

ITEM NO: 25

**SUBJECT: LANDSCAPING AND DRAINAGE ISSUES IN NORTH LEURA AS A
RESULT OF HIGHWAY WIDENING**

FILE NO: F01710

Recommendation:

That Council notes and receives this report.

Response by Group Manager, Community Corporate:

This report responds to the Question With Notice raised by Councillor Mays at the Council meeting of 3 March 2009, as follows:

“Who is currently responsible for the landscaping and drainage outcomes on the north side of Leura resulting from the highway widening? Is it still the RTA or has the RTA handed this area back to Council?”

When will outstanding landscaping and drainage issues be fully addressed and completed in the areas of Den Hogan Drive, cnr Britain Street/North Mall and Highland Street Leura.”

(QWN: 03/03/09)

Great Western Highway – Leura Projects

The Question With Notice covers issues across two projects:

Section 1 – between East of Mount Hay Road, Leura and West of East View Avenue, Katoomba. This project was completed in May 2006. This project includes the area around Den Hogan Drive, Britain Street and the northern sections of The Mall. Refer attachment 1 for map.

Section 2 – between Kings Road/East View Avenue, Leura to Bowling Green Avenue, Katoomba. The civil construction was completed in March 2009 and the landscaping is programmed to commence in May 2009. This project includes the detention basin at Kings Road and the Woodlands Road link. Refer attachment 2.

Maintenance Agreement

On 1 December 2005 the Council and the RTA entered into an agreement which provides clarification of maintenance implications to each party. As well as clarifying the RTA’s responsibilities it enables the Council to identify its responsibilities and incorporate these into Service Level Agreements. It is also the intention of the agreement to minimise and rationalise the maintenance burden on the Council. In pursuing such agreements the Council seeks to establish maintenance regimes for the Great Western Highway and other State Roads that recognise the surrounding World Heritage environment.

For the purposes of identifying assets in the transport corridor a number of nominal work limits (NWL) have been established; based on the Roads Act 1993. For ease of definition the maintenance NWL's are best described as those assets within the lane and kerb alignment remaining the responsibility of the RTA; and those outside of this alignment being the responsibility of the Council. There are other assets and exceptions such as railway bridges which are the responsibility of the Rail Infrastructure Corporation; these are listed separately in the maintenance agreement.

Stormwater and Drainage

As a general rule the RTA retains ownership and maintenance responsibility for all civil structures directly related to state road stormwater and drainage. In the case of Sections 1 and 2 the RTA retains the responsibility of the stormwater basins on Den Hogan Drive and Kings Road.

Landscaping

As a general rule the Council is responsible for maintaining all landscaping outside the lane and kerb alignments with the RTA maintaining all medians and traffic islands. In the case of sections 1 and 2, the Council will eventually be responsible for the areas of Den Hogan Drive, Highland Street, Britain Street and all areas of the Mall.

The corner block at the intersection of Den Hogan Drive and Highland Street has been an area of concern for both residents and Council staff. This area has been constructed from excess fill from the Leura underpass and other sections of the upgrade project. This area is a large scale landscape regeneration project which differs to the usual treatments that generally follow road construction. This has required the RTA to revisit the type of planting species and regimes necessary to obtain an appropriate outcome. This site has recently exhibited signs of establishing a reasonable covering of grasses, shrubs and tree plantings which will ultimately enable the site to stabilize. Further work will be carried out by the RTA and their contractor Marsupial Landscape Management to bring it to a standard acceptable for handover to the Council. This work is expected to be carried out in the autumn and winter seasons of 2009.

Process for certification of completion and handover of RTA works to the Council

When a project is completed a certificate of completion and handover is drawn up which covers the following elements:

- Project overview;
- List of public utility adjustments;
- List of asset responsibility for maintenance and repairs;
- Civil ownership and defect liability periods; and
- Landscape ownership and defect liability period.

Prior to any handover, Council staff will undertake an audit of all works both civil and landscaping for defects which are required to be corrected to the approved design prior to any formal handover. This certificate is signed by the RTA project management and Council staff.

Handover Status

Section 1 - The civil works in this project were signed over to the Council on 15 December 2008. A current landscaping agreement is in place between the RTA and Marsupial Landscape Management Pty Ltd which is covered by contract for 24 months from July 2007-June 2009. Council staff continue to raise outstanding issues with the RTA, with the most recent contact being on Friday 27 March 2009.

Section 2 -: No handover has occurred for this section. Council staff have completed pre handover audits for the civil works where a number of defects were identified and these are currently being remediated by the contractors and RTA. The landscaping contract has not yet been finalised but is due to begin May 2009.

Landscape Maintenance Contract

Landscape maintenance contracts are usually set for a 24 month period. This period begins once the installation of the landscaping has been completed.

