

**4.4: CONSIDERATION OF SUBMISSIONS RECEIVED – PROPOSED RELEASE OF UNALLOCATED CROWN LAND AND CLOSURE OF A RIGHT OF WAY IN YOUNGS SIDING**

<b>Land Description</b>	: Lots 11-24, 35, 36 and 38 Knapp Street, Youngs Siding
<b>Proponent</b>	: Department for Regional Development and Lands
<b>Owner</b>	: Crown
<b>Attachments</b>	: Attachment 1 – Map showing cadastral information Attachment 2 – Map showing land zoning Attachment 3 – Schedule of Submissions Attachment 4 – Submissions received
<b>Responsible Officer(s)</b>	: Acting Executive Director Corporate Services (P Wignall)

**IN BRIEF**

- At the Ordinary Council Meeting held in May 2011, Council resolved to support the closure of a public right of way between Knapp Street and Station Road, Youngs Siding and to support the release of unallocated Crown land within the Youngs Siding townsite. This proposal was then advertised for public comment, in accordance with the provisions of the *Land Administration Act 1997*.
- Council is requested to consider the submissions received during the advertising period which raise objection to the proposed right of way closure, as required by the *Land Administration Act 1997*.

<b>CEO:</b>	<b>RESPONSIBLE OFFICER:</b>
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**ITEM 4.4: RESPONSIBLE OFFICER RECOMMENDATION**  
**VOTING REQUIREMENT: SIMPLE MAJORITY**

**THAT Council:**

- i) **ADVISE** the Department for Regional Development and Lands that, in accordance with section 58 of the *Land Administration Act 1997* and further to Council’s previous resolution at its meeting held on 17 May 2011 (Item 5.2), the City of Albany has advertised the proposed closure of the right of way situated between Station Road and Knapp Street, Youngs Siding and considered the submissions received;
- ii) **REQUESTS**, pursuant to section 58 of the *Land Administration Act 1997*, that the Minister for Lands close the right of way situated between Station Road and Knapp Street, Youngs Siding;
- iii) **ADVISE** all persons having made a submission on the proposed right of way closure of Council’s resolution.

**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. There is a right of way running between those lots fronting Station Road and the unallocated Crown land facing Knapp Street. The right of way needs to be closed in order to facilitate the amalgamation of the unallocated Crown land with the existing freehold titles fronting Station Road.
4. The Department requested Council's comments on the sale of the subject land and the closure of the right of way situated between the lots fronting Station Road and the lots facing Knapp Street. This request was considered by Council at the meeting held on 17 May 2011, where it was resolved:

*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;*
  - 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.*
5. The Department for Regional Development and Lands was advised of Council's resolution and, in response to Part (i) above, a meeting was held between City and Department officers in September 2011.
6. The Department for Regional Development and Lands advised that, under the provisions of the *Land Administration Act 1997*, they had no authority to progress the road closure procedure. An arrangement was reached whereby the City agreed to undertake the required advertising procedure, with the Department being responsible for all costs associated with advertising the road closure.

## **DISCUSSION**

7. The proposed right of way closure was advertised on 20 October 2011 for a period of 35 days, completing on 25 November 2011.
8. Nine submissions were received during the advertising period. Four submissions were from government servicing agencies and no objections to the proposed right of way closure were raised by these agencies. Five submissions were received from community members raising objection to the proposed right of way closure.
9. The objections received are detailed in the attached Schedule of Submissions (Attachment 3) and the objections themselves are included as Attachment 4 to this report. The Schedule of Submissions notes the primary reasons for objecting to the proposed right of way closure and makes comment to those objections.
10. In summary, the primary reasons for objecting to the proposed right of way closure and the responding comments are detailed as follows:

- a) *Many of the residents believe that the City has not consulted the community appropriately on this proposal.*

The proposed right of way closure and release of the unallocated Crown land has only come about at the request of some of the adjoining landowners in the Youngs Siding townsite. It is noted that, of the five residents making the objection, only one is an adjoining owner in the townsite. The City has undertaken the public consultation in line with the legislative requirements of the *Land Administration Act 1997*.

There appears to have been some confusion with Council resolving to close the right of way prior to undertaking public consultation. However, this is standard procedure under the provisions of the *Land Administration Act 1997*, as there is no delegated authority for City officers to advertise such proposals prior to their consideration by Council.

- b) *Concerns were raised with the resulting lot pattern, as not all adjoining owners will wish to purchase the unallocated Crown land.*

It is correct that not all owners will wish to buy the adjoining unallocated Crown land and this will result in a fragmented lot pattern. However, the Albany Local Planning Strategy does not recommend any future growth for the Youngs Siding townsite and this land is unlikely to be used for any other purpose.

