

Tree Protection on Private Land Policy

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1. POLICY OBJECTIVE (OR PURPOSE)

This policy aims to minimise the loss of urban character and ecosystem services by regulating tree removal on private land. It also aims to:

- aid with achieving the goals and targets of Greater Dandenong City Council's Urban Forest Strategy; the Greening Our Neighbourhoods Strategy, and the Greening Our City Urban Tree Strategy;
- protect and expand the tree canopy on private land;
- protect natural beauty and environmental benefits provided by trees;
- provide and enhance neighbourhood amenity and ecosystem services provided by trees;
- mitigate the impact of climate change and provide adaptive benefits in response to climate change;
- provide a sustainable environment; and
- encourage replacement planting for a net gain of tree canopy cover, but not at the expense of protecting existing trees or enforcing the illegal removal of trees.

The Greater Dandenong Planning Scheme Vegetation Protection Overlays (VPOs); Environmental Significance Overlays (ESOs); Heritage Overlays (HOs); Particular Provisions (Native Vegetation), and Tree Protection on Private Land Local Law all assist Council to protect and expand the tree canopy of the entire municipality. Council's aim to increase tree canopy cover to 15 per cent by 2028 is directly affected by the implementation of these planning controls and the local law.

This policy is intended to provide guidance with regard to assessing Local Law permits for protected trees on private land in accordance with the Tree Protection on Private Land Local Law and ensure trees suitable for retention are protected. A person, without a permit, must not remove, damage, destroy or lop, or allow to be removed, damaged, destroyed or lopped, any protected trees on any private land.

A person must also not carry out, or direct, authorise or allow to be carried out, any works near a protected tree or vegetation contrary to the guidelines in the *Australian Standard AS4970-2009 Protection of Trees on Development Sites*.

A permit is not required:

- if the tree does not meet the definition of a protected tree; or
- if the removal of a tree requires a planning permit under the Greater Dandenong Planning Scheme and a permit has been obtained; or
- for pruning, where the pruning is carried out by a minimum AQF level 3 Arborist and is in accordance with Australian Standard *AS 4373-2007 Pruning of amenity trees*, and the Arborist has provided their qualifications, and the property owner has kept photographs of trees before and after the work; or
- in an emergency, any part of a tree that is an immediate hazard to life and/or property as determined by a minimum AQF level 5 Arborist may be pruned; or
- the tree is a *salix spp* (Willow) declared a noxious weed under the *Catchment and Land Protections Act 1994*.

2. BACKGROUND

Data shows that with increasing density of urban development the number of large trees on private land is decreasing, therefore protecting the health and sustainability of these trees is becoming increasingly important.

Trees can be long-lived and provide a sense of character and identity to an area. They also contribute to improving the impacts of living in an urban environment, including reducing the rate of stormwater runoff into drains, reducing air temperatures and urban heat islands, capturing dust particles and pollutants, providing natural protection from the sun, contributing to psychological wellbeing, providing habitat for local fauna and can also increase property values.

Decisions made in respect to tree removal permits must consider the property owner's desires, the risk of injury or damage to persons or property and the impact of the tree removal on people, the environment and local amenity.

3. SCOPE

This policy is limited in its application to trees that are protected under the Tree Protection on Private Land Local Law 2023.

A protected tree is a tree with a stem diameter equal to or greater than 40 centimetres measured at 1.4 metres above ground level. The diameter of trees with multiple stems is calculated in accordance with Australian Standard *AS 4970–2009 Protection of Trees on Development Sites*. This excludes the salix spp (Willow) species which is declared a noxious weed (Victorian Noxious Weed List) or where a tree is an immediate hazard to life and or property as determined by a minimum AQF level 5 Arborist, with removal being the only option to mitigate the risk.

This policy does not apply to exemptions and determinations made by the Responsible Authority regarding trees protected by the Greater Dandenong Planning Scheme. This includes, but is not limited to:

- Heritage Overlays;
- Environmental Significant Overlays;
- Particular Provisions (Native vegetation); and
- Vegetation Protection Overlays.

