

Anthony Vuleta
Chief Executive Officer
Town of Victoria Park
Locked Bag 437
Victoria Park WA 6979

Your ref:
Our ref: ALH/GAM 39632

By post and email

12 November 2020

cc Ben Killigrew
BKilligrew@vicpark.wa.gov.au

Dear Mr Vuleta,

Development Proposal for 1022 - 1032 Albany Highway and Right of Way 54, East Victoria Park

1. We refer to:
 - (a) our various correspondence to the Town of Victoria Park (**Town**) including our most recent letter dated 14 September 2020;
 - (b) the Ordinary Council Meeting which was held by the Town on 15 September 2020 (**September OCM**) where the resolution which sought approval for the Town to request that the Minister dedicate Right of Way 54 (**ROW 54**) as a public road was defeated; and
 - (c) the agenda for the Agenda Briefing Forum that was held on 3 November 2020 (**Agenda**).
2. We have reviewed the Agenda and note that the resolution that has been put forward to the Council for consideration at Item 13.1 is substantially the same (and, in most instances, completely identical) to the resolution that was defeated at the September OCM.
3. It is highly unusual and extremely concerning that the Town would put forward a resolution that is substantially the same as a resolution that was only defeated two months previously.
4. The only main differences that we can identify between the Agenda and the agenda for the September OCM in this regard are:
 - (a) on 23 October 2020, the Town received a letter from its lawyers advising the Town of the outcome of a 'comprehensive probate investigation' which the Town's lawyers completed;
 - (b) the Town received a letter from Fabcot Pty Ltd (**Fabcot**) on 21 September 2020, which was originally uploaded as an attachment to the Agenda, but has since been removed; and

- (c) the introduction of some commentary in paragraph 10 of the section entitled “*Background*” which draws a comparison between the request to dedicate ROW 54 and the circumstances in which a road dedication occurred at Lot 170, State Street, Victoria Park.
5. We have outlined the reasons below as to why none of these differences are a legitimate basis for the Council to reconsider the decision to dedicate ROW 54.

Probate Investigation

6. The letter from the Town’s lawyers states that it has undertaken a ‘comprehensive probate investigation’ in relation to the estate associated with the land holdings known as Lot 0 on Plan 26090 (**Lot 0**) and Lot 67 on Diagram 13707 (**Lot 67**). However, the Town’s lawyers do not provide any detail in relation to what activities were actually undertaken as part of this investigation. The only information provided is that:
- (a) Lot 0 and Lot 67 were not administered as part of the last legitimate will of each owner respectively; and
 - (b) the Public Trustee is the only party that can carry out the administration of Lot 0 and Lot 67 and therefore the Town should proceed with the request to dedicate ROW 54 and advise the Minister for Lands (**Minister**) accordingly.
7. In response to this information, we make the following comments:
- (a) At the time the Council resolved to defeat the resolution put forward at the September OCM it was already clear that Lot 0 and Lot 67 were not administered as part of the last legitimate will of each owner for each respective parcel of land. This is because each parcel of land is still in the names of the original owners. This fact was identified on numerous occasions throughout the report in support of the recommendation at the September OCM.
 - (b) The Town’s lawyers do not state the basis upon which they make the assertion that ‘...the deceased’s estate can only be dealt with by the Public Trustee’. We have spoken to the Public Trustee specifically in relation to this matter and have been advised that it does not administer the estate of at least one of the deceased registered proprietors. As a result, it was recommended that it is more appropriate to approach the executors under each respective will.
8. On this basis, the conclusion that the Town’s lawyers draw in their letter that the Town should request the dedication of ROW 54 on the basis that ‘...the Public Trustee is the only party that can ‘carry out [the] administration of Lot 0 and Lot 67’ is flawed and should not be considered as a reason to support the proposed resolution.
9. In light of the above, we have obtained a copy of the last will of one of the deceased registered proprietors. This demonstrates that there are other avenues that are available without relying on the Town to request that the Minister dedicate ROW54.
10. In any event, we re-iterate our previous comments that undertaking a ‘probate enquiry’ (especially of the nature which seems to have been undertaken) should not be taken as a replacement for a satisfactory level of public consultation to be undertaken (see our letter dated 14 September 2020 enclosed in Annexure A).

