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AGENDA

Hearing of Submissions Committee Meeting to be held virtually on Tuesday 13 June 2023 at 5:30pm.

The virtual meeting will be available for the public to watch through livestreaming via Councils website: www.darebin.vic.gov.au

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Agenda

1. OPENING OF MEETING AND MEMBERSHIP

Cr. Julie Williams (Mayor) (Chairperson)

Cr. Susanne Newton (Deputy Mayor)

Cr. Emily Dimitriadis

Cr. Gaetano Greco

Cr. Tom Hannan

Cr. Tim Laurence

Cr. Trent McCarthy

Cr. Lina Messina

Cr. Susan Rennie

ACKNOWLEDGMENT OF TRADITIONAL OWNERS

2. APOLOGIES

3. DISCLOSURES OF CONFLICTS OF INTEREST

4. CONFIRMATION OF THE MINUTES OF THE PREVIOUS HEARING OF SUBMISSIONS COMMITTEE MEETING

Recommendation

That the Minutes of the Hearing of Submissions Committee Meeting held on 14 March 2023 be confirmed as a correct record of business transacted.

5. CONSIDERATION OF REPORTS

5.1 PROPOSED DISCONTINUANCE AND SALE OF TWO ROADS AND ONE RESERVE ADJOINING 29 TO 47 BAYLISS STREET, 34-54 MAY STREET AND 2 CLARA STREET, PRESTON

Author: Manager Property & Asset Strategy

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 two rights of way/roads and the reserve adjoining 29 to 47 Bayliss Street, 34-54 May Street and 2 Clara Street, Preston.

At its meeting on 27 February 2023, 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 two rights of way/roads and the reserve adjoining 29 to 47 Bayliss Street, 34-54 May Street and 2 Clara Street, Preston.

Public notice was given of Council's intention to discontinue and sell the subject road in The Age newspaper and on Councils website on 31 March 2023, in addition all adjoining owners and occupiers of the whole of the roads and reserve were consulted in writing. The public notice period ended on Friday, 28 April 2023. Council received two written submissions in regard to the proposal with two 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 proposed discontinuance and sale of the subject roads and reserve will be provided to Council on 24 July 2023 seeking a final resolution on the same matter.

Officer 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 24 July 2023 Council Meeting as part of Council's deliberations in considering the proposed discontinuance and sale of two rights of way/roads and the reserve adjoining 29 to 47 Bayliss Street, 34-54 May Street and 2 Clara Street, Preston.

BACKGROUND / KEY INFORMATION

In mid-2019, Council received several inquiries from property owners requesting the discontinuance and sale of the two 3.05 metre wide roads and 0.17 to 0.30m wide reserve (revenge strip) at the rear of 34 to 54 May Street and 29 to 47 Bayliss Street and adjoining 2 Clara Street, Preston (the **roads**).

Investigations identified that although the land comprises two roads (and the reserve) on title, the roads are not listed on Council's Register of Public Roads.

The roads appear to have been enclosed within the adjoining properties for many years and have not been used for access, as shown on the aerial view in **Appendix A**.

Once initial investigations confirmed the feasibility of the proposed discontinuance, Macquarie Lawyers were engaged to undertake further consultation with a view to Council commencing the statutory procedures to facilitate the possible discontinuance and sale of the roads and reserve.

All immediate adjoining property owners of the proposed road discontinuance were informed of the proposal with no objections or issues having been raised by them, except for one submitter who was in favour of the proposal. In addition to notifying the affected adjoining owners, the adjoining property owners of the eastern section of the road which is not proposed to be discontinued and is not occupied, were informed of the proposal. The second submitter's property adjoins the eastern section of the road which is not proposed to be discontinued. The second submitter has raised concerns regarding the allocation of the land and the sewer line. The sewer line largely runs along the southern boundary of the roads and reserve. The dimensions and proposed allocation of the land are shown in the Plan for Discussion Purposes provided in **Appendix B**. As there has been no offer to purchase Lot 1 and the proposed purchaser of Lot 3 only made an offer to purchase on 2 May 2023, this boundary will be adjusted to accommodate the clearances from the sewer line stipulated by Yarra Valley Water.

Seven property owners have confirmed an interest in acquiring the land, in particular Lots 2, 3, 13, 14, 18, 22 and 23 in the Plan for Discussion Purposes provided in **Appendix B**, as well as agreeing to meet a share of the reasonable costs associated with Council discontinuing and selling the roads and reserve, in accordance with the Sale of Minor Council Assets Policy.