This policy also does not apply to vegetation on land owned or managed by Council.

Where a planning permit is not required to remove a protected tree proposed for removal as part of a development on site, a Tree Protection Local Law Permit will still be required to remove the tree(s).

4. DEFINITIONS

TERM	MEANING
Authorised Officer	a person appointed to a statutory position, who has certain powers by virtue of that position.
Cultivars	a plant or tree that has been bred by humans to have desired traits, using selective breeding
Exotic tree	species whose natural habitat is exclusively outside of Australia.

Immediate hazard	a tree or tree part that has started to, or is most likely to, fail in the near future without significant or increased load.
Indigenous tree	native species that were present in the original vegetation communities of the suburb, excluding cultivars and varieties thereof.
Minor pruning	minor pruning or pruning for regular maintenance that is carried out in accordance with Australian Standard (AS 4373–2007 <i>Pruning of amenity trees</i>) by a minimum AQF Level 3 Arborist and does not result in the damage or destruction of a protected tree on private land.
Native tree	species that are native to Australia. This may include indigenous species (including cultivars and varieties of indigenous species).
Noxious weed	plant or salix spp (Willow) tree that is declared a noxious weed under the <i>Catchment and Land Protections Act 1994</i> .
Protected tree	a tree with a stem diameter equal to or greater than 40cm measured at 1.4m above ground level. The diameter of trees with multiple stems is calculated in accordance with Australian Standard AS 4970–2009 <i>Protection of trees on development sites</i> . The definition excludes salix spp (Willow) which is declared a noxious weed under the <i>Catchment and Land Protections Act 1994</i> . Where a tree has been removed without a permit, for enforcement purposes, a protected tree is a tree with a stump diameter equal to or greater than 50cm at ground level.
Tree	Any perennial plant having one or more permanent, woody, self- supporting trunks and with branches forming a crown, and includes all parts of the plant whether above or below ground.

5. POLICY

In January 2020, City of Greater Dandenong joined a growing number of cities around Australia and declared a “Climate and Ecological Emergency” committing to emergency action on climate change and biodiversity loss.

Council has developed a Climate Emergency Strategy and Action Plan 2020-30 to assist the City of Greater Dandenong become a resilient, net zero carbon emission city with an active community prepared for the challenges of the changing climate. Council has developed the Urban Forest Strategy, as well as the Greening Our Neighbourhoods Strategy, and Greening Our City: Urban Tree Strategy collectively to actively manage the urban forest and its vital role in mitigating climate change and biodiversity loss.

Council has committed to providing high-quality living environments for residents, ratepayers and visitors. The urban forest makes an important contribution to ecosystem services and regulation of environmental conditions, health and wellbeing, local amenity, sense of place, neighbourhood character, landscape values and cultural heritage. Tree canopy cover enhances local climatic conditions by providing shade, wind protection and reduction of the urban heat island effect. Trees also contribute to native fauna habitat and local biodiversity.

Greater Dandenong City Council is committed to protecting and enhancing tree canopy cover because it is regarded as integral to municipal identity and underlying land values and provides innumerable ecosystem and health and wellbeing benefits.

Recent research has confirmed that tree canopy in urban areas is being removed at a high rate. Large trees are being lost due to land development, risk aversion, infrastructure and property

maintenance, climate variability, natural attrition, pests and disease.

A proactive approach to protecting tree canopy cover is required in order to maintain the high levels of amenity and distinctive character of Greater Dandenong's suburbs and to protect ecosystem services for liveability within Greater Dandenong.

Council applies a range of regulatory and operational measures aimed at protecting tree canopy cover on both private and public land. In relation to private land, two legal instruments facilitate tree protection and replacement:

- Tree Protection on Private Land Local Law 2023
- *Greater Dandenong Planning Scheme* (under provisions listed in Section 3 of this policy and through the use of planning permit conditions).

5.1 TREE WORKS PERMIT

A permit is required to remove a tree described in the Tree Protection on Private Land Local Law 2023. Applications are made in writing or online using a standard template and must be adequately supported with the nominated information.

