

LAKE AVENUE RESUBDIVISION OF LAND

1° AND 2° GEO. VI., No. XXXVI.

No. 36 of 1937.

AN ACT to constitute a public street at Shenton Park, Subiaco, to be known as Lake Avenue, and to effect a resubdivision of the lands fronting the said street, and for other incidental purposes.

[Assented to 18th January, 1938.]

Preamble.

WHEREAS certain lands situated at Shenton Park, Subiaco, as delineated and shown on plan No. 1819 at the Land Titles Office, Perth, abut on the south boundary of a road called Lake Avenue as appears upon the said plan and abut upon a right-of-way at the rear of such blocks as also appears on the said plan: And whereas also at the rear of such blocks is a public reserve No. A8630, which is vested in the Subiaco municipality for recreation purposes: And whereas the said reserve is known as "Shenton Park," on which is a lake known as Shenton Park Lake: And whereas it is the intention of the Subiaco municipality to effect certain improvements to the said reserve, and it is the opinion of the said municipality that such improvements cannot be advantageously effected, unless a public street runs along the northern boundary of the said reserve: And whereas the said municipality is also of opinion that the amenity of the district will be improved by the said blocks being reversed and made to front Shenton Park Lake and the

proposed new public street: And whereas the said lands now fronting Lake Avenue as per the said deposited plan are all approximately thirty-three feet frontages: And whereas the municipality is of the opinion that the said frontages are too small for building purposes and is desirous of resubdividing the said land (as far as possible) and increasing the size of the blocks which the municipality is of opinion will also add to the amenity of the district: And whereas it is desirable and expedient to enable the municipality to give legal effect to its desire to constitute the said new road and effect a resubdivision of the said lands: Be it therefore enacted by the King's Most Excellent Majesty, by and with the advice and consent of the Legislative Council and Legislative Assembly of Western Australia in this present Parliament assembled and by the authority of the same, as follows:—

1. This Act may be cited as the *Lake Avenue Resub- Short title.*
division of Land Act, 1937. This Act shall come into operation on a date to be fixed by proclamation.*

2. In this Act, unless the context otherwise requires— Definitions.

“Municipality” means the Subiaco municipality.

“Registrar” means the Registrar of Titles under the Transfer of Land Act, 1893.

“Titles Office” means the Office of Land Titles at Perth.

3. Plan No. 1819, deposited in the Titles Office, is hereby cancelled, in so far as it relates— Old plan 1819 cancelled, etc.

(1) to the land shown and delineated thereon marked brown and edged in carmine and called “Lake Avenue”;

(2) to the land shown thereon coloured brown and called “right-of-way,” except the right-of-way which has already been dedicated as part of Excelsior street shown on the said plan;

(3) to all those pieces of land, being lots 28 to 40 both inclusive, lots 40A and 40B and lots 41 to 54, both inclusive.

Lake Avenue and the said right-of-way are hereby closed, and all rights over the same shall cease on the passing of this Act.

* Proclaimed to commence 14th March, 1938 (see *Gazette*, 18th March, 1938).

Existing
diagrams
cancelled.

4. Diagrams Nos. 10357, 10358, 10359, and 10360, deposited in the Titles Office, and any other diagrams which may be deposited in the said Titles Office before the coming into operation of this Act which subdivide or seek to subdivide any of the lands referred to in section three (3) of this Act are hereby also cancelled.

Divesting
of lands.

5. The respective proprietors of the whole of the lands referred to in subsections (1), (2), and (3) of section three or referred to in section four hereof are hereby divested of their respective titles to the said land. The respective certificates of title relating to the land referred to in section three (3) hereof and section four hereof are hereby cancelled, and the Registrar is hereby directed and required to cancel the originals of such titles accordingly and to enter a memorandum to that effect on the said titles in the Register Book.

Liability of
owners for
rates and pay-
ment of en-
cumbrances
not affected.

6. Notwithstanding the divesting of the said land and the cancellation of the said titles as aforesaid—

- (1) all rates, taxes, and assessments charged, assessed, or levied upon the said land prior to the commencement of this Act shall, both with respect to arrears and/or the period or periods of assessment current at the commencement of this Act, still remain payable by and recoverable from the respective owners of such lands, notwithstanding the cancellation of such titles;
- (2) the personal liability of the respective mortgagors under any mortgage registered against any of the said lands as at the commencement of this Act, or under any equitable mortgage, charge, or encumbrance, shall remain unprejudiced, and all moneys now or hereafter due under any such mortgage, legal or equitable, shall be recoverable by the respective mortgagees from the respective mortgagors, notwithstanding the cancellation of the said titles.

Plan 5790
substituted
for plan 1819.

