

**Committee report to Council**

**Agenda item 5.1**

**Council**

**Proposed Public Highway Declaration Shands Lane and PT5202, North Melbourne**

**26 March 2024**

**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 of Shands Lane and PT5202, North Melbourne (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 Shands Lane and PT5202, North Melbourne, as shown hatched on the public notice dated 8 November 2023 (Roads) as public highways, for the reasons that:
    - 3.1.1. the Roads are already considered to be public highways at common law and the southern and Eastern portions of Shands Lane having been maintained by Council for many decades
    - 3.1.2. the submissions received are generally supportive
    - 3.1.3. the declaration will provide a greater ability for the Council to manage the competing needs of adjoining owners
    - 3.1.4. the declaration will make clear the Council is responsible for maintenance of Roads including a portion of common property forming part of the Roads
    - 3.1.5. if the Roads had been public highways under Council's care and management at the time of commencement of the development of 39 Erskine Street, North Melbourne, a traffic management plan would have been required which would have managed traffic issues arising from large vehicles accessing the development site and their hours of use
  - 3.2. Request management investigate options to address safety issues arising from the narrowness of the Roads.
  - 3.3. Notify in writing every person who has lodged a separate submission of the decision and reasons for the decision.

**Management report to Submissions (223) Committee****Proposed Public Highway Declaration Shands Lane and PT5202, North Melbourne****Agenda Item 5.1****Presenter:** Leon Wilson, Licensed Surveyor Spatial Team**Submissions  
(223) Committee****Purpose and background****1 February 2024**

1. This report responds to four submissions received in relation to the proposed public highway declaration relating to Shands lane, North Melbourne ('the Road'), being part of the above proposal, the full extent of the Proposed Public Highway declaration is shown hatched on the plan in Attachment 2 (Proposal).
2. The Road is considered a Public Highway at common law see attachment 1 legal comments with the underlying ownership being shown on the coloured plan in Attachment 2.
3. The submissions (see Attachment 3 for summary and full copies) raise the following points:
  - 3.1. One submission raises safety and amenity concerns and a portion is common property
  - 3.2. One submission supports the proposal in principle subject to safety and amenity concerns
  - 3.3. Two submissions fully support the proposal which will remove the uncertainty of the status

**Key issues**

4. 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.
5. The areas of common property included in the proposal all have carriageway easements over them in favour of other land.
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 entire 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. the Owners Corporations would cease to be liable for these areas and the ongoing maintenance.

**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.

## 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 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 paver 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 186m<sup>2</sup> of bluestone laneway and 42m<sup>2</sup> of asphalt in Shands Lane to the road register, the rest of Shands Lane being 457m<sup>2</sup> is already on 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 Shands Lane and PT5202, 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 with the southern and eastern portions of Shands Lane having 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 Shands Lane and PT5202' 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



Not to Scale

Roads proposed to be declared Public Highways






Unlimited in height and depth

Coloured ownership plan



Not to Scale

Ownership

-  Melbourne City Council
-  Remnant titles from 1901 and 1908
-  Common Property

[REDACTED]

[REDACTED]

[REDACTED]

**Sent:** Monday, 13 November 2023 10:32 PM  
**To:** CoM Meetings  
**Subject:** ATTN: Director Governance - Proposed Public Highway declaration Shands Lane and PT5202  
**Attachments:** Shands Lane Public Highway Submission.docx; Certificate of title Common Property 2.pdf; Certificate of title\_23 Shands Lane.pdf; Certificate of title\_25 Shands Lane.pdf

Dear Sir/Madam,

Please find attached our written submission with regards to the subjected proposal.

Can we ask that you acknowledge the receipt of this submission via return email? Thank you.

Kind Regards,  
Anthony Shea & Guat Beng Shea

Anthony & Guat Beng Shea  
23 & 25 Shands Lane  
North Melbourne VIC 3051

13 November 2023

Director Governance  
Melbourne City Council  
GPO Box 1603  
Melbourne VIC 3001

**RE: PROPOSED PUBLIC HIGHWAY DECLARATION SHANDS LANE AND PT5202**

Dear Sir/Madam,

We are owners and occupier of 23 & 25 Shands Lane, North Melbourne and we're writing this submission to raise our concerns with regards to the above proposal.

Firstly, we would like to raise **safety** concern re the western portion of the laneway (highlighted in yellow below), should it be made accessible to all vehicles due to the narrowness of the lane. Vehicles have not used this lane for many years but since construction has started at the end of this lane, it has been used by vehicles to access the property and we have had our property damaged twice. I have included photos of the damage to our wall below for reference (Photo 1 – damage done in September 2023, Photo 2 – damage done in October 2023).







Photo 1 – Wall Damage in September 2023



Photo 2 – Wall Damage in October 2023

The damages were subsequently repaired by the responsible people but it's proven how our properties and neighbours' properties are susceptible to be damaged by vehicles. The incidence of property damage would increase if this part of the lane was converted to public access. We would like to further show a photo of a truck that used this laneway to highlight the narrowness of the lane and how close it is to the properties. Residents especially local children are at grave risk of being struck by vehicles. Any action by the Council would need to incorporate safety plans to residents and their properties. We strongly believe that any use of this narrow part of the laneway should at the very least be restricted by vehicle size and weight limit.



Secondly, we note that the portion of the laneway highlighted in blue below is currently registered as Common Property of 23 & 25 Shands Lane. What is the implication to our privately held property if this is declared as public road? We have included copies of our Titles for your reference (Certificate of Title 23 Shands Lane.pdf, Certificate of Title 25 Shands Lane.pdf, Certificate of Title Common Property 2.pdf).



Kind Regards,

Anthony and Guat Beng Shea



# Imaged Document Cover Sheet

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Document Type	<b>Plan</b>
Document Identification	<b>PS400383B</b>
Number of Pages (excluding this cover sheet)	<b>4</b>
Document Assembled	<b>18/07/2023 14:28</b>

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<b>PLAN OF SUBDIVISION</b>		STAGE NO. <del>          </del>	LTO use only <b>EDITION 1</b>	Plan Number <b>PS 400383 B</b>
<p style="text-align: center;"><b>Location of Land</b></p> <p><b>Parish:</b> JIKA JIKA AT NORTH MELBOURNE</p> <p><b>Township:</b> _____</p> <p><b>Section:</b> 90</p> <p><b>Crown Allotment:</b> 8 (part) &amp; 17 (part)</p> <p><b>Crown Portion:</b> _____</p> <p><b>LTO Base Record:</b> CHART 292</p> <p><b>Title Reference:</b> C/T VOL10228 FOL 032, 033.</p> <p><b>Last Plan Reference:</b> STAGE 3 PS.327560 M LOTS 9,10.</p> <p><b>Postal Address:</b> 19-25 SHANDS LANE (at time of subdivision) NORTH MELBOURNE</p> <p><b>AMG Co-ordinates</b> E 318 865 Zone: 55 (of approx. centre of land in plan) N 5814 710</p>		<p style="text-align: center;"><b>Council Certification and Endorsement</b></p> <p>Council Name: MELBOURNE CITY COUNCIL Ref: TP 95/1290 (783)</p> <p>1. This plan is certified under section 6 of the Subdivision Act 1988.</p> <p><del>2. This plan is certified under section 11(7) of the Subdivision Act 1988.</del></p> <p><del>Date of original certification under section 6 / /</del></p> <p>3. This is a statement of compliance issued under section 21 of the Subdivision Act 1988.</p> <p style="text-align: center;"><u>OPEN SPACE</u></p> <p>(i) A requirement for public open space under section 18 of the Subdivision Act 1988 <del>has</del>/has not been made.</p> <p>(ii) The requirement has been satisfied.</p> <p>(iii) The requirement is to be satisfied in Stage.....</p> <p>Council delegate <del>Council seal</del></p> <p>Date <b>6 / 3 / 96</b></p> <p>Re-certified under section 11(7) of the Subdivision Act 1988</p> <p>Council Delegate Council Seal</p> <p>Date / /</p>		
<b>Vesting of Roads or Reserves</b>		<b>Notations</b>		
Identifier	Council/Body/Person	<b>Staging</b> This <del>is</del> /is not a staged subdivision Planning Permit No.		
NIL	NIL	<b>Depth Limitation</b> DOES NOT APPLY		
		<p style="text-align: center;"><u>LOCATION OF BOUNDARIES DEFINED BY BUILDINGS</u></p> <p>MEDIAN: Boundaries marked M</p> <p>INTERIOR FACE: _____</p> <p>EXTERIOR FACE: All other boundaries</p> <p>Boundaries shown by continuous heavy lines are defined by buildings.</p> <p>Cross sections are not to scale.</p>		
		<p><b>Survey</b> This plan is <del>is not</del> based on survey</p> <p>This survey has been connected to permanent marks no(s) In Proclaimed Survey Area No.</p>		
<b>Easement Information</b>				<b>LTO use only</b>
<p><b>Legend:</b> E - Encumbering Easement or Condition in Crown Grant in the Nature of an Easement or other Encumbrance A - Appurtenant Easement R - Encumbering Easement (Road)</p>				Statement of Compliance/ Exemption Statement
SECTION 12 (2) SUBDIVISION ACT 1988				Received <input checked="" type="checkbox"/>
Subject Land	Purpose	Width (Metres)	Origin	Land Benefited/In Favour Of
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				Date <b>15 / 3 / 96</b>
				<b>LTO use only</b>
				PLAN REGISTERED
				TIME
				DATE <b>3 / 4 / 96</b>
				<i>J. Sagan</i> Assistant Registrar of Titles
				Sheet 1 of 5 Sheets
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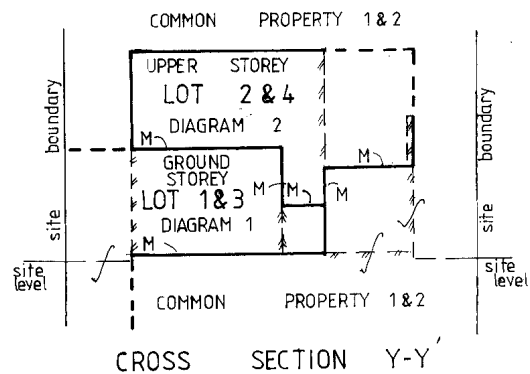
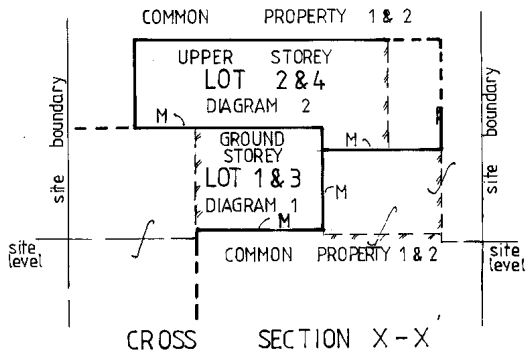
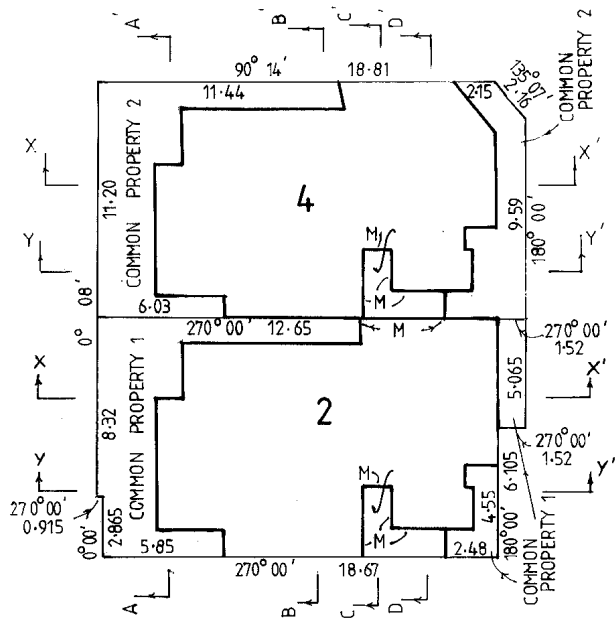
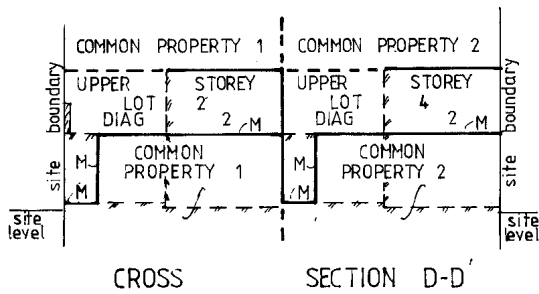
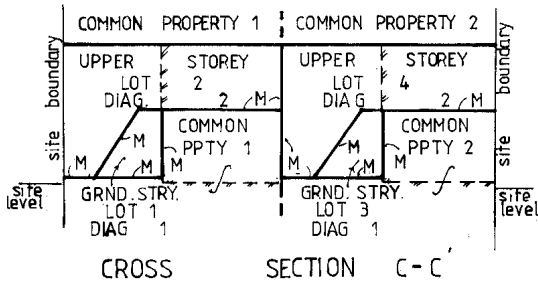
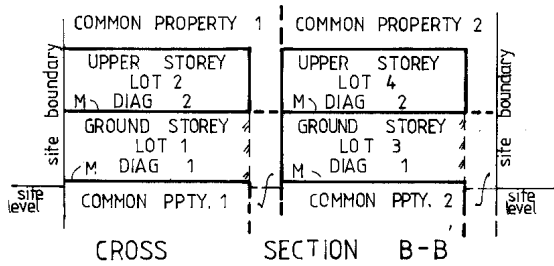
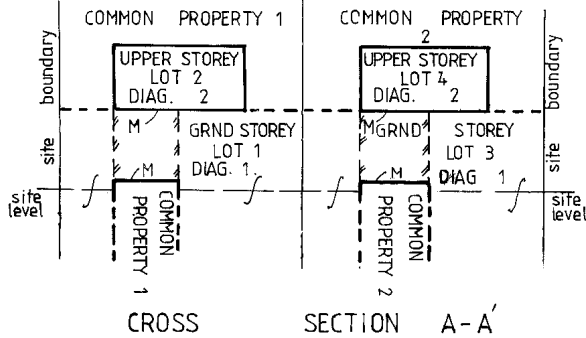


