



# Council Meeting Agenda

**Monday 8 August 2022 at 7 PM**

**Council Chamber, Malvern Town Hall  
Corner Glenferrie Road & High Street Malvern**

## **Information for the Community**

### **Welcome**

Welcome to a City of Stonnington Council meeting.

The Council has adopted Governance Rules in accordance with the Local Government Act 2020 which determine the way in which the Council will make decisions.

### **About this meeting**

The agenda lists all the items to be considered by the Council. Each report is written by a Council Officer and outlines the purpose of the report, relevant information and a recommendation for the Council. The Council will consider the report and either accept, reject or make amendments to the recommendation. Council decisions are adopted if they receive a majority vote from the Councillors present at the meeting.

### **Arrangements to ensure meetings are accessible to the public**

Council meetings are generally held at the Malvern Council Chamber, corner High Street and Glenferrie Road (entry via Glenferrie Road via the door closest to the Malvern Police Station). The Malvern Council Chamber is accessible to all. Accessible toilets are also available. If you require translation, interpreting services or a hearing loop, please contact the Council's Civic Support Officer on 03 8290 1331 to make appropriate arrangements before the meeting.

To ensure that people in the Hall can follow proceedings, the meeting agenda, recommendations and proposed alternate recommendations are displayed on screen.

### **Live webcasting**

Council meetings are broadcast live via Council's website, allowing those interested to view proceedings without needing to attend the meeting. This gives people who are unable to attend, the ability to view Council decisions and debate. A recording of the meeting is available on the Council website after the meeting (usually within 48 hours). Live captioning is occurring during the meeting. Only Councillors and Council Officers are visible. People in the public gallery will not be filmed, but if you speak, you will be recorded.

### **Governance Matters**

This Council Meeting is conducted in accordance with the Local Government Act 2020 and the City of Stonnington Governance Rules.

### **Recording of Council Meetings**

In accordance with the Governance Rules 2020 clause 67 meetings of the Council will be audio recorded and made available for public access, with the exception of matters identified as confidential items in the agenda.

### **Disclosure of Conflict of Interest**

In accordance with the Local Government Act 2020, a Councillor must declare any Conflict of Interest pursuant to Section 130 of the Act in any items on the Agenda.

At the time indicated in the agenda, a Councillor with a conflict of interest in any item on the agenda must indicate they have a conflict of interest by clearly stating"

- The item for which they have a conflict of interest;

- Whether their conflict of interest is general or material; and
- The circumstances that give rise to the conflict of interest.

Immediately prior to the consideration of the item in which they have a conflict of interest, a Councillor must indicate to the meeting the existence of the conflict of interest and leave the meeting.

### **Behavior at meetings**

Members of the public present at the meeting must remain silent during the proceedings other than when specifically invited to address the meeting.

The Chair may remove a person from the meeting for interjecting or offensive gesture after being asked to desist, and the Chair may cause the removal of any object or material that is deemed by the Chair to be objectionable or disrespectful.

The Chair may call a break in the meeting for either a short time, or to resume another day if the behavior at the Council table or in the gallery is significantly disrupting the Meeting.

Your cooperation would be appreciated.

**Mayor, Deputy Mayor and Councillors, Stonnington City Council**

**Statement of Reconciliation**

The Chair will open the meeting and recite the following Statement of Reconciliation.

We acknowledge we are meeting on the Traditional Lands of the Wurundjeri Woi Wurrung and Bunurong peoples of the East Kulin Nations and pay our respects to their Elders past, present and emerging.

We extend that respect to all Aboriginal and Torres Strait Islander peoples. We acknowledge their living connection to Country, relationship with the land and all living things extending back tens of thousands of years.

**Statement of Commitment**

The Chair will recite the following Statement of Commitment.

We are reminded that as Councillors we are bound by our Oath of Office to undertake the duties of Councillor in the best interests of the people of the City of Stonnington and to faithfully and impartially carry out the functions, powers, authorities and discretions vested in us under the Local Government Act and any other relevant Act.

# Council Meeting Agenda Monday 8 August 2022 Order of Business

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- 1 Reading of the Statement of Reconciliation
- 2 Reading of the Statement of Commitment
- 3 Introduction of Councillors & Executive Staff
- 4 Apologies
- 5 Confirmation of the Minutes of the previous meeting

#### 5.1 Minutes of the Council Meeting held on 25 July 2022

##### Officer Recommendation

*That the Minutes of the Meeting of the Stonnington City Council held on 25 July 2022 be confirmed as an accurate record of the proceedings.*

- 6 Disclosure of Conflicts of Interest
- 7 Questions From the Community
- 8 Business

## 8.1 Proposed removal from Register of Public Roads of road at rear 420 High Street, Prahran - Public Submissions

**Chief Financial Officer: Julia Gallace**  
**Acting Director Organisation Capability: Marilyn Kearney**  
**Director Environment & Infrastructure: Rick Kwasek**

##### Linkage to Council Plan

#### Direction 1: A thriving and unique place

1.2 Thriving and desirable businesses

#### Direction 3: A people-centred and future ready city

3.1 Community focus, connection and engagement

##### Purpose of Report

To consider the two (2) submissions received in response to the proposal and request for a further report to the Council to grant authority to remove from the Register of Public Roads (**Register**) the road at the rear of 420 High Street, Prahran (**Road**), shown outlined red on the plan attached to this report at Schedule 1 (**Site Plan**), pursuant to section 17(4) of the *Road Management Act 2004* (Vic) (**RMA**).

Council will determine this matter at the Council meeting on 29 August 2022.

## Officer Recommendation

### **That the Council:**

- 1. CONSIDER the two (2) submissions received in response to letters sent to all adjoining landowners in relation to the discontinuance of the road at the rear of 420 High Street Prahran pursuant to section 17(4) of the RMA.**
- 2. THANK the submitters for their submission.**
- 3. NOTE there is no requirement for Council to undertake a public consultation process before removing the Road from the Register under the RMA.**
- 4. NOTE after Council has considered submissions made by the Owner and Adjoining Owner, Council must determine whether the Road is no longer reasonably required for general public use pursuant to section 17(4) of the RMA and whether to remove the Road from the Register. Council will make this determination at the Council Meeting 29 August 2022.**

## Executive Summary

- To consider the submissions received in response to Council's letters dated 17 May 2022, regarding the proposed removal of the road at the rear of 420 High Street, Prahran (**Road**), from the Register of Public Roads (**Register**).
- Report on its findings from the submission process at a future Council meeting and determine whether the road is removed from the Register.
- The Road is part of the land contained in certificate of title volume 8616 folio 758, being Lot 2 on title plan no. TP833454A, which is registered in the name of Mt Erica Holdings Pty Ltd (Owner).
- Council's records show that it has not historically inspected, repaired and maintained the Road, despite the Road being included on the Register. This is consistent with statements from the Owner.
- On 13 May 2022, a report was endorsed by the Chief Executive Officer to commence proceedings to remove the Road from Council's register of public road and to invite persons who may be affected by that proposal to make a submission in respect to that proposal.
- Council will be responsible for any costs and disbursements associated with removing the road from the Register.

