University of Southern Queensland
Faculty of Engineering and Surveying

The Resolution of Uncertain Boundaries at Amity Point
(North Stradbroke Island)

A dissertation submitted by
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ABSTRACT

The encroachment situation at Amity Point was initiated by occupation constructed off alignment to the original property boundary of Lot 521 A33912. Further fencing and dwelling construction over a period of time has seen these encroachments compounded. A resolution of these encroachments is required to ensure the occupants of Amity Point are certain of their true boundary location.

Under the current legislative system in Queensland there are three methods available for rectification of uncertain boundaries. The three methods available are by absolute surrender pursuant to the Land Act 1994, reconfiguration of a lot pursuant to the Integrated Planning Act 1997 and remedy through the Supreme Court.

This project documents a complex case study of the methods available involving the resolution of uncertain boundaries resulting in the production of a proposed survey plan for issuing title for the rectification of the uncertain boundary for the chosen case study. A 2004/2005 review of legislation proposed by the Department of Natural Resources and Mines for the resolution of uncertain boundaries is critiqued for its usefulness in boundary resolution.
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I further certify that the work is original and has not been previously submitted for assessment in any other course or institution, except where specifically stated.

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Chapter 1  Introduction

1.1 History and Location of North Stradbroke Island

North Stradbroke Island is located approximately thirteen kilometres east of Cleveland and Redland Bay, suburbs of Brisbane in South East Queensland, Australia.

Figure 1.1 Location of North Stradbroke Island:

North Stradbroke Island or “Straddie” is about 38 kilometres long and 11 kilometres wide. The name Stradbroke comes from the Earl of Stradbroke and was named in 1827 by the Earl’s son, Captain H.J.Rous, the Commander of the HMS Rainbow. In 1827, the town of Dunwich was settled to house convicts from the settlement in Moreton Bay. This town was abandoned in 1831. The town was re-established for off-
loading ships. Shipping goods up the Brisbane River in the 1800’s was difficult due to shallow waters.

Dunwich is the main town on North Stradbroke Island. Ferries, barges and water taxis arrive from the mainland here daily.

Today North Stradbroke Island is a tourist destination with long, clean, white beaches and beautiful clear water.

1.2 Amity Point

The Northern most tip of this island is called Amity Point.

“This first settlement of this important location occurred in 1825 when a pilot station was built to help shipping into Moreton Bay and the Brisbane River”. (FairfaxDigital 2005).

In the 1950s, Amity Point was the main access point to the island instead of Dunwich. Amity Point has a lot of tidal and beach erosion issues, houses and a lot of other dwellings have been lost to the ocean over the years at Amity Point.

1.3 Aim of this Project

This project aims to investigate the reason why occupation along the esplanade at Amity Point is encroaching onto neighbouring properties and to consider possible resolutions to these encroachments pursuant to the Land Act 1994 and the Integrated Planning Act 1997.
1.4 Major objectives of this Project

1.4.1 Review of Current Rectifications Available for the Resolution of Uncertain Boundaries in Queensland

A review of the current methods available to the general public of Queensland of what is available for resolving uncertain boundaries.

1.4.2 History of the Amity Encroachments

The history of the Amity encroachments will be documented including the initial detection of these problems, a brief explanation of rectification of the problems, details of meetings with local authorities other professionals and surveys undertaken at Amity Point.

1.4.3 Cadastral Survey Report

A cadastral survey report has been compiled and describes the fieldwork completed at Amity Point as well as procedures undertaken to reinstate each original corner in the affected area.

1.4.4 Rectification of Encroachments

The rectifications of encroachments at Amity Point are investigated and two legislative options for resolution are established. Namely, Absolute Surrender under the Land Act 1994 and Reconfiguration of a Lot under the Integrated Planning Act 1997.

1.4.5 New Legislation

New legislation being introduced by the Department of Natural Resources and Mines regarding uncertain boundaries is researched and documented.
1.4.6 Survey Plan

A survey plan for the subdivision resolving the encroachment problems has been produced.

1.5 Introductory Comments

This dissertation has been based on a real life situation. Advise from senior staff at the Department of Natural Resources and Mines during this project resulted in the client ending the project due to time restraints. This project has assumed the continuation of the resolution of the boundary problems, and has proceeded to a probable conclusion. Chapter 2 looks at the current systems available to landholders in Queensland for uncertain boundary resolution.
2.1 Absolute Surrender under Section 358 of the Land Act 1994

Absolute surrender is when the registered owner or registered owners of an uncertain boundary area agree to surrender titles to the state and be issued with new deeds of grant. The surrender is completed pursuant to Section 358 of the Land Act 1994 (appendix II).

2.1.1 Section 358 (2) Land Act 1994

Section 358 (2) Land Act 1994 states:

“A registered owner or trustee, with the Minister’s written approval, may surrender the land contained in the registered owner’s deed of grant or the trustee’s deed of grant if—

(a) On resurvey of the land, the boundaries of the land do not agree with the boundaries described in the existing deed or appropriate plan, and no doubt exists about the boundaries of the land; or

(b) The boundaries of the land have significantly changed because of erosion or by gradual and imperceptible degrees.”

For Absolute surrender or Section 358 (2) to be successful each party involved must give consent to the proposed solution. If there is one party or fifty parties involved it is crucial each landholder is in agreement to use Section 358 (2).
The Land Use Manager (Minister) of the subject region must agree and give approval to the proposed resolution to the uncertain boundaries.

Section 358 (2) part (a) explains that if doubt exists over the boundaries of a lot or lots and these boundaries do not agree with the referenced survey plan description of the lot then Section 358 (2) can be implemented. This occurs when there is insufficient evidence to re-establish the property boundaries. These situations can occur in both urban and rural areas. In urban areas these situations occur when there is a significant time period between the time of original survey and the subsequent development of the area. The situation is similar in rural areas. Agricultural practices in rural areas can result in the removal of original occupation and survey marks making it extremely difficult to reinstate the original property boundaries.

Section 358 (2) part (b) gives details about situations arising from natural elements. Land degradation is common in urban and rural areas. In urban coastal regions erosion can occur through tidal activity along esplanades and in rural areas property boundaries along rivers and creeks can change over time from flood erosion.

2.1.2 Section 358 (3) Land Act 1994

"On the surrender of the land –

(a) the deed of grant or deed of grant in trust is cancelled: and

(b) a new deed must be issued containing the land to which the registered owner or trustee is entitled.” Section 358 (3) Land Act 1994.

(c) If Section 358 (2) is implemented and the registered owners are allowed by the Minister to surrender their existing deed of grant, the original deed is cancelled and a new deed of grant is issued to the registered owners.
2.1.3 Section 358 (4) Land Act 1994

"When issuing any new deed under this section, the Governor in Council may amend or change the description of the land." Section 358 (4) Land Act 1994.

During the process of Section 358 (3) the minister has the power to amend or change the description of the land using Section 358 (4). In some uncertain boundary cases the minister will reduce or increase Lot areas pursuant to Section 358 (4) of the Land Act 1994.

2.1.4 Section 358 (5) Land Act 1994

"The registrar of titles must register the new deed and must record on the deed all mortgages, leases, easements or other transactions that were recorded on the deed surrendered." Section 358 (5) Land Act 1994.

Section 358 (5) ensures the registrar retains the mortgages, leases, easements and any other records that were contained in the previous title. This is a guarantee that each existing allocation will remain over each new deed.

2.2 Reconfiguration of a Lot under the Integrated Planning Act 1997

The Integrated Planning Act 1997 (IPA 1997) was first implemented in 1997 to achieve ecological sustainability throughout Queensland.

IPA 1997 maintains coordination and planning between local, regional and State levels of government and manages development procedures across the State.


This is a development system for managing developments across Queensland.
The first step involved in IDAS is an application stage where an Assessment Manager accepts or rejects an application for reconfiguration of a lot under IPA 1997.

Next is the information and referral stage where the impacts of the proposed development are assessed.

Subsequently a notification stage is put into practice and members of the public can voice opinions of any new developments.

The next stage in IDAS is a decision stage at this point the Assessment Manager of the development approves the proposed development.

Finally, the Minister can use powers to amend the proposed development and a survey plan is drafted for council sealing.

2.2.1 Application Stage

Chapter 3 part 2 Application Stage (Appendix SS) is the Legislation for making an application to subdivide under the Integrated Planning Act 1997. The application stage is required to initiate the process of reconfiguration of a Lot under IPA 1997.

An application form (Appendix TT) is submitted to the assessment manager of the Local Authority. Along with a monetary fee associated with the development application. It must contain an accurate description of the land and have written consent from its owners. If the Assessment Manager accepts the application he/she must reply with an acknowledgment notice in the required period of 30 days (acknowledgment period) from when the application is received. The acknowledgement notice must state that the development is for reconfiguration of a Lot and it must state the names and addresses of each referral agency.

The application stage ends when the Assessment Manager sends out an acknowledgment notice.
2.2.2 Information and Referral Stage

Chapter 3 Part 3 Information and Referral Stage (Appendix UU) of the Integrated Planning Act 1997 (IPA 1997) allows the Assessment Manager to ask questions to other Concurrence Agencies about the impacts of the proposed development. The Assessment Manager can also query the Referral Agencies about the application.

2.2.3 Notification Stage

Part 4 Notification Stage of the third chapter of IPA 1997 is shown as appendix VV. The notification stage gives members of the public an opportunity to object to the proposed development.

The applicant must place an advertisement in a local newspaper, place a sign on the affected Lot and advise the adjoining owners via mail about the proposed development.

During this notification process any person can make a submission to the assessment manager.

The notification stage concludes when the time frame required for the period expires and the assessment manager receives written notice of compliance from the applicant.

2.2.4 Decision Stage

Chapter 3 Part 5 Decision Stage (IPA 1997) is the communication link between the Local Council and the applicant (see Appendix WW). This stage is essential as it outlines to the applicant what conditions the Local Authority has placed on the subdivision. This stage of the subdivision commences when the applicant has replied to the information request and the Assessment Manager has received the request.

The application will then be code assessed and impact assessed. Code assessment is evaluation of the development by the Assessment Manager only against the common
codes used by the local government involved. Impact assessment estimates the environmental effects of the proposed development.

The Assessment Manager has 20 business days to assess the decision notice and can extend this period by 20 days.

The decision notice when finished must be distributed to the applicant and each of the referral agencies involved.

If application is approved it will normally be to several conditions set by the Local Authority and can start when the development permit takes effect.

2.2.5 Ministerial IDAS Powers

Chapter 3 Part 6 Ministerial IDAS Powers (Appendix XX) states that a Minister may give direction if the Assessment Manager has not made a decision on a proposed development. This only occurs when the development involves State land and a concurrence agency isn’t involved with the proposal.

The Minister must complete a report explaining the direction.

2.2.6 Plan of Subdivision

Chapter 3 Part 7 Plan of Subdivision is appendix YY. The Local Authority involved in the development will approve the subdivision plan when:

- The conditions of the development have been adhered to
- Operational works conditions have been obeyed
- All levies and charges have been paid to the Local Authority
- The plan is prepared with accordance to the conditions of the subdivision

When approved by the Local Authority this plan is lodged for registration.
2.3 Supreme Court

2.3.1 Supreme Court

The Supreme Court has the jurisdiction to determine the location of each individual boundary. This is the case where one party takes another party to court (usually neighbours) to resolve the position of the boundaries between the properties. One of the parties involved will be acting on information received from a licensed surveyor who reinstated the boundaries. The Supreme Court will often direct one party to compensate the other party to resolve the dispute.

2.3.2 Supreme Court under the Property Law Act 1974


The Property Law Act 1974 enables an owner or an adjoining owner to resolve encroachment issues.

The Property Law Act 1977 Part 11, Section 184 (1) (2) Application for relief in respect of encroachments states:

“(1) Either an adjacent owner or an encroaching owner may apply to the court for relief under this division in respect of any encroachment”

(2) This section applies to encroachments made either before or after the commencement of this Act.”

Section 184 explains who can apply to the Supreme Court for remedy of encroachments and that this section applies to any encroachment made after or before the implementation of this Act.
Section 185 (1) of the Property Law Act 1977 Part 11 Powers of court on application for relief in respect of encroachment states:

“(1) On an application under section 184 the court may make such order as it may deem just with respect to –

(a) The payment of compensation to the adjacent owner; and

(b) The conveyance, transfer, or lease of the land to the encroaching owner, or grant to the encroaching owner of any estate or interest in the land or of any easement, right, or privilege in relation to the land; and

(c) The removal of the encroachment.”

This means the court may make judgement by compensation, instruct an easement or lease over the encroachment or order the direct removal of the obstruction.

The Property Law Act 1977 Part 11 Section 186 (1) (2) Compensation explains:

“(1) The minimum compensation to be paid to the adjacent owner in respect of any conveyance, transfer, lease, or grant under section 185 to the encroaching owner shall, if the encroaching owner satisfies the court that the encroachment was not intentional and did not arise from negligence, be the unimproved capital value of the subject land, and in any other case 3 times such unimproved capital value.

(2) In determining whether the compensation shall exceed the minimum and so by what amount, the court shall have regard to –

(a) the value, whether improved or unimproved, of the subject land to the adjacent owner; and

(b) the loss and damage which has been or will be incurred by the adjacent owner through the encroachment and through the orders proposed to be made in favour of the encroaching owner; and

(c) the circumstances in which the encroachment was made.”
Pursuant to Section 186 (1) the court will order minimum compensation to the victim of a direct encroachment if the encroachment was not intentional of the amount of three times the unimproved capital value of the property. If the encroachment was intentional the compensation will be ruled on the value of the land encroached upon, the loss or damage caused by the obstruction and the circumstances surrounding the encroachment.

Solving an encroachment through the Supreme Court is a viable option for the resolution of a single boundary dispute. Resolving multiple encroachments with the Supreme Court is difficult as the solution is compounded when several Lots are involved. Each individual Lot involved within the confused boundary area would have to give evidence to the judge and further more the judge would have to rule upon every encroachment involved. The cost and time involved in single and multiple boundary disputes through the Supreme Court is high and vast.

### 2.4 Adverse Possession

Pursuant to the Land Title Act 1994 an adverse possessor is defined as:

> “An adverse possessor of a lot means a person-

(a) against whom the time for bringing an action to recover the lot has expired under the Limitation of Actions Act 1974; and

(b) who, apart from this Act is entitled to remain in possession of the lot.”

Adverse Possession provides a solution to uncertain boundaries by permitting original long-standing occupation to be adopted as the boundary.

The Land Title Act 1994 Section 98 Application may not be made about encroachment states:
“An application may not be made under this division if it is about land that is an
encroachment as defined in the Property Law Act 1974, section 182.”

This means an application for adverse possession can’t be made if the
obstruction is defined as an encroachment under the Property Law Act 1974.

The Property Law Act 1974 Part 11 Encroachment and mistake Section 182
definitions for div 1 defines an encroachment as:

“Encroachment - means encroachment by a building, including encroachment by overhang
of any part as well as encroachment by intrusion of any part in or upon the soil.”

Any building encroaching onto another lot cannot be solved using adverse
possession.

In addition, The Land Title Act 1994 makes provisions for the whole of a lot and not
part of a lot. Adverse possession under the Land Title Act 1994 cannot be used for
the rectification of uncertain boundaries as the encroachments for a single or multiple
encroachment situations involve only part of a lot.

2.5 Summary

Under the current legislative system in Queensland there are three methods available
for rectification of uncertain boundaries. Absolute Surrender under the Land Act 1994,
reconfiguration of a lot under the Integrated Planning Act 1997 and remedy through
the Supreme Court.

Chapter 3 will examine and introduce the relevance of Absolute Surrender under the
Land Act 1994 and the Integrated Planning Act 1997 to Amity Point on North
Stradbroke Island.
Chapter 3 History of the Amity Point Encroachments

3.1 Initial Recognition of the Encroachments

The initial field excursion to Amity Point was for an Identification Survey of Lot 506 on A3392 (Appendix O). Using Control points from a recent subdivision on Toompany Street (SP136597, Appendix Q), it was found that Mr Murphy’s shed and BBQ area were encroaching onto Lot 505 A3392 (owned by Redland Shire Council). After Mr Murphy had seen the encroachments he and his fellow neighbours measured deed distances along the frontage of Lot 507 on A3392 and Lot 519 to 522 on A33912. As a result of this a detail survey of all the encroaching Lots was completed to see how extreme the problem was. This survey can be seen in appendix B of this dissertation and is discussed in section 3.2 (The Detail Survey Site Plan).

3.2 The Detail Survey Site Plan

3.2.1 Lot 507 A3392

The owner of Lot 507 A3392 engaged Urban and Rural Surveys PTY LTD to perform an identification survey of Lot 507 A3392 on the 6th of November 1996. This is the reason that this property has no encroachments. This Plan (IS129970) is shown as appendix C of this dissertation. It is interesting to note the surveyor does not show any occupation on the Identification Survey Plan around Lot 507.
3.2.2 Lot 519 A33912

The next Lot 519 A33912 has its BBQ area encroaching.

3.2.3 Lot 520 A33912

The Dwelling on Lot 520 A33912 is encroaching on both of the longer sides of the Lot. This means its width is wider than the deed width distance of 15.088. Lot 520 has a BBQ area encroaching onto Lot 519.

3.2.4 Lot 521 A33912

Lot 521 A33912 accommodates the first house constructed in the A33912 subdivision. This house has had numerous building extensions and now encroaches into Lot 520 and the esplanade.

3.2.5 Lot 522 A33912

Finally Lot 522 A33912 has some extensions to the Main house. These extensions encroach onto Lot 521.

3.2.6 Original Fences

Most of the original fences on the Site Plan (Appendix B) are in the incorrect position. This survey suggests the original fences move in a northeasterly direction away from the boundaries as they approach the esplanade. This distance varies from 2.3 metres to 1.0 metre.

3.2.7 Survey Control

Survey Control for Appendix B was obtained from IS129970. This included original nails in bitumen at stations 2, 5 and 6 on IS129970 and an original iron pin at station 2 IS129970.
3.3 Client inquires how they can resolve the problem?

This Site Plan was forwarded to our client Mr Murphy. After Mr Murphy held a small meeting with the owners of the affected Lots, he engaged Kevin Holt Consulting PTY LTD to attempt to rectify the problem.

3.3.1 Visit to Mayor of Redland Shire Council

Mr Kevin Holt (principal of Kevin Holt Consulting PTY LTD) suggested that a meeting with the mayor of Redland Shire could help solve the encroachment issues. A meeting was organised by Mr Holt with the mayor Mr Don Seccombe, Mr Paul Murphy and Mr Graeme Rush (General Manager of Land Management and Use at The Department of Natural Resources and Mines in Brisbane). This meeting took place on the Thursday the 20th of November, 2004.

No minutes were taken at this meeting. Mr Kevin Holt explained after the conclusion of the meeting that the mayor was eager to help to resolve the problem.

3.3.2 Absolute Surrender under the Land Act 1994

Appendix D is an email from Mr Graeme Rush to Mr Kevin Holt.

In this email, Mr Rush states that the best way to repair the encroachment problems at Amity Point is for the property owners affected to surrender their titles to the state and be issued with new deeds of grant.

This is done by transactions within the Land Act Section 358 and Section 360 explained in Chapter 2.

Mr Rush also outlines the fees associated with absolute surrender.
3.4 Process involved in Rectification

3.4.1 Boundary Alignment Plan

It was at this point that a proposed boundary alignment plan was drafted. This plan can be seen as appendix E.

The proposed boundaries on this plan can be identified as the bolder lines, and the dashed line type represents the original boundaries. These new boundaries have been produced by moving the frontage of all Lots 2.5 metres northeast, leaving the Millars Lane end of Lots 519 to 522 on A33912 fixed and the centre of Lots 507 and 506 fixed.

3.4.2 Issues in Boundary Alignment Plan

The owner of Lot 506 A3392 is prepared to move the BBQ area and shed so that they are not encroaching onto Lot 505 A3392.

The proposed new boundaries have been drafted to align with the present occupation along each boundary. The aim of these new boundaries is to express the way the new boundaries will appear when rectification has been implemented.

Lot 522 A33912 gains 63 square metres and Lot 505 A3392 owned by Redland Shire Council, surrenders 63 square metres of land for this proposed plan to be acceptable. These boundaries are a guide only. When the finished survey plan is drafted these proposed boundaries will be modified to some extent.

Lots 508 and 509 on A3392 have been cancelled. These Lots are unallocated state land and are to be absorbed by the esplanade. This will be explained further in chapter 5.
3.4.3 Leasehold Land

For absolute surrender to be effective, all parties must agree to the action. Appendix F shows the title certificates for each Lot. From this Lot 521, A33912 is shown as leasehold land. This means that for the surrender to be effective, we must have the permission of the State to perform the boundary realignment of Lot 521. To adjust the common boundary line between Lots 505 and 506 on A3392, we must have permission of Redland Shire Council (the owner of Lot 505 A3392).

3.4.4 Correspondence to Redland Shire Council

A letter (Appendix G) was sent to each owner explaining that Mr Graeme Rush had advised that the best resolution for the encroachment issues on their beachfront properties at Amity Point was Absolute Surrender. The Letter gives details about the process of absolute surrender and advises that a letter from each owner will be required to start proceedings.

This letter also states that a new survey plan will be drafted. The plan must have the consent of all parties involved before the application to the state is instigated. This letter also informs the owners of this esplanade land at Amity Point of the fees involved in the boundary re-alignment.

3.4.5 Correspondence from affected land holders

Correspondence received from the affected parties (Appendix H) show that all parties that inhabit the esplanade at Amity Point are willing to surrender their titles.
3.4.6 Contact with Ken Rogers

Mr Ken Rogers (the Senior Land Officer at The Department of Natural Resources and Mines, Beenleigh Office) received a phone call from Kevin Holt Consulting. This phone call explained the situation at Amity Point and the rectification process our company was starting for resolution. Mr Rogers informed Kevin Holt Consulting that he would investigate the matter.

3.4.7 Meeting with Redland Shire Council

A meeting was arranged with Redland Shire Council to ask for permission to take the 63 square metres of land on Lot 505 A3392.

It was at this point that Mr Wayne Dawson (Manager of Land Use Planning) and Mr Paul Powell (Senior Advisor for Spatial Management) of Redland Shire Council were contacted.

An email sent to Mr Powell and Mr Dawson (Appendix I) explains the situation at Amity Point and outlines the procedures required for absolute surrender. It also states the need for consent from Redland Shire Council, as Lot 505 A3392 will be forfeiting 63 square metres to Lot 522 A33912. Attached to this email was the proposed boundary alignment plan (appendix E).

In response to Mr Powell and Mr Dawson reading this email a meeting was organised for Friday the 16th of April 2004. This meeting was held from 10:00am to 11:00am at the Orange Room at Redland Shire Council Chambers in Cleveland.
3.4.8 Minutes of Meeting with Redland Shire Council

Minutes from the meeting with Redland Shire Council (Appendix J) show that the attendee’s are Mr Wayne Dawson, Mr Kevin Holt, Mr David Wilson, Mr Gary Photinos (Manager of Policy and Legislation, Redland Shire Council) and Mr Paul Powell.

Redland Shire Council raises several issues in minute 7 appendix J:

“Why does Council have to surrender land if all the other land owners were basically going to maintain or increase their land area?” “Should the loss be shared?”

Mr Powell suggested two alternatives to Redland Shire Council forfeiting the 63 square metres of land.

The first alternative (Appendix Ja) suggested that the 63 square metres be proportioned equitably between Lots 505, 506 and 507 on A3392. The area of each Lot would decrease 21 square metres, instead of Lot 505 reducing the entire 63 square metres.

One advantage of this method is that some of the Lots share the 63 square metres lost.

Some disadvantages of this solution are the fences on the common boundaries between Lots 506 and 507 and Lots 505 and 506 on A3392 will not be on the original fence alignment.

This solution could also prompt potential arguments between the registered owners of Lots 505, 506 and 507 A3392 (the forfeiting owners) and the residents of Lots 519 – 522 A33912 (the gaining owners).
Mr Powell’s second solution (Appendix Jb) is whether each Lot along the esplanade could equally share the 63 square metres? This could be accomplished by reducing the depth of each Lot.

For example, if Lot 506 A3392 reduced its depth to 100.034 from 100.584 it would reduce its area by 11 square metres. A calculation could be made to equally distribute the 63 square metres over the frontages of the seven Lots affected.

The obvious advantage of this is that the Redland Shire Councils Lot of 505 on A33912 isn’t the only loser and the surrendered land is shared between each Lot. This argument provided by Mr Powell doesn’t provide a solution as the boundaries are impeded by structures.

Minute 8 in appendix J states the current position of a tidal high water mark for this area is unknown. The tidal mean high water mark is determined by mean high water springs (MHWS). This minute also explains there are some erosion issues on the esplanade frontage of these Lots. This would have to be determined by field survey at a later date.

If, the MHWS for this particular area is encroaching onto the frontage of the Lots, then the frontage of each Lot maybe adjusted upon consent from The Department of Natural Resources and Mines.

In appendix J, minute 9 is also important. This states Council’s position on this matter is going to be dependent on the erosion and high water mark issue.

3.4.9 Survey of Mean High Water Spring

The original site plan has been updated with the new amendments (Appendix K).

These amendments include:

- The 0.75m MHWS contour.
Chapter 3  History of the Amity Point Encroachments

- The “landside” of the existing rock retaining wall along the esplanade.
- Text showing a value of 0.75m for MHWS. It also includes the source of this value (Amity Point tidal station).
- Text stating the date of survey and the origin of the levels. These were the 10th of May 2004 and PSM 116098 with a reduced level of 2.122 AHDD respectively.

The MHWS surveyed contour for Amity Point is a reasonable distance from the surveyed boundaries of Lots 505-507 on A3392 and 519-522 on A33912. This means that the front boundaries cannot be adjusted to MHWS as the MHWS contour line is on the esplanade and not encroaching onto the Lots.

3.4.10 Second Meeting with Redland Shire Council

The minutes of the following meeting with Redland Shire Council are shown in appendix L.

In minute one, Mr Powell explains that Redland Shire Council is willing to accept the proposal and agree to surrendering 63 square metres of land. This is a major break through with this project as without Redland Shire cooperation the proposal would not work. Redland Shire’s willingness to assist in correcting these encroachments has also come without a price. There has been no land surrendered by any other party and no monetary compensation has to be addressed.

Minute three makes clear that Mr Dawson requires boundary setbacks to be maintained where practical. This will mean the Proposed Boundary Alignment Plan (Appendix E) will have to be modified to suit these requirements when the final Boundary Alignment Plan is drafted.
In minute five, a discussion was undertaken about access for Lot 506 A3392. Lot 506 A3392 is “land locked”. This means it has no access from the Lots surrounding it. It was suggested that an easement be created onto the end of Millers Lane and over the existing Lot 507 A3392 ensuring that Lot 506 A3392 could have right of entry to Millers Lane.

This motion was denied by the owner of Lot 507 A3392 (Mr Rodney Wiley). Mr Powell explained that he would draft a letter stating that the owner of Lot 506 A3392 could gain access through Lot 505 A3392 to the property.

The next minute six gives two solutions about what should be done to rectify these encroachments.

- The first solution is to determine if there were error(s) in the original survey and solve the encroachment issues under Section 358 of the Land Act 1994.
- The second solution is to solve the problem under the Integrated Planning Act 1997. This process involves a proposal to council and council is the manager of this proposal.

The first solution is preferred as the second option could take an extremely long period of time to resolve. The final minute prompts Kevin Holt Consulting to undertake a large cadastral survey of this area to find this error in the original survey. This survey was undertaken as an integral part of the Land Act 1994 and is examined in detail in chapter 4.
Chapter 4 Cadastral Survey Report of Amity Point Boundaries

4.1 Introduction

As explained in the previous chapter, the first visit to this site was for an identification survey (Appendix O). The client to our firm (Mr Paul Murphy owner of Lot 506 A3392) requested his property boundaries to be identified as he had received correspondence from Redland Shire Council explaining that there were some encroachment issues. This letter can be seen in appendix M and is explained in the sub section 4.1.1 (Letter of non-compliance).

Secondly, another cadastral survey was completed to discover any original marks that proved the original pegs were placed incorrectly and consequently illustrate that the encroachment issues that exist to this day are a result of this inaccuracy.

This second identification survey was required as part of absolute surrender under the Land Act 1994.
4.1.1 Letter of non-compliance

This letter states that there are number of non-complying structures on Mr Murphy’s land. The letter goes onto say that these structures (Pergola, Barbecue area, Caravan and Annex and Garden Lights) don’t comply with Redland Shire Council’s Town and Building Act. Appendix M then states that the caravan and annex are encroaching onto council owned land.

This letter also gives Mr Murphy a number of options to rectify the problems Council outlined in the letter of non-compliance.

4.2 Reinstatement for Initial Identification Survey

Using control points from a very recent subdivision on Toompany Street the initial identification survey was undertaken to determine the extent of the encroachments. The results of this identification survey can be viewed as appendix O.

All point numbers detailed in the following reinstatement report refer to the drafted identification survey (Appendix O).

4.2.1 Reinstatement of Northern side of Toompany St

Station 1 was searched and there were no original marks found. The line from station one to station five on the northern side of Toompany Street was fixed by locating the original iron pin and original nail in bitumen at station two and the original permanent survey mark 116098 at station four.

The origin of this original iron pin at station 2 was from IS 20955 (Appendix P) and the origin of the original nail in bitumen at station two was from IS 129970 (Appendix C).

The origin of the permanent survey mark 116098 at station four is from Appendix Q SP 136597. This line will become the datum of the survey.
4.2.2 Reinstatement of Southern side of Toompany St

The southern side of Toompany Street has been fixed by the original marks found at station six and seven.

At station six there are two original iron pins. One of these original iron pins has come from station 7 RP 105166 (Appendix R) and the other from station 3 RP 130351 (Appendix Z).

4.2.3 Reinstatement of Northern side of Ballow St

The northern side of Ballow Street was fixed by the original marks at stations six, eight, nine, ten and twelve.

The original screw in concrete at station eight was placed in a survey lodged as RP 880791 (Appendix T).

The original iron pin at station 9 on the truncation of Ballow and Toompany Streets was placed on appendix Q, SP 136597 from station five.

Paul Caddey Surveys placed the original nail in post at station ten. This can be seen on IS166498 (Appendix U). Paul Caddey also places survey marks at station 12.

4.2.4 Reinstatement of Millars Lane

The alignment of Millars Lane was fixed by the original marks at stations two and eleven. The origin of station two’s marks has been explained previously.

The original nail in bitumen at station eleven was first placed by Mr David Copley (Licensed Surveyor) at station six on IS 129970 (Appendix C).

Deed bearings and distances have been adopted to place the pegs at the corners of Lot 506. Original pegs were found along the southeastern line of Lot 505 and 506 these original pegs prove the pegged position of the boundaries.
4.2.5 Misclose of Traverse

The misclose, when the traverse for this identification survey was closed was a 10" angular misclose and a 0.003m linear misclose giving a measure of precision of 1:133333.

4.3 History of each Plan and the origin of significant Survey Marks

All station numbers explained in the following section are directly related to the plan which is being explained, and do not relate to the drafted identification survey plans.

4.3.1 A3392

The first survey completed for the Township of Amity in this area was A3392 (Appendix S). Mr R Abbott (Surveyor) completed A3392 on the 4th of July 1886.

4.3.2 A33912

Mr F. W. James (Auth Surveyor) surveyed Lots three, four and Lots sixteen to twenty-two on A33912 (Appendix V) on the 13th of August 1948. The datum of this survey was a line of original pegs, original survey post at station 1, original reference tree and original survey post at station 2 and an original reference tree at station 18. All these marks originated from A3392.

4.3.3 RP 83630

Next Ray Lamont (Auth Surveyor) surveyed Lots 1 – 5 on RP 83630 (appendix W). This subdivision is located on the corner of Birch and Ballow Streets. Mr Lamont has used two original iron pins as his datum. These original iron pins were placed by A3397.
4.3.4 RP 105166

RP 105166 (Appendix R) is the next plan in chronological order. This registered plan surveys Lots 1-4 and Easements A – C. The datum for this plan is also along Ballow Street. Station 1 has been reinstated from two original iron pins. The position of station 7 has been determined by an original iron pin and original reference tree. These marks originated from A3392. The original iron pin at station 4 has been connected to and originates from A33912. This can be seen in appendix X the field notes for A33912. Appendix Y also shows field notes for A3392. The connection to the original iron pin at station 4 only shows a distance (150 links, measurement only). It is standard practice to assume that the angle at station 3 is not ninety degrees and Mr Noel Hyde (Auth Surveyor) has used the original iron pin to fix the line from station 3 to station 16.

4.3.5 RP 130351

RP 130351 (appendix Z) is a subdivision of Lots 1 – 7 cancelling Lot 15 on A3392. This subdivision is located at the corner of Toompany and Ballow Streets. Mr V.B.Ryan (Auth Surveyor) has used the original marks at stations 1 and 3 to fix this survey. The original box and original iron pin at station 1 came from RP 105166. Mr Ryan located two original iron pins at station 3.

- The connection of 69 degrees for a distance of 106.07 links is from the subject plan of A3392.
- The original iron pin at 24 degrees for 3.0 links originates from the previously discussed plan RP105106.

The alignment of Toompany Street has been fixed by adopting deed angle at station 3. Station 5 has been reinstated by intersecting deed bearings from corner 11,
reinstated form the original iron pin at station 11 and corner 3. This is why there are excess measurements from station 3 to 5 and 5 to 11.

The original iron pin at station 11 originates from station 12 RP 105166. An interesting thing to note on this plan is that the occupation at station 6 has referenced the centre of round fence post 14.0 links NE. This calculates to be 2.817 metres, about the same amount of error that has caused the encroachments in the subject Lot.

4.3.6 IS 20955

IS 20955 (Appendix P) is an identification survey of part of Lot 511, 513, 516 and 518 on A33912. The datum of this survey is two original iron pins along the common boundary of Toompany Street and Lots 2-6 on RP 130351. The distance between these two original iron pins is ranged only. This usually means that the distance measured is smaller than deed distance. Mr Michael Long (Surveying Graduate) has used these two marks to fix his entire survey on IS20955.

4.3.7 CP 859680

The plan CP 859680 (appendix AA) shows two large Lots 802 and 814. They are located to the southwest, parallel of Toompany Street. The datum of this plan is the line along Ballow Street.

The original marks at station 1 and 3 are the same as mentioned above for RP 130351. The exception to this is the original reference tree at station 3, this is now gone. The original iron pin at station 2 is from RP 130351, this has also been used to fix this line.

The original marks used for reinstatement of Toompany Street are the original iron pins at stations 1 and 14. The distance from 1 – 14 is deed distance. The previous
identification survey reported, “ranged only” for this distance. Did the survey graduate Mr Michael Long measure this distance correctly?

Also there is an original peg in Millars Lane from IS 20955 (appendix P) as well as an original peg at station 16. The occupation at station 15 still shows the centre of round fence post to be 2.77 NE. There are also some encroachments shown in the diagram. In the worst instance the gutter is 0.58 NE of the boundary.

4.3.8 RP 880797

The plan RP 880797 (Appendix T) is a plan of Lots 1 – 4 and easement A cancelling part of Lots 807 – 810 on A3392. This plan does not have any real impact on the reinstatement for the subject Lots. The reason it has been included is because it shows the origin of the original screw at station 2.

4.3.9 RP 905457

The standard format survey plan RP 905457 (appendix BB) shows Lots 51 and 52 cancelling Lots 802 and 814 on CP 859680. This plan is located on the frontage of Ballow Street and spans to the esplanade. The datum though it is not specified, appears to be the original marks along Ballow Street. Once again deed angle has been kept at station 1 of 90 degrees. Also deed distance has once again been measured between stations 1 – 23.

