Queensland Government Native Title Work Procedures

Module CB: State Road Policy

Commonwealth Native Title Act 1993: s.253 definition of public work

August 2017
Version history

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Part 1: Introduction

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

The State Road Policy is based upon the definition of a public work in section 253 of the Native Title Act 1993 (NTA). Under this definition, a road constructed or established by or on behalf of the Crown is a public work. The use of the expression ‘constructed or established’ means that roads established without also being constructed are also captured by the definition. It is the State’s view that a road is established by the dedication or declaration of an area of land as road.

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

Dedicated as road

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

An area is dedicated as road where -

- an area of unallocated State land (or vacant Crown land) has been dedicated or declared opened as road for public use by notification published in the Queensland Government Gazette - section 94 Land Act 1994 and section 362(1) Land Act 1962

- it has been created by virtue of a plan of subdivision of a freehold lot under section 51(2) of the Land Title Act 1994 or section 119 of the Real Property Act 1861

- an area of Crown land was distinctly delineated as ‘road’, on a plan of survey which has been registered and deposited in the office of the chief executive (surveys) and that plan has been subject of Executive Authority action (Governor in Council approval, for example, of a lease document referring to the plan showing the road) on or before 30 June 1995 - section 362(2) Land Act 1962

- it is unsurveyed and was shown through a pastoral lease or occupation licence by being delineated by a dotted line on a map or plan published by the Department of Lands on or before 30 June 1995 and that map or plan has been subject of Executive Authority action on or before 30 June 1995 (Governor in Council approval, for example, of a pastoral lease document referring to the map or plan showing the road)- section 362(3) Land Act 1962

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

An area is declared as road where -

- the Governor in Council confirmed the recommendation of the Commissioner by declaring by Proclamation that a road, route or means of access was a State highway, main road, developmental road, secondary road, urban arterial road or urban sub-arterial road - section 11(3) Main Roads Act 1920

- the Minister (on recommendation of the Corporation) by notification published in the Gazette declared a road, route or means of access to any land, or any part of a road, route or means of access, to be a declared road - section 3.1(1) Transport Infrastructure (Roads) Act 1991

- the Minister by gazette notice declared a road or route, or part of a road or route, to be a State-controlled road - section 21 Transport Infrastructure Act 1994 (for the period 15 April 1994 to 30 June 1995) or 23(1) Transport Infrastructure Act 1994 (for the period 1 July 1995 to 30 November 2003) or section 24 Transport Infrastructure Act 1994 (for the period 1 December 2003 to present).

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

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

However, you must look to the NTA and not the common law³ (eg. Selpam) in order to ascertain the effect on native title of the valid dedication or declaration of an area as road. This is why there are some exceptions to Selpam, that a dedication or declaration of land as road extinguishes native title. For example an area dedicated as road under section 24KA of the NTA does not extinguish native title.

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² per Drummond J at 312.
³ The need to look to the NTA (statute law) for the effect on native title and not the common law has been made clear by the High Court in its decision in *Western Australia v Ward* (2002) 191 ALR 1. The majority held that at [25] ‘...it must be emphasised that it is to the terms of the NTA that primary regard must be had, and not the decisions in *Mabo [No.2]* or *Wik*. The only present relevance of those decisions is for whatever light they cast on the NTA.’
Part 2: How do I use this Module?

Step 1
If you know your proposed dealing area was or is validly dedicated road.

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

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

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

If not, proceed to Step 2.

Step 2
If you do not know whether your proposed dealing area was or is validly dedicated/declared as road.

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

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

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

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

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

This Module is set out in the following divisions -

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

Division A - Dedication Assessment Table

Part 3: What is the Dedication Assessment Table?

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

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

- the time period in which the dedication actually occurred

  Or

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

**Explanation**

**It is not essential to find evidence of the original dedication of the area as road.** For example if an area was dedicated as road in 1908, it would be sufficient for the purposes of making a decision under this Module to find the following evidence of dedication -

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

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

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

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

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

**Example**

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

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

3. **If the dedication does not fit within the above two options**, then native title has not been extinguished and you will need to proceed to the next Module.
The following is an example of how to complete the sections of the Native Title Assessment Form dealing with Module CB. The Native Title Assessment Form is found at Annexure 7.1.

