

11.3 Lot 170 State Street, Victoria Park - Intention to Dedicate as Private Road

Location	Victoria Park
Reporting officer	Laura Sabitzer
Responsible officer	Robert Cruickshank
Voting requirement	Simple majority
Attachments	<ol style="list-style-type: none">1. Site aerial [11.3.1 - 1 page]2. Deposited plan [11.3.2 - 1 page]3. Proposed development plans [11.3.3 - 6 pages]4. Request for road dedication [11.3.4 - 1 page]

Recommendation

That Council:

1. Resolves to commence the process to request the Minister for Lands (WA) to dedicate Lot 170 State Street, Victoria Park as a road, pursuant to section 56(1)(b) of the *Lands Administration Act 1997*, subject to the following:
 - a. The owners of No. 593 – 595 (Lot 171) Albany Highway, Victoria Park entering into a legal agreement with the Town of Victoria Park, to indemnify the Town against all costs incurred by the Town as part of the dedication request or arising out of the dedication of the private road.
2. Advertises the proposal to dedicate Lot 170 State Street, Victoria Park for public comments, for a period of 21 days.

Purpose

For Council to consider whether to commence the process to dedicate Lot 170 State Street which is owned by a deceased person with no known descendants, as a road, and proceed to seeking public comments on the request.

In brief

- The owner of No. 593 – 595 (Lot 171) Albany Highway, Victoria Park has approached the Town to secure rights over Lot 170 for vehicle access.
- Presently, Lot 170 State Street is privately owned by a deceased person with no known descendants.
- The Town has obtained legal advice regarding the developer's request. The legal advice indicates that it is possible for an owner of land abutting the site to make application to the local government seeking dedication of land as a private road, pursuant to section 56 of the *Land Administration Act 1997*.
- Should Council resolve to commence the process to request to dedicate Lot 170 as a private road, it is recommended that the proposal is advertised for public comment for a period of 21 days.

- It is recommended that Council resolves to commence the process to request the Minister of Lands (WA) to dedicate Lot 170 State Street, Victoria Park as a road and proceed to seeking public comments on this request.

Background

1. Lot 170 State Street (the subject site) is an existing private lot which provides vehicle access by way of a rights of carriageway easement to No. 579A (Lot 992) Albany Highway, Victoria Park (see Attachments 1 & 2).
2. The owner of the subject site, Wealands Bell Robinson, is deceased and no known descendants have been located by the applicant's lawyer. The Certificate of Title was registered in 1922.
3. Over the last two years, the owner of No. 593 – 595 (Lot 171) Albany Highway, Victoria Park has been pursuing avenues to also have the legal right to use Lot 170 State Street for vehicle access purposes.
4. The owner of Lot 171 lodged an application to Landgate seeking to be registered as the owner of Lot 170 by virtue of adverse possession. The application for adverse possession has not been successful to date and is unlikely to proceed.
5. In May 2018, the Town received a Development Assessment Panel (DAP) application for a four storey mixed use development at No. 593 – 595 (Lot 171) Albany Highway, Victoria Park which proposes an internal car parking area accessed solely from Lot 170 State Street (see Attachment 3). As Lot 171 does not presently have the legal right to use Lot 170 for access purposes, the application has been deferred.
6. The owner of Lot 171 has approached the Town for assistance in securing rights over Lot 170 for vehicle access. Refer to the written request from the owner of Lot 171 at Attachment 4.
7. The owner of Lot 171 has been paying rates on both Lot 170 and 171 since when the property was group rated in May 2004.

Strategic alignment

Environment	
Strategic outcome	Intended public value outcome or impact
EN01 - Land use planning that puts people first in urban design, allows for different housing options for people with different housing need and enhances the Town's character.	The purpose of this road dedication request is to enable vehicle access which makes an efficient use of land.

Engagement

8. In relation to external engagement, Council Policy GEN3 'Community Consultation' states that there is no minimum requirement for community consultation, however under the policy it recommends consultation with the owner of the private road, adjoining property owners and public utility providers. In this case, the Town will not be able to consult with the owner of the private road as the owner is deceased with no known descendants.
9. The *Land Administration Regulations 1998* and the corresponding Crown Land Manual states that the Local Government is to undertake community consultation in relation to the dedication request prior to making a resolution to dedicate a road.

10. Should Council resolve to commence the process to request to dedicate Lot 170 as a private road, it is recommended that the Town carries out community consultation for 21 days, via the following consultation methods:
- Letters sent to owners of properties adjoining the subject land
 - Letters sent to relevant public utility providers
 - Notice in the local newspaper
 - Notification sign on-site
 - Information available on your Thoughts, the Town's online consultation hub
11. Following the conclusion of the public comment period, submissions will be collated and reviewed, and a further report will be presented to Council with a recommendation of whether to submit a formal request to the Minister for Lands to dedicate Lot 170 State Street, Victoria Park as a road.

