



Resource Planning and Development Commission

Planning Advisory Note 17

Subject: **The meaning of the word ‘Road’ and access in s.109 of the *Local Government (Building and Miscellaneous Provisions) Act 1993*.**

Purpose: **To advise on the interpretation the Commission places on the word ‘road’ and provisions for reasonable access when exercising its powers under s.109 of the *Local Government (Building and Miscellaneous Provisions) Act 1993*.**

Background

Section 109 of the *Local Government (Building & Miscellaneous Provisions) Act 1993* (the Act) sets standards for minimum lots for subdivision, including requirements for frontage and vehicle access to a road. In certain cases, unless the relevant planning scheme or interim order provides otherwise, the Resource Planning and Development Commission may, at the request of a Council, approve a lot that does not have all the required qualities to be minimum lot.

Interpretation of “road”

A “road” is defined in Section 3 of the Act as

- (a) *any land subject to a right of way for wheeled vehicles; and*
- (b) *any land which obviously appears to be regularly used for the passage of wheeled vehicles; and*
- (c) *any land made ready to be regularly so used, together with any adjoining path.*

Notwithstanding the definition of “road” in the Act, the references to roads in s.109 of the Act are interpreted by the Commission to be references to public roads.

In the Commission’s opinion, for a road to be a public road, it must be a highway over which the public ordinarily have a right of access. A broader interpretation of the definition, in the Commission’s view, is likely to result in difficulties: private roads could be closed arbitrarily or licences to use Crown land could cease or be withdrawn with the result that land without access to a public road could become land locked or inaccessible.

The Commission’s interpretation of road in s.109 of the Act is consistent with the interpretation of Evans J of the Supreme Court in *R v West Tamar Council; ex p Phillips* [1999] TASSC 107, at 18 (20 October 1999) and the Resource Management and Planning Appeal Tribunal in *N Noye v Tasman Council* [2004] TASRMPAT 263, at 6 (9 November 2004).

Planning Advisory Notes are prepared by the Resource Planning and Development Commission to explain statutory provisions and provide guidance to planning authorities and others on the operation of the planning system.

The Commission will therefore only grant approval to lots having frontage or access to a public road or roads when exercising its powers under s.109 of the Act.

Access

Subsection 109(1)(f) of the Act provides that, unless the relevant planning scheme or interim order provides otherwise, a minimum lot is to have:

- (f) *in any building area, reasonable vehicular access from the carriage-way of a road to a boundary.*

The Commission considers reasonable vehicular access means a vehicle crossing constructed to the boundary of the lot from the carriageway of a made public road, being either a State highway or highway under local management as defined in the *Local Government (Highways) Act 1982*. The vehicle crossing must be located and constructed in accordance with the requirements of the responsible highway authority and must, as a minimum, address the following matters:

- Adequate sight distance to provide safety for vehicles, cyclists and pedestrians using both the access and the highway; and
- Suitable carriageway width for the traffic likely to use the access, including fire trucks (appliances) in bush-fire prone areas; and
- Safe and convenient grades; and
- All weather construction; and
- Means of drainage.

When approving a lot as part of a subdivision in accordance with Part 3 of the Act, a planning authority must ensure that every lot has reasonable access in accordance with the above provisions.

Further Information

Relevant legislation may be viewed at <http://www.thelaw.tas.gov.au>.

Information on road authority requirements should be sought from the Department of Infrastructure, Energy and Resources in the case of State roads and the municipal Council in the case of local roads.

For further information, contact:

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