

Significant Landscape Overlay (SLO9)

Frequently Asked Question's (FAQs)

Where does SLO9 apply?

SLO9 was applied to all land included in the Neighbourhood Residential Zone (NRZ), General Residential Zone (GRZ), Residential Growth Zone (RGZ) and Low Density Residential Zone (LDRZ) that was not already covered by SLO1-8.

This means that all residential zoned land in the Whitehorse is now covered by the SLO and tree protection controls apply. The controls do not change the zoning of land. Landowners can identify the zoning and overlays that apply to their land at <https://map.whitehorse.vic.gov.au/index.html>

Amendment C219 deleted Schedule 2 and Schedule 4 to the Vegetation Protection Overlay (VPO) as these were large, area-based, tree controls that would be duplicated by the updated SLO9. Any other existing overlays will continue to apply to your land.

What is Planning Scheme Amendment C219?

Amendment C219 applied SLO9 to all residential land that was not already included in an SLO.

How long are the controls in place for?

SLO9 will cease to have effect after **23 December 2024** (unless a further extension to the control is approved).

Why is there an expiry date?

The Minister for Planning extended SLO9 on a temporary basis while the Department of Transport and Planning (DTP) completes a review of the SLO in the Victoria Planning Provisions. This review is intended to establish a State-wide approach on how planning tools for tree protection are used.

Council will only notify landowners and occupiers again if SLO9 is approved permanently and therefore Council encourages all landowners to confirm the planning controls that apply to their land prior to undertaking any buildings and works that may affect trees on a property.

What is a Significant Landscape Overlay?

The SLO identifies, protects and enhances the visual and/or aesthetic landscape qualities of particular areas. The planning controls and desired landscape outcomes of the SLO vary from area to area, therefore in Whitehorse, the planning controls introduced in SLO9 differ from SLO 1 to 8. The location of each schedule to the SLO is as follows:

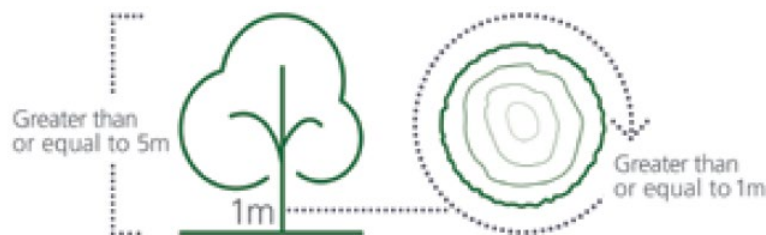
- SLO1: Blackburn Area 1
- SLO2: Blackburn Area 2
- SLO3: Walker Estate, Mitcham
- SLO4: Blackburn Early Settlement Neighbourhood Character
- SLO5: Nominated large sites – 1 Lake Road, Blackburn; 57-67 Central Road, Blackburn and 131-173 Central Road, Nunawading
- SLO6: Yarran Dheran, Somers Trail, Collina Dell and Menin Road, Mitcham
- SLO7: Vermont (Glenburnie Road and surrounds)
- SLO8: Vermont (south of Canterbury Road)
- SLO9: all other residential land – put in place by Amendment C219

How is Amendment C219 different to the temporary tree protection controls in place since February 2018?

The temporary tree protection controls were first approved by the Minister for Planning through Amendment C191 and applied SLO9 to all residential land across the municipality that was not already included in an SLO. Amendment C219 introduced an updated SLO9 that includes more exemptions from the need for a planning permit than the temporary controls. These exemptions are explained below. The further extension only changes the expiry date.

What do the controls mean for me?

Any tree with a trunk circumference of 1.0 metre or greater measured at 1.0 metre from the ground and/or a height of 5 metres or greater will a planning permit to be removed, lopped or destroyed (see diagram).



The controls apply to all properties covered by SLO9, not just to land being developed. The tree control means that careful design and planning will be necessary to make sure that development either allows for the retention of trees that are protected by the SLO or provides justification for their removal and provides enough space to plant new trees.

