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# GLEN EIRA CITY COUNCIL COMMUNITY IMPACT STATEMENT PROPOSED CLASSIFIED TREE AMENDMENT LOCAL LAW



Community Impact Statement – Proposed Classified Tree Amendment Local Law

Glen Eira City Council

Community Impact Statement – Proposed Classified Tree Amendment Local Law

27 February 2024

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## Part A – General Comments

Glen Eira City Council (**Council**) provides the following information to the municipal community in respect of the proposed Classified Tree Amendment Local Law (**proposed Local Law**) and to assist any member of the public who may wish to make a submission to Council during the public consultation process required under Council's *Community Engagement Policy*.<sup>1</sup>

The proposed Local Law will amend Council's Classified Tree Local Law.<sup>2</sup> If the proposed Local Law is adopted, then the Classified Tree Local Law will be renamed the Canopy Tree Protection Local Law (the **amended Local Law**) as part of the proposed amendments.

This Community Impact Statement is to be read in conjunction with the proposed Local Law, available at <https://www.haveyoursaygleneira.com.au/canopy-tree-protection-local-law>.

## Background

Many major cities and local government authorities seek to maintain and protect trees on private land because of the positive impacts that trees can bring to human health and wellbeing, not just for the owners of the trees but the community as a whole.

As Glen Eira grows and evolves, and with continuing changes to local neighbourhoods and our climate, our city's trees will be increasingly important.

Council already works towards increasing tree canopy cover on public land by planting new trees in vacant public spaces, and around 1,000 trees are planted every year. New trees take a long time to establish, and many existing canopy trees in Glen Eira are on private land. Protecting trees on private land is an important part of managing the city's urban forest for both the municipal community and visitors to Glen Eira, as well as future generations.

However, despite the measures that Council has in place, there are still gaps that have the potential to allow tree removal to occur on private land without adequate assessment.

In July 2019, Glen Eira's canopy cover was measured and compared with other councils. It was reported that Glen Eira has only 12.5% of its measured land surface as canopy cover. The *Living Melbourne strategy* recorded Glen Eira's canopy cover at 14.3% just 24 months prior.

Council committed to the '*Living Melbourne: our metropolitan urban forest*' strategy launched in June 2019. The key themes of this strategy (listed below) are relevant to the need for a form of tree protection on private land for the city:

1. Healthy People – Protect and increase access to nature, green space and canopy cover, to reduce heat exposure and improve mental and physical wellbeing.
2. Abundant Nature – Protect and extend habitat connectivity and corridors to enhance biodiversity.

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<sup>1</sup> <https://www.gleneira.vic.gov.au/media/4956/community-engagement-policy.pdf>

<sup>2</sup> <https://www.gleneira.vic.gov.au/media/7350/classified-tree-local-law.pdf>

3. Natural Infrastructure – Protect and increase vegetation on public and private land to cool urban areas, retain water in the soils, reduce flood risk and increase water and air quality.

All these themes demonstrate the need for tree protection measures to ensure the retention of canopy cover throughout the city.

On 1 September 2020, Council resolved to make the Classified Tree Local Law and create a Classified Tree Register (**Register**). The Register is a list of trees within the municipality that are considered significant and warrant protection. These trees may be on public or privately owned land. If a tree is nominated to be included on the Register, it is assessed by Council's arborist and after following the process in the Classified Tree Policy a recommendation may be made to Council to add the tree to the Register. There are currently 242 trees on the Register.

On 29 June 2021, Council adopted the Glen Eira Urban Forest Strategy to reverse the loss of canopy coverage throughout the municipality and grow our urban forest. As Council aims to increase canopy coverage within Glen Eira from 12.5% to 22% by 2040, protecting canopy trees on private land is considered essential for us to meet this objective.

Tree protection measures and the Register are considered a valuable part of the Urban Forest Strategy, not only for their role in retaining tree canopy cover but also in educating the public and creating a greater understanding of the importance of trees to the wellbeing of the municipal community.

Since adopting the Urban Forest Strategy, Council has been challenged with limited legislative and planning controls to protect private tree canopy across Glen Eira.

On 17 May 2022, Council called on officers to prepare a report for the August 2022 Ordinary Council Meeting in relation to reviewing measures for encouraging the retention of trees and vegetation and considering the most efficacious method of making a local law and/or planning instruments and/or advocating for regulations and/or conducting community engagement to control the pruning, removal or destruction of trees and other vegetation on private land to support the implementation of our Urban Forest Strategy and our Climate Emergency Strategy.

On 9 August 2022, Council considered a report on the Measures for Encouraging the Retention of Trees and Vegetation on Private Land. Council noted the content of the report and authorised officers to:

1. continue to increase public awareness of the importance of all vegetation and Glen Eira's existing biodiversity through a comprehensive community engagement campaign.
2. continue to advocate to the state / federal governments for greater statutory environmental protection mechanisms.
3. develop a new Tree Protection & Vegetation Local Law to be presented to Council for endorsement that would offer protection to all private trees within the municipality that meet a minimum prescribed threshold.
4. continue to investigate improvements to the Glen Eira planning scheme that could be implemented in the future to offer greater protection to existing vegetation and encourage the planting of new vegetation to help achieve our strategic objectives.

In response to item 3 above, Council officers have prepared the proposed Local Law to amend Council's Classified Tree Local Law.

## **Making of local laws**

All councils in Victoria have a form of local regulation called a local law. One of the legislative functions given to councils is making and enforcing local laws to achieve their legislative objectives. The broad objectives of councils are set out in the *Local Government Act 2020* (**the Act**). Councils may make a local law for or with respect to any act, matter or thing in respect of which it has a function or power under the *Local Government Act 2020* or any other Act.

The Act outlines the process that must be followed in making local laws. A local law is made by a council passing a resolution. Before a council can make a local law, it must strictly comply with the procedure in the Act.

The *Better Practice Local Law Strategy* (December 2008) and the *Guidelines for Local Law Manual* (2010) (**the Guidelines**), released by the Minister for Local Government, set out a model scheme for developing and making local laws.<sup>3</sup>

The Guidelines detail best practices for the creation and enforcement of local laws. The key features of the Guidelines are summarised as follows:

- to improve accessibility, accountability, compliance, consistency, currency, efficiency, enforceability, necessity and transparency;
- regulation should be viewed as a last resort because it imposes a burden of compliance on the community and a burden of enforcement on the council;
- the community should be involved from the commencement of the law-making process, not just at the final formal submissions stage;
- a local law should incorporate relevant council policies;
- a local law should not allow discretions on the part of those administering/enforcing them without clear guidelines;
- where a local law relies on other documents, such as council policies or permit conditions, those documents should be as accessible to the public as the local law; and
- councils should produce a Community Impact Statement for all new or materially altered local laws.

## **Drafting of the proposed Local Law**

The proposed Local Law was drafted with input from Council's subject matter experts (the Park Services department) and advice from Council's external solicitors.

Extensive consultation on the proposed Local Law was undertaken across Council with relevant staff at all levels, including:

- Community Safety and Compliance
- Corporate Counsel

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[www.localgovernment.vic.gov.au/\\_\\_data/assets/pdf\\_file/0028/48718/Local\\_Laws\\_Manual.pdf](http://www.localgovernment.vic.gov.au/__data/assets/pdf_file/0028/48718/Local_Laws_Manual.pdf)

- Parks Services
- Planning and Building Services

Councillors were briefed, and opportunities were given to all Councillors to provide input into the drafting of the proposed Local Law.