Financial Implications

As per the Maintenance Agreement between the RTA and Council, the RTA retains ownership and maintenance responsibilities for all the basins, associated stormwater and civil infrastructure and landscaping within the lane and kerb alignments. The Council is responsible for civil infrastructure and landscaping outside the lane and kerb alignments. While there are no additional financial implications from the report recommendation, the ongoing maintenance of the RTA’s projects has financial implications.

External Consultation

Bimonthly community meetings have been held for both sections of the RTA’s works at the CWA hall in Leura. This provided the opportunity for the RTA and contractors to update the community on progress and respond to their questions. These meetings are consistently attended by approximately 10-20 residents.

On 21 April 2009 the Council received a petition from residents of North Leura expressing their concerns over the landscaping in North Leura and is available in the précis of correspondence. The concerns raised in this correspondence will be taken into consideration as part of the negotiations with the RTA on the remediation works for these projects.

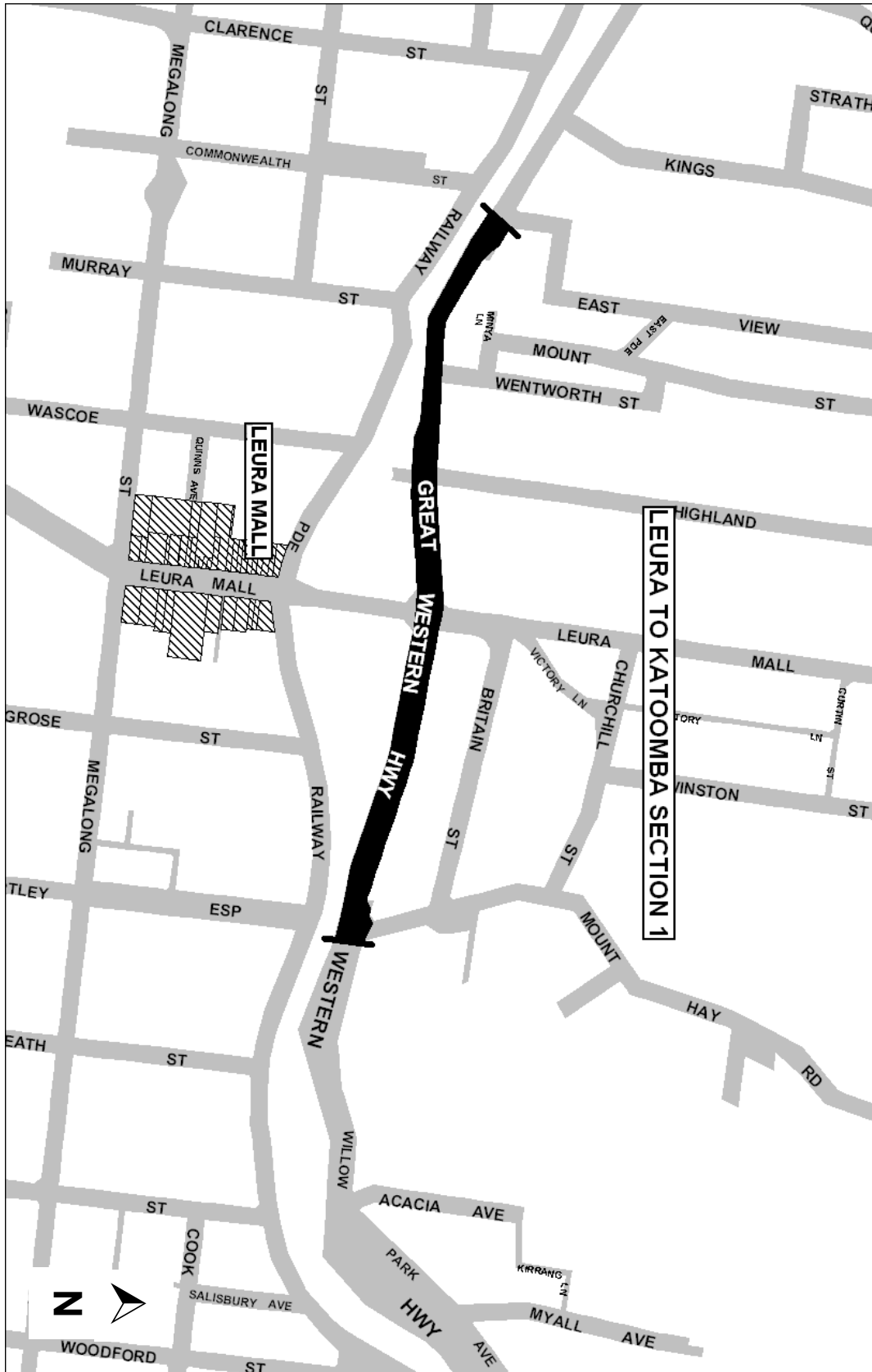
Conclusion

Council officers will continue to liaise with the RTA to ensure that best practice is being met and that current issues are addressed.

