

**Committee report to Council**

**Agenda item 5.3**

**Council**

**Proposed Public Highway Declaration of whole block bounded by La Trobe, Lonsdale, Exhibition and Russell Streets, Melbourne**

**25 June 2019**

**Committee** Submissions (Section 223)

**Presenter** Greg Stevens, Manager Parks, Property and Waterways

**Purpose and background**

1. The purpose of this report is to recommend the public highway declaration of the roads within the whole block bounded by La Trobe, Lonsdale, Exhibition and Russell Streets, Melbourne (the Roads) pursuant to sections 204(1), 207A and 223 of the *Local Government Act 1989* (the Act), as shown shaded and cross hatched on the attached plan (see page 4 of the attached report to the Committee).

**Consideration at Committee**

2. At the Submissions (Section 223) Committee meeting on 2 May 2019 the Committee considered the attached report and made the below recommendation for presentation to Council.

**Recommendation**

3. That Council:
  - 3.1. Declare the roads bounded by La Trobe, Lonsdale, Exhibition and Russell Streets, Melbourne, as shown shaded and cross hatched on the public notice dated 27 March 2019 (Roads) as public highways, for the reasons that:
    - 3.1.1. the Roads are already considered to be public highways at common law having been constructed by and maintained by Council for many decades and being on the Council's Road Register
    - 3.1.2. the only objection received relates to the northern end of Bennetts Lane at the rear of 131 La Trobe Street which portion of road (affected area) was constructed around 1854 by Council at the cost of the abutting property owners and has subsequently been maintained and cared for by Council, and the declaration will:
      - 3.1.2.1. maintain access rights for the abutting properties at 131 La Trobe Street and 24 Bennetts Lane
      - 3.1.2.2. make clear the Council is responsible for maintenance of the affected area
      - 3.1.2.3. ensure unobstructed access for the property at 131 La Trobe Street to its fire exit and maintenance of the ventilation to the carpark.
  - 3.2. 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 5.1, 2 May 2019 (Page 2 of 9)

## Management report to Submissions (223) Committee

Attachment 1  
Agenda item 5.3  
Council  
25 June 2019

### Proposed Public Highway Declaration of the whole block bounded by La Trobe, Lonsdale, Exhibition and Russell Streets Melbourne

**Presenter:** Leon Wilson, Acting Senior Project Officer Facilities Management

#### Purpose and background

1. This report responds to one submission received to a proposed public highway declaration of the whole block bounded by La Trobe, Lonsdale, Exhibition and Russell Streets, Melbourne ('the Roads') as shown shaded and cross hatched on the plan in Attachment 2.
2. The submission is on behalf of the owners corporation for the property at 131 La Trobe Street and it only objects to the declaration in so far as it affects the northern end of Bennetts Lane (that is the axe handle shaped portion) (see Attachment 3), on the following basis:
  - 2.1. the area is used as a driveway to 131 La Trobe Street and the neighbouring building at 24 Bennetts Lane and is a private lane
  - 2.2. the owners corporation maintain the area by cleaning, removing garbage bags, weeds, boxes and generally, through their cleaning staff, keeping the area free of rubbish and tidy, claiming it has not been maintained by Council at all or for "decades" as stated in the notice

#### Key issues

3. The door at the end of the northern end of Bennetts Lane in to the property at 131 La Trobe Street has a fire exit and keep clear sign on the outside as shown in the photograph in Attachment 2, the car park entrance is in line with the main length of Bennetts Lane.
4. Bennetts Lane being CL77 is on Council's Public Roads Register under the *Road Management Act 2004*, it was originally constructed around 1854 by Council at the cost of the abutting property owners and has subsequently been maintained and cared for by Council.
5. The declaration of Bennetts Lane will maintain access rights for the abutting proprietaries at 131 La Trobe Street and 24 Bennetts Lane and ensure that Bennetts Lane continues to be maintained and managed by Council.