### **Community engagement**

A key focus of the *Guidelines* is the community's involvement from the commencement of the law-making process, not just at the final formal submission stage.

In response to the recommendation that best practice requires wide consultation from the commencement of the process, Council completed three rounds of community consultation in November/December 2017, June 2018 and July 2020. The first consultation was a municipal-wide consultation, which received 130 submissions. The second consultation was through Glen Eira Community Voice, which received 258 submissions. The third consultation was conducted in relation to the community consultation for the Classified Tree Local Law, which received 110 submissions.

In these consultations, the community told Council that we should protect trees in Glen Eira, including those on private and public land.

### **Operation of the proposed Local Law**

The objectives of the proposed 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.

The proposed Local Law will protect Canopy Trees, which are:

- a) taller than 5 metres measured from ground level with a trunk circumference or combined trunk circumference of 140cm or more measured at a point 140cm along the trunk's length from ground level; and
- b) a palm tree taller than 8 metres measured from ground level.

A tree that will have a stump of circumference of 140 cm or more is a Canopy Tree and, a permit is required for its removal.

The proposed Local Law requires a person to obtain a permit from Council in relation to the following:

- a) remove, damage, kill or destroy or direct, authorise or allow to be removed, damaged,

killed or destroyed a Canopy Tree or a tree planted in satisfaction of a condition of a Permit or a direction in a Notice to Comply; or

- b) Prune or direct, authorise or allow to be Pruned a Canopy Tree or a tree planted in satisfaction of a condition of a Permit or a direction in a Notice to Comply; or
- c) carry out, or direct, authorise or allow to be carried out any works within the Tree Protection Zone of a Canopy Tree or of a tree planted in satisfaction of a condition of a Permit or a direction in a Notice to Comply.

The proposed Local Law creates six offences (clauses 23(2)(a) to (f)), attracting a maximum penalty of 20 penalty units, with an infringement penalty of either 5, 10 or 20 penalty units.

The monetary value for each penalty unit is controlled by State Legislation and is set at \$100 per penalty unit for local laws made under the Local Government Act 1989.<sup>4</sup>

The proposed Local Law, when implemented, will give power to authorised Council officers, if required, to issue warnings, impose fines or prosecute people.

While enforcement options are available, it is anticipated that the proposed Local Law will be self-enforcing, with wilful compliance being achieved through community education and expectations that de-normalise the indiscriminate removal and damage to canopy trees on private land in the municipality.

### **Administration of the Local Law**

Park Services in the Sustainability, Assets and Leisure Directorate will administer and enforce the proposed Local Law.

### **Permits**

Whilst Canopy Trees will be provided with greater protection, it is recognised that sometimes a tree may need to be removed or extensively pruned. This could be because of the tree's poor health or because it poses an unacceptable safety risk to surrounding residents, obstructs a building, or impacts development potential because of its location within a block. The proposed Local Law aims to provide a balanced approach between protecting healthy trees and providing flexibility to residents who need to remove or extensively prune a tree.

A permit will be required to prune or remove a Canopy Tree; however, exemptions for the need to obtain a permit will apply to:

- a) pruning, where no more than 10% canopy volume is removed within 12 months, and branches no larger than 10cm circumference at the point of attachment are removed; and
- b) works required to make safe an immediate hazard such as damage from a storm event.

Council staff assess applications for a permit under the proposed Local Law. The proposed Local Law provides that Council staff must consider, to the extent appropriate, the following when determining whether to grant a permit:

- the condition of the tree;

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<sup>4</sup> The Local Government Act 1989, the Sentencing Act 1991 and the Monetary Units Act 2004.

- the appropriateness of the tree for its location on the property, having regard to the existing buildings; and
- whether the proposed action is to be undertaken for reasons of health or safety;
- whether the tree is causing any property damage;
- whether the tree is causing any public nuisance or creating any nuisance to relevant landholders;
- whether the tree is a weed;
- any legislative requirements;
- any other matter relevant to the circumstances associated with the application.

Further specification of the matters that should be considered by officers when exercising their discretion under the proposed Local Law is contained in the Classified Tree Assessment Guidelines (**Assessment Guidelines**). The purpose of the Assessment Guidelines is to ensure decisions about permit applications are sensible, fair and consistent.

### **Internal Review (Permits)**

An internal review process for decisions made under the proposed Local Law is available to applicants for a permit. The internal review considers all the information supplied with the request for review and the process taken to determine the application. A different member of staff at Council undertakes any reassessment of the application for a permit.

### **Community consultation**

On 27 February 2024, at an Ordinary Council meeting, Council resolved to give notice of its intention to make the proposed Local Law under Division 3 of Part 3 of the *Local Government Act 2020* and to undertake the community consultation process between 1 March to 12 April 2024 required under Council's *Community Engagement Policy*.

### **Public Notice**

Public notice of Council's intention to make the proposed Local Law and the opportunity for public submissions are provided as required by section 73(3) of the Act by a notice at Glen Eira Town Hall<sup>5</sup> and on Council's website.<sup>6</sup> Notice is also provided in the agenda of the Council meeting on 27 February 2024, which is a public document available online.<sup>7</sup>

Copies of this Community Impact Statement and the proposed Local Law can be obtained from the Town Hall<sup>8</sup> during office hours. Copies are also available for viewing at Council's libraries.<sup>9</sup> These documents can also be viewed and downloaded from Council's HaveYourSay website.<sup>10</sup> Upon request to our Customer Service Centre on 03 9524 3333, a copy of the documents can be sent by post.

The timeline to make the proposed Local Law is set out in Table 1 below.

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<sup>5</sup> Glen Eira City Council office at the corner Glen Eira and Hawthorn Roads, Caulfield;

<sup>6</sup> <https://www.gleneira.vic.gov.au/>

<sup>7</sup> [www.gleneira.vic.gov.au/Council/Meetings-and-agendas/Council-meeting-agendas-and-minutes](http://www.gleneira.vic.gov.au/Council/Meetings-and-agendas/Council-meeting-agendas-and-minutes)

<sup>8</sup> Glen Eira City Council office at the corner Glen Eira and Hawthorn Roads, Caulfield;

<sup>9</sup> <https://library.gleneira.vic.gov.au/about-us/locations-and-hours>

<sup>10</sup> <https://www.haveyoursaygleneira.com.au/canopy-tree-protection-local-law>

**Table 1: Timeline for the proposed Local Law**

February 2024	Consideration of report and Council resolution to commence the process of making the proposed Local Law
1 March to 12 April 2024	Exhibition of the proposed Local Law, including statutory notices and consultation
June 2024	Consideration of public submissions by Council
September 2024	Adoption of the proposed Local Law by Council  The proposed Local Law is available on Council's website and from the Customer Service Centre.  Notice of the making of the proposed Local Law is published in the Government Gazette and on Council's website.  Commencement of the proposed Local Law

### Drop-in public information sessions

During the consultation period, Council will conduct three (3) drop-in public information sessions where community members can come along, ask questions and find out more about the proposed Local Law, what it means and how to make a submission. Registration is required. The dates and times of these sessions are detailed below in Table 2.

