

# *Council Policy*

## Tree Management



# COUNCIL POLICY

 <p><b>Adelaide Hills</b> COUNCIL</p>	<h2 style="margin: 0;">TREE MANAGEMENT</h2>
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<b>Policy Number:</b>	ENV-04
<b>Responsible Department(s):</b>	Open Space
<b>Relevant Delegations:</b>	Not applicable
<b>Other Relevant Policies:</b>	Public Consultation Policy Public Notification Policy Risk Management Policy
<b>Relevant Procedure(s):</b>	Tree Management Procedures (various) Roadside Vegetation Management Plan
<b>Relevant Legislation:</b>	Local Government Act 1999 Development Act 1993 Native Vegetation Act 1991 Highways Act 1926 Road Traffic Act 1961 Heritage Places Act 1997 Electricity Act 1996 Natural Resources Management Act 2004 Water Industry Act 2012 (and associated Regulations)
<b>Policies and Procedures Superseded by this policy on its Adoption:</b>	Tree Management Policy 10 May 2016, 12.1,18
<b>Adoption Authority:</b>	Council
<b>Date of Adoption:</b>	26 March 2019
<b>Effective From:</b>	9 April 2019
<b>Minute Reference for Adoption:</b>	26 March 2019, Item 12.10, Resolution 79/19, Page 59
<b>Next Review:</b>	No later than April 2022 or as required by legislation or changed circumstances

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## TREE MANAGEMENT

### 1. INTRODUCTION

This policy provides principles and guidelines for the management of trees under the Council's care and control. The policy will assist to address the following:

- Requests to prune or remove trees under the care and control of the Council
- Responses to concerns raised regarding the potential effect of trees on private property
- The selection of appropriate species for planting on land under the care and control of the Council
- The need for community engagement in respect to removing and planting trees

Trees are fundamental to sustainable living and they provide many positive benefits to the community such as:

- Improved air quality
- Assistance with erosion control
- Shade and shelter
- Ecological habitat that enhances biodiversity
- Historical value
- Improved economic value and tourist potential
- Definition of landscape characters and localities
- Road delineation and character, pedestrian safety and comfort
- Social and recreational opportunities
- Improved resilience and adaptation to climate change.

This policy is to be read in conjunction with other relevant Council policies, including the Public Consultation Policy, the Public Notification Policy and the Risk Management Policy. The policy is formulated under the provisions of the Local Government Act 1999 and outlines the Council's position in respect to the functions of the Council relating to tree management as described in that Act.

Government legislation impacts tree management in many circumstances and legislative requirements will be observed at all times. Where there is a conflict between legislation and this policy, legislation will take precedence to the extent of the conflict.

The Council has different roles in relation to trees. Under the Development Act 1993, the Council can be a development authority, particularly in relation to approving tree damaging activity for Regulated Trees. As a body responsible for the care and control of community land and roads, the Council acts as 'owner' of trees. In some instances the Council will have both roles in relation to a single matter. In those cases, the Council will as far as reasonably practicable, separate the two functions as required by Subsection 36(3) of the Local Government Act 1999.

This policy does not apply or have any effect in relation to the management of trees on private property beyond the extent of functions available to the Council under the Local Government Act 1999. It does not apply or have any effect in relation to the Council's role as a development authority.

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## 2. OBJECTIVES

The objectives of this policy are to:

- Demonstrate the Council's commitment to the retention of trees while managing risks associated with trees particularly in locations where people gather such as parks and playgrounds
- Establish a framework for including 'retention value' in considerations about tree removal
- Demonstrate a commitment to community engagement in relation to tree management
- Enable consistent decision making in relation to the various functions, duties and powers available to the Council in respect to tree management contained in the Local Government Act 1999.

## 3. DEFINITIONS

**"Avenues"** or **"notable plantations"** means rows or stands of trees or individual trees, that have been planted in a distinct place (or on a roadside) and can be clearly distinguished as being a 'feature' of the landscape in their own right. They may have been planted as a memorial, in commemoration of an event or as part of a community initiative. In any case, they generally hold significance to a measurable portion of the community for either historic, cultural, commercial or amenity reasons.

**"Declared plants"** are as defined in the Natural Resource Management Act 2004 and associated Regulations.

**"Regulated trees"** and **"significant trees"** are as defined the Development Act 1993 and associated Regulations.

**"Retention value"** is a concept which accounts for the social, economic, environmental and/or cultural benefits of retaining a tree. Retention value is often difficult to quantify, but the benefits can be identified and understood. It is also important to understand the extent of the benefit (e.g. whether the benefit applies broadly or to a limited number of individuals; critical habitat benefit to an endangered fauna species or general environmental benefit; etc.).

