Tree and Canopy Protection Guidelines

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Part A – Introduction

1. Title

These guidelines may be cited as the Tree and Canopy Protection Guidelines and are to be read in conjunction with Council’s Activities and General Amenities Local Law 2018 (Local Law).

2. Purpose

The objectives of these guidelines are to:

a) ensure that the established treed character of the municipal district is maintained; and

b) prohibit, regulate and control any activities which may endanger significant trees and canopy trees within the municipal district.

3. Commencement

These guidelines apply from 1 July 2018.

4. Application

These guidelines apply at all times throughout the municipal district.

5. Definitions

Some of the terms used in these guidelines are defined. They are identified by bold italics and have the following meanings:

<table>
<thead>
<tr>
<th>Term</th>
<th>Definition</th>
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</thead>
<tbody>
<tr>
<td>“Act”</td>
<td>means the Local Government Act 1989, or any later equivalent enactment.</td>
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<tr>
<td>“Authorised Officer”</td>
<td>means a person appointed by Council under section 224 of the Act.</td>
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<tr>
<td>“Canopy tree”</td>
<td>means any tree:</td>
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<tr>
<td></td>
<td>a) with a total trunk circumference of 110 centimetres or more measured at a point 1.5 metres along the</td>
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trunk’s length from the closest point above ground level; or

a) if multi-stemmed, with a total trunk circumference of all its trunks of 110 centimetres or more, measured at a point 1.5 metres along the trunks’ lengths from the closest point above ground level; or

b) with a trunk circumference of 150 centimetres or more measured at ground level.

See schedule 1, diagrams 1 and 2.

| “Council” | means Moonee Valley City Council. |
| “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;
  b) land covered with water; and
  c) the airspace above and the earth below the land. |
<p>| “Municipal district” | means the municipal district of the City of Moonee Valley. |
| “Notice to Comply” | means a notice in writing, given by an Authorised Officer or Council under these guidelines, directing the person to whom it is addressed to take some action to comply with the Local Law. |
| “Offence” | means an offence against or breach of a provision of these guidelines or a breach of a notice or direction issued. |
| “Penalty” | means the fine prescribed under these guidelines for an offence. |
| “Permit” | means a permit issued under these guidelines. |
| “Private land” | means all land other than public land. |</p>
<table>
<thead>
<tr>
<th><strong>“Prune”</strong></th>
<th>means to remove any branches of a tree which are greater than 50mm in diameter at the point of contact with the larger branches or the trunk.</th>
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<tr>
<td><strong>“Public land”</strong></td>
<td>means all land owned, leased, managed or occupied by a public body, including Council.</td>
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<tr>
<td><strong>“Significant tree”</strong></td>
<td>means a tree listed in Council’s Significant Tree Register of trees and vegetation within the municipal district that are considered to be of environmental, historic, horticultural, biodiversity or other value, and includes any subsequent trees added to the Significant Tree Register.</td>
</tr>
<tr>
<td><strong>“Structural root zone”</strong></td>
<td>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 two metres. See schedule 1, diagram 4.</td>
</tr>
<tr>
<td><strong>“Tree protection zone”</strong></td>
<td>means the area surrounding a significant 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 12 times the trunk diameter, measured at 1.5 metres above ground level, to a maximum of 15 metres. Note: See schedule 1, diagram 3.</td>
</tr>
<tr>
<td><strong>“Works”</strong></td>
<td>includes building, trenching, digging, compaction, excavation, filling or storage of materials and equipment, whether by mechanical or manual methods.</td>
</tr>
</tbody>
</table>
Part B - Context

This part is intended to help the reader understand the context in which the guidelines are made. It is not intended to affect the interpretation of any provisions in other parts of the guidelines.

Council recognises the contribution that the municipal district’s tree canopy makes to the quality of its suburban environment. Damage and / or removal of significant trees or canopy trees results in a degradation of this established character. Council also acknowledges that trees in the urban 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 storm water runoff, absorbing pollution, providing habitat and promoting biodiversity. These guidelines are based on the following principles:

1. Significant trees must be retained and cared for, and will be the major determining factor in any redevelopment of land in the vicinity of the tree.

