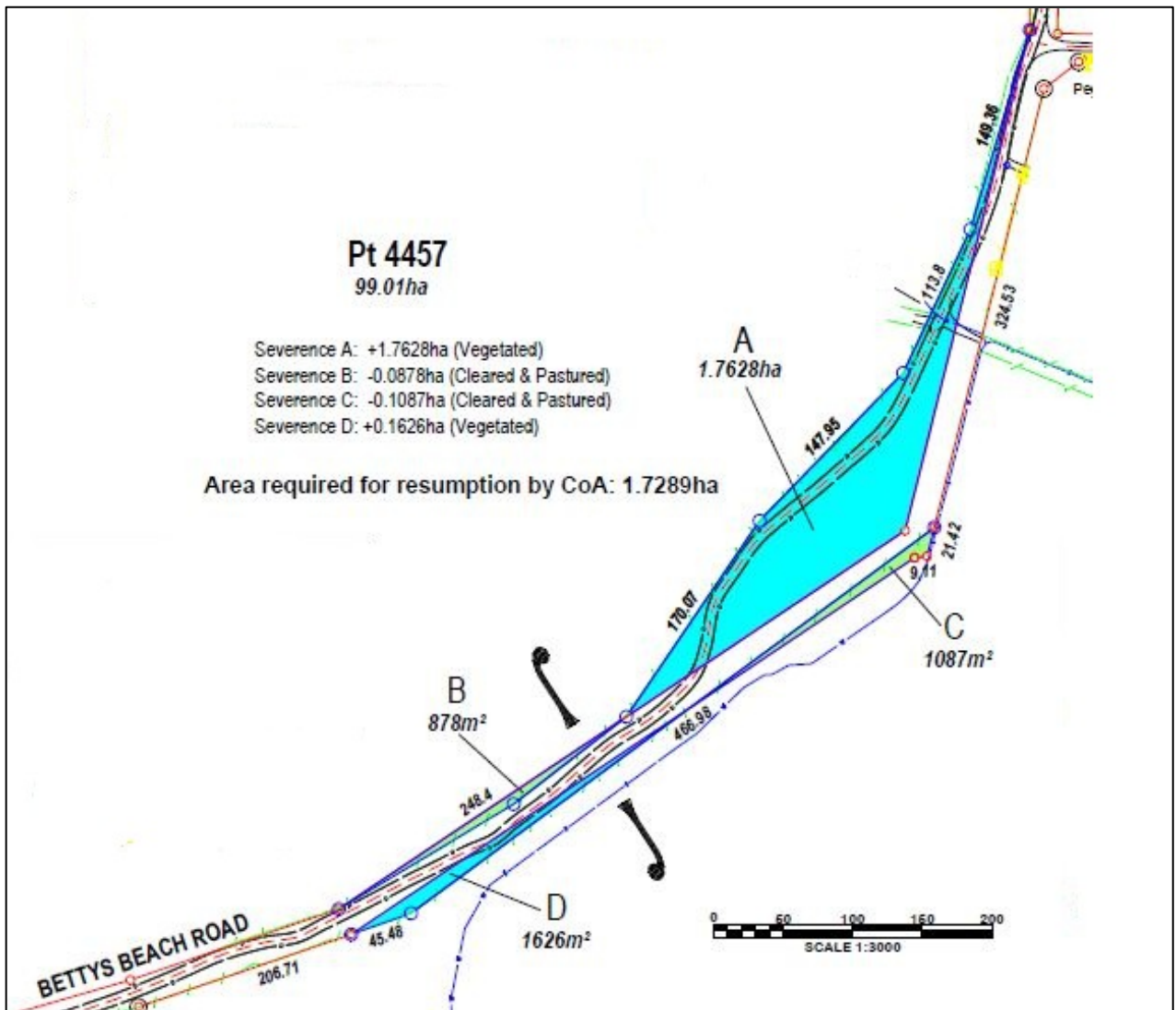


4.4: RECONSIDERATION OF THE PROPOSED ROAD WIDENING OF BETTY'S BEACH ROAD AFFECTING 905 HOMESTEAD ROAD, MANYPEAKS

Land Description : Lot 4457 No 905 Homestead Road, Manypeaks
Proponent : City of Albany
Owner : E & L Stone
Attachment : Item 5.1 OCM 21/06/2011
Responsible Officer(s) : Executive Director Corporate Services (P Wignall)

Maps and Diagrams:



IN BRIEF

- Council previously resolved, at its meeting on 21 June 2011, to widen a portion of Betty's Beach Road to accommodate the section of the road that has been constructed outside of the road reserve.
- The detailed survey of the land has identified issues that could not be detected as part of the preliminary assessment. These changes impact on Council's previous resolution and an amended resolution is now required.

