

**CITY OF BELMONT**  
**SCHEDULE OF SUBMISSIONS – PROPOSED GRANT OF EASEMENT FOR ENCROACHMENT OF PUBLIC ART EASEMENT – LOT 262**  
**(16A) TIDEWATER WAY, ASCOT**

No.	Respondent and Address	Resume of Submissions	Officer Comment
1	Sharren Holt 24 The Boardwalk, ASCOT WA 6104	I hereby advise that I oppose the easement for public art on community land for 16 Marina Drive.	Noted.  The creation of the easement would allow the artwork to encroach legally into the public land.
2	Susanne Carter 3/10 Marina Drive, ASCOT WA 6104	1. The proposed easement impacts on the public's use of the area. The structure may constitute more than a mere inconvenience; it may also constitute a hazard.	Noted.  1. The encroachment of the public artwork is considered minor and will not result in any significant impacts to pedestrians on the boardwalk or residents accessing the marina for boating.  At the 25 February 2020 Ordinary Council Meeting, Council resolved to require the proponents of the development to engage a suitably qualified Access Consultant to assess the encroachment into the public boardwalk and implement the recommendations.  The key findings and recommendations of the report are: <ul style="list-style-type: none"> <li>• The encroaching artwork has been identified as a potential hazard due to its location with protruding elements, located adjacent to the boardwalk.</li> <li>• However, installing warning Tactile Ground Surface Indicators (TGSI) to address the artwork protrusion into the accessible path of travel offers a compliant solution.</li> <li>• In combination with the TGSI options, installing additional 1.2m high safety bollards at the exposed ends and corners of the artwork, to provide additional safety measures should be implemented.</li> <li>• These safety bollards could designed be in a similar manner</li> </ul>

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		<p>2. The easement restricts movement on the boardwalk, the passing of children on bikes for example and may constitute an obstructional hazard. Another example is boat owners manoeuvring items to their boat pens. This would affect public liability legislation enforcement and make it more difficult for the public to pursue damages should such be the case.</p> <p>3. In law a 'boundary' wall is the property of both parties i.e the land owners and, in this case, the City of Belmont. This is generally understood by the public. Having a structure on the outside of the external wall indicates it belongs to the City rather than the strata company of 16 Marina Drive, Ascot.</p> <p>4. The easement gives the building owners the right/obligation(s) to decide if and when any future maintenance might be undertaken, rather than the City of Belmont incorporating such</p>	<p>to the existing bollards used in the precinct (Figure 5 below depicts the intended locations for the safety bollards).</p> <ul style="list-style-type: none"> <li>• The Access Consultant has also acknowledged comments provided by a Qualified Building Surveyor (engaged by the developer in January 2020 to assess the impacts on access) that note the installation of the public art will comply with the National Construction Code.</li> </ul> <p>2. Refer to response in Point 1.</p> <p>3. The creation of the easement would allow the artwork to encroach legally into the public boardwalk, allowing it to be wholly owned by the strata company and not the City.</p> <p>4. As the proposed development has a value in excess of \$4.5 million and is located within Precinct 8 area of LPP 11, a developer contribution equivalent to 1% of the estimated cost of development was required as a condition of development</p>

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		<p data-bbox="506 318 1104 378">maintenance into its ongoing streets and landscaping upkeep plans.</p> <p data-bbox="506 948 1104 1073">5. For reasons 3. And 4. The easement is ambiguous and confusing for the public at large and may lead to future conflict between the public, the City and the landowners.</p> <p data-bbox="506 1138 1104 1354">6. The developer's plans were approved by the City of Belmont some 24 months ago and the developers were well aware of their obligations to incorporate artwork on their property. They did not allow for this to occur sufficiently on their property and they now intend for it to occur on public property. This is in breach of the building</p>	<p data-bbox="1125 318 1921 410">approval. Additionally, the condition of the development approval also states that the public artwork must be maintained for the life of the artwork to the satisfaction of the City.</p> <p data-bbox="1125 443 1921 597">As the artwork is a result of a developer-lead contribution in accordance with LPP 11, the developer and any successors in title (i.e. the Council of Owners) is required to maintain the artwork, not the City. The artwork is not a City-led project but rather a developer contribution.</p> <p data-bbox="1125 630 1921 784">On this basis, a draft Deed of Easement has been prepared to address how the public art will be maintained in the future. The Deed requires that the Grantee, in this case the proponent and any successors in Title, be responsible for ongoing maintenance and repair of the artwork.</p> <p data-bbox="1125 816 1921 876">Based on the above, it is considered that the proposed Grant of Easement is acceptable.</p> <p data-bbox="1125 948 1482 976">5. Refer to above comments.</p> <p data-bbox="1125 1138 1921 1354">6. Valid development approvals for this development have been granted in the past. A development approval for a mixed use building comprising 91 multiple dwellings, a restaurant and office at 16 Marina Drive, Ascot was approved by the Metro Central Joint Development Assessment Panel on 27 April 2016. Subsequent amendments were also approved on 14 November 2016 and 22 August 2018.</p>

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		<p>permit issued and so not in the interests of the community at large nor of the City of Belmont for the reasons already given.</p> <p>7. The City appears to be waiving compensation for the imposition and such action is hardly in the public interest.</p>	<p>Subsequent to this development approval The City of Belmont's Public Art Advisory Panel (PAAP) provided support for the public art concept in June 2016.</p> <p>There are separate building permits issued for the building and the public artwork.</p> <p>It was during the construction process that the developer identified that an easement was required to formally allow for the installation of the artwork. The building permit for the public artwork reflects the easement; therefore there is no breach of any building permit.</p> <p>7. The applicant/developer has agreed to bear all costs in regards to the preparation of this easement. Given that the encroachment for the public artwork is minor and will allow public artwork to be installed to the exterior of the development to enhance the public domain, it is considered reasonable to not charge the applicant/developer for the portion of the space acquired via the easement.</p>