## Background

- This proposal is being initiated by Council on the basis that it is not appropriate that Council retain roads on the Register which it does not currently maintain and does not intend to maintain.
- The Road is part of the land contained in certificate of title volume 8616 folio 758, being Lot 2 on title plan no. TP833454A, which is registered in the name of Mt Erica Holdings Pty Ltd (Owner).
- The Road has been included on the Register as laneway no. 16656, since the creation of the Register on 1 July 2004.
- The Owner is the owner of the Mt Erica Hotel site, comprising the land shown coloured orange and green on the Site Plan attached to this report as Attachment 1 (Hotel Site). The part of the Hotel Site shown coloured orange comprises the Mt Erica Hotel



building, and the part shown coloured green is contiguous paved area comprising the Road and a car park for patrons of the Mt Erica Hotel, which is accessible from both High Street and the Road.

11. The southern boundary of the Road abuts the property known as 80 Williams Road, Prahran, being the land, coloured blue on the Site Plan and contained in certificate of title volume 10378 folio 359 (Adjoining Land). The owner of the Adjoining Land (Adjoining Owner) does not use the Road for vehicular or pedestrian access to the Adjoining Land, however, claims that she requires access to the Road to maintain trees that overhang onto the Road from the Adjoining Land. The Adjoining Owner also claims that the Road is required as a 'natural barrier' between her residence on the Adjoining Land and the commercial premises comprising the Mt Erica Hotel.
12. The Owner claims that the Road is required only for access by patrons of the Mt Erica Hotel, rather than use by the general public, and that it has taken steps throughout the years to preclude public access, including by storing bins on the Road and erecting a chain barrier. The Owner also disputes that Council had the power to include the Road on the Register in 2004, on the basis that the Owner does not consider the Road to be a public highway at common law.
13. Council's records show that it has not historically inspected, repaired and maintained the Road, despite the Road being included on the Register. This is consistent with statements from the Owner.
14. On 13 May 2022, Council's Chief Executive Officer made a decision under power of delegation to commence a process to consider removing the Road from the Register and to invite persons who may be affected by that proposal to make a submission in respect of that proposal.
15. For a more detailed background, a copy of the first report to Council's Chief Executive Officer is contained in Schedule 2 to this report.

## Key Issues and Discussion

### Repair and maintenance of the Road

16. For so long as the Road is included on the Register, Council is under a statutory duty to inspect, maintain and repair the Road to the standard specified in its Road Management Plan, pursuant to section 40 of the RMA. A failure to discharge its statutory duty could expose Council to liability in negligence if a person suffers loss as a result, or potentially other claims.
17. The Owner and its tenants have been repairing and maintaining the Road, on the basis that the Owner claims that the Road is a private road that is predominantly used by the Owner and its invitees (that is, patrons of the Mt Erica Hotel), rather than members of the public.

### Is the Road reasonably required for general public use?

18. In this case, it is considered that the Road is not reasonably required for general public use, on the basis that:
  - the Road only provides access to the Hotel Site (rather than another publicly accessible road);

- the Road is predominantly, if not wholly, used by the Owner and the occupiers and invitees of the Mt Erica Hotel, rather than the general public; and
  - the Adjoining Owner does not use the Road for road purposes, but rather her use appears to be limited to non-road purposes such as pruning trees.
19. It is also noted that the removal of the Road from the Register will not, of itself, extinguish the rights of the public or adjoining owners to access the Road, as the Road would remain a road at law (but no longer a 'public road' under the RMA in respect of which Council has a statutory duty to inspect, maintain and repair). The rights of the public and adjoining owners could only be extinguished if the Road is discontinued as a road (which is not proposed here).

### Options for consideration

20. It is recommended that Council consider the submissions received as outlined in this report.
21. Council has provided submitters that have requested to be heard the opportunity to do so.
22. Council may elect to reschedule the meeting.

#### Option 1

23. Council could resolve to abandon the proposal, take no action or may make no resolution on the matter. This option would mean that the land would continue to remain on Council public road register, despite being owned and exclusively maintained by the original proprietor of the land. Council may be perceived as knowingly encouraging the road to be used for a wider community use. Council may, at some time in the future, resolve to recommence the statutory process for the sale of the land.

#### Option 2

24. Council could resolve to consider the submissions and report their findings to finalise the statutory procedures to remove the road from the Register. This would be consistent with the statutory procedures which have been completed and having considered the submissions received. Benefits of finalising the statutory process, depending upon Council's decision, would ensure that the land is used for its original purpose and that the Road continue to vest (and be maintained) by the original proprietor.

### Governance Compliance

#### Policy Implications

25. There are no policy implications associated with this report.

#### Financial and Resource Implications

26. Council will bear its own costs associated with the process for considering the proposal.
27. The effect of deciding that the Road is no longer reasonably required for general public use and removing the Road from the Register, is that Council will no longer be

responsible for inspecting, maintaining, and repairing the Road under the RMA. However, the Road would remain a road for the purposes of the LGA and common law.

#### Conflicts of Interest Disclosure

28. No Council officer and/or contractors who have provided advice in relation to this report have declared a conflict of interest regarding the matter under consideration.

