
**10.4.3 ROW 4A - REQUEST FOR RECONSIDERATION OF UPGRADING COST
FOR 218 BROOME STREET, COTTESLOE**

File Ref: PR52542
Attachments: Copy of Letter Received
Copy of Council Policy Rights of Way Laneways
Plan of Location
Responsible Officer: Carl Askew
Chief Executive Officer
Author: Geoff Trigg
Manager Engineering Services
Proposed Meeting Date: 10 December 2013
Author Disclosure of Interest: Nil

SUMMARY

A development approval has been issued for a new house to be constructed at 218 Broome Street, Cottesloe. The new house will use the rear laneway to gain access. Council's Rights of Way/Laneways Policy (adopted in 2004) requires the laneway to be sealed back to the closest sealed road or sealed section of the laneway.

Staff applied this policy and provided an estimated cost. The Owner of 218 Broome Street has disputed this cost. The recommendation is that Council:

1. Receive a report in February 2014 on the Rights of Way/Laneways Policy, possible changes to achieve greater equality of contribution to upgrading levels and implications if major changes are made.
2. Not require any payment from the applicant for the laneway upgrading until the Policy is reviewed.
3. Inform the applicant of Council's decision and that a further response will be provided to the submission when Council receives the full report in February 2014.

BACKGROUND

In 2004, Council adopted a new policy for Rights of Way/Laneways, after advertising and full discussion. That policy included, among other aspects, what Council required in regards to laneway upgrading when a new house was designed to have the prime access off an (until then) unsealed laneway.

The applicable part of the policy is:

3. *When a ROW or Laneway is required for primary access to a new development the developer will upgrade by paving, kerbing and drainage, the ROW or Laneway from the nearest built gazetted road or existing built laneway to the furthestmost lot boundary, to the satisfaction of the Manager Engineering Services.*
 4. *The developer may elect to have the Laneway upgrading works done by the Town of Cottesloe or by a Contractor.*
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- (a) *If the Town is to undertake the works, payment of the full estimated value of the works must be received by the Town before works commence.*
- (b) *If the developer employs contractors, a supervision and inspection fee is to be charged, in accord with Section 6.16 of the Local Government Act, 1995.*

The policy has been applied by staff to all development applications since adoption. The same policy came up for review in 2011 and this section remained unchanged by Council.

When applied to 218 Broome Street, the estimated cost of sealing and draining 60m was \$18,500. This 60m remained after 242 Broome Street funded the first 3 property widths in from North Street in 2011 and after allowance for the next 130m being sealed this financial year (as budgeted) by Council as part of its ongoing Laneway Upgrade Program.

STRATEGIC IMPLICATIONS

There are no strategic necessities for the upgrading of laneways in the Future Plan.

POLICY IMPLICATIONS

This item involves potential changes to Council's Right of Way/Laneways Policy.

STATUTORY ENVIRONMENT

Nil

FINANCIAL IMPLICATIONS

Potential reduction in the amount of private funds being applied to the upgrading of public access laneways, with the resultant increase in required Council expenditure to achieve the same result.

STAFFING IMPLICATIONS

Nil

SUSTAINABILITY IMPLICATIONS

Nil

CONSULTATION

Only when the 2004 draft policy was advertised for public comment.

STAFF COMMENT

Staff have applied Council's Rights of Way/Laneway Policy since it was adopted in 2004. In regards to other metropolitan councils there is no single policy adopted by the majority on this subject. Some have fully sealed their laneway systems using rates funding. Others have taken standard contributions for each development using laneways as their principal access point and the combined income has been put towards laneway works, not necessarily the laneways originally contributed to.

In general terms, when a development approval is given, the laneway serving the property can be damaged due to trucks carting away demolition materials and delivering new building products. The upgrading of the laneway is then left until the house is mostly completed.

There are ongoing requests for laneways to be sealed, complaints about builders blocking and damaging laneways and adjacent private fencing and also requests to ban trucks from narrow lanes because of damage, dust and the danger to other users of the laneway system.

In recent years, Council has been funding approximately \$80,000 in its annual budget towards sealing and draining the worst laneways. At that rate, it will be many years before the laneway system is sealed to meet public requests. Even when that happens, there will be sections which will never need upgrading, unless property sizes are reduced through subdivision.

If Council resolves to change the current policy to reduce or remove the condition of laneway upgrading applying to 218 Broome Street, it may also consider reviewing the planned expenditure of \$40,000 on the same laneway this financial year. There are residents who continue to request their laneway access to be sealed for a variety of reasons. The option exists to relocate those funds to such laneways being requested for upgrading.

This subject will require time for a comprehensive report to be written for Council's consideration, prior to any potential new or modified policy being advertised for public comment.

VOTING

Simple Majority

COMMITTEE DISCUSSION

Mayor Dawkins sought clarification that endorsing the officer recommendation would not delay the approval of the owner's development application. CEO confirmed that the development application has been approved and the building permit can be issued, with the owner's contribution to be determined in February 2014.

OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Rowell, seconded Cr Downes

THAT Council:

1. Receive a report in February 2014 on the Rights of Way/Laneways Policy, possible changes to achieve greater equality of contribution to upgrading levels and implications if major changes are made.
2. Not require any payment from the applicant for the laneway upgrading until the Policy is reviewed.
3. Inform the applicant of Council's decision and that a further response will be provided to the submission when Council receives the full report in February 2014.

