

## 1.50 Right of Way Policy

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### Objective

The objective of this policy and procedure (**Appendix 1**) is to ensure a consistent approach is applied to the future use of land with a caveat that specifies a primary purpose as a right of carriageway. This policy enables applicants and the administration to proactively work with all stakeholders to determine appropriate land use.

### Scope

This policy applies to all land parcels with the purpose of 'right of carriageway' (ROW) within the City of Albany. Any recommendations made within the Right of Way Inventory are subject to further investigation, adequate budget allocation and whether such actions will be to the benefit of the greater Albany community.

### Background

The City of Albany has identified **172** land parcels classified with a "right of carriageway" purpose. The land tenure is a mix of crown land, private freehold or freehold to the City of Albany.

### Policy Statements

To ensure a consistent approach is applied to the future use of land with a caveat that specifies a primary purpose as a right of carriageway, the following prescribed management options and conditions apply:

#### A. Decision to dedicate as road reserve, where:

- There is evidence of past maintenance by a local government authority;
- The right of carriageway currently serves or potentially will serve as primary access for adjoining lots as part of an infill project; or
- The City receives ongoing requests/interest from adjoining landowners to dedicate.

#### B. Decision to dispose, where:

- The right of carriageway serves no function as a right of carriageway to adjoining properties.
- Interest from adjoining landowners to acquire the portion for amalgamation into the existing lot.
- Historical encroachment of adjoining owners into the ROW.

### C. Decision to leave “as is”, where:

- There is an intention to dedicate a right of carriageway as a public road in the future, as part of the future subdivision of adjoining lots.
- The right of carriageway is currently owned and maintained by the City.
- The right of the carriageway is part of a long-term CBD Improvement Strategy.
- The City maintains private rights of the carriageway that serve a public use benefit.
- The right of carriageway is Crown Land serving as a fire access track, consistent with the current land tenure purpose.
- The right of carriageway is in private ownership of a deceased estate in which the City of Albany and adjoining landowners have no interest to acquire.

### D. Management Options:

The procedures for determining the management option for a right of the carriageway, according to its current land tenure (Crown, private freehold or freehold to the City of Albany) are detailed at **Appendix 1**.

### Legislative and Strategic Context

Section 167A of the *Transfer of Land Act 1893* indicates that the registered proprietors of the original lots, which were included in the Plan or Diagram of Survey creating a private right-of-way, have an ‘implied right’ easement to use them provided it is shown as a ‘right-of-way’ on the Land Titles Office Plan or Diagram of Survey.

Under Section 52 *Land Administration Act 1997* a local government may request the Minister for Lands to acquire as Crown land any private road.

Under Section 56 of the *Land Administration Act 1997*, the local government may request the Minister for Lands to dedicate private roads.

Section 58 of the *Land Administration Act 1997* allows for a local government to request the Minister for Lands to close a right-of-way for ceding to the Crown.

### Review Position and Date

This policy is to be reviewed every two years.

### Associated Documents

- *Transfer of Land Act 1893*
- *Land Administration Act 1997*
- City of Albany Community Strategic Plan
- Western Australian Planning Commission Bulletin 33
- Western Australian Planning Commission [Liveable Neighbourhoods](#) (2022)
- Western Australian Planning Commission Policy [DC 2.6, Residential Road Planning](#) (2022)
- [Crown Land Practice Manual](#) (2024)
- [Land Titles Registration Practice Manual](#) (2022)

