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Principal: Robert McKay
Our Ref: RSM:RSM:211505



1 October 2021

Vijaya Vaidyanath & George Vass
City of Yarra
333 Bridge Road
RICHMOND VIC 3121
george.vass@yarracity.gov.au; info@yarracity.vic.gov.au

BY EMAIL ONLY

Dear Vijaya and George

Submission on Proposed Declaration of Public Highway – Sandeman Place

1. We are writing to make objection submissions in response to council's **enclosed** notice in The Age newspaper issue of 3 September 2021 regarding a proposed public highway declaration under [section 204\(1\)](#) of the *Local Government Act 1989* (Vic) (the **LGA**) over parts of Sandeman Lane, Fitzroy (the **Notice**).
2. We act for the following related parties:
 - (a) Owners corporation plan no. RP015268 (the **OC**), the registered proprietor of the common property of 174 – 178 George Street, Fitzroy;
 - (b) Irene Meletsis, in relation to Unit 1 of 174 – 178 George Street, Fitzroy, being lot 1 on registered plan of strata subdivision 015628 (the **Plan**);
 - (c) Capital One Securities Pty Ltd, the registered proprietor of:
 - (i) Unit 2 of 174 – 178 George Street, Fitzroy, being lot 2 on the Plan; and
 - (ii) Unit 3 of 174 – 178 George Street, Fitzroy, being lot 3 on the Plan;
 - (d) Odel Investments Pty Ltd, the registered proprietor of Unit 4 of 174 – 178 George Street, Fitzroy, being lot 4 on the Plan.

Submissions

3. Our clients' submissions for the purposes of [section 223](#) of the LGA are as follows.
4. Our clients oppose the proposed declarations set out in the Notice to the extent that those declarations will affect their rights and interests in an area or portion of the land that our clients have occupied and used since their property or properties was or were acquired by their family in the 1970s (the **Opposed Portion**). At annexure A to this letter we have depicted approximately in yellow fill the Opposed Portion by reference to the Notice's 'Figure A' diagram.

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Law Courts 8010

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ACN 137 307 692

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Historical occupation by the family

5. The parents of our clients (or, as applicable, persons or entities related to our clients), Panagiotis Karaglanis and Ekaterini Karaglanis, purchased the original land parcel that was eventually subdivided into the Plan (being the land described in volume 9349 folio 003) in the 1970s. We **enclose** a historical title search of that original land parcel to that effect.
6. The Plan was then registered in or in about 1980 and Mr and Mrs Karaglanis transferred the subdivided properties to our clients, or persons controlled by or related to our clients, and the properties have remained within the family since that time.
7. Consequently, ownership of our clients' respective properties and exclusive occupation of the Opposed Portion has been continuously maintained by our clients' and their family since Mr and Mrs Karaglanis first purchased the original land parcel (as referred to in paragraph 5) for a period of some 40 – 50 years.

Diagrams and structures

8. We refer to the annotated NearMap satellite image at annexure B to this letter and note the following:
 - (a) The pink squares with text demark each of our clients' (except for the OC) private lots;
 - (b) The brighter of the yellow cadastre lines demarks a common shared accessway between our clients' properties (being, for the most part, the OC's common property) – the easternmost portion of which includes the Opposed Portion;
 - (c) The red circle shows approximately the relevant area affected by the proposed declaration set out in the Notice; and
 - (d) The blue line demarks approximately the location of our clients' wall and gate, a photo of which is at annexure C to this letter (the **Current Dividing Structure**).
9. As can be seen by reference to annexures A to C, the Current Dividing Structure encloses the Opposed Portion to the exclusion of the public and bisects the cross-hatched area that is proposed to be declared a road pursuant to 'Proposal A'.
10. Even before the Current Dividing Structure was erected, the Opposing Portion was used exclusively by our clients as a car park to the extent that, if anyone other than our clients (or those authorised by our clients) entered onto the Opposed Portion, it would have been considered a trespass (and this was the basis for erecting the Current Dividing Structure). The Opposed Portion was effectively treated as the common property of the OC and it served the private lot owners of the Plan throughout the course of time for many decades. The Opposing Portion has been considered by our clients as an asset and a fundamental part of their respective properties.

