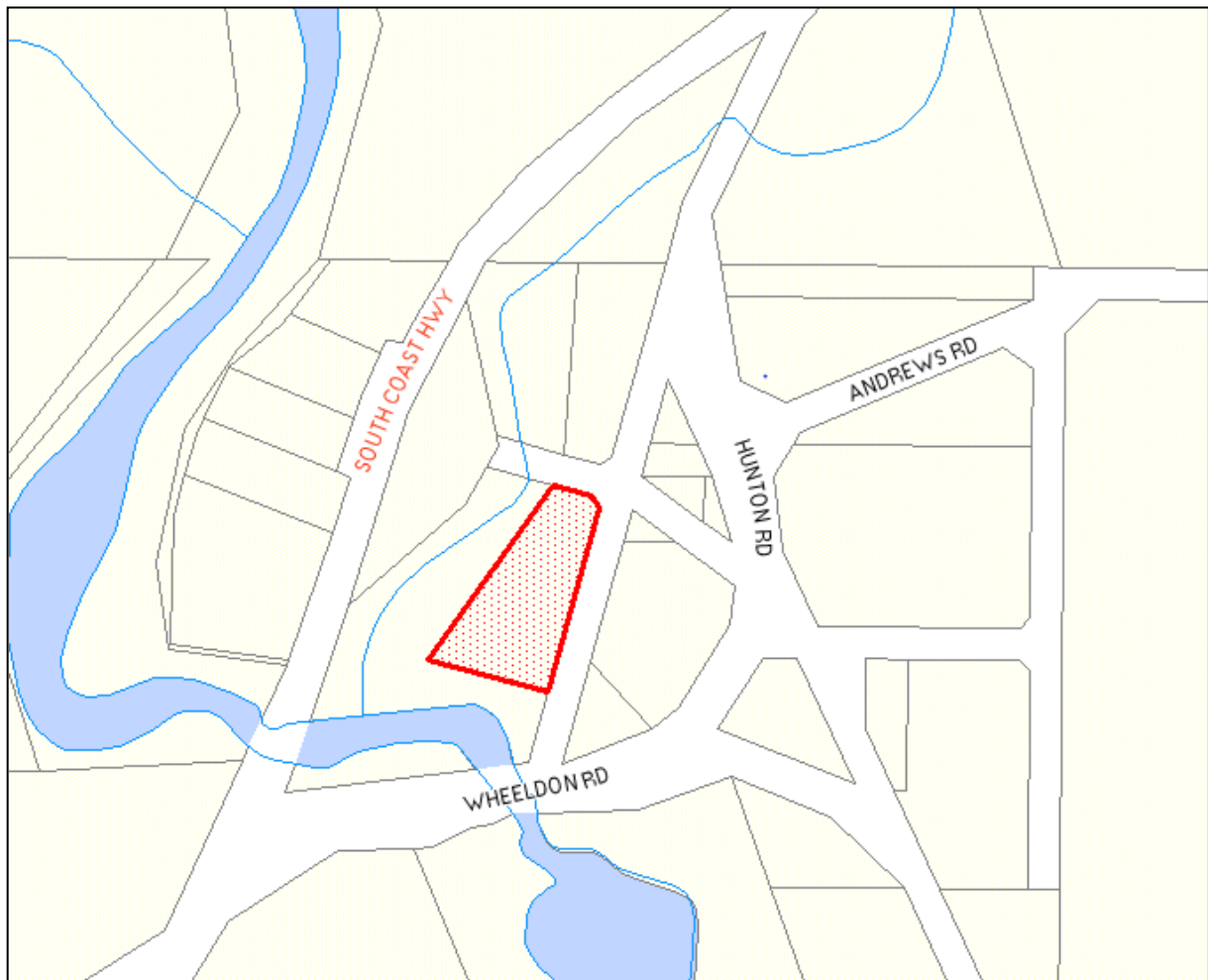


**4.4: PROVISION OF LEGAL CONSTRUCTED ROAD ACCESS TO 17
WHEELDON ROAD**

Land Description	: Lot 23 No 17 Wheeldon Road, Kalgan & surrounding Crown Land (road reserve, unallocated Crown land (Lot 2))
Proponent	: City of Albany; N Gibbons; Kalgan Settlers Association
Owner	: N & S Gibbons; State of WA (Crown)
Attachments	: Map Showing Interests
Responsible Officer(s)	: Acting Executive Director Corporate Services (P Wignall)

Maps and Diagrams:



IN BRIEF

- Council is requested to consider an alternative access route for 17 Wheeldon Road, as Council's previous resolution to use Lot 2 Hunton Road (Unallocated Crown Land) has not been supported by the South West Aboriginal Land and Sea Council because of the native title rights that exist over all Unallocated Crown Land and the Noongar heritage values of this area.

**ITEM 4.4: RESOLUTION
VOTING REQUIREMENT: SIMPLE MAJORITY**

**MOVED: COUNCILLOR GREGSON
SECONDED: COUNCILLOR STOCKS**

THAT Council SUPPORTS the use of the existing dedicated road reserve running between Hunton Road and Wheeldon Road and portion of Reserve 13909, Kalgan as a means for providing constructed road access to Lot 23 No 17 Wheeldon Road, Kalgan, subject to the receiving the final approval of the submitted section 18 application from the Minister for Indigenous Affairs.

