

ROAD RESERVE STUART ROAD EAST WARBURTON

Report Author: Executive Officer Stormwater, Traffic & Transport

Responsible Officer: Director Built Environment & Infrastructure

Ward(s) affected: O'Shannassy;

The author(s) of this report and the Responsible Officer consider that the report complies with the overarching governance principles and supporting principles set out in the Local Government Act 2020.

CONFIDENTIALITY

This item is to be considered at a Council meeting that is open to the public.

SUMMARY

Stuart Road, East Warburton is an unsealed Council Road as defined in section 3(1) of the 1989 Act, on the basis that the Road is known to title as a road reserve. A house is located on that part of No. 35 which is situated between the Road and the Yarra River but the house does not encroach upon the Road.

A gate across the road at the street frontage of No. 35 on Stuart Road, to protect its property from trespassers and antisocial behaviour, which gate is locked with a padlock, currently limits access for the local community.

At its meeting on 13th September 2022, the Council received a petition advocating for the reinstatement of vehicle use and pedestrian access via Stuart Road, East Warburton to the Yarra River. The petitioners expressed concerns about the southern portion of Stuart Road, which is currently obstructed by a locked gate and signage.

There is a historical record of public use and a community desire to access the Yarra River via the southern portion of Stuart Road. Council has limited care and management responsibilities in respect of the unconstructed section (gated) of Road, it does have an overriding responsibility to manage and minimise any risks to public health and safety in respect of any use of the Road.

Concerns regarding the local community being restricted vehicle access for their own emergency purposes were raised by the petitioners. However, advice from Council's Emergency Management team and the Municipal Fire Management Planning Committee (MFMPC) led to the rejection of the proposal for unrestricted community access. Emergency Services vehicles access to the road reserve is supported.

In light of this, this report recommends installing a locked gate (with standard S100 key for emergency / maintenance access) with narrow opening for pedestrians, to prevent private vehicles from accessing the road reserve. Any signs on the gates which restricts pedestrian access to the road reserve needs to be removed.

In the event of continued concerns, further initiatives, such as delineating the road reserve and the property at No. 35 Stuart Road, is recommended to be explored.

RECOMMENDATION

That Council

- 1. *Maintain use of Stuart Road, East Warburton for pedestrian access to the Yarra River.***
- 2. *Prevent public vehicular access to the river via the unconstructed road section of Stuart Road, East Warburton bounded by 35 Stuart Road.***
- 3. *Maintain the road access for the relevant Authorities and Emergency Services Vehicles.***
- 4. *Install a locked gate (with emergency services/maintenance access) with suitable pedestrian access that prevents private vehicles from accessing the road reserve.***
- 5. *Remove signage which restricts pedestrian access to the road reserve.***
- 6. *Advise the Lead Petitioner and owner of No.35 Stuart Road, East Warburton of the Council resolution.***

RELATED COUNCIL DECISIONS

This report responds to the petition received by Council on 13 September 2022 to reinstate emergency vehicle and pedestrian access via Stuart Road, East Warburton to the Yarra River.

DISCUSSION

Background

Stuart Road is a no-through road that facilitates vehicular access to four (4) properties. The section up to No.35 Stuart Road is listed in Council's Public Road Register. The remaining section, which is unconstructed road reserve, bisects No.35 Stuart Road, East Warburton, and connects to the Yarra River.

There is an unmaintained ford (Figure 1) at the end of Stuart Road that could provide a connection to Armitage Avenue, when river levels are low.

Council's Fire Management Plan identifies a water supply point on the other side of the river, opposite No.35 and it is intended to be accessed via Armitage Avenue.

Additionally, there is a gate installed on the road reserve at the entry point into 35 Stuart Road.

The key features of interest are outlined in Figure 2 below.