If Council decides to proceed with the proposed discontinuance of the roads and reserve, it will have to undertake the following:

- Procedures under section 206 and clause 3 of Schedule 10 to the Local Government Act 1989 to discontinue the roads.
- Procedures under part 4 of the Planning and Environment Act 1987 and section 24(A) and 35(8) of the Subdivision Act 1988 to remove (discontinue) reserve status from the land, merge the land from the roads and reserve as one and then subdivide the land into various lots.
- Procedures under section 114 of the Local Government Act 2020 for the sale of the land from the discontinued roads and reserve.

Once the Plan of Subdivision is registered at Land Use Victoria, title to all of the lots in the Plan will be issued to Council.

Previous Council Resolution

At its meeting held on 27 February 2023, Council resolved:

That Council:

- (1) *Commences the statutory procedures under section 206 and clause 3 of Schedule 10 to the Local Government Act 1989 to discontinue and sell two 3.05m wide roads and a 0.17 to 0.30m wide reserve (revenge strip) at the rear of 34 to 54 May Street and 29 to 47 Bayliss Street and adjoining 2 Clara Street, Preston, shown hatched, cross-hatched and stippled in Figure 1 in **Appendix C** and section 114 of the Local Government Act 2020 to sell the land from the roads and reserve;*
- (2) *Gives public notice under section 223 of the Local Government Act 1989 and section 114 of the Local Government Act 2020 in the appropriate newspapers and on Council's website of the intention to discontinue the roads and reserve and sell the land to the adjoining property owners by private treaty in accordance with Council's Sale of Minor Assets Policy May 2022.*
- (3) *As part of its community engagement process, Council invites both written and verbal submissions on the proposed sale and deal with any submissions received in line with the principles set out in section 223 of the Local Government Act 1989.*
- (4) *That any submissions be considered by Council's Hearing of Submissions Committee at a meeting to be held at the next available Council meeting, following the closure of submissions.*
- (5) *If no submissions are received, a further report be presented to the Chief Executive Officer for a decision under delegation to consider completion of the statutory procedures for the discontinuance and sale of the roads and reserve to the owners of the adjoining properties and sign all necessary documentation for the sale of the land in accordance with Council policy. A Governance Report will be presented to Council to report on the Chief Executive Officer's decision.'*

ALIGNMENT TO 2041 DAREBIN COMMUNITY VISION

Strategic Direction 2: Prosperous, Liveable and Flourishing

ALIGNMENT TO 2021-25 COUNCIL PLAN

Strategic Direction 4 Responsible, Transparent and Responsive

ALIGNMENT TO COUNCIL PLAN STRATEGIC OBJECTIVES

4.2 We will ensure our assets are optimised for the benefit of our community

DISCUSSION

In accordance with sections 189 and 223 of the *Local Government Act 1989*, Council is required to take into consideration all submissions received in relation to the proposed discontinuance and sale of the roads 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 two written submissions in regard to the proposal with both submitters requesting to be heard by Council in support of their respective submission.

Submission One - Kathy Millianci and Ari Sarris (Appendix D)

- Submission received on 9 April 2023
- Ms Kathy Millianci and Mr Ari Sarris are in support of the road being discontinued and sold
- Ms Kathy Millianci and Mr Ari Sarris wish to be heard by Council in support of their submission

Submission Two – Mr Lindsey Tadd (Appendix E)

- Submission received on 21 April 2023
- Mr Lindsey Tadd has concerns that:
 - the proposal to discontinue and sell the road may affect Yarra Valley Water's ability to maintain the sewer line in the road;
 - whether the adjoining owners are aware of the purchase costs of the road; and
 - whether property owners who do not purchase part of the road can access the portion which is not proposed to be discontinued and sold.

Ms Kathy Millianci and Mr Ari Saris, and Mr Lindsey Tadd 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 land from the roads and reserve at the rear of 34 to 54 May Street and 29 to 47 Bayliss Street and adjoining 2 Clara Street, Preston appears to have been enclosed within the adjoining properties for many years and has not been used for access, as shown on the aerial view in **Appendix A**.

Ms Kathy Millianci and Mr Ari Saris have both indicated their support of the proposal to discontinue and sell the roads and reserve, although to date they have not expressed an interest in purchasing any part of the adjoining road.

Mr Lindsey Tadd has expressed concerns as to Yarra Valley Water's ability to maintain its assets located in the roads and reserve, and queries whether they have been consulted with respect to the proposal.