CARRIED 13-0

BACKGROUND

1. At the meeting held on 21 September 2010, Council considered the options to provide a legal constructed access route to 17 Wheeldon Road, as this property does not currently have constructed road frontage. The owners of this property have been informally accessing their property through the adjoining Reserve 22325, which is vested in the Kalgan Settlers Association.
2. The Kalgan Settlers Association have sought the City's support to prevent vehicles using their reserve as a thoroughfare, due to safety concerns and their intention to limit disturbance to the heritage building situated on this lot. Council has previously been advised that it is within the Association's rights to barricade the existing track to prevent vehicles informally accessing the land.
3. It was proposed to use Lot 2 Hunton Road, which is Unallocated Crown Land, as the means for accessing 17 Wheeldon Road, as this land offers minimal clearing requirements to provide vehicle access to the property. Council, at its meeting held on 21 September 2010, resolved to seek the Minister for Lands' approval to dedicate this portion of Unallocated Crown Land as a road.
4. It was only through liaising with the Department for Regional Development and Lands to progress the Council resolution, that the requirement to consult with the South West Aboriginal Land and Sea Council was identified. Our process is now to refer all proposals on Crown Land to the South West Aboriginal Land and Sea Council for comment. It cannot be determined why this process was not followed previously, as other officers were responsible.
5. As the access track was proposed to be located in Crown Land, the matter was referred to the South West Aboriginal Land and Sea Council for comment. This agency advised of the following:
 - a) The area around Kalgan is of significant importance to the Noongar community and proposals to do anything in the area of the Registered Site will be met with concern;
 - b) The land surface through the Kalgan Hall reserve has been disturbed by past and present uses and, as such, the claimants consider this the most appropriate place to access the property;
 - c) The claimants would like to minimise the level of disturbance to the surface and subsurface of the site;

****REFER DISCLAIMER****

- d) It is unlikely that the City will, under any circumstances, obtain agreement from the Noongar community for the Unallocated Crown Land to be used for a roadway; and
 - e) It is the preference of the South West Aboriginal Land and Sea Council that the City discusses this matter further with the Kalgan Settlers Association to facilitate the access through their land.
6. As a result of this advice, City officers met with members of the Kalgan Settlers Association to discuss this matter further. However, the Association maintains their position that they would like the access route to be relocated. The Association plans to restore the existing heritage-listed Kalgan Hall and wants to protect this building. They would also like to maintain the site for their own future use and possible expansion, without the physical limitation the access track poses.

DISCUSSION

7. In view of the significant objections by the South West Aboriginal Land and Sea Council and the Kalgan Settlers Association to the use of both the Kalgan Settlers Association Reserve 22325 and the adjoining Unallocated Crown Land at Lot 2 Hunton Road, an alternative means for accessing 17 Wheeldon Road was explored.
8. There is currently an unconstructed dedicated road reserve running between Wheeldon and Hunton Road, between private land holdings at 17 and 22 Wheeldon Road and the Kalgan Settlers Association Reserve. It is understood that there was historically a road constructed in this location, though there is little evidence of this today and much of the vegetation has regrown. This road has previously been known as James Street or Cape Richie Road.
9. The Department for Regional Development and Lands has advised that this road reserve was dedicated as a road on 26 December 1896. Accordingly, Native Title has been extinguished on this land parcel.
10. The majority of the land is well vegetated in this area, however there is a previously cleared path leading from Hunton Road through to the properties at 17 and 22 Wheeldon Road. It appears this path may have been cleared to install power and telecommunications services, though again much of the vegetation has partially regrown.
11. It was considered that the least obtrusive path for the access track was to follow the previously cleared line, which means a small portion of the access track will cut through Reserve 13909, a 'C' class reserve vested in the City of Albany for Recreation purposes. This route has been chosen as it minimises the amount of vegetation that will need to be removed and it is likely that the ground in this significant Aboriginal site has previously been disturbed by the installation of services through the area.
12. As there is a registered Aboriginal Site (Site 5523 – Kalgan Hall Archaeological Site) impacting the whole area between the Kalgan River, Hunton Road and Wheeldon Road, compliance with the *Aboriginal Heritage Act 1972* is required. To this end, a section 18 approval has been sought to undertake works in a registered Aboriginal site.

GOVERNMENT CONSULTATION

13. Advice on this matter has been sought from the Department of Indigenous Affairs and the Department for Regional Development and Lands.
14. The Department for Regional Development and Lands have advised that the native title has been extinguished on this land by way of dedication of the road in 1896 and compliance with the *Native Title Act 1993* is not required. Though, compliance with the *Aboriginal Heritage Act 1972* will be required as the road reserve is situated in a Registered Aboriginal Site.
15. The Department for Indigenous Affairs has advised that the proposed access track is situated in Registered Aboriginal Site 5523 (Kalgan Hall) and approval will be required under the provisions of the *Aboriginal Heritage Act 1972*. This application was lodged with the Department on 1 December 2011.
16. The section 18 application was considered at the Aboriginal Cultural Materials Committee held on 8 February 2012 and a recommendation has been made to the Minister for Indigenous Affairs. No indication of this recommendation can be obtained prior to the Minister's decision and the Minister has 30 working days in which to make this decision (being the 21 March 2012).
17. Contact was made with the Department for Indigenous Affairs to advise of the timing constraints of this project and the need to commence works before the area becomes too wet. The Department has assured that every effort will be made to convey the Minister's decision to the City prior to the Council meeting at which this report will be considered. Further information on the Minister's decision will be circulated to Council as soon as it becomes available.

