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GLEN EIRA CITY COUNCIL PROPOSED CLASSIFIED TREE AMENDMENT LOCAL LAW



Classified Tree Amendment Local Law

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Part 1—Preliminary

1 Title

This Local Law is the Classified Tree Amendment Local Law.

2 Objectives

The objectives of this Local Law are to:

- (1) amend the Classified Tree Local Law to create offences and other enforcement measures to protect Canopy Trees and trees required to be planted in satisfaction of a condition of a Permit or a direction in a Notice to Comply on private land within the City; and
- (2) ensure that the established tree lined character of the City is enhanced; and
- (3) make other minor amendments to the Classified Tree Local Law; and
- (4) rename the Classified Tree Local Law as the Canopy Tree Protection Local Law; and
- (5) provide for the peace, order and good government of the City.

3 Authorising Provision

This Local Law is made under section 71 of the **Local Government Act 2020**.

4 Commencement Date

This Local Law commences on the date of publication of the notice of the making of this Local Law in the **Government Gazette**.

Part 1—Preliminary

5 Sunset (Revocation) of this Local Law

Unless this Local Law is revoked sooner, its operation will cease on the day on which the Classified Tree Local Law (to become the Canopy Tree Protection Local Law) ceases to operate.

6 To what part of the Municipal District does this Local Law apply?

This Local Law operates throughout the whole of the Municipal District.

7 Definition of words used in this Local Law

- (1) Unless the contrary intention appears in this Local Law –
 - (a) words defined in section 3(1) of the **Local Government Act 2020** have the same meaning in this Local Law; and
 - (b) words defined in the Principal Tree Local Law have the same meaning in this Local Law; and
 - (c) words defined below have the respective meanings assigned in this Local Law.

Principal Tree Local Law, means the Classified Tree Local Law made by Council on 1 September 2020, which local law is, by virtue of clause 8(1) of this Local Law, renamed the Canopy Tree Protection Local Law.

- (2) Headings above each clause, introductions to parts and notes do not form part of this Local Law.

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Introduction – This Part amends the Principal Local Law.

8 Amendment to Clause 1

In clause 1 of the Principal Local Law, delete "Classified Tree" and substitute "Canopy Tree Protection".

9 Amendment to Clause 2

Delete clause 2 of the Principal Local Law and substitute "The objectives of this Local Law are to: (a) provide for the registration of Classified Trees within the Municipal District; and (b) create offences and other enforcement measures to protect Classified Trees, Canopy Trees and trees required to be planted in satisfaction of a condition of a Permit or a direction in a Notice to Comply on private land within the Municipal District; and (c) ensure that the established tree lined character of the Municipal District is enhanced; and (d) provide for the peace, order and good government of the Municipal District."

10 Amendment to Clause 3

In clause 3 of the Principal Local Law at the end of "This Local Law is made under section 111(1) of the Local Government Act 1989" insert "and amended under section 71 of the Local Government Act 2020".

11 Amendment to Clause 4

In clause 4 of the Principal Local Law at the end of " This Local Law comes into operation on 3 September 2020" insert " and was amended on <insert date>".

12 Amendment to Clause 5

Delete clause 5 of the Principal Local Law and substitute “Unless revoked earlier, this Local Law ceases to operate on 3 September 2030.”.

13 Amendment to Clause 8

(1) In clause 8 of the Principal Local Law:

- (a) Delete "Damage, means to interfere with a tree’s natural growth including, but not limited to—(a) ringbarking; or (b) topping; or (c) cutting down; or (d) lopping; or (e) poisoning (including by contamination); or (f) undertaking Works within the Tree Protection Zone such that the tree is no longer viable, whether in terms of health, structure or stability; or" and substitute "Damage, means to interfere with a tree’s natural growth including, but not limited to—(a) ringbarking; or (b) topping; or (c) cutting down; or (d) lopping; or (e) poisoning (including by contamination); or (f) undertaking Works within the Tree Protection Zone such that the tree is no longer viable, whether in terms of health, structure or stability; or (g) uprooting or displacing; or (h) burning, scorching, singeing, or damaging by radiant heat; or (i) spilling oil, petroleum, paint, cement, mortar, or other deleterious substances onto the Tree Protection Zone."
- (b) Delete "Prune, means the removal all or any part of the branches, stems and stubs for maintenance that is carried out in accordance with Standards Australia, Pruning of Amenity Trees (AS 4373-2007)." and substitute "prune, means the removal of all or any part of the branches, stems and stubs of a tree."

