



Dedicated to a better Brisbane

Brisbane City Council ABN 72 002 765 795

Office of the Disputes Commissioner
Brisbane Square, 266 George Street Brisbane
GPO Box 1434 Brisbane Qld 4001
T 07 3403 8888
www.brisbane.qld.gov.au

19 December 2024

Mr Peter White
50 Boblynne Street
CHAPEL HILL QLD 4069
stjames4069@gmail.com

Dear Mr White

I refer to your email dated 24 October 2024 to the Office of the Disputes Commissioner (this Office) requesting that your concerns regarding Brisbane City Council's (Council) handling of your complaint about the decision to refuse to grant a trustee lease to the Body Corporate for the St James Estate (Body Corporate), be reviewed.

Accordingly, your concerns were independently reviewed by this Office under the *AP186 Administrative Action Complaints Procedure (AACP)* pursuant to section 250 of the *City of Brisbane Act 2010*. Please note, the officer who conducted this review provided general advice on the application of the AACP to the matter under review. However, they remained separate to the work areas under review and were not involved in the administrative actions subject to the review.

The role of this Office in reviewing your concerns was to determine whether the administrative actions taken by Council were appropriate and reasonable, and whether there were reasonable grounds for making the decisions that were made. If this was not the case, I may make recommendations of further action to the appropriate business areas.

The methodology used in addressing your concerns was as follows:

- (i) examine the relevant material and decision;
- (ii) determine whether the actions and decisions were appropriate and reasonable.

The following material was examined:

- (i) correspondence between you and Council;
- (ii) relevant Council policies/procedures;
- (iii) relevant Local Laws and legislation;
- (iv) relevant Council records.

Scope of Review

As advised by email on 30 October 2024, the independent review addressed the following:

Council's decision to refuse to grant a trustee lease to allow the St James Body Corporate to build and maintain a footbridge over Boblynne Street Park (no. 32).

Review Findings

In addition to the scope of review above, the review considered the history of the Boblynne Street Park Footbridge (the Bridge). This included the Bridge's initial approval, construction, various inspections undertaken by Council officers in addition to other parties external to Council, and its subsequent removal. This is on the basis that it provided relevant background information and context to the matter.

Regarding your statement, made to this Office by email on 30 October 2024:

I think that the information supplied should provide you with sufficient information to conduct a review.

While your views in relation to the sufficiency of information provided by you to the review are acknowledged, the review investigated all information relevant to the Bridge contained within Council records. Additionally, a thorough interrogation of each interaction you had with Council, including the circumstances leading to the removal of the Bridge, along with the actions and decisions made by Council officers in response to these was conducted.

Council correspondence internally and externally was also reviewed, however, due to the history of your engagement with Council, relevant privacy considerations, the agreed scope of the review, and in the interests of brevity, only relevant interactions have been detailed within the review.

The review acknowledges that you are, or have been, elected as the Chairman or Secretary of the Body Corporate at various times, and that these positions provide you with some authority in raising concerns as a representative of the Body Corporate or on behalf of individuals residing in the St James Estate. However, Council has not received suitable evidence to support this.

Council records do indicate though that you have been engaging with Council since mid-2019, in addition to receiving a significant number of documents in response to multiple access applications under the *Right to Information Act 2009* (RTI Act). For those reasons, it has been determined that providing the independent review outcome to you is appropriate.

As you may be aware, the development of the St James Estate, that included the Bridge, was approved by Council on 4 September 1989 subject to a number of conditions. Most relevant to the Bridge were:

- Condition 4(iii) which related to the construction of the Bridge connecting the St James Estate development to the shopping centre, now known as the Kenmore Plaza Shopping Centre.
- Condition 7(i) which related to transferring the land that is now known as the Boblynne Street Park (no. 32).

On 8 May 1991, Council wrote to the then Department of Lands within the Land Administration Commission surrendering the land on, and over, which the Bridge had been situated. The terms of this surrender were that the land would be reserved for park and recreation purposes with Council as the trustee. By Queensland Government Gazette dated 24 July 1992, the land was entrusted to Council.

In early to mid-1992, the Bridge itself was built. Since this date, it is understood that residents of the St James Estate have enjoyed the benefit of using the Bridge to travel from the estate to the Kenmore Plaza Shopping Centre and to other associated businesses and services in the area.

