

Guideline

Roads under the *Land Act 1994*

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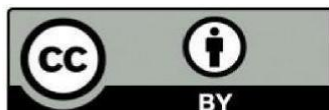
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Further information

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

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1 Purpose

This policy provides guidance on how roads are managed under the *Land Act 1994* (Land Act).

2 Rationale

Land dedicated as road is an area set aside for the present or future use of the travelling public.

Unless authorised under an Act, the use of a road for any other purpose must not lessen the primary purpose of public passage.

Any application to use the road for another purpose has to be balanced against the present and future use for the road. Where a local government or Department of Transport and Main Roads (TMR) is unable to authorise another proposed use on the road, an application under the Land Act may be required. For example:

- a permanent road closure is the act of changing the status of the land from road to unallocated state land (USL) to be available for subsequent issue of a Deed of Grant or for inclusion into non freehold land (e.g. lease or reserve); or
- a temporary closure to restrict the public's right to use the road; or
- a permit to occupy may also issue over a road in limited circumstances.

3 Policy

3.1 Use of a road

3.1.1 Who manages roads

While all land in a road is owned by the state, the day to day management, control and regulation are the responsibility of:

- TMR under the *Transport Infrastructure Act 1994* for state controlled roads; and
- local governments under the *Local Government Act 2009* (LGA) and *City of Brisbane Act 2010* for other roads.

Consequently issues relating to use, access, construction and maintenance should be referred to the road manager who is best placed to deal with the request.

3.1.2 What activities may be undertaken on a road

A road may be used for travelling and access purposes by means of a vehicle, walking, horse, etc. unless it is restricted under the provisions of an Act. The fact that a road is not constructed does not diminish its status as road and therefore may still be available for use by the public for that purpose.

Public utilities and services, including electricity distribution, communication cables, bus shelters, public telephones, water, sewage and drainage are a historical and present use of roads.

Section 66 of the *Transport Operations (Road Use Management) Act 1995* also provides for a local government to authorise certain uses of local roads. Situations that a local government may authorise (by a local law) include a structure over a road (e.g. shop awning) or the placement of portable improvements on a road area in connection with a business being conducted on adjoining land for restaurant (e.g. footpath dining), retail or similar purposes, or advertising.

3.1.3 A road is still needed when ...

Section 101(3) states that the Minister must refuse a road closure application if the Minister is satisfied the road is still needed.

A road is considered still needed when:

- it gives the only practical access to a parcel of land whether or not there is some other dedicated access to such land; or
- it is the only dedicated access to a parcel of land (whether or not the owner of the parcel agrees to the closure); or
- it is used by the public for road, including in connection with the Bicentennial National Trail (see section below) or stock route purposes (see separate section below) and is expected to continue to be required for such purposes; or
- it is required to provide continuity to an existing road network (however temporary closure may be acceptable in this situation); or
- the interests of existing public service facilities or authorised private service facilities cannot be otherwise protected or accommodated e.g. by easements or movement of services; or
- the land contains or is critical for existing or foreseeable road structures and road maintenance (for example land beneath a road bridge that contains or provides structural support), however temporary closure may be acceptable where the need is foreseeable rather than now; or
- the road contains some historically or socially significant feature or flora and fauna that should be protected in the State's interest or where the land protects other land, or waterways (for example beachfront dunes), and no convenient alternative provision can be made for the protection of the features, the flora and fauna or other land (for example through setting aside of part of the land as a community purpose reserve, or covenant if the road was closed and included in the adjoining freehold), or
- the road provides access to the coast, a watercourse or a lake.

In addition, depending on the circumstances, it may be decided on other grounds that a road may still be needed following investigation of a particular road closure application e.g. road frontage to both the front and rear of an adjoining property is to be retained.

3.2 Opening and closing a road

3.2.1 Road closures

Section 68 of the LGA and section 74 of the *City of Brisbane Act 2010*, requires notice of any proposed closure or opening be provided to the local government. Further, section 69 of the LGA allow local governments to permanently or temporarily close a road. Consequently before making an application for a road closure, under the Land Act, the proposal should be discussed with the local government as it may be possible for it to authorise the use under its legislation.