Native Title Assessment Form

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

Assessment Section

Module AA. Proposed Dealing


Location – Proposed Dealing Area

Lot: ______________ Plan _____________________________
Parish: Mangrove County: Ocean
Current Tenure: Marine Park
Locality Description: The intertidal area of west shore of Lagoon Island in the Whitsunday Marine Park approximately 50 metres south of the rock wall. Lagoon Island is described as Lot 1 on NPW 157 and lies due east of the town of Seaforth.
Plan/Map: Maps are attached of Lagoon Island showing the location of the proposed new jetty (hatched). Also attached is a map of the Whitsunday Marine Park showing the location of Lagoon Island.

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

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

Go to Reason for Decision box
<p>| | |</p>
<table>
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<tbody>
<tr>
<td><strong>Module AC. Is there a registered ILUA that covers the proposed dealing?</strong></td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>☐ Go to Reason for Decision box ☐ Part of the proposed dealing area</td>
</tr>
<tr>
<td>No</td>
<td>✓</td>
</tr>
</tbody>
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<tbody>
<tr>
<td><strong>Module AD. Is there a determination of native title that covers the proposed dealing area?</strong></td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>☐ ☐ Part of the proposed dealing area</td>
</tr>
<tr>
<td>No</td>
<td>✓</td>
</tr>
</tbody>
</table>

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

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<tbody>
<tr>
<td>Yes</td>
<td>☐ Go to Reason for Decision box</td>
</tr>
<tr>
<td>No</td>
<td>☐ Go to Chapter 5 as native title will exist over the proposed dealing area unless subsequently extinguished by a later act.</td>
</tr>
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<tr>
<td><strong>Module BA. Is there or has there been a grant or vesting of exclusive possession over the proposed dealing area?</strong></td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>☐ Go to Reason for Decision box ☐ Part of the proposed dealing area</td>
</tr>
<tr>
<td>No</td>
<td>✓</td>
</tr>
</tbody>
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<tr>
<td><strong>Module BB. Can I rely upon the extinguishing effect of the PEPA?</strong></td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>☐ Go to Reason for Decision box</td>
</tr>
<tr>
<td>No</td>
<td>✓</td>
</tr>
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<tr>
<td><strong>Module CA. Was or is there a valid public work over the proposed dealing area?</strong></td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>☐ Go to Reason for Decision box ☐ Part of the proposed dealing area</td>
</tr>
<tr>
<td>No</td>
<td>✓</td>
</tr>
</tbody>
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<tbody>
<tr>
<td><strong>Module CB. Was or is the proposed dealing area dedicated or declared as road?</strong></td>
<td></td>
</tr>
<tr>
<td>Yes</td>
<td>✓ Go to Reason for Decision box ☐ Part of the proposed dealing area</td>
</tr>
<tr>
<td>No</td>
<td>☐</td>
</tr>
</tbody>
</table>

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

<p>| | |</p>
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</thead>
<tbody>
<tr>
<td>Yes</td>
<td>✓ Go to Reason for Decision box</td>
</tr>
<tr>
<td>No</td>
<td>☐</td>
</tr>
</tbody>
</table>

**Reason for decision**

On 27 January 1970, the proposed dealing area formed part of a larger area that had been dedicated as road, ie. an esplanade. It was dedicated for public use by notification published in the Queensland Government Gazette (27.1.1970, page 243) under section 362(1) Land Act 1962. A copy of the gazettal notification is attached. The road is shown on plan HR1971 which is also attached.

Due to a cyclone in 2000, the esplanade was eroded away and was closed.
The Dedication Assessment Table provides that the dedication extinguishes native title as it was done before 1 January 1994. Therefore native title has been extinguished over the proposed dealing area.

