

3.1: PROPOSED RE-ALIGNMENT OF PALMDALE ROAD RESERVE

Land Description	: Lot 5949 No 2425 Palmdale Road, Palmdale
Proponent	: City of Albany
Owner	: Johnson (Perpetual Lessee of Crown Lease 351/1966)
Attachment(s)	: Map: <ul style="list-style-type: none">• Drawing no 14512-01A
Responsible Officer	: Executive Director Works & Services (K Ketterer)

IN BRIEF

- Approval to re-align the Palmdale Road reserve to reflect the current alignment of the road, as a portion has been constructed outside of the dedicated road reserve.

ITEM 3.1: RESPONSIBLE OFFICER RECOMMENDATION

THAT Council:

- i) **SUPPORTS** the Taking by Agreement, under section 168 of the *Land Administration Act 1997*, of a 1.57ha portion of land from Lot 5949 No 2425 Palmdale Road, Palmdale, which is the current alignment of Palmdale Road (refer Drawing No 14512-01A);
- ii) **SEEKS** the Minister for Lands approval, under section 58 of the *Land Administration Act 1997*, to close a 1.65ha portion of Palmdale Road reserve, as shown in Drawing No 14512-01A) and the amalgamation of this closed road with the adjoining Lot 5949 No 2425 Palmdale Road, Palmdale;
- iii) **SEEKS** approval under Section 168 of the *Planning & Development Act 2005* to dedicate the 1.57ha portion of land to be taken from Lot 5949 No 2425 Palmdale Road, Palmdale, as a public road, through the lodgement of a subdivision application;
- iv) **INDEMNIFIES** the Minister for Lands from any claims for compensation, as is required under Section 56 of the *Land Administration Act 1997*; and
- v) **AUTHORISE** staff to forward the required applications to the Minister for Lands and the Western Australian Planning Commission without the need for a further item to Council, should there be no objections received.

ITEM 3.1: RESOLUTION (Responsible Officer Recommendation)

MOVED: COUNCILLOR SUTTON

SECONDED: COUNCILLOR WELLINGTON

THAT the Responsible Officer Recommendation be ADOPTED.

**CARRIED 10-0
ABSOLUTE MAJORITY**

CEO:

RESPONSIBLE OFFICER:

BACKGROUND

1. Palmdale Road serves the South Stirling rural communities and plays an important connecting role onto the South Coast Highway and Main Road network. The road is partially surfaced with the remainder gravelled.
2. A portion of the road has been constructed outside the official cadastral road reserve and is irregularly occupying Crown reserve land in perpetual lease. This report is the first stage in regularising this situation.

DISCUSSION

3. The adjoining land is Crown Land held in Perpetual Lease by Johnson. Both the lessees and Elders Rural Bank Ltd, the holders of the mortgage for the land, have provided written consent to surrender the land.
4. The consent of the Perpetual Lessees for the surrender of the land has been granted without the need for a financial payment of compensation, as the area of land that will be amalgamated with Lot 5949 Palmdale Road is greater than the area to be excised. This meets the requirements for a Taking by Agreement under section 168 of the *Land Administration Act 1997*.
5. The Department of Regional Development and Lands have advised that there are a number of other interests in Lot 5949 Palmdale Road, including a Profit a Prendre, Caveat and Sub-lease, however these interests do not apply to the portion of land affected by the proposed road reserve re-alignment. The advice of this agency states that the consent of the other parties with an interest in the land is not required.
6. The re-alignment of the Palmdale Road reserve includes closure of the 1.65ha road reserve that is no longer required and amalgamating the closed road reserve with the surrounding Lot 5949 Palmdale Road.
7. In addition, a 1.57ha portion of Lot 5949 Palmdale Road which is the location of the constructed road will be excised and dedicated as a public road.

PUBLIC CONSULTATION / ENGAGEMENT

8. Sections 56 and 58 of the *Land Administration Act 1997* set the procedure for dedicating and closing roads. It is a requirement of the Act that the proposed road re-alignment be advertised in a local newspaper for a period not less than 35 days. Notification will also be sent to neighbouring landowners and to relevant public utility service providers.

GOVERNMENT CONSULTATION

9. The proposal has been discussed with the Department for Regional Development and Lands, as it is this agency that will process the road closure request. They have not raised any objections to the proposal, provided that all requirements of the *Land Administration Act 1997* and *Planning and Development Act 2005* are addressed.

10. Public utility service providers must be contacted as part of the consultation process and invited to comment on the proposal.

STATUTORY IMPLICATIONS

11. Section 56 of the *Land Administration Act 1997* provides that, where land is acquired for use by the public as a road, the local government may request the Minister for Lands to dedicate that land as a road. In doing so, the Local Government must indemnify the Minister against any claim for compensation.
12. Section 58 of the *Land Administration Act 1997* allows the local government to request the Minister for Lands to close a road. This section specifies the public consultation processes that must be observed prior to the submitting the request to the Minister.
13. Section 168 of the *Land Administration Act 1997* sets the procedure for acquiring land for public works through a Taking by Agreement. Part 10 of the Act states that every person having an interest in land taken under the Act is entitled to compensation, however the Act does allow for non-monetary compensation i.e. the transfer of property.
14. The creation of a road occurs through the subdivision process detailed under Part 10 of the *Planning and Development Act 2005*. Section 168 of this Act states all land shown on a diagram or plan of survey of a subdivision shown as a new road or road widening will be dedicated as a road.

FINANCIAL IMPLICATIONS

15. The re-alignment of the Palmdale Road reserve will include costs to Council which will be funded from the 2010/11 land acquisition budget and are estimated to be in the order of \$7,000. Sufficient funds are available for this purpose.
16. There will be no costs to Council for the road or fencing works, as they are already in place, and a non-monetary compensation agreement has been negotiated with the affected lease holders.

STRATEGIC IMPLICATIONS & ALIGNMENT TO CORPORATE PLAN

17. This item directly relates to the following element from the Albany Insight – Beyond 2020 Corporate Plan:

“4. Governance.....

4.2 Manage our municipal assets to endure they are capable of supporting our growing community.”

POLICY IMPLICATIONS

18. Not Applicable.

ALTERNATE OPTIONS & LEGAL IMPLICATIONS

19. There are not considered to be any alternate options in this circumstance. The City must ensure that the public works for which they are responsible are held in appropriate land tenure.

SUMMARY CONCLUSION

20. The proposed re-alignment of the Palmdale Road reserve will be effected to reflect the current construction of the road. The adjoining leaseholders have provided their written consent to a Taking by Agreement in exchange for the transfer of the land that will be created by the road closure. Council's resolution to enact the closure and road dedication processes is sought to meet the requirements of the *Land Administration Act 1997* and the *Planning & Development Act 2005*.

Consulted References	Land Administration Act 1997 Planning and Development Act 2005
File Number (Name of Ward)	RD.ACQ.1 (All Wards)