



CITY OF BOROONDARA

TREE PROTECTION LOCAL LAW

As amended by the
Miscellaneous Amendments Local Law
gazetted on 1 September 2011.

Date Resolved By Council	25 September 2006
Date Amended By Council	15 August 2011
Commencement Date:	25 November 2006
Revocation Date:	25 November 2016
Responsible Directorate:	City Development & Amenity

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TREE PROTECTION LOCAL LAW**PART A - INTRODUCTION****1 Title**

This local law may be cited as the Tree Protection Local Law

2 Purpose of this Local Law

The objectives of this Local Law are to:

- (a) Ensure that the established treed character of the *Municipal District* is maintained; and
- (b) prohibit, regulate and control any activities which may endanger *significant trees* and *canopy trees* within the *Municipal District*.

3 Authorising Provision

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

4 Commencement Date

This Local Law begins on 25 November 2006.

5 Sunset (Revocation) of this Local Law

This Local Law ends on 25 November 2016 unless sooner revoked.

6 Application of this Local Law

This Local Law applies at all times throughout the *Municipal District*.

7 Definitions in this Local Law

Some of the terms used in this Local Law are defined.

They are identified by *bold italics* and have the following meanings:

“**Act**” means the *Local Government Act 1989*, or any later equivalent enactment.

“**Authorised Officer**” means a person appointed by *Council* under section 224 of the *Act*.

“**Canopy Tree**” means any tree with a total trunk circumference of 110cm or more measured at a point approximately 1.5 metres from the ground.

“**Council**” means the Boroondara City *Council*.

“**Critical Root Zone (CRZ)**” means the area surrounding a *significant tree*’s trunk or a *canopy tree*’s trunk which contains the roots that are essential to the tree’s continued health, vigour and stability, being a circular area below the tree extending at equal proportions from the base, the diameter of which is ten times the trunk diameter measured at 1.5 metres above ground level.

“**Crown**” means the portion of a *significant tree* or *canopy tree* consisting of branches and leaves and any part of the trunk and stems from which branches arise.

“**Crown Dripline**” means the zone directly beneath the tree, extending into the ground, the outer edge of which is a vertical projection of the lateral extent of the foliage of the tree.

“**Land**” includes-

- (a) buildings and other structures permanently or temporarily fixed to *land*; and
- (b) *land* covered with water; and
- (c) any estate, interest, easement, servitude, privilege or right in or over *land*.

“**Lop**” means the removal of any branches of a tree which are greater than 100mm in diameter at the point of contact with larger branches or the trunk of the tree.

“**Municipal District**” means the area from time to time comprising the *Municipal District* of the *Council*

“**Notice to Comply**” means a Notice in writing given by an *Authorised Officer* or the *Council* under this Local Law directing the person to whom it is addressed to take some action to comply with the Local Law

“**Offence**” means an offence against or breach of a provision of this Local Law or a breach of a notice or direction issued under it.

“**Penalty**” means the fine prescribed under this Local Law for an *Offence*.

“**permit**” means a permit issued under this Local Law.

“**Private land**” means all *land* other than *public land*;

“**Public land**” means all *land* owned, leased, managed or occupied by a public body, including *Council*.

“**Significant Tree**” means a tree listed in *Council’s Significant Tree Study*.

“**Significant Tree Study**” means the study prepared by John Patrick and Associates in May 2001 of trees and vegetation within the *Municipal District* that are considered to be of environmental, historic, horticultural, bio-diversity or other value and includes any subsequent trees added to the *Significant Tree Study* by way of Schedule to the *Significant Tree Study*.

“Works” includes trenching, digging, excavation or fill whether by mechanical or manual methods.

PART B – THE CONTEXT OF THIS LOCAL LAW

This Part is intended to help you understand the context in which the Local Law is made.

It is not intended to affect the interpretation of any provisions in other Parts of the Local Law.