#### Recommendation from management

6. That the Submissions (Section 223) Committee:
  - 6.1. Consider 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.
  - 6.2. Recommend 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 8)
2. Public Notice and Plans (Page 3 of 8)
3. Submission (Page 6 of 8)

## 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. The Roads are currently on Council's Public Roads Register under the *Road Management Act 2004*, the declaration as a public highway will vest the underlying land in Council.

### Finance

2. Council is meeting the costs associated with the public highway declaration from the general consultancy budget.
3. Council has accepted and will continue to accept responsibility for the maintenance and cleaning of the Roads following the public highway declaration process. These costs are currently and will continue to be met out of existing and future general Engineering Services branch budgets for the maintenance and renewal of roads.

### Conflict of interest

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

### Health and Safety

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

### Stakeholder consultation

6. The proposal was given public notice. Overall the consultation involved:
  - 6.1. advertising in the Age on the 27 March 2019
  - 6.2. a letter was sent to the owners and occupiers of abutting properties
  - 6.3. the notice was placed on Council's web site.

### Relation to Council policy

7. 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

8. This proposal has no significant impact on environmental sustainability.

## MELBOURNE CITY COUNCIL

### **Proposed Public Highway Declaration of the whole block bounded by La Trobe, Lonsdale, Exhibition and Russell Streets, 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 shaded and cross hatched on the plan below as public highways (Proposal).

The Roads 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. 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 25 April 2019 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 2 May 2019, commencing at 3pm, in the Melbourne Town Hall, Administration Building, Swanston Street, Melbourne.

Written submissions should be marked 'Proposed Public Highway Declaration of whole block bounded by La Trobe, Lonsdale, Exhibition and Russell Streets' and addressed to the Manager Governance and Legal, 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/rly4bj60tdagsq/>

