

**M23/5964 – REVIEW OF 14 BEACH STREET BOUNDARY FOUNDATION AND RETAINING BY AN INDEPENDENT REGISTERED BUILDING SURVEYOR (REC) (ATTACHMENT)**

Ward : All  
 Category : Executive  
 Subject Index : Property Index 14 Beach Street, Bicton  
 Customer Index : City of Melville  
 Disclosure of any Interest : No Officer involved in the preparation of this report has a declarable interest in this matter.  
 Previous Items : Item 15.3 Review of 14 Beach Street Boundary Foundation and Retaining by an Independent Registered Building Surveyor - Ordinary Meeting of Council held 16 August 2022.  
 Item M22/5937 Review of 14 Beach Street Boundary Foundation and Retaining by an Independent Registered Building Surveyor – Ordinary meeting of Council held 15 November 2022.  
 Works Programme : Not Applicable  
 Funding : Not Applicable  
 Responsible Officer : Patrick Hughes  
 Manager Building and Environmental Health Services

**AUTHORITY / DISCRETION**

**DEFINITION**

<input type="checkbox"/>	Advocacy	<i>When the Council advocates on its own behalf or on behalf of its community to another level of government/body/agency.</i>
<input checked="" type="checkbox"/>	<b>Executive</b>	<b><i>The substantial direction setting and oversight role of the Council. e.g. adopting plans and reports, accepting tenders, directing operations, setting and amending budgets.</i></b>
<input type="checkbox"/>	Legislative	<i>Includes adopting local laws, town planning schemes &amp; policies.</i>
<input type="checkbox"/>	Review	<i>When the Council operates as a review authority on decisions made by Officers for appeal purposes.</i>
<input type="checkbox"/>	Quasi-Judicial	<i>When the Council determines an application/matter that directly affects a person's right and interests. The judicial character arises from the obligation to abide by the principles of natural justice. Examples of Quasi-Judicial authority include town planning applications, building licences, applications for other permits/licences (eg under Health Act, Dog Act or Local Laws) and other decisions that may be appealable to the State Administrative Tribunal.</i>
<input type="checkbox"/>	Information	<i>For the Council/Committee to note.</i>

## **M23/5964 – REVIEW OF 14 BEACH STREET BOUNDARY FOUNDATION AND RETAINING BY AN INDEPENDENT REGISTERED BUILDING SURVEYOR (REC) (ATTACHMENT)**

### **KEY ISSUES / SUMMARY**

- At the 16 August 2022 Ordinary Council Meeting, a Motion with Notice was supported that an independent registered building surveyor be appointed to undertake an inspection of the boundary structure footings and associated retaining structures located at 14 Beach Street, Bicton and provide a report back to the 18 October 2022 Ordinary Meeting of Council.
- This Item was discussed at the Elected Member Engagement Session held 4 October 2022 where it was advised that a report would be presented to the November 2022 Council Meeting.
- A report was then presented to the 15 November 2022 Meeting that provided an update on the progress of actions taken in implementing the August 2022 Council resolution.
- An Independent Registered Building Surveyor (TESG) was appointed, and an inspection of the site was undertaken on 9 December 2022.
- The Final Independent Registered Building Surveyor Report was received on 13 March 2023, and as required by the August 2022 Council resolution, the report is presented to the Council.
- This report recommends that the Council notes the TESG report and consider the Officer recommendation in relation to this matter.

### **BACKGROUND**

At the 16 August 2022 Ordinary Meeting of the Council it was resolved that:

***“That the Council directs the CEO to:***

- 1. appoint an independent registered building surveyor to undertake an inspection of the boundary structure footings and associated retaining located at 14 Beach Street, Bicton, and***
- 2. provide a report back to the 18 October 2022 Ordinary Meeting of Council which includes a copy of the independent registered building surveyor’s and any other relevant reports.”***

The reasons provided in support of the motion were:

- Since 2017 there have been questions and opinions provided relating to the boundary of 14 Beach Street.
- The Objective is to:
  - inspect the entirety (eastern and western sides) of the footings and retaining on which the boundary structure rests;
  - identify any issues or non-conformances relating to the footings and retaining when compared to Building Approval Certificate (BA14) BA-2017-466;
  - identify any additional issues that become apparent during the inspection.

