

| **Date:** 22 November 2019

Amendment C219 to the Whitehorse Planning Scheme

**Application of permanent tree protection controls across residential areas within
the municipality of Whitehorse**

| **Council Submission: Part A**

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Introduction

1. This submission is made on behalf of Whitehorse City Council (**Council**).
2. Council is the Planning Authority for Amendment C219 (**Amendment**) to the Whitehorse Planning Scheme (**the Scheme**). On its own initiative, Council prepared the Amendment.
3. In broad terms, the Amendment seeks to:
 - 3.1 apply permanent tree protection controls across residential areas in the municipality of Whitehorse, including those properties covered by the Vegetation Protection Overlay – Schedules 1, 3 and 5; and
 - 3.2 retain tree canopy and replant trees for the future in line with the Municipal Wide Tree Study undertaken by Council in 2016 as prepared by Planisphere.
4. Specifically, the exhibited Amendment seeks to:
 - 4.1 amend the Scheme maps by applying the Significant Landscape Overlay (**SLO**) Schedule 9 (**SLO9**) on a permanent basis and deleting the Vegetation Protection Overlay (**VPO**) Schedule 2 and Schedule 4;
 - 4.2 amend Clause 21.05 (Environment) to:
 - 4.2.1 strengthen references to the importance of tree preservation and retention to the neighbourhood character of Whitehorse in the policy basis and objectives; and
 - 4.2.2 clarify the lot size in areas affected by the SLO as well as the application of the tall tree ratio;
 - 4.3 amend Clause 22.04 (Tree Conservation) to:
 - 4.3.1 strengthen references to canopy trees and neighbourhood character in the policy basis and objectives;
 - 4.3.2 strengthen references in the policy basis about tree retention to ensure that trees are retained if they are also significant to neighbourhood character;
 - 4.3.3 strengthen references to replanting to ensure that new trees are appropriate for the location, soil type and neighbourhood character;
 - 4.3.4 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;
 - 4.3.5 refine the provisions relating to tree regeneration to provide for a minimum area of 35m² in SLO9 rather than the 50m² that applies to SLO1-8; and
 - 4.3.6 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;

- 4.4 amend Schedule 9 to Clause 42.03 SLO to:
- 4.4.1 apply the schedule on a permanent basis by deleting the expiry date of the control;
- 4.4.2 strengthen the landscape character objective to include reference to replacement trees;
- 4.4.3 introduce new exemptions providing for the removal, destruction or lopping of a tree without a permit for:
- trees affecting public utilities including powerlines, services within easements and the like;
 - street trees in line with Council's Street Tree Policy;¹
 - 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 (Planning Act)*;
- 4.5 list new reference documents in Clauses 21.05, Clause 21.06, Clause 22.03 and Clause 22.04 – Municipal Wide Tree Study Discussion Paper, March 2016, Municipal Wide Tree Study Options and Recommendations Report, June 2016 and Municipal Wide Tree Study Part 2: Additional Analysis in Garden Suburban and Bush Suburban Character Precincts, March 2019’;
- 4.6 make reference to these documents in the decision guidelines in SLO9;
- 4.7 include 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; and
- 4.8 delete Schedule 2 and Schedule 4 to Clause 42.02 (VPO) from properties where they currently apply.

Panel directions

5. This submission responds to Direction No. 1 of the Panel's Directions issued on 29 October 2019 (**Panel's Directions**) directing Council to circulate its 'Part A' submission by 2pm Friday 22 November 2019 and specifying items to be included in its submission.
6. The 'Part A' submission is arranged under the following headings, in accordance with the Panel Directions:
- 6.1 **Background to the Amendment** – including a chronology of events and an overview of the earlier planning investigations and planning scheme amendments, including Amendments C191, C196, C214 and C223.
- 6.2 **Strategic context and assessment** – including a response to the Panel's Directions to identify:

¹ See section 3.6.1 'Street Tree Removal Policy' contained in Appendix 1 to Council's Urban Forest Strategy published in 2018.

