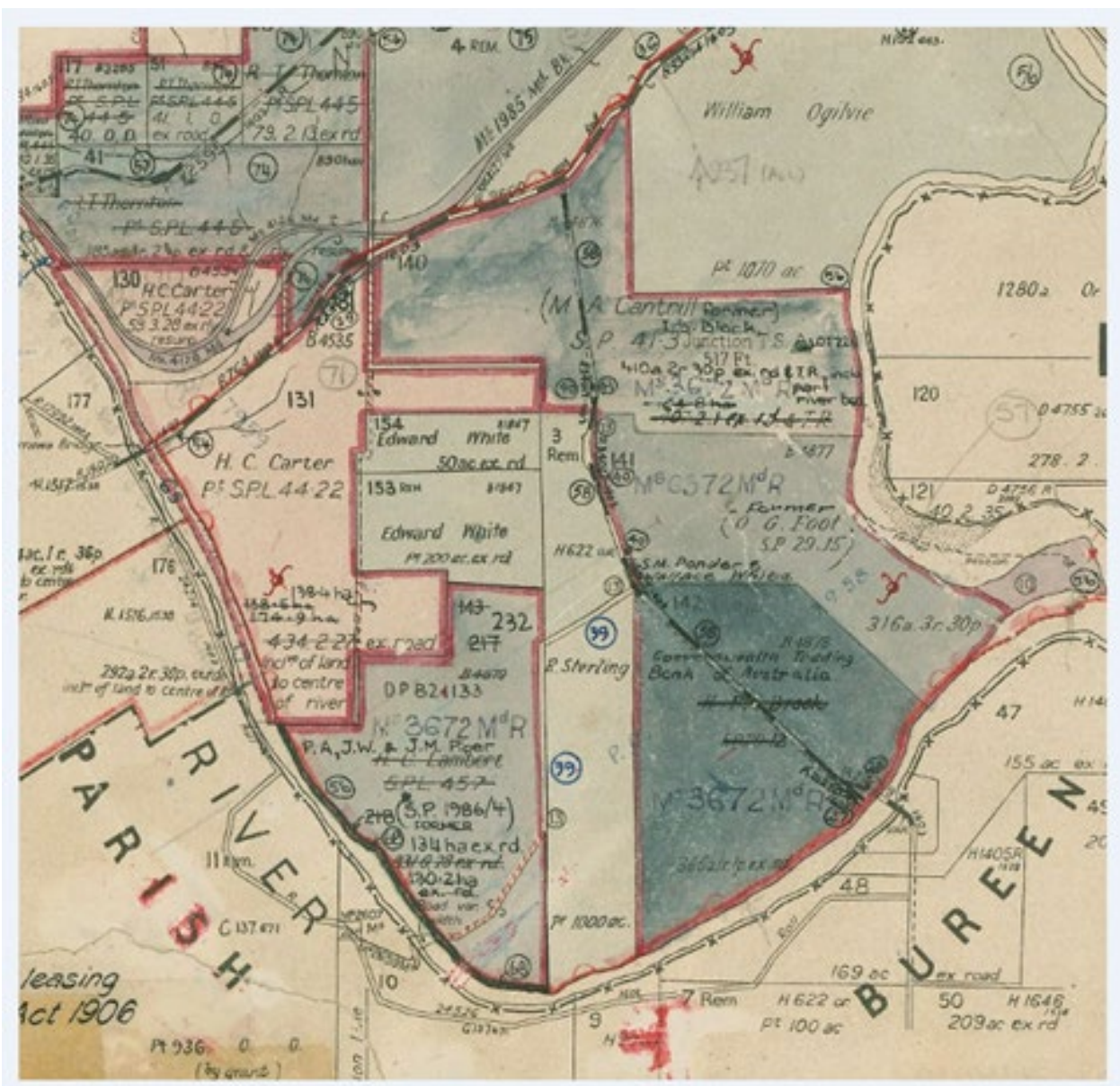


## Guideline

The preparation of native title assessment reports in support of applications for authorities granted under the *Mining Act 1992* and the *Petroleum (Onshore) Act 1991*

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## Glossary

The meanings and terms used in this document are set out below:

**Please note:** For ease of reading, we have not replicated in the body of the guideline the terms defined in the glossary.

Term	Meaning
ALA	assessment lease application
Applicant	a person or company applying for an authority
Application	an application to the Minister for an authority granted under the Mining Act or the Petroleum (Onshore) Act
Application area	the area of the authority applied for
Authority	in the context of this guideline: <ul style="list-style-type: none"><li>• an exploration licence, an assessment lease, a mining lease under the Mining Act; and</li><li>• a petroleum title under the Petroleum (Onshore) Act,</li></ul> and may include authorities for substratum works
Authority holder	the holder of an authority granted under the Mining Act or the Petroleum (Onshore) Act
Crown grant	the instrument whereby the Crown passed an estate in fee simple to the grantee
Crown road	has the meaning given in the Roads Act and, in the context of this Guideline, includes a road depicted on a historical parish map other than as a public road
exploration licence	an exploration licence under the Mining Act or the Petroleum (Onshore) Act (as applicable)
Exempted area	An area defined in sections 30 and 48 of the Mining Act and section 70 of the Petroleum (Onshore) Act where an authority holder must seek the consent of the Minister before undertaking activities.
Guideline	this document
Historical title search	in the context of this guideline, a historical search from the NSW Land Registry Services in respect of a folio of land
ILUA	an indigenous land use agreement

Term	Meaning
Minister	the Minister responsible for the administration of the Mining Act and the Petroleum (Onshore) Act
MEG	Mining, Exploration and Geoscience, Department of Regional NSW
MLA	mining lease application
Mining Act	the <i>Mining Act 1992</i> (NSW)
Native Title Act	the <i>Native Title Act 1993</i> (Cth)
Native title condition	the condition included in a standard exploration licence that the licence holder must obtain the Minister's consent before carrying out prospecting activities on land or water where native title might exist
Native title holder	a person who holds native title rights and interests over a particular area of land or waters (which may include a prescribed body corporate)
PALA	petroleum assessment lease application
PELA	petroleum exploration licence application
Petroleum (Onshore) Act	the <i>Petroleum (Onshore) Act 1991</i> (NSW)
Petroleum title	in the context of this Guideline, petroleum exploration licence, petroleum assessment lease, petroleum production lease and petroleum special prospecting authority
PSPA	petroleum special prospecting authority
PPLA	petroleum production lease application
Public road	has the meaning given in the Roads Act and, in the context of this Guideline, includes a road depicted on a historical parish map as a public road
Report	a native title extinguishment assessment report
Report checklist	the checklist provided in Annexure B to this guideline
Roads Act	the <i>Roads Act 1993</i> (NSW)
RTN	the 'right to negotiate' process required by Part 2, Division 3, Subdivision P of the Native Title Act

Term	Meaning
Scheduled interest	for NSW, these are the historic tenure types listed in Schedule 1 of the Native Title Act that are considered a ' <i>previous exclusive possession act</i> '
Standard exploration licence	an exploration licence that is subject to the native title condition
Tenure card	a record evidencing title to Crown land
Title search	in the context of this Guideline, a current copy of the Certificate of Title which shows the current owner, the land description and any dealings associated

# 1. Purpose of this guideline

The purpose of this guideline is to set out the information applicants for an authority under the *Mining Act 1992* and the *Petroleum (Onshore) Act 1991* need to provide Mining, Exploration and Geoscience (MEG) to demonstrate native title has been extinguished. As well as applications for the grant of an authority, it also applies to applications for Ministerial consent to prospect on land that is an exempted area.

To ensure authorities granted by MEG are valid with respect to native title, MEG must comply with the *Native Title Act 1993* unless the applicant can demonstrate that native title to the application area has been wholly extinguished.

If the applicant can demonstrate extinguishment of native title, the grant of the authority will not affect native title and compliance with the Native Title Act is not required. If not demonstrated, MEG will assume native title exists in the application area and will require that the grant of the authority is validated by one of the processes under the Native Title Act.

To assist, MEG has prepared a template for applicants to use when preparing extinguishment reports (Annexure C). Once a report is received, MEG will undertake the preliminary checks referred to in section 8.1 guided by the report checklist in Annexure B. MEG will return the report to applicants for further work if does not satisfy these preliminary checks.

This guideline does not modify the information that an applicant needs to provide to MEG in support of an assertion that native title has been extinguished in the application area for an authority. It simply details MEG's expectations.

This guideline does not:

- a) provide an exhaustive list of all documentation that MEG will accept to establish extinguishment, or
- b) explain the legal principles that are relevant to the extinguishment of native title, or
- c) detail how the Native Title Act might be complied with in situations where extinguishment of native cannot be demonstrated over the entire application area, or
- d) provide legal advice.



## 2. Understanding native title

### 2.1. What is native title?

Native title is the name Australian law gives to the traditional rights and interests that indigenous groups have practised, and continue to practise, over land and water. Native title reflects the close and continued connection indigenous groups have with land and water.

