

## TMC Reports

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A new state-wide Planning Provision, Clause 52.37, has been introduced and is in effect as of the 15<sup>th</sup> of September 2025. This new clause brings tree protection requirements to residential land located within any of the following planning zones:

- Mixed Used Zone (MUT)
- Township Zone (TZ)
- Residential Growth Zone (RGZ)
- General Residential Zone (GRZ)
- Neighbourhood Residential Zone (NRZ)
- Housing Choice and Transport Zone (HCTZ)

I hope this is helpful.

If you have any questions, please feel free to reach out.

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## 1 Meaning of terms

### 1.1 Canopy Trees

Clause 52.37-1 defines 'Canopy Trees' as trees which meet **all** of the following triggers:

- The tree has a height greater than 5m
- The tree has a trunk circumference of more than 0.5m, measured at 1.4m above ground level
- The tree has a canopy diameter of at least 4m

*Notes:*

- *It has to meet all of the above to be considered a 'Canopy Tree'.*
  - *if multi-stemmed one trunk needs to be greater than 0.5m circumference at 1.4m above ground level*
    - *Greater than 0.5m circumference – needs to be 0.51m to trigger.*
    - *e.g. if a tree has 5 stems that are 0.50m circumference at 1.4m above ground level, this requirement will not be triggered - as it does not mention adding stem circumferences together.*
  - *Canopy diameter means 2m radius.*
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### 1.2 Boundary Canopy Trees

Clause 52.37-1 separately defines 'Boundary Canopy Trees' as Canopy Trees (as defined above) where:

- any part of the trunk is located within 6m of the *narrowest* street frontage of a lot, or
  - any part of the trunk is located within 4.5m of the rear boundary of a lot.
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### 1.3 Relationship Between Canopy Trees and Boundary Canopy Trees

- Canopy Trees is the umbrella category.
- Boundary Canopy Trees are a defined subset of Canopy Trees.
- All Boundary Canopy Trees are Canopy Trees.
- Not all Canopy Trees are Boundary Canopy Trees — only those located near the front or rear boundary (as described in section 1.2).

## 2 Permit requirements

### 2.1 Permit requirements for a 'Canopy Tree'

A permit is required to remove, destroy or lop a 'Canopy Tree' *anywhere within a lot* where:

- The land is vacant, or
  - The land is vacant and a new single dwelling is proposed (and only a building permit is required).
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### 2.2 Permit requirements for 'Boundary Canopy Trees'

A permit is required to remove, destroy or lop a 'Boundary Canopy Tree' *within 6m of the front or 4.5m of the rear boundaries* where:

- The land contains an existing dwelling where no development is proposed, or
- The land contains an existing dwelling and is proposed to be extended, or
- The land is vacant and a planning permit application is being assessed for one or more dwellings, or
- The land contains an existing dwelling(s) and a planning permit application is being assessed for one or more dwellings.

## 3 Setbacks to determine Boundary Canopy Trees

### 3.1 Standard (Rectangular) Blocks

- The front boundary is the boundary that faces the street.
  - The rear boundary is the boundary directly opposite the front boundary.
  - The two remaining boundaries are side boundaries.
  - Boundary Canopy Trees:
    - Trees within 6 m of the front boundary or 4.5 m of the rear boundary require a permit.
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### 3.2 Corner Blocks

- The front boundary is the shorter street frontage.
- If both street frontages are the same length, the council decides which boundary is the front.
- The rear boundary is the boundary directly opposite the front boundary.

- If there is more than one boundary opposite the front, the longest of these is the rear.
- All other boundaries are side boundaries.
- Boundary Canopy Trees:
  - Trees within 6 m of the designated front boundary or 4.5 m of the rear boundary require a permit.

### 3.3 Oddly Shaped Blocks

- The front boundary is the boundary that faces the street.
- The rear boundary is the boundary (or point) that is most distant from the front boundary.
- If there are multiple distant boundaries, the longest is treated as the rear.
- All other boundaries are side boundaries.
- Boundary Canopy Trees:
  - Trees within 6 m of the front boundary or 4.5 m of the rear boundary require a permit.

### 3.4 Examples

Figure 1: Canopy Trees are protected anywhere on a vacant lot (unless subject to a planning permit application).

