

**Submission
No 263**

**INQUIRY INTO THE PROTECTIONS WITHIN THE VICTORIAN
PLANNING FRAMEWORK**

Organisation: Blackburn & District Tree Preservation Society

Date Received: 31 January 2022

BLACKBURN & DISTRICT

TREE PRESERVATION SOCIETY INC.

31 January 2022

The Secretary
Legislative Council Environment and Planning Committee
Parliament House, Spring Street
EAST MELBOURNE. VIC 3002

Via email only planninginquiry@parliament.vic.gov.au

Dear Members of the Legislative Council Environment and Planning Committee

Re: Inquiry into Protections within the Victorian Planning Framework

Thank you for the invitation to provide a written submission to such an important inquiry into the adequacy of the Planning and Environment Act 1987 and the Victorian planning framework. The Blackburn and district Tree Preservation Society (inc.) wishes to address the following terms of reference:

- (2) environmental sustainability and vegetation protection
- (3) delivering certainty and fairness in planning decisions for communities
- (4) (g) penalties for illegal demolition and tree removals

The Blackburn and District Tree Preservation Society notified all its members about this planning inquiry in its November 2021 Newsletter.

Yours sincerely,

Dianne Tribe – [REDACTED]
On behalf of the Committee of the Blackburn & District Tree Preservation Society

Prepared by the Executive Committee of the Blackburn & District Tree Preservation Society

Dianne Tribe Life member – [REDACTED]
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For the Blackburn & District Tree Preservation Society Inc.
PO Box 5 Nunawading VIC 3131
January 2022

The Blackburn & District Tree Preservation Society Inc.

The Blackburn & District Tree Preservation Society ('B&DTPS' or 'Tree Society') consists of one hundred members with an Executive Committee of seven and a Friends group of over one hundred people and like-minded community groups.

The tree society was formed sixty years ago after Blackburn residents became concerned at the loss of the treed amenity of the newly developed area in which they had chosen to live. People gained affinity with the place with its natural landscape and were prepared to fight to preserve it.

The tree society has maintained the philosophy of the importance of preserving and enhancing the local landscape since 1959. It continues to encourage sensitive development with the protection of the environment paramount. It became the voice of many, offering expert advice and information, including to council, to retain the treed aspect as well as protection for the remaining flora and fauna in a suburban environment.

Highlighting corridor enhancement and creating biolinks has become the platform for many Tree Society submissions required in the protection of the precious, remaining remnants.

During the 1980s Tree Society members and many concerned residents were crucial in the original campaign for tree and vegetation controls for Blackburn and surrounding suburbs in the City of Nunawading (now the City of Whitehorse) in the 1980s. Residents who moved into the area realised that action needed to be initiated to enact protection and prevent inappropriate development in this special locality containing significant urban tree canopy and indigenous vegetation.

This process was one of the earliest examples of the establishment of tree and vegetation protection controls within Victoria.

The scheme has undergone several name changes over the years from the early Landscape Development Scheme to the Special Residential Zone (which encompassed 6 Blackburn streets originally, then 59). More recently many more neighbourhoods have been added in suburbs such as Mitcham, Forest Hill, Blackburn South, Vermont and Mont Albert North.

In February 2018 the whole of the City of Whitehorse attained significant landscape overlay status that afforded interim tree protection throughout the city via Significant Landscape Overlay No. 9 (SLO9). SLO9 covered all residential areas within Whitehorse that were not currently covered by SLO 1 through 8. This Schedule was updated on 30 July 2020 and is an interim tree protection control until mid-2021.

Refer **Appendix 1** - The Blackburn & District Tree Preservation Society Inc.

Terms of Reference #2: Environmental sustainability and vegetation protection

Climate change, the urban heat island effect and population growth are the major issues in environmental sustainability and vegetation protection.

Urban Trees are at Crisis Point according to DELWP (2019) as well as the research by RMIT Centre for Urban Research.

Despite Councils publishing an Urban Forest Strategy, it is obvious that the urban tree canopy and vegetation is declining.

This is particularly evident in the City of Whitehorse where environmental sustainability and vegetation protection is under threat despite protections from 9 Significant Landscape Overlays in this City.

