

Policy and procedures for the dedication, upgrade or closure of rights of ways

Policy scope

Background

Private ROWs are separate parcels of land typically created in subdivisions around the turn of the previous century. Prior to the installation of reticulated sewerage systems, private ROWs were typically used to facilitate sanitary collections from the rear of properties.

An inventory of ROWs (private and public) and public access ways PAWs for Fremantle was prepared in 2001. The inventory (City of Fremantle Right of Way Study January 2001) identified 123 ROWs and PAWs within the City. Approximately 93 ROWs are privately owned and created under section 167 of the Transfer of Land Act 1893 (TLA).

Issues

Responsibility for maintenance and upgrading

Many ROWs provide access (pedestrian and vehicle) to properties throughout Fremantle. The Fremantle ROW Study, completed in 2001, identified the majority of private ROWs as being little more than “informal dirt tracks”. It is therefore not surprising that from time to time ROWs present severe maintenance problems.

Maintenance responsibility for private ROWs is a complex issue. Given that private ROWs are private property it is not strictly the responsibility of the Council to maintain the ROW. Furthermore, any recourse for maintenance to the original owner (of the ROW) is often impossible as the titleholder in, most cases, is long deceased or their forebears untraceable.

Given these difficulties there is an expectation among some citizens that private ROWs should be dedicated in the Council for the purposes of maintenance and upgrading (ie akin to public roads). Whilst the Council is clearly in the best position to maintain ROWs, the use of public funds for the upgrading of private ROWs to contemporary trafficable standards maybe unfair given that the beneficiaries will essentially be the adjoining owners of the ROW only. Accordingly, there is a need for policy to define the circumstances where dedication of a ROW could be supported and effective mechanisms for distribution of costs.

ROWs vested in the Council are typically developed to a trafficable standard and do not present the same issues as private ROWs.

Use of ROWs for access

Some developers are now seeking to utilise ROWs for vehicular access to new in-fill development or to augment existing access to sites. Several issues have typically arisen including:

- a. what amenity impacts are likely to arise from allowing vehicle access?
- b. is the ROW physically capable of being used for access?
- c. should the whole or part of the ROW be upgraded and to what standard? And
- d. should the ROW be dedicated in the Council in order to ensure ongoing maintenance and provision of services?

Closure of ROWs and Public Access Ways

From time to time the Council is requested to consider closure of a ROW or PAW. Once again, this gives rise to a number of issues including:

- a. under what circumstances would the Council be likely to support or not support closure of a ROW or PAW? And
- b. process for assessing a proposal for closure.

Scope and purpose

This policy does not purport to actually identify ROWs suitable for upgrading or closure. Instead, the City of Fremantle Rights of Way Study January 2001 should be referred for this purpose. Given the complexity of issues associated with ROWs in Fremantle, including range of community opinion, it is beyond the resources of the Council to categorically identify ROWs that should remain open and those that shall be closed.

This policy will enable each case (dedication, upgrading & closure) to be determined on its merits by:

- a. outlining the circumstances in which the Council will approve the use of private ROWs as primary access to new development or to be upgraded to the status of minor streets on a case by case basis,
- b. outlining the process for dedication of private ROWs, and
- c. defining a procedure that enables private ROWs to be dedicated and upgraded in order that they may be utilised for vehicle access.

Equally, in some circumstances, justifiable grounds may exist for the closure of private ROWs or roads. There is a requirement to define a standard approach to closure of ROWs and private roads.

Objectives

The objectives of this policy are:

- a. to outline the approach of the Council to the use of private ROWs for the principle means of access for development,
- b. clearly define a fair and transparent process for the dedication and upgrading of private ROWs and roads including funding options,
- c. to enable the upgrading and use of private ROWs without unreasonable impost upon Council funds, and
- d. to define a clear process for the closure of private ROWs and Roads.

Policy statement

1. New Development

- 1.1 The Council shall not support the use of a private ROW or road as providing sole access to development unless:
- a. the ROW is dedicated as an under width public road as per the requirements and process outlined below,
 - b. the ROW, in its entirety is constructed, sealed and drained to a trafficable standard to the satisfaction of the Council, and
 - c. all costs associated with the upgrading are met by the proponent (s) as per the funding options and requirements outlined below.