Yarra Valley Water was consulted on 28 June 2019 and again on 5 May 2023. On both occasions they advised that they had no objection to the proposal and sale provided that an easement was registered on Title of any lots sold in their favour, to protect their assets (the sewer line and pits), provided that any division of the land allowed a 60 centimetre clearance from their assets to the boundary of the lots. The proposed allocation of lots provides the required Yarra Valley Water clearance with the exception of Lot 3, which will be adjusted to accommodate this clearance. The allocation of lots with the required clearances has been confirmed by Council's surveyors.

Yarra Valley Water has the right and power to access the roads from adjoining owners' properties both currently, and following discontinuance and sale and the creation of the easement in their favour.

The proposed discontinuance only directly affects the Western end of the subject roads which are currently occupied by the adjoining owners. Neither Mr Lindsay Tadd nor those residents adjoining the Eastern end of the subject roads are impacted by the proposed discontinuance and sale of those discontinued lots.

CONSIDERATION OF LOCAL GOVERNMENT ACT (2020) PRINCIPLES

Financial Management

There is a positive financial consideration (in Council's favour) as a result of commencing the statutory procedures as contained in this report. Costs associated with undertaking the statutory process are partly recoverable from the purchasers as in accordance with the Sale of Minor Council Assets Policy.

Community Engagement

Public notice was given of Council's intention to discontinue and sell the subject road in The Age newspaper and on Councils website on 31 March 2023. In addition to these notifications, all adjoining owners and occupiers along the rights of way were consulted in writing, including those whose property did not abut the portion of the roads proposed to be discontinued and sold. The public notice period ended on Friday, 28 April 2023. Council received two written submissions in regard to the proposal with both submitters requesting to be heard by Council in support of their submission.

All immediate adjoining property owners to the proposed discontinuance have been informed of the proposal and no objections or issues have been raised. The owners adjoining the eastern end of the roads were also informed of the proposal and provided with the plan annexed at **Appendix C** which shows the full extent of the roads and delineates the portion of the roads proposed to be discontinued and sold shown hatched on the plan.

Of the two submissions received, one is in support of the proposal and the other has raised concerns regarding the allocation of the land and the sewer line. The dimensions and proposed allocation of the land are shown in the Plan for Discussion Purposes provided in **Appendix B**. As there has been no offer to purchase Lot 1 and the proposed purchaser of Lot 3 only made an offer to purchase on 2 May 2023, this boundary can be adjusted to accommodate the clearances from the sewer line stipulated by Yarra Valley Water.

Seven property owners have confirmed an interest in acquiring the land, in particular Lots 2, 3, 13, 14, 18, 22 and 23 in the Plan for Discussion Purposes provided in **Appendix B**, as well as agreeing to meet a share of the reasonable costs associated with Council discontinuing and selling the roads and reserve, in accordance with policy.

The statutory procedures require Council to give public notice of its intentions to discontinue and sell the roads adjoining 29 to 47 Bayliss Street, 34-54 May Street and 2 Clara Street, Preston Road 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.

Policy Considerations

Council's Sale of Minor Council Property Assets Policy 2022, items 2.5.1 and 2.5.2 states:

2.5.1 Council will first offer parcels of land to those property owners adjoining the Minor Council Property Asset that can demonstrate continuous and exclusive occupation of those parcels for 12 years or more. This rule does not apply if there is a change in ownership of the Applicant's land.

2.5.2 Where 2.5.1 does not apply, the land will be offered on the basis of equal distribution to abutting property owners, taking into account: (i) Existing property boundaries (try to make neat parcels and maximise street frontage where possible) (ii) Existing structures and the surrounding land (consider how land can be used by purchasers) (iii) The presence of any underground assets (determining the future fence alignment so that it does not encroach on the easement reserved for the underground assets), noting that land will not be subdivided longitudinally where there is an easement running longitudinally along the land.

Council's Sale of Minor Council Property Assets Policy 2022, items 2.5.1 and 2.5.2 states:

2.5.7 Council will take title to the land created through the discontinuance of a Road or removal of the reserve status of Minor Council Property Assets, where no abutting property owners wish to purchase the land.

Council's Sale of Minor Council Property Assets Policy 2022, item 2.2.3(h) states:

Land from surplus Minor Council Property Assets may be sold subject to an easement registered on title in favour of a public authority or Council to protect any right, power or interest in, on, under or over the land.

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.