7. In lieu of such portion of deposited plan No. 1819 and the said diagrams as by this Act are cancelled, plan No. 5790, already received by the Titles Office (but not yet accepted as a deposited plan), is substituted, and the Registrar is hereby required and directed to give effect to the partial cancellation of plan No. 1819 and the can-

cellation of the said diagrams as aforesaid, and upon the requirements of section eighteen of this Act being fulfilled, to forthwith accept and approve of the said plan No. 5790 as a deposited plan in lieu of such partially cancelled plan and cancelled diagrams.

8. (a) The land shown and delineated as Lake Avenue on the said plan 5790 is hereby dedicated as a road for the purpose of section two hundred and twenty-one of the Municipal Corporations Act, 1906, and vested in the municipality accordingly.

Dedication of
Lake Avenue;
alteration of
plan.

(b) The lands shown and delineated as "r.o.w." and right of way respectively on the said plan 5790 are hereby dedicated as public rights of way and vested in the municipality for an estate in fee simple in possession.

9. Upon written application, to be made by the municipality to the Registrar forthwith after the commencement of this Act, the Registrar shall issue a new certificate of title (original and duplicate) under the provisions of the Transfer of Land Act, 1893, for an estate in fee simple in possession in favour of the person whose name, address, and description is set forth in the first column to the schedule for each piece of land set forth opposite his or her name in the third column to the said Schedule, in lieu of the land set forth opposite his or her name in the second column to the said Schedule. Provided always, that if any of the persons whose names are set forth in the said first column to the said Schedule have prior to the commencement of this Act by transfer duly registered under the provisions of the Transfer of Land Act, 1893, transferred the land owned by him or her and set forth in the second column of the said Schedule, or if any of the said land shall have been otherwise legally transferred by any other means or transmitted under the provisions of the Transfer of Land Act, 1893, into any other name, then the Registrar shall issue such new certificate of title in favour of the transferee or successor in title of such person or persons. The Registrar shall issue to the registered proprietor a new certificate of title for the balance of the land (lot 15) in certificate of title volume 1026, folio 733.

New certifi-
cates of title
to be issued.

10. Any person in possession of any certificate of title evidencing the title to any land set forth in the second column to the Schedule shall, upon receiving

Old certifi-
cates of title
to be returned
to Titles Office.

written notice from the Registrar, deliver up to him such certificate of title, which shall thereupon be marked as cancelled by the Registrar and retained by him.

Delivery of
new certifi-
cates of title
by the Regis-
trar.

11. The duplicates of the new certificates required to be issued by the Registrar shall only be delivered or sent by the Registrar to the same persons respectively as shall have delivered up the cancelled certificates of title to the Registrar in respect of which such new duplicate certificate of title has been issued. If any cancelled certificate of title shall not be delivered up to the Registrar, then the relative duplicate new certificate of title shall only be delivered or sent by the Registrar to the person claiming to be legally entitled thereto, upon proof satisfactory to the Registrar, supported by statutory declaration, substantiating such claim and accounting for the non-production or inability to produce the cancelled certificate of title. Pending the delivery or sending of any new duplicate certificate of title under the provisions of this section, no dealing by the registered proprietor of the land comprised in any new certificate of title shall be accepted by the Registrar.

Encumbrances
to be carried
forward to
new titles.

12. Each new certificate of title shall have indorsed thereon by the Registrar as an encumbrance under the same date of registration and under the same registration number the same registered mortgages, charges, encumbrances, or caveats or dealings as those indorsed upon the cancelled title to the respective lands set out in the said second column to the said Schedule in respect of which the said new certificate of title shall be issued, and such encumbrances shall operate and take effect according to their tenor in all respects as if originally affecting the land comprised in the new certificate in lieu of the land comprised in the cancelled certificate and with the same priorities as existing immediately prior to the commencement of this Act, and the land the subject of the said new certificate of title shall be deemed to be and is hereby mortgaged, charged, or encumbered accordingly, and the Registrar is hereby required and directed to make the necessary amendment to the original of such mortgages or other encumbrances, notwithstanding the non-production of the duplicates thereof, and upon production to him of the duplicate of any such registered encumbrances to likewise make the necessary amendment.

13. Any person in possession of any duplicate registered mortgage or other encumbrance over any of the land set forth in the second column to the Schedule shall upon receiving written notice from the Registrar deliver up to him such duplicate mortgage or encumbrance, upon which the Registrar shall make the necessary amendments as required by the last preceding section.

Registered instruments of mortgage to be delivered up for amendment.

14. The Registrar shall, upon effecting the said amendments to the duplicate mortgages or other encumbrance, deliver or send the same only to the same persons respectively as shall have delivered up the said duplicate mortgages or other encumbrances to the Registrar, and if any of the said mortgages or other encumbrances have not been delivered up to the Registrar, then no dealing thereon or therewith shall be accepted by the Registrar unless or until the same is delivered up to the Registrar, or the inability so to do explained by the registered proprietor or person legally entitled thereto to the satisfaction of the Registrar and supported by statutory declaration.