A road that is closed under the LGA remains a road and allows the use of the closed road on the conditions the local government considers appropriate.

The following entities may apply for a permanent road closure under the Land Act:

- A public utility provider. This also includes the commonwealth, state and local governments however it does not include non-core utility providers. These are defined in the Dictionary, Schedule 6 of the Land Act, or
- An adjoining owner, or
- The trustee of reserve land that adjoins the road.

The following persons may apply for a temporary road closure under the Land Act:

- An adjoining owner; or
- Another person that proposes minor structural improvements limited to irrigation pipes, irrigation water channels or boundary fencing.

Refer to Policy - Land Allocation: Public Purpose Reservations (SLM/2013/480) for guidance on reserved roads or reservations in title.

Adjoining owner

An adjoining owner is defined as the registered owner of the property that shares a common boundary with the road (i.e. contiguous, directly connected or without interruption).

An adjoining owner can apply for the area of road that immediately adjoins the property boundary, but not any part of the road that continues in either direction beyond the property boundary.

If a road is a 'dead end' and the property boundary only adjoins on the end and does not extend along the road, the owner is not considered an adjoining owner for a road closure application. For clarity, a person who has limited frontage to the road cannot apply for closure of the entire length of the road. Refer to Attachment 1 for examples of an adjoining owner.

Adjoining owners do not include an applicant who may have some "entitlement" (e.g. by way of an unconditional contract of sale) to become the registered owner of land adjoining a road, and therefore a road closure application may not be made by that person. However, under section 98 of the Land Act, the Minister may close a road without receiving an application, after making appropriate inquiry and notice. A road closure could therefore be considered for a person who may claim an "entitlement" to be an adjoining owner only if that person is able to:

- demonstrate urgency relating to the proposed closure that is unable to wait until the person is the adjoining owner; and
- the proposed closure would be in the public interest.

3.2.1.1 Appropriate enquiry and public notice

If the Minister (or delegate) is satisfied that a road closure application may proceed to be investigated, section 100(1) of the Land Act requires the Minister to give appropriate public notice. Appropriate public notice includes:

- notification in the gazette;
- placing a notice on the site; and
- placing a notice in the local newspaper.

This requirement applies to all road closure applications except:

- a no-through road*. A no-through is a road that is closed at one end, and provides access to the land of only 1 adjoining owner for the road;

- part of a road to be closed volumetrically (i.e. in strata) and the closure will not adversely affect the road use; or
- the road closure application is to close part of a road adjoining transport land (as defined under the Land Act) and the closure will not adversely affect the part of the road being used as a road.

*Land below high water mark (i.e. coastal lands or tidal watercourses) is the property of the state, as well as the bed and banks of a non-tidal boundary watercourse and lake. Therefore, a road that provides access to the coast or a watercourse or lake is not a no-through road i.e. the road provides access to land other than the land of only 1 adjoining owner for the road.

If an application for a road closure is refused under section 99(7) of the Land Act or under section 420D(1) of the Land Act (as the application is frivolous or vexatious) the application does not need to be further considered. Consequently section 100 of the Land Act does not apply and public notice of the application is not required.

Section 98 of the Land Act allows the Minister to close a road without receiving an application. The requirements to undertake appropriate enquiry and public notice apply if an application has been received. Consequently the public notice requirements do not apply if an application has not been made.

3.2.1.2 Specific conditions to apply to a road closure

Section 109 of the Act states that land in a closed road may be dealt with as unallocated State land and reserved, leased or sold or included in an adjoining owner's land. A road licence may issue over a road that is temporarily closed.

When dealing with a road closure, there is a need to protect local government requirements. Further, service facilities such as water mains, telephone lines, are often located on roads and access needs to be retained after closure, or re-location may be required.

