

# APPLICATION TO AMEND PRIOR APPROVAL

LOT 9 (NO.4) BERGEN WAY, MINDARIE



PROJECT REF: 2028



Prepared for

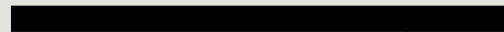


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## 1.0 Introduction



This planning report has been prepared in support of an application to amend a prior planning approval. The planning report contains the following pertinent details of the proposal deemed to be relevant as part of considering the merits of the application:

- Details of the proposal.
- Detailed assessment of the proposal with respect to the relevant planning considerations pertaining to the application.
- Detailed justification of any variations sought.

In addition to this planning report, the following documentation has been provided in order to assist the City of Wanneroo in making a determination on the proposed application:

- Certificate of Title (**Appendix 1**).
- Relevant development plans (**Appendix 2**).
- A traffic engineering technical note (**Appendix 3**).
- Prior planning approval (**Appendix 4**).

It will be demonstrated in subsequent sections of this submission that the proposed amendment is entirely appropriate for approval.

## 2.0 Site Details

### 2.1 Legal Description

The subject site is legally described as:

Lot	Plan	Volume	Folio	Street Address
9	21205	2068	62	4 Bergen Way

The area of the subject site is 4,800m<sup>2</sup>.

A copy of the Certificate of Title pertinent to the subject site is contained in **Appendix 1**.

### 2.2 Locational and Land Use Context

#### 2.2.1 Regional and Local Context

The subject site is located within the City of Wanneroo municipal area and in the suburb of Mindarie. The site is located in close proximity to the Marmion Avenue and Anchorage Drive North intersection. Access to the site presently occurs from both Bergen Way (one way entry only) and Mulgrave Loop (two way access and egress). The site also shares a boundary with an existing service station and car wash development at Lot 8 (No. 360) Anchorage Drive North.

At present the site is occupied by an existing commercial building that is tenanted by a range of different businesses that are primarily pedestrian orientated.

Figures 1 and 2 depict the subject site in its regional and local context, respectively.