Other Principles for consideration

Overarching Governance Principles and Supporting Principles

(a) Council decisions are to be made and actions taken in accordance with the relevant law;

Public Transparency Principles

(a) Council decision making processes must be transparent except when the Council is dealing with information that is confidential by virtue of this Act or any other Act;

Strategic Planning Principles

(b) strategic planning must address the Community Vision;

Service Performance Principles

(a) services should be provided in an equitable manner and be responsive to the diverse needs of the municipal community;

COUNCIL POLICY CONSIDERATIONS

Environmental Sustainability Considerations (including Climate Emergency)

There are no additional factors in this report which impact on environmental sustainability considerations.

Equity, Inclusion, Wellbeing and Human Rights Considerations:

There are no additional factors in this report which impact on equity, inclusion, wellbeing and human rights.

Economic Development and Cultural Considerations

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

Operational Impacts

There are no additional factors in this report which impact on operational impacts.

Legal and Risk Implications

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




IMPLEMENTATION ACTIONS

Following the Hearing of Submissions Committee meeting, a further report in relation to the matter will be provided to Council on 24 July 2023, seeking a final resolution on the matter.

RELATED DOCUMENTS

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

Attachments

- Appendix A - Aerial Plan (**Appendix A**) [↓](#) 
- Appendix B - Allocation of Lots and Sewer Location (**Appendix B**) [↓](#) 
- Appendix C - Plan showing extent of proposed discontinuance (**Appendix C**) [↓](#) 
- Appendix D - Submission One (**Appendix D**) Confidential - enclosed under separate cover
- Appendix E - Submission Two (**Appendix E**) 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 conflicts of 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.

Appendix A: Aerial View

Portion proposed to be discontinued:

34 to 54 May Street and 29 to 47 Bayliss Street and adjoining 2 Clara Street, Preston

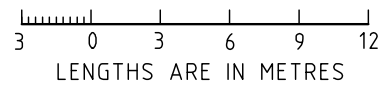


PLAN FOR DISCUSSION PURPOSES

PART ROAD & "REVENGE STRIP" RESERVE ON LP3024
& PART ROAD ON LP7402

MAY STREET, BAYLISS STREET & CLARA STREET, PRESTON

SCALE 1:300



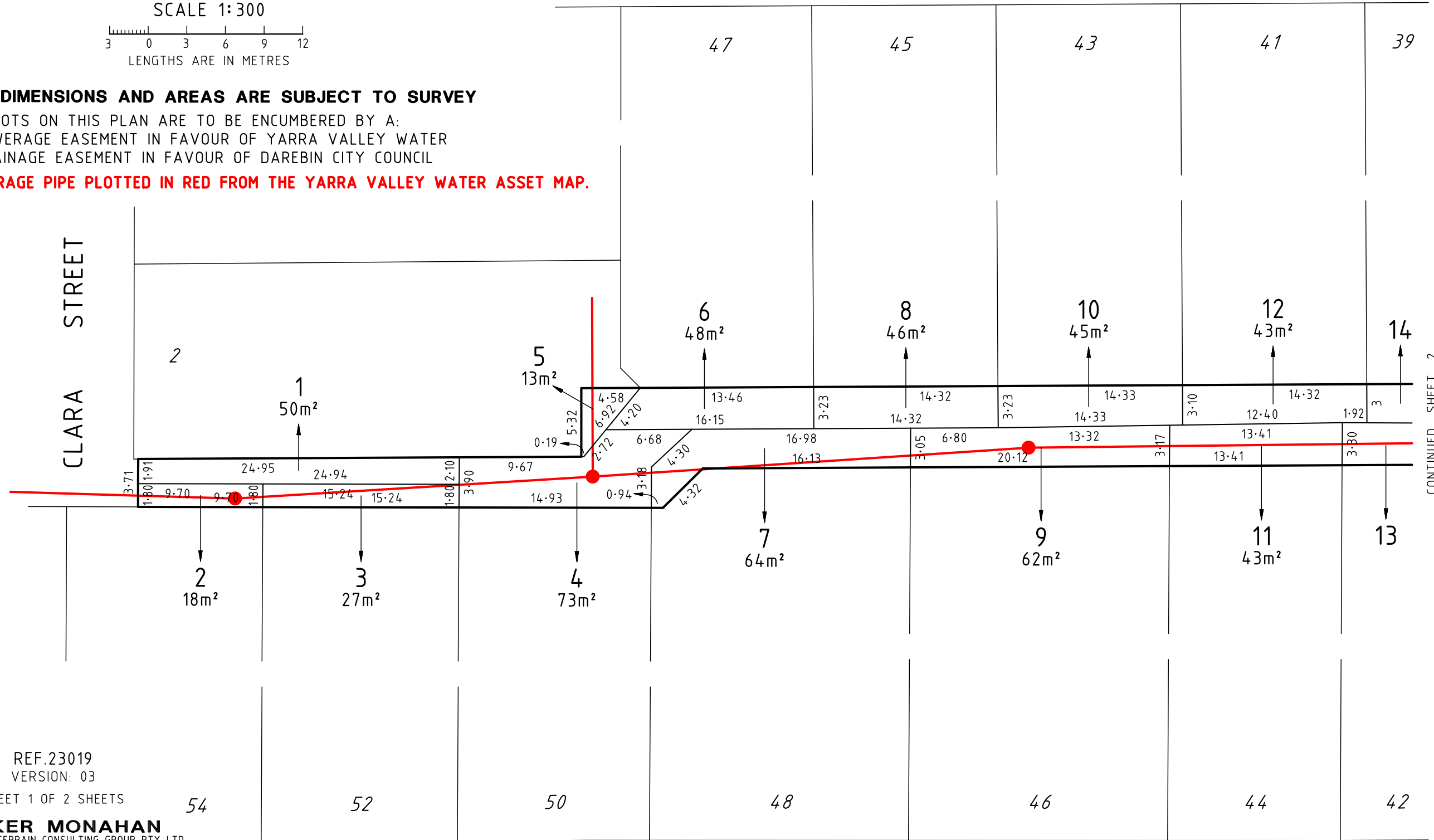
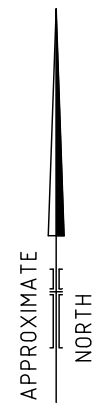
NOTE:

LOT DIMENSIONS AND AREAS ARE SUBJECT TO SURVEY

ALL LOTS ON THIS PLAN ARE TO BE ENCUMBERED BY A:

- SEWERAGE EASEMENT IN FAVOUR OF YARRA VALLEY WATER
- DRAINAGE EASEMENT IN FAVOUR OF DAREBIN CITY COUNCIL

SEWERAGE PIPE PLOTTED IN RED FROM THE YARRA VALLEY WATER ASSET MAP.



CONTINUED SHEET 2

REF.23019
VERSION: 03

SHEET 1 OF 2 SHEETS

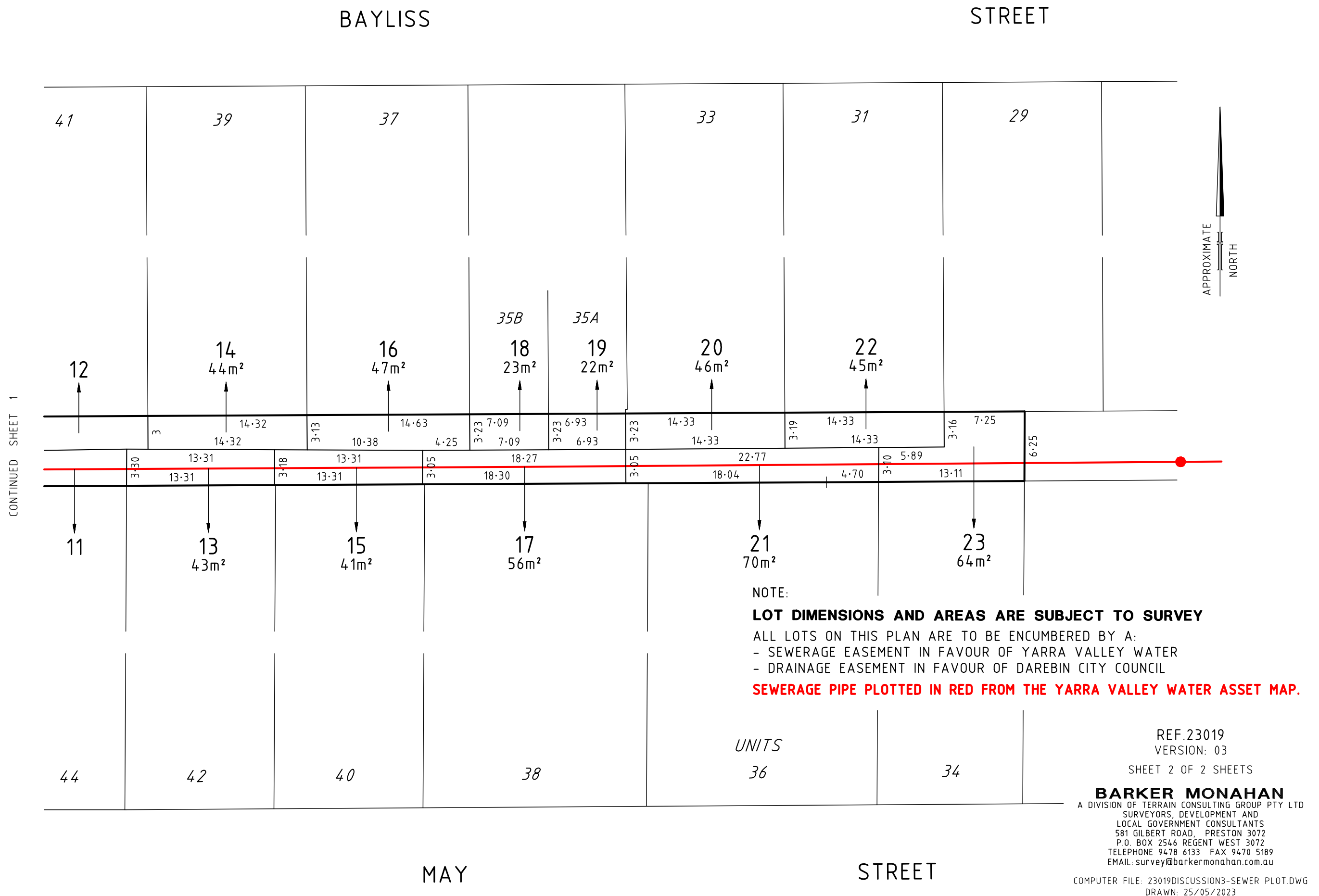
BARKER MONAHAN

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COMPUTER FILE: 23019DISCUSSION3-SEWER PLOT.DWG
