RES-01 Crown Reserves

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1 Overview

A reserve is Crown land that has been set aside for a particular purpose in the public interest. It is a form of tenure of Crown land and is not an interest in land.

Part 4 of the Land Administration Act 1997 (LAA) provides the legislative basis for the creation, management, amendment and cancellation of reserves of Crown land. Before 30 March 1998, reserves were created under Part III of the Land Act 1933 or the Land Act 1898 and were created by proclamation in the Government Gazette. Any land reserved under s.29 of the Land Act 1933 and remaining so reserved immediately before 30 March 1998, was transitioned into the LAA and taken to be reserves created under s.41 of the LAA ( Clause 14(2) Schedule 2 LAA). New reserves are now created by Ministerial Order under the LAA or by other legislative powers set out in an Act, for example, reserves may also be created under the Conservation and Land Act 1984.

There are 3 main types of reserves that can be created over Crown land under the LAA by the Minister for Lands:

1. Reserves
2. Class A reserves
3. Mall reserves

2 Class A Reserves

Class A reserves afford the greatest degree of protection for reserves of Crown land created under the LAA. The A classification is used solely to protect areas of high conservation or high community value.

Where a Class A reserve is to be amended, cancelled, have the purpose or classification changed, or an easement is to be granted over it, the Department of Planning, Lands and Heritage must follow the protocols set out in the LAA. This may include tabling the proposal in parliament.
and/or advertising in a newspaper circulating throughout the State.

3 Mall Reserves

The LAA provides for a statutory form of reserve known as a Mall reserve under s.59 of the LAA. The Minister for Lands may create this form of statutory tenure by Ministerial Order at the request of a Local Government within its district. Mall reserves will most commonly be created over existing roads.

Any road within a land parcel will be automatically closed upon creation of the mall reserve. Once created as a mall reserve, any land within a mall is treated as if it were a road for the purpose of access and installing, maintaining or removing public utility services.

Registration of a Ministerial Order to cancel a mall reserve automatically dedicates the land as a road, cancels any Management Order and repeals any by-laws made in respect to the mall reserve. Any land that was not already a pre-existing road before the creation of a mall reserve, will be dedicated as a road upon the cancellation of a mall reserve. Any encumbrances on the land must be removed prior to any cancellation.

4 Class B Reserves

Class B reserves were created under the Land Act 1933. Those class B reserves remaining under the Land Act 1933 continue and remain so classified as if the Act had not been repealed. Class B reserves cannot be created under the LAA.

Class B reserves can only be cancelled by the Governor by proclamation in accordance with s.31(2) of the Land Act 1933, by order made under the LAA (see clause 14(6)(a) of schedule 2 LAA).

The Minister for Lands may continue to deal with Class B reserves created under the Land Act 1933 provided that, should the reservation be required to be cancelled, the Minister must make an order under the LAA and also present a special report to both Houses of Parliament setting out the reasons for the cancellation and the purpose to which the land is intended to be used.

5 Management Orders

A reserve is usually placed under the care, control and management of a state government agency, local government authority or incorporated community group by way of a Management Order registered against the relevant parcels of Crown land within a reserve and endorsed on the Crown land titles.

A Management Order is a statutory right to manage and control Crown land in accordance with the Management Order granted under the LAA. They place reserves in trust with management bodies on behalf of the public and do not constitute an interest in the land.

Management Orders may contain conditions on the use and development of the reserve and may grant the management body certain powers to deal with the land, such as the power to lease and/or license.
A management body cannot grant easements or covenants over Crown land and cannot be a grantee of an easement that benefits the land (dominant tenement) the subject of the management order.

A management body must be a legal entity or Minister responsible for an Act. Where the name of a management body is to be amended, the Department of Planning, Lands and Heritage will need to lodge a Revocation of Management Order, followed by a new Management Order.

A Management Order must be over the whole of a reserve and cannot be limited to part of the land in a reserve. A Management Order that includes a time limit must also include a statement that the Management Order will be revoked by document. The term will not be shown on the Crown land title or on the reserve register and the Management Order will remain on the Crown land title and reserve register until revoked.

A reserve is not always placed under the care, control and management of a management body. Such reserves are known as unmanaged reserves and remain under the administration of the Minister for Lands.

