



# Implementing the **Monash Urban Landscape and Canopy Vegetation Strategy** – a discussion paper

Consultation version March 2018



**Document:** **Implementing the MULCVS - a discussion paper**  
**Filename:** Version 2-2 Discussion paper on implementation options.docx  
**Version:** 2.2  
**Status:** For Council Consideration  
**Date:** 9 March 2018  
**Pages:** 26  
**File Size:** 2038kb

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**Appendix 1** – Content for Community Law for Tree Protection

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# 1 Purpose of this discussion paper

This discussion paper explores the ways in which Council can implement the Draft Monash Urban Landscape and Canopy Vegetation Strategy (the “Strategy”) – building on the implementation recommendations in Section 7 of the Strategy – embedding the overall vision and objectives and the preferred character types into Council actions.

This can be achieved in the following ways:

- Improving planning policy to increase canopy cover
- Planning Overlays and a new Community Law
- Providing guidance for the community and decision-makers
- A significant tree study
- Community education and engagement

Council actions are outlined in each section of this report and are summarised in Section 10. All actions are divided into Stage 1 (to be started immediately following adoption) and Stage 2 (to be started in the next 2-3 years).

## 2 What are the aims of the Strategy?

The Strategy provides the following vision for the City of Monash:

*“Creek corridors that are teeming with birdlife and native fauna amongst the bushland and wetlands, flow through the leafy treed suburbs. The tree lined streets and the parks are vibrant and alive with people walking, cycling, socialising and enjoying the ambience of the green Garden City Character with fresh air and plenty of shade. In the Monash National Employment and Innovation Cluster, the landscaped setbacks with tall trees are bustling with people walking and cycling to and from their workplace or relaxing and socialising during lunch in the dappled shade and after work in one of the adjoining cafes that spill out onto the green landscaped setbacks.”*

To achieve this vision, the Strategy provides a number of objectives / aims, including to protect and enhance the green Garden City character to meet the challenges of climate change and growth, providing more resilience, strengthening biodiversity, retaining and increasing the presence of large canopy trees, promoting health and wellbeing, and developing a cohesive vision for landscape character. Importantly, the Strategy sets a target of increasing canopy cover from 22% to 30% by 2040 to create a more liveable, sustainable and resilient city.

The implementation of these objectives / aims is demonstrated in the following diagram:

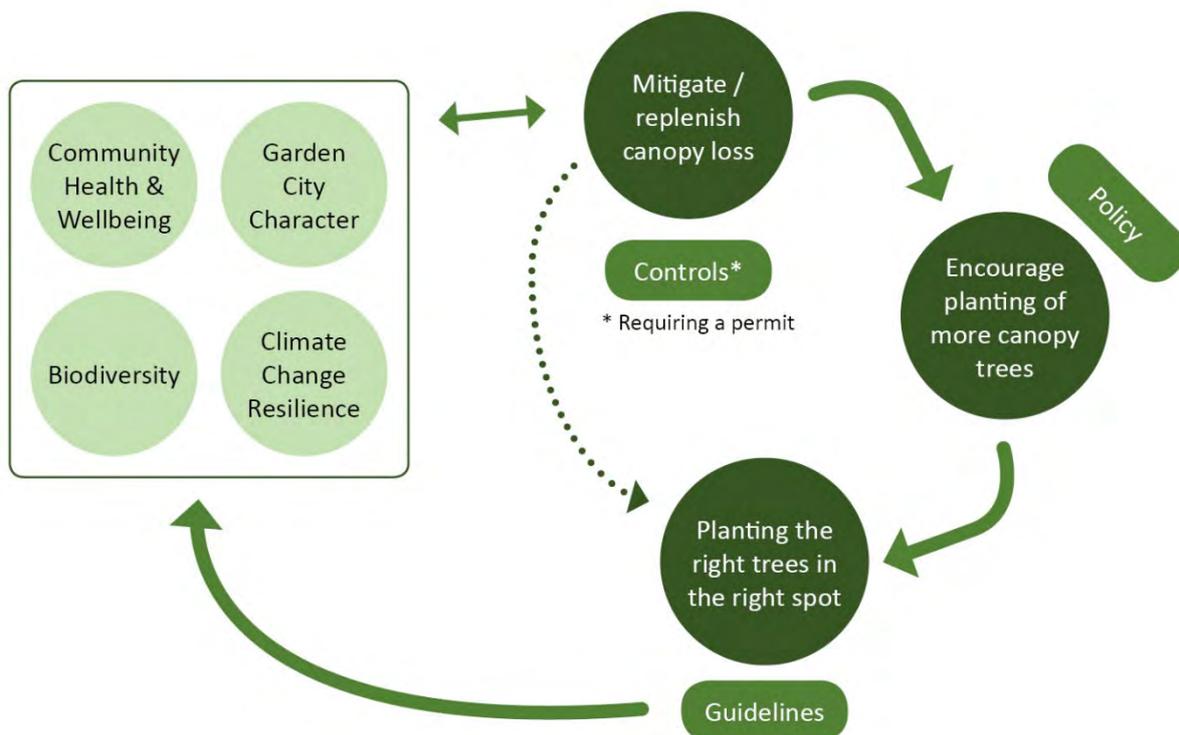


Figure 1 - Implementing the objectives / aims

The Strategy identifies nine preferred landscape character types in the City of Monash. Seven types deal with residential land use areas and there are two for commercial/industrial areas:

PREFERRED LANDSCAPE CHARACTER TYPE	OBJECTIVE TO ACHIEVE	WHERE APPLIED
<b>Residential land use:</b>		
Creek habitat corridor	Strengthen the biodiversity values and indigenous landscape character in both the private and public land along the waterway corridors.	Along Gardiners, Scotchman's, Damper and Dandenong Creeks.
Creek valley environs	Strengthen the presence of emergent canopy trees with a preference for tall native trees in the creek valleys that overlook the creek corridors.	In the valleys surrounding the creek habitat corridors.
Undulating leafy garden suburban	Strengthen the liveability and protect the suburban character of interwar residential areas with an emphasis on increasing the exotic canopy vegetation and greening to continue the suburban garden context as intensification of built form increases.	Areas between the creek valleys in Mount Waverley, Glen Waverley, Chadstone and Notting Hill.
Gently undulating leafy garden suburban	Strengthen the liveability and protect the suburban character of the interwar and 1960s onward residential areas with an emphasis on increasing exotic canopy vegetation and greening to continue the suburban garden context as intensification of built form increases.	Residential areas east of Huntingdale Road and south of North Road in Huntingdale, Clayton and Oakleigh South, and between the industrial areas and the Monash Freeway in Mulgrave.
Hilly native garden suburban	Strengthen the liveability and protect the suburban native landscape character of the post 1965 curvilinear suburban areas with an emphasis on increasing presence of emergent native canopy trees as intensification of built form increases in the longer term.	Residential area in Wheelers Hill between the Monash Freeway and Jells Road.
Early 1900s exotic garden style	Strengthen the heritage exotic garden style by strengthening the presence of alternating evergreen and deciduous street tree avenues and increasing the presence of large exotic canopy trees and vegetation on private land.	Residential areas in Oakleigh and Hughesdale within and surrounding the heritage precincts.
Waverley Park exotic urban	Continue to maintain the exotic streetscape canopy vegetation and planting character and strengthen the presence of exotic canopy vegetation on private land.	Waverley Park in Mulgrave.
<b>Commercial / industrial land use:</b>		
Native garden commercial/industrial	Create a distinctive native garden commercial/industrial landscape character in the Monash National Employment and Innovation Cluster by activating the landscape setbacks and strengthening the tall native tree cover and urban greening.	Industrial and Special Use Zone land in Clayton, Notting Hill and Mulgrave.
Urban greening commercial/industrial	Increase greening and evergreen canopy vegetation in the urban industrial precincts in the Oakleigh area to improve resilience and create a more comfortable and sustainable employment area.	Industrial and commercial land in Oakleigh and Huntingdale.