- 6.2.1 which elements of the background documents remain relevant to the Amendment; and
- 6.2.2 new or additional strategic work informing the preparation of the Amendment.
- 6.3 **Issues identified in submissions** – the issues identified are summarised in the relevant Council report and in this Part A submission.
- 6.4 **Suggested changes to the Amendment.**
- 7. This Part A submission is supported by two appendices, being:
 - 7.1 **Appendix 1** – map showing proposed areas to be affected by Amendment C219;
 - 7.2 **Appendix 2** – chronology of events.
- 8. This Part A submission is also accompanied by the expert evidence of James Reid of Ethos Urban and Shannon Brown of Greenscape Tree Consulting and other documentation referred to in the Part A submission.
- 9. Council's 'Part B' submission will be presented at the Panel hearing and will address Council's response to the submissions, matters raised in expert evidence and a response to the remaining items raised in Panel Direction No. 10.

Background to the Amendment (including a chronology of events)

- 10. This section sets out the relevant background to the Amendment under the following headings:
 - 10.1 Municipal Wide Tree Study;
 - 10.2 Amendment C191;
 - 10.3 Further strategic reforms and review;
 - 10.4 Authorisation and exhibition of Amendment C219; and
 - 10.5 Council's consideration of submissions to Amendment C219.
- 11. A chronology of events is set out at **Appendix 2** to this Part A submission.

Municipal wide tree study

- 12. Council has passed a number of resolutions about tree protection and retention in the municipality of Whitehorse.

13. At a Council meeting on 17 February 2014, Council resolved the following:

That Council:

Write to the Minister for Planning seeking an amendment to all Planning Scheme provisions relating to vegetation protection to require that, where there is a planning permit exemption to remove a dead, dying or dangerous tree that this be subject to the planting of a suitable replacement tree/s within a specified timeframe and location to the satisfaction of the Responsible Authority.

14. At Council's Special Committee Meeting on 13 October 2014, Council resolved the following;

That Council:

1. *Commit to the protection of canopy trees in Whitehorse, by supporting the consideration of a planning scheme amendment for submission to the Minister for Planning for approval.*
2. *Scheme would provide for the:*
 - 2.1 *Protection of existing canopy trees in Whitehorse from removal, especially (but not limited to) indigenous trees.*
 - 2.2 *Establishment of minimum tree sizes for protection which will be related to species.*
 - 2.3 *Requirement of a permit for removal and lopping of all such trees.*
 - 2.4 *Requirement of tree replacement of similar acceptable species where a tree is removed.*
3. *The preparation and implementation of such a scheme be subject to Council consideration for appropriate funding at the 2015/2016 Council budget.*
4. *Further that Council:*
5. *Seek legislative change to bring penalties for illegal tree removal and moon scaping into line with New South Wales.*
6. *Write to the Minister for Consumer Affairs requesting that all tree loppers be required to obtain a trade licence.*

15. At the Council meeting on 20 October 2014, the above recommendation from the Special Committee was not adopted and instead, Council resolved the following;

That Council:

1. *Receive a report appraising it of the options available to further protect canopy trees in Whitehorse. Such options to include a planning scheme amendment or use of a local law or any other option and the use of an interim measure, such as a local law, while pursuing a planning amendment. The report to also include an estimate of the costs involved both to establish the protection, and to implement annually.*
2. *Consideration of the report, and the financial implications, to be subject to Council's 2015/2016 budget discussions.*
3. *Write to the government, ALP and Greens political parties, expressing concern at the low financial penalties currently in place for illegal vegetation removal, and requesting them to include increased penalties, as apply in NSW, in their election commitments.*
4. *Write to the Minister for Consumer Affairs requesting that all tree loppers be required to obtain a trade licence.*

16. A report outlining options available to further protect canopy trees in the municipality of Whitehorse, was presented at a Council meeting on 8 December 2014. At that meeting, Council further resolved:

That Council

1. *Note the report*
2. *In accordance with its resolution of 20 October 2014, refer the options for further protection of canopy trees in the municipality as outlined in this report to the 2015/2016 budget process, noting that a blanket planning scheme overlay is the preferred control.*

17. Council allocated funding in the 2015/16 Council budget towards a further study on tree protection controls. In December 2015, Council engaged planning consultants Planisphere to undertake the Municipal Wide Tree Study (<https://www.whitehorse.vic.gov.au/whitehorse-tree-study>).

