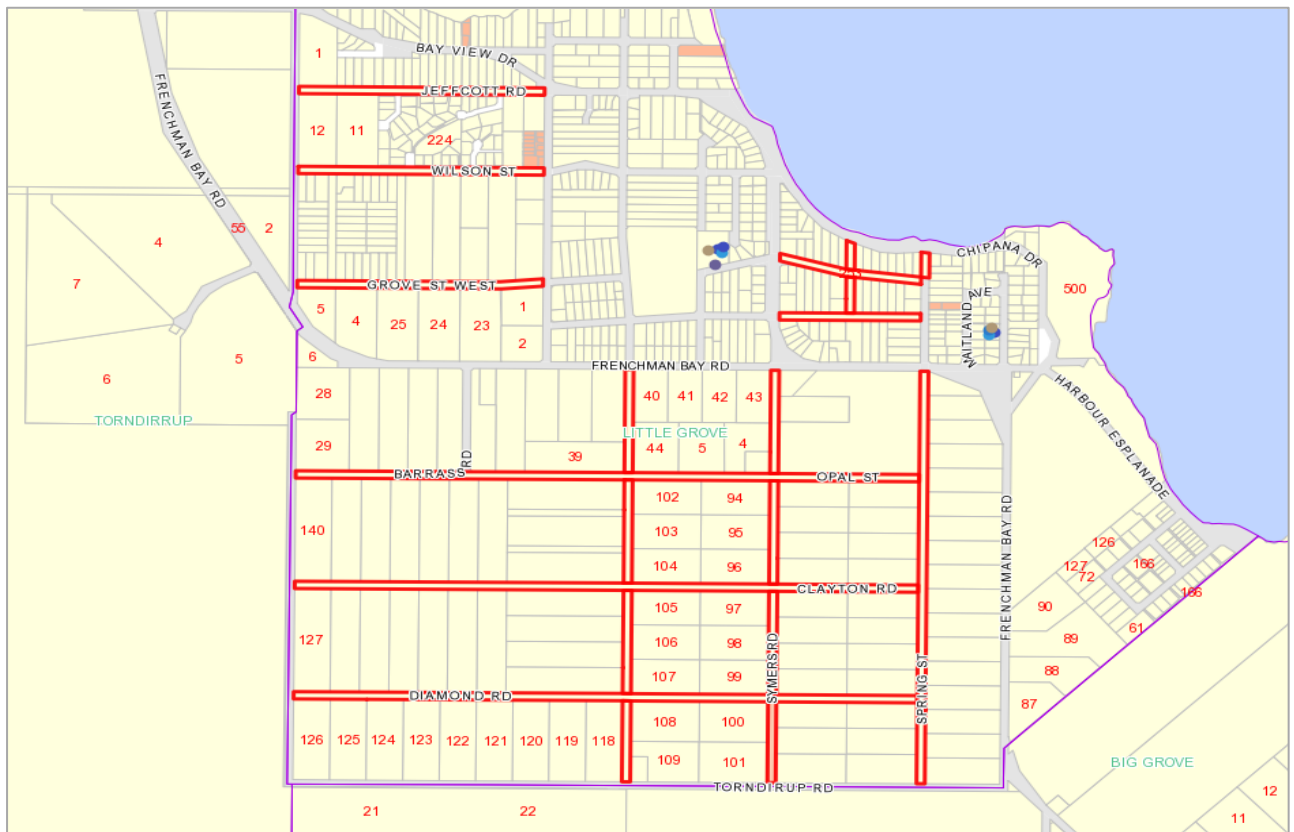


**4.8: ACQUISITION OF ALIENATED LAND AS ROAD RESERVES IN LITTLE GROVE.**

- Land Description** : Lot 50 (Jeffcott Street, Wilson Street & Grove Street West), Lot 155 (Spring Street), Lot 156 (Diamond Street), Lot 157 (Clayton Street), Lot 158 (Opal Street (Barass Road)), Lots 159-162 (O’Connell Street), Lots 163-166 (Symers Street), Lot 250 (Spring Street), Lot 251 (Gordon Street), Lot 253 (Grove Street) and Lots 252 & 254 (Hill Street) Little Grove.
- Proponent** : City of Albany
- Owner** : Henry Bellingham (deceased)
- Responsible Officer(s)** : Executive Director Corporate Services (G Adams)