**NB. Extract from Native Title Assessment Form**

**Division B - Dedication Assessment Guide**

**Part 4: What is the Dedication Assessment Guide?**

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

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

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

- an area of unallocated State land (or vacant Crown land) has been dedicated or declared opened as road for public use by notification published in the Queensland Government Gazette - section 94 *Land Act 1994* and section 362(1) *Land Act 1962*

- it has been created by virtue of a plan of subdivision of a freehold lot under section 51(2) of the *Land Title Act 1994* or section 119 of the *Real Property Act 1861*

- an area of Crown land was distinctly delineated as ‘road’, on a plan of survey which has been registered and deposited in the office of the chief executive (surveys) and that plan has been subject of Executive Authority action (Governor in Council approval, for example, of a lease document referring to the plan showing the road) on or before 30 June 1995 - section 362(2) *Land Act 1962*

- it is unsurveyed and was shown through a pastoral lease or occupation licence by being delineated by a dotted line on a map or plan published by the Department of Lands on or before 30 June 1995 and that map or plan has been subject of Executive Authority action on or before 30 June 1995 (Governor in Council approval, for example, of a pastoral lease document referring to the map or plan showing the road) - section 362(3) *Land Act 1962*

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

Generally, your investigation into whether your proposed dealing area has been validly dedicated as road is dependent upon evidence relating to the adjoining land tenures. This is because it will be the tenure documents (eg. lease instruments, freehold title instruments, etc) of the adjoining lots that are the most accessible evidence of the road having been dedicated.
Lease instruments and title documents are prepared under Executive Authority (ie. Governor in Council approval of the grant evidenced by the Governor’s signature on the lease or title document) and should clearly identify the road by describing it -

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

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

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

**Step 1**

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

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

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

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

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

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

---

**Important**

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

Adjoining lots showing lot on plan description (e.g. Lot 11 on SP112104) and tenure type

Example A - SmartMap

Adjoining lots showing lot on plan description (e.g. Lot 12 on SP138652) and tenure type
Step 2

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

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

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

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

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

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

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

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

**Important**

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

(b) Using Survey Search (CISP) for a particular parcel will provide you with a list in chronological order (beginning with the most recent) of every survey plan. Examine these plans and locate the earliest one that clearly shows the road and states that the area is ‘road’. Refer to Example C.

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

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

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

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

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

Queensland Government Native Title Work Procedures - Module CB, Department of Natural Resources and Mines, 2017

**Queensland Government Native Title Work Procedures - Module CB, Department of Natural Resources and Mines, 2017**

**Part A**

**THE BRIGHTLANDS LAND AGENTS’ DISTRICT**

**County of Ward, parish of Palm Creek**

The whole of the south-western extremity of portion 11.

**THE CLEMTMONT LAND AGENTS’ DISTRICT**

**County of Clermont, parish of Baroona**

Portion 11, Settlement Farm Lease No. 2308 (Lion James Herren, lessee).

An area of 3 acres 2 rods 11 perches, being a strip of varying width along and within the north-western corner of the portion as shown on plan Cm. 125 deposited in the Survey Office.

**THE GOONWINDI LAND AGENTS’ DISTRICT**

**County of Coonamble, parish of Minjil**

Portion 17, Grafsing Homestead No. 3662 (Edgar Gilmore and Rob Gilmore, his wife as tenants in common, lessees).

An area of 5 acres 3 rods 19 perches, being a strip of varying width along and within the northern boundary of the portion as shown on plan Cm. 125 deposited in the Survey Office.

**THE INNSFAIL LAND AGENTS’ DISTRICT**

**County of Cardwell, parish of Rockingham**

Portion 195, Reserve for Landing Ground for Air Craft, Tutu (R. 337).

A strip generally three chains wide commencing at the south-western boundary of portion 225 and extending north-easterly for a distance of about twenty-three chains sixty links through portion 197 as shown on plan Cm. 180 deposited in the Survey Office.

**THE IPSWICH LAND AGENTS’ DISTRICT**

**County of Chelmsford, parish of Royston**

Crown land

An area of about 32-7 perches, being a strip of varying width along the south-western boundary of portion 178 and continued in the following boundaries—commencing at the south-western corner of the portion and bounded by lines bearing about 270 degrees about one chain eighty-two links, about 9 degrees about two chains, about 19 degrees about eighty-two links and thence north-easterly by the south-western boundary of the portion to the point of commencement.

**THE ROCKHAMPTON LAND AGENTS’ DISTRICT**

**County of Humble, parish of Spreyden**

Portion 16, Grazing Farm 9116 (Edward Drake and Margaret Berry, lessees of Reginald Daniel Drake, lessees).

An area of 4 acres and 35-9 perches being a strip two chains wide in the south-eastern corner of the portion as shown on plan Hl. 171 deposited in the Survey Office.

