

8.4 Proposal to Declare Land Abutting Sandeman Place Fitzroy as Public Highway

Reference	D22/286472
Author	Ivan Gilbert - Group Manager Chief Executive's Office
Authoriser	Group Manager Chief Executive's Office

Purpose

1. For Council to consider whether to declare the hiatus land and referenced parcel of common property at the southern end of Sandeman Place, Fitzroy (**Subject Land**) to be a public highway pursuant to section 204(1) of the *Local Government Act 1989* (**Act**).

Critical analysis

History and background

2. Factual background

- 2.1 The Subject Land is shown as the hatched area on the plans attached (refer **Attachment 1** Copy of Public Notice) to this Report and includes:
 - 2.1.1 the 'hiatus land' (or "NUA land", being land "Not Under the Act"), which is not contained in any certificate of title and is shown hatched on the plan at Figure A (**Hiatus Parcel**); and
 - 2.1.2 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 (**Webb Parcel**).
- 2.2 Sandeman Place is a bluestone laneway of approximately 4 metres in width that provides vehicular and pedestrian access to the rear of the properties at 174-178 George Street and 75-79 Webb Street, Fitzroy, from Charles Street, Fitzroy. The laneway comes to a dead-end at its southern end approximately 5.16 metres south of the northern boundary of 174-178 George Street where it abuts the Hiatus Parcel.
- 2.3 In March 2020, the lot owners of 75-79 Webb Street (**Webb St Owners**) sought assistance from Council because the lot owners of 174-178 George Street (**George St Owners**) erected a fence and steel gates that extended through, and enclosed a significant portion of, the Hiatus Parcel (**2020 Fence**). The Webb St Owners assert that the 2020 Fence substantially interferes with their ability to execute turning movements into and out of the common property at 75-79 Webb Street so that they can exit Sandeman Place with vehicles in a forward direction (refer photograph on page 5 of **Attachment 2**).
- 2.4 Council officers are satisfied that the Hiatus Parcel was historically used to accommodate vehicular and pedestrian traffic from both 174-178 George Street and 75-79 Webb Street, Fitzroy, from at least 2009 until the erection of the 2020 Fence and, in all likelihood, far longer. On this basis, Council officers are satisfied that the Hiatus Parcel is a 'right of way' within the meaning of the Act and, therefore, constitutes a 'road' within the broad meaning specified in the Act, in respect of which Council is entitled to consider making a declaration pursuant to section 204(1) of the Act. Officers note, however, that the George St Owners assert that part of the Hiatus Parcel has been continuously and exclusively possessed by them, the implication being that it is not a 'road' for the purposes of the Act.

- 2.5 The Webb Parcel also appears as part of the navigable section of Sandeman Place and has been used for vehicular access to the common property at the rear of 75-79 Webb Street, Fitzroy, since at least 2009. The Webb Parcel has been included as part of the Subject Land to ensure uninhibited vehicular access to the rear of 73 Webb Street and 75-79 Webb Street, based on an Engineering Report commissioned by Council (see **Attachment 2** Engineering Report) which revealed that the Webb Parcel is required to be maintained as part of the laneway to ensure that a B99 design vehicle can proceed to the termination (southern boundary) of the Subject Land.
- 2.6 If Council resolves to declare the Subject Land to be a public highway under section 204(1) of the Act, the Subject Land will become a 'public road' under section 17(1)(c) of the *Road Management Act 2004 (RMA)* and must be included on Council's Register of Public Roads in accordance with s 17(2) of the RMA.

3 Previous decisions

- 3.1 Council, at its meeting of 20 July 2021, resolved to commence the statutory processes under sections 204(1), 207A and 223 of the Act to declare the Subject Land a public highway.
- 3.2 On 3 September 2021, Council published a notice in The Age:
- 3.2.1 giving notice that Council proposes to declare the Subject Land a public highway under section 204(1) of the Act; and
- 3.2.2 inviting submissions under section 223 of the Act by 1 October 2021 (see **Attachment 1** Copy Public Notice);
- 3.3 Additionally, by letters served by Registered Post and letters hand delivered to occupiers, Council issued copies of the public notice to the owners and occupiers of the properties likely to be affected by the proposed declaration of the Subject Land as a public highway.

4. Public consultation

- 4.1 Council received two written submissions in response to its public notice published pursuant to s 223 of the Act. These are discussed below.
- 4.2 *Submission one – one of the Webb St Owners*
- 4.2.1 One of the Webb St Owners sent an email to Council officers raising concerns regarding the necessity of including the Webb Parcel as part of the Subject Land (see **Attachment 3**).
- 4.2.2 While this response did not specifically identify that it was a submission made under s 223 of the Act, given that it was received during the period for submissions, Council is treating it accordingly. Further, the response did not expressly oppose or support the proposed declaration, however it is nonetheless appropriate to consider its content and address the issues that it raises.
- 4.2.3 Following a process under s 204(1), 207A and 223 of the Act provides transparency associated with the proposed declaration and ensures the integrity of the decision-making process.
- 4.2.4 With respect to the purpose of including the Webb Parcel as part of the Subject Land, as noted at paragraph 2.4 above, this is to ensure uninhibited vehicular access by B99 design vehicles to the termination (southern boundary) of the proposed public highway.
- 4.3 *Submission two – the George St Owners*
- 4.3.1 Council received a submission from the legal representative of the Owners Corporation Plan no. RP015268 and the owners of units 1-4 of 174-178 George Street (being the 'George St Owners'). The submission (which is **Attachment 4**) opposed the proposed declaration to the extent that it included in the Subject Land the part of the Hiatus Parcel shaded in yellow in the diagram (refer **Attachment 5**). (**Opposed Parcel**).

4.3.2 By way of summary, this submission raised the following matters in opposition to the inclusion of the Opposed Parcel within the proposed declaration:

- (a) the George St Owners assert that the Opposed Parcel has been continuously and exclusively used and occupied by them and their predecessors for at least 40 years, for car parking purposes. The assertion is that the George St Owners are now the legal owners of the Opposed Parcel based on the doctrine of adverse possession and, by inference, the Opposed Parcel is not a 'road' which is capable of a public highway declaration. Such occupation is the basis for the George St Owners claiming the legal right to erect the 2020 Fence;
- (b) the Opposed Parcel is not '*reasonably required for general public use*' and, on that basis, Council cannot reasonably declare the Opposed Parcel to be a public highway under s 204(1) of the Act; and
- (c) based on their asserted legal ownership of the Opposed Parcel, the George St Owners are entitled to apply to the Registrar of Titles to amend the title boundaries of the relevant folios comprising 174-178 George Street, to incorporate the Opposed Parcel within those parcels.

