

*Planning and Environment Act 1987*

**Panel Report**

**Whitehorse Planning Scheme Amendment C219**

**Municipal Wide Tree Study**

**23 January 2020**

*Planning and Environment Act 1987*

Panel Report pursuant to section 25 of the Act

Whitehorse Planning Scheme Amendment C219

Municipal Wide Tree Study

23 January 2020



Michael Ballock, Chair



Chris Harty, Member

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## Glossary and abbreviations

Act	<i>Planning and Environment Act 1987</i>
Additional Analysis Report	Municipal Wide Tree Study Part 2: Additional Analysis in Garden Suburban and Bushland Suburban Character Precincts, March 2019
Council	Whitehorse City Council
DELWP	Department of Environment, Land, Water and Planning
Discussion Paper	Municipal Wide Tree Study Discussion Paper, March 2016
Forest Strategy	City of Whitehorse Urban Forest Strategy 2018
GRZ	General Residential Zone
Housing Strategy	Whitehorse Housing Strategy 2014 (Whitehorse Housing and Neighbourhood Character Review)
MPS	Municipal Planning Strategy
MSS	Municipal Strategic Statement
NRZ	Neighbourhood Residential Zone
Options Report	Municipal Tree Study Final Options and Recommendations Report June 2016
Planning Scheme	Whitehorse Planning Scheme
PPF	Planning Policy Framework

PPN07	<i>Planning Practice Note 7 Vegetation Protection in Urban Areas</i>
RGZ	Residential Growth Zone
SLO1	Significant Landscape Overlay Schedule 1
SLO2	Significant Landscape Overlay Schedule 2
SLO9	Significant Landscape Overlay Schedule 9
Study	Municipal Wide Tree Study
VCAT	Victorian Civil and Administrative Tribunal
VPO1	Vegetation Protection Overlay Schedule 1
VPO2	Vegetation Protection Overlay Schedule 2
VPO3	Vegetation Protection Overlay Schedule 3
VPO4	Vegetation Protection Overlay Schedule 4
VPP	Victoria Planning Provisions

## Overview

Amendment summary	
<b>The Amendment</b>	Whitehorse Planning Scheme Amendment C219
<b>Common name</b>	Municipal Wide Tree Study
<b>Brief description</b>	The Amendment applies Schedule 9 to the Significant Landscape Overlay on a permanent basis to all residential land in the municipality that is not currently included in a permanent Significant Landscape Overlay, including those areas covered by the Vegetation Protection Overlay Schedules 1 and 3
<b>Subject land</b>	Generally residential land within the General Residential Zone, Neighbourhood Residential Zone and the Residential Growth Zone, as shown in Figure 1
<b>Planning Authority</b>	Whitehorse City Council
<b>Authorisation</b>	16 June 2019 subject to conditions
<b>Exhibition</b>	18 July to 19 August 2019
<b>Submissions</b>	Number of Submissions: 308 Opposed: 157

Panel process	
<b>The Panel</b>	Michael Ballock (Chair), Chris Harty
<b>Directions Hearing</b>	Box Hill Town Hall, 23 October 2019
<b>Panel Hearing</b>	Nunawading Civic Centre, 2, 4, 5 and 6 December 2019
<b>Site inspections</b>	Unaccompanied, 2 and 5 December 2019
<b>Appearances</b>	Refer to Appendix B
<b>Citation</b>	Whitehorse PSA C219 [2019] PPV
<b>Date of this Report</b>	23 January 2020

## Executive summary

Whitehorse Planning Scheme Amendment C219 (the Amendment) seeks to apply the Significant Landscape Overlay Schedule 9 (SLO9) on a permanent basis to all residential land in the municipality that is not currently included in a permanent Significant Landscape Overlay (SLO), including those areas covered by the Vegetation Protection Overlay Schedules 1 (VPO1) and 3 (VPO3). The Amendment would replace the interim SLO9 that was applied by Amendment C191. The Amendment also deletes Vegetation Protection Overlay Schedules 2 (VPO2) and 4 (VPO4) and makes associated changes to local policy.

Key issues raised in submissions included:

- safety hazard
- costs associated with planning permit applications
- imposition on private property rights
- impact on development
- intent of the control.

The role of trees and vegetation contributing to a cooler and greener Melbourne is detailed in the planning scheme in both state and local policy. One of the defining characteristics of the eastern suburbs of Melbourne, which includes the City of Whitehorse, is that they are “*leafy and green.*” The Amendment focuses on canopy trees and their role in contributing to neighbourhood character. The issue for Council was then whether there was a “*particular characteristic about this part of Melbourne that is special or different and which warrants protection and particular attention by the scheme.*”

In response, Council has commissioned a number of reports to better understand the roles of trees as part of the neighbourhood character of the General Residential, Neighbourhood Residential and Residential Growth Zones in the municipality. These reports include:

- Municipal Wide Tree Study Discussion Paper, March 2016
- Municipal Tree Study Final Options and Recommendations Report June 2016
- Municipal Wide Tree Study Part 2: Additional Analysis in Garden Suburban and Bushland Suburban Character Precincts, March 2019
- City of Whitehorse Urban Forest Strategy 2018
- Whitehorse Housing and Neighbourhood Character Review, 2014.

Collectively, the first three reports make up the Municipal Wide Tree Study which forms the strategic basis for the Amendment.

The SLO9 has generated a significant range of submissions ranging from the blanket application of the control going too far, to the control having too many exemptions from the need for a permit to not having enough flexibility regarding permit requirements.

The permanent application of SLO9 over the balance of the residential areas of Whitehorse creates, in the Panel’s view, a different context. The effect of this much wider application of the SLO9 means that greater attention should be given to matters of tree safety, the costs associated with making an application and the imposition on property owners. The Panel accepts that the provisions of the proposed permanent SLO9 is reflective of a more nuanced

approach to addressing a range of issues that arise from applying a blanket control over the residential areas of Whitehorse.

The Panel concludes that:

- the Amendment is well founded and strategically justified and should proceed subject to addressing the more specific issues discussed in this report
- the Municipal Wide Tree Study is an appropriate basis for the permanent introduction of the SLO9
- the introduction of the SLO9 on a permanent basis will not have an adverse impact on housing delivery
- the SLO9 is an appropriate tool for tree protection in the Bush Suburban and Garden Suburban character areas
- tree safety is appropriately addressed under the Amendment
- the permit exemption provisions applying to dead, dying and dangerous trees in the SLO9 are appropriate
- an additional decision guideline be included which deals with the provision of replacement trees where trees are removed or destroyed
- Council should consider the provision of pre-application advice from a qualified arborist about the health of trees
- the imposition on private property rights with the Amendment are acceptable given the broader community benefits that derive from the controls to protect the retention and replacement of canopy trees and their contribution to canopy tree cover and neighbourhood character
- the cost burden from the permit process is reasonable and can be further mitigated with support from Council for individual applications for single tree removals
- Council should consider waiving the permit fee for VicSmart tree removal applications and engaging an arborist to provide an assessment and report on these applications
- it is appropriate for the controls of the SLO9 to differ from those of the SLOs 1 to 8
- the SLO9 provides an acceptable level of control over canopy tree loss in support of its role and contribution to neighbourhood character and reduction of loss from 'moonscaping' practices
- the SLO9 exemptions relating to public land are acceptable
- It is not necessary to expand the application of the SLO9 over public and Crown land areas given the Urban Forest Strategy includes policy and provisions to reasonably manage trees and vegetation on public land that Council owns and manages
- it is acceptable for a property to be covered by the SLO9 and VPO3
- the list of environmental weeds included in SLO9 is appropriate
- the Panel considers the changes proposed to Clauses 21.05, 21.06, 22.03 and 22.04 reasonable and support the introduction of the SLO9 into the planning scheme.
- the post exhibition changes to the SLO9 are appropriate
- the landscape character objectives should be reviewed to better encapsulate the landscape character that is sought to be protected under the SLO9
- the exemption provisions around tree height and width should be redrafted to be made clearer.



## **Recommendations**

Based on the reasons set out in this Report, the Panel recommends that Whitehorse Planning Scheme Amendment C219 be adopted as exhibited subject to the following:

- 1. Amend Schedule 9 to the Significant Landscape Overlay in the form of the Panel preferred version in Appendix D.**

# 1 Introduction

## 1.1 The Amendment

### (i) Amendment description

The purpose of the Amendment is to apply the Significant Landscape Overlay Schedule 9 (SLO9) on a permanent basis to all residential land in the municipality that is not currently included in a permanent SLO, including those areas covered by the Vegetation Protection Overlay Schedule 1 (VPO1) and Schedule 3 (VPO3). This Amendment replaces the interim SLO9 that was applied by Amendment C191. The Amendment also deletes Schedule 2 (VPO2) and Schedule 4 (VPO4) to the VPO.

Specifically, the Amendment proposes to:

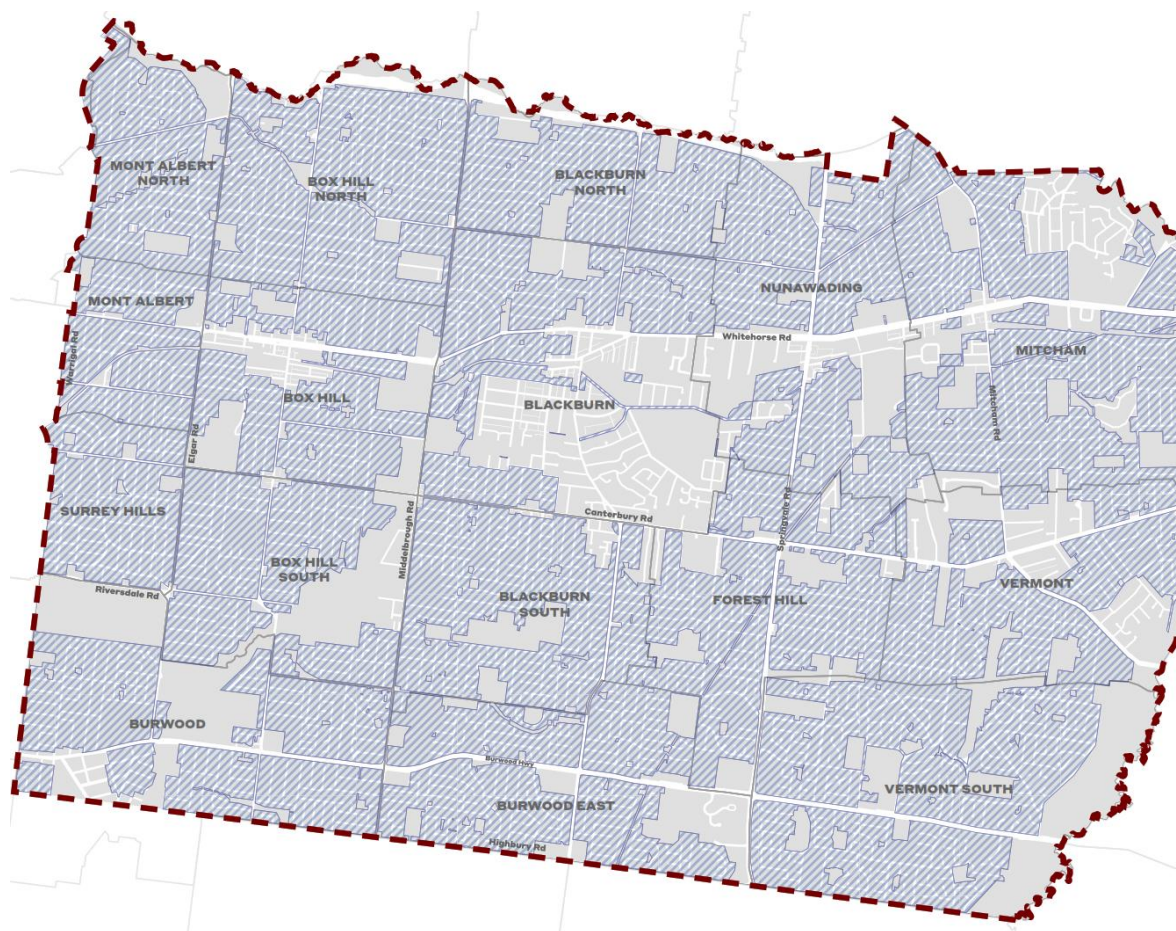
- amend the planning scheme maps by applying the SLO Schedule 9 on a permanent basis and delete the VPO2 and VPO4
- amend Clause 21.05 (Environment) to:
  - strengthen references to the importance of tree preservation and retention to the neighbourhood character of Whitehorse in the policy basis and objectives
  - clarify the lot size in areas affected by the SLO as well as the application of the tall tree ratio.
- amend Clause 22.04 (Tree Conservation) to:
  - strengthen references to canopy trees and neighbourhood character in the policy basis and objectives
  - strengthen references in the policy basis about tree retention to ensure that trees are retained if they are also significant to neighbourhood character
  - strengthen references to replanting to ensure that new trees are appropriate for the location, soil type and neighbourhood character
  - refine the provisions relating to buildings and works near existing trees to provide for a minimum setback of 3 metres in SLO9 rather than the 4 metres that applies to SLOs 1-8
  - refine the provisions relating to tree regeneration to provide for a minimum area of 35 square metres in SLO9 rather than the 50 square metres that applies to SLOs 1-8
  - clarify that when a planning permit is triggered, an arborist report is required to justify the removal of all trees, irrespective of the health of the tree.
- amend SLO9 to:
  - apply the schedule on a permanent basis by deleting the expiry date of the control
  - strengthen the landscape character objective to include reference to replacement trees
  - introduce new exemptions providing for the removal, destruction or lopping of a tree without a permit for:
    - trees located less than 3 metres from the wall of a dependent person's unit or dwelling
    - trees located less than 3 metres from an in-ground swimming pool
    - specified environmental weeds
    - trees affecting public utilities including powerlines, services within easements and the like
  - street trees in line with Council's Street Tree Policy

- trees required to be removed, destroyed or lopped in order to construct or carry out buildings or works approved by a Building Permit issued prior to 8 February 2018
- trees that may require separate approval to remove, destroy or lop as part of an existing permit condition, a plan endorsed under a planning permit or an agreement under section 173 of the *Planning and Environment Act 1987*.
- lists the following reference documents in Clause 21.05, Clause 21.06, Clause 22.03 and Clause 22.04:
  - Municipal Wide Tree Study Discussion Paper (the Discussion Paper), March 2016
  - Municipal Wide Tree Study Options and Recommendations Report (the Options Report), June 2016
  - Municipal Wide Tree Study Part 2: Additional Analysis in Garden Suburban and Bush Suburban Character Precincts, March 2019 (the Additional Analysis Report).
- includes reference to the following documents in the decision guidelines under SLO9:
  - Whitehorse Neighbourhood Character Study, April 2014
  - Municipal Wide Tree Study Options and Recommendations Report, June 2016 (the Options Report)
  - Municipal Wide Tree Study Part 2: Additional Analysis in Garden Suburban and Bush Suburban Character Precincts, March 2019 (the Additional Analysis Report).
- includes an additional decision guideline in SLO9 to require Council to consider, as appropriate, the cumulative contribution the tree makes with other vegetation in the landscape and the impact of incremental loss
- deletes VPO2 and Schedule 4 to Clause 42.02 from properties where they currently apply.

**(ii) The subject land**

The Amendment applies to all land in the municipality included in the Neighbourhood Residential Zone (NRZ), General Residential Zone (GRZ), Residential Growth Zone (RGZ) and Low Density Residential Zone that is not covered by an SLO or VPO. This includes properties in Mont Albert, Mont Albert North, Blackburn, Blackburn North, Blackburn South, Nunawading, Mitcham, Surrey Hills, Box Hill, Box Hill North, Box Hill South, Vermont, Vermont South, Forest Hill, Burwood and Burwood East as shown in Figure 1.

Figure 1: Location of the SLO9



## 1.2 Background

In December 2015, Council engaged planning consultants to undertake the *Municipal Wide Tree Study* (the Study). The consultants prepared a discussion paper which included commentary on the benefits of tree cover, the existing policy context, the current controls in the Planning Scheme, the existing tree coverage in Whitehorse and the decisions at the Victorian Civil and Administrative Tribunal (VCAT) regarding applications in areas with tree controls.

The consultants then prepared a draft Options Report which outlined the tools available to Council to protect tree canopy and the advantages and disadvantages of the tools, including the local planning policy framework, VPO, SLO, residential zone variations, local laws, native vegetation provision, agreements under section 173 of the *Planning & Environment Act 1987* (the Act) and education programs.

