

**4.6: REVIEW OF DELEGATIONS CONCERNING LAND ADMINISTRATION
FUNCTIONS**

- Attachments** : 1. Revised & New Delegations Relating to Land Administration
2. Summary of Changes
- Responsible Officer(s)** : Executive Director Corporate Services (G Adams)

IN BRIEF

- Council is requested to consider the review of delegations relative to land administration tasks, with the view to adopting four revised and two new delegations. The two new delegations are, in part, extracted from the existing delegations, with the view to improving clarity and to increase the efficiency with which land administration matters are handled.

**ITEM 4.6: RESPONSIBLE OFFICER RECOMMENDATION
VOTING REQUIREMENT: ABSOLUTE MAJORITY**

THAT the four revised and two new delegations relative to the City's Land Administration functions and as attached to this item be ADOPTED.

BACKGROUND

1. Under the provisions of the Local Government Act 1995, a local authority may delegate some of its powers and duties to the Chief Executive Officer to help facilitate the services it provides to the community.
2. The City maintains a Register of Delegations. These delegations are reviewed annually and Council last considered this review at its meeting held on 18 September 2012, where the revised Register of Delegations was adopted.
3. The City currently has over 140 delegations and while the annual review considers the relevance and operation of each delegation, it does not have the scope for a detailed review relative to legislative change and the effectiveness of individual functions of the City.
4. Over the last two years, the City has made great progress in addressing a backlog of land administration matters. To date, many of these issues have been reported to Council. With improved practices and knowledge, it is now proposed to modify and enhance the delegations relating to land administration tasks.
5. The review of the delegations relative to land administration matters has been considered against the relevant legislation, including the *Local Government Act 1995* and the *Land Administration Act 1997*, to ensure consistency with the legislative powers of these Acts.

DISCUSSION

6. Land Administration issues can encompass a variety of matters, including changes to Crown reserves, road closures, the dedication of roads and the resumption of land for City infrastructure. The City currently has four delegations that address these issues in part, however some modifications are required to improve their clarity, accuracy and function. The proposed changes of each delegation will be discussed in detail, as follows:

a. **Delegation:** Closing Certain Thoroughfares to Vehicles (period exceeding 4 weeks)

Function: This delegation grants authority to close a thoroughfare in accordance with section 3.50 of the *Local Government Act 1995*.

Proposed Modifications:

- This provision of the *Local Government Act 1995* relates to the temporary closure of a thoroughfare, such as for special events or to accommodate road works. It is not intended to be used for the permanent closure of a road, as this function sits with the *Land Administration Act 1997*.
- It is proposed to remove the reference to the permanent closure of a thoroughfare and include additional wording to make clear this delegation refers to the temporary closure of thoroughfares.

b. **Delegation:** Creation and Change of Purpose of a Crown Reserve

Function: This delegation grants authority to process requests relating to Crown Reserves, pursuant to Part 4 of the *Land Administration Act 1997*.

Proposed Modifications:

- This is a very general delegation and it is considered that more detail relating to the provisions of the *Land Administration Act 1997* would improve its application to functions and make it clear which matters should be presented to Council for consideration.
- A change to the name of this delegation is proposed to reflect its expanded function.
- The reference to State managed leases contained in this existing delegation occurs under Part 6 of the *Land Administration Act 1997*, not Part 4 as included in this delegation. The revised delegation will correct this anomaly.

c. **Delegation:** Rights of Way – Closure, Part Closure, Amalgamation, Paving, Drainage and Obstruction of

Function: This delegation grants authority to manage rights of way, including closure, part closure, amalgamation, paving, drainage and the placement / removal of obstructions, pursuant to Schedule 6.3(3) of the *Local Government Act 1995*.

Proposed Modifications:

- The closure and amalgamation of a right of way no longer occurs under the *Local Government Act 1995*. A right of way is considered to be a road and

therefore must observe the road closure procedures defined in the *Land Administration Act 1997*.

- While the provisions relating to the on-ground management of rights of way will be retained, references to the closure or amalgamation of a right of way will be deleted. A new delegation to consider road closures is proposed and will be further discussed in this report.

d. **Delegation: Traffic Management Treatments**

Function: This delegation grants authority to investigate and implement traffic management treatments and obtain road widening for road infrastructure improvements.