**THE ROMA LAND AGENTS’ DISTRICT**

**County of West Gregory, parish of Bellova**

Portion 3, Grazing Homestead No. 7439 (The Union Trustees Company of Australia Limited and Lucy Mary Ward, widow, of Biloela, lessees).

An area totaling 37 acres 2 rods 9 perches, being strip of varying width intersecting the portion as shown on plan Wt. 202 deposited in the Survey Office.

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

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**Date of Government Gazette and page number.**

2.3. 4-65

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Queensland Government Native Title Work Procedures - Module CB, Department of Natural Resources and Mines, 2017

15
(f) If you find a reference on the survey plan to a freehold grant (eg. C.12345), you can obtain a copy of the freehold grant from the Automated Titling System (ATS). ATS is an electronic registry of title records of freehold, leasehold, licences and permits over land and is maintained by DNRM. If you have the Volume and Folio number of the freehold grant, DNRM staff can convert the number to an ATS reference number and retrieve a copy of the grant from ATS.

Step 3

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

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

Freehold

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

Leasehold

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

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

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

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

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

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\(^4\) Section 362(3)(a) Land Act 1962

\(^5\) Section 96(2) Land Act 1994
How do I obtain a copy of these title and lease documents?

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

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

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

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

If the adjoining lot on your SmartMap (obtained at Step 1) is -

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

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

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

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

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

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

The Survey Plan states the area is ‘Road’

Evidence indicating registration of plan - ‘Examined by’ and Charted by’ both have dates inserted

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

DERM Road case file number - RC25340

Government Gazette reference (eg. GG 63.2.602)

NB. in relation to a road closure

Survey Plan Number

Date plan deposited in survey office

Example C - Survey Plan

Queensland Government Native Title Work Procedures - Module CB, Department of Natural Resources and Mines, 2017
Example D - Lease Instrument

Lease number (eg. 1779 N.C.L)

Description of land covered by lease by reference to the Schedule

Seal of the State of Queensland and signature of the Governor. The lease is granted under executive authority.
If your proposed dealing area was validly dedicated as road go back to Division A to assess what effect the dedication had on native title.

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

Division C - Declarations of roads under various transport legislation

Part 5: Declarations of areas as road

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

1. the Governor in Council (on the recommendation of the Commissioner) declared by Proclamation that a road, route or means of access was a State highway, main road, developmental road, secondary road, urban arterial road or urban sub-arterial road - section 11(3) Main Roads Act 1920. Refer to Example E

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

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

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

**Is an amending declaration sufficient evidence?**

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

(a) it came into force before 1 January 1994

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

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

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

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

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

Where the area declared as road was also dedicated as road, you can choose to rely upon either the dedication or the declaration.
Example E - Proclamation in Government Gazette - declaration of a road

A PROCLAMATION

By His Excellency the Honorable Sir Walter Benjamin Campbell, one of Her Majesty's Councils in and over the State of Queensland in the Commonwealth of Australia.

W. B. CAMPBELL

Governor

IN pursuance of the powers and authorities in me vested by the provisions of the Major Roads Act 1920-1925, and of all other powers and authorities in me vested, I, Sir Walter Benjamin Campbell, the Governor aforesaid, acting by and with the advice of the Executive Council, do, by this my Proclamation, publish and confirm the recommendation made by the Commissioner of Main Roads in pursuance of the Major Roads Act 1920-1925, as set forth in the schedule to this my Proclamation.

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

By Command, R. J. HINZE

God Save the Queen!

The Schedule

RECOMMENDATION OF THE COMMISSIONER OF MAIN ROADS ABOVE REFERRED TO

The Commissioner of Main Roads appointed under the provisions of the Major Roads Act 1920-1925, hereby recommends to the Governor in Council that on and from the 15th November, 1980, the descriptions specified in Schedule I hereto, be amended by inserting in the same, respectively, the descriptions specified in Schedules II, III and IV, of Appendix B, respectively, under and for the purposes of the Major Roads Act 1920-1925.

The Commissioner also recommends that the road as described in Appendix III hereto be declared a Main Road under and for the purposes of the Major Roads Act 1920-1925.