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- (c) Delete "Top, means reducing the height of a tree through the practice of lopping." and substitute "top, means reducing the height of a tree through the practice of lopping."
- (d) Delete "tree, includes—(a) any perennial plant having one or more permanent, woody, self-supporting trunks and with branches forming a crown, and includes all parts of the plant whether above or below ground; and (b) any unbranched evergreen plant commonly known as a palm tree, which has a crown of feathered or fan-shaped leaves;" and substitute "tree, includes—(a) any perennial plant having one or more permanent, woody, self-supporting trunks and with branches forming a crown, and includes all parts of the plant whether above or below ground; and (b) any unbranched evergreen plant commonly known as a palm tree, which has a crown of feathered or fan-shaped leaves; and (c) includes all parts of the plant, whether above or below ground, including its trunk, branches, canopy and root system."
- (e) Delete "ground level, means, in relation to a Tree Protection Zone, the highest point where a tree meets the soil." and substitute "ground level, means the highest point where a tree meets the soil."
- (f) Delete "Lop, means cutting branches or stems between branch unions or internodes." and substitute "lop, means cutting branches or stems between branch unions or internodes."

- (2) In clause 8 of the Principal Local Law, in the appropriate alphabetical positions, insert the following definitions:

Canopy Tree, does not include

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(a) a Classified Tree;

but otherwise means

(b) a palm tree taller than 8 metres measured from ground level; or

(c) a tree with a stump circumference of 140 cm or more measured at ground level; or

(d) a tree taller than 5 metres measured from ground level; and

(i) a trunk circumference of 140cm or more measured at a point 140cm along the trunk's length from ground level; or

(ii) a combined trunk circumference of 140 cm or more measured at a point 140cm along the trunks' lengths from ground level.

combined trunk circumference, means the aggregate circumference of two or more trunks of a tree;

trunk, means the main structural member of a tree that is supported by and directly attached to the roots, and which, in turn, supports the branches;

working day, means a day that is not a Saturday, Sunday or a day that is a public holiday in the Municipal District.

14 Amendment to Clause 17

In clause 17 of the Principal Local Law, delete "A relevant landholder may apply in writing to delist a Classified Tree from the Register." and substitute "A relevant landholder may apply in

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writing to delist a Classified Tree from the Register."

15 Amendment to Clause 22(3)

In clause 22(3) of the Principal Local Law, delete "Council must publish notice in the Victorian Government Gazette of a decision under subclause (1)(a)." and substitute "Council must publish a notice in the Victorian Government Gazette of the inclusion of the tree in the Register under subclause (1)(a)."

16 Amendments to Part 5

Delete Part 5 of the Principal Local Law and substitute

"Part 5 - Protection of Classified Trees and Canopy Trees

Introduction— Council recognises the important contribution that Classified and Canopy Trees make to the character of our suburban environment. Trees are some of the most effective and efficient ways for cities to reduce their negative environmental impacts and adapt to climate change. Trees provide shade and cooling, especially over roads and paved surfaces, which mitigate the urban heat island effect. They improve air quality by removing particulate matter and pollution as well as absorbing CO₂, help to reduce stormwater runoff volume and water pollution, reduce windspeeds along streets and in open spaces and form green corridors that create habitat and biodiversity links for a range of wildlife in the urban context. Indiscriminate damage to and destruction of Classified and Canopy Trees results in a degradation of this established character. This Part gives Council the necessary controls to effectively caretake the city's Classified and Canopy Trees.

23. Protection of Classified Trees and Canopy Trees

(1) Subclause (2) applies to any—

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- (a) Classified Tree; and
 - (b) Canopy Trees; and
 - (c) tree planted in satisfaction of a condition of a Permit; and
 - (d) tree planted in satisfaction of a direction in a Notice to Comply— which is situated on any Private Land, whether or not the—
 - (e) Classified Tree; or
 - (f) Canopy Trees; or
 - (g) tree planted in satisfaction of a condition of a Permit; or
 - (h) tree planted in satisfaction of a direction in a Notice to Comply— extends beyond the boundary of that Private Land.
- (2) Subject to subclauses (3), (4), (5), (6), (7), (8) and (9), a person must not, without a Permit—
- (a) remove, Damage, kill or destroy or direct, authorise or allow to be removed, Damaged, killed or destroyed a Classified Tree or a Canopy Tree; or
 - (b) prune or direct, authorise or allow to be pruned a Classified Tree or a Canopy Tree; or

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- (c) carry out, or direct, authorise or allow to be carried out any Works within the Tree Protection Zone of a Classified Tree or a Canopy Tree; or
- (d) remove, Damage, kill or destroy or direct, authorise or allow to be removed, Damaged, killed or destroyed a tree planted in satisfaction of a condition of a Permit or a direction in a Notice to Comply; or
- (e) prune or direct, authorise or allow to be pruned a tree planted in satisfaction of a condition of a Permit or a direction in a Notice to Comply; or
- (f) carry out, or direct, authorise or allow to be carried out any Works within the Tree Protection Zone of a tree planted in satisfaction of a condition of a Permit or a direction in a Notice to Comply.