Native title rights and interests may include the right to live and camp in an area, conduct ceremonies, hunt and fish, collect food and resources, build shelters and visit places of cultural importance.

Native title rights and interests are recognised through the native title claim process under the Native Title Act. Determinations that native title exists, or does not exist, in a particular area are made by the Federal Court of Australia (or in rare cases the High Court).

When assessing an application, MEG assumes native title exists unless the applicant is able to prove otherwise. As noted, if extinguishment of native title cannot be demonstrated over the entire application area, MEG will require the grant of the authority to be validated by one of the processes under the Native Title Act, such as the RTN process.

### 2.2. Where does native title exist?

Native title may exist in any land or waters where indigenous people have maintained a connection in accordance with their traditional law and custom. If this connection is lost, native title will be extinguished, and no native title rights will attach to the area.

Native title is most commonly extinguished by past Acts of the Crown that are inconsistent with the continued existence of native title, including:

- a) granting a freehold interest<sup>1</sup>
- b) building roads, airports, railways, schools or other public works before 23 December 1996
- c) compulsory acquisition of land, and
- a) granting a leasehold interest that confers exclusive possession.

For this reason, native title is most likely to continue to exist over public or vacant Crown land, such as:

- a) state forests
- b) national parks
- c) public reserves
- d) areas subject to non-exclusive leases from the Crown
- e) coastal areas, or
- f) beds and banks of some watercourses.

## 3. Understanding extinguishment assessment reports

### 3.1. What is the purpose of an extinguishment assessment report?

A native title extinguishment assessment report provides evidence regarding whether or not native title is extinguished in land subject to an application for an authority. If the Minister is satisfied that native title has been extinguished in the entire application area, the authority may be granted

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<sup>1</sup> Native title can still exist in land held freehold where it has been transferred under the *Aboriginal Land Rights Act 1984* (NSW).

without the Native Title Act applying. The Minister's decision is based on MEG's recommendation, which is, in turn, informed by the tenure history documents provided by the applicant.

To ensure the Native Title Act is applied appropriately, and to facilitate the timely consideration of extinguishment information, MEG prefers applicants for an authority to provide an extinguishment assessment report, that is prepared to a high standard, setting out conclusions as to extinguishment based on tenure history documentation. This guideline is designed to assist applicants in preparing reports that meet such requirements.

If extinguishment of native title cannot be demonstrated, MEG must ensure that the Native Title Act has been complied with before an authority is granted. For exploration licences this may require inclusion of the native title condition and for most other authorities it will require completion of the right to negotiate process.<sup>2</sup>

### 3.2. When is an extinguishment assessment report required?

An applicant for one of the following authorities must provide MEG with an extinguishment assessment report that includes each parcel of land where the applicant is asserting that native title has been extinguished:

- a) A mining lease or petroleum production lease
- b) An assessment lease or petroleum assessment lease
- c) An exploration licence, petroleum exploration licence or petroleum special prospecting authority.

If native title extinguishment can only be demonstrated for part of an application area, the Native Title Act will need to be complied with for the balance of the application area. Applicants should clearly advise which parts of an application area is subject of the extinguishment report and how it is proposed to comply with the Native Title Act for the balance of the area.

The information regarding extinguishment should be provided to MEG with the application, or within 10 days, in accordance with MEG's usual requirements. If an authority is to be granted on the basis that native title has been extinguished over the whole of the application area, MEG must be of the view that native title has been extinguished over the entire area before recommending to the Minister the granting of the authority.

If extinguishment is asserted for part of the application area, while MEG may be consider native title has been extinguished over that part, no recommendation to grant the authority will be made until the selected Native Title Act process has been successfully completed for the remaining part of the application area.

MEG will ask applicants to provide further documentation if the report is found to be incomplete. MEG will not be able to complete its assessment of the report until all documentation is provided.

### 3.3. Standard of extinguishment

MEG applies a high standard of proof, which means that it must be satisfied that there is no doubt that native title is extinguished before accepting that the Native Title Act does not apply to the grant of the authority.

In order to meet this standard, MEG requires applicants to provide primary evidence that demonstrates extinguishment. Section 4 below provides information about the types of documentation that is required to establish extinguishment over different tenure types. Although not mandatory, MEG believes compliance with this guideline places applicants in a good position to meet MEG's high standard of proof.

As noted above, a report is only required in support of an assertion that the Native Title Act does not apply to the grant of an authority, in whole or in part, because native title is extinguished in the application area. Therefore, there is no need to provide a report to MEG if applicants are content to

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<sup>2</sup> See RTN guidelines at: [www.regional.nsw.gov.au/meg/exploring-and-mining/native-title](http://www.regional.nsw.gov.au/meg/exploring-and-mining/native-title)

proceed through the applicable Native Title Act process, such as the right to negotiate (RTN) process, without a detailed inquiry into the status of the land.

### 3.4. Extinguishment in substratum authorities

Even if there are no surface impacts, an application for a substratum tenement that asserts that native title has been extinguished must be accompanied by an extinguishment assessment report prepared in accordance with these guidelines.

### 3.5. National Native Title Tribunal search results

Applicants should provide a copy of geospatial search results from the National Native Title Tribunal to identify where there are any native title claims or determinations affecting the application area.

MEG asks for a search from the National Native Title Tribunal because:

- a) it reflects the official record of native title claims or determination in a particular area, and
- b) it identifies native title parties that may have an interest in the report or the application.

However, search results from the National Native Title Tribunal alone are not sufficient to establish that native title is extinguished in a determination area. The search result is a spatial comparison of the same data used in Native Title Vision. See section 4.4 for how an applicant can use a native title determination to establish that native title has been extinguished.

### 3.6. When is an indigenous land use agreement relevant to the extinguishment process?

An indigenous land use agreement (ILUA) may provide the native title party's agreement to:

- a) future acts within the ILUA area which will replace the Native Title Act's future Act process, such that, for example, the right to negotiate does not apply to the grant of a mining lease; or
- b) the surrender of native title rights and interests as a consequence of particular Acts within the ILUA area.

For the purpose of this guideline, which is directed at identifying where native title has been extinguished, an ILUA under which native title is surrendered will be the more relevant. See section 4.5 for more detail.

## 4. Demonstrating extinguishment

### 4.1. Primary evidence

The table below sets out examples of primary evidence that MEG will accept as extinguishment for the relevant tenure. The example documentation in Annexure D provides further guidance.

For this tenure:		MEG will accept as evidence of extinguishment:
a)	<b>Freehold land</b>	A copy of: <ul style="list-style-type: none"><li>• the Crown grant made to a private person or company before 23 December 1996, or</li><li>• if the grant of land is gazetted, the Government Gazette which effects the grant or vesting of land</li><li>• where the grant of land is to the Crown or a statutory authority, a Crown grant from before 31 October 1975.</li></ul>

	<p><b>Notes:</b></p> <p><i>A copy of a record or provision of a later document that purports to record such a grant is not acceptable because it does not provide primary evidence of extinguishment. In most instances, a secondary record is not sufficient to show that native title has been extinguished.</i></p>
<ul style="list-style-type: none"> <li>Land subject to a scheduled interest</li> </ul>	<p>A copy of:</p> <ul style="list-style-type: none"> <li>the instrument granting the scheduled interest</li> <li>a Crown plan that identifies the scheduled interest in the application area</li> <li>the tenure card evidencing that the interest relied on was granted, and</li> <li>a gazette notice that grants the scheduled interest or evidences the existence of the interest or other executive action.</li> </ul>
<p>b) <b>Perpetual Western Lands Lease</b></p>	<p>A copy of:</p> <ul style="list-style-type: none"> <li>a Crown or deposited plan that identifies the scheduled interest in the application area</li> <li>a copy of the instrument granting the Perpetual Western Lands Lease; and</li> <li>the gazettal notice for the grant.</li> </ul>
<p>c) <b>Public roads (other than Crown roads)</b></p>	<p>If the application area is traversed by a road that is depicted on a parish map as a public road, in most circumstances the applicant must provide MEG with a copy of the Government Gazette notice declaring the road to be a public road and dedicating the road to the public.</p>
<p>d) <b>Crown roads</b></p>	<p>If the cadastral maps and parish maps indicate that the application area is traversed or bounded by a Crown road then <i>one way</i> to establish extinguishment is to provide MEG with proof the road had not been closed and was still reserved as a road at the commencement of the <i>Crown and Other Roads Act 1990</i> on 1 April 1992<sup>3</sup>.</p> <p>This means that an applicant needs to provide MEG with:</p> <ul style="list-style-type: none"> <li>a copy of the parish map charted to the date most relevant in time (but pre-dating) 1 April 1992 that shows the road was "reserved" as a Crown road, and</li> <li>any plans or maps available (such as a copy of a deposited plan, a plan documenting the opening of the road or a copy of the mapping from NSW Six Maps) which taken together, show that the road was still open <b>after</b> 1 April 1992.</li> </ul> <p>It is better to provide MEG with several different documents that show that the Crown road was open both before <u>and</u> after 1 April 1992. From time to time, MEG may request that the applicant provide further details of the searches undertaken in respect of roads if it is not satisfied with the extent of the documents provided.</p>
<p>e) <b>Roads shown as enclosed by permit</b></p>	<p>Note that the non-extinguishment principle applies road enclosure permits and is not evidence of native title extinguishment. Therefore, the evidence required to establish that native title has been extinguished in a Crown road</p>

