

Unconstructed Road Reserves and Access to Properties

Prior to considering any development or land use on a property, it must be demonstrated that the property has legal and constructed access.

Legal and Constructed Access

Under the *Shire of Donnybrook – Balingup Local Planning Scheme No. 7 (LPS7)*, prior to considering development on a property, it must be demonstrated that the property has legal and constructed access.

Legal access can be by way of:

- A suitably constructed road within a road reserve; or
- An easement registered on the relevant Certificate of Title(s).

Consideration of Development

Under LPS7, in considering an Application for Development Approval on land abutting an unconstructed road reserve or where frontage to a dedicated road reserve does not exist, the Local Government may:

- Refuse the application until the road has been constructed and/or access by means of a dedicated and constructed road is provided; or
- Require other legal arrangements to be made for permanent legal access to the satisfaction of the Local Government; or
- Where dedicated road access is available, grant approval subject to a condition requiring the applicant to pay a sum of money for the cost of constructing the road or part thereof or construct a road to the Local Governments construction standards.

Roads

'Road' refers to the physical formation of the trafficable surface within a road reserve, sometimes referred to as the carriageway.

Unless identified on the Shire's Works and Services program, the construction of roads for the purposes of private development remains the responsibility of the relevant landowner(s) / developer(s). The ongoing maintenance and construction of roads and road reserves is determined within the Annual Budget and coordinated by the Shire's Works and Services team.

Road Reserve

A 'road reserve' is a parcel of land, generally owned by the Crown and dedicated for the purposes of road, usually under the care and control of the Local Government (or in some cases, Main Roads WA).

A road reserve is the area of land that contains the physical road formation as well as any relevant public services (i.e. infrastructure for stormwater, telecommunications, electricity, footpaths, reticulated water and sewer, etc.)

Unconstructed Road Reserve

The term 'unconstructed road reserve' refers to a road reserve that does not contain a constructed road. There are a number of unconstructed road reserves throughout the Shire, which is particularly common in rural Local Government areas.



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Landlocked Property

A property that does not adjoin a road reserve, is referred to as a 'landlocked property'.

Access to a landlocked property is across another property by way of an easement on the relevant Certificate of Title(s). Where an easement does not exist, it is considered that the property does not have legal access.

Where access is through different lots within the same ownership, a development application is generally required to ensure that appropriate measures are in place should one of the properties change ownership in the future.

Right of Carriageway Easement

An easement is a right attached to a parcel of land which allows the landowner to use another person's land in a particular manner.

An easement for the purposes of access is generally referred to as a 'right of carriageway' and is set out on the relevant Certificate of Title(s).

An easement for a right of carriageway generally contains three components:

1. **Easement Burden:** The land to be burdened by the easement i.e. the land on which the carriageway exists;
2. **Easement Benefit:** The land to be benefited by the easement i.e. the land which has the benefit of right to use and access the carriageway; and
3. The easement document, including terms and agreements i.e. use limitations, ongoing maintenance responsibilities, etc.

The Certificate of Title and all other documents relating to property Titles can be obtained from Landgate.

Residential Land

There are a number of properties within the Shire, including Residential zoned land, without legal or constructed road access. Some of these lots were created prior to contemporary development standards being introduced and do not have access to roads, drainage, electricity or water supply.

These Residential properties are generally identified as being within a Structure Plan Area under LPS7. This means that prior to the Shire considering any future development (including a dwelling), these areas require comprehensive structure planning to address design and servicing requirements.

The responsibility for undertaking such structure planning rests with the owners of the lots and therefore likely to require collaboration and cost sharing agreements.

Purchasing a Property

Prior to purchasing a property within the Shire, it is strongly recommended that you confirm the legal access arrangements to ensure the land is capable of being developed.

Legal access to properties remains the responsibility of the landowner, therefore it is important for prospective purchasers to be aware of this responsibility.



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Frequently Asked Questions

What is the difference between a road and a road reserve?

