ROADS ACT 1993
AN UPDATE

(Road Openings & Closures)

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1. BACKGROUND

Understanding the Roads Act 1993 has been a slow and a difficult process for both Council and Government Offices. In the two years since the Act has been legislated little advice or instruction has been forthcoming from the appropriate authorities.

Training courses/seminars promised in October, 1993 by the Department of Conservation and Land Management (CALM) and the Local Government Association STILL have not eventuated.

The Local Government Roads Legislation Group was formed in 1993 by a Group of concerned Councils from the Hunter Valley and North Coast in an attempt to explain and form common procedures to deal essentially with road openings/closures and to a lesser degree other roads matters. Issues arising from the new legislation which have been identified by the group include:

- lack of direction from CALM, Local Government Associations or other relevant bodies
- In the case of closing Crown Roads or Unformed Council Roads, conditions set by Council on the purchaser cannot be enforced by CALM
- High costs of road closures
- Definitions of terms
- Inconsistencies in advice from various regional CALM offices. To date the only formal advice that Councils have received is a seven page letter from CALM on the implementation of the Roads Act 1993 and a similar letter from the Land Titles Office (Annexure A).
- Unreasonable delays by many CALM offices in dealing with roads matters
- No provision for joint road opening/closures
- Impact of the Native Title Act on roads matters
- Inappropriate use of the (Just Terms Compensation) Act 1991 by CALM in some instances
- Loss of compensation for Councils with most road closures
- No compensation for Councils for maintaining Crown and unformed Council roads.

The opinions and views expressed in this paper broadly reflect the Roads Group findings and experiences and not necessarily those of any particular Local Government Authority. It is expected that the opinions and procedures contained in this paper will be modified as the relevant Government and Local Government authorities gain a better understanding of the new act.

2. CLOSING OF PUBLIC ROADS (PART 4 ROADS ACT)

A brief outline of the legislation for the closure of a public road is listed below:

Section 34 (1) An application for the closure of a public road can be made by:

- any person in the case of a Crown Road
- a relevant Roads Authority in the case of a Council Road or public road under the control of any other public authority
- the RTA in case of a freeway

Section 34 (2) - An application may be transferred in accordance with regulations

(3) - The Applicant is to pay all costs as required.

Section 35 Publication of a proposal to close a public road:

- to be published in a local newspaper
- any person is entitled to make a submission (also Section 36)
- a minimum period of 28 days is to be allowed for submissions

Section 37 (1) Closure of a public road may be effected by notice published in the NSW Government Gazette

Section 37 (2) A public road cannot be closed without the consent of the following:

- for a classified road - the RTA
- for a Council road - the relevant Council
- for a classified road owned by Council - the RTA and Council

Section 38 (1) Upon publication of the closure notification in the Government Gazette:

- the road ceases to be a public road
- all previous rights etc. affecting the subject road are extinguished

Section 38 (2) A closed public road vests in:

- the RTA in the case of a freeway
- the Council in the case of a constructed Council road
- the Crown in all other cases

Section 42 (1) Disposal of a Closed Crown road is to be by the appropriate Sections of the Crown Lands Act 1989.

Section 43 (1-4) Disposal of a Council road

Upon closure of a Council road the land is automatically classified as Operational Land for the purposes of the Local Government Act 1993 unless Council has resolved that it vests as community land.

Compensation from the closure of a Council road can only be used for:

- acquiring land for public road or
- carrying out works on public roads

2.1 Exceptions

Freeways may be closed by the RTA. Tollways are not public roads as defined by the Roads Act but both freeways and tollways are still dealt with under the Act.

In certain cases a Public Authority may be a Roads Authority such as Department of Housing, Public Works Department, Forestry Commission and National Parks and Wildlife Service but in the case of a road closure Council's consent would still be required and CALM prefers the relevant Council to be the applicant.

3. ROAD CLOSURE PROCESS

It is essential that the applicant for a road closure clearly understands that the road closure process is not simple, quick or inexpensive. The applicant must also be made fully aware that the acceptance of a road closure application by a roads authority or CALM does not constitute any form of a contract or guarantee that the road will be closed and sold.

A Roads Authority's charges must reflect the true costs it has incurred in the road closure process as in many cases the authority will not be entitled to any compensation for a road closure.

These may include:

- General processing of applications
- Investigation of status including title searches
- Obtaining agreements of adjoining owners
- Obtaining agreements of public utilities
- Resolution of drainage problems
- Creation of easements
- CALM fees
- Resolution of any objections by the public
- Valuations
- Survey Plans and lodgement with Land Titles Office

The closure process varies depending on who has control of the subject road. To address this situation a number of Councils have introduced a two (2) stage processing system:

Stage 1 - Initial assessment of application up to Council Resolution

Stage 2 - From Council Resolution to closure and sale of road

The two (2) stage system is appropriate because Council may only be involved at a Stage 1 level in Crown road closures but will be involved at Stage 1 and 2 for a Council Road. A number of Councils have also introduced their own Road Closure forms for internal use

3.1 Crown Roads

The closure process for a Crown Road is similar to previous legislation with any person being able to apply for the closure of a Crown Road.

An application is made (on CALM form CL31A-2) in the first instance to Council for its approval. This would involve Council in Stage 1 processing as follows (Annexure B attached - Flowchart for Closure of a Crown Road):

- Payment of application fee to Council (Approximately $300) and lodging of Application Form

- Check status of road

- Check consent of adjoining owners - some Councils require consent of adjoining owners as a condition of accepting application

- Check consent of all relevant Public Authorities including RTA and public utilities or if a proposed closure is affected by public utilities ascertain what action may be required such as relocation of utilities or creation of easements.

- Ascertain history of use and construction details

- Comments from Council departments e.g. Engineers, Planners, Surveyors etc. as to any effects the closure may cause (e.g. drainage or contravention of any planning instruments, etc..

- Letter to applicant either rejecting application or stating what recommendations may be made to Council.

- Report to Council and Resolution giving consent or refusal and setting any conditions Council may have.

- Signing of application by Mayor and General Manager (plus Council Seal)

- Completed application form returned to applicant.

Council involvement generally ends at this point and applicant then deals with CALM.

- Applicant to lodge application form with CALM with $800 current processing fee.

- Check status and adjoining titles.

- Check with Public Authorities and public utilities.

- Proposed closure advertised in local paper for submissions from any person (minimum of 28 days).