<sup>3</sup> This legislation had the effect of confirming that roads which were "public roads" and roads which had not been dedicated as "public roads" (ie. road or lands vested in the Crown and indicated on maps as being reserved or left as a road) were roads dedicated to the public.

	that is subject to a road enclosure permit is the same as other Crown roads (see (d) above).
f) <b>Water courses</b>	<p>From 3 May 1918, in the Eastern and Central Division of NSW and 31 May 1935 in the Western Division, watercourses and lakes were subject to a Crown reservation from sale or lease. [Annexure A is a diagram showing the NSW division boundaries]</p> <p>Boundary watercourses for Crown grants before the relevant dates above may have the benefit of a rebuttable presumption that the grant of title extended to the middle line of the watercourse (<i>ad medium filum aquae</i>).</p> <p>If relying on this presumption, an applicant must provide MEG with a copy of the pre-1918 (or pre-1935) Crown grant that describes the land as being "bounded by" the water course (rather than excluding the water course). An applicant should highlight or identify this description in the Crown grant to assist MEG with its review.</p>
g) <b>Resumption of land for a public works</b>	<p>Sometimes the Crown has resumed land (e.g. by way of compulsory acquisition) in order to undertake public works on the land, such as the construction of roads and railways or civic buildings. If relying on resumption by the Crown to demonstrate extinguishment, MEG will need to receive a copy of:</p> <ul style="list-style-type: none"><li>• any plans available depicting the land as being "resumed" for the public purpose, and</li><li>• a copy of the NSW Government gazette declaring that the land has been resumed under legislation for a public purpose and vested in a government agency or construction authority.</li></ul>

## 4.2. Evidence for public works

### Physical construction

Native title may be extinguished by the physical construction or establishment of a public work prior to 23 December 1996. It can be difficult to rely on the construction or establishment of public works to prove extinguishment because determining:

- a) whether the public work was constructed may require an on-site assessment, because extinguishment is determined by the construction/use footprint of the works
- b) that construction of the public work was valid can be difficult with the passage of time (because it requires evidence that the person constructing the public work did so on behalf of the Crown and the person constructing it had the necessary authority to construct it), and
- c) the extent of the extinguishment may not be easy to identify – construction or establishment will extinguish native title to those parts that have been required for the construction or use of the public works. If details of where the construction occurred can be located, it may not cover the entirety of the parcel(s) of land on which it is sited. If the application area encompasses the whole parcel, construction of the public work over part or even most of the parcel is not sufficient to evidence extinguishment over the entirety of the parcel of land.

For the reasons set out above, it will be more straightforward to evidence extinguishment through tenure rather than by creation or establishment of public works. Therefore, MEG prefers applicants only rely on evidencing extinguishment by the creation or establishment of public works where there are no other PEPAs that can be relied upon.

## Establishment by legislation

The extinguishment of native title by the creation of a public work is simpler to establish when the public work has been established by legislation (rather than physical construction).

This is a common approach adopted in respect of roads, where dedication of the road under particular legislation opens it to public use, thereby extinguishing native title (and which will apply to the entire road area the subject of the dedication).

### 4.3. Prior extinguishment

In some cases, the application will include a parcel of land that was included in a previous report in which MEG accepted that native title was extinguished in that area.

This may occur when an applicant has previously submitted a report to support its application for consent by the Minister to undertake exploration for certain classes of Crown land (as required by the Mining Act).

If this is the case, MEG does not require an applicant to repeat the extinguishment assessment. The applicant can establish that native title has been extinguished to the area by providing MEG with:

- a) the earlier report, and/or
- b) correspondence from MEG confirming that native title has been extinguished.

### 4.4. Providing evidence in a determined area

#### General information

If the Federal Court has concluded that native title has been extinguished in an area then applicants can rely on the Federal Court determination as evidence that extinguishment has occurred provided the applicant supplies the following material for the land in which they are asserting extinguishment:

- a) a copy of the determination, including schedules of areas where native title has been clearly determined not to exist and schedules of areas excluded from the determination area on the basis that they were subject to PEPAs at the time the claim was lodged
- b) a list identifying how each of the land parcels, roads, watercourse areas in the application area was dealt with in the determination
- c) if there has been a change in folio identifiers, documents showing a link to current folio identifiers (such as the provision of historical title searches and plans of subdivision).

If the application area is not wholly within the determination area where native title is extinguished, the applicant will be required to provide further evidence supporting extinguishment for the remaining area.

#### Native title vision

The National Native Title Tribunal provides a mapping service called Native Title Vision that identifies the determined outcomes in a native title determination. Providing a map from Native Title Vision is not, in itself, sufficient evidence for MEG to be satisfied that native title has been extinguished.

### 4.5. Relevance of ILUAs

An ILUA may document the native title holder's agreement to surrender the native title holder's rights and interests in particular land and/or waters. These are specific types of ILUAs to which the state must be a party. If this type of ILUA applies to the land or waters within your application area, the ILUA may be provided to MEG as evidence that native title has been extinguished in the application area (as long as that is what the ILUA clearly states has been agreed by the parties).

However, not every ILUA will be relevant to an extinguishment assessment report. For example, if an ILUA applies to the grant of a lease but does not extinguish native title then it will not be relevant to an extinguishment report.

## 5. Obtaining primary evidence

### 5.1. Title searches

A search of the Torrens title system (i.e. a title search) will provide you with a record of information about a parcel of land, including who owns the land and the parish name of the land.

A historical title search will identify the 'prior title' and 'first title' for the particular parcel of land. Often, the first title for the land will refer to the volume and folio details for a historical Crown grant which is the PEPA that has extinguished native title. Obtaining a Crown grant is a common way of proving that native title has been extinguished.

As set out in the template report, MEG recommends the first step to completing an extinguishment assessment of a parcel of land is to obtain the title search, historical title search and the title diagram for the parcel of land. These will form documents 1 – 3 in your supporting documents for that parcel of land (see Attachment 4 in the template report provided in Annexure C of this Guideline).

### 5.2. Obtaining copies of primary documentation

Primary documentation required for reports can be obtained in different ways and often online. For example:

- a) Crown grants can be obtained by using the Historical Land Records Viewer operated by the NSW Land Registry Services
- b) government gazettes that were issued prior to 2001 can be found on Trove, and
- c) government gazettes that were issued after 2001 can be found on the NSW legislation website.

However, other forms of primary documentation will need to be requested from either the relevant government department or a third-party service provider. For example, tenure cards can be obtained from the DPE Crown Lands at [cl.enquiries@crownland.nsw.gov.au](mailto:cl.enquiries@crownland.nsw.gov.au).

The NSW Land Registry Services has an established network of approved information brokers that can provide access to NSW titling information. This information can be found here: Information Brokers - NSW Land Registry Services ([nswlrs.com.au](http://nswlrs.com.au)).

### 5.3. Investigating tenure history

Preparing an extinguishment assessment report will often require applicants to look beyond the title search or historical title search. This is particularly the case if the historical title search indicates that the first title is Crown land.

Some tenure history of land in NSW has been documented in parish maps that can be accessed through the Historical Land Records Viewer operated by the NSW Land Registry Services. The title search for a parcel of land will identify the parish details for the land that you can then use to search in the Historical Land Records Viewer.

The Historical Land Records Viewer contains historical parish maps, Land Titles Office charting maps, regional charting maps and status branch charting maps. These maps provide critical information for applicants in finding land dealings that may have occurred decades ago.

## 6. Preparing extinguishment assessment reports

### 6.1. Scope of report

A report must identify and provide evidence of extinguishment across the whole of the application area. Your application area may be comprised of the following types of land:

- a) Freehold land (that has folio identifiers)
- b) Western Land Lease (perpetual)
- c) Crown land including unidentified land (i.e. that does not have a folio identifier)
- d) Roads which can be further identified as:
  - i. public roads, and
  - ii. Crown roads.
- e) Watercourses which can be further identified as:
  - i. a boundary watercourse, where it forms the boundary of a parcel of land, or
  - ii. a traversing watercourse, where it runs across the land parcel and the title diagram indicates the watercourse is excluded from the title boundary.

When preparing an extinguishment assessment report, land within your application area should be grouped by these categories.

### 6.2. Contents of report

It is preferred that reports be in the form set out in Annexure C.

