

## 10.7 RESPONSE TO NOTICE OF MOTION 986 - VEGETATION PROTECTION POLICY

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**File No:** GV/10/030

**Attachments:** 1. Tree Control Case Studies  
2. Planning Control Options

### 1. EXECUTIVE SUMMARY

- 1.1 On 24 August 2020 Council resolved that as a priority a local planning policy is developed seeking to protect existing mature vegetation in all subdivision and development planning applications. This policy is then to be implemented through a future Planning Scheme Amendment.
- 1.2 Further it was resolved that a report should be tabled at the September Council meeting to outline the requirements and resources to develop the policy. The report was to also outline what steps would be taken in the interim through current planning permit applications to protect vegetation.
- 1.3 This report explores the options available to Council to inform a future strategy and what planning controls might be utilised. It further outlines the financial requirements of such a project outlining that depending on the complexity of the approach taken there could be significant costs incurred in such a project. Given this, it is recommended that officers prepare a detailed project scope setting out the proposed approach for Mitchell Shire to be presented to Council in a further report.
- 1.4 Lastly it was resolved that officers would prepare a future report for Council's consideration on mechanisms available to respond to further potential environmental impacts of development such as climate change, canopy protection and community health. This future report could include the presentation of the detailed scope for the Urban Forest Strategy.
- 1.5 This report also outlines the mechanisms to ensure in the absence of the policy that appropriate rigour of assessment is applied to current planning permit applications to ensure all is done to protect mature vegetation from unnecessary removal.

### RECOMMENDATION

**THAT** Council:

1. Receive and note the information contained in this report regarding options explored, resourcing and financial information presented.
2. Endorse the undertaking of a detailed scoping exercise to inform a future Urban Forest Strategy project and required resource budget allocation.

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3. Note the use of the Delegate Committee for all current and future planning permit applications which include vegetation removal as a permit trigger.

## 2. BACKGROUND

2.1 Council's resolution of 24 August 2020 was:

- i. *That as a priority, a local planning policy is developed prioritising protection of existing mature vegetation in all subdivision and development planning applications to be implemented through a future Planning Scheme Amendment.*
- ii. *That a report be prepared by officers and presented to the September Ordinary Council meeting, outlining the requirements, resources and timelines to implement the policy, and also what steps are to be taken to ensure appropriate interim measures are in place to assist with the consideration and assessment of existing and new planning permit applications for vegetation removal until a policy is established.*
- iii. *That a further report be prepared by officers and presented to Council at a later date focused on the appropriate planning mechanisms available to respond to further potential environmental impacts of development such as climate change, canopy protection and community health.*

2.2 This report responds in particular to items i. and ii. of the above resolution. It is noted that a further future report will be completed for Council's consideration at a later date in response to item iii.

## 3. POLICY AND LEGISLATIVE IMPLICATIONS

3.1 Any approaches to this topic and any Planning Scheme Amendments that may result need to comply with the requirements of the Mitchell Planning Scheme as well as the *Planning and Environment Act 1987*.

3.2 This approach is supported by Council's commitment to the Resilient Melbourne Urban Forest Strategy and the Mitchell Shire Council Environment Policy (2020) including the following 2050 goals;

- *All new developments apply and celebrate environmentally sustainable design principles*
- *Mitchell Shire's biodiversity values and natural environment are embedded within and protected by the planning scheme and local policy*
- *Mitchell Shire communities' benefit from cooler green urban spaces and healthier environments*

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#### **4. CHARTER OF HUMAN RIGHTS IMPLICATIONS**

- 4.1 The rights protected in the *Charter of Human Rights and Responsibilities Act 2006* were considered in preparing this report and it's determined that the subject matter does not raise any human rights issues.

#### **5. CHILDREN AND YOUNG PEOPLE IMPLICATIONS**

- 5.1 No impact.

#### **6. ISSUES AND DISCUSSION**

- 6.1 Many of Mitchell's towns currently contain areas zoned for development but also contain significant stands of vegetation. This includes areas of Wallan, Kilmore, Broadford and Seymour. Often these sites are zoned for development but do not contain any overlays or additional protections for vegetation removal outside of Clause 52.17 of the Planning Scheme which deals only with Native Vegetation. Without additional planning controls, or a defined policy position, it is difficult to mandate the retention of trees or vegetation unless the developer shares a common vision for their site.
- 6.2 In addition to the lack of planning protection, some permits that are currently being developed were issued a number of years ago. This results in the current strong desire to protect mature vegetation was not captured in their original assessment. It often it takes a number of years from the time the permit was issued for development to occur, particularly in the case of staged subdivisions.
- 6.3 This report focuses on the two main areas of interest outlined in the Council resolution above. Firstly, information shall be provided about the requirements and processes to develop a planning policy/control and its implementation. Secondly this report shall set out a number of steps to ensure current planning permit applications are assessed in a way that prioritises the protection of mature vegetation in the interim.

