Nature and the Reef: Urban tree clearing

Overview
This fact sheet provides advice about what urban trees are protected by laws, what tree clearing can occur legally and what to do if you suspect illegal tree clearing is occurring.

The key points you need to be aware of are:
- Urban tree clearing is mainly regulated by local government local laws and planning schemes in Queensland.
- See our factsheet on native vegetation clearing for an overview on non urban clearing laws.
- Only native vegetation is protected (however non-native trees can be protected for heritage purposes.)
- Different local governments in Queensland have different rules and criteria for discerning protected and non-protected trees, and also provide for exemptions which allow interference with protected trees for health and safety.
- Energy companies can lawfully lop and remove trees that may interfere with power line safety.
- Vegetation Protection Orders are a common tool used by local governments protect individual or groups of trees; their definition and form vary between local governments. Heritage listing can also be used to protect trees.
- You can nominate a tree for protection by applying to your local government

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1. Regulating urban tree clearing in Queensland

In Queensland, local governments regulate tree clearing through one or more of the following mechanisms:

- Local laws
- Planning schemes
- Priority Development Area designation
- Neighbourhood Disputes (Dividing Fences and Trees) Act 2011 (Qld)

The State government can also regulate clearing of development in urban areas through the Planning Act 2016, Vegetation Management Act 1999 and Nature Conservation Act 1992, particularly where the vegetation is remnant native vegetation or habitat for native wildlife. Please see our complementary factsheet on ‘Native Vegetation Clearing’ for regulation under these State laws.

Local laws

Many local governments have created local laws in relation to tree clearing in their particular local government area (LGA). The management of tree clearing can vary significantly between LGAs, depending on the geographical locality and which government agency has power over the particular clearing (e.g. local government, state government, Energex). Individuals should contact their local government to confirm what local laws apply to their LGA. The Department of State Development, Infrastructure and Planning (DSDIP) provides an online database of local laws.

Planning instruments

Local councils are required to prepare a local planning instrument to manage development in their LGA. Local planning instruments often contain provisions relating to tree clearing in the context of land development, providing for the protection of vegetation through the development approval process. You should contact your local government or check your local government’s website to identify the relevant planning instrument for your area.

Note: even if clearing of vegetation is not assessable under the local government planning scheme, it still may require planning approval from the State government. See our factsheet on ‘Native Vegetation Clearing’ for more information.

Priority Development Area designations

Under the Economic Development Act 2012, areas around Queensland can now be designated as Priority Development Areas (PDAs) or Proposed Priority Development Areas (PPDAs). Under these designations, the regulating bodies (the Minister for Economic Development Queensland and its related body) prepare land use plans that control development in the designated area, overriding state and local planning instruments. These land use plans may provide for issues concerning tree clearing in an area. You can find

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2 Planning Act 2016, s 15.
out more about PDA and PPDA designations and their effects by viewing our factsheet ‘Priority Development Areas’.

**Neighbourhood Disputes (Dividing Fences and Trees) Act 2011 (Qld)**

This act details the legal responsibilities and rights in relation to trees that are situated on dividing fences between properties, with the purpose of reducing neighbour disputes arising in relation to tree management. If you are involved in a neighbourhood dispute concerning the management of a tree.

### 2. When can tree clearing occur legally?

You can lawfully remove trees from your urban property without council approval in some circumstances, as long as the trees are not the subject of a Tree Protection Order or a Vegetation Protection Order. This is usually referred to as “accepted development subject to requirements”, and means that as long as the removal of a tree complies with the relevant zone, neighbourhood plan and overlay applicable to your lot you will not need an additional approval from your council.

If the trees are located within:

- 10m of a dwelling;
- 3m of an approved structure, including sheds and pools; or
- 3m of a property boundary, as reasonably necessary, to construct or maintain a boundary fence or to create a fire break

you may not need Council permission to clear. To find out if your property contains protected vegetation and what type of vegetation protections may apply, contact your local council.

### 3. Trees and powerlines

Energy companies like Energex are obliged under the Electrical Safety Act (2002) to maintain clearance zones around powerlines. Tree trimming is undertaken by Energex to the Australian Standard AS4373 “Pruning of Amenity Tree”. A tree can be lawfully removed if it cannot be maintained away from the safety zone and still comply with the Australian Standard. The energy company will work with your local council to remove the tree.

### 4. How do particular trees get protected?

A local law may affect trees on land where the land or tree is:

- Historically, culturally, and / or visually significant;
- Important for erosion prevention and slope stabilisation;
- Important for local character; or
- Important for the conservation of biodiversity.

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A local law may also affect land recognised as containing trees of a particular nature (e.g. native species) and character (e.g. girth and height) or trees that are subject to a Vegetation Protection Order (VPO). A VPO is an order a local government may provide for under their local laws with respect to particular trees which it would like to protect in its LGA. A fine may be incurred for damaging a tree subject to a VPO.