Carried 8/0

12.2.3 LANEWAYS AND RIGHTS OF WAY - COTTESLOE

File No: E13. 1
Author: Mr Geoff Trigg
Author Disclosure of Interest: Nil
Report Date: 29 July, 2004
Senior Officer: Mr Alan Lamb

SUMMARY

The town of Cottesloe has no official policy on Rights of Way (ROW) and Laneways, in regards to construction and maintenance, ownership and whether it wishes to eventually have a fully constructed laneway system under its control or generally requires a minimalist system to be in place, with a minimum of Council involvement.

This report seeks Council's directions to staff and proposes a policy for controlling this infrastructure, in order to develop a five year programme of stewardship.

STATUTORY ENVIRONMENT

The most relevant legislation in regards to Roads and Laneways are:

- *Local Government Act 1995*
- *Land Administration Act 1997*
- *Main Roads Act 1930*
- *Public Works Act 1902*
- *Transfer of Land Act 1893*
- *Town Planning and Development Act 1928*

The acts of most significance to this report are:

The *Local Government Act 1960* which was, until 1 January, 1996, the State's primary legislation dealing with creation, management and closure of roads. On 1 January, 1996, the 1960 Act was mostly replaced by the *Local Government Act 1995*, with some of its road sections being incorporated into the *Land Administration Act 1997* instead.

The *Land Administration Act 1997* is the State's primary legislation providing for the disposition and management of Crown land. This Act is administered by the Minister for Lands and the Department of Land Information (DLI), a body formerly known as Department of Land Administration (DOLA).

The *Main Roads Act 1930* also contains provisions in relation to roads, in particular highways, main roads and secondary roads. This Act gives the Commissioner of Main Roads similar powers as a local government in relation to the primary road network.

POLICY IMPLICATIONS

This report proposes that a policy be developed regarding Council's attitude to Rights of Way and Laneways.

STRATEGIC IMPLICATIONS

The increase of land values, the growing complexity of development applications, the increase in legal cases relating to injuries or damages suffered on roads, streets and laneways all impact on laneways. The need to clearly define Council's future requirements and attitudes regarding these routes or accesses all push towards much greater control and definition of the Town of Cottesloe's requirements and obligations in this matter, in a strategic and forward planning sense.

FINANCIAL IMPLICATIONS

Council currently funds the maintenance of ROW/Laneway surfaces and the control of vegetation in these areas. There is little definition as to whether private sections of laneways should be maintained, the level at which heavy maintenance should become construction and included in a 'Capital Works' budget, and what liabilities Council takes on by general maintenance of private laneways used by the general public.

This report seeks to establish a financial framework to deal with these issues, as well as to determine if a five year programme for laneway upgrading is necessary.

BACKGROUND

Staff currently have access to an August 1992 document prepared by JA Smallman & Associates "Rights of Way in Cottesloe". This is an update of a previous 1988 report, and gives a general background of the history and legality of different forms of laneways plus a detailed listing of each laneway in the Town of Cottesloe and its ownership, location and any proposals for change.

No formal updating of this document appears to have taken place since 1992. In addition, for planning purposes, the Residential Design Codes of Western Australia are used to give some guidance to staff when laneway access is involved.

Currently, the laneways are required to be paved and drained for the frontage of the development property but developers are not asked to connect this level of construction to the nearest constructed street, which is recommended by the Design Codes.

Council has included in its annual budget, for many years, a financial allocation for the maintenance of laneways, without an accepted understanding of what that funding should be restricted to.

CONSULTATION

No community consultation has taken place on this matter. Discussions have occurred between staff and with other Local Government Authorities regarding various policies and attitudes in place for other municipalities.

STAFF COMMENT

In reading back through the Laneways/ROW file and the 1992 "Smallman & Associates" report, this problem has obviously been running for many years. Recommendations have been made for a policy to direct staff actions regarding laneways but the complex issues involved have not been addressed. Three types of

legal control of laneways exist in Cottesloe: Crown land, Council owned lanes (in fee simple) and privately owned laneway sections.

It is legal (under the Local Government Act) for Council funds to be spent on Crown land used by the public as road reserve or laneways and on Council owned fee simple sections of laneways.

However, the broad principle of not spending Council funds on privately owned property would still apply.

The Laneway and ROW system in the Town of Cottesloe is in a variety of conditions, from sand track through to new drained concrete surfacing. The majority of new laneway construction in recent years has been through property development or subdivision, where development conditions have included the laneway being upgraded, at the developers cost.

Those sections have been 'owned' by the Crown, by Council or by the developer.

There have been some improvements on the condition of the Laneway/ROW system funded by Council on all three 'ownership' types of laneways for the benefit of the general public, it would appear, without reference to whether the lane sections were privately owned.

Also, in many sections, the laneways contain public facilities such as deep sewer pipelines and drainage pits or pipelines.

The practical problems faced by Engineering staff, particularly, deal with maintenance and development requirements of laneways, eg:

- Should staff maintain sections of laneways plus drainage pits or sumps, which require the expenditure of Council funds, but which are privately owned and part of a longer laneway used by the general public?
- If conditions attached to a development approval include the upgrading of the laneway frontage of that property, what happens to any unbuilt or poor quality sections between that development and the closest built street or road?
- Does Council support the acceptance of donations of private laneway sections at little or no cost to Council?
- Should laneway sections owned in fee simple by Council be given to the Crown to ensure their permanent retention and remove any obligations under the Dividing Fences Act?
- Should Council be acting, over time, to achieve the placement of all laneways in the town area as Crown land, to be treated as public access, built and maintained by Council?
- Should Council have a long term program to upgrade laneways and what priorities should apply to such upgrading?
- Does Council need a policy to direct and control staff regarding its requirement regarding Laneways/ROW including minimum dimensions, development conditions, maintenance and construction standards etc?