# PLAN OF SUBDIVISION

Page 16 of 68 Stage No.

Plan Number  
**PS 400383 B**

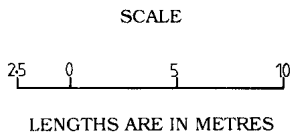
## DIAGRAM 2



W. CRANE  
P.O. BOX 678  
ELTHAM 3095 718 1643

Sheet 3 of 5 sheets

ORIGINAL  
SCALE SHEET  
SIZE  
A3



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SIGNATURE..... DATE / /  
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Original sheet size A3

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**PS400383B**

**Owners corporation information  
formerly contained on Sheets**

**4, 5**

**of this plan is now available in the Owners  
Corporation Search Report**

**Sheets**

**5**

**have been removed from this plan**

**REGISTER SEARCH STATEMENT (Title Search) Transfer of  
Land Act 1958**

VOLUME 10276 FOLIO 746  
No Coft exists

Security no : 124107694921G  
Produced 18/07/2023 02:25 PM

**LAND DESCRIPTION**

Common Property 2 on Plan of Subdivision 400383B.  
PARENT TITLES :  
Volume 10228 Folio 032 to Volume 10228 Folio 033  
Created by instrument PS400383B 03/04/1996

**REGISTERED PROPRIETOR**

Estate Fee Simple  
Sole Proprietor  
OWNERS CORPORATION 2 PLAN NO. PS400383B of 23-25 SHANDS LANE NORTH MELBOURNE  
VIC 3051  
PS400383B 03/04/1996

**ENCUMBRANCES, CAVEATS AND NOTICES**

Any encumbrances affecting Common Property that are derived from an encumbrance shown on titles to lots affected by the Owners Corporation.

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section 24 Subdivision Act 1988 and any other encumbrances shown or entered on the plan set out under DIAGRAM LOCATION below.

**DIAGRAM LOCATION**

SEE PS400383B FOR FURTHER DETAILS AND BOUNDARIES

**ACTIVITY IN THE LAST 125 DAYS**

NIL

-----END OF REGISTER SEARCH STATEMENT-----

Additional information: (not part of the Register Search Statement)

Street Address: 23-25 SHANDS LANE NORTH MELBOURNE VIC 3051

**OWNERS CORPORATIONS**

The land in this folio is affected by  
OWNERS CORPORATION 2 PLAN NO. PS400383B

DOCUMENT END



# Department of Environment, Land, Water & Planning

## Owners Corporation Search Report

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Produced: 18/07/2023 02:28:11 PM

**OWNERS CORPORATION 1**  
**PLAN NO. PS400383B**

The land in PS400383B is affected by 2 Owners Corporation(s)

### Land Affected by Owners Corporation:

Common Property 1, Lots 1, 2.

### Limitations on Owners Corporation:

Unlimited

### Postal Address for Services of Notices:

19-21 SHANDS LANE NORTH MELBOURNE VIC 3051

PS400383B 03/04/1996

### Owners Corporation Manager:

NIL

### Rules:

Model Rules apply unless a matter is provided for in Owners Corporation Rules. See Section 139(3) Owners Corporation Act 2006

### Owners Corporation Rules:

NIL

### Additional Owners Corporation Information:

NIL

### Notations:

Only the members of Owners Corporation 1 are entitled to use Common Property No. 1

### Entitlement and Liability:

NOTE – Folio References are only provided in a Premium Report.

Land Parcel	Entitlement	Liability
Common Property 1	0	0
Lot 1	100	100
Lot 2	100	100
<b>Total</b>	<b>200.00</b>	<b>200.00</b>

From 31 December 2007 every Body Corporate is deemed to be an Owners Corporation. Any reference to a Body Corporate in any Plan, Instrument or Folio is to be read as a reference to an Owners Corporation.



# Department of Environment, Land, Water & Planning

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## Owners Corporation Search Report

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**OWNERS CORPORATION 1**  
**PLAN NO. PS400383B**

Statement End.





# Department of Environment, Land, Water & Planning

## Owners Corporation Search Report

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**OWNERS CORPORATION 2**  
**PLAN NO. PS400383B**

The land in PS400383B is affected by 2 Owners Corporation(s)

### Land Affected by Owners Corporation:

Common Property 2, Lots 3, 4.

### Limitations on Owners Corporation:

Unlimited

### Postal Address for Services of Notices:

23-25 SHANDS LANE NORTH MELBOURNE VIC 3051

PS400383B 03/04/1996

### Owners Corporation Manager:

NIL

### Rules:

Model Rules apply unless a matter is provided for in Owners Corporation Rules. See Section 139(3) Owners Corporation Act 2006

### Owners Corporation Rules:

NIL

### Additional Owners Corporation Information:

NIL

### Notations:

Only the members of Owners Corporation 2 are entitled to use Common Property No. 2.

### Entitlement and Liability:

NOTE – Folio References are only provided in a Premium Report.

Land Parcel	Entitlement	Liability
Common Property 2	0	0
Lot 3	100	100
Lot 4	100	100
<b>Total</b>	<b>200.00</b>	<b>200.00</b>

From 31 December 2007 every Body Corporate is deemed to be an Owners Corporation. Any reference to a Body Corporate in any Plan, Instrument or Folio is to be read as a reference to an Owners Corporation.



# Department of Environment, Land, Water & Planning

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## Owners Corporation Search Report

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<p><b>OWNERS CORPORATION 2</b> <b>PLAN NO. PS400383B</b></p>
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Statement End.

**REGISTER SEARCH STATEMENT (Title Search) Transfer of  
Land Act 1958**

VOLUME 10276 FOLIO 743

Security no : 124106122699T  
Produced 16/05/2023 01:40 PM

**LAND DESCRIPTION**

Lot 3 on Plan of Subdivision 400383B.  
PARENT TITLES :  
Volume 10228 Folio 032 to Volume 10228 Folio 033  
Created by instrument PS400383B 03/04/1996

**REGISTERED PROPRIETOR**

Estate Fee Simple  
Joint Proprietors  
ANTHONY WILLIAM SHEA  
GUAT BENG SHEA both of 25 SHANDS LANE NORTH NORTH MELBOURNE VIC 3051  
AE199933A 22/02/2006

**ENCUMBRANCES, CAVEATS AND NOTICES**

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section 24 Subdivision Act 1988 and any other encumbrances shown or entered on the plan set out under DIAGRAM LOCATION below.