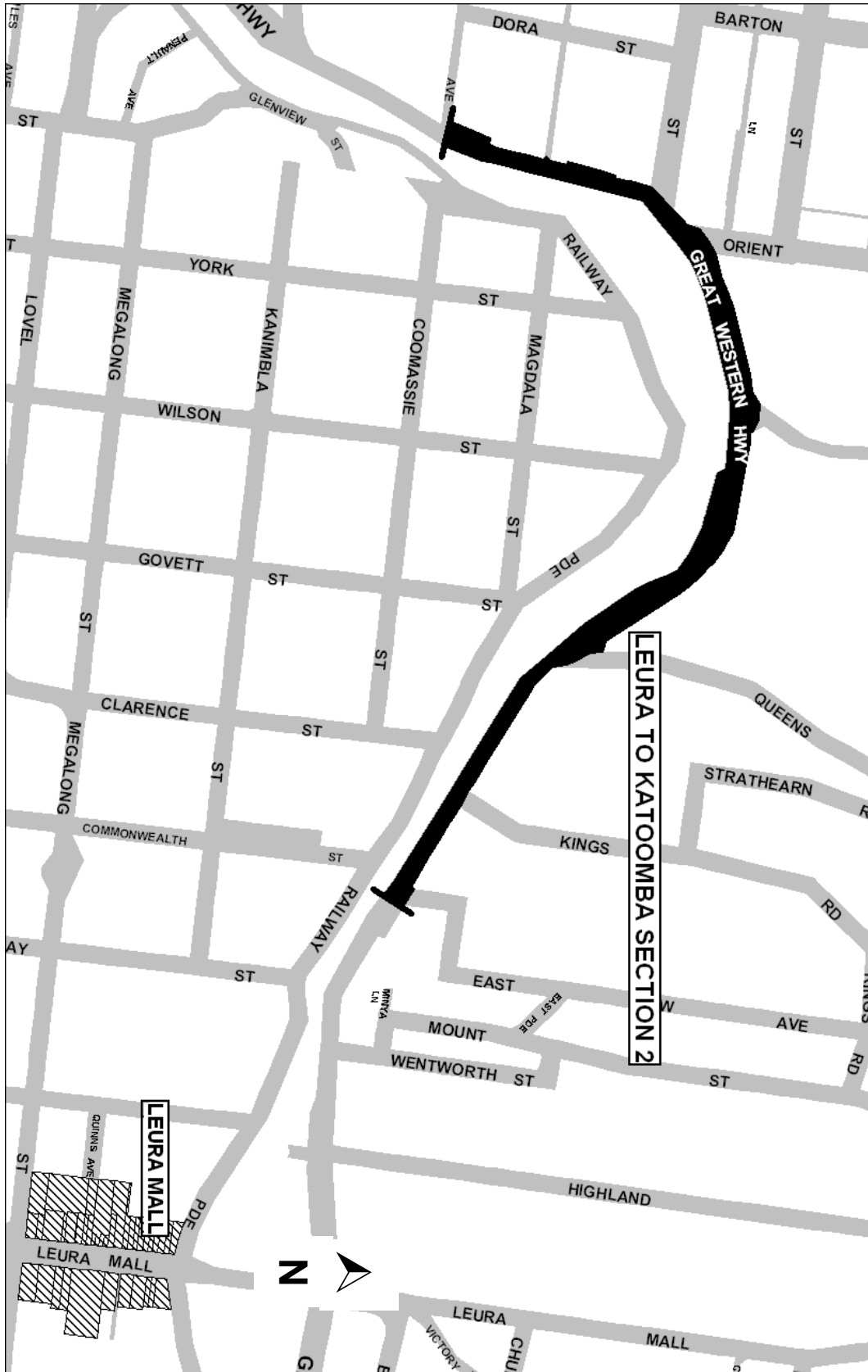
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Attachments x 2

Attachment 1: Section 1 location map



Attachment 2: Section 2 location map.



ITEM NO: 26**SUBJECT: INSPECTIONS BY COUNCIL STAFF****FILE NO: F00544**

Recommendation:

That Council notes and receives this report.

