

13.2 Causeway Pedestrian and Cyclist Bridge - Construction Licence

Location	Victoria Park
Reporting officer	Strategic Projects Manager
Responsible officer	Property Development and Leasing Manager
Voting requirement	Simple majority
Attachments	1. CONFIDENTIAL REDACTED - Construction Access Licence - Causeway Pedestrian and Cycle Bridges v.1.0 [13.2.1 - 25 pages]

Recommendation
<p>That Council:</p> <ol style="list-style-type: none">1. Approve the Construction Access Licence - Causeway Pedestrian and Cycle Bridges in respect of parts of Lots 501 and 502 on Deposited Plan 412328 owned by the Town under Certificate of Title Volume 2975 (Folios 780 and 781 respectively) as per Attachment 1.2. Authorise the Chief Executive Officer and the Mayor to execute all necessary documents under the common seal to give effect to 1. above.

Purpose

Council approval is sought to execute and affix the Town's common seal to the "Construction Access Licence - Causeway Pedestrian and Cycle Bridges" (the Licence) in respect of parts of Lots 501 and 502 on Deposited Plan 412328 (the Licence Area). The Town is the registered proprietor of this land held under Certificate of Title Volume 2975 (Folios 780 and 781, respectively).

In brief

- The Causeway Link Alliance has been awarded the contract by Main Roads WA (MRWA) to design and build the Causeway Pedestrian and Cyclist Bridge (the Bridge). A Development Application is being assessed, and construction of the Bridge is planned to commence early in 2023.
- The construction works are to be undertaken across several land parcels, including two (2) land parcels owned in freehold by the Town of Victoria Park.
- MRWA require the Licence in order to construct the Bridge.
- The Licence grants MRWA access to the Town's land to construct and operate the Bridge. In addition, the Licence contains a wide range of provisions, including relating to the design and construction of the Bridge, meeting the needs of the Town, as well as ensuring that the Licence Area is returned to the Town in the correct condition.

Background

1. At its meeting held on 20 September 2022, Council resolved by resolution 186/2022:-

"1. That Council:

- a. delegates authority to the CEO to provide landowner consent on behalf of the Town of Victoria Park freehold owned lots 501 and 502, to enable the Main Roads WA-led Causeway Link Alliance to submit a development application for the proposed Causeway Pedestrian and Cyclist Bridge.*

b. delegates authority to the CEO to sign the development application form and any other documents necessary to give effect to 1(a) above.

2. Notes that the landowner consent is for the purpose of allowing the development application to be submitted and processed and does not constitute the grant of any property right or other approval to occupy in respect of the Town owned freehold lots.

2. MRWA require the Licence in order to construct the Bridge. A draft licence has been negotiated on a consensus (non binding) basis for Council's consideration.
3. The Licence requires MRWA to comply with all laws and requirements of any authority as defined. This includes obtaining all consents, approvals and permits to use the licensed area. This will include environmental approvals as well as planning approvals. Planning approvals – which were the subject of the Special Council Meeting held on 22 November 2022
4. The Licence ensures that the Town is protected in the following;
 - a. Design and construction of the Bridge;
 - b. Design criteria for New Local Government Assets;
 - c. Licence Area to be secure and safe;
 - d. MRWA Work Health and Safety obligations;
 - e. Restoration of the Licence Area;
 - f. Defect liability periods;
 - g. Workplace safety obligations;
 - h. Asset ownership and responsibility.
 - i. The Licence envisages that the following further agreements will be entered into by MRWA and the Town in due course:-
 - j. Bridge Easement
 - k. Asset Maintenance Agreement
5. These additional agreements are to be negotiated and agreed upon separately.

Strategic alignment

Civic Leadership	
Community priority	Intended public value outcome or impact
CL1 – Effectively managing resources and performance.	The Licence ensures that there are clear accountabilities whilst constructing in a very visible public open space
CL3 - Accountability and good governance.	Ensuring that the Town's Freehold land and assets are managed and protected for the benefit of the ratepayers

Environment	
Community priority	Intended public value outcome or impact
EN1 - Protecting and enhancing the natural environment.	The protection and clear responsibilities for the construction of the Causeway Pedestrian and Cyclist Bridges and ensuring that these are

	delivered in accordance with the approved design
EN4 - Increasing and improving public open spaces.	The proposal will enhance the existing public open space and provide a significant gateway to the Town of Victoria Park
EN5 - Providing facilities that are well-built and well-maintained.	The Licence sets out the design and approval process for Assets that will be maintained by the Town and ensures that the constructed assets are built to the appropriate standard