Council recognises the contribution that the *Municipal District’s* tree canopy makes to the quality of its suburban environment. Damage and or removal of *significant trees* or *canopy trees* results in a degradation of this established character. This Local Law is based on the following principles;

1. *Significant trees* must be retained and cared for and will be the major determining factor in any redevelopment of land in the vicinity of the tree.
2. Trees that contribute to the *Municipal District’s* overall tree canopy character should be retained where practicable. *Works* near *significant trees* or *canopy trees* should be minimised to prevent damage and disruption to tree roots or growing conditions.
3. Owners of *land* and or contractors will be responsible for the loss or damage of *significant trees* or *canopy trees* that are required to be retained.

This Local Law gives *Council* the necessary controls to effectively caretake trees listed in *Council’s Significant Tree Study* ensuring they are maintained in accordance with the urban character, local amenity and biodiversity of the *Municipal District*.

PART C – TREE PROTECTION

8 Protection of Trees

(1) This clause applies to:

- (a) any *Significant Tree*;
- (b) any *Canopy Tree*; and
- (c) any multi-stemmed tree where the total circumference of all its stems measured at 1.5m from the ground equals or is greater than 110 cm (centimetres),

where the tree, as described above, is situated on any *Private Land*.

Note: See Figures 1 and 2.

- (2) The *Significant Tree Study* as amended by the addition of Schedules from time to time is incorporated into this Local Law.
- (3) A person must not without a *permit*:
 - (a) remove, *lop*, damage, kill or destroy or direct, authorise or allow to be removed, *lopped*, damaged, killed or destroyed a *significant tree*.
 - (b) carry out, or direct, authorise or allow to be carried out, any *works* near a *significant tree* to which this clause applies where any part of such *works* takes place within the *critical root zone* or encroaches on more than one quarter (1/4) of the outer edge of the *crown dripline*.

Note: See Figures 3 and 4

- (c) Remove, damage, kill or destroy or direct, authorise or allow to be removed, damaged, killed or destroyed a tree to which this clause applies other than a *significant tree*.

Maximum Penalty: twenty (20) Penalty Units

- (4) Clause 8(3) does not apply to a person whose actions are required by any other legislation or by any other statutory authority.
- (5) If a tree is interfered with in any of the circumstances specified in clause 8(3), the owner of any *private land* on which the tree is located is guilty of an offence, whether or not the person who actually interfered with the tree is identified or prosecuted, unless the owner can prove that the interference was undertaken by another party without authorisation of the owner.

9 Power of Authorised Officer to Direct – Notice to Comply

- (1) An *Authorised Officer* may by Notice to Comply given to the owner of *private land* or any contractor or other person engaged in *works* on *private land* who appears to be in breach of this Local Law direct that owner, contractor or other person to remedy any situation which constitutes a breach under this Local Law.
- (2) An *Authorised Officer* may by Notice to Comply direct a person who appears to be in breach of this Local Law to plant by way of replacement one or more trees of a type and in a location specified by *Council* or the *Authorised Officer*.

10 Time to Comply

- (1) A Notice to Comply must state the time and date by which the situation must be remedied.
- (2) The time required by a Notice to Comply must be reasonable in the circumstances having regard to:
 - (a) The amount of work involved;

- (b) The degree of difficulty of the work involved;
 - (c) The availability of necessary materials or other necessary items;
 - (d) Any other relevant factor.
- (3) A Notice to Comply must also include:
- (a) the name of the alleged offender (if known);
 - (b) the provision of the *Local Law* which appears to have been breached;
 - (c) the date on which it was given to the owner, contractor or other person; and
 - (d) the name of the *Authorised Officer* who has given it.

PART D - ADMINISTRATION

11 Applications for Permits

Where an application for a *permit* is made by a person who is not the owner of the *private land* on which the tree described in clause 8(1) is located, the application must be accompanied by a document evidencing the owner's consent to the application for the *permit* being made.

12 Permits

- (1) The *Council* or an *Authorised Officer* may, after considering the application for a *permit*:
- (a) grant a *permit*, with or without conditions;
 - (b) refuse to grant a *permit*; or
 - (c) determine that a *permit* is not required.
- (2) In determining whether to grant a *permit* under this Local Law, the *Council* or *Authorised Officer* must take the following into consideration:
- (a) the effect on the aesthetics of the neighbouring area;
 - (b) whether the tree is a *significant tree*;
 - (c) whether the proposed act is for health and safety reasons;
 - (d) whether the tree is causing property damage or giving rise to safety concerns;
 - (e) whether the tree is causing a public nuisance or creating an undue nuisance to adjoining landowners or occupiers;
 - (f) whether the tree is a recognised weed;

- (g) any legislative requirements; and
- (h) any other matter relevant to the circumstances associated with the application.

