



GLEN EIRA
CITY COUNCIL

BENTLEIGH
BENTLEIGH EAST
BRIGHTON EAST
CARNEGIE
CAULFIELD
ELSTERNWICK
GARDENVALE
GLEN HUNTLY
MCKINNON
MURRUMBEENA
ORMOND
ST KILDA EAST

GLEN EIRA CITY COUNCIL CLASSIFIED TREE LOCAL LAW

(INCORPORATING CHANGES FROM
THE PROPOSED CLASSIFIED TREE
AMENDMENT LOCAL LAW)



Part 1 - Preliminary

1. Title

This Local Law is the Glen Eira City Council Classified TreeCanopy Tree Protection Local Law and is referred to as the “Local Law”.

2. Objective

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) 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. ensure that the established tree lined character of the Municipal District is enhanced; and
- ~~(b)~~(d) provide for the peace, order and good government of the Municipal District.

3. Authorising Provision

This Local Law is made under section 111(1) of the **Local Government Act 1989** and amended under section 71 of the **Local Government Act 2020**.

4. Commencement

This Local Law comes into operation on 3 September 2020 and was amended on <insert date>.

5. Revocation

~~This Local Law ceases to operate on 3 September 2030, unless revoked earlier.~~Unless revoked earlier, this Local Law ceases to operate on 3 September 2030.

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

This Local Law applies to all land throughout the whole of the Municipal District.

7. Scope of this Local Law

The provisions of this Local Law apply to the extent that they are not inconsistent with any legislation applicable to Council or its Municipal District.

8. 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 below have that meaning in this Local Law.

Authorised Officer, means a person appointed by Council to be an Authorised Officer under section 224 of the **Local Government Act 1989**.

Canopy Tree, does not include

(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.

Classified Tree, means any—

(a) tree; or

(b) tree within a stand of trees—

that is recorded in the Register.

Classified Tree Policy, means Council's Classified Tree Policy, dated 3 September 2020.

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

Council, means Glen Eira City Council.

Damage, means to interfere with a tree's natural growth including, but not limited to—

(a) ringbarking; or

(b) ~~t~~opping; or

(c) cutting down; or

(d) ~~l~~opping; or

(e) ~~p~~oisoning (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.

~~(f)~~ -

ground level, means, ~~in relation to a Tree Protection Zone~~, the highest point where a tree meets

the soil.

Infringement Notice, means an infringement notice served by an Authorised Officer under this Local Law.

Land, includes buildings and other structures permanently or temporarily fixed to land, land covered with water, and the airspace above and the earth below the land.

landholder, means—

- (a) the person who is registered as a proprietor, or the persons who are registered as the proprietors, of an estate in fee simple in the Land; and
- (b) a person who, whether alone or with others, is in occupation or possession, or has the management or control, of Land, and includes the agent of such a person.

Local Government Act 2020, means the Local Government Act 2020 (Vic) or any later equivalent enactment.

Local Government Act 1989, means the Local Government Act 1989 (Vic) or any later equivalent enactment.

Lop, means cutting branches or stems between branch unions or internodes.

Municipal District, means the district under the local government of Council.

Notice to Comply, means a written notice issued by Council and served by an Authorised Officer under this Local Law directing the person to whom it is addressed to take specified actions to comply with the Local Law.

noxious weed, means—

- (a) a State prohibited weed; and
- (b) a regionally prohibited weed in the Port Philip and Westernport Catchment and Land Protection Region; and
- (c) a regionally controlled weed in the Port Philip and Westernport Catchment and Land Protection Region; and
- (d) a restricted weed in the Port Philip and Westernport Catchment and Land Protection Region—

as declared by Order in Council made on 28 September 2010 under the **Catchment and Land Protection Act 1994** and published in Victorian Government Gazette S 399 on 1 October 2010 at pages 22 -27, as amended by the Order in Council made on 19 August 2014 and published in Victorian Government Gazette G 34 on 21 August 2014 at pages 1824–1828, as amended by the Order in Council made on 18 July 2017 and published in Victorian Government Gazette G 29 on 20 July 2017 at pages 1579–1588, which declared certain plants to be State prohibited weeds, regionally prohibited weeds, regionally controlled weeds or restricted weeds or any later equivalent instrument.

