

ENGINEERING SERVICES**10.1.4 DOSCAS LANE PARTIAL CLOSURE REQUEST**

Directorate: Engineering Services
Author(s): Shaun Kan, Director Engineering Services
Authoriser(s): Matthew Scott, Chief Executive Officer
File Reference: D22/42802
Applicant(s): The Owner 53 John Street
Author Disclosure of Interest: Nil

SUMMARY

For Council to consider a request from the Owner of 53 John Street (Attachment B) for the permanent partial closure of Right of Way (ROW) 32 (Doscas Lane) and amalgamate this section of laneway land with the mention property title. The attached survey plan indicates the width of this request.

OFFICER RECOMMENDATION IN BRIEF

It is recommended Council supports the Land Administration Act (1997) public consultation associated with the resident's request for the partial closure of Doscas Lane.

BACKGROUND

The current owner of 53 John Street, Cottesloe purchased the property in early 2022. They are asking Council to consider the disposal of a small parcel of Doscas Lane containing structural encroachments through Adverse Possession (survey plan attached – Attachment A).

This is dedicated as road and is Crown Land with Management Orders vested to the Town of Cottesloe. The property falls within Local Planning Scheme 3 (listed on the Town's Heritage Register).

Diagram 1 and 2 combined with Photographs 1 and 2 provide an illustration on the encroachments.



