

## PUBLIC SUBMISSION AND DEPUTATION FORM:

AGENDA BRIEFING FOR ORDINARY COUNCIL MEETING TO BE HELD ON 26 MAY 2020 (ITEM 12.4 DISPOSAL OF INTEREST IN LAND – PROPOSED GRANT OF EASEMENT FOR ENCROACHMENT OF PUBLIC ART – LOT 262 ON PLAN 267111 (16A) TIDEWATER WAY, ASCOT

NAME: SUSANNE CARTER, 3/10 MARINA DRIVE, ASCOT, ADJOINING NEIGHBOUR

EMAIL: [susannecarter.wa@gmail.com](mailto:susannecarter.wa@gmail.com) PHONE: 0414 478 079

OPPOSE PROPOSED GRANT OF EASEMENT.

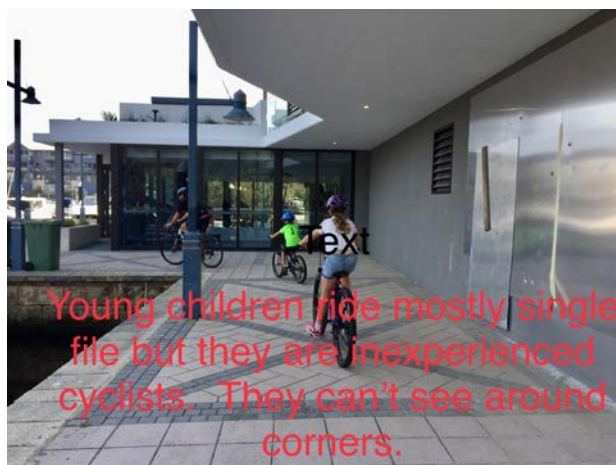
The following deputation uses

Abbreviations: COB = City of Belmont; The Boardwalk or footpath surrounding the marina water's edge between the western and southern walls of Lot 16A Marina Drive = the BW; The public artwork = the structures; TGSI = Tactile ground surface indicators.

This deputation is different from the objections raised during the advertising period, however it speaks to the agenda briefing prepared by COB officers.

## QUESTIONS:

1. Is COB acting lawfully by relying in part, and only in part, on a consultant report, prepared for the owner(s) of the lot, which naturally will be biased for the party who commissions the report. The consultant has determined visibility aspects *to be adequate for the structures* when the width of said footpath (The Boardwalk, BW) however photos and drawings they used and are now presented in the agenda briefing documents do not accurately portrayed the reality? Please note the photo below is a much more accurate representation of the area where the protruding structure (the public artwork) is proposed. It can mostly be seen from my photos that the area is used by and for a number of users/purposes; cyclists, boat-pen holders and their trolleys, pedestrians including small children, prams, walkers and wheelchairs. Please note the western most proposed easement is on the BW against a solid boundary wall adjacent the edge of a 90-degree right angle turn, beyond which no visibility exists. As such the protruding structure would narrow the BW at this important right angle turn and narrow the width of the BW from approximately 3 metres width to 2 meters. If common sense prevails then the location and protrusion of the structures ARE significant and require the COB to be absolutely satisfied those structures do not pose a risk to public, which is simply not the case as they protrude by 550mm. The agenda briefing acknowledges the increased public risk from the protruding structures and this evident in its recommendations that TGSI's and additional safety bollards be placed in the centre of the BW. This only serves to increase the obstacles on this particular BW stretch; and in doing so pose an increased risk to the general public who access the BW with bicycles, trolleys, waste bins and baby and dog prams. This is an even more acute problem at night.



2. What is the COB's response that their recommendations favour the developers and not the general public who use the BW the most? Common sense vs the cost of a piece of artwork. Two of five affixed structures; worth approximately 1/5<sup>th</sup> of the financial contribution required. The two structures require easement approval.
3. Does the COB agenda brief accurately reflect the distance from Lot 16A western boundary wall to the EDGE of the water? The agenda brief references an in principal width of a shared use pathway of 3.5 meters. Please note there are bollards along the edge of the water and these encroach into the 3.5 meters. Therefore, at the particular stretch of pathway in front of the proposed easement structure is narrower than that indicated by the agenda briefing drawings and representations. A realistic photo gives more accurate information of the situation and we are talking a solid wall to the edge of the bollards, not the water, available for passing foot and vehicle traffic. Consideration of my real-time photos is more indicative.