#### Legal / Risk Implications

29. There are no legal / risk implications relevant to this report.

#### Environmental Implications

30. There are no environmental implications relevant to this report.

#### Community Consultation

31. There is no requirement for Council to undertake a public consultation process before removing the Road from the Register under the RMA. However, before making a decision to remove the Road from the Register, Council is required to consider whether it needs to afford procedural fairness to any particular person(s) in respect of the proposal, being particular persons or classes of persons who may be adversely affected by the proposal to a greater extent than the general public. The duty to afford procedural fairness is discharged by giving the relevant persons notice of the proposal and an opportunity to respond to the proposal, and then considering any such responses before it makes its decision.
32. The removal of the Road from the Register affects the Owner as registered proprietor of the Road. Further, the Adjoining Owner has asserted that she requires continued access to the Road and, in doing so, has notified Council that she claims an interest in the Road which is greater than that of the general public.
33. In order to discharge its obligation to afford procedural fairness to parties specifically affected by the proposal, Council provided notice of the proposal to both the Owner and the Adjoining Owner on 11 May 2022.
34. Copies of Council's letters to each of the Owner and the Adjoining Owner, which set out the effect of Council's proposal (and confirm that the proposal will not affect the road status at law or the access rights of the public or the adjoining owners (if any)), are attached to this report as Schedule 3.
35. After Council has considered any submissions made by the Owner and Adjoining Owner, Council must determine whether the Road is no longer reasonably required for general public use pursuant to section 17(4) of the RMA in order to decide whether to remove the Road from the Register.

#### Submissions

36. On 27 May 2022, the director of the Owner wrote to Council in support of the proposed removal of the Road from the Register and requested that the Owner's previous correspondence be treated as part of its submission. The Owner's previous correspondence comprises:
  - letter of advice from Arnold Bloch Leibler to the Owner dated 14 December 2018 (a copy of which was provided to Council); and an email to Council from the Owner's director dated 30 March 2022.

37. The Owner's submission may be summarised as follows:
- the Road has not been declared as a public highway pursuant to section 204(1) of the Local Government Act 1989 or section 11 of the RMA;
  - there is no evidence that the Owner expressly dedicated the Road as a public highway;
  - there is no evidence that Council has ever maintained the Road;
  - the Owner has taken steps to keep the Road as private land, including:
    - I. maintaining the Road;
    - II. paying rates and land tax in respect of the Road; and
    - III. restricting access by members of the public over the Road;
38. Council's decision to include the Road on the Register is open to challenge on the basis that it could not have reasonably formed an opinion that the Road was reasonably required for public use; and
39. the Adjoining Owner has never had direct access to the Road, as a fence between the Adjoining Land and the Road has been in place since at least 1990.
40. Copies of the correspondence received by Council from the Owner are attached to this report as Schedule 4.
41. On 15 June 2022, Best Hooper Lawyers made a submission to Council on behalf of the Adjoining Owner objecting to Council's proposal to remove the Road from the Register.
42. The Adjoining Owner's submission may be summarised as follows:
- that the Road is required for general public use, on the basis that:
    - I. the Road is constructed, open and available for use by the general public;
    - II. the Road provides thoroughfare access to the public road network between Williams Road and High Street, Prahran; and
    - III. the Road is accessed and used by the public (not just by the staff and patrons of the Mt Erica Hotel); and
  - that it is inappropriate for Council to remove the Road from the Register, and therefore relinquish its responsibilities under the RMA to repair and maintain the Road, because:
    - I. the operators of the Mt Erica Hotel will occupy the Road for inappropriate purposes and inhibit its use as a public road;
    - II. inappropriate use of the Road by the operators of the Mt Erica Hotel may cause damage to the Road, impeding its use as a thoroughfare;
    - III. damage caused to the Road may not be remedied by the Owner;
    - IV. lack of care and maintenance to the Road may cause the Road to become unsafe for public use, posing a risk to Council; and

- V. graffiti and other damage to the Road will likely be exacerbated if Council relinquishes its responsibility to maintain the Road, resulting in diminished neighbourhood character and appeal.
43. A copy of the Adjoining Owner's submission is attached to this report as Schedule 5.
44. Council officers provide the following comment as follows in response to the Adjoining Owner's objections:
- the Road is constructed as a private driveway which provides access to the Hotel Site only;
  - Council does not have any evidence of the Road being used by the general public (as opposed to its use by the patrons and invitees of the Mt Erica Hotel)
  - the Road does not provide thoroughfare access between Williams Road and High Street, Prahran as a continuous roadway, as any such access requires the Road user to pass over the private car park of the Mt Erica Hotel;
  - it is not necessary, or desirable, for vehicular traffic to pass between Williams Road and High Street, Prahran using the private car park and the Road as a thoroughfare;
  - the Road is currently maintained by the Owner or the occupiers of the Mt Erica Hotel as part of the Owner's private land, as opposed to being maintained by Council;
  - there is no evidence to suggest that if Council removes the Road from the Register, that the Owner or the occupiers of the Mt Erica Hotel will cease to maintain the Road or cause it to fall into disrepair; and if Council decides to remove the Road from the Register, that decision will not affect any existing access rights of the general public or the adjoining owners (if any).

#### Human Rights Consideration

45. Complies with the Charter of Human Rights & Responsibilities Act 2006.

#### Attachments

1. Proposed Removal from Register - road abutting 420 High Street, Prahran ( Schedule 1) [8.1.1 - 2 pages]
2. Proposed Removal from Register - road abutting 420 High Street, Prahran ( Schedule 2) [8.1.2 - 5 pages]
3. Proposed Removal from Register - road abutting 420 High Street, Prahran ( Schedule 3) [8.1.3 - 4 pages]
4. Proposed Removal from Register - road abutting 420 High Street, Prahran ( Schedule 4) [8.1.4 - 6 pages]
5. Proposed Removal from Register - road abutting 420 High Street, Prahran ( Schedule 5) [8.1.5 - 2 pages]

## 8.2 VCAT Quarterly Report - Second Quarter 2022 (April-June 2022)

**Manager Statutory Planning: Alex Kastaniotis**  
**Director Planning & Place: Annaliese Battista**

### Linkage to Council Plan

#### Direction 1: A thriving and unique place

##### 1.3 Pride of place and character

### Purpose of Report

To inform Councillors of the planning decisions issued by the Victorian Civil and Administrative Tribunal (VCAT) in the second quarter of 2022, between April and June 2022.

### Officer Recommendation

#### **That Council:**

- 1. RECEIVES and NOTES the VCAT Report (April 2022 – June 2022).**

### Background

- Council has acknowledged that it is important to review and understand how decisions at VCAT are made and the implications of these decisions. As a result, this report is prepared, outlining all decisions issued by VCAT in the second quarter of 2022.

### VCAT Decision Terminology

- The following definitions of often used VCAT terminology is provided to assist understanding this report.