The occupation at station 21 has either been removed or more than likely not been recorded as there is minimal occupation displayed on the plan.

There are two new survey marks referenced.

- An original screw in concrete at station 4, which is from RP 880797.
- An original nail in bit at station 1, which was derived from station 1 RP 859680.
4.3.10 IS 129970

IS 129970 (Appendix C) is an identification survey of Lot 507 on A3392 completed by Urban and Rural Surveys PTY LTD on the 6th of November 1996. The Licensed Surveyor David Copley’s datum is from station 2 to station 1 (IS129970).

To fix Mr Copley’s datum line, the same reference points mentioned previously have been used.

An addition to this is the original nail in bit at station 2. This originates from station 1 RP859680.

To fix the line along Toompany Street, Mr Copley has used the original iron pin at the truncation of Lot 6 RP130351 for the southern side of the road.

The original pegs found on the truncation of Lot 516 A33912 have fixed the northern side of Toompany Street. The Street has also been reinstated by the nail found in the top of round fence post at station 4.

The question must be asked has Mr Copley completed the identification survey correctly as he has not connected to any original marks above the northern side of Toompany Street?

The distances and angles adopted by Mr Copley are all deed. He has not referenced any occupation and has not marked any of the corners of his subject Lot. Instead the client has instructed Mr Copley to place building gridlines.

Mr Rodney Wiley is the register owner of Lot 507 A3392. The reason for this identification survey was to build a two storey dwelling on the Lot. Appendix B shows the position of the constructed dwelling on Lot 507 A3392. The building is not parallel to the boundaries, but it does not encroach onto any of the neighbouring properties.
This is because Rodney Wiley realised the original fences were not in the correct position at the time of construction and built his house parallel to his neighbours.

4.3.11 SP136597

SP 136597 (appendix Q) is a subdivision of Lot 511 on A3392 into Lots 51 to 55. Once again the original marks used for reinstatement have been mentioned previously.

An original iron pin has fixed station 1 on SP 136597 from IS 20955. The original nail in bit at station 1 has also been re-referenced.

Station 6 is reinstated by several original marks. The only mark previously not mentioned is an original spike in bitumen, which originates from station 2, IS 129970.

The most important thing to note on this plan is its datum, MGA. This has been fixed from original permanent survey mark (OPM) 130435 and OPM 19799.

An original peg at station 11 is the first original mark on Ballow Street that has been located above the intersection of Toompany and Ballow Streets since the original survey in 1886. This original peg at station 11 was placed by Mr Paul Caddy (Licensed Surveyor) on the 31st of May 2002.

4.3.12 IS 166498

IS 166498 (Appendix U) is an identification survey of Lot 513 on A3392. Mr Paul Caddy, who completed the survey has used same original marks as SP 136597. The reference marks used to fix each line and therefore corner of the survey have once again been mentioned before. The only new mark is the original permanent survey mark at the truncation of Lot 51 SP 136597. This mark was originally placed on SP 136597.
This survey once again has not found any original marks to fix the survey above the northern boundary of Lot 512 A3392.

4.4 Conclusions of Identification Survey

Station numbers mentioned in the following section relate to the drafted identification survey (appendix O).

In this identification survey each corner has been searched for original marks trying to justify these deed bearings and distances. The frontages of Lots 501 – 505 A3392 are in the ocean so there was no need to search these corners for original marks. The other lines which have not been searched since 1948 (A33912) are from stations 14 – 15 and stations 12 to 13. These lines were surveyed and large holes were dug at each corner in an attempt to find an original peg.

The original reference tree at corner 13 was not found nor any remains. There were no original marks found at any of these corners including the original reference tree.

In conclusion, from the evidence given above, the lines from stations 8 – 12, stations 6 – 7 and stations 2 – 5 have been fixed with original marks. All other lines on the survey have been fixed by using deed bearings and distances.

4.5 Second Identification Survey

In the Identification survey report mentioned previously there was great difficulty in locating original marks that prove the deed distances adopted for reinstatement. In Chapter One, Mr Graeme Rush pointed out that a possible solution to these encroachments was to find an error in the original survey and solve these problems under the Land Act. Therefore another cadastral survey (Appendix HH) was
completed to discover any original marks that proved the original pegs were placed incorrectly and consequently illustrate that the encroachments issues that exist to this day are a result of this inaccuracy.

4.6 History of each Plan and the origin of significant Survey Marks

4.6.1 A33912

This error could have arrived from A33912 appendix V. Mr Fred W James completed this survey on the 19th of August 1948. Mr James was a lecturer at the University of Queensland. He and his students carried out A33912 during a survey practical.

The original field notes for A33912 are displayed in appendix X. Page 6 shows how Mr James set his datum line for the survey. He has used an original survey post at station 1, as well as an original reference tree at station 18 to fix his datum.

Along the line he has shown a line of original pegs between stations 1 and 2. There is also an original reference tree at station 2a and an original reference tree lying out at station 2.

Next, the bottom of page seven in appendix X shows how Mr James fixes the line along the northern side of Ballow Street. He starts at station 2 and finds an original peg at station 6 and renews it. Along this line, Mr James measures an offset to an original peg of 200 links from station 3. This can be seen on the on the face of the plan A33912. The origin of this mark is unknown, as Toompany Street is 150 links wide and the width of Lot 801 A3392 is 100 links.

In the middle of page seven of these field notes (Appendix X) Mr James surveys the line between station 3 and station 7. He finds an original peg at the corner of Lots
517 and 518 and another original peg at station 7. Mr James also measures another 700 links until Nuggin Street and reads a bearing of 114 degrees and a distance of 500 links to the peg placed when fixing the datum at the corner of Nuggin Street and Ballow Street.

Page seven of Mr James’s field notes shows he surveys the line from station 6 to 17. This entry shows the position of the original cottage on Lot 521. The cottage in this sketch is square to the boundaries. At the bottom of page 8 of the field notes Mr James has pegged and fixed the line from 8a – 5. He has also shown a connection from the original house to the common boundary of Lots 520 and 521 of 10 links (2.012m). From the corner of the house closest to the esplanade to this common boundary measures 1.310m. The measurement from the original house corner closest to Millars Lane to the common boundary is 3.06m. The mean value of these two measurements is 2.185m. The mean value is reasonably close to value measured by Mr James (2.012m) but why is the original cottage shown to be square with the boundaries?

Has Mr James correctly reinstated this survey?

The back of Lots 516 to 518 have been fixed correctly by original pegs, but the only original mark fixing the esplanade side of the subdivision is the original peg at station 6. Mr James renewed this peg in his survey.

The only way to prove the front alignment is correct would be for another field survey to be conducted to find more original marks. This will be surveyed and discussed in the sub section 4.7.3 Esplanade Reinstatement.
4.6.2 A3391

A3391 (Appendix CC) is a plan of severalLots to the north east of Nuggin Street. This survey was completed at the same time as A3392. If these two surveys can be related to each other by original survey marks than this may prove the validity of Mr James’s Survey of Lots 516 – 522 on A33912.

As mentioned previously, Amity Point is very open to erosion from Moreton Bay. This means a Lot of the original marks placed by Mr R Abbott are gone.

The most up to date real property descriptions of the eastern Lots of A3391 can be seen in appendix DD. Lots 210, 106 – 109 A3391 and Lots 1 and 2 on RP 104707 (appendix EE) are the only remaining Lots due to erosion in the area.

Mr R Abbott placed pegs along the line between stations 6a and 8 on the second identification survey plan (appendix HH) and referenced an iron pin at on the corner Lot 1 RP104707 (appendix EE).

4.6.3 RP104707

RP104707 is a standard survey plan showing Lots 1 and 2 cancelling Lot 110 A3391 (Appendix EE). The datum of this plan is the line along Ballow Street. Mr Noel Hyde (Licensed Surveyor) used an original peg at station 3 and an original iron pin referenced to station 1 to fix this line. He found and original peg at the corner of Lots 107 and 108 A3391 and the remains of an original peg at station 1. Mr Hyde measures the following:

- Measures 1-3: 201.329m
- Deed 1-3: 201.168m
- Total Excess: 0.161m
4.6.4 IS20957

IS 20957 (Appendix FF) is an identification survey of the southern boundaries of Lot 210 on A3391, Lots 106 – 109 A3391 and Lot 1 RP104707. This identification survey also marks the position of the eastern and western boundaries of Geera Street. Mr Edward Long (Surveying Graduate) has also chosen the line along Ballow Street as datum.

Mr Long used the original iron pins at the intersection of Geera and Ballow Streets to fix the intersection point of Lot 1 RP 104707. The original iron pin at this intersection originates from station 1 RP 104707 and the original iron pin referenced to this corner is from A3391.

To reinstate Geera Street Mr Long has found an original peg and a referenced original iron pin at the northeastern corner of Lot 2 RP104707. This makes the internal angle at the intersection of Ballow and Geera Streets, deed angle of ninety degrees.

All measurements on this identification survey are deed except for a ranged distance along the datum (Ballow Street). Mr Long has not shown this distance as it was discovered when the line was measured in the field to have 0.2 metres excess. Mr Long is only reinstating the line in the north/south direction so distances in the east west direction are irrelevant.

4.7 Reinstatement of Second Identification Survey

Station numbers for this following reinstatement report relate to the second identification survey (Appendix HH).
The datum for this survey was the already fixed line on Ballow Street between stations 5 and 1. Original pegs from A3391 were then searched along the line of 5a – 5b until the esplanade was encountered. The search for these original pegs was once again by excavating large holes two metres in diameter and one metre deep. A picture of a typical excavation hole is shown in appendix GG. This photo shows what was thought to be an original peg or remains of an old fence post, after further investigation it proved to be a PMG cable marker post.

4.7.1 Ballow Street Reinstatement

A traverse was completed to the original marks found at the eastern end of Ballow Street. The original peg at station 6a and the original iron pin found at station 8 has fixed the Ballow Street line between 8 and 6a. Also, an original peg has fixed Station 7a and station 7 has been fixed by an original peg and original iron pin. Stations 6a and 7a have been fixed only in the north/south direction.

The deed and measured distances from 6a to Ellis Street are:

- Measures 6a – Ellis St: 40.292m
- Deed 6a – Ellis St: 40.234m
- Total Excess: 0.058m

Excess is also discovered for the frontage of Lot 107 A3391. If the survey required theses frontages to be marked in the east/west direction then deed distance would be adopted across the frontages and these original pegs would be referenced in an east west direction. Alternatively this excess between stations 7 and 8 could be proportion out so each Lot receives an equal share of this extra measured distance.
Projecting the fixed line from station 1 to 5 (32°01'10") and the fixed line between stations 8 and 6a (276°00'00") to a point have determined the reinstatement of the corner at station 6.

The deed and measured distances between stations 5 and 6 are:

| Measures 5b – 6:                         | 159.520m |
| Deed 5b – 6:                             | 159.758m |
| Total Shortage:                          | 0.238m   |

This shortage of 0.238 metres could be shared between Lots 514 and 515 A3392, Nuggin Street, and Lots 417 – 423 A3391. Alternatively the 0.238 metres could be left between stations 5b and 6. Lots 420 - 423 have been eroded away over time and are actually now in the esplanade.

The deed and measured distances between stations 7 and 6 are:

| Measures 6 – 6a:                         | 431.587m |
| Deed 6-6a:                               | 431.334m |
| Total Excess:                            | 0.253m   |

This excess once again could be divided up evenly between the Lots along this line. On the other hand, deed frontage could be assigned to all the Lots that still are on land and the excess could be left in the eroded Lots.

4.7.2 Geera Street Reinstatement

The original peg and original iron pin found at station 8a and the original iron pin found at station 8 have fixed the western boundary along Geera Street between stations 9 and 8. From station 8a, a projection of 6°00'00" has been made for a distance of 100.584 metres (deed distance) to reinstate corner 9. This means that the angle between Geera and Old Ballow Streets has been left as deed (90 degrees).
4.7.3 Esplanade Reinstatement

By adopting this deed angle of 90 degrees again at station 9, the line between stations 10 and 9 can be reinstated.

The corner at station number 10 has been found by projecting two lines together. These lines are from stations 11 – 10 (64°01’10’’) and 9 – 10 (276°00’00’’).

The distance between 9a and 9 is 201.368 metres. This distance is the same as station 7 to 8. The reason these values are the same is to ensure Sec 1 A3391 remains square in shape.

The deed and measured distances between stations 9a and 10 are:

<table>
<thead>
<tr>
<th>Measures 9a – 10:</th>
<th>503.439m</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deed 9a – 10:</td>
<td>502.920m</td>
</tr>
<tr>
<td>Total Excess:</td>
<td>0.519m</td>
</tr>
</tbody>
</table>

This excess could, as explained earlier, be distributed evenly between the Lots along this line or left in the western end as these Lots are now part of the esplanade. When fixing the boundaries in the north/south direction, care must be taken to fix these boundaries so they are parallel to Ellis and Geera Streets.

The deed and measured distances between stations 11 and 10 are:

<table>
<thead>
<tr>
<th>Measures 11 – 10:</th>
<th>210.786m</th>
</tr>
</thead>
<tbody>
<tr>
<td>Deed 11 – 10:</td>
<td>211.226m</td>
</tr>
<tr>
<td>Total Shortage:</td>
<td>0.440m</td>
</tr>
</tbody>
</table>

This shortage will be proportioned over the frontage of each Lot along this line. This part of this survey is well into Moreton Bay due to erosion. Therefore leaving the distance short in this particular area will have little objections.
The reinstated line between stations 14 and 11 is deed bearing and distance as is the angle at station 11.

4.7.4 Misclose of Traverse

Traversing the same points as originally surveyed later checked this traverse. The angular misclose was 6 seconds and a linear misclose was 0.004m giving a measure of precision of 1:1000000.

4.8 Conclusions of Eastern Identification survey

In conclusion, by linking the original marks from A3392 and A3391, little evidence has been found that proves Mr James located his survey of A33912 incorrectly. When connecting to the original marks discovered between Ellis and Geera Streets there was a missing bearing and distance of 91°25’ for a distance of 0.415 metres between where the original iron pin at station 8 was calculated to be and where it actually was discovered. This is the reason why the distances in the east/west direction in appendix HH are all showing excess. This also explains why the bearings at the eastern end of the survey are -0°01’10” different to deed. If the difference in the measured to calculated distance was 2.5 metres instead of 0.415 then there would be a reason to suggest Mr James incorrectly located A33912.

Due to the small inaccuracies found in the cadastral surveys at Amity Point other rectification methods have to be analysed. The analysis of these methods will be explained in chapter 5.
Chapter 5   Analysis of Possible Resolutions to the Encroachments at Amity Point

5.1 Absolute Surrender under Section 358 of the Land Act 1994

This procedure has been explained briefly in chapter 2. Absolute surrender is when the registered owners group together and agree to surrender their titles to the state and be issued with new deeds of grant. This surrender is completed using Section 358 of the Land Act 1994 (appendix II).

5.1.1 Section 358 (2) Land Act 1994

The title of this Section is changing deeds of grant – change in description or boundary of land. Section 358 (2) Land Act 1994 states:

“A registered owner or trustee, with the Minister’s written approval, may surrender the land contained in the registered owner’s deed of grant or the trustee’s deed of grant if–

(a) On resurvey of the land, the boundaries of the land do not agree with the boundaries described in the existing deed or appropriate plan, and no doubt exists about the boundaries of the land; or

(b) The boundaries of the land have significantly changed because of erosion or by gradual and imperceptible degrees.”
In the case of Amity Point, the minister who grants written approval for this section of the Land Act 1994 is Ken Rogers who is the Senior Land Officer for the South East Region of Queensland.

Mr Rogers must give his consent to the properties at Amity Point or Section 358 (2) Land Act 1994 cannot be executed.

In part (a) above, the act explains that if the boundaries of the land do not agree with the boundaries described in the deed or survey plan then Section 358 (2) can be used.

In the case at Amity Point, after an extremely large cadastral survey explained in chapter 4, the boundaries of Lots 519 – 522 A33912 and Lots 506 and 507 on A3392 were found to agree with the boundaries described on the survey plans A33912 and A3392. This means that the uncertain boundaries at Amity Point (Lots 519 – 522 and Lots 505 – 507 A33912) will have to be solved by another means.

Part (b) states that if the land has changed due to erosion then this legislation could be used to resolve the problem.

Although erosion has and always will be a problem at Amity Point, there is not enough erosion to warrant using part (b).

5.1.2 Section 358 (3) Land Act 1994

“On the surrender of the land –

(a) the deed of grant or deed of grant in trust is cancelled: and

(b) a new deed must be issued containing the land to which the registered owner or trustee is entitled.” Section 358 (3) Land Act 1994.

Section 358 (3) explains that a deed of grant must be cancelled and a new deed must be created to the registered owner of the Lot. This is correct, as each owner at Amity Point has given their consent to new titles or deeds. These letters are shown in appendix H.
5.1.3 Section 358 (4) Land Act 1994

“ When issuing any new deed under this section, the Governor in Council may amend or change the description of the land.” Section 358 (4) Land Act 1994.

Section 358 (4) has little relevance at this stage of the process but could be implemented later by the Governor in the Redland Shire Council.

5.1.4 Section 358 (5) Land Act 1994

“ The registrar of titles must register the new deed and must record on the deed all mortgages, leases, easements or other transactions that were recorded on the deed surrendered.” Section 358 (5) Land Act 1994.

Sections 358 (5) points out that the registrar of titles must register the new deed and record all the existing mortgages and leases shown on the original title certificates in appendix F.

5.2 Statutory Declarations

Mr Graeme Rush was consulted about options to resolve the uncertain boundaries. He suggested that statutory declarations from the residents of the affected Lots could help to prove an error in the original survey.

5.2.1 Paul Murphy’s Statutory Declaration

Appendix JJ is a statutory declaration from Mr Paul Murphy who is the registered owner of Lot 506 A3392. Mr Murphy points out how Mr Jim Nash was living on Lot 520 A33912 in 1968. Mr Paul Murphy declares that Mr Jim Nash informed him that an original peg on the esplanade side of Lot 520 A33912 had determined all the boundaries. Mr Murphy states he measured deed distance to the original barbwire fence on the northeastern side of Lot 506 A3392. The fences between Lot 506 A3392
and Lot 520 A33912 also measured to be in the correct position. Mr Murphy goes onto say he built his house parallel to the existing fence lines.

I wonder about the validity of this statutory declaration?

If deed distance was measured from the boundary of Lot 520 A33912 to the original barbwire fence on Mr Murphy’s Lot, this original peg that was measured from must have been 1.86 metres out of position. If the original pegs described in this statutory declaration were correctly placed according to A3392, A33912 and appendix O then the distance measured to the original fence would be 72.269 metres, 1.86 metres larger than the deed distance 70.409 metres.

5.2.2 Lorraine Walker’s Statutory Declaration

The next statutory declaration is from Lorraine Walker (appendix KK). Mrs Walker states the original fence between Lots 520 and 521 A33912 was built to the original pegs. Appendix LL is a plan showing the hedge Mrs Walker refers to in her statutory declaration.

5.2.3 Correspondence to Ken Rogers

These two statutory declarations, the Statutory Declaration Comment Plan and a letter (appendix MM) were then sent to Ken Rogers at The Department of Natural Resources and Mines. This letter explains the situation to Mr Rogers and points out that according to the statutory declarations there could have been an error in the original survey. If Mr Rogers gives his consent to an error in the original survey then these encroaching properties at Amity can have their boundaries realigned under the Land Act 1994.
5.3 Response from Mr Ken Rogers

Mr Ken Rogers replied to the letter (appendix NN) on the 8th of October 2004.

Mr Rogers defines the Land Act 1994 Section (2) and outlines why this part of the Land Act 1994 cannot be used in this circumstance.

Mr Rogers’s arguments are discussed in detail in the following sub-sections:

5.3.1 Erosion Issues

The paragraph immediately following the definition of the Land Act 1994 Section (2) in appendix NN affirms that erosion is controlled at present by a retaining wall along the boundaries of Lots 521 and 522 on A33912. The remaining Lots are fully susceptible to seaside erosion.

The Land Act 1994 section 358 (2) (b) states:

“The boundaries of the land have significantly changed because of erosion or by gradual and imperceptible degrees.”

Is the erosion the length of the esplanade at Amity Point significant enough to warrant the use of this part of the Land Act 1994?

Mr Rogers has not declared whether this can be used for rectification. This implies that there is not enough erosion to enforce this part of the Land Act 1994.

5.3.2 Valuation Report

Page two of Appendix NN explains that Mrs Rogers has sought a Valuation Report (Appendix OO), which was prepared by a Land Ranger in 1949. This Report illustrates the illegal occupant at the time Mr W E Millar had constructed a fence off alignment. The Ranger found the original survey pegs along the eastern alignment subsequently witnessing the occupation disagreeing with the boundary alignment. Mr Rogers goes onto say that due to the shortage of surveys undertaken since 1949, it is
likely the fences were constructed off the fence alignment datum of Lot 21. The Land Ranger also requests this fence to be removed.

Did this original fence ever get taken away?

If this fence was correctly removed these encroachments could have been avoided, as this original occupation was the datum for other fences built in the vicinity.

As this original fence has remained, the encroachments exist.

Mr Rogers is not convinced that the Land Act 1994 Section 358 (2) (a) can be used to rectify the problem encroachments at Amity Point, as the original fences have been constructed off their original surveyed position.

5.4 Suggested Rectification of Amity Point Encroachments

Mr Rogers suggests the best way to rectify these problems is to use the Land Act 1994 (Section 166 Application to Convert a Lease) for the leasehold land and Section 122 (Deeds of Grant of Unallocated State Land) for the USL which are Lots 508 and 509 on A3392 displayed on appendix K. Subsequent to this occurring the Integrated Planning Act 1997 will be used to reconfigure the boundaries of each Lot.

5.5 Conversion of Leasehold Land to Freehold Land

Sections 166 – 172 of the Land Act 1994 have been included as appendix PP of this dissertation.

5.5.1 Section 166 Land Act 1994

Section 166 (1) Application to convert a lease.

This explains how a Lessee may apply to the state to change a perpetual lease to freehold land. Lot 521 A33912’s title certificate states that its land tenure is leasehold.
As explained previously this Lot 521 A33912 must be changed to freehold tenure. This is called a conversion application.

Part (3) of this section also clarifies that if a previous application has been made for conversion application and has been denied, section 167 cannot be considered.

5.5.2 Section 167 Land Act 1994

Section 167 (1) has many subsections. The elements to be considered in the case at Amity Point are as follows:

- Is Lot 521 A33912 needed for environmental conservation reasons? Section 167 (1) subsection (d) states:
  
  “(d) whether part of the lease needs to be set apart and declared as State Forest under the Forestry Act 1959.”

If the government decides Lot 521 A33912 is required for state forestry the leasehold tenure will change to State Forest.

- Is this leasehold Lot at serious risk from erosion from the esplanade of Moreton Bay? Section 167 (1) subsections (e) & (f) state:

  “(e) whether a substantial part of the lease is at serious risk from land degradation”

  “(f) whether a substantial part of the lease suffers from serious land degradation”

Subsections (e) and (f) are extremely applicable to Lot 521 A33912 because Amity Point is susceptible to tidal erosion.

- Has Mr Quentin Evens (Registered Lessee) meet the terms of the lease? Section 167 (1) subsection (g) states:

  “(g) whether the lease has compiled with, or to what extent the lessee has compiled with, the conditions of the lease”

Mr Evan’s has meet the terms and conditions of his lease.

- Does Lot 521 A33912 have a different land use zoning to what it presently
carries? Section 167 (1) subsection (h) states:

“(h) whether part of the lease has a more appropriate use from a land planning perspective”

Redland Shire Council will investigate from a planning prospective what the future planning aspects are for Lot 521 A33912 before the leasehold tenure is released.

- Does the location of this lease make it special? Section 167 (1) subsection (i) states:

“(i) whether part of the lease is on an island or its location, topography, geology, accessibility, heritage importance, aesthetic appeal or like issues make it special”

This is another assessment that Redland Shire Council will make before the tenure is changed.

- Is any part of this lease needed for public purpose? Section 167 (1) subsection (j) states:

“whether part of a lease is needed for public purpose”

Redland Shire Council will assess the location of Lot 521 A33912 and decide if its location is required for public purpose.

- Is residential the most appropriate tenure for the land? Section 167 (1) subsection (m) states:

“if the lease is used for residential or industrial purposes – the most appropriate tenure for the land”

Once again Redland Shire Council will evaluate the zoning of Lot 521 A33912 and decide if it remains residential tenure.

5.5.3 Section 168 Land Act 1994

Section 168 Land Act 1994 explains that if Mr Quentin Evens applies for freehold tenure on the land the minister will supply him with conditions of the new freehold land. If the owner’s application is refused then Mr Evens must be supplied with
written reasons of the decision. If the conversion application is denied, Mr Evens can make an appeal if refusal was because of not fulfilling the conditions of the lease.

5.5.4 Section 169 Land Act 1994

Section 169 (Conditions of freehold offer) describes that if Mr Evens receives freehold tenure on his land, he must undertake agreements under the Nature Conservation Act 1992 and conform to elements regarding forestry under this act.

5.5.5 Section 170 Land Act 1994

Section 170 (Purchase if deed of grant offered) talks about the methods the Minister employs in calculating the purchase price as well as ways to appeal the purchase price.

5.5.6 Sections 171 & 172 Land Act 1994

Sections 171 and 172 explain the conditions involved in accepting the offer if Mr Evens accepts.

5.5.7 Deed of Grant Issued

This process was completed on the 24th of June 2005. Lot 521 A33912 was granted freehold tenure by Sections 166 – 172 of the Land Act 1994.

5.6 Conversion of Unallocated Land to State Land

The next step for boundary realignment under IPA 1997 is to convert the Unallocated State land (Lots 508 and 509 A3392) shown on appendix K to the Redland Shire Council to legally describe it as esplanade.

Appendix QQ displays Section 122 of the Land Act 1994.
5.6.1 Section 122 Land Act 1994

In Section 122 (Deeds of grant of unallocated state land) element (2) states that an Unallocated State Land deed of grant can be allocated to local government (Redland Shire Council) without competition if the minister decides these two Lots are required for public purpose.

Element (4) also explains that a deed of grant can be allocated to the state without any opposition.

5.6.2 Encroachments onto Lots 508 and 509 A3392 (USL)

The Site Plan (appendix K) also shows the dwelling on 521 A33912 encroaching onto Lot 509 on A3392, the unallocated state land being converted to esplanade. From verbal instruction from Ken Rogers this land must be purchased from the Redland Shire Council at market value. If there were plans to redevelop the site then the Local Government would not choose to act on the encroachment as the newly constructed dwellings could be erected within the Lot. In this case the dwelling is to remain, therefore according to Mr Rogers the land must be purchased at market value and a plan of survey drafted for the change in the freehold Lots affected.

The process for the sale of this land is not pursuant of any legislation it is simply an extra survey plan that subdivides part of the existing Lot 509 A3392 and connects this land to Lot 521 A33912.

In Appendix RR (the Survey Plan of the new reconfigured Lots) Lot 2 is the parcel of land, which encroaches onto the original USL. This land is shown as being part of Lot 2 on this plan in anticipation of Redland Shire Council surrendering the 9 square metres required at no cost to the owner of the new Lot 2. This assumption was made for the reason that Lot 5 also surrenders 23 square metres back to the original USL,
now shown as esplanade on appendix RR. This means Redland Shire Council gains 14 square metres of land along this part of the esplanade.

This also presumes the occupants of Lots 3 and 4 are agreeable to reposition their BBQ areas so they do not encroach onto the esplanade.

When Redland Shire Council concurs to this proposal it will signify that only one Survey Plan (appendix RR) is required as no land is being purchased.

5.7 Reconfiguring the Lots under the Integrated Planning Act 1997

With Lot 521 A33912 assigned freehold tenure, a survey plan (appendix RR) can be drafted and submitted to Redland Shire for reconfiguration of a Lot under the Integrated Planning Act 1997. This is the process required to repair the encroachment dilemma at Amity Point as absolute surrender under the Land Act 1994 proved to be unsuccessful.


This is a development system for managing developments across Queensland.

5.7.1 Application Stage

The first step in this process is to complete appendix TT. This form is to be submitted to the assessment manager of Redland Shire Council. Along with a monetary fee associated with the development application. This form must also contain letters of consent from each registered owner at Amity Point. A proposed subdivision plan (Appendix RR) will also be sent with the application form so the assessment manager can examine the proposed development. This whole application process ends when Redland Shire Council sends an acknowledgement notice in reply.
5.7.2 Information and Referral Stage

This is where the Assessment Manager possibly could hold up the Amity Point reconfiguration. One of the Referral Agencies for the subdivision will be the Environmental Protection Authority. This agency will have issues with the amount of erosion that is taking place along the esplanade. The Assessment Manager will ask the applicant for an information request into the impact of the erosion in the area.

5.7.3 Notification Stage

Part 4 Notification Stage of the third chapter of IPA 1997 is shown as appendix VV. The notification stage gives members of the public an opportunity to object to the proposed development.

Notification will be an advertisement in the local Redlands newspaper and signs are placed on the Lots for fifteen or thirty days depending on the quantity of concurrence agencies from the information and referral stage.

In this case each of the affected landholders would examine appendix RR and voice their opinions to the Assessment Manager about the proposed survey plan. The owners of the affected Lots must be content with the new boundary positions.

This stage finishes when all objections have been dealt with and the Redland Shire Assessment Manager receives written notice of compliance from the owners of the Lots at Amity Point.

5.7.4 Decision Stage

Chapter 3 Part 5 Subsection 14 (2) (a) of the IPA 1997 states:

“If the application is for development planning in a scheme area, the assessment manager’s decision must not compromise the achievement of the desired environmental outcomes for the planning scheme area.”
This means the Assessment Managers decision must take into account environmental factors around Amity Point. This will mean an impact assessment by the Environmental Protection Authority into the erosion issues along the esplanade.

Once these issues have been resolved, the Assessment Manager will issue a decision notice saying the development has been approved to a number of conditions. This subdivision would be started as soon as the development permit date designated by the Assessment Manager allows.

5.7.5 Ministerial IDAS Powers

Chapter 3 Part 6 Ministerial IDAS Powers (Appendix XX) could be used in the Amity Point application as the development involves a state interest, Lot 505 A3392. Lot 505 A3392 reduces in area by 63 square metres. This will require consent form the owner of Lot 505 A3392, which is Redland Shire Council.

5.7.6 Plan of Subdivision

Chapter 3 Part 7 Plan of Subdivision is appendix YY. This plan of subdivision can be examined in appendix RR of this dissertation. Under IPA and the Land Title Act 1994 this subdivision will have to be sealed by Redland Shire Council providing all of the conditions of subdivision portrayed in the decision notice have be adhered to.

The Queensland Government is currently developing a more simplified and specific process for the procedure explained above. The details of this process can be observed in the following Chapter.
Chapter 6  Review of Proposed Legislation to Solve Uncertain Boundaries

6.1 Introduction

The government has been aware of many areas in Queensland that have similar encroachment characteristics to Amity Point. An information paper entitled “The Characteristics of a Solution for Resolution of Uncertain Boundaries” compiled by The Department of Natural Resources and Mines (DNRM) in May 2003 is Appendix ZZ. This information paper investigates the different methods available to address such encroachment issues.

6.2 Part 1 Different Uncertainty in the Location of Boundaries

“The Characteristics of a Solution for Resolution of Uncertain Boundaries” (DNRM 2003) paper Appendix ZZ describes two situations, which can lead to boundary uncertainties:

6.2.1 Multiple Encroachments

“(i) Multiple encroachments – in which the pattern of occupation (fences and buildings on or near the boundary) is not consistent with the originally surveyed pattern”

The Department of Natural Resources and Mines (2003)
This is where the outline of occupation or fence line does not match the original surveyed position of the property boundaries.

6.2.2 Insufficient Information

“(ii) Insufficient information – in which the information necessary to re-establish boundaries is so limited that the cost of undertaking a survey of any individual parcel is prohibitive” The Department of Natural Resources and Mines (2003).

This occurs when the evidence at the time of survey is inadequate to reinstate the boundaries to their original surveyed position. This occurs when the land has not been surveyed for many years or the evidence such as fences or original survey marks have been completely removed by erosion or another mean.

6.2.3 Single Boundary Disputes

Another uncertainty not listed in Appendix ZZ is Single Boundary Disputes. This occurs when two or more surveyors have reinstated the same boundary from different original evidence.

Amity Point has multiple encroachment boundary uncertainties. The original boundaries are obstructed by structural improvements such as buildings and fences.

6.3 Part 2 Objectives

Part 2 of Appendix ZZ explains that this paper is produced to help the development of solving encroachment issues involved in uncertain boundaries in Queensland.
6.4 Part 3 The Problem

At present in Queensland, each party must be within agreement to reconfigure the boundaries under the Integrated Planning Act 1997 or use absolute surrender under the Land Act 1994. The Supreme Court using the Property Law Act 1974 is another source of solution and has been explained in chapter 2.

The application of these processes relies upon all parties being in agreement to solve the issues.

What happens if one of the parties doesn’t want to solve the problems?

New legislation must be developed to stop a single party from objecting to solving encroachment issues as the present methods of absolute surrender, reconfiguration of a lot under IPA 1997 and the rectification through the Supreme Court are inefficient.

Due to the rise of the property market in the last decade, development in Queensland has grown significantly. This development has generated an increase in the amount of boundary surveys undertaken in Queensland. Subsequently more instances of uncertain boundaries are being discovered. New legislation to solve uncertain boundaries needs to be researched and implemented as soon as possible so when these problems are discovered they can be deciphered quickly and efficiently.

6.5 Part 4 Government Process To Develop a Solution

This states the process the government is going to use to implement the new legislation. It’s interesting to note that the deadline for the development of legislation is early 2004. There is no legislation available to date; the government is still developing this legislation.
6.6 Part 5 Background

As discussed in Chapter 2 presently there are several ways landholders in Queensland can resolve boundary disputes:

6.6.1 Supreme Court

Use the Supreme Court to determine the location of each individual boundary. This can be implemented by the direct judgement of the court or by the Property Law Act 1974 Part 11 – Encroachment and Mistake, Division 1 Encroachment of Buildings (Appendix AAA).

6.6.2 Boundary Realignment

All parties involved agree to have new titles issued and a new plan of subdivision drafted to correct the encroachments. These processes are Absolute Surrender under the Land Act 1994 and Reconfiguration of a Lot under the Integrated Planning Act 1997.

The processes outline in sections 6.6.2 and 6.6.3 can be very costly and time consuming where multiple encroachments are concerned.

6.7 Other Jurisdictions in Australia

Pages 4 – 8 of Appendix ZZ compare the New South Wales, South Australia, Victorian, British Columbia and Western Australian approaches to boundary dispute. The following sub sections will analysis in detail the above-mentioned jurisdictions to find the ideal legislation for uncertain boundaries in Queensland.
6.7.1 New South Wales Legislation

The advantages of this legislation are:

1. The owners involved in the dispute are responsible for the resolving the costs of fixing the problem.

2. The owners are consulted and advised about the encroachment issues and final plan.

3. The owners can appeal the decision to the Land and Environment Court.

4. No survey plan is prepared; the areas are only changed on the title statements of each affected lot. This keeps the costs of the process minimal.

The disadvantages are:

1. The cost of the process falls entirely on the registered owners of the affected lots.

2. There is no survey plan drafted showing the new boundaries. A new survey plan is only drafted if there is future project in the area.

6.7.2 South Australian Legislation

The advantages are:

1. The owners involved in the dispute are responsible for the resolving the costs of fixing the problem.

2. The owners and local government are consulted and advised about the encroachment issues and final plan.

3. The legislation actually declares a “Confused Boundary Area” so everyone involved knows there is a problem in the area.

