

Planning and Environment Act 1987

Panel Report

Moreland Planning Scheme Amendment C189more Canopy Tree Planting in Residential Areas

17 April 2020

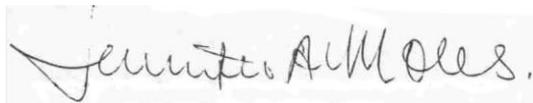
Planning and Environment Act 1987

Panel Report pursuant to section 25 of the Act

Moreland Planning Scheme Amendment C189more

Canopy Tree Planting in Residential Areas

17 April 2020

A handwritten signature in black ink on a light grey background. The signature reads "Jenny Moles" in a cursive script.

Jenny Moles

Chair

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Glossary and abbreviations

Act	<i>Planning and Environment Act 1987</i>
Council	Moreland City Council
DDO	Design and Development Overlay
DELWP	Department of Environment, Land, Water and Planning
GRZ	General Residential Zone
MSS	Municipal Strategic Statement
MUZ	Mixed Use Zone
NRZ	Neighbourhood Residential Zone
RGZ	Residential Growth Zone
SPOS	Secluded Private Open Space

Overview

Amendment summary

The Amendment	Moreland Planning Scheme Amendment C189more
Common name	Canopy Tree Planting in Residential Areas
Brief description	New landscaping requirements for medium density developments in residential areas, and incorporation of supporting policies and reference documents
Subject land	All land included in the Neighbourhood Residential Zone, General Residential Zone, Residential Growth Zone and Mixed Use Zone
The Proponent	Moreland City Council
Planning Authority	Moreland City Council
Authorisation	21 October 2019 (conditional)
Exhibition	21 November – 20 December 2019
Submissions	<p>Eight submissions:</p> <ul style="list-style-type: none"> • Four in support • One provided general support but requested changes • One objected to the Amendment • Two raised issues unrelated to the Amendment with one being subsequently withdrawn

Panel process

The Panel	Jenny Moles
Directions Hearing	Scheduled for 12 March 2020 but later vacated
Panel Hearing	Conducted on the papers as no submitter requested to be heard
Citation	Moreland PSA C189more [2020] PPV
Date of this Report	17 April 2020

Executive summary

Moreland Planning Scheme Amendment C189more (the Amendment) seeks to direct specific canopy tree planting outcomes for medium density housing throughout Moreland's residential zones by adding landscaping requirements within the schedules to the residential zones. It is proposed by this means to vary the usual B13 standard of Clause 55.03-8. Other supporting changes to the Planning Scheme are proposed.

Key issues raised in submissions responding to the exhibited Amendment related to integration of the new requirements with existing design controls for medium density housing and the need to respond to variation in dwelling types and zone development intensity. They included:

- Whether the requirements for canopy trees might potentially conflict with the Clause 55 objectives and standards relating to overshadowing of open space and daylight and sunlight to windows on and off the site.
- The variation to Standard B13 is the same standard for the GRZ and NRZ and fails to recognise that the expected housing outcomes for the two zones is at different scales.
- The landscaping requirements will restrict housing growth and diversity within the municipality.
- There is no justification for the minimum dimension of 4.5 metres for the planting of canopy trees and it will result in secluded private open space areas with a greater dimension than the adequate minimum dimension of 3 metres set by Standard B28 of Clause 55.05-4.
- A minimum garden area does not apply in the RGZ and the MUZ where increased housing growth is expected and the canopy tree provisions fail to recognise this.
- The provisions will result in reduced site coverage and consequent reduction in internal dimensions and the amenity of dwellings.
- The current requirement for a minimum garden area (expressed in terms of the percentage of the lot) in both the NRZ and GRZ, combined with the site coverage, permeability and stormwater management and landscaping objectives, as already varied by the schedules to the residential zones, mean that development proposals are already required to achieve appropriate open space and landscaping.
- The effectiveness of the minimum garden area requirement introduced by Amendment VC110 in 2017 in achieving the outcomes sought by the present Amendment needs to be assessed and may obviate the need for the Amendment.
- It is not clear how secluded private open space not provided at ground level - such as balconies - will be treated. An ability to plant a canopy tree elsewhere on the site should be included.
- The changes proposed are overly prescriptive and that no other inner metropolitan council has sought to include prescriptive scheme content such as this.
- Planting canopy trees adjacent to sealed accessways has the potential to cause damage over time as root systems develop and expand.
- It is unclear whether fire hazard had been considered.

