

Planning Panels Victoria

Melbourne Planning Scheme Amendment C379melb Significant trees

Panel Report

Planning and Environment Act 1987

26 October 2022

How will this report be used?

This is a brief description of how this report will be used for the benefit of people unfamiliar with the planning system. If you have concerns about a specific issue you should seek independent advice.

The planning authority must consider this report before deciding whether or not to adopt the Amendment.

[section 27(1) of the *Planning and Environment Act 1987* (the PE Act)]

For the Amendment to proceed, it must be adopted by the planning authority and then sent to the Minister for Planning for approval.

The planning authority is not obliged to follow the recommendations of the Panel, but it must give its reasons if it does not follow the recommendations. [section 31 (1) of the PE Act, and section 9 of the *Planning and Environment Regulations 2015*]

If approved by the Minister for Planning a formal change will be made to the planning scheme. Notice of approval of the Amendment will be published in the Government Gazette. [section 37 of the PE Act]

Planning and Environment Act 1987

Panel Report pursuant to section 25 of the PE Act

Melbourne Planning Scheme Amendment C379melb

Significant trees

26 October 2022

A handwritten signature in black ink, appearing to read "Lester Townsend". The signature is written in a cursive, slightly stylized font.

Lester Townsend

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Glossary and abbreviations

AS	Australian Standard
Council	Melbourne City Council
DELWP	Department of Environment, Land, Water and Planning
ESO2	Environment Significance Overlay Schedule 2
PE Act	<i>Planning and Environment Act 1987</i>
TPZ	Tree Protection Zone

Overview

Amendment summary

The Amendment	Melbourne Planning Scheme Amendment C379melb
Common name	Significant trees
Brief description	The Amendment proposes to update the existing Environmental Significance Overlay: Exceptional Trees to permanently list an additional 119 exceptional trees currently listed on an interim basis until 27 April 2023.
Subject land	Various sites across the municipality
Planning Authority	Melbourne City Council
Authorisation	18 May 2021 with conditions
Exhibition	31 March to 2 May 2022
Submissions	Number of Submissions: 10 Opposed: 3 1 Adelaide Greig 2 Robert Ventresca 3 Anthony- Corbett 4 Maggie Reeves 5 Ludwig Cugura 6 Bettiina Terry 7 Margaret Bradshaw 8 Crisentieae Saint-Piaf 9 Rebecca Mason 10 The owner of 120 Toorak Road West, South Yarra

Panel process

The Panel	Lester Townsend
Directions Hearing	17 October 2022
Site inspections	Unaccompanied, 17 October 2022
Panel Hearing	A hearing was not required and the matter was conducted 'on the papers'
Citation	Melbourne PSA C379melb [2022] PPV
Date of this report	26 October 2022

Executive summary

In the Melbourne Planning Scheme, significant trees are protected by Schedule 2 to the Environmental Significance Overlay (ESO2): Exceptional Trees. ESO2 applies to exceptional trees located on privately owned or privately managed land. ESO2 currently lists 138 trees, with a further 119 exceptional trees listed on an interim basis until 27 April 2023.

Melbourne Planning Scheme Amendment C379melb (the Amendment) seeks to:

- give permanent protection to the 119 interimly listed trees
- expand four existing tree groups to list each tree with an individual tree protection zone
- remove the listing for seven trees which have been removed due to poor physical health
- make minor listing corrections
- reference the recently updated Exceptional Tree Register 2019 as a background document.

Ten submissions were received:

- four submissions supported the protection of additional exceptional trees across the municipality
- two submissions put forward additional nominations
- one submission sought further information on the nomination process
- three submissions raised specific concerns with the Amendment.

Issues raised in submissions included:

- whether the Bhutan Cypress trees at Simonds Hall (120W Toorak Road, South Yarra) should be listed
- whether Tree 157 in North Melbourne, should not be listed given submitter concerns about risk
- the need to include a portion of the submitter's property within the Tree Protection Zone of Tree 171.

