

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 Erskine Place North Melbourne (Road) 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 Erskine Place, North Melbourne, as shown hatched on the public notice dated 8 November 2023 (Road) as a public highway, for the reasons that:
 - 3.1.1. the Road is already considered to be a public highway at common law, with the Council having relayed the bluestone for the entire Road in 2007
 - 3.1.2. declaring the Road as a public highway will not alter the current ability of the public to use the Road, but will assist the Council in managing the competing needs of adjoining owners in terms of enforcement and the application of the greening your laneway program and confirm Council is responsible for cleaning and maintenance.
 - 3.1.3. the declaration will make clear the Council is responsible for maintenance of the Road including a portion of common property forming part of the Roads.
 - 3.2. Request management investigate options to address safety issues arising from the narrowness of the Road.
 - 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 5.2, 1 February 2024

Management report to Submissions (223) Committee**Proposed Public Highway Declaration Erskine Place, North Melbourne****Agenda Item 5.2****Presenter:** Leon Wilson, Licensed Surveyor Spatial Team**Submissions
(223) Committee****Purpose and background****1 February 2024**

1. This report responds to 3 submissions received in relation to the proposed public highway declaration of Erskine Place, North Melbourne ('the Road'), shown hatched on the plan in Attachment 2 (Proposal).
2. The submissions (see Attachment 3) raise the following points:
 - 2.1. One submission supports the Proposal
 - 2.2. The other two submissions object to the Proposal on the following basis:
 - 2.2.1. the Proposal does not address the current status of the Road
 - 2.2.2. the Road whilst open to the public is not generally used by the public
 - 2.2.3. the Proposal gives legal rights to the land at 32-34 Erskine Street at the end of the Road
 - 2.2.4. if successful, it will lead to:
 - 2.2.4.1. increased traffic congestion and more traffic using the public highway
 - 2.2.4.2. noise and pollution due to increased traffic and vehicle emissions
 - 2.2.4.3. risks to safety due to the Road being extremely narrow with insufficient space unless vehicles use common property and poor visibility
 - 2.2.5. the Road has not been maintained by Council
 - 2.2.6. it will reduce property values and result in less privacy.

Key issues

3. The Council undertook rehabilitation works around 2007, relaying the bluestone in Erskine Place at the request of residents following the finalisation of the development at 11 to 17 Erskine Place.
4. The Road meets the tests of a public highway at common law, see attachment 1 legal comments.
5. The historical width of many laneways in Melbourne is 10 feet being 3.05 metres. Given the narrow width of the lanes they should be used by vehicles at low speeds with pedestrian priority.
6. The Proposal does not significantly change the current situation in terms of public use, traffic congestion, noise pollution or safety.
7. Should the Proposal be successful:
 - 7.1. it confirms the subject land is vested in Council and the Road will come under Council's care and management and be included on Council's Public Roads Register under the *Road Management Act 2004*
 - 7.2. it would provide clarity for Council and abutting owners in terms of enforcement, greening your laneway program, cleaning and maintenance responsibility and regularise the common law public highway status.
 - 7.3. it may increase property values as the abutting owners would not have to maintain the Road or enforce access in the future.
8. It is noted that part of the common property at 11 to 17 Erskine Place is paved with bluestone. An option would be for this area to be declared a public highway (see coloured plan in attachment 2). This option would require a new statutory process for that area.

9. That the Submissions (Section 223) Committee:
 - 9.1. 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.
 - 9.2. 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 3 of 17)
2. Public Notice and Plans (Page 5 of 17)
3. Submissions (Page 8 of 17)

Supporting Attachment

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 vest in Council and the Road will formerly come under Council's care and management and 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 as -
 - 3.1. intention to dedicate land as a public highway either expressly or to be inferred from the conduct of the landowner; and
 - 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. Council is meeting the costs associated with the public highway declaration.
5. Council will accept responsibility for the maintenance and cleaning of the road should it become a public highway. These costs will be 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 251m² of bluestone laneway to the road register.

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 needs to consider the Safety of users of the area while maintaining access.

Stakeholder consultation

12. The proposal was given public notice. Overall the consultation involved:
 - 12.1. advertising in the Age on the 8 November 2023
 - 12.2. a letter was sent to the owners and occupiers of abutting properties
 - 12.3. the notice was placed 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. This proposal has no significant impact on environmental sustainability.

