

A Brief History of NSW Titles within the ACT and Their Redefinition

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ABSTRACT

At the time of creation of the Australian Capital Territory (ACT), all estates and interests in any land within the Territory came into the territory under the same 'terms and conditions as they were held from the state'. This meant that titles remained under the provision of the NSW Torrens registry or as Old System. Although much of the land in the central areas of Canberra was acquired by the Commonwealth in the following years, many titles remained under NSW provisions well into the 1970s. This land was dealt with (transferred, mortgaged, etc.) under the relevant NSW systems and not directly under any Commonwealth act or ordinance. As the ACT approached 50 years of age, there was a desire to bring all land under the Real Property Ordinance 1925 (Commonwealth legislation), and thus many freehold titles were transferred to be under the provision of this ordinance (yes, the Commonwealth registered freehold certificates of title in the ACT for a short period of time). In the decade following these transfers, compulsory acquisition (and some resurvey) of many titles occurred, which were then granted as ACT leasehold. This paper initially gives some insight into land dealings with such titles, the process of titles being brought under the Commonwealth registry and then examines an interesting case in which a lack of appreciation for the principles of redefinition and likely poor supervision and training resulted in a significant error when redefining boundaries from pre-ACT plans of survey. This error was part of a recent dispute and ensuing case in the ACT Supreme Court, which resulted in a government survey of redefinition.

KEYWORDS: Land titles, boundary redefinition, ACT.

1 INTRODUCTION

This paper outlines the major events relating to land administration and policy within the Australian Capital Territory (ACT) between 1909 and 1980. At the time of its acceptance by the Commonwealth, the lands comprising the ACT were administered under New South Wales (NSW) Acts and provisions. In 1913, approval was granted to bring all lands within the Territory under federal administration, and in 1925 the necessary legislation for this was established (*Real Property Ordinance 1925*). Despite this, it was not until the late 1970s that all land had actually been brought under the provisions of federal legislation and administration. As a result, for a significant portion of ACT's history (at least 1925-1978), land was administered under three different regimes: NSW Torrens Title, NSW Old System Title and ACT Torrens Title. This meant that for effective management, surveyors, lawyers and administrators would have had to navigate and be familiar with three distinct land registers, each governed by significantly different frameworks. To further complicate matters, this land was held as a mixture of freehold and leasehold titles with varying methods in controlling land use. This was a complex situation. To orient the reader, a brief timeline is given in Table 1.

Table 1: Timeline of major historical events discussed in this paper.

Year	Event(s)
1901	Federation of the colonies of Australia and the new constitution requiring a Seat of Government to be established.
1909	Surrender of land within the proposed Federal Territory by the state of NSW for the Seat of Government and then acceptance by the Commonwealth. All titles held prior to the surrender remained to be held under the same 'terms and conditions as they were held from the State'.
1910	An Act passed in which it was made law that no land within the ACT be sold as freehold (i.e. thus creating the need for a leasehold system of land administration).
1911-1912	Initial acquisition of land by the Commonwealth and short-term leasing to previous occupiers.
1913	Decision made to acquire all privately held land within the Territory and further acquisition of land.
1913-1917	Further significant acquisition of land.
~1917	Large-scale acquisitions of land ceased. At this time almost all lands in the northern two thirds of the Territory had been acquired.
1925	<i>Real Property Ordinance 1925</i> (Commonwealth legislation) enacted to establish a Torrens like system of land administration in the Territory for the management of leasehold and freehold title.
1925-late 1950s	Land was managed under three different categories of administration (NSW Torrens Title, NSW Old System Title and ACT Torrens leasehold Title).
1958-1960	All NSW Torrens titles were brought under the provision of <i>Real Property Ordinance 1925</i> as freehold titles.
1960-mid 1970s	Land was managed under three different categories of administration (NSW Old System Title, ACT Torrens leasehold Title and ACT Torrens freehold Title).
1970s	ACT Torrens freehold Title and NSW Old System Title all acquired by the Commonwealth. Some land was then either directly granted as leasehold or re-surveyed and then granted as leasehold.
by 1980	All privately held lands within the ACT were held as leases under the <i>Real Property Ordinance 1925</i> .

Upon the review of this history, the paper then examines a case related to three blocks of land in Oaks Estate that were originally freehold titles recorded on the NSW Torrens register. The blocks were then brought under the provision of Commonwealth legislation in 1960, still as freehold, before being acquired in 1974 so that the freehold title could be regranted as leasehold. The regrantee of leasehold title initiated a new survey to amend the original 1888 NSW subdivision. In the redefinition of these boundaries, the surveyor (in 1976) made a significant error which resulted in a boundary dispute that made its way to the Australian Supreme Court in 2023.

The error, likely causes, dispute and court case are then discussed. This error resulted in the side boundaries of three blocks being 1 metre south of their true location. The evidence examined concluded that the most likely cause was poor supervision and the lack of experience of the surveyor who performed the field work.

The relevant aspects of the dispute and outcome of the court case are presented. The main outcome being the requirement for a new plan of survey to define four blocks affected by the aforementioned error. Finally, the paper outlines the redefinition of the same boundaries (from the 1888 NSW subdivision) following a court order.

Throughout this paper, all legislation references relate to Commonwealth legislation unless indicated otherwise and all references to a Deposited Plan (DP) are to an ACT DP unless otherwise stated. Any reference to a letter by Charles Scrivener (Director of Commonwealth

Lands and Surveys), David Miller (Administrator of the Federal Capital Territory), King O'Malley (Minister for Home Affairs) and Willam Henry Kelly (acting Minister for Home Affairs) is found in the National Archives of Australia (NAA), see National Archives of Australia (2025a, 2025b, 2025c).

2 THE CREATION OF A SEAT OF GOVERNMENT AND EARLY ACQUISITION OF LAND

Section 125 of the Australian Constitution required a Seat of Government to be established within the State of New South Wales (NSW) which will be granted to the Commonwealth of Australia. After the selection of the site for the nation's capital, there began the monumental task of bringing the land under the control of the Commonwealth. The following sections outline important events and various processes used in relation to land being brought under the control and administration of the Commonwealth.

2.1 Seat of Government Acceptance Act 1909

The *Seat of Government Acceptance Act 1909* was an act whereby the Commonwealth formally accepted the land surrender by the state of NSW in the *Seat of Government Surrender Act 1909 (NSW)*. In addition to formal acceptance, the act rather importantly declares in section 6 that all laws applicable in NSW shall '*continue in force until other provision is made*' and section 7 that '*All estates and interests in any land in the Territory which are held by any person from the State immediately before the proclaimed day shall, subject to any law of the Commonwealth, continue to be held from the Commonwealth on the same terms and conditions as they were held from the State.*'

This meant that land held as either freehold or leasehold under either Torrens or Old System title as well as roads remained unchanged. This also meant that NSW acts required for administration of the lands accepted, such as the *Public Roads Act 1902 (NSW)* and the *Real Property Act 1900 (NSW)*, were still in force.

2.2 Seat of Government Administration Act 1910

The *Seat of Government Administration Act 1910* was to provide for provisional government of the Territory. Section 9, likened to Leviticus 25:23 by Kennedy (1973), states that '*No Crown lands in the Territory shall be sold or disposed of for any estate of freehold, except in pursuance of some contract entered into, or the right to enter into which existed before the commencement of this Act, ...*'

It is important to emphasise that (1) this did not affect land held as freehold before the commencement of the Act and (2) it is only concerned with future granting of land and does not limit the ability to bring currently existing freehold land under the provisions of any later Commonwealth act or ordinance and then issue freehold certificates of title for such land (as is discussed in Section 3.2).

2.3 Early Acquisition of Land (1911-1912)

Initially 2,018 acres of land were acquired at Acton in February 1911 (Ling, 2013). Following this, a large-scale acquisition of land was approved on 18 July 1912 and then published in the

Commonwealth Gazette on 27 July ([linked here](#)). The land referred to in the gazettal was for all land within the green outline shown in Figure 1. In a short period following the gazettal, almost all of this land was then valued and purchased by the Commonwealth. The values and particulars relating to the acquisition of the parcels were documented in a large volume currently held by the National Archives of Australia (part of page one shown in Figure 2) as well as on the certificates of title for Torrens land (examples of notations on certificates of title shown in Figures 3 and 4). Although the intention was for all the aforementioned land to be acquired immediately, exceptions do exist. For example, the Parish Map for the Parish of Narrabundah shows all parcels being acquired in 1912, except for three portions that were later acquired in 1927. All lots in Oaks Estate are another exception.

