

## 13.2 Decision Reports

### 13.2.1 Proposed Closure of a Portion of Road - Hamley Street, Peterhead

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| <b>Report Type</b>     | Decision                                                                                                                                                                                                                                                                                                                                                                      |
| <b>City Plan Theme</b> | Community                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Report Author</b>   | Property Officer, City Assets                                                                                                                                                                                                                                                                                                                                                 |
| <b>Report Summary</b>  | This report recommends that Council endorse the Administration to commence Community Engagement on entering into a Road Closure process to close a portion of Hamley Street, Peterhead, measuring approximately 129m <sup>2</sup> and amalgamate it into the adjoining landowners allotments at 112-124 Mead Street, Peterhead.                                               |
| <b>Attachments</b>     | <ol style="list-style-type: none"><li>1. Road Closure Initial Consultation Plan [<b>13.2.1.1</b> - 1 page]</li><li>2. Deposited Plan 1113 [<b>13.2.1.2</b> - 1 page]</li><li>3. Filed Plan 4425 [<b>13.2.1.3</b> - 1 page]</li><li>4. Historical Image Showing Fence Placement [<b>13.2.1.4</b> - 1 page]</li><li>5. Current Aerial View [<b>13.2.1.5</b> - 1 page]</li></ol> |

## RECOMMENDATION

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Council resolves that:

1. The Director City Assets report titled "Proposed Closure of a portion of Road - Hamley Street, Peterhead" be received and noted.
2. The portion of Hamley Street, Peterhead delineated in blue and identified in Attachment 1 – Road Closure Initial Consultation Plan measuring approximately 129 square metres adjacent 7 residential properties be declared surplus to Council's requirements.
3. Council Administration is authorised to implement the required provisions of the *Roads (Opening and Closing) Act 1999*, including Community Engagement to commence a process for closure of a portion of road adjacent as 112,114,116,118,120,122 and 124 Mead Street, Peterhead delineated in blue Attachment 1 – attached Road Closure Initial Consultation Plan and delineated in red on Attachment 2 – Deposited Plan 1113 and Attachment 3 - Filed Plan 4452
  - Approximately 15 square metres of Hamley Street, Peterhead adjacent 112 Mead Street Peterhead and delineated in blue and defined as G in Attachment 1 – Road Closure Initial Consultation Plan and identified in red on Attachment 2 – Deposited Plan 1113 as Allotment 1.
  - Approximately 16 square metres of Hamley Street, Peterhead adjacent 114 Mead Street Peterhead and delineated in blue and defined as F in Attachment 1 – Road Closure Initial Consultation Plan and identified in red on Attachment 2 – Deposited Plan 1113 as Allotment 2.

- Approximately 17 square metres of Hamley Street, Peterhead adjacent 116 Mead Street Peterhead and delineated in blue and defined as E in Attachment 1 – Road Closure Initial Consultation Plan and identified in red on Attachment 2 – Deposited Plan 1113 as Allotment 3.
  - Approximately 18 square metres of Hamley Street, Peterhead adjacent 118 Mead Street Peterhead and delineated in blue and defined as D in Attachment 1 – Road Closure Initial Consultation Plan and identified in red on Attachment 2 – Deposited Plan 1113 as Allotment 4.
  - Approximately 22 square metres of Hamley Street, Peterhead adjacent 120 Mead Street Peterhead and delineated in blue and defined as C in Attachment 1 – Road Closure Initial Consultation Plan and identified in red on Attachment 3 – Filed Plan 4425 as Allotment 60.
  - Approximately 23 square metres of Hamley Street, Peterhead adjacent 122 Mead Street Peterhead and delineated in blue and defined as B in Attachment 1 – Road Closure Initial Consultation Plan and identified in red on Attachment 3 – Filed Plan 4425 as Allotment 59.
  - Approximately 18 square metres of Hamley Street, Peterhead adjacent 124 Mead Street Peterhead and delineated in blue and defined as A in Attachment 1 – Road Closure Initial Consultation Plan and identified in red on Attachment 3 – Filed Plan 4425 as Allotment 58.
4. Subject to the Chief Executive Officer fulfilling the requirements of the *Roads (Opening and Closing) Act 1991*, the Chief Executive Officer is authorised to do all things necessary to expedite the Road Closure process, including:
    - a) determine whether to proceed with the closure of the Road or any part of the Road; and
    - b) negotiate with the registered owners of 112,114,116,118,120,122 and 124 Mead Street, Peterhead (and their representatives) ('the Purchasers') on all Road Closure and disposal matters relating to the proposed closure of this portion of Road and subsequent disposal outlined in this report
  5. Should any objections be received after completion of the Community Engagement process, Council Administration will prepare a report to Council outlining the objections. Should no objections be received, Council Administration be endorsed to submit the required documentation to the Surveyor General for approval of the proposed Road Closure.
  6. Pursuant to Section 38(1) of the *Local Government Act 1999*, the Mayor and the Chief Executive Officer are authorised to attest to the affixation of the Common Seal of the City of Port Adelaide Enfield to any documents, and to sign documents necessary to give effect to the 'Road Process' for the closure and disposal of the Road.
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## **Background**

