

Reform of tree regulations is urgent as climate change takes hold

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There are serious failings in regulation and administration both at state and local government levels which, together, are compromising the recovery of canopy tree cover in greater Melbourne, and especially in the City of Boroondara.

The history

Regulatory protection against canopy tree loss on residential properties in Boroondara was first introduced in 2006 in the form of the Tree Protection Law 1F. Now the Tree Protection Law 2016, it remains in force today in substantially its original form. It provides for a number of protections, most significantly that no tree with a trunk circumference of 1.1 metres or more may be removed except under specified conditions with Council approval.

Boroondara Council was prompted to introduce the Local Law by increased community concern over the loss of canopy trees associated with residential development. And residential land is important, as it comprises about 75% of the total land area of 6,000 hectares in the municipality, and thus from a climate change perspective is very important.

Penalties

Inadequate penalties have often been cited as a cause of major canopy tree loss in Boroondara, and in many other municipalities. The maximum penalty under the Local Government Act for contravening the Local Law is 20 penalty units. These penalties are indexed and are currently set at \$184.92 per unit. This means a maximum penalty of \$3,698.00.

This does not constitute an adequate sanction to protect against the illegal removal or damage to canopy trees. And it is evident that non-compliance has been very common during the entire period that the local law has been in force. The provision of adequate sanctions under local laws made by individual councils as provided for under the Local Government Act is a responsibility of the Victorian government.



A tree which was illegally removed from a residential property in Balwyn

More regulatory failure

Penalties, whilst important are one thing. But what if the physical conditions suitable for the growing of trees on residential properties, is not assured under current regulatory requirements? This, unfortunately, is where we find ourselves today.

It is a fact that under current Victorian regulations, there is no assurance that there will be adequate land available on individual residential properties to provide for the growing of a tree. This is also an issue for the Victorian government, a central feature of which is the maximum site coverage upon which residences are permitted to be built. For most properties, buildings must not occupy more than 60% of an allotment. This did not matter a generation ago when new dwellings were far smaller. But now, many dwellings are being constructed in Boroondara to fully occupy the allotment as permitted under regulation. The scope for the planting of vegetation, and especially canopy trees, is accordingly diminished.



The fully concreted front “garden” is now common-place in Boroondara

An associated standard of relevance is that of the minimum garden area, which is set at 35% for an allotment greater than 650 square metres. Lesser garden areas are required on smaller allotments. Superficially, this may appear adequate. However, this condition for a “garden area” may be constituted of an aggregation of much smaller areas. And it need not be comprised of sufficiently deep soil in which a tree could be successfully grown.

Site permeability and excavations

It may appear at first glance that this limitation is recognized in provisions for site permeability, which requires that the permeable area may be no less than 20% on larger allotments, but less on smaller properties. However, there is no requirement that the “permeable” area be constituted of soil deep enough to sustain vegetation, including trees. This gap in state regulation is exemplified by the now common excavation of residential sites. In fact, the regulations provide carte blanche for excavations to cover the entire allotment.



A large site for a single residence in Boroondara. The excavation consumes the entire site.

Self-evidently, such developments eliminate any prospect for the growing of trees. Of related concern is the fact that these developments do not permit the absorption of rainfall into soil. The rain that does fall is typically directed into the stormwater system. These developments are accelerating the trend already evident for the soil to become drier because of the impact of climate change.

Building surveyors

Most residential building projects are supervised by surveyors who are appointed by the developer. It appears that in many instances that subsequent to the building surveyor granting the occupancy certificate for a new residence, there is no effective supervision or enforcement of regulations for the completed project. This includes potential non-compliance with regulations, such as those highlighted above, that restrict the growing of trees. It is also common for the occupancy of dwellings to be approved prior to any landscaping works, and other works not associated with the habitability of the dwelling itself.

Administrative failures

Report and consent applications

Under the “report and consent” provisions of the Building Regulations a property owner may secure the approval of the Council to over-ride specified regulatory standards. These approvals, as secured under “report and consent” are made at administrative level.

It is self-evident that such decisions may, in certain cases, adversely impact the environment for trees. For example, a permitted reduction in a front setback would reduce the scope for trees to be grown in a front garden. Likewise, approval for a higher front fence, which necessitates deep concrete foundations could potentially intrude into the root zone of trees, both on the property itself and street trees on an adjoining nature strip. Boroondara Council approves hundreds of report and consent applications each year, the details of which are not reported publicly.



A positive outcome in this case: Trees on the nature strip and on the adjoining residential property unimpeded by a low regulation height front fence

Council resources deployed to protecting canopy trees on residential properties

The level of resources deployed in the administration and enforcement of the Tree Protection Law in Boroondara has been inadequate since its inception. In 2022-23 budgeted Council outlays for this function are only \$620,000. This funding is to provide for a multiplicity of tasks which include the assessment of applications to remove trees. These have been received by the council since the introduction of the Local Law at the rate of about four each working day. It also includes the prosecution of enforcement action for non-compliance. Educational and promotional activity to spotlight the importance of canopy tree cover on residential properties across the community is underfunded.

Turning around regulatory failure

The foregoing sets out some of the more important elements of regulatory and administrative failure, both at state and local government levels, that militate against the development of adequate canopy tree cover on residential properties. These elements need to be the subject of wider and more intense conversation and campaigning than they have been until now. The objective is to achieve necessary regulatory change, and administrative reform, to save the situation.