**Table 2: Drop-in public information sessions**

Public Info Session	Date	Time and Place
1	17 March 2024	This session will take place in Princes Park, DC Bricker Pavilion, Caulfield South (Function Room). For further information, see <a href="https://www.haveyoursaygleneira.com.au/canopy-tree-protection-local-law">https://www.haveyoursaygleneira.com.au/canopy-tree-protection-local-law</a>
2	27 March 2024	This session will take place in Packer Park Pavilion, Carnegie (Function Room). For further information, see <a href="https://www.haveyoursaygleneira.com.au/canopy-tree-protection-local-law">https://www.haveyoursaygleneira.com.au/canopy-tree-protection-local-law</a>
3	10 April 2024	This session will take place in Bentleigh McKinnon Youth Centre, Hodgson Reserve, Bentleigh (Function Room). For further information, see <a href="https://www.haveyoursaygleneira.com.au/canopy-tree-protection-local-law">https://www.haveyoursaygleneira.com.au/canopy-tree-protection-local-law</a>

For further information regarding the public information sessions, contact Jarrod Knight on 03 9524 3333 or email [tree-canopy-local-law@gleneira.vic.gov.au](mailto:tree-canopy-local-law@gleneira.vic.gov.au).

### Submissions

Submissions must be in writing and received by Council by 12 April 2024. Submissions must be marked 'Proposed Classified Tree Amendment Local Law Submission' and addressed to Mark Dornau, Manager Park Service, Glen Eira City Council, PO Box 42 Caulfield South 3162.

Submissions may also be delivered either to Council's Service Centre, corner Glen Eira and Hawthorn Roads, Caulfield or to the post box at the main entrance to the Town Hall or by email to [tree-canopy-local-law@gleneira.vic.gov.au](mailto:tree-canopy-local-law@gleneira.vic.gov.au).

A submission can also be made at Council's HaveYourSay website at <https://www.haveyoursaygleneira.com.au/canopy-tree-protection-local-law>.

Council will consider any submission relating to the proposed Local Law in accordance with its Community Engagement Policy.

Any person who has made a submission to Council and has requested to be heard in support of their submission may appear in person or be represented by a person specified in the submission at a Council meeting in June 2024. Council meetings are normally held in the Council Chamber, Glen Eira Town Hall, corner Glen Eira and Hawthorn Roads, Caulfield.

All submissions will be handled as authorised or required by law, including under the *Privacy and Data Protection Act 2014* (Vic). Submissions received (including any personal information contained therein) may be included within the official Council agenda and minutes, which are permanent public documents available on Council's website.<sup>11</sup>

## Part B – Comments on the proposed Local Law

### Template assessment tool

Table 4 contains a template assessment of the proposed Local Law. The template assessment provides a framework for assessing the compatibility of the Parts and clauses of the proposed Local Law against the *Guidelines*. A description of the purpose and content of each of the 17 elements of the template assessment used in Table 4 is detailed below in Table 3.

**Table 3: Template assessment tool**

Framework and Title	Number	Description
(1) (a)		Part Number(s) and Title(s) of the proposed Local Law.
(1) (b)		Clause(s) Number(s) and Title(s) of the proposed Local Law.
(2) Identify the Problem(s)		A brief description of the problems identified which are addressed by the proposed Local Law.
(3) Relating the Problem to Council's policy objectives: Identifying if it is a Council problem		A brief description of the linkage between the objectives of the proposed Local Law and Council's policy objectives. The statement would identify: <ul style="list-style-type: none"><li>– where Council's objectives are set out and may be read,</li><li>– how the proposed Local Law would assist Council to achieve its objectives or remove an impediment to achieving its objectives.</li></ul>

<sup>11</sup> <https://www.gleneira.vic.gov.au/about-council/meetings-and-agendas/council-agendas-and-minutes>

<b>Framework Number and Title</b>	<b>Description</b>
(4) Identifying existing legislation that might be used instead of the proposed Local Law	A brief description of other legislation that has been identified which touches on issues dealt with by the proposed Local Law and an explanation as to why these provisions are not suitable to resolve the problem.
(5) Measures of success of proposed Local Law	A brief description of the indicators by which Council will measure the success of the proposed Local Law and the frequency with which success will be measured and reported on to the community.
(6) Identifying existing legislative provisions that may be overlapped by a Local Law	<p>A brief description:</p> <ol style="list-style-type: none"> <li>1) of any existing legislation on the issue covered by the proposed Local Law; and</li> <li>2) where required, clarify why the proposed Local Law does not overlap, duplicate or cause inconsistency with that legislation.</li> </ol>
(7) A risk management approach to Local Law	This section details the rating of the severity of the problem according to the frequency and consequences (assuming no local law was in place either now or in the future) and the reduction in rating that is anticipated as a result of the proposed Local Law.
(8) Considering and deciding on different Local Law approaches	<p>A brief description of the regulatory approach taken and whether it is considered low, medium or high impact. Within this framework, the controls may be:</p> <ul style="list-style-type: none"> <li>• low impact – 'light touch' controls that generally carry no barriers to activity, save that they encourage the type of conduct one might normally expect to ensure safety and amenity;</li> <li>• medium impact – these include permit controls that may present a barrier or impediment to activity, or local law requirements that might require an entity to set in place processes to ensure compliance, or</li> <li>• high impact – where significant barriers to entry exist, or the controls in place carry an inspection and compliance regime that is materially onerous and time-consuming.</li> </ul> <p>The decision regarding which regulatory approach to take varies according to the extent of risk, the perceived extent of non-compliance and the enforcement resources available.</p>
(9) The least burden / greatest advantage test for Local Law	A brief description of how the proposed Local Law meets the least burden / greatest advantage test.

Framework Number and Title	Description
(10) Considering and deciding on penalties	<p>A brief description of the penalties in the proposed Local Law for each operative clause that imposes a penalty.</p> <p>Any variation between the penalty levels adopted by Council compared to that of the neighbouring municipalities is addressed.</p>
(11) Considering and deciding on the purpose and conditions of permits and fees	<p>A brief description of the purpose and conditions of permits and fees.</p> <p>Any significant differences between the level of fees to be adopted by Council and those of neighbouring councils should be explained here.</p>
(12) Review with consideration to neighbouring Councils	<p>Detail of those councils whose local laws have been compared, the points of comparison and the result of the comparison.</p>
(13) Possible restriction of competition by Local Law	<p>The application of the National Competition Policy (<b>NCP</b>) to Local Government in Victoria results from the Competition Principles Agreement signed by the Commonwealth, State and Territory Governments in 1995.</p> <p>NCP principles require, among other matters:</p> <ul style="list-style-type: none"> <li>○ the removal of legislative restrictions on competition, unless there is a net public benefit; and</li> <li>○ the adoption of competitive neutrality policies; and</li> <li>○ processes to recognise and offset the advantages enjoyed by government businesses.</li> </ul>
(14) Identifying (and staying within) the power to make a Local Law	<p>A brief statement confirming that Council considers it within its power to make the proposed Local Law.</p>
(15) Considering possible alternatives to Local Law	<p>A brief description of the possible alternatives to the proposed Local Law.</p>
(16) Considering if a State Act is more appropriate than a Local Law	<p>Details of whether any State Government legislation is more appropriate to deal with the problem identified in item (2) of the framework.</p>
(17) Identifying Planning Scheme requirements with which a Local Law may be inconsistent	<p>A brief description:</p> <ol style="list-style-type: none"> <li>1) of any existing Planning Scheme on the issue covered by the proposed Local Law and</li> <li>2) where required, clarify why the proposed Local Law does not overlap, duplicate or cause inconsistency with that Planning Scheme.</li> </ol>

Framework Number and Title	Description

The responses to the assessment of the proposed Local Law against the template assessment tool in Table 3 above are as detailed in Table 4.