4. The owners can appeal the decision to the Land and Valuation Court.
The disadvantages are:

1. The act doesn’t explain costs involved in the process.

2. The plan prepared for the process of determination only surveys the land with encroachments and doesn’t extend to the whole “Confused Boundary Area”.

6.7.3 Victorian legislation

The advantages are:

1. A notice is actually placed on the land and advertisements are placed in local papers regarding the encroachments.

2. The owners can appeal the decision to the Supreme or County Court.

The disadvantages are:

1. The criterion for determination of boundary occupation is only 15 – 30 years.

2. The applicant must find a surveyor for the survey.

3. This process is only for a one case at a time. There are no criteria for multiple encroachments.

6.7.4 British Columbia Legislation

The advantages are:

1. The Attorney General selects the surveyor to carry out the survey.

2. The legislation actually declares a “Block Outline” or “Complete” survey so everyone involved knows there is a problem in the area.

3. The surveyor who carried out the field survey of the encroachments prepares a preliminary advice and recommendation to the Attorney General.

4. Boundaries are reinstated to suit existing occupation.

5. The owners are consulted and advised about the encroachment issues and final plan.
6. If one owner gains land and the other losses land, they will be compensated for their loss.

7. This decision can then be appealed in the Court of Appeal.

8. The survey is actually registered.

9. Costs may be apportioned out between the owners of the affected lots.

The disadvantages are:

1. The owners of each lot share any loss or benefit when the final survey plan is drafted. If one owner gains, that party is responsible for compensating the losing party. This has the potential to cause conflict.

6.7.5 Western Australian Legislation

1. The affected owners and the public are notified through advertisements in local newspapers about survey encroachments.

2. Registrar of titles initially hears any objections.

3. The Registrar of Titles registers the plan and issues new titles.

4. Any damages can be recovered through the registrar.

The disadvantages are:

1. There is no way to lodge an appeal.

6.7.6 Remembrement

Remembrement is a process developed in Europe. Remembrement is the process of amalgamating different parcels of land that have been separated through the law of succession over thousands of generations.
The advantages are:

1. Affected owners are notified.
2. Time is allowed for objection to the proposal and appeals are made to the commissioner and the Supreme Court.
3. A survey plan is prepared and titles are issued.
4. Costs are distributed through the owners or local government.
5. Owners are compensated for their loss.

The disadvantages are:

1. The Local Government is responsible for the process instead of a specific officer such as Registrar of Titles.
2. Seventy percent of owners must give consent in writing. What about the other thirty percent?
3. Only owners who do not agree are eligible for compensation.

6.8 Part 6 Key Issues

6.8.1 Inventory of Uncertain Areas

The Department of Natural Resources and Mines in 1992 gathered a list of uncertain boundary areas from various local government entities throughout Queensland.

6.8.2 Types of Uncertain Areas

These types of uncertain boundaries have been mention previously in section 6.2 with the exception of unsurveyed lands.

Unsurveyed lands are parcels of land owned by local government that have never been surveyed. Unsurveyed lands are to be ignored by this paper because until the parcel of land has actually been surveyed, encroachment problems will not be recognised.
6.8.3 Adverse Possession

Adverse Possession is when an applicant applies to the registrar to acquire all or part of a lot occupied by the applicant for several years. As explained in Chapter 2, the Land Title Act 1994 section 98 states an application for land acquisition using adverse possession may not be made if the encroachment is defined by the Property Law Act 1977. Furthermore, adverse possession in Queensland can only be used over the whole of a lot and not parts of a lot. Therefore, adverse possession cannot be used at Amity Point as the encroachments are defined by the Property Law Act 1977 and the adverse possession is over part of the lots.

6.8.4 Compensation Issues

This is another issue that is vital in the resolution of uncertain boundaries. Who should pay for the rectification process? What if one party is expanding the area of their parcel of land, causing another party to forfeit land? Shouldn’t the former party be paying the latter party some kind of compensation?

6.9 Characteristics of a Solution

“The Characteristics of a Solution for Resolution of Uncertain Boundaries” (DNRM 2003) paper Appendix ZZ lists thirteen characteristics that are key components for a solution to uncertain boundaries.

6.9.1 Availability to Landowners

Any registered owner or licensed surveyor engaged by a registered owner or local government must be allowed to apply for the resolution of uncertain boundaries. Also, the Registrar of Titles must be able to be applied to for the resolution of an uncertain boundary after he/she has notified the affected landowners.
6.9.2 Criteria for Definition of an Uncertain Boundary

Criteria must be established to find how the encroachments occurred. These criteria would examine the cadastre with respect to original occupation, human activity in the area in the past and if the dimensions of each lot are smaller or larger than the original surveyed dimensions. This characteristic is essential to start the process of uncertain boundaries.

6.9.3 Costs

After determining there is a problem in the cadastral network in an area, the parties involved must be made aware of the costs of rectification. These costs will be proportioned equally between each affected party. The state will not pay for the solution of uncertain boundaries. The Queensland Government is spending a lot of funds at present to make the process for a solution fast and efficient to minimise costs to parties involved.

6.9.4 Minimal Costs

This issue is to ensure that costs of resolution are kept to a small amount. If costs to owners are extreme, then landowners are going to be discontented with the process of alteration.

6.9.5 The Process must be fair to each Landowner

In this process, a survey plan will be prepared and areas as well as lot dimensions will change to accommodate existing encroachments and occupation. Though some owners will be gaining land and others will be losing land, the outcome should be equitable to all parties.
6.9.6 Boundary setbacks must be Relaxed

The Amity Point Survey Plan (appendix RR) has been drafted by attempting to maintain a minimum of 600 millimetres from eave to boundary. This plan is not ascetically pleasing as there are a lot of bends in each boundary. If boundary relaxations were permitted the plan would be more orderly in appearance.

6.9.7 New boundaries must be Marked

The new agreed boundaries must be physically marked on the ground so each owner knows exactly the extremities of their lot. Marking each corner of the new subdivision is required under the Surveyors Act 1997.

6.9.8 Single Common Boundary Disputes must be Catered for

In chapter 3 a cadastral reinstatement report was written. This report uses original survey control from a recent subdivision in Toompany Street (appendix Q SP136597). If another surveyor used original survey control from appendix EE (RP 104707), a subdivision at the corner of Ballow and Geera Streets, he/she would obtain a dissimilar result. This characteristic guarantees that a process will be developed to solve reinstatement issues between surveyors.

6.9.9 Express Process

The process for the whole modification process must be followed through in an appropriate time frame. The Integrated Planning Act 1977 breaks down at this point. As explained in chapter 5 IPA 1977 has an information and referral stage which involves other concurrence agencies. Large amounts of time are misplaced at this point. For legislation to be a success, the time frame for rectification must be prompt.
6.9.10 Original Occupation

In all cases when there is occupation that has existed for a long period of time it must be adopted to fit the new boundaries. This keeps the new subdivision boundary as close to the original fences as possible. This will also mean some registered owners will lose land and some will gain land.

6.9.11 Public Consultation

All registered landholders of the affected lots must be informed that the area is an encroachment problem area and these owners will be told how the problem can be remedied. An approach similar to the Integrated Planning Act 1977 could be employed where each affected landowner is contacted via mail and a sign is placed on site to inform the public.

6.9.12 Appeals

If a registered owner objects to the proposed boundary realignment plan there must be a court that will hear these objections. This court must available swiftly as this could slow the whole process if a court cannot hear a case for 6 months.

6.9.13 Compensation

How much compensation is required for any particular circumstance and how this is applied in the process needs to be defined.

6.10 Examination of Proposed Legislation for Queensland

Using the characteristics discussed above and the previous study of other jurisdictions in Australia and abroad, a possible legislative option for the state of Queensland has been drafted by the Department of Natural Resources and Mines.
6.10.1 Who is Responsible for the Process?

The Chief Executive (Government Representative) is responsible for this process. The advantage of this is one individual who has enormous experience with uncertain boundaries in Queensland manages the process.

6.10.2 Applications

Similar to the New South Wales legislation any person can make an application. However the Chief Executive can use his/her power and refuse an applicant. A purchaser, owner or their agent, local government in the area and even the Registrar of Titles and Chief Executive can make an application. The major benefit of this is that there is no prejudice to any party wishing to make an application. Any person with a vested interest in the land can apply.

6.10.3 Declaration of the Area

The Chief Executive may declare an uncertain boundary area in two particular circumstances. A type multiple encroachment uncertain boundary area will be declared when the occupation of land does not agree with the original surveyed boundaries. A type insufficient evidence uncertain boundary area will be declared when there is no occupational evidence in an old subdivision to reinstate the original boundaries. This method used by the South Australian local authorities informs the public and other surveyors that there is reinstatement uncertainties in the area and that they are being rectified at the present time.

6.10.4 Cadastral Survey of the Area

Once again a mutual entity (Chief Executive) will organise a cadastral survey of the area to assist in the drafting of a plan for the new boundaries. This survey doesn’t have to be carried out by the Chief Executive it can be completed by any cadastral surveyor.
Appendix ZZ explains the procedure used in different cases of encroachment the Chief Executive will use to construct this plan. The greatest advantage of this element is the Chief Executive who is specially trained in uncertain boundaries manages and drafts the survey plan for rectification.

6.10.5 Notification to Affected Parties

Notification is based on the procedure outlined in the Integrated Planning Act 1977. The Chief Executive must inform the parties with a registrable interest in the land, where they can view the proposed plan and explain a time period for objections. This gives the registrable owners an opportunity to study the proposal, seek professional advice and lodge an objection to the Chief Executive. The approach adopted by the Western Australian government could also be employed here where the notification is placed in the local newspaper. This ensures the public’s knowledge of the uncertain boundary area.

6.10.6 Consultation

All objections to the proposal must be considered seriously. If the Chief Executive modifies the proposed plan he/she must give reasons for the alteration to the surveyor responsible and to all parties involved. This is crucial to this element being successful because if communication between each party breaks down at this point, the whole process will be ineffective.

6.10.7 Appeals

Any appeals against the Chief Executive’s decisions will be held at the Land Court within 28 days of the notification. Any person who received a notice can make an appeal. The time limit for this appeal period is essential as this element could slow the process down. The Land Court will verify, cancel or ask the Chief Executive for
further consideration to an appeal. The appeals element is fundamental to the success of this whole process. Without the right to appeal, the legislation has little chance of success, as each party involved deserves a right to challenge the Chief Executives decisions.

6.10.8 Titling and Boundary Formalisation

The Registrar of Titles will amend or issue new titles once the final boundaries have been determined. The Chief Executive will ask the local government involved for relaxations to building clearances. The boundaries are then marked on the ground and these boundaries are fixed for a period of twelve months. During this one-year period, appeals can be lodged to the Supreme Court for rectification. This final one-year period is necessary for parties who didn’t realise the ramifications of the plan until it was physically marked on the ground. This is advantageous as it gives the affected parties another right to appeal.

6.10.9 Costs of Rectification

The total cost of the boundary realignment will be apportioned equitably between each party involved. The government should not be involved in the cost of this procedure unless they are a registered owner of one of the affected lots. The Department of Natural Resources and Mines has spent infinite amounts of money and time into providing a solution for uncertain boundaries. An estimate of the costs involved for each section or element would be very interesting. If this process is too expensive then people will be reluctant to use it.

6.10.10 Compensation

In this process to obtain a realistic outcome some parties will gain land and some parties will lose land. Appendix ZZ (Survey Plan of New Lots 1-7) illustrates this
point. No compensation will be payed if a party loses land in this process. The design process becomes to involved and sometimes impossible if equal areas are needed to be produced in the final survey plan. Registered owners may, after the location of the boundaries, apply for compensation to existing encroachments. This could be a problem with the new legislation. Couldn’t the party affected by this encroachment make an appeal in section 5.10.6 Appeals about the problem and have it rectified then?

6.10.11 Recent Improvements

In some circumstances, an owner could have engaged a cadastral surveyor to perform an identification survey to construct an improvement on his/her land. The surveyor may have used a different reinstatement procedure to the Chief Executive when completing the survey. This means the new plan could create an encroachment. A process of compensation should be implemented for this situation.

6.11 Concluding Comments

The proposed legislative option for Queensland explained in section 5.10 takes into account all advantageous properties of the other jurisdictions previously analysed. More research is required to eliminate the following:

6.11.1 Time Period for Resolution

One of the ways in which this procedure could break down is the time period it takes for resolution. The Chief Executive needs to be quick and efficient in registering applications, declaring the confused boundary area, implementing the Cadastral Survey and notifying the affected parties. This will mean that if there are objections and appeals from property owners, the majority of the legislative processes time can be focused on resolving these issues, therefore reducing the time of the whole process.
6.11.2 Costs involved

The government must also make sure the proposed legislation doesn’t involve too many costs. What are the application fees and titling fees? These combined with the field survey costs and possible court costs may be too expensive for the average landowner. One of the main reasons this legislation has been developed was to stop a situation arising where all affected owners wanted to resolve a multiple encroachment area and one of affected parties did not. This process will not work if the affected parties cannot afford to pay for implementation of this legislation. Will the government pay for the rectification in underprivileged areas with declared uncertain boundary areas?

6.11.3 Date for Implementation

“The Characteristics of a Solution for Resolution of Uncertain Boundaries” (DNRM 2003) paper Appendix ZZ explains this legislation will be developed in early 2004. No legislation exists at present and implementation is an unknown time in the future.
Chapter 7   Survey Plan Resolution to Amity Point Boundaries

7.1 Introduction

Survey Plan of New Lots 1-7 (Appendix RR) is a drafted plan of the new boundaries at Amity Point. This Plan has been derived from the encroachment positions on the Site Plan (Appendix B) and the Proposed Boundary Realignment Plan (Appendix E). The datum of this plan is SP 136597 (Appendix Q). David Wilson drafted the survey plan.

7.2 New Lot Areas

Lot 1 (formally Lot 522 A33912) has gained 51 square metres.
Lot 2 (formally Lot 521 A33912) has lost 19 square metres.
Lot 3 (formally Lot 520 A33912) has gained 28 square metres.
Lot 4 (formally Lot 519 A33912) has lost 10 square metres.
Lot 5 (formally Lot 507 A3392) has the same area.
Lot 6 (formally Lot 506 A3392) has the same area.
Lot 7 (formally Lot 505 A3392) has lost 62 square metres.

7.3 Summary of Lot Calculations

7.3.1 Lot 1

The northeastern boundary of Lot 1 (between Lots 1 and 2) was realigned using the correct boundary clearance (0.6 metres) from the two awnings shown on appendix K.
(Amended Site Plan). This also places the new boundary line closer to the original fence line along this boundary. In addition the esplanade frontage has been increased to 16.479 metres all the remaining boundary lines are original and have not been altered.

7.3.2 Lot 2

All the original boundary lines in Lot 2 have been changed. The boundary line between Lot 1 and 2 has been explained previously in section 6.2.1. The frontage of Lot 2 has been reduced to 13.697. Station 9 is on the original corner of Lot 521 A33912 and Lot 509 A3392. From this original corner station 9, the boundary traverses southeast and proceeds around the eave at a 0.6 metre offset of the dwelling encroaching onto the original Lot 509 A3392. This boundary then continues southeast, at a 0.6 metre offset, parallel to the eave of the single storey dwellings on 521 and 520 on A33912. The boundary then follows the original fence until it finds station 8. By using minimum boundary setbacks and original fence lines, the reinstatement of the limits of Lot 2 have been fulfilled.

7.3.3 Lot 3

The same principles have been used on Lot 3. The frontage (esplanade) and Millars lane are on the correct alignment but have reduced distances. The boundary between Lots 3 and 4 has been aligned to a 0.6 metre offset from the dwelling on Lot 520 A33912.

7.3.4 Lot 4

Once again the frontage (esplanade) and Millars lane are on the original alignment but have reduced distances. The boundary between Lot 4 and 5 has been altered between
stations 4a and 7. This is to allow correct clearance between the dwelling on Lot 519 A33912 and to place this line on the original fence line.

7.3.5 Lots 5, 6 and 7
The theory used for Lot 4 has been reflected in Lots 5, 6 and 7. This assumption has been adopted to match the new boundaries with existing occupation.

7.4 Back of Survey Plan

7.4.1 Section 6 Created Lots
Section 6 on the back of the drafted survey plan displays the new created Lots and the existing Lots. Lot 505 A3392 is wholly contained in the new Lot 7. Lots 506, 507 A3392 and Lots 519, 521 and 522 A33912 are comprised of two newly created Lots. Lot 520 A33912 consists of three newly created Lots namely Lot 2, 3 and 4.

7.4.2 Mortgage Allocations
The mortgage allocation section on the back sheet of appendix RR (Survey Plan) shows the new mortgage allocations for each Lot. The Lot fully encumbered is the new Lot that relates to the mortgage number. The partially encumbered Lot shows the Lot, which was originally encroached upon.

7.5 Summary of Survey Plan
The Survey Plan produced in appendix RR has been drafted with no feedback from the registered owners of the affected Lots. If the client instructs Kevin Holt Consulting Pty Ltd to continue with the boundary realignment, then this plan could be altered with suggestions from the owners.
Chapter 4, Section 4.6.2 Encroachments onto Lots 508 and 509 A3392 (USL) explains that only one Survey Plan has been produced on the condition that Redland Shire Council is willing to accept the encroachment onto the esplanade from the new Lot 2, and the owners of Lots 3 and 4 will co-operate and move their BBQ areas. This means Mr Rogers’s advice of multiple survey plans will no longer be valid. Controversy may arise from the registered owners over the size of the new Lot 1. The registered owners of the remaining Lots will most definitely be questioning how to share the excess area created.

The main standards of boundary realignment, used to construct this plan were to allow for the correct boundary setbacks from existing obstructions and to use the original occupation along each boundary line.
Chapter 8  Conclusion

8.1 Achievements of Objectives

8.1.1 History of Amity Encroachments

The Amity Point encroachments were initially discovered when Mr Paul Murphy, owner of Lot 506 A3392, employed Kevin Holt Consulting Pty Ltd to perform an identification survey of the above-mentioned Lot. Preceding this, a further identification survey was conducted to find the extremities of the problem in the area. Plans were drafted of the problems (Appendix B) and the solution to this dilemma (Appendix E). Several meetings were had with various local authorities about the encroachment issues and the result was to find an error in the original survey, to rectify this problem with absolute surrender under the Land Act 1994.

8.1.2 Cadastral Surveys

Two cadastral surveys were conducted to find an error in the original survey. From these surveys, it was concluded that the original subdivision was located correctly.

8.1.3 Possible Rectification Procedures

Absolute Surrender under the Land Act 1994 can only be used for a solution to encroaching boundaries if there is an imprecision in the subdivisions original survey. As there is no inaccuracy in the original survey, the suggested procedure for modification is to convert the leasehold land to freehold land, convert the USL to
esplanade and correct all these Lots under the Integrated Plan Act 1977 by the way of reconfiguring a Lot. This is the only way to solve these encroachments at Amity Point.

8.1.4 New Legislation

A possible new legislative option for Queensland has been researched from the Department of Natural Resources and Mines. This paper's analysis of other States and Countries helps to outline an acceptable model for Queensland. Implementation of this model was expected in early 2004, but has yet to be executed.

When implemented this legislation could resolve issues similar to Amity Point with greater understanding and in faster timeframes than the Integrated Planning Act 1997 and the Land Act 1994.

8.1.5 Survey Plan

A drafted Survey Plan portraying the new boundaries at Amity Point can be seen in Appendix RR. This plan encourages minimum boundary setbacks prescribed by Redland Shire Council as well as attempting to follow existing occupation along each boundary line.

8.2 Further Work

This initial identification survey for Mr Paul Murphy was surveyed in July 2003. After receiving the letter from Mr Ken Rogers (appendix NN) explaining that the matter could only be rectified under the Integrated Planning Act 1997 by way of reconfiguration of a Lot, the clients decided to stop the process. This decision was based on suggestions that solving these problems under the Integrated Planning Act
1997 could take years to resolve. This dissertation has assumed the client has continued to pursue the rectification process.

The survey plan produced in chapter 7 will most probably be modified to suit the request of each registered owner. After this, the plan will be submitted to Redland Shire Council and the Integrated Planning Act 1997 will be implemented. This will involve council managing the proposal and eventually approving this subdivision.

### 8.3 Closing Comments

This Dissertation has hopefully outlined the need for new legislation to be introduced into Queensland to solve the cloudy area of uncertain boundaries. Once the proposed legislation outlined in Chapter 6 is implemented, an exact procedure can be followed to correct encroaching land throughout Queensland.
LIST OF REFERENCES


Integrated Planning Act 1997 (QLD)

Land Act 1994 (QLD)

Land Title Act 1994 (QLD)

Property Law Act 1974 (QLD)
The Resolution of Uncertain Boundaries at Amity
(North Stradbroke Island)
Project Specification

Aim:
This project seeks to investigate the reason why occupation along the esplanade at Amity Point is encroaching on to neighboring properties and considers how these encroachments can be rectified through various transactions under the Land Act 1994 and the Land Title Act 1994.

1.0 Background

Amity Point is a small town located on the Northern beaches of North Stradbroke Island.
On the 4th of July 2003 Mr Paul Murphy, a family friend, requested an identification survey of his property.
Whilst conducting this survey it was discovered that there were some serious encroachment issues with six properties located along the Esplanade.
From a rather extensive Cadastral Survey it was found that the original fences did not coincide with the position of the boundaries.
Mr Murphy then engaged Kevin Holt Consulting (my current Employer) to resolve the encroachment issues.

2.0 Why are the fences and boundaries conflicting? Was there an error in the original survey?

2.1 Cadastral Survey Report

To find if there was an error in the original survey, a large cadastral survey report will be written.
This will detail if there has been any errors made in the original survey, by researching original field notes and survey marks.

2.2 Did the occupants of each of the lots move their fences to suit the position of the original house?

Investigation will be made by obtaining statutory declarations from the older generation who have lived at Amity all their lives.
Any other information regarding the lots will be sought from the Department of Natural Resources. This may include valuation reports.

3.0 Resolutions of the encroachments

3.1 Absolute surrender under the Land Act

Attached are two plans. The Site Plan shows the current encroachment issues. The Proposed Boundary Realignment Plan attempts to match the existing fences to new boundary lines.
It moves the boundaries of each lot 2.5 metres northeast leaving the centre fixed.
Absolute surrender under the Land Act involves the owners agreeing to surrender their titles and be issued with new deeds of grant (section 358 and 360). Two reconfiguration Survey plans will be required. The reason two survey plans are required is because Lot 521 is leasehold and the other lots are freehold. The next step is to obtain permission from the state to alter the boundaries of lot 521(leasehold).
After this, permission from the owner of lot 505 (Redland Shire Council) must be obtained, as we are reducing the size of lot 505 by 63 square metres. For absolute surrender under the land act to be successful, there has to be consensus from all parties.

3.2 Reconfiguration of lots under the Integrated Planning Act

This approach is similar to a normal subdivision. Signatures must once again be obtained from all parties involved. A proposal is put forward to council and the local authority manages the application. The Absolute surrender method is preferred as the reconfiguration method can be more expensive and time consuming.

3.3 Other possible resolutions

Research into other possible solutions and investigation of previous similar situations will be examined in this project.

3.4 New Legislation

The Department of Natural Resources and Mines is considering new legislation that may allow multiple boundary alignments to occur. Investigation into the logistics of this new legislation will also be researched in this project.

4.0 Survey Plans

One Survey Plan will be produced with new areas and boundaries.

5.0 Academic Supervisor

Mr Shane Simmons has kindly donated his time to supervise this project.
Area to be added to Lot 802 on A. 3392 (6.7.8.9) ... 1786 m²
Area to be added to Lot 814 on A. 3392 (4.5.6.7) ... 1675 m²

No Mark Pid at stations 10 & 12 (in water).

Brett Clifford CURREY
Firmly certify that the surveyors have surveyed the land comprised in this plan and personally examined the same, that the plot is accurate, that the said survey was performed in accordance with the Surveyors Act and the Surveyors Regulations and that the said survey was completed on 15-12-95.
Council of the certifies that all the requirements of this Council, the Local Government Acts and all By-Laws have been complied with and approves this Plan of Subdivision.

Dated this day of 19
Mayor or Chairman
Town or Shire Clerk

I/We
(Names in full)
• as Proprietor/s of this land,
• as Lessee/s of Miner's Homestead
agree to this plan and dedicate the new road as shown hereon to public use.

Signature of • Proprietor/s • Lessee/s
• Rule out which is inapplicable.

This survey has been examined and may be used for land dealings.

Surveyor General

|-----|------|------|-----|------|------|-----|------|------|

Lodged by
Received Registrar of Titles

Fees Payable
Postal fee and postage
Logt. Exam. & Ass.
New Title
Endd. on Deeds
Photo Fee
Total
Short Fees Paid

File Ref. Deposited / / Audited / / Passed / / 2/94
Survey Records: File/Field Notes Charted / / Original Grant

Particulars entered in Register Book
Vol. Folio

at

REGISTRAR OF TITLES

Rec. No. 341251 341252
RECEIVED $ 68.00 68.00
DATE 20/1/94 20/1/94
PART 11—ENCROACHMENT AND MISTAKE

Division 1—Encroachment of buildings

182 Definitions for div 1
In this division—
“adjacent owner” means the owner of land over which an encroachment extends.
“boundary” means the boundary line between contiguous parcels of land.
“building” means a substantial building of a permanent character, and includes a wall.
“encroaching owner” means the owner of land contiguous to the boundary beyond which an encroachment extends.
“encroachment” means encroachment by a building, including encroachment by overhang of any part as well as encroachment by intrusion of any part in or upon the soil.
“owner” means any person entitled to an estate of freehold in possession—
(a) whether in fee simple or for life or otherwise; or
(b) whether at law or in equity; or
(c) whether absolutely or by way of mortgage, and includes a mortgagee under a registered mortgage of a freehold estate in possession in land under the Land Title Act 1994.
“subject land” means that part of the land over which an encroachment extends.

183 Application of div 1
This division applies despite the provisions of any other Act.

184 Application for relief in respect of encroachments
(1) Either an adjacent owner or an encroaching owner may apply to the court for relief under this division in respect of any encroachment.
(2) This section applies to encroachments made either before or after the commencement of this Act.

185 Powers of court on application for relief in respect of encroachment
(1) On an application under section 184 the court may make such order as it may deem just with respect to—
(a) the payment of compensation to the adjacent owner; and
(b) the conveyance, transfer, or lease of the subject land to the encroaching owner, or the grant to the encroaching owner of any estate or interest in the land or of any easement, right, or privilege in relation to the land; and
(c) the removal of the encroachment.
(2) The court may grant or refuse the relief or any part of the relief as it
deems proper in the circumstances of the case, and in the exercise of this discretion may consider, amongst other matters—
(a) the fact that the application is made by the adjacent owner or by the encroaching owner, as the case may be; and
(b) the situation and value of the subject land, and the nature and extent of the encroachment; and
(c) the character of the encroaching building, and the purposes for which it may be used; and
(d) the loss and damage which has been or will be incurred by the adjacent owner; and
(e) the loss and damage which would be incurred by the encroaching owner if the encroaching owner were required to remove the encroachment; and
(f) the circumstances in which the encroachment was made.

186 Compensation
(1) The minimum compensation to be paid to the adjacent owner in respect of any conveyance, transfer, lease, or grant under section 185 to the encroaching owner shall, if the encroaching owner satisfies the court that the encroachment was not intentional and did not arise from negligence, be the unimproved capital value of the subject land, and in any other case 3 times such unimproved capital value.
(2) In determining whether the compensation shall exceed the minimum and if so by what amount, the court shall have regard to—
(a) the value, whether improved or unimproved, of the subject land to the adjacent owner; and
(b) the loss and damage which has been or will be incurred by the adjacent owner through the encroachment and through the orders proposed to be made in favour of the encroaching owner; and
(c) the circumstances in which the encroachment was made.

187 Charge on land
(1) The order for payment of compensation may be registered in the land registry in such manner as the registrar determines and shall, except so far as the court otherwise directs, upon registration operate as a charge upon the land of the encroaching owner, and shall have priority to any charge created by the encroaching owner or the encroaching owner’s predecessor in title.
(2) In this section, the land of the encroaching owner means the parcel of land contiguous to the boundary beyond which the encroachment extends, or such part of the land as the court may specify in the order.

188 Encroaching owner—compensation and conveyance
Wherever the court sees fit, and in particular where the encroaching owner is not an owner beneficially entitled to the fee simple free from encumbrances, the court may determine—
(a) by whom and in what proportions the compensation is to be paid in the first instance, and is to be borne ultimately; and
(b) to whom, for whose benefit and upon what limitations the conveyance, transfer, or lease of the subject land or grant in respect of the land is to be made.

189 Adjacent owner—compensation and conveyance
Wherever the court sees fit, and in particular where the adjacent owner is not an owner beneficially entitled to the fee simple free from encumbrances, the court may determine—
(a) to whom, for whose benefit, and in what proportions the compensation is to be paid or applied; and
(b) by whom the conveyance, transfer, or lease of the subject land or grant in respect of the subject land is to be made.

190 Vesting order
Wherever the court may make or has made an order under this division with respect to the subject land, the court may make such vesting order as it may deem proper instead of or in addition to the order, or in default of compliance with the order.

191 Boundaries
(1) Where any question arises as to whether an existing building encroaches or a proposed building will encroach beyond the boundary, either of the owners of the contiguous parcels of land may apply to the court for the determination under this division of the true boundary.
(2) On the application the court may make such orders as it may deem proper for determining, marking, and recording the true boundary.
(3) This section applies to buildings erected either before or after the commencement of this Act.

192 Suit, action or other proceeding
(1) In any suit or proceeding before the court, however originated, the court may, if it sees fit, exercise any of the powers conferred by this division, and may stay the suit or proceeding on such terms as it may deem proper.
(2) Where any action or proceeding is taken or is about to be taken at law by any person, and the court is of opinion that the matter could more conveniently be dealt with by an application under this division, the court may grant an injunction, on such terms as it may deem proper, restraining the person from taking or continuing the action or proceedings at law.
(3) In any action at law a judge may, if the judge is of opinion that the matter could more conveniently be dealt with by an application under this division, stay the action or proceeding on such terms as the judge may deem proper.
193 Persons interested
In any application under this division the court may require—
(a) that notice of the application shall be given to any person interested; and
(b) that any person who is or appears to be interested shall be made a party to the application.

194 Costs
In any application under this division the court may make such order as to payment of costs (to be taxed as between solicitor and client or otherwise), charges, and expenses as it may deem just in the circumstances and may take into consideration any offer of settlement made by either party.

Division 2—Improvements under mistake of title

195 Application of div 2
This division applies despite the provisions of any other Act.

196 Relief in case of improvements made by mistake
Where a person makes a lasting improvement on land owned by another in the genuine but mistaken belief that—
(a) such land is the person’s property; or
(b) such land is the property of a person on whose behalf the improvement is made or intended to be made;
application may be made to the court for relief under this division.

197 Nature of relief
(1) If in the opinion of the court it is just and equitable that relief should be granted to the applicant or to any other person, the court may if it thinks fit make any 1 or more of the following orders—
(a) vesting in any person or persons specified in the order the whole or any part of the land on which the improvement or any part of the improvement has been made either with or without any surrounding or contiguous or other land;
(b) ordering that any person or persons specified in the order shall or may remove the improvement or any part of the improvement from the land or any part of it;
(c) ordering that any person or persons specified in the order pay compensation to any other person in respect of—
(i) any land or part of the land; or
(ii) any improvement or part of the improvement; or
(iii) any damage or diminution in value caused or likely to be caused by or to result from any improvement or order made under this division;
(d) ordering that any person or persons specified in the order have or give possession of the land or improvement or part of the improvement for such period and upon such terms and conditions as the court may specify.

(2) An order under this division, and any provision of the order, may—
(a) include or be made upon and subject to such terms and conditions as the court thinks fit, whether as to payment by any person of any sum or sums of money including costs (to be taxed as between solicitor and client or otherwise), or the execution by any person of any mortgage, lease, easement, contract or other instrument, or otherwise; and
(b) declare that any estate or interest in the land or any part of the land on which the improvement has been made to be free of any mortgage, lease, easement or other encumbrance, or may vary, to such extent as may be necessary in the circumstances, any mortgage, lease, easement, contract, or other instrument affecting or relating to such land or any part of the land; and
(c) direct that any person or persons execute any instrument or instruments in registrable or other form necessary to give effect to the declaration or order of the court; and
(d) order any person to produce to any person specified in the order any title deed or other instrument or document relating to any land; and
(e) direct a survey to be made of any land and a plan of survey to be prepared.

198 Right to apply or be served

(1) Application for relief under this division may be made by—
(a) any person who made or who is for the time being in possession of any improvement referred to in section 196; and
(b) any person having any estate or interest in the land or any part of the land upon which such improvement has been made; and
(c) any person claiming to be a party to or to be entitled to any benefit under any mortgage, lease, easement, contract or other instrument relating to such land or improvement; and
(d) the successor in title to, or mortgagee or lessee of, any person upon whose land the improvement or any part of the improvement was intended to be made; and
(e) the local government within whose area the land or improvement or any part of the land or improvement is situated.

(2) In any application under this division the court may require—
(a) that notice of the application be given to any of the persons referred to in subsection (1) and to any other person who is or appears to be interested in or likely to be affected by an order made under this division; and
(b) that any such person be made a party to the application.
Lodged by

<table>
<thead>
<tr>
<th>Title Reference</th>
<th>Description</th>
<th>New Lots</th>
<th>New Road</th>
<th>Em's</th>
</tr>
</thead>
<tbody>
<tr>
<td>18801035</td>
<td>Lot 802 on CP859680</td>
<td>51 &amp; 52</td>
<td></td>
<td></td>
</tr>
<tr>
<td>18803176</td>
<td>Lot 814 on CP859680</td>
<td>51</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

We, Rodney Robert FARRELL and Roselyn FARRELL as Joint Tenants and Gregory Colin DEED and Suzanne Joan DEED as Joint Tenants

(Name in full)

* As Registered Owner of this land * As Lessee(s) of a Miners Homestead agree to this Plan, and dedicate the Public Use Land as shown hereon in accordance with Section 56 of the Land Title Act 1994.

F.O.L.R.

* Rule out whichever is inapplicable

NOTE: A Lessee of a Miners Homestead is unable to dedicate Public Use Land.

Toadland Shire Council
certifies that all the requirements of this Council, the Local Government Act 1993, the Local Government (Planning and Environment) Act 1990 and all Local Laws, and the City of Brisbane Act 1924 and all Ordinances thereunder, have been complied with and approves this plan of Subdivision, SUBJECT TO

Dated this 13th November 1996

MAYOR

Date: 13th November 1996

Surveyor: Paul Carrey

Survey Examinations

Exam. Fee $ ..........................
Receipt No. ................................
Date ......................................
Deposit ....................................
Passed ....................................

Charting

(Sect. B)

Charted ..........................

Lodgement Fees

Survey Exam $ ........................
Log. Exam & Ass $ ........................
O. New Titled ...........................
Photocopy ...........................
Postage ............................

TOTAL $ ..............................

Reference

Lands Title
Local Government Reference 013727K
Surveyors Reference 1494

Registered Plan 905457
-----Original Message-----
From: rob
Sent: Monday, 24 November 2003 8:55 AM
To: notebook01
Subject: FW: Paul Murphy Project, Amity Point

-----Original Message-----
From: Rush Graeme [mailto:Graeme.Rush@nrm.qld.gov.au]
Sent: Monday, November 24, 2003 6:41 AM
To: mail@kevinholtconsulting.com
Subject: Paul Murphy Project, Amity Point

Kevin,

As discussed briefly after our meeting at Redland Shire, because lot 521 is leasehold and the rest are freehold, two plans are normally necessary.

