

7.5 Protection of Council Assets and Control of Building Sites Local Law 2021

Abstract

The Protection of Council Assets and Control of Building Sites Local Law 2011 (**Local Law 2011**) created by Council under the *Local Government Act 1989* is due to expire on 1 September 2021. As a result, a comprehensive review has been undertaken to inform its replacement, the Protection of Council Assets and Control of Building Sites Local Law 2021 (**Local Law 2021**) (see **Attachment 1**).

The objectives of the review were to:

- address the gaps, issues and challenges experienced in enforcing the *Local Law 2011*
- incorporate plain language to ensure any ambiguity is removed allowing more effective enforcement of the Local Law.

This report tables the *Local Law 2021* which has been developed to address identified gaps, opportunities and limitations of the *Local Law 2011*. While

Attachment 2 details the changes proposed, key highlights include:

- Part B- Asset Protection (Clause 9): This clause has been amended to include any person causing damages to Council assets is liable for the damages, where previously only the owner was liable.
- Part D- Administration and Enforcement: The value of infringements have been increased and new infringements introduced, in order to act as deterrents to non-compliance. Currently in some cases, the cost of obtaining a permit exceeds the value of an infringement for failing to obtain a permit, encouraging non-compliance. In line with the Attorney General's guidelines officers have completed benchmarking against like and neighbouring councils including the City of Yarra, City of Port Phillip and City of Stonnington. Findings indicate penalties proposed are within a similar range of those charged by these councils.
- Part C – Control of Building Sites: New clauses have been introduced to better control and enforce any impact of building works on the amenity, community safety, Council assets and environment. Additionally, these clauses will allow for multiple infringements to be issued (one for each breach/non-compliance) where currently, only one infringement can be issued. For example, applying the *Local Law 2021*, if a builder commenced works without an Asset Protection Permit (10 penalty units) and during those works allowed concrete to wash into the drain requiring the drain to be replaced (10 penalty units and replacement costs for the drain) and caused damage to the crossover (10 penalty units), a total fine of 30 penalty units (\$3000) would be issued, in addition to the replacement costs for the drain, and the crossover. With this same example, applying the current *Local Law 2011*, only 5 penalty units (for failure to obtain an Asset Protection Permit) and a further 2 penalty units could be issued - totalling \$700 - together with the replacement cost of the drain and the crossover.

In accordance with section 119(1) and 223 of the *Local Government Act 1989*, public notice was duly given and the period for consultation concluded on 29 July 2021. In summary, 143 people visited the website page, 84 people viewed the documents online and Council received five written submissions. All five submissions were supportive of the *Local Law 2021*, with questions and feedback mostly relating to the application of the Local Law. One of the main areas members of the public provided feedback on was it was unclear whether the definition of “Council Assets” included green infrastructure, with the subsequent request to amend various clauses to support the specific protection of green infrastructure. Whilst the publicly exhibited draft *Local Law 2021* and the associated definitions did not exclude the protection of Council’s green environment, officers have considered the community feedback and have amended the definition of “Council assets” in the *Local Law 2021* to specifically include green infrastructure.

The *Local Law 2021* will allow Council to better enforce the reinstatement of community assets damaged during building works, ensuring they continue to provide the services for which they were originally designed. Furthermore, the *Local Law 2021* aims to hold liable any (or all) parties responsible for causing damage to Council assets for their replacement and/or reinstatement. The changes proposed will reduce risks to the community by implementing new provisions and deter non-compliance by ensuring officers can issue multiple infringements for individual offences when required and of higher penalty value.

Officers' recommendation

That Council resolve that:

1. having:

- a) completed the statutory process under Part 5 of the *Local Government Act 1989* for the making of the proposed Protection of Council Assets and Control of Building Sites Local Law 2021;
- b) undertaken, and been satisfied with, the evaluation of the proposed Protection of Council Assets and Control of Building Sites Local Law 2021, as set out in the Community Impact Statement attached to this Report; and
- c) Considered all submissions that were received in respect of the proposed Protection of Council Assets and Control of Building Sites Local Law 2021,

resolves to make the Protection of Council Assets and Control of Building Sites Local Law 2021 in the form attached to this Report; and

2. authorises the Chief Executive Officer to:

- a) give public notice, and notice in the *Victoria Government Gazette*, of the making of the Protection of Council Assets and Control of Building Sites Local Law 2021; and
- b) send a copy of the Protection of Council Assets and Control of Building Sites Local Law 2021, as made, to the Minister for Local Government.

Responsible director: Nick Lund, Acting Director Urban Living

1. Purpose

The purpose of this report is to seek Council's endorsement of the Protection of Council Assets and Control of Building Sites Local Law 2021 (*Local Law 2021*) (**Attachment 1**).

The *Local Law 2021* is created from changes proposed to the current Local Law 2011 (*Local Law 2011*) (**Attachment 3**) and is designed to improve the clarity, utility, relevance, fairness and enforceability of the Local Law.

2. Policy implications and relevance to community plan and council plan

Council is committed to the maintenance of services, public areas, safety, and the local environment. This commitment is demonstrated through the objectives of the *Local Law 2021*.

There exists a clear alignment between the purpose of the Local Law and the following strategic objectives of the Boroondara Community Plan:

Strategic Objective 1: Community Services and facilities are high quality, inclusive and meet a variety of needs now and into the future.

Strategic 1.6: Create and maintain public areas, facilities, amenities, footpaths and spaces that are inviting, clean and appropriately lit to increase social connection and improve perceptions of safety.

Strategic Objective 4: Protect the heritage and respect the character of the City to maintain amenity and liveability, whilst recognising the need for appropriate, well-designed development for future generations.

Strategic 4.6: Engage with owners and developers to achieve a balance between development and protection of neighbourhood characters, heritage and amenity.

The *Local Law 2021* has been considered and deemed compatible with human rights principles as described in the Victorian Charter for Human Rights and Responsibilities.

This Local Law cannot override any provisions of an existing Act or legislation, for example matters dealt with under the planning scheme, Building Act or Environment Protection Act.

Maddocks lawyers have reviewed the proposed *Local Law 2021* and confirmed the Local Law does not duplicate or conflict with any other existing legislation.

The *Local Government Act 2020* (Division 3 of Part 3) provides provisions for the making of local laws with respect to any act, matter or thing in respect of which the Council has a function or power under this act or any other Act. This part of the *Local Government Act 2020* comes into effect on 1 July 2021.

Until this time, the *Local Government Act 1989* (Part 5 - Local Laws) which also provides for the making of local laws, applies. As such, the appropriate Local Government Act, will be referenced throughout this report.

3. Background

The *Local Law 2011* aims to protect public infrastructure assets from damage caused by any building work, protect the health and safety of people who work in or enter building sites and protect the health and safety of people who reside near or happen to be near a building site.

The *Local Law 2011* (**Attachment 3**) expires 1 September 2021, necessitating a review to inform its replacement. As a result, a comprehensive review was undertaken and the *Local Law 2021* was developed.

In accordance with section 119(1) and 223 of the *Local Government Act 1989*, public notice was duly given and the period for public consultation concluded on 29 July 2021. Section 5 of this report includes details of the submissions received.

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Community engagement was sought through:

- Council's website
- the *Local Law 2021* being on public exhibition at Council's municipal building in Camberwell
- advertisement in the Victorian Government Gazette
- neighbouring councils, including Cities of Stonnington, Yarra, and Banyule
- the Victorian Building Authority
- Council's Facebook page.

The review considered community feedback as informed through community engagement, customer service requests, feedback from customer interactions with officers in response to complaints and observations from Asset Protection Officers regarding issues, challenges and opportunities relevant to the Local Law's application and enforcement.

The specific objectives of the review were to:

- address the gaps, issues and challenges experienced in enforcing the *Local Law 2011*
- incorporate plain language to ensure any ambiguity is removed allowing more effective enforcement of the *Local Law 2021*, compared to the *Local Law 2011*.

For reference, Council received an average 266 complaints each month in 2020 relating to damaged assets, unsafe work sites and amenity around building sites.

4. Outline of key issues/options

Liability

The *Local Law 2011* enables an Asset Protection permit to be issued to a Land Owner (not a builder) and as such, places the onus of responsibility for any damages to assets, solely with the Land Owner who is often absent from the property during building works or development. The *Local Law 2021* creates a burden of responsibility on those directly responsible for completing the building works (mainly the builder) irrespective of who originally obtained the Asset Protection permit. This is particularly relevant where a Land owner is in dispute with the builder regarding who is responsible for damages to assets (creating further delays for Council in seeking the reinstatement of assets). It is worth noting some builders have employed unsatisfactory practices on sites that have resulted in damage to assets, knowing the owner would be held responsible for rectification works sought by Council.

The *Local Law 2011* allows a single penalty (of 2 penalty units) to be issued for possible multiple breaches to a permit condition. The penalty able to be imposed on these occasions, is insufficient and does not help deter the behaviours that lead to multiple breaches to permit conditions. While Council's Amenity Local Law has been used to supplement the enforcement of building works on these occasions, (in addition to the *Local Law 2011*) this fragmented approach - determining which Local Law best applies to rectify the damage to a Council asset - is both time consuming and can lead to confusion. The introduction of specific and individual penalties in the *Local Law 2021*, provides a means of addressing multiple non-compliance matters, individually, immediately and specifically.

Enforcement

The *Local Law 2011* has four objectives:

1. Protect Council assets from damage caused by building works
2. Protect the health and safety of persons who work in or enter building sites
3. Protect the health and safety of persons who reside near or pass by building sites
4. Provide for the peace, order and good governance of the municipality.

The *Local Law 2021* introduces two further objectives:

5. Protect the amenity of persons who reside near or pass by building sites
6. Provide for the administration and enforcement of this Local Law.

These additions recognise the need to protect amenity specifically around matters arising from undertaking works outside designated building work hours and highlight its enforcement function.

A notable addition to highlight is the increase in the number of infringements and the cost of infringements that can be issued. Currently, the *Local Law 2011* only prescribes two infringements, as described in Part D, in Table 1. The proposed *Local Law 2021*, lists individual offences and prescribes a penalty based on the severity of each offence and the impact of the works.

The current cost of obtaining a permit at times, exceeds the cost of a current infringement. For example, the infringement for starting works without an Asset Protection Permit is \$500, however the cost for a major developer to obtain an Asset Protection Permit is \$750. Whilst the requirement to obtain a permit remains, the discrepancy presented is an opportunity for builders to commence works without a permit and save \$250 by not seeking a permit in advance. This has created further issues for Council as officers have not been able to undertake a 'pre-works' site visit to assess the state of assets prior to any works commencing to ensure they are reinstated (to Council's standards) at the completion of the works. The *Local Law 2021* seeks to provide a disincentive for builders and owners to commence works without a permit by increasing the cost of the penalty issued for not doing so to 10 penalty units (\$1000). Officers believe this approach will serve to act as a deterrent to breaching the Local Law. A full list of infringements can be found in **Schedule A of Attachment 1**.

Changes

All proposed changes to *Local Law 2011* in making *Local Law 2021* are detailed in **Attachment 2**, and summarised in the table below. Additionally, a Community Impact Statement (**Attachment 4**) was prepared to inform the community about the proposed Local Law and assist any member of the public who wished to make a submission to Council during the public consultation process.

It is also worth noting Maddocks Lawyers were engaged to review all proposed changes to the *Local Law 2011*, and made recommendations regarding suggested wording for new Clauses included in the *Local Law 2021*.

Table 1. Summary of changes

Local Law 2011 section	Summary of Change/s
All sections	The structure of the <i>Local Law 2011</i> was altered to enable better flow, resulting in changes to Clause numbers. Wording has also changed in some areas to clarify and simplify the language.

