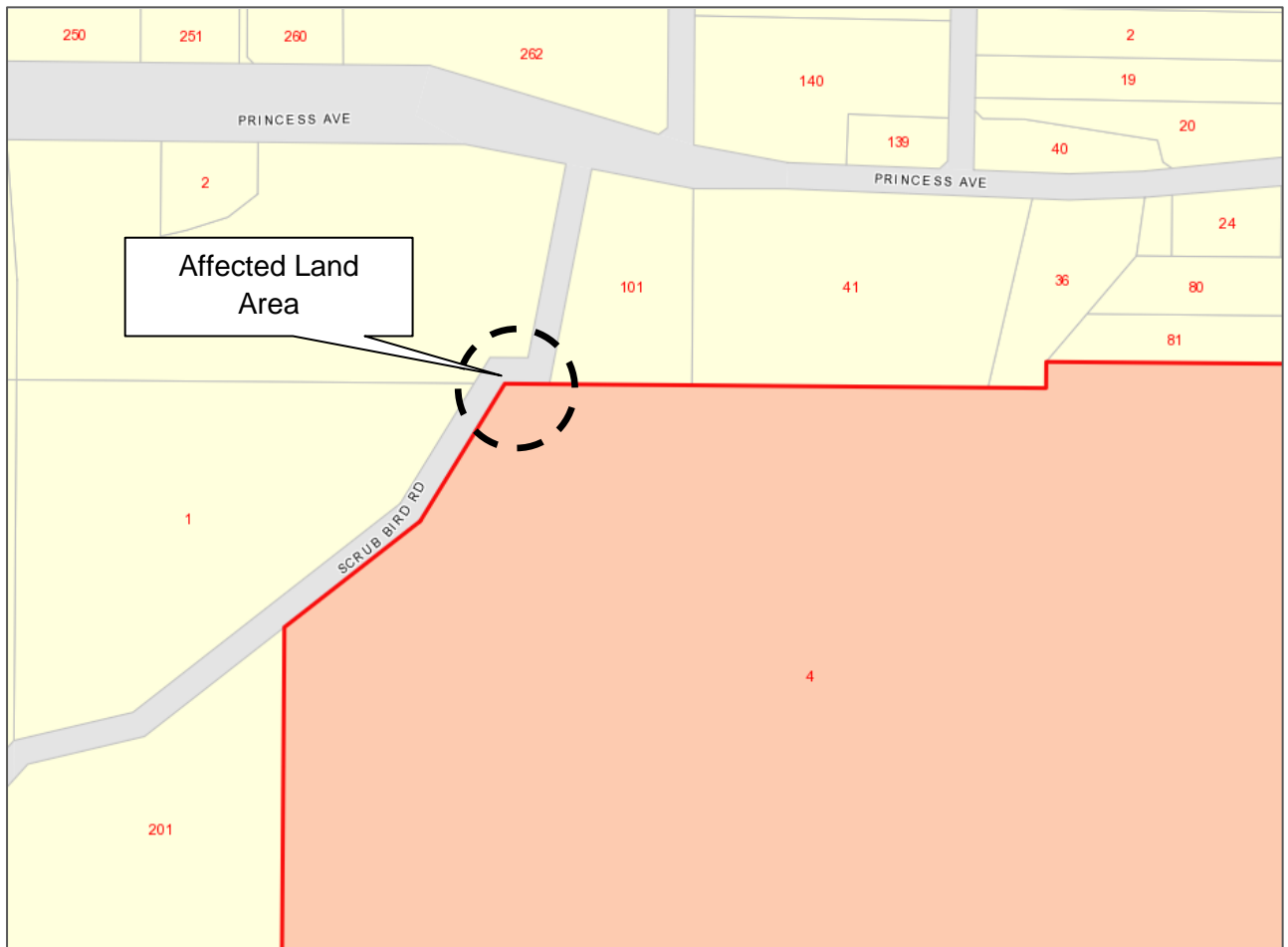


4.3: PROPOSED LAND RESUMPTION AFFECTING LOT 4 FRENCHMAN BAY ROAD, TORNDIRRUP

Land Description	: Lot 4 Frenchman Bay Road, Torndirrup
Proponent	: City of Albany
Owner	: T & H Anderson
Attachments	: Aerial Photography of Lot 4 Frenchman Bay Road, Torndirrup showing area to be resumed
Responsible Officer(s)	: Executive Director Corporate Services (G Adams)

Maps and Diagrams:



IN BRIEF

- Council is requested to consider the resumption of a 507m² portion of land from Lot 4 Frenchman Bay Road, Torndirrup. The subject land currently contains portion of the constructed Scrub Bird Road in freehold title and it is proposed to bring this existing road into land title that is under the control and management of the City of Albany to allow for widening of the road.

