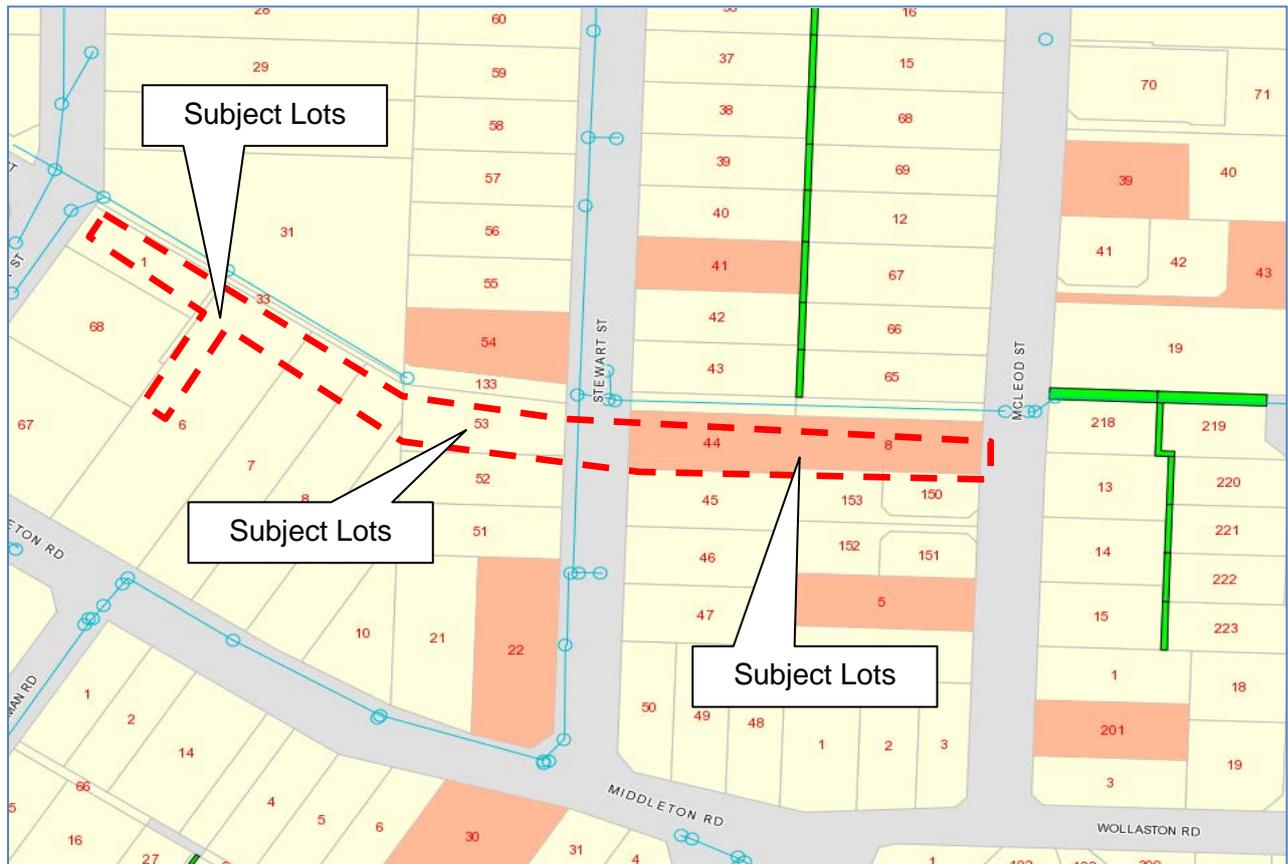


**4.3: ACQUISITION OF ALIENATED LAND FOR DRAINAGE PURPOSES –  
LOTS 33, 100 & 133 MCLEOD, STEWART AND SEYMOUR STREETS,  
MIRA MAR**

**Land Description** : Lots 33, 100 and 133 McLeod, Stewart & Seymour Streets, Mira Mar  
**Proponent** : City of Albany  
**Owner** : Elizabeth Timewell (deceased); Charlotte & Denis O’Halloran (deceased); Mary Cameron (deceased)  
**Responsible Officer(s)** : Executive Director Corporate Services (G Adams)

**Maps and Diagrams:**



Existing easements over freehold title for drainage      City drainage infrastructure

**IN BRIEF**

- Council is requested to consider the acquisition of freehold land that is currently being used for the City’s drainage purposes. This land remains in the ownership of the original subdividers of the area and all are now deceased. The land should have been transferred to the Crown at the time of subdivision (1950s-60s), as they are shown as drainage reserves on the relevant deposited plan, however this has not occurred. The City may now request, under the provisions of the *Land Administration Act 1997*, that this land is acquired as a Crown Reserve to reflect the use of the land.