2. Existing Development

- 2.1 The Council may support part dedication and construction of a private ROW or road subject to the following:
- a. the part construction of the ROW would not prejudice the amenity of the locality particularly by way of dust generation, storm water runoff, noise generation or any other amenity impact,
 - b. construction of the ROW would not prejudice the future acquisition and upgrading of the balance of the ROW,
 - c. the ROW is part dedicated as a under width public road as per the requirements and process outlined below,
 - d. the portion of ROW is designed and constructed as per the requirements outlined below,
 - e. all costs of the upgrading are as per the requirements outlined below, and
 - f. the proposal is supported by a minimum of 50% of all adjoining owners.

3. Dedication of a Private Right of Way or Road

3.1 The Council shall not support dedication of a private ROW of road unless:

- a. the ROW is upgraded as per the requirements outlined in Part 3 below, and
- b. the proposal is supported by a minimum of 50% of all adjoining owners.

4. Closure of a Rights of Way (Public and Private) and Public Accessways

4.1 The Council shall not support the closure of a ROW or private road unless:

- a. all adjoining owners or strata bodies agree to the closure action*,
- b. it is clearly demonstrated that all adjoining lots have satisfactory pedestrian and vehicle access from other means,
- c. such action would not result in the loss of opportunity (current or future) to enhance streetscape or contribute to enhanced traffic management or pedestrian movement in the area,
- d. the ROW or road is of no significance in terms of the historic form or pattern of development in the locality,
- e. all adjoining owners agree to pay the purchase price and all associated costs of the closure, and
- f. in the case of ROWs, less than 50 % of adjoining lots have the potential for the development of additional dwellings that would benefit from access from the ROW.

4.2 In addition to the matters outlined in 4.1 a) – f), the Council shall not support the closure of a crown / local government ROW / PAW where:

- a. the ROW / PAW is located within 400 metres of shops (neighbourhood & local), parks, schools, bus stops and community facilities,
- b. the ROW / PAW forms part of a designated cycle link, and or
- c. the ROW / PAW is located within 800 metres of a town centre, railway station, arterial bus route or secondary school.

Administrative Procedures for Dedication and Upgrading of a Private Right of Way (ROW) for the Purposes of an Underwidth Public Road

5. Legal mechanisms for dedication

- 5.1 Landgate (formerly known as the Department of Land Administration (DOLA)) and the Department of Planning, Lands and Heritage (formerly known as the Department of Planning and Infrastructure) recommend that the preferred legal mechanism for the dedication of private ROWs and roads is section 56 of the LAA.
- 5.2 Clause 56 provides 3 circumstances in which the Council may request dedication of a private ROW or a private road:
- a. 56(1)(a): dedication as roads, land reserved or acquired for use as a road,
 - b. 56(1)(b): dedication of private roads as public roads, at the request of the owner or adjacent ratepayers where the private road has been constructed and maintained to the satisfaction of the Council. And upgrading is supported by a number of adjoining landowners who's aggregate rateable land value is greater than one half of the total rateable value of property adjoining the ROW, and
 - c. 56(1)(c): dedication of private roads that the public has used for an uninterrupted period of not less than 10 years.

With respect to b. above, there are a number of private roads that could be considered to fall within this category. Once-again, reference should be made to the Fremantle Right of Way Study (2001) for identification of these roads (roads).

And some private roads would be subject to point c. above

In all cases approval for dedication is at the discretion of the Minister for Lands.

Explanatory note:

Why dedicate a private ROW or road?

Any ROW that is intended to provide access to a lot or lots should be dedicated as an underwidth road. Essentially "dedication" refers to the formal process of setting aside of land for a public purpose. ROWs should be formally set aside as minor or underwidth roads in order that they can be managed and maintained by the Council and importantly provide for the coordinated provision of services and infrastructure. Furthermore, Department of Planning, Lands and Heritage policy generally does not permit the creation of residential lots unless they have dedicated road frontage. In other words, it would not be possible to subdivide and maximise the potential of land abutting the ROW unless the ROW itself becomes dedicated as an underwidth road.

The process of dedication is prescribed in law and has an important bearing on the process of upgrading ROWs.

What other mechanisms are available for dedication?

Where none of the prerequisites associated with clause 56 can be satisfied, the LAA also provides for dedication under clause 52 and part 9 of the act. It should be noted that clause 52 and part 9 of the LAA entitle the owner of the land comprising the private ROW or road to compensation.

In addition, there are Common law dedications in relation to roads created before the promulgation of the Local Government Act 1960. In considering whether or not there is a dedication at common law, regard must be had for two things:

there must be an intention to dedicate the road by the person who created the road, and there must be acceptance of that dedication by the public.

Common law dedications are referred to the courts for determination. This is a relatively complex area of law that is outside the scope of this policy. Where a right of common law dedication is thought to exist, this matter should be discussed initially with officers at the Department of Planning, Lands and Heritage.