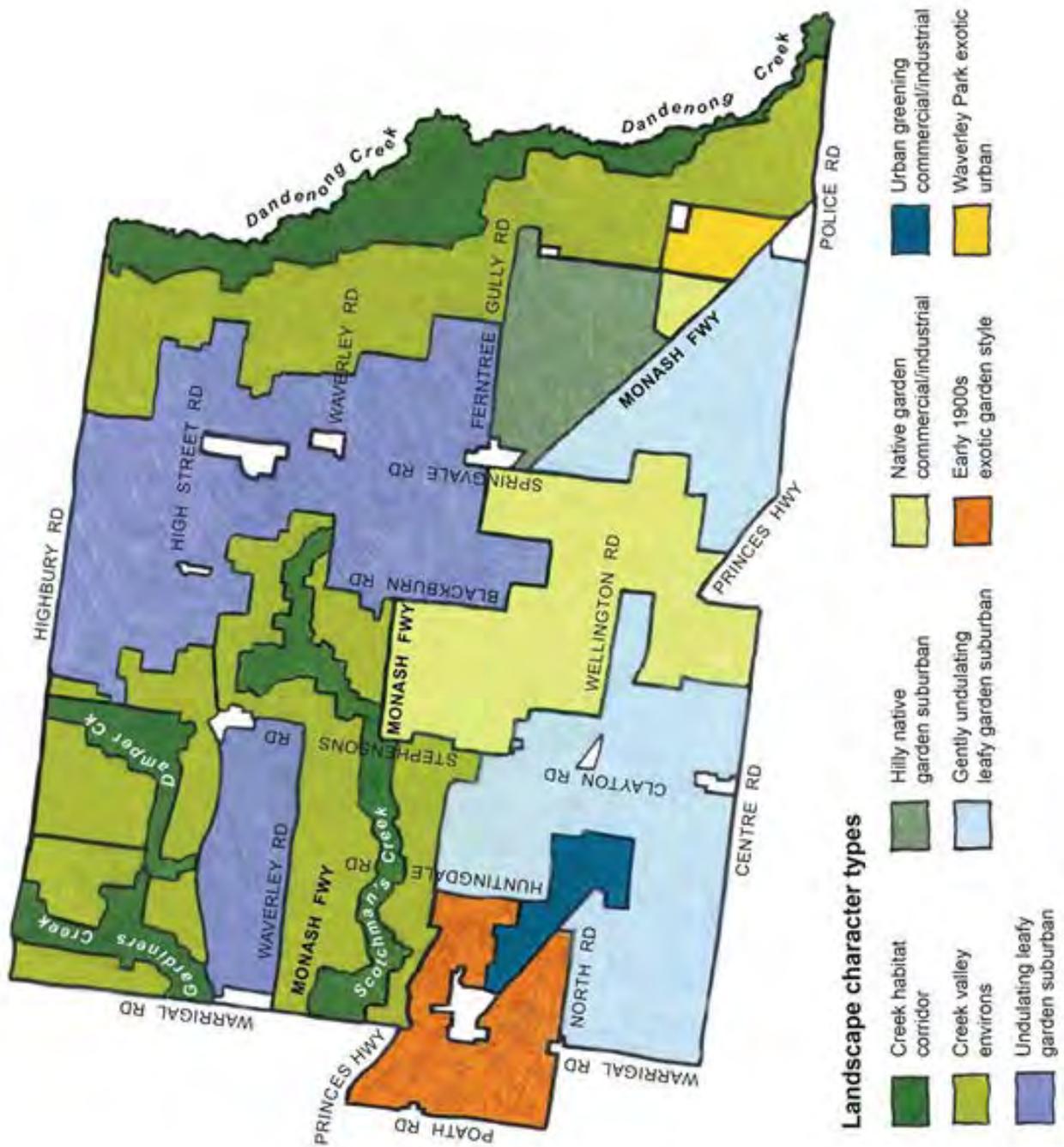


Figure 2 - Preferred landscape character types

### 3 Improving planning policy to increase canopy cover

#### ACTIONS:

- |   |         |
|---|---------|
| 1. Update and expand the definition and purpose of Garden City character to reference benefits in Clause 21.03.   | Stage 1 |
| 2. Create a new clause in the MSS to introduce the existing and preferred landscape character types in the Strategy.  | Stage 1 |
| 3. Outline the application of policies and overlays, and further strategic work to be undertaken in Stage 2.  | Stage 1 |
| 4. As part of the Planning Scheme Review, create and consolidate objectives and strategies relating to Garden City character.   | Stage 2 |
| 5. Replace Clause 22.05 (Tree Conservation Policy) with a new policy (“Significant Landscape Policy”)   | Stage 1 |
| 6. Update the Urban Design Guidelines with new landscaping requirements.  | Stage 1 |
| 7. Revise Clause 22.03 (Industry and Business Development and Character Policy) and Clause 22.02 (Monash Technology Precinct Policy) to strengthen the landscaping requirements and reflect the Strategy. | Stage 1 |
| 8. Revise the reference to the Urban Design Guidelines in Clause 22.02.   | Stage 1 |
| 9. As part of the Planning Scheme Review, rearrange and strengthen objectives and strategies relating to landscaping in commercial / industrial areas (including the MNEIC).                              | Stage 2 |

The key implementation of the Strategy is through policy changes in the Monash Planning Scheme to provide guidance and greater clarity for applicants and decision-makers in the planning permit process. The actions outlined above are derived from Section 7.1 in the Strategy, which recommends changes to the MSS, a new local planning policy and changes to policies relating to the Monash NEIC and other commercial / industrial areas.

## 4 Planning Overlays and a new Community Law

### ACTIONS:

- |  |         |
|--|---------|
| 10. Remove VPO, except where applied by Amendment C66.   | Stage 1 |
| 11. Apply SLO1 to creeks, ridgelines and special landscape areas.  | Stage 1 |
| 12. Use the Strategy to inform the content of the schedule.  | Stage 1 |
| 13. Follow the process in the <i>Local Government Act 1989</i> to introduce a Community Law for tree protection. A draft copy of the content needed is provided at Appendix 1. | Stage 1 |
| 14. Update schedules to residential zones to reference the preferred landscape character types.  | Stage 1 |

The use of Planning Overlays is important for the retention and enhancement of canopy cover across the municipality. These tools provide a mechanism for vegetation removal to be considered and to require replacement planting through conditions on a permit. The Planning Overlays can be supplemented by a Community Law, which would apply to areas outside of the overlay in areas where an overlay may not be strategically justified.

### 4.1 Removing the Vegetation Protection Overlay (VPO)

It is proposed to remove the VPO, except where it is applied to parts of the former Monash Primary School at 24 Samada Street, Notting Hill (introduced through Amendment C66, which was gazetted on 19 April 2012). The existing VPO1 schedule would be modified to refer only to that site.

## 4.2 Applying the Significant Landscape Overlay (SLO) to our creeks, ridgelines and special landscape character areas

The Strategy provides significant guidance for how the SLO should be proposed in order to protect and enhance canopy cover in the municipality's sensitive environmental areas.

GUIDANCE IN STRATEGY	PROPOSED APPLICATION
Emphasise the habitat significance of waterway corridors and adjoining private land and the landscape requirements for these areas.	Apply to Creek Habitat Preferred Landscape Character Precincts
Protect the ridgelines where built form can become dominant if designed without regard for the height of tree canopy.	Apply to Creek Valley Preferred Landscape Character Precincts. Apply further to the west to protect the ridgeline through Glen Waverley, Wheelers Hill and Mulgrave by using the existing VPO boundary on Mulgrave Street and eastern side of Springvale Road as a guide; and using the proposed boundary (in Amendment C125) between GR23 & NR24 on Lum Road as a guide.
Protect special landscape character precincts that represent the different periods of development in the municipality	Apply to Early 1900s Exotic Garden Style Preferred Landscape Character Precinct (Oakleigh & Hughesdale)

The map below illustrates the proposed application.

