ROADS

Some of the more common methods of ROAD status removal.
• Transfer of Land Act 1958.
• Local Government Act 1958.
• Local Government Act 1989.
• Subdivision Act 1988.
• Land Act 1958.
• Road Management Act 2004.
• Planning and Environment Act 1987.
• Other methods may be created for major projects such as CityLink, Urban Land Act, etc.
Understand that we all have our own vested interest when dealing with roads.

- Councils.
- DELWP.
- Land Use Victoria.
- Roads Corporation.
- (Linking Melbourne), Places Victoria.
- Governor in Council.
- Water Authorities.
- Surveyor Generals Office.
- Other organisations that come and go.
• Identify the “ROAD”.
• Is the road a;
  • Road created on early Lodged Plan.
  • Road created on a modern Plan of Subdivision.
  • Laneway occupied by adjoining owner/s.
  • Carriageway Easement labelled as a road on the register.
  • Private Road.
  • A General Law or Old Law Road.
  • Government Road.
  • Un-used government road.
  • A Freeway or Arterial Road.
  • Any combination of a number of the above.
• Removal of Road Status under Section 73 used when encumbrance can be proven to be abandoned or extinguished.
• Can be used to remove carriageway and road status.
• Most commonly used on laneways.
  — Proof of a minimum of 30 years non-use.
  — Letter from council produced indicating road is not a public Highway or on the councils road register within the meaning of RMA 2004.
• Same principles apply under Section 60 TLA.
• Many roads discontinued by councils using these provisions still appear as a road on the register because the transfer under 528(2) has not been lodged with LUV.

• Although the LGA 1958 was repealed, if a gazettal entry was published in the Victorian Government Gazette prior to (7th Dec 1993) then the process can be finalised by a 528(2) transfer.

Section 25 (2) Local Government (Miscellaneous) Act 1993 (Repeal of 1958 LGA)
Any Act, matter or thing started under that Part may be completed as if that Part was still in force.
Local Government Act 1958
LOCAL GOVERNMENT ACT 1958

At the Executive Council Chamber, Melbourne, the twenty-first day of June, 1983

Present:

His Excellency the Governor of Victoria
Mr Simmonds
Mr Walker
Mr Cotchie
Mr Mathews

ROAD DISCONTINUED — CITY OF COBURG

Whereas it is provided in section 328 (2) of the Local Government Act 1958, that where a road (whether or not a public highway but not being a road set out on land of the Crown) or any part thereof is not required for public use, the Governor in Council on the request of the council of the municipality in which such road is situated made not less than one month after publishing in a newspaper generally circulating in the district and pasted to the registered proprietor (if any) of the land and the owners and occupiers (if any) of lands adjoining or immediately adjacent to the road notice of intention to make such a request may by Order published in the Government Gazette direct that such road or part shall be discontinued and show upon such road or part shall be discontinued accordingly.

And whereas the Council of the City of Coburg has requested that the Governor in Council direct that roads bounded by Huxton, Elizabeth, Coed and Corben Streets, Coburg East be discontinued and not less than one month previously has published in a newspaper generally circulating in the district and pasted to the registered proprietor of the land in the road and to the owners and occupiers of lands adjoining or immediately adjacent to the road notice of intention to make such a request.

Now therefore, His Excellency the Governor of the State of Victoria, by and with the advice of the Executive Council, hereby discontinue:

(a) that the said roads which are shown by hatching on the given hereunder shall be discontinued.

(b) notwithstanding such discontinuation the Melbourne and Metropolitan Board of Works shall continue to have and possess the same right title power authority or interest in or in relation to the whole of the land shown by hatching on the said plan as it had or possessed prior to such discontinuation with regard to or in connection with any drainage or storm water or other work or land for the purposes of drainage or ascertainment.

(c) that, subject to any such right title power authority or interest the land in the said roads may be sold by the Council of the City of Coburg by agreement.

And the Honourable Frank Noel Wilks, His Majesty’s Minister for Local Government for the State of Victoria, shall give the necessary directions herein accordingly.

TOM FORRESTAL

Chair of the Executive Council

This Order is in law of the Order which appeared in the Victoria Government Gazette No. 90, dated 8th September 1983.
Closure or Discontinuance of a road under the LGA 1989.
Process involves numerous steps for councils;
• Notices

• Referral Authorities interest and reserving rights

• Gazetttal publication

• Transfer to adjoining land owners or council
Local Government Act 1989
Significant differences LGA 1958 & LGA1989

• Both provisions bring General Law or Old Law Land under the operation of the Transfer of Land Act upon publication.

Two significant differences exist between old and new provisions:

1. Section 528 LGA 1958 removes the carriageway and road status only. ALL other encumbrances will continue to encumber the new title that will issue.

2. If the notice in the Government Gazette directs that the closed/discontinued road is to be retained by council then council must obtain title by applying under Section 54 of the TLA1958. If however council wish to gain title to a road closed/discontinued under LGA 1989 they are both the transferor and the transferee on the 207D Transfer.
Road Exchange

Finalise process S. 35 Sub’d Act 1988

Finalise process S. 207E
Subdivision Act 1988

- Section 46A Sub’d Act gives the Registrar some discretionary power in relation to recognition of a road.

46A Expiry of registered plan

1. The Registrar may determine that a plan that was registered before the commencement of section 44 has expired if—
   
   (a) no folios for roads, lots or reserves have been created in respect of the plan; and
   
   (b) the land has been dealt with without reference to the plan.

2. If the Registrar determines under subsection (1) that a plan has expired, the plan is taken never to have been registered.
• Closure of Government Roads.
• Increased relevance to Land Registration Services (LRS) with the creation of Crown Register.
RMA 2004
• Section 12 deals with Discontinuance of roads.

P & E Act 1987
• Allows council/Minister (Administering RMA) to close and sell unnecessary roads as part of a general planning scheme amendment.
• Similar affect as discontinuance under LGA.
In the Auditor Generals report in 2005 identified concerns relating to Crown Land records, particularly:

- Poor reporting by government agencies of changes to Crown Land records placing government decisions at risk.
- An inability to provide a reliable picture of Crown Land responsibilities across agencies lead to ineffective management of the State’s assets.
- A lack of confidence in available information resulted in increased cost for all interested stakeholders.

Over ensuing months and years the most appropriate Crown recording system was explored, then on the 13th August 2016 the Crown Land Register went live.
• It is hoped that in the not too distance future that a Government Road Parcels Capture Project will begin.

• The Crown Register/Record is based on the freehold platform and is recorded in VOTS and has an assigned volume and folio reference but is NOT Torrens land.

• The recording method of changes is now based on the ‘endorsement’ system as per freehold and only current information is portrayed on the face of the crown folio.
On LASSI Build Map feature select the property parcel folder and then select parcel (road).

All captured road parcels will have red line boundaries and identified by the letter “G”.
www.propertyandlandtitles.vic.gov.au