Road legislation

11. [Section 5\(2\)](#) of the *Road Management Act 2004* (Vic) (the **RMA**) provides, in essence, that certain provisions of the LGA – including Division 2 of Part 9 of the LGA in which [section 204\(1\)](#) of the LGA appears – are to be construed as part of the RMA.
12. Council must register a road in its register for which it has made a decision that the road is reasonably required for general public use: [section 17\(3\)](#) of the RMA; *Pulitano Pastoral Pty Ltd v Mansfield Shire Council* [2017] VSC 421 at [99].
13. A road cannot become a 'public road' (that term is defined in [section 17\(1\)\(c\)](#) of the RMA to mean a road declared under [section 204\(1\)](#) of the LGA) unless and until a decision is made by council under [section 17\(3\)](#) of the RMA: *Anderson v City of Stonnington* [2017] VSCA 229 at [182].
14. To synthesise and express what we say at paragraphs 12 and 13 in plainer terms, council is obliged to determine that a road it is seeking to declare under section 204(1) of the LGA is *reasonably required for general public use*.
15. Noting what we say between paragraphs 5 to 10, it would be manifestly illogical and unreasonable for council to decide that the Opposed Portion is *reasonably required for general public use* because:
 - (a) the Opposed Portion has not been used by the public for in excess of 40 years, but rather, exclusively by our clients or their relatives and those authorised by them;
 - (b) there is nothing occurring in the vicinity of the Opposed Portion (such as development, planning scheme amendments, or infrastructure changes) that would give rise to the Opposed Portion suddenly becoming reasonably required for general public use such that declaring the Opposed Portion a public highway would achieve the objectives of the RMA or LGA (in fact, we say it would be to the contrary);
 - (c) the Opposed Portion does not provide the general public any more use of Sandeman Lane than the general public already has. That is, declaring the Opposed Portion achieves only a detrimental impact on our clients' possessory rights without there being any corresponding material benefit gained by the general public (i.e. there is a net disadvantage).

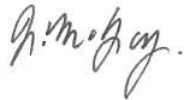
Transfer of Land Act

16. Moreover, our clients have a present entitlement to make an application to amend their relevant, respective folios to incorporate the Opposed Portion by way of an application made under [section 99\(1\)](#) and or [section 102](#) of the *Transfer of Land Act 1958* (Vic) and it is their intention to now do so without delay.
17. For council to now seek to declare the Opposed Portion a public highway may subvert or otherwise interfere with our clients' present entitlement in that regard, which is not a power council has either under the LGA or the RMA (or at all) and we are instructed to resist any such attempt by any and all means available.

Conclusion

18. We would welcome a decision by council to remove the Opposed Portion from its proposal for Sandeman Lane and we respectfully submit that council is required to do so, in any event, at law (for the reasons set out **above**).
19. Otherwise, we submit that the proposed declarations as set out in the Notice should be rejected wholesale for the reasons set out **above**.
20. We reserve all of our clients' rights, including to expand upon and produce further evidence supporting these submissions in advance of, or at, any meeting conducted by council. In that respect our clients request to be heard at any such meeting, pursuant to [section 223\(1\)\(a\)\(iv\)](#) of the LGA.
21. Please contact our office should you wish to discuss.

Yours faithfully



Robert McKay
Principal Lawyer
Enc.

