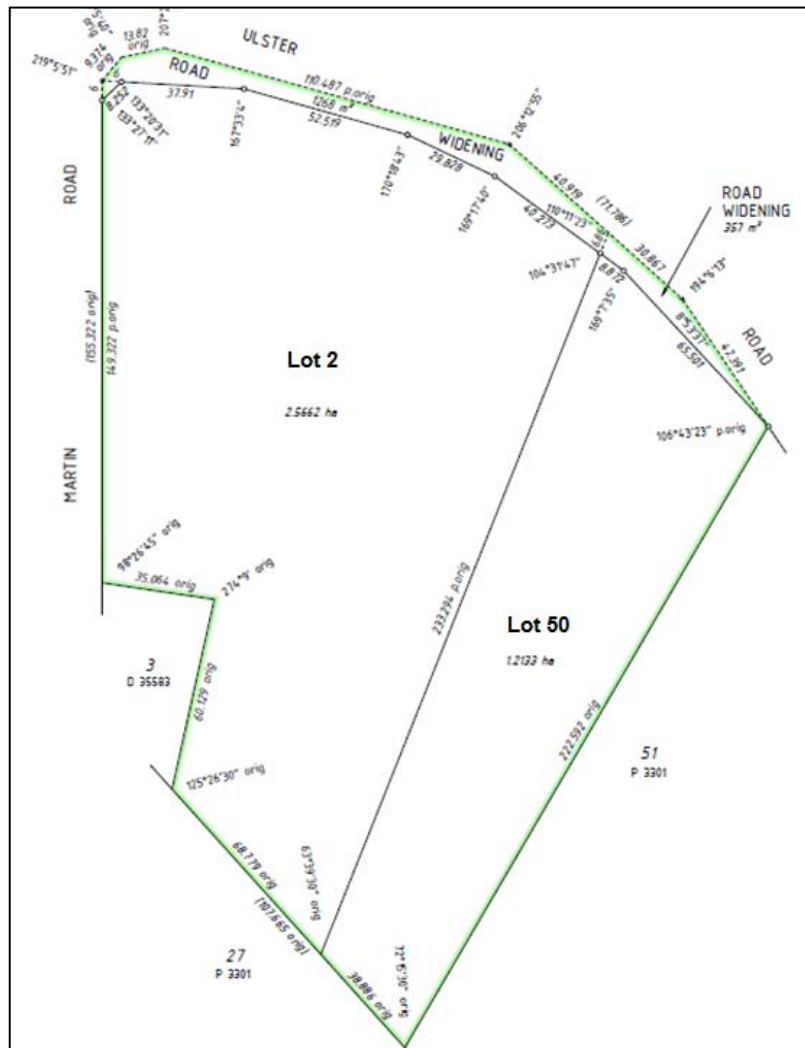


5.1: PROPOSED ROAD WIDENING AFFECTING LOT 50 ULSTER ROAD

Land Description : Lot 50 No 240 Ulster Road, Spencer Park
Proponent : City of Albany
Owner : The Roman Catholic Bishop of Bunbury
Attachments : Map
Responsible Officer(s) : Executive Director Works and Services (K Ketterer)

Maps and Diagrams:



IN BRIEF

- Council's resolution is required to take a 357m² portion of land from Lot 50 Ulster Road to allow the widening of the Ulster Road reserve to accommodate existing road infrastructure and a footpath.

**ITEM 5.1: RESPONSIBLE OFFICER RECOMMENDATION
VOTING REQUIREMENT: SIMPLE MAJORITY**

THAT Council:

- i) **SUPPORTS** the Taking by Agreement, under section 168 of the *Land Administration Act 1997*, of a 357m² portion of land from Lot 50 No 240 Ulster Road, Spencer Park to allow the widening of the Ulster Road Reserve;
- ii) **SEEKS** approval under Section 168 of the *Planning & Development Act 2005* to dedicate the 357m² portion of land to be taken from Lot 50 No 240 Ulster Road, Spencer Park and the 1268m² portion of land to be taken from Lot 2 No 216 Ulster Road, Spencer Park as a public road, through the lodgement of a subdivision application; and
- iii) **INDEMNIFIES** the Minister for Lands from any claims for compensation, as is required under Section 56 of the Land Administration Act 1997.

ITEM 5.1: RESOLUTION (Responsible Officer Recommendation)

**MOVED: COUNCILLOR SUTTON
SECONDED: COUNCILLOR DUFTY**

THAT the Responsible Office Recommendation be ADOPTED.

