9.3 ROAD DEDICATION OF RIGHT OF WAY LOT 66 ON DIAGRAM 4096, LEEDERVILLE

Attachments:

1. **Survey Plan - Lot 66 Diagram 4096**
2. **Certificate of Title 2748-736 Lot 66 On Diagram 4096**
3. **Cancelled Certificate of Title 1054-346 - Lot 66 On Diagram 4096 - Partial Closure of Right of Way**

RECOMMENDATION:

That Council:

1. **REQUESTS the Minister for Lands to dedicate as a road Lot 66 on Diagram 4096 as shown in Attachment 1, comprised in Certificate of Title Volume 2748 Folio 736 as shown in Attachment 2, pursuant to section 56(1)(c) of the *Land Administration Act 1997* (LAA) subject to the Chief Executive Officer:**

   1.1 Providing public notice seeking submissions on the proposal to dedicate Lot 66 on Diagram 501 pursuant to section 56(1)(c) of *Land Administration Act 1997* and Regulation 8 of *Land Administration Regulations*; and

   1.2 Considering and responding to any submissions or objections received.

PURPOSE OF REPORT:

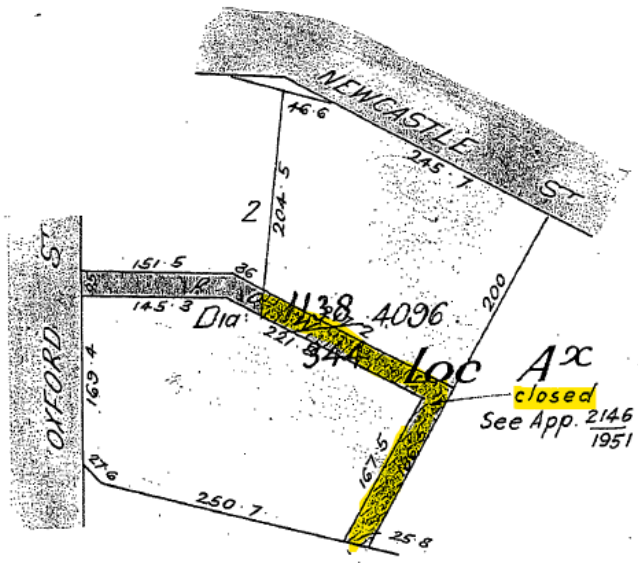
For Council to consider the dedication of the right of way adjacent to Oxford Street, Leederville, known as Lot 66 on Diagram 4096, as a road pursuant to section 56(1)(c) of the *Land Administration Act 1977* (LAA).

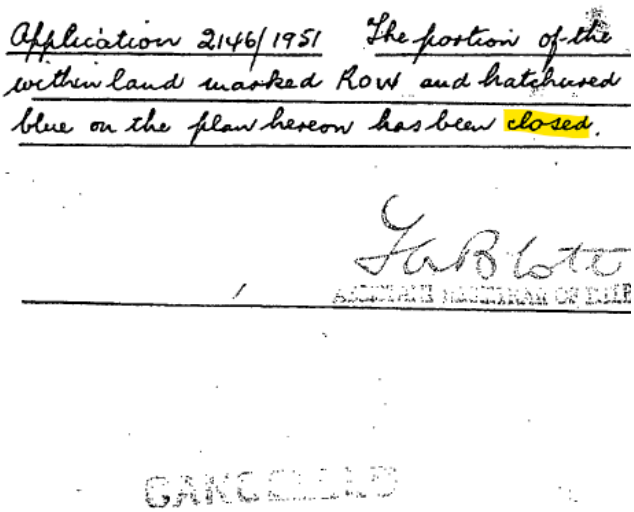
DELEGATION:

Section 56(1)(c) of the LAA sets out that a Local Government may request the Minister for Lands to dedicate as road land that comprises a private road of which the public has had uninterrupted use for a period of not less than 10 years. The *Local Government Act 1995* defines 'Local Government' as the Elected Members unless otherwise delegated. This function has not been delegated.

BACKGROUND:

At the original time of its dedication, a privately owned ROW extended from Oxford Street to the south and to the east in a L shape (see below). In 1951, the eastern portion of the freehold ROW lot was closed, and the land was absorbed into the strata at 663 Newcastle Street, as shown in the cancelled Certificate of Title 1054-346 (**Attachment 3)**.





