

INFRASTRUCTURE

4.1.7

Engineering

TITLE:	REGISTER OF PUBLIC ROADS
ADOPTED:	OMC 25 September 2008 – Pages 100 - 109
REVIEWED:	OMC 19 March 2009 – Pages 26 – 31 OMC 15 March 2012 – Pages 96 – 103 OMC 27 March 2014 – Pages 94 – 99 OMC 17 December 2015 – Pages 110 – 121 OMC 14 December 2017 – Pages 1032 - 1043
ASSOCIATED LEGISLATION:	Local Government Act 1995 Land Administration Act 1997 Main Roads Act 1930 Public Works Act 1902 Local Government (Miscellaneous Provisions) Act 1960 Planning and Development Act 2005
ASSOCIATED DOCUMENTS:	Background Paper (attached)
REVIEW RESPONSIBILITY:	Director Infrastructure
DELEGATION:	

Previous Policy Number 3.1.15

Objective:

1. To provide a framework for making consistent, structured and justifiable decisions as to whether a road or area of land should be included on the Shire's Register of Public Roads.
2. To clearly state for which public roads or ancillary areas, the Shire is the responsible road authority.
3. To have a framework for making consistent, structured and justifiable decisions in regard to how the register is updated.

4. To provide for policy defence in the case of litigation.
5. Public Roads that are included on the Register will be inspected, maintained and repaired by the Shire in accordance with its Road Management Plan.
6. To enable the Shire to demonstrate that due diligence has been carried out in regard to public risk, safety, health and the environment of the Shire.

Definitions:

Ancillary area - An ancillary area is an area of land owned or managed by Council that's use is ancillary to the use of an adjacent road. In most cases this will be car parks.

Dedication - The setting apart or registration of a portion of land for a public road. It has the effect of vesting freehold land in the State.

Highway - means a road declared by proclamation to be a highway for the purpose of the Main Roads Act 1930.

Main road - means a road declared by proclamation to be a Main Road for the purpose of the Main Roads Act 1930.

Due Diligence - Need for Council to show that all possible measures were taken to provide the community with assets free of hazards, as Council owes a duty of care to the public.

Public Road – Definitions:

- Road – a route trafficable by motor vehicles; in law, the public right-of-way between boundaries of adjoining properties.
- Road reserve – a legally described area within which facilities such as roads, footpaths and associated features may be constructed for public travel.
- Public road – a public place provided for the use of the public for traffic movement, and which has been declared, or proclaimed, notified or dedicated.

(Refer Australian Standard 1348-2002 Road and Traffic Engineering – Glossary of Terms)

Negligence - means failure to exercise reasonable care.

Responsible Road Authority - Means the road authority which has operational functions and responsibilities.

Road Reserve - means all of the area of land between property boundaries on both sides of the road.

Service Roads - are subsidiary carriageways separated from the main carriageway for the primary purpose of providing public access to abutting properties.

State Land means and includes all land except land granted in fee simple, and includes all marine and other waters within the State, all islands and the sea-bed and subsoil, seaward to the statutory limit.

Unformed Roads or Pathways - A road or pathway which has no formed construction. Commonly these are tracks on an irregular alignment with no drainage.

Policy:

The Shire of Broome will meet its obligations to provide for a viable public road network and will maintain an accurate Register of Public Roads to provide the community with a clear understanding of the roads for which the Shire is the Responsible Road Authority.

Generally, for a road or ancillary area to be included on the Shire's Register of Public Roads it has to:

- Be on Shire owned or controlled land
- Be constructed to an acceptable standard that is capable of being economically maintained
- Provide unrestricted public access (no gates)
- Be reasonably required for general public use; and
- Service more than one property

The Shire will fully maintain and accept liability for roads which are on its Official Road Register (Roman2) in accordance with its Transport Asset Management Plan.

The Transport Asset Management Plan will set out the minimum Levels of Service applicable for each type of road.

Gates or Grids are only permitted to exist on these roads under license.

Procedure:

To achieve the consistency required when deciding on what roads or land areas should be added to the Register of Public Roads, a structured process needs to be followed. This policy and accompanying background paper sets out the issues that need to be considered when evaluating a road or land area.