18. Planisphere 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.

19. Planisphere then prepared a draft Options and Recommendations 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 law, native vegetation provision, agreements under section 173 of the *Planning & Environment Act 1987* and education programs.
20. Community engagement took place in April and May 2016 in response to the Options and Recommendations Report in April and May 2016.
21. Engagement included notices in the Whitehorse Leader, an online survey, three drop-in information sessions and the release of Study Bulletin #2.
22. Council ultimately adopted the Whitehorse Tree Study Final Options and Recommendations Report (**Tree Options and Recommendations**) at a Council meeting on 18 July 2016. At this time, Council also 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.
23. Council also resolved to:
 - 23.1 advocate to the State Government for an increase in the fines for illegal tree removal and for stronger legislation to prevent moonscaping of sites prior to development approval;
 - 23.2 advocate to the State Government for a building and works trigger in the VPO;
 - 23.3 undertake a tree education and awareness program; and
 - 23.4 refer the education and awareness program, additional resources and monitoring and enforcement (including up to 6 new staff) to the 2017/18 budget process.

Preparation of Amendments C191 and C196

24. Following Council's adoption of the Tree Options and Recommendations, 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 Schedule 9 to the SLO on an interim basis (Amendment C191) (<https://www.whitehorse.vic.gov.au/amendment-C191>).
25. At the same time as requesting Ministerial approval for Amendment C191, 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).
26. The introduction of Amendment C191 meant that a permit is required to remove, destroy or lop a tree. This did not apply to:
 - 26.1 a tree less than 5m in height and having a single trunk circumference of 1.0 metre or less at a height of one metre above ground level; or
 - 26.2 the pruning of a tree for regeneration or ornamental shaping; or
 - 26.3 a tree which is dead or dying or has become dangerous to the satisfaction of the responsible authority; or
 - 26.4 a tree outside the Minimum Street Setback in the Residential Growth Zone.

Approval of Amendment C191 by the Minister

27. On 28 December 2017, the Minister for Planning advised Council that he had approved the interim controls (**Amendment C191**). However, the Minister did not agree to Council's request for authorisation to prepare and exhibit Amendment C196.
28. When approving Amendment C191, the Minister made changes to the proposed SLO9, mainly that the single trunk circumference requirement for trees in the SLO was increased from 0.5 metres to 1.0 metre.
29. The Minister advised that the request to prepare and exhibit the permanent controls was premature and that Council should undertake further strategic work on the landscape character of the municipality to justify the application of the controls on a permanent basis.

Further strategic reforms and review

30. In August 2018, Council engaged planning consultants Ethos Urban (previously Planisphere) to assist Council in undertaking the further strategic work as directed by the Minister.
31. The further work involved additional analysis about the application of the controls in the Bush Suburban and Garden Suburban neighbourhood character precincts.
32. The further work reaffirmed that the presence of canopy trees influences, and contributes to, the strong neighbourhood character in Whitehorse.
33. The further work concluded that it is appropriate to introduce additional planning permit exemptions beyond those included in the interim controls. These include:
 - 33.1 A tree that is less than 3 metres from the wall of an existing house.
 - 33.2 A tree that is located less than 3 metres from an in ground swimming pool.
 - 33.3 A tree species that is listed an environmental weed in the proposed controls.
 - 33.4 A tree on public land, or in a road reserve removed by, or for, Council.
 - 33.5 The removal, destruction, or lopping of a tree to ensure the safe and efficient function or a utility installation such as powerlines.
 - 33.6 A tree that is to be removed as part of buildings or works approved in a Building Permit issued prior to 8 February 2018.
 - 33.7 A tree that may require separate approval to remove, destroy or lop as part of an existing planning permit.
34. The further work also recommended improving planning policy within the Local Planning Policy Framework (LPPF) irrespective of any other tools and mechanisms that could be put in place to protect trees to strengthen the discussion about the roles and values of vegetation within Whitehorse. It is also proposed to amend the Municipal Strategic Statement (MSS) to include reference to the Urban Forest Strategy and its tree canopy target.
35. On 18 December 2018, the Minister extended the lapse date for the interim SLO by 6 months until 30 June 2019 (Amendment C214) to allow the further strategic work to be completed.