**"Street trees"** specifically refers to trees *planted* in a road. It does not include naturally occurring or self-sown trees growing in a road.

**"Tree owner"** is the person (or an entity) that owns land on which the subject tree grows.

**"Trees"** means trees under the care and control of the Council, which are generally those growing in land designated as public roads and community land (i.e. most public parks, reserves, etc.). Trees growing on land held by the Council, but not classified as community land, will generally be managed in accordance with this policy unless that is at odds with the purpose for which the Council holds the land.

#### 4. POLICY STATEMENT

The following principles will be applied to the management of trees under the Council's care and control:

- Trees are an important and valuable part of the Adelaide Hills landscape. They provide amenity and environmental benefits and they play an important role in maintaining a 'sense of place' for Hills townships and the countryside.
- Some areas in the district have developed a particular sense of cultural heritage around tree scapes (e.g. autumn leaves, tree avenues and feature trees) and it is important that this be nurtured.
- Trees of both indigenous and introduced varieties are considered valuable and should generally be retained unless there are mitigating circumstances requiring their removal or they are of a "declared plant" species according to the Natural Resources Management Act 2004.
- Dead or dying trees should be retained if they have habitat value for indigenous fauna and the risk of retention is acceptable.
- Where the removal of a tree is being contemplated in order to address an identified risk, alternatives should be considered first. Tree removal should only occur where other options are considered to be cost prohibitive or ineffective and the risk of retaining the tree is considered unacceptable when weighed against its retention value.
- In many cases, community stakeholders have an interest in tree matters. Community engagement should occur with identified stakeholders where the removal of trees in established avenues or notable plantations is contemplated or where new tree plantings are proposed.
- Although trees can sometimes cause a nuisance to individuals, in general trees are considered to be part of the natural environment and there is an over-riding expectation by the community as a whole that minor inconveniences, outweighed many-fold by the numerous benefits of trees, will be tolerated
- Private property owners should take responsibility for trees growing on their property.

#### 5. POSITION STATEMENT

The following reflects the Council's position in respect to applying the above principles in the circumstances indicated:

##### ***Street tree planting and replacement***

The Council does not plant street trees as a matter of course. Rather, streetscape planting is considered on a case by case basis and is generally done for amenity or memorial reasons in a planned manner.

Before planting or authorising the planting of vegetation in a road, Section 232 of the Local Government Act 1999 requires the Council to undertake consultation where the vegetation "may have a significant impact on residents, the proprietors of nearby businesses or advertisers in the area."

Where it is contemplated to plant a series of street trees in a road, or undertake wholesale replacement of existing street trees, the adjoining property owners will be consulted on the proposal, including the details of proposed tree species.

Where the road in question is within a commercial precinct or a township arterial road, other stakeholders such as businesses, residents associations and business associations, will also be identified and engaged.

In respect to species selection, as a general principle, trees indigenous to the area will be considered for areas outside of townships, while in townships, introduced species may be considered where it is in line with an established look and feel for the township. Short lived or trees which could create problems for people using public spaces should not be planted.

### ***Private planting on roads***

Property owners or occupiers may plant trees on a road if authorised to do so by the Council under Section 221 of the Local Government Act 1999, but definitely not within 2 metres of the carriageway. While the Act assigns liability for the vegetation to the person planting it, it is acknowledged that with the passage of time, the Council are ultimately responsible for the vegetation.

Allowing trees to be planted in a road carries risks including:

- inappropriate species selection
- poor planting and tree establishment technique
- inappropriate application of herbicides and pesticides
- planting in a position that may hinder safe lines of sight for pedestrians and road users
- potential nuisance to neighbours

To lessen the above risks, people will generally not be permitted to plant trees in a road themselves. However, if property owners or occupiers wish to plant trees and the proposal is not something already being contemplated by the Council, the Council may consider the matter and manage the process at the cost of the proponents, including the cost of any necessary consultation.

Exceptions include planting that occurs as part of an approved revegetation program or an established partnership with a business/community group or similar, in which case planting will be permitted in line with the terms of the program or partnership.

### ***Public risk management***

Due to the nature of the vegetation within the hills environment it is unrealistic to maintain a register of all trees under the care and control of the Council and to inspect and assess the risks posed by them on a regular basis. Therefore, in line with the Council's Risk Management Policy, a managed-risk approach will be taken to the inspection and maintenance of trees within the limits of the resources available to the Council.

Operational procedures are used to identify trees or groups of trees that pose a heightened risk of causing injury or death through limb-drop or falling. Considerations may include proximity to roads and public walkways, tree species, health of the tree, etc. A register of those trees will be kept and they will be subject to a programmed inspection and maintenance regime, developed according to risk.