Another option, which does not (necessarily) attract subdivisional application fees (but would require RCC concurrence) is for all property owners to surrender their titles to the State and be reissued with new Deeds of Grant. This would be a section 358 and 360 Land Act action. The fees associated with such an action would be:

<table>
<thead>
<tr>
<th>Description</th>
<th>Cost</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application fees</td>
<td>six X $176.60</td>
</tr>
<tr>
<td>Survey Deposit fee</td>
<td>$110.65</td>
</tr>
<tr>
<td>plus</td>
<td>six X $16.55</td>
</tr>
</tbody>
</table>

You might like to suggest this approach as an alternative to the reconfiguration proposal, and two survey plans.

Also, Paul has suggested that the property owners might like to stake where they would like the boundaries to be.

You suggested that you would write to Paul with a proposal. I hope you find this input useful.

Graeme Rush
General Manager
Land Management and Use
Dept of Natural Resources and Mines
GPO Box 2454, Brisbane Qld 4001
4th Floor, Mineral House
41 George Street, Brisbane Qld 4000
Ph: (07) 3405 5501
Fax: (07) 3405 5521
Mobile: 0407 883 993
Email: graeme.rush@nrm.qld.gov.au
The information in this e-mail together with any attachments is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any form of review, disclosure, modification, distribution and/or publication of this e-mail message is prohibited. If you have received this message in error, you are asked to inform the sender as quickly as possible and delete this message and any copies of this message from your computer and/or your computer system network.
CURRENT TITLE SEARCH  
NATURAL RESOURCES & MINES, QUEENSLAND

Request No: 112949711  
Search Date: 23/02/2005 11:50 am  
Title Reference: 10641244  
Date Created: 11/03/1887

REGISTERED OWNER

COUNCIL OF THE SHIRE OF REDLAND

ESTATE AND LAND

Estate in Fee Simple

LOT 505    CROWN PLAN A3392
County of STANLEY           Parish of STRADBROKE
Local Government: REDLAND SHIRE

EASEMENTS, ENCUMBRANCES AND INTERESTS

1. Rights and interests reserved to the Crown by
   Deed of Grant No. 10641244 (ALLOT 5 SEC 5)

ADMINISTRATIVE ADVICES - NIL
UNREGISTERED DEALINGS - NIL

CERTIFICATE OF TITLE ISSUED - No

** End of Current Title Search **

COPYRIGHT THE STATE OF QUEENSLAND (NATURAL RESOURCES & MINES) [2005]
Requested By: ABR ONLINE
CURRENT TITLE SEARCH
NATURAL RESOURCES & MINES, QUEENSLAND

Request No: 110508238
Search Date: 19/02/2004  9:32 am                   Title Reference: 14276141
Date Created: 28/02/1969

Previous Title: 12194183

REGISTERED OWNER
PAUL PATRICK MURPHY

ESTATE AND LAND

Estate in Fee Simple

LOT 506    CROWN PLAN A3392
County of STANLEY     Parish of STRADBROKE
Local Government: REDLAND SHIRE

EASEMENTS, ENCUMBRANCES AND INTERESTS

1. Rights and interests reserved to the Crown by
   Deed of Grant No. 10647032 (ALLOT 6 SEC 5)

2. MORTGAGE No 601812215 (D690540)  03/02/1969
   TO THE ENGLISH, SCOTTISH AND AUSTRALIAN BANK LIMITED

ADMINISTRATIVE ADVICES - NIL
UNREGISTERED DEALINGS - NIL

CERTIFICATE OF TITLE ISSUED - No

Caution - Charges do not necessarily appear in order of priority

** End of Current Title Search **

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Requested By: ABR ONLINE
CURRENT TITLE SEARCH
NATURAL RESOURCES & MINES, QUEENSLAND

Request No: 110508235
Search Date: 19/02/2004  9:32 am             Title Reference: 50127242
                                         Date Created: 03/06/1996

Previous Title: 14465166
                14465167

REGISTERED OWNER

Dealing No: 701340816  31/05/1996

RODNEY WILLIAM WILEY

ESTATE AND LAND

Estate in Fee Simple

LOT 507    CROWN PLAN A3392
County of STANLEY          Parish of STRADROKE
Local Government: REDLAND SHIRE

EASEMENTS, ENCUMBRANCES AND INTERESTS

1. Rights and interests reserved to the Crown by
   Deed of Grant No. 10647031 (ALLOT 7 SEC 5)

2. MORTGAGE No 707282864  10/12/2003 at 10:51
   BANK OF QUEENSLAND LIMITED  A.C.N. 009 656 740

ADMINISTRATIVE ADVICES - NIL
UNREGISTERED DEALINGS - NIL

CERTIFICATE OF TITLE ISSUED - No

Caution - Charges do not necessarily appear in order of priority

** End of Current Title Search **

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Requested By: ABR ONLINE
CURRENT TITLE SEARCH
NATURAL RESOURCES & MINES, QUEENSLAND

Request No: 110508234
Search Date: 19/02/2004  9:32 am                   Title Reference: 50362721
                                      Date Created: 17/08/2001

Previous Title: 40029808

REGISTERED OWNER

Dealing No: 704971400  17/08/2001

ANNE MACNICOL

ESTATE AND LAND

Estate in Fee Simple

LOT 519    CROWN PLAN A33912
          County of STANLEY    Parish of STRADBROKE
          Local Government: REDLAND SHIRE

EASEMENTS, ENCUMBRANCES AND INTERESTS

1. Rights and interests reserved to the Crown by
   Deed of Grant No. 40029808 (Lot 519 on CP A33912)

ADMINISTRATIVE ADVICES - NIL
UNREGISTERED DEALINGS - NIL

CERTIFICATE OF TITLE ISSUED - No

** End of Current Title Search **

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Requested By: ABR ONLINE
CURRENT TITLE SEARCH
NATURAL RESOURCES & MINES, QUEENSLAND

Request No: 110508232
Search Date: 19/02/2004  9:32 am                   Title Reference: 15998121
Date Created: 12/06/1980

REGISTERED OWNER

Dealing No: 704205446  20/07/2000
LORRAINE MARY WALKER

ESTATE AND LAND

Estate in Fee Simple

LOT 520  CROWN PLAN A33912
County of STANLEY   Parish of STRADBOKE
Local Government: REDLAND SHIRE

EASEMENTS, ENCUMBRANCES AND INTERESTS

1. Rights and interests reserved to the Crown by
   Deed of Grant No. 15998121 (ALLOT 20 SEC 5)

2. MORTGAGE No 705124429  18/10/2001 at 11:51
   NATIONAL AUSTRALIA BANK LIMITED A.C.N. 004 044 937

ADMINISTRATIVE ADVICES - NIL
UNREGISTERED DEALINGS  - NIL

CERTIFICATE OF TITLE ISSUED - No

Caution - Charges do not necessarily appear in order of priority

** End of Current Title Search **

COPYRIGHT THE STATE OF QUEENSLAND (NATURAL RESOURCES & MINES) [2004]
Requested By: ABR ONLINE
DESCRIPTION OF LAND

Tenure Reference: NCL 6/881

LOT 521    CROWN PLAN A33912
County of STANLEY   Parish of STRADROKE
Local Government: REDLAND SHIRE

Area:    0.075900 Ha.  (SURVEYED)

No Land Description

No Forestry Entitlement Area

Purpose for which granted:
No Purpose

TERM OF LEASE

Day of beginning of lease

Lease in perpetuity commencing on 01/04/1952

REGISTERED LESSEE

QUENTIN RAYMOND EVANS

CONDITIONS

Nil

ENCUMBRANCES

1. MORTGAGE No 707362667  08/01/2004 at 12:20
   CITIBANK LIMITED A.B.N. 88 004 325 080

ADMINISTRATIVE ADVICE - NIL
UNREGISTERED DEALINGS - NIL

ORIGINAL LEASE IN EXISTENCE - No

Caution - Charges do not necessarily appear in order of priority

** End of State Tenure Search **

COPYRIGHT THE STATE OF QUEENSLAND (NATURAL RESOURCES & MINES) [2004]
Requested By: ABR ONLINE
CURRENT TITLE SEARCH
NATURAL RESOURCES & MINES, QUEENSLAND

Request No: 110508227
Search Date: 19/02/2004  9:32 am                   Title Reference: 16539106
Date Created: 02/12/1983

REGISTERED OWNER

Dealing No: 700181321  23/08/1994

DAVID PHILEMON CILENTO
EILEEN MARY CILENTO           JOINT TENANTS

ESTATE AND LAND

Estate in Fee Simple

LOT 522   CROWN PLAN A33912
County of STANLEY              Parish of STRADBROKE
Local Government: REDLAND SHIRE

EASEMENTS, ENCUMBRANCES AND INTERESTS

1. Rights and interests reserved to the Crown by
   Deed of Grant No. 16539106 (ALLOT 22 SEC 5)

ADMINISTRATIVE ADVICES - NIL
UNREGISTERED DEALINGS - NIL

CERTIFICATE OF TITLE ISSUED - No

** End of Current Title Search **

COPYRIGHT THE STATE OF QUEENSLAND (NATURAL RESOURCES & MINES) [2004]
Requested By: ABR ONLINE
Our Ref : 30741

17 March 2004

Paul Murphy
91 Heather St
Wilston
QLD 4051

Dear Paul,

Re : Surrender of Titles (North Stradbroke) Lot 506 on A3392.

I am writing to you with regard to your property on North Stradbroke. I have been in contact with Mr Graeme Rush who is the General Manager of the Land Management and Use section of The Department of Natural Resources & Mines. He has instructed me that the best way to resolve the encroaching issues on your property is to surrender your title to the state and then be reissued with new titles. To start this process off I need an agreement in writing from yourselves saying that you will agree to surrender your title. After I have received the letters from all the occupants of the encroaching Lots, I will draft a new survey plan. A copy will then be sent to each owner ensuring that they are happy with their new boundaries. Once all the owners have given their consent I will apply to the State for new titles.

The fees involved for this are:
Application Fees: $176.60
Survey Deposit Fee: $127.20
Plus Survey fees : Approx : $400.00

If you have any queries please contact the surveyor in charge of the project David Wilson on 32060166. Thank you for your time

Yours faithfully

Kevin Holt
Licensed Surveyor
Paul Murphy,
91 Heather St.,
WILSTON, 4051

Kevin Holt,
Kevin Holt Consulting,
300 Avalon Rd.,
SHELDON 4157

RE: Surrender of Titles (North Stradbroke)

In response to your letter of 22 January, 04, I am writing to notify you that I agree to surrender my title and then to be reissued by State with a new title after the resurvey of the area by your company.

Yours faithfully,

Paul Murphy.

4/3/04
9 February 2004

Ref: H: M: D Correspondence\Letters: Holt Consulting 01.doc

Kevin Holt Consulting
300 Avalon Road
SHELDON QLD  4157

Attn:  Kevin Holt

Dear Kevin

Re:  Surrender of Title (North Stradbroke)

In response to your letter of 22 January 2004, I am writing to advise that I agree in principle to surrender my title on the basis that there is an ‘exchange’ of titles as the current title is being used as security.

If you require any further information please do not hesitate to contact myself or Jayne Lynn at my office in my absence on 38598888.

Yours faithfully

Rodney Wiley
BY HIS DULY APPOINTED ATTORNEY
ALLAN JOHN MCPHERSON
18 Union St
Taringa 4068
16-02-04

David Wilson
Quinn Yeat Consulting
300 Avalon Rd
Shelbourne 4157

Dear David:

RE: SURRENDER OF TITLE
(Arity, St H, STRADBROKE IS)

I hereby give my permission
for you to surrender my
title to MILLERS LACE
Arity Point to the
State and be reissued
with a new title.

I look forward to discussing
a new Murray plan.

Regards

Anne Brown
Mr. David Wilson  
Kevin Holt Consulting  
300 Avalon Road  
SHELDON QLD 4157

Dear Sir,

RE: JOHN ALLAN WALKER & LORRAINE MARY WALKER  
SURRENDER OF TITLES (NORTH STRADBROKE)

We refer to your letter of the 22nd January, 2004 to our clients, John and Lorraine Walker of 2 Parkway Close, Gowrie Junction, Toowoomba.

We have been instructed to advise by our clients that they are quite happy to dedicate their land to the Crown and that in due course, a new Title Deed will issue to correct the encroachments which currently exist.

Currently, our clients are on an around Australia trip.

We would be pleased if you would forward any Documentation to this Office and we will arrange to have same signed by Mr. & Mrs. Walker. However, please allow some time for the Documentation to be signed as it may have to be emailed to them and the original documents returned for further attention.

We have contacted the Mortgagee of the premises who has indicated they are quite agreeable to the surrender in the knowledge that there interests as Mortgagee are protected.

Yours faithfully,
C.W. HOOPER & HOOPER

Per:
Attention: David Wilson
Your Ref: 30741

Kevin Holt
Kevin Holt Consulting
300 Avalon Road
Sheldon Qld 4157

Dear Mr Holt,

With regard to the surrendering the Certificate of Title to my property on North Stradbroke Island, I am in agreement.

The document is in the hands of my mortgagees, Citibank Australia.

I thank you for our work in this matter.

Yours faithfully

[Signature]

Quentin Evans
Your Ref: 30741

6 February 2004

Mr K Holt
Kevin Holt Consulting
300 Avalon Road
SHELDON Q 4157

Dear Kevin,

RE: Surrender of Titles (North Stradbroke)

In response to your letter regarding the resurvey of our Amity Point property, we hereby agree to surrender our title to Lot 522 A33912 Vol. 16539106, located at 6 Toompany Street, Amity Point.

We confirm that we will pay the appropriate fees, as set out in approximate terms in your letter, on invoice etc.

Yours faithfully,

[Signatures]

David Cilento
Eileen Cilento
Hi Wayne and Paul,
Attached is a plan showing the encroaching boundaries at Amity, as discussed yesterday with Wayne. As you can see the situation is very ugly. I have been in contact with Mr Graeme Rush and Mr Ken Rogers from the Department of Natural Resources and they have advised me that this problem can be rectified by the owners doing an absolute surrender of their titles under the Land Act. This means that two reconfiguration survey plans will be drawn, one for Lot 521 (Leasehold) and one for the remaining lots (freehold). The Lots will be reconfigured by keeping the back of the blocks fixed and swinging the front of the blocks approximately 2.5m North onto the original fence lines. This means that Lot 505 which is owned by the Redland Shire will be reduced in area by a small amount. I need to get consent from Redland Shire to take this land. Kevin has had a meeting with the mayor regarding this matter and he has said he will support it. If I could organise a meeting with you two to talk about it further that would be great. Thank you for your time, and I look forward to a response.

David Wilson
Kevin Holt Consulting
Phone: 3206 0166
Mobile: 0418 154 547
Email: dwilson@kevinholtconsulting.com
358 Changing deeds of grant—change in description or boundary of land

(1) A registered owner or trustee may surrender the land contained in the registered owner’s deed of grant or trustee’s deed of grant in trust if the description of the land is no longer correct because of—
(a) an exchange of land under chapter 2, part 1; or
(b) a sale of all or part of a reservation under chapter 2, part 2; or
(c) the addition of land under chapter 3, part 1, division 3; or
(d) a boundary correction or amendment under chapter 3, part 1, division 4; or
(e) the opening or closing of a road, through or adjoining any land held in fee simple, under chapter 3, part 2, divisions 4 and 5; or
(f) a sale without competition under chapter 4, part 1, division 2.

(2) A registered owner or trustee, with the Minister’s written approval, may surrender the land contained in the registered owner’s deed of grant or trustee’s deed of grant in trust if—
(a) on resurvey of the land, the boundaries of the land do not agree with the boundaries described in the existing deed or appropriate plan, and no doubt exists about the boundaries of the land; or
(b) the boundaries of the land have significantly changed because of erosion or by gradual and imperceptible degrees.

(3) On the surrender of the land—
(a) the deed of grant or deed of grant in trust is cancelled; and
(b) a new deed must be issued containing the land to which the registered owner or trustee is entitled.

(4) When issuing any new deed under this section, the Governor in Council may amend or change the description of the land.

(5) The registrar of titles must register the new deed and must record on the deed all mortgages, leases, easements or other transactions that were recorded on the deed surrendered.
Meeting – AMITY ENCROACHMENTS PROPOSAL – Kevin Holt Consulting


Attendees: Wayne Dawson, Kevin Holt, David Wilson, Gary Photinos, Paul Powell

1. The land owners of Lots 506, 507, 519 -522 have engaged Kevin Holt Consulting to try and resolve the numerous encroachments that exist over their adjoining boundaries.

2. Lots 505, Owned by Council; Lot 520, Crown leasehold; Lots 506,507, 519, 521 and 522, privately owned

3. Lots 508 and 509 – USL, G Rush had previously indicated that to K Holt that these lots no longer exist. Still in Smart Map and DCDB received by Council.

4. Proposal - all land owners to surrender their titles to the crown with new titles issued to an agree boundary realignment.

5. Council is required to surrender 63m² under the current proposal. The proposal plan showed a shed and a BBQ area still existing over the proposed new boundary between Lot 505 and 506. K Holt indicated that the land owner of lo 506 is going to move this infrastructure.

6. With absolute surrender the survey plan does not need to be sealed by Council re IPA.

7. The following questions were asked

   “Why does Council have to surrender land if all the other land owners were basically going to maintain or increase their land area?”
   “Should not the loss be shared?”

   For example the 63m² Council is required to surrender, could be shared between the owners of lots 505, 506 & 507. The existing fencing would not align with the proposed boundaries.

8. The erosion problem along the western boundary of these lots was discussed. The current position of the high water mark (MHWS) was not known. NRM&E’s position/requirements, with respect to the erosion and its affect on all of these lots, needs to be determined.

9. Council position on the resolution of the encroachments would depend on the erosion/high water issue. A report would need to put to Council to finalise Council’s position on this matter.

10. Is Council expected to contribute to the cost of this boundary resolution? K Holt felt that the land holders would not require Council to contribute.

11. Kevin Holt offered to resolve the high water mark issue.

12. Paul Powell offered to discuss the erosion issue with Ken Rogers NRM&E to determine NRM&E’s position on the erosion.

13. A future meeting will be held when further information is available.
PLAN OF 21 SQUARE METRE LOSS

Client: Paul Murphy

Site Address: PLAN SHOWING ENCROACHMENTS ON LOTS 505 & 507 ON A3392 AND LOTS 519 - 522 ON A33912 ESPLANADE, AMITY POINT, STRADBROKE ISLAND

REAL PROPERTY DESCRIPTION
Parish of Stradbroke
County of Stanley
Orig Portion Allot 11 & Sec 5

Map Ref: 333
UBD Ref: F3
Meridian: of SP136507
Local Authority: Redland S.C.

Plan Reference: A3

Date: 16/4/2004
Scale: 1:500
Surveyor: DW
Map No: 9543-22143

JOB NO: 30741
CLIENT JOB NO:
Oaths Act 1867

Statutory Declaration

QUEENSLAND TO WIT

I, Paul Patrick Murphy
of 91 Heather St, Wilston, in the State of Queensland
that,

do solemnly and sincerely declare

When I built my property on the Esplanade as it was then (now 9A Millers Lane) in 1968 Jim Nash was living in retirement 3 doors down from me. He told me that the boundaries were all determined by the peg up the front (seaside) of his property. From this we measured the 2 properties in between & it worked out that our then existing barbed wire fence on the far side of my property was in the correct place. The two properties’ boundary fences (between mine & Nash’s) also appeared to be in the correct position. I built my house parallel to the existing fence line which still remains today.

And I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the Oaths Act 1867.

Taken and Declared before me, at this 20th day of September 2004

Brisbane

Margaret Brook

A Justice of the Peace/Commissioner for Declarations.

SITE PLAN

Client: Paul Murphy

Site Address:
PLAN SHOWING ENCROACHMENTS ON LOTS 506 & 507 ON A3392 AND LOTS 519 - 522 ON A33912 ESPLANADE, AMITY POINT, STRADBROKE ISLAND

REAL PROPERTY DESCRIPTION
Parish of Stradbroke County of Stanley
Org Portion Allot 11 & Sec 5
Map Ref: 333
UBD Ref: F3
Meridian: 103135397
Local Authority: Redland S.C.

Date: 1-09-2003
Scale: 1:500
Surveyor: DW
Map No: 9543-22143

Plan Reference: A3

JOB NO: 30741A
 CLIENT JOB NO: 

SCALE 1:500 - LENGTHS ARE IN METRES.
I, Lorraine M Walker

of C/- Adelaide Shores Caravan Park

1 Military Road West Beach Postcode 5024

in the State/Territory of South Australia

Insert your occupation(s) Retired

I do solemnly and sincerely declare that

My name is Lorraine Walker. I am 57 years old and I grew up in Millers Tone on the esplanade at Amity Flats in Shorncliffe. When I was about six years old I remember my father fencing our property. I believe it was according to the feudal system. As I did not follow the tracks from the house one evening I was going to visit the family next door. I got off our the usual track and ran straight into the barbed wire fence. I have the scars to this day.

Later I can remember the original barbed wire fence being under siege from the drift of the dunal sand. So a hardy haw hedge was planted along this fence line and I can remember my father hammering the original pegs into the ground on either end of this hedge.

When Dad built the tool shed at the side of our house the original barbed wire fence existed between our house and Mr. Bill Miller's you could walk between the shed and the house.

My father purchased the property in 1949 when I was nine months old.

(Your Statutory Declaration ends on the reverse side of this page and that is where you sign it)
Meeting – AMITY ENCROACHMENTS PROPOSAL – Kevin Holt Consulting

Record of the Issues Discussed – 2nd July, 2004. (9:00 – 10:00am)

Attendees: Kevin Holt, Graeme Rush, Paul Murphy, Paul Powell, Wayne Dawson, Rodney Wiley, David Wilson

1. Paul Powell explained that council was willing to surrender 63 square metres of land.

2. Paul Powell also indicated that council was prepared to carry on with the proposed boundary plan drafted by Kevin Holt Consulting.

3. Wayne Dawson stated that when the new realignment survey plan was drafted that building set backs should try to be maintained.

4. Graeme Rush confirmed lots 508 and 509 on A3392 have been surrendered back to the State and can remain USL or Esplanade.

5. Lot 506 A3392 has no access. David Wilson asked if there should be an access easement placed on lot 507 A3392. The owner of lot 507 A3392 expressed his concern at this proposed easement. Paul Powell indicated that he would organise a letter permitting access to lot 506 A3392 via the RSC Land (lot 505 A3392).

6. The Question was asked “Where to from here”? Graeme Rush said there were two solutions:

   1. If we can find an error in the original survey of these lots then the encroachments will be corrected by absolute surrender under the land act.
   2. Apply to Council and do the re-alignment under the Integrated Planning Act.

7. Kevin Holt Consulting offered to do a large identification survey of the area to attempt to find an error.
13 August 2002

Mr Paul Murphy
91 Heather Street
Wilston QLD 4051

Dear Mr Murphy

It has come to Council's attention that you have a number of non-complying structures, on land described as Lot 506 on A3392 situated at 9A Millers Lane Amity Point. An initial investigation on our behalf leads us to believe that these structures (Pergola and barbecue area, caravan and annex, and garden lights) do not comply with certain aspects of Redland Shire Councils Town Plan and The Building Act. It is also noted that these structures are encroaching onto Council owned land (caravan and annex).

In order to ensure the safety and well being of the community, Council has standard systems in place to rectify what it believes are breaches of its legislation. This letter is the first stage in this process. It is designed to inform you of our concerns and to ask that you contact the Officer below within fourteen (14) days of the date of this letter to discuss options as to how the problem can be rectified within a time-frame suitable to yourself and to Council. It is a means of achieving a suitable solution within a reasonable time frame with both parties working together.

A possible solution may be achieved, and Council's initial advice is that you:-

a. Apply for a development permit under the Integrated Planning Act 1997. Note existing work may require an Engineer's certificate certifying the structural soundness of the development.

Note: applying for a development permit does not guarantee that the existing development (pergola, barbecue and light) will be approved. Accordingly you are advised to seek a pre-lodgment meeting as a means by which you may assess whether or not your application will be successful.

b. Ensure building work complies with the Building Act 1975, Town Planning Scheme, Local Laws and Policies, Development Control Plans, Acts and Regulations, Codes, and Adopted Standards;

c. Ensure all structures are wholly contained within your property;

d. Demolish or remove the building or structure;
Our Ref: 30741

30th September 2004

Department of Natural Resources and Mines
108 George St
Beenleigh, QLD 4207

ATTN: Ken Rogers

Dear Ken,

Re: Solution of Uncertain Boundaries, Amity Point, North Stradbroke

Further to our conversation earlier this year regarding the above property. From the direction of Mr Graeme Rush in your Brisbane office, we have been working over the last 12 months trying to discover a solution to the encroachment problems at Millars Lane, Amity point on North Stradbroke Island.

I have appended copies of the letters of consent from the owners, saying they are willing to surrender their titles and be issued with new deeds of grant. We have agreement from the affected landowners that they will co operate in assisting the Redland Shire Council and Crown in solving this problem.

Lots 506, 507, 519, 520 and 522 are freehold properties and Lot 521 is leasehold.

Lot 505 is owned by Redland Shire and after several meetings with this party they have agreed to surrender 63m2 of land as shown on the Proposed Boundary Realignment Plan (Ref #2). Redland Shire has also given its consent to the whole proposal. These meetings have been held with Wayne Dawson and Paul Powell.

No survey marks from the original plan of survey could be found during a recent field inspection.
Attached are two Statutory Declarations. One is, from Mrs Loraine Walker (Lot 520), who states that she believes the original fences were built to the original pegs. I have shown the position of the hedge that she refers to as well as the approximate position of the original peg. See Ref #3 for details.

The other Statutory Declaration is from Paul Murphy (Lot 506), Mr Murphy states Jim Nash informed him that the original fences were built off an original peg at the front of his property.

From these two Statutory Declarations it seems there may have been an error in the original survey.

There are three other plans attached:

Plan Reference#1 is a Site Plan showing the original encroachments.

Plan Reference# 2 is a Proposal Plan showing the new boundaries.

Plan Reference# 3 is a plan of the comments made by Mrs Lorraine Walker.

Trusting that this meets with your approval and look forward to your response.

Yours Sincerely,

David Wilson
Surveying Graduate
Ken Rogers  
Our File Ref: BEE/020532  
Your Ref: 30741  
South East Region, Beenleigh Office  
3884 8069

8/10/2004

KEVIN HOLT CONSULTING  
300 Avalon Road  
SHELDON QLD 4157

Attention: David Wilson

Dear Sir

RE: UNCERTAIN BOUNDARIES, VICINITY OF MILLERS LANE, AMITY POINT

I refer to your letter dated 30 September 2004.

The issue of the boundary alignment of properties in and adjacent to Millers Lane at Amity Point has been subject to a number of discussions between myself, and surveyors from your company. I have also discussed the issue with Mr Paul Powell from Redland Shire Council and Mr Graeme Rush. Mr Rush has advised me that he is acting in a private capacity for a friend in this case.

I have explained to the Redland Shire Council that the capacity exists within the Land Act 1994 for the Minister administering the Act to accept a surrender of a registered owner’s land for the issue of a new deed of grant. Section 358 (2) of the Act applies where:

- On resurvey of the land, the boundaries of the land do not agree with the boundaries described in the existing deed or appropriate plan, and no doubt exists about the boundaries of the land; or
- The boundaries of the land have significantly changed because of erosion or by gradual and imperceptible degrees.

The above can be generalised to misdescription of the land by the survey or the doctrine of erosion and accretion.

I acknowledge that erosion has taken place in the Amity area and to the seaward of the properties and is likely to continue through natural coastal processes. Your plan: Job No.30741 Plan Reference 1, shows erosion within freehold properties Lots 506 and 507 on A3392 and unallocated State land described as Lots 508 and 509 on A3392. Lots 521 and 522 on A33912 are protected at this time by the rock retaining wall constructed within the esplanade.
I have researched files held by the Department relating to the creation of Lots 519 to 522 on A33912 (As Bris 43 parts 2 & 3). These files indicate that in or around 1920 the original allotments 8,9 and 10 of Section 5 on A33392 were surrendered to the Crown as valueless land. Prior to 1949 a decision was made to make the land within allotments 8,9 and 10 available for sale and plan A33912 was prepared for the proposed sale.

In November 1949 a Land Ranger employed by the Land Administration board inspected the subdivision as a decision had been made to offer Allotment 21 on A33912 to W E Miller in priority. It seems that W E Miller was in occupation of Allotment 21 for some time prior as he was charged informal occupancy rent, as his occupation was not tenured. The Land Rangers report states that he found the survey pegs with some difficulty for the eastern alignment of allotment 21. He could not find the pegs for the western alignment.

The report further stated that W E Miller had constructed the fence off alignment within allotment 20 and had placed his "earth closet" with allotment 20. Allotments 16 to 20 and 22 were offered for sale as perpetual town leases in September 1950.

From the survey information that you have provided, and my discussions with other relevant parties, I am aware that a number of improvements such as dwellings and fences are constructed so that they encroach on adjoining properties. I do not believe that this encroachment has come about by a misdescription of the property boundaries.

I believe that it is most likely from the information available dating back to 1949 that fences were constructed off alignment from the initial time of occupation. Further fences and dwellings were most likely constructed using the dimensions of the allotments but did not take into account that the original improvements could have been off alignment. I can find no record of any further surveys being undertaken to establish the correct boundaries of any of the properties since 1949 except for Lots 516 to 518 on A33912.

On the basis of the above information I do not believe that Section 358(2)(a) of the Land Act 1994 can be used to resolve the problem of the encroachments.

It is my opinion that at this time the boundary realignment can only be rectified through a number of transactions under the Land Act 1994 and the Land Title Act 1994. Those lots that abut the current State land held by way of lease and as USL can be dealt with under the Land Act 1994. Those lots that are freehold can be dealt with under the Land Title Act 1994 by way of reconfiguration of a lot.

I understand that consideration is being given to new legislation that may allow multiple boundary realignments to occur. I cannot give any time frame for the introduction of the legislation.

Dealings with Lot 521 on A33912 are also further complicated because of processes currently underway between the property owner and the State in relation to freeholding of the property. If all the property owners were willing to wait until Lot 521 on A33912 is freehold then the whole issue could be dealt with under the Land Title Act 1994.

Please contact me if I can provide further clarification about the difficulties involved in dealing with this case under the Land Act 1994.

Yours sincerely,

Ken Rogers
Senior Land Officer
Beenleigh Office
South East Region.
166 Application to convert lease

(1) A lessee may apply to convert (the “conversion application”—
(a) a perpetual lease to freehold land; and
(b) a term lease to a perpetual lease or to freehold land.
(2) The lessee of a term lease issued for pastoral purposes may only
apply to convert the lease—
(a) to a perpetual lease; and
(b) after 80% of the existing term on the lease has expired, unless in
the Minister’s opinion, special circumstances exist.
(3) A conversion application may be rejected without consideration
under section 167 if—
(a) the applicant has made an earlier conversion application and the
application was refused; and
(b) there is no relevant change in circumstances from the earlier
application.

167 Issues the Minister must consider

(1) The Minister must consider the following issues before making a
decision to offer to convert a lease—
(a) whether part of the lease needs to be set apart and declared as
State forest under the Forestry Act 1959;
(b) whether part of the lease is better suited for long-term forest
management for the production of indigenous timbers of
commercial value than for all other forms of primary production;
(c) whether the public interest could be adversely affected, other
than about an issue mentioned in paragraph (a) or (b), if the lease
were converted;
(d) whether part of the lease is needed for environmental or nature
conservation purposes;
(e) whether a substantial part of the lease is at serious risk from land
degradation;
(f) whether a substantial part of the lease suffers from serious land
degradation;
(g) whether the lessee has complied with, or to what extent the lessee
has complied with, the conditions of the lease;
(h) whether part of the lease has a more appropriate use from a land
planning perspective;
(i) whether part of the lease is on an island or its location,
topography, geology, accessibility, heritage importance, aesthetic
appeal or like issues make it special;
(j) whether part of the lease is needed for a public purpose;
(k) whether part of the lease is needed for property build-up
purposes of other properties without reducing the remaining land
to less than a living area;
(l) whether part of the lease could be subdivided without reducing
the remaining land to less than a living area;
(m) if the lease is used for residential or industrial purposes—the most appropriate tenure for the land.

(2) Subsection (1) does not apply if the conversion application relates to a lease for development purposes and the lease states that conversion of the lease will be considered on fulfilment of the conditions stated in the lease.

168 Written notice of Minister’s decision

(1) If the Minister decides to offer a new lease or a deed of grant, the applicant must be given written notice of the conditions on which the offer is made.

(2) If the offer is for a lease, the offer must state the conditions to which the lease will be subject.

(3) The offer may be for a smaller size area of land or a different tenure to that applied for.

(4) If the Minister decides to refuse the conversion application, the applicant must be given written notice of the reasons for the decision.

(5) The applicant may appeal against the Minister’s decision to refuse the conversion application if the only reason for the refusal was that the applicant had not fulfilled the conditions of the lease.

169 Conditions of freehold offer

If an offer is for a deed of grant, including a freeholding lease, the offer may include 1 or both of the following conditions—

(a) that the lessee enter into a conservation agreement under the Nature Conservation Act 1992;

(b) that either—

(i) the lessee enter into an agreement with the Minister administering the Forestry Act 1959 regarding commercial timber on the land; or

(ii) the deed of grant or freeholding lease includes a forest entitlement area.

170 Purchase price if deed of grant offered

(1) Unless a price or formula has already been stated in the lease to be converted, the Minister decides the purchase price for the conversion of a lease to a deed of grant.

(2) The lessee may appeal against the Minister’s decision on the purchase price.

(3) The purchase price is an amount equal to the total of—

(a) the unimproved value of the land being offered, as if it were fee simple; and

(b) the market value of any commercial timber that is the property of the State on the land.

(4) The unimproved value of the land is calculated at the day the Minister receives the conversion application.

(5) The market value of the commercial timber is calculated at—
(a) if the value is not appealed—the day the conversion application was received; or
(b) if the value is appealed—the day the appeal is decided.

171 When offer has been accepted
An offer has not been accepted until the lessee fulfils the conditions of the offer.

172 Acceptance of offer
(1) If the lessee accepts the offer—
(a) the lessee must surrender the existing lease before the new tenure is issued; and
(b) the Governor in Council may issue, in priority, to the existing lessee, the offered tenure.
(2) If the new tenure is a lease, the lease must be issued for the same purpose as the existing lease and is subject to the terms the Governor in Council considers appropriate.
(3) Additional unallocated State land may be included in the new tenure, if chapter 4, part 1, division 2 is complied with.  
(4) The new tenure is issued subject to all the relevant encumbrances to which the old lease was subject and in the same priorities.
## Certificate of Registered Owners or Lessees

ROBYN HELEN BRENNAN

(Names in full)

*as Registered Owners of this land agree to this plan and dedicate the Public Use
Land as shown herein in accordance with Section 50 of the Land Title Act 1994.

**Signature of Registered Owners**

---

### Local Government Approval

Redland Shire Council hereby approves this plan in accordance with the:

Integrated Planning Act 1997

---

### Plans with Community Management Statement

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### Portion Allocation

| Map Reference: | 9543-22143 |

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### Locality

Amity

---

### Local Government

Redland S.C.