Annexure A | Opposed Portion

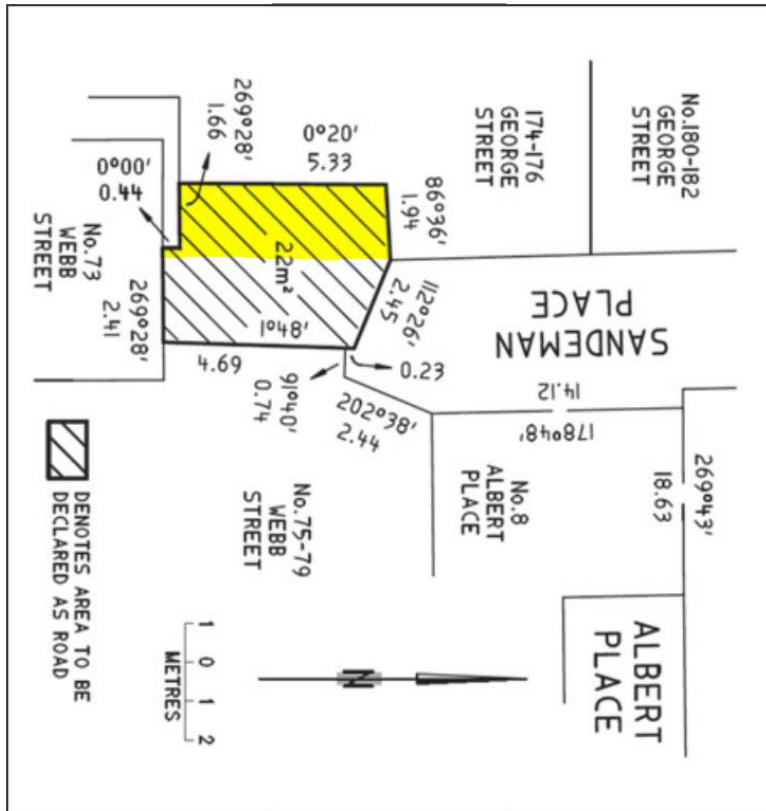


Figure A:

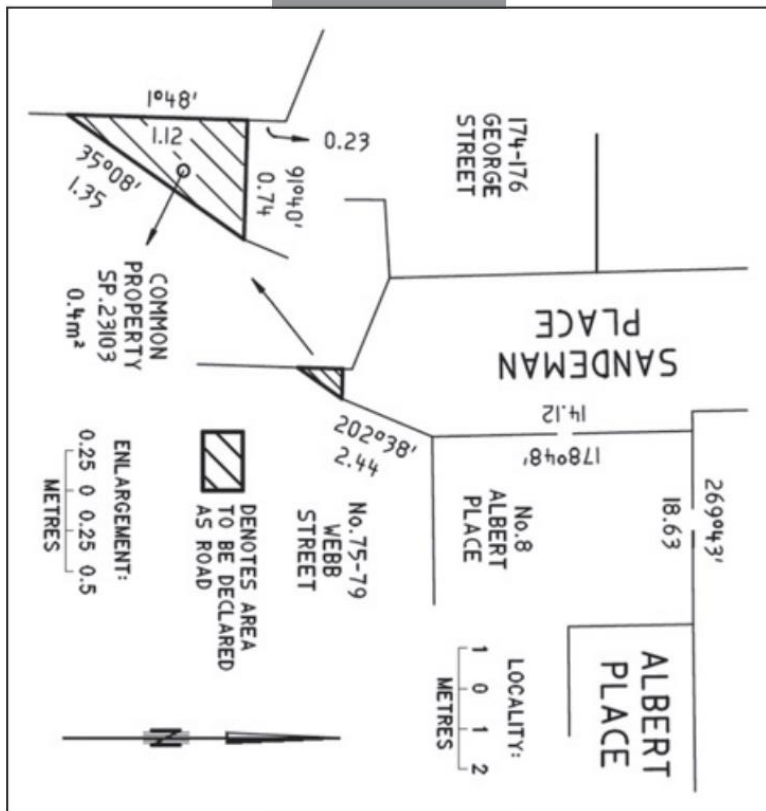


Figure B:

Annexure B | Annotated NearMap satellite image



Annexure C | Photo of wall and gate



TAB CODE MR BENDIGO

SELECTIONS: TIM HABEL

TRACK GOOD (4) RAIL OUT 9M

DAILY DOUBLE 7 and 9 EARLY QUADDIE 2, 3, 4 and 5 QUADDIE 6, 7, 8 and 9 TREBLE 7, 8 and 9 BIG6 4, 5, 6, 7, 8 and 9 CIRCUMFERENCE 1994m STRAIGHT 400m

Table for Bendigo Mazda Plate (1100m) with columns for Form, Horse, Jockey, Trainer, Weight, and Price. Includes selections: FIRE 1, Joseylin 2, Fly On Bye 3, Imminent Risk 4.

