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AGENDA

Hearing of Submissions Committee Meeting to be held
at Preston Town Hall,
284 Gower Street Preston
on Monday, 29 March 2021
at 4.00pm.



ACKNOWLEDGEMENT OF TRADITIONAL OWNERS AND ABORIGINAL AND TORRES STRAIT ISLANDER COMMUNITIES IN DAREBIN

Darebin City Council acknowledges the Wurundjeri Woi-Wurrung people as the Traditional Owners and custodians of the land we now call Darebin and pays respect to their Elders, past, present and emerging.

Council pays respect to all other Aboriginal and Torres Strait Islander communities in Darebin.

Council recognises, and pays tribute to, the diverse culture, resilience and heritage of Aboriginal and Torres Strait Islander people.

We acknowledge the leadership of Aboriginal and Torres Strait Islander communities and the right to self-determination in the spirit of mutual understanding and respect.



English

These are the Minutes for the Council Meeting. For assistance with any of the items in the minutes, please telephone 8470 8888.

Arabic

هذه هي محاضر اجتماع المجلس. للحصول على المساعدة في أي من البنود في المحاضر، يرجى الاتصال بالهاتف 8470 8888.

Chinese

这些是市议会会议纪要。如需协助了解任何纪要项目，请致电8470 8888。

Greek

Αυτά είναι τα Πρακτικά της συνεδρίασης του Δημοτικού Συμβουλίου. Για βοήθεια με οποιαδήποτε θέματα στα πρακτικά, παρακαλείστε να καλέσετε το 8470 8888.

Hindi

ये काउंसिल की बैठक का सारांश है। सारांश के किसी भी आइटम में सहायता के लिए, कृपया 8470 8888 पर टेलीफोन करें।

Italian

Questo è il verbale della riunione del Comune. Per assistenza con qualsiasi punto del verbale, si prega di chiamare il numero 8470 8888.

Macedonian

Ова е Записникот од состанокот на Општинскиот одбор. За помош во врска со која и да било точка од записникот, ве молиме телефонирајте на 8470 8888.

Nepali

यी परिषद्को बैठकका माइन्युटहरू हुन्। माइन्युटका कुनै पनि वस्तुसम्बन्धी सहायताका लागि कृपया 8470 8888 मा कल गर्नुहोस्।

Punjabi

ਇਹ ਵੈੱਸਲ ਦੀ ਮੀਟਿੰਗ ਵਾਸਤੇ ਸੰਖੇਪ ਸਾਰਾਂਸ਼ ਹੈ। ਸੰਖੇਪ ਸਾਰਾਂਸ਼ ਵਿਚਲੀਆਂ ਕਿਸੇ ਵੀ ਆਈਟਮਾਂ ਸੰਬੰਧੀ ਸਹਾਇਤਾ ਵਾਸਤੇ, ਕਿਰਪਾ ਕਰਕੇ 8470 8888 ਨੂੰ ਟੈਲੀਫੋਨ ਕਰੋ।

Somali

Kuwaani waa qodobadii lagaga wada hadlay Fadhiga Golaha. Caawimada mid kasta oo ka mid ah qodobada laga wada hadlay, fadlan la xiriiir 8470 8888.

Spanish

Estas son las Actas de la Reunión del Concejo. Para recibir ayuda acerca de algún tema de las actas, llame al teléfono 8470 8888.

Urdu

یہ کاؤنسل کی میٹنگ کا ایجنڈا ہے۔ ایجنڈے کے کسی بھی حصے کے بارے میں مدد کے لیے براہ مہربانی 8470 8888 پر فون کریں۔

Vietnamese

Đây là những Biên bản Họp Hội đồng Thành phố. Muốn có người trợ giúp mình về bất kỳ mục nào trong biên bản họp, xin quý vị gọi điện thoại số 8470 8888.

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Extract from Hearing of Submissions Committee Instrument of Delegation (Adopted by Council 7 December 2020)

1.Powers and functions

The Hearing of Submissions (the Committee) is a ‘ Delegated committee ‘ with delegated powers appointed pursuant to section 63 of the Local Government Act 2020 to exercise Council’s powers, functions and duties relating to the hearing of submissions received by Council in accordance with section 223 of the Local Government Act 1989 (or under any other Act) including, but not limited to:

- a) review of Councillor and Mayoral allowances, b) making of local laws, c) the Council Plan, d) the Council Budget, e) the system of valuing land, f) special rates or charges, g) sale of land, h) lease of land, i) change of use of land, j) proposed works to concentrate or divert drainage,k)requiring,drainage works on private land,l) fix and alter the level of roads, m) deviation of a road through private land or Crown land, n) discontinuance and sale of roads, o) fixing road alignment, p) narrowing or widening a road, q) placement of permanent barriers on roads, r) placement of temporary barriers for traffic diversion experiments, s) declaration of shopping malls, t) restricting the use of roads by vehicles of certain size or weight, u) declaration of a public highway; and v) declaration of a road to be open to public traffic.

2. Membership

The Committee comprises all Councillors.

3. Chairperson

The Mayor is the Committee Chairperson.

4. Meetings

The Committee will generally meet as determined by resolution of the Council, but may, pursuant to Section 63 of the *Local Government Act 2020*, also resolve to hold meetings.

5. Submitters to the Hearing of Submissions Committee

Submitters to the Committee include persons who have made a written submission to a matter and any other person determined by the Chairperson.

Submitters to the committee will be allocated 2 minutes to address the committee in support of their written submission.

The Chairperson at their discretion may extend the submission time limits in relation to a specific matter or person.

6. Reporting

The Committee reports as required to a subsequent meeting of the Council. A separate report on each specific matter heard by the Committee will also be submitted for formal determination by the Council. A report on the meetings and activities of the Hearing of Submissions Committee is to be prepared for inclusion in Council’s Annual Report.

Agenda

1. MEMBERSHIP

Cr. Lina Messina (Mayor) (Chairperson)

Cr. Gaetano Greco (Deputy Mayor)

Cr. Emily Dimitriadis

Cr. Tom Hannan

Cr. Tim Laurence

Cr. Trent McCarthy

Cr. Susanne Newton

Cr. Susan Rennie

Cr. Julie Williams

2. APOLOGIES

3. DISCLOSURES OF CONFLICTS OF INTEREST

4. CONFIRMATION OF MINUTES

Nil

5. CONSIDERATION OF REPORTS

5.1 PROPOSED DISCONTINUANCE OF THE RIGHT OF WAY/ROAD ADJOINING THE REAR OF 1 TO 11 MERRILANDS ROAD, 4 TO 10 HUGHES PARADE AND 12 ASQUITH STREET, RESERVOIR

Author: Acting Senior Property Services Officer

Reviewed By: General Manager, Governance and Engagement

EXECUTIVE SUMMARY

The purpose of this report is to seek the Hearing of Submissions Committee's consideration of the submissions made on the proposed discontinuance and sale of the right of way/road adjoining the rear of 1 to 11 Merrilands Road, 4 to 10 Hughes Parade and 12 Asquith Street, Reservoir.

At its meeting on 17 August 2020, Council resolved to commence statutory procedures under section 206 and clause 3 of Schedule 10 of the *Local Government Act 1989* regarding the proposed discontinuance and sale of the right of way/road adjoining the rear of 1 to 11 Merrilands Road, 4 to 10 Hughes Parade and 12 Asquith Street, Reservoir.

Public notice was given of Council's intention to discontinue and sell the subject road in the Herald Sun newspaper and on Council's website on 31 August 2020, in addition all adjoining owners and occupiers were consulted in writing. The public notice period ended on 30 September 2020. Council received 4 written submissions in regard to the proposal with 2 requesting to be heard by Council in support of their submission.

It is noted that the role of the Hearing of Submissions Committee is only to 'hear' and receive submissions. There are no options for consideration, or analysis of submissions included in this report.

Following the Hearing of Submissions Committee meeting, a further report in relation to the matter will be provided to the 26 April Council meeting seeking a final resolution on the matter.

Recommendation

That Council:

- (1) Receives the written and verbal submissions.
 - (2) Thanks all submitters and presenters for addressing the Committee in support of their written responses.
 - (3) Receives a report to 26 April 2021 Council Meeting as part of Council's deliberations in considering the proposed discontinuance and sale of the right of way/road adjoining the rear of 1 to 11 Merrilands Road, 4 to 10 Hughes Parade and 12 Asquith Street, Reservoir.
-

BACKGROUND / KEY INFORMATION

In 2016, Council commenced preliminary investigations into the discontinuance and sale of the section of road. The investigations identified that although the Road remains a road on title, it is not listed on Council's Register of Public Roads and that whilst some of the adjoining owners appear to have been using the land for growing plants and vegetables, and with the exception of 4 Hughes Parade and 11 Merrilands Road (who are in occupation of the land), the majority of the land is unoccupied and is not used as a road.

Once initial investigations confirmed the feasibility of the proposed discontinuance, Macquarie Lawyers were commissioned to undertake further consultation with a view of Council commencing the statutory procedures to facilitate the possible discontinuance and sale of the 3.05m wide section of Road.

Previous Council Resolution

At its meeting on 17 August 2020, Council resolved:

- (a) Commences the statutory procedures under section 206 and clause 3 of Schedule 10 to the *Local Government Act 1989* ("the Act") to discontinue the road adjoining the rear of 1 to 11 Merrilands Road, 12 Asquith Street and 4 to 10 Hughes Parade, Reservoir, shown hatched in the statutory plan as **Appendix A**
- (b) Gives public notice under sections 207A and 82A and 223 of the Act of the proposed discontinuance in the appropriate newspapers and on Council's website and in such notice states that if discontinued, Council proposes to sell the land from the Road to the adjoining property owners by private treaty and transfer to itself any land from the Road not sold.

