

**12.3 GRANT OF ACCESS EASEMENT OVER THE CITY'S RIGHT OF WAY (LOT 303) FOR THE BENEFIT OF LOT 49 (NO.33) SCARBOROUGH BEACH ROAD, NORTH PERTH AND TRANSFER OF LOTS 303 AND 304 ON DEPOSITED PLAN 28000 TO STATE OF WESTERN AUSTRALIA**

- Attachments:**
1. Deposited Plan - easement over Lot 303 on Deposited Plan 28000
  2. Plan of City's Private Right of Way - Lot 303 on Deposited Plan 28000
  3. Deposited Plan 28000 - depicting lots 303 and 304
  4. Plan of development at 33 Scarborough Beach Road

**RECOMMENDATION:****That Council:**

1. **GRANTS** an easement for access over the portion of the City's private right of way known as Lot 303 on Deposited Plan 28000, from Pennant to Howlett Street, for the benefit of Lot 49 (No. 33) Scarborough Beach Road, North Perth, as shown marked "A" on Deposited Plan 417328, at Attachment 1, and in the aerial plan at Attachment 2;
2. Subject to final satisfactory negotiations being carried out by the Chief Executive Officer, **AUTHORISES** the Chief Executive Officer and the Mayor to affix the common seal and execute the easement document in Recommendation 1. above;
3. **APPROVES** the transfer of the City's private rights of way between Anzac Road, Scarborough Beach Road, Howlett Street and Chamberlain Street, known as Lots 303 and 304 on Deposited Plan 28000, and being Certificate of Title Volume 2217 Folio 818 and 819, as shown in Attachment 3, to the State of Western Australia pursuant to section 3.58 of the *Local Government Act 1995*, **SUBJECT TO** the Chief Executive Officer providing a statutory declaration in respect to any contamination, unpaid rates to utility providers, leases, licences or any other interests in Lots 303 and 304;
4. **NOTES** that Lots 303 and 304 will become Crown land pursuant to section 82 of the *Land Administration Act 1997*, and **REQUESTS** that the Minister for Lands either:
  - 4.1 reserve Lots 303 and 304 for the purpose of a public right of way and place care, control and management with the City pursuant to section 41 and 46(1) of the *Land Administration Act 1997*; or
  - 4.2 dedicate Lots 303 and 304 as a road pursuant to section 56 of the *Land Administration Act 1997*,as determined appropriate by the Minister for Lands, in consultation with the Chief Executive Officer.

**PURPOSE OF REPORT:**

## To consider:

- granting an easement for access (including vehicular access) over a portion of the City's private right of way, known as Lot 303 on Deposited Plan 28000 (Lot 303), to enable rear access to the proposed development at Lot 49 (No. 33) Scarborough Beach Road, North Perth (Lot 49); and
- transferring Lots 303 and 304 on Deposited Plan 28000 to the State of Western Australia so that these rights of way are available for use by the public.

**BACKGROUND:**

In May 2016 the City installed protected cycle lanes along Scarborough Beach Road. The design of the cycle lanes included road islands, trees and other landscaping. The cycle lane has restricted vehicle access from some adjacent lots to Scarborough Beach Road. In most instances vehicle access for these lots is possible from a rear right of way.

On 3 March 2020 the owners of Lot 49 (No. 33) Scarborough Beach Road, North Perth submitted a development application for Six Grouped Dwellings (Application). The Application proposes rear access via Lot 303, which is a right of way owned in freehold by the City. Lot 49 does not currently have a legal right of access over Lot 303. The Development Application was approved by the City under delegated authority on 15 May 2020, subject to conditions requiring the owner to gain a legal right of access over Lot 303 prior to the development commencing.

The City can provide legal access over Lot 303 by granting an easement benefit to Lot 49 or by transferring Lot 303 to the State of Western Australia so that it becomes either a public right of way or a dedicated road.

