

**5.2: PROPOSED RE-ALIGNMENT OF FRANCIS ROAD – REQUIREMENTS TO BE OBSERVED FOR ROAD CLOSURE**

<b>Land Description</b>	: Francis Road Reserve and Lots 1, 2, 6, 500, 501 and 3729 Francis Road, Lowlands
<b>Proponent</b>	: City of Albany
<b>Owners</b>	: Road Reserve – Crown; Lot 1 – L Walsh; Lot 2 – A & K King; Lot 6 – J Anderson & D Byers; Lot 500 – D & G Clarke; Lot 501 – P Gibbons & B Martino; Lot 3729 – L Henson
<b>Attachment(s)</b>	: Diagrams depicting road re-alignment and changes to adjoining properties (prepared by Denmark Survey & Mapping, received on 22 September 2006)
<b>Responsible Officer(s)</b>	: Executive Director Works and Services (K Ketterer)

**IN BRIEF**

- Council has been advised by the Department for Regional Development and Lands that certain requirements of the *Land Administration Act 1997* for the re-alignment of Francis Road have not been observed, including an appropriate Council resolution and public advertising of the proposed road closures. Council’s resolution is now sought to fulfil these legislative requirements.

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

**THAT Council, subject to receiving no objections:**

- i) **SEEKS** the Minister for Lands approval, under section 58 of the *Land Administration Act 1997*, to permanently close portions of Francis Road, as depicted in the plans prepared by Denmark Survey & Mapping received on 22 September 2006;
- ii) **SEEKS** the Minister for Lands approval, under section 56 of the *Land Administration Act 1997*, to dedicate the proposed sections of Francis Road reserve, as depicted in the plans prepared by Denmark Survey & Mapping received on 22 September 2006, as a public road;
- iii) **INDEMNIFIES** the Minister for Lands from any claims for compensation, as is required under Section 56 of the *Land Administration Act 1997*; and
- iv) **AUTHORISE** the Chief Executive Officer to forward the required information to the Minister for Lands without the need for further referral to Council, should there be no objections received during the legislatively required advertising period;

CEO:	RESPONSIBLE OFFICER:
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**BACKGROUND**

1. In response to concerns raised by an adjoining landowner in 2004, the City determined that parts of Francis Road were constructed outside of the dedicated road reserve through freehold land. The owners raised concerns about public liability if an accident was to occur on private land.
2. The alignment of Francis Road was investigated and preliminary negotiations were held with affected landowners. At its meeting held on 19 December 2006, Council supported the officer's recommendation to re-align Francis Road, as follows:

*"That Council, in accordance with Section 56 of the Land Administration Act of 1997;*

- i) Proceed with Francis Road, Lowlands becoming a dedicated public road with the associated land resumptions and road closures required.*
  - ii) Delegate authority to Damien Morgan to negotiate with the landowners of Francis Road, Lowlands to proceed with Francis Road dedication.*
  - iii) Reallocate funds for the associated legal costs required with the dedication of Francis Road, Lowlands at the quarterly budget review."*
3. Since Council's December 2006 resolution, the following actions have occurred:
    - a. Surveys were undertaken and plans prepared detailing the road closures and land resumptions;
    - b. Negotiations were undertaken with some landowners that had concerns with the proposal with agreement eventually reached between all parties;
    - c. The written consent of all affected landowners was obtained to proceed with the road closure and land resumption process;
    - d. Valuations were obtained for the land to be transferred to Council;
    - e. Caveats were lodged on all freehold titles, registering Council's interest in the land and allowing the payment of the agreed monies to affected landowners;
    - f. Some works were undertaken on site, in accordance with landowner agreements and payment of compensation monies was made;
    - g. Consultation has occurred with all of the servicing agencies;
    - h. An application for subdivision / amalgamation was lodged with the Western Australian Planning Commission. Approval for the proposed re-alignment was granted on 19 January 2010;

- i. The conditions of subdivision approval were addressed, deposited plans were created and the final clearance of the Western Australian Planning Commission was obtained;
  - j. The deposited plans were lodged at Landgate on 13 July 2010 and they are now awaiting processing; and
  - k. Applications were initiated to remove the caveats on title and create new land titles.
4. It is recognised that there was a significant delay between the initiation of the process in December 2006 and the lodging of the subdivision application in late 2009. This delay was likely due to both administrative oversights and staff changes throughout the period.
  5. Following on from the subdivision approval and clearance of the subdivision conditions received on 6 August 2010, the proposal was then forwarded to the Department for Regional Development and Lands for finalisation. The Department is now responsible for completing the re-alignment of the Francis Road Reserve.

