

**Management report to Council**

**Agenda item 6.6**

**Fawkner Park Pasley Street North Entrance Improvements – Heritage Victoria permit refusal**

**Council**

**Presenter:** Kim Le Cerf, Acting Manager Urban Sustainability

**24 September 2019**

**Purpose and background**

1. On 31 July 2019, Heritage Victoria issued a heritage permit refusal (Attachment 2) for proposed works in accordance with the endorsed concept plan for the Pasley Street North Entrance Improvement project.
2. The purpose of this report is to provide information on three options available to the City of Melbourne following the refusal decision, and to seek Council endorsement of Option 3 – to request a review by the Heritage Council of the heritage permit refusal for works in Fawkner Park.

**Key issues**

3. During the design development process a number of options for relocation of the basketball court were explored. Options were ruled out throughout the design process for reasons including unacceptable impacts on landscape and heritage values or did not sufficiently respond to usage patterns. An assessment of the options explored was provided to Heritage Victoria as part of the Fawkner Park Heritage Impact Statement and Request For Information Response on 22 May 2019 (Attachment 3).
4. In light of the permit refusal, three options have been identified and assessed.
5. Option 1 – accept the heritage permit refusal, with no works to proceed. Implications include continued degradation of the existing landscape from high use increasing maintenance costs, risk management issues not addressed and community concerns about drainage and noise amenity will continue.
6. Option 2 – review the project scope and revisit the entrance design. Implications include:
  - 6.1. A reduced project scope with limited ability to address known landscape and management issues as these were already explored through the design development process.
  - 6.2. Limited tree protection works could proceed.
  - 6.3. An entrance redesign process including community consultation, Council endorsement and a new heritage permit application would be required.
  - 6.4. This would take approximately 9 to 12 months, at an estimated cost of \$320,000.
7. Option 3 – request a review of the heritage permit refusal by the Heritage Council. Legal grounds must be established under the *Heritage Act 2017* and lodged 60 days after refusal (by Thursday 26 September). Implications include:
  - 7.1. There is no guarantee of a favourable outcome of a review by the Heritage Council.
  - 7.2. An assessment of recent Heritage Council decisions reveals that refusals have been upheld approximately 50 per cent of the time.
  - 7.3. This would take approximately four to five months at an estimated cost of \$90,000.
8. Eight parks and gardens in the City of Melbourne are listed on the Victoria Heritage Register. In order to ensure these parks and gardens continue to serve the community there will be requirements for upgrades to existing facilities and landscapes over time. As Committee of Management for these parks and gardens under the *Crown Land (Reserves) Act 1978*, Council has a duty as a responsible land manager to maintain and improve the landscape and manage uses in these places. Acceptance of this permit refusal without requesting a review may have ongoing implications for Council's ability to perform its duties as a responsible land manager in all of its heritage parks and gardens.

**Recommendation from management**

9. That Council resolves to request a review by the Heritage Council of the heritage permit refusal for works in Fawkner Park.

**Attachments:**

1. Supporting Attachment (Page 2 of 16)
2. Heritage Victoria permit refusal (Page 3 of 16)
3. Request for Information Response (Page 8 of 16)

**Supporting Attachment**

---

**Legal**

1. Legal advice has and will continue to be provided on the subject matter in the report.

**Finance**

2. \$1.2 million is currently allocated to the Fawkner Park Pasley Street North Entrance Improvements project in the 2019–20 annual capital works program.

**Conflict of interest**

3. 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.

