

## **REASONS FOR DECISION IN RELATION TO PROPOSAL TO CANCEL THE REGISTRATION OF PTR093**

### **PROPOSAL TO CANCEL REGISTRATION OF PTR093**

I have received a proposal to cancel the registration of PTR093 pursuant to section 55 of the *Tree Protection Act 2005 (the Act)*. The proposal was made by Mrs S Liangis, Governing Director of Liangis Investments Pty Ltd, on 6 April 2018. Additional information from Mr Ben Ponton, Chief Planning Executive of the ACT Planning and Land Authority (ACTPLA) was provided on 6 September 2018 in relation to the broader planning objectives of the Territory Plan.

Pursuant to section 56 of the Act, notice of the proposal to cancel the registration of PTR093 was given on 15 November 2018.

### **THE TREE**

PTR093 is located on Block 3, Section 96 Griffith, the street address being 15 Franklin Street, Griffith. The tree is a London Plane tree (*platanus x acerifolia*). The tree was registered on the ACT Tree Register on 1 May 2012 on the basis that it held landscape and aesthetic value.

### **MATERIAL CONSIDERED IN MAKING THE DECISION**

In making a decision in relation to the proposals to cancel the registration of PTR093, I must have regard to:

- the cancellation criteria contained within Schedule 1 to the *Tree Protection (Criteria for Cancellation of Registration) Determination 2018 (the Determination)*
- any advice of the Tree Advisory Panel,
- any advice of the Heritage Council, and
- any comments received on the proposed cancellation.

As noted below, clause 5 of the Determination requires me to give consideration to advice from ACTPLA.

In making a decision in relation to the proposal to cancel the registration of PTR093, I have considered the following:

- the Determination
- the advice from the proponent Mrs S Liangis, Governing Director of Liangis Investments
- the advice of ACTPLA, dated 6 September 2018 and 2 November 2018
- the advice of the Tree Advisory Panel, dated 29 November 2018
- the advice of the Heritage Council, dated 27 November 2018
- the 21 responses received from the community during the public notification period
- report Lindon Coot of John Skurr Consulting Engineers (JSCE) date 6 January 2017

- the report prepared by Canberra Town Planning, dated May 2018.
- the National Capital Design Review Panel (Interim) advice for Capitol Hotel Manuka date 7<sup>th</sup> March 2018

## **DECISION**

I have made the decision to refuse the proposal to cancel the registration for the reasons set out below.

### **REASONS FOR DECISION**

#### **Clause 5 – Consideration of broader planning objectives**

##### *Clause 5*

Pursuant to clause 5 of the Determination, I may cancel the registration of a tree if, on advice from ACTPLA, ‘the registration of the tree will significantly compromise the broader strategic planning objectives of the Territory Plan’. When making a decision as to whether the criterion in clause 5 is met, I may consider the value of the tree as assessed against the criteria in clauses 1 and 2 of the Determination.

##### *ACTPLA advice*

On 6 September 2018, I received advice in relation to PTR093 from the Chief Planning Executive of ACTPLA. I received further advice from ACTPLA on 2 November 2018, following a request for further information being made by me on 11 October 2018.

In its advice, ACTPLA noted its view that the retention of the PTR093 would ‘significantly compromise the broader strategic planning objectives of the Territory Plan’ for the following reasons:

- (a) the retention of registered tree PTR093, is potentially at odds with the following strategic directions:
  - 1.12: The retention of PTR093 will prevent a highly visible and key commercial site from being redeveloped, or will remain undeveloped for a significant part of it.
  - 1.15: The retention of PTR093 will prevent reasonable redevelopment of the site with a hotel.
  - 1.17: The retention of PTR093 is highly likely to prevent redevelopment or cause redevelopment to be not cost-effective on Blocks 3 and 4, with the registered tree impinging on the whole-of-life cost of any future proposed development.
  - 2.3: The retention of PTR093 may prevent or discourage further concentration of commercial and retail activity in an existing commercial and retail node.
  - 2.14: The retention of PTR093 may jeopardise the design outcome and the quality of future redevelopment of the site if constrained by the current tree protection zone
- (b) the Manuka Circle Precinct Development Control (DCP17/01) provided further guidance including:

- approvals for development of the site with a maximum building height of 18 metres and 100% site coverage and encourages active frontages for all new development proposals.
- requirement for future buildings to ‘Display consistency and integrity in height and form ...’ and calls for ‘... consistency and regularity in landscape structure ...’ of the future buildings in the locality.
- Rule B1 permits zero metre building setback on all frontages of the site.
- Figure 6 does not include reference to PTR093.

Further, ACTPLA advised that it was of the view that there was not any realistic design alternative for the site that would allow PTR093 to be retained.

### *Community views*

Twenty one responses were provided by the community including one from the Heritage Council. A number of responses received from the community during the public notification period were from people with planning experience. While the response were supportive of the site being appropriately redeveloped, 15 responses expressed the view that PTR093 tree should be retained as part of any redevelopment of the site.

Some of the responses from people with planning experience referred to a number of relevant strategic planning objectives of the Territory Plan not referred to in ACTPLA’s advice. In particular, I note the following comments:

- There are a number of strategic directions in the Territory Plan that support a conclusion that the registration of PTR093 should not be cancelled:
  - Section 2.16 states that the retention of Canberra’s unique landscape setting, including the integration of natural and cultural elements that create its ‘garden city’ and ‘bush capital’ qualities, will be accorded the highest priority. The provision further states that special attention will be given to safeguarding visual amenity, protecting vegetation and other important features within established urban landscape, and ensuring the high quality of environmental design in new developments or redevelopment.
  - Section 2.14 seeks to develop ‘Policies and procedures to promote high quality, creative design of development, urban spaces and landscape settings will be applied throughout the Territory, and innovation encouraged, in keeping with the spirit of the National Capital as an exemplar of best practice’.
  - Section 1.6 states that the pattern of development is to reflect land capacity constraints resulting from topography, soils, geotechnical factors, drainage, nature hazards, microclimate and the sensitivity of ecosystems. Particular attention will be given to the need to conserve soil, water and vegetation; maintain biological diversity; safeguard important ecosystems and ecological processes; and provide and protect wildlife corridors.

- Section 1.3 states that economic, social and environmental objectives will be pursued in a balanced and integrated way, having regard to both short-term and long-term factors, such that present needs can be met without prejudicing the welfare of future generations, and without serious or irreversible loss of life-supporting natural resources or damage to the environment.
- There are a number of rules in DCP17/01 that support a conclusion that the registration of PTR093 should not be cancelled:
  - Rule A.4 states that a ‘Tree Management and Replacement Master Plan for the subject site are to be prepared in consultation with and approved by the NCA and relevant ACT Government Agencies’. This Rule applies to the section across Canberra Avenue from the section on which the tree is located.
  - Rule C.3 states that ‘Landscape plans for development applications should incorporate a tree conservation and management plan for trees on the site. Trees removed shall be replaced elsewhere on the site’. This Rule applies to the section across Furneaux Street from the section on which the tree is located.
  - Rule B1, which permits a zero metre building setback on all frontages, identifies a maximum coverage but does not exclude development with less coverage of the site.
  - There is no requirement for the DCP (Figure 6) to reference a registered tree, while this is often the practice there are examples where this does not occur.

A number of the community responses also noted that ACTPLA’s advice may not be consistent with the advice from National Capital Design Review Panel (interim).

In reviewing the advice from National Capital Design Review Panel one of the six recommendations related specifically to the Registered Tree.

The advice stated:

- “The Panel notes the positive contribution that the existing Registered tree offers to the Franklin Street streetscape and broader landscape setting of the area. The Panel also notes that the Proponent will seek to de-register the tree on Block 3 Section 96 Griffith as part of a development application.