**Table 4: Responses to the template assessment tool**

Framework Number and Title	Description
(1) (a) and (b)	A title precedes each Part and clause of the proposed Local Law. A title does not form part of the proposed Local Law. It is provided to assist understanding.
(2) Identify the Problem(s)	<p>Trees have always been an important part of what makes Glen Eira such a great place to live, work and play. As Glen Eira grows and evolves and our climate changes, our trees will become increasingly important.</p> <p>Canopy 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 CO<sub>2</sub>, 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.</p> <p>As privately owned land accounts for around 66% of the municipality, it is essential to have private tree protection mechanisms in place to ensure Council achieves its aim to increase our Urban Forest canopy coverage to 22% by 2040. There are currently minimal controls in place to prevent the removal of trees from private property within the municipality, and the absence of any broad, adequate controls to restrict these removals, combined with increasing urban densification, has led to the rapid reduction in canopy cover across Glen Eira.</p> <p>Council has developed several measures, including our Street Tree Strategy and planning controls, designed to promote and protect vegetation, preserve existing trees to ensure that development minimises loss of vegetation, and protect locations of special significance.</p> <p>Other controls come from guidelines and measures that Council applies to itself through the Street Tree Removal Policy. This guides Councils' approach to trees on streets and land, which is Council's responsibility.</p> <p>The protections afforded to trees on public land include those under the Glen Eira Community Local Law, Glen Eira Classified Tree Local Law as well as Council's role as Committee of Management for trees on Crown Land, which control and direct how Council manages trees.</p> <p>Council's existing protections for trees on private and public land include some overlays attached to the Glen Eira Planning Scheme and an assessment framework for new dwellings known as ResCode that seeks to protect existing significant trees.</p>

Framework Number and Title	Description
	<p>The Planning Scheme overlays, such as the Vegetation Protection Overlay, Significant Landscape Overlay and Heritage Overlay, include controls over specific locations with significant vegetation. These overlays are fragmented across the city and offer limited protection to the municipality's tree canopy.</p> <p>Currently, alongside the Planning Overlays, Glen Eira uses the Classified Tree Local Law to protect 242 trees, of which 63 are on private land. Whilst the Classified Tree Local Law protects a small number of private trees, it cannot protect enough to reverse the decline in our urban forest canopy coverage.</p>
<p>(3) Relating the Problem to Council's policy objectives: Identifying if it is a Council problem</p>	<p>This is a Council problem because it supports Council's aim, in the Urban Forest Strategy,<sup>12</sup> to increase canopy coverage within Glen Eira from 12.5% to 22% by 2040.</p> <p>Glen Eira's Council Plan 2022-2025<sup>13</sup> states that one of its strategic directions is a Green and Sustainable Community. Council's strategic priority is to increase our tree canopy and expand private and public greening initiatives.</p> <p>The objective of the proposed Local Law is to provide for a measure of control and protection to canopy trees on private land within the municipality whilst not unreasonably impeding the ability of landholders to deal with those trees.</p> <p>The ability of Council to deliver on this objective requires the use of clear and reliable laws and enforcement mechanisms. The proposed Local Law provides clear requirements and enforcement mechanisms to regulate the indiscriminate removal or damage to canopy trees. Regulating activities that may endanger canopy trees on private land is integral to increasing our tree canopy.</p>
<p>(4) Identifying existing legislation that might be used instead of the proposed Local Law</p>	<p>Council has considered using the <i>Planning and Environment Act 1987</i> and the <i>Planning Scheme</i> as an alternative to the proposed Local Law.</p> <p>The <i>Planning Scheme</i> provisions could be used to protect trees within specific locations in the municipality. Amendment of the <i>Planning Scheme</i> is a costly and time-consuming process involving a municipal review by an arborist and subsequent <i>Planning Scheme</i> amendment. There is no guarantee of Ministerial approval of the amendment.</p>
<p>(5) Measures of success of proposed Local Law</p>	<p>The objectives of the proposed Local Law include the creation of offences and other enforcement measures to protect canopy trees on private land within the municipality.</p> <p>These objectives are not simply about compliance but about increasing our tree canopy.</p>

<sup>12</sup> <https://www.gleneira.vic.gov.au/media/9301/glen-eira-urban-forest-strategy.pdf>

<sup>13</sup> <https://www.gleneira.vic.gov.au/about-council/our-performance/glen-eira-council-plan-2021-2025>

Framework Number and Title	Description
	<p>Measuring the success of a local law can be difficult; however, some quantitative and qualitative measures can be assessed. Some of the measures to be used include how many:</p> <ul style="list-style-type: none"> <li>○ Permits are issued;</li> <li>○ warnings have been issued;</li> <li>○ infringement notices are issued;</li> <li>○ Notice to Comply has been issued;</li> <li>○ prosecutions are undertaken.</li> </ul> <p>However, success should not be assessed in isolation based on these criteria. The assessment and reporting by Council staff on current trends, anomalies and emerging problems will also be used to measure the success of the proposed Local Law.</p>
<p>(6) Identifying existing legislative provisions that may be overlapped by a Local Law</p>	<p>Existing State legislation that deals with issues that the proposed Local Law also deals with includes the following:</p> <ul style="list-style-type: none"> <li>● <i>Planning and Environment Act 1987;</i></li> <li>● <i>Glen Eira Planning Scheme; and</i></li> <li>● <i>Building Act 1993.</i></li> </ul> <p>The proposed Local Law complements existing legislation and provides a more appropriate local response whilst not overlapping, duplicating or conflicting with existing State legislation.</p>
<p>(7) A risk management approach to Local Law</p>	<p>The proposed Local Law addresses a number of possible risks:</p> <ul style="list-style-type: none"> <li>● unregulated removal of and damage to canopy trees in Glen Eira by landholders or developers; and</li> <li>● threats to public safety because of the canopy trees' health, condition or location.</li> </ul> <p>A risk assessment was completed for the operative provisions of the proposed Local Law.</p>

