



ACCOUNTING FOR LAND UNDER ROADS

INTRODUCTION

The recognition and valuation of “land under roads” has been a vexed question ever since the promulgation of Australian Accounting Standard AAS 27 *Financial Reporting for Local Governments* in 1991. Various transitional provisions, culminating in AASB 1045 *Land Under Roads: Amendments to AAS 27A, AAS 29A and AAS 31A* have extended the period for the recognition of “land under roads” until the end of the first reporting period ending on or after 31 December 2007¹.

ED 156 *Proposals Arising from the Short-term Review of the Requirements in AAS 27, AAS 29 and AAS 31* proposes a new standard AAS 10XY which will terminate the existing transitional provisions and requires any adjustment on recognition to be made direct to equity. We will address these requirements later in this paper.

THE NATURE OF LAND UNDER ROADS

“Public Highways” Land

We contend that there is a significant difference between “land under roads” that is freehold land, and “land under roads” that has been declared² to be “public highways”³ land.

In each jurisdiction there is a particular mechanism prescribed for the declaration of land to be for the purposes of a “public highway”. So far as we can ascertain - and we are not lawyers - the relevant legislation is as follows:

NSW	Roads Act 1993
NT	Control of Roads Act
Qld	Transport Infrastructure Act 1994
SA	Roads (Opening and Closing) Act 1991
Tas	Highways Act 1951
Vic	Road Management Act 2004

1. The most recent amendment to AASB 1045 was made by the Australian Accounting Standards Board on 5 October 2006, and extended the transition period from 31 December 2006 to 31 December 2007.
2. Using whatever mechanism is prescribed by the relevant legislation.
3. We use the term “public highways” land as a generic term for all land where members of the public have the right to pass and repass at will, irrespective of the specific term used in the different jurisdictions. We use the term “private road” to refer to any road where members of the public **DO NOT** have the right to pass and repass at will.

The opinions expressed in this data sheet are the professional views of the authors and are intended to promote the development of improved accounting practices in Local Government.

They may not represent the best practice for your Council, which should be determined by consultation between the Council's officers and Auditor.

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WA Land Administration Act 1997

The NSW Roads Act 1993 (section 5) states:

(1) A member of the public is entitled, as of right, to pass along a public road (whether on foot, in a vehicle or otherwise) and to drive stock or other animals along the public road.

(1A) The right conferred by this section extends to the right of passage of members of the public in a light rail or other railway vehicle.

(2) The right conferred by this section does not derogate from any right of passage that is conferred by the common law, but those rights are subject to such restrictions as are imposed by or under this or any other Act or law.

The Queensland Transport Infrastructure Act 1994 includes in its definition of a road⁴:

- (d) (i) an area of land dedicated to public use as a road; or
- (ii) an area that is open to or used by the public and is developed for, or has as 1 of its main uses, the driving or riding of motor vehicles; or
- (iii) a bridge, culvert, ferry, ford, tunnel or viaduct; or
- (iv) a pedestrian or bicycle path; or
- (v) a part of an area, bridge, culvert, ferry, ford, tunnel, viaduct or path mentioned in sub paragraphs (i) to (iv).

The Tasmanian Highways Act 1951 refers to a public right to pass and repass over land for a road, street or other kind of highway:

4. (1) The Crown, or any authority empowered to take land for a road, street, or other kind of highway, may, in lieu of taking land, acquire for the public the right to pass and repass over the land by the same process and form, as nearly as may be, as that by which it may take land.

The Victorian Road Management Act 2004 contains a number of provisions pertinent to this discussion: "public highway" means any area of land that is a highway for the purposes of the common law;

"public road" means a public road within the meaning of section 17⁵;

8.(1) A member of the public is individually entitled as of right to pass along a road.

(2) Members of the public are generally entitled as of right to pass along a road.

(3) The rights conferred by this section extend to a member of the public using any means of public transport along a road.

(4) The rights conferred by this section do not derogate from any right of passage conferred by the common law.

(5) Rights of passage conferred by this section or at common law are subject to any restrictions, limitations or conditions which may be specified by or under this Act or any other Act or law.

9. (1) An owner or occupier of any land which adjoins a road is entitled as of right to access the road from that land.