Note: A consolidated list of declared noxious weeds as they appear in the Victorian Government Gazette is available from Agricultural Victoria's Internet website.

Offence, means an offence against or breach of a provision of this Local Law or a breach of a Notice to Comply or direction issued by an Authorised Officer under this Local Law.

Penalty, means the fine prescribed under this Local Law for an Offence.

Permit, means a written permit issued under this Local Law by the authority of Council and signed by an Authorised Officer.

person, includes an individual, a corporation, an association incorporated under the **Associations Incorporation Reform Act 2012**, a partnership and an unincorporated association.

Private Land, means all Land other than Public Land.

Property, means any Land in separate ownership or separate occupation.

prune, means the removal of all or any part of the branches, stems and stubs ~~for maintenance of a tree that is carried out in accordance with Standards Australia, Pruning of Amenity Trees (AS 4373-2007).~~

Public Land, means all Land owned, leased, managed or occupied by a public body.

Register, means the register of Classified Trees adopted by Council under subclause 10(1), as amended from time to time.

responsible authority, has the same meaning as it has in the **Planning and Environment Act 1987**.

relevant landholder, means a landholder of all or part of the Land within a Tree Protection Zone.

top, means reducing the height of a tree through the practice of ~~h~~opping.

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~~

~~(b)(c)~~ includes all parts of the plant, whether above or below ground, including its trunk, branches, canopy and root system.

Tree Protection Zone means a sphere the radius of which, measured from the centre of the tree stem at ground level, is calculated in accordance with Standards Australia, Protection of Trees on Development Sites (AS 4970-2009).

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;

Works, include without limitation building, trenching, digging, compacting, excavating, filling, constructing or installing a structure and the installation of impervious surfaces whether by mechanical or manual methods or storage of materials and equipment.

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

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

9. Incorporation of documents

- (1) The following documents, as adopted or endorsed by Council and published from time to time on Council's Internet site or available for inspection at Council's office, the titles of which are set out in Table 1 below, are hereby incorporated into this Local Law.

Table 1— Incorporation of Council documents

Title of document
Classified Tree Register
Appendices 1, 2, 3 and 4 of the Classified Tree Policy

- (2) The following documents, as published from time to time on Council's Internet site or available for inspection at Council's office, the titles of which are set out in Table 2 below, are hereby incorporated into this Local Law.

Table 2— Incorporation of documents

Title of document
Standards Australia, Pruning of Amenity Trees (AS 4373-2007)
Standards Australia, Protection of Trees on Development Sites (AS 4970-2009)

Part 2 - Classified Tree Register

10. Classified Tree Register

- (1) Council must adopt and maintain the Register.
- (2) Council may, subject to this Local Law, include any tree within the Municipal District in the Register.
- (3) Council may amend or delete the whole or any part of the Register.
- (4) Council may delist a Classified Tree from the Register.
- (5) Council must ensure that a copy of the Register is available for inspection—
- (a) at Council's office; and
 - (b) on Council's Internet site.

Part 3 - Nomination of a tree for inclusion in the Classified Tree Register

11. Nomination of a tree for inclusion in the Classified Tree Register

- (1) A person may nominate any tree within the Municipal District for inclusion in the Register.
- (2) Council may consider one or more nominations under subclause (1) together.