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### Passed & Endorsed

By: Soundhill Pty Ltd

Signed: [Signature]

Date: 10/5/2001

Designation: Licensed Surveyor/Director

---

### Lodgement Fees

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## Lodged by

Shand Taylor Lawyers

GPO Box 2486

BRISBANE QLD 4001

Ref: JWS: 211010

(Include address, phone number, reference, and Lodger Code)

---

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is not permitted. Contact the surveyor or consulting surveyors
 Queensland for information.
122 Deeds of grant of unallocated State land
(1) A deed of grant of unallocated State land may be granted without competition if the Minister decides—
(a) the land is not needed for a public purpose; and
(b) the intended use is the most appropriate use of the land; and
(c) 1 or more of the priority criteria apply.
(2) A deed of grant of unallocated State land may be granted without competition to a local government if the Minister decides the land is needed for a public purpose.
(3) The Minister must decide the purchase price for the land.
(4) To remove any doubt, it is declared that a deed of grant may be granted to the State, without competition.
1. Certificate of Registered Owners or Lessees.
   
   PAUL PATRICK MURPHY
   RODNEY WILLIAM WILEY
   ANNE MACNICOL
   LORRAINE MARY WALKER
   QUENTIN RAYMOND EVANS
   DAVID PHILEMON CLETO
   EILEEN MARY CLETO
   JOINT TENANTS

   (Names in full)

   * as Registered Owners of this land agree to this plan and dedicate the Public Use
   Land as shown herein in accordance with Section 50 of the Land Title Act 1994.

   * as Lessees of this land agree to this plan.

   Signature of Registered Owners #Lessees

2. Local Government Approval.

   hereby approves this plan in accordance with the:

   %

Dated this day of

#

#

#

#

3. Plans with Community Management Statement:

   CMS Number:
   Name:

4. References:

   Dept File:
   Local Govt:
   Surveyor:
   Name:
   30741

5. Existing Created

   Title Reference Lot Plan Lots Erns Road
   10641244 505 A392 7
   14276141 506 A392 6 & 7
   50127242 507 A392 5 & 6
   50362721 519 A3912 4 & 5
   15938121 520 A3912 2, 3 & 4
   17559246 521 A3912 2 & 3
   1639106 522 A3912 1 & 2

6. Mortgage Allocations

   Mortgage Lots Fully Encumbered Lots Partially Encumbered
   601812215 6 7
   707262684 5 6
   40029808 4 5
   705124429 3 2 & 4
   707362667 2 3
   1639106 1 2

7. Portion Allocation:

   1-7 Allots 8-10, Sec. 5

   Lots Orig

   Cadastre Surveyor/Director * Date

   # delete words not required

8. Map Reference:

   9543-22143

9. Locality:

   AMITY

10. Local Government:

    Redland S. C.

11. Passed & Endorsed:

    By: Kevin Maurice Halt
    Date: 
    Signed: 
    Designation: Cadastral Surveyor

12. Building Format Plans only.

    1. Certificate:
       # As far as is practicable to determine, so part of the building shown on this plan encroaches
       onto adjoining lots thereof;

    2. On the building shown on this plan encroaches onto adjoining lots and road:
       #

13. Lodgement Fees:

    Survey Deposit $............
    Lodgement $............
    New Titles $............
    Photocopy $............
    Postage $............
    TOTAL $............

14. Insert Plan Number

   SP176118
For Additional Plan & Document Notings Refer to OSBP

I hereby certify, on honor, that this survey has been carried out with the
I hereby certify, on honor, that this survey has been carried out with the

SCALE: 2 chains to 1 in.

Surveyed under Florida Statutes from Survey Reference, in

LAND AGENTS DISTRICT OF

Copyright protects this plan. Unauthorized reproduction or amendment is not permitted. Contact the surveyor or Consulting Surveyor, Queensland for information.
PART 2—APPLICATION STAGE

Division 1—Application process

3.2.1 Applying for development approval
(1) Each application must be made to the assessment manager. 43
(2) Each application must be made in the approved form.
(3) The approved form—
   (a) must contain a mandatory requirements part including a
      requirement for—
      (i) an accurate description of the land, the subject of the
      application; and
      (ii) the written consent of the owner of the land to the making of
      the application; and
   (b) may contain a supporting information part.
(4) Each application must be accompanied by—
   (a) if the assessment manager is a local government—the fee set by
      resolution of the local government; or
   (b) if the assessment manager is another public sector entity—the
      fee prescribed under a regulation under this or another Act.
41 See part 5.
42 An application for development approval for a domestic dwelling requiring code
    assessment only against the Standard Building Law, Standard Sewerage Law and
    Standard Water Supply Law will normally involve 2 stages of IDAS only—the
    application and decision stages. By contrast, an application for development
    approval for a factory requiring code assessment and a referral for workplace health
    and safety purposes involves 3 stages—the application, referral and decision stages.
43 A single application may be made for both a preliminary approval and a
    development permit.
(5) If an application is a development application (superseded planning
    scheme), the application must also identify the superseded planning
    scheme under which assessment is sought or development is proposed.
(5A) If the development involves taking, or interfering with, a resource
    of the State, another Act may require the application to be supported by—
    (a) evidence of an allocation of the resource; or
    (b) the written consent of the chief executive, of the department in
    which the other Act is administered, to the application being
    made. 44
(6) An application complying with subsections (1), (2), (3)(a), (4), (5)
    and (5A) is a “properly made application”.
(7) The assessment manager may refuse to receive an application that is
    not a properly made application.
(8) If the assessment manager receives, and after consideration accepts,
    an application that is not a properly made application, the application
    is taken to be a properly made application.
(9) Subsection (8) does not apply to an application unless the application
    contains—
    (a) the written consent of the owner of any land to which the
application applies; or
(b) any evidence required under subsection (5A).

(10) Subsection (3)(a)(ii) does not apply to an application if—
(a) the application is for work on land over which there is an existing
public utility easement in favour of a public sector entity; and
(b) the applicant is the public sector entity.

(11) Subsection (3)(a)(ii) does not apply to an application if—
(a) the application is for building work or operational work on land
designated for community infrastructure; and
(b) the building work or operational work is for the supply of the
community infrastructure.

For example, see the Water Act 2000, chapter 2, part 9 or chapter 8, part 2.

3.2.2 Approved material change of use required for certain
developments
(1) This section applies if, at the time an application is made—
(a) a structure or works, the subject of an application, may not be
used unless a development permit exists for the material change
of use of premises for which the structure is, or works are,
proposed; and
(b) there is no development permit for the change of use; and
(c) approval for the material change of use has not been applied for
in the application or a separate application.

(2) The application is taken also to be for the change of use.

3.2.3 Acknowledgment notices generally
(1) The assessment manager for an application must give the applicant a
notice (the “acknowledgment notice”) within—
(a) if the application is other than a development application
(superseded planning scheme)—10 business days after receiving
the properly made application (the “acknowledgment period”); or
(b) if the application is a development application (superseded
planning scheme)—30 business days after receiving the properly
made application (also the “acknowledgment period”).

(1A) Subsection (1) does not apply if—
(a) the application requires code assessment only; and
(b) there are no referral agencies (other than building referral
agencies), or all referral agencies have stated in writing that they
do not require the application to be referred to them under the
information and referral stage; and
(c) the application is not a development application (superseded
planning scheme).

(2) The acknowledgment notice must state the following—
(a) which of the following aspects of development the application
seeks a development approval for—
(i) carrying out building work;
(ii) carrying out plumbing or drainage work;
(iii) carrying out operational work;
(iv) reconfiguring a lot;
(v) making a material change of use of premises;
(vi) clearing vegetation on freehold land;
(b) the names of all referral agencies for the application;
(c) whether an aspect of the development applied for requires code assessment, and if so, the names of all codes that appear to the assessment manager to be applicable codes for the development;
(d) whether an aspect of the development applied for requires impact assessment, and if so, the public notification requirements;
(e) if the assessment manager does not intend to make an information request under section 3.3.6—that the assessment manager does not intend to make an information request;
(f) whether referral coordination is required.

3.2.5 Acknowledgment notices for applications under superseded planning schemes
(1) If an application is a development application (superseded planning scheme) in which the applicant advises that the applicant proposes to carry out development under a superseded planning scheme, the acknowledgment notice must state—
(a) that the applicant may proceed as proposed as if the development were to be carried out under the superseded planning scheme; or
(b) that a development permit is required for the application.
(2) If a notice is given under subsection (1)(a), section 3.2.3(2) does not apply.
(3) If an application is a development application (superseded planning scheme) in which the applicant asks the assessment manager to assess the application under the superseded planning scheme, the acknowledgment notice must state—
(a) that the application will be assessed under the superseded planning scheme; or
(b) that the application will be assessed under the existing planning scheme.
(4) If the applicant is given a notice under subsection (1)(a), the applicant may start the development for which the application was made as if the development were started under the superseded planning scheme.
(5) However, the applicant must start the development under subsection (4) within—
(a) if the development is a material change in use—4 years after the applicant is given the notice under subsection (1)(a); or
(b) if paragraph (a) does not apply—2 years after the applicant is given the notice under subsection (1)(a).

3.2.6 Acknowledgment notices if there are referral agencies or referral
coordination is required
(1) If there are referral agencies for an application, the acknowledgment notice must also state—
(a) the address of each referral agency; and
(b) for each referral agency—whether the referral agency is a concurrence agency or an advice agency.
(2) If referral coordination is required, the acknowledgment notice must state that the applicant is required to give the chief executive—
(a) a copy of the application; and
(b) a copy of the acknowledgment notice; and
(c) the fee prescribed under a regulation under this or another Act.45

Division 2—General matters about applications

3.2.7 Additional third party advice or comment
(1) The assessment manager or a concurrence agency for an application may ask any person for advice or comment about the application at any stage.
45 See section 3.3.3 (Applicant gives material to referral agency).
(2) However asking for and receiving advice or comment must not extend any stage.
(3) There is no particular way advice or comment may be asked for and received and the request may be by publicly notifying the application.
(4) To remove any doubt, it is declared that public notification under subsection (3) is not notification under part 4, division 2.

3.2.8 Public scrutiny of applications
(1) The assessment manager must keep each application and any supporting material available for inspection and purchase from the time the assessment manager receives the application until—
(aa) if the application is not a properly made application—the assessment manager decides not to accept the application; or
(a) the application is withdrawn or lapses; or
(b) if paragraphs (aa) and (a) do not apply—the end of the last period during which an appeal may be made against a decision on the application.
(2) Subsection (1) does not apply to supporting material to the extent the assessment manager is satisfied the material contains—
(a) sensitive security information; or
(b) other information not reasonably necessary for a third party to access for the purpose of evaluating or considering the effects of the development.
(2A) Also, the assessment manager may remove the name, address and signature of each person who made a submission before making the submission available for inspection and purchase.
(3) In this section—
“supporting material” means—
(a) the acknowledgment notice; and
(b) any information request for the application; and
(c) any material (including site plans, elevations and supporting reports) about the aspect of the application assessable against or having regard to the planning scheme that—
(i) is in the assessment manager’s possession when a request to inspect and purchase is made; and
(ii) has been given to the assessment manager at any time before a decision is made on the application

3.2.9 Changing an application
(1) Before an application is decided, the applicant may change the application by giving the assessment manager written notice of the change.
(2) When the assessment manager receives notice of the change, the assessment manager must advise any referral agencies for the original application and the changed application of the receipt of the notice and its effect under subsection (3).
(3) The IDAS process stops on the day the notice of the change is received by the assessment manager and starts again—
(a) from the start of the acknowledgment period, if 1 or more of the following apply—
(i) the application is an application that requires an acknowledgment notice to be given and the acknowledgment notice for the original application has not been given;
(ii) there are referral agencies for the original application, the changed application or both the original application and the changed application;
(iii) the original application involved only code assessment but the changed application involves impact assessment; or
(b) if paragraph (a)(i), (ii) or (iii) does not apply—from the start of the information request period.
(4) However, the IDAS process does not stop if—
(a) the change merely corrects a mistake about—
(i) the name or address of the applicant or owner; or
(ii) the address or other property details of the land to which the application applies; and
(b) the assessment manager is satisfied the change would not adversely affect the ability of a person to assess the changed application.
(5) To remove any doubt, it is declared that this section does not apply if an applicant changes an application in response to an information request.

3.2.10 Notification stage does not apply to some changed applications
The notification stage does not apply to a changed application if—
(a) the original application involved impact assessment; and
(b) the notification stage for the original application had been completed when the IDAS process stopped; and 
(c) the assessment manager is satisfied the change to the application, if the notification stage were to apply to the change, would not be likely to attract a submission objecting to the thing comprising the change.

3.2.11 Withdrawing an application
(1) An application may be withdrawn by the applicant, by written notice given to the assessment manager, at any time before the application is decided.
(2) If the applicant withdraws the application the assessment manager must give all referral agencies written notice of the withdrawal.
(3) If within 1 year of withdrawing the application, the applicant makes a later application that is not substantially different in its proposals from the withdrawn application, any properly made submission about the withdrawn application is taken to be a properly made submission about the later application.

3.2.12 Applications lapse in certain circumstances
(1) An application lapses if—
(a) the next action to be taken for the application under the IDAS process is to be taken by the applicant; and
(b) the period mentioned in subsection (2) has elapsed since the applicant became entitled to take the action; and
(c) the applicant has not taken the action.
(2) For subsection (1), the period mentioned is—
(a) if the next action is complying with section 3.3.3—3 months; or
(b) if the next action is complying with section 3.3.8—12 months; or
(c) for taking the actions mentioned in section 3.4.4—20 business days; or
(d) if the next action is complying with section 3.4.7—3 months.
(3) The period mentioned in subsection (2)(b) may be extended if the entity making the information request agrees with the applicant to extend the period.

3.2.13 Refunding fees
An assessment manager or a concurrence agency may, but need not, refund all or part of the fee paid to it to assess an application.

Division 3—End of application stage

3.2.15 When does application stage end
The application stage for a properly made application ends—
(a) if the application is an application that requires an
acknowledgment notice to be given—the day the
acknowledgment notice is given; or
(b) if the application is an application that does not require an
acknowledgment notice to be given—the day the application was
received.
46 Section 3.3.3 (Applicant gives material to referral agency)
47 Section 3.3.8 (Applicant responds to any information request)
48 Section 3.4.4 (Public notice of applications to be given)
49 Section 3.4.7 (Notice of compliance to be given to assessment manager)
Lodged by
A.J. Trelawney
P.O. Box 4053
Amiti Point 44183
(07) 409 7161

Particulars entered in the Register on the Titles listed below,

BE 400 PLAN OF SURV ORIG

V信念 Anthony John Trelawney.

* Names in full
* As Registered Owner of this land
* As Lessee of Miners Homestead

agree to this Plan, and dedicate the Public Use Land as shown hereon
in accordance with Section 50 of the Land Title Act 1994.

Signature of Owner

For Additional Plan & Document Notings Refer to CISP

Rule out whichever is inapplicable

NOTE: A Lessee of a Miners Homestead is unable to dedicate Public Use Land.

Council of the Shire of Redland

certifies that all the requirements of this Council, the Local Government Act 1993, the Local Government (Planning and Environment) Act 1990 and all Local Laws, and the City of Brisbane Act 1924, and all Ordinances thereunder, have been complied with and approves this plan of Subdivision, SUBJECT TO

Grant of Easement A in Lot 1 in favour of Lot 2 for Access Purposes.

Dated this 9th day of January 1995

Mayor

# An appointed officer

Chief Executive Officer

# Insert the name of the Local Government

# Delete for Local Governments other than the City of Brisbane

SURVEY EXAMINATION
Exam. Fee $ ........................
Receipt No
Date
Deposited
Examined
Passed 06/04/1995

CHARTING
CHARTING
10647043 Allot 10
10647046 Allot 7
10647067 Allot 8
10647048 Allot 9

CHARTED
Chartered

LODGERMENT FEES
Survey Exam $ 87
Log. Exam & Asst $ 175
4 New Titles $ 160
Photocopy $ 14
Footage $ 10
TOTAL $ 436

REFERENCES
Lands File
Local Government Reference 880797
Surveyors Reference 780

REGISTERED PLAN 880797
**IDAS Assessment Checklist**

(Formerly the “Referrals Checklist”)

**PLEASE NOTE:**

1. This checklist was formerly referred to as the ‘Referrals Checklist’. Some of the ‘Guides’ to using the IDAS Application Forms continue to refer to this document as the “Referrals Checklist”. The name of this checklist has changed to more accurately describe its function.
2. Under the IPA and IDAS framework, an application may require assessment by the local Council and/or certain Queensland State entities (e.g. Environmental Protection Agency, Dept. of Natural Resources and Mines, Queensland Heritage Council etc.).
3. This checklist is provided to assist applicants to determine when an application requires assessment by a Queensland State entity and may also assist the applicant to determine the assessment manager for the application.
4. Therefore, the completion of all questions in section 1 of this checklist is mandatory for all applications (other than those requiring the completion of Parts A & B only).
5. It is the responsibility of the applicant to accurately complete this checklist.
6. Depending on the nature of the application, an applicable State entity may be either the assessment manager or an IDAS referral agency for the application.
7. The assessment manager for the application will rely on the information provided by the applicant when completing this checklist (as well as any material lodged in support of the application) to identify in the Acknowledgement Notice, any applicable referral agencies for the application. The assessment manager will also rely on this information when identifying if the application triggers referral coordination.
8. To assist you in answering the following questions a series of guides are available free from www.ipa.qld.gov.au.
9. The other parts of Form 1 required to be completed by this checklist are available from the Council or the applicable State entity, or can be downloaded free from www.ipa.qld.gov.au.
10. Section 2 provides advice about the referrals that can be required for applications for building work assessable against the Standard Building Regulation 1993 (SBR).

**SECTION 1 - STATE ASSESSMENT** (completion mandatory)

**Environmentally relevant activity**

For more information refer to Guide 4.

Unless you answered “none of the above” to Q1, the application requires assessment by the administering authority.

If an entity, other than the administering authority, is the assessment manager for the application, the administering authority is a concurrence agency for the application in relation to this matter.

**Note:** An application involving ERA 19 and/or 20 will also require completion of Part K of Form 1 for approval when an allocation under the Water Act 2000 is required.

**State-controlled road matters**

For more information refer to Guide 3.

Unless you answered “none of the above” to Q2, the application triggers referral to the Department of Main Roads (DMR) as a referral agency.

In certain circumstances DMR will be an advice agency, while in other circumstances DMR will be a concurrence agency.

Schedule 2 of the IP Regulation will assist you to determine where DMR is an advice or concurrence agency for the application.

1. The application involves: (tick applicable box/es)
   - (i) an environmentally relevant activity (ERA) for which a code for environmental compliance has **not** been made - complete Part G of Form 1
   - (ii) a mobile or temporary ERA for which a code of environmental compliance has **not** been made - complete Part G of Form 1
   - (iii) none of the above

2. The application involves: (tick applicable box/es)
   - (i) development on land **contiguous** to a State controlled road and for -
     - (a) material change of use assessable against the planning scheme;
     - (b) reconfiguring a lot unless -
       - the total number of lots is not increased; and
       - the total number of lots abutting the State-controlled road is not increased;
     - (c) **operational work** (not associated with a material change of use assessable against the planning scheme or reconfiguring a lot mentioned in (b) above)--
       - associated with access to a State-controlled road; or
       - for filling or excavation; or
       - involving the redirection or intensification of site stormwater from the land, through a pipe with a cross-sectional area greater than 625 cm² that directs stormwater to a State-controlled road;

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1 The assessment manager is responsible for assessing and deciding an IDAS application. The assessment manager for an application is prescribed in schedule 8A of the IPA.
2 For additional information refer to Guide 6 “Does my application trigger the referral coordination process?”
3 The ‘administering authority’ may be the Environmental Protection Agency, the relevant local government (for a devolved ERA) or the Queensland Department of Primary Industries and Fisheries (for a delegated ERA).
4 Land contiguous to a State-controlled road is defined in schedule 14 of the IP Regulation to mean land - if part of the land is within 100m of the State-controlled road, or that is part of a future State-controlled road.
State-controlled road matters (cont)

- (ii) development on land not contiguous to a State-controlled road and -
  - (a) material change of use –
    - assessable against the local government's planning scheme; and
    - mentioned in schedule 5 of the IP Regulation and exceeding the thresholds set by that schedule;
  - (b) reconfiguring a lot for a purpose mentioned in schedule 5 of the IP Regulation and exceeding the thresholds set by that schedule;
  - (c) operational work (not associated with a material change of use assessable against the planning scheme or reconfiguring a lot mentioned in (b) above) –
    - assessable against the local government's planning scheme; and
    - mentioned in schedule 5 of the IP Regulation and exceeding the thresholds set by that schedule;

- (iii) none of the above

Clearing vegetation
For more information refer to Guide 12.

Unless you answered “none of the above” to Q3, the application requires assessment by the Department of Natural Resources and Mines (NR&M). If an agency other than NR&M is the assessment manager for the application, NR&M is a concurrence agency for the application in relation to this matter.

3. The application involves: (tick applicable box/es)
   - (i) material change of use –
     - (a) assessable against the planning scheme;
     - (b) on a the lot containing –
       - a category 1, 2 or 3 area shown on a property map of assessable vegetation; or
       - if there is no property map of assessable vegetation for the lot - remnant vegetation;
     - (c) where the existing use of the land is a rural or environmental use; and
     - (d) where the size of the land is 2 hectares or larger - complete Part J of Form 1
   - (ii) reconfiguring a lot –
     - (a) on a lot containing a category 1, 2 or 3 area shown on a property map of assessable vegetation or, if there is no property map of assessable vegetation for the lot, remnant vegetation;
     - (b) where the size of the lot before the reconfiguration is 2 hectares or larger;
     - (c) where 2 or more lots are created; and
     - (d) where the size of any lot created is 25 hectares or smaller - complete Part J of Form 1
   - (iii) operational work -
     - (a) for the clearing of native vegetation where the vegetation clearing is made assessable under Schedule 8 of the IPA; and
     - (b) not associated with a material change of use assessable against the planning scheme mentioned in (i) or reconfiguring a lot mentioned in (ii) - complete Part J of Form 1
   - (iv) none of the above

Strategic port land
For more information refer to Guide 11.

If you ticked (i) - the relevant Port Authority is the assessment manager for the application.

If you ticked (ii) Queensland Transport is a concurrence agency for the application.

4. The application involves:
   - (i) development on strategic port land as defined in the Transport Infrastructure Act 1994 (TI Act); - complete Part I of Form 1
   - (ii) a material change of use that is inconsistent with the land use plan approved under the TI Act for the strategic port land - complete Part I of Form 1
   - (iii) none of the above

Acid sulfate soils
For more information refer to Guide 10.

Unless you answered “none of the above” to Q5, the application requires assessment by Department of Natural Resources and Mines (NR&M).

If an agency other than NR&M is the assessment manager for the application, NR&M is an advice agency for the application in relation to this matter.

5. The application involves development on land situated in an identified local government area and where the surface of the land is: (tick applicable box)
   - (i) below 20m AHD and the development will involve the excavation of 1000m³ or more of soil or sediment at or below 5m AHD; or
   - (ii) at or below 5m AHD and the development will involve filling the site with 1000m³ or more of material
   - (iii) for none of the above

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5 The identified local government areas are: Aurukun, Bowen, Brisbane, Broadsound, Bundaberg, Burdekin, Burke, Burnett, Caboolture, Cairns, Calliope, Caloundra, Cardwell, Carpentaria, Cook, Cooloolah, Douglies, Fitzroy, Gladstone, Gold Coast, Hervey Bay, Hinchinbrook, IIsis, Johnstone, Livingstone, Logan, Mackay, Maroochy, Maryborough, Mirkum Vale, Morrington, Noosa, Pine Rivers, Redcliffe, Redland, Rockhampton, Sarina, Thuringowa, Tiaro, Torres, Townsville, Whitsunday.

6 Australian Height Datum (AHD).
6. Does the application involve a **material change of use** for a major hazard facility or possible major hazard facility as defined under the Dangerous Goods Safety Management Act 2001?

- NO
- YES - complete Part L of Form 1

7. The application involves:

- (i) **operational work**, for taking or interfering with water under the Water Act 2000, that is:
  - (a) in a watercourse, lake or spring, or from a dam constructed on a watercourse (eg. a pump, gravity diversion, stream re-direction, weir or dam) - complete Part K, Ks, Kd, or Ks of Form 1 whichever is applicable;
  - (b) for an artesian bore anywhere in the State, no matter what the use - complete Part K of Form 1;
  - (c) for a subartesian bore, in declared groundwater area, for use for purposes other than stock and/or domestic use - complete Part K, Ks of Form 1;
  - (d) for a subartesian bore, in certain declared groundwater area, for use for stock and/or domestic purposes - complete Part K, Ks of Form 1;
  - (e) for constructing a referable dam or that will increase the storage capacity of a referable dam by more than 10% - complete Part Ks of Form 1, or
  - (f) for taking or interfering with overland flow water - complete Parts Kd and G of Form 1
  - (ii) none of the above.

8. Does the application involve development for the removal of quarry material from a watercourse requiring an allocation notice under the Water Act 2000?

- NO
- YES - complete Parts K and G of Form 1

9. The application involves **operational work** that is:

- (i) **tidal work** as defined under the Coastal Protection and Management Act 1995 (the Coastal Act) – complete Part M of Form 1; or
- (ii) carried out within a **coastal management district** under the Coastal Act and for – complete Part M of Form 1 if any box (a) to (i) below is ticked,
  - (a) constructing or installing works in a watercourse between MHWS and HAT (i.e. other than those works in tidal water) where the development has been determined not to be assessable against the Water Act 2000;
  - (b) constructing a canal intended to be connected to tidal waters;
  - (c) constructing an artificial waterway;
  - (d) reclaiming land under tidal water;
  - (e) disposing of dredge spoil or other solid waste material in tidal water;
  - (f) interfering with quarry material on State coastal land above high-water mark;
  - (g) draining or allowing drainage or flow of water or other matter across State coastal land above high-water mark;
  - (h) removing or interfering with coastal dunes on land, other than State coastal land, that is in an erosion prone area and above high-water mark; or
  - (i) constructing a bank or bund wall to establish a ponded pasture on land, other than State coastal land, above high-water mark

- (ii) none of the above.
10. The application involves operational work that is: (tick the applicable boxes)

- (i) tidal work\(^\text{12}\) as defined under the Coastal Protection and Management Act 1995 (the Coastal Act) – complete Part M of Form 1; or
- (ii) carried out within a coastal management district\(^\text{13}\) under the Coastal Act and for:
  - (a) disposing of dredge spoil or other solid waste material in tidal water – complete Part M of Form 1;
  - (b) reclaiming land under tidal water – complete Part M of Form 1; or
  - (c) constructing a canal\(^\text{14}\), if the canal is associated with reconfiguring a lot – complete Part M of Form 1;
- (iii) none of the above.

11. The application involves: (tick the applicable boxes)

- (i) a material change of use assessable under a planning scheme involving operational work carried out completely or partly in a coastal management district\(^\text{15}\)
- (ii) a material change of use assessable under a planning scheme involving building work, carried out completely or partly in a coastal management district that is:
  - the construction of a new premises with a GFA\(^\text{16}\) of at least 1000m\(^2\)
  - the enlargement of the GFA of existing premises by more than 1000m\(^2\)
- (iii) reconfiguring a lot assessable under schedule 8 of the IPA where the land is situated completely or partly in a coastal management district
- (iv) reconfiguring a lot\(^\text{17}\) assessable under schedule 8 of the IPA and in connection with the construction of a canal\(^\text{14}\) – complete Part M of Form 1
- (v) none of the above

12. Does the application involve development below high water mark\(^\text{17}\) and within the limits of a port under the Transport Infrastructure Act 1994?

- NO
- YES – complete Part M of Form 1

13. Does the application involve operational work that is tidal work for a marina\(^\text{18}\) with more than 6 vessel berths?

- NO
- YES - complete Part M of Form 1

14. Does the application involve tidal works within the limits of strategic port land tidal areas\(^\text{19}\)?

- NO
- YES - complete Part M of Form 1

15. Does the application involve development in a heritage registered place as defined under the Queensland Heritage Act 1992?

- NO
- YES – complete Part C of Form 1

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\(^{12}\) Tidal work is defined in sch 10 of the IPA.

\(^{13}\) Coastal management district is defined in sch 10 of the IPA and means a coastal management district under the Coastal Protection and Management Act 1995, other than an area declared as a coastal management district under section 47(2) of that Act.

\(^{14}\) Canal means canal as defined under the Coastal Protection and Management Act 1995

\(^{15}\) GFA is defined in sch 14 of the IPA to mean the gross floor area. For a definition of how to calculate GFA, go to the planning scheme against which the application is being assessed.

\(^{16}\) Under s117 of the Coastal Protection and Management Act 1995, an application for reconfiguration, where the reconfiguration is associated with the construction of an artificial waterway, must be accompanied by the application for the operational works to construct the artificial waterway.

\(^{17}\) High water mark is defined in the Coastal Protection and Management Act 1995 and means the ordinary high water mark at spring tide.

\(^{18}\) Marina is defined in the Transport Operations (Maritime Pollution) Regulation 1995.

\(^{19}\) Strategic port land tidal areas are the areas generally 50 meters seaward of high water mark adjacent to strategic port land.
### Declared catchment areas

For more information, including a list of the declared catchment areas within Queensland, refer to [Guide 13](#).

Unless you answered "none of the above" to Q16, the application requires assessment by the Department of Natural Resources and Mines (NR&M).

If an agency other than NR&M is the assessment manager for the application, NR&M is a concurrence agency for the application in relation to this matter.

<table>
<thead>
<tr>
<th>Number</th>
<th>Question</th>
<th>Yes/No</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>16.1</td>
<td>The application involves development assessable against the planning scheme and on land designated for community infrastructure?</td>
<td>(i)</td>
<td>intended to be supplied by a public sector entity; and</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(ii)</td>
<td>on land not owned by or on behalf of the State; and</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(iii)</td>
<td>other than development –</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(a)</td>
<td>for the designated purpose; or</td>
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<tr>
<td></td>
<td></td>
<td>(b)</td>
<td>carried out by, or on behalf of, the designator.</td>
</tr>
</tbody>
</table>

**IDAS Assessment Checklist, Version 14.0, 19 September 2005**

### Contaminated land

Applications involving material change of use and/or reconfiguring a lot may trigger this referral.

For more information refer to [Guide 5](#).

Unless you answered "none of the above" to Q17, the application requires assessment by the Environmental Protection Agency (EPA). If an agency other than EPA is the assessment manager for the application, EPA will be a concurrence agency for the application in relation to this matter.

<table>
<thead>
<tr>
<th>Number</th>
<th>Question</th>
<th>Yes/No</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>17.1</td>
<td>The application involves:</td>
<td>(i)</td>
<td>reconfiguring a lot for which all of part of the premises are –</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(a)</td>
<td>premises mentioned in the IPA, schedule 8, part 1, table 2 –</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(b)</td>
<td>incomplete Part N of Form 1</td>
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<tr>
<td></td>
<td></td>
<td>(iii)</td>
<td>none of the above</td>
</tr>
</tbody>
</table>

### Electricity infrastructure

For more information refer to schedule 2 of the [IP Regulation](#).

Unless you answered "none of the above" to Q18, the application triggers referral to the agency to which the easement is granted in favour of an advice agency.

<table>
<thead>
<tr>
<th>Number</th>
<th>Question</th>
<th>Yes/No</th>
<th>Details</th>
</tr>
</thead>
<tbody>
<tr>
<td>18.1</td>
<td>The application involves:</td>
<td>(i)</td>
<td>reconfiguring a lot where any part of the lot is –</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(ii)</td>
<td>a material change of use, assessable against a planning scheme and not associated with reconfiguring a lot if –</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(iv)</td>
<td>operational work that is filling or excavation assessable against the planning scheme, not associated with reconfiguring a lot, if –</td>
</tr>
<tr>
<td></td>
<td></td>
<td>(v)</td>
<td>none of the above</td>
</tr>
</tbody>
</table>

### Land designated for community infrastructure

Applications involving development on land designated for community infrastructure may trigger this referral.

For more information refer to schedule 2 of the [IP Regulation](#).

If you answered "YES" to Q19, the application requires assessment by the chief executive of the department administering the Act, authorising the development for the designated purpose.

If an agency other than the designator is the assessment manager for the application, the designating agency will be a concurrence agency for the application in relation to this matter.
SEQ Regional Plan
For more information refer to schedule 2 of the IP Regulation.
Unless you answered “none of the above” to Q20, the application requires assessment by the Office of Urban Management (OUM).

20. The application involves a material change of use of premises in the SEQ Region\(^\text{20}\) for: (tick the applicable box/es)

- (i) urban activities\(^\text{21}\), other than where the premises are zoned for urban activities under a planning scheme in a rural village\(^\text{22}\) or the Mt Lindesay/North Beaudesert Study Area, for which all or part of the premises, the subject of the development, is in the –
  - (a) Regional Landscape and Rural Production Area;
  - (b) Rural Living Area;
  - (c) Investigation Area; or
  - (d) Mt Lindesay/North Beaudesert Investigation Area.

- (ii) rural residential purposes\(^\text{23}\) where the premises are not zoned for rural residential purposes and the premises are in the –
  - (a) Regional Landscape and Rural Production Area;
  - (b) Investigation Area; or
  - (c) Mt Lindesay/North Beaudesert Investigation Area;

- (iii) none of the above

Fisheries matters
For more information refer to schedule 2 of the IP Regulation.
Unless you answered “none of the above” to Q21, the application requires assessment by the Department of Primary Industries and Fisheries (DPI&F).
If an agency other than DPI&F is the assessment manager for the application, DPI&F is a concurrence agency for the application in relation to items (i) – (iv) and an advice agency in relation to item (v).

21. The application involves: (tick the applicable box/es)

- (i) an assessable material change of use for aquaculture - complete Part O1 of Form I;

- (ii) assessable operational work that is the construction or raising of a waterway barrier - complete Part O3 of Form I,

- (iii) assessable operational work completely or partly within a declared fish habitat area;

- (iv) assessable operational work that is the removal, destruction or damage of a marine plant - complete Part O2 of Form I;

- (v) development assessable under the IPA, schedule 8, part 1, on land that adjoins a declared fish habitat area;

- (vi) none of the above

Integration of land use and public transport
For more information refer to Guide 23, schedule 8A of the IPA, & schedule 2 of the IP Regulation.
Unless you answered “none of the above”, the application triggers referral to QT as a concurrence agency.

22. The application involves: (tick the applicable box/es)—

- (i) a material change of use assessable against the planning scheme for a purpose mentioned in schedule 13C of the IP Regulation and exceeding the thresholds set by that schedule.

- (ii) reconfiguring a lot—
  - (a) on land that is completely or partly within a public transport corridor, and the total number of lots increases;
  - (b) on land that is completely or partly within a future public transport corridor or an airport’s public safety area;
  - (c) on land that is within 400m of a public passenger transport facility or a future public passenger transport facility, and the total site area is 5000m\(^2\) or greater;
  - (d) for a residential purpose within the 25 ANEF contour for an airport;
  - (e) for a residential purpose resulting in 100 or more allotments.

- (iii) operational work assessable against the planning scheme, but not associated with a material change of use mentioned in (i) above or reconfiguring a lot mentioned in (ii) above, on land that—
  - (a) is completely or partly within a public transport corridor or a future public transport corridor;
  - (b) will result in work that encroaches into an airport’s operational airspace.

- (iv) none of the above

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20 Local Governments within the SEQ Region are identified in the South East Queensland Regional Plan as Beaudesert Shire, Boonah Shire, Brisbane City, Caboolture Shire, Caloundra City, Esk Shire, Gatton Shire, Gold Coast City, Ipswich City, Kilcoy Shire, Laidley Shire, Logan City, Maroochy Shire, Noosa Shire, Pine Rivers Shire, Redcliffe City, Redland Shire and Toowoomba City.

21 Urban activity means urban activity as defined in schedule 2, Part H Regulatory Provisions, South East Queensland Regional Plan. The term includes some facilities and purposes and excludes some purposes. A single residential dwelling on a lot is not included in urban activity.