- Preparation of Survey Plan - may be compilation or full survey depending on circumstances.

- Lodgement and registration of Survey Plan with Land Titles Office ($510).

- Closure effected by publishing of notice in Government Gazette.

- Closed road vests in Crown and title is issued.

- Valuation by Valuer General (market value)

- Compensation set by CALM and sale of land.

3.2 Council Roads - Formed

The closure process for a Council road is substantially different to previous legislation with Council (or relevant Roads Authority) being the only applicant under the new legislation. This means that Councils will often have to act as applicants on behalf of another party for a road closure in which a Council has no real interest.

Under previous acts eventual payment for the land (plus sometimes the improvements) compensated Council for its cost in the closure. Under the new legislation payment for the land will not occur if the road is unconstructed and the use of such payment is restricted by Section 43 of the Roads Act 1993. It is therefore essential for a Council to ensure all costs are covered by the intended purchaser. A number of Councils have introduced the two (2) stage fee structure to reflect the true costs of a closure action.

An application is made to Council by an interested party. There is no set application form at this stage and a number of Councils have developed their own internal forms to address this problem (Annexure C attached - Flowchart for Closure of a formed Council road). The processing involves stage 1 and 2 as follows:

Stage 1 - Same as for Crown road except for a different application form and a valuation may be done at this stage.

Stage 2 - If the interested party agrees to the conditions of Council's resolution, Council may then apply to CALM (on CALM form CL29-1)

- Payment of fees -CALM $800
  -Council approx. $700
- Check of status and adjoining title
- Check with public authorities and public utilities
- Determination of any public utilities requirements by Council
- Proposed closure advertised in local paper for submissions from any person (minimum of 28 days for submissions)
- Resolution by Council of any objections
- Preparation of survey plan (applicant's cost)

- Lodgement and registration of survey plan by Council with Land Titles Office ($510 approx)

- Closure affected by publishing notice in Government Gazette

- Issue of title by Land Titles Office to Council.

- Compensation set by Council and sale of land.

Note

A number of Councils insist that a closed road be consolidated with adjoining property to avoid the problem of undersized lots being created and conflicting with any planning instruments.

3.3 Council Roads - unformed

The closure process for an unformed Council road is generally the same as for a formed Council road using the two (2) stage process (Annexure D attached - Flowchart for the closure of an unformed Council road). The major difference is that upon gazettal of the closure the land vests in the Crown and Council receives **no compensation.**

4.0 OPENING OF PUBLIC ROADS

The acquisition of land for road purposes is now the total responsibility of the particular roads authority. Prior to the Roads Act 1993 actions were carried out by various Government instrumentalities at a cost to the responsible roads authority.

The preliminary actions leading to the formal requirements remain as they were, however, the roads authority is now required to perform all statutory and legal works (that is all matters up to registration of survey plan with the Land Titles Office, i.e. title search, valuation, survey and plan preparation, Government Gazette notices, plan registration) and must also ensure that the Land Acquisition (Just Terms Compensation) Act 1991 is complied with. It is also up to the Roads Authority to make any necessary applications (with complete documentary support) to the Minister if compulsory acquisitions is the only solution to finalise the acquisition.

Road opening applications are no longer submitted to the local Lands Office (CALM) unless there is a road closure on the same plan or if the road opening is over Crown Land. If a plan of opening and closure is submitted to the Lands Office, that office is only concerned with the closure aspects and when it is consented to the plan is returned to the road authority for registration etc.

As indicated earlier in this paper the title generated for the road closure is granted to either the Crown or the road authority. If this closure is to be part or full compensation for a parallel road opening the road authority has the obligation to arrange this action. If the closed road was unconstructed the road authority may have to purchase the closed road from CALM at market price.

4.1 Road Opening Process

Below is an outline of legislation affecting the opening of public roads under the Act.

Section 8 A public road can only be opened in accordance with this or some other Act.

Section 9 Opening methods

- By an intention statement on a plan of subdivision to be registered at the Land Titles Office - includes Temporary Roads
- Registration of the plan dedicates the land as public road

Section 10
- Council or RTA owned land can be declared public road by that authority in the Government Gazette
- On publication of the notice in the gazette the land becomes public road

Section 11 The Minister may dedicate land acquired for road purposes as public road by notice in the Government Gazette

- Ministers dedication must state if public road is Crown controlled

Section 12 Minister can dedicate unoccupied Crown land as public road in the Government Gazette

- Ministers dedication must state if public road is Crown controlled
- Land becomes public road on publication in Gazette

Section 13 The Governor may dedicate land (used as road) owned by a Public Authority as public road

- This dedication can only take place on the recommendation of the Minister responsible for that Public Authority
- The land becomes public road on publication in the Gazette

Section 14 Land acquired and dedicated for widening of an existing public road becomes part of that road.

Section 15 A public road cannot be opened by a person unless:

- The opening is approved by the Council of the area
- If outside a local government area, approved by the Minister
- Conditions may or may not be imposed by Council or by the Minister
- Each affected land owner must consent to the opening - if not opening cannot proceed.

Section 16 Council may dedicate certain lands as public road - applies to land set aside as roads left in a subdivision before 1 January, 1907 or a plan of subdivision registered by the Registrar General before 1 January, 1920.

- Council may dedicate the land as road in the Gazette
- The land is freed of all trusts, restrictions, dedication, reservations, obligations and interests and becomes public road on publication of the Gazette
- No compensation is payable under this section
- Dedication not to take place if Land and Environment Court has made a declaration under Section 17 that it may not proceed or such an application is pending before that Court

Section 17 Prior to dedication under Section 16 Council must give 28 days notice of the intention to the land owner.

- During the 28 days notice the land owner may apply to the Land and Environment Court for a declaration for Council not to proceed.

5. CONSTRUCTION OF CROWN ROADS

The Crown will no longer consent to the construction of a Crown Road. CALM's policy will now result in any Crown Road proposed to be constructed being transferred to the control of the relevant Council. CALM will force this on Council's with or without their consent.

6. TERMINOLOGY AND DEFINITIONS

The wording of the act has created a number of problems, the main one being the inconsistency of wording with its cognate act, the Local Act 1993.

Definitions of wording is unclear such as

- Constructed
- Unconstructed
- Maintenance
- Close to

7. FEES AND CHARGES

Councils

Councils' work load increased substantially as a result of the act such as:

- road openings - Councils to be responsible for most road openings

- road closures - Councils to be the applicant for all Council roads, even though they receive no compensation in most cases.