The Council is committed to managing trees according to contemporary arboriculture practice. Tree pruning will be carried out in accordance with AS4373-2007 Pruning of Amenity Trees, unless special circumstances require divergence from this approach.

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***Potential damage to property***

Section 245 of the Local Government Act provides that if the Council is requested in writing to take reasonable action to avert the risk of potential property damage caused by a tree growing in a road, and does not do so, the Council may be liable for future damages to property caused by the tree.

The Council is committed to act reasonably in addressing written advice of this kind.

When written advice is received, the Council will use reasonable endeavours to assess the applicable risk. Consideration will be given to the assessed risk and available resources when determining what, if any, action should be taken to mitigate the risk of future property damage.

The Council will seek to apply measures other than removing trees, unless the alternatives are cost prohibitive or unlikely to be effective.

***Overhanging trees from private property***

Section 254 of the Local Government Act 1999 allows the Council to make orders to require an owner or occupier of land “to remove overgrown vegetation, cut back overhanging branches, or to remove a tree” if “the vegetation, branches or tree create, or are likely to create, danger or difficulty to persons using a public place.”

The Council is committed to applying this power in a responsible and practical manner. Vegetation growing on private property can contribute to the overall streetscape and help create ‘avenues’ to public places and this will be taken into account when determining whether to pursue the matter.

It is impractical for the Council to be aware of, and act on, every situation where overgrowing vegetation occurs across the district. It is therefore necessary to prioritise situations which arise, depending on the particular risks of the case and whether the present or potential danger or difficulty can be reasonably known and avoided by the person using the public space.

***Trees fallen from private property***

Trees from private property can and do fall onto public roads and land under the Council’s care and control. The Council considers public safety to be paramount in these situations.

Without removing any responsibility or liability that rests with the owner of the tree, the Council may act in the interests of public safety to clear fallen trees from roads and land under the Council’s care and control. The Council will clear fallen trees only to the extent required to avert immediate risks to public safety. The tree owner is still considered to be responsible for the tree and will be expected to clear the remainder of the tree.

The Council will generally not seek compensation for costs incurred in clearing fallen trees in these situations, however, the Chief Executive Officer, having given consideration to the circumstances of the case, may seek compensation from the tree owner. Reasons for pursuing compensation may include, but are not limited to, negligence or deliberate action by the tree owner or repeated indifference to the risks posed by the owner’s trees.

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***Disputes involving trees between neighbours***

The Council's position in respect to this matter is that property owners will be encouraged to resolve disputes between themselves and other parties through community mediation.

***Council's Civil Works***

In planning for Civil Works options to minimise the impact on existing trees or need for tree removal will be considered. Where trees are removed replacement trees will be planted in appropriate locations. If planned infrastructure upgrades present the opportunity to consider the appropriateness of existing vegetation some trees may be removed and other planted to suit the new design.

Where replacement of street trees is planned, due to their declining health or loss of structural integrity, the opportunity for maintenance or upgrading of built infrastructure to be coordinated with the replacement will be considered.

***Tree removal generally***

Removal of trees under the care and control of the Council will only be carried out in accordance with the principles contained in this Policy and in line with the requirements of any relevant legislation.

Trees can only be removed in line with operational procedures which confer an appropriate officer(s) with the role of approving the removal. The procedures will require the approving officer to be satisfied that the principles of this Policy and the applicable steps of associated procedures have been followed, as well as that the tree can be lawfully removed.

Circumstances that may justify the removal of a tree include, but are not limited to:

- the tree creates, or is likely to create, an unacceptable level of material risk to people or property
- the tree is irreversibly diseased or close to death
- the tree poses an environmental threat
- the tree is stunted in its growth and replacement is necessary to achieve the intended effect of a tree scape
- the tree is interfering with other trees to such an extent that neither tree can develop to its full potential
- the tree is being replaced as part of a strategic redevelopment of a street scape, avenue or notable plantation (but only after the applicable engagement process has occurred)
- the tree does, or is likely to, interfere with public infrastructure and other alternatives to removing the tree have been explored and found to be cost prohibitive or ineffective
- removal is being contemplated as part of an approved bushfire mitigation plan or program

In all cases, consideration shall be given to the retention value of the tree and a decision made on balance.

In cases of emergency removal, where staff considers that there is a real and imminent risk to life or property, approval may be sought retrospectively.

### ***Removal of Council trees by others***

Property owners sometimes desire a tree under the care and control of the Council to be removed for their own reasons. Property owners or occupiers may plant/remove trees on a road if authorised to do so by the Council under Section 221 of the Local Government Act 1999.

