

Protection of Council Assets and Control of Building Sites Local Law 2011

Date Resolved By Council

22 August 2011

Commencement Date:

1 September 2011

Revocation Date:

1 September 2021

CITY OF BOROONDARA

**PROTECTION OF COUNCIL ASSETS
AND CONTROL OF BUILDING SITES
LOCAL LAW 2011**

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PART A – FORMAL PARTS

1. Title

This Local Law is called the "Protection of Council Assets and Control of Building Sites Local Law 2011".

2. Objects

The objects of this Local Law are to:

- (a) protect public infrastructure assets from damage caused by building work;
- (b) protect the health and safety of persons who work in or enter building sites;
- (c) protect the health and safety of persons who reside near or pass by building sites; and
- (d) provide for the peace, order and good governance of the municipality.

3. Authorising provision

This Local Law is authorised by section 111(1) of the Local Government Act 1989.

4. Commencement of this Local Law

This Local Law begins on 1 September 2011.

5. Sunset of this Local Law

This Local Law ends on 1 September 2021.

6. Application of this Local Law

This Local Law applies throughout Council's municipal district.

7. Definitions

In this Local Law:

"Asset Protection Permit" means an asset protection permit issued in accordance with clause 9.

"Authorised Officer" means a person appointed by Council as an authorised officer under section 224(1) of the Local Government Act 1989.

"*builder*" means a person who has applied to Council (or any other person by whom such an application may be made) for a building permit or, if no such application has been made, the person in charge of any building work being carried out.

"*builders' refuse*" includes any solid or liquid domestic or commercial waste, sediment, debris or rubbish and, without limiting this meaning, includes any glass, metal, plastic, paper, fabric, wood, food, vegetation, soil, sand, concrete, rocks and any other waste material, substance or thing generated by or in connection with building work.

"*building*" includes any structure or building, whether temporary or permanent, or any part of such building or structure.

"*building site*" means any land on which, or on part of which, building work is being carried out.

"*building work*" means work for or in connection with the construction, renovation, alteration, demolition, relocation or removal of a building and includes landscaping, concreting, paving and subdivision road construction (extending to installation of utility services and drainage).

"*Council*" means Boroondara City Council and where this Local Law requires or empowers things to be done by Council, includes any member of Council staff to whom such requirement or power has been delegated.

"*Council-controlled land*" means any land which Council occupies, manages or otherwise controls.

"*land*" means any land or building in separate ownership or separate occupation.

"*municipal district*" means the municipal district of Council.

"*owner*" means in relation to building work, the owner of land on which the building work is carried out.

"*penalty unit*" has the meaning attributed to it under section 110 of the Sentencing Act 1991

"*permit*" means a permit issued by Council in accordance with Clause 12 (c)

"*public infrastructure asset*" means items, facilities or systems owned, managed or otherwise controlled by Council which provide or facilitate a public service, including (but not limited to) roads, bike lanes, bicycle and shared paths, bicycle road and footpath markings, footpaths, stormwater systems, lighting, fencing, retaining walls, trees, landscaping, kerb and channel, traffic management devices, traffic signals, signs, line marking, nature strips, street furniture, car parks, bridges, buildings and structures.

"road" has the same meaning as in the Local Government Act 1989.

"security bond" means a security bond required to be paid to Council in accordance with clause 9.6.

PART B – ASSET PROTECTION

8. Notice of intention to undertake building work

- 8.1 An owner must not commence or allow or authorise anyone else to commence building work on the owner's land unless notice is given to Council in accordance with this clause.
- 8.2 The notice must be given to Council no less than 21 days before the building work commences.
- 8.3 The notice must be in writing and include:
- (a) the owner's name or, if more than one owner, the names of an owner nominated for the purposes of this clause;
 - (b) the owner's residential address or, if more than one owner, the nominated owner's residential address;
 - (c) an address for the service or posting of notices under this Local Law;
 - (d) if the owner wishes to appoint an agent for the service or posting of notices, the name, residential address and postal address of the agent, together with evidence that the agent has agreed to being the appointed agent;
 - (e) a description of the proposed building work including the costs of the building work.
- 8.4 The notice may include a written or photographic (or both written and photographic) survey showing the condition of public infrastructure assets located on, under or adjacent to the owner's land.