- roads/lands affected by native Title - Council have had onus placed on them to resolve any issue in regard to Native Title Interest.

It is therefore essential that Councils charges reflect true costs. Road Closure costs can easily exceed $5,000 and one Council has reported that costs to-date in a roads matter affected by Native Title has exceeded $10,000 (up to Tribunal hearing stage) with compensation to be paid by Council or Commonwealth yet to be determined.

Crown Land Services

In respect of road closures CALM fees are now $800, yet Council (in the case where they are the applicants) are now responsible for survey plan and registration, resolution of all objections and Land Titles Office matters.

Land Titles Office

Charges by the Land Titles Office appear to be reasonably consistent with charges prior to the new act.

8. ISSUING OF TITLES BY LAND TITLES OFFICE

Since July, 1994 the Land Titles Office automatically issue title for road closures. In the case of roads closed prior to July 1994 Councils will still have to apply for title.

9. OBJECTIONS IN RELATION TO ROAD CLOSURES

The Roads Act now allows any member of the public to object to a road closure (Section 35). Situations have arisen where a number of closure applications have been substantially delayed or even stopped due to erroneous or frivolous objections. There is an apparent reluctance by CALM to override any objections and avenues of appeal against CALM decisions or failure to continue processing of an application appear to be non-existent.

10. PROBLEMS WITH ROADS AN NATIVE TITLE

The Native Title Act 1993 has created one of the single greatest problems for roads authorities dealing with unformed Crown Roads and other Crown Lands. A requirement that Native Title has to be extinguished over a subject parcel of land has effectively stopped the processing of closure applications by CALM for unformed Crown Roads. Other applications over Crown land in relation to road matters have also been considerably drawn out and expensive due to the need for native Tribunal hearings etc. Use of the Native Title register does prove that a claim over a parcel of Crown Land does not exist.

11. PROBLEMS WITH LEASING OF ROADS

Legislation dealing with the leasing of roads has changed little from previous legislation with the exception of the provision for footpath restaurants. Leasing above and below the road surface can be for a period of up to 99 years (Section 149) but leasing of the surface (Section 157) is still restricted to 5 years (7 years for footpath restaurants).

Many larger CBD's contain malls and wide footpaths with a perceived commercial value, but this value is not realised as many businesses require the security of leases for 20 years or longer.

Another problem is the liability of respective roads authorities for awnings and verandahs over roads. It would appear that all awnings should be subject to a lease setting out conditions, liability, insurance requirements etc. The cost of administering awnings under current legislation would be prohibitive.

12. PROCESSING OF APPLICATIONS BY CALM

Time taken by CALM to process matters such as road closures are excessive. Some road closures commenced under the Public Roads Act 1902, have still not been finalised. Few closures commenced under the new act have been finalised at this stage.

Many road opening applications lodged with CALM by Councils prior to commencement of the Roads Act were returned unprocessed upon implementation of the new act.

Reasons given by CALM for delays in processing include:

- Lack of Staff
- Waiting on legal advice/direction
- Some offices not having full time roads officers
- Staff turnover/training of new staff

Having regard for the fact that many aspects of roads procedures are dealt with by Councils and that the fees charged by CALM appear to reflect true costs excessive time delays by CALM are unwarranted.

13. LAND TITLES OFFICE

The Land Titles Office has to ultimately deal with the final stages of most road procedures even though they had no involvement in drafting the Roads Act. Members of the Roads Group have found the Land Titles Office to be helpful and co-operative but have been unable to provide a definitive interpretation of aspects of the Act. Advice on a particular matter given by the Land Titles Office can vary depending on the officer providing the advice.

14. COMPILED PLANS

In many cases the Land Titles Office will no longer accept compiled plans for road closures. Currently only 10% of plans accepted are compiled whereas previously 34% were accepted.

No compiled plans of Road Openings will be accepted by the Land Titles Office

15. JOINT ROAD OPENING/CLOSURES PLANS

Todate no acceptable methods have been developed for this purpose. Bob Ings (LTO) would welcome any suggestions.

16. FEEDBACK FROM 1994 STAFF SURVEYORS CONFERENCE

It was apparent that the vast majority of those attending the conference were ignorant of most aspects of the Roads Act. Confusion with the Public Roads Act 1902 and Crown and other Roads Act was also evident.

Members of the Association appear to be affected by the same problem as most Councils - lack of advice/instructions from relevant authorities.

I would like to thank the many substantial numbers of conference members who have contacted me since the conference.

17. CONCLUSION

The past 12 months have provided no relief for Councils in administering the Roads Act 1993. Those parts of the Act that have been deciphered generally serve to increase workloads, increase costs and create very lengthy delays when dealing with many government departments. The main concerns currently perceived by the Roads Group include:

- lack of seminars/workshops by CALM and relevant bodies
- lack of policies by CALM on many roads matters
- unreasonable processing times by CALM
- impact of Native Title Act 1993 on roads matters
- loss of income for Councils
- increased costs
- crown roads transferred to Council's without their consent
- need to re-write Act to make it consistent with its cognate Acts
- need for joint road closure/consolidations procedures

ANNEXURE A

TITLE CREATION DIVISION CIRCULAR

LAND TITLES OFFICE

DATE 20th May 1994 NUMBER 2/1994

ROADS ACT 1993

1. **The Act**

The Roads Act 1993 commenced on 1 July 1993. The Act supersedes the roads provisions of the Crown and Other Roads Act 1990, the State Roads Act 1986, the Local Government Act 1919 (other than the provisions relating to new roads in Part 12), the Public Gates Act 1901, the Width of Streets and Lanes Act 1902 and the Traffic Safety (Lights and Hoardings) Act 1951.

The basic objectives of the Act are:

- to consolidate various provisions relating to roads in the repealed Acts within one Act;
- to establish the procedures for opening and closing of public roads;
- to provide for the classification of roads; and
- to provide for the declaration of the RTA, the council of a local government area and the Minister administering the Crown Lands Acts as roads authorities.

The Act also sets out the rights of the public to pass along public roads and also the rights of persons who own land adjoining a public road to have access to the public road.

The following points are fundamental to operations under the Roads Act 1993:

- road opening/closing applications made before 1 July 1993 will generally continue under existing procedures;
- councils can no longer lodge a road opening application with CaLM;
- only roads authorities may apply to close a road which is not a Crown road;
- a Crown road remains vested in the Crown on closing; and
- a road of which the council is the roads authority remains vested in the council on closing except that where the road is not constructed the land vests in the Crown.

