
8.3 PROPOSED DECLARATION OF PUBLIC HIGHWAY - PART WANDONG AVENUE

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Attachments: 1. Area proposed to be declared public highway

Reference: CM18/307

SUMMARY

The ownership and management of the land adjacent to the constructed road (Wandong Avenue) has long been the subject of uncertainty (area shown in Attachment 1).

The proposal to declare the whole of the land (shown in Attachment 1) as a public highway would create certainty for future management of the land. The proposal has been advertised to the community by giving public notice and requesting submissions in response to the public notice.

This report follows Council Reports from 15 October 2018, 18 February 2019 and 15 April 2019 which discussed issues associated with the land on both sides of Wandong Avenue where the road abuts Rail Street.

The recommendations of the Council Reports are as follows:

15 October 2018

THAT Council:

1. Propose to declare the northern section of Wandong Avenue, Wandong (adjacent to Rail Street), and as shown on Attachment 1 of this report, as a public highway.
2. Authorise the giving of Public Notice under Section 223 of the *Local Government Act 1989* of the intention to declare the section of Wandong Avenue, as shown on Attachment 1, a public highway under Section 204(1) of the *Local Government Act 1989*. The Public Notice would be published in a local newspaper and on Council's website.
3. In accordance with Section 223 of the *Local Government Act 1989*, receive written submissions and hear from submitters at a meeting of the Community Questions and Hearings Committee.

18 February 2019

THAT Council:

1. Determine that the area shown in Attachment 1 of this report, being the northern section of Wandong Avenue adjacent to Rail Street, is reasonably required for

PROPOSED DECLARATION OF PUBLIC HIGHWAY - PART WANDONG AVUNUE (CONT.)

- public use, both for immediate vehicle and pedestrian use and to allow for future planning for public, Council and utility uses and services.
2. Authorise the giving of public notice to give effect to Recommendation 1, by the publication of a notice of declaration of public highway under section 204(1) of the *Local Government Act 1989* of the area shown in Attachment 1 of this report in the *Victoria Government Gazette*.
 3. After the giving of public notice, authorise the preparation of a title Plan for the land declared as public highway and application by Council to become the registered proprietor of the land declared as public highway, as shown in Attachment 1 of this report.

Following the Council meeting of 18 February 2019, it came to light that Officers inadvertently did not provide all parties the opportunity to be heard in accordance with Section 223 of the *Local Government Act 1989* and that a new resolution on the matter of declaring Part Wandong Avenue a Public Highway would be required after submitters had the opportunity to be heard by the Community Questions and Hearings Committee.

The Council resolution of 18 February 2019 could not be acted upon without having provided procedural fairness as is required by the Act, therefore this required Council to consider the proposal anew.

The subsequent report of 15 April 2019 proposed a way forward to ensure that the submissions were treated in accordance with the Act and Council could advance to make a new resolution once they had considered all submissions, written and verbal.

The resolution of the Meeting of 15 April 2019 is as follows:

15 April 2019

THAT Council:

1. Reconsider the decision made at the Ordinary Council Meeting of 18 February 2019, Item 2, which gives effect to the declaration of public highway of part of Wandong Avenue (as shown in Attachment 1), noting that Council cannot proceed with the resolution having not fulfilled its requirements under the *Local Government Act 1989* to provide opportunity for submitters to be heard in accordance with section 223 of the *Local Government Act 1989*.
2. Officers invite the submitter and all other objectors who wished to be heard in support of their submission made in regard to the proposed declaration of public highway of part Wandong Avenue to the meeting of the Community Questions and Hearing Committee meeting scheduled for Monday 13 May 2019.
3. Hear the submitters at the Community Questions and Hearings Committee and report back to Council with a full representation of the submitter's views and concerns.

PROPOSED DECLARATION OF PUBLIC HIGHWAY - PART WANDONG AVUNUE (CONT.)

This report provides the background and information around the proposal for the declaration as public highway of part of Wandong Avenue to inform the consideration of the proposal in conjunction with the submission/s to the Community Questions and Hearings Committee.

In summary the report recommends that, in recognition of the long-established use of the whole of the land by vehicle and pedestrian traffic, it is considered that the area under discussion and shown in Attachment 1 of this report is considered reasonably required for public use and that support be given for the publication of a Gazettal Notice to give effect to the declaration of a public highway.

RECOMMENDATION

THAT Council:

1. Determine that the area shown in Attachment 1 of this report, being the northern section of Wandong Avenue adjacent to Rail Street, is reasonably required for public use, both for immediate vehicle and pedestrian use and to allow for future planning for public and community uses, and Council and utility services.
2. Authorise the giving of Notice to give effect to Recommendation 1, by the publication of a Notice of declaration of public highway under section 204(1) of the *Local Government Act 1989* of the area shown in Attachment 1 of this report in the Victoria Government Gazette.
3. After the giving of the Notice, authorise the preparation of a title plan for the land declared as public highway and application by Council to become the registered proprietor of the land declared as public highway, as shown in Attachment 1 of this report.