Terminology	Definition
Set aside	VCAT has overturned Council's decision to either issue or refuse a permit.
Affirmed	VCAT supports Council's decision to either issue or refuse a permit.
Varied	VCAT is largely supportive of Council's decision to issue a permit, but has either removed conditions, altered the wording of conditions, or imposed additional conditions on that permit.
Struck out	The appeal has been thrown out and will not be heard.
Withdrawn	The person who lodged the appeal has decided not to pursue it and has withdrawn the appeal.
Outcome by consent	An agreement was reached prior to a hearing where all parties were satisfied with the outcome and agreed to a permit issuing, subject to agreed changes.

### Key Issues and Discussion

3. 19 cases were determined by VCAT in the second quarter of 2022, which is slightly lower than the normal range of 20 – 25 cases per quarter.
4. In this second quarter, there were 7 outright wins (37%). In addition to the outright wins, 4 positions of consent were reached (21%), these are generally considered to be positive outcomes as Council only consents to the matter being settled if it is satisfied with the resulting outcome. 6 cases were lost (31.5%). A remaining 2 matters were withdrawn before the hearing (10.5%).
5. The above figures used by the Planning Department to report to Council on VCAT decisions differ to the Local Government Performance Reporting Framework (LGPRF) 'win/loss' ratio. This difference is because the LGPRF data does not factor in outcomes where positions of consent were reached, or matters struck out or withdrawn. The LGPRF data only looks at matters that went to a full merits hearing and a decision was handed down by a member of the Tribunal. This means for the current quarter, 31.5% of VCAT outcomes are excluded from being included in the LGPRF results.
6. A significant decision worth noting this quarter relates to an application at 173 Burke Road, Glen Iris. This was an appeal against Council's refusal of a six-storey mixed use building. The application proposed a supermarket and bottle shop at ground floor and 85 apartments above. Council officers refused the application under delegation on grounds relating to excessive height and scale, unreasonable amenity impacts on surrounding land, traffic impacts and concerns with waste management.
7. Council received 198 objections to the proposal from surrounding residents and business owners. The key themes raised in objections were traffic and parking concerns and concerns with the excessive scale of the building. Of the 198 objectors, 30 became parties to the VCAT Appeal, which is an unusually high number.
8. The hearing was originally listed for four days, but given the very high number of objector parties, was extended to 12 days. Given the high number of parties, all 12 days were required to hear the matter.
9. At the hearing, the permit applicant called seven expert witnesses (Environmental Sustainable Design, Social planning (liquor), traffic, economist, photomontages, town planner and urban design). Council called two (traffic and urban design), and a group of objectors called one (traffic).
10. After considering the proposal and all submissions made at the hearing, VCAT found in favour of Council and the objectors. The Tribunal found that the loss of on-street car parking and traffic impacts were not acceptable. The Tribunal also found that the built form was not respectful of the local context. On this basis VCAT affirmed Council's refusal and directed that no permit issue.
11. A second decision of note relates to 935 & 941-951 High Street, Armadale. This was an appeal against Council's refusal of a six-storey commercial building. Council officers refused the application under delegation on grounds relating to; building height and scale, impacts on heritage fabric and significance, failure to meet requirements of the Design and Development Overlay 19, amenity impacts on adjacent sites, impacts of the vehicle access on the retail frontage, and failure to provide an acceptable response to environmentally sustainable development policy.
12. VCAT found that there was strategic support for a multi-storey commercial building on the site. However, the proposal before the Tribunal failed to provide an acceptable

outcome in relation to the heritage significance of the area and the built form of the proposal.

On this basis, VCAT affirmed Council's refusal of the application and directed that no permit issue.

## **Governance Compliance**

### **Policy Implications**

13. There are no policy implications associated with this report.

### **Financial and Resource Implications**

14. There are no financial and resource implications associated with this report.

### **Conflicts of Interest Disclosure**

15. No Council Officer and/or contractors who have provided advice in relation to this report have declared a conflict of interest regarding the matter under consideration.

### **Legal / Risk Implications**

16. There are no legal / risk implications relevant to this report.

### **Stakeholder Consultation**

17. There was no requirement for external stakeholder consultation in this proposal.

### **Human Rights Consideration**

18. Complies with the Charter of Human Rights & Responsibilities Act 2006.

## **Attachments**

Nil



## 8.3 Authorisation of Infringement Review Committee Panel to Review Planning Compliance Matters

**Manager Liveability & Compliance: Brad Petryczkowycz**  
**Director Planning & Place: Annaliese Battista**

### Linkage to Council Plan

**Direction 3: A people-centred and future ready city**

3.4 Fit for purpose operating model and resource management

### Purpose of Report

The purpose of this report is for the Council to approve the execution of an Instrument of Appointment and Authorisation under the *Planning and Environment Act 1987* for City of Stonnington Council Officers David Taylor, David Thompson, Fiona Ford and Rick Kwasek. These Officers represent Council's Infringement Review Committee panel and must be authorised to undertake an internal review when sought by a person (or a person acting on their behalf) of a decision to serve an Official Warning or Infringement Notice under the *Planning and Environment Act 1987* as regulated by the *Infringements Act 2006* and/or the *Fines Reform Act 2014*.

### Officer Recommendation

***That the Council APPROVE, in the exercise of the powers conferred by Section 224 of the Local Government Act 1989 (Vic) and the other legislation referred to in the attached Instrument of Appointment and Authorisation, that:***

- 1. The Council Officers referred to in the Instrument of Appointment and Authorisation (Attachment 1 as annexed to the minutes) be appointed and AUTHORISED as set out in the Instrument.***
- 2. The Instrument of Appointment and Authorisation comes into force immediately once the Common Seal of Council is affixed to the Instrument and remains in force until Council determines to vary or revoke it.***
- 3. The Instrument of Appointment and Authorisation be SEALED.***

### Background

1. The Appointment of Authorised Officers enables appropriate Council Officers within the organisation to administer and enforce various Acts, regulations or local laws in accordance with the powers granted to them under legislation or a local law.
2. Instruments of Appointment and Authorisation are prepared based on advice from Council's legal representatives. Whilst the appointment and authorisation of authorised Officers under other relevant legislation is approved by the Chief Executive Officer under delegation, Council's legal representatives recommend that Officers enforcing the *Planning and Environment Act 1987* (Vic) be authorised by Council resolution. Maddocks also recommend that Instruments of Appointment and

Authorisation be refreshed on a regular basis. The instruments are reviewed regularly and updated due to:

- appointment of new staff;
- changes in the names of Acts;
- the introduction, amendment or revocation of legislation;
- changes in position titles; and
- changes in roles.