The submission did not raise any matters for consideration in respect of the Webb Parcel or the balance of the Hiatus Land (excluding the Opposed Parcel).

4.4 At its meeting on 7 December 2021 Council resolved to declare the Subject Land a public highway. It did so after hearing from one of the Webb St Owners and considering an Officer Report making a Recommendation that the declaration be made.

Council resolved as follows:

*That Council, having given public notice of its proposal to declare the road shown hatched on the plan in the relevant public notice (**Subject Land**) as a public highway under section 204(1) of the Local Government Act 1989 (**Act**), and having considered all submissions in response to that notice:*

- (a) *resolves to declare the Subject Land to be a public highway pursuant to section 204(1) of the Act, for the reason that the whole of the Subject Land is required for public use;*
- (b) *authorises the publishing of a notice in the Victoria Government Gazette declaring the Subject Land to be a public highway pursuant to section 204(1) of the Act; and*
- (c) *notifies submitters in writing of its decision and the reasons for the decision.*

The declaration of the Subject Land as a public highway was then gazetted.

4.5 Council's 7 December 2021 Resolution became the subject of a legal challenge. A Supreme Court proceeding was brought by the George St Owners, challenging the validity of Council's decision.

One of the grounds of legal challenge was that Council had acted invalidly because the George St Owners had not been provided with an opportunity to speak to a written submission previously made to Council.

4.6 As Council's lawyers began preparing Council's defence to the proceeding, it was discovered that, due to an administrative oversight by a former member of Council staff, the George St Owners were not advised in advance of the meeting held on 7 December 2021. They were therefore deprived of an opportunity to speak in support of their written submission, with the result that section 223(1)(b)(i) and (iii) of the *Local Government Act 1989* had been breached. These provisions require a Council to give notice to a submitter of the date, time and place of the meeting that will consider submissions, and provide the submitter with an opportunity to be heard in support of their written submission.

The George St Owners and Council agreed that the Supreme Court proceeding should be resolved by the making of consent orders. As a result, on 24 June 2022 the Supreme Court ordered that:

- 4.6.1 the public highway declaration embodied in Council's Resolution of 7 December 2021, as subsequently gazetted, be quashed;
- 4.6.2 Council pay the George St Owner's costs of the proceeding on a standard basis; and
- 4.6.3 the proceeding otherwise be dismissed without any adjudication of the merits.

The effect of the Orders made by the Supreme Court is to treat Council's Resolution of 7 December 2021 as a nullity. In other words, no public highway declaration has, as a matter of law, been made.

4.7 After the Supreme Court proceeding was resolved Council wrote to those who had previously made written submissions:

- 4.7.1 advising them that Council would meet on 25 October 2022 to hear from any submitter who wished to be heard in support of their written submission; and
- 4.7.2 inviting them to attend the meeting of Council on 25 October 2022 to speak in support of their submission.

4.8 At its meeting on 25 October 2022 Council heard from each of the submitters.

- 4.8.1 The legal representative of the George St Owners reiterated that:
 - (a) the George St Owners assert that they have enjoyed the exclusive use of the Hiatus Parcel for in excess of 40 years; and
 - (b) there would be no real purpose served by the proposed declaration, since anyone exiting 75-79 Webb Street along Sandeman Place would inevitably need to traverse part of the privately owned land comprising 174-178 George Street, to which there is no legal right of access.

4.8.2 A representative of the Webb St Owners maintained that:

- (a) for a period of approximately 37 years, the Hiatus Parcel had been used to access the rear of 75-79 Webb Street. In other words, what was said by the legal representative of the George St Owners about exclusive use was disputed; and
- (b) it is possible to use only the Subject Land to reverse out of 75-79 Webb Street, without traversing any part of the privately owned land comprising 174-178 George Street.

4.9 After hearing from submitters Council resolved to:

- 4.9.1 note what was said in the written submissions and what had been said in support of those submissions; and
- 4.9.2 consider those submissions and what had been said in support of those submissions, and an Officer Report such as this, at this meeting.

4.10 Council is, therefore, now at a point where it must decide whether to declare the Subject Land to be a public highway. It is important that Councillors approach this issue taking into account all relevant considerations, and knowing that, in doing so, they are free to reach a different conclusion than that embodied in the Resolution of 7 December 2021.

5. Consideration of Submissions and Review of Relevant Issues

5.1 Council officers recently carried out an inspection of Sandeman Place, with particular reference to the Subject Land and the areas and physical features highlighted in **Attachment 2**. They are satisfied that no material changes to the Subject Land (including the relevant areas and physical features) have occurred since the preparation of **Attachment 2**.

5.2 Council officers provide the following comments in response to the submissions made by the George St Owners:

5.2.1 Adverse possession / ownership claim

- (a) The Opposed Parcel is 'hiatus land' and does not have a title or registered proprietor.
- (b) If they made an adverse possession claim the onus would be on the George St Owners to prove that they are entitled to be registered as owner of the fee simple estate in the Opposed Parcel based on the doctrine of adverse possession. This would require the George St Owners to prove that they accrued at least 15 years of continuous and exclusive possession of the Opposed Parcel, to the exclusion of all others, prior to the Opposed Parcel becoming a road. Once the Opposed Parcel became a road, the George St Owners would need to show 30 years of continuous and exclusive possession to obtain a legal title free from the road status.
- (c) The George St Owners assert that their rights of adverse possession derive from them having demarked the Opposed Parcel from the publicly accessible areas of Sandeman Place, by concreting the Opposed Parcel as a parking area which has been exclusively possessed and used by the George St Owners.
- (d) Aerial images of the Subject Land obtained by Council show that, prior to erection of the 2020 Fence, the Opposed Parcel was openly accessible to third parties via Sandeman Place (refer **Attachment 2**). This evidence appears to contradict the George St Owners' claims that the Opposed Parcel was in the exclusive possession of the George St Owners for any period longer than approximately 20 months.
- (e) The Webb St Owners maintain that they (and their predecessors) have been accessing and using the Opposed Parcel for at least 35 years prior to erection of the 2020 Fence, for the purpose of vehicle movements and using that land for access between Sandeman Place and the common property at the rear of 75-79 Webb Street. This evidence contradicts the George St Owners' claims that they have been in exclusive and continuous possession of the Opposed Parcel, to the exclusion of all others, for any period longer than approximately 20 months.
- (f) Although it is not free from doubt, the evidence provided and available to Council indicates that the George St Owners have not accrued rights of adverse possession over the Opposed Parcel and, therefore, are not the legal owners of the Opposed Parcel.

