



Principles of Re-establishment Guidance Note 5

Types of Re-establishment – Crown Boundaries

Crown boundaries and the law

At the time of separation from New South Wales there was little by way of legislation to advise on either how cadastral surveys should be performed or the means to ensure that they were undertaken at an appropriate standard. So when a lack of appropriately trained survey personnel was combined with a significant backlog in the alienation of land by the state for land that, from a survey perspective, could best be described as challenging, it is easy to see why these Crown surveys have been considered to be flawed.

While s.134 of the *Transfer of Land Act 1866* required a map for subdivision purposes having to be declared as being survey accurate by a licensed surveyor before it could be deposited with the Registrar and Part VIII of the *Transfer of Land Act 1890* gave some guidance on dealing with boundaries, it was not until 1895 that the *Land Surveyors Act 1895* was proclaimed and a Surveyors Board was established to provide regulation on the state's licensed surveyors.

An attempt had been made prior to 1895 to address the deficiencies of the earlier surveys by proclaiming the *Survey Boundaries Act 1885*. The preamble of this Act advised that it was for the resolution of the discrepancies that frequently arose between 'the boundaries of land as marked on the ground and the description as given in the title deeds thereof'. The amendments when proclaimed, applied to both the *Transfer of Land Act 1958* and the Real Property Act (repealed), and can be summarised as follows:

- Section 3 Crown survey boundaries as marked on the ground to be deemed the true boundaries.
- Section 4 Crown grant or lease to be deemed to convey the land within the survey boundaries other than if there is a patent mistake or error.
- Section 5 As to aliquot parts of Crown sections having excess of area.
- Section 6 How survey boundaries may be proved in the absence of survey marks.
- Section 7 Margin of error allowed in description of boundaries.
- Section 8 Provisions of *Survey Boundaries Act 1885* to apply to land not under the Act and to land which is under the Act.

However these provisions were later found not to provide full resolution of the problems created by the inaccuracies of the earlier surveys and as a result a Royal Commission was conducted on the matter. The recommendations of the Royal Commission were implemented in 1890 by amending the *Real Property Act 1890*. These amendments are now contained in the *Property Law Act 1958* and are known as Sections 267–273 inclusive.

These being:

- Section 267 Definition of 'Document of title'.
- Section 268 Crown survey boundaries as marked on the ground to be deemed the true boundaries.
- Section 269 Crown grant or lease to be deemed to convey the land within the survey boundaries.
- Section 270 As to aliquot parts of Crown sections having excess of area.
- Section 271 How Crown survey boundaries may be proved in the absence of survey marks.
- Section 272 Margin of error allowed in description of boundaries.
- Section 273 Provisions of Part to apply to land under general law and *Transfer of Land Act 1958*.

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The main differences between the *Survey Boundaries Act 1885* and the recommendation of the Royal Commission being that:

- there was now no allowance for the discounting of any variation where it could be regarded as being caused by either a 'patient mistake or error' see Section 269 of the *Property Law Act 1958*.
- it was now possible to prove individual Crown boundaries rather than the boundaries of a whole Crown allotment and the subject land no longer had to be a whole Crown allotment see Section 271 of the *Property Law Act 1958*.
- the margin of error allowed for was increased for those lines greater than 40.23m from 1 part in 1000 to 1 part in 500.

Order of priority when re-establishing Crown boundaries

Crown survey monuments

Boundaries as defined in the original Crown survey by survey posts, pegs, trenches or other marks are deemed by statute to be the true boundaries in spite of the dimensions that have been derived from that survey.

Consequently, original Crown marks found in the current survey should be adopted as the boundary corner, provided their positions are verified.

By verification, it is meant that:

- the relationship is maintained to adjacent marks, trenches, RMs (Reference marks) reference trees etc
- the dimensions are compatible to adjacent Crown pegs, i.e. angles and distances are in practical harmony
- there is practically sufficient land left to the nearest known or provable Crown boundary or government road alignment
- where there are two or more marks that may relate to a Crown corner and they are not in agreement, the mark least likely to have been moved should be utilised
- where a Crown peg is found beside a post that wasn't there at time of the Crown survey, then the peg has most likely been displaced by the placement of the post.

Crown Survey Marks may include: Permanent Marks (PM), Primary Cadastral Marks (PCM), Reference Marks (RM), Standard Survey Marks (SSM), Reference Trees, Instruments Points (IP), Occupation, Pegs & Trenches (P & T).

