

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