VOTING

Simple Majority

COMMITTEE COMMENT

Nil.

12.2.3 OFFICER & COMMITTEE RECOMMENDATION & COUNCIL RESOLUTION

Moved Cr Miller, seconded Cr Strzina

That Council:

- (1) Request the Manager Engineering Services prepare a draft policy, for Council consideration, dealing with all aspects of the administration of all Rights of Way and Laneways in the Town of Cottesloe; and
- (2) Provide to the Manager Engineering Services all knowledge and history available to individual Councillors regarding the past attitude and treatment of Laneways, for consideration in the preparation of the draft policy.

Carried 9/0

12.2.5 RIGHTS OF WAY AND LANEWAYS POLICY

File No: E13. 1
Author: Mr Geoff Trigg
Author Disclosure of Interest: Nil
Report Date: 1 December, 2004
Senior Officer: Mr Stephen Tindale

SUMMARY

At its meeting in October 2004, Council resolved to invite public submissions on the draft Rights of Way and Laneways policy, closing on Friday, 26 November, 2004.

That advertising and consultation process has now been completed, with six submissions received.

This report recommends adoption of the new policy.

STATUTORY ENVIRONMENT

Relevant legislation for roads and laneways:

- *Local Government Act 1995*
- *Land Administration Act 1997*
- *Main Roads Act 1930*
- *Public Works Act 1902*
- *Transfer of Land Act 1893*
- *Town Planning and Development Act 1928*

The Acts of most significance to this report are:

The *Local Government Act 1960* which was, until 1 January 1996, the State's primary legislation dealing with creation, management and closure of roads. On 1 January 1996, the 1960 Act was mostly replaced by the *Local Government Act 1995*, with some of its road sections being incorporated into the *Land Administration Act 1997* instead.

The *Land Administration Act 1997* (LAA) is the State's primary legislation providing for the disposition and management of Crown land. This Act is administered by the Minister for Lands and the Department of Land Information (DLI) a body formerly known as Department of Land Administration (DOLA).

The *Main Roads Act 1930* also contains provisions in relation to roads, in particular highways, main roads and secondary roads. This Act gives the Commissioner of Main Roads similar powers as a local government in relation to the primary road network.

Definitions(a) *Public Laneway*

A laneway is a narrow road located along the rear and/or side of a property boundary. Laneways are generally not the primary street from which a property may access the local road network. Laneways are typically used in more dense residential areas when smaller lot layouts justify rear garaging, and where alternative vehicular access is needed for lots fronting busy streets.

In all other respects laneways conforms to the definition of a public road.

(b) *Public Road*

A road consists of the entire road reserve or "casement" between abutting property boundaries that define the legal limits of the road corridor. Roads may vary in width, may or may not be surveyed, and may or may not be constructed.

In general terms, a road or road reserve includes the constructed road, kerbing and verge areas (eg street lawns in urban areas, roadside vegetation in rural areas) up to the boundaries of abutting land holdings.

Most roads are dedicated by order of the Minister for Lands or by approval of a plan of subdivision. Such dedicated roads are termed public roads, and as such the entire road reserve is vested in the Crown. Public roads are controlled and managed by the local authority or the Main Roads WA. A public road can also be referred to as a dedicated or gazetted road or street.

There are a number of different definitions of a public road, including the following:

- **The *Local Government Act 1960*** defines a "road" to have the same meaning as a "street", which was then defined to include "a highway; and a thoroughfare; which the public are allowed to use; and including every part of the highway or thoroughfare, and other things including bridges and culverts, appurtenant to it".
- **The *Local Government Act 1997*** dispenses with "roads", "streets" and "highways", using instead the term "thoroughfare", which is defined as "a road or other thoroughfare and includes structures or other things appurtenant to the thoroughfare that are within its limits, and nothing is prevented from being a thoroughfare only because it is not open at each end".
- **The *Land Administration Act 1997*** defines a road to mean "land reserved, declared or otherwise dedicated under this Act as an alley, bridge, court, lane, road, street, thoroughfare or yard for the passage of pedestrians or vehicles or both".

- **The *Main Roads Act 1930* defines:**
"Road" to mean any thoroughfare, highway or road that the public is entitled to use and any part thereof and all bridges (including any bridge over or under which a road passes), viaducts, tunnels, culvert, grids, approaches and other things appurtenant thereto or used in connection with a road;

"Declared Road" to mean a road declared to be a highway, main road or a secondary road under this Act, and including any part of any such road.

(c) *Private Laneway or Road*

The definition of a Private road is a roadway on privately held or freehold land, which is generally restricted in use to certain abutting landowners. Further, it means an alley, court, lane, road, street, thoroughfare or yard on alienated land which is shown on a Plan or Diagram of Survey deposited with the Registrar of Title and which:

- a) is not dedicated, whether under law or a common law, for use by the public;
- b) forms a common access to the land or premises, separately occupied; or
- c) is accessible to an alley, court, lane, road, street, thoroughfare or yard or public place that is dedicated, whether under a written law or at common law, to use as such by the public (Section 3 of the *Land Administration Act*).