13 Payment of a Security Bond

(1) Where:

- (a) the owner of *private land* proposes carrying out *works*; or
- (b) the owner of *private land* engages a contractor for the purposes of carrying out *works*

within the *critical root zone* of a *significant tree* or *canopy tree*, whether those works are proposed to be undertaken pursuant to a planning permit or otherwise, the *Council* or an *Authorised Officer* may, by notice given to the Owner, require payment of a security bond to the Council.

- (2) The security bond shall be for an amount and in a form determined by the *Council* or the *Authorised Officer*.
- (3) Twelve months after the completion of the *works* the *Council* may:
 - (a) retain all or any part of the security bond to cover costs of replacement of any *significant tree* or *canopy tree* damaged or killed as a result of the *works*; or
 - (b) refund the security bond.

14 Cancellation of a Permit

(1) The *Council* may cancel a *permit* if it considers that:

- (a) there has been a serious or ongoing breach of the conditions of the *permit*; or
- (b) a Notice to Comply has been issued, but not complied with within seven (7) days after the time specified in the notice for compliance; or
- (c) there was a significant error or misrepresentation in the application for the *permit*; or
- (d) in the circumstances, the *permit* should be cancelled.

(2) Before it cancels a *permit*, the *Council* must provide to the holder of the *permit* an opportunity to make comment on the proposed cancellation.

- (3) If a holder of a *permit* is not the owner of the *private land* and the owner's consent was required to be given to the application for the *permit*, the owner must be notified of any Notice to Comply and of the reason why it has been served.

15 Inspections

An *Authorised Officer* may enter any *private land* for the purpose of inspecting any *significant tree* or *canopy tree* where a *permit* has been issued in accordance with this Local Law but there are reasonable grounds for believing that a breach of this Local Law has been or is being committed.

16 Infringement Notices

- (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.
- (2) The penalty fixed for an infringement notice under this Local Law is:
- (a) where an offence relates to a tree which in the opinion of the *Authorised Officer* is dead – 5 penalty units for each offence;
 - (b) for all other offences – 20 penalty units for each offence

17 Offences

- (1) A person who:
- (a) fails to comply with any provision of this Local Law;
 - (b) fails to comply with a condition of a *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 a *permit* made under this Local Law
- is guilty of an offence.
- (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.
- (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.

Figure 1. For single-stemmed trees, the trunk circumference is measured at 1.5 metres above ground level.