12. Grounds to reject a nomination

- (1) Council may reject a nomination under subclause 11(1) if—
 - (a) the nominated tree is already listed on the Register; or
 - (b) the nominated tree was delisted from the Register; or
 - (c) Land within all or part of the Tree Protection Zone of the nominated tree is directly impacted by proposed activities in a planning permit application received by Council prior to the date on which the nomination under subclause 11(1) was received by Council; or
 - (d) Land within all or part of the Tree Protection Zone of the nominated tree is directly impacted by activities permitted by an existing planning permit which was issued by the responsible authority prior to the date on which the nomination under subclause 11(1) was received by Council; or
 - (e) Land within all or part of the Tree Protection Zone of the nominated tree is marketed for sale as at the date on which the nomination under subclause 11(1) was received by Council; or
 - (f) within the last five years, Council resolved under subclause 16(1)(b) not to include the nominated tree in the Register.
- (2) Council must notify the person who nominated the tree under subclause 11(1) of the ground or grounds for the rejection under subclause (1).

13. Council's preliminary assessment of a nomination

Council may undertake, to the extent it considers appropriate, a preliminary assessment of a nomination under subclause 11(1) in accordance with the process in Appendix 3 of the Classified Tree Policy.

14. Inspection of a nominated tree

- (1) An Authorised Officer may enter any Private Land to inspect a tree nominated under subclause 11(1) while undertaking a preliminary assessment under clause 13.
- (2) The Authorised Officer must undertake the inspection mentioned in subclause (1) at a reasonable time.
- (3) The Authorised Officer may undertake the inspection mentioned in subclause (1) with the assistance of another Authorised Officer.

15. Assessing eligibility for inclusion in the Classified Tree Register

In determining whether a tree nominated under subclause 11(1) is eligible for inclusion in the Register, Council must consider the following, to the extent it considers appropriate—

- (a) the criteria in Appendix 1 of the Classified Tree Policy; and
- (b) the criteria in Appendix 2 of the Classified Tree Policy; and
- (c) any written submissions received by Council regarding the tree nominated under subclause 11(1).

16. Notification of decision

- (1) Council may—
 - (a) include a tree nominated under subclause 11(1) in the Register; or
 - (b) not include a tree nominated under subclause 11(1) in the Register.
- (2) Council must notify—
 - (a) the person who nominated the tree under subclause 11(1) of the decision under subclause (1); and
 - (b) all relevant landholders of the decision under subclause (1).
- (3) Subclause (2)(a) does not apply to Council where it nominated the tree under subclause 11(1).
- (4) Subclause (2)(b) does not apply to Council to the extent that it is a relevant landholder.
- (5) Council must publish notice in the Victorian Government Gazette of the decision to include a tree in the Register under subclause (1)(a).

Part 4 - Delisting a Classified Tree from the Classified Tree Register

17. Application for delisting

- (1) A relevant ~~landholder~~may landholder may apply in writing to delist a Classified Tree from the Register.
- (2) An application under subclause (1) must state why the Classified Tree no longer meets the criteria in Appendix 1 of the Classified Tree Policy.
- (3) Council may nominate a tree to be delisted from the Register.
- (4) Council must notify all relevant landholders of a nomination under subclause (3).
- (5) Council may consider one or more applications under subclause (1) together.

18. Grounds to reject an application

- (1) Council may reject an application under subclause 17(1) if, within the last two years, Council determined that the Classified Tree meets any of the criteria in Appendix 1 of the Classified Tree Policy.
- (2) Council must notify the relevant landholder who applied under subclause 17(1) of a rejection of the application under subclause (1).
- (3) Subclause (1) does not apply if the application under subclause 17(1) states that the Classified Tree is a danger to life or property.

19. Council's preliminary assessment of an application to delist

Council may, to the extent it considers appropriate, undertake a preliminary assessment of an application under subclause 17(1) or a nomination under subclause 17(3), in accordance with the process in Appendix 4 of the Classified Tree Policy.

20. Inspection of a Classified Tree

- (1) An Authorised Officer may enter any Private Land to inspect a Classified Tree while

undertaking a preliminary assessment under clause 19.

- (2) The Authorised Officer must undertake the inspection mentioned in subclause (1) at a reasonable time.
- (3) The Authorised Officer may undertake the inspection mentioned in subclause (1) with the assistance of another Authorised Officer.

