



ROWE
GROUP

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Chief Executive Officer
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Sent via email: rcruikshank@vicpark.wa.gov.au

Attention: Robert Cruikshank – Manager Development Services

Dear Robert

**Revised Local Development Plan and Additional Information
Berwick EVP Pty Ltd vs Town of Victoria Park (SAT Matter DR 240/2021)**

Rowe Group acts on behalf of our Client, Berwick EVP Pty Ltd ('Applicant'), being the landowner of Lot 3 (No. 384) Berwick Street, East Victoria Park ('subject site') in relation to State Administrative Tribunal ('SAT') matter DR 240 of 2021 (Berwick EVP Pty Ltd vs Town of Victoria Park).

As per the 10 November 2021 SAT Orders, the Applicant is to provide a revised Local Development Plan ('LDP') that reflects the revision agreed by the parties by 15 November 2021. The revised material is to be presented to the Town of Victoria Park ('Respondent') 14 December 2021 Ordinary Council Meeting for reconsideration.

In this regard, please find enclosed the revised LDP and the following additional information in its support.

Refer Attachment 1 – Revised Local Development Plan.

Background

Rowe Group, on behalf of the Applicant, submitted an LDP to the Respondent in relation to the subject site on 1 June 2021, which was formally accepted by the Respondent's administration on 27 July 2021 following initial comments and revisions.

The LDP was submitted in order to progress the clearing of conditions of Development Approval and survey-strata Subdivision Approval relating to the

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subject site, and to address a site-specific provision of the Town of Victoria Park Local Planning Scheme No. 1 ('LPS 1').

At its 12 October 2021 Ordinary Council Meeting, the Council of the Respondent resolved to reject the LDP due to the impact of the nil setback on the adjacent bushland.

The Applicant subsequently met with the Respondent's administration on 3 November 2021, whereby an agreement was reached insofar as the Respondent supporting a revised LDP which provides a minimum setback of 2.5m to the Hill View Terrace Bushland ('Bushland') in order to address the sole reason for refusal.

An Application for Review of the decision was then submitted to the SAT on 4 November 2021. The Application for Review was accompanied by a Minute of Consent Orders in which the two parties agreed to the Applicant submitting a revised LDP (stipulating a 2.5m setback to the Bushland) by 15 November 2021, and the Council of the Respondent reconsidering the revised LDP at its 14 December 2021 Ordinary Council Meeting.

Proposed Revision

The revised LDP comprises one (1) amendment to the text and one (1) corresponding amendment to the plan of the previous LDP. The amendments stipulate a 2.5m minimum setback to the boundary shared with the Bushland, for the full extent of the boundary.

Guide for Future Development

Management of Site Constraints

The Department of Planning, Lands and Heritage ('DPLH') *Framework for Local Development Plans* ('Framework') notes that an LDP is a mechanism used to coordinate and assist in achieving better built form outcomes by linking lot design to future development. The Framework outlines the following circumstances in which an LDP may be prepared:

- *lots with an area less than 260m² and irregularly configured lots;*
- *lots where specific vehicle access and egress control is required;*
- *lots abutting public open space;*
- *local and neighbourhood centres;*
- *lots that have been identified to accommodate a future change of use;*
- *lots with particular site constraints (e.g. steeply sloping land); and*
- *to address noise buffer and amelioration requirements.*

The subject site meets at least three (3) of the above criteria in relation to lot size, control of vehicle access and proximity to public open space. Approval of the revised LDP will ensure these site constraints and opportunities are appropriately managed through tailored development controls, rather than the general development



standards of *State Planning Policy 7.3 Residential Design Codes Volume 1* ('R-Codes Volume 1') and *Volume 2 – Apartments* ('R-Codes Volume 2').

For the above reasons, the provisions of the East Victoria Park Precinct Plan P12 ('P12') of LPS 1 require a Local Development Plan to be prepared and approved prior to the commencement of any development on the site. A condition of the Development Approval also for the subject site makes reference to this requirement.

Further, the Respondent recommended a condition of the survey-strata Subdivision Approval for the subject site which requires an LDP be submitted and approved or sufficiently progressed. The condition stipulates six (6) key points to be addressed, which the revised LDP achieves.

Cohesive Future Development

Whilst Development Approval has been granted for grouped and multiple dwellings at the subject site (refer Metro Inner-South Joint Development Assessment Panel approval of 39 grouped dwellings and 32 multiple dwellings), the LDP remains a critical mechanism for guiding any future development. Once approved, the assessment of any future Development Application at the subject site would be required to have due regard to the LDP.

The approved subdivision and development at the subject site have been designed in a holistic manner in order to provide a consistent streetscape, and to ensure matters which often arise from smaller lots and grouped dwellings are mitigated, such as overlooking, overshadowing or the impact of nil side setbacks. The developer, Hamlen, are also the builder of all portions of the approved development, ensuring the cohesive vision for the development is realised.

Without an approved LDP, the lots could be sold individually and developed in an 'ad-hoc' manner. The R-Codes Volumes 1 and 2 would not appropriately mitigate potential issues arising from the unique lot dimensions, and do not include specific provisions to guide the interface with the adjoining Edward Millen Reserve ('Reserve'), dwelling orientation, or vehicle access and traffic movement throughout the subject site. The LDP also provides for consistent building heights and street setbacks throughout the subject site.

