

TOWN OF COTTESLOE



Works and Corporate Services
Committee

ATTACHMENT 10.2.2

Meeting Date: 22 May 2012

SUB/272

Colin and Joanne Svanberg

71 John Street

Cottesloe 6011

March 6, 2012

Dear Mr Askew

Re: Upgrade of Laneway ROW 32B

Further to the correspondence from Geoff Trigg dated February 29.

We have been the owners of 71 John Street for nearly 20 years and our problem is with the eastern boundary fence because it may be encroaching onto ROW 32B by a small amount. Most of the fence has been in the same position since the house was built 60 years ago.

Mr Trigg said in his letter the legal width is 2.72m. At the John Street entrance to the lane the current width is 2.7m and at the garage of Ms Meaghan White, the person who arranged for a surveyor to peg the east side, the width is also 2.7m.

From her building application, we understand a second storey is going on to the existing carport.

This second storey will overlook our backyard and we have been growing a large shrub to give us some privacy. This shrub is along the boundary fence and will need to be removed if the fence has to be relocated.

Also, our rear patio may have to be moved and a grape vine that has been growing close to the fence since the house was built will also have to come out.

The cement path along the side of our house will have to have about 20cm cut off as it may be on the lane reserve where Ms White is required to seal.

The side path of our house will then be too narrow to walk down, let alone take a wheelbarrow along it.

The section of fence Ms White said needs to be moved is made of asbestos and will have to be removed correctly and replaced with one made of a different material.

The lane is very rarely used. A mulberry tree from another neighbour reaches over across the lane to our property, virtually blocking anyone walking along the lane. We haven't seen hardly anyone walk down the lane passed Ms White's office to the lane at the rear since we have lived at 71 John St.

No car has ever gone down the lane passed Ms White's garage as it is too steep where it joins the rear lane.

A previous owner to where Ms White lives used the garage to park their car and never had any trouble with the existing alignment. They simply drove in and backed out, never hitting our fence.

No-one in the time we've owned the house has had any problem with the lane being too narrow. The first we knew our fence was out of alignment was when Ms White's surveyor pegged it out last week. We noticed the points at the start of the lane he marked were not 2.72m apart and we would therefore question the correctness of the other points he pegged out.

The neighbour on the corner of John and Marmion streets does not have a problem with our brick wall, which is the first part of our laneway fence, and neither does Ms White.

The total amount of area in question, if the asbestos part of the fence was re-aligned and if the survey was done correctly, is about 5sq m. It is about 20m of fence that Ms White says should be moved.

We submit to council a request to have the lane blocked off for a period of time for submissions to be gathered to present to Landgate.

In accordance with the Crown's legalities, the blockage only needs to take place after the first carport in the lane because the fence under dispute occurs after this point.

Ms White uses her garage as an office and, as we understand it, does not intend to use the garage to park her car there even when the second storey addition is completed.

Ms White often parks her car in the lane next to her office which has never been a problem. So she is used to backing out of the lane the way it is and has never complained to us about it being too narrow and difficult to reverse back to John Street.

The blockage for a month should not interfere with anyone as Ms White does not use her garage to park her car and she would be the only person affected by the closure.

We believe to go to so much cost and trouble for everyone concerned and for us to lose privacy in our backyard just for the sake of realigning the fence by such a small amount is ridiculous.

Currently, the laneway is only a thumb's thickness less than the legal width (2.7m as opposed to 2.72m) and this has never been a problem to drivers using the 2 garages in the lane in the past.

A lane blockage could be avoided if council requests Ms White to seal to the width of the existing lane.