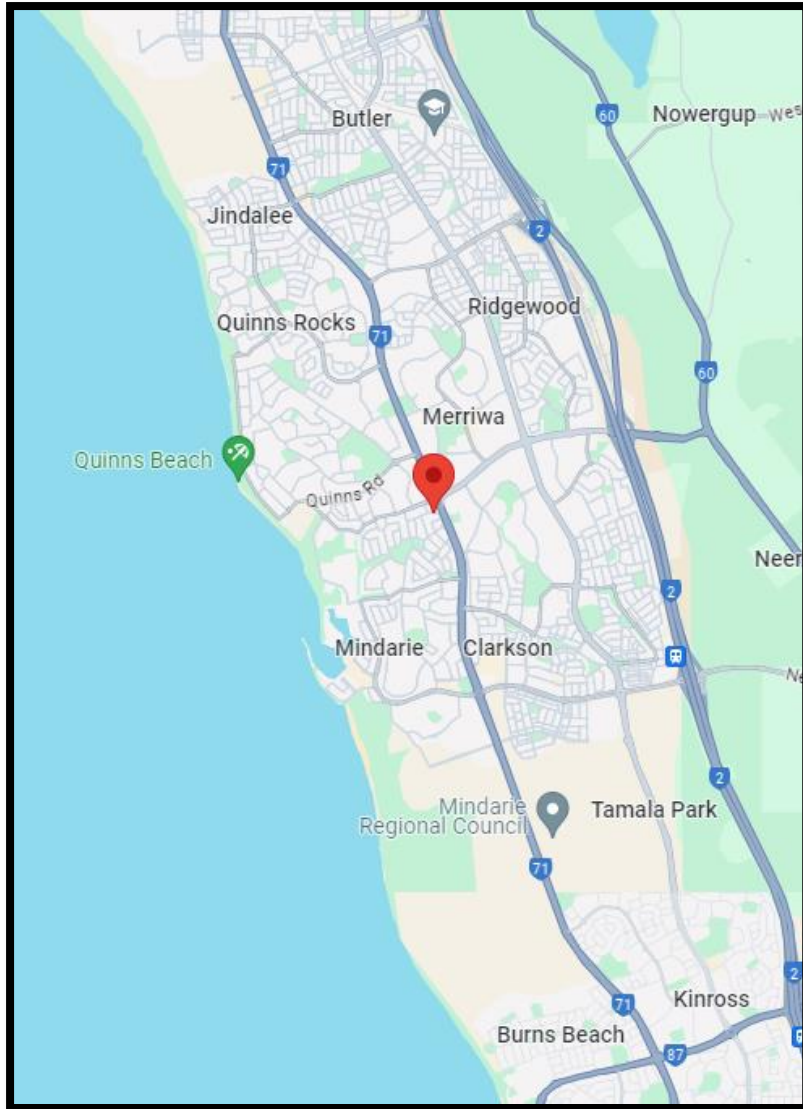


Figure 1 – Regional Context



Figure 2 – Local Context



### 3.0 Background

In 1996 approval was obtained for the existing commercial development at the subject site which was subsequently implemented with the development operating for a period of 13-14 years before our clients and the current registered proprietors purchased the development.

In approximately 2014 the current registered proprietors installed a number of bollards in the location pictured below between the existing commercial development and the adjoining service station / car wash development.



Figure 3 – Location of Bollards

Unbeknown to the current registered proprietors, the installation of the bollards was in contravention of a prior imposed condition of approval (Condition 14) which required the granting of an easement in favour of the City of Wanneroo to benefit the adjoining service station / car wash development. The easement was intended to provide access to the vehicular access way and parking at the subject site – see Figure 4 below.

14. The granting of an easement in gross in favour of the City of Wanneroo to the satisfaction of the City Planner over the proposed parking bays and vehicular accessways thereto, in order to facilitate reciprocal vehicular access and carparking between Lot 9 (4) Bergen Way, Mindarie and Lot 8 (360) Anchorage Drive, Mindarie.

Figure 4 – Condition 14 – Original Approval

Despite the imposition of Condition 14 on the original approval, the development was constructed, and occupancy was issued without an easement over the subject site which is evident in that the current Certificate of Title has no easement registered. As a result, at the time of purchase, our clients were not aware of any obligation to maintain access between the two properties and in the interests of pedestrian safety installed the bollards to prevent additional unwanted traffic through the development.

In recent times the City of Wanneroo has commenced compliance action related to the contravention of Condition 14 and this application seeks to resolve this compliance action by amending the prior approval to remove Condition 14.

## 4.0 Planning Framework

### 4.1 Metropolitan Region Scheme (MRS)

The subject site is zoned 'Urban' under the provisions of the Metropolitan Region Scheme (MRS) and abuts an 'Other Regional Road' reservation associated with Marmion Avenue.

For reasons outlined further in this report, the proposed application will not impact the developments compliance with the 'Urban' MRS zoning applicable to the subject site.

### 4.2 City of Wanneroo District Planning Scheme No. 2 (DPS2)

The subject site is zoned 'Service Commercial' under the provisions of DPS2. Relevant objectives for the 'Service Commercial' zone are outlined in Clause 3.13.2 of DPS2 and have been summarised below:

- To accommodate commercial activities which, because of the nature of the business, require good vehicular access and/or large sites.
- To provide for a range of wholesale sales, bulky goods showrooms, trade and services which, by reason of their scale, character, operational or land requirements, are not generally appropriate in, or cannot conveniently or economically be accommodated in, the commercial or industrial zones.

As the proposed application simply seeks to modify operational characteristics of the existing development, there is no impact on the development's compliance with the relevant zone objectives.