In most cases this will be a straight forward process, for example where a new subdivision has been accepted by the Shire the roads will be added to the Register of Public Roads once accepted onto maintenance and therefore considered to be "reasonably required for general public use".

If Main Roads Western Australia determine that any road is to be Declared by Proclamation to be a Main Road, or to be "de-mained", then it is added to or removed from the register as the case may be.

In some cases more investigation is required and in general, issues will fall into the following areas:

1. Ancillary areas

2. Right of ways and service roads
3. Subdivisions
4. Crown land or freehold title
5. Body corporate driveways
6. Pathways
7. Demarcation
8. Vehicle crossings
9. Street/Road Group Committees
10. Roads not on the Register of Public Roads
11. Single property access

Some landholders are served by access roads which are not on Council's Road Register and which the Shire does not maintain. These are private roads. Responsibility for maintenance or upgrading on these roads rests with the landholder. All public liability associated with these roads is the responsibility of the landholder. Gates or grids on these roads are not required to be licensed.

At times the Shire is provided with funds by Main Roads Western Australia (MRWA) to carry out works on some special access roads which serve evolving communities. In these cases MRWA has recognised that there is a public benefit to the roads and the Shire carries out the work as an "agent" of Main Roads.

The Shire accepts full liability for the standard of roads listed in the Road Register, regardless of whether that standard is lower than that required for acceptance of new roads onto the Register.

These issues are addressed further in the background report attached to this Policy. The Shire has provided a clear, consistent and structured approach to managing the Register of Public Roads.

Responsibility & Relationships

The Manager of Infrastructure Operations is responsible for ensuring the Register of Public Roads (Roman2) is kept up to date. They will rely upon the Works Section to work with them to identify new, renewed or upgraded roads that occur through new subdivisions or capital works. In these cases, the responsible officer is the Manager of Infrastructure Operations.

It also requires the Manager of Infrastructure Operations to work closely with the Works Section service provider and the community when issues arise regarding what roads or land areas should or should not be included on the Register of Public Roads. In these cases, the responsible officer is the Manager of Infrastructure Operations.

This policy is an ongoing requirement as the roads register (Roman2) will need to be continually updated.

Timeframes

This policy will be reviewed at least every two years starting in 2009, keeping it in line with the Transport Asset Management Plan reviews.

REGISTER OF PUBLIC ROADS POLICY

Background Paper

1.0 INTRODUCTION

The Register of Public Roads Policy has been developed to set out a framework for making consistent, structured and justifiable decisions as to whether a road or area of land is reasonably required for general public use and can be considered to be a "Public Road". A road identified as a Public Road it will be included on the Shire Road Register.

The inclusion in the Register of a road is an acknowledgement by Council that it is the Responsible Road Authority in respect of that road or area of land, and therefore has the responsibility for its on-going inspection, maintenance, repair, risk and the associated public liability.

2.0 WHAT CONSTITUTES A "ROAD"?

Please refer to the attached extract from a published brochure entitled "Creation of a Road" from by State Land Services) for a comprehensive explanation of how a "road" is legally created.

3.0 REGISTER OF PUBLIC ROADS

The Shire of Broome's Register of Public Roads is a register of all Public Roads, car parks and pathways for which the Shire is the Responsible Road Authority.

This Register was established and is maintained by the Shire.

The definition of a Shire Road includes any road which:

- Is a thoroughfare referred to in Section 3.53 of the Local Government Act 1989, which indicates a local government is responsible for controlling and managing every otherwise unvested facility within its district;
- Is not a declared State Highway, Main Road or Secondary Road, under the *Main Roads Act 1930*;
- Is on land reserved under the *Land Administration Act 1997* and is vested in or placed under the control and management of a local government,

The Register requires regular updating to accommodate development and is queried from time to time as to whether a road is on it or not.

If a road is on the register then this means that Council has a responsibility to inspect, repair and maintain that public road in accordance with service levels set out in the Transport Asset Management Plan.

The level of maintenance is dependent on the classification of the road in the road Hierarchy, the standard to which the road has been constructed and the level of risk.

Levels of service are to be prescribed in the Shire's Transport Asset.