Part A: Definitions	Some definitions have been added and amended while others removed to provide greater clarity and remove any ambiguity.
Part B: Asset Protection (Clause 8 and Clause 9.3)	<p>Clause 8 of the <i>Local Law 2011</i> prescribes the owner of a property is held liable for damages to Council assets, even though a contractor may have completed works on their behalf. The <i>Local Law 2021</i> seeks to make any individual or contractor potentially liable for damage to Council assets serving to better protect the owner financially, as often the contractor does not accept charges related to the damage to Council assets, leaving the owner to pay for damages they did not cause.</p> <p>In the case where an owner is in dispute with their builder regarding who is responsible for costs to rectify damages caused during a build, the clause enables Council to address this matter, with the ability to issue a direction (and where appropriate, a penalty for non-compliance) to the person deemed responsible for the damage to complete works within a specified time.</p> <p>The <i>Local Law 2021</i> (Clause 8) also extends the responsibility for obtaining an Asset Protection Permit from solely the owner, to any responsible party conducting the works (e.g. a demolition contractor, builder or landscaper) to ensure any party who damages Council's assets is responsible for reinstating the asset, in addition to incurring penalties in accordance with any breach of Local Law.</p> <p>In the <i>Local Law 2011</i>, the owner is required to provide Council no less than 21-days' notice (before commencing) proposed building works. Clause 9.3 states that if Council does not respond to the owner within 14 days, their works are deemed to not require an Asset Protection Permit. Clause 9.3 has been removed from the <i>Local Law 2021</i>, as it contradicts Clause 8, which states an Asset Protection permit is required to undertake building works.</p> <p>The protocol and procedures manual to be developed post adoption of the Local Law will define Officer's obligation to respond to notifications received of proposed works within a defined service level.</p>

<p>Part C: Control of building sites (Clause 12)</p>	<p>The <i>Local Law 2011</i> has one clause to regulate building sites. The clause has proven inadequate to ensure building sites do not unduly impact on the amenity of the area, cause environmental impacts or damage Council assets.</p> <p>The <i>Local Law 2021</i> includes 11 new clauses which regulate all aspects of building sites and building works including:</p> <ul style="list-style-type: none"> • Building work hours to reduce development fatigue on residents (e.g. later start time for work on Saturdays) • Occupation or Obstruction of Council Land and Roads regarding the requirement for a permit to place items on Council Land • Hoardings and other structures and the requirement to obtain a permit for their placement on Council land • Run off e.g. requirement to prevent contaminated water entering drains • Requirement for a temporary cross over where access is required to the Owners Land and a vehicle crossing does not exist • Refuse facility to ensure any building refuse is contained and removed regularly • Toilets and conditions regarding where they can be placed during the building works and the type of facility permissible • Vehicles entering and leaving land, addressing the location and any substance that may be deposited on Council land • Requirement to maintain a safe environment; • Amenity impacts from building sites, including dust, dirt, odour, litter and emission of noise generated from commencing work with power tools before allowable building work hours. (Note: Noise emission from machinery is dealt with under the Environment Protection Act 2017), and • Damage to roads, Council land and Council Assets. <p>These new clauses better outline the responsibilities covered under this section to ensure all aspects of building works can be adequately enforced.</p>
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<p>Part D: Administration and Enforcement (Clause 14)</p>	<p>The <i>Local Law 2011</i> only prescribes two infringements:</p> <ul style="list-style-type: none"> • Failure to obtain an Asset Protection Permit (5 penalty units) • All other breaches of the Local Law (2 penalty units) <p>A number of new infringements have been introduced allowing for multiple infringements to be issued where multiple offences have occurred and, the value of infringements has also been increased to act as a deterrent to non-compliance.</p> <p>For example;</p> <ol style="list-style-type: none"> 1. a builder has commenced works without an Asset Protection Permit (10 penalty units) and; 2. during those works allowed concrete to wash into the drain, requiring the drain to be replaced (10 penalty units and replacement costs); 3. during those works, also damaged the crossover on Council land (10 penalty units and reinstate the crossover). <p>The builder would receive a total of \$3,000 in penalties in addition to the cost of repairing Council's assets (drain and crossover). Compared to the current <i>Local Law 2011</i>, where the same builder would receive an infringement of \$700 (for failing to obtain a permit and for causing damage to the Council asset, in addition to the cost of repairing the Council Assets).</p> <p>At the time the <i>Local Law 2011</i> was drafted, the <i>Sentencing Act 1991</i> prescribed the value of a penalty unit to be \$100, and this value has not changed since, remaining at \$100 today.</p>
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With respect to the (new) penalty rates introduced as part of the *Local Law 2021*, the Attorney General Guidelines for Local Laws Manual Clause 3.4 states:

“Council needs to comply strictly with legislative provisions related to penalties, including the fact that the maximum effective penalty allowed under a Local Law is 20 penalty units. Council also needs to comply with the Attorney-General’s guidelines on penalties related to infringement notice penalties. Penalties should be adequate, but not excessive. If the penalty for all offences is the same regardless of the seriousness of the offence, credibility will be compromised. In general, a breach of a similar Local Law provision should have a similar impact from Council to Council.

If there is a wide discrepancy between neighbouring or like Councils in the penalty for similar offences, each Council runs the risk of loss of credibility.”

It is important to note the maximum penalty Council is able to apply for an offence under a Local Law is 20 penalty units (\$2000). In line with the Attorney General’s guidelines, Officers have completed benchmarking against like and neighbouring councils including the Cities of Yarra, Port Phillip and Stonnington, and note the proposed changes to penalty values are within a similar range to those imposed by these councils.

Summary of feedback received from community consultation

In accordance with section 119(1) and 223 of the *Local Government Act 1989*, public notice was duly given and the period for submissions concluded on 29 July 2021. 143 people visited the website page and 84 people viewed the documents online, with Council receiving a total of five submissions. All submitters were supportive of the proposed Local Law 2021 with questions and feedback relating to the application of the Local Law.

Three of the submitters provided feedback that it was unclear whether the term “Council Assets” included Council’s green infrastructure, and some provided suggestions to amend various clauses to support the specific protection of green infrastructure. Whilst the proposed Local Law and the associated definitions do not exclude the protection of Council’s green environment, officers have considered the community feedback and have amended the definition of “Council assets” in the proposed *Local Law 2021* to specifically include green infrastructure. The definition is included below.

It is important to note Council maintains many classes of assets of significant value, and it is not practical to identify each asset and the specific requirements of each asset within the Local Law. To help address matters relating to specific assets, Council develops policies and guidelines (which can be accessed by the community) detailing specific requirements of introducing, maintaining and renewing Council assets. Such policies include: the Blue Stone Policy, Asset Management Policy and the Tree Management Guidelines to name a few. Officers are presently working on developing operational guidelines to enforce the *Local Law 2021*, to ensure a consistent approach and understanding of all assets, including Council’s green assets. It is important to note any requests to complete works that may impact Council’s green infrastructure, is referred to the specific department within Council for review, before issuing a consent/permit for works. This is done to identify any specific requirements required to be addressed during the works.

The new definition of a “Council asset” is:

“Council asset” means a resource, structure or other thing owned by, or under the control of Council, that has a public function or purpose, including, but not limited to:

- a) roads;*
- b) footpaths;*

- c) *nature strips;*
- d) *kerb and channel;*
- e) *drainage pits and pipes;*
- f) *street furniture;*
- g) *signage;*
- h) *street trees and other vegetation; and*
- i) *service pits.*

Key themes addressed in the feedback are summarised in the Table 2 table below.

Table 2. Community Feedback

Submission Theme	Council Response
Concern about the messy, noisy, destructive behaviours of building site workers and those who deliver to sites.	<p>The following clauses in the <i>Local Law 2021</i> address this theme:</p> <ul style="list-style-type: none"> • <i>Clause 25 - Refuse</i> • <i>Clause 18 - Asset Protection Permit</i> • <i>Clause 21 - Occupation or obstruction of Council land and roads</i> • <i>Clause 23 - Run Off</i> • <i>Clause 24 - Temporary cross over/Clause 27 Vehicles entering and leaving land</i> • <i>Clause 28 - Requirement to maintain a safe environment</i> • <i>Clause 30 - Damage to Roads, Council land and Council Assets</i> <p><u>Destructive behaviours</u> Destructive behaviours of building site workers and those who deliver to sites is typically criminal in nature and should be reported to Victoria Police. Unsafe Worksafe practices should be reported to Worksafe Victoria.</p>
Ensuring there is sufficient resources to enforce the activities related to building site	Resources are sufficient and constantly monitored to ensure Council can adequately monitor, respond and enforce the matters regulated by Council Local Laws.
Management of sediment, spoils, refuse, run off mud and other matter on Council Land, Councils storm water system, and the building site itself	<p>The following clauses in the <i>Local Law 2021</i> address these matters:</p> <ul style="list-style-type: none"> • <i>Clause 18 - Asset Protection Permit</i> • <i>Clause 23 - Run Off</i> • <i>Clause 25 - Refuse</i>
Concerns regarding the protection of green infrastructure including trees, nature-strips and vegetation - is was not evident the Council assets included green infrastructure	<p>The addition of a definition for "Council assets" has been included which explicitly lists street trees and other vegetation.</p> <p>The <i>Local Law 2021</i> covers all Council assets regardless of the form they take. Given the number of asset classes it is not practical to explicitly list each asset in the Local Law. Policies exist to address how Council will introduce, maintain and renew assets and can include the standards that apply to each asset.</p>

	<p>The following clauses in the <i>Local Law 2021</i> respond to damage/or removal of these assets:</p> <ul style="list-style-type: none"> • <i>Clause 18 - Asset Protection Permit</i> • <i>Clause 28 - Requirement to maintain a safe environment</i> • <i>Clause 24 - Temporary cross over</i> • <i>Clause 27 Vehicles entering and leaving land</i> • <i>Clause 30 - Damage to Roads, Council land and Council Assets</i> <p>Enforcement in relation to these assets is also dealt with under:</p> <ul style="list-style-type: none"> • <i>Amenity Local Law 32.1.2; and</i> • <i>The Planning and Environment Act 1987 Sections 127 and 130.</i> <p>Officers will make a determination as to most relevant enforcement action to take based on the evidence available to respond and the nature of the impact on the asset.</p>
<p>Suggestion that permit conditions contain a clause to ensure that where access may be restricted due to building works, that an alternative and safe route be provided within a reasonable distance to the site and that considers all mobility requirements</p>	<p>This refers to Council's permit process whereby an applicant makes a submission to undertake activities on Council land. As part of the assessment process, Council requests a traffic management plan to ensure the builder has adequately responded to the requirements of pedestrians and vehicles around a site through the use of public protection measures to ensure for example, suitable access can be provided close to the building site, where it is deemed safe to do so. Council's assessment relies on the application of the <i>Road Management Act 2004</i>.</p>
<p>Query regarding how amenity impacts will be measured, assessed, communicated and reconciled</p>	<p>Council recognises the complexities of dealing with amenity impacts and the enforcement of amenity lies in a number of Victorian Government policies, and legislation, in particular noise.</p> <p>Whilst Council recognises some dust, dirt and odour can be released as part of the building process, this Local Law addresses levels of dust, dirt and odours that are serious and ongoing. For larger developments, these matters are dealt with by measures prescribed in the construction management plan. For smaller sites, this is investigated for its seriousness and whether it is ongoing in nature.</p> <p>Enforcement in relation to these matters is also dealt with under: Public Health and Wellbeing Act</p> <p>Council officers will be guided by an internal procedures and protocols manual, which is being developed in conjunction with the proposed Local Law.</p> <p><u>Fact Sheet</u> Additional information via a fact sheet will be provided to builders at the commencement of</p>

	works and issued with the Asset Protection Permit to define what is appropriate, and how any impacts on amenity can be avoided.
Request to include a section "Context of this local law" to explain what the Local Law is for	<p>The Local Law has a specific function, and that is to protect all of Council's assets and provide a mechanism for permits and enforcement for activities which may, by nature of the works have a direct impact on all of Council's assets. The Context of the Local Law is addressed in the title of the Local Law, and the Objects of the proposed Local Law, which has been expanded to more accurately reflect the purpose of the Local Law, and include:</p> <p>d) protect the amenity of persons who reside near and pass by building sites</p> <p>e) provide for the administration and enforcement of this Local Law.</p>
A request to include wording in the objects that specifically recognises the long term impact on our green infrastructure	<p>These matters are either addressed by the <i>Tree Protection Local Law</i> in respect of private land; or the <i>Amenity Local Law</i>, in respect of Council land and roads or the <i>Planning and Environment Act 1987</i> - Significant Landscape Overlay. Additionally, Council has Tree Management Guidelines to assist the community to understand their obligations around Trees.</p> <p>Council's aim is to educate the community prior to starting works, rather than address a damaged asset during or at the completion of works.</p> <p>Before customers start work, they generally seek further information regarding how work should be undertaken. The Tree Management Guidelines is an example of a policy which is available to assist in providing that information. Additionally, customers are directed to Council's Open Spaces team to seek advice before commencing works that may have an impact on Council's green infrastructure.</p>
Additional wording has been requested to address standards, protection measures and reinstatement requirements.	<p>The permit defines the minimum standards under which work can be undertaken, e.g. the requirement for approved traffic management devices or how works should be conducted near trees. The permit also outlines the reinstatement requirements at the completion of works. As these may vary according to the specific works, these matters are expressly defined within the permit conditions.</p> <p>Where a permit is not obtained prior to completing works, and damage occurs to a Council asset, the introduction of <i>Clause 30 - Damage to Roads, Council land and Council Assets</i> enables Council to enforce defined standards for repair of assets via a notice to comply. Additionally, these matters are covered under the permit conditions of an Asset Protection Permit.</p>