MELBOURNE CITY COUNCIL

Proposed Public Highway declaration Erskine Place, North Melbourne

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. 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 Erskine Place, North Melbourne' 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 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.

Coloured ownership plan



Not to Scale

Ownership

-  Owned by 52 Erskine Street
-  Remnant title from 1912
-  Common Property
-  Common Property - paved with bluestone

Jordan McKay

From: Wufoo <no-reply@wufoo.com>
Sent: Wednesday, 22 November 2023 11:47 AM
To: CoM Meetings
Subject: Submissions (223) Committee submissions form [#25]

Privacy acknowledgement: I have read and acknowledge how Council will use and disclose my personal information.

*

Name: * Andrew Watkins

Email address: * [REDACTED]

Phone number * [REDACTED]

Please write your submission in the space provided below and submit by no later than 11 August 2020.

I am objecting to the proposed Public Highway declaration Erskine Place, North Melbourne on the following basis.

- The proposal does not address what is the current status of the place/laneway.
- This is a right of way for properties accessing the lane and although open to the public, is not generally used by the public.
- The declaration does not address which properties have right of access to laneway and whether this will change. In particular property marketed CP169860F current has no access.
- Melbourne city council has not consistently maintained the lane with regards to street sweeping or the cobble stones.
- The laneway is extremely narrow, with insufficient space unless vehicles use private area market CM1.

Kind regards

Andrew Watkins

Please indicate whether you would like to be heard by the Submissions (Section 223) Committee in relation to your No

submission live

via phone or

Zoom: *

From: Daniel Janghorban
Sent: Tuesday, 5 December 2023 10:55 AM
To: CoM Meetings
Cc: Leon Wilson
Subject: FW: Proposed Public Highway Declaration of Erskine Place, North Melbourne

Hi CoM Meetings,
I want to register the response below regarding the Public Highway Declaration at the address above.
Thanks,
Dan
Please do not hesitate to contact me if you need further information.
Thanks and regards,

Daniel Janghorban – Senior Engineer | Infrastructure Development

City of Melbourne | Council House 1, 200 Lt Collins Street Melbourne 3000 | GPO Box 1603 Melbourne 3001
E: [redacted] | www.melbourne.vic.gov.au

We value: Integrity | Courage | Accountability | Respect | Excellence

The City of Melbourne respectfully acknowledges the traditional custodians of the land, the Bunurong Boon Wurrung and Wurundjeri Woi Wurrung peoples of the Eastern Kulin Nation and pays respect to their Elders past, present and emerging. We are committed to our reconciliation journey, because at its heart, reconciliation is about strengthening relationships between Aboriginal and non-Aboriginal peoples, for the benefit of all Victorians.



Please consider your environmental responsibility before printing this email.

From: [redacted]
Sent: Monday, 4 December 2023 3:49 PM
To: Daniel Janghorban [redacted]
Subject: Proposed Public Highway Declaration of Erskine Place, North Melbourne

Dear Daniel,

RE: Proposed Public Highway declaration: Erskine Place, North Melbourne.

I am writing as a resident and a parent of 3 children living on Erskine Place to strongly object the proposed Public Highway declaration of Erskine Place in North Melbourne.

I have several concerns about the impact that this would have on my family and my community.

Safety

- Increased traffic congestion would make it more difficult and dangerous for children to play and walk in the street.
- Erskine Place is a narrow street with poor visibility, making it difficult for drivers to see pedestrians and cyclists.
- A public highway would attract more traffic, including heavy vehicles, which would pose an additional safety hazard.

Noise and pollution

- Increased traffic would lead to higher noise levels, which would be disruptive to residents.

- Vehicle emissions would also increase, which would have a negative impact on air quality.