On 26 June 2019, you wrote to Council online requesting information about the Bridge. You made similar enquiries throughout 2019. Council records indicate that after requesting you provide any easement documentation, your enquiry was referred to Council's Park Asset and Governance team for their consideration.

On 16 July 2019, you wrote to Council online with an enquiry:

The bridge is in need of replacement and I am looking to obtain a copy of the easement agreement and the building plans for the bridge supports(sic).

Information provided to Council shows that you wrote to State Land Asset Management within the then Department of Natural Resources, Mines and Energy (DNRME) during mid to late-2019 requesting information about the Bridge. In response, they advised that Council is the trustee for the land and as such are responsible for the ongoing management and maintenance of the reserve land and any improvements on the land, including the Bridge.

Further correspondence regarding the Bridge indicates that you may have spoken to various Council officers, particularly referenced by you in an online enquiry form dated 9 September 2019 as a phone call with a person from the 'Town Planning Department' on 3 September 2019. There are no Council records showing this phone call.

In addition to referencing this call, you raised that the Titles Registry and State Land Management had no record of the Bridge. You then reiterated that the Body Corporate, of which you claimed to be the Chairman, was considering replacing the Bridge and as such required any applicable easement information.

Council records indicate that your various enquiries and requests for information throughout 2019 were not addressed until you received a phone call from a Council officer in the Development Services branch on 25 September 2019. A written record of conversation was completed that detailed the call. In summary, you requested a copy of any relevant easement documentation, and the officer advised that as the Bridge forms part of Council greenspace, Council is responsible for its maintenance.

The review found that this advice was consistent with the provisions of the *Land Act 1994* (Land Act) and is further supported by Council's position as trustee of the reserve land as provided in the Queensland Government Gazette.

During October 2019, Council corresponded with DNRME regarding specific interpretations of a number of sections within the Land Act relating to how the Bridge was defined. Council records do not show whether these discussions resolved into any shared understanding or agreement.

On 5 October 2019, a Ward Officer from the Walter Taylor Ward Office wrote to Council advising that you had attended their office with a number of documents and were requesting ownership details of the Bridge. In response to this enquiry, Council records suggest that a Regional Parks Coordinator from the Asset Services branch replied by email.

There were insufficient records supporting that an email was sent, however, the content of what appears to be the email was saved as a text document to the correspondence file. This document raises that the Regional Parks Coordinator spoke with you and referred you to Council's Structures team who would be providing a response to you. Council's correspondence management system shows that the officer added an entry stating that the email to the Ward Office was sent on 4 November 2019.

There are no Council records relevant to the scope of review from 4 November 2019 until 30 April 2020 when Cooper Grace Ward Lawyers (CGW) wrote to Council. In their letter, CGW raised that they acted on behalf of the Body Corporate and relevantly provided:

Given the state of the Bridge, associated safety issues, and the convenience it provides to residents of St James, our client would like to investigate the potential for an easement or similar which facilitates:

- (a) exclusive use of the Bridge by residents of St James;*
- (b) St James having the responsibility for maintaining and/or upgrading the bridge at its own cost;*

(c) *consent for St James to make any further development/building applications which may be necessary to facilitate upgrading the Bridge.*

Council records indicate that internal communication between Council's City Legal branch and the Park Asset and Governance team was entered into throughout all of June. This correspondence is relevantly summarised below:

- The reserve land is entrusted to Council for park and recreation purposes in accordance with the Land Act.
- Consultation or approval from the State may be required and Council can provide information or be a party to discussions of this nature.
- The existing easement does not relate to the entire Bridge and as such there may be a requirement to seek agreement or consent from the owner of the land on which the Kenmore Plaza Shopping Centre is situated.
- Council would be agreeable to engaging in further discussions with CGW regarding a trustee lease.
- Council is supportive of the proposal for the Body Corporate to take responsibility for the maintenance of the Bridge and of the preparation of an appropriate mechanism to allow that.

On 30 June 2020, this position was relayed to CGW by a Team Leader in the Park Assets and Governance team. Following this, on 24 March 2021, CGW sent an email to the Team Leader confirming a call they had on 18 March 2021. This call was not appropriately recorded. Attached to the email was a visual inspection report, undertaken by a third party and a sketch of how the Bridge may be accessible to the public.