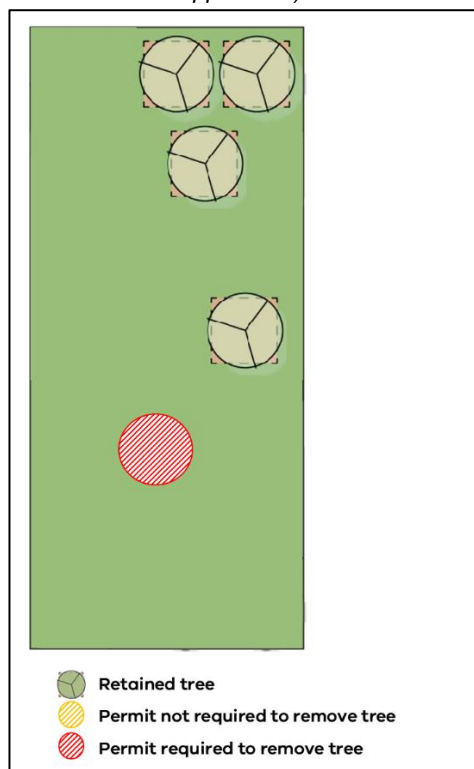
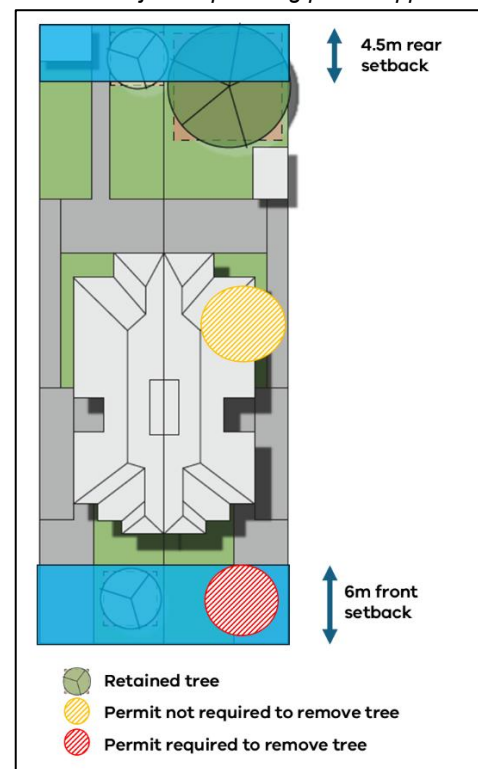


Figure 2: Boundary Canopy Trees are protected within the front and rear boundaries of developed lots, or a vacant lot subject to planning permit application.



## 4 Transitional provisions

### 4.1 Building permit issued before or within 12 months after 15 September 2025

- If the building permit was issued before 15 September 2025; or
- If it was issued within 12 months after 15 September 2025 and either:
  - A relevant building surveyor was already appointed before 15 September 2025; or
  - The surveyor certifies that substantial design progress had been made before 15 September 2025.

*If your building permit was already in place, or nearly finalised before the rules changed, tree removal linked to that permit isn't affected by Clause 52.37.*

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### 4.2 Existing planning permits granted before 15 September 2025

- If the tree removal is part of works covered by a permit that was granted before 15 September 2025.

*If you already had a planning permit before the changes, you can still remove the tree under that permit.*

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### 4.3 Permit applications lodged before 15 September 2025

- If the tree removal is part of works under a permit application lodged before 15 September 2025.

*If you applied for your permit before the rule change, the old rules apply to you.*

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### 4.4 Other permits under the planning scheme (granted before 15 September 2025)

- If tree removal was already allowed by another permit under the planning scheme before 15 September 2025.

*If another part of the planning scheme already let you remove the tree before 15 September 2025, you don't need to worry about Clause 52.37.*

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#### 4.5 Development Plan Overlay (DPO)

- If the land is in a DPO area, and a development plan was approved by council before 15 September 2025, and no extra permit is required for the tree removal under another clause.

*If your site is in a DPO area with a plan signed off before 15 September 2025, you don't need a new permit for canopy trees under Clause 52.37.*

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#### 4.6 Incorporated Plan Overlay (IPO)

- If the land is in an IPO area, approved before 15 September 2025, and no other permit is required for the tree removal.

