Shire of Peppermint Grove

Local Planning Policies - 5.7 Local Planning Policy – Tree Retention

Policy	Local Planning Policies – 5.7 Local Planning Policy – Tree Retention Policy
Statutory Authority	Planning and Development Act 2005 Planning and Development (Local Planning Schemes) Regulations 2015 Shire of Peppermint Grove Local Planning Scheme No. 4 (2017) 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 and often contribute to the fabric of heritage-listed places. 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:
    1. “works that are urgently necessary for any of the following —
    2. (a) public safety;
    3. (b) the safety or security of plant or equipment;
    4. (c) the maintenance of essential services; or
    5. (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 or on behalf of the local government on a street tree or a tree encroaching into a road reservation or a right-of-way 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 particularly when contributing to the fabric of heritage-listed places, 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.

A Heritage Impact Statement may be required to justify a *tree damaging activity* to a *regulated tree* that contributes to the heritage fabric of a heritage-listed place.

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) Involves the pruning or lopping of overhanging branches or limbs to the point where entering an abutting property or abutting common property under a strata scheme;

c) Is of a fruit tree and done for fruit production; or

d) 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 truck 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 or limbs of a tree not classified as maintenance pruning; and/or

d) The ringbarking, or 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

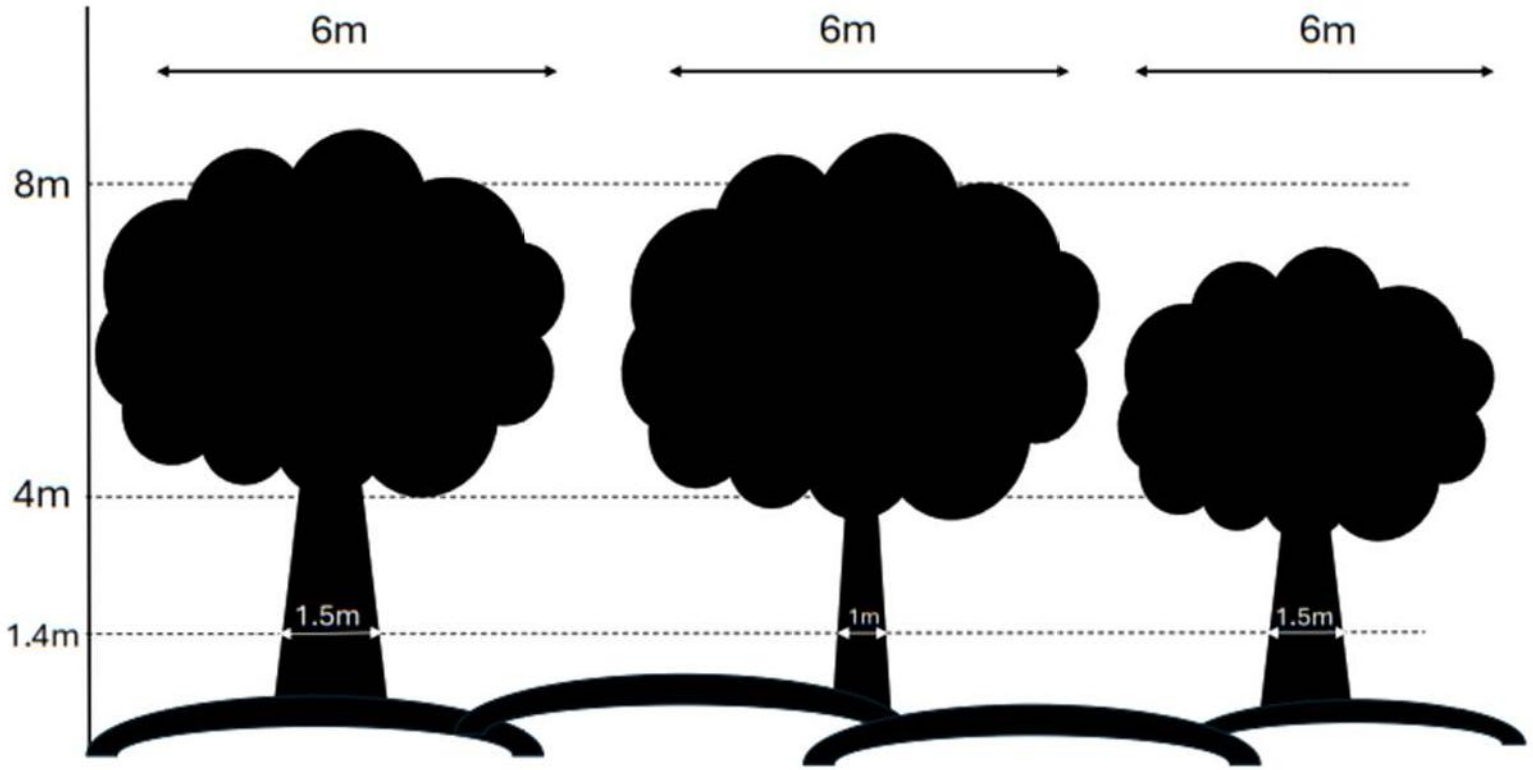
Department of Primary Industries and Regional Development Western Australian organism list https://www.agric.wa.gov.au/organisms

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	17 December 2024	Development Services
Review Date	22 September 2026	

EXAMPLES OF A REGULATED TREE



Height ✓
Canopy Diameter ✓
Trunk Circumference ✓

Height ✓
Canopy Diameter ✓
Trunk Circumference X

Height X
Canopy Diameter ✓
Trunk Circumference ✓