Council agreed with submitters in respect of the Bhutan Cypress trees and considered the trees should not be listed. Council also agreed that the Tree Protection Zone for Tree 171 should be amended. These changes would resolve these submissions, and the Panel considers they are appropriate changes.

In respect of Tree 157, an arborist's assessment concluded that with appropriate maintenance the tree presents a low risk. The Panel concludes that Tree 157 should remain in the Amendment.

Recommendations

Based on the reasons set out in this Report, the Panel recommends that Melbourne Planning Scheme Amendment C379melb be adopted as exhibited subject to the following:

- 1. Remove the Bhutan Cypress Trees numbered 133/1–133/11 at 120W Toorak Road, South Yarra and the adjoining property at 128W–130W Toorak Road from ESO2 and the Exceptional Tree Register 2019.**
- 2. Exclude 287–293 Exhibition Street, Melbourne from the Tree Protection Zone of Tree 171.**

1 Introduction

1.1 The Amendment

In the Melbourne Planning Scheme, significant trees are protected by Schedule 2 to the Environmental Significance Overlay (ESO2): Exceptional Trees. ESO2 applies to exceptional trees located on privately owned or privately managed land. ESO2 currently lists 138 trees, with a further 119 exceptional trees listed on an interim basis until 27 April 2023.

The Amendment proposes to:

- give permanent protection to the 119 interim listed trees
- expand four existing tree groups to list each tree with an individual tree protection zone
- remove the listing for seven trees which have been removed due to poor physical health
- make minor listing corrections
- reference the recently updated Exceptional Tree Register 2019 as a background document.

Council is the Planning Authority for the Amendment.

1.2 Summary of issues raised in submissions

(i) Overview of submissions

Ten submissions were received:

- four submissions supported the protection of additional exceptional trees across the municipality
- two submissions put forward additional nominations
- one submission sought further information on the nomination process
- three submissions raised specific concerns with the Amendment.

Concerns include:

- whether the Tree Group 133 (Trees 1 to 11) meets the exceptional trees criteria (Submission No 10)
- the continued protection of Tree 157, given that submitter considers the tree has shown significant branch dropping creating a hazard to buildings and people below (Submission 2)
- the need to include a portion of the submitter's property within the Tree Protection Zone of Tree 171 (Submission 3).

(ii) Resolved submissions

In response to submissions, Council resolved (Future Melbourne Committee 2 August 2022):

That the Future Melbourne Committee:

- Considers the submissions received following the exhibition of Amendment C379 and notes management's responses ..., that includes recommended changes to the Amendment as requested in Submissions 3 and 10 to:
 - exclude 287–293 Exhibition Street Melbourne from the Tree Protection Zone of Tree No 171

- remove the Bhutan Cyprus Trees numbered 133/1–133/11 at 120W Toorak Road South Yarra and the adjoining property at 128W–130W Toorak Road from ESO2 and Exceptional Tree Register 2019.

(iii) Unresolved submissions

Submitter 2 considered that Tree 157 has shown significant branch dropping creating a hazard to buildings and people below and that it should be removed from the Amendment. Council disagreed.

1.3 Procedural issues

No submitter sought to be heard. At the Directions Hearing the Panel advised that it would consider the material it already had to hand and inspect Tree 157. If it formed a view that it might recommend that Tree 157 be removed from the Amendment, it would give Council an opportunity to make further submissions. Otherwise, it would proceed ‘on the papers.’ On reviewing the material and inspecting Tree 157, the Panel concluded that a hearing was not necessary.

1.4 The Panel’s approach

The Panel has assessed the Amendment against the principles of net community benefit and sustainable development, as set out in Clause 71.02-3 (Integrated decision making) of the Planning Scheme.

The Panel considered all written submissions made in response to the exhibition of the Amendment, observations from site visits, and submissions, evidence and other material prepared by Council in its assessment of the Amendment. 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 in Chapter 3.