2. Trees that contribute to the municipal district’s overall tree canopy character should be retained where practicable. Works near significant trees or canopy trees should be minimised to prevent damage and disruption to tree roots or growing conditions.

3. Owners of land and / or contractors will be responsible for the loss of or damage to significant trees or canopy trees that are required to be retained.

These guidelines give Council the necessary controls to effectively protect trees listed in Council’s Significant Tree Register, ensuring they are maintained in accordance with the urban character, local amenity and biodiversity of the municipal district.
Part C – Tree protection

6. Protection of trees

1. This clause applies to:
   a) any significant tree; and
   b) 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. 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.

2. The Significant Tree Register, as amended by the addition of schedules from time to time, is incorporated into these guidelines, with any amendment made to a schedule coming into effect when it is published in the Government Gazette.

3. A person must not without a permit:
   a) remove, prune, damage, kill or destroy, or direct, authorise or allow to be removed, pruned, damaged, killed or destroyed, a significant tree.
   b) carry out, or direct, authorise or allow to be carried out, any works within the tree protection zone of a significant tree.
   c) remove, damage, kill or destroy, or direct, authorise or allow to be removed, damaged, killed or destroyed, a canopy tree.
   d) carry out, or direct, authorise or allow to be carried out, any works within the structural root zone of a canopy tree.
   e) 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.

   Maximum penalty: twenty (20) penalty units.

   Note: Notwithstanding sub-clause 6(3)(d), it is an offence under sub-clause 6(3)(c) 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 sub-clause 6(3)(c) if such works either damage, kill or destroy that tree.

4. Clause 6(3) does not apply to:
   a) a person whose actions are required by any other legislation or by any other statutory authority; or
b) a person acting in accordance with an instruction or direction from an Authorised Officer.

5. If a tree, or part of a tree, is interfered with in any of the circumstances specified in Clause 6(3), 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 significant tree or 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.

7. Power of Authorised Officer to direct – Notice to Comply

1. An Authorised Officer may, by issue of a Notice to Comply to the owner of private land or any contractor or other person engaged in works on private land who appears to be in breach of these guidelines, direct that owner, contractor or other person to remedy any situation which constitutes a breach under these guidelines.

2. An Authorised Officer may, by issue of a Notice to Comply, direct a person who appears to be in breach of these guidelines to plant, by way of replacement, one or more trees of a type and in a location specified by Council or the Authorised Officer.

Part D - Administration

8. Applications for permits

1. An application for a permit must be made in writing using a form prescribed by Council, and must be accompanied by the appropriate fee as determined by Council.

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 6(1) is located, the application must be accompanied by a document evidencing the owner's consent to the application for the permit being made.

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.
9. Permits

1. **Council** or an **Authorised Officer** may, after considering the application for a permit:
   a) grant a **permit**, with or without conditions;
   b) refuse to grant a **permit**; or
   c) determine that a **permit** is not required.

2. In determining whether to grant a **permit** under these guidelines, **Council** or an **Authorised Officer** must take the following into consideration, to the extent it considers appropriate:
   a) the effect of the proposed action on the aesthetics of the neighbourhood;
   b) whether the tree is a **significant tree**;
   c) the condition of the tree (i.e. its health and structural integrity);
   d) the appropriateness of the tree for its location on the property, having regard to the existing buildings and conditions on the property;
   e) whether the proposed action is to be undertaken for reasons of health or safety;
   f) whether the tree is causing any unreasonable property **damage**;
   g) whether the tree is causing any unreasonable public nuisance or creating any unreasonable nuisance to private property owners or occupiers;
   h) whether the tree is a recognised weed;
   i) the nature of the zoning of the **land** under the Moonee Valley Planning Scheme;
   j) any legislative requirements; and
   k) any other matter relevant to the circumstances associated with the application.