## **Governance Compliance**

### **Policy Implications**

3. There are no policy implications associated with this report.

### **Financial and Resource Implications**

4. The costs to prepare the Instrument are minimal and met within the current operational budget.

### **Conflicts of Interest Disclosure**

5. No Council officer and/or contractors who have provided advice in relation to this report have declared a conflict of interest regarding the matter under consideration.

### **Legal / Risk Implications**

6. There are no legal / risk implications relevant to this report.

### **Environmental Implications**

7. There are no environmental implications relevant to this report.

### **Community Consultation**

8. There was no requirement for community consultation.

### **Human Rights Consideration**

9. Complies with the Charter of Human Rights & Responsibilities Act 2006.

## **Attachments**

1. S11A Instrument of Appointment & Authorisation - IRC Panel [8.3.1 - 2 pages]

## 8.4 Community Grants Program 2022/2023

**Manager Aged, Diversity & Community Planning: Liz Daley**  
**Director Community & Wellbeing: Cath Harrod**

### Linkage to Council Plan

#### **Direction 2: An inclusive and healthy community**

- 2.1 Health and wellbeing
- 2.2 Diverse, inclusive and safe

#### **Direction 3: A people-centred and future ready city**

- 3.1 Community focus, connection and engagement

### Purpose of Report

To seek Council endorsement of applications recommended for funding through the Stonnington Community Grants program for the 2022/23 financial year.

### Confidentiality

Confidential information is contained in Attachment 4, as circulated in the confidential section of the agenda attachments, in accordance with Section 66(2)(a) and the definitions of 'confidential information' in section 3(1) of the Local Government Act 2020.

The information relates to:

- a) personal information, being information which if released would result in the unreasonable disclosure of information about any person or their personal affairs;
- b) private commercial information, being information provided by a business, commercial or financial undertaking that if released, would unreasonably expose the business, commercial or financial undertaking to disadvantage.

The item has been included in the public agenda to facilitate transparency and accountability in Council's decision making. If discussion of the confidential information in the attachment to this report is required for Council to make a decision, this item will be deferred to the confidential section of the agenda.

### Officer Recommendation

#### ***That the Council:***

- 1. ACCEPT four late applications where applicants had commenced but not completed applications by the closing date as shown in Attachment 1;***
- 2. APPROVE the recommendations for Community Capacity Building (annual) grants funding for 2023/23 as shown in Attachment 1;***
- 3. APPROVE the recommendations for Partnership (triennial) grants funding for the Community Grants Program 2022/23 for the second of three years funding***

*(subject to the annual budget and accountability provisions) as shown in Attachment 2;*

4. **APPROVE the allocation of Ethnic Meals Program subsidies to community groups for 2022/23 as shown in Attachment 3, noting this is a restricted historical program not available to new groups;**
5. **APPROVE the recommendation regarding four applications as shown in Confidential Attachment 4;**
6. **NOTE any applicant unable to expend the grant during the 2022/23 financial year will be required to return unspent funds to the Council;**
7. **NOTE grant recipients, including funding amount and project description, will be publicised on the Council's website; and**
8. **NOTE that the remaining balance of funding will be made available for Quick Response grants and other funding commitments.**

### Executive Summary

1. The Community Grants Program supports eligible groups deliver vital activities that contribute to community wellbeing; social connectivity and inclusion; and promote environmental sustainability.
2. Applications were open for annual Community Capacity Building (cash) and In-kind (facilities and transport) grants between 26 April 2022 and 23 May 2022. Of 74 applications submitted, 67 are recommended for full or partial funding (refer **Attachment 1**).
3. Four late applications are identified and included for the Council's discretion.
4. Community Partnership (triennial) applicants, of which there are 13, will receive their second of three-year funding based on successful acquittal of their 2021-2022 grant. (refer **Attachment 2**).
5. Cash grants recommendations are below budget; the remaining funds will support Quick Response Grants for unforeseen events.
6. Recommendations for Ethnic Meals Subsidies are included for eligible senior groups (refer **Attachment 3**).
7. Note a confidential recommendation (refer **Attachment 4**) is made in relation to four applications.

### Background

8. The 2022/23 Community Grants Program includes annual Community Capacity Building grants (cash); in-kind facilities and transport grants; and the second year of three-year Partnership grants.
9. In addition to the annual Community Grants Program, an Ethnic Meals Subsidy Program supports cultural and linguistically diverse senior's clubs to support their cultural programs.
10. The Community Grants Program was reviewed following the 2021/22 program and the Community Recovery Grants audit.

### Key Issues and Discussion

11. The 2022/23 Community Grants Program opened 26 April 2022 and closed 23 May 2022.
12. Applications have been assessed by a panel against weighted criteria articulated in the Community Grants Guidelines 2022/23.
13. 74 applications were received for annual Community Capacity Building and In-kind grants, of which 67 are recommended for full or partial funding (refer **Attachment 1**).
14. Four late applications that had commenced via Smarty Grants but were not completed by the closing date are included for Council’s consideration; these are:
  - a. Chabad House – Chanukah event and self-drive transport
  - b. NCJW (Victoria) Community Services Inc. - support for senior communities
  - c. Nature Playgroup (auspice Playgroups Victoria) - First Nations storytelling
  - d. Rewilding Stonnington (auspice Keep Victoria Beautiful) - planting project.
15. Applications recommended for partial, or no support, fall into categories below:
  - a. Closed program or small numbers of resident participants.
  - b. Ineligible due to the project deemed capital works.
  - c. Application to support activities required under incorporation requirements.
  - d. Inadequate demonstration to deliver the scale of the proposed program.
  - e. Application seeking funds for equipment above the \$2,000 limit.
16. In the triennial Partnership Grants Program, 11 applicants are recommended to receive their second year of funding.
17. Successful applicants will be required to enter into a funding agreement with the Council and meet acquittal and other obligations.
18. Successful applicants, along with a brief project description, will be included on Council’s website.
19. Recommendations for the Ethnic Meals Program are also included as **Attachment 3**. Once approved, funds will be distributed quarterly with recipients required to submit receipts and acquittals to release the future funds.