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- The City will:
  - gain an understanding of the current condition of the entirety of the foundation and retaining along the boundary of 14 Beach Street, Bicton
  - an independent entity will either confirm the foundation and retaining as-built and current condition aligns with the drawings supplied with BA-2017-466 or advise otherwise.
  - be informed as to a path forward should rectification of the foundation, retaining and any other issues be required.
- Potential Risks:
  - Continued lack of clarity in relation to the “as built” status of the foundation and retaining. No resolution to lack of retaining issue.

The Officer Advice Note provided to the August 2022 meeting was:

*“Written consent must be obtained, from both property owners, to implement the motion if supported. Without this consent, the CEO cannot implement the actions proposed in the motion.*

*The objectives call for an inspection of the eastern and western sides of the footings and retaining. The orientation of the properties is that these are the northern and southern sides. To implement the motion as presented, access to both 12 and 14 Beach Street would be required.*

*The property owner of 12 Beach Street has the option to provide written consent for City Building Surveyors to conduct part of the inspection from their property. If this consent is not provided, this will greatly restrict the City’s ability to assist and investigate. The City will not be in a position to pursue any compliance enforcement process unless evidence is obtained by City Officers. This has been confirmed through legal advice from McLeods.*

*A specific inspection of the boundary retaining structures and footings may require a Structural Engineer to gain access to both properties. This may result in destructive or sample testing of the structures (coring, digging etc.). Consent will be required from the owner of 14 Beach Street for this to occur, if required.*

*A Building Surveyor will only provide a visual inspection of the footings and retaining, then provide a conclusion if they believe the structures comply with approved plans and assess if the structures are in a dangerous state. It is not recommended that this motion be put forward until written consent is submitted to the City, from the owners of 12 and 14 Beach Street, for the inspection to take place.”*

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### **DETAIL**

TESG Building Surveyors were appointed to undertake the inspection, which was undertaken on Friday, 9 December 2022.

A draft copy of the report was received on 15 February 2023, with a final report being received 10 March 2023. Minor changes to correction of dates and numbering were made with the latest corrected version of the report being received Monday, 13 March 2023.

Elected Members have been advised of the progress of this matter in the Elected Member Bulletins of 3, 17 and 24 February and 3 March 2023. A copy of the 15 February 2023 draft report was published to the Elected Member Portal on 17 February 2023.

The [TESG 14 Beach Street, Bicton Building Code Compliance Report](#) is provided as an attachment to this report.

The following observations are made in relation to the report:

1. The report has confirmed that the screen wall, the subject of this ongoing dispute, appears to be constructed in accordance with Building Approval Certificate BA-2017-466. That is significant, as consistent allegations have been made that the screen wall was not constructed in accordance with that Certificate.
2. The report also noted that, in the independent Building Surveyor's view, although the remains of the limestone retaining wall is not in compliance with the approved structural details for BA-2002-2166, issued in 2002, the limestone retaining wall is not displaying any signs of imminent danger of collapse. As a result, the independent Building Surveyor's view is that the retaining wall is not in a dangerous state and therefore there is no basis, pursuant to the *Building Act 2011*, for the City to pursue any building compliance enforcement action against the owner (14 Beach Street) of the retaining wall to direct them to carry out any repair work.
3. The inspector is also of the view that the City cannot issue the owner of the screen wall (14 Beach Street) a Building Order requiring the outward facing side of the screen wall to be finished in a particular way, pursuant to s.88, *Building Act 2011*. The City has been made aware that the owner of 12 Beach Street will not permit the owner of 14 Beach Street, or her contractors, to enter his property to finish the screen wall, the works cannot be undertaken.
4. Legal advice indicates that in relation to the circumstances above, if the City were to issue a building order (which appears doubtful), it would be invalid and unenforceable.