- Roads fully constructed to an acceptable and maintainable standard. Eg Sealed road pavement with kerb & channel and may include drainage. – High level of maintenance.
- Roads partially constructed to an acceptable and maintainable standard. Eg Gravel road. – Moderate level of maintenance
- Roads not constructed to an acceptable and maintainable standard Eg Vehicle track. – Limited (low) level of maintenance

Inclusion of a road in the Register does not preclude funding being sought from Property owners or Developers when an upgrade is required, in the form of special contribution schemes.

If Council decides that an area of land is not a Public Road then Council does not have any statutory or common law duty to inspect, repair or maintain the area of land. This means that Council has the discretion, not duty, to inspect, maintain and repair areas of land not on the Register.

4.0 "REASONABLY REQUIRED FOR GENERAL PUBLIC USE"

When deciding on which roads should be included or not included on the Register the very broad test of: is it "reasonably required for general public use?" needs to be refined into more specific criteria. These criteria will provide a fair, consistent and justifiable process for Shire staff when deciding on which areas need to be added to the Register.

The first question that should be asked when deciding on whether a road or ancillary area should be in the register is: Does the Shire own or control the land? This is not always an easy question to answer especially in the case of car parks where research may be required to determine ownership. In some cases the Shire may not own a property but through agreements may be in control of the property. The level of control the Shire has is subject to what agreements are in place, such as agreements with Developers (Planning & Development Act 2005), licences and leases.

Any road or land area that is under question will be investigated and assessed using this policy as a guide and the Chief Executive Officer will make the final judgement based all the information before him.

Once ownership or control is established, it is the Shire policy that the following criteria be considered when deciding whether a Road is "reasonably required for general public use":

- Has it been formed or constructed for use by the general public?
- If unformed and would be added to the register if formed or constructed, are the adjoining land owners prepared to pay for an upgrade to a standard that can be maintained?
- Does it serve a defined purpose or function for the general public?
- Is there evidence that it is currently being used by the general public?
- Is there unrestricted public access?

- What are the consequences if public access was removed?
- Can the needs for public use of this land be readily accommodated with Alternatives?
- Should it be recommended for discontinuance?
- Any other relevant matter brought to Council's attention?

For the majority of Roads it is a straight forward decision to include them on the Register, as seen above and in the definitions.

For the small minority that are not straight forward some clarification is required and is documented here as a Shire of Broome Policy.

5.0 SPECIFIC ISSUES THAT NEED TO BE ADDRESSED

5.1 Specific issues include:

- Ancillary areas
- Right of ways (Laneways) and service roads
- Subdivisions
- Crown land or freehold title
- Body corporate driveways
- Pathways
- Demarcation
- Driveways (Vehicle crossings)
- Roads not on the register

Each issue will now be explained in detail and an assessment form will follow that will be used when deciding what roads or land areas shall be added to the Register.

5.2 Ancillary area required for public use:

An ancillary area is an area of land owned or managed by Council that's use is ancillary to the use of an adjacent road. In most cases this will be car parks, but can include areas such as scenic lookouts or rest stops. The following criteria are to be considered in determining whether an area of land can be considered an ancillary area:

- It is under the Shire's ownership or management
- Is it constructed or formed to a maintainable level
- It is required by the Shire or the public for general use
- No person is exercising any rights of private ownership over the land
- A relevant Minister has given the Shire, as the Responsible Road Authority, written consent; and
- Any other relevant matter brought to Council's attention

5.3 Right of ways and service roads:

Roadways constructed or formed that are required for use by the general public will generally be considered to be a Public Road and therefore be included in the Register. An appropriate maintenance and inspection regime

will be applied to the area of land that reflects the expected frequency of use by the public, construction standards and the associated risk.

The Shire does not have a duty to upgrade a road or to maintain a road to a higher standard than the standard to which the road is constructed.

Therefore some roads in the Register will be noted as having "Limited Maintenance Responsibility". This means maintenance required will be determined based on what is reasonable for a road under certain restrictive conditions.

There are two specific cases that need clarification:

- i. Rear access to commercial or industrial properties will be included on the Register when at a maintainable level.
- ii. Defined Fire tracks will be maintained to a serviceable level.

