

**4.5: PROPOSED PERMANENT CLOSURE OF PORTION OF FORTS ROAD
& AMALGAMATION WITH SURROUNDING RESERVE 38226
(PRINCESS ROYAL FORTRESS)**

Land Description : Forts Road, Mt Adelaide
Proponent : City of Albany
Owner : State of WA
Responsible Officer(s) : Acting Executive Director Corporate Services (P Wignall)

Maps and Diagrams:



IN BRIEF

- Council is requested to consider the permanent closure of portion of Forts Road, which was temporarily closed in 1987. This permanent closure will allow the road reserve to be amalgamated with the adjoining Reserve 38226, giving the City the control and management of the land.
- The Department for Regional Development and Lands has also suggested that the purpose of the Reserve 38226 be amended from 'Parklands and Recreation' to 'Parklands, Recreation and Tourism Precinct' to better reflect the use of this site as a major tourist facility.

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| CEO: | RESPONSIBLE OFFICER: |
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**ITEM 4.5: RESPONSIBLE OFFICER RECOMMENDATION
VOTING REQUIREMENT: SIMPLE MAJORITY**

THAT Council:

- i) **SEEKS** the Minister for Lands approval, under section 58 of the *Land Administration Act 1997*, to permanently close the portion of the Forts Road reserve situated within the boundaries of Reserve 38226 Lot 1347 Forts Road, Mt Adelaide;
- ii) **AUTHORISE** the Chief Executive Officer to forward the road closure request to the Minister for Lands without the need for a further item to Council, should no objections be received during the required advertising period (legislative requirement);
- iii) **SEEKS** the Minister for Lands approval, under Section 51 of the *Land Administration Act 1997*, that the boundary of Reserve 38226 Lot 1347 Forts Road, Mt Adelaide be amended to include the closed portion of Forts Road; and
- iv) **AGREES** to the purpose of Reserve 38226 being amended from 'Parklands and Recreation' to 'Parklands, Recreation and Tourism Precinct', pursuant to section 51 of the *Land Administration Act 1997*.

BACKGROUND

1. In April 1987, the Council of the Town of Albany resolved to seek the Minister for Lands' approval to temporarily close portion of Forts Road and erect a fence, with gates, at the entry to the Princess Royal Fortress. The temporary closure was sought during the restoration of the Forts, which commenced in May 1987.
2. The request to temporarily close and fence portion of Forts Road was supported by the Minister for Lands on 26 June 1987. The road reserve has remained temporary unallocated Crown land (closed road) since this time.
3. On 20 September 2011, City staff met with Mr Ken McCrackan of the Department of Regional Development and Lands to discuss land matters associated with the Anzac Centenary – Mount Adelaide Project. At this meeting, Mr McCrackan indicated that the portion of Forts Road which has been temporarily closed may not be in the control and management of the City of Albany and steps should be taken to amalgamate this land with the surrounding Reserve 38226, which is vested in the City.
4. In addition, Mr McCrackan suggested that the purpose of Reserve 38226 be amended from 'Parklands and Recreation' to 'Parklands, Recreation and Tourism Precinct' to better reflect the use of this land as a major tourist facility.

5. Preliminary correspondence was forwarded to the Department for Regional Development and Lands in September 2011, to determine what actions were required to amalgamate the closed road with the surrounding reserve and how to amend the purpose of the reserve.
6. The Department forwarded correspondence to the City in January 2012 advising of the following:
 - a. This closed road was only temporarily closed under section 292 of the *Local Government Act 1960* while the City actioned the restoration of the Forts;
 - b. The portion of closed road is shown as temporary unallocated Crown land (closed road) and it is unclear whether the City would have the management and control of this land;
 - c. As the road is not formally closed under the *Land Administration Act 1997*, it cannot be included into the surrounding Reserve 38226; and
 - d. The City must now decide how it would like to proceed on this matter.

DISCUSSION

7. The closed road is part of the Princess Royal Fortress and is managed as part of this major tourist facility. There is an existing gate at the entry to the Fortress which is locked outside of opening hours.
8. In terms of the portion of Forts Road that has been temporarily closed, the following options exist to resolve this land matter:

a. Take no action and leave the land as a temporarily closed road;

This is not considered appropriate, as the Department for Regional Development and Lands has advised that it is unclear whether the City has the control and management of this land at present.

b. Steps be taken to remove the temporary closure and re-open the road, making it a public dedicated road under the control and management of the City; or

The Department for Regional Development and Lands have advised that they are uncertain on how this can be actioned and legal advice will need to be sought. Notwithstanding, the outcome will be a dedicated public road passing through the Fortress land. Preventing the access of vehicles on public roads is not permitted unless the appropriate approvals have been obtained under the *Local Government Act 1995*. These clauses do not provide for the intermittent opening and closing of a road.

