

**Committee** Submissions (Section 223)

**Presenter** Kim Wood, Chief Legal Counsel

### **Purpose and background**

1. The purpose of this report is to recommend the Public Highway Declaration Victoria Place and Coleman Place Carlton (Roads) pursuant to section 204(1), 207A(c) and 223 of the *Local Government Act 1989* (the Act), as shown hatched on the attached plan (see Attachment 1).

### **Consideration at Committee**

2. At the Submissions (Section 223) Committee meeting on 1 February 2024 the Committee considered the report at Attachment 1 and made the below recommendation for presentation to Council.

### **Recommendation**

3. That Council:
  - 3.1. Declare Victoria Place and Coleman Place, Carlton, as shown hatched on the public notice dated 8 November 2023 (Roads) as a public highway, for the reasons that:
    - 3.1.1. the Roads are already considered to be public highways at common law
    - 3.1.2. whilst most of the Roads are owned by Council on title, the declaration will address a sliver of land that is part of Victoria Place as constructed in 1871 but is not under the Transfer of Land Act 1958
    - 3.1.3. in respect to the garden bed and adjoining area used for parking a car:
      - 3.1.3.1. as most of the area is already owned by the Council, the declaration will not alter the Council's powers over the area
      - 3.1.3.2. declaring the area is consistent with the original layout of the Roads
      - 3.1.3.3. the issue of parking controls and enforcement will not be effected by the declaration
      - 3.1.3.4. whilst respecting the garden bed, its purpose and history, it is important the Council be aware of its maintenance responsibilities
  - 3.2. Request management:
    - 3.2.1. investigate the parking controls applying to the area immediately adjoining the garden bed including the possibility of allowing parking by holders of residential parking permits
    - 3.2.2. contact the owner of 32 Neil Street, Carlton to discuss the on-going maintenance of the garden bed.
  - 3.3. Notify in writing every person who has lodged a separate submission of the decision and reasons for the decision.

#### **Attachment:**

1. Submissions (Section 223) Committee, Agenda item 5.3, 1 February 2024

**Management report to Submissions (223) Committee****Proposed Public Highway Declaration Victoria Place and Coleman Place  
Carlton****Agenda Item 5.3****Presenter:** Leon Wilson, Licensed Surveyor Spatial Team**Submissions  
(223) Committee****Purpose and background****1 February 2024**

1. This report responds to a submission received in relation to the proposed public highway declaration of Victoria Place and Coleman Place, Carlton ('the Road'), shown hatched on the plan in Attachment 2 (Proposal).
2. The submission (see Attachment 3) raises the following points in relation to a small triangle of land with no title, otherwise the submission does not oppose the Public Highway Declaration for the rest of the Proposal:
  - 2.1. There is a native garden bed roughly matching the triangular area so the area has not functioned as a road for 35 years.
  - 2.2. The garden was built and has been maintained by the submitter for this period, as detailed in the submission for the purpose of a memorial to massacres of the Wurundjeri. The Council has only installed a "Victoria Place Gardens" sign, done a minor upgrade to keep the garden edging safe and provided a grant for a launch of a mural (and the garden) which took place in 2009.
  - 2.3. The submitter requests the triangle or more particularly the garden bed area is removed from the Proposal, and wishes to discuss what happens with the future of the garden.

**Key issues**

3. Advice was sought from Land Use Victoria in respect to the triangle of land. The advice was partially based on Council records and was that the triangle is not within a title and is considered excess land under the *Transfer of Land Act 1958*
4. The Plan of Survey dated 12 January 2024 in attachment 2 shows the extent of the garden bed. Council records were incorrect in terms of the extent of the triangle resulting in the majority of the triangle and the garden being on the Council owned title and only a small sliver being excess land under the *Transfer of Land Act 1958*.
5. The Road was originally constructed around 1871 by Council under the *Public Health Amendment Statute, 31 Victoria, No. 310*, at the cost of abutting property owners and subsequently maintained and cared for by Council until the garden bed was constructed on a portion.
6. Should the Proposal be successful and the Road declared a public highway:
  - 6.1. if would provide clarity for Council and abutting owners in terms of enforcement, the application of the greening your laneway program, cleaning and maintenance responsibility and regularise the common law public highway status
  - 6.2. by confirming the subject land is vested in Council, all of the Road would come under Council's statutory care and management and be required to be included on Council's Public Roads Register under the *Road Management Act 2004*.
7. Should it be decided that the triangle it is not part of the road to be declared and that area removed from the Proposal, it must also be removed from Council's Register of Public Roads. This would be problematic as most of the triangle is on the Council title.