If the report is not consistent with Annexure C, further information may be required and this may delay processing the application.

### 6.3. Presenting your report

An applicant should align reports with the following principles.

No.	Topic	Detail
1.	Sufficient documentation	The reports submitted by applicants contain the information and documents required by this guideline.
2.	Logical flow of information and documents	<p>The reports submitted by applicants follow a logical order – this means that the descriptions provided in the tenure history table (Attachment 2 of the report) reflect the order in which the supporting documents are provided so that MEG can easily read the 2 documents together and understand the tenure history of the particular parcel.</p> <p>In addition, the bundle of supporting documents for each parcel of land should start with the current documentation (i.e. title search, historical title search, title diagram) and then work backwards in reverse chronological order, with the final document in the bundle being the primary evidence of the PEPA. This ensures MEG can easily ‘step through’ the tenure history of the land.</p>
3.	Navigation tools	The reports including the supporting documents include page numbers, appropriate headings and for PDFs, bookmarks so they can be easily navigated by MEG.



<p>4. Cross-referencing</p>	<p>Where land tenure documents (such as historical Crown grants) are applicable to more than one parcel of land within the application area, cross-references should be used by the applicant to show that the same historical document is relevant to multiple parcels of land.</p> <p>In addition, if the current configuration of the land is different to the way the land was configured when the extinguishing act occurred (which may be some decades ago) it is important to ensure that the extinguishing act being relied upon applies to all of the land depicted in the title diagram for the current land parcel.</p> <p>For example, often the current land may have previously spanned several Crown grants. In this scenario, applicants should provide copies of each relevant Crown grant to be satisfied that extinguishment has occurred over the entirety of the current land parcel. It is helpful for MEG if the applicant has annotated the various documents and maps to make the connection between the current configuration of the land and how it is relevant to the Crown grants being provided by the applicant.</p> <p>Example: See page 31 of the supporting material to the example documentation in Annexure D to this guideline.</p>
<p>5. High resolution</p>	<p>The reports submitted by applicants contain documents that have sufficient resolution and quality such that all information including dates and title identifiers (e.g. lot or portion numbers, or the volume and folio reference) are legible.</p>

## 6.4. Collating your materials

MEG requests that the materials to be provided as follows:

- a) the report (as both a PDF and a Microsoft Word document) –containing all of the information about the application area along with attachments 1 (application area map), attachment 2 (tenure history table) and attachment 3 (National Native Title Tribunal geospatial search results)
- b) the supporting documentation (as a PDF) – attachment 4 of the report should contain the supporting documentation. This should be collated into one PDF and organised by parcel of land with cover pages, bookmarks and page numbers for each parcel of land. This will allow MEG to navigate the material and review the evidence alongside the descriptions provided in the report, particularly in the tenure history table, more easily.

Attachment 4 to the template report provided in Annexure C to this guideline provides more details about how to organise supporting documentation.

If the application area includes many parcels of land, it may be difficult to include all of the supporting documents in one PDF. In these cases, because of the volume of documents, it is reasonable to provide multiple PDFs containing supporting documentation. If there are multiple PDFs for the supporting documentation, the tenure history table should specify which volume of supporting documentation the evidence is within.

## 7. Providing your report to MEG

### 7.1. Electronic provision of report

An applicant should provide their report to MEG via email, in electronic format. Reports can be emailed to the email address below. MEG can accept emails with attachments up to 20 MB . Supporting documentation that is too big to attach to an email can be provided to MEG via a cloud-based share file system. MEG is able to access most share file systems provided by applicants.

Email for reports: [titles@regional.nsw.gov.au](mailto:titles@regional.nsw.gov.au)

## 7.2. Certification of documents

The applicant is not required to provide certified copies of documents with the report. However, MEG may request that certified copies of the documents referred to in the report are provided.

The applicant would be responsible for these costs.

## 7.3. Confidentiality in reports

Reports provided to MEG are not treated as confidential and may be shared with:

- a) other government departments or agencies, including the Crown Solicitor's Office
- b) relevant native title parties.

If a report is to be shared with another agency or native title party, you will be contacted before any reports are shared with any agency or third party other than the Crown Solicitor's Office.

# 8. Review of the report by MEG

## 8.1. Preliminary checks

Once an extinguishment assessment report is received by MEG, it will be assigned to an officer for review. The MEG officer will undertake a series of preliminary checks that includes checking the report to confirm:

- a) the parcels of land listed in the report cover all of the land included in the application area
- b) it is in the form of the template report included in Annexure C and includes the necessary classes of information
- c) there is supporting documentation for each parcel of land that appears to reflect the requirements specified in Annexure D.

MEG will use the report checklist to guide this preliminary review, which will usually be undertaken within 10 business days.

## 8.2. Substantive analysis

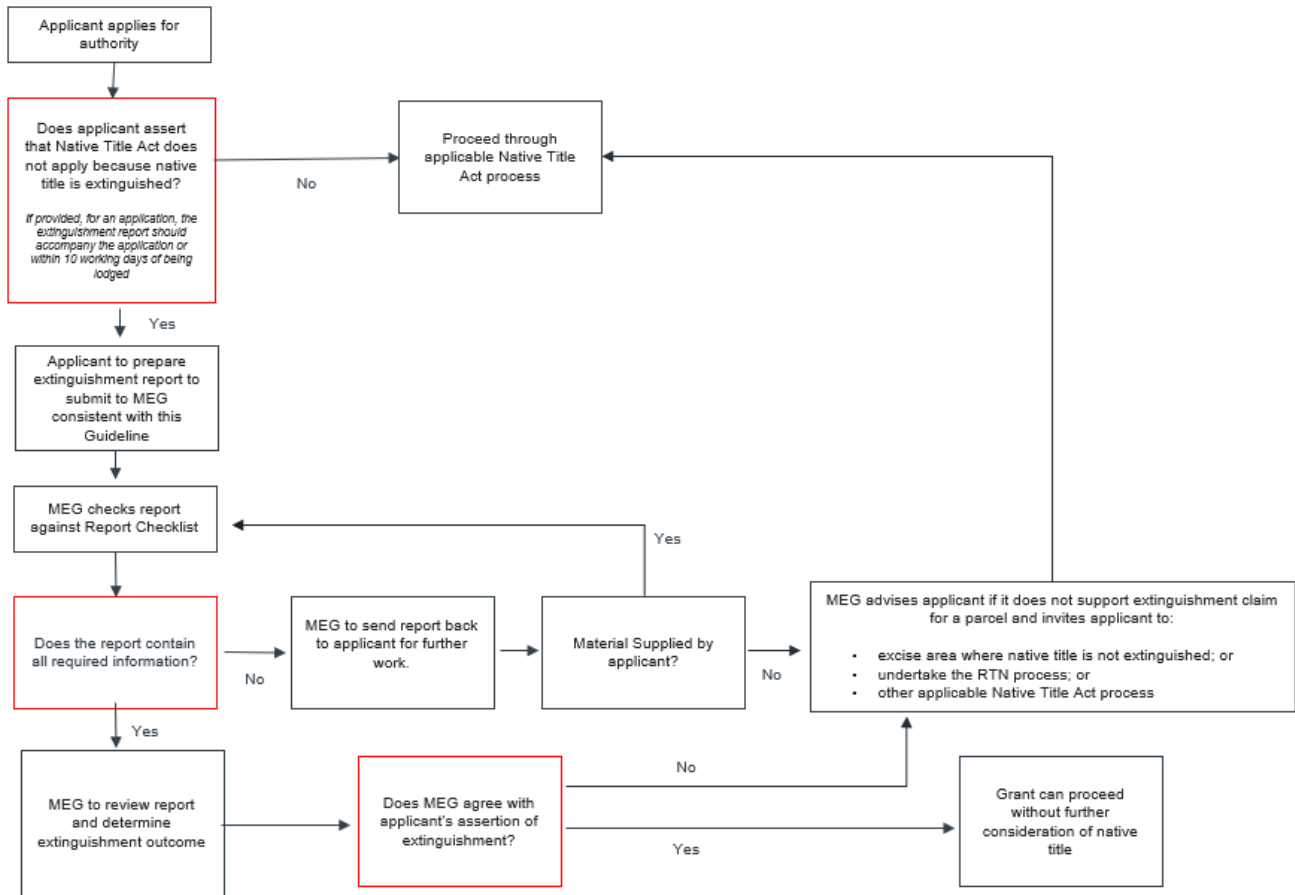
Once the report satisfies the preliminary checks, MEG will proceed to complete its substantive review of the report, noting that MEG is not responsible for correcting errors or providing missing documents/evidence.

## 8.3. Timeframes for review

MEG estimates that a substantive review of a report will take a minimum of 8 weeks following completion of the preliminary review. However, timeframes will vary depending on the size of the application area, the degree of complexity in the tenure history and whether further supporting documentation or clarification is required.