Council Administration was approached by the registered owners of 118 Mead Street, Peterhead to advise they had commissioned a survey over the residential allotment. This survey identified that a portion of land measuring approximately 18m<sup>2</sup> that extended past their fenceline abutting Hamley Street was actually included within their allotment. The Owner sought certification of this survey by the Surveyor General as they had constructed a large carport and shed upon this land.

The Surveyor General acknowledged the historically incorrect fence placement; however, it was decided to follow common law precedent and allocate the 'excess land' as 'road' making this portion of 'excess land' a part of Hamley Street, Peterhead and as such, placed it into Councils ownership.

Attempts were made by the Licensed Surveyor on behalf of the registered owners of 118 Mead Street, Peterhead to have the 'excess land' allocated to the residential allotment, which included seeking a letter of support from the Chief Executive Officer which stated Council was supportive of this 'excess land' being allocated to the residential allotment, this letter of support was provided. The Surveyor General was not supportive of this approach and preferred to allocate the land as road. The Licensed Surveyor acted upon the Surveyor Generals advice and determined the 'excess land' to be defined as road within the survey.

The Surveyor also identified that a similar size portion of excess land also existed against the adjoining properties on the western side of Hamley Street Peterhead, being 112, 114, 116, 120, 122 & 124 Mead Street, Peterhead.

By letter, the Survey General suggested that Council may wish to consider a 'Road Closure process' under the *Roads (Opening and Closing) Act 1991* to resolve this historical issue for the affected owners.

**Attachment 4** – Historical Image showing fence placement identifies the allotments, along with the historic misalignment of the fenceline delineated in red, and the boundary of the allotments in yellow.

**Attachment 5** – Current Aerial View identifies the allotments, along with the historical misalignment of the fenceline delineated in red, and the boundary of the allotments in yellow and the land declared 'excess land' prior to being defined as Road by the Surveyor General and delineated in green.

## ***Resident Interaction and Consultation***

Once Council Administration had been provided with the Surveyor Generals decision to allocate the 'excess land' to Road, Council Administration met with the owners of 118 Mead Street, Peterhead to enter into an Authorisation Agreement for 5 years to allow for their carport and garage to encroach into Council land (the portion of road) whilst options for Road Closure of this land were investigated.

As a result of this action, an onsite meeting with all adjoining owners of 112-124 Mead Street, Peterhead was held to update all parties on the history of the land and the Surveyor Generals decision. Two options were presented to those in attendance; a temporary solution of Authorisation Agreements for each allotment owner or the more

permanent solution of entering into a Road Closure process along with the owner of 118 Mead Street, Peterhead.

All of the registered owners of 112-124 Mead Street confirmed that they would like Council Administration to investigate the option for entering into a Road Closure process over the portion of land measuring approximately 129 m<sup>2</sup> as outlined in the table below.