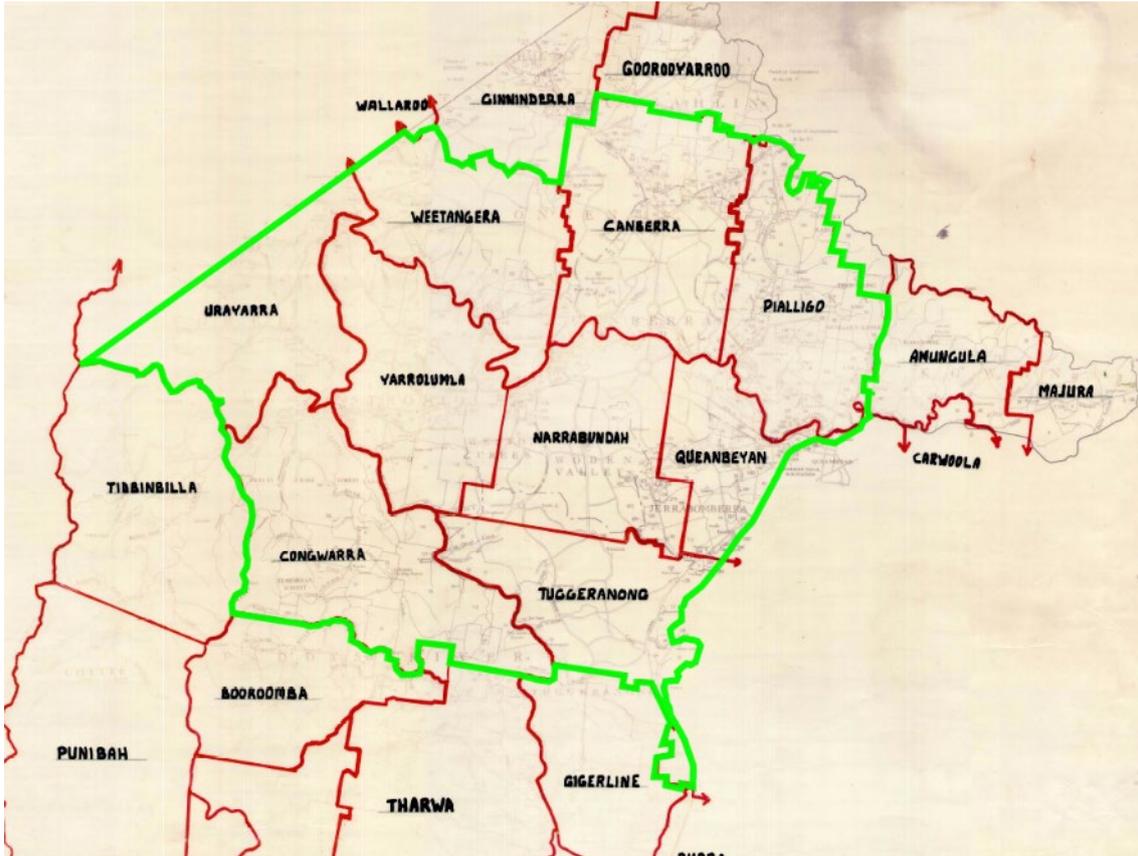


Figure 1: Land approved for acquisition on 18/07/1912, overlaid on the NSW parish boundaries within the ACT.

Holding	Owner	Por. or Lot	AREA			CLAIM			VALUATION			OFFER			SETTLEMENT						
			A.	R.	P.	Date	£	s.	d.	Date	Value	£	s.	d.	Date	£	s.	d.			
1	Moore, E.O. <i>Acq^d for disposal 3.8.12 Reg 277/12</i>	132, 131, 130, 127, 128 of Congwarra 188 & 189, 179 of Urayarra	1250			20.11.12	3810	..		Moianky, A.W.	1469	10		17.2.13	11150			1-19-13 1000 - 2-1-13 2320 7 4 3-2-13 118 5 4 4-4-13 7 5 3 2-1-14 140 8 8 2-1-14 140 8 8			
2	Moore, Rich ^d Sen ^r <i>Acq^d for disposal 3.8.12 Reg 277/12</i>	60, 51, 62, 59, 95, 98, 100, 101, 102, 103, 104, 105, 106, 107 of Yarrolumla	833	1		20.10.12	119,374	8.10		do	2670	2	6	24.7.13				4.11.13			
3	Moore, Est. of W ^m Deed <i>Acq^d for disposal 3.8.12 Reg 277/12</i>	57, 54, 55, 51, 52, 53, 54, 55, 56, 57, 58, 59 of Torrens Parish	867	1		3.10.12	5150	16		do	2852	14	2	6.1.13	2300			6.2.14	3072	5	4
4	Hardy, W ^m																				

Figure 2: Records of valuation and acquisition of land (National Archives of Australia).

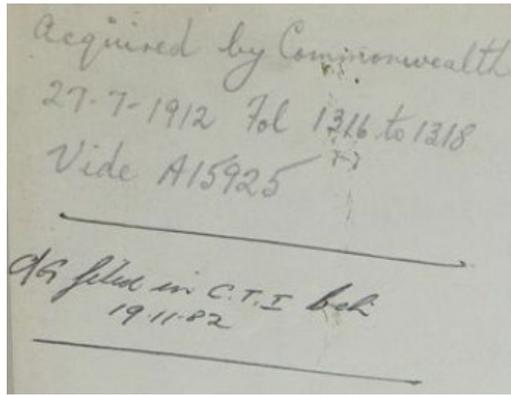


Figure 3: Notation on Volume 2293 Folio 131 (NSW register).



Figure 4: Notation on Volume 2252 Folio 122 (NSW register).

At this time, a large area of land had now been acquired, but only a relatively small area was needed for the initial development of the city. As such, authority was then given on 30 July 1912 for the ‘disposal of such lands by leasing ... to the present occupiers.’ This was then published in the Commonwealth Gazette on 3 September 1912 ([linked here](#)). No record of any lease in this period is found in the national archives or elsewhere. Despite this, various references to short-term leases are made in letters between Charles Scrivener (Director of Commonwealth Lands and Surveys), David Miller (Administrator of the Federal Capital Territory) and King O’Malley (Minister for Home Affairs) in the period from 1912-1913. These letters state that short-term leases of 1-5 years were granted during this period.

2.4 Acquisition of Further Land (1913-1917)

After this initial acquisition, there was uncertainty and differing opinions regarding further land acquisition within the Territory. In a letter dated 23 September 1913, Charles Scrivener said ‘there could be no more profitable undertaking than the acquisition of the whole of the privately owned lands within the Territory.’ In David Miller’s reply on the following day, he expressed that acquisition of lands outside the ‘city proper’ would be unjustified and went on to suggest that the legality of acquisition of these lands under the Lands Acquisition Act 1906 may be questionable.

On 10 October 1913, Scrivener gave an update on the acquisition process and again expressed his support for wholesale acquisition of all privately held lands within the Territory. This time David Miller supported the proposal and forwarded Scrivener’s letter to Willam Henry Kelly (acting Minister for Home Affairs) who approved the acquisition of all lands within the Territory on 12 November 1913.

As suggested by Scrivener, all lands north of the Molonglo River were acquired first. The land in the Parishes of Ginninderra and Goorooyaroo was systematically acquired and generally completed by 1915. The work south of the Molonglo began around the same time but was short-lived. The northern parts of the Parishes of Booroomba and Gigerline (parishes south of the Molonglo) were acquired by 1917 and seem to mark an end to large-scale acquisitions in the early administration of the Territory. Parish maps and other documents show various acquisitions of individual portions post 1917, but nothing large-scale is readily found in the Parish maps or other records searched. This was far short of the wholesale acquisition of all privately held lands envisioned by Scrivener. Appendix A shows an index of parish boundaries within the ACT, which may be useful at this point.

3 LAND HELD UNDER DIFFERING ADMINISTRATIVE SYSTEMS 1925 TO ~1980

As a result of not acquiring all privately held land in the Territory, the following categories of privately held land existed around 1920: (1) short-term leases granted by the Commonwealth on recently acquired land (see section 2.1), (2) Torrens land granted freehold by NSW prior to 1909, and (3) 'Old System' granted prior to 1909. In general, categories (2) and (3) were rural land in the southern third of the ACT as well as lots in the village of Hall and Oaks Estate. Additionally, there was land leased by the NSW government prior to 1909, but the details of this land have not been investigated and are beyond the scope of this paper.