CARRIED 11-0

BACKGROUND

1. In 2004/05, the City was successful in obtaining funds under the Regional Road Group's Black Spot Program to address road safety issues at the intersection of Ulster and Martin Roads. The road work improvements necessitated the need to resume land from Lots 2 and 50 Ulster Road to allow the widening of the road reserve.
2. Council, at its meeting held in June 2008, considered an item to obtain road widening from Lots 2 and 50 Ulster Road. From this meeting, it was resolved to lay the matter on the table pending the outcome of negotiations on the final cost of the land to be taken. The City then entered into a lengthy negotiation process with the proponent.
3. Council considered a further report on this matter at its meeting held on 20 July 2010. Council was advised that an amount of \$82,000 had been agreed upon for the resumption of land from Lot 2 Ulster Road and it was then resolved:

"That Council in accordance with Section 56 of the Land Administration Act 1997 –

1. *Complete the administrative processes relating to the road widening of portion of Lot 2 Ulster Road;*
2. *Indemnify the Minister from any claims for compensation; and*
3. *Approve \$82,000 funds the compensation required for the road dedication from the current budget, Roads – Land Acquisition account."*

****REFER DISCLAIMER****

4. It would appear that Lot 2 and Lot 50 Ulster Road were dealt with separately, as at the time of commencing negotiations, the land was owned by two individual entities. Lot 2 was formerly owned by the Community in WA of St Joseph of the Apparition and Lot 50 was owned by The Roman Catholic Bishop of Bunbury. Since the commencement of this matter, Lot 2 has now been sold to The Roman Catholic Bishop of Bunbury and they own all of the subject land.
5. The payment of \$82,000 for the land to be resumed from Lot 2 Ulster Road was made to the Community in WA of St Joseph of the Apparition on 23 September 2010.

DISCUSSION

6. It is proposed that the subdivision application required to obtain the road widening from Lots 2 and 50 be lodged simultaneously. The survey of the land and the preparation of the deposited plan have been undertaken together to save costs.
7. A valuation for the 357m² portion of land to be taken from Lot 50 Ulster Road has been obtained. The land has been valued at \$21,500 and the owner of the land, The Roman Catholic Bishop of Bunbury, has accepted this valuation. The City has obtained a signed Consent to Taking by Agreement from the landowner on this basis.
8. The negotiation on the compensation for the Taking by Agreement of this portion of land from Lot 50 Ulster Road has been dealt with under the Road Widening Delegation (OCM 14/12/10 Item 4.3.21). However, the provisions of the *Land Administration Act 1997* require Council's resolution to indemnify the Minister for Lands from any claims from compensation.

GOVERNMENT CONSULTATION

9. No consultation with government agencies has occurred on this matter as yet. As part of the subdivision application process, the Western Australian Planning Commission will refer the proposal to all the relevant servicing and government agencies for comment.
10. Once Council has resolved on this matter, notification will be sent to the Department for Regional Development and Lands at the same time as lodging the subdivision application to advise of the Minister's indemnification and compliance with the *Land Administration Act 1997*.

PUBLIC CONSULTATION / ENGAGEMENT

11. No public consultation on this proposal is required under the statutory provisions, other than with the affected landowners. The written consent of the affected owners to the resumption of the land for road widening purposes has been obtained.

STATUTORY IMPLICATIONS

- 12. 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.
- 13. 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.
- 14. 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

- 15. This item directly relates to the following element from the Albany Insight – Beyond 2020 Corporate Plan:

“4. Governance.....

4.2 Manage our municipal assets to endure they are capable of supporting our growing community.”

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
If road widening not obtained, Council assets would be contained in freehold title and land usage is inappropriate	Possible	Moderate – Council assets contained within land title not controlled by the City. Payment of \$82,000 for portion of the land has already been made and would be a loss for the Council.	Medium	To support the Taking by Agreement of land providing for the widening of Ulster Road

FINANCIAL IMPLICATIONS

- 18. The payment of \$21,500 for the land to be resumed from Lot 50 Ulster Road can be sourced from the 2010/11 land acquisition budget and can be accommodated in the current budget line item.

19. The lodgement of a subdivision application for road widening purposes does not require the payment of fees to the Western Australian Planning Commission.
20. There will be fees associated with the creation of the final deposited plan, the lodgement of the plan with Landgate and settlement fees. This is expected to be in the order of \$3,000 and can be accommodated in the current budget line item for land acquisition.

LEGAL IMPLICATIONS

21. The widening of the Ulster Road reserve will legitimise the road infrastructure and footpath currently situated in freehold title.

ALTERNATE OPTIONS

22. While Council can defer this item, money has already been paid for the land to be resumed from Lot 2 Ulster Road. Further, landowner agreement has been easily reached for the land to be resumed from Lot 50 Ulster Road. As such, it is recommended that this matter be expedited as soon as possible.

SUMMARY CONCLUSION

23. The proposed widening of Ulster Road will be effected so that Council's road and footpath assets are contained in a dedicated road reserve. The affected landowner of Lot 50 Ulster Road has provided their written consent to a Taking by Agreement for the figure recommended by the valuation of the land. The owner of Lot 2 Ulster Road has already been compensated for the land to be taken and the matter needs to be finalised, in line with Council's previous resolution made in July 2010. Council's resolution to enact the road dedication process is sought to meet 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.DEC.2
Previous Reference	OCM 20/07/2010 Item 15.2.6 OCM 17/06/2008 Item 13.6.1