Queensland Government Native Title Work Procedures

Module CB: Road Policy

Commonwealth Native Title Act 1993: s23B(7) public work as a previous exclusive possession act and s253 definition of public work

May 2020
### Version history

<table>
<thead>
<tr>
<th>Version</th>
<th>Comments</th>
<th>Date published</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td></td>
<td>June 2017</td>
</tr>
<tr>
<td>2</td>
<td></td>
<td>May 2019</td>
</tr>
<tr>
<td>3</td>
<td>Added three categories – Country Lands, Deed of Grant and Stock Route</td>
<td>May 2020</td>
</tr>
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</table>
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Introduction

Module CB covers the dedication and declaration of roads on or before 23 December 1996 that, as a previous exclusive possession act, have the effect of wholly extinguishing native title (s23B(7) NTA). It is based upon the public work definition (s253 NTA) which includes a road constructed or established by or on behalf of the Crown.

In contrast to Module CA, this module is not looking at whether the road is constructed but whether it has been ‘established’ by way of dedication/declaration—the process by which a particular area of land is opened to the public for use as a road (sometimes called ‘paper roads’).

Upon dedication or declaration of the area as road, immediate user rights of passage are created in the public that are wholly inconsistent with native title.

This module covers public roads only.

Application of module

Module CB:

- details the various means by which roads are dedicated and declared, and
- provides examples of dedicated and declared roads for each of the various means.

Effect on native title

For ‘roads’ that meet the requirements under this module, native title is wholly and permanently extinguished over the dedicated or declared area. 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.

Date of dealing

Any proposed dealing which occurs on or after 24 December 1996 is not covered by Module CB.
Excluded dealings

The following dealings are excluded from Module CB:

<table>
<thead>
<tr>
<th>No.</th>
<th>‘Road’ category</th>
<th>Why the ‘road’ does not fall in Module CB</th>
<th>Go to</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>Reserve for road (not including a reserve for esplanade under the Land Act 1962) purposes dedicated under various land legislation.</td>
<td>It is a reserve and not a dedicated road.</td>
<td>Next module</td>
</tr>
<tr>
<td>2</td>
<td>‘Road’ dedicated/declared under section 24IB (Module IB) as a pre-existing right-based act.</td>
<td>Non-extinguishment principle applies.</td>
<td>Next module</td>
</tr>
<tr>
<td>3</td>
<td>‘Road’ dedicated/declared under section 24JA (Module J).</td>
<td>Module J should not have been used to dedicate/declare road as the underlying reservation could not have continued.</td>
<td>Please refer details to Land and Native Title Services (LNTS) via your Native Title Contact Officer (NTCO)</td>
</tr>
<tr>
<td>4</td>
<td>Road dedicated/declared under section 24JAA (Module JAA).</td>
<td>Non-extinguishment principle applies.</td>
<td>Next module</td>
</tr>
<tr>
<td>5</td>
<td>Road dedicated/declared under section 24KA (Module K).</td>
<td>Non-extinguishment principle applies.</td>
<td>Next module</td>
</tr>
<tr>
<td>6</td>
<td>Road dedicated or declared following compulsory acquisition of native title rights and interests.</td>
<td>Compulsory acquisition dealing—not a dedication/declaration dealing.</td>
<td>Go back and consider Module AB</td>
</tr>
<tr>
<td>7</td>
<td>Off-alignment road.</td>
<td>If a constructed road is not within its dedicated or declared alignment boundaries, you cannot treat the off-alignment section as if it is validly dedicated/declared.</td>
<td>Go back and consider Module CA</td>
</tr>
<tr>
<td>8</td>
<td>Road over a watercourse.</td>
<td>It is clear from the survey plan that the dedication/declaration does not extend over the watercourse.</td>
<td>Go back and consider Module CA</td>
</tr>
</tbody>
</table>

Stock route

If the area being assessed is shown as a stock route please contact LNTS via your NTCO. Please include an Annexure 7.1 Assessment Form and associated evidence/information.

Requirement 1: The road was dedicated or declared on or before 23 December 1996

Was the road dedicated or declared on or before 23 December 1996:

- Yes - continue with Module CB
- No - go to next Module
Requirement 2: The road was dedicated or declared by one of the following methods

If you are considering this module, you will have identified the road by either SmartMap and/or a plan or map. In some cases, that plan or map (not a SmartMap) will be sufficient evidence of dedication, but in other cases you will need accompanying evidence such as a gazettal.

The following tables advise when you can rely upon the plan or map and when more evidence is required to satisfy this requirement.

