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GLEN EIRA CITY COUNCIL

CANOPY TREE PROTECTION LOCAL LAW ASSESSMENT GUIDELINES



Date first adopted:	15 August 2024
Dates amended:	N/a
Next review date:	15 August 2029
Responsible Directorate	Sustainability, Assets and Leisure
Approved by:	Council
Internal external or both:	Both

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1. Introduction and Purpose

The purpose of these assessment guidelines (**the guidelines**) is to provide a information that must be considered by officers when assesses sing applications made under the Canopy Tree Protection Local Law 2024 (**the local law**) that clearly set out the way applications for;

These guidelines provide guidance to officers when considering each of the matters set out in the Glen Eira Canopy Tree Protection Local Law 2024. Application of these guidelines is to ensure that decision making is consistent and equitable.

These guidelines require that in the assessment of an application for a permit, the officer consider 5 key elements. These are;

1. the type of tree;
2. the location of the tree;
3. the health, condition and risk status of the tree;
4. the reason for the request to remove or prune the tree; and
5. all supporting information provided by an applicant.

Assessments are to be guided by the overarching principle of the Local Law which is to retain classified trees and canopy trees where practicable, while also seeking to safeguard the rights of a property owner to the reasonable enjoyment of their property.

2. Canopy Tree and Classified Tree Permits

Where any provision within the local law requires that a person obtain a permit before engaging in a particular activity related to either a canopy or classified tree, an offence is committed if that person engages in the activity or causes or permits any other person to engage in the activity, without an appropriate permit issued by a Council officer authorised under the local law.

2.1 Applying for a Permit

A person seeking to apply for a permit under the local law is required to apply for the Permit in writing to Council. This can be done through the relevant permit portal within Council's website or in writing by completing a permit application form available on Council's website, or from Council's customer service centre.

2.2 2 Cost of a Permit

There is no cost for the application of a Canopy Tree Protection Local Law permit.

2.3 Timeframe for a Permit Assessment

All applications for permits will be assessed by Authorised Officers within 14 Calendar days of the permit application being received.

2.4 Definition of Canopy and Classified Trees

A **canopy tree** is defined under the local law as:

- a) a palm tree taller than 8 metres measured from natural ground level; or
- b) a tree with a stump circumference of 140 cm or more measured at natural ground level; or
- c) a tree taller than 5 metres measured from natural ground level; and
- d) a trunk circumference of 140cm or more measured at a point 140cm along the trunk's length from ground level; or
- e) a combined trunk circumference of 140 cm or more measured at a point 140cm along the trunks' lengths from natural ground level.

A **classified tree** is defined under the local law as a **tree**, or **stand of trees** that;

- a) Has been assessed as meeting one of the Categories of Significance; and
- b) Has been endorsed by Council; and
- c) is recorded on the Glen Eira Classified Tree Register.

2.5 Trees Protected by the Local Law

Protection of **canopy trees** and **classified trees** refer to any tree that;

- a) Is a classified tree; or
- b) Is a canopy tree; and
- c) trees planted in satisfaction of a condition of a Permit; and
- d) trees planted in satisfaction of a direction in a Notice to Comply; inclusive of
- e) any of the above trees which are situated on private land irrespective of whether the tree extends beyond the boundary of the private land.

2.6 Permit Requirements under the Local Law

A permit **is required** if a person wishes to;

- a) remove, or direct the removal of a classified or a canopy tree; or
- b) prune or direct pruning of a classified tree or a canopy tree; or
- c) carry out, or direct works to be carried out within the Tree Protection Zone (TPZ) of a classified tree or a canopy tree; or
- d) remove, or direct the removal of a tree planted in satisfaction of a condition of a permit or a direction in a notice to comply; or
- e) prune or direct pruning of a classified tree or a canopy tree planted in satisfaction of a condition of a Permit or a direction in a notice to comply; or

- f) carry out, or direct works to be carried out within the Tree Protection Zone (TPZ) of a classified or canopy tree planted in satisfaction of a condition of a Permit or a direction in a Notice to Comply.

A permit **is not required** if;

- a) a person, whose actions are required by any other legislation or by any other statutory authority; or
- b) a person acting in accordance with an instruction or direction from an Authorised Officer; or
- c) a tree that is a noxious weed; or
- d) a tree that requires pruning or removal to control an immediate danger to life or property if Council is notified within 5 days of the works being carried out.
- e) pruning which is carried out that is:
 - In accordance with Standards Australia AS4373 – 2007
 - Only branches of the tree that have with a circumference of less than 100 millimetres at the point of contact with the larger branches or the trunk are removed.
 - A maximum of 10% of the tree's total volume is removed within 12 calendar months.