BACKGROUND

The road in the section of Wandong Avenue adjacent to Rail Street has been used as a public highway for a significant period of time, likely well before the construction of the sealed road around 1970. The approximate length of the section of road is 50m. Given the length of time that the road has been used and accepted by the public as a road, the road is considered to be reasonably required for general public use and is also considered to be a public highway at common law.

This section of constructed road, along with the balance of Wandong Avenue, is listed on Council's Register of Public Roads. Therefore, under the *Road Management Act 2004*, the land under the road vests in the municipal council of the municipal district in which the road is located. This is regardless of Council not being the registered proprietor of the land on title.

The land proposed to be included in the area to be declared a public highway includes the land on each side of the constructed Wandong Avenue adjacent to Rail Street. An approximation of the area of land under discussion in this report is shown in Attachment 1. Wandong Road (constructed) is referred to as the Road and the land to the north and south of the constructed road as the Land.

PROPOSED DECLARATION OF PUBLIC HIGHWAY - PART WANDONG AVENUE (CONT.)

ISSUES AND DISCUSSION

In consideration of the expected growth around Wandong and subsequent increase in vehicle and pedestrian traffic, it is prudent to plan for future infrastructure demands by an application to transfer all the Land to Council. The transference of all the Land will also resolve speculation around the Road boundaries (along both sides of this section of constructed road).

The land along each side of the Road has long been used by pedestrians in travel paths along Wandong Avenue and between Wandong Avenue and Rail Street. The well-established history of pedestrian traffic establishes solid grounds for the whole of the Land being considered reasonably required for use as a public highway, along with the constructed Road.

The inclusion of the Land in the road title will provide scope to allow for potential future widening of the road, curb and channel, intersection controls and a footpath on the southern side of Wandong Avenue down to Rail Street where the bus stop is located. The southern side of Wandong Avenue has the space for a graduated all abilities footpath between Wandong Avenue and Rail Street.

The land to the south of Wandong Avenue would also allow for a pedestrian path to be constructed away from the thoroughfare of the Road and, if considered of community benefit, potential for seating to be placed in this area.

The development of the Wandong Community Hall has, over time, resulted in the hall grounds and infrastructure expanding beyond the boundary of Council owned land. The transfer of the land would allow the opportunity for a future realignment of boundaries between the Land and the title on which the Wandong Community Hall is located, thereby correcting this anomaly of the hall and surrounds expanding beyond the title boundary although there would need to be land left alongside the constructed road to allow for a 'nature strip' and installation of utility services.

This may be achieved by the declaration of the land and road as a public highway under section 204(1) of the *Local Government Act 1989*, subject to the support of Council and the undertaking of the required statutory processes. Conditional on the outcome of the statutory processes and subsequent support of Council, an application can be made to the title office for registration of a certificate of title for the road (Road and Land) in Council's name. The application would likely be made under section 54 of the *Transfer of Land Act 1958*.

It is noted that neighbouring properties have fenced in part of the Land which is the subject of the proposed declaration and, should the declaration of public highway be supported, this is a matter which will need to be remedied.

As resolved at the Council meeting of 15 October 2018, public notice of the intention to make the declaration of public highway has been given, with submissions received in writing and made in person to the Community Questions and Hearings Committee. With Council's statutory public notice obligations fulfilled, this report now proposes to continue the final steps in the process to make the declaration of public highway for part of Wandong Avenue (as shown in Attachment 1).

PROPOSED DECLARATION OF PUBLIC HIGHWAY - PART WANDONG AVUNUE (CONT.)

CONSULTATION

Public Notice was given in the local newspaper on 30 October 2018 and placed on Council's website.

In response to the public notice, there was one objection to the proposal and four responses supporting the proposal. The submissions of support did not request to be heard at a Community Questions and Hearings Committee Meeting.

The consideration of the proposal to declare part of Wandong Avenue a Public Highway was placed on the Community Questions and Hearings Committee Meeting Agenda of the 13 May 2019 and the objector was invited to attend and put forward their views at the Meeting.

The submission heard at the 13 May 2019 meeting can now be considered anew in conjunction with this report.

FINANCIAL, RESOURCE AND ASSET MANAGEMENT IMPLICATIONS

If supported, the next step to give effect to the declaration of public highway would be the publication of a gazettal notice in the Victoria Government Gazette and this can be undertaken within the current officer resource, and at a cost of less than \$100.

A surveyor would need to be engaged to create the new title plan for the land to be declared as public highway and this should be less than \$1,000 unless a survey is required to be undertaken.

The application to transfer the title to Council ownership may be needed to be undertaken by a legal representative due to the registration and representation requirements of the title office for the transfer of titles. However, Council may be able to undertake the process due to the vesting as a result of the Gazettal Notice.