**Recommendation from management**

8. That the Submissions (Section 223) Committee:
  - 8.1. Considers all written submissions in relation to the proposal and hear any person wishing to be heard in support of their submission and then make a recommendation to Council.
  - 8.2. Recommends Council notify in writing every person who has lodged a submission of its decision and the reasons for its decision.

**Attachments:**

1. Supporting Attachment (Page 2 of 15)
2. Public Notice and Plans (Page 4 of 15)
3. Submissions (Page 9 of 15)

## 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.
2. Should the Road be declared as a public highway the subject land will formally vest in Council, the area declared come under Council's care and management and required to be included on Council's Public Roads Register under the *Road Management Act 2004*.
3. The Supreme Court case *Anderson & Anor v City of Stonnington & Anor* [2016] VSC 374 confirms the tests for a laneway to be a public highway to be two steps:
  - 3.1. intention to dedicate the land as a public highway either expressly or to be inferred from the conduct of the landowner
  - 3.2. acceptance by the public, for example, repeated and continued use of the relevant land as a public highway – that is, evidence of use.

### Finance

4. The costs associated with the public highway declaration are within the current approved Council budget.
5. Costs of maintenance and cleaning of public highways under Council's statutory control are met out of existing and future general City Infrastructure budgets.
6. The approximate cost of reconstructing a laneway:-
  - 6.1. a bluestone picher laneway is \$400 per square metre, for afterhours work the cost is \$430 per square metre
  - 6.2. an asphalt laneway is \$290 per square metre, for afterhours work the cost is \$442 per square metre
7. The ongoing maintenance costs (routine maintenance, minor maintenance, surveillance etc.) are in the order of \$3 per square metre when included within the overall renewal and maintenance budget of \$6.5 million which currently covers 2,493,176 square metres of road.
8. The approximate cost of cleaning a road is \$50 per square metre per annum.
9. This Proposal will add an additional area of 88m<sup>2</sup> of bluestone laneway to the road register, the rest being 984m<sup>2</sup> is already on the road register. The small garden the subject of the submission is currently included in this area on the road register and is 9m<sup>2</sup>.

### Conflict of interest

10. No member of Council staff, or other person engaged under a contract, involved in advising or preparing this report has declared a material or general conflict of interest in relation to the matter of the report.

### Health and Safety

11. The Proposal is intended to give certainty to adjoining owners and people using the area and ensure the the safety of users of the area whilst still maintaining access.

### **Stakeholder consultation**

12. Public notice of the proposal was given in accordance with the Act. The consultation involved:
  - 12.1. Placing the public notice in The Age on the 8 November 2023
  - 12.2. letters being sent to the owners and occupiers of abutting properties
  - 12.3. the public notice being published on Council's web site.

### **Relation to Council policy**

13. 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**

14. The Proposal has no significant impact on environmental sustainability. If the garden bed were part of the area declared as a public highway, its existence could be maintained through a local law permit process.

## MELBOURNE CITY COUNCIL

### Proposed Public Highway declaration Victoria Place and Coleman Place, Carlton

Notice is given pursuant to sections 204(1), 207A and 223 of the *Local Government Act 1989* (Act) that the Melbourne City Council (Council) proposes to declare the roads shown hatched on the plan below as Public Highways (Proposal). The roads are considered to be public highways at common law and except for the east and west portions of Coleman Place have been maintained by the Council for many decades and on the Council's Road Register. The Proposal is to put the public highway status beyond doubt.

Any person may make a written submission on the Proposal to the Council. All submissions received by the Council on or before 7 December 2023 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 1 February 2024, commencing at 3pm, in the Melbourne Town Hall, Administration Building, Swanston Street, Melbourne.

