



TOWN OF
VICTORIA PARK



RIGHTS OF WAY MANAGEMENT STRATEGY 2021



**WE'RE OPEN
VIC PARK**

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1.0 KEYWORDS

Laneway means a narrow local street type without a verge located along the rear and/or side property boundary, typically used in more dense residential areas when smaller lot layouts justify rear garaging, and where alternative vehicle access is needed for lots fronting busy streets or parks.

Right of way means a laneway, private street, or other use of land (not being a public street or road) that provides vehicular access to a development site.

Private right-of-way means the balance of title from a subdivision held in private ownership over which adjacent owners have an implied right of access under Section 167A of the *Transfer of Land Act 1893*.

Public right-of-way means land vested in the Crown under the Transfer of Land Act 1893 for public use. These can be ceded to the Crown on subdivision or amalgamation under Section 152 of the *Planning and Development Act 2005*.

“Dedication” means the acquisition as Crown land of any alienated land or private road which has been used by the public, following a request from a local government to the Minister for Lands under Section 56 of the Land Administration Act 1997.

“Private road” means alley, court, lane, road, street, thoroughfare, or yard on alienated land which is shown on a Plan or Diagram of Survey deposited with the Registrar of Titles and which:

- (a) is not dedicated, whether under a written law or at common law, for use by the public,
- (b) forms a common access to the land, or premises, separately occupied, or
- (c) is accessible from an alley, court, lane, road, street, thoroughfare, yard, or public place that is dedicated, whether under a written law or at common law, to use as such by the public (Section 3 of the Land Administration Act 1997).

2.0 EXECUTIVE SUMMARY

The Town of Victoria Park has a cumulative length of 169.3 kilometres of Rights of Way (ROWs) within its jurisdiction. On 12 May 1998, the Council resolved to adopt a Right of Way (ROW) Strategy Plan, the basis for applying Town Policy relating to vehicular access to properties via Rights of Way. Subsequently in September 2003, Council adopted a programme to upgrade fifty ROWs that were identified to remain open.

Lighting forms a part of major upgrades to the existing ROW network. Currently major construction of Rights of Way is prioritized based on Multi Criteria Assessment Process, whilst in already developed ROWs, lighting requirements are ascertained based on the crime statistics in the area.

As per the Council directive on 28 September 2021, this Rights of Way Strategy has been prepared to provide an update and seek an endorsement a 10-year capital works program based on the priority.

3.0 OBJECTIVES

- To construct and upgrade all ROWs that are vital for public use as the primary road network for management by Town of Victoria Park
- To make them a part of the Road network and contribute to better traffic management
- To enable them to be the sole access for the new developments, encouraged through Local Planning Policy 7 - Development and Vehicle Access to Properties Abutting Rights-of-Way
- To fund the 10 Year Capital Works Program
- Subsequently widen under width ROWs to two way for uninterrupted traffic flow
- To provide ownership and construction condition details required to upgrade each ROW under the ownership of the Crown and those vested in the Town of

Victoria Park.

4.0 INTRODUCTION

The Town has 151 ROWs, with some having multiple sections under same ROW number. 146.05 kilometers (86.25%) of the cumulative length of 169.3kilometres is sealed/paved and are part of the Town's road network that is currently in use. Although many ROWs are 'privately' owned, they are commonly perceived by the community to be public areas and look to the Town to address any related issues.

Approximately Fourteen ROWs were designed and constructed to include lighting of the ROW in the Town of Victoria Park since 2010. These were fully funded by the Council. 11.1% are set to remain open and are prioritized to be constructed. This equates to 28 ROW sections requiring to be upgraded. This has been consolidated into 21 separate projects for construction over the next 10 years.

The focus of this strategy is to prioritise those ROW's that are unsealed and require lighting to be installed.

The Multi Criteria Assessment exercise has been used as a mechanism to prioritise projects based on a selection of important variables with weightings

- Length Criteria – (20% weighting)

Longer ROWs have a higher need for two way passing opportunities. The number of developments along their length is also likely to be higher, thus the need for yielding points for the safe passage of vehicles.

- No. of properties abutting ROW – (25% weighting)

The objective of the Town is to encourage the use of ROW for sole vehicle access to new developments whenever available and to encourage development abutting rights-of-way that provides an appropriate building interface, increases activation and safety, and promotes surveillance.