Table for The Big Screen Company Plate (1500m) with columns for Form, Horse, Jockey, Trainer, Weight, and Price. Includes selections: ADDENDA 1, Mista Sizzle 2, Fazzabeel 3, Moxatation 4.

Table for Catanach's Jewellers (B64) (1100m) with columns for Form, Horse, Jockey, Trainer, Weight, and Price. Includes selections: Lani Bang Bang 1, Virtue 2, El Fabio 3, Predetermined 4.

Table for Adroit Bendigo Plate (1300m) with columns for Form, Horse, Jockey, Trainer, Weight, and Price. Includes selections: OFBUSCATION 1, Treporti 2, Rose Cuvee 3, Lastar 4.

Table for Bet365 Drift Protector (B58) (2400m) with columns for Form, Horse, Jockey, Trainer, Weight, and Price. Includes selections: VILANCULOS 1, Brilliant Venture 2, Dancing Duck 3, Full Knots Ahead 4.

Table for Smartline Bendigo (B64) (1600m) with columns for Form, Horse, Jockey, Trainer, Weight, and Price. Includes selections: Murganella 1, Silver Lake 2, Saint Tropez 3, The Enzo 4.

Table for The Bendigo Cleaning Co. Plate (1400m) with columns for Form, Horse, Jockey, Trainer, Weight, and Price. Includes selections: MICRO 1, Hezagem 2, Shabalala 3, Sky Warrior 4.

Table for Apiam Animal Health (B64) (1100m) with columns for Form, Horse, Jockey, Trainer, Weight, and Price. Includes selections: Circle of Magic 1, Smiler Marshall 2, Ho Ho Prince 3, Zoutons 4.

Table for Bendigo Magazine (B64) (1300m) with columns for Form, Horse, Jockey, Trainer, Weight, and Price. Includes selections: Yelbarb 1, Spanish Poet 2, Hot In Paris 3, D Bates 4.

TAB CHECK

To avoid error, TAB investors should check numbers with the official lists of the fields at TAB agencies. Lists published in newspapers are not official.

Public Notices

Public Notice regarding Sandeep Kaur w/o Manpreet Singh, currently residing in 1/9 Swinburne court Truganina.

Public Notice regarding PACKAGED LIQUOR LICENCE APPLICATION for DOWNTOWN GROCERY TWO PTY LTD.

PRIVATE SECURITY BUSINESS REGISTRATION

Global Security Australia Pty Ltd of 34A Access Way, Carrum Downs Victoria 3201, has made application to the Licensing & Regulation Division for a Private Security Business Registration.

Public Notices

Public Notice regarding CREDITORS, next of kin and others having claims against the estate of any of the undermentioned deceased persons.

Public Notice regarding BELENGUER Ramon Marques, late of Mooroolbark Residential Aged Care.

Public Notice regarding HOSKING Clive Robert, late of Springtime Sydneyham.

Public Notice regarding OSMOND Debbie, late of 2A Whitby St RESERVOIR VIC 3073.

Public Notice regarding PELAEZ Demetrio, late of Westgate Aged Care.

Public Notice regarding RAISTRICK Thomas, late of Benett St Laurence Court.

Public Notice regarding ROBERTSON Kenneth Fowler, late of Unit 9 182 Weatherall Rd.

Public Notice regarding SULLY John Owen, late of Mecawcare John Atchison Centre.

Public Notices

NOTICE OF AN APPLICATION FOR A PLANNING PERMIT

The land affected by the application is located at: 4 Regina Terrace DONCASTER EAST. Construction of a new two-storey dwelling to the rear of the existing dwelling.

Land Acquisition and Compensation Act 1986

Notice of Acquisition. Compulsory Acquisition of Interest in Land. Head, Transport for Victoria declares that by this notice it acquires the following interest in part of the land described in Crown Allotment 21 Section 1 Parish of Conewarre.

Land Acquisition and Compensation Act 1986

Notice of Acquisition. Compulsory Acquisition of Interest in Land. Head, Transport for Victoria declares that by this notice it acquires the following interest in part of the land described in Lot C on Plan of Subdivision 730381N.