Tree removal applications must include supporting information, such as an arborist report. Refer to Attachment A for guidance with different types of supporting information.

The property owner should seek arboricultural advice while undertaking a preliminary tree assessment, which includes an inspection of tree health and structure. This information can be used by the property owner's arborist to determine the suitability of intervention methods for tree or habitat retention. Permits may be granted to remove trees where no suitable intervention could be applied for tree or habitat retention. Refer to Attachment A, *Guidelines for Assessing Applications*.

5.2 PRUNING PROTECTED TREES ON PRIVATE LAND

Pruning of protected trees must be carried out by a minimum AQF Level 3 Arborist and in accordance with Australian Standard *AS 4373–2007 Pruning of Amenity Trees*.

A permit is not required for pruning, so long as the following conditions are met:

- where the pruning is carried out by a qualified arborist in accordance with *Australian Standard AS 4373–2007 Pruning of Amenity Trees*:
 - and the Arborist has provided their qualifications; and
 - and the property owner has kept photographs of trees before and after the work; or
- in an emergency, where any part of a tree is an immediate hazard to life and or property, as determined by a minimum AQF Level 5 Arborist, it may be pruned.

Pruning of trees is usually undertaken by those with advanced skill and knowledge, with the ability and equipment to perform these works. Pruning of a protected tree by a suitably qualified person in accordance with the Australian Standard does not require a permit, with the cost of maintaining these trees thus being no greater than prior to the introduction of the Local Law.

5.3 TREE WORK IN EMERGENCY CIRCUMSTANCES

In an emergency, the part of a protected tree that is an immediate hazard to cause injury,

damage or disruption as determined in an assessment by a minimum AQF Level 5 Arborist, may be pruned or removed without a permit. A brief written assessment from the property owner's Arborist and before and after photos should be kept by the property owner if verification of the work is requested by Council. The Arborist must provide their qualifications in the assessment to ensure that they meet the minimum requirement to undertake the work.

5.4 DECISION MAKING FOR TREE WORKS PERMITS

Permit assessments relating to sections 5.1 and 5.2 are undertaken by an Authorised Officer of Council with minimum AQF level 5 arboricultural qualifications. The Authorised Officer will inform the applicant of the decision made by Council.

6. RESPONSE TO THE OVERARCHING GOVERNANCE PRINCIPLES OF THE LOCAL GOVERNMENT ACT 2020

Section 9 of the *Local Government Act 2020* states that a Council must, in the performance of its role, give effect to the overarching governance principles. As such, the overarching governance principles of the *Local Government Act 2020* have been considered in the preparation of this policy in the following regard:

- Council decisions have been made and actions will be taken in accordance with the relevant law;
- this policy ensures that priority is given to protecting significant trees to achieve the best outcomes for the municipal community and future generations;
- this policy will promote social and environmental sustainability of the municipal district, including mitigation of and planning for climate change risks;
- innovation and continuous improvement will be pursued;
- consultation with other councils and statutory bodies has been undertaken and considered;
- regional and state plans and policies were taken into account in the policy's development; and
- permit applications will be assessed and determined in a transparent manner.

7. CHARTER OF HUMAN RIGHTS AND RESPONSIBILITIES ACT 2006 – COMPATIBILITY STATEMENT

Council, Councillors and members of Council staff are a public authority under the *Charter of Human Rights and Responsibilities Act 2006* and, as such, are all responsible to act in accordance with the *Victorian Charter of Human Rights and Responsibilities 2006* (the Charter).

The Victorian Charter of Human Rights and Responsibilities 2006 has been considered in the preparation of this policy which is considered to be consistent with the standards set by the Charter.

8. RESPONSE TO THE GENDER EQUALITY ACT 2020

The *Gender Equality Act 2020* came into operation on 31 March 2021. It requires that councils take positive action towards achieving workplace gender equality and promote gender equality in their policies, programs and services.

Council's Diversity, Access and Equity Policy and the *Gender Equality Act 2020* have been considered in the preparation of this policy but are not relevant to its contents, as the policy is purely administrative in nature and does not benefit any one gender group over any other.