Diagram 1: Locality Plan

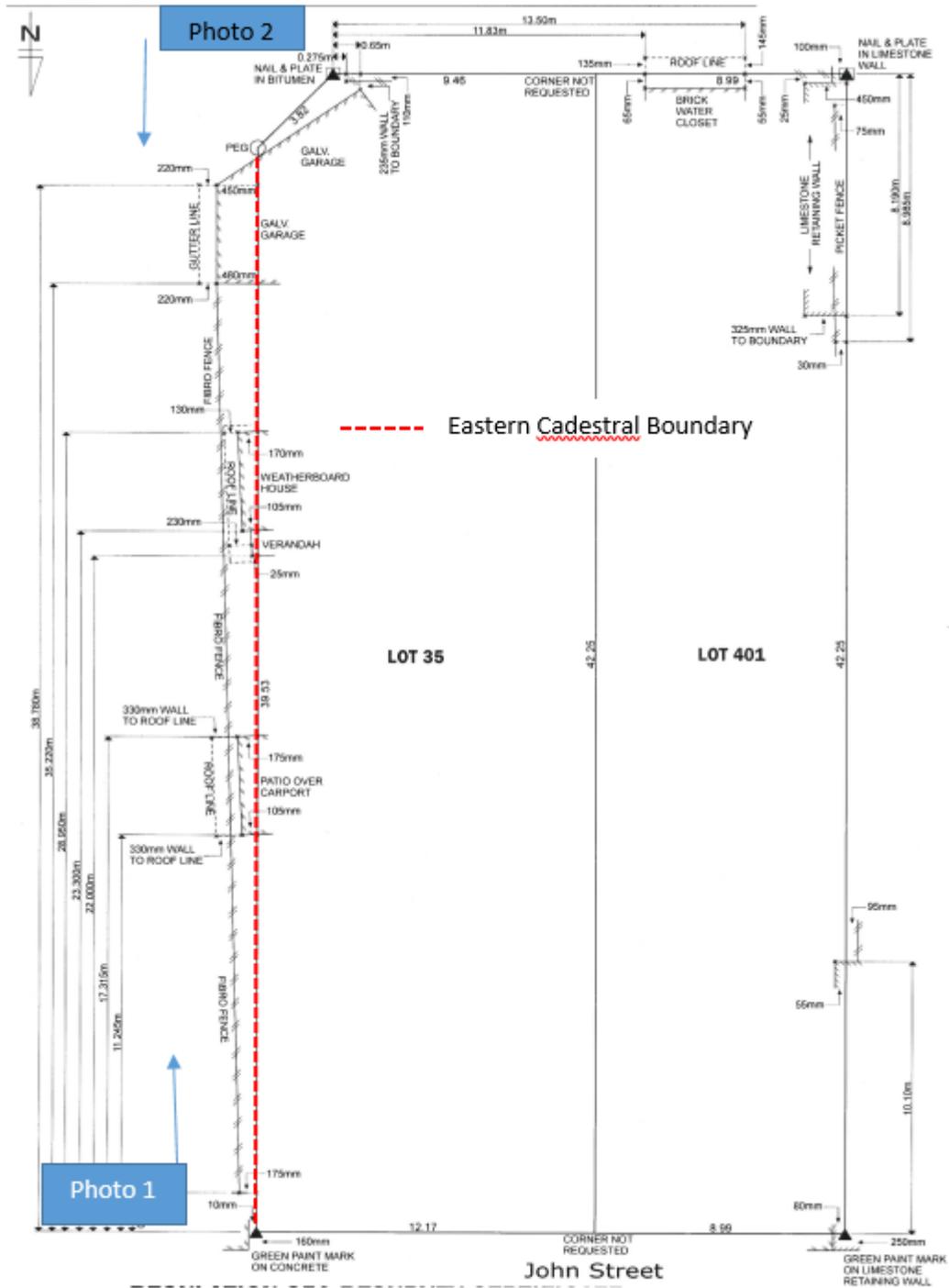


Diagram 2: Property Layout – Eastern Cadastral Boundary and Encroachments (Attachment A)



Photograph 1: Looking South from John Street



Photograph 2: Looking North from Doscas Lane towards John Street

From consultation with the resident, it is reasonable to conclude that the current owner is aware of the encroachment at the time of purchase.

The property owner in their correspondence has suggested that the encroachments were completed before 1952 (Landgate Aerial Images). Given this occurred over 70 years ago, the Town is unable to locate records backdating that far.

Given the laneway tenure (regardless of encroachment occurrence period), the State Government is the determining authority and any consideration must comply with the Land Administration Act (1997) Section 58 process, further discussed in the officer's comment. Council is also to note that the Limitations Act (2005) section 76 has no provisions for Crown Land Adverse Possession.

Some necessary sub-structural safety related works have occurred within the property. The owner will be required to obtain retrospective building approval for these works. A development approval is also required, prior to the retrospective building application being submitted as the property is of heritage significance. However, Council needs to refer the matter to DPLH for a decision on the land issues before the Town can consider both planning and building approvals. Should DPLH not grant the boundary realignment then the structures that are encroaching into the laneway must be removed.

OFFICER COMMENT

As Doscas Lane is Crown Land and a dedicated public road, the process for considering closure of any part of the road is set out in the *Land Administration Act 1997*, Part 5, Division 1, Section 58 - Closing Roads and is summarised as follows:

1. *Council determines on whether or not to proceed with advertising;*
2. *Local advertising occurs (minimum 35 days);*
3. *Council considers any comments and objections and resolves whether to support the request for closure;*
4. *If resolution is to support request this is then referred to the Minister for Lands via the Department of Planning Lands and Heritage (DPLH)*
5. *The Minister for Lands determines the request and advises the town of the decision.*

The appropriateness of the above process has been confirmed.

Given the requirements, a recommendation is made to endorse the district wide public consultation so that Council can consider feedback and determine whether to support the closure.

If supported, it is envisaged that the advertising will happen over the month of December 2022 and January 2023 for deliberation at the February 2023 Ordinary Council Meeting (OCM). This timeframe complies with the minimum 35 days but Council can determine a different period. In addition to the standard public notification through the local newspapers, residents and property owners along both sections of Doscas Lane will be invited to provide comments.

Feedback is then considered and an appropriate recommendation made to Council whether to refer this onto DPLH for the Crown to carry out their due diligence in deciding on the matter.

Council is to note that not proceeding with the advertising places the property owner in a precarious situation, as a State Government determination is required for the statutory

approvals (planning and building) lodgement needed for the remaining improvement works within the title boundary.

