

## Management report to Council

Agenda Item 6.3

### Proposed public highway declaration of PL5376, Davis Street and surrounding roads in Kensington

Council

Presenter: Angela Meinke, Manager Planning and Building

26 April 2016

#### Purpose and background

1. The purpose of this report is to recommend that the roads shown shaded on the plan in Attachment 2 be declared as public highways.
2. The declaration is being done in conjunction with the discontinuance of part of Davis Street shown hatched on the plan in Attachment 2. The discontinuance proposal is part of the Small Reserves Project, which is taking 'green' areas within roads and protecting them by discontinuing the road and adding the land to abutting reserves or creating new reserves. No submissions were received relating to the discontinuance, which will be actioned under delegation.
3. The private laneway PL5376 known as Road R2 on LP4129 abutting Parsons Street Reserve is to be declared a Public Highway for the following reasons:
  - 3.1. Parsons Street Reserve has private rights to PL5376 which includes obligations for the care and maintenance of PL5376. Council is substantially the main adjoining land holder and would carry 50 percent of the care and maintenance costs for the private laneway, including any insurance claims should an accident occur.
  - 3.2. PL5376 is adjacent to a public park which contains a Council playground.
  - 3.3. There are amenity and access issues with PL5376 including rubbish dumping.
  - 3.4. Following the successful gazetting of PL5376 as a Public Highway it would be added to Council's Road Register.
4. Davis Street and the surrounding roads are included in the declaration proposal as they are considered to be public highways at common law having been maintained by Council and its predecessors for many decades and are on the Council's Road Register under the *Road Management Act 2004*. The public highway declaration will put the public highway status beyond doubt.

#### Key issues

5. Public consultation in respect to the proposed declaration was undertaken (see Attachment 1). A submission (see Attachment 3) was lodged by Jamie Rigoll who advised that previously the Roads were maintained by Moonee Valley City Council.
6. Moonee Valley City Council looked after the roads between 1993 to 2007, prior to which Melbourne City Council was the relevant Municipality, these roads are now again within the City of Melbourne.
7. The recommendation reflects the recommendation from Council's Submissions (Section 223) Committee held on 3 March 2016.

#### Recommendation from management

8. That Council:
  - 8.1. Declares PL5376, Davis Street and surrounding roads in Kensington as shown on the public notice dated 28 January 2016 as public highways for the reasons that:
    - 8.1.1. with the exception of PL5376, all of the roads have been maintained by the Council and its predecessors at law for many decades and the declaration will put the issue beyond doubt
    - 8.1.2. the declaration of PL5376 and the Council assuming care and management of that road is reasonable noting the Council already has significant obligations arising from being an adjoining land owner
    - 8.1.3. whilst an internal query was raised as to whether the southernmost eight metres of PL5376 should be included in the declaration, it has been included as otherwise it would become an anomaly and exacerbate uncertainty as to responsibility for the same.
  - 8.2. Notifies the submitter in writing of the decision and its reasons for the decision.

#### Attachments:

1. Supporting Attachment
2. Plan and Public Notice
3. Submission

## Supporting Attachment

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### Legal

1. Where a Council proposes to declare a road as a public highway under section 204(1) of the *Local Government Act 1989* (Act), sections 207A(c) and 223 of the Act require it give public notice of the proposal and consider all submissions received prior to making its decision.

### Finance

2. If the application is successful the Roads will be declared as public highways and the subject land will vest in Council. Council can then obtain a title to the Roads via an application to give effect to disposition section 59(2) *Transfer of Land Act 1958* and/or a plan of subdivision being lodged and registered at Land Victoria. The costs for the survey, disposition and plan of subdivision will be combined with the work to include the portion of Davis Street, which is to be discontinued, in Parsons Street Reserve.
3. If the declaration is successful the funding, estimated to be \$180,000, for the upgrade of PL5376 will be sought from Council's works budget for 2017/2018.
4. Council responsibility for maintaining and cleaning of the Roads will be met out of existing general and future budgets. Council may receive monies from parking infringements within the Roads.