4. Has the COB undertaken steps to obtain written guarantee statements from the Lot 16A Marina Drive, insurance underwriters acting as agents for the property that the risk to a public from a protruding structure and any foreseeable liability arising there from is sufficient for this structure? The agenda brief does not address a specific clause regarding public liability of such structures to be incorporated into the property owner's bylaws. In this regard should COB be seeking a legal review of such clause(s) to indemnifying the COB?
5. Has the COB approached the waste disposal collectors and sought their opinion on the access to the waste bins in respect of the proposed narrowing of the BW on and around a projection into the BW by the easement? There are currently a number of waste bins for boat pen holders to deposit their rubbish in. These bins are chained to nearby posts and bollards, as evident in the photos provided at Question 1? If such bins belong to COB then COB has vicarious liability for any accident or hindrance to public safety at the proposed narrowing of the BW, the easement and the waste bins. Have COB got legal advice on their vicarious liability for public safety? And if yes, why is this not put forward in the agenda brief?
6. Can the COB, when considering the recommendations put forward by the agenda brief, better serve its obligations to consider the protrusion from a different point of view namely I propose to make an application for an easement for me to park my canoe against the western wall of the BW. My canoe will not protrude beyond 400mm? Would COB approve such application?
7. Can the COB and its Public Art Advisory Panel (PAAP) advise why the easement application was delayed and only submitted to COB when building/installation of the structures, considered part of that easement, was already in progress. Where is COB accountability in this matter? Is the easement a fait-accomplis?
8. Were the developers, Blackburne Property Group, given any 'special' consideration by the PAAP and COB regarding the delayed submission of the easement application until the end of the building completion stage? Please note people had already started moving in when the easement application was considered by the COB and furthermore, similar structures, but within the Lot 16A Marina Drive boundaries, had already been built. Refer photos in this submission. Is the easement a fait-accomplis and is the advertising period merely a process?

9. Can the COB draft a specific brief to the Lot 16A Marina Drive owners (ie Blackburne Property Group and the building's Council of Owners which is responsible under the Strata Act) stipulating exactly and in great detail when and what maintenance is expected for the protruding structures to 'meet the COB standards which are merely alluded to in the agenda brief. (Please note, that as a ratepayer, I consider this of the utmost importance having dealt with the COB on numerous occasions where my concerns about safety, noise, dust and similar hazards in regards to the building by Blackburn Property Group have been mostly generalised and dismissed as 'insignificant' unless I emailed a complaint and quoted a particular section of law. This has left a bad taste in my mouth where COB due diligence is concerned). I expect the COB has the knowledge and skills to prepare a more detailed itemisation of what is proposed maintenance under the easement rather than arbitrary motherhood statements about future maintenance standards.
10. Is COB exercising due diligence to the local community, and indeed to the disabled community and to the public at large, when they allow an inconsistent approach to BW widths surrounding the Marina specifically a walkway adjacent to the water's edge? The public, the main users of the BW, will be confused by the constraints the proposed easement puts on their right to use the land unencumbered. Is this fair and just?
11. With the benefit of the foresight from living at this location and observing the use of the BW, I ask whether the COB considered approval of the easement will result in the need to place slow down signage, or even signage for cyclists to dismount, or mirrors or the like to be placed in the future which is restrictive of use of the BW by the public? Why opt for knee jerk reactions when you have the ability to disallow the easement in the first place. Please note I do not object to the use of TGSi on either sides of the right angled BW turns. A sample of such signage and a bollard is provided as per the photo. This type of approach is not suitable for the BW.



12. If the proposed easement structures are subject to vandalism by the public, and therefore not in the control of the strata management of the complex, who is responsible for the clean-up?

13. Multiple variations to COB planning and building policies were granted to the developers of 16A Marina Drive. This has allowed them to fill every inch of the lot with concrete. What recourse does the COB have for building mistakes, ie the drain mistake now requiring an easement (see photo below), other than to grant an easement?



Motions put forward for Item 12.4 of 26 May 2020 meeting:

1. That the COB defer the decision for the granting of current easement and subsequently 1.1 obtain written guarantees from Blackburne Property Group (and strata owners) of Lot 16A Marina Drive insurance underwriters accepting the public liability risk inclusions of the proposed public artwork and 1.2 That the COB advise whether or not COB have approved and itemised the additional public risk liability clauses in the COB public liability insurance policy inclusion or exclusion policies.
2. That the COB clearly advise its ratepayers of who is responsible for vandalism clean-up of the structure should it occur.
3. That the COB reconsider their interpretation of 'minimal' or 'insignificant' public safety risk adopting instead a position of action in accordance with their duty of care to the public and favouring the adopting a position of 'NO RISK to the public of either damage to person or property.
4. That the COB defer the granting of the easement until the Blackburne Property Group can supply a design construct of a proposed structure protruding NOT greater than 200mm 'relief' projection instead of the current proposed 550mm projection.

Respectfully submitted via email by

Susanne Carter on Monday 18 May 2020