

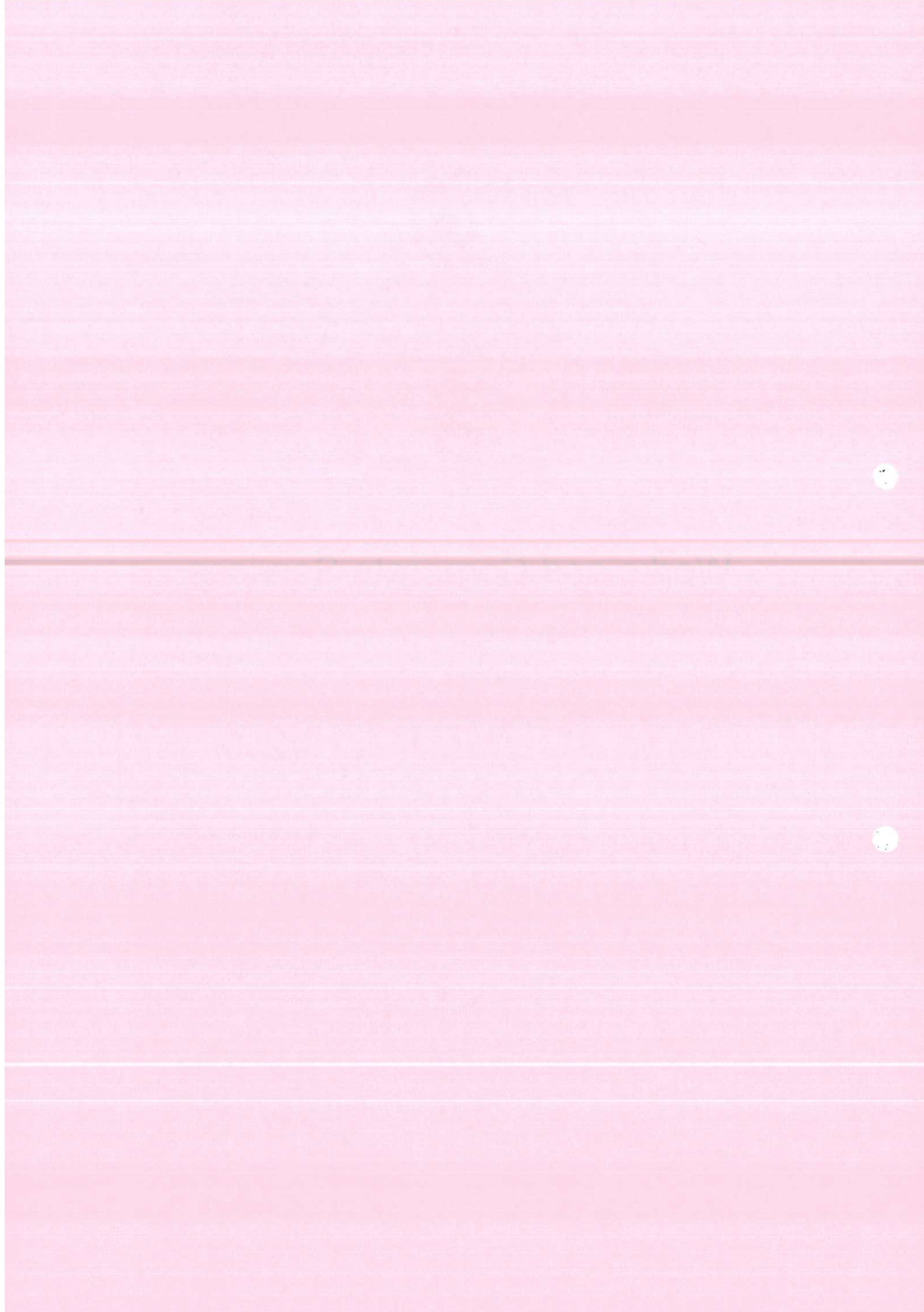
TOWN OF COTTESLOE



Works and Corporate Services
Committee

ATTACHMENT 10.2.1

Meeting Date: 21 August 2012



Cr Jeanes declared a proximity interest in Item 11.2.10 due to living adjacent to applicant and left the room at 7.53PM.