#### **DETAILS:**

Scarborough Beach Road is a distributor type "A" road. The projected daily traffic volume (between Charles and Loftus Streets) is approximately 12,000 vehicles per day, which equates to 6,000 vehicles per day per lane. In accordance with the [2009 WAPC Liveable Neighbourhood Guidelines](#) a development which abuts a road that has over 5,000 vehicles per day should be accessed via a secondary street (low traffic), if available.

The Application has been designed to accommodate the on-site car parking spaces at the rear of the lot, adjacent to Lot 303, as shown in **Attachment 4**. This layout aligns with the deemed-to-comply criteria of the [Residential Design Codes of WA – Volume 1](#) (clause 5.3.5 Vehicular Access - C5.1 – page 28). The reasons rear access to this type of development are preferential are:

- vehicle access safety;
- reduced impact of access points on the streetscape;
- legible access;
- pedestrian safety; and
- minimal crossovers.

In accordance with the above principles, the access arrangement to Lot 49 via Lot 303 is appropriate for the following reasons:

- access from the ROW is legible as it connects this lot with Pennant and Howlett streets;
- a number of adjoining properties, including 35 and 37 Scarborough Beach Road, have vehicle access from Lot 303;
- in terms of safety, Scarborough Beach Road has protected bicycle lanes on both sides of the carriageway, by minimizing the number of crossovers over the bicycle lane this improves cyclist safety; and
- vehicle access provided onto Scarborough Beach Road would increase the hardstand crossover area in the verge reducing the potential for quality landscaping.

Administration recommends that the City request the Minister for Lands (Minister) to acquire Lots 303 and 304 as Crown land under section 52 of the *Land Administration Act 1997* (LAA) and to either dedicate these lots as a road or reserve these lots as public rights of way. This process is estimated to take 12 months.

In the interim to the completion of the acquisition process, legal access over the portion of Lot 303 between Pennant and Howlett streets can be established by the City granting an easement to the benefit of Lot 47. This process is estimated to take 1 month. This will enable the proposed development at Lot 47 to progress.

Administration proposes that Lots 303 and 304 in their entirety are transferred to the State of Western Australia and vested in the City as public rights of way or dedicated as road, as this will prevent this type of access issue arising in the future.

#### **CONSULTATION/ADVERTISING:**

The Chief Executive Officer will prepare a Statutory Declaration relating to any known interests in Lot 303 and Lot 304, and organise for the land to be transferred to the State of Western Australia.

#### **LEGAL/POLICY:**

Transferring the freehold in Lots 303 and 304 to the State of Western Australia would be considered a disposition under section 3.58 of the *Local Government Act 1995*. Regulation 30(2)(c) of the *Local*

*Government (Functions and General) Regulations 1996* provides that dispositions to the Crown are exempt from the land disposal requirements of section 3.58.

Section 56 of the *Land Administration Act 1997* (LAA) sets out the requirements for the City to request the Minister to dedicate Lots 303 and 304 as road. Regulation 8 of the *Land Administration Regulations 1998* sets out the requirements for a local government to make a request pursuant to section 52(1)(b) of the LAA.

The City's Register of Delegations, Authorisations and Appointments does not provide the Chief Executive Officer with the power to grant an easement under common law. Therefore it is necessary for Council to grant an easement over Lot 303 and for the easement document to be executed by the Mayor and Chief Executive Officer, with the City's common seal affixed.

**RISK MANAGEMENT IMPLICATIONS:**

**Low Risk:** There is low risk in granting an easement over a portion of Lot 303 and transferring Lots 303 and 304 to the State of Western Australia.

**STRATEGIC IMPLICATIONS:**

This is in keeping with the City's *Strategic Community Plan 2018-2028*:

Accessible City

*Our pedestrian and cyclist networks are well designed, connected, accessible and encourage increased use. We have better integrated all modes of transport and increased services through the City.*

Innovative and Accountable

*We are open and accountable to an engaged community.*

**SUSTAINABILITY IMPLICATIONS:**

N/A

**FINANCIAL/BUDGET IMPLICATIONS:**

Nil.