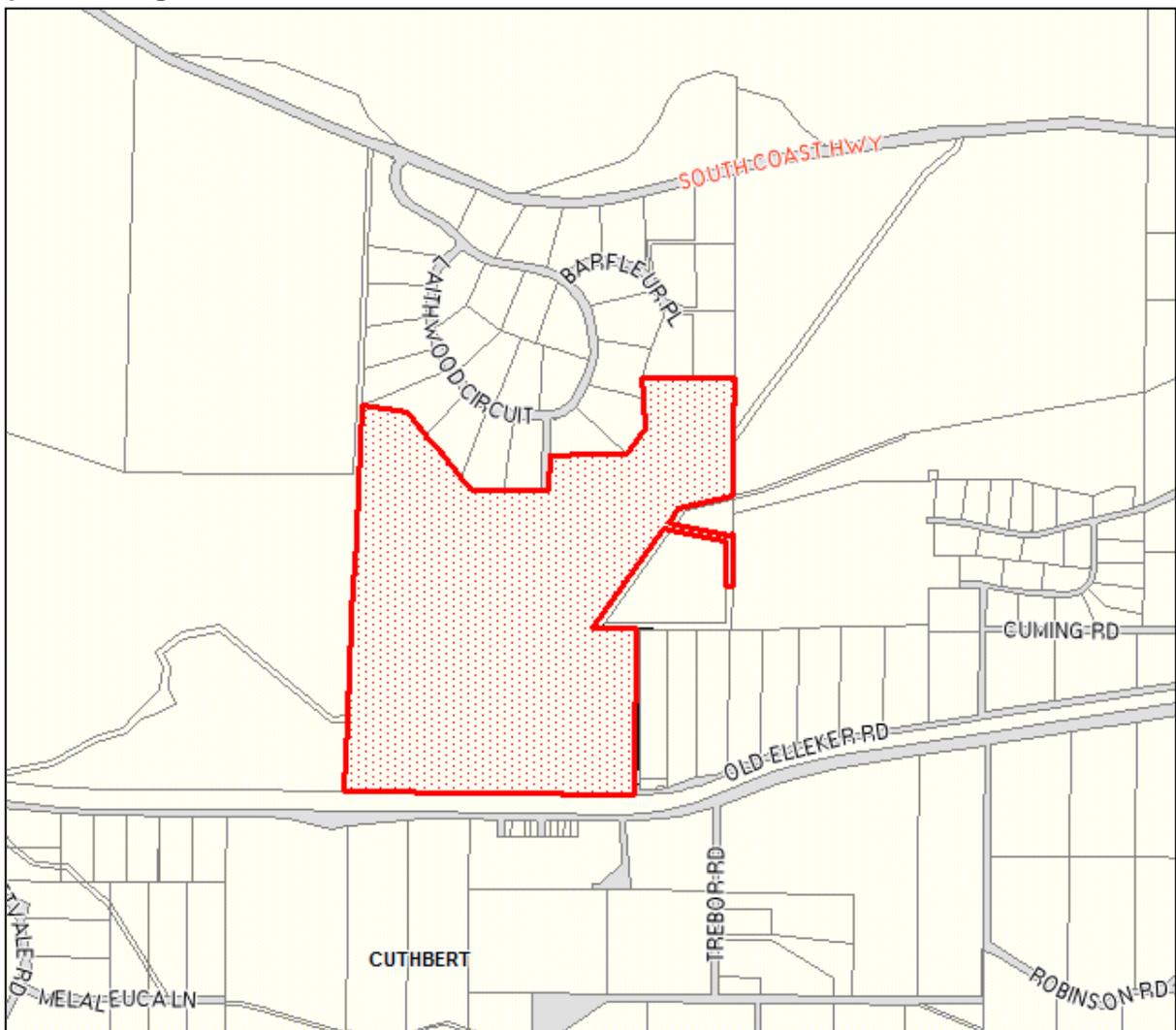


**4.9: PROPOSED LAND RESUMPTION AFFECTING LOT 9000 NO 688  
LOWER DENMARK ROAD, CUTHBERT**

<b>Land Description</b>	: Lot 9000 No 688 Lower Denmark Road, Cuthbert
<b>Proponent</b>	: City of Albany
<b>Owner</b>	: Mr Barry Panizza
<b>Attachments</b>	: Aerial Photography of Lot 9000 No 688 Lower Denmark Road, Cuthbert showing area to be resumed
<b>Responsible Officer(s)</b>	: A/Executive Director Corporate Services (Pamela Wignall)

**Maps and Diagrams:**



**IN BRIEF**

- Council is requested to consider the resumption of a 2401m<sup>2</sup> portion of land from Lot 9000 No. 688 Lower Denmark Road, Cuthbert. The subject land currently contains public infrastructure in freehold title and it is proposed to bring these works into land title that is under the control and management of the City of Albany.