2 Background

2.1 The Exceptional Tree Register

The Exceptional Tree Register was first endorsed by the City of Melbourne in 2012 to identify significant trees as part of a holistic vision for the future urban forest. The register recognises and celebrates exceptional trees on any land that is listed in the Melbourne Planning Scheme, with the exception of land that is owned or managed by the City of Melbourne or located in the Royal Botanic Gardens. Land owned or managed by the City of Melbourne is subject to Council's Tree Retention and Removal Policy (2012) and therefore excluded from the register.

For trees to be classified as 'exceptional', they are required to meet a minimum of one of the following exceptional criteria: aboriginal association; aesthetic value; curious growth form; environmental/microclimate services; historical value; horticultural value; location or context; outstanding example of species; outstanding habitat value; outstanding size; particularly old; rare or localised; or social, cultural or spiritual significance. The register is consequently made up only of trees that provide a truly exceptional contribution to the community.

2.2 Amendment C212

Amendment C212 implemented the Round 1 recommendations from the Exceptional Tree Register (2012) by applying Schedule 2 to the Environmental Significance Overlay (ESO2) to identified trees in the municipality. This amendment was gazetted in the Melbourne Planning Scheme on 30 April 2015.

The 'Environmental objectives to be achieved' for ESO2 are:

To protect and preserve the exceptional trees as listed in the Table to this schedule, for their intrinsic environmental, ecological, habitat, historical, cultural, landscape, aesthetic and scientific values.

To minimise the adverse effects of development and works on the condition and health of the exceptional trees as listed in the Table to this schedule.

ESO2 is applied to specific trees and these are listed in a table to ESO2. Figure 1 shows how ESO2 appears in the Planning Scheme.

Figure 1 Application of ESO2

2.3 The current Amendment

In 2019, Council called for a second round of nominations to expand upon the list of exceptional trees. Council reviewed the Round 2 nominations and a total of 119 trees met the relevant criteria.

On 29 April 2021, the Minister for Planning approved Amendment C378melb which protects the 119 exceptional trees on an interim basis. This interim protection expires on 27 April 2023.