9. CONSIDERATION OF CLIMATE CHANGE AND SUSTAINABILITY

One of the overarching governance principles of the *Local Government Act 2020* is that the economic, social and environmental sustainability of the municipal district, including mitigation of and planning for climate change risks, is to be promoted.

In January 2020, this Council joined a growing number of cities around Australia and declared a "Climate and Ecological Emergency" and committed this Council to emergency action on climate change.

Council has developed a Climate Emergency Strategy and Action Plan 2020-30 to assist the City of Greater Dandenong become a resilient, net zero carbon emission city with an active community prepared for the challenges of the changing climate. Council has developed the Urban Forest Strategy, as well as the Greening Our Neighbourhoods Strategy, and the Greening Our City: Urban Tree Strategy to collectively and actively manage the urban forest, and its vital role in mitigating climate change and biodiversity loss.

You can find these strategies and action plans at the following links:

- <https://www.greaterdandenong.vic.gov.au/climate-emergency-strategy-and-action-plan-2020-30>
- <https://www.greaterdandenong.vic.gov.au/urban-forest-strategy-2021-28>
- <https://www.greaterdandenong.vic.gov.au/greening-our-neighbourhoods-strategy-2021-28>
- <https://www.greaterdandenong.vic.gov.au/greening-our-city-urban-tree-strategy>

This policy supports Council's action on climate change and sustainability by protecting significant trees on private land.

The protection of these trees will contribute to improving the impacts of living in an urban environment, including reducing the rate of stormwater runoff into drains, reducing air temperatures and urban heat islands, capturing dust particles and pollutants, increasing property values, providing natural protection from the sun, contributing to psychological and physiological wellbeing, and providing habitat for local fauna.

10. RESPONSIBILITIES

ROLE	RESPONSIBILITY
Policy Development	Manager Community Amenity Manager Planning and Design Parks Service Unit Leader
Policy Implementation	Manager Regulatory Services
Policy Evaluation	Manager Community Amenity
Policy Review	Manager Community Amenity Parks Service Unit Leader

11. REPORTING, MONITORING AND REVIEW

The effectiveness of the management of the *Tree Protection on Private Land Policy* will be reviewed by Council's Parks Service Unit in conjunction with the Regulatory Services Department and will consider input from community stakeholders. Information on applications and decisions will be maintained in Council's record management system.

A review of the Tree Protection on Private Land Local Law and this policy will be undertaken following three years of its inception.

12. REFERENCES AND RELATED DOCUMENTS

Legislation

- *Catchment and Land Protections Act 1994*
- *Charter of Human Rights and Responsibilities Act 2006*
- *Gender Equality Act 2020*
- *Greater Dandenong Planning Scheme*
- *Local Government Act 2020*
- *Planning and Environment Act 1987*

Standards

- *Australian Standard AS 4970–2009 Protection of trees on development sites*
- *Australian Standard AS 4373–2007 Pruning of amenity trees*

Related Council and Other Policies, Procedures, Strategies, Protocols, Guidelines

- Greater Dandenong City Council Access, Diversity and Equity Policy
- Greater Dandenong City Council Climate Change Emergency Strategy and Action Plan 2020-30
- Greater Dandenong City Council Garden Policy
- Greater Dandenong City Council Greening Our City: Urban Tree Strategy 2021-28
- Greater Dandenong City Council Greening Our Neighbourhoods Strategy 2021-28
- Greater Dandenong City Council Urban Forest Strategy 2021-28
- Greater Dandenong City Council Satisfaction Procedure and Form

13. ATTACHMENTS

13.1 ATTACHMENT A - GUIDELINES FOR ASSESSING APPLICATIONS

These Guidelines require that, in the assessment of a permit application, Council considers three key elements. These are:

- a) the health, structure and identified and potential hazard status of the tree; and
- b) the canopy and habitat value of the tree; and
- c) the reasons for the request to remove or lop a protected tree.