In dealing with land that is a closed road, the following conditions should apply:

- the interests of owners of authorised private service facilities (e.g. water pipelines) and owners of public service facilities are to be protected to their satisfaction (e.g. condition of lease or road licence, written agreement, easement) in any dealing with a road area which is otherwise not required for public use; and
- the requirements of the local government with respect to cost of alteration or relocation of services must be satisfied, but not in respect of compensation for assets such as kerbing, channelling and road surface.

3.2.1.3 Stock route network

Land that is dedicated as a stock route is also a road.

It is important that the integrity (connectivity and functionality) of the stock route network is not compromised. If the Minister (or delegate) is satisfied that a road is or may be used regularly by the public as a stock route, the application will be recommended for refusal under section 99(7) of the Land Act.

However, if the Minister decides the application may proceed any proposal to alienate part of the stock route network needs to be thoroughly investigated and evaluated to ensure that this is the most appropriate use of state land.

Where a decision is made to proceed with an application to close a road declared as a stock route there are ramifications relating to its continuation as a stock route. For detailed information on dealing with a stock route please refer to the Policy - Land dealings affecting the stock route network (SLM/2013/363).

3.2.1.4 Bicentennial National Trail

To ensure the integrity of the Bicentennial National Trail (the Trail) is maintained, any road closure application in proximity to the Trail must be carefully considered. Road closure applications that will fragment or interfere with the integrity of the Trail will not be approved as the road is needed by the public. Refer to section 99(7) of the Land Act.

Applications for a road closure over part of the Trail will only be considered if an alternative (but not inconvenient) realignment of the Trail can be determined in the particular locality and this is supported by the Bicentennial National Trail Ltd (ACN 010 860 143).

3.2.1.5 Access to watercourses and coastal land

Land below high water mark is the property of the state, as well as the bed and banks of a non-tidal boundary watercourse and lake. Therefore, a road that provides access to the coast or a watercourse or a lake is not a no-through road.

There is a longstanding policy for provision of public access to beaches and watercourses. Consequently, an application to close a road that provides access to a boundary water course or coastal land is not supported.

3.2.2 Dealing with a closed road

Freehold, lease, road licence and permit to occupy

When a road is closed permanently the land becomes USL. Depending on the size and location of the parcel of land it could be disposed of as a stand-alone parcel of land, or may be included in adjoining land. It may be sold as freehold, leased or dedicated as community reserve and in limited instances included into an operational reserve.

A road licence may be issued over a temporarily closed road. Although the road is temporarily closed the underlying tenure remains as road. A road licence provides a right to exclusive occupation of the road (within the conditions of the licence). The licence may be cancelled at short notice (generally three months) with no compensation.

Roads do not need to be closed for a permit to occupy to be able to be issued over the road. Permits provide rights for non-exclusive occupation of the land, and the land remains road, and may be cancelled at short notice with no compensation.

Determining the purchase price of a permanently closed road

Depending on the size and location of the closed road it could be disposed of as a stand-alone parcel of land, or included into the adjoining land. This allocation should be determined by the method that will give the greatest return to the state.

If the closed road is to be amalgamated into the applicant's freehold land the applicant has to pay for the land.

However if the applicant was the original dedicator of the road and is able to provide written evidence; payment only of the service provision fee (\$1,200 plus GST) is required. This does not apply if the original dedication was part of an action, approval or condition of an approval under:

- the Land Act e.g. simultaneous road opening and closure where the road was opened in replacement of the dedicated road on an "exchange" basis; or
- another Act e.g. reconfiguration of a lot (subdivision) under the *Planning Act 2016* where the applicant was required to dedicate the road as a condition of the development approval; or
- an acquisition under the *Acquisition of Land Act 1967* where compensation was paid.

If the land comprised in the closed roads has been acquired in the past by a local government or TMR, it is reasonable to expect that upon closure and sale, these authorities should share in the proceeds.

Accordingly, where a local government or a state government department can provide written evidence that they have expended funds for the acquisition of the land in the road to be closed, the purchase price obtained for the sale, less the administration fee (according to Treasury's approved fee structure for property disposals) will be remitted to the local government or TMR respectively.