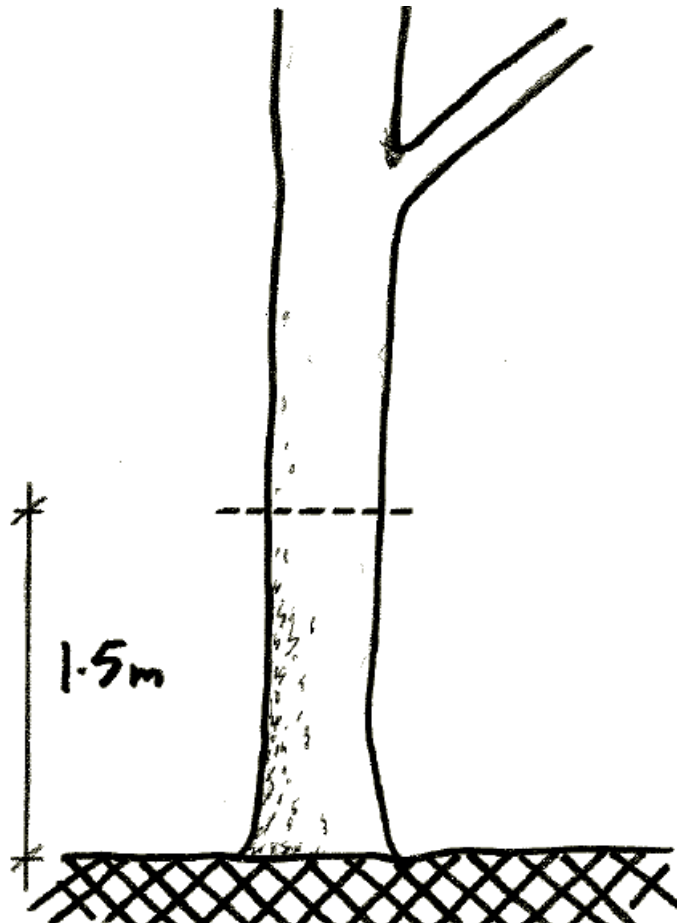
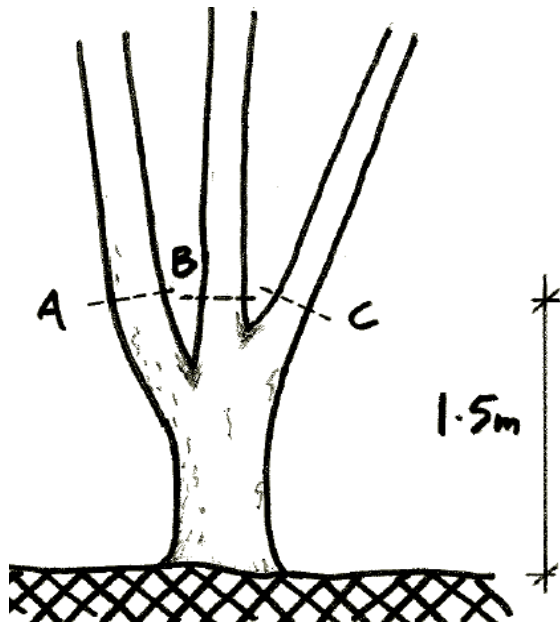
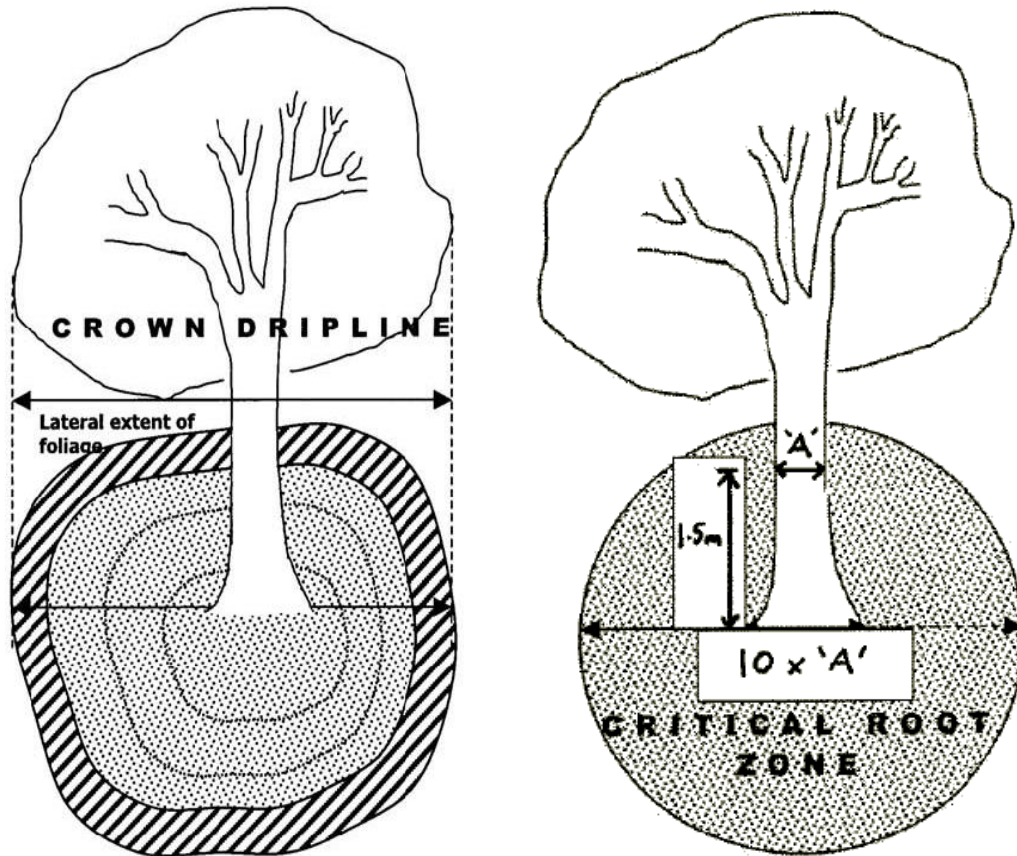