The western portion of the ROW was transferred in 1951 to the current owners, who are believed to be deceased, and has remained in private ownership since.

During the development of the *Leederville Town Centre Place Plan (the Place Plan)*, Lot 66 on Diagram 4096 was identified as a privately owned (freehold) right of way which for all intents and purposes has been operating as a public thoroughfare for many years, connecting Oxford Street, Leederville with the privately owned car parks at 663 Newcastle Street, Leederville.

Action 4.7(a) of the *Place Plan* reads:

Request the Minister of Lands acquire the right of way linking Oxford Street to the strata lots at 663 Newcastle Street.

Action 4.7 of the Place Plan identifies the opportunity to improve the pedestrian amenity of the ROW and continue any improvements into the Strata-owned portion of the laneway. Administration has begun discussions with the 663 Newcastle strata owners to collaborate on this opportunity and tie any improvements in with the Frame Court car park redevelopment.

DETAILS:

S56 LAA & Reg 8 *Land Administration Regulations 1998* (LAR) process

Administration is proposing to request that the Minister for Lands considers dedication of Lot 66 on Diagram 4096 comprised in Certificate of Title Volume 2748 Folio 736 (ROW Lot 66) as a road under section 56 of the LAA. This section allows the dedication of a private road which the public has had uninterrupted use of for a period of not less than 10 years.
The LAA defines a private road to include *"…alley, court, lane, road, street, thoroughfare or yard on alienated land… which is not dedicated… is shown on a plan or diagram… and which forms a common access to land…*".

A review of aerial imagery shows that between 1965 and 2024, ROW Lot 66 formed an accessway from Oxford Street into three privately-owned car parks / loading areas fronting onto Oxford Street, Newcastle Street and to the rear of 112-124 Oxford Street, Leederville.

Administration is satisfied that the dedication of ROW Lot 66 would not impact on adjoining properties and would not result in the loss of vehicle access to any adjoining properties. Based on aerial imagery Administration is comfortable that since at least 1965, the strata at 663 Newcastle Street and the owners of 112-124 Oxford Street, Leederville and their predecessors have been the primary landowners who have enjoyed the benefit of ROW Lot 66.

Administration considers that there is sufficient evidence to show that use of ROW Lot 66 has been used for vehicle access since 1965 and that this would satisfy the requirements of the LAA.

Next Steps

The process requesting the Minister for Land's consent to the dedication is as follows:

- Council resolves to request the Minister dedicate ROW Lot 66 as a road pursuant to Section 56 of the LAA, subject to the City advertising the intention and considering any submissions.
- The City gives public notice for a period of 31 days of its decision to request the Minister dedicate ROW Lot 66 as a road and considers any responses to any public submissions received.
- The City gives notice to suppliers of public utility services for a period of 31 days of its decision to request the Minister dedicate as road ROW Lot 66 and considers any responses received from the public utility service providers.
- The City makes a request in writing to the Minister for Lands for ROW Lot 66 to be dedicated as a road under Section 56 of LAA and Regulation 8 of LAR which includes the following:
    - Copy of the Council report of the recommendation and minutes to dedicate as road ROW Lot 66.
    - Plan of survey, sketch plan or document to describe the dimensions of the road (**Attachment 1**).
    - Written confirmation that the public has had uninterrupted use of the private road for a period of not less than 10 years.
    - A description of the section or sections of the public who have had that use.
    - A description of how ROW Lot 66 has been constructed.
    - Information on land ownership. Provided on Certificate of Title (**Attachment 2**).
    - Copies of any submissions/objections received in response to the public notice, and the City's comments on these submissions / objections.
    - Written confirmation that the City has complied with section 56(2) of LAA.

Where a private road is dedicated as road by a Dedication Order under s.56 of LAA, compensation is not payable to **any** person with an interest in the land (including the owner of the fee simple interest in the land) nor any person who may have the benefit of an easement over the private road created under s.167A of the *Transfer of Land Act*.

If the Minister grants the request for the dedication of ROW Lot 66 as a road, the right of way will become Crown Land owned by the State of Western Australia, with care, control and management the responsibility of the City in accordance with section 55(2) of the LAA.

