

RESPONSES TO QUESTIONS TAKEN ON NOTICE

COUNCIL MEETING 21 AUGUST 2024



Public Question Time

Question from Justin Halliday:

Following the tragic death of a cyclist on Plummer Street in Port Melbourne overnight. What is the Council's plan for safe bike lanes in Fishermans Bend?

Response: *As expressed at the Council meeting we are saddened by the events that led to the fatality of the bike rider in Plummer Street Port Melbourne.*

Council has strong aspirations for Fishermans Bend to have a high proportion of all trips to be conducted by active transport modes. To achieve this vision the Fishermans Bend Framework proposes a network of safe dedicated and connected bike lanes across the precinct. In our submission on the draft Fishermans Bend Development Contribution Plan to the State Government Council advocated that the future cycling network in Fishermans Bend should function at three levels:

- *Providing regional connections through the State's Strategic Cycling Network*
- *Providing precinct-level connections across Fishermans Bend*
- *Providing local access and movement opportunities on all streets, connecting people safely between local properties and the broader precinct and regional cycling network*

The submission noted that the current cycling plan (in the DCP) focuses on regional and precinct connections, but lacks local access and movement infrastructure. This presents a safety and amenity concern for locals.

For more information on cycling infrastructure in the DCP submission please click on the link below which will take you to the Council meeting at which the submission was endorsed (item 10.4). [Agenda of Meeting of the Port Phillip City Council - Wednesday, 20 March 2024 \(infocouncil.biz\)](https://infocouncil.biz)

Councillor Question Time

Question from Councillor Sirakoff:

Can the footpath cleaning schedule on the paths that run through the Eastern Road Reserve include washing down rather than just sweeping of debris?

Response: *The current pressure washing service specifications are all aligned to the places and precincts program across trader/shopping locations, there has been no budget allocated to increase services in park locations. However, the parks teams and our rapid response teams will attend park locations to remove biohazard and spot pressure wash if required for health concerns. The parks team do remove debris from all pathways in Eastern Road Reserve once every 3 weeks in line with their maintenance programs.*

Should an increased level of service be required, an allocation would be required through the annual budget process to cover increased costs.

Item 11.1 Urban Forest Strategy: For Adoption

Question from Councillor Pearl:

What is the amount of money that we need to be provisioning for things like installation of root barriers to avoid root intrusion into people's properties? What is the amount of money we should be provisioning now, for the forward liability trees are creating in 2, 5, 10, 15, 20

RESPONSES TO QUESTIONS TAKEN ON NOTICE

COUNCIL MEETING 21 AUGUST 2024



years from now? Based on both the trees that we're planting today and the trees that we currently have. What work have we done so far, and if we haven't done any comprehensive work, what are we going to do to make sure we do that?

Response: *The installation of tree barriers and the ongoing liability to Councils is a very complex matter and one in which Council officers have been working on, with the intent to take a briefing paper to Council in the new year.*

The Livingstone v City of Melbourne Victorian County Court case 1775, awarded \$453,530.83 for nuisance and damages to the plaintiff and this has opened up many unanswered questions.

Case Notes:

During the hearing the Plaintiff pursued an action in nuisance and damages in the amount of \$453,530.83 (which included the proposed demolition of the dwelling and its rebuild). The central issues were whether the street tree caused or materially caused the damage to the dwelling and, if so, whether this amounted to a substantial and unreasonable interference with the Plaintiff's use and enjoyment of her dwelling. The Council denied the street tree had caused the damage to the dwelling and argued the dwelling had not been properly maintained, thus resulting in the heaving and damage to foundations.

Three expert engineers gave evidence on the moisture content of the highly reactive clay soil around the vicinity of the dwelling. The experts also considered other factors such as the: old inflexible original dwelling foundations; inflexible nature of the solid brick construction; inadequate stormwater drainage from the downpipes of the dwelling; extent of the root barrier installed by the Council; effect of climatic conditions; and impact from other vegetation situated on neighbouring land.