Figure 2. For multi-stemmed trees, the total circumference is the sum circumference of all stems, measured at 1.5 metres above ground level.




$$\begin{aligned} & \text{CIRCUMFERENCE A} \\ & + \\ & \text{CIRCUMFERENCE B} \\ & + \\ & \text{CIRCUMFERENCE C} \\ \hline & = \text{TOTAL CIRCUMFERENCE} \end{aligned}$$

Figure 3: Diagram illustrating how to determine the **Crown Dripline** and **Critical Root Zone**.



Explanatory Notes to Figure 3:

 Represents $\frac{1}{4}$ of the Crown Dripline. Works are allowed in this section without a permit.


 Represents the Critical Root Zone. Works are not allowed without a permit.

Figure 4: Determining when a permit is required for works.

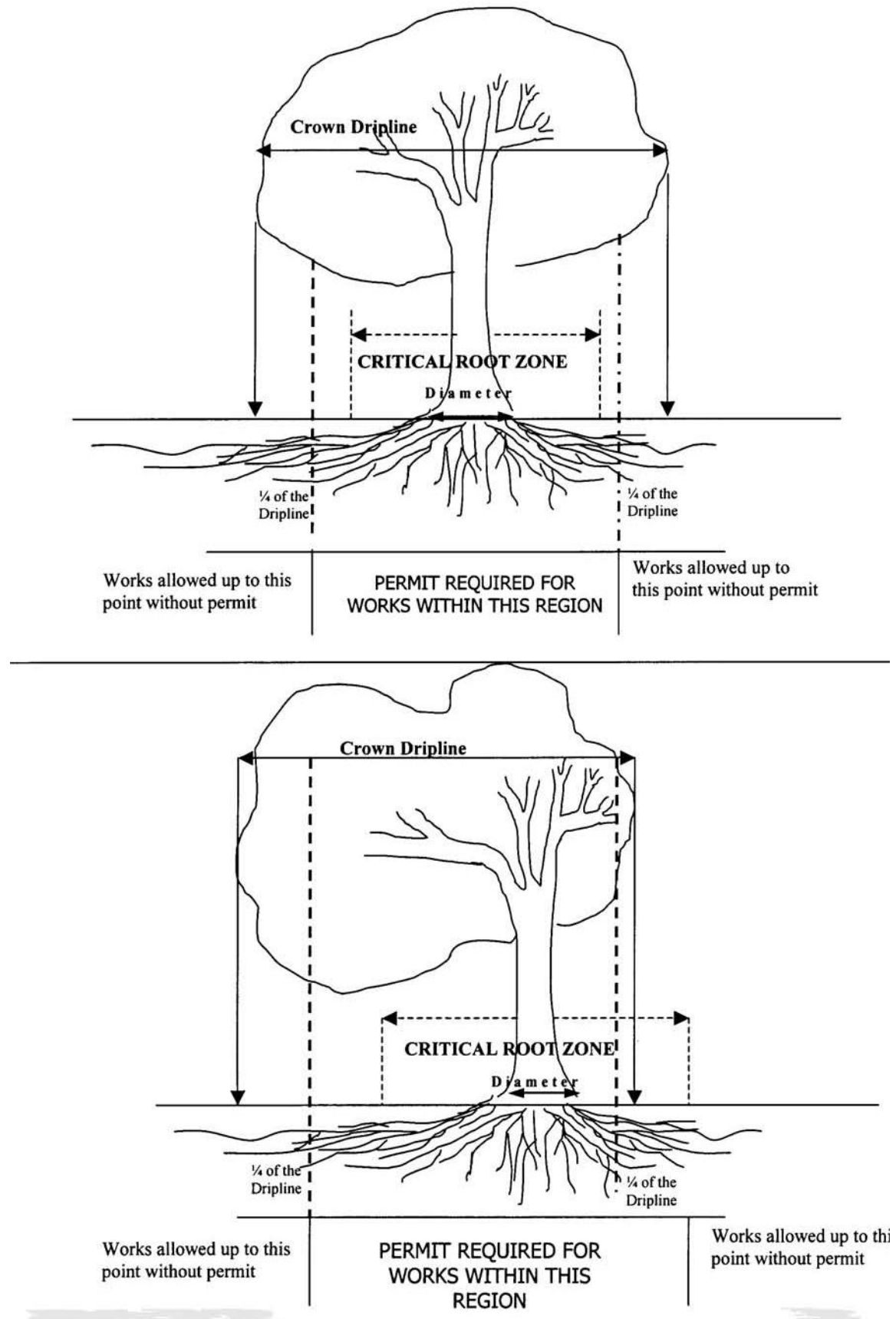
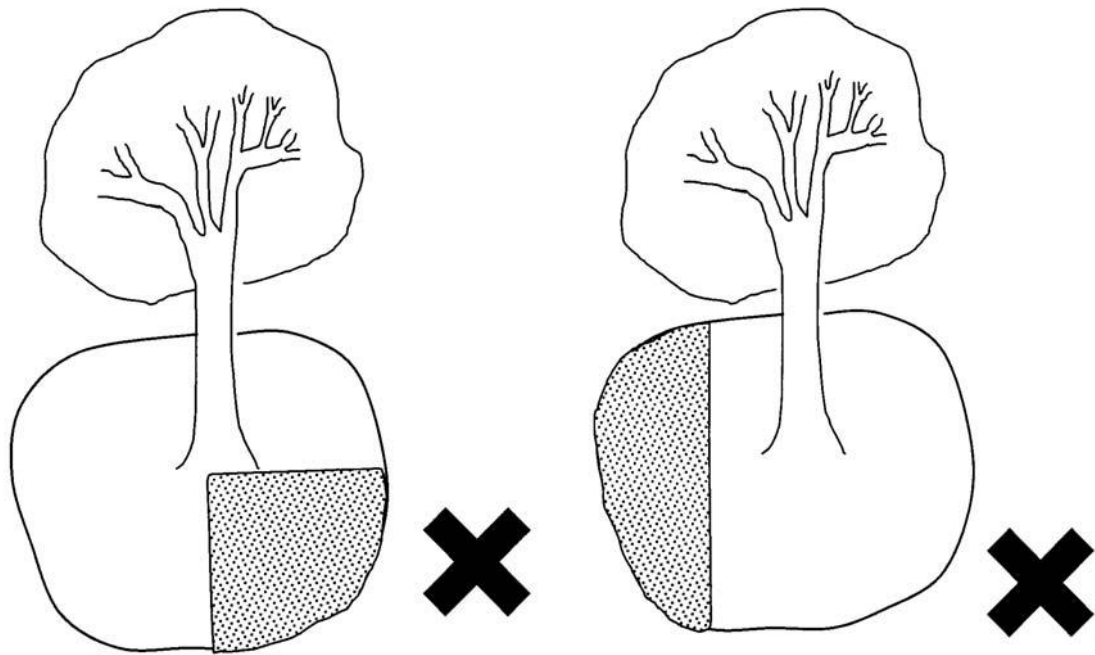


Figure 5: Diagram illustrating how one quarter (1/4) of the **Crown Dripline** is not measured.



Explanatory Notes to Figure 5:

Works undertaken in the shaded areas shown above are considered to be encroaching on more than one quarter of the outer edge of the **Crown Dripline** and a permit is required.

ENDNOTES:

This document is a version of the Tree Protection Local Law No 1F, incorporating amendments made by the Miscellaneous Amendments Local Law.

The Tree Protection Local Law No 1F was originally adopted by Council on 25 September 2006 and commenced on 25 November 2006.

The Miscellaneous Amendments Local Law was adopted by Council on 15 August 2011 and commenced on 2 September 2011 and made amendments to:

Clause 7	Clause 16
Clause 10	Clause 17
Clause 11	
Clause 12	
Clause 13	

Copies of the original Local Laws can be obtained by contacting the Governance Department on 9278 4471.