



**muswellbrook
shire council**

Management of Trees on Roads and Public Land Policy

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Community Strategic Plan Goal	5: Effective and efficient infrastructure that is appropriate to the needs of our community		
Community Strategic Plan Strategy	5.1 Construct and maintain well-planned community infrastructure that is safe, reliable, and provides agreed levels of service		
Delivery Program activity	5.1.1 Review, develop and maintain liveable town and village precincts		

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Policy Objectives

1. To manage the risks arising from trees on all roads and public land under Muswellbrook Shire Council's control, taking reasonable measures within available resources. The Policy Provides for the management of risks arising from:
 - Tree failure potentially causing injury to people and/or property damage, and
 - Tree roots causing and/or likely to cause damage to property such as buildings and structures.
2. To preserve, enhance and develop attractive, uniform streetscapes and public open space areas to ensure local history, identity, and liveability is preserved and enhanced for future generations within Council's planning controls and adopted strategies.

Risks Being Addressed

1. Damage caused by trees to people, property, and infrastructure.
2. Damage to the environment and the loss of:
 - Community history, identity, and natural landmarks; and
 - Community liveability by the reduction of trees and environment.
3. Poor land management leading to soil compaction, loss of topsoil, and erosion.
4. The urban heat island effect.

Scope

To be considered under this Policy, trees originate “wholly or principally” from public land owned or managed by Council.

Definitions

Term	Definition
Advanced Tree	Greater than 60 Litre pot size, 25 mm caliper, and 180 cm tall.
Council	Muswellbrook Shire Council
Dead Tree	A tree that is assessed by a Council Officer or arborist as dead or dying.
EEC	Endangered Ecological Community
Emergency Situation	Tree is assessed as dangerous or unstable and the likelihood is considered possible, and the consequences are considered major or severe for risk to property or people.
Habitat Tree (stag tree)	A live or dead tree with one or more hollows, nest, or roost sites. Dead trees, where practical and subject to a risk assessment, will be retained to provide habitat.
Public land	Public land includes: <ul style="list-style-type: none"> • Land owned by the Council set aside for community uses (such as parks and natural bushland) including Crown land managed by Council. • Roads and road reserves (whether the road is formed or not).

	<ul style="list-style-type: none"> • Council owned/managed natural areas and drainage reserves, and • Land owned by Council set aside for its operational purposes.
Natural Area	Defined land managed with native species for conservation of nature with associated ecosystems and biodiversity.
Solar Appliance	An attached, fixed appliance that is intended to capture the sun's energy for heating water or generating electricity.
Tree	A perennial woody plant with secondary branches supported by a primary stem and usually having a distinct crown. A tree may be dead or alive.
Vandalism	Unlawful destruction, damage, or injury to trees, whether dead or alive, through methods including, but not limited to, poisoning, pruning, cutting, ring barking, and/or removal.

Policy Statement

Section 42 of the Civil Liability Act 2002 makes allowance for Council's ability to carry out its duty of care as being limited by the financial and other resources which are reasonably available to exercise its functions. To rely on this section, inter alia, Council is required to show evidence of its compliance with the general procedures and applicable standards for the exercise of its functions, such as risk management from trees on public land controlled by Council.

With this Policy, Council aims to:

- Promote an integrated framework for dealing with the management of risks from trees on land under the control of Council and take reasonable steps to ensure that Council delivers its required duty of care;
- Ensure consistency and fairness in the way Council manages the risks arising from trees within public land controlled by Council;
- Ensure compliance with legislative requirements under the Local Government Act 1993, Roads Act 1993, the Civil Liability Act 2002, and the Privacy & Personal Information Protection Act 1998; and
- Take such steps as are appropriate to ensure a balance between managing the risks to the community's safety and infrastructure, whilst acknowledging the significant benefit of trees within the landscape to the social, environmental, economic, and cultural wellbeing of the community.

1. New Trees

Council encourages the planting of trees within road reserves or in public reserves, but only through Council approved programmes and/or application processes.

New street tree plantings should consider existing solar access for solar appliances, habitable buildings, and important garden areas (such as vegetable gardens) on neighbouring properties.

Amenity tree planting will be guided by Council's preferred species list.

Plantings in bushland and natural areas must be species native to the region, preferably of local provenance.

Council does not authorise the planting of trees on public land by individuals unless they are working as part of a recognised group in accordance with an approved management plan, or Council approved programme and/or application process.

