

Tree Preservation Controls – Why we have them and how they work

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There is a growing community requirement that greenery, and trees in particular, are an indispensable part of our urban environment. This is challenged by an increasing expectation that life be risk-free and without personal inconvenience. Caught in between these often contradictory community views are the planning authorities, utility providers and the companies that service them.

Serving the community requires a balance between these views. Often this sees planning authorities and utility providers on opposite sides. A key to working together for these parties is a good understanding of the underpinning legislation and planning processes that apply to urban vegetation.

These processes and controls arise from various sources and vary widely from one community to the next, and from one State to the next.

Protection v Preservation

Tree Protection and Tree Preservation are terms that are used interchangeably. This unfortunately leads to confusion when we discuss the different stages in keeping canopy trees in our community. For clarity I put forward the following guidelines.

Tree Preservation

- Retaining trees
- A planning/planned decision (hopefully!)
- Preserving the right tree is important

Tree Protection

- Keeping trees alive once we've decided to preserve them
- Tree protection zones, fencing, avoiding damage

Why preserve trees?

When we make a decision to damage or destroy a tree, we can't just build a new one in its place. Once its gone, a mature tree is lost in that place for at least 2 human generations.

So, we need to be really sure that when we damage or destroy a tree, we are getting the decision right, because we won't have much time to change our minds, but we'll have a really long time to live with a mistake.

Sadly, recent history, and the community generally, is saying that we have not been getting those decisions right. That's why we have a growing trend of tree preservation controls.

Here are a few policy excerpts covering a wide range of Councils in Australia selected from a general web search. These excerpts provide a good insight into the rationale of Councils in introducing tree preservation controls.

Eurobodalla Shire, NSW

The Value and Benefits of Urban Trees

The trees that stand in streets, parks, private property and in fact anywhere within developed urban areas, form what is now regarded as the *urban forest*. An appropriately stocked and maintained urban forest contributes significantly to the

amenity and aesthetics of an urban area, and to the well being of its residents and visitors. In addition, a well managed urban forest contributes significant infrastructure cost savings in areas such as stormwater and air quality control, and energy conservation. Table 1 (page 26) summarises the benefits and contributions of urban trees.

The urban forest is a public infrastructure system – it is one component of a complex built environment that includes roads, car parks, footpaths, underground and overhead services, buildings and other structures. Interactions between trees and the built environment are complex and not well understood, and so these potential interactions must be given proper consideration when designing for new trees and when developing strategies to manage and maintain existing trees.

Urban Forests are internationally recognised as significant community assets worthy of retention, protection and expansion. However, the enormous benefits that accrue from urban forests are only achieved when the density of the tree canopy is appropriate and when each individual tree is properly maintained.

<http://www.esc.nsw.gov.au/Publications/Reports/TPO.pdf>

Devonport City Council, Tasmania

People love trees and most communities are proud of their trees. Trees can be used by people to shelter from excessive sun, sound and wind; to improve the quality of living; to provide privacy and to screen out unsightly views or enhance / frame good views or vistas. A trees appearance through flowers, foliage and form also adds beauty to our environment. Trees also contribute directly to our environment by providing cleaner air through reduction in air pollution and slow down rainfall runoff in an urban or bushland environment. The trend is clearly to improve our environment by selectively planting appropriate species of trees.

Trees also enhance a community's sense of place by providing a strong visual presence emphasising the individuality of a city / town especially for visitors. The uniqueness of Devonport is enhanced by not only its remnant indigenous vegetation but also its exotic trees.

Trees have an inherent monetary value as well as enhancing property values. They can provide a cultural connection between the past, present and future generations. As we enjoy the tree plantings from past generations, we equally share a responsibility to maintain and continually renew our existing tree stocks.

Conversely street trees do have negative aspects including tree root uplifting of pavement, leaf fall and interference with powerlines and underground services. However, this aspect can be effectively dealt with by progressively removing problem trees whilst replanting with appropriate tree species for the particular location. This document is intended to be a proactive in enhancing the role that trees have within Devonport City Council's environment.