COMMUNICATIONS AND ENGAGEMENT

Public notice was given of Council's intention to discontinue and sell the subject road in the Herald Sun newspaper and on Council's website on 31 August 2020, in addition all adjoining owners and occupiers were consulted in writing. The public notice period ended on 30 September 2020. Council received 4 written submissions in regard to the proposal with 2 requesting to be heard by Council in support of their submission.

The owners of 4 Hughes Parade, 8 Hughes Parade, 10 Hughes Parade, 5 Merrilands Road, 7 Merrilands Road and 12 Asquith Street, Reservoir, have confirmed an interest in acquiring the land shown as Lots 5, 6, 1, 2, 7 and 3 respectively, shown in the Title Plan in **Appendix A**, at current market value, as well as agreeing to meet a share of the reasonable costs associated with Council discontinuing and selling the Road, in accordance with policy. Council will transfer to itself any land that remains unsold protecting its interest in the land.

Yarra Valley Water has a sewer within part of the land and will require an easement to be saved over part of the land if the Road is discontinued. Similarly, Council has drainage assets in part of the land and will also require an easement to be saved over part of the land if the Road is discontinued.

Consultation with the community

The statutory procedures require Council to give public notice of its intentions to discontinue and sell the Road adjoining the rear of 1 to 11 Merrilands Road, 12 Asquith Street and 4 to 10 Hughes Parade, Reservoir and invite submissions from affected parties.

Submitters may request to be heard by Council prior to a decision being made to proceed or otherwise with the proposal. In addition, all abutting property owners would be advised of the

proposal in writing and informed of their right to make a submission. Following which, a report will be presented to Council for a decision on each of the matters.

Amendments to the Local Government Act 1989

Section 189 (Restriction on power to sell land) of the *Local Government Act 1989* (Act) will be revoked on 1 July 2021 and will be replaced by Section 114 of the *Local Government Act 2020*.

Section 114 of the *Local Government Act 2020* is similar to section 189, however the exemption from compliance with section 223 (the right to make a submission) has been removed.

Because section 223 does not apply under the 2020 Act, from 1 July 2021, any sale of land from a discontinued road must first comply with the community engagement provisions of Council's Community Engagement Policy.

Accordingly, from 1 July 2021 Council will be required to undertake a 2 staged process of first resolving to discontinue a road and sell the land under clause 3 of Schedule 10 of the Act and then propose the sale of the land under section 114 of the 2020 Act

ANALYSIS

Alignment to Council Plan / Council policy

Goal 6 - A well governed Council

Property Assets Management Strategy

Sale of Minor Council Property Assets Policy

Environmental Sustainability Considerations

There are no factors in this report which impact upon environmental sustainability considerations

Climate Emergency

There are no factors in this report which impact upon climate change.

Equity, Inclusion and Wellbeing Considerations

There are no factors in this report which impact upon equity, inclusion and wellbeing considerations.

Cultural Considerations

There are no factors in this report which impact upon cultural considerations.

Economic Development Considerations

There are no factors in this report which impact upon economic development considerations.

Financial and Resource Implications

There are no financial or resource implications as a result of commencing the statutory procedures as contained in this report. Costs associated with undertaking the statutory process would be recoverable from the purchasers, should Council decide in future to discontinue the

Road and sell the land. Should Council decide not to proceed with the discontinuance and sale, then the costs associated with conducting the statutory process would be funded from existing allocations.

Legal and Risk Implications

Legal and risk implications associated with each option are covered under the analysis of each option.

Operational Impacts

There are no factors in this report which impact upon operations.

DISCUSSION

In accordance with sections 129 and 223 of the *Local Government Act 1989*, the Council is required to take into consideration all submissions received in relation to the proposed discontinuance and sale of the Road and after it has made a decision, notify all persons who have made a submission of the decision and the reasons for the decision.

Council received 4 written submissions in regard to the proposal with 2 requesting to be heard in support of their submission by Council.

Submission One – Mr Michael Steeve Tsang Mang Kin (Appendix B)

- Submission received on 17 September 2020.
- Mr Tsang Mang Kin is the owner of 1 Merrilands Road, Reservoir.
- Mr Tsang Mang Kin is in support of the road being discontinued however objects to all the land at the rear of his property being sold to the abutting property owner (at 4 Hughes Parade) who is occupying the land. He would also like the opportunity to purchase the land.
- Mr Tsang Mang Kin wishes to be heard by Council in support of his submission.

Submission Two – Mr Anthony Cappola (Appendix C)

- Submission received on 17 September 2020.
- Mr Cappola is the owner of 3 Merrilands Road, Reservoir.
- Mr Cappola is in support of the road being discontinued however objects to all the land at the rear of his property being sold to the abutting property owner (at 4 Hughes Parade) who is occupying the land. He would also like the opportunity to purchase the land.
- Mr Cappola wishes to be heard by Council in support of his submission.

Submission Three – Mr Dean Young (Appendix D)

- Submission received on 1 October 2020.
- Mr Young is the owner of 5 Merrilands Road, Reservoir.
- Mr Young is in support of the road being discontinued and has expressed interest in purchasing land, however, has suggested that the matter put on hold until after the Covid 19 pandemic.
- Mr Young has not requested to be heard by Council in support of his submission.

Submission Four – Ms Nicole Talevski (Appendix E)

- Submission received on 30 September 2020.
- Ms Talevski is the owner of 11 Merrilands Road, Reservoir.
- Ms Talevski is in support of the road being discontinued.
- Ms Talevski has not requested to be heard by Council in support of his submission.

Mr Tsang Mang Kin and Mr Anthony Cappola have requested to be heard in support of their written submissions and have been advised of the time, date and place of this meeting of Council's Hearing of Submissions Committee.

The road at the rear of 4 Hughes Parade has been exclusively occupied within their property for more than 20 years based on Councils aerial records, half of the occupied road has been concreted over and the other half has a vegetable garden on it, as shown in the aerial view in **Appendix F**. The owners of 4 Hughes Parade have previously indicated that they were going to acquire the land they through an adverse possession application, however no such application has been forthcoming. The owner has now confirmed an interest in acquiring all of the land they are occupying from Council at market value, in accordance with Council policy.

Both adjoining owners at 1 and 3 Merrilands Road do not object to the road being discontinued however, they have both made submissions to Council expressing their objection to all the land occupied by 4 Hughes Parade being sold to the owner of that property. Additionally, they have both expressed an interest in acquiring the land as well.

The property at 1 Merrilands Road, Reservoir was sold by the owner at auction on 6 February 2021. However, until such time as the property has gone through settlement the submitter remains the legal proprietor of the property and retains the right to lodge and have their submission heard by Council.

Should Council resolve not to sell all of the land occupied by 4 Hughes Parade to the owner of that property, the owner may proceed to lodge an adverse possession application at Land Victoria. Previous legal advice provided by Councils lawyer was that it would not be in Councils best interest to challenge an adverse possession application made by 4 Hughes Parade as the owner claims to have evidence of exclusive occupation of the land for more than 40 years. If this evidence was accepted by the Registrar of Titles it would be highly probable that the application would be successful.

Policy Considerations

Council's Sale of Minor Council Property Assets Policy 2015, item 7.3 section (xii) states *"proposed divisions of Minor Council Property Assets will seek to equitably distribute the available land taking into account... 2. Existing structures on Minor Council Property Asset and the surrounding land."*

Item 8.0; *"Surplus Minor Council Property Assets will be offered for sale in a manner that will ensure the maximum price can be achieved whilst protecting both the Council and the public interest. The Minor Council Property Asset will be investigated to ascertain its status and whether it may be suitable for sale. This investigation should address the following... (vii) Any encroachments on the land and/or rights of adverse possession."*

Council's property portfolio must meet current service needs while providing the flexibility to meet future requirements. Roads, reserves, revenge strips and other pieces of land of unusual shape and limited usefulness that are less than 200m² in area (collectively referred to as minor Council property assets) were originally set aside in early plans of subdivision for a particular purpose, such as access or drainage. In many cases these parcels of land are still required

for and need to remain open and available to the public. In situations where a minor Council property asset is no longer reasonably required for that purpose or any other strategic purposes it may be considered surplus and suitable for sale.

OPTIONS FOR CONSIDERATION

It is recommended that Council proceed with the Hearing of Submissions as outlined in this report. The role of this Committee is only to 'hear' submissions.

Council must provide submitters that have requested to be heard the opportunity to do so, in accordance with s. 223 of the *Local Government Act 1989*. Should Council decide not to enable the Hearing of Submissions to take place, it would be in breach of the *Local Government Act 1989*.

Council may elect to reschedule the meeting.

IMPLEMENTATION STRATEGY

Details

Following the Hearing of Submissions Committee meeting, a further report in relation to the matter will provided to Council at a later date, seeking a final resolution on the matter.

Communication

- Council Departments
- Macquarie Local Government Lawyers
- Owners of the adjoining properties
- Statutory Authorities

Timeline

It is expected that a further report in relation to the matter will provided to Council within two months of this report.

