

Boblynne Park, Kenmore (D1397) Pullenvale Ward – Bridge

Background

St James is a residential estate built in the early 1990's and has the benefit of a pedestrian bridge which crosses the adjoining Cubberla Creek and links its land to the Kenmore Plaza Shopping Centre. It is understood the Bridge was constructed around the same time as St James Estate (1995).

The Bridge, although adjoining St James, crosses land reserved to Brisbane City Council for park and recreation purposes managed as Trustee under the Land Act 1994, described as Lot 21 SL811444 (forming part of Lot 33 on SP110622).

The bridge has always operated as a private pedestrian linkage from St James to the shopping centre and associated amenities. Having regard to its location the residents of St James are the only people who gain any practical benefit from the Bridge.

In 2019/ 2020 St James Estate Body Corporate approached Council (believe via Asset Management) seeking a potential easement over the bridge with the view to the body corporate "owning" the bridge to enable continued access and manage ongoing maintenance.

The below outlines the timeframe and outcomes coordinated by the Parks Policy and Planning team in NEWS with assistance and support from City Legal, PPI Structures and others, navigating land tenure, mechanisms and expectations from the St James Estate Body Corporate regarding ownership and maintenance of the bridge.

History and timeline

27 February 2019 - Body Corporate for St James Estate undertakes a visual condition inspection and recommendations report on the bridge.

30 April 2020 - LMO letter - LMO4 10228831 requesting investigation into an easement over the bridge for use by the St James residents.

22 June 2020 - Council advises the matter referred to the Asset Management area – likely via an easement request.

30 June 2020 - Council provides correspondence advising as the underlying land is State-owned, the proposed easement over the Bridge needs to be between the State and St James Estate and Council's consent would be required. Council is supportive of the proposal for St James to take responsibility for the maintenance of the Bridge and of the preparation of the appropriate mechanism to enable this.

13 November 2020 - Cooper Grace Ward (CGW) Lawyers lodge an application on behalf of St James Estate with the Department of Resources for an easement over the Bridge.

9 March 2021 - DoR doesn't support granting an easement for a private purpose over State land and had considered other land tenure options but none of them are suitable in the circumstances. As Council is trustee for the reserve it is also responsible for the Bridge. The State advises Council that based on the condition of the Bridge, it needs to repair or remove the Bridge.

24 March 2021 - Matter handed to NEWS from AM and NEWS advises CGW it will continue discussions with the State to ascertain whether the impasse as to who is responsible for the bridge could be resolved. NEWS engages City Legal.

31 May 2021 - On instruction from NEWS City Legal approach DNRME regarding interpretation of the Land Act, improvements to the land and Council's obligations as trustee.

4 June 2021 - Dept of Resources disputes Council's argument and advises the bridge is the responsibility of Council as trustee.

19 July 2021 - City Legal prepare to debate the DNRME position.

29 September 2021 - CGW Lawyers approach Council to enter a trustee lease between the Body Corporate for St James' Estate.

14 October 2021 - City Legal agree with DNRME that as trustee Council is responsible for the bridge. City Legal consider the terms of a draft trustee lease with CGW on behalf of the body corporate.

25 October 2021 - Matter handed to City Legal Property team. City Legal notify CGW of this.

26 November 2021 - Key points for negotiation are the body corporate seeking financial contribution from Council. And the BC propose to demolish and rebuild the bridge.

22 December 2021 - City Legal advise resigning the trusteeship doesn't remove Council's obligations to maintain the bridge. Council has no visibility on the bridge condition at this time (however it can only accommodate 2 people at any time). A lease is considered an alternative option.

13 January 2022 - NEWS seek clarification regarding the type of agreement that can be used with St James that indemnifies Council and requires the body corporate to maintain the bridge. NEWS also seeks to confirm what Council's obligations are as a condition of development and if a trustee lease is granted it would need Ministerial approval.

1 February 2022 - City Legal advise Council needs to undertake its own inspection of the bridge; plus review the DA Deed to understand maintenance obligations as opposed to replacement obligations.

10 February 2022 - email from Mr Peter White St James Body Corporate following up progress of the BC request.

11 February 2022 - Structures team undertake a visual inspection of the bridge.

16 February 2022 - City Legal advise they cannot communicate with the Body Corp. DA Deed confirms maintenance obligation is very brief with no details relating to level of maintenance or replacement obligations on Council. The Deed will not impact Council's progression of the matter (i.e., consideration of the options to remove or maintain the bridge as previously discussed).