PUBLIC CONSULTATION / ENGAGEMENT

18. As part of identifying an alternative access track to 17 Wheeldon Road, the City has undertaken consultation with the South West Aboriginal Land and Sea Council and the Kalgan Settlers Association.
19. The proposed access track and the use of the existing dedicated road reserve were discussed with members of the local Noongar community. It was in this meeting that the proposal to use the existing road reserve was actually developed. As such, it has the support of some members of the local Noongar community.
20. In addition, the consultant engaged to undertake the archaeological and ethnographic assessment required as part of the section 18 application process met with two members of the Noongar community. Both members stated their preference for the track to follow the previously cleared path and supported the City's attempts to minimise ground disturbing activities in this significant area.

21. Should Council support this proposal, consultation will be undertaken with the owners of 22 Wheeldon Road, as these owners are situated nearby the proposed works, however no works will occur on their land. This is the same as the process adopted for all capital works where, once all approvals are in place, nearby owners are given prior notification of the works occurring.

STATUTORY IMPLICATIONS

22. Section 5 of the *Aboriginal Heritage Act 1972* protects places of Aboriginal cultural significance.
23. Section 17 of the *Aboriginal Heritage Act 1972* states that any person who alters in any way an Aboriginal site commits an offence. Section 18 of this Act states that approval may be sought for any works or actions that may be likely to result in a breach of section 17 in respect to any Aboriginal site. This approval must be granted by the Minister for Indigenous Affairs via the Department for Indigenous Affairs.

STRATEGIC IMPLICATIONS

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

Key Focus Area

Lifestyle and Environment

Community Priority

Preservation of Albany's uniqueness

Proposed Strategies

Retain Albany's unique heritage aspects (ANZAC Story, first European settlement, Indigenous history)

POLICY IMPLICATIONS

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

RISK IDENTIFICATION & MITIGATION

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

Risk	(L)	(C)	Risk Rating	Mitigation
If an alternative access route is not agreed, the Kalgan Settlers Association may prevent access to their Reserve leaving the owners of 17 Wheeldon Road with no constructed access to their property	Possible	Medium – Private landowners will have no means for accessing property held in their ownership	High	The City would be required to find a suitable access track to 17 Wheeldon Road that is agreeable to all stakeholders and seek the necessary approvals to construct the track and then build the track.

FINANCIAL IMPLICATIONS

27. Council has allocated an amount of \$30,818 in the 2011/12 budget for the construction of an access track to 17 Wheeldon Road.
28. The Heritage Survey required as part of the section 18 application required the appointment of a suitable consultant, at a cost of \$6,085. This included provision for two Aboriginal monitors to attend the site and undertake a survey of the area.

LEGAL IMPLICATIONS

29. The City is legally required to lodge a section 18 approval prior to undertaking any works in a Registered Aboriginal Site. This requirement is being observed and the decision of the Minister is forthcoming.

ALTERNATE OPTIONS

30. The City has explored other options for providing constructed road access to the owners of 17 Wheeldon Road, including maintaining the existing access track through the Kalgan Settlers Association Reserve and using the unallocated Crown Land at Lot 2 Hunton Road as a means of access.
31. As significant objections have been raised to these possibilities, it is now considered that there is little alternative available to using the existing dedicated road reserve running between Hunton and Wheeldon Road.

SUMMARY CONCLUSION

32. The Council has previously resolved to provide a legal constructed road access to 17 Wheeldon Road through the unallocated Crown Land at Lot 2 Hunton Road and as an alternative to the existing informal access track through the Kalgan Settler's Association Reserve 22325. This proposal was not referred to the South West Aboriginal Land and Sea Council for comment until after Council's resolution and the Department for Regional Development and Lands advised of the requirement to do so. It is now the City's process to refer all proposals on Crown Land to the South West Aboriginal Land and Sea Council for comment. It cannot be determined why this process was not followed previously, as other officers were responsible.
33. In view of the significant objections received to the use of Lot 2 Hunton Road, an alternative access track is proposed to be situated on the existing dedicated road reserve running between Wheeldon Road and Hunton Road. Council's support of the proposed route is sought on this basis. Approval to use this land and construct the access track has been sought from the Minister for Indigenous Affairs and Council will be advised of the outcomes of this process as soon as it becomes available.

Consulted References	:	Land Administration Act 1997 Aboriginal Heritage Act 1972 Native Title Act 1993
File Number (Name of Ward)	:	RD.ACQ.1; DES186
Previous Reference	:	OCM 21/09/2010 Item 3.1