Response by Group Manager, Environmental & Customer Services in consultation with the Group Manager Blue Mountains City Services:

This report responds to the Questions With Notice raised by Councillor McLaren at the Council meeting of 14 April 2009, as follows:

1. *What is the protocol in relation to notification of residents for council inspections on their properties?*
2. *Are council staff required to notify residents before entering their property for a routine inspection?*
3. *What methods are used by staff to deal with dogs who may be aggressive towards a stranger entering their property?*
4. *Does council take any responsibility for injuries incurred by dogs during the course of an inspection by council staff?*

(QWN: 14/04/09)

Response

This response is based primarily on the activities of Environmental Health & Regulatory Compliance in relation to the inspections of activities on or associated with residential properties. It should be noted that there are a large number of frequently amended statutory instruments that address entry requirements. Maintaining appropriate protocols for residential access requires a system of continuous legislative monitoring and improvement in order to address these requirements.

Question 1 *What is the protocol in relation to notification of residents for council inspections on their properties?*

The protocol for notification of the owner or occupier will depend on the reason why a Council officer requires access. That will also determine the relevant legislation governing the access that is sought.

Access may be required under various acts including but not limited to:

- *Local Government Act 1993*
- *Environmental Planning and Assessment Act 1979*
- *Protection of the Environment and Operations Act 1997*
- *Food Act 2003*

- *Rural Fires Act 1997*
- *Swimming Pools Act 1992*
- *Companion Animals Act 1998*
- *Noxious Weeds Act 1993*

An officer must be authorised within the terms of the Act or Regulation they are operating under and they must produce their photo identification on request.

Some typical protocols are:

a) Where a complaint warranting an on site investigation is received several courses of action may be followed.

For example and most commonly, if access is required to investigate a complaint regarding unauthorised development and there appears to be some urgency attached to the matter, an officer is likely to seek permission directly from the owner to enter the premises. This approach is normally effective and access is usually granted.

Where access is not granted in response to a direct request by Council staff, a notice of entry under *Section 118C* of the *Environmental Planning and Assessment Act 1979* is mailed to the address. In the case of a residential property, the owner still has a right to deny access to both the residence and to the residential curtilage of the property. This generally means the yard area associated with the dwelling is not accessible.

Where the written notice of access is provided and the owner fails to co-operate, the next step is to obtain a search warrant. This is very much a last resort and has rarely been used.

b) Where access is required as part of a programme of inspections, such as for the residential swimming pool safety programme and the noxious weeds program, a letter is sent to the properties for which inspections are programmed, approximately three weeks before the inspections are scheduled to occur, advising that authorised officers will be undertaking an inspection over a stated period. With respect to the pools and noxious weeds, the current protocols invite a response from residents (and owners if they are not the resident), request consent to enter the property and encourage people to be present at the time of the inspection. If people do wish to be present, a mutual time will be arranged for the inspection. The letter otherwise serves as a notice of entry under the Swimming Pools Act.

c) With respect to the Companion Animals Act, powers of entry to premises containing dangerous dogs or dogs which have attacked and which are not properly contained by the owner.

d) Many Acts contain provisions that enable the requirement for notice to be dispensed with where there is the reasonable likelihood of a serious risk to health or safety. In such instances the officers would still try to contact the owners if possible, but would not allow that to prevent the required action being undertaken.

Question 2 *Are council staff required to notify residents before entering their property for a routine inspection?*

Notwithstanding the complexity of the relevant regulations, some of the relevant Acts share a common approach with respect to entry for routine inspections and that is:

1. Entry can occur without notice, where the owners consent has been obtained;
2. Entry can occur after written notice of intention is provided to the owner or occupier of the premises;
3. Entry can occur without written notice where there is a reasonable likelihood of serious risk to health or safety or in relation to the inspection of work being carried out under a development consent.

Other Acts contain additional provisions, such as the Protection of the Environment Operations Act, which enable entry at any time in a number of circumstances including in relation to any premises reasonably suspected of causing pollution, or in relation to premises where an officer suspects that industrial, commercial or agricultural activities are being carried out, during the time in which they are carried out.

As noted in the response to Question 1, different Acts contain different provisions and requirements in relation to access to residential property. The delegations to staff and the protocols adopted for different purposes are designed to meet those requirements.

Question 3 *What methods are used by staff to deal with dogs who may be aggressive towards a stranger entering their property?*

With respect to staff safety regarding dogs, staff members are to take appropriate precautions where dogs are known to be on a site. Staff will not enter a site unless they consider that they can do so with safety. The information that is disseminated with advice about planned routine inspections does request owners to make arrangements for safe access by staff.

Question 4 *Does council take any responsibility for injuries incurred by dogs during the course of an inspection by council staff?*

With respect to injury caused to a dog, we are not aware of any such instance and therefore have not had to consider or deal with this question. The circumstances that gave rise to such an occurrence would have to be examined to determine whether there had been negligence and whether any potential liability or compensation may arise.

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