Subdivisions

If a developer requires to permanently close a road that will be incorporated into freehold land and then subdivided, any permanent road closure is at the full market value. The offsetting principle does not apply as the developer is gaining a commercial benefit to achieve the subdivision.

Where an owner wishes to close roads as part of a subdivision development the action is to proceed by way of a road closure and once the road is closed a new deed will be issued. Any new roads will be created and dedicated as part of the freehold subdivision under the *Planning Act 2016*.

3.2.3 Road closure in strata

Section 5(2) of the Land Act states that layers and strata above and below the surface of land may be dealt with under that Act.

An application for road closure in strata only needs to be advertised if the general public or an adjoining owner's use of the road maybe adversely affected.

If after investigation the road is closed in strata, as the underlying/overlying land is still dedicated as road where the public may still have access to the land above or below, the state requires protection from any claims relating to the use of such area. Therefore, a term lease to authorise construction and continued existence of the facility is considered the most appropriate tenure and it includes conditions for indemnity and public liability insurance.

A bond/bank guarantee, of an amount suitable for the restoration of the area, may be required as a condition of the lease. The amount of the bond is to be reviewed every two years and amended, if required, under section 209 of the Land Act.

If the proposed closure is for construction of a facility to join properties in separate ownership, the application for closure must be in the form of a joint application.

A term lease for a facility to join properties in separate ownership must be issued jointly in those names. A "tied" covenant under section 373A of the Land Act to provide for no separate transfers is also to be lodged tying the lease to each parcel. If at a later date, one of the adjoining lots and lease are to be transferred, the existing covenant may be released, approval given to the transfer of the lease but on condition that a new "tied" covenant is registered for the new owner/lessee.

If the proposed closure is for the benefit of only one property, or properties in the same ownership, the term lease is also to be "tied" by covenant to those properties under section 373A of the Land Act to provide for no separate transfer.

If a local government or TMR requires ingress/egress to property to be by way of tunnel under road formation or footpath or a structure in air space above road formation or footpath and the tunnel or structure is not enclosed in any way with the adjoining property, the tunnel or structure is to be treated as another level of road formation with control and maintenance by the local government or TMR.

For more information refer to Policy - Land Allocation: Granting Land Volumetrically (SLM/2013/492).

3.2.4 Simultaneous road opening and road closure

Local governments and TMR may need to realign and reposition roads where the constructed alignment is not on the dedicated alignment and/or the dedicated alignment is not the practical alignment for a road. In specific circumstances this can be achieved by a simultaneous opening and closure of the road.

There is a recognition and acceptance of the exchange (offsetting) situation in some state dealings for realignment or repositioning of roads. A fundamental principal is the state is not disadvantaged in these actions. Minor road straightening and realignments required by TMR or a local government on an exchange of land basis are acceptable.

Section 109A of the Land Act allows a registered owner to apply for a simultaneous road opening and closure through that owner's freehold land. This should generally be considered only if the application is as a result of the requirements of TMR or a local government.

If there is more than one freehold lot subject to a simultaneous road opening and closure action, all the freehold lots must be in the exact same ownership .i.e. name/s and joint tenants/tenants in common.

The diagrams directly below provide indications of a simultaneous road opening and closure, i.e. the road proposed to be opened is in replacement of the existing dedicated road.



There is no requirement under the Land Act for an application for a simultaneous road opening and closure to be “advertised” but views of interested parties will be considered before making a decision. Therefore, if the public is not affected, no advertisement is required, however each case needs to be determined on its merits. For example, it would be considered that there would be no effect on the public for a minor realignment of the road through a lot or adjoining lots. The public may be affected if the existing constructed road was being realigned.

Proposed road closure and openings for a development, including a reconfiguration of lot (subdivision) or for a better result/design, are not supported under the Land Act. These dealings may not be done by way of an exchange.

All exchanges must be in accordance with the work procedure – Land Exchanges.

3.2.5 Dedicating state land as a road

USL may be dedicated as a road. Consequently it is a requirement to amend/revoke a reserve or lease to allow the road to be opened. In the majority of cases this action will be instigated by a local government.

