



## **SPECIAL ELECTORS MEETING**

### **Minutes of Special Electors Meeting Called in Response to a Petition to Discuss**

- Closure of Right-of-Way 15 (which extends from Riverview Street to Angelo Street to the west of the South Perth Primary School) and the impact this is having on the South Perth community and the South Perth Primary School; and
- The City of South Perth fund a challenge to the closure of ROW15 in the Supreme Court.

**Held in the South Perth Senior Citizens Centre**

**58 Coode Street, South Perth**

**Monday 16 November 2009 Commencing at 5.45pm**

#### **1. DECLARATION OF OPENING**

The Mayor opened the meeting at 5.45pm and welcomed Councillors, officers of the City, Mr John McGrath, MLA Member for South Perth the Hon. Bill Grayden, a Freeman of the City and the public gallery.

#### **2. RECORD OF ATTENDANCE / APOLOGIES / APPROVED LEAVE OF ABSENCE**

Present:

Mayor J Best (Chair) until 6.40pm

Councillors:

V Lawrance	Civic Ward
I Hasleby	Civic Ward
P Best	Como Beach Ward
G Cridland	Como Beach Ward
T Burrows	Manning Ward
L P Ozsdolay	Manning Ward
C Cala	McDougall Ward
R Wells, JP	McDougall Ward
R Grayden	Mill Point Ward
B Skinner	Mill Point Ward
S Doherty	Moresby Ward (Chair from 6.40pm)

Officers:

Mr C Frewing	Chief Executive Officer
Ms V Lummer	Director Development and Community Services
Mr P McQue	Manager Governance and Administration
Mr R Bercov	Strategic Urban Planning Adviser
Mrs K Russell	Minute Secretary

Apologies

Cr K Trent, RFD Moresby Ward – leave of absence

A petition listing 83 ratepayers' apologies / support for the purpose of the meeting 'tabled'. Four individual letters of apology / support for the meeting were also 'tabled'.

Public Gallery

There were approximately 200 people in attendance.

#### DECLARATION OF INTEREST

The Mayor read aloud the following Declaration of Interest received from Councillor Rob Grayden.

*"I wish to declare a Conflict of Interest as a Councillor for Mill Point Ward. I am a long term resident of 49 years, during which I have enjoyed unfettered use of ROW15. I am also a proprietor of 23 Riverview Street, South Perth and as such, have an express right to use the ROW pursuant to an easement conferred by the original title for the subdivision, which right has been obstructed and will be obstructed by the development application.*

*I am also a parent of children attending South Perth Primary School and understand first hand how the development proposed has and will affect the school. I am also the solicitor (acting Pro Bono) representing the 'interested parties' who are opposing the development application. In light of the above I declare an impartiality interest and will attend the Special Electors' Meeting as a resident only."*

#### STATEMENT FROM THE MAYOR

The Mayor outlined the format for the Special Electors Meeting, called in response to a Petition with 190 ratepayer's signatures and advised that the first presentation would be from the Petitioner, Mr David Skinner, Chair of the South Perth Primary School Council. He stated that it was his intention to apply the City's Standing Orders Local Law to the running of the meeting, and raised the following points:

- Only electors can speak or vote at the meeting;
- Councillors are not obliged to attend Electors' Meetings but have chosen to do so to listen to the comments made by the residents of South Perth. Councillors will not respond to any questions;
- Electors have the right to speak however any Councillor wishing to speak does so as an elector;
- Council is not bound by any decision made at the meeting. Motions passed will be considered by Council at the December 2009 Council meeting;
- Each speaker will be permitted 5 minutes and should restrict their comments to the subject of the meeting;
- Speakers should not repeat comments / points already raised by another speaker. There will be the opportunity to voice support in the vote when any Motion is put; and
- Meeting protocol is to be adhered to.

### **3. PETITION**

Mayor Best read aloud the text of the petition (as follows) received 27 October 2009 from **David Skinner**, 21 Tate Street, South Perth together with 190 signatures.

#### ***Text of the petition reads:***

Under Section 5.28 of the *Local Government Act 1995*, the electors of Mill Point Ward whose names, addresses and signatures are set out in the attached list and who comprise more than 100 electors, request that a Special Meeting of Electors of the district be held. The details of the matter to be discussed at the Special Electors Meeting are:

- (a) the closure of ROW15 and the impact this is having on the South Perth community and the South Perth Primary School; and
- (b) the City of South Perth fund a challenge to the closure of ROW15 in the Supreme Court.