As the development of Canberra progressed, there was a need for the leasing of land in the proposed city area for residential and commercial use as well as the desire to have longer-term leases for the lands currently under short-term lease (category 1 above). Therefore, the desire arose for a new Commonwealth act that allowed for the administration of land within the Territory.

In 1925, the Commonwealth enacted the *Real Property Ordinance 1925* (discussed further in section 3.1). A perusal of this ordinance shows that it was intended for the administration of all land within the Territory that was/would be held privately. It cancelled the *Real Property Act 1900 (NSW)* (as applied in the Territory by the *Seat of Government Administration Act 1910*) and transferred all land to the provisions of the Commonwealth Ordinance (section 38). The only category of privately held land not directly brought under the provision of the Ordinance was land held as 'Old System' title (which could be brought under the provision of the Ordinance by application).

Although almost all privately held land was under the provision of the new ordinance, this was not the case in practice. A significant portion of land within the ACT was still dealt with under the *Real Property Act 1900 (NSW)* and registered by the NSW Registrar-General until the late 1950s. The following sections outline the administration of the three categories of land previously mentioned.

3.1 Real Property Ordinance 1925

The *Real Property Ordinance 1925* (renamed the *Land Titles Act 1925* in 1995) was similar to the *Real Property Act 1900 (NSW)*. It established a Torrens-like system of administration in which future land granted freehold or leasehold greater than 5 years must be registered on a register kept by the 'Registrar of Titles' and any transfers, easements, caveats or other dealings with land must be registered against the title. It is interesting to note that the Ordinance made

provision for the granting of freehold title despite section 9 of the *Seat of Government Administration Act 1910* (see section 2.2). Soon after the enactment of this ordinance, longer-term leases of land began to be granted in the Territory. In general, urban land was granted a 99-year lease term, but rural land varied from 1-25 years depending on when the land was likely to be needed for urban development (Ling, 2013).

Although not directly related to the topic of this paper, it is noted that much of the land in the acquired areas was re-surveyed before longer-term leasing. In urban areas, land was surveyed in accordance with the design for the new city and had almost no relation with the previous portion boundaries. Surveys in rural areas often bear resemblance or are in some cases identical to the original portion boundaries. For example, DP10 sheet 3 is a survey of rural land defining blocks for lease. The plan predominantly followed existing fencing. As some of this fencing was along the pre-existing portion boundaries, the original portion boundaries are somewhat 'visible' in the cadastre of the ACT. Another example, DP690 (Block 22, District of Booth), was directly compiled from crown plan 1507-1793 (being the portion plan for portion 54 in the parish of Yarara). Taylor (1977) and Kennedy (1973) give further insight, particularly in the urban areas, into the development of the ACT cadastre, early control and cadastral surveys and some brief information on leasing.

3.2 Freehold Land Under the Real Property Act 1900 (NSW)

Little documented evidence is available relating to the administration of freehold land within the Territory under the provision of the *Real Property Act 1900 (NSW)*. As previously mentioned, the NSW act ceased to apply to lands within the Territory in 1925. Despite this, a perusal of almost any certificate of title for lands not acquired shows otherwise. Figure 5 shows page 2 of Vol. 841-52 (Block 1 Section 2, Division of Hall), on which transfers, mortgages and caveats have been registered by the NSW Registrar-General. On this particular title, the last dealing is a discharge of mortgage registered in 1948. Other certificates of title show the registration of dealings in the mid/late 1950s.

Various parish maps within the ACT, particularly the Land Titles Office (LTO) parish maps, show that the NSW LTO was continually updating parish maps as part of the administration of land. This included parishes that did not cross the border. For example, the fourth edition of the parish map of Booroomba was published in 1972.

The evidence found shows that administration of Territory lands by the NSW Registrar-General was generally limited to the registration of dealings. No subdivisions have been found. Taylor (1977) states that a limited number of subdivisions of rural freehold land were lodged with the NSW Registrar-General in the 1950s (the location of these subdivisions is not mentioned and could not be ascertained). He implies that the lodging of these subdivisions initiated the transfer of all freehold land being administered by the NSW Registrar-General to the Territory Registrar of Titles.

Between 1958 and 1960, over 25 notices appeared in the Commonwealth Gazette to bring land under the provisions of the *Real Property Ordinance 1925*. Each notice listed numerous certificates of title (example [linked here](#)). Upon gazettal, the NSW title was cancelled (with a notation being made on the NSW title) and a certified copy was delivered to the Territory Registrar of Titles who then simply issued a Volume and Folio (Vol-Fol) in the Territory's register. This was then handwritten beneath the NSW Vol-Fol on the copy. Volume 71 Folio 7031, parts of which are shown in Figures 6 and 7, is one such example with the ACT Vol-Fol circled red in Figure 6. As an aside, this is the title of the Lanyon estate, which is somewhat well known due to the multiple legal cases related to it. The most relevant to surveying is the 1966 case *Lanyon Pty Ltd v. Canberra Washed Sand Pty Ltd*, which was a dispute regarding an ambulatory boundary and the application of *ad medium filum aqua*.

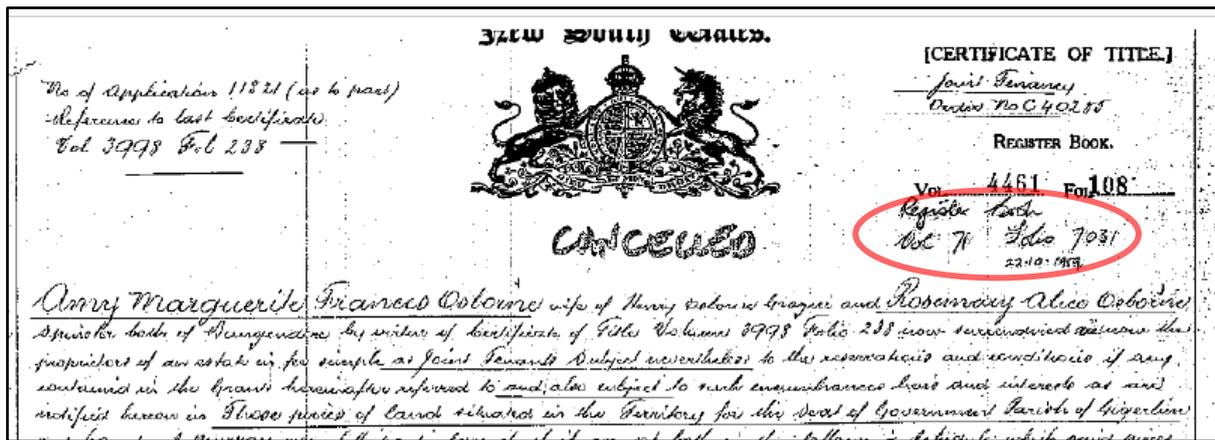


Figure 6: Volume 71 Folio 7031 (ACT register) being a copy of Volume 4461 Folio 108 (NSW register).

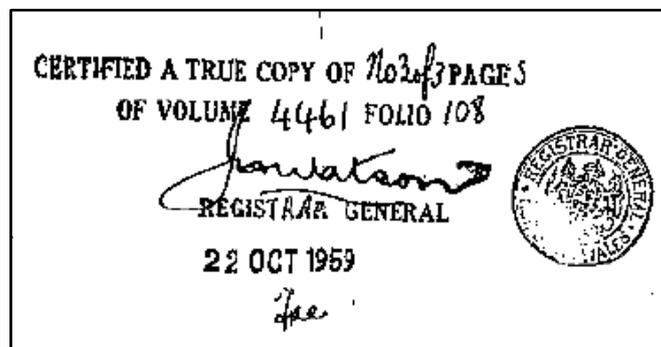


Figure 7: Certification of true copy on Volume 71 Folio 7031.

It is interesting to note that bringing these titles into the ACT register in this way meant that the survey plan that defined the title was not necessarily on the ACT register (as was almost always the case for leases under the *Real Property Ordinance 1925*). In the case of the title above, boundary definition would require the use of the portion plans and road plans from NSW. That said, the Commonwealth received copies of all NSW plans within the borders of the Territory shortly after the surrender of the land by NSW and so obtaining copies of the plans would not have been an onerous task.

Land that was transferred after being brought under the *Real Property Ordinance 1925* could be issued with a new certificate of title by the ACT Registrar of Titles. Figure 8 shows part of such a certificate.