(2) Rights of access conferred by this section or at common law are subject to any restrictions, limitations or conditions which may be specified by or under this Act or any other Act or law.

10. The rights of the public whether under this Act or at common law in relation to a public highway can only be extinguished if the public highway is discontinued as a road in accordance with section 12 or discontinued as a road or permanently closed as a road under a power to discontinue or permanently close a road conferred by or under any other Act.

The Western Australian Land Management Act 1997 likewise refers to land *declared* for the passage of persons and vehicles:

4. Schedule 6 - Dictionary, definition of "road".

5. Road Management Act 1994, section 3, Definitions.

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“road” means, subject to section 54, land dedicated at common law or reserved, declared or otherwise dedicated under an Act as an alley, bridge, court, lane, road, street, thoroughfare or yard for the passage of pedestrians or vehicles or both;⁶

We have not been able to quickly locate equivalent sections in the Northern Territory or South Australian legislation, but both refer to “public roads” as if it has a settled legal meaning - which we would assume confers a right to any member of the public to pass and repass - and both provide a specific procedure for conferring those rights on the public.

The Western Australian Land Management Act 1997 provides a useful definition of a “private road”:

“private road” means alley, court, lane, road, street, thoroughfare or yard on alienated land, or a right of way created under section 167A(1) of the TLA, which —

(a) is not dedicated, whether under a written law or at common law, to use as such by the public; and

(b) is shown on a plan or diagram deposited or in an instrument lodged with the Registrar, and which —

.....⁷

We therefore contend that there are significant differences between *freehold land*, where the owner - or a person authorised by the owner - has the power to control access, and *public highway land*, where members of the public have the right to pass and repass at will.

DECLARATION OF “PUBLIC HIGHWAY” LAND

Each of the pieces of legislation listed above prescribes one or more procedures⁸ for the “opening” of a public road (i.e. conversion of other land (which may or not be freehold) to *public highway land*), and for the conversion of *public highway land* to *freehold land*⁹.

None of the legislation restricts this procedure to land recently acquired by a roads authority¹⁰ and land long held by a roads authority, or the Crown, may be converted to *public highway land* at any time.

We therefore argue that the conversion of land to or from *public highway land* is a transaction separate from the acquisition of the land, and that it should be accounted for as such.

CONTROL OF LAND UNDER ROADS

Freehold Land Under (Private) Roads

The fact that a road has been constructed on freehold land does not change the nature of the title to the land, and the owner, or a person authorised by the owner, is entitled to regulate access. We understand that where the right to regulate access is not exercised for a period of time, common law presumes a public right to pass and repass, and this is specifically referred to in the NSW, Queensland and WA legislation quoted above.

However, until such presumption is made, the rights and benefits of freehold title attach to the land.

6. Land Management Act 1997, section 3 Interpretation.

7. Land Management Act 1997, section 3 Interpretation.

8. Which may be simply the registration of a plan of sub-division showing the land as a public road.

9. In some jurisdictions, the *closure of a public road* automatically converts the land to Crown land, which can then be converted to freehold land and sold.

10. We use this term to refer to any authority (including Councils) responsible for the construction and maintenance of public roads. It is also used to refer to any authority with the power relating to the disposition of Crown lands.

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Public Highway Land Under Roads

This question was examined in detail by the AASB Land Under Roads Working Party in their Discussion Paper *The Recognition and Measurement of Land Under Roads* and the majority conclusion was as follows:

The majority Working Party view is that, for an entity recognising roadworks as assets, land under roads meets the definition of assets for that entity. Land under roads is essential to the provision of road services and provides future economic benefits together with those roadworks. Accordingly, the Working Party view is that neither legal impediments to the sale or redeployment of land under roads (for example, legislative restrictions over Crown Land) nor legally enforceable rights of adjoining property holders of access to that land prevent the entity that controls roadworks from:

- (a) benefiting from the land under those roads in the pursuit of its objectives; or*
- (b) having the capacity to deny or regulate the access of others to the benefits embodied in that land.*

While we largely concur with their conclusions, we note the following points:

1. We place emphasis on the words “for an entity recognising roadworks as assets”.
2. The “legally enforceable rights ... of access to that land” extends not only to adjoining owners, but to any member of the public. The ability of the roadworks authority to deny or regulate access is limited, and largely occurs in conjunction with roadworks construction - when it is controlled as a work-site - or for special occasions, which are for limited periods of which due public notice must be given.

