



Town of Cottesloe

23 February 2023

Dear Resident,

As you may be aware, on or about 6 January, 2023 the Town of Cottesloe (the Town), as with all impacted residents and interested parties, was notified by the Registrar of Titles (Landgate) of an adverse possession claim by the owner of 38 Florence Street (the applicant), Cottesloe, for portions of Right of Way (ROW) 20A and 20B. After being notified of this claim a caveat was lodged (on 27 January 2023) by the Town in order to protect the Town's legal position by giving it the opportunity to consider whether it has a legal and factual basis to challenge the adverse possession in the Supreme Court. The caveat was in force for a maximum period of one month. Unless the Town commenced Supreme Court proceedings to challenge the claim made by the applicant, within one (1) month of lodging the caveat, it would lapse at the end of the period (28 February 2023).

Since lodging the caveat, the Town has been collecting information relating to the claim, including seeking information from nearby residents, in order to determine whether there was sufficient evidence to successfully challenge the adverse possession claim. During this investigation period the Town became aware of further information relating to potential additional adverse possession claims from other property owners associated with ROW 20.

In order to formally consider the information collected to determine how to deal with this specific adverse possession claim and the associated caveat lodged by the Town, and to consider a way forward regarding future similar claims, a Special Council Meeting was held on 21 February, 2023. At this meeting Council made the following resolution:

That Council:

1. *Acknowledge the legal advice received with regards to the adverse possession claim (D229323) by the owner of 38 Florence Street for a portions of Right OF Way (Row) (20A & 20B);*
2. *Take no further action in relation to the caveat arranged by the CEO, acknowledging it will lapse on 28 February 2023;*
3. *Instruct the CEO, in order to mitigate future adverse possession claims, to:*
 - a. *Seek further legal and technical advice to manage and potentially prevent any further claims for adverse possession for any remaining portions of ROW 20 (20A, 20B or 20D);*
 - b. *To continue to progress the transfer of any and all remaining ROWs currently in the name to the Town of Cottesloe to the Crown; and*
 - c. *Undertake physical surveys and inspections, to achieve points 3(a) & (b).*

4. *Request the CEO to immediately and formally advise impacted residents of ROW 20 (including Florence Street and Hawkstone Street residents) of this decision, via a letter drop and email (where available); and*
5. *Instruct the CEO to review Policy Pol/59 Right of Way and present the reviewed policy to a future Council Meeting for consideration, by the May 2023 OCM.*

The Town acknowledges that some residents may be disappointed with this resolution with regards to the adverse possession claim associated with 38 Florence Street, Cottesloe. However, it should be noted that adverse possession claims are complex and need to be considered based on the particular circumstances of the individual claim (no two cases are necessarily alike). In this case, after reviewing the information collected and the advice received, Council determined there was insufficient evidence to successfully challenge this specific claim, via Supreme Court Action.

Council's decision to allow the Town's caveat to lapse does not impact on future claims made in respect of ROW 20. Further, interested parties may have grounds for challenging adverse possession claims relating to ROW 20, and the Town encourages residents to seek their own advice on this point.

Please note in the resolution that Council has instructed the Administration (via the Chief Executive Officer) to actively manage and potentially prevent further encroachments and adverse possession claims. This will be done via various actions, some of which have already been initiated (such as a physical survey on impacted ROWs).

I trust this letter provides some context regarding Council's decision on this matter. Please contact the Town on 9285 5000 or town@cottesloe.wa.gov.au if you have any further queries.

Regards,



Matthew Scott

Chief Executive Officer