Rights of owners and occupiers of adjoining land are:

- i. An owner or occupier of any land which adjoins a road is entitled as of right to access the road from that land.
- ii. Rights of access conferred by this section or at common law are subject to any restrictions, limitations or conditions which may be specified by or under any Act or law.

5.4 Subdivisions:

When a new subdivision, which includes subdivisional roads, is released to the public for the sale of lots within the subdivision that does not mean that the Shire accepts that the subdivisional roads have been constructed to the Shire standard. The Shire's policy is not to adopt a new subdivisional road as a public road unless all standards and condition as per DA requirements have been complied with. The road is taken over by the Shire following a satisfactory inspection at the time of Practical Completion. At this time the Shire will take over routine maintenance but the developer is responsible for fixing defects for a period of time and this is called the defects liability period.

5.5 Management of Crown Land or Freehold Title:

The Shire has the care and maintenance for roads, pathways and car parks that are located on freehold title or Crown land. That is, Crown land where the Shire has been declared the responsible authority such as Road Reserves or other Reserves. These can include access tracks in reserves that are formed and provide access to car parks and shared footways that may have been constructed by the Shire and therefore require consideration for inclusion in the Register.

It is considered that roads, car parks, pathways or access tracks located on Crown land or separate freehold title, will be included in the Register where:

- Council accepts it is a common law public highway;

- It is constructed or formed to an acceptable standard and
- It is reasonably required for general public use.

5.6 Private Streets and Body Corporate Driveways:

Historically, Broome has had streets developed internally within developments which have remained as private Streets. Gus Winckel Drive and Jules St are both Private Streets.

It is possible for developments to have in their plan of subdivision named the common property as a private street and installed street name blades.

Legally the common property in such developments is the property of the body corporate, which is made up of the owners of the lots within the development. Functionally, such common property is used as a driveway. Therefore, body corporate common property is privately owned land that does not form part of the municipal road network and is the responsibility of the body corporate to maintain.

It is the Shire policy that such driveways not be registered as Public Roads.

For the sake of clarity the Shire maintains a separate list of body corporate driveways that either appear to be part of the road network or have been named as private streets on the plan of subdivision, but are not Public Roads.

For those private roads that have road name signs they will be progressively updated to include under the name "Private Road".

5.7 Pathways:

To be included on the register of public roads, a pathway must meet the following criteria:

- Be on a public highway or on property owned / managed by the Shire
- Have been constructed or formed to provide a defined pathway to an acceptable level.

For a new subdivision they are required to be constructed to Council's design and construction parameters and have been accepted by Council at time of practical completion.

5.8 Demarcation:

Other road authorities, for example Main Roads Western Australia (MRWA), Department of Transport (DoT), Department of Parks & Wildlife (DPaW) and Department of Aboriginal Affairs (DAA) have a responsibility to maintain roads and pathways on land under their control and to have their own asset database registers and management plans.

Under the Main Roads Act 1930, MRWA is the Co-ordinating Road Authority for Declared Main Roads and Highways and DPaW the Co-ordinating Road Authority for roads in State Forests.

The Shire may be made responsible for some road sides, car parks, pathways, service roads, road furniture and footbridge structures on State Roads or Crown land on the basis of Codes of Practice, or specific agreements.

Generally for other authorities except for MRWA, the Shire responsibility for a road or pathway will end at the property boundary unless other written and signed agreements have been made.

6.0 ROADWORKS CARRIED OUT ON ROAD RESERVE WITHOUT COUNCIL APPROVAL.

The Shire does not condone or accept any responsibility for any work carried out on a road reserve without its written permission. The road will not be maintained or improved in any manner by the Shire as a result of such works and the Shire may direct staff to remove unauthorized gates or obstructions or block the road if a safety risk to the public has been identified.

7.0 APPROVED ROADWORKS

The Shire approves and budgets for new, renewal and upgrading Capital roadworks each year. The Shire may allow works to be carried out on the Shire Roads by others under contract provided the work is included in the Shire approved Budget, funding is available and the Shire Purchasing Policy is adhered to.

The contractor must be fully insured for public liability and workers compensation, equipment and operators licensed, accredited and machinery in safe operating condition; all processes undertaken in accordance with legal requirements, a Job Risk Assessment and Safety Plan completed, works are performed in accordance with the Shire instructions and the funding is authorised by the Shire.