The controls allow Council to consider how a development will impact the tree canopy in the area, whether a proposal for tree removal is appropriate and require replacement planting of any trees that are permitted to be removed. The tree controls also enable Council to take enforcement action if vegetation is removed without the required approval.

What trees can I remove without a permit?

No planning permit is required to remove, or undertake works to the following:

- A tree that has both:
 - a height less than 5 metres; and
 - a single trunk circumference of less than 1.0 metre measured at a height of 1.0 metre above ground level.
- A tree that is less than 3 metres from the wall of an existing Dwelling or an existing Dependent Person's Unit when measured at ground level from the outside of the trunk. However, this exemption does not apply to a tree that is less than 3 metres from an existing outbuilding.
- A tree that is located less than 3 metres from an existing in ground swimming pool when measured at ground level from the outside of the trunk.
- A tree that is an Environmental Weed species listed below:
 - Box Elder (*Acer negundo*)
 - Cape Wattle (*Paraserianthes lophantha*)
 - Cherry Plum (*Prunus cerasifera*)
 - Cootamundra Wattle (*Acacia baileyana*)
 - Cotoneaster (*Cotoneaster spp.*)
 - Desert Ash (*Faxinus angustifolia*)
 - Hawthorn (*Crataegus monoyna*)
 - Mirror Bush (*Coprosma angustifolia*)*
 - Privet (*Ligustrum spp.*)
 - Radiata or Monterey Pine (*Pinus radiata*)
 - Sallow Wattle (*Acacia longifolia*)

- Sweet Pittosporum (*Pittosporum undulatum*)
- Willow (*Salix spp.*)

*Please note, the Mirror Bush (*Coprosma angustifolia*) has been incorrectly identified in the adopted amendment documents. The correct species name is Mirror Bush (*Coprosma repens*).

- The pruning of a tree for regeneration or ornamental shaping.
- A tree which is dead or dying or has become dangerous to the satisfaction of the responsible authority. See below.
- A tree outside the minimum street setback requirement in the Residential Growth Zone (RGZ). This means a permit is not required for a tree beyond / behind the specified minimum street setback. This exemption recognises that the RGZ is where Council is directing housing growth within the municipality, but the leafy streetscape that contributes to neighbourhood character should be protected.
- A tree on public land or in a road reserve removed by or on behalf of Whitehorse City Council.
- The removal, destruction, or lopping of a tree to the minimum extent necessary:
 - to maintain the safe and efficient function of a Utility Installation, such as power lines, to the satisfaction of the responsible authority or the utility service provider; or
 - by or on behalf of a utility service provider to maintain or construct a Utility Installation in accordance with the written agreement of the Secretary to the DELWP (as constituted under Part 2 of the *Conservation, Forests and Lands Act 1987*).
 - to maintain the safe and efficient function of the existing on road public transport network, such as bus stops and related infrastructure and tramways, to the satisfaction of the Department of Transport.
- A tree required to be removed, destroyed or lopped in order to construct or carry out buildings or works approved by a Building Permit that was issued prior to 8 February 2018.

This does not apply to a tree that needs to be retained as part of an existing permit condition, a plan endorsed under a planning permit or an agreement under section 173 of the Planning and Environment Act 1987, where separate approval may be required to remove, destroy or lop the tree. Please contact Council's Planning and Building Department on 9262 6303 to ascertain the best way forward.

If there are any additional planning overlays on your land, or existing planning permits or agreements, this may also affect what trees you can remove.

What if I think my tree is dead, dying or dangerous?

For dead trees (no foliage year round; clearly dead) please send us a photo of the tree with your address and details via email to customer.service@whitehore.vic.gov.au and wait for a response. You will be contacted by Council.

For dying trees you will need an arborist report and to lodge a Planning Information Request with Council via our website <https://www.whitehorse.vic.gov.au/planning-building/lodge-and-apply>.

For dangerous trees that are an immediate hazard, please contact the Planning & Building Department on 9262 6303.

Do I need to confirm with Council first that my tree is exempt from the need for a planning permit?