6. Initiation

6.1 Clause 56(1)(a) of the LAA

In the case of applications made with respect to clause 56(1)(a) , where the ROW is reserved or vested in the local authority, the process of dedication and upgrading shall be initiated by written request lodged by an adjoining owner, other interested party or the local authority. The written request shall include the following details:

- a. Signed and dated copy of Council resolution to request the dedication
- b. Copy of the certificate of title
- c. Details of consultation process together with the number of objections and support plus comments including local government comments on the submissions
- d. Copies of correspondence to public utility service providers and other agencies confirming their agreement to the proposed dedication.
- e. Plan of survey, sketch plan or document to describe the dimensions of the road
- f. Written confirmation that the local government has complied with section 56(2) of the LAA.

6.2 Clause 56(1)(b) of the LAA

In the case of applications made with respect to clause 56(1)(b), the process of dedication and upgrading of a ROW shall be initiated by a written request lodged by an adjoining owner or other interested party (proponent). The written request shall include the following details:

- a. a copy of the certificate of title of the subject land,

- b. consent of the owner of ROW or forebear or evidence that every reasonable attempt has been made to identify heirs or successes in title,
- c. reasons for seeking upgrade of ROW,
- d. evidence that a minimum of 50% of adjoining owners support the initiation of dedication and upgrading, and
- e. written evidence that the dedication and upgrading is supported by a number of adjoining landowners who's aggregate rateable land value is greater than one half of the total rateable value of property adjoining the ROW.

Where application is made pursuant to Clause 56(1)(b) by the owner of the subject ROW, points b. and e. above do not apply.

6.3 Clause 56 (1)(c) of the LAA

The process for upgrading a private ROW shall be initiated via a written request lodged with the Council from an adjoining owner (s) or other party (proponent). The written submission shall include the following details:

- a. a copy of the certificate of title of the subject land,
- b. consent of the owner of ROW or forebear or evidence that every reasonable attempt has been made to contact same,
- c. reasons for seeking upgrade of ROW,
- d. evidence that a minimum of 50% of adjoining owners support the initiation of dedication and upgrading, and
- e. a statutory declaration from a minimum of two members of the Public formally declaring that they have had uninterrupted access over the subject land for a minimum of ten years.

7. Initial assessment

7.1 Upon receipt of a written request to upgrade or dedicate a private ROW, the Council shall undertake an assessment of the proposal. The assessment shall include consideration of the following:

- a. Land tenure: The intent of this part of the assessment is to substantiate that the land is a bona fide ROW created pursuant to clause 167A (1) of the TLA or a private road as defined under the LAA.
- b. Planning: Primary reference will be made to the Fremantle Right of Way Study 2001. Consideration will also be given to the following issues:
 - i. the potential to enhance traffic management on busy roads by providing alternative access and parking,
 - ii. more efficient and amenable forms of development in infill areas (where residential density is being increased through small-scale subdivision), by

providing an alternative access option to the space-wasting "battleaxe" block, and

- iii. protecting streetscape in heritage areas where garages and carports might otherwise need to be constructed in front of character homes should the dedication and upgrading of the ROW not proceed.
- c. Engineering: Physical assessment of the upgrading of the ROW including some preliminary assessment of costs. The report shall detail the following:
 - i. suitability of ROW for upgrading ie width, length gradient etc
 - ii. costs of upgrading based upon upgrading (construction materials), provision of lighting, manoeuvre space and drainage facilities.
- d. Internal Referral: The proposal should be referred to the following departments within the Council for comment: Parking Services and Integrated Patrols, Strategic Planning and Heritage, Economic Development and Marketing and Waste Management.

7.2 The assessment will be referred to the Council or the relevant committee for consent to advertise. The Council may refuse the proposal for dedication or grant consent for the proposal to be formally advertised.

8. Advertising

8.1 A proposal for the dedication and upgrading of a ROW shall be formally advertised as per the "Formal" advertising requirements outlined in the Council Local Planning Policy 1.3 (public Notification of Planning Proposals) with the exception that the minimum advertising period shall be 21 days.

8.2 In addition to the formal advertising procedures, a workshop shall be organised and facilitated by the Council for all adjoining owners of the ROW. At the workshop staff, among other things, shall have the following information available for dissemination:

- a. approximate costs of upgrading including funding options,
- b. explanation of the process of dedication and what it means,
- c. an outline of the possible development scenarios that may arise from the dedication and upgrading of the ROW,
- d. and time frame for completions of works.