## **DISCUSSION**

6. On 19 April 2011, the City received correspondence from the Department for Regional Development and Lands advising that the previous resolution of Council was not appropriately worded to comply with the requirements of the *Land Administration Act 1997*. Further, the proposed road closures that form part of the re-alignment of Francis Road have not been advertised in accordance with the provisions of Section 58 of the *Land Administration Act 1997*.
7. Council's resolution from 19 December 2006 makes reference to Section 56 of the *Land Administration Act 1997*, which are the provisions that relate to the dedication of road reserves. While the re-alignment of Francis Road does include dedication of new road reserves, it also includes the closure of portion of the existing road reserve. Accordingly, reference should be made to Section 58 of the *Land Administration Act 1997*.
8. Section 58 of the *Land Administration Act 1997* requires that, in order to close a road, the proposal must be advertised for a period of 35 days in a local newspaper. While the proposal was referred to government servicing agencies for comment, it was not advertised as legislatively required. This must occur before the Minister for Lands will consider the closure of portion of Francis Road.

## **GOVERNMENT CONSULTATION**

9. In May 2008, comments on the proposed re-alignment of Francis Road was sought from the public service provides, including Main Roads WA, Western Power, St John's Ambulance, Water Corporation, Telstra and Fire and Emergency Services.
10. Responses were received from Fire and Emergency Services, Water Corporation and Main Roads WA advising that they had no objections to the proposed re-alignment of Francis Road. No response was received from St John's Ambulance.

11. Both Western Power and Telstra advised that there was infrastructure along Francis Road that may be impacted by the proposal. Both of these concerns have since been addressed and these agencies' requirements have been met.

**PUBLIC CONSULTATION / ENGAGEMENT**

12. The City has referred the proposed re-alignment to adjoining landowners and government servicing agencies. Written agreement has been obtained from all of the adjoining landowners.
13. The City will now advertise the proposed re-alignment as required under section 58 of the Land Administration Act 1997.

**STATUTORY IMPLICATIONS**

14. Section 56 of the Land Administration Act 1997 allows the local government to request the Minister for Lands to dedicate land as a public road.
15. Section 58 of the *Land Administration Act 1997* allows the local government to request the Minister for Lands to close a road.

**STRATEGIC IMPLICATIONS**

16. 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**

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

**RISK IDENTIFICATION & MITIGATION**

18. The risk identification and categorisation relies on the City's Risk management Framework.

<b>Risk</b>	<b>Likelihood</b>	<b>Consequence</b>	<b>Risk Rating</b>	<b>Mitigation</b>
The provisions of the Land Administration Act 1997 are not appropriately addressed.	Unlikely	Moderate – Council has made a significant financial expense to progress this matter.	Medium	To comply with the requirements of the Land Administration Act 1997 by making an appropriately worded Council resolution and advertising the proposal in local newspapers.

### **FINANCIAL IMPLICATIONS**

19. The City of Albany expended approximately \$48,000 in the 2007/08 and 2008/09 financial years for the re-alignment of Francis Road. This expenditure was budgeted in these financial years and provided for the road works undertaken and payment of compensation to the affected landowners.
20. Funds were sourced in the 2009/10 and 2010/11 financial years from the land acquisition budget line item for fees and charges associated with undertaking land surveys, preparation of deposited plans, legal works for the lodging and removing of caveats, making a subdivision application etc.
21. It is envisaged that there will be further fees and charges associated with the Landgate and legal components of creating new titles. There will also be costs associated with advertising the proposal in local newspapers. There are sufficient funds in the 2010/11 land acquisition budget line item for these fees and charges, which are estimated to be in the order of \$5,000.
22. The Department for Regional Development and Lands has also advised that there may be outstanding costs relating to cash differentials and the payment of the goods and services tax for the land exchanged (i.e. the land taken for the new road reserve is greater than the land which is part of the closed road, which is to be included in the adjoining titles). It is understood that this matter is currently being investigated by the Department's lawyers, though it has been estimated that these costs could be in the order of \$9,000. There are also sufficient funds in the 2010/11 land acquisition budget line item for these costs.

### **LEGAL IMPLICATIONS**

23. This item will facilitate compliance with the legislative requirements of the *Land Administration Act 1997*.

### **ALTERNATE OPTIONS**

24. In order to achieve compliance with the provisions of the *Land Administration Act 1997*, there are not considered to be any viable alternate options in this matter.

### **SUMMARY CONCLUSION**

25. The new resolution of Council and advertising the proposed re-alignment of Francis Road will ensure compliance with the *Land Administration Act 1997* and will meet the requirements of the Department for Regional Development and Lands. Council has put considerable time, money and resources into the re-alignment of Francis Road and fulfilment of these last requirements should allow this long standing matter to be finalised.

<b>Consulted References</b>	Land Administration Act 1997 Planning and Development Act 2005
<b>File Number (Name of Ward)</b>	RD.ACQ.1 (West Ward)
<b>Previous References</b>	OCM 19/12/2006 Item 13.7.1