



TOWN OF  
VICTORIA PARK

## Special Council Meeting Minutes – 1 September 2020

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**WE'RE OPEN**  
**VIC PARK**

Please be advised that a **Special Council Meeting** was held at **6pm** on **Tuesday 1 September 2020** in the **Council Chambers**, Administration Centre at 99 Shepperton Road, Victoria Park.

**Deputy Mayor Bronwyn Ife**  
2 September 2020

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# 1 Declaration of opening

Deputy Mayor Bronwyn Ife opened the meeting at 6pm.

## Acknowledgement of Country

*Ngany yoowart Noongar yorga, ngany wadjella yorga. Ngany djerapiny Wadjak – Noongar boodja-k yaakiny, nidja bilya bardook.*

I am not a Nyungar woman, I am a non-Indigenous woman. I am honoured to be standing on Whadjuk - Nyungar country on the banks of the Swan River.

*Ngany kaaditj Noongar moort keny kaadak nidja Wadjak Noongar boodja. Ngany kaaditj nidja Noongar birdiya – koora, ye-ye, boorda, baalapiny moorditj Noongar kaaditjin, moort, wer boodja ye-ye.*

I acknowledge the traditional custodians of this land and respect past, present and emerging leaders, their continuing cultural heritage, beliefs and relationship with the land, which continues to be important today.

*Ngany youngka baalapiny Noongar birdiya wer moort nidja boodja.*

I thank them for the contribution made to life in the Town of Victoria Park and to this region.

# 2 Announcements from the Presiding Member

## 2.1 Recording and live streaming of proceedings

In accordance with clause 39 of the *Town of Victoria Park Meeting Procedures Local Law 2019*, as the Presiding Member, I hereby give my permission for the administration to record proceedings of this meeting.

This meeting is also being live streamed on the Town's website. By being present at this meeting, members of the public consent to the possibility that their image and voice may be live streamed to public. Recordings are also made available on the Town's website following the meeting.

## 2.2 Public question time and public statement time

There are guidelines that need to be adhered to in our Council meetings and during question and statement time people speaking are not to personalise any questions, or statements about Elected Members, or staff or use any possible defamatory remarks.

In accordance with clause 40 of the *Town of Victoria Park Meeting Procedures Local Law 2019*, a person addressing the Council shall extend due courtesy and respect to the Council and the processes under which it operates and shall comply with any direction by the presiding member.

A person present at or observing a meeting shall not create a disturbance at a meeting, by interrupting or interfering with the proceedings, whether by expressing approval or dissent, by conversing or by any other means.

When the presiding member speaks during public question time or public statement time any person then speaking, is to immediately stop and every person present is to preserve strict silence so that the presiding member may be heard without interruption.

Questions and statements at this Special Council Meeting must relate to the business of the agenda.

### **2.3 No adverse reflection**

In accordance with clause 56 of the *Town of Victoria Park Meeting Procedures Local Law 2019*, both Elected Members and the public when speaking are not to reflect adversely on the character or actions of Elected Members or employees.

### **2.4 *Town of Victoria Park Meeting Procedures Local Law 2019***

All meetings of the Council, committees and the electors are to be conducted in accordance with the Act, the Regulations and the *Town of Victoria Park Meeting Procedures Local Law 2019*.

### **3 Attendance**

#### **Banksia Ward**

Cr Claire Anderson  
Cr Ronhhda Potter  
Cr Wilfred Hendriks  
Cr Luana Lisandro

#### **Jarraah Ward**

Deputy Mayor Bronwyn Ife  
Cr Brian Oliver  
Cr Jesvin Karimi

#### **Chief Executive Officer**

Mr Anthony Vuleta

#### **Chief Operations Officer**

Mr Ben Killigrew

#### **Chief Financial Officer**

Mr Michael Cole

#### **A/Chief Community Planner**

Mr David Doy

#### **Manager Development Services**

Mr Robert Cruickshank

#### **Governance Advisor - Compliance**

Mr Liam O'Neill

#### **Secretary**

Ms Amy Noon

#### **Public liaison**

Ms Alison Podmore

#### **Public**

4

### **3.1 Apologies**

#### **Chief Community Planner**

Ms Natalie Martin Goode

### **3.2 Approved leave of absence**

#### **Mayor**

Mayor Karen Vernon

Banksia Ward

Cr Claire Anderson

Jarraah Ward

Cr Vicki Potter

## **4 Declarations of interest**

### **Declaration of financial interest**

Nil.