In addition, Section 3.49 of the *Local Government Act 1995* defines a "private thoroughfare" as a thoroughfare that is not dedicated to use by the public and that connects lands, or premises, separately occupied to a thoroughfare or place that is dedicated to use by public.

Most private streets were created by subdivision of freehold land prior to 1962, with the land remaining in the ownership of the sub-divider. In many cases such owners are long-since deceased, or are defunct companies. Such streets are usually subject to easements or rights of carriageway created by instruments registered under the provisions of the *Transfer of Land Act 1893*.

In 1967 the *Town Planning and Development Act 1928* was amended by insertion of section 20A, providing for rights-of-way and pedestrian accessways to be vested directly in the Crown, upon approval of a plan of subdivision creating such ways. These ways are not subject to easements in favour of adjoining landowners. The Crown is the owner of land in such ways.

A private road not otherwise vested in or owned by the Council or the Crown is rateable land within the provisions of the *Local Government Act 1995*.

(d) *Other*

The Department of Land Information (DLI) identifies the following definitions in their 'Land Lingo' document. These definitions are provided for further clarification of the terms used throughout this report:

Land	All land within the limits of the State, including coastal waters and seabed.
Crown Land	<p>Defined in the Land Administration Act as all land, except alienated (freehold) land, that includes:</p> <ul style="list-style-type: none"> • All land within the limits of the State, • All marine and other waters within the limits of the State, • All coastal waters of the State, including the seabed and all islands. <p>Around 93% of the State's area of 2,527,620 square kilometres (above high water mark) comprise Crown estate, the remaining 7% consisting of freehold land. The major categories of tenure within the Crown estate comprise;</p> <p>33% Unallocated Crown land, 16% Reserved land, 34% Pastoral Lease, 3% Other leases (LAA and War Service Land Settlement Scheme Act).</p>
Alienated Land	Land held in Freehold or fee simple land.
Dedication	<p>The acquisition as crown land or any alienated land or private land which has been used by the public, following a request from a local government to the Minister of Lands under Section 56 of the <i>Land Administration Act 1997</i>.</p> <p>Dedication as applied to a public road reserve is the "setting apart" or registration of a portion of land for a public road. It has the effect of vesting freehold land in the Crown.</p> <p>A dedicated road is one that has been created by lawful process, whether by approval of a plan creating the road, or by publication in the Government Gazette or State newspaper of a notice of dedication, or (as now required by the LAA in certain cases) by registration against a Crown Land Title (CLT) of an order declaring that the land has been set aside for such purpose. A road may also be declared a highway, main road or control of access under the <i>Main Roads Act 1930</i>.</p> <p>The manner of dedication depends on the requirements of the relevant legislation in force at the time the road was created.</p>
Road	A route trafficable by motor vehicles; in law, the public right of way between boundaries of adjoining properties.

Closed Road	A public road closed by legal processes. The land involved is usually disposed of to the owners of adjoining properties.
Main Road	Main Road means a road declared by proclamation to be a main road for the purpose of the <i>Main Roads Act 1930</i> .
Highway	Highway means a road declared by proclamation to be a highway for the purpose of the <i>Main Roads Act 1930</i> .
Road Reserve	The entire right of way devoted to public travel including footpath, verges and carriageways, ie the whole width between adjacent property in a road reserve.
Public Road	A public place that has been provided for use by the public for traffic movement and has been declared or proclaimed, notified or dedicated.
Public Access Route	Tracks across Crown land providing public access to coastal recreation areas, where formal declaration as a road is not appropriate.
Right of Way	A right of way is a strip of land available either for use by the general public, or a restricted section of the community, and may be created by subdivision, specific transfer, or continued use over a period.
Public Right of Way	Land vested in the crown as a condition of subdivision.
Private Right of Way	A narrow strip of land generally in a private subdivision and legally available only to owners of blocks in the subdivision.
Road Reserve, Road Casement	Property boundary to property boundary.
Pedestrian Access Way (PAW)	Land acquired by the Crown for use as a footway.
Underwidth Road	A purely descriptive term for a road or laneway which is of a lesser width than normal. The standard road reserve is generally 20.12m.
Easement	An easement is a grant of rights over land by the property owner in favour of another person, to enter onto land for the purpose of installing and maintaining facilities such as cables, pipelines etc. An easement may also be to grant the right to cross over land in order to gain access to another parcel of land. In the case of Crown lands, section 144 of the LAA allows for the Minister of Lands to grant easements over Crown land to any person for any purpose.

POLICY IMPLICATIONS

Council has no policy on rights of way and laneways. This report proposes a new policy on this subject.

STRATEGIC IMPLICATIONS

The increase of land values, the growing complexity of development applications, the increase in legal cases relating to injuries or damages suffered on roads, streets and laneways all impact on laneways. The need to clearly define Council's future requirements and attitudes regarding these routes or accesses all push towards much greater control and definition of the Town of Cottesloe's requirements and obligations in this matter, in a strategic and forward planning sense.

FINANCIAL IMPLICATIONS

Council currently funds the maintenance of laneway surfaces and the control of vegetation in these areas. There is little definition as to whether private sections of laneways should be maintained, the level at which heavy maintenance should become construction and included in a 'Capital Works' budget, and what liabilities Council takes on by general maintenance of private laneways used by the general public.