Request to include the amenity value calculation method to determine fees payable for damaged, removed or destroyed trees located on Council managed land	Council has many classes of assets where various methods of charges are applied to determine the cost of damage which are not exclusively listed in the Local Law. Officers refer to Council's endorsed annual budget for approved Fees and Charges to determine fees to be charged. For small or medium works a full amenity value is not applied to the calculation of a bond unless it is evident there is a particular risk to the tree. The inclusion of the amenity value of a tree may increase the value of a bond to a point where Council has placed an unfair financial burden on the permit holder for what is small building works.
<p>Clause 13 - Notice to comply</p> <p>Request to include: in the case of living assets such as trees, contains a direction for remediation of damaged, destroyed or removed tree(s) on Council managed land by way of payment. The payment amount reflects; the amenity value of the tree(s) generated in accordance with Council's tree amenity value calculation process; the cost of remedial tree works or tree removal and site reinstatement; and, where tree removal is required, replacement planting and maintenance for two years.</p>	Any claim for damages would be made under the Asset Protection Process. Where an Asset Protection permit was not sought the builder or owner would be in breach of <i>Clause 30 - Damage to Roads, Council land and Council Assets</i> and would receive an infringement with claim for damages. The officers work with the relevant teams to determine any standards, costs and ongoing actions required to address an asset that has been damaged to ensure the best outcome for the community and least financial burden to Council.
R Removal of 'No Stopping' signs at frontage of sites	The <i>Local Law 2021</i> includes <i>Clause 30 – Damage to Roads, Council land and Council Assets</i> to address this matter.
Concerns regarding illegal parking	Parking Matters are addressed in the <i>Amenity Local Law, Clause 35 - Use of Vehicles on Council Controlled Land</i> .
Unacceptable construction work hours	The <i>Local Law 2021</i> includes <i>Clause 20 - Building Work Hours</i> which outlines acceptable building work hours.
Inadequate crossover maintenance which made it a pedestrian tripping hazard	The proposed <i>Local Law 2021</i> includes <i>Clause 24 - Temporary cross over/Clause 27 Vehicles entering and leaving land</i> to address this matter.
Requirement for tree protection zone....fixed infringement in Schedule A	<p>The requirement for protection barriers is addressed in the permit conditions of an Asset Protection Permit, Road Opening Permit, Road and Footpath Occupation Permit, Vehicle Crossing Permit or Planning Permit where applicable.</p> <p>Damage or removal of a tree where it can directly be attributed to the building works is dealt with under the following clauses of the Local Law:</p> <ul style="list-style-type: none"> • <i>Clause 18 - Asset Protection Permit</i> • <i>Clause 30 - Damage to Roads, Council land and Council Assets</i>

5. Consultation/communication

Under section 223 of the *Local Government Act 1989*, Council is required to give public notice of the proposed Local Law and invite submissions for a period of 28 days. A copy of the *Local Law 2021* with additional documents outlining all proposed changes (**Attachment 2**), the current *Local Law 2011* (**Attachment 3**) and the Community Impact Statement (**Attachment 4**) were made available electronically on Council's website for review. A tracked changes document of the *Local Law 2021* (against the current *Local Law 2011*) was also made available for public review. A copy of the proposed Local Law was made available at Camberwell Municipal Offices.

Council sought feedback from neighbouring councils, including Cities of Yarra, Stonnington and Banyule, and the Victorian Building Authority. Additionally, notification of the consultation period was advertised on Council's Facebook page, in the Victorian Government Gazette and The Age newspaper. In summary, 143 people visited the website page, 84 people viewed the documents online and Council received a total of five submissions from community members.

6. Financial and resource implications

The intent of the proposed *Local Law 2021* is to increase compliance. As a direct result of this intent, penalties have been increased to deter non-compliance and provide Council with greater control over building sites minimising the impact of works on the greater community. Additionally, Council seeks to minimise its own expenditure to repair assets damaged as a result of private building works, by recovering costs from any party responsible for the damage and reduce risk of litigation.

The strengthening of the Local Law in this manner allows Council to appropriately enforce any breaches and enforce multiple breaches on the one site, likely resulting in an increase in revenue generated from infringements. The changes also reduce Council's financial exposure by better enabling the recouping of costs of repair of Council assets. While there is not expected to be an impact on resourcing, any additional resourcing required to issue infringements, increase site surveillance and follow-up payment of infringements can be funded with the expected increase of revenue from higher non-compliance penalties and is subject to Council's established budgeting processes.

7. Governance issues

The officers responsible for this report have no direct or indirect interests requiring disclosure.

The proposed *Local Law 2021* has been reviewed for compatibility with the Charter of Human Rights and Council is satisfied it is compatible with the Charter and consistent with the principles of justice and fairness.

8. Social and environmental issues

The proposed *Local Law 2021* aims to protect valuable community resources from damage caused in and around (or as a result from) building sites. The amendments introduced in the proposed *Local Law 2021* better support Council to maintain and protect all public assets and prioritises the reinstatement of all assets following works.

9. Conclusion

The proposed *Local Law 2021* will allow Council to better enforce the reinstatement of community assets damaged during building works, ensuring they continue to provide the services for which they were originally designed. In response to the public feedback received during the consultation process, officers have amended the definition of “assets” to specifically include green infrastructure.

The proposed *Local Law 2021* aims to hold liable any (or all) parties responsible for causing damage to Council assets for their replacement and/or reinstatement. The changes proposed will reduce risks to the community by implementing new provisions and deter non-compliance by ensuring officers can issue multiple infringements for individual offences when required and of higher penalty value.

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Report officer: Mirella Manfre, Coordinator Permits Appeals and Protection of Assets

ATTACHMENT 1 - PROPOSED LOCAL LAW 2021

CITY OF BOROONDARA

PROTECTION OF COUNCIL ASSETS AND CONTROL OF BUILDING SITES LOCAL LAW 2021

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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 2021".

2. Objects

The objects of this Local Law are to:

- (a) protect Council 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;
- (d) protect the amenity of persons who reside near and pass by building sites;
- (e) provide for the administration and enforcement of this Local Law; and
- (f) provide for the peace, order and good governance of the municipality.

3. Authorising provision

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

4. Commencement of this Local Law

This Local Law begins on 1 September 2021.

5. Sunset of this Local Law

This Local Law ends on 1 September 2031 unless revoked sooner.

6. Application of this Local Law

This Local Law applies throughout Council's municipal district.

7. Definitions

In this Local Law:

"Act" means the *Local Government Act* 2020.

"appointed agent" means a person authorised by an owner of land to make an application on the owner's behalf.

"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 the Council, or any other person by whom an application may be made, for a building permit or the person in charge of any building work being carried out, or the person identified on the building permit.

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

"building work" includes 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.

"Council asset" means a resource, structure or other thing owned by, or under the control of Council, that has a public function or purpose, including, but not limited to:

- a) roads;
- b) footpaths;
- c) nature strips;
- d) kerb and channel;
- e) drainage pits and pipes;
- f) street furniture;
- g) signage;

"Council land" means any land which Council owns, occupies, manages, or otherwise controls.

"Council Policy" means a policy adopted by Council from time to time in connection with this Local Law.

"land" has the same meaning as the *Interpretation of Legislation Act 1984*.

"Local Law" means the Protection of Council Assets and Control of Building Sites Local Law.

"municipal district" means the municipal district of Council.

"owner" in relation to any land, has the same meaning as it has in section 3(1) of the Act.

"permit" means a permit granted under this Local Law or another local law made by Council.

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

PART B– ADMINISTRATION

8. Permits

- 8.1 Where occupation or activity on Council land is required, and that occupation or activity on Council land, person or class of persons have not been exempted from the requirement of a permit need to obtain a permit:
- 8.2 A person who makes an application for a permit must:
 - 8.2.1 lodge with Council an application in a form approved by Council;
 - 8.2.2 pay the application fee.
- 8.3 Council may require a person to provide additional information before further considering an application for a permit.
- 8.4 Council may require a person applying for a permit to give public notice of the application and if public notice is given any person may make a submission in relation to the application.
- 8.5 Council may:
 - 8.5.1 grant the permit;
 - 8.5.2 refuse to grant the permit;

- 8.5.3 grant the permit subject to conditions; or
- 8.5.4 determine that no permit is required.
- 8.6 in considering an application for a permit, Council must consider:
 - 8.6.1 any policy or guideline adopted by Council relating to the subject matter of the application for the permit;
 - 8.6.2 any written objection, submission or comment received in respect of the application, where they are invited under clause 8.3 above.
- 8.7 A permit will be in the form approved by Council from time to time and may include any condition which Council considers to be reasonable and appropriate, including but not limited to:
 - 8.7.1 a requirement that a security bond, release, indemnity and/or guarantee (in a form specified by Council) be lodged with or given to Council to secure the proper performance of the permit;
 - 8.7.2 a requirement that notice be given to Council as to when the activities authorised by the permit will be carried out or will occur;
 - 8.7.3 a time limit on the permit or on the activities authorised by it;
 - 8.7.4 a provision for the extension of the permit;
 - 8.7.5 the payment of a fee, charge, fare or rent;
 - 8.7.6 a standard to be applied to the activities authorised by the permit, or to which the activities authorised by the permit must be carried out;
 - 8.7.7 that the permit is conditional upon the rectification, remedying or restoration of any situation or circumstance; and
 - 8.7.8 where the applicant is not the owner of the land that the consent of the owner be obtained.
- 8.8 Unless otherwise stated in the permit, a permit authorises the person or persons named on the permit to carry out the activity authorised by the permit (including the engaging of contractors or the appointment of agents) and is not transferable.

9. Correction, amendment, cancellation, and suspension

- 9.1 Council may correct a permit if the permit contains:
 - 9.1.1 a clerical mistake or an error arising from any accident, slip or omission; or
 - 9.1.2 a material miscalculation of figures or a material mistake in the description of any person, premises, thing or property referred to in the permit.
- 9.2 Council may cancel, suspend or amend any permit at any time if:
 - 9.2.1 it is requested to do so by the permit holder; or
 - 9.2.2 it considers that there has been:
 - 9.2.2.1 a material misrepresentation or concealment of fact in relation to the application for the permit;
 - 9.2.2.2 any material mistake in relation to the grant of the permit; or

9.2.2.3 any material change of circumstances which has occurred since the grant of the permit; or

9.2.2.4 any default in the payment of a fee, security bond, guarantee or other payment, or in the provision of a release, indemnity or other thing, required by a permit.

9.3 Council may cancel or suspend a permit at any time if Council is satisfied that there has been a substantial failure to comply with:

9.3.1 a permit condition; or

9.3.2 a notice to comply relating to the premises, item or activity to which the permit relates.

9.4 Council may cancel or suspend a permit at any time where Council determines that the permit may result in a hazard, danger or inconvenience to any other person, premises, thing, or property.

10. General permit provisions

10.1 The holding of a permit or compliance with a condition included in a permit does not of itself relieve the permit holder from:

10.1.1 compliance with any other legislation with respect to the subject matter of the permit; or

10.1.2 liability for any damage sustained by any person as a result of an activity undertaken by or on behalf of the permit holder pursuant to the permit.

10.2 A person who:

10.2.1 makes or allows to be made any false representation or declaration in or in relation to the application for a permit; or

10.2.2 omits relevant information from an application for a permit –

is guilty of an offence.

10.3 Except where expressly stated in this Local Law or in a permit, the permit will operate from the date it is granted for a period of 3 years.

11. Fees and charges

11.1 Council may from time to time, by resolution, determine the fees and charges to apply under this Local Law, which may include an administrative or processing fee or charge, and Council must give reasonable public notice of its resolution to determine or alter fees and charges.

11.2 In determining any fees and charges, Council may establish a system or structure of fees and charges, including a minimum or maximum fee or charge, if it considers it is appropriate to do so.

11.3 Council may waive, reduce or alter any fee, charge, bond, guarantee or payment applying under this Local Law, with or without conditions.

12. Delegation

12.1 Pursuant to section 78(c) of the Act, Council delegates all of its powers, functions and duties under this Local Law to the person holding the position of Chief Executive Officer.

- 12.2 Pursuant to section 78(d) of the Act, Council authorises the person holding the position of Chief Executive Officer to delegate a power, function or duty referred to in clause 12.1 to the holder of a position as a member of Council staff.

13. Notice to Comply

- 13.1 If Council reasonably believes that a person has contravened or failed to comply with the Local Law or a permit granted under this Local Law, Council may cause to be served on the person a written notice to comply which:

- 13.1.1 requires the person to stop contravening or failing to comply with the Local Law or a permit;
- 13.1.2 contains a direction stating what action is required to stop contravening or failing to comply with the Local Law or a permit;
- 13.1.3 contains a direction stating what action is required to achieve compliance with this Local Law or a permit;
- 13.1.4 contains a direction to remedy any consequences arising from the conduct contravening or failing to comply with the Local Law or a permit; or
- 13.1.5 any combination of the above.

- 13.2 A notice to comply must be in writing and include:

- 13.2.1 the name of the person or if not known the statement "the owner" or "the occupier";
- 13.2.2 the clause of the Local Law contravened or failed to comply with or the condition of the permit;
- 13.2.3 the action and/or direction;
- 13.2.4 the time and date for compliance;
- 13.2.5 the date on which it is issued; and
- 13.2.6 the name or other unique identifier of the officer issuing the notice to comply.

