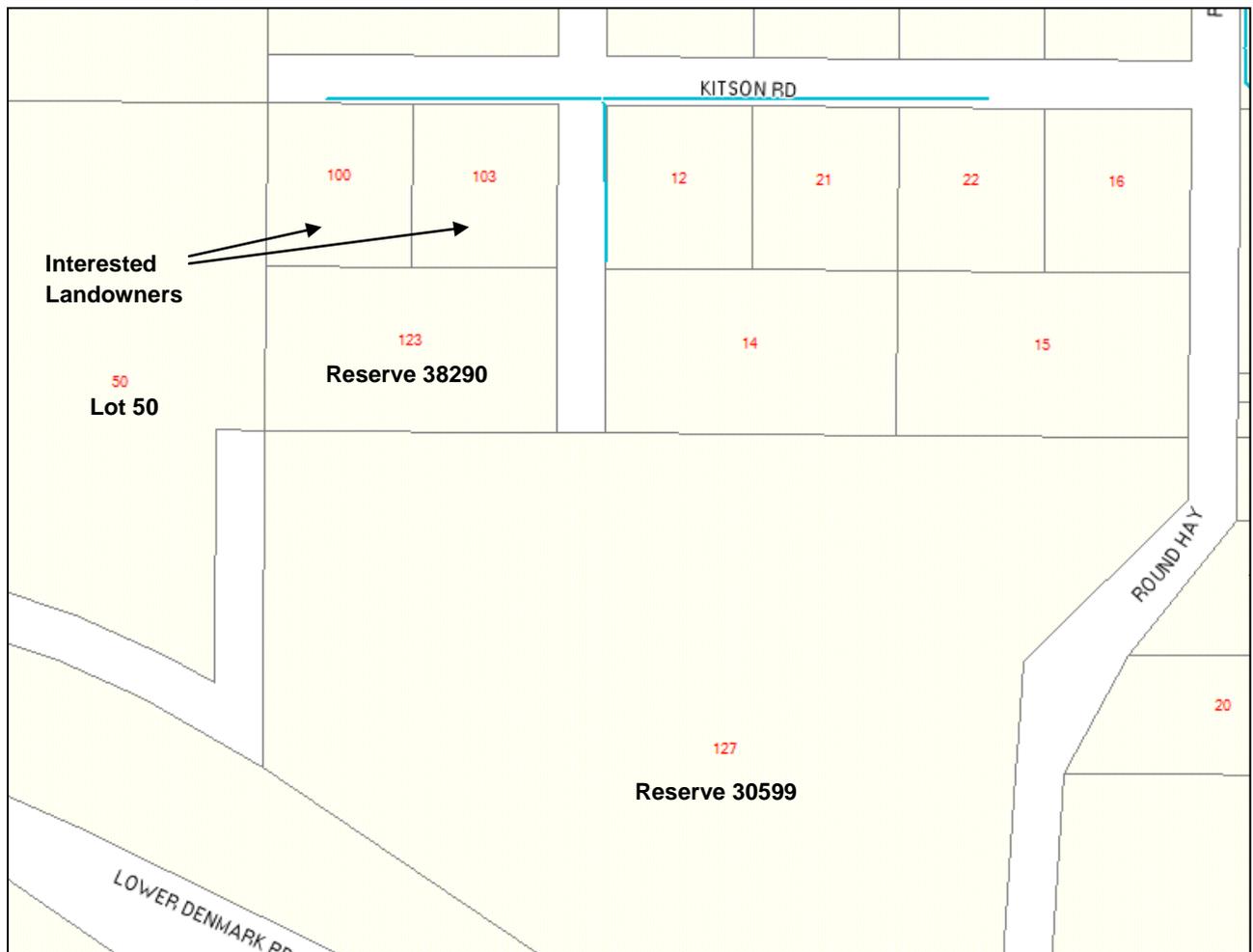


### 4.3: PROPOSED DISPOSAL OF CROWN LAND - RESERVE 38290 LOT 123 GIPTON STREET, GLEDHOW

|                               |  |
|-------------------------------|--|
| <b>Land Description</b>       | : Lot 100 No 37 Kitson Road, Gledhow<br>Lot 103 No 25 Kitson Road, Gledhow<br>Lot 123 No 62 Gipton Street, Gledhow (Reserve 38290) |
| <b>Proponent</b>              | : Department for Regional Development and Lands  |
| <b>Owner</b>                  | : F Burns & S Gorman<br>A & J Goodall  |
| <b>Responsible Officer(s)</b> | : Chief Executive Officer (F James)  |

#### Maps and Diagrams:



#### IN BRIEF

- At the request of the Department for Regional Development and Lands, Council is requested to consider the disposal of Crown Reserve 38290 to the adjoining landowners. This reserve is vested in the City of Albany for the purpose of 'Rubbish Disposal Site'.

