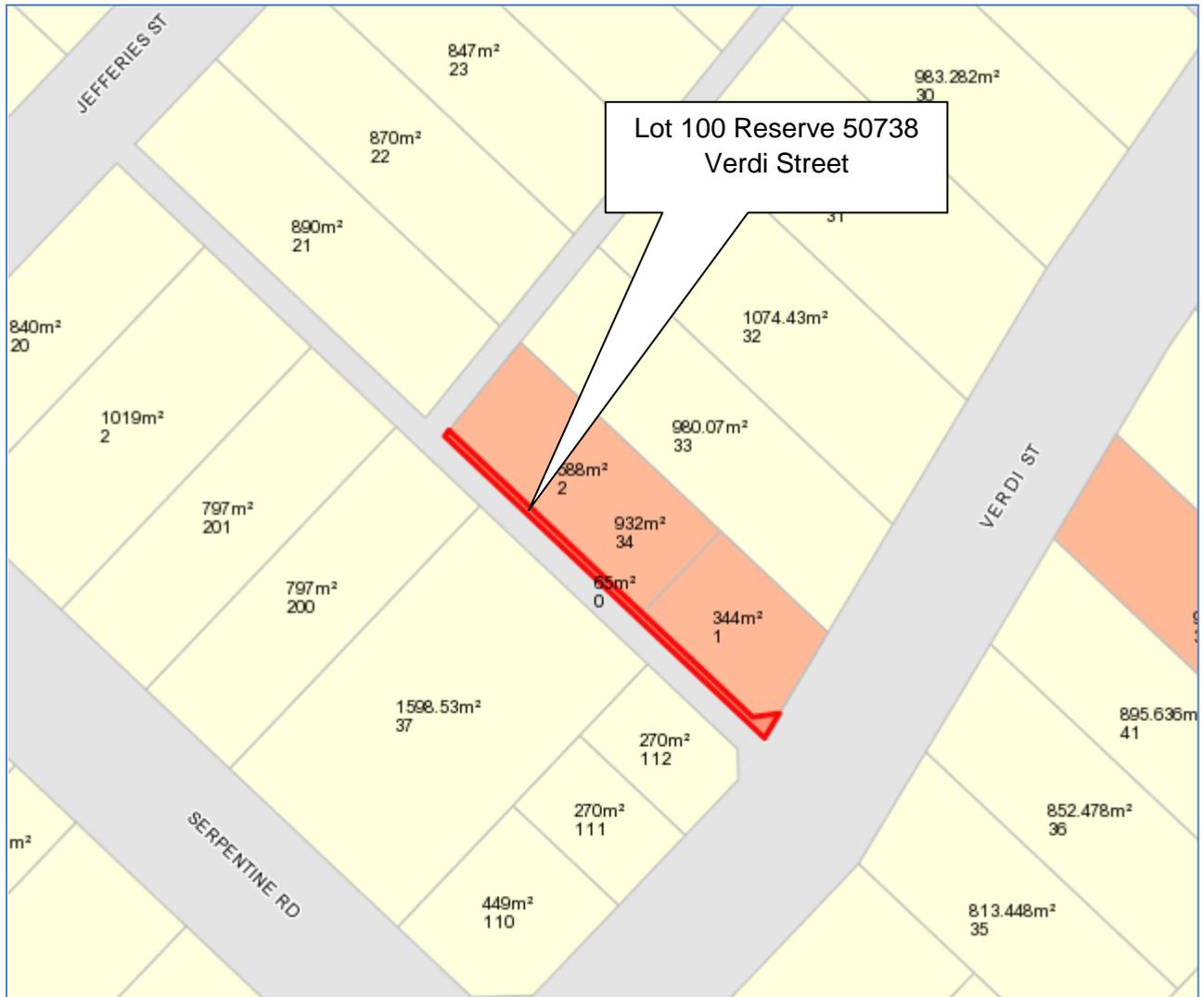


**4.3: CANCELLATION OF RESERVE 50738 & DEDICATION AS A ROAD –
ADJOINING VERDI STREET RIGHT OF WAY**

Land Description : Lot 100 Reserve 50738 Verdi Street, Mt Melville
Proponent : City of Albany
Owner : Crown Land
Responsible Officer(s) : Executive Director Corporate Services (G Adams)

Maps and Diagrams:



IN BRIEF

- Council is requested to consider the cancellation of Reserve 50738 to allow its dedication as a public road, in line with the land tenure of the adjoining right of way. This land was ceded as road widening as part of the strata development of the adjoining property at 1 Verdi Street, however it has not been transferred to the management of the City. This land has been paved and kerbed, as part of the right of way, and is used as access for the strata units at 1 Verdi Street.

**ITEM 4.3: RESPONSIBLE OFFICER RECOMMENDATION
VOTING REQUIREMENT: SIMPLE MAJORITY**

THAT Council:

- i) **REQUESTS** under section 51 of the *Land Administration Act 1997* that the Minister for Lands cancels Reserve 50738 adjoining 1 Verdi Street, Mt Melville;
- ii) **REQUESTS** under section 56 of the *Land Administration Act 1997* that the Minister for Lands dedicate the land forming part of cancelled Reserve 50738 as a road;
- iii) **INDEMNIFIES** the Minister for Lands from any claims for compensation, as is required under Section 56 of the *Land Administration Act 1997*.