Proposed Modifications:

- Road widening is only one example of a land resumption that may be required for the City's infrastructure. It is proposed to remove the road widening provisions of this delegation to create a new delegation relative to land resumptions.
 - Land Resumption occurs under the provisions of the *Land Administration Act 1997*, which is not referenced in this delegation.
 - This delegation is not sub-delegated to the Executive Director Corporate Services, which is where the land administration functions sit. This hinders the efficiency of undertaking a land resumption.
7. Two new delegations are proposed to replace some of the provisions removed from the existing delegations and to make them more specific to land administration functions, while referencing the correct legislative powers.
8. These two delegations will also include some additional delegated authority, based on the matters that have been presented to Council over the last two years. Over this period, Council has considered approximately 30 reports relative to land administration matters. These items rarely raise issues or concerns and generally the officer recommendation is adopted without change. It is proposed that the additional delegated authority will include the straightforward and routine functions relative to matters consider under the *Land Administration Act 1997*.
9. The functionality of the proposed delegations is summarised below:

a. **Delegation: Road Dedications & Closures**

Details:

- New authority is proposed to seek the dedication of a road reserve, including the indemnification of the Minister, where the land is already being used as part of an existing road or right of way or where land is to be resumed for this use. This complements the land resumption delegation, where land is to be resumed for a thoroughfare.
- This dedication picks up the deleted provisions relating to the closure of rights of way.

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- It is also proposed to introduce authority to initiate the advertising process for a road closure where it is considered that the road is surplus to current and future requirements. This eliminates the need for Council to consider an item twice when submissions are received during advertising and Council then makes the decision to close the road based on both the City's and the community's views. The final decision to close the road will remain with Council.
- It is proposed to sub-delegate this function to the Executive Director Corporate Services in the first instance, as this is where the land administration functions sit.

b. Delegation: Land Resumption

Details:

- This delegation contains the provisions deleted from the Traffic Management Treatments delegation relative to road widening;
- The delegation provisions are expanded to include the other reasons why the City resumes land i.e. drainage infrastructure, road realignments.
- This new delegation correctly references the relevant provisions of the *Land Administration Act 1997*.
- The delegation includes conditions which reflect the City's current practices for administering a land resumption, including the legal document (Consent to Taking by Agreement) which is signed between the City and the affected landowner.
- It is proposed to sub-delegate this function to the Executive Director Corporate Services in the first instance, as this is where the land administration functions sit.

GOVERNMENT CONSULTATION

10. This matter has not been referred to any government agency for comment, as it relates to the City's internal processes only.

PUBLIC CONSULTATION / ENGAGEMENT

11. There is no requirement for this matter to be advertised for public comment.

STATUTORY IMPLICATIONS

12. The *Land Administration Act 1997* applies to the whole of the City of Albany and provides the basis for undertaking the functions relating to the administration of land tenure.
13. Section 5.42 of the *Local Government Act 1995* enables the delegation of some powers and duties to the Chief Executive Officer.
14. Section 9.10 of the *Local Government Act 1995* allows the appointment of persons or classes of persons to be authorised for the purpose of performing particular functions.

STRATEGIC IMPLICATIONS

15. 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

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

RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Rating	Mitigation
<i>If the revised delegations are not supported, this will limit improvement to efficiency and maintain incorrect references to current legislation and practices.</i>	<i>Unlikely</i>	<i>Minor</i>	<i>Low</i>	<i>Adopt the revised and new delegations, as recommended.</i>

FINANCIAL IMPLICATIONS

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

LEGAL IMPLICATIONS

19. The revised and new delegations reflect the correct provisions of the *Local Government Act 1995* and the *Land Administration Act 1997*.

ALTERNATE OPTIONS

20. Council may:
- a. Resolve not to adopt the new delegations and the current delegations will remain in place; or
 - b. Adopt the new and revised delegations, allowing improved clarity in how to apply the delegations and greater efficiency for the handling of land administration functions.

SUMMARY CONCLUSION

21. A review of the delegations relative to land administration functions has been undertaken with the view to improving their clarity and application to current day practices. This review has also resulted in changes to ensure greater consistency with relevant legislation. It is recommended that Council adopt the revised and new delegations, as contained in Attachment 1 to this item.

Consulted References	:	Land Administration Act 1997 Local Government Act 1995
File Number (Name of Ward)	:	PE.AUT.1
Previous Reference	:	OCM 18/9/2012 Item 1.3

Attachment 1 Proposed Delegations Relating to Land Administration

REVISED DELEGATIONS

Closing Certain Thoroughfares to Vehicles (period exceeding 4 Weeks)

Function and Delegation (*Authority to exercise the following functions and sub delegate is*):

Authority to:

- (1) Temporary closure of a thoroughfare, wholly or partially, in accordance with the *Local Government Act 1995*, Section s 3.50; and
- (2) Appoint persons to administer any or all of the above functions.

Conditions and Exceptions (*Appointment of persons is restricted to the Chief Executive Officer*):

- (1) Public notice of intentions and reasons, inviting submissions and then considering submissions
- (2) Action taken to temporarily close thoroughfares must be recorded in the appropriate register and Council Members to be advised accordingly.