Site-Specific Boundary Setbacks

As an example of the above, the LDP provides for a 3.0m setback to the Reserve to accommodate outdoor living spaces addressing the open space. Under the R-Codes Volume 1, setbacks of up to 1.0m are deemed-to-comply, which would result in a "harsher" interface with the Reserve.

Further, the revised LDP stipulates a 2.5m setback to the Bushland, whereas under the R-Codes Volume 1 a setback of up to 1.0m (for a wall height of 3.5m up to a length of 14.0m with no major openings, for example), or 1.5m (for a wall height of 10.0m up to a length of 9.0m with no major openings, for example) would be deemed-to-comply.



Notably, the R-Codes Volume 1 permit reduced setbacks to side and rear boundaries where major openings are not present. This is preferable where the boundary adjoins residential development, but in this instance, could incentivise a “harsher” interface with the Bushland. The R-Codes do not distinguish between side boundaries to adjoining residential development and to adjoining public open space. The LDP is therefore an important tool in setting site-specific development standards which acknowledge the adjacent Reserve and Bushland.

Given the above, it is essential that the revised LDP be approved in order to appropriately guide future development and ensure a cohesive built form outcome across the subject site.

Justification for Revised Setback

The Council of the Respondent identified the nil setback to the Bushland as its sole reason for refusal of the LDP (at its 12 October 2021 Ordinary Council Meeting). The proposed 2.5m setback stipulated by the revised LDP is sufficient to mitigate any perceived impact on the Bushland, whilst providing amenity for the residents of Future Lot 9 which abuts it.

Providing Adequate Outdoor and Developable Area

If needed, the proposed 2.5m setback can accommodate balconies for multiple dwellings which are compliant with the R-Codes Volume 2 (which require that balconies have a minimum dimension of 2.4m). The proposed setback can also accommodate sufficient deep soil area for small trees (1.0m wide deep soil area required), or medium trees with an additional 1.0m rootable soil zone (2.0m wide deep soil area required), as per the R-Codes Volume 2.

Given the depth of Future Lot 9 is just 16.0m, a significant setback to the Bushland would detrimentally limit the developable area of the lot. This would impact the ability to provide sufficient dwelling and room sizes, and car parking and vehicle manoeuvring space for communal parking areas.

Future Lot 10, which also abuts the Bushland, has a width of 9.0m at the accessway and 8.0m at the Reserve. A 2.5m setback to the Bushland accommodates a two-car garage at this lot, whereas any greater setback would not.

Vegetation Separation Distance

Vegetation within the Bushland lot is setback a minimum of approximately 3.5m from the boundary shared with the subject site, primarily for fire break purposes. As a result, any built form developed as per the LDP would be setback a minimum of 6.0m from the neighbouring vegetation. This provides a significant buffer to mitigate any perceived impacts on the Bushland.

Differing Setbacks under Volumes 1 and 2

In determining an appropriate setback to the Bushland, we observed that the R-Codes Volume 1 and 2 stipulate different deemed-to-comply or ‘Acceptable Outcome’ setbacks. At the R60 density coding, Volume 2 stipulates a



setback of 3.0m. Volume 2 stipulates different setbacks based on height, width and the presence of major openings, to a minimum of 1.0m.

Whilst the approved development largely consists of multiple dwellings abutting the Bushland, the LDP would also guide development of any grouped dwellings proposed at this boundary, if proposed in the future. In light of this, a 2.5m setback to the Bushland is reasonable and appropriate.

Summary

In light of the above and the enclosed supporting material, we request the Council of the Respondent approve the revised Local Development Plan for the following reasons:

- The LDP is an essential mechanism for the guiding of any future development at the subject site;
- The LDP will manage the constraints of the subject site in relation to lot size, control of vehicle access and proximity to public open space;
- The LDP will ensure the cohesive vision for development at the subject site is realised;
- The LDP will set site-specific setbacks to the public open space adjoining the subject site, which in many cases will be greater than the deemed-to-comply setbacks under *State Planning Policy 7.3 Residential Design Codes Volume 1* and *Volume 2 – Apartments*;
- The proposed setback to the Hill View Terrace Bushland provides adequate outdoor space whilst also maintaining an adequate developable area for Future Lot 9 of the subject site;
- The proposed setback to the Hill View Terrace Bushland provides adequate separation between built form and vegetation to mitigate any impacts on the Bushland, particularly in conjunction with the 3.5m setback of the vegetation;
- The proposed setback to the Hill View Terrace Bushland is appropriate given the differing setbacks stipulated by *State Planning Policy 7.3 Residential Design Codes Volume 1* and *Volume 2 – Apartments*; and
- The revised LDP addresses the sole reason for refusal outlined by the Council of the Respondent as the proposed 2.5m boundary setback provides a sufficient and reasonable outcome.

Should you require any further information or clarification in relation to this matter, please contact Mr Paul Cunningham or the undersigned on 9221 1991.

Yours faithfully,

Belle Smithies

Rowe Group

CC. Client