RECOMMENDATION

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

THAT Council:

- 1. SUPPORTS the Taking by Agreement, under section 168 of the *Land Administration Act 1997*, of a 507m² portion of land from Lot 4 Frenchman Bay Road, Torndirrup to allow the widening of the Scrub Bird Road reserve.**
- 2. SEEKS approval under Section 168 of the *Planning & Development Act 2005* to resume the 507m² portion of land to be taken from Lot 4 Frenchman Bay Road, Torndirrup as a public road through the lodgement of a subdivision application; and**
- 3. INDEMNIFIES the Minister for Lands from any claims for compensation, as is required under Section 56 of the *Land Administration Act 1997*.**

BACKGROUND

1. As part of the 2011-12 Capital Works Programme, Scrub Bird Road was identified for upgrading works, including a gravel resheet and widening of the existing pavement. This job has been carried over into the 12/13 Capital Works Programme. As part of the land and heritage assessment undertaken on all the City's capital works, portion of the Scrub Bird Road reserve was found to be owned as freehold title as part of Lot 4 Frenchman Bay Road, Torndirrup.
2. The northwest corner of Lot 4 Frenchmans Bay Road extends into what is currently a public road reserve, namely Scrub Bird Rd. This land needs to be resumed so that the constructed road is contained in land title designated for this purpose.
3. The landowners of Lot 4 Frenchman Bay Rd were contacted on 1 June 2012 and informed of the land issue. They were advised of the City's intent to rectify the situation by resuming a small portion of the freehold property to ensure that the road was wholly contained within the road reserve.
4. Written consent from the landowner to allow the City access to the portion of the road passing through the property was sought and granted on 7 June 2012 to allow the road upgrading works to occur. These works have now been completed.
5. Once consent to undertake the upgrading works on Scrub Bird Road was obtained, the City commenced the land resumption process. A valuation of the subject 507m² portion of land was sought.

DISCUSSION

6. The subject 507m² portion of land was valued at \$900 and the affected landowner was initially offered compensation at this value. This amount was not acceptable to the affected landowner and they sought their own advice on the matter.
7. Following negotiations with the affected landowner, a compensation amount of \$2,400 was agreed and the owners have now signed a Consent to Taking by Agreement to this effect.
8. It is noted that City officers have delegated authority to negotiate on compensation for road widenings up to \$100,000, though City officers do not have delegated authority to resolve on the legislative requirements associated with this process.

GOVERNMENT CONSULTATION

9. No consultation with government agencies has occurred on this matter as yet. As part of the subdivision application, which is the process used to resume the land into Crown land title, the Western Australian Planning Commission will refer the proposal to all the relevant servicing and government agencies for comment.

PUBLIC CONSULTATION / ENGAGEMENT

10. 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

11. Section 56 of the *Land Administration Act 1997* allows the dedication of land as a road. In doing so, the Local Government must indemnify the Minister for Lands against any claim for compensation.
12. 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.
13. Section 220 of the *Land Administration Act 1997* states that where an offer of compensation is rejected, the compensation payable to the claimant may be determined by agreement between the acquiring authority and the claimant.
14. Section 241 of the *Land Administration Act 1997* states that, in determining the amount of compensation to be offered, regard is to be had for the value of the land with any improvements.

15. The creation of a road occurs through the subdivision process detailed under Part 10 of the *Planning and Development Act 2005*. Section 168 of this Act states all land shown on a diagram or plan of survey of a subdivision shown as a new road or road widening will be dedicated as a road.

STRATEGIC IMPLICATIONS

16. 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

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

RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Rating	Mitigation
<i>If the land resumption is not supported, public infrastructure will remain in freehold title, creating concerns about public liability and the City's rights to maintain these works.</i>	<i>Possible</i>	<i>Moderate</i>	<i>Medium</i>	<i>To support the proposed land resumption and allow the public infrastructure to be contained in appropriate land title under the control and management of the City.</i>

FINANCIAL IMPLICATIONS

19. The proposed land resumption will cost approximately \$10,000 in total, providing for the compensation payment and all costs and fees associated with the creation of new titles (i.e. survey charges, creation of plans, Landgate fees, settlement etc). These costs will be accommodated in the budget allocation for the capital works relative to Scrub Bird Road (Job 8392).

LEGAL IMPLICATIONS

20. The resumption of land containing the public infrastructure located on Lot 4 Frenchman Bay Road, Torndirrup will legitimise the current use of the land.

ALTERNATE OPTIONS

21. While Council can defer this item, this means that a public road that should be under the control and management of the City will remain in freehold title. As a detailed negotiation process has occurred with the landowner and agreement has now been reached, it is recommended that this matter be expedited as soon as possible.

SUMMARY CONCLUSION

22. The proposed land resumption from Lot 4 Frenchman Bay Road, Torndirrup will allow for the widening of the Scrub Bird Road reserve, such that all of this road is contained in Crown land title. This land will then come under the control and management of the City, as is appropriate for the City's public infrastructure. As the landowner is now agreeable to the amount of compensation, it is recommended that Council support the proposed land resumption, in line with the requirements of the *Land Administration Act 1997* and the *Planning & Development Act 2005*.

Consulted References	:	Land Administration Act 1997 Planning and Development Act 2005
File Number (Name of Ward)	:	RD.ACQ.1 (West Ward)
Previous Reference	:	No previous references