CONSULTATION/ADVERTISING:

Public notice is required prior to dedication and notice to public utility services suppliers pursuant to *S56 Land Administration Act 1997* and Reg 8 of the *Land Administration Regulations 1998*.

Public notice will be provided for a minimum of 31 days in the following ways:

- on the City's website;
- in the local paper;
- letters to adjoining property owners; and
- on the City's Public Notice board.

Organisation Implementation

Organisations lead engagement and seek input, shape the policies, projects and services for which they are responsible. This is a familiar and traditional approach to policy development, project management and service delivery.
Tension: People feel forced leading to an unresponsive process.
Mitigation: Increasing the level of influence, and implementing a transparent, robust process.

LEGAL/POLICY:

Land Administration Act 1997

Section 56 of *Land Administration Act 1997*

Regulation 8 *Land Administration Regulations 1998*

RISK MANAGEMENT IMPLICATIONS

RISK CATEGORY	RISK APPETITE/TOLERANCE STATEMENT	DESCRIPTOR/CLARIFICATION
Activities against ratepayer values & ethics	The city has a very low risk appetite for investments and activities that do not align with the city's values.	The city has set its vision, purpose and guiding values based on the interpretation of those of the community it serves. When entering into new projects, investments and proposals, these values must be considered as one of the key consideration sets.

Council's adopted Risk Appetite & Tolerance Statements page 5.

Low: It is low risk for Council to dedicate ROW Lot 66 as a road. The dedication aligns with the pillars of Council's adopted SCP and the adopted Leederville Town Centre Place Plan.

As ROW Lot 66 is currently operating as a publicly accessible road, dedication of the lot as a road would not have a noticeable impact on the surrounding area and would not impact on adjoining landholdings which would continue to have uninterrupted vehicle access. This laneway space will be activated and support the Thriving Places and Sensitive Design pillars.

STRATEGIC IMPLICATIONS:

This is in keeping with the City's *Strategic Community Plan 2022-2032*:

Thriving Places

Efficiently managed and maintained City assets in the public realm.

Innovative and Accountable

We engage with our community so they are involved in what we are doing and how we are meeting our goals.

SUSTAINABILITY IMPLICATIONS:

This does not contribute to any environmental sustainability outcomes. This action/activity is environmentally neutral.

PUBLIC HEALTH IMPLICATIONS:

This does not contribute to any public health outcomes in the *City's Public Health Plan 2020-2025.*

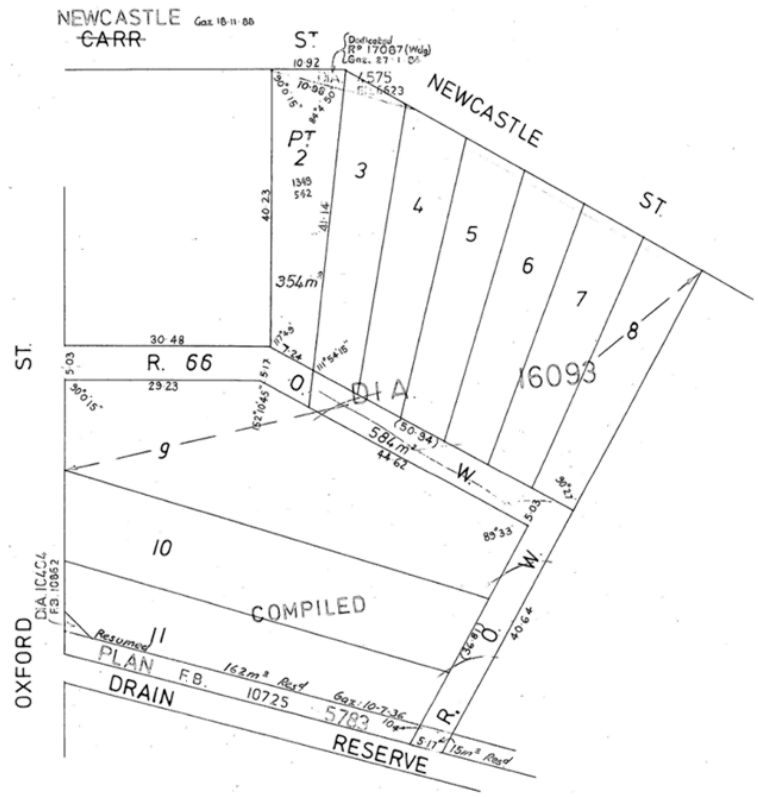
FINANCIAL/BUDGET IMPLICATIONS:

The dedication of the road will require a nominal fee of approximately $209 for the lodgement of the Dedication Order with Landgate. Improvements to the pedestrian amenity of the right of way following the dedication by the Minster for Lands will be considered in future budget allocations.