### Conflict of interest

5. No member of Council staff, or other person engaged under a contract, involved in advising on or preparing this report has declared a direct or indirect interest in relation to the matter of the report.

### Stakeholder consultation

6. Public consultation in respect to the proposed declaration was undertaken in accordance with the Act. Overall the consultation involved:
  - 6.1. advertising in The Age on 28 January 2016
  - 6.2. a letter was sent to the owners and occupiers of abutting properties
  - 6.3. all of the Service Authorities were notified by e-mail of the proposal.
7. One submission was received and reported at the Submissions (Section 223) Committee meeting held on 3 March 2016.

### Relation to Council policy

8. There is no Council policy for the declaration of roads as public highways, however the actions taken and the recommendations in this report are all legislatively compliant and accord with well established practice.

### Environmental sustainability

9. This proposal will assist the creation of additional public open space.

Public Notice published in the Age on 28 January 2016

## Melbourne City Council

### **Proposed Public Highway Declaration of PL5376, Davis Street and surrounding roads in Kensington**

Notice is given pursuant to sections 204(1) and 223 of the *Local Government Act 1989* ('Act') that the Melbourne City Council ('Council') proposes to declare PL5376, Davis Street and surrounding roads in Kensington, shaded on the plan below as public highways ('Proposal').

Davis Street and the surrounding roads (other than PL5376) are considered to be public highways at common law having been maintained by the Council for many decades and are on the Council's Road Register under the *Road Management Act 2004*. The Proposal is to put the public highway status beyond doubt.

PL5376 is proposed to be declared a public highway to enable it to be added to Council's Road Register and be maintained by Council.

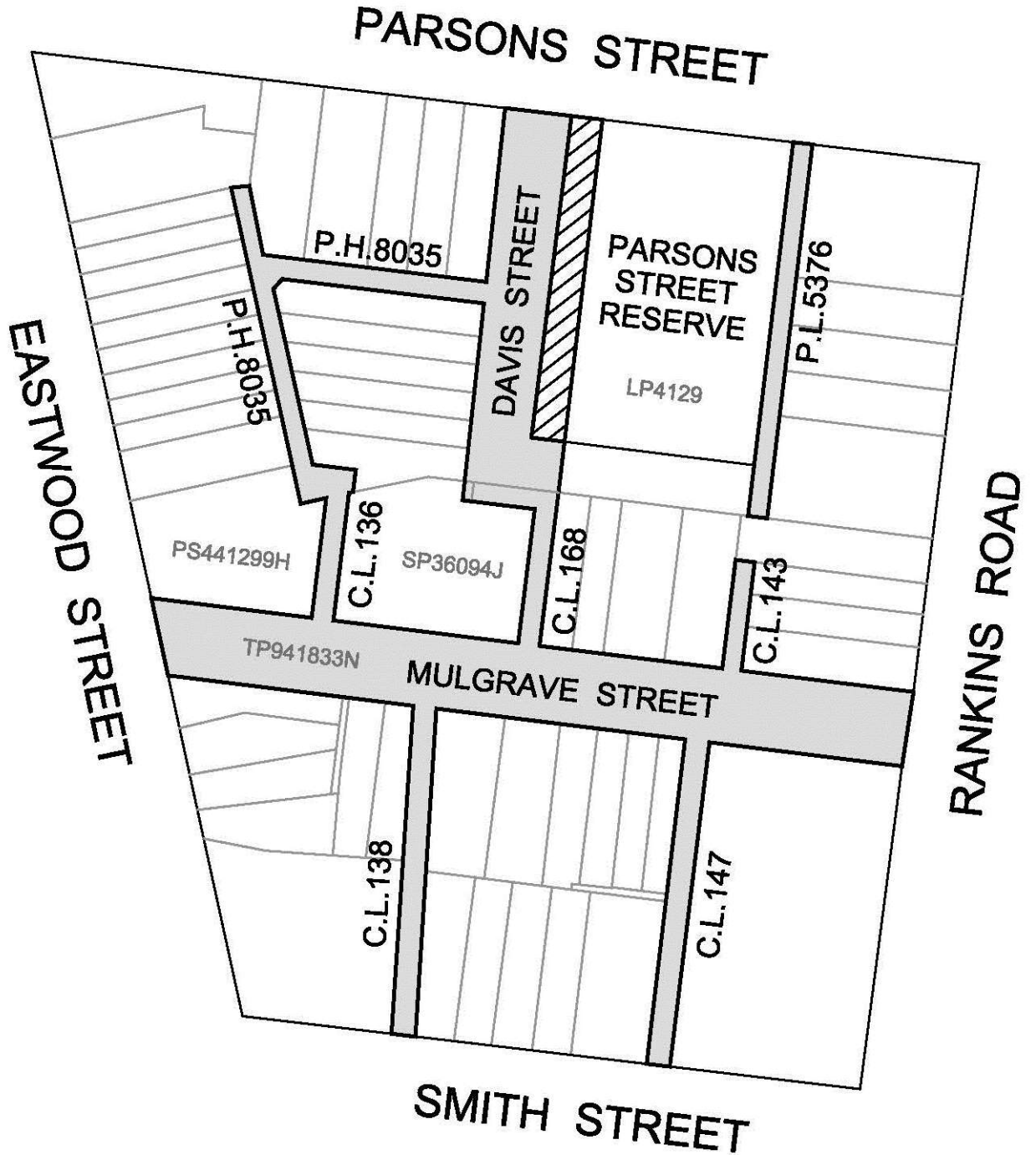
Any person may make a submission on the Proposal to the Council. All submissions received by the Council on or before 26 February 2016 will be considered in accordance with Section 223(1) of the Act, by the Council's Submissions (Section 223) Committee ('Committee').

