



Shire of
Peppermint Grove

INFORMATION ON THE SHIRE'S DRAFT TREE RETENTION POLICY



Shire of Peppermint Grove

8th November 2024

Dear Resident,

Information on the Shire's Draft Tree Retention Policy

The Shire is considering a new Local Planning Policy (LPP 7) aimed at encouraging the protection of significant trees on private properties.

While the Council has previously invited community feedback, we are now seeking further input from residents before making any final decisions on the draft policy.

This policy aims to ensure that property owners carefully consider the impact of removing large trees, particularly during house demolitions or significant development projects. It also addresses the removal of large trees even when no development work is planned.

We want to emphasise that it is not our intention to infringe upon private property rights. However, the preservation of the Shire's significant tree canopy is a matter of great importance to our community, and we believe it warrants thoughtful discussion.

Submissions should be sent to admin@peppermintgrove.wa.gov.au. The closing date for submissions is Friday, 22 November 2024.

Thank you for your understanding and engagement in this important issue.

A handwritten signature in black ink, appearing to read 'Don Burnett', is positioned above the printed name and title.

Don Burnett
CHIEF EXECUTIVE OFFICER

Attached is the draft policy and a set of FAQs.



Shire of Peppermint Grove

Attachment: Shire of Peppermint Grove FAQ for Tree Retention Policy

This document provides answers to key questions regarding the draft Local Planning Policy (LPP7) on tree retention. It covers:

- Which trees would be affected by the draft LPP?
- What is a Regulated Tree?
- What is tree-damaging activity?
- Where would the draft LPP apply?
- Why did the Shire prepare the draft LPP?
- How was the criteria for a Regulated Tree determined?
- Is development approval required for pruning of a Regulated Tree?
- What if my neighbour's tree is encroaching/overhanging on my land?
- How do I apply for development approval to remove a tree covered by the draft LPP?
- How will applications be assessed?
- What are the requirements for Development Approval and Exemptions?
- What will the application fees be?
- What happens if an application for removal is not supported?
- What happens if I remove a Regulated Tree without approval should Council approve the LPP?
- What will happen to my feedback?

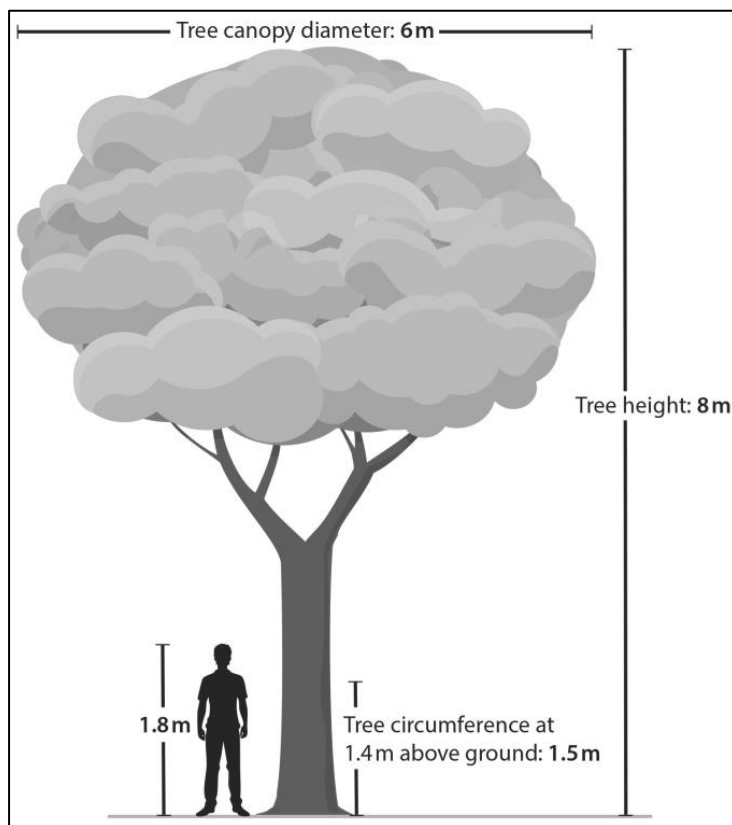
Which trees would be affected by the draft LPP?

