



## **Guidelines for the consideration of applications under Council's Local Law No. 3**

(Assessing applications for the removal/lopping/trimming of significant trees)

---

## Contents

<b>1.</b>	<b>Introduction .....</b>	<b>3</b>
<b>2.</b>	<b>Preliminary Matters.....</b>	<b>3</b>
<b>3.</b>	<b>Guidelines .....</b>	<b>3</b>
3.1	Hierarchy of Need .....	4
3.2	Applications .....	4
3.3	Tree Removal .....	5
3.3.1	Reasons for approving an application for removal of a significant tree include: .....	5
3.3.2	Reasons for refusing an application for removal of a significant tree might include: .....	6
3.4	Tree Pruning .....	6
<b>4.</b>	<b>Grievance procedure .....</b>	<b>7</b>

## 1. Introduction

Trees in urban landscapes provide many environmental, health and economic benefits. In many cases, the value of urban trees in private and public landscapes can outweigh the financial inputs required in their establishment and maintenance if issues of urban sustainability are considered. Their benefits include opportunities to ameliorate the urban heat island effect, reduce stormwater runoff, provide shade and reduce energy use.

Landscape values are another benefit of trees. They provide a sense of human scale and soften the built landscape. Trees can also reinforce the character of a streetscape and visually link areas.

Council's implementation of Environment Local Law, No. 3 of 2012 (**Environment Local Law**), Part B-Tree Protection specifically provides for the protection of trees within the municipality and refers to the Council's development of a significant tree register. It is the aim of the Environment Local Law to maximise the benefits from trees and maintain a tree canopy that provides for the wider community.

These Guidelines have been prepared in order to clearly set out the way in which applications for permits will be assessed for trees listed on the Council's 'Significant Tree Register' as defined in subclause 7.47 of the Environment Local Law. Under this subclause the following is defined:

7. 47        **'significant tree register'** means a register of trees of cultural significance to the Council, which register:
- 7.47.1        will be created and maintained by the Council, and be made available for public inspection at Council's principal office during the hours on which such office is generally open to members of the public; and
- 7.47.2        may include trees individually or as a group (e.g. an avenue of trees).

The Guidelines also apply to any other tree which meets the criteria set out in subclause 7.46 of the Environment Local Law, as follows:

- 7.46.1        the tree is single trunked with a trunk diameter 400mm or greater measured at 1500mm (1.5m) above the ground; or
- 7.46.2        the tree is multi-trunked with a combined trunk diameter 400mm or greater at 1500mm (1.5m) above the ground.

---

## 2. Preliminary Matters

An application for a permit to remove, damage, destroy or lop a tree protected under the Local Law must be made to the Council. It will then be determined in accordance with clause 53 of the Environment Local Law either by an authorised officer or by resolution of the Council. For ease of expression, these Guidelines refer throughout to "the Council", however, they apply to the assessment and determination of an application by Council resolution and by an authorised officer.

---

## 3. Guidelines

These Guidelines require that, in the assessment of an application for a permit to remove, damage, destroy or lop a significant tree; the Council consider three key elements. These are:

- (i) the health, condition and identified & potential hazard status of the tree
- (ii) the type of tree and its value to both people and the surrounding environment; and
- (iii) the reasons for the request to remove, damage, destroy or lop the tree.

Assessments are to be guided by the overarching principle of the Environment Local Law, which is to retain significant trees where practicable and safe to do so, while also seeking to safeguard the right of the landowner to the reasonable use of their property.

### 3.1 Hierarchy of Need

The Council, when assessing applications for permits to remove, damage, destroy or lop a tree, 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:

- (i) New dwellings;
- (ii) Building Repairs
- (iii) Alterations and additions to existing dwellings (including extensions to the dwelling, and structures such as garages and carports);
- (iv) Swimming pools;
- (v) Patios and decks;
- (vi) Landscaping and paving; and
- (vii) Recreational facilities (eg tennis courts)

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

### 3.2 Applications

When the Council receives an application for a permit to remove, damage, destroy or lop a tree on private land, it will be assessed as follows:

- (i) The application will be referred to the Council's Manager Compliance for assessment.
- (ii) If required, the Council's Manager Compliance will allocate the application to an Arborist, for the purpose of preparing a report on the health and significance of the tree the subject of the application. The Arborist's report will make recommendations as to whether the tree can and/or should be removed, or other appropriate action should be undertaken.
- (iii) Council's Manager Compliance will consider all supporting documentation from a suitably qualified professionals (eg structural engineers, arborists, other relevant specialist professions etc)
- (iv) The Council's Manager Compliance will consult with other Council officers as appropriate
- (v) The Council's Manager Compliance will then assess and determine the application, taking into account:
  - (a) the recommendations of the independent Arborist and any comments of the Council's Arborist;
  - (b) any other reports provided or comments from other relevant Council professionals;
  - (c) the hierarchy of need;
  - (d) any other reasons for the proposal to remove, damage, destroy or lop the tree;
  - (e) the effect of the proposed removal, damage, destruction or lopping on the aesthetics of the surrounding area;
  - (f) whether the tree the subject of the proposal has caused, is causing, or is likely to cause, substantial property damage or a threat to the health or safety of any person
  - (g) whether the tree the subject of the proposal has caused, is causing, or is likely to cause a significant public nuisance or a nuisance to adjoining landowners that cannot be alleviated with pruning or other forms of tree management;

- (h) whether the tree is a recognised weed as defined by the Declared Noxious Weeds under the Catchment and Land Protection Act;
- (i) any legislative requirements imposed by any Act, regulation or other legislative instrument; and
- (j) any other matter relevant to the circumstances of the application.

