

Think before you trim: the hazards of cutting trees in a vegetation overlay area

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Whilst it is commonly known that it is legal to cut any overhanging branches of your neighbour's trees back to the fence line, it is less commonly known that in some circumstances, such as when the property is covered by a vegetation overlay, there are limitations to this right and if these limitations are not complied with then the Council can issue a fine or other penalty. Similarly, homeowners who wish to cut trees on their property which are covered by these limitations can also face fines if they do not comply.

Where a property is covered by a vegetation overlay or other similar planning scheme, there are often limitations on the size of a tree which can be cut or the amount which can be cut. If you wish to cut trees over these limitations then you will need to apply for a permit from the Council.

An example of these requirements is under the Monash Council vegetation overlay area where a planning permit is required to cut any vegetation which has a trunk circumference of over 500mm and is higher than 10 metres. If a planning permit is not applied for in regard to a tree meeting or exceeding those requirements, then the person cutting that tree can face penalties from the Council, which can include a separate fine per tree cut.

Similarly, these requirements also enable homeowners to take action against neighbours who cut overhanging branches of their trees without obtaining the appropriate permit.

A homeowner of a property under the Whitehorse Council overlay faced this problem when their neighbours severely cut their large historic elm tree while they were overseas on holiday. The homeowners returned to find that their tree had been severely lopped to the fenceline, forever ruining the shape of the canopy of the tree and that the neighbours had done so without a permit.

As the requirements under the vegetation overlay applied to the properties, the homeowners were able to report the illegal lopping to the Council who levied fines on the neighbours for cutting the tree without an appropriate permit.

If your home is under a vegetation overlay, or you think that it may be under such an overlay or similar planning scheme, it is advisable to contact the Council or an experienced planning lawyer for advice before cutting your own trees or any overhanging branches of your neighbour's tree. This is to avoid any Council fines or other penalties.

For lawyers experienced in this area of planning law, [click here](#).

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