36. At a Council meeting on 18 March 2019, Council resolved to:
- 36.1 adopt the further strategic work as requested by the Minister for Planning to support the application of the SLO on a permanent basis;
 - 36.2 provide the further strategic work to the Minister for Planning with a new request to prepare and exhibit an amendment to the Planning Scheme to apply the SLO on a permanent basis and make associated policy updates, generally in accordance with the draft planning controls.

Authorisation and exhibition of Amendment C219

37. On 3 April 2019, Council sought authorisation to prepare the Amendment.
38. Amendment C219 proposed more exemptions from the need for a planning permit than the interim controls that were originally introduced by Amendment C191. These are listed above at Point 33.
39. On 16 June 2019, the Minister's delegate authorised Council to prepare the Amendment subject to 3 conditions (see 'Ministerial Authorisation Conditions' below).
40. On 28 June 2019, the lapse date for the interim SLO9 was extended via Amendment C223 by a further 1 year to allow the completion of the amendment process for the permanent controls.
41. The Amendment was formally exhibited under section 19 of the *Planning & Environment Act 1987* between 18 July 2019 and 19 August 2019.
42. Notice of the Amendment was:
- 42.1 sent to all owners and occupiers in the municipality affected by the proposed amendment (81, 947 letters);
 - 42.2 sent to arborists, public authorities, community groups, relevant Prescribed Ministers and local members of parliament;
 - 42.3 published in the Whitehorse Leader on 15 July 2019;
 - 42.4 published in the Victorian Government Gazette on 18 July 2019; and
 - 42.5 made available at the following locations:
 - (a) Council's website (<https://www.whitehorse.vic.gov.au/schedule-9-landscape-overlay-amendment-c219>);
 - (b) Council's offices and Customer Service Centres (Nunawading, Box Hill, forest Hill);
 - (c) libraries in Whitehorse (Nunawading, Box Hill, Blackburn, Vermont South);
 - (d) Sportlink (Vermont South) and Aqualink (Nunawading and Box Hill);
 - (e) Neighbourhood Houses at Bennettswood, Burwood and Kerrimuir;
 - (f) Morack Public Golf Course; and
 - (g) Department of Environment, Land, Water and Planning's website.

Council's consideration of submissions to Amendment C219

43. Council received 307 submissions (in total) in response to the exhibition of the Amendment. Of those submissions:
 - 43.1 26% supported the Amendment without changes;
 - 43.2 22% supported the Amendment with changes;
 - 43.3 38% objected to the Amendment outright; and
 - 43.4 33% did not clearly specify whether they supported the Amendment but they expressed concern or requested changes.

44. Four late submissions were subsequently received by Council and have been referred to the Panel.

45. The key concerns raised in the submissions fall within the following broad themes:
 - 45.1 trees are a safety hazard to property and/or people;
 - 45.2 potential fees and costs associated with planning permit applications;
 - 45.3 imposition on private property rights;
 - 45.4 impact on development in the municipality of Whitehorse, including reduced housing capacity and overshadowing of solar panels;
 - 45.5 changes to the proposed control, primarily in relation to the list of proposed exemptions and the space required for tree planting;
 - 45.6 the intent of applying the control to properties;
 - 45.7 other comments including tree removal by developers, the amendment process, street trees and the resources required to manage tree removal applications.

46. The Panel has received a copy of the ordinary meeting minutes of 16 September 2019 summarising the submissions received together with Council's officers' response to the submissions.

47. The Council officer response to the submissions is adopted by Council for the purposes of this submission and the 'Part B' submission. Council will expand on the response to submissions at the panel hearing.

48. At the meeting on 16 September 2019, Council resolved to:
 - 48.1 receive all submissions made in response to the exhibited Amendment;
 - 48.2 request the Minister appoint an independent Planning Panel under section 23 of the *Planning & Environment Act 1987* to consider the Amendment and submissions; and
 - 48.3 adopt a position in support of Amendment C219 in accordance with the Council officers' response to the submissions (with changes to the Amendment).

Strategic context and assessment

49. The Panel will observe that the Amendment applies to all residential zoned areas that do not already have permanent tree protection controls within the municipality of Whitehorse.