Framework Number and Title	Description																																													
	<div style="text-align: center;"> <table border="1" data-bbox="528 371 1139 1003"> <tr> <td rowspan="5" style="vertical-align: middle;">Likelihood</td> <td>Almost certain</td> <td style="background-color: yellow;"></td> <td style="background-color: orange;"></td> <td style="background-color: red;"></td> <td style="background-color: red;"></td> <td style="background-color: red;"></td> </tr> <tr> <td>Likely</td> <td style="background-color: yellow;"></td> <td style="background-color: yellow;"></td> <td style="background-color: orange;"></td> <td style="background-color: red;"></td> <td style="background-color: red;"></td> </tr> <tr> <td>Possible</td> <td style="background-color: green;"></td> <td style="background-color: yellow;"></td> <td style="background-color: yellow; text-align: center;">X</td> <td style="background-color: orange;"></td> <td style="background-color: red;"></td> </tr> <tr> <td>Unlikely</td> <td style="background-color: green;"></td> <td style="background-color: green; text-align: center;">O</td> <td style="background-color: yellow;"></td> <td style="background-color: yellow;"></td> <td style="background-color: orange;"></td> </tr> <tr> <td>Very Unlikely</td> <td style="background-color: blue;"></td> <td style="background-color: blue;"></td> <td style="background-color: green;"></td> <td style="background-color: yellow;"></td> <td style="background-color: yellow;"></td> </tr> <tr> <td></td> <td></td> <td style="text-align: center;">Insignificant</td> <td style="text-align: center;">Minor</td> <td style="text-align: center;">Moderate</td> <td style="text-align: center;">Major</td> <td style="text-align: center;">Critical</td> </tr> <tr> <td></td> <td></td> <td colspan="5" style="text-align: center;">Consequence</td> </tr> </table> </div> <p data-bbox="1145 1010 1238 1043" style="text-align: right;">  (Ctrl) ▾         </p> <p data-bbox="453 1099 807 1133"><b>Results: Before X After O</b></p> <p data-bbox="453 1178 1543 1323">As a result of the introduction of the Local Law, the risk is projected to move from a medium tolerance level to a more acceptable low tolerance level. Considering the cost of risk treatment, this is considered a worthwhile use of the local law regulatory mechanism.</p>	Likelihood	Almost certain						Likely						Possible			X			Unlikely		O				Very Unlikely								Insignificant	Minor	Moderate	Major	Critical			Consequence				
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		Consequence																																												
(8) Considering and deciding on different Local Law approaches	<p data-bbox="453 1335 1543 1480">Council considers that the environmental, amenity and safety issues associated with indiscriminate damage and removal of canopy trees on private property requires a medium impact regulatory approach and this is consistent with adjoining councils.</p> <p data-bbox="453 1525 1543 1603">Council believes in the minimum imposition on the community with regard to local laws. The proposed Local Law reflects this approach by providing for:</p> <ul data-bbox="501 1648 1543 1883" style="list-style-type: none"> <li>• reasonable penalties;</li> <li>• minimum possible number of provisions that create offences;</li> <li>• where possible, provision for permits rather than prohibition of activities;</li> <li>• reasonable and appropriate permit conditions; and</li> <li>• reasonable enforcement procedures, including provision for the giving of warnings where appropriate and the provision of an internal review process.</li> </ul> <p data-bbox="453 1917 1543 1995">The proposed Local Law obligations will create a material impact on landholders and developers that is proportional to the potential harm to the community.</p>																																													

Framework Number and Title	Description
	<p>Council considers it is in the interest of the municipal community that this level of control is placed over these issues.</p> <p>The approach taken by Council is not out of step with other adjoining councils.</p>
(9) The least burden / greatest advantage test for Local Law	<p>Council considers that the municipal community would want problems prevented if possible or solved as quickly as possible and with the least cost to all concerned. A local law provides for quick resolution of the problem. State legislation is inadequate for managing the issues identified in item (2) of the framework.</p>
(10) Considering and deciding on penalties	<p>The penalties applying under the proposed Local Law were carefully considered, and because the matter being regulated is a high concern and priority of Council and the municipal community, substantial penalties may be incurred where there is a breach of the penalty provisions of the proposed Local Law.</p> <p>The level of penalties in the Local Law generally reflects the following:</p> <ul style="list-style-type: none"> <li>• relative risks to community health, safety and amenity;</li> <li>• the potential cost to the community of a breach; and</li> <li>• the deterrent in each case.</li> </ul> <p>In order for the clauses of the proposed Local Law to be effective, they have been set at levels considered to be a deterrent.</p> <p>The penalties in the proposed Local Law range from five (5) to twenty (20) penalty units, with the addition of two (2) penalty units applying for each day after a conviction where a contravention of the proposed Local Law continues.</p> <p>Council considers that the maximum penalty of twenty (20) units is necessary for certain offences to help protect canopy trees.</p> <p>The penalties applying to the proposed Local Law were compared to those imposed by adjoining municipalities of Bayside, Kingston, City of Port Phillip, Monash and Stonnington. The proposed penalties are generally within the range of those in adjoining municipalities with a local law protecting trees on private land from damage and removal.</p> <p>The amount of an Infringement Notice penalty is normally significantly less than the potential maximum penalty a Court might impose for the same offence. The Attorney-General's Guidelines<sup>14</sup> provide that an infringement penalty should generally be approximately no more than 20 – 25% of the maximum penalty for the offence.<sup>15</sup> The level of Council's penalties for breaches of the proposed Local</p>

<sup>14</sup>

[www.justice.vic.gov.au/sites/default/files/embridge\\_cache/emshare/original/public/2018/10/e4/35939b25a/infringementsact2006\\_attorneygeneralguidelines-051018.pdf](http://www.justice.vic.gov.au/sites/default/files/embridge_cache/emshare/original/public/2018/10/e4/35939b25a/infringementsact2006_attorneygeneralguidelines-051018.pdf)

<sup>15</sup> Annexure A, Attorney-General's Guidelines to the Infringements Act 2006 (Vic).

Framework Number and Title	Description																													
	<p>Law is compliant with the Attorney-General's Guidelines.</p> <p>Table 5 below lists the number of penalty units for an Infringement Notice and the maximum penalty that can be imposed by the Court for each offence under the proposed Local Law.</p> <p><b>Table 5: Infringement and Court penalties</b></p> <table border="1" data-bbox="456 573 1501 2011"> <thead> <tr> <th data-bbox="456 573 635 689">Clause number</th> <th data-bbox="635 573 799 689">Title</th> <th data-bbox="799 573 1082 689">Offence</th> <th data-bbox="1082 573 1289 689">Infringement Penalty</th> <th data-bbox="1289 573 1501 689">Maximum Penalty at Court</th> </tr> </thead> <tbody> <tr> <td data-bbox="456 689 635 1043">23(2)(a)</td> <td data-bbox="635 689 799 1043">Protection of Classified Trees and Canopy Trees</td> <td data-bbox="799 689 1082 1043">remove, damage, kill or destroy or direct, authorise or allow to be removed, damaged, killed or destroyed a Canopy Tree;</td> <td data-bbox="1082 689 1289 1043">20</td> <td data-bbox="1289 689 1501 1043">20</td> </tr> <tr> <td data-bbox="456 1043 635 1272">23(2)(b)</td> <td data-bbox="635 1043 799 1272">Protection of Classified Trees and Canopy Trees</td> <td data-bbox="799 1043 1082 1272">Prune or direct, authorise or allow to be Pruned a Canopy Tree;</td> <td data-bbox="1082 1043 1289 1272">5</td> <td data-bbox="1289 1043 1501 1272">20</td> </tr> <tr> <td data-bbox="456 1272 635 1585">23(2)(c)</td> <td data-bbox="635 1272 799 1585">Protection of Classified Trees and Canopy Trees</td> <td data-bbox="799 1272 1082 1585">carry out, or direct, authorise or allow to be carried out any Works within the Tree Protection Zone of a Canopy Tree;</td> <td data-bbox="1082 1272 1289 1585">10</td> <td data-bbox="1289 1272 1501 1585">20</td> </tr> <tr> <td data-bbox="456 1585 635 2011">23(2)(d)</td> <td data-bbox="635 1585 799 2011">Protection of Classified Trees and Canopy Trees</td> <td data-bbox="799 1585 1082 2011">remove, damage, kill or destroy or direct, authorise or allow to be removed, damaged, killed or destroyed a tree required to be planted as a condition of a permit or a</td> <td data-bbox="1082 1585 1289 2011">10</td> <td data-bbox="1289 1585 1501 2011">20</td> </tr> </tbody> </table>					Clause number	Title	Offence	Infringement Penalty	Maximum Penalty at Court	23(2)(a)	Protection of Classified Trees and Canopy Trees	remove, damage, kill or destroy or direct, authorise or allow to be removed, damaged, killed or destroyed a Canopy Tree;	20	20	23(2)(b)	Protection of Classified Trees and Canopy Trees	Prune or direct, authorise or allow to be Pruned a Canopy Tree;	5	20	23(2)(c)	Protection of Classified Trees and Canopy Trees	carry out, or direct, authorise or allow to be carried out any Works within the Tree Protection Zone of a Canopy Tree;	10	20	23(2)(d)	Protection of Classified Trees and Canopy Trees	remove, damage, kill or destroy or direct, authorise or allow to be removed, damaged, killed or destroyed a tree required to be planted as a condition of a permit or a	10	20
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Framework Number and Title	Description				
			direction in a Notice to Comply;		
	23(2)(e)	Protection of Classified Trees and Canopy Trees	Prune or direct, authorise or allow to be Pruned a tree required to be planted as a condition of a permit or a direction in a Notice to Comply;	5	20
	23(2)(f)	Protection of Classified Trees and Canopy Trees	carry out, or direct, authorise or allow to be carried out any Works within the Tree Protection Zone of a tree required to be planted as a condition of a permit or a direction in a Notice to Comply.	10	20
(11) Considering and deciding on the purpose and conditions of Permits and fees	<p>A number of provisions in the proposed Local Law require permits for various activities.</p> <p>Permits are contemplated in clauses 23(2)(a) to (f). For example, a permit is required for certain activities, including removal or extensive canopy tree pruning or work within its Tree Protection Zone.</p> <p>Council considers permits the only means of controlling these types of activity.</p> <p>Permit applications and conditions will be guided by policy considerations in the public interest.</p> <p>To satisfy the transparency and accountability principles of best practice, the application process and consideration for granting permits are detailed in Part 7 of the amended Local Law.</p> <p>Permit fees and related charges are a budgetary matter decided independently by Council as part of the annual budget process. Benchmarking other council's fees and charges takes place in the lead-up to the annual budget process. The proposed Local Law will continue to allow Council to determine permit fees. Whilst there may</p>				