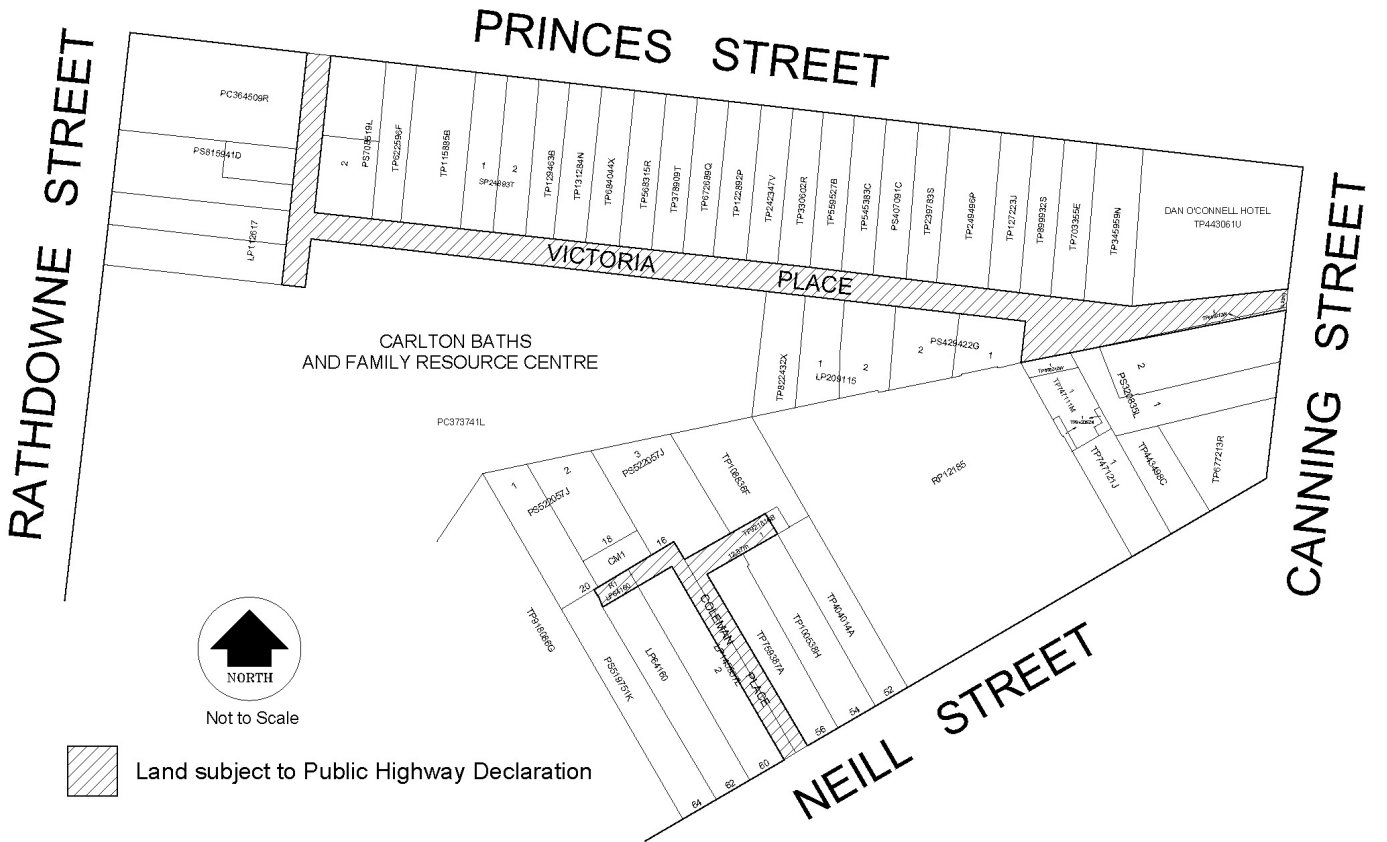
Written submissions should be marked 'Proposed Public Highway declaration Victoria Place and Coleman Place, Carlton' and addressed to the Director Governance, Melbourne City Council, GPO Box 1603, Melbourne, 3001. Written submissions can be made via mail, email to [com.meetings@melbourne.vic.gov.au](mailto:com.meetings@melbourne.vic.gov.au) or on-line at <https://comdigital.wufoo.com/forms/mq3jero1molzzx/>

#### **Written submissions cannot be delivered in person.**

Submissions form part of the public record of the meeting (including any personal information you provide) and will be 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.