**DIAGRAM LOCATION**

SEE PS400383B FOR FURTHER DETAILS AND BOUNDARIES

**ACTIVITY IN THE LAST 125 DAYS**

NIL

-----END OF REGISTER SEARCH STATEMENT-----

Additional information: (not part of the Register Search Statement)

Street Address: 23 SHANDS LANE NORTH MELBOURNE VIC 3051

**OWNERS CORPORATIONS**

The land in this folio is affected by  
OWNERS CORPORATION 2 PLAN NO. PS400383B

DOCUMENT END

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Document Type	<b>Plan</b>
Document Identification	<b>PS400383B</b>
Number of Pages (excluding this cover sheet)	<b>4</b>
Document Assembled	<b>16/05/2023 13:44</b>

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<b>PLAN OF SUBDIVISION</b>	STAGE NO. <b>EDITION 1</b>	LTO use only <b>PS 400383 B</b>
----------------------------	----------------------------	------------------------------------

**Location of Land**

**Parish:** JIKA JIKA  
AT NORTH MELBOURNE

**Township:** \_\_\_\_\_

**Section:** 90

**Crown Allotment:** 8(part) & 17(part)

**Crown Portion:** \_\_\_\_\_

**LTO Base Record:** CHART 292

**Title Reference:** C/T VOL10228 FOL 032, 033.

**Last Plan Reference:** STAGE 3 PS.327560 M LOTS 9,10.

**Postal Address:** 19-25 SHANDS LANE  
NORTH MELBOURNE  
(at time of subdivision)

**AMG Co-ordinates** E 318 865      Zone: 55  
(of approx. centre of land in plan)      N 5 814 710

**Council Certification and Endorsement**

Council Name: MELBOURNE CITY COUNCIL      Ref: TP 95/1290 (783)

1. This plan is certified under section 6 of the Subdivision Act 1988.

~~2. This plan is certified under section 11(7) of the Subdivision Act 1988.~~  
~~Date of original certification under section 6      /      /~~

3. This is a statement of compliance issued under section 21 of the Subdivision Act 1988.

OPEN SPACE

(i) A requirement for public open space under section 18 of the Subdivision Act 1988 ~~has~~/has not been made.

(ii) The requirement has been satisfied.

(iii) The requirement is to be satisfied in Stage.....

Council delegate  
~~Council seal~~

Date      **6 / 3 / 96**

Re-certified under section 11(7) of the Subdivision Act 1988

Council Delegate  
Council Seal

Date      /      /

**Vesting of Roads or Reserves**

Identifier	Council/Body/Person
NIL	NIL

**Notations**

**Staging**      This ~~is~~/is not a staged subdivision  
Planning Permit No. \_\_\_\_\_

**Depth Limitation**      DOES NOT APPLY

LOCATION OF BOUNDARIES DEFINED BY BUILDINGS  
 MEDIAN: Boundaries marked M  
 INTERIOR FACE: \_\_\_\_\_  
 EXTERIOR FACE: All other boundaries

Boundaries shown by continuous heavy lines are defined by buildings.  
 Cross sections are not to scale.

**Survey**      This plan is/~~is not~~ based on survey  
 This survey has been connected to permanent marks no(s)  
 In Proclaimed Survey Area No. \_\_\_\_\_

**Easement Information**

**Legend:**      E - Encumbering Easement or Condition in Crown Grant in the Nature of an Easement or other Encumbrance  
                   A - Appurtenant Easement      R - Encumbering Easement (Road)

SECTION 12 (2) SUBDIVISION ACT 1988

Subject Land	Purpose	Width (Metres)	Origin	Land Benefited/In Favour Of
A-1 A-2 E-1 E-2	Drainage " Carriageway & drainage	0.305 2 see plan 1.52	1st Transfer 589526 C/E T416511M Stage 3 PS.327560M " " "	C/T Vol 6705 Fol 905 C/T Vol 10147 F 100 PS 327560 M Lots 6-10 on PS 327560 M C Ts V.3502 F 225, V.6683 F 490, V.8270 F 094, V.8338 F 452, V.1642 F 271 AND LOTS 6-10 ON PS 327560M

**LTO use only**

Statement of Compliance/  
Exemption Statement

Received     

Date      **15 / 3 / 96**

**LTO use only**

PLAN REGISTERED

TIME

DATE      **3 / 4 / 96**

*J. Sagan*  
Assistant Registrar of Titles

Sheet 1 of 5 Sheets

W CRANE  
P.O. BOX 678  
ELTHAM. 3095      718 1643

LICENSED SURVEYOR (PRINT)..... **W CRANE**

SIGNATURE.....      DATE      /      /

REF 4966      VERSION 2

DATE      /      /

COUNCIL DELEGATE SIGNATURE

Original sheet size A3

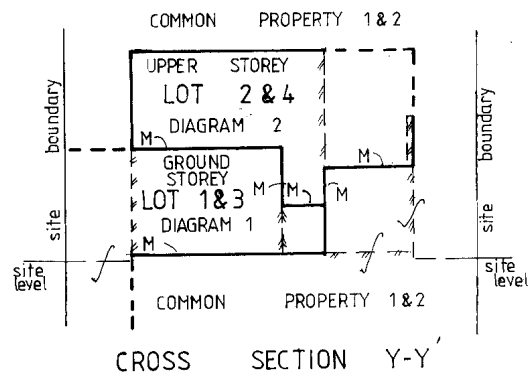
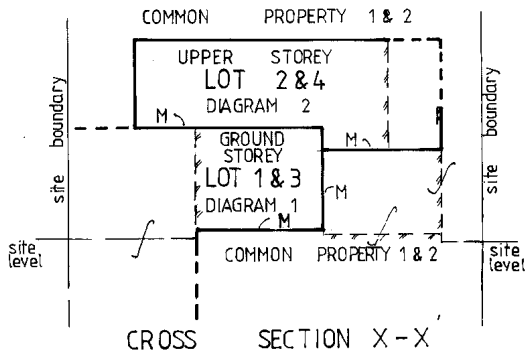
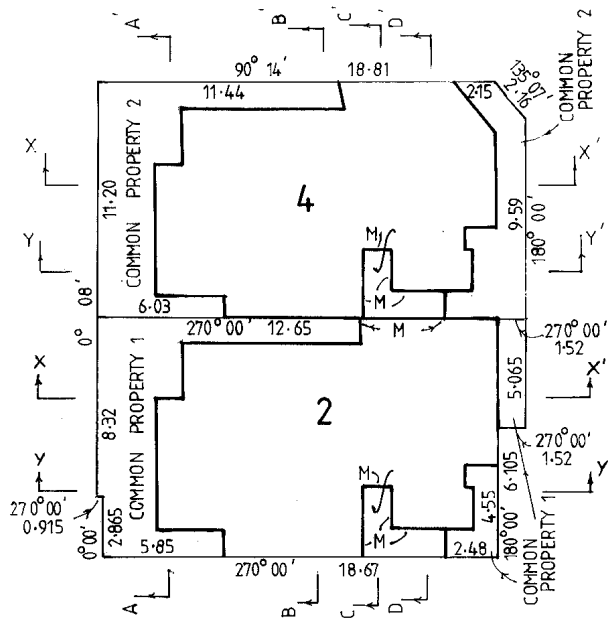
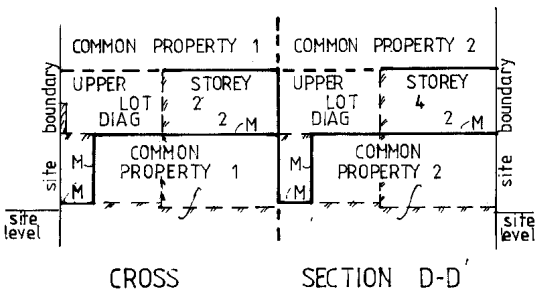
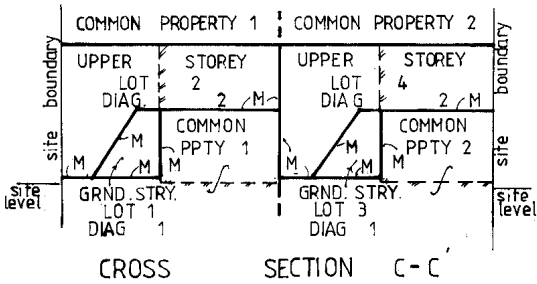
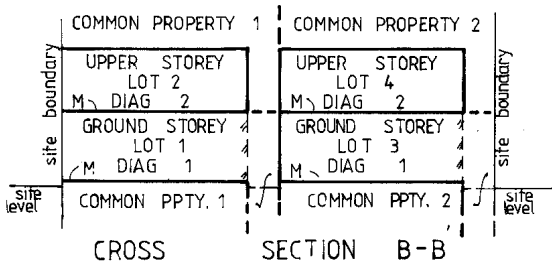
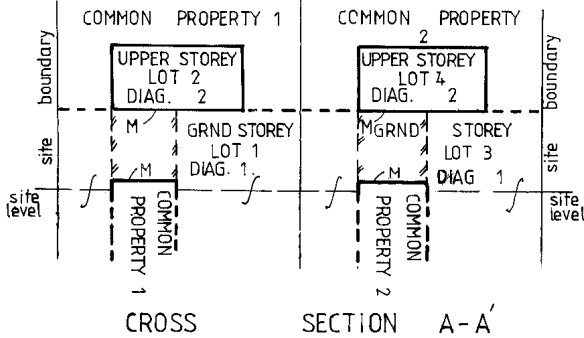


# PLAN OF SUBDIVISION

Page 27 of 68 Stage No.

Plan Number  
**PS 400383 B**

## DIAGRAM 2



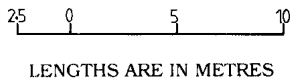
W. CRANE  
P.O. BOX 678  
ELTHAM 3095 718 1643

Sheet 3 of 5 sheets

ORIGINAL

SCALE

SCALE SHEET SIZE  
1 : 250 A3



LICENSED SURVEYOR (PRINT) W. CRANE

SIGNATURE..... DATE / /

REF 4966

VERSION 2

DATE / /

COUNCIL DELEGATE SIGNATURE

Original sheet size A3

**PS400383B**

**Owners corporation information  
formerly contained on Sheets**

**4, 5**

**of this plan is now available in the Owners  
Corporation Search Report**

**Sheets**

**5**

**have been removed from this plan**





# Department of Environment, Land, Water & Planning

## Owners Corporation Search Report

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Produced: 16/05/2023 01:44:42 PM

**OWNERS CORPORATION 1**  
**PLAN NO. PS400383B**

The land in PS400383B is affected by 2 Owners Corporation(s)

### Land Affected by Owners Corporation:

Common Property 1, Lots 1, 2.