9. Asset Protection Permits

- 9.1 Within 14 days of receiving notice pursuant to clause 8, Council must notify the owner or, if the owner has nominated an agent, the agent whether:
- (a) Council requires the owner to obtain an Asset Protection Permit in accordance with this clause; or

- (b) Council requires the owner to provide further information about the building work.
- 9.2 If Council notifies the owner or agent that it requires further information about the building work:
 - (a) Council must specify in the notice what further information is required;
 - (b) Council is not required to determine whether an Asset Protection Permit is required until the information is provided;
 - (c) the owner must not commence building work until the information is provided.
- 9.3 If Council does not give notice in accordance with clause 9.1 or within 14 days of Council being provided the further information pursuant to clause 9.2, Council is deemed to have determined that an Asset Protection Permit is not required.
- 9.4 Where Council determines that an Asset Protection Permit is required, the owner must not commence building work until the owner obtains the Asset Protection Permit.
- 9.5 Council may from time to time determine:
 - (a) the fee for an Asset Protection Permit, which fee may include different fees for different types of building work or according to the risk to public infrastructure assets from the building work;
 - (b) the form of an application for an Asset Protection Permit;
 - (c) the conditions under which an Asset Protection Permit is subject.
- 9.6 Without limiting clause 9.5, an Asset Protection Permit may be subject to such conditions as Council determines, including:
 - (a) requiring the payment of a security bond; or
 - (b) requiring protection works to be done; or
 - (c) requiring the erection of temporary fencing to the satisfaction of Council; or
 - (d) requiring that any or all damage to public infrastructure assets be repaired, replaced or re-instated within a specified time; or

- (e) requiring a temporary vehicle crossing to be installed and thereafter used to Council's satisfaction.
 - (f) A combination of paragraphs (a) to (e)
- 9.7 An Asset Protection Permit expires if the building works are not commenced within 12 months of the Asset Protection Permit being issued.
- 9.8 Where an Asset Protection Permit is issued subject to a condition that the owner pay a security bond:
- (a) Council may set the amount of the security bond;
 - (b) the building work must not commence until the security bond is paid in full to Council;
 - (c) Council must retain the security bond and only apply it towards the cost of repairing damage to a public infrastructure asset in accordance with clause 10;
 - (d) Council must refund the security bond to the owner if, after the building work is completed:
 - i. the owner gives notice to Council, and
 - ii. Council does not apply the security bond in accordance with clause 10 within 30 days of such notice being given.

10. Applying the security bond

- 10.1 Council may at any time cause a public infrastructure asset which is on, under or adjacent to the owner's land to be inspected to record the condition of the public infrastructure asset including:
- (a) before the building work commences;
 - (b) during the building work;
 - (c) after the building work is completed; and
 - (d) after notice is received in accordance with clause 9.8(d).
- 10.2 Where Council causes an inspection of the public infrastructure asset to be undertaken in accordance with this clause, the person undertaking the inspection must record in writing or photographically (or both written and photographically) the condition of the public infrastructure asset.

- 10.3 The recording of the public infrastructure asset is conclusive evidence of the condition of the public infrastructure asset as at the time the recording was made.
- 10.4 Where Council has issued an Asset Protection Permit subject to a condition that the owner pay a security bond and the recording of a public infrastructure asset made in accordance with this clause indicates damage to the public infrastructure asset:
- (a) the damage shall be deemed to have been caused by the building work on the owner's land unless the owner had included a survey with the notice required to be given under clause 8 and the survey indicates that the damage existed before the building work commenced;
 - (b) Council may give a notice to the owner or the agent requiring the owner to repair the damage to Council's satisfaction within the time specified in the notice;
 - (c) if the public infrastructure asset is not repaired to Council's satisfaction within the time specified in the notice, Council may arrange to repair the public infrastructure asset without any further notice to the owner or agent; and
 - (d) if Council arranges to repair the public infrastructure asset in accordance with this clause, Council may deduct the cost of the repair from the security bond and
 - i. if the security bond is more than the cost of the repair, refund the balance to the owner; or
 - ii. if the security bond is less than the cost of repair, recover the additional cost of the repair from the owner as a debt.

11. Protection of public infrastructure assets

- 11.1 Without limiting clauses 8, 9 and 10, the owner of land upon which building work is undertaken is liable for damage caused to a public infrastructure asset by the building work.
- 11.2 Where an owner:
- (a) fails to give notice in accordance with clause 8; or
 - (b) gives notice in accordance with clause 8 but did not include a survey of the public infrastructure assets with such notice in accordance with clause 8.4 -

any damage to a public infrastructure asset evidenced by a recording made in accordance with clause 10 is deemed to have been caused by the building work.

- 11.3 Where an Authorised Officer is satisfied that damage to a public infrastructure asset was caused by building work carried out on the owner's land or is deemed by this clause to have been caused by such building work, the Authorised Officer may give the owner notice directing the owner to repair the damage to the satisfaction of Council and within the time specified in the notice, which time must be reasonable having regard to:
- (a) the degree of risk or potential risk;
 - (b) the amount of work involved;
 - (c) the degree of difficulty;
 - (d) the availability of necessary materials or other necessary items;
 - (e) climatic conditions; or
 - (f) any other relevant matter.