Panel conclusions

The Council material forwarded to the Panel has indicated that thorough background investigations were undertaken leading to the Amendment and that it is strategically supported by the following Council-adopted investigations and policies:

- *Moreland Urban Heat Island Action Plan, 2016-2026*
- *Moreland Urban Forest Strategy, 2017-2027*
- *Medium Density Housing Review, October 2018.*

The Panel has concluded that the canopy tree planting standards proposed to be introduced are soundly-based, and adequately respond to the different residential zone types and other medium density housing design components and policies of the Planning Scheme.

The Panel has also concluded that there is nothing in any objecting submission that gives rise to a need to alter the Amendment before adoption.

The Panel has made some minor editorial suggestions which might be considered.

Recommendations

Based on the reasons set out in this Report, the Panel recommends that Moreland Planning Scheme Amendment C189more be adopted as exhibited subject to the following:

- **The Council should consider making the minor editorial changes recommended by the Panel in section 2.3 of this Report.**

Further recommendations

The Panel makes the following further recommendation:

The Council should consider what improvements are required to enforcement of planning permit requirements as relate to landscaping.

1 Introduction

1.1 The Amendment

(i) Amendment description

Amendment C189more (the Amendment) to the Moreland Planning Scheme (the Planning Scheme) proposes to direct specific tree planting outcomes for medium density housing throughout Moreland's residential zones by adding landscaping requirements within the one schedule to the Neighbourhood Residential Zone (NRZ), four schedules to the General Residential Zone (GRZ), two schedules to the Residential Growth Zone (RGZ) and the one schedule to the Mixed Use Zone (MUZ). The Amendment also proposes to modify other provisions to ensure consistency throughout the scheme with the proposed landscaping changes.

Specifically, the Amendment proposes to:

- Amend the Municipal Strategic Statement Clause 21.03 Strategic Framework and local policy at Clause 22.01 Neighbourhood Character to insert landscaping requirements to ensure consistency with residential zone schedules and reference the updated *Moreland Tree Planting Manual for Residential Zones, 2019*.
- Amend Clause 21.04 to replace the *Moreland Street Landscape Strategy 2012-2022* with the updated *Moreland Urban Forest Strategy 2017-2027*; and change the *Moreland Tree Planting Manual for Residential Zones, 2014* for the updated version of that document dated 2019.
- Amend the schedules to the NRZ, GRZ, RGZ and MUZ to insert new Landscaping provisions varying the general landscaping Standard B13 of Clause 55.03-8 as enabled by the relevant zone provisions and Clause 55 itself; insert a new Neighbourhood character or Design objective, Application requirements and Decision guidelines for each zone; and reference the updated *Moreland Tree Planting Manual for Residential Zones, 2019*.
- Amend Design and Development Overlay Schedule 24 Neighbourhood Centres (DDO24) to reference the updated *Moreland Tree Planting Manual for Residential Zones, 2019*.
- Amend Documents Incorporated in the Planning Scheme in the Schedule to Clause 72.04 to reference the updated *Moreland Tree Planting Manual for Residential Zones, 2019*.

The new canopy tree planting B13 standards proposed by the Amendment for the four types of residential zone are conveniently summarised in the following table from the Council submission.

Table 1 Summary of tree planting requirements in the residential zones

Zone	Front Setback	Small front setback	Other open spaces
Neighbourhood Residential Zone & General Residential Zone	Minimum of 1 tree: <ul style="list-style-type: none"> 8-15m high 7m wide canopy 4.5m x 4.5m area 	Minimum of 1 tree: <ul style="list-style-type: none"> 6-8m high 5m wide canopy 4.5m wide area 	Minimum of 1 tree in each SPOS ¹ : <ul style="list-style-type: none"> 6-8m high 5m wide canopy 4.5m x 4.5m area
Residential Growth Zone & Mixed Use Zone	Minimum of 1 tree: <ul style="list-style-type: none"> 6-8m high 5m wide canopy 4.5m wide area 		Minimum of 1 tree in each SPOS: <ul style="list-style-type: none"> 6-8m high 5m wide canopy 4.5m x 4.5m area

Table 2 Proposed new objective in the residential zones

Zone	New objective
Neighbourhood Residential Zone & General Residential Zone	To promote a preferred neighbourhood character where the design and siting of new dwellings integrates generous landscaping through the retention of existing canopy trees (where practical) and the planting of new canopy trees and vegetation.
Residential Growth Zone & Mixed Use Zone	Ensure the design and siting of new buildings maximises landscaping throughout the site, including the retention of existing canopy trees (where practical) and the planting of new canopy trees and vegetation.