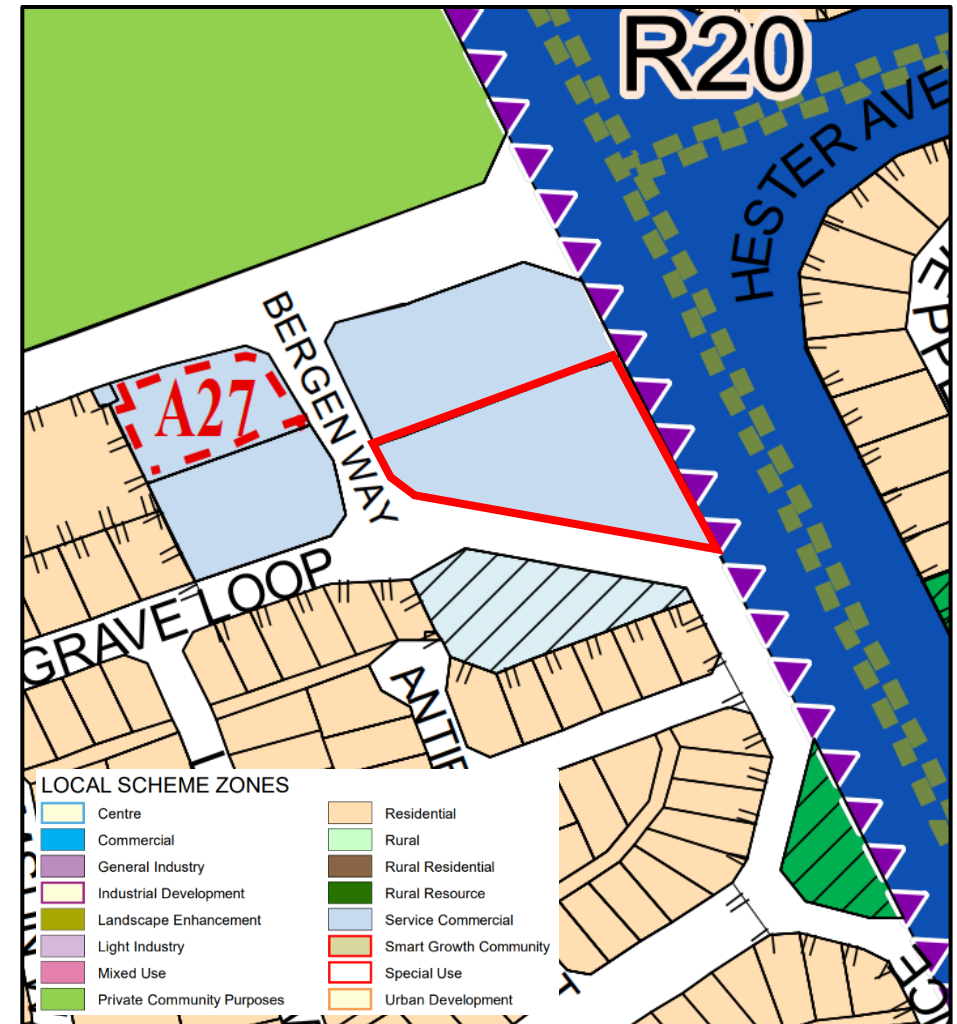


Figure 5 –DPS2 Zoning Map

## **5.0 Proposal Details**

The proposed application seeks to resolve current compliance action by amending the prior approval (Appendix 4) to remove Condition 14. This would remove the obligation to establish an easement over the subject site and allow for the retention of the existing bollards that have been installed at the vehicular connection point between the subject site and the adjoining service station and car wash development.

As will be outlined in subsequent sections, the removal of Condition 14 and prohibition of access between the two sites is considered to be an improved traffic safety outcome and as such warrants the support of the City of Wanneroo.

## **6.0 Justification**

As the proposed application does not seek to modify any of the existing built form or the existing operational characteristics of any of the businesses at the subject site there are no relevant development requirements that require consideration as part of the assessment of the application. Instead, the appropriateness of the proposed development relates to traffic safety and movement between the two adjoining properties.

With the above in mind, the removal of Condition 14 and prohibition of access between the two sites is considered to warrant approval as:

1. The nature of the uses approved at the subject site are far more pedestrian orientated and rely on customers accessing the site with their car, parking and then walking to the relevant business/tenancy. This contrasts greatly with the approved development at the adjoining property which is heavily car orientated and in some instances, customers won't even leave their car whilst on site. With this in mind, restricting movement between the two sites has the benefit of reducing potential conflicts between cars and pedestrians.
2. The nature of both developments is such that they each have a compliant provision of parking on their respective sites. In this regard the adjoining service station and car wash development is not reliant on accessing parking available at the subject site. In this regard there is no reason to establish an easement over the subject site to allow access to parking for the adjoining property.



3. The adjoining property and development has two existing access points to the established road network through a left in and left out access to Anchorage Drive North and a full movement crossover on Bergen Way. As a result of these two access points, the adjoining development is in no way reliant on access through the subject site to the surrounding road network. Further, given the car orientated nature of the uses, the primary objective would be to access the regional road network (Anchorage Drive North and Marmion Avenue) as opposed to traversing a residential neighbourhood which would result should access exist from the adjoining property through the subject site.
4. The City of Wanneroo neglected to require the easement when the development at the subject site was originally constructed. As such both the developments at the subject site and the adjoining property have for some 27 years operated successfully without an easement and for some 10 years with the prohibition of access through the installation of the bollards. This indicates that the easement and access between the two sites is not required for the effective operation of both developments.