MEG's review process is reflected in Figure 1, on the following page.

Figure 1: MEG review process



## 9. Additional information

### 9.1. Additional resources

Additional resources that may also assist applicants in preparing the reports include:

- 1963 NSW Department of Lands Survey Directions - Index of Survey Markings on Map 'Distinctive Boundaries' (p. 36) and Glossary of Key Terms (p. 41-42)
- [www.nswlrs.com.au/information-brokers](http://www.nswlrs.com.au/information-brokers) which contains a list of authorised information brokers published by Land Registry Services NSW
- Trove, operated by the National Library of Australia, which can be found at: [trove.nla.gov.au/](http://trove.nla.gov.au/)
- the Historical Land Records Viewer operated by the NSW Land Registry Services, which can be found at: [hluv.nswlrs.com.au/](http://hluv.nswlrs.com.au/)
- the NSW Legislation online search tool, which provides access to Government Gazettes dated 2001 and older, available at [legislation.nsw.gov.au/gazette](http://legislation.nsw.gov.au/gazette)
- MinView, an interactive mapping application operated by Department of Regional NSW, available at: <https://minview.geoscience.nsw.gov.au/>
- the National Native Title Tribunal website, where applicants can submit Geospatial search requests, available at [www.nntt.gov.au/assistance/Geospatial/Pages/default.aspx](http://www.nntt.gov.au/assistance/Geospatial/Pages/default.aspx)

### 9.2. Contacts

MEG can be contacted at [titles@regional.nsw.gov.au](mailto:titles@regional.nsw.gov.au) for any additional questions.

## 10. Frequently asked questions

### 10.1. How do I provide reports to MEG?

The report and supporting material must be provided to MEG electronically.

You can submit your report by email to: [titles@regional.nsw.gov.au](mailto:titles@regional.nsw.gov.au)

Supporting documentation that is too big to attach to an email can be provided to MEG via a cloud based share file system. MEG is able to access most share file systems (e.g. Share Point, Share File, Google drive etc). Please ensure that links to the documentation remain open until receipt and download has been confirmed.

### 10.2. Do I need a consultant to prepare reports?

MEG does not require applicants to submit reports that have been prepared by a consultant.

Applicants may, due to the specialised nature of the report, wish to engage a consultant with experience in extinguishment principles and tenure history investigation to complete the report.

MEG does not provide any technical support on extinguishment principles or tenure history investigation.

### 10.3. What happens if I can only find evidence of extinguishment to part of the application area?

The Native Title Act will apply to the grant of an authority except where native title can be demonstrated to have been extinguished in the entire application area.

If there are some parcels of land in the application area where native title could still exist, the applicant may:

- a) ask MEG to initiate the relevant Native Title Act process for the application. Usually this will be the right to negotiate; or
- b) amend the application to exclude the areas where extinguishment cannot be demonstrated; and
- c) in the case of exploration licences, indicate they wish to have the licence granted as a standard licence subject to the native title condition.

### 10.4. Does MEG have access to software or a database that maps the different extinguished areas?

No. MEG does not have access to nor is aware of any database, GIS layer or other service that maps extinguished areas in NSW.

MEG is aware that the National Native Title Tribunal operates a mapping software called Native Title Vision which allows applicants to see the outcomes of native title determinations. This is not operated or managed by MEG and cannot be relied upon to establish extinguishment for the purposes of this guideline.

### 10.5. How recent do the current title searches need to be?

The current title searches must be no older than 3 months when the report is submitted.

### 10.6. How recent do the native title search results need to be?

The native title search results must be no older than 3 months when the report is submitted.

## 10.7. How does proof of extinguishment affect renewals of authorities?

Extinguishment is established on the basis of previous exclusive possession acts and if a PEPA has occurred then native title is extinguished forever (unless the limited circumstances in which extinguishment is to be disregarded under the Native Title Act apply).

Therefore, if a report was previously provided that established extinguishment over the application area when the original authority was granted, the applicant does not need to prove extinguishment again when that authority is renewed.

## 10.8. How do EL holders satisfy themselves they have met the native title condition?

Holders of exploration licences must undertake their own investigations and obtain any advice required to ensure they are complying with the native title condition in the EL.

However, the information included in this guideline can provide useful information for a holder undertaking investigations, including guidance on places to find primary tenure documentation and examples of the material that MEG requires to be satisfied that native title has been extinguished.

MEG recommends that exploration licence holders keep any records of the steps that they have taken to satisfy themselves that they have complied with the native title condition in their EL.

## 10.9. When do I need to provide MEG with a copy of the ILUA relevant to the land in order to comply with the guideline?

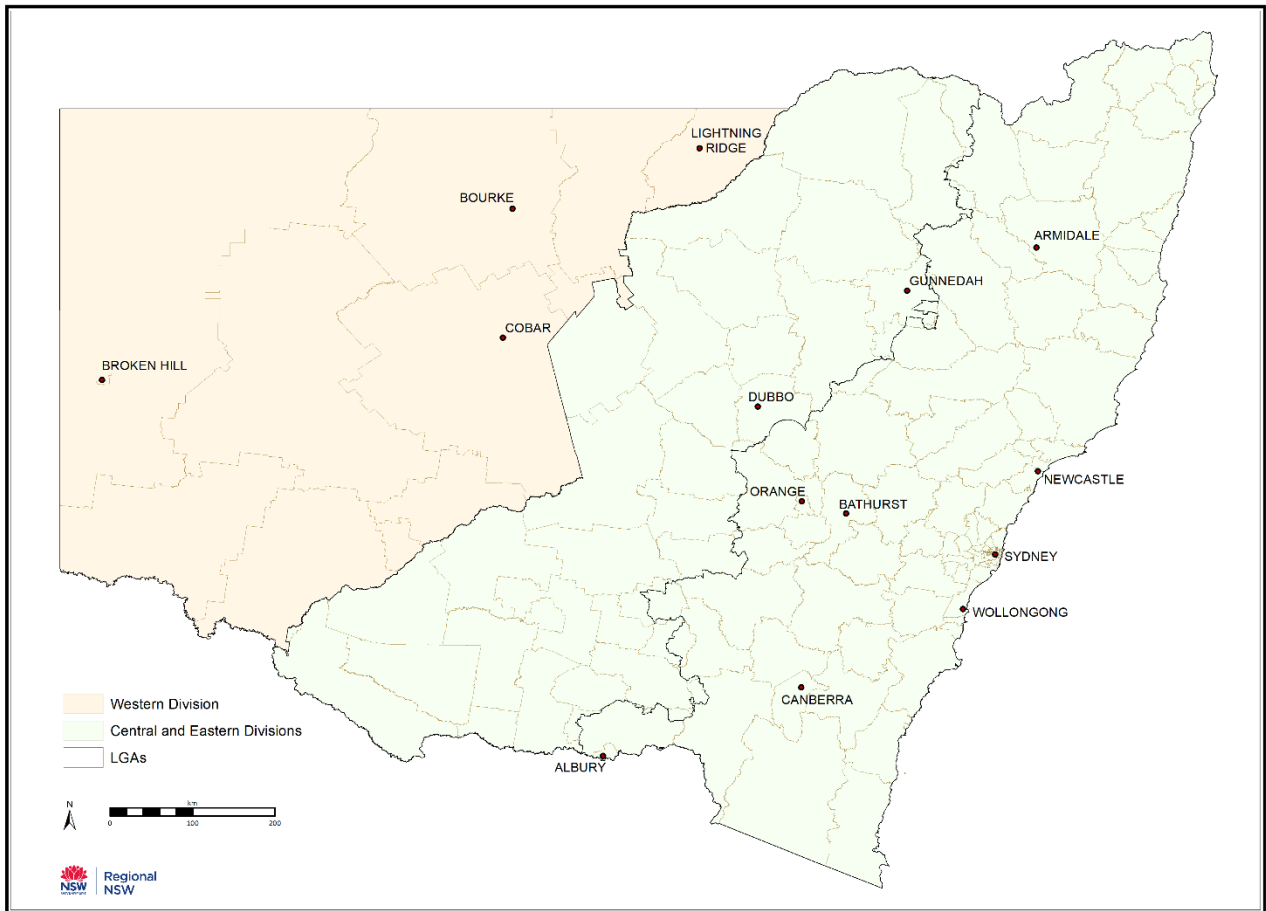
You only need to provide a copy of an ILUA if you are relying on that ILUA to demonstrate extinguishment in your application area (i.e. because the ILUA has provided for the surrender of native title rights and interests).

## 10.10. Where do I find a Word version of the template report provided as Annexure C to this guideline?

A Word version of this table and Checklist templates are available on our [website](#).

