

5.2: PROPOSED RELEASE OF UNALLOCATED CROWNLAND AND CLOSURE OF A RIGHT OF WAY IN YOUNG SIDING (VERSION 2)

- Land Description** : Lots 11 – 24, 35, 36 and 38 Knapp Street, Youngs Siding
- Proponent** : Department of Regional Development and Lands
- Owner** : Crown
- Attachments** : Map 1 – Cadastral Information Only
Map 2 – Extract from Town Planning scheme No 3 showing Land Zoning
Map 3 – Map Indicating Nature of Land Tenure, Produced by Department of Regional Development and Lands
- Responsible Officer(s)** : Executive Director Works and Services (K Ketterer)

IN BRIEF

- The Department of Regional Development has sought Council’s support to release unallocated Crown land and to close a right of way in Youngs Siding, allowing the resultant land to be amalgamated with the adjoining residential lots. In addition, two separate 1.5 hectare lots are also proposed to be released for sale as individual land titles.

**ITEM 5.2: RESPONSIBLE OFFICER RECOMMENDATION
VOTING REQUIREMENT: SIMPLE MAJORITY**

THAT Council advise the Department of Regional Development and Lands of the following:

- i) Council **SUPPORTS** the closure of the public right of way between Knapp Street and Station Road, Youngs Siding, under section 58 of the *Land Administration Act 1997*, conditional upon the Department being responsible for observing all procedures required and any costs incurred by this action;
- ii) Council **SUPPORTS** the release of the unallocated Crown land contained in Lots 11 to 24 and 38 Knapp Street, Youngs Siding, subject to the following conditions:
 - a. The resultant land be amalgamated with the adjoining freehold titles fronting Station Road, Youngs Siding;
 - b. A notification be placed on title advising that the re-subdivision of the land will not be supported by the City of Albany;

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CEO:	RESPONSIBLE OFFICER:
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- c. A notification be placed on the title advising that the subject land has the potential for inundation and risks associated with the disturbance of acid sulphate soils. Any development on the created lots would require the landowner to demonstrate that these risks can be satisfactorily managed, to the City of Albany's satisfaction, prior to any development occurring;
 - d. A notification be placed on title to establish a minimum finished floor level of 0.3 metres above ground level for any building development that might occur to minimise flood risk;
 - e. The area of the existing right of way shall be included in an easement in favour of the City of Albany for drainage purposes; and
 - f. As the development of this land will alter water movement in the area, drainage works are recommended to define current drainage watercourses and assist the movement of ponded water into drainage reserves. The City objects to being responsible for the costs associated with these works.
- iii) Council **DOES NOT SUPPORT** the lease or sale of Lots 35 and 36 Knapp Street, Youngs Siding, until such time as a geotechnical report by the Department of Regional Development and Lands has been prepared to determine whether the land can support a dwelling and any associated effluent disposal systems and outbuildings.
- iv) **THAT** Lots 35 and 36 Knapp Street, Youngs Siding do not currently have constructed road access and that portion of Knapp Street that is constructed does not meet the City's standards or specifications. The City does not have any plans to upgrade or construct the remainder of Knapp Street. If this land was to be released for sale, the upgrading and extension of this road by the current owner is recommended.

BACKGROUND

1. The Department of Regional Development and Lands has been approached by four adjoining landholders in the Youngs Siding townsite to purchase the unallocated Crown land adjoining their properties. In response to this request, the Department has considered all of the unallocated Crown land in the townsite. The subject land involves Lots 11 to 24 and Lots 35, 36 and 38 Knapp Street and will impact on a total of 13 private landowners.
2. It is understood that the four residents who have approached the Department of Regional Development and Lands would like to use this land to extend garden areas, secure rear access and possibly construct additional outbuildings.

