

TASMANIAN PLANNING COMMISSION

DECISION

Planning scheme	Hobart Interim Planning Scheme 2015
Amendment	PSA-19-3 - Amendments to E24.0 Significant Trees Code, including additional listings to Table E24.1 Significant Tree List
Planning authority	Hobart City Council
Date of decision	12 March 2020

Decision

The draft amendment is modified under section 41(ab) of the *Land Use Planning and Approvals Act 1993* as set out in Annexure A and is approved under section 42.



Peter Fischer
Delegate (Chair)



Robin Nolan
Delegate

Note:

References to provisions of the *Land Use Planning and Approvals Act 1993* (the Act) are references to the former provisions of the Act as defined in Schedule 6 – Savings and transitional provisions of the *Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme Act) 2015*. The former provisions apply to an interim planning scheme that was in force prior to the commencement day of the *Land Use Planning and Approvals Amendment (Tasmanian Planning Scheme Act) 2015*. The commencement day was 17 December 2015.

REASONS FOR DECISION

Background

Amendment

The draft amendment proposes the following amendments to E24.0 Significant Trees Code:

- 1) Insert a new definition for 'suitably qualified person (arboriculture)' under E24.3 Definition of Terms;
- 2) Insert a new definition for 'natural causes' under E24.3 Definition of Terms;
- 3) Insert a new Acceptable Solution A1 under E24.6 Development Standards to allow for a permitted pathway for the removal of significant trees that have died due to natural causes; and
- 4) Insert 79 new listings (741 trees and 3 hedges) into Table E24.1 Significant Tree List.

Site information

The draft amendment proposes new tree, or groups of tree listings at 79 different sites across the Hobart municipal area.

Issues raised in representations

The representors raised the following issues:

- Objecting to a tree(s) being listed;
- Objecting to a nominated tree not being listed;
- Supporting a listing;
- Noting exemptions relating to infrastructure;
- Asking for clarification on trees to be listed and what inclusion in the List will mean.

Planning authority's response to the representations

The planning authority considered the representations and recommended the amendment be approved with the following changes:

- (a) Amendment of the listing Ref. No. S29 to include a third *Eucalyptus globulus* (Tasmanian blue gum) at 894 Sandy Bay Road by updating the address from '892' to '892 and 894' and changing the number of trees from '2' to '3';
- (b) Deletion of listing Ref. No. D22 to 8 *Cupressus torulosa* (Bhutan cypress) at 70 Davey Street;
- (c) Deletion of listing Ref. No. L36 for 1 *Eucalyptus Morrisby* (Morrisby's gum) at Lower Jordan Hill Road (nature strip adjacent no. 60);
- (d) Insertion of a new Amendment PSA-19-3-5 to update Appendix 1 – Referenced and Incorporated Documents of the Hobart Interim Planning Scheme 2015 by omitting the date '14 June 2012' and substituting the date '4 November 2019' in reference to the City of Hobart Significant Tree Register.

Date and place of hearing

The hearing was held at the Commission's office on Level 3, 144 Macquarie Street, Hobart on 18 February 2020.

Appearances at the hearing

Planning authority: Ms Sarah Crawford, Acting Manager Planning Policy and Heritage
Ms Ruby Wilson, Program Leader Arboriculture and Nursery
Mr Nicholas Booth, Urban Designer and Cultural Heritage Officer

Representors: Mr John Hughson for Tasmanian Health Service

Other: Dr Marketa Skala
Mr Nicholas Zacharin for Fisher Family

Consideration of the draft amendment

1. Under section 40 of the *Land Use Planning and Approvals Act 1993* (the Act), the Commission is required to consider the amendment and the representations, statements and recommendations contained in the planning authority's section 39 report.
2. A hearing was convened to assist the Commission consider the issues in the representations.
3. The amendment has been initiated and certified by the Hobart City Council, in its capacity as planning authority, and further supported in the reports under sections 35 and 39.
4. Under section 32(1), in the opinion of the relevant decision-maker, a draft amendment:
 - (a)-(d) . . .
 - (e) must, as far as practicable, avoid potential for land use conflicts with use and development permissible under the planning scheme applying to the adjacent area;
 - (ea) must not conflict with the requirements of section 300;
 - (f) must have regard to the impact that the use and development permissible under the amendment will have on the use and development of the region as an entity in environmental, economic and social terms.
5. Section 32(1)(e) is not relevant as the draft amendment does not impact on the planning scheme applying to the adjacent area.
6. Section 300 includes that:
 - (1) An amendment may only be made under Division 2 or 2A to a local provision of a planning scheme, or to insert a local provision into, or remove a local provision from, such a scheme, if the amendment is, as far as is, in the opinion of the relevant decision-maker, practicable, consistent with the regional land use strategy for the regional area in which is situated the land to which the scheme applies.
7. The relevant regional strategy under section 300(1) is the Southern Tasmania Regional Land Use Strategy 2010-2035 (9 May 2018).
8. Under section 32(2), the provisions of section 20(2)-(9) inclusive apply to the amendment of a planning scheme in the same manner as they apply to a planning scheme.

