

Item No: R4 Recommendation to Council
Subject: **ACQUISITION OF TRUMPER PARK PUBLIC ACCESS
FOOWAY AND ADJOINING LAND - 4 & 8-10 NEW MCLEAN
STREET, EDGECLIFF**
Author: Anthony Sheedy, Senior Property Officer
Approvers: Zubin Marolia, Manager - Property & Projects
Tom O'Hanlon, Director - Technical Services
File No: 18/190066
Reason for Report: To consider the acquisition of Trumper Park public access footway from the adjoining Owners of 4 & 8-10 New McLean Street, Edgecliff.

Recommendation:

THAT Council:

- A. Enters into a Deed of Agreement (**Deed**) with the Owners Corporation Strata Plan 19963 being the owners of 4 New McLean Street, Edgecliff and the Owners Corporation Strata Plan 20548 being the owners of 8-10 New McLean Street, Edgecliff for:
 - i) the carrying out of early works by Council and
 - ii) the dedication of a public access footway and adjoining land to Council, free of cost, (land shown hatched in C-Side Surveyors plan reference 18140-DET Revision C dated 14/11/2018 (**Land**)).
- B. Accepts the dedication of the Land by the adjoining Owners of Strata Plan 19963 and Strata Plan 20548 as a public reserve and resolves that the Land will, on its acquisition be classified as Community land in accordance with Section 26 of the *Local Government Act 1993*.
- C. Extinguishes the existing easements for a Right of Way in favour of Council over the Land being the easements created by DP609347 and DP631160.
- D. Delegates to the General Manager the power to negotiate the terms of the Deed with the Owners Corporations of SP 199673 and SP20548 and authorises the Mayor and General Manager to execute the Deed and do all things necessary to implement and give effect to the Deed, including executing any necessary documentation.

Background:

In around 1980 the strata properties at No.4 and No.8-10 New McLean Street, Edgecliff were developed and various easements were granted in favour of Council. These easements gave the public Rights of Footway across the common property of those strata properties, ensuring pedestrian access from New McLean Street Edgecliff to the Trumper Park Reserve in Paddington (see Annexures 2 & 3) (**Footway**).

The Footway links New McLean Street to the Trumper Park Children's Playground and Trumper Park Reserve Oval (see Annexures 1 & 5). The Owners of 8-10 New McLean Street (SP 20548) have erected a chain wire fence on their land, which informally reduces the common property of their strata scheme to exclude the Footway and surrounding landscape vegetation.

The Owners Corporations of the strata properties believed that the Footway was a Woollahra Council road and that Council was liable for the maintenance of the Footway. They have since been provided legal advice to the effect that the pedestrian Footway is not a Council road and that Council is not liable for its maintenance or insurance.

Recent incidents have involved pedestrians tripping and falling on the Footway due to the poor design and condition of this Footway including poor lighting, which indirectly reflects poorly on Council. Council's Open Space and Risk Management staff are also concerned about the community safety issues as this Footway is not up to Council's required standards with the Footway area not being maintained adequately by the Owners of the Strata Plans.

Proposal:

Due to the unsatisfactory condition of the Footway and to ensure pedestrian safety issues associated with this access way are addressed, it is proposed to undertake the necessary works to upgrade the Footway to bring it into compliance with Council's standards, and for the Footway and adjoining land to be transferred into Council's ownership as soon as possible to protect this important community access Footway.

Council has engaged a surveyor to prepare a plan showing the Footway and surrounding landscape vegetation extending to the fences erected on the common property of No.4 & No.8-10 New McLean Street (see Annexure 4). The vegetation in this area has historically been managed by Council bush regeneration staff. It is intended to acquire the whole of the area shown in hatched relief on the plan from the Owners Corporations of SP 19963 and SP 20548 (**Land**). Both Owners Corporations of the Strata Plans have agreed in principle to the dedication of the land to Council free of cost.

To achieve this in a timely manner, it is proposed that a deed be entered into by Council and the Owners Corporations of the Strata Plans which provides for Council to have access to the Land prior to the formal transfer to Council. Council can then carry out the works to the Footway to make the area safe. Council's consultant lawyers will prepare a Deed of Agreement for the Works and Land dedication and all necessary documents for the acquisition. Once a formal agreement is in place, Council will commence the necessary early rectification and lighting works.

A plan of subdivision will be prepared by the surveyor based upon the attached plan. The plan of subdivision will indicate that the Land is to be dedicated as a public reserve. No development consent is required for the subdivision, as the subdivision is for a public purpose (that is, excising land to be used as public reserve). Once a subdivision certificate has been issued, the plan will be registered at Land Registry Services and dedicated as a public reserve. Council will include the Land within Trumper Reserve. The land is to be classified as community land under the *Local Government Act 1993*.

Because the existing Rights of Way will become redundant once the subject land is a public reserve, it is proposed that they will be extinguished as part of the acquisition process.

No monetary compensation will be paid to the Owners Corporations for the acquisition of the Land. However, Council will bear the legal costs of acquisition and the preparation of all documentation,. The Owners Corporations will pay for their own legal costs.

Consultation:

Council Property staff have been negotiating in recent weeks with the Owners Corporation representatives in regards to entering into the Deed of Agreement and land acquisition proposal. Both Owners Corporations have discussed the transfer of the land to Council at no cost at their respective statutory meetings and have agreed to enter into a Deed of Agreement in principle for Works and Dedication of land for the Trumper Park pedestrian access footway and adjoining landscaped area.

Identification of Income & Expenditure:

No compensation monies are to be paid to the Owners Corporations SP 19963 and SP20548 for the acquisition of the subject land. The legal costs of acquisition, preparation of all documentation, and land transfer are to be borne by Council. The Strata Owners will pay for their own legal advice.

Council's Capital Works Manager has advised that the estimated overall cost for the footway works will be approximately \$60,000. This scope includes 3 new handrails and replacement of slate paving stones with safety compliant brushed concrete WMC Standard pavers. The works also include additional lighting installation of four (4) matching bollards with inbuilt lighting fixtures.

If the recommendations are adopted, the expenditure for the works will be subject of the December budget review of the 2018/19 Capital Works Budget.

Conclusion:

The acquisition of the private land identified in the attached sketch plan formalises what has historically been the public pedestrian access way to and from Trumper Park Reserve. The land will be dedicated to Council without any compensation payable and entry into the proposed Deed will allow for beneficial upgrade works to be carried out to improve the safety of the footway for the Woollahra community.

It is recommended that Council agrees to the acquisition of the land comprising the footway and adjoining parts of the land from the owners of Strata Plan 19963 and Strata Plan 20548, as shown in attached plan and to incorporate those parts of the land into Trumper Park for pedestrian and other use by the public.

In order to seek approval to access the Common Properties to undertake the early works to upgrade the Footway prior to its dedication to Council, it is recommended that Council first enters into a Deed of Agreement for Works and Dedication of Land for Footway, with the private owners the land and seek their commitment to the dedication of the land to Council.

The acquired land parcel would be classified in accordance with Section 26 of the Local Government Act 1993 as Community land and will be a public reserve forming part of the existing Trumper Park Reserve.

As the existing Rights of Way will become redundant once the subject land is acquired from the Owners Corporation of SP19963 and SP20548, it is proposed that they will be extinguished as part of the acquisition process.

Annexures

1. Aerial view of land for acquisition
2. Right of Way over 4 New McLean Street, Edgecliff
3. Right of Way over 8-10 New McLean Street, Edgecliff
4. Surveyors sketch Plan of land for acquisition
5. Site photos of subject land for acquisition