3. This process would involve the alienation of the subject land from the Crown to create freehold title, so that they may then be offered for sale and/or amalgamation with adjoining titles. It is envisaged that Lots 35 and 36 Knapp Street would be sold as separate land titles.
4. The Department of Regional Development and Lands has requested comment from Council on the following matters:
 - a. Whether the subject Lots 35 and 36 could be considered for sale or leasing, given their Rural zoning under Town Planning Scheme No 3;
 - b. Whether the residential lots, being Lots 11 to 24 and 38, could be considered for sale on the proviso that composting toilets only are required to address effluent disposal concerns; and
 - c. Whether the right of way on the eastern side of Lots 11 to 24 and 38 can be closed to accommodate the amalgamation of the crown reserves with existing freehold lots.
5. Staff had previously considered this initial request from the Department of Regional Development and Lands. On that occasion, based on concerns regarding the low lying nature of the land and effluent disposal issues, the City requested a geotechnical report to determine the land's capability. It was recommended that such reporting should be undertaken prior to any release of the land to ensure future purchasers had a realistic expectation of the land's potential.
6. In response to this request, the Department of Regional Development and Lands advised that even if these land parcels were amalgamated with adjacent lots they would only marginally be above 2000m² and therefore could not support any additional dwellings and subsequent effluent disposal systems under the Country Sewerage Policy, which permits a density of one dwelling per 2000m².
7. The Department also acknowledged that, if the amalgamation was permitted, any prospective purchasers would need to be advised that the future re-subdivision of the resultant lots would not be considered. This position was supported by the Department of Planning, who suggested that an additional notification could be placed on the title which advises landowners that there is a potential for inundation and risk from the disturbance of acid sulphate soils and that any development on the amalgamated portions of the land would require the landowner to demonstrate that these risks can be satisfactorily managed.
8. The proposed right of way closure will facilitate the amalgamation of the unallocated Crown land with the existing freehold titles fronting Station Road. It is likely this public right of way was created as part of the original townsite as a potential access or servicing lane to the adjoining lots.

DISCUSSION

9. Staff have investigated the Department for Regional Development and Lands' request and found that the land in question is subject to inundation. The Department for Planning has also noted risks associated with the disturbance of acid sulphate soils.

10. The amalgamated lots will only be marginally larger than 2000m², bringing the lots into compliance with the Country Sewerage Policy. Further subdivision and/or a second dwelling could not be supported under this Policy as it specifies a minimum area of 2000m² per dwelling for land not serviced by a reticulated sewerage system. Interested residents have expressed a desire to use the adjoining land parcels in conjunction with their current residence for gardens, rear access and outbuildings.
11. The vacant Lots 35 and 36 Knapp Street are currently zoned Rural under Town Planning Scheme No 3 and have an approximate area of 1.5 hectares each. It is recommended that the Department for Regional Development and Lands undertakes a geotechnical survey of these lots prior to their release to determine whether the land is capable of accommodating a dwelling, an associated effluent disposal system and large outbuildings which are typically found on such lots.
12. It is further noted that Lots 35 and 36 Knapp Street do not currently have constructed road access and the portion of Knapp Street that is constructed does not meet the City's standards or specifications. If the land was to be sold as individual freehold titles, which is possible given their size of 1.5 hectares each, the question of who would be responsible for the construction of this road would arise. There are no plans at this time to upgrade or construct the remainder of Knapp Street.
13. The Lots 11 to 24 and 38 Knapp Street displays a low relief and is a poorly draining landscape. The land is subject to high water tables and is seasonally waterlogged. This will impact on the future development of the land and it is recommended that a minimum finished floor level of 0.3 metres above ground level be established for any development in order to reduce building flood risk.
14. The public right of way is not currently constructed. There is limited drainage constructed within the right of way and this drainage provides a reduced drainage function to move water away from lots fronting Station Street. If the right of way was to be closed and amalgamated with adjoining land, the City would want to maintain access to the area within the right of way for drainage purposes. As such, it is recommended that the land encompassed within the right of way be accommodated in an easement in favour of the City for drainage purposes.
15. The further development of the subject lots is likely to impact on water movement in this locality and onto the adjoining road. Excavated drainage would be required to intercept ponding water and provide a hydraulic gradient to move water to drainage channels that should be constructed in the road reserve. It is recommended that the Department for Regional Development and Lands be advised that the development of this land will alter water movement in the area and drainage works are recommended to define current drainage watercourses and assist the movement of ponded water into drainage reserves. As the Department will financially benefit from the sale of this land, it is further recommended that this Department pays for these necessary works.