Figure 1: Ford (unmaintained) at the end of Stuart Road

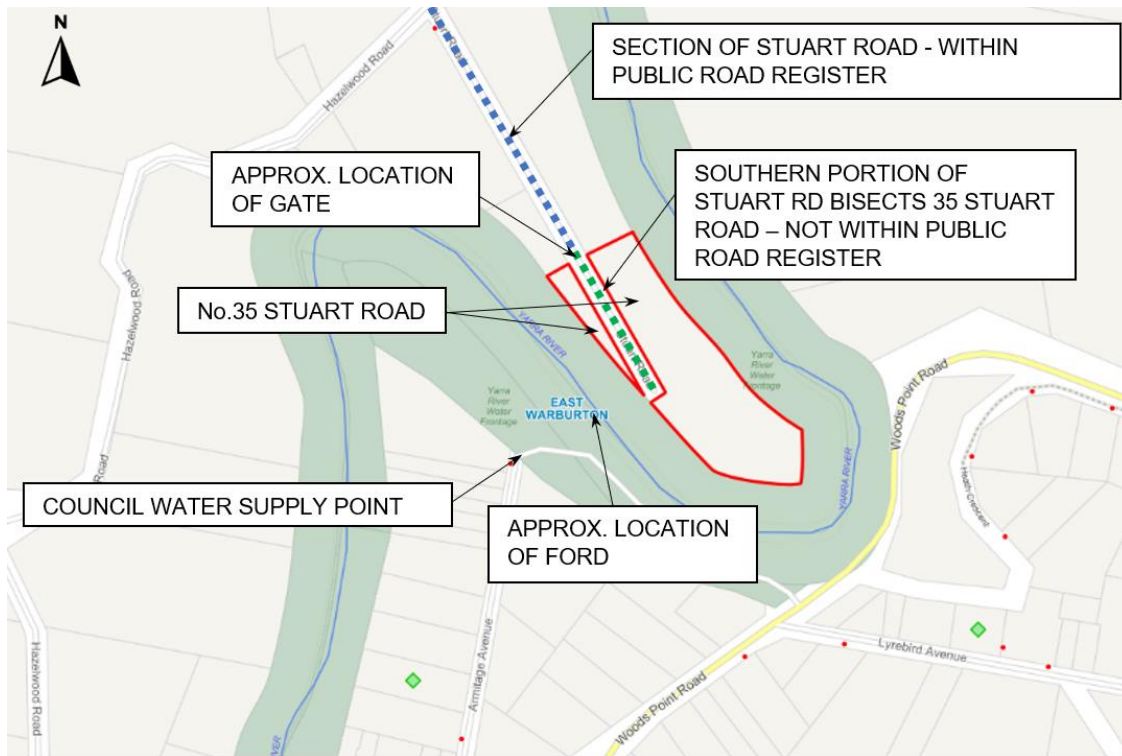


Figure 2: Key features of interest

In 2021, Council received concerns from the property owners at No.35 Stuart Road regarding antisocial behaviour and property trespassing. This led to owners installing a padlock on the gate preventing all forms of access to the Yarra River via Stuart Road. In addition, they have installed signs on the fence 'Private Property No Trespassing' and 'No Shooting', as shown in Figure 3 below.



Figure 3: Signage on the gate

Locking of the gate resulted in Council receiving concerns from some residents that the gate restricts vehicle and pedestrian access to the Yarra River.

At its meeting on 13 September 2022, Council received a petition for reinstatement of emergency vehicle and pedestrian access via Stuart Road, East Warburton to the Yarra River. The petition consisted of 26 signatures.

Vehicle Access

The lead petitioner has outlined in his correspondence to the Council the necessity to maintain the ford and road reserve for public vehicle access during emergencies (as an evacuation route) and for recreational purposes.

Fords are not a type of asset maintained by the Council, and any request for maintenance or upgrades must be directed to Melbourne Water, the responsible authority.

The Council's Emergency Management department has reviewed the matter and determined that the southern portion of Stuart Road and the ford and road reserve are not necessary for Council use concerning Emergency Management purposes.

Additionally, Council officers met with the CFA District Commander in March 2023 to discuss their requirements for the ford. Following the CFA process, the matter was considered at the Municipal Fire Management Planning Committee (MFMPC) meeting on 10 May 2023. The proposal to reinstate the ford across the Yarra at Armitage and Stuart Road, East Warburton, did not receive support due to potential

safety risks to CFA members and the community when crossing the Yarra. Moreover, there were significant financial and environmental concerns associated with the construction.

Considering the aforementioned factors, the upgrades to the southern portion of Stuart Road and the ford are deemed unnecessary and unconstructed road section bounded by 35 Stuart Road is not required for the public to have vehicular access to across river for emergency or recreational purposes.

Pedestrian access

The petition outlines that the southern portion of Stuart Road has historically been used for pedestrian access to the Yarra River for recreational purposes and locking of the gate prevent public access to the river.

Recommended treatments

It is necessary to balance the need for pedestrians to access the Yarra River via Stuart Road with the security and safety concerns expressed by the owner of No. 35 Stuart Road, East Warburton.

Council has powers under the *Local Government Act 1989* to require the removal of all or any obstructions within a road reserve. Given the demonstrated use of this section by pedestrians, it is recommended that the road be opened for pedestrian access.

In August 2023, owner of No.35 Stuart Road agreed to remove the locks to allow pedestrian access to the river – however shortly after removing the locks, several instances of vehicle access and antisocial behaviour have been reported to Council.

Considering the above, it is recommended to install a locked gate (with standard S100key for Emergency/ maintenance access) with narrow opening for pedestrians, to prevent private vehicles from accessing the road reserve – refer to Figure 4 for typical arrangement.



Figure 4. Typical gate treatment

Furthermore, any signage preventing pedestrian access to the road reserve needs to be removed.

In the event of continued concerns, further initiatives, such as delineating the road reserve and the property at No. 35 Stuart Road, is recommended to be explored.

RELEVANT LAW

The *Road Management Act 2004* provides a statutory framework for the safe and efficient management of the road network. It also provides direction on rights of passage along a road.

Stuart Road, East Warburton is a 'road' under the *Local Government Act 1989 (1989 Act)*, a public highway at common law, and a 'road' under the 2004 Act, which has vested in Council.

The following also applies to the Road upon becoming a 'road' within the meaning of the 2004 Act (again, regardless of the fact that the Road is not a public road on Council's Register):

- Members of the public are individually entitled to a right of passage along the Road pursuant to section 8 of the 2004 Act
- Owners or occupiers of any land which adjoins the Road are entitled as of right to access the Road from their land pursuant to section 9(1) of the 2004 Act.
- Those public rights of way conferred by the 2004 Act and at common law cannot be extinguished except by a recognised statutory process of road discontinuance or road closure under the 2004 Act, the 1989 Act or another Act.

Council also has powers under the *Local Government Act 1989* to require the removal of all or any obstructions within a road reserve. Council has care and management responsibilities of all roads within its jurisdiction under the same Act.

COMMUNITY ENGAGEMENT

Officers have engaged with lead petitioner and owner of No.35 Stuart Road, throughout the investigation.

Furthermore, officers have also liaised with members of CFA District to understand site-specific emergency access requirements.

Council Officers have also engaged with internal stakeholders with respect to the use of the access as both a road carriageway and pedestrian access.

CONFLICTS OF INTEREST

No officers and/or delegates acting on behalf of the Council through the Instrument of Delegation and involved in the preparation and/or authorisation of this report have any general or material conflict of interest as defined within the *Local Government Act 2020*.

ATTACHMENTS TO THE REPORT

Nil