Framework Number and Title	Description
	<p>be a considerable amount of work in making those assessments, such as site inspections and assessments against the requirements of the proposed Local Law, it is Council's current policy that no fees are payable for permits under the proposed Local Law.</p>
<p>(12) Review with consideration to Neighbouring Councils</p>	<p>Numerous Local Governments across Melbourne, including those that border Glen Eira, maintain and protect canopy tree cover via a broadly applied local law in addition to Planning Overlays that protect trees and vegetation within specific regions.</p> <p>Local laws implemented by many other nearby councils to protect trees on private lands are applied broadly to all private trees where those trees exceed a size threshold specified in the local law. These local laws make it an offence to remove or prune any private tree over a specific size without obtaining a permit from the council.</p> <p>Some councils also maintain a Register of Significant Trees in addition to the more broadly applied local law, where trees included in a register are given greater protection.</p> <p>The terms Canopy Tree, Significant Tree and Classified Tree vary in meaning and applications across different councils. While Glen Eira utilises “Classified Trees” to indicate our most important specimens, Boroondara, Bayside, and Kingston use “Significant Trees”. However, Stonnington, Port Phillip, and Brimbank councils use “Significant Tree” to describe any tree over a certain size threshold protected under their relevant local law. In contrast, the term “Canopy Tree” is used in other councils.</p> <p>Benchmarking was undertaken against similar local laws in all adjoining Councils (Bayside, Kingston, City of Port Phillip, Monash and Stonnington).</p> <p><b>City of Port Phillip</b></p> <p>The City of Port Phillip's<sup>16</sup> local law protects "significant tree or palm", defined as a tree or palm on private land with a circumference greater than a specified amount. A tree is considered significant if its trunk circumference is 140 centimetres or greater when measured 1 metre from its base.</p> <p><b>Bayside City Council</b></p> <p>Bayside City Council's local law<sup>17</sup> protects trees with a circumference greater than a specified amount. A local law permit is required to prune or remove a tree if the tree:</p> <ul style="list-style-type: none"> <li>• has a single or combined trunk circumference greater than 155cm measured 1m above ground level.</li> </ul>

<sup>16</sup> <https://www.portphillip.vic.gov.au/media/d3lfhij/city-of-port-phillip-community-amenity-local-law-2023.pdf>

<sup>17</sup> <https://www.bayside.vic.gov.au/sites/default/files/2022-05/Neighbourhood%20Amenity%20Local%20Law%202021%20Guidelines%20-%20Final.pdf>

Framework Number and Title	Description
	<p><b>Stonnington City Council</b></p> <p>Stonnington City Council's local law<sup>18</sup> protects "significant trees" which are defined as tree or palm which has a circumference greater than a specified amount. A permit is required to carry out works, including pruning and tree removal to significant trees and within the Tree Protection Zone (TPZ) of Significant Trees with:</p> <ul style="list-style-type: none"> <li>• a trunk circumference of 140 cm or greater measured at 1.4 m above its base.</li> <li>• with a total circumference of all its trunks of 140 cm or greater measured at 1.4 m above its base.</li> <li>• with a trunk circumference of 180 cm or greater measured at its base; or</li> <li>• with a total circumference of all its trunks of 180 cm measured at its base.</li> </ul> <p><b>Kingston City Council</b></p> <p>Kingston's local law<sup>19</sup> protects "protected trees", which are defined as trees that have a trunk circumference of 110cm or greater as measured at its base, a multi-stemmed tree where the circumference of its exterior stems measured at its base is greater than 110 centimetres, or a tree planted as required by a replanting condition of a permit issued for the removal of a protected tree, excluding species which are environmental weeds or noxious weeds.</p> <p><b>Monash City Council</b></p> <p>Monash City Council<sup>20</sup> is currently developing a Significant Tree Register and does not currently have a local law that protects them.</p> <p>The benchmarking of the operative provisions of the proposed Local Law, which requires a permit against the local laws in adjoining municipalities, is detailed in Table 6 of Appendix 2.</p> <p>The assessment found that Council's proposed Local Law is broadly consistent with the intent of the other Councils' local laws which regulates the removal of trees on private land.</p>
(13) Possible restriction of competition by Local Law	<p>An NCP assessment has been undertaken. It is recognised that there will be some instances where a business is affected by the costs and potential limitations and restrictions applied by the proposed Local Law.</p> <p>It has been concluded that while costs are associated with the permit process or the restriction on removal of a canopy tree, any impact on business is minimal. Even</p>

<sup>18</sup> <https://www.stonnington.vic.gov.au/Services/Trees/Manage-trees-on-your-property>

<sup>19</sup> <https://www.kingston.vic.gov.au/council/local-laws>

<sup>20</sup> <https://www.monash.vic.gov.au/Residents-Property/Trees-and-Nature-Strips/Tree-Management/Tree-Management-Policy>