The access, if any, to a property will generally be reflected in that property's value. If access (including a secondary access) is provided, the property's value may increase. As the state is not responsible for providing access to existing freehold land, including a freeholding lease, the state is entitled, as any owner, to a fair value for its land.

Accordingly, where access is required to freehold land or a freeholding lease provided from USL, a lease (non freeholding), licence or trust land, an amount equal to the value afforded by the access is required. i.e. the increase in property's value.

A property (without any dedicated access) separated from a dedicated road by a non tidal boundary watercourse may have “physical” access, the lot does not have dedicated access. The bed and banks of a boundary watercourse, under section 13A of the Land Act, are the property of the state and may provide "physical" access to a property, however the land is not a dedicated road.

In some instances, a road opening in conjunction with a closure action that is not a simultaneous road opening and closure (i.e. the road being opened is not replacing the road being closed) may be requested, but any road closure must be paid for as a separate consideration without any regard to the road opening.

The creation of any new roads are required to be in a fully surveyed state.

3.3 Further Information

3.3.1 Trespass

A local government is recognised as having control of all local roads in its area and being immediately and primarily responsible for local roads, section 60 of the LGA. This includes taking action to deal with trespass related act on a local road, section 75 of the LGA.

TMR has control of state controlled roads and similar powers to manage trespass under the *Transport Infrastructure Act 1994*.

The Chief Executive's powers (under section 405A of the Land Act) are supplementary to the powers of a local government under the Local Government Act.

Any enquiry made to the department about trespass on a road will initially be entered into the department's Compliance Information Register and Management System (CIRaM). The enquiry will then be referred to the local government, which has control of the road, for its action. The referral should also advise that if the local government's intention is to authorise the use, and local government is unable to authorise the use, the department may then consider a road closure application.

The person who made the initial enquiry will also be advised that the matter has been referred to the local government for action or TMR if it is a state controlled road.

Section 405B of the Land Act allows a fee to be charged if a person has been unlawfully occupying land and an offer is made for tenure of that land (e.g. sale, lease, licence or permit). It is reasonable for the state to require a person to pay a fee if that person was occupying the land prior to the issue of tenure.

A fee is to be charged for unlawful occupation of the land (including road) from the date it is determined that the unlawful occupation started until the new tenure (deed of grant, lease, permit to occupy or road licence) issues. The fee, calculated on a pro rata basis (part year) if applicable, is to be equivalent to rent that would have been payable for the intended use of the land, including if freehold is to issue.

4 Legislation

Land Act 1994

Planning Act 2016

Stock Route Management Act 2002

Local Government Act 2009

City of Brisbane Act 2010

Transport Infrastructure Act 1994

Transport Operations (Road Use Management) Act 1995

Acquisition of Land Act 1967

5 Related documents

“Policy – Land Dealings affecting the Stock Route Network (SLM/2013/363 = PUX/901/238)”

“Policy – Land Allocation: Granting Land Volumetrically (SLM/2013/492 = PUX/901/100)”

“Policy – Land Allocation: Public purpose reservations (SLM/2013/480 = PUX/901/112)”

“Work procedure – Land Exchanges”

Attachment A – Examples of an adjoining owner

These general examples provide an overview of possible road closure applications. Each case is assessed on its merits and variations may be entertained. Consequently a pre-lodgement meeting is recommended.

An adjoining owner can apply for an area of road that immediately adjoins the property boundary and not any part of the road that continues in either direction beyond the property boundary.

Example 1

Clark Street: The maximum area the registered owner of lot 4 on SP123456 can apply for is 20m x 60m, Area A.

Example 2

Kent Street: The registered owner of Lot 7 on SP123456 can apply for Area B. 10m x 170m.

Example 3

Kent Street: The registered owner of Lot 8 on SP123456 can apply for Area C. 10m x 220m.

Note

Clark Street: The registered owner of Lot 10 or Lot 11 on SP123456 is not considered an adjoining owner for a road closure application due to the limited road frontage.