<http://cms.dcc.tas.gov.au/NR/rdonlyres/0558DB1E-6C04-4048-9CD0-2A600443B88C/0/DevonportTreePolicyApril05.pdf>

South Perth, WA

Rationale

As a result of concern about the loss of tree cover due to infill development throughout the City, council has adopted provisions in the Town Planning Scheme which offers protection to trees considered to be of City-wide significance on public and private land.

Policy

The City of South Perth values the shade, habitat and amenity provided by trees on public and private land and commends practices which seek to preserve mature trees where possible.

www.southperth.wa.gov.au/policies/p305.doc



The picture above shows the loss of canopy over a 6-year period in one small patch of Melbourne suburbs. It is not definitive evidence of broad-scale tree canopy loss, but it is a good indicator.

Intrinsic values

Trees in our urban forests have economic, aesthetic and social value. These values are documented elsewhere and will not be dealt with in detail here. As a brief comment on values, the excerpt below is from the supporting information South Australian Significant Tree legislation. A list of resources on the benefits of trees is presented in Appendix 1.

PLANNING BULLETIN - Significant Urban Trees

- The contribution of the tree to the landscape character of an area or its importance as a landmark.
- The aesthetics, visually pleasing and psychological aspects of trees such as through softening the visual impact of structures.
- The importance of remnants of original native vegetation.
- The preservation of biodiversity.
- Shade and shelter.
- The need for protection of rare and endangered species.
- Provision of habitat for fauna.
- The historic value and/or association with original aboriginal inhabitants of the area.
- The value of tree(s) as examples of a species, its large size or unusual shape.
- The genetic value of trees for propagation, including specimens which are resistant to disease or exposure.
- The environmental benefits of air quality improvement.
- Education and recreation.
- Potential economic benefits of higher property values in well treed localities and improved sales in new suburbs.

<http://dataserver.planning.sa.gov.au/publications/487p.pdf>

Mechanisms of tree preservation

Federal legislation and policy

Federal legislation does not significantly impact on urban tree issues. It generally deals with native vegetation and biodiversity at a broad, national level. The most relevant legislation is the *Environment Protection and Biodiversity Conservation Act 1999*.

State legislation and policy

State legislation is the major overarching control for tree preservation. This can be applied through a number of mechanisms. The most common is through Council Planning controls. In some states there are direct State controls over vegetation, particularly native vegetation. These controls are still usually applied through the Council planning system, although State authorities may be a referral authority (see flow chart below). The State also influences local planning controls in many cases through a State-based appeals mechanism.

The State department in charge of planning is the authority for State controls, although the local Council will usually be the principle interface with the public for State controls.

Examples

South Australia – Significant Tree protection under the Development Act 1993

The *Development Act 1993* now provides that any activity that damages a 'significant tree' is development.

The Development Act and Regulations have been amended to provide that a 'significant tree' is:

- Any tree in Metropolitan Adelaide and townships in the Adelaide Hills Council with a trunk circumference of 2.0m or more. In the case of trees with multiple trunks, those with trunks with a total circumference of 2.0m or more and an average circumference of 625mm or more, measured at a point 1.0m above natural ground level or
- Any tree identified as a significant tree in the City of Adelaide, City of Burnside, City of Prospect or City of Unley Development Plans.