A 'road' refers to the physical formation of the trafficable surface whereas a 'road reserve' refers to the parcel of land in which the road and other public infrastructure is contained.

Can I build a house on a property that doesn't adjoin a road reserve?

Only when it is demonstrated there is alternative permanent, practical (constructed) and legal access.

What is considered legal access?

Legal access is generally considered either through a constructed road reserve or an easement registered on a Certificate of Title.

I own the property that I use to access another property I own, how do I ensure ongoing legal access if I sell one of the properties?

As part of the sale of your land, you will need to arrange for an easement to be placed over the relevant Certificate of Titles to ensure legal access remains in perpetuity, regardless of ownership.

My property adjoins an unconstructed road reserve. Who is responsible for constructing the road to my property?

Unless identified on the Shire's Works and Services program, the construction of roads for private development and/or access is the responsibility of the relevant landowners and/or applicants. Construction of roads is

generally a condition of development and/or subdivision approval.

If I pay rates, why doesn't the Shire construct the road?

The annual rates revenue makes up a small portion of the Shire's Annual Budget adopted by Council each year, which is then allocated for use across many service areas of the Shire (i.e roads, parks, waste, libraries, sporting facilities etc).

Funds allocated for roads are typically utilised for the maintenance, renewal and upgrading of existing Shire road assets, not for the expansion/construction of new roads. Whilst rates do contribute to these funds, a significant proportion of revenue used for road purposes is from external sources.

The construction of new roads is a very expensive process, with estimates for new rural bitumen roads ranging between \$300,000 to \$500,000 per kilometre.

Council bears no responsibility for maintenance of roads beyond its constructed road network or any obligation to extend its constructed road network to provide access to properties that are not serviced by the constructed road network.

Where can I get a copy of the Certificate of Title and/or the easement documentation?

All land title information, including easement documentation, can be obtained from Landgate.



Unconstructed Road Reserves and Access to Properties

My Certificate of Title has an Easement Burden registered – what does this mean?

It means that your land contains a right for someone else for someone else's benefit. You will need to get a copy of the relevant Plan and easement documentation to find out the specifics. These are available from Landgate.

My Certificate of Title has an Easement Benefit registered – what does this mean?

It means that you have a right over another parcel of land that you don't necessarily own. You will need to get a copy of the relevant Plan and easement documentation to find out the specifics. These are available from Landgate.

How do I get an easement over someone else's land for access to my property?

An easement agreement is a private agreement between landowners that the Shire is not party to. You will need to contact the relevant landowner of the land to arrange and easement.

I am having a disagreement with the landowner of the property I have an easement benefit to. Can the Shire help?

Easements are a civil arrangement between private landowners. The Shire does cannot get involved in any associated disputes over easements. You may need to obtain private legal advice.

I am looking to purchase a property in the Shire. How do I check if the property has legal access?

If the property is connected to a constructed public road, this is considered legal access. If not, you will need to review the Certificate of

Title for any easement. You may wish to contact the Shire to confirm this.

There are a few Residential properties for sale in town that don't appear to join a constructed road. How can they be sold if there is no legal access?

There is nothing the Shire can do to prevent the sale of a lot, rather the Shire can only regulate the use and development of the land.

As it is the responsibility of the landowner to arrange legal access prior to being able to develop the land, it is important that prospective purchasers do their thorough due diligence prior to purchasing a lot so that they are aware of all responsibilities.

How do I find out more information?

For information relating to the Certificate of Title, Easement or any other documents relating to property Titles, you can contact Landgate at (08) 9273 7373 or on their website at <https://www0.landgate.wa.gov.au/>

To discuss the Shire's road construction standards, or current road works program, you may contact the Shire's Works and Services Team on (08) 9780 4200 or via email at: shire@donnybrook.wa.gov.au.

For information relating to legal access and Development Applications, you may contact the Shire's Planning Services (08) 9780 4200 or via email at: shire@donnybrook.wa.gov.au.