Crown boundaries adopted in surveys other than surveys done by the Crown

Where a bona fide Crown boundary adoption has been made in support of a registered plan it should be respected in later surveys of that Crown boundary.

A Crown boundary adoption that varied significantly from occupation at the time of survey – and that occupation is now capable of acceptance under the provisions of Section 271 of the *Property Law Act 1958* – is not considered to be a bona fide Crown boundary adoption.

Where an adoption was made significantly short of the provable boundary in a previous survey, it is then possible to consider it a bona fide Crown boundary adoption provided no other surveyed boundary is affected when the current survey adopts the provable boundary.

Conversely, where the previous survey was of the adjoining allotment and an adoption was made significantly short of the provable boundary, it is not possible for the current survey to adopt over the fence and make a common adoption with the previous survey.

Occupation – in the absence of Crown marks

During the survey, check for any evidence of previous fence lines and reasons why the original Crown boundary was not fenced as intended – perhaps it was because of a rocky outcrop, mature tree(s), gully, swamp, natural watercourse etc. It can also be helpful to chat with local residents who may provide further information.

Record the age and type of fence – a 60-year-old post and mortice fence is far more significant than a five-year-old steel dropper and wire fence.

Mature fencing can be accepted as the Crown boundary under the provisions of Section 271 of the *Property Law Act 1958* without a declaration, provided that:

- there has been diverse ownership

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- the boundaries practically agree with angles and distances of the grant
- sufficient land remains to satisfy the adjoining allotment or Crown land
- the boundaries agree with the pattern established by the adjoining allotments, i.e. similar excess/deficiencies.

The surveyor's report must refer to the boundaries being modernised under the provisions of 271PLA.

Where fencing is less than 15-years-old and/or the adjoining allotment is considered to be affected, a statutory declaration under the provisions of Section 271 of the *Property Law Act 1958* will need to be obtained before the fence can be accepted as the Crown boundary. The person providing the declaration would need to have at least 15 years' personal knowledge of the boundary.

If there is a significant effect on the adjoining parcel it may be necessary to formally amend the title under Section 99 of the *Transfer of Land Act 1958* before its status can be legally recognised.

Note: the amendment would need to be under Sec 99 rather than under Sec 60 otherwise it could not be considered to be the Crown boundary.

If fencing is not adopted, the surveyor will need to provide justification as to why by providing evidence of:

- older/other occupation in a different position to that of today
- its creation as a fence of convenience – where there was/is common ownership or it is practically not possible
- local knowledge.

Dimensions

Where there is neither evidence of old marks nor fencing that could be considered to define the Crown boundary, then Crown dimensions should be utilised.

Overall dimensions should be observed between known Crown boundaries/ Government Roads and any excess or deficiency between these known points should be apportioned to establish the boundaries of the subject land.

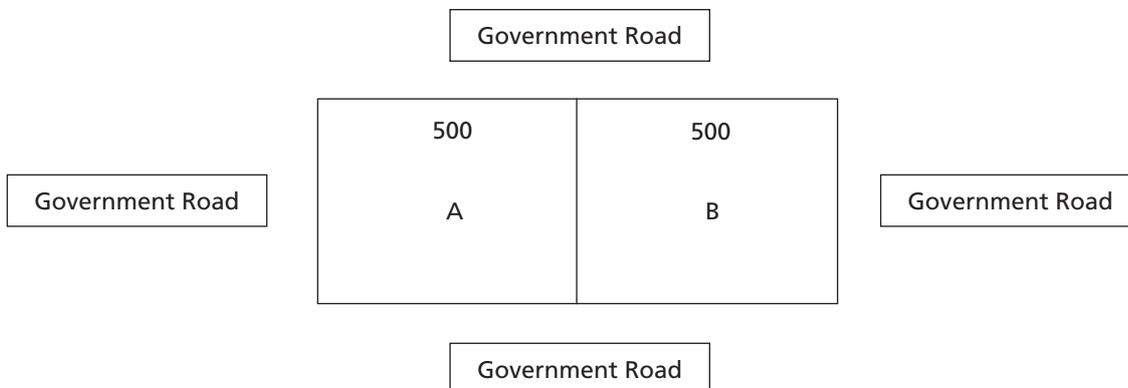
If possible, the determined excess or deficiency should be confirmed by reference to that found in adjoining surveys.