The draft LPP 7 applies to trees that meet the definition of a Regulated Tree. Development approval is required for any activity that damages a Regulated Tree.

What is a Regulated Tree?

A Regulated Tree is any living tree not listed on a State or local weed register that meets two or more of the following criteria:

- Height of 8 meters or more.
- Average canopy diameter of at least 6 meters.
- Trunk circumference of at least 1.5 meters, measured 1.4 meters above the ground.



What is tree-damaging activity?

Tree-damaging activity includes:

- Killing or destroying a tree.
- Removing a tree.
- Severing branches, limbs, stems, or trunk (excluding maintenance pruning).
- Ringbarking, topping, or lopping a tree.
- Any other substantial damage to a tree.

Where will the draft LPP apply?

The draft LPP applies to all land zoned as Residential under the Shire of Peppermint Grove's Local Planning Scheme No. 4.

Why did the Shire prepare the draft LPP?

The Shire faces increasing pressure on its urban tree canopy due to new construction and changes in property ownership. This policy aims to protect our trees, which provide essential environmental and community benefits, including:

- Reducing urban heat.
- Mitigating climate change effects.
- Supporting biodiversity.
- Preserving the “leafy green” character of our community.

How was the criteria for a Regulated Tree determined?

The criteria were developed with guidance from the Western Australian Local Government Association (WALGA), using a model draft policy focused on urban tree canopy retention. The criteria emphasize the protection of the most valuable trees for habitat and amenity.

Is Development Approval needed for pruning a Regulated Tree?

No development approval is required for maintenance pruning of a Regulated Tree, which includes:

- Removing dead or diseased wood.
- Pruning fruit trees for production.
- Minor maintenance that does not harm the tree's health or appearance.
Significant lopping or pruning that goes beyond maintenance will require approval.

What if my neighbour's tree is encroaching on my land?

Homeowners are responsible for ensuring their trees do not harm neighbours. Under the *Dividing Fences Act*, you may remove branches or roots that encroach onto your property, but you must not cut anything on your neighbour's side without their consent.

For Regulated Trees on a neighbour's property, you will need development approval to prune any part that overhangs onto your land, unless it's maintenance pruning. We recommend discussing this with your neighbour first.

How do I apply for Development Approval to remove a tree under the draft LPP?

To apply for development approval, submit the following to the Shire:

- A completed development application form.
- A current copy of your property title.
- A scaled site plan showing the tree's location.
- Any necessary supporting documents (like an arborist or structural engineering report).

How will applications be assessed?

Applications will be evaluated based on the draft LPP, which presumes against tree removal unless:

- An arborist or structural engineering report shows the tree should be removed due to health or safety concerns.
- Redesigning the development to preserve the tree is not feasible.

What are the requirements for Development Approval and Exemptions?

Tree damaging activity requires development approval except in any of the following circumstances:

- a) the tree does not satisfy the definition of regulated tree.
- b) the tree damaging activity is carried out in the course of works with the Planning and Development (Local Planning Schemes) Regulations 2015 Schedule 2 Part 7 Clause 61 (b) item 18:
“works that are urgently necessary for any of the following –
 - i. Public safety;
 - ii. The safety or security of plant or equipment.
 - iii. The maintenance of essential services; or
 - iv. The protection of the environment.”
- c) the tree damaging activity is required as part of an approved Bushfire Management Plan.
- d) the tree damaging activity is maintenance pruning:
- e) The tree damaging activity is carried out by the local government on a street tree and/or the tree damaging activity is a public work.

What are the application fees?

The fee for a development application is currently \$147, as per the Shire's Schedule of Fees and Charges. The processing time for a tree-damaging application would typically be 1-4 weeks.

What happens if an application for removal is not supported?

If your application is denied, you have the right to appeal the decision to the State Administrative Tribunal.

What are the consequences of removing a Regulated Tree without approval?

Removing a tree without the necessary approval is an offence under the Planning and Development Act 2005, carrying significant penalties: up to \$200,000 for individuals and \$1,000,000 for organizations, along with potential daily fines for ongoing violations.