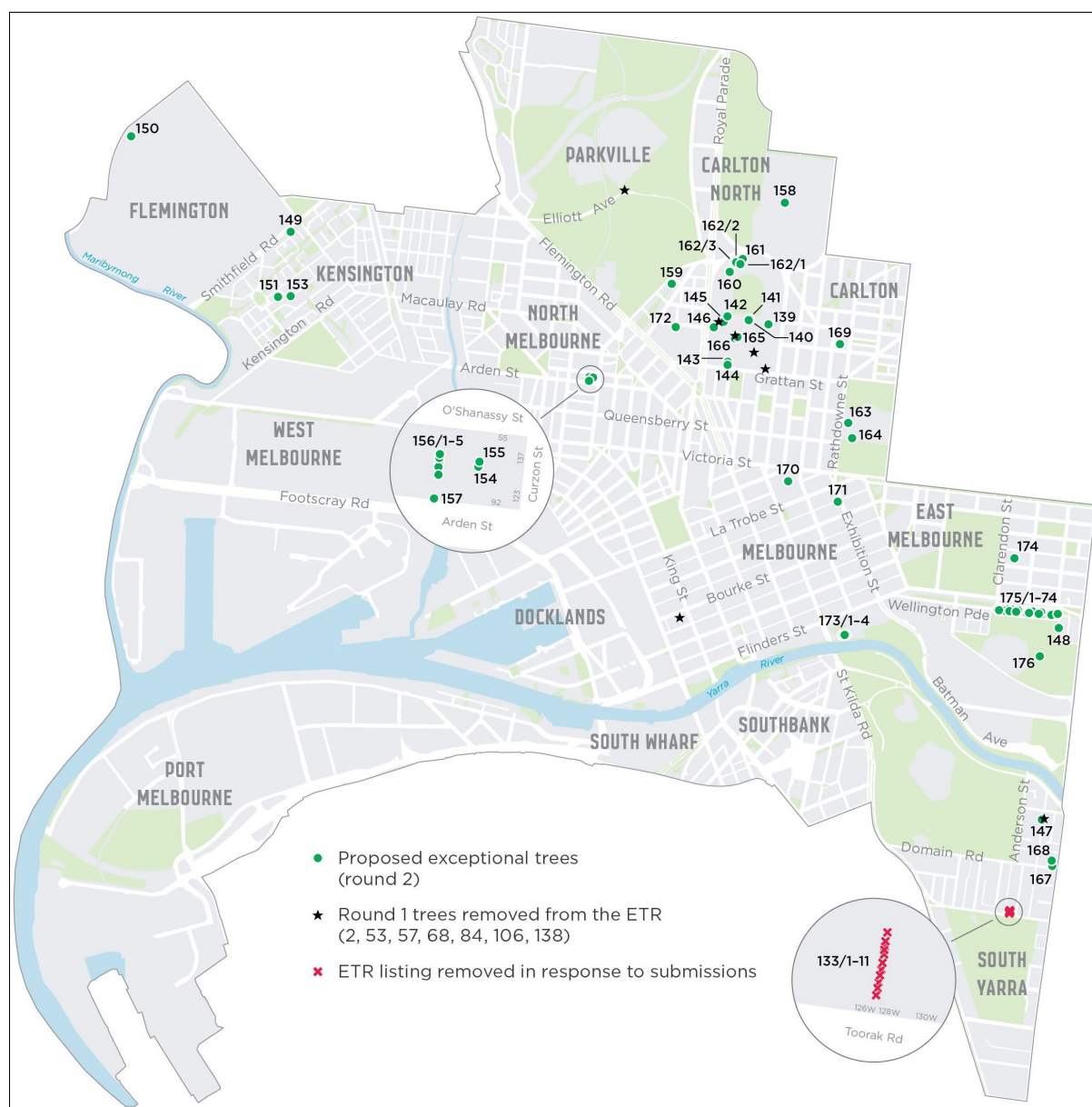
The Amendment introduces permanent controls to protect the additional 119 trees. The recently updated Exceptional Tree Register 2019 is also proposed to be listed as a background document.

The Amendment also proposes to amend the ESO2 to:

- expand four existing tree groups to list each tree with an individual tree protection zone
- remove the listing for 7 trees which have been removed due to poor physical health
- make minor listing corrections.

Figure 2 shows the changes to ESO proposed by the Amendment and post exhibition changes supported by Council.

Figure 2 Changes to ESO proposed by the Amendment and post exhibition changes supported by Council



3 Issues

3.1 Policy support and research

(i) The Expansatory Report

The Explanatory Report states:

The Amendment is consistent with the objectives of planning in Victoria by implementing the objectives detailed in Section 4 (1) of the Planning and Environment Act 1987 which state:

- to provide for the protection of natural and man-made resources and the maintenance of ecological processes and genetic diversity
- to secure a pleasant, efficient and safe working, living and recreational environment for all Victorians and visitors to Victoria
- to conserve and enhance those buildings, areas or other places which are of scientific, aesthetic, architectural or historical interest, or otherwise of special cultural value.

In answer to the question ‘How does the amendment support or implement the State Planning Policy Framework and any adopted State policy?’, the Explanatory Report states:

- Clause 12 (Significant Environments and Landscape Values): The amendment seeks to protect important natural features within the urban environment.
- Clause 15 (Built Environment and Heritage): The amendment will assist in supporting the following objectives:
...
 - Clause 15.01-4S (Healthy neighbourhoods): The amendment will assist in supporting community wellbeing through the protection of exceptional trees from being removed from the private environment to ensure that future generations benefit from the enjoyment of the trees.