Any request to the Shire for funding assistance to private contractors for new road construction or upgrading work on Council Roads is to be funded from the Capital Works Program (Roadworks) and the above pre-requisites on contractors applies.

Any request to the Shire for funding assistance to private contractors for routine maintenance work, would normally be handled by the Shire but if due to opportunity or distance constraints, a local contractor is engaged then the work may be funded from the Road Maintenance budget.

8.0 DRIVEWAYS (VEHICLE CROSSINGS)

A Vehicle Crossing is the portion of a property's driveway located between the road carriageway and the property boundary.

They are private entrances, and are the responsibility of property owners for construction and maintenance relating to the property being served. The Shire assumes no direct responsibility for these private vehicle crossings, but does require property owners to maintain these vehicle crossings in a low risk condition. The Shire

may provide a reactive maintenance service with full costs charged to the responsible property owner for each request.

This does not, however, prevent the Shire from imposing conditions on the construction of the driveway.

9.0 LANDHOLDER MAINTENANCE ON ROADS

A landholder may carry out Maintenance on a Council road under certain conditions and with written approval of the Shire. There is no authority to:

- Alter road width,
- Alter road alignment,
- Alter the surface treatment,
- Add or alter any structures on road reserve, or
- Add or alter any traffic management devices.

The Shire is the Road Authority for all roads on the road register. This responsibility cannot be undertaken by non-approved and unsupervised contractors. The Road Authority is responsible for determining all intervention levels, response times, and inspection frequencies.

Landholders may be engaged as contractors to undertake prescribed maintenance on the Shire roads. Such maintenance must be carried out using qualified and competent staff, licensed machinery and operators, public liability insurance cover, workers compensation insurance and all necessary signing for Works on public roads required under an approved Traffic Management Plan. They shall execute only those works authorised and ordered.

These measures are required because of the potential risk of non-compliance to the community, the contractor and the Shire. Not only is the safety and comfort of the community to be considered but the shared liability risk for both the contractor and the Shire.

10.0 ROADS NOT ON THE REGISTER

For roads or tracks not on the Register, Council does not have a duty to inspect, maintain or repair them.

11.0 REQUESTS FOR ROAD CONSTRUCTION

(Not Development related)

From time to time Council may receive a request from others to construct roads on existing unformed road reserves. In such cases the following shall apply:

- Requests are reported to and considered by Council. The response, if affirmative, will require the works to be funded by the applicant or as otherwise determined;
- The applicant will make suitable arrangements to make payment to the Shire of the full cost of the works as estimated by the Director of Infrastructure. Alternatively, if the works are proposed to be carried out

by a contractor, plans and specifications will be required to be submitted to the Director Infrastructure for approval prior to work commencing;

- The standard of plans and specifications required for a contractor will be determined by the Director Infrastructure and will reflect the extent and consequences of the proposed work.
- If a contractor is employed a pre-start meeting will be required, and a formal acceptance process completed.
- If the Shire carried out the work, the same standards of work will apply as with a contractor.
- Upon acceptance of the work, the Shire Road Register will be amended to reflect the maintenance status of the new work.

12.0 LIABILITY

The Shire accepts full liability for the standard of all roads documented in the Public Roads Register (Roman2), regardless of whether that standard is lower than that required for acceptance of new roads on the Register.

“Creation of a Road”

Extract from Brochure Authored by State Land Services:-

WHAT IS THE RELEVANT LEGISLATION FOR CREATION OF ROADS?

The *Local Government Act 1960* was until 30 June 1996 the State’s primary legislation dealing with creation, management and closure of roads. On 1 July 1996 it was mostly replaced by the *Local Government Act 1995*, with those parts of the residual *Local Government (Miscellaneous Provisions) Act 1960* (LGMPA) dealing with roads being incorporated into the *Land Administration Act 1997* (LAA) on 30 March 1998.

The LAA is administered by the Minister for Planning and Infrastructure in a statutory role as Minister for Lands, and the Department for Planning and Infrastructure.