Delegate(s): Chief Executive Officer

Sub-Delegates (*Authorised Officers*):

- Executive Director Works & Services
- Manager Infrastructure

Legislative Powers (Reference):

- *Local Government Act 1995*, s3.50(1a) and 3.50(4).

Group: Works & Services - Community Safety **Delegator**: Council

Matters Relating to Crown Reserves

Function and Delegation (*Authority to exercise the following functions and sub delegate is*):

Authority to:

- (1) Process requests related to Crown Reserves, pursuant to section 3.54 of the *Local Government Act 1995* and Part 4 of the *Land Administration Act 1997*.
- (2) Comment on requests to lease Crown land, where the State manages the lease, pursuant to Part 6 of the *Land Administration Act 1997*.
- (3) Appoint persons to administer any or all of the above functions.

Conditions and Exceptions (*Appointment of persons is restricted to the Chief Executive Officer*):

- (1) Authority to process matters relating to Crown Reserves, as follows:
 - Requests to the Minister for Lands to create a new reserve or transfer Crown land from one form to another (i.e. road reserve to Crown reserve; excision of road reserve from Crown reserve etc.)
 - Change of purpose of a Crown reserve;
 - Changes to reserve boundaries;
 - Acceptance of a management order, where the City is currently managing the land or can do so within existing operational budgets;
 - Requests to lease Crown land, where no structure will be built (i.e. leases managed by the State, pastoral leases etc).
- (2) Compliance with the following documents is necessary:
 - City Town Planning Schemes and Local Planning Strategy
 - Adopted Asset Management Plans (Roads; Reserves – Natural and Developed; Drainage)
 - City of Albany Bushfire Strategy
- (3) The revocation of a management order of an existing City managed reserve or cancellation of an existing Crown reserve shall be considered by Council.

Delegate(s): Chief Executive Officer

Sub-Delegates (*Authorised Officers*):

- Executive Director Corporate Services
- Executive Director Works & Services
- Executive Director Planning & Development Services

Legislative Powers (Reference):

- *Local Government Act 1995, s 3.54; and*
- *Land Administration Act 1997, Parts 4 and 6.*

Group: Corporate Services – Lands **Delegator:** Council

Rights of Way – Paving, Drainage and Obstruction of

Function and Delegation (*Authority to exercise the following functions and sub delegate is*):

- (1) Manage Rights-of-Way, including the paving and drainage and the placement and/or removal of obstructions.
- (2) Appoint persons to administer any or all of the above functions.

Conditions and Exceptions (*Appointment of persons is restricted to the Chief Executive Officer*):

Note: A local government may manage Rights-of-Way, including:

- a. the paving and drainage; and
- b. the placement and/or removal of obstructions.

Conditions: Nil.

Delegate(s): Chief Executive Officer

Sub-Delegates (*Authorised Officers*):

- Executive Director Works & Services
- Executive Director Planning & Development Services

Legislative Powers (Reference):

- *Local Government Act 1995, Schedule 6.3(3).*

Group: Works & Services - Infrastructure Enhancement and Maintenance **Delegator:** Council

Traffic Management Treatments

Function and Delegation (*Authority to exercise the following functions and sub delegate is*):

Authority to:

- (1) Investigate and develop traffic management treatment proposals and Local Area Traffic Management Scheme proposals in order to identify and address traffic related issues; and
- (2) Appoint persons to administer any or all of the above functions.

Conditions and Exceptions (*Appointment of persons is restricted to the Chief Executive Officer*):

Conditions:

- (1) During the course of investigation contact to be made with the residents/residential groups, as appropriate, to:
 - identify problems and issues;
 - establish objects of traffic management and develop plans of alternative treatments;
 - evaluate alternative treatments and refine selected plan;
- (2) All alternative routes with regard to road construction or re-construction shall be investigated as part of the design process;
- (3) The selected plan with the proposed traffic treatment to then be presented to the Council for approval.
- (4) Where it is only necessary to consider remedial action, the Council's approval is not required.

Delegate(s): Chief Executive Officer

Sub-Delegates (*Authorised Officers*):

- Executive Director Works & Services

- Executive Director Planning & Development Services
- Manager Infrastructure
- Manager Compliance & Community Safety
- Coordinator Emergency Management & Community Safety

Legislative Powers (Reference):

- *Local Government Act 1995, s3.*

Group: Works & Services - Infrastructure Enhancement and Maintenance **Delegator:** Council

NEW DELEGATIONS

Road Dedications & Closures

Function and Delegation (*Authority to exercise the following functions and sub delegate is*):

Authority to:

- (1) Action requests to the Minister for Lands to dedicate land as a road and indemnity the Minister against any claims for compensation;
- (2) Initiate the public advertising period for the closure of road reserves;
- (3) Appoint persons to administer any or all of the above functions.