What will happen to my feedback?

Your feedback will be reviewed and considered in finalizing the draft LPP, which will be presented to the Council for adoption at the Ordinary Council Meeting on December 17. You can submit your feedback through our website "Have your Say" or via email at admin@peppermintgrove.wa.gov.au.

Submissions close Friday 22 November 2024.



Shire of
Peppermint Grove

ATTACHMENT

Local Planning Policy 7 - Tree Retention

Shire of Peppermint Grove

Statutory Authority

Planning and Development Act 2005

Planning and Development (Local Planning Schemes) Regulations 2015

Shire of Peppermint Grove Local Planning Scheme No. 4 (as amended)

Shire of Peppermint Grove Tree Management Strategy 2022

Local Planning Policy

This local policy shall apply to all matters considered pursuant to Local Planning Scheme No.4 (LPS 4) and where the Council may exercise its discretion to vary Scheme requirements, to advise on site and building design, and/or processes associated with the assessment and implementation of development and matters related to its implementation.

The local policy intends to provide clear direction and explanation as to the basis for the Shire's tree retention requirements. It intends to influence the design and quality of proposals and to achieve consistency of deliberation on matters which call for judgement and consideration of site characteristics and design merit.

This policy clarifies the circumstances in which development approval is required for any *tree damaging activity* and guides the assessment of subdivision and amalgamation applications, demolition and building permit applications, development applications and strategic planning proposals.

To ensure this policy remains relevant and effective, it will be regularly reviewed and updated.

Policy Application

This local policy applies to the Residential Zone within the LPS4 including in the circumstances listed below:

- Development applications;
- Subdivision applications;
- Other strategic planning proposals including scheme amendments and structure plans; and
- *Any tree damaging activity to a regulated tree* where no other development or subdivision is proposed.

Context

The Shire's Local Planning Strategy recognises the importance of maintaining and enhancing the Shire's streetscapes. The Shire is committed to enhancing the number and quality of the nearly 1,200 trees located within verges and median strips, encouraging the retention of *regulated trees* and establishment of new trees on private land. Planning controls are necessary to support this commitment, and to minimise adverse impacts on the tree canopy cover resulting from residential infill development.

The Shire is known for its large character homes set in tranquil tree-lined streets and open landscaped settings. Generous street, side and boundary setbacks are an integral part of the Shire's urban fabric that provides space for *regulated trees*, soft soil landscaping, private open spaces, ventilation, and solar access which all combine to create distinctive streetscapes.

The Shire recognises the importance of *regulated trees* to the landscape quality and canopy of green corridors, spaces and places. They provide significant social, economic, and environmental benefits to the community. Large mature trees provide the greatest community benefit and are preferred over multiple smaller or replacement juvenile trees.

The prevalence of *regulated trees* is a consideration when a *development* relies upon the *design principles* for *private open space* and *landscaping*.

Planning Objective

- *To provide a clear definition of a regulated tree and clarify application requirements for tree damaging activities.*
- *To prioritise the retention and protection of trees on private land and adjacent reserves in the planning process.*
- *To promote and facilitate tree preservation at the earliest possible stage in the planning and development process, balancing with the desired built form and land use outcomes.*
- *To preserve and enhance neighbourhood amenity, character and sense of place.*
- *To mitigate the urban heat island effect, improve air and groundwater quality, to provide areas for groundwater infiltration, and contribute to biodiversity and other environmental benefits.*

Statutory Basis

This Local Planning Policy is made under the provisions of the Planning and Development (Local Planning Schemes) 2015 Regulations, and in accordance with State Planning Policy 7.3 - Residential Design Codes; being based in part on Australian Standard AS 4970-2009 Protection of Trees on Development Sites and Australian Standard AS 4373-2007 Pruning of Amenity Trees.

The Shire has an obligation under Section 3.1(1A)(a) of the Local Government Act 1995 to promote environmental sustainability, mitigate the effects associated with climate change, and to consider impacts on future generations.

This policy should be read in conjunction with the local planning policy framework, local laws and the Shire's Tree Management Strategy 2022.