## Governance Compliance

### Policy Implications

20. The Community Grants Policy 2022/23 and Community Grants Guidelines 2022/23 guide the Community Grants Program.

### Financial and Resource Implications

21. Community Grant recommendations are within the allocated budget. Unspent funds will be redirected to meet other commitments including Quick Response Grants.

	Cash	In-kind	Ethnic Meals	Total
<b>Budget allocation</b>	\$687,720.00	\$2,366,012.00	\$86,075.00	\$3,406,807.00

<b>Annual Grants – Amount requested</b>	\$277,452.00	\$388,478.13	-	\$665,950.13
<b>Annual Grants – Amount recommended</b>	\$190,412.00	\$370,565.05	\$80,300.00	\$641,277.05
<b>Partnership Grants – Year 2 commitments</b>	\$418,286.70	\$4,495.65	-	\$422,782.35
<b>Remaining funds</b>	\$79,021.30	\$1,990,951.30	\$5,775.00	

### Conflicts of Interest Disclosure

22. A Conflict of Interest was declared by Prahran Mechanics Institute (applicant) due to a Councillor being on their Board.
23. No Council officer who has provided advice in relation to this report have declared a conflict of interest regarding the matter under consideration.

### Legal / Risk Implications

24. Legal / risk implications have been considered in this report (refer **Confidential Attachment 4**).

### Community Consultation

<b>Purpose</b>	To provide information to eligible community groups and organisations on the opening and closing dates for applications to community grants program, including the application and eligibility requirements.
<b>IAP2 Goal:</b>	Inform
<b>Exhibition period</b>	Community Grants opened 26 April at 9am and closed 23 May 2022 at 11.59am. Quick Response Grants open 25 July 2022 until funds exhausted.
<b>Method:</b>	Two in person and one online information session for interested applicants SmartyGrants database notification EDMS: Stonnington News, Active Stonnington, Environment, Youth Services, Engaged and Library News – collective reach: 23,505 Website landing page Social Media posts weekly linked to City of Stonnington Community Grants webpage Intranet and internal email to officers requesting them to share with their networks Customer service on-hold message
<b>Reach:</b>	SmartyGrants database: 1,782 contacts Social media: Facebook: 9,500 followers; Instagram: 2,864 followers; LinkedIn: 8,777 followers. EDMS collective reach: 23,505 Reach data unavailable: website, customer service on-hold message
<b>Summary of feedback:</b>	None provided
<b>Impact:</b>	Applications received

### Human Rights Consideration

25. Complies with the Charter of Human Rights & Responsibilities Act 2006.

**Attachments**

1. Annual Grant Recommendations [**8.4.1** - 9 pages]
2. Partnership Grant Recommendations [**8.4.2** - 1 page]
3. Ethnic Meals Subsidy Program Recommendations [**8.4.3** - 2 pages]

## 8.5 Stonnington Disability and Access Committee - Applicant endorsement

**Manager Aged, Diversity & Community Planning: Liz Daley**  
**Director Community & Wellbeing: Cath Harrod**

### Linkage to Council Plan

#### **Direction 2: An inclusive and healthy community**

- 2.1 Health and wellbeing
- 2.2 Diverse, inclusive and safe

### Purpose of Report

To seek endorsement of three (3) applicants for membership of the Stonnington Disability and Access Committee, in accordance with the Terms of Reference.

### Confidentiality

Confidential information is contained in Attachment 1, as circulated in the confidential section of the agenda attachments, in accordance with Section 66(2)(a) and the definitions of 'confidential information' in section 3(1) (f) of the Local Government Act 2020.

The information relates to:

- a) personal information, being information which if released would result in the unreasonable disclosure of information about any person or their personal affairs;

The item has been included in the public agenda to facilitate transparency and accountability in Council's decision making. If discussion of the confidential information in the attachments to this report is required for Council to make a decision, this item will be deferred to the confidential section of the agenda.

### Officer Recommendation

#### ***That the Council:***

- 1. APPROVE Belinda Loche, Beverley Gorr and Tasmin Jowett for membership of the Stonnington Disability and Access Committee.***

### Executive Summary

1. The Stonnington Disability and Access Committee (SDAC) is an advisory committee comprised of people with disability, carers and representatives of local disability services.
2. In 2020, a review of the SDAC Terms of Reference recommended that new and re-applying committee members be endorsed by Council to ensure diversity of membership and good governance.



3. Endorsement is sought of three applicants to fill existing community member vacancies.

### Background

4. In 2020, a review of the SDAC Terms of Reference recommended Council endorsement of new Committee members.
5. Recruitment in 2021 resulted in full membership however resignations during 2022 resulted in three vacancies.
6. Three applicants are recommended for endorsement following the recruitment and selection process.

### Key Issues and Discussion

7. The SDAC Committee is comprised of 12 community members.
8. Members have an initial two-year appointment and may apply for a second and third term, not exceeding a total of six years continuous service, before a break of at least one term.
9. In 2021, a recruitment drive resulted in a full Committee membership however, in 2022 member resignations resulted in three vacancies.
10. A recruitment drive during March and April resulted in seven applications.
11. During the selection process three withdrew due to changed circumstances leaving four applicants to fill three vacancies (refer **Confidential Attachment 1**).
12. Three of the four applicants have lived experience and one disability sector experience.
13. With four strong applicants the selection focused on diversifying the Committee in terms of age, disability and lived experience.
14. With three current members having sector experience, the three members with lived experience are recommended for endorsement.
15. The applicants are committed to creating an accessible and inclusive community for people living with disability, their carers and families and will contribute to the diversity of the committee.

### Governance Compliance

#### Policy Implications

16. There are no policy implications associated with this report.

#### Financial and Resource Implications

17. There are no financial and resource implications associated with this report.

#### Conflicts of Interest Disclosure

18. No Council officer and/or contractors who have provided advice in relation to this report have declared a conflict of interest regarding the matter under consideration.

#### Legal / Risk Implications

19. There are no legal / risk implications relevant to this report.

#### Environmental Implications

20. There are no environmental implications relevant to this report.

#### Community Consultation

21. The recruitment process did not require traditional community consultation. Below is a summary of the promotion undertaken.