### Limitations on Owners Corporation:

Unlimited

### Postal Address for Services of Notices:

19-21 SHANDS LANE NORTH MELBOURNE VIC 3051

PS400383B 03/04/1996

### Owners Corporation Manager:

NIL

### Rules:

Model Rules apply unless a matter is provided for in Owners Corporation Rules. See Section 139(3) Owners Corporation Act 2006

### Owners Corporation Rules:

NIL

### Additional Owners Corporation Information:

NIL

### Notations:

Only the members of Owners Corporation 1 are entitled to use Common Property No. 1

### Entitlement and Liability:

NOTE – Folio References are only provided in a Premium Report.

Land Parcel	Entitlement	Liability
Common Property 1	0	0
Lot 1	100	100
Lot 2	100	100
<b>Total</b>	<b>200.00</b>	<b>200.00</b>

From 31 December 2007 every Body Corporate is deemed to be an Owners Corporation. Any reference to a Body Corporate in any Plan, Instrument or Folio is to be read as a reference to an Owners Corporation.



# Department of Environment, Land, Water & Planning

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## Owners Corporation Search Report

Produced: 16/05/2023 01:44:42 PM

<p><b>OWNERS CORPORATION 1</b> <b>PLAN NO. PS400383B</b></p>
--

Statement End.



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## Owners Corporation Search Report

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Produced: 16/05/2023 01:44:42 PM

**OWNERS CORPORATION 2**  
**PLAN NO. PS400383B**

The land in PS400383B is affected by 2 Owners Corporation(s)

### Land Affected by Owners Corporation:

Common Property 2, Lots 3, 4.

### Limitations on Owners Corporation:

Unlimited

### Postal Address for Services of Notices:

23-25 SHANDS LANE NORTH MELBOURNE VIC 3051

PS400383B 03/04/1996

### Owners Corporation Manager:

NIL

### Rules:

Model Rules apply unless a matter is provided for in Owners Corporation Rules. See Section 139(3) Owners Corporation Act 2006

### Owners Corporation Rules:

NIL

### Additional Owners Corporation Information:

NIL

### Notations:

Only the members of Owners Corporation 2 are entitled to use Common Property No. 2.

### Entitlement and Liability:

NOTE – Folio References are only provided in a Premium Report.

Land Parcel	Entitlement	Liability
Common Property 2	0	0
Lot 3	100	100
Lot 4	100	100
<b>Total</b>	<b>200.00</b>	<b>200.00</b>

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# Department of Environment, Land, Water & Planning

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## Owners Corporation Search Report

Produced: 16/05/2023 01:44:42 PM

<p><b>OWNERS CORPORATION 2</b> <b>PLAN NO. PS400383B</b></p>
--

Statement End.

**REGISTER SEARCH STATEMENT (Title Search) Transfer of  
Land Act 1958**

VOLUME 10276 FOLIO 744

Security no : 124106394562Q  
Produced 26/05/2023 01:21 PM

**LAND DESCRIPTION**

Lot 4 on Plan of Subdivision 400383B.  
PARENT TITLES :  
Volume 10228 Folio 032 to Volume 10228 Folio 033  
Created by instrument PS400383B 03/04/1996

**REGISTERED PROPRIETOR**

Estate Fee Simple  
Joint Proprietors  
ANTHONY WILLIAM SHEA  
BENG OOI GUAT both of 25 SHANDS LA, MELBOURNE 3000  
V619215J 02/09/1998

**ENCUMBRANCES, CAVEATS AND NOTICES**

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section 24 Subdivision Act 1988 and any other encumbrances shown or entered on the plan set out under DIAGRAM LOCATION below.

**DIAGRAM LOCATION**

SEE PS400383B FOR FURTHER DETAILS AND BOUNDARIES

**ACTIVITY IN THE LAST 125 DAYS**

NIL

-----END OF REGISTER SEARCH STATEMENT-----

Additional information: (not part of the Register Search Statement)

Street Address: 25 SHANDS LANE NORTH MELBOURNE VIC 3051

**OWNERS CORPORATIONS**

The land in this folio is affected by  
OWNERS CORPORATION 2 PLAN NO. PS400383B

DOCUMENT END

# Imaged Document Cover Sheet

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Document Type	<b>Plan</b>
Document Identification	<b>PS400383B</b>
Number of Pages (excluding this cover sheet)	<b>4</b>
Document Assembled	<b>26/05/2023 13:24</b>

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<b>PLAN OF SUBDIVISION</b>	STAGE NO. <b>EDITION 1</b>	LTO use only <b>PS 400383 B</b>
----------------------------	----------------------------	------------------------------------

**Location of Land**

**Parish:** JIKA JIKA  
AT NORTH MELBOURNE

**Township:** \_\_\_\_\_

**Section:** 90

**Crown Allotment:** 8(part) & 17(part)

**Crown Portion:** \_\_\_\_\_

**LTO Base Record:** CHART 292

**Title Reference:** C/T VOL10228 FOL 032, 033.

**Last Plan Reference:** STAGE 3 PS.327560 M LOTS 9,10.

**Postal Address:** 19-25 SHANDS LANE  
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(at time of subdivision)

**AMG Co-ordinates** E 318 865 Zone: 55  
(of approx. centre of land in plan) N 5 814 710

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Council Name: MELBOURNE CITY COUNCIL Ref: TP 95/1290 (783)

- This plan is certified under section 6 of the Subdivision Act 1988.
- ~~This plan is certified under section 11(7) of the Subdivision Act 1988.~~  
~~Date of original certification under section 6~~ / /
- This is a statement of compliance issued under section 21 of the Subdivision Act 1988.

OPEN SPACE

(i) A requirement for public open space under section 18 of the Subdivision Act 1988 ~~has~~/has not been made.

(ii) The requirement has been satisfied.

(iii) The requirement is to be satisfied in Stage.....

Council delegate  
~~Council seal~~

Date **6 / 3 / 96**

Re-certified under section 11(7) of the Subdivision Act 1988

Council Delegate  
Council Seal

Date / /

**Vesting of Roads or Reserves**

Identifier	Council/Body/Person
NIL	NIL

**Notations**

**Staging** This ~~is~~/is not a staged subdivision  
Planning Permit No. \_\_\_\_\_

**Depth Limitation** DOES NOT APPLY

LOCATION OF BOUNDARIES DEFINED BY BUILDINGS  
 MEDIAN: Boundaries marked M  
 INTERIOR FACE: \_\_\_\_\_  
 EXTERIOR FACE: All other boundaries

Boundaries shown by continuous heavy lines are defined by buildings.  
 Cross sections are not to scale.

**Survey** This plan is/~~is not~~ based on survey  
 This survey has been connected to permanent marks no(s)  
 In Proclaimed Survey Area No. \_\_\_\_\_

**Easement Information**

**Legend:** E - Encumbering Easement or Condition in Crown Grant in the Nature of an Easement or other Encumbrance  
 A - Appurtenant Easement R - Encumbering Easement (Road)

SECTION 12 (2) SUBDIVISION ACT 1988

**LTO use only**

Statement of Compliance/  
Exemption Statement

Received

Date **15 / 3 / 96**

Subject Land	Purpose	Width (Metres)	Origin	Land Benefited/In Favour Of
A-1 A-2 E-1 E-2	Drainage " Carriageway & drainage	0.305 2 see plan 1.52	1st Transfer 589526 C/E T416511M Stage 3 PS.327560M " " "	C/T Vol 6705 Fol 905 C/T Vol 10147 F 100 PS 327560 M Lots 6-10 on C Ts V.3502 F 225, V.6683 F 490, V.8270 F 094, V.8338 F 452, V.1642 F 271 AND LOTS 6-10 ON PS 327560M

**LTO use only**

PLAN REGISTERED

TIME

DATE **3 / 4 / 96**

*J. Sagan*  
Assistant Registrar of Titles

Sheet 1 of 5 Sheets

W CRANE  
P.O. BOX 678  
ELTHAM. 3095 718 1643

LICENSED SURVEYOR (PRINT) **W CRANE**

SIGNATURE..... DATE / /

REF 4966 VERSION 2

DATE / /

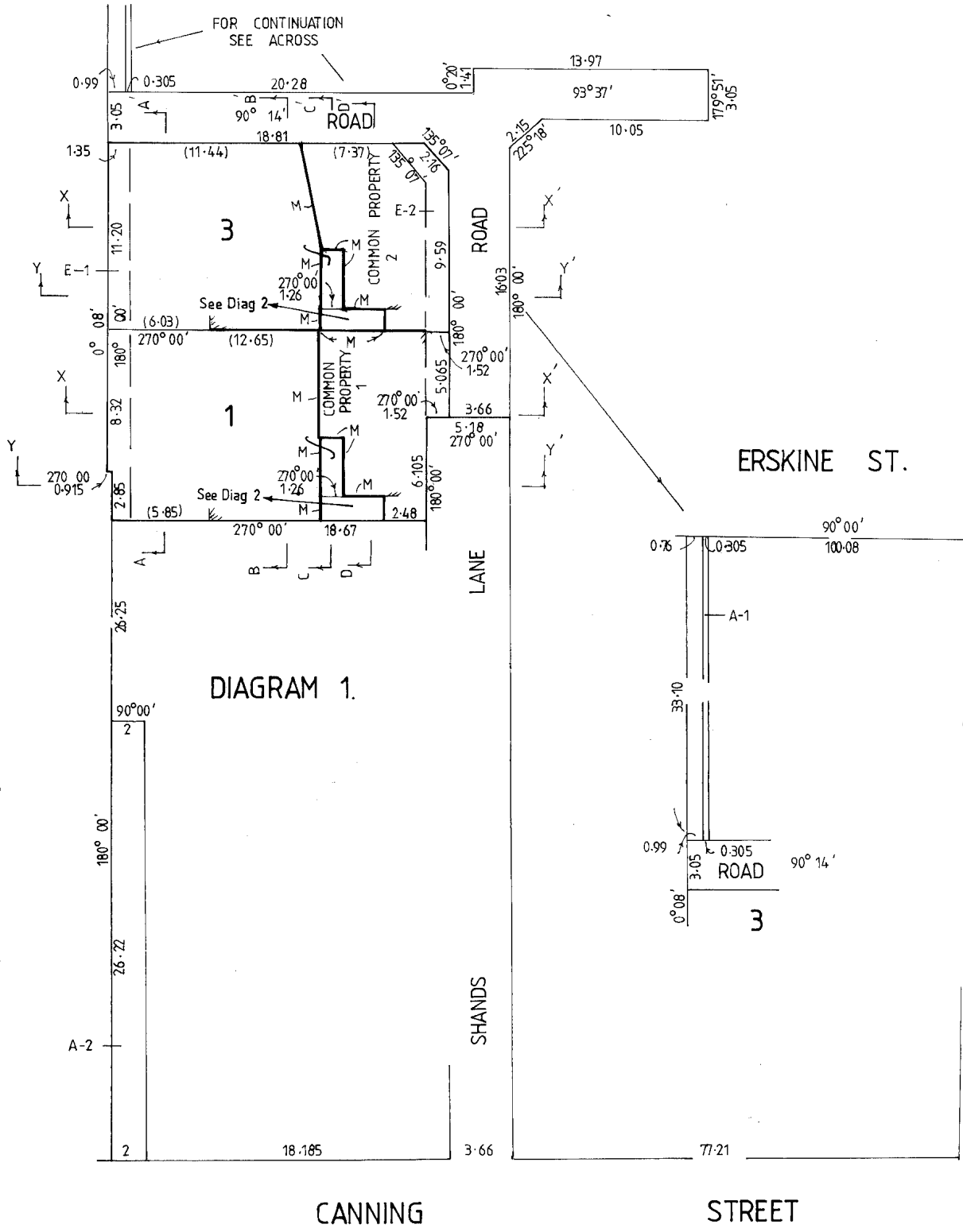
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Original sheet size A3

**PLAN OF SUBDIVISION**

Page 36 of 68 Stage No.