##### Policy Development

- 6.4 This report outlines the requirements, resources and timelines that would be necessary to implement a tree control policy and outlines interim measures that could be pursued whilst the detailed work required to prepare planning controls is undertaken.
- 6.5 Planning Practice Note 7, Vegetation Protection in Urban Areas, (PPN07) provides guidance on how to assess the significance of vegetation in urban areas and how to protect significant vegetation through the planning scheme.
- 6.6 PPN07 suggests that the following steps be taken to strategically underpin the application of planning controls to protect vegetation.

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- Undertake a vegetation survey using expert advice and community input.
  - Determine vegetation significance and prepare statements of significance.
  - Prepare a local policy (if required – since this practice note was developed the approach to local policies has changed)
  - Apply overlay provisions (and native vegetation provisions if appropriate)
  - Enforce the planning scheme where necessary.
  - Monitor outcomes.
- 6.7 It is important that strong justification for seeking tree controls be articulated. This should explain what Council is trying to achieve, and why is it important.
- 6.8 Some councils have recently completed work on Urban Forest strategies including Whitehorse City Council and Melbourne City Council. These strategies provide a municipal wide basis for protection of existing vegetation and planting of more, both in the public realm, on publicly owned land, and on private property. Attachment 1 details a number of specific case studies.
- 6.9 In addition, the Maribyrnong City Council Urban Forest Strategy is a good example of what Mitchell might wish to achieve. It articulates a clear vision, objectives and targets for the greening of the municipality as detailed in the following:

1. *Our vision*
2. We want to live in a sustainable city that maximises the many benefits of urban trees.
3. We want our City to be leafy, cool and inviting.
4. Our vision is for 'A Greener Maribyrnong'.
5. *As part of this we want to see:*
  - More trees planted in streets and parks.
  - More large canopy trees across the city.
  - More tree planting in major infrastructure projects.
  - Better protection of significant trees.
  - Better awareness of the value and benefits of trees.
  - Improved amenity and neighbourhood character.
  - Cooler, healthier neighbourhoods.
6. *Our objectives*

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7. The objectives of the Strategy are to:

- Increase tree canopy on public land.
- Adapt to climate change and maximise environmental outcomes.
- Raise awareness and improve advocacy.
- Improve planning processes for trees.
- Maximise community health and wellbeing outcomes.
- Streamline Council's processes and monitor progress.

8. *Targets*

9. These objectives will be measured by targets to:

- Increase canopy cover in the public realm to 20% by 2040.
- Seek gains in canopy cover on private land and at a minimum achieve no net loss.

6.10 Some of the above examples can be achieved by the planning system, and some cannot. Those would need to be dealt with through programs like street tree planting and open space development and infrastructure delivery.

6.11 Strategies like this can help Council articulate why it is important to protect trees and to have a stronger chance of succeeding in applying planning controls. Essentially the planning scheme allows controls to be put in place to manage:

- Unique and threatened vegetation.
- Significant landscapes (which may include neighbourhood character issues).
- Places that are environmentally significant.
- Heritage trees.
- Native vegetation.

6.12 There are also policy links that can be drawn between community health and wellbeing, and adaptation to climate change, but no specific overlay control to ensure the retention of trees because of these issues.

6.13 Once an overarching strategy has been developed, detailed work then needs to be undertaken to justify application of controls in the planning scheme.

6.14 Several tools are available in the planning scheme to protect vegetation, including mature trees, from removal. These are:

- Local policy in the Planning Policy Framework.