6 Vesting of Crown Reserves or Crown Land

There are a number of other Acts in Western Australia that empower a reserve or Crown land to be vested in an agency for the purposes of an Act. Once a reserve or Crown land has been vested under other written law, the power to then undertake transactions in respect of that reserve or Crown land will depend upon the powers contained in the respective legislation and whether any other powers under the LAA can be exercised in relation to that land.

Where a vesting created under another Act is required to be recorded on a Crown land title, the responsible agency is to inform Landgate in writing of the legal identity and address of the vesting body, the section number and Act that creates the vesting and where gazetted was part of the requirement of the vesting, a copy of the relevant page from the government gazette. Landgate will then create and register a Sundry document to record the vesting on the Crown land title. The same procedure can be utilised where a registered vesting is required to be removed from a Crown land title.

Reserves or Crown land that are vested under other written law are usually managed in accordance with the powers and functions of the statutory authority in whom the reserve or Crown land is vested under that written law.

However, as the land is Crown land as defined in the LAA, the Minister for Lands does have certain powers to deal with that land. The Minister for Lands exercises those powers so they do not inhibit or conflict with the powers of the particular Minister or statutory authority vested with the control and administration of the reserve or Crown land by that other written law.

Any powers exercised by the Minister for Lands under the LAA (e.g. creation of an easement) in such instances should only be done with the consent and knowledge of the vestee.

Examples of other Acts that may generate the vesting of Crown land include the Conservation and Land Act 1984, the Marine and Harbours Act 1981, the Port Authorities Act 1999 and the Aboriginal Affairs Planning Authority Act 1972.

7 Revocation of Management Orders
Management Orders may be revoked where the reserve has not been appropriately managed, where it is in the public interest to revoke the Management Order or by agreement with the management body.

Where the Minister considers it is in the public interest to revoke the Management Order, all existing interests or caveats created under the Management Order will continue to exist (s.50(4)(b) LAA) and the Minister becomes the Primary Interest Holder of those interests or caveats. For example, where a lease was granted by a management body and continues to exist, the State of Western Australia becomes the lessor.

Where an agreement has been made with the management body for a revocation of the Management Order or where the reserve has not been appropriately managed and the Management Order is to be revoked, an interest or caveat created under the Management Order, will not continue to subsist unless the Revocation of Management Order made by the Minister for Lands expressly provides for the continuation of that interest or caveat (s.50(4)(a) LAA).

Where a reserve is affected by an increase in area, a change of purpose or any other change where the existing Management Order was originally created under the Land Act 1933, the Department of Planning, Lands and Heritage will usually lodge a Revocation of Management Order, followed by a new Management Order.

8 Change of Purpose of Reserve

The Minister for Lands has power under s.51 of the LAA to change the purpose of a reserve by Ministerial Order lodged and registered with the Registrar of Titles under the TLA.

Management Orders usually state the purpose of the reserve within the document so where a reserve purpose is changed, any Management Order over the reserve is usually revoked before the Change of Reserve Purpose document is registered as the purpose stated in the Management Order may no longer be compatible with the new purpose of the reserve. A new Management Order stating the new purpose of the reserve may follow the Change of Reserve Purpose document.

Where a Class A reserve purpose is being changed, the Department of Planning, Lands and Heritage is responsible for tabling the proposal in parliament and advertising in a newspaper circulating throughout the State.

9 Amendment of Reserve

Reserves may be amended by Ministerial Order under s.51 of the LAA and the amendment is effected by the lodgement and registration of an Amendment of Reserve document. The reserve amendment may entail a lot being included or excluded or may require a subdivision of lots already within the reserve.

Where a reserve with Management Order is being amended, the Department of Planning, Lands and Heritage may or may not lodge simultaneously, a revocation and new Management Order, depending on the extent of the amendment.

Where a Class A reserve or a reserve for the purpose of conservation park or national park is being amended, the Department of Planning, Lands and Heritage must follow the protocols set out in the LAA. This may include tabling the proposal in parliament and/or advertising in a newspaper circulating throughout the State.
10 Cancellation of Reserve

The Minister for Lands has power under s.51 of the LAA to cancel a reserve by Ministerial Order lodged and registered with the Registrar of Titles under the TLA. Any Management Order over the reserve must be revoked before the Reserve Cancellation document may be registered.

Where a Class A reserve is being cancelled, the Department of Planning, Lands and Heritage is responsible for tabling the proposal in parliament and advertising in a newspaper circulating throughout the State.