5.2.2 Whether the Opposed Parcel can legally form part of the proposed declaration

- (a) Section 204(1) of the Act does not expressly require that Council make a decision that a road is 'reasonably required for general public use' before it can declare that road to be a public highway.
- (b) However, as the effect of declaring the Subject Land to be a public highway is that it will be:
 - (i) *'open to the public for traffic as a right, irrespective of whether the road is in fact open to traffic'* (section 3(1) of the Act); and
 - (ii) a 'public road' for the purposes of the RMA (section 17(1)(c) of the RMA),

the relevant issue for determination by Council is whether the Subject Land is reasonably required for public use. Council must act reasonably and consider all relevant considerations in reaching its decision.

- (c) Officers consider that it is open to Council to consider declaring the Subject Land to be a public highway, for the reasons set out at paragraph 2.3 and 2.4 above.
- (d) Officers propose that it is reasonable to declare the whole of the Subject Land (including the Opposed Parcel) to be reasonably required for public use and a public highway under the Act, having regard to the following:
 - (i) adjoining landowners have stated that the whole of the Subject Land is needed to facilitate vehicular and pedestrian access to 174-178 George Street, 73 Webb Street and 75-79 Webb Street, Fitzroy. The factual basis of these statements is supported by the swept path diagrams in the Engineering Report commissioned by Council (see **Attachment 2.**);
 - (ii) it is not fatal to Council's decision that members of the public (other than adjoining landowners) may not have been using the Subject Land to date, as the purpose of the proposed declaration is to crystallise the rights of the public so that they are protected into the future. Officers consider that it is essential that the Subject Land be open for general public use, so that Sandeman Place is safely and properly navigable to members of the public who use it (as they are entitled to do);
 - (iii) the fact that Sandeman Place is a dead-end laneway does not necessarily mean that it is not reasonably required for public use going forward;
 - (iv) officers consider that the whole of the Subject Land is required for traffic management purposes, to facilitate the functionality of Sandeman Place as a laneway accessible to vehicles. The Opposed Parcel, in particular, is required to this end, as it is essential for the turning of vehicles at the southern end of Sandeman Place, consistent with its use over a number of years prior to the erection of the fence and gates by the George St Owners. In short, without the Opposed Parcel being included in the declaration, the ability of vehicles to use the balance of the Subject Land would be limited from a traffic management and functionality standpoint; and
 - (v) the proposed declaration does not appear to interfere with any property rights of the George St Owners, for the reason set out at paragraph (f) above.
- (e) Officers do not agree with the George St Owners' assertion that the declaration of the Opposed Parcel as a public highway would be contrary to the objectives of the RMA or the Act. Rather, such declaration serves the objectives of the relevant legislation, including the following objectives/principles of:
 - (i) achieving the best outcomes for the municipal community, including future generations (section 9(2)(b) of the Act);
 - (ii) establishing a system for the management of safe and efficient public roads that best meet the needs and priorities of State and local communities (section 4(2)(b) of the RMA); and
 - (iii) providing for the protection of roads against damage and interference (section 4(2)(k) of the RMA).

5.2.3 The George St Owners' proposal to obtain title to the Subject Land

With respect to the intention of the George St Owners to amend their titles to incorporate the Opposed Parcel, given that there is evidence that they have not historically enjoyed continuous and exclusive possession over the Opposed Parcel, it is suggested that an application of this kind is unlikely to succeed. Council should

also object to any such application on the basis that the Opposed Parcel is a 'road' for the purposes of the RMA.

- 5.3 Council officers provide the following comments in response to the submissions made by the Webb St Owners:
- 5.3.1 the historical aerial photography of the Subject Land and surrounding areas shows that it was possible for the Webb St Owners to access the Opposed Parcel for the purpose of reversing vehicles, without obstruction or consent from the George St Owners, as asserted by the Webb St Owners. Whether or not such use has occurred is a question of fact; and
 - 5.3.2 the swept path diagrams obtained by Council (contained in Attachment 2) show that the inclusion of the Webb Parcel in the proposed declaration, and its opening for public access, would facilitate vehicular movements across the Subject Land without the need for such vehicles to encroach onto the privately owned land comprising 174-178 George Street.
- 5.4 The Officers are of the opinion that, despite conflicting evidence, it is more likely than not that the George St Owners do not have a good possessory title to the Hiatus Parcel, that the Webb St Owners have, for an extended period, used the Hiatus Parcel (or at least the Opposed Parcel) and that the Subject Land is needed to ensure appropriate access to 75-79 Webb Street. They recommend that the proposed declaration be made.

Discussion

6. Following general discussion on the matter, the process has been subject to a statutory requirement.

Options

7. For Council to determine on the matter of declaring the subject parcels of land as public highway.

Community and stakeholder engagement

8. The statutory advertisement process enabled community / stakeholder engagement.

Policy analysis

Alignment to Community Vision and Council Plan

9. Not relevant to this report.

Climate emergency and sustainability implications

10. Not relevant to this report.

Community and social implications

11. A Council determination will provide clarity as to the status of Hiatus Parcel.

Economic development implications

12. Not relevant to this report.

Human rights and gender equality implications

13. Not relevant to this report.

Operational analysis

Financial and resource impacts

14. If the Subject Land is declared to be public highway, Council will be responsible for appropriate maintenance of the road.

Legal Implications

15. The consideration and processing of the matter has been addressed in accordance with legislative requirements.

Conclusion

16. That Council, having given public notice of its proposal to declare the road shown hatched on the plan in the relevant public notice (**Subject Land**) as a public highway under section 204(1) of the *Local Government Act 1989 (Act)*, and having considered all submissions in response to that notice (including what has been said in support of written submissions):
 - (a) resolves to declare the Subject Land to be a public highway pursuant to section 204(1) of the Act, for the reason that the whole of the Subject Land is required for public use;
 - (b) authorises the publishing of a notice in the *Victoria Government Gazette* declaring the Subject Land to be a public highway pursuant to section 204(1) of the Act; and
 - (c) authorises the Group Manager Chief Executive's Office to notify submitters in writing of its decision and the reasons for the decision, being the reasons set out in paragraphs 5.2 and 5.3 of the Officer Report.