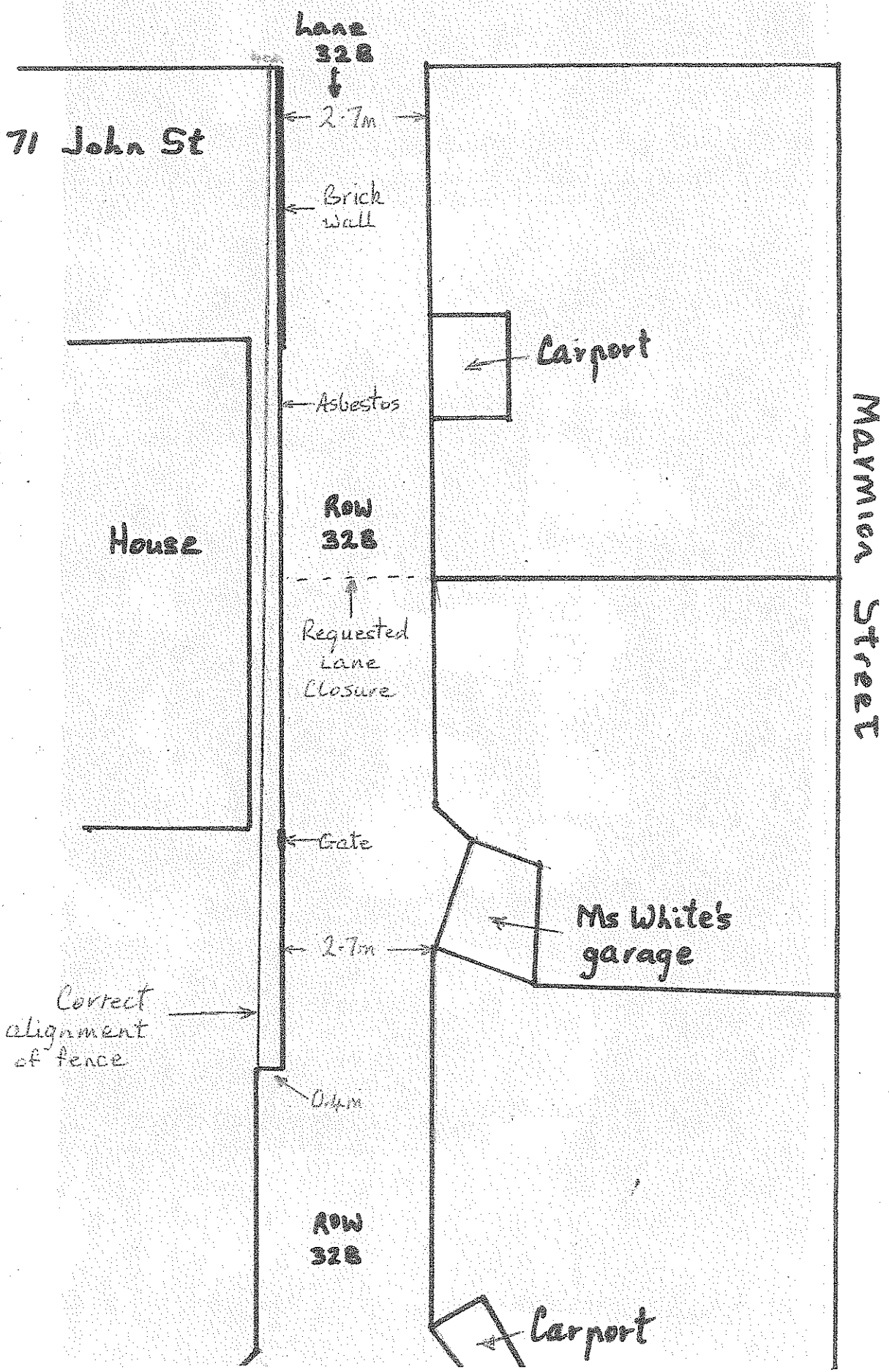
We believe Ms White wants her building work to start at her house in August and it would be only fair to have this matter settled beforehand.

Looking forward to a speedy and sensible resolution to this matter.

Yours sincerely

Colin Swanberg
Joanne Swanberg

John Street



71 John St

Lane 328



2.7m

Brick wall

Asbestos

Row 328

Requested Lane Closure

Gate

2.7m

Dip

ADW 328

Carport

House

Ms White's garage

Correct alignment of fence

Carport

Mawmick Street



ROW 32B, OFF JOHN STREET, COTTESLOE

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Scale 1:464

Tuesday, May 15, 2012



9th March 2012

Town of Cottesloe
109 Broome Street,
Cottesloe WA 6011

Att: Mr Geoff Trigg

Dear Geoff

**RIGHT OF WAY 32B
REAR OF 217 MARMION STREET,
COTTESLOE**

Thank you for organising the meeting today. As requested we write to assist with the Council consideration of the fencing encroachment at 71 John Street as it relates to the above.

BACKGROUND

As you are aware the refurbishment and extension of our home is currently under construction and is due for completion late 2012/early 2013. The house has been designed by my wife, Meaghan White, who is an Architect specialising in the refurbishment and extension of heritage dwellings, including the recent comprehensive upgrade of the Art Deco home at 36 John Street, Cottesloe (opposite John Street Café).