Community engagement took place in response to the Options Report in April and May 2016. At its meeting on 18 July 2016, Council adopted the Options Report and resolved to seek authorisation from the Minister for Planning to prepare and exhibit an amendment to the Planning Scheme to extend the SLO to all residential zoned land in the municipality of Whitehorse.

In May 2017, Council requested Ministerial approval to cover all residential zoned land in the municipality, which was not already affected by an existing SLO, by SLO9 on an interim basis (Amendment C191). At the same Council also sought approval to prepare and exhibit an

amendment to the Planning Scheme to apply the same controls on a permanent basis (Amendment C196).

On 28 December 2017, the Minister for Planning advised Council that he had approved the interim controls (Amendment C191) with changes including increasing the single trunk circumference requirement from 0.5 metres to 1.0 metre.

Amendment C191, as exhibited, provided for the following exemptions:

- a tree less than 5 metres in height and having a single trunk circumference of 1.0 metre or less at a height of one metre above ground level
- the pruning of a tree for regeneration or ornamental shaping
- a tree which is dead or dying or has become dangerous to the satisfaction of the responsible authority
- a tree outside the Minimum Street Setback in the RGZ.

The Minister did not authorise Amendment C196 and advised Council to undertake further strategic work on the landscape character of the municipality to justify the application of the controls on a permanent basis.

In August 2018, Council engaged planning consultants to undertake the further strategic work as directed by the Minister. The further work involved additional analysis about the application of the controls in the Bush Suburban and Garden Suburban neighbourhood character precincts.

This further work concluded that the following additional planning permit exemptions, beyond those included in the interim controls, were appropriate:

- a tree that is less than 3 metres from the wall of an existing house
- a tree that is located less than 3 metres from an in-ground swimming pool
- a tree species that is listed an environmental weed in the proposed controls
- a tree on public land, or in a road reserve removed by, or for, Council.
- the removal, destruction, or lopping of a tree to ensure the safe and efficient function of a utility installation such as powerlines
- a tree that is to be removed as part of buildings or works approved in a Building Permit issued prior to 8 February 2018
- a tree that may require separate approval to remove, destroy or lop as part of an existing planning permit.

The further work also recommended improving local planning policy within the Planning Policy Framework, including the Municipal Strategic Statement (MSS).

On 18 December 2018, the Minister extended the lapse date for the interim SLO9 by 6 months until 30 June 2019 (Amendment C214) to allow the further strategic work to be completed. Council adopted the Additional Analysis Report on 18 March 2019 and resolved to seek authorisation for an amendment.

On 16 June 2019 the Minister's delegate authorised the preparation of Amendment C219 subject to the following conditions:

- There is limited information available about the number of canopy trees likely to require a planning permit for removal. This information would be helpful to understand the number of residential lots likely to be impacted by the requirement for a planning permit under the proposed overlay and in turn the impact on housing growth capacity in residential zones.
- The proposed SLO coverage is extensive. The council provide evidence to demonstrate the high significance of vegetation character in the two character areas.

The final proposed extent of the SLO in the proposed amendment should be clearly justified during the amendment process.

- The need for a planning permit for any buildings and works within 4 metres of protected tree is likely to place an unreasonable burden on landowners and proponents, particularly those attempting to carry out relatively minor works. The council should reconsider this requirement, and clearly justify any revised requirement of this nature during the amendment process.

On 28 June 2019, the lapse date for the interim SLO9 was extended by Amendment C223 by a further year to allow the completion of Amendment C219.

### **1.3 Summary of issues raised in submissions**

#### **(i) Planning Authority**

The key issues for Council were:

- further information about the number of trees likely to require a permit for removal
- the impact on housing growth of the SLO9
- the significance of the vegetation to be protected
- the requirement for a 4 metre setback from buildings and works
- the exemption of Council properties from the SO9.

#### **(ii) Relevant agencies**

The key issue for the Yarra Trams was:

- The inclusion of tramways as one of the functions for which a permit is not required for the removal, destruction or lopping of a tree.

The key issue for the VicRoads (now referred to as Transport for Victoria) was:

- The exemption from a permit to remove destroy or lop a tree in a road reserve should also apply to the 'relevant road authority.'

These issues have been resolved by Council's post exhibition changes to amend the exemptions under SLO9.

#### **(iii) Individual submitters or groups of submitters**

The key issues by submitters were:

- safety hazards
- costs associated with planning permit applications
- imposition on private property rights
- impact on development
- intent of the control
- the controls should be the same as the SLO1 and SLO2.

These submissions are still outstanding.

### **1.4 The Panel's approach**

The Panel has considered all written submissions made in response to the exhibition of the Amendment, observations from site visits and submissions, evidence and other material presented to it during the Hearing. It has reviewed a large volume of material and has had to be selective in referring to the more relevant or determinative material in the Report. All

submissions and materials have been considered by the Panel in reaching its conclusions, regardless of whether they are specifically mentioned in the Report.

This Report deals with the issues under the following headings:

- Planning context
- Strategic justification
- The Municipal Wide Tree Study
- Individual issues
- Form and content of the Amendment.

## 2 Planning context

### 2.1 Planning policy framework

Council submitted that the Amendment is supported by various clauses in the Planning Policy Framework (PPF), which the Panel has summarised below.

#### **Victorian planning objectives**

The Amendment will assist in implementing State policy objectives set out in section 4 of the Act by enhancing the liveability and neighbourhood character of the existing urban environment in Whitehorse and promote the sustainable use and development of land. The Amendment will provide a net community benefit by retaining and replanting canopy trees that will provide benefits for present and future generations.

#### **Clause 15.01-5S (Neighbourhood Character)**

The Amendment supports Clause 15.01 by:

- recognising, supporting and protecting neighbourhood character, cultural identity and sense of place
- ensuring development contributes to existing or preferred neighbourhood character
- ensuring development responds to its context by emphasising the underlying natural landscape character and significant vegetation.

#### **Clause 15.02-1S (Energy and resource efficiency)**

The Amendment supports Clause 15.02 by:

- encouraging land use and development that is energy and resource efficient, supports a cooler environment and minimises greenhouse gas emissions
- encouraging retention of existing vegetation and planting of new vegetation as part of development and subdivision proposals.

#### **Clause 21 (the Municipal Strategic Statement)**

The Amendment supports the MSS by:

- facilitating environmental protection and improvements to assets including water, flora, fauna and biodiversity (21.05 Environment)
- identifying vegetation as integral to the neighbourhood character in Whitehorse (21.06 Housing).

#### **Clause 22 (local planning policies)**

The Amendment supports local planning policies by:

- including policies that aim to retain and protect existing trees and require the provision of sufficient space for the regeneration and growth of new trees (22.04 Tree Conservation)
- minimising loss of trees and vegetation in new development (22.03 Residential development).



## 2.2 Other relevant planning strategies and policies

### (i) Plan Melbourne

*Plan Melbourne 2017-2050* sets out strategic directions to guide Melbourne's development to 2050, to ensure it becomes more sustainable, productive and liveable as its population approaches 8 million. It is accompanied by a separate implementation plan that is regularly updated and refreshed every five years.

Plan Melbourne is structured around seven Outcomes, which set out the aims of the plan. The Outcomes are supported by Directions and Policies, which outline how the Outcomes will be achieved. Outcomes that are particularly relevant to the Amendment are set out in Table 1.

**Table 1: Relevant parts of Plan Melbourne**

Outcome	Directions	Policies
6	6.4	Make Melbourne cooler and greener
6	6.4.1	Support a cooler Melbourne by greening urban areas, buildings, transport corridors and open spaces to create an urban forest

## 2.3 Planning scheme provisions

### (i) Overlays

The land is subject to the SLO. The purposes of the Overlay are:

To identify significant landscapes

To conserve and enhance the character of significant landscapes.

The statement of nature and key elements of landscape of the exhibited SLO9 are:

The leafy garden and bushy character of Melbourne's eastern suburbs can be viewed from many high points throughout Melbourne and is a significant component of the subregion. The treed character of areas such as Whitehorse provides an important 'green' link between Melbourne and the Yarra Valley.

The *Municipal Wide Tree Study* (June 2016 and March 2019) identifies that trees are significant to the landscape character of the City of Whitehorse. The tree cover in Whitehorse simultaneously delivers multiple benefits to the community, including defining neighbourhood character, providing visual amenity, reducing the urban heat island effect in more urbanised areas, improving air quality and energy efficiency, providing habitat for fauna and increasing the wellbeing of people and liveability of neighbourhoods.

The **Garden Suburban Neighbourhood Character Area** generally has formalised streetscapes comprising grassed nature strips, concrete footpaths, kerbs and channels and buildings are generally visible along streets behind low front fences and open garden settings.

Gardens are typically established with canopy trees, lawn areas, garden beds and shrubs and there are typically well defined property boundaries and consistent building siting.

The majority of the municipality is included in the Garden Suburban Neighbourhood Character Area.

The **Bush Suburban Neighbourhood Character Area** generally has a mix of formal and informal streetscapes with wide nature strips and streets are dominated by vegetation with buildings partially hidden behind tall trees and established planting.

Gardens are less formal, consisting of many canopy trees and property boundary definition can be non-existent or fenced. Buildings appear detached along the street and generally comprise pitched rooftops, with simple forms and articulated facades.

The Bush Suburban Neighbourhood Area includes parts of Blackburn, Box Hill South, Vermont South, Mitcham, Nunawading and Mont Albert North as shown in the Neighbourhood Character Precincts Map contained in the *Neighbourhood Character Study 2014*.

## 2.4 Ministerial Directions and Practice Notes

### Ministerial Directions

Section 12(2) (a) of the Act, requires a Planning Authority to have regard to the Minister's directions. Council submitted that the Amendment is consistent with the *Ministerial Direction on the Form and Content of Planning Schemes* under Section 7 of the Act.

The Amendment is consistent with the Ministerial Direction No 9 – *Metropolitan Strategy*:

- Direction 6.4 of Plan Melbourne 2017-2050 is to “*Make Melbourne cooler and greener.*” This direction outlines the benefits of urban greening and notes that Melbourne needs to maintain its urban forest of trees and vegetation on properties.
- Additionally, Policy 6.4.1 is to “*Support a cooler Melbourne by greening urban areas, buildings, transport corridors and open spaces to create an urban forest.*” This policy notes that “*residential development provisions must be updated to mitigate against the loss of tree canopy cover and permeable surfaces as a result of urban intensification.*”

The Explanatory Report discusses how the Amendment meets the relevant requirements of Ministerial Direction 11 - *Strategic Assessment of Amendments* and *Planning Practice Note 46: Strategic Assessment Guidelines*, August 2018 (PPN46). That discussion is not repeated here.

### Planning Practice Notes

The Amendment has been prepared in accordance with *Practice Note No 46 – Strategic Assessment Guidelines for preparing and evaluating planning scheme amendments* and is consistent with the form and structure of the Victorian Planning Provisions.

The Municipal Wide Tree Study, March 2016, undertook an analysis of the overlays for vegetation protection consistent with that envisaged by Planning Practice Note 7 *Vegetation Protection In Urban Areas, August 1999* (PPN07). The Practice Note states that the SLO is appropriate when vegetation is primarily of aesthetic or visual importance in the broader landscape and should be used where vegetation is identified as an important contributor to the character of an area.

## 3 Strategic justification

### 3.1 Submissions

Council submitted that the role of trees and vegetation is detailed in the Planning Scheme in both State and local policy. In addition to the matters addressed in Chapter 2 of this report, Council referred to a number of strategic works it has undertaken which, it argued, supports the Amendment. These strategic works and a description provided by Council are:

#### **Municipal Wide Tree Study Discussion Paper, March 2016**

The Municipal Wide Tree Study Discussion Paper (Discussion Paper) included background analysis undertaken as part of the Municipal Wide Tree Study. The Discussion Paper gathered information about the importance of trees to the image and character of the area, urban cooling, fauna habitat, social wellbeing, health and economic benefits. The Discussion Paper also analysed the number of existing tools used to manage trees in Whitehorse, including residential zones, overlays and local policy.

#### **Municipal Wide Tree Study Options and Recommendations Report, June 2016**

The Options Report detailed the statutory and non-statutory mechanisms that could be used to protect trees, including zoning, overlays, tree education programs and provision of free trees. This Report ultimately recommended extending the SLO across the residential land in the municipality, not already covered by the SLO.

#### **City of Whitehorse Urban Forest Strategy 2018**

The Urban Forest Strategy sets a municipal wide minimum target of 30 per cent canopy cover by 2030. Currently canopy cover is estimated at between 22 per cent and 25 per cent. Council controlled land accounts for 10 per cent of the municipality and, consequently, the strategy concludes that additional tree cover will need to be achieved on private land. The strategy recognises that to achieve this level of canopy cover Council will need to facilitate the planting of new canopy cover across both public and private land in addition to protecting existing trees.

#### **Whitehorse Housing and Neighbourhood Character Review, 2014**

The final *Whitehorse Housing Strategy 2014 (Whitehorse Housing and Neighbourhood Character Review)* (Housing Strategy) noted that “trees and variations in the vegetation types and densities are an integral aspect of the urban character of Whitehorse” and that “the municipality is dominated by an upper tree canopy which covers a majority of the city.”

Council submitted that the Housing Strategy demonstrated that there is sufficient housing capacity in particular areas of Whitehorse to justify more stringent controls to protect Whitehorse’s valued neighbourhoods. Council added that this work was used as the strategic justification for applying the State Government’s new residential zones.

#### **Council Plan 2017-2021**

Strategic Direction 2 of the Council Plan 2017-2021 is to “Maintain and Enhance our built environment to ensure a liveable and sustainable city.” Actions to support this include activities which protect neighbourhood character.

## **Municipal Wide Tree Study Part 2: Additional Analysis in Garden Suburban and Bush Suburban Character Precincts, March 2019**

The Additional Analysis Report reviewed existing characteristics and preferred character statements from the Whitehorse Neighbourhood Character Study in addition to undertaking a field assessment of selected precincts.

The analysis concluded that tree retention alone will not achieve the 30 per cent target of the Urban Forest Strategy and that greater emphasis needs to be placed on residential development achieving canopy cover through the establishment of new canopy trees.

### **Living Melbourne**

Council informed the Panel that *Living Melbourne* is a new urban forest strategy for metropolitan Melbourne which has been prepared by Resilient Melbourne in partnership with The Nature Conservancy.

Council submitted that Living Melbourne sets out key actions to increase canopy cover across Metropolitan Melbourne and has been endorsed by the Department of Environment, Land, Water and Planning (DELWP) and many other government agencies including Whitehorse.

Council concluded:

Through the work of this Amendment, and the Municipal Wide Tree Study (the Study) Council sought to better understand the true nature, extent and spread of that vegetation, in order to understand whether existing measures in place (including the confined use of the SLO/VPO and planning policy provisions) were appropriate or whether some further protective measures were warranted and appropriate.

## **3.2 Discussion**

The Amendment is supported by a considerable body of work and analysis. The role that vegetation and trees in particular play in achieving environmental outcomes as well as defining the character of an area is well established in Plan Melbourne, the PPF and local policy. From this perspective the protection of mature trees in a metropolitan context has considerable strategic support.

In addition, Council has completed a number of studies to establish the justification for tree control as well as a mechanism to achieve this outcome which provides substantial strategic justification.

For this reason, as well as those set out in the following chapter, the Panel concludes that the Amendment is supported by, and implements, the relevant sections of the PPF, and is consistent with the relevant Ministerial Directions and Practice Notes.

## **3.3 Conclusion**

The Panel concludes:

The Amendment is well founded and strategically justified and should proceed subject to addressing the more specific issues discussed in the following chapters.

## 4 The Municipal Wide Tree Study

### 4.1 The issues

The issues are whether:

- the Study is an appropriate basis for the introduction of the SLO9
- the tree removal controls will have an adverse impact on housing delivery
- whether the controls proposed in the SLO9 are appropriate.

### 4.2 Relevant policies, strategies and studies

The Study is made up of the following documents:

- the Discussion Paper
- the Options Report
- the Additional Analysis Report.