11.2.10 UPGRADING OF LANEWAY ROW 32B & CLOSURE REQUEST

File No: SUB/272
Attachments: [Copy of letter and attached sketch from owner of 71 John Street](#)
[Aerial Plan of ROW32B](#)
[Copy of letter and attachment from owners of 217 Marmion Street](#)
[Details of Development Application for 217 Marmion Street](#)
Responsible Officer: Carl Askew
Chief Executive Officer
Author: Geoff Trigg
Manager Engineering Services
Proposed Meeting Date: 22 May 2012
Author Disclosure of Interest Nil

SUMMARY

A development application has been approved for 217 Marmion Street, Cottesloe. The D.A. covers a new single garage accessed from the rear via a short section of ROW 32B, off the south side of John Street. An office will be built above the garage. The affected section of ROW 32B is to be sealed and drained as a condition of the D.A. The legal width is 2.72m, however the fence line on the west side of ROW 32B (the eastern boundary of N^o71 John Street) appears to be not on the correct alignment and reduces the laneway width by up to 0.4m.

The two affected owners (217 Marmion Street and 71 John Street) have not been able to agree on a realignment of the fence, to allow proper width access to the rear of 217 Marmion Street.

The owners of 71 John Street have requested Council to have the section of ROW 32B adjacent to the rear boundary of 217 Marmion Street temporarily closed for submissions to be gathered to be presented to Landgate.

The owners of 217 Marmion Street have requested that no closure be approved and that Council require the boundary fence on the east side of 71 John Street be installed on the correct alignment and that an independent licensed surveyor peg the laneway boundaries to give assurance to the owner of 71 John Street.

This report recommends that Council:

1. Arrange for a licensed surveyor to determine the legal alignment of property boundaries on each side of ROW 32B off John Street.
2. Inform the owners of 217 Marmion Street and 71 John Street that:

- a) Council will not approve any form of closure of a portion of ROW 32B; and
- b) Council will arrange a licensed survey of the laneway between their properties and if the results of that survey should show that the fence on the east side of 71 John Street obstructs or restricts the legal width of ROW 32B, then the fence will be required to be moved back onto the legal alignment within a particular time period.

BACKGROUND

The owners of 217 Marmion Street have had a surveyor peg their property boundary and establish the location of both sides of the affected section of ROW 32B. This pegging has indicated – that the western boundary line of the ROW is actually inside the existing asbestos and brick fence line. The three properties on the east side have existing fence lines set back from the legal alignment.

Therefore, with the laneway sealing condition, the full legal width cannot be achieved. Also, the available access width to the proposed garage approved for 217 Marmion Street is not sufficient for normal vehicle access and movement.

Staff have had discussions and one arranged meeting on site with owners from the two affected properties, but no agreement or compromise was achieved. It would appear that the alignment of the existing fences have been on their current alignment for many years. Any potential shift of the fence will have implications for the owner in terms of cost and potential consequential impacts upon other structures including side access, one mature tree and a pergola.

STRATEGIC IMPLICATIONS

Nil

POLICY IMPLICATIONS

Council's Rights of Way / Laneways Policy applies

STATUTORY ENVIRONMENT

Along with all other previously owned laneways by Council, this laneway is now Crown Land but vested in Council for administration and control.

The Local Government Act 1995, under section 3.25, states:

3.25 NOTICES REQUIRING CERTAIN THINGS TO BE DONE BY OWNER OR OCCUPIER OF LAND

(1) A local government may give a person who is the owner or, unless Schedule 3.1 indicates otherwise, the occupier of land a notice in writing relating to the land requiring the person to do anything specified in the notice that —

(a) is prescribed in Schedule 3.1, Division 1; or

(b) is for the purpose of remedying or mitigating the effects of any offence against a provision prescribed in Schedule 3.1, Division 2.

(2) Schedule 3.1 may be amended by regulations.

- (3) *If the notice is given to an occupier who is not the owner of the land, the owner is to be informed in writing that the notice was given.*
- (4) *A person who is given a notice under subsection (1) is not prevented from complying with it because of the terms on which the land is held.*
- (5) *A person who is given a notice under subsection (1) may apply to the State Administrative Tribunal for a review of the decision to give the notice.*
- (6) *A person who fails to comply with a notice under subsection (1) commits an offence.*

Under Schedule 3.1, Division 1, Part 14(1) and (2) Council has the power to require something to be done, in this case remove anything obstructing.