22 Rural village means rural village as defined in schedule 2, Part H Regulatory Provisions, South East Queensland Regional Plan.

23 Rural residential purpose means rural residential purpose as defined in schedule 2, Part H Regulatory Provisions, South East Queensland Regional Plan.
Railway safety and efficiency
For more information refer to Guide 23, schedule 8A of the IPA & schedule 2 of the IP Regulation.
Unless you answered “none of the above”, the application triggers referral to QT as a concurrence agency.

23. The application involves: (tick the applicable box/es) —

☐ (i) a material change of use assessable against the planning scheme for a purpose mentioned in schedule 13D of the IP Regulation and exceeding the thresholds set by that schedule.

☐ (ii) reconfiguring a lot —

☐ (a) on land that is completely or partly within a future public transport corridor, future railway land or a railway tunnel easement;

☐ (b) on land that is within 400m of a Citytrain passenger railway station or a future Citytrain passenger railway station, and the total site area is 5000m² or greater;

☐ (c) on land that abuts rail corridor land, commercial corridor land or future railway land, and the total number of lots increases;

☐ (d) on land that abuts rail corridor land, commercial corridor land or future railway land and an easement abutting the corridor or future railway land is created;

☐ (e) on land that is completely or partly within 100m of, and abutting an approach to, a railway level crossing, and the total number of lots increases;

☐ (f) for a residential purpose resulting in 100 or more allotments.

☐ (iii) operational work assessable against the planning scheme, but not associated with a material change of use mentioned in (i) above or reconfiguring a lot mentioned in (ii) above, involving extracting, excavating or filling greater than 50m³, on land that—

☐ (a) is completely or partly within rail corridor land or commercial corridor land, and

☐ (b) is completely or partly within future railway land, or a railway tunnel easement;

☐ (c) abuts rail corridor land, commercial corridor land or future railway land, and

☐ (d) the work is within 25m of the railway boundary.

☐ (iv) none of the above.

Referral coordination
An information request requires referral coordination if the application involves –

(i) 3 or more concurrence agencies; or

(ii) a facility or area assessable under a planning scheme and prescribed in schedule 7 or 8 of the IP Regulation; or

(iii) development which is subject to an application for preliminary approval mentioned in s3.1.6 of the IPA.

For more information go to Guide 2 and Guide 6.

24. Does the application trigger referral coordination?

☐ NO

☐ YES, as the application: (tick the applicable box/es)

☐ (i) triggers 3 or more concurrence agencies;

☐ (ii) involves a material change of use made assessable under a planning scheme and prescribed in schedule 7 of the IP Regulation;

☐ (iii) involves a material change of use (other than a dwelling house, outbuilding or farm building) made assessable under a planning scheme, or reconfiguring a lot, in an area prescribed in schedule 8 of the IP Regulation;

☐ (iv) is for a preliminary approval mentioned in s3.1.6 of the IPA.

Referral agency responses prior to lodgement
Under s3.3.2 of the IPA, a referral agency may give a referral agency response on a matter within its jurisdiction about a proposal before an application for the proposal is made to the assessment manager.

This is commonly the case where an application requires referral to a building referral agency (eg. Qld Fire and Rescue Service).

25. Did a referral agency give a referral agency response under s3.3.2 of the IPA before the application was made to the assessment manager?

☐ NO

☐ YES - attach a copy of the referral agency/s response/s

PLEASE NOTE: The assessment manager may refuse to accept an application, which, at the time of lodgement, fails to provide the completed IDAS Assessment Checklist (if applicable).
### SECTION 2 – BUILDING REFERRALS (completion **not** mandatory)

**Note:** Below is a list of the referrals that can apply to an application for building work assessable against the Standard Building Regulation 1993 (SBR). This section of the IDAS Assessment Checklist is provided for **advice only**. This section of the IDAS Assessment Checklist is **not** required to be completed and lodged with an application for building work assessable against the SBR only.

<table>
<thead>
<tr>
<th>Referral Type</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>Fire safety</td>
<td>An application may trigger referral to Qld Fire and Rescue Services as an advice agency if the building work the subject of the application requires the installation of a fire safety system.</td>
</tr>
<tr>
<td>Fire safety for budget accommodation</td>
<td>An application may trigger referral to Qld Fire and Rescue Services as an advice agency if the building work the subject of the application requires the installation of a fire safety system for a budget accommodation building.</td>
</tr>
<tr>
<td>Spray painting</td>
<td>An application may trigger referral to the Department of Industrial Relations (DIR) as a concurrence agency if the application involves a workplace incorporating spray painting.</td>
</tr>
<tr>
<td>Retail meat premises</td>
<td>An application may trigger referral to Safe Food Qld as a concurrence agency if the application involves retail meat premises.</td>
</tr>
<tr>
<td>Private health facilities</td>
<td>An application may trigger referral to the Department of Health as a concurrence agency if the application involves a private health facility.</td>
</tr>
<tr>
<td>Workplace area less than 2.3m²</td>
<td>An application may trigger referral to the Department of Industrial Relations (DIR) as an advice agency if the application involves a workplace area less than 2.3m².</td>
</tr>
<tr>
<td>Land contiguous to a State-controlled road</td>
<td>An application may trigger referral to the Department of Main Roads as a concurrence agency or advice agency if the application involves land contiguous to a State-controlled road.</td>
</tr>
<tr>
<td>Pastoral workers accommodation</td>
<td>An application may trigger referral to the Department of Industrial Relations (DIR) as a concurrence agency if the application involves pastoral workers accommodation.</td>
</tr>
<tr>
<td>Child care centre</td>
<td>An application may trigger referral to the Department of Communities as a concurrence agency if the application involves a childcare centre.</td>
</tr>
<tr>
<td>Coastal development</td>
<td>An application may trigger referral to the Environmental Protection Agency (EPA) as a concurrence agency if the application involves land completely or partly seaward of a coastal building line.</td>
</tr>
<tr>
<td>Heritage</td>
<td>An application may trigger referral to the Heritage Council as a concurrence agency if the application involves a heritage registered place.</td>
</tr>
<tr>
<td>Fisheries matters</td>
<td>An application may trigger referral to the Department of Primary Industries and Fisheries (DPI&amp;F) as a concurrence agency if the application involves assessable building work in a declared fish habitat area.</td>
</tr>
<tr>
<td>Integration of land use and public transport</td>
<td>An application may trigger referral to Queensland Transport as a concurrence agency if the application involves existing or future public transport corridors, or airport operational airspace.</td>
</tr>
<tr>
<td>Railway safety and efficiency</td>
<td>An application may trigger referral to Queensland Transport as a concurrence agency if the application involves future railway land.</td>
</tr>
</tbody>
</table>

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24 Coastal building lines are prescribed under the Coastal Protection and Management Act 1995.
25 Operational airspace is as defined in State Planning Policy 1/02 “Development in the Vicinity of Certain Airports and Aviation Facilities.”
PART 3—INFORMATION AND REFERRAL STAGE

Division 1—Preliminary

3.3.1 Purpose of information and referral stage
The information and referral stage for an application—
(a) gives the assessment manager, and any concurrence agencies, the opportunity to ask the applicant for further information needed to assess the application; and
(b) gives concurrence agencies the opportunity to exercise their concurrence powers; and
(c) gives the assessment manager the opportunity to receive advice about the application from referral agencies.

3.3.2 Referral agency responses before application is made
(1) Nothing in this Act stops a referral agency from giving a referral agency response on a matter within its jurisdiction about a development before an application for the development is made to the assessment manager.
(2) However—
(a) a referral agency is not obliged to give a referral agency response mentioned in subsection (1) before the application is made; and
(b) if the development is development requiring referral coordination, a statement in the referral agency response that the agency does not require a referral under section 3.3.3(3)(b)(i) is of no effect.

Division 2—Information requests

3.3.3 Applicant gives material to referral agency
(1) The applicant must give each referral agency—
(a) a copy of the application (unless the referral agency already has a copy of the application); and
(b) a copy of the acknowledgment notice (unless the referral agency was the entity that gave the notice or is a building referral agency); and
(c) if the referral agency is a concurrence agency—the agency’s application fee prescribed under a regulation under this or another Act or, if the functions of the concurrence agency in relation to the application have been devolved or delegated to a local government, the fee that is, by resolution, adopted by the local government.
(2) The things mentioned in subsection (1)(a), (b) and (c) must be given to all referral agencies at about the same time.
(3) However, the applicant need not give a referral agency the things mentioned in subsection (1)(a), (b) and (c), if—
(a) the applicant gave the assessment manager a copy of the referral agency’s response mentioned in section 3.3.2(1) with the application; and
(b) the referral agency’s response states that—
(i) the agency does not require a referral under this section; or
(ii) the agency does not require a referral under this section if any conditions (including a time limit within which the application must be made) stated in the response are satisfied; and
(c) the statement is not stopped from having effect under section 3.3.2(2)(b), and any conditions mentioned in paragraph (b)(ii) are satisfied.

(4) The assessment manager may, on behalf of the applicant and with the applicant’s agreement, comply with subsection (1) for a fee, not more than the assessment manager’s reasonable costs of complying with subsection (1).

(5) To the extent the functions of a referral agency in relation to the application have been lawfully devolved or delegated to the assessment manager, subsections (1) to (4) (other than subsection (1)(c)) do not apply.

3.3.4 Applicant advises assessment manager
(1) After complying with section 3.3.3, the applicant must give the assessment manager written notice of—
(a) the day the applicant gave each referral agency the things mentioned in section 3.3.3(1)(a), (b) and (c); and
(b) if referral coordination is required—the day the applicant complied with section 3.3.5(2).

(2) To the extent the functions of a referral agency in relation to the application have been lawfully devolved or delegated to the assessment manager, subsection (1)(a) does not apply.

3.3.5 Referral coordination
(1) If the application involves 3 or more concurrence agencies, the information requests require coordination (“referral coordination”) by the chief executive.
(2) If referral coordination is required, the applicant must give the chief executive—
(a) a copy of the application; and
(b) a copy of the acknowledgment notice; and
(c) the fee prescribed under a regulation; and
(d) written notice of the day the applicant complied with section 3.3.3(1) for each referral agency.

3.3.6 Information requests to applicant (generally)
(1) This section does not apply if referral coordination is required.
(2) The assessment manager and each concurrence agency may ask the
applicant, by written request (an “information request”), to give further information needed to assess the application.

(3) A concurrence agency may only ask for information about a matter that is within its jurisdiction.

(4) If the assessment manager makes the request, the request must be made—

(a) for an application requiring an acknowledgment notice to be given—within 10 business days after giving the acknowledgment notice (the “information request period”); and

(b) for an application that does not require an acknowledgment notice to be given—within 10 business days after the day the application was received (also the “information request period”).

(4A) If a concurrence agency makes the request, the request must be made within 10 business days after the agency’s referral day (also the “information request period”).

(5) If an information request is made by a concurrence agency, the concurrence agency must—

(a) give the assessment manager a copy of the request; and

(b) advise the assessment manager of the day the request was made.

(6) The assessment manager or a concurrence agency may, by written notice given to the applicant and without the applicant’s agreement, extend the information request period by not more than 10 business days.

(7) Only 1 notice may be given under subsection (6) and it must be given before the information request period ends.

(8) The information request period may be further extended if the applicant, at any time, gives written agreement to the extension.

(9) If the information request period is extended for a concurrence agency, the concurrence agency must advise the assessment manager of the extension.

3.3.7 Information requests to applicant (referral coordination)

(1) This section applies if referral coordination is required.

(2) The chief executive may, within 20 business days after the chief executive receives the notice mentioned in section 3.3.5(2)(d) and after consulting the assessment manager and each referral agency—

(a) by written request (also an “information request”) ask the applicant to give further information needed to assess the application; or

(b) by written notice advise the applicant, the assessment manager and each referral agency that an information request will not be made under this section.

(3) The chief executive may, by written notice given to the applicant and without the applicant’s agreement, extend the information request period by not more than 10 business days.

(4) Only 1 notice may be given under subsection (3) and it must be given
before the information request period ends.

(5) The information request period may be further extended if the applicant, at any time, gives written agreement to the extension.

(6) If the chief executive extends the information request period, the chief executive must advise the assessment manager and each concurrence agency of the extension.

(7) If the chief executive does not give the applicant an information request under this section and has not given a notice under subsection (2)(b), the chief executive must advise the applicant, the assessment manager and each referral agency that an information request will not be made under this section.

3.3.8 Applicant responds to any information request

(1) If the applicant receives an information request from the assessment manager or a concurrence agency (the “requesting authority”), the applicant must respond by giving the requesting authority—

(a) all of the information requested; or

(b) part of the information requested together with a notice asking the requesting authority to proceed with the assessment of the application; or

(c) a notice—

(i) stating that the applicant does not intend to supply any of the information requested; and

(ii) asking the requesting authority to proceed with the assessment of the application.

(2) If the requesting authority is a concurrence agency, the applicant must also give a copy of the applicant’s response to the assessment manager.

(3) If the applicant receives an information request from the chief executive carrying out referral coordination, the applicant must give the assessment manager and each referral agency (but not the chief executive) a written response to the information request supplying—

(a) all of the information requested; or

(b) part of the information requested together with a notice asking the assessment manager and each referral agency to proceed with the assessment of the application; or

(c) a notice—

(i) stating that the applicant does not intend to supply any of the information requested; and

(ii) asking the assessment manager and each referral agency to proceed with the assessment of the application.

3.3.9 Referral agency advises assessment manager of response

Each referral agency must, after receiving the applicant’s response, advise the assessment manager of the day of the applicant’s response under section 3.3.8.
Division 3—Referral assistance

3.3.10 When referral assistance may be requested
(1) The applicant may make a written request to the chief executive for assistance (“referral assistance”) for an information request to which the applicant has not responded.
(2) The chief executive may give referral assistance if the chief executive is satisfied that—
(a) the information request, being a concurrence agency’s information request or an information request under referral coordination, is unreasonable or is inappropriate in the context of the application; or
(b) the request is in conflict with another information request.

3.3.11 Chief executive acknowledges receipt of referral assistance request
(1) After receiving a referral assistance request, the chief executive must give a notice acknowledging receipt of the request to—
(a) the applicant; and
(b) if the request involves the assessment manager—the assessment manager; and
(c) if the request involves a concurrence agency—the concurrence agency.
(2) The notice must state the day on which the request was received.

3.3.12 Chief executive may change information request
(1) If the chief executive decides to give referral assistance, the chief executive may, after consulting with the entity that made the information request, change the information request.
(2) However, the chief executive may change an information request made by a local government only if the local government agrees to the change.
(3) The chief executive must give a copy of the changed information request to the applicant and any entity whose information request has been changed.

3.3.13 Applicant may withdraw request for referral assistance
The applicant may, by written notice to the chief executive at any time, withdraw the request for referral assistance.

Division 4—Referral agency assessment

3.3.14 Referral agency assessment period
(1) The period a referral agency has to assess the application (the “referral agency’s assessment period”) is—
(a) the number of business days, starting on the day immediately
(a) after the agency’s referral day and being less than 30 business days, prescribed under a regulation; or
(b) if there is no regulation under paragraph (a)—30 business days, starting on the day after the agency’s referral day.

(2) A referral agency’s assessment period includes the information request period.

(3) A concurrence agency may, by written notice given to the applicant and without the applicant’s agreement, extend its referral agency’s assessment period by not more than—
(a) if a regulation under subsection (1)(a) has prescribed the referral agency’s assessment period—the number of business days, being less than 20 business days, prescribed under a regulation; or
(b) if paragraph (a) does not apply—20 business days.

(4) A notice under subsection (3) may be given only before the referral agency’s assessment period ends.

(5) The referral agency’s assessment period may be further extended, including for the purpose of providing further information to the referral agency, if the applicant, before the period ends, gives written agreement to the extension.

(6) If the referral agency’s assessment period is extended for a concurrence agency, the agency must advise the assessment manager of the extension.

(7) If referral coordination is not required, the referral agency’s assessment period does not include—
(a) any extension for giving an information request; or
(b) any period in which the agency is waiting for a response to an information request.

(8) If referral coordination is required, the referral agency’s assessment period does not include—
(a) if the chief executive gave an information request—the time between the agency’s referral day and the day the applicant responds under section 3.3.8(3); or
(b) if the chief executive does not give an information request—the time between the agency’s referral day and the day the chief executive gives notice that an information request will not be made.

### 3.3.15 Referral agency assesses application

(1) Each referral agency must, within the limits of its jurisdiction, assess the application—
(a) against the laws that are administered by, and the policies that are reasonably identifiable as policies applied by, the referral agency; and
(b) having regard to—
(i) any planning scheme in force, when the application was made, for the planning scheme area; and
(ii) any State planning policies not identified in the planning scheme as being appropriately reflected in the planning scheme;
and
(iii) if the land to which the application relates is designated land—it’s designation; and
(c) for a concurrence agency—against any applicable concurrence agency code.

(2) Despite subsection (1) a referral agency—
(a) may give the weight it considers appropriate to any laws, planning schemes, policies and codes, of the type mentioned in subsection (1), coming into effect after the application was made, but before the agency’s referral day; but
(b) must disregard any planning scheme for the planning scheme area if the referral agency’s jurisdiction is limited to considering the effect of the Standard Building Regulation, Standard Sewerage Law and Standard Water Supply Law on building, plumbing or drainage work.

3.3.16 Referral agency’s response
(1) If a concurrence agency wants the assessment manager to include concurrence agency conditions in the development approval, or to refuse the application, the concurrence agency must give its response (a “referral agency’s response”) to the assessment manager, and give a copy of its response to the applicant, during the referral agency’s assessment period.

(2) If an advice agency wants the assessment manager to consider its advice or recommendations when assessing the application, the advice agency must give its response (also a “referral agency’s response”) to the assessment manager, and give a copy of its response to the applicant, during the referral agency’s assessment period.

(3) If a referral agency does not give a response under subsection (1), the assessment manager may decide the application as if the agency had assessed the application and had no concurrence agency requirements.

3.3.17 How a concurrence agency may change its response
(1) Despite section 3.3.16(1), a concurrence agency may, after the end of the assessment period but before the application is decided, give a response or amend its response.

(2) Subsection (1) applies only if the applicant has given written agreement to the content of the response or the amended response.

(3) If a concurrence agency gives or amends a response under subsection (1), the concurrence agency must give—
(a) to the assessment manager—the response or the amended response and a copy of the agreement under subsection (2); and
(b) to the applicant—a copy of the response or the amended response.
3.3.18 Concurrence agency’s response powers
(1) A concurrence agency’s response may, within the limits of its jurisdiction, tell the assessment manager 1 or more of the following—
(a) the conditions that must attach to any development approval;
(b) that any approval must be for part only of the development;
(c) that any approval must be a preliminary approval only.
(2) Alternatively, a concurrence agency’s response must, within the limits of its jurisdiction, tell the assessment manager—
(a) it has no concurrence agency requirements; or
(b) to refuse the application.
(3) A concurrence agency’s response may also offer advice to the assessment manager about the application.
(4) A concurrence agency may only tell the assessment manager to refuse the application if the concurrence agency is satisfied that—
(a) the development does not comply with a law, policy or code mentioned in section 3.3.15(1)(a) or (c); and
(b) compliance with the law, policy or code can not be achieved by imposing conditions.
(5) However, to the extent a concurrence agency’s jurisdiction is about assessing the effects of development on designated land—
(a) subsection (4) does not apply; and
(b) the concurrence agency may only tell the assessment manager to refuse the application if the concurrence agency is satisfied the development would compromise the intent of the designation and the intent of the designation could not be achieved by imposing conditions on the development approval.
(6) Subsection (2)(b) does not apply to the extent a concurrence agency’s jurisdiction is about the assessment of the cost impacts of supplying infrastructure to development.
(7) If a concurrence agency’s response requires an application to be refused or requires a development approval to include conditions, the response must include reasons for the refusal or inclusion.

3.3.19 Advice agency’s response powers
(1) An advice agency’s response may, within the limits of its jurisdiction—
(a) recommend the conditions that should attach to approval of the application; or
(b) recommend the application be refused.
(2) An advice agency’s response may also offer advice to the assessment manager about the application or state that it has no advice to offer.

Division 5—End of information and referral stage

3.3.20 When does information and referral stage end
(1) If there are no referral agencies for the application, the information
and referral stage ends when—
(a) the assessment manager states in the acknowledgment notice that it does not intend to make an information request; or
(b) if a request has been made—the applicant has finished responding to the request; or
(c) if neither paragraph (a) nor paragraph (b) applies—the assessment manager’s information request period has ended.
(2) If there are referral agencies for the application, the information and referral stage ends when—
(a) the assessment manager has received the notice from the applicant under section 3.3.4; or
(b) an action mentioned in subsection (1)(a) or (b) has happened or the assessment manager’s information request period has ended; and
(c) all referral agency responses have been received by the assessment manager or, if all the responses have not been received, all referral agency assessment periods have ended.
PART 4—NOTIFICATION STAGE

Division 1—Preliminary

3.4.1 Purpose of notification stage
The notification stage gives a person—
(a) the opportunity to make submissions, including objections, that must be taken into account before an application is decided; and
(b) the opportunity to secure the right to appeal to the court about the assessment manager’s decision.

51 Section 3.3.4 (Applicant advises assessment manager)

3.4.2 When notification stage applies
(1) The notification stage applies to an application if any part of the application requires impact assessment.
(2) Subsection (1) applies even if code assessment is required for another part of the application.
(3) Even if a concurrence agency advises the assessment manager it requires the application to be refused, the notification stage still applies to the application.

3.4.3 When can notification stage start
(1) If there are no concurrence agencies and the assessment manager has stated in the acknowledgment notice that the assessment manager does not intend to make an information request, the applicant may start the notification stage as soon as the acknowledgment notice is given.
(2) If no information requests have been made during the last information request period, the applicant may start the notification period as soon as the last information request period ends.
(3) If an information request has been made during the information request period, the applicant may start the notification period as soon as the applicant gives—
(a) all information request responses to all information requests made; and
(b) copies of the responses to the assessment manager.

Division 2—Public notification

3.4.4 Public notice of applications to be given
(1) The applicant (or with the applicant’s written agreement, the assessment manager) must—
(a) publish a notice at least once in a newspaper circulating generally in the locality of the land; and
(b) place a notice on the land in the way prescribed under a regulation; and
(c) give a notice to the owners of all land adjoining the land.
(2) The notices must be in the approved form.
(3) If the assessment manager carries out notification on behalf of the applicant, the assessment manager may require the applicant to pay a fee, of not more than the assessment manager’s reasonable costs for carrying out the notification.
(4) For subsection (1)(c), roads, land below high-water mark and the beds and banks of rivers are to be taken not to be adjoining land.
(5) In this section—
“owner”, for land adjoining the land the subject of the application, means—
(a) if the adjoining land is subject to the Integrated Resort Development Act 1987 or the Sanctuary Cove Resort Act 1985—the primary thoroughfare body corporate; or
(b) if the adjoining land is subject to the Mixed Use Development Act 1993—the community body corporate; or
(c) subject to paragraphs (a) and (b), if the adjoining land is subject to the Building Units and Group Titles Act 1980—the body corporate; or
(d) if the adjoining land is, under the Body Corporate and Community Management Act 1997 scheme land for a community titles scheme—
(i) the body corporate for the scheme; or
(ii) if the adjoining land is scheme land for more than 1 community titles scheme—the body corporate for the community titles scheme that is a principal scheme; or
(e) if there is a time sharing scheme on the adjoining land and the name and address of a person has been notified under the Local Government Act 1993, section 715—
(i) the person; or
(ii) if paragraphs (a) to (g) do not apply—the person for the time being entitled to receive the rent for the land or would be entitled to receive the rent for it if it were let to a tenant at a rent.

3.4.5 Notification period for applications
The “notification period” for the application—
(a) must be not less than—
(i) if there is no referral coordination for the application—15 business days starting on the day after the last action under section 3.4.4(1) is carried out; or
(ii) if there is referral coordination for the
application—30 business days starting on the day after the last action under section 3.4.4(1) is carried out; and
(b) must not include any business days between 20 December and 5 January (in the following year).

3.4.6 Requirements for certain notices
(1) The notice placed on the land must remain on the land for all of the notification period.
(2) Each notice given to the owner of adjoining land must be given at about the same time as the notice is published in the newspaper and placed on the land.
(3) All actions mentioned in subsection (2) must be completed within 5 business days after the first of the actions is carried out.
(4) A regulation may prescribe different notification requirements for an application for development on land located—
(a) outside any local government area; or
(b) within a local government area but in a location where compliance with section 3.4.4(1) would be unduly onerous or would not give effective public notice.

3.4.7 Notice of compliance to be given to assessment manager
If the applicant carries out notification, the applicant must, after the notification period has ended, give the assessment manager written notice that the applicant has complied with the requirements of this division.

3.4.8 Circumstances when applications may be assessed and decided without certain requirements
Despite section 3.4.7, the assessment manager may assess and decide an application even if some of the requirements of this division have not been complied with, if the assessment manager is satisfied that any noncompliance has not—
(a) adversely affected the awareness of the public of the existence and nature of the application; or
(b) restricted the opportunity of the public to make properly made submissions.

3.4.9 Making submissions
(1) During the notification period, any person other than a concurrence agency may make a submission to the assessment manager about the application.
(2) The assessment manager must accept a submission if the submission is a properly made submission.
(3) However, the assessment manager may accept a written submission even if the submission is not a properly made submission.
(4) If the assessment manager has accepted a submission, the person who made the submission may, by written notice—
(a) during the notification period, amend the submission; or
(b) at any time before a decision about the application is made, withdraw the submission.

54 It is an offence to give the assessment manager a notice under this section that is false or misleading (see section 4.3.7).

3.4.9A Submissions made during notification period effective for later notification period

(1) This section applies if—
(a) a person makes a submission under section 3.4.9(1) and the submission is a properly made submission or the assessment manager accepts the submission under section 3.4.9(3); and
(b) the notification stage for the application is repeated for any reason.

(2) The properly made submission is taken to be a properly made submission for the later notification period and the submitter may, by written notice—
(a) during the later notification period, amend the submission; or
(b) at any time before a decision about the application is made, withdraw the submission.

(3) The submission the assessment manager accepted under section 3.4.9(3) is taken to be part of the common material for the application unless the person who made the submission withdraws the submission before a decision is made about the application.

**Division 3—End of notification stage**

3.4.10 When does notification stage end

The notification stage ends—
(a) if notification is carried out by the applicant—when the assessment manager receives written notice under section 3.4.7; or
(b) if notification is carried out by the assessment manager on behalf of the applicant—when the notification period ends.
PART 5—DECISION STAGE

Division 1—Preliminary

3.5.1 When does decision stage start
(1) If an acknowledgment notice or referral to a building referral agency for an application is required, the decision stage for the application starts the day after all other stages applying to the application have ended.
(2) If subsection (1) does not apply to an application, the decision stage for the application starts—
   (a) if an information request has been made about the application—the day the applicant responds to the information request; or
   (b) if an information request has not been made about the application—the day the application was received.
(3) However, the assessment manager may start assessing the application before the start of the decision stage.

3.5.2 Assessment necessary even if concurrence agency refuses application
This part applies even if a concurrence agency advises the assessment manager the concurrence agency requires the application to be refused.

Division 2—Assessment process

3.5.3 References in div 2 to codes, planning instruments, laws or policies
In this division (other than section 3.5.6), a reference to a code, planning instrument, law or policy is a reference to a code, planning instrument, law or policy in effect when the application was made.
55 See section 3.3.8 (Applicant responds to any information request).

3.5.4 Code assessment
(1) This section applies to any part of the application requiring code assessment.
(2) The assessment manager must assess the part of the application only against—
   (a) applicable codes (other than concurrence agency codes the assessment manager does not apply); and
   (b) subject to paragraph (a)—the common material.
(3) If the assessment manager is not a local government, the laws that are administered by, and the policies that are reasonably identifiable as policies applied by, the assessment manager and that are relevant to the application, are taken to be applicable codes in addition to the applicable codes mentioned in subsection (2)(a).
(4) If the application is a development application (superseded planning scheme) and the applicant has been given a notice under
section 3.2.5(3)(a), the assessment manager must assess and decide the application as if—
(a) the application were an application to which the superseded planning scheme applied; and
(b) the existing planning scheme was not in force.

3.5.5 Impact assessment
(1) This section applies to any part of the application requiring impact assessment.
(2) If the application is for development in a planning scheme area, the assessment manager must carry out the impact assessment having regard to the following—
(a) the common material;
(b) the planning scheme and any other relevant local planning instruments;
(c) any State planning policies not identified in the planning scheme as being appropriately reflected in the planning scheme;\(^{56}\)
\(^{56}\) See schedule 1, section 18(6) (Reconsidering proposed planning scheme for adverse effects on State interests).
(d) any development approval for, and any lawful use of, premises the subject of the application or adjacent premises;
(e) if the assessment manager is not a local government—the laws that are administered by, and the policies that are reasonably identifiable as policies applied by, the assessment manager and that are relevant to the application;
(f) the matters prescribed under a regulation (to the extent they apply to a particular proposal).
(3) If the application is for development outside a planning scheme area, the assessment manager must carry out the impact assessment having regard to the following—
(a) the common material;
(b) if the development could materially affect a planning scheme area—the planning scheme and any other relevant local planning instruments;
(c) any relevant State planning policies;
(d) any development approval for, and any lawful use of, premises the subject of the application or adjacent premises;
(e) if the assessment manager is not a local government—the laws that are administered by, and the policies that are reasonably identifiable as policies applied by, the assessment manager and that are relevant to the application;
(f) the matters prescribed under a regulation (to the extent they apply to a particular proposal).
(4) If the application is a development application (superseded planning scheme) and the applicant has been given a notice under section 3.2.5(3)(a), subsection (2)(b) does not apply and the assessment manager must assess and decide the application as if—
(a) the application were an application to which the superseded planning scheme applied; and
(b) the existing planning scheme was not in force.

3.5.6 Assessment manager may give weight to later codes, planning instruments, laws and policies
(1) This section does not apply if the application is a development application (superseded planning scheme).
(2) In assessing the application, the assessment manager may give the weight it is satisfied is appropriate to a code, planning instrument, law or policy that came into effect after the application was made, but—
(a) before the day the decision stage for the application started; or
(b) if the decision stage is stopped—before the day the decision stage is restarted.

Division 3—Decision

3.5.7 Decision making period (generally)
(1) The assessment manager must decide the application within 20 business days after the day the decision stage starts (the “decision making period”).
(2) The assessment manager may, by written notice given to the applicant and without the applicant’s agreement, extend the decision making period by not more than 20 business days.
(3) Only 1 notice may be given under subsection (2) and it must be given before the decision making period ends.
(4) However, the decision making period may be further extended, including for the purpose of providing further information to the assessment manager, if the applicant, before the period ends, gives written agreement to the extension.
(5) If there is a concurrence agency for the application, the decision must not be made before 10 business days after the day the information and referral stage ends, unless the applicant gives the assessment manager written notice that it does not intend to take action under section 3.5.9 or 3.5.10.

3.5.8 Decision making period (changed circumstances)
Despite section 3.5.7, the decision making period starts again from its beginning—
(a) if the applicant agrees to a concurrence agency giving the assessment manager a concurrence agency response or an amended concurrence agency response57 after the end of the referral agency’s assessment period—the day after the response or amended response is received by the assessment manager; or
(b) if the decision making period is stopped under section 3.5.9 or 3.5.10—the day after the assessment manager receives further
written notice withdrawing the notice stopping the decision making period.

3.5.9 Applicant may stop decision making period to make representations
(1) If the applicant wishes to make representations to a referral agency about the agency’s response, the applicant may, by written notice given to the assessment manager, for not more than 3 months, stop the decision making period at any time before the decision is made.
(2) If a notice is given, the decision making period stops the day the assessment manager receives the notice.
(3) The applicant may withdraw the notice at any time.

3.5.10 Applicant may stop decision making period to request chief executive’s assistance
(1) The applicant may, at any time before the application is decided—
(a) by written notice (the “request”) given to the chief executive, ask the chief executive to resolve conflict between 2 or more concurrence agency responses containing conditions the applicant is satisfied are inconsistent; and
(b) by written notice given to the assessment manager, for not more than 3 months, stop the decision making period.
(2) The request must identify the conditions in the concurrence agency responses the applicant is satisfied are inconsistent.
57 Under section 3.3.17, a concurrence agency may, with the agreement of the applicant, amend its response.
(3) After receiving the request, the chief executive must give a notice acknowledging receipt of the request to the applicant and each affected concurrence agency.
(4) In responding to the request, the chief executive may, after consulting the concurrence agencies, exercise all the powers of the concurrence agencies necessary to reissue 1 or more concurrence agency responses to address any inconsistency.
(5) If the chief executive reissues a concurrence agency response, the chief executive must give the response to the applicant and give a copy of the response to—
(a) the affected concurrence agency; and
(b) the assessment manager.
(6) The applicant may withdraw the notice given under subsection (1)(b) at any time.

3.5.11 Decision generally
(1) In deciding the application, the assessment manager must—
(a) approve all or part of the application and include in the approval any concurrence agency conditions; or
(b) approve all or part of the application subject to conditions decided by the assessment manager and include in the approval
any concurrence agency conditions; or
(c) refuse the application.
(2) However, the decision must be based on the assessments made under
division 2.
(3) To remove any doubt, it is declared that—
(a) a development approval includes the conditions imposed by the
assessment manager and any concurrence agency; and
(b) the assessment manager may give a preliminary approval even
though the applicant sought a development permit.

3.5.12 Decision if concurrence agency requires refusal
If a concurrence agency requires the application to be refused, the
assessment manager must refuse it.

3.5.13 Decision if application requires code assessment
(1) This section applies to any part of the application requiring code
assessment.
(2) The assessment manager’s decision may conflict with an applicable
code if there are sufficient grounds to justify the decision, having regard to
the purpose of the code.
(3) However—
(a) if the application is for building work—the assessment
manager’s decision must not conflict with the Building Act 1975;
and
(b) for assessment against a code in a planning scheme—the
assessment manager’s decision must not compromise the
achievement of the desired environmental outcomes for the
planning scheme area.
(4) The assessment manager may refuse the application only if the
assessment manager is satisfied—
(a) the development does not comply with the applicable code; and
(b) compliance with the code can not be achieved by imposing
conditions.
(5) Subsection (3)(b) applies only to the extent the decision is consistent
with any State planning policies not identified in the planning scheme as
being appropriately reflected in the planning scheme.

3.5.14 Decision if application requires impact assessment
(1) This section applies to any part of the application requiring impact
assessment.
(2) If the application is for development in a planning scheme area, the
assessment manager’s decision must not—
(a) compromise the achievement of the desired environmental
outcomes for the planning scheme area; or
(b) conflict with the planning scheme, unless there are sufficient
planning grounds to justify the decision.
If the application is for development outside a planning scheme area, the assessment manager’s decision must not compromise the achievement of the desired environmental outcomes for any planning scheme area that would be materially affected by the development if the development were approved.

Subsections (2)(a) and (3) apply only to the extent the decision is consistent with any State planning policies not identified in the planning scheme as being appropriately reflected in the planning scheme.