Framework Number and Title	Description
	<p>if it could be said that the proposed controls restrict business, it is considered that the overall benefit to the community outweighs the possible restriction.</p>
<p>(14) Identifying (and staying within) the power to make a Local Law</p>	<p>Council has broad powers to make local laws for or with respect to any act, matter or thing in respect of which it has a function or power under the <i>Local Government Act 2020</i> or any other Act.</p> <p>The proposed Local Law identifies the authority on which it is based and remains within that power. A local law is made under section 71 of the <i>Local Government Act 2020</i>.</p> <p>Council has reviewed the proposed Local Law and considers its clauses within its power to make a local law.</p>
<p>(15) Considering possible alternatives to Local Law</p>	<p>In conjunction with the proposed Local Law, Council would promote resident's responsibilities through information and education campaigns. It is considered that self-regulation alone is not achievable in relation to the problems identified in item (2) of the framework.</p> <p>A local law that discourages the indiscriminate damage or removal of canopy trees from private land in the municipality that is fairly enforced and requires replanting where possible is the basis for creating an environment for enduring improvements in the canopy cover within Glen Eira.</p> <p>A local law is considered the most appropriate legislative approach at this stage, given the uncertainty surrounding the introduction of additional planning controls and the more complex, lengthy and costly application process associated with amending planning controls.</p>
<p>(16) Considering if a State Act is more appropriate than a Local Law</p>	<p>In each case, it is considered that this section is either not applicable or that making a Local Law best serves the public interest.</p>
<p>(17) Identifying Planning Scheme requirements with which a Local Law may be inconsistent</p>	<p>None of the proposed Local Law clauses was identified as inconsistent with the <i>Planning and Environment Act 1987</i> or the <i>Planning Scheme</i>. The proposed Local Law is subordinate to the provisions of the <i>Planning and Environment Act 1987</i> and the <i>Planning Scheme</i>. To the extent of any inconsistency, the provisions of the <i>Planning and Environment Act 1987</i> and the <i>Planning Scheme</i> will prevail.</p> <p>Council is the responsible authority for enforcing both the planning overlays and local laws but whereas Council's planning decisions can be overturned or varied by the Victorian Civil and Administrative Tribunal (VCAT), that body cannot over-rule the requirement for a permit under a local law.</p>

Framework Number and Title	Description
	<p>Where activities require a permit under the proposed Local Law and the Planning and Environment Act 1987, both a planning permit and a local law permit are required.</p> <p>Circumstances could, therefore, arise where a planning officer or VCAT has issued a planning permit/ordered a planning permit to be issued but were acting on such a planning permit would involve illegal removal of a tree under the proposed Local Law.</p> <p>Whilst there may be a perception of a conflict, a local law prohibiting interference with trees is not inconsistent with the Planning and Environment Act 1987. The proposed Local Law complements the Planning Scheme and its operation.</p> <p>The risk of circumstances giving rise to a perception of a conflict is mitigated as Authorised Officers are provided with Assessment Guidelines, which assist in exercising their discretion when assessing a permit application in relation to a proposed dwelling or due to proposed improvements to an existing dwelling.</p> <p>The risk of a conflict is mitigated by communication between the Planning and Building Services department and the Park Services department in relation to their respective decision-making processes to ensure that all relevant information is considered when decisions are made under the relevant regulatory regimes.</p>

## **Appendix 1 – Assessment of Compliance against the Human Rights Charter**

Section 72(a) of the *Local Government Act 2020* provides that a local law must not be inconsistent with any Act (including the Charter of Human Rights and Responsibilities Act 2006 (**Human Rights Act**)) or regulations.

The Human Rights Act contains twenty (20) basic rights that promote and protect the values of freedom, respect, equality and dignity. Councils must not knowingly breach these rights and must always consider them when creating local laws, developing policies, and delivering services.

Council, as a 'public authority' under the Human Rights Act, must also ensure that a local law made by it is not incompatible with a human right. If a proposal restricts or interferes with a right, consideration must be given to determining whether the restrictions are reasonable and demonstrably justified under the Human Rights Act.

Council has assessed the proposed Local Law for compatibility with the Human Rights Act. On balance, the proposals in the proposed Local Law are not incompatible with the rights in the Human Rights Act. Even if it could be said that the proposals are incompatible with the Human Rights Act, Council considers that the approach in the proposed Local Law is demonstrably justifiable, such that no incompatibility with the Human Rights Act exists.

In keeping with section 28 of the Human Rights Act, this statement of compatibility is made with respect to the proposed Local Law.

*The proposed Local Law is compatible with the human rights protected by the Human Rights Act.*

Appendix 1 – Assessment of Compliance against the Human Rights Charter

Will any person feel their rights are limited / What human rights may be impacted?	Relevant Part(s)/clause(s) of the proposed Local Law	What are the interests you have to balance?	Is the limitation reasonable?	What practical solutions are available to reduce the limitation?
Yes - A fair hearing - section 24 <sup>21</sup>	Clause 48 of the amended Local Law provides that as an alternative to prosecution, an Authorised Officer may issue an infringement notice on a person who the Authorised Officer believes has committed an infringement offence.	Council acknowledges that every individual has the right to a fair hearing.	<p>The <i>Infringements Act 2006</i> contains provisions for individuals to challenge Infringement Notices and for Council to waive Infringement Notices upon consideration of correspondence from the individual.</p> <p>The right to a fair hearing applies to "a person charged with a criminal offence or a party to a civil proceeding" (section 24(1)). This does not extend to Infringement Notice offences.</p>	In the event of service of an Infringement Notice, any limitation can be further reduced by continuing to the Magistrates Court for a decision.

<sup>21</sup> A person charged with a criminal offence or a party to a civil proceeding has the right to have the charge or proceeding decided by a competent, independent and impartial court or tribunal after a fair and public hearing.

Appendix 1 – Assessment of Compliance against the Human Rights Charter

Will any person feel their rights are limited / What human rights may be impacted?	Relevant Part(s)/clause(s) of the proposed Local Law	What are the interests you have to balance?	Is the limitation reasonable?	What practical solutions are available to reduce the limitation?
<p>Yes – Privacy and reputation (section 13)</p>	<p>Part 5 of the amended Local Law controls activities on private land, including the ability, without a permit, to remove, prune or undertake works near a canopy tree or a tree required to be planted as a condition of a permit or a direction in a Notice to Comply.</p> <p>Clause 54 of the amended Local Law allows a person approved</p>	<p>Council acknowledges the right of members of the community to privacy and reputation, including the right not to have their privacy, family or home unlawfully or arbitrarily interfered with.</p> <p>This right is balanced against the interest in protecting the community's interest in preserving the safety and amenity of the municipality.</p>	<p>Council acknowledges that the proposed Local Law may affect an individual's choices in relation to their home and family life to the extent that a permit is required to remove, prune or undertake works near a canopy tree. Council considers it reasonable to issue permits because the community interest in protecting community safety and amenity is greater than an individual's right in these circumstances.</p> <p>Council may authorise a member of Council staff to enter upon any land on which there is a failure to comply with a Notice to Comply and do anything required to ensure compliance.</p> <p>Council considers that these limitations are justified under section 7(2) to ensure that community safety and amenity is not put at risk due to a failure</p>	<p>The number of Authorised Officers is limited. These persons will be supported in awareness of obligations under the Human Rights Act and the requirement to act consistently with human rights obligations in the course of exercising powers, duties and functions under the proposed Local Law.</p>

Appendix 1 – Assessment of Compliance against the Human Rights Charter

Will any person feel their rights are limited / What human rights may be impacted?	Relevant Part(s)/clause(s) of the proposed Local Law	What are the interests you have to balance?	Is the limitation reasonable?	What practical solutions are available to reduce the limitation?
	<p>by Council to enter upon any Property on which there is a failure to comply with a Notice to Comply and do all such acts, matters or things that are required to comply with a Notice to Comply.</p> <p>Clause 54 of the amended Local Law allows a person approved by Council to enter upon any Private Land to inspect any tree where there are reasonable</p>		<p>to comply with the proposed Local Law.</p> <p>With the approval of Council, a person may enter upon any land to conduct inspections. Council considers these limitations justified under section 7(2) because the community interest in protecting community safety and amenity is greater than an individual's right in these circumstances.</p>	