**Maps and Diagrams:**



**Affected Roads in Little Grove**

**IN BRIEF**

Council is requested to consider the acquisition of freehold land that is currently being used as roads in Little Grove. This land remains in the ownership of the original landowner of the area who is now deceased. The land areas should have been transferred to the Crown at the time of subdivision (1960s-70s), as they are shown as road reserves on the relevant deposited plans, 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 Crown land and dedicated as a road reserve, to reflect the use of the land.

**ITEM 4.8: RESPONSIBLE OFFICER RECOMMENDATION  
VOTING REQUIREMENT: SIMPLE MAJORITY**

**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 50 (Jeffcott Street, Wilson Street & Grove Street West), Lot 155 (Spring Street), Lot 156 (Diamond Street), Lot 157 (Clayton Street), Lot 158 (Opal Street (Barass Road)), Lots 159-162 (O'Connell Street), Lots 163-166 (Symers Street), Lot 250 (Spring Street), Lot 251 (Gordon Street), Lot 253 (Grove Street) and Lots 252 & 254 (Hill Street), shown on Certificate of Title 13/81 Little Grove as road reserves;
- ii) **REQUESTS** under section 52 of the *Land Administration Act 1997* that the Minister for Lands acquires as Crown land, the following freehold Lots:
- a. Lot 50 - Jeffcott Street, Wilson Street & Grove Street West contained on Certificate of Title 13/81 on Plan 85;
  - b. Lot 155 - Spring Street contained on Certificate of Title 13/81 on Plan 62;
  - c. Lot 156 - Diamond Street contained on Certificate of Title 13/81 on Plan 62;
  - d. Lot 157 - Clayton Street contained on Certificate of Title 13/81 on Plan 62;
  - e. Lot 158 – Opal Street (Barass Road) contained on Certificate of Title 13/81 on Plan 62;
  - f. Lots 159-162 - O'Connell Street; contained on Certificate of Title 13/81 on Plan 62
  - g. Lots 163-166 - Symers Street; contained on Certificate of Title 13/81 on Plan 62
  - h. Lot 250 - Spring Street; contained on Certificate of Title 13/81 on Plan 47
  - i. Lot 251 - Gordon Street; contained on Certificate of Title 13/81 on Plan 47
  - j. Lot 253 - Grove Street; contained on Certificate of Title 13/81 on Plan 47 and
  - k. Lots 252 & 254 - Hill Street, contained on Certificate of Title 13/81 on Plan 47.
- iii) **REQUESTS** under section 56 of the *Land Administration Act 1997* that the Minister for Lands dedicates all of the above mentioned land as public roads and indemnifies the Minister against any claims for compensation, as is required under this part;
- iv) **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;

**BACKGROUND**

1. In October 2011, the City received a request from the owners of No 32 Lot 109 Grove Street East, Little Grove to close the road reserve adjoining their property. These owners wished to purchase the land currently part of the Hill Street road reserve (Lot 252) and amalgamate that land with their freehold title.
2. The City progressed the request for permanent road closure of the portion of Hill Street and disposal to the adjoining landowners, with an item going to Council's Ordinary meeting on 21 February 2012 (OCM 21/02/2012 Item 4.6).