Assessments are to be guided by the overarching principle of the Tree Protection on Private Land Local Law 2023, which is to retain protected trees where practicable to do so, while also considering the right of the landowner to the reasonable use of their property.

The Local Law uses a measurement of tree trunk diameter to determine whether it is classified as a protected tree. The larger the trees are, the more benefits they provide and a measurement of equal to, or greater than 40cm, measured at 1.4m high from the ground on the tree's stem is a tree considered protected under the Local Law.

A protected tree also means any:

- a multi-stemmed tree where the diameter of its exterior stems measured at 1.4m is equal to or greater than 40 cm, calculated in accordance with Australian Standard AS 4970-2009 Protection of Trees on Development Sites.
- a tree planted as required by a replanting condition of a permit issued for the removal of a protected tree

Hierarchy of Need

Council, when assessing applications for permits, will have regard to a hierarchy of need which has been established in relation to the most common improvements undertaken on home sites. The purpose of this hierarchy is to allocate decreasing levels of significance to the different kinds of improvements undertaken, from the construction of new dwellings to the addition of recreational facilities to existing dwellings. The hierarchy of need is:

- a) New dwellings;
- b) Building repairs;
- c) Alterations and additions to existing dwellings (including extensions to the dwelling, and structures such as garages and carports);
- d) Swimming pools;
- e) Pergolas; and
- f) Covered patios and decks.

Where an improvement other than those listed above is proposed as part of an application, Council will allocate it to a suitable level in the hierarchy of need based on its similarity to one of the improvements listed above.

Nominated information

The following information must be included within the permit application:

- a) Completed application form;
- b) Applicant details;
- c) Property details;
- d) Application fee;
- e) Tree details: species name, common name, health and structure assessment and diameter measured at 1.4m;
- f) Tree location details: a map or aerial image, with the tree(s) clearly identified;
- g) Reasons for requesting tree removal;
- h) Supporting information – which should include an arborist report confirming the need to remove the tree(s); and
- i) Property owner(s) name and signature.

Applications

When Council receives a permit application, it will be assessed as follows:

- a) The application will be referred to Council's Arborist for assessment;
- b) If required, the Arborist may involve an Independent Arborist hired by Council for the purpose of assessing the health and significance of the tree which is the subject of the application. The Arborist will make recommendations as to whether the tree can and/or should be removed, or other appropriate action should be undertaken;
- c) The Arborist will consider all supporting documentation from a suitably qualified professional (e.g. structural engineers, arborists, other relevant specialist professionals, etc) and will consult with other Council Officers as appropriate and
- d) The Arborist will then assess and determine the application, taking into account:
 - (i) the recommendations and comments, if any, of the Independent Arborist;
 - (ii) any other reports provided or comments from other relevant Council Officers;
 - (iii) the hierarchy of need;
 - (iv) any other reasons for the proposal to remove, damage, destroy or lop a protected tree;
 - (v) the effect of the proposed removal or lopping of a protected tree on the surrounding area and those living within it;
 - (vi) whether the tree has caused, is causing, or is likely to cause, substantial property damage or an unacceptable risk to the safety of any person;
 - (vii) whether the tree is recognised as a *salix* spp (Willow) as defined under the *Catchment and Land Protection Act 1994*;
 - (viii) any legislative requirements imposed by any Act, regulation or other legislative instrument; and
 - (ix) any other matter relevant to the circumstances of the application.

If deemed necessary by Council, the Arborist and other relevant persons may conduct a site inspection to assist in the determination of the application.

Planning applications and protected trees

Where a protected tree, that does not require a planning permit for removal, is identified for removal as part of a planning application, the following will occur:

- a) The planning application 'Request for Further Information' letter will require the applicant to either apply for a Local Law permit to remove the Protected Tree, or provide evidence that the tree is not a Protected Tree;
- b) If a Local Law permit is required, a decision must be made on that permit prior to further consideration of the planning application; and
- c) If the Local Law permit refuses the removal of the tree, the planning application will need to be redesigned to retain the tree.

Tree Removal

Council will require the retention of all trees where it is appropriate and possible to do so. The preservation of protected trees is of prime importance to Council and it will encourage the use of practical techniques to maintain the health and longevity of trees.