Strategic planning context

50. The broader strategic planning context also warrants an overview. In particular, this includes an overview of the following strategic documentation which supports the Amendment:
- 50.1 Municipal Wide Tree Study Discussion Paper, March 2016 (**Tree Discussion Paper**);
 - 50.2 Municipal Wide Tree Study Options and Recommendations Report, June 2016 (**Tree Options and Recommendations**);
 - 50.3 City of Whitehorse Urban Forest Strategy published in 2018 (**Forest Strategy**);
 - 50.4 Whitehorse Housing and Neighbourhood Character Review, 2014 (**Housing Strategy**);
 - 50.5 Council Plan 2017-2021 (**Council Plan**);
 - 50.6 Municipal Wide Tree Study Part 2: Additional Analysis in Garden Suburban and Bush Suburban Character Precincts, March 2019 (**Tree Analysis**);
 - 50.7 Plan Melbourne 2017-2050; and
 - 50.8 Living Melbourne.
51. This section also considers which elements of these background documents remain relevant to the Amendment. Broadly, Council considers each of these documents remain relevant to the Amendment.

Discussion Paper

52. Council acknowledged the Discussion Paper on 18 July 2016.
53. The Discussion Paper included background analysis undertaken as part of the Municipal Wide Tree Study.
54. The Discussion Paper gathered information about the importance of trees to the image and character of the area, urban cooling, fauna habitat, social well-being, health and economic benefits.
55. The Discussion Paper also analysed the number of existing tools being used to manage trees in Whitehorse, including residential zones, overlays and local policy.
56. The canopy cover of Whitehorse was assessed using I-tree software. At the time of the report, the analysis estimated that 26.6% of Whitehorse had tree canopy cover, however it confirmed anecdotal reports that tree cover is decreasing across Whitehorse.
57. Council officer and community feedback was obtained on the Discussion Paper through meetings and workshops.
58. The community identified a number of issues including that “moonscaping” of new development sites prior to a planning application was a key concern. It was also clear that

the community valued tree cover in Whitehorse for its contribution to the neighbourhood character and amenity of the area.

Tree Options and Recommendations

59. Council adopted the Final Options and Recommendations Report on 18 July 2016.
60. The Options and Recommendations 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.
61. The Options and Recommendations Report ultimately recommended extending the Significant Landscape Overlay across the residential land in the municipality, not already covered by the SLO.
62. This option also included updating the LPPF, extending tree education programs, continuing to advocate for an increase in fines for illegal tree removal and providing incentives such as discounted canopy trees or tree vouchers.

Forest Strategy

63. Council adopted the Urban Forest Strategy on 20 August 2018 (<https://www.whitehorse.vic.gov.au/naturestrips>).
64. The Urban Forest Strategy sets a municipal wide minimum target of 30% canopy cover by 2030.
65. As Council controlled land accounts for only 10% of the municipality, additional tree cover will need to be achieved on private land. If Council is going to achieve this canopy cover it must protect existing canopy trees, but also facilitate the planting of new canopy cover across both public and private land.
66. The Amendment seeks to assist this by implementing a municipal wide SLO which allows Council to require the replanting of trees if they are permitted to be removed.

Housing Strategy

67. In 2012 Council commenced a review of the Whitehorse Housing Study and Neighbourhood Character Study 2003 (<https://www.whitehorse.vic.gov.au/housing-and-neighbourhood-character-review>).
68. The final 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” (page 14).
69. 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.
70. The work was used as the strategic justification for applying the State Government’s new residential zones.
71. Council presented a submission to the Managing Residential Development Advisory Committee in 2016, which included a broad analysis into its land and theoretical dwelling supply based on its proposed new residential zones and other areas where dwellings could be located (such as in commercial areas).

72. The figures showed that Whitehorse can satisfactorily accommodate the expected growth in housing in the municipality to 2036 and beyond within its residential rezoning, as well as protect environmentally sensitive and highly valued neighbourhood character areas for the future.
73. In summary, based on the existing zones, as at 2014:
- 73.1 Whitehorse's housing requirement to 2036 is 12,997 dwellings (an average of 500 new dwellings per year);
 - 73.2 Whitehorse's theoretical dwelling capacity is 108,755 dwellings;
 - 73.3 Whitehorse theoretically has over eight times the dwelling capacity it requires to meet its future housing needs (95,758 extra dwellings).
74. The figures do not take into account the lifting of the two dwelling limit in the Neighbourhood Residential Zone (which was in place when the zones were first introduced). Therefore the theoretical dwelling capacity would be higher based on the removal of this limit.