Plan Number  
**PS 400383 B**

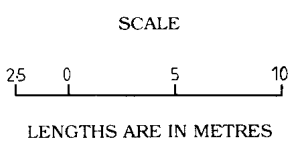


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W. CRANE  
P.O. BOX 678  
ELTHAM, 3095 718 1643

Sheet 2 of 5 sheets

ORIGINAL  
SCALE SHEET SIZE A3  
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LICENSED SURVEYOR (PRINT) W CRANE

SIGNATURE..... DATE / /

REF 4966 VERSION 2

DATE / /

COUNCIL DELEGATE SIGNATURE

Original sheet size A3

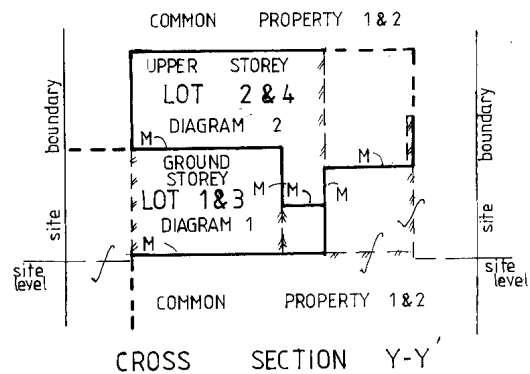
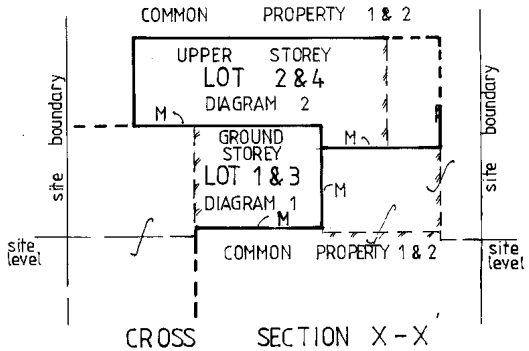
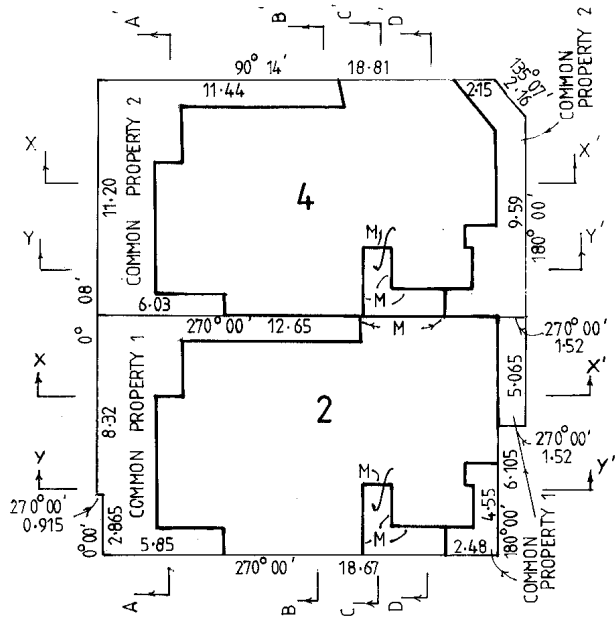
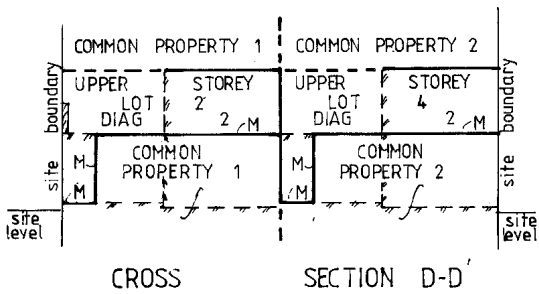
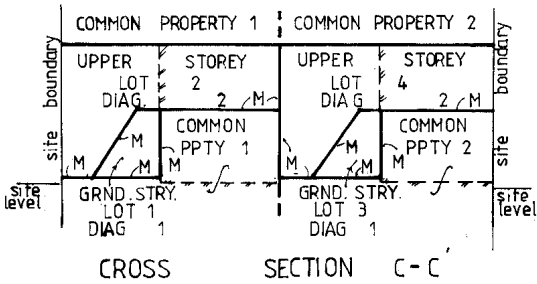
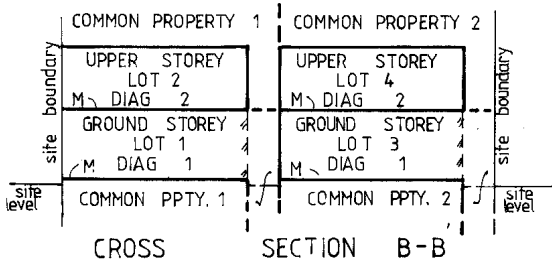
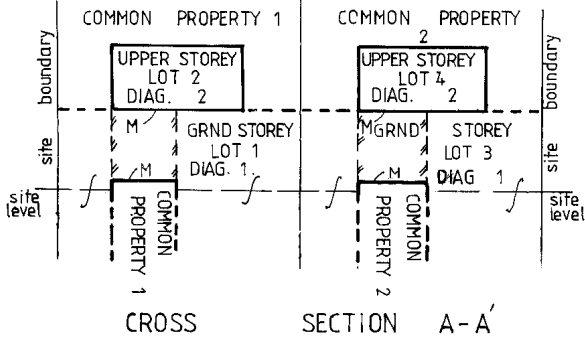


# PLAN OF SUBDIVISION

Page 37 of 68 Stage No.

Plan Number  
**PS 400383 B**

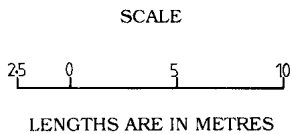
## DIAGRAM 2



W. CRANE  
P.O. BOX 678  
ELTHAM 3095 718 1643

Sheet 3 of 5 sheets

ORIGINAL  
SCALE SHEET  
SIZE  
A3



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SIGNATURE..... DATE / /  
REF 4966 VERSION 2

DATE / /  
COUNCIL DELEGATE SIGNATURE

Original sheet size A3

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**PS400383B**

**Owners corporation information  
formerly contained on Sheets**

**4, 5**

**of this plan is now available in the Owners  
Corporation Search Report**

**Sheets**

**5**

**have been removed from this plan**



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Produced: 26/05/2023 01:24:14 PM

**OWNERS CORPORATION 1**  
**PLAN NO. PS400383B**

The land in PS400383B is affected by 2 Owners Corporation(s)

### Land Affected by Owners Corporation:

Common Property 1, Lots 1, 2.

### Limitations on Owners Corporation:

Unlimited

### Postal Address for Services of Notices:

19-21 SHANDS LANE NORTH MELBOURNE VIC 3051

PS400383B 03/04/1996

### Owners Corporation Manager:

NIL

### Rules:

Model Rules apply unless a matter is provided for in Owners Corporation Rules. See Section 139(3) Owners Corporation Act 2006

### Owners Corporation Rules:

NIL

### Additional Owners Corporation Information:

NIL

### Notations:

Only the members of Owners Corporation 1 are entitled to use Common Property No. 1

### Entitlement and Liability:

NOTE – Folio References are only provided in a Premium Report.

Land Parcel	Entitlement	Liability
Common Property 1	0	0
Lot 1	100	100
Lot 2	100	100
<b>Total</b>	<b>200.00</b>	<b>200.00</b>

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# Department of Environment, Land, Water & Planning

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## Owners Corporation Search Report

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<p><b>OWNERS CORPORATION 1</b> <b>PLAN NO. PS400383B</b></p>
--

Statement End.



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## Owners Corporation Search Report

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Produced: 26/05/2023 01:24:14 PM

**OWNERS CORPORATION 2**  
**PLAN NO. PS400383B**

The land in PS400383B is affected by 2 Owners Corporation(s)

### Land Affected by Owners Corporation:

Common Property 2, Lots 3, 4.

### Limitations on Owners Corporation:

Unlimited

### Postal Address for Services of Notices:

23-25 SHANDS LANE NORTH MELBOURNE VIC 3051

PS400383B 03/04/1996

### Owners Corporation Manager:

NIL

### Rules:

Model Rules apply unless a matter is provided for in Owners Corporation Rules. See Section 139(3) Owners Corporation Act 2006

### Owners Corporation Rules:

NIL

### Additional Owners Corporation Information:

NIL

### Notations:

Only the members of Owners Corporation 2 are entitled to use Common Property No. 2.

### Entitlement and Liability:

NOTE – Folio References are only provided in a Premium Report.

Land Parcel	Entitlement	Liability
Common Property 2	0	0
Lot 3	100	100
Lot 4	100	100
<b>Total</b>	<b>200.00</b>	<b>200.00</b>

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# Department of Environment, Land, Water & Planning

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## Owners Corporation Search Report

Produced: 26/05/2023 01:24:14 PM

**OWNERS CORPORATION 2**  
**PLAN NO. PS400383B**

Statement End.