Internal engagement

Stakeholder	Comments
Street operations service area	Provided advice in relation to the maintenance of the subject site and following discussions have no objections to the road dedication request. In relation to maintenance it was advised that the Town currently sweeps / maintains Lot 170 and would respond to a repair request, if received.
Finance service area	Confirmed that the owner of No. 593 – 595 (Lot 171) Albany Highway, Victoria Park has been paying rates on both Lot 170 and 171 since 2004.

Legal compliance

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

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

12. The Town has received legal advice in relation to options and the associated processes to obtain a legal right of access for No. 593 – 595 (Lot 171) Albany Highway, Victoria Park, for vehicle access. This has been provided to Elected Members under a separate cover.

Risk management consideration

Risk and consequence	Consequence rating	Likelihood rating	Overall risk analysis	Mitigation and actions
Legal compliance The Minister for Lands is ultimately responsible for determining requests	Moderate	Unlikely	Moderate	Provide the required information as per Regulation 8 of the <i>Land Administration Regulations 1998</i> (WA) and sufficient justification for the road dedication request.

for the dedication of land as a road.

It is possible that the Minister may decide to refuse or modify the road dedication request notwithstanding Council's resolution.

Financial implications

Current budget impact

Sufficient funds exist within the annual budget to address this recommendation.

It is recommended that the owners of No. 593 – 595 (Lot 171) Albany Highway, Victoria Park enter into a legal agreement with the Town, to indemnify the Town against all costs incurred by the Town as part of the dedication request or arising out of the dedication of the private road. The applicant has been advised of this proposed recommendation.

Future budget impact

If Lot 170 is dedicated to the Town, the Town would be formally responsible for the maintenance and repair of the land. 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

13. Pursuant to section 5(1)(b)(ii) of the *Land Administration Act 1997*, an owner of land abutting a private road can make application to the local government seeking dedication of the private road by the Minister for Lands.
14. The Town has received a formal request from the landowner of No. 593 – 595 (Lot 171) Albany Highway, Victoria Park for the Town of Victoria Park to seek dedication of Lot 170 State Street by the Minister of Lands. Refer to Attachment 4.
15. As outlined above, the owner of No. 593 – 595 (Lot 171) Albany Highway, Victoria Park has been pursuing options to have the legal right to use Lot 170 State Street for vehicle access purposes, including the submission of an adverse possession claim to Landgate.
16. Enabling vehicle access to Lot 171 via Lot 170 is anticipated to have positive benefits including:
 - the building's street frontages to both Albany Highway and State Street being uninterrupted creating an attractive and pedestrian-friendly environment;
 - Minimising crossovers and vehicle access points to the lot;
 - the efficient use of land, utilising an existing laneway which is used for vehicle access to No. 579A (Lot 992) Albany Highway, Victoria Park;
 - allows for safe vehicle access and egress, minimising conflict with pedestrians and cyclists.

17. Vehicle access from a laneway is also referenced as a recommended design outcome in the Residential Design Codes, Volumes 1 & 2.
18. For the above reasons, it is recommended that Council resolves to commence the process to dedicate Lot 170 State Street as a road and proceed to seeking public comments on this request.
19. Any public submissions received on the proposal will need to be considered by Council, and the Minister for Lands (if the Council resolves to formally request the dedication following the consideration of public submissions). It is understood that should objections be received from members of the public, that this is not determinative, and the Minister for Lands would still be able to approve a dedication request.

Relevant documents

Not applicable

Further consideration

20. At the Agenda Briefing Forum on 1 October 2019, an Elected Member requested for an elevation plan of the proposed development (facing the laneway) to be included with the proposed development plans. This elevation plan has been included at Attachment 3.

COUNCIL RESOLUTION (200/2019):

Moved: Cr Bronwyn Ife

Seconded: Deputy Mayor Vicki Potter

That Council:

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2. Advertises the proposal to dedicate Lot 170 State Street, Victoria Park for public comments, for a period of 21 days.

CARRIED BY EXCEPTION RESOLUTION (9 - 0)

For: Cr Karen Vernon, Cr Claire Anderson, Cr Brian Oliver, Cr Bronwyn Ife, Cr Julian Jacobs, Mayor Trevor Vaughan, Deputy Mayor Vicki Potter, Cr Jennifer Ammons Noble, Cr Ronhhda Potter

Against: nil