3. Other than for these purposes, a member of the public is entitled to pass and re-pass along the public highway. If the member of the public is using a motor vehicle, the person must also comply with the relevant Road Traffic Act, or if using some other conveyance, in accordance with the relevant legislation, but the roadworks authority cannot deny the passage.
It is usually the roadworks authority that has the responsibility for the care and control of the entire area of public highway land, including areas not directly forming part of the roadworks construction. It is under this responsibility that such authorities are able to prevent the taking of wood, soil or other materials from, or the unauthorised construction of works on, the public highway land. Again, as we understand it, the authority is unable to prevent access to the land - they are merely entitled to protect the land.

We certainly agree that, other than the roadworks authority, there is no person better able to:

- (a) benefit from the land under those roads in the pursuit of its objectives; or
- (b) deny or regulate the access of others to the benefits embodied in that land.

We agree with the view of the Working Party that public highways land under roads qualifies for recognition as an asset for entities recognising roadworks as assets.

REQUIREMENTS OF THE ACCOUNTING STANDARDS

AASB 116 *Property, Plant and Equipment* provides:

15. An item of property, plant and equipment that qualifies for recognition as an asset shall be measured at its cost.

Aus15.1 Notwithstanding paragraph 15, in respect of not-for-profit entities, where an asset is acquired at no cost, or for a nominal cost, the cost is its fair value as at the date of acquisition.

7. The cost of an item of property, plant and equipment shall be recognised as an asset if, and only if:
 - (a) it is probable that future economic benefits associated with the item will flow to the entity; and
 - (b) the cost of the item can be measured reliably.¹¹

11. AASB 116 paragraphs 16ff discusses the components of the cost of an asset.

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Cost is the amount of cash or cash equivalents paid or the fair value of the other consideration given to acquire an asset at the time of its acquisition or construction or, where applicable, the amount attributed to that asset when initially recognised in accordance with the specific requirements of other Australian Accounting Standards, for example, AASB 2 Share-based Payment.¹²

Fair value is the amount for which an asset could be exchanged between knowledgeable, willing parties in an arm's length transaction.¹³

We therefore argue that public highways land must be recognised at cost, or where acquired by a not-for-profit entity at no or nominal cost, at its fair value at the time of acquisition.

Further, where the *fair value model*¹⁴ is adopted for recognition after measurement, public highways land must be periodically revalued at *fair value*.

THE FAIR VALUE OF LAND UNDER ROADS

Fair Value Generally

AASB 116 includes the following discussion on the determination of fair value:

32. The fair value of land and buildings is usually determined from market-based evidence by appraisal that is normally undertaken by professionally qualified valuers. The fair value of items of plant and equipment is usually their market value determined by appraisal.

33. If there is no market-based evidence of fair value because of the specialised nature of the item of property, plant and equipment and the item is rarely sold, except as part of a continuing business, an entity may need to estimate fair value using an income or a depreciated replacement cost approach.

Fair value must therefore determined from

- (a) market-based evidence,
- (b) income based calculation¹⁵, or
- (c) depreciated replacement cost.

Freehold Land Under (Private) Roads

As stated above, the fact that an area of freehold land supports a road does not alter the rights and entitlements of the owner. There is a viable and active market for the sale and lease of freehold (and leasehold) land, and there is sufficient market evidence available for professionally qualified valuers to be able to reliably measure.

Accordingly, we are of the view that freehold land under roads should be recognised at cost of acquisition, and where the *fair value model* is adopted, recognised after acquisition at fair value based on the market in freehold land.

Public Highway Land Under Roads

In relation to the determination of public highway land under roads, certain difficulties present themselves.

1. There is no established market for the sale and transfer of "public highway" land. All "public highway" land has been subject to *dedication* in accordance with the relevant jurisdictional legislation

12. AASB 116 paragraph 6 *Definitions* "cost"

13. AASB 116 paragraph 6 *Definitions* "fair value"

14. AASB 116 paragraph 31ff.

15. i.e. based on the present value of estimated future revenues to be generated by the asset.

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at or after acquisition. All former “public highway” land subsequently sold to private persons has been converted to some other class of land **before disposal**.