2. Existing Trees – Potential Hazards

Where a request for tree removal or pruning relates to the potential for injury to any person or damage to property, a suitably qualified Council Officer will undertake a tree inspection to assess the risk using a hazard rating.

2.1. Hazard Ratings and Council's Actions

The table below outlines Council's hazard rating and corresponding action determined from a tree inspection. It describes the hazard rating at which Council will undertake work subject to Council's resourcing.

Table: Tree hazard rating and corresponding action

HAZARD RATING Personal injury / Property damage	COUNCIL ACTION
< 5	No action based on hazard assessment.
5 – 9	Conditional actions as recommended by Council Officer or arborist.
10 – 11	Tree removal or pruning.
12	Tree removal or significant pruning.

2.2. Refusal of Requests to Prune or Remove Council Trees

Council will refuse requests for removal or pruning of trees, if at the time of the inspection, the tree:

- Is in a healthy and stable state,
- Does not interfere with overhead or underground services,
- Does not affect the sight lines of motorists or pedestrians,
- Is not causing damage to private or public property,
- Is not risking public safety, and
- Is not likely to cause any of the above in the foreseeable future.

If no significant hazard or other considerations apply, Council will not consider the following reasons as valid for the removal or pruning of a tree(s):

- Leaf drops or bark shedding (into gutters and downpipes, pools, and lawns, for example),
- To improve the street lighting of private property,
- To enhance views,
- To reduce shade created by a tree,
- To reduce fruit, resin, bat or bird droppings on cars, driveways, pathways, clothes lines/washing,
- Minor lifting of driveways and paths on private property by tree roots, and
- To improve reception of communication transmissions such as digital TV signals.

2.3. Other Considerations (Not Including Solar Access):

Council will consider the following circumstances in conjunction with the hazard rating of the tree, when determining which action is appropriate:

- Whether the tree is heritage listed or listed on Council's Significant Tree Register,
- Whether the tree has significant amenity or aesthetic value, including the significance of the tree within the local area and regional landscape,
- Whether the tree provides habitat,

- d. Whether the tree species is listed as an environmental or noxious weed, and
- e. Whether the tree obstructs or prevents reasonable access for the maintenance of infrastructure,
- f. Whether the tree is listed as a threatened species or forms part of an Endangered Ecological Community (EEC),
- g. Whether the tree is demonstrated to cause or contribute significantly to health hazards and/or conditions,
- h. Whether there are other alternatives that could reduce the hazard, such as managing access around the tree or removing the target,
- i. The proximity of the tree to Local and State Heritage items, and
- j. Where a tree impedes the authorised use of community land categorised under the *Local Government Act 1993*, such as a sportsground, consideration will be given to pruning or removal of the tree.

2.4. Appeal of Hazard Assessment

Council will reconsider an assessment where a suitably qualified person supplies additional and satisfactory evidence.

2.5. Existing Trees - Potential Damage to Private Assets

Property owners are responsible for the repair and maintenance of assets on their land, including pipes, plumbing, driveways, and retaining walls. If tree roots have entered a pipe, it is typically because the roots are attracted to water leaking from a pipe. Property owners are responsible for repairs to pipes and should notify Council if repairs require pruning the roots of public trees.

Council will only consider claims for damage to private assets where there is sufficient evidence of a Council tree causing damage and it is shown that the property owner has previously notified Council about a particular issue and Council can be shown to have failed to take appropriate action.

Damage alleged to have been done to private property caused by a public tree requires documentation, including photographs of the alleged damage and the subject tree, to be provided to Council. The obligation is on the private property owner to provide sufficient evidence.

2.6. Existing Trees - Solar Access

Where a request for removal or pruning a tree on Council managed land relates to solar access, Council requires evidence of the solar appliance being installed prior to the tree being present before considering the request. Any tree pruning, removal, or other works arising from a request to provide for solar access will be at the applicant's expense.

2.7. Refusal of Requests for Tree Pruning / Removal to Increase Solar Access

Requests for removing or pruning of public trees will not be considered if any of the following conditions apply:

- a. The tree predates (that is: was growing prior to) the solar appliance installation,
- b. The tree is located on community land identified in the Community Land Plan of Management and is part of the native vegetation of the site,

- c. The tree is in an area of public bushland or is a native bushland remnant tree,
- d. The tree is a threatened species or part of an Endangered Ecological Community,
- e. The tree is a habitat or stag tree,
- f. The tree forms part of a native vegetation corridor, and the removal or pruning of the tree will have a negative impact on that corridor,
- g. The tree is listed on the Council's Significant Tree Register,
- h. The tree is included in a heritage declaration,
- i. The solar appliance is receiving four (4) hours or more full sunlight in winter, and
- j. The tree is the subject of a development consent or other approval that requires its retention.

