

3. TREE MANAGEMENT - PLANNING APPROACH TOWARDS COMPLIANCE ISSUES

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PURPOSE

The purpose of this report is to brief Council on proposed improvements to the tree management procedures undertaken by the Planning Department (including Planning Compliance).

BACKGROUND

Issues have been identified in respect to the incremental loss of the established tree canopy across the municipality. For the most part, this is occurring as a consequence of the high levels of redevelopment taking place in Stonnington. It is considered that there are too many instances where permit holders are not adequately protecting vegetation that is to be retained as part of a development approval.

At a broader perspective, Council's Urban Forest Strategy (UFS), adopted in June 2017, identifies (among other things) that population and housing growth and competition for limited space are challenges facing the urban tree population. The Key Directions identified within the UFS include:

- *To maximise the protection and retention of existing trees in the urban landscape.*
- *To expand the urban forest across public and private land in order to increase canopy cover and maximise the community, environmental and economic benefits provided by trees.*
- *To green the City by Growing vegetation to complement the urban tree population.*

The tree management compliance review undertaken by the Planning Department links into this broader framework and is intended to support many of the outcomes the UFS seeks to achieve.

The retention and protection of particular trees is often a critical determining factor to the issue of a planning permit, and therefore the preservation of trees and the establishment of new vegetation must be highly regarded by those developing land. The loss of a significant tree upon which the issue of a permit was contingent, is a serious and frustrating issue, which is difficult to reactively address.

Council officers have undertaken a review of the existing town planning procedures as they relate to vegetation, with external input from a planning consultant and legal advisors. This has identified how processes could be improved with the view to achieving better outcomes for the municipality's overall spread of vegetation.

The project has generally taken place in two parts:

- Investigation of new permit conditions in an endeavour to achieve greater pre-emptive protection of vegetation in the future; and
- A review of planning compliance procedures relating to the failure to comply with permit conditions regarding vegetation management.

DISCUSSION

NEW PERMIT CONDITIONS

A series of new permit conditions are proposed to be applied to future permits where vegetation outcomes are sought. Most notable of these new conditions are the following, which require the securing of an agreed amount of money as a bank guarantee to protect existing trees which are to be retained, and to ensure full implementation of endorsed landscape plans.

The draft conditions are as follows:

Tree Bank Guarantees

Prior to the endorsement of plans and prior to any development commencing on the site (including demolition and excavation whether or not a planning permit is required), the owner/ developer must enter into a Deed with the Responsible Authority and provide it with a bank guarantee of \$xxx must be provided to the Responsible Authority as security against a failure to protect the health of xxx tree(s) to be retained. The applicant must meet all costs associated with drafting and execution of the Deed, including those incurred by the responsible authority. Once a period of 12 months has lapsed following the completion of all works at the site the Responsible Authority may discharge the bank guarantee upon the written request of the obligor. At that time, the Responsible Authority will inspect the tree(s) and, provided they have not been detrimentally affected, the bank guarantee will be discharged.

Landscape Bank Guarantees

Prior to the endorsement of plans, the owner/ developer must enter into a Deed with the Responsible Authority and provide it with a bank guarantee of \$xxx must be provided to the Responsible Authority as security to ensure the satisfactory establishment of landscaping works. The applicant must meet all costs associated with drafting and execution of the Deed, including those incurred by the responsible authority. Once landscaping has been completed in accordance with the endorsed plans, the Responsible Authority must be notified in writing so that a site inspection can confirm the landscaping is compliant, and a 6 week establishment period will commence. The bank guarantee will be discharged after landscaping has been maintained for that period to the satisfaction of the Responsible Authority.

A bank guarantee is preferred to a monetary bond (which is held by Council) as a means of protecting vegetation. This is preferred on the basis (A) that the anticipated resource burden would be less than in the case Council holds a monetary bond, and (B) that in most cases a bank holding the guarantee will forfeit the specified amount upon request from Council.

The amount forfeited, and the conditions upon which the amount would be forfeited would be outlined in the Deed referred to in each condition. The Deed would also specify that the onus is upon the permit holder / developer to advise Council that works are complete and that the 6 month / 12 month period has commenced – this requirement will also be confirmed by a new Note on relevant Permits. It is possible for complex cases, a Section 173 Agreement may need to be prepared and used in place of a Deed (in which case the permit conditions above would be altered to substitute the words *Section 173 Agreement* with the word *Deed*).

In order to put this process in place, the following further work will be undertaken:

- Preparation of a Deed to be entered into by Council and the party providing the guarantee, which precisely and accurately outlines the formal requirements associated with the holding, forfeiture (part or full) and release of the guarantee.

- Engagement of an arboricultural expert to provide a comprehensive expert opinion on the different types of methods to value trees and recommend the best method for Council to employ (noting that the 'best' method may vary in different cases). This advice will assist Council in calculating a fair and reasonable guarantee amount in each case.

A series of other complementary permit conditions and notes have also been drafted and they appear at **Attachment 1**.

It is also intended to amend the planning permit cover letter, for a permit which includes tree management requirements to insert the following:

Please ensure you are familiar with each of the permit conditions and the information contained within the endorsed plans and other documents referred to in the permit, including any Tree Management Plan (if required).