| Residential Property Address | Described As                       | Road Closure Identifier | Approx. sqm to be Amalgamated in Adjoining Allotment |
|------------------------------|------------------------------------|-------------------------|------------------------------------------------------|
| 112 Mead St, Peterhead       | Allotment 1 in Deposited Plan 1113 | G                       | 15m2                                                 |
| 114 Mead St, Peterhead       | Allotment 2 in Deposited Plan 1113 | F                       | 16m2                                                 |
| 116 Mead St, Peterhead       | Allotment 3 in Deposited Plan 1113 | E                       | 17m2                                                 |
| 118 Mead St, Peterhead       | Allotment 4 in Deposited Plan 1113 | D                       | 18m2                                                 |
| 120 Mead St, Peterhead       | Allotment 60 in Filed Plan 4425    | C                       | 22m2                                                 |
| 122 Mead St, Peterhead       | Allotment 59 in Filed Plan 4425    | B                       | 23m2                                                 |
| 124 Mead St, Peterhead       | Allotment 58 in Filed Plan 4425    | A                       | 18m2                                                 |
|                              |                                    | <b>Total</b>            | <b>129m2</b>                                         |

The registered owners have requested that Council Administration return to Council to seek support for the following proposal

- *Council endorse that each allotment owner pays no application fees (application fees of \$632 per applicant are normally payable for a Road Closure process.)*
- *Council endorse that each allotment owner is not responsible for their portion of the surveyor fees associated with the Road Closure process and these costs would be paid by Council*
- *Council endorse that each allotment owner is not responsible for their portion of the conveyancing fees associated with the Road Closure process.*
- *Council endorse that each allotment owner is not responsible for their portion of the Public Consultation and advertising fees associated with the Road Closure process.*
- *Council endorse that each allotment owner is not responsible for their portion of the State Government fees and charges associated with the Road Closure process.*
- *Council endorse not seeking compensation of the value of the land payable to Council from the adjoining owners.*

### **Costs Associated with a Road Closure**

As a part of a Road Closure process, the following Fees and Charges are applied and considered a part of the applicants' costs:

| Item                                                                                                                                                                                                            | Cost/Charge                             |
|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|-----------------------------------------|
| <b>Application Fee</b><br>(In house Council Administration fee – investigations into internal & external consultation, along with time and resources spent investigating the matter on behalf of the applicant) | \$4,424.00<br>or<br>\$632 per applicant |
| <b>Surveyor Fees</b><br>(Fees associated with this charge are for boundary alignment & identification purposes along with providing all supporting documentation for the Road Closure)                          | \$3,500<br>(Estimated)                  |
| <b>Road Closure Consultancy Fees</b><br>(Fees associated with this charge are for Road Closure plans, documentation and contractual services required to complete a Road Closure)                               | \$5,000<br>(Estimated)                  |
| <b>Conveyancing Fees</b><br>(Fees associated with this charge are for Lands Title certificates and amalgamation of the land into existing allotments)                                                           | \$1,500<br>(Estimated)                  |
| <b>Land Valuation Fees</b><br>(Fees associated with this charge provide evidence of valuation for the compensation payable to Council for the land)                                                             | \$3,000<br>(Estimated)                  |
| <b>Public Consultation Fees</b><br>(Fees associated with this charge are for the advertising requirements associated with undertaking a Road Closure process)                                                   | \$1,200<br>(Estimated)                  |
| <b>Sale of Land Costs</b><br>(Costs associated with this charge are determined from the Land Valuation Report and payable to Council upon transfer of ownership the land)                                       | TBA                                     |
| <b>State Government Fees &amp; Charges</b><br>(Fees associated with this charge are based on items such as stamp duty and any taxes payable to the State Government for the consideration of the land)          | TBA                                     |

The approximate costs associated with a road closure process are in excess of \$10,000 plus any sale & transfer of land costs and any State Government charges which may apply. It is standard practice that these costs are covered by the applicant.

As all seven applicants have indicated they wish to proceed with the Road Closure, the costs associated with the Road Closure process could be split equally between all parties, thus equating to approximately \$1,600 per applicant.

Council Administration have undertaken investigations into what compensation may be considered payable by the applicants for the land. Recent sales information suggests, within the Peterhead Area, land value of between \$945 and \$970 per square metre.

However, this does not take into consideration that:

- Council would not sell this land to any other individual apart from the adjoining allotments; and
- There are no independent building options for a portion of land measuring less than 25m<sup>2</sup> in these locations; and
- This land prior to the decision of the Surveyor General was for all intents and purposes their land but was not included in the physical allotments due to the historical boundary error

Based on the above considerations it is reasonable for Council in line with its *Sale and Disposal of Land and Assets Policy* to consider a non-financial outcome for the transfer of this land to the adjacent owners.