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).

### Plan from Public Notice



Coloured ownership plan

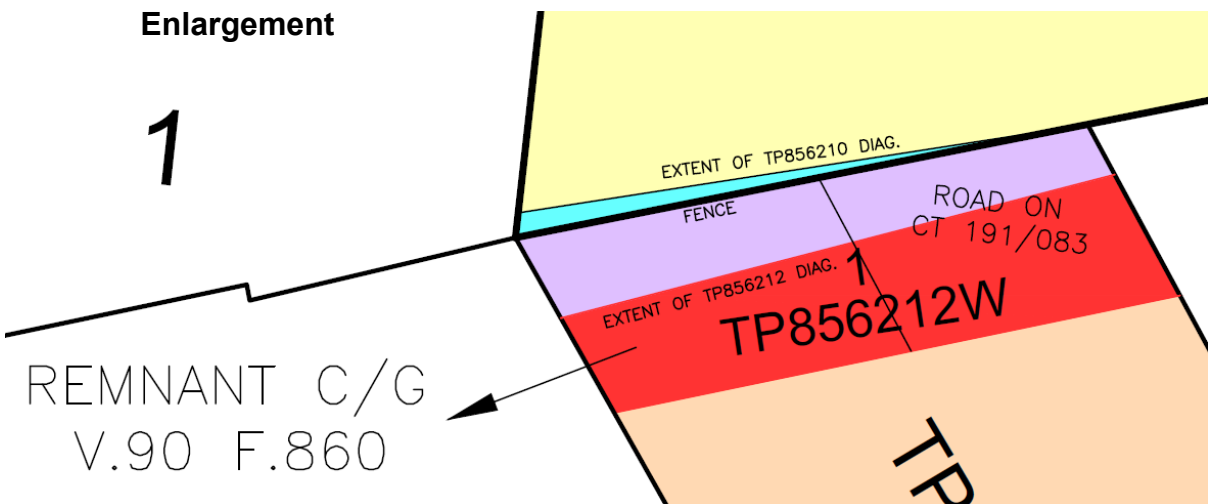


Ownership

- Council owned land
- Area with no title on Council road register
- Owned by 32 Neill Street
- Area with no title occupied by 32 Neill Street
- Remnant titles from 1902

Enlargement

1



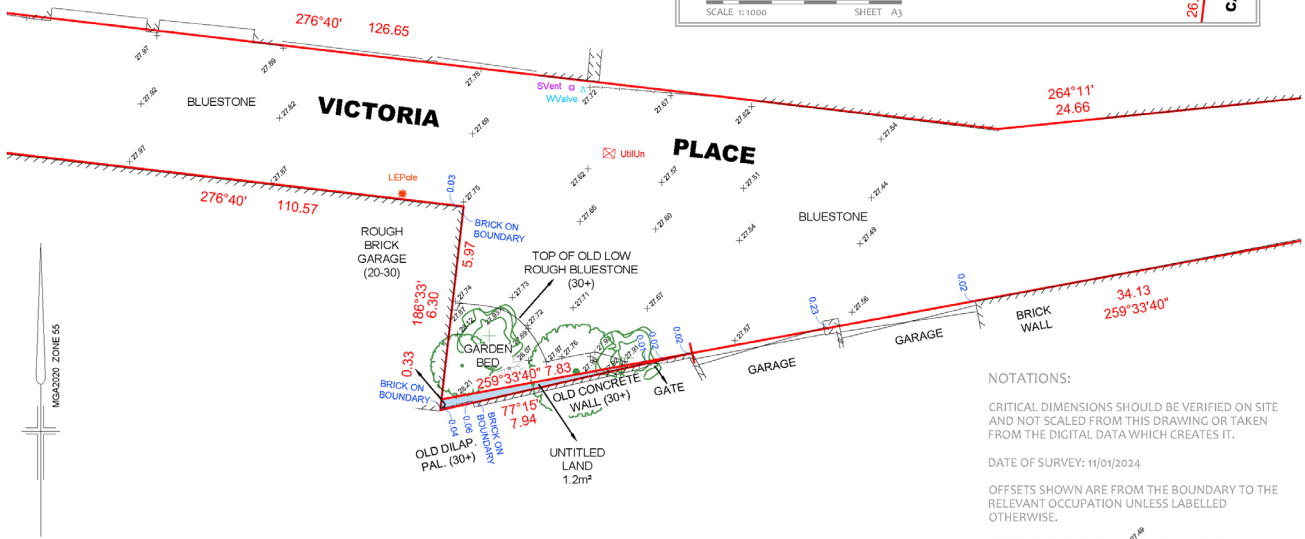
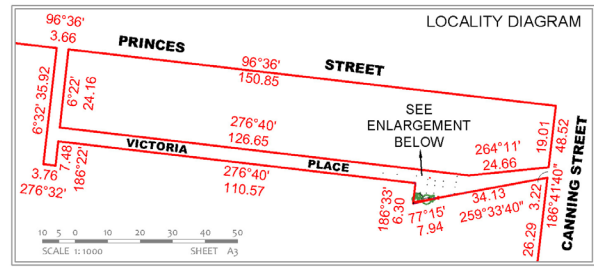
### Plan of Survey of the triangular area and surrounds