RECOMMENDATION

1. That Council, having given public notice of its proposal to declare the road shown hatched on the plan in the relevant public notice (**Subject Land**) as a public highway under section 204(1) of the *Local Government Act 1989 (Act)*, and having considered all submissions in response to that notice (including what has been said in support of written submissions):
 - (a) resolves to declare the Subject Land to be a public highway pursuant to section 204(1) of the Act, for the reason that the whole of the Subject Land is required for public use;
 - (b) authorises the publishing of a notice in the *Victoria Government Gazette* declaring the Subject Land to be a public highway pursuant to section 204(1) of the Act; and
 - (c) authorises the Group Manager Chief Executive's Office to notify submitters in writing of its decision and the reasons for the decision, being the reasons set out in paragraphs 5.2 and 5.3 of the Officer Report.

Attachments

- 1 Attachment 1 - Copy of public notice published in The Age
- 2 Attachment 2 - Engineering Report
- 3 Attachment 3 – Submission on behalf of the Webb St Owners
- 4 Attachment 4 - Submission on behalf of the George St Owners
- 5 Attachment 5 - Diagram of Opposed Parcel

Attachment 2 - Attachment 2 - Engineering Report



MEMO

To: Ivan Gilbert
CC:
From: Danny Millican
Date: 4 November 2021
Subject: **Description:** Declaration of Land adjacent to Sandeman Place
Site Address: South End of Sandeman Place, Fitzroy

This memo provides engineering comment on the declaration of land adjacent to Sandeman Place, Fitzroy.

Drawings and Documents Reviewed

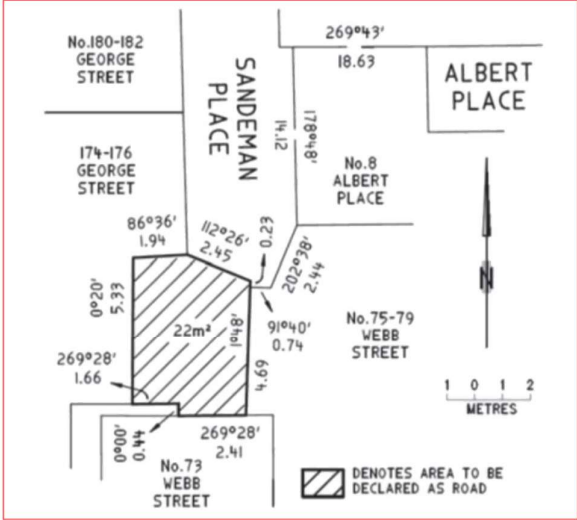
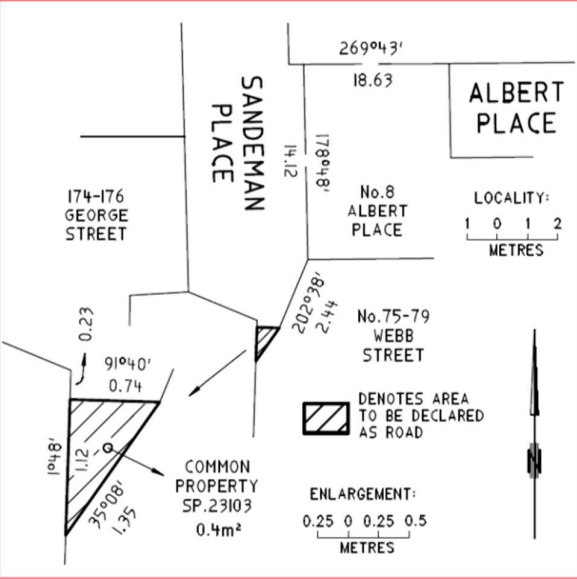
	Drawing No. or Document	Revision	Dated
Lawlor and Loy Vic.	Plan of Survey		2 July 2020
Micheli Oldfield Sinton Architects	TP01 Basement and Ground Floor Plan 174 George Street, Fitzroy	B	July 2019
Grounds Architecture	A001 Site/Location Plan 75 Webb Street, Fitzroy	Endorsed	14 February 2018
Certificate of Title	Vol. 09650 Fol. 169 and Vol. 09650 Fol. 889 75-79 Webb Street, Fitzroy		

Land at Southern End of Sandeman Place


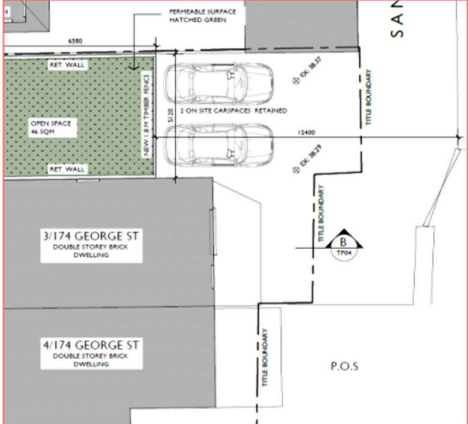
Item	Details
Background	
Sandeman Place, Fitzroy	<p>Sandeman Place is a Council controlled laneway and is listed on Council's <i>Register of Public Roads</i>. Commencing from Charles Street, Sandeman Place is aligned in the north-south direction and has a termination at its southern end. The laneway provides vehicular access to 75 Webb Street and 174 George Street. The southern end of Sandeman Place also abuts NUA land ('Not under the Act')* or hiatus land abutting the western boundary of 75-79 Webb Street and northern boundary of 73 Webb Street.</p> <p>Sandeman Place comprises a bluestone pavement with a central invert and has effective carriageway widths ranging from 3.09 metres to 4.07 metres.</p>

* 'Act' i.e. - *Transfer of Land Act 1958*.