**Health and Safety**

4. In developing this proposal, no Occupational Health and Safety issues or opportunities have been identified.

**Stakeholder consultation**

5. Community engagement on the proposed concept plan was undertaken from 29 November to 22 December 2017. The community were invited to participate through signage in the park, letter drop in the immediate areas, emails to stakeholders, and school newsletters. Feedback was provided through Participate Melbourne website submissions and on site discussion.
6. The engagement included meetings with the local schools and local residents. Two opportunities for the community to meet Council officers in the park were provided on Saturday 9 December 2017 (2–4pm) and Monday 11 December 2017 (3.15–6pm).
7. Thirty submissions were received which provided good quality information and informed refinement of the concept plan. The majority of community responses supported the draft concept, including the adjacent South Yarra Primary School. Three respondents did not support the proposal to relocate the court as they felt it would have a negative impact on the park's landscape character. Feedback was incorporated into the concept plan, as appropriate. A summary of community feedback and officer responses was presented to Future Melbourne Committee on 6 March 2018 when the concept plan was endorsed.
8. As the park is listed on the Victorian Heritage Register, public notice regarding the permit application to Heritage Victoria was given by:
  - 8.1. Placement of advertisement in The Age newspaper on 30 January 2019.
  - 8.2. Installation of a public notice sign at a park entrance to inform the local community for 28 days. Project update signs were placed at multiple park entrances to inform park users of the project.
  - 8.3. Listing on the Public Notice section of the City of Melbourne website.

**Relation to Council policy**

9. The recommendation is consistent with the following Council policies: Fawkner Park Master Plan (2006), Open Space Strategy (2012), Parks Policy, Urban Forest Strategy (2012), Urban Forest Precinct Plan: South Yarra 2013–2023, Nature in the City (2017), Total Watermark – City as a Catchment (update 2014) and Climate Change Adaptation Strategy Refresh (2017).

**Environmental sustainability**

10. The proposal will improve the health, resilience and function of an existing park. The objectives include improving landscape and tree health, increasing canopy cover through tree planting and addressing an ongoing drainage problem with the solution enabling stormwater to be reused in the landscape.
11. The proposal will result in an increase in biodiversity through the introduction of new tree species and plantings to the area.



## Department of Environment, Land, Water & Planning

Permit Application No: P29324  
File No: FOL/16/204

Level 7, 8 Nicholson Street  
East Melbourne Victoria 3002  
Telephone: 03 9938 6894  
[www.delwp.vic.gov.au](http://www.delwp.vic.gov.au)  
DX210098

Ms Deb Cailes,  
Manager, Urban Sustainability,  
City of Melbourne,  
GPO Box 1603  
MELBOURNE VIC 3001

Dear Ms Cailes

**RE: PERMIT APPLICATION P29324 - FAWKNER PARK, 24-88 COMMERCIAL ROAD SOUTH YARRA (H2361)**

Thank you for your application for a permit dated 18 December 2018 to undertake the following works or activities at the above place:

- *Improvement works to the Pasley Street entry zone including the removal of the existing basketball court, the construction of a new sports court further to the west of the existing facility, landscaping works, drainage improvement works, selected tree removals and new tree planting works and the construction of two new pathways providing access to the new sports court facility.*

I have assessed your application in accordance with the *Heritage Act 2017*. I have determined to refuse to issue the permit under s.101(1)(b) of the *Heritage Act 2017*. Attached is a notice of refusal to grant a permit, including the reasons for the refusal.

An owner, applicant or person with a real and substantial interest in the registered place may make a request to the Heritage Council of Victoria to review a refusal to grant a permit. A request to review must be lodged within 60 days of the notice of refusal. Review forms can be obtained online at:

<https://heritagecouncil.vic.gov.au/registrations-reviews/permit-reviews/> or by phoning the Heritage Council Hearings Officer on (03) 9197 9360.

Please contact Heritage Victoria's Permits Co-ordinator on (03) 9938 6891 with any queries about this refusal.

Yours sincerely

**Steven Avery**  
Executive Director  
Heritage Victoria

cc Manager Statutory Planning, City of Melbourne

31/7/19

### Privacy Statement

Any personal information about you or a third party in your correspondence will be protected under the provisions of the Privacy and Data Protection Act 2014. It will only be used or disclosed to appropriate Ministerial, Statutory Authority, or departmental staff in regard to the purpose for which it was provided, unless required or authorised by law. Enquiries about access to information about you held by the Department should be directed to the Privacy Coordinator, Department of Environment, Land, Water & Planning, PO Box 500, East Melbourne, VIC 8002. Notwithstanding the above, please note that information provided to enable the administration of the Heritage Act 2017 may be disclosed to persons with an interest in the heritage place or object particularly, and information provided as part of a permit application may be made available on-line where the application has been publicly advertised under section 94 of the Heritage Act 2017.