In general terms the 'old' Crown surveyor deliberately put one link excess in every chain for the urban areas, while a greater amount could be found in rural areas depending on the age of the survey, the topography and the surveyor involved. Angles were generally laid out fairly accurately.

So, while excess is expected, any deficiency should be fully investigated.

Example 1

Title/Litho dimensions:



A and B are Crown allotments with frontages as shown.

An old fence exists on the common boundary.

Crown marks are found at all road corners.

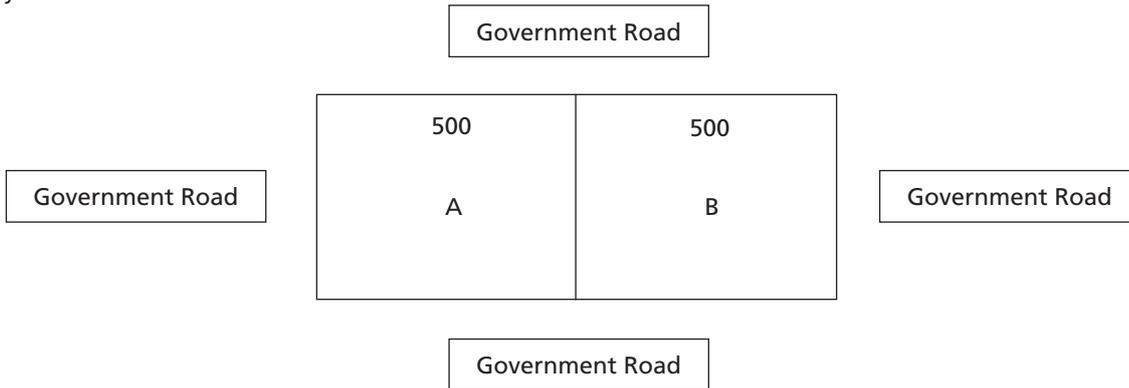
The common boundary fence may or may not have been erected on the line of the original marks.

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The following scenarios depict 10 alternative combinations of measurements that could be found by a surveyor. Each case is different in some way and the example is included to illustrate possible alternatives for a very simple subdivision of the land owned by A.

Scenario 1

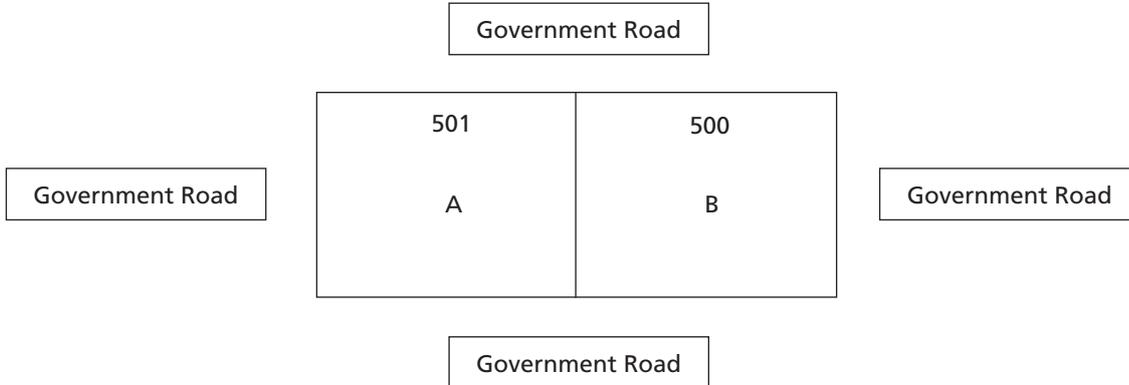
Surveyed dimensions:



Measured dimensions accord with title and are therefore acceptable.