- 13.3 The time and date required by a notice to comply served under this Local Law must be reasonable in the circumstances and what will be reasonable will vary depending on the matters to be remedied, but should take into account, if applicable:

- 13.3.1 the amount of work involved;
- 13.3.2 the degree of difficulty to carry out the work;
- 13.3.3 the availability of necessary materials or other necessary items;
- 13.3.4 climatic conditions;
- 13.3.5 the degree of risk or potential risk;
- 13.3.6 the response if any by the person to be served with the notice to comply; and
- 13.3.7 any other relevant matter.

- 13.4 Any person to whom a notice to comply is directed and who fails to comply with, or contravenes, the notice to comply is guilty of an offence.
- 13.5 If a person does not comply with a notice to comply, Council or an authorised officer or any employee or any other person authorised in writing by Council or an authorised officer, may enter upon any private land or public land on which there is any such failure to comply and do all acts, matters or things that are required to comply with the notice to comply.
- 13.6 All costs and expenses including any administration fee incurred by council in carrying out any acts, matters or things are a debt due to Council from the person on whom the notice to comply was issued.

14. Urgent circumstances

- 14.1 Council may act to remedy any circumstance which threatens a person's life, health or property, or an animal, or to prevent any danger to the environment or any nuisance arising, without serving a notice to comply, provided that:
- 14.1.1 the circumstance arises out of a person's use of Council controlled land or a road or a failure to comply with a provision of this Local Law
- 14.1.2 Council considers the circumstance to be sufficiently urgent that the time necessary to serve, or the potential difficulty in serving, a notice to comply may place the person's life, health or property, or the animal or the environment at risk or the danger of substantial detriment;
- 14.1.3 the action taken is no more than the minimum necessary to remedy the urgent circumstance;
- 14.1.4 the person on whom a notice to comply under clause 13 would have otherwise been served is as soon as possible notified of the urgent circumstance and the action taken to remedy it; and
- 14.1.5 All costs and expenses including any administration fee incurred by Council in carrying out any acts, matters or things are to be paid to Council by the person on whom the notice to comply would have been issued.

15. Impounding

- 15.1 Council may seize and impound any item which is, has been or is being used, possessed, placed, or left in contravention of or by a failure to comply with this Local Law.
- 15.2 Where a thing has been impounded under this Local Law, Council must, if it is practicable to do so, serve notice of the impounding on the person who appears to be the owner of it;
- 15.3 On receipt of evidence which, to Council's satisfaction, shows a person is the owner of an impounded item, and on payment of a fee determined by Council, an impounded thing must be given back to:
- 15.3.1 its owner; or
- 15.3.2 a person who provides satisfactory evidence to Council of his or her authority from the item's owner to act on the owner's behalf.
- 15.4 Where an impounded item has not been claimed within 30 days of notice being given in accordance with clause 15.2, or within 30 days of the thing being impounded if it is not practicable to serve notice of the impoundment in accordance with clause 15.2, Council may:

- 15.4.1 sell the impounded thing and recover the costs of the impounding and storage of the thing; or
- 15.4.2 if the cost of selling the thing exceeds the costs of the impounding and storage, destroy, or give away the thing as the case requires.
- 15.5 If the thing is sold and the amount recovered exceeds the costs of the impounding and the storage of the thing, the excess of the money must be returned to the owner of the thing or dealt with in accordance with the *Unclaimed Money Act 2008*.

16. Appeals

- 16.1 A person who has been issued with a notice to comply may request Council to review the decision to issue the person with the notice to comply.
- 16.2 Where a request for the review of the decision to issue a notice to comply has been made, the person requesting the review must do everything practicable to cooperate in the prompt and timely review of the decision to serve the notice to comply.
- 16.3 Unless Council notifies the person to the contrary, the person must still comply with a notice to comply.

17. Security Bonds

- 17.1 In deciding to grant a permit, Council may, at any time, require the applicant to lodge or provide to Council a security bond or guarantee in such amount and in such a manner as Council determines.
- 17.2 In the event that a person to whom a permit is issued breaches or fails to comply with the permit conditions attached to the permit or this Local Law, Council may apply so much of the security bond or guarantee as is necessary to remedy that breach or failure to comply and repair any damage caused by that breach or failure to comply.
- 17.3 In the event that the security bond or guarantee is insufficient to remedy the breach or failure to comply and repair any damage caused by that breach, the person to whom a permit is issued is liable for the additional cost of the repair.
- 17.4 Upon expiry of a permit, Council must, unless clause 17.2 applies, release any remaining security bond or guarantee to the person who paid the security bond or guarantee.
- 17.5 If there is any remaining amount which would be released pursuant to clause 17.4, and Council cannot locate the person entitled to the money, the money must be dealt with in accordance with the *Unclaimed Money Act 2008*.

18. Asset Protection Permit

- 18.1 If a building permit is required for building work on land and that building work, person or class of persons have not been exempted from the need to obtain a permit:
 - 18.1.1 the owner of the land;
 - 18.1.2 the builder engaged to carry out building work on the land;
 - 18.1.3 any appointed agent; and
 - 18.1.4 any demolition contractor engaged to demolish some object on the land as part of the building work

must:

- 18.1.5 not carry out or allow to be carried out building work on that land unless a permit has been obtained;
- 18.1.6 not carry out or allow to be carried out building work on that land in breach of any conditions of a permit that has been obtained; and
- 18.1.7 pay any bond or guarantee determined by the Council from time to time, in accordance with Council Policy.

19. Exemptions

- 19.1 Council or an authorised officer may exempt any person or class of persons from the requirement to obtain a permit:
 - 19.1.1 on application;
 - 19.1.2 on its own motion; or
 - 19.1.3 by way of Council Policy.
- 19.2 An exemption granted under clause 19.1 may:
 - 19.2.1 operate for a specified period; and
 - 19.2.2 be subject to conditions.
- 19.3 Council or an authorised officer may require an applicant under clause 19.1.1 to provide additional information before determining an application for an exemption.
- 19.4 A person must comply with the conditions of an exemption granted under this clause 19.

PART C – CONTROL OF BUILDING SITES

20. Building work hours

- 20.1 A person must not, without a permit, carry out or allow to be carried out, building work for which a building permit has been granted, or is required, pursuant to clause 18 between the following hours:
 - 20.1.1 before 7am or after 6pm on a Monday to Friday (inclusive);
 - 20.1.2 before 9am or after 5pm on a Saturday;
 - 20.1.3 on a Sunday; or
 - 20.1.4 on a public holiday
- 20.2 Clause 20.1 does not apply to:
 - 20.2.1 any employee or agent of an out of hours permit holder;
 - 20.2.2 any building work required because of an emergency;
 - 20.2.3 any building work which is subject to a permit issued under the *Planning and Environment Act 1987* if that permit contains a condition which:
 - 20.2.3.1 restricts the times during which building work may be performed; and

20.2.3.2 the condition is more restrictive than clause 20.1; or

20.2.4 any person to whom section 48A(5) of the *Environment Protection Act* 1970 applies; or

20.2.5 building work which is carried out by an occupier or owner of land being home maintenance.

21. Occupation or obstruction of Council land and roads

21.1 A person must not, without a permit:

21.1.1 place any building materials, plant, equipment or any other thing associated with building work on a road or Council land;

21.1.2 erect or install anything associated with building work on a road or Council land;

21.1.3 occupy a road or Council land in connection with, or for the purposes of, building work; or

21.1.4 obstruct a road or Council land in connection with, or for the purposes of, building work.

21.2 If clause 21.1 above is contravened, the builder is also guilty of an offence, whether the person who contravened clause 21.1 above is identified or prosecuted.

21.3 Clause 21.1 does not apply to a delivery of any building materials associated with building work, plant or equipment, or any other thing on a road or Council land which is less than half an hour in duration.

22. Hoardings and other structures

22.1 A person must not, without a permit, place or construct any hoarding, scaffolding or other structure on or over a road or Council land.

23. Run off

23.1 Where building work is being carried out on any land the owner, the builder, and any appointed agent must ensure that contaminated water, including, run off of chemicals, sediments, concrete, soil, wash down, animal waste and other pollutants does not enter the storm water system from the land or the washing or cleaning of tools or in any other way.

23.2 The builder will be guilty of an offence for a breach of clause 23.1.

24. Temporary cross over

24.1 Where building work is to be carried out, the owner, the builder and any appointed agent must not, without a permit, place or construct a temporary vehicle cross over on a road or Council land.

24.2 The owner and the builder will each be guilty of an offence for a breach of clause 24.1.

25. Refuse facility

25.1 Where building work is being carried out on any land, the owner, the builder and any appointed agent must ensure that:

- 25.1.1 a facility is provided for refuse which is of a size and construction to adequately contain all refuse generated on the land during the building work;
 - 25.1.2 the facility remains on the land for the duration of the building work (other than when required to be emptied);
 - 25.1.3 the facility is not placed on Council Land or a road without a permit under Council's Amenity Local Law or any other applicable law; and
 - 25.1.4 the facility is emptied whenever full and promptly replaced (if necessary).
- 25.2 During building work:
- 25.2.1 the owner of land on which the building work is being carried out;
 - 25.2.2 the builder engaged to carry out the building work; and
 - 25.2.3 any appointed agent-
- must ensure that:
- 25.2.4 all refuse which requires containment is placed in the facility provided under clause 25.1;
 - 25.2.5 the refuse is not deposited in or on any land other than in accordance with clause 25.1, and
 - 25.2.6 the builder's refuse is not deposited in or over any part of the storm water system.
- 25.3 On any land where building work is being, or has been, carried out:
- 25.3.1 the owner of the land on which the building work is being, or has been, carried out;
 - 25.3.2 the builder engaged to carry out the building work; and
 - 25.3.3 any appointed agent-
- must remove and lawfully dispose of all refuse, including refuse in the facility provided under clause 25.1, within seven (7) days of the completion of the building work or issue of an occupancy permit, whichever occurs last.
- 25.4 The driver of any vehicle involved in placing or removing a facility provided under clause 25.1 on or from land must access the land by way of a temporary vehicle crossing installed or constructed in accordance with this Local Law.

26. Toilets

- 26.1 The:
- 26.1.1 owner of land on which building work is being carried out;
 - 26.1.2 builder engaged to carry out the building work; and
 - 26.1.3 appointed agent-
- must not undertake or carry on any building work necessitating the employment or engagement of persons on the land unless:

- 26.1.4 a sewerer toilet or a fresh water flush with water seal type portable toilet (closed) system is provided on the land; and
- 26.1.5 the toilet system provided under clause 26.1.4 is serviced as required, and in any event at least monthly, to the satisfaction of Council or an authorised officer.
- 26.2 A toilet must not, without a permit, be placed on or occupy a road or Council land.
- 26.3 Clause 26.1 does not apply if:
 - 26.3.1 buildings are being constructed on adjacent pieces of land simultaneously by the same person;
 - 26.3.2 there is at least one (1) toilet system provided under and in accordance with this clause 26 on one of those pieces of adjacent land; and
 - 26.3.3 that toilet system services no more than three pieces of adjacent land on which building work is being undertaken.
- 27. Vehicles entering and leaving land**
 - 27.1 The owner of the land on which building work is being carried out, the builder and any appointed agent must ensure that:
 - 27.1.1 a motor vehicle enters or leaves the land on which building works are being carried out via a vehicle crossing or temporary vehicle crossing;
 - 27.1.2 soil, earth, clay, or other debris is not deposited on a road from a vehicle entering or leaving the land.
- 28. Requirement to maintain a safe environment**
 - 28.1 The owner, the builder, and a person in charge of any:
 - 28.1.1 land on which building works are being undertaken; or
 - 28.1.2 vehicle parked on or adjacent to any road or Council land,must ensure that the land is maintained, and the vehicle is parked and loaded, in such a way so as not to cause or potentially cause any:
 - 28.1.3 injury to a person or animal;
 - 28.1.4 damage to a Council owned or controlled asset or any other asset not owned or controlled by the owner or person in charge; or
 - 28.1.5 detriment to the amenity of adjacent land or the neighbourhood.
- 29. Amenity impacts from building sites**
 - 29.1 The owner, the builder, and a person in charge of any land on which building works are being undertaken is guilty of an offence if the amenity of the area is detrimentally affected by the emission of noise, dust, dirt, odour, litter, vermin or in any other way.
- 30. Damage to Roads, Council land and Council Assets**
 - 30.1 A person must not without a permit remove, destroy, damage, or interfere with any road, Council land or other Council asset.

- 30.2 If any road, Council land or other Council asset is removed, destroyed, damaged or interfered with the person who removed, destroyed, damaged or interfered with the road, Council land or other Council asset and the builder are guilty of an offence.
- 30.3 A permit is evidence of a consent given under the *Road Management Act 2004*.