2. Roads Authorities

2.1 The RTA is the roads authority for all freeways. Such freeways are vested in fee simple in the RTA (section 145(1)).

2.2 The Minister administering the Crown Lands Acts is the roads authority for all Crown roads.

A Crown road is defined in the Roads Act 1993 as a public road that is declared to be a Crown road for the purposes of the Act. Consequently, all roads administered by the Crown as a roads authority will be public roads which are Crown roads (clause 56, Division 4 of Schedule 2).

All Crown roads are vested in fee simple in the Crown as Crown Land (section 145(2)).

2.3 The council of a local government area is the roads authority for all public roads within the area (other than any freeway, Crown road or any public road for which some other authority such as the Sydney Cove Redevelopment Authority may be declared by regulation to be the roads authority).

Section 145(3) vests all public roads within a local government area (other than freeways or Crown roads) in fee simple in the appropriate roads authority.

All public roads outside a local government area (other than freeways or Crown roads) are vested in fee simple in the Crown as Crown land (section 145 (4)). This will apply to public roads in the unincorporated area in the Western Division of the State.

3. Classification of roads

Part 5 of the Roads Act 1993 provides for the classification of roads, requires that there be consultation with the various roads authorities before a road is classified, distributes certain functions between the RTA and the other roads authorities and makes provision for the restriction of access between freeways and controlled access roads and adjoining land.

4. Savings, transitional and other provisions

The Act includes savings, transitional and other provisions which are set out in Schedule 2.

They provide for -

- Any road opening application or proposal existing under the Crown and other Roads Act 1990 to be finally disposed of in accordance with the provisions of that Act (clause 57).

In future, only a private person may lodge an application with CALM to open a road. After 1 July 1993, councils and other road authorities (other than the Crown) may take independent action to open a road under Division 1 of Part 12 of the Roads Act 1993 and the Land acquisition (Just Terms Compensation) Act 1991 (see paragraph 5).

- Any road closing application or proposal existing under the Crown and Other Roads Act 1990 to be finally disposed of in accordance with the provisions of that Act with the proviso that any public road closed may be disposed of in accordance with Division 4 of Part 4 of the new Act i.e. land that formed a public road that has been closed after 1 July 1993 vests in the relevant authority (clause 60).

5. Opening of Public Roads

A public road may only be opened in accordance with the Roads Act 1993 or some other Act (section 8). This does not bind the Crown.

Section 9 provides for a public road to be created by registration of a plan. The section reads as follows -

"9 (1) A person may open a public road by causing a plan of subdivision or other plan that bears a statement of intention to dedicate specified land as a public road (including a temporary public road) to be registered in the office of the Registrar General.

(2) On registration of the plan, the land is dedicated as a public road.

(3) This section is subject to Part 12 of the Local Government Act 1919".

Note that Part 12 (sections 320-342) of the Local Government Act 1919 remains in force pursuant to section 3 of and Schedule 1 to the Local Government (Consequential Provisions) Act 1993.

Land may also be dedicated as a public road under the Roads Act 1993 in the following ways -

(i) The RTA or a council may dedicate land as a public road by notice published in the Government Gazette (section 10).

(ii) The Minister administering the Crown Lands Acts may dedicate land as a public road by notice published in the Government Gazette where the relevant land has been acquired by the Minister under Division 1 or 2 of Part 12 of the Act. Such a notice must declare whether or not the road is to be a Crown road (section 11).

(iii) The Minister administering the Crown Lands Acts may dedicate land as a public road by notice published in the Government Gazette where the relevant land is unoccupied Crown land (section 12).

(iv) The Governor may proclaim certain public land that is used by the public as a road to be public road (section 13). Such a proclamation may not be made except on the recommendation of the Minister responsible for the public authority which owns the land.

(v) Land that is the subject of a road widening order and is acquired under the Act for road widening becomes public road without further dedication (section 14). See also paragraph 11.4.

(vi) A council may dedicate land as public road where there is doubt surrounding the status of the land as a public road because it was set aside in an old subdivision, unless the Land and Environment Court has ordered otherwise or an application for an order is pending (sections 16 and 17).

6. **Power to acquire land generally.**

After 1 July 1993, the Minister administering the Crown Lands Acts, RTA and councils may pursuant to section 177 acquire:

- land for any of the purposes of the Roads Act 1993;
- land that is to be made available for any public purpose for which it is reserved or zoned under an environment planning instrument; or
- land that forms part of, or adjoins or lies in the vicinity of, other land proposed to be acquired for the purpose of opening, widening or constructing a road or road work.

The RTA may also acquire land that it proposes to declare to be RTA development land.

Land that is authorised may be acquired by agreement or by compulsory process in accordance with the Land Acquisition (Just Term Compensation) Act 1991 (section 178).

In respect of Torrens title land, a Request (form 97-11R) should be completed requesting the Registrar General to note in the Register kept under the Real Property Act 1900 pursuant to the Land Acquisition (Just Terms Compensation) Act 1991, that a proposed acquisition notice (or its withdrawal or amendment) has been issued, affecting the land specified in the request.

An example of a Request is attached.

With Old System land an instrument should be prepared and lodged for registration in the General Register of Deeds together with a registration copy prepared in accordance with clause 4 of the Conveyancing (General) Regulation 1992. Alternatively the LTO will prepare the registration copy for an additional fee. See the attached example.

A council may not give a proposed acquisition notice under the Land Acquisition (Just Terms Compensation) Act 1991 without the approval of the Minister for Local Government and Co-operatives.

7. **Acquisition of land by the Minister administering the Crown Lands Acts as a result of private application for the purpose of a public road.**

Any person who is not empowered to compulsorily acquire land may apply to the Minister administering the Crown Lands Acts for the acquisition of land (other than unoccupied Crown land) for the purpose of a public road (section 182).

Section 185 requires the Minister as soon as practicable after publishing a notice of intention to deal with an application in a local newspaper to give notice of that intention to the Registrar General. If the application is abandoned then notice of such abandonment must also be given to the Registrar General (section 200). The procedures for the lodgment of a Request as set out in paragraph 6 will apply in these circumstances.

Section 200 does not apply if the Minister has not published a notice with respect to the proposal.