### **Declaration of proximity interest**

Nil.

### **Declaration of interest affecting impartiality**

Nil.

## **5 Public question time**

### **Vince Maxwell**

*1. What is the urgency in having a Special Council Meeting for this item?*

The Chief Operations Officer advised that there has been a long series of reports that have had to be separated and brought to Council to dedicate the road and fulfill the obligations to the owner of the site near the area being considered.

*2. Why is the legal advice not included in the appendices?*

The Chief Operations Officer advised that the legal advice is confidential.

*3. Why isn't the advice and guidance from the Department of Planning, Lands and Heritage (DPLH) included?*

The Chief Operations Officer advised that this question was answered at the last meeting. Communication with DPLH has been verbal and by email. It wasn't considered relevant to attach all communication to the report.

*4. Why isn't there any of it?*

The Chief Operations Officer advised that the guidance is outlined in the report.

*5. Was the advice from DPLH in writing?*

Deputy Mayor Bronwyn Ife advised that this question has been answered already.

The Chief Operations Officer advised that the advice has been in many forms. Guidance and advice has been followed throughout the process. DPLH will make a determination and then the Minister will make a determination.

*6. Was any advice in writing?*

The Chief Operations Officer advised that he was aware of some email correspondence between officers and DPLH.

*7. Why is the Town not being transparent about this matter? What do you not want us to see? Do the documents exist?*

Deputy Mayor Bronwyn Ife advised that she considered some of the questions to not be constructive.

The Chief Operations Officer advised that the attached letters are opinions from a lawyer. The Town has obtained legal advice and are confident in the process being followed and that we are conducting ourselves in a legal manner.

*8. Is the statement correct about the Town receiving guidance from DPLH that providing the Town can provide an aerial photograph confirming the public having use of the right-of-way for at least 10 years, it will have met the requirements?*

Deputy Mayor Bronwyn Ife advised that it was correct to best of her knowledge and the advice received.

The Chief Operations Officer advised that the Town is following guidance from lawyers and DPLH. It satisfies the requirement of Section 56 of the Land Administration Act.

*9. Did DPLH give that information?*

The Chief Operations Officer that to best of his understanding, that is correct. It was also confirmed through legal advice.

*10. The letter from Glen McLeod on 17 August states that no such advice was provided to the Town from DPLH and requested that an email be attached to the agenda. Did the Town receive the email and why was it not included in the agenda appendices? What is the Town hiding?*

The Chief Operations Officer advised that many letters are included and took the question on notice. He also added that the Town is not required to include items in the agenda at the request of an external party that is not involved. The request is beside the point because the Town is being transparent by including the letters from Glen McLeod.

*11. Did the department advise that all the Town needs is a photograph? Why can't the community see the advice?*

The Chief Operations Officer advised that this question has already been answered. All advice has been followed. The Town is comfortable that we're following the requirements of the Land Administration Act.

*12. Why hasn't the Town done a probate enquiry already? Why was it not the first action taken when it was discovered that it didn't belong to the Town?*

Deputy Mayor Bronwyn Ife advised that the Town has done it.

The Chief Operations Officer advised that a probate enquiry isn't required for this path. The Town is doing more than is necessary to ensure transparency to Councillors and the community.

*13. What is the land that is being given to the developer worth?*

Deputy Mayor Bronwyn Ife advised that the question wasn't relevant as the item relates to the dedication of the road and not the sale.