**H2361 Fawkner Park, 24-88 Commercial Road, South Yarra**

**Permit Application P29324**

**Why is Fawkner Park of heritage significance?**

Fawkner Park is included in the Victorian Heritage Register under the provisions of the *Heritage Act 2017* for its historical, archaeological, and aesthetic significance to the State of Victoria.

Fawkner Park was permanently reserved in 1862 as part of the vision of Charles La Trobe to develop Melbourne as a city surrounded by extensive public parklands. It was formerly developed in 1875 and is a fine example of an 'outer ring' park which were typically developed for recreation and organised sporting activity. Fawkner Park is also important for its use as an accommodation base for the Australian Women's Army Service (AWAS) and as a camp for British migrants between 1947 and 1955. Fawkner Park is notable for its number of fine, mature avenues of English and Dutch Elm, White Poplar, English Oak and Moreton Bay Fig that criss-cross the site, forming over-arching canopies above the pathway system. The treed avenues form the dominant landscape component of the site counterpointed with expanses of lawn for recreational use between the avenue alignments.

**What was the permit application for?**

In December 2018 Heritage Victoria received a permit application for improvement works to the Pasley Street North entrance to Fawkner Park including the relocation of a basketball court, tree removal, tree planting, new landscaping and the construction of new drainage and secondary pathways.

The permit application was advertised between 30 January 2019 and 27 February 2019 and a total of 42 submissions were received.

**Why has the permit been refused?**

The *Heritage Act 2017* requires the Executive Director of Heritage Victoria to consider various matters in determining a permit application including the extent that the application, if approved, would affect the cultural heritage significance of the place; the extent that refusal would affect the reasonable or economic use of the place; and any submissions received in response to public notice of the permit application.

On 31 July 2019, the Executive Director of Heritage Victoria refused the permit application for the following reasons:

- If the application were approved, and the sports court constructed in the proposed location, it would result in an unacceptable detrimental impact on the cultural heritage significance of Fawkner Park.
- The construction of the sports court in this location would result in physical and visual impacts on the landscape character of Fawkner Park as:
  - it represents an incursion of hard surfacing into a part of the park which is currently grassed and eliminates an area of the lawn which remains the majority surface to this sector of the park;
  - the location of the sports court away from its historical location at the perimeter of the park requires a network of new paths that run counter to the overall materiality, alignment and width of the asphalt linear avenues which contribute to the aesthetic significance of Fawkner Park;

- the scope of works goes beyond the relocation of the existing facility as it will be larger than the existing facility and, in tandem with its additional pathways, will have a larger overall footprint; and
  - its placement adjacent to Avenue G, will alter the presentation of an avenue recorded in the Conservation Analysis of 2002 as being of high heritage significance.
- Refusal of the permit application will prevent the works as proposed from being realised. Heritage Victoria accepts that the continuation of a sports court in Fawkner Park, although constructed in a new form, is a reasonable use. However, the Applicant has not sufficiently demonstrated that an alternative more suitable location for the sports court could not be found.
- While Heritage Victoria is generally supportive of the necessary landscape and drainage improvement works and the associated entrance improvements at Pasley Street proposed, it is understood that these works cannot be extracted from the proposal as whole.

