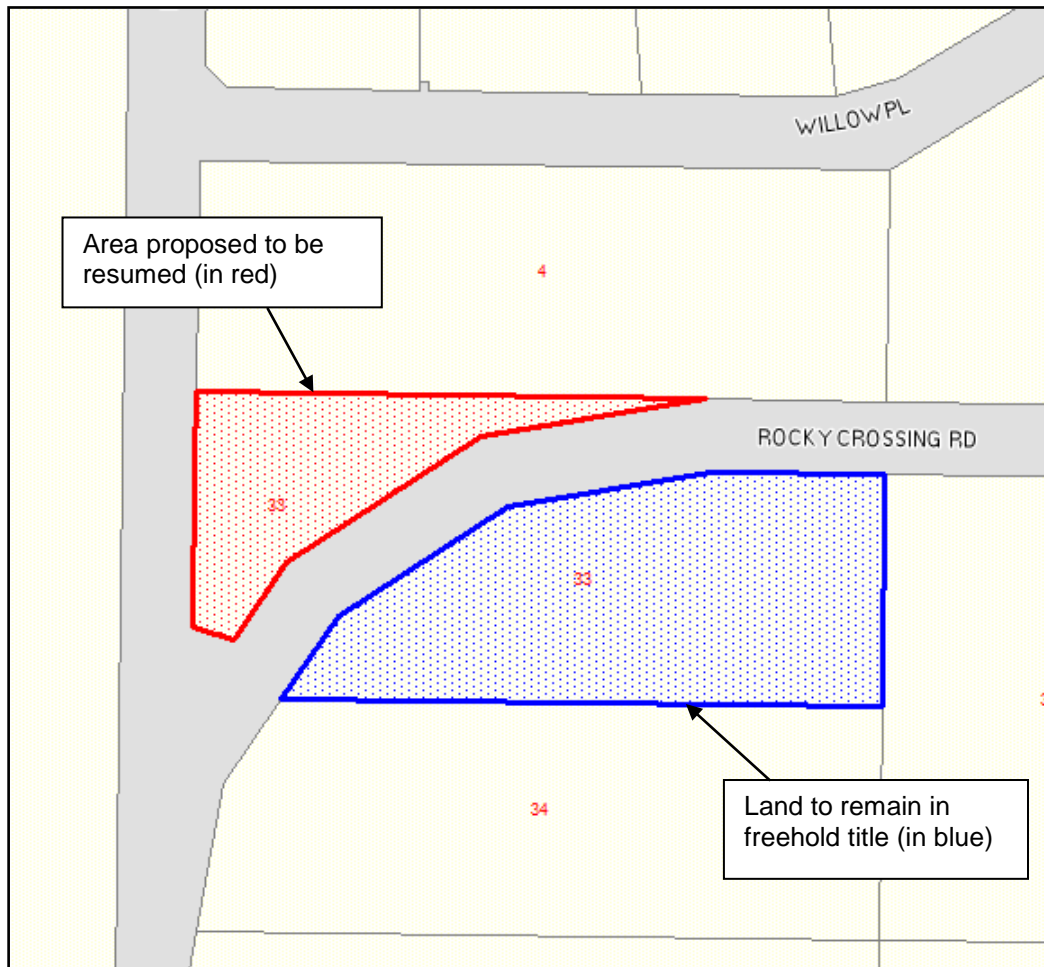


4.5: PROPOSED RESUMPTION OF PORTION OF LOT 33 NO 100 ROCKY CROSSING ROAD, WARRENUP FOR DRAINAGE PURPOSES

Land Description : Lot 33 No 100 Rocky Crossing Road, Warrenup
Proponent : City of Albany
Owner : Mrs Ada Mol
Responsible Officer(s) : Acting Executive Director Corporate Services (Pamela Wignall)

Maps and Diagrams:



IN BRIEF

- Council is requested to consider the resumption of a 3444m² portion of Lot 33 No 100 Rocky Crossing Road, Warrenup to allow the creation of a drainage reserve. This action is in lieu of undertaking remediation works on this currently privately owned land (to rectify previous works undertaken by City staff in the 2005 flood event, which has impacted on the useability and saleability of this private lot).