(ii) The subject land

The Amendment applies to land in residential zones throughout the municipality.

1.2 Background

The Explanatory Report for the Amendment provides the following rationale for the Amendment:

The *Moreland Urban Heat Island Action Plan [2016-2026]*² identified Moreland's highly urbanised environment experiences a high urban heat island effect (UHIE). Detailed analysis of Moreland's UHIE vulnerability has found that there is a high number of extremely hot areas and with very few cool places, where during heatwaves most parts of Moreland can be four to seven degrees warmer than surrounding areas. The analysis highlighted that Moreland has a community that

¹ SPOS - Secluded Private Open Space

² Adopted by the Council in June 2016

is vulnerable to this heat due to the increased amount of hard surfaces that absorb and radiate heat, limited vegetation to shade and cool, heat production from machines and activities and air pollution creating local greenhouse effects.

This Amendment is responding to this research demonstrating that the UHIE is having a real effect on a large aspect of the municipality, with infill urban development being the key contributor to the loss of vegetation and decline of Moreland's urban forest. Currently, landscaping including tree planting occurs once the site layout has been determined, resulting in small areas of open space that can only accommodate small trees. This Amendment seeks to flip this approach to mandate a predetermined tree size and open space that can facilitate larger canopy on private land throughout Moreland's residential development to realize meaningful canopy cover for the long-term liveability of Moreland.

The *Moreland Urban Heat Island Action Plan and Urban Forest Strategy [2017-2027]*³ identified increased vegetation and canopy cover on private land as key actions needed to combat the UHIE and change the urban ground cover to provide more shade and moisture in the air to keep Moreland cool.

1.3 Procedural issues

Following appointment of the Panel to consider the Amendment, all submitters were notified on 26 February 2020 of the intended Panel Directions Hearing and Hearing. No submitter requested to be heard, but the Council on 27 February 2020 indicated a wish to present to the Panel.

The Panel then vacated the scheduled Directions Hearing and sought the Council's agreement to abandon the Hearing proper and deal with the matter by considering written material only – an 'on the papers' process.⁴

The Council concurred and the Council's written submission to the Panel was received on 1 April 2020. That submission in turn relied upon background documents and officer reports earlier provided to the Panel on 26 February 2020.

1.4 Summary of issues raised in submissions

As noted eight submissions were received by the Council with only three raising matters potentially challenging or requiring a change to the Amendment. The issues raised can be summarised as follows:

- While supporting the Amendment, Submitter 1 queried whether the requirement for canopy trees might potentially conflict with the Clause 55 objectives and standards relating to overshadowing of open space and daylight and sunlight to windows on and off the site.
- Submitter 7 objected to the Amendment. Issues raised included:
 - The variation to Standard B13 is the same prescriptive standard for the GRZ and NRZ and fails to recognise that the expected housing outcomes for the two zones is at different scales.

³ Adopted by the Council in August 2017

⁴ Panel letter to the Council dated 10 March 2020

- The landscaping requirements will restrict housing growth and diversity within the municipality.
 - There is no justification for the minimum dimension of 4.5 metres for the planting of canopy trees and it will result in secluded private open space areas with a greater dimension than the adequate minimum dimension of 3 metres set by Standard B28 of Clause 55.05-4.
 - A minimum garden area does not apply in the RGZ and the MUZ where increased housing growth is expected and the canopy tree provisions fail to recognise this.
 - The provisions will result in reduced site coverage and consequent reduction in internal dimensions and amenity.
- Submitter 8, a company that is an owner and proposed developer of land in Coburg, raised a number of concerns:
 - The current Planning Scheme requirement for a minimum garden area (expressed in terms of the percentage of the lot) in both the NRZ and GRZ, combined with the site coverage objective at Clause 54.03-3 and Clause 55.03-3, the permeability and stormwater management objectives at Clause 54.03-4 and Clause 55.03-4, and landscaping objectives at Clause 55.03-8 as already varied by the schedules to the residential zones, mean that infill development proposals are already required to achieve meaningful and effective open space and landscaping. The new controls specifying sizes for permeable spaces and number of trees to be planted would simply overlap with the existing provisions and provision for planting of a minimum of one canopy tree is adequate.
 - The introduction of the minimum garden area by Amendment VC110 in 2017 occurred while the current Amendment had been under development. The effectiveness of the minimum garden area in achieving the outcomes sought by the Council with the present Amendment needs to be assessed and may obviate the need for the Amendment.
 - It is not clear how secluded private open space not provided at ground level – such as balconies - will be treated. An ability to plant a canopy tree elsewhere on the site should be included.
 - The changes proposed were said to be overly prescriptive and that no other inner metropolitan council has sought to include prescriptive scheme content such as this.
 - The encouragement to plant canopy trees adjacent to sealed accessways has the potential to cause damage over time as root systems develop and expand, and this part of the Amendment should be removed.
 - It is unclear whether fire hazard had been considered.