Reference to last Title. Vol. 72 Folio 7157	Register Book. Vol. 211 Folio 32
Issued On Transfer No. 67339	
AUSTRALIAN CAPITAL TERRITORY	
Real Property Ordinance 1925-1957	
Certificate of Title	
FREEHOLD	
JON DAVID CRAIG of 16 William Street Oaks Estate in the Australian Capital Territory Statistician is now seized of an estate in fee simple, subject, nevertheless to such encumbrances, liens and interests as are notified by memorial underwritten or endorsed hereon in that piece of land situated in the Australian Capital Territory being the piece of land shown by pink colour on the plan endorsed hereon which said piece of land is Lot 12 Section L Parish of Queanbeyan County of Murray as delineated on Deposited Plan Number 2207 deposited in the office of the Registrar of Titles in the said Territory.	
IN WITNESS WHEREOF I have hereunto signed my name and affixed my seal this <i>twenty-first</i> day of <i>September</i> one thousand nine hundred and sixty-seven.	
Signed in the presence of <i>[Signature]</i>	<i>[Signature]</i> Registrar of Titles

Figure 8: Volume 211 Folio 32 (ACT register).

3.3 Old System Title

Ownership and the status of Old System titles is, in general, more difficult to track than Torrens titles due to various historic reasons. As such, it is hard to quantify the number of titles and extent of land held under Old System title within the Territory between 1925 and 1980. Likely there was a significant number of Old System titles within the Territory in 1909 (the various LTO parish maps appear to show this). It is known that there were at least two such titles held in Oaks Estate in 1974 as they were included in the acquisition gazettal linked in the following section. One of these titles, the Hazelbrook estate, is related to the survey discussed in section 5. A thorough search of the chain of title for Hazelbrook shows that during the period where the land was within the Territory, it was transferred and mortgaged numerous times as well as seized and then sold due to bankruptcy. A copy of each deed was sent to the NSW LTO, received by the Registrar-General and included in the 'register of deeds'.

4 FINAL ACQUISITION OF FREEHOLD TITLES

Taylor (1977) states that there was concern regarding the use and subdivision of freehold land in the 1960s. The main method for land control within the Territory at this time was through conditions imposed within a Crown lease. As the freehold title did not have conditions regarding allowable land use directly imposed in the title, it appears that the Commonwealth was concerned it may have little legal control over land use. The true extent of the issue is not known by the author, but it is known that at least two subdivisions took place in Oaks Estate in the early 1960s after the titles had been brought onto the ACT register. Freehold certificates of title were issued post subdivision. As a result of these concerns, the *Freehold Land (Subdivision*

and Use) Ordinance 1967 was enacted to manage this issue but was ultimately disallowed by Australian Senate less than four months after it commenced. As a consequence, the decision was made to acquire all remaining freehold land (a course of action which had already been envisioned and approved almost 60 years earlier in 1913).

Final acquisitions took place throughout the 1970s, and it is believed that all freehold land had been acquired by 1980 (the author has not performed an exhaustive search to conclusively ascertain the date at which the last freehold title was acquired). Notices were published in the Commonwealth Gazette (example [linked here](#)) and then, for Torrens Land, the certificate of title was cancelled. Leasehold title was then granted (often with a delay of several years) to either the original owner or others. After the acquisition, many blocks were re-surveyed before leases were issued. The survey discussed in section 5 was one such re-survey. In 1976, less than 30 freehold titles remained – see the 1976 ACT Land Tenure Map (Appendix B, with freehold land coloured yellow).

5 OAKS ESTATE – AN ERROR IN THE RESURVEY OF A NSW SUBDIVISION

The following is a summary of the history of the Oaks Estate subdivision. The subdivision, shown outlined on the Queanbeyan town map in Figure 9, was a private subdivision which partially became part of the Territory. The area was originally part Portion 35 in the Parish of Queanbeyan. This portion had various parts transferred (by deed) to others and another part acquired for the Goulburn-Cooma railway. A part held by William Price was then the subject of Primary Application 6456, surveyed DP56456 (NSW), in January 1888. This lot was then subdivided into 241 blocks in September 1888, as shown on DP2207 (NSW) with all lots being freehold title (Torrens). DP2207 is shown in Appendix E.



Figure 9: Oaks Estate subdivision shown on the Queanbeyan town map.

In 1909, at the passing of the *Seat of Government Acceptance Act 1909*, the land north of the Goulburn-Cooma railway became part of the Federal Territory and as previously discussed all land held became part of the Territory in the ‘same state’ as it was currently held. Blocks 1-9

section L DP2207 were then acquired by the Commonwealth in July 1914. However, all other land remained held as freehold title under the provision of the *Real Property Act 1900 (NSW)* until it was brought under the provision of the *Real Property Ordinance 1925 (ACT)* on 7 January 1960 (as freehold title). This freehold title was then acquired by the Commonwealth on 10 January 1974. A copy of DP2207 (NSW) was registered in the ACT as DP2207, and subsequently many leases were granted over these blocks.

Prior to the leasing of Blocks 10-12 Section L DP2207, a plan of 'resubdivision' (DP4379) was registered. The intention of this plan was to redefine these blocks in Section L and amend the rear boundary to be approximately along the 1,875-foot contour (i.e. cut off the riverbank and remove the ambulatory boundary) as the Commonwealth wanted control over the river corridors within the Territory. The following sections outline the survey definition, a significant mistake in redefinition and the likely contributing reasons for the mistake.

5.1 Redefinition of DP2207 as shown in DP4379

The survey registered as DP4379 (shown in Appendix C) intended to define three blocks, being Blocks 20-22 Section L. The boundaries of these blocks were intended to be defined by the road and side boundaries of Blocks 10-12 Section L (shown green in Figure 10) and have the rear boundary approximately along the 1,875-foot contour.

In brief, the survey:

- 1) Established the adjacent side of William Street from marks found in Miscellaneous Survey 1077 (MS1077) (red line in Figure 10).
- 2) Used MS1077 (shown in Appendix D) to define the corners of Blocks 25/26 and 28/29 Section K.
- 3) From the above corners, came across the per-original (PO) road width (20.115 m) of William St (magenta lines in Figure 10) to define the frontage of Blocks 10-12 Section L.
- 4) Used the dimensions from DP2207 to redefine the front and side boundaries (green lines in Figure 10).
- 5) Defined the new rear boundary by surveying the 1,875-foot contour – slightly lower than the high bank of the Queanbeyan River (cyan lines in Figure 10) – and intercepting this with the side boundaries defined above.

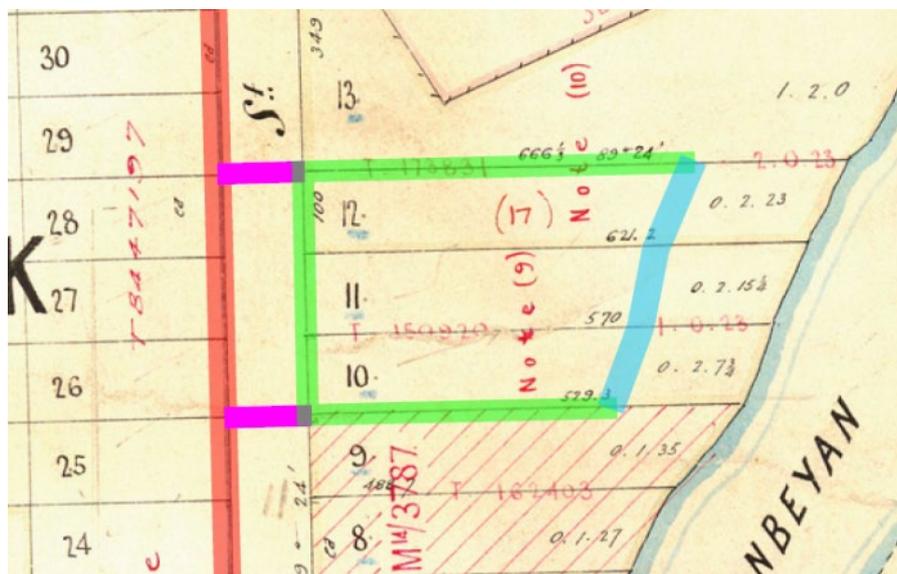


Figure 10: Redefinition of DP2207.

5.2 Redefinition Error

The redefinition was deficient due to incorrect assumptions implied in points 2 and 3 in the foregoing section. It resulted in the side boundaries of Blocks 10-12 being more than 1 metre from the original location.