Attachment 2 - Attachment 2 - Engineering Report

Item	Details
<p>Declaration of Land adjacent to South End of Sandeman Place</p>	<p>In March 2021, Council published a formal notice inviting submissions for the proposal to declare the NUA land at the south end of Sandeman Place as a Public Highway. This parcel of land is an irregular shape, as shown below:</p> 
<p>Declaration of Land adjacent to the NUA Land</p>	<p>Further to the formal notice, Council is considering a proposal to declare a small triangular piece of land on private property adjacent to the NUA land as a Public Highway. The parcel of land has an area of 0.4 square metres and is located on common property within the title of 75-79 Webb Street. Lawlor and Loy Surveyors have provided a plan of the land as shown below:</p> 

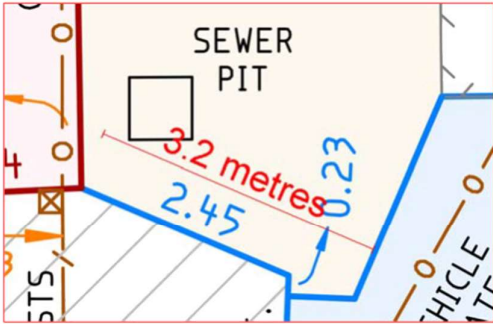
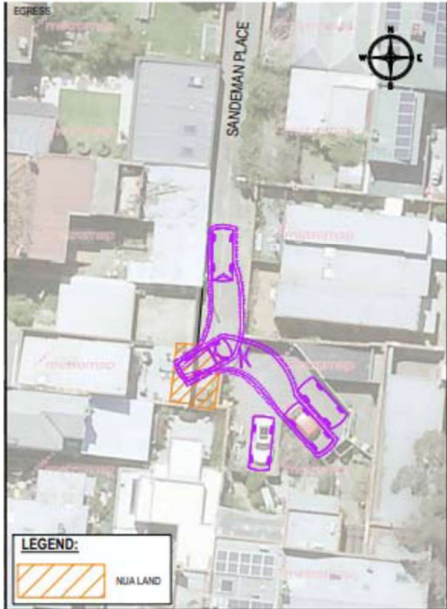
Attachment 2 - Attachment 2 - Engineering Report

Item	Details
	<p>The acquisition of the triangular parcel of land as a Public Highway would improve access for vehicles to the NUA land, as the 2.45 metre distance of the north east boundary of the NUA is insufficient for satisfactory vehicle access.</p>
Existing Conditions	
<p>Survey Plan prepared by Lawlor and Loy Surveyors</p>	<p>The survey plan prepared by Lawlor and Loy depicts existing features of walls, infrastructure assets and gates, among other things, and are superimposed with the cadastre (please see <i>Plan of Survey</i> appended to this memo).</p>
<p>75-79 Webb Street, Fitzroy</p>	<p>The property at 75-79 Webb Street comprises four residential dwellings and an on-site car parking area with four spaces (common property) and is accessed via Sandeman Place. Below is an extract from the endorsed drawings for 75 Webb Street (PLN17/1105), showing the on-site car parking configuration, driveway and vehicular entrance.</p> 
<p>174 George Street, Fitzroy</p>	<p>The property at 174 George Street comprises four residential dwellings with three approved on-site parking spaces. Below is an extract from the advertised plan. Units 3 and 4 do not contain any on-site car parking.</p> 

Attachment 2 - Attachment 2 - Engineering Report

Item	Details
<p>South End of Sandeman Place Nearmap Aerial Photo Imagery Thursday 11 March 2021</p>	
<p>Site Inspection of Sandeman Place – Thursday 6 May 2021</p>	<p>A site inspection of Sandeman Place was conducted by Council Engineers to note existing conditions and to record a number of measurements.</p> <p><u>75-79 Webb Street Abuttal to Sandeman Place</u> The gate servicing 75-79 Webb Street has a width of 3.24 metres – ample for the swept path of a B99 design vehicle.</p> <p>It was observed that the north western boundary of the property is delineated by a trowel line in the pattern paved concrete, as is clearly shown in the photograph below:</p>  <p>The corner of the brick wall shown in the photograph above (where a white outlet pipe can be seen towards the left) marks the precise location of the south west corner of 8 Albert Place – as depicted in the survey undertaken by Lawlor and Loy. The placement of a structure or bollard within the triangular parcel of land would reduce the doorway width of the property’s vehicular entrance.</p> <p><u>174 George Street Abuttal to Sandeman Place</u> A fence and sliding gate has been constructed along the property’s abuttal to Sandeman Place and extends through the NUA land.</p>

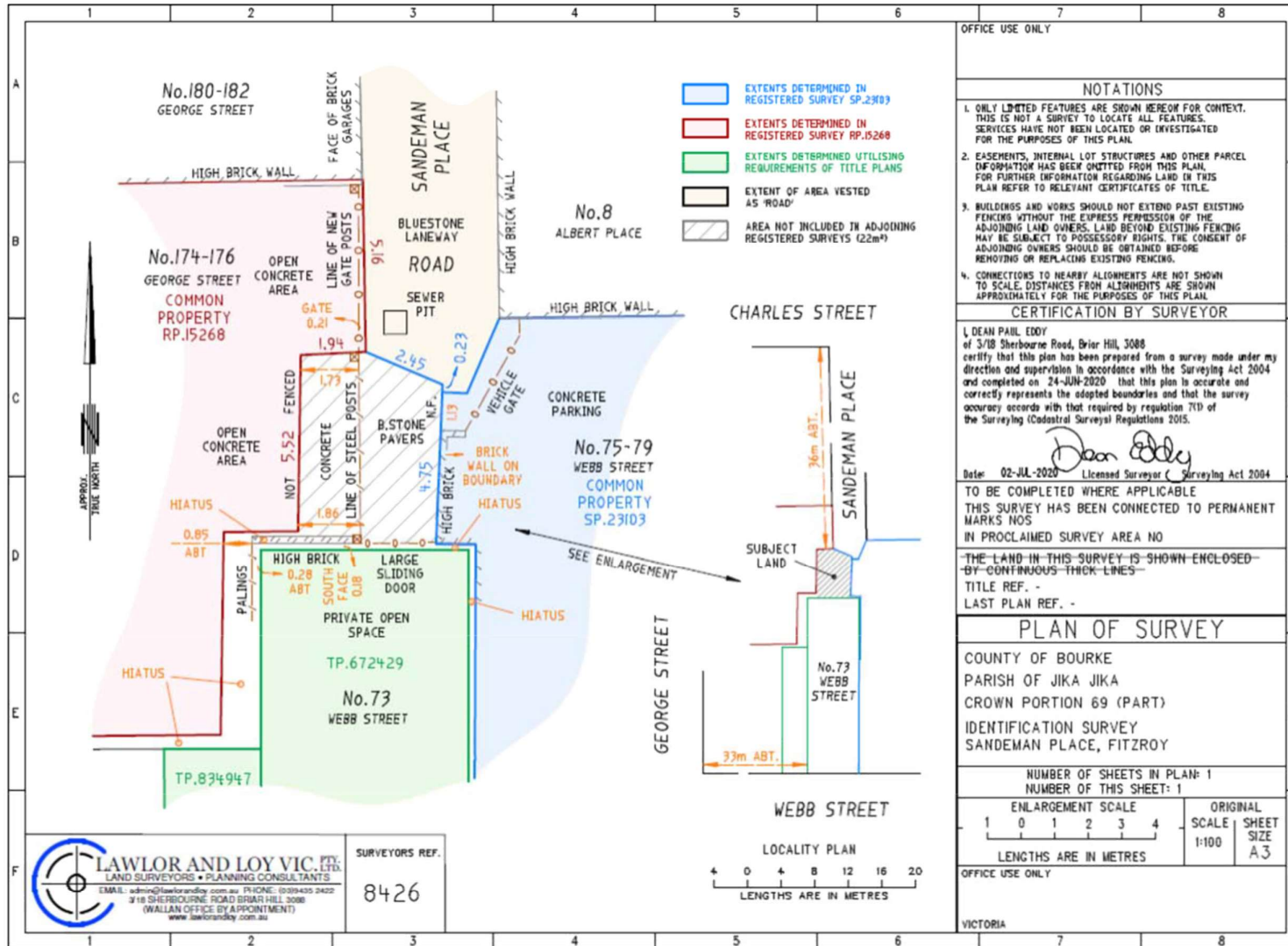
Attachment 2 - Attachment 2 - Engineering Report