1.5 The Panel's approach

The Panel has considered all written submissions made in response to the exhibition of the Amendment and the Council's written submission to the Panel and supporting documents. All submissions and materials have been considered by the Panel in reaching its

conclusions, regardless of whether they are specifically mentioned in the Report. The Panel has only addressed those submissions that have requested a change to the Amendment but has noted the comments by supporting submitters and their requests to Council about related landscaping matters.

In addition to the issues raised by submitters, the Panel has addressed what may be an outstanding issue which arose in discussion between the Department of Environment, Land, Water and Planning (DELWP) and the Council at the time of authorisation to exhibit the Amendment. This issue relates to changes to Clause 22.01 and the alleged lack of strategic justification for those changes.

The Panel considers that the statutory and strategic planning context for the Amendment is adequately set out in the Explanatory Report for the Amendment and the Council's written submission to the Panel and it is not necessary to restate it here. Suffice to say that the Panel considers the introduction of landscaping provisions driven by urban heat bank reduction intents and environmental efficiency, which also enhance residential amenity for medium density housing, are supported by State Policy. In particular, the Panel notes the objective of the policies set out at Clause 15.02-1S:

To encourage land use and development that is energy and resource efficient, supports a cooler environment and minimises greenhouse gas emissions

and the following associated policies:

Reduce the urban heat island effect by greening urban areas, buildings and transport corridors and open spaces with vegetation

Encourage retention of existing vegetation and planting of new vegetation as part of development and subdivision proposals.

The Panel itself has also identified a number of minor drafting issues for attention by the Council.

The following chapter of this Report deals with the issues under the following headings:

- The issues in submissions
- DELWP issue
- Minor drafting and implementation issues identified by the Panel.

Appendix A lists the submitters and Appendix B the documents provided to the Panel.

2 Panel consideration

2.1 The issues in submissions

2.1.1 Strategic justification for proposed standards

There was no argument presented in submissions that the broad strategic intents of the proposed Amendment were inappropriate or without any foundation. While Submitter 8 took the view that the existing Planning Scheme provisions, including those relating to site coverage, storm water, garden area and landscape, were adequate to achieve meaningful and effective open space and landscaping, there was tacit and explicit support in submissions for the amenity and urban heat bank benefits of canopy tree planting.

The Panel is satisfied that the Council has undertaken a thorough analysis of the need for the greening of medium density housing, and identified the resultant wider community benefits. The Panel considers that sound strategic support is given for the greening of housing by the Council's *Medium Density Housing Review, October 2018*, *Urban Forest Strategy 2017-2027*, *Urban Heat Island Effect Action Plan 2016-2026* and the background report adopted by the Council in July 2019 *Canopy Tree Planting in Residential Areas*.

Submitter 7 nevertheless argued that the particular dimension in Standard B13 of a minimum of 4.5 metres for planting of canopy trees is unfounded and that it would result in private open spaces greater than required by the garden area requirement of Standard B28 in Clause 55.05-4.

The Council submission noted that the background report, *Canopy Tree Planting in Residential Areas*, provides the rationale for the Amendment numerical standards. It was said that it contained a thorough analysis of the open space arrangements of a variety of medium density development types on lots of differing sizes. Over 150 medium density plans were reviewed. This review sought to identify the largest size tree that could be accommodated in the existing private open spaces to maximise shading benefits whilst not impacting on dwelling yield.