Engagement

Internal engagement

Stakeholder	Comments
Manager Property Development and Leasing	Input into the report.
Manager Community	<p>The Town will continue to work with event organisers / hirers / Main Roads in an effort to fully understand requirements and associated implications of works upon events.</p> <p>Depending on the footprint size and actual location of set down areas, this will give clarity to the impact of events in this area, and potential financial implications.</p>
Manager Development Services	The Licence will take effect only if, and following an approval from the City of Perth Local Development Assessment Panel.
Manager Technical Services	For the new assets to be transferred to the Town, the proponent will supply 85% Design Packages for the Town's assessment and approval. Material selection, supplier details, warranties, proponent maintenance period, maintenance responsibility will be assigned through the Asset Maintenance Agreement.

Other engagement

Stakeholder	Comments
Main Roads WA	Resolved the extent of the proposed licence area and construction footprint
State Solicitors Office	State Solicitors Office acting for Main Roads WA in preparation of Licence.
Mindeera Advisory Group	Presented on 11 August 2022

Legal compliance

Not applicable

Risk management consideration

Risk impact category	Risk event description	Consequence rating	Likelihood rating	Overall risk level score	Council's risk appetite	Risk treatment option and rationale for actions
Financial	The potential for damaged assets and lack of rectification of the public open space	Moderate	Likely	High	Low	TREAT risk by Clearly articulating the requirements for the restoration of the public open space
Financial	Impact of the project construction will reduce ability to obtain revenue from events	Moderate	Likely	High	Low	TREAT risk by reducing the area of the licence area and incorporating full traffic management and construction schedule to minimise the impact.
Environmental	Potential impact to adjoining park.	Minor	Possible	Medium	Medium	TREAT As part of the works, the area will be managed with an Environmental Management Plan
Health and safety	Obligations under WHS not met	Minor	Possible	Medium	Low	TREAT risk by assigning clear responsibilities within Licence area
Health and safety	Public Safety at risk whilst constructing	Moderate	Possible	Medium	Low	TREAT risk by Licence area to fully include areas in which the public will be prevented from entering The bike path will

						be diverted to an alternative route to avoid the construction area
Infrastructure/ ICT systems/ utilities	Nil				Medium	
Legislative compliance	Nil				Low	
Reputation	Unmanaged impact on surrounding area of Public Open Space	Minor	Likely		Low	TREAT risk by providing ongoing project updates and having clearly demarcated areas for the Licence area
Reputation	Traffic and noise generated which impacts residents	Minor	Likely	Medium	Low	TREAT Traffic and noise plans to be submitted to the Town
Service delivery	Negative Impact on existing assets	Minor	Likely	Medium	Medium	TREAT risk by defining this and the restoration process within the Licence

Financial implications

Current budget impact	Sufficient funds exist within the annual budget to address this recommendation.
Future budget impact	The Licence deals with the impact during construction and defined roles, but the works as designed, built and transitioned to the Town will incur additional costs that will be dealt with separately within the Asset Maintenance Agreement.

Analysis

6. The Licence has been drafted by the State Solicitors Office (SSO) on behalf of MRWA and presented to the Town for consideration.
7. Strategic Projects Manager and Manager Property Development and Leasing have been undertaking an ongoing review of the Licence terms to identify and address needs and requirements for the Licence and related matters.
8. Summary of Key Terms