Council Plan

75. Council adopted the Council Plan on 26 June 2017 (<https://www.whitehorse.vic.gov.au/publications/corporate-documents>).
76. The Council Plan will guide the work of Council until 2021. Council adopted Year Three of the Council Plan 2017-2021 on 24 June 2019.
77. 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. The Amendment therefore seeks to support the Council plan by protecting current and future canopy trees which contribute to the neighbourhood character and streetscape.

Tree Analysis

78. Council adopted the Tree Analysis paper on 18 March 2019.
79. The further work included analysis by Ecology and Heritage Partners that reviewed existing characteristics and preferred character statements from the Whitehorse Neighbourhood Character Study and undertaking a field assessment of selected precincts.
80. The analysis highlighted that tree retention alone will not achieve the 30% target of the Interim Urban Forest Strategy, and that greater emphasis needs to be placed on residential development achieving canopy cover through the establishment of new canopy trees.
81. The further work looked at the housing capacity and future development assumptions from the 2014 *Housing and Neighbourhood Character Review*, existing tree canopy cover and the proposed application of the SLO within the Residential Growth, General Residential and Neighbourhood Residential Zones.
82. The further work concluded that introduction of the permanent SLO is not expected to have an unreasonable impact on the City's capacity to accommodate projected population and dwelling growth in the residential zones.
83. The further strategic work reiterated that the SLO is the only tool within the Victoria Planning Provisions that can protect canopy trees for their collective aesthetic value and relate their contribution to neighbourhood character.

84. The further work recommended revising Schedule 9 to the SLO to include additional permit exemptions to simplify the permit process. The further work also recommended amending the local planning policy at Clause 22.04 to reinforce the importance of retaining canopy trees in Whitehorse.

Plan Melbourne 2017-2050

85. The Amendment is consistent with *Plan Melbourne 2017-2050* (<https://www.planmelbourne.vic.gov.au/>). *Plan Melbourne* is guided by nine principles which are supported by seven outcomes, including that Melbourne is a “sustainable and resilient city”. *Plan Melbourne* notes that “the city’s growth, in combination with climate change, is testing the resilience of Melbourne’s natural and built environment, causing habitat loss and biodiversity decline, higher urban temperatures...” and that “by 2050, Melbourne will need to be a more sustainable and resilient city (page 106)
86. The outcomes are supported by directions. Outcome 6 is supported by Direction 6.4 of *Plan Melbourne* which 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.
87. *Plan Melbourne* notes that the benefits of urban greening including improved liveability and attractiveness of urban areas which contributes to neighbourhood character. Other benefits include a reduction in urban temperatures, reduced energy demand, more habitat and greater biodiversity and increased property values.
88. Direction 6.4 is supported by Policy 6.4.1, which 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”. It also notes that “greening must be integrated into planning frameworks”.

Living Melbourne

89. *Living Melbourne* is a new urban forest strategy for metropolitan Melbourne which has been prepared by Resilient Melbourne in partnership with The Nature Conservancy (<https://resilientmelbourne.com.au/living-melbourne/>).
90. *Living Melbourne* sets out key actions to increase canopy cover across Metropolitan Melbourne and has been endorsed by DELWP and many other government agencies including Whitehorse.
91. *Living Melbourne* notes that there are a variety of stressors contributing to a loss of canopy cover, including development pressures.
92. *Living Melbourne* contains 6 actions relating to the urban forest including protecting and restoring species habitat, setting targets, building an implementation toolkit, funding the protection and enhancement of the urban forest and collaborating across sectors and regions.
93. Specific actions in *Living Melbourne* relating to canopy cover are listed as part of “Action 3: Scale up greening in the private realm” and includes:
- 93.1 strengthening regulations to support greening in new subdivisions and developments – to benefit human health and wellbeing, and increase biodiversity;
 - 93.2 strengthening regulations to protect canopy trees;

- 93.3 encouraging private landholders to protect and enhance the urban forest and expand greening activities by offering incentives for planting, installing and maintaining natural infrastructure.
94. *Living Melbourne* states that “maintaining and enhancing the urban forest should be integral to urban planning” and “enforcement measures, such as financial penalties, are current insufficient to deter the unpermitted removal of canopy trees”.
95. It also notes recommends that “regulations to protect canopy trees should be strengthened and enforced” (page 55).