Meaghan and I are both personally committed to the retention and enhancement of the built character of Cottesloe and have embodied these values in the broader design approach to our home at 217 Marmion Street, including the following key features:

- full retention and upgrade of the existing heritage dwelling;
- a largely single storey extension stepping with the natural slope of the land and reducing general bulk visible from Marmion Street and adjoining properties, particularly reducing overshadowing to the south; and
- an east-west orientated building design that concentrates the extension between the existing house and existing garage (which is currently built to the rear boundary). This enables the design of the house to maximise the exposure to the northerly aspect and significantly reduces the need for artificial heating and cooling.

Whilst it impacts on our usable rear private space, we were particularly keen to ensure the retention of the rear garage and utilisation of the existing right of way as we felt it would provide a superior design outcome consistent with the Town of Cottesloe's own objectives, particularly the ability to:

- remove the need for a large concrete driveway across the Marmion Street grass verge which is approximately 15m wide at this point;
- eliminate the need for a garage structure to be added to the Marmion Street streetscape;
- avoid the need for vehicles backing across the Marmion Street footpath; and
- enable upgrade of the existing unsealed right of way to improve the amenity and surveillance for all adjoining owners.

The initial design development included commissioning of engineering studies to determine the appropriate turning clearances required for the gazetted lane width of 2.72m. As a result of this investigation the existing garage will be partially demolished and set back an additional 1.0m and the depth and width of the garage will be approximately 1.0m wider and 1.0m deeper than typically required. This did compromise the functional design of the new space between the existing garage and existing house, but we have still been able to retain the full extent of the existing home.

New rear boundary fencing will be constructed on the correct boundary alignment.

CONSULTATION

During the development of designs all three of our direct neighbours were contacted about the general design and applicable setbacks.

At that time it was also discussed and indicated on the plans that the fencing alignment of 71 John Street may not have matched the gazetted boundary of the right of way, however, this was based on an older feature survey undertaken by the previous owners and was subject to final survey. It was accepted that the right of way would have to be upgraded and that as is the usual course this would have to occur on the gazetted boundary alignment.

After initial neighbour feedback our plans were refined and subsequently endorsed by our neighbours at 215 Marmion Street and 71 John Street. A third neighbour at 219 Marmion Street was (at that time) an absentee landowner and did not comment.

The plans have received planning approval, building licences have been issued and site works are underway. The entire extension from the existing house to the rear of the property is based on a steel frame structure. This is currently being fabricated offsite and is expected to be delivered and erected in 6-8 weeks time.

ROW SURVEY

Whilst upgrading of the laneway will be the last step in the building process we initiated early contact with Council to understand what was required of the right of way upgrade, including the resolution of the potential fencing encroachment.

We also initiated a survey pegging to confirm the boundary alignment. We did this out of respect for our neighbours and to allow maximum time for the fencing to be re-located in the event the encroachment was confirmed.

The survey was conducted approximately two months ago and this has confirmed that the fence encroaches up to 400mm at the southern end where the fence then steps at 90 degrees back across to the correct alignment. The current owners advise they have never moved the fence but it appears a previous owner has moved a portion of the fence to enable private access down the side of the existing house. (refer Attachment 1)

Whilst the encroachment would be minor under typical circumstances, the narrow gazetted lane width of 2.72m means the encroachment causes substantial material impact to the general utility of the laneway as it:

- reduces the basic safety clearance for cars using the lane; and
- has a major impact on the ability to manoeuvre in and out of the garage at 217 Marmion where the maximum encroachment occurs.

Whilst portions of the existing fencing on the eastern boundary are currently set back off the legal boundary, the encroachment also compromises short term construction access, which substantially increases the cost of the construction of the extension (i.e. basic delivery of building materials, crane access for steel frame erection and window installation, need for specialist concrete pumps for slab pour and pool building etc) and long term service access (delivery and repair vans).

RESOLUTION

Since the planning approval we have once directly approached the owners of 71 John Street, and again today with Council assistance. It was our hope that we could discuss concerns and attempt to resolve an amicable compromise, including an offer to provide personal labour to assist with the removal of the existing fence. It has been made clear on both occasions that the owners are not interested discussing any compromise.