Item	Details
<p>General Vehicular Access Width of combined NUA Land and Triangular Parcel of Lane</p>	<p>Throughout much of the municipality, many Council controlled laneways have carriageway widths of 3.05 metres – adequate for a B99 design vehicle to traverse. As indicated earlier, a width of 2.45 metres is considered insufficient for adequately accommodating a vehicle.</p> <p>The effective width of the NUA land and triangular parcel of land would result in a combined carriageway width of 3.2 metres. This has been confirmed using Trapeze, as shown below:</p>  <p>A swept path analysis using vehicle tracking software for a B85 demonstrates that the NUA land may have previously been used for vehicles exiting 75-79 Webb Street prior to the erection of the fence within the NUA land. The movement shown is a vehicle reversing out of 75-79 Webb Street and using the land to turn into a forward direction. There is an expectation from a road safety perspective that all vehicles exiting Sandeman Place will do so in a forward direction.</p> 

Attachment 2 - Attachment 2 - Engineering Report

Conclusion	
Summary	<p>In light the above, the declaration of the triangular parcel of land on the property of 75-79 Webb Street is crucial to ensuring that a B99 design vehicle can proceed to the termination (southern boundary) of the NUA land.</p> <p>The analysis has shown that the NUA land may have previously been used for vehicles exiting 75-79 Webb Street prior to the erection of the fence within the NUA land.</p>

Attachment 2 - Attachment 2 - Engineering Report



Attachment 3 - Attachment 3 – Submission on behalf of the Webb St Owners

From: Greg Rodwell
Sent: Tuesday, 28 September 2021 5:04 PM
To: Vass, George

Subject: Re: Sandeman Place

Hi George,

We received a letter from you dated 14 September 2021 re 'Notice of Statutory Process to declare part of Sandeman Place Fitzroy a Public Highway'. I was a little confused and surprise to see this given the communication we have received from you (in the email chain below) specifically where you stated on the 13th of May 2021:

"Immediately following Council's meeting of 4 May 2021, we provided a copy of Council's resolution to Council's legal representative with an instruction to gazette the NUA land a public highway.

The gazettal notice was already prepared.

On the question of enforcing Sandeman Place a PH, I also briefed our Compliance Team of Council's declaration and sought advice as to whether Council should act on the resolution alone or wait for gazettal and it was agreed that we wait for gazettal.

I should have an update today re timing but it is simply an administrative but important step.

I have also now received a report from Council's engineers that support the importance of the 0.4 sq.m triangle that forms part of the separate statutory process that Council is ready to commence.

The report includes diagrams that show the position of the triangle, the 2.45 metre diagonal restriction previously highlighted and most importantly the sweep path necessary for reasonable vehicular access. The sweep path shown is for a B99 vehicle which includes an ambulance or small truck that would not be able to get through the Sandeman place restriction if the triangle is not part of Sandeman Place."

I have spoken to Stephen Jolly about this today, he advised that Council did not follow the correct process and that is why now the process is starting again. What I am struggling to understand is why now, with no further consultation, you are listing the 0.4sq.m triangle as part of this process when you specifically stated that it would be part of a separate process? I am also struggling to understand the need for this 0.4sq.m triangle, the report you refer to doesn't identify if the B99 vehicle has sufficient width to enter 75-77 Webb St, especially considering this is the only access to Tony's home - where as a B99 can access 73 Webb and George St from Webb St and George St respectively. At the Council meeting you argued the triangle would increase access by over 2m - whereas it only increases it by 23cm. This seems really misleading.

From someone who works for Local Government I find this whole process slightly unbelievable and concerning. From our initial interaction with you where you proposed options to give the NUA land to those parties that are unlawfully staking a claim to it, to the numerous communications you have made (as evidenced by the statement above) where you provide advice and a commitment and then not follow through on this. We then find out that the process is starting again because Council did not follow the correct process, it really questions my trust in Council and the Officers undertaking this process. It almost feels like it might have been a convenient mistake...

Attachment 3 - Attachment 3 – Submission on behalf of the Webb St Owners

If you could please provide clarity on my questions above and provide some sense of assurity to the process and our rights as rate paying residents that would be greatly appreciated.

Regards,
Greg Rodwell
75 Webb Street Fitzroy

Attachment 4 - Attachment 4 - Submission on behalf of the George St Owners

Contact: Robert McKay
 Direct line: 03 9691 0244
 Email: rmckay@besthooper.com.au
 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.

Best Hooper Pty Ltd

Level 9/451 Little Bourke Street
 Melbourne VIC 3000, Australia

PO Box 13312
 Law Courts 8010

T (03) 9670 8951
F (03) 9670 2954

www.besthooper.com.au
 ACN 137 307 692

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Attachment 4 - Attachment 4 - Submission on behalf of the George St Owners

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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.

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Attachment 4 - Attachment 4 - Submission on behalf of the George St Owners

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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.

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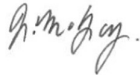
Attachment 4 - Attachment 4 - Submission on behalf of the George St Owners

- 4 -

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.