### 4.3 Evidence and submissions

#### 4.3.1 The Study

Council submitted that one of the defining characteristics of the eastern suburbs of Melbourne, which includes the City of Whitehorse, is that they are *“leafy and green.”* The issue for Council was then whether there was a *“particular characteristic about this part of Melbourne that is special or different and which warrants protection and particular attention by the scheme.”*

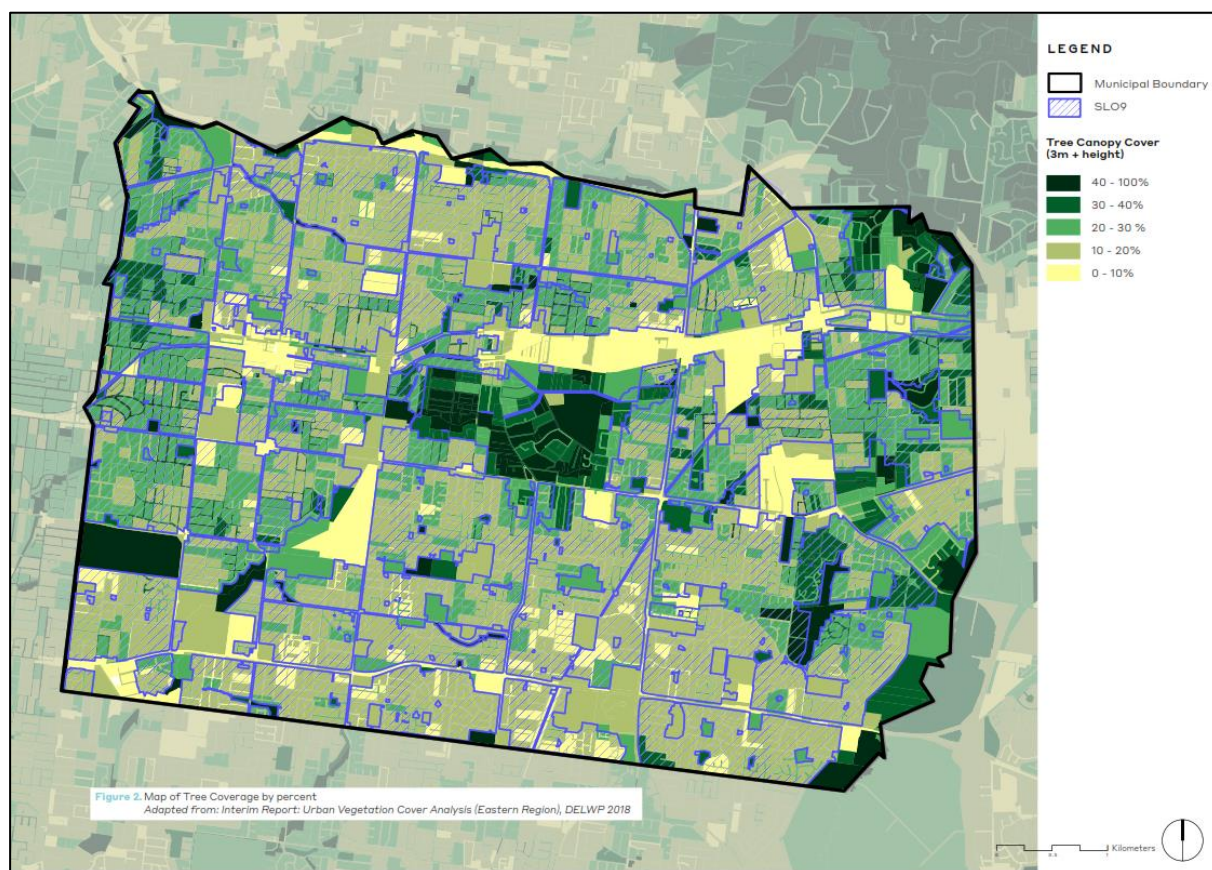
Council argued that state policy and the municipal profile recognise the significance of canopy trees as a key determinant of the character of the residential areas in Melbourne in general and Whitehorse in particular. In addition, the planning scheme has eight existing SLO schedules and the SLO1 and SLO2, that cover part of Blackburn, date back to vegetation controls established in the mid-1980s.

Council submitted that the basis for proposing the SLO9 was the Study which concluded that protective measures were warranted and the SLO9 was the most appropriate means of achieving that protection.

The Study used a computer program to benchmark Whitehorse with other municipalities and assess current land form and canopy cover. Council informed the Panel that this analysis produced an average tree canopy cover of 26.6 per cent for the municipality while the Bush Suburban and Garden Suburban Areas, to which the SLO9 is applied, showed cover of almost 30 per cent and 24 per cent respectively. However, the percentage tree canopy cover varied considerably across the municipality, as shown in Figure 2. The Options Report concluded:

The analysis of tree cover over the City indicates that the municipality has a high level of tree cover when compared with most metropolitan areas, and even within the middle ring suburban municipalities. However, the analysis confirms anecdotal reports that tree cover is decreasing over the City, while building site coverage and other hard surfaces are increasing

Areas with tree protection controls have a significantly higher proportion of ground covered by trees, as do areas identified as ‘Bush Environment’ and ‘Bush Suburban’ in the neighbourhood character study.

**Figure 2: Whitehorse percentage tree cover**

Source: Additional Analysis Report

Council advised the Panel that both the Options Report and the Additional Analysis Report reviewed a number of alternative approaches for tree control. The Additional Analysis report concluded:

Among the various tools implemented in Whitehorse, the SLO provides the only mechanism that relates neighbourhood character to vegetation management, which assists in considering the impact beyond just the trees and property boundaries. The SLO also contains the ability to trigger a permit for buildings and carrying out works, which provides greater integration and focuses on developing to a site's individual conditions.

Mr Reid gave evidence that the Housing Study *“formed the basis of the current suite of residential zones in Whitehorse, identified that canopy tree coverage is fundamental to neighbourhood character across the municipality.”* He stated that the Discussion Paper identified tree cover as essential to the established character of Whitehorse and there was scope to implement vegetation protection controls over a broader area. He added that the Discussion Paper identified the clearing of all vegetation on a lot, commonly referred to as *‘moonscaping,’* as a significant threat in areas without controls.

He stated that the Options Report included a gap analysis which identified the lack of a definition of a canopy tree. He added other gaps identified included:

- replacement trees – the Planning Scheme lacks replacement requirements
- landscape plans – incorporating tree protection.
- buildings and works controls – permit triggers for buildings and works in close proximity to protected trees.

- monitoring – monitoring processes are not in place to ensure compliance with landscaping plans
- weed species – existing canopy trees that are regarded as environmental weeds do contribute to overall canopy cover, urban cooling and landscape values.

Mr Reid informed the Panel that the most significant recommendation of the Options Report was to introduce the SLO9 over all residential areas not covered by a SLO and included:

- improving the local planning policy
- strengthening the Council Plan
- strengthening the landscape plan review process
- extending education programs and include welcome packs
- enforcing section 173 agreements on new subdivisions to require canopy tree planting on all sites
- ongoing advocacy for an increase in fines for illegal tree removal
- providing incentives for canopy tree species at Council or community nurseries.

His evidence was that:

The Additional Analysis reinforced the importance of canopy cover to character and liveability. It found that canopy trees are vitally important for the role they play aesthetically, by reducing the urban heat island effect, providing habitat and offering community wellbeing and health benefits. It found that the gradual loss of canopy coverage throughout the city will diminish its character, liveability and ecological sustainability.

He added that the Additional Analysis Report also considered the impact of the SLO9 on housing growth.

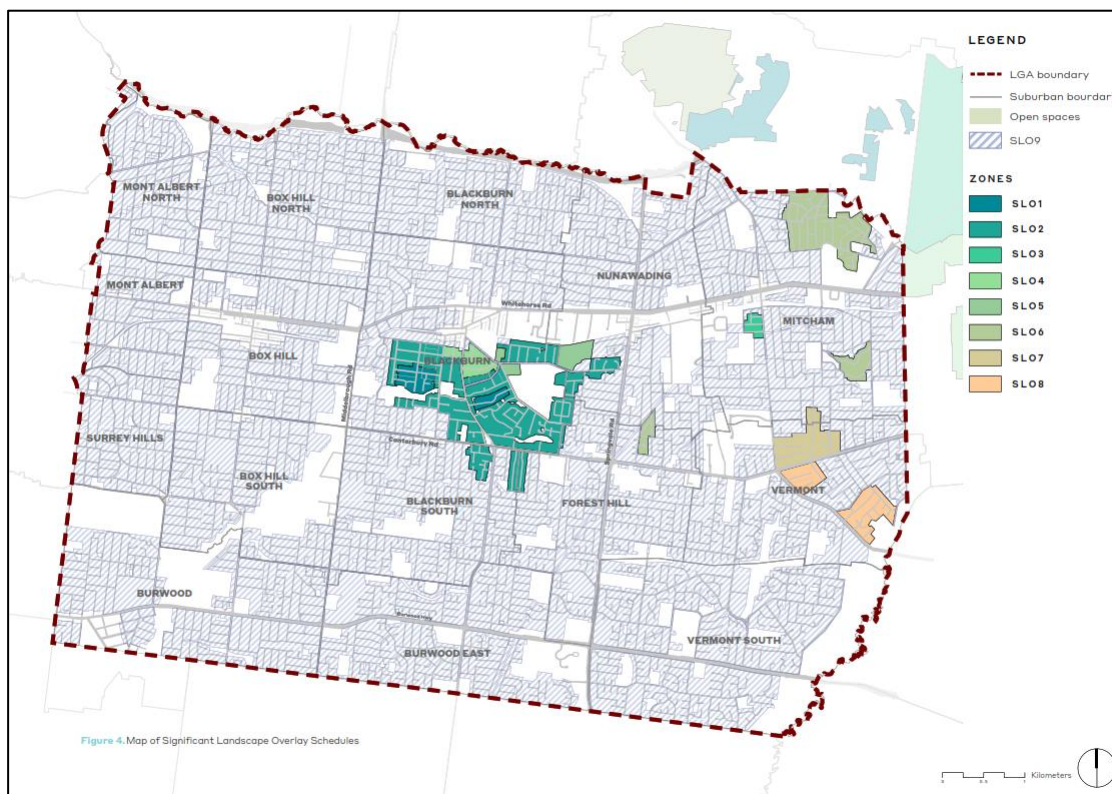
### **4.3.2 Housing**

Council submitted that coverage of the SLO9 matched those residential areas identified as having a Bush Suburban or Garden Suburban character, as shown in Figure 3 and Source: **Additional Analysis Report**

Figure 4 below. In addition, the introduction of permanent tree controls would not have an *“unreasonable impact on the municipality’s ability to accommodate its projected population and dwelling growth in the residential zones.”*

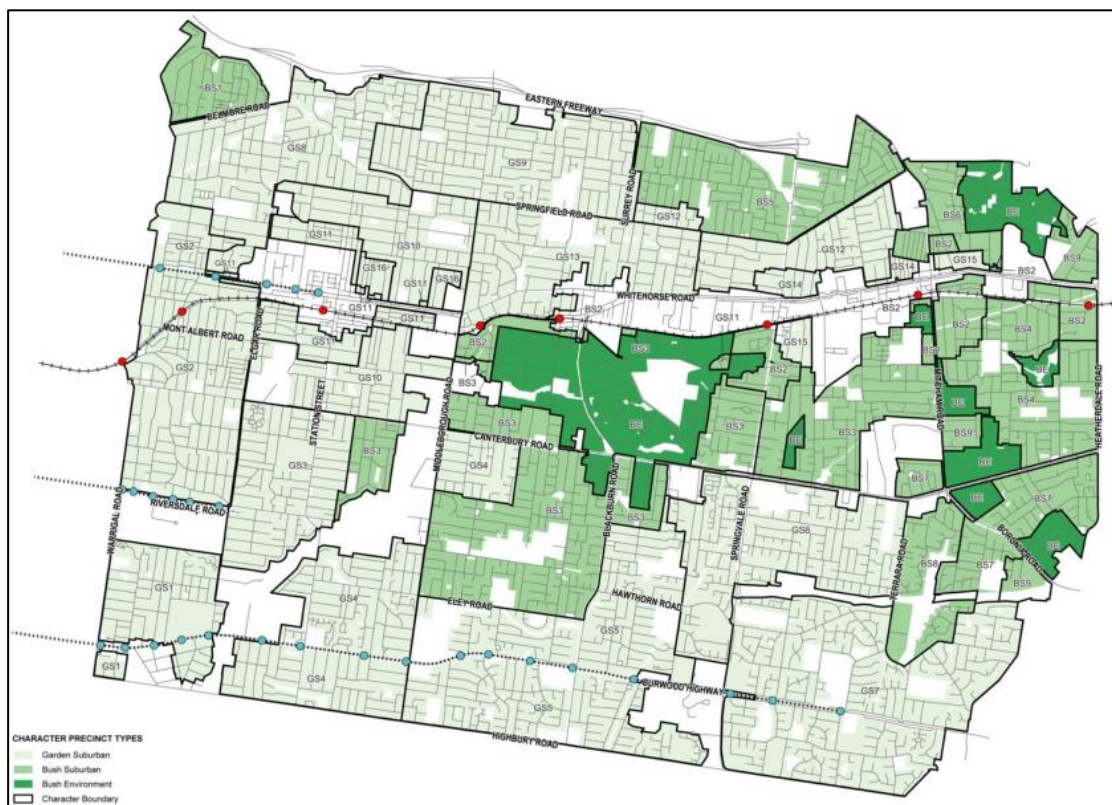
Council submitted that the SLO9 controls applies largely in the GRZ and RGZ. Mr Reid gave evidence the SLO9 was unlikely to have any impact on dwelling yield in the RGZ due to tree removal exemptions outside the front setback areas coupled with the purpose of the zone, which is intended to accommodate growth. He added that the two out of the three RGZ schedules require new development to provide at least one canopy tree that has the potential to reach 8 metres. From his analysis, Mr Reid concluded that smaller lots in the RGZ are less likely to contain canopy trees than those in the GRZ or in turn the NRZ.

Figure 3: Whitehorse areas covered by SLOs 1 to 9



Source: Additional Analysis Report

Figure 4: Whitehorse Neighbourhood Character Areas



Source: Clause 22.03 of the Planning Scheme



Council reminded the Panel that the Minister for Planning raised the following issue in the letter of authorisation:

There is limited information available about the number of canopy trees likely to require a planning permit for removal. This information would be helpful to understand the number of residential lots likely to be impacted by the requirement for a planning permit under the proposed overlay and in turn the impact on housing growth capacity in residential zones.

Mr Reid's evidence summarised the key findings of the Additional Analysis Report with respect to impacts on housing growth as follows:

- the Housing & Character Review concluded that the total residential capacity within the municipality was substantially in excess of projected growth requirements to 2031
- SLO9 does not apply to commercial areas or Neighbourhood Activity Centres, which represented around 25% of available development capacity
- SLO9 is unlikely to have any impact on dwelling yield in the RGZ due to tree removal exemptions outside the front setback areas coupled with the purpose of the zone, which is intended to accommodate growth – the RGZ represented almost 29% of capacity
- SLO9 is likely to have negligible impact on dwelling yield in the NRZ given the conservative development assumptions applied to the zone and the fact that SLO1-8 applies to the most heavily vegetated areas of the municipality – the NRZ represented just under 20% of capacity at the time of review, however, subsequent changes to the zone have increased the development potential in these areas
- SLO9 is likely to have some impact on dwelling yield within the GRZ, noting that the zone schedules require additional open space and tree planting in any case – these areas represented approximately 26% of available capacity.

He stated that the Additional Analysis Report concluded:

- It is highly improbable that the provisions of SLO9 would constrain housing growth to such a magnitude that Whitehorse would not have capacity to house forecast population growth.

Mr Reid's evidence was that the Housing Strategy had underestimated the level of development in Box Hill where the additional dwelling capacity provided in high rise buildings has mitigated the likelihood of the SLO9 adversely impacting on housing growth in Whitehorse.

Mr Reid advised the Panel that further research was undertaken to assess how many properties contain trees that would trigger a permit under the SLO9. His evidence was that the key findings of this analysis were:

- Canopy trees are ubiquitous and widely spread across the residential landscape of Whitehorse, reinforcing the conclusion of the Neighbourhood Character Study that they make an integral contribution to neighbourhood character in all character precincts.
- Canopy tree coverage appears to have played a role in defining the character areas, with the limited change areas (zoned NRZ) containing the highest proportion of lots with canopy trees, followed by the natural change areas (zoned GRZ) and then the substantial change areas (zoned RGZ).
- In all zones, it is the larger lots that are more likely to contain canopy trees than smaller lots. It was apparent during the analysis that many multi-dwelling developments do not preserve sufficient space for the establishment of canopy trees.
- Due to the prevalence of canopy trees on larger sites compared to smaller sites, the greatest threat to overall canopy cover is more likely to be the redevelopment of these sites rather than the removal of individual trees for other reasons.