In the event of a breach of any of the requirements of the permit or endorsed material, the landowner, developer and any other relevant persons (such as a sub-consultants) will be liable to prosecution.

In most cases, such a breach will result in the issue of a Planning Infringement Notice to all parties (where applicable bank guarantees will be drawn). The current fine associated with a Planning Infringement Notice is \$xxx.

PLANNING COMPLIANCE

Council's planning compliance officers operate under a protocol of *Ask, Tell, Enforce* whereby offenders are first given at least one opportunity to rectify a breach of permit before a Planning Infringement Notice (PIN) is issued. It has been identified that in respect to tree management, the effectiveness in sufficiently protecting vegetation could be improved. Examples of this include Tree Protection Fences (TPF) not being adequately installed or maintained, and trees being damaged (and in some cases removed) contrary to the requirements of a permit.

The resource costs in managing these issues are considerable under the current *Ask, Tell, Enforce* protocol. One of the outcomes sought by this project is to streamline the processes, while also achieving a higher level of compliance and consequent tree protection and regeneration.

It is intended to send a clearer message to developers that they are expected to diligently implement the vegetation related conditions on planning permits (and associated documents, including Landscape Plans and Tree Management Plans).

Attachment 2 includes a Matrix which has been prepared to assist planning compliance officers manage breaches of permit conditions relating to vegetation.

It should be noted that this matrix is intended to form a guide only, since in each case there may be variables. One of the main changes proposed is to remove the current practice of issuing warnings to permit holders, and to reduce the number of formal interviews that take place.

One of the most important practices to ensure the protection of existing trees is the correct installation of Tree Protection Fences. It is considered that where Tree Protection Fences (and associated measures – signs etc) are correctly installed, and maintained throughout the development period, trees should have improved opportunities for survival. Council officers therefore propose to much more strictly and promptly penalise those who fail to install and maintain Tree Protection Fences.

In most cases, an infringement will be simply issued to the land owner, since the culpability of the owner is easier to establish under the Planning and Environment Act than the culpability of any other party such as the developer or a contractor. It is likely that the issue of a PIN to the land owner will be incentive enough to resolve an issue, and ensure future compliance. This approach alleviates the resource burden of conducting formal investigations (beyond a site inspection) and/or interviews with numerous people. Where appropriate though, formal interviews will continue to take place at the initial site inspection. Planning compliance officers will need to judge whether the burden of conducting a series of additional interviews subsequently is likely to result in the identification of other liable parties.

To reduce the risk to Council in employing this approach a mail out to all current owners of land for which a permit has issued within the last four years will be carried out. The letter to owners will remind them of the obligation imposed by their permit, and inform them that Council has adopted a zero-tolerance approach in respect to the failure to adhere with vegetation requirements of permits.

POLICY IMPLICATIONS

The Planning Scheme emphasises the importance of protecting the City's landscape character. Most notably, this is through Clause 21.06-2 (Landscape Character), which includes the following Key Issues:

- *Acknowledging the City's landscape quality and character as one of its most distinctive characteristics.*
- *Preventing further erosion of the existing landscape character and repairing the damage of the past.*
- *Establishing high standards of landscape integration with all new developments*
- *Achieving a high standard of landscape design in the public realm*

The impetus for this project falls most obviously under the first two dot points, and its objective is to establish a more effective framework for protecting existing trees and to ensure that Landscape Plans are fully implemented and maintained. These outcomes are consistent with Objective 1 of Clause 21.06-2, which is: *To repair and reinforce the high quality landscape character of the City.* They are also consistent with Clause 22.23 (Neighbourhood Character), where many of the *Statements of Preferred Neighbourhood Character* and *Design Guidelines* seek to maintain and strengthen the City's garden setting.

The project also implements the UFS as identified earlier in this report. It is also consistent with the Council Plan 2017-2021, where one of the Key Pillars is Environment. One of the Strategic Challenges identified in the Council Plan is the: *Increasing development that creates an 'urban heat island effect' (i.e. reduced land permeability, increased flooding, reduced water quality and tree growing conditions), impacting on health, amenity and liveability.* Strategies of the Plan include to:

- *Enhance biodiversity values throughout the City to protect an increase flora and fauna; and*
- *Protect, maintain and grow the City's street tree population to enhance the character, identify and liveability of the City of Stonnington.*

FINANCIAL AND RESOURCES IMPLICATIONS

One of the outcomes in the changes proposed to the planning compliance processes is to reduce the resource burden upon compliance officers by reducing some of the current steps in the case of vegetation related compliance issues.

LEGAL ADVICE & IMPLICATIONS

Legal advice has been provided in respect to the proposed draft permit conditions.

HUMAN RIGHTS CONSIDERATION

This recommendation complies with the Victorian Charter of Human Rights and Responsibilities Act 2006.

ATTACHMENTS

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| ⇒1. Tree Management Planning Project - Attachment 1 | Excluded |
| ⇒2. Tree Management Planning Project - Attachment 2 | Excluded |

RECOMMENDATION

That Council endorses, adopts and promotes the proposed operational protocols and methods to be used in the issuing and management of Planning Permits as they relate to tree retention and landscape implementation.