9. The Commission generally supports the planning authority's assessment in the reports under section 35 and 39. Matters which require further consideration are discussed below.

Strategic context

10. In the report under section 35, the planning authority considered the draft amendment to be, as far as is practicable, consistent with the regional strategy:

It is considered that the amendments are consistent with the strategy in that they value and protect special features in the landscape, which correlates in particular with Strategic Directions SD6: Increasing Responsiveness to our Natural Environment, SD8: Supporting Strong and Healthy Communities and SD9: Making the Region Nationally and Internationally Competitive.

Commission's consideration

11. The Commission considers that while the protection of significant trees is not directly addressed in the regional strategy, the draft amendment is generally in agreement with the strategic directions, particularly those referred to by the planning authority. The Commission therefore finds that the draft amendment is, as far as is practicable, consistent with the regional strategy.

Exemptions

12. In his representation, Mr Hughson for the Tasmanian Health Service raised concerns that the trees proposed to be listed at 90 Davey Street were causing problems with aging water mains at the site. He was concerned that the listings would prevent potentially necessary emergency work to repair water mains, which may necessitate the removal of trees.
13. At the hearing, Ms Crawford noted that in a case where a tree was posing a danger to persons or property, the exemption provisions in the planning scheme would apply.

Commission's consideration

14. The Commission considers that sufficient exemptions are provided in the planning scheme to allow for tree removal in the case of emergency and therefore the listings at 90 Davey Street are supported.

Listing of trees without land owner consent

15. In the report under section 39, the planning authority's tree assessment panel proposed a number of modifications be made to the draft amendment in response to the representations. At the Council meeting of 4 November 2019, the planning authority supported those recommendations, except for the recommendation to include one *Fraxinus velutina* (velvet ash) at 284-290 Elizabeth Street, which was deferred for further consideration.
16. At the hearing, Dr Skala submitted that all trees that were found to be significant by the tree assessment panel should be included in the Significant Tree Register, despite whether the land owner supported the listing. Dr Skala was particularly interested in an oak tree at 454 Elizabeth Street that was recommended to be listed by the tree assessment panel, but removed from the draft amendment by the planning authority prior to certification.
17. Mr Zacharin considered that no tree should be included in the Register if the land owner did not consent.
18. Representations were received in support of the listing of trees at 892-894 Sandy Bay Road. The trees, *Eucalyptus globulus* (Tasmanian blue gum) are located near the rear boundary of 892-894 Sandy Bay Road. Two *Eucalyptus globulus* were listed at 892 Sandy Bay Road in the

certified amendment but not 894 Sandy Bay Road as the land owner had written to object to its inclusion. After the exhibition period, the planning authority resolved to recommend modification to the draft amendment to include this tree within the listing S29 after representation was made by the land occupier in support of the listing. Ms Crawford further noted that the land owner was notified of the representation in support of the listing, but that they did not further engage in the process.

19. Ms Crawford advised that the planning authority in principle did not support trees being included in the Register that did not have land owner support.

Commission's consideration

20. The Commission agrees with Dr Skala in principle that if a tree is assessed as significant, then it should be included in the listing whether or not the listing is supported by the land owner.
21. However, the Commission considers that proper process requires the affected land owners to be offered the opportunity to make representations and to participate in the hearing process, as required by section 41B.
22. Given the substantial number of trees proposed to be listed, along with the other proposed amendments to the Significant Tree Code, the Commission does not support such a delay in the resolution of the draft amendment.
23. For the above reasons, the Commission therefore also does not support the planning authority's recommendation to include the Eucalyptus globulus at 894 Sandy Bay Road in listing S29.
24. The Commission further notes that the planning authority will have an opportunity to consider additions to the Significant Tree Register during the upcoming assessment of the Hobart Local Provisions Schedule. Once finalised, the Local Provisions Schedule, together with the State Planning Provisions, will form the Tasmanian Planning Scheme and will replace the current planning scheme.