- c) *Concerns were raised about the impact the development of the unallocated Crown land as a series of backyards will have on the appearance and aesthetics of the Youngs Siding townsite.*

This concern is noted, however the land is not considered suitable for development in its own right. At present, because the land is unallocated Crown land, it is not maintained by anyone. The sale of this land to adjoining owners may improve the future maintenance of this land.

- d) *The objections noted that the proposal as suggested does not provide for any future growth of the Youngs Siding townsite.*

The City's Local Planning Strategy recommends a "no growth" strategy for the Youngs Siding townsite. As such, it is not necessary for the City to provide for future growth in this location. Concerns are also raised about the capability of the land to accommodate additional dwellings in this area, as it is low lying and prone to flooding.

- e) *Comments were made about the selling price of the land, noting that it should be set at market value, to be fair to the surrounding community.*

The Department for Regional Development and Lands is responsible for the sale of the unallocated Crown land and they are bound by the provisions of the *Land Administration Act 1997*. The valuation of the land is based on the unimproved market value, as determined by Landgate Valuation Services. Council does not have any influence over this process.

## **GOVERNMENT CONSULTATION**

11. Discussions with the Department for Regional Development and Lands has been ongoing throughout this process, as this is the body responsible for finalising the closure of the right of way and the sale of the unallocated Crown land.
12. The proposed right of way closure was referred directly to all government servicing agencies for comment. Four submissions were received, however no objections were raised by these agencies.

## **PUBLIC CONSULTATION / ENGAGEMENT**

13. The request to purchase the unallocated Crown land, necessitating the closure of the adjoining right of way, 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 discuss the sale of the unallocated Crown land with the remaining nine landowners, as is required by the provisions contained in Part 6 of the *Land Administration Act 1997*.
14. In terms of the closure of the right of way, this proposal has been advertised in a local newspaper for a period of 35 days, as required by the *Land Administration Act 1997*. In addition, direct notification was mailed to 27 adjoining and nearby landowners for comment, including notification to the local residents association.

## **STATUTORY IMPLICATIONS**

15. 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.
16. 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.
17. Section 58 of the *Land Administration Act 1997* states that, in making a request to close a road, the local government must consider any objections made to it within the consultation period.
18. 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**

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

**Key Focus Area**

Sustainability and Development

**Community Priority**

A sustainable future

**Proposed Strategies**

Establish satellite township hubs in areas such as Youngs Siding, Redmond, Manypeaks and Wellstead to provide services (basic shopping necessities and recreational areas).

It is noted that the Youngs Siding townsite currently has a local shop and sports ground. This proposed right of closure is considered in line with this strategy.

**Albany Local Planning Strategy**

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**

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.

Risk	Likelihood	Consequence	Risk Rating	Mitigation
Road closure is supported and the public do not feel that their concerns have been adequately addressed.	Possible	Minor	Medium	Ensure comments are adequately considered and landowners are advised of Council's decision.

**FINANCIAL IMPLICATIONS**

22. The Department has paid for all costs associated with the advertising of the proposed closure of the right of way.
23. There will be no further financial implications for Council, as any proceeds from the sale of the closed right of way and the unallocated Crown land will go to the State Government and not Council.

**LEGAL IMPLICATIONS**

24. There are no legal implications relevant to this item.

**ALTERNATE OPTIONS**

25. Council has the following options in relation to this proposal:
- a) Proceed with the closure of the right of way, allowing the sale of the unallocated Crown land and the subsequent amalgamation with the lots fronting Station Road; or
  - b) Decide not to proceed with the closure of the right of way and advise the Department for Regional Development and Lands that Council does not want to proceed with the sale of the unallocated Crown land fronting Knapp Street at this time.

**SUMMARY CONCLUSION**

26. While public objections have been received during the advertising period for the proposed closure of the right of way in the Youngs Siding townsite, many of the concerns raised have been adequately considered and addressed in this report. Majority of the objections relate to the future development and growth of the townsite, however Albany’s Local Planning Strategy recommends a “no growth” strategy for Youngs Siding.
27. Council has previously supported the conditional sale and development of the unallocated Crown land fronting Knapp Street and the right of way must be closed in order to allow this land to be purchased by the owners fronting Station Road.
28. On this basis, it is recommended that Council proceed with the closure of the right of way in the Youngs Siding townsite.

<b>Consulted References</b>	Land Administration Act 1997 Planning and Development Act 2005
<b>File Number (Name of Ward)</b>	RD.RDC.2 & GR.STL.39
<b>Previous Reference</b>	OCM 17/05/2011 Item 5.2