"Private thoroughfare" is mentioned and explained in Schedule 9.1, part 7(1).

Schedule 9.1 also covers under part 3, "Obstructing or encroaching on public thoroughfare".

OBSTRUCTING OR ENCROACHING ON PUBLIC THOROUGHFARE

- (1) *Regulations may be made about the obstruction of public thoroughfares by things that —*
 - (a) *have been placed on the thoroughfare; or*
 - (b) *have fallen from land or fallen from anything on land.*
- (2) *Regulations may be made to ensure that structures and plants do not encroach on a public thoroughfare.*

FINANCIAL IMPLICATIONS

The owner of 71 John Street has not accepted the accuracy of the survey pegging of the boundaries of ROW 32B. The owners of 217 Marmion Street arranged the pegging but, because of this non-acceptance of the result, have now requested Council arrange an independent licensed surveyor to formally peg the laneway boundaries.

The cost of this survey is estimated at \$1,000. No other cost to Council is anticipated.

SUSTAINABILITY IMPLICATIONS

Nil

CONSULTATION

On site discussions have occurred with the two affected property owners. Other adjacent owners were contacted but do not wish to be involved.

STAFF COMMENT

The fence issue affecting the owners of 217 Marmion Street and 71 John Street has had a negative impact on the previously friendly relationship between the two

families. Discussions and meetings on site have not resolved the issue or established any compromise.

On the east side of the laneway, the legal boundary appears forward of the actual built fences. Any sealing could only go to the boundary, not the fence lines. On the west side, the legal boundary is inside the built fence line for most or all of the length. The front fence section is brick, followed by asbestos which is the section measured up to 0.4m out into the laneway opposite the development site approved for 217 Marmion Street.

The request by the owners of 71 John Street to close a part of the laneway, even temporarily, should not be considered. It is a public access way, currently used for access to residential properties. It will be used for construction machinery and materials delivery when site works commence at 217 Marmion Street.

The plans provided by the owners of 217 Marmion Street for their development show a wider than normal garage set back from the property boundary, to allow for the turn into the garage plus the ability to back out and drive forwards out of the laneway onto John Street.

This becomes difficult to impossible if the laneway west side fence remains off the suggested legal boundary alignment.

Originally, it was thought that Landgate would be involved in requiring the miss-aligned fence to be relocated but Council has the administrative responsibility for these public access laneways, identical to vested road reserves.

The use of powers given to Council in the Local Government Act 1995 as covered under "Statutory Environment" indicate that, if shown to be out of alignment, the fence line, acting as an obstruction in a public thoroughfare, could be dealt with by first having a notice served, under Section 3.25, to the owners of 71 John Street requiring the fencing obstruction to be removed or relocated.

It would be warranted for Council to arrange for a licensed surveyor to survey the laneway section to remove any doubt of the existence of an obstruction of the laneway width.

VOTING

Simple Majority

OFFICER RECOMMENDATION

Moved Cr Strzina, seconded Cr Rowell

THAT Council:

1. Arrange for a licensed surveyor to determine the legal alignment of property boundaries on each side of ROW 32B off John Street.
2. Inform the owners of 217 Marmion Street and 71 John Street that:
 - a) Council will not approve any form of closure of a portion of ROW 32B; and

- b) Council will arrange a licensed survey of the laneway between their properties and if the results of that survey should show that the fence on the east side of 71 John Street obstructs or restricts the legal width of ROW 32B, then the fence will be required to be moved back onto the legal alignment within a particular time period.

AMENDMENT 1

Moved Mayor Morgan, Seconded Cr Strzina

That point (2)(b) of the officer recommendation be amended to include the words "portion of asbestos" after the words "legal width of ROW 32B, then the" and the words "from the end of the brick wall to the end of the White's property boundary" be added after the word "fence".

Carried 5/0

AMENDMENT 2

Moved Mayor Morgan, Seconded Cr Strzina

That a new point (2)(c) be added to the officer recommendation that states "Inform the owners that the costs of the realignment of the asbestos fence should be met jointly by the owners of 217 Marmion Street and 71 John Street."