#### 4. **REPORT / PRESENTATIONS**

##### PRESENTATION FROM PETITIONERS

Mr David Skinner, the petitioner, of 21 Tate Street, South Perth and Chair of the South Perth Primary School Council commenced his presentation by reading allowed the proposed Motion, as follows:

##### PROPOSED MOTION

That...

- (a) Council obtain its own legal opinion as to the merits of seeking a declaration of the Supreme Court on whether or not the express rights-of-carriageway over Lot 69 Riverview Street exists, as asserted by the residents of the district; and
- (b) the City of South Perth fund a challenge to the closure of Right-of-Way 15 in the Supreme Court.

Mr Skinner then outlined the current position:

- The land on which ROW 15 was registered has been acquired by a neighbouring land owner.
- ROW 15 has been closed without Local Council approval or broader community consultation.
- Closure of the ROW has had a seriously adverse impact on the school and the local community.
- Residents in the original subdivision that were not consulted have a legal basis on which to challenge the ROW closure.
- The City of South needs to work with the residents to fund a legal challenge to the ROW closure.

Ms Ann Choong, 16 Waverley Street, South Perth and President of the South Perth Primary School P & C spoke on behalf of the school community in relation to the following points:

- Disconnection
- Congestion in other areas
- Programmed activities stopped
- Disruption of school building program
- Evacuation protocols drastically affected

Mr Harry Anstey, 21 Riverview Street, South Perth spoke on behalf of 'Interested Parties' and raised the following points:

- Who are the "Interested Parties?"
  - A group of five residents and neighbours who live in the eastern end of Riverview Street.
  - Group includes the Grayden, Pitcher, Falvey and Anstey families.
  - Some family links with ROW, like the Grayden and Pitcher families, go back more than 60 years.
  - Recognise that if the wider community does not show it cares about the closure of the ROW, then it will be considered as only benefiting a handful of noisy Riverview Street residents
  - Our objective has been to have the ROW restored permanently to its "essential" right-of-carriage status, operating in the same way as it has for the past 104 years - for the benefit of Riverview Street and the wider community.

- Brief History of the ROW
  - South Perth Primary's association with the ROW on the western boundary of Lot 350 exceeds 107 years:
  - In 1902 the main class room was accommodating 75
  - 13 May 1904 requested that a gate be installed at the NW corner "so 30% of students and the assistant teacher did not have to scramble through the fence".
  - The school did not have septic sewer until the 1930's.
  - In 1904 Mr Arnott purchased the land within the boundaries of Angelo, Onslow, Hensman and Forrest Streets, surrounding Lot 350, the South Perth Primary School
  - The Plan of subdivision 2692 was to the west of Lot 350, SPPS, and south of Angelo Street and east of Onslow Street.
  - The Plan envisaged the future extension of:-
    - Riverview Street east, to Lot 350 (SPPS)
    - Karoo Street from Onslow to Forrest Streets, and
    - King Edward Street from Angelo Street to (proposed) Karoo Street

However, the extension of the proposed Streets did not happen (Gazetted) until the 1920's.

The subdivision included a "right of carriageway" to service (from the back) the proposed Lots in the subdivision. So there were 3 principal ROWs:

- south from Angelo Street, along the boundary of SPPS (Lot 350) to what would be Karoo Street,
- east from Onslow street to the boundary of SPPS (Lot 350), with one to the north of the proposed Riverview Street and the other on the south (between Riverview and Karoo Streets).
- This ROW, to the west of SPPS, would also have been used to provide the "night collection" service to the school's toilets, which are still on this western boundary.

- Legal Issues and Opinion

Council Policies rely on the *Land Administration Act* and the requirements flow from that. It had no expectation nor experience with whether s.167A of the TLA governs the position. .... this section, subject to its express terms effectively provides that an easement (including a right of carriage way) is limited to properties which abut in this case the so-called right of way. There is a further aspect to this interpretation, which will become apparent.

The Interested Parties have sought legal opinion from a senior Perth Barrister, Mr Peter McGowan, concerning the Closure of the Right of Way in April 2009.

He has advised us that:

***"the express words of the encumbrance demonstrate that the rights are conferred upon all those in the several subdivisions on plan 2692 over not just the abutting land"***

***"the rights extended to the whole of the right of way. Those rights remain in respect of the balance of the right of way which had as at 2007 not been closed."***

Another of the points made to the Interested Parties is that:-

***"the right of way as originally created is that which extends between Angelo Street and Karoo Street"***. The relevance of this may become relevant at a later stage of the proceedings.