<b>Purpose</b>	Recruitment of new committee SDAC members
<b>Goal:</b>	To inform eligible community members of the opportunity to apply for membership to the committee.
<b>Advertising period</b>	March and April 2022
<b>Method:</b>	<ul style="list-style-type: none"><li>• Social media</li><li>• Website news (featuring current member stories)</li><li>• Targeted communication (local agencies / Access News)</li></ul>
<b>Reach:</b>	7 applications received
<b>Impact:</b>	3 applicants shortlisted for endorsement

#### Human Rights Consideration

22. Complies with the Charter of Human Rights & Responsibilities Act 2006.

#### Attachments

Nil

## 8.6 Proposed Vesting of Reserve in Council + Discontinuance of Road at Knox Street Malvern East

**Chief Financial Officer: Julia Gallace**

**Acting Director Organisation Capability: Marilyn Kearney**

**Director Environment & Infrastructure: Rick Kwasek**

### Linkage to Council Plan

**Direction 2: An inclusive and healthy community**

2.3 Public and green spaces

**Direction 3: A people-centred and future ready city**

3.1 Community focus, connection and engagement

### Purpose of Report

This Report seeks authority to consider whether part of the road at Knox Street, Malvern East, shown on the subdivision plan contained in Schedule 1 to this report, being part of the land contained in certificate of title volume 1856 folio 140 (**Road**), should be discontinued pursuant to clause 3 of Schedule 10 to the *Local Government Act 1989* (**Act**).

### Officer Recommendation

**That the Council:**

1. **APPROVE** having followed the required statutory procedures pursuant to sections 207A and 223 of the *Local Government Act 1989* (**Act**), and pursuant to its power under clause 3 of Schedule 10 to the **Act**, and having received no written submissions in response to the public notice regarding Council's proposal to discontinue the part of the road at Knox Street, Malvern East, which is shown in the plan contained in Schedule 1 to this Report, being part of the land contained in certificate of title volume 1856 folio 140 (**Road**):
2. **NOTE** the opinion that the Road (1 foot wide) is no longer reasonably required for general public use;
3. **ENDORSE** to discontinue the Road;
4. **APPROVE** that a notice pursuant to the provisions of clause 3(a) of Schedule 10 of the **Act** is to be published in the *Victoria Government Gazette*;
5. **ENDORSE** that Council make an application for title to the discontinued Road pursuant to section 207D of the **Act** and authorise Council's Chief Executive Officer to sign all documents required to finalise this application.
6. **ENDORSE** the discontinued road title (1 foot wide) with the existing tree reserve title (4.5m wide) and have them vest as one title under Council's ownership.

## Executive Summary

1. For the reasons set out in this report, it is considered reasonable to discontinue and vest the road as part of Plan of Consolidation in Council's favour.
2. The Road is shown coloured red on the site plan contained in Schedule 2 to this report (Site Plan).
3. The Road and the Reserve form a nature strip which contains an avenue of mature oak trees which are shown in Schedule 3. Council has been responsible for maintaining this open space for many decades and will formalise ownership through the vesting of the reserve.
4. The Road is not required for access by the occupants of the properties fronting Nyora Street, Malvern East.
5. The discontinuance, vesting and consolidation of titles ensures Council's ownership rights are preserved and that no provision will be made to enable vehicle/pedestrian access directly into the neighbouring properties.
6. Council will cover all costs and disbursements associated with the proposed discontinuance and consolidation of the Road and vesting of the Reserve.
7. On 28 January 2020, Council resolved to commence its statutory process to consider whether or not to proceed with the Proposal, and to give public notice of the Proposal pursuant to sections 207A and 223 of the Act. A copy of the minutes is shown in Schedule 4.
8. Council published a public notice of the proposed discontinuance in the 'Herald Sun' and Council's website on 28 March 2022. The public notice submission period ended on 28 April 2022 and no submissions were received.

## Background

9. The Road adjoins the Knox Street Reserve, which is shown coloured red on the site plan contained in Schedule 1 to this Report (**Reserve**).
10. The Road and the Reserve form a nature strip which contains an avenue of mature oak trees, as shown in the image in Schedule 2 to this report. Council has been responsible for maintaining this open space for many decades.
11. The Road is not required for access by the occupants of the properties fronting Nyora Street, Malvern East, being the properties shown hatched yellow on the site plan in Schedule 1 to this Report. Due to the timber fencing surrounding the perimeter of the Road and the Reserve, the Road is inaccessible from Knox Street, being the road shown cross-hatched green on the site plan contained in Schedule 1 to this Report.
12. In December 2016, Council was contacted by surrounding residents who raised concerns that the Road and the Reserve would not be retained as public open space.
13. On 28 January 2020, the Chief Executive Officer resolved to commence the statutory procedures to discontinue the Road, and give public notice pursuant to section 207A and 223 of the Act of its intention to discontinue the Road.
14. The report seeks to protect Council's interests by discontinuing the road and consolidating the title within the existing tree plantation reserve. The actions ensure that the road cannot be used as a secondary access road to the neighbouring properties.
15. Council officers did not pursue the invitation of public submissions (under S223 of the LGA) until it had satisfied all neighbouring property enquiries regarding existing

planning permits. It was noted that some applications were conditional on the retention of the road in its current state (for secondary access purposes).

16. In accordance with section 223 of the Act, Council published a public notice of the proposed discontinuance in the 'Herald Sun' on 28 March 2022. The public notice submission period ended on 28 April 2022. A copy of the public notice is contained in Schedule 5 to this Report.
17. No written submissions were received by Council at the conclusion of the public notice submission period. Council received two telephone calls in relation to proposed road discontinuance, however, neither resulted in written submissions being made.

## Key Issues and Discussion

### Road Status

18. The Road is known to title as a road and is therefore a 'road' for purposes of section 3(1) of the Act. Accordingly, Council has the statutory power to consider discontinuing the Road under clause 3 of Schedule 10 of the Act.
19. It is considered that the Road is no longer required for general public use, on the basis that it is not accessible to the public or adjoining properties, due to the various improvements constructed around the road.
20. If the Road is discontinued, the Road will vest in Council and Council may obtain a certificate of title for the former Road by application to the Registrar of Titles. Council may then retain that land as freehold land and determine a suitable future use for that land.

### Reserve

21. Council is separately taking steps to vest the Reserve in its ownership name pursuant to section 24A of the Subdivision Act 1988 (Vic). The titles will be consolidated upon Council's approval of the road discontinuance process.

