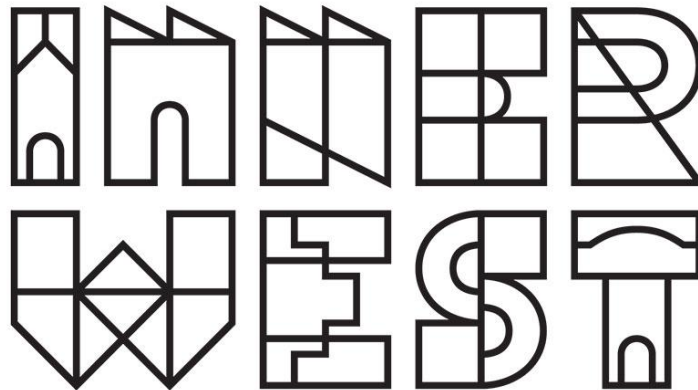


SUPPLEMENTARY AGENDA 1

Distributed on 2 August 2023



COUNCIL MEETING

TUESDAY 8 AUGUST 2023

6.30pm

Location Ashfield Service Centre, 260 Liverpool Road, Ashfield

**MEETING AGENDA – PRECIS
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Item No: C0823(1) Item 60
Subject: NOTICE OF MOTION: NO STEP ACCESS FROM ESPLANADES AND ESCARPMENTS TO ELLIOT PARK
From: The Mayor, Councillor Darcy Byrne

MOTION

1. That Council confirm the legal advice that was issued by the Inner West Council General Counsel in 2018 that the construction of a ramp from Elliot Park to the Balmain Cove Esplanades and Escarpments is allowable.
 2. That pending confirmation of the 2018 advice Council provide landowners consent for the Owners Corporation to submit a DA to construct the ramp.
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Background

Dear Mayor and General Manager of the Inner West Council

I am writing on behalf of a Strata Committee at Balmain Cove, Rozelle (Esplanades and Escarpments (E&E)) to inform you of the issues we are having with getting approval to construct a ramp from E&E to Elliot Park, to service the elderly and disabled and provide emergency service access. Currently, there is no no-step access to E&E at all, whether via Elliot Park or any other route.

As part of the development of Balmain Cove, Elliot Park was dedicated to Council for open space. Within the boundary of Elliot Park are four sets of stairs (and part of four airbridges) that provide the only pedestrian access from 88 apartments in E&E to Elliot Park, to Wulumay Close and to the postboxes for E&E residents. These four sets of stairs also provide access to E&E for visitors and emergency service providers.

Discussions with Council about the provision of a ramp between E&E and Elliot Park commenced back in 2017. An onsite meeting was held with all relevant Council staff on 25 August 2017. On 14 May 2018, Joe Strati, the then General Counsel of Council advised that Council had no substantive objection and provided a roadmap for E&E to follow to enable construction of the ramp, that in his view did not require the completion of a Plan of Management (PoM) and did not require an easement, lease, or licence over the impacted land.

Specifically, he required us to:

1. obtain a resolution of support from the Owners Corporation (OC) and Community Association (CA) for both the ramp structure and the proposed legal mechanism i.e. an agreement between the OC and Council.
2. enter into an agreement with Council whereby Council permits the OC to erect the structure on Council land (Joe identified that an easement would not be possible given legal constraints in the Local Government Act (LGA) 1993). The agreement would commit the OC to seeking development consent, and subject to this, constructing the structure, maintaining the structure, having all necessary insurances and indemnities in place, and covering all reasonable costs.

E&E completed all that was asked of it at considerable expense (up to \$30,000 dollars and untold hours of Strata Committee time). However, on requesting owners' consent to lodgement of a development application (DA) Council advised that it now had a different legal view, and that the DA could not proceed until a PoM is prepared – a PoM that includes all pocket parks in the LGA. In addition, Council advised that E&E is now required to obtain an easement with associated compensation payment and get new resolutions of support for this revised approach from the OC and CA. A PoM and easement were the very things that Joe Strati's roadmap avoided.

We are deeply concerned about this change in direction and the further delay, cost, and uncertainty that it will introduce. We have suffered over 20 years without disability access, which arguably is Council's responsibility to provide under the Disability Discrimination Act (DDA) and Aged Discrimination Act (ADA), but we are prepared to pay for it and make it happen, only to be stalled by Council. Each month of delay is leading to higher and higher construction costs.

In our opinion, it is unreasonable and unlawful (estoppel) for Council to provide us with one set of advice and to simply change it when personnel at Council change. We are seeking your support to resolve this quickly and allow us to immediately submit the DA for the ramp and commit Council to entering into an agreement with E&E regarding the ramp in accordance with Council's original advice. There is no legal impediment to this approach.

I am happy to provide you additional information, should you require it, including all correspondence with Council, our response to Council's latest interpretation of the LGA, and the relevant provisions of the DDA and ADA that bind Council.
Yours faithfully

Dr Rob Gillespie

Officer's Comments:

No further comments were required for this Notice of Motion.

ATTACHMENTS

Nil.