The Chief Operations Officer advised that the portion of the road being referred to is an access way that has been available to the public for many decades. That portion of the right of way accesses a number of properties that are owned by FABCOT. The Town is proposing to relocate the right-of-way to create a safer access from Shepperton Road.

## PROCEDURAL MOTION

**Moved:** Cr Bronwyn Ife

**Seconded:** Cr Jesvin Karimi

Extend public question time by five minutes.

**CARRIED (6 - 0)**

**For:** Cr Ronnhda Potter, Cr Brian Oliver, Cr Luana Lisandro, Cr Wilfred Hendriks, Cr Bronwyn Ife, Cr Jesvin Karimi

**Against:** nil

*14. If the Minister is absolved, who is liable for any future compensation?*

The Chief Operations Officer advised that this indemnity is a standard clause. It is a minimal risk and is recommended in line with guidance from DPLH. The Town would be liable.

*15. Where does the money come from if the Town has to pay?*

The Chief Operations Officer advised that the Town assessed the risk and the advice is that there is minimal risk that any value will be paid.

*16. Does the Local Government Act provide elected members with parliamentary privilege that protects them from litigation that an injured party might bring?*

The Governance Advisor - Compliance advised that there is no such indemnity.

*17. Are you saying there is no such protection?*

The Governance Advisor - Compliance advised that people would bring a suit against the Town, not individual Councillors but took the question on notice.

*18. Can the Council legally make a decision knowing that they are exposing ratepayers to a future final loss in the event that the rightful owners of the land seek compensation?*

The Chief Operations Officer advised that the Town is following advice from DPLH and the legal team. It is not an unusual process. The world was a different place when development occurred in 1904. The approach is well considered and shouldn't lead to the hypotheticals mentioned.

## 6 Public statement time

*The Manager Development Services left the meeting at 6.25pm and returned at 6.30pm.*

**Vince Maxwell**

1. Made a statement against the recommendation for item 9.1.

## 7 Presentations



### **7.1 Petitions**

Nil.

### **7.2 Presentations**

Nil.

### **7.3 Deputations**

Nil.

## **8 Method of dealing with agenda business**

Nil.

## 9 Chief Operations Officer reports

### 9.1 Request to dedicate ROW 54 as a road

<b>Location</b>	East Victoria Park
<b>Reporting officer</b>	Peter Scasserra
<b>Responsible officer</b>	Jon Morellini
<b>Voting requirement</b>	Simple majority
<b>Attachments</b>	<ol style="list-style-type: none"><li>1. January 2000 Aerial Photo - ROW 54 [9.1.1 - 1 page]</li><li>2. Road Dedication Map - ROW 54 [9.1.2 - 1 page]</li><li>3. Glen Mc Leod Legal 5 August 2020 [9.1.3 - 1 page]</li><li>4. Glen Mc Leod Legal 1 July 2020 [9.1.4 - 1 page]</li><li>5. Glen Mc Leod Legal 17 August 2020 [9.1.5 - 5 pages]</li><li>6. Glen Mc Leod Legal 21 July 2020 [9.1.6 - 2 pages]</li><li>7. Glen Mc Leod Legal 17 July 2020 [9.1.7 - 2 pages]</li><li>8. Glen Mc Leod Legal 3 August 2020 [9.1.8 - 3 pages]</li><li>9. Glen Mc Leod Legal 13 July 2020 [9.1.9 - 5 pages]</li><li>10. CONFIDENTIAL REDACTED - Legal Advice to Town of Victoria Park - ROW 54 and 355-357 Shepperton Rd 180820 [9.1.10 - 2 pages]</li><li>11. CONFIDENTIAL REDACTED - Legal Advice to Town of Victoria Park - ROW 54 290720 [9.1.11 - 4 pages]</li><li>12. CONFIDENTIAL REDACTED - Legal Advice to Town of Victoria Park - ROW 54 [9.1.12 - 11 pages]</li></ol>