The road must have been dedicated or declared under one of the methods set out in the below tables. Each table provides the evidence you will need to support your assessment.

For dedications and declarations done in the period 1 January 1994 to 23 December 1996, the intermediate period test must be applied — that is the whole or part of the dedicated/declared area must have been at some time prior to 1 January 1994 covered by a freehold estate, valid lease (other than a mining lease), or public work.

If your road does not fall into one of the below methods, please refer to LNTS via your NTCO.
### Table 1 - Relying solely upon the plan of survey (survey plan or compiled plan) or map which shows the road

<table>
<thead>
<tr>
<th>No.</th>
<th>Type</th>
<th>Legislative authority</th>
<th>Plan must have been created in the period...</th>
<th>Evidence</th>
<th>Example</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>A plan or map of a pastoral holding or occupation licence (eg. PH2222 or OL954).</td>
<td>Section 362(3), <em>Land Act 1962</em>.</td>
<td>1 January 1963 to 30 June 1995.</td>
<td>1. PH plan/map or OL plan/map; and 2. Map or plan was published by the Department of Lands; and 3. Road shown as unsurveyed dotted line going through pastoral lease or occupation licence. Helpful Hint: If the plan was created 1 January 1994 to 30 June 1995, you must meet intermediate period act requirements.</td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>A plan of subdivision of a freehold lot.</td>
<td>s51(2), <em>Land Title Act 1994</em>. s119 of the <em>Real Property Act 1861</em> (and as amended in 1936 and 1963).</td>
<td>7 August 1861 to 23 December 1996.</td>
<td>1. Registered plan Helpfull hint: There are usually endorsements on the plan - by the registered proprietor agreeing to the subdivision and road dedication; and - by the Council agreeing to the road. NB: If the plan was created 1 January 1994 to 23 December 1996, you must meet intermediate period act requirements.</td>
<td></td>
</tr>
</tbody>
</table>

### Table 2 - Relying upon a plan of survey and an Executive Authority Action

<table>
<thead>
<tr>
<th>No.</th>
<th>Type</th>
<th>Legislation</th>
<th>Must have been created in the period...</th>
<th>Evidence</th>
<th>Example</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>A registered plan of survey (survey plan or compiled plan) subject</td>
<td>Section 362(2), <em>Land Act 1962</em>. For roads prior to 1 January 1963, this method can</td>
<td>1 January 1963 to 30 June 1995.</td>
<td>1. Plan of survey; and 2. Road is distinctly delineated as a road. If it</td>
<td></td>
</tr>
<tr>
<td>No.</td>
<td>Type</td>
<td>Legislation</td>
<td>Must have been created in the period...</td>
<td>Evidence</td>
<td>Example</td>
</tr>
<tr>
<td>-----</td>
<td>------</td>
<td>-------------</td>
<td>----------------------------------------</td>
<td>----------</td>
<td>---------</td>
</tr>
<tr>
<td></td>
<td>to executive authority action.</td>
<td>also be used, that is executive authority action on a plan as the publication of a map or plan is a significant act of the Crown.</td>
<td>is shown as 'New road' or 'Road to be opened' or similar notation it cannot be relied upon; '</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3.</td>
<td>Plan was registered and deposited in the office of the chief executive (surveys);</td>
<td></td>
<td>and</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4.</td>
<td>Subject to executive authority action (created by the Governor in Council, eg. grant of freehold).</td>
<td></td>
<td>NB: If the plan was created 1 January 1994 to 30 June 1995, you must meet intermediate period act requirements.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2</td>
<td>Lease instrument.</td>
<td>Section 96(1), Land Act 1994.</td>
<td>Lease must have been in force as at 1 July 1995.</td>
<td>1. Lease instrument; and 2. Sketch of road on lease instrument or lease references a plan that shows road as excluded.</td>
<td>D</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td>NB: If the plan was created 1 July 1995 to 23 December 1996, you must meet intermediate period act requirements.</td>
<td></td>
</tr>
</tbody>
</table>