- The prevalence of canopy trees on larger lots suggests that the majority of future multi-dwelling development applications will need to consider issues related to tree removal, provision or protection. It is worth noting that these proposals will require a planning permit notwithstanding the existence of SLO9.

Council advised the Panel that since the introduction of the interim SLO9 in December 2017, 975 planning permit applications have been triggered under the interim SLO9. Council provided a sample of 186 of these applications (Table 2), made up of at least 10 applications from each suburb.

**Table 2: Council application outcomes**

Type of decision	Number
Delegate permit issued	83
VCAT directed permit	1
Condition 1 plans approved	97
Council refusal	4
Secondary consent approved	1

Council observed that in all but four of these applications, approval had been given to remove, destroy or lop a tree. Council argued that this outcome supported its view that the introduction of the SLO9 on a permanent basis would not significantly impact housing growth.

### 4.3.3 SLO9

Council submitted that the Options Report concluded that the SLO controls should be applied to the remaining residential areas and including VPO areas. Council argued that this was the *“preferred option by the residents who participated in the consultation, the majority of which supported the imposition of additional planning controls to protect tree canopy.”*

Council added that the Additional Analysis report, in response to the Minister’s direction focused more on the strategic justification for the controls. The Additional Analysis Report reviewed a number of vegetation protection tools used by a number of municipalities as well as reference to PPN07. Council submitted that the Additional Analysis report concluded:

Among the various tools implemented in Whitehorse, the SLO provides the only mechanism that relates neighbourhood character to vegetation management, which assists in considering the impact beyond just the trees and property boundaries. The SLO also contains the ability to trigger a permit for buildings and carrying out works, which provides greater integration and focuses on developing to a site’s individual conditions.

Mr Reid’s evidence was that the SLO was the most appropriate tool to achieve the Council’s goals of vegetation protection and enhancement. He added that the SLO required a permit for buildings and works and subdivision where this development would impact on an existing tree.

Mr Reid stated that the Additional analysis Report concluded:

The review of VPP tools available for vegetation protection and the examination of additional strategic documents prepared by Council (including the Urban Forest Strategy) concluded that the SLO is still the most effective tool available to achieve canopy tree protection. This is due to the ability of the SLO to holistically consider vegetation and the built form through triggers for buildings and works applications, and its inherent connection to neighbourhood character.

The introduction of SLO9 was found to have resulted in a substantial increase in the number of applications to remove, destroy or lop trees within the municipality. It was determined that a higher threshold and additional exemptions were appropriate in SLO9 relative to other SLOs in Whitehorse due to the expansive area to which SLO9 applies. This approach, it concluded, would still support vegetation management controls in a strategic manner by applying more stringent controls in priority areas and having a lighter touch in areas where multi-dwelling development priorities must be balanced.

## 4.4 Discussion

The role of vegetation in defining the character of neighbourhoods is well established in Plan Melbourne, in the Whitehorse Planning Scheme and in each of the three neighbourhood character types identified in the Housing Strategy. In addition, other work including Living Melbourne (Document 4-6), the *Interim Report: Urban Vegetation Cover Analysis Eastern Region, 2018* prepared by RMIT University et al. (Document 4-7) and the *Urban Vegetation, Urban Heat Islands and Heat Vulnerability Assessment in Melbourne, 2018* study prepared by RMIT University et al.<sup>1</sup> identify additional values including habitat and the mitigating effects of vegetation on urban heat islands.

The need to protect and enhance trees is a theme that is well developed throughout the Study. The Discussion Paper identified that tree cover was an essential element of the character of Whitehorse as well as the eastern region of Melbourne and tree protection is given a priority in the PPF.

The gap analysis in the Options Report identified the lack of formal tree protection outside of the existing VPOs and SLOs as a significant shortcoming and the rationale behind the Study. The gap analysis also identified a lack of guidance for development particularly in relation to:

- the preservation of sufficient soil volume to allow trees of a requisite size to flourish
- the preservation of sufficient soil volume to sustain existing trees, and
- the protection of existing trees through the development process.

Another consistent theme in both documents was that while the municipality has a high level of tree cover, it is decreasing. The Panel accepts these findings, particularly as similar results are identified in the Living Melbourne and RMIT Study reports.

The Additional Analysis Report provides more detail on the strategic context, the use of the SLO9 and the impact on Housing growth. In the Panel's view the work presented in the three documents that make up the Study is substantial and comprehensive and an appropriate basis for the introduction of broader tree protection in the municipality.

The Panel appreciates that there may be an inherent tension between tree protection and increased housing density. Nevertheless, in the Panel's view, one of the fundamental roles of planning is to balance competing interests with a view to achieving the objectives of planning in Victoria.

The Panel acknowledges that it is likely that the tree protection and the buildings and works controls will have an impact on some residential development. The issue is whether that impact is reasonable in the balance between increased housing density and tree protection. In the Panel's view it is reasonable. The SLO9 introduces a requirement for a permit and criteria to guide decision-making. The SLO9 does not prohibit tree removal and the Panel is

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<sup>1</sup> Sun C, Hurley J, Amati M, Arundel J, Saunders A, Boruff B, Caccetta P (2019) *Urban Vegetation, Urban Heat Islands and Heat Vulnerability Assessment in Melbourne, 2018*. Clean Air and Urban Landscapes Hub, Melbourne, Australia.

mindful of the information provided by Council which shows that few applications result in a refusal.

The Panel accepts that the Additional Analysis Report provides an appropriate response to the housing issue identified in the letter of authorisation and that the municipality has sufficient capacity to accommodate its residential growth targets as well as protecting its *“leafy and green”* character.

On the basis that the protection of trees requires not only controls over the removal, destruction or lopping of a tree but also of buildings and works in the vicinity of the tree, the Panel accepts that the SLO is the most appropriate tool. The Panel notes that there are eight SLOs in place within the municipality all of which have similar provisions. The provisions of SLO9 are different and this matter is addressed in Chapter 5.3 and the detail of the SLO9 is discussed in Chapter 2 of this report.

## **4.5 Conclusions**

The Panel concludes:

- the Municipal Wide Tree Study is an appropriate basis for the permanent introduction of the SLO9
- the introduction of the SLO9 on a permanent basis will not have an adverse impact on housing delivery
- the SLO9 is an appropriate tool for tree protection in the Bush Suburban and Garden Suburban character areas.

## 5 Individual issues

### 5.1 Safety hazard and dead, dying and dangerous trees

#### (i) The issues

The issues are:

- whether the imposition of the SLO9 will exacerbate safety hazards from retaining canopy trees in residential settings
- whether the permit exemption provisions applying to dead, dying and dangerous trees in the SLO9 are appropriate.

#### (ii) Evidence and submissions

The submission from Mr Piddington highlighted concern with safety from large canopy trees close to buildings and the risk from trees like natives that may shed limbs in both windy and calm conditions, or even suffer more catastrophic loss such as whole tree failure. He believes landowners best look after their trees and do not need Council overseeing their management.

The submission from Mr Borg went further and he referred to Eucalyptus trees as '*widow makers*' stating that:

Eucalyptus trees can be a danger to humans in populated areas.

Eucalypts have a habit of dropping heavy branches earning them the nickname of Widow Maker. These gum trees preserve their health during periods of drought or inadequate water supply by allowing some branches to dry out and break off – a sort of self pruning.

Ms Taylor considered "*residential blocks are not suited to large gum trees*". She also expressed concern over conflicts between Council and residents regarding tree health, condition and approval for removal of trees that may be unsafe. She considers advice on tree safety should be only from qualified arborists and not Council officers who are not qualified in that discipline.

Submitters like Ms Taylor and Mr Borg query who should be responsible for managing a large canopy tree for its health and safety, where Council imposes a permit requirement for any maintenance that might be required on the tree including lopping or removal.

The submission from Ms and Mr Krall identified an issue with liability for tree safety where overhanging trees from an adjoining property creates safety risks and who should be responsible for management of that risk, particularly when adjoining landowners are reluctant to take appropriate action. Their submission highlighted the danger from planting inappropriate tree species in inappropriate locations with respect to dwellings.

Mr Weiss on behalf of the Bellbird Residents Advocacy Group submitted that in his experience over the past 20 years, trees dropping limbs is rare. He described three occasions over this period where he has experienced dropping limbs and where action was promptly undertaken to manage the trees including some removal. The dead or dying exemption from the need for a permit contained in the current SLOs are helpful in managing these trees. He considered that although this exemption can be abused, it is essential that Council officers are appropriately trained and have the strength and support to resist inappropriate use of the exemption provisions. He believes "*simple commonsense precautions can minimise risk.*"

Mr Berry on behalf of the Blackburn and District Tree Preservation Society Inc., Mr White from the Combined Residents of Whitehorse Action Group Inc. and Ms Ruth Ault opposed the dead, dying or dangerous exemption because it had been abused in the past by rendering unwanted trees dead, dying or dangerous. They argued that dead trees are *“important providers of habitat.”*

Ms Brown submitted that dead, dying, diseased and unhealthy trees should be removed and urged the Panel to consider how the replacement of new and replacement canopy trees can be achieved.

Ms Taylor and Ms Wicking outlined their experience where their arborist and the Council arborist had differing opinions about the health of trees.

Mr Borg and Mr and Ms Krall submitted that owners should be able to remove dangerous trees without Council approval.

Council submitted that trees on private land are the responsibility of the relevant landowner and that the SLO9 will not negate such obligations. The arboricultural evidence of Mr Brown was that:

When considering the number of private trees across Melbourne for example, it is unusual when compared to most planning related tree and site assessments to deal with trees that have dropped limbs or even whole tree failure. While it is certainly acknowledged branch failures do occur as do whole tree failures, however, based on my experience both are quite rare, particularly the latter. When the issue of tree safety is raised, in my experience it is usually done on the assumption that something may happen rather than something that has happened.

Regarding the ability to manage tree safety, Mr Brown stated:

If a private landowner believes a tree is dangerous, they can have it assessed by an arborist. If that arborist has assessed the tree as dangerous, the landowner can apply to Council to have the tree removed.

If assessed by a Council planning arborist as dangerous, there is provision under the scheme (SLO9) for a tree that has ‘become dangerous’ to be exempt from requiring a permit for its removal. Therefore, C219 does not restrict the removal of dangerous trees in anyway. This in my experience is very similar to the way other vegetation controls are applied across Melbourne. For example, if a tree is dangerous in Banyule or Maroondah an exemption can be given so that a permit is not required for its removal.

Regarding more localised issues such as leaf litter and debris, Mr Brown stated that:

In relation to the dropping of leaves and debris, there are gutter guarding systems available that work quite well in reducing leaves and debris in gutters and on roofs. It must be noted that this is a common problem across Melbourne, and not having trees overhanging a property will not eliminate leaves and debris being carried by the wind and accumulating on a roof or in the gutter. In addition, the cleaning of gutters is generally seen as a standard maintenance for any home owner.

Mr Brown’s evidence was that tree root damage to pipework will in most instances be associated with pipes that have pre-existing leaks or cracks or are broken that allow tree roots access as they follow water gradients and tend to grow along lines of least resistance. Tree roots should have no adverse impact on intact pipework.

Council submitted that the Amendment would not prevent the removal, destruction or lopping of dead or dying trees as well as those that are potentially dangerous. Council added that, when supported by evidence from an arborist, the management or removal of dead, dying or dangerous trees will *“have a positive benefit for individuals as well as the wider community.”*

Mr Brown's evidence was:

The approval of C219 will not prevent the removal or management of dead, dying or dangerous trees. In addition, it will not stop property owners from maintaining their dwelling or managing their land as they currently do. It, however, has the potential to improve the landscape character, reduce the visual impact of development and improve the overall environments of the areas it currently covers.

Council's submission also presented a number of VCAT decisions and Panel reports that considered the concept of a dangerous tree. Both the Monash C115 (Monash C115 (PSA) [2013] PPV 101) and Banyule C80 (Banyule C80 (PSA) [2013] PPV 13) Panel reports considered the exemption relating to emergency works in the head clause of the VPO and questioned the need for a qualifying exemption in the schedule.

### (iii) Discussion

The Panel recognises the concerns over safety with the location of canopy trees in urban settings such as the residential areas of Whitehorse.

Applying SLO9 to retain canopy trees and creating permit requirements over the balance of residentially zone land in Whitehorse has raised concerns over the ability of landowners to efficiently address safety hazards through management of canopy trees. This reflects the tension between valuing the important contribution canopy trees make towards the character and aesthetics of the residential areas of Whitehorse and being able to manage trees with regards to safety.

In response, the Amendment proposes the SLO9 provides the following exemption from the need for a permit to remove, destroy or lop a tree:

A tree which is dead or dying or has become dangerous to the satisfaction of the responsible authority

The Panel recognises that planning controls should reflect safety hazards from large trees. This has already been recognised in Whitehorse over decades with the SLOs 1 to 8. These provisions include an exemption for removing, without a permit, dead or dying trees subject to the satisfaction of Council. It is also noted that these SLOs do not include a reference to trees that have become dangerous.

The Panel notes that, to some extent, the head clause of the SLO deals with this matter in Clause 42.03-3 - *Table of exemptions* under emergency works which contains the following:

**Table 3: Whitehorse Planning Scheme Clause 43.03-3**

#### The requirement to obtain a permit does not apply to:

Emergency works	Vegetation that is to be removed, destroyed or lopped: Emergency works in an emergency by, or on behalf of, a public authority or municipal council to create an emergency access or to enable emergency works; Or where it presents an immediate risk of personal injury or damage to property. Only that part of the vegetation that presents the immediate risk may be removed, destroyed or lopped under this exemption
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Regarding the safety exemption, the permanent application of SLO9 over the balance of the residential areas of Whitehorse creates, in the Panel's view, a different context. The effect of this much wider application of the SLO9 means that greater attention should be given to matters of tree safety. The Panel considers the inclusion of the exemption for dead and dying

trees and its expansion to include dangerous trees is reflective of a more nuanced approach to addressing tree safety hazards.

As mentioned in Mr Reid's evidence and in Council's submission, the changes proposed in SLO9 under the Amendment includes an increased flexibility, compared to the other SLOs that reflects its much broader application.

In many respects, the Panel considers the issue of the dead, dying or dangerous tree has been addressed by past Panels. Notably, the Panel acknowledges the report into Whitehorse C46 Part 2 in March 2004 where, in relation to this exemption the Panel commented that:

In some locations, there is a need to protect dead trees because of their habitat value as nesting sites for certain bird species. However, habitat protection has not been established as a major issue in Blackburn. The overlay in question is one that protects landscape character, not environmental significance. Blackburn is a suburban area and the trees, which contribute to its landscape character, must coexist with houses and other development. Therefore issues of safety associated with dead trees probably have a higher priority than in non-urban areas where the incidence of people and buildings, which might suffer potential damage, is much lower.

The Panel therefore agrees with submitters that it is unreasonable to limit the permit exemption provisions relating to dead and dangerous trees to trees that present an immediate risk. The delays associated with obtaining a planning permit can be critical in the case of a potentially dangerous tree and can be the cause of unnecessary risk, stress and inconvenience to property owners. While the Panel acknowledges that there may be occasional cases where healthy trees are removed with the excuse that the tree was dangerous or dying, in practice this is likely to be a rare occurrence. Furthermore, this negative impact is likely to be more than offset by greater acceptance of the controls by affected property owners.

The C46 Part 2 Panel recommended the exemption, with the inclusion of reference to dangerous trees be included in the SLOs around Blackburn.

The Panel considers it is appropriate that reference to dangerous trees be included in the SLO9. In the Panel's view a tree that is "*becoming dangerous*" is different from emergency works. Broadening the exemption is appropriate, given its broader application whereby a greater reliance is made on a more targeted approach towards retaining and replacing canopy trees in Whitehorse's residential neighbourhoods. The combination of exemptions available under the SLO head provision and in Schedule 9 to the SLO provides a reasonable approach to managing tree safety.