Appendix I

<table>
<thead>
<tr>
<th>Name of Road</th>
<th>Classification</th>
<th>Date of Proclamation as Major Road</th>
</tr>
</thead>
<tbody>
<tr>
<td>No. 17B</td>
<td>State Highway</td>
<td>15th November, 1980</td>
</tr>
<tr>
<td>Cunningham Highway (Ipswich-Warwick)</td>
<td>Ipswich City</td>
<td></td>
</tr>
<tr>
<td>No. 17</td>
<td>State Highway</td>
<td>15th November, 1980</td>
</tr>
<tr>
<td>Cunningham Highway (Ipswich-Warwick)</td>
<td>Moreton Shire</td>
<td></td>
</tr>
<tr>
<td>No. 17</td>
<td>State Highway</td>
<td>15th November, 1980</td>
</tr>
<tr>
<td>Cunningham Highway (Ipswich-Warwick)</td>
<td>Boonah Shire</td>
<td></td>
</tr>
<tr>
<td>No. 17B</td>
<td>State Highway</td>
<td>23rd June, 1984</td>
</tr>
<tr>
<td>Cunningham Highway (Ipswich-Warwick)</td>
<td>Goomboorian Shire</td>
<td></td>
</tr>
<tr>
<td>No. 17</td>
<td>State Highway</td>
<td>15th November, 1980</td>
</tr>
<tr>
<td>Cunningham Highway (Sub-Warwick)</td>
<td>Warwick City</td>
<td></td>
</tr>
<tr>
<td>No. 13A</td>
<td>Urban Arterial Road</td>
<td>21st December, 1985</td>
</tr>
<tr>
<td>Gateway Arterial Road (Upper Mount Gravatt-Murrarie)</td>
<td>Brisbane City</td>
<td></td>
</tr>
<tr>
<td>No. 131</td>
<td>Urban Sub-Arterial Road</td>
<td>1st July, 1983</td>
</tr>
<tr>
<td>Redland Sub-Arterial Road</td>
<td>Brisbane City</td>
<td></td>
</tr>
<tr>
<td>No. 2020</td>
<td>Secondary Road</td>
<td>31st January, 1981</td>
</tr>
<tr>
<td>Beechmont Road Beaudesert</td>
<td></td>
<td></td>
</tr>
<tr>
<td>No. 2020</td>
<td>Secondary Road</td>
<td>31st January, 1981</td>
</tr>
<tr>
<td>Beechmont Road Albert Shire</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Schedule II—Urban Arterial Road

No. U13A
GATEWAY ARTERIAL ROAD
(Eight Mile Plains—Mercerite)
Urban Arterial Road
Brisbane City

Commencing at its junction with the South East Arterial Road at a point distant about 120 metres west of the south-eastern corner of Lot 3 on R.P. 113200, parish of Yeronga, to the start of the Gateway Bridge Franchise area distant about 100 metres south of the most southern corner of the northern severance of portion 15, parish of Balmoral, including all ranges shown, by the route shown on the plans under seal held by The Commissioner of Main Roads and identified by the registration numbers RDU13A-1-37-2.

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

Schedule III—Urban Sub-Arterial Road

No. U91
REDLAND SUB-ARTERIAL ROAD
Urban Sub-Arterial Road
Brisbane City

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

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

Schedule IV—Secondary Road

No. 2020
BEECHMONT ROAD
Secondary Road
Beaudesert Shire

From a point near the north-western corner of subdivision 1 of subdivision 3 of portion 28, parish of Wilberforce, to the shire boundary near the north-eastern corner of subdivision 2 of portion 21V, parish of Wilberforce, having a boundary section with Albert Shire between the distances of 16.68 kilometres and 17.30 kilometres, half the length of which is credited to each local authority, by the route shown on the plans under seal held by The Commissioner of Main Roads and identified by the registration numbers RDU2020-1-C and RDU2020-2-E.

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

No. 2020
BEECHMONT ROAD
Secondary Road
Albert Shire

From the shire boundary near the north-eastern corner of the north-eastern severance of portion 4V, parish of Murrumba, to the shire boundary near the north-eastern corner of subdivision 1 of portion 37V, parish of Wilberforce, being a boundary section with Beaudesert Shire, and from the shire boundary near the north-eastern corner of subdivision 2 of portion 21V, parish of Wilberforce, to its intersection with the Nambour-Murwillumbah Road at a point distant about 13.83 kilometres south of the north-eastern corner of subdivision 9 of portion 8B, parish of Nambour, having a boundary section with Beaudesert Shire between the distances of 16.68 kilometres and 17.30 kilometres, half the length of which is credited to each local authority, by the route shown on the plans under seal held by The Commissioner of Main Roads and identified by the registration numbers RDU2020-2-F and RDU2020-3-G.