1 Section 362(2) of the Land Act 1962 stated Crown land (i.e. unallocated State land) may be dedicated by registration of a plan. When plans showing 'New Road' or 'Road to be opened' or similar notation were registered for survey the land was still freehold or a lease, and not Crown land, and the proposed road opening may not have been actioned.
<table>
<thead>
<tr>
<th>No.</th>
<th>Type</th>
<th>Legislation</th>
<th>Must have been created in the period...</th>
<th>Evidence</th>
<th>Example</th>
</tr>
</thead>
<tbody>
<tr>
<td>3</td>
<td>Proclamation/Notification.</td>
<td>Section 42, 43, 44 and 46 Crown Lands Act 1884. Sections 75, 77, 78 and 84 Land Act 1897. Sections 48, 49, 161 Land Act 1910.</td>
<td>1 March 1885 to 28 February 1898. 1 March 1898 to 31 December 1910. 1 January 1911 to 31 December 1962.</td>
<td>1. Plan of survey or map of land opened for selection- land opened divided into lots and marked with proper roads; and 2. Plan shows road; and 3. Proclamation/Notification opening Country Lands for selection in Government Gazette with subdivision(s) that include valid roads; and 4. Plan exhibited to the public (you can assume that it was so exhibited).</td>
<td>E</td>
</tr>
<tr>
<td>4</td>
<td>Adjoining Deeds.</td>
<td>Metes and Bounds.</td>
<td>1859 to 31 December 1962.</td>
<td>Two adjoining (either side of road) Deeds of Grant where: Metes and bounds description on both adjoining deeds make reference to boundary as road; and Both adjoining deeds refer to a sketch (plan) showing road as two lines adjoining the deeds.</td>
<td>F</td>
</tr>
<tr>
<td>5</td>
<td>Deed/Lease.</td>
<td>Metes and Bounds (internal road scenario).</td>
<td>1859 to 31 December 1962.</td>
<td>Road shown on a sketch and plan and excluded in the metes and bounds description of the Tenure.</td>
<td>G</td>
</tr>
</tbody>
</table>
## Table 3 - Relying on a Notice, Order in Council or Proclamation in the Government Gazette opening land as road

<table>
<thead>
<tr>
<th>No.</th>
<th>Type</th>
<th>Legislative authority</th>
<th>Notification must have been gazetted in the period...</th>
<th>Evidence</th>
<th>Example</th>
</tr>
</thead>
</table>
2. Plan of survey.  
NB: If the dedication occurred 1 July 1995 to 23 December 1996, you must meet intermediate period act requirements. | H       |
2. Plan of survey.  
NB: If the dedication occurred 1 January 1994 to 30 June 1995, you must meet intermediate period act requirements. |         |
| 3   | Proclamation.         | Section 11(3), *Main Roads Act 1920*.                    | 1 January 1920 to 13 July 1991.                     | 1. Proclamation (declaring road, route or means of access as a State highway, main road, developmental road, secondary road, urban arterial road or urban sub-arterial road)  
and  
2. Plan. | I       |
and  
2. Plan.  
NB: If the declaration occurred 1 January 1994 to 14 April 1994, you must meet intermediate period act requirements. |         |
<table>
<thead>
<tr>
<th>No.</th>
<th>Type</th>
<th>Legislative authority</th>
<th>Notification must have been gazetted in the period…</th>
<th>Evidence</th>
<th>Example</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>Gazette Notice.</td>
<td>Section 21 Transport Infrastructure Act 1994.</td>
<td>15 April 1994 to 23 December 1996.</td>
<td>1. Gazette notice (declaring a road or route, or part of a road or route, to be a State-controlled road) and 2. Plan. NB: If the declaration occurred 1 January 1994 to 15 April 1994 to 23 December 1996, you must meet intermediate period act requirements.</td>
<td></td>
</tr>
</tbody>
</table>
Examples

Example A - Plan of a pastoral holding (road shown as a dotted line)
Example B - Freehold plan of subdivision

Inset A

As Proprietor of this land, I agree to this Plan of subdivision, and dedicate the new roads shown heron to public use.

Signature of Proprietor

Inset B

On behalf of the Herberton Shire Council I agree to the Road as shown on this Plan

Chairman
Example C - Plan of survey (distinctly delineated as road)

NB: If there is a registered date shown on the plan, it will have been deposited in the survey office.
Example D - Sketch on lease instrument

QUEENSLAND

Perpetual Suburban Lease No. 1779

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,

In Testimony Whereof We have caused this Our Lease to be sealed with the Seal of Our said State.

[Signature]

Alexander... day of January in the tenth year of Our Reign and in the year of Our Lord One thousand nine hundred and forty-eight.

SCHEDULE

Proposed Suburbs

Lease No. 1779

County

Parish

Tongue

Portion Two hundred and fifty-six

Net Area

Two acres ten rods twenty-three and four-tenths perches

Scale 2 Chains to an Inch

Plan No. SL 3772
Example E - An exhibited plan or map

You are considering the road running north to south (adjacent to lots 197 and 198) on plan CG57.