The Panel notes that the open space outcome for lots may be greater than the garden area requirement at times but the intent of the Amendment is to enable canopy tree planting which has benefits in terms of wider urban cooling rather than merely providing open garden areas. The Panel considers that the issue of the appropriate amount of space per canopy tree has been thoroughly investigated by the Council and no change is required to the Amendment in response to this submission.

2.1.2 Relationship to sunlight and daylight objectives and standards

This issue of potential conflict with objectives and standards associated with sunlight to private open space areas and sunlight and daylight to windows on the subject land and adjoining properties was addressed satisfactorily by Council officers with the Submitter 1 advising that its enquiry had been resolved.

The Panel agrees with the response given by the Council that the relevant current objectives and standards, such as Objective 11 of Clause 21.03-4, relate in the main to

building siting and orientation, and the new objectives and standards relating to canopy trees can integrate satisfactorily with these Planning Scheme provisions. The implementation of the canopy tree provisions can be achieved without compromising the existing provisions by suitable tree selection and appropriate siting, enabling shading in summer and access to direct sunlight in winter months.

The Panel notes that there are existing provisions in the Planning Scheme which already give support to landscaping with canopy trees, such as Objective 12 of Clause 21.03-4, which have been accepted as not inconsistent with the sunlight and daylight access objectives.

No change to the Amendment is required in response to this submission.

2.1.3 Consequent constraint on site coverage and internal amenity

The Submitter 7 objection included that the landscaping requirements would result in the internal dimensions of dwellings being reduced with consequent amenity impacts.

The Council response to this again made reference to the detailed analysis undertaken of developments and applications as described in section 2.1.1 above. It was particularly noted that the background investigation was predicated on not reducing dwelling yield.

The Panel has reviewed the medium density housing examples which were investigated and provided in the Council submission to the Panel, and is satisfied that the inclusion of canopy trees in accordance with the proposed provisions would not compromise the amenity of dwellings as only small layout changes (or possibly including a second storey) would be required.

No change to the Amendment is required in response to this submission.

2.1.4 Failure to respond to anticipated zone variation in built form outcomes

Submission 7 raised concern that the Amendment failed to provide any distinction in the expected landscape outcomes between the NRZ and GRZ which support housing of different scales. It also argued that the Amendment fails to recognise increased housing growth within the RGZ and MUZ.

The Council in reply noted that the Planning Scheme does not at present direct differing landscaping outcomes for the GRZ and NRZ. The garden area requirements introduced via Amendment VC110 in early 2017 and modified by VC143 do not differ between the two zones. It was also submitted that there is essentially no difference in the types of town house developments being proposed in these two zones. The landscape changes proposed by the Amendment would not alter those intended for the NRZ but appropriately would add the same requirement for the GRZ.

Concerning the need to direct different landscaping outcomes for the RGZ and MUZ from those in the GRZ and NRZ, the Council responded by pointing to the different objectives and lesser requirements for the more intensive zones as are summarised in Tables 1 and 2 of this Report. It was submitted that the planting outcome sought by the Amendment of one tree in a front setback and one elsewhere on the site in the RGZ and MUZ is not an onerous requirement and indeed is already required for apartments.

As noted, the Council's written submission to the Panel reported on the comprehensive analysis which had been undertaken of the impact of the proposed requirements on various designs for medium density housing without reducing yield. It concluded that in more than 70 per cent of cases, the new landscape requirements could be met with no or no substantial change to the site layout. The alternative means to meet the landscape objective for improved canopy cover – either by boundary planting or grouping of canopy trees – which would likely play a greater role in the RGZ and MUZ was also noted.

The Panel accepts that adequate consideration has been given to this issue in the development of the Amendment. No change to the Amendment is required in response to these aspects of Submission 7.

2.1.5 Relationship to garden area requirement

Submitter 8 noted that the introduction of the Garden Area requirement at Standard B28 via Amendment VC110 occurred in early 2017 during the period that the background work was being undertaken in relation to this Amendment and queried whether the effectiveness of the minimum garden area in achieving the outcomes sought by the Council via the present Amendment had been assessed. It was suggested that Standard B28 might obviate the need for the Amendment.

In response the Council submission included that the background work had reviewed how medium density garden areas had changed post VC110 and the subsequent modification by VC143 and this was documented in both the Moreland Medium Density Review and Canopy Trees in Residential Areas background report.

