address any native title requirements (if required)	Local government
6.	Prepare plan of survey of road to be closed. The closed road is to be shown as a lot.	Local government
7.	Upon permanent closure the DCDB and title will be amended to reflect the new details. The road will be shown as unallocated state land.	Department
8.	Upon finalisation of the application for road closure as notified by the department, the NCA department will arrange for the inclusion of the USL (closed road) into National Park/State forest.	NCA department
9.	The NCA department is responsible for preparation of a new protected area/forestry estate plan inclusive of the closed road.	NCA department
10.	DCDB and title are amended to reflect the new protected area/forestry estate details.	Department

3. Simultaneous road opening and closure within protected areas/forestry estates:

Simultaneous road opening/closure is not possible for tenures under the *Nature Conservation Act 1992* and *Forestry Act 1959*. This is because the area of new road must be revoked (a lengthy process) and declared as road in accordance with statutory procedures prior to the area of current dedicated road being closed and made available for dedication/declaration as protected area or state forest.

4.2.3.2 Scenario 3.2 - DOGIT and Aboriginal land

4.2.3.2.1 Deed of Grant in Trust (DOGIT) land scenarios

1. Dedication of an area as road:

Step	Action	Agency responsible
1.	Obtain endorsement from Minister for the department and the trustees to surrender land required for road from the DOGIT.	Local government
2.	Prepare a plan of subdivision of the DOGIT identifying the road, and the balance of the DOGIT areas as separate lots.	Local government
3.	Lodge surrender application forms and plan with the department.	Local government
4.	The department will assess native title in accordance with the Queensland Government native title work procedures prior to undertaking actions to reflect correct road alignment. Refer to Appendix A for more information about native title.	Department
5.	The department issue a letter of offer.	Department
6.	The local government must comply with requirements of the department's offer.	Local government
7.	Survey plan and Land Registry forms are then lodged with the Titles Registry. The road actions occur at registration of the survey plan.	Department
8.	DCDB and DOGIT are amended to reflect the new details.	Department

2. Closure of road area and inclusion into a DOGIT held for a community purpose:

Step	Action	Agency responsible
1.	Liaise with trustees to accept closed road area to be included into the DOGIT.	Local government
2.	Upon notification of trustee's agreement, the Local Government will make an application for permanent road closure for inclusion into the DOGIT.	Local Government
3.	After investigation, the department to issue letter of offer.	Department
4.	Comply with requirements of the department's offer.	Local government
5.	Local government will be responsible for preparation of survey plan to facilitate inclusion of closed road area into DOGIT.	Local government
6.	Survey plan and Land Registry forms are then lodged with the department's Titles Registry. The road actions occur at registration of the survey plan.	Department
7.	DCDB and DOGIT amended to reflect the new details.	Department

4.2.3.3 Scenario 3.3: Other Tenures e.g. unallocated state land (USL), Reserve

On rare occasions, an off alignment road issue may arise spanning properties with differing tenures. In such cases, different tenures must be dealt with separately and pre-lodgement advice of the department should be sought regarding the process. Generally however, a combination of scenarios contained within this document will apply.

Some actions in USL and reserves are initiated by the department. Where a local government has initiated action to rectify a particular road within USL or reserves it will bear the costs of taking such action. The following information applies in cases where council is the instigator of change.

4.2.3.3.1 Procedure

If rectifying the issue is deemed to be a priority by local government, it is recommended that the following procedure be followed.

Contact the department seeking pre-lodgement advice on the status of the road and proposed actions to rectify any roads off alignment or undedicated roads.

As part of the pre-lodgement advice, the department will require research as outlined in 4.1.

The department will undertake its own research on the matter.

If rectifying the issue is deemed a priority by the local government following procedures may be followed.