Scenario 2

Surveyed dimensions:

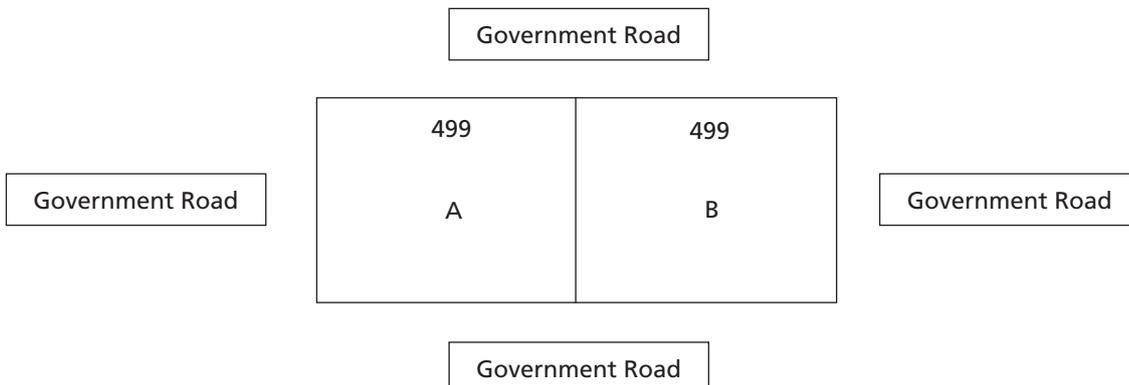


Measured dimensions accord with title and are therefore acceptable.

In the absence of any original marks or any local evidence to the contrary, it could be reasonably assumed that a combination of survey difference and slightly inaccurate fencing could have contributed to give the results. The adoption of fencing as the Crown boundary is therefore justified.

Scenario 3

Surveyed dimensions:



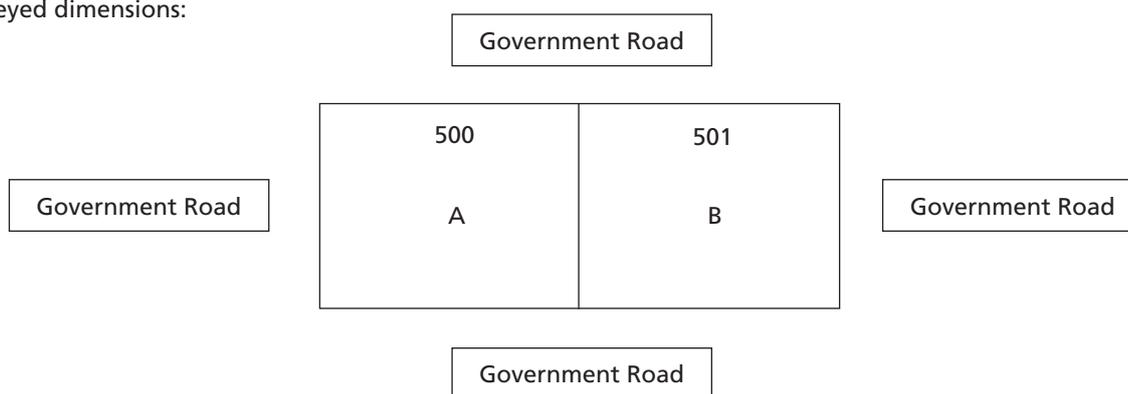
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Measured dimensions practically accord with the title and the shortage is proportional for each C.A. and is therefore acceptable

In the absence of any original marks or any local evidence to the contrary, it could be reasonably assumed that a combination of survey difference and slightly inaccurate fencing could have contributed to give the results. The adoption of fencing as the Crown boundary is therefore justified.

Scenario 4

Surveyed dimensions:

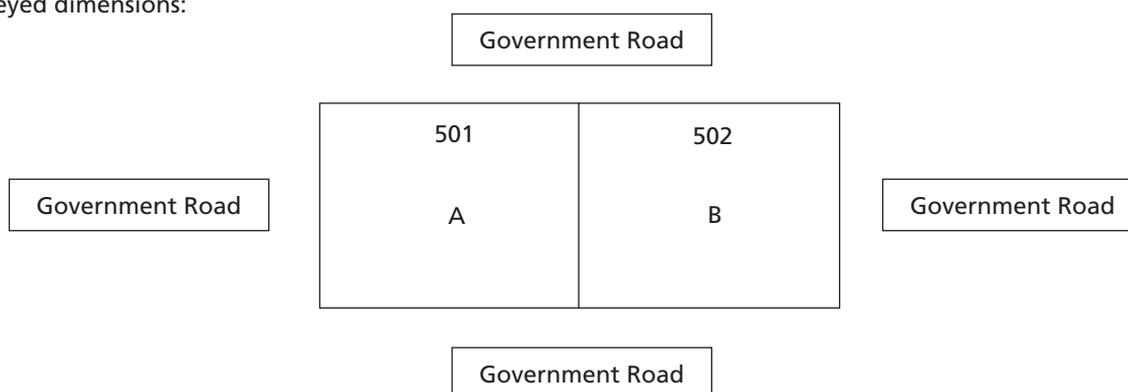


Measured dimensions practically accord with the title and both titles' requirements are satisfied and it is therefore acceptable.