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Attachment 4 - Attachment 4 - Submission on behalf of the George St Owners

Annexure A | Opposed Portion

Figure A:

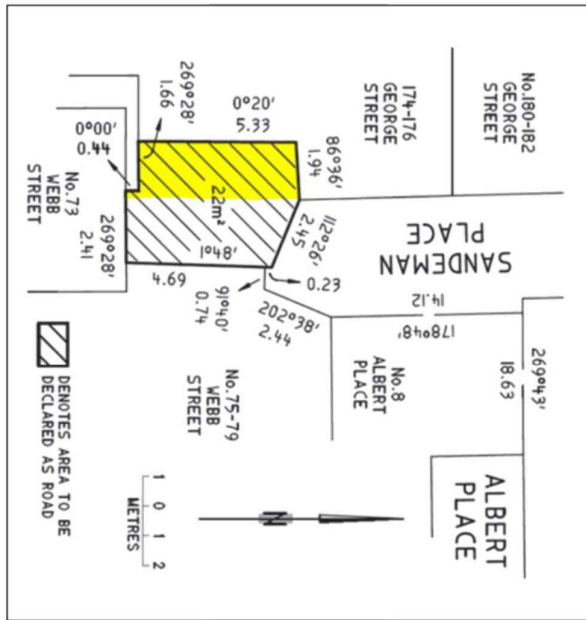
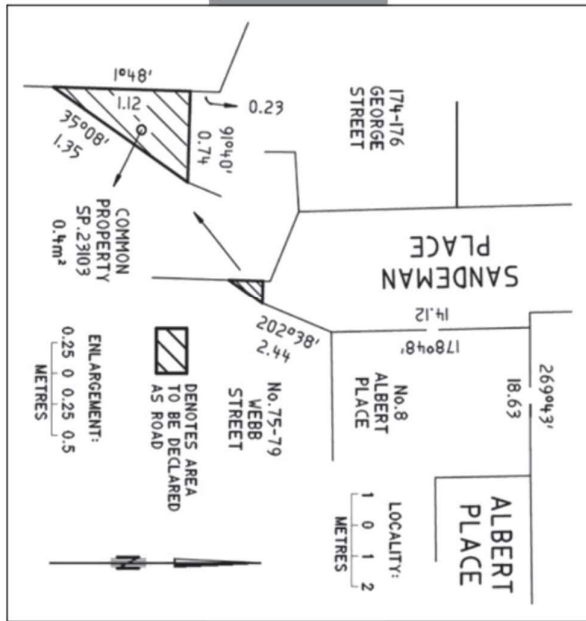


Figure B:



Annexure B | Annotated NearMap satellite image

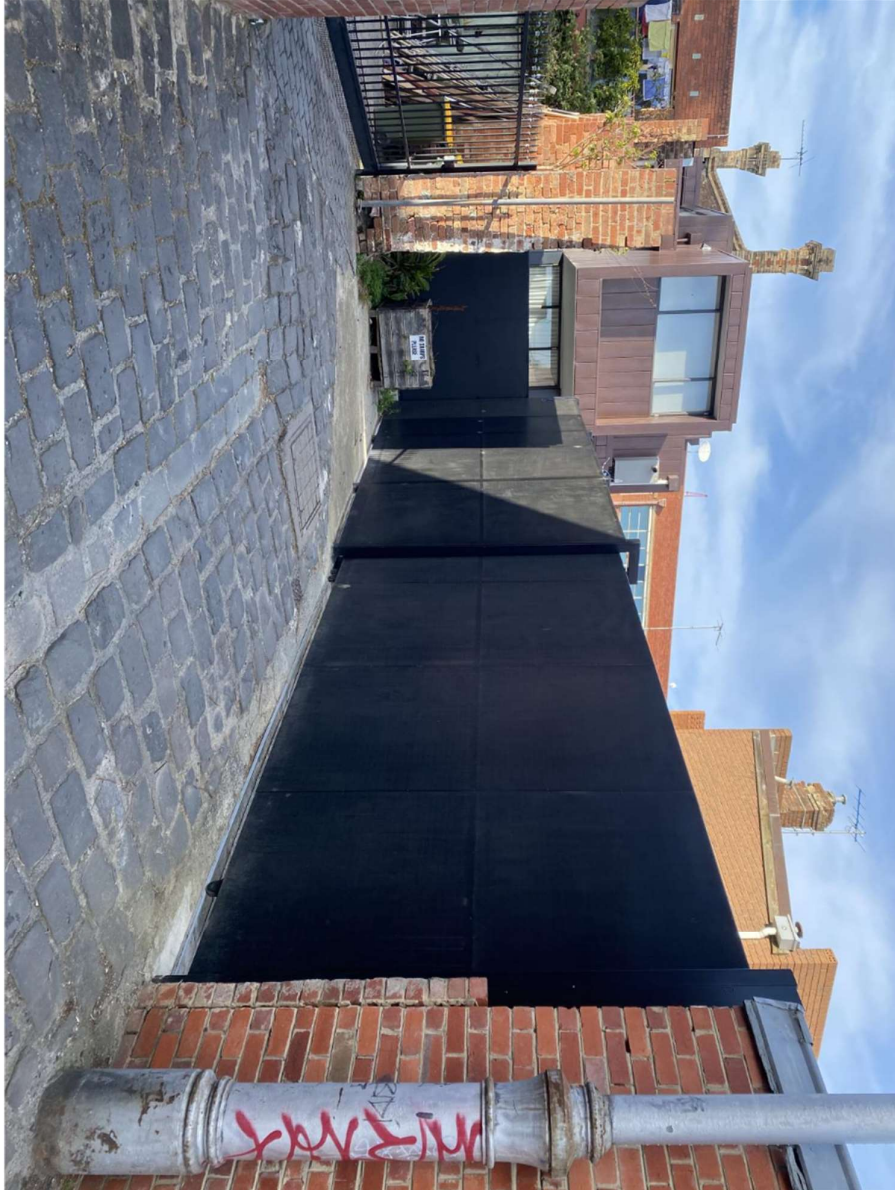


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Attachment 4 - Attachment 4 - Submission on behalf of the George St Owners

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Annexure C | Photo of wall and gate



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Attachment 4 - Attachment 4 - Submission on behalf of the George St Owners

38 THE AGE FRIDAY, SEPTEMBER 3, 2021

SPORT RACING

Table with columns for race times (1-12:30, 1-12:40, 1-12:50, 2-1:00, 2-1:10, 2-1:20, 2-1:30, 2-1:40, 2-1:50, 3-2:00, 3-2:10, 3-2:20, 3-2:30, 3-2:40, 3-2:50, 3-3:00, 3-3:10, 3-3:20, 3-3:30, 3-3:40, 3-3:50, 3-4:00), race names (Bendigo Mazda Plate, Big Screen Company Plate, Catanach's Jewellers (B64), etc.), and race details (Prize money, horse names, jockeys, trainers, etc.).