As a general principle, trees are considered to be part of the natural environment and there is an over-riding expectation by the community as a whole that minor inconveniences, outweighed many-fold by the numerous benefits of trees, will be tolerated.

Approval for removal will not be granted unless circumstances exist which may expose the Council to an unacceptable risk of liability if the tree is to remain or the tree is being replaced as part of a redevelopment of a street scape/landscape.

Approval may be granted where the tree is of a species listed as Weeds of National Significance or Declared Plants under the Natural Resources Management Act 2004.

For the sake of clarity:

- property owners and occupiers **do not** automatically have the permission of the Council to remove trees on land under the care and control of the Council, even if done with the intent of mitigating bushfire risk. (e.g. even if the tree is within 20m of a dwelling)
- approval **will not** be granted for a person to remove trees on land under the care and control of the Council for amenity reasons or for increasing the value or enjoyment potential of a property
- approval **will not** generally be granted for a person to remove trees on land under the care and control of the Council if it is required solely for the purposes of allowing private development to occur on adjacent private land, unless a broader community benefit can be demonstrated and suitable offset plantings are incorporated in the proposal
- Approval **will not** be granted solely because the property owner or occupier considers the tree to be a nuisance (e.g. because leaves/debris fall into roof gutters, etc.).

In situations where it is considered reasonable for the proponent to remove the tree, the proponent is responsible for obtaining any necessary statutory approvals and meeting the cost of tree removal, reinstatement and/or environmental offset as required.

For example, if the tree is Regulated or Significant, the proponent is responsible for fulfilling the requirements of the development assessment process. If the tree is a native species, the proponent is responsible for establishing and fulfilling the requirements of the Native Vegetation Act and Regulations.

Council reserves the right to authorise a utility service provider to undertake removal of a tree as part of a vegetation clearance program after appropriate consultation has occurred.

*Separate processes apply to the Council's role as the Development Authority in respect to assessing applications to remove Trees.*

### ***Avenues and notable plantations***

Where the removal of trees from avenues or notable plantations is contemplated, engagement with stakeholders and stakeholder groups, including surrounding property occupiers, business

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operators, residents and business associations (as applicable) will occur prior to any trees being removed (unless the urgency of the situation prevents this). This will include strategies to replace the tree to be removed.

Examples:

In the case of a war memorial planting, the Returned and Services League and the Department of Veterans' Affairs may be identified as specific stakeholders.

In the case of an avenue of trees in a township, the applicable residents association and business association may be identified as specific stakeholder groups.

In the case of a stand of trees in a park planted by a service club, that club may be identified as a specific stakeholder.

In the case of a tree planted as a memorial to a deceased individual, the family of the individual may be identified as a stakeholder group.

Council Members of the applicable Ward should also be informed of proposals in the interests of enhancing information flow and communication with the community.

### ***Power line clearance***

The Council acknowledges the statutory obligation of power transmission entities to carry out power line clearance in accordance with the Electricity Act and associated Regulations. The Council does, however, assert the need to prune trees in a manner which maintains proper shape and form and does not negatively affect the health of trees where possible. To that end, the Council will consider permitting the pruning of trees outside of the regulated "buffer zone" for achieving proper tree pruning practice.

Power transmission entities will be expected to fulfil their statutory obligation to advise the Council in advance of pruning trees on roads. The Council is committed to a co-operative approach and will work with those entities to achieve the best possible outcomes.

The Council is committed to its legislative obligations regarding the planting and nurturing of vegetation near power lines.

The Council will consider, on a case by case basis, opportunities to replace inappropriate tree species planted under power lines where ongoing and repetitive power line clearance work has negatively affected the shape, form or health of the trees.

### ***Response to Bushfire/Storm Events***

It should be acknowledged that after a bushfire/Storm Event some elements of this policy may not be able to be followed in the interest of both public safety and the need for residents to return to their properties. The inspection, subsequent clearance of trees and opening of roads so they are safe to be traversed are considered a priority after a bushfire/Storm Event. Staff will take actions and use methods that would not be used under normal circumstances, also assessments of trees may have to be done on a broad scale and not have the same rigor that would normally be applied.

## **6. DELEGATIONS**

The Chief Executive Officer has the delegation to:

- Approve, amend and review any procedures that shall be consistent with this Policy; and
- Make any formatting, nomenclature or other minor changes to the Policy during the period of its currency.

## **AVAILABILITY OF THE POLICY**

The public may inspect a copy of this policy, without charge, at the offices of council during office hours, and may obtain a copy for a fee as per Council's Fees & Charges Register. The policy is also available on Council's website [www.ahc.sa.gov.au](http://www.ahc.sa.gov.au).