**ITEM 4.9: RESOLUTION**

**VOTING REQUIREMENT: SIMPLE MAJORITY**

**MOVED: COUNCILLOR HAMMOND**

**SECONDED: COUNCILLOR BOWLES**

**THAT Council:**

- i) **SUPPORTS** the Taking by Agreement, under section 168 of the *Land Administration Act 1997*, of a 2401m<sup>2</sup> portion of land from Lot 9000 No 688 Lower Denmark Road, Cuthbert. An 800m<sup>2</sup> portion of this is to be dedicated as public road and the remaining 1601m<sup>2</sup> is to be included in a Crown Reserve for drainage purposes.
- ii) **SEEKS** approval under Section 168 of the *Planning & Development Act 2005* to resume the 2401m<sup>2</sup> portion of land to be taken from Lot 9000 No 688 Lower Denmark Road, Cuthbert as a public road and drainage reserve, through the lodgement of a subdivision application; and
- iii) **REQUESTS** that, under section 41 of the *Land Administration Act 1997*, the Minister for Lands reserves a 1601m<sup>2</sup> portion of land currently situated within Lot 9000 No 688 Lower Denmark Road, Cuthbert for drainage purposes and that, pursuant to section 46 of the *Land Administration Act 1997*, the Management Order for this land be granted to the City of Albany.
- iv) **INDEMNIFIES** the Minister for Lands from any claims for compensation, as is required under Section 56 of the *Land Administration Act 1997*.

**CARRIED 12-0**

**BACKGROUND**

1. In 2005, an application was lodged with the City to subdivide Lot 800 and Lot 50 Lower Denmark Road, Cuthbert to create 33 Special Rural Lots (known as Albany Green).
2. The subdivision was conditionally supported by the City of Albany and the Western Australian Planning Commission in late 2005.
3. To fulfil a condition of the subdivision approval, a drainage management plan was prepared in conjunction with the City, the Department of Water and the Department of Environment and Conservation. The plan showed a drainage basin and the cul-de-sac head of Philliskirk Road contained in the proposed balance Lot 9000. No concerns were raised with public infrastructure being situated in freehold title because the developer indicated that, at some point in the future, Lot 9000 would be further developed to create Stage 2 of the Albany Green subdivision. At this time, the land containing the public infrastructure would be included in appropriate Crown land title.

**\*\*REFER DISCLAIMER\*\***

4. In December 2007, the City granted final clearance to the subdivision and approved the satisfaction of all the conditions. The Deposited Plans did not have any provision for the public works on the created balance Lot 9000.
5. The balance Lot 9000 has not been subject to a further application for rezoning and subdivision and has since been sold as an entire land parcel to a new owner. This owner has since contacted the City requesting that the land on which the public works are situated, should be resumed and contained in appropriate land title, as he was concerned about public liability issues.

## **DISCUSSION**

6. The location of the property boundary for Lot 9000 No 688 Lower Denmark Road is not apparent on the ground, as the fencing for the subject lot is situated south of the public road and drainage basin.
7. It is proposed to resume an area of 800m<sup>2</sup> which contains the cul-de-sac head for Philliskirk Road and this land is to be dedicated as a public road. The remaining 1601m<sup>2</sup> containing the existing drainage basin will be included in a Crown Reserve, which will then be vested in the City of Albany for drainage purposes.
8. It is considered appropriate that these public works be contained in Crown land title under the management of the City, similar to all other public infrastructure that the City controls. The City's Public Liability Insurance would then provide coverage on this land. As such, the City commenced the land resumption process, at the request of the owner and in accordance with the requirements of the *Land Administration Act 1997*.
9. Following the initial contact from the affected landowner, a valuation was sought to determine the compensation that might be payable to resume the land. The land was valued at \$3,125, however this was disputed by the affected landowner, as he believed no consideration was given to the value of the infrastructure contained on the land.
10. Negotiations then occurred with the affected landowner and it was agreed that works (as specified in point 11 below) would be undertaken by the City on the landowner's property, to the value of \$26,000. The landowner preferred that the works were undertaken rather than the payment of money and the owner has now entered into a Consent to Taking by Agreement, as required under the provisions of the *Land Administration Act 1997*.
11. The works on the subject land will likely be undertaken in February / March 2011 because the property is prone to inundation and the earthworks need to occur in the dry months. The works will include the construction of a compacted sand track within the subject owner's property, which will also require the relocation of a stay wire for a power pole and some drainage works. All sand required for the job will be sourced from the subject property.

## **GOVERNMENT CONSULTATION**

12. 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.
13. Depending on Council's resolution, 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**

14. 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**

15. Section 41 of the *Land Administration Act 1997* allows the Minister for Lands to reserve Crown land for one or more purposes in the public interest.
16. Section 46 of the *Land Administration Act 1997* allows the Minister for Lands to place the care, control and management of a reserve in a person or management body, subject to any conditions the Minister may specify.
17. 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.
18. 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.
19. Section 212 of the *Land Administration Act 1997* states that a claimant may request that the compensation for taking land be made in a form other than money. This would include works undertaken on their behalf.
20. 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.
21. 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.

22. 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

23. 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

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

### RISK IDENTIFICATION & MITIGATION

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

Risk	Likelihood	Consequence	Risk Rating	Mitigation
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.	Possible	Medium	High	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.

### FINANCIAL IMPLICATIONS

26. The proposed land resumption will cost approximately \$34,000 in total, providing for the works to be undertaken on the land 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 can be accommodated in the land acquisition line item in the 2011/12 budget.

**LEGAL IMPLICATIONS**

27. The resumption of land containing the public infrastructure located on Lot 9000 No 688 Lower Denmark Road, Cuthbert will legitimise the current use of the land.

**ALTERNATE OPTIONS**

28. While Council can defer this item, this means that public works that should be under the control and management of the City will remain in freehold title. As an extensive 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**

29. The proposed land resumption from Lot 9000 No 688 Lower Denmark Road, Cuthbert will allow the public works currently situated on this property to be contained in appropriate 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*.

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