Letter from Fabcot

11. The letter from Fabcot to the Town on 21 September 2020 makes a number of assertions in relation to the contract dated 22 December 2019 for the sale of 355 and 357 Shepperton Road, East Victoria Park (**Contract**).
12. Amongst these assertions, Fabcot states that:
 - (a) the Contract does not allow the Town to refuse to make the request to the Minister to dedicate ROW 54; and
 - (b) the Town may be in breach of its obligations contained in the Contract if it fails to assist Fabcot with the realignment of ROW 54.
13. As part of these statements, Fabcot refers to the condition precedent contained in clause 2.1(a)(i)(C) of the Contract together with the obligations of the Town which are contained in clause 2.3(c) of the Contract.
14. The assertion that the Town would breach the Contract if it fails to pass the resolution contained in Item 13.1 at the Ordinary Council Meeting on 17 November 2020 is flawed, for reasons that include:
 - (a) The obligation contained in clause 2.3(c)(iii) of the Contract requires the Town to take all reasonable steps to obtain the closure of ROW 54 under section 58 of the *Land Administration Act 1997 (WA)* (**LA Act**). This was the appropriate section for the Town to use at the time, given the mistaken belief that the Town was the owner of Lot 0 and Lot 67 and therefore could make a request to the Minister to close ROW 54. The ancillary obligations on the Town associated with such a closure under section 58 of the LAA are contained in clause 2.3(c)(iv) and clause 2.3(c)(v) of the Contract respectively.
 - (b) On 19 November 2019, the Town resolved to delegate to the CEO and the Mayor the ability to execute all documentation necessary in this regard at its Ordinary Council Meeting and, at the same time, took the reasonable steps required to fulfil its obligations under clauses 2.3(c)(iii) to 2.3(c)(v) of the Contract).
 - (c) Once the Town became aware that it did not own Lot 0 and Lot 67, the obligations contained in clauses 2.3(c)(iii) to 2.3(c)(v) of the Contract were no longer capable of being fulfilled (if they had not already been done so previously).
 - (d) The Town instead attempted to follow a process under section 56 of the LA Act (which is a separate and different power to that which is able to be exercised under section 58 of the LA Act) to request that the Minister dedicate ROW 54 as a public road, despite there being no specific requirement in the Contract for the Town to take any steps to do so under section 56 of the LA Act.
15. For these reasons, it is incorrect for Fabcot to draw any conclusion that the Town is contractually bound to request the dedication of ROW 54 under section 56 of the LA Act.

16. Even if there was an implied obligation on the Town that it must make such a request under section 56 of the LAA (which Fabcot also appears to assert), then this obligation would be expressly subject to the acknowledgement contained in clause 2.3(d) of the Contract which states that the Town would not be in default of the Contract as a result of performing its obligation or exercising its discretion when determining whether or not to pass the resolution contained in Item 13.1.
17. On this basis, any perceived breach of the Contract that Fabcot has asserted should not influence the Council's decision in determining whether or not to pass the resolution. It also follows that any commentary contained in the Agenda which identifies the potential consequences from a breach of the Contract as justification as to why the resolution should be passed, should be disregarded (including a number of comments contained in the section entitled "Risk Management Consideration").

Comparison with Lot 170, State Street in Victoria Park

18. The Town has drawn a comparison between its proposal to make a request to the Minister to dedicate ROW 54 as a public road under section 56 of the LA Act to the process that was undertaken in relation to a private road dedication at Lot 170, State Street in Victoria Park (**Lot 170**). The comments in the report appear to suggest that because the Town made a request to the Minister to dedicate Lot 170 under section 56 of the LA Act, it is also appropriate to use this power in relation to ROW 54. This comparison and suggestion is flawed for the following reasons:
 - (a) The owner of the property adjacent to Lot 170 (who approached the Town to make the request to the Minister under section 56 of the LA Act) investigated a number of alternative options in an attempt to acquire Lot 170 over a two year period. There is no evidence in this situation that Fabcot has investigated any alternative option to acquire ROW 54 other than the so-called 'comprehensive probate investigation' that was carried out on behalf of the Town and not by Fabcot.
 - (b) Before the Town resolved to make the request to the Minister in respect of Lot 170, the Town sought public comments in relation to the proposed dedication during a consultation period. No such consultation period has occurred in relation to the proposed dedication of ROW 54 despite this having been raised as a fundamental requirement on multiple occasions in previous correspondence to the Town. The Town has merely continued to rely on a previous consultation period which was carried out pursuant to section 58 of the LA Act and on the specific basis that ROW 54 was owned by the Town. This consultation period cannot be used as a substitute for the requisite consultation under section 56 of the LA Act.
 - (c) The owner of the property adjacent to Lot 170 provided a back to back indemnity to the Town in relation to the indemnity that the Town was required to provide under section 56 of the LA Act. In this situation, Fabcot will not be providing a back to back indemnity and the Town is required to carry the risk of any potential claim for compensation which may arise as a result of ROW 54 being dedicated as a public road.

19. In light of the above, any suggestion that the dedication of Lot 170 is comparable to the present scenario and therefore provides a justification for the dedication of ROW 54 is incorrect.