In some circumstances, however, the removal of trees may be necessary and by recognising those circumstances and permitting removal where appropriate, Council can protect property and public safety within the municipality to an acceptable level.

Reasons for approving an application for removal of a protected tree include:

- a) The tree is damaged, diseased, dead or in an advanced state of decline and further remedial action is unlikely to be effective in saving or retaining the tree.

Note: In the event that vandalism to, or poisoning of, a tree is suspected by persons known or unknown, provided that the tree does not present an unacceptable risk to people or property, the application will not be determined until an investigation into the cause of damage to, or death of, the tree has been completed, or Council is otherwise satisfied that the application should be determined sooner;

- b) The tree has a significant structural fault, identified by a minimum AQF Level 5 qualified arborist, that cannot be remedied by appropriate techniques;
- c) The tree is an immediate hazard to life and or property, as determined by the property owner's arborist with a minimum AQF Level 5, or poses a serious health risk and cannot be rectified by pruning or other methods;

Note: Where it is claimed that a tree poses a serious health risk, evidence that has been documented by an immunologist is required to substantiate this claim.

- d) The tree has caused, is causing, or is likely to cause, substantial damage to property (including that of public utilities) and the estimated cost of ongoing repairs outweighs the value of the tree and there is no reasonable alternative to solve the problem;

Note: Where it is claimed that a tree is causing substantial damage, evidence to support this claim must be provided. For instance, if the claim is of building damage, a Structural

Engineer's report that is not based on the anecdotal zone of influence would be required to substantiate this claim.

- e) The works must be carried out in order to comply with any obligation imposed at law (e.g. an Act, Court order, etc.);
- f) The tree has been identified in a property development plan approved by the Council as requiring removal in order to implement that plan; and
- g) Construction of one or more new buildings on a site where the applicant can demonstrate to the Council's satisfaction that:
 - (i) the proposed works cannot be redesigned, or the use of particular building techniques are not feasible in order to protect the buildings; and
 - (ii) that appropriate arboricultural techniques as detailed in the submission of an Arborist report cannot be employed in order to retain the tree.

Reasons for refusing an application for removal of a protected tree might include:

- a) The tree is in good condition, suitable to the site, and has not caused, is not causing, and is unlikely to cause substantial damage to property, or evidence to substantiate these claims is insufficient;
- b) The tree is to be removed from private land only to facilitate the construction of tennis courts, patios, decks, garages, carports, swimming pools, or similar facilities unless a planning permit has been approved which requires removal in order to implement the permit;
- c) The tree is to be removed only to address common issues, including but not limited to tree litter and/or leaf fall, bird droppings and bird noise or wildlife complaints

Note: these are not considered a nuisance issue and form part of general maintenance and acceptable living environments.

- d) The tree is to be removed to address an unsubstantiated and perceived danger that a tree might fall or drop branches in a weather event.

Note: If such a claim is made, a Tree Risk Assessment completed by a minimum AQF Level 5 Arborist, using an industry accepted risk assessment method, is required to substantiate this claim. Council will also engage an arborist to conduct its own enquiries into the tree;

- e) The tree is to be removed only to facilitate a desire to re-landscape or for turf growth;
- f) The tree is to be removed only to facilitate access for solar panels;
- g) The tree has caused, is causing, or is likely to cause problems for swimming pool installation and/or maintenance because of interference by roots and/or falling debris; and

- h) The tree must be removed to facilitate the repair of underground services (e.g. water, gas etc.) when all other options have not yet been considered (e.g. sleeving sewerage pipes, realignment of services etc.).

Note: In these instances, tree owners must consider hydro-excavation and other non-destructive excavation methods.

- i) The tree is to be removed simply because it is considered dead.

Note: Unless the tree presents an unacceptable risk to people or property as determined by a minimum AQF Level 5 qualified arborist, a dead tree meeting the dimensions of a Protected Tree could nonetheless be required for retention if it continues to provide fauna and ecosystem benefits.