ROA-02 Creation of Public Roads

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1 Crown Land

A public road is created by:

- being set out as a road on an approved Crown deposited plan that additionally includes a lot for non-road purposes. Automatic dedication occurs under s.28 of the LAA on approval of the deposited plan.

- being declared as a road in a Road Dedication (Ministerial) Order lodged and registered against a Crown land title. Dedication occurs under s.56 of the LAA on registration of the road dedication document.

2 Alienated Land

A public road is created:

- By taking for the purpose of a road under s.177 of the LAA and s.3.55 of the Local Government Act 1995 and consequential dedication under s.56 of the LAA.

- By setting out a private road on a plan and subsequently dedicating it to public use under the provisions of s.56 of the LAA. This is firstly considered by the Local Government Authority who in accordance with the regulations may then request the Minister to dedicate the land as a road.

Where the Minister grants the request, the Dedication Order, which is endorsed on the freehold title, has the effect of transferring that private road to the Crown in the name of the State of Western Australia and revesting the land as Crown land on registration of that Order.

Any encumbrances or implied rights under s.167 of the TLA that may be attached to the land are extinguished by the dedication (see policy and procedure guide ROA-03 Roads and their Closure).

- Where land is transferred to the State of Western Australia or a Local Government and the
transfer document contains a statement that the transfer is for the purpose of extending or adding to an existing public road pursuant to s.168 (5) of the P&D Act (formerly s.28(1) of the T P&D Act).

Dedication is effective from the date of registration of the transfer. Any existing encumbrances, interests or caveats affecting the parcel of land transferred must be removed prior to the dedication.

- Where a road corner shown on any registered plan is rounded off or truncated by any new plan. The portion of the land so rounded off or truncated forms part of the public road and is dedicated to public use on the date of approval of the new plan by the Inspector of Plans and Surveys (s.168 (3) P&D Act, formerly s.28(2) T P&D Act).

- Where any part of the land on a plan of subdivision is marked road widening. Such portion is dedicated to public use and forms part of the road so widened on approval of the plan by the Inspector of Plans and Surveys (see s.168 (3) of the P&D Act, formerly s.28 (3) of the T P&D Act).

- Where the road widening is the only land on the plan there is no automatic dedication as a public road and further action by way of notification in the Government Gazette or registered transfer is required.

- A local Government may also have a proposed road widening surveyed out but may pend the legal dedication of the road as public until such time as any buildings encroaching on the new road alignment are demolished.

When the land is clear of buildings it is dedicated as a public road upon an order of the Governor (Local Government (Miscellaneous Provisions) Act 1960, s.364).

3 Railway Land

Prior to the introduction of the LAA, land originally taken for railway purposes on an approved survey and then no longer required as a railway could be dedicated as a public road by a notice published in the Government Gazette (Public Works Act 1902, s.105). On the introduction of the LAA, s.105 of the Public Works Act 1902 was repealed (see s.54 of the LAA).

In these instances, the Department of Planning, Lands and Heritage now arrange the necessary steps to be taken to have the land made Unallocated Crown land. A road dedication order is then lodged under s.56 of the LAA to dedicate the land as a road.

4 Ownership, Care, Control and Access to Roads

The State of Western Australia is the owner of all land in roads. All subsequent actions to change the course or status of a road are taken by the Department of Planning, Lands and Heritage. The Department of Planning, Lands and Heritage is not, however, charged with the maintenance and construction of roads, it acts as an agent attending to the legalities.

The care, control and management of public roads is with the Local Government Authorities (s.3.53 of the Local Government Act 1995 and s.55 (2) of the LAA).

Not all roads, however, are under or remain under the care, control and management of the Local Government Authority. By a proclamation pursuant to s.13 of the Main Roads Act 1930, the Commissioner for Main Roads may declare any road or part of a road to be either a highway or a main road.
The proclamation takes effect from the date of its publication in the Government Gazette. The care, control and management of the highway or main road is then vested in the Commissioner (s.15 of the Main Roads Act 1930).

Access to a road either on foot or by vehicles, can be restricted in the case of main roads or highways by the proclamation pursuant to s.28A of the Main Roads Act 1930 by the Commissioner of Main Roads. The proclamation takes effect from the date of its publication in the Government Gazette.

Road access can be restricted or prohibited (s. 150 of the Planning and Development Act 2005) as set out in conditions imposed by the Western Australian Planning Commission (s. 143 of the said Act) and in accordance with the relevant regulations.

Purchasers of land adjoining main roads or highways (and their agents) would be well advised to seek from the Main Roads Western Australia information on the status of road access.

If the road in question was created as part of a subdivision of freehold land, it will most likely be a local road under the control of the Local Government Authority.

Prior to the LAA if the road was originally created by a survey of Crown land or has at any time been extended, widened or deviated by actions in the Department of Planning, Lands and Heritage; the former public plan series would show a road number reference, which can be used to retrieve a Department of Planning, Lands and Heritage file for information purposes.

The road number references were utilised for gazetted purposes. Roads now created under the LAA over Crown land no longer show a road number, however, a Department of Planning, Lands and Heritage file number (generally the survey file) is shown on Crown deposited plans or on the document where a Road Dedication Order has been registered.

Some of the more recently created freeways have been created by a Taking Order for the resumption or purchase of freehold land and have not yet been dedicated as a public road and therefore, not vested as Crown land.

Protected Roads are unsurveyed roads shown on Landgate’s Crown plans extending only across unallocated Crown land, reserves and State forests. Where shown on a Crown plan, protected roads indicate the approximate position of a road. The purpose was to assist in future subdivision over the area and to indicate the presence of a road in the event of an enquiry over the land.

Prior to 1961, under the Road Districts Act 1932, a protected road or any road shown on a Landgate Crown plan was and remains a public road, and the local authority had control and power to finance its construction. After 1961, under the Local Government Act 1960, this power was lost and protected roads created after 1961 are not considered public roads.

Where a protected road was shown on plans after 1 July 1961 and is shown over a reserve, it is not legally available for public access unless it has been formally dedicated and removed from that reserve. The same principle applies to other forms of Crown tenure. For a protected road to be deemed to be for public use, it must have existed on Landgate’s plans prior to 1 July 1961 and must have been created over unallocated Crown land or excised from the tenure and then created.

5 Also see

- ROA-01 Creation of Private Roads