We appreciate understand no-one wants the be in a position to relocate their boundary fence, however, under the circumstances it is critical the encroachment be rectified by the owners of 71 John Street for the following reasons:

- the encroachment is clearly the result of a deliberate re-alignment of the fence, providing additional private clearance down the side of 71 John Street at the public expense of adjoining owners;
- whilst the front brick portion of the fence starts as a very minor encroachment is widens to approximately 300m by the time it reaches the boundary of 217 Marmion. If the wall were retained the right of way would effective be constructed in a "dog leg" alignment and relies on the long term goodwill of the current and future owners of 217 + 219 Marmion Street ie that they wont align fences to its rightful boundary – it is not considered that this is a practical or fair solution;
- the encroachment largely involves the relocation of a super six fence adjacent to a limestone plinth foundation wall and should be achievable at limited cost and with limited impact on the amenity of the adjoining property;
- removal of the fence enables the provision of sealed lane access at no cost to the owners of 71 John Street – the property runs the entire frontage of this section of lane and therefore enjoys the majority benefit of all adjoining owners; and
- it is obstructing the basic car access, preventing service access and in particular severely obstructing the access to the garage at 217 Marmion Street.

Simply put the fence encroaches into public land and the resealing of the right of way is the logical and fair point at which to align fences to the correct boundaries.

We respectfully request Council:

- formally resolve not to support any current or future initiation of a partial, full or temporary Road Closure request on the basis it would deny basic functional access for adjoining owners;
- re-affirm the need for the boundary fence of 71 John Street to be re-aligned to the survey boundary by the owners of 71 John Street as a matter of priority to enable re-instatement of basic car, service access and to facilitate the upgrade of the right of way; and
- commission a licensed survey pegging to provide the owners of 71 John Street with an independent assurance of the legal right of way boundary.

If you require any further information or clarification of the above, please do not hesitate to contact the undersigned directly on 0417 998 312.

Yours Sincerely



DEON WHITE

FENCE
BOUNDARY

ENCROACHMENT ALSO
CONSTRAINING LANE ENTRY

MAXIMUM ENCROACHMENT
ADJACENT TO GARAGE

FENCE STEPS BACK TO
CORRECT ALIGNMENT

71 JOHN ST

217 MARI ST

Aug 12, Jan 2008

nearmap
current - clear - change



Cossill & Webley Pty Ltd
Level 2
431 Roberts Road
Subiaco WA 6008
PO Box 680
Subiaco WA 6904
T (08) 9422 5800
F (08) 9422 5801
E admin@cosweb.com.au



22nd June 2010
CW Ref: PL.WTB_White_217Marmion

White Architects
217 Marmion Street
Cottesloe WA 6011

Dear Meaghan,

RE: 217 MARMION STREET COTTESLOE – VEHICLE ACCESS INTO GARAGE FROM ROW

In relation to our discussions and correspondence relating to the vehicle access into the proposed garage located on the 217 Marmion Street property in Cottesloe, Cossill & Webley have used a computer aided design (CAD) based software called AutoTurn to check the suitability of the vehicle movements against the proposed garage location off the Right of Way (ROW).

AutoTurn assists in the Engineering design by analyzing and evaluating the swept path of a vehicle and provides turn simulation and maneuverability checks.

The attached figure presents a diagrammatic representation of our findings for the typical vehicle movements into the garage located off the ROW. The template adopted was the B85 vehicle as per Australian Standard AS 2890.1 2004 - Off street car parking. The 85th percentile vehicle (B85) is defined as the vehicle which is larger than or equal to 85% of the passenger and light commercial vehicles that operate on Australian roads and is the commonly used design vehicle. The dimensions of the B85 vehicle, which have now been adopted for the purposes of the standard, are for a vehicle 4.91m long by 1.87m wide. AS 2890.1 states that the 85th percentile vehicle was found to be similar to the Ford Falcon sedan in all key dimensions (other than height and turning circle) and is referred to as the B85 Vehicle.

As indicated in the attached figure, our findings of the vehicle movements can be summarized as follows;

- Vehicle access into the property would be possible from John Street, approaching the garage from the north via the ROW.
- There is sufficient clearance from the front of the vehicle to the proposed garage to adequately enter the premises using a single left hand, right angle turn at slow speed.
- Exiting the garage is possible by reversing into the southern length of the ROW using one turning movement and driving north and forwards onto John Street.
- As indicated from the figure, only one turning movement is required for both entry and exit without encroachment into adjacent properties.

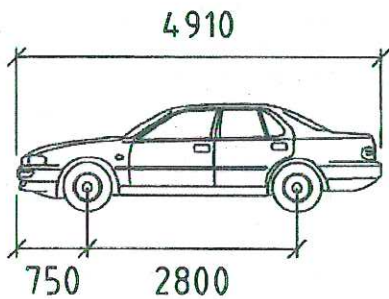
As detailed above and indicated diagrammatically in the attached figure, the proposed garage location and dimensions are adequate to accommodate the safe vehicle movement into and out of the proposed garage located at 217 Marmion Street Cottesloe.

Should require any additional information, please contact me to discuss.