PART D –ENFORCEMENT

31. Offences

- 31.1 A person who:
- 31.1.1 fails to comply with any provision of this Local Law;
 - 31.1.2 fails to comply with a condition of a permit;
 - 31.1.3 fails to obtain a permit when a permit is required;
 - 31.1.4 fails to comply with a Notice to Comply issued under this Local Law; or
 - 31.1.5 submits wrong, inaccurate or misleading information in an application for a permit issued under this Local Law.
- is guilty of an offence.
- 31.2 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.
- 31.3 In addition to any penalty imposed pursuant to this Local Law, a penalty not exceeding 2 penalty units will apply for each day that a contravention of this Local Law continues after a finding of guilt or conviction for an offence against it.

32. Infringement notices

- 32.1 Where an authorised officer reasonably believes that a person has contravened or failed to comply with this Local Law the authorised officer may issue an infringement notice.
- 32.2 Where an infringement notice is issued under this Local Law the penalty payable in respect of the infringement notice is:
- 32.2.1 the amount specified in Schedule A; or
 - 32.2.2 if no amount is specified in Schedule A, 5 penalty units.

33. Offences in relation to Authorised Officers

- 33.1 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.-

Schedule A - Penalties Fixed for Infringements

Clause	Offence	Penalty Unit
10.2.1	Make or allow to be made any false representation or declaration in or in relation to the application for a permit	10
10.2.2	Omits relevant information from an application for a permit	7
13.4	Failure to comply with a Notice to Comply	10
18.1.5	Person carries out or allows to be carried out building work on the land without obtaining a permit	10
18.1.6	Person carries out or allowed to be carried out building work on the land in breach of a condition of a permit that has been obtained	10
18.1.7	Person carries out or allowed to be carried out building work on the land without paying a bond or guarantee	10
20.1	Person failed to comply with Building Work Hours	10
21.1.1	Person place any building material associated with building work, plant or equipment or any other thing on a road or Council Land without a permit	5
21.1.2	Person erects or installs anything associated with building work on a road or Council Land without a permit	10
21.1.3	Person occupies a road or Council Land without a permit	10
21.1.4	Person obstructs a road or Council Land without a permit	10
22.1	Person places or constructs any hoarding, scaffolding, or other structure on or over a road or Council Land without a permit	10
23.1	Person did not ensure contaminated water did not enter storm water system from the land	10
23.2	Builder did not ensure contaminated water did not enter storm water system from the land	10
24.1	Person placed or constructed a temporary vehicle crossing over a road or Council Land without a permit	15
25.1.1	Person did not ensure that an adequate refuse facility was provided to contain all refuse	10
25.1.2	Person did not ensure that the refuse facility remained on site for the duration of the works	7.5
25.1.3	Person did allow a refuse facility to be placed on Council Land without a permit	5
25.1.4	Person did not ensure the refuse facility was emptied when full	5
25.2.4	Person did not ensure all refuse was contained in the refuse facility	7
25.2.5	Person did not ensure that refuse was not deposited in or on any land	7
25.2.6	Person did not ensure that refuse was not deposited in or over any storm water system	10
25.3	Person did not remove and lawfully dispose of all refuse within 7 days of the completion of the building work	5
25.4	Person placing or removing a refuse facility accessed the land without the use of the temporary vehicle crossing	5
26.1.4	Person did not provide compliant toilet system on land	10
26.1.5	Person did not service toilet system on land	10
26.2	Person placed toilet on road or Council land without a permit	5

Clause	Offence	Penalty Unit
27.1.1	Person did not ensure that a vehicle entered or left land via a vehicle crossing or temporary vehicle crossing	10
27.1.2	Person allowed soil, earth, clay or other debris to be deposited on a road from a vehicle entering or leaving the land	10
28.1	Person did not ensure that land was maintained or a vehicle was parked and loaded in such a way so as not to cause or potentially cause any injury, damage or detriment to amenity	10
29.1	Detrimentially affect the amenity of the area by the emission of noise, dust, dirt, odour, litter, vermin or in any other way	10
30.1	Remove, destroy, damage, or interfere with any road, Council land or other Council asset without a permit	10

ATTACHMENT 2: Summary of proposed changes to the Protection of Council Assets and Control of Building Sites Local Law

Section	Local Law 2011	Summary of change	Comments
Table of Contents	<p>Update title of the document</p> <p>Protection of Council Assets and Control of Building sites Local Law 2011</p> <p>Date Resolved by Council 22 August 2011 Commencement Date: 1 September 2011 Revocation Date: 1 September 2011</p> <p>Removed Part B: 8. Notice of intention to undertake building work 11. Protection of public infrastructure assets</p> <p>Wording Part B: 10. Changed from Applying for the security bond to Security Bond</p> <p>Removed Part C:</p> <p>12. Control of building sites and replaced with new clauses</p> <p>Part D - Administration and Enforcement Removed: 15. Notice to comply - Moved to Part B Asset Protection 16. Urgent Inspection - Moved to Part B Asset Protection 18. Power of entry and inspection</p>	<p>Update title of the document</p> <p>Protection of Council Assets and Control of Building sites Local Law 2021</p> <p>Date Resolved by Council XX Commencement Date: 1 September 2021 Revocation Date: 1 September 2031 Updated to include additional Clauses and numbering updates</p> <p>Part B - Asset Protection Addition of new clauses 9. Correction, amendment, cancellation and suspension 10. General permit provisions 11. Fees and charges 12. Delegation 13. Notice to Comply 14. Urgent circumstances 15. Impounding 16. Appeals 17. Security Bonds 18. Asset Protection Permit 19. Exemptions</p> <p>Part C - Control of Building Sites Addition of new clauses 20. Building work hours 21. Occupation of Council Land and Roads</p> <p>22. Hoardings and other structures 23. Run off 24. Temporary cross over 25. Refuse facility 26. Toilets 27. Vehicles entering and leaving land 28. Requirement to maintain a safe environment 29. Amenity impacts from building sites 30. Damage to Roads, Council Land and Council Assets</p> <p>Part D: Administration and Enforcement changed to Part D: Enforcement 31. Offences 32. Infringement notices 33. Offences in relation to Authorised Officers Schedule A: Penalties fixed for Infringements</p>	Changes reflect new clauses and rewrite of existing clauses to expand on specific aspects of enforcement in relation to building sites.
Part A – FORMAL PARTS	<p>1. Title</p> <p>This Local Law is called the "Protection of Council Assets and Control of Building Sites Local Law 2011"</p>	<p>1. Title</p> <p>Title amended</p>	

Section	Local Law 2011	Summary of change	Comments
		This Local Law is called the “Protection of Council Assets and Control of Building sites 2021”	
PART A – FORMAL PARTS	2. Objects	2. Objects Included additional Objects (d) protect the amenity of persons who reside near and pass by building sites; (e) provide for the administration and enforcement of this Local Law; and	Changes more accurately reflect the purpose of the Local Law
PART A – FORMAL PARTS	3. Authorising provision This Local Law is authorised by section 111(1) of the Local Government Act 1989	3. Authorising provision Amended to: This Local Law is authorised by section 111 of the Local Government Act 1989	
PART A – FORMAL PARTS	4. Commencement of the Local Law	4. Commencement of the Local Law Date changed from 2011 to 2021	
PART A – FORMAL PARTS	5. Sunset of the Local Law	5. Sunset of the Local Law Date changed from 2021 to 2031 unless revoked sooner by Council	A Local Law can be revoked prior to the Local Law sun setting
PART A – FORMAL PARTS	7. Definitions Definition of "Asset Protection Permit" removed "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. "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). Definition of "builders refuse" removed Definition of "building site" removed Definition of Council revised "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	7. Definitions Inclusion of the following definitions: "Act" means the Local Government Act 2020. "appointed agent" means a person authorised by an owner of land to make an application on the owner's behalf. "builder" means a person who has applied to the Council, or any other person by whom an application may be made, for a building permit or the person in charge of any building work being carried out, or the person identified on the building permit. Revised definition of "building work" "building work" includes work for or in connection with the construction, renovation, alteration, relocation, or removal of building and includes landscaping, concreting, paving and subdivision road construction (extending to installation of utility and drainage) Revised definition of "Council" "Council" means Boroondara City Council. Inclusion of definition of "Council asset"	Extension of definitions provided for clarity and intent. Those removed have been well defined within the relevant sections of the Local Law Asset Protection removed as the Local Law references all Permits Building site removed - term is in plain language Definition of "building work" - minor change to improve clarity Builders refuse removed as not referenced in the Local Law Definition revised to be consistent with Council's other Local Laws

Section	Local Law 2011	Summary of change	Comments
	<p>such requirement or power has been delegated.</p> <p>Definition of Council controlled land revised "Council-controlled land" means any land which Council occupies, manages or otherwise controls.</p> <p>Definition of Owner revised as incorrect "owner" means in relation to building work, the owner of land on which the building work is carried out.</p> <p>Definition of "permit" revised "permit" means a permit issued by Council in accordance with Clause 12 (c).</p> <p>Definition of "public infrastructure asset" removed "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.</p> <p>Definition of "security bond" removed "security bond" means a security bond required to be paid to Council in accordance with clause 9.6.</p>	<p>"Council asset" means a resource, structure or other thing owned by, or under the control of Council, that has a public function or purpose, including, but not limited to:</p> <ul style="list-style-type: none"> a) roads; b) footpaths; c) nature strips; d) kerb and channel; e) drainage pits and pipes; f) street furniture; g) signage; h) street trees and other vegetation; and i) service pits. <p>Inclusion of "Local Law" "Local Law" means the Protection of Council Assets and Control of Building Sites Local Law.</p> <p>Definition of "land" revised "land" has the same meaning as the <i>Interpretation of Legislation Act 1984</i>.</p> <p>Definition of "Council controlled land" revised "Council land" means any land which Council owns, occupies, manages, or otherwise controls.</p> <p>Inclusion of "Council Policy" "Council Policy" means a policy adopted by Council from time to time in connection with this Local Law.</p> <p>Correction of definition of Owner "owner" in relation to any land, has the same meaning as it has in section 3 of the <i>Local Government Act 1989</i>.</p> <p>Definition of "permit" revised "permit" means a permit granted under this Local Law or another local law made by Council.</p> <p>Definition of "penalty unit" removed.</p> <p>Definition of "public infrastructure asset" removed as no longer referenced in the Local Law</p>	<p>Inclusion of Council assets to improve clarity</p>

Section	Local Law 2011	Summary of change	Comments
		Definition removed - term is in plain language and adequate explaining on Clause 17 – Security Bonds	
Part B – Asset Protection	Part B – Asset Protection	Part B Asset Protection changed to Part B - ADMINISTRATION	Change of Parts more accurately reflects the flow of work that occurs during building works. Starting with the requirement for a permit and relevant administration of the permit and related matters (Part B - Administration), requirements of the builder once the works commence (Part C - Asset Protection) and finally enforcement where breach occurs (Part D - Enforcement).
Part B - Administration - Clause 8	<p>Clause 8" Notice of intention to undertake building work" removed and replaced with Clause 8 "Permits"</p> <p>8. Notice of intention to undertake building work</p> <p>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.</p> <p>8.2 The notice must be given to Council no less than 21 days before the building work commences.</p> <p>8.3 The notice must be in writing and include:</p> <p>(a) the owner's name or, if more than one owner, the names of an owner nominated for the purposes of this clause;</p> <p>(b) the owner's residential address or, if more than one owner, the nominated owner's residential address;</p> <p>(c) an address for the service or posting of notices under this Local Law;</p> <p>(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;</p> <p>(e) a description of the proposed building work including the costs of the building work.</p> <p>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.</p>	<p>Clause 8 was previously Clause 9. Wording has been changed.</p> <p>8. Permits</p> <p>8.1 Where occupation or activity on Council land is required, and that occupation or activity on Council land, person or class of persons have not been exempted from the requirement of a permit need to obtain a permit:</p> <p>8.2 A person who makes an application for a permit must:</p> <p>8.2.1 lodge with Council an application in a form approved by Council;</p> <p>8.2.2 pay the application fee.</p> <p>8.3 Council may require a person to provide additional information before further considering an application for a permit.</p> <p>8.4 Council may require a person applying for a permit to give public notice of the application and if public notice is given any person may make a submission in relation to the application.</p> <p>8.5 Council may:</p> <p>8.5.1 grant the permit;</p> <p>8.5.2 refuse to grant the permit;</p> <p>8.5.3 grant the permit subject to conditions; or</p> <p>8.5.4 determine that no permit is required.</p> <p>8.6 In considering an application for a permit, Council must consider:</p> <p>8.6.1 any policy or guideline adopted by Council relating to the subject matter of the application for the permit;</p> <p>8.6.2 any written objection, submission or comment received in respect of the application, where they are invited under clause 8.3 above.</p> <p>8.7 A permit will be in the form approved by Council from time to time and may include any condition which Council considers to be reasonable and appropriate, including but not limited to:</p> <p>8.7.1 a requirement that a security bond, release, indemnity and/or guarantee (in a form specified by Council) be lodged</p>	<p>Clause 8 "Notice of intention to undertake building work" removed and replaced with Clause 8 "Permits"</p> <p>This clause was removed as it meant that if Council did not respond to a notification of the intention to complete building works within 21 days, Council had no recourse to ask the Owner/Builder to obtain a permit and security bond for the works.</p> <p>The requirement for an Asset Protection Permit has been included in Part B - Administration Clause 18. This inclusion ensures that all works requiring an Asset Protection Permit can be enforced.</p>