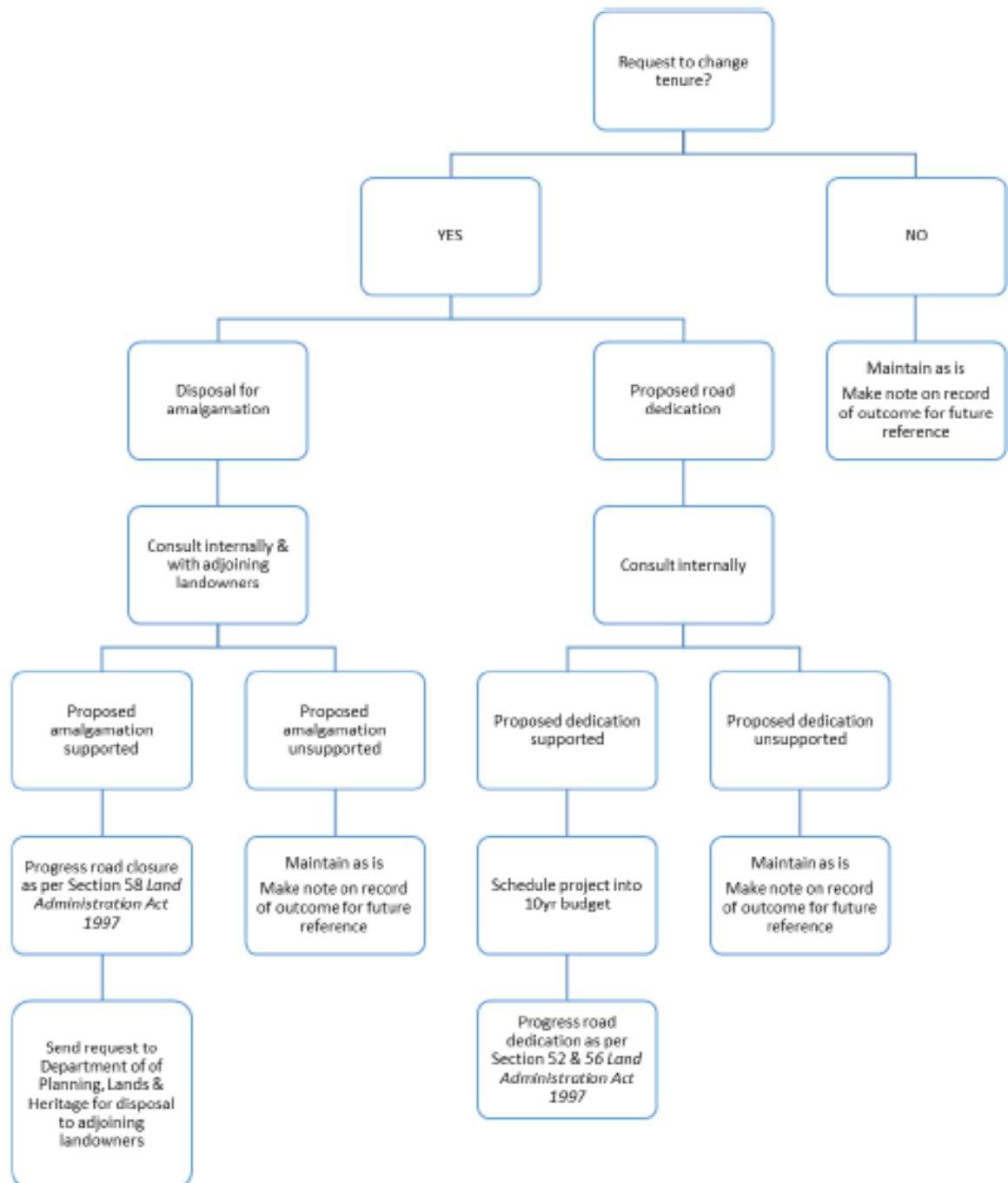
## Definitions

- **Dedication** means the acquisition as Crown land of any alienated land or private road that 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* (WAPC Bulletin 33).
- **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:
  - is not dedicated, whether under a written law or at common law, for use by the public;
  - forms common access to the land, or premises, separately occupied; or
  - 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*).
- **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* (WAPC Bulletin 33).
- **Easement** means the right attached to a parcel of land that allows the proprietor of the parcel to use the land of another in a particular manner or to restrict its use to a particular extent (Crown Land Administration & Registration Practice Manual).

