

MOTIONS ON NOTICE**AO127-19 MOTION ON NOTICE - UNIVERSITY**

FILE NO: 15/5/2
PREVIOUS MIN:

Councillor Ken Dorsey has given notice that he would move the following motion at this meeting:-

“THAT Council following the approval of the University DA, work with the University to ensure the following:

- 1) that the “right of way” to West Beach has clear access for emergency vehicles and maintenance vehicles***
- 2) that a portion of parking be retained with immediate access to West Beach for surfers and families.”***

COUNCILLOR’S COMMENTS

I opposed the DA on the grounds that it failed to address the cultural and emergency needs of the people of Burnie. The intention of the planning scheme is to deliver an acceptable standard of outcome for use and development in terms of the suitability of land and the likely impact for natural systems, infrastructure, **cultural values** and adjacent land use from an environmental, **social and economic perspective**.

The current plan did not provide adequate safeguards to ensure that the University accepts the cultural nature of the city and its residents, nor did it address the need for immediate access to the beach, or the loss of access by fishermen.

As the land owners, our cultural identity needs to be preserved.



GENERAL MANAGER'S COMMENTS

The Council acting as a planning authority on 16 April 2019 granted a permit for further development of land at West Park to provide for additional educational buildings and amended arrangements for parking.

Part of the work described on the permit application will involve the closure and conversion of a car park area located immediately west of the West Beach boardwalk.

The planning permit decision cannot be rescinded or amended. The appeal period has expired and the applicant has the full benefit of the permit and may proceed in accordance with the development as described in the permit application documents. Any grounds for opposition to grant of a permit are no longer a valid consideration in relation to the ability of the permit holder to proceed with works on the site.

The Council as landowner may negotiate with the permit holder in relation to matters that were not relevant to determination of the land use permit. Such negotiations are entirely separate from the permit application process.

In this regard –

- (a) There are a number of interconnected rights of way registered on the land title which provide access to the car park area to be closed, and across the car park to the existing ramp access on the western end of West Beach.

In general terms, the effect of a right of way is that the beneficiary has an absolute right to go and come across any part of the right of way, and the owner of the land must not in any manner substantially interfere with or obstruct the right of any beneficiary. Neither the landowner or the beneficiary has any obligation to maintain the right of way in such a manner that it is useable, although it is open for either party to construct the right of way to improve their use.

An easement or right of way may be abandoned or extinguished if it no longer serves its intended purpose.

The law on easements is complex, and the basic assumptions described above may be qualified.

There is no need or advantage for the Council to specifically determine the current right of way must remain clear for the passage of emergency and maintenance vehicles to access West Beach. The right is already protected if the easement provides the Council and/or the public with a general right of passage across the land. If the right of way is limited in purpose or benefit, or the circumstances of ownership or the development and use of the site allow the right of way to be abandoned or extinguished, it is unlikely a decision of the Council to protect the right of way will have any effect.

Details of the purpose and beneficiaries of the right of way have not yet been determined.

- (b) The permit granted on 16 April 2019 allows closure of the south-eastern car park off West Beach.

The permit granted on 16 April 2019 contains an enforceable condition requiring that UTAS must manage the car parking areas on the site so as to be available and adequate at all times for university, band, visitor and sporting use.

There is no requirement in the permit that UTAS must provide and manage parking space to accommodate public use of West Beach.

The Council as a planning authority cannot determine to amend that permit.

The Council as owner of the land may request the developer to retain all or part of the existing car park.

However, any substantially change in the description of the development may trigger a requirement for a new permit.

West Beach has pedestrian access from a number of locations east and west of and central to the beach area. There is no public vehicular access to the beach or to the immediate foreshore. Pedestrian access is available between beach entry points and parking facilities in the immediate vicinity.

The ability for the public to access West Beach will not change as a result of the permit decision.

The south-eastern car park is not a public parking area. Redevelopment of the site as the Maker's Workshop required the parking area be designated for use by vehicles associated with tourism and cultural activities on the site. The permit granted in 2013 to include use and development of the site by UTAS described the car park as a part of the facilities required to provide parking for users of UTAS and the Visitor Information Centre.

The convenience of the public to utilise the existing private car park for access to West Beach will be lost as part of the approved redevelopment works. However, closure will not exclude public access to the beach along the boardwalk and via the ramp. The level and frequency of use of the private car park by surfers and families has not been quantified.

The Council has no power to insist that the permit holder must amend the proposed development and retain part of the car park for public use.

There are a number of matters in relation to conversion of the site at West Park from its current development configuration and pattern of established use to the facilities and occupation intended by UTAS. These considerations include the nature of rights and interests of the public to access and pass across the site (including on the coastal pathway), and the manner in which such rights may be accommodated.

The Mayor and General Manager met with a representative of UTAS on 8 May 2019 and the issue of access to the ramp onto West beach and parking was discussed. A working group is to be established with representatives of Burnie City Council and UTAS to identify and manage development and transition of the site from the Council to UTAS.

The transitional working group is an appropriate forum in which to raise and examine issues connected with current use of the site.

In this regard the Council should ask the working group to establish the exact nature of entitlements under the current registered rights of way and of the effect of the development and transfer of land to UTAS may have on such rights. It should also discuss the UTAS's

approach to management of the required car parking facilities on the site, including the opportunity for public use.

Recommendation

“That the Council refer the following matters for consideration by the working group overseeing transition of the West Park site from the Council to UTAS -

- 1) Provision of arrangements for access by emergency and maintenance vehicles onto the western end of West Beach; and*
- 2) Opportunity for the public to use the parking facilities within the UTAS site, including for parking of vehicles by persons using West Beach.”*