

Ben Killigrew  
Chief Operating Officer  
Town of Victoria Park  
Locked Bag 437  
Victoria Park WA 6979

Your ref:  
Our ref: ALH/GAM 36915

21 July 2020

cc: Councillors of the Town of Victoria Park

## By post and email

Dear Mr Killigrew,

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

1. We refer to the Town of Victoria Park's (**Town**) amended agenda for the Ordinary Council Meeting this evening (**Agenda**). We note that a memorandum has been included for Item 13.1 which states:

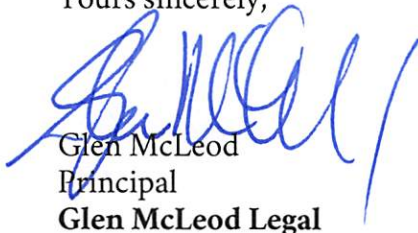
The Town had advertised the proposed closure of the right-of-way under section 58 of the *Land Administration Act* referring to a "dedicated road" and due to the advised change is re-advertising to reflect the updated land tenure. As such, the officer's recommendations for item 13.1 has been amended.

2. We acknowledge that the above suggests that the Town is in part following the correct processes under the *Land Administration Act 1997* (WA) (**LA Act**) and the *Land Administration Regulations 1998* (WA) by requiring the re-advertising of the proposed closure of Right of Way 54 (**ROW 54**).
3. However, the re-advertising of the proposed closure only addresses one of the concerns raised in our letter of 13 July 2020. The re-advertising should not be considered as a substitute to forego the proper consideration as to whether it is appropriate for the Council to resolve to request that the Minister dedicate a portion of ROW 54 given that:
  - (a) the Town has not carried out any advertising or other form of consultation in relation to its proposal to request that the Minister dedicate ROW 54 as a public road;
  - (b) the Council has not been provided with adequate evidence to support the assertion that the public has had uninterrupted use of ROW 54 for a period not less than 10 years;
  - (c) no assurance has been given that the beneficiaries of the residuary estates of Alexander Joseph Monger and Charles Victor Hale have been identified and notified of the proposal to dedicate their privately owned land as a public road; and

- (d) no consideration has been given as to whether the Town can lawfully use the LA Act to dedicate the private owned land (being ROW 54) as a public road in order to facilitate a transaction for the benefit of a private entity rather than a public purpose and thereby ignoring a fundamental requirement of the LA Act.
4. Further, Recommendation 4 in Item 13.1 recommends that Council “*Gives notice and seek public submissions on a proposal to request the Minister for Lands (WA) to close and amalgamate a 445 m2 portion of ROW 54...*”. There are two fundamental issues with this recommendation which are as follows:
- (a) it suggests that the relevant procedures that are required to request ROW 54 to be dedicated as a public road and, if approved, any subsequent proposed closure and amalgamation can occur contemporaneously. This is unable to occur for the reasons outlined in our letter dated 13 July 2020.
- (b) any advertisement carried out under section 58 of LA Act can only be for ‘...a road in [the] district...’ of the relevant authority (see paragraphs 18 and 19 of our letter dated 13 July 2020). Given that ROW 54 is not currently dedicated as a public road, no steps should be taken to re-advertise its proposed closure and amalgamation until any such dedication has been completed (as it presupposes that the dedication of ROW 54 is both lawful and will be approved).
5. On this basis, it would be improper for the Council to resolve to approve Recommendation 4.
6. We request that Council defer consideration of whether it can resolve to request that the Minister dedicate a portion of ROW 54 as a public road until it has received advice on the issues outlined above and which we also identified in our previous correspondence that we have issued.

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

Yours sincerely,



Glen McLeod  
Principal  
**Glen McLeod Legal**