Return of mortgages after amendment.

15. The lands comprised in each new certificate of title shall be deemed to be subject to the same equitable mortgages, charges, and encumbrances and to the same statutory charges and liens as those appertaining at the commencement of this Act to the respective lands set out in the second column to the said Schedule in respect of which the said new certificate of title shall be issued.

Equitable interests to onure as against new titles.

16. In addition to the express powers hereby conferred upon the Registrar, he is hereby directed and required to make such entries and indorsements on all original and duplicate certificates of title, mortgages, and other encumbrances, and on all plans and diagrams, and on all other documents, as shall in the opinion of the Registrar be necessary and proper to give effect to the provisions of this Act.

Registrar to make all other entries necessary.

17. All fees payable to the Registrar to give effect to the provisions of this Act shall be payable by the municipality.

Municipality to pay fees.

18. The Board under the Town Planning and Development Act, 1928, is hereby directed and required, upon application being made in that behalf, to approve

Town Planning Board to approve plan.

of the said plan of subdivision No. 5790, and thereupon the said plan shall be forthwith accepted as a deposited plan No. 5790 by the Registrar of Titles.

No compensa-
tion payable
to interested
parties.

19. No person shall have any claim or demand upon the municipality, or upon His Majesty's Government, or upon the assurance fund constituted under the provisions of the Transfer of Land Act, 1893, or upon any person, or be entitled to receive any compensation consequent upon being divested of his or her land under the provisions of this Act and the issue to him or her of a new certificate of title as aforesaid.

THE SCHEDULE.

Name, Address, and Description.	Registered Proprietor of undermentioned Lots, all as shown on Deposited Plan 1819.	Land for which new Title to be issued, as shown on Plan 5790.
William Hepburn, of Broken Hill, in the State of New South Wales, confectioner	Lot 28, certificate of title volume 235, folio 130	Lot 16
John Augustine Moore Shelley, of Morgan street, Broken Hill, New South Wales	Lot 29, certificate of title volume 236, folio 67	Lot 15
Frederick Walter Flood, of 21 Hopetoun terrace, West Subiaco, painter	Lots 30 and 31, certificate of title volume 1046, folio 379	Lot 14
Colin Anderson, of 49 Evans street, Shenton Park, builder	Lots 32 and 33, certificate of title volume 1054, folio 602	Lot 13
Rupert Lindsay Connor, of 4 Commercial Bank Chambers, Perth, freeholder	Lots 34 and 35, part of land in certificate of title volume 1026, folio 733	Lot 12
Anthony Joseph Bush, of 251 Nicholson road, Subiaco, signwriter	Lots 36 and 37, certificate of title volume 1050, folio 285	Lot 11
Colin Anderson, of 49 Evans street, Shenton Park, builder	Lots 38, 39, and part of lot 40 (diagram 10360), certificate of title volume 1050, folio 624	Lot 10
Colin Anderson, of 49 Evans street, Shenton Park, builder	Lot 40A and part of Lot 40 (diagram 10359), certificate of title volume 1050, folio 625	Lot 9

THE SCHEDULE—*continued.*

Name, Address, and Description.	Registered Proprietor of undermentioned Lots, all as shown on Deposited Plan 1819.	Land for which new Title to be issued, as shown on Plan 5790.
Colin Anderson, of 49 Evans street, Shenton Park, builder	Lot 40B and part of lot 41 (diagram 10358), certificate of title volume 1050, folio 626	Lot 8
Colin Anderson, of 49 Evans street, Shenton Park, builder	Lot 42 and part of lot 41 (diagram 10357), certificate of title volume 1050, folio 627	Lot 7
Leonard Henry Pottier, of 19 Stirling highway, Claremont, bus driver	Lot 43 and part of lot 44, certificate of title volume 1049, folio 587	Lot 6
Ernest Edward Rose, telephone mechanic, and Lilian May Rose, married woman, both of Lake avenue, Subiaco	Lot 45 and part of lot 44, certificate of title volume 1049, folio 839	Lot 5
Winifred Alice Kernutt, of Tavistock street, Wagin, widow	Lot 46, certificate of title, volume 475, folio 195	} Lot 4
Winifred Alice Kernutt, of Tavistock street, Wagin, widow	Lot 47, certificate of title volume 618, folio 107	
Edward Nairn Roberts, of Coodardy station, Cue, squatter	Lots 48, 49, 50, and 51, certificate of title volume 470, folio 155	Lots 1, 2, and 3
Gerald Balding and Frank Balding, both of Railway road, West Subiaco, builders, as tenants in common	Lot 52, certificate of title volume 432, folio 127	Lot 17
Martin Patrick Dunne, of 175 Onslow road, Subiaco, customs clerk	Lot 53, certificate of title volume 359, folio 9	Lot 18