22 February 2022 - City Legal provide an update to CGW advising Council is considering options of how to progress the matter including delegation requirements.

1 March 2022 – Letter from CGW outlines this history of the matter and that the Body Corporate “remains willing to work with Council to implement a formal mechanism which allows it to take responsibility for the Bridge and its maintenance”. Letter confirms Council remains liable for the bridge until a mechanism is in place. BC requests Council's assurances it will not remove the bridge without further reference to the Body Corporate. As the Body Corporate has incurred costs of \$40,000 the Body Corporate “has decided to pause pursuing this matter through legal channels until there is a positive response from Council”.

– Email from Body Corp requesting a copy of the bridge inspection and sharing the letter.

2 March 2022 – Structures Team presents findings from inspection on 16/2 and 2019 inspection organised by the Body Corporate. Summary:

- Bridge constructed before 1995.
- Bridge joins the body corporate and shopping centre. Locked gate at body corporate end to control the access only to body corporate residents. No access for general public so no benefit for general public.
- Bridge is in fair condition and no significant deterioration to timber components from original conditions. Barriers/handrails are not compliant with current Australian standards.
- Recommend keeping load restriction to three persons maximum on the bridge at any one time, until proper load rating analysis is undertaken.
- If bridge has no structural capacity for service requirement (to be agreed), girders can be strengthened to satisfy load requirements. Details to be prepared by a structural design engineer. Also, barriers could be replaced to make it compliant to Australian Standards. Details has to be prepared by a structural design engineer.
- To maintain the bridge for existing service conditions, no major repairs are required except general maintenance (oiling timber components, tightening bolts and nuts, attending minor erosion & settlements at approaches etc).

4 March 2022 –City Legal confirm the bridge is a Council asset and Council is wholly responsible for it and the risk to Council is as per any other park asset. Council is not legally obliged to retain the bridge or consult the body corporate prior to its removal. Council can enter into a Trustee lease, licence, easement, agreement with the Body Corp.

10 March 2022 – Follow up email from the Body Corp Secretary (Mr Peter White) advising of new proposal from the estate to pay \$4000 per year until the ownership of the bridge can be handed to the Estate.

– City Legal advise if Council does not wish to maintain or remove the bridge the only option is to grant the BC a trustee lease. To do this would require the Minister for Local Government's approval to exempt Council from undertaking a tender process as required under Section 217 of the *City of Brisbane Regulation 2012*, Full Council approval and the Minister for Resources approval for the trustee lease given that the purpose of the trustee lease will be inconsistent for the purpose in which the reserve was created.

11 March 2022 – City Legal provide an options table to guide NEWS.

14 March 2022 – NEWS request Structures team to add the bridge to the park asset register to enable it to be managed by the PPI structures team. NEWS investigates what the longer-term options are for the bridge including decommissioning it at the end of its asset life. Bridge registered in SAP as B9534.

17 March 2022 – NEWS advises Body Corporate Council will maintain the bridge as park asset and use by the estate will continue.

18 March 2022 – NEWS work with Structures team to find funding to undertake the engineering design work.

30 March 2022 - Notification 11787470 created by PPI Structures to load rate the bridge.

27 March 2022 – Body Corporate write to council seeking compensation / contribution to the \$26,000 legal fees incurred.

18 July 2022 – PPI seek new WBSE to undertake the design work not undertaken in earlier FY.

6 October 2022 – Body Corporate advise the bridge decking is slippery and seek Council's approval to apply anti-slip coating. This is referred to Structures.

10 October 2022 – Structures seek \$80k for the design package works and are planning urgent maintenance.

13 October 2022 – NEWS seek input from Structures to a memo with options for maintenance / repair / removal of the bridge for consideration by NEWS.

29 November 2022 - Notification 11846054 – scope of repairs to condition 3, to make the bridge safe for 3 years. Agreement to remove the bridge in 25/26.

4 September 2023 – PPI Structures following up on request for WBSE for engineering design.

17 October 2023 – PPI Structures advise the bridge will be closed for safety reasons. Inspections have identified significant deterioration of the bridge. Memo prepared for GM NEWS who supports bridge closure.