

ATTACHMENT TO AGENDA ITEM

Special Meeting

14 September 2016

Agenda Item 6.2	GV Link - Expression of Interest (EOI) to lease Council Land for a Large Scale Solar Farm	
Attachment 1	Written advice from RK legal to be able to advertise EOI during caretaker period	464
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Our Ref: MJD 119780-02442

Contact

Michael Dowling
Tel +61 3 9609 1536
Fax +61 3 9609 6803
mdowling@rk.com.au

1 September 2016

BY EMAIL johann.rajaratanam@shepparton.vic.gov.au

Johann Rajaratanam
Shepparton City Council

Dear Johann

Request for Expressions of Interest for the proposed lease of part of the GV Link land for a solar farm – part of Toolamba Road, Mooroopna, Victoria, 3629 (Land)

We refer to recent telephone conversations and correspondence in this matter.

We advise that the proposed recommendations for this matter to be included in a report for the special meeting of Council to be held on 13 September 2016 (as currently proposed) do not, if adopted by Council, constitute conduct by Council during an election period in breach of section 93A of the *Local Government Act 1989* ("**1989 Act**"), for the following reasons:

- 1 The recommendations, if adopted by Council, will be decisions made by Council prior to commencement of the election period on 20 September 2016 and not during the election period prescribed by the 1989 Act.
- 2 The recommendation for Council to request Expressions of Interest for the lease of the Land does not constitute a "major policy decision" of the kind prohibited by section 93A of the 1989 Act. A "major policy decision" is exhaustively defined in section 93A and includes decisions to enter a contract, the total value of which exceeds whichever is the greater of:
 - 2.1 \$100,000; or
 - 2.2 1% of Council's revenue from rates and charges levied in the preceding financial year.

This recommendation involves the initiation of a request for Expressions of Interest for the lease of the Land and outlines the procedure with respect to the appointment of a panel, the assessment of any Expressions of Interest received and a report back to Council with a recommendation, without requiring Council to enter into any contract constituting a "major policy decision" during the election period.
- 3 The other recommendations contained in the draft Council report contemplate the initiation of a statutory process of giving public notice of the proposed lease of the Land

Russell Kennedy Pty Ltd ACN 126 792 470 ABN 14 940 129 185
Level 12, 469 La Trobe Street, Melbourne VIC 3000 PO BOX 5146, Melbourne VIC 3001 DX 494 Melbourne
T +61 3 9609 1555 F + 61 3 9609 1600 info@rk.com.au

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for the purposes of a solar farm, pursuant to section 190 of the 1989 Act, but do not require Council to make any "major policy decision" during the election period.

- 4 In the unlikely event that the recommendation concerning the appointment of a probity auditor involved Council entering a contract that provided a remuneration package for the probity auditor which constituted a "major policy decision", such a decision would not be made during the prescribed election period.
- 5 Neither the 1989 Act nor Council's election period policy contemplate that statutory processes cannot be initiated and continued during an election period, nor that negotiations in respect of a matter cannot be initiated and continued during an election period, provided no "major policy decision" is made by Council during the election period.

If you have any queries or concerns, please do not hesitate to contact the writer.

Yours faithfully

RUSSELL KENNEDY

A handwritten signature in black ink that reads "Michael Dowling". The signature is written in a cursive style with a large, sweeping flourish at the end.

Michael Dowling
Special Counsel