As there is no formalised easement registered on the title of the subject site the removal of Condition 14 is straightforward and will not impact operations at either site.

5. Historically an easement over the adjoining property was established to benefit the subject site through a prior condition of subdivision or development approval. However, in 2015 a development application was approved which enabled the construction of the car wash

at the adjoining property. The location of this car wash facility conflicts with the established easement on the adjoining property and effectively severs the easement and prevents use of this easement for access by the subject site. This is evident in Figure 6 below. Despite this, access from the subject site through the adjoining property is also not required for effective vehicle movements.



**Figure 6 – Location of car wash relative to the easement (pink line)**

6. A traffic engineering analysis of the relationship between the two properties has been completed by RTSM Consulting (Appendix 3) which has determined that the restriction of access between the two properties is a preferred traffic safety outcome for users of the subject site.

## **7.0 Conclusion**

Based on the contents of this planning report, it is clear that the proposed application to remove Condition 14 and restrict access through bollards at the subject site is considered to warrant approval as:

1. Access and an easement over the subject site is not required for the successful operation of either the adjoining development or the development at the subject site.
2. Restricting access will improve traffic safety and remove the potential for vehicular and pedestrian conflict at the subject site.
3. The developments have operated successfully for many years without an established easement over the subject site.

Given the above, the proposed application warrants support from the City of Wanneroo.

## Appendices



CITY OF WANNEROO  
DEVELOPMENT APPLICATION  
APPROVED  
SUBJECT TO THE ENDORSEMENTS HEREON AND COMPLIANCE WITH  
THE CONDITIONS OF APPROVAL TO COMMENCE DEVELOPMENT  
M.R.S. APPN No. 30/5296  
DATE APPROVED 8 October 1997  
NOTE: THIS APPROVAL DOES NOT CONSTITUTE A BUILDING LICENCE

OFFICE COPY

SECTION ON A-A  
SCALE 1:100

STEPDOWN OF FOOTING  
SCALE 1:20

*Bottom of Building to be  
deleted as per concept plan  
received 20/10/97*

COMMERCIAL DEVELOPMENT  
43.30 A.H.D. F.F.L.

SITE PLAN  
scale 1:200

LEGEND

- EXISTING LEVELS
- NEW LEVELS

NOTES

1. REFER TO ARCH DWGS FOR POSITION OF SOAKWELLS AND GRATES

Rev. no.	Date	Revision
b.	22.8.96	SOAKWELLS & LEVELS ADDED
c.	23.8.96	CROSSOVER & DISABLED RAMPS ADDED
d.	04.9.96	RAMP DETAILS, LEV. 3 CARPARK, BIN STORAGE AREA & FINISHED FLOOR LEVEL 43.30 AHD
e.	21.7.97	ATM ROOM ADDED

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SCALE  
1:200

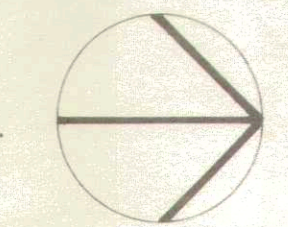
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### **APPENDIX 3** – Traffic Engineering Technical Note

## TECHNICAL NOTE

### Background

Mindarie Central is a small-scale commercial centre located at 4 Bergen Way in Mindarie, in the City of Wanneroo (Figure 1).