[REDACTED]

---

**From:** Thomas Harper [REDACTED]  
**Sent:** Monday, 20 November 2023 10:55 PM  
**To:** CoM Meetings  
**Subject:** Re: Proposed Public Highway declaration Shands Lane and PT5202  
**Attachments:** 2023.11.20 - Revised response to Proposed public highway declaration of Shands Lane.pdf

To the Director Governance, Melbourne City Council,  
Having sought the advice of my solicitor and spoken to the City Infrastructure Team at Melbourne City Council, I would like to retract my submission on this matter dated 13 November 2023.  
In its place, please find my amended submission, dated 20 November 2023.

**Wish to be heard on the matter and appear in person.**

Please confirm receipt of this letter and the details of the hearing for this matter.  
Best wishes,

Thomas Harper  
Phone: [REDACTED]

On Monday, 13 November 2023 at 09:43:01 pm AEDT, [REDACTED] wrote:

To the Director Governance, Melbourne City Council,  
Please find my submission to *proposed Public Highway declaration Shands Lane and PT5202* attached.

**Wish to be heard on the matter and appear in person.**

Please confirm receipt of this letter and the details of the hearing for this matter.  
Best wishes,

Thomas Harper  
Phone: [REDACTED]

Director Governance  
Melbourne City Council  
GPO Box 1603  
Melbourne  
Victoria 3001

Thomas Harper  
31 Erskine Street  
North Melbourne  
Victoria 3051

20 November 2023

**Re: Proposed Public Highway declaration Shands Lane and PT5202**

Dear Director and Council members,

I support the Proposed Public Highway declaration of Shands Lane in North Melbourne in principle. However, there significant concerns need to be addressed.

**Safety**

The western portion of Shands Lane has only been used for foot traffic since at least the 1950s and this status as a pedestrian-only space should remain.

The lane is less than 3m wide at this point. Current Australian and New Zealand practice is to provide standard widths of 3.5m (Austroads, Guide to Road Design Part 3: Geometric Design). Austroads 2009b denotes that narrower lanes are possible, down to a minimum of 3.3m. This is 10% wider than the available space in the western portion of Shands Lane.

My back door and the rear access of both 33 and 35 Erskine Street open directly into this part of the lane. As vehicles have to turn when they pass my back door they pass within 20 cm of my home.

Even at low speeds the risk posed to pedestrians is immense. There is no safe space to stand and no way to see vehicles coming, particularly when they are travelling east. This is a blind corner. Indeed, the lane is so narrow, drivers or passengers are unable to exit their vehicle when in the western portion of the lane.

Photograph 1 and Photograph 2 demonstrate how close vehicles pass my back door and how little vision there is to prevent incidents. The sight distance and potential stopping distance are almost zero from the exit from my property. The same would be the case from 33 and 35 Erskine Street.

Our family have determined not to use our own back door during the current construction at 37-39 Erskine Street as the risk is too great. If cars are permitted to access the western end of Shands Lane, this risk becomes permanent. We will lose the ability to safely exit our back door and the safety of all foot, scooter or bicycle traffic in the northern end of the lane will be severely impacted.



## **Vehicle strikes**

In the 42 years I've lived by the lane, I have found that damage from vehicles occasionally attempting to access the western end of Shands Lane to park is not uncommon. Because of this, signage advising *pedestrian traffic only* was installed in approximately 2005. This signage reflects the title limitations of 33 and 35 Erskine Street. The title for 37-39 Erskine Street does not include any lane access, nor any reference to Shands Lane.

Our home was hit by a reversing vehicle on 1 July 2023. Video of the driver immediately prior to the incident and myself checking the damage within moments of the accident can be provided.

The driver was the owner of 37-39 Erskine Street. No apology was offered and there has been no follow-up from him about the incident, even when we were both within 5m of the impact spot at the time.

As shown in Photograph 3, the damage caused is within 15cm of the timber back door that my children used to travel to North Melbourne Primary School prior to the safety concerns detailed above.

25 Shands Lane was struck on 1 September 2023, as shown in Photograph 4. The owners of this property had to approach the builders at 37-39 Erskine Street to arrange for this damage to be repaired.

## **Community amenity**

In an attempt to better maintain the space, neighbours from the length of Shands Lane previously constructed a community garden in the western end of lane. This was visited by Melbourne City Council in 2023 and we were advised that the Council was in favour of community gardens and that we should apply for a grant to support it.

The garden was forcibly removed by the owners of 37-39 Erskine Street on 13 May 2023. They threatened neighbours with a bobcat and breached noise restrictions by conducting the work at before 8am on a Saturday morning.

The community garden was dumped in the lane and the community banded together to clear the damaged garden and donate the boxes to a local initiative. This is shown in Photograph 5 and Photograph 9. The same community spirit remains in Shands Lane and there are regular functions and play dates with resident children and their friends in the middle and northern ends of the space.

Declaring Shands Lane a public highway is an opportunity to control appropriate access and usage of the space for the benefit and amenity of all residents. Allowing vehicles to traverse such a clearly inappropriate space benefits one resident at the expense of all others.

## **Data**

No traffic analysis or safety assessment have been shared with residents and it is unclear if they have been conducted.

In my experience, vehicles cannot successfully negotiate the corner to the western portion of Shands Lane without conducting a two-point turn. This further increases the risk to other users of the lane.

References to standard Australian road widths are included earlier in this letter. The western portion of Shands lane is narrower than the minimum specified by a considerable margin.

### **Conclusion**

It is a historical anomaly that the western portion of Shands Lane has remained a private space for so long. Declaring it a public highway means the significant issues raised in this letter can finally be addressed.


Of greatest importance are the safety and amenity of the space for all users. The western portion of Shands Lane is inappropriate and unsafe for vehicular access and the ambiguous nature of the space to date has been the source of many issues. Melbourne City Council has the opportunity to end this ambiguity.

Securing the narrow, blind corner from unsafe traffic will ensure the space remains viable for the many foot, bike and scooter users that access their homes from this vantage. It also creates an opportunity for safe play, new green space or other options that benefit all residents.

### **Wish to be heard on the matter and appear in person.**

Please confirm receipt of this letter and the details of the hearing for this matter.

Best wishes,



Thomas Harper

## Attachments

**Photograph 1      How close vehicles pass my back door (a)**



**Photograph 2      How close vehicles pass my back door (b)**





**Photograph 3      Impact mark on my home (video can be provided)**



**Photograph 4      Damage caused to 25 Shands Lane**



**Photograph 5      Establishing our community garden (a)**





**Photograph 6      Establishing our community garden (b)**



**Photograph 7      Establishing our community garden (c)**





**Photograph 8      The community garden dumped by the owners of 37-39 Erskine Street**



**Photograph 9      Clearing the dumped community garden**



[REDACTED]

**Sent:** Thursday, 7 December 2023 7:50 AM  
**To:** CoM Meetings  
**Subject:** Submissions (223) Committee submissions form [#29]

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

\*

**Name: \*** Andrew Clarkson

**Email address: \*** [REDACTED]

[REDACTED] \* [REDACTED]

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

To: The Director Governance,  
Melbourne City Council

Subject: Proposed Public Highway declaration Shands Lane and PT5202

I wish to make a submission in relation to the above.

Having lived at No 35 Erskine Street North Melbourne for over 35 Years and also holding the title to the property which backs onto the western end of Shands Lane, I have always insisted and attempted over the years to maintain all my common law rights of access to my property.

I fully support the Councils proposal to declare the whole of Shands Lane a Public Highway.

As far as maintenance of this western end of the laneway, it has been me who has mowed, weeded & unblocked the spoon drains and cleaned out the drainage pit at the very end of it. (There is a storm water drainage easement down the western side of my prpperty to Erskine Street.)

I have had my vehicle down that laneway many times over the years and used the rear access it for delivery of bulky white goods into my property. ( If you look at google maps satellite view, you will actually see my car parked in the laneway.)

Various neighbors further up the lane way that have no knowledge of common law property rights have



over the years attempted to block my vehicular access, claiming the access is not granted on my land title. Each time, full access has been restored by the efforts of the 3 owners down the western end of the laneway that have properties that face onto Erskine Street... ie, Nos 33, 35 & 37-39.

Most recently it was with vegetable garden planter boxes placed there that only allowing my rear gates to open with a 0.75 meter gap left for entry and exit through the rear gate. With the grateful help of the owners of No 37- 39 Erskine street along with their diesel powered earthmoving equipment, full access to all of our properties was rightly restored.

Further attempts to block laneway access after this were quickly met with direct action and stern warnings that 24/7 access to the properties will now be always enforced.

The unlawful actions of a few neighbours in blocking the rear access has caused alot of stress and angst and legal cost, so with the Council declaring the whole of the laneway a Public Highway this will finally put an end to this nonsense.

My future plans are to upgrade the rear access of my property with a rolla type door across the back of it to enable a small vehicle to park in my backyard.

Yours Sincerely,

Andrew Clarkson  
Owner of No 35 Erskine St.

P: [REDACTED]

E: [REDACTED]

**Please indicate**      **No**  
**whether you**  
**would like to be**  
**heard by the**  
**Submissions**  
**(Section 223)**  
**Committee in**  
**relation to your**  
**submission live**  
**via phone or**  
**Zoom: \***

## Jordan McKay

---

**From:** Wufoo <no-reply@wufoo.com>  
**Sent:** Monday, 4 December 2023 10:21 PM  
**To:** CoM Meetings  
**Subject:** Submissions (223) Committee submissions form [#27]

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

**Name: \*** Sarah Kendell

**Email address: \***



**Phone number \***



Alternatively you may attach your written submission by uploading your file here:



[notice\\_from\\_council\\_06.11.2023.pdf](#) 1.56 MB · PDF

Please indicate whether you would like to be heard by the Submissions (Section 223) Committee in relation to your submission live via phone or Zoom: \*

[REDACTED]

---

**From:** Sarah Kendell [REDACTED]  
**Sent:** Monday, 4 December 2023 10:16 PM  
**To:** CoM Meetings  
**Subject:** [AMP WARNING: ATTACHMENT UNSCANNED]Proposed Public Highway declaration Shands Lane and PT5202  
**Attachments:** Submission to Council 04.12.23.pdf; Historical Title Search - Shands Lane (Remnant) - CT 00230 957 - Lot 1 TP870089M.pdf; Excerpt of Subdivision Plan.pdf; Notice from Council - 06.11.2023.pdf

To the Director of Governance,  
Please refer to attached documentation as our submission regarding the Proposed Public Highway declaration Shands Lane and PT5202, North Melbourne, 3051.  
Yours sincerely,  
Sarah and Warrick Kendell

Warrick and Sarah Kendell  
39 Erskine Road  
North Melbourne VIC 3051

Director Governance  
Melbourne City Council  
GPO Box 1603  
Melbourne VIC 3001

By mail and email: [com.meetings@melbourne.vic.gov.au](mailto:com.meetings@melbourne.vic.gov.au)

4 December 2023

Dear Sir/Madam,

**Re: Proposed Public Highway declaration Shands Lane and PT5202**

We refer to the attached notice from Daniel Janghorban dated 6 November 2023 (**Notice**) in relation to the Council's proposal to declare Shands Lane and PT5202 in North Melbourne as public highways (**Proposal**)

We are the owners of 37-39 Erskine Street, North Melbourne VIC 3051 (**Property**). Our Property abuts the nearby laneway known as Shands Lane (the **Lane**), which is one of the laneways mentioned in the Proposal.