### SLO1 - Creeks, ridgelines and special landscape character areas

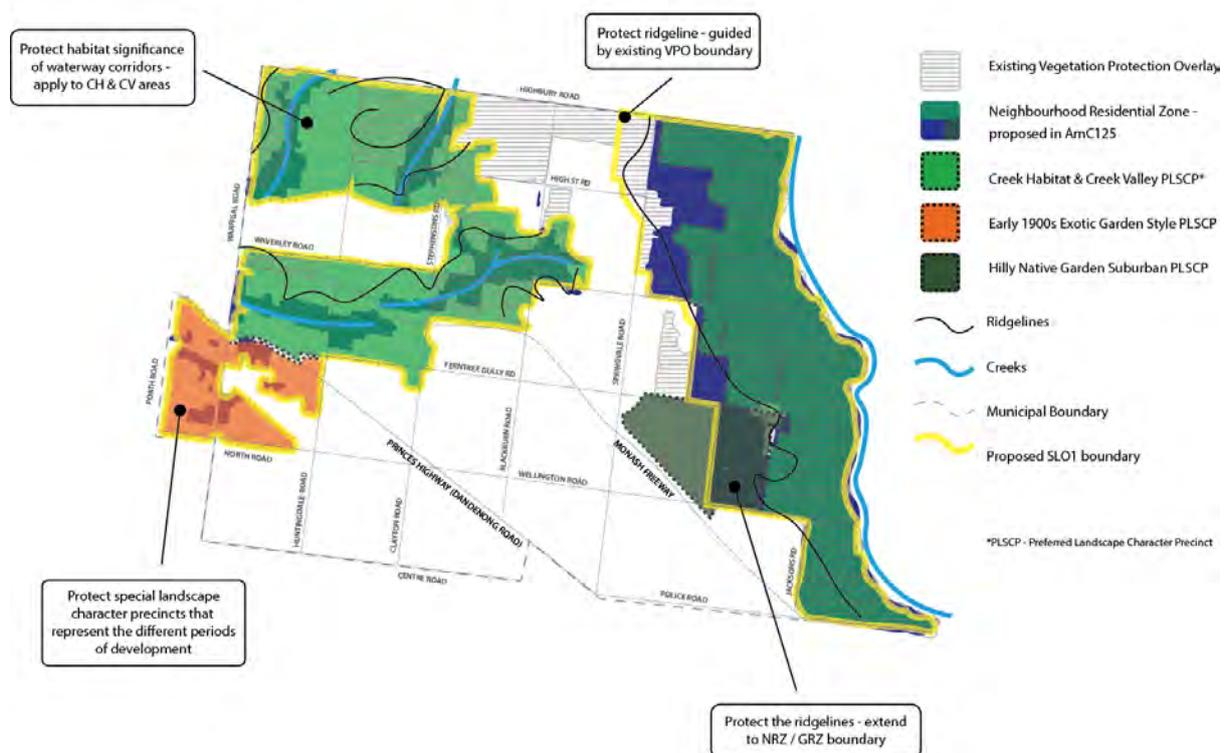


Figure 3 - Methodology for applying SLO1



The new Community Law would require a permit to remove a canopy tree or interfere with its structural root zone, and establish associated administrative and enforcement procedures.

Design and principles of a new Community Law:

- Protects canopy trees of a significant size on private land
- Protects canopy trees on adjoining land, where development is occurring within the structural root zone of that canopy tree
- It would not apply where a planning permit requirement already exists to protect trees or other vegetation
- It is easy to administer and enforce

A draft version of the Community Law is provided in Appendix 1.

Application fees charged by other councils with a Local Law for tree protection range from \$79 per tree to \$198 for 1-2 trees. A fee of between \$80 and \$100 per tree would be consistent with other councils and recover at some of the cost of the work by Council’s arborist in inspecting the trees and providing advice.

ADVANTAGES	DISADVANTAGES
Allows for retention in areas where canopy trees are more scattered and there is less consistency in landscape character that would justify the application of an SLO	Designed principally to reduce loss of canopy cover rather than increase canopy cover over time.
The permit triggers and exemptions can be adjusted over time.	Generally limited to 1-for-1 replacement of canopy trees
Protection for individual ‘significant trees’ in the Significant Tree Register can be administered by additions to the Community Law.	Maximum fine for removing a tree without a permit is capped at 20 Penalty Units (\$3,171.40 in 2017-18).
Form and content not limited to what is permissible in the schedule to the SLO.	Separated out from planning / building permit systems.
It is possible to protect trees on adjacent properties where buildings are to be constructed within the structural root zone of the tree.	

#### 4.4 Where the SLO won’t be applied

It is proposed not to apply the SLO to the following properties or areas:

- **Land zoned for public purposes and/or Crown Land where the core business of public authorities is the management of vegetation.** Applying the SLO to this land would duplicate the function of the public land manager.
- **Land owned by the Commonwealth Government.** Planning controls have no force or effect over land owned by the Commonwealth Government. This includes the CSIRO site in Notting Hill / Clayton.
- **Major activity centres.** These centres are subject to structure planning and controls for canopy cover (if required) are best left to the implementation of the structure plan.
- **Local shopping centres.** Generally, in these centres, the shops are constructed to the front boundary and there is minimal opportunities for landscaping on private land. There is heavy reliance on street tree planting for canopy cover.

## 5 Providing guidance for the community and decision-makers

### ACTIONS:

15. Review Guidelines 1 to 7 for implementation as listed in the table in Section 5.

Stage 1

It is proposed to use policy to provide high level guidance for decision-makers, with the more detailed guidelines added as reference documents. These guidelines would also be used for the Community Law (if that option is pursued).

Section 6 of the Strategy outlines the following guidelines, which can be implemented as a whole in guidelines that sit outside the planning scheme and partially as objectives, strategies and broad guidance in the MSS or planning policies, as indicated:

## 6 A significant tree study

### ACTIONS:

16. Establish an internal working group to investigate the feasibility of a Significant Tree Study to include trees on private land.

Stage 2

It is proposed to investigate the preparation of a Significant Tree Study to:

- Document the existing large canopy trees in the municipality.
- Broaden the appreciation of the cultural landscape heritage value of these trees.
- Broaden the appreciation of the contribution these trees make towards the sense of place, the Garden City Character and community health and wellbeing.

The study would look at street trees, trees in public open space and trees on private land for inclusion on a potential future register. The protection of these trees could be achieved in a number of ways, including through a Community Law requiring a permit for the removal of a 'Significant Tree', applying a Heritage Overlay if it meets the relevant heritage criteria or applying a VPO. An amenity value could also be attached to significant trees on private land.

## 7 Community education and engagement

### ACTIONS:

17. Establish an internal working group across Council to develop community and engagement material, including:
- Material to be included in a welcome pack
  - Education campaigns
  - Engagement with community groups
  - Exploring the feasibility of showcasing good examples of tree retention
  - And any other relevant actions

Stage 1

The Strategy has recommended a number of actions relating to community education and engagement, and these can be implemented through a number of existing programs.

### 7.1 Information packs for new residents, land owners and developers

It is proposed, as part of Council's existing welcome program, to prepare and distribute 'Information Packs' within the Monash context inclusive of:

- A brochure that outlines the beneficial effects of canopy vegetation, particularly large mature trees, on community health and wellbeing, biodiversity values, the landscape character and how they mitigate the effects of climate change. The brochure would also encourage the retention of trees when considering renovations and new builds.
- An information summary sheet of Existing and Preferred landscape character type for their area and the relevant suggested tree species planting list.
- Other relevant material already produced by Council including the Gardens for Wildlife Booklet for residents, land owners and developers in the Creek habitat corridor, Creek valley environs and the Hilly native garden suburban preferred landscape character types.
- If desirable and practical, the provision of a sapling with the relevant planting guidelines for the species of tree / shrub best suited to the dwelling type and precinct.

### 7.2 Tree retention

In combination with the above action, it is proposed to undertake an education program to encourage land owners and developers to retain and plant new trees on their properties where feasible so that it is possible to maintain their natural form without hedging and shaping the trees. This is to maximise the benefits of shading and overall structural health and longevity of the tree, and the tree's contribution to the site and to the tree canopy cover of the municipality.

### 7.3 Community groups

It is proposed to work with established community groups, Community Advisory Groups and organisations to communicate and promote the beneficial effects of canopy trees.

## 7.4 Garden tours

It is proposed to explore the feasibility of offering (and/or publicising) garden tours, awards and other incentives to showcase good examples of tree retention and planting and the use of plants that provide multiple benefits of greening as described in the Strategy.

## 8 Resource implications

### ACTIONS:

18. Determine the preferred option for cost recovery.
19. Streamline tree assessment processes and recruit necessary staff to cover anticipated workload.

Stage 1  
Stage 1

### 8.1 Estimated application load

Both options outlined in Section 4.3 would incur similar administrative costs, although Option 1 may be slightly higher as the Community Law would be applicable to all private land outside SLO1 or VPO1 (including commercial land in activity centres), whereas SLO2 and SLO3 would be more targeted.

Council currently assesses approximately 100 applications per year. All applications in VPO1 are currently exempt from notice and review, and therefore any further administrative costs. Expanding tree protection controls to cover most of the municipality would mean that 2.8 times as many properties would be affected compared with the current VPO.

Applications under the SLO or VPO are eligible for the streamlined VicSmart process if all the required information is provided, the application is for a single tree or the buildings and works proposed are associated with a single dwelling and are a carport, garage, pergola, verandah, deck, shed or similar structure. These applications are dealt with within 10 days.

Schedules to the SLO or VPO can state that a permit is exempt from notice and review. Applications eligible for VicSmart are exempt from notice and review.