It is also relevant to note that, when Lot 69 was purchased in 2007 it was recognised by the City and WAPC as an essential ROW and the Purchaser: ***“acquired the interest ... which interest was subject to rights granted pursuant to the original transfer in favour of those who owned from time to time property in the subdivision bounded by Angelo Street, Onslow Street, Karoo Street and lot 350.”***

***“it’s an attempt to extinguish interests claimed by others and any interest acquired could be no greater than that which was capable of being conveyed ... which conveyance was subject to the express encumbrances contained on Certificate of Title volume 507, folio 77.”***

***“the closure of the right of way was legally ineffective as against those who had rights by reason of the encumbrance referred to above and who had not otherwise consented to the surrender of those rights.”***

- Where to from here?  
***“the Supreme Court has power pursuant to s.200 of the TLA to direct the Registrar to take consequential steps in light of any findings that may be made as to any rights of those who have an interest in the property, whose interests have been wrongly taken away or not recognised or both.”***

The Interested parties are still active in the SAT proceedings.

The Legal Opinion we received was that it:

***“remains relevantly a planning consideration because those who have an interest in the property have expressed their objection to approval being granted.”***

However our abilities in SAT have recently been significantly restricted and we now rely totally on Council actions.

The Interested Parties believe they, as proprietors, have a very strong case to support restoration of the ROW to its former “essential status”. However, we are also aware of suggestions that this is a matter which only benefits a few Riverview Street residents. It is not a community issue.

Against this background, the Interested Parties feel that any further action taken MUST be a community effort. We welcome the interest and support of the South Perth Primary School and that of the wider community. We are prepared to work with these communities, and the City of South Perth, to ensure that any action taken from here on, in the Supreme Court, includes both our support and the benefits we, as original proprietors have, which ought to ensure the outcome we all seek.

As you may have noticed, ROW 15 is a Landgate creation. Our legal advice is that the ROW is continuous between Angelo and Karoo Streets. So where does that leave the 5m wide section along the western boundary of the school, part of the oval? Perhaps now it is apparent why this matter cannot be seen as a one off incident, but a potential incident, awaiting further ramifications in the future. ROW15 must be resolved and its essential use restored. If this requires a Supreme Court decision, then it must be supported as community action.

Mr Skinner closing for the Motion

- a permanent closure of the right-of-way will have serious adverse consequences for the community.
- the City of South Perth has a responsibility to protect community assets such as the ROW.
- residents in the original subdivision that were not consulted have a clear and legitimate legal basis on which to challenge the ROW closure but need the City's assistance to fund a challenge.
- the City needs to work with the local residents to restore this essential community asset.

MOTION

Moved David Skinner, Sec Margaret Mairata, 19 Norfolk Street, South Perth

That....

- (a) Council obtain its own legal opinion as to the merits of seeking a declaration of the Supreme Court on whether or not the express rights-of-carriageway over Lot 69 Riverview Street exists, as asserted by the residents of the district; and
- (b) the City of South Perth fund a challenge to the closure of Right-of-Way 15 in the Supreme Court.

**5. PUBLIC COMMENT PERIOD**

SPEAKERS FOR / AGAINST MOTION

Mr Greg Parker (representing Mrs Parker) 32 Riverview Street, South Perth

Prior to Mr Parker commencing his debate the Mayor sought clarification that Mr Parker was an elector and therefore entitled to speak / vote at the meeting. Mr Parker confirmed that he owned property within South Perth and was entitled to speak and vote.

Mr Parker spoke against the Motion

- background on closure process over 5 years
- consultation held
- engaged Greg Rowe and Associates who approached South Perth Primary School and City of South Perth – both parties refused to speak about closure of ROW15
- closure process 'secretive' – on two occasions we have tried to address the issue – had no response - trying to accommodate a compromise
- since moving to 32 Riverview Street have endured many incidents as a family eg car thefts, burglaries, countless 'near misses' at all hours of day and night involving pedestrians, cyclists and skateboarders
- do not believe there is a member of this community who would not put safety of family first
- Motion proposed has already been put to lawyers acting on behalf of Council – advice received closure process legal
- basis for closure has taken place because City of South Perth and the South Perth Primary School would not listen
- two ways to close ROWs – tried to talk to South Perth Primary School and Council and were ignored under *ROW Act* – went the other way and closed legally under *Land Act*

Hon Bill Grayden, 25 Riverview Street, South Perth for the Motion

- ROW in operation over 105 years – served South Perth well
- have lived in Riverview Street for 56 years – in all of that time have regularly used ROW to access Angelo Street and shops
- all of my 10 children went to South Perth Primary School and accessed the ROW
- during any school week, until its closure, there was extensive use of ROW
- now no longer able to access the steps / right-of-way
- since closure of right-of-way it has been chaotic with traffic exacerbated
- support the Motion