The email further provided:

- A request that Council confirm that no steps will be taken to remove the Bridge without notifying CGW.
- Confirmation of the Body Corporate's request for any development approval records relating to the Bridge.
- A request for clarification regarding Council's discussions with the State about a lease being appropriate.
- That a meeting with Body Corporate representatives could be arranged.

During April 2021, internal correspondence was exchanged between the Team Leader and City Legal regarding CGW's correspondence. On 22 April 2021, they emailed CGW to advise that City Legal would now be the main contact point for further correspondence.

On 4 May 2021, City Legal wrote to CGW advising that:

- The Body Corporate would be notified before any work was undertaken.
- Development approval records should be requested through the appropriate and established information access process.
- Discussions with the State are ongoing.
- Council did not require an on-site meeting at that time.

In response, by email dated 12 May 2021, CGW disputed City Legal's advice relating to the appropriate channels to seek information from Council. They provided a number of grounds that are not relevant to the scope of the review, however, it was found that City Legal's administrative action in referring to the various information access processes that Council has was appropriate.

This is on the basis that the provisions of the *Planning Act 2016* and the *Planning Regulation 2017* appear to show that the information they were requesting was required to be available for inspection and purchase, not provided to CGW electronically or without payment.

In addition to this, CGW included a comment that the Body Corporate would not accept liability relating to the Bridge and requested that Council facilitate the mechanism for the Body Corporate to accept liability and responsibility for the Bridge. As provided in previous correspondence dated 30 June 2020 and 4 May 2021, Council had already expressed that they were supportive of further discussions relating to a lease or other mechanism of this nature.

Further, as established during a phone call you had with an officer from the Development Services branch on 25 September 2019, the Bridge was the responsibility of Council and any assertions relating to the Body Corporate not accepting liability were irrelevant. This is further supported by Council being the trustee of the reserve land since 24 July 1992.

On 31 May 2021, City Legal departed from Council's usual process by providing two documents relating to the Bridge. These were an extract of Council minutes and a document that appears to be an offer to enter into a Deed. As Council minutes are made publicly available, there are no privacy considerations that would apply.

However, the Deed may have contained information that was personal, sensitive, privileged or protected in some way. While it is accepted that City Legal has the relevant legal acumen to determine the appropriateness of providing the documents, there were no Council records available to show City Legal's decision-making process.

In mid-2021, Council recommenced their correspondence with DNRME regarding the same Land Act provisions as were previously raised in 2019. This continued until 2 September 2021, when the issues raised were resolved which led to an email being sent to CGW requesting a summary of the terms that the Body Corporate would like to see if a trustee lease was granted.

On 29 September 2021, CGW provided the Body Corporate's draft key terms for the proposed lease which were subsequently raised with Park Assets and Governance for their consideration. As the matter had progressed from determining how the Land Act applied, to considering the draft terms provided by CGW, the matter was allocated to City Legal's Property Team.

Internal considerations were had between City Legal, Park Assets and Governance and the Parks Planning and Policy teams. These considerations were collated by the Service Delivery Manager, Parks Planning and Policy in an email dated 22 December 2021. Relevantly:

- Resigning of the trustee won't change the maintenance obligations of the Bridge.

The review found that this advice and determination was appropriate as it was consistent with section 337 of the Land Act which states:

The lessee of a lease that is sublet, in whole or in part, continues to be liable for all the conditions to which the lease is subject.

Further, a rezoning deed from 1990 identified that Council has maintenance responsibilities for the Bridge.

- Council does not have sufficient access to maintain the Bridge and would require permission from the Body Corporate and the owner of the land where the Kenmore Plaza Shopping Centre is.
- The trustee lease option may be possible, and the draft terms may be appropriate.
- Significant work was required to repair the Bridge, or it would need to be replaced, as shown in an inspection report that was commissioned by the Body Corporate.
- The Bridge serves no park function, only benefits the residents of St James Estate, and if the Bridge were to fail, or fall into severe disrepair, Council would remove it.

Additionally, Council's Structures team became involved as they were asked to undertake an inspection of the Bridge to assist in determining the scope and cost of required repairs. Two inspections were undertaken in February 2022.