If you are unsure whether a tree is exempt from the need for a planning permit, you can contact Council to check. It is also recommended that you keep evidence showing that the tree met an exemption e.g. photos, arborist comments, measurements, etc.

If you believe a tree is dead, dying or dangerous please refer to the information in the previous question.

If you want confirmation from Council in writing that the tree is exempt from the need for a planning permit you may lodge a Planning Information Request via our website <https://www.whitehorse.vic.gov.au/planning-building/lodge-and-apply>

What happens if I don't have any trees on my property?

The tree controls are intended to protect larger canopy trees and establishing trees that form part of the landscape and character of the neighbourhood. SLO9 covers a large part of the municipality and therefore includes properties that currently do and don't contain larger trees. However, in the future, a tree that has matured over time may need a planning permit to be removed. You will only require a planning permit to remove a tree if it doesn't meet any of the permit exemptions in the SLO9.

What is the difference between pruning and lopping?

- **Pruning** of a tree is defined as removing branches (or occasionally roots) from a tree or plant using approved practices, to achieve a specified objective such as for regeneration or ornamental shaping. *A permit is not required to prune a tree.*
- **Lopping** is defined as cutting branches or stems between branch unions or internodes. *A permit is required to 'lop' a branch, or branches.*

Council encourages residents to contact an arborist before pruning or lopping, as there are Australian Standards for pruning and lopping that should be complied with.

Can I prune overhanging branches from neighbouring property?

Talk to your neighbours first if you are concerned about a tree on their property. You can prune an overhanging tree to the boundary fence line (refer to pruning guidelines above), without a planning permit. You do not have the right to enter their property without permission.

What about trees on the nature strip or street trees?

Street trees in the nature strip/road reserve on any road that falls within a residential zone are protected by the controls, and any other vegetation controls. However a planning permit is not needed for a tree in a road reserve to be removed by, or on behalf of, Whitehorse City Council.

Street trees in the nature strip/road reserve of a road in the Road Zone Category 1 (generally larger arterial roads such as, but not limited to, Whitehorse Road) are not protected by the updated controls, or any other vegetation controls.

How is the health and safety of street trees and trees in Council's parks monitored?

Council has an active program of inspecting and maintaining street trees and trees in Council's parks. Information about Council's approach to nature strip trees can be found on our website at <https://www.whitehorse.vic.gov.au/waste-environment/trees-and-gardens/naturestrips>. If you are concerned about the safety of a specific tree or trees, we ask that you report them to Council through the 'Report' function at www.whitehorse.vic.gov.au or using the *Snap Send Solve* app.

Can I still develop my land?

The overlay does not prohibit development, however any development needs to comply with the overlay. This means that careful design and planning will be necessary to make sure that development either allows for the retention of trees that are protected by the SLO or provides justification for their removal and allows enough space to plant new trees.

Any buildings and/or works on private land within 4 metres of any tree that is protected under the controls will require a planning permit. The protected tree may be on your own land, on neighbouring land or in the nature strip. Buildings and works includes, but is not limited to:

- New habitable and non-habitable buildings, extensions to existing buildings and structures;
- Driveways (new or modifying an existing one);
- Service and utility authority pits and works (e.g. Telstra pits);
- Excavation for driveways/hard surfacing, or general site cuts; or

- Retaining walls/front fences/side boundary fencing within 3 metres of the frontage.

The controls allow Council to consider how a proposed development will impact on the tree canopy in the area and whether a proposal for tree removal is appropriate.

What about unlawful removal of trees?

The overlay enables Council to take enforcement action if vegetation is removed without approval. The maximum penalty that can apply is 1200 penalty units (section 127 of the *Planning and Environment Act 1987* (PEA) and explained here <https://www.planning.vic.gov.au/legislation-regulations-and-fees/penalties>). A penalty unit is \$165.22 (as at 1 July 2020) (<https://www.justice.vic.gov.au/justice-system/fines-and-penalties/penalties-and-values>). The maximum fine at the Magistrates Court for illegal tree removal is \$198,264 (as at 1 July 2020).