CEO:

RESPONSIBLE OFFICER:

**4.3: RESPONSIBLE OFFICER RECOMMENDATION  
VOTING REQUIREMENT: SIMPLE MAJORITY****THAT Council:**

- i) **ADVISE the Department for Regional Development and Lands that it has no objection to the sale of Reserve 38290 Lot 123 Gipton Street, Gledhow to the adjoining landowners, subject to the following conditions:**
- a) **A Memorial being placed on any resultant freehold title advising current landowners and any future prospective purchasers that the land may be contaminated; and**
  - b) **The prospective purchasers of the subject land being advised that the future use and development of the land must comply with the City's Town Planning Scheme and any relevant policies.**
- ii) **AGREES to revoke the Management Order for Reserve 38290 held by the City of Albany, pursuant to section 50 of the *Land Administration Act 1997*.**

**BACKGROUND**

1. The Department of Regional Development and Lands has been approached by the owners of Lot 103 Kitson Road about the potential to purchase the land adjoining their property at Lot 123 Gipton Street.
2. Lot 123 Gipton Street is a designated Crown Reserve (R38290). It was reserved in March 1983 for the Shire of Albany to use as a Rubbish Disposal Site, in conjunction with the adjoining Lot 50, which is owned in freehold title by the Shire (now owned by City of Albany).
3. In investigating the disposal of R38290 Lot 123 Gipton Street, the Department for Regional Development and Lands asked whether this land has ever been used for its designated purpose.
4. City staff has researched the former Shire of Albany records to determine whether the land has ever been used for Rubbish Disposal purposes. It has not been possible to identify whether this use has ever occurred on the land, therefore it is uncertain whether the land is contaminated. It has been noted that the adjoining Reserve 30599 was the Regional Saleyards and is a contaminated site in the City's register.
5. The Department for Regional Development and Lands had asked the City to sign a statutory declaration pursuant to the *Contaminated Sites Act 2003* to clarify the potential contamination of the land. The City advised the Department that, as no information exists on how the land has been used or what contaminants might exist on the land, that it was not possible to sign a Statutory Declaration about its past use.

6. Separate to the issue of the contamination of the land, the Department for Regional Development and Lands has asked the City to determine whether it agrees to the sale of the land, as the Department cannot progress the proposal without the City's consent.
7. The Department for Regional Development and Lands has advised that it has also sought the comments of the adjoining landowner of Lot 100 Kitson Road who may be interested in obtaining a portion of the subject area of land depending on associated costs.

## DISCUSSION

8. Lot 100 and 103 Kitson Street both have existing residences and appear to be used for residential purposes only. It is noted that a single dwelling is designated as an 'A' use in the City of Albany Town Planning Scheme No 3 Table 1 – Zones, which means that it is a use not permitted unless approval is granted by the Council. The appropriate approvals of Council were obtained prior to the construction of these dwellings.
9. In considering the disposal of R38290 Lot 123 Gipton Street, the City has considered and discussed with the owner of Lot 103 Kitson Street the future use of the land. The owner has been advised that the land is zoned 'General Industry' under the City's Town Planning Scheme No 3 and can only be used for the uses permitted under the Scheme.
10. It is noted that Gipton Street is currently unconstructed and any development of R38290 Lot 123 Gipton Street for industrial purposes would require the construction of this road as a condition of development.
11. The owner of Lot 103 Kitson Street has advised that they would like to purchase the land so that more space is available for the construction of an outbuilding and as additional storage space in conjunction with their existing residence. They do not propose to operate any business from this property at this time.
12. With regard to the issue of the possible contamination of the land, the Department for Regional Development and Lands are currently seeking legal advice on placing a Memorial on title to advise of the potential for the land to be contaminated. This is a matter for the Department to resolve and does not require any action by the City.
13. While it is noted that the land is reserved for Rubbish Disposal purposes, it is noted that there would be a number of constraints to developing the land for this purpose. In particular, there are four residential properties within 100m of Lots 50 and 123. The minimum recommended buffer for landfill sites to sensitive uses (including residences) is 150m (as specified by the Department for Environment and Conservation). There are no plans by the City to use or develop this reserve for waste disposal purposes.

