

Right of Way (ROW) Frequently Asked Questions

What is a ROW?

Rights of Way (ROW) are parcels of land that were originally created to facilitate sanitary collection at the rear of properties prior to reticulated sewerage. In many cases, the ROW often remains registered against a deceased person or defunct company.

How many ROWs are in the Town, and who owns them?

Within the Town, there are 22 ROWs (made up of 29 individual parcels), with a total length of 4.9km.

The following is the land tenure of the 22 ROW's within the Town:

- 14 are privately owned, 12 of which are deceased estates (with 10 of those held by the same deceased estate); and
- Eight are in public tenure by the Town, the State of WA or the Water Corporation.

In respect to the 10 held in the same deceased estate, the Department of Lands has confirmed that the Town can act on behalf of the estate in respect to dealings with the land.

Why have we prepared a Strategy?

The community increasingly views ROWs as public and look to the Town to resolve management issues. However, give many ROWs are owned by a deceased estate or defunct company, no management by the owner(s) occurs. Consequently, many issues have arisen which predominately affect residents adjacent to ROWs including:

- Overgrown vegetation and fire risk;
- Vandalism and antisocial behaviour;
- Reduced amenity;
- Illegal dumping and storage of materials; and
- Overall lack of management of ROWs, including fencing disputes.

The purpose of the draft ROW strategy is to ensure a coordinated approach to matters relating to ROWs, and to inform future design guidelines for subdivision/development abutting ROWs.

What criteria have been used to inform the ROW-specific recommendations?

The recommendations for each ROW have been informed by:

- Width;
- Surface material and condition;
- Tenure;
- Access arrangements;
- Usage;
- Service infrastructure assets; and
- Safety.

When will upgrades occur?

Where the Town does not already own a ROW, retaining/upgrading ROWs will require the ROW to first be dedicated as a public road under section 56 of the [Land Administration Act 1997](#) (LAA).

A section 56 dedication request can be made by the Town in accordance with the ROW Strategy, or alternatively by the abutting landowners (with support by over 50% of the rateable value of the abutting landowners).

A section 56 dedication also requires advertising of the proposal by the Town for no less than 30 days, and a resolution of Council. However, the request is ultimately determined by the Minister for Lands (Minister).

Should Council endorse the Strategy following consultation, the Town will undergo section 56 dedications (where applicable) and progress engineering drawings for the ROWs that have been identified for upgrading.

The time-frame for delivery of the upgrades will be based on subsequent budget processes.

What does the closure process involve?

ROW closures are dealt with under section 52 of the LAA.

The determination to close a ROW is ultimately made by the Minister. The Minister requires a sketch plan showing the proposed future disposition of the land after it has been closed and therefore, ROW closures only proceed where agreement between landowners results in the acquisition and amalgamation of the entire ROW.

Should Council proceed with the recommendations contained within the Strategy, the Town will liaise with landowners as to the future disposition of the land.

In addition to the above, the Town will consider the other following matters to be addressed when proceeding with a ROW closure:

- Arrangements being made to protect or relocate any public services located within the ROW;
- Reasonable objections by adjacent property owners and occupants of properties served by the ROW being satisfactorily addressed; and
- Comments raised by service agencies being addressed.

I want to buy my portion of ROW, how do I do this?

If you are interested in purchasing a portion of the ROW, the ROW will first need to be closed under the section 52 process of the LAA described above.

The Town encourages any landowners who have an interest in purchasing a portion of an abutting ROW to express such an interest through this consultation process.

There is a financial cost associated with acquiring the land based on valuations in addition to the cost of the process of preparing sketch plans, and any other information required by the Minister.

What happens if the ROW my land abuts has been fenced off and/or is privately being used by another landowner?

If the abutting lots were created on the same Plan or Diagram of survey as the ROW, the abutting landowners may have an implied right under section 167A of the *Transfer of Land Act 1893* to use the ROW. Although the Town encourages closure and abutting acquisition of the ROW where this is the case, if the ROW has been recommended for upgrade/retention, the Town will investigate lawful use.

How can I make a submission?

Any comments you wish to make on the draft ROW Strategy are to be submitted in writing via:

- Email: mail@bassendean.wa.gov.au
- Mail: PO Box 87, Bassendean WA 6934
- In person: Customer Service Centre - 35 Old Perth Road, Bassendean (8.30am – 5:00pm, Monday to Friday (excluding public holidays))

Submissions close **5:00pm 30 November 2021**. Any submissions received will be considered as part of the determination process and your submission will be publicly available in the Council Agenda.

Should you have any further enquiries on the above, please contact the Town's Planning Services on 9377 8000 or via mail@bassendean.wa.gov.au