#### CERTIFICATION BY SURVEYOR

I, Marc Centofanti of 16/501 Swanston Street Melbourne certify that this plan has been prepared from a survey made under my direction and supervision, in accordance with the Surveying Act 2004 and completed on 11/01/2024, that this plan is accurate and correctly represents the adopted boundaries and the survey accuracy accords with that required by regulation 7(1) of the Surveying (Cadastral Surveys) Regulations 2015.

*M. Centofanti*

Licensed Surveyor  
(Surveying Act 2004)



#### NOTATIONS:

CRITICAL DIMENSIONS SHOULD BE VERIFIED ON SITE AND NOT SCALED FROM THIS DRAWING OR TAKEN FROM THE DIGITAL DATA WHICH CREATES IT.

DATE OF SURVEY: 11/01/2024

OFFSETS SHOWN ARE FROM THE BOUNDARY TO THE RELEVANT OCCUPATION UNLESS LABELLED OTHERWISE.

LEVELS SHOWN THUS  $\times$  ARE IN METRES TO AUSTRALIAN HEIGHT DATUM BASED ON JIKA JIKA PM 319 WITH STATED R.L. 25.52 AS AT 11/01/24.

PLAN OF RELOCATION  
FEATURES AND LEVELS  
VICTORIA PLACE, CARLTON

Ref: 242100/RFL  
Rev: A  
Sheet: 1 of 1

Drawn: JL  
Date: 12/01/2024  
Checked: PDS

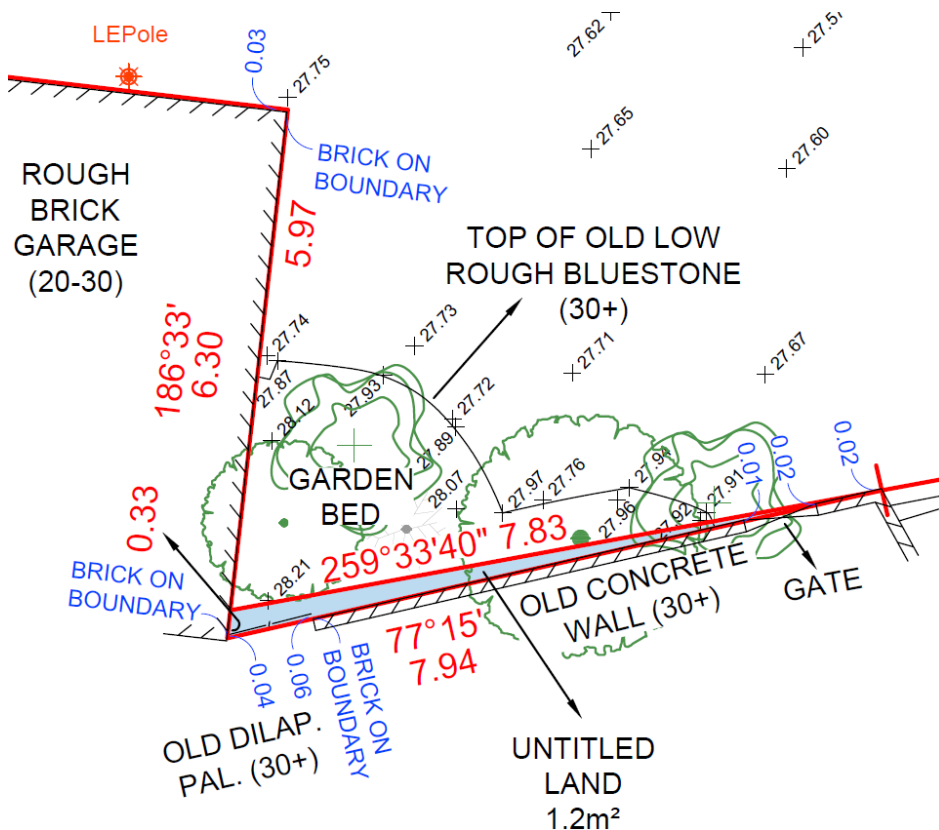
Scale: 1:100 SHEET A3  
C:\p\pds\Office Work\Plans\In Progress\242100-RFL-A.dwg