This report seeks to establish a financial framework to deal with these issues, as well as to determine if a five year programme for laneway upgrading is necessary.

BACKGROUND

Council received an extensive report in October, 2004 on the laneway/ROW network within the Town of Cottesloe, including a draft policy for ROW's/Laneways. This was developed after every laneway was inspected for length, width, condition, construction type, obstructions etc. Investigations then took place regarding ownership status, possible encroachment from private properties and an aerial inspection using the town's GIS photography capacity.

As per Council policy (and resolution) the draft policy has now been advertised, included on Council's web page and staff have been available for discussion on this matter.

CONSULTATION

The requirements of Council's draft consultation policy have been applied to this subject, to assess community concerns.

STAFF COMMENT

The following submissions were received regarding the proposed ROW/Laneways Policy:

1. Owner 2/499 Stirling Highway:

Concern regarding the existing width of Rockett Lane, with all truck deliveries not being able to use the lane due to the width. Requests that this lane be checked to see if fences have been incorrectly located.

Staff Comment:

This lane is narrow at each end, but these widths appear correct and are not affected by incorrect fence alignments. Future widening could only be considered as a condition of subdivision or by forcible resumption.

2. **Owner 261 Curtin Avenue:**

A request for the retention of the rear laneway behind the property. The lane provides the only rear access to the property.

Staff Comment:

No proposals exist for the closure of this laneway. Initial inspections have revealed possible illegal private property encroachment into the laneway, which will be further investigated.

3. **Owner 19 Jarrad Street:**

Supports the draft policy, its objectives and resolutions. Makes reference to ROW56 between Jarrad Street and Rosser Street regarding promised truncations, an illegal closure at the western end and a variety of problems this closure and a lack of truncations have caused.

Staff Comment:

All unapproved closures, obstructions and private property encroachment will be followed up, now that these problems have become obvious from the laneway inspections and use of the GIS aerial photograph capacity. Truncations can be gained as new development proposals are considered and conditions imposed. Both problems identified will be inspected for solution.

4. **Owner 8 Ozone Parade:**

First submission –

- Odd that naming is not proposed.
- ROW 3 (north of Grant Street, between Broome Street and Ozone Parade) 10 residents committed to funding the sealing of the southern end of this ROW. Will Council supervise this work?
- Support has been gathered for two years for this work, including resident meetings. Views this matter as very important.

Staff Comment:

The reasons for not naming laneways are included in the original report. The new policy does not stop or reject the idea of a laneway being sealed, totally at private cost, with solid public support. Staff could supervise this work, undertaken by contractors.

The Ozone Parade/ROW 3 upgrade could be approved by Council and the work completed this financial year, if required.

Second submission –

Reasons for sealing laneways:

- Maintenance includes spraying grass and weeds which stabilise the sand. Small cars are damaged due to the sand moving, causing car bottoms, exhausts and wheel alignment damage.

- Safety of vehicles improved if the laneways are sealed, allowing more vehicles to be parked via rear laneway access – theft of vehicles occur when parked on the verge or kerbline.
- Rear access of ROW's allows a second alternative for a flat/level entrance for people with injuries or disabilities.
- More use of laneways will make them safer. Possible future lighting?
- Built laneways will mean improved drainage.
- ROW's as sand tracks can cause damage to side fences, due to truck use.
- Sand laneways can become smelly areas due to dog use, rubbish dumping/burial, fish carcass burial.
- Vehicles drive faster down sand laneways to avoid being bogged in dry sand, causing rutting and broken fences.
- Lanes are valuable assets if sealed. Numerous other Councils have sealed their laneways.
- Dust from unsealed laneways cover houses, cars and enter houses, particularly on windy days.
- More value in installing soakwells in laneways than in Ozone Parade.
- No logic in installing soakwells at a larger separation distance on streets than on laneways.
- Owners of rental properties should be encouraged to contribute via an annual levy. These owners are not contributing to the possible sealing of ROW3.
- Suggestion that all residents should contribute half the cost of sealing via an annual levy for \$150/year over 10 years.
- A piece meal approach is less efficient than a major program.
- All new buildings with access should fund their section of the laneway to be sealed. Many are not.
- Infill development should have a requirement for off street parking, via a built laneway. For all developments this would protect the verge streetscape.

Staff Comment:

Most of these points have been covered in the previous report or are self explanatory. Particular comments are:

- (a) Lighting of laneways is generally not proposed. Most laneways are too narrow to install light poles.
- (b) Soak wells being installed on Ozone Parade are to protect a private property from flooding. These soak wells are much larger than the soak wells installed on laneways. For long lengths of laneways, more precise drainage design is proposed ie larger pits further apart.
- (c) No forced laneway levies are proposed. If residents don't want their laneway sealed then it is not proposed to force that sealing with some form of levy.

5. Owner 16 Ozone Parade:

- (a) Remove first 17 words of the policy section 4 (6). Replace with "when an existing property adjoining a ROW/Laneway is redeveloped to an estimated cost of more than \$....., or when new access is sought (eg new gate) from an existing property". Contribution should not be tied to

redevelopment because pedestrian and vehicle access can be achieved after redevelopment.