Stamped on the plan, is a reference to a proclamation (notified in the Government Gazette) regarding portions 197 and 198 being opened for selection.

The Proclamation notifies and declares that the Country Lands specified in the Schedule are opening for selection under the Land Act 1897 and the Agricultural Lands Purchase Act 1891. Portions 197 and 198 are listed in the Schedule.
**Example E - An exhibited plan or map (cont.)**

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**A PROCLAMATION**

By His Excellency Major-General Sir HERBERT CHARLES CHERMSIDE, Knight Grand Cross of the Most Distinguished Order of St. Michael and St. George, Companion of the Most Honourable Order of the Bath, Governor of the State of Queensland.

HERBERT CHERMSIDE,

Governor.

In pursuance and execution of all powers and authorities in me vested under the provisions of “The Land Act, 1897,” and “The Agricultural Land Purchase Acts, 1894 to 1901,” I, Sir HERBERT CHARLES CHERMSIDE, the Governor aforesaid, by and with the advice of the Executive Council, do, by this my Proclamation, notify and declare that the Country Lands specified in the Schedule herein, and situated in the BRISBANE LAND AGENTS’ DISTRICT, shall be open for AGRICULTURAL FARM SELECTION, under the provisions of “The Agricultural Lands Purchase Acts, 1894 to 1901,” on and after TUESDAY, the TWENTY-FIRST day of OCTOBER, 1902, at ELEVEN O’CLOCK A.M., at the COURT HOUSE, WOODBOURNE, at the annual rents and purchasing prices specified in the said Schedule.

And it is hereby further notified that such of the lots as may remain unsold after the Twenty-third day of October, 1902, shall, on and after FRIDAY, the TWENTY-FOURTH day of OCTOBER, 1902, at ELEVEN O’CLOCK A.M., be open for selection, on the same terms and conditions, at the LAN D OFFICE, BRISBANE.

And I do hereby, by and with the advice aforesaid, declare that the maximum area which may be selected by any one person in the whole area to which this Proclamation has reference shall be 1,280 acres, and with regard to the respective sections of such area, the maximum area which may be selected by any one person shall be as stated in the said Schedule.

And I do hereby further notify and declare, by and with the advice aforesaid, that William Petherbridge shall be entitled to priority in respect of lot 13, and that if on the day appointed as that on which the land will be open for aforesaid application by the said William Petherbridge is lodged at the same time as applications by other persons, the application of the said William Petherbridge shall be deemed to have been first lodged and shall be entitled to priority accordingly.

Given under my Hand and Seal, at Government House, Brisbane, this fifth day of September, in the year of our Lord one thousand nine hundred and two, and in the second year of His Majesty’s reign.

By Command, ROBERT PHILP.

---

**THE SCHEDULE**

DURUNDUR ESTATE (DURUNDUR AND HOLMWOOD).

THE BRISBANE LAND AGENTS’ DISTRICT.

<table>
<thead>
<tr>
<th>No. of Lot</th>
<th>Parts.</th>
<th>No. of Portions</th>
<th>Area</th>
<th>Survey Fee</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>No. of Lots allowed to any one person, 1,280 acres.</th>
</tr>
</thead>
</table>
| 1
| 2
| 3
| 4
| 5
| 6
| 7
| 8
| 9
| 10
| 11
| 12
| 13
| 14
| 15
| 16
| 17
| 18
| 19
| 20
| 21
| 22
| 23
| 24
| 25

---

**Section A**

Maximum area allowed to any one person, 1,280 acres.

**Section B**

Maximum area allowed to any one person, 900 acres.
Example E - An exhibited plan or map (cont.)

The following plan/map is that which would have been exhibited to advertise the land opening. It was printed and published by the Department of Public Lands in September 1902. It makes reference to CG57 and shows the road clearly marked.

NB: You will not always be able to find the exhibited map or plan (the published sales notification map), and if you can they will not all have the same information. If you cannot find the published sales notification map/plan then you can assume that one was published provided you have the plan of survey and the relevant Government Gazette.
Example F - Adjoining deeds (either side of road)
Example F - Adjoining deeds (either side of road) (cont.)

Extract from Portion 30 Deed of Grant of Land – reference to road on western boundary.

Extract from Portion 20v Deed of Grant of Land – reference to road on eastern boundary.
Example G - Deed with metes and bounds description

Extract from Portion 17v Deed of Grant of Land - reference to approximately 6 acres of excluded road.