Land Acquisition and Compensation Act 1986

Notice of Acquisition. Compulsory Acquisition of Interest in Land. Head, Transport for Victoria declares that by this notice it acquires the following interest in part of the land described in Lot 1 on Title Plan 015565D.

Land Acquisition and Compensation Act 1986

Notice of Acquisition. Compulsory Acquisition of Interest in Land. Head, Transport for Victoria declares that by this notice it acquires the following interest in part of the land described in Lot 1 on Title Plan 015565D.

Land Acquisition and Compensation Act 1986

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Land Acquisition and Compensation Act 1986

Notice of Acquisition. Compulsory Acquisition of Interest in Land. Head, Transport for Victoria declares that by this notice it acquires the following interest in part of the land described in Lot 1 on Title Plan 015565D.

Dated 30 August 2021

Public Notices

NOTICE OF AN APPLICATION FOR A PLANNING PERMIT

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Land Acquisition and Compensation Act 1986

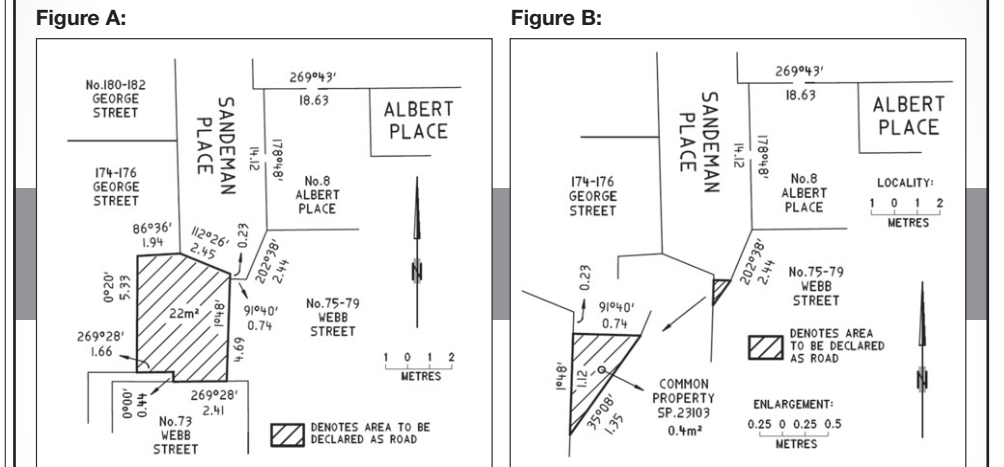
Notice of Acquisition. Compulsory Acquisition of Interest in Land. Head, Transport for Victoria declares that by this notice it acquires the following interest in part of the land described in Lot 1 on Title Plan 015565D.

Dated 30 August 2021

YARRA CITY COUNCIL PROPOSED PUBLIC HIGHWAY DECLARATION PUBLIC NOTICE INVITING SUBMISSIONS UNDER SECTION 223

Yarra City Council (Council) gives notice under section 204(1) of the Local Government Act 1989 (Act) that it proposes to declare the following parcels of land abutting Sandeman Place, Fitzroy, to be public highways:

- (a) the 'hiatus land' not contained in any certificate of title, shown hatched on the plan at Figure A below (Proposal A); and
(b) part of the common property on registered plan of strata subdivision no. SP023103J at 75-79 Webb Street, Fitzroy being part of the land contained in certificate of title volume 12137 folio 050, shown hatched on the plan at Figure B below (Proposal B).



Any person may make a submission on either Proposal A or Proposal B, or on both Proposals A and B.

Any person wishing to make a submission under section 223 of the Act must do so in writing by 1 October 2021.