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- 42.01 Environmental Significance Overlay
  - 42.02 Vegetation Protection Overlay
  - 42.03 Significant Landscape Overlay
  - 43.01 Heritage Overlay
  - 52.16 Native vegetation precinct plan
  - 52.17 Native vegetation.
- 6.15 Attachment 2 lists the details of each tool, including if a planning permit trigger is included in the control.
- 6.16 At least three Councils; Bayside, Darebin and Boroondara, use a Local Law to require a permit for tree removal instead of relying solely on planning controls. This can apply to both private and public land.
- 6.17 A Local Law enables Council to manage tree removal when a planning permit process is not in play or when the vegetation controls only cover native vegetation (as with Bayside).
- 6.18 Unlike making changes to the planning scheme, the process for developing a local law is within Council's control. Under the *Local Government Act 1989*, Councils are responsible for approving local laws. Under the *Planning and Environment Act 1987*, the Minister for Planning is responsible for approving planning controls.
- 6.19 Following the preparation of an appropriate strategy, interim controls under the planning scheme can be a useful shorter-term solution until the implementing planning scheme amendment is complete. The appropriate time to seek interim controls is after Council has adopted the underlying strategic document (e.g. the Tree Control Study) and has resolved to seek authorisation for the amendment to proceed.
- 6.20 Concurrent with this recommendation, Council should also seek interim controls with a sunset clause of one or two years to enable the amendment to go through its normal public process.
- 6.21 Interim controls provide the benefit of protecting trees from removal during the time in which the merits of the control are considered. The risk of not introducing interim controls is that property owners may pre-emptively remove canopy trees in anticipation of controls being approved for their land. This would undermine the intent of the control.
- 6.22 Interim controls were approved for Whitehorse Council via Amendment C191 on 8 February 2018. These controls were extended three times (C214, C223, C226) before Amendment C219 was approved on 20 July 2020.

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6.23 Applying for interim controls prior to the adoption of the strategic document and resolution to seek authorisation for the amendment to proceed is unlikely to be supported by DELWP, as prior to that stage the controls would not be considered to be a 'seriously entertained idea', and could be seen to create an unfair burden for land owners.

Costs

6.24 As a starting point, Council should prepare an Urban Forest Strategy or similar, to articulate the vision, objectives and targets for vegetation protection across the municipality. This strategy would align with Council's commitment to the Resilient Melbourne Urban Tree Strategy and the Mitchell Shire Council Environment Policy (2020).

6.25 The Resilient Melbourne Urban Tree Strategy sets a target that our urban areas have at least 27% tree canopy cover, whilst the Environment Policy includes a goal of 39% tree canopy and shrub cover by 2050. Several councils have prepared such strategies and this work could be used as a model for Mitchell Shire. An allocation of approximately \$50,000 would be a reasonable amount of budget for this work.

6.26 In researching this topic to prepare this report general costings have been obtained for the work prepared by private consultants Planisphere and Ethos Urban for a municipal council that has recently incorporated extensive tree controls into the scheme.

6.27 Stage one of this work, which would underpin the interim controls is approximately \$120,000 in consulting fees. This included a Discussion Paper, an Options Report, consultation and a Final report. Stage two of this work, which underpinned the permanent controls was \$105,000. There were additional Landscape Architect/Horticulturalist costs.

6.28 In addition to these consultancy costs, Council should also budget for:

- Officer time to manage the project. This is a significant project and will run for two or three years.
- Community consultation. Engagement with the community to identify values is an important element of defining values and identifying what should be protected and controlled.

6.29 There are options to undertake a staged approach to reduce costs such as:

- Assess heritage trees and specific exceptional trees (the Melbourne approach).
- Prioritise townships and undertake studies one at a time. This could be a viable approach for Mitchell to secure controls in those urban centres with significant vegetation currently experiencing development pressure such as Wallan, Kilmore, Broadford and Seymour.

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- 6.30 The threshold for placing tree controls in the planning scheme is high as it is creating a significant encumbrance for property owners and may reduce the development potential for some properties in a context where urban consolidation is generally encouraged. Therefore, any amendment must be underpinned by rigorous strategic planning work in order to be supported by DELWP and ultimately the Minister or Planning.
- 6.31 Council should ensure that an output from the underlying study is a set of planning scheme provisions that should be applied to implement the strategy. This includes correctly drafted proposed ordinance and planning scheme maps showing the boundaries of each control.
- 6.32 Amendment expenses will be dependent on the nature of the submissions received. Costs may include:
- Community consultation.
  - Expert witnesses – horticulturalist / arborist, landscape specialist.
  - Panel fees.
  - Officer time to manage the project.
- 6.33 The importance of tree controls has been identified through the planning scheme review. This gives a good strategic basis to commence work on this important project. At present there is no allocated budget to commence this work. Should it be considered a priority, it will likely require allocation in the next budget cycle.