### 8.2 Staffing levels

In estimating that the application load may increase by up to three-fold, it is estimated that 1 additional full-time person to administer the process, 1 administration officer and 1 full-time arborist to undertake inspections would be required to process the applications. This would equate to about \$275,000 pa in salaries.

This can be reduced if training and guidelines were provided to statutory planners to deal with the majority of tree removal applications, with the more contentious or difficult applications being referred to the arborist.

This would be similar across both options, as it is likely that statutory planners would deal with both planning applications and Community Laws permits.

In addition, increased resourcing of enforcement would be required – in responding to complaints and/or proactive enforcement. Some of the costs of enforcement will be recovered through fines for removing trees without a permit.

### 8.3 Recovering the cost

A fee should be charged in order to recover some of the cost associated with assessing the application.

There are three distinct options:

- No fee (status quo)
- Partial cost recovery (sliding scale or per tree)
- Full cost recovery (per tree, based on time to assess application by planner and arborist, and any administrative costs associated with lodgement)

Fines for non-compliance with permit conditions or removing trees without a permit can recover some of the costs in the short term. The Community Law proposes maximum fines of 20 penalty units (currently \$3,171.40) per offence. Five penalty units (currently \$793) for an individual and 10 penalty units for a company (currently \$1,586) is the maximum fine issued by Council under the *Planning and Environment Act 1987* for these types of offences. Courts can issue fines of up to \$190,284.

Tree removal is our most common complaint and in increasing the extent of tree protection across the municipality, there would be an increase in workload for officers and a need to have access to the full-time arborist, who can carry out inspections and give advice.

A discussion of application fees charged by other councils is outlined in Appendix 2, which range from \$79 per tree to \$198 for 1-2 trees.

## 9 What else is happening?

There are a number of other activities of Council and other authorities that may have an impact on how Council implements the Strategy across the municipality and in particular precincts or sites. The activities that are happening at present are:

- Council is commencing the structure plans for Huntingdale, Clayton and Mount Waverley, with background analysis being prepared in 2018 and consultation on draft structure plans in early to mid-2019.
- Council is undertaking a review of the Monash Planning Scheme, as required by the Planning and Environment Act 1987 every 4 years. Following the review, Council will consult on an amendment or a series of amendments to make changes to the planning scheme and outline further strategic work.
- Council is implementing actions from the Street Tree Strategy 2016.
- Amendment C125, which implements Stage 1 of the Monash Housing Strategy 2014, has been approved in part and awaiting gazettal.
- The Victorian Planning Authority is finalising the Framework Plan for the Monash National Employment and Innovation Cluster.
- The Minister for Planning has approved an interim SLO that covers all the residential areas in the City of Whitehorse. Whitehorse City Council will exhibit an amendment for the permanent controls in late 2018 (some further work is required as a condition of authorisation).
- The Victorian Law Reform Commission has put out a discussion paper on establishing a statutory scheme for dealing with tree disputes amongst neighbours. Submissions closed on 22 February 2018.
- In response to the 2020 Vision, local governments are undertaking plans to combat the urban heat island effect through increasing canopy cover.

## 10 Summary of actions

NO.	DESCRIPTION	STAGE
1	Update and expand the definition and purpose of Garden City character to reference benefits in Clause 21.03.	1
2	Create a new clause in the MSS to introduce the existing and preferred landscape character types in the Strategy.	1
3	Outline the application of policies and overlays, and further strategic work to be undertaken in Stage 2.	1
4	As part of the Planning Scheme Review, create and consolidate objectives and strategies relating to Garden City character.	2
5	Replace Clause 22.05 (Tree Conservation Policy) with a new policy (“Significant Landscape Policy”)	1
6	Update the Urban Design Guidelines with new landscaping requirements.	1
7	Revise Clause 22.03 (Industry and Business Development and Character Policy) and Clause 22.02 (Monash Technology Precinct Policy) to strengthen the landscaping requirements and reflect the Strategy.	1
8	Revise the reference to the Urban Design Guidelines in Clause 22.02.	1
9	As part of the Planning Scheme Review, rearrange and strengthen objectives and strategies relating to landscaping in commercial / industrial areas (including the MNEIC).	2
10	Remove VPO, except where applied by Amendment C66.	1
11	Apply SLO1 to creeks, ridgelines and special landscape areas.	1
12	Use the Strategy to inform the content of the schedule.	1
13	Follow the process in the <i>Local Government Act 1989</i> to introduce a Community Law for tree protection. A draft copy of the content needed is provided at Appendix 1.	1
14	Update schedules to residential zones to reference the preferred landscape character types.	1
15	Review Guidelines 1 to 7 for implementation as listed in the table in Section 5.	1
16	Establish an internal working group to investigate the feasibility of a Significant Tree Study to include trees on private land.	2
17	Establish an internal working group across Council to develop community and engagement material, including: <ul style="list-style-type: none"> <li>• Material to be included in a welcome pack</li> <li>• Education campaigns</li> <li>• Engagement with community groups</li> <li>• Exploring the feasibility of showcasing good examples of tree retention</li> <li>• And any other relevant actions</li> </ul>	1
18	Determine the preferred option for cost recovery.	1
19	Streamline tree assessment processes and recruit necessary staff to cover anticipated workload.	2

## **Appendix 1**

Draft Local Law No. 5

**CONTENT FOR  
DRAFT COMMUNITY LAW  
FOR  
TREE PROTECTION**

**CITY OF MONASH COMMUNITY LAW – TREE PROTECTION**

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DRAFT

## CITY OF MONASH COMMUNITY LAW

### PART 1 – INTRODUCTION

#### Title

1. This Local Law is called "Community Law for Tree Protection".

#### What are the objectives of this Local Law?

2. The objectives of this Local Law are to:
  - 2.1 Ensure that the established treed character of the *municipal district* is maintained; and
  - 2.2 Prohibit, regulate and control any activities which may endanger canopy trees within the *municipal district*.

#### What authorises this Local Law?

3. This Local Law is made under section 111 of the *Act*.

#### When does this Local Law commence?

4. This Local Law commences on [insert commencement date].

#### When does this Local Law end?

5. Unless revoked sooner, this Local Law ends on [insert end date].

#### To what part of the *municipal district* does this Local Law apply?

6. This Local Law applies throughout the whole of the *municipal district*.

#### Definitions

7. The words identified in italics throughout this Local Law are intended to have the following meanings, unless the context suggests otherwise:

"*Act*" means the Local Government Act 1989, or any later equivalent enactment.

"*appointed agent*" means the person authorised in writing by an owner of land to make an application, appeal, referral or representation on the owner's behalf.

"*Asset Protection Permit*" means a written permit issued by *Council* under Local Law No. 3 for the protection of public assets and infrastructure during *building work*.

"*authorised officer*" means a person appointed by *Council* to be an authorised officer under section 224 of the *Act*.

"*canopy tree*" means any tree:

- (a) With a total trunk circumference of 150cm or more measured at a point 1 metre along the trunk's length from the closest point above the ground; or
- (b) If multi-stemmed, with a total trunk circumference of all its trunks of 150cm or more measured at a point 1 metre along the trunks' lengths from the closest point above ground level; or
- (c) With a trunk circumference of 150cm or more measured at ground level; or
- (d) With a height from the ground to the top of the canopy of 10 metres or more.

**Note: See Schedule 1, Diagrams 1, 2 & 3**

"*Council*" means Monash City *Council*.

"*Council land*" means any land (including a building) vested in or under the control of *Council*, including a *reserve*, watercourse, reservation and the like but excludes a *road*.

"*damage*" means to interfere with, prune or undertake works near a tree such that the tree is no longer viable in terms of health, structure or stability.

"*land*" includes:

- (a) buildings and other structures permanently or temporarily fixed to land; and
- (b) land covered with water; and
- (c) The airspace above and the earth below the land.

"*municipal district*" means the municipal district of *Council*.

"*Municipal Place*" means any building which is on *Council land*, and includes a public library and any recreation centre which is owned, occupied or under the management or control of *Council*.

"*Notice to Comply*" means a notice served under Clause 10.1.

"*offence*" means an offence against or breach of a provision of this Local Law or a breach of a notice or direction issued under it.

"*overlay*" means any overlay or other mechanism in the Monash Planning Scheme, which regulates the removal, destruction or lopping of vegetation on *land* where the *overlay* is applied. It may include the Significant Landscape Overlay, the Vegetation Protection Overlay, the Environmental Significance Overlay or the Heritage Overlay.