The Panel recognises that the dead, dying and dangerous exemption can be abused and that some owners or applicants might undertake measures to accelerate the senescence of canopy trees and thus circumvent Council assessment through a permit application process. Exempting dead trees can also fail to recognise their habitat value. As noted earlier by the C46 Part 2 Panel, the focus of the SLO is on landscape character rather than on environmental significance or habitat value. The SLO9 is appropriate in that it relates to canopy trees in an urban setting with a focus on their contribution to neighbourhood character. The exemption also includes reference to Council's satisfaction which provides a check to ensure that the tree is actually dead, dying or becoming dangerous.

From this perspective the Panel accepts Council's submission that the exemption provisions that relate to dead, dying or dangerous trees are appropriate.

The Panel agrees with Council that landowners are responsible for looking after their trees including their health and condition with respect to safety. Watering, appropriate pruning



and regular inspections are all important as part of these responsibilities. The Amendment and the SLO9 do not negate these responsibilities.

Similarly, the Panel accepts the evidence of Mr Brown with respect to leaf litter and debris and damage to infrastructure. These are all routine maintenance issues that are commonplace in residential areas where trees exist.

The Panel agrees with Ms Brown that the decision guidelines should give more weight to the second of the proposed landscape character objectives to be achieved. This may require a further decision guideline that considers the provision of replacement trees where a tree is removed or destroyed.

The Panel accepts the dilemma faced by applicants who engage an arborist whose assessment is ultimately different from the Council's expert. Issues around disagreement with Council revert to the permit process. Any further dispute can ultimately be dealt with by VCAT, but Council should be looking for a more efficient and less expensive solution particularly when dealing with applications that are not part of a redevelopment. One option may be for Council's arborist to provide an initial assessment of the tree prior to the applicant seeking the advice of an arborist.

#### **(iv) Conclusions**

The Panel concludes:

- tree safety is appropriately addressed under the Amendment
- the permit exemption provisions applying to dead, dying and dangerous trees in the SLO9 are appropriate
- an additional decision guideline be included which deals with the provision of replacement trees where trees are removed or destroyed.
- Council should consider the provision of pre-application advice from a qualified arborist about the health of trees.

## **5.2 Imposition on private property rights and cost burden**

### **(i) The issues**

The issues are:

- whether the SLO9 imposes excessive restrictions over private property rights and freedoms regarding maintenance of private gardens
- impacts on existing use rights
- whether the Amendment imposes excessive and burdensome costs associated with the permit process for tree management.

### **(ii) Evidence and submissions**

Council submitted that the SLO9 has been applied to residential areas and supports the role canopy trees have in contributing to neighbourhood character of the Bush Suburban and Garden Suburban Neighbourhood Character Precincts. Council argued that the imposition of tree controls is generally supported by the community.

Council added that trees support the character that makes many of Whitehorse's suburbs attractive places to live and argued that these trees should be protected to ensure the landscape values are not compromised by development.

The requirement of the SLO9 requiring an application for a planning permit to remove, destroy or lop canopy trees was viewed to be an imposition on private property rights by several submitters. This concern was expressed by Mr Mackiewicz as a restriction of what he considered were existing use rights over the residential use of his land and the ancillary use of his garden and trees as part of that residential use.

Mr Mackiewicz considered the Amendment an imposition on private property rights through the SLO9 requiring permits for tree removal and not providing for individual choice in removing single trees for preference reasons, such as for amenity or aesthetic purposes or garden management.

In contrast, Mr Young submitted that those who object to controls on tree protection on the grounds of interference with their property rights are “*selfish.*” He argued that all residents live in a community and not in isolation and stated:

Our actions or inaction may have a profound impact on the amenity and liveability of our neighbours and the broader community. Residents have never been allowed to do as they please on their properties in order to prevent public nuisance or danger.

Mr Brown, in his evidence, accepted that there are landowners who have planted a tree and desire to control how and when that tree is managed, including its removal. He agreed that some residents may see the requirement of a permit as an unnecessary imposition on their ability to manage their own garden.

Mr Chow considered the requirement to apply for a planning permit to remove, destroy or lop trees is an imposition in terms of cost and time. He described his experience of seeking approval to remove trees which had a total cost over \$1000 and five months later was still unresolved.

Mr Weksler submitted that the costs for applying for a planning permit for tree removal imposed unnecessary expenses on residents with permit application fees and the costs for arborist reports. He added these costs created “*a disheartening process,*” that is adversarial and requires money to be spent on specialist advice for what he considered to be a trivial matter.

Ms Wicking submitted that the permit application process is a significant additional burden on tree management on private land. She argued that it is a complex and time-consuming process requiring the expertise of arborists and the preparation of plans showing the location of trees, all of which are beyond the means of landowners.

Mr Piddington reiterated that the permit process creates uncertainty for residents, which adds to the cost of the process.

Mr Gardner expressed concern that the presence of large canopy trees with extensive canopy coverage over his property created a disincentive for anyone to purchase the property. This was reflected first through the Amendment penalising those properties that have canopy trees with regulations. Secondly, by creating an uneven playing field for prospective purchasers who may wish to redevelop a property with canopy trees compared to other sites containing no canopy trees that offer a less restrictive redevelopment option.

### **(iii) Discussion**

The Panel acknowledges that having to apply for a planning permit under the SLO9 for tree removal places a restriction on individual property owners. However, the Panel also

acknowledges that there are benefits from applying this form of control in limiting the unfettered removal of trees.

The SLO9 relates to the protection of landscape values as they relate to neighbourhood character. While the SLOs 1 to 8 are more targeted in their coverage of small areas, the SLO9 has been applied in a blanket manner over a substantial area. As a consequence, the SLO9 has been drafted to include a range of exemptions that reduces the administrative burden on individual landowners where they may seek to remove individual trees as part of maintenance and routine garden management. The Panel considers this is an acceptable approach while retaining some control over the loss of the larger trees that contribute to canopy coverage.

The concerns over existing use rights are not relevant with respect to the Amendment. The SLO9 is an overlay under the Victoria Planning Provisions which does not affect land use and hence existing use rights. The SLO9 introduces a permit trigger and management obligations to ensure large canopy trees are retained, replaced and managed.

Regarding the burden of costs with the permit process, the Panel notes that the provisions of SLO9 are directed at tree removal associated with development and is Council's attempt to reduce the ease and extent of 'moonscaping,' which has concerned so many residents in the community.

The Panel notes the commentary of the Panel in C46 Part 2 that:

... A permit application fee is \$90, the advertising fee is \$66 and the application is to be accompanied by an arborist's report that further adds to the cost of the application. The Panel is aware that some Councils (e.g. the Shire of Nillumbik) waive the permit fee for tree removal, and do not require advertising of the application. Furthermore, the application is assessed by an arborist employed by Council, rather than requiring the applicant to provide that assessment. This approach is adopted as an attempt to encourage property owners to apply for a planning permit to remove trees (where this is required).

Apart from tree removal associated with a new development, tree removal forms part of the normal process of managing a garden. Trees are living things that mature and eventually enter senescence and die. Trees may also grow too large for the space that was provided for them, or they may be damaged or become diseased. Or the wrong decision may have been made about the species to be used in a particular location. Tree removal and replacement planting is part of the normal process of gardening and the management of properties, and is often an ongoing process. In this respect tree removal differs from development proposals which relate to a specific, one-off event.

The Panel accepts that in an area with special landscape qualities (such as Blackburn) there is a need to control the process of tree removal to ensure that the landscape values are protected. However, imposition of costs associated with the permit requirement does place a heavy financial burden on property owners. Because it is the community that benefits from the tree protection controls, the Panel believes that it is not unreasonable for the community to shoulder the whole of the cost of administration of the controls. The Panel therefore recommends that the Council give consideration to waiving the permit fee for tree removal applications and to employing an arborist to report on tree removal applications.

The above commentary demonstrates that issues around costs and changing circumstances and conditions with trees have been around for almost 20 years and is supported by the Panel. Mr Brown's evidence was that the cost of an arborist report for a single tree is around \$500 to \$600 with additional trees charged at around \$25-\$100 per tree. The Panel also notes that where individual tree removals are concerned, the VicSmart permit process allows for single tree removal to be processed in a much quicker and simplified process. Council submitted that it has not reached a formal position on whether to assist the simpler permit application

process. However, the Panel notes that given the community benefit from applying the controls under the Amendment, an option may be for an applicant not needing to provide an arborist report and that Council's arborist undertake assessment for the VicSmart fee.

The Panel supports such an approach for individual tree removal applications under the VicSmart process.

#### **(iv) Conclusions**

The Panel concludes:

- the imposition on private property rights with the Amendment are acceptable given the broader community benefits that derive from the controls to protect the retention and replacement of canopy trees and their contribution to canopy tree cover and neighbourhood character
- the cost burden from the permit process is reasonable and can be further mitigated with support from Council for individual applications for single tree removals
- Council should consider waiving the permit fee for VicSmart tree removal applications and engaging an arborist to provide an assessment and report on these applications.

### **5.3 Consistency with Significant Landscape Overlay Schedules 1 to 8**

#### **(i) The issue**

The issue is:

- whether the controls in the SLO9 should be the same as those in the SLOs 1 to 8.

#### **(ii) Evidence and submissions**

A number of submitters including the Blackburn and District Tree Preservation Society, the Blackburn Village Residents Group, the Combined Residents of Whitehorse Action Group, the Yarran Dheran Advisory Committee and Ms Ault wanted the controls in the SLO9 to match those of the SLOs 1 to 8.

Ms Ault submitted that the controls in the SLOs 1 to 8 had worked well and resulted in reasonable tree protection. She argued that it would be consistent to have the same controls applied across all SLOs. Blackburn and District Tree Preservation Society expressed concern that the unique provisions of the SLO9 will:

... dilute the overlay's effectiveness and render it of little value in retaining, let alone enhancing, the natural character of SLO9 areas within Whitehorse.

Council submitted that the various studies that make up the Study proposed that a 5 metre height was the most suitable criterion for a canopy tree. Council added that the Options Report concluded that:

Based on this benchmarking exercise, it can be seen that canopy trees are usually protected from 5 or 6m in height and for any species, whether it be indigenous or exotic. Based on this, it would be reasonable to suggest that a canopy tree in Whitehorse can be determined as a tree with a 0.5 metre circumference at 1.0 metre above the ground (being the most common measurement used in the existing Whitehorse controls and elsewhere) and/or a minimum height of 5-6 metres.

Council added that the Additional Analysis report observed:

that Canopy trees with a height of at least 5 metres will, in most cases, provide a visible canopy above the roofline of a single storey house and the ground level of most buildings with two or more storeys.;

and

... at the time the original SL09 had been submitted for introduction it included a 0.5 metre trunk circumference provision in order to align it with Whitehorse's pre-existing SLOs. This threshold was changed by DELWP upon introduction of the interim SL09.

Council submitted that the 4 metre buildings and works setback from a protected tree was appropriate because trees within tree protection zones are generally large trees which warrant protection. Council concluded:

There is no doubt that large trees make a significant contribution to neighbourhood character. It follows that without this 4 metre "trigger" point, there is a very real risk that larger trees could potentially be damaged by buildings and works, particularly if situated near adjoining properties undergoing development.

Mr Reid's evidence was that since the introduction of the interim SLO9 in February 2019 almost 1000 permit applications have been triggered for vegetation removal or buildings and works. He added:

The additional exemptions proposed by Amendment C219 are generous and will have the effect of reducing the number of properties affected and applications required. This in turn will reduce the administrative burden on Council and relieve many landowners from the need to apply for a permit to remove exempt trees.

Mr Reid stated that the difference in setbacks from buildings and works already existed in local policy at Clause 22.04 which nominated a 4 metre setback in SLOs 1 to 8 and a 3 metre setback for everywhere else. With respect to planting areas he stated:

A requirement for a 50 square metres minimum area for a newly planted tree is problematic in areas expected to experience dwelling growth because of the significant amount of land it would exclude from development. It also exceeds the private open space standards that apply in most of Whitehorse's residential zone schedules, which require an area of 35 square metres.

Mr Reid gave evidence that given the extent of SLO9 compared to the other SLO areas, more generous permit thresholds and exemptions were appropriate to ensure an appropriate balance is obtained between vegetation protection and other planning objectives.

### **(iii) Discussion**

There are several differences in the permit requirements between the SLOs 1 to 8 and SLO9. In addition, there are some differences in the permit requirements across the SLOs 1 to 8, most of which relate to the construction of a building. The Blackburn Village Residents Group provided a very useful table (Document 13) which detailed the controls across each of the SLOs 1 to 9.

The main differences highlighted to the Panel were the permit requirement for removal of trees with a circumference of 0.5 metres in SLOs 1 to 8 and 1.0 metres in SLO9. The minimum area for planting in SLOs 1 to 8 was 50 square metres and 35 square metres in SLO9.

Table 4 below shows a comparison of these and a sample of other controls.

**Table 4: Comparison of some controls in SLOs 1 to 9**

Type of decision	SLOs 1 to 8	SLO9
Tree removal	0.5 metre circumference	1.0 metre circumference
Front setback	9 metres in SLOs 1-3, 5 and 8	Clause 54 and 55
Side setback	1.2 metres in SLOs 1-3, 5 and 8	Clause 54 and 55
Building and works setback	4 metres	3 metres
Minimum planting area	50 square metres	35 square metres

Table 4 also shows that there is not a consistency of the controls across the SLOs 1 to 8. From this perspective, the Panel accepts the evidence of Mr Reid that the SLO9 applies generally across the GRZ, NRZ and RGZ areas of Whitehorse where some redevelopment is expected to occur and which is different from the predominantly NRZ areas covered by the SLOs 1 to 8. Under these circumstances different controls are appropriate.

In the Panel's view, the SLO9 enables Council to require modifications to the design, layout or location of buildings in order to protect existing canopy trees or allow replanting to grow while enabling development to occur. As a consequence, there are sound reasons why some of the SLO9 controls should differ from SLOs 1 to 8.

#### **(iv) Conclusions**

The Panel concludes:

- it is appropriate for the controls of the SLO9 to differ from those of the SLOs 1 to 8.

### **5.4 Intent of the controls**

#### **(i) The issues**

The issues are:

- perverse outcomes with tree protection, retention and enhancement
- Inadequate effect on canopy tree protection and canopy tree cover retention and enhancement
- mis-directed approach towards canopy tree protection, retention and enhancement.

#### **(ii) Evidence and submissions**

The Panel recognises an overarching concern best summed by the submission from Mr Young regarding the:

...gradual loss by stealth of gardens and canopy trees in our once green and leafy suburb. Existing tree removal and planning controls have proven ineffective to the extent that it appears every second home and established garden is being 'moonscaped' and replaced by over development with multiple units and fence to fence 'McMansions' leaving insufficient space for a landscaped garden let alone canopy trees.

Mr Young submitted that:

Placing blanket controls over the entire municipality concerning tree removal is essential because it requires all so-called "developers" to justify tree removal rather than Council simply approving development after 'moonscaping' has occurred.

If tree removal (not subject to the various exemptions) requires a permit from Council then developers and residents will automatically have breached applicable legislation by removing trees prior to making an application for a building or demolition permit.

Mr Berry submitted that the extent of exemptions in SLO9 compared to what are provided in the SLOs 1 to 8 will dilute the effectiveness of SLO9 in protecting canopy trees and render it of little value in retaining let alone enhancing the natural character of the SLO9 areas within Whitehorse. He considered there are many areas where large canopy trees may still not be protected under the SLO9 because of the combination of exemptions relating to either trunk circumference or tree siting within 3 metres of existing dwellings.

He argued that it will not stem the effects from the more than 2 per cent loss of canopy tree cover experienced in Whitehorse between 2014 and 2018. He added that under the SLO9 tree



removal exemptions do not make provision for replacement planting and there is no offset requirement for canopy tree removal under the exemptions.