Internal correspondence regarding the matter continued until 22 February 2022 when an update was provided to you and to CGW. In response, on 25 February 2022, CGW sent an email with a brief timeline of the matter, reiterated the outcome the Body Corporate sought, being a trustee lease to be granted, and advised that they were no longer acting for the Body Corporate.

On 10 March 2022, you sent an email to the Team Leader expressing your dissatisfaction around the length of time that it was taking to find a resolution and as such, you were considering escalating the matter within Council, to your local Councillor, or the Queensland Ombudsman. You also proposed that the Body Corporate pay Council an amount annually to continue maintaining the Bridge.

On 10 March 2022, the Team Leader sent you a response raising that they were seeking legal advice on various matters and assured you that they had been working on the matter to achieve a resolution in the interests of all parties involved. The review found that this email was appropriate on the basis that the Team Leader had been actively pursuing a resolution.

On 11 March 2022, internal considerations culminated into a table that listed the advantages and disadvantages of three options relating to the Bridge, which was emailed to the Service Delivery Manager. This led to an email, attaching a letter, being sent to you on 17 March 2022 that relevantly provided:

- The Act provides the framework within which Council manages public assets, including when exclusive use can be granted to a private entity.
- The Bridge is a public park asset, and it would not be appropriate to grant exclusive use to the Body Corporate.
- It is Council's responsibility to maintain the Bridge.
- Routine maintenance and minor repair work will be undertaken.

In addition to the above, the Service Delivery Manager made the following statement:

Council's continued ownership and management of the bridge ensures that the St James' Estate residents will be able to continue to use the bridge as they currently do.

On 17 March 2022, you sent an email to the Team Leader thanking them for resolving the issue. On 27 March 2022, you sent an email to the Team Leader thanking them once again for resolving the issue in addition to requesting reimbursement of the Body Corporate's legal costs.

On 19 April 2022, the Manager, Parks and Natural Resources sent you a letter by email acknowledging the length of time taken to resolve the matter and denying your request for reimbursement on the basis that engaging a solicitor was at the discretion of the Body Corporate. In addition to the following commitment:

I acknowledge your feedback that the length of time taken to resolve the matter was too long and have requested Council's Parks Policy and Planning team to investigate how this can be improved in future.

There are insufficient records available to support that investigations of this nature were undertaken.

The review acknowledges your dissatisfaction in this regard, particularly as your initial request for Council to formalise a mechanism to allow the Body Corporate to use and manage the Bridge was first raised with Council via CGW on 30 April 2020, and this was responded to on 17 March 2022.

However, Council records indicate that the length of time taken, while prolonged, was considered reasonable for the reasons below:

- The matter required input from multiple areas of Council, including legal advice.
- Input was required from the State Government.
- Council decided to investigate all options available, including:
 - Removing the Bridge in its entirety.
 - Granting a lease.
 - Considering other appropriate mechanisms to transfer responsibility of the Bridge to the Body Corporate.
 - Replacing the Bridge.
- There are no records indicating that Council delayed responding to you without reasonable grounds.

During 2022 and 2023, Council monitored the condition of the Bridge to determine whether it would be best to maintain, repair, or remove it. This included obtaining cost estimates for each option. The decision to remove the Bridge was made following a detailed report that was completed as a result of an inspection undertaken on 22 February 2022.

The closure of the Bridge was delayed on the basis that mitigation strategies had been recently implemented, include restricting the load capacity of the Bridge by limiting the number of people permitted to use it at any time. Further monitoring and internal considerations were had between Structures, Park Assets and Governance, and Parks Planning and Policy.

As a result of the monitoring activities undertaken by Structures, on 17 October 2023, Council decided to close the Bridge following three inspection reports over four years. The following specific reasons were provided by a Senior Structures Engineer as grounds to support the Bridge's closure:

- Significant rot was present.

Girders have gone from a 350mm section to having only about 50mm of sound timber inside.

- Significant deflection under no load was identified.
 - *The deflection has gone from 50mm in 2019 to 156mm this year.*
 - *Under maximum design loads we would only expect approx. 50mm deflection.*
 - *The measured deflections are with no load*
- The design of the Bridge meant that there were redundancies should a girder break.