Council planning controls

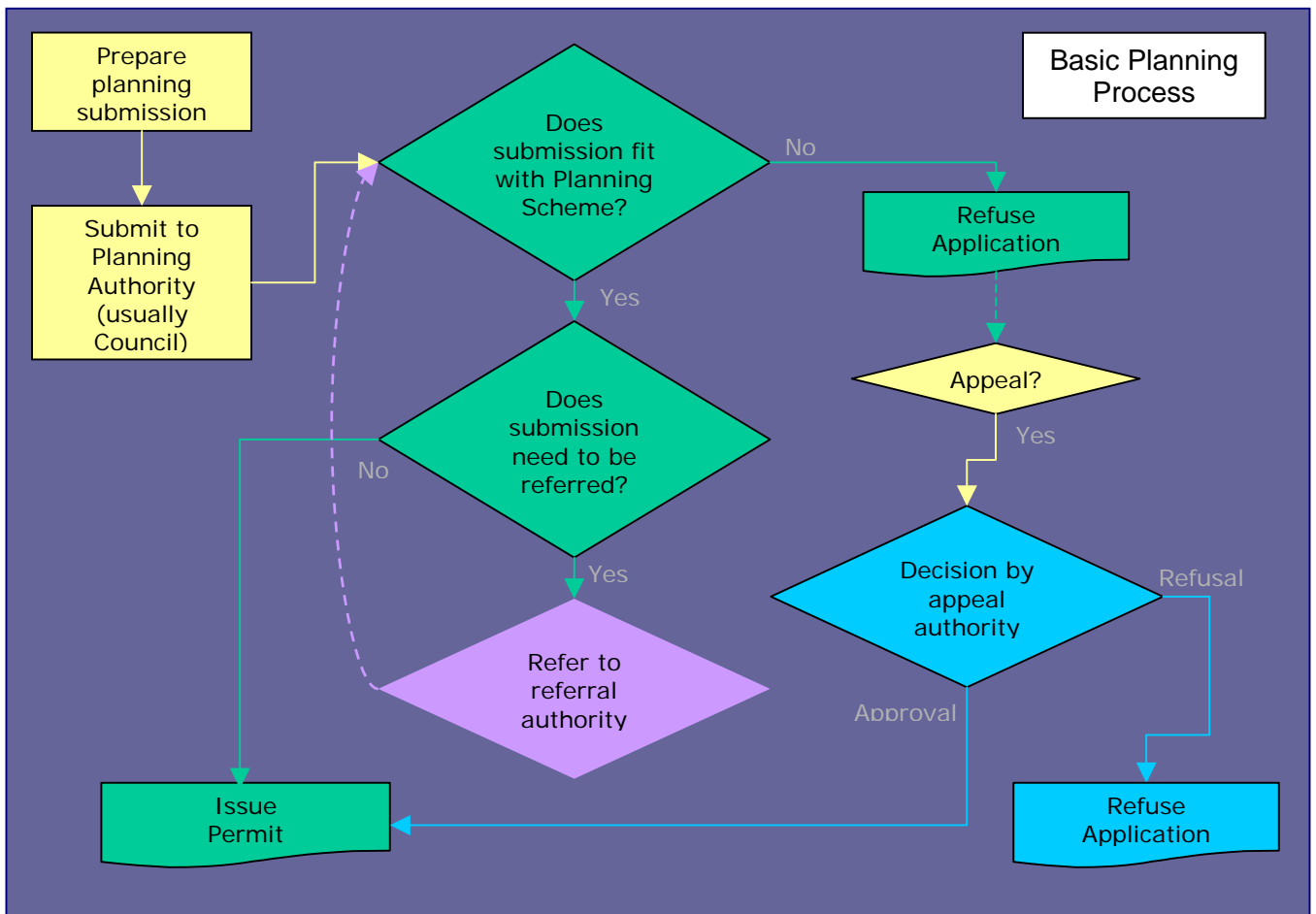
Councils in most States will have a local planning instrument. For example, in Victoria these are called the Council Planning Scheme, in NSW, Local Environmental Plans (LEP). These planning controls are formed within the parameters and requirements of State legislation and therefore often reflect State level policies with a local flavour.

For Planning controls, the local Council is usually the enforcement authority, but there is usually a State appeals authority, such as the Victorian Civil and Administrative Tribunal (VCAT) or the Land and Environment Court in NSW.

The flow chart below demonstrates a basic application of a Council planning process. The yellow boxes are actions by the applicant, green the Council, blue the appeals mechanism and purple by referral authorities. This representation is simplistic and only provided as a basic guide. Each State planning process is different, and each application can track different courses through a process depending on its size and complexity.