Step	Action	Agency responsible
1.	Contact the department seeking pre-lodgement advice on the status of the road and proposed actions to rectify any roads off alignment or undedicated roads. As part of the pre-lodgement advice, the department will require information as outlined in 4.1. The department will undertake its own research on the matter. In most instances, the local government will be required to lodge an application with the department.	Local government
2.	Notify parties with an interest in the property (for example reserve trustee, trustee lessee, permittee) that an administrative action is required to more accurately describe the location of the constructed road, close the road (if required) and amend the description of the land accordingly.	Local government
3.	When written agreement of all interested parties is received, forward agreement to the department with details of property. Any permittee or trustee lessee to be advised that the permit or trustee lease will need to be cancelled and/or surrendered. A new permit or trustee lease will then be issued over the newly surveyed area of the reserve.	Local government
4.	Collect details required for preparation of a plan to better describe the location of the road and area of road to be closed.	Local government
5.	The local government will then lodge an application for road action with the department.	Local government
6.	The department to assess native title in accordance with the Queensland Government native title work procedures prior to	Department

	undertaking actions to reflect the correct road alignment. Refer to Appendix A for more information about native title.	
7.	The department will then issue a letter of offer	Department
8.	The local government must comply with requirements of the department's offer. The local government must then engage a Registered Cadastral Surveyor to prepare a survey plan of the area of road to be opened, area of road to be closed and a balance plan of the subject lot to reflect the correct road alignment.	Local government
9.	The survey plan and Land Registry forms are then lodged with the department's Titles Registry.	Department
10.	The DCDB and any lease will then be amended to reflect the new details.	Department

4.2.3.4 Scenario 3.4: Multiple tenures

On rare occasions, an off alignment road issue may arise spanning properties with differing tenures. For example, the road may run through a reserve, as well as a leasehold and a freehold lot. In such cases, each tenure must be dealt with separately and pre-lodgement advice of the department sought regarding required process.

Generally, a combination of scenarios contained within this document will apply.

5 Legislation

Land Act 1994

Native Title Act 1993 (Cth)

Acquisition of Land Act 1967

Planning Act 2016

Nature Conservation Act 1992 and Forestry Act 1959

The department is committed to respecting, protecting and promoting human rights. Under the *Human Rights Act 2019*, the department has an obligation to act and make decisions in a way that is compatible with human rights and, when making a decision, to give proper consideration to human rights. To the extent an act or decision under this document may engage human rights under the *Human Rights Act 2019*, regard will be had to that Act in undertaking the act or making the decision.

6 Further information

- Contact your nearest business centre (https://www.dnrme.qld.gov.au/?contact=state_land).
- Refer to <https://www.qld.gov.au/environment/land/state>.
- Call 13 QGOV (13 74 68).

Appendix A – Native title

The department will comply with the *Native Title Act 1993* (Cth) work procedures before dedicating roads constructed outside dedicated corridors, and closing roads in any of the identified scenarios.

A local government is responsible for any native title procedures applicable to land offered as part of compensation payable in accordance with the *Acquisition of Land Act 1967*, if native title rights or interests may apply to the land. It is also responsible for the native title procedures that apply when native title is compulsorily acquired.

Potential Native Title Scenarios Based On Current Tenure

The following material may be considered by local governments in relation to a road off alignment.

All requirements and associated responsibilities should be confirmed with the department prior to any action being taken.

Leasehold

- If the lease is a previous exclusive possession act (*Native Title Act 1993* (Cth) s.23B(2)) native title is taken to be extinguished.
- The following apply if the lease is not a previous exclusion possession act:
 - Dedicating an area where there is a constructed road
 - The department will complete a tenure history and land use investigation when an area is either to be surrendered by the lessee, or resumed by council from the lease area containing the road.
 - If dedication of that area as a road is a native title 'future act', then the department will meet the *Native Title Act 1993* (Cth) requirements.
 - Applying an alternate use to an area currently dedicated as a road but no longer required (close road)
 - This will be particularly relevant if the local government is conferring upon the lessees the use of the dedicated area in return for the lessee's surrender of the area where the road is constructed off alignment.
 - Whether native title is an issue or whether compensation regarding native title is required depends on when the area was validly dedicated as a road. A local government is responsible for meeting the *Native Title Act 1993* (Cth) requirements if native title has not been clearly extinguished.
 - Roads dedicated before 01 January 1994—If the area was validly dedicated before 1 January 1994 then native title is considered extinguished. and native title is not an issue.
 - Roads dedicated between 1 January 1994 to 23 December 1996 (inclusive)—If the area was validly dedicated between 1 January 1994 to 23 December 1996 (inclusive), AND the area of the road was previously held either as freehold or

lease (other than a mining lease), then native title is considered extinguished and native title is not an issue.