Mr Howell and Mr Weksler submitted that the real issue and driver of the perceived problem recognised above by Mr Young is the current policy for closer settlement or high-density development. They argued that it is this policy that the Amendment fails to address and is the significant cause for tree loss in Whitehorse and other middle ring eastern municipalities of Melbourne. They added that the Amendment is creating unnecessary restrictions on most residents who, in the opinion of Mr Weksler, *“have done nothing wrong.”*

The Blackburn and District Tree Preservation Society and the Combined Residents of Whitehorse Action Group consider the Amendment should include the following changes to the SLO9 or Clause 22.04 – *Tree Conservation* policy to overcome limitations:

- Tree trunk circumference should be reduced from 1 to 0.5 metres like the SLOs 1 to 8. This avoids confusion between the SLO schedules
- Permits should be required to remove a canopy tree located less than 3 metres from an existing dwelling or in-ground swimming pool. Many existing trees are located close to houses and in-ground swimming pools without interfering with their structural integrity
- Increasing the area for planting a canopy tree replanting from 35 to 50 square metres. This is like that applied under the SLOs 1 to 8 and would allow sufficient space and soil volume for canopy trees to survive, thrive and reach maturity with a natural canopy spread
- Ensure that where canopy trees identified as environmental weeds are exempted from requiring a permit and when removed, they are appropriately replaced by non-weed species that will offset canopy tree cover.

In contrast, Mr Piddington considered the Amendment should be changed to increase flexibility for landowners, as distinct from developers who may seek to ‘moonscape’ their properties by:

- increasing setbacks from all permanent structures such as dwellings and outbuildings from 3 to 5 metres
- allowing removal of branches overhanging the roofline of all permanent structures
- increasing the 'canopy tree' height measurement from 5 to 7 metres
- Council offering incentives to ratepayers to support more canopy trees.

Ms Brown expressed concern that the SLO9 is not clear enough in supporting the objective for canopy tree replanting. She submitted the SLO9 decision guidelines need to be reviewed to better provide for the planting of new and replacement canopy trees and what a decision maker needs to consider when retention of canopy trees cannot be achieved.

Ms Ault considered that:

- there needs to be greater account taken for the time a replacement tree takes to grow and mature and play a role in tree canopy cover
- care needs to be taken with removing environmental weed trees particularly where they occur in clumps or groups so that any bulk removal does not leave a significant impact on canopy cover loss.

Submitters like Mr Mackiewicz, Mr Weksler and Mr Borg considered that the Amendment will result in residents removing trees before they reach the 5 metres height trigger for a permit and replant smaller trees to avoid the complications of the permit application process.

Council submitted that one of the issues driving the Amendment was the effect of ‘moonscaping’ of residential lots. Mr Reid described the practice of ‘moonscaping’ as *“clearing of a property of all vegetation prior to redevelopment. This may coincide with the demolition of buildings, although not always.”* His evidence was that the practice accentuates community and Council concerns when it occurs prior to a planning permit being approved for redevelopment with the perception that it is done to avoid the need for assessment of removal of large trees and to maximise development potential.

Mr Reid’s evidence was that:

Moonscaping can be regarded as an attempt to circumvent the contribution of trees to neighbourhood character. This is particularly relevant in character areas where canopy trees play an important role in defining character, as is the case throughout Whitehorse.

In the absence of vegetation protection controls, there is no legal impediment to moonscaping.

He added that the permanent application of SLO9 across the balance of Whitehorse’s residential areas has the potential to discourage ‘moonscaping’ by:

- identifying vegetation protection as an important planning priority
- strengthening enforcement action where vegetation is removed without approval
- requiring assessment of the significance, health and safety of a tree and weighing these considerations against other planning criteria
- establishing a nexus between vegetation protection and built form, requiring a more considered design response
- supporting the replacement of trees permitted for removal with replanting.

Mr Reid was in no doubt that making SLO9 permanent would provide a strong discouragement to the speculative ‘moonscaping’ of residential lots and enabling vegetation to be properly considered in a development context.

Regarding perverse outcomes with tree management, Council’s response was that the intent of the controls is to protect current, as well as future trees that contribute to the landscape and neighbourhood character.

Mr Brown’s evidence was that:

I believe it is unlikely landowners in any great number would not plant trees as a result of the permanent control. It is my experience that even landowners that perhaps do not like trees as much as some others on their properties, will still generally plant trees. However, they will likely be more species and location specific. In addition, a landowner cutting down trees before they reach 5 metres in height is unlikely. There is some effort needed in even the removal of a 4 – 5 metre tree.

For example, it may not be able to be removed in one piece (cut from the bottom), therefore ladders may be required, which is dangerous, so a landowner may need to engage an arborist.

A 4 – 5 metre tree will generally be a lot bigger once it is on the ground than what the lay person expects. There is a lot of effort required to cut it up and fit it in a green bin and the right tools are required to do so. In my experience once a landowner has done it, they usually will not do it again, because of the level of work involved in removing even a small tree. Further, people in my experience are reluctant to remove trees that they have paid for and planted themselves.

### **(iii) Discussion**

The Amendment has the intent of reducing the extent of canopy tree loss across Whitehorse and contributing towards enhancement of canopy cover. The permanent introduction of the SLO9 aims to protect, retain and enhance canopy tree cover over residential areas that currently (apart from some areas affected by the VPO) do not have tree protection controls.

Despite these goals, many submitters to the Amendment do not believe the SLO9 goes far enough, others believe it goes too far, while others again consider the Amendment misses the real driver of tree loss in Whitehorse.

The SLO9 is a statutory planning control that will trigger permits for the removal, destruction or lopping of canopy trees that are not exempt. The purpose of the control is to protect, retain and replace canopy tree removed where permits are required and to act as a policy direction for landowners to keep and manage their trees in the long-term.

The Panel accepts Council's position with regards to 'moonscaping' and considers the SLO9 will assist in reducing the extent of the practice. The SLO9 will not eliminate the practice entirely because of the exemptions in the Schedule, but will, in the Panel's view, contribute to a diminution of the ease of removal of large canopy trees and provide for a more holistic assessment of large trees for their role in canopy cover in Whitehorse.

The Amendment is not seeking to address broader policy issues such as housing intensity and increased density of development or closer settlement. These are higher level policies that an overlay control like the SLO cannot address. Issues around closer settlement patterns should be addressed elsewhere and not within the ambit of the Panel's considerations.

The Panel accepts Council's position and agrees with the evidence of Mr Brown that the controls will not discourage landowners from planting trees *"to the extent that it compromises the overall canopy of the municipality or impacts the integrity of the control."*

Regarding the effect of exemptions and the perception that the SLO9 will not sufficiently protect canopy trees, the Panel notes that Mr Berry's concerns over potential loss of canopy trees failed to consider tree heights above 5 metres in addition to trunk circumference.

As discussed in 5.3 above, the suggested changes to the SLO9 provisions sought by Mr Berry and Mr Piddington are not supported by the Panel. The Panel considers that Council has struck the right balance between permit requirements and exemptions given the broad blanket application of the SLO9.

Regarding Ms Brown's concerns with respect to the adequacy of replacement planting and offsetting to account for the loss of canopy trees, there are two components of this issue. One relates to appropriate replanting as part of tree removal approved in the permit application process and the other is loss of canopy trees under the operation of exemptions.

The Panel notes that the basis of Ms Brown's submission was in relation to her experiences with a permit application and VCAT process associated with a residential development proposal and proposed landscaping, or rather, lack of proposed offsetting of tree loss. The Panel recognises that her experiences are based on the current interim version of SLO9 and notes, under the Amendment, it has been amended to improve direction regarding replacement planting for tree loss. These changes include:

- modifying the second objective to provide for the planting of new and replacement canopy trees
- modifying the decision guidelines to include reference to the cumulative contribution trees make with other vegetation to the landscape and the incremental loss of trees.

There are other changes to policy under the Amendment which also contribute to supporting the replacement of trees including Clause 22.04 relating to *Tree Conservation* that improve offsetting permitted tree loss including space for canopy tree plantings. Regarding tree replacement, the policy shifts the area requirement from 50 to 35 square metres. The Panel heard evidence from Mr Brown that this will allow more trees to be planted in available space and including allowing more than one canopy tree of variable height to be planted to provide for density and variety of canopy coverage.

The Panel considers these changes and shift in emphasis will support not only tree retention but enable realistic replacement of canopy trees to occur as part of the residential redevelopment process.

The Panel notes the policy under Clause 22.04 does provide strategic support for tree loss to be replaced as part of normal garden management on private property. The Panel considers this goes some way to helping Council achieve the canopy cover goals of the Urban Forest Strategy.

#### **(iv) Conclusions**

The Panel concludes:

- the SLO9 provides an acceptable level of control over canopy tree loss in support of its role and contribution to neighbourhood character and reduction of loss from 'moonscaping' practices.

### **5.5 Application of the Significant Landscape Overlay Schedule 9 to public land**

#### **(i) The issue**

The issue is whether the application of the SLO9 is inconsistent in not affecting both private and public land areas.

#### **(ii) Relevant policies, strategies and studies**

The SLO9, as exhibited, includes the following exemptions from requiring a permit:

A tree on public land or in a road reserve removed by or on behalf of Whitehorse City Council.

The removal, destruction, or lopping of a tree to the minimum extent necessary:

- to maintain the safe and efficient function of a Utility Installation to the satisfaction of the responsible authority or the utility service provider; or

- by or on behalf of a utility service provider to maintain or construct a Utility Installation in accordance with the written agreement of the Secretary to the Department of Environment, Land, Water and Planning (as constituted under Part 2 of the *Conservation, Forests and Lands Act 1987*).

### **(iii) Submissions**

The submission from Mr Pianta questioned why the application of the SLO9 does not include public land areas. He considered the SLO9 should be applied over both private and public land areas including road reserves and public park areas. In relation to the exemption of the SLO9 for public land areas and road reserves, he stated:

My reason for opposing and objecting to this exemption is that significant vegetation within the municipality of the Whitehorse City Council is sited on public land (Council reserves or other government public land) or within a road reserve and apart from the exemptions in the header of the SLO should be subject to the same planning controls as private freehold land. Many road reserves and public land (reserves) provide tree vegetation for wildlife and wildlife habitat movements. Every person and/or body should be subject to the same planning controls so that there is clear transparency and a consistent policy applied to consider any application for planning permit to remove, destroy or lop vegetation. Why should the Whitehorse City Council or other owners of public land be exempt from the planning controls, particularly so if these parcels of land have significant tree vegetation or canopy cover on the land? The planning controls should not be “do as I say and not as I do.”

Mr Pianta submitted that public land areas and road reserves would already most likely require permits under the provisions of Clause 52.17 relating to native vegetation for tree removal. Including all canopy trees irrespective of species would not be that much more onerous to impose a permit requirement. He argued a more strategic approach is needed for canopy tree management on public land areas that is clear in terms of transparency and guidance over canopy tree management and without allowing Council or any other public authority to act without any checks or balances.

Ms Wicking questioned the need for different approaches to tree protection and retention management between trees on private and public land. For example she referred to the contradiction evident between a suggestion in Mr Brown’s evidence for porous pavement treatments for trees within 3 metres of a driveway and what she considers to be a lesser separation that is often the case with trees in nature strips and the kerb and channel and bitumen surface treatments of local roads.

Council and Mr Berry advised that the Urban Forest Strategy provides guidance on tree management in the Whitehorse urban environment for public land tenure under Council’s management. The objective of the Strategy is to increase the Whitehorse tree canopy cover from the current 20 per cent to at least 30 per cent by 2030.

Council submitted the Urban Forest Strategy outlines the way in which Council will continue to sustainably manage, enhance and increase trees and vegetation in its streetscapes, parks and gardens, with species that enhance neighbourhood character, support biodiversity and are adaptable to a changing climate. The Urban Forest Strategy includes an Urban Forest Policy which seeks to provide clarity and direction to the ongoing management of trees in Whitehorse. The policy relates to trees on public land, owned and managed by Council including street trees and park trees but does not incorporate trees on private land or trees managed by other agencies. The Urban Forest Strategy also contains a Tree Management Plan that also provides policy guidance for trees in parks and reserves. Both the policy and

management plan relate to removal, pruning, planting and protection of trees on Council managed public land areas.

**(iv) Discussion**

The SLO9 is proposed to be applied over land that is privately owned and zoned for residential purposes within Whitehorse where the SLO is not currently in place. It is not proposed to be applied to land zoned for commercial, industrial or mixed use purposes and does not cover public or Crown land areas including parks and reserves that are zoned Public Conservation and Resource Zone, Public Park and Recreation Zone or Public Use Zone. It does cover roads within the residential areas of the municipality.

As a result, the SLO9, as exhibited, includes the following exemptions from requiring a permit:

A tree on public land or in a road reserve removed by or on behalf of Whitehorse City Council.

The removal, destruction, or lopping of a tree to the minimum extent necessary:

- to maintain the safe and efficient function of a Utility Installation to the satisfaction of the responsible authority or the utility service provider; or
- by or on behalf of a utility service provider to maintain or construct a Utility Installation in accordance with the written agreement of the Secretary to the Department of Environment, Land, Water and Planning (as constituted under Part 2 of the *Conservation, Forests and Lands Act 1987*).

The Panel is aware of debate that has occurred with the application of SLOs over different land tenures. For example, amendments that have applied the SLO over coastal areas of the State have been subject to Panel reports<sup>2</sup> discussing whether the overlay should be applied over coastal Crown land in order to more comprehensively protect significant coastal landscapes and not merely focus application over private land areas.

Although these Panel reports supported the application of the SLO over both public and private land tenure, the view of the State Government was not supportive of such an approach, primarily on the basis that public land management agencies have their own processes and procedures for determining vegetation management that has regard to impacts from activity on environmental and scenic landscape values.

While noting the discussion and outcomes of these past Panel reports and amendments relating to the SLO to the respective planning schemes of other municipalities, the Panel acknowledges that the Amendment and SLO9 in this instance relates to the role of canopy trees and cover with respect to neighbourhood character in Whitehorse. It is a quite different context where it is the role of canopy trees in creating a landscape appearance and aesthetic in an urban context associated with the Bush Suburban and Garden Suburban neighbourhood character precincts derived from Council's past strategic work on Housing and Neighbourhood Character.

The aim of the SLO9 is retention of established mature trees and provision for planting of new and replacement of canopy trees. On this basis, the Panel is comfortable with the application of the SLO9 on residentially zone private land areas.

In addition, the Panel is aware of Council's attempts with the SLO9 to limit the effect of unnecessarily triggering permit applications and hence views the omission of applying the

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<sup>2</sup> Refer to East Gippsland C68, South Gippsland C45 and Bass Coast C98 Panel Reports.

overlay from public land areas and including the exemptions as proposed, a reasonable approach to limiting this impact.

Finally, the Panel accepts that Council has in place an Urban Forest Strategy that contains both an Urban Forest Policy and Tree Management Plan that provides a degree of guidance over how Council manages trees on public land that is under its control and management. The Urban Forest Strategy can provide surety that Council will work towards achieving its aim for a 30 per cent canopy tree cover by 2030 in conjunction with application of the SLO9 to protect, retain and enhance canopy tree cover across its residential areas.

Regarding the effect of Clause 52.17 and native vegetation regulations with respect to permit applications triggered for native vegetation on public land areas and road reserves, the Panel considers the emphasis between the native vegetation regulations and the SLO9 are quite different. Clause 52.17 relates to the benefit of native vegetation for biodiversity values, while SLO9, in an urban context, is focused on canopy trees and their contribution to neighbourhood character and landscape aesthetics. The respective controls serve different purposes and Clause 52.17 contains a range of exemptions that facilitate management of native vegetation to the minimum extent necessary over both land tenures.

Regarding the perceived contradiction with Mr Brown's evidence on street trees and their juxtaposition with road surfaces, the Panel observes that Mr Brown's evidence in this regard was with respect to suggestions to further amend the provisions of the Amendment including the proposed SLO9. These suggestions were not supported by Council and the Panel has not further considered them as they risk transforming the Amendment and does not comment further on them.

#### **(v) Conclusions**

The Panel concludes:

- the SLO9 exemptions relating to public land are acceptable
- It is not necessary to expand the application of the SLO9 over public and Crown land areas given the Urban Forest Strategy includes policy and provisions to reasonably manage trees and vegetation on public land that Council owns and manages.

## **5.6 Other issues**

### **(i) Submissions**

Mr Pianta advised the Panel that his property was affected by an existing VPO3 and proposed SLO9. He questioned the need to have two controls over his land and not a single overlay control relating to tree management.

Mr Hutchinson submitted that the Camphor Laurel (*Cinnamomum camphora*) be added to the list of environmental weeds. Mr Hutchinson added that *Cinnamomum camphora* was listed in the *Advisory list of environmental weeds in Victoria* by DELWP. A number of other submitters made comments about the species listed in the SLO9.

In response to a question from the Panel, Council submitted that it did not support the use of a list of environmental weeds or document which can be changed from time to time by Council outside of the planning scheme amendment process such as that produced by Mr Hutchinson. Council submitted that it did not support the addition of *Cinnamomum camphora* to the list of environmental weeds in SLO9.