- (b) Policy section 4, 9(d)(ii) reference should be to #6 not #7.
- (c) Policy section 4, 9(e) replace "a ROW or Laneway" with "ROW/Laneway or section thereof". This is to cover sections of a ROW/Laneway only.
- (d) Policy section 4, 9(e)(iii) add a new sentence "If the ROW/Laneway or section thereof already includes work previously required to be done in the preceding five years then expenditures outlined will be treated as a contribution in order to access priorities and make up the minimum of 50%. This point covers the situation where several short sections may already be built as development conditions, hence the contribution has already been made.

Staff Comment:

- (a) Council is normally not informed if a resident or land owner creates a new pedestrian or vehicle access gate onto a laneway. The use may not be for parking – eg delivery of firewood, gardening material etc. A redevelopment does include the requirement to supply plans and specifications against which a condition of laneway upgrading can be placed. Putting a minimum value on a redevelopment, below which no contribution is required, has been previously considered.

Any vehicle use of a laneway to gain access to a private property, for parking, builders constructing a redevelopment or delivery of goods and materials should require the laneway contribution because such use should impact on neighbouring properties ie dust, noise, drainage etc. A low cost carport or 'lean to' against an existing wall could house one or two cars, but the value may be minimal.

- (b) Agreed, the reference should be to #6.
- (c) Agreed, sections of ROWs/Laneways should be noted.
- (d) Agreed, constructed sections (due to upgrading conditions on development approvals) should be seen by Council as contributions already made to that laneway upgrading.

6. Owner 66 John Street

- (a) Objective 1 of the policy encourages the use of laneways to travel around Cottesloe. This should be restricted to streets and footpaths. Laneways are often used by thieves targeting homes and should be for the use of residents for property access. Therefore change Objective 1 to:
"To provide a safe environment and trafficable surface for residents to access their properties and reduce the public liability risk to the Town of Cottesloe."
- (b) The policy should discourage the use of laneways as shortcuts, particularly vehicle use, with the use of severe speed bumps. Therefore add a new Principle 6:
"To discourage pedestrians and motorists from using laneways as de-facto streets and footpaths or using laneways as shortcuts".
- (c) Clause No. 11 of the policy reads:
"Only in special circumstances are laneways or ROW's to be considered for closure, with all such applications being the subject of a report to

Council.” A number of laneways have limited to no use due to previous closures, steep slopes, narrow width, lack of intersection corner locations etc. This limits the use of such laneways to residents. In such cases, closure may be the best option therefore change clause #11 to read:

“As a general rule it is Council policy to keep laneways open. Applications for closure are to be considered by Council”.

- (d) Policy clause No. 13:

Naming of Laneways is not supported as this may create problems of residents requesting the normal services of a street eg access for emergency vehicles, postal services, refuse collection and street numbering.

However, the installation of metal plates at each end of Laneways/ROW's showing the ROW number is supported.

Installing a number plate for laneway/ROW makes it just as easy to apply for “normal services of a street” as a name place. This will also encourage traffic. Therefore remove clause 13.

Staff Comment:

- (a) Changing Objective 1 to underline a reduced use of laneways for residents only is worthy of adoption of the change. In reality, thieves will still do what they have done in the past and people knowledgeable of Cottesloe laneways will still use them in an unrestricted way.

It is proposed that small speed humps will be installed at drainage pits to direct water into those pits. This method is used in Subiaco with good results.

- (b) The adoption of a new Principle 6, to discourage shortcut use of laneways can be incorporated into the policy. Large speed humps creates a liability concern. More small speed humps (see previous item (a)) would be a more applicable treatment. Pedestrian use of laneways is legal and difficult to discourage, apart from possible signage.
- (c) This proposed clause change will have a similar result to the existing proposal. Road or laneway closure is a heavy ‘red tape’ matter, dealing with many State Government departments (DPI, DLI, Western Power, Water Corporation, Telstra, Alinta Gas etc) with at least a two year time period. Unless there are outstanding reasons, most staff recommendations will be negative.
- (d) A metal plate with a ROW number is not a public street status. It would allow people to find a particular location more readily rather than have ‘lost’ drivers wandering up and down laneways not shown on all street maps. This will reduce undue use of laneways by people searching for a particular property on a laneway.

VOTING

Simple Majority

OFFICER & COMMITTEE RECOMMENDATION

That Council adopt the Rights of Way/Laneways policy, with the following improvements:

- (1) Change Objective #1 to read:
 - (a) "To provide a safe environment and trafficable surface for residents to access their properties while managing risk to the public and the Town of Cottesloe."
- (2) Include a new Principle No. 6:
 - (b) To discourage pedestrians and motorists from using laneways as de-facto streets and footpaths or using laneways as short cuts.
- (3) Change Policy item 9(d)(ii) to refer to point #6 not point #7.
- (4) Add a new sentence to Policy Item 9(e)(iii):
 - (a) "If the ROW/Laneway or section thereof already includes work previously required to be done in the preceding five years then expenditure involved will be treated as contributions, in order to assess priorities and make up the minimum of 50%.
- (5) Change the first sentence of Policy Item 9(e) to read:
 - (a) "ROW/Laneway or section thereof".
- (6) Change clause 11 of the policy to read:
 - (a) "As a general rule it is Council policy to keep laneways open, even if un-constructed. Applications for closure are to be considered by Council".

AMENDMENT

Moved Cr Utting, seconded Cr Sheppard

That 2(b) be amended to read:

- (b) To discourage motorists from using laneways as de-facto streets and using laneways as short cuts.