- Roads dedicated after 23 December 1996; or if neither of the above 2 scenarios fully apply—If the area falls into this sub-paragraph then native title is required to be addressed in accordance with the requirements of the *Native Title Act 1993* (Cth) . Check with the State to confirm its requirements. The *Native Title Act 1993* (Cth) procedures will probably need to be met by council before the lease can be amended to include the relevant area.

Freehold

Subject to the provisions of the *Native Title Act 1993*,(Cth) a private grant of freehold extinguishes native title.

Unallocated state land (USL)

When the current road is constructed on USL, and this USL is to be dedicated as a road, the department will comply with the *Native Title Act 1993* (Cth) requirements and may use s.24KA provision, in which case the non-extinguishment principle will apply.

Protected area estate

When the current road is constructed on protected area estate such as national park and is to be dedicated as a road, the area must be revoked from the State park etc. and will then revert to USL.

The USL section then applies. The department may apply s.24KA, in which case the non-extinguishment principle will apply.

DOGIT and Aboriginal land

When the current road is constructed on DOGIT or Aboriginal land and is to be dedicated as a road the area must be surrendered from the DOGIT Area.

The USL section then applies. The department may apply s.24KA provision (if required) so the non-extinguishment principle will apply.

Differing land tenures on adjoining properties

The applicable native title procedure will depend on the land tenure. This will be considered separately depending on each tenure type.

Appendix B - Definitions

Term	Definition
'dedicated road corridor'	<p>Road corridor considered as a road for public use and as defined hereunder in terms of the <i>Land Act 1994</i> s.93.</p> <p>A "road" means an area of land, whether surveyed or unsurveyed:</p> <ul style="list-style-type: none"> • dedicated, notified or declared to be a road for public use or • taken under an Act, for the purpose of a road for public use.
'road alignment'	Physical constructed road and associated works, including road shoulders, signage and parking areas within the road corridor.
'constructed road'	Physical road formation, regardless of construction type (e.g. gravel, pavement etc.)
'Digital Cadastral Data Base (DCDB)'	<p>Digital Cadastral Data Base (DCDB) is a database showing the spatial representation of the property boundaries and related property descriptions of Queensland. The DCDB provides the map base for systems dealing with land and land related information and provides data in order to generate hard copy map.</p> <p>DCDB contains a record of the property boundary of every parcel of land in Queensland together with its legal Lot on Plan description. Other attribute information is also provided. This includes a lot area, limited tenure information, street and road names, creek and river names (where they form part of the cadastral boundary), locality names, parish names and local government names.</p> <p>Where the DCDB differs from the source information defining the road (e.g. survey plans, gazettal), the source information is the correct record.</p>
'GNSS'	Global Navigation Satellite Systems (GNSS) is the standard generic term for satellite navigation systems that provide autonomous positioning on the earth's surface. The most well-known GNSS is Global Positioning System (GPS). Other systems include GLONASS, Galileo, Beidou together with other regional systems.
'survey plan'	<p>A plan of survey that determines the boundaries of a piece of land or waters, required or authorised:</p> <ul style="list-style-type: none"> • under any Act dealing with the alienation, leasing, and occupation of State lands or with mining, or affecting titles to land • by the proprietor, lessee or mortgagee under any Act affecting titles to land • by the owner, proprietor, lessee, mortgagee or occupier of, or any person holding a registered interest in, any land for the re- establishment of, or identification of, or adjustment of any boundary of such land <p>or</p>

	<ul style="list-style-type: none"> • under any Act to be made or certified by a Cadastral Surveyor.
'administrative plan'	A plan that has been prepared for administrative purposes for an action or dealing in land that may be required under an Act of Parliament.