

Report to the Future Melbourne (Planning) Committee

Agenda item 6.4

Amendments C378 and C379 Exceptional Tree Register 2019

21 July 2020

Presenter: David Callow, Acting Director Parks and City Greening**Purpose and background**

1. The purpose of this report is to present the Exceptional Tree Register (ETR) 2019 (refer Attachment 2) for endorsement, seek authorisation from the Minister for Planning to prepare and exhibit Planning Scheme Amendment C379, and apply for interim protection of trees identified in the ETR via Ministerial Amendment C378 (refer Attachments 3 and 4).
2. The ETR recognises and celebrates exceptional trees within the municipality that are not owned or managed by the Council. The ETR 2019 expands on the ETR 2012 which resulted in the protection of trees on the register through application of the Environmental Significance Overlay (ESO2) through Planning Scheme Amendment C212 gazetted in April 2015. All trees on the ETR contribute significantly to the landscape and community, and have been assessed by an expert panel to fulfil the 'Exceptional' criteria (refer to p.8 ETR, Attachment 2).
3. Amendment C379 proposes to protect 119 additional exceptional trees in the areas of East Melbourne, North Melbourne, Kensington, Flemington, Parkville, Carlton, Carlton North, South Yarra and Melbourne CBD, along with the deletion of seven trees due to past physical removal. This will occur through updating the ESO2. These controls trigger a planning permit requirement to significantly prune, remove, destroy or lop any listed tree, or to undertake any works within the Tree Protection Zone.

Key issues

4. The process of compiling and peer reviewing the ETR is detailed in the ETR 2019 (refer Attachment 2). The ETR 2019 comprises 279 reports, including 160 individual trees already included in ESO2 from the first round of nominations in 2012, and 119 additions resulting from the round two process. 86 of these additional trees are included in one of four significant groups of trees.
5. A review and update to the trees listed in the ETR 2012 has included creating separate listings within the ESO2 for individual trees currently identified as a group listing (located in Parkville, South Yarra and North Melbourne) and removing trees from the register and ESO2 due to the past physical removal of the tree.
6. The planning scheme map changes proposed for the Amendment (refer Attachments 3 and 4) apply the ESO2 to the Tree Protection Zone of identified trees rather than to property boundaries (which was the approach used for the existing ESO). This mapping approach enables the trees to be more easily located within a property on the planning scheme map. Applying a similar approach to the mapping of the existing trees (ETR 2012) in ESO2 will require a separate planning scheme amendment. Management is investigating whether this can occur through a 'correction' amendment.

Recommendation from management

7. That the Future Melbourne Committee:
 - 7.1. Adopts the Exceptional Tree Register 2019.
 - 7.2. Requests the Minister of Planning prepare and approve Planning Scheme Amendment C378 (refer Attachment 3 of the report from management) to the Melbourne Planning Scheme, pursuant to section 20(4) of the *Planning and Environment Act 1987*, to introduce interim Environmental Significance Overlays over the 119 additional trees on the Exceptional Tree Register.
 - 7.3. Seeks authorisation from the Minister for Planning to prepare and exhibit Planning Scheme Amendment C379 (refer Attachment 4 of the report from management) to introduce permanent Environmental Significance Overlays over the 119 additional trees on the Exceptional Tree Register and delete redundant controls where trees have been removed.
 - 7.4. Authorises the General Manager Strategy, Planning and Climate Change to make any further minor editorial changes to the Amendment documents and Exceptional Tree Register 2019.

Attachments:

1. Supporting Attachment (Page 2 of 476)
2. Exceptional Tree Register 2019 (Page 4 of 476)
3. Planning Scheme Amendment C378 documentation with map changes (Page 314 of 476)
4. Planning Scheme Amendment C379 documentation with map changes (Page 394 of 476)

Supporting Attachment

Legal

1. Part 3 of the *Planning and Environment Act 1987* (the Act) sets out the procedure for a planning scheme amendment. Section 8(1)(b) of the Act provides that the Minister may prepare an amendment to any provision of a planning scheme. Section 20(4) of the Act provides that the Minister may exempt himself or herself from the requirements of the Act which govern the normal statutory process for an amendment to a planning scheme:

'if the Minister considers that compliance with any of those requirements is not warranted or that the interests of Victoria or any part of Victoria make such an exemption appropriate.'

2. Section 35 of the Act sets out that the Minister may approve an amendment to a planning scheme.
3. While trees may be included on the ETR and protected in the Melbourne Planning Scheme, the Council will hold no liability for issues with the trees arising from this inclusion.

Finance

4. The costs for preparing and processing Planning Scheme Amendment C378 and Planning Scheme Amendment C379 for the ETR are set out under Section 6 of the *Planning and Environment (Fees) Regulations 2016*. These costs as well as the costs for exhibition of the Amendment are provided for within the City Strategy 2020—2021 budget.

Conflict of interest

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

Health and Safety

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

Stakeholder consultation

7. ETR Round Two nominations were open to the public from 1 December 2018 to 15 March 2019.
8. Targeted promotion of the ETR Round Two occurred during January and February 2019. Promotion included coverage in the Herald Sun, ABC Radio, social media, Melbourne Magazine and libraries, along with a mail-out to key stakeholders.
9. An expert panel comprising knowledgeable professionals including the National Trust and the University of Melbourne were engaged in the development of the register. Letters were sent to the owners/managers of properties on which the trees are located advising of nomination to the ETR. Arborist assessment was undertaken on site, often in the company of the owner/property manager.
10. To ensure stakeholders are notified as early as practicable, a letter has been sent at least 10 days prior to the Future Melbourne Committee meeting to all landowners for sites affected by the ESO2 changes under Amendments C378 and C379 with the following information:
 - 10.1. Findings of the Arboricultural assessment as outlined the ETR 2019.
 - 10.2. Notification of the upcoming agenda item.
 - 10.3. Advice regarding how they may participate in the Planning Scheme Amendment process.

11. Senior officers at the Department of Land, Water and Planning have been advised of the proposed amendments for the ETR.

Relation to Council policy

12. The ETR relates to and is consistent with the following policies and strategies:
 - 12.1. Future Melbourne – Eco City; and
 - 12.2. Urban Forest Strategy 2012 – 2032.

Environmental sustainability

13. Environmental sustainability issues have been a priority in the development of the ETR. The ETR presents an exciting opportunity to recognise, celebrate and protect the exceptional trees that exist on non City of Melbourne owned or managed land across the municipality, which contribute to the urban forest, the City's character and the challenges of climate change, urban heat island effect and population growth.
14. The ETR also highlights the role that the private realm can play in contributing to the City of Melbourne's urban forest. There is future opportunity for associated education and marketing to increase the awareness and importance of caring for trees within City of Melbourne's urban forest.