Carried 7/3

12.2.5 COUNCIL RESOLUTION

Moved Mayor Rowell, seconded Cr Strzina

That Council adopt the Rights of Way/Laneways policy, with the following improvements:

- (1) Change Objective #1 to read:

- (a) "To provide a safe environment and trafficable surface for residents to access their properties while managing risk to the public and the Town of Cottesloe."
- (2) Include a new Principle No. 6:
 - (b) To discourage motorists from using laneways as de-facto streets or using laneways as short cuts.
- (3) Change Policy item 9(d)(ii) to refer to point #6 not point #7.
- (4) Add a new sentence to Policy Item 9(e)(iii):
 - (a) "If the ROW/Laneway or section thereof already includes work previously required to be done in the preceding five years then expenditure involved will be treated as contributions, in order to assess priorities and make up the minimum of 50%.
- (5) Change the first sentence of Policy Item 9(e) to read:
 - (a) "ROW/Laneway or section thereof".
- (6) Change clause 11 of the policy to read:
 - (a) "As a general rule it is Council policy to keep laneways open, even if un-constructed. Applications for closure are to be considered by Council".

Carried 10/0

TOWN OF COTTESLOE POLICY

RIGHTS OF WAY / LANEWAYS

(1) OBJECTIVES:

1. To provide a safe environment and trafficable surface for residents to access their properties while managing risk to the public and the Town of Cottesloe.
2. To establish a procedure for the progressive upgrading of all public Rights of Way and Laneways, by paving and drainage, using all available sources of funding.
3. To establish a procedure for private developments and subdivisions to contribute to the upgrading of public Rights of Way and Laneways, where those developments impact on those routes.
4. To establish a procedure for sections of private laneways to become Crown land, including land held by Council as private property and used by the public as access.

(2) PRINCIPLES:

1. To recognise that the Rights of Way (ROW)/Laneway network provides valuable access to residential and commercial properties.
2. To recognise that aesthetic improvements occur in street frontages when garages and carports are accessed from ROW's and Laneways.
3. To ensure that the costs of improvements to ROW's/Laneways are funded by developers and subdividers, if such improvements are required to service such developments.
4. To recognise that the ROW/Laneway network is of benefit to the whole community and that the Town of Cottesloe should contribute towards upgrading, if landowners wish to contribute towards ROW or Laneway upgrading.
5. To recognise that any ROW or Laneway used by the general public should be Crown land vested in Council for the purpose of public access, maintained by Council through the normal annual budgeted maintenance programs.
6. To discourage motorists from using laneways as de-facto streets or using laneways as shortcuts.

(3) ISSUES:

1. When compared with similar Local Government Authorities in the metropolitan area, the Town of Cottesloe has a high proportion of its ROW's and Laneways in a poor to undeveloped condition.

TOWN OF COTTESLOE POLICY

2. A large proportion of ROW's and Laneways in the Town of Cottesloe are privately owned by the Town, with the remaining sections being either Crown land or privately owned by various individuals or companies.
3. ROW's and Laneways are being progressively built, piecemeal, due to conditions placed on developments and subdivisions, with no long term air of this construction. Such construction has not included a requirement to connect the built section to a built street or existing built Laneway or ROW.
4. ROW's and Laneways often contain Service Authorities infrastructure eg; deep sewers, water supply pipes, as well as Council installed drainage systems. Machine access is required at all times to maintain and service this infrastructure, regardless of ownership.
5. The mixture of Crown control, private ownership and Council ownership of ROW's and Laneways has created confusion in the past for staff trying to maintain these accesses while trying not to expend Council funds on privately owned sections.
6. The amount of privately owned laneway sections (by Council and individuals) requires a lot of control regarding actions, filing, knowledge of ownership etc, which could be greatly simplified by their surrender to the Crown.
7. Past completion of various short sections of ROW and Laneway construction by various contractors organised by various developers to meet development conditions have left Council with varying levels, construction standards and quality standards of these sections throughout the Town area. This will inevitably result in a variety of maintenance problems as ROW and Laneway use grows.
8. Many of the past approved laneway constructed sections have been to a 100mm thick, un-reinforced concrete standard. With vehicle weights increasing and the use of heavy machinery by Service Authorities to service their infrastructure in laneways, it is also inevitable that Council will be involved in expensive repairs to cracked and damaged concrete laneway sections. Therefore laneway surfacing should be based on flexible rather than inflexible pavements.

(4) POLICY:

1. Council's attitude towards the status of ROW's/Laneways is that all such accesses should be Crown land, where they are used by the general public rather than for a specific restricted property access function.
2. Any sections of ROW's/Laneways owned by the Town of Cottesloe will be surrendered to the Crown under processes included in the *Local Government Act*. Any such sections owned by ratepayers of the Town

TOWN OF COTTESLOE POLICY

of Cottesloe, which become available to Council for little or no cost, will also be surrendered to the Crown for Crown land.