## GOVERNMENT CONSULTATION

14. This matter was initiated by the Department for Regional Development and Lands as a result of a public query from the owners of Lot 103 Kitson Road. The City has consulted with the Department throughout the process of investigating the disposal of the subject land. No other government agency has been contacted.

## PUBLIC CONSULTATION / ENGAGEMENT

15. This matter has been initiated by a private landowner. Both the City and the Department for Regional Development and Lands have discussed the matter with the owner Lot 103 Kitson Road. The Department has also been in contact with the owner of Lot 100 Kitson Road. No other surrounding owners have been contacted, though it is noted that majority of the surrounding properties are under the ownership or management of the City of Albany.

## STATUTORY IMPLICATIONS

16. Section 50 of the *Land Administration Act 1997* allows the Minister for Lands to revoke a management order for a Crown Reserve where the management body agrees that it should be revoked. The City of Albany is the management body for the subject reserve.
17. Section 74 of the *Land Administration Act 1997* allows the Minister for Lands to sell Crown land.
18. Table 1 of the *City of Albany Town Planning Scheme No 3* sets out the land uses that are permitted in a General Industry zone. In this table, a single dwelling is specified as an 'A' use, which means it is a use only permitted with the approval of Council.

## STRATEGIC IMPLICATIONS

19. This item relates directly to the following elements of the City of Albany Strategic Plan (2011-2021)

### **Key Focus Area**

Organisational Performance

### **Community Priority**

Policy and Procedures

### **Proposed Strategies**

Develop clear processes and policies and ensure consistent, transparent application across the organisation.

The Albany Local Planning Strategy maintains that the subject land and surrounding area will continue to be set aside for Industry purposes (Map 9B). Clause 5.3.1 of the Albany Local Planning Strategy provides the planning objective for existing industrial sites, as follows:

*"To maintain the sustainable use of existing industrial sites."*

The sale of the land is consistent with the strategic directions sets by the Albany Local Planning Strategy, provided that the future development of the land is consistent with the Town Planning Scheme provisions for the General Industry zone.

**POLICY IMPLICATIONS**

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

**RISK IDENTIFICATION & MITIGATION**

21. The risk identification and categorisation relies on the City's Risk Management Framework.

| <b>Risk</b>   | <b>Likelihood</b> | <b>Consequence</b>   | <b>Risk Analysis</b> | <b>Mitigation</b>   |
|---|-------------------|--|----------------------|---|
| Council does not support the sale of the land to adjoining landowners and the land remains in the management of the City. | Possible          | Insignificant – This land is not regularly maintained, so it would have little impact if it was to remain under the City's management. | Low                  | Council supports the sale of the unused Crown Reserve to adjoining landowners and reduces the amount of land required to be maintained by the City. |

**FINANCIAL IMPLICATIONS**

22. Beyond staff time involved in organising land matters, there are no financial implications relevant to this item. The Department for Regional Development and Lands will be responsible for the actions associated with the disposal of the land.

**LEGAL IMPLICATIONS**

23. The only legal implication associated with the sale of the land is if the owner purchases contaminated land without being duly advised. In the circumstance where an owner buys contaminated land without being notified of such, the owner could make a claim for compensation against the Crown.

24. As it cannot be clearly identified whether the land has been contaminated or not, the Department for Regional Development and Lands is proposing to place a Memorial on title to advise the current owner and any prospective purchasers that the land has potentially been contaminated. In this case, the landowner would have no potential to make a claim for compensation against the Crown.

**ALTERNATE OPTIONS**

25. Council can:

- a) Not support the sale of R38290 Lot 123 Gipton Street and the land will remain under the care, control and management of the City of Albany; or
- b) Support the sale of the subject land and agree to the revocation of the Management Order held by the City of Albany.

**SUMMARY CONCLUSION**

26. Reserve 38290 Lot 123 Gipton Street is not used or actively managed by the City of Albany and there are no plans at this time for the City to develop the land as a Rubbish Disposal site, particularly given the proximity of nearby residences. The issues of contamination and the use of the land may be adequately managed by the placement of a Memorial on title and compliance with the City's Town Planning Scheme and Policies. Accordingly, the sale of the land is supported and to facilitate the sale, the City must revoke the management order held for Reserve 38290.

|                                   |   |
|-----------------------------------|---|
| <b>Consulted References</b>       | City of Albany Town Planning Scheme No 3<br>City of Albany Local Planning Strategy<br>Land Administration Act 1997<br>Contaminated Sites Act 2003 |
| <b>File Number (Name of Ward)</b> | CU.PRA.60   |
| <b>Previous Reference</b>         | No previous references  |