If a person wishes to be heard in support of their submission they must include the request to be heard in the written submission and this will entitle them to appear in person, or by a person acting on their behalf, before a meeting of the Committee, scheduled to be held on Thursday 3 March 2016, commencing at 3pm, in the Melbourne Town Hall, Administration Building, Swanston Street, Melbourne.

Written submissions should be marked 'Proposed Public Highway Declaration of PL5376, Davis Street and surrounding roads in Kensington' and addressed to the Manager Governance and Legal, Melbourne City Council, Town Hall, 90 Swanston Street, Melbourne, 3000 or GPO Box 1603, Melbourne, 3001.

Submissions form part of the public record of the meeting (including any personal information you provide) and will be appended to the Council report which is published on Council's website (accessible worldwide) for an indefinite period. A hard copy will also be made available for inspection by members of the public at Council offices, in accordance with the requirements of the Act.

If you have any concerns about how Council will use and disclose your personal information, please contact the Council Business team via email at [privacy@melbourne.vic.gov.au](mailto:privacy@melbourne.vic.gov.au).



 Land Subject to Public Highway Declaration

 Land Subject to Discontinuance Davis Street (Part)



Not to Scale

10/02/2016

'PROPOSED PUBLIC HIGHWAY  
DECLARATION OF PL5376, DAVIS  
STREET AND SURROUNDING ROADS IN  
KENSINGTON'

THE SENTANCE, DAVIS STREET AND  
THE SURROUNDING ROADS (OTHER THAN  
PL5376) ARE CONSIDERED TO BE  
PUBLIC HIGHWAYS AT COMMON LAW  
HAVING BEEN MAINTAINED BY THE  
COUNCIL FOR MANY DECADES IS  
INCORRECT. UNTIL THREE YEARS  
AGO THE ROADS SURROUNDING DAVIS  
STREET WERE MAINTAINED BY THE  
MOONEE VALLEY CITY COUNCIL.

JAMIE RIGOLL.