**NOTICE OF REFUSAL TO GRANT A  
PERMIT  
UNDER SECTION 102(1)(C) OF THE  
HERITAGE ACT 2017**

---

**Permit Application No.:** P29324

**Owner/s:** Ms Deb Cailles  
Manager, Urban Sustainability  
City of Melbourne  
GPO Box 1603  
MELBOURNE VIC 3001

**NAME OF PLACE:** FAWKNER PARK

**HERITAGE REGISTER NUMBER:** H2361

**LOCATION OF PLACE:** 24-88 COMMERCIAL ROAD SOUTH YARRA

**WHAT HAS BEEN REFUSED**

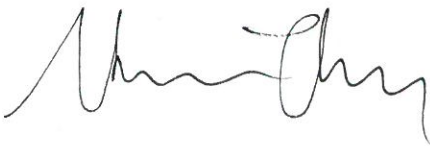
Approval to undertake improvement works to the Pasley Street entry zone including the removal of the existing basketball court, the construction of a new sports court further to the west of the existing facility, landscaping works, drainage improvement works, selected tree removals and new tree planting works and the construction of two new pathways providing access to the new sports court facility.

---

**REASONS FOR REFUSAL:**

That a permit not be issued as:

- If the application were approved, and the sports court constructed in the proposed location, it would result in an unacceptable detrimental impact on the cultural heritage significance of Fawkner Park.
- The construction of the sports court in this location would result in physical and visual impacts on the landscape character of Fawkner Park as:
  - it represents an incursion of hard surfacing into a part of the park which is currently grassed and eliminates an area of the lawn which remains the majority surface to this sector of the park;
  - the location of the sports court away from its historical location at the perimeter of the park requires a network of new paths that run counter to the overall materiality, alignment and width of the asphalt linear avenues which contribute to the aesthetic significance of Fawkner Park;
  - the scope of works goes beyond the relocation of the existing facility as it will be larger than the existing facility and, in tandem with its additional pathways, will have a larger overall footprint; and
  - its placement adjacent to Avenue G, will alter the presentation of an avenue recorded in the Conservation Analysis of 2002 as being of high heritage significance.
- Refusal of the permit application will prevent the works as proposed from being realised. Heritage Victoria accepts that the continuation of a sports court in Fawkner Park, although constructed in a new form, is a reasonable use. However, the Applicant has not sufficiently demonstrated that an alternative more suitable location for the sports court could not be found.
- While Heritage Victoria is generally supportive of the necessary landscape and drainage improvement works and the associated entrance improvements at Pasley Street proposed, it is understood that these works cannot be extracted from the proposal as whole.

<p>Signature by the Executive Director, Heritage Victoria:</p> 	<p>Date:</p> <p>31-7-19</p>	<p>HERITAGE VICTORIA HERITAGE VICTORIA HERITAGE VICTORIA</p>
--	-----------------------------	--

APPENDIX A      OPTIONS ASSESSMENT PREPARED BY THE CITY OF MELBOURNE



FAWKNER PARK

## INTRODUCTION

During the feasibility stage, the project team examined several options over a number of years. The options sought solutions to poor landscape health, soil compaction, drainage, entrance improvements, increasing use, cyclist management, and improvements to residential amenity for neighbouring residents. The options investigated included the potential to relocate the sports court.

To respond to some of the queries raised, we have prepared a summary of the advantages and disadvantages of these options. It should be noted that some options listed below were not pursued in detail as they did not address all of the project requirements and objectives. Refer to Figure 1 showing location of options 1-6.