8.3 During the advertising process the proposal shall be referred to the following external agencies for comment: Western Australian Planning Commission via the Department of Planning, Lands and Heritage together with servicing agencies such as, the Water Corporation, Western Power, Telstra, Alinta Gas and the Department of Fire & Emergency Services (DFES).

9. Assessment

- 9.1 Where the requirements 8. are fulfilled, the Council shall assess the proposal for dedication and in doing so have regard to the following:
- a. all the submissions received,
 - b. the various technical matters outlined in (2.1(c)), and
 - c. any other relevant matter
- 9.2 The assessment will be referred to the Council or the relevant committee for consent to advertise. The Council may refuse or grant consent for the proposed dedication.

Explanation:

The intent of the "Assessment" section is to scope any issues that may have arisen from the advertising process. Comments from the Department of Planning, Lands and Heritage will be particularly important, as dedication will not proceed unless the department will consent to the creation of an under with road.

10. Submission of detailed plan of upgrading

- 10.1 Where the Council has granted preliminary approval pursuant to clause 9. above, the proponent shall submit a plan of upgrading the entire ROW to the satisfaction of the Council. Essentially the Council expects that the ROW will be upgraded to the status of an underwidth street. The plan shall include, but is not limited to, the following detail:
- a. design of pavement including width and thickness, paving materials and kerbing, stormwater drainage management including position and capacity of soak wells, lighting installation,
 - b. traffic management devices where appropriate, and
 - c. preliminary details of service location (power, water deep sewerage) and connection.
- 10.2 Subject to suitable cost recovery arrangements, the proponent may engage the Council to undertake the preparation of the ROW upgrading plan.
- 10.3 Irrespective of whether the ROW is constructed or dedicated in whole or part, the requirements of 10.1 shall apply.

11. Funding options

Special area rate

- 11.1 Where a ROW is deemed to require upgrading, the Council may choose to apply a special area rate to all properties adjoining the ROW in order to raise sufficient monies to fund the upgrading (which may include loan repayments) of the ROW in accordance with the approved plan subject to:

- a. a minimum of 75% of all adjoining landowners are in agreement to the application of the special area rate, and
- b. the special area rate shall not apply for a period greater than 10 years.

Developer funding option

11.2 Where the requirements of 11.1 cannot be fulfilled, the Council may consent to the proponent (s) funding the entire or part upgrade of the ROW in accordance with the approved plan.

Determination of costs

11.3 Costs associated with the dedication and upgrade of the ROW shall include, but are not limited to, the following:

- a. all construction costs including installation of lighting,
- b. all costs associated with administering loans where funding is based upon a special area rate,
- c. costs associated with any additional services that may be required, for example water supply sewerage, electricity and gas, and
- d. administration costs associated with referral to the Hon Minister for Lands.

12. Dedication as an underwidth public road

12.1 Prior to resolving to pursue dedication the Council shall:

- a. seek a commitment from 75% of adjoining owners that they support application of a special area rate for the upgrading of the ROW, and
- b. in the case of developer funded upgrading, receipt of a bond from the proponent (s) representing the total sum of upgrading whole or part of the ROW to satisfaction of the Council.

12.2 Where the requirements of 12.1 cannot be fulfilled, the Council shall withdraw all further action for the dedication of the ROW or road.

13. Referral to the Minister for Lands

13.1 Where a funding commitment is received for the upgrading of the ROW or road, the Council will formally request dedication of the land as an underwidth road.

13.2 In referring the request to the Minister for Lands the following information shall be provided as per Regulation 8 of the Land Administration Regulations:

- a. written confirmation that the local government has resolved to make the request, including details of the date when the relevant resolution was passed

and any other information relating to that resolution that the Minister may require,

- b. if an application has been made to the local government under section 56 (1) (b) (ii) of the Act, a copy of the application and details of the rateable value of all the rateable land relevant to the application,
- c. if the request is made in respect of a private road referred to in section 56 (1) (c) of the Act written confirmation that the public has had uninterrupted use of the private road for a period of not less than 10 years,
- d. a description of the section or sections of the public who have had that use and a description of how the private road is constructed,
- e. copies of any submissions relating to the request that the local government has received, and the local government comments on those submissions,
- f. any other information the local government considers relevant to the Minister's consideration of the request, and
- g. written confirmation that the local government has complied with section 56 (2) of the Act.

13.3 In the event that the Minister does not approve dedication, in the case of 12.1 (b), the bond monies shall be returned immediately to the proponent.

14 Construction

14.1 As soon as practicable upon dedication of the private ROW or road, the land shall be constructed in accordance with the approved plan or within a time frame satisfactory to the Council.