Other Commentary in the Agenda

20. We note that there is a range of other commentary in the Agenda which substantially reflects the commentary contained in agendas on this matter previously.
21. In this regard, we do not intend to repeat the concerns we have previously raised other than to re-iterate each of the concerns summarised in our letter dated 31 August 2020 which is enclosed in Annexure B and our letter dated 14 September 2020 which is enclosed in Annexure A.

Compliance of ROW 54 location and crossover to Shepperton Road

22. The only issue we would like to re-iterate specifically is the continuation of the narrative contained in the report which seeks to justify the proposed resolution on the basis of the crossover which connects ROW 54 with Shepperton Road being 'unsafe' and 'inappropriate' and that it should be relocated to ensure that there is a 'compliant' crossover to Shepperton Road.
23. This is not a relevant consideration for the Council in making its decision whether to pass the proposed resolution. The only relevant considerations are the requirements contained in the LA Act. As you are aware, some of the issues we initially raised with the Town were as follows:
 - (a) No analysis has been provided to support the Town's position that a 'safer' and 'compliant' crossover would be achieved by realigning ROW 54. At a minimum, any such analysis would need to consider the traffic volumes utilising ROW 54 in its current configuration as opposed to its proposed realignment, as well as the introduction of a significantly higher volume of traffic as a result of the development of 1022-1032 Albany Hwy in East Victoria Park (**Property**).
 - (b) No objective information has been provided as to why the current configuration of ROW 54 is considered 'unsafe' and 'inappropriate', for example through the provision of accident data history;
 - (c) If ROW 54 is 'unsafe' and 'inappropriate' then the Town should clearly advise why it was only prompted to realign ROW 54 through the Contract, rather than at an earlier point in time.
 - (d) It was not clear whether the advice was provided in the context of the current uses of the Property or once Fabcot has developed the Property into a commercial centre that would result in a significantly higher volume of traffic in the area.
24. Given that the Town has failed to provide a satisfactory response to these issues, you are also aware that:
 - (a) MRWA provided us with a copy of the letter from the Town dated 12 February 2020 (enclosed in Annexure C) which advises MRWA of the proposed closure of

ROW 54 and that the Town was considering the realignment of ROW 54 in the form of a right of carriageway.

- (b) MRWA advised us that it responded to the Town that it did not object to the closure of ROW 54.
 - (c) MRWA also advised us that they were not aware of the proposed development by Fabcot of the Property at the time of providing its feedback.
 - (d) MRWA provided us with a copy of the preliminary design that MRWA was considering to re-align the intersection of Shepperton Road and Albany Highway to create a safer carriageway in the area (see enclosed in Annexure C) which would be impacted by the development of the Property.
25. The above information reinforces the concerns that we have previously raised in relation to the context upon which any advice was provided by MRWA. To date, the Town has continued to fail to address these concerns which include:
- (a) Why MRWA was not advised that the purpose of the proposed closure is to facilitate the development of the Property into a commercial centre that would result in a significantly higher volume of traffic in the area.
 - (b) Whether the Town is aware of the preliminary design by MRWA to re-align the intersection of Shepperton Road and Albany Highway and, if so, why this has not been previously disclosed as part of any agenda in relation to this matter previously.
26. Unless the Town provides the advice received from MRWA then, to the extent that the Town is relying on the feedback from MRWA as a reason to support the proposed resolution, the commentary in relation to this advice that is contained in the report should be disregarded.


Conclusion

27. We continue to remain concerned that the Town is seeking to undertake the proposed dedication of ROW 54 as a public road without a substantive justification. These concerns were proven to be legitimate when the resolution that was put forward at the Ordinary Council Meeting in September 2020 was not passed.
28. It is therefore difficult to understand how the Council could pass the proposed resolution at the Ordinary Council Meeting on 17 November 2020 given that:
- (a) the differences between the Agenda report (as compared to the report contained in the agenda for the September OCM) are not a legitimate basis for the Council to reconsider the decision it made at the September OCM to defeat substantially the same resolution; and
 - (b) the Town has not substantively addressed the issues that have previously been raised and remain unresolved.
29. On this basis, there is no objective or reasonable basis upon which the resolution that is being proposed at the Ordinary Council Meeting on 17 November 2020 should be

passed and therefore we request that this item be withdrawn from the Agenda immediately.

If you have any questions or wish to discuss the above, please let us know.