Lot 16, 301 Swanston Street  
Melbourne, Vic 3000  
p (+61) 8660 3000  
www.reedsconsulting.com.au  
survey@reedsconsulting.com.au



### Enlargement





Photos



[REDACTED]

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**From:** [REDACTED]  
**Sent:** Thursday, 7 December 2023 2:13 PM  
**To:** CoM Meetings  
**Subject:** Proposed Public Highway declaration Victoria Place, Carlton

Director Governance,

MCC

re Proposed Public Highway declaration Victoria Place, Carlton

I have been in discussion with your Senior Engineer Daniel Janghorban, and this week with your surveyor Leon Wilson, who has today provided new information about your lack of title to the native garden that we established abutting the lane, and I have maintained for 35 years. He has suggested, given he is still providing information to me, that there could be an extension of time to make a submission to you.

I would be happy to be heard at the committee meeting in February.

Yours sincerely,

Donald Smith

**From:** [REDACTED]  
**Sent:** Thursday, 14 December 2023 4:21 PM  
**To:** CoM Meetings  
**Subject:** re Proposed Public Highway declaration Victoria Place, Carlton . Additional submission

Director Governance,

MCC

**Submission regarding the proposed declaration of a public road, being Victoria place Carlton.**

I do not oppose a declaration being made, but wish to propose its correspondence with the existing title for the lane, as shown on TP856210B, along with the sliver being part of title shown on TP856212W.

The area on which I wish to focus is the small triangular plot of land without a title(!) as marked in light blue on a map ([Extract of Mapbase east end of Victoria Place.pdf](#), attached), roughly matching the native garden fronting Victoria place which we constructed 35 years ago, and which I have maintained since (see photo attached).

I think it reasonable that it be left out of the new road declaration as it has not functioned as a road for over 35 years. I understand the area is in the Council road register, but the point is, that is a fiction. When your road register was established in the 2000s, names of existing roads were entered without looking at the actual road. The garden had been in place many years already. It may be an appropriate time to revise the road register. But that is really a separate issue to the road declaration.

Contrary to your letter accompanying the notice of the proposed declaration, and the notice of the proposed declaration itself, only some of the proposed road has been maintained by the City of Melbourne. The garden area has NOT “been maintained by the Council for many decades”. Your premise is untrue.

To give some history of the garden in terms of the City’s interaction with it: The garden was constructed as an initially personal and somewhat private, memorial to massacres of the Wurundjeri people, the original people of this area who were vastly reduced in numbers over the years following British ‘settlement’. In about 1987 or 1988 the Bicentennial year, Dr. Marion Cincotta and I constructed the native garden planting a variety of indigenous grasses and other plants.

Through the work of the historian Henry Reynolds we had become aware of many massacres of indigenous people throughout the colonies of Australia. I wanted to commemorate the memory of so many of the original people who had died in the first decades of Melbourne’s takeover and settlement, although I know not how they died. So we built a massacre memorial garden, just out the back of my place.

Among the other motivations to construct the garden was a desire to deter rubbish dumping in the corner alcove. The alcove shape of the lane attracted extensive rubbish dumping, and would again were the garden removed.