Penalty— 20 Penalty Units

- (3) Subclause (2) does not apply to—
 - (a) a person whose actions are required by any other legislation or by any other statutory authority; or
 - (b) a person acting in accordance with an instruction or direction from an Authorised Officer; or
 - (c) a tree that is a noxious weed; or
 - (d) such as part of a tree that is above or below Public Land.
- (4) Subclause (2)(b) does not apply—

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- (a) to pruning carried out to control an immediate danger to life or property arising from a Classified Tree or a Canopy Tree (including without limitation an immediate danger as a result of damage to the Classified Tree or a Canopy Tree caused by a storm, lightning, earthquake, flood or other act of nature); and
- (b) if Council is notified within five (5) working days of the commencement of the pruning.

Note: Notification enables Council to conduct an onsite inspection of the Classified Tree or Canopy Tree.

(5) Subclause (2)(e) does not apply—

- (a) to pruning carried out to control an immediate danger to life or property arising from a tree planted in satisfaction of a condition of a Permit or from a tree planted in satisfaction of a direction in a Notice to Comply (including without limitation an immediate danger as a result of damage to the tree caused by a storm, lightning, earthquake, flood or other act of nature); and
- (b) if Council is notified within five (5) working days of the commencement of the pruning.

Note: Notification is to enable Council to carry out an onsite inspection of the tree.

(6) Subclause (2)(a) does not apply—

- (a) to topping or lopping carried out to control an immediate danger to life or property arising from a Classified Tree or a Canopy Tree (including without limitation an immediate danger as a result of damage to the Classified Tree or a Canopy Tree caused by a storm, lightning, earthquake, flood or other act of nature); and

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- (b) if Council is notified within five (5) working days of the commencement of the topping or lopping.

Note: Notification enables Council to conduct an onsite inspection of the Classified Tree or a Canopy Tree.

- (7) Subclause (2)(d) does not apply—

- (a) to topping or lopping carried out to control an immediate danger to life or property arising from a tree planted in satisfaction of a condition of a Permit or from a tree planted in satisfaction of a direction in a Notice to Comply (including without limitation an immediate danger as a result of damage to the tree caused by a storm, lightning, earthquake, flood or other act of nature); and

- (b) if Council is notified within five (5) working days of the commencement of the topping or lopping.

Note: Notification is to enable Council to carry out an onsite inspection of the tree.

- (8) Subclause (2)(b) does not apply to pruning, which is carried out to the following specifications—

- (a) up to a maximum of 10% of the Classified Tree's or Canopy Tree's total volume within 12 calendar months; and
- (b) in accordance with Standards Australia AS4373 – 2007; and
- (c) only branches of the Classified Tree or a Canopy Tree that have a circumference of less than 100 millimetres at the point of contact with the larger branches or the trunk.

- (9) Subclause (2)(e) does not apply to pruning which is

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carried out to the following specifications—

- (a) up to a maximum of 10% of the tree's total volume within 12 calendar months; and
- (b) in accordance with Standards Australia AS4373 – 2007; and
- (c) only branches of the tree with a circumference of less than 100 millimetres at the point of contact with the larger branches or the trunk."

17 Amendment to Clause 27(3)

In clause 27(3) of the Principal Local Law, delete "Council must publish notice in the Victorian Government Gazette of the cancellation of an interim protection order under subclause (1)." and substitute "Council must publish a notice in the Victorian Government Gazette of the cancellation of an interim protection order under subclause (1)."

18 Amendment to Clause 28(2)

In clause 28(2) of the Principal Local Law, delete "A tree which is no longer subject to the interim protection order under subclauses 1(b) or (1)(c) is delisted from the Register." and substitute "A tree that is no longer subject to the interim protection order under subclauses 1(b) or (1)(c) is delisted from the Register."

19 Amendment to Clause 29(2)

In clause 29(2) of the Principal Local Law, delete "A tree which that is no longer subject to the interim protection order under subclause (1) is delisted from the Register." and substitute "A tree

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that is no longer subject to the interim protection order under subclauses 1(b) or (1)(c) is delisted from the Register."