"*penalty*" means a fine prescribed under this Local Law for an *offence*.

*“permit”* means a permit issued under this Local Law.

*“private land”* means any land which is not *Council land* nor land occupied or under the control or management of a public body.

*“prune”* means to remove any branches of a tree which is greater than 50mm in diameter at the point of contact with the larger branches or the trunk.

*“public land”* means all *land* owned, leased, managed or occupied by a public body, including *Council*.

*“structural root zone”* means the area surrounding a *canopy tree’s* trunk being a circular area below the tree extending at equal distances from the tree base in all directions, the radius of which is 2 metres.

**Note: See Schedule 1, Diagram 4**

*“tree protection zone”* means the area surrounding a canopy tree’s trunk to be protected as required by a *permit* or a *Notice to Comply*. This area may be larger in area than the *structural root zone* as determined by Council or the authorised officer.

*“works”* includes building, trenching, digging, compaction, excavation, fill or storage of materials and equipment whether by mechanical or manual methods.

### **Notes in this Local Law**

8. Introductions to Parts, headings and notes are explanatory only and do not form part of this Local Law. They are provided to assist understanding.

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## PART 2 – THE CONTEXT IF THIS LOCAL LAW

This Part is intended to help you understand the context in which the Local Law is made. It is not intended to affect the interpretation of any provisions in other parts of the Local Law.

Council recognises the contribution that the *Municipal District's* tree canopy makes to the quality of its suburban environment. Damage and or removal of *canopy trees* results in a degradation of this established character. Council also acknowledges that trees in the suburban environment have a series of environmental benefits such as reducing the impact of the urban heat island effect, reducing the effects of climate change, reducing temperatures in and around buildings, reducing stormwater runoff, absorbing pollution, providing habitat and promoting biodiversity. This Local Law is based on the following principles:

- Trees that contribute to the *Municipal District's* overall tree canopy character should be retained where practicable. Works near *canopy trees* should be minimised to prevent *damage* and disruption to tree roots or growing conditions.
- Owners of *land* and or contractors will be responsible for the loss or *damage* of *canopy trees* that are required to be retained.

This Local Law gives *Council* the necessary to controls to effectively maintain and enhance canopy cover and the Garden City Character, local amenity and biodiversity of the municipal district.

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## PART 3 – TREE PROTECTION

### 9. Protection of Trees

- 9.1 This clause applies to any *canopy tree* where the tree, as described above is situated on any *private land*, whether or not the tree extends beyond the boundary of that *private land*, and the *private land* is not subject to any *overlay*. For avoidance of doubt, this clause does not apply to such part of a tree that is above or below land which is not *private land*.
- 9.2 A person must not within a *permit*:
- 9.2.1 remove, *damage*, kill or destroy or direct, authorise or allow to be removed, *damaged*, killed or destroyed a *canopy tree*.
- 9.2.2 carry out, or direct, authorise or allow to be carried out any works within the *structural root zone* of a *canopy tree*.<sup>1</sup>
- 9.2.3 remove, *damage*, kill or destroy or direct, authorise or allow to be removed, *damaged*, killed or destroyed a tree required to be planted as a condition of a *permit*.

#### Penalty: 20 Penalty Units

- 9.3 Clause 9.2 does not apply to:
- 9.3.1 a person whose actions are required by any other legislation or by any other statutory authority; or
- 9.3.2 a person acting in accordance with the instruction or direction from an *authorised officer*.
- 9.4 If a tree, or part of a tree, is interfered with in any of the circumstances specified in Clause 9.2, the owner of any *private land* on which the relevant part of the tree is on, over or under is guilty of an offence, whether or not the person who actually interfered with the tree is identified or prosecuted, unless the owner can prove that the interference was undertaken by another party without the owner's knowledge. For avoidance of doubt, where a *canopy tree* extends over multiple parcels of *private land*, the owner of the *land* on, over or under which the part of the tree which has not been interfered with is located, is not guilty of an offence.

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<sup>1</sup> Note: notwithstanding Clause 9.2.2, it is an offence under Clause 9.2.1 to 'remove, *damage*, kill or destroy or direct, authorise or allow to be removed, *damaged*, killed or destroyed a *canopy tree*'. Accordingly, works occurring outside the *structural root zone* of a *canopy tree* will constitute an offence under Clause 9.2.1 if such works either *damage*, kill or destroy that tree.

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## PART 4 – ADMINISTRATION AND ENFORCEMENT

### 10. **Notices to Comply**

- 10.1 *Council* or an *authorised officer* may, by *Notice to Comply*, direct any owner, occupier or other relevant person to remedy any thing which constitutes a breach of this Local Law.
- 10.2 An *authorised officer* may by *Notice to Comply* direct a person who appears to be in breach of this Local Law to plant by way of replacement one or more trees of a type and in a location specified by Council or the *authorised officer*.

### 11. **Time to Comply**

- 11.1 A *Notice to Comply* must state the time and date by which the situation must be remedied.
- 11.2 The time required by a *Notice to Comply* must be reasonable in the circumstances having regard to:
- 11.2.1 the amount of work involved;
  - 11.2.2 the degree of difficulty;
  - 11.2.3 the availability of necessary materials or other necessary items;
  - 11.2.4 climatic conditions;
  - 11.2.5 the degree of risk or potential risk; and
  - 11.2.6 any other relevant matter.
- 11.3 A *Notice to Comply* must also include:
- 11.3.1 the name of the alleged offender (if known);
  - 11.3.2 the provision of this Local Law which appears to have been breached;
  - 11.3.3 the date on which it was given to the owner, contractor or other person; and
  - 11.3.4 the name of the *authorised officer* who has given it.
- 11.4 Any person who fails to remedy a thing in accordance with a *Notice to Comply* within the time specified is guilty of an offence under this Local Law.

**Penalty: 20 Penalty Units**

### 12. **Application for *permits***

- 12.1 An application for a *permit* must be made in writing using a form prescribed by *Council* from time to time and must be accompanied by the appropriate fee as determined by *Council* from time to time.
- 12.2 Where an application for a *permit* is made by a person who is not the owner of the *private land* on which the tree described in Clause 9.1 is located, the application must be

accompanied by a document evidencing the owner's consent to the application for the *permit* being made.

- 12.3 If required to do so by Council or an *authorised officer*, an applicant must provide additional information before the application for a *permit* is considered.

### 13. Permits

- 13.1 The *Council* or an authorised officer may, after considering the application for a *permit*:
- 13.1.1 grant a *permit*, with or without conditions
  - 13.1.2 refuse to grant a *permit*, or
  - 13.1.3 determine that a *permit* is not required.
- 13.2 In determining whether to grant a permit under this Local Law, the Council or authorised officer must take the following into consideration, to the extent it considers appropriate:
- 13.2.1 the effect of the proposed action on the aesthetics of the neighbourhood;
  - 13.2.2 the condition of the tree (i.e. its health and structural integrity)
  - 13.2.3 the appropriateness of the tree for its location on the property having regard to the existing buildings and conditions on the property;
  - 13.2.4 whether the proposed action is to be undertaken for reasons of health or safety;
  - 13.2.5 whether the tree is causing any unreasonable property damage;
  - 13.2.6 whether the tree is causing any unreasonable public nuisance or creating any unreasonable nuisance to *private property* owners or occupiers;
  - 13.2.7 whether the tree is a recognised weed;
  - 13.2.8 the nature of the zoning of the land under the Monash Planning Scheme;
  - 13.2.9 the appropriateness of any replanting to the setting;
  - 13.2.10 any legislative requirements; and
  - 13.2.11 any other matter relevant to the circumstances associated with the application.

### 14. Payment of a Security Bond

- 14.1 Where:
- 14.1.1 the owner of *private land* proposes carrying out works; or
  - 14.1.2 the owner of *private land* engages a contractor for the purposes of carrying out *works* within the structural root zone of a canopy tree, whether those *works* are proposed to be undertaken pursuant to a planning permit or otherwise, the *Council* or an *authorised officer* may, by notice given to the Owner, require payment of a security bond to the *Council*.

- 14.2 The security bond shall be for an amount and in a form determined by the Council or the Authorised Officer.
- 14.3 Twelve months after the completion of the Works the Council may:
- 14.3.1 retain all or any part of the security bond to cover costs of replacement of any *canopy tree damaged* or killed as a result of the *works*; or
  - 14.3.2 refund the security bond.