3. At this meeting it was resolved by simple majority;

**THAT Council:**

- i) **SEEKS the Minister for Lands approval, under section 58 of the *Land Administration Act 1997*, to permanently close the portion of the Hill Street road reserve between Gordon Street and Grove Street East, Little Grove; and**
- ii) **AUTHORISE the Chief Executive Officer to forward the road closure 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).**
4. As part of section 58 of the *Land Administration Act 1997*, the proposed road closure was advertised for public comment on 1 March 2012 for a period of 30 days. All the adjoining landowners were also advised of the road closure process and invited to comment on the proposal, with submissions closing on 6 April 2012. Three responses were received, two from the public and one from the Department of Regional Development and Lands (DRDL).
5. In the response from DRDL, they informed the City that Hill Street (Lot 252 and Lot 254) were part of a freehold subdivision and were designated as “Road Reserve” on the deposited plan, however it was never formally transferred to the Crown. As such, Hill Street remains in the ownership of the original subdivider of the land. The Department advised that the City could seek the acquisition of this land under the provisions of the *Land Administration Act 1997*.
6. As Lots 252 and 254 Hill Street were still under freehold title of the original landowner, a Mr Henry Bellingham who purchased the land in 1884, the land tenure of other adjoining lots was also investigated. This further investigation by City staff identified a number of other roads within Little Grove which were also still under this same freehold title (Certificate of Title 13/81), totalling 18 lots containing 14 roads/ streets.
7. Due to the need for the land to undergo the process of acquisition and dedication, the original interested landholders of No 32 Lot 109 Grove Street East, Little Grove were contacted in November 2012 and advised that the road closure and subsequent sale would not be going ahead at this time.

**DISCUSSION**

8. Titles searches on the 18 lots have been undertaken and it has been confirmed that all land parcels are shown as “Road Reserve” on the associated deposited plans / plans. All lots are in freehold title and it has been confirmed with the South Australian Probate Registry that the landowner, Mr Henry Bellingham is now deceased.
9. A probate search has been undertaken to identify the persons that the land would have passed to and the beneficiaries for Henry Bellingham’s estate have been successfully identified. No living beneficiaries have been located.

10. Evidence of the unsuccessful search for Henry Bellingham's ancestors will be submitted to the Department for Regional Development and Lands following the advertising period.
11. The City's Works & Services division has advised that the 18 lots contain bituminised and/or regularly maintained gravel roads. As this land provides an essential public access function, it should be under the care, control and management of the City.

#### **GOVERNMENT CONSULTATION**

12. 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.
13. The Department for Regional Development and Lands has advised that it is not possible to determine why land shown as a road reserve was not transferred from freehold title to the Crown, though these errors are common state-wide.
14. 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**

15. 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. As there are over 300 adjoining landowners, notification will occur via an advertisement in the local paper.

#### **STATUTORY IMPLICATIONS**

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.

18. Section 56 of the *Land Administration Act 1997* provides that where land is acquired for use by the public as a road, the local government may request the Minister for Lands to dedicate that land as road. In doing so, the Local Government must indemnify the Minister for Lands against any claim for compensation.

### STRATEGIC IMPLICATIONS

19. 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

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

### RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Rating	Mitigation
<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

22. 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 \$1100. These costs can be accommodated in the 2012/13 budget allocation for land acquisition.

**LEGAL IMPLICATIONS**

23. The acquisition of the freehold land, so as to create road reserves under management of the City of Albany, will legitimise the existing use of these lots for road reserves.

**ALTERNATE OPTIONS**

24. Council can:
- Decline the request for acquisition of the freehold land and it will remain in private ownership as it has done for many years, however the legality of the use of this land for roads will not be correct or officially under the control of the City; or
  - Support the request to acquire these lots and legitimately reserve this land for roads, with the management order being held by the City of Albany.

**SUMMARY CONCLUSION**

25. When land in Little Grove was original subdivided, Lots 50 as Jeffcott Street, Wilson Street & Grove Street West, Lots 155-166 as Spring Street, Diamond Street, Clayton Street, Opal Street (Barass Road), O'Connell Street South & Symers Street, and Lots 250-254 as Spring Street, Gordon Street, Grove Street & Hill Street were created as road 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.

<b>Consulted References</b>	:	<i>Land Administration Act 1997</i>
<b>File Number (Name of Ward)</b>	:	GR.STL.39, RD.ACQ.2
<b>Previous Reference</b>	:	No previous reference