**From time to time the City has played important roles in retaining the garden,** without directly contributing to its maintenance.

Perhaps the first mark of City support for the garden's existence was more than 30 years ago, when we had planted quite a few small native plants, but I had not been attentive, and the area had been overrun with weeds. The City applied Round Up liberally to the site. When I raised this with the City they said putting a garden sign at the site would indicate to City gardeners that it was planted out. So the City installed the sign 'Victoria Place Gardens' on my back wall to indicate such, where it remains decades later (see photo).

Another time the City played a constructive role in support of the garden was many years ago when the historic bluestone lane, complete with historic rutting from metal cart wheels, was pulled up and relaid. (The condition of the lane surface now, many years later, is worse than when that work was arranged.) I had some time earlier extended the curved garden, narrowly along the wall and car parking space up to my back entrance gate. I had used bluestones and logs for the border. The City issued the lane workers the written instruction to 'cement in loose bluestones', which they did to my design.

The last significant contribution the City made to the garden area was to give a small grant for a launch of a mural (and the garden) which took place in the lane in 2009. The pre-European landscape representing the area as it had been, was painted on my back wall by Pol the Painter a couple of years before the launch event.

Apart from the elapse of time, one of the factors that led me to become more public about the garden's meaning, was an event where activist, academic and author Clare Land\* gave a talk on whitefella memorialisation of Indigenous peoples, and completely surprising to me, highlighted the garden in that talk.

In the last couple of years I have tried, but have mostly been unsuccessful in getting the City to actively help with the garden, on which I spend hundreds of dollars each year, now mostly in the

form of a paid garden assistant. For a while, until after he moved from the area, I did have some help looking after the garden from Michael Julian, an Indigenous neighbour who lived over the lane.

While dumping of rubbish in the garden corner is far less than it would be were the garden not here, it has not completely abated, and just lately, indeed this week, I have been remonstrating with tradies from the renovation job opposite who have taken to washing out cement onto the garden bed!

If you adopt the road alignment I propose for your declaration, we can still discuss what happens with the future of the garden, most of which would, to my mind, be on untitled Wurundjeri land.

Much of this is symbolic with limited practical consequence either way. BUT

**The garden is not a road. It is a garden. It has been that way for 35 years. To declare otherwise looks duplicitous.**

I am happy to be heard at your meeting on February 1<sup>st</sup>.

Donald Smith

14.12.2023

\*Footnote:

Clare Land, **Decolonizing solidarity: Dilemmas and Directions for Supporters of Indigenous Struggles**. Zed books, 2015.

**From:** [REDACTED]  
**Sent:** Thursday, 14 December 2023 4:57 PM  
**To:** CoM Meetings  
**Subject:** Submission regarding the proposed declaration of a public road, being Victoria place Carlton.Submission photos



Photo: Mural and garden



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**From:** [Redacted]  
**Sent:** Thursday, 14 December 2023 5:02 PM  
**To:** CoM Meetings  
**Subject:** Submission regarding the proposed declaration of a public road, being Victoria place Carlton.  
**Attachments:** Extract of Map base east end of Victoria Place.pdf

plan: light blue area to be excluded from Road Declaration

TP545383C  
 PS407091C  
 TP239783S  
 TP249496P  
 TP127223J  
 TP899932S  
 TP703355E  
 TP345959N  
 DAN O'CONNEL  
 TP4430  
 NO.223-2  
 223

V.192 F.243 MCC  
 TP871270V

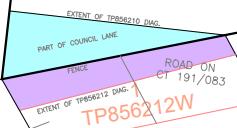
VICTORIA (C.L.1174) PLACE

V.90 F.862 MCC

TP856212W

21  
 19  
 17  
 PS429422G  
 2  
 1  
 2  
 5 110m2

TP856210B



REMNANT C/G  
 V.90 F.860

PS3320835L

REMNANTS  
 V.998 F.562  
 (1902)  
 2 PARTS

TP747111M

TP942052N

TP747121J

TP443498C  
 TREMAINE

PRINCES HILL  
 GALLERY

TP677213R

RP12185

NO.28

NO.213

32

209

34

30 28

26

213

215

217

219