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Section	Local Law 2011	Summary of change	Comments
		<p>with or given to Council to secure the proper performance of the permit;</p> <p>8.7.2 a requirement that notice be given to Council as to when the activities authorised by the permit will be carried out or will occur;</p> <p>8.7.3 a time limit on the permit or on the activities authorised by it;</p> <p>8.7.4 a provision for the extension of the permit;</p> <p>8.7.5 the payment of a fee, charge, fare or rent;</p> <p>8.7.6 a standard to be applied to the activities authorised by the permit, or to which the activities authorised by the permit must be carried out;</p> <p>8.7.7 that the permit is conditional upon the rectification, remedying or restoration of any situation or circumstance;</p> <p>8.7.8 where the applicant is not the owner of the land that the consent of the owner be obtained.</p> <p>8.8 Unless otherwise stated in the permit, a permit authorises the person or persons named on the permit to carry out the activity authorised by the permit (including the engaging of contractors or the appointment of agents) and is not transferable.</p>	
Part B - Administration - Clause 9 - Asset Protection Permits	<p>Clause 9 - Asset Protection Permits moved to Clause 18 and replaced with Clause 9 - Correction, amendment, cancellation and suspension</p> <p>9. Asset Protection Permits</p> <p>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:</p> <p>(a) Council requires the owner to obtain an Asset Protection Permit in accordance with this clause; or</p> <p>(b) Council requires the owner to provide further information about the building work.</p> <p>9.2 If Council notifies the owner or agent that it requires further information about the building work:</p> <p>(a) Council must specify in the notice what further information is required;</p> <p>(b) Council is not required to determine whether an Asset Protection Permit is required until the information is provided;</p> <p>(c) the owner must not commence building work until the information is provided.</p> <p>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.</p> <p>9.4 Where Council determines that an Asset Protection Permit is required, the owner must not commence building</p>	<p>Clause 9 - Asset Protection Permits removed and replaced with Correction, amendment, cancellation and suspension and General Permit Provisions</p> <p>9. Correction, amendment, cancellation, and suspension</p> <p>9.1 Council may correct a permit if the permit contains:</p> <p>9.1.1 a clerical mistake or an error arising from any accident, slip or omission; or</p> <p>9.1.2 a material miscalculation of figures or a material mistake in the description of any person, premises, thing or property referred to in the permit.</p> <p>9.2 Council may cancel, suspend or amend any permit at any time if:</p> <p>9.2.1 it is requested to do so by the permit holder; or</p> <p>9.2.2 it considers that there has been:</p> <p>9.2.2.1 a material misrepresentation or concealment of fact in relation to the application for the permit;</p> <p>9.2.2.2 any material mistake in relation to the grant of the permit; or</p> <p>9.2.2.3 any material change of circumstances which has occurred since the grant of the permit; or</p> <p>9.2.2.4 any default in the payment of a fee, security bond, guarantee or other payment, or in the provision of a release, indemnity or other thing, required by a permit.</p> <p>9.3 Council may cancel or suspend a permit at any time if Council is satisfied that there has been a substantial failure to comply with:</p>	New clause which enables Council to make amendments to a permit as required.

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Section	Local Law 2011	Summary of change	Comments
	<p>work until the owner obtains the Asset Protection Permit.</p> <p>9.5 Council may from time to time determine:</p> <ul style="list-style-type: none"> (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. <p>9.6 Without limiting clause 9.5, an Asset Protection Permit may be subject to such conditions as Council determines, including:</p> <ul style="list-style-type: none"> (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) <p>9.7 An Asset Protection Permit expires if the building works are not commenced within 12 months of the Asset Protection Permit being issued.</p> <p>9.8 Where an Asset Protection Permit is issued subject to a condition that the owner pay a security bond:</p> <ul style="list-style-type: none"> (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: <ul style="list-style-type: none"> 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. 	<p>9.3.1 a permit condition; or</p> <p>9.3.2 a notice to comply relating to the premises, item or activity to which the permit relates.</p> <p>9.4 Council may cancel or suspend a permit at any time where Council determines that the permit may result in a hazard, danger or inconvenience to any other person, premises, thing, or property.</p>	
Part B - Asset Protection - Clause 10 - Applying for the security bond	<p>Part B - Administration - Clause 10 - Applying for the security bond</p> <p>Moved to Clause 17 and renamed "Security bonds" Wording changed to reflect requirement for a Security Bond</p> <p>10.11. Applying the security bond</p> <p>10.1 Council may at any time cause a public infrastructure</p>	<p>Part B - Administration - Clause 10 - Applying for the security bond moved to Clause 17</p> <p>Moved to Clause 17 and renamed "Security bonds" Wording changed to reflect requirement for a Security Bond, process for determining the bond, how a bond may be used and release of the bond</p>	

Section	Local Law 2011	Summary of change	Comments
	<p>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:</p> <p>(a) before the building work commences;</p> <p>(b) during the building work;</p> <p>(c) after the building work is completed; and</p> <p>(d) after notice is received in accordance with clause 9.8(d).</p> <p>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.</p> <p>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.</p> <p>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:</p> <p>(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;</p> <p>(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;</p> <p>(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</p> <p>(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</p> <p>i. if the security bond is more than the cost of the repair, refund the balance to the owner; or</p> <p>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.</p>	<p>17. Security Bonds</p> <p>17.1 In deciding to grant a permit, Council may, at any time, require the applicant to lodge or provide to Council a security bond or guarantee in such amount and in such a manner as Council determines.</p> <p>17.2 In the event that a person to whom a permit is issued breaches or fails to comply with the permit conditions attached to the permit or this Local Law, Council may apply so much of the security bond or guarantee as is necessary to remedy that breach or failure to comply and repair any damage caused by that breach or failure to comply.</p> <p>17.3 In the event that the security bond or guarantee is insufficient to remedy the breach or failure to comply and repair any damage caused by that breach, the person to whom a permit is issued is liable for the additional cost of the repair.</p> <p>17.4 Upon expiry of a permit, Council must, unless clause 17.2 applies, release any remaining security bond or guarantee to the person who paid the security bond or guarantee.</p> <p>17.5 If, there is any remaining amount which would be released pursuant to clause 17.4, and Council cannot locate the person entitled to the money, the money must be dealt with in accordance with the Unclaimed Money Act 2008.</p>	
<p>Part B - Asset Protection</p> <p>New Clause 10 - General permit provisions</p>	N/A	<p>New Part B - Administration - Clause 10</p> <p>10 General permit provisions</p> <p>10.1 The holding of a permit or compliance with a condition included in a permit does not of itself relieve the permit holder from:</p> <p>10.1.1 compliance with any other legislation with respect to</p>	<p>New clause which enables Council to enforce matters which sit outside the conditions stated on a permit.</p> <p>Updated expiry date on the permit from 1yr to 3 years to allow for building work that is delayed or requires greater than one year to complete e.g. multi-storey developments.</p>

Section	Local Law 2011	Summary of change	Comments
		<p>the subject matter of the permit; or</p> <p>10.1.2 liability for any damage sustained by any person as a result of an activity undertaken by or on behalf of the permit holder pursuant to the permit.</p> <p>10.2 A person who:</p> <p>10.2.1 makes or allows to be made any false representation or declaration in or in relation to the application for a permit; or</p> <p>10.2.2 omits relevant information from an application for a permit –</p> <p>is guilty of an offence.</p> <p>10.3 Except where expressly stated in this Local Law or in a permit, the permit will operate from the date it is granted for a period of 3 years.</p>	<p>The changes reduce the administrative requirement for the applicant and Council to renew a permit every year. It is Council's experience that the majority in building works are completed within 3 years. .</p>
<p>Part B - Asset Protection - Clause 11 Protection of public infrastructure assets</p> <p>New Clause 11 - Fees and Charges</p>	<p>Clause 11 Protection of public infrastructure assets removed and replaced with New Clause 11 - Fees and Charges</p> <p>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.</p> <p>11.2 Where an owner:</p> <p>(a) fails to give notice in accordance with clause 8; or</p> <p>(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.</p> <p>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:</p> <p>(a) the degree of risk or potential risk;</p> <p>(b) the amount of work involved;</p> <p>(c) the degree of difficulty;</p> <p>(d) the availability of necessary materials or other necessary items;</p> <p>(e) climatic conditions; or</p> <p>(f) any other relevant matter.</p>	<p>Clause 11 Protection of public infrastructure assets removed and replaced with New Clause 11 - Fees and Charges - See below.</p>	<p>Clause 11 covered under Clause 13 Notice to comply</p>
Part B - Asset Protection	<p>Previously Section B Asset Protection - Clause 9.5</p> <p>Council may from time to time determine:</p> <p>a) the fee for an Asset Protection Permit, which may</p>	<p>Part B - Administration</p> <p>New Clause 11 Fees and charges</p>	<p>Provision with respect to fees and charges has been expanded upon to provide greater clarity and intent.</p>

Section	Local Law 2011	Summary of change	Comments
New Clause 11 - Fees and Charges	include different fees for different types of building work; b) the form of an application for an Asset Protection Permit c) the conditions under which an Asset Protection Permit is subject.	11.1 Council may from time to time, by resolution, determine the fees and charges to apply under this Local Law, which may include an administrative or processing fee or charge, and Council must give reasonable public notice of its resolution to determine or alter fees and charges. 11.2 In determining any fees and charges, Council may establish a system or structure of fees and charges, including a minimum or maximum fee or charge, if it considers it is appropriate to do so. 11.3 Council may waive, reduce or alter any fee, charge, bond, guarantee or payment applying under this Local Law, with or without conditions.	
Part B - Asset Protection New Clause 12 Delegation	N/A	Part B - Administration New Clause 12 Delegation 12.1 Pursuant to section 78(c) of the Act, Council delegates all of its powers, functions and duties under this Local Law to the person holding the position of Chief Executive Officer. 12.2 Pursuant to section 78(d) of the Act, Council authorises the person holding the position of Chief Executive Officer to delegate a power, function or duty referred to in clause 12.2 to the holder of a position as a member of Council staff.	New clause added to provide clarity regarding powers of delegation.
Part B - Asset Protection New Clause 13 Notice to comply	Part D Administration and Enforcement New Clause 13 Notice to comply, previously Part D Administration and Enforcement - Clause 15 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.	Part B - Administration New Clause 13 Notice to comply, previously Part D Administration and Enforcement - Clause 15 13. Notice to Comply 13.1 If Council reasonably believes that a person has contravened or failed to comply with the Local Law or a permit granted under this Local Law, Council may cause to be served on the person a written notice to comply which: 13.1.1 requires the person to stop contravening or failing to comply with the Local Law or a permit; 13.1.2 contains a direction stating what action is required to stop contravening or failing to comply with the Local Law or a permit; 13.1.3 contains a direction stating what action is required to achieve compliance with this Local Law or a permit; 13.1.4 contains a direction to remedy any consequences arising from the conduct contravening or failing to comply with the Local Law or a permit; or 13.1.5 any combination of the above. 13.2 A notice to comply must be in writing and include: 13.2.1 the name of the person or if not known the statement "the owner" or "the occupier"; 13.2.2 the clause of the Local Law contravened or failed to comply with or the condition of the permit;	Clause moved from Part D Administration and Enforcement to Part B Administration and wording changed. Administrative function prior to enforcement. This clause has been expanded to specify and clarify the requirements to be included in a Notice to Comply.