#### Recommendation

That Council:

1. Resolves to request the Minister for Lands (WA) to dedicate portion of Lot 0 on Plan 2609, East Victoria Park as a road, pursuant to section 56(1)(c) of the *Land Administration Act 1997*, and regulation 8 of the *Land Administration Regulations 1998*.
2. Resolves to request the Minister for Lands (WA) to dedicate all of Lot 67 on Diagram 13701, East Victoria Park as a road, pursuant to section 56(1)(c) of the *Land Administration Act 1997*, and regulation 8 of the *Land Administration Regulations 1998*.
3. Indemnifies the Minister for Lands against any claim for compensation that may arise, pursuant to section 56(4) of the *Land Administration Act 1997*.

#### Purpose

The Town is seeking a resolution from Council pursuant to s56 (1)(c) of the Land Administration Act 1997 to lodge a formal request to the Minister for Lands (WA) for the dedication of portion of Lot 0 on Plan 2609 and all of Lot 67 on Diagram 13701 as a road and to indemnify the Minister for Lands (WA) against any claim for compensation that may arise from dedicating portion of Lot 0 and all of Lot 67 as a road.

#### In brief

- The portion of Lot 0 on Plan 2609 and the portion of Lot 67 on Diagram 3701 are referred to in this report as ROW 54.

- Prior to August 2019, the Town had been advised by Landgate that ROW 54 had the status of a public road. That understanding affected the approach taken by the Town in regard to the future use of the land in ROW 54.
- At the Ordinary Council Meeting of 19 November 2019, the Council resolved to delegate to the Chief Executive Officer and the Mayor the authority to execute all necessary documentation under the Town's Common Seal in accordance with s58 and s87 of the *Land Administration Act 1997*, and regulation 9 of the *Land Administration Regulations 1998* to satisfy conditions precedent 2.3(b) within the contract of sale for 355-357 Shepperton Road, East Victoria Park to Fabcot Pty Ltd.
- As a result of updated advice, the Town must now request the Minister for Lands (WA) to dedicate the private road and ROW being portion of Lot 0 on Plan 2609 and all of Lot 67 on Diagram 13701 as road pursuant to s56 (1)(c) of the *Land Administration Act 1997* and regulation 8 of the *Land Administration Regulations 1998*, this requires a Council Resolution and Indemnity.
- The existing ROW currently provides a connection with a crossover to Shepperton Road, this crossover is non-compliant. The development intends to bring the existing non-compliant ROW crossover up to a current safer design standard by creating a slip lane and new access point further away from the traffic light intersection.
- Condition precedent 2.3(b) requires closing and amalgamating a 445m<sup>2</sup> portion of ROW 54 situated in between 355-357 Shepperton Road and land owned by Fabcot Pty Ltd on Albany Hwy. The ROW has become redundant in light of intended future use of the adjacent land, and inappropriate having regard to future road designs.
- Advice received from the Department of Planning, Lands, and Heritage, resulting from an investigation by a survey team, identified an anomaly with Landgate's cadastral data which had erroneously depicted the three land parcels within ROW 54, being portion of Lot 0 on Plan 2609 (the two components of the formerly identified dedicated road) and all of Lot 67 on Diagram 13701 which is in the middle of these two lots, as dedicated road rather than private road.
- To resolve the tenure of the ROW, the Town must request the Minister for Lands (WA) to dedicate portion of Lot 0 on Plan 2609 and all of Lot 67 on Diagram 13701 as road pursuant to s56(1)(c) of the *Land Administration Act 1997* and regulation 8 of the *Land Administration Regulations 1998*, and indemnify the Minister for Lands (WA) against any claims for compensation that may arise.
- At the Ordinary Council Meeting of 21 July 2020, the Council resolved to receive the letter from Glen McLeod Legal as received and request the Chief Executive Officer to provide a report to Council addressing the matters in the letter received minutes before the 21 July Ordinary Council Meeting.
- The Town has sought legal advice which confirms that the course of action proposed by the Town in regard to ROW 54 is appropriate. The Town has also sought the advice and guidance of the Department of Planning, Lands, and Heritage in connection with the dedication request, and has followed the appropriate and necessary processes to give effect to the dedication.