FAWKNER PARK

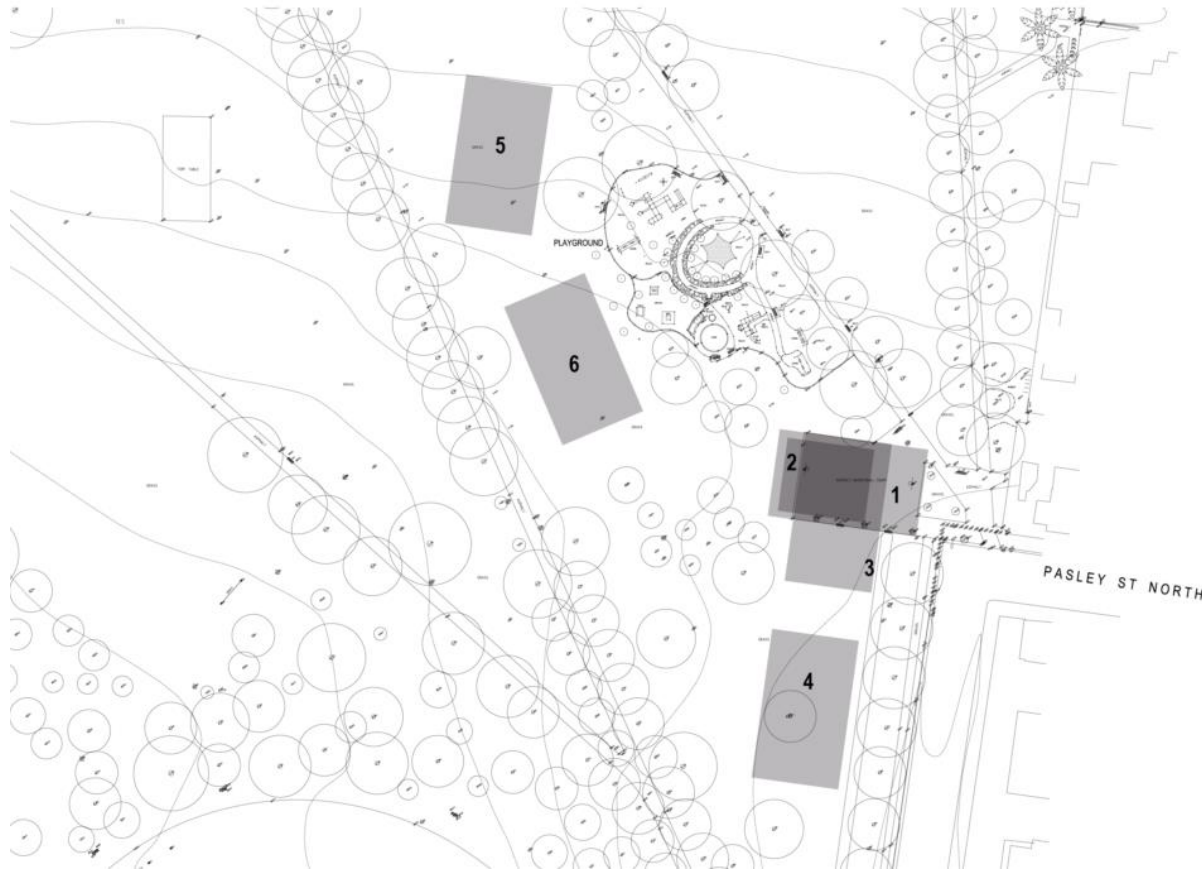


Figure 1: Six options explored between 2009 -2014 to inform the 2015 concept plan development.  
*Note:* This diagram is intended only to show court locations that were considered. It is not intended as a representation of current site conditions, tree locations or impacts, as the base drawing was produced before accurate site information was available.

- Option 1 Retaining the court in its existing location
- Option 2 Converting to a half court
- Option 3 Reorientation of the court to N-S orientation on the west of the current site
- Option 4 Relocate the court to the south on the eastern boundary
- Option 5 Relocate the court to the north of the playground
- Option 6 Relocate the court to the west of the playground.

Based on the assessment of these options, a concept plan was developed for consultation with the community on Option 6.

Table 1 Options summary

	Option	Disadvantages	Advantages
1	Retain court in existing location	<p>Difficult to improve drainage without substantial excavation and reconstructing the court at a lower level. This would require a larger footprint (to access sunken court) and greater impact on mature trees and paths.</p> <p>Retaining court as is would not resolve flooding or drainage problem.</p> <p>Limited opportunity to improve the appearance of the entrance as the asphalt remains.</p> <p>Noise and amenity issues from court use cannot be improved for Pasley Street residents.</p> <p>Limited opportunity to make other improvements including reuse of stormwater in the park.</p> <p>Cyclist and pedestrian management improvements at</p>	<p>Is within the South Yarra Primary School (SYPS) play zone</p> <p>Closest location to the SYPS</p> <p><i>This option was not tested further as it would not resolve drainage and flooding problems, did not offer residential amenity improvements and did not allow for entrance improvements or cyclist management.</i></p>