Ms Ault submitted that while environmental weeds may not be desirable, many mature trees contribute to the canopy cover of Whitehorse and if a larger list of environmental weeds is used then significant areas of the existing canopy cover could be removed.

**(ii) Discussion**

The Panel acknowledges that the SLO9 and VPO3 are similar controls and have a common element in the requirement of a permit to remove, destroy or lop a tree. However, the controls also have different objectives with the VPO more focused on the protection of trees which have been identified as significant in the *Significant Tree study, City of Whitehorse 2006*.

In the Panel' view, it is acceptable to have two overlays with similar controls over a property particularly because each overlay is intended to achieve a different outcome. The Panel notes that the Amendment proposes the removal of the VPO2 and VPO4 because these controls essentially implement elements of the Neighbourhood Character Study and SLO9 is intended to achieve a similar outcome.

The Panel agrees with Ms Ault's submission that an extensive list of exempt environmental weed species may have an adverse impact on the canopy cover in Whitehorse. In addition, the requirement of a permit provides Council with the ability to require a replacement planting of a more suitable species. For this reason, the Panel accepts Council's submission that the list proposed in SLO9 is appropriate.

**(iii) Conclusions**

The Panel concludes:

- it is acceptable for a property to be covered by the SLO9 and VPO3
- the list of environmental weeds included in SLO9 is appropriate.



## 6 Form and content of the Amendment

### 6.1 Changes to the Municipal Strategic Statement

#### (i) Discussion

The Amendment, as exhibited, proposes a number of changes to Clauses 21.05, 21.06, 22.03 and 22.04. Post exhibition, Council proposed further changes to Clauses 21.05 and 22.04 which were mainly corrections and clarifications.

No submissions were made on the changes to Clauses 21.05, 21.06, 22.03 and 22.04. The Amendment proposes to add the three documents of the Study as policy references to all four clauses.

Additional text is proposed in Clause 21.05 - *Environment* which refers to the Study and the importance of trees in strengthening neighbourhood character, landscape and amenity, reducing the urban heat island effect, providing habitat for wildlife, improving air quality and the local climate and their positive effects on community health and wellbeing. Other changes include simplifications of the references to locations.

The changes to Clause 22.05 - *Tree Conservation* include:

- additional objectives dealing with improving canopy tree coverage
- adding tree protection to tree retention policy
- greater emphasis on tree replanting
- in Performance standards:
  - consequential edits to the buildings and works near existing tree provisions
  - edits to the site area for a new tree.

#### (ii) Conclusions

The Panel considers the changes proposed to Clauses 21.05, 21.06, 22.03 and 22.04 reasonable and support the introduction of the SLO9 into the Planning Scheme.

### 6.2 Significant Landscape Overlay Schedule 9

#### (i) Discussion

The SLO9 generated significant commentary, much of which has been described earlier in this report ranging from the blanket application of the control going too far, to the control having too many exemptions from the need for a permit to not having enough flexibility regarding permit requirements.

Council argued that the SLO9 relates to canopy trees and their relationship to neighbourhood character of those suburbs in Whitehorse not already covered by the existing SLOs 1 to 8. Council submitted that Whitehorse is experiencing rapid growth and residential development, which results in the loss of canopy trees and comes at the cost of landscape character. Council recognises that vegetation cover is significant, and that Whitehorse has a different landscape character compared to other areas of Metropolitan Melbourne that it believes should be nurtured, encouraged and not allowed to be eroded over time.

Council's approach in the Amendment is to build on the other SLOs and support the retention and enhancement that large canopy trees make to its suburbs. The SLO is a useful planning tool allowing Council to be involved with tree removal and opportunities to influence tree

survival and replanting for optimal growth. Exemptions have been included in the proposed SLO9, which Council submit are pragmatic and will keep the controls realistic allowing careful thought about managing trees.

The Panel accepts the overarching thrust of SLO9 to provide outcomes that improve amenity and neighbourhood character while dealing with a hotter future with climate change.

The Panel notes that Council have suggested changes to the SLO9 as a result of its consideration of submissions received to the Amendment. These changes include:

Yarra Trams and the Department of Transport made submissions to include an additional exemption to allow the removal of trees to maintain the function of the on road public transport network, including tramways. This is supported. Therefore it is proposed to include the following exemption:

*"The removal, destruction or lopping of a tree to the minimum extent necessary to maintain the safe and efficient function of the existing on road public transport network (including tramways) to the satisfaction of the Department of Transport."*

There are some minor typographical errors in the exhibited amendment documents. The botanical names in the Environmental Weed list should be consistently italicised which will be updated prior to the panel hearing. Additionally, the word "including" is proposed to be replaced as this does not provide a definitive list of species to the exclusion of all others. It is proposed to amend the introduction to the exemption so that it is expressed as:

*"A tree that is listed as an Environment Weed species listed below:"*

Amendment C219 proposes to exempt the need for a planning permit to remove, destroy or lop a tree within 3 metres from an in-ground swimming pool. The exemption does not explicitly state that it applies to existing in-ground swimming pools, which was the intention of the exemption. It is proposed to add the word "existing" to the exemption relating to in-ground swimming pools, so that the exemption is expressed as:

*"A tree that is located less than 3 metres from an existing in-ground swimming pool when measured at ground level from the outside of the trunk."*

The Panel considers these changes logical and beneficial in terms of ensuring the exemptions operate efficiently and accordingly support amending the exhibited SLO9 to include Council's suggested changes.

Two other matters that the Panel has with the SLO9 require consideration; one relates to the landscape objectives Schedule 9 of the SLO seeks to achieve and the other relates to the drafting of the exemption relating to tree height and trunk width.

### **Landscape objectives**

The SLO includes the following purposes:

- To implement the Municipal Planning Strategy and the PPF.
- To identify significant landscapes.
- To conserve and enhance the character of significant landscapes.

Clause 42.03-1 relating to *Landscape character and objectives* requires a schedule to contain:

- A statement of the nature and key elements of the landscape.
- The landscape character objectives to be achieved.

The proposed SLO9 provides a statement of the nature and key elements of landscape. This has been included earlier in section 2.3(i). The emphasis of the landscape statement is the treed character of Whitehorse and how it provides a 'green' link between Melbourne and the Yarra Valley. Trees are significant to the landscape character of Whitehorse and SLO9 relates

to neighbourhood character of the Garden Suburban and Bush Suburban Neighbourhood Character Areas identified in the Housing Strategy.

The SLO9 includes the following landscape character objectives which focus on retention of established and mature trees and planting of new and replacement canopy trees:

To encourage the retention of established and mature trees.

To provide for the planting of new and replacement canopy trees.

The Panel questioned whether the scope of the objectives is somewhat narrow and whether there is a disjunct with identifying what is more broadly important with respect to landscape character in the Garden Suburban and Bush Suburban Neighbourhood Character Areas. In response, Mr Reid considered the SLO9 was sufficient in focusing on trees due to the link with canopy cover, landscape value and hence neighbourhood character. He considered that, together with the policy framework, landscape value would be appropriately addressed.

The Panel accepts that the combination of policy such as that relating to tree conservation and neighbourhood character and the SLO9 may go some way to balancing canopy trees with residential development. However, it feels there should be additional objectives that encapsulate the landscape character that is sought to be protected under the SLO9.

The Panel suggests that additional objective(s) should be considered by Council that relate to landscape character such as looking to ensure that development is compatible with the landscape character of the area and retaining and enhancing the canopy tree cover of the Garden and Bush Suburban Neighbourhood Character Areas.

### **Tree exemption**

The SLO9 includes the current exemption relating to trees:

A permit is required to remove, destroy or lop a tree.

This does not apply to:

- A tree less than 5 metres in height and having a single trunk circumference of less than 1.0 metre at a height of 1.0 metre above ground level; or ...

The Panel questioned whether Council had considered the wording of the above exemption and any consideration to its re-drafting to improve clarity.

Ms Marshall drew the Panels' attention to a decision of the Tribunal in *Ausgood Development Pty Ltd v Whitehorse CC* [2018] VCAT 690, where then Deputy President Gibson responded to a question of law regarding interpretation of the exemption and made the following findings on the wording of the exemption:

In my view, the question of law has been awkwardly framed because it focuses on whether a tree having certain criteria needs a permit for removal when that is not the way in which the control in SLO9 is framed. For the reasons given, I find that a permit is required to remove, destroy or lop all trees unless one of the exemptions applies. The specific exemption under consideration here would require a tree to have both a height of less than 5 metres and a single trunk circumference of 1.0 metre or less at a height of 1 metre above ground level. Unless both criteria are met, a permit is required.

Nevertheless, having regard to the way in which the question of law set out above has been framed, I am of the opinion that the question of law should be decided as follows:

- Yes, a tree having either a height of 5 metres or more or a circumference of more than 1.0m requires a permit under SLO9 of the Whitehorse Planning Scheme.

Ms Marshall advised that Council was satisfied with the proposed wording of the exemption and relies upon the Tribunal decision with respect to how the exemption should be read.

The Panel notes Council's position and outcome of the Tribunal's decision. However, the Panel considers the wording of the exemption can be amended to improve its clarity in line with the Tribunal decision and Council's intent with what the exemption seeks.

The SLO9 seeks to require permits for large trees that influence landscape and neighbourhood character. The strategic work Council has undertaken identifies that once trees get to around 5 to 6 metres in height or have a trunk circumference of 1 metre, they are sizeable specimens that will be above the height of a single storey dwelling and have a canopy of a size that will be noticeable in the neighbourhood and streetscape landscape. Hence, they should require a permit to be removed. This is fundamentally, the basis of the Amendment.

The Additional Analysis Report considered the exemption and formed the view that a permit for the removal, destruction or lopping of a tree should not be required for:

- A tree less than 5 metres in height; and/or
- A single trunk circumference of 1.0 metres or less at a height of one metre above ground level.

The Report considered that given the characteristics of dominant tree species throughout the interim SLO9 area, it concluded that the 5 metres height and 1 metre circumference triggers both ensure that the control targets trees that are large enough to have an impact on neighbourhood character.

Similarly, the evidence of Mr Reid considered that a permit should only be required for trees that are both at least 5 metres in height and 1 metre in girth.

In considering the above, the Panel believes there is merit in revisiting the drafting of the tree exemption noting that the Neighbourhood Character Overlay under Clause 43.05-2 includes the following exemption from a permit requirement:

To a tree that is less than 5 metres in height or has a trunk circumference of less than 0.5 metre measured 1 metre above ground level.

Alternate drafting could follow the above example, or could be redrafted to read:

A permit is required to remove, destroy or lop a tree.

This does not apply to:

- A tree that has both:
  - a height of less than 5 metres; and
  - a single trunk circumference of less than 1.0 metre at a height of 1.0 metre above ground level.

### **Post exhibition changes to the SLO9**

Council proposed some changes to the exhibited version of the SLO9. These changes were in response to the submission by Yarra Trams and VicRoads as well as some minor corrections. The Panel accepts these changes.

### **(ii) Conclusions**

The Panel concludes:

- the post exhibition changes to the SLO9 are appropriate
- the landscape character objectives should be reviewed to better encapsulate the landscape character that is sought to be protected under the SLO9
- the exemption provisions around tree height and width should be redrafted to be made clearer.

**(iii) Recommendation**

The Panel recommends:

**Amend Schedule 9 to the Significant Landscape Overlay in the form of the Panel preferred version in Appendix D.**

## Appendix A Submitters to the Amendment

No.	Submitter	No.	Submitter
1	Garry Zhou	155	Melissa Halim
2	Kyle and Elizabeth Matheson	156	Bronwyn Lekos
3	Paul Tierney	157	Bee Yeo
4	Lee Jifrang	158	Xi Shan Chen
5	Ian Hore-Lacey	159	June Anton
6	Joe Savoria	160	Bradley James Crawford
7	Elaine Hopper	161	Judi Lawton
8	Glenyce Hanson	162	Chee Cheong Low (David)
9	Zhiqiang Luo	163	Peter McDonald
10	Diana Ni	164	Angelique Valcanis
11	Denise Farrugia	165	Ashan Dassanayake
12	David Diaz	166	Les and Barbara Browne
13	Mark Rogers	167	Julie and David Power
14	Zhiwei Zhang	168	Michael Ryan
15	Zhongyang Wang	169	Neil Kirby
16	Kon Kyranakis	170	Rex Hermon
17	Yan Lu	171	Ian Lawrie
18	Tony ( <i>Surname not provided</i> )	172	Ian George
19	Wing Ching Wang	173	John Smith
20	Andrew Cross	174	William Chow
21	Hao Liu	175	Anne V Makhijani
22	Sally Tanner	176	Helen Harris OAM
23	Alex Kuo	177	Michael Hassett
24	Steffi Kyranakis	178	Roland James Thompson
25	Fiona Knight	179	Patricia Welsh
26	Steve Bainbridge	180	S Y Liu
27	Michael Portelli	181	Kenneth McMurtrie
28	Chris Nicholls	182	Rajiv and Madhu Kapoor
29	Peter Ervin	183	Robert Eades
30	Yuelin Luo	184	Hedrie Rooney
31	Xin Xu	185	Martin Murphy
32	Michelle Wai Yan Yip	186	Terry Dalgleish

No.	Submitter	No.	Submitter
33	Shi Ming Qiu	187	Trina Seow
34	Ya Hong Qiu	188	Alexander Judd
35	Dan Li Lin	189	Julie Snodgrass
36	Yee Mun Ling	190	Michael Weksler
37	Lisa & Anthony Wilcox	191	Terry McKay
38	Fangkai Gao	192	Xiaowei Yuan
39	Sarah Wai Yin Sun	193	Kwok Chun Lam
40	Grace Briggs-Yuan	194	Zhou Wei
41	Zhanqiu Shu	195	Joanne Wilson
42	Wanwen Pan	196	Jane Taylor
43	Kim Daire	197	Sarah Thomas
44	Catherine Stahel	198	Daphne Arthur
45	Anna Sanchez	199	Eve Pakarinen
46	Daryl Contessotto	200	Stephen Kelly
47	Joseph Borg	201	Stephen Frank
48	Andrew Lerk	202	Anthony Coomes
49	Amy and Damien Calvert	203	Kaiwu Li
50	L Chen and H Cai	204	J ( <i>Surname not provided</i> )
51	Glen Nicholls	205	David Harmer
52	Sau-King Wong	206	Alex Gelber
53	Laurie Taylor	207	Lyndall Steer
54	Sue Holberton	208	Janet Yeo
55	Susan Wang	209	Sally and Andrew O'Hoy
56	Aman Kapuria	210	Rosalind M Bekhuis
57	Richa Sharma	211	Greg Newham
58	Stanley Li	212	Pranil Chandra
59	Brendan Lacey	213	Janice Poon, Ben Cull, Kate Cull, Yence Arliantro, Jenny Mann, Peter Winnell
60	Jennifer Downes	214	Margaret Lesley Eckdeld
61	Man Lan David Wo	215	Michael Scott
62	Shu Wang	216	Robert Andrew Weiss
63	Tessa Setiadi	217	Letitia Gordon
64	Yarran Dheran Advisory Committee	218	Alison Kirk
65	Liam Morrish	219	Marilyn Gurry
66	James Paul & Joanne Marjory Flanagan	220	Shannon Nixon

No.	Submitter	No.	Submitter
67	Xiaoli Wang	221	Rebecca Muir
68	Dian Li Wang	222	Anisa Yuk Kwan Cheung
69	Peter Gavriel	223	Andrew Stagg
70	Paul Deepak Norman	224	Anthony Gerald Pickup
71	Kalam Goodman	225	Dean Lam
72	Raghu Krishnaswamy	226	Neil E Moseley
73	Emad Atia	227	Ho Ngun Yee LAM
74	Bridgette Jones	228	Steve Day
75	Peter Nikolas May	229	Andrew Baker
76	Weijia Tao	230	Anne C. Tan
77	Peter Gogoll	231	Anne Grant
78	Anthony Galanakis	232	Andrew Syme
79	Linda Chen	233	Diana Yallop
80	Zh Echo	234	Fiona McKinnon
81	Anonymous	235	Robin Baker
82	Valerie Donlon	236	Betty Lynch
83	George Mackiewicz	237	Craig Lighton
84	Robert Musilli	238	Dasha and Jane Kopecek
85	Jayshilkumar M Kanani	239	David Wilkinson
86	Rachel Burrows	240	Dianne Tribe
87	R.M Smith	241	Bert Alesich
88	Joan Morgan	242	Teena D'Agostino-Burns
89	Jie Yu	243	Guo Jun WU
90	Jon Lyn	244	Bellbird Residents' Advocacy Group
91	Paul Hansen	245	Xiaolu Liu
92	Luciano Di Leonardo	246	Catherine Dale and Chris Hazelewood
93	Robert Cummings	247	Peter Thomson
94	Daniel Burkett	248	Robert and Maryanne Krall
95	Anonymous	249	Aidan King
96	Albert Collie	250	Katherine Lam
97	Elizabeth Alcorn	251	Anthea Swann
98	Kate Kennedy	252	Stephen Cronin
99	Deborah Downie	253	Cynthia Wong
100	Ian Hopkins	254	Lynette Hogan