In point 3, the surveyor assumed that the side boundaries in Section K were directly opposite Section L. A simple calculation using the road connection at the north of William Street in DP2207 shows the northern boundaries of Block 28 Section K and Block 12 Section L being offset by 1.4 m along William Street (with the Section L boundaries being further north). Although no road connections are shown at the south of William Street, a calculation using dimensions from DP2207 and the Territory border survey result in a 1.2 m offset.

In point 2, the surveyor assumed that the monuments found in MS1077 were sufficient to define the side boundaries of Sections K and L. This assumption, although not significantly flawed, is to extrapolate information from MS1077 further than intended. A review of the field books associated with MS1077 reveals that the survey, undertaken in August 1958, found a limited number of pegs (assumed to be original marking) in the south of Oaks Estate and then surveyed a significant number of occupations along each street. From the pegs and occupations, the boundaries as shown on DP2207 were ‘best fit’ and then marks placed accordingly. The ACT government examination policy manual, in reference to the action of remarking the roads in Oaks Estate, said ‘*How legitimate this action was is debatable.*’ It is the opinion of the author (and other ACT registered surveyors) that the definition of the road alignments shown in MS1077 is generally acceptable, but further evidence (particularly old occupations) should be relied on in the definition of side boundaries. DP4379 simply adopted measurements along the road frontage of William Street to define Section K and seemingly did not consider any occupations or other evidence as part of the definition.

5.3 Likely Factors Causing the Error

A thorough investigation of the field book and DP4379 indicates that the likely factors that led to such an error are poor supervision and lack of experience of the surveyor who performed the field work. The signature panel of DP4379 clearly shows that the survey was carried out under supervision and not directly by the registered surveyor. The field book confirms that the survey was undertaken by a non-registered surveyor under supervision (who would become registered one year later).

The first indication of poor supervision is the lack of the registered surveyor’s signature in the field notes. The 1972 Surveyors Practice Directions (SPDs) required the registered surveyor to ‘*personally attend ... and ... exercise ... immediate oversight*’ (section 5) as well as requiring they ‘*sign as evidence that the work shown in the field book was performed by him or under his supervision*’ (section 43). The following survey in the same field book included both the registered surveyor’s and the supervised surveyor’s signatures.

Furthermore, the numerous basic errors found in the survey and field book indicate a lack of supervision, a lack of Quality Assurance (QA) measures and a lack of adequate experience. In the author’s opinion, a lack in QA is the ‘hallmark’ sign of poor supervision.

Basic errors include:

- 1) A distance being shown between the Concrete Block (CB) at Sections J and K when the field book shows that only a bearing was observed.
- 2) A Galvanized Iron Pipe (GIP) placed in a somewhat unrelated survey recorded as being over 0.7 m from the location shown in the original survey (verified as PO in government survey).
- 3) Failure to connect to a nearby CB placed in MS1077 that would have been of significant value to the survey (or indicate in the field notes why it was not surveyed).
- 4) Failure to show a proposed sewerage easement despite having surveyed the sewer line and leaving a comment '*easement for sewer lines???*' in large letters in the field book.
- 5) DP4379 showing a GIP placed at the southwest of Block 20 being 1.83 m from the corner whereas the field book shows 2.00 m (while it is likely that this error was made by the drafter, still the surveyor should have found it when checking the plan).

Poor supervision and a lack of experience are the likely causes of the incorrect boundary redefinition shown on DP4379, especially when considering that all old occupations significantly disagree and that two '*old pegs*' were surveyed that showed a difference of over 1 m (Figure 11). The differences from old occupations and the two pegs found should have been 'alarm bells' which would have instigated a review of the boundary redefinition and likely found that the assumption regarding the relationship between Section L and K was incorrect.

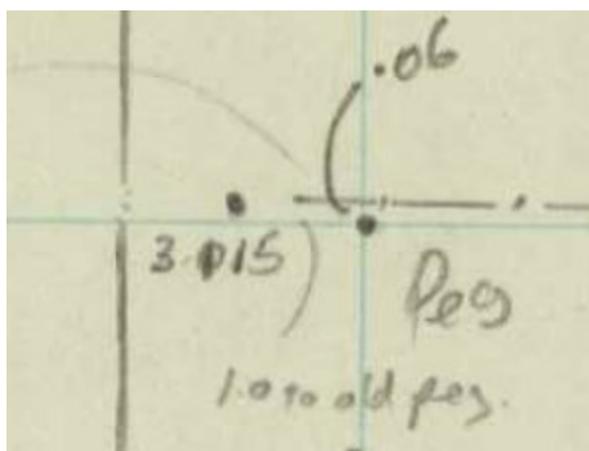


Figure 11: Extract from field book K7311 (page 5).

A short discussion with a registered surveyor who worked for the Commonwealth around the time of this survey noted that at the time there were a number of younger surveyors who had spent almost the entirety of their training working in greenfield subdivisions in Canberra. Due to the close connection between control and cadastral surveys, see Taylor (1977) and Kennedy (1973), and the 'design cadastre' of the Territory, some less-experienced surveyors approached boundary redefinition as simply 're-pegging design' from the control network. He seemed to remember numerous cases where redefinition by such surveyors was rather inadequate and caused significant issues. It is possible that the surveyor undertaking this work was one such 'young surveyor'.

It is also worth mentioning that at the time the Commonwealth had no examination section for DPs. Quite likely the error would have been found if examination had been undertaken.

5.4 Adjoining Surveys

Future adjoining and nearby surveys adopted the boundaries as defined in DP4379 from the marks found. The area to the north was surveyed two years later (DP4822) with the northern boundary of Block 22 Section L being a common boundary, thereby perpetuating the redefinition errors in DP4379.

6 BOUNDARY DISPUTE

In 2022, upon the marking of Block 4 Section 14 for a proposed subdivision, the boundary of Block 22 Section L (now renamed and henceforth referred to as Section 12) came into question. The exact details and history of events relating to the dispute are not completely known to the author but are largely inconsequential to the discussion of law and survey definition and hence not included in this paper. Some details are presented below as deemed relevant.

The initial evidence that instigated the dispute was an identification survey of Block 22 from 1968 (prior to the incorrect resurvey of these blocks by DP4379), which showed an offset from the existing house to the boundary significantly different from what was marked for the proposed subdivision. Various improvements constructed by the adjoining lessee (who had assumed the distance on the identification survey was correct rather than using the definition from the registered DP) were encroaching the boundary.

Following this discovery, a lessee contacted numerous ACT government departments about the issue and the Office of the Surveyor-General and Land Information (OSGLI) briefly investigated. The OSGLI undertook a partial survey of the land, sought internal legal advice and concluded that an error had in fact occurred but that despite this the boundaries as marked by DP4379 in 1976 remain. The Land Titles Office also concluded that it has no liberty to amend the register as section 160 of the *Land Titles Act 1925 (ACT)* implies that without a court order the LTO is only able to correct an ‘*accidental slip or omission*’.

Despite the advice given by the Statutory Planning division of the ACT government, the dispute between lessees continued. The dispute was eventually settled and all affected lessees agreed they wished to move the side boundaries to the original position as shown in DP2207. Despite this agreement, there was no mechanism in the ACT for this kind of amendment to the titles register. The parties therefore went to the ACT Supreme Court to obtain an order to ‘correct the register’ under section 161 of the *Land Titles Act 1925 (ACT)* and to dispute costs. Justice McWilliam decided the matter on 27 September 2024 ([linked here](#)).

The order given is shown below:

1. *The boundaries between the land presently described in the ACT Land Titles register as:*

- a. *Block 4 Section 14 Oaks Estate;*
- b. *Block 22 Section 12 Oaks Estate;*
- c. *Block 21 Section 12 Oaks Estate;*
- d. *Block 20 Section 12 Oaks Estate;*
- e. *Block 23-25 section 12 Oaks Estate; and*
- f. *Blocks 1-2 section 15 Oaks Estate,*

Are DECLARED to be as shown in DP 2207, and replicated in the “Investigation Survey, Section 12” completed by the Office of the Surveyor-General on 16 September 2024, annexed to this order and marked “A”.

2. Pursuant to s 161 of the Land Titles Act 1925 (ACT), the second defendant (ACT Registrar-General) is to correct the ACT Land Titles register to reflect the boundaries in order 1 above, making such other consequential corrections as are necessary.
3. The Registrar-General is directed to remove Caveat no. 3275972 from the title of Block 4, Section 14, Oaks Estate in the ACT.