Upon receipt of a notice of intention to deal with an application or abandonment of an application, the Registrar General must make such recordings as the Registrar General considers appropriate in the Register kept under the Real Property Act 1900 or in the General Register of Deeds.

It will be the responsibility of the applicant for the road opening or the applicant's representative to lodge the final plan in the LTO. However, the plan must be accepted by the authorised person in the District Office of CaLM.

8. **New procedures for councils and other roads authorities (other than the Crown)**

Roads authorities must -

(i) Prepare and lodge a plan of survey of the proposed road with the LTO. The heading of the plan should refer to "Plan of land to be acquired for the purposes of the Roads Act 1993".

A statement of intention in regard to each parcel (other than a residue parcel) should be included in the panel provided for statements etc.

Statements of intention should be in the following form -

(a) Lots 12 to 17 inclusive are required for road and after construction will be dedicated as public road under section 10 of the Roads Act 1993.

(b) Lots 7 to 11 inclusive are required for freeway under section 48 of the Roads Act 1993.

Access will be denied across the boundaries marked A-B-C-D and E-F-G-H.

Lots 12 and 13 are to be acquired and will ultimately be disposed of.

(c) Lots 4 to 8 inclusive are required for controlled access road under section 49 of the Roads Act 1993.

Access will be denied across the boundaries marked A-B-C and D-E-F.

The plan will be registered (plan purpose - proposed road or proposed freeway) and appropriate dummy ALTS records created.

(ii) Publish a notification in the Government Gazette to compulsorily acquire or to compulsorily acquire and dedicate the land as public road or if the land is acquired by transfer, publish a notification in the Gazette to dedicate the land as public road.

NB: The only road opening applications processed by the District Offices of CaLM will be those lodged by a private person. The plan purpose will be shown as proposed road.

Following gazettal, the roads authority should lodge a Request (form 97-11R) for Torrens title land to have the resumption notified in the Register and to create any folios for residue lots (NOCT).

Where the land is not Torrens title and a certificate of title is required, a Resumption Application pursuant to section 31A(2) of the Real Property Act 1900 (form 20-0630) should be lodged.

9. Road Closings

Section 38 of the Roads Act 1993 provides that on closing:

- a road ceases to be a public road and the rights of passage and access that previously existed are extinguished;
- land that was formerly a freeway remains vested in the RTA; and
- a public road that was formerly vested in a council (other than a public road in respect of which no construction has ever taken place) remains vested in the council.

In any other case, a road that is closed vests in the Crown as Crown land or, if previously vested in the Crown, remains vested.

After 1 July 1993 roads authorities other than the Crown must apply to the Minister administering the Crown Lands Acts to close a public road (other than a freeway).

The roads authority must -

- Prepare and lodge the plan depicting the land intended to be closed. The plan will be for road closing purposes and the heading should refer to "Plan of road to be closed under the Roads Act 1993". A statement of intention in regard to each lot proposed to be closed should be included in the panel provided for statements etc. If the plan is in order it should be registered and appropriate dummy ALTS records created for the lots therein.

- Supply a copy of the registered plan to the District Office of CaLM. That Office will notify the road closing in the Government Gazette. The gazettal will specify the authority in which the closed road vests or remains vested.

Following gazettal, an Application (form 97-18RA - previously form RP89) will be raised in Charting Branch to issue new certificates of title in the name of the authority. Form RP89 is renumbered as form 97-18RA so that it is compatible with the LTO computerised stock control system.

A general Primary Application number (PA 90000) will be entered in the Historical File in ALTS for each new folio to be created for closed roads where the former title is Old System.

10. Minister as Roads Authority

The closing procedure for a Crown road generally remains unchanged -

- Existing procedures for lodging plans with pre-allocated plan numbers by District Offices of CaLM will still apply to closings of Crown roads.

- The plans will be registered (purpose - Crown Folio Creation) and the heading will refer to "Plan of road proposed to be closed under the Roads Act 1993".

- On registration, an appropriate ALTS dummy record will be created.

- The closed road remains vested in the Crown following notification in the Government Gazette.

- An Application (form 97-18RA) to create a new folio of the Register (NOCT) will be raised in Charting Branch.

  The Historical File in ALTS will show THIS FOLIO as the first title.

11. Road Widening

11.1 Division 2 of Part 3 of the Roads Act 1993 allows a roads authority to submit to the Minister for Local Government and Co-operatives a proposed plan for the widening of a public road for which a council is the roads authority.

The provisions in the Act alter the existing procedures for widening a public road using the realignment method previously authorised by section 262 of the Local Government Act 1919 and section 19 of the State Roads Act 1986 (both now repealed).

The Minister may not give approval to a proposed widening with respect to a classified road except on the recommendation of the RTA.

11.2 On receiving the Minister's approval to a proposed plan, the roads authority may give effect to the plan by means of an order published in the Government Gazette (road widening order).

The order takes effect on the date on which it is published in the Government Gazette and the roads authority concerned must lodge the survey plan (purpose - proposed road) referred to in the order with the LTO for registration.

A person must not construct, replace or repair a building or work on land to which a road widening order applies.

A roads authority may, by order published in the Government Gazette, vary a road widening order, but only by excluding land from the operation of the order, or revoke a road widening order. Such an order may not be made with respect to a classified road except with the consent of the Minister given on the recommendation of the RTA.

11.3 Upon publication of a road widening order in the Government Gazette, a note will be entered in the Register for Torrens title land -

(ON NB) - "LOT _____ DP _____ ROAD WIDENING ORDER
GAZ _____ FOL ____ ".

The reference map will be similarly noted and the limits of the proposed road will be shown by red lines where necessary.

11.4 Division 3 of Part 12 of the Act provides that a roads authority may compulsorily acquire land the subject of a road widening order by means of an acquisition notice under the Land Acquisition (Just Terms Compensation) Act 1991 without the need for a proposed acquisition notice under that Act, provided the acquiring authority is satisfied that the land is clear of any building or structure (section 203(1) and (2)).

However, an acquisition notice is not invalid merely because of the existence on the land of any building or structure as at the time the notice is given (section 203(3)).

The Register and reference map will be noted -

"LOT _____ DP _____ - ROAD. GAZ _____ FOL _____".

11.5 A notice in force under section 19(2) of the State Roads Act 1986 or served on the owner of land under section 262 of the Local Government Act 1919 is taken to be a road widening order under the new Act.