VPOs may apply to:

a) A particular tree in a specified location;
b) A particular group of trees in a specified location;
c) Vegetation of a specified class on freehold land within a specified area;
d) All vegetation on freehold land within a specified area; or

e) All vegetation on freehold land within a specified area other than vegetation of a specified class or classes.

A dead tree can also be protected under a VPO if it is providing important habitat for fauna. However, a VPO generally does not relate to vegetation if the vegetation is subject to a scheme or plan providing for its management and exploitation as a sustainable resource (e.g. timber harvesting) approved by Council, or authorised or approved under another law. See your local government website to find out more about trees protected under VPOs.

A tree may also be protected under the Queensland Heritage Act 1992 due to its cultural or natural heritage significance, in which case it would be recorded by the Department of Environment and Science or respective local government heritage unit. Trees may further be protected for association with places of Aboriginal and Torres Strait Islander tradition or custom under the Aboriginal Cultural Heritage Act 2003 and the Torres Strait Islander Act 2003.

5. Can I nominate particular trees for protection?

Where a local government provides for VPOs, members of the public can request that their local government make a VPO in respect to particular vegetation. Depending on the relevant local government local law, a request of this nature is generally required to detail how the protection of the tree(s) would advance the objectives of the particular local law, which often include:

- Protecting the biodiversity values of the city;
- Preserving natural landforms (e.g. coastal areas and steep slopes);
- Protecting the landscape character and cultural and historical values of the city.

You may also nominate a tree or area of trees for heritage protection by applying to the DEHP using the form available on their website here: http://www.ehp.qld.gov.au/heritage/documents/ap-ch-enter-remove.doc.

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6. What are the consequences of breaching a local government law?
Interference with a protected tree is generally only allowed in accordance with a permit issued by the local government or where the interference is an exempt activity\(^5\) as prescribed under a local law. If an individual or corporation is found to have infringed a local government law, local governments often issue an infringement notice requiring the wrongdoer to pay a penalty determined by the local law, such as a Prescribed Infringement Notice. The wrongdoer may also be required to fund and/or carry out work that attempts to restore the cleared area. This is commonly referred to as remediation works.

7. Are there any exemptions?
Local governments often provide exemptions to their tree clearing laws to allow interference with protected vegetation where it involves threats to health and safety of persons, property, or the tree itself, for emergency access or firebreaks (by authorised people only) and for pruning to accommodate utilities in accordance with standards between a local government and the utility provider. Other exemptions include interference with pasture vegetation, works associated with a previous approval and existing Vegetation Management Plan and works essential for carrying out work authorised or required under another statute.

These exemptions therefore provide the ability, for instance, for Energex workers to trim trees which may be too close to power lines, and other interferences which are believed necessary for health and safety of the tree or the community.

**Example: Natural Assets Local Law 2003 - Brisbane City Council**

The Brisbane City Council (BCC) *Natural Assets Local Law 2003 (NALL)* provides for the regulation of tree clearing for the purpose of protecting biodiversity values, preserving natural landforms, facilitating retention of the city’s landscape and the retention of the historical and cultural values of Brisbane City. This local law defines ‘protected vegetation’ as:

- Vegetation on BCC controlled premises;
- Vegetation subject to a VPO made under a BCC local law;
- Vegetation in a waterway corridor;
- Vegetation in a wetland;
- Significant landscape trees;
- Significant native vegetation; and
- Valued urban vegetation.

VPOs are provided for where BCC believes an object of the NALL would be fostered by protecting specified vegetation on freehold land in Brisbane. A range of classes of VPOs may be made over a particular area, including for a particular species, an individual tree, vegetation over a certain height, various specified vegetation types, or involving all vegetation in a particular area of land.

BCC has recently amended the NALL to make it easier for residents and businesses to interact with protected vegetation on or adjacent to their properties. Designed to ‘simplify and streamline’ vegetation

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\(^5\) Exempt activities include, inter alia, removal of vegetation for emergency purposes, pruning for maintenance or to accommodate utilities.
management, and reduce BCC resources used in vegetation protection, the changes amalgamate many classifications of protected vegetation and introduce the ability for residents to undertake ‘minor pruning’ in front of their residence or business.

There is also provision for long-term permits of 5 to 10 years to be granted for protected vegetation management in accordance with an approved Protected Vegetation Management Plan, similar to the existing application to Carry Out Works to (including interfering with) Protected Vegetation. Further, the amendments provide for a greater range of options for remittance for unapproved damage to protected vegetation, such as rehabilitation, restoration and/or compensation.


### 8. Useful Contacts / Links

**Local Laws Database**  
Department of State Development, Infrastructure and Planning  

**Energex**  
131 253

### 9. EDO contacts

Environmental Defenders Office (Qld) Inc.  
Ph: 07 3211 4466  
Fax: 07 3844 0766  
Post: 8/205 Montague Rd West End Qld 4101  
Email: edoqld@edoqld.org.au  
Web: [http://www.edoqld.org.au](http://www.edoqld.org.au)

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