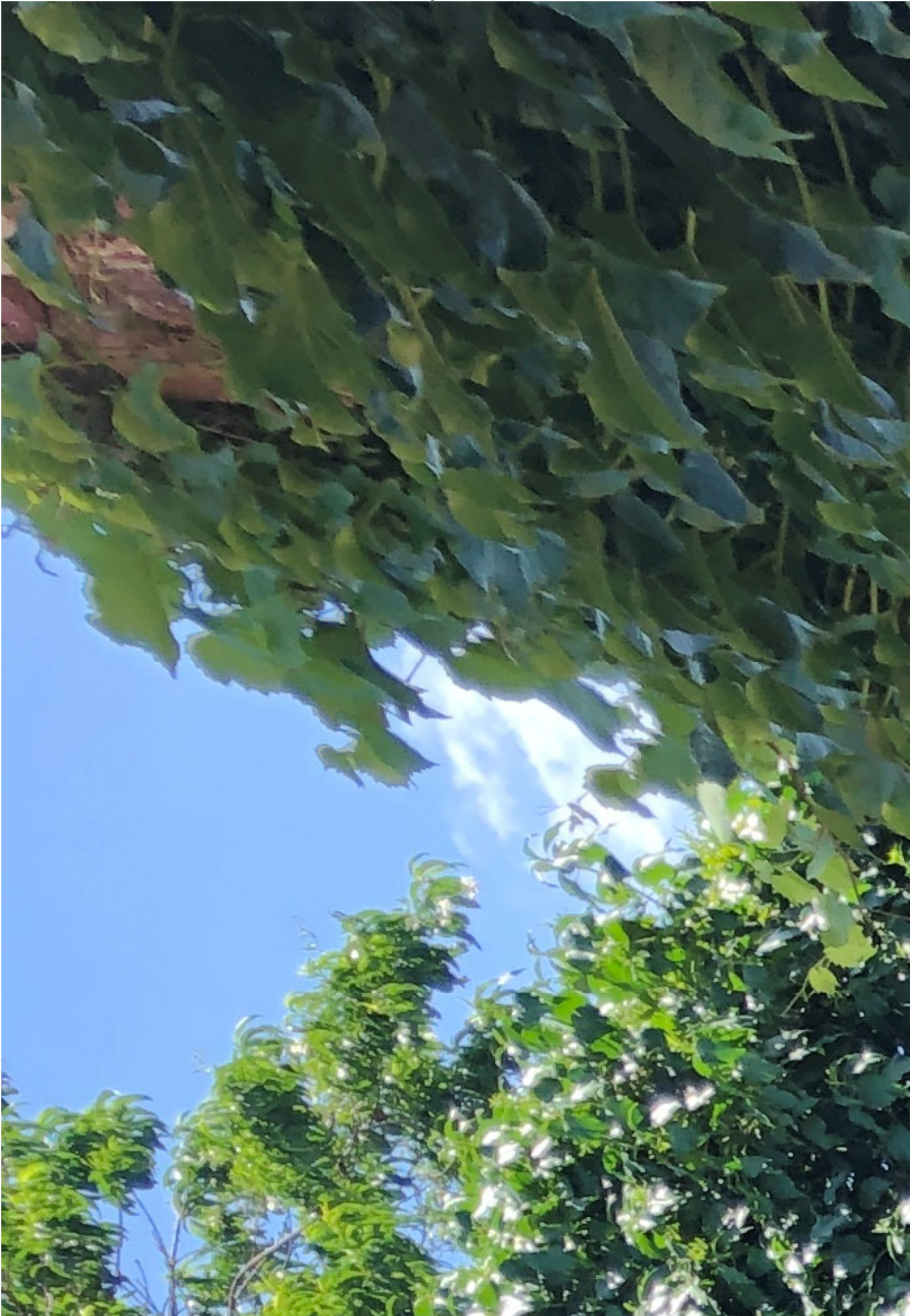
Property values and privacy

- A public highway would likely lead to a decrease in property values in Erskine Place.
- It would also raise privacy concerns, as residents would be more exposed to passersby.

I believe that the proposed public highway declaration is not in the best interests of our community for my family and those living in Erskine Place. I urge you to reconsider your decision.

Sincerely,













[REDACTED]

From: hilary [REDACTED]
Sent: Saturday, 2 December 2023 2:58 PM
To: CoM Meetings
Subject: Proposed Public Highway Declaration Erskine Place, North Melbourne

I am Hilary Nicholson, owner of [REDACTED] Erskine Street North Melbourne. I am writing in support of the above declaration to make Erskine Place a public Highway. Thankyou.

Regards,
Hilary Nicholson

Sent from my Galaxy