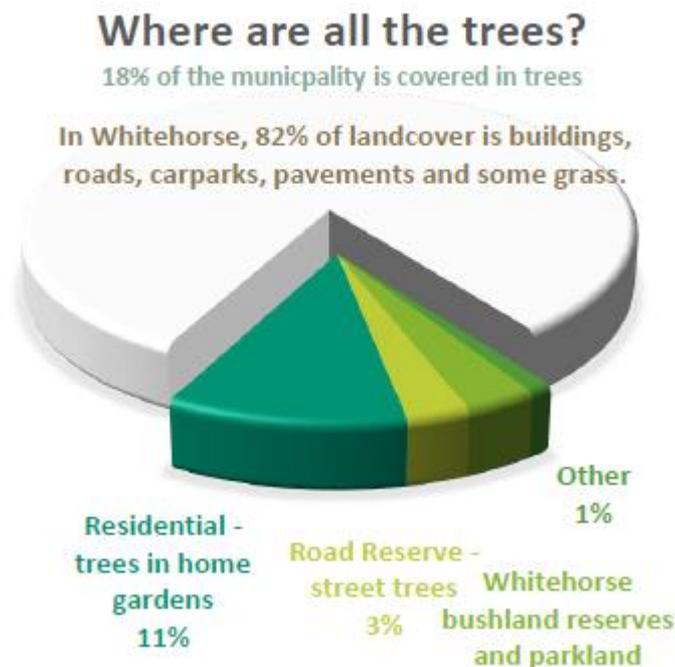
Recent research has demonstrated that the tree canopy in Whitehorse has reduced from 22.3% in 2014 to under 20% in 2018. This finding from an RMIT Centre for Urban Research study, *Urban Vegetation Cover Change 2014-2018*, published in July 2019 reinforces earlier research detailed in the report *Benchmarking Australia's Tree Canopy: An I-Tree Assessment* (2014) by the Institute of Sustainable Futures, University of Technology, Sydney. The latter study used a municipal tree canopy assessment tool to measure tree canopy and found that Whitehorse had 22.9% tree canopy cover in 2014. Subsequent measurements have demonstrated a steady decline in the urban tree canopy similar to the conclusions from the RMIT Centre for Urban Research study.

The DWELP 2019a Study of Tree Canopy in Melbourne's east shows that in 2018, the City of Whitehorse had a tree canopy measuring 18.4%. This will be even lower in 2022.

If this tree canopy loss is not addressed, then Whitehorse will have less than 10% tree canopy cover by 2040.

Where is the existing vegetation of Whitehorse?

- Whitehorse is covered by 82% built form such as roads, footpaths, buildings and sports ovals.
- Over 50% of tree canopy and vegetation is on private land, sitting at 11%
- 4% of the tree canopy is in parks and 3% are street trees.



Therefore the planning controls and enforcement on privately owned land are essential to prevent further tree canopy loss.

Over 1,000 trees are removed annually on private land within Whitehorse with little or no attempt at establishing or administering a tree succession program – and because most trees in urban environments are in private ownership there needs to be an immediate response in favour of tree retention.

However, the authorities at State and Local level keep passing the buck and either appear powerless or unwilling to act.

The trees in the City of Whitehorse are under threat as never before due to:

1. Over development of sites with little room for canopy trees to provide shade and to prevent overheating leading to more reliance on air conditioners:
 - There is a relentless push for infill development with multi-unit developments and overblown 'McMansions' being built on average-sized lots requiring mass tree and vegetation removal prior to construction and too little room for replacement plantings including for canopy trees once these long-term unsustainable dwellings have been built.
 - Tree size does matter: The benefits of trees increase exponentially with their size (City of Melbourne, 2011). The larger the tree the greater the benefits and ultimately the more liveable is the neighbourhood. Large trees can deliver 60-70 times the benefit of small trees in terms of oxygen, carbon capture and heat protection. It is not as simple as just replacing a large old canopy tree with a sapling. Many saplings are required to give the same effect as one old tree. They also require at least 20 years to be effective.