No redundant load paths.

In addition to the closure reasons, the Senior Structures Engineer outlined the communication plan to notify relevant stakeholders. As a result of this, an email was sent to you on 18 October 2023 advising that the Bridge will be closed indefinitely as Council had no confidence in its remaining structural capacity and that no information regarding when the Bridge might be reopened was available.

A memorandum was sent from the Program and Planning Manager, who leads the Structures team, to the Natural Environment, Water and Sustainability branch, which includes Parks Planning and Policy and Park Assets and Governance. This memorandum provided the background and issues relating to the Bridge in addition to a recommendation:

the permanent and full removal of the structure and its foundations without replacement to be undertaken as soon as possible.

While the decision to close the Bridge was appropriate and based on reasonable grounds, Council's monitoring activities occurred over a number of years which showed that the deterioration of the

Bridge was not unforeseen. Council had the opportunity to give the Body Corporate, and other relevant stakeholders, notification of its intentions prior to closing the Bridge. Further, the 18 October 2023 email sent to you could have provided a more definitive conclusion that confirmed Council's intention to remove the Bridge, and not replace it.

Following this memorandum, a project to remove the Bridge was initiated on the basis that cost estimates had shown that repairing the Bridge would not be economical. While it had been established in previous correspondence that allowing exclusive use of the Bridge for the Body Corporate, and by extension the residents of the St James Estate, Structures continued to consider replacing the Bridge. On that basis, the recommendation provided by the Program and Planning Manager was not accepted in full.

Quotes to remove the Bridge's superstructure were sought in accordance with Council's *SP103 Procurement Policy and Plan*, including from internal work areas.

On 1 December 2023, you wrote to the Office of the Chief Executive Officer (CEO's Office) regarding the Bridge and sought their assistance in resolving your concerns. On 8 December 2023, you requested an update on the progress of the matter.

On 14 December 2023, you were called in relation to your request for an update on the progress of Council's considerations by a Program Service Coordinator. Council records indicate that this phone call was about the removal of the Bridge. In this call, you referenced a letter you received from the local Ward Office that advised:

- Council provides public assets to benefit all park users and maintaining an exclusive access arrangement to the footbridge is inconsistent with this.
- When Council considers the replacement of any park asset, utilisation is a significant factor and replacing the footbridge, which is not available for broad public use, is not considered a good use of public funds.

In addition to your discussions regarding the removal of the Bridge, the record made by the Program Service Coordinator indicates that you proposed that the Body Corporate enter a co-funding arrangement with Council to replace the Bridge.

On 22 December 2023, a letter was sent by the CEO's Office to you advising that the Bridge was at the end of its useful life and required removal for safety reasons. The letter continues by providing that Council expects the Bridge will be removed by June 2024, however, this may change with consideration of replacement options occurring. A relevant statement from this letter is below:

When considering the replacement of any park asset, utilisation is a significant factor, therefore replacing the footbridge, which is not available for broad public use, may not be considered a good use of public funds.

The review found that the use of the word 'may' in this statement was marginally inconsistent with the correspondence you referred to in your phone call with the Program Service Coordinator on 14 December 2023. However, Council records show that replacement of the Bridge remained an option that Council was considering.

On 3 January 2024, you wrote to Council online providing a letter dated 23 March 2021 from a consultancy firm that provided their view following a review of a report titled *Mod-shock Testing of Pedestrian Bridge Supporting Columns, St James Estate, Chapel Hill, QLD* dated 12 March 2020. On 10 and 20 January 2024, you wrote to the Structures Engineer reaffirming your request for a co-funding arrangement and provided the report to them as well.

On 23 January 2024, the Program Service Coordinator confirmed that they had received the report and would forward it to the Structures Engineer. The review found that it would have been appropriate for the Program Service Coordinator, in addition to forwarding the report to the Structures Engineer, reiterate that the concrete columns were not planned to be removed at that stage.

On 9 February 2024, you spoke with the Program Service Coordinator regarding your 10 January 2024 email that had not yet been responded to. You acknowledged that the Body Corporate had no legal right to the Bridge but were willing to provide public access to it as part of a co-funding arrangement that you proposed. You also raised that you believed that Council was not fully considering this proposal. The record made by the Program Service Coordinator indicates that they would consult their manager prior to responding.