The Court found that the sole cause of damage to the dwelling was the street tree and that the root barrier installed by the Council had not been effective in preventing the street tree from causing damage to the dwelling. Other factors such as the neighbouring vegetation, the treatment of stormwater from downpipes, and a nearby Telstra pit (that collected water) were found to have contributed only marginally to the damage.

The Court found that the dwelling was in good condition prior to the planting of the street tree. The Plaintiff had sought to mitigate her loss as she had approached the Council on many occasions complaining about the street tree and the alleged damage it was causing to her dwelling. She had not failed to mitigate her loss by not connecting the downpipes to a legal point of discharge, as this did not materially contribute to the damage. She had acted reasonably and was not negligent in arranging the underpinning of the dwelling, regardless of whether this had actually been an effective measure.

The Court assumed the Council's officers or employees knew of the existence of the clay in the area and its highly reactive nature; the moisture-seeking propensities of trees through their roots; and the characteristics of the white cedar and its potential for growth. The Court found that the Council ought to have known that damage would result from planting the street tree close to the dwelling where the soils were highly reactive clay. That damage was reasonably foreseeable, and the Council was liable in damages. Ultimately, the Council planted the street tree. The street tree caused or materially contributed to the damage of the dwelling. Therefore, the Council was found guilty of the tort of nuisance as it had substantially interfered with the Plaintiff's enjoyment of the dwelling, and she suffered damage as a result.

City of Port Phillip have implemented the MAV Insurance Guidance Document 2023, however there remains many questions on how Council can ensure root barriers remain

**Please note: Responses to any questions during Public Question Time and Councillor Question Time which were responded to during the meeting are included in the minutes of that meeting.*

RESPONSES TO QUESTIONS TAKEN ON NOTICE

COUNCIL MEETING 21 AUGUST 2024



effective over the course of 5,10,15,20 years and beyond. Given the nature of the asset, the only practical way is to open up a cavity to inspect the tree root and barrier. This would be a very costly exercise as tree root barriers installation average costs are \$30-\$75k. Council currently have 81 tree root barriers in place, with visual inspections from the road reserve being conducted to record any on-going infrastructure damage. If destructive digging is required to open up all barriers, based on the average cost of \$52,000 a budget of \$4.2M would be required for these inspections to occur.

Officers are currently in the process of organising workshops with our insurance providers, industry leaders including expert engineering witnesses used by insurance company and other interested Councils to review our practices, responses and ultimately the best way to limit Council liability in the future.

Question from Councillor Pearl:

How drought resistant is the existing tree stock and the new stock that we are planting today? How are we going to monitor the health of the tree stock on an overall basis? Is there possibility we can create a tree index based on the average age of the trees and their health? Is there some sort of measure we can use to monitor tree health especially in terms of drought?

Response: *Council source 45-100 litre trees from various suppliers who continue to grow this stock for 6-9 months prior to tree planting season specifically to Council requirements. Trees are selected based on soil type, tree tolerances to climatic conditions and street amenity. Trees are placed on a watering and monitoring program for the first 12 months of their lives.*

Council officers are currently undertaking a Service review of the Amenity Tree contract. The current contract will expire on 31 March 2026. Council will receive a briefing on the results of the Service review including how we plan to inspect trees, collect, store, and use data to inform decisions. Currently all tree health data is held in the One Council asset system.

Officers are reviewing industry best practices as part of the current Service review. A briefing and report on findings will be presented to Council.

Item 13.1 Carlisle Street Car Park and Laneways - Intention to Sell

Question from Councillor Baxter: One of the public speakers tonight mentioned a possibility of a heads of an agreement mechanism through the sale. Is that something that Council has done before, or do we know how that might work?

Response: *A response to this question was provided on the night of the Council meeting by Chris Carroll, Chief Executive Officer. The response can be listened to via [Council's livestream page](#).*