21. Assessing eligibility to delist a Classified Tree from the Classified Tree Register

In determining whether a Classified Tree is eligible to remain on the Classified Tree Register, Council must consider, to the extent it considers appropriate,

- (a) the criteria in Appendix 1 of the Classified Tree Policy; and
- (b) any written submissions received by Council regarding the application to delist the Classified Tree under subclause 17(1) or a nomination under subclause 17(3).

22. Notification of decision

- (1) Council may—
 - (a) delist a Classified Tree from the Register; or
 - (b) not delist a Classified Tree from the Register.
- (2) Council must notify all relevant landholders of a decision under subclause (1).
- (3) Council must publish a notice in the Victorian Government Gazette of a decision under subclause (1)(a).

Part 5 - Protection of Classified Trees and Canopy Trees

Introduction— Council recognises the important contribution that Classified ~~Trees~~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 ~~Trees~~and Canopy Trees results in a degradation of this established character. This ~~Local Law~~Part gives Council the necessary controls to effectively caretake the city's Classified ~~Trees~~and Canopy Trees.

23. Protection of Classified Trees and Canopy Trees

- (1) Subclause (2) applies to any—
 - (a) Classified Tree; and
 - (a)(b) Canopy Trees; and
 - (b)(c) tree planted in satisfaction of a condition of a Permit; and
 - (c)(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)~~ (f) Classified Tree; or

~~(d)~~ (f) Canopy Trees; or

~~(e)~~ (g) tree planted in satisfaction of a condition of a Permit; or

~~(f)~~ (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 ~~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) ~~p~~Prune or direct, authorise or allow to be ~~p~~Pruned a Classified Tree or a Canopy Tree; or

(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) ~~p~~Prune or direct, authorise or allow to be ~~p~~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—

(a) to ~~P~~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 ~~P~~pruning.

Note: Notification ~~is to enable~~enables Council to ~~carry out~~conduct an onsite inspection of the

Classified Tree or Canopy Tree.

(5) Subclause (2)(e) does not apply—

- (a) to ~~P~~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 ~~P~~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 ~~T~~opping or ~~L~~opping 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 ~~t~~opping or ~~L~~opping.

Note: Notification ~~is to enable~~enables Council to ~~carry out~~conduct an onsite inspection of the Classified Tree or a Canopy Tree.

(7) Subclause (2)(d) does not apply—

- (a) to ~~t~~opping or ~~L~~opping 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 ~~t~~opping or ~~L~~opping.

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

(8) Subclause (2)(b) does not apply to ~~P~~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

(a)(b) in accordance with Standards Australia AS4373 – 2007; and

(b)(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 ~~p~~Pruning which is carried out to the following specifications—

(a) up to a maximum of 10% of the tree's total volume within 12 calendar months; and

(a)(b) in accordance with Standards Australia AS4373 – 2007; and

~~(b)~~(c) only branches of the tree ~~that have~~with a circumference of less than 100 millimetres at the point of contact with the larger branches or the trunk.

Part 6- Interim Protection

24. Council may make an interim protection order

- (1) Council may make an interim protection order in relation to a tree on Private Land if, in the opinion of Council, it is necessary or desirable to do so for the purposes of this Local Law.
- (2) An interim protection order must be in the form approved by Council from time to time.

25. Service of an interim protection order

- (1) Council must cause the interim protection order or a reproduction of the interim protection order to be served on all relevant landholders.
- (2) An interim protection order may be served on a person under section 315 of the **Local Government Act 2020**.

26. Effect of an interim protection order

- (1) A tree in relation to which an interim protection order is made is included in the Register while the interim protection order is in force.
- (2) Council must publish a notice in the Victorian Government Gazette of the inclusion of the tree in the Register under subclause (1).

27. Cancellation of an interim protection order

- (1) Council may cancel an interim protection order if, in the opinion of Council, it is necessary or desirable to do so for the purposes of this Local Law.
- (2) Council must notify all relevant landholders of the cancellation of an interim protection order under subclause (1).
- (3) Council must publish a notice in the Victorian Government Gazette of the cancellation of an interim protection order under subclause (1).