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

### 3.3 Tree Removal

The Council values trees located throughout parks, streets and private land holdings within the municipality. It is for this reason that the Council will retain all trees where it is appropriate and possible to do so.

The preservation of significant trees is of prime importance to the Council and it will encourage the use of practical techniques to maintain the health and safety 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.

#### 3.3.1 Reasons for approving an application for removal of a significant tree include:

- (i) The tree is damaged, diseased, and dead or in decline and further remedial action is unlikely to be effective in saving 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 a threat to property or to the health or safety of any person, the application will not be determined until an investigation into the cause of damage to, or death of, the tree has been completed, or the Council is otherwise satisfied that the application should be determined sooner.
- (ii) The tree has a significant structural fault, identified by a qualified arborist, that cannot be remedied by appropriate techniques
- (iii) The tree is an immediate threat to the health or safety of any person, or poses a serious, documented health risk that cannot be rectified by pruning or other methods.  
**Note:** Where it is claimed that a tree poses a serious, documented health risk, the Council may require the provision of evidence in support of that claim.
- (iv) 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.
- (v) The works must be carried out in order to comply with any obligation imposed at law (e.g. an Act, Court order, etc.).
- (vi) The tree has been identified in a property development plan approved by the Council as requiring removal in order to implement that plan.
- (vii) Construction of one or more new buildings on a site where the applicant can demonstrate to the Council's satisfaction that:
  - (a) the proposed works cannot be redesigned, or the use of particular building techniques are not feasible in order to protect the buildings; and
  - (b) that appropriate arboricultural techniques as detailed in the submission of an Arborist report cannot be employed, in order to retain the tree.

### 3.3.2 Reasons for refusing an application for removal of a significant tree might include:

- (i) 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 a threat to the health or safety of any person.
- (ii) The tree is to be removed from private property 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.
- (iii) The tree is to be removed only to address issues with tree litter and/or leaf fall.  
**Note:** this is considered part of general maintenance and not a nuisance issue.
- (iv) The tree is to be removed to address an unsubstantiated and perceived danger that a tree might fall or drop branches in a storm.  
**Note:** If such a claim is made, the Council may require provision of evidence that the stability of the tree is compromised. The Council might also engage an Arborist to conduct its own enquiries into the stability of the tree.
- (v) The tree is to be removed only to facilitate a desire to re-landscape.
- (vi) The tree is to be removed only to facilitate access for solar panels.
- (vii) 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
- (viii) 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.). In these instances, tree owners must consider Hydro-excavation and other non-destructive excavation methods.

### 3.4 Tree Pruning

The trigger for an application to prune the tree includes the removal of branches that will affect the overall shape and appearance of the tree. A permit to lop or prune a tree listed in the Council's Significant Tree Register will not be issued unless the Council is reasonably satisfied that:

- (i) the branch/es to be removed are dead or dying;
- (ii) the branch/es to be removed pose an immediate hazard of falling
- (iii) the branch/es to be removed are causing damage to property (including public assets) which cannot be alleviated through means other than removal;
- (iv) the works are to be carried out in order to comply with any obligation imposed by law (e.g. an Act, Court order, etc);
- (v) the works are to be carried out to provide access for vehicles or pedestrians; or
- (vi) the works are to be carried out to reduce overhang from dwelling roofs.

All pruning should be carried out by a qualified arborist according to AS 4373-2007, Pruning of Amenity Trees.

## 4. Grievance procedure

If a person applying for a permit to remove, damage, destroy or lop a significant tree on private property is dissatisfied with the determination of that application by the Council's Manager Compliance, they may apply to the Council's Executive Manager CEO Office, for review of that determination.

Any application must be in writing, addressed to the Council's Executive Manager CEO Office, and accompanied by:

- (i) a document explaining why the person is applying to remove, damage, destroy or lop the tree the subject of the application;
- (ii) any supporting documentation which justifies the proposal to remove, damage, destroy or lop the tree they may have (e.g. soil engineer's report evidencing property damage);
- (iii) a report prepared by an arborist who is suitably qualified (AQF Level 5 Arboriculture or equivalent) in accordance with Council Arboriculture Victoria guidelines (**CAV**).

The Council's Executive Manager CEO Office will then review the application, in consultation with the Council's Manager Compliance and any relevant persons.

The Council's Executive Manager CEO Office will then assess the application, following the procedure set out in paragraph 3.2 of these Guidelines. The Council's Executive Manager CEO Office may obtain and consider such further information and evidence as considered necessary for determination of the application. A determination will then be issued by the Council's Executive Manager CEO Office.

If the person applying for the permit is still dissatisfied with that determination, they may request that the matter is referred to the Council for assessment and determination.

Any request must be in writing, addressed to the Council's Executive Manager CEO Office. The Council's Executive Manager CEO Office will then prepare a report to the Council, to be considered at the earliest ordinary meeting following receipt of the request.

The report will address the matters set out in paragraph 3.2 of these Guidelines, together with such further information and evidence as was considered by the Council's Executive Manager CEO Office in the initial review of the application. The Council will then determine the application by resolution.

The permit assessment and grievance procedure is outlined in a flowchart on the following page.

## **Permit Assessment and Grievance Procedure**