And in answer to ‘How does the amendment support or implement the Local Planning Policy Framework, and specifically the Municipal Strategic Statement?’ the Explanatory Report states:

- Clause 21.03 (Vision-Environment and Landscape values) - the amendment achieves the overall vision of continued protection of the health of ecological systems whilst accommodating the municipality’s growth by protecting the most valued trees located on privately owned or managed land.
- Clause 21.05-1 (Biodiversity) – the amendment protects the City’s biodiversity through the protection of indigenous vegetation, natural exceptional vegetation.
- Clause 22.21 (Heritage Places within the World Heritage Environs Area) – the amendment protects two trees which form part of the significant historic landscape of the World Heritage Environs Area of the World Heritage Listed Exhibition Building and Carlton Gardens.

(ii) Panel discussion

The Panel notes that this is an extension of an existing provision in the Planning Scheme. As such, issues of strategic justification and the selection and application of the most appropriate planning tool are not before the Panel. Having said that, the Panel considers that the approach is well supported by policy and the use of an ESO is appropriate.

3.2 Trees 133/1 to 133/11

(i) The issue

Submitter 10 requested that all the Bhutan Cypress trees on 120W Toorak Road, South Yarra, identified as Trees 133/1 to 133/11 inclusive, be removed from the City of Melbourne Exceptional Tree Register 2019 and ESO2.

(ii) ESO2 entry

Table 1: ESO2 listing Group 12 Trees 133/1 to 133/11

Property Address of Exceptional Tree		120W Toorak Road, South Yarra	
Tree Name (Botanical & Common)		Cupressus torulosa Bhutan Cypress	
Identified Values		Outstanding Size, Historical (HO6) Value, Particularly Old, Location or Context.	
Exceptional Tree Register Tree Report Number:	Tree Protection Zone Radius (m)	133	4.4
		133/2	3.5
		133/3	4.2
		133/4	4.4
		133/5	4.4
		133/6	4.9
		133/7	3.8
		133/8	4.2
		133/9	4.3
		133/10	4.7
		133/11	6.0
Planning Scheme map No.		11ESO	
Statement of Significance		These trees form part of a row of cypress trees which are in good condition and likely to have been part of the original plantings of the heritage listed Simonds Hall.	

(iii) Submission and Council response

The site is occupied by Simonds Hall which is protected by the Heritage Overlay. Simonds Hall is one of the few grand mansions surviving in the area and is a fine example of the boom style Italianate mansion. It was erected in 1885 and is now a conference centre.

Submitter 10 stated the following values identified in the Statement of Significance for to the Bhutan Cypress trees have not been met:

- Historical
Historical images suggest that these trees were either not present or of a small size in 1945. It is therefore highly unlikely that they were part of the original planting of

Simonds Hall and have little if any historical value. Based on the photographic evidence, this was not contested by Council in relation to Exceptional Trees No's 133/7 to 133/11. Council's Heritage Advisor provided advice to confirm that they agreed that the row of trees were most likely planted in the 1960s during the site's conversion to a hotel.

- **Outstanding size**
The trees within the row have an average size of approximately 18 metre tall and 4.5 metre wide. HortFlora describes this taxon as "*A large tree growing to about 30 m tall*". Based on this, these trees are therefore not outstanding in size for the taxon.
- **Particularly Old**
Historical images do not support the claim that these trees are particularly old
- **Location or context**
The trees are not in a particularly unique location or context. This taxon is often planted as a row along boundaries and historical images show that it does not have any particular link to the original garden of Simonds Hall.

In summary, Submitter 10 considered that the existing 11 Bhutan Cypress trees are not part of the original plantings associated with Simmonds Hall and based on the identified values, are not considered exceptional. Trees 133/7 to 133/11 have already been approved for removal. As such, it would be inappropriate to include them as part of the updated Exceptional Tree Register. As the listing relates to the entire row of trees, it can therefore be considered that the remaining trees (133/1 to 133/6) are also not exceptional and should be removed from the register.