- No. of vehicular access points – (35% weighting – Highest)

Higher traffic volumes are likely with a greater number of access points. This is also directly related to the number of properties abutting the ROW gaining access through garages and gates. Safety is considered high priority due to conflicts from access points.

- General condition – (15% weighting)

Unsealed ROWs with flat compacted gravel are considered to be in a good condition. Those with grass/soft soil and uneven surface treatments are considered to be very poor.

- Crime and safety statistics (5% weighting)

All rights of way that are unsealed will be constructed with lighting and therefore a lower weighting in this category has been given. There may be exceptional circumstances where the ROW is extremely narrow for lighting to be considered. All options will be explored in constrained locations. Potential isolated widening maybe necessary where light fixtures are needed.

5.0 BACKGROUND

The master list of the ROW was created up by the City of Perth in 1991. The Town of Victoria Park was established on 1 July 1994 because of Government of Western Australia's decision to split the City of Perth and form three new municipalities, one of which was The Town of Shepperton, which was renamed as The Town of Victoria Park on 2 November 1994. (Reference [Municipality Boundary Amendments Cover Pages.doc \(boundaries.wa.gov.au\)](#))

The Town is divided into two wards – Banksia Ward and Jarrah Ward. The following suburbs are within the Town: Victoria Park, East Victoria Park, Carlisle, Lathlain, Burswood, sharing with City of South Perth is Kensington and sharing with City of Canning are Bentley, St James, and Welshpool.

The old Local Government Act ceased to be in effect in 1995 and the lands from the closed laneways were given away to the abutting property owners for free. This was a windfall for many landowners as the properties which gained additional land area gained developmental potential.

In 1997 a map with a list of ROW was drawn up to prioritize the construction of Rights of Way within the Town of Victoria Park.



Amendments		SHEET		FILE NAME	
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TOWN OF VICTORIA PARK
99 SHEPPERTON ROAD, VICTORIA PARK

DESIGNED: D. DROSTENOR 09/03
DRAWN: D. DROSTENOR 09/03
CHECKED: T. KETCHY 09/03
RECOMMENDED

RIGHT OF WAY STRATEGY PLAN

SHEET 1 OF 1
DRAWING NO. **E 9304A**
JOB NO.

LEGEND:

- █ PAVED AND CURRENTLY IN USE OR TO BE PAVED IN CURENT BUDGET.
- █ ESSENTIAL FOR ACCESS _ TO REMAIN OPEN AND ULTIMATELY BE CONSTRUCTED.
- █ CURRENTLY SUBJECT TO CLOSURE ACTION OR POTENTIALLY COULD BE CLOSED IN THE FUTURE.

2/09/2003

Most ROWs across the Town of Victoria Park are 5m wide, however a few are 6m wide, which is enough to cater for two-way passage. The ROWs in the Town of Victoria Park were created as a part of the original greenfield subdivision in early 1900s where the ROW was at the rear of the properties for the access by night fill carts. These were typically left as unmade tracks and subsequent lack of use has made few of these ROW to be in dishevelled state overgrown with vegetation or sites of illegal dumping. Few of the problems that affect these ROW is listed below:

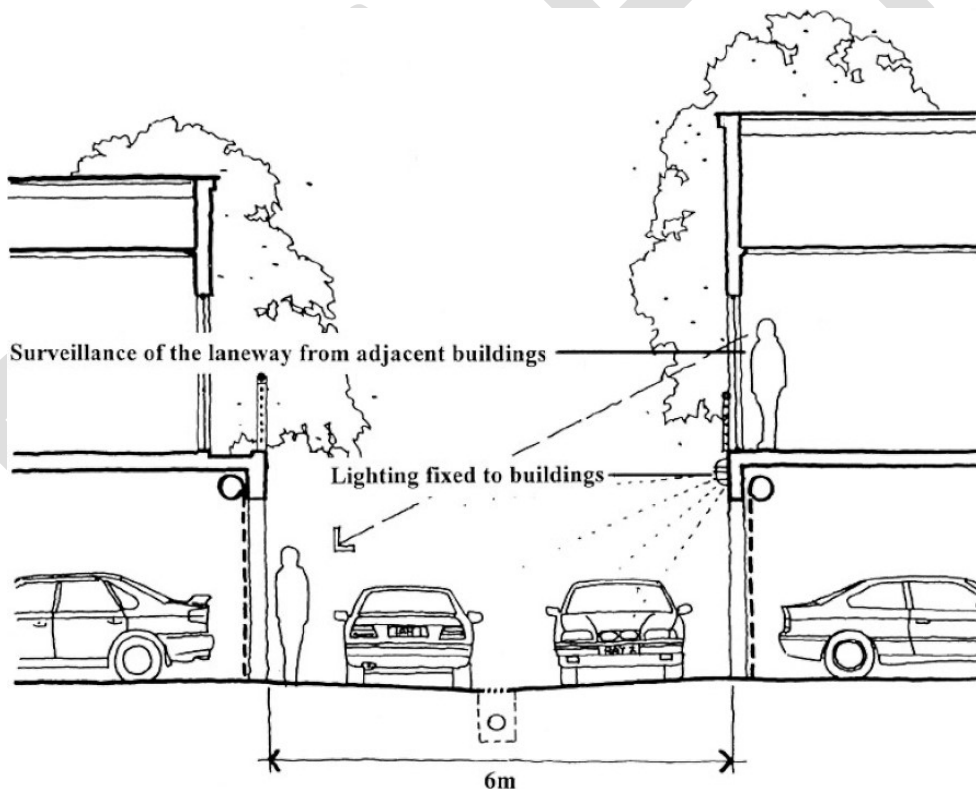
- Lack of surveillance causing security concerns
- Vandalism
- Reduced desirability to the neighborhood
- Inappropriate material dumping
- Disagreements between neighbors abutting the ROW, over the management of ROWs, e.g., where they have been fenced or otherwise obstructed without authority.

In recent times, increased urban development, vehicle usage and intensified land use have resulted in increased demand for alternative access to properties along with few properties that have been developed with ROWs being their primary access. ROWs which were initially intended for nightfall carts were not designed for traffic demands of the modern day and as a result several difficulties have risen including but not limited to-

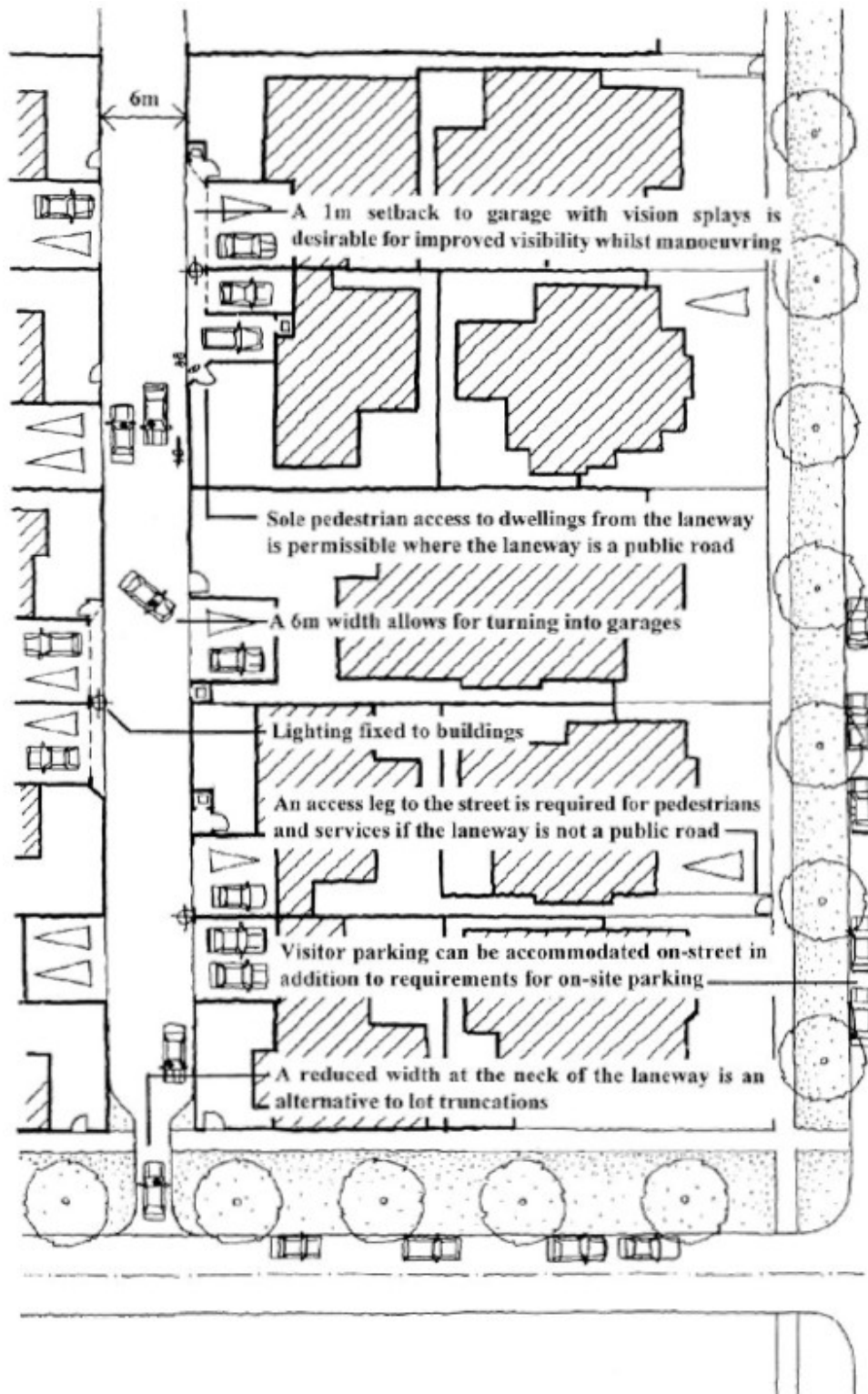
- Congestion and very limited maneuvering space,
- Poor visibility and inadequate lighting
- Minor collision with fences resulting in property damage
- Reduced safety for pedestrians accessing ROW
- Bogging in unsealed ROW
- Drainage and flooding