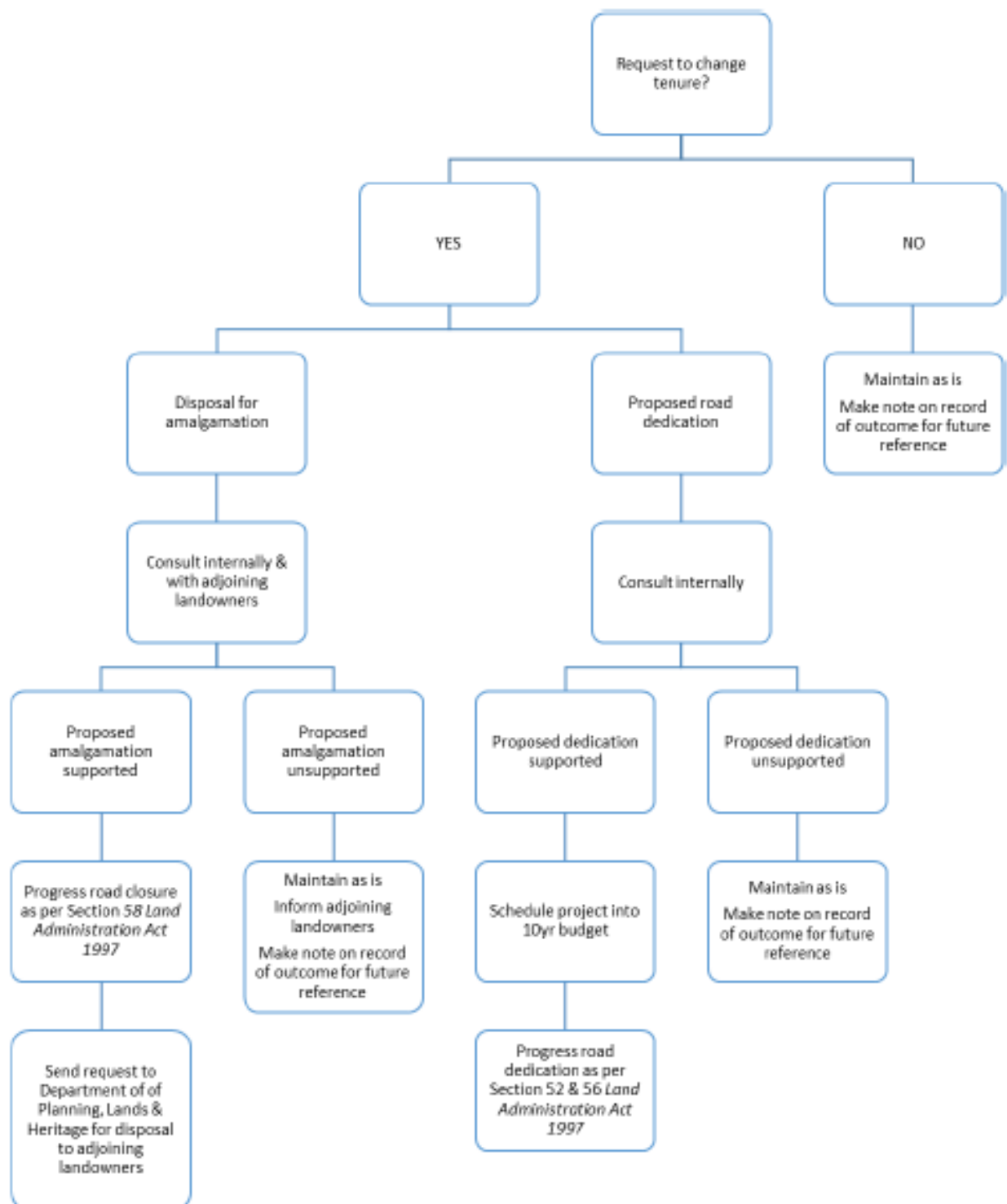
## Appendices: (Process Flow Charts – Internal Use Only)

- **Appendix 1 - ROW tenure – freehold to the City of Albany**
- **Appendix 2 - ROW tenure – Crown**
- **Appendix 3 - ROW tenure – Private freehold**

## Appendix 1 - ROW tenure – freehold to the City of Albany



## Appendix 2 - ROW tenure – Crown



## Appendix 3 - ROW tenure – Private freehold