Notwithstanding the above, Council should also note the following supplementary information in making this decision:

- Doscas Lane is a dedicated and gazetted road that provides access to a number of other properties, noting that is also access through Broome Street which is narrower than the subject section;
- The proposed partial closure Doscas Lane section has the following width dimensions:
 - (a) Northern end asphalt surface 3 metres
 - (b) Southern end asphalt surface 5 metres
 - (c) Midpoint asphalt 3 metres
 - (d) Full width fence to fence 5 metres
- The applicant has confirmed that the proposed closure area of Doscas Lane is 17m² which narrows down from 0.45 metres from the south to 0.175 metres at the John Street end, noting that approximately 5.4 metres is the width of a two way road (no lane marking) and resuming the encroached area may not necessarily meet the required compliance, notwithstanding additional resurfacing and maintenance cost;
- Furthermore, the width of the east-west section of Doscas Lane is narrow and cannot accommodate two vehicles passing with no widening opportunity as adjoining properties are built up to their boundaries;
- The current lot size of 53 John Street is 890m² (Lots 35 & 401) and this increases to approximately 907m² with the requested land amalgamation. Under Local Planning Scheme 3, the property is within a R20 residential density code zone (450m² per lot average), allowing the potential sub-division of the site;
- Should the partial closure of Doscas Lane be supported, it is preferred that both existing lots and the laneway land (property owner request) is amalgamated to ensure that the current heritage building on the site is contained on one title;
- The property located at 53 John Street is of heritage significance (Heritage Listed). It is listed in the Town's Local Planning Scheme and included on the Town's heritage list. As a result, any improvements to the property will require a development approval, noting that the encroaching structures have no known heritage value. The property is therefore protected and any request to demolish the property must be approved by Council.
- Should Council grant approval for the demolition of the property, two separate dwellings could potentially be built on the existing lots (lots 35 and 401).
- The owner requires the acquisition in order to build a secure perimeter for safety reasons.

Further feedback on the above including opinions on other unknown matters may also be obtained through the consultation for Council's consideration.

ATTACHMENTS

- 10.1.4(a) Attachment A - 53 John Street - Survey Plan [under separate cover]
10.1.4(b) Attachment B - Confirmation of Land Owner Acquisition Request - 53 John Street - Redacted [under separate cover]

CONSULTATION

Consultation with the owner of 53 John Street and DPLH has occurred.

A recommendation is made for Council to proceed with advertising the partial closure of Doscas Lane and consider all submissions before deciding whether to refer this to DPLH to make a determination on the land amalgamation.

STATUTORY IMPLICATIONS***Local Government Act 1995 Section 2.7 – Role of Council******Land Administration Act (1997) Section 58 - Activities on Thoroughfares and Trading in Thoroughfares and Public Places***

- (1) *When a local government wishes a road in its district to be closed permanently, the local government may, subject to subsection (3), request the Minister to close the road.*
 - (2) *When a local government resolves to make a request under subsection (1), the local government must in accordance with the regulations prepare and deliver the request to the Minister.*
 - (3) *A local government must not resolve to make a request under subsection (1) until a period of 35 days has elapsed from the publication in a newspaper circulating in its district of notice of motion for that resolution, and the local government has considered any objections made to it within that period concerning the proposals set out in that notice.*
 - (4) *On receiving a request delivered to him or her under subsection (2), the Minister may, if he or she is satisfied that the relevant local government has complied with the requirements of subsections (2) and (3) —*
 - (a) *by order grant the request; or*
 - (b) *direct the relevant local government to reconsider the request, having regard to such matters as he or she thinks fit to mention in that direction; or*
 - (c) *refuse the request.*
 - (5) *If the Minister grants a request under subsection (4) —*
 - (a) *the road concerned is closed on and from the day on which the relevant order is registered; and*
 - (b) *any rights suspended under section 55(3)(a) cease to be so suspended.*
 - (6) *When a road is closed under this section, the land comprising the former road —*
 - (a) *becomes unallocated Crown land; or*
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- (b) *if a lease continues to subsist in that land by virtue of section 57(2), remains Crown land.*

Land Administration Regulations (1998) Regulation 9 - Local government request to close road permanently (Act s. 58(2)), requirements for