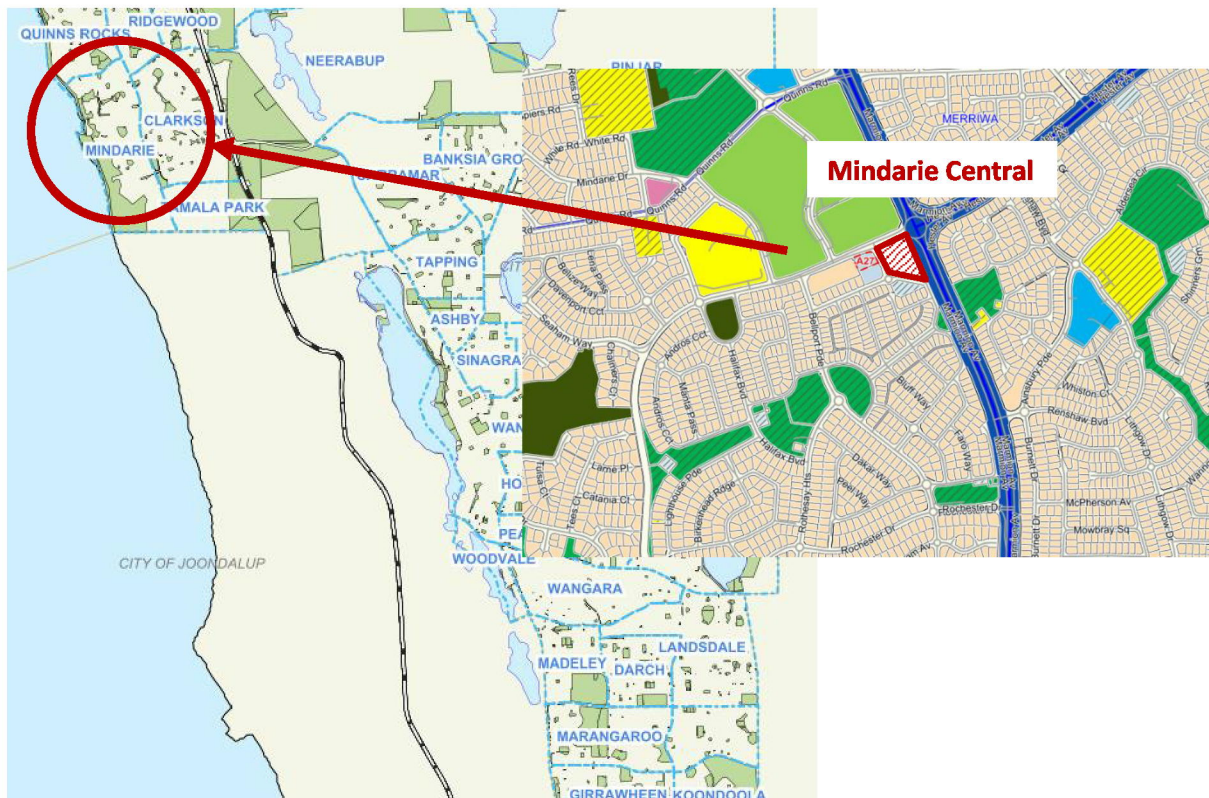


Figure 1: Location of the subject lot within the City of Wanneroo



Mindarie Central accommodates low intensity commercial properties that include:

- TAB
- art studio
- vet clinic
- specialty groceries store
- laundry
- restaurant
- physiotherapist
- fast food (Domino's)
- accountant
- chiropractor

Mindarie Central (Lot 9) shares boundary with a Service Station (Lot 8) located at 360 Anchorage Drive (Figure 2). Access is via a one-way in entry off Bergen Way and a two-way access off Mulgrave Loop. There are also two mutual accesses (east and west) between Lot 8 and Lot 9 (Figure 3).



