

Agenda

Special Meeting of Council

Thursday, 30 January 2020

6.00pm

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Thursday, 30 January 2020 at 6.00pm
to be held at the Moonee Valley Civic Centre

Members: Cr Samantha Byrne Mayor
 Cr John Sipek Deputy Mayor
 Cr Jim Cusack
 Cr Rebecca Gauci Maurici
 Cr Richard Lawrence
 Cr Nicole Marshall
 Cr Narelle Sharpe
 Cr Andrea Surace

Officers: Bryan Lancaster Chief Executive Officer
 Kendrea Pope General Manager Operations
 Vincent Cammell General Manager City Development
 Allison Watt Executive Manager Corporate Governance

Business:

- 1. Opening and Reconciliation Statement**
- 2. Apologies**
- 3. Declarations of Conflict of Interest**
- 4. Reports**
 - 4.1 Newmarket Station proposed tree removal4
- 5. Close of Meeting**

BRYAN LANCASTER
Chief Executive Officer

REPORTS

4.1 Newmarket Station proposed tree removal

Author: Colin Harris - Senior Project Manager Infrastructure and Land Use Developments

Business Unit: Planning

1. Purpose

- 1.1 The purpose of this report is to present Council with details of the proposed removal of the river red gum tree and other works at Newmarket Station and recommend next steps in relation to engaging with Metro Trains Melbourne (MTM) to allow some works to proceed whilst ensuring the retention of the significant river red gum tree.

2. Background

- 2.1 On 13 May 2014, Council received a request for report and consent under Section 29A of the *Building Act 1993* to demolish part of the inbound (east) side of the station building at the Newmarket Railway Station. MTM advised Council it considered the station building to be unsafe. Following this, Council engaged an engineer to provide an initial assessment of the structural soundness of the building. The report was provided to Council on 20 May 2014, which deemed the building to be safe and capable of being repaired.
- 2.2 Council subsequently advised MTM that interim and permanent heritage controls were being sought and on 11 June 2014, MTM withdrew its request for report and consent under Section 29A of the *Building Act 1993*.
- 2.3 The 2014 heritage citation for the site outlines the mature trees in the adjoining reserves of Newmarket Railway station date from the 1920s and as such are significant with the peppercorn trees, in particular, typical of railway station plantings of the 1920s. Other mature trees surrounding the station include several peppercorns (*Schinus molle*), silver or white poplars (*Populus alba*) and a river red gum (*Eucalyptus camaldulensis*), mostly to the south of the station buildings with one peppercorn at the north end of the inbound (east) platform and a large fig (*Ficus sp.*) adjacent to the ramp leading to the building entrance.
- 2.4 The citation highlights that the aesthetic qualities of the station complex are enhanced by its elevated siting and the mature trees, with the complex as a whole, forming a landmark that contributes to the historic character of the historic commercial centre in Racecourse Road and Pin Oak Crescent of which it forms a part.
- 2.5 Based on this report Heritage Overlay 380 (HO380) was applied to the station and surrounds. Additional tree protection controls were also applied via an Environmental Significance Overlay (ESO2) in June 2019.

- 2.6 In December 2018, Council officers and MTM representatives met onsite to walk through planned works to repair structural issues with the Newmarket Station platform and railway line, and any associated impacts this may have on protected trees. The concerns raised by MTM at the time were that the tree roots were impacting the station and railway tracks, creating potential safety issues. Four trees were closely examined and officers reiterated Council's strong position to retain trees.
- 2.7 Given the significance of the river red gum, Council officers engaged the services of a specialist arborist to undertake a detailed assessment of the tree. Homewood Consultants prepared a report outlining the likely tree behaviour in this location, a risk assessment on the track and platform, together with areas for further investigation and recommended actions.
- 2.8 The report concluded that the river red gum would have no impact on the track or platform and it also proposed future steps to ensure protection of the significant tree.
- 2.9 On 6 December 2018, Council wrote to the CEO of MTM stating that based on the information currently available, and given the heritage and landscape values of the tree to the community, support groups and the National Trust, Council sought a written commitment the tree would not be removed until all of the relevant matters had been fully explored.
- 2.10 The Homewood Consultants report was provided to MTM in late December 2018.
- 2.11 Council officers contacted MTM on numerous occasions throughout 2019 seeking an update on and response to the Homewood Report. No detailed response was provided to Council officers during 2019.
- 2.12 On 21 January 2020, key staff from the Department of Transport (DoT) and MTM met with Council's Chief Executive Officer (CEO). This meeting was established following an urgent request for a meeting with Council's CEO from DoT the previous day.
- 2.13 At the meeting, Council's CEO was advised MTM intended to remove the significant trees at Newmarket Station commencing on 24 January 2020. Council officers were advised the station platforms on both east and west side need repair and that works are scheduled to take place in conjunction with a planned shutdown of the Craigieburn line.
- 2.14 Council officers were advised the proposed tree removals are based on reports commissioned and recently received by MTM which highlight the trees have compromised the structural integrity of the station platforms and environs, including retaining walls. MTM and DoT consider there is a public safety risk.
- 2.15 These works include removing the more than 100-year-old river red gum and other significant trees that are all included within both a Heritage Overlay (HO380) and an Environmental Significance Overlay (ESO2) under the Moonee Valley Planning Scheme.