The Council submission also advised that further analysis of the private open spaces was conducted in considering the translation of Moreland's Neighbourhood Character Policy (Clause 22.01) into the new format Planning Scheme (PPF Translation). This analysis focused on whether policy directing ground level secluded private open spaces in excess of Clause 55 standards remains useful since the introduction of the garden area requirement post 2017.

The Council advised that the analysis of medium density housing applications and developments had demonstrated that the width of secluded private open space areas (SPOS) in proposed medium density developments in the NRZ and GRZ had increased since the introduction of the garden area requirement in 2017 albeit there had been some reduction because of the definitional changes introduced by Amendment C143. It was also noted that the review had nevertheless found that with some minor changes to dwelling layout, the SPOS area could be widened to accommodate a small tree with a canopy of 20 square metres without impacting yield.

The Council submission included that:

The garden area requirement is an important policy that has improved the private open spaces in medium density development. However, the garden area requirement will not achieve the cooling outcomes alone, but in conjunction with proposed prescriptive planting and greater canopy cover. Cooling in the long term can be achieved without impacting on dwelling yield.

No change to the Amendment is required in response to this aspect of Submission 8.

2.1.6 Catering for SPOS in balcony form

Submitter 8 also argued that the provisions to be introduced via the Amendment made inadequate allowance for secluded private open space (SPOS) being provided only as balconies and queried how tree planting was to occur.

The Council response included that the medium density housing review had identified that the introduction of the garden area requirement had virtually eliminated balcony developments in the NRZ and GRZ where the majority of medium density housing development occurs. It was said that where open space would be provided as balconies, only planting in the front setback would be required but generous other landscaping would be expected to respond to the urban heat objectives.

No change to the Amendment is required in response to this aspect of Submission 8.

2.1.7 Changes as overly prescriptive

Submitter 8 also asserted that the changes proposed were overly prescriptive and that no other inner metropolitan council has sought to include similar prescriptive scheme content relating to canopy trees.

The Council submitted that this was an appropriate use of the objectives and standards of Clause 55 and that 10 other Councils had utilised the schedules to residential zones to vary landscape requirements. It was said that notably Darebin (schedules 2,3 and 5 to the RGZ), Whittlesea (schedules 4 and 5 to the GRZ) and Knox (schedules 1 and 2 to the RGZ and schedules 2-5 to the GRZ) had prescriptive B13 controls of this kind.

It was noted that in any case a standard for canopy tree planting in apartment developments was already contained in Clause 58.03-5 of the Planning Scheme.

The Panel agrees with the Council submission concerning the appropriateness of this Planning Scheme tool and notes the provisions in other schemes.

No change to the Amendment is required in response to this aspect of Submission 8.

2.1.8 Root damage by planting along sealed accessways

Submitter 8 suggested that the encouragement to plant canopy trees adjacent to sealed accessways has the potential to cause damage over time as root systems develop and expand, and this part of the Amendment should be removed.

The Council's response was that this could be adequately dealt with by the provision of root barriers.

The Panel agrees with the Council response and notes that appropriate species selection has a role to play in planting along sealed accessways.

No change to the Amendment is required in response to this aspect of Submission 8.

2.1.9 Fire hazard

Submitter 8 included that it is unclear whether fire hazard had been considered and whether discussions had been held with relevant fire management authorities.

The Council submitted that this matter had not been regarded as requiring particular attention as the municipality is not one identified as being in a Bushfire Prone Area and is not affected by a Bushfire Management Overlay. No mandatory referral to the CFA or MFB was required. Notice of the Amendment was given, however, to the Minister for Water, Police and Emergency Services together with other ministers and no submission was forthcoming.

The Panel does not consider that a planning scheme requirement designed to offset urban heat effects and support residential amenity in the inner metropolitan area, albeit trees are involved, should require referral to fire management agencies. In any case, the Planning Scheme already contains provisions such as the Objective 12 and associated strategies and implementation measures at Clause 21.03-4 which support increased tree cover, and references to enhanced green and leafy character already occur at Clause 22.01-2.

No change to the Amendment is required in response to this aspect of Submission 8.

2.2 DELWP issue

The Council resolved on 10 July 2019 to seek authorisation to exhibit the Amendment. In response to the Council request, an email was received from DELWP outlining changes to the Amendment before exhibition. These included the removal of reference to 'climate responsive' and 'urban heat' in the objectives to be added to the zone schedules. On 16 September, the Council re-submitted the Amendment with the changes requested by DELWP.