Yours sincerely,



Glen McLeod
Principal
Glen McLeod Legal

Annexure A

Anthony Vuleta
Chief Executive Officer
Town of Victoria Park
Locked Bag 437
Victoria Park WA 6979

Your ref:
Our ref: ALH/GAM 39627

By post and email

14 September 2020

cc Ben Killigrew
BKilligrew@vicpark.wa.gov.au

Dear Mr Vuleta,

Development Proposal for 1022 - 1032 Albany Highway and Right of Way 54, East Victoria Park

1. We refer to:
 - (a) our various correspondence to the Town of Victoria Park (**Town**) including our most recent letter dated 31 August 2020;
 - (b) the Town's Special Council Meeting (**SCM**) on 1 September 2020 at which the recommendation to make a request to the Minister to dedicate ROW 54 as a public road was considered; and
 - (c) the agenda for the Ordinary Council Meeting to be held on 15 September 2020 (**OCM**) that was published on 11 September 2020 (**Agenda**).
2. We have reviewed the Agenda and note that it continues to fail to properly and substantively address the issues which have been raised in our previous correspondence to the Town up to and including our letter dated 31 August 2020.
3. In this regard, we do not intend to repeat these issues other than to re-iterate and hereby bring to the attention of the Town again, all issues that have previously been raised and which are summarised in our letter dated 31 August 2020.
4. We note that we received a letter from the Town's lawyer on 1 September 2020 advising that the Town is of the view that it has provided substantial responses to the queries we have previously raised and that it is 'not appropriate' to continue to engage with us on this matter going forward.
5. In response to these comments, it is clear that the Town has failed to substantively address the issues we have raised. There is nothing in either the Agenda or any correspondence that we have received from the Town (or its lawyer) which would suggest otherwise in this regard.
6. Further, it is particularly concerning that the Town is taking the position to refuse to respond to the proper and legitimate issues that we have raised. This reinforces our significant concerns with the process that the Town is seeking to undertake in relation to the proposed dedication of ROW 54.

Relevant Correspondence not attached to the Agenda

7. We note that some relevant correspondence has been omitted from the Agenda. This includes:
 - (a) the previous correspondence issued by the Department of Planning, Lands and Heritage (DPLH) dated 3 and 17 August 2020, which was enclosed with our correspondence of the same dates; and
 - (b) our letter to the Town dated 31 August 2020.
8. In relation to the emails from the DPLH dated 3 and 17 August 2020, we note that:
 - (a) the Town also failed to include these emails as part of the agenda for the SCM despite us advising the Town in writing on 1 September 2020 that this was the case and requesting them to do so accordingly; and
 - (b) the failure to include these emails as part of the agenda for the SCM was specifically highlighted to Mr Killigrew during the SCM during public question time.
9. In response to this, Mr Killigrew took this query on notice, but nevertheless stated that there was no requirement for this correspondence to be included and that the Town was being transparent by including our correspondence up until 17 August 2020. As previously advised on multiple occasions, the advice we received from the DPLH that is contained in this correspondence is clearly inconsistent with the commentary provided by the Town which is contained in the Agenda.
10. To date, these inconsistencies have not been properly addressed by the Town and, if the Town is seeking to be transparent, then it should include this correspondence as part of the Agenda so that the advice from the DPLH on this matter, which has been provided in writing, can be publicly viewed and considered.
11. In addition, the Town should also include our letter dated 31 August 2020 as part of the Agenda as it raises legitimate issues and concerns which need to be addressed by the Town. This will ensure that a transparent approach to the matter is taken as it will also allow these issues to be publicly viewed and considered.

Correspondence with Main Roads WA

12. In our letter dated 31 August 2020, we raised our concerns with the comments from the Town (that were contained in the agenda for the SCM) that it had consulted with Main Roads WA (MRWA) in relation to the proposed relocation of ROW 54. In particular, these concerns were that:
 - (a) the advice that was provided by MRWA was not attached to the agenda for the SCM; and
 - (b) it was not clear whether the advice was provided in the context of the current uses of 1022 – 1032 Albany Highway (**Property**) or once it was developed into a commercial centre that would result in a significantly higher volume of traffic in the area.
13. Despite our request for the Town to do so, the Town:

- (a) failed to provide a copy of the advice it received from MRWA as an attachment to the agenda for the SCM; and
 - (b) has also failed to provide a copy of the advice it received from MRWA as an attachment to the Agenda.
14. We re-iterate our view that if the Town has relied on any advice from a third party (including MRWA) then it should be provided as an attachment to the Agenda to ensure transparency.
15. Given the failure of the Town to provide the advice from MRWA, we sought to obtain their advice on this matter directly. In response to our enquiry:
- (a) MRWA provided us with a copy of the letter from the Town dated 12 February 2020 (see enclosed) which advises MRWA of the proposed closure of ROW 54 and that the Town was considering the realignment of ROW 54 in the form of a right of carriageway;
 - (b) MRWA advised us that it responded to the Town that it did not object to the closure of ROW 54;
 - (c) an MRWA officer advised us by telephone that they were not aware of the proposed development by Fabcot Pty Ltd of the Property at the time of providing its feedback; and
 - (d) MRWA provided us with a copy of the preliminary design that MRWA was considering to re-align the intersection of Shepperton Road and Albany Highway to create a safer carriageway in the area (see enclosed) which would be impacted by the development of the Property.
16. This advice reinforces our concerns outlined in paragraph 12 in relation to the context upon which any advice was provided by MRWA. In addition, it also raises the additional concerns:
- (a) it is unclear whether the Town has advised MRWA of the change of circumstances in relation to ROW 54 (from when it issued its letter dated 12 February 2020) and, if so, whether this alters any advice it has received from MRWA;
 - (b) why MRWA was not advised that the purpose of the proposed closure is to facilitate the development of the Property into a commercial centre that would result in a significantly higher volume of traffic in the area; and
 - (c) whether the Town is aware of the preliminary design by MRWA to re-align the intersection of Shepperton Road and Albany Highway and, if so, why this has not been previously disclosed as part of any agenda in relation to this matter previously.
17. We restate that the Town should publicly provide a copy of any advice that it has received from MRWA to ensure transparency. Until this has occurred (and our additional concerns have also been addressed) then, to the extent that the Town is relying on the feedback from MRWA as a reason to support its proposed recommendation at the OCM, the commentary in relation to this advice that is contained in the Agenda should be disregarded.

Probate Enquiry

18. As you are aware, the proposed recommendation to be considered at the SCM was deferred to the OCM 'to seek the outcome of the probate enquiry'. Despite this, there is no commentary contained in the Agenda in relation to the outcome of the probate enquiry, and therefore any advice the Town may have received, cannot properly be considered before the OCM.
19. If the Town is intending to rely on any advice from Probate at the OCM then it should be provided as part of the commentary in the Agenda to ensure transparency and to allow it to be properly considered beforehand.
20. In any event, we repeat our previous comments that undertaking a 'probate enquiry' should not be taken as a replacement for a satisfactory level of public consultation, prior to requesting that the Minister dedicate ROW 54 as a public road.

Conclusion

21. We continue to remain concerned that the Town is seeking to undertake the proposed dedication with no consultation and with no substantive justification as to why this consultation is not required and no objective demonstration of the public purpose which is behind the proposal.
22. We request that that the Town defer consideration of this agenda item and any associated recommendation until such time as the various matters we have raised are properly and substantively addressed.
23. If the Town nevertheless decides to proceed with the proposed recommendation, then it should immediately take steps to:
 - (a) attach a copy of this letter to the Agenda together with our letter dated 31 August 2020;
 - (b) attach a copy of the emails from the DPLH dated 3 and 17 August 2020 to the Agenda;
 - (c) attach a copy of any advice it has received from MRWA to the Agenda;
 - (d) update the Agenda to address the matters we have raised in paragraph 16; and
 - (e) update the Agenda to include an appropriate level of commentary in relation to the outcome of the probate enquiry undertaken by the Town.

If you have any questions or wish to discuss the above, please let us know.

Yours sincerely,


Glen McLeod
Principal
Glen McLeod Legal

Annexure B

Fiona Grgich
Managing Partner
McLeods
220 Stirling Highway
Claremont WA 6010

Your ref: FG:VIC:44924
Our ref: ALH/GAM 36924

31 August 2020

cc: Anthony Vuleta
AVuleta@vicpark.wa.gov.au

By post and email

Dear Fiona,

Development Proposal for 1022 - 1032 Albany Highway and Right of Way 54, East Victoria Park

1. We refer to our letter dated 28 August 2020, relating to the Special Council Meeting (SCM) which has been called by the Town of Victoria Park (Town) on 1 September 2020 to discuss the dedication of ROW 54 as a public road.
2. We have reviewed the agenda for the SCM and note that it does not substantively address the issues which have been raised in our previous correspondence with the Town and you (most notably being our letters dated 17 August 2020 and 26 August 2020). These include:
3. the requirement for a satisfactory level of public consultation to occur prior to the Town making a decision as to whether it should request that the Minister dedicate ROW 54 as a public road;
4. the insistence that an aerial photograph is sufficient evidence to demonstrate that the public has enjoyed continuous and uninterrupted use of ROW 54 for at least a 10 year period, despite the fact that the Department of Planning, Lands and Heritage (DPLH) advising that it would expect a more detailed submission in this regard;
5. the failure to take any steps to identify (or consult with) the current registered proprietor(s) of ROW 54 and to notify them that the Town is seeking to unilaterally dedicate their land;
6. the correspondence with the DPLH dated 3 August 2020 and 14 August 2020 and the advice given to the Town in respect of the processes for dedicating ROW 54 not being consistent with the commentary contained in either the agenda for the SCM (SCM Agenda) or agendas that were prepared on this matter previously; and
7. whether the Town can lawfully use the *Land Administration Act 1997* (WA) (LA Act) to request that the Minister dedicate ROW 54 in order to satisfy a condition precedent in its contract with a private entity, rather than for a public purpose.
8. In addition, the Town has also failed to advise when the contract with Fabcot Pty Ltd (Fabcot) was executed and whether the parties subsequently agreed to extend the 'Latest Date' by which Condition Precedent 2.1(a)(i)(C) must be satisfied.