RELATED DOCUMENTS

- *Local Government Act 1989*
- *Local Government Act 2020*
- *Road Management Act 2004*
- Sale of Minor Council Property Assets Policy

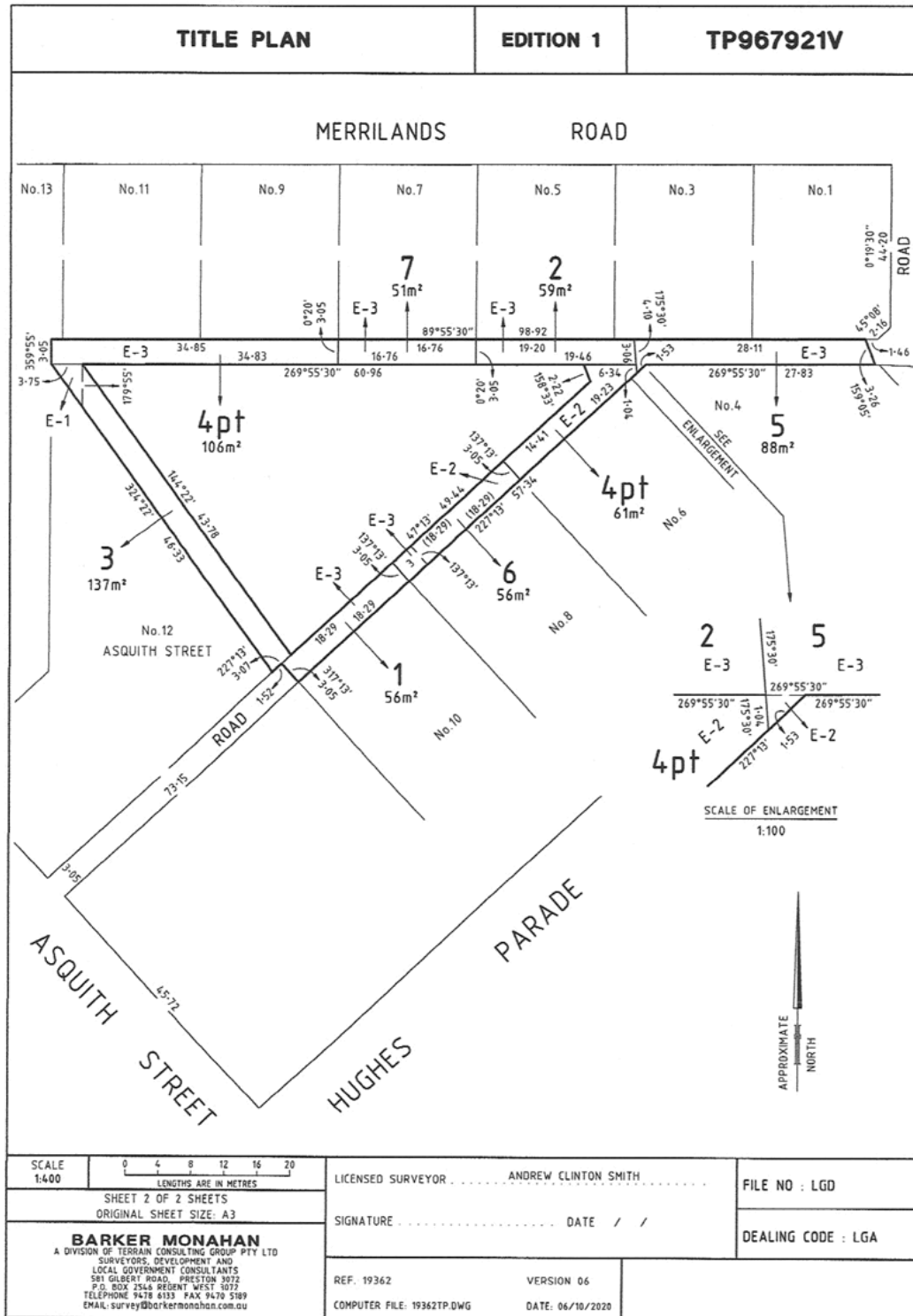
Attachments

- Title Plan TP967921V - road rear Merrilands Road, Hughes Parade and Asquith Street, Reservoir (**Appendix A**) [↓](#)
- Submission received from Michael Steeve Tsang Mang Kim - 1 Merrilands Road, Reservoir (**Appendix B**) Confidential - enclosed under separate cover
- Submission received from Anthony Cappola - 3 Merrilands Road, Reservoir (**Appendix C**) Confidential - enclosed under separate cover
- Submission received from Dean Young - 5 Merrilands Road, Reservoir (**Appendix D**) Confidential - enclosed under separate cover
- Submission received from Nicole Talevski - 11 Merrilands Road, Reservoir (**Appendix E**) Confidential - enclosed under separate cover
- Aerial View - road rear 1-11 Merrilands Road, 4-10 Hughes Parade and 12 Asquith Street, Reservoir (**Appendix F**) [↓](#)

DISCLOSURE OF INTEREST

Section 130 of the *Local Government Act 2020* requires members of Council staff and persons engaged under contract to provide advice to Council to disclose any general or material interest in a matter to which the advice relates.

The Officer reviewing this report, having made enquiries with relevant members of staff, reports that no disclosable interests have been raised in relation to this report.



Merrilands Road



Hughes Parade

5.2 PROPOSED ROAD DECLARATION REAR 137-143 STATION STREET, 100-104 ARTHUR STREET AND ADJOINING 2 DUNCAN STREET, FAIRFIELD**Author:** Acting Senior Property Services Officer**Reviewed By:** General Manager, Governance and Engagement

EXECUTIVE SUMMARY

The purposed of this report is to seek the Hearing of Submissions Committee's consideration of the submissions made on the proposed declaration of the road right-of-way/road located at the rear of 137-143 Station Street, 100-104 Arthur Street and adjoining 2 Duncan Street, Fairfield, under section 204(2) of the *Local Government Act 1989* (the Act) as being a road that is "*reasonably required for public use and to be open to public traffic*".

At its meeting on 19 October 2020, Council resolved to commence statutory procedures under sections 204(2), 207A(c) and 223 of the *Local Government Act 1989* regarding the proposed declaration of the road right-of-way/road located at the rear of 137-143 Station Street, 100-104 Arthur Street and adjoining 2 Duncan Street, Fairfield.

Public notice was given of Council's intention to declare the subject right of way/road as being a road that is "*reasonably required for public use and to be open to public traffic*" in the Herald Sun newspaper and on Councils website on 28 October 2020, in addition all adjoining owners and occupiers were consulted in writing. The public notice period ended on 27 November 2020. Council received 2 written submissions in regard to the proposal with both parties requesting to be heard by Council in support of their submission.

It is noted that the role of the Hearing of Submissions Committee is only to 'hear' and receive submissions. There are no options for consideration, or analysis of submissions included in this report.

Following the Hearing of Submissions Committee meeting, a further report in relation to the matter will provided to the 26 April Council meeting seeking a final resolution on the matter.

Recommendation

That Council:

- (1) Receives the written and verbal submissions.
 - (2) Thanks all submitters and presenters for addressing the Committee in support of their written responses.
 - (3) Receives a report to the 26 April 2021, Council Meeting as part of Council's deliberations in considering the proposed declaration of the road right-of-way/road located at the rear of 137-143 Station Street, 100-104 Arthur Street and adjoining 2 Duncan Street, Fairfield, under section 204(2) of the *Local Government Act 1989* as being a road that is "*reasonably required for public use and to be open to public traffic*".
-

BACKGROUND / KEY INFORMATION

All of the physical 'road' land located at the rear of 137-143 Station Street, 100-104 Arthur Street and adjoining 2 Duncan Street, Fairfield is comprised of three separate titles. The 1.52m x 17.25m section of land located directly adjoining 2 Duncan Street and part of 100 Arthur Street (shown highlighted yellow on the Cadastral plan in **Appendix A**), is contained in title Vol. 3499 Fol. 622 which is encumbered with a carriage way easement. The 1.52m x 9.98m section of land directly adjoining the rear of 137 Station Street (shown highlighted blue on the Cadastral plan in **Appendix A**), is contained in title Vol. 9297 Fol. 873 is in the ownership of 137 Station street however is also encumbered with a carriage way easement. The remainder of the land located at the rear of 139-143 Station Street and 100-104 Station Street (shown green on the Cadastral plan in **Appendix A**), which is in the ownership of 143 Station Street, is in title Vol. 9278 Fol 548. is shown as "Road R1" on LP114710 which is also encumbered by a carriage way easement. Additionally, historical title documents dating back to 1918, shown in **Appendix B**, also show part of the road.

In accordance with the legal advice provided to Council, Council considers the entire section of land to be a legal road within the meaning of the *Local Government Act 1989*, the *Act* defines a road to be, amongst other definitions, a right of way. At common law a 'right of way' extends to and includes a 'carriageway easement' or an 'easement of way'. Therefore, legally and on the Cadastre a 'carriageway easement', is also a 'right of way', and in turn, it will be a 'road' for the purposes of the *Local Government Act 1989*, as well as Council's powers in relation to roads. In addition, *Under the Road Management Act 2004 Section 9 (1)* "An owner or occupier of any land which adjoins a road is entitled as of right to access the road from that land."

A traffic study of the right-of-way/road was undertaken in July 2019. This has shown (what is considered by officers to be) a 'not insignificant' use of the Road by vehicular traffic. The Trans Traffic Survey has identified that in the week between 22 July – 29 July 2019, a total of 132 vehicles used the Road.