**ITEM 4.3: RESOLUTION**

**VOTING REQUIREMENT: SIMPLE MAJORITY**

**MOVED: COUNCILLOR GREGSON**

**SECONDED: COUNCILLOR ATTWELL**

**THAT Council:**

- i) **SUPPORTS** the initiation of the public advertising period required under section 52 of the *Land Administration Act 1997* to allow the acquisition of the freehold Lot 100 McLeod Street, Lot 133 Stewart Street and Lot 33 Seymour Street, Mira Mar, as Crown Land for the purpose of drainage;
- ii) **REQUESTS** under section 52 of the *Land Administration Act 1997* that the Minister for Lands acquires as Crown land the following freehold land parcels:
  - a. Lot 100 McLeod Street, Mira Mar contained on Certificate of Title 2648/292 on Plan P053063;
  - b. Lot 133 Stewart Street, Mira Mar contained on Certificate of Title 1140/646 on Plan P006964; and
  - c. Lot 33 Seymour Street, Mira Mar contained on Certificate of Title 1092/352 on Diagram D010747.
- iii) **AUTHORISE** the Chief Executive Officer to forward the land acquisition 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);
- iv) **REQUESTS** under section 46 of the *Land Administration Act 1997* that the Minister for Lands issues the management order for the created Crown Reserves to the City of Albany for drainage purposes.

**CARRIED 9-0**

**BACKGROUND**

1. In September 2011, the City and the Department for Regional Lands and Development (RDL) were contacted by the owner of 13 McLeod Street about a parcel of land (Lot 100 McLeod Street) that they had been maintaining for a number of years but was not in their ownership. This owner advised both parties that they were no longer capable of maintaining this land and raised the question as to who was responsible for its continued maintenance.
2. RDL then wrote to the City and advised that Lot 100 was part of a freehold subdivision and was designated as a "Drainage Reserve" on the deposited plan, however it was never formally transferred to the Crown. As such, Lot 100 remains in the ownership of the original subdivider of the land. RDL advised that the City could seek the acquisition of this land under the provisions of the *Land Administration Act 1997*.
3. As Lot 100 McLeod Street was part of a larger drainage system moving through Seymour, Stewart and McLeod Streets, the land tenure of these other adjoining parcels was also investigated. It was then determined that Lots 33 and 133 Stewart Street also remained in the private ownership of the original developers of the land.

4. As an interim measure and pending the resolution of this land tenure issue, the City has assumed the maintenance of this land (mowing a 387m<sup>2</sup> portion of land). The concerns of the owner of 13 McLeod Street have been addressed.

## **DISCUSSION**

5. While the concerns of the owner of 13 McLeod Street were addressed as a high priority, the resolution of the land tenure concerns were given a lower priority and have been addressed as time and resources permit.
6. Titles searches on the three Lots 33, 100 and 133 have been undertaken and it has been confirmed that all three land parcels are shown as “Drainage Reserve” on the associated deposited plans / plans (Ref: 53063; 10747, 6964). All lots are in freehold title and it has been confirmed with the Registry of Births, Deaths and Marriages that all landowners are now deceased.
7. A probate search has now been undertaken to identify the persons that the land would have passed to and ancestors for Mary Louisa Cameron and Charlotte & Denis O'Halloran have been successfully identified. No living ancestors for Elizabeth Timewell have been located, as it would appear that the family migrated to the United Kingdom in the 1950s.
8. The available ancestors will be contacted during the advertising period required under the *Land Administration Act 1997*. Evidence of the unsuccessful search for Elizabeth Timewell will be submitted to the Department for Regional Development and Lands following the advertising period.
9. The City's Works & Services Division have advised that the Lots 33, 100 and 133 contain a buried stormwater pipe and the land is also an overland flood route. As this land provides an essential drainage function, it should be under the care, control and management of the City.