For the purposes of preparing and delivering under section 58(2) of the Act a request to the Minister to close a road permanently, a local government must include with the request —

- (a) *written confirmation that the local government has resolved to make the request, details of the date when the relevant resolution was passed and any other information relating to that resolution that the Minister may require; and*
- (b) *sketch plans showing the location of the road and the proposed future disposition of the land comprising the road after it has been closed; and*
- (c) *copies of any submissions relating to the request that, after complying with the requirement to publish the relevant notice of motion under section 58(3) of the Act, the local government has received, and the local government's comments on those submissions; and*
- (d) *a copy of the relevant notice of motion referred to in paragraph (c); and*
- (e) *any other information the local government considers relevant to the Minister's consideration of the request; and*
- (f) *written confirmation that the local government has complied with section 58(2) and (3) of the Act.*

Limitations Act (2005) Section 76 – No Action by Adverse Possession Against the Crown

Despite any law that is, or has been, in effect the right, title or interest of the Crown to, or in, any land is not affected in any way by any possession of such land adverse to the Crown, and is to be taken as never having been so affected.

Building Act 2011 and Building Regulations 2012

POLICY IMPLICATIONS

There are no perceived policy implications at this stage and this will be determined when submissions are presented to Council.

STRATEGIC IMPLICATIONS

This report is consistent with the Town's *Strategic Community Plan 2013 – 2023*.

Priority Area 6: Providing open and accountable local governance

Major Strategy 6.2: Continue to deliver high quality governance, administration, resource management and professional development.

RESOURCE IMPLICATIONS

Resource requirements are in accordance with the existing budgetary allocation and any associated cost with the closure (not including advertising) is the responsibility of the applicant.

ENVIRONMENTAL SUSTAINABILITY IMPLICATIONS

There are no perceived sustainability implications arising from the officer's recommendation.

VOTING REQUIREMENT

Simple Majority

OFFICER RECOMMENDATION

Moved Cr Harkins

Seconded Cr Wylenko

THAT Council:

1. APPROVES the Cottesloe District wide advertising and public consultation on the proposed partial closure requested by the owner of 53 John Street pursuant to Land Administration Act 1997 Section 58 and Land Administration Regulations 1998 Regulation 9;
2. Subject to point one, NOTES that:
 - a. directly affected residents along the affected section of Doscas Lane will be sent a letter informing them of the proposal and seeking their input on the matter; and
 - b. the consultation will occur over the month of December 2022 to February 2023 so that the matter can return to the February 2023 Ordinary Council Meeting

OCM173/2022

Moved Cr Sadler

Seconded Cr Bulbeck

COUNCILLOR AMENDMENT

That point 2b to be altered to read:

The consultation will occur over the months of February and March 2023 so that the matter can return to the April 2023 Ordinary Council Meeting.

Lost 3/4

For: Crs Sadler, Masarei and Bulbeck

Against: Mayor Young, Crs Harkins, MacFarlane and Wylenko

OCM174/2022

Moved Mayor Young Seconded Cr Bulbeck

FORESHADOWED AMENDMENT

THAT Council:

2. Subject to point one, NOTES that:

- b. the consultation will occur over the month of December 2022 and January, February 2023 so that the matter can return to the March 2023 Ordinary Council Meeting

Carried 4/3

For: Mayor Young, Crs Sadler, Masarei and Bulbeck
Against: Crs Harkins, MacFarlane and Wylenko

OCM175/2022

SUBSTANTIVE MOTION

Moved Cr Harkins Seconded Cr Wylenko

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2. Subject to point one, NOTES that:

- a. directly affected residents along the affected section of Doscas Lane will be sent a letter informing them of the proposal and seeking their input on the matter; and
- b. the consultation will occur over the month of December 2022 and January, February 2023 so that the matter can return to the March 2023 Ordinary Council Meeting

Carried 7/0

For: Mayor Young, Crs Sadler, Masarei, Harkins, MacFarlane, Bulbeck and Wylenko
Against: Nil

Cr Barrett returned to the meeting at 6:44 pm.