Whitehorse Background paper for Urban Forest Strategy

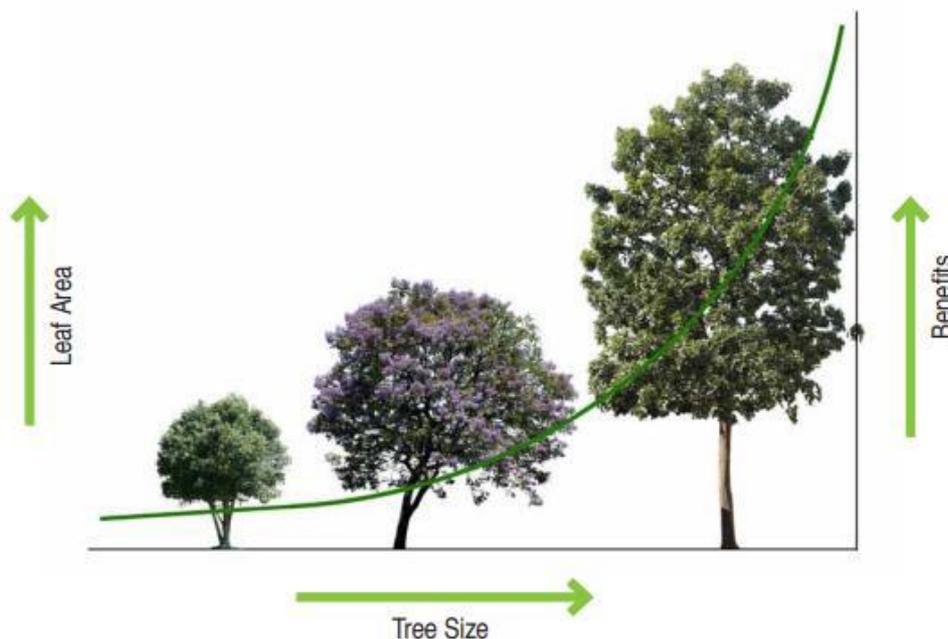


Figure 7 - Tree size does matter - the benefits of trees increase exponentially with size and increase in leaf area. (Adapted from Urban Tree Alliance <http://www.urbantreealliance.org/why-trees/> accessed 12/7/2012)

2. Illegal and unauthorised tree removal:

- The illegal removal of trees and the low fines meted out by the State and Local authorities lead to developers seeing fines as the cost of their development.
- It is costly and time consuming for Councils to take culprits to the Magistrates Court for paltry fines.

3. The unintended consequences of VicSmart Applications:

- The introduction of the fast-tracked VicSmart single tree planning approval process lacks transparency and is being unscrupulously 'gamed' by irresponsible landowners and developers without, it appears, any willingness to close the loopholes by state or local government authorities.

4. The effects of all built form:

- As already stated, 82% of the City of Whitehorse is covered with built form.
- The massive loss of trees and vegetation caused by major infrastructure projects in Whitehorse including level crossing removals and the North East Link.
- The city's street trees are under pressure to survive in the face of urban threats, including disproportionate lopping due to their proximity to powerlines, vehicular pollution and the current and worsening climate emergency.
- The city's parks and open spaces are vulnerable and currently are only 4% coverage of Whitehorse.
- There is insufficient open space in Whitehorse because of the city's burgeoning population and the increasing popularity of parks and open spaces, especially during the COVID-19 lockdowns.
- Urban open spaces are being increasingly viewed as 'wasted space' ripe for economic gain via residential, industrial or commercial development as well as specific sporting clubs that exclude others from use and require either more built form or more grass and less diverse vegetation and tree canopy. The resultant effect is hotter urban environments.

Terms of Reference #3: Delivering certainty and fairness in planning decisions for communities

The use and misuse of the VicSmart planning application process for single tree removals.

The objective of VicSmart was to streamline the planning process and lead to better planning outcomes for all stakeholders but the process lacks transparency and is being 'gamed' by unscrupulous owners and developers.

The VicSmart planning process for single-tree removals however, is currently being misused. For example, developers and residents are submitting multiple single applications to circumvent the intended checks that would be required for a normal planning application that would be assessed by council planners via council Planning Schemes.

In addition, the process lacks third-party transparency. These applications are considered by a planner with no public submissions and no information regarding the reason for removal of a particular tree. Trees are frequently removed for their nuisance value to the owner and are usually not replaced with a similar tree. There is no way to ensure replacement trees are planted. Council can insist on replanting with a planning application.

Terms of Reference #4: Penalties for illegal demolition and tree removals

There should be on the spot fines of significant value for illegal tree removal – this is the only deterrent that is effective for developers and residents who see trees as a nuisance or a 'danger'. \$2000 is no deterrent to a developer and the Tree Society would encourage the fine be of the equivalent value of the tree removed as deemed by Council.

Retention of tree canopy through meaningful and increased enforcement and appropriate fines:

Increased enforcement is key to the deterrent effects of illegal tree removals, and often, the tree has already been felled before the Enforcement Officer arrives. And then, at best, it's a slap on the wrist.

Residential infill development and the tendency to build larger houses are negatively impacting the urban residential tree canopy. The excessive removal of existing trees and vegetation to create larger built structures inevitably results in the provision of little or no space for successful replacement tree plantings.

Metropolitan planning schemes provide for limited tree protection and mandates some space for gardens. However there is little in the way of enforcement and existing financial penalties do not deter tree removal and compensatory canopy tree replacement rarely occurs.