It is exceedingly important to highlight the fact that what was put before Justice McWilliam was not a question directly related to boundary determination. As previously stated, the parties had already agreed on amending the boundaries and were seeking a court order to amend the Land Titles Register. In section 16 of the proceedings, Justice McWilliam clearly stated this by saying '*The starting point is that this is a matter that settled and was not fully heard on its merits.*' It is therefore the author's opinion that no existing precedent is challenged or any new precedent set in the ACT by this judgement as it is not directly related to the determination of boundaries.

6.1 A Brief Interjection of Opinion and Consideration

It is interesting to consider the potential outcome had the case been a judgement on the determination of boundaries. On one hand, there is consideration of the intention of DP4379 being to adopt the boundaries of DP2207 and that for the boundary to move during the physical occupation of the same land and dwellings would seem rather farcical (Blocks 10-11 then 20-21 were owned/leased by the same family before and after 1976).

Alternatively, it could be argued that since the land was acquired by the Commonwealth in 1974 there is no continuity of title. Following the acquisition, DP4379 determined boundaries (incorrectly or not, it determined boundaries) and marked them in accordance with the SPDs. Subsequently, leases were granted. These leases were a new title (completely separate from the freehold title held prior) and that as the lease referred to DP4379, these were the relevant boundaries. Any prospective lessee in 1976 was at liberty to inspect the marking (which would have still been in place) and clearly seen what they were leasing. By accepting the lease, they accepted the boundaries as defined in DP4379. Consideration could also be given to the period of time between the mistake and the dispute (45 years) and the fact that other adjoining plans had accepted the definition.

Although the above considerations are interesting to note, Justice McWilliam must have somewhat believed that the legally justified course of action was for the boundaries to be as defined in DP2207. Her Honour likely would not have wanted to make a decision that had the potential to be further challenged or overruled.

7 PLAN OF REDEFINITION

The OSGLI undertook a plan of redefinition on behalf of the Registrar-General to satisfy the court order. Some aspects of the survey definition outlined below are relevant to the current discussion. Reference to Appendix F, showing sheet 3 of the registered plan of redefinition, may be helpful for this discussion.

7.1 William Street

The alignment of William Street was defined from reference marks placed in MS1077 (previously discussed in section 5.2).

7.2 Side Boundaries

The old peg (previously referred to in Figure 11 and shown in Figure 12) was found during the survey. The old peg (at the corner of Blocks 26/27) fell exactly on the alignment of William Street. Holding dimensions from this point, the side boundaries were 'laid in' from DP2207. This resulted in the southern boundary of Block 26 running through an old post (Figure 13) that had been surveyed in 1958 in field book K1341 (survey for MS1077) as well as passing through numerous posts of a similar age (70+ years old).



Figure 12: Old peg found.



Figure 13: Old post found.

The boundary of Block 27/28 was also almost entirely within a paling fence. This fence is predominantly new but some of the posts of an earlier fence were found. These occupations (particularly the old posts along the southern boundary of Block 26) justified the adoption of the old peg.

Field book K1341 (for MS1077) also somewhat justified this definition as two posts (shown in Figure 14) were found to be 200.7 links apart (close to DP2207). The post circled green is the post found and previously mentioned. The post circled red is now gone but would have been on the same line as the paling fence mentioned above.

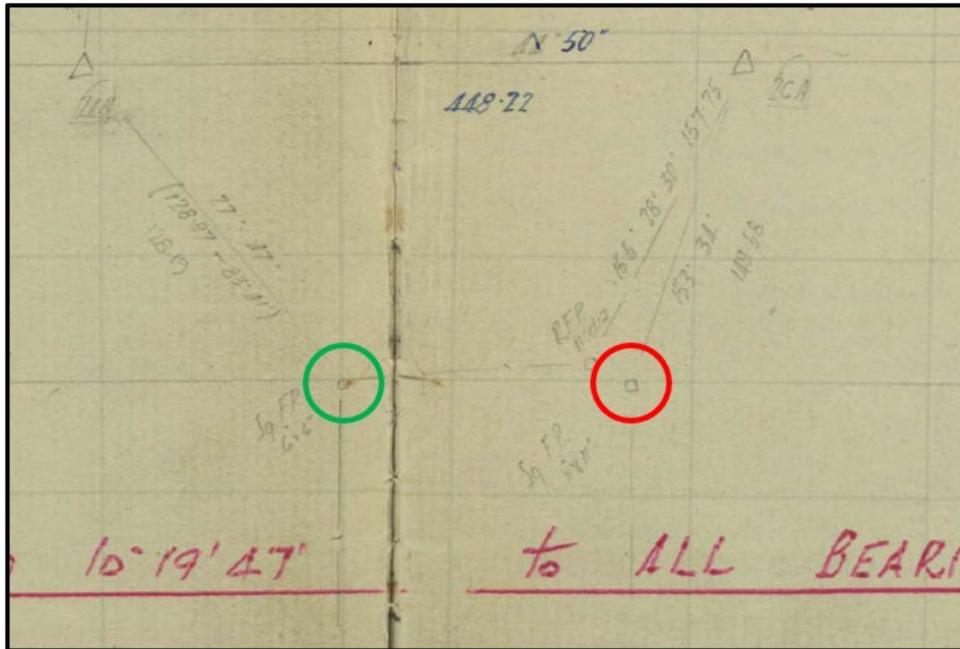


Figure 14: Extract from field book K1341, showing post found (green) and post now gone (red).

7.3 Rear Boundaries of Blocks 26-28 Section 12

Much thought was given to the rear boundaries of Blocks 26-28 Section 12. The court order simply stated that the boundaries were '*declared to be as shown in DP2207*' and did not give any specific instruction relating to the rear boundary (the author believes the order is lacking in this regard). As previously stated, the rear of these blocks was 'cut off' in DP4379 so that the bank and land along the river would be under control of the Commonwealth. It is not fathomable that the Magistrate was intending for this to be reversed and for the owners to have a lease going right to the river (as in DP2207).

The decision was made to simply hold the distances along the side boundaries from DP4379 to establish the rear boundary. Although this is not identical to the position of the rear boundaries in DP4379, the intention is similar and the boundary still falls partially down the 'cliff'. As no improvements exist in the vicinity, this was deemed acceptable.

7.4 Further Definition

As the changed boundaries also affected an adjoining block to the north of the subject land (originally defined in DP4822), it also needed to be redefined. Approval was granted for a partial survey, and this block was primarily compiled. In addition, marks from various other associated and nearby plans were also required for definition in the survey. Although further discussion may be of interest, remarks on these aspects of the definition are not relevant to the discussion of the legal case and have not been included in this paper. The new survey was registered as DP16471.

8 CONCLUDING REMARKS

The significant influence the NSW cadastre and pre-federation surveys have had on shaping the cadastre of the ACT is often underestimated (even by surveyors). By tracing the history of the transition from NSW to Commonwealth land administration, it is hoped the reader has gained an appreciation for the significant undertaking the creation of the seat of government was. In Scrivener's letter from 1913 (previously mentioned in section 2.4), he gave the sense that he envisioned complete Commonwealth control and the establishment of a leasehold system of administration in the not-too-distant future. The author suspects that Scrivener would have been rather surprised if he was told that freehold title was still being administered by the NSW Registrar-General in 1960 and even more so that acquisitions of freehold title were still taking place in the late 1970s.

Today, the Territory enjoys the many benefits of an urban cadastre that is closely integrated with its control network. Despite this, the cadastral history presented, and the error made in Oaks Estate, serve as a reminder that the ACT still relies on a monument-based system of boundary definition. Monuments, shown on cadastral plans, are the primary reference for determining property boundaries. In 2025, there are still leasehold titles held which refer to plans of survey almost entirely compiled from pre-ACT surveys. Even more plans, like the one in Oaks Estate, redefine pre-ACT boundaries and thus form part of the cadastre. Although these are mostly in rural areas, development (or other forms of progress) will eventually reach them. It is therefore inevitable that these boundaries (both blocks and roads) will need to be redefined with reference to NSW plans of survey.

The case examined in Oaks Estate also serves as evidence of the consequences that can occur when a lack of supervision and quality assurance measures is combined with a lack of experience and training. The issues identified underscore the importance of thorough oversight and expertise in survey practices. Despite this case occurring close to 50 years ago, it serves as a cautionary tale for modern surveyors and emphasises the need for robust processes to prevent similar mistakes in the future.