28. Period of an interim protection order

- (1) An interim protection order under subclause 24(1) continues in effect until the publication in the Victorian Government Gazette of a notice that—
 - (a) Council has determined that the tree should be included in the Register under subclause 16(1)(a); or
 - (b) Council has determined that the tree should not be included in the Register under subclause 16(1)(b); or
 - (c) Council has cancelled the interim protection order under subclause 27(1).
- (2) A tree ~~which that~~ is no longer subject to the interim protection order under subclauses 1(b) or (1)(c) is delisted from the Register.

29. Expiry of an interim protection order

- (1) If none of the things stated in subclause 28(1) occurs, the interim protection order continues in effect for a period of six months from the date of the publication of the notice under subclause 26(2) or for the extended period specified by Council under subclause 30(1).
- (2) A tree ~~which~~that is no longer subject to the interim protection order under subclause (1) is delisted from the Register.
- (3) Council must publish notice in the Victorian Government Gazette of the expiry of an interim protection order under subclause (1).
- (4) Council must notify all relevant landholders of the expiry of an interim protection order under subclause (1).

30. Extension of an interim protection order

- (1) Council may extend the period for which an interim protection order under subclause 24(1) is in effect.
- (2) Notice of an extension of an interim protection order under subclause (1) must be served in the same manner as the interim protection order is served under clause 25.
- (3) Council must publish notice in the Victorian Government Gazette of the extension of an interim protection order under subclause (1).
- (4) Council must notify all relevant landholders of the extension of an interim protection order under subclause (1).

Part 7 - Permits

Introduction— This Part provides the system of applying for, administering and regulating Permits.

31. Permit offences

- (1) 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.

Penalty— 20 Penalty Units

- (2) Any person who—
 - (a) contravenes any condition of a Permit; or
 - (b) gives to Council any information (whether oral or in writing) which is false or misleading in any material particular when applying for a Permit; or
 - (c) fails to notify Council of any material change in circumstances ~~which~~that are is relevant to an application for a Permit; or
 - (d) fails, neglects or refuses to produce a Permit when directed to do so by an Authorised Officer—

commits an Offence.

Penalty— 20 penalty units

32. Permit applications

A person seeking to do anything for which a Permit is required under this Local Law must apply for the Permit in writing to Council and pay the relevant fee as determined by Council from time to time.

33. Permit fee

- (1) Council may by resolution determine fees and charges for the purposes of this Local Law.
- (2) In determining any fees and charges Council may establish a system or structure of fees and charges, including a minimum or maximum fee or charge, if it considers it is appropriate to do so.
- (3) Council may reduce, waive or refund, in whole or in part, a fee or charge with or without conditions.

Note— A schedule of the Permit fees can be obtained from Council.

34. Further information

Council may require the applicant to provide further information before it deals with the application for a Permit.

35. Notice of a Permit application

- (1) Council may require the applicant to give notice of the application for a Permit in a form and manner specified by Council.
- (2) Without limiting subclause (1), Council may require a notice under subclause (1) to state—
 - (a) that submissions regarding the application for a Permit under subclause 32 may be made to Council, and
 - (b) the method by and period in which submissions may be made to Council.
- (3) Subclause (2)(a) does not confer a right on a person to make a submission under section 223 of the **Local Government Act 1989**.

36. Consideration of an application

- (1) In determining whether to issue a Permit, Council must consider the following, to the extent it considers appropriate—
 - (a) the condition of the ~~Classified Tree~~tree (such as, for example, its health, appearance and structural integrity); and
 - (b) the appropriateness of the ~~Classified Tree~~tree for its location on the Property having regard to the existing buildings on the Property; and
 - (c) whether the proposed action is to be undertaken for reasons of health or safety; and
 - (d) whether the ~~Classified Tree~~tree has caused property damage, and the extent of the damage and cost of repair of the damage caused-; and
 - (e) whether the ~~Classified Tree~~tree is causing any public nuisance or creating any other nuisance to relevant landholders; and

- (f) whether the ~~Classified Tree~~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 ~~Classified Tree~~tree, the consent of all of the owners of the ~~Classified Tree~~tree must be provided to Council with the application under clause 32.

