

## Local Government Act

A. R. Bluett ESQ.

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The President announced that apologies for unavoidable absence had been received from Messrs. J. H. Cardew, F. L. Alexander, J. E. Proust, Victor J. Waine, F. Chapman, W. A. Chadwick, M. C. Faviell, E. Kenny and Thos. H. Rose.

The Chairman stated that the Council had approved of the nomination of

**Oswald Henry Little,  
John McGregor Macara, and  
Vincent Joseph Roche,**

as Members, and

**George Alexander Harrison**

as an Associate Member.

Messrs. H. G. Foxall and T. G. Wilson, Jr. were appointed scrutineers, and on their report

**Thomas William Watson**

was elected a Member, and

**Geoffrey Ansell Robin**

an Associate Member.

Mr. A. R. Bluett, Secretary, Local Government Association, of New South Wales, delivered an address on "Roads and Subdivisions under the Local Government Act." He prefaced his remarks by saying he was glad of the opportunity of removing a misapprehension which existed in the minds of many, that the Councils had little power in connection with the laying out of roads, and in the matter of subdivision of land. He stated that the Councils had very real powers, and that the Supreme Court in the numerous cases that had come before it, had shown a disposition to interpret the laws as much in favour of the Councils as possible. Mr. Bluett dealt very fully with some of the intricate portions of the law.

At the conclusion of the address Mr. L. A. Curtis moved a hearty vote of thanks to the lecturer, which was supported by Mr. S. R. Dobbie, and carried unanimously.

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## Local Government Act.

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*Address delivered at a Meeting of the Institution of Surveyors, N.S.W., Tuesday, April 21st, by A. R. BLUETT, Esq., Secretary Local Government Association, on Roads and Subdivisions under the Local Government Act.*

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The lecturer began his address by a short resumé of the various Acts relating to Roads, and the methods by which they can be opened. He explained that the laws dealing with roads have been built upon a mass of Common Law, dating back for a great number of years, quoting cases from the 18th century.

Owing to the fact that the whole community can be regarded as having a right to the use of a road, Mr. Bluett pointed out that it was inconceivable that every person interested in a road should express or imply consent to its use for other purposes, and accordingly, that

there could be no such thing as adverse possession against a road once it has been opened as a public highway. The case *Vickery v. Strathfield* recently published in "The Surveyor," was quoted as an example in which, although a certificate of title clearly included the land under dispute, it had been used and improved as a road, and consequently the right of the Council to it was upheld.

There are three principal methods by which a road can be opened—

1. By the Crown.
2. By a private individual.
3. By user.

The case where a road is opened by the Crown through Crown lands needs no comment.

#### ROADS OPENED BY A PRIVATE INDIVIDUAL.

This is done by dedication expressed or implied, and the dedication can be performed in two ways—

(a) By instrument of dedication, *followed by act on the part of the public*. The lecturer gave it as his opinion that mere dedication by instrument was not sufficient to imply public ownership, *i.e.*, if the public made no use of the land by improvement, traffic, or otherwise, it might be subsequently withdrawn.

(b.) By subdivision and sale. A subdivision is not to be held effective for this purpose until it is actually offered for sale.

#### IMPLIED DEDICATION.

Dedication is implied by the owner concurring in the public use. The right must be exercised without hindrance for a certain period. This period is not definite. In England a continuous use for six years is held to be sufficient to imply dedication, but the opinion has been expressed by an Australian Judge that in a new country like this it would be unwise to allow so short a period to suffice. Each case is accordingly dealt with on its merits.

An interesting point on which there appears to be some doubt is whether a lessee can effect dedication against the owner of the fee simple.

In case of a dispute as to whether a piece of land forms part of a road provision is made under the Act for a Council to have proclamation made that the land is a public road, whereupon any interested parties have a certain time in which to lodge objections, when the case is decided in a competent Court. This, in the lecturer's opinion constitutes an invaluable test by means of which it can be decided whether the land in dispute is really entitled to be regarded as a roadway, and he expressed his surprise that it is not more often used.

It was pointed out that the rights of a Council to a road only cover the surface, together with sufficient depth below to carry out their requirements in the way of sewers, drains, etc., and sufficient height above to provide for traffic regulations. An instance was cited of a case in a certain town where electric light wires were stretched across the street from house to house without reference to the Council.

If the Crown subdivides and leaves a road the ownership of the actual land to an indefinite depth under the road remains vested in the Crown. In a private subdivision ownership is a matter of evidence

and proof of title being wanting, the rights to the actual soil are considered as being vested in the owners on each side of the road up to the centre thereof.

It was decided in the case *Concord v. Coles* that the Council had not sufficient interest in the road to empower it to lodge a caveat against a Real Property application. This was, however, amended in 1908.

Although the Councils are empowered by law to "Alter or increase the width of a road," the rights of the public to a road once opened are considered so sacred that it is considered that the word "alter" cannot be construed as giving the Council power to decrease the width of a road.

If a Council desire to alter the levels of a road the new levels must be advertised and any objections *heard*. There is no obligation on the Council to defer to any objections, nor is it liable to pay compensation for any decrease in the value of the property consequent on the adoption of the new levels, provided it acts without negligence and without reckless disregard of private rights.

With regard to the claims that can be made by a Council, it is provided in the Act that in the event of a deadlock between a subdividing owner and a Council, an appeal can be made to a District Court Judge, who will summon witnesses, hear evidence, and determine the matter, having regard to the circumstances of the case *and to the public interest*. Under this provision it is to be assumed that the Judge's verdict will be as a rule favourable to the Council, as representing the public interest, unless the demands made are altogether unreasonable.

It is considered that a Council has a right to ask with regard to a subdivision, that the roads therein should fit in with the existing scheme of roads in the municipality, and that as far as formation is concerned they should be left in such a condition that the Council shall not be put to any additional expense in bringing them up to local standard.

Referring to the practice of giving a Council a sum of money with which to construct the road, it was pointed out that the Council has no authority under the Act to accept such a sum, unless the transaction be regarded as the giving and subsequent forfeiting of a security for the work being carried out.

Among other duties the Council is required to see that *due ways of access* are provided in a subdivision to the front and rear of any buildings erected thereon. It is held that the interpretation of the expression "due ways of access" lies entirely with the Council, and that, for example, if a Council decided that a lane was necessary for "due access" to the rear of certain allotments, a building covenant providing for a space to be left between the fences and the nearest buildings would not necessarily be accepted as sufficient, but the lane could be insisted on.

In conclusion, Mr. Bluett expressed his regret that there should be any friction between the Councils, who were doing their best for the public, on one side, and the surveyors, who were upholding the interests of their clients on the other, and hoped that in the reconstruction of the Act now under contemplation some means of reconciling the two parties might be found.