BACKGROUND

1. In 2009, the City of Albany supported the survey strata subdivision of 1 Verdi Street to create two lots of 344m² and 588m². The conditions of approval for this survey strata application required that the adjoining right of way be constructed and that a 1m strip of land be given up for the widening of the right of way. The right of way was to be used as the primary means of accessing the rear 588m² lot.
2. A condition of the survey strata approval required that the subdivider not commence construction works in the right of way until the land was dedicated to the City of Albany.
3. In 2010, the City supported further applications to construct three grouped dwellings at 1 Verdi Street and the subsequent survey strata titling of the proposed dwelling units. The construction of these dwellings and the survey strata of the three units are still in progress.
4. In July 2010, the City granted approval to the deposited plan to create two survey strata lots of 344m² and 588m² at 1 Verdi Street, including clearing all conditions of the subdivision approval. The deposited plan showed the land given up to widen the right of way as a separate lot and had a notation that the lot was to be vested in the Crown under section 152 of the *Planning and Development Act 2005*.
5. In June 2010, Council considered an item to dedicate the right of way between Verdi and Jeffries Streets as a public road. This land was held in freehold title by a deceased owner, however it had been used as a public thoroughfare by adjoining owners for a period of longer than 10 years. This action was supported by Council and the dedication action is complete, such that the right of way is now a public road.

DISCUSSION

6. The section 152 of the *Planning and Development Act 2005* refers to the vesting of land directly to the Crown when required as a condition of subdivision approval and states that the land will transferred to the Crown as a reserve, without any conveyance, transfer or payment of any fee.

****REFER DISCLAIMER****

7. The land titles for the two survey strata lots at 1 Verdi Street have now been created and the 1m right of way widening has been created as Reserve 50738. This Crown reserve is not under the management of the City.
8. It is considered an oversight that the land has been given up as a reserve under section 152 of the *Planning and Development Act 2005*, rather than it being shown as road widening on the deposited plan. In this case, the road widening would have been given up under section 168 of the *Planning and Development Act 2005* and would automatically have been dedicated as a public road.
9. While the subdivider has been required to construct the right of way, once complete, the right of way will be maintained by the City. It is therefore appropriate that all land that forms part of this right of way is under our control and management.
10. It is noted that the right of way has now been renamed to 'Nisus View'.

GOVERNMENT CONSULTATION

11. When it was discovered that the 1m right of way widening was not a dedicated road or vested in the City, advice was sought from the Department for Regional Development and Lands.
12. The Department has advised that the City has two options:
 - a. The City can agree to accept the Management Order for Reserve 50738; or
 - b. The reserve can be cancelled and the subject land then dedicated as a road. In this circumstance, the City must comply with section 56 of the *Land Administration Act 1997* and clause 8 of the *Land Administration Regulations 1998*.

As the remainder of the right of way is a dedicated road, it is recommended that the City pursue the cancellation of the reserve and the dedication of the land.

PUBLIC CONSULTATION / ENGAGEMENT

13. There is no legislative requirement to advertise this action for public comment. As it is a change in land tenure only and will not involve any substantial changes on site, it is not considered that public engagement is necessary.

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 51 of the *Land Administration Act 1997* allows the Minister for Lands to cancel, change the purpose or amend the boundaries of a reserve.

REFER DISCLAIMER

17. Section 56 of the *Land Administration Act 1997* allows the Minister for Lands to dedicate land as a road, provided that the local government indemnifies the Minister against any claim for compensation.
18. Clause 8 of the *Land Administration Regulations 1998* specifies the requirements that must be observed and forwarded with any request to the Minister under section 56 of the *Land Administration Act 1997*.
19. Section 152 of the *Planning and Development Act 2005* states that where the Western Australian Planning Commission approves the subdivision of land subject to a portion of land being provided as a right of way, that land shall be vested in the Crown without any conveyance, transfer or payment of any fee. The Act states that any land vested under this section, shall be reserved under section 41 of the *Land Administration Act 1997*.
20. Section 168 of the *Planning and Development Act 2005* states that any land shown as a new road or as road widening on a diagram or plan of survey of a subdivision will be automatically dedicated as a road.

STRATEGIC IMPLICATIONS

21. 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**

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

RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Rating	Mitigation
<i>If Council does not seek the vesting or dedication of the land, it will remain as Crown land and the City has no legal right to maintain our assets in this right of way.</i>	<i>Possible</i>	<i>Moderate – Council assets will remain in land not under our control and management</i>	<i>Medium</i>	<i>Support the proposal to cancel the Reserve 50738 and dedicate the land as a public road.</i>

FINANCIAL IMPLICATIONS

24. The only possible financial implications with this action are fees associated with plan preparation and Landgate lodgement. This should not amount to more than \$500 and can be accommodated in the Land Acquisition budget allocation.

LEGAL IMPLICATIONS

25. This action will legitimise the use of the subject land as a right of way and allow the City rights to access and maintain this land in the future.

ALTERNATE OPTIONS

26. Council can:
- a. Seek the Management Order for Reserve 50738, however in this circumstance, the land will remain in a separate land title to the adjoining right of way; or
 - b. Request that the Minister for Lands cancels Reserve 50738 and dedicates the land as a public road, so that it is then merged with the adjoining right of way.

SUMMARY CONCLUSION

27. The right of way between Jeffries and Verdi Street is likely to be increasingly used as a secondary means of access by adjoining residents. It is appropriate that all land that forms part of this right of way is under the control and management of the City. The right of way widening given up as part of the development of 1 Verdi Street should have been ceded as a public road, however it was incorrectly given up as a Crown reserve. It is recommended that this oversight be rectified through the cancellation of the reserve and dedication of the land as a road.

Consulted References	:	Planning and Development Act 2005 Land Administration Act 1997 Land Administration Regulations 1998
File Number (Name of Ward)	:	1011-09
Previous Reference	:	OCM 15 June 2010 Item 15.2.2