Existing notifications which refer to section 27E of the Main Roads Act 1924, section 19 of the State Roads Act 1986 or section 262 of the Local Government Act 1919 will, where appropriate, be carried forward on new editions of folios of the Register.

12. Lease of public road

12.1 Section 149 of the Roads Act 1993 empowers a roads authority to lease the air space above, or land below the surface of, any public road (other than a Crown road) that is owned by the authority.

Such a lease may not be granted by a roads authority other than the RTA except with the approval of the Director of Planning. Approval should not be given if the granting of the lease would be inconsistent with the rights of passage and access that exist with respect to the road.

The term of the lease, together with any option to renew, must not exceed 99 years.

12.2 A roads authority may lease land comprising a public road (other than a Crown road) to the owner or lessee of land adjoining the public road if, in its opinion, the road is not being used by the public.

However, a lease of land acquired by the RTA for the purpose of road widening under Division 3 of Part 12 of the Roads Act 1993 (forming part of a classified road) may not be granted except by the RTA.

The term of a lease, together with an option to renew, must not exceed 5 years or 10 years in the case of a lease of land that has been acquired by the road authority under Division 3 of Part 12 of the Roads Act 1993.

A lease may be terminated by the roads authority at any time and for any reason.

See sections 153 to 157 inclusive of the Roads Act 1993.

13. Transfer of public road to another roads authority

The Minister for Local Government and Co-operatives (where a council is the roads authority) or the Minister for Roads (where the RTA is the roads authority) may pursuant to section 150, by order published in the Government Gazette, transfer a public road (other than a Crown road) from one authority to another. Such an order may not be made except with the consent of the roads authority from which, and the roads authority to which, the road is to be transferred.

14. Transfer of Crown road to council

The Minister administering the Crown Lands Acts may, by order published in the Government Gazette pursuant to section 151, transfer a specified Crown road to another roads authority.

An order transferring a Crown road to the RTA may not be made except with the consent of the RTA.

15. Quarter Session Roads

The Act provides that any road that was before 1st July 1993 a Quarter Session road is dedicated as a public road (clause 63 of Schedule 2 to the Act).

These types of roads will not now vest in the adjoining owner when closed.

NB: Provision for the opening of Quarter Session Roads ceased after the 1968 amendment to the Public Roads Act. At the same time (from 18 October 1968), closed roads that were opened under Act 4 William IV No. 11 ceased to vest in the adjoining owners and became Crown land.

Dennis Brady

DENNIS BRADY
Assistant Director
20 May 1994

97-11R

REQUEST

Real Property Act 1900

Land Titles Office use only

(A) **LAND**
Show no more than 20 References to Title.

(TITLE DETAILS)

(B) **REGISTERED DEALING**
If applicable.

(C) **LODGED BY**

L.T.O. Box	Name, Address or DX and Telephone REFERENCE (max 15 characters):	R

(D) **APPLICANT** (NAME OF ACQUIRING AUTHORITY)

(E) I, the Applicant, in regard to the above **Land/Registered Dealing**, request the Registrar General to

Note that the land described above is the subject of a proposed acquisition notice dated.....issued pursuant to Section 11 of the land Acquisition (Just Terms Compensation) Act 1991

(F) Certified correct for the purposes of the Real Property Act 1900. **DATE** (COMPLETE)

Signed in my presence by the applicant who is personally known to me.

.....
Signature of Witness

.....
Name of Witness (BLOCK LETTERS)

.....
Address of Witness

(EXECUTION OF AUTHORITY)
Signature of Applicant

CHECKED BY (office use only)

INSTRUCTIONS FOR COMPLETION

1. The Request must be completed clearly and legibly in permanent, dense, black or dark blue non-copying ink. If using a dot-matrix printer the print must be letter-quality.

2. Do not use an eraser or correction fluid to make alterations: rule through rejected material. Initial each alteration in the lefthand margin.

3. If the space provided at any point is insufficient, you may annex additional sheets. These must be the same size as the form; paper quality, colour, etc, must conform to the requirements set out in Land Titles Office Information Bulletin No. 19. The first and last pages must be signed by the person executing the Application and any attesting witness.

4. The following instructions relate to the marginal letters on the Request.

(A) LAND

Show the Reference to Title for the Land subject of the Request, for example, "1/723456" or "Volume 12345 Folio 111".
If there are more than twenty show none in this panel. Place ALL of them on an annexure (see 3 above) with twenty per sheet.

(B) REGISTERED DEALING

Show the number of any registered dealing subject of the Request.

(C) LODGED BY

This section relates to the person or firm lodging the Request at the Land Titles Office.
LTO Box If the person or firm lodging has a Land Titles Office Delivery Box, show the number; if not, leave this panel blank.
Name, Address or DX and Telephone Show the name, full address and daytime telephone number.
Reference (max. 15 characters) This is optional. Any slashes, dots, blank spaces, etc, will be counted as characters.

(D) APPLICANT

Show the name in full. Address and occupation need not be shown.

(E) LAND/REGISTERED DEALING

Amend as appropriate, for example, if the Request relates only to land delete "Registered Dealing".
Set out the terms of the request.

(F) EXECUTION

The Request must be executed by or on behalf of the Registered Proprietor.
By the Registered Proprietor Personally The Request must be signed in the presence of an adult witness who is not a Registered Proprietor and who knows the party signing personally. The witness should complete the appropriate section of the form.
By an Attorney The Power of Attorney must be registered in the General Register of Deeds at the Land Titles Office. The execution should take the form, "AB by her attorney XY *[full name]* pursuant to Power of Attorney Book 1234 Number 567".
Under Authority If the Request is made pursuant to an authority other than a Power of Attorney (see above) the nature of the authority should be disclosed.
By a Corporation under Seal The execution must either include a statement to the effect that the seal has been properly affixed, for example, "... pursuant to a resolution of the board of directors ...", or disclose the positions within the corporation of all those witnessing the affixing of the seal, for example, "director" or "secretary".

The completed request must be lodged by hand at the LAND TITLES OFFICE, Queens Square, Sydney (adjacent to Hyde Park Barracks), together with the relevant Certificate of Title (see 4(A) above). The Request must be accompanied by a completed Notice of Sale (obtainable from the Land Titles Office) if it will have the effect of altering the proprietorship of the Land.

If you have any questions about filling out the form, please call 228-6666 and ask for our Customer Services Branch.