Requirement for Development Approval and Exemptions

Tree damaging activity requires development approval except in any of the following circumstances:

- a) the tree does not satisfy the definition of *regulated tree*;
- b) the *tree damaging activity* is carried out in the course of works in accordance with the Planning and Development (Local Planning Schemes) Regulations 2015 Schedule 2 Part 7 Clause 61 (b) item 18:
 - “works that are urgently necessary for any of the following —
 - (a) public safety;
 - (b) the safety or security of plant or equipment;
 - (c) the maintenance of essential services; or
 - (d) the protection of the environment.”
- c) the *tree damaging activity* is required as part of an approved Bushfire Management Plan;
- d) the *tree damaging activity* is maintenance pruning;
- e) *Tree damaging activity* to a *regulated tree* that is listed as a Weed of National Significance, or is declared by the Department of Primary Industries and Regional Development to be a harmful plant or pest under the Biosecurity and Agriculture Management Act 2007.
- f) the *tree damaging activity* is carried out by the local government on a street tree and/or the tree damaging activity is a public work.

NOTE (i) *A development application is required for any tree damaging activity to a regulated tree where other works including demolition are proposed on a subject site, even if those other works are exempt from development approval under the local planning scheme as per Schedule 2, Part 7 Clause 61 (deemed provisions) of the Planning and Development (Local Planning Scheme) Regulations 2015 (e.g., the erection of a Single House that meets the deemed-to-comply requirements of the Residential Design Codes).*

Policy Statement

- a) Unless prior written approval has been obtained, or its removal is exempt under the provisions of this policy, a *regulated tree* should be retained in perpetuity in accordance with AS 4373-2007 and be protected.
- b) Retention and protection of regulated trees should be prioritised, and development works, structure plan and subdivision design should preferably avoid or as a minimum minimise harm to regulated trees.
- c) Where *tree damaging activity* is proposed to a *regulated tree* the following will be given due regard in the assessment process:
 - i. Health, maturity, species, and location of the *tree*;
 - ii. Ecological, biodiversity and environmental values of the *tree*;
 - iii. Contribution of the tree to the streetscape;
 - iv. The preservation of any other *regulated tree* on the subject site;
 - v. The location of the tree within the development site and capacity for a modified building design or subdivision to maximise tree retention;
 - vi. Whether a variation to the deemed-to-comply requirements for lot boundary setbacks is preferred to a *tree damaging activity*;
 - vii. Any existing development on the site;
 - viii. Design and location of proposed crossovers;
 - ix. Topography and the potential impact from excavation/fill;
 - x. Possible safety risks due to tree limb failure and infrastructure and/or structural damage associated with the retaining the tree;
 - xi. Tree Protection Zone(s) (as per AS 4970-2009);
 - xii. Tree replacement and/or planting proposed;
 - xiii. Recommendations of an *Arborist Report*; and
 - xiv. The objectives of this policy.
- d) The following justifications for *tree damaging activity* to a *regulated tree* will not be supported:
 - i. Impact on views;
 - ii. The tree variety is disliked;
 - iii. The tree variety causes nuisance by way of leaf, fruit or bark shedding or the like;
 - iv. The tree impacts on solar access to a *swimming pool*, *habitable room* or space, or an *outdoor living area*; or
 - v. The tree impacts on private gardens, solar installations, minor structures or the like.
- e) Any proposed *tree damaging activity* to a street tree is to be referred to Infrastructure Services for consideration, having regard to the Shire's Tree Management Strategy 2022.

Development Application Requirements:

A development application is required for any tree damaging activity to a regulated tree where other works are proposed on a subject site, even if those other works (such as a single house) maybe exempt from development approval under the local planning scheme.

There is a general presumption against tree damaging activity (other than maintenance pruning) to any regulated tree whereby the siting and design of proposed development should, where possible, avoid impacting any regulated tree.