PART C – CONTROL OF BUILDING SITES

12. Controlling building sites

A builder must undertake building work so as to:

- (a) not allow the discharge of building refuse from the building site;
- (b) not damage public infrastructure assets;
- (c) not, without a permit, place any materials, vehicles, structures, plant or equipment associated with the building work on Council-controlled land;
- (d) provide a facility or facilities of sufficient size and design on the building site for the storage of building refuse until such time as the building refuse is disposed of;
- (e) regularly empty the facility or facilities referred to in paragraph (d) so as not to cause a build up of building refuse and, without limitation, within 7 days of completion of the building work;

PART D – ADMINISTRATION AND ENFORCEMENT

13. Offences

- 13.1 A person who:
- (a) fails to comply with any provision of this Local Law;
 - (b) fails to comply with a condition of an Asset Protection Permit;
 - (c) fails to comply with a Notice to Comply issued under this Local Law; or
 - (d) submits wrong, inaccurate or misleading information in an application for an Asset Protection Permit or permit made under this Local Law.
- is guilty of an offence.
- 13.2 If no penalty is specifically provided for in a provision of this Local Law, a person found guilty of an offence under this Local Law is liable to a penalty not exceeding 20 penalty units.
- 13.3 In addition to any penalty imposed pursuant to this Local Law, a penalty not exceeding 2 penalty units will apply for each day after conviction for an offence during which a contravention of this Local Law continues.
- 13.4 A person who is guilty of an offence under this Local Law must in addition to any penalty pay Council all reasonable costs incurred by Council in remedying the offence.

14. Infringement notices

- 14.1 Where an Authorised Officer reasonably believes that a person has committed an offence against this Local Law, the Authorised Officer may issue and serve on that person an infringement notice as an alternative to prosecution for the offence.
- 14.2 If an offence is a continuing offence, an Infringement Notice may be issued on each day the offence continues.
- 14.3 The penalty indicated must be paid to Council within twenty eight (28) days of the issue of the Infringement Notice, to avoid prosecution.
- 14.4 A person issued with an Infringement Notice is entitled to not pay the penalty indicated in the Infringement Notice and, instead, to defend a prosecution in Court.

- 14.5 Subject to the Infringements Act 2006, if payment of the amount specified in an Infringement Notice is not made within the twenty eight (28) day period and the notice is not withdrawn the Authorised Officer may:
- (a) pursue the matter by prosecuting for an offence; or
 - (b) take any steps which may be available for enforcing penalties by registration of Infringement Notices.
- 14.6 Where an Infringement Notice is issued under this Local Law the penalty payable in respect of the Infringement Notice will be:
- (a) with respect to clause 9.4 - five (5) penalty units; or
 - (b) with respect to all other clauses - two (2) penalty units.

15. Notice to comply

- 15.1 An Authorised Officer may, by giving a Notice to Comply, direct the owner or occupier of land or other relevant person to remedy any situation which constitutes or may constitute a breach of this Local Law.
- 15.2 The time specified in a Notice to Comply given under this Local Law must be reasonable in the circumstances having regard to:
- (a) the degree of risk or potential risk involved in the work;
 - (b) the amount of work to be performed in order to comply with the Notice to Comply;
 - (c) the degree of difficulty of that work;
 - (d) the availability of necessary materials or other necessary items;
 - (e) climatic conditions.
- 15.3 A person who fails to observe any requirement specified in a Notice to Comply is guilty of an offence.

16. Urgent circumstances

- 16.1 In urgent circumstances arising as a result of a failure to comply with this Local Law, an Authorised Officer may take action to remove, remedy or rectify a situation without first giving a Notice to Comply, provided that:

- (a) it appears to the Authorised Officer that a breach of this Local Law is likely to occur, is occurring or has occurred;
 - (b) the Authorised Officer considers the circumstances or situation to be sufficiently urgent and that the time involved or difficulties associated with giving a Notice to Comply may place a person, property or thing at risk or in danger; and
 - (c) wherever practicable, the prior consent of Council's Chief Executive Officer, or his or her delegate, is obtained.
- 16.2 In deciding whether circumstances are urgent, the Authorised Officer must take into account, to the extent relevant:
- (a) whether it is practicable to contact the person by whose default the situation has arisen; or
 - (b) whether there is an urgent risk or threat to public health, public safety, the environment or property.
- 16.3 An Authorised Officer who takes action under this clause 16 must ensure that as soon as practicable:
- (a) details of the circumstances and remedying action are forwarded to the person in breach of the provision of this Local Law in respect of which the action was taken; and
 - (b) a report of the action taken is submitted to the Chief Executive Officer.
- 16.4 Any costs incurred by Council to remove, remedy or rectify a situation under this clause 16 may be recovered by Council from the person responsible.

17. Offences in relation to Authorised Officers

A person must not give information that the person knows or believes to be false to an Authorised Officer who is performing a function under this Local Law.

18. Power of entry and inspection

An Authorised Officer may at any reasonable time enter any land upon which building work is taking place or is about to take place for the purpose of ascertaining compliance with this Local Law.

The Common Seal of the
Boroondara City Council was
hereunto affixed in the presence of:

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)
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Nicholas Tragas
.....

Councillor

Catherine Dale
.....

Chief Executive Officer

30th August 2011
.....

Date