Mr Greville-Collins, 30 Hensman Street, South Perth spoke against the Motion

- Explore other options
- Right-of-way issue similar to others in South Perth which have been ratified by Council
- Education Department not here tonight – they have a primary interest
- why were Education Department not aware of ownership of right-of-way / why did they not do something previously
- in relation to evacuation plan etc – you would think someone from the school would have taken up this issue with the Education Department
- do not believe City of South Perth should fund Supreme Court action – believe there are other ways
- extent of Education Department involvement in this should be a guide to other schools – would appear South Perth Primary School is on its own
- understand right-of-way has been legally purchased – one has to ask if there has been any illegality in the way it has been handled
- cost to Council seems an extreme measure until other options explored
- against the Motion

DEPUTY MAYOR TO TAKE THE CHAIR

The Mayor advised the meeting of a prior commitment. He handed over the position of Chair to Deputy Mayor Doherty.

Mayor Best left the Meeting at 6.40pm and Deputy Mayor Doherty took the position as Chair.

Mr James Grayden, 86 Strickland Street, South Perth for the Motion

- have children attending South Perth Primary School
- grew up in Riverview Street and used right-of-way
- potential exposure to Council of huge \$\$ cost
- legal advice received today indicated the cost would be in the range of \$30,000 - \$50,000
- school community use ROW - I personally use the ROW to access Angelo Street
- since closure of right-of-way I drive to get to Angelo Street
- believe closure is ad hoc planning by one resident to detriment of entire community
- believe Education Department not in attendance as they do not have a clear enforceable right in this matter
- the only people who have a clear enforceable right in this matter are the residents
- unfair to impact a handful of residents to fund Supreme Court Action
- strongly support Motion – urge others to also support the Motion

PETITION FROM RESIDENTS UNABLE TO ATTEND

At this point in the meeting Mr Harry Anstey 'tabled' a Petition containing a list of 83 names of Electors of the City of South Perth who were unable to attend the meeting but wished to record their support for the Meeting and proposed Motion.

The Deputy Mayor received the Petition.

Mr John McGrath, MLA - Member for South Perth for the Motion

- unaware of this difficult situation until it came to my office several months ago
- have had meetings with Brendan Grills (Minister for Lands) about the situation
- believe there is and was some anomaly in the Act
- have held meetings with Department of Lands – advised by them nothing they could do – only course of action was for residents to go to Supreme Court
- having heard the history of the right-of-way and the fact that so many South Perth residents used it, believe the issue is of such a serious nature it can only be sorted in the Supreme Court
- in the meantime have been in touch with the Education Department and they will be processing the matter on behalf of the South Perth Primary School
- the school were of the opinion, like many people, that the right-of-way would be there for ever
- perhaps there needs to be more information on this matter - I am not taking sides but want the right decision to be made
- heard concerns raised about the cost to the City on behalf of a small number of ratepayers – however believe the issue is more than that
- this show of support tonight from the South Perth community is sending a message to the City
- possible course of action would be to discuss with the Department of Education again – there could be some type of ‘joint action’ – a tricky situation that can only end up in the Supreme Court - according to advice received the Department of Education is still pursuing legal action

**MEETING DECISION**

The Deputy Mayor put the Motion

That....

- (a) Council obtain its own legal opinion as to the merits of seeking a declaration of the Supreme Court on whether or not the express rights-of-carriageway over Lot 69 Riverview Street exists, as asserted by the residents of the district; and
- (b) the City of South Perth fund a challenge to the closure of Right-of-Way 15 in the Supreme Court.

CARRIED UNANIMOUSLY

**Note:** This matter will be the subject of report to the December 2009 meeting of Council.

**6. CLOSURE**

The Deputy Mayor closed the meeting at 6.48pm and thanked everyone for attending.



**DISCLAIMER**

The minutes of meetings of the Council of the City of South Perth include a dot point summary of comments made by and attributed to individuals during discussion or debate on some items considered by the Council.

The City advises that comments recorded represent the views of the person making them and should not in any way be interpreted as representing the views of Council. The minutes are a confirmation as to the nature of comments made and provide no endorsement of such comments. Most importantly, the comments included as dot points are not purported to be a complete record of all comments made during the course of debate. Persons relying on the minutes are expressly advised that the summary of comments provided in those minutes do not reflect and should not be taken to reflect the view of the Council. The City makes no warranty as to the veracity or accuracy of the individual opinions expressed and recorded therein.

**These Minutes were confirmed at a meeting on 24 November 2009**

**Signed** \_\_\_\_\_  
**Chairperson at the meeting at which the Minutes were confirmed.**