Current Planning Permit Applications

- 6.34 Outside of developing a strategy to inform either interim or ultimate planning controls, there are several practical steps Council's Statutory Planners can take to seek to protect existing vegetation. A number of these are already occurring.
- 6.35 In recent years the Statutory Planning team have been providing proactive pre-planning advice, including guidance and advice to applicants suggesting all efforts should be made to retain existing vegetation through any development or subdivision proposal. More recent planning decisions are reflective of this approach. However, this does not address legacy decisions made prior that are commencing development now.
- 6.36 A new step has recently been added into the assessment process for planning permit applications involving removal of vegetation. All such applications are now also referred to Council's Tree Management Coordinator who has extensive knowledge and experience in this area. Both the Statutory Planning and Tree Management teams of Council are also drafting improved information for developers and landowners to communicate the value in retaining existing vegetation throughout our

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towns. This is in addition to the existing support from Council's Environment Team.

6.37 In recent years, given the increasing number of complex staged subdivision planning permit applications being received by Council, the Delegate Committee was conceived and implemented. The Committee is made up of the CEO, Director of Development & Infrastructure, with the other two Directors rotating through, the Manager of Development Approvals, Coordinator of Statutory Planning and the assessing Planner of each application. The committee sits monthly to review applications.

6.38 Currently the committee considers those more complex subdivision applications and also a number of applications that involve vegetation removal. As an additional step it is now proposed that all applications that trigger a planning permit for vegetation removal will be considered by the committee to ensure appropriate rigour is applied to these assessments until such a time as a planning control can be developed and implemented.

6.39 As a final interim step, the monthly reporting to Councillors, on planning applications received and decided upon, shall be amended to provide greater emphasis on matters where vegetation removal is a planning permit trigger. This reporting will provide the opportunity for Councillors to request additional information on such applications and if they so wish would activate the 'Call-in' mechanism for an application to be determined by Council rather than under delegation by officers.

## 7. SUSTAINABILITY IMPLICATIONS (SOCIAL AND ENVIRONMENTAL)

7.1 The protection of mature vegetation throughout our townships will have positive social and environmental impacts. From a social impact point of view, the retention of mature vegetation creates greater amenity and prestige in our developments.

7.2 The retention of vegetation also has obvious environmental impacts with retaining canopy cover, increased biodiversity and retention of habitat.

## 8. RISK IMPLICATIONS

Risk Ranking is determined using [ROHS201-G1- Corporate Risk Matrix](#). Risk is identified as Low, Medium, High or Very High.

Risk	Risk Ranking	Proposed Treatments	Within Existing Resources?
Without specific planning controls to protect existing mature vegetation it may be lost leading to poor development outcomes in a number of our towns	Medium	Develop strategy and implement new controls  Assess existing applications in a way to ensure protection of vegetation	No – budget and staff resources required

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## **9. COMMUNICATION PLAN**

9.1 Any project to implement tree controls would require a detailed communication plan prior to its commencement. This is down to the high number of potential stakeholders in such a significant project.

## **10. NEXT STEPS**

10.1 The next step in this process is to seek a budget allocation for this project and secure the resources for its commencement.

## **11. CONSULTATION**

11.1 In preparing of this report a number of discussions have been held with Councillors and the Executive Management Team. Internally ongoing discussions have been occurring between members of the Statutory and Strategic Planning Teams, the Environment Team and Tree Management Team.

## **12. FINANCIAL, RESOURCE AND ASSET MANAGEMENT IMPLICATIONS**

12.1 This project is not currently budgeted and may have significant cost implications. To fully implement such a project may cost up to \$120,000. To fully implement the future outcomes of such a strategy additional staff resources may be required to operate as arborists across the Shire.

## **13. OFFICER DECLARATION OF CONFLICT OF INTEREST**

13.1 No officers involved in the preparation of this report have any direct or indirect interest in this matter.

## **14. CONCLUSION**

14.1 This report has been developed in response to a council resolution seeking that as a priority a local planning policy is developed seeking to protect existing mature vegetation in all subdivision and development planning applications. This policy is then to be implemented through a future Planning Scheme Amendment.

14.2 This report outlines the requirements and resources to develop the policy. The report also outlines what steps would be taken in the interim through current planning permit applications to protect vegetation.