In view of the report findings, the City is not required to take any further action in this matter, unless the City receives a report by a Structural Engineer that confirms what remains of the retaining wall or any other part of the structure is in a dangerous state. Subsequently, without the consent of the owner of 14 Beach Street, this would require the owner of 12 Beach Street to allow a Structural Engineer onto their property to carry out a visual inspection only of the boundary structures and what remains of the limestone retaining wall.

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Invasive sample testing of the structures on 14 Beach Street cannot be undertaken without the property owner's consent. The owner of 14 Beach Street has previously declined consent to access their property for any further inspections and it is for this reason that undertaking a visual inspection to confirm structural adequacy from 12 Beach Street, is not presented as an alternative recommendation.

Previous legal advice obtained in relation to this matter, that is still relevant, has been provided to Elected Members in the 17 March 2023 Elected Members Bulletin. The advice provides the opinion on how the Council may proceed with this matter, which is reflected in the City Officer recommendation.

### **STATUTORY AND LEGAL IMPLICATIONS**

The TESS report makes reference to the following sections of the Building Act 2011:

<i>Section 88</i>	<i>Finishes of walls close to boundaries.</i>
<i>Section 110</i>	<i>Building Orders</i>
<i>Section 112</i>	<i>Content of Building Order</i>

### **FINANCIAL IMPLICATIONS**

The cost to undertake the inspection and provide the report was \$6,490. Additional expenditure may be incurred should the Council request the independent Building Surveyor to attend a briefing session, to present and discuss his report.

### **STRATEGIC, RISK AND ENVIRONMENTAL MANAGEMENT IMPLICATIONS**

The report addresses the risk and concerns regarding the structural adequacy of the limestone retaining wall located adjacent to the side allotment boundary with 12 Beach Street, Bicton.

### **POLICY IMPLICATIONS**

The Council Policy CP-114 Compliance and Enforcement Policy needs to be considered in relation to any compliance and enforcements actions relating to this matter.

### **ALTERNATE OPTIONS AND THEIR IMPLICATIONS**

The August 2022 Council resolution requires that the independent building surveyor's report and any other relevant reports be presented to the Council.

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The options now available for the owners of 12 and 14 Beach Street in relation to this matter are:

- The owner of 14 Beach Street may wish to appoint a Structural Engineer to undertake an inspection of the structures and footings of the boundary structures, adjacent to 12 Beach Street, as recommended by the independent Building Surveyor.
- As the City does not have cause at this time to undertake any further action in relation to this matter, in accordance with Recommendation 10 of the Weir Report and legal advice, refer the owners of 12 and 14 Beach Street to processes under the Dividing Fences Act or other legal processes to reach agreement and/or to resolve this matter.
- The owner of 12 Beach Street may wish to appoint a Structural Engineer to undertake a visual inspection only of the 14 Beach Street boundary structures, therefore is considered of limited value.

The options in the above dot points are not enforceable pursuant to the *Building Act 2011*, however, the City will continue to support attempts to achieve the report recommendations.

### **CONCLUSION**

The TEGS Report on the boundary structure footings and associated retaining located at 14 Beach Street, Bicton is presented to the Council as required by the August 2022 resolution. The report provides observations made in relation to the report recommends and advises of options that are now available for the Council to consider.

### **OFFICER RECOMMENDATION (5937)**

### **NOTING**

**That the Council:**

- 1 Notes the TEGS 14 Beach Street, Bicton Building Code Compliance Report dated 10 March 2023; and**
- 2 In accordance with Recommendation 10 of the Weir Report and legal advice received, that the owners of 12 and 14 Beach Street, Bicton now be advised to avail themselves to processes under the Dividing Fences Act or other Legal Processes to reach agreement on the way that the screen fence is finished and resolve any retaining wall and fence matters.**