If required, enforcement action may be able to be completed within existing resources and should Council need to remove the fence, the costs associated with removing the fence can be recovered under the provisions of the *Local Government Act 1989*.

POLICY AND LEGISLATIVE IMPLICATIONS

This proposed declaration of public highway has been undertaken in line with the requirements of the *Local Government Act 1989* and the *Road Management Act 2004*.

RISK IMPLICATIONS

Risk Ranking is determined using [ROHS201-G1- Corporate Risk Matrix](#). Risk is identified as Low, Medium, High or Very High.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
Loss of the potential use of the Land, particularly the Land to the south of Wandong Avenue where there is the space to provide	Medium.	Declare the Land a public highway, resulting in having the title in Council's ownership and the Land bought under the	A surveyor would need to be engaged to create the new title plan for registration of

PROPOSED DECLARATION OF PUBLIC HIGHWAY - PART WANDONG AVENUE (CONT.)

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
future community infrastructure such as a graduated footpath.		control of the <i>Road Management Act 2004</i> .	ownership by Council.
The Land on the north side of Wandong Avenue which contains hard and soft landscaping treatments as part of the Hall surrounds is outside of the boundary of the land owned by Council	Medium	Carry through with the process to declare the land a public highway.	A surveyor would need to be engaged to create the new title plan for registration of ownership by Council.
The path along the northern side of Wandong Avenue (in front of the Hall) is narrow and follows the edge of the road which is inconsistent with Council's Road Management Plan	Medium	Construct new graduated path on southern side of Wandong Avenue down to Rail Street.	Unknown.
The land on the southern side of Wandong Avenue may be perceived as forming part of the road.	Medium	Declare the Land a public highway, resulting in having the title in Council's ownership and the Land bought under the control of the <i>Road Management Act 2004</i> .	A surveyor would need to be engaged to create the new title plan for registration of ownership by Council.
The southern section of the Land adjacent to Wandong Avenue may be subject to a future adverse possession claim.	High	Declare the Land a public highway, resulting in having the title in Council's ownership and the Land bought under the control of the <i>Road Management Act 2004</i> .	A surveyor would need to be engaged to create the new title plan for registration of ownership by Council.

SUSTAINABILITY IMPLICATIONS (SOCIAL AND ENVIRONMENTAL)

There are mature eucalypts on the Land on the southern side of Wandong Avenue. Two of the submissions supporting the proposed public highway declaration encouraged the retention of these trees. The protection and retention of the trees would

PROPOSED DECLARATION OF PUBLIC HIGHWAY - PART WANDONG AVENUE (CONT.)

augment the established character of Wandong and Heathcote Junction as semi-rural leafy neighbourhoods.

There are implied social benefits which would result from the transfer of the road and land as one parcel into Council's ownership. These include the future ability to construct a higher service level of footpath/s and road infrastructure for the community, both for safety reasons and to enable a more 'walking friendly' environment and a prospective pedestrian rest area.

There is also the possibility of being able to align boundaries to reflect the actual footprint of the Wandong Community Hall and secure this land for community use.

CHARTER OF HUMAN RIGHTS IMPLICATIONS

The rights protected in the *Charter of Human Rights and Responsibilities Act 2006* were considered in preparing this report and it's determined that the subject matter does not raise any human rights issues.

CHILDREN AND YOUNG PEOPLE IMPLICATIONS

There are no direct implications for children and young people however, it could be reasoned that securing the southern Land for possible infrastructure such as wide footpaths away from the road may assist with the safety of pedestrians, particularly young children, when walking along roads which will only get busier into the future and the vehicle numbers increase along with the population.

OFFICER DECLARATION OF CONFLICT OF INTEREST

No officers involved in the preparation of this report have any direct or indirect interest in this matter.

CONCLUSION

The discrepancy surrounding the ownership and management of the land abutting the northern section of Wandong Avenue has led to conflict and anomalies in the way the land has been managed, used and developed.

The declaration of all of the area, being the constructed road and abutting Land as shown in Attachment 1, as a public highway would provide clarification and certainty regarding the status of the land and allow Council to plan and better manage the area for the local community.

In recognition of the long established use of the Land by vehicle and pedestrian traffic and the need to secure the Land for future use and infrastructure, it is considered that the area under discussion and shown in Attachment 1 of this report is considered reasonably required for public use and it is a recommendation of this report that the area shown in Attachment 1 be declared a public highway by the publication of a Notice to that effect in the Victoria Government Gazette.

PROPOSED DECLARATION OF PUBLIC HIGHWAY - PART WANDONG AVUNUE (CONT.)

MITCHELL SHIRE COUNCIL

Council Meeting Attachment

GOVERNANCE AND CORPORATE PERFORMANCE

20 MAY 2019

8.3

**PROPOSED DECLARATION OF PUBLIC
HIGHWAY - PART WANDONG AVUNUE**

Attachment No: 1

Area proposed to be declared public highway

Attachment 1

Road and Land outlined in red – area proposed to be declared as public highway