3.5.15 Decision notice
(1) The assessment manager must give written notice of the decision in the approved form (the “decision notice”) to—
(a) the applicant; and
(b) each referral agency; and
(c) if the assessment manager is not the local government and the development is in a local government area—the local government.
(2) The decision notice must be given within 5 business days after the day the decision is made and must state the following—
(a) the day the decision was made;
(b) the name and address of each referral agency;
(c) whether the application is approved, approved subject to conditions or refused;
(d) if the application is approved subject to conditions—
   (i) the conditions; and
   (ii) whether each condition is a concurrence agency or assessment manager condition, and if a concurrence agency condition, the name of the concurrence agency;
(e) if the application is refused—
   (i) whether the assessment manager was directed to refuse the application and, if so, the name of the concurrence agency directing refusal and whether the refusal is solely because of the concurrence agency’s direction; and
   (ii) the reasons for refusal;
(f) if the application is approved—whether the approval is a preliminary approval, a development permit or a combined preliminary approval and development permit;
(g) any other development permits necessary to allow the development to be carried out;
(h) any code the applicant may need to comply with for self-assessable development related to the development approved;
(i) whether or not there were any properly made submissions about the application;
(j) the rights of appeal for the applicant and any submitters.
(3) If the application is approved, the assessment manager must give a
copy of the decision notice to each principal submitter within 5 business
days after the earliest of the following happens—
(a) the applicant gives the assessment manager a written notice
stating that the applicant does not intend to make representations
mentioned in section 3.5.17(1);
(b) the applicant gives the assessment manager notice of the
applicant’s appeal;
(c) the applicant’s appeal period ends.
(3A) If the application is refused, the assessment manager must give a
copy of the decision notice to each principal submitter at about the same
time as the decision notice is given to the applicant.
(4) A copy of the relevant appeal provisions must also be given with
each decision notice or copy of decision notice.
(5) When the assessment manager gives a decision notice under
subsection (1), the assessment manager must also give a copy of any plans
and specifications approved by the assessment manager in relation to the
decision notice.

Division 4—Representations about conditions and other matters

3.5.16 Application of div 4
This division applies only during the applicant’s appeal period.

3.5.17 Changing conditions and other matters during the applicant’s
appeal period
(1) This section applies if the applicant makes representations to the
assessment manager about a matter stated in the decision notice, other than
a refusal or a matter about which a concurrence agency told the assessment
manager under section 3.3.18(1).
(2) If the assessment manager agrees with any of the representations, the
assessment manager must give a new decision notice (the “negotiated
decision notice”) to—
(a) the applicant; and
(b) each principal submitter; and
(c) each referral agency; and
(d) if the assessment manager is not the local government and the
development is in a local government area—the local
government.
(3) Only 1 negotiated decision notice may be given.
(4) The negotiated decision notice—
(a) must be given within 5 business days after the day the assessment
manager agrees with the representations; and
(b) must be in the same form as the decision notice previously given; and
(c) must state the nature of the changes; and
(d) replaces the decision notice previously given.
(5) If the assessment manager does not agree with any of the representations, the assessment manager must, within 5 business days after the day the assessment manager decides not to agree with any of the representations, give a written notice to the applicant stating the decision about the representations.

(6) Before the assessment manager agrees to a change under this section, the assessment manager must reconsider the matters considered when the original decision was made, to the extent the matters are relevant.

58 Section 3.3.18 (Concurrence agency’s response powers)

3.5.18 Applicant may suspend applicant’s appeal period

(1) If the applicant needs more time to make the written representations, the applicant may, by written notice given to the assessment manager, suspend the applicant’s appeal period.

(2) The applicant may act under subsection (1) only once.

(3) If the written representations are not made within 20 business days after the day written notice was given to the assessment manager, the balance of the applicant’s appeal period restarts.

(4) If the written representations are made within 20 business days after the day written notice was given to the assessment manager—

(a) if the applicant gives the assessment manager a notice withdrawing the notice under subsection (1)—the balance of the applicant’s appeal period restarts the day after the assessment manager receives the notice of withdrawal; or

(b) if the assessment manager gives the applicant a notice under section 3.5.17(5)—the balance of the applicant’s appeal period restarts the day after the applicant receives the notice; or

(c) if the assessment manager gives the applicant a negotiated decision notice—the applicant’s appeal period starts again the day after the applicant receives the negotiated decision notice.

Division 5—Approvals

3.5.19 When approval takes effect

If the application is approved, or approved subject to conditions, the decision notice, or if a negotiated decision notice is given, the negotiated decision notice, is taken to be the development approval and has effect—

(a) if there is no submitter and the applicant does not appeal the decision to the court—from the time the decision notice is given (or if a negotiated decision notice is given, from the time the negotiated decision notice is given); or

(b) if there is a submitter and the applicant does not appeal the decision to the court—when the submitter’s appeal period ends; or

(c) if an appeal is made to the court—subject to the decision of the court, when the appeal is finally decided.
3.5.20 When development may start
(1) Development may start when a development permit for the development takes effect.
(2) Subsection (1) applies subject to any condition applying under section 3.5.31(1)(b) to a development approval for the development.

3.5.21 When approval lapses
(1) The development approval for the application lapses at the end of the currency period for the approval unless—
(a) for development that is a material change of use—the change of use happens before the end of the currency period; or
(b) for a development permit that is reconfiguring a lot—the plan mentioned in section 3.7.2 for the reconfiguration of the lot is given to the local government for its approval before the end of the currency period; or
(c) for development not mentioned in paragraphs (a) and (b)—development under the approval substantially starts before the end of the currency period.
(2) To the extent the approval is for development that is a material change of use, the “currency period” is, if the application was not a development application (superseded planning scheme)—
(a) the 4 years starting the day the approval takes effect; or
(b) if the approval states or implies a time for the approval to lapse—the period from the day the approval takes effect until the stated or implied time.
(3) To the extent the approval is for development other than a material change of use, the “currency period” is, if the application was not a development application (superseded planning scheme)—
(a) the 2 years starting the day the approval takes effect; or
(b) if the approval states or implies a time for the approval to lapse—the period from the day the approval takes effect until the stated or implied time.
(4) To the extent the approval is for development that is a material change of use, the “currency period” is, if the application was a development application (superseded planning scheme), the longest of the following—
(a) the 4 years starting the day the approval takes effect;
(b) if the approval states or implies a time for the approval to lapse—the period from the day the approval takes effect until the stated or implied time;
(c) the 5 years starting the day the planning scheme or planning scheme policy, creating the superseded planning scheme, was adopted or the amendment, creating the superseded planning scheme, was adopted.
(5) To the extent the approval is for development other than a material change of use, the “currency period” is, if the application was a
development application (superseded planning scheme), the longest of the following—
(a) the 2 years starting the day the approval takes effect;
(b) if the approval states or implies a time for the approval to lapse—the period from the day the approval takes effect until the stated or implied time;
(c) the 5 years starting the day the planning scheme or planning scheme policy, creating the superseded planning scheme, was adopted or the amendment, creating the superseded planning scheme, was adopted.
(6) Despite subsections (2) to (5), to the extent the approval is for development that is reconfiguring a lot and the reconfiguration requires operational works, the “currency period” is—
(a) the 4 years starting the day the approval takes effect; or
(b) if the approval states or implies a time for the approval to lapse—the period from the day the approval takes effect until the stated or implied time.
(7) If a monetary security has been given in relation to the approval, the security must be released if the approval lapses.

3.5.22 Request to extend currency period
(1) If, before the development approval lapses, a person wants to extend a currency period, the person must, by written notice—
(a) advise each entity that was a concurrence agency that the person is asking for an extension of the currency period; and
(b) ask the assessment manager to extend the currency period.
(2) The notices must be given at about the same time, and the notice to the assessment manager must include a copy of each notice given under subsection (1)(a).
(3) If the person asking for the extension is not the owner of the land, the subject of the application, the request must contain the owner’s consent.
(4) If the assessment manager has a form for the request, the request must be in the form and be accompanied by—
(a) the fee for the request—
(i) if the assessment manager is a local government—set by a resolution of the local government; or
(ii) if the assessment manager is another public sector entity—the fee prescribed under a regulation under this or another Act; and
(b) a copy of each notice given under subsection (1)(a).

3.5.23 Deciding request to extend currency period
(1) If there was no concurrence agency, the assessment manager must approve or refuse the extension within 30 business days after receiving the request.
(2) If there was a concurrence agency, the assessment manager—
(a) must not approve or refuse the extension until at least 20 business days after receiving the request; but
(b) must approve or refuse the extension within 30 business days after receiving the request.
(3) The assessment manager and the person making the request may agree to extend the period within which the assessment manager must decide the request.
(4) A concurrence agency given a notice under section 3.5.22(1)(a) may give the assessment manager a written notice advising—
(a) it has no objection to the extension being approved; or
(b) it objects to the extension being approved and give reasons for the objection.
(5) If the assessment manager does not receive a written notice within 20 business days after the day the request was received by the assessment manager, the assessment manager must decide the request as if the concurrence agency had no objection to the request.
(6) Despite subsection (5), if the development approval was subject to a concurrence agency condition about the currency period, the assessment manager must not approve the request unless the concurrence agency advises it has no objection to the extension being approved.
(7) If the assessment manager receives a written notice from a concurrence agency within 20 business days after the day the request was received by the assessment manager, the assessment manager must have regard to the notice when deciding the request.
(8) The assessment manager may make a decision under this section even if the development approval was granted by the court.
(9) Despite section 3.5.21, the development approval does not lapse until the assessment manager decides the request.
(10) After deciding the request, the assessment manager must give written notice of the decision to the person asking for the extension and any concurrence agency that gave the assessment manager a notice under subsection (4).

3.5.24 Request to change development approval (other than a change of a condition)
(1) If a person wants a minor change to be made to a development approval, the person must, by written notice—
(a) advise each entity that was a concurrence agency that the person is asking for the change; and
(b) advise each entity that was a building referral agency, for the aspect of the application the subject of the request, that the person is asking for the change; and
(c) ask the assessment manager to make the change.
(2) The notices must be given at about the same time, and the notice to the assessment manager must include a copy of each notice given under subsection (1)(a).
If the person asking for the change is not the owner of the land, the subject of the application, the request must contain the owner’s consent.

(3A) If the development approval is for building work or operational work for the supply of community infrastructure on land designated for the community infrastructure—
(a) subsection (1) applies only to a person who intends to supply, or is supplying, the infrastructure; and
(b) subsection (3) does not apply.

If the assessment manager has a form for the request, the request must be in the form and be accompanied by—
(a) the fee for the request—
(i) if the assessment manager is a local government—set by a resolution of the local government; or
(ii) if the assessment manager is another public sector entity—the fee prescribed under a regulation under this or another Act; and
(b) a copy of the advice given to any concurrence or building referral agency for the application.

(5) This section does not apply if the change is a change of a condition of the development approval.

3.5.25 Deciding request to change development approval (other than a change of a condition)

(1) If there was no concurrence or building referral agency, the assessment manager must approve or refuse the change within 30 business days after receiving the request.

(2) If a concurrence or building referral agency is required to be given a notice under section 3.5.24(1)(a) or (b), the assessment manager—
(a) must not approve or refuse the change until the first of the following happens—
(i) a written notice has been received under subsection (4) from each concurrence or building referral agency;
(ii) the period of 20 business days after receiving the request ends; but
(b) must approve or refuse the change within 30 business days after receiving the request.

(3) The assessment manager and the person making the request may agree to extend the period within which the assessment manager must decide the request.

(4) A concurrence or building referral agency given a notice under section 3.5.24(1)(a) or (b) must give the assessment manager a written notice advising—
(a) it has no objection to the change being made; or
(b) it objects to the change being made and give reasons for the objection.

(5) If the assessment manager does not receive a written notice within
20 business days after the day the request was received by the assessment manager, the assessment manager must decide the request as if the concurrence or building referral agency had no objection to the request. (6) If the assessment manager receives a written notice from a concurrence or building referral agency within 20 business days after the day the request was received by the assessment manager, the assessment manager must have regard to the notice when deciding the request. (7) The assessment manager may make a decision under this section even if the development approval was granted by the court. (8) After deciding the request, the assessment manager must give written notice of the decision to the person asking for the change and any concurrence or building referral agency that gave the assessment manager a notice under subsection (4).

3.5.26 Request to cancel development approval
(1) The owner of the land, the subject of the application, or another person, with the owner’s consent, may, by written notice ask the assessment manager to cancel the development approval. (2) However, the owner must not ask the assessment manager to cancel the development approval in either of the following circumstances unless written consent to the cancellation is given by— (a) if there is a written arrangement between the owner and another person under which the other person proposes to buy the land—the other person; (b) if the application is for land the subject of a public utility easement—the entity in whose favour the easement is given. (3) Subsections (1) and (2) apply only if the request is made before development under the development approval starts. (3A) Subsection (1) applies to an owner of land designated for community infrastructure only if the owner is the entity who intends, or intended, to supply the infrastructure. (4) The request must be accompanied by the fee for the request— (a) if the assessment manager is a local government—set by a resolution of the local government; or (b) if the assessment manager is another public sector entity—the fee prescribed under a regulation under this or another Act. (5) After receiving the notice and the fee, the assessment manager must cancel the approval and give notice of the cancellation to the person who applied for the cancellation and to each concurrence agency. (6) If a monetary security has been given in relation to the approval, the security must be released if the approval is cancelled.

3.5.27 Certain approvals to be recorded on planning scheme
(1) If the development approval was given by a local government as assessment manager and the local government is satisfied the approval is inconsistent with the planning scheme, the local government must note the
approval on its planning scheme.
(2) To remove any doubt, it is declared that—
(a) the note on the planning scheme is not an amendment of the
planning scheme; and
(b) a contravention of subsection (1) does not affect the validity of
the approval given.

3.5.28 Approval attaches to land
(1) The development approval attaches to the land, the subject of the
application, and binds the owner, the owners successors in title and any
occupier of the land.
(2) To remove any doubt, it is declared that subsection (1) applies even if
later development (including reconfiguring a lot) is approved for the land
(or the land as reconfigured).

Division 6—Conditions

3.5.29 Application of div 6
This division applies to each condition in a development approval
whether the condition is a condition—
(a) a concurrence agency directs an assessment manager to impose; or
(b) decided by an assessment manager; or
(c) attached to the approval under the direction of the Minister.

3.5.30 Conditions must be relevant or reasonable
(1) A condition must—
(a) be relevant to, but not an unreasonable imposition on, the
development or use of premises as a consequence of the
development; or
(b) be reasonably required in respect of the development or use of
premises as a consequence of the development.
(2) Subsection (1) applies despite the laws that are administered by, and
the policies that are reasonably identifiable as policies applied by, an
assessment manager or concurrence agency.

3.5.31 Conditions generally
(1) A condition may—
(a) place a limit on how long a lawful use may continue or works
may remain in place; or
(b) state a development may not start until other development
permits, for development on the same premises, have been given
or other development on the same premises (including
development not covered by the development application) has
been substantially started or completed; or
(c) require development, or an aspect of development, to be
completed within a particular time and require the payment of security under an agreement under section 3.5.34.60 to support the condition.

(2) If a condition requires assessable development, or an aspect of assessable development, to be completed within a particular time and the assessable development or aspect is not completed within the time, the approval, to the extent it relates to the assessable development or aspect not completed, lapses.

3.5.32 Conditions that can not be imposed

(1) A condition must not—
(a) be inconsistent with a condition of an earlier development approval still in effect for the development; or
(b) require a monetary payment for the capital, operating and maintenance costs of, or works to be carried out for, community infrastructure; or
(c) state that works required to be carried out for a development must be undertaken by an entity other than the applicant; or
(d) require an access restriction strip.

(2) Nothing in this section stops a condition being imposed if the condition requires—
(a) a monetary payment, or works to be carried out, to protect or maintain the safety or efficiency of State owned or State controlled transport infrastructure; or
(b) a monetary payment for lessening the cost impacts of supplying infrastructure under section 3.5.35.

(3) In subsection (2)—

60 Section 3.5.34 (Agreements)

“State owned or State controlled transport infrastructure” means transport infrastructure under the *Transport Infrastructure Act 1994* that is owned or controlled by the State.61

3.5.33 Request to change or cancel conditions

(1) This section applies if—
(a) a person wants to change or cancel a condition; and
(b) no assessable development would arise from the change or cancellation.

(2) The person may, by written notice to the entity that decided the condition or required the condition to be imposed on or attached to the approval, ask the entity to change or cancel the condition.

(3) If the person is not the owner of the land to which the approval attaches, the request must contain the owner’s consent.

(3A) If the development approval is for building work or operational work for the supply of community infrastructure on land designated for the community infrastructure—
(a) subsection (1) applies only to a person who intends to supply, or is supplying, the infrastructure; and
(b) subsection (3) does not apply.
(4) If the entity has a form for the request, the request must be in the form and be accompanied by the fee for the request—
(a) if the entity is a local government—set by a resolution of the local government; or
(b) if the assessment manager is another public sector entity—the fee prescribed under a regulation under this or another Act.
(5) The entity must decide the request within 20 business days after receiving the request.
(6) The entity and the person may agree to extend the period within which the entity must decide the request.
(7) To the extent relevant, the entity must assess and decide the request having regard to—
(a) the matters the entity would have regard to if the request were a development application; and
(b) if submissions were made about the application under which the condition was originally imposed—the submissions.
(7A) Also, if a building referral agency gave advice about an aspect of the application the subject of the request, the assessment manager must have regard to the opinion of the agency about the change before deciding the request.
(8) The entity must give the person written notice of its decision.
(9) If the entity is a concurrence agency or the court, the entity must give the assessment manager written notice of any change or cancellation.
(10) The changed condition or cancellation takes effect from the day the notice is given to the person.
(11) Subsections (5) and (6) do not apply if the entity is the court.

3.5.34 Agreements
The applicant may enter into an agreement with an entity, including, for example, an assessment manager or a concurrence agency, to establish the obligations, or secure the performance, of a party to the agreement about a condition.

3.5.35 Limitations on conditions lessening cost impacts for infrastructure
(1) A condition requiring a monetary payment for lessening the cost impacts for infrastructure may be imposed only—
(a) for development that is inconsistent with—
(i) the form or scale of lots, works or uses under the planning scheme, having regard to the provisions of the planning scheme about infrastructure; or
(ii) the timing for infrastructure under the planning scheme; and
(b) to lessen the cost impacts for—
(i) State schools infrastructure; or
(ii) public transport infrastructure; or
(iii) State-controlled roads infrastructure; or
(iv) police or emergency services infrastructure; or
(v) a development infrastructure item; and
(c) having regard to guidelines approved by the chief executive
about the method of calculating cost impacts.

(1A) Also, an entity may not impose a condition mentioned in
subsection (1) for infrastructure that is not the entity’s infrastructure.

(2) The condition complies with section 3.5.30, to the extent—
(a) the condition is for lessening the cost impacts for a development
infrastructure item identified in an infrastructure charges plan; and
(b) the item is necessary, but not yet available, to service the land.

(2A) If the development mentioned in subsection (1)(a) is development
for residential (including rural residential) purposes, the development is
inconsistent with the timing for infrastructure under the planning scheme
only if—
(a) the planning scheme includes a benchmark development
sequence; and
(b) all or part of the premises is not in the first stage for development
shown in the benchmark development sequence.

(3) Subsection (2) applies even if a development infrastructure item
mentioned in subsection (1)(b)(v) is also intended to service other land.

(4) However, instead of imposing the condition, the applicant and an
entity may enter into a written agreement to make infrastructure mentioned
in subsection (1)(b) available to service the land.

(5) For infrastructure mentioned in subsection (1)(b)(i) to (iv)—
“cost impacts” means—
(a) the difference between—
(i) the present value of capital, operating and maintenance
costs made necessary by the development; and
(ii) the present value of capital, operating and maintenance
costs, if the approval had not been given; and
(b) the reasonable administrative costs for calculating the difference
under paragraph (a).

(6) For a development infrastructure item (the “item”)—
“cost impacts” means—
(a) the difference between—
(i) the present value of capital costs made necessary by the
development; and
(ii) the present value of capital costs, if the approval had not
been given; and
(b) additional interest charges, other financing costs and operating
and maintenance costs, made necessary by the development, for all development infrastructure items (other than the item) and payable by the entity to which the monetary payment must be paid; and
(c) the cost, or the anticipated cost, of amending the infrastructure charges plan because of the development; and
(d) reasonable administrative costs for calculating the difference under paragraph (a) and the charges and costs mentioned in paragraphs (b) and (c).

3.5.36 Matters a condition lessening cost impacts for infrastructure must deal with
(1) A condition permitted under section 3.5.35 must—
(a) identify the amount of the monetary payment; and
(b) state the entity to which the monetary payment must be paid.
(2) An amount identified under subsection (1)(a) must not be more than—
(a) to the extent the amount relates to the capital cost of infrastructure—the full capital cost; and
(b) to the extent the amount relates to the operating and maintenance costs of infrastructure—the additional operating and maintenance costs for 15 years.
(3) If a development approval is subject to a condition mentioned in subsection (1), the approval must also—
(a) for infrastructure under section 3.5.35(1)(b)(i) to (iv) that is a service—state the day by which the service is to be substantially started, having regard to the basis on which the cost impact was calculated; and
(b) for infrastructure under section 3.5.35(1)(b)(i) to (iv) that is other than a service—state the day by which construction of the infrastructure is to be substantially started, having regard to the basis on which the cost impact was calculated; and
(c) for a development infrastructure item necessary, but not yet available, to service the land—state the day by which the item is to be available to service the land, having regard to the basis on which the cost impact was calculated; and
(d) for a development infrastructure item not mentioned in paragraph (c)—state the day by which construction of the item is to be substantially started, having regard to the basis on which the cost impact was calculated.
(4) The monetary payment must be paid—
(a) for infrastructure mentioned in subsection (3)(a), (b) or (d)—at least 60 business days before the day stated under the subsection; or
(b) for infrastructure mentioned in subsection (3)(c)—the day the development starts.
Despite subsection (4), the applicant and the entity requiring the monetary payment may agree in writing to another time or for the payment to be made by instalments.

The entity to which the monetary payment has been paid must repay the payment to the owner of the land—

(a) for a payment made for infrastructure mentioned in subsection (3)(a)—if the service has not substantially started on the day stated under subsection (3)(a); or

(b) for a payment made for infrastructure mentioned in subsection (3)(b) or (d)—if the construction of the infrastructure has not substantially started on the day stated under the subsection; or

(c) if the development approval lapses or is cancelled.

For infrastructure mentioned in subsection (3)(c), if the applicant complies with subsection (4)(b), the entity to which payment was made must substantially start the infrastructure by the day stated in subsection (3)(c) unless the applicant and the entity agree in writing to a different day.

3.5.37 Covenants not to be inconsistent with development approvals

(1) Subsection (2) applies if a covenant under the \textit{Land Act 1994}, section 373A(4) or the \textit{Land Title Act 1994}, section 97A(3)(a) or (b) is entered into in connection with a development application.

(2) The covenant is of no effect unless it is entered into as a requirement of a condition of a development approval for the application.
The description of the survey should be prepared by the engineer of the survey. It should be drafted in a manner that is clear and concise. The description should reflect the details of the survey area and should include any relevant information. The description should also be accompanied by a map or sketch of the survey area.

In the field, the surveyor should be guided by the description and should take notes of any observations made during the survey. The notes should be recorded accurately and should include any relevant details.

The description of each survey should be recorded in the field book. The date of the survey should also be recorded. The description should be reviewed and approved by the surveyor and should be signed by the surveyor and the owner of the land.

The description should be clear and should include any relevant details. The description should be accompanied by a map or sketch of the survey area. The notes should be recorded accurately and should include any relevant details. The description should be reviewed and approved by the surveyor and should be signed by the surveyor and the owner of the land.
PART 6—MINISTERIAL IDAS POWERS

Division 1—Ministerial direction

3.6.1 When Ministerial direction may be given
The Minister may give a direction under this division about an application only if—
(a) the assessment manager has not decided the application; and
(b) the development involves a State interest; and
(c) the matter the subject of the direction is not within the jurisdiction of a concurrence agency for the application.

3.6.2 Notice of direction
   (1) The Minister may direct the assessment manager, by written notice, to take 1 or more of the following actions or to refuse the application—
   62 Land Act 1994, section 373A (Covenant by registration)
   63 Land Title Act 1994, section 97A (Covenant by registration)
   (a) to attach to the development approval the conditions stated in the notice;
   (b) to approve part only of the development;
   (c) to give a preliminary approval only.
   (2) The notice must state—
   (a) the nature of the State interest giving rise to the direction; and
   (b) the reasons for the Minister’s direction.
   (3) The Minister must give a copy of the notice to the applicant.

3.6.3 Effect of direction
   (1) If the Minister gives a direction, the assessment manager, in deciding the application, must comply with the direction.
   (2) For an appeal under sections 4.1.27 to 4.1.29, the Minister’s direction is taken to be a concurrence agency’s response and the chief executive is taken to be a co-respondent.

Division 2—Ministerial call in powers

3.6.4 Definition for div 2
In this division—
“Minister” includes the Minister administering the State Development and Public Works Organisation Act 1971.

3.6.5 When a development application may be called in
The Minister may, under this division, call in an application—
(a) only if the development involves a State interest; and
(b) at any time after the application is made until 10 business days after the later of the following—
   (i) the day the chief executive receives notice of an appeal
against the application;
(ii) the end of both the applicant’s appeal period and the
submitter’s appeal period for the decision on the
application.

3.6.6 Notice of call in
(1) The Minister may, by written notice given to the assessment
manager, call in the application and—
(a) if the application has not been decided by the assessment
manager—assess and decide the application in the place of the
assessment manager; or
(b) if the application has been decided by the assessment
manager—reassess and re-decide the application in the place of
the assessment manager.
(2) The notice must state—
(a) the point in the IDAS process from which the process must
restart; and
(b) the reasons for calling in the application.
(3) The Minister must give a copy of the notice to—
(a) the applicant; and
(b) any concurrence agency; and
(c) any submitter.

3.6.7 Effect of call in
(1) If the Minister calls in an application—
(a) the Minister is the assessment manager from the time the
application is called in until the Minister gives the decision
notice; and
(b) if the application is called in before the assessment manager
makes a decision on the application—the Minister must continue
the IDAS process from the point at which the application is
called in; and
(c) if the application is called in after the assessment manager makes
a decision on the application—the IDAS process starts again
from a point in the IDAS process the Minister decides, but before
the start of the decision stage; and
(d) until the Minister gives the decision notice a concurrence agency
is taken to be an advice agency; and
(e) the Minister’s decision on the application is taken to be the
original assessment manager’s decision but a person may not
appeal against the Minister’s decision; and
(f) if an appeal was made before the application was called in—the
appeal is of no further effect.
(2) The entity that was the assessment manager before the application
was called in (the “original assessment manager”) must give the Minister
all reasonable assistance the Minister requires to assess and decide the
application, including giving the Minister—
(a) all material about the application the assessment manager had before the application was called in; and
(b) any material received by the assessment manager after the application is called in.
(3) When the Minister gives the decision notice to the applicant and each submitter and referral agency, the Minister also must give a copy of the notice to the original assessment manager.

3.6.8 Process if call in decision does not deal with all aspects of the application
(1) If the Minister’s decision notice does not decide all aspects of the application, the Minister must, by written notice, refer the aspects not decided back to the assessment manager.
(2) If the Minister gives a notice under subsection (1), the notice must state the point in the IDAS process from which the process must restart for the aspects of the application not decided by the Minister.

3.6.9 Report about decision
(1) If the Minister calls in an application, the Minister must, after deciding the application, prepare a report about the Minister’s decision.
(2) Without limiting subsection (1), the Minister must include the following in the report—
(a) a copy of the application;
(b) a copy of the notice given under section 3.6.6;
(c) a copy of any referral agency’s response;
(d) an analysis of any submissions made about the application;
(e) a copy of the decision notice;
(f) the Minister’s reasons for the decision;
(g) a copy of any notice given under section 3.6.8.
(3) The Minister must cause a copy of the report to be tabled in the Legislative Assembly within 14 sitting days after the Minister’s decision is made.
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<th>Lot No.</th>
<th>Chain</th>
<th>Section</th>
<th>Township</th>
<th>Range</th>
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<td>31</td>
<td>2</td>
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<td>3</td>
<td></td>
<td>II</td>
<td>31</td>
<td>2</td>
<td>Wooded area</td>
</tr>
</tbody>
</table>

Wooded area poorly drained

Explanations:
- Wooded area

Map Reference:
- Sec IV

Notes:
- Wooded area poorly drained

Reference:
- Sec IV
PART 7—PLANS OF SUBDIVISION

3.7.1 Application of pt 7
This part applies to a plan (however called) for the reconfiguration of a lot if, under another Act, the plan requires the approval (in whatever form) of a local government before it can be registered or otherwise recorded under that Act.

Examples of plans to which this part applies—
1. A plan of subdivision that, under the Land Title Act 1994, section 50(g), requires the approval of a local government
2. A building units plan or group titles plan that, under the Building Units and Group Titles Act 1980, section 9(7), must be endorsed with, or be accompanied by, a certificate of a local government.

3.7.1A Definition for pt 7
In this part—
“plan” includes an agreement that reconfigures a lot by dividing land into parts rendering different parts of a lot immediately available for separate disposition or separate occupation, but does not include a lease for—
(a) a term, including renewal options, not exceeding 10 years; or
(b) all or part of a building.

3.7.2 Plan for reconfiguring under development permit
(1) This section applies if the reconfiguration proposed to be effected by the plan is authorised by a development permit.
(2) The plan must be given to the local government for its approval before the end of the currency period for the permit.
(3) The local government must approve the plan, if—
(a) the conditions of the development permit about the reconfiguration have been complied with; and
(b) for a reconfiguration that requires operational works—the conditions of the development permit for the operational works have been complied with; and
(c) there are no outstanding rates or charges levied by the local government or expenses that are a charge over the land under any Act; and
(d) the plan is prepared in accordance with the development permit.
(4) Alternatively, the local government may approve the plan, if—
(a) satisfactory security is given to the local government to ensure compliance with the requirements of subsection (3)(a) to (c); and
(b) the plan is prepared in accordance with the development permit.
(5) If the applicant has not complied with the requirements of subsection (3) or (4), the local government must, within 10 business days

67 See section 1.3.5 (Definitions for terms used in “development”), definition of
after receiving the plan, give the applicant written notice stating the actions to be taken to allow the plan to be approved.

### 3.7.3 Plan submitted under condition of development permit

1. This section applies if the plan is required to be submitted to the local government under a condition of a development permit.
2. The plan must be given to the local government—
   a. within the time stated in the condition; or
   b. if a time has not been stated in the condition—within 2 years after the decision notice containing the condition was given.
3. The local government must approve the plan, if—
   a. the conditions of the development permit about the reconfiguration have been complied with; and
   b. there are no outstanding rates or charges levied by the local government or expenses that are a charge over the land under any Act; and
   c. the plan is prepared in accordance with the development permit.
4. Alternatively, the local government must approve the plan, if—
   a. satisfactory security is given to the local government to ensure compliance with the requirements of subsection (3)(a) and (b); and
   b. the plan is prepared in accordance with the development permit.
5. If the applicant has not complied with the requirements of subsection (3) or (4), the local government must, within 10 business days after receiving the plan, give the applicant written notice stating the actions to be taken to allow the plan to be approved.

### 3.7.4 Plan for reconfiguring that is not assessable development

1. If the reconfiguration proposed to be effected by the plan is not assessable development, the plan may be given to the local government for its approval at any time.
2. The plan must be consistent with any development permit relevant to the plan.
3. If the applicant has not complied with the requirements of subsection (2), the local government must, within 10 business days after receiving the plan, give the applicant written notice stating the actions to be taken to allow the plan to be approved.

### 3.7.5 Endorsement of approval

1. The local government’s approval must be given for the plan within 20 business days after the applicant complies with section 3.7.2(3) or (4), section 3.7.3(3) or (4) or section 3.7.4(2) and the local government receives the plan.
2. The applicant may agree to an extension of the period mentioned in subsection (1).
3.7.6 When approved plan to be lodged for registration
The approved plan must be lodged for registration with the relevant registering authority within 6 months after the approval was given.

3.7.7 Local government approval subject to other Act
A requirement under this part for the local government to approve the plan has effect subject to any requirements of the Act under which the plan is to be registered or otherwise recorded.

3.7.8 When pt 7 does not apply
(1) This part does not apply to a plan (however called) for the reconfiguration of a lot if the reconfiguration is in relation to—
   (a) the acquisition, including by agreement, under the *Acquisition of Land Act 1967*, of land by a constructing authority, as defined under that Act, or an authorised electricity entity, for a purpose set out in the schedule of that Act; or
   (b) the acquisition by agreement, other than under the *Acquisition of Land Act 1967*, of land by a constructing authority, as defined under that Act, or an authorised electricity entity, for a purpose set out in the schedule of that Act; or
   (c) land held by the State, or a statutory body representing the State, for a purpose set out in the *Acquisition of Land Act 1967*, schedule, whether or not the land relates to an acquisition; or
   (d) a lot comprising strategic port land as defined under the *Transport Infrastructure Act 1994*.
(2) Also, this part does not apply to a plan lodged under the *Acquisition of Land Act 1967*, section 12A,88 as a result of a reconfiguration of a lot mentioned in subsection (1)(a).
(3) If, under subsection (1) or (2), this part does not apply to a plan, the *Land Title Act 1994*, sections 50(g) and (h) and 83(2)do not apply to the registration of the plan.
Vincent Bernard Ryan, of Cleveland

Authorised Surveyor, do hereby solemnly and sincerely declare that I have faithfully and truly surveyed, measured and marked on the ground the parcel of land herein referred to, and that the measurements and boundaries given in this plan are correct, and do not to the best of my belief in any way interfere with the rights or property of any persons, owners or occupiers of the land adjoining the above land, and described in the said plan; and I make this solemn declaration conscientiously believing the same to be true, and by virtue of the provisions of the "Survey Act, 1957-1967".

Y.B. Ryan
Authorised Surveyor

Made and Signed at Cleveland this 10th Day of May, 1972, before me.

Signature of Registrar of Titles or of a Magistrate.

The Council of the Shire of Stradbroke, on the 13th day of May, 1972, hereby certify that all the requirements of the Survey Act of 1957 and all By-Laws have been complied with and approves this Plan of Subdivision subject to the following conditions:

Those shown on the Plan are subject to the Right of Way shown thereon.

Dated this 13th Day of May, 1972.

(Signature)

Chairman of Council

Town Clerk

In consideration of the above-mentioned conditions, the Proprietor(s) of the land, agree to the Plan of Subdivision, and dedicate the new roads shown thereon to public use.

Signature of Proprietor(s)

For Additional Plan & Document Refer to Historic GIS.

Lodged by: Sciacca & Ryan

RESIDENT OF TITLE

REGISTERED

PLAN 130351
INFORMATION PAPER

CHARACTERISTICS OF A SOLUTION FOR RESOLUTION OF UNCERTAIN BOUNDARIES

DEPARTMENT OF NATURAL RESOURCES AND MINES

MAY 2003
FOREWORD

For many years, the Government has been aware of a number of areas of the state where there are problems in identifying the location of land boundaries. The purpose of this paper is to take the first step in developing a mechanism to address such problems.

This paper does not present a proposed mechanism, or options, for consideration. Rather, it presents what are considered to be the desirable characteristics of a solution to resolve uncertain boundaries. These are presented in Part 7 of this paper.

Before developing options for a solution, the Department is seeking feedback as to the appropriateness of these characteristics. In particular, comment is invited on the following:

• whether each of the characteristics is appropriate;
• whether there are other characteristics that a mechanism should have;
• how each of the characteristics could be applied in developing a solution;
• whether there may be any practical difficulties in implementing a mechanism with each of the characteristics.

In part 9, the paper presents a possible legislative option for Queensland, based on these characteristics. This is included in order to give some understanding of how the characteristics might be applied in practice, and should not be taken to reflect a preferred option. You are invited to comment on the extent to which this possible option satisfies the suggested characteristics.

You are also invited to propose any other option that may warrant further consideration, and provide an analysis of this option against the characteristics.

If you have any comments with regard to the above, please send them to me at the address below, by Friday 29 August 2003.