ITEM 4.5: RESOLUTION

VOTING REQUIREMENT: SIMPLE MAJORITY

MOVED: COUNCILLOR HOLDEN

SECONDED: COUNCILLOR DUFTY

THAT Council:

- i) **SUPPORTS** the Taking by Agreement, under section 168 of the *Land Administration Act 1997*, of a 3444m² portion of land from Lot 33 No 100 Rocky Crossing Road, Warrenup, situated on the north-west boundary of Rocky Crossing Road, for drainage purposes.
- ii) **SEEKS** approval under Section 168 of the *Planning & Development Act 2005* to resume the 3444m² portion of land to be taken from Lot 33 No 100 Rocky Crossing Road, Warrenup as a drainage reserve, through the lodgement of a subdivision application; and
- iii) **REQUESTS** that, under section 41 of the *Land Administration Act 1997*, the Minister for Lands reserves the 3444m² portion of land currently contained in Lot 33 No 100 Rocky Crossing Road, Warrenup for drainage purposes and that, pursuant to section 46 of the *Land Administration Act 1997*, the Management Order for this land be granted to the City of Albany.

CARRIED 13-0

BACKGROUND

1. In May 2011 and with the support of the relevant Ward Councillor, the City received a letter of complaint from the owner of Lot 33 No 100 Rocky Crossing Road, Warrenup. This letter advised:
 - a. There is a stormwater culvert that passes underneath Rocky Crossing Road between the two portions of her lot (which spans on either side of this road) and this culvert drains a large surrounding catchment area;
 - b. The stormwater previously drained overland into Lot 4 No 115 Rocky Crossing Road, however after the 2005 flooding event, complaints were raised by the owner of Lot 4 No 115 Rocky Crossing Road. The City then cut a swale through the north-west portion of Lot 33 No 100 Rocky Crossing Road;
 - c. This swale channels water through the privately owned property and to the piped drainage system along Neilson Road, which then drains into the creek line at the bottom of the valley;
 - d. These drainage works are making it difficult to sell this property as a useable space and have devalued the land; and
 - e. There is also a Western Power high voltage power line running across the same north-west portion of Lot 33 No 100 Rocky Crossing Road, which also devalues the land.

****REFER DISCLAIMER****

2. The owner requested that the Council considered resuming the portion of her property that was used for drainage purposes or restate it so any drainage impacts are “pre-2005” condition.
3. It is noted that there are no written records of the Works & Services’ work having been undertaken on Lot 33 No 100 Rocky Crossing Road, although long servicing staff are aware of the work being undertaken. A flood damage assessment report was commissioned following the 2005 flooding event and this document (prepared by Opus in April 2005) does note damage has occurred to Lot 4 No 115 Rocky Crossing Road. The report states that the stormwater run-off from Rocky Crossing Road has washed out the residents’ driveway and while this damage was repaired, a way to divert the water away from Lot 4 No 115 Rocky Crossing Road should be investigated. The Works & Services solution to this recommendation was to cut a waterway swale through the north-east portion of Lot 33 No 100 Rocky Crossing Road.

DISCUSSION

4. City officers have investigated the portion of land proposed to be resumed and considered the works that will be required to remediate the land to its pre-2005 condition. A swale has been cut through the middle of the 3444m² portion of land. Remediation works will include levelling and filling the affected land and piping the existing overland drainage to Neilson Road. It is estimated that these works will cost approximately \$37,000. This is a very preliminary estimate without detailed design and additional works may be required once the detailed design is completed.
5. Following the initial contact from the affected landowner, a valuation was sought to determine the compensation that might be payable to resume the land. The land was valued at \$130,000, as it was considered that if the land was subdivided (because it is already divided by Rocky Crossing Road), the 3444m² portion could be developed as a single house lot.
6. Despite the valuation, the owner of the property has offered the land to Council for an amount of \$30,000. The owner has been provided a copy of the valuation and encouraged to seek independent professional advice. The owner has sought appropriate advice from her solicitor and real estate agent and has advised that she is still prepared to accept \$30,000 as compensation for the land.
7. The landowner has now entered into a Consent to Taking by Agreement, as required under the provisions of the *Land Administration Act 1997*, which provides written agreement to the compensation amount of \$30,000.
8. The proposed land resumption will cost approximately \$37,000 in total, providing for the compensation payable and all costs and fees associated with the creation of new titles (i.e. survey charges, creation of plans, Landgate fees, settlement etc).
9. Given the value of compensation the owner has agreed to, compared to the estimate for remediation works, it is considered cost effective over the long term for the City to resume the land for drainage purposes and the land will continue to be used as an overland drainage route. In this circumstance, remediation works would not be required at this time.