The panel did not consider the proponent had demonstrated that removal of the tree was warranted. While not part of the decision making process for the registered tree, the Panel expressed concern that the starting assumption of the proposal was that removal of the tree would be approved. This decision appears to have been made without consideration of other design solutions. The Panel recommends that the design team explore and demonstrate other design solutions for the site, where the Registered tree is retained in the case that approval to remove the tree is not

granted. Exploration of other design solutions for the site would benefit being undertaken as part of a more comprehensive design for the whole of section 96.”

### *Consideration*

There is a need for me to balance the views expressed by ACTPLA and the community in relation to PTR0093. I note that there is no agreed objective based criteria to determine if a tree significantly compromises the broader strategic planning objectives of the Territory Plan. Additionally, there is no agreed socio-economic assessment that is to be undertaken.

Having considered the views expressed, I have formed the opinion that the community views and the view of the Design Review Panel point to compelling reasons for refusing the proposal to cancel the registration of PTR093. In my view, those compelling reasons rebut the advice of ACTPLA.

In particular, I note the following:

- While ACTPLA has advised that there are no alternative designs that would allow for the retention of PTR093, it has not provided a basis for this conclusion.
- Contrary to the view expressed by ACTPLA, trees in urban settings have been found to encourage retail development and spend. Maintaining/creating an environment that includes nature/trees increases peoples use of these areas, provides improved sense of wellbeing and greater social connection and subsequently patronage.
- Rule B1 states that buildings *may* be built with a zero metre setback. This is a maximum coverage and designed to achieve the objectives for the Canberra Avenue corridor. In my view, this Rule provides scope to maintain the tree with appropriate set back given the tree is on the boundary. PTR093 is on the Franklin Street side of the site, and I have not been provided with any information to indicate the viability of an alternative design that includes a setback on the Franklin Street side that would allow the tree to be retained.
- It appears that there has been no assessment of the economic and social values provided by the tree to determine cost effectiveness of the proposed development. However, I note that PTR093 is significantly larger than the trees in the immediate vicinity. Large mature trees provide 75% more environmental benefits than smaller trees.
- Tree canopy coverage is one of the most effective and cheapest ways of safeguarding cities against global warming. 30% canopy coverage is the minimum required to safeguard against global warming. Increased heat stress in cities results in increased mortality of vulnerable people. Trees (canopy cover) reduce this heat stress.
- Trees increase the value of a property by up to 12%
- It seems to me that there is a question of whether, having regard to section 1.3, the issue of cost effectiveness has been pursued in a balanced and integrated way taking into regard the life support resources provided by the tree.

I am not satisfied that ‘the registration of the tree will significantly compromise the broader strategic planning objectives of the Territory Plan’, and so I refuse the proposal to cancel the registration of PTR093 on the basis of clause 5 of the Determination.

#### **Clause 4 – criteria for cancellation of registration**

##### *Values in clause 1*

Pursuant to clause 4(1)(a) of the Determination, I may cancel the registration of a tree if the tree does not meet any of the values in clause 1 of the Determination.

Clause 1 of the Determination sets out a number of values to be considered for a tree located in a built-up urban area. The three values are natural or cultural heritage value, landscape and aesthetic value, and scientific value.

##### Natural or cultural heritage value

The object of this value is to identify trees that are of particular importance to the community due to their intrinsic heritage values.

A tree may be considered to be of natural or cultural heritage value when it is:

- (a) associated with a significant public figure or important historical event; or
- (b) of high cultural heritage value to the community or cultural group, including trees associated with aboriginal heritage and culture; or
- (c) associated with a heritage nominated place and representative of that same historic period.

The Heritage Council’s advice of 27 November 2018 stated that:

- there is no heritage registration for PTR093 or the block on which it is located, and
- there are no heritage considerations relevant to my decision arising from the *Heritage Act 2004*.

The community in a number their submissions recognised the significance of the tree for its consistency with the village character of Manuka, while this could be considered as having cultural value I have not consider this to be the case.