Other Rights of Way:

It is likely that some areas of land in the form of a ROW or road are in-fact not private roads as per the LAA definition above. Examples may include lots that are otherwise in the shape of a lane way but not described on title as a ROW or road. In these instances and where the Council would still wish to pursue dedication, officers at the Landgate have advised to use clause 52 or part 9 of the LAA. Clause 52 and Part 9 require the Council to negotiate compensation with the land owner of the affected land.

It is recommended in these instances that the procedure outlined above for ROW or private road be followed with compensation factored into the costs of dedication and upgrading.

Administrative Procedures for Closure of a Private Right of Way or Public Access Way (PAW)

The Land Administration Act provides for the closure of ROWs and PAWs. In terms of closure process, the act distinguishes between ROWs and PAWs held in public ownership (eg Local Government or State Government agency) and those in the ownership of private individuals or companies. The proposed closure of a PAW is guided by; *Section 58 of the LAA* and in accordance with the WAPC “Procedure for the Closure of Pedestrian Access Ways Planning Guidelines (October 2009)” and “Reducing Crime and Anti-Social Behavior in Pedestrian Access Ways Planning Guidelines (October 2009)”.

Closure of ROWS and PAWS

15. Initiation of closure

- 15.1 Closure of a ROW or PAW shall be initiated by a written request lodged by an adjoining owner or other interested party (the proponent). The written request shall include the following details:
- a. a copy of the certificate of title of the subject land,
 - b. acknowledgement that all costs* associated with the closure shall be borne by adjoining owners,
 - c. consent of the owner of ROW or forebear or evidence that every reasonable attempt has been made to contact same,
 - d. agreement from 100% of all adjoining owners,
 - e. a sketch plan of the closure including any applicable easements and proposed allocation of the ROW/PAW,
 - f. reasons for seeking closure of the ROW, and
 - g. in principle agreement from all adjoining owners that the land comprising the ROW/PAW will be amalgamated into adjoining properties.

** The bulk of these costs are associated with amalgamating the resulting vacant land into the abutting properties, and include any fees imposed by the Department of Planning, Lands and Heritage (DPLH) as well as the costs of purchasing the land, relocating fences and adjusting landscaping. In supporting the closure application, the City does not accept responsibility for any of these costs. However, it should be noted that owners will not be held to their in principle agreement, as the costs are likely to be unknown at the time of application and may prove higher than expected.*

Role of the Council

Whilst the Council may initiate a proposal for closure, approval rests ultimately with the Minister for Lands via the Department of Planning, Lands and Heritage. In addition, the Land Administration Act requires all proposals for closure to be supported by the Western Australian Planning Commission.

16. Initial assessment of applications for closure

16.1 Upon receipt of a written request to close a private ROW or PAW, the Council shall undertake an assessment of the proposal. The assessment shall include consideration of the following:

- a. Land tenure: The intent of this part of the assessment is to substantiate that the land is a bona fide ROW created pursuant to clause 167A (1) of the TLA or a private road as defined under the LAA.
- b. Planning: Primary reference will be made to the Fremantle Right of Way Study conducted by SJB Planners in 2001. In addition the proposal will be assessed in accordance with the requirements detailed in clause 7.1 i - iv above.
- c. Engineering: This section deals with the physical or engineering assessment of the proposed closure, for example the likely impact of the closure upon services and infrastructure in the locality.
- d. Internal Referral: The proposal should be referred to the following departments within the Council for comment:
 - i. Parking Services and Integrated Patrols,
 - ii. Strategic Planning and Heritage, Economic Development and Marketing,
 - iii. Waste Management,
 - iv. Infrastructure Engineering.
- e. Preliminary assessment of costs, including purchase of land comprising of the ROW / PAW.

16.2 Where the ROW / PAW is owned by the Council or a state government agency, the Council shall also have regard to the following:

- a. impact of the proposal upon pedestrian and cycle connectivity, with particular regard to access to bus / train stops, schools, shopping facilities, parks and community facilities, and
- b. consideration of the alternatives to closure including: temporary closure, improvements to safety (lighting {particularly solar powered}, design of development to encourage passive surveillance and barriers).

16.3 The assessment will be referred to the Council or the relevant committee for consent to advertise. The Council may refuse the proposal for closure and not proceed to advertising.

17. Advertising

17.1 Refer section 8. for procedure. In addition the Council shall notify Precincts and any other relevant interested organizations that may have an interest in the closure action.