In the absence of any original marks or any local evidence to the contrary, it could be reasonably assumed that a combination of survey difference and slightly inaccurate fencing could have contributed to give the results. The adoption of fencing as the Crown boundary is therefore justified.

Scenario 5

Surveyed dimensions:



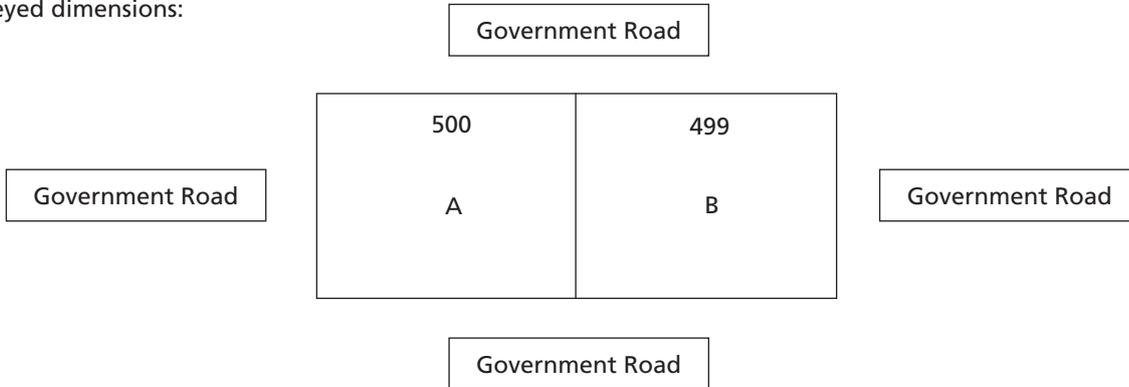
Measured dimensions practically accord with title and both titles' requirements are satisfied. This is therefore acceptable.

In the absence of any original marks or any local evidence to the contrary, it could be reasonably assumed that a combination of survey difference and slightly inaccurate fencing could have contributed to give the results. The adoption of fencing as the Crown boundary is therefore justified.

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Scenario 6

Surveyed dimensions:

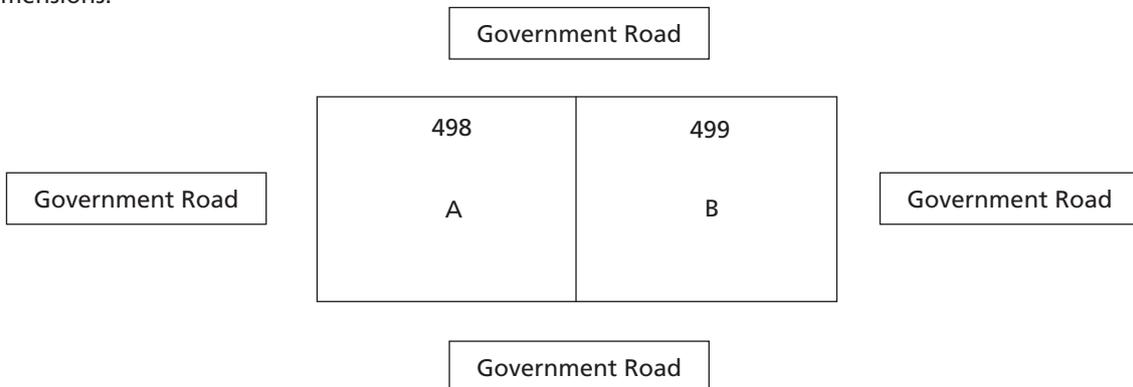


Measured dimensions practically accord with title and are therefore acceptable.

In the absence of any original marks or any local evidence to the contrary, it could be reasonably assumed that a combination of survey difference and slightly inaccurate fencing could have contributed to give the results. The adoption of fencing as the Crown boundary is therefore justified.