The authorisation subsequently granted on 21 October 2019 remained conditional, however: it required or suggested some further changes to the Amendment wording. These were mostly of a minor drafting nature but from the Council's perspective it seemed that a significant change required by DELWP was the direction to 'delete the proposed new objective from all residential zone schedules including GRZ, NRZ, RGZ and Mixed Use Zone'.

The authorisation also 'suggested' that the Council consider other changes including deleting the changes to Clause 22.01 as 'there has been no character work undertaken to justify any changes'. The authorisation went on to say that this was because neither the *Urban Forest Strategy, 2017-2027* nor the *Urban Heat Island Effect Action Plan 2016-2026* articulate urban character.

The Council queried these and other authorisation requirements on 24 October given it was believed that DELWP had earlier accepted the revised drafting of the new zone objectives. The Council also argued that objectives for the schedules were required, the objectives were strategically justified by the background studies, and they did not duplicate the other objectives in the Planning Scheme⁵ as had been alleged by DELWP in another letter of 22 October 2019.

⁵ Notably Clause 15.02-1S, Clause 22.08 and the objective of standard B38 (deep soil areas and canopy trees) in Clause 55.07-4

On 28 October 2019, DELWP again wrote about the conditions of authorisation indicating that it had discovered there had been technical problems in the electronic transfer of redrafted documents between the Council and DELWP and the most up to date versions of the documents had not necessarily been reviewed by them on 21 October 2019. It was accepted that the revision of the objectives for exhibition was now acceptable and had addressed the concerns raised by DELWP.

The DEWLP letter indicated that if the Council had not addressed all the other matters raised in its letter⁶, they ‘will get reviewed later in the process via Panel etc.’

The Panel considers that the issue of drafting of the objectives for the zone schedules has now largely been resolved (subject to minor wording issues discussed in section 2.3 below) and the minor drafting matters included as DEWLP authorisation ‘suggestions’ appear to have been satisfactorily addressed.

The only matter which perhaps warrants Panel consideration is whether there remain exhibited changes to Clause 22.01 which conflict with the DELWP suggestion that this clause should not be altered.

The Panel’s view is that the changes to Clause 22.01 policy as exhibited do not represent a substantial shift from the existing policy. Only a new reference to planting of canopy trees in secluded private open space areas in accordance with the zone schedules is introduced. This new policy replaces a similar policy currently applying only to the NRZ.

The Panel would comment here that it finds the approach taken by DELWP that proposed changed ‘character’ policies or objectives were not supported strategically by the studies which the Council had undertaken somewhat strange. The Council has strategically supported urban greening arising from its multifaceted concerns about loss of urban forest and urban heat island effects in Moreland. It has adopted a number of policy documents relating to these issues. The greening strategy also finds support in the Council study of improvements to the amenity of medium density housing sought by residents. It does not seem unreasonable that these strategic objectives for greener and leafier urban outcomes be viewed as seeking a new urban character. The precise requirements for the greening of medium density housing developments were also carefully established by the background work reviewing existing and proposed medium density developments.

The Panel does not see any need for change to the Amendment arising from this issue.

2.3 Minor drafting and implementation issues identified by the Panel

In reviewing the documents provided by the Council and the submitters, the Panel has noted a few matters which appear to require, or would benefit by, attention by the Council.

⁶ Presumably the letter of 21 October 2020

2.3.1 Wording of the objectives

The Panel believes that the Objectives clause at the start of the schedule to the MUZ, RGZ1 and RGZ2 may be grammatically incorrect. It reads:

Ensure the design and siting of new buildings maximises landscaping throughout the site, including the retention of existing canopy trees (where practical) and the planting of new canopy trees and vegetation.

The Panel suggests the sentence is problematic in its using a singular rather than plural verb. 'Maximise' rather than 'maximises' would be correct. Also, the Panel believes that 'where practical' would likely be intended to be 'where practicable'.

Similarly, in the Neighbourhood Character Objective for the GRZ1, there is again use of the singular rather than plural verb and the use of 'where practical'. The clause reads:

To promote a preferred neighbourhood character where the design and siting of new dwellings integrates generous landscaping through the retention of existing canopy trees (where practical) and the planting of new canopy trees and vegetation.

'Integrates' should be 'integrate', and 'practical' should be 'practicable'.