### ***Investigations into Road Closure Proposal of a portion of Hamley Street, Peterhead***

Internal and external consultation and investigations were undertaken by Council Administration with internal stakeholders providing 'in principle' support for the proposal.

External consultation was undertaken with service providers (South Australian Power Networks, South Australian Water (SA Water), Telstra, Australian Pipeline Gas, ElectraNet and the Department for Infrastructure and Transport) with no objections to the Road Closure and none expressing the requirement for an easement or re-location of services over this portion of land.

A further internal memo was presented to the Chief Executive Officer detailing the proposal and outlining what feedback had been received from the registered owners and internal and external stakeholders. This memo recommended due to the unique circumstances of the Road Closure relating to the allocation of excess land to Road, that a one-off fee of \$800.00 (50% of estimated costs associated) be paid by each applicant, plus any State Government fees or charges.

All applicants involved in the Road Closure Process have agreed to this cost proposal.

### ***Recommendation***

Given the historical fencing alignment error causing this longstanding situation, it is recommended where possible to remove any internal fees and charges to make the process affordable for the registered owners of 112-124 Mead Street, Peterhead.

The approximate costs associated with the Road Closure process for the seven applicants at 112-124 are in the order of \$1,600 per applicant (minus the application fee and land valuation fee) plus any State Government charges assuming all seven owners proceed with the road closure process.

Given the unique circumstances of this proposed Road Closure and how the excess land had been allocated to Road by the Surveyor General, Council Administration recommend seeking reimbursement of \$800 per applicant (50% of the costs associated) plus any State Government charges. This assumes the waiver of the \$632 Council application fee and not

seeking an independent valuation for the land. It is also recommended that the land is to be transferred at nil consideration.

### **City Plan Relationship**

The proposed road closure supports the City Plan theme of 'Community'. Through negotiation and consultation with the community, we can achieve an outcome that meets the community's needs.

### **Legislative Context and Related Policies**

To enable a portion of a road to be closed, it is necessary to formally close the road in accordance with the requirements of the *Roads (Opening and Closing) Act 1991* subject to the consent of the Minister.

A road is closed by what is known as a 'Road Process Order' made by Council, confirmed by the Minister, and notified in the South Australian Government Gazette in accordance with the *Roads (Opening and Closing) Act 1991*.

Council's *Sale & Disposal of Land and Assets Policy* requires that Non-Community Land (including roads) can only be sold where the land has been declared to be surplus to requirements. Non-financial outcomes are also able to be considered where the sale aligns with Council's strategic objectives.

The Policy also provides that disposal can be "by negotiation – with adjoining owners or others with a pre-existing interest in the land, or where the land is to be used by a purchaser whose purpose for the land is consistent with the Council's strategic objectives for the land."

### **Stakeholder Engagement**

Should the Council endorse the initiation of the proposed Road Closure process, the Administration will undertake a period of public consultation in line with the Council's Community Engagement Policy.

Consultation will be in accordance with the requirements of the *Roads Opening and Closing Act 1991* ('Roads Act'), and subject to Surveyor General approval, that should no objections be received, Council endorse the closure and disposal of portions of Hamley Street, Peterhead, adjacent 112-124 Mead Street, Peterhead.

Those people affected by the proposed road closure (such as surrounding property owners and service authorities) will be notified and can formally object, as required by the Roads Act.

Any person may object to a proposed Road Closure process and any person affected by the proposal may apply for an easement to be granted in their favour over the land that is subject to the proposed Road Closure.

## **Risk Management**

There is a risk the community will not support the closure of the Road or that the Minister may not approve it. Communicating with those most affected by the road closure will help reduce the likelihood of substantial objections being received.

