



BRRAG

Belmont Resident and Ratepayer Action Group Inc.

"To provide an effective voice for the people of Belmont"

18 Junw 2019

The Mayor and Councillors
City of Belmont
Belmont WA 6104

Dear Mayor and Councillors

At the Agenda Briefing Forum on the 21 May, two residents were in attendance to give submissions regarding a Vehicle Access Plan. At the council meeting on the 28th May, the Coucillors voted against this item, as both residents were against this proposal. It was a good outcome for the residents in question.

At the OCM, Ms ~~XXXX~~ one of the owners affected by the subject VAP, attended and asked questions. A couple of those questions related to whether or not the City received legal advice on the matter. As one of the members of BRRAG paid for a copy of the minutes of the OCM, the response can be found on the attached file (6.17)

Councillor Rossi asked a specific question during the debate, as to whether or not the City got legal advice on the matter. ~~XXXXXX~~ the Town Planner who spoke at the ABF sent me an email (attached) which states:

It is my understanding that the City has obtained legal advice that agrees with my interpretation of clause 5.5. I am not suggesting that the City does not accept this legal advice, however they have chosen, in this instance, not to exercise discretion.

Questions have previously been raised regarding cost of legal advice to the City and whether or not the advice is followed. I refer to the minutes of July 2018 (attached). In this instance I had refused to comply with the demands the planning department was trying to force me to do, as I believed they lacked understanding of the legislation they were trying to enforce, ie The Planning and Development Act. Eventually the City obtained legal advice and that was the City were wrong and therefore I did not have to comply with their demands. What is most concerning is that it was also stated that in the event the same question arises again, the City plans to do it the way they see fit and had tried to impose on me, as it is better practice according to the Director.. Why are we paying for legal advice if it is ignored?

It is of concern that it appears that this VAP may be another instance of legal advice being ignored. This practice of staff ignoring legal advice in favour of what works best, could potentially be detrimental to the City and end up in legal action that could be very costly. It should not be up to the Officers to go against legal advice, as I would not expect that any of the staff have had any substantial legal training. One has to ask the question how often the legal advice is ignored? This precise question was asked at **question 3** of July last year minutes and the response to that question was "***it is impossible to answer such an open ended question.***" Is this satisfactory?

I would encourage Councillors to be more pro-active in questioning things of a potential legal matter. You all receive reports and recommendations on items on the agenda, that you are expected to vote on. If there is anything in these documents that may be against legal advice, you may well be voting to support or not support something that you would view differently, if you asked if the City got legal advice and what it was. Planning in particular, is an area that you have to be sure of the legalities when it is time to vote. The City's view of good practice, may end up being a costly exercise if a resident chooses to appeal the decision of council.

Please be advised this response will be made available to the Residents of Belmont on the BRRAG website, in the interests of transparency.

Kindest regards

Lisa Hollands
Chairperson BRRAG