

10 REPORTS FOR DECISION**10.1 REQUEST TO ESTABLISH AN EASEMENT ON COUNCIL LAND ADJACENT TO 284 PROSPECT ROAD****File Number:** IC21/26**Author:** Vincent Cammell, Acting Director Infrastructure & Environment**Authoriser:** Nigel McBride, Chief Executive Officer**EXECUTIVE SUMMARY**

Eminent Homes is currently in the process of seeking Development Approval from the State Government for land generally referred to as 284 Prospect Road, Prospect (the **Land**). It is also seeking an easement for 'light and air' from Council over the adjoining Prospect Estate Reserve carpark (the **Carpark Land**). The effect of the easement, if granted, being to prevent the construction of built structures in the easement area.

The easement has been requested as the development of the Land is proposed up to the shared boundary with the Carpark Land. This raises a Building Rules Consent issue because the Carpark Land is considered to be a separate developable allotment under the National Construction Code, which means the shared boundary is treated as a fire source feature and requirements apply in respect to building separation.

In previous engagement with Council, including the previous conditional approval of rights of way over the carpark area, it has always been clear that the proposal would extend to the common boundaries. It is an option for the Council to grant an easement, as requested, that is subject to conditions to ensure the operation of the easement will not unreasonably impact the public access and enjoyment of the Carpark Land. For this reason, it is recommended that the Council grant an easement subject to conditions.

RECOMMENDATION

That Council:

1. Having considered Item 10.1 Request to establish an easement on Council Land adjacent to 284 Prospect Road receives and notes the report.
2. To facilitate the development at 284 Prospect Road, Council agrees, in principle, to grant to Eminent Homes an easement over the portion of the Prospect Estate Reserve carpark shown in the Plan contained in the Report and marked Attachment A for the purposes of light and air, subject to the following conditions:
 - a. carparking rights being preserved in the easement area;
 - b. Eminent Homes meeting Council's costs of preparing, negotiating and registering the easement (including legal costs);
 - c. the easement expressly permitting tree planting and garden plantings within the easement area;
 - d. the easement permitting Council works in the easement area, as necessary, to maintain, repair and replace the easement area; and
 - e. any other conditions that the Council's Chief Executive Officer considers appropriate, including with regard to the Council's existing and future use of the easement area.
3. Authorises the Chief Executive Officer to negotiate the terms of the easement and finalise and execute all documentation necessary to give effect to the easement, in accordance with part 2 of this resolution.

DISCUSSION

A request has been received from Eminent Homes which is undertaking a development at 284 Prospect Road, Prospect (the **Land**) for an additional easement over the portion of the Prospect Estate carpark that is adjacent to the Land.

The request has been made due to a potential Building Rules Consent issue that has been identified during the planning assessment, in respect to the development being constructed on the boundary with the adjoining carpark. The issue has arisen as under the National Construction Code because the carpark is considered a separate developable allotment and, therefore, the shared boundary of the development site and carpark is treated as a fire source feature and requirements apply in respect of building separation.

Eminent Homes has stated that its proposal is significantly advanced in its assessment and the design has been endorsed by the Government Architect, Department of Infrastructure and Transport and is approaching completion of its assessment by the State Commission Assessment Panel.

To address the Building Rules Consent issue, Eminent Homes has requested that the Council grant an easement for light and air along the boundary of the Council carpark allotment which adjoins the development site. The easement would serve to provide the development site with the right to obtain light and air at all times by means of ensuring an ongoing requirement for any future development of the carpark being separated from the development site along the length of the easement.

With Council's endorsement of a right of way through the carpark in support of the development and an existing easement to the Department of Infrastructure on the Western edge of the carpark, it is not considered that this additional easement will adversely impact the Council's use of the Carpark Land or create any issues for Council with appropriate conditions in place. It is recommended to create the easement as a long form easement with conditions to preserve car parking rights up to the boundary and the Council's rights to undertake maintenance and repair works on the Carpark Land. The easement will not, otherwise, confer rights upon the developer in respect of the Carpark Land. Based on this it is recommended that the request is supported. There is no community consultation required on this matter.

The easement would, if granted, operate to preclude built structures in the easement area. Eminent Homes has been asked to comment on this aspect, as early designs lodged with Council indicated that it may seek (under licence) authorisation to construct a decked area to support a future café style business on the south eastern corner of the carpark facing Prospect Road. The easement may, subject to its terms prevent this going ahead.

Due to the timelines in place with Eminent Homes approval processes and the limited impact the requested easement is considered to have on the carpark or community, the Administration sought initial feedback from Council Members on this proposal via memorandum sent 17 May 2021.

The area in red marked 'D' in Attachment A below defines the additional easement. The area marked 'C' defines the proposed right of way. The area marked 'B' defines an easement to the Department of Transport.

Attachment A



Community Plan: Towards 2040

► Inclusive & Diverse

2 to 5 year timeline

ID2.4 Promote more people living in the Urban Corridor Zones through development of more townhouses and apartments

ATTACHMENTS

Nil