14.3 This report also outlines the steps required to develop a planning policy that will form part of the Mitchell Planning Scheme. It also outlines mechanisms to ensure in the absence of the policy that appropriate rigour of assessment is applied to current planning permit applications to ensure all is done to protect mature vegetation from unnecessary removal.

**Case studies**

Example of three approaches other have taken to tree controls in their schemes are:

**Identification of individual trees of significance.**

Melbourne Amendment C212 - Gazetted 30/04/2015

Amendment C212 to the Melbourne Planning Scheme applies a new Schedule 2 to the Environmental Significance Overlay to protect the trees identified on its Exceptional Tree Register. It also includes trees of historical value in the 'Tree controls' column of the Schedule to the Heritage Overlay, where it applies over a property and where the trees are not on the Victorian Heritage Register.

The Exceptional Tree Register was prepared by Council following the receipt of nominations from a range of individuals and organisations, including its own officers.

Schedule 2 to the Environmental Significance Overlay will provide statutory control over the removal or lopping of a tree and buildings and works carried out within the Tree Protection Zone. There is a permit exemption for buildings and works that are outside the Tree Protection Zone.

132 trees are included in Council's Exceptional Tree Register and subsequently protected under the planning scheme controls. Nominations for trees to be include in the Exceptional Tree Register were sought from the general public and an expert panel assessed whether they were suitable for inclusion in the register based on a number of criteria.

A Statement of Significance has been prepared for each individual tree.

**A mosaic or layered approach to vegetation controls based on values to be protected**

Manningham Amendment C54 - Gazetted 21/02/2013

Amendment C54 is a complex and multi-faceted amendment that takes a strategic and holistic approach to update a significant part of the Manningham Planning Scheme.

Amendment C54 reviews and revises the existing suite of Environmental Significance, Significant Landscape, Vegetation Protection and Design and Development Overlays.

Vegetation protected by the suite of controls includes native vegetation and exotic trees in some areas.

The exotic trees include Monterey Pine and Cypress Trees that were historically planted as windbreaks around orchards and homesteads. They form an important part of Manningham's cultural landscape. The identification of these trees was done by a Landscape Architect and Urban Designer.

Mature trees are identified by size (e.g. height of tree, circumference of trunk, circumference of canopy) rather than by individual tree. For example:

*A tree in a residential zone with a trunk circumference of less than 0.35 metre at 1.3 metre above natural ground level.*

*A height of more than 6 metres.*

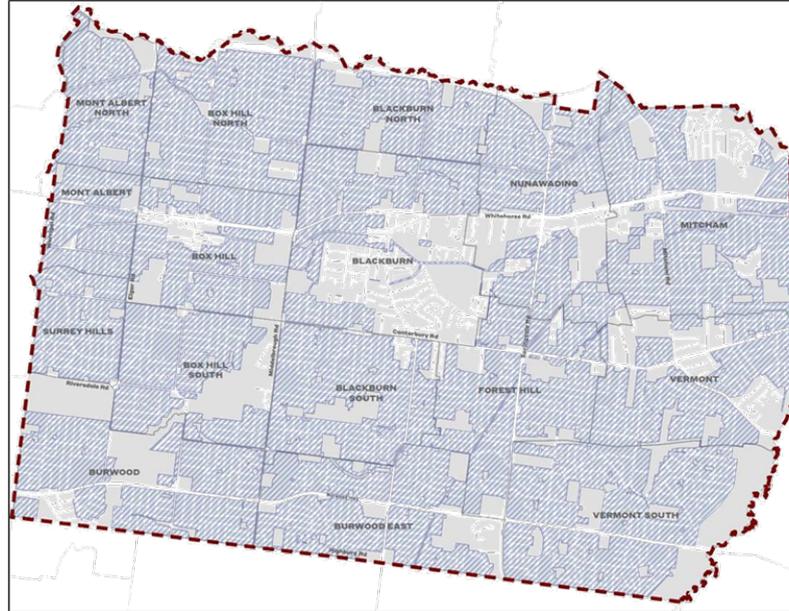
The mosaic of controls put in place by Manningham has been very successful in preserving vegetation.

**A blanket control**

Whitehorse Amendment C219 - Gazetted 30/07/2020

Whitehorse Planning Scheme Amendment C219 applied the Significant Landscape Overlay Schedule 9 (SLO9) on a permanent basis to all residential land in the municipality that is not currently included in a permanent Significant Landscape Overlay.