- [Annexure C template report](#) (Word version)

## Annexure A – NSW Divisions map



## Annexure B - Report checklist

No.	Information	Included Y/N?
<b>Body of report</b>		
1.	Description of application area A summary of tenure included in the application area. Clearly identify whether parcels of land on the boundary are considered by the applicant to be within the application area boundary or outside the application area boundary	<input type="checkbox"/>
2.	Statement on native title extinguishment A statement confirming that native title has been extinguished or not extinguished in the application area	<input type="checkbox"/>
3.	Statement regarding compliance with Guideline A statement confirming that the report complies with the guideline	<input type="checkbox"/>
4.	Contact details The contact details of the person who MEG may call to request additional information or seek clarifications if required	<input type="checkbox"/>
<b>Attachments</b>		
5.	Map of application area A map of the application area that is the subject of the application, which identifies each tenure type (parcel, road, watercourse), preferably prepared using GIS software, as Attachment 1	<input type="checkbox"/>
6.	Tenure history of the land A tenure history table, as Attachment 2	<input type="checkbox"/>
7.	Native title search results A copy of the National Native Title Tribunal search results, as Attachment 3	<input type="checkbox"/>
8.	Supporting documentation Supporting documentation that provides primary evidence of extinguishment for each form of tenure within the application area, as Attachment 4	<input type="checkbox"/>

A Word version of the report is available on the [website](#)

- [Annexure B Report checklist](#) (Word version)

## Annexure C – Template report

### General guidance for completion of template

A native title extinguishment assessment report must comprise:

- A. Covering page
- B. Body of report
  - a. Attachment 1: Map of application area
  - b. Attachment 2: Tenure history table
  - c. Attachment 3: National Native Title Tribunal search results
  - d. Attachment 4: Supporting documentation

A Word version of the report is available on the [website](#)

- [Annexure C template report](#) (Word version)



## [COVER PAGE]

**NATIVE TITLE EXTINGUISHMENT ASSESSMENT REPORT FOR** [insert authority application details]  
**SUBMITTED BY** [insert authority applicant + Applicant's contact details]  
[Date]

[BODY OF REPORT DESCRIBING APPLICATION AREA AND IDENTIFYING CONCLUSIONS]

**General guidance for completion of template**

**MEG requests applicants to provide the following information in the body of the report:**

1. Description of application area

This section should provide a summary of the tenure included in the application area, separated out into land categories – freehold, crown **and, unidentified land, Western Land Leases, scheduled interests roads and watercourses. A template table that can be used for this purpose is provided below.** This section should clearly identify whether parcels on the boundary are considered by the applicant to be within the application area boundary or outside the application area boundary.

2. Statements by the applicant

Extinguishment of native title

The applicant is required to state whether they assert native title is extinguished over part or all of the application area. If the applicant asserts that native title is extinguished, this assertion should be supported by reasons for this conclusion.

Compliance with this guideline

A statement from the applicant confirming that the extinguishment report provided to MEG complies with this guideline.

3. Contact details

The contact details of the person who MEG may call to request additional information or seek clarifications if required.

## Attachment 1: Map of application area

### General guidance for completion of template

The applicant must provide MEG with a map that depicts the boundary of the application area of the authority as well as:

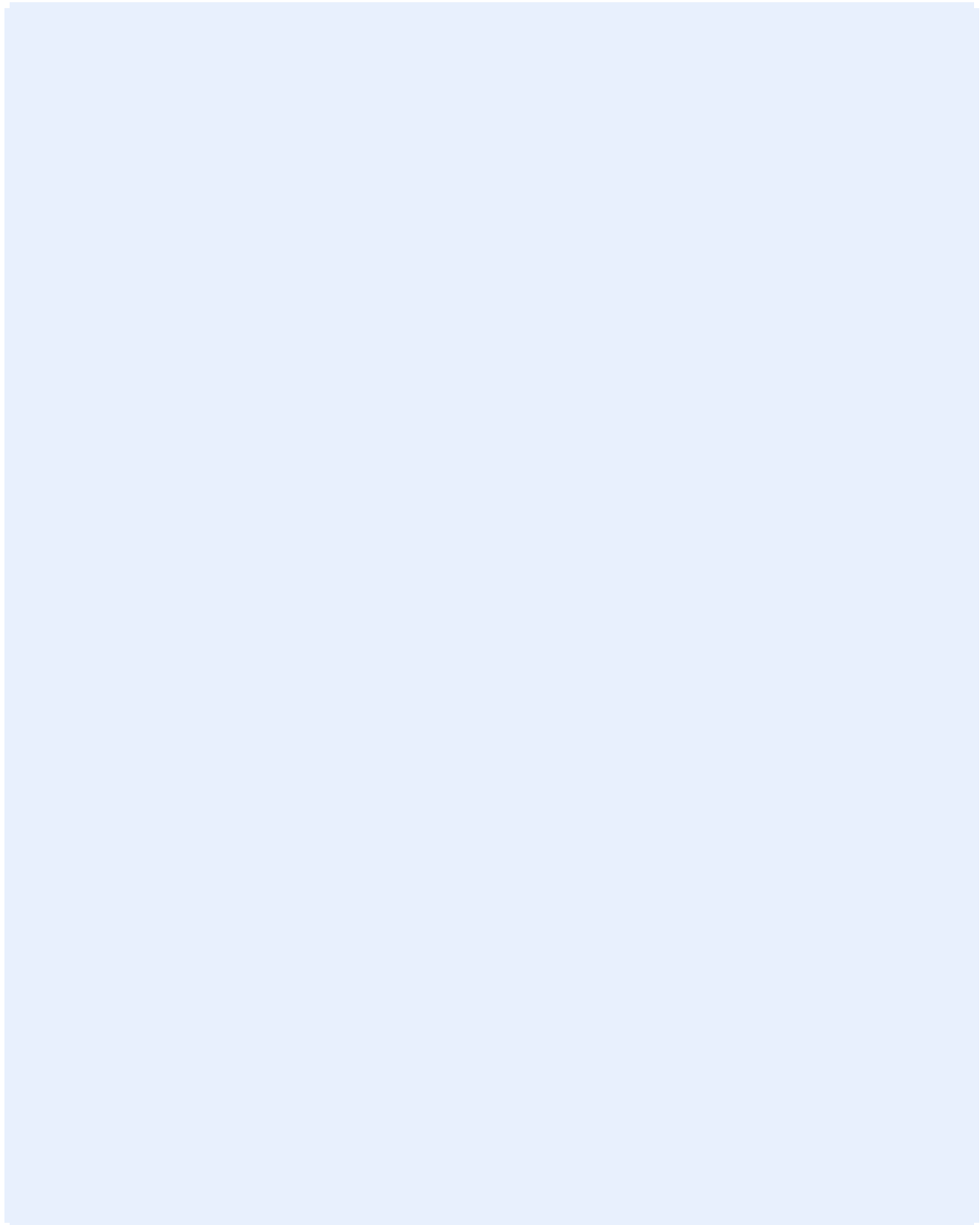
- underlying land ownership boundaries,
- the lot and plan numbers, and
- a scale and north facing arrow.

Each of the parcels represented in the tenure history table (Attachment 2) should be clearly identifiable in the map of application area provided by the applicant.

It may be necessary for the applicant to provide this information across several maps to provide clear information to MEG. The applicant should give thought to how colours and legends can be used to clearly identify the required information on each map. If the mapping and documentation clearly identifies the application area it will assist in the assessment of the report.

We provide an example map in **Annexure D** to this guideline.

Insert map as appropriate



## Attachment 2: Tenure history table

General guidance for completion of template report

MEG requires applicants to complete the table below for every land parcel, road and water course within the application area.

No.	Current title reference (lot and DP) CADID etc for unidentified or colour coding	Tenure	Registered proprietor	Description of the tenure history	Native title extinguished? [eg Y or N ]	Date of extinguishing event	Basis for extinguishment conclusion [eg <i>by PEPA (various Crown grants); by dedication of all existing roads to the public under the Crown and Other Roads Act 1990 (NSW); by vesting of the road in fee simple under the Local Government Act 1919 (NSW)</i>	Supporting documentation volume & page number  [eg <i>Vol 1 Page 3, Vol 2 page 24 etc</i> ]  <u>NB: Vol Ref. only required where there are multiple PDFs containing the bundles of supporting documentation</u>
<i>Freehold</i>								
1.								
2.								
<i>Crown Land</i>								
3.								
4.								
<i>Western lands Lease</i>								

No.	Current title reference (lot and DP) CADID etc for unidentified or colour coding	Tenure	Registered proprietor	Description of the tenure history	Native title extinguished? [eg Y or N ]	Date of extinguishing event	Basis for extinguishment conclusion [eg <i>by PEPA (various Crown grants); by dedication of all existing roads to the public under the Crown and Other Roads Act 1990 (NSW); by vesting of the road in fee simple under the Local Government Act 1919 (NSW)</i>	Supporting documentation volume & page number [eg <i>Vol 1 Page 3, Vol 2 page 24</i> etc]  <u>NB: Vol Ref. only required where there are multiple PDFs containing the bundles of supporting documentation</u>
5.								
6.								
<i>Scheduled Interests</i>								
7.								
8.								
<i>Roads</i>								
9.								
10.								
<i>Watercourses</i>								
11.								
12.								