Appendix 1 – Assessment of Compliance against the Human Rights Charter

<p><b>Will any person feel their rights are limited / What human rights may be impacted?</b></p>	<p><b>Relevant Part(s)/clause(s) of the proposed Local Law</b></p>	<p><b>What are the interests you have to balance?</b></p>	<p><b>Is the limitation reasonable?</b></p>	<p><b>What practical solutions are available to reduce the limitation?</b></p>
	<p>grounds for believing that a breach of the Local Law has been, is being committed or is likely to be committed.</p>			

Appendix 1 – Assessment of Compliance against the Human Rights Charter

Will any person feel their rights are limited / What human rights may be impacted?	Relevant Part(s)/clause(s) of the proposed Local Law	What are the interests you have to balance?	Is the limitation reasonable?	What practical solutions are available to reduce the limitation?
Yes - Property rights (section 20)	<p>Part 5 of the amended Local Law controls activities on private land, including the ability, without a permit, to remove, prune or undertake works near a canopy tree or a tree required to be planted as a condition of a permit or a direction in a Notice to Comply.</p> <p>Clause 54 of the amended Local Law allows a person approved</p>	<p>Council acknowledges that members of the community have economic and property interests, including rights in the acquisition, use and enjoyment of property. These rights and interests are balanced against the safety and amenity of the community, the safety and amenity of the individual, and the safety and amenity of any other person going about their daily activities within the municipality.</p>	<p>The proposed Local Law limits an individual's rights to deal with their private property. For example, the proposed Local Law requires the property owner to obtain a permit to remove, prune or undertake works near a canopy tree or a tree required to be planted as a condition of a permit. Council considers it reasonable to issue permits to lessen the overall impact on the community from the indiscriminate removal of canopy trees on private land in the municipality.</p>	<p>An applicant for a permit can seek a review of a decision to refuse a permit or grant a permit with conditions.</p> <p>In the event of service of an Infringement Notice, the limitation can be further reduced by continuing to the Magistrates Court for a decision.</p>

Appendix 1 – Assessment of Compliance against the Human Rights Charter

<p><b>Will any person feel their rights are limited / What human rights may be impacted?</b></p>	<p><b>Relevant Part(s)/clause(s) of the proposed Local Law</b></p>	<p><b>What are the interests you have to balance?</b></p>	<p><b>Is the limitation reasonable?</b></p>	<p><b>What practical solutions are available to reduce the limitation?</b></p>
	<p>by Council to enter upon any Property on which there is a failure to comply and do all such acts, matters or things that are required to comply with a Notice to Comply.</p> <p>Clause 54 of the amended Local Law allows a person approved by Council to enter upon any Private Land to inspect any tree where there are reasonable grounds for believing that a</p>			

Appendix 1 – Assessment of Compliance against the Human Rights Charter

<p><b>Will any person feel their rights are limited / What human rights may be impacted?</b></p>	<p><b>Relevant Part(s)/clause(s) of the proposed Local Law</b></p>	<p><b>What are the interests you have to balance?</b></p>	<p><b>Is the limitation reasonable?</b></p>	<p><b>What practical solutions are available to reduce the limitation?</b></p>
	<p>breach of the Local Law has been, is being committed or is likely to be committed.</p>			

Appendix 1 – Assessment of Compliance against the Human Rights Charter

Will any person feel their rights are limited / What human rights may be impacted?	Relevant Part(s)/clause(s) of the proposed Local Law	What are the interests you have to balance?	Is the limitation reasonable?	What practical solutions are available to reduce the limitation?
Yes - Right not to be tried or punished more than once (section 26)	Clause 47(c)(ii) of the amended Local Law – Offences - provides for further penalties for each day after a finding of guilt during which the contravention continues	<p>Council acknowledges that a person has the right not to be tried or punished more than once for an offence in respect of which they have already been finally convicted in accordance with the law.</p> <p>This right is balanced against the community interest in ensuring that contraventions of the proposed Local Law are addressed and rectified promptly to protect the safety and amenity of the community.</p>	<p>This limitation is intended to address ongoing recalcitrant behaviour which causes detriment to the community.</p> <p>Council considers these limitations reasonable because the interest of the municipal community is greater than an individual's right in these circumstances.</p> <p>This provision is enforced by Infringement Notices. The applicable fine of 2 penalty units is relatively low, and the <i>Infringements Act 2006</i> contains provisions for individuals to challenge Infringement Notices and for Council to waive Infringement Notices upon consideration of correspondence from the individual.</p>	In the event of service of an Infringement Notice, the limitation can be further reduced by continuing to the Magistrates Court for a decision.

**Appendix 2 - Benchmarking of adjoining Councils' local laws**

**Table 6: Benchmarking of adjoining Councils' local laws**

Clause in proposed local law	Proposed offence	Similar clauses in adjoining Council:			
		Bayside	Kingston	City of Port Phillip	Stonnington
23(2)(a)	remove, damage, kill or destroy or direct, authorise or allow to be removed, damaged, killed or destroyed a Canopy Tree	Yes - clause 21(1)(a) – 10 penalty units for infringement notice / 20 penalty units maximum penalty	Yes - clause 42(a) – 10 penalty units for infringement notice / 20 penalty units maximum penalty	Yes – clause 55(1)(a) and (b) – 5 penalty units for infringement notice / 20 penalty units maximum penalty/ Subsequent contravention 20 penalty units maximum	Yes - clause 163(2)(a) and (d) – 20 penalty units for infringement notice / 20 penalty units maximum penalty
23(2)(b)	Prune or direct, authorise or allow to be Pruned a Canopy Tree	Yes - clause 21(1)(b) – 5 penalty units for infringement notice / 20 penalty units maximum penalty	Yes - clause 42(b) – 10 penalty units for infringement notice / 20 penalty units maximum penalty	No	Yes - clause 163(2)(b) and (d) – 10 penalty units for infringement notice / 20 penalty units maximum penalty
23(2)(c)	carry out, or direct, authorise or allow to be carried out any works within the Tree Protection Zone of a Canopy Tree	No	Yes - clause 42(c) – 10 penalty units for infringement notice / 20 penalty units maximum penalty	No	Yes - clause 163(2)(c) and (d) – 10 penalty units for infringement notice / 20 penalty units maximum penalty
23(2)(d)	remove, damage, kill or destroy or direct, authorise or allow to be	Yes - clause 21(2)(a) – 5 penalty units for infringement notice / 20 penalty units	Yes - clause 42(a) – 10 penalty units for infringement notice / 20 penalty units maximum	No	No

	removed, damaged, killed or destroyed a tree planted in satisfaction of a condition of a Permit or a direction in a Notice to Comply	maximum penalty	penalty		
23(2)(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	Yes - clause 21(2)(b) – 2 penalty units for infringement notice / 20 penalty units maximum penalty	Yes - clause 42(b) – 10 penalty units for infringement notice /20 penalty units maximum penalty	No	No
23(2)(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	No	Yes - clause 42(c) – 10 penalty units for infringement notice / 20 penalty units maximum penalty	No	No