GOVERNMENT CONSULTATION

10. The City has discussed this matter with the Department for Regional Development and Lands to determine if there is anything in legislation that would influence the amount of compensation payable for land. This Department has advised that this is an agreement between the local authority and the affected landowner/s and there are no provisions stating that a certain level of compensation is payable when a land resumption occurs.
11. No consultation with other government agencies has occurred on this matter as yet. Should Council approve the resumption, the subdivision application (which is the process used to resume the land into Crown land title) will require that the Western Australian Planning Commission refers the proposal to all the relevant servicing and government agencies for comment.

PUBLIC CONSULTATION / ENGAGEMENT

12. There is no requirement under the provisions of the *Land Administration Act 1997* to advertise this matter for public comment. All engagement with the affected landowner has been kept confidential during the negotiation phase of the land resumption process, as is appropriate. No other landowners are considered to be impacted by the proposed land resumption.

STATUTORY IMPLICATIONS

13. Section 41 of the *Land Administration Act 1997* allows the Minister for Lands to reserve Crown Land to the Crown for one or more purposes in the public interest.
14. Section 46 of the *Land Administration Act 1997* allows the Minister for Lands to place the care, control and management of a reserve in a person or management body, subject to any conditions the Minister may specify.
15. 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.
16. Section 220 of the *Land Administration Act 1997* states that the compensation payable to the claimant may be determined by agreement between the acquiring authority and the claimant.

STRATEGIC IMPLICATIONS

17. 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

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

RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Rating	Mitigation
If Council does not support proposal to resume land, remediation works are required to be undertaken.	Possible	Moderate – cost of remediation works may be higher than the cost of resuming the land	Medium	Support the proposal to resume the land as a drainage reserve.

FINANCIAL IMPLICATIONS

20. The proposed land resumption will cost approximately \$37,000 in total, providing for the compensation payable and all costs and fees associated with the creation of new titles (i.e. survey charges, creation of plans, Landgate fees, settlement etc). The City will pay all "settlement" fees. These costs can be accommodated in the land acquisition line item in the 2011/12 budget and will be addressed in the Q3 review.
21. It is estimated that the costs of remediating the property to its pre-2005 condition will be \$37,000, however this is a preliminary estimate only and additional works may be required once detailed design is complete.

LEGAL IMPLICATIONS

22. The resumption of land from Lot 33 No 100 Rocky Crossing Road will legitimise the current use of the north-western portion of this property as an overland stormwater drainage route.

ALTERNATE OPTIONS

23. Given that it is believed to be the works undertaken by the City that has caused damage to this land, it is not considered that the City has any alternative than to address the concerns of this landowner in some way. The two options for addressing this matter are:
- a. Undertake remediation works on this land and install a new drainage system to Neilson Road; or
 - b. Resume the land as a drainage reserve and allow it to continue to be used as an overland stormwater drainage route.

SUMMARY CONCLUSION

24. The proposed land resumption and creation of drainage reserve will better reflect the current use of the land as an overland stormwater drainage route. Given the owner's consent to the resumption for a compensation amount that is likely to be no more than the cost of remediation works, it is considered to be in the City's best interests to take this land for drainage purposes.

Consulted References	:	Land Administration Act 1997 Planning and Development Act 2005
File Number (Name of Ward)	:	A37122
Previous Reference	:	No previous references