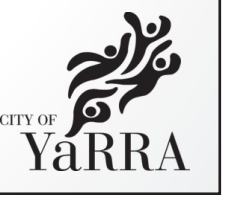
All submissions will be considered in accordance with section 223 of the Act. Submissions should be addressed to the Chief Executive Officer and described as 'Submission on Proposed Declaration of Public Highway - Sandeman Place', and can be hand delivered to Council's Municipal Office at 333 Bridge Road, Richmond 3121 or posted to the following address:

Vijaya Vaidyanath
Chief Executive Officer, Yarra City Council
PO Box 168
RICHMOND VIC 3121

Any person requesting to be heard in support of his or her submission is entitled to be heard before Council (or its committee established by Council for this purpose) or be represented by a person acting on his or her behalf, and will be notified of the time and date of the hearing.

For more information on the proposal, please contact George Vass on 03 9205 5097 or George.Vass@yarracity.vic.gov.au.

Vijaya Vaidyanath
Chief Executive Officer, Yarra City Council



108866

ORIGINAL

NOT TO BE TAKEN FROM THE OFFICE OF TITLES



VICTORIA

CANCELLED
REGISTER BOOK

VOL. **9349** FOL. **003**

Certificate of Title

UNDER THE "TRANSFER OF LAND ACT"

PANAGIOTIS KARAGLANIS Labourer and EKATERINI KARAGLANIS Married Woman - - - both of 97 Gore Street Fitzroy are JOINT PROPRIETORS of an estate in fee -- simple subject to the encumbrances notified hereunder in all that piece of land in the Parish of Jika Jika County of Bourke being the land in Plan of Consolidation No.108866 which land is shown enclosed by continuous lines -- on the map hereon - - - - -

FOL.

VOL.

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Issued pursuant to Section 97A (2) of the Transfer of Land Act 1958

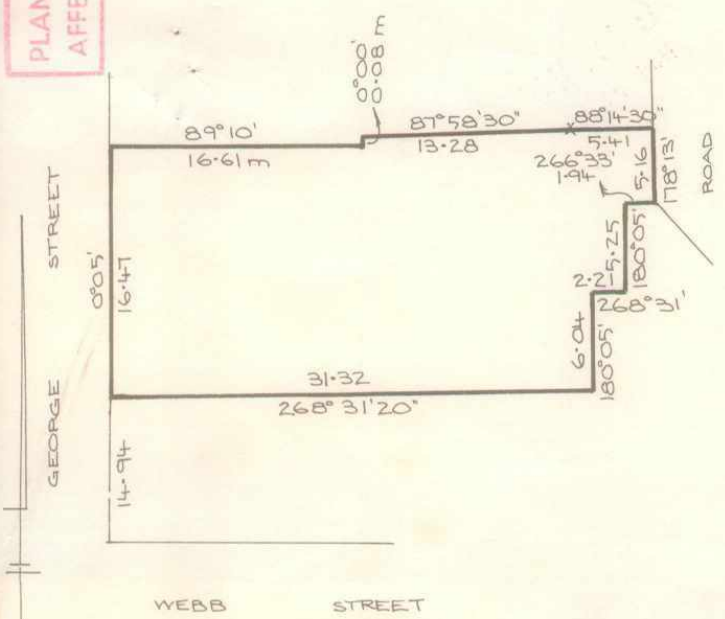
WARNING
This document provides an image of a cancelled folio of the Register. It is not a statement from the register of subsisting information in relation to the land to which it refers.

PLAN **J130958**
AFFECTS LAND HEREIN

B.T. Dingler
Assistant Registrar of Titles



ENCUMBRANCES REFERRED TO



MEASUREMENTS ARE IN METRES

Derived from Vols.8497 Fols.089
9254 382

9th L... mber 1979

DP

VOL. **9349** FOL. **003**

INSTRUMENT

APPLICATION

9204/78-PL

MORTGAGE to H.G. & R. NOMINEES

PROPRIETARY LIMITED and COLIN HENRY

~~KEON-COHEN~~

Registered 27th November 1979

No. M779191



MORTGAGE to FRANCIS ALEXANDER

McMANUS and BERNARD JAMES AHERN

Registered 4th June 1980

No. J14071



CANCELLED

Units one to 6 in Vol **9387** Folio **779**

Resp. to Vol **9387** Fol. **784**

Registered Plan No. 15268

Date 3rd September 1980

J130958



CANCELLED



T09349-003-1-8

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WARNING