Referral authorities can include, depending on the individual applications -

- Roads authorities
- Water, sewer or drainage authorities
- State planning authorities



Local laws

Local Laws are Council controls enacted at a local level. They can cover a wide range of issues and encompass a variety of powers depending on the State legislation under which they are formed and the local Council policies.

For Local Laws, the local Council is the principle authority. Local laws are usually only challengeable through the Magistrates' Court. Typically with fines in the hundreds of dollars local laws do not apply significant financial penalties. Even prosecution through the courts will normally impose a fine of a few thousand dollars at most, although it may be recorded as a criminal conviction. Consequently local laws may cause a private individual to reconsider a tree removal but for a developer they are not a serious impediment.

Moral weight

The National Trust Significant Tree Register recognises outstanding trees based on a range of criteria. The Register does not have legal weight or any mechanism for preserving the trees on it. It relies on the focussing moral weight or peer pressure from the community and authorities as a result of the recognising trees through a robust assessment process.

Which trees are protected?

Unless you know otherwise, assume ALL trees are protected and check with the relevant authority. Fines for breaching tree preservation controls range from a few hundred dollars, to \$1.2million, so it pays to be certain!

Appendix 1 – Resources

Below is a list of resources available to help. These are not the only resources available and it is always recommended that you check with local planning authorities before undertaking any tree or vegetation pruning or removal.

Inevitably some of these links will change, so if you they don't work try searching for the relevant text heading in an Internet search engine such as Google.

General Information

Commonwealth and State biodiversity legislation, plans and policies
<http://www.environment.gov.au/biodiversity/toolbox/policy-legislation.html>

Australian Legal Information Institute <http://www.austlii.edu.au/>

- Legislation, court rulings, searchable database

Australian Heritage Places Inventory <http://www.heritage.gov.au/ahpi/index.html>

- Searchable database of National & State heritage registers

Trees Are Good <http://www.treesaregood.org/>

- Tree care advice and consumer information

ISAAC <http://isaac.org.au>

Australian industry information and events

Utility Arborist Association Australia <http://utilityarborist.isaac.org.au>

Arboriculture publications for sale <http://isaac.org.au/onlineshop>

Standards Australia <http://www.standards.com.au>

- Purchase Australian and international standards
- Examples of some relevant Standards
 - AS 4373-2007 *Pruning of Amenity Trees*
 - AS 2726.2-1995 Chainsaws - Safety requirements - Chainsaws for tree service
 - AS 2727-1997 Chainsaws - Guide to safe working practices
 - AS/NZS 4453.3:1997 Protective clothing for users of hand-held chainsaws - Protective legwear

Treesearch <http://www.treesearch.fs.fed.us/>

National Occupational Health and Safety Commission www.nohsc.gov.au

The Benefits of Urban Trees

A brief list of resources. There are many others.

- Treelink <http://www.treelink.org/linx/?navSubCatRef=56>
- Urban Trees and Air Quality <http://www.es.lanacs.ac.uk/people/cnh/docs/UrbanTrees.htm>
- <http://warnell.forestry.uga.edu/warnell/service/library/index.php3?docID=2>
- <http://www.urbanforestrysouth.org/>
- <http://ncrs.fs.fed.us/pubs/search.asp?go=1&query=urban%20forestry>
- http://www.treesaregood.org/treecare/tree_benefits.aspx
- Landscape and Human Health Laboratory <http://www.lhhl.uiuc.edu/>
- <http://www.cfr.washington.edu/research.envmind/urban.html>

- <http://www.warwickdc.gov.uk/WDC/Leisure+and+culture/Parks+and+recreation/Parks/The+Benefits+of+Trees.htm>
- <http://www.coloradotrees.org/benefits.htm>

Australian Capital Territory

Relevant legislation

- Tree Protection Act 2005

Other resources

- The Territory Plan <http://apps.actpla.act.gov.au/tplan>
- Application to undertake a tree damaging activity [http://www.act.gov.au/CAP/accesspoint/cc?action=recordDetails&sourceNode=/cap\(Search+Manager\)&sourceResource=ServiceDataManager&recordId=urn:service:00000204](http://www.act.gov.au/CAP/accesspoint/cc?action=recordDetails&sourceNode=/cap(Search+Manager)&sourceResource=ServiceDataManager&recordId=urn:service:00000204)
- ACT WorkCover <http://www.workcover.act.gov.au/>