Council recorded at its meeting of 2 August 2022 that:

It is acknowledged that in deliberating permit application (TP-2021-326), Council accepted that Bhutan Cypress trees were not part of the original plantings associated with Simmonds Hall and therefore did not fulfil the criteria of historical value to the property which was the original basis for listing exceptional tree listing. It is accepted that the remaining trees (133/1 to 133/6) are also not of historic value and therefore not exceptional on this basis. In response to the matters raised in submission, an independent arborist inspected six of the 11 trees (Tree No 133/1 to 133/6) in June 2022. The recommendation provided was that in addition to the permit approval to remove Tree 133/7 to 133/11 based on the absence of historical value to the property, the exceptional nature of the Bhutan Cypress row will be significantly diminished and this would not warrant further inclusion of these trees in the Exceptional Tree Register. The expert advice has been accepted to delete these trees from the City of Melbourne's Exceptional Tree Register 2019 and the Environmental Significance Overlay – Schedule 2.

(iv) Panel discussion and recommendation

The Panel accepts the approach of Council in response to submissions 10.

The Panel recommends:

- 1. Remove the Bhutan Cyprus Trees numbered 133/1–133/11 at 120W Toorak Road, South Yarra and the adjoining property at 128W–130W Toorak Road from ESO2 and the Exceptional Tree Register 2019.**

3.3 Tree 157

(i) The issues

Submitter 2:

- considers that Tree 157, a Spotted Gum, is a public safety risk due to the dropping of limbs
- requests the protection of the tree be deferred or cancelled.

(ii) ESO2 entry

Table 2: ESO2 listing for Tree 157

Property Address of Exceptional Tree	63 – 69 O'Shanassy Street, North Melbourne Interim control expiry date: 27/04/2023
Tree Name (Botanical & Common)	Corymbia maculate, Spotted Gum
Identified Value(s)	Location or context; Outstanding size; Aesthetic value; Historical Value; Environmental/ microclimate services; Social, cultural or spiritual value; Habitat value
Tree Protection Zone Radius (m)	9.6
Exceptional Tree Register Tree Report Number:	157
Planning Scheme Map No.	5ESO
Statement of Significance	This tree is a large specimen of the species that was planted by notable landscape architect, Beryl Mann. The tree located within the Hotham Gardens complex has high social, aesthetic and microclimate value, providing benefit to the adjacent streetscape.

(iii) Submission and Council response

Figure 3 shows photographs of Tree 157.

Figure 3: Views of Tree 157



Submitter 2 advised that they had submitted the original request to have this tree recognised in the register back in 2019 but, since then the tree has shown significant branch drop creating a major hazard to the buildings and people below. They advised that they considered that the tree required significant pruning to stay healthy and safe. They expressed concerns:

- about the hazard this tree presents given the past years of limb fall
- that protecting a tree of this height, posing such a safety hazard goes against prioritising a safe community.

Council recorded at its meeting of 2 August 2022 that:

Exceptional Tree No 157(Corymbia maculata, Spotted Gum) which is located at 63–69 O'Shanassy Street North Melbourne was nominated to the register by the submitter. The tree was assessed by independent Arborists and a panel of experts against the eligibility criteria in 2019 and recommended for inclusion on the Exceptional Tree Register.

To assess matters raised in submission, an independent arborist inspected the tree in June 2022 and conducted a tree risk assessment. The arborist concluded:

- The Spotted Gum is a dominant canopy and contributes to the streetscape of Arden Street being easily visible when travelling either east or west along the road. This is in keeping with the Statement of Significance in the Exceptional Tree Register Report, which amongst other considerations notes that the Spotted Gum, "... has high social, aesthetic and microclimate value, providing benefit to the adjacent streetscape."
- The trees is deemed to be in healthy condition with no major structural defects observed.
- In response to the submitter's statement that the tree requires significant pruning to stay healthy, any mature tree in an urban landscape requires regular maintenance to promote health and structural integrity. An effective maintenance program, including regular inspections and necessary follow-up care can identify problems and correct them before they become damaging or serious. In conclusion, with regular maintenance the Spotted Gum could remain an exceptional tree for the foreseeable future.