10. Security bonds

1. Where:
   a) the owner of **private land** proposes carrying out **works**; or
   b) the owner of **private land** engages a contractor for the purposes of carrying out **works** within the **tree protection zone** of a **significant tree** or the **structural root zone** of a **canopy tree**, whether those **works** are proposed to
be undertaken pursuant to a planning permit or otherwise, Council or an Authorised Officer may, by notice given to the owner, require payment of a security bond to Council;

2. The security bond shall be for an amount and in a form determined by Council or the Authorised Officer.

3. 12 months after completion of the works, Council may;
   a) retain all or any part of the security bond to cover costs of replacement of any significant tree or canopy tree damaged or killed as a result of the works; or
   b) refund the security bond.

11. Permit cancellation

1. Council or an Authorised Officer may cancel a permit if it considers that:
   a) there has been a serious or ongoing breach of the conditions of the permit; or
   b) 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
   c) there was a significant error or misrepresentation in the application for the permit; or
   d) in the circumstances, the permit should be cancelled.

2. Before it cancels a permit, Council or an Authorised Officer must provide to the holder of the permit a reasonable opportunity to make comment on the proposed cancellation.

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 for the application for the permit, the owner must be notified of any Notice to Comply and of the reason why it has been served.

12. Inspections

1. An Authorised Officer may enter any private land for the purpose of inspecting any significant tree or canopy tree where the Authorised Officer has reasonable grounds to believe that a breach of these guidelines has been, is being, or is likely to be committed.

2. An Authorised Officer may enter any private land for the purpose of inspecting any significant tree or canopy tree where an application for a permit has been made, in accordance with these guidelines.
13. Infringement notices

1. Where an **Authorised Officer** reasonably believes that a person has committed an **offence** against these guidelines, the **Authorised Officer** may issue and serve on that person an infringement notice as an alternative to prosecution for the **offence**.

2. The **penalty** fixed for an infringement notice under these guidelines is:
   a) where an **offence** relates to a tree which, in the opinion of the **Authorised Officer**, is dead – five (5) **penalty** units for each **offence**;
   b) for all other **offences** – 20 **penalty** units for each **offence**.

14. Offences

1. A person who:
   a) fails to comply with any provision of these guidelines;
   b) fails to comply with a condition of a **permit**;
   c) fails to comply with a **Notice to Comply** issued under these guidelines; or
   d) submits wrong, inaccurate or misleading information in an application for a **permit** made under these guidelines;

is guilty of an **offence**.

2. If no **penalty** is specifically provided for in a provision of these guidelines, a person found guilty of an **offence** under these guidelines is liable to a **penalty** not exceeding 20 **penalty** units.

3. In addition to any **penalty** imposed pursuant to these guidelines, a **penalty** not exceeding two (2) **penalty** units will apply for each day after conviction for an **offence** during which a contravention of these guidelines continues.

15. Application review

1. Within 60 calendar days of receiving notice of a refusal to grant a **permit** under Clause 9(1)(b) of these guidelines, the applicant for the **permit** may apply to **Council** for a review of that decision.

2. An application for review under Clause 15(1) of these guidelines must be made in writing and must:
   a) state the grounds upon which the application for review is made; and
b) include further information which was not provided or made available at the
time the application for the permit was made.

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

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.
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 1.5 metres above ground level, measured along the trunk’s length from the closest point above ground level) is 110 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 1.5 metres above ground level, measured along the trunks’ length from the closest point above ground level) is 110 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 *tree protection zone*.
The *tree protection zone* (TPZ) is based on ‘R’.

R = 12 x the trunk diameter at point ‘A’, to a maximum of 15 metres. The TPZ is a circular area below the tree, extending at equal distances from the tree base in all directions.
Diagram 4

Diagram illustrating how to determine the **structural root zone**.

The **structural root zone** (SRZ) is based on ‘R’.

R = 2 metres. The SRZ is a circular area below the tree, extending at equal distances from the tree base in all directions.