## Background

1. Council at its Ordinary Council meeting In November 2019 resolved to approve the contract of sale for land adjacent to ROW 54 being Lot 30 on Diagram 10509, Lot 488 on Plan 2609 and Lots 131 and 132 on Deposited Plan 45782 (355-357 Shepperton Road). The contract obligates the Town to satisfy conditions precedent before the sale can proceed.
2. Condition precedent 2.3(b) requires the Town to close and amalgamate a portion of dedicated road (known as ROW 54) into adjacent Lot 30 on Diagram 10509, Lot 488 on Plan 2609 and Lots 131 and 132 on Deposited Plan 45782.

3. Vehicular access to the area is planned to be relocated to a future ROW that will service the locality at a safer entry/egress location than the existing one from Shepperton Rd, further to the North with a full slip lane and left in/left out.
4. Private ROW's are roads set out on a plan of subdivision of privately owned land which have not been dedicated to public use. They are pertinent only to those lots on the plan which abut onto the private road by providing owners with an implied right of way, unless additional rights have been granted by registered easement. Currently all lots associated with the eastern portion of the ROW are owned by Fabcot.
5. ROWs are created to allow for existing or planned future public access over land (e.g. by vehicles, cyclists or pedestrians) where it is not considered appropriate or possible to dedicate land as a public road.
6. Historically, ROW 54 was created in 1904 by subdivision to service the created lots. Its intended use was right of carriageway to provide access to the adjoining properties as well as an access way for public use, and has been used for this purpose since its creation. Given the lay of the land as a ROW in the original subdivision in 1904, and the regular use of the ROW by the public, it is not appropriate to see the original laying out of the ROW as an act of dedication by the original subdivider, and the consistent public use in the meantime as possibly completing a common law dedication. Avoiding the need to obtain a formal recognition of common law dedication, the proposal for dedication under s56(1)(c) of the *Land Administration Act 1997* has historical support.
7. ROW 54 is 230m in length and varies in width from 5m at the northern end to approximately 9m in some wider midblock sections. It is sealed with a thin layer of dense graded asphalt, approximately 25mm to 30mm thickness. The seal and pavement are likely to be more than 20 years old with some sections closer to Oats Street in fairly poor condition, the overall condition rating varies between 3 and 4.1 (0-5 scale with 5 being best). The underlying formation is unknown. A main sewer line also runs through the entire length of ROW 54.
8. A 445m<sup>2</sup> portion of ROW 54 (approximately 89.4m in length) at the Shepperton Road end, abuts 355-357 Shepperton Road, being the car park owned in freehold by the Town of Victoria Park.
9. On 30 August 2019, Landgate informed the Town that the relevant portion of ROW 54 was dedicated.
10. Based on Landgate's assessment that identified the relevant portion of ROW 54 as dedicated road, the Town entered into a contractual agreement on the assumption that the dedicated road could be closed pursuant to s58 of the *Land Administration Act 1997*.
11. As part of the Town's preliminary discussions the Town consulted with Main Roads to determine whether it could achieve maintaining the through movement of traffic onto Shepperton Road following the closure of the relevant portion of ROW 54.
12. The Town provided a draft plan to the Department of Planning, Lands and Heritage displaying the closure of the relevant portion of ROW 54 as well as the final outcome which seeks to keep public access to the area open by realigning and repositioning the access point onto Shepperton Road, and preserves the right of public access to free parking. The new access point includes a slip lane with left in entry and left out exit and allows for a safer and compliant crossover onto Shepperton Road.
13. To consider the proposed realignment of the ROW the Department of Planning Lands and Heritage contracted a surveyor for advice relating to the compilation of the draft deposited plan depicting the approved exit design.
14. As a result of the surveyor's investigation, an anomaly with Landgate's cadastral data was discovered that erroneously depicted two Landgate PINs as dedicated road.
15. The correct Landgate records appear to identify a portion of Lot 0 on Plan 2609 and all of Lot 67 on Diagram 13701 as existing private roads held in fee simple, the current registered proprietors of which are deceased estates. Considering the creation of the ROW in the original 1904 subdivision, and the regular use of the ROW land by the public, the circumstances suggest the possible existence of a common law dedication, and that possibility may be consistent with the present proposal for the land to be dedicated pursuant to s56 of the *Land Administration Act 1997*.