Part 5 of the LAA deals with public roads-related matters. Part 4 has provisions dealing with closure of private roads. The *Main Roads Act 1930* also contains provisions in relation to roads, in particular highways, main roads and secondary roads. This Act gives the Commissioner of Main Roads similar powers to a local government. There is other legislation which also relates to the creation of roads and the various acts are outlined in this brochure.

WHAT IS A ROAD?

There are a number of different definitions of a road including the following:

- The *Local Government Act 1960* defined a “road” to have the same meaning as “street”, which was then defined to include “a highway; and a thoroughfare; which the public are allowed to use; and including every part of the highway or thoroughfare, and other things including bridges and culverts appurtenant to it”;
- The *Local Government Act 1995* dispenses with “roads” and “streets” and “highways”, using instead the term “thoroughfare”, which is defined as “a road or other thoroughfare and includes structures or other things appurtenant to the thoroughfare that are within its limits, and nothing is prevented from being a thoroughfare only because it is not open at each end”
- The *Main Roads Act 1930* defines “road” to mean any thoroughfare, highway or road that the public is entitled to use and any part thereof and all bridges (including any bridge over or under which a road passes), viaducts, tunnels, culverts, grids, approaches and other things appurtenant thereto or used in connection with the road and “declared road” to mean a road declared to be a highway, main road or a secondary road under this Act, and including any part of any such road.

There are a number of other definitions. A useful, succinct set of definitions is provided by the *Australian Standard 1348-2002 Road and Traffic Engineering – Glossary of Terms*:

- *Road* – a route trafficable by motor vehicles; in law, the public right-of-way between boundaries of adjoining properties.
- *Road reserve* – a legally described area within which facilities such as roads, footpaths and associated features may be constructed for public travel.
- *Public road* – a public place provided for the use of the public for traffic movement, and which has been declared, or proclaimed, notified or dedicated.

WHAT DO THE VARIOUS TERMS MEAN?

“State Land” means and includes all land except land granted in fee simple, and includes all marine and other waters within the State, all islands and the sea-bed and subsoil, seaward to three nautical miles.

“Dedication” as applied to a public road reserve is the setting apart or registration of a portion of land for a public road. It has the effect of vesting freehold land in the State.

“Main road” means a road declared by proclamation to be a main road for the purpose of the *Main Roads Act 1930*.

“Highway” means a road declared by proclamation to be a highway for the purpose of the *Main Roads Act 1930*.

HOW ARE PUBLIC ROADS CREATED?

A public road reserve may be created by subdivision of State or freehold land or by dedication in accordance with the LAA and other statutes. Each of these is discussed below:

Land Dedicated For Roads Through State Subdivision

Section 27 of the LAA empowers the Minister for Lands to authorize the subdivision of State land into lots and determine the width and direction of streets, roads and lanes within such lands.

Section 28 of the LAA provides for the automatic dedication of roads shown on a certified State subdivisional plan.

Both of these provisions deal with subdivisions, and they do not cover the situation where a road is being created alone or with a single lot. The mechanism of section 56 of the LAA is employed in this case.

Land Dedicated For Roads Through Freehold Subdivisions

Section 295(5) of the LGMPA provides for the automatic dedication of roads within a freehold subdivision once the plan of survey has been deposited with the Department

of Land Information (DLI) and approved, provided they are six metres in width. This provision is affected by new planning legislation:

- Clause 14 of the *Planning and Development (Consequential and Transitional Provisions) Bill 2004* repeals section 295 of the LGMPA;
- Clause 9 of the Bill inserts section 26A to the LAA, providing for naming of roads on plans of subdivision; and
- Clause 172 of the *Planning and Development Bill 2004* replaces section 295(5) of the LGMPA.

Land Dedicated For Roads Under The LAA

In accordance with section 56 of the LAA, local government authorities may request the dedication of land to become a public road reserve.

This may involve excision of land from State land or reserves or a taking under the LAA of leasehold and freehold estates. Once survey plans and documentation has been completed, the Minister for Lands authorizes the dedication of the road reserve. This process normally entails a local government gaining prior agreement of all affected landholders or vestees.