#### **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

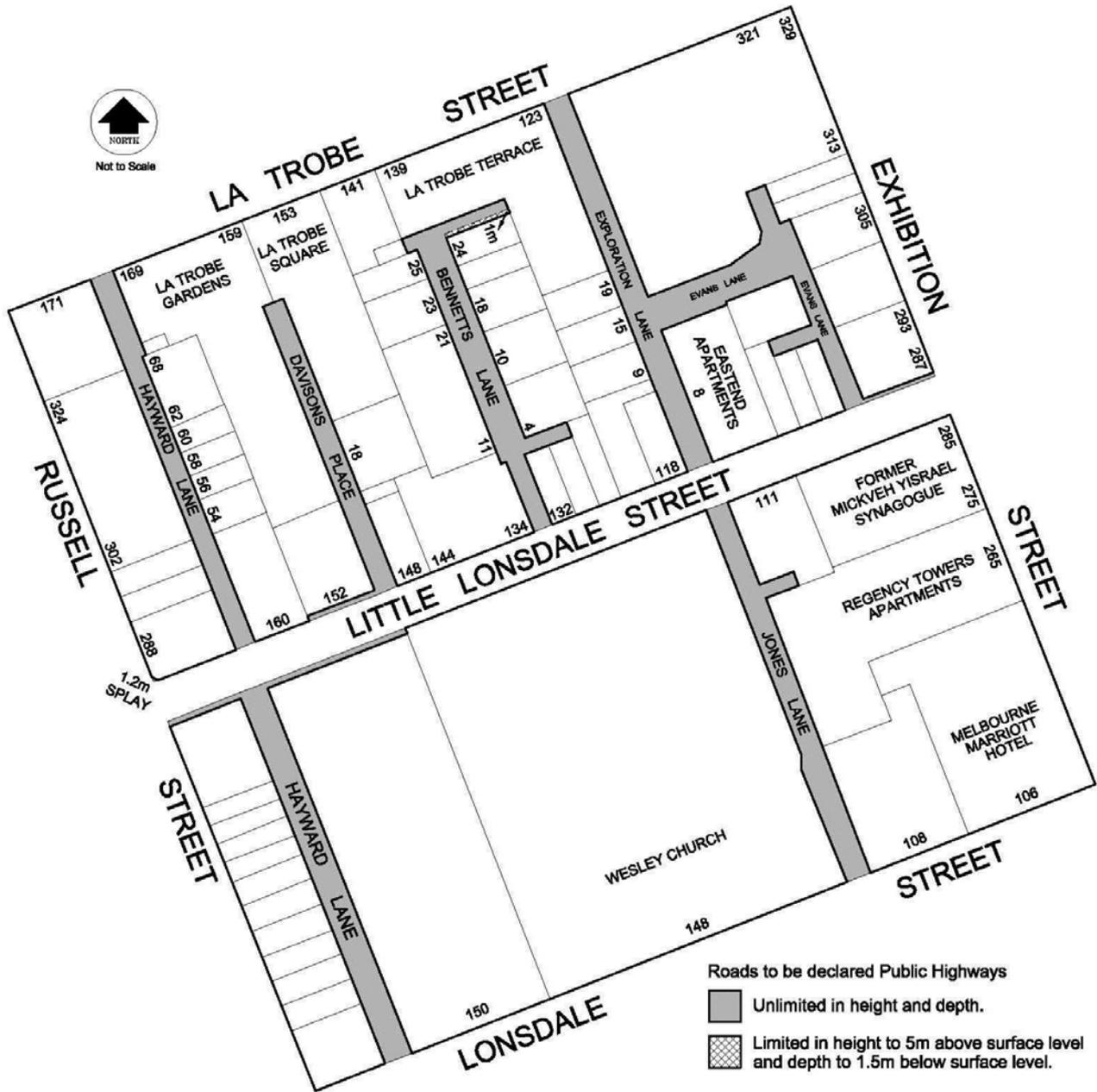


Photo of northern leg of Bennetts Lane

The door at the end has a fire exit, keep clear sign on it.



**BARRISTERS AND SOLICITORS**

*Our ref: AR:MFA:16590  
Your ref: Leon Wilson*

24 April 2019

Manager Governance and Legal  
Melbourne City Council  
PO Box 1603  
Melbourne VIC 3000

Com.meetings@melbourne.vic.gov.au

Dear Sirs or Madam,

**RE: PROPOSED PUBLIC HIGHWAY OF ALL LANES AND ROADS IN THE WHOLE  
BLOCK BOUNDED BY LA TROBE, LONSDALE, EXHIBITION AND RUSSELL  
STREETS, MELBOURNE**

We write to you in response to Notice to our client that Council proposes to declare the road shown shaded on the attached plan relating to Bennett's Lane as a public highway.

Our client is Owners Corporation 410588A which represents the 88 owners of 131 La Trobe street Melbourne and is owner of the common property in that premises. and other adjoining land. The rear of our client's property abuts portion of the northern end of Bennett's lane (that is the axe handle shaped portion).

We have attached a copy of the map provided by you which describes the area proposed to be declared a public highway and a further detailed map illustrating the area concerning our clients which is their driveway used daily. The area is used as a driveway to 131 La Trobe street and is a private lane.

Our clients presently maintain the designated area marked hatched by cleaning, removing garbage bags, weeds, boxes and generally, through their cleaning staff, keeping the area free of rubbish and tidy.

Our clients are considering any further entitlement to the private road; it is used solely as a driveway to their building by our client and the neighbouring building on the southern side of the driveway which accesses a small side doorway to the neighbour's property.

Our client does not consent to the proposed declaration in so far only as it affects the strip marked on the attached plan which is the driveway off Bennett's lane proper. That portion North of Bennett's lane proper cared for by our client has not been maintained by the council at all or for "decades" as stated.

Our clients require that it be removed from the Proposal as a public highway.

Please confirm receipt and consideration ASAP.

Yours faithfully

**MICHAEL FLEMMING  
MICHAEL FLEMMING & ASSOCIATES**

Level 5, 410 Collins Street, Melbourne Australia 3000  
Phone: (03) 9642 5111 Fax: (03) 9642 5211  
michael@michaelflemming.com.au



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