Vegetation and canopy trees are a crucial urban amenity however the illegal removal of trees in Victoria is either ignored by the authorities or, for the small number of successful court cases, a small fine not exceeding \$2,000 results. This is not significant enough to discourage excessive tree removal by landowners and developers. It is seen as the cost of doing business.

By contrast in **NSW meaningful tree protection has applied since 1979.**

The Environmental Planning and Assessment Act 1979 provides that the maximum penalty for illegal tree removal or destruction in breach of the Act is a fine of \$1.1 million and a further fine of \$110,000 for each day that the offence persists. In addition to imposing a fine, the NSW Act permits the court to order a person convicted of illegal tree removal/destruction to plant and maintain new trees to maturity, and to provide a financial security for the performance of any obligation of this kind.

The NSW Environmental Planning and Assessment Act 1979 allows councils to make provisions in relation to protecting or preserving trees or vegetation via Tree Preservation Orders (TPOs). Breaching a TPO is a criminal offence and essentially the Order prohibits the removal of trees 5 metres in height and taller unless prior approval from the council has been obtained or the tree is a declared noxious environmental weed.

Two examples have occurred in the last few weeks in Whitehorse:

On 12 January 2022 the new property owner (a developer) felled six mature trees illegally at 207 Canterbury Road Blackburn which is located within the Significant Landscape Overlay – schedule 2 (SLO2). The SLO-2 protects trees that have a circumference of 50 centimetres at 1 metre above ground level.

On Saturday 29 January 2022 at 7:00pm, a developer was clearing a site at 199 Canterbury Road, Blackburn with only a permit for demolition of the dwelling. No tree protection barriers were installed and no permission was given for vegetation removal. The enforcement officer arrived and work ceased at 8pm.

The team leader of the Enforcement Team at Whitehorse Council has advised that it may take between 12 months to 7 years to get a compliance outcome whereby trees (saplings) of a similar species may be replanted. In the meantime, the developer can apply for a permit to proceed with the development while the resolution regarding the illegal removal of the trees (breach of a planning permit) drags on to be resolved. The developer should not be allowed to lodge an application for a planning and building permit whilst the developer has failed to obtain a planning permit regarding the trees on the property and until the planning matter is resolved to the satisfaction of the authority.

An 'on the spot fine' would address this issue. There are currently tools to measure the dollar value of an old growth tree. One suggestion is that the perpetrator pays the full price of the tree that has been removed.

In summary:

- Vicsmart has added to the problem and not addressed it with no ability to ensure trees are replaced.
- Fines are too low and too difficult and time consuming for council to collect and the NSW model should be adopted with on the spot fines.

- Planning controls require more mandatory planning schemes that are clear and more than guidelines.
- Space needs to be included on private land for canopy trees to prevent the urban heat island effects.

Appendix 1: The Blackburn and District Tree Preservation Society Inc.

Tree Society Profile

The tree society is a not-for-profit incorporated environmental organization with over eighty members managed by an honorary committee of five individuals.

The society concerns itself with issues involving the natural landscape within the City of Whitehorse and also regional, state wide and national environmental concerns.

Local issues of interest to the society include:

- Protection and enhancement of the city's natural landscape
- Planning in relation to preserving vegetation and limiting over-development
- The built landscape
- Streetscape character
- The management of municipal parks and open spaces.

The society was started in 1959 when a group of Blackburn residents, concerned about the loss of local bush character, banded together to lobby council to reserve areas of remnant vegetation and open space for parkland. The society has been instrumental in supporting the election of 'green' Councillors, actively promotes the planting of indigenous plants and has published regular newsletters, plant guide booklets and an indigenous plants poster.

In the early to mid-1980s, the society was instrumental in the creation of the Special Residential Zone (now the Significant Landscape Overlay No. 1) in Blackburn with its tree control provisions and has provided crucial support for establishing community Bushland Park Advisory Committees unique to Whitehorse.

Statement of Purpose of the Society

1. To investigate the present and potential areas of parklands and sanctuaries within the City of Whitehorse and to have selected bushland areas reserved as sanctuaries and parklands, preserving their natural amenity.
2. To encourage and participate in the planting of indigenous trees and plants in parks and sanctuaries and along streets, especially in denuded areas.
3. Foster a general interest in the native flora of the City of Whitehorse, to encourage the retention of existing indigenous trees and plants, and, in particular, to encourage the use of indigenous plants in private gardens.
4. To stimulate an interest in the history of the City of Whitehorse, in particular by accumulating, disseminating and preserving information on the natural history of the area.
5. To concern itself with wider conservation issues, although the interests of the society lie mainly within the City of Whitehorse.

Tree Society Website and Email Address

The website is <http://www.bdtps.wordpress.com>

Email address: [REDACTED]