*If your land is in an IPO with an incorporated plan approved before 15 September 2025, Clause 52.37 does not apply.*

### 5 Application process

- Clause 52.37 applications must be made through the planning system — either via the VicSmart pathway (fast-track, 10 business days, no public notice) or through a standard planning permit application (main planning permit process with standard timeframes and procedures).
- The chosen planning pathway will determine how quickly the application is assessed, but both pathways provide the legal approval for tree removal, destruction, or lopping.
- A building permit cannot authorise tree removal. Building permits deal only with construction works under the Building Regulations.
- If trees are to be removed in connection with building works, approval must first be obtained under the relevant planning permit (VicSmart or standard).
- Only once the planning permit has been issued can the building permit proceed if it relies on those trees being removed.

An application must include the following information (as appropriate):

#### 5.1 Site plan and photos

- Show the location of all Canopy Trees and vegetation on the site.
  - Clearly identify the Canopy Trees proposed for removal, destruction or lopping (species, height, canopy diameter).
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## **5.2 Details of existing and new trees**

- Provide the species, type, expected mature height and canopy diameter.
  - Include soil conditions and proposed irrigation for any new canopy trees.
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## **5.3 Reason for removal**

- Explain why the Canopy Tree is proposed to be removed, destroyed or lopped.
  - If relevant, explain why the proposal cannot meet the Canopy Tree requirement.
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## **5.4 Development details (if relevant)**

- Provide plans of the proposed building or works if tree removal is needed to enable construction.
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## **5.5 Arborist assessment (if relevant)**

- Supply an assessment by a suitably qualified arborist (AQF Level 5) if the tree is proposed to be removed or lopped due to health or stability concerns.
  - An arborist assessment is only required if the Canopy Tree is proposed to be removed or lopped due to its health or stability.
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## **5.6 Council discretion**

- The responsible authority (Council) may waive or reduce some requirements if they are not relevant to deciding the application.

# **6 Considerations for removal**

- The health and stability of the tree.
- Whether the tree is causing (or likely to cause) damage to buildings, works, or infrastructure.
- The number, size, and location of trees to be retained on the site.



- If tree removal is linked to development, whether the building/works were designed to minimise tree loss.
- The cumulative impact if other canopy trees have already been removed within the last 12 months.

### **6.1 Number of required Canopy trees per site**

Separate from the protection of existing trees, new developments must also meet minimum canopy tree requirements, which increase in proportion to the size of the lot.

When considering an application to remove, destroy, or lop a Canopy Tree, Council will take into account the total number of Canopy Trees on the property.

- If the site already meets the minimum Canopy Tree threshold, removal may be supported (subject to other considerations).
- If the site does not meet the minimum threshold, Council may still allow removal but will generally require replanting to ensure compliance with the minimum Canopy Tree requirements.

The minimum Canopy Tree requirements for given lot sizes are as follows:

- 0–100 m<sup>2</sup> → 1 Canopy Tree
- 101–200 m<sup>2</sup> → 2 Canopy Trees
- 201–500 m<sup>2</sup> → 3 Canopy Trees
- 501–700 m<sup>2</sup> → 4 Canopy Trees
- 701–1000 m<sup>2</sup> → 6 Canopy Trees
- 1001 m<sup>2</sup>+ → Canopy cover equal to 20% of the site area (or more if already above 20%).

Considerations:

- Trees can be existing, newly planted, or a mix.
- New trees should be planted in deep soil (12 m<sup>2</sup>, 2.5 m min. width) or in a large planter (12 m<sup>3</sup>, 0.8 m depth).
- If the tree is expected to spread more than 8 m, bigger soil/planter areas may be required to the satisfaction of the Responsible Authority.

Example:

- A 600 m<sup>2</sup> block must have 4 canopy trees.
- If it only has 3, removal may not be approved unless you plant a new tree to make up the numbers.
- Council may allow removal if replacement planting is proposed so the minimum requirement is still met.

## 7 Interplay with existing planning requirements

### 7.1 Other planning regulations

Clause 52.37 does not override or limit the operation of other relevant planning provisions such as overlays and the bushfire requirements. Land may be affected by other overlays including vegetation protection or environmental significance overlays.

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### 7.2 Local Laws

A number of councils regulate vegetation removal including Canopy Trees via Local Law permits. Clause 52.37 may override a Local Law regarding tree removal only when it duplicates the considerations of the Local Law. The Local Law may continue to operate for any matters that are beyond the scope of clause 52.37.