16. Lot 0 on Plan 2609 is paved and currently in use. It provides through vehicle access by way of rights of carriageway from Oats Street to Shepperton Road, East Victoria Park. The owner, Alexander Joseph Monger, is deceased.
17. Lot 67 on Diagram 13701 is paved and currently in use. It provides through vehicle access by way of rights of carriageway from Oats Street to Shepperton Road, East Victoria Park. The owner, Charles Victor Hale, is deceased.
18. The Town will seek to undertake a probate enquiry as a matter of course to inform the Department of Planning, Lands and Heritage through the dedication process. However, this is not a legislative requirement under the Act given the ROW has been used as a public road for a period longer than 10 years.
19. The adjoining properties continue to have a right of access from ROW 54. The only properties directly affected by the proposed change to the realignment of the ROW are the properties owned by Fabcot Pty Ltd.
20. ROW 54 has been managed and maintained by the Town, who also manages all disputes related to the ROW. The Town has never received rates for this land.
21. Over the course of the last 116 years being the date of the original subdivision associated with ROW 54, there has been significant change in the planning objectives of the locality. Transitioning from semi-rural originally, to residential and to now being an inner-city commercial centre. The nature of the traffic and access roads have subsequently also changed.
22. The dedication of the subject land as road is in keeping with these historical changes over time and allows the planning objectives of the location, in this instance to becoming a shopping and commercial precinct, to materialise appropriately.
23. The presence of the current road alignment and need for the relevant portion of ROW 54 in this locality is no longer consistent with the objectives of the Town. An appropriate and revised access outcome will be part of the circumstances of the new planning objectives for the site.

## Strategic alignment

Economic	
Strategic outcome	Intended public value outcome or impact
EC02 - A clean, safe and accessible place to visit.	The purpose of this road dedication request will allow a future repositioning of the ROW access point as part of a planning outcome which will have a positive impact in reducing anti-social and crime related activity, and improving safety.

Environment	
Strategic outcome	Intended public value outcome or impact
EN02 - A safe, interconnected and well-maintained transport network that makes it easy for everyone to get around.	The purpose of this road dedication request will allow a future repositioning of the ROW access point as part of a planning outcome which will bring a non-compliant cross over onto Shepperton Road up to a current safer design standard by creating a slip lane and new access point further away from the traffic light intersection.

## Engagement

### Internal engagement

Property Development and Leasing	Input into the report and the process to undertake the road closure.
Place Planning	Original consultation with the preceding Council report for the sale of 355-357 Shepperton Road.
Statutory Planning	Original consultation with the preceding Council report for the sale of 355-357 Shepperton Road.
Street Operations	Consulted on budget impact.

### External engagement

Stakeholders	Owners and occupiers of adjoining properties affected by the realignment
Period of engagement	11 December 2019- 17 January 2020
Level of engagement	2. Consult
Methods of engagement	Written submissions accepted
Advertising	Letters sent to adjoining landowners and service providers, notification on public notice board and The West newspaper notice
Submission summary	No submissions were received during the public comment period
Key findings	N/A

## Legal compliance

The Town has procured and received legal advice to inform this report. Legal advice has concluded that the Town has followed the appropriate and necessary processes to give effect to the dedication of the Right of Way.