In 2017, Council received an enquiry from the owner of 104 Arthur Street, Fairfield regarding the right-of-way/road at the rear of the property, in particular their right to use the right-of-way located at the rear of 137–143 Station Street and rear 100–104 Arthur Street and adjoining 2 Duncan Street, Fairfield

In 2015, plans and permits (D/997/2014) were approved by Council allowing the property located at 104 Arthur Street, Fairfield to be changed from a residential dwelling into a medical practice with rear parking for 3 vehicles to be used by the practitioners of the clinic. The use of the right-of-way at the rear of the property was, amongst other reasons, authorised because the right-of-way appeared to be a road which legally benefited the property being developed, although it was subsequently an incidental finding by both the owner of the property and Council officers (after the refurbishment and development of the property) that the property did not have any legal abuttal rights (on title) to or over the road and that the entire road was not registered as a public road on Council's Register of Public Roads under the *Road Management Act 2004*.

Since that time the owners and occupiers of 104 Arthur Street have been attempting to use the right-of-way to access the rear of their property, but this is often restricted as there have often been obstructions or vehicles parked in the road on a regular basis and more recently a shipping container was put on the land.

The road shown in the aerial view in **Appendix C**, in its present physical form, is open, partially constructed and has for many years been used for the purposes of access by the owners and occupiers of those properties fronting Station Street. Investigations and a review of historical title documents show that the majority of the land was appropriated and set apart for the

purposes of easements of way on 20 March 1975. The registered proprietors of the road are and remain the owners of 143 Station Street, Fairfield.

The business tenant of 143 Station Street, who uses the road land on a regular basis for access to their loading dock, the collection and storage of industrial bins, housing of a storage shed as well as parking for vehicles, has informed Council that they believe the main section of road land (that is, the road shown as 'Road R1' on Plan of Subdivision LP114710) is 'exclusively' theirs to occupy, use and enjoy as they wish and have made this position known to Council. Additionally, the owners of both the road land and the property located at 143 Station Street have strongly objected to the proposed road declaration.

In accordance with the legal advice provided to Council, the entire section of land which is to be the subject of any declaration is considered to be a road within the meaning of the *Local Government Act*.

Should Council declare the right-of-way to be reasonably required for public use and to be open to public traffic under Section 204(2) of the *LGA*, the road does not become a public highway and will remain in the name of the current registered proprietor. The road does not need to be included in Council's Register of Public Roads and Council will only manage the section of road on a purely discretionary basis (and not by way of any statutory duty)

Council will only excise out enough land to give reasonable, proper rear access to accommodate the needs and requirements of 104 Arthur Street as well as formalising rear access for 5 adjoining properties (at 100-104 Arthur Street, 2 Duncan Street and 145 Station Street) for past use, present use and future use, while providing for future planning and development potential of the area.

Previous Council Resolution

At its meeting held on 19 October 2020, Council resolved:

'That Council acting under section 204(2) of the Local Government Act 1989 (Act) and every other power given to Council enabling it to:

- 1) *Resolves that the statutory procedures be commenced under the Act to declare that part of the road in Council's municipal district which is shown coloured pink, green and yellow on the site plan in **Appendix A (section of road)** as being a road that is reasonably required for public use and is to be open to public traffic (**declaration**).*
- 2) *Directs that under sections 207A(c) and 223 of the Act public notice of the proposal to make the declaration be given in the Herald Sun newspaper (or equivalent) and on Council's website and to those persons who are the owners and occupiers of properties abutting onto, or immediately adjacent to, the section of road.*
- 3) *Authorises the Chief Executive Officer to undertake the administrative procedures necessary to enable Council to carry out its functions under section 223 of the Act, including if required, the establishment of a Committee of Council to hear any persons who in their written submissions to Council have requested that they be heard in support of their submissions.*
- 4) *Directs that Council receive a further report prior to Council making a final decision on the matter.'*

COMMUNICATIONS AND ENGAGEMENT

Public notice was given of Council's intention to declare the subject right of way/road as being a road that is "*reasonably required for public use and to be open to public traffic*" in the Herald Sun newspaper and on Council's website on 28 October 2020, in addition all adjoining owners and occupiers were consulted in writing. The public notice period ended on 27 November 2020. Council received 2 written submissions in regard to the proposal with both parties requesting to be heard by Council in support of their submission.

Consultation with the community

The statutory procedures require Council to give public notice of its intentions to declare the subject right of way/road as being a road that is "*reasonably required for public use and to be open to public traffic*" and invite submissions from affected parties.

Submitters may request to be heard by Council prior to a decision being made to proceed or otherwise with the proposal. In addition, all abutting property owners would be advised of the proposal in writing and informed of their right to make a submission. Following which, a report will be presented to Council for a decision on the matter.

Amendments to the Local Government Act 1989

Section 189 (Restriction on power to sell land) of the *Local Government Act 1989* (Act) will be revoked on 1 July 2021 and will be replaced by Section 114 of the *Local Government Act 2020*.

Section 114 of the *Local Government Act 2020* is similar to section 189, however the exemption from compliance with section 223 (the right to make a submission) has been removed.

Because section 223 does not apply under the 2020 Act, from 1 July 2021, any sale of land from a discontinued road must first comply with the community engagement provisions of Council's Community Engagement Policy.

Accordingly, from 1 July 2021 Council will be required to undertake a 2 staged process of first resolving to discontinue a road and sell the land under clause 3 of Schedule 10 of the Act and then propose the sale of the land under section 114 of the 2020 Act

ANALYSIS

Alignment to Council Plan / Council policy

Goal 6 - A well governed Council

Property Assets Management Strategy 2014.

Sale of Minor Council Property Assets Policy 2015.

Environmental Sustainability Considerations

There are no factors in this report which impact upon environmental sustainability considerations

Climate Emergency

There are no factors in this report which impact upon climate change.

Equity, Inclusion and Wellbeing Considerations

There are no factors in this report which impact upon equity, inclusion and wellbeing considerations.

Cultural Considerations

There are no factors in this report which impact upon cultural considerations.

Economic Development Considerations

The proposed road declaration would formalise rear access and egress provisions for all adjoining property owners fronting Station Street, Arthur Street and Duncan Street, which may create conditions for future economic development within the local area.

Financial and Resource Implications

There are no financial or resource implications as a result of commencing the statutory procedures as contained in this report. Costs associated with conducting the statutory process would be funded from existing budget allocations.

Legal and Risk Implications

Legal and risk implications associated with each option are covered under the analysis of each option.

Operational Impacts

There are no factors in this report which impact upon operations.

DISCUSSION

In accordance with sections 207A(c) and 223 of the *Local Government Act 1989*, the Council is required to take into consideration all submissions received in relation to the proposed road declaration and after it has made a decision, notify all persons who have made a submission of the decision and the reasons for the decision.

Council received 2 written submissions in regard to the proposal with both requesting to be heard in support of their submission by Council.

Submission One – Ms Eugenia Mitrakas (Lawyer & Notary) & Ms Jane Sharp (Barrister) (Appendix D)

- Submission received on 24 November 2020.
- Ms Mitrakas & Ms Sharp have been appointed to act on behalf of Taxiathoula Athanasis, Eustratios Athanasis and Constantinos Athanasis the owners of the road and the property at 143 Station Street, Fairfield.
- Ms Mitrakas & Ms Sharp object to the proposed road declaration claiming that the road is not reasonably required for public use.
- Ms Mitrakas & Ms Sharp wish to be heard by Council in support of his submission.

Submission Two – Mr George Ryan (Solicitor) & Ms Anne Sibereisen (property owner) (Appendix E & F)

- Submissions received on 15 December 2020.
- Mr Ryan has been appointed by Ms Sibereisen to act on her behalf as the owner/occupier of the property at 104 Arthur Street, Fairfield.
- Mr Ryan & Ms Ms Sibereisen are in support of the proposed road declaration as the road would provide vital access and egress to the rear of the property/business for herself and two other practitioners.
- Mr Ryan & Ms Ms Sibereisen wish to be heard by Council in support of his submission.

All parties listed above, who have requested to be heard in support of their written submissions and have been advised of the time, date and place of this meeting of Council's Hearing of Submissions Committee.

OPTIONS FOR CONSIDERATION

It is recommended that Council proceed with the Hearing of Submissions as outlined in this report. The role of this Committee is only to 'hear' submissions.

Council must provide submitters that have requested to be heard the opportunity to do so, in accordance with sections 207A(c) and 223 of the *Local Government Act 1989*. Should Council decide not to enable the Hearing of Submissions to take place, it would be in breach of the *Local Government Act 1989*.

Council may elect to reschedule the meeting.

IMPLEMENTATION STRATEGY**Details**

Following the Hearing of Submissions Committee meeting, a further report in relation to the matter will provided to Council at a later date, seeking a final resolution on the matter.

Communication

- Council Departments
- Macquarie Local Government Lawyers
- Owners of the adjoining properties
- Statutory Authorities

Timeline

It is expected that a further report in relation to the matter will provided to Council within two months of this report.