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

Appendix III

No. 127
BEERBURRUM ROAD
Main Road
Caloundra Shire

From its intersection with the D'Aguilar Highway and the Bunya Highway - Caloundra Road near the north-eastern corner of portion 13A, town of Caloundra, parish of Coochin, to the shire boundary near the south-eastern corner of portion 64, parish of Beerwah, by the route shown on the plans under seal held by The Commissioner of Main Roads and identified by the registration numbers RDU127-1-2-A.

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

No. 127
BEERBURRUM ROAD
Main Road
Landsborough Shire

From the shire boundary near the south-eastern corner of portion 64, parish of Beerwah, to its intersection with the Glasshouse Mountains Road near the north-western corner of S.F. 322, parish of Beerwah, by the route shown on the plans under seal held by The Commissioner of Main Roads and identified by the registration number RDU127-2-B.

Length: 1.05 kilometres (approximately)
76/127/1

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

E. FINGER
Commissioner of Main Roads

B. A. HAMMOND, Government Printer, Queensland
Division D - Helpful hints and explanations

Part 7: Off-alignment constructed roads

If a constructed road is not within its dedicated/declared alignment boundaries, then, besides finding evidence of the dedication of the road, native title has to be addressed in respect of the area constructed off the alignment in the adjoining tenure, eg. leasehold, reserve, etc. In remote areas, such diversions were normally due to physical constraints encountered at the time of constructing the road.

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

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

Part 8: Roads and watercourses

Constructed roads

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

Dedicated/declared roads

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

- Example 1 - Dedication does not continue over the watercourse.
In the above survey plan, the Hervey’s Range Developmental Road crosses over the Star River. However, as can be seen on this survey plan the dedication for that road clearly stops on each side of the river and therefore the river remains as unallocated State land.

- Example 2 - Dedication does continue over watercourse

This survey plan shows the creek crossing the road in different places. It is clear that the dedication covers the creek crossings as the line of the dedication crosses the creek and the creek is shown within the boundaries of the dedication.
## Part 9: Explanations and reasoning behind the Dedication Assessment Table