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Section	Local Law 2011	Summary of change	Comments
		<p>13.2.3 the action and/or direction; 13.2.4 the time and date for compliance; 13.2.5 the date on which it is issued; and 13.2.6 the name the name or other unique identifier of the officer issuing the notice to comply.</p> <p>13.3 The time and date required by a notice to comply served under this Local Law must be reasonable in the circumstances and what will be reasonable will vary depending on the matters to be remedied, but should take into account, if applicable: 13.3.1 the amount of work involved; 13.3.2 the degree of difficulty to carry out the work; 13.3.3 the availability of necessary materials or other necessary items; 13.3.4 climatic conditions; 13.3.5 the degree of risk or potential risk; 13.3.6 the response if any by the person to be served with the notice to comply; and 13.3.7 any other relevant matter impacting ability to complete works.</p> <p>13.4 Any person to whom a notice to comply is directed and who fails to comply with, or contravenes, the notice to comply is guilty of an offence.</p> <p>13.5 If a person does not comply with a notice to comply, Council or an authorised officer or any employee or any other person authorised in writing by Council or an authorised officer, may enter upon any private land or public land on which there is any such failure to comply and do all acts, matters or things that are required to comply with the notice to comply.</p> <p>13.6 All costs and expenses including any administration fee incurred by council in carrying out any acts, matters or things are a debt due to Council from the person on whom the notice to comply was issued.</p>	
Part D - Administration and enforcement moved to Part B Administration	<p>Part D - Administration and enforcement - Clause 16 Urgent Circumstances</p> <p>16. Urgent circumstances</p> <p>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;</p>	<p>Part D - Administration and enforcement - Clause 16 Urgent Circumstances moved to Part B Administration - Clause 14 Urgent Circumstances</p> <p>14 Urgent circumstances</p> <p>14.1 Council may act to remedy any circumstance which threatens a person's life, health or property, or an animal, or to prevent any danger to the environment or any nuisance arising, without serving a notice to comply, provided that: 14.1.1 the circumstance arises out of a person's use of Council Controlled land or a road or a failure to comply with a provision of this Local Law 14.1.2 Council considers the circumstance to be sufficiently urgent that the time necessary to serve, or the potential</p>	<p>Clause moved to Administration as the decision to exempt a permit due to urgent circumstances is determined when Council is notified of the works, prior to granting a permit.</p> <p>Wording updated for clarity.</p>

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Section	Local Law 2011	Summary of change	Comments
	<p>and</p> <p>(c) wherever practicable, the prior consent of Council's Chief Executive Officer, or his or her delegate, is obtained.</p> <p>16.2 In deciding whether circumstances are urgent, the Authorised Officer must take into account, to the extent relevant:</p> <p>(a) whether it is practicable to contact the person by whose default the situation has arisen; or</p> <p>(b) whether there is an urgent risk or threat to public health, public safety, the environment or property.</p> <p>16.3 An Authorised Officer who takes action under this clause 16 must ensure that as soon as practicable:</p> <p>(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</p> <p>(b) a report of the action taken is submitted to the Chief Executive Officer.</p> <p>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.</p>	<p>difficulty in serving, a notice to comply may place the person's life, health or property, or the animal or the environment at risk or the danger of substantial detriment;</p> <p>14.1.3 the action taken is no more than the minimum necessary to remedy the urgent circumstance;</p> <p>14.1.4 the person on whom a notice to comply under clause 13 would have otherwise been served is as soon as possible notified of the urgent circumstance and the action taken to remedy it; and</p> <p>14.1.5 All costs and expenses including any administration fee incurred by Council in carrying out any acts, matters or things are to be paid to Council by the person on whom the notice to comply would have been issued.</p>	
Part B - Asset Protection New Clause 15- Impounding	N/A	Part B - Administration New Clause 15 - Impounding <p>15.1 Council may seize and impound any item which is, has been or is being used, possessed, placed, or left in contravention of or by a failure to comply with this Local Law.</p> <p>15.2 Where an item has been impounded under this Local Law, Council must, if it is practicable to do so, serve notice of the impounding on the person who appears to be the owner of it;</p> <p>15.3 On receipt of evidence that, to Council's satisfaction, shows that a person is the owner of an impounded item, and on payment of a fee determined by Council, an impounded thing must be given back to:</p> <p>15.3.1 its owner; or</p> <p>15.3.2 a person who provides satisfactory evidence to Council of his or her authority from the item's owner to act on the owner's behalf.</p> <p>15.4 Where an impounded item has not been claimed within 30 days of notice being given in accordance with clause 15.2, or within 30 days of the thing being impounded if it is not practicable to serve notice of the impoundment in accordance with clause 15.2, Council may:</p> <p>15.4.1 sell the impounded thing and recover the costs of the impounding and storage of the thing; or</p>	<p>No provision in the current local law to remove items from Council land. The new clause enables Council to remove any items on Council land that are not permitted to be there and may pose a risk to the community.</p>

Section	Local Law 2011	Summary of change	Comments
		<p>15.4.2 if the cost of selling the thing exceeds the costs of the impounding and storage, destroy, or give away the thing as the case requires.</p> <p>15.5 if the thing is sold and the amount recovered exceeds the costs of the impounding and the storage of the thing, the excess of the money must be returned to the owner of the thing or dealt with in accordance with the <i>Unclaimed Money Act 2008</i>.</p>	
Part B - Asset Protection New Clause 16- Appeals	N/A	Part B - Administration New Clause 16 - Appeals <p>16.1 A person who has been issued with a notice to comply may request Council to review the decision to issue the person with the notice to comply.</p> <p>16.2 Where a request for the review of the decision to issue a notice to comply has been made, the person requesting the review must do everything practicable to cooperate in the prompt and timely review of the decision to serve the notice to comply.</p> <p>16.3 Unless Council notifies the person to the contrary, the person must still comply with a notice to comply.</p>	This clause enables a person who has been issued a notice to comply provision to appeal the decision, where no review process previously existed.
Part B - Asset Protection New Clause 19 - Exemptions	N/A	Part B - Administration New Clause - Exemptions <p>19.1 Council or an authorised officer may exempt any person or class of persons from the requirement to obtain a permit:</p> <p>19.1.1 on application;</p> <p>19.1.2 on its own motion; or</p> <p>19.1.3 by way of Council Policy.</p> <p>19.2 An exemption granted under clause 19.1 may:</p> <p>19.2.1 operate for a specified period; and</p> <p>19.2.2 be subject to conditions.</p> <p>19.3 Council or an authorised officer may require an applicant under clause 19.1.1 to provide additional information before determining an application for an exemption.</p> <p>9.4 A person must comply with the conditions of an exemption granted under this clause 19.</p>	<p>The current Local Laws requires all building works to obtain a permit.</p> <p>This clause enable a person undertaking works of a minor nature that are determined to be unlikely to impact Council Assets and/or deemed urgent an exemption from applying for a permit.</p>
Part C - Control of Building Sites	Part C - Control of building sites Clause 12 - Controlling building sites 12. Controlling building sites	<p>Part C - Control of building sites Clause 12 - Controlling building sites - removed and replaced Part C - Control of Building Sites</p> <p>Refer to new clauses below</p>	Part C – Control of building sites contains only one clause which is inadequate to ensure that building sites do not unduly impact on the amenity of the area, cause environmental impacts and damage Council assets.

Section	Local Law 2011	Summary of change	Comments
	<p>A builder must undertake building work so as to:</p> <ul style="list-style-type: none"> (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; 		Further clauses have been included to ensure all aspects of building works can be adequately enforced.
<p>Part C - Control of Building Sites</p> <p>New Clause 20 - Building work hours</p>	N/A	<p>Part C - Control of Building Sites</p> <p>New Clause 20 - Building work hours</p> <p>20.1 A person must not, without a permit, carry out or allow to be carried out, building work for which a building permit has been granted, or is required, pursuant to clause 18 between the following hours:</p> <ul style="list-style-type: none"> 20.1.1 before 7am or after 6pm on a Monday to Friday (inclusive); 20.1.2 before 9am or after 5pm on a Saturday; 20.1.3 on a Sunday; or 20.1.4. on a public holiday. <p>20.2 Clause 20.1 does not apply to:</p> <ul style="list-style-type: none"> 20.2.1 any employee or agent of an out of hours permit holder; 20.2.2 any building work required because of an emergency; 20.2.3 any building work which is subject to a permit issued under the Planning and Environment Act 1987 if that permit contains a condition which: <ul style="list-style-type: none"> 20.2.3.1 restricts the times during which building work may be performed; and 20.2.3.2 the condition is more restrictive than clause 20.1; or 20.2.4 any person to whom section 48A(5) of the Environment Protection Act 1970 applies; or 20.2.5 building work which is carried out by an occupier or owner of land being home maintenance. 	<p>New clause to cater for "building works" under the new Local Law. Excludes a resident that is completing maintenance on their home.</p> <p>Change in hours aim to reduce the burden of construction fatigue on residents with a later start time on Saturdays (from 8am to 9am)</p>
<p>Part C - Control of Building Sites</p> <p>New Clause 21 Occupation of Council Land</p>	N/A	<p>Part C - Control of Building Sites</p> <p>New Clause 21 - Occupation or Obstruction of Council land and roads</p> <p>21.1 A person must not, without a permit:</p> <ul style="list-style-type: none"> 21.1.1 place any building materials, plant, equipment or any 	New clause to cater specifically for Occupation of Council Land in relation to Building Works where none existed.

Section	Local Law 2011	Summary of change	Comments
		<p>other thing associated with building work on a road or Council land;</p> <p>21.1.2 erect or install anything associated with building work on a road or Council land;</p> <p>21.1.3 occupy a road or Council land in connection with, or for the purposes of, building work; or</p> <p>21.1.4 obstruct a road or Council land in connection with, or for the purposes of, building work.</p> <p>21.2 If clause 21.1 above is contravened, the builder is also guilty of an offence, whether the person who contravened clause 21.1 above is identified or prosecuted.</p> <p>21.3 Clause 21.1 does not apply to a delivery of any building materials associated with building work, plant or equipment, or any other thing on a road or Council land which is less than half an hour in duration.</p>	
Part C - Control of Building Sites New Clause 22. Hoardings and other structures	N/A	Part C - Control of Building Sites New Clause 22 - Hoardings and other structures <p>22.1 A person must not, without a permit, place or construct any hoarding, scaffolding or other structure on or over a road or Council land.</p>	New clause to cater specifically for Hoardings and other structures in relation to Building Works where none existed.
Part C - Control of Building Sites New Clause 23 Run off	N/A	Part C - Control of Building Sites New Clause 23 - Run off <p>23.1 Where building work is being carried out on any land the owner, the builder, and any appointed agent must ensure that contaminated water, including, run off of chemicals, sediments, concrete, soil, wash down, animal waste and other pollutants does not enter the storm water system from the land or the washing or cleaning of tools or in any other way.</p> <p>23.2 The builder will be guilty of an offence for a breach of clause 23.1.</p>	New clause to cater specifically for run off in relation to Building Works where none existed. Council has received a number of complaints in relation to damage to assets caused by run off. Run off from building sites can pollute waterways and significantly damage the storm water network.
Part C - Control of Building Sites New Clause 24 Temporary cross over	N/A	Part C - Control of Building Sites New Clause 24 - Temporary cross over <p>24.1 Where building work is to be carried out, the owner, the builder and any appointed agent must not, without a permit, place or construct a temporary vehicle cross over on a road or Council land.</p> <p>24.2 The owner and the builder will each be guilty of an offence for a breach of clause 24.1.</p>	New clause to cater specifically for temporary cross over in relation to Building Works where none existed.

Section	Local Law 2011	Summary of change	Comments
Part C - Control of Building Sites New Clause 25 Refuse facility	N/A	Part C - Control of Building Sites New Clause 25 - Refuse facility 25.1 Where building work is being carried out on any land, the owner, the builder and any appointed agent must ensure that: 25.1.1 a facility is provided for refuse which is of a size and construction to adequately contain all refuse generated on the land during the building work; 25.1.2 the facility remains on the land for the duration of the building work (other than when required to be emptied); 25.1.3 the facility is not placed on Council land or a road without a permit under Council's Amenity Local Law or any other applicable law; and 25.1.4 the facility is emptied whenever full and promptly replaced (if necessary). 25.2 During building work: 25.2.1 the owner of land on which the building work is being carried out; or 25.2.2 the builder engaged to carry out the building work; or 25.2.3 any appointed agent- must ensure that: 25.2.4 all refuse which requires containment is placed in the facility provided under clause 25.1; 25.2.5 the refuse is not deposited in or on any land other than in accordance with clause 25.1, and 25.2.6 the builder's refuse is not deposited in or over any part of the storm water system. 25.3 On any land where building work is being, or has been, carried out: 25.3.1 the owner of the land on which the building work is being, or has been, carried out; 25.3.2 the builder engaged to carry out the building work; and 25.3.3 any appointed agent- must remove and lawfully dispose of all refuse, including refuse in the facility provided under clause 25.1, within seven (7) days of the completion of the building work or issue of an occupancy permit, whichever occurs last. 25.4 The driver of any vehicle involved in placing or removing a facility provided under clause 25.1 on or from land must access the land by way of a temporary vehicle crossing installed or constructed in accordance with this Local Law.	New clause to cater specifically for refuse facility in relation to Building Works where none existed.
Part C - Control of Building Sites New Clause 26 Toilets	N/A	Part C - Control of Building Sites New Clause 26 - Toilets 26.1 The: 26.1.1 owner of land on which building work is being carried out;	New clause to cater specifically for toilets in relation to Building Works where none existed.