COMMENTS:

Administration supports the dedication of Lot 66 on Diagram 4096 as road under section 56 of the *Land Administration Act 1997* as the public has had uninterrupted use of the ROW Lot 66 for a period of not less than 10 years and the intention is to continue granting the public an accessible road. Dedication of this portion of ROW would align with the City's adopted place plan and would allow consideration of improvements to the ROW.

Town or District	Number of Lot or Location	Scale	Field Book	Certificate of title in which land is vested	Area
PERTHSHIRE	LOTS 48 & 49 OF LOC. Ax.	1:634	6007	Vol. 1054 Fol. 346	



Land Parcel Identifier amended - Registrar of Titles (Validation) Regulations 1980 Corr. 1773-2000-01
Date: 13.05.2010

DIA 4096

CI

G.K.

Recorded on Index Plan	Recorded on Plan	Recorded on Diagram	Cor.	Surveyor	Deposited	Approved
PERTH 1000.24-52 " " 23-52	450			E. MANNING	7-5-1914	13-12-1915

DUPLICATE 4096

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Landgate
www.landgate.wa.gov.au

WESTERN AUSTRALIA

TITLE NUMBER	
Volume	Folio
2748	**736**

RECORD OF CERTIFICATE OF TITLE

UNDER THE TRANSFER OF LAND ACT 1893

The person described in the first schedule is the registered proprietor of an estate in fee simple in the land described below subject to the reservations, conditions and depth limit contained in the original grant (if a grant issued) and to the limitations, interests, encumbrances and notifications shown in the second schedule.

BGRoberts
REGISTRAR OF TITLES

LAND DESCRIPTION:

LOT 66 ON DIAGRAM 4096

REGISTERED PROPRIETOR:
(FIRST SCHEDULE)

CHARLES STEWART OF 9 VICTORIA PARADE, CLAREMONT
ADA ESTHER STEWART OF 9 VICTORIA PARADE, CLAREMONT
WILLIAM LEOPOLD PATTERSON OF 12 WRIGHT STREET, EAST PERTH
HELEN THOMSON PATTERSON OF 12 WRIGHT STREET, EAST PERTH
VERNON MORSE HARROLD OF 28 BULWER STREET, PERTH
MARA HARROLD OF 28 BULWER STREET, PERTH
AS TENANTS IN COMMON IN EQUAL SHARES

(T T7444/1951) REGISTERED 18/4/1951

LIMITATIONS, INTERESTS, ENCUMBRANCES AND NOTIFICATIONS:
(SECOND SCHEDULE)

1. THE LAND THE SUBJECT OF THIS CERTIFICATE OF TITLE EXCLUDES ALL PORTIONS OF THE LOT DESCRIBED ABOVE EXCEPT THAT PORTION SHOWN IN THE SKETCH OF THE SUPERSEDED PAPER VERSION OF THIS TITLE. SEE VOLUME 1054 FOLIO 346

Warning: A current search of the sketch of the land should be obtained where detail of position, dimensions or area of the lot is required. Lot as described in the land description may be a lot or location.

----------END OF CERTIFICATE OF TITLE----------

STATEMENTS:

The statements set out below are not intended to be nor should they be relied on as substitutes for inspection of the land and the relevant documents or for local government, legal, surveying or other professional advice.

SKETCH OF LAND:	D4096
PREVIOUS TITLE:	1054-346
PROPERTY STREET ADDRESS:	NO STREET ADDRESS INFORMATION AVAILABLE.
LOCAL GOVERNMENT AUTHORITY:	CITY OF VINCENT

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Corr. TRANSFER 132 VOL. 1051 , FOL. 162 ORIGINAL INDEXED

1239/48 19 37 35444/50

Diagram 16093

REGISTER BOOK.