Public Notices

Public Notices section containing various notices including 'PACKAGED LIQUOR LICENCE APPLICATION', 'PRIVATE SECURITY BUSINESS REGISTRATION', and 'NOTICE OF AN APPLICATION FOR A PLANNING PERMIT'.

Public Notices

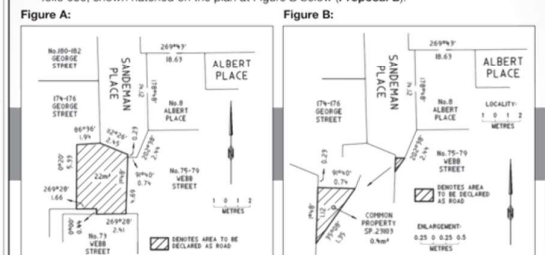
Public Notices section containing various notices including 'PACKAGED LIQUOR LICENCE APPLICATION', 'PRIVATE SECURITY BUSINESS REGISTRATION', and 'NOTICE OF AN APPLICATION FOR A PLANNING PERMIT'.

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, sub divided on the plan at the Figure A below (Proposal A); and
(b) part of the common property on registered plan of strata subdivision no. SP023103.J 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




Attachment 4 - Attachment 4 - Submission on behalf of the George St Owners

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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 - - - - -

VOL.

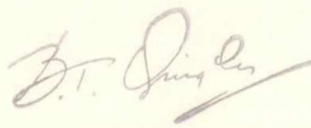
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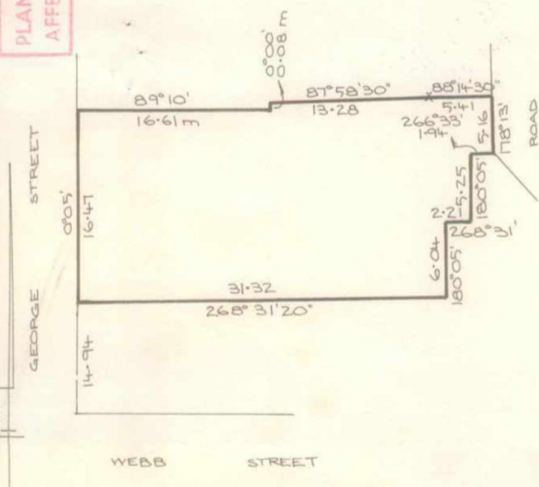
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PLAN **J130958**
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 Assistant Registrar of Titles


 OFFICE OF TITLES
 VICTORIA

ENCUMBRANCES REFERRED TO








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Attachment 4 - Attachment 4 - Submission on behalf of the George St Owners

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VOL. 9349 FOL. 003	INSTRUMENT	APPLICATION	9204/78-PL
<p>MORTGAGE to H.G. & R. NOMINEES PROPRIETARY LIMITED and COLIN HENRY KEON-CHEN Registered 27th November 1979 No. M779191</p>  			
<p>MORTGAGE to FRANCIS ALEXANDER McMANUS and BERNARD JAMES AHERN Registered 4th June 1980 No. J14071</p> 			
<p>CANCELLED Units one to six in Vol 9387 Folios 779 Resp. to Vol 9387 Fol. 784 Registered Plan No. 15268 Date 3rd September 1980 J130958</p> 			
<p>CANCELLED</p>			
			
		<p>T09349-003-1-8</p>	

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Attachment 5 - Attachment 5 - Diagram of Opposed Parcel

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Annexure A | Opposed Portion

Figure A:

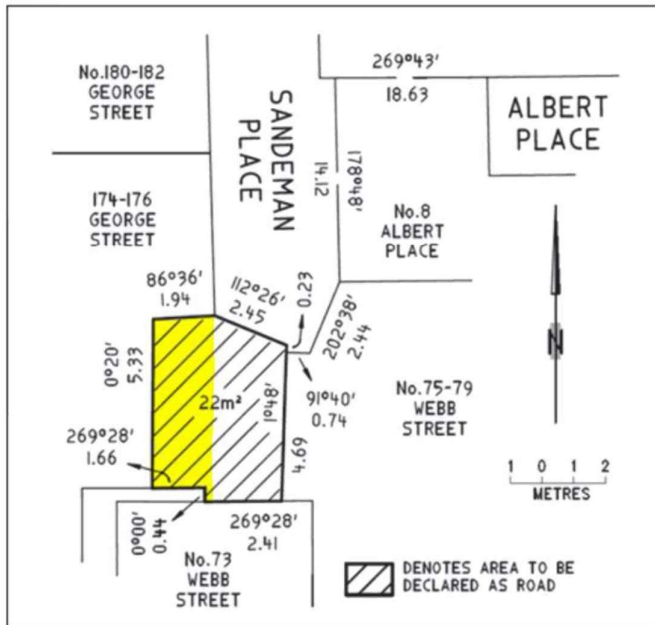
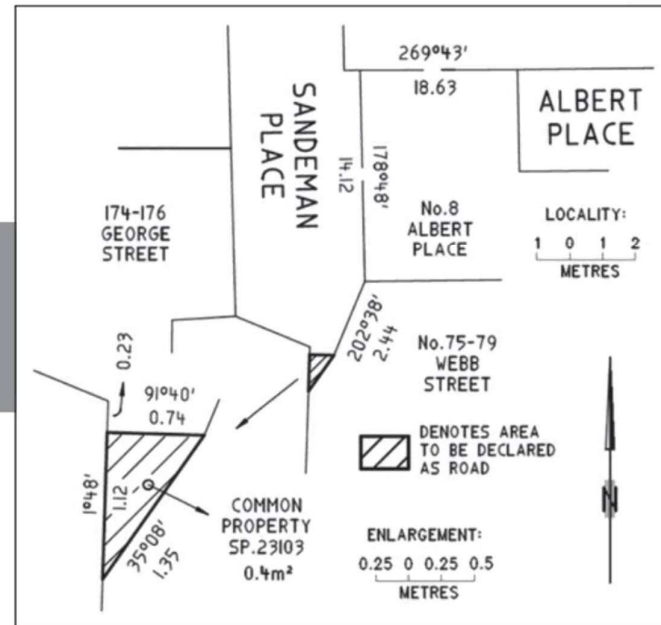


Figure B:



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