Key Terms	
Licence Area	Parts of Lots 501 and 502 on Deposited Plan 412328 owned by the Town under Certificate of Title Volume 2975 (Folios 780 and 781, respectively).
Agreement Type	Licence
Licensor	Town of Victoria Park ABN 77 284 859 739
Licensee	Commissioner of Main Roads
First Term	From the date the last of the Parties to sign the Licence up to Construction Completion Date.
Second Term	From the Construction Completion Date to the day immediately following the day the Bridge Easement is entered into by the Parties.
Licence Fee	\$1
Construction Works	Will be completed: (i) in a timely and efficient manner; (ii) with all due care, skill and diligence which may reasonably be expected of a skilled professional qualified contractor; and (iii) in accordance with the Design Documentation. Licensee confirming three and five year defect liability periods for New Local Government Assets.
Commencement Date	The date of signature by the last of the Parties to sign the licence.
Services	Licensor not obliged to provide services to the Licensee or Licensed Area
Asset Ownership	(a) The Licensee will own, and be responsible for, the Bridge. (b) The Licensee will be responsible for maintenance of the New Local Government Assets until the Asset Maintenance Agreement has been entered into after which responsibility for maintenance will be in accordance with the terms of the Asset Maintenance Agreement.
Maintenance	Licensee must keep the New Local Government Assets in good repair and condition until the date the Asset Maintenance Agreement commences. Maintenance will be defined as per the Asset Maintenance Agreement.

Bridge Maintenance	Licensee responsible for all repair and maintenance of the Bridge during the Second Term and in perpetuity (including repairs of a structural nature and any capital replacement of the Bridge or any part of it, where required).
Bridge Easement	Bridge Easement to be agreed and entered into after construction completion.
Permitted Use	First Term - Completion of the Construction Works, together with associated or related activities (Construction Use); Second Term - Operation and maintenance of the Bridge, together with associated or related activities (Operation Use).
Design	Licensee obligated to provide design documentation for New Local Government Assets, minimise whole of life maintenance costs and conduct two design workshops with Local Government Asset Manager.
Indemnity and Insurance	Licensee to indemnify Licensor. The Licensee to ensure the following insurances are in place during the Term: (a) Licensee controlled works insurance, for the value of the works, covering the Licensee, the Non-owner Participants, its contractors, sub-contractors and agents; (b) Licensee controlled public liability insurance in the amount of \$250,000,000, covering the Licensee, the Non-owner Participants, its contractors and sub-contractors; and (c) Non-owner Participant controlled workers compensation, plant, and motor vehicle insurance as part of the PAA.
Completion of Construction	Licensee to vacate, make good, repair and reinstate and remediate any contamination caused by Licensee and its Agents.
Security and Barriers	Licensee to secure and separate Licensed Area during First Term.
Land title encumbrances and third party/public rights	Confirmation of Licensee due diligence and Licensee release of Licensor of any liability or claim.

9. Lots 501 and 502 are freehold assets of the Town. The Town has raised with MRWA the question of payment of consideration for the proposed construction licence or future easement. MRWA have responded that the foreshore land that the bridge will be built on is currently held by the Town in freehold as a Crown Grant in Trust and that this effectively means that the land was gifted to the Town free of cost, and as such the Town is not entitled to any compensation for the land. Whilst it is correct that Lot 502 is held by the Town as a Crown Grant in Trust acquired free of consideration, the Town is of the view that the Council (if it were so minded) could agree with MRWA to charge consideration for the grant of the proposed licence or future easement. A valuation arranged by the Town has valued a construction licence on the land at \$1.80 per square metre per annum (for the estimated licence area of 18,929 square metres, this would be \$34,072 per annum) and a grant

of permanent development rights for the bridge at \$55 per square metre (for the estimated bridge easement area of 176 square metres, this would be \$9,680 per annum).

10. The Town has also sought compensation from MRWA for loss in events revenue arising from the use of the Town's land by MRWA. MRWA have responded that the proposed construction footprint and laydown area has been agreed between the Town and MRWA to minimise impacts on events. Events held on the Town's land at McCallum Park generate approximately \$100,000 per annum in events revenue. Whilst liaison between the Town and MRWA has resulted in a substantial reduction in the size of the licence area, with a view to preserving (as much as possible) the ability for the Town's land to be used for events during construction, the final impact on the use of the land for events during construction and revenue generation cannot be predicted at this stage. Indications from the major event organisers, the 4WD Show, are that the proposed licence area will not prevent the show going ahead during the construction period.
11. Having regard to the social and environmental benefits of the proposed bridge, including better connectivity of pedestrian and cycle links between the Town and the City of Perth the Council may however choose not to charge MRWA for the grant of the proposed construction licence or future easement.
12. Legal advice was sought by the Town from Irdi Legal which has seen the finalisation of the Licence to include satisfactory terms acceptable to the Town with MRWA agreement to these terms as presented in Attachment 1.

Relevant documents

Not applicable.

Further consideration