On 11 February 2024, you wrote to the Office of the Lord Mayor in addition to your local Ward Office about the Bridge. Council records indicate that you were not provided a response to these enquiries on the basis that you were already corresponding with the CEO's Office. The review found that officers within the Lord Mayor's Office should have provided you with a response that referred to your correspondence with the CEO's Office, and confirmed they would not be responding on that basis.

On 21 March 2024, a letter was sent to you by email from the CEO's Office that referenced your correspondence of 12 February and 5 March 2024, in addition to representations made on your behalf by the Ward Office. This letter reiterated the points made regarding the replacement of the Bridge. Most relevant to the scope of review, the letter provides:

replacing the footbridge, which is not available for broad public use, is not considered a good use of public funds.

This letter, while consistent with the correspondence you referred to in your 14 December 2023 phone call with the Program Service Coordinator, was minorly inconsistent with the 22 December 2023 letter from the CEO's Office. Further raised in this letter was:

- An acknowledgement of your comments about the lack of maintenance by Council on the Bridge.
- Structural assessments indicate that construction methodology is likely to have contributed to the condition of the Bridge.

This is consistent with Council records that provided there was no redundancy designed in the Bridge should a girder fail. This in addition to the relatively rapid deterioration that was identified by the Structures team.

- The letter further raised that the Bridge would remain closed to maintain community safety and that planning for the Bridge's removal continued.

On 22 March 2024, you responded to the CEO's Office advising that you were looking to lodge a complaint to the Queensland Ombudsman for refusing to consider the Body Corporate's request for a co-funding arrangement. On 27 March 2024, you wrote to the CEO's Office again expressing your dissatisfaction regarding Council's purported failure to comply with its Bridge maintenance obligations as provided in a Deed of Agreement. You reiterated your view that Council failed to meet its responsibilities regarding the Bridge which led to the early end to its service life.

You also raised that the Bridge was not on Council's asset register, which is not supported by Council records. While the review did not access Council's previous asset registration system as this was not relevant to the scope of the review, the current iteration shows that the Bridge had been registered as an asset since its implementation on 3 August 2014.

Regardless of its registration status, the Bridge, being on reserve land entrusted to Council, is a Council asset. This advice was initially provided to you by DNRME in or around June 2019. Additionally, you were advised of this on 25 September 2019 in a phone call you had with an officer from the Development Services branch.

On 2 April 2024, you sent an email to the Structures Engineer attaching proposed trustee lease terms and requested that it be sent to the Program Service Coordinator.

On 4 April 2024, the Program and Planning Manager wrote a briefing note to the General Manager of the Program Planning and Integration branch providing information about the Bridge in addition to their recommendation regarding your request to retain the Bridge's substructure while negotiations continued.

In summary, the briefing note outlined the background of the management of the matter to date. It continues by raising that as there are no Council records documenting the Bridge's design, Council cannot accurately measure the risks associated with leaving any part of it in the public domain. The recommendation given to the General Manager was that Council should continue with its plan to fully remove the Bridge, including the super structure and substructure commencing on 17 April 2024.

On 5 April 2024, you emailed the CEO's Office advising that you would be seeking compensation should the Bridge closure become permanent. On 10 April 2024, you met with the General Manager of the Natural Environment, Water and Sustainability branch and the Program Service Coordinator to discuss replacing the Bridge. There are Council records detailing the discussions had during this meeting.

On 19 April 2024, the Bridge's superstructure was removed. On 30 April 2024, the CEO's Office sent you an email attaching a letter that confirmed the meeting you had on 10 April 2024 and advised that the concrete piers and gabion basket abutments would not be removed while discussions regarding the replacement of the Bridge continued. You were also reminded that there is a footpath leading from the St James Estate to the Kenmore Plaza Shopping Centre that could be utilised by residents.

On 25 May 2024, you sent an email to the CEO's Office raising dissatisfaction with the documents that were provided following your information access application under the RTI Act. While your dissatisfaction is acknowledged, the RTI Act provides for the appropriate mechanism to review decisions internally, which is undertaken by City Legal, in addition to the opportunity to request an external review be undertaken by the Office of the Information Commissioner.