O.S. LAND

NOTIFICATION OF PROPOSED ACQUISITION NOTICE

(Name of Authority) hereby gives notice that the land described in schedule hereto is the subject of (a) proposed acquisition Notice(s) dated ....., issued pursuant to section 11 of the Land Acquisition (Just Terms Compensation) Act 1991

(Signature of Authority
and date)

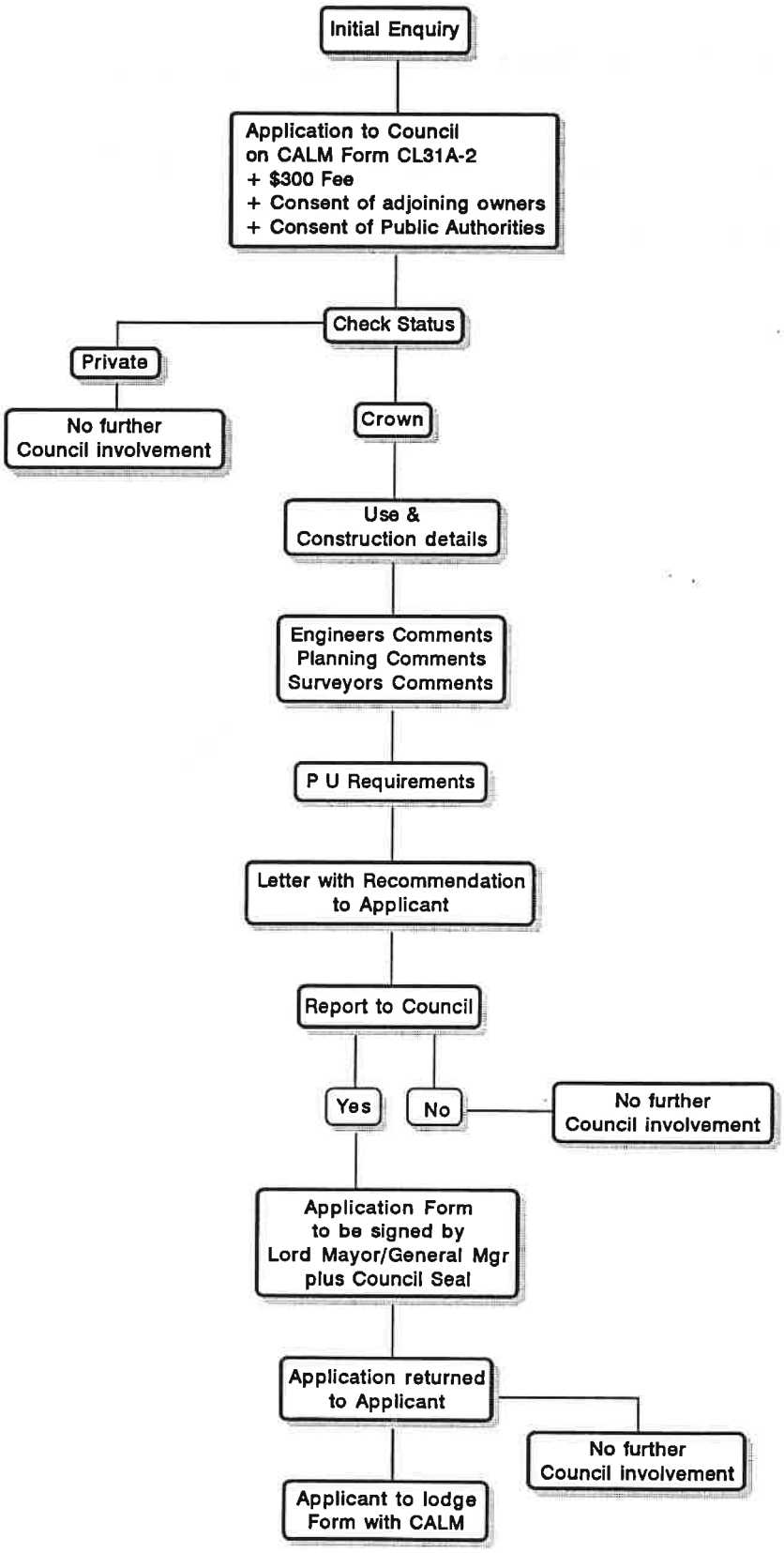
SCHEDULE

Description of Land	Name of owner of Land	Interest proposed to be acquired
(e.g. Lot ..... in DP ..... Parish of .....County of	(e.g. John Smith)	(e.g. Fee Simple or easement to drain water)