I am satisfied that PTR093 does not have cultural heritage value based on the advice of the Heritage Council.

In relation to natural value, all trees provide a range of natural values, including habitat for wildlife and recycling of nutrients. Older trees in particular provide more value than younger trees.

In relation to PTR093 I am satisfied that the tree does not have any substantive natural value in relation to this criteria.

##### Landscape and aesthetic value

The object of this value is to identify trees that are of particular importance to the community due to their substantial contribution to the surrounding landscape.

A tree may be considered to be of landscape and aesthetic value if it is situated in a prominent location when viewed from a public place and it:

- (a) contributes significantly to the surrounding landscape based on its overall form, structure, vigour and aesthetic values; or
- (b) represents an outstanding example of the species, including age, size or habit; or
- (c) is an exceptional example of a locally native species that reached maturity prior to urban development in its immediate vicinity.

PTR093 is not a native tree, and so (c) does not apply.

The Tree Advisory Panel's advice of 29<sup>th</sup> November 2018 made the following comments in relation to PTR093:

- The tree is healthy and is approximately 40 to 50 years old.
- The tree provides landscape and aesthetic value recognised by the community.
- The tree is in excellent condition with a dense crown, negligible deadwood and negligible epicormics growth.
- The tree has excellent branch structure with good angles, lacking tight unions or included bark.
- The tree has a canopy spread of about 15 metres parallel to Franklin Street and 23 metres perpendicular to the street. It is about 18 metres high. The girth has continued to increase over a six year period by approximately 27 mm (4.2 mm per year)
- The tree is the largest plane tree in the vicinity and forms an important landscape link with the street plantings, integrating it with the streetscape
- The tree is prominent from a diversity of viewing points and softens the otherwise hard landscape of paving and buildings.
- The panel consider the tree to be highly attractive of considerable aesthetic value.
- This tree qualified for registration for its landscape/aesthetic value, was provisionally listed on the tree register on the 6<sup>th</sup> May 2011 and was substantively listed on the tree register on the 1<sup>st</sup> May 2012 and its condition has not declined since then.

On 8 January 2019, I was notified by the Tree Protection Unit that PTR093 may have been potentially tampered with or poisoned. At that time, I requested that the Tree Protection Unit carry out the necessary investigation and continue to monitor the tree's health. While the investigation identified drill holes in the trunk of the tree, testing for poisoning was inconclusive. Accordingly, the investigation was suspended on the basis that there was insufficient information to make a conclusion regarding tampering or poisoning.

I note that ascertaining whether a tree has been poisoned is quite difficult in many instances. In my view, even if PTR093 has been poisoned, the fact that it remains in a healthy condition is evidence of its overall health.

I accept the advice of the Tree Advisory Panel.

Fifteen responses from the community supported the retention of the tree, with the majority highlighting its aesthetic value and contribute to the character of Manuka as a reason for its retention.

I am of the view that, based on the advice of the Tree Advisory Panel and the community response, PTR093 contributes significantly to the surrounding landscape based on its overall form, structure, vigour and aesthetic values and represents an outstanding example of the species, including age, size or habit. Accordingly, I am of the view that PTR093 meets the criteria for registration in relation to landscape and aesthetic value, and so the registration should not be cancelled.

#### Scientific value

The object of this value is to identify trees that are of particular importance to the community due to values associated with their ecological, genetic or botanical significance or ability to substantially contribute to the scientific body of knowledge and understanding.

A tree may be considered to be of scientific value when it:

- (a) is evidence of the former range limits or extent of the species or an ecological community; or
- (b) is endangered or vulnerable species that is endemic to the Territory or local region now reduced in range or abundance; or
- (c) demonstrates a likelihood of providing information which will contribute significantly to a wider understanding of natural history by virtue of its use as a research site, teaching site, type locality or benchmark site; or
- (d) is of botanical or genetic value and is not well represented elsewhere in the Territory; or
- (e) is a significant habitat element for a threatened native species.