18. Adjoining owner support

18.1 Assessment of the proposal shall not proceed further unless all adjoining owners are supportive of the proposed closure and are signatory an application for closure of the ROW/PAW.

<p><i>At the completion of the advertising period, it is the responsibility of the proponent to demonstrate to the Council that the proposed closure has the support of 100% of adjoining owners.</i></p>

19. Assessment

19.1 Where the requirements 17 and 18 are fulfilled, the Council shall assess the proposal for closure and in doing so have regard to the following:

- a. all the submissions received,
- b. any relevant technical /engineering factors
- c. any other relevant matter.

19.2 Upon completing the assessment, the Council may approve or refuse support for the proposed closure.

20. Approval of the Western Australian Planning Commission

20.1 Where the Council resolves to support the closure of the PAW / ROW, the Council at the expense of adjoining owners shall organise the preparation of a survey plan showing the allocation of the closed PAW / ROW.

20.2 The plan shall be prepared by a licensed surveyor and approved by the Western Australian Planning Commission.

21. Referral to the Minister for Lands via the Department of Planning, Lands and Heritage

21.1 Where the Council supports closure of the ROW or PAW, the Council shall formally refer the request for closure to the DPLH for the conditional approval of the Minister for Lands.

21.2 The request shall include submission of the following information:

- a. copy of background assessment report to the Council,

- b. signed copy of the Council resolution to close road,
- c. copies of all submissions received (including servicing agencies) and brief outline of process of consultation,
- d. copies of correspondence to owner (where owner is deceased evidence of attempts to locate, electoral roll searches, land title records etc),
- e. sketch plan showing allocation of ROW/PAW to adjoining owners and identification of applicable easements,
- f. documentation of antisocial behaviour and evidence of consideration of alternative prevention measures to closure,
- g. copy of the approval by the WAPC, and
- h. any other relevant material.

Where the Minister grants approval to the closure it will be conditional upon:

- *agreement by adjoining owners to pay the purchase price and all costs and fees associated with the closure,*
- *approval by the WAPC of the survey plan of amalgamation,*
- *all easements required to be detailed and agreed, and*
- *all land the subject of the proposed closure being amalgamated into adjoining land.*

In assessing the proposal the DPLH will also determine the costs associated with the closure this includes purchase price of the ROW/PAW and all other fees and charges associated with same.

22. Coordination of closure action by the Council

- 22.1 Where the Minister for Lands proposes to conditionally support closure of a private ROW or PAW, the Council shall within 14 days convey in writing the Minister's decision to all adjoining owners.
- 22.2 The Council shall not proceed further with the closure action unless all adjoining owners agree in principle to the terms and conditions (including payment of fees) of the closure as outlined by the Minister within six months of the Minister's conditional approval.
- 22.3 The road will only be closed once all relevant documents have been lodged and registered with the Registrar of Titles.

The following checklists are an extract of the Crown Administration & Registration Practice Manual July 2013 and printed here to provide a guideline to the processes required.

Roads

Chapter 5

TABLE A

Local Government Checklist to close a Private Road (where land owned by Person other than the Crown/State of Western Australia)

ITEM	DOCUMENTS TO BE PROVIDED	ATTACHED
1	Report and minutes of Council meeting recommending road closure	
2	Signed copy of Council minutes of decision to close road	
3	Copies of correspondence to owner of road to be closed Copies of responses, Submissions and Objections, if any. If owner is dead or unavailable, evidence to show searches undertaken by Council to locate owner of road or person with power to agree to close road (for example if natural person – electoral roll searches, Land Title Records. If Company – Australian Securities Commission Register)	
4	Copies of correspondence to owners of adjoining land Copies of responses, submissions and objections, if any	
5	Copies of correspondence to public utility service providers and other agencies confirming their agreement to the proposed closure <ul style="list-style-type: none"> • Water Corporation • Western Power • Alinta Gas • Telstra • Department of Industry and Resources • Dampier to Bunbury Natural Gas Pipeline (DPNGP) • Land Access Minister • DoL (Statutory Planning) 	
6	Sketch plan showing proposed allocation/sale of land in road to adjoining owners (to identify easements under either section 167 of the Planning and Development Act 2005 for drainage works, water, electricity or gas, if required or, under section 144 of the LAA)	
7	Copies of correspondence from adjoining owners on the proposed allocation of land in proposed closed road	