We wish to formally declare our support for the Proposal, our reasons for which are summarised in this letter.

**Background**

For completeness, the Notice describes the Proposal as follows:

*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 with the southern and eastern portions of Shands Lane having 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.*

We, and some of our neighbours, have recently experienced tension between the owners or occupiers of other properties abutting the Lane, with certain parties seeking to occupy the Lane for their own personal use and restricting access to members of the public or other neighbours.

Obtaining a declaration from Council of a public highway with respect to the Lane (and generally the roads or other lanes mentioned in the Proposal) would resolve such concerns.

**Advice Obtained**

We have previously made further enquiries and sought legal advice, including advice from an experienced barrister practising in this field, and the advice we received was consistent with the reasoning set out in the Proposal.

Specifically, the advice we received may be summarised as follows:

1. Part of Shands Lane is on the register of public roads, which is directly connected to the 'private' portion of the Lane.

2. The titles comprising the private portion of the Lane were last registered to the executors of the Estate of Samuel James Thornton in 1908, who we understand cannot be located and the titles are therefore deemed to be remnant titles.
3. The historical plan of subdivision creating the Lane designates it as a "Road", which is consistent with subsequent title plans and plans of subdivision for the land comprising or abutting the Lane. This shows a clear intention of the landowner at the time to dedicate it to the public for the purpose of a lane.
4. The Lane has, both historically and more recently, been used as a means of public access to and from the public part of Shands Lane by passing over the Lane (including by way of a long-standing gate on the boundary of our Property), showing that this use has been accepted by the public.
5. Such longstanding public use of the Lane has been 'without force, without secrecy and without permission', consistent with the principles set out by the Courts in Victoria for determining whether a road is a public or private road or highway.
6. Our Property benefits from a carriageway easement over part of the Lane, but this would not be strictly required if it were declared a public road. For completeness, many of the nearby properties also benefit from easement rights over part or all of the Lane, although it may be argued that these have been extinguished if the land is a public highway at common law.
7. It is therefore the view of our advisors that the Lane is a public road/highway at common law and by designation on the plans of subdivision.
8. Accordingly, the Lane would also fall within the definition of a 'road' under the *Road Management Act 2004* (Vic).

#### **Response to Proposal**

The declaration of the Lane as a public road/highway would clarify a major point of uncertainty in the area and, in our view, be consistent with the practical and legal status of the Lane.

We also consider it to be in the public interest and to the public benefit for the entire lane to be declared a public highway. As the titles to the private portion of the lane are remnant titles (for which the owner cannot be located), there is currently no person or entity that can be held accountable for incidents of public liability, issues relating to the dumping of rubbish or public nuisance, and care and maintenance of the lane.

As Council would be aware, the introduction of the *Local Government Act 2020* has imposed new obligations on Councils to properly assess situations where they may be at risk of liability, including in relation to the care and maintenance of roads. It may be argued that implied responsibility over the Lane already falls to the Council by virtue of the Lane meeting the definition of a public highway at common law. In any event, we would consider it to be within the statutory purpose and responsibility of the Council to exercise its functions and powers to manage any associated foreseeable risk. Accordingly, we consider the Proposal to be consistent with Council's objectives and for the public benefit.

For the reasons set out above, we are strongly in support of the Proposal.

We would be happy to discuss the matter further before a meeting of the Council's Submissions (Section 223) Committee.

Sincerely yours,

  
Warrick and Sarah Kendall

**HISTORICAL SEARCH STATEMENT**

**Land Use Victoria**

Produced 23/12/2022 03:47 PM

Volume 230 Folio 957

Folio Creation: Created as paper folio continued as computer folio

THE IMAGE OF THE FOLIO CEASED TO BE THE DIAGRAM LOCATION ON 12/03/2009 12:11:46 PM

**RECORD OF HISTORICAL DEALINGS**

Date Lodged for Registration	Date Recorded on Register	Dealing	Imaged	Dealing Type and Details
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**RECORD OF VOTS DEALINGS**

Date Lodged for Registration	Date Recorded on Register	Dealing	Imaged
24/10/2005	25/10/2005	AD957462Y	Y

RECTIFICATION LAND REFER TO INSTRUMENT

Conversion History

Lot 1 on Title Plan 870089M (formerly known as part of Crown Allotment 8 Section 90 at North Melbourne Parish of Jika Jika).

STATEMENT END

**VOTS Snapshot**

Volume 00230 Folio 957  
124015814911H  
Produced 25/10/2005 02:22 pm

CROWN GRANT

**LAND DESCRIPTION**

Lot 1 on Title Plan 870089M (formerly known as part of Crown Allotment 8 Section 90 at North Melbourne Parish of Jika Jika).

**REGISTERED PROPRIETOR**

Estate Fee Simple

Joint Proprietors

WILLIAM BONAR PAGE CROCKET of 51 ERROL STREET NORTH MELBOURNE

SAMUEL JOHN THORNTON of 59 ERSKINE STREET NORTH MELBOURNE

ALBERT EDWARD THORNTON of 24 BROUGHAM STREET NORTH MELBOURNE Legal Personal Representative(s) of SAMUEL JAMES THORNTON who died on 24/03/1908

Y004136Q 24/07/1908

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**ENCUMBRANCES, CAVEATS AND NOTICES**

Any crown grant reservations exceptions conditions limitations and powers noted on the plan or imaged folio set out under DIAGRAM LOCATION below. For details of any other encumbrances see the plan or imaged folio set out under DIAGRAM LOCATION below.

Any encumbrances created by Section 98 Transfer of Land Act 1958 or Section 24 Subdivision Act 1988 and any other encumbrances shown or entered on the plan set out under DIAGRAM LOCATION below.

**DIAGRAM LOCATION**

SEE DIAGRAM ON IMAGED FOLIO VOLUME 230 FOLIO 957 FOR FURTHER DETAILS AND BOUNDARIES

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**Paper Title Images**

230/957 - Version 0, Date 23/06/2000



Entered in the Register Book  
Vol. 230 Fol. 957

Registrar of Titles  
D. M. H. G.

Victoria by the Grace of God of the United Kingdom of Great Britain and Ireland QUEEN DEFENDER OF THE FAITH and so forth To ALL to whom these presents shall come GREETING Whereas in conformity with the laws concerning the disposal of Crown Lands in our Colony of Victoria the person hereinafter named has become the purchaser and entitled to a grant in fee simple of the land hereinafter described for and in consideration of the sum of Twenty five pounds

which sum has been duly paid to us **Now know ye** that in consideration of the said sum so paid **WE DO HEREBY GRANT** unto Samuel Thornton of Melbourne

his heirs and assigns ALL THAT PIECE OF LAND in the said Colony containing one rood and four perches

or thereabouts described in the schedule hereto and shown with the measurements and abutments thereof in the map drawn in the margin of these presents and therein colored yellow To HOLD unto the said Samuel Thornton

his heirs and assigns for ever

**In testimony whereof** we have caused this our Grant to be sealed with the Seal of our said Colony **Witness** our trusty and well-beloved SIR JOHN HENRY THOMAS MANNERS SUTTON, Knight Commander of the Most Honorable Order of the Bath, Governor and Commander-in-Chief of the said Colony of Victoria, at Melbourne this thirty first day of October year of Our Reign and in the year of our Lord One thousand eight hundred and sixty-six

*J. H. Manners Sutton*

*The measurements are in feet and inches*



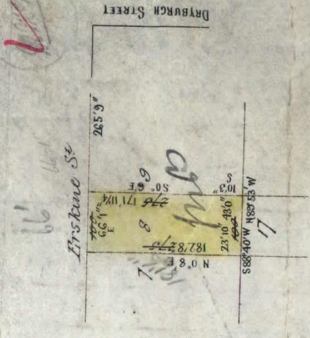
SCHEDULE.

Situation of Land.	Number on Survey Map.	Superficial Extent or thereabouts.		Boundaries.
		Acres.	Perches.	
County of Bourke	Section Ninety			Commencing at the north west angle of the allotment and bounded on the north by Erskine Street bearing east one chain on the east by allotment nine bearing south two chains seventy five links on the south by allotment seven bearing west one chain and on the west by allotment seven bearing north two chains seventy five links to the commencing point
	Allotment Eight			

Parish of St. John the Baptist  
City of Melbourne  
at Melbourne  
Witness my hand and seal this 31st day of October 1866



ORIGINAL CROWN GRANT  
NOT TO BE TAKEN FROM THE OFFICE  
OF TITLES



ORIGINAL CERTIFICATE  
NOT TO BE TAKEN FROM THE OFFICE OF TITLES



MEMORIALS OF INSTRUMENTS.