Strategic assessment

96. This section of Council’s submission will now provide an overview of the strategic basis of this Amendment, having regard to the relevant State and local policies. The explanatory report accompanying the exhibited Amendment includes a strategic assessment. Council adopts that assessment for the purposes of Council’s submission.
97. A response to the strategic issues raised in the objections to the Amendment, and more particularly, those that questioned the strategic merit of particular aspects of the Amendment, will be addressed in Council’s ‘Part B’ submission.

Planning Policy Framework (PPF)

98. Strategic support is found in the PPF and particularly in the following clauses:
- 98.1 **Clause 15.01-5S ‘Neighbourhood Character’**: the objective of this clause is to “recognise, support and protect neighbourhood character, cultural identity, and sense of place’. It includes specific strategies to support this objective, notably to ‘ensure development...contributes to existing or preferred neighbourhood character”, and furthermore to ‘ensure development responds to its context...by emphasising the...underlying natural landscape character and significant vegetation”.
- 98.2 **Clause 15.02-1S ‘Energy and resource efficiency’**: the objective of this clause is to “encourage land use and development that is energy and resource efficient, supports and cooler environment and minimises greenhouse gas emissions”. Relating to the Amendment, the clause seeks to “encourage retention of existing vegetation and planting of new vegetation as part of development and subdivision proposals”.

Local Planning Policy Framework

99. Strategic support is also found in Council’s MSS. More particularly:
- 99.1 **Clause 21.05 ‘Environment’**: seeks to facilitate environmental protection and improvements to assets including water, flora, fauna and biodiversity.
- 99.2 This Clause identifies trees as being an integral aspect of the character of residential areas in Whitehorse.
- 99.3 The Clause includes a strategy that tree removal within significant areas requires permission and that replanting of trees is supported.
- 99.4 **Clause 21.06 ‘Housing’**: sets out three ‘categories’ of housing change in Whitehorse – minimal change, natural change and substantial change.
- 99.5 This Clause notes that the role of vegetation is seen as integral to the neighbourhood character in Whitehorse.

- 99.6 **Clause 22.04 ‘Tree Conservation’:** seeks to provide a link between the environmental and neighbourhood character of trees in Whitehorse.
- 99.7 This Clause includes policies that aim to retain and protect existing trees and require the provision of sufficient space for the regeneration and growth of new trees.
- 99.8 **Clause 22.03 ‘Residential Development’:** seeks to reinforce the importance of trees to the residential areas of Whitehorse.
- 99.9 The Clause includes an objective specifically relating to minimising loss of trees and vegetation in new development. It also includes the Preferred Character Statements which refer to the importance of trees to the neighbourhood character of Whitehorse.

Practice Note No. 46

100. 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.

Ministerial Authorisation Conditions

101. The Minister’s authorisation for Council to prepare the Amendment was subject to the following 3 conditions:
1. 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.
 2. 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.
 3. 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.
102. Council will address these conditions in detail in its ‘Part B’ submission to the Panel.

Issues identified in submissions

103. A detailed summary of the themes raised in the submissions is set out in the Council officer report of 16 September 2019 (**Council Report**).
104. In broad terms, the key issues identified in the submissions can be summarised as follows:
- 104.1 **Safety hazard** – some submitters expressed concern about the potential safety hazards associated with trees including dropping of tree limbs and leaves and debris. Other submitters raised concerns about damage to property including drainage pipes.