TABLE B
Local Government Checklist to Close a Crown PAW or ROW

ITEM	DOCUMENTS TO BE PROVIDED	ATTACHED
1	<p>Summary/Information Report prepared for public advertising containing information set out in DoL's Crown Land Administration and Registration Practice Manual at Paragraph 5.8.2: Copy of Information Report prepared for public advertising that outlines the effect of the closure on walkability to facilities, alternative access paths, if the PAW does not or does form part of a necessary continuous access system;</p> <p>Consideration of alternatives to closure; Documentation of the anti-social behaviour and crime being experienced and Council's policy to combat it; Department of Planning other relevant Government agencies' comments; Details of consultation process together with the number of objections and support plus comments; Copies of correspondence to owners of adjoining land as well as with those adjoining owners interested in the land sharing arrangement</p>	
2	Signed copy of Council resolution to close Way	
3	Sketch plan showing proposed land allocation to adjoining owners or proposed use of land following closure (to identify easements under either section 167 of the Planning and Development Act 2005 for drainage works, water, electricity or gas, if required or, under section 144 of the LAA)	
4	<p>Copies of correspondence to public utility service providers and other agencies confirming their agreement to the proposed closure</p> <ul style="list-style-type: none"> • Water Corporation • Western Power • Alinta Gas • Telstra • Department of Industry and Resources • Dampier to Bunbury Natural Gas Pipeline (DPNGP) Land Access Minister • DoL (Statutory Planning) 	
5	Copies of correspondence from adjoining owners on the proposed allocation of land in proposed closed PAW or ROW	

TABLE C
Local Government Checklist to close a Road (Dedicated Public Road)

ITEM	DOCUMENTS TO BE PROVIDED	ATTACHED
1	Report/Background information to Councillors before Council Meeting to close road	
2	Signed copy of Council Resolution to close road	
3	Copy of advertisement to close road	
4	Copies of any submissions and objections to advertisement	
5	Signed copy of Council motion and comments on submissions and objections	
6	Copies of correspondence to public utility service providers and other agencies confirming their agreement to the proposed closure <ul style="list-style-type: none"> • Water Corporation • Western Power • Alinta Gas • Telstra • Department of Industry and Resources • Dampier to Bunbury Natural Gas Pipeline (DPNGP) Land Access Minister • DoL (Statutory Planning) 	
7	Sketch plan showing proposed allocation/sale of land in road to adjoining owners (to identify easements under either section 167 of the Planning and Development Act 2005 for drainage works, water, electricity or gas, if required or, under section 144 of the LAA)	

TABLE D

DoL Checklist to Dedicate a Road where the land is Reserved or Acquired for use by the Public as a Road under the Care, Control and Management of Local Government

ITEM	DOCUMENTS TO BE PROVIDED	ATTACHED
1	Signed and dated copy of Council resolution to request dedication of road	
2	Details of consultation process together with the number of objections and support plus comments including Local Government's comments on these submissions	
3	Indemnity in favour of the Minister for Lands against any claims for compensation and costs	
4	Copies of correspondence to public utility service providers and other agencies confirming their agreement to the proposed dedication. <ul style="list-style-type: none"> • Water Corporation • Western Power • Alinta Gas • Telstra • Department of Industry and Resources • Dampier to Bunbury Natural Gas Pipeline (DPNGP) Land Access Minister • DoL (Statutory Planning) 	
5	Plan of survey, sketch plan or document to describe the dimensions of the road	
6	Written confirmation that the Local Government has complied with section 56(2) of the LAA	

TABLE E

DoL Checklist to Dedicate a Road where the Land comprises a Private Road constructed and maintained to the satisfaction of the Local Government and where the owner of Road, or abutting Owners, request Dedication.

ITEM	DOCUMENTS TO BE PROVIDED	ATTACHED
1	Signed and dated copy of Council resolution to request dedication of road	
2	Copy of the application and where abutting landowners requested dedication, details of the rateable value of all the rateable land relevant to the application	
3	Search information on ownership of the road and abutting land	
4	Details of consultation process together with the number of objections and support plus comments including Local Government's comments on these submissions	
5	Copies of correspondence to public utility service providers and other agencies confirming their agreement to the proposed dedication <ul style="list-style-type: none"> • Department of Industry and Resources • Dampier to Bunbury Natural Gas Pipeline (DPNGP) Land Access Minister • DoL (Statutory Planning) 	
6	Plan of survey, sketch plan or document to describe the dimensions of the road	
7	Written confirmation that the Local Government has complied with section 56(2) of the LAA	

TABLE F

DoL Checklist to Dedicate a Road where the Land comprises a Private Road constructed and maintained to the satisfaction of Local Government, or which the Public has had uninterrupted use for a period of not less than 10 years