ITEM 4.4: RESOLUTION

VOTING REQUIREMENT: SIMPLE MAJORITY

MOVED: COUNCILLOR ATTWELL

SECONDED: COUNCILLOR HORTIN

THAT subject to Council rescinding its resolution at the Ordinary Council Meeting held on 21 June 2011, Council:

- i) **SEEKS** the Minister for Lands approval, under section 58 of the *Land Administration Act 1997*, to permanently close a portion of Betty's Beach Road Reserve (shown as areas B and C on Drawing 110826, dated 01-03/08/2011);
- ii) **AUTHORISE** the Chief Executive Officer of the City of Albany to forward the required applications to the Minister for Lands without the need for a further item to Council, should there be no objections received during the required advertising period (legislative requirement);
- iii) **SUPPORTS** the Taking by Agreement, under section 168 of the *Land Administration Act 1997*, of a 1.9254ha portion of land from Lot 4457 No 905 Homestead Road, Manypeaks to allow the widening of the Betty's Beach Road Reserve (shown as areas A and D on Drawing 110826, dated 01-03/08/2011);
- iv) **SEEKS** approval under Section 168 of the *Planning & Development Act 2005* to dedicate the 1.9254ha portion of land to be taken from Lot 4457 No 905 Homestead Road, Manypeaks as a public road, through the lodgement of a subdivision application; and
- v) **INDEMNIFIES** the Minister for Lands from any claims for compensation, as is required under Section 56 of the *Land Administration Act 1997*.

CARRIED 12-0

BACKGROUND

1. In November 2009, the City was approached by Albany Mapping & Surveying Services, on behalf of the owners of 905 Homestead Road, Manypeaks, advising that a significant portion of Betty's Beach Road had been constructed outside of the dedicated road reserve.
2. The proponent requested that this situation be resolved through either re-construction of Betty's Beach Road in the correct alignment or the resumption of land to widen the road reserve and protect the constructed road.
3. The matter was considered by Council at its meeting on 21 June 2011 and it was resolved:

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 4457 No 905 Homestead Road, Manypeaks to allow the widening of the Betty's Beach Road Reserve;
 - ii) SEEKS approval under Section 168 of the Planning & Development Act 2005 to dedicate the 1.57ha portion of land to be taken from Lot 4457 No 905 Homestead Road, Manypeaks as a public road, through the lodgement of a subdivision application; and
 - iii) INDEMNIFIES the Minister for Lands from any claims for compensation, as is required under Section 56 of the Land Administration Act 1997.
4. The area of 1.57ha was identified by Albany Survey and Mapping Services, based on aerial photography and the original land survey.
 5. A detailed survey of the land is not undertaken prior to obtaining Council's resolution on a road widening action, as this would be an unnecessary expense if Council did not support the proposal.

DISCUSSION

6. The appointed surveyor has now undertaken a detailed survey of the land. It is a requirement of the subdivision process, which is used as the conduit to acquire the subject land, that a feature survey be undertaken and that the subdivision plan is based on this survey.
7. The survey has shown that the original area of 1.57ha to be taken from Lot 4457 No 905 Homestead Road, Manypeaks is incorrect and that the required area is 1.7628ha. In addition, there is a minor incursion of 1626m² of Betty's Beach Road (based on the existing fence lines) into Lot 4457 No 905 Homestead Road, Manypeaks (shown as Areas A and D on the map). This means the total area of land to be resumed is 1.9254ha.