## **GOVERNMENT CONSULTATION**

10. This matter has been discussed with the Department for Regional Development and Lands to seek correct information and clarify the process to be observed to acquire this land.
11. The Department for Regional Development and Lands has advised that it is not possible to determine why land shown as a drainage reserve on a deposited plan was not transferred from freehold title to the Crown, though these errors are common state-wide.
12. It is a requirement of the *Land Administration Act 1997* that all public utility providers and the Western Australian Planning Commission are consulted as part of the public advertising period.

## **PUBLIC CONSULTATION / ENGAGEMENT**

13. It is a requirement of the *Land Administration Act 1997* that prior to forwarding the request to the Minister for Lands to acquire freehold land as Crown land, that the owners of the subject land and the owners of adjoining land parcels are advised of the intention and provided a 30 day period to make an objection, if they wish to do so.

## **STATUTORY IMPLICATIONS**

14. Section 41 of the *Land Administration Act 1997* allows the Minister for Lands to reserve Crown land for one or more purposes in the public interest.
15. 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.
16. Section 52(1) of the *Land Administration Act 1997* allows a local government to request the Minister for Lands to acquire as Crown land any freehold land designated for a public purpose on a survey or sketch plan lodged with the Registrar.
17. Section 52(3) of the *Land Administration Act 1997* states that before a local government makes a request to acquire freehold land as Crown land, the following steps must be undertaken:
  - a. Take all reasonable steps to give notice of that request to the owner of the land; the owners of the adjoining land; and the suppliers of public utility services;
  - b. Provide a 30 day period for all interested persons to lodge objections against the making of the request to the Minister for Lands; and
  - c. The request must be accompanied by a plan of survey or sketch plan which has been endorsed by the Western Australian Planning Commission.

## **STRATEGIC IMPLICATIONS**

18. 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**

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

**RISK IDENTIFICATION & MITIGATION**

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

<b>Risk</b>	<b>Likelihood</b>	<b>Consequence</b>	<b>Risk Rating</b>	<b>Mitigation</b>
<i>If Council does not support the proposal to acquire land, City assets will remain in freehold ownership and the City has no clear legal right to access the land.</i>	<i>Possible</i>	<i>Moderate – Council assets will remain in freehold ownership by external parties</i>	<i>Medium</i>	<i>Support the proposal to acquire the land currently being used for drainage purposes.</i>

**FINANCIAL IMPLICATIONS**

21. There are minor administrative costs associated with obtaining clearances from the Registry of Births, Deaths and Marriages and advertising the proposal to adjoining owners and relevant servicing agencies. A plan of survey must also be created at a cost of \$440. These costs can be accommodated in the budget allocation for drainage design.

**LEGAL IMPLICATIONS**

22. The acquisition of these Lots 33, 100 and 133 McLeod, Stewart and Seymour Streets to create drainage reserves vested in the City of Albany will legitimise the existing use of these land parcels for drainage purposes.

**ALTERNATE OPTIONS**

23. Council can:

- a. Decline the request to acquire Lots 33, 100 and 133 McLeod, Stewart and Seymour Streets and the land will remain in private ownership as it has done for many years, however the legality of the use of this land for drainage purposes will not be correct or officially under the control of the City; or
- b. Support the request to acquire these land parcels and legitimately reserve this land for drainage purposes, with the management order being held by the City of Albany.

**SUMMARY CONCLUSION**

24. When land in Mira Mar was original subdivided, Lot 100 McLeod Street, Lot 133 Stewart Street and Lot 33 Seymour Street, Mira Mar were created as drainage reserves and the land parcels have then been used for this purpose. It is only through administrative error at the State Government level that the land has not been transferred to the Crown. As such, it is recommended that the land be acquired as Crown reserves so that their care, control and management can be granted to the City of Albany.

**\*\*REFER DISCLAIMER\*\***

<b>Consulted References</b>	:	<i>Land Administration Act 1997</i>
<b>File Number (Name of Ward)</b>	:	GR.STL.39, SD.AGR.1
<b>Previous Reference</b>	:	No previous reference