The Panel is also uncomfortable with the way that 'integrate(s)' is used without a pronoun following it. It probably should be 'integrated with' as in Objective 12 in Clause 21.03-4 or might be better expressed as 'include' or 'incorporate'.

2.3.2 Wording of B13 requirement in the schedules

The second last dot point of the B13 requirements in all schedules refers to locating canopy trees so as to provide shading to accessways. It again uses the phrase 'if practical'.

The Panel again suggests that this should be 'if practicable'.

2.3.3 Wording of the Decision guidelines of the schedules

The Panel notes that the second last new dot point in the schedules for the MUZ, RGZ and schedules 1 and 3-4 of the GRZ differs in expression from that in the GRZ2 and the schedule to the NRZ. In the case of the former group the decision guideline is expressed as:

The suitability of the proposed location and soil volume of the canopy tree(s) for canopy tree health.

In the case of GRZ2 and NRZ1, it is expressed as:

The suitability of the proposed location and soil volume for canopy tree health.

There does not appear to be any intended difference in meaning but it is desirable that the clauses should be expressed consistently across all schedules.

2.3.4 Content of DDO24

Clause 43.02 relates to the Design and Development Overlay (DDO). Schedule 24 to that overlay (DDO24) relates to Neighbourhood Centres. It is proposed to simply update the reference in the Landscaping requirement of Clause 2 to the *Moreland Tree Planting Manual, 2019*.

The two specified landscape requirements are:

- Provide at least one tree in the front setback, selected in accordance with the *Moreland Tree Planting Manual, 2019*
- Provide tree planting along the side and rear boundaries for properties located in the Residential Growth Zone and Mixed Use Zone.

While these two requirements are already part of the Planning Scheme, the Panel notes that at least the first dot point appears to be intended to relate principally or exclusively to residential developments.

In this respect the Panel notes that the schedule's Frontage Setback Requirements include that retail and commercial buildings are normally to be constructed to the street boundary at ground level. It is only in the case of buildings with residential uses at ground floor level that a frontage setback requirement applies. It is therefore only for buildings of this type that a requirement for tree planting in the front setback would usually apply⁷.

This Amendment may offer an opportunity to clarify this if it is the case.

It is unclear whether the second dot point relating to planting along side and rear boundaries is intended to apply only to buildings with residential occupancy or to all types of buildings in neighbourhood centres. If it is the case that it is only residential buildings then this requirement might be said to be now overtaken by the new tree planting provisions applying to residential developments in the relevant zones. It is possibly superfluous and its deletion might be considered.

2.3.5 Implementation and enforcement issues

The Council submission refers to the *Moreland Medium Density Housing Review* adopted by the Council in October 2018. This was the background study that investigated the quality of townhouse and unit development within Moreland and included recommendations about how it can be improved. The Panel notes that, as claimed by the Council, a key recommendation of the review was to amend the Planning Scheme to increase tree canopy and landscaping outcomes.

The Panel notes also, however, that a key finding was:

Whilst landscape plans indicate tree planting, an audit in 2018 found actual tree planting largely didn't occur. These non-compliances were not enforced due to resourcing.

Another key recommendation of the review was:

Increase the compliance with planning permit requirements.

The Panel would observe that the implementation of the Amendment if approved could be confounded by the existing problem of enforcement. This is something which requires attention if the intents of the Amendment are to be properly achieved.

⁷ It is possible that it is intended to apply also commercial and retail buildings if set back from the frontage.

2.4 Conclusions

The Panel concludes:

- The submissions and the DELWP issue do not give rise to any requirement to modify the Amendment before adoption.
- Some minor drafting improvements might be made as suggested by the Panel. Some attention may be required to the enforcement of permit conditions relating to implementation and maintenance of landscaping.

Appendix A Submitters to the Amendment

No.	Submitter
1	John Douglas Group Pty Ltd
2	Pilar Gioskos
3	Emily Mellon (later withdrawn)
4	Aaron Goldsworthy
5	Paul Hyde
6	Environment Protection Authority
7	Terrain Consulting Group
8	Property Corporate Pty Ltd

Appendix B Document list

No.	Date	Description	Provided by
1	26/02/2020	Folder of background and exhibited documents and written submissions to the Council	Nia Kolokas, Senior Strategic Planner, Moreland City Council
2	1/04/2020	Council submission	Nia Kolokas