Many ROWs are held in private ownerships, yet there is a constant burden on the Town to address the complaints from the Community on various problems. Although there is a lack of consistency in the issues surrounding the ROWs, it is recognized that ROWs have a potential to offer strategic benefits to the wider community in terms of planning outcomes and management of traffic on roads.

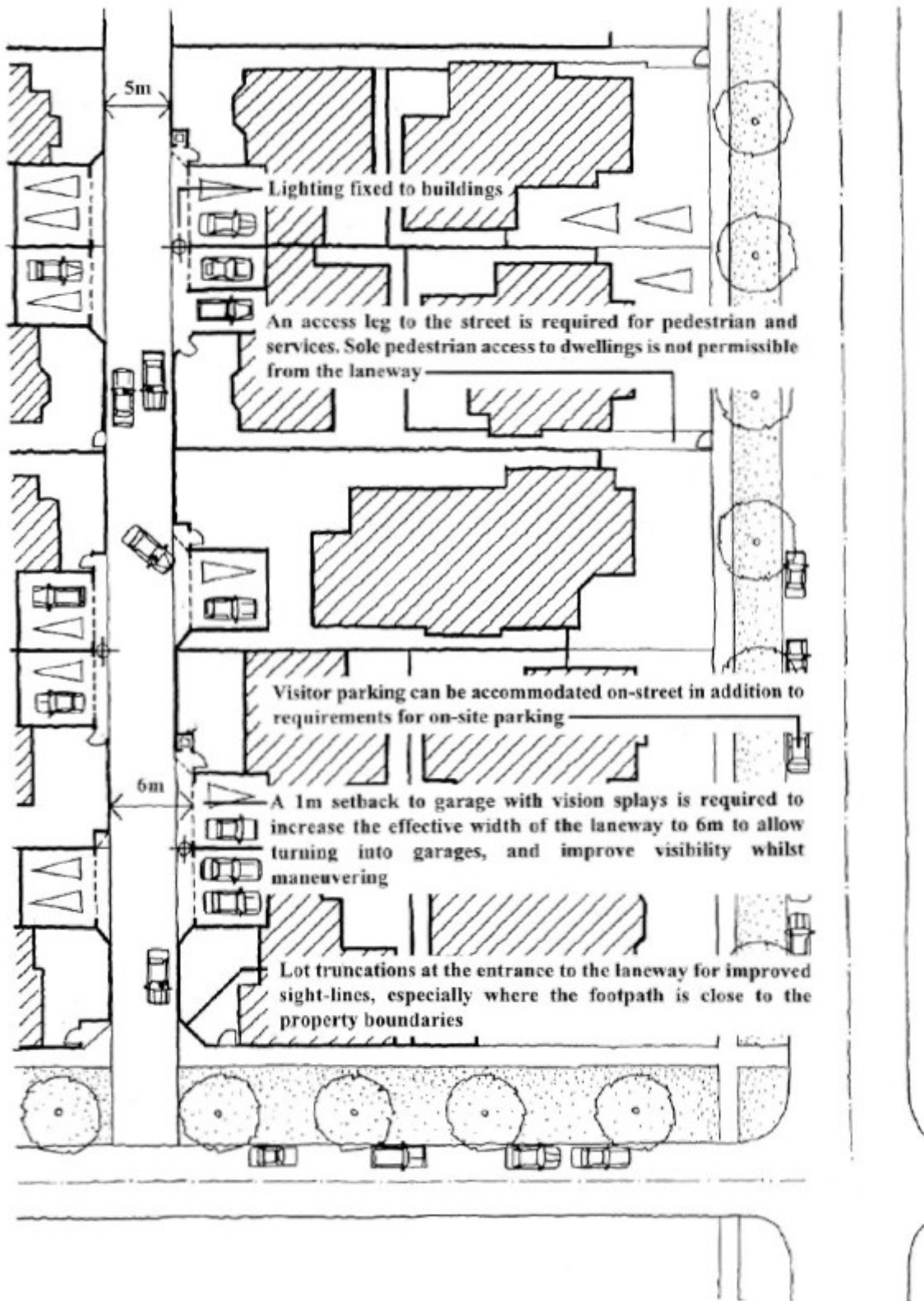
This document is in response to the Council initiative to prepare a Rights of Way Management Strategy. The strategy is intended to provide an update and seek an endorsement a 10-year capital works program based on the priority and, to provide a comprehensive and coordinated approach to the issue of ROWs management in the Town of Victoria Park involving the upgrade and dedication of all ROWs that remain open and available for use by the public.