PTR093:

- is not evidence of the former range limits or extent of the species or an ecological community
- is not an endangered or vulnerable species
- does not demonstrate a likelihood of providing information which will contribute significantly to a wider understanding of natural history by virtue of its use as a research site, teaching site, type locality or benchmark site
- is not of botanical or genetic value



- is well represented elsewhere in the Territory, and
- is not a significant habitat element for a threatened native species.

On the basis of the above, I am satisfied that PTR093 does not have any scientific value.

*Unacceptable risk to public safety*

Pursuant to clause 4(1)(b) of the Determination, I may cancel the registration of a tree if the tree represents an unacceptable risk to public safety. However, I may only cancel the registration of a tree for this reason if all reasonable remedial treatments and risk mitigation measures to avoid or minimise the risk presented or damage caused by the tree have been determined to be ineffective.

The Tree Advisory Panel, in its advice of 29th November 2018, noted that PTR093 presents a low risk to public or private safety, advising that:

- based on global standards the unacceptable risk of this tree was approximately one in ten million
- the tree is of very low risk of falling over or pulling the wall over
- the panel has provided a comprehensive risk framework as an attachment to their report
- the panel concluded
  - branch drop is less likely than an “average tree” due to the strong branch structure and negligible deadwood
  - the tree is very unlikely to fall over due to its strong root structure

I accept the advice of the Tree Advisory Panel.

I note that the tree roots are currently exposed, although the tree is currently inaccessible by the public as it has been fenced off. In the event that this is considered a risk to public safety, I am satisfied that backfilling the dirt would be an appropriate remedial action to reduce any risk that arises.

On the basis of the above, I am satisfied that the tree does not pose an unacceptable risk to public safety. To the extent that the exposed tree roots could be considered a risk to public safety, I am satisfied that there is an appropriate remedial action available to minimise the existing risk.

*Substantial damage to substantial building, structure or service*

Pursuant to clause 4(1)(c) of the Determination, I may cancel the registration of a tree if the tree is shown to be causing substantial damage to a substantial building, structure or service that will require ongoing and extensive remediation measures. However, I may only cancel the registration of a tree for this reason if all reasonable remedial treatments and risk mitigation measures to avoid or minimise the risk presented or damage caused by the tree have been determined to be ineffective.

The Tree Advisory Panel, in its advice of 29th November 2018, advised that PTR093 is not causing substantial damage to the building or services. However, the Tree Advisory Panel indicated that there is a need for greater information from a structural engineer regarding substantial damage to the structure of the building. I note that such information has previously been provided.

A report prepared for Mrs Liangis in May 2018, which relies on previous reports from 2017, suggested that the roots of PTR093 were growing towards the existing building and causing cracking to the walls of that building. However, a report prepared by Lindon Coot of JSCE indicated that the roots are not consistently growing towards the building, and any cracking caused by the roots are not to structural walls. While these reports are now some years old, I am of the view that in the absence of any more recent advice to the contrary, I cannot be satisfied that PTR093 is causing substantial damage to a substantive building or structure that will require ongoing and extensive remediation measures.

There is no information from service providers (electricity or sewage) that PTR093 is impacting on these services, either at present or in the past. While there is a suggestion that the roots of PRT093 may be growing into sewage pipes, there is no evidence to suggest that this has impacted the sewage pipes to date. In the absence of evidence to indicate an impact to services, I am unable to find that PTR093 is causing substantial damage to a substantial service that will require ongoing and extensive remediation measures.

Accordingly, I cannot be satisfied that PTR093 is causing substantial damage to a substantial building, structure or service that will require ongoing and extensive remediation measures such that it would warrant the cancellation of the tree's registration.

A handwritten signature in black ink, appearing to read 'Ian Walker', with a long horizontal flourish extending to the right.

Ian Walker  
Conservator of Flora and Fauna  
15<sup>th</sup> May 2019