2.7 Granting of a Permit

Canopy or Classified Tree removal permit

A permit will not be granted to remove a canopy or classified tree unless:

- it is dead or dying.
- it is structurally unsound and cannot be made safe through available arboricultural techniques.
- it poses an unreasonable risk which cannot be alleviated through means other than removal.
- it is causing structural damage to private or public assets which cannot be alleviated through means other than removal.
- the works are to be carried out to comply with any other legislation.

Permits allowing removal of a canopy or classified trees may require replacement planting to Council's satisfaction (see guidelines for replacement tree planting below).

Canopy or Classified Tree pruning permit

A permit will not be granted to prune a canopy or classified tree unless:

- the branch/es to be removed are dead or dying.
- the branch/es to be removed pose a risk which cannot be alleviated through means other than removal.

- the branch/es to be removed are causing structural damage to private or public assets which cannot be alleviated through means other than removal.
- the pruning is to be carried out to comply with any other legislation.
- the pruning is necessary to maintain the tree's viability having regard to Australian Standard AS 4373:2007 'Pruning of Amenity Trees' (or as updated/replaced by the equivalent Australian Standard).

Permits allowing pruning of a canopy or classified tree will include conditions which will require the tree to be pruned in accordance with Australian Standard AS 4373:2007 'Pruning of Amenity Trees' (or as updated/replaced by the equivalent Australian Standard).

Permit for works in the Tree Protection Zone (TPZ) of a canopy or classified tree

A permit will not be granted for works within the Tree Protection Zone (TPZ) of a canopy or classified tree, unless:

- the works to be carried out are proposed to alleviate damage being caused by the tree which cannot be alleviated through any other means
- the works are to be carried out to comply with any other legislation
- a report by a suitably qualified and experienced arborist as part of the application demonstrates to Council's satisfaction that the proposed works will be carried out in such a way that the tree is not unreasonably impacted. This may include the requirement to undertake a non-destructive root excavation to determine the location, type and size of roots.

Permits allowing works within the TPZ of a canopy or classified tree will include conditions which will require that the works must be carried out in the presence of a qualified arborist and in accordance with the recommendations of an arborist report submitted with the application and approved by Council or alternatively in accordance with the recommendations of the determining Council officer.

3. Review of a Permit Decision

An internal review process for is available to applicants for a permit. Council officers will engage an independent arboriculture consultant to undertake a review of the decision when requested by an applicant. Officers will then prepare a report for the Council who will determine if a permit should be issued.

4. Criteria for Granting a Permit in Clause 36 (1)

In determining whether to grant a permit under the Local Law, the Council or Authorised Officer must take the following into consideration, to the extent it considers appropriate:

- a) whether the tree is a canopy tree or a classified tree.
- b) the condition of the tree (such as, for example, its health, appearance, and structural integrity).
- c) the appropriateness of the tree for its location on the property having regard to the existing buildings and conditions on the property.
- d) whether the proposed action is to be undertaken for reasons of health or safety.
- e) whether the tree has caused property damage, and the extent of the damage and cost of repair of the damage caused.
- f) whether the tree is causing any unreasonable public nuisance or creating any unreasonable nuisance to private property owners or occupiers.
- g) whether the tree is an environmental weed
- h) any legislative requirements.
- i) any other matter relevant to the circumstances associated with the application.

5. Guidelines for Criteria for Granting a Permit

The following information sets out the matters the Authorised Officer must consider when assessing an application. These criteria exist to assist officers exercise discretion when determining a decision under the Local Law. These criteria cannot change or supplant the criteria set out in Clause 36 (1) of the Local Law. Officers must first determine which criteria are relevant to the assessment of the application, as not all criteria will be relevant for every application.

a) Whether the tree is a canopy tree or a classified tree.

In assessing an application to remove or prune a private tree, officers must first determine if the tree is a canopy or classified tree, and as such offered protection under the Local Law.

b) The condition of the tree (such as, for example, its health, appearance, and structural integrity).

All applications will be assessed by a qualified and experienced arborist in accordance with industry best practice and will include an assessment of risk in accordance with an industry recognised methodology.

Officers must critically analyse any arborist reports provided by an applicant as supporting evidence. Arborist reports submitted with an application should be prepared by suitably qualified (AQF Level 5) arborists.

As part of their assessment, the assessing officer may deem it necessary to request further information from an applicant such as an external consultant report that may include an aerial inspection, sonic tomograph testing, root plate stability testing or other testing as deemed relevant to the circumstances of a tree.

c) The appropriateness of the tree for its location on the property having regard to the existing buildings and conditions on the property.

If the application has not been made because of proposed buildings or works on the property, officers must consider, as relevant to the application:

- the extent of the tree's canopy and TPZ.
- the proximity of the tree to any buildings or areas of recreational open space on the property.
- the growing conditions of the tree.
- whether the tree can be pruned to reduce any unreasonable impacts the tree may be having on the property.
- how recently the 'existing buildings and conditions on the property' were constructed, and whether the structure could have been designed to mitigate or prevent damage caused by the tree.