## 15. Cancellation of a Permit

- 15.1 The Council or an authorised officer may cancel a permit if it considers that:
- 15.1.1 there has been a serious or ongoing breach of the conditions of the *permit*; or
  - 15.1.2 a Notice to Comply has been issued, but not complied with within seven (7) days after the time specified in the notice for compliance; or
  - 15.1.3 there was a significant error or misrepresentation in the application for the Permit; or
  - 15.1.4 in the circumstances, the *permit* should be cancelled.
- 15.2 Before it cancels a *permit*, the *Council* or an *authorised officer* must provide to the holder of the *permit* a reasonable opportunity to make comment on the proposed cancellation.
- 15.3 If a holder of a *permit* is not the owner of the *private land* and the owner's consent was required to be given to the application for the *permit*, the owner must be notified of any *Notice to Comply* and of the reason why it has been served.

## 16. Inspections

- 16.1 An *authorised officer* may enter any *private land* for the purpose of inspecting any *canopy tree* where the *authorised officer* has reasonable grounds for believing that a breach of this Local Law has been, is being committed or is likely to be committed.
- 16.2 An *authorised officer* may enter any *private land* for the purpose of inspecting any *canopy tree* where an application for a *permit* has been made in accordance with this Local Law.

## 17. Infringements

- 17.1 Where an *authorised officer* reasonably believes that a person has committed an offence against this Local Law, the *authorised officer* may issue and serve on that person an infringement notice as an alternative to prosecution for the offence.

17.2 The penalty fixed for an infringement notice under this Local Law is:

17.2.1 where an offence relates to a tree which in the opinion of the Authorised Officer is dead – **5 penalty units for each offence**;

17.2.2 for all other offences – **20 penalty units for each offence**.

## 18. Offences

18.1 A person who:

18.1.1 fails to comply with any provision of this Local Law;

18.1.2 fails to comply with a condition of a *permit*;

18.1.3 fails to comply with a *Notice to Comply* issued under this Local Law; or

18.1.4 submits wrong, inaccurate or misleading information in an application for a *permit* made under this Local Law

is guilty of an *offence*.

## 19. Applications for Review

19.1 Within 60 calendar days of receiving notice of a refusal to grant a *permit* under Clause 13.1 of this Local Law, the applicant for the Permit may apply to Council for a review of that decision.

19.2 An application for review under Clause 19.1 of this Local Law must be made in writing and must:

19.2.1 state the grounds upon which the application for review is made; and

19.2.2 include further information which was not provided to or made available at the time the application for the *permit* under this Local Law was made.

19.3 If required to do so by *Council*, an applicant must provide additional information before *Council* determines an application for review.

19.4 If an application to review a decision is made in accordance with this clause, the review shall be undertaken by *Council's* Chief Executive Officer or such person as the Chief Executive Officer appoints for such purpose.

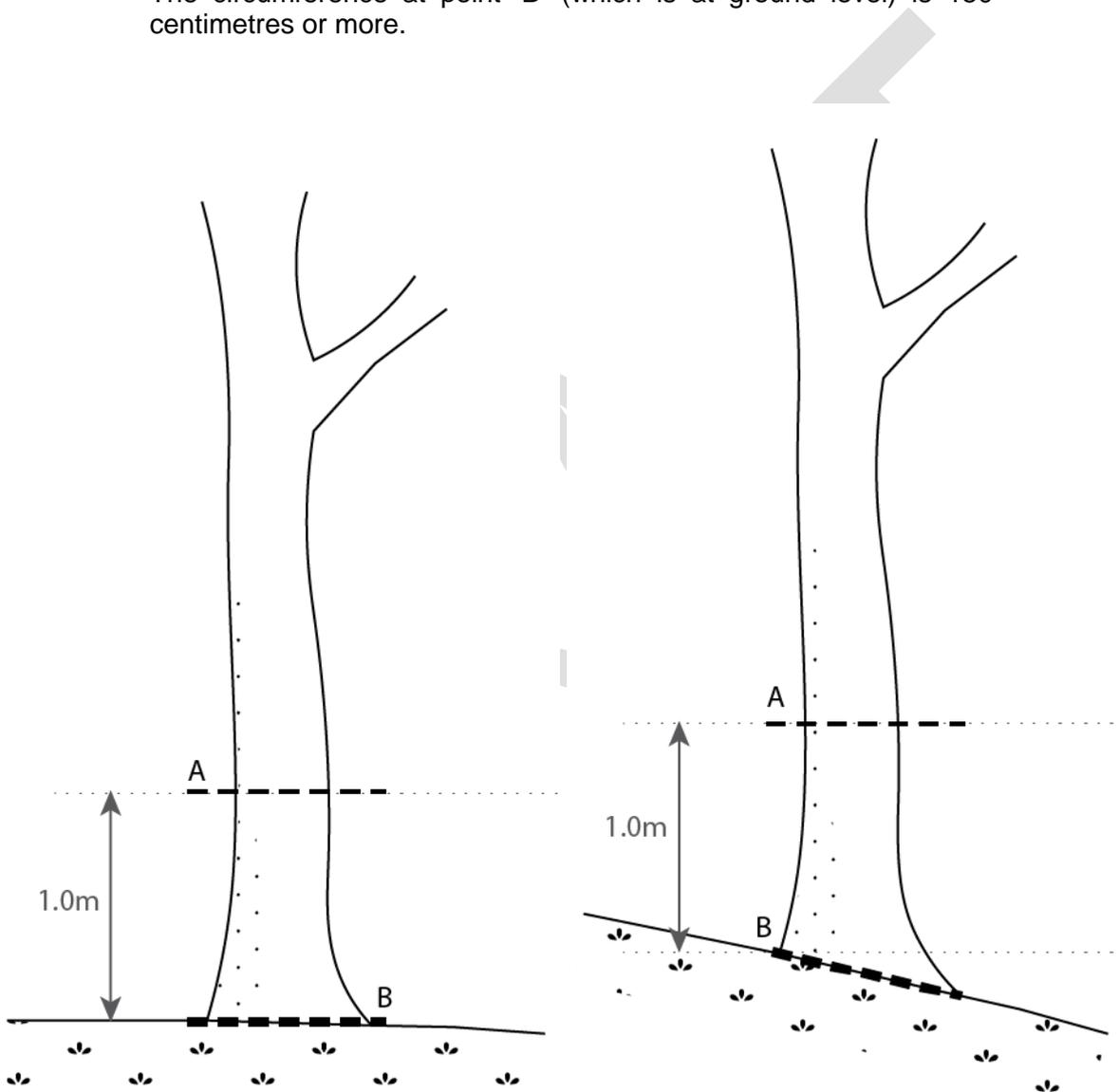
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### SCHEDULE 1 – Diagrams

**Diagram 1** – diagram illustrating how to determine whether a single stemmed tree is a *canopy tree*:

For single stemmed trees, a tree is a *canopy tree* if:

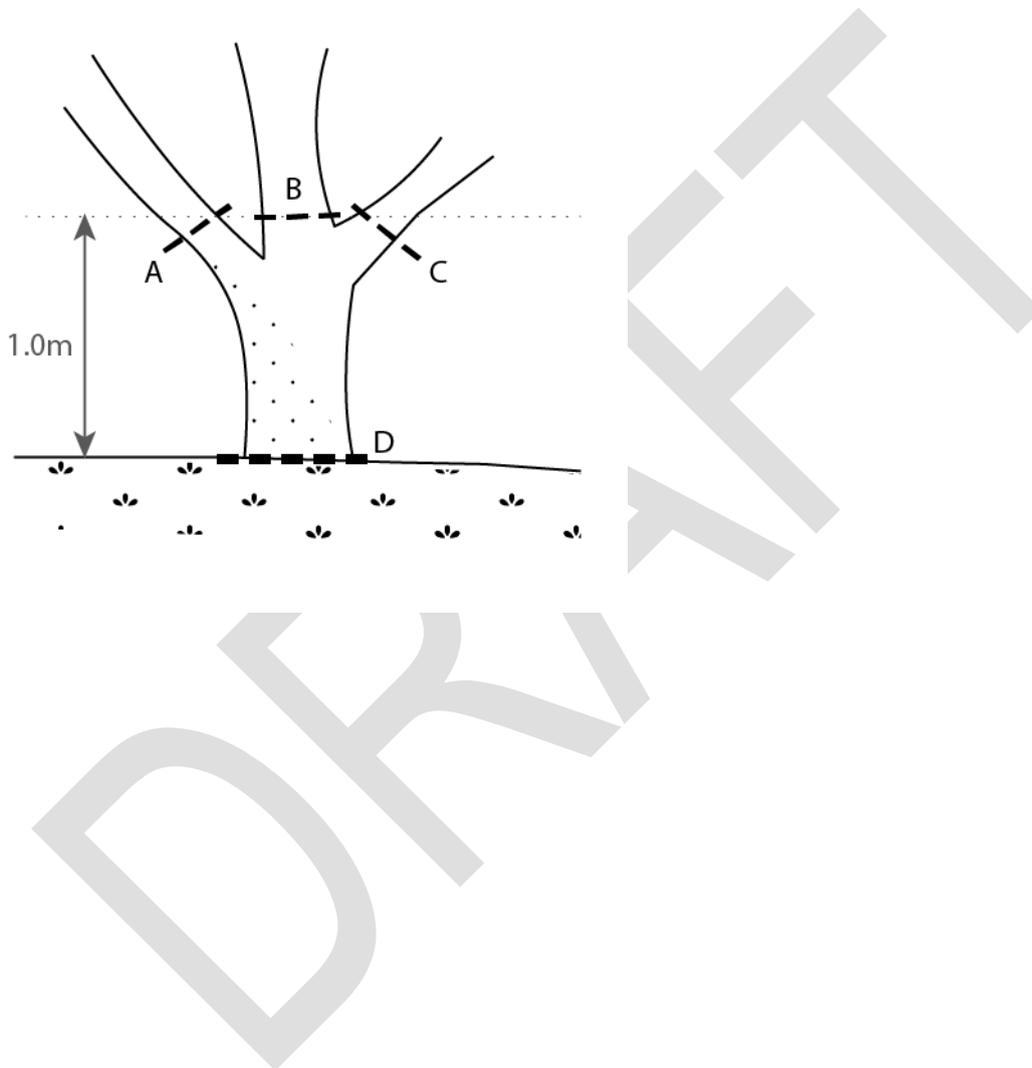
- The circumference at point 'A' (which is 1 metre above ground level, measuring along the trunk's length from the closest point above ground level) is 150 centimetres or more; or
- The circumference at point 'B' (which is at ground level) is 150 centimetres or more.



**Diagram 2** – diagram illustrating how to determine whether a multi stemmed tree is a *canopy tree*:

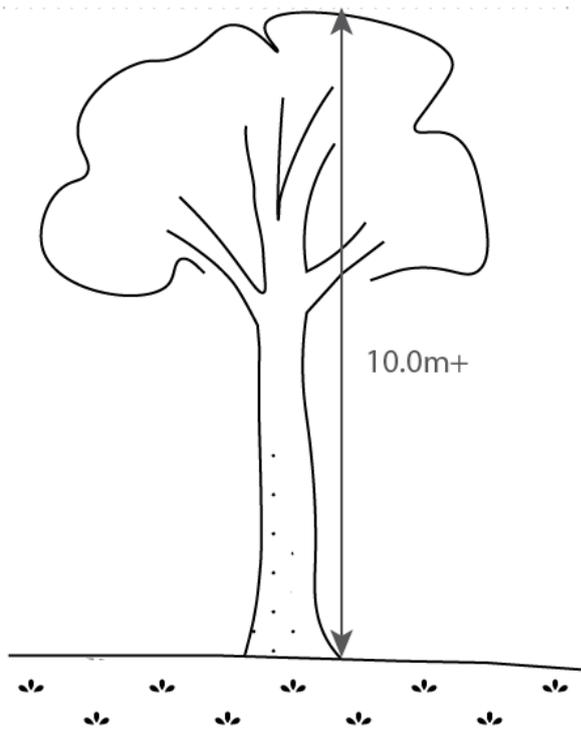
For multi-stemmed trees, a tree is a *canopy tree* if:

- The combined circumference at points 'A', 'B' and 'C' (which is 1 metre above ground level, measured along the trunks' length from the closest point above ground level) is 150 centimetres or more; or
- The circumference at point 'D' (which is at ground level) is 150 centimetres or more.



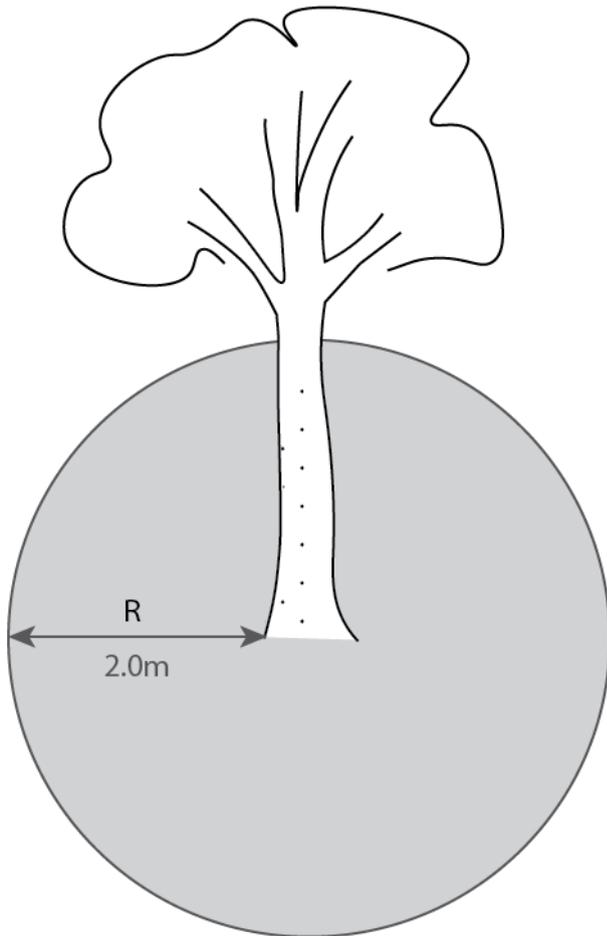
**Diagram 3** – diagram illustrating how to determine the height of a canopy tree.

A tree is a canopy tree if it is 6 metres or more as measured from ground level to the top of the canopy.



**Diagram 4** – diagram illustrating how to determine the *structural root zone*

The structural root zone (SRZ) is based on 'R'. The SRZ is a circulate area below the tree extending at equal distances from the tree's base in all directions.



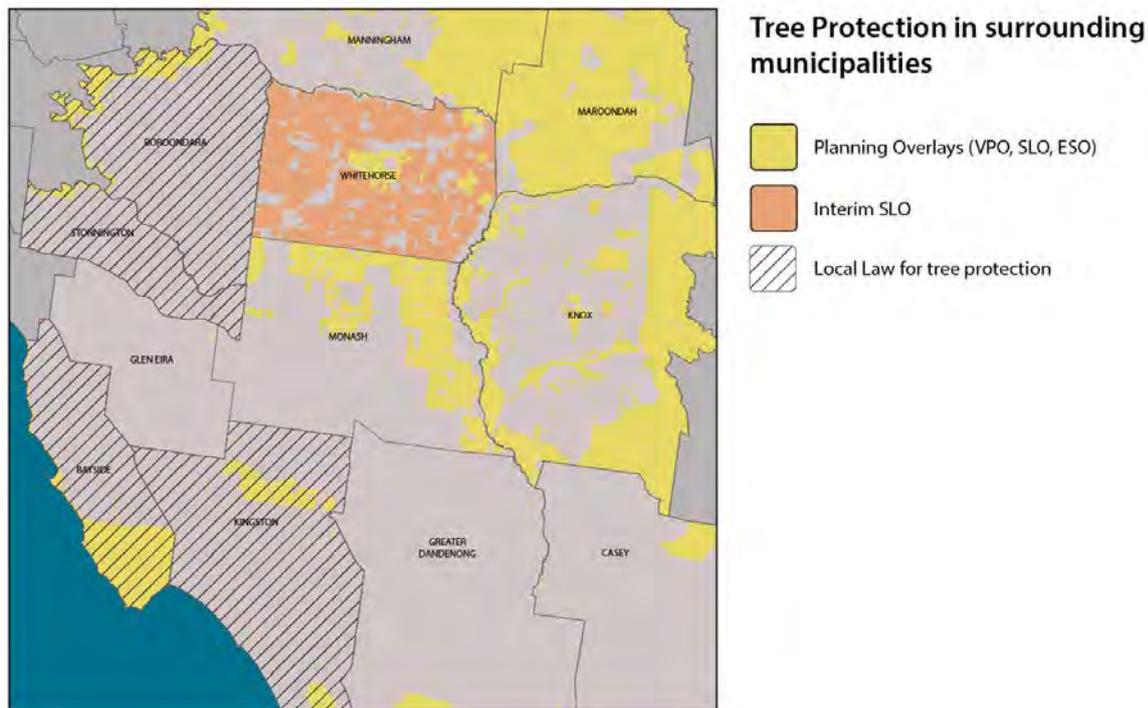
## **Appendix 2**

Vegetation controls in other council areas

## Vegetation controls in other council areas

### Application of overlays and/or Local Law

The map below shows that municipalities to our west generally use a Local Law to control removal of trees on private land, and municipalities to the north and east generally use planning overlays such as the SLO, VPO and ESO.