		<p>entrance limited.</p> <p>Limited opportunity to provide any expansion of opportunities on the court to meet current and new demand.</p>	
2	Convert to half court	<p>The existing court is highly used as observed by council officers and reported during consultation in 2017. There was also demand expressed for an additional court.</p> <p>A half court would not support existing use and would not meet future demand.</p> <p>Poor outcome as it would remove an existing well-used community facility.</p>	<p>Could have some improvement to drainage but would not resolve this issue.</p> <p>Rationalises the space.</p> <p><i>This option was not tested further as it was a removal of an existing use.</i></p>
3	Reconstruct the court to north-south orientation on the west of the current site	<p>The topography to the south is higher than existing court. Difficult to improve drainage without substantial excavation and reconstructing the court at a lower level. This would require a larger footprint (to access sunken court). In this location this would impact on tree protection zones for at least six large mature trees.</p> <p>Would be more difficult to provide an alternative route for cyclists.</p> <p>Noise and amenity issues from court use cannot be improved for Pasley Street residents.</p> <p>Reduced options to provide a landscaped entrance.</p>	<p>None</p> <p><i>This option was not explored further as it would require significant excavation and have a high impact on trees. It did not offer residential amenity improvements, or sufficient scope for entrance improvements or cyclist management.</i></p>
4	Relocate the court to the south on the	<p>Would require removal of 20 small to large trees. Tree protection zones of a number of mature trees would</p>	<p>Enables new entrance to be created with soft landscape rather</p>

	eastern boundary	<p>potentially be impacted, including five large Elm trees along Pasley Street.</p> <p>This location has potential to increase noise impacts for Pasley Street residents.</p> <p>Greater distance from and no relationship with the playground or BBQ area.</p> <p>Greater distance from SYPS and not in an area currently used or supervised by the school.</p> <p>Not currently a sports court.</p>	<p>than asphalt.</p> <p>Enables a more sustainable drainage solution where water can be used for passive irrigation of the landscape instead of going into drains.</p> <p>Enables different solutions to be created to slow cyclists at the park entrance.</p>
5	Relocate the court to the north of the playground	<p>Sloped topography would require more cut and fill.</p> <p>Location is further from SYPS.</p> <p>Less opportunity to consolidate activities and for central supervision.</p> <p>Not currently a sports court.</p>	<p>No tree removal required.</p> <p>Further from residential areas.</p> <p>Enables new entrance to be created with soft landscape rather than asphalt.</p> <p>Enables a more sustainable drainage solution where water can be used for passive irrigation of the landscape instead of going into drains.</p> <p>Enables different solutions to be created to slow cyclists at the park entrance.</p> <p>Improves amenity for Pasley Street residents by moving the court further from housing.</p>
6	Relocate the court	<p>Six juvenile trees would be removed.</p>	<p>Consolidates high activity areas in a contained space, which</p>

	<p>to the west of the playground.</p>	<p>Further from SYPS than the current location. Not currently a sports court.</p>	<p>supports better management of high use.</p> <p>Reflects how children use multiple locations for play, including play equipment, court and park.</p> <p>Better for supervision of children, especially if supervising more than one child when they are doing different activities.</p> <p>Is within the area used by the school for play. Staff already supervise students in this area.</p> <p>Enables a new entrance to be created with soft landscape rather than asphalt.</p> <p>Enables a more sustainable drainage solution where water can be used for passive irrigation of landscape instead of going into drains.</p> <p>Enables different solutions to be created to slow cyclists at the park entrance.</p> <p>Improves amenity for Pasley Street residents by moving the court further from housing.</p> <p>An expanded range of opportunities for use can be provided by moving to this location. This will better meet current and future demand.</p>
--	---------------------------------------	---	---

**REFERENCES**

*Fawkner Park User Study*, IOSS, May 2016.

*Fawkner Park Master Plan*, City of Melbourne, May 2006.