It is a 'blanket' control and applies to the properties shown with blue hash on the plan below.



#### **Location of the SLO9**

The landscape objectives to be achieved by this control are:

- To retain and enhance the canopy tree cover of the Garden and Bush Suburban Neighbourhood Character Areas.
- To encourage the retention of established and mature trees.
- To provide for the planting of new and replacement canopy trees.
- To ensure that development is compatible with the landscape character of the area.

Essentially, a planning permit is required to remove, destroy or lop a tree that has both:

- A height less than 5 metres.
- A single trunk circumference of less than 1.0 metre at a height of 1.0 metre above ground level.

Environmental weeds are excluded from the control. These are listed in the control. There are various other exclusions.

## Victoria Planning Provision tools available to implement tree controls.

Tool	Objectives of the tool	Permit trigger for vegetation removal	Comments
Local Policy in the Planning Policy Framework.	To provide policy to aid discretionary decision making. See options immediately below this table.	No permit trigger. Reliant on a permit being triggered by another control in the scheme.	Useful for guiding discretion. Cannot mandate tree controls. Use of schedules to the zones and overlays is more effective for this.
42.01 Environmental Significance Overlay	To identify areas where the development of land may be affected by environmental constraints. To ensure that development is compatible with identified environmental values.	Yes unless the schedule specifies that a permit is not required to remove vegetation.	A statement of <b>environment</b> significance is required.
42.02 Vegetation Protection Overlay	To protect areas of significant vegetation. To ensure that development minimises loss of vegetation. To preserve existing trees and other vegetation. To recognise vegetation protection areas as locations of special significance, natural beauty, interest and importance. To maintain and enhance habitat and habitat corridors for indigenous fauna. To encourage the regeneration of native vegetation.	Yes but the vegetation must be specified in the schedule. Permit is not required to remove vegetation identified in a native vegetation plan (52.16).	A statement of the nature and significance of the <b>vegetation</b> is required.
42.03 Significant Landscape Overlay	To identify significant landscapes. To conserve and enhance the character of significant landscapes.	Yes but the vegetation must be specified in the schedule. Permit is not required to remove vegetation identified in a native vegetation plan (52.16).	A statement of the nature and key elements of the <b>landscape</b> is required.
43.01 Heritage Overlay	To conserve and enhance heritage places of natural or cultural significance. To conserve and enhance those elements which contribute to the significance of heritage places. To ensure that development does not adversely affect the significance of heritage places. To conserve specified heritage places by allowing a use that would otherwise be prohibited if this will demonstrably assist	Yes but the schedule to the overlay must specify the heritage place as one where tree controls apply.	A statement of significance for the <b>heritage place</b> is required.

Tool	Objectives of the tool	Permit trigger for vegetation removal	Comments
	with the conservation of the significance of the heritage place.		
52.16 Native vegetation precinct plan	To provide for the protection, management and removal of native vegetation through the use of a native vegetation precinct plan incorporated into this scheme. To ensure that there is no net loss to biodiversity as a result of the removal, destruction or lopping of native vegetation. To manage the removal, destruction or lopping of native vegetation to minimise land and water degradation.	Yes but the vegetation must be included in the incorporated native vegetation precinct plan.	Applies to native vegetation only. An incorporated document is required.
52.17 Native vegetation	To ensure that there is no net loss to biodiversity as a result of the removal, destruction or lopping of native vegetation. To manage the removal, destruction or lopping of native vegetation to minimise land and water degradation.	Yes	Applies to native vegetation only.

#### Options for including a local policy in the Planning Policy Framework

The best location will be determined by identifying the main thing Council is trying to achieve through tree controls.

#### 12.05-2 Landscapes

To protect and enhance significant landscapes and open spaces that contribute to character, identity and sustainable environments.

#### 13.01-1 Natural hazards and climate change

To minimise the impacts of natural hazards and adapt to the impacts of climate change through risk-based planning.

#### 15.01-4 Healthy neighbourhoods

To achieve neighbourhoods that foster healthy and active living and community wellbeing.

#### 15.01-5 Neighbourhood character

To recognise, support and protect neighbourhood character, cultural identity, and sense of place.

#### 15.02-1 Energy and resource efficiency

To encourage land use and development that is energy and resource efficient, supports a cooler environment and minimises greenhouse gas emissions.