State Policies and Resource Management and Planning System Objectives

25. The Commission finds that no State Policies are particularly relevant to the draft amendment and that it seeks to further the Objectives of the Resource Management and Planning System in Schedule 1.

Modifications required to draft amendment

26. The Commission does not support the planning authority's recommendation to include a Eucalyptus globulus at 894 Sandy Bay Road within listing S29 for the reasons stated above.
27. The Commission supports the recommendation to delete listings D22 and L36 for the reasons noted in the planning authority's report under section 39.
28. The planning authority's recommendation to update Appendix 1 – Referenced and Incorporated Documents to substitute the relevant date is unnecessary as Appendix 1 is not a formal part of the planning scheme. The date can be modified at any time after the amendment has been approved.

Decision on draft amendment

29. Subject to the modifications described above, the Commission finds that the draft amendment is in order and gives its approval.

Attachments

Annexure A – Modified amendment

Annexure A

Modified amendment PSA-19-3 Hobart Interim Planning Scheme 2015

Amendment PSA-19-3-1

Amend E24.3 Definition of Terms under E24.0 Significant Trees Code of the Hobart Interim Planning Scheme 2015 by inserting a new definition under the definition for 'Destruction', as follows:

Suitably qualified person (arboriculture)	Means a person possessing the qualifications, knowledge, skills and experience to provide advice on the health, condition and management of trees.
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Amendment PSA-19-3-2

Amend E24.3 Definition of Terms under E24.0 Significant Trees Code of the Hobart Interim Planning Scheme 2015 by inserting a new definition under the definition for 'Destruction', as follows:

Natural causes	Means any natural means resulting in the death or destruction of a tree, such as age, disease, environmental stress, pest infestation or storm damage, but not including actions by a person causing the death or destruction of a tree.
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Amendment PSA-19-3-3

Amend E24.6 Development Standards under E24.0 Significant Trees Code of the Hobart Interim Planning Scheme 2015 by omitting 'No Acceptable Solution', and inserting a new acceptable solution, as follows:

'A1

the lopping, pruning, removal or destruction of any tree listed in Table E24.1 that is determined to be dead from natural causes, based on a written statement to that effect prepared by a suitably qualified person.'

Amendment PSA-19-3-4

Amend Table E24.1 Significant Tree List under E24.0 Significant Tree Code of the Hobart Interim Planning Scheme 2015 by inserting the following listings in alphabetical order:

Street Number	Street / Property / Location	Ref No.	Botanical name	Common name	No. of trees
	Aberdeen Street (adjacent to the Aquatic Centre, and University Rose Gardens)	A6	<i>Quercus robur</i>	English oak	12
	Allison Street median strip	A7	<i>Fraxinus angustifolia</i> subsp. <i>Oxycarpa</i> 'Raywood'	Claret ash	5
	Alt-Na-Craig Avenue (side of 23 Auvergne Avenue)	A8	<i>Eucalyptus viminalis</i>	White gum	2
2	Amanda Crescent	A9	<i>Eucalyptus viminalis</i>	White gum	1
17	Beach Road (Long Beach Reserve)	B24	<i>Eucalyptus globulus</i>	Tasmanian blue gum	13
67	Brisbane Street	B25	<i>Cupressus torulosa</i>	Bhyutan cypress	1
	Chessington Court (roundabout at end of cul-de-sac)	C4	<i>Eucalyptus globulus</i>	Tasmanian blue gum	2
2	Churchill Ave University of Tasmania (opposite union building on Churchill Avenue)	C5	<i>Eucalyptus globulus</i>	Tasmanian blue gum	6
2	Churchill Ave - University of Tasmania (centre of UTAS campus)	C6	<i>Eucalyptus globulus</i> and <i>Eucalyptus pulchella</i>	Tasmanian blue gum and white peppermint	5
	Churchill Avenue (adjacent The Hutchins School oval)	C7	<i>Eucalyptus globulus</i> and <i>Eucalyptus viminalis</i> .	Tasmanian blue gum and white gum	3