There is therefore no market-based evidence against which a *fair value* can be assessed, for all assessment methods that rely on a market value, including the ‘en globo’ method preferred by the AASB Land Under Roads Working Party.

2. With the possible exception of toll roads, public highways do not directly generate any income.

The right of a Council to levy rates on its ratepayers, part of which is subsequently expended for the construction and maintenance of public highways, cannot be considered to be the direct generation of income for these purposes. As this paper is directed to providing assistance to local government officers, we consider that the discussion in relation to toll roads is not germane to our purposes¹⁶.

Because no income is directly generated, an income calculation is not possible.

3. It may be possible to calculate the cost of acquisition of alternative land to replace the land currently located under a public highway. However, such cost must be necessarily be based on the cost of freehold land, not public highway land, and in our view would be akin to obtaining a valuation for sheep on hand by reference to cattle prices.

We are inclined to accept the arguments of real estate agents that on current time scales “they have stopped making new land”, and that therefore land that now exists cannot be replaced.

We are therefore of the view that an attempt to use replacement cost would not result in a reliable measurement.

4. We note that where a landowner fails to exercise his rights of control of access, and the land converts to public highway land under common law (see above) no compensation is payable.

Accordingly, we are of the view that there is NO reliable basis of measurement of public highway land.

As a result, we submit that public highways land is an asset that qualifies for recognition, but that it cannot be reflected in the Balance Sheet as there is no reliable basis of measurement. We consider it essential that a road making authority maintain proper records of all public highway land under its control, but that no amount be attributed to it¹⁷.

We discuss the disclosures that we consider to be appropriate below.

Proposed AASB 10XY *Land under Roads*

The *Basis for Conclusions* forming part of ED 156 *Proposals Arising from the Short-term Review of the Requirements in AAS 27, AAS 29 and AAS 31*, includes the following paragraph:

BC22 The Board notes that in respect of not-for-profit entities, consistent with AASB 116, where land under roads is acquired at no cost, or for a nominal cost, for initial recognition purposes cost is fair value as at the date of acquisition. AASB 116 requires the cost of an item of property, plant and equipment to be recognised as an asset if, and only if, the cost of the item can be measured reliably. This would require land under roads acquired at no cost or for a nominal cost to be

16. However, we suggest that any revenue generation by land under toll roads would be no more than the residue after deduction of revenue generation by the road structure, and may be more akin to a rental on otherwise unalienated Crown lands. The question as to whether toll roads are *public highways* also needs to be examined.

17. In this regard, we can see no difference between a Public Highway Land Register and a Key Register, which must be maintained in order to maintain control over entitlements to access an entity’s assets, but the costs of the keys recorded in the Register is similarly not reflected in the Balance Sheet.

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recognised if, and only if, its fair value as at the date of acquisition can be measured reliably. Given the length of time since land under roads may have been acquired, the Board notes that such a criterion may not be met. Where that is the case, the Board concluded that such land under roads should not be required to be recognised and measured at current fair value. Accordingly, application of the recognition criteria in AASB 116 may result in the non-recognition of land under roads acquired at no cost or for a nominal cost.

While we welcome the Board's conclusion that "AASB 116 may result in the non-recognition of land under roads acquired at no cost or minimal cost" - *we would prefer the term recognition at Nil value* - in our view it fails to address some key issues:

- Land acquired in the past, other than for no cost or for a nominal cost, but for which it is impractical to determine the actual cost of the transaction due to the effluxion of time or for other reasons.
- The implied situation where current acquisitions of land are recognised at cost (being, in the case of acquisitions at no cost or for a nominal cost, the fair value at the time of acquisition) but earlier acquisitions are recognised at Nil value. (This would result in, say, the City of Sydney recognising all of its roads at Nil value, but Councils in developing areas recognising land under public highways for material amounts.)

We welcome the Board's conclusion that "such land under roads should not be required to be recognised and measured at current fair value".

The proposed standard does not address (it is not its purpose) the difficulty - in our view the impossibility - of reliably attributing a current fair value to public highway land.

ACCOUNTING FOR "PUBLIC HIGHWAY" LAND

Purchase
The cost of the acquisition of the land - usually freehold - land is recorded in accordance with paragraphs 16ff of AASB 116.