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### 7.3 Summary

The way this is worded seems like if you are wanting to remove, destroy or lop a Canopy Tree that you need an overlay permit to remove destroy or lop, you will need to get both a 52.37 permit and the relative overlay permit to do so.

The wording used in the clause is clause 52 'may' override a local law when it duplicates (regarding a permit to remove, destroy or lop).

This wording leaves scope for councils to apply different procedures in practice.

## 8 Exemptions

A table of exemptions is listed in 52.37-8 (below – 8.1) the most pertinent of which exclude specimens from protection where:

- the Canopy Tree is dead, or
- the Canopy Tree is a declared noxious weed within the State or local planning scheme

*Note:*

- *The word used in the exemption table is 'noxious weed'*
- *It is unclear if environmental weeds or any other type of weed is exempt.*

## 8.1 Clause 52.37 Exemptions

The requirement to obtain a permit does not apply to:	
<b>Dead canopy tree</b>	A canopy tree that is dead.
<b>Emergency works</b>	<p>A canopy tree that is to be removed, destroyed or lopped:</p> <ul style="list-style-type: none"> <li>○ in an emergency by, or on behalf of, a public authority or municipal council to create an emergency access or to enable emergency works; or</li> <li>○ where it presents an immediate risk of personal injury or damage to property.</li> </ul> <p>Only that part of the canopy tree that presents the immediate risk may be removed, destroyed or lopped under this exemption.</p>
<b>Extractive industry</b>	A canopy tree that is to be removed, destroyed or lopped to the minimum extent necessary to enable the carrying out of extractive industry in accordance with a work plan approved under the Mineral Resources (Sustainable Development) Act 1990 and authorised by a work authority granted under that Act.
<b>Fire protection</b>	<p>A canopy tree that is to be removed, destroyed or lopped to the minimum extent necessary to carry out the following fire protection activities:</p> <ul style="list-style-type: none"> <li>○ fire fighting;</li> <li>○ planned burning;</li> <li>○ making or maintenance of a fuel break or fire fighting access track (or any combination thereof) that does not exceed a combined width of 6 metres;</li> <li>○ the making of a strategic fuel break up to 40 metres wide by, or on behalf of, a public authority in accordance with a strategic fuel break plan approved by the Secretary to the Department of Energy, Environment and Climate Action (as constituted under Part 2 of the Conservation, Forests and Lands Act 1987);</li> <li>○ in accordance with a fire prevention notice issued under either: <ul style="list-style-type: none"> <li>• section 87 of the Fire Rescue Victoria Act 1958;</li> <li>• section 65 of the Forests Act 1958; or</li> <li>• section 41 of the Country Fire Authority Act 1958; or</li> </ul> </li> <li>○ keeping a canopy tree clear of, or minimising risk of bushfire ignition from, an electric line in accordance with a code of practice prepared under Part 8 of the Electricity Safety Act 1998;</li> <li>○ minimising the risk to life and property from bushfire on a roadside of a public road managed by the relevant responsible road authority, and carried out by, or on behalf of that authority, in accordance with the written agreement of the Secretary to the Department of Energy, Environment and Climate Action (as constituted under Part 2 of the Conservation, Forests and Lands Act 1987 ). In this exemption, roadside, public road and responsible road authority have the same meanings as in section 3 of the Road Management Act 2004.</li> </ul> <p><b>Note:</b> Additional permit exemptions for bushfire protection are provided at Clause 52.12.</p>
<b>Geothermal energy exploration and extraction</b>	A canopy tree that is to be removed, destroyed or lopped to the minimum extent necessary in accordance with an operation plan approved under the <i>Geothermal Energy Resources Act 2005</i> .