Where can I view the approved Amendment documents?

- Council's website at <https://www.whitehorse.vic.gov.au/schedule-9-landscape-overlay-amendment-c219>
- Department of Environment, Land, Water and Planning's website at <https://www.planning.vic.gov.au/schemes-and-amendments/browse-amendments>

If I need a planning permit, how long will it take and what do I need to provide as part of the application?

If a permit is required for the removal of one tree, it may be possible to obtain this through the VicSmart application process, which aims to fast track decisions on minor planning applications in 10 business days. More information about VicSmart is available from <https://www.whitehorse.vic.gov.au/planning-building/permit-information/permit-processes-explained/vicsmart-permit-process>. Landowners should contact Council's Planning and Building Department on 9262 6303 to determine if a permit can be obtained through this process.

The timeframe for planning permit applications that do not meet the VicSmart criteria is likely to be longer. Timing for a decision is dependent on a range of factors, including the extent and complexity of the proposal, and whether notice of the application is required.

Please note that an arborist report may be required when submitting an application for a permit to remove a tree. For further information about what is required for an application please visit <https://www.whitehorse.vic.gov.au/planning-building/permit-information/permit-processes-explained/planning-permit-process>

What is the cost of a planning permit application?

The fees for planning permit applications can be found online at: <https://www.whitehorse.vic.gov.au/planning-building/application-fee-information>. A fee for a VicSmart application is between \$199.90 and \$429.50 (August 2020). Fees for non-VicSmart planning permit applications may be higher. Please contact Council's planning and Building Department on 9262 6303 if you have any queries about the fees.

Key milestones for SLO9191

Please note: milestones highlighted in red indicate when notification was sent

- **2015** - *Municipal Wide Tree Study* commenced
- **26 May 2017** - Council submitted a request to the Minister for Planning (the Minister) to approve Amendment C191 to apply the SLO on an interim basis to all residential land that did not already have an existing permanent SLO. Council also sought authorisation to prepare an amendment to apply the same controls on a permanent basis
- **28 December 2017** - Minister approved Amendment C191, which came into effect on 8 February 2018, and introduced SLO9 on an interim basis until 31 December 2018. The Minister directed Council to undertake further strategic work before submitting a new request to permanently apply SLO9
- **21 February 2018** - Letters sent to all owners and occupiers of affected properties notifying them about the introduction of the interim controls
- **18 December 2018** - Minister extended the lapse date for the interim SLO9 by 6 months until 30 June 2019. Council engaged planning consultants to assist in undertaking the further strategic work
- **18 March 2019** - Further strategic work adopted by Council
- **3 April 2019** - Council submitted a new request to the Minister to prepare and exhibit Amendment C219 to permanently apply SLO9
- **27 June 2019** - Minister authorised Council to prepare and exhibit Amendment C219
- **28 June 2019** - Minister extended the lapse date for the interim SLO9 by a further 1 year until 30 June 2020 to allow the completion of Amendment C219
- **11 July 2019** - Letters sent to all owners and occupiers of affected properties notifying them about the exhibition of Amendment C219
- **18 July to 19 August 2019** - Exhibition of Amendment C219
- **16 September 2019** - Council considered submissions and resolved to request the Minister to appoint an independent Panel to consider the submissions
- **2 December 2019 to 6 December 2019** - Independent Planning Panel Hearing
- **23 January 2020** - Council received the Panel report
- **16 March 2020** - Panel recommendations were presented to Council
- **26 March 2020** - Council submits Amendment C219 to the Minister for approval
- **16 July 2020** - Minister approves Amendment C219 on an interim basis for 12 months while the State Government completes a review of the SLO in the Victorian Planning Provisions
- **30 July 2020** - Updated SLO9 came into effect
- **September 2020** - Letters sent to all owners and occupiers of affected properties notifying them about the approval of Amendment C219
- **24 June 2021** – Minister extends SLO9
- **16 June 2022** – Minister extends SLO9
- **24 May 2023** – Minister extends SLO9
- **20 June 2024** – Minister extends SLO9