New South Wales

Relevant legislation

- Environmental Planning and Assessment Act
- Trees (Disputes Between Neighbours) Act 2006

Other resources

- National Arborists Association <http://www.naaa.net.au/>
- Local Government Tree Resources Association <http://www.lgtra.com/>
- Tree Contractors Association <http://www.tcaa.com.au/>
- Workcover <http://www.workcover.nsw.gov.au/>

Northern Territory

Relevant legislation

- Planning Act

Other resources

- NT Planning <http://www.ipe.nt.gov.au/whatwedo/planning/scheme>
- Worksafe <http://www.worksafe.nt.gov.au/>

Queensland

Relevant legislation

- Local Government (Planning and Environment) Act 1990
- Integrated Planning Act 1998

Other resources

- Queensland Arboricultural Association <http://www.qaa.net.au/>
- Office of Urban Management <http://www.oum.qld.gov.au>
- Tree Industry Safety Fact Sheets
<http://www.deir.qld.gov.au/workplace/business/smallbusiness/advice/tree/index.htm>
- Workcover <http://www.workcover.qld.gov.au/>

South Australia

Relevant legislation

- Environment, Resources & Development Court Act 1993
- Development Act 1993
 - includes protection for Significant Trees
- Natural Resources Management Act 2004
- Native Vegetation Act 1991

Other resources

- South Australian Society of Arboriculture <http://www.treesa.biz/>
- Planning SA Maps Online <http://www.planning.sa.gov.au/go/maps-and-data/maps-online>
 - Development plans available, follow the links
- Significant Trees <http://www.planning.sa.gov.au/go/development-applications/assessment-processes-explained/guides-for-applicants/significant-trees>
- Workcover <http://www.workcover.com/>

Tasmania

Relevant legislation

- Local Government Act 1993
- Land Use Planning and Approvals Act 1993
- Threatened Species Protection Act 1995
- Forest Practices Act 1985
 - For large areas of vegetation or tree ferns

Other resources

- Native Vegetation of Tasmania <http://www.dpiw.tas.gov.au/inter.nsf/ThemeNodes/BHAN-54746E?open>
- IRIS Maps & info online <http://www.iris.tas.gov.au/maps>
- WorkCover <http://www.workcover.tas.gov.au/node/workcover.htm>

Victoria

Relevant legislation

- Planning and Environment Act 1987
- Water Industry Act 1994
- Electricity Safety Act 1998

- Catchment and Land Protection Act 1994

Other resources

- Council Arboriculture Victoria <http://cav.arboriculture.com.au/>
- Victoria's Native Vegetation Management: A Framework for Action <http://www.dse.vic.gov.au>
- Victorian Planning Practice notes <http://www.dse.vic.gov.au/dse/nrenpl.nsf/LinkView/D51C1646AEEC19A0CA256D480003CF577C88B8D6A023CC49CA256D1900262D2E>
- Council Planning Schemes <http://www.dse.vic.gov.au/planningschemes/>
 - All Victorian Council Planning Schemes online
- Energy Safe Victoria <http://www.esv.vic.gov.au/>
 - Gas and electricity safety including vegetation clearance for electric lines
- Information Victoria <http://www.information.vic.gov.au/>
- Purchase legislation, regulations and codes of practice
- WorkSafe <http://www.workcover.vic.gov.au/wps/wcm/connect/WorkSafe>

Western Australia

Relevant legislation

- Planning and Development Act 2005

Other resources

- Tree Guild of Western Australia <http://www.treeguild.com/>
- WA Planning Commission <http://www.wapc.wa.gov.au>
 - Planning Maps <http://www.wapc.wa.gov.au/Mapping/Western+Australian+Atlas+-+Planning+layer/default.aspx>
- Workcover <http://www.workcover.wa.gov.au>