Note: this criterion only permits consideration of existing buildings and conditions on the property, not proposed buildings or conditions.

d) Whether the proposed action is to be undertaken for reasons of health or safety.

Officers must consider, as relevant to the application:

- the risk presented by the tree to human health and safety, as determined by a risk assessment undertaken by qualified and experienced arborist in accordance with a relevant industry recognised methodology.
- whether fruit, flowers or litter from the tree gives rise to any risks that are unreasonable to manage.
- whether the tree is causing any property damage which is consequently giving rise to a human health and safety risk that cannot be reasonably managed with repairs or alternative construction.
- whether routine monitoring or remedial works (e.g. pruning or cabling) can be undertaken to manage the human health and safety risks presented by the tree.
- whether any other steps can be taken to mitigate the human health and safety risks presented by the tree.
- whether the applicant could have reasonably considered the human health and safety risks presented by the tree prior to purchase or occupancy of the property.

e) Whether the tree has caused property damage, and the extent of the damage and cost of repair of the damage caused.

Officers must consider, as relevant to the application:

- any evidence of the property damage being caused.
- the extent of property damage being caused.
- whether the property damage can reasonably be repaired without impacting on the viability of the tree.
- the estimated cost of repairing the property damage.
- if the tree's roots are blocking, breaking or otherwise damaging pipes, whether the pipes can be cleared, relined, or replaced without removing the tree.
- whether the tree can be pruned to reduce the unreasonable property damage being caused.

Prior to considering an application under this criterion, officers can also consider whether to request further information from the applicant under the provisions of the Local Law, if the circumstances require. Further information may include:

- A report from a suitably qualified and licensed plumber which includes details of the extent of damage to underground services, the likely cause of damage, evidence of the role of the tree in the damage, CCTV footage of the damage, invoices for previous repairs, options/requirements for repair or replacement and/or quotes for future repairs.
- A report from a suitably qualified and experienced builder/engineer that includes what steps have already been taken to abate or rectify damage to a structure, and any evidence of the role of the tree in the damage. The report must address the condition of the structure, its age, foundations, and requirements for repair or replacement, including quotes if available, details of any root investigations, and soil moisture testing.

Note: This does not limit officers' discretion under the Local Law to request other information from the applicant if the circumstances require.

f) Whether the Canopy tree is causing any public nuisance or creating any other nuisance to relevant landholders.

Officers must consider, as relevant to the application:

- the conditions beneath the tree.
- the species of tree, including the frequency and extent of litter, leaves, bark, fruit and the like dropped by the tree.
- whether the conditions beneath the tree could reasonably be changed to reduce the impact of the nuisance.
- whether the tree can be pruned to reduce the unreasonable nuisance being caused.
- whether the applicant could have reasonably considered the potential nuisance issues presented by the tree prior to construction on the land.
- Any supporting evidence provided by the applicant to demonstrate that the requirements or costs in manage issues of nuisance are unreasonable (for

example, invoices for maintenance or other extenuating circumstances such as disability, age).

g) Whether the tree is an environmental weed.

Officers must consider, as relevant to the application:

- whether the tree is listed in the *Victorian Noxious Weeds List* or later equivalent document.
- of the tree and the specific context in which the tree may be considered a weed, including the proximity of the tree to waterways, public land and biodiversity corridors set out in the *Urban Biodiversity Strategy 2013-2023* or later equivalent document.
- the species in relation to its location.

Note: Some trees are only considered to be weeds in circumstances, such as if they are located close to waterways or near areas of environmental significance.

h) Any legislative requirements.

Officers must consider, as relevant to the application:

- whether the removal, pruning or works are required by legislation.
- whether the removal, pruning or works can be modified so that the tree remains viable.
- whether there is a Court Order requiring the removal, pruning or works, or a Court Order requiring buildings, demolition or works that would impact on the tree.

i) Any other matter relevant to the circumstances associated with the application.

- Any other matters as raised as part of the application process.

6. Tree Removal Applications for Construction Activities

Where removal of a canopy tree is proposed to facilitate construction works on land the Council officer will exercise discretion in assessing permit applications which have been made due to a proposed dwelling or due to proposed improvements to an existing dwelling. Having considered all other criteria under Clause 36 (1) of the Local Law for an application to remove a canopy or classified tree, if officers have determined that the subject tree is in good condition, suitable to the site and is not causing any unreasonable property damage or unreasonable nuisance, the officer will give consideration to the current owners of the property and their rights to the reasonable enjoyment of that property, and the necessity of any construction works proposed.