Conditions and Exceptions (*Appointment of persons is restricted to the Chief Executive Officer*):

- (1) Requests to dedicate land as a road reserve shall comply with the following conditions:
 - Land is being used as part of an existing road or right of way;
 - Land is to be acquired for road widening as part of a land resumption process.
- (2) Initiation of the public advertising for road closure shall only be actioned where it is identified that the road or right of way is surplus to current requirements and is not required as part of the future planning and development of an area.
- (3) Council to make the final decision on a road closure request following the advertising period, irrespective of whether submissions have been received.

Delegate(s): Chief Executive Officer

Sub-Delegates (*Authorised Officers*):

- Executive Director Corporate Services
- Executive Director Planning & Development Services

Legislative Powers (Reference):

- *Land Administration Act 1997, Part 5*

Group: Corporate Services – Lands; **Delegator:** Council

Land Resumption

Function and Delegation (*Authority to exercise the following functions and sub delegate is*):

Authority to:

- (1) Obtain land for the City's infrastructure (roads, drainage, footpaths etc).
- (2) Appoint persons to administer any or all of the above functions.

Conditions and Exceptions (*Appointment of persons is restricted to the Chief Executive Officer*):

- (1) All land taking to be based on sound engineering principles, taking into account existing and future road and drainage systems;
- (2) Compensation for the resumption of private land shall be based initially on an independent valuation obtained from a licensed valuer;
- (3) Compensation to a maximum of \$100,000 dollars and within the confines of relevant budget allowances, may be negotiated without referral to Council;

AGENDA ITEM 4.6 REFERS

(4) Landowners are to enter into a Consent to Taking by Agreement for the land to be resumed and agreeing to the compensation amount and any other special conditions;

(5) No payment of compensation is to be paid for the land resumption until a caveat has been placed on title registering the City's interest or the final deposited plan is lodged in order for dealings.

Delegate(s): Chief Executive Officer

Sub-Delegates (*Authorised Officers*):

- Executive Director Corporate Services
- Executive Director Planning & Development Services

Legislative Powers (Reference):

- *Land Administration Act 1997, Parts 9 and 10*

Group: *Corporate Services – Lands*; **Delegator:** *Council*

Attachment 2 Proposed Amendments to Delegations Relating to Lands

Delegation: Closing Certain Thoroughfares to Vehicles (period exceeding 4 weeks)

Amendments Proposed:

- Delete references to permanent road closures, as this does not occur under the *Local Government Act 1995*, this is considered under the *Land Administration Act 1997*.
 - This delegation relates to the temporary closure of roads and minor wording changes are proposed to make this clear.
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Delegation: Creation and Change of Purpose of a Crown Reserve

Amendments Proposed:

- To update the delegation to reflect changes adopted by Council in the OCM on 15 March 2011.
 - To rename the delegation to reflect its expanded function.
 - To include an updated reference to comment on State managed leases, which occurs under Part 6 of the *Land Administration Act 1997* (not Part 4).
 - To clearly specify the matters addressed under Part 4 of the *Land Administration Act 1997* that may be considered under delegation and those which must be presented to Council for consideration.
 - To re-word the delegation to improve clarity and accuracy pursuant to the provisions of relevant legislation.
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Delegation: Rights of Way – Closure, Part Closure, Amalgamation, Paving, Drainage and Obstruction of

Amendments Proposed:

- Delete all reference to the closure, part closure or amalgamation of rights of way, which now occurs as part of the road closure provisions of the *Land Administration Act 1997*. This will be picked up in a new delegation relating to road closures.
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Delegation: Traffic Management Treatments

Amendments Proposed:

- Delete all reference to road widening (including the conditions relating to this part), which is to be included in a new delegation relating to Land Resumptions.
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Delegation: **NEW** Road Dedications & Closures

Comments:

- Introduce new delegations to seek the dedication of a road reserve, under Part 5 of the *Land Administration Act 1997* where the land is being used as part of an existing road or right of way or to be resumed for this use.
- Introduce new delegations to initiate the road closure advertising process. At present, an item is presented to Council to undertake this part and then a further item to Council is done if any submissions are received.

AGENDA ITEM 4.6 REFERS

- Include sub-delegation to the Executive Director Corporate Services, as this is the division where Lands sits, and the Executive Director Planning & Development Services as an alternate option.
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Delegation: **NEW** Land Resumption

Comments:

- Include the provisions relating to road widening previous included in the Traffic Management Treatments delegation and expand to include the other reasons for land resumption i.e. drainage infrastructure, road realignments etc.
- Include correct references to relevant parts of the Land Administration Act 1997.
- Include conditions which reflect the City's current process for land resumptions i.e. Consent to Taking by Agreement; payment of funds at caveat or at 'in order for dealings'.
- Include sub-delegation to the Executive Director Corporate Services, as this is the division where Lands sits, and the Executive Director Planning & Development Services as an alternate option.