Vol. 1054 Fol. 346

WESTERN AUSTRALIA.

Certificate of Title

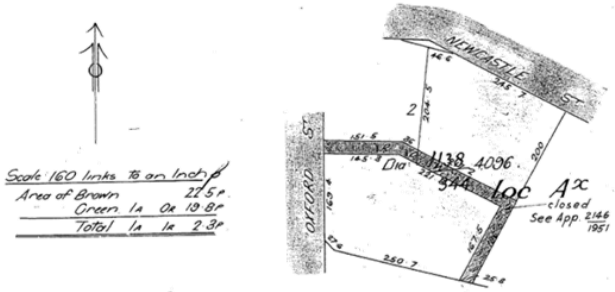
CT 1054 0346 F

Application 3537/1950

under "The Transfer of Land Act, 1893" (Sch. 5, 56 Vic., 14).

Mary Maretta Pittard of 711 Newcastle Street, Leederville, Widow is now the sole proprietor 16th October 1950 A Mackenzie ASSISTANT REGISTRAR OF TITLES CANCELLED

of an estate in fee simple in possession subject to the easements and encumbrances notified hereunder in ALL those pieces of land delineated and coloured green and brown on the map hereon, containing together one acre one rood two and three tenths perches or thereabouts, being portion of Perthshire Location A^X and being part of the land on diagram 4096.



Scale 160 links To an Inch

Area of Brown 2.5 p

Green 1a 0r 19.8p

Total 1a 1r 2.3p

Application 2146/1951 The portion of the within land marked ROW and hatched blue on the plan hereon has been closed.

H A B Lotte ASSISTANT REGISTRAR OF TITLES

CANCELLED

Dated the fourteenth day of June One thousand nine hundred and thirty-seven.

A Barnett Assistant Registrar of Titles.

Application 3537/1950 On the 23rd August 1950 Mary Maretta Pittard was married to William Henry Walter Hawke and her name, address and description are now Mary Maretta Hawke of 62 Holland Street, Wembley, Married Woman

16th October 1950 A Mackenzie ASSISTANT REGISTRAR OF TITLES

Transfer 7444/1951 Transferred to Charles Stewart (Company Director) and Ada Esther Stewart (married Woman) both of 9 Victoria Parade Claremont, William Leopold Patterson (Engineer) and Helen Thomson Patterson (married Woman) both of 12 Wright Street East Perth, Vernon Morse Harold (Dentist) and Mara Harold (married Woman) both of 28 Bulwer Street Perth as tenants in common in equal shares Registered 18th April 1951 at 10.10 a.m.

H A B Lotte ASSISTANT REGISTRAR OF TITLES

The portion coloured brown on diagram 16093 alone remains

4096.

See Diagram 4096 Faces this CT.

BC

12/7/54

TOTALLY CANCELLED

WITHDRAWAL/S DISCHARGE/S SUNDRY DOCUMENT K375440 BALANCE: 1st 66 and Diagram 4096 To Vol. 2748 Fol. 736	LODGED/REGISTERED 15.7.2010 AT 14.25 hrs

J 10401/37* **For encumbrances and other matters affecting the land see back.**

Title is cancelled

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EASEMENTS AND ENCUMBRANCES REFERRED TO.

Caveat 740/1934 Lodged 16·5·1934 at 11 o.c. Barnett ogd. George Barnett

Caveat 843/1935 Lodged 23·8·1935 at 12:10 o.c. Barnett ogd. A. W. B. Glendell

Re-Transfer 7444/1951 FOURTEEN DAYS NOTICE SENT on 20/4/1951 on Caveat 740/1934. Limit 4/5/1951. No action taken Transfer registered

Withdrawal 444/1951 of Caveat 843/1935 Lodged 18·4·1951 at 10 10 o.c. REGISTRAR OF TITLES

W.

Application 2114/1951 No separate certificate issued for the land the subject of diagram 16093. Registered 15th May 1951 at 12.25 o.c. REGISTRAR OF TITLES

W. 1138 3/4/4

Title is cancelled

CT 1054 0346 B

CERTIFICATE OF TITLE

Registered Vol. ..... Fol. .....

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