- 2.16 At the meeting MTM advised it had scheduled the works for the 25-27 January weekend as the Craigieburn line was proposed to be shut for planned works.
- 2.17 MTM advised it would act under the provisions of the *Rail Management Act, 1996* where it is considered that trees are a safety risk pursuant to the public this Act provides exemptions from the *Planning and Environment Act, 1987*. MTM has offered to discuss offset vegetation replacement and the reuse of felled timber with Council officers.
- 2.18 Council officers advised MTM the rationale now being provided to support the tree removal was different to that originally outlined in 2018, with the details having expanded significantly to include the whole of the station precinct. Council officers raised concerns as to the loss of trees, proposed timing and lack of consultation with stakeholders and the community, given the previous history on this matter.
- 2.19 Council officers requested to be provided with a copy of the relevant MTM reports in relation to the trees and structural integrity of the station.
- 2.20 These were provided to Council officers on a confidential basis late on Tuesday 21 January 2020. Officers have reviewed the reports and had an independent review completed of the relevant arborists' reports.
- 2.21 Following this review, Council officers consider the reports identify options to undertake works while retaining the significant river red gum tree.
- 2.22 On 23 January 2020, Council officers wrote to the Minister for Public Transport requesting that "*the planned removal of the tree this weekend be deferred until a meeting is held with your Department Head and further specialist advice can be obtained.*"
- 2.23 Council officers have sought legal advice on the proposed tree removal. Following receipt of the advice Council officers advised MTM a planning permit is required and removal of trees without approval would be in breach of the *Planning and Environment Act, 1987*.
- 2.24 Lawyers acting on behalf of Council engaged with MTM and DoT during the week ending 24 January 2020. Late on Thursday 24 January 2020 Council received notice from the Head of Transport Services at the Department of Transport stating:
- 2.24.1 The Department has advice that the tree does pose a direct risk to safety, and that its removal is necessary in order to remediate the risk to safety caused by the retaining wall.
- 2.24.2 The Department considers that MTM's proposed reliance on s 60A (*Rail Management Act, 1986*) to be within power and appropriate in the circumstances.
- 2.24.3 None of the Minister for Public Transport, the Secretary to the Department, the Head, Transport for Victoria or any other State transport body proposes to remove or otherwise take any action with respect to the Tree.

- 2.24.4 It is understood that MTM has provided an assurance that the Tree will not be removed before Friday, 31 January 2020.
- 2.24.5 The issues raised in your letter should be progressed between the Council and MTM directly, and it would not be appropriate for the Department to comment further on those issues at this stage.
- 2.25 Over the weekend of 25-27 January 2020, MTM erected security fencing in the vicinity of the tree and station surrounds, including the playground.
- 2.26 On 29 January 2020, Council's lawyers received advice from lawyers acting on behalf of MTM that MTM extends the undertaking not to remove the river red gum tree before 4pm on Friday, 7 February 2020.
- 2.27 Council officers consider MTM has yet to examine all engineering solutions that would address their current risks while negating the need to remove the significant trees. Further engineering reports should be sought that specifically focus on meeting MTM upgrades needs whilst ensuring retention of the river red gum tree.
- 2.28 Council Officers have written to MTM and DoT seeking urgent meetings to discuss the issues. No response has been received at the time of writing this report.
- 2.29 Based on the most recent MTM correspondence, works to remove the trees could commence at 4.00 pm on 7 February 2020.
- 2.30 Should this occur Council's legal advice is that there would be a breach of the *Planning and Environment Act, 1987*.

3. Issues

MTM Reports

- 3.1 Officers have undertaken a review of the reports provided by MTM. No detailed plans of landscaping outcomes have been included. A range of options are presented to undertake the works. It is unclear which option is being utilised to undertake the works by MTM.
- 3.2 The reports include options whereby the trees could be retained.
- 3.3 The material is augmented by two arborists' reports. Neither categorically state the significant trees cannot be retained, and state that further works should be undertaken.
- 3.4 Council's independent arborist has reviewed the MTM reports and outlined that the conclusions reached are not supported by the MTM author's "*...own observations and he has not completed his own due diligence in forming his opinion – he has recommended that a canopy inspection is completed*".

In summary, Council's independent arborist's opinion is that "*this tree is a valuable asset in the landscape and poses a negligible risk to rail users*".

Legal

- 3.5 Council is familiar with the safety considerations and risk management requirements for managing trees in public spaces. A balanced assessment of the risk is required before the MTM enlivens the provisions of the *Rail*

Management Act, 1996 under which it is obligated to act reasonably. This requires an assessment of the options available to address the risk, including the merits of removal versus management of the vegetation.