Carried 3/2

COMMITTEE RECOMMENDATION

Moved Cr Boland, Seconded _____

THAT Council:

1. Arrange for a licensed surveyor to determine the legal alignment of property boundaries on each side of ROW 32B off John Street.
2. Inform the owners of 217 Marmion Street and 71 John Street that:
 - a) Council will not approve any form of closure of a portion of ROW 32B;
 - b) Council will arrange a licensed survey of the laneway between their properties and if the results of that survey should show that the fence on the east side of 71 John Street obstructs or restricts the legal width of ROW 32B, then the portion of asbestos fence from the end of the brick wall to the end of the White's property boundary will be required to be moved back onto the legal alignment within a particular time period; and
 - c) Inform the owners that the costs of the realignment of the asbestos fence should be met jointly by the owners of 217 Marmion Street and 71 John Street.

MOTION LAPSED DUE TO WANT OF A SECONDER

MOTION TO RE-INTRODUCED THE ORIGINAL OFFICER RECOMMENDATION**OFFICER RECOMMENDATION**

Moved Cr Strzina, seconded Cr Downes

THAT Council:

1. Arrange for a licensed surveyor to determine the legal alignment of property boundaries on each side of ROW 32B off John Street.
2. Inform the owners of 217 Marmion Street and 71 John Street that:
 - a) Council will not approve any form of closure of a portion of ROW 32B; and
 - b) Council will arrange a licensed survey of the laneway between their properties and if the results of that survey should show that the fence on the east side of 71 John Street obstructs or restricts the legal width of ROW 32B, then the fence will be required to be moved back onto the legal alignment within a particular time period.

AMENDMENT

Moved Cr Pyvis, Seconded Mayor Morgan

That in point 2 (b) the word 'fence' be deleted and be replaced with "portion of asbestos fence from the end of brick wall to the end of the White's property boundary".

Carried 5/2

AMENDMENT

Moved Cr Walsh, Seconded Mayor Morgan

That in point 2 (b) the word 'will' be replaced with "may".

Carried 4/3

AMENDMENT

Moved Mayor Morgan, Seconded Cr Boland

That in point 2 (b) after the word 'period' the following words be added "providing that the cost of realignment are met jointly by both owners of 217 Marmion Street and 71 John Street".

Lost 2/5

COUNCIL RESOLUTION

THAT Council:

1. Arrange for a licensed surveyor to determine the legal alignment of property boundaries on each side of ROW 32B off John Street.
 2. Inform the owners of 217 Marmion Street and 71 John Street that:
-

- a) Council will not approve any form of closure of a portion of ROW 32B; and
- b) Council will arrange a licensed survey of the laneway between their properties and if the results of that survey should show that the fence on the east side of 71 John Street obstructs or restricts the legal width of ROW 32B, then the portion of asbestos fence from the end of brick wall to the end of the White's property boundary may be required to be moved back onto the legal alignment within a particular time period.

THE AMENDED SUBSTANTIVE MOTION WAS PUT

Carried 6/1

Cr Jeanes returned to the Chambers at 8:12PM



JOHN

STREET



This survey was performed in accordance with the provisions of the Licensed Surveyors (Guidance of Surveyors) Regulations 1961 and the Licensed Surveyors (Transfer of land Act 1893) Regulations 1961

M. DUNN
LICENSED SURVEYOR

NOTE All distances in metres and are calculated from the title boundary.

LEGEND	
○	Boundary Mark
encl.	Denotes structure encroaches across title boundary
clr.	Denotes structure is clear of title boundary
—	Title boundary
- - - - -	Fence (centre-line)
▨	Building (external face)
—	Wall
⋯	Roof gutter

TITLE: Survey Report 71 John Street Cottesloe	GIUDICE SURVEYS ESTABLISHED 1972 ESTABLISHED 1972	8 Stirling Street Fremantle PO Box 1219 FREMANTLE WA 6959	LOT: 113	REF: 120/12	DATE: 18/6/12		
			CLIENT: Town of Cottesloe	LICENSED LAND SURVEYORS Land Subdivisions, Strata Consultants, Engineering Surveys, Project Management E: giudice@lnet.net.au	T: 9335 6222 F: 9430 4980	PLAN/DIA: P377	DATUM:
			LOC:	REVISION:			
			C/T: VOLUME - FOL 1156-584	SCALE: 1:200 A3 0 1 2 4 6 8 10			