The ensuing legal case also exposed shortcomings in the *Land Titles Act 1925 (ACT)*. Despite a significant error being identified, there was no process to settle the matter outside of the legal system. The ACT does not have any legal provision in which the Registrar-General (or Surveyor-General) can make a determination in relation to a disputed boundary (unlike other Australian jurisdictions such as NSW and South Australia). As such, the disputing landholders had no option but to go to the courts for a solution. Justice McWilliam (paragraph 18 of the court order) acknowledges this by saying that '*I am satisfied that the nature of the error and the relief sought in this matter was of a kind that was always going to require the imprimatur of the Supreme Court given the limitations of [section] 160 of the [Land Titles] Act.*' It follows that a review of the *Land Titles Act 1925 (ACT)*, at least in respect to boundary determination, may be warranted.

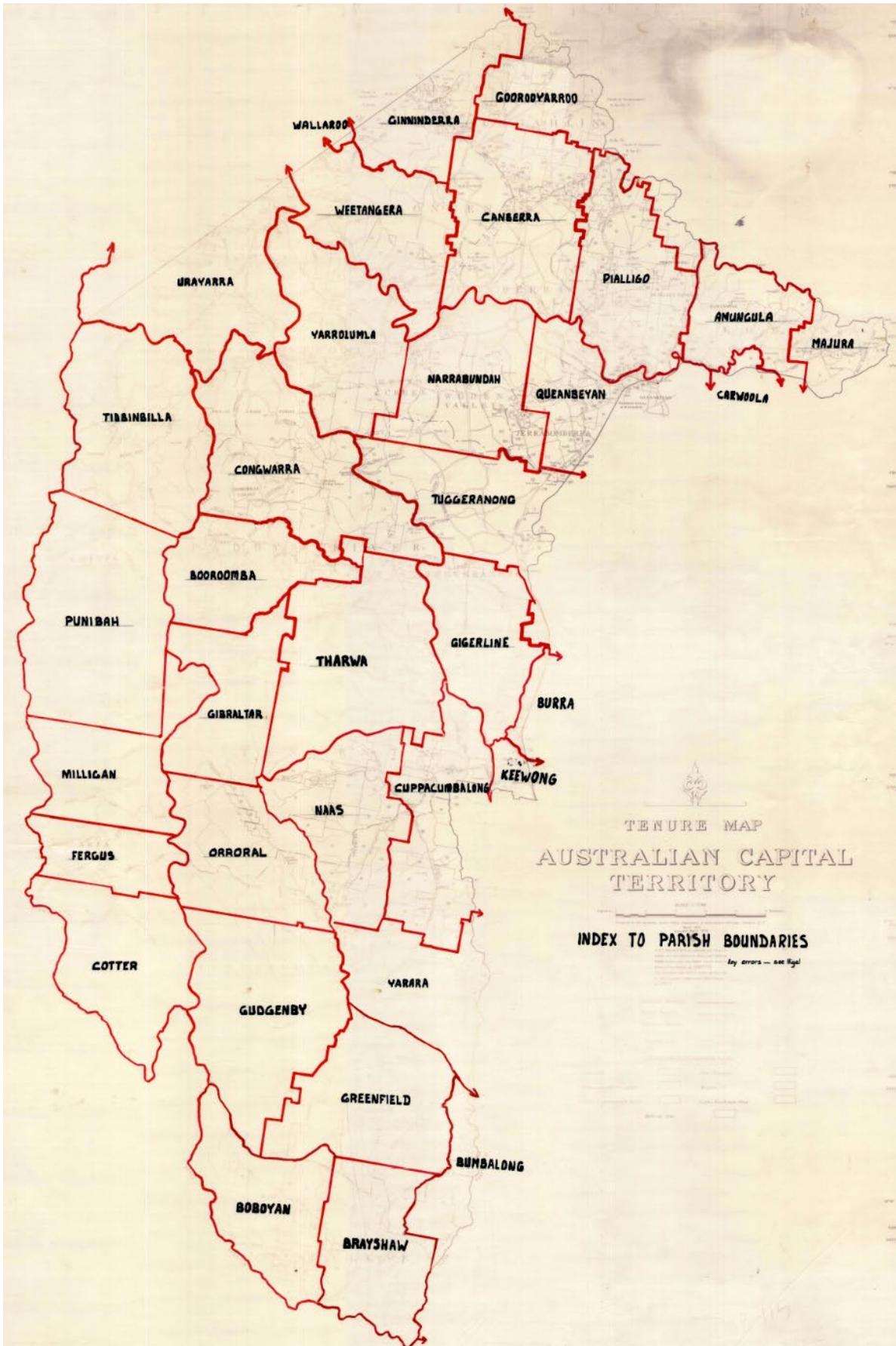
ACKNOWLEDGEMENTS

Gavin Evans and Joanne Hawkes are gratefully acknowledged for their significant contribution to this work and first-class review of a hastily written draft. Stephen Hogan is thanked for various phone calls discussing early NSW and ACT titles, while Bruce Langley is thanked for the lesson on searching Old System registers and the 'Book of Deeds'.