RELATED DOCUMENTS

- *Local Government Act 1989*
- *Local Government Act 2020*
- *Road Management Act 2004*
- Sale of Minor Council Property Assets Policy

Attachments

- Cadastral Plan & title documents to road rear 137-143 Station Street, rear 100-104 Arthur Street and adjoining 2 Duncan Street, Fairfield (**Appendix A**) [↓](#)
- Historical titles showing the ROW bound by Arthur Street, Duncan Street and Station Street, Fairfield (**Appendix B**) [↓](#)
- Aerial View rear 137-143 Station Street, rear 100-104 Arthur Street and adjoining 2 Duncan Street, Fairfield (**Appendix C**) [↓](#)
- Submission on behalf of the landowners - Proposed road Declaration of Right of way rear 137- 143 Station Street and rear 100-104 Arthur Street Fairfield (**Appendix D**) Confidential - enclosed under separate cover
- submission from George Ryan (Solicitor) on behalf of the owners of 104 Arthur Street, Fairfield (**Appendix E**) Confidential - enclosed under separate cover
- submission from Anne Sibereisen owner of 104 Arthur Street, Fairfield (**Appendix F**) Confidential - enclosed under separate cover

DISCLOSURE OF INTEREST

Section 130 of the *Local Government Act 2020* requires members of Council staff and persons engaged under contract to provide advice to Council to disclose any general or material interest in a matter to which the advice relates.

The Officer reviewing this report, having made enquiries with relevant members of staff, reports that no disclosable interests have been raised in relation to this report.

Cadastral Plan & Titles – Right of Way bound by Arthur Street, Station Street and Duncan Street, Fairfield





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REGISTER SEARCH STATEMENT (Title Search) Transfer of Land Act 1958

VOLUME 03499 FOLIO 622

Security no : 124047783426W
Produced 16/10/2013 11:28 am

LAND DESCRIPTION

Lot 1 on Title Plan 911455P (formerly known as part of Lot 56 on Plan of Subdivision 000568).

PARENT TITLES :

Volume 01918 Folio 519 Volume 01969 Folio 649
Created by instrument 0648237 20/04/1911

REGISTERED PROPRIETOR

Estate Fee Simple
Sole Proprietor

ALEXANDER MACKIE YOUNGER of STATION STREET FAIRFIELD
0648237 20/04/1911

ENCUMBRANCES, CAVEATS AND NOTICES

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section 24 Subdivision Act 1988 and any other encumbrances shown or entered on the plan set out under DIAGRAM LOCATION below.

DIAGRAM LOCATION

SEE TP911455P FOR FURTHER DETAILS AND BOUNDARIES

ACTIVITY IN THE LAST 125 DAYS

NIL

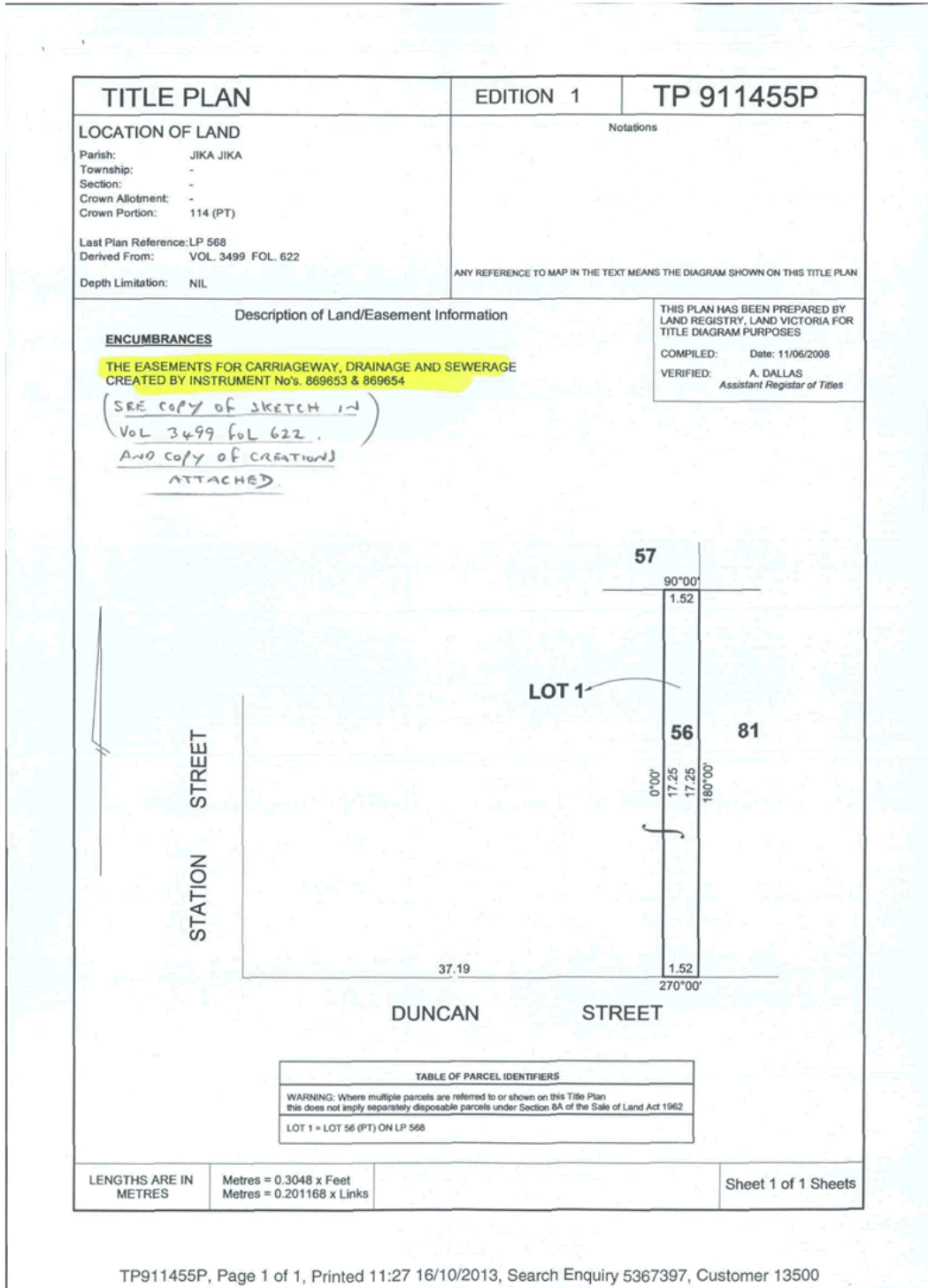
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FEIGL & NEWELL
Title Searchers
GPO BOX 2343
Melb 3001
(DX 301)
Ph. 9629 3011



Account: 13500 Order: 15367397

Title 3499/622
Page 1 of 1



 Department of
Sustainability
and Environment

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REGISTER SEARCH STATEMENT (Title Search) Transfer of Land Act 1958

VOLUME 09297 FOLIO 873 Security no : 124047817882U
Produced 18/10/2013 09:34 am

LAND DESCRIPTION
Lot 1 on Title Plan 226317W.
PARENT TITLE Volume 04182 Folio 393
Created by instrument H258568 06/10/1978

REGISTERED PROPRIETOR
Estate Fee Simple
Sole Proprietor
RAILWAY HOLDINGS PTY LTD of 10 DUDLEY STREET IVANHOE VIC 3079
AJ977712M 19/10/2012

ENCUMBRANCES, CAVEATS AND NOTICES
MORTGAGE AJ977713K 19/10/2012
AUSTRALIA AND NEW ZEALAND BANKING GROUP LTD


Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section 24 Subdivision Act 1988 and any other encumbrances shown or entered on the plan set out under DIAGRAM LOCATION below.