- 3.6 Advice to Council is that the evidence produced by DoT and MTM has not reasonably established that the river red gum currently poses a risk to any persons on or using the railway track.
- 3.7 MTM has not provided information that warrants the use of the provisions of the *Rail Management Act, 1996*. Council considers that a planning permit is required under Moonee Valley Planning Scheme.
- 3.8 The Head of Transport Services at DoT, has directed that Council should engage directly with MTM on this matter. Council will aim to seek clarification from the Minister for Public Transport in relation to the ongoing role of DoT in relation to the management of rail infrastructure within the municipality. Legal advice is being sought as to Council's responsibilities in the event that MTM seeks to progress removal of the tree.

Community and Stakeholder Engagement

- 3.9 There has been a significant response from the community directly to Council supporting the retention of tree. The National Trust has also engaged with Council and MTM directly outlining the importance of the red gum.
- 3.10 Council officers have requested that all of the relevant MTM reports be made publicly available.
- 3.11 Council officers recognise and supports the need for investment towards the railway infrastructure at Newmarket Station. However, officers believe there are solutions that can be undertaken where by the significant river red gum tree and potentially other significant vegetation is retained.
- 3.12 At the time of writing this report Council officers have sought further engagement with MTM, however there has been no response.

Recommendation

That Council resolves to:

- a. **Write to the Chief Executive of Metro Trains Melbourne requesting that:**
 - i. **Council is advised in writing by midday 5 February 2020 that no works will be undertaken in relation to the removal of the river red gum tree.**
 - ii. **MTM and DoT work with Council to achieve an outcome for the upgrade of Newmarket Station that includes the most appropriate engineering solution to facilitate the retention of the river red gum tree.**
- b. **Write to the Minister for Public Transport requesting information in relation to the ongoing role of the Department with regards to the management of rail infrastructure within the municipality.**

- c. **Allocate funding (up to \$25,000) to allow Council officers to identify engineering solutions that would allow retention of the river red gum tree, including the methodology for ensuring the ongoing required maintenance to ensure the longevity of the tree, and funding requirements.**

Attachments

Nil

Impact Assessment

1. Relationship to Council commitment MV2040 or Council Plan

- 1.1 In presenting this report, Council is working to achieve MV2040:
Strategic Direction 14. *A city that is green and water-sensitive*
Target: We achieve 30 per cent canopy cover by 2040 through enhancing our urban forest.
Objective 14.1 *Enhance our urban forest*
Strategic direction 17 – *A city that fosters local identity*
17.1 *Express identity through landscapes. Ensure intact heritage streetscapes and significant landscapes are protected, avoiding increased densities in these areas.*

2. Legislative obligations

- 2.1 The advice to Council is that a planning permit is required under the provisions of the *Planning and Environment Act 1987*. Council is the Responsible Authority.
- 2.2 There are no known human rights implications as a result of this report.

3. Legal implications

- 3.1 The proposal has legal implications for Council. On the advice to Council any removal of the tree requires a planning permit.
- 3.2 Any actions to prevent activity to remove the tree, outside the provisions of the *Planning and Environment Act, 1987* would require Council to seek recourse through the Supreme Court.

4. Risks

- 4.1 Any potential court action may involve costs to Council which are not able to be quantified at this point in time.
- 4.2 Using the risk assessment criteria matrix, the risk rating for the report is High (12). The measure of consequence is assessed as major (financial, reputation, legislative and environmental) and the measure of likelihood is possible.

5. Social impact assessment

- 5.1 The removal of significant vegetation including the River Red Gum tree at Newmarket Station would have a negative impact on the local community, based on information received during the relevant Planning Scheme Amendment exhibition and more recent feedback since the proposed tree removal was made public.

6. Economic impact assessment

- 6.1 The decision to proceed with removal of a significant vegetation including the River Red Gum tree without community consultation will potentially

impact negatively on business, economic development in the municipality, or on economic opportunities.

7. Environmental impact assessment

7.1 The proposed removal of the significant vegetation including the river red gum tree will have an impact on the environment by removing established flora and fauna habitat.

8. Reputational impact assessment

8.1 Council is advocating for the retention of the River Red Gum tree, and is aiming to ensure compliance with the Moonee Valley Planning Scheme. This is consistent with its commitment to protecting and supporting health and resilience of our city.

9. Financial implications

9.1 The recent activities have financial implications for Council. At the time of writing this has primarily been through additional legal costs.

10. Sensitivity / scenario analysis

10.1 Significant concern has been raised by the community. There is an expectation that Council will advocate for the retention of the key heritage and landscape elements surrounding Newmarket Station.

11. Conflict of interest declaration

11.1 No officer involved in the preparation of this report has any direct or indirect interest in this matter or the decision.

12. Consultation undertaken or planned

12.1 There has been some direct engagement through an organised events with the wider community in relation to the attached report.