Street Number	Street / Property / Location	Ref No.	Botanical name	Common name	No. of trees
208-210	Collins Street	C8	<i>Eucalyptus melliodora</i>	Yellow box	2
4	Colville Street (Avon Court Apartments)	C9	<i>Magnolia grandiflora</i>	Magnolia	1
	Colville Street (nature strip adjacent to 12 St Georges Terrace)	C10	<i>Eucalyptus globulus</i>	Tasmanian blue gum	2
35	Congress Street	C11	<i>Corylus avellana</i> 'contorta'	Twisted hazelnut	1
	D'Arcy Street (southern side adjacent to South Hobart playground)	D20	<i>Tilia cordata</i> and <i>Quercus Coccinea</i>	small-leaved lime and scarlet oak	11
	Darling Parade (nature strip adjacent to no. 9)	D21	<i>Eucalyptus globulus</i>	Tasmanian blue gum	2
90	Davey Street	D23	<i>Eucalyptus viminalis</i> subsp. <i>viminalis</i> and <i>Quercus robur</i>	White gum and English oak	6
161	Davey Street (at rear on parcel of land between 161 Davey Street and 260 Macquarie Street)	D24	<i>Juglans regia</i>	English walnut	1
142	Davey Street (St Ann's aged care)	D25	<i>Quercus robur</i>	English oak	7
336	Davey Street	D26	<i>Araucaria heterophylla</i>	Norfolk pine	2

Street Number	Street / Property / Location	Ref No.	Botanical name	Common name	No. of trees
2	Davies Avenue (between Doone Kennedy Aquatic Centre and Tennis Centre)	D27	<i>Eucalyptus viminalis</i>	White gum	24
2	Davies Avenue (Soldiers Memorial Avenue, Queens Domain)	D28	<i>Cedrus deodara</i> , <i>Cedrus atlantica glauca</i> , <i>Cedrus libani</i> and <i>Cupressus sempervirens</i>	Deodar, blue atlas cedar, Italian cypress, and cedar of Lebanon	537
2	Davies Avenue (alongside Soldiers Memorial Avenue)	D29	<i>Eucalyptus viminalis</i>	White gum	1
	Elizabeth Street (adjacent to 81 Elizabeth St - Commonwealth Bank)	E7	<i>Metasequoia glyptostroboides</i>	Dawn redwood	3
448-450	Elizabeth Street (Lyndhurst)	E9	<i>Cedrus deodara</i>	Deodar	1
15	Fitzroy Place	F14	<i>Quercus robur</i>	English oak	1
	French Street (French Street reserve)	F15	<i>Eucalyptus globulus</i>	Tasmanian blue gum	2
	Glen St (end of road, adjacent to no. 6)	G3	<i>Eucalyptus globulus</i>	Tasmanian blue gum	1
40	Gordon Avenue	G4	<i>Cupressus torulosa</i>	Bhutan cypress	3
126-146	Goulburn Street (Goulburn Street Primary School)	G5	<i>Quercus robur</i>	English oak	2
	Goulburn Street and Barton Avenue corner	G6	<i>Ulmus glabra 'lutescens'</i>	Golden elm	1

Street Number	Street / Property / Location	Ref No.	Botanical name	Common name	No. of trees
15	Gourlay Street (Lansdowne Crescent Primary School)	G7	<i>Quercus robur</i>	English oak	1
164	Harrington Street (St Mary's College)	H4	<i>Aesculus hippocastanum</i>	horse chestnut	1
	Hill Street (roundabout at Warwick St intersection)	H5	<i>Platinus x acerifolia</i>	London Plane tree	1
	Hill Street (roundabout at Pine Street intersection)	H6	<i>Platinus x acerifolia</i>	London Plane tree	3
98	King Street	K2	<i>Phoenix canariensis</i>	Date palm	1
	Lansdowne Crescent (West Hobart Oval)	L28	<i>Acacia melanoxylon</i>	blackwood	1
	Lansdowne Crescent (road reserve between Allison Street and Warwick Street)	L29	<i>Platinus x acerifolia</i>	London plane trees	5
268	Lenah Valley Road (Ancanthe Park)	L30	<i>Eucalyptus globulus</i>	Tasmanian blue gum	1
	Linear park (next to rivulet bridge at end of Anglesea Street, on boundary of South Hobart Primary School)	L31	<i>Cedrus deodara</i>	Deodar	3
	Liverpool Street (Campbell /Collins Street corner adjacent to RHH)	L32	<i>Schinus molle</i>	Peppercorn tree	1