Extract from Portion 17v Deed of Grant of Land - showing Deed sketch. Road depicted internal to portion.
Example G - Deed with metes and bounds description (cont.)
Example H - Gazette notification

Queensland Government Native Title Work Procedures - Module CB, Department of Natural Resources, Mines and Energy, 2020
Example I - Transport declaration

A PROCLAMATION

By His Excellency Commodore Sir James Maxwell-Bryan, Knight Commander of the Most Distinguished Order of the British Empire, upon whom has been conferred the Decoration of the Distinguished Service Cross, and Commander in the Royal Australian Navy (Retired), Governor in and over the State of Queensland and its Dependencies in the Commonwealth of Australia.

In pursuance of the powers and authorities vested in me by the provisions of the Main Roads Act 1920-1979 and of all other powers and authorities in me vested, I, Sir James Maxwell-Bryan, Governor in and over the State of Queensland, acting by and with the advice of the Executive Council, do, by the present proclamation, make the following recommendations made by The Service Commissioner and the Transport Commissioner of the Main Roads Act 1920-1979, as set forth in the Schedule to this proclamation.

Given under my Hand and Seal at Government House, Brisbane, the twenty-third day of August, in the year of our Lord one thousand nine hundred and seventy-nine, in the twenty-eighth year of Her Majesty's reign.

By Command, R. J. BINGE.

GET SAVE THE QUEENS

THE SCHEDULE

RECOMMENDATIONS OF THE COMMISSIONERS OF MAIN ROADS ABOVE REFERRED TO

The Commissioner of Main Roads is directed under the provisions of the Main Roads Act 1920-1979, hereby recommends in the Governor in Council that the following roads as set forth in the Schedule be gazetted as State Highways, as provided for in Article 1.5 of Article 4 of the Main Roads Act 1920-1979.

**APPENDIX I**

<table>
<thead>
<tr>
<th>Name of Road</th>
<th>Classification</th>
<th>Date of Recommendations Relating to Road</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. 1a</td>
<td>Bruce Highway (Graff-Gil-Ca), Cucul, Warrill</td>
<td>State Highway</td>
</tr>
<tr>
<td>No. 1b</td>
<td>Bruce Highway (Graff-Hi-Cairns), Malgaria</td>
<td>State Highway</td>
</tr>
<tr>
<td>No. 1c</td>
<td>Bruce Highway (Graff-ful-Cairns), Cucul City</td>
<td>State Highway</td>
</tr>
<tr>
<td>No. 94a</td>
<td>Thrumann Developmental Road (Wulgur, Bareb, Hume)</td>
<td>Developmental Road</td>
</tr>
<tr>
<td>No. 94b</td>
<td>Thrumann Developmental Road (Kangar-Lang-russ, Rennell), Rennell Shire</td>
<td>Developmental Road</td>
</tr>
<tr>
<td>No. 94c</td>
<td>Thrumann Developmental Road (Kangar-Lang-russ, Lang-russ, Longurst), Rennell Shire</td>
<td>Developmental Road</td>
</tr>
<tr>
<td>No. 94d</td>
<td>Thrumann Developmental Road (Kangar-Lang-russ, Lang-russ, Longurst), Rennell Shire</td>
<td>Developmental Road</td>
</tr>
<tr>
<td>No. 94e</td>
<td>Thrumann Developmental Road (Kangar-Lang-russ, Longurst, Rennell), Rennell Shire</td>
<td>Developmental Road</td>
</tr>
<tr>
<td>No. 94f</td>
<td>Thrumann Developmental Road (Kangar-Lang-russ, Longurst, Rennell), Rennell Shire</td>
<td>Developmental Road</td>
</tr>
</tbody>
</table>

**APPENDIX II**

**SCHEDULE L: STATE HIGHWAYS**

| No. 10a | BRUCE HIGHWAY | (Innisfail-Cairns) | State Highway |

From the north-western corner of section 22X, town of Innisfail, parish of Kinnarvon, to the state boundary at the north-eastern corner of portion 605, parish of Gladys, the route shown on the plan under seal held by The Commissioner of Main Roads and identified by the registration number RD100-LP-2.0.

Length: 140 kilometers (approximately)

6614.71

No. 10b | BRUCE HIGHWAY | (Innisfail-Cairns) | State Highway |

From the state boundary at the north-eastern corner of portion 605, parish of Gladys, the route shown on the plan under seal held by The Commissioner of Main Roads and identified by the registration numbers RD100-LP-2.0 and RD102-2.

Length: 68 kilometers and 3 kilometers of the boundary section (944 kilometers) = 68.22 kilometers (approximately)

26.9474

Qld. Gaz., 1st September, 1979, No. 5, pages 96-98.
Example I - Transport declaration (cont.)