Scenario 7

Surveyed dimensions:

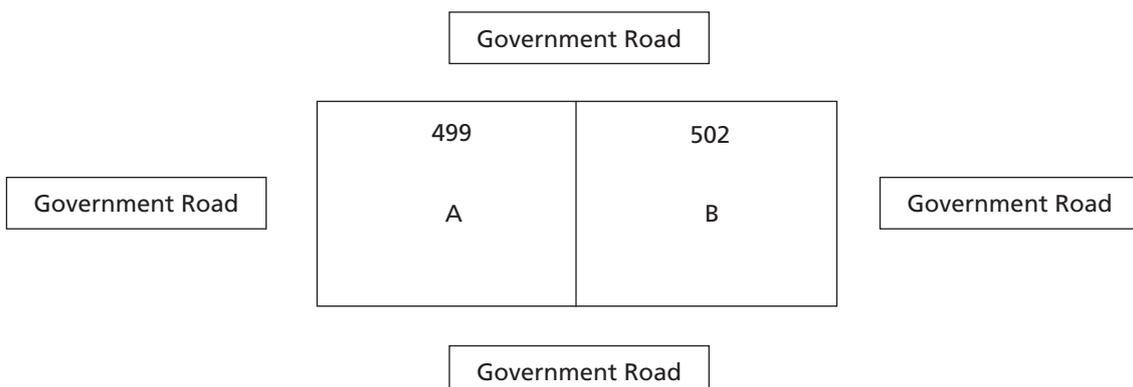


Measured dimensions practically accord with title and the deficiency adopted for each parcel is practically proportional to the overall shortage. This is therefore acceptable.

In the absence of any original marks or any local evidence to the contrary, it could be reasonably assumed that a combination of survey difference and slightly inaccurate fencing could have contributed to give the results. The adoption of fencing as the Crown boundary is therefore justified.

Scenario 8

Surveyed dimensions:



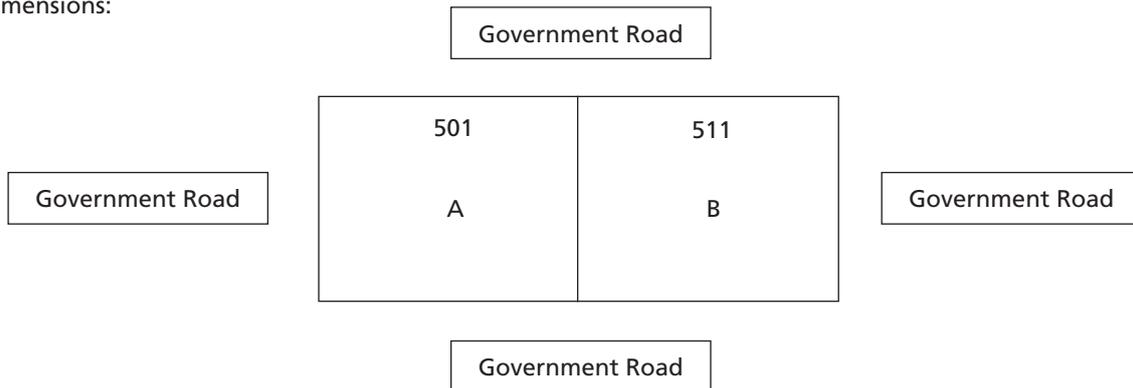
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Measured dimensions practically accord with title and are therefore acceptable.

In the absence of any original marks or any local evidence to the contrary, it could be reasonably assumed that a combination of survey difference and slightly inaccurate fencing could have contributed to give the results. The adoption of fencing as the Crown boundary is therefore justified.

Scenario 9

Surveyed dimensions:

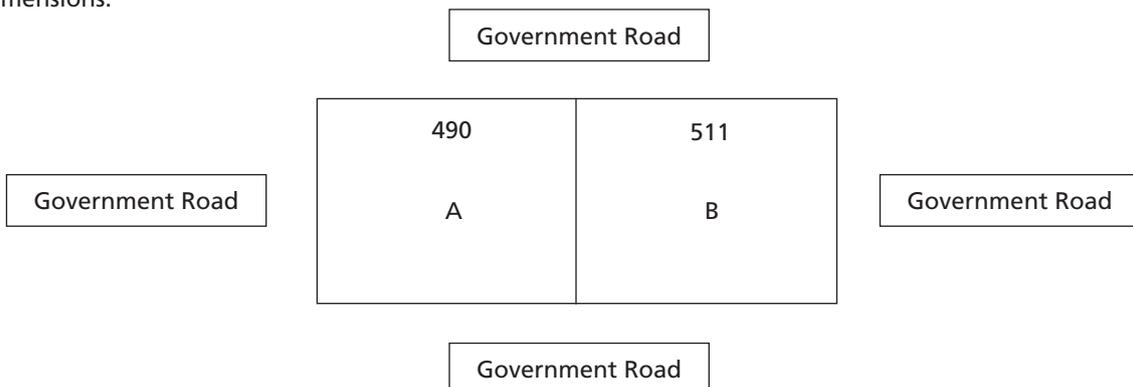


In this case, with satisfactory proof of age of existing fencing and both parcels satisfied as to Crown grant dimensions, it is considered that the fencing would most likely be acceptable as the crown boundary.

In the absence of any original marks or any local evidence to the contrary, it could be reasonably assumed that a combination of survey difference and slightly inaccurate fencing could have contributed to give the results. The adoption of fencing as the Crown boundary is therefore justified.

Scenario 10

Surveyed dimensions:



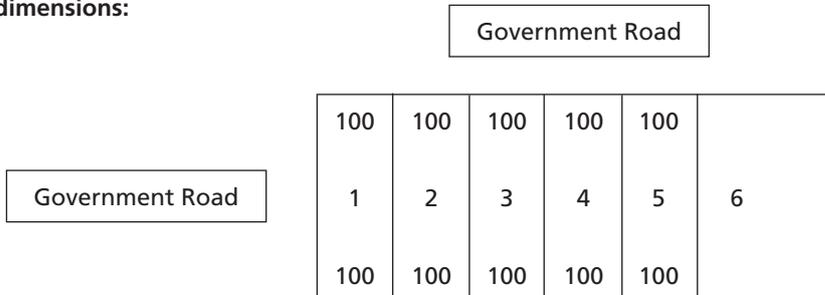
In this case, the assumption that the fencing represents the Crown boundary is very doubtful. The surveyor would be expected to look closely for evidence of survey marks or the remains of old fencing some 10 links/metres from the fence, and to question the owner as to their knowledge of the fence location's history. It is possible the fence was erected to avoid a physical feature on the original boundary.

In dealing with either Crown allotment, even with a statutory declaration in accordance with section 271 of the *Property Law Act 1958*, it is most unlikely that Land Victoria would regard the fencing as being in the original position of the Crown boundary. It would be considered that part of Crown Allotment A was adversely occupied and procedures under Section 60 *Transfer of Land Act 1958* would be appropriate if the owner decided to lodge an application with the Registrar; or alternatively, the common boundary could be altered by NICO subdivision.

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Example 2

Title/Litho dimensions:



Crown allotments 1, 2 and 3 are in one title owned by proprietor 'A'.

Each allotment is 100 on litho.

The owners wish to carry out a NICO subdivision of C.A.s 3 and 4.

Crown allotments 4 and 5 are in one title owned by proprietor 'B'.

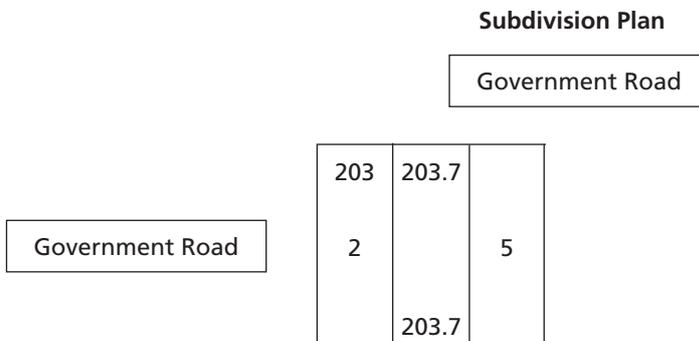
Surveyed dimensions:



Survey discloses:

- the fenced width of Crown Allotments 1, 2 and 3 is 304.5
- the fenced width of Crown Allotments 4 and 5 is 204.4
- the fences are old and are capable of proof under Section 271 *Property Law Act 1958*