### Conditions of discontinuance

22. If the Road is discontinued and the Reserve is vested in Council, Council officers propose that:
  - the Road should be designated as a reserve on title; and
  - the titles to the Reserve and discontinued Road should be consolidated into a single reserve,
  - subject to Council complying with any applicable statutory processes in that respect and making the requisite decision in respect of the proposed subdivision. A further report will be prepared on this item, in due course.

## Governance Compliance

### Policy Implications

23. There are no policy implications associated with this report.

### Financial and Resource Implications

24. Council will cover costs and disbursements associated with the proposed discontinuance of the Road and vesting of the Reserve.

### Conflicts of Interest Disclosure

25. No Council officer and/or contractors who have provided advice in relation to this report have declared a conflict of interest regarding the matter under consideration.

### Legal / Risk Implications

26. Council's Solicitors for this matter, Maddocks, will prepare and review relevant documentation in relation to this matter.

### Environmental Implications

27. There are no immediate environmental implications relevant to this report provided that the land be retained for its current purpose.

### Community Consultation

28. In accordance with section 223 of the Act, Council published a public notice of the Proposal in the 'Herald Sun' on 28 March 2022. Council also provided a copy of the public notice to each of the landowners whose property abuts the Road and those persons who have previously written to Council regarding the Proposal. The public notice submission period ended on 28 April 2022. Council received no submissions in response to its public notice.

### Public Authorities

29. In addition to Council, the following statutory authorities have been advised of the proposed discontinuance of the Road and have been asked to respond to the question of whether they have any existing assets in the Road, which should be saved under section 207C of the Act:
30. South East Water, Yarra Valley Water, Melbourne Water, CitiPower, United Energy, Multinet Gas, Telstra, Optus, APA, AusNet and NBN.
31. Melbourne Water, United Energy, Multinet Gas, Telstra, Optus, AusNet, NBN and Council have advised that they do not have assets in or above the Road and/or do not object to the proposed discontinuance and sale of the Road.
32. Any rights to existing assets which are required by the statutory authorities to be saved under section 207C of the Act, will be saved in any transfer of the Road.

### Human Rights Consideration

33. Complies with the Charter of Human Rights & Responsibilities Act 2006.

### Attachments

1. Schedule 1.plan of subdivision [8.6.1 - 1 page]
2. Schedule 2.site plan [8.6.2 - 1 page]
3. Schedule 3.site photo [8.6.3 - 1 page]
4. Schedule 4 - CEO Report Minutes - Proposed Vesting of Reserve in Council+ Discontinuance of Part of [8.6.4 - 7 pages]
5. Schedule 5. public notice [8.6.5 - 2 pages]

**9 Correspondence**

**10 Tabling of Petitions and Joint Letters**

**11 Notices of Motion**

**12 Reports by Councillors**

## 12.2 Record of Councillor Briefing Session held on 1 August 2022

### Purpose of Report

The Governance Rules provide that a summary of the matters discussed at a informal meeting of Councillors is tabled at the next practical Council meeting and recorded in the minutes of that meeting.

### Officer Recommendation

***That the Council RECEIVE the Record of the Councillor Briefing Session held on 1 August 2022.***

### Governance Compliance

#### Policy Implications

1. There are no policy implications associated with the report.

#### Financial and Resource Implications

2. There are no financial and resource implications associated with the report.

#### Conflicts of Interest Disclosure

3. No Council officer and/or contractors who have provided advice in relation to the report have declared a conflict of interest regarding the matter under consideration.

#### Legal / Risk Implications

4. There are no legal / risk implications relevant to the report.

#### Community Consultation

5. There was no requirement for community consultation.

#### Human Rights Consideration

6. Complies with the Charter of Human Rights & Responsibilities Act 2006.

### Attachments

1. Record - Councillor Briefing Session (1 August 2022) [**12.2.1** - 3 pages]

## 12.3 Record of Stonnington Disability & Access Committee Meeting held on 19 July 2022

### Purpose of Report

The Governance Rules provide that a summary of the matters discussed at a informal meeting of Councillors is tabled at the next practical Council meeting and recorded in the minutes of that meeting.

### Officer Recommendation

***That the Council RECEIVE the Record of the Stonnington Disability & Access Committee meeting held on 19 July 2022.***

### Governance Compliance

#### Policy Implications

1. There are no policy implications associated with the report.

#### Financial and Resource Implications

2. There are no financial and resource implications associated with the report.

#### Conflicts of Interest Disclosure

3. No Council officer and/or contractors who have provided advice in relation to the report have declared a conflict of interest regarding the matter under consideration.

#### Legal / Risk Implications

4. There are no legal / risk implications relevant to the report.

#### Community Consultation

5. There was no requirement for community consultation.

#### Human Rights Consideration

6. Complies with the Charter of Human Rights & Responsibilities Act 2006.

### Attachments

1. Disability Action Committee Informal Councillor meeting 19-7-22 [**12.3.1** - 2 pages]



## 12.4 Record of Reconciliation Action Plan Advisory Committee Meeting held on 21 July 2022

### Purpose of Report

The Governance Rules provide that a summary of the matters discussed at a informal meeting of Councillors is tabled at the next practical Council meeting and recorded in the minutes of that meeting.

### Officer Recommendation

***That the Council RECEIVE the Record of the Reconciliation Action Plan Advisory Committee meeting held on 21 July 2022.***

### Governance Compliance

#### Policy Implications

1. There are no policy implications associated with the report.

#### Financial and Resource Implications

2. There are no financial and resource implications associated with the report.

#### Conflicts of Interest Disclosure

3. No Council officer and/or contractors who have provided advice in relation to the report have declared a conflict of interest regarding the matter under consideration.

#### Legal / Risk Implications

4. There are no legal / risk implications relevant to the report.

#### Community Consultation

5. There was no requirement for community consultation.

#### Human Rights Consideration

6. Complies with the Charter of Human Rights & Responsibilities Act 2006.

### Attachments

1. Reconciliation Action Plan Advisory Committee 21 07 21 [12.4.1 - 2 pages]

**13 Questions to Council Officers**

**14 Urgent Business**

**15 General Business**

**16 Confidential Business**

**16.1 Aged Services Update**

**Director Community & Wellbeing: Cath Harrod**

This document is confidential information under Section 66 (2) (a) of the Local Government Act 2020. The matter is deemed to be confidential under Section 3 (1) (a) Council business information, being information that would prejudice the Council's position in commercial negotiations if prematurely released.