3. Vandalism

Various legislation provides for an offence where a person who, without lawful excuse, wilfully or negligently injures, damages, or removes a tree on public land.

Council may implement actions relative to the severity and scale of the environmental vandalism, up to and including issuing infringement notices and legal proceedings.

4. Tree Replacement

If a tree is removed, Council will require the replacement with two advanced trees proximate to the location of removal, where practicable. Tree selection shall be guided by Council's preferred species list.

5. Dead Wood / Firewood Collection

The removal of dead wood, trees and logs is a Key Threatening Process under the *Threatened Species Conservation Act 1995*. Council will leave dead wood in situ or on site as much as possible to provide habitat for native fauna, facilitate ecological processes, and to assist in the control of soil erosion. The collection of firewood is not permitted from public land.

6. Tree Harvesting / Seed Collection

Harvesting or collection of plant material on public land requires written permission and will be considered on a case-by-case basis. Collection of seed from proposed development areas approved by Council is preferred.

If approved, the collection of seed from public land is subject to the following requirements:

- a. Flora bank guidelines must be followed (www.florabank.org.au),
- b. No collection in areas which have been burnt by a bushfire or subject to a major disturbance within the previous 3 years,
- c. Written consent of Council for seed collection shall be limited to a maximum of 2 years,
- d. No collection of seed from sensitive species,
- e. Applicants must demonstrate they have any necessary approvals/licences from relevant government agencies, and

- f. Any other conditions Council may require.

7. Removal for Driveway Crossings

Street tree planting, with or without tree guards, usually occurs when a new urban subdivision is developed. New development on the vacant blocks should have regard to the location of street trees. New driveway crossings are designed to be a minimum of 1 metre from any tree trunk.

A driveway crossing that requires removal of the street tree or will be closer to 1 metre to the trunk of the street tree, will only be approved in exceptional circumstances. Removal of a street tree for a new driveway crossing is subject to the following requirements:

- a. s138 permit,
- b. Location of proposed driveway allows for improved passive energy design of the building to be served by the driveway,
- c. A replacement street tree is planted along the frontage of the lot, or two trees are planted in a nearby public park nominated by Council. Replacement trees are to be advanced in size and maintained for a minimum of 12 months. If the trees don't survive in the first 12 months, they are to be replaced at the relevant party's cost.

Delegations

Other than in Emergency Situation and Development Approval in relation to driveway crossings, all requests that meet the criteria for Tree Removal are to be submitted to Council for consideration.

The removal of dead trees and the management of Natural Areas are exempt from these delegations. The Roads Act 1993 No 33 and the Rural Fires Act 1997 override this policy.

Dispute Resolution

Any disputes should be directed to the Manager Works, Muswellbrook Shire Council.

Associated Council Documentation

- Amenity Tree Planting – Preferred Species List
- Community Infrastructure Precinct Service Specifications for Parks and Reserves,
- Muswellbrook Flying Fox Camp Management Plan
- Riparian master plan
- Parks and Recreation Asset Management Plan
- Road Asset Management Plan

Legislation

- Biodiversity Conservation Act 2016
- Civil Liability Act 2002
- State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017- (SEPP)
- Hunter Regional Plan 2036
- MSC Locally Environmental Plan (LEP)
- MSC Development Control Plan (DCP)

- Local Government Act 1993,
- Roads Act 1993, and
- The Privacy & Personal Information Protection Act 1998

References

AS 4373-2007 Australian Standard Pruning of Amenity Trees

Statewide Mutual – Best Practice Manual – Trees and Tree Roots version 8: December 2019

Version History

This section identifies authors who reviewed the Policy and the date that it became effective.

Version No.	Date changed	Modified by	Amendments/Previous adoption details
1	22/11/2022	Director Property and Place	Draft Policy on public exhibition 28/09/2022 - 25/10/2022. Adopted by Council on 22/11/2022. Minute Number 156.
2	11/12/2023	Director Property and Place	Delegations amended and 'Emergency Situation' defined. Draft Policy on public exhibition 21/12/2023 – 01/02/2024.
3	20/03/2024	Director Infrastructure and Property	Definition of dead trees and natural area and reference to precedence of Roads Act 1993 No 33.