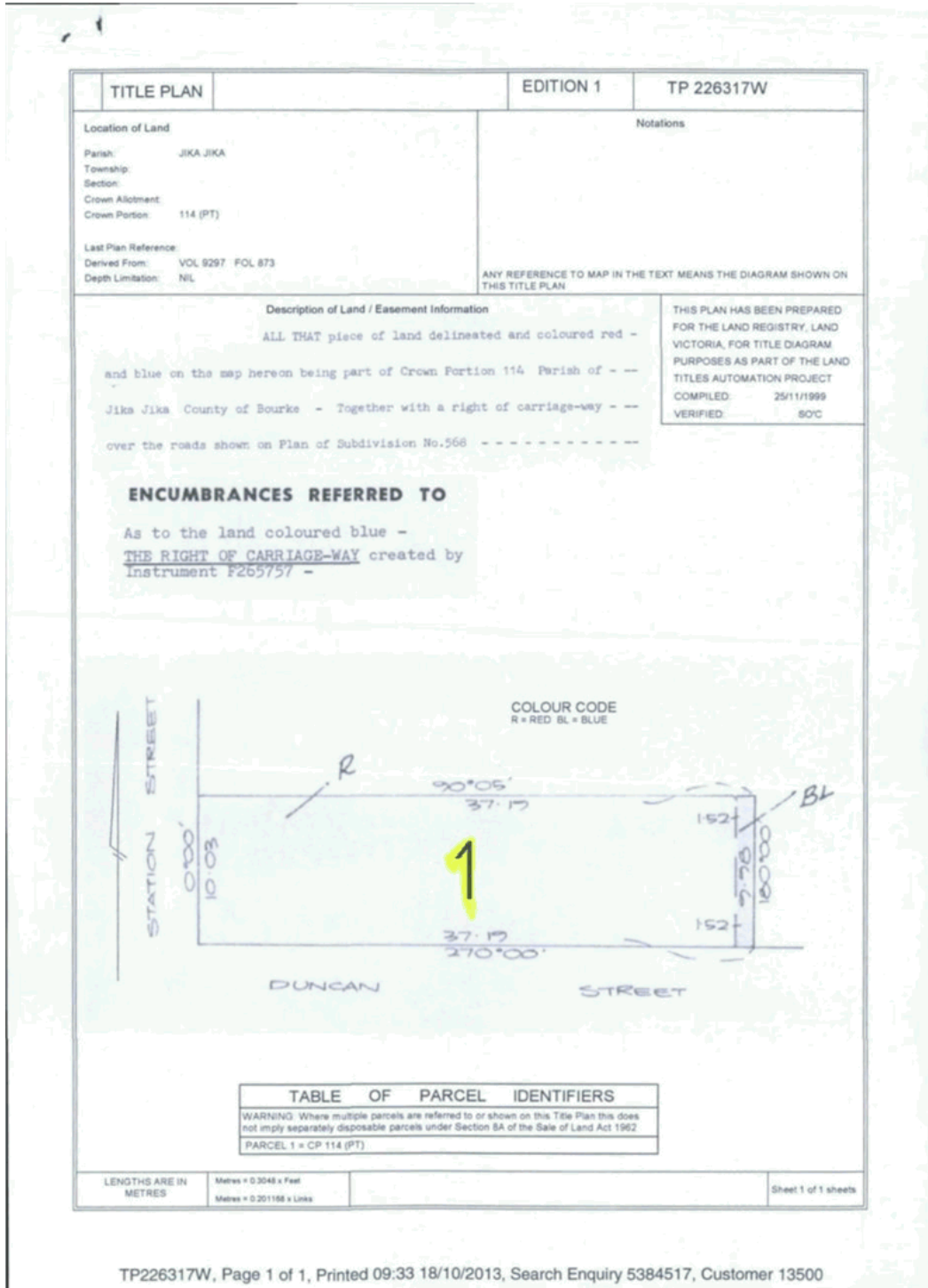
DIAGRAM LOCATION
SEE TP226317W FOR FURTHER DETAILS AND BOUNDARIES

ACTIVITY IN THE LAST 125 DAYS
NIL

DOCUMENT END

FEIGL & NEWELL
Title Searchers
GPO BOX 2343
Melb 3001
(DX 301)
Ph. 9629 3011

 Account: 13500 Order: 15384517 Title 9297/873
Page 1 of 1



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F265757
52
32.00 G RES

REGD F265757

9-40 739173 APR-20 CONNIM VELIK & EMANUEL
VICTORIA

9027/732 MADE AVAILABLE TO ISSUE TO
CREATION OF EASEMENT
PHILLIPS FOX & CO.
under Attached 11/1/74
Commercial Bank of Australia Ltd.

CH 4182-393 MADE AVAILABLE TO ISSUE TO

WILLIAM POPPINS Furniture Retailer and JANE POPPINS Married Woman both of 1543 The Boulevard Kew being registered as the proprietors of an estate in fee simple in the land secondly hereinafter described subject to the encumbrances notified hereunder IN CONSIDERATION of the sum of THREE HUNDRED DOLLARS (\$300.00) paid to them by SPRING NOMINEES PTY. LIMITED formerly of 34 Arcoona Road, Caulfield but now of 4 Prospect Hill Road, Camberwell DO HEREBY TRANSFER AND GRANT unto the said SPRING NOMINEES PTY. LIMITED its assignees and successors in title the registered proprietor or proprietors for the time being of ALL THOSE pieces of land more particularly described in Certificate of Title Volume 4164 Folio 706, Volume 4164 Folio 707, Volume 4164 Folio 708 and Volume 3581 Folio 075 a right of carriage way over the land coloured red on the map endorsed hereon being part of Crown Portion 114 Parish of Jika Jika and being part of the land more particularly described in Certificate of Title Volume 4182 Folio 393.

4182-393 (P1)
TO
9027-732 (VH)
20/8/74
SK. 114
22/11/74
10/1/74
103325 25000
LE D 1012 *** 500

DATED this 24th day of March. 1974.

SIGNED in Victoria by the said)
WILLIAM POPPINS in the presence of:)
William Poppins

SIGNED in Victoria by the said)
JANE POPPINS in the presence of:)
Jane Poppins

THE COMMON SEAL of SPRING NOMINEES)
PTY. LIMITED was hereunto affixed)
in the presence of:)

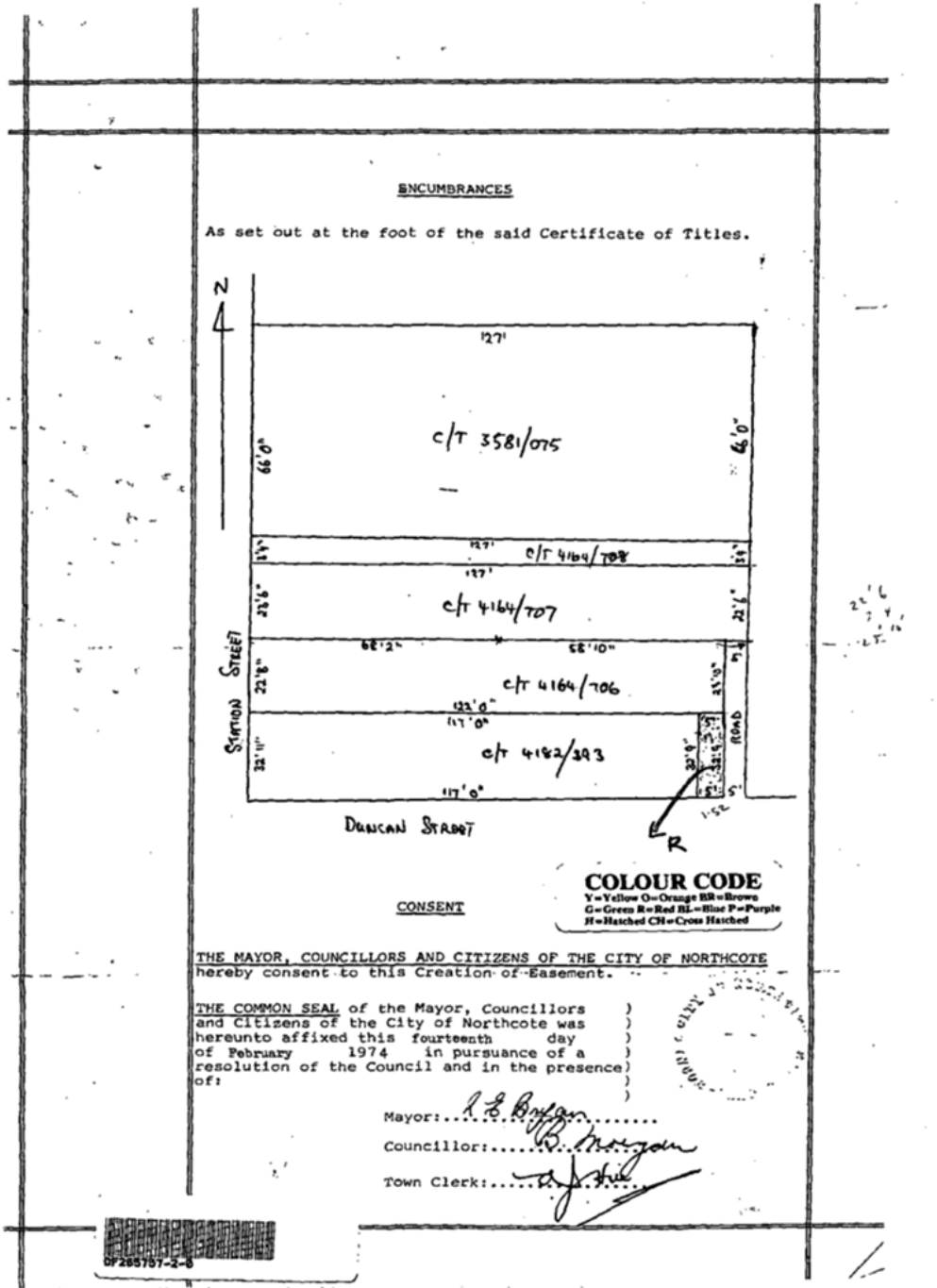
Henry Spring Director:
[Signature] Secretary:

THE COMMON SEAL OF
SPRING NOMINEES PTY. LIMITED


9027/732
20/8/74

DF265757-1-3

F265757, Page 1 of 6, Printed 13:54 16/10/2013, Search Enquiry 5370022, Customer 13500



F265757. Page 3 of 6, Printed 13:54 16/10/2013, Search Enquiry 5370022, Customer 13500



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REGISTER SEARCH STATEMENT (Title Search) Transfer of Land Act 1958

VOLUME 09278 FOLIO 548

LAND DESCRIPTION
Road R1 on Plan of Subdivision 114710.
PARENT TITLE Volume 09027 Folio 732
Created by instrument H084696 23/05/1978

REGISTERED PROPRIETOR
Estate Fee Simple
TENANTS IN COMMON
As to 1 of a total of 3 equal undivided shares
Sole Proprietor
TAXIARHOULA ATHANASIS of 52 WRIGHT STREET MIDDLE PARK 3206
As to 1 of a total of 3 equal undivided shares
Sole Proprietor
CONSTANTINOS ATHANASIS of 10 EDDYS GROVE BENTLEIGH 3204
As to 1 of a total of 3 equal undivided shares
Sole Proprietor
EFSTRATIOS ATHANASIS of 6 AUSTIN STREET BENTLEIGH 3204
U849842S 01/07/1997

ENCUMBRANCES, CAVEATS AND NOTICES

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section 24 Subdivision Act 1988 and any other encumbrances shown or entered on the plan or imaged folio set out under DIAGRAM LOCATION below.