ITEM	DOCUMENTS TO BE PROVIDED	ATTACHED
1	Signed and dated copy of Council resolution to request dedication of road	
2	Written confirmation that the public has had uninterrupted use of the private road for a period of not less than 10 years	
3	A description of the section or sections of the public who have had that use	
4	A description of how the private road is constructed	
5	Search Information on land ownership	
6	Details of consultation process together with the number of objections and support plus comments including Local Government's comments on these submissions	
7	Copies of correspondence to public utility service providers and other agencies confirming their agreement to the proposed dedication <ul style="list-style-type: none"> • Department of Industry and Resources • Dampier to Bunbury Natural Gas Pipeline (DPNGP) Land Access Minister • DoL (Statutory Planning) 	
8	Plan of survey, sketch plan or document to describe the dimensions of the road	
9	Written confirmation that the Local Government has complied with section 56(2) of the LAA	

TABLE G1
Redevelopment Options for PAWs



TABLE G2
Redevelopment Options for PAWs



TABLE H

EXAMPLE OF INFORMATION REPORT – REQUEST FOR PAW CLOSURE

PAW Location (Refer Attached Plan)

Between Smith Street and Jones Road, Placeville.

LOCAL CONNECTIVITY

Additional walking distance from one end of PAW to the other once closed:

375 metres using other PAWs

450 metres using the street system

Will divert pedestrian cycle traffic predominantly to PAWs rather than street system

Quality of Alternative Routes/Shortest alternative access also through PAWs with poor surveillance, especially along Walters Park boundary.

No footpath on west side of Brown Boulevard.

Brown Boulevard route involves steep uphill section heading north.

IMPACT OF CLOSURE ON ALTERNATIVE ROUTES

Closure will increase use of two PAWs in Smith Street to access Walters Park

ACCESS TO FACILITIES

Walters Park (local park) within 400m of PAW

No. of houses within 400m walkable access if PAW open: 142

No. of houses within 400m walkable access if PAW closed: 83

%reduction in access: 41%

RELATIONSHIP TO STRATEGIC CYCLE/PEDESTRIAN NETWORK

Strategic cycle network on Brown Boulevard

PAW shown in Pedestrian Network Plan within Local Planning Strategy as a local route as it serves a local park.

SOCIAL DIFFICULTIES

Statement attached from landowners regarding anti-social behaviour in PAW.

Definitions and abbreviations

Dedicate, dedication - the act of setting Crown land aside for a specified purpose, under the *Land Administration Act 1997* (LAA) or other legislation - for example, dedicating land for use as a road, railway or port.

Private right of way - a narrow strip of land generally in a private subdivision and legally available only to owners of blocks in the subdivision. The *Land Administration Act 1997* defines a private ROW as a private road:

Private road – alley, court, lane, road, road, thoroughfare or yard on alienated land, or a right of way created under section 167A(1) of the TLA, which -

- a. is not dedicated, whether under a written law or at common law, to use as such by the public, but
- b. is shown on a plan or diagram deposited or in an instrument lodged with the Registrar, and which -
 - i. forms a common access to land, or premises, separately occupied,
 - ii. once formed or was part of a common access to land, or premises, separately occupied, but no longer does so,
 - iii. is accessible from an alley, court, lane, road, road, thoroughfare, yard or public place that is dedicated, whether under a written law or at common law, to use as such by the public, or
 - iv. once was, but is no longer, accessible from an alley, court, lane, road, road, thoroughfare, yard or public place that was dedicated, whether under a written law or at common law, to use as such by the public,

EXPLANATORY NOTES:

Is the Council responsible for private ROWs? Short answer: No.

The majority of private ROWs remain in the ownership of the original subdivider. Therefore the land is to all intents and purposes private property and not the responsibility of the Council. Nevertheless, in most cases private ROWs the original owner of the ROW is deceased or the original land subdividing company defunct. Therefore, the Council probably has a moral obligation to coordinate or facilitate the upgrading of the ROW where appropriate in liaison with adjoining owners and other affected parties.

Application of policy

Given that a private ROW is defined as a "private road" in the LAA, this policy applies, by definition, to private roads as defined above. This policy does not apply to public ROWs or public access ways (PAWs). Public ROWs and PAW are the responsibility of the Council in term of maintenance and upgrading.

Role of the Council

Whilst the Council may initiate a proposal for dedication and upgrading approval rests ultimately with the Minister for Lands via the Department of Planning, Lands and Heritage (DPLH) In addition, the Land Administration Act requires all proposals for dedication to be supported by the Western Australian Planning Commission (WAPC).

Responsibility and review information	
Responsible officer:	Manager Strategic Planning
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