16. Staff would be supportive of the request to close the right of way and release the unallocated Crown land, currently zoned Residential, to allow amalgamation with the adjoining freehold titles, subject to the conditions noted above and the following notifications being placed on title:
 - a. The re-subdivision of the lots will not be supported by the City of Albany; and
 - b. There is a potential for inundation and risks associated with the disturbance of acid sulphate soils. Prior to any development of the resultant lots occurring or being approved, the landowner must demonstrate that these risks can be satisfactorily managed to the satisfaction of the City of Albany.

GOVERNMENT CONSULTATION

17. Whilst the Department for Regional Development and Lands is the government agency responsible for the request, all other public utilities would be consulted and their comments included in any assessment of the proposal. This is specifically relevant to the proposed right of way closure.

PUBLIC CONSULTATION/ENGAGEMENT

18. The request has been initiated by the Department of Regional Development and Lands, on behalf of four adjoining landowners. Should Council support the request, the Department will be required to consult with the remaining nine landowners as is required by the provisions contained in Part 6 of the *Land Administration Act 1997*.
19. Section 58 of the *Land Administration Act 1997* sets the procedure for closing roads, the definition of which includes a public right of way. It is a requirement of the Act that the proposed right of way closure 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. As the Department of Regional Development and Lands is initiating this request, it would be that Department's responsibility to observe the advertising requirements of the Act.

STATUTORY IMPLICATIONS

20. The *Land Administration Act 1997* defines a road as “*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.*” This definition includes public rights of way.
21. 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 submitting the request to the Minister, including a minimum notification period of 35 days from the date of advertising in a newspaper circulating in the district.

22. Section 87 of the *Land Administration Act 1997* provides the Minister for Lands the power to convey in fee simple or lease Crown land for subsequent amalgamation with adjoining land, wherever that Crown land is considered unsuitable for retention as a separate location or lot because of its geographical location, potential use, size, shape or any other reason based on good land use planning principles.

STRATEGIC IMPLICATIONS & ALIGNMENT TO CORPORATE PLAN

23. 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.”

24. Table 5 contained within the Albany Local Planning Strategy recommends a no growth scenario for the Youngs Siding townsite. The proposal is in line with this strategy.

POLICY IMPLICATIONS

25. There are no policy implications relevant to this item.

RISK IDENTIFICATION & MITIGATION

26. The risk identification and categorisation relies on the City’s Risk Management Framework.

Risk	Likelihood	Consequence	Risk Rating	Mitigation
Sale of the land is supported without conditions for infrastructure improvement	Possible	Moderate	Medium	Advise Department of Regional Development and Lands of conditions of Council’s support

FINANCIAL IMPLICATIONS

27. There would be no financial implications for Council, as any proceeds from the sale of the closed right of way and the unallocated Crown land would go to the State Government and not Council. As the subject land is currently unallocated Crown land, the land management costs are met by the Crown

ALTERNATE OPTIONS & LEGAL IMPLICATIONS

28. Council has the following options in relation to this proposal:
- a. The proposed release of the unallocated Crown land and the closure of the right of way to allow amalgamation of the resultant land into the adjacent freehold titles can be supported. In this scenario, the Department of Regional Development and Lands would then progress the advertising and notification procedures required under the Land Administration Act 1997; or
 - b. The request may be declined.

SUMMARY CONCLUSION

29. As the subject Lots 11 to 24 and 38 are less than 2000m², they are not considered suitable for development under the Country Sewerage Policy. The right of way does contain a drainage function which must be retained in an easement on any future amalgamated titles. Further, drainage and road upgrading works would be appropriate prior to the release of the land for sale. The amalgamation of this land into the adjoining lots for use by the adjacent titleholders appears to be a reasonable use of the subject land. As such, the proposal is supported, subject to the conditions mentioned in the discussion section of the report.
30. With regard to Lots 35 and 36 Knapp Street, there are sufficient concerns about the capability of this land to sustain development that further investigation is considered necessary prior to any decision being made on their release for sale as individual land parcels. It is noted that these lots do not currently have constructed road access and Council does not have any plans to construct the remainder of this road.

Consulted References	Land Administration Act 1997 Planning and Development Act 2005
File Number (Name of Ward)	RD.RDC.2 & GR.STL.39 (All Wards)