ROA-01 Creation of Private Roads

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1 Private Roads and Rights of Way

The term private roads (which includes private right of way) is applied to those roads set out on a plan of subdivision of privately owned land under the Act which have not been dedicated to public use. These roads were formerly shown coloured brown on all plans registered under the TLA, however, colouring is no longer used on the creation of new deposited plans and on SmartPlan they are coloured yellow the same as other freehold land.

Private roads set out on plans of subdivision are appurtenant only to those lots on the plan which abut onto the private road, unless additional rights have been granted by registered easement (s.167A). The implied right of way which the owner of a lot abutting onto a right of way acquires by the purchase of that lot, is as legally binding as that gained by a right of way created by a registered grant of easement.

Crown land right of ways were created by the Minister for Lands under the Land Act 1933 or earlier legislation. These rights of way are not subject to private access rights in favour of adjoining landowners under s.167A of the TLA. These rights of way remain Crown land and are actually accessway reserves.

2 Pedestrian Accessways and Rights of Way under Section 152 of the Planning and Development Act 2005

Pedestrian accessways (PAWs) and right of ways (ROWs) created on deposited plans of subdivisions for freehold land pursuant to the provisions of s.152 of the P&D Act vest in the Crown. A Crown Land Title, in the name of the State of Western Australia, will be created and registered for each PAW or ROW that is vested in the Crown.

PAWs are created as a requirement of the WAPC as part of the subdivision of freehold land, as a means of pedestrian access between public roads, and for providing a corridor for public utility
services.

ROWs are created as a requirement of the WAPC upon subdivision to allow for existing or planned future public access over land by vehicles, cycles or pedestrians, usually where it is not considered appropriate or possible to dedicate land as a public road under the LAA or as a road widening under s.168 of the P&D Act (formerly s.28 of the T P&D Act).

Prior to the introduction of the Reserves and Land Revestment Act 57 of 1991, the land so vested was subject to the rights of the adjoining landowners in accordance with s.167A of the TLA. The Reserves and Land Revestment Act removed those rights, both for new surveys and for all existing surveys, in those cases where the land vested in the Crown pursuant to s.152 of the P&D Act. Therefore, none of these PAWs or ROWs are subject to private access rights in favour of adjoining landowners under s.167A of the TLA.

Note: Prior to the proclamation of the P&D Act on 9 April 2006 the above-mentioned provisions were set out in s.20A of the T P&D Act.

3 Also see

- ROA-02 Creation of Public Roads
- ROA-03 Roads and their Closure