## **Financial Management**

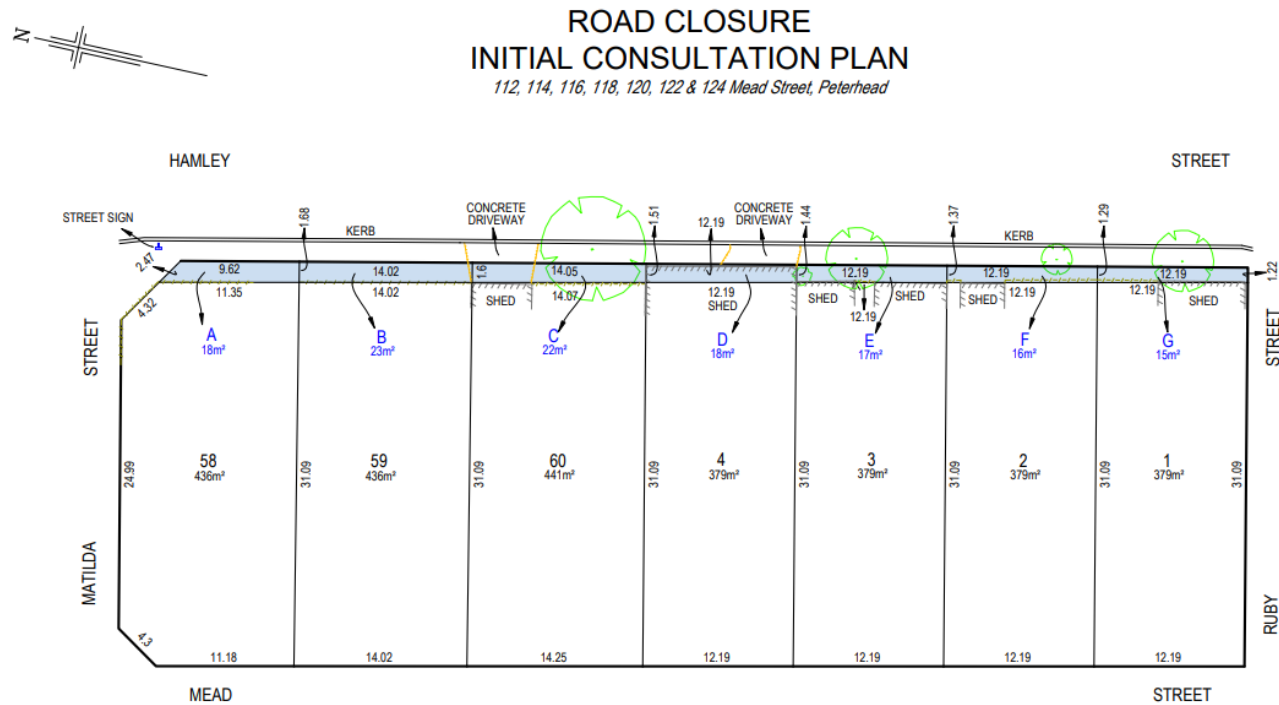
Any funds that would be forfeited by disposing of this land for nil consideration to the adjoining owners has not been factored into existing budgets or Council's Long Term Financial Plan.

All costs borne by Council for this road closure process (estimated at \$6,000) will come from existing operating budgets.

If the Road is transferred, Council will no longer have financial responsibility for the costs of maintaining it.