All legal advice received has been provided as confidential attachments to this report.

[Section 56 of the Land Administration Act 1997](#)

[Section 58 of the Land Administration Act 1997](#)

[Section 87 of the Land Administration Act 1997](#)

[Regulation 8 of the Land Administration Regulations 1998](#)

[Regulation 9 of the Land Administration Regulations 1998](#)

## Risk management consideration

Risk impact category	Risk event description	Consequence rating	Likelihood rating	Overall risk level score	Council's risk appetite	Risk treatment option and rationale for actions
Financial	The Town does not continue with the process to give effect to the dedication of the ROW resulting in the inability for the required land assembly to occur not allowing settlement of the contract of sale.	Moderate	Possible	Medium	Low	TREAT For Council to follow legal advice received and the advice and guidance from relevant Govt agencies including Department of Planning Lands and Heritage.
Environmental	Not applicable.					
Health and safety	Not applicable.					
Infrastructure/ ICT systems/ utilities	Not applicable.					
Legislative compliance	<p>The Minister for Lands (or as delegated) is ultimately responsible for determining requests for the dedication of land as a road.</p> <p>It is possible that the Minister may decide to refuse or modify the road dedication request notwithstanding Council's resolution.</p>	Insignificant	Rare	Low	Low	TREAT Provide the required information as per Regulation 8 of the Land Administration Regulations 1998 (WA) and sufficient justification for the road dedication request.
Reputation	Not applicable.					
Service delivery	Not applicable.					

## Financial implications

<b>Current budget impact</b>	Sufficient funds exist within the annual budget to address this recommendation. The Town is in the process of satisfying its obligations in the contract of sale to Fabcot Pty Ltd as part of the delivery of 355-357 Shepperton Road East Victoria Park, which is in line with Council's previous resolution.
<b>Future budget impact</b>	Once Portion of Lot 0 on Plan 2609 and all of Lot 67 on Diagram 13701 is dedicated as road, the Town would be formally responsible for the maintenance and repair of the dedicated road. The Town's Street Operations service area has advised that this is the 'status quo', and therefore this would not impact the existing Street Operations budget.

## Analysis

24. The Council since entered into a contractual agreement for the land it owns abutting one side of the relevant portion of ROW 54 and resolved at its Ordinary Council Meeting of 19 November 2019 to delegate the Chief Executive Officer and the Mayor the authority to execute all necessary documentation under the Town's Common Seal in accordance with s58 and s87 of the *Land Administration Act 1997*, and regulation 9 of the *Land Administration Regulations 1998* to satisfy conditions precedent 2.3(b) within the contract.
25. Condition precedent 2.3(b) requires the Town to close and amalgamate a portion of ROW 54 into adjacent Lot 30 on Diagram 10509, Lot 488 on Plan 2609 and Lots 131 and 132 on Deposited Plan 45782 (known as 355-357 Shepperton Road, East Victoria Park).
26. The lots comprised within ROW 54 were in effect land dedicated by the subdivider as an access way for public use at the time of the original subdivision in 1904 and have been used by the public consistently since dedication. Additionally, the Town has been maintaining the ROW and has never rated the land.
27. Considering ROW 54 has also been the only vehicle access point for multiple properties along Albany Highway as well as the only access point to a public car park, and the public have had uninterrupted use of the private road comprising of portion of Lot 0 and all of Lot 67 for more than 10 years, the Town is satisfied it has met the requirement to evidence it has to complied with regulation 8(c) of the *Land Administration Regulations 1998* and s56(1)(c) of the *Land Administration Act 1997*.
28. Further, as part of the overall commercial planning considerations for the area the resulting increase in traffic has deemed the existing access point from Shepperton Road unsafe and inappropriate. When repositioned onto the proposed new access point from Shepperton Road, incorporating the inclusion of a slip lane with left in entry and left out exit, the realigned ROW will be safer and allow for a compliant crossover onto Shepperton Road. The existing crossover is non-compliant entering onto a 30,000 car a day Primary Distributor Road with the crossover only 50m away from a busy traffic light intersection.
29. Main Roads WA have confirmed the repositioning of the new access point onto Shepperton Road, achieved by the land exchange, will satisfy their Development Control Policy 5.1 requirements and will also achieve rationalisation of driveways to reduce conflict on the road network, and bring the existing non-compliant ROW crossover to a current safer design standard.
30. On 1 July 2020 the Town received a letter from Glen McLeod Legal regarding the request for road dedication and closure and amalgamation of portion of ROW 54, a copy was also sent to the Department of Planning, Lands, and Heritage.