No.	Submitter	No.	Submitter
101	John Gardner	255	Ruth Ault and Mike Gage
102	Damian Elliott	256	Annette and Rod Eyssens
103	A Mosse	257	Gayle and Andrew Gower
104	David Cameron	258	Graeme Stone
105	Tania Thornton	259	Nicole Brown
106	Richard Lawrence	260	Tony Robinson
107	Mrs Margaret Sharpin	261	Susan Hopkins
108	Irene Raszotzsky	262	John McMahon
109	Bernie Muldowney	263	Rosemary Lawrence
110	Huizhen Huang	264	Elizabeth Meredith
111	Angelina Zhang	265	Ben Cooke
112	Diana ( <i>Surname not provided</i> )	266	Brendan Dawson
113	Steve Pemberton	267	Peter and Maria McKeown
114	Mingzhi Lei	268	Philip Lajta and Xue Huang
115	Randall Nott	269	Patrick Abrahams
116	Rachel Wicking	270	Neil Whitmore
117	Damian Coad	271	Stephanie Rodwell
118	Euan Drumm	272	Sin Che
119	Wanxin Liang	273	Sajid Khalfe
120	Michael Barrett	274	Peter Dempsey
121	Diana Doidge	275	Susan Dempsey
122	John Young	276	Helen Kane
123	Sandra Gleeson	277	Lorraine and John Hinkins
124	Sharon Clarke	278	Doris Turnnidge
125	Withdrawn	279	Kristy Rebecca
126	Zhao Fang	280	Belinda McDonald
127	Troy Rendle	281	Nianhua Cheng
128	YJ Davey	282	Damien Mate and Lara Verplak
129	Byoung Sik Kim	283	Blackburn & District Tree Preservation Society
130	Hans and Doris Schmidt	284	Combined Residents of Whitehorse Action Group Inc
131	Shane Pianta	285	Warren and Anne Hutchinson
132	Libby ( <i>Surname not provided</i> )	286	George Narikuzhy
133	Helen Dent	287	Robbie McKenzie

No.	Submitter	No.	Submitter
134	Radiance Chen	288	Regis Aged Care Pty Ltd
135	Coralie Millet	289	Caroline Graham
136	Kerryn Jory	290	James Coutts
137	Murray Taylor	291	Jennifer and Brian Williams
138	Lisa Miall	292	Jenny Stone
139	Si Yi Chen and Zhao Xiaopeng	293	Nitin Joglekar
140	Ben Cooke	294	Anthony Piddington
141	Malcolm Mathias	295	Alex Pascual
142	Don and Rosemary Graham	296	George Fankhauser
143	MLJ Law	297	Patrick O'Keefe and Nadine Taubenheim
144	Phan Tran	298	Hans and Doris Schmidt
145	Deborah Prior	299	Nini Peng
146	M P Fellowes	300	E Haddrick
147	Paul Jaffer	301	S. R Howell
148	Valerie Turnbull	302	Pennie Kendall
149	Lindsay Glen	303	David Inglis
150	Blackburn Village Residents Group	304	Vera Velickovic
151	Clare Ors	305	William Orange
152	Anne Wicking	306	Heather Oldfield
153	Michael Gardner and Maree Cairns	307	Monika Zuscak
154	Ramesh Yarramsetty	308	Mina Jafari

## Appendix B Parties to the Panel Hearing

Submitter	Represented by
Whitehorse City Council	Maria Marshall of Maddock assisted by Thy Nguyen of Maddocks, called the following expert evidence: - Planning from James Reid of Ethos Urban - Arboriculture from Shannon Brown of Greenscape Tree Consulting
Regis Aged Care Pty Ltd	Maddison Sztefek of Urbis
Blackburn & District Tree Preservation Society	David Berry
Yarran Dheran Advisory Committee	Gay Gallagher
Dasha Kopecek	
Combined Residents of Whitehorse Action Group Inc	Geoff White
Nicole Brown	
William Chow	
George Mackiewicz	
Joseph Borg	
Liam Morrish	
Michael Weksler	
Clare Ors	Anne Wicking
Anne Wicking	
Stephen Kelly	
Jane Taylor	
John Young	
Shane Pianta	
Warren Hutchinson	
Michael Gardner	
Bellbird Residents' Advocacy Group	Robert Weiss
Blackburn Village Residents Group	David Morrison
Anthony Piddington	
Les Browne	
S.R. Howell	
Maryanne and Robert Krall	
Ruth Ault	

## Appendix C Document list

No.	Date	Description	Provided by
1	2/12/19	Council Part A submission	Ms Marshall
2	2/12/19	James Reid planning expert witness statement	Mr Reid
3	2/12/19	Shannon Brown arboriculture expert witness statement	Mr Brown
4	2/12/19	Council hearing folder	Ms Marshall
5	2/12/19	James Reid PowerPoint presentation	Mr Reid
6	2/12/19	Ausgood Development Pty Ltd v Whitehorse CC [2018] VCAT 690 (Deputy President Gibson decision of question of law of interpretation of SLO9 exemption)	Ms Marshall
7	2/12/19	Dasha Kopecek PowerPoint presentation	Ms Kopecek
8	2/12/19	Dasha Kopecek photos	Ms Kopecek
9	4/12/19	Council Part B submission	Ms Marshall
10	4/12/19	Regis Aged Care submission	Ms Sztefek
11	4/12/19	Blackburn & District Tree Preservation Society Inc. PowerPoint presentation	Mr Berry
12	4/12/19	Blackburn & District Tree Preservation Society Inc. submission	Mr Berry
13	4/12/19	Bellbird Residents Advocacy Group submission	Mr Weiss
14	5/12/19	Blackburn Village Residents Group Inc. submission	Mr Morrison
15	5/12/19	Nicole Brown submission	Ms Brown
16	5/12/19	Brown v Whitehorse CC [2018] VCAT 1133	Ms Brown
17	5/12/19	Council delegate report on 13 Deep Creek Road, Mitcham	Ms Brown
18	5/12/19	Combined Residents of Whitehorse Action Group Inc. (CROWAG) submission	Mr White
19	5/12/19	George Mackiewicz submission	Mr Mackiewicz
20	5/12/19	William Chow submission	Mr Chow
21	5/12/19	Jane Taylor submission	Ms Taylor
22	5/12/19	Michael Weksler submission	Mr Weksler
23	5/12/19	Joseph Borg PowerPoint presentation	Mr Borg
24	5/12/19	Clare Ors submission	Ms Wicking
25	5/12/19	Anne Wicking submission	Ms Wicking
26	5/12/19	S. R. Howell PowerPoint presentation	Mr Howell
27	5/12/19	Maryanne & Robert Krall submission	Mr & Mrs Krall
28	6/12/19	John Young submission	Mr Young
29	6/12/19	Shane Pianta submission	Mr Pianta

No.	Date	Description	Provided by
30	6/12/19	Ruth Ault PowerPoint presentation	Ms Ault
31	6/12/19	Book Indigenous Gardening in Whitehorse	Ms Ault
32	6/12/19	Book Fighting for the trees – The storey of the Tree Society	Ms Ault
33	6/12/19	Blackburn Bushland Corridor report by Anthony Kjar	Ms Ault
34	6/12/19	Les Browne PowerPoint presentation	Mr Browne
35	6/12/19	Anthony Piddington submission	Mr Piddington
36	6/12/19	Council right of reply submission	Ms Marshall
37	6/12/19	Council summary of VCAT decisions	Ms Marshall
38	6/12/19	Submission on behalf of Warren Hutchinson	Mr Hutchinson

## Appendix D Panel preferred version of the Significant Landscape Overlay Schedule 9

21/12/2018  
Proposed C219

### SCHEDULE 9 TO CLAUSE 42.03 SIGNIFICANT LANDSCAPE OVERLAY

Shown on the planning scheme map as **SLO9**.

#### NEIGHBOURHOOD CHARACTER AREAS

##### 1.0 Statement of nature and key elements of landscape

08/02/2018  
Proposed C219

The leafy garden and bushy character of Melbourne's eastern suburbs can be viewed from many high points throughout Melbourne and is a significant component of the subregion. The treed character of areas such as Whitehorse provides an important 'green' link between Melbourne and the Yarra Valley.

The *Municipal Wide Tree Study* (June 2016 and March 2019) identifies that trees are significant to the landscape character of the City of Whitehorse. The tree cover in Whitehorse simultaneously delivers multiple benefits to the community, including defining neighbourhood character, providing visual amenity, reducing the urban heat island effect in more urbanised areas, improving air quality and energy efficiency, providing habitat for fauna and increasing the wellbeing of people and liveability of neighbourhoods.

The **Garden Suburban Neighbourhood Character Area** generally has formalised streetscapes comprising grassed nature strips, concrete footpaths, kerbs and channels and buildings are generally visible along streets behind low front fences and open garden settings.

Gardens are typically established with canopy trees, lawn areas, garden beds and shrubs and there are typically well defined property boundaries and consistent building siting.

The majority of the municipality is included in the Garden Suburban Neighbourhood Character Area.

The **Bush Suburban Neighbourhood Character Area** generally has a mix of formal and informal streetscapes with wide nature strips and streets are dominated by vegetation with buildings partially hidden behind tall trees and established planting.

Gardens are less formal, consisting of many canopy trees and property boundary definition can be non-existent or fenced. Buildings appear detached along the street and generally comprise pitched rooftops, with simple forms and articulated facades.

The Bush Suburban Neighbourhood Area includes parts of Blackburn, Box Hill South, Vermont South, Mitcham, Nunawading and Mont Albert North as shown in the Neighbourhood Character Precincts Map contained in the *Neighbourhood Character Study 2014*.

##### 2.0 Landscape character objectives to be achieved

08/02/2018  
Proposed C219

[To retain and enhance the canopy tree cover of the Garden and Bush Suburban Neighbourhood Character Areas.](#)

To encourage the retention of established and mature trees.

To provide for the planting of new and replacement canopy trees.

[To ensure that development is compatible with the landscape character of the area.](#)

##### 3.0 Permit requirement

08/02/2018  
Proposed C219

###### Buildings and works

A permit is required to construct or carry out works for a front fence that is within 4 metres of any vegetation that requires a permit to remove, destroy or lop under the provisions of this schedule. This does not apply to a front fence that is undertaken to the same details, specifications and materials as the front fence being replaced, to the satisfaction of the responsible authority.

A permit is not required to construct a building or construct or carry out works provided the buildings or works are set back at least 4 metres from any tree protected under the provisions of this schedule when measured at ground level from the outside of the trunk.

### Vegetation removal

A permit is required to remove, destroy or lop a tree.

This does not apply to:

- ~~▪ A tree less than 5 metres in height and having a single trunk circumference of less than 1.0 metre at a height of 1.0 metre above ground level; or~~
  - A tree that has both:
    - a height less than 5 metres; and
    - a single trunk circumference of less than 1.0 metre at a height of 1.0 metre above ground level.
- A tree that is less than 3 metres from the wall of an existing Dwelling or an existing Dependent Person's Unit when measured at ground level from the outside of the trunk. For the avoidance of doubt, this exemption does not apply to a tree that is less than 3 metres from an existing outbuilding.
- A tree that is located less than 3 metres from an existing in-ground swimming pool when measured at ground level from the outside of the trunk.
- A tree ~~species~~ that is ~~listed as~~ an Environmental Weed ~~including~~ species listed below:
  - Box Elder (*Acer negundo*)
  - Cape Wattle (*Paraserianthes lophantha*)
  - Cherry Plum (*Prunus cerasifera*)
  - Cootamundra Wattle (*Acacia baileyana*)
  - Cotoneaster (*Cotoneaster spp.*)
  - Desert Ash (*Faxinus angustifolia*)
  - Hawthorn (*Crataegus monoxyna*)
  - Mirror Bush (*Coprosma angustifolia*)
  - Privet (*Ligustrum spp.*)
  - Radiata or Monterey Pine (*Pinus radiata*)
  - Sallow Wattle (*Acacia longifolia*)
  - Sweet Pittosporum (*Pittosporum undulatum*)
  - Willow (*Salix spp.*)
- The pruning of a tree for regeneration or ornamental shaping.
- A tree which is dead or dying or has become dangerous to the satisfaction of the responsible authority.
- A tree outside the minimum street setback requirement in the Residential Growth Zone.
- A tree on public land or in a road reserve removed by or on behalf of Whitehorse City Council.
- The removal, destruction, or lopping of a tree to the minimum extent necessary:
  - to maintain the safe and efficient function of a Utility Installation to the satisfaction of the responsible authority or the utility service provider; or
  - by or on behalf of a utility service provider to maintain or construct a Utility Installation in accordance with the written agreement of the Secretary to the Department of Environment, Land, Water and Planning (as constituted under Part 2 of the *Conservation, Forests and Lands Act 1987*; or
  - to maintain the safe and efficient function of the existing on road public transport network (including tramways) to the satisfaction of the Department of Transport.
- A tree required to be removed, destroyed or lopped in order to construct or carry out buildings or works approved by a Building Permit issued prior to 8 February 2018.

- A tree that may require separate approval to remove, destroy or lop as part of an existing permit condition, a plan endorsed under a planning permit or an agreement under section 173 of the *Planning and Environment Act 1987*.

*Note: For the purpose of this schedule, pruning is defined as removing branches (or occasionally roots) from a tree using approved practices, to achieve a specified objective such as for regeneration or ornamental shaping.*

*For the purpose of this schedule, lopping has its ordinary meaning and includes the practice of cutting branches or stems between branch unions or internodes.*

#### 4.0 Application requirements

21/12/2018  
Proposed C219

Applicants must provide a report from a suitably qualified arborist to:

- Justify the removal of trees.
- Outline the measures to be taken, particularly during the construction phase, to ensure the long-term preservation of trees on, or adjoining, the development site.

#### 5.0 Decision guidelines

08/02/2018  
Proposed C219

The following decision guidelines apply to an application for a permit under Clause 42.03, in addition to those specified in Clause 42.03-5 and elsewhere in the scheme which must be considered, as appropriate, by the responsible authority:

- The contribution of the tree to neighbourhood character and the landscape.
- The need to retain trees that are significant due to their species age, health and/or growth characteristics.
- Where the tree is located, its relationship to existing vegetation and its role in providing habitat and corridors for fauna and their contribution to local ecological systems.
- The cumulative contribution the tree makes with other vegetation to the landscape and the impact of the incremental loss of trees.
- Where the location of new and existing footings and impervious areas are in relation to the root zone of established trees.
- The compatibility of any buildings and works with existing vegetation proposed to be retained.
- The effect of any proposed lopping on the significance, health or appearance of the tree.
- Whether there is a valid reason for removing the tree and whether alternative options to removal have been fully explored.
- If retention cannot be achieved, or a tree is considered appropriate for removal, consider whether:
  - a replacement tree has been provided; and
  - the site provides adequate space for offset planting of trees that can grow to a mature height similar to the mature height of the tree to be removed.
- If it is not appropriate to select an indigenous or native tree species, the selected species should be drought tolerant.
- Whether the planting location of a replacement tree(s) will enable the future growth of the canopy and root system of the tree to maturity.
- Whether the replacement tree species and planting locations conflict with existing or proposed overhead wires, buildings, easements and existing trees.
- Whether the proposal is consistent with the *Whitehorse Neighbourhood Character Study (April 2014)*, the *Municipal Wide Tree Study Options and Recommendations Report (June 2016)* and the *Municipal Wide Tree Study Part 2: Additional Analysis in Garden Suburban and Bush Suburban Character Precincts (March 2019)*.