The applicant must submit with their application a full set of fully dimensioned plans of the proposed works, drawn in relation to title boundaries and showing the location of the subject tree/s and the extent of its Tree Protection Zone (TPZ) having regard to the relevant Australian Standard. If the circumstances require, officers may request further information from the applicant as set out in these guidelines.

Officers should commence their assessment by considering whether the proposed works would be able to be constructed without necessitating the removal of the tree. In determining whether the proposed works cannot be redesigned and/or that appropriate arboricultural techniques cannot be employed to retain a tree, officers must have regard to the following guidelines:

- the siting of the dwelling or dwelling extension on the property, or other building work, relative to the location of the tree
- the impact of the site coverage and/or hard surface coverage on the health, condition and useful life expectancy of the tree
- whether the proposed building work can be reasonably designed or redesigned to successfully retain the tree, by, for example, decreasing site coverage, decreasing hard surface coverage, increasing setbacks, utilising root sensitive construction techniques, or minor amendments to the proposed layout.

Officers must consider whether to request further information from the applicant under the provisions of the Local Law, such as:

- A report from a suitably qualified and experienced arborist detailing whether appropriate arboricultural techniques could be employed to retain the tree. This may include the requirement to undertake a non-destructive root excavation to determine the location, type, and size of roots, to assist in determining the impact of the proposed building works on the tree.
- A report from a suitably qualified and experienced structural engineer detailing whether any construction techniques could be employed to retain the tree.
- A landscape plan to demonstrate whether appropriate tree planting can be provided on the property to compensate for the loss of any trees permitted for removal.

Note: This does not limit officers' discretion under the Local Law to request any other information from the applicant if the circumstances require.

If officers determine to grant a permit for the removal of a canopy or classified tree in accordance with these guidelines, the permit may be subject to conditions, including but not limited to the following:

- That the permit will have no force or effect until a Building Permit for a development generally consistent with that depicted on the plans submitted with the application has been issued in accordance with the Building Act or later equivalent document.
- That the permit will have no force or effect until building work has been substantially commenced.

- That building work is to be substantially commenced within 12 months of the permit being issued or it will have no force or effect.
- That building works must be undertaken in accordance with Australian Standard 4970-2009 Protection of Trees on Development Sites (or as updated/replaced by Guidelines applicable to works within the SRZ of a canopy tree).

7. Replacement Tree Planting

The officer will determine whether a canopy or classified tree is to be replaced during assessment of the application, in accordance with these guidelines.

The standard approach will be to require replacement planting of a canopy tree (planted at a height of 1.5 metres and capable of reaching a height of at least 13 metres and 7 metres spread at maturity) for each tree removed, with the species and replacement tree location selected by the applicant, subject to Council approval. Conditions should be worded to require that the replacement tree planting be to the satisfaction of Council and be planted within 12 months of date of the permit or 24 months for applications related to a new dwelling construction.

In determining to impose conditions requiring replacement tree planting differing from this standard approach, officers must consider whether:

- there is sufficient space for replacement canopy tree planting on the property.
- there are other existing canopy trees on the property.
- if the property's location or the circumstances of the application warrant it, require the replacement tree planting to be native, exotic or indigenous, or in a particular location on the property.
- in the case of the removal of a canopy or classified tree the replacement tree must be a particular species or family of species, be higher than 1.5 metres high at time of planting or be capable of reaching a certain height at maturity.

8. General Tree Maintenance Works

The officer will determine whether maintenance works to an existing tree(s) on the land is required instead of or in addition to replacement planting. In doing so, officers should consider whether the health, condition or appearance of the existing tree(s) would be improved by such maintenance works and would advance the objectives of the Local Law.

Such maintenance works could include (but are not limited to):

- remedial pruning.
- removal of dead branches.
- removal of vines or creepers growing on a tree.
- pruning or removal of other vegetation detrimentally affecting the condition of a tree.

- works to protect a tree during construction.
- works to improve the health of a tree (for example, mulch, fertilisation or decompaction).

9. Works Within the Tree Protection Zone (TPZ) of a Canopy or Classified Tree

A permit will not be granted for works within the TPZ of a canopy tree, unless:

- the works to be carried out are proposed to alleviate damage being caused by the tree which cannot be alleviated through any other means.
- the works are to be carried out to comply with any other legislation.
- a report by a suitably qualified and experienced arborist as part of the application demonstrates to Council's satisfaction that the proposed works will be carried out in such a way that the tree is not unreasonably impacted (This may include the requirement to undertake a non-destructive root excavation to determine the location, type, and size of roots).
- the works are to be carried out pursuant to, and in accordance with, a building permit the implementation of which necessitates removal of the tree.
- Permits allowing works within the TPZ of a canopy tree will require that the works must be carried out in the presence of a qualified arborist and in accordance with the recommendations of the arborist's report submitted with the application and approved by Council or in accordance with the recommendations of Council's assessing officer.