20 Amendment to Clause 31(1)

In clause 31(1) of the Principal Local Law, delete "Where any provision in this Local Law requires that a person obtain a Permit before engaging in a particular activity, that person commits an Offence if that person engages in that activity or cause or permits any other person to engage in that activity without a Permit authorising that activity." and substitute "Where any provision in this Local Law requires that a person obtain a Permit before engaging in a particular activity, that person commits an Offence if that person engages in that activity or causes or permits any other person to engage in that activity without a Permit authorising that activity."

21 Amendment to Clause 31(2)(c)

In clause 31(2)(c) of the Principal Local Law, delete "fails to notify Council of any material change in circumstances which is relevant to an application for a Permit; or" and substitute "fails to notify Council of any material change in circumstances that are relevant to an application for a Permit; or"

22 Amendment to Clause 36

Delete clause 36 of the Principal Local Law and substitute "In determining whether to issue a Permit, Council must consider the following, to the extent it considers appropriate—(a) the condition of the tree (such as, for example, its health, appearance and structural integrity); and (b) the appropriateness of the tree for its location on the Property having regard to the existing

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buildings on the Property; and (c) whether the proposed action is to be undertaken for reasons of health or safety; and (d) whether the tree has caused property damage, and the extent of the damage and cost of repair of the damage caused; and (e) whether the tree is causing any public nuisance or creating any other nuisance to relevant landholders; and (f) whether the tree is an environmental weed; and (g) any legislative requirements; and (h) any other matter relevant to the circumstances associated with the application. (2) If the applicant for a Permit is not the owner of the tree, the consent of all of the owners of the tree must be provided to Council with the application under clause 32."

23 Amendment to Clause 38(1)(e)

In clause 38(1)(e) of the Principal Local Law, delete "where the applicant is not the owner of the Classified Tree, the consent of the owner; and" and substitute "where the applicant is not the owner of the tree, the consent of the owner; and"

24 Amendment to Clause 44(1)

Delete clause 44(1) of the Principal Local Law and substitute "Under section 78 of the Local Government Act 2020, Council hereby delegates to the Chief Executive Officer and Authorised Officers all the powers, discretions, authorities and considerations of Council under this Local Law to do any act, matter or thing necessary or incidental to the exercise of any function or power by Council under this Local Law."

25 Amendment to Clause 46(1) and (2)

Delete clauses 46(1) and 46(2) of the Principal Local Law and substitute "(1) Council may, by written notice, exempt any person or class of persons from the need to get a Permit, and such

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exemption may be conditional, altered, and cancelled. (2) Council may, by written notice, exempt any person or class of person from the need to pay any Permit fee."

26 Amendment to Clause 49

Delete clause 49 of the Principal Local Law and substitute "(1) The amount of penalty indicated on the Infringement Notice will be the greater of — (a) 25% of the maximum penalty stated under a provision in this Local Law for the offence to which the Infringement Notice relates; and (b) \$50.00. (2) Notwithstanding subclause (1), the amount of penalty for an Infringement Notice for an Offence in relation to a Classified Tree under subclauses 23(2)(a), 23(2)(c), 23(2)(d) and 23(2)(f) is twenty (20) penalty units. (3) Notwithstanding subclause (1), the amount of penalty for an Infringement Notice for an Offence in relation to a Canopy Tree under subclause 23(2)(a) is twenty (20) penalty units. (4) Notwithstanding subclause (1), the amount of penalty for an Infringement Notice for an Offence in relation to a Canopy Tree under subclauses 23(2)(c), 23(2)(d) and 23(2)(f) is ten (10) penalty units."

27 Amendment to Clause 51(3)(b)

In clause 51(3)(b) of the Principal Local Law, delete "direct the person to stop the conduct which constitutes the breach of this Local Law; or" and substitute "direct the person to stop the conduct that constitutes a breach of this Local Law; or"

28 Amendment to Clause 53(1)(a)

In clause 53(1)(a) of the Principal Local Law, delete "section 225 of the Local Government Act 1989 does not apply; and" and substitute "section 117 of the Local Government Act 2020 does not apply; and"

29 Amendment to Clause 54

Delete clause 54 of the Principal Local Law and substitute "(1) An Authorised Officer may enter any Private Land to inspect any tree where the Authorised Officer has reasonable grounds for believing that a breach of this Local Law has been committed, is being committed or is likely to be committed. (2) An Authorised Officer may enter any Private Land to inspect any tree which is the subject of an application for a Permit. (3) The Authorised Officer must undertake an inspection mentioned in subclauses (1) and (2) at a reasonable time. (4) The Authorised Officer may undertake an inspection mentioned in subclauses (1) and (2) with the assistance of another Authorised Officer."