No.	Current title reference (lot and DP) CADID etc for unidentified or colour coding	Tenure	Registered proprietor	Description of the tenure history	Native title extinguished? [eg Y or N ]	Date of extinguishing event	Basis for extinguishment conclusion [eg <i>by PEPA (various Crown grants); by dedication of all existing roads to the public under the Crown and Other Roads Act 1990 (NSW); by vesting of the road in fee simple under the Local Government Act 1919 (NSW)</i>	Supporting documentation volume & page number [eg <i>Vol 1 Page 3, Vol 2 page 24</i> etc]  <u>NB: Vol Ref. only required where there are multiple PDFs containing the bundles of supporting documentation</u>
<i>Public works</i>								
13.								
14.								
<i>Determination</i>								
15.								
16.								

## Attachment 3: National Native Title Tribunal search results

General guidance for completion of template report

An applicant should provide MEG with a copy of the geospatial search of the register from the National Native Title Tribunal. This search identifies whether:

- any native title claimant application is before the Federal Court, or
- whether a determination of native title has been made by the Federal Court, in any of the land within the application area.



## Attachment 4: Supporting documentation

### General guidance for completion of template report

An applicant must provide MEG with supporting documents that evidence the extinguishment that is described in Attachment 2 (tenure history table) and which substantiate the conclusions that are made in the body of the report about extinguishment in the application area.

Where practicable, the supporting documents should be collated in one PDF containing all parcels of land. Each parcel of land should include the following documents, in the following order (which is reverse chronological, meaning that the most recent tenure information such as the current title search is first, followed by the historical title search and then so on and so forth until finishing with evidence of the PEPA that is being relied upon):

### Order and contents of supporting documentation

1. a title page identifying the relevant land parcel / road / watercourse
2. searches (as applicable):
  - a. the current title search
  - b. the historical title search
  - c. the current title diagram (deposited plan or Crown plan)
3. primary evidence of the PEPA which depending on the tenure history of the land and the category of land *may* include a copy of:
  - a. the Crown grant or lease instrument
  - b. tenure card for the scheduled interest
  - c. any relevant gazettes such as:
    - i. notification of the grant of a scheduled interest
    - ii. extension of the term of a scheduled interest to perpetuity
    - iii. vesting of the land in a public authority
    - iv. declaring a section of road as open
    - v. declaring that land has been resumed under legislation for a public purpose and vested in a public authority
  - d. any relevant maps or plans such as:
    - i. a historic crown plan
    - ii. a plan documenting the opening of a road

- iii. plans available depicting the land as being "resumed" for the public purpose
- iv. cadastral maps
- v. mapping from NSW Six Maps
- vi. Crown grant

## Annexure D – Examples and supporting documents

A pdf of examples and supporting documents can be found [here](#)

### EXAMPLE MAP OF APPLICATION AREA, TENURE HISTORY TABLE AND SUPPORTING DOCUMENTS

The following pages contain an example map for a proposed MLA area (being Attachment 1 to the extinguishment assessment report) and a tenure history table (being Attachment 2 to the extinguishment assessment report) dealing with common types of land, together with corresponding supporting documentation.



Please note the example map of application area and tenure history table do not relate to the same parcels of land and are provided by way of example only.

(Applicant to insert details of authority application number)								
No.	Current Title Reference / Details (Lot and DP)	Tenure	Registered proprietor	Description of the tenure history	Native title extinguished?	Date of extinguishing event	Basis for extinguishment conclusion	Supporting documentation volume, page number
<i>Land parcels</i>								
1.	Lot 223 in DP755442	Freehold	<i>Information omitted</i>	<p>1. The title search for Lot 223 in DP755442 shows that the land is located in the Parish of Moolarben County of Phillip, and that the title diagram is Crown Plan 3392.2125. It also notes that the land was formerly known as Portion 223.</p> <p>2. The historical title search for Lot 223 in DP755442 shows that the first title for the land is "See prior title" and the prior title is Volume 8418 Folio 131.</p> <p>Volume 8418 Folio 131 is a Grant of Land Purchased by Conditional Sale dated 19 November 1962 which shows that Portion 223 in the Parish of Moolarben County of Phillip was granted to the Rural Bank of New South Wales in freehold.</p>	Yes	19 Nov 1962	by PEPA (pre-23 December 1996 freehold grant).	Vol 1, pg 2-7
2.	Lot 289 in DP704098	Freehold	<i>Information omitted</i>	<p>3. The title search for Lot 289 in DP704098 shows that the land is located in the Parish of Moolarben County of Phillip, and that the title diagram is DP704098.</p> <p>4. The historical title search for Lot 289 in DP704098 shows that the first</p>	Yes	23 Mar 1981	PEPA (Scheduled interest, being Conditional Lease 1907/60).	Vol 1, pg 8-21

			<p>title and the prior title for the land is Volume 14366 Folio 165.</p> <p>5. Deposited Plan 704908, registered 28 June 1984, is a plan of subdivision of Portion 206 in the Parish of Moolarben County of Phillip, which shows that Lot 289 was previously part of Portion 206. It also shows that the last plan for the land was Crown Plan 3171-2125.</p> <p>6. Volume 14366 Folio 165 is a Crown Grant dated 23 March 1981 which shows that Portion 206 in the Parish of Moolarben County of Phillip was granted to Kevin Leslie Garner and Andrew Findley Morrison Jones as a lease in perpetuity, subject to the provisions of the Crown Lands Acts in respect of conditional leases. It also shows that Portion 206 was previously subject to Conditional Lease 1907/60 Mudgee, which was subject to the reservations, conditions and restrictions set out in the Crown Lands Consolidation Act 1913.</p> <p>7. The Crown Plan for Portion 206 in the Parish of Moolarben County of Phillip, being Crown Plan 3171-2125, indicates that Portion 206 was subject to Conditional Lease 07.60, which was applied for under section 48 of the Crown Lands Act of 1884 by James Edward Roberts.</p> <p>8. The tenure card for Conditional Lease 1907/60 shows that the lease was in respect of Portion 206 in the Parish of Moolarben County of Phillip and was applied for on 22 August 1907, confirmed on 20 October 1908, and gazetted on 13 January 1909. It also</p>				
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				<p>indicates the lease was converted to a lease in perpetuity by government gazette notice dated 25 March 1949.</p> <p>NSW Government Gazette No. 5 dated 13 January 1909 Folio 217 [4077] is a notice of the rents determined in respect of various Conditional Leases, which shows that Portion 206 in the Parish of Moolarben County of Phillip was subject to Conditional Lease 1907/60 to James Edward Robert, applied for on 22 August 1907 and confirmed on 20 October 1908.</p>				
3.	Lot 37 in DP 750156	Crown land	Her Most Gracious Majesty Queen Elizabeth the Second	<p>The Current Title Search shows that Lot 37 in DP 750156 was formerly known as Portion 37 in the Parish of Edinburgh, County of Ashburnham.</p> <p>The Historical Title Search shows that the First and Prior Titles for Lot 37 is Volume 7060 Folio 180.</p> <p>Crown Grant Volume 7060 Folio 180 granted <b>portion 37</b> in the Parish of Edinburgh to John Reuben Peken in freehold on 15 December 1955, exclusive of a road traversing that portion (which does not form part of the application area).</p>	Yes	15 Dec 1955	by PEPA (Crown Grant).	Vol 1, pg 22-26
4.	Lot 5 in DP875253	Crown land	Her Most Gracious Majesty Queen Elizabeth the Second on behalf of the Minister for Natural Resources for	<p>The Historical Title Search for Lot 5 in DP875253 shows that the Prior Title for Lot 5 is Lot 2 in DP 776656 and the First Title was Old System Land.</p> <p>The Historical Title Search for Lot 2 in DP776656 shows that the Prior Title for Lot 2 is Lot 3 in DP 585558 and the First Title was Old System Land.</p> <p>The Historical Title Search for Lot 3 in DP585558 shows that the First Title</p>	Yes	4 Dec 1856 9 Dec 1861	by PEPA (various Crown Grants).	Vol 1, pg 27-43