37. Decision to issue a Permit

- (1) Council may, after considering an application under clause 32—
- (a) issue a Permit; or
 - (b) refuse to issue a Permit; or
 - (c) determine that a Permit is not required.

38. Conditions of a Permit

- (1) A Permit issued under subclause 37(1)(a) or 39(1)(a) may be with or without any conditions which Council considers to be appropriate in the circumstances, including—
- (a) the payment of any fee or charge; and
 - (b) a time limit to be applied, whether specifying the duration or commencement or completion date; and
 - (c) the happening of an event; and
 - (d) the rectification, remedying or restoration of a situation or circumstance; and
 - (e) where the applicant is not the owner of the ~~Classified Tree~~tree, the consent of the owner; and
 - (f) the granting of some other permission or authorisation; and
 - (g) standards and quality of work, including Australian Standards; and
 - (h) a requirement that a replacement tree be planted; and
 - (i) a requirement for replanting or re-establishment of a tree; and
 - (j) the submission of further information or plans relevant to the application; and
 - (k) any other matter considered relevant to a particular application.
- (2) The conditions of a Permit must be set out in the Permit.

39. When does a Permit commence?

A Permit commences on the date specified in the Permit or, if no date is specified, the day on which it is issued.

40. When does a Permit expire?

- (1) A Permit is in force until the expiry date indicated on the Permit, unless it is cancelled before the expiry date.
- (2) If no expiry date is indicated on a Permit, the Permit expires 12 months from the date it is issued.
- (3) Conditions of a Permit requiring replanting, re-establishment or replacement of any trees expire (ten) 10 years after the day on which the Permit is issued, irrespective of the expiry date of the Permit under subclauses (1) and (2).

41. Correction of a Permit

- (1) Council may correct a Permit if it contains—
 - (a) a clerical mistake or an error arising from any accidental slip or omission; or
 - (b) an obvious material miscalculation of figures or an obvious material mistake in the description of any person, thing or property mentioned in the Permit.
- (2) Council must notify a Permit holder in writing of any correction under subclause (1).

42. Grounds for suspension, cancellation or amendment of a Permit

- (1) Council may suspend, cancel or amend any Permit if it considers that there has been—
 - (a) a material misstatement or concealment of fact in the application for the Permit; or
 - (b) any substantial failure to comply with the conditions of the Permit; or
 - (c) there has been an ongoing breach of the conditions of the Permit; or
 - (d) any material mistake in the issuing of the Permit; or
 - (e) any material change of circumstances which has occurred since the issuing of the Permit; or
 - (f) a failure to comply with any direction in a Notice to Comply served on the Permit holder.
- (2) Before it suspends, amends or cancels a Permit under subclause (1), Council must, if it is practicable to do so, provide to the Permit holder an opportunity to comment on the proposed suspension, amendment or cancellation.
- (3) If the owner's consent is required to be given with an application for the Permit under subclauses 36(2) or as a condition of a Permit under subclause 38(1)(e), Council must notify the owner of any suspension, cancellation or amendment under subclause (1).

43. Suspend, correct, cancel or amend a Permit

Council may, under subclause 41 or 42 as applicable, suspend, correct, cancel or amend a Permit at the request of any person or at its own initiative.

44. Delegations

- (1) Under section ~~114-78~~ of the **Local Government Act 1989**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.

- (2) Notwithstanding subclause (1), Council does not delegate to the Chief Executive Officer and Authorised Officers the powers, discretions, authorities and considerations of Council under subclauses 16(1), 22(1), 30(1), 46(1) and 46(2).

45. Transfer of Permits

A person must not transfer or assign a Permit to any other person without the written consent of Council.