MUNICIPALITY	DESCRIPTION	OVERLAYS USED (NO. OF SCHEDULES) (%)	COVER BY OVERLAYS	LOCAL LAW
Maroondah	Extensive use of the SLO, targeted application of VPO to native vegetation areas.	SLO (4) (70%) VPO (1) (11%)	● 5,002 ha (81%)	✘
Bayside	VPO applies to native vegetation areas in south. Local Law applies.	VPO (3) (28%) ESO (1) (<1%) SLO (1) (<1%)	● 1,090 ha (29%)	✓
Whitehorse	Extensive use of the SLO, limited application of others. Refer to Note 1.	SLO (9) (70%) VPO (5) (3%) ESO (2) (<1%)	● 4,728 ha (74%) [Note 1]	✘
Boroondara	Overlays applied to Yarra River corridor. Local Law with Significant Tree Register applies.	SLO (1) (9%) VPO (2) (<1%) ESO (1) (<1%)	● 616 ha (10%)	✓
Manningham	SLO and ESO applies mostly to public land in the east.	ESO (4) (48%) SLO (7) (19%) VPO (3) (<1%)	● 7,649 ha (68%)	✘
Kingston	Limited use of overlays. Local Law applies.	ESO (3) (5.9%) VPO (1) (<1%)	● 569 ha (6%)	✓
Knox	ESO used in valley areas and in east with SLO.	ESO (2) (23%) SLO (6) (18%) VPO (4) (4%)	● 5,079 ha (45%)	✘

MUNICIPALITY	DESCRIPTION	OVERLAYS USED (NO. OF SCHEDULES) (%)	COVER BY OVERLAYS	LOCAL LAW
Stonnington	Overlay applied to Yarra River corridor. Local Law applies.	SLO (1) (3%)	● 79 ha (3%)	✓
Monash	VPO applied to part of north and along Dandenong Creek escarpment in the east.	VPO (1) (27%)	● 2,216 ha (27%)	✗
Casey	Limited vegetation protection.	SLO (4) (9%) ESO (8) (9%) VPO (2) (<1%)	● 7742 ha (19%)	✗
Greater Dandenong	Limited vegetation protection.	ESO (3) (15%)	● 1,912 ha (15%)	✗
Glen Eira	Limited vegetation protection.	VPO (1) (0.046%) SLO (1) (<0.01%)	● 2 ha (0.05%)	✗

Source: Planning Schemes Online (accessed 19 February 2018)

**Note 1:** Amendment C191 to the Whitehorse Planning Scheme introduced SLO9 on an interim basis until 31 December 2018 – extending the SLO to cover all of the residential areas. Prior to Amendment C191, SLO/VPO/ESO covered 377 ha (6%) of the municipality.

## Content of schedules and Local Laws, and permit triggers

In the Monash Planning Scheme, a permit is required for vegetation removal or destruction in VPO1 if the trunk circumference is 50cm or greater at 120cm above the base, the trunk diameter is greater than 16cm or the tree is greater than 10m in height.

In reviewing the schedules to the SLO, VPO and ESO applied in the planning schemes and any applicable Local Laws of surrounding municipalities, the following is found:

- Restricted to certain species of vegetation – e.g. native or indigenous.
- Restricted to specific trees as shown on a map attached to the schedule.
- Applied to all vegetation regardless of species or size.
- If restricted to a minimum size to trigger the need for a permit:
  - Circumferences can vary between 35cm and 180cm (most common is 50cm)
  - Where to measure the circumference varies between 50cm and 150cm above the base or on the base (most common is 1 metre)
  - Heights vary from 2 metres to 8 metres (most common is 6 metres).
- Local Laws generally require a permit for larger trees with a circumference of 110cm to 180cm.

## Application fees

There is no specific fee in the *Planning and Environment (Fees) Regulations 2016* to remove, destroy, lop or prune vegetation. The cost of the development (e.g. the cost to remove the tree and any remediation works) would probably form the basis for the fee. Cost of development of \$10,000 or less attracts a fee of \$192, which is the same as the VicSmart fee for the removal of a single tree.

Councils can charge other, discretionary fees such as a fee for an arborist to review the tree removal application and do a site visit (as is the case at Knox).

Monash currently waives the fee tree removal and is therefore not recovering any costs associated with the assessment of the application by statutory planners or, if the application is referred, by Council's arborist.

The following table contains a summary of what our adjoining and nearby Councils charge for tree removal or pruning:

MUNICIPALITY	MECHANISM	APPLICATION COST
<b>Maroondah</b>	SLO	1 tree (\$110) 2 trees (\$135) 3 trees (\$160) 4 trees (\$185) 5 trees (\$210) 6 or more trees (\$235)
	Other overlays	1 or more trees (\$235)
<b>Bayside</b>	Local Law	\$198 for up to 2 trees + \$52 per tree after that
	VPO	Based on cost of removal using statutory fees for development for single dwelling or VicSmart e.g. \$10,000 or less (\$192)
<b>Knox</b>	All overlays	Arborist review of tree removal (\$140) Arborist review of tree pruning (\$70)
<b>Boroondara</b>	Local Law	\$79 per tree – removal \$39.50 per tree – pruning Works within 2m of a tree (\$79)

## **Appendix 3**

Draft Schedule to the Significant Landscape Overlay

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## SCHEDULE 1 TO CLAUSE 42.03 SIGNIFICANT LANDSCAPE OVERLAY

Shown on the planning scheme map as **SLO1**.

### MONASH CREEKS, RIDGELINES AND SPECIAL LANDSCAPE CHARACTER AREAS

#### 1.0 Statement of nature and key elements of landscape

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The significance of the area is attributed to the shaded and biodiverse creek habitats, the surrounding creek valley environs and the tree covered ridgelines along the north and east, and the heritage character of the early 1900s exotic garden style in the south west.

#### 2.0 Landscape character objective to be achieved

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To emphasise the habitat significance of waterway corridors through retention and planting of indigenous vegetation.

To retain the dominance of vegetation cover along the ridgelines.

To increase the presence of large, exotic canopy trees and vegetation to strengthen the heritage exotic garden style.

#### 3.0 Permit requirement

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##### Buildings and works

A permit is not required to construct a building or construct or carry out works provided that:

- The building or hard surface area does not cover more than 40 percent of the site when combined with the area of any existing building or hard surface area.
- The buildings or works are set back more than 4 metres from any vegetation that requires a permit to remove, destroy or lop under the provisions of this schedule. This does not include a shed of less than 6 square metres.
- The land has an average slope of less than 20 percent.
- The natural surface level of the ground is not altered by more than 2.5 metres of cut or fill.
- The building is no more than 2 storeys, or higher than 8 metres, above the natural surface level of the ground directly below that part of the building.

A permit is required to construct a front fence that is within 4 metres of any vegetation that requires a permit to remove, destroy or lop under the provisions of this schedule. This does not apply to the like-for-like replacement of a front fence to the satisfaction of the responsible authority.

##### Vegetation removal

A permit is required to remove, destroy or lop vegetation. This does not apply to:

- A tree having a single trunk circumference of less than 0.5 metres at a height of one metre above the ground and that is less than 10 metres in height.
- The pruning of a tree for regeneration or ornamental shaping.
- A tree which is dead, dying or dangerous to the satisfaction of the responsible authority.
- Street tree removal carried out by or on behalf of the municipal council.

#### 4.0 Decision guidelines

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The following decision guidelines apply to an application for a permit under Clause 42.03, in addition to those specified in Clause 42.03 and elsewhere in the scheme which must be considered, as appropriate, by the responsible authority:

- The preferred landscape character in the *Monash Urban Landscape and Canopy Vegetation Strategy (insert date)*
- The effect of the proposed removal of the vegetation on the character and canopy of the area.
- The significance of the vegetation to the character and environment of the area.
- The habitat value of the vegetation.
- The role of the vegetation in contributing to and maintaining biodiversity along the waterway corridors.
- The effect of the building on the profile of the ridgeline.
- The reason for removing the vegetation and the practicality of alternative options which would not require the removal of the vegetation.