Typical Cross-section of a 6m Laneway (Ref: Planning Bulletin 33/2017, Rights-of-way, or laneways in established areas)



Typical 6m Laneway in an established residential area (Ref: Planning Bulletin 33/2017, Rights-of-way, or laneways in established areas)



Typical 6m Laneway in an established residential area (Ref: Planning Bulletin 33/2017, Rights-of-way, or laneways in established areas)

6.0 MANAGEMENT PRINCIPLES

ROW Multi Criteria Assessment forms the general basis for the prioritisation of ROWs for upgrading and dedication under the strategy, followed by consideration for:

- High usage of the ROWs, where it is used as primary access by the properties abutting the ROW and that ROWs are already more than 50% sealed,
- ROWs that require upgrading for traffic safety, drainage management or access to a public facility such as parks and playground,
- ROWs for which substantial upfront contributions have already been received from the owners

The Town assumes responsibility for the ROW to be upgraded to a standard that is considered appropriate based on its function, degree of use, community safety, and amenity. Safety of the users of the ROWs and the adjacent residents is one of the leading factors considered in the management of the ROWs. Appropriate Council policies be established to complement and contribute to the objectives of this strategy. The Town will generally contribute financially towards the upgrade and maintenance of the ROWs given the benefits that will accrue to the wider community.

7.0 UPGRADE OF THE RIGHTS OF WAY

Most Rights of Way in the Town of Victoria Park have the potential to be developed and upgraded for greater public and ideally should be constructed and maintained by the Town as a part of its functional road network by 2032. The strategy goals are to -

- Contribute for better access and traffic
- Provide street lighting to all developed ROWs
- To enhance accessibility
- Contribute by adding streetscaping and preserving existing streetscape

- To endorse a 10 Year ROW works using Town funds and development contributions
- Drainage
- Consider existing infrastructure assets

8.0 PLANNING CONTEXT

State Planning

This Rights of Way strategy holds relevance to the state planning policies listed below-

- Liveable Neighborhoods

Reference Links:

[Liveable neighbourhoods \(www.wa.gov.au\)](http://www.wa.gov.au)

[Liveable Neighbourhoods \(dplh.wa.gov.au\)](http://dplh.wa.gov.au)

- Western Australian Planning Commission Directive

Reference Links:

[Introduction to the Western Australian Planning System \(dplh.wa.gov.au\)](http://dplh.wa.gov.au)

- Residential Design Codes of Australia.