46. Exemption from Permit or Permit fee

- (1) Council may ~~by written notice exempt any person or class of person, by written notice, exempt any person or class of persons~~ from the need to get a Permit, and such exemption may be conditional, ~~may be altered and may be altered, and~~ cancelled.
- (2) Council may ~~by written notice, by written notice,~~ exempt any person or class of person from the need to pay any Permit fee.
- (3) An exemption from the requirement to pay a Permit fee may be amended, cancelled or corrected in the same way as a Permit.

Part 8 - Infringement Notice

Introduction— This Part provides for enforcement of this Local Law by service of Infringement Notices by Authorised Officers.

47. Offences

A person who—

- (a) contravenes any provision of this Local Law; or
- (b) contravenes a Notice to Comply; or
- (c) fails to comply with a direction of an Authorised Officer under this Local Law is

guilty of an Offence and is liable to—

- (i) the penalty stated under a provision in this Local Law, or if no penalty is stated then twenty (20) penalty units; and
- (ii) a further penalty of two (2) penalty units for each day after a finding of guilt or conviction during which the contravention continues; and
- (iii) upon a finding of guilt by any Court for a second or subsequent offence, a penalty of twenty (20) penalty units will apply (unless otherwise stated).

48. Persons who may issue an Infringement Notice and other notices

As an alternative to prosecution, an Authorised Officer may serve an Infringement Notice or any other notice under this Local Law on a person who has or is reasonably believed to have committed an Offence against this Local Law requiring the person—

- (a) in the case of an Infringement Notice, to pay the infringement penalty (or comply with other conditions) for that Offence within the period specified in the Infringement Notice,

being a period not less than the number of days set out in section 14 of the **Infringements Act 2006** after an infringement notice has been served; or

- (b) in the case of any other notice, to comply with the conditions within any other nominated period.

49. Penalty by Infringement Notice

- (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 ~~against~~ 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.~~
- ~~(2)~~

Part 9 - Enforcement (Other than by Infringement Notice)

Introduction— This Part provides a means for enforcing this Local Law other than by Infringement Notices. In particular, this Part provides Authorised Officer with a power to serve a Notice to Comply.

50. Recovery of costs of enforcement

In addition to any penalty imposed under the **Local Government Act 1989** or the **Local Government Act 2020** for a contravention of this Local Law, Council is entitled to recover from the offender any cost, expense or loss incurred by Council because of the contravention of this Local Law or in the prosecution of an Offence.

51. Notice to Comply

- (1) If a person has contravened this Local Law then, either as an alternative or in addition to prosecution, a direction or an Infringement Notice, an Authorised Officer may serve on that person a Notice to Comply.
- (2) A person must comply with a Notice to Comply issued under subclause (1).

Penalty: ~~--~~ 20 penalty units.
- (3) A Notice to Comply may do one or more of the following things—
 - (a) direct the person to comply with this Local Law; or
 - (b) direct the person to stop the conduct ~~which that~~ constitutes ~~the a~~ breach of this Local Law; or

- (c) direct the person to deliver to the Authorised Officer or to a specified person or a specified location any item or property of the person which constitutes the breach of this Local Law; or
 - (d) direct the person to remove or cause to be removed any item, goods, equipment or other things that constitute a breach of this Local Law; or
 - (e) direct the person to undertake any work or to do specified things to remedy a breach of this Local Law; or
 - (f) direct the person to plant to re-establish or replace one or more trees of a type, of a maturity and in a location as specified in the Notice to Comply.
- (4) If the owner's consent was required to be given with an application for a Permit under subclause 36(2) or as a condition of a Permit under subclause 38(1)(e), Council must notify the owner of any Notice to Comply and of the grounds upon which it has been served.
- (5) A Notice to Comply must specify the time and date by which the person specified in the Notice to Comply must comply with a direction in the Notice to Comply.
- (6) The time and date by which the person specified in the Notice to Comply must comply with the direction in the Notice to Comply must be reasonable in the circumstances, having regard to—
- (a) the amount of work involved; and
 - (b) the degree of difficulty; and
 - (c) the availability of necessary materials or other necessary items; and
 - (d) climatic conditions; and
 - (e) the degree of risk or potential risk; and
 - (f) any other relevant factor.