Other Acquisition
The cost of the acquisition of the land - usually minor - is recorded in accordance with paragraphs 16ff of AASB 116.

Conversion to Public Highway Land

The transaction completed by the road authority in converting the land from its previous title form (most commonly freehold) to public highway land may be viewed as -

- (a) the disposal of the land in its previous title form for no or nominal consideration, and
- (b) the acquisition of public highway land for no or nominal consideration.

Accordingly, a loss equal to the carrying value of the land in its previous title form would be recognised, and the public highway land would be recognised at its fair value (which cannot be reliably measured, and is therefore NIL)¹⁸.

Alternatively, we are of the opinion that the conversion of (freehold) land to public highway land would be sufficient to require an assessment of the asset for impairment, pursuant to paragraph 9 of AASB 136 *Impairment of Assets*.

18. Note that this entry would be identical in the case where a landowner fails to exercise his rights of control of access, and the land converts to public highway land under common law, except that the former freeholder would not control title to the public highway land.

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9. An entity shall assess at each reporting date whether there is any indication that an asset may be impaired. If any such indication exists, the entity shall estimate the recoverable amount of the asset.

The *recoverable amount* of an asset or a cash-generating unit is the higher of its fair value less costs to sell and its value in use.¹⁹ And as we have already determined, the fair value of public highway land is not reliably measurable, and is therefore NIL.

Conversion from Public Highway Land

So far as we are aware, conversion of public highway land to some other form of title **always precedes** its sale (which may or may not be by the roads authority making the conversion).

The transaction completed by the road authority in converting the land from public highway land to another form of title may be viewed as -

- (a) the disposal of the public highway land for no or nominal consideration, and
- (b) the acquisition of land in another title form for no or nominal consideration. (In some jurisdictions, this second transaction does not occur, as the lands revert automatically to the Crown on conversion.)

As the carrying value of the public highway land is NIL, there is no loss on disposal to be reported. In relation to the acquisition (if any), the accounting treatment depends on the proposed future of the land.

If the land is to be retained by the roads authority and used for other purposes, AASB 116 paragraph Aus15.1 (quoted above) requires that it be recognised at fair value. Where there is an established market for land with that form of title - which certainly exists for freehold land - a reliable estimate of fair value can be ascertained. The fair value of the land would be recognised as income and disclosed as *physical assets acquired at no or nominal cost*.

If the land is to be sold in the short term²⁰, we are of the view that AASB 5 applies.

We consider that AASB 102 Inventories does not apply because this land would not meet the criterion of being held for sale in the ordinary course of business²¹. We view the ordinary business of a road authority as the construction and maintenance of roads, not the disposal of roads.

AASB 5 *Non-current Assets Held for Sale and Discontinued Operations* prescribes that "an entity shall measure a non-current asset (or disposal group) classified as held for sale at the lower of its carrying amount and fair value less costs to sell."²²

The carrying amount would be, at most, the costs incidental to the conversion of the public highway land to the other form of title.

Sale

A gain on disposal would be recognised for the difference between net sales proceeds and carrying value.

DISCLOSURE

Given that we have reached the conclusion that a road authority should recognise public highway land under its control, but that it cannot be reliably measured, we consider it to be appropriate that disclosure be made of the following:

19. AASB 136, paragraph 6 *Definitions*, "recoverable amount".

20. And in some jurisdictions, this is a pre-requisite of the conversion process.

21. AASB 102 paragraph 6 *Definitions* "inventories"

22. AASB 5 paragraph 15.

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1. The length (or area) of public highway land under the control of the road authority, with separate disclosure by different road categories or construction treatments on a voluntary basis.
2. A statement that, in the opinion of the road authority, it is not possible to reliably measure the fair value of public highway land.

In the case of freehold land under roads, disclosure of the basis of valuation is already required by AASB 116, and separate disclosure of the valuation basis (if different from other freehold land) would only be appropriate where the amount is material.

INVITATION TO COMMENT

We invite comments from any source in relation to the suggested guidelines set out in this data sheet.

Ultimately, the procedures used, and disclosures made, by any Council are the responsibility of the Council in consultation with its Auditor. We trust that the information provided in this data sheet is of assistance to you in making your decisions.

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