Figure 2: Lot 8 and Lot 9

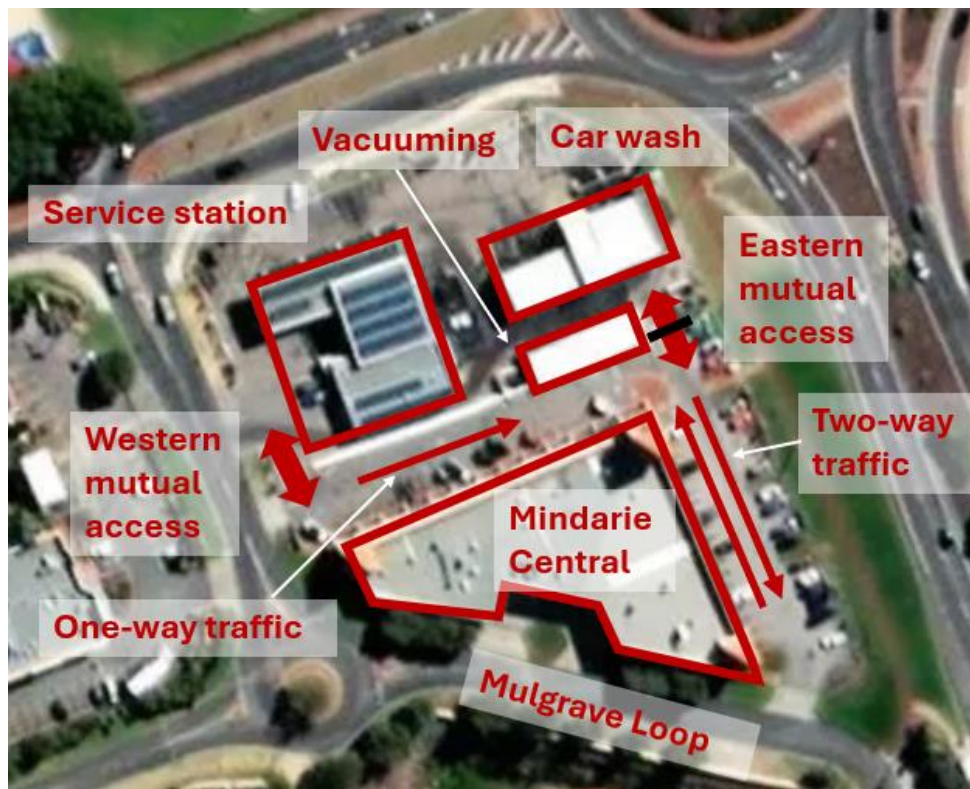


Figure 3: Mindarie Central

Historically, the entire area covered by Lot 8 and Lot 9 used to be a single lot. The original lot was split in March 1996. Lot 9 was developed into the existing commercial centre while Lot 8 was developed into a Service Station, Convenience Store & Car Wash (BA96/4359). The development included a mechanic workshop in the southeastern corner of the lot.

At the time of the subdivision, in December 1996, an easement for a right of way (access and parking) was registered on Lot 8 (Figure 4):



Figure 4: Right of way easement registered on Lot 8

It is understood that at the time of the subdivision, a development condition by the City of Wanneroo was imposed to Lot 9 requiring the registration of the continuing right of way easement over Lot 9. This easement was never registered on the Title but the development condition over Lot 9 remained in force.

The Owners purchased Lot 9 in January 2011, unaware of the development condition.

### Bollards

It is understood that during the operation of the mechanic workshop on Lot 8, workshop staff used to park their personal vehicles as well as the serviced vehicles in the marked bays on Lot 9. The mutual access between the two lots was used by the mechanics to test drive the serviced vehicles.

In response to what was perceived as inappropriate access and car park use, and unaware of any easement requirements given that this was not registered on the Title, the Owners organised the installation of four metal bollards at the boundary between the two lots to prevent these movements. The bollards were installed in 2014 (Figure 5) without submitting a development application.



*Figure 5: Bollards installed between Lot 8 and Lot 9*

In 2015, Lot 8 was subject to a new redevelopment (DA2015-1975) which saw the replacement of the mechanic workshop with a car wash facility consisting of two automatic car wash bays, three self service wash bays and four vacuuming bays.

In March 2024, the Owners received correspondence from the City of Wanneroo Compliance department requesting the removal of the bollards. The justification for this request was that the installation of the bollards was a non-compliant and unapproved development.

### **Bollards removal**

The Owners contend that the removal of the bollards will significantly increase the volume of vehicles using the car parking area on the eastern side of Lot 9 creating risks for the car park users.

Upon visiting the site, reviewing the traffic operation on Lot 8 and Lot 9, and reviewing the pertinent documentation, RTSM Consulting formed the view that the removal of the bollards is not warranted. This view is based on the following arguments:

- 1) Both redevelopments of Lot 8, in 1996 and 2015, nominally allowed mutual access between the lots on the western and eastern side. However, the design of Lot 8 allowed effective vehicular movements in, through and out of the lot without access to Lot 9. In fact, the car wash facility has been operating for the last eight years without the issue of the bollards ever been raised before.
- 2) The intention behind the right of way easement was to provide mutual access and parking between the two lots. However, the construction of the car wash facility severed the original easement preventing any meaningful connectivity from Lot 9 onto Lot 8. The easement, if implemented, would only serve the users of the car wash facility to access Mulgrave Loop via the car park.



- 3) Based on a recent survey, conducted on 5 and 7 April 2024, up to 45 vehicles use the car wash and vacuuming facilities during one hour. Even if only a part of these vehicles was to use the Lot 9 car park to access Mulgrave Loop, this would be a significant increase of through traffic use of a car parking facility elevating the risk for car park users. During the site visit, the parking bays on Lot 9 were used almost to capacity.

## **Conclusion**

Based on the analysis presented in this Technical Note, RTSM concludes that the removal of four metal bollards from the access between Lot 8 and Lot 9 is not warranted while at the same time increasing the risk of collision with vehicles and pedestrians using the Lot 9 car park.

The retention or reinstallation of the bollards is supported from a traffic engineering perspective.

it is, therefore, recommended to remove of the development condition requiring the registration of a right of way easement on Lot 9.