DIAGRAM LOCATION
SEE LP114710 FOR FURTHER DETAILS AND BOUNDARIES


ACTIVITY IN THE LAST 125 DAYS

NIL

DOCUMENT END

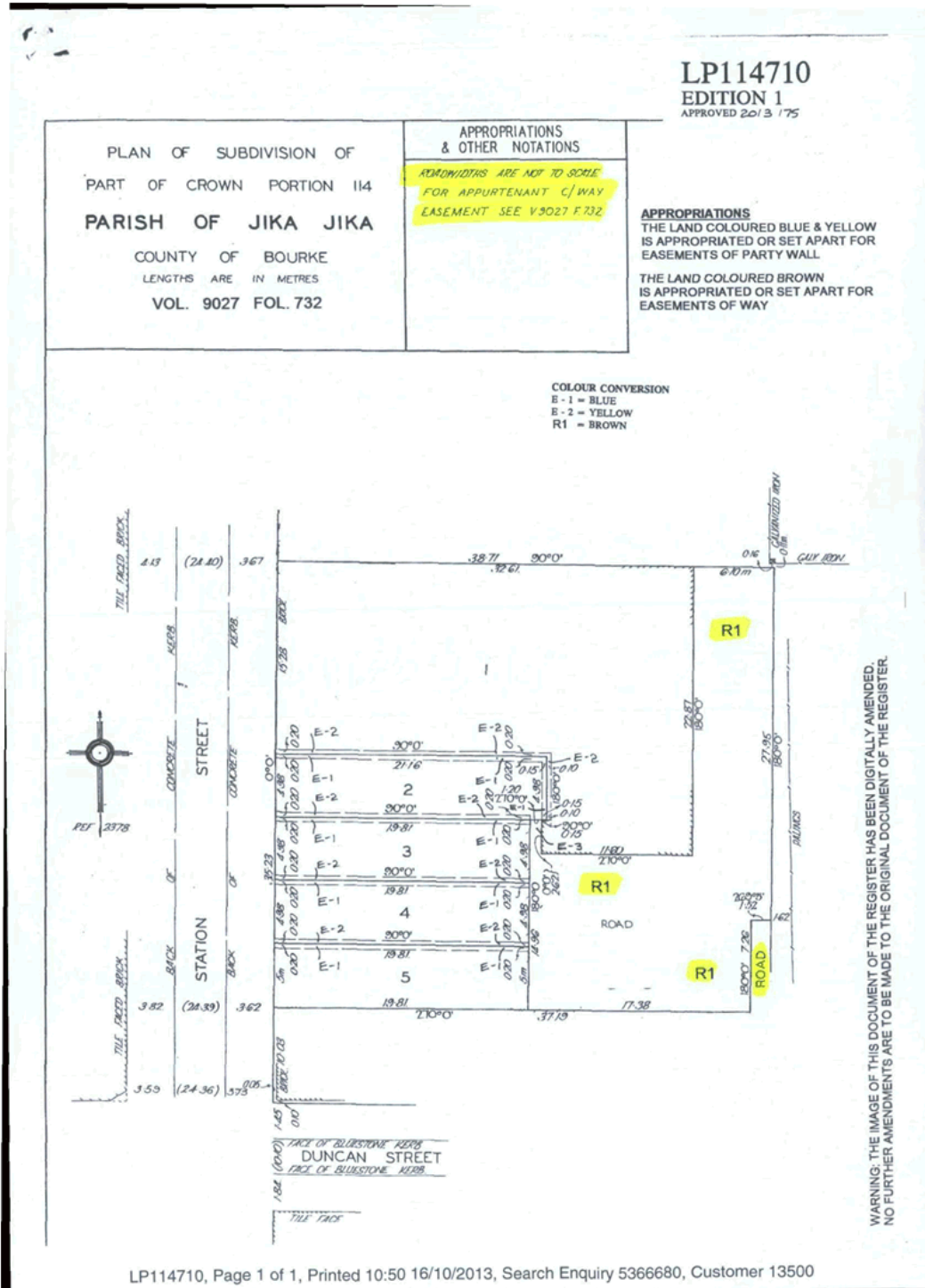
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Produced 16/10/2013 10:52 am

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Title Searchers
GPO BOX 2343
Melb 3001
(DX 301)
Ph. 9629 3011



Account: 13500 Order: 15366680

Title 9278/548
Page 1 of 1




**PLAN OF SUBDIVISION
OF PART OF CROWN PORTION 113&114
PARISH OF JIKA JIKA
COUNTY OF BOURKE**

V 1515 F 976
Measurements are in Feet & Inches
Conversion Factor
FEET X 0.3048 = METRES

COLOUR CODE
BR=BROWN

STREET NAME AMENDED
FROM RAILWAY PLACE
TO WINGROVE STREET
CORR. 40/31972

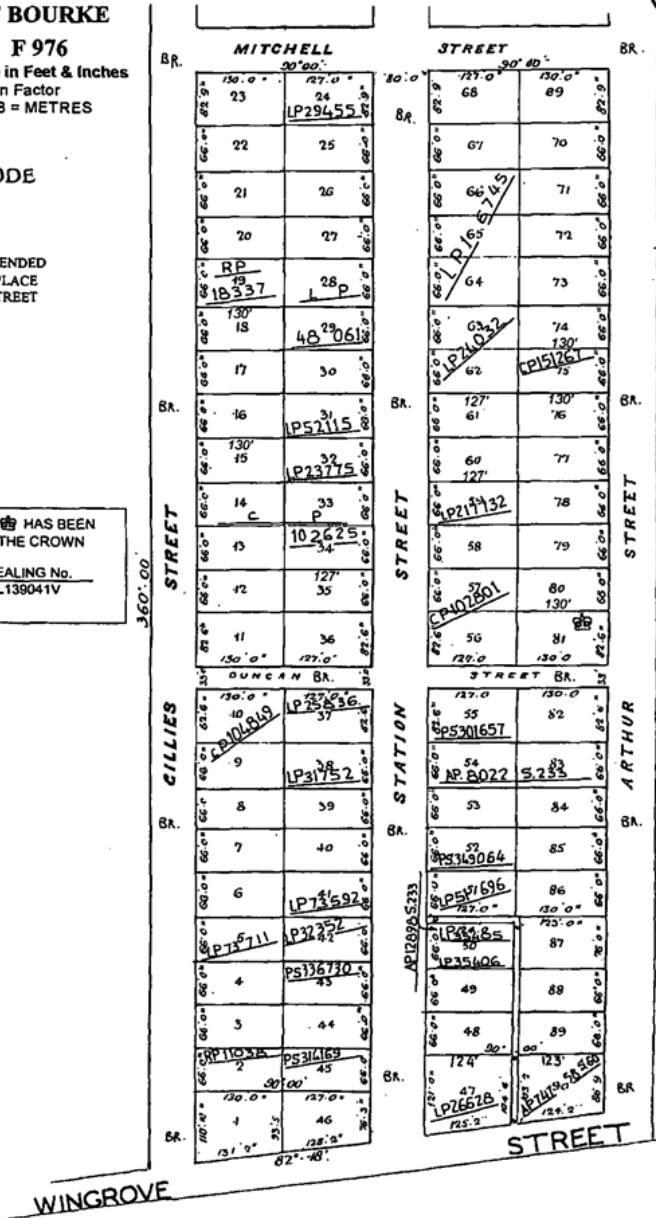
LAND SHOWN THIS  HAS BEEN
TRANSFERRED TO THE CROWN

LOT No.	DEALING No.
81 [PT.]	L138041V

WARNING: THE IMAGE OF THIS PLANDOCUMENT HAS
BEEN DIGITALLY AMENDED. NO FURTHER AMENDMENTS
ARE TO BE MADE TO THE ORIGINAL PLANDOCUMENT.

LP 568
EDITION 1

Stamp
12.3.1884



1914312

COLOUR CODE
 Y:Yellow BR:Brown G:Green
 R:Red BL:Blue P:Purple
 H:Hatched CH:Cross Hatched

869654

Rigby & Fielding.
 Freshfield.
 VICTORIA.

OFFICE OF THE
 2 37
 30 OCT 1918
 TASMANIA

TRANSFER of LAND.

I, ALEXANDER MACKIE YOUNGER formerly of Station Street Fairfield but now of Fairfield Hall North Road Caulfield Builder being registered as the proprietor of an estate in fee simple in the land hereinafter described subject to the encumbrances notified hereunder in consideration of the sum of Five hundred and fifty-pounds paid to me by LEONARD MAUD KERSLAKE of ----- Montpellier Street Battery Point Hobart in Tasmania Linesman DO HERREBY -- TRANSFER to the said Leonard Maud Kerslake A I I my estate and interest in ALL THAT piece of land being part of lot Fifty-six on Plan of Subdivision Number 568 and being part of Crown Portion One hundred and fourteen Parish of Jika Jika County of Hourke and being that part of the land particularly described in Certificate of Title entered in the Register Book Volume -- 3499 Folio 699622 delineated and colored red and blue on the map drawn here- on TOGETHER with the use of the land colored yellow on the said map for the purposes of a party wall which is now or may be hereafter erected thereon Reserving to myself and my transferees registered proprietor or proprietors for the time being of the land colored yellow the use and enjoyment of the land colored blue for the purposes of a party wall which is now or may be hereafter erected thereon TOGETHER with a right of carriage-way and a right of drainage and the right to lay and relay pipes for drainage and sewerage through over and along the land colored brown on the said map hereon.

DATED the twentieth day of October One thousand nine hundred and eighteen.