<table>
<thead>
<tr>
<th>Time period</th>
<th>Action/Dealing</th>
<th>Explanation/reasoning</th>
<th>Effect on native title</th>
</tr>
</thead>
<tbody>
<tr>
<td>Before 1 January 1994</td>
<td>Dedication of an area as road</td>
<td>The dedication of an area as road is considered to be the establishment of a public work and therefore is a previous exclusive possession act under the NTA - section 23B(7) of the NTA and section 21 of the NTQA.</td>
<td>Extinguishment of native title</td>
</tr>
<tr>
<td>On 1 January 1994 to and including 23 December 1996</td>
<td>Dedication of an area as road not involving compulsory acquisition of native title rights and interests</td>
<td>The dedication of an area as road is considered to be the establishment of a public work and therefore is a previous exclusive possession act under the NTA - section 23B(7) of the NTA and section 21 of the NTQA. However, to ensure that the dedication was valid the whole or part of the area covered by the dedication must have, at any time prior to the dedication, been subject to: - a valid freehold estate - a valid lease (other than a mining lease) - a valid public work.</td>
<td>Extinguishment of native title</td>
</tr>
<tr>
<td>On 1 January 1994 to and including 29 September 1998</td>
<td>Subsequent dedication of an area as road after compulsory acquisition of native title rights and interests in this period</td>
<td>The non-extinguishment principle applies to the acquisition itself - section 23(3)(a) of the original NTA. However, section 23(3)(b) provides that nothing in the NTA prevented any act done to give effect to the purpose of the acquisition from extinguishing the native title rights and interests. Therefore, as the dedication of a road for the public extinguishes native title rights and interests at common law, the effect of dedicating the acquired area as road will extinguish native title.</td>
<td>Extinguishment of native title</td>
</tr>
<tr>
<td>On 24 December 1996 to and including</td>
<td>Dedication of an area as road which was a pre-existing right-based act and falling within section 24IB</td>
<td>The dedication done in this time period must be based upon a legally enforceable right or a prior commitment etc made on or before 23 December 1996.</td>
<td>Non-extinguishment principle</td>
</tr>
<tr>
<td>Time period</td>
<td>Action/Dealing</td>
<td>Explanation/reasoning</td>
<td>Effect on native title</td>
</tr>
<tr>
<td>-------------</td>
<td>---------------</td>
<td>-----------------------</td>
<td>-----------------------</td>
</tr>
<tr>
<td>29 September 1998</td>
<td>(the transitional provisions of the NTA)</td>
<td>Under the transitional provisions of the NTA, if the dedication takes place after 23 December 1996 but before 30 September 1998, section 24ID will apply to the dedication as if the dedication was a permissible future act under the NTA. Section 24ID of the NTA provides that the conferral of a right of exclusive possession or the grant of a freehold estate will extinguish native title. Since the dedication of an area as road does not fall into either category, the non-extinguishment principle will apply to the dedication.</td>
<td></td>
</tr>
<tr>
<td>On 24 December 1996 to and including 29 September 1998</td>
<td>Dedication of an area as road not involving compulsory acquisition and falling within section 24KA of the NTA (transitional provisions of the NTA)</td>
<td>Under the transitional provisions of the NTA, if the dedication takes place after 23 December 1996 but before 30 September 1998, section 24KA will apply to the dedication as if the dedication was a permissible future act under the NTA as it was in force at 29 September 1998.</td>
<td>Non-extinguishment principle</td>
</tr>
<tr>
<td>On and after 30 September 1998</td>
<td>Dedication of an area as road not involving compulsory acquisition and done under section 24KA of the NTA</td>
<td>Section 24KA of the NTA would apply to the dedication of an area as road.</td>
<td>Non-extinguishment principle</td>
</tr>
<tr>
<td></td>
<td>Dedication of an area as road which was a pre-existing right-based act under section 24IB of the NTA</td>
<td>Section 24ID of the NTA provides that the conferral of a right of exclusive possession or the grant of a freehold estate will extinguish native title. Since the dedication of an area as road does not fall into either category, the non-extinguishment principle will apply to the dedication.</td>
<td>Non-extinguishment principle</td>
</tr>
<tr>
<td>Time period</td>
<td>Action/Dealing</td>
<td>Explanation/reasoning</td>
<td>Effect on native title</td>
</tr>
<tr>
<td>-------------</td>
<td>----------------</td>
<td>-----------------------</td>
<td>------------------------</td>
</tr>
<tr>
<td>This is the period for which you have sufficient evidence showing the area was dedicated as road.</td>
<td><strong>Dedication of part of a reserve as road under section 24JA of the NTA</strong></td>
<td>It is not possible to <strong>validly</strong> dedicate part of a reserve as a road under section 24JA. Dedications of areas as roads have been purportedly done under section 24JA of the NTA on the basis that the dedication was either in accordance with the purpose of a reserve or in the area covered by the reservation there would have no greater impact than what could already be done on the area covered by the reserve. However, these purported dedications have probably not been effective. The reason why the dedication was ineffective is explained in the example set out below. <strong>Example</strong> - in 1968, the land was reserved for public purposes under which the dedication of a road was in accordance with the purpose for which the land was reserved. However, as the reserved land over which the road was to be dedicated would have needed to have been first excised from the reserve and revert to unallocated State land, it could not have been done in accordance with the reservation or in the area covered by the reservation as that reservation no longer existed for that particular area. Therefore, section 24JA is not the applicable section and native title will not have been extinguished under section 24JA by the establishment of a public work, ie. the dedication of the area as road. If the dedication you are considering has been done under section 24JA, please refer all details to your NTCO who will then refer to matter to ATSILS for consideration.</td>
<td><strong>Not Applicable</strong></td>
</tr>
</tbody>
</table>
Division E - Effect on native title, compensation and decision-making

Part 10: What is the effect on native title?

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

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

Extinguishment
Extinguish means permanently extinguish. This means that after the extinguishment the native title rights and interests cannot revive, even if the act that caused the extinguishment ceases to have effect.
Part 11: Is compensation payable for the effect on native title by the dedication?

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

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

Part 12: Who makes the decision whether this Module applies?

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

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

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

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