The provisions of the LAA enable local government authorities to seek:

- Section 56(1)(a): dedication as roads land that is reserved or acquired for use as a road, or used by the public as a road;
- Section 56(1)(b): dedication of private roads as public roads, at the request of the owner or adjacent ratepayers; and
- Section 56(1)(c): dedication of private roads as public roads where the public have used such roads for more than ten years.

Common Law Dedication

In relation to roads created before the *Local Government Act 1960* came into force, dedication at common law also has to be considered. In considering whether or not there is a dedication at common law, regard must be had for two things:

1. There must be an intention to dedicate the road by the person who created the road; and
2. There must be acceptance of that dedication by the public.

The intention to dedicate the road is readily inferred by the courts if the road communicates at each end with another road and there is sufficient acceptance of that dedication by the public if members of the public have in fact used the road.

Freehold Land Dedicated For Roads Under The Provisions Of The Town Planning And Development Act 1928

- Section 28(1): provides for the automatic dedication of land transferred to State or local government authorities for extending or adding to a public street;
- Section 28(2): provides for automatic dedication of street truncations on approved plans of survey; and

- Section 28(3): automatic conveyance and dedication of street widenings, additions or extensions upon approval of subdivision plan or diagrams.

These provisions will be replaced by clause 172 of the *Planning and Development Bill 2004*.

Dedications Under Superseded Legislation

Roads may have been dedicated under superseded provisions for which there are now no corresponding powers. For example:

- Section 106 of the *Land Act 1933* – declaring of public roads through pastoral leases (such road is a thoroughfare within the meaning of section 1.4 of the *Local Government Act 1995* and via section 3.53 of that Act, comes within the care, control and management responsibility of the relevant local government authority;
- Section 105 of the *Public Works Act 1902* – declaring as a public road, land resumed for railways;
- Section 3.49 of the *Local Government Act 1995* (repealed in 1998); and
- Section 17 of the *Land Act 1933* (former provision for dedicating roads through State subdivision).

Roads Which Have Not Been Dedicated

Many formed or made public roads are not contained within dedicated road reserves. The land on which they are constructed may have been acquired by transfer or resumption and remain as parcels of fee simple land registered in the name of Her Majesty or the Commissioner of Main Roads. For example, Mitchell Freeway comprises a number of freehold parcels. Alternatively, roads may run through unallocated State land or leases (eg, pastoral leases) or through State forest, where there is no separate reserve created.

Land

Register of Public Roads Assessment Form

Assessment form to be used where a road or land area does not easily fit the test of being reasonably required for public use.

Road Name:..... Road Number.....

Investigation Conducted by:.....

	Criteria	Yes/No	Tick	Action
Q1	Does the Shire own the land or is there an agreement that gives Council control of the land?	Yes		Q2
		No		Q10
Q2	Is it a constructed or formed asset?	Yes		Q3
		No		Q12
Q3	Is there unrestricted access?	Yes		Q4
		No		Q11
Q4	Constructed or formed pathway?	Yes		Q9
		No		Q5
Q5	Constructed or formed ancillary area?	Yes		Q9
		No		Q6
Q6	Constructed or formed commercial/industrial secondary access?	Yes		Q9
		No		Q7
Q7	Does it provide primary access to multiple properties?	Yes		Q9
		No		Q8
Q8	Fully constructed to Council standard secondary access?	Yes		Q9
		No		Q12
Q9	Is it reasonably required for general public use?*	Yes		Register
		No		Do Not Register
Q10	Is it a demarcation issue?	Yes		Contact Road Authority
		No		Q12
Q11	Restriction can be removed to allow public access?	Yes		Q4
		No		Q12
Q12	Is there anything else to be considered?	Yes		Discretionary Circumstances?
		No		Do Not Register

Signed:..... Date:.....

Recommendation is Add to register / Do not register.

Authorised by:..... Date:.....

Signed:..... Position:.....

Final decision is Add to register/Do not register.

If registered by discretion give reason:

.....

.....

*Note: What to consider when assessing "is it reasonably required for general public use":

- Does it serve a defined purpose or function for the general public?
- Is there evidence that it is currently being used by the general public?
- What are the consequences if public access was removed?
- Can the needs for public use of this land be readily accommodated with alternatives?
- Should it be recommended for discontinuance?

Following is a flow chart representing the above assessment form.