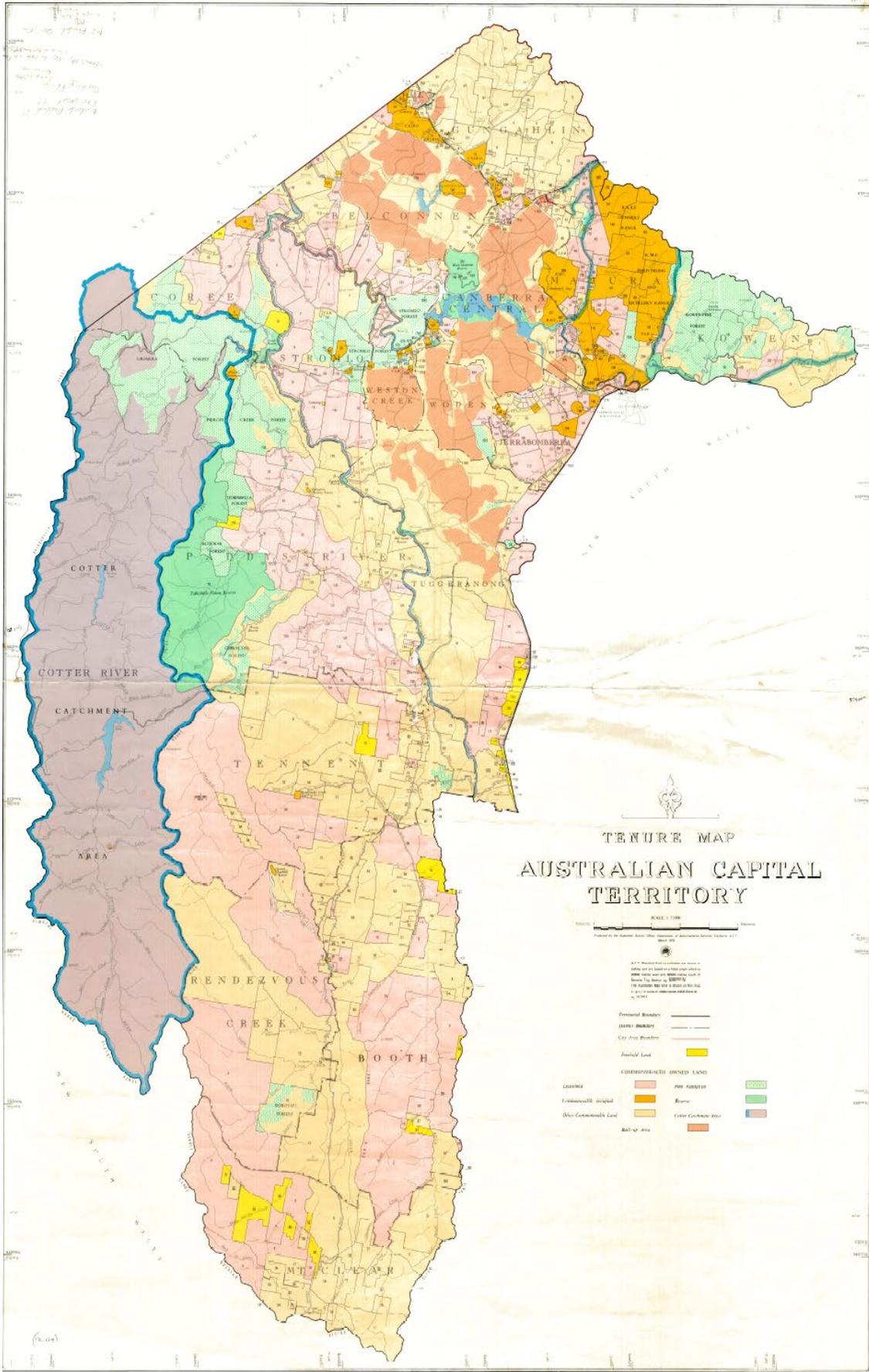
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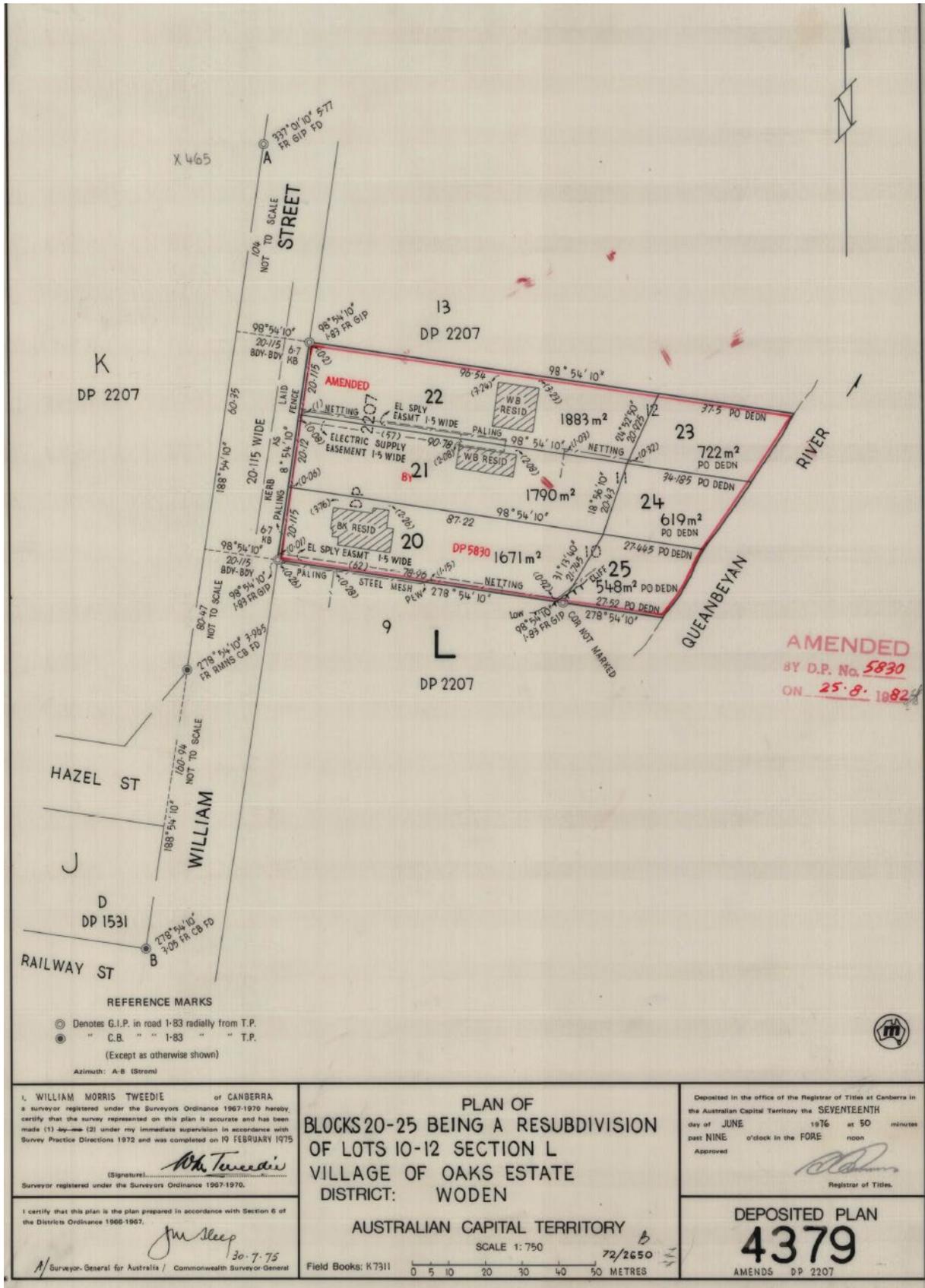
APPENDIX A: INDEX TO PARISH BOUNDARIES WITHIN THE ACT



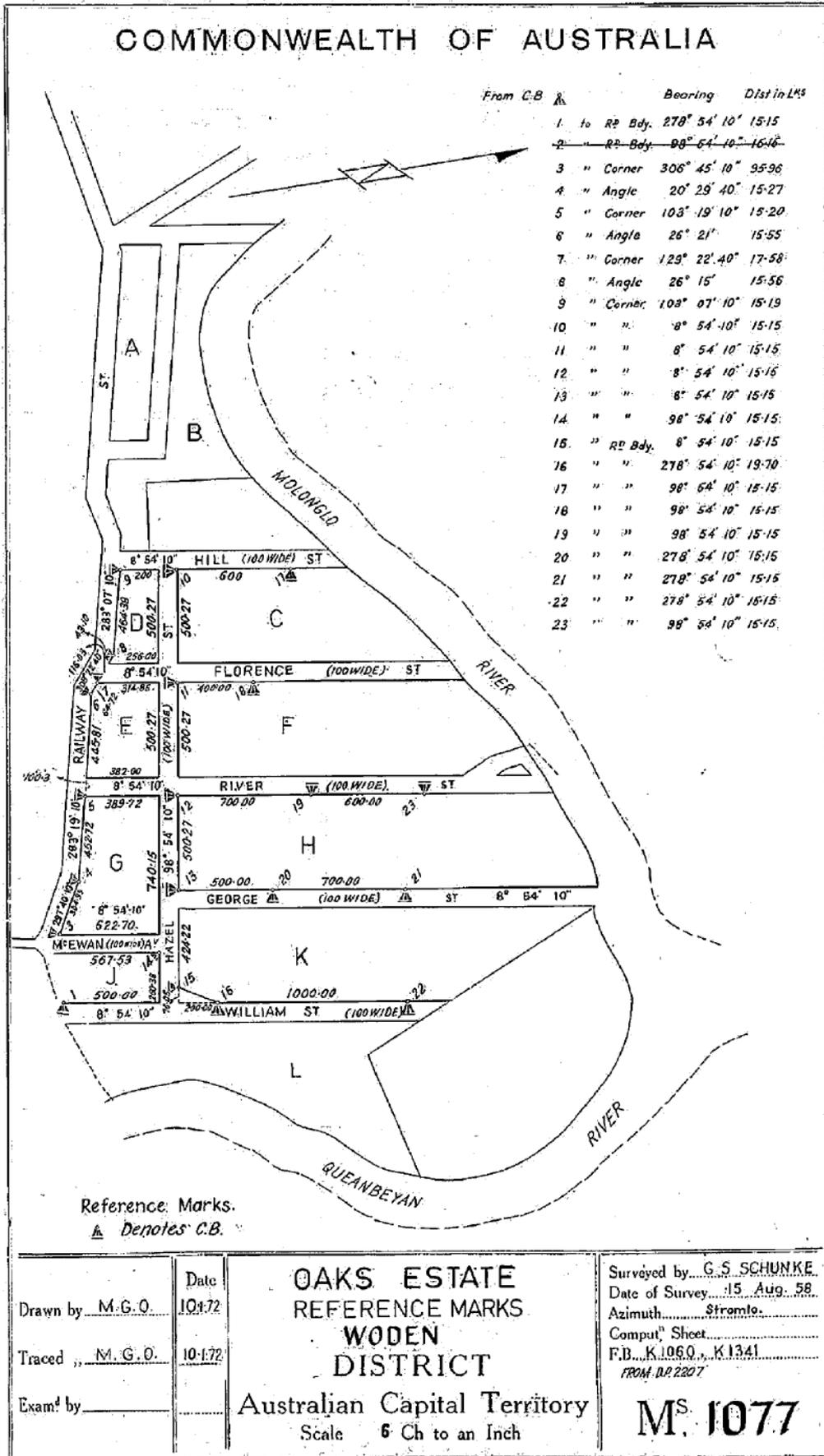
APPENDIX B: 1976 ACT TENURE MAP (FREEHOLD LAND SHOWN IN YELLOW)



APPENDIX C: DEPOSITED PLAN DP4379



APPENDIX D: MISCELLANEOUS SURVEY MS1077



APPENDIX F: DEPOSITED PLAN DP16471 SHEET 3