Nature of Instrument.	Time of its Production for Registration.	Names of the Parties to it.	Number or Symbol thereon.
<p><i>Mortgage Discharged</i>  <i>and Reg. of Title</i>  <i>16th January 1894</i></p>	<p>The <i>twelfth</i>  day of <i>September</i>  1869 at <i>1.30</i>  o'clock in the <i>after</i> noon.</p>	<p><i>Samuel Thornton,</i>  <i>James Peter, William</i>  <i>Chrystal and John Davies.</i>  <i>Richard</i>  <i>Assistant Registrar of Titles.</i></p>	<p><i>No. 3463.</i></p>
<p><i>Mortgage</i>  <i>24 September</i></p>	<p>The <i>20th</i> day of  <i>February</i> 1890 at <i>11.4</i>  o'clock in the <i>forenoon.</i></p>	<p><i>Samuel Thornton</i>  to  <i>The Land Mortgage Bank of</i>  <i>Victoria Limited.</i>  <i>Samuel</i>  <i>Asst. Reg. of Titles.</i></p>	<p><i>22644</i></p>
<p><i>Mortgage</i>  <i>24 September</i></p>	<p>The <i>18th</i> day of  <i>July</i> 1878 at <i>10.23.</i>  o'clock in the <i>forenoon.</i></p>	<p><i>Samuel Thornton</i>  to  <i>The Land Mortgage Bank of</i>  <i>Victoria Limited.</i>  <i>Samuel</i>  <i>Asst. Reg. of Titles.</i></p>	<p><i>22567</i></p>
<p><i>Mortgage</i>  <i>5th June 1902</i>  <b>DISCHARGED</b>  <b>REG. OF TITLES</b></p>	<p>The <i>15th</i>  <i>April</i> 1886  at <i>11.20 Am</i></p>	<p><i>Samuel James Thornton</i>  to  <i>John Lamb</i>  <i>Master and</i>  <i>Asst. Reg. of Titles.</i></p>	<p><i>71570</i></p>

5. Memo No. 41558.

*William Bonar Page Crocket, of No 51 Errol Street, Auctioneer, Samuel John Thornton, of 59 Erskine Street, Cartage Contractor, and Albert Edward Thornton, of 24 Brougham Street, Traveller, all of North Melbourne, are registered proprietors of the within-described land as Executors to whom probate of the will and codicil of Samuel James Thornton, (who died 24th March, 1908,) was granted the 3rd June, 1908*  
Dated 24th July, 1908.

307<sup>08</sup>

*W. Bruce*  
Assistant-Registrar of Titles.

For continuation of Endorsements  
see annexed sheet marked  
**ASST. REGISTR. OF TITLES.**



This is the Sheet marked *A* referred to in the *Crown Grant* Certificate of Title entered in the Register Book Vol. 230 Fol. 45957.

*H. Hooker*

Assistant Registrar of Titles.

Nature of Instrument.	Day and Hour of its Production.	Names of the Parties to it.	Number or Symbol thereon.
<p>Transfer as to part and creation of Easement.</p> <p><b>CANCELLED as to the LAND in CERTIFICATE OF TITLE VOL. 3358 FOL. 671531</b></p> <p><i>H. Hooker</i> ASSISTANT REGISTRAR OF TITLES</p>	<p>The 6<sup>th</sup> May 1909. at 10.51. am.</p>	<p>William Bonar Page Crocket, Samuel John Thornton, and Albert Edward Thornton.</p> <p>to Evan Evans</p> <p><i>H. Hooker</i> Assistant Registrar of Titles.</p>	<p>589526</p>
<p>Transfer as to part and creation of Easement.</p> <p><b>CANCELLED as to the LAND in CERTIFICATE OF TITLE VOL. 3371 FOL. 674146</b></p> <p><i>H. Hooker</i> ASSISTANT REGISTRAR OF TITLES</p>	<p>The 17<sup>th</sup> August 1909. at 2.48. pm.</p>	<p>William Bonar Page Crocket, Samuel John Thornton and Albert Edward Thornton</p> <p>to Isabella Thornton.</p> <p><i>H. Hooker</i> Assistant Registrar of Titles.</p>	<p>589527</p>
<p>creation of Easement</p> <p><b>VOL 3371 FOL 674147</b></p>	<p>The 31<sup>st</sup> August 1909 at 2.23 pm</p>	<p>William Bonar Page Crocket, Samuel John Thornton and Albert Edward Thornton.</p> <p>to Fredric Elliott Grant and William Boundy.</p> <p><i>H. Hooker</i> Assistant Registrar of Titles.</p>	<p>603240</p>
<p>Creation of Easement</p> <p><b>VOL 3502 FOL 700225</b></p>	<p>2<sup>nd</sup> May 1911 at 3.13 pm</p>	<p>William Bonar Page Crocket Samuel John Thornton and Albert Edward Thornton</p> <p>to Arthur James Wilson</p> <p><i>J. Holoubek</i> Assistant Registrar of Titles.</p>	<p>649227</p>
		<p>Assistant Registrar of Titles.</p>	
		<p>Assistant Registrar of Titles.</p>	



Assistant Registrar of Titles.







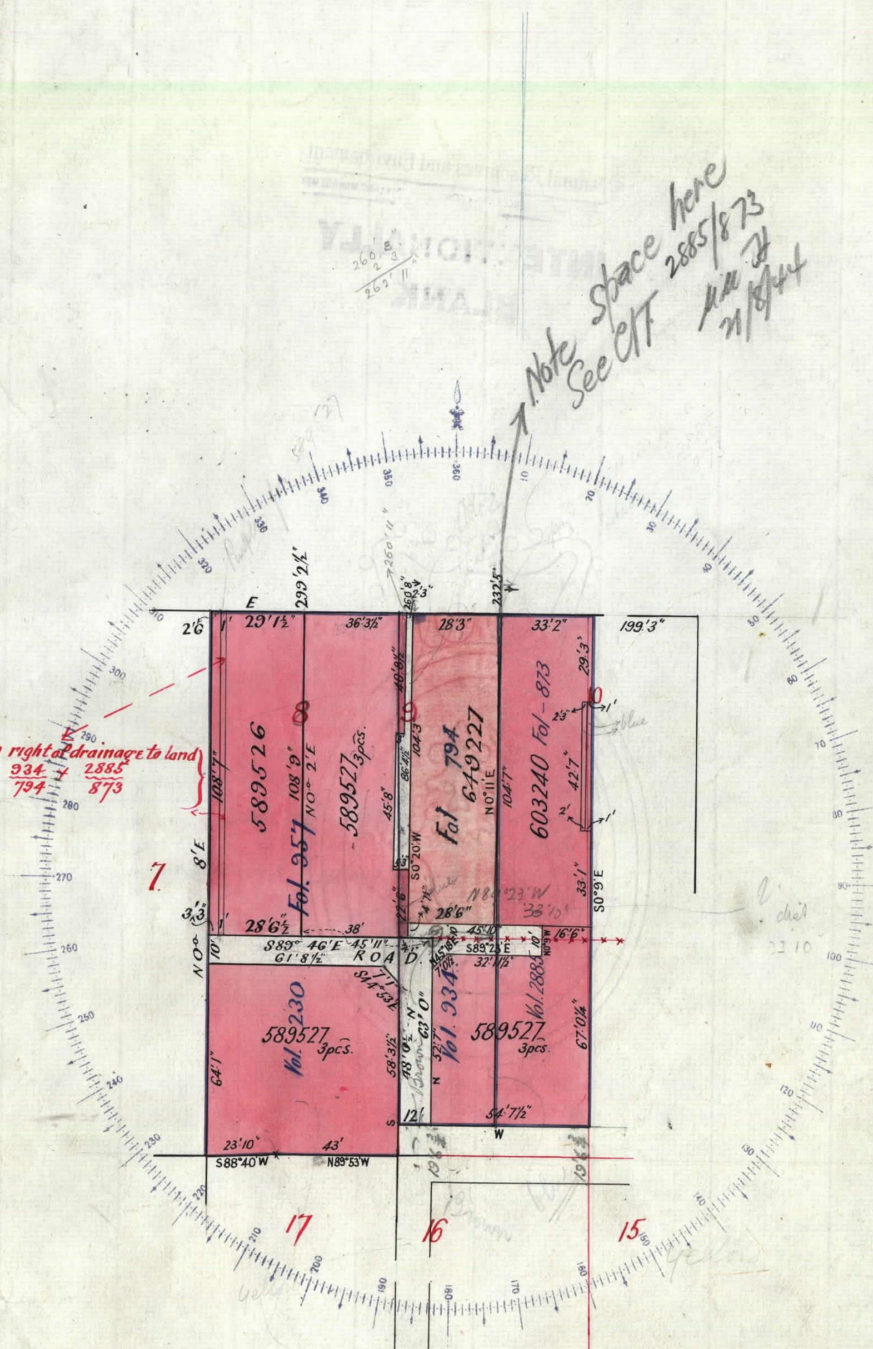
SCALE 40 Ft = to one inch

# Titles Office Record of Subdivision

Vol. 230 Fol. 957  
" 934 " 794  
" 2885 " - 873

Reservation right of drainage to land  
in 230 934 2885  
357 794 873

Note space here  
See CIT 2885/873  
11/18/44



Vide c/s/r.

199' 3"  
23'  
232' 5"

33 6  
33 4


33 1  
42 7  
24 3  
104 11  
8

62 37

199 3  
61 5  
260 8  
29 11  
36 3  
328 9

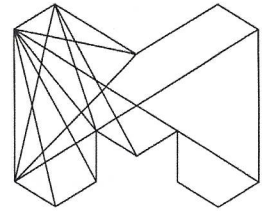


27/11/10/09

 **Natural Resources and Environment**  
AGRICULTURE • FORESTRY • RANGELANDS • WILDLIFE • LAND MANAGEMENT

**INTENTIONALLY  
BLANK**





**CITY OF MELBOURNE**

GPO Box 1603  
Melbourne VIC 3001

Phone 61 3 9658 9658

Fax 61 3 9654 4854

[www.melbourne.vic.gov.au](http://www.melbourne.vic.gov.au)

DX210487

ABN 55 370 219 287

6 November 2023

To the Occupier/Owner  
37-39 ERSKINE STREET  
NORTH MELBOURNE 3051

Dear Sir/Madam

**Proposed Public Highway Declaration of  
Shands Lane and PT5202 North Melbourne**

Please find attached a public notice under the provisions of the *Local Government Act 1989* proposing to declare the land and roads listed in North Melbourne as Public Highways.

The roads are considered to be public highways at common law with the southern and eastern portions of Shands Lane having 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.

You are welcome to make a submission either for or against the proposal, as detailed in the public notice.

Yours sincerely

**Daniel Janghorban**  
Senior Engineer, City Infrastructure

Telephone 9658 9658  
E-mail [Daniel.Janghorban@melbourne.vic.gov.au](mailto:Daniel.Janghorban@melbourne.vic.gov.au)

CoM reference 57/6/322

## MELBOURNE CITY COUNCIL

### **Proposed Public Highway declaration Shands Lane and PT5202, 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 with the southern and eastern portions of Shands Lane having 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 Shands Lane and PT5202' 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).





Not to Scale

Roads proposed to be declared Public Highways



Unlimited in height and depth