Yours faithfully
COSSILL & WEBLEY PTY. LTD

TROY BOEKEMAN
Associate

BRICK & TILE
RESIDENCE # 71



B85 Car

mm

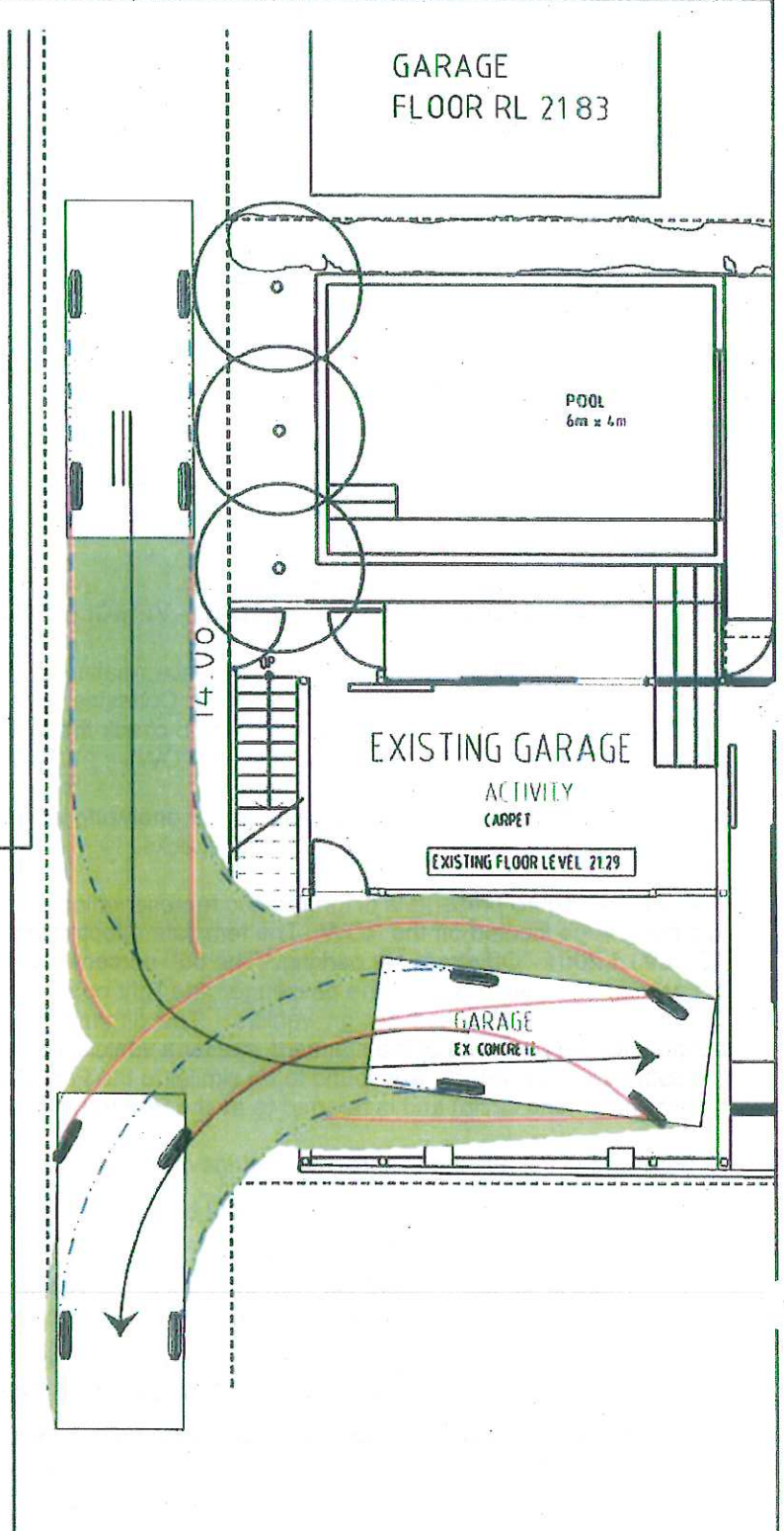
Width	: 1870
Track	: 1770
Lock to Lock Time	: 6.0
Steering Angle	: 44.4



CW Cossill & Webley
CONSULTING ENGINEERS

Level 2
431 Roberts Road
SUBIACO WA 6008
Tele: (08) 9422 5800
Fax: (08) 9422 5801
E-mail: cosweb@cosweb.com.au

217 MARMION STREET, COTTESLOE



AUTOTURN OF B85 CAR
IN AND OUT OF GARAGE