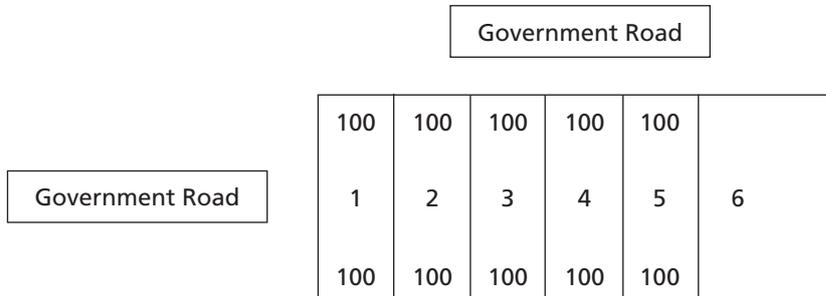
Comments:



The surveyor should adopt individual widths of 101.5 for each of C.A.s 1, 2 and 3 and 102.2 for C.A.s 4 and 5, resulting in a total width for the subdivided land of 203.7.

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Title/Litho dimensions:



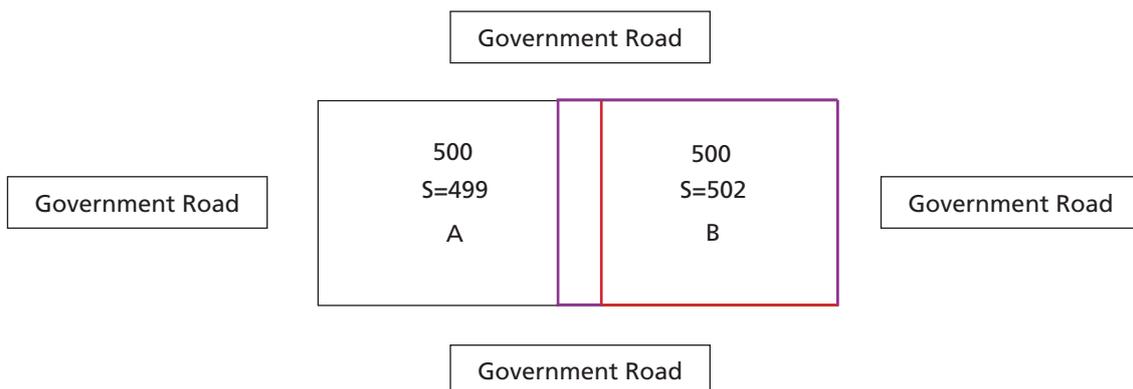
Crown allotments 1, 2 and 3 are in one title owned by proprietor 'A'

Each allotment is 100 on litho.

The owners wish to carry out a NICO subdivision of C.A.s 3 and 4.

Example 3 – Crown boundaries adopted in surveys other than surveys conducted by the Crown

Surveyed dimensions



Previous survey of B has adopted original grant dimensions.

If B is resurveyed, should the Crown boundaries be adopted?

Where a bona fide Crown boundary adoption has been made in support of a registered plan it should be respected in later surveys of that Crown boundary.

A Crown boundary adoption that varied significantly from occupation at the time of survey, and that occupation has subsequently been shown to be capable of acceptance under the provisions of Section 271 of the PLA, is not considered to be a bona fide Crown boundary adoption.

Where the previous survey was of the subject land and an adoption was made significantly short of the provable boundary, then it is possible provided no other surveyed boundary is affected by the current survey adopting the provable boundary.

Conversely, where the previous survey was of the adjoining allotment and an adoption was made significantly short of the provable boundary, it is not possible for the current survey to adopt over the fence to make a common adoption with the previous survey.

If A is resurveyed, where should the Crown boundary be adopted?

Where a bona fide Crown boundary adoption has been made in support of a registered plan it should be respected in later surveys of that Crown boundary.

A Crown boundary adoption that varied significantly from occupation at the time of survey, and that occupation has subsequently been shown to be capable of acceptance under the provisions of Section 271 of the PLA, is not considered to be a bona fide Crown boundary adoption.

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Where the previous survey was of the subject land and an adoption was made significantly short of the provable boundary, then it is possible provided no other surveyed boundary is affected by the current survey adopting the provable boundary.

Conversely where the previous survey was of the adjoining allotment and an adoption was made significantly short of the provable boundary, it is not possible for the current survey to adopt over the fence to make a common adoption with the previous survey.