3. When a ROW or Laneway is required for primary access to a new development the developer will upgrade by paving, kerbing and drainage, the ROW or Laneway from the nearest built gazetted road or existing built laneway to the furthestmost lot boundary, to the satisfaction of the Manager Engineering Services.
4. The developer may elect to have the Laneway upgrading works done by the Town of Cottesloe or by a Contractor.
 - (a) If the Town is to undertake the works, payment of the full estimated value of the works must be received by the Town before works commence.
 - (b) If the developer employs contractors, a supervision and inspection fee is to be charged, in accord with Section 6.16 of the *Local Government Act, 1995*.
5. The design of the ROW or Laneway must recognise the need to minimize vehicle speeds and maximize safety and security.
6. When a ROW is required for primary or secondary access from an existing property redevelopment, it is conditional (Town Planning) upon the developer to contribute an amount equivalent to 50% of the costs to construct a portion of standard ROW 4m x 20m in area.
 - (a) Where a charge has been applied, as condition of development for the upgrade of a ROW, the money is to be placed in a Reserve Account established under Section 6.11 of the *Local Government Act*, for the specific purpose of ROW upgrade.
7. Notwithstanding averaging requirements for developments under the residential codes for rear setbacks and fencing specifications in Council's fencing local laws, there shall be a minimum building setback for carports and garages, to allow a minimum turning circle of six (6) metres, measured from the far side laneway boundary to the closest part of the structure, for each car bay, carport and garage designed at 90° to the laneway or ROW.
8. Fees and charges for contribution to works, supervision and inspection will be determined annually by Council in accordance with the provisions of Section 6.16 of the *Local Government Act, 1995*.
9. In situations where new developments or redevelopments are not factors in laneway upgrading and the condition of particular laneways has created concern regarding unsafe conditions for drivers and pedestrians, an increased public liability risk and ongoing maintenance requirements, the following shall apply regarding upgrading:

TOWN OF COTTESLOE POLICY

- (a) A construction program of ROW's and Laneways will be determined by priority on the basis of vehicle and pedestrian usage, existing surface condition, drainage problems and condition of private fencing.
- (b) The design of the ROW/Laneway will recognise the need to minimize vehicle speeds and maximize safety and security.
- (c) All fences abutting ROW's and Laneways shall be constructed and maintained in accordance with Council's fencing Local Laws.
- (d) The funds available for ROW/Laneway upgrading per budget year shall be total of:
 - (i) The equivalent of the total of minimum rates levied on privately owned ROW/Laneway sections per financial year; plus
 - (ii) Contributions received through the development process as covered under point #6, ie the contents of the Reserve Account for this purpose; plus
 - (iii) An amount determined by Council in each budget document, to be made available from Council funds for ROW/Laneway upgrading and construction.
- (e) Where adjacent landowners wish to contribute to the cost of construction of a ROW/Laneway or section thereof, the project will be given priority over all other such works, subject to the following:
 - (i) The application shall contain confirmation by landowners of their request for the upgrading and the amount each is willing to contribute.
 - (ii) It will be the responsibility of the applicants to collect the contributions and deliver all monies to the Council.
 - (iii) A minimum of 50% of the total cost of the work, estimated by the Council's Manager Engineering Services will be required prior to acceptance of any application. If the ROW/Laneway or section thereof already includes work previously required to be done in the preceding five years then expenditure involved will be treated as contributions, in order to assess priorities and make up the minimum of 50%.
 - (iv) Work will not commence until the full amount of the contribution has been received by the Council.
 - (v) The programming and design of the work will be at the sole discretion of the Council.
 - (vi) Applications will be approved in the order in which the full amount of the contribution is received by the Council and will be subject to the availability of funds to meet the Council's contribution through budget allocations each year.

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10. The higher the percentage of cost of laneway upgrading to be provided by private property owner contribution, the higher the priority of project acceptance from Council, apart from the need to allow for funding to remove public liability risks and unsafe conditions on any other ROW or Laneway.
11. As a general rule it is Council policy to keep Laneways open, even if un-constructed. Applications for closure are to be considered by Council.
12. The widths of ROW's/Laneways, the need for truncations on 90° bends, 'Tee' junctions and outlets of laneways onto gazetted roads, and set back requirements from laneways are issues dealt with in other Council documents.
13. On request Council will consider the naming of right-of-ways/laneways under the care, control and management of the Town of Cottesloe on the understanding that there shall be no obligation on the Town of Cottesloe or any other service agency to improve the condition of any particular right-of-way/laneway or services to same.
14. Where a development or subdivision approval includes a condition requiring the sealing and drainage of a portion of ROW/Laneway to allow rear vehicle access, and the developer believes there is a substantial negative attitude from other affected landowners for such ROW/Laneway improvements, it is up to the developer to demonstrate to Council that attitude.
15. Where no application for a development has been received relating to the drainage and sealing of a laneway, and one or more landowner wishes to prevent the sealing and drainage of a laneway, then the concerned landowner(s) would undertake the requirements of #16 to present Council will the case to prevent such sealing and drainage.
16. The demonstration of a local landowner attitude against the drainage and sealing of a laneway to meet a development condition must include the signatures of at least two thirds of all landowners affected by the proposal supporting the 'no sealing and drainage' case and accepting that any future request to Council from any affected landowner to upgrade or seal that laneway must include an acceptance of two thirds of those owners for a differential rating payment system for those properties to fund such improvement works.

(5) TABLE OF ROW / LANEWAYS FOR WHICH COUNCIL HAS GRANTED EXEMPTION FROM UPGRADING PURSUANT TO CLAUSES 14-16 OF THIS POLICY:

ROW/ Laneway	Date of Council Decision
ROW 14	28 February 2011

TOWN OF COTTESLOE POLICY

RESOLUTION NO: 11.1.3
ADOPTION: 28 February 2011
REVIEW: December, 2017