DRAWN: 25/05/2023

MAY

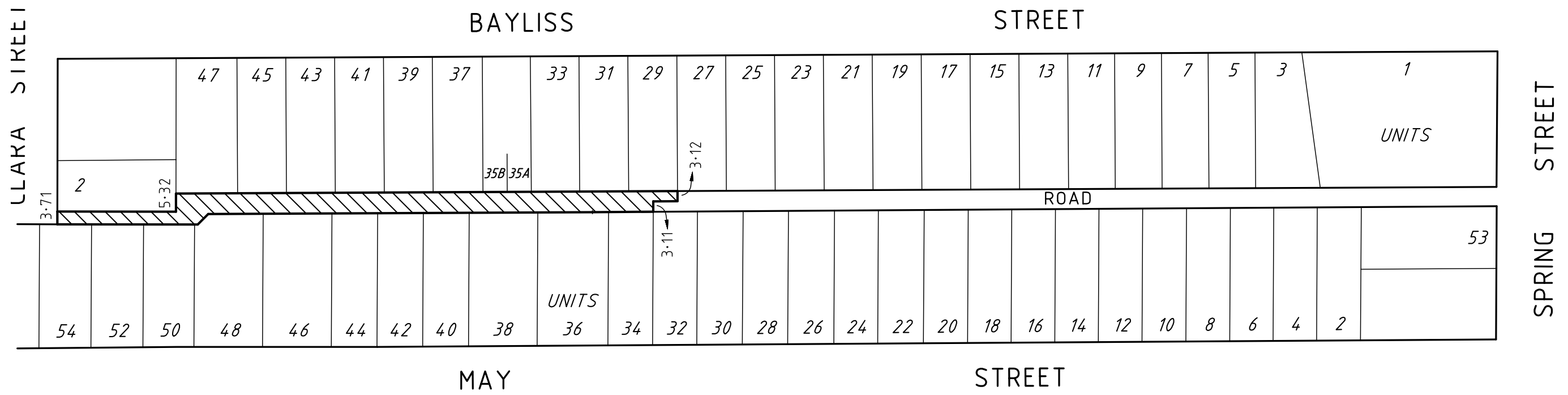
STREET



CONTINUED SHEET 1

NOTE:
LOT DIMENSIONS AND AREAS ARE SUBJECT TO SURVEY
 ALL LOTS ON THIS PLAN ARE TO BE ENCUMBERED BY A:
 - SEWERAGE EASEMENT IN FAVOUR OF YARRA VALLEY WATER
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SEWERAGE PIPE PLOTTED IN RED FROM THE YARRA VALLEY WATER ASSET MAP.

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 DRAWN: 25/05/2023



6. CLOSE OF MEETING