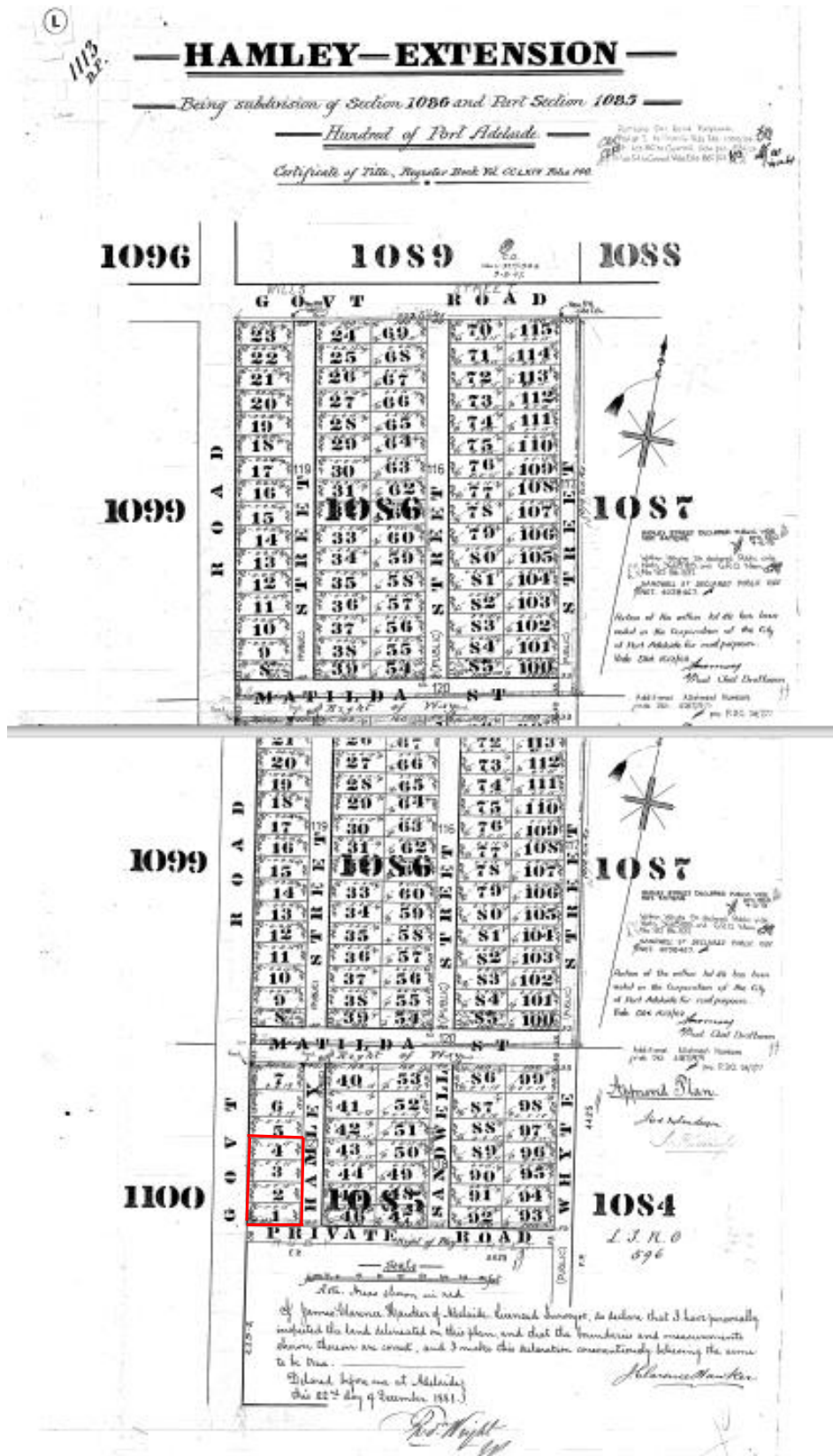
## **Environmental and Social Impacts**

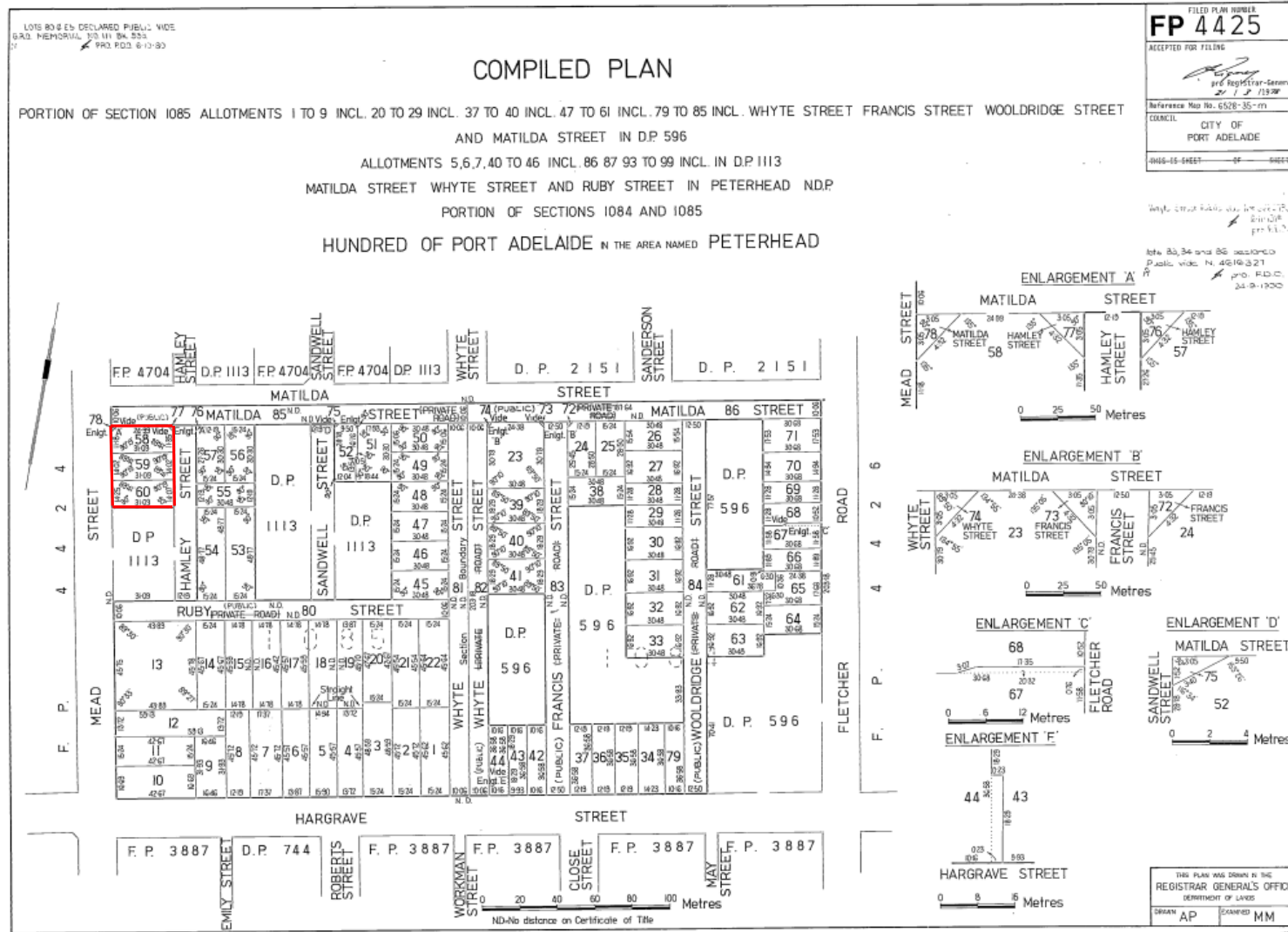
It is considered unlikely that the closure and sale of the Road will have an adverse effect on the local community as the Road is intended to be used for residential purposes which is consistent with the surrounding properties and use of the neighboring land.



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|---------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>LEGEND</b><br>TREE<br>FENCE<br>BUILDING<br>BOUNDARY<br>PAVING<br>STREET SIGN | ALLOTMENT: LOTS 58,59,60 IN F4425 & LOTS 1,2,3,4 IN D1113<br>IN THE AREA NAMED: PETERHEAD<br>HUNDRED OF: PORT ADELAIDE<br>CERTIFICATE OF TITLE: CT5788/897, CT5511/967, CT5501/190, CT5789/587, CT5437/534, CT5330/338, CT5396/393                                                                                |
|                                                                                 | NOTES THE DIMENSIONS AND AREAS SHOWN ON THIS PLAN ARE APPROXIMATE ONLY. FINAL FIGURES ARE TO BE DETERMINED BY A LICENSED SURVEYOR<br>THE PURPOSE OF THIS PLAN IS FOR CONSULTATION ONLY WITH OWNERS AND IS NOT THE PRELIMINARY ROAD CLOSING PLAN<br>AREAS IN BLUE SHADED AREA REPRESENT ROAD CLOSURE PER ALLOTMENT |







Aerial View from 1965 (Prior to Surveyor General Decision) Boundary Alignment  
112-124 Mead Street, Peterhead

|                                      |                                          |
|--------------------------------------|------------------------------------------|
| Red Line indicates fencing placement | Yellow Line indicates allotment boundary |
|--------------------------------------|------------------------------------------|



Close up view of 116-118 Mead Street, Peterhead

Aerial View from 5<sup>th</sup> November 2023 (After Surveyor General Decision) Boundary Alignment  
112-124 Mead Street, Peterhead

|                                      |                                       |                                          |
|--------------------------------------|---------------------------------------|------------------------------------------|
| Red Line indicates fencing placement | Green shading indicates 'Excess Land' | Yellow Line indicates allotment boundary |
|--------------------------------------|---------------------------------------|------------------------------------------|