ROAD CLOSURE PROCEDURE

ROADS ACT 1993 **- CROWN ROAD**

ANNEXURE B

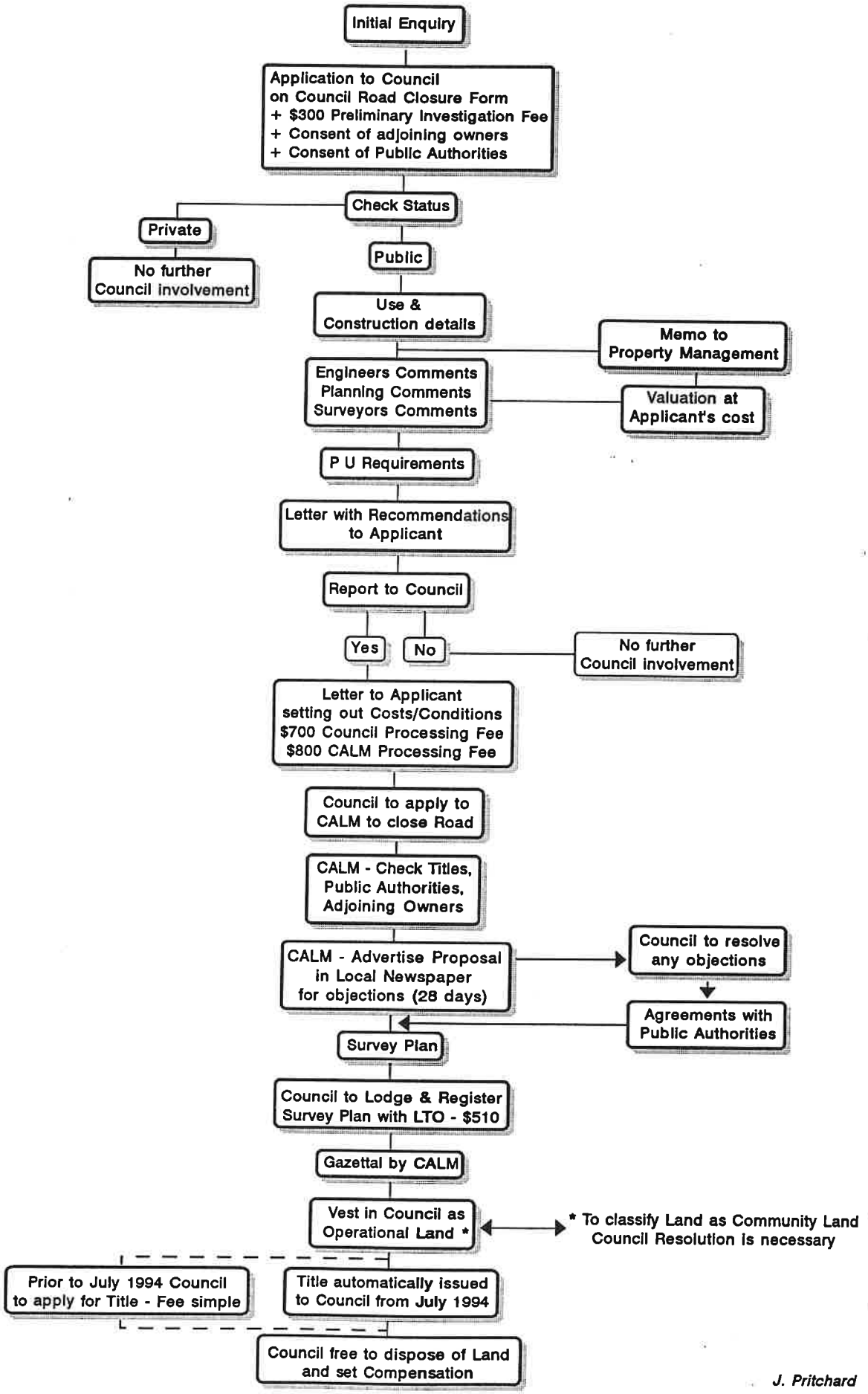


J. Pritchard NCC

ROAD CLOSURE PROCEDURE

ANNEXURE C

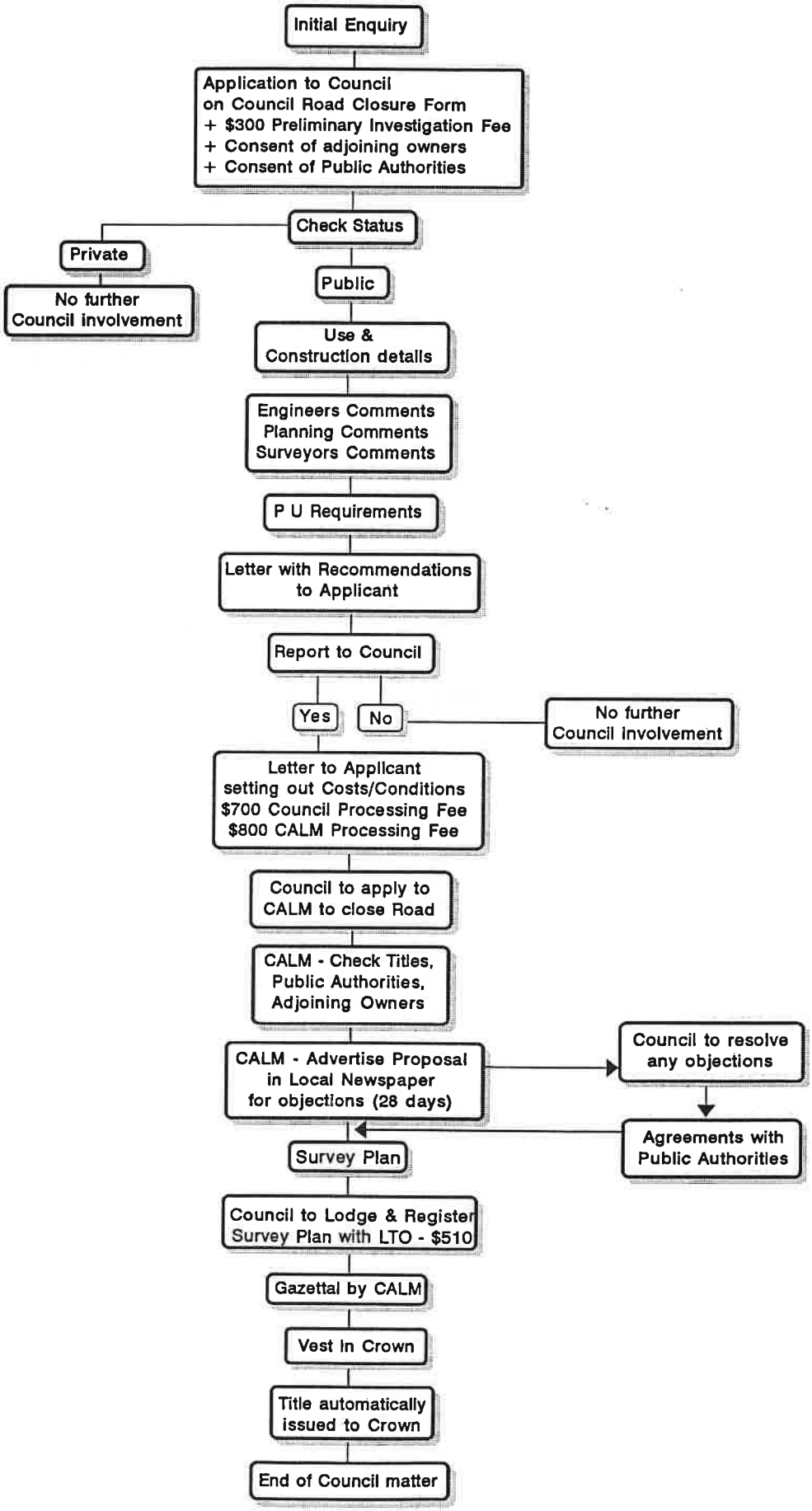
***ROADS ACT 1993* - COUNCIL ROAD - FORMED**



cclrdfor.ch3

J. Pritchard NCC

ROAD CLOSURE PROCEDURE

ANNEXURE D

***ROADS ACT 1993* - COUNCIL ROAD - UNFORMED**