- 104.2 **Fees / costs associated with planning permit applications** – some submitters opposed payment of costs associated with submitting a planning permit application and /or obtaining an arborist report required to accompany the application. Some submitters considered that the proposed controls was a Council revenue raising mechanism and that such fees should be waived.
- 104.3 **Imposition on private property rights** – many submitters expressed a concern that Council sought to intrude into the decision-making on private land by requiring the property owner to following externally determined tree regulations.
- 104.4 **Impact on development** – some submitters expressed a concern that the proposed controls would reduce development and / or impact on housing development and affordability. Other concerns raised related to the impact of the proposed controls on the housing capacity of the municipality of Whitehorse and about the inability to remove trees that may affect existing, or future, solar panels.
- 104.5 **Intent of the control** - some submitters queried the intent or rationale for the proposed permanent controls particularly if they did not have any trees currently on their respective property.
105. The Report goes on to provide a detailed summary of submitters' proposed changes to the proposed controls and / or permit exemptions. In broad terms, the proposed changes can be categorised as follows:
- 105.1 list of environmental weeds;
 - 105.2 tree height and trunk circumference thresholds;
 - 105.3 proximity of trees to dwellings and in-ground pools;
 - 105.4 space required for tree planting;
 - 105.5 public transport infrastructure;
106. Council's detailed response to the above issues are provided in the Report.
107. Council will respond to the issues raised in these submissions in more detail in its 'Part B' submission to the Panel.

Changes proposed to the Amendment after exhibition

108. At the meeting on 16 September 2019, Council resolved to make the following changes in response to the submissions received to the Amendment:
- 108.1 Amend Schedule 9 to Clause 42.03 to italicise botanical names of environmental weed species. This will ensure the names are consistently italicised.
 - 108.2 Amend the exemption relating to the Environmental Weeds list in sub-clause 3.0 of Schedule 9 to Clause 42.03 to read "A tree that is listed as an Environmental Weed species listed below". The word "including" in the exhibited version is proposed to be replaced as this does not provide a definitive list of species to the exclusion of all others.
 - 108.3 Amend the exemption relating to swimming pools in sub-clause 3.0 of Schedule 9 to Clause 42.03 to read: "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". This is proposed as the exemption as it was exhibited does not explicitly state that it applies to existing in-ground swimming pools, which was the intention of the exemption.

- 108.4 Include an additional planning permit exemption in sub-clause 3.0 of Schedule 9 to Clause 42.03: "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". This recommended change was included in submissions by Yarra Trams and the Department of Transport and is supported to allow the removal of trees to maintain the function of the on-road public transport network.
- 108.5 Include reference to the tree canopy target of 30% contained in Council's Urban Forest Strategy in Clause 21.05 (Environment) of the planning scheme. This is intended to help support the SLO by linking the tree canopy target with the planning scheme.

Conclusion

- 109. This completes Council's 'Part A' submission.

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Maddocks
Maria Marshall
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Appendix 1 – Map of proposed areas to be affected by Amendment C219

Appendix 2 – Chronology of Events

Date	Event / Description
December 2015	Council engaged Planisphere to undertake Municipal Wide Tree Study
18 July 2016	Council adopted <i>Municipal Wide Tree Study Options and Recommendations Report</i>
26 May 2017	Council submitted a request to the Minister for Planning to approve Amendment C191 and seek authorisation to prepare and exhibit Amendment C196
28 December 2017	Minister approved Amendment C191, but refuses request to prepare and exhibit Amendment C196. The Minister directs Council to undertake further strategic work before submitting a new request to apply controls on a permanent basis
8 February 2018	Amendment C191 came into effect on an interim basis until 31 December 2018
25 June 2018	Council budget approved for further strategic work
August 2018	Council engaged Ethos Urban to undertake further strategic work
18 December 2018	Minister extended lapse date of interim SLO9 by 6 months until 30 June 2019 (via Amendment C214)
18 March 2019	Council adopted further strategic work and resolved to provide it to the Minister with a new request to prepare and exhibit an amendment (Amendment C219)
27 June 2019	Minister authorised Council to prepare and exhibit Amendment C219
28 June 2019	Minister extended lapse date of interim SLO9 by 1 year until 30 June 2020 (via Amendment C223)
18 July – 19 August 2019	Exhibition of Amendment C219
16 September 2019	Council resolves to request the Minister appoint an independent Planning Panel to consider Amendment C219 and submissions received
23 October 2019	Directions Hearing for Amendment C219
2 December 2019	Panel Hearing for Amendment C219 commences