(iv) Panel discussion and conclusion

The Panel understands that Council has met on site with the submitter and clarified the impact of the controls on the ability to maintain Tree 157. The Panel has inspected Tree 157 and it is clearly an exceptional tree. The Panel accepts the advice of the arborist that tree is healthy with no major structural defects. Although close to some buildings, wires and a footpath there is nothing to suggest that with regular maintenance the Spotted Gum could remain an exceptional tree for the foreseeable future. The Panel observes the tree is not especially unusual in its relationship to its surrounds, and if similarly located trees without significant defects were deemed appropriate for removal broader planning policies to protect significant natural assets would not be achieved.

The Panel concludes:

Tree 157 should remain in the Amendment.

3.4 Tree 171

(i) The issue

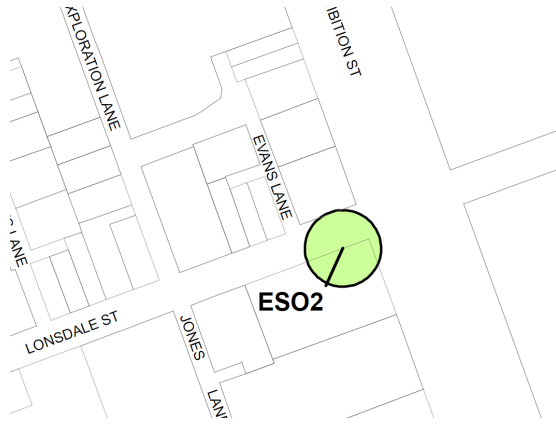
Submitter 3 strongly supports the protection of Exceptional Tree 171 but notes that the Tree Protection Zone (TPZ) just barely extends across onto an adjoining site at, 287–293 Exhibition Street, Melbourne.

(ii) ESO2 entry

Table 3: ESO2 listing Tree 171

Property Address of Exceptional Tree	275–285 Exhibition Street, Melbourne
Tree Name (Botanical & Common)	Erythrina x sykesii Common Coral Tree
Identified Value(s)	Horticultural value; Rare or Localised; Location or context; Particularly old; Outstanding size; Outstanding example of species; Aesthetic value; Environmental/microclimate services
Tree Protection Zone Radius (m)	11.5
Exceptional Tree Register Tree Report Number:	171
Planning Scheme Map No.	8ESO
Statement of Significance	This landmark tree is an excellent specimen of the species in a unique location within the city providing high aesthetic and microclimate services.

(iii) Submissions and Council response

Figure 4: Tree 171	Figure 5: Application of ESO to Tree 171
	

Submitter 3 requested that the extent of the TPZ be revised to remove the TPZ over the adjoining site. Given the extent of underground services between the adjoining site and the tree, the submitter proposed that it is exceedingly unlikely any works in that area would disturb the tree.

Council recorded at its meeting of 2 August 2022 that:

- Tree 171 was assessed by an independent arborist (Greenwood Consulting Pty Ltd) in June 2019, which was then peer reviewed by a second independent arborist (Tree Logic Pty Ltd) in September 2019.
- A TPZ radius of 11.5 m was calculated for this tree in accordance with Australian Standard AS 4970-2009.
- The ESO map (8ESO) shows the TPZ just overlapping Exhibition Apartments, 287–293 Exhibition Street, Melbourne.
- The distance from the centre of the trunk to the property boundary (edge of the footpath) of 275–285 Exhibition Street is 11.9 metres, confirming that the TPZ should not extend onto Exhibition Apartments, 287–293 Exhibition Street, Melbourne.

(iv) Panel discussion and recommendation

The Panel accepts the approach of Council in response to submission 3.

The Panel recommends:

- 2. Exclude 287–293 Exhibition Street, Melbourne from the Tree Protection Zone of Tree 171.**