9. The SCM Agenda also raises a number of new issues in relation to the proposed dedication of ROW 54. These issues are contained in the additional generic and broad commentary which was not included in previous meeting agendas when this item was discussed. In response to these issues and the additional commentary we make the below remarks.

Compliance of ROW 54 location and crossover to Shepperton Road

10. From the SCM Agenda it now appears that the central justifications which the Town is relying on to support its recommendation to request that the Minister dedicate ROW 54 are:
- (a) the crossover which connects ROW 54 with Shepperton Road is 'non-compliant' and should therefore be relocated (together with a slip lane) to ensure that there is a 'compliant' crossover to Shepperton Road;
 - (b) the proposed development by Fabcot of 1022-1032 Albany Hwy (Property) intends to bring this crossover up to 'a current safer design standard';
 - (c) ROW 54 has become redundant as a result of the intended future use of the Property and inappropriate when having regard to future road design; and
 - (d) the current alignment of ROW 54 is no longer consistent with the planning objectives of the Town for the Property.
11. These justification demonstrate that the Town has introduced a new narrative in the SCM Agenda, which is that that the proposed dedication should be referred to the Minister for reasons of 'safety', 'compliance' and to achieve a 'better standard'. To suggest that these aspects should be the reason to approve the proposed referral is incorrect. The only relevant considerations are the requirements contained in the *Land Administration Act 1997* (LA Act), which the Town has failed to properly address for the reasons previously provided. These new justifications for the Town's position also raises the following issues.
12. ROW 54 is intended to be realigned as a part of the development of the Property. On this basis, any comment by the Town that the proposed realignment of ROW 54 (as compared to its current configuration) provides a more desirable outcome pre-supposes that the development of the Property will be approved (and the realignment implemented accordingly). Any such justification in this regard is fundamentally flawed because of this presupposition.. The Town has an obligation to give proper, objective and independent consideration to any development application it receives. It is unable to do so if it holds a pre-determined view on any specific matter associated with the development of the Property.
13. Comments made by the Town which presuppose the development of the Property being approved are also concerning given that they compromise the future decision making of the Town in relation to the Property.
14. No analysis has been provided to support the Town's position that the policy objective of creating a 'safer design standard' would be achieved by realigning ROW 54. At a minimum, any such analysis would need to consider the traffic volumes utilising ROW 54 in its current configuration as opposed to realigning ROW 54 as proposed and introducing a significantly higher volume of traffic as a result of development of the Property. The Town has also not provided any objective information as to why the current configuration of

ROW 54 is considered 'unsafe' such as providing crash data history or other similar information to support its position.

15. If ROW 54 is 'non-compliant' then the Town should clearly advise why it has not previously sought to realign ROW 54 to an alternative location and when it would have otherwise done so (had it not been for the obligation on the Town to do so under its contract with Fabcot).
16. The Town has not demonstrated how the planning objective to '*...have a positive impact in reducing anti-social and crime related activity...*' will be achieved by dedicating ROW 54 as a public road and subsequently realigning it as well. This objective *may* be achieved by developing the Property (but not by the dedication of ROW 54 in isolation) which further supports the view that the proposed dedication is only being sought to facilitate the development of the Property.
17. Each of these issues reinforces the view that the proposed dedication of ROW 54 is not being done for a 'public purpose' but rather to facilitate its closure to solely benefit the private interests of Fabcot, pursuant to the contract of sale that it has with the Town.

Common law dedication of ROW 54

18. The Agenda suggests that the circumstances surrounding ROW 54 may allow it to be dedicated as a public road under common law and therefore this provides justification for the proposed request to dedicate ROW 54 in accordance with section 56(1)(c) of the LA Act.
19. We are at a loss to understand how it can be suggested that such a common law dedication would apply in this situation given that the Town is seeking to recommend that it be dedicated under the LA Act. Even if there was some merit in stating that such a dedication would apply (which is denied) it is incorrect to suggest that this provides an appropriate basis to make a request under section 56(1)(c) of the LA Act.