SIGNED by the said Alexander Mackie Younger in the State of Victoria in the presence of A. M. Younger

SIGNED by the said Leonard Maud Kerslake in the State of Tasmania in the presence of L. N. Kerslake

ENCUMBRANCES REFERRED TO. 0869654-1-1

As to the land colored blue: The easement created by Instrument of Transfer of even date from Alexander Mackie Younger to Howard Rowland.

Stamp Duty 1/6
 Stamp Duty 1/6
 Stamp Duty 1/6

55 gm

BR

122

As to the land colored blue: The easement created by Instrument of Transfer of even date from Alexander Mackie Younger to Howard Rowland.

0869654, Page 1 of 2, Printed 13:54 16/10/2013, Search Enquiry 5370027, Customer 13500

DATED October 1918.

A. N. YOUNGER
- to -
I. H. KERSLAKE.

T R A N S Y E R R.

HENRY & PIERING,
Solicitors,
60 Market Street,
Melbourne.

MEMORIAL OF INSTRUMENT.

NATURE OF INSTRUMENT	TIME OF ITS PRODUCTION FOR REGISTRATION	TO WHOM GIVEN	NUMBER OR SYMBOL THEREON
Transfer as to part and Creation of Basevent	THE 30 th DAY OF October 1918	To Leonard Noad Kerslake.	869654

N.R. Younger
ASSISTANT REGISTRAR OF TITLES.

3 1/2 lbs THAT A MEMORIAL OF THE WITHIN INSTRUMENT WAS ENTERED AT THE TIME
LAST ABOVE MENTIONED IN THE REGISTER BOOK VOL 3499 FOL 699622.

N.R. Younger
ASSISTANT REGISTRAR OF TITLES.

0869654-1-1

0869654, Page 2 of 2, Printed 13:54 16/10/2013, Search Enquiry 5370027, Customer 13500

1914309

COLOUR CODE
 Y-Yellow BR-Brown G-Green
 R-Red BL-Blue P-Purple
 H-Hatched CH-Cross Hatched

869653

Rigby & Fielding,
 VICTORIA.

ccpa?

TRANSFER of LAND.

I, ALEXANDER MACKIE YOUNGER formerly of Station Street Fairfield but now of Fairfield Hall North Road Caulfield Builder being registered as the proprietor of an estate in fee simple in the land hereinafter described subject to the encumbrances notified hereunder in consideration of the sum of Five hundred and fifty pounds paid to me by HORATIO ROWLAND of 95 Station Street Fairfield Tobaccoist DO HEREBY TRANSFER to the said Horatio Rowland A 1 1 my estate and interest in ALL THAT piece of land being part of Crown Portion One hundred and fourteen Parish of Jika Jika County of Bourke and being that part of Lot Fifty-six on Plan of Subdivision Number 568 lodged in the Office of Titles delineated and colored red and blue on the map drawn hereon Together with the use of the land colored yellow on the said map for the purposes of a party wall which is now or may be hereafter erected thereon -- Reserving to myself and my transferees registered proprietor or proprietors for the time being of the said land colored yellow the use and enjoyment of the land colored blue for the purposes of a party wall which is now or may be hereafter erected thereon Together with a right of carriage-way and a right of drainage and the right to lay and relay pipes for drainage and sewerage through over and along the land colored brown on the said map drawn hereon, and together with all appurtenant tenements

DATED the next day of October One thousand nine hundred and eighteen.

SIGNED by the said ALEXANDER MACKIE YOUNGER in the State of Victoria in the presence of: *et in Younger*

SIGNED by the said HORATIO ROWLAND in the State of Victoria in the presence of: *Horatio Rowland, Clerk*

3097 St. Cl. 1895 H.

ENCUMBRANCES REFERRED TO, *By pt lot 56 on pt 505*

2 pt for 100

at 1000 John C. Brown

by Co. no. 100 and 11

Car. no. 100

by pt wall yellow

on address St. no. 100

(Shuntle 869653)

0869653-1-8

0869653, Page 1 of 2, Printed 13:54 16/10/2013, Search Enquiry 5370026, Customer 13500

DATED October 1918

FRANKS F. R.

HOSATIO HOWLAND,

- to -

A. N. YOUNGER

RIGBY & FRENCH,
Solicitors,
60 Market Street,
Melbourne.

MEMORIAL OF INSTRUMENT

NATURE OF INSTRUMENT	TIME OF PRESENTATION FOR REGISTRATION	TO WHOM GIVEN	NUMBER OR SYMBOL THEREON
Transfer as to part and Creation of Easement	30 th October 1918	To Horatio Howland	869653

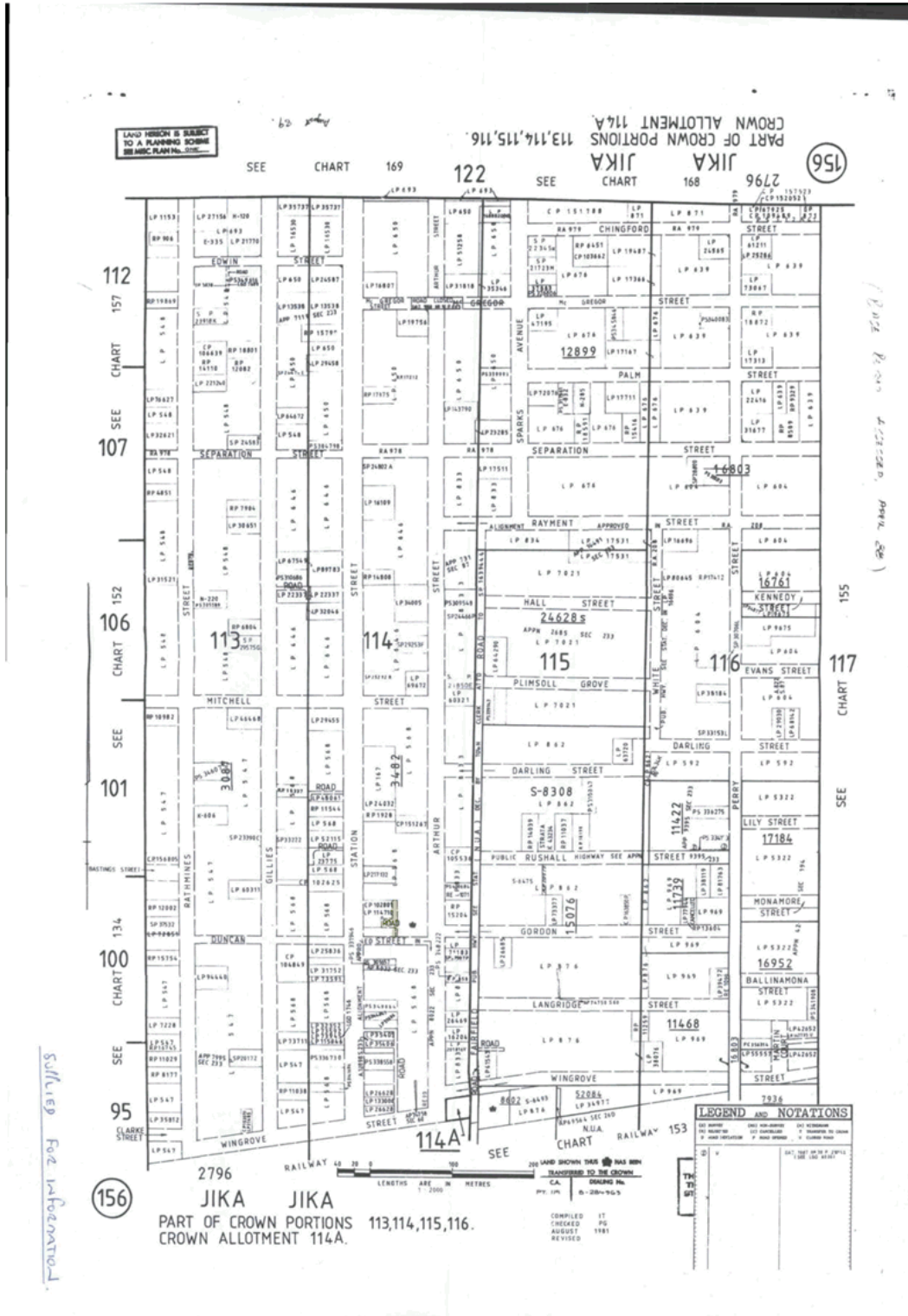
[Signature]
ASSISTANT REGISTRAR OF TITLES

I HEREBY CERTIFY THAT A MEMORIAL OF THE WITHIN INSTRUMENT WAS ENTERED AT THE TIME LAST ABOVE MENTIONED IN THE REGISTER BOOK VOLS 3545 3499 708831 699622

[Signature]
ASSISTANT REGISTRAR OF TITLES

0869653-1-8

0869653, Page 2 of 2, Printed 13:54 16/10/2013, Search Enquiry 5370026, Customer 13500



Sullied For Information

Page 155 of 155

Darebin City Council
8/10/2019



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6. CLOSE OF MEETING

**CITY OF
DAREBIN**

274 Gower Street, Preston
PO Box 91, Preston, Vic 3072
T 8470 8888 F 8470 8877
E mailbox@darebin.vic.gov.au
darebin.vic.gov.au

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relayservice.gov.au

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 **Speak your language**
T 8470 8470

العربية	Italiano	Soomalil
繁體中文	Македонски	Español
Ελληνικά	नेपाली	اردو
हिंदी	ਪੰਜਾਬੀ	Tiếng Việt