<b>Greenhouse gas and exploration</b>	A canopy tree that is to be removed, destroyed or lopped to the minimum extent necessary in accordance with an operation plan approved under the <i>Greenhouse Gas Geological Sequestration Act 2008</i> .
<b>Land management and directions notice</b>	A canopy tree that is to be removed, destroyed or lopped to the minimum extent necessary to comply with a land management notice or directions notice served under the <i>Catchment and Land Protection Act 1994</i> .
<b>Land use conditions</b>	A canopy tree that is to be removed, destroyed or lopped to the minimum extent necessary to comply with a land use condition served under the <i>Catchment and Land Protection Act 1994</i> .
<b>Lopping and pruning for maintenance</b>	<p>Lopping or pruning a canopy tree, for maintenance only, provided no more than 1/3 of the foliage of the tree is lopped or pruned.</p> <p>This exemption does not apply to:</p> <ul style="list-style-type: none"> <li>the pruning or lopping of the trunk of a canopy tree;</li> <li>pruning or lopping that would reduce the height of the tree to less than 5 metres or the canopy diameter of the tree to less than 4 metres.</li> </ul>
<b>Mineral exploration and extraction</b>	<p>A canopy tree that is to be removed, destroyed or lopped to the minimum extent necessary by the holder of an exploration, mining, prospecting, or retention licence issued under the Mineral Resources (Sustainable Development) Act 1990:</p> <ul style="list-style-type: none"> <li>that is low impact exploration within the meaning of Schedule 4A of the Mineral Resources (Sustainable Development) Act 1990; or</li> <li>in accordance with a work plan approved under Part 3 of the Mineral Resources (Sustainable Development) Act 1990.</li> </ul> <p><b>Note:</b> Schedule 4A of the Mineral Resources (Sustainable Development) Act 1990 specifies limits on the extent of a native tree that may be removed as part of low impact exploration.</p>
<b>Noxious and environmental weeds</b>	<p>A canopy tree that is identified as a noxious weed in:</p> <ul style="list-style-type: none"> <li>a declaration under section 58 or section 58A of the <i>Catchment and Land Protection Act 1994</i>. This exemption does not apply to Australian Dodder (<i>Cuscuta australis</i>); or</li> <li>a planning scheme.</li> </ul>
<b>Public land manager</b>	A canopy tree that is to be removed, destroyed or lopped by or on behalf of a public land manager.
<b>Railways</b>	A canopy tree that is to be removed, destroyed or lopped to the minimum extent necessary to maintain the safe and efficient function of an existing railway, or railway access road, in accordance with the written agreement of the Secretary to the Department of Energy, Environment and Climate Action (as constituted under Part 2 of the <i>Conservation, Forests and Lands Act 1987</i> ).
<b>Road safety</b>	A canopy tree that is to be removed, destroyed or lopped to the minimum extent necessary by or on behalf of a public authority or municipal council to maintain the safe and efficient function of an existing public road with the written agreement of the Secretary to the Department of Energy, Environment and Climate Action (as constituted under Part 2 of the <i>Conservation, Forests and Lands Act 1987</i> ).
<b>Traditional owners</b>	A canopy tree that is to be removed, destroyed or lopped by a person acting under, and in accordance with:

	<ul style="list-style-type: none"> <li>○ a natural resources agreement under Part 6 of the Traditional Owner Settlement Act 2010; or</li> <li>○ an authorisation order made under sections 82 or 84 of the <i>Traditional Owner Settlement Act 2010</i> as those sections were in force immediately before the commencement of section 24 of the <i>Traditional Owners Settlement Amendment Act in 2016 (1 May 2017)</i>.</li> </ul>
<b>Tram stops</b>	A canopy tree that is to be removed, destroyed or lopped to the minimum extent necessary by or on behalf of the Head, Transport for Victoria to construct a tram stop, including a tram stop shelter.
<b>Transport land</b>	A canopy tree that is to be removed, destroyed or lopped to the minimum extent necessary by or on behalf of the Head, Transport for Victoria on land in a Transport Zone, or in a Public Acquisition Overlay if the Head, Transport for Victoria is the acquiring authority, to construct or maintain transport system infrastructure, in accordance with the written agreement of the Secretary to the Department of Energy, Environment and Climate Action (as constituted under Part 2 of the <i>Conservation, Forests and Lands Act 1987</i> ).

## 8.2 State-listed noxious weeds

The following woody plants are declared noxious weeds within the State of Victoria, and exempt from protection under Clause 52.37:

Scientific name	Common name
<i>Acacia nilotica</i>	Prickly acacia
<i>Ailanthus altissima</i>	Tree of heaven
<i>Cestrum parqui</i>	Chilean cestrum
<i>Crataegus monogyna</i>	Hawthorn
<i>Genista linifolia</i>	Flax-leaved broom
<i>Genista monspessulana</i>	Cape broom
<i>Lycium ferocissimum</i>	African boxthorn
<i>Mimosa pigra</i>	Mimosa
<i>Opuntia spp. (some exceptions)</i>	Opuntoid cacti
<i>Salix (some exceptions)</i>	Willow
<i>Tamarix aphylla</i>	Athel pine