Street Number	Street / Property / Location	Ref No.	Botanical name	Common name	No. of trees
67	Lord Street	L33	<i>Cedrus atlantica</i> 'Glauca'	blue atlas cedar	1
	Lord Street (Regent Street intersection - median strip)	L34	<i>Eucalyptus globulus</i>	Tasmanian blue gum	1
85	Lord Street	L35	<i>Cupressus sempervirens</i>	Italian Cypress	1
89-93	Macquarie Street	M13	<i>Araucaria heterophylla</i>	Norfolk pine	1
	Manresa Court (road reserve opposite no. 13)	M15	<i>Eucalyptus globulus</i>	Tasmanian blue gum	1
	McKenzie Street (adjacent to child care centre at 24-26 Weld Street)	M16	<i>Ulmus glabra</i> 'lutescens'	Golden elm	1
23	Nelson Road, and Peel Street (boundary of Queensborough oval, including small separate section at end of Peel St)	N1	<i>Cupressus/ Hesperocyparis macrocarpa</i>	Monterey cypress	Hedge and 1 tree
23	Nelson Road (Queensborough Oval)	N2	<i>Pinus radiata</i>	radiata pine	4
	Nelson Road (Road reserve adjacent to 108-108A Nelson Rd)	N3	<i>Eucalyptus globulus</i>	Tasmanian blue gum	1
228	New Town Road (Ogilvie High School)	N4	<i>Salix babylonica</i>	weeping willow	1

Street Number	Street / Property / Location	Ref No.	Botanical name	Common name	No. of trees
228	New Town Road (Ogilvie High School)	N5	<i>Quercus palustris</i>	Pin oak	1
13	Parliament Street	P1	<i>Cupressus/ Hesperocyparis macrocarpa</i>	Monterey cypress	hedge
	Petty Street nature strip	P2	<i>Corymbia ficifolia</i>	flowering gum	1
113	Princes Street (Princes Street Primary School)	P3	<i>Platanus acerifolia</i>	London Plane Tree	2
6	Proctors Road	P4	<i>Phoenix dactylifera</i>	Date palm	1
6	Quorn St (corner of Quorn and David Ave)	Q3	<i>Cupressus/ Hesperocyparis macrocarpa</i>	Monterey cypress	hedge
	Risdon Road (trees located either side of the road outside no 74 - Lauderdale Cottage)	R3	<i>Platanus x acerifolia</i> and <i>Ulmus procera</i>	London plane tree and English elm	2
	Salier Crescent (road reserve, adjacent to no 15 next to bus stop)	S22	<i>Fraxinus oxycarpa</i> ' <i>Raywoodii</i> '	Claret Ash	1
20	Sandy Bay Road (St Davids Park)	S23	<i>Fagus sylvatica</i> and <i>Tilia cordata</i>	European beech and small-leaved lime	4
20	Sandy Bay Road (St Davids Park)	S24	<i>Eucalyptus globulus</i>	Tasmanian blue gum	1

Street Number	Street / Property / Location	Ref No.	Botanical name	Common name	No. of trees
117	Sandy Bay Road	S25	<i>Eucalyptus viminalis</i>	White gum	1
629-663	Sandy Bay Rd (Alexandra Battery Park, Churchill Avenue frontage)	S26	<i>Eucalyptus viminalis</i>	White gum	1
646A	Sandy Bay Road	S27	<i>Eucalyptus globulus</i>	Tasmanian blue gum	2
706	Sandy Bay Road	S28	<i>Eucalyptus globulus</i>	Tasmanian blue gum	1
892	Sandy Bay Rd	S29	<i>Eucalyptus globulus</i>	Tasmanian blue gum	2
	Sandy Bay Road (between Derwentwater and Waimea Avenues)	S30	<i>Platanus x acerifolia</i>	London plane tree	12
908	Sandy Bay Rd (The Grange Picnic Area)	S31	<i>Eucalyptus globulus</i>	Tasmanian blue gum	1
	Suncrest Avenue (Road reserve adjacent to no. 5)	S33	<i>Chamaecyparis lawsoniana</i>	Lawson cypress	2
120	Swanston Street	S34	<i>Eucalyptus globulus</i>	Tasmanian blue gum	1
29	Tower Road (front garden)	T1	<i>Phoenix dactylifera</i>	Date palm	1
36	View St	V1	<i>Fagus sylvatica</i> 'Purpurea'	copper beech	1
168	Warwick Street	W9	<i>Pyrus communis</i>	Pear tree	1

Street Number	Street / Property / Location	Ref No.	Botanical name	Common name	No. of trees
224	Warwick Street	W10	<i>Pyrus communis</i>	Pear tree	1
58	Wentworth Street	W11	<i>Ulmus minor</i> ' <i>Variegata</i> '	Silver elm	1
	Woodcutters Drive (Tolmans Hill park)	W12	<i>Eucalyptus globulus</i>	Tasmanian blue gum	1
17	Woodcutters Road	W13	<i>Eucalyptus globulus</i>	Tasmanian blue gum	1