It is the Department's advice that the City would not be permitted to fence or gate a public road and as such, the security of the Princess Royal Fortress could not be maintained.

c. The formal road closure process is enacted under section 58 of the Land Administration Act 1997, enabling the land to be amalgamated with the surrounding Reserve 38226.

This is the recommended option of the Department for Regional Development and Lands, as it will mean that the land will be amalgamated into the surrounding reserve, which is vested in the City of Albany. The City will then have the control and management of the closed road, because it will become part of the public reserve. In this circumstance, there will be no restrictions on the fencing of the reserve, allowing for appropriate security of the Princess Royal Fortress to be maintained. In addition, there will be no restrictions on any traffic management measures this City may like to apply within the Forts, ensuring pedestrian safety through the site.

9. In terms of the change of purpose of the reserve, it is considered appropriate to include the use of "Tourist Facility", as this reflects the current use of the land. This additional purpose gives further weight to the use of the land as a major tourist resource. Further, this would diminish the likelihood that questions will be raised about whether any future development of the Princess Royal Fortress falls within the purpose of 'Parklands and Recreation'. The proposed change of purpose will formalise the Council's intentions for this land.

GOVERNMENT CONSULTATION

10. The proposed road closure and changes to the purpose of the reserve arise out of collaborations between City staff and officers of the Department for Regional Development and Lands.
11. As part of the road closure advertising requirements specified by the *Land Administration Act 1997*, public utility service providers must be contacted directly and invited to comment on the proposal.

PUBLIC CONSULTATION / ENGAGEMENT

12. 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 a period of not less than 35 days. Notification will also be sent to nearby landowners and to relevant public utility service providers.

STATUTORY IMPLICATIONS

13. Section 41 of the *Land Administration Act 1997* grants the Minister for Lands the power to reserve land to the Crown for one or more purposes in the public interest.
14. Section 51 of the *Land Administration Act 1997* allows the Minister for Lands to cancel, change the purpose or amend the boundaries of a reserve.
15. Section 58 of the *Land Administration Act 1997* allows the local government to request the Minister for Lands to close a road.

16. Section 292 of the rescinded *Local Government Act 1960* allowed the local government to request that the Minister temporarily close a road, where it was not required for traffic and where the Council was of the opinion it should not be permanently closed.
17. The *Local Government Act 1960* has now been superseded by the *Local Government Act 1995*.
18. Section 3.50 of the *Local Government Act 1995* states that a local government may close any thoroughfares to the passage of vehicles for a period of up to 4 weeks. Approval for a period of longer than 4 weeks may only be granted once public notice has been given. This clause does not provide for the intermittent opening or closing of a road.

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.

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 |
|--|------------|-------------|-------------|---|
| If the road closure is not supported, the land will remain outside the control and management of the City, meaning Council has no rights over the land within the closed road, | Possible | Medium | High | To support the road closure request and allow the land to be amalgamated into the adjoining reserve, giving the City control and management of all land within the Princess Royal Fortress. |

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| which passes through one of the City's major tourist facilities. | | | | |
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FINANCIAL IMPLICATIONS

22. There will be costs associated with advertising the road closure, however this is likely to be only \$300 and can be accommodated in the 2011/12 budget.

LEGAL IMPLICATIONS

23. The closure of portion of Forts Road and amalgamation into the surrounding Reserve 38226 will legitimise the current and future use of the land as part of the Princess Royal Fortress.

ALTERNATE OPTIONS

24. As detailed in the Discussion section (Point 8) of this report, Council has a number of options to resolve this situation, however the most feasible options available to Council are considered to be:
- a. Leave the land as temporary unallocated Crown land (closed road) and not assume the management of the land; or
 - b. Support the closure of this road and its amalgamation into Reserve 38226, granting the City the management of the entire area within the Princess Royal Fortress and permitting the site to be locked outside of opening areas.

SUMMARY CONCLUSION

25. As this closed road passes through the Princess Royal Fortress, which is one of the City's most important tourist facilities, it is considered essential that the City has the control and management of this land. As such, it is recommended that the road closure is supported to allow its amalgamation into the adjoining Reserve 38226, which is vested in the City of Albany. In addition, the change of purpose of Reserve 38226 to 'Parklands, Recreation and Tourist Facility' is recommended to better reflect the current use of the land.

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| Consulted References | Land Administration Act 1997 Local Government Act 1960 Local Government Act 1995 |
| File Number (Name of Ward) | RD.RDC.2 / CP.PR.4 |
| Previous Reference | No previous references |