Correspondence with Main Roads WA

20. The Town has stated that it has consulted with Main Roads WA (MRWA) in relation to the proposed relocation of ROW 54. The agenda states that MRWA has confirmed that the new proposed access point onto Shepperton Road will (amongst other things) satisfy Development Control Policy 5.1.
21. However, the basis on which this advice was provided by MRWA is not explained in the SCM Agenda. For example, it is not clear whether the advice was provided in the context of the current uses of the Property or once Fabcot has developed the Property into a commercial centre that would result in a significantly higher volume of traffic in the area.
22. Any correspondence from MRWA in support of the proposed relocation of ROW 54 would only be applicable in the latter situation. However, any such consideration of this situation by MRWA should only occur as part of any development application lodged for the Property. It should not form part of any preliminary discussion with the Town so as not to fetter the discretion of MRWA in the future.
23. If the Town has relied on any advice from a third party (including MRWA) then it should be provided as an attachment to the SCM Agenda to ensure transparency. This is especially

pertinent given that the previous agenda contained comments concerning advice from the DPLH which were identified to be inaccurate.

24. In the event that the Town does not provide any advice it receives from a third party as an attachment to the SCM Agenda, and therefore should carry little weight.

Probate enquiry

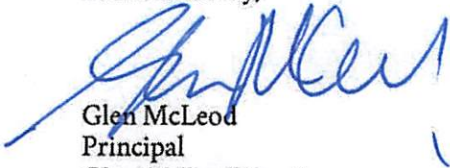
25. The Town has advised that it intends to '...undertake a probate enquiry as a matter of course...'. This cannot be taken as a justification for not attempting to identify or notify the current registered proprietors of ROW 54 of the Town's intention to request to dedicate their land unilaterally as a public road.
26. On this basis, the assurance to undertake a 'probate enquiry' should not be taken as a replacement for a satisfactory level of public consultation, prior to requesting that the Minister dedicate ROW 54 as a public road.

Conclusion

27. In light of the above, we request the following:
 - (a) that a substantive response be provided to both this letter and our letter dated 17 August 2020; and
 - (b) that the Council defer consideration of this agenda item and any associated recommendation until such time as a proper and substantive response to both this letter and our letter dated 17 August 2020 has been provided to us and also circulated to the Councillors.
28. If the Town nevertheless decides to proceed with the SCM, then it should:
 - (a) immediately takes step to attach a copy of this letter to the SCM Agenda; and
 - (b) provide a copy (as an attachment to the SCM Agenda) of any advice it has received from MRWA.

If you have any questions or wish to discuss the above, please let us know.

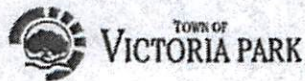
Yours sincerely,



Glen McLeod
Principal
Glen McLeod Legal

Annexure C

Our Ref: D19/45047
Enquiries: Peter Scasserra
Telephone: 9311 8111
Email: admin@vicpark.wa.gov.au



12 February 2020

Main Roads WA
PO Box 6202
EAST PERTH WA 6892



Dear Sir/Madam

**NOTICE OF CLOSURE AND POTENTIAL AQUISION OF PORTION OF DEDICATED ROAD
BOUNDED BY SHEPPERTON ROAD, ALBANY HIGHWAY AND OATS STREET, EAST
VICTORIA PARK (ROW 54)**

The Town of Victoria Park at its Ordinary Council Meeting of 19 November 2019 resolved to close a portion of the above dedicated road pursuant to section 58 of the Land Administration Act 1997.

The proposal was advertised on 11 December 2019 in accordance with Council's resolution. No submissions were received at the end of the advertised submission period and the Town will now progress the closure.

To allow the through movement of traffic to access Shepperton Road, a proposed right of carriageway is being considered over the adjoining land known as 355-357 Shepperton Road, East Victoria Park, subject to Main Roads WA approval.