Reference Links:

[State Planning Policy 7.3 - Residential Design Codes \(www.wa.gov.au\)](http://www.wa.gov.au)

Town Planning

- Planning policy, regulation, and legislation

Reference Link:

[Planning policy, regulation, and legislation - Victoria Park](#)

- Local Planning Policy

Reference Link:

[Local planning policies \(LPPs\) - Victoria Park](#)

- Strategic Planning

Reference Link:

[Strategic Planning - Victoria Park](#)

- Place Plans

Reference Links:

[Place Plans - Victoria Park](#)

- Climate Emergency Plan

Reference Link:

[Climate Emergency Plan - Victoria Park](#)

To be included - Strategic Community Plan, Corporate Business Plan, Long Term Financial Plan and Disability Access and Inclusion Plan

9.0 LEGAL CONTEXT (Statutory Obligations)

The provisions relating to the ROW or laneways under the State legislations are generally limited to the creation of easement rights, closure of ROWs and conversion to public streets. Practical guidance is required for the day-to-day management and maintenance of private ROWs. Adjoining owners of the ROWs in the Town of Victoria Park have expressed their concerns with the problems associated with the use and conditions of private ROWs from adjoining owners.

The following legislations, local law and legal tenure are relevant to this strategy and the issue of ROWs:

TRANSFER OF LAND ACT 1893

REFERENCE: SECTION 167A(1) OF THE TRANSFER OF LAND ACT 1893

Rights of way generally not public ways or thoroughfares

(1) Subject to subsection (2), every right of way shown and marked as such upon any map or plan deposited with the Registrar, under the provisions of Part VIII, on the subdivision of any land shall, unless the contrary is stated, be deemed an easement appurtenant to the land comprised in such map or plan and abutting upon such right of way, and not a public way or thoroughfare.

(2) Subsection (1) does not apply, and is deemed never to have applied, to or in relation to land —

(a) vested in the Crown under section 20A of the Town Planning and Development Act 1928 11 or section 152 of the Planning and Development Act 2005 for the purpose of a pedestrian accessway or right of way; or

(b) shown and marked as a footway or right of way on a map or plan (being a map or plan deposited with the Registrar of Titles) and transferred to the Crown —

(i) at the same time as, or after, the registration of certificates of title in accordance with that map or plan; and

(ii) before the commencement of section 20A of the Town Planning and Development Act 1928 11.

[Section 167A inserted: 2 Edw. VII. No. 10 s. 8 (as amended: No. 17 of 1950 s. 75); amended: No. 57 of 1991 s. 22; No. 81 of 1996 s. 100; No. 38 of 2005 s. 15.]

Local Government Act 1995

The Local Government Act 1995 provides minimal direct authority for local

government intervention in relation to private ROWs. Section 3.25 of the Act provides authority for a local government to issue a notice to an owner or occupier of land to remove or make safe any obstruction in a private thoroughfare to prevent or minimize dangers to other users.

Reference: **VICTORIA PARK VEHICLE MANAGEMENT LOCAL LAW 2021**

[Town of Victoria Park Vehicle Management Local Law 2021 - Victoria Park](#)

Division 3 – No Stopping or Parking, Item 30

Right of way and laneway A person shall not stop or park a vehicle so that any portion of the vehicle is obstructing a right of way or laneway, or so close thereto as to likely deny any vehicle reasonable access to or egress from the right of way or laneway

Land Administration Act 1995

This act defines private roads as including ROWs created pursuant to Section 167A of the Transfer of Land Act 1893 which have not been dedicated for use by the public and forms or formed a common access to land or premises that are separately occupied. This Act contains provisions to facilitate the closure and extinguishment of private roads and the dedication of private roads as public streets.

Relevant sections: Section 52, Section 56

Reference Link: [WALW - Land Administration Act 1997 - Home Page \(legislation.wa.gov.au\)](#)

Land Tenure

Policies and Standards for Geographical Naming in Western Australia (Landgate) – Under Review

Australian Standard AS/NZS 4819:2011 Rural and Urban Addressing Types of

ROW – Under Review

Land Tenure – Under Review

Private ROW's are roads set out on a plan of subdivision of privately owned land which has not been dedicated for public use. They are pertinent only to those lots on the plan which abut onto the private road by providing owners with an implied right of way unless additional rights have been granted by a registered easement.