Internal correspondence between Structures and City Legal occurred throughout April, June, and July 2024. As a result of these considerations, the following view was formed:

After confirming the costs to replace the bridge, the engineering standards required, and the community benefit of the bridge, it is proposed that the bridge not be rebuilt, and the remainder of the bridge be demolished.

On 23 July 2024, City Legal sent you a letter that detailed Council's position on the matter. The letter focused mainly on Council's obligation to replace the Bridge, and not on whether it was willing to reconsider mechanisms to transfer liability and responsibility to the Body Corporate. While your claims of loss regarding Council's acts or inaction relating to the Bridge were rejected, you were advised that you could lodge a claim against Council if you believed that you had suffered a loss.

On 25 July 2024, you called the Program Service Coordinator expressing your dissatisfaction that Council had not responded to any matters raised in the 10 April 2024 meeting. You further raised that you believed that Council was obliged to replace the Bridge, but your reasoning was not available in the record created of the call.

The Program Service Coordinator advised that the response you received from City Legal met the commitment made in the meeting and that Council cannot support any expenditure on a Bridge located on or over public land, for private benefit. The Program Service Coordinator suggested you contact City Legal for further clarification.

This phone call also appeared to be focused on whether Council will replace the Bridge and not about whether a trustee lease, or other mechanism, would be granted to the Body Corporate.

On 26 July 2024, you wrote to City Legal advising that you would instruct your legal advisors to proceed with a compensation claim on the basis that Council had misrepresented its plans for the

future management of the Bridge. You finished the email by requesting a reconsideration of the decision.

On 11 August 2024, you wrote to the CEO's Office providing a history of the Bridge and Council's management of it to date, including City Legal's recent advice. Additionally, you raised that property values had declined and at least two lot owners believed they were entitled to compensation. On 13 August 2024, City Legal confirmed that they were managing the matter and no response from the CEO's Office was required.

On 18 August 2024, you abandoned your co-funding agreement proposal and again raised the possibility of a trustee lease in an email to the Program Service Coordinator. Relevant to the Land Act, and your lease proposal, you raised:

The trustee lease whilst inconsistent with the purpose of the trust land is in your powers to grant. The lease will not diminish the purpose of the trust land or adversely affect the public interest.

On 23 August 2024, City Legal sent you an email confirming Council's position. No further reasons were provided, and no response to your specific statement, referenced above, was provided. While it is accepted that Council is under no obligation to grant a trustee lease for private use, this letter could have expressed Council's grounds in more detail.

The recent correspondence in the matter was focused on replacing the Bridge and your request for a trustee lease was only addressed once in an email sent to you on 17 March 2022. The review acknowledges that this response was sufficient, however, it could have been clarified and reiterated to ensure you understood that granting exclusive use included a trustee lease specifically.

On 25 August 2024, you responded to City Legal and reiterated that the lease would not diminish the purpose of the reserve land or adversely affect the public interest. You also raised that the public rarely use the park, and when they do it is as a shortcut to the Kenmore Plaza Shopping Centre. On this basis, you requested a review of the decision.

On 10 September 2024, City Legal confirmed that any infrastructure on private land would not be removed without landowner's consent. The email continued with information about Council's Complaints Management Process, and advice that the Natural Environment, Water and Sustainability branch was responsible for the decision meaning they would undertake the internal review.

Internal reviews are undertaken in accordance with the AACP which requires the following prior to commencing an investigation into an internal review:

- The creation of a new file in an existing system.
- That the investigation be undertaken by an officer who was not involved in the original decision.
- An assessment of the complaint be undertaken.
- An acknowledgement sent to the complainant.

Council records indicate that the above requirements were met as a new file was created, the officer undertaking the internal review was not part of the original decision, and an assessment of the matter was undertaken. This Office provided general advice to the internal reviewer regarding the application of the AACP thereby rendering the assessment requirement redundant.

On 23 September 2024, an acknowledgement letter was sent to you confirming the matter would be managed as an internal review, the expected timeframe for an outcome to be provided, and expressed the scope of the internal review. On 23 September 2024, the scope was refined to be:

Council's decision to refuse to grant a trustee lease allowing for the St James Estate body corporate to construct a new bridge.