Russell Priezenow
Director Cadastral Policy

Contact details:

Dr Russell Priezenow
Director Cadastral Policy
Department of Natural Resources & Mines
GPO Box 2454
Brisbane  Qld  4001

Email: russell.priebbenow@nrm.qld.gov.au
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DEVELOPING A QUEENSLAND APPROACH TO THE RESOLUTION OF UNCERTAIN BOUNDARY ISSUES

1 Uncertain Boundaries

Currently there are a number of areas in Queensland where there is significant uncertainty about the true location of a property boundary. Generally, a group of parcels in the area are affected, and resolution of the problem requires the interests of all affected landholders to be considered. While there are mechanisms through which resolution of these problems can be progressed, they have serious deficiencies regarding the quality and cost of the solution that they deliver and thus there is a need for an effective process to better address this issue in the future.

The issue of uncertain boundaries includes situations of:

(i) multiple encroachments – in which the pattern of occupation (fences and buildings on or near the boundary) is not consistent with the originally surveyed pattern; and

(ii) insufficient information – in which the information necessary to re-establish boundaries is so limited that the cost of undertaking a survey of any individual parcel is prohibitive.

Where there is uncertainty in the location of the boundary, this can result in disputes between neighbours, difficulty in selling land, and difficulty in obtaining building or development approvals from local governments. These problems are compounded by the lack of a suitable mechanism to resolve the uncertainty.

2 Objective

The objective of this paper is to support the development of an effective mechanism to resolve situations where there are uncertain boundaries.

Key stakeholder consultation will be a critical component of the policy development process. To support the planned targeted consultation process, this paper overviews the current environment and issues, and offers steps toward the development of a new approach.

3 The Problem

There is no Queensland legislation whose purpose is to resolve uncertain boundary situations as a whole. Individual action can be taken between adjoining landholders in relation to a specific boundary, either by agreement or through the Supreme Court.

The Department of Natural Resources and Mines (NR&M) and its predecessors have informally resolved a number of uncertain boundary situations. However, the resolution of these issues relies on the owner supporting the process and being satisfied with the outcome. Without legislative backing, successful outcomes can only be based on goodwill.

For a number of years NR&M and its predecessors have been aware of a growing number of uncertain boundary areas being identified throughout Queensland. While the department knows these areas, the registered owners may be unaware of the situation in relation to their boundaries. The Public Sector Management Commission (PSMC), in its 1991 review of the then Department of Lands, recognised that the State has a responsibility to the public to protect the indefeasible nature of private ownership.
NR&M also acknowledges that our current awareness of situations of uncertain boundaries is not complete. As further re-developments occur, and development is initiated on land that has not been surveyed for many years, the awareness of this issue and need for clear steps in resolution is likely to grow.

While this issue has been considered through a number of forums (eg Law Reform Commission, PSMC and Surveyors Board) a formal resolution of this issue has not been achieved. However, findings from these prior investigations have been included in the research undertaken as a part of this current process.

4 Process to develop a solution

A current policy development process has been initiated, involving the following key steps:

- Research into issue, providing:
  - An audit of known situations;
  - An assessment of approaches adopted by other jurisdictions; and
  - An identification of key elements required in a Queensland solution.

- Identification of key stakeholders in developing a solution, in particular key Government agencies and key technical groups

- Development of an Information Paper (this paper) to support targeted consultation on this issue. This paper examines previous attempts to solve uncertain boundaries, proposes desirable characteristics for a solution, reviews what is happening in other jurisdictions both nationally and internationally and suggests a possible model for a legislative resolution in Queensland.

- Development of a subsequent proposal for legislative change.
  - Refinement of characteristics based on comments – September 2003
  - Development of proposed solution and consultation – October to December 2003
  - Submission to government seeking approval of solution – scheduled for early 2004

5 Background

5.1 Existing Queensland Situation

The mechanisms available to landholders in Queensland to address these situations are:

(i) to seek a determination of the location of the boundaries by the Supreme Court;
(ii) all affected landholders agree on a plan of subdivision of the land, and have titles reissued on the basis of that plan, providing ongoing certainty in the location of the boundaries; or
(iii) in cases of encroachment, seeking relief in the Supreme Court under the Property Law Act 1974.

Submissions from members of the community to the Department and to Members of Parliament indicate that there is a desire for a better mechanism to resolve such situations, and that there is a community expectation that the Government has a role to play in this resolution.
Resolution of uncertain boundaries in Queensland currently relies on the affected owners reaching agreement on a boundary configuration, and lodging a plan of resurvey or subdivision of that land on which new titles could be issued. The current procedure is hampered by having no effective mechanism to allow for determinations of boundaries, particularly in cases where no physical encroachment (of substantial structures) exist. There is no mechanism to involve owners who do not wish to participate in a process.

Without the development of a formal approach, existing uncertain boundary areas will continue unresolved for some time to come. There is little scope for cost recovery since the system operates without legislative support.
5.2 Management of this issue in other jurisdictions

The approaches adopted by other jurisdictions provide some guidance in this issue, and also allow a more complete analysis of possible options. The following table below presents the elements of six approaches. Where the table shows no information, the particular legislation did not appear to contain any specific provisions.

<table>
<thead>
<tr>
<th>Aspect of Model</th>
<th>NSW Model</th>
<th>Sth Aust Model</th>
<th>Vic (Adv Poss) Model</th>
<th>British Columbia Model</th>
<th>WA “doubtful boundaries”</th>
<th>Remembrement (implementations may vary)¹</th>
</tr>
</thead>
<tbody>
<tr>
<td>Officer responsible for process</td>
<td>Registrar of Titles (RoT)</td>
<td>Surveyor General (SG)</td>
<td>Registrar of Titles</td>
<td>Attorney General (AG)</td>
<td>Registrar of Titles</td>
<td>Public authority such as Local Govt</td>
</tr>
<tr>
<td>When process applies</td>
<td>When there is doubt as to the position of the boundary – appears to be limited to a single boundary</td>
<td>Generally the occupation of land within the area does not accord to a substantial extent with the boundaries of land as shown in records or plans kept in the Land Titles Office</td>
<td>When application made for correction of a title on the basis of adverse possession</td>
<td>A discrepancy exists or is thought to exist between occupation and a registered plan or description under which land is held.</td>
<td>doubtful boundaries of old subdivisions that is unoccupied or in part unoccupied</td>
<td>In the context of uncertain boundaries, criteria such as those in SA and Victorian models could apply</td>
</tr>
<tr>
<td>Applications – who may apply</td>
<td>Owner, purchaser, public authority, local govt or Govt dept head</td>
<td>RoT, SG, Commissioner of Highways, or a local Council</td>
<td>A person claiming he has acquired title by possession.</td>
<td>Local government, RoT, 2 or more owners or the AG</td>
<td>Registered owner may apply to have boundaries corrected where occupation disagrees with survey</td>
<td>Could include affected owners &amp; public authorities</td>
</tr>
<tr>
<td>Applications – how apply</td>
<td>Approved form, with supporting information &amp; fee</td>
<td>SG declares area in Gazette</td>
<td>Apply to RoT accompanied by survey plan of the land.</td>
<td>Approved form to RoT</td>
<td>Varies with particular implementation</td>
<td></td>
</tr>
</tbody>
</table>

¹ The process of remembrement was developed in European countries as a means of consolidating and amalgamating land parcels which had been fragmented through the law of succession over numerous generations. This was designed to achieve a more appropriate landholding in an endeavour to increase the efficiency of agricultural production. A form of it has also been used in urban renewal exercises in a number of major industrial cities throughout the world as industries move out of central locations.
<table>
<thead>
<tr>
<th>Aspect of Model</th>
<th>NSW Model</th>
<th>Sth Aust Model</th>
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<th>WA “doubtful boundaries”</th>
<th>Remembrément (implementations may vary)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Acceptance / Rejection of applications</td>
<td>Refused unless “there is doubt as to the position of the boundary”</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td>Acceptance limited to criteria establishing that boundaries are uncertain over a sufficiently large area to warrant the process being pursued</td>
</tr>
<tr>
<td>Advice to owners</td>
<td>Notice to owners adjoining boundary</td>
<td>Notice to local government and all persons with registered interest in land and those adjoining.</td>
<td>RoT advertises in local paper and advises persons with an interest in land. Notice posted on land.</td>
<td></td>
<td>Notice to owners and advertised in local newspapers</td>
<td>Before the scheme is initiated, notice must be published</td>
</tr>
<tr>
<td>Responsibility for carrying out of survey</td>
<td>LTO, for a fee paid by applicant</td>
<td>A surveyor conducting a survey within the CBA Applicant.</td>
<td>AG requests surveyor approved by SG</td>
<td></td>
<td>RoT</td>
<td>Public authority responsible for the process</td>
</tr>
<tr>
<td>Definition of extent of area over which method applied</td>
<td>By declaration of a “Confused Boundary Area” by SG</td>
<td></td>
<td>May be “Block outline” or “complete” survey.</td>
<td></td>
<td>External boundaries of original subdivision</td>
<td></td>
</tr>
<tr>
<td>Consultation re extent of area</td>
<td></td>
<td>Surveyor prepares preliminary advice and recommendation to AG for approval.</td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Criteria for determination of boundaries</td>
<td>All available evidence, but if inconclusive, what is just and reasonable</td>
<td>On the basis of what is fair and equitable having regard to: o existing physical boundaries; o the length of time that those boundaries have departed from the boundaries as shown in any public records of survey or as marked by existing survey marks; and o all other relevant factors</td>
<td>Based on longstanding (15-30 years) occupation.</td>
<td>Surveyor to re-establish existing survey but may depart in order to establish boundaries in agreement with occupation and improvements. Surveyor to endeavour to make adjustments to minimise compensation.</td>
<td>Agree with original subdivision or apportion any excess or determine as deemed equitable and expedient</td>
<td>Allotment to the owners in a fair and equitable manner, so that as far as possible the value of the new parcels allotted to them is equal to the value of their former parcels and where possible in approximately the same location as their former parcels.</td>
</tr>
<tr>
<td>Aspect of Model</td>
<td>NSW Model</td>
<td>Sth Aust Model</td>
<td>Vic (Adv Poss) Model</td>
<td>British Columbia Model</td>
<td>WA “doubtful boundaries”</td>
<td>Remembrance (implementations may vary)</td>
</tr>
<tr>
<td>---------------------------------</td>
<td>---------------------------------------------------------------------------</td>
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<td>--------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------------------</td>
<td>----------------------------------------------------------------------------------------------</td>
</tr>
<tr>
<td>Process for determination</td>
<td>RoT must consult with a registered surveyor, and if there is doubt re position of body, may make determination in consultation with SG.</td>
<td>Plan prepared by a surveyor (only surveys land relevant to the survey, not the whole CBA). Plan lodged and examined by RoT and forwarded to SG. Notification and appeal process commences.</td>
<td>AG forwards copy of plan to RoT and local government. Notification and appeal process commences.</td>
<td>RoT has survey made and a plan of subdivision prepared</td>
<td>All the parcels, highways and other real property in the district are thrown together and forms one common mass of real property. The necessary real property is removed from the mass to cater for highways, parks and public squares. The remainder of the common mass is divided into parcels for allotment to the owners.</td>
<td></td>
</tr>
<tr>
<td>Notification of proposed outcome – who notified</td>
<td>Applicant, adjoining owners, SG</td>
<td>Affected owners and local government.</td>
<td>Notice to all registered owners and those with registered interests.</td>
<td>affected owners and public</td>
<td>Affected owners</td>
<td></td>
</tr>
<tr>
<td>Notification of proposed outcome – process</td>
<td>Plan and report to all affected parties</td>
<td>Cadastral plan of land within a CBA must be placed on public display and affected owners notified in writing by the SG</td>
<td>Plan and surveyors report available for inspection by those notified.</td>
<td>Notices are given to affected owners and advertised in local newspapers</td>
<td>A period of time is allowed for inspection of the proposal (often done at different times in the process)</td>
<td></td>
</tr>
<tr>
<td>Objections to proposal – how and on what basis</td>
<td>Objections received by SG.</td>
<td>Caveat lodged within 21 days of notice by any person with an interest.</td>
<td>Objections and basis for compensation to AG within seven days of specified date of holding hearings</td>
<td>Objections or proposals to alter and supporting evidence to be lodged by appointed time</td>
<td>A period of time is allowed for objection to the proposal (often done at different times in the process)</td>
<td></td>
</tr>
<tr>
<td>Consideration of objections</td>
<td>Cavaet dealt with by Supreme or County court.</td>
<td>AG decides complaints and claims for compensation based on what is just and equitable.</td>
<td>RoT hears any objections to the proposed scheme</td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Finalisation of proposal</td>
<td>Plan and report, if accepted by affected parties, become part of a registrable document.</td>
<td>If no appeal lodged, or if appeal results in amendment, plan is approved by SG and forwarded to RoT to deposit in LTO.</td>
<td>RoT makes vesting order of land in applicant.</td>
<td>Lieutenant Governor in Council by order in council declares the boundaries</td>
<td>Notice of the subdivision is published in the gazette</td>
<td>The owners of seventy percent of the total assessed value of all the land in the district must consent in writing.</td>
</tr>
<tr>
<td>Aspect of Model</td>
<td>NSW Model</td>
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<tr>
<td>----------------</td>
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<td>----------------</td>
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<td>--------------------------</td>
<td>----------------------------------------</td>
</tr>
<tr>
<td><strong>Appeals – to whom</strong></td>
<td>Land and Environment Court</td>
<td>Land and Valuation Court</td>
<td></td>
<td>Court of Appeal</td>
<td>Commissioner appointed to hear complaints regarding compensation. Appeals of commissioners decisions to Supreme Court</td>
<td></td>
</tr>
<tr>
<td><strong>Appeals – process</strong></td>
<td>Owner or purchaser, if dissatisfied request referral</td>
<td>Any person who is notified can appeal.</td>
<td></td>
<td>Any decision of the AG may be appealed to the Court of Appeal.</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Status of determined boundary</strong></td>
<td>Shown on appropriate plans and taken to be the boundary</td>
<td>On deposit of plan in LTO, boundaries are determined.</td>
<td></td>
<td>On registration of order in council and plan, the plan becomes the official plan of the land.</td>
<td>RoT to use plan to issue any new titles or correct any titles</td>
<td>On completion of the scheme, the allotments are binding on all the owners.</td>
</tr>
<tr>
<td><strong>Correction of titles</strong></td>
<td>Titles noted. No plan prepared.</td>
<td>RoT may amend certificate of title or issue new one without the production of the duplicate.</td>
<td>RoT makes any amendments to Register to effect vesting order or issues new title.</td>
<td>The RoT corrects titles in accordance with the order in council and the special survey plan</td>
<td>The plan is enrolled by the RoT and used for future dealings</td>
<td>Plan prepared and titles issued.</td>
</tr>
<tr>
<td><strong>Costs – permitted costs</strong></td>
<td>Act is silent on costs.</td>
<td>Yes</td>
<td>Yes</td>
<td>Yes</td>
<td></td>
<td></td>
</tr>
<tr>
<td><strong>Costs – distribution</strong></td>
<td>RoT may require applicant to pay survey cost. Total cost $250.</td>
<td>Costs to local government who may then pass on by apportionment to registered owners.</td>
<td></td>
<td>Initial costs are borne by the RoT but may be recovered from owners requesting subsequent registration of dealings affecting the land</td>
<td>Local government or distributed through owners.</td>
<td></td>
</tr>
<tr>
<td>Aspect of Model</td>
<td>NSW Model</td>
<td>Sth Aust Model</td>
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<td>----------------------</td>
<td>------------------------</td>
<td>--------------------------</td>
<td>------------------------------------------</td>
</tr>
<tr>
<td>Compensation considerations</td>
<td>None</td>
<td>None</td>
<td>AG to use as guiding principle the survey done for all owners consequently all owners should share in any loss or benefit based on their area of the total affected by the survey, but where one owner loses and one gains based on improvements, the owner gaining should compensate the owner losing.</td>
<td>Any person injured by the action of the RoT may recover damages</td>
<td>Each owner who does not consent has the right to compensation. Compensation based on loss of value; loss of, damage to or costs of moving buildings or improvements; loss of income from use of buildings; loss resulting from acquisition of land by council.</td>
<td></td>
</tr>
<tr>
<td>Delegation of responsibilities</td>
<td>To an officer of the LTO</td>
<td></td>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other considerations</td>
<td>If owners agree, aspects of process dispensed with.</td>
<td></td>
<td></td>
<td>A certain margin of error is allowed in the description of any boundary.</td>
<td>A certain margin of error is allowed in the description of any boundary.</td>
<td></td>
</tr>
</tbody>
</table>
6 Key Issues

6.1 Dimension of this problem

In 1992, the Department sought to compile an inventory of uncertain boundary areas throughout the State. An invitation for submissions was circulated to all Regional Offices of the Department as well as the Local Government Association of Queensland and the Queensland Law Society. The Department also consulted with leading figures within the surveying profession, including the President of the Institution of Surveyors Australia (Qld) and also with the Registrar of Titles.

A significant number of areas of boundary uncertainty were identified as part of this process, in both rural and urban areas.

6.2 Types of Uncertain Boundaries

- **Multiple Encroachments**

  These normally occur in urban areas where a group of lots within a street section exhibits a pattern of occupation and development of land that does not conform to the pattern originally surveyed. This may only involve a few lots or may affect almost every lot within a street section or a subdivision.

  In many such cases some lots occupy more land than intended while others occupy less land than intended.

  In other instances the land occupied is more or less the intended shape and size of the lots as originally surveyed, however they are displaced to some degree from their intended position.

  In such instances any attempt to restore the boundaries to the original surveyed layout is likely to cause a series of substantial building encroachments.

- **Insufficient Evidence**

  When the extrinsic evidence of boundaries deteriorates, through natural or man-made causes, boundary reinstatement can become problematical. This may result in significant costs for searching for evidence on the ground that are out of proportion to the marginal values of the properties involved. Uncertainty in boundary locations results as surveyors attempt to evaluate the meagre evidence of the original boundary pattern.

  The cost of boundary location, where there is insufficient evidence, is borne disproportionately by those who first engage in land transactions in uncertain boundary areas. Subsequent surveys draw upon the often-comprehensive “first” survey when re-establishing other property boundaries.

- **Unsurveyed Lands**

  Submissions from the Local Government Association (LGA) in 1992 suggested that “Unsurveyed” lands should be included as a third category. The LGA highlighted the fact that local authorities face significant surveying costs when setting aside reserves and constructing roads in areas where large parcels of land have never been surveyed.

  For the purposes of this paper, unsurveyed lands will not be considered because, although the boundaries may be uncertain, until they are surveyed originally, they do not pose a problem in terms of re-establishment. The Department, however, has investigated cheaper, alternate methods of surveying boundaries in rural areas that may be suitable for use in surveys in large
rural holdings. The introduction of new technologies such as Global Positioning System (GPS) surveys in combination with existing techniques offers potential savings in the identification and final re-survey of unsurveyed lands.

6.3 Adverse Possession

In most jurisdictions in Australia, there is provision in their titles registry for adverse possession. However, each jurisdiction administers it differently. In those jurisdictions where adverse possession is permissible over part of a lot, this provides a mechanism for resolution of uncertain boundaries by permitting long-standing occupation to be adopted as the boundary.

6.4 Compensation issues

It is important to distinguish the issue of compensation from that of cost of rectification. The former issue involves consideration of whether or not persons have suffered loss as a result of resolving any uncertainty. The latter involves determining who will bear the costs of rectification – the State, affected landholders, or some other party.

Although the Torrens System of title includes a guarantee of title by the state, and a mechanism for compensation for loss of title, that guarantee and system of compensation does not apply to the area and dimensions of a parcel. Section 189.(1) of the Land Title Act 1994, in the subdivision titled “Compensation for loss of title”, states inter alia:

“A person is not entitled to compensation from the State for deprivation, loss or damage—
...
(e) caused when the registrar corrected an indefeasible title that mistakenly included the person’s land, unless the person suffered loss or damage under section 188A(1)(d); or
(f) because of an error in the location of a lot’s boundaries or in a lot’s area; or
(g) because of an error or shortage in area of a lot according to a plan lodged in the registry; or
...
”

However, there may be situations where the location of recently constructed improvements differs from long-accepted occupation. If a mechanism for resolving uncertain boundaries involves adjustment of the boundary configuration from that which would have been adopted in the absence of the recent improvements, it may be appropriate to require the beneficiaries of such adjustment to pay the affected landholder for the loss of land.
7 Characteristics of a Solution

What are the desirable characteristics of a solution to the problem of uncertain boundaries? The following are suggested as the key components of any proposed solution. A more detailed explanation of each of the characteristics follows the table.

7.1 Summary of Characteristics

<p>| | |</p>
<table>
<thead>
<tr>
<th></th>
<th></th>
</tr>
</thead>
<tbody>
<tr>
<td>1.</td>
<td>The mechanism is available to all</td>
</tr>
<tr>
<td>2.</td>
<td>There are clear criteria to define when an uncertain boundaries process may be adopted, and the extent of the area over which the process applies.</td>
</tr>
<tr>
<td>3.</td>
<td>A method exists to equitably apportion costs amongst affected parties.</td>
</tr>
<tr>
<td>4.</td>
<td>The overall cost of the solution is minimised</td>
</tr>
<tr>
<td>5.</td>
<td>The resolution must be, as far as possible, equitable to all affected owners.</td>
</tr>
<tr>
<td>6.</td>
<td>There must be the capacity for the relaxation of local government ordinances in relation to clearances to existing structures.</td>
</tr>
<tr>
<td>7.</td>
<td>At the conclusion of the process, there must be certainty for all registered owners and their successors in title as to the position of boundaries and their rights in title.</td>
</tr>
<tr>
<td>8.</td>
<td>The resolution of single common boundary disputes should be catered for.</td>
</tr>
<tr>
<td>9.</td>
<td>There must be a timely closure to the resolution of the uncertain boundaries and the correction of any affected certificates of titles.</td>
</tr>
<tr>
<td>10.</td>
<td>In a situation of multiple encroachments, consideration must be given to the existing possessory rights of the registered owners in determining the new boundary positions.</td>
</tr>
<tr>
<td>11.</td>
<td>Public consultation is required.</td>
</tr>
<tr>
<td>12.</td>
<td>An appeal mechanism is available to any person who feels disaffected by the proposed outcomes.</td>
</tr>
<tr>
<td>13.</td>
<td>The issue of compensation is addressed.</td>
</tr>
</tbody>
</table>

7.2 Explanation of characteristics

Following is an explanation of each of these suggested characteristics for a mechanism to resolve uncertain boundaries.

1. The mechanism is available to all

Any registered owner affected by an uncertain boundary should be able apply for the resolution of an uncertain boundary area. An agent of the owner (including a licensed surveyor), the local government or the Registrar of Titles may also apply.
2. Clear criteria are established to define when an uncertain boundaries process may be adopted, and the extent of the area over which the process applies.

Criteria need to be established to identify areas where, through the passage of time and of human activity on the built environment, the cadastral boundary framework has degraded to such an extent that boundaries are indeterminant or where the occupation evidence is significantly different from the boundary framework based on original surveyed dimensions. The Surveyors Board suggests that indicators of this could include:

- The extent of reinstatement necessary
- The amount of excess or shortage
- The size of differences between deed dimensions and occupation
- Disagreement between surveyors

3. A method exists to equitably apportion costs amongst affected parties.

The nature of many uncertain boundaries is such that, even if a process exists to resolve the uncertainty, unless there is a mechanism for apportioning the costs amongst the beneficiaries of the process, the cost will be borne disproportionately by the initiator of the process.

4. The overall cost of the solution is minimised

In any solution, the costs to the registered owners, who believe in good faith that they have a valid title issued by the State, should be minimised

5. The resolution must be, as far as possible, equitable to all affected owners.

At the end of the process, there should be no reasonable perception that the process has unreasonably disadvantaged or profited anyone.

6. In any solution there must be the capacity for the relaxation of local government ordinances in relation to clearances to existing structures.

A boundary determination in improved areas, particularly one of multiple encroachments, may result in clearances to improvements being below the local government minimums. Any legislative solution should allow for the relaxation of these minimum clearances for existing improvements. Subsequent redevelopment of a lot would require local government ordinances to be met.

7. At the conclusion of the process, there must be certainty for all registered owners and their successors in title as to the position of boundaries and their rights in title.

In any determination of an uncertain boundary, there needs to be a requirement for the boundary to be unambiguously defined at law, and marked on the ground by a surveyor so that all parties are certain of the final boundary position.

8. The resolution of single common boundary disputes should be catered for in any solution.

Surveyors are being asked to identify boundaries in urban areas that may have been originally surveyed in excess of 100 years ago. Two surveyors could quite easily disagree on
the location of a common boundary by utilising different evidence for its determination. A low cost mechanism is necessary to resolve individual boundary locations that are in dispute.

9. There must be a timely closure to the resolution of the uncertain boundaries and the correction of any affected certificates of titles.

If rectification is sought, it must be followed through to its ultimate conclusion within an appropriate or statutory timeframe.

10. In a situation of multiple encroachments, consideration must be given to the existing possessory rights of the registered owners in determining the new boundary positions.

This characteristic is based on the acceptance of long standing occupation as evidence of boundary location. It is also based on legal and legislative precedent wherein, in the absence of original survey monumentation, occupation that has been “long acquiesced in” is accepted as evidence of original boundary location. This should be seen as separate from acquisition of title by adverse possession.

11. Public consultation is a necessary characteristic of any solution.

As a minimum, all persons potentially affected in an uncertain boundary area need to be consulted with respect to the problem, the process for resolving it, and the proposed solution and how it affects them. This would need to be carried out within specified timeframes to ensure that a timely resolution is not jeopardised.

12. An appeal mechanism must be available to any person who feels disaffected by the proposed outcomes.

Courts have always been the final arbiters in deciding boundary positions. A reasonably low cost appeal Court, with appropriate expertise, must be available for hearing boundary determinations.

13. The issue of compensation is addressed.

The extent to which compensation is to be paid, and the mechanisms for doing so, needs to be defined as part of the solution.
8 Assessment of Existing Models against Specified Characteristics

<table>
<thead>
<tr>
<th>CHARACTERISTICS</th>
<th>NSW</th>
<th>SA</th>
<th>VIC</th>
<th>BRITISH COLUMBIA</th>
<th>WA</th>
<th>Rememrement</th>
</tr>
</thead>
<tbody>
<tr>
<td>Available to all</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Criteria for definition and extent</td>
<td>✓</td>
<td>✓</td>
<td>×</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Method for apportionment of costs</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Minimal cost</td>
<td>✓</td>
<td>×</td>
<td>×</td>
<td>✓</td>
<td>✓</td>
<td>×</td>
</tr>
<tr>
<td>Equitable to affected owners</td>
<td>✓</td>
<td>✓</td>
<td>×</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Relaxation of LG by-laws</td>
<td>×</td>
<td>×</td>
<td>×</td>
<td>×</td>
<td>×</td>
<td>✓</td>
</tr>
<tr>
<td>Certainty for owners</td>
<td>✓</td>
<td>✓</td>
<td>×</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Single boundary dispute resolution.</td>
<td>✓</td>
<td>×</td>
<td>×</td>
<td>×</td>
<td>×</td>
<td>×</td>
</tr>
<tr>
<td>Timely closure</td>
<td>✓</td>
<td>×</td>
<td>×</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Possessory rights for new boundaries</td>
<td>×</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Public consultation</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
<td>✓</td>
</tr>
<tr>
<td>Appeal mechanism</td>
<td>✓</td>
<td>✓</td>
<td>×</td>
<td>✓</td>
<td>×</td>
<td>✓</td>
</tr>
<tr>
<td>Compensation</td>
<td>×</td>
<td>×</td>
<td>×</td>
<td>✓</td>
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9 A Possible Legislative Option for Qld

The interjurisdictional analysis of approaches targeted to the management of uncertain boundary issues provides a number of potential tools for use in the Queensland situation.

*Multiple encroachments* - To resolve the uncertainty surrounding situations of multiple encroachments, a method of declaring uncertain boundary locations similar to that utilised in South Australia could be developed. Under that method, the Surveyor-General has the power to declare an area as a “Confused Boundary Area” where “generally the occupation of land within the area does not accord to a substantial extent with the boundaries of land as shown in records or plans kept in the Lands Titles Registration Office”. Surveyors conducting surveys in such areas adopt different reinstatement criteria.

*Insufficient evidence* – In order to satisfy uncertain boundaries based on insufficient evidence, legislation as in WA, where the Commissioner of Titles may determine doubtful boundaries of old subdivisions that are unoccupied or in part unoccupied, by having a survey made and a plan of subdivision prepared.

*Individual boundary disputes* – In order to satisfy individual boundary disputes, either between adjoining owners or between surveyors acting on behalf of the owners, legislation similar to that applied in NSW, allowing the Registrar-General of Titles to make determinations in regard to the position of boundaries where there is doubt as to the position of the boundary.

*Appeals* – Provided a consultative process is included in the legislation, and there is an opportunity for appeals to be heard by an independent body, the rights of the registered owners are not diminished by Government’s involvement in brokering a solution.

*Responsibility* – The Chief Executive of the agency responsible for surveying and land titling issues could be responsible for the boundary determination process, with an officer with appropriate expertise holding a delegation of the necessary powers. In determining a final solution, it will be necessary for the chief executive to liaise with the Registrar of Titles for the correction of the appropriate certificates of title.

9.1 Possible Legislative Solution

While this analysis has not identified a preferred option from those currently applied in other jurisdictions, it has identified strengths and weaknesses of such approaches, allowing Queensland to potentially build its own ideal approach. An option for such an approach is summarised below. This option has been developed to illustrate the application of the principles, and does not represent a proposed, or preferred, policy position.

*Responsibility for the process*

The Chief Executive is responsible for the boundary determination process.

*Applications*

Applications can be made by: a registered owner or their agent; a prospective purchaser where contract has been finalised or owner consents; the local government; the Registrar of Titles or the Chief Executive

The Chief Executive has the power to refuse an application.
Declaration of Area

If the Chief Executive considers that the matter relates only to the common boundary between a single parcel and the land adjoining it, the Chief Executive shall advise all relevant owners of the application and afford them the opportunity to provide a submission.

If the Chief Executive is satisfied that, generally, the occupation of land within an area under application does not accord to a significant extent with the boundaries of land as originally surveyed, the Chief Executive may recommend that the Minister declare an uncertain boundary area, of the type multiple encroachment.

If the Chief Executive is satisfied that in old subdivisions that are unoccupied or in part unoccupied, there is insufficient evidence to support the accurate reinstatement of the boundaries with certainty, the Chief Executive may recommend that the Minister declare an uncertain boundary area, of the type insufficient evidence.

Survey of Area

The Chief Executive may commission a survey to assist the determination of the boundaries.

The Chief Executive shall make a determination of the location of the boundaries, and have a plan of the affected parcels prepared, in accordance with the following criteria for boundary determination:

In the case of a single boundary –

a. the determination of the Chief Executive should be based on all available evidence and if inconclusive, what is fair and equitable; and

b. if the Chief Executive considers other boundaries may be affected, the Chief Executive can investigate these or initiate the declaration of an uncertain boundary area, in which case the relevant process (multiple encroachment or insufficient evidence) would be adopted.

In the case of multiple encroachment, the boundaries of the land must be determined on the basis of what is fair and equitable having regard to –

a. existing physical boundary features;

b. the length of time the boundary features have departed from the original surveyed boundaries;

c. departure from accepted boundary reinstatement evidence hierarchy; and

d. all other relevant factors.

In the case of insufficient information, the boundaries of the land must be determined on the basis of what is fair and equitable and conforming, as far as practicable, to the original boundary configuration, having regard to –

a. existing physical boundary features;

b. original survey measurements;

c. improvements on or near the boundaries; and

d. all other relevant factors.
Notice to affected parties

Once a plan is received by the Chief Executive, the Chief Executive must give notice to all affected parties with a registrable interest in the land within the declared area and to the local government and the Registrar of Titles –

- advising that the plan has been prepared and where it can be viewed; and
- specifying a period wherein submissions relating to the determination can be lodged with the Chief Executive.

The Registrar of Titles must place an administrative advice against all potentially affected titles regarding this plan.

Consultation

The Chief Executive must give due consideration to any submissions when considering the plan of survey and may –

- determine the boundaries of the survey with or without modification; and
- carry out further work as is necessary to meet the terms of the determination.

The Chief Executive must give notice of the terms of the determination and the reasons for any modification to the survey, if approved with modification, to –

- the surveyor responsible for the survey; and
- all persons who were entitled to be notified of the survey.

Appeals

Any person entitled to receive a notice may appeal the decision of the Chief Executive with the Land Court within twenty eight days of the notification.

The Land Court may hear whatever evidence it thinks fit whether or not the evidence was produced for the Chief Executive’s decision.

The Land Court may exercise one or more of the following –

- confirm or vary the decision or make in addition any decision that should have been made in the first instance;
- quash the decision and substitute any decision that should have been made in the first instance; or
- remit the subject matter of the appeal to the Chief Executive for further consideration.

In taking such action, the Land Court must be guided by the *criteria for boundary determination* specified above.

Formalisation of boundaries and titles

Once the boundaries are finally determined, the plan is lodged with the Registrar of Titles who may amend or issue new certificates of title without the production of a duplicate or without the consent of a person who appears to have an interest in the land.
Any amendment made to a certificate of title will be taken to have been made prior to the registration of any instrument registered on the title.

If necessary, the local government is to be advised to allow for relaxation of minimum clearance to existing improvements.

Once determined, the boundary positions become fixed as if the survey and plan of the determined boundaries is the survey of the affected parcels, subject only to an application to the Supreme Court for a boundary determination within 12 months. Should such an application be made to the Supreme Court, the Court would be required to make that determination on the basis of the criteria for boundary determination specified above.

**Costs**

Costs are apportioned equitably between the parties. Any owner may opt to defer the repayment of costs until ownership is transferred, with the amount owing indexed by CPI (or some other relevant factor).

**Compensation**

No compensation is payable on the basis of gained or lost entitlements as a result of the redefinition of the boundaries, whether this relates to a difference between the title area and the final area or to any change in status of the parcel as a result of changes in parcel dimension or area (e.g. planning considerations).

However, this does not preclude owners taking separate action for compensation, or other remedy, to resolve any encroachments existing following the determination of the location of the boundaries.

**Provision for recent improvements**

The process above does not incorporate resolution of encroachments into the boundary determination, where these encroachments are a result of recently constructed improvements. In some instances, improvements have been constructed following a recent survey that would not have followed the reinstatement approach presented above.

An approach to address this could involve the preparation of two plans, the first depicting the boundary configuration that would have been adopted in the absence of recent surveys and improvements, and the second showing adjustments to this configuration to resolve encroachments. The effect of these adjustments on the value of the affected parcels would need to be determined, and payments made accordingly. Such an approach should not apply to improvements constructed after the commencement of the provisions.

**10 Where to from here**

This purpose of this paper is to obtain feedback on the suggested characteristics of a solution. As such, it is one of a number of steps in developing a solution. Recipients of this paper are invited to comment on:

- whether each of the characteristics is appropriate;
- whether there are other characteristics that a mechanism should have;
- how each of the characteristics could be applied in developing a solution;
• whether there may be any practical difficulties in implementing a mechanism with each of
  the characteristics.

The characteristics will be reviewed in light of any comments that are received. One or more
options will then be developed, based on the revised characteristics. Relevant organisations will
be consulted regarding the proposed options before they are presented to the Government for
consideration.

It is likely that legislation will need to be drafted to implement the mechanism. This will occur
after the Government has considered the matter.

As indicated previously, the planned timetable for these tasks is as follows:
  o Refinement of characteristics based on comments – September 2003
  o Development of proposed solution and consultation – October to December 2003
  o Submission to government seeking approval of solution – scheduled for early 2004