52. Service of a Notice to Comply

A Notice to Comply may be served on a person under section 315 of the **Local Government Act 2020**.

53. Compliance with a Notice to Comply

- (1) Where—
- (a) section ~~225-117~~ of the **Local Government Act ~~1989-2020~~** does not apply; and
 - (b) the person served with a Notice to Comply fails to comply with the Notice to Comply,

an Authorised Officer or any other person with the approval of Council may enter upon any Property in respect of which there is or has been any such failure to comply and do all such acts, matters or things that are required to comply with the Notice to Comply.

- (2) All costs and expenses incurred by Council in carrying out any acts, matters or things described in subclause (1)(b) are a debt due to Council from the person on whom the Notice to Comply was served.

54. Inspections

- (1) An Authorised Officer may enter any Private Land to inspect any ~~Classified Tree~~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 ~~Classified Tree~~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.

55. Offences by bodies corporate

- (1) If a body corporate contravenes any clause of this Local Law, each officer (within the meaning of section 9 of the **Corporations Act 2001** (Cth)) of the body corporate who knowingly authorised or permitted the contravention is taken to have contravened the same clause.
- (2) A person may be proceeded against and convicted under a clause of this Local Law under subclause (1), whether or not the body corporate has been proceeded against or convicted.
- (3) Nothing in this clause affects any liability imposed on a body corporate for an Offence committed by the body corporate against this Local Law.

Part 10 - Internal Review

56. Internal Review

- (1) An applicant for a Permit or a person acting on that person's behalf with the applicant's consent may apply in writing to Council for a review of a decision by an Authorised Officer to refuse a Permit under subclause 37(1)(b) or to issue a Permit under subclause 37(1)(a) with conditions under subclause 38(1).
- (2) An application for review under subclause (1)—
 - (a) must be in writing; and
 - (b) must state the grounds upon which the application for review is made; and
 - (c) may only be made once; and
 - (d) must be made within 28 calendar days of the applicant becoming aware of the decision.
- (3) Subclause (1) does not confer a right on a person to make a submission under section 223 of the **Local Government Act 1989**.

57. Request for additional information

- (1) Council may request in writing from the applicant any additional information which it requires to conduct a review under subclause 58(1).
- (2) If Council makes a request under subclause (1), it must suspend the review until the earlier of—

- (a) 42 calendar days from the date which is specified in the document making the request under subclause (1) as the date of the document; or
 - (b) the date when the additional information is provided.
- (3) Within 28 calendar days from the date which is specified in the document making the request under subclause (1) as the date of the document, the applicant—
 - (a) may provide the additional information; or
 - (b) if additional time is required, may request in writing an extension of time to provide the additional information.
- (4) If the applicant requests additional time under subclause (3)(b), Council may—
 - (a) refuse to extend the time for the provision of the additional information; or
 - (b) agree to an extension of time for that information to be provided.
- (5) Council must inform the applicant in writing of the period of the extension granted under subclause (4)(b).
- (6) If an applicant fails to provide the information requested under subclause (1) to Council within the period specified in subclause (3) or, if an extension is granted under subclause (4)(b), within the period of that extension, Council—
 - (a) may review the decision under subclause 58(1) without the additional information; or
 - (b) despite subclause (3)—
 - (i) if the applicant provides the additional information to Council out of time, may accept that late information; and
 - (ii) may review the decision under subclause 58(1) with that late information.

58. Review by Council

- (1) Council must review the decision which is the subject of the application for review under subclause 56(1).
- (2) Council must ensure that a review under subclause (1) is conducted by a person who was not involved in making the decision under review.
- (3) Nothing in this clause limits the power of Council to review the decision on any other basis.

59. What can Council decide on review?

- (1) After reviewing a decision under subclause 58(1), Council may—
 - (a) issue a Permit; or
 - (b) refuse to issue a Permit; or
 - (c) determine that a Permit is not required.
- (2) Council must serve the applicant who applied for review under subclause 56(1) with written

notice of its decision under subclause (1).