On 24 September 2024, you sent further information to support your internal review request.

Section 4 of the AACP provides for the general process for undertaking internal review investigations:

The Council officer will generally use the following process for conducting an investigation of an administrative action complaint that is subject to an internal review:

- *gather all relevant information for analysis*
- *formulate and record any necessary decisions and recommendations*
- *consider any remedy options available*
- *communicate the outcome of the investigation to the complainant.*

The Council officer must document each step of the investigation, including discussions, meetings, phone calls and site inspections on an official file.

There are insufficient records available to show that the investigating officer followed the process listed above. The gathering of relevant information, analysis, consideration, and formulation of any decisions, views, or remedy options were not documented on the internal review file.

On 22 October 2024, the outcome of the internal review was provided to you by email that attached a letter. Section 5 of the AACP provides for the requirements of an outcome letter:

The complainant must be advised of the outcome of either an internal or independent review in a letter that includes:

- *a summary of the administrative action complaint*
- *the reasons for the original decision*
- *the steps taken and information considered during the investigation*
- *the outcome of the review*
- *remedy options, if appropriate*
- *officer contact details, if appropriate*
- *review rights, if appropriate*

The review found that the outcome sufficiently summarised the administrative action complaint and reasons for the original decision. Additionally, relevant contact details and review rights were provided to you.

While the internal review met the requirements of the AACP, it was identified that the grounds of the original decision and the outcome of the review, while expressed, may not have been sufficiently explained. Regarding, the consideration described as:

Council's continued obligations as trustee of the land.

The review found that this reason was not provided to you in the past but is a major consideration in the decision to refuse the trustee lease. Council is unable to sublet out of its responsibilities as trustee of the reserve land as provided in section 337 of the Land Act.

Review Outcomes

In summary, the independent review of your concerns under the AACP as required by section 250 of the Act has determined that the administrative actions taken by Council in relation to your complaint about the decision to refuse to grant a trustee lease to the Body Corporate were appropriate and reasonable.

While it is accepted and acknowledged that the Bridge was initially built in 1992, and residents of the St James Estate have had the benefit of its existence since this time, it has been Council's long held

position that infrastructure that benefits private property is not supported on public land. Any expense incurred is obtained from the wider community, and the management of Council owned land must always be in the public's interest as required by section 4(2)(a) of the Act.

The effective, efficient, and economical management of public resources is further underpinned by section 15 of the Act. Notwithstanding the provisions of the Land Act, the review has determined that Council's decision to refuse to grant a trustee lease was appropriate on this basis alone as granting exclusive use of infrastructure on private land is not an effective, efficient, or economical use of public resources.

The *ICT24 Recordkeeping in Brisbane City Council Procedure* (Recordkeeping Procedure) was created to ensure Council meets its legislative and corporate recordkeeping obligations. Most relevantly, section 1.1 provides that Council officers must create full and accurate records of Council's business activities.

While the majority of records that were captured throughout the management of this matter since 2019 were sufficient to detail Council's considerations and subsequent administrative actions, the review identified that a number of phone calls and emails may not have been created as full and accurate records. The recordkeeping practices of the teams involved were generally in accordance with the Recordkeeping Procedure.

However, the meeting you had with the General Manager of the Natural Environment, Water and Sustainability branch and the Program Service Coordinator was not sufficiently recorded. While the internal review met the requirements of the AACP, it was found that further exposition could have been provided to ensure you understood the reasons for Council's administrative actions.

In accordance with Section 5 of the AACP, the review recommends:

- *Relevant officers in the Natural Environment, Water and Sustainability branch be reminded of the requirements of the ICT Recordkeeping in Brisbane City Council Procedure by completing the 'Recordkeeping and You' eLearning module.*
- *Relevant officers in the Natural Environment, Water and Sustainability branch consider implementing business processes to ensure internal review outcomes are sufficiently detailed.*

I acknowledge that, in this instance, the outcome of this review may not be what you had wished for. However, I trust that my response has adequately addressed the concerns you have raised. This response concludes Council's complaints management process, if you remain dissatisfied with Council's handling of this matter, you may contact the Queensland Ombudsman.

Yours sincerely



Blair Clark
DISPUTES COMMISSIONER

Ref: 20162625