Subdivision and amalgamation applications, demolition and building permit applications, development applications and strategic planning proposals that are subject to this policy are to provide the following applicable information:

- a) Site survey and/or site plan indicating:
 - i. location of all *regulated trees*, including street trees;
 - ii. whether any *regulated tree* is proposed to be retained or affected by any *tree damaging activity*;
 - iii. Tree Protection Zone(s) in accordance with AS 4970-2009; and
 - iv. any trees proposed to be planted on the development site.
- b) Written justification for any proposed tree damaging activity against the objectives and requirements of this Policy including that the redesign of the development to accommodate the regulated tree is unfeasible.; and
- c) Whether any *regulated tree* was identified to be retained at a previous planning stage such as subdivision or demolition approval.

An *Arborist Report* may be required in the following instances:

- i. To justify *tree damaging activity* to a *regulated tree* specifically considering the health of the tree and/or any safety risk it may pose to people or property;
- ii. To explain any mitigation measures proposed to protect a *regulated tree* including works proposed within the Tree Protection Zone (refer to AS 4970-2009 for details to identify the Tree Protection Zone).

A Structural Engineering Report will need to accompany an *Arborist Report* to justify any current or future safety risk to infrastructure or buildings. Additional technical reports (e.g., Environmental reports, Tree Retention Strategy) may be required.

Subdivision Application Requirements

The Shire may recommend additional information be provided to the Western Australian Planning Commission (WAPC) to enable consideration of the general application requirements. Of particular importance will be the subdivision design, layout and *siteworks* that prioritise the retention of regulated trees, including details and measures on how regulated trees will be retained and protected as part of subdivisional earthworks.

The Shire may request the WAPC to include a condition on the subdivision approval to ensure *regulated trees* are retained and protection measures implemented to ensure such trees are not impacted by subdivisional works.

Strategic Policy Development

Where applicable, LPS 4 amendments, local planning policy development, and Structure Plan proposals should identify *regulated trees* and outline approaches and measures to protect *regulated trees* at subsequent stages of the planning process. Strategic planning proposals shall be supported by technical information and reports which demonstrate that the protection of *regulated trees* has been prioritised.

Enforcement and Penalties

In the event that a tree damaging activity to a regulated tree is undertaken without development approval or an approved tree retention and/or replenishment condition(s) of a statutory approval are not complied with, the Shire may issue a written direction to stop development under Section 214(2) of the Planning and Development Act 2005. Section 214(7) of the Planning and Development Act 2005, which prescribes that a person who fails to comply commits an offence and is liable to prosecution in the Magistrates Court.

Alternatively, the Shire may issue a Planning Infringement Notice (PINs) under Part 13 of the Planning and Development Act 2005.

Definitions

Arborist Report means a report which is prepared by a suitably qualified and experienced arboriculturist with a minimum qualification of Diploma of Horticulture (Arboriculture) Australian Qualification Framework (AQF 5) or equivalent, and with demonstrated experience in high level tree assessment and diagnosis.

Maintenance Pruning means pruning that:

- a) Involves removing dead or diseased wood only; or
- b) Is of a fruit tree and done for fruit production; or
- c) Is otherwise minor maintenance or thinning of the crown that does not adversely affect the health of the tree.

Regulated Tree means a living tree that is of a species that is not included on State or local area weed register and satisfies two or more of the following qualifiers:

- a) Is 8m or higher; or
- b) Has an average canopy diameter of at least 6m; or
- c) Has a trunk circumference of at least 1.5m, measured 1.4m above the ground.

Tree Damaging Activity means:

- a) The killing or destruction of a tree; and/or
- b) The removal of a tree; and/or
- c) The severing of branches, limbs, stems or trunk of a tree; and/or
- d) The ringbarking, topping or lopping of a tree; and/or
- e) Any other substantial damage to a tree.

Additional Information

Department of Primary Industries and Regional Development declared plant control table
<https://www.agric.wa.gov.au/declared-plants/declared-plant-control-table>

Department of Primary Industries and Regional Development Western Australian organism list
<https://www.agric.wa.gov.au/organisms>

Biosecurity and Agriculture Management Act 2007
https://www.legislation.wa.gov.au/legislation/statutes.nsf/main_mrtitle_2736_homepage.html

Local Planning Policy 7:

Policy Reference	Formal Description	Service Line
LPP 7	Tree Retention	Development Services
Implementation:		
Adoption and Modification		Development Services
Review Date	N/A	