- **Ownership**
- **Title Notifications**
 - **Encumbrances**
 - **Easements**
 - **Conditions**
 - **Use – Right of Carriageway**
- **Prescribed vs Implied Rights**

10.0 NAMING PROCESS

Naming in other words Toponyms are a means of public and personal reference for location description and identification and provide intelligence relating to where a place is, what is there and key elements of maps.

In 1936 Geographic Names Committee (GNC) became the advisory to Minister of Lands. GEONOMA is recognised by the Western Australian Government as the primary source and official register for all approved named geographic features,

administrative boundaries and road names and their positions and/or extents. Names added to or amended within GEONOMA are automatically propagated to features in other linked government systems.

Requests to assign names to the Town's Rights of Way (ROW) are received frequently from residents having difficulty directing visitors, delivery drivers and trades people to property facing a Right of Way. These requests have become more frequent due to the increase in urban development. Consequently, the orientation of properties with primary access and frontages on a ROW has resulted in many requiring names for addressing purposes.

Assigning names to Rights of Way (ROW) ensures street addresses are compliant with the Geographical Standards for Rural and Urban Addressing (AS/NZS 4819:2011). The Standards take into consideration access points, street orientation and consistency to improve the efficiency of, for example, emergency service vehicles attempting to locate a dwelling with a frontage to a ROW.

Prior to submitting any names to Landgate. Commemorative naming needs to comply with the Australian/New Zealand Standard – Rural and Urban Addressing AS/NZS 4819:2011 as well as pass Landgate's Geographical Names Committee preliminary validation assessment in accordance with their Policies and Standards for Geographical Naming in Western Australia.

The Geographical Naming Policy requires the following provisions to be satisfied:

1. Posthumously,
2. Permission of the immediate family must be obtained,
3. Based on demonstrated record or achievement,
4. Having a direct and long-term association with the location and made a significant contribution to the area,

5. The proposal commemorating an individual with an outstanding national or international reputation has had a direct association with the area in which it is to be located,
6. Such application is in the public interest,
7. There is evidence of broad community support for the proposal

Once the preferred name has been endorsed by Council, the assignment of the name by Landgate, once submitted by the Town, will occur within 10 business days.

11.0 PROCESS OF DEDICATING ROW (private road converts to a public road)

In preparation for the closure of the ROW pursuant of Section 56(1)(c) of the Land Administration Act 1997("Act") followed by the dedication of the ROW as a public road via Section 87 of the Land Administration Act 1997. The act requires that the road must be upgraded to the satisfaction of the local government prior to the dedication of the ROW as a public road.

A statutory declaration from a minimum of two members of the public formally declaring they have had uninterrupted access over the subject land for a minimum of 10 years. Along with the following

1. Evidence that 100% of the adjoining owners have provided a response in writing and a minimum 50% of adjoining owners supporting the initiation of upgrading, followed by the dedication of the ROW as a public road.
2. 75% of all adjacent owners must agree to the application of a special area rate before Council will consider upgrading/dedication of a ROW

12.0 UPGRADE OF PRIVATELY OWNED ROW

The proposal for the upgrade of a privately owned ROW shall be a written request to the Town with the following details included –

1. A copy of the Certificate of Title of the subject land
2. Contacting the forebearer/owner and obtaining the consent in writing
3. Probate searches are required in case the details of the forebearer/owner are not found. There shall be evidence to show that there was reasonable attempt was made to find and contact the owner
4. Establish the reasons for upgrade sought
5. Evidence that 100% of the adjoining owners have provided a response in writing and a minimum 50% of adjoining owners supporting the initiation of upgrading, followed by the dedication of the ROW as a public road.
6. 75% of all adjacent owners must agree to the application of a special area rate before Council will consider upgrading/dedication of a ROW

13.0 CLOSURE OF ROW

Closure of Private Roads and Rights of Way by Application

The owner of the fee simple of a private road or right of way may close it by application to the Registrar on an [Application form](#). For such an application the following should be noted:

- the application must be made by the registered proprietor of the fee of the road or right of way
- any easement granted expressly by transfer must be the subject of a formal surrender by the dominant owner. Any encumbrancer of the dominant tenement must consent to the surrender
- the proprietor of the original lots on the plan of subdivision that abut the road or right of way must also execute a formal surrender of their implied rights. If an original lot has been subdivided, surrenders must be obtained from all the proprietors of all the new lots that formed part of the original lot, not just the part of the subdivided lot that abuts the road or right of

way

- all surrenders must be stamped by the Revenue WA (Stamp Duties Division) but the application is not dutiable
 - the duty stamped Surrender if lodged with the Application as associated evidence.¹
- and
- a consent in writing must be obtained from all encumbrancers of any land the proprietors of which have implied rights of way over the private road or right of way.
 - A deposited plan of subdivision incorporating the land the subject of the closed road or right of way may be lodged at Landgate, but no action may be taken on the plan until the road or right of way is closed. After closure of the road or right of way an application for a new title the subject of the plan is required. This application (using [Application for a new/balance title form](#)) may be lodged simultaneously with the application to close the road or right of way.

Where no new deposited plan of subdivision is being lodged to incorporate the road or right of way being closed, the land therein, for the purpose of identification, reverts to its original lot. An application for a new title for the closed road or right of way must be made. This application (using [Application for a new/balance title form](#)) may be lodged simultaneously with the application to close the road or right of way.

The title for the land in the road or right of way to be closed must be produced unless it is partially cancelled and held by Landgate.

After lodgement, each application to close a road or right of way is submitted to the Commissioner for approval and if satisfied that the requirements have

been met, effect will be given to the closure.

Closure of Private Roads and Rights of Way at the Request of Local Governments

Closure by acquisition – Section 52 of the LAA (extinguishes all rights to land and land transfers to DPLH – becomes unallocated Crown land.

Freehold private roads may be closed under s.52 of the LAA, by way of an Acquisition Order made by the Minister or under s.56 (dedication), at the request of a Local Government. However, closure of PAWs and ROWs vested in the Crown under s.152 of the P&D Act (formerly s.20A of the TP&D Act) is dealt with differently.

Generally, road closures will not be approved by the Minister or his or her delegate unless the road is to be totally amalgamated into adjoining land or is reserved with a management order to an appropriate management body. In general, it is the preference of Department of Planning, Lands and Heritage that management responsibility for the land once the road has been closed is undertaken by local government.

Private roads (for the purposes of this paragraph) generally consist of land set aside in older subdivisions of freehold land as laneways at the rear of residential lots. Fee simple title to the land in private roads usually remains in the name of the original subdivider, but who in fact has no further real interest in the land. Commonly, such landowners are long since deceased, or defunct land development companies. The private road may be subject to implied easements under s.167A of the TLA in favour of the residential lots created by

the relevant plan of subdivision.

Registration of an Acquisition Order under s.52 extinguishes all rights, interests and encumbrances affecting the subject land and reverts the land as Crown land. Where a private road is closed by an Acquisition Order under s.52 of the LAA, compensation is not payable to **any** person with an interest in the land (including the owner of the fee simple interest in the land) nor any person who may have the benefit of an easement over the private road created under s.167A of the TLA.

Before Local Government can request the Minister for Lands to close a private road, Local Government must comply with the requirements set out in s.52 of the LAA and regulation 6 of the *Land Administration Regulations 1998*.

As part of the closure process the Local Government informs the Minister of the proposed future disposition of the land in the closed road to adjoining land holders. s.87 of the LAA provides the means for disposal of the land in a closed road by lodgement of a Conveyance and Amalgamation Order by DPI that allows for amalgamation of land into an adjoining land holder's land (see [AMA-01 Amalgamations](#))

A private road may also be closed by subsequently dedicating it to public use under the provisions of s.56 of the LAA. This is considered by the Local Government on:

- the request of the owner of the street or right of way made to the Local Government
- the request of the owners of rateable property abutting the street or right of way or at least the owners of more than one half of the sum of

the rateable values of the abutting properties

or

- where the public has had uninterrupted use of the street or right of way for a period of not less than ten years.

Local Government may then in accordance with the regulations 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.

Reference : [ROA-03 Roads and their Closure - Landgate](#)

Closure pursuant to section 58 of the LAA (public road closure, unallocated Crown land is then amalgamated into the adjoining land under section 87 of the LAA.

Amalgamation (Under Review) – Section 87 (Sale of Crown land – subject land is amalgamated into the adjoining land

Utilisation

Widening

Safety

Risk

Conclusion

14.0 DOCUMENT CONTROL

DATE	CHANGES	MADE BY	AUTHORISED BY
22 Nov 2021	New Document	Jai Ananda	Frank Squadrito

DRAFT