31. On 3 July 2020 the Department of Planning, Lands and Heritage issued a response to the Glen McLeod Legal letter confirming it had advised the Town subsequent to the discovery of the cadastral error that the subject land could be acquired pursuant to s52 of the *Land Administration Act 1997* or dedicated directly as road pursuant to s56(1)(c) of the *Land Administration Act 1997*.
32. The Town has consulted with its Solicitor in relation to s56 (1) (c) of the *Land Administration Act 1997* which states 'land comprising a private road of which the public has had uninterrupted use for a period of not less than 10 years'.
33. The Town's Solicitor has consulted with the Department of Planning, Lands and Heritage who have provided guidance that, provided that the Town provides an aerial photograph and confirms that the public has had the use of the ROW for at least 10 years it will have met the requirements.
34. The Town's Solicitor has assured the Town that it has taken both legal advice and has sought the advice and guidance of the Department of Planning, Lands and Heritage in connection with the dedication request, and has followed the appropriate and necessary processes to give effect to the dedication of the Right of Way.
35. The Town acknowledges it will comply with s56(2) of the *Land Administration Act 1997*, by preparing and delivering the request to the Minister in accordance with the regulations, and will provide the Minister with sufficient information in a plan of survey to describe the dimensions of the proposed road.
36. The Town has since received further correspondence from Glen McLeod Legal. These letters have been attached and the Town has consequently excluded a request to close ROW 54 within this report.
37. These latest letters do not change the current process being undertaken by the Town, the legal advice received and the recommendations included within this report.

## Relevant documents

Not applicable.

### MOTION:

**Moved:** Cr Wilfred Hendriks

**Seconded:** Cr Ronhhda Potter

That Council:

1. Resolves to request the Minister for Lands (WA) to dedicate portion of Lot 0 on Plan 2609, East Victoria Park as a road, pursuant to section 56(1)(c) of the *Land Administration Act 1997*, and regulation 8 of the *Land Administration Regulations 1998*.
2. Resolves to request the Minister for Lands (WA) to dedicate all of Lot 67 on Diagram 13701, East Victoria Park as a road, pursuant to section 56(1)(c) of the *Land Administration Act 1997*, and regulation 8 of the *Land Administration Regulations 1998*.
3. Indemnifies the Minister for Lands against any claim for compensation that may arise, pursuant to section 56(4) of the *Land Administration Act 1997*.

## PROCEDURAL MOTION:

**Moved:** Cr Brian Oliver

**Seconded:** Cr Luana Lisandro

That the item be deferred to the September 2020 Ordinary Council Meeting, under clause 87 of the *Meeting Procedures Local Law 2019*.

**CARRIED (4 - 2)**

**For:** Cr Brian Oliver, Cr Luana Lisandro, Cr Bronwyn Ife, Cr Jesvin Karimi

**Against:** Cr Ronhhda Potter, Cr Wilfred Hendriks

**Reason:**

To seek the outcome of the probate enquiry.

**10 Public question time**

Nil.

**11 Public statement time**

Nil.

**12 Closure**

There being no further business, Deputy Mayor Bronwyn Ife closed the meeting at 6.45pm.

I confirm these minutes to be true and accurate record of the proceedings of the Council.

Signed: .....  
.....

Dated this: ..... Day of: ..... 2020