8. The survey has also shown that portion of the Betty's Beach Road reserve, based on the existing fence line, is being privately used by the owners of Lot 4457 No 905 Homestead Road (shown as areas B and C on the map and constituting a total area of 1965m²).
9. The differing information now provided is partly because of the inaccuracy of aerial photography relative to ground features. The surveyor also only managed to locate two reliable survey pegs and all other survey marks in this location now no longer exist. The surveyor advised that the original survey of this land is very old (dating back to 1911) and the ground features as they exist today did not correlate with the original survey. None of this information would have been available until such time as the detailed survey of the land was undertaken.
10. If the portion of Betty's Beach Road being used by the subject landowners was closed as part of the road widening action and included in their landholding, this land swap would leave a difference of 1.7289ha.
11. Council has previously been advised that the relocation of the existing road reserve was more cost effective than re-constructing the road in the correct alignment. Similarly, the landowners would also like to maintain their existing fence lines and save the expense of relocating this infrastructure.
12. The landowners have previously agreed to financial compensation of \$15,700 for the land to be taken, which was based on the valuation of an area of 1.57ha. The landowner has entered into a Taking by Agreement with the City on this basis.
13. The outcomes of the survey and the differing area have been discussed with the affected landowners. It has been agreed that the closure of portion of the Betty's Beach Road and ceding that land back to their title compensates for the additional land to be taken and they are willing to proceed with the land resumption based on the original valuation of the land.
14. While the negotiations on compensation for the taking of the land can be dealt with under the Road Widening Delegation (OCM 14/12/10 Item 4.3.21), the provisions of the *Land Administration Act 1997* require Council's resolution to indemnify the Minister for Lands from any claims from compensation.
15. As this action now also includes closing portion of the Betty's Beach Road reserve, the *Land Administration Act 1997* also requires Council's resolution to close a road.

GOVERNMENT CONSULTATION

16. This matter has been discussed with the Department for Regional Development and Lands to seek their support to ceding the closed road back to the title of Lot 4457 No 905 Homestead Road without the need to purchase the land. In this circumstance, the land would be "swapped", however this is dependent upon the valuation of the land areas. The Department is further investigating this matter through Landgate Valuation Services.

17. As part of the subdivision application process, the Western Australian Planning Commission will refer the proposal to all the relevant servicing and government agencies for comment.
18. Depending on Council's resolution, notification will be sent to the Department for Regional Development and Lands at the same time as lodging the subdivision application to advise of the Minister's indemnification and compliance with the *Land Administration Act 1997*.

PUBLIC CONSULTATION / ENGAGEMENT

19. Section 58 of the *Land Administration Act 1997* sets the procedure for permanently closing roads. It is a requirement of the Act that the proposed road closure be advertised in a local newspaper for 35 day period and that nearby owners and public utility service providers be provided written notification of the proposal.
20. The landowner's written consent to the resumption of the land for road widening purposes and supporting the amendment to the original area has been obtained.

STATUTORY IMPLICATIONS

21. Section 56 of the *Land Administration Act 1997* allows the dedication of land as a road. In doing so, the Local Government must indemnify the Minister for Lands against any claim for compensation.
22. Section 58 of the *Land Administration Act 1997* allows the local government to request the Minister for Lands to close a road (or portion thereof).
23. 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.
24. 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.

STRATEGIC IMPLICATIONS

25. 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.

POLICY IMPLICATIONS

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

RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Rating	Mitigation
If road widening not obtained, Council assets would be contained in freehold title.	Possible	Moderate	Medium	Support the modified Taking by Agreement of land providing for the widening of Betty's Beach Road.

FINANCIAL IMPLICATIONS

28. The payment of \$15,700 for the land to be resumed from Lot 4457 No 905 Homestead Road, Manypeaks can be accommodated in the current 2011/12 budget.
29. The lodgement of a subdivision application for road widening purposes does not require the payment of fees to the Western Australian Planning Commission.
30. There are fees associated with the advertising of the road closure, the feature survey of the area, the creation of an initial plan for the subdivision application, the creation of a final deposited plan, the lodgement of the plan with Landgate and settlement fees. This is expected to be in the order of \$9,500 and can also be accommodated in the current budget line item for land acquisition.

LEGAL IMPLICATIONS

31. The widening of the Betty's Beach Road reserve will legitimise the road infrastructure currently situated in freehold title.

ALTERNATE OPTIONS

32. Council may:
- a. Support the modified proposal for the taking of land to widen Betty's Beach Road, including the closure of the portion of the road reserve being used by the adjoining owners; or

- b. Not support the modified proposal and the previous resolution of Council from its meeting held 21 June 2011 will stand, however in this circumstance portion of the City's assets will be contained in freehold title.

SUMMARY CONCLUSION

33. The proposed widening of Betty's Beach Road will ensure that Council's road is contained in a dedicated road reserve and the closure of the portion of the road contained within the fence line of Lot 4457 No 905 Homestead Road will ensure that Crown land is not used for private purposes.
34. The affected landowner of Lot 4457 No 905 Homestead Road, Manypeaks has agreed to the modified area at the original compensation value included in the Taking by Agreement.
35. Council's resolution to enact the road closure and 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 (Kalgan Ward)
Previous Reference	Item 5.1 OCM 21/06/2011