			Forestry Commission	<p>and Prior Title for Lot 3 is Volume 13290 Folio 138.</p> <p>Cancelled Certificate of Title Volume 13290 Folio 138 shows that Lot 3 in DP585558 was held in freehold by Yates Harris (Holdings) Pty. Limited at 30 March 1977 and that Lot 3 was originally part of Portions 33, 34, 45 and 2 in the Parish of Waldegrave.</p> <p>Consistent with the notation on the Cancelled Certificate of Title, the table entitled "Parish Numbers Used" in the 1967 Regional Charting Map for Waldegrave indicates that Portions 33, 34 and 35 were the subject of a grant dated 4 December 1856 and that Portion 2 was the subject of a grant dated 9 December 1861:</p> <ul style="list-style-type: none"> <li>• Crown Grant Volume 56 Folio 3896 granted <b>Portion 33</b> in the Parish of Waldegrave to Henry Coppock on 4 December 1856, exclusive of a road one chain wide passing through the land (which is dealt with in this Assessment separately).</li> <li>• Crown Grant Volume 56 Folio 3897 granted <b>Portion 34</b> in the Parish of Waldegrave to William Stevens on 4 December 1856, exclusive of a road one chain wide passing through the land (which is dealt with in this Assessment separately).</li> <li>• Crown Grant Volume 56 Folio 3898 granted <b>Portion 35</b> in the Parish of Waldegrave to Thomas Reynolds on 4 December 1856, exclusive of a road one chain wide passing through the land (which is</li> </ul>				
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				<p>dealt with in this Assessment separately</p> <ul style="list-style-type: none"> <li>• Crown Grant Volume 61 Folio 2262 granted <b>Portion 2</b> in the Parish of Waldegrave to Thomas Reynolds on 9 December 1861, exclusive of an area of road one chain wide passing through the land (which is dealt with in this Assessment separately).</li> </ul> <p><i>[Guidance from MEG. It is important that the assessment of this parcel of land:</i></p> <ul style="list-style-type: none"> <li>• <i>provides evidence of extinguishment for all portions that previously comprised Lot 5; and</i></li> <li>• <i>addresses the road that traverses Lot 5 specifically within the assessment. MEG has not provided analysis of this particular road in this example tenure history table or in the example supporting documentation.]</i></li> </ul>				
Roads								
5.	Thistle Road	Public road	N/A	<p>The relevant section of Thistle Road commences on the northern boundary of Lot 54 in DP750156 and runs in a south-easterly direction through Lot 54 until it reaches the southern boundary of that Lot.</p> <p>Thistle Road is depicted as a public road in the 1959 Regional Charting Map in the Parish of Edinburgh with Reference Note 8. Reference Note 8 states this road was dedicated to the public by Government Gazette notice of 17 June 1960.</p>	Yes	17 June 1960	by dedication of a public road under the <i>Public Roads Act 1902</i> .	Vol 1, pg 44-47



				Government Gazette notice 17 June 1960 confirms that this section of Thistle Road was dedicated open to the public under section 18 of the <i>Public Roads Act 1902</i> .				
6.	Road 3	Crown road	N/A	<p>9. The land referred to as Road 3 is shown as a road, but not a public road, on the 1965 Regional Charting Map for the Parish of Moolarben.</p> <p>10. The 1965 Regional Charting Map for the Parish of Moolarben includes a notation from 1997 (see reference note 59), and is the official map or plan charted at the time most relevant to the commencement of the Crown Roads Act on 1 April 1992. Further, the Regional Charting Map does not show any dealings with the road from 1965 to 1997.</p> <p>11. Therefore, it is reasonable to infer that the land comprising Road 3 was a road as at the commencement of the Crown Roads Act and was therefore subject to the dedication of all existing Crown roads to the public under that legislation.</p>	Yes	1 Apr 1992	by the dedication of all existing roads to the public under 1990 <i>Crown Roads Act</i> , based on the information publicly available.	Vol 1, pg 48-50
7.	Old Swamp Road	Combination of Public road and Crown road	N/A	The section of Old Swamp Road that is within the application area commences on the north-east boundary of Lot 1 in DP523318 and travels in an easterly direction to its intersection with Woodville Road (to the south) and Waldegrave Road (to the north) before continuing in an easterly direction between Lot 3 in DP1130549 and Lot 71 in DP1001155.	Yes	20 May 1881	part of Old Swamp Road by resumption under the <i>Roads Act 1902</i> and the remainder declared as open to the public under the <i>Roads Act 1902</i>	Vol 1, pg 51-61

				<p>Old Swamp Road is shown as a public road on the 1967 Regional Charting Map for the Parish of Waldegrave with a reference to "R339b-1603" and "R12493-1603", and on the 1967 Regional Charting Map for the Parish of Beneree with a reference to "R339b-1603".</p> <p>Crown Plan R12493-1603 is a plan of lands to be resumed under the <i>Public Roads Act 1902</i>, and relates to the section of Old Swamp Road that traverses Lot 89 in DP750415 (in the west) to its intersection with Woodville and Waldegrave Roads (in the east). It indicates that this section of Old Swamp Road was resumed by Government Gazette notice 3 March 1916 (Folio 1431). Government Gazette notice 3 March 1916 Folio 1431 confirms that the section of Old Swamp Road depicted in Crown Plan R12493-1603 was resumed and dedicated as a road by that notice.</p> <p>Crown Plan R339b-1603 is a plan of deviation in the road from Cadia to Bathurst. It relates to the section of Old Swamp Road to the east of Flyers Creek between Lot 3 in DP1130549 and Lot 71 in DP1001155. It indicates that this section of road was opened by Government Gazette notice 20 May 1881 Folio 2820. Government Gazette notice 20 May 1881 Folio 2820 confirms that this section of Old Swamp Road was opened for public use by that notice.</p> <p>Crown Plan R339b-1603 does not cover the section of Old Swamp Road that forms the north eastern boundary of Lot 1 in DP523318 and part of the</p>				
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				southern boundary of Lot 89 in DP750415 (ie, to the point where the road turns to traverse Lot 89, where it is covered by Crown Plan R12493-1603). However, this area is depicted on the 1951 Waldegrave Parish Map as a public road with a notation to reference note 44, which states "Declared to be Public Road G. 3.4.58". Government Gazette notice 3 April 1958 (Folio 996) confirms that the part of Old Swamp Road running along the southern boundary of portion 89 was declared open to the public under provisions section 18 of the Public Roads Act 1902.				
<i>Watercourse</i>								
8.	Moolarben Creek	Water course	N/A	<p>We have assessed the native title status of the bed and banks of that part of Moolarben Creek within the application area by considering the tenure history of each parcel of land within the application area that the Moolarben Creek abuts, in accordance with the <i>ad medium filum aquae</i> principle.</p> <p><b>Land abutting watercourse - Lot 110 in DP755442</b></p> <p>12. The title search for Lot 110 in DP755442 shows that the land is located in the Parish of Moolarben County of Phillip, and that the title diagram is Crown Plan 1002.2125.</p> <p>13. The historical title search for Lot 110 in DP755442 shows that the first title for the land is "See prior title" and the prior title is Volume 12516 Folio 184.</p> <p>14. Volume 12516 Folio 184 is a certificate of title issued on 20 August</p>	Yes	26 Jul 1910	15. By the grant of a pre-3 May 1918 freehold estate (Crown Grant Volume 2076 Folio 179) that abuts the western bank of Moolarben Creek extinguished native title to the centreline.	Vol 1, pg 62-69

				<p>1974 which shows that Portion 110 in the Parish of Moolarben County of Phillip was held by Kevin Leslie Garner in freehold at that date. It also shows the prior title as Crown Grant Volume 2076 Folio 179.</p> <p>Volume 2076 Folio 179 is a Grant of Land Purchased by Conditional Sale Without Competition dated 26 July 1910 which shows that Portion 110 in the Parish of Moolarben County of Philip was granted to Herbert Swords in freehold.</p> <p>Additionally, the written description of Portion 110 provided in Volume 2076 Folio 179 confirms that Portion 110 is bounded on the north by Moolarben Creek, and the terms of the grant do not explicitly exclude Moolarben Creek.</p>				
<i>Determination</i>								
9.	Lot 1 in DP616317	Freehold	The Maritime Services Board of NSW	<p>Lot 1 in DP616317 forms part of the table of 'Extinguished Parcels' contained in Schedule Three of Native Title Determination NCD2015/002 - Yaegl People #1. which sets out the land and waters to which native title has been extinguished.</p> <p>The table shows that the registered proprietor of Lot 1 in DP616317 in the Locality of Yamba is The Maritime Services Board of NSW.</p>	Yes	25 Jun 2015 i.e. date of Determination	by Native Title Determination of the Federal Court.	Vol 1, pg 70-85

Western Lands Lease								
10.	66/760471	Perpetual WLL	Jane & John Farmer	<p>Former WL Portion 66 corresponds with current lot 66.</p> <p>A lease for grazing known as WLL3306 (applied for 16 Feb 1944) was granted pursuant to section 23 of the WLA over WL Portion 66 in the parish of Lawrence, County of Cairn, Shire of Balranald to Hugh Curphy perpetuity on 2 October 1944 (Government Gazette No. 100, 13 Oct 1944 Folio 1776) in</p> <p>Note: there are no watercourses reserved from the grant</p>	Yes	2 Oct 1944	<p>Grant of Perpetual Lease under sec 23 Western Lands Act 1901 and in accordance with</p> <p>Wilson v Anderson (2002) 213 CLR 401</p>	Page 86