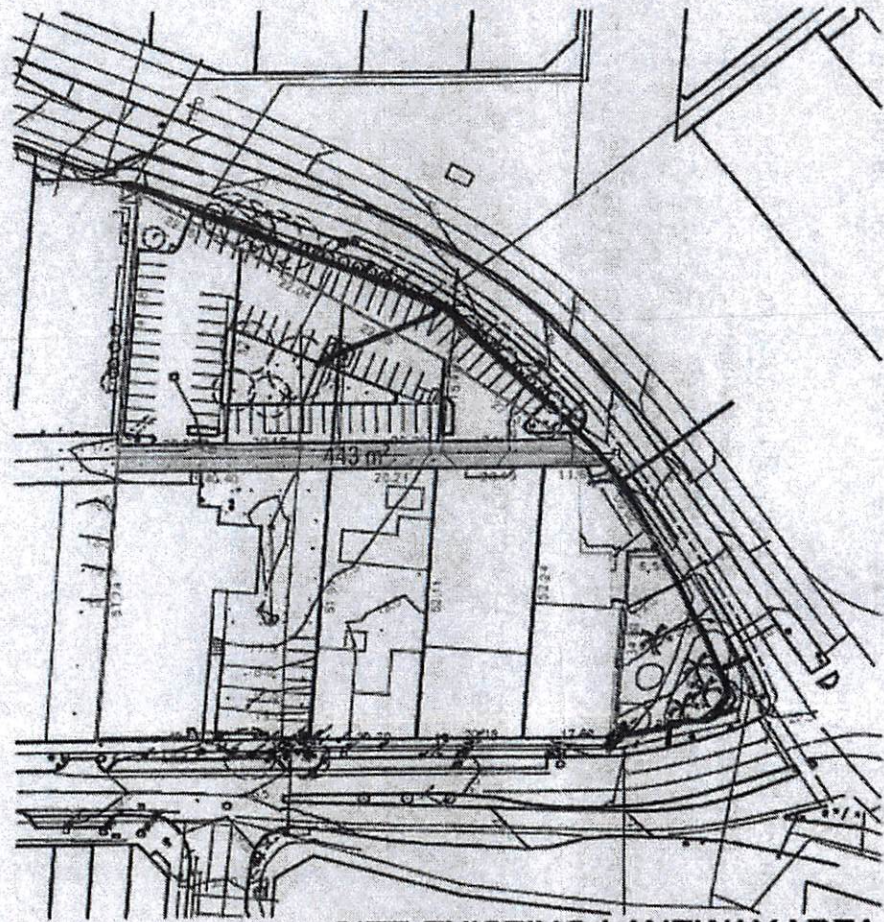
A plan which depicts the dedicated road and the portion to be closed has been provided overleaf for your reference.

Should you require any further information please don't hesitate to contact me at this office.

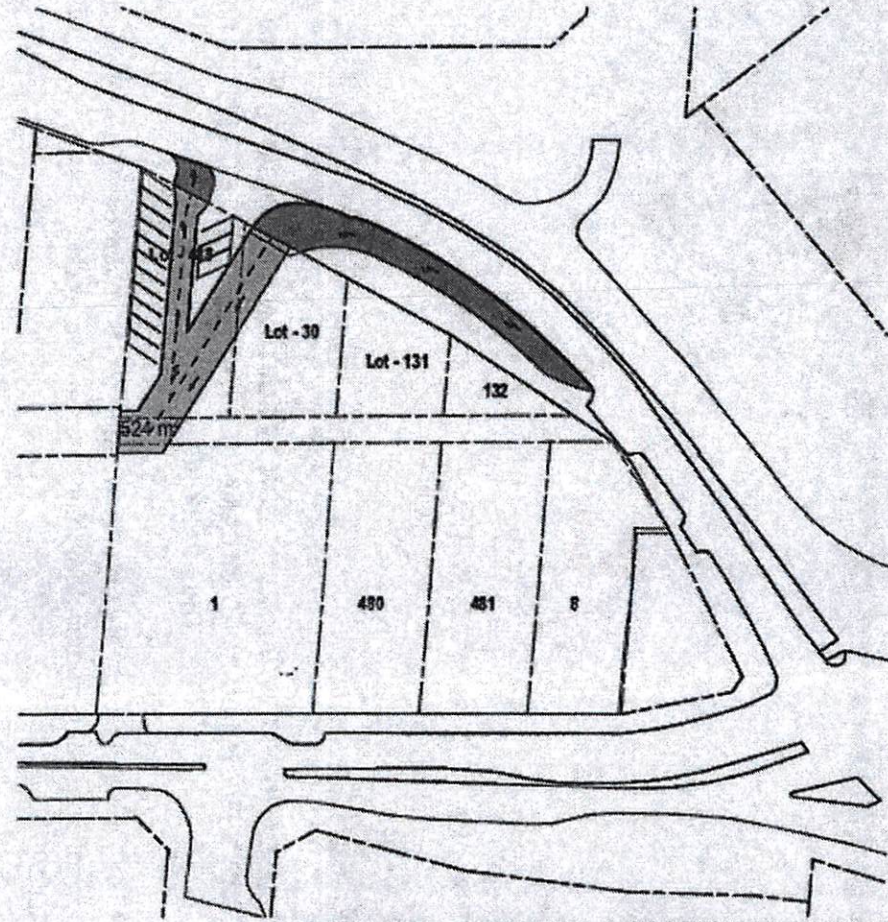
Yours sincerely

Peter Scasserra
Leasing and Property Projects Officer

tel (08) 9311 8111	Administration Centre,	Locked Bag No. 437,	admin@vicpark.wa.gov.au
fax (08) 9311 8181	99 Shepperton Road,	Victoria Park WA 6979	www.victoriapark.wa.gov.au
abn 77 284 859 739	Victoria Park WA 6100		



SITE EXISTING LANEWAY AREA



SITE PROPOSED LANEWAY AREA