Section	Local Law 2011	Summary of change	Comments
		<p>26.1.2 builder engaged to carry out the building work; and</p> <p>26.1.3 appointed agent- must not undertake or carry on any building work necessitating the employment or engagement of persons on the land unless:</p> <p>26.1.4 a sewerage toilet or a fresh water flush with water seal type portable toilet (closed) system is provided on the land; and</p> <p>26.1.5 the toilet system provided under clause 26.1.4 is serviced as required, and in any event at least monthly, to the satisfaction of Council or an authorised officer.</p> <p>26.2 A toilet must not, without a permit, be placed on or occupy a road or Council land.</p> <p>26.3 Clause 26.1 does not apply if:</p> <p>26.3.1 buildings are being constructed on adjacent pieces of land simultaneously by the same person;</p> <p>26.3.2 there is at least one (1) toilet system provided under and in accordance with this clause 26 on one of those pieces of adjacent land; and</p> <p>26.3.3 that toilet system services no more than three pieces of adjacent land on which building work is being undertaken.</p>	
Part C - Control of Building Sites New Clause 27 Vehicles entering and leaving land	N/A	<p>Part C - Control of Building Sites</p> <p>New Clause 27 - Vehicles entering and leaving land</p> <p>27.1 The owner of the land on which building work is being carried out, the builder and any appointed agent must ensure that:</p> <p>27.1.1 a motor vehicle enters or leaves the land on which building works are being carried out via a vehicle crossing or temporary vehicle crossing;</p> <p>27.1.2 soil, earth, clay, or other debris is not deposited on a road from a vehicle entering or leaving the land.</p>	New clause to cater specifically for vehicles entering and leaving land in relation to Building Works where none existed.
Part C - Control of Building Sites New Clause 28 Requirement to maintain a safe environment	N/A	<p>Part C - Control of Building Sites</p> <p>New Clause 28 - Requirement to maintain a safe environment</p> <p>28.1 The owner, the builder, and a person in charge, of any:</p> <p>28.1.1 land on which building works are being undertaken; or</p> <p>28.1.2 vehicle parked on or adjacent to any road or Council land,</p> <p>must ensure that the land is maintained, and the vehicle is parked and loaded, in such a way so as not to cause or potentially cause any:</p> <p>28.1.3 injury to a person or animal;</p> <p>28.1.4 damage to a Council owned or Controlled asset or any other asset not owned or Controlled by the owner or person in charge; or</p>	New clause to cater specifically for requirement to maintain a safe environment in relation to Building Works where none existed.

Section	Local Law 2011	Summary of change	Comments
		28.1.5 detriment to the amenity of adjacent land or the neighbourhood.	
Part C - Control of Building Sites New Clause 29 Amenity impacts from building sites	N/A	Part C - Control of Building Sites New Clause 29 - Amenity impacts from building sites 29.1 The owner, the builder, and a person in charge, of any land on which building works are being undertaken is guilty of an offence if the amenity of the area is detrimentally affected by the emission of noise, dust, dirt, odour, litter, vermin or in any other way.	New clause to cater specifically for amenity impacts from building sites where none existed.
Part C - Control of Building Sites New Clause 30 Damage to Roads, Council Land and Council Assets		Part C - Control of Building Sites New Clause 30 - Damage to Roads, Council land and Council Assets 30.1 A person who is carrying out building work must not without a permit, remove, destroy, damage, or interfere with any road, Council land or other Council asset. 30.2 If any road, Council land or other Council asset is removed, destroyed, damaged or interfered with the person who removed, destroyed, damaged or interfered with the road, Council land or other Council asset and the builder are guilty of an offence. 30.3 A permit is evidence of a consent given under the Road Management Act 2004.	New clause to cater specifically for damage to Roads, Council Land and Council Assets in relation to Building Works where none existed.
Part D - Administration and enforcement changed to Part D Enforcement	Part D - Administration and enforcement	Part changed to Part D - Enforcement	Administrative function of the local law moved to Part B. This section retitled and focuses on Enforcement
Part D - Administration and enforcement	Part D - Administration and Enforcement Clause 13 (b) fails to comply with a condition of an Asset Protection Permit; 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.	Part D - Enforcement Re-worded 31.1.2 fails to comply with a condition of a permit; Re-worded 31.3 In addition to any penalty imposed pursuant to this Local Law, a penalty not exceeding 2 penalty units will apply for each day that a contravention of this Local Law continues after a finding of guilt or conviction for an offence against it.	Enables Officers to enforce any type of permit issued in relation to building works conducted on Council land e.g. Road opening permit.
Part D - Administration and enforcement Clause 13 Offences	N/A	Part D - Enforcement Moved from Clause 13 to Clause 31	

Section	Local Law 2011	Summary of change	Comments
Part D - Administration and enforcement Clause 14 Infringements	Part D - Administration and enforcement Clause 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.	Part D - Enforcement Revised wording for clarity Moved from Clause 14 to Clause 32 32.1 Where an authorised officer reasonably believes that a person has contravened or failed to comply with this Local Law the authorised officer may issue an infringement notice. 32.2 Where an infringement notice is issued under this Local Law the penalty payable in respect of the infringement notice is: 32.2.1 the amount specified in Schedule A; or 32.2.2 if no amount is specified in Schedule A, 5 penalty units.	Revised wording for clarity
Part D - Administration and enforcement Clause 17 Offences in relation to Authorised Officers	Part D - Administration and enforcement Clause 17 - Offences in relation to Authorised Officers 17.1 A person must not give information that the persons knows or believes to be false to an authorised officer who is performing a function under this Local Law	Part D - Enforcement Moved from Clause 17 to Clause 33	
Part D - Administration and enforcement Clause 14 Infringements	As per Part D - Administration and Enforcement Clause 14 Infringement 14.6 Where an Infringement Notice is issued under this Local Law the penalty payable in respect of 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.	Schedule A - Penalties Fixed for Infringement Clause 14.6 replaced with Schedule A- Penalties Fixed for Infringement Schedule A lists 32 Penalties related to Offences of the Local Law	Penalties have increased to act as a deterrence to non-compliance. Additionally a person can receive multiple infringements where previously they would only receive one for the breach of a permit condition or Clause 12 Controlling building sites. Example; 18.1.5 Person carries out or allows to be carried out building work on the land without obtain a permit (10 penalty units) 23.1 Person did not ensure contaminated water did not enter storm water system (10 Penalty units) Total infringement amount \$2000.

ATTACHMENT 3: Current Local Law



**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:

Nicholas Tragas

)
)
)
Councillor



Catherine Dale

Chief Executive Officer

30th August 2011

Date

Attachment 4: Community Impact Statement**BOROONDARA CITY COUNCIL****Proposed Protection of Council assets and Control of Building Sites****Local Law 2021****Community Impact Statement****Introduction**

Council is proposing to update its Protection of Council Assets and Control of Building Sites Local Law, adopted in 2011 (**current Local Law**).

The proposed new Protection of Council Assets and Control of Building Sites Local Law (**proposed Local Law**) will supersede and replace the current Local Law.

This Community Impact Statement has been prepared to inform the community about the 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 the *Local Government Act 1989 (Act)*.

PART A**Background**

Local laws are regulatory instruments which enable councils to fulfil their functions and exercise their powers under State and Commonwealth legislation within their respective municipal districts. The Act grants the power to Council 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 that or any other Act.

The current Local Law was made by Council resolution of 22 August 2011. Pursuant to the Act, local laws are revoked 10 years after the day they come into operation. The current Local Law is due to expire on 1 September 2021 and needs to be renewed and updated to incorporate changes in legislation and to reflect the current issues within the municipal district.

Local laws must comply with the requirements set out in the Act. Importantly, a local law is inoperative to the extent that it duplicates, or is inconsistent with, any other Act or regulation, or the Boroondara Planning Scheme. A local law must also be directed towards, and not go beyond, its specified objectives, and adopt means of achieving those objectives which involve the least burden or the greatest advantage to the community.

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Objectives of the Local Law

The proposed Local Law is being made under section 111(1) of the Act and will have operation throughout Council's municipal district.

The proposed Local Law, to be known as the Protection of Council Assets and Control of Building Sites Local Law (2021), will commence operation on 1 September 2021 and, unless it is revoked earlier, will expire 10 years after commencement. The objectives of the proposed Local Law are to provide for the following:

- (a) Protect public infrastructure assets from damage cause by building work;
- (b) Protect the health and safety of person who work or enter building sites;
- (c) Protect the health and safety of person who reside near or pass by building sites;
- (d) Protect the amenity of person who reside near and pass by building sites;
- (e) Provide for the administration and enforcement of this Local Law; and
- (f) Provide for the peace, order and good governance of the municipality.

Process

The proposed Local Law has been drafted following a comprehensive review and analysis of the current Local Law. Consultations have been undertaken with internal stakeholders across various areas of Council, most importantly with the officers responsible for the management of building sites.

Pursuant to sections 119(2)(c) and 223 of the Act, Council is required to give public notice of the proposed Local Law and invite submissions for a period of at least 28 days.

Following Council's approval of the proposed Local Law for consultation purposes, submissions will be sought from the community.

The consultation period will run from 1 July 2021 to 28 July 2021. During this time, the community will be able to obtain information, provide feedback and make submissions, which will then be considered by Council in preparation for adoption of the final Local Law.

Anyone who makes a written submission can request to be heard in support of their submission at the Ordinary Council Meeting which considers the adoption of the proposed Local Law. Details of the meeting will be provided to submitters.

This Community Impact Statement is intended to provide clarity and transparency for those affected by the current Local Law and who will be affected by the proposed Local Law.

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PART B

In accordance with Guidelines issued by the Minister for Local Government in relation to the making of local laws, Council has conducted an evaluation of the proposed Local Law. The evaluation is outlined below.

Measures of success

Council will measure the success of the proposed Local Law by:

- (a) Monitoring the level of compliance and comparing levels with those of previous years;
- (b) Measuring efficiency in administering the proposed Local Law and success in responding to issues and complaints;
- (c) Assessing the resources required to administer and enforce the proposed Local Law; and
- (d) Assessing and measuring the adequacy of the proposed Local Law in achieving the objectives.

Additional information and criteria will be incorporated to assess the operation of the proposed Local Law.

Existing legislation and the Boroondara Planning Scheme

Council has examined the provisions of the Act, the *Environmental Protection Act 1970* (EPA) and the other Acts and Regulations that it has the power to administer and enforce and considers the proposed Local Law is supplementary to the existing legislation.

Existing State legislation deals with certain issues which are also dealt with in some general circumstances by the proposed Local Law, including:

- (a) *Environment Protection Act 1970* and *Environment Protection Act 2017*;
- (b) *Road Management Act 2004*; and
- (c) *Public Health and Wellbeing Act 2008*.

Council is unaware of any provision of the proposed Local Law which unduly overlaps, duplicates or is inconsistent with the existing legislation specified above, any other existing legislation or the Boroondara Planning Scheme.

State legislation

State legislation empowers Council to make Local Laws to address issues within its municipal district. In developing the proposed Local Law, Council has not sought to address any issues which it feels are best addressed at the State or Commonwealth level.

Council is of the view that each of the issues identified in relation to the proposed Local Law are issues over which Council is delegated responsibility and has functions and powers.

Risk Assessment

Council has adopted a risk management approach to the review and development of the proposed Local Law. This approach has involved consideration of the following:

- (a) Impacts on community safety and amenity;

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- (b) Existing laws; and
- (c) Long-term solutions.

Legislative approach adopted

Council maintains the position that its local laws should not impose unduly or unreasonably on the community. The proposed Local Law reflects this approach by implementing reasonable enforcement procedures, including the giving of notices instead of infringements where appropriate, and allowing a permit holder the opportunity to comment prior to Council cancelling a permit. In consideration of the least burden/greatest advantage test, where possible and appropriate, Council has created provisions for permits rather than prohibiting certain activities, and reasonable and appropriate permit conditions have been set. Council has ensured that the proposed Local Law:

- (a) Is expressed plainly and unambiguously, consistently with the language of the enabling Act and in accordance with modern standards of drafting applying in the State of Victoria;
- (b) Does not exceed the powers conferred by the Act;
- (c) Is not inconsistent with the principles, objectives or intent of the enabling Act;
- (d) Does not make unusual or unexpected use of the powers conferred by the Act under which the Local Law is made;
- (e) Does not unduly trespass on rights and liberties of the person previously established by law;
- (f) Does not unduly make rights and liberties of the person dependent upon administrative and not upon judicial decisions;
- (g) Does not purport to shift the onus of proof to a person accused of an offence; and
- (h) Does not unduly restrict competition.

Penalties

The Act provides that a local law may prescribe a penalty for a contravention of a local law. The Act sets a maximum penalty of 20 penalty units. Under the *Sentencing Act 1991*, the penalty unit is set at \$100.00.

Council has compared the level of penalties provided for in the proposed Local Law with those of its neighbouring Councils. The proposed penalties are not inconsistent with those neighbouring Councils.

Amendments to the prescribed penalties for some offences have been made to ensure consistency with the Attorney-General's requirements that 'an infringement penalty should generally be approximately no more than 20 – 25% of the maximum penalty for the offence. However, a proportion of up to 50% can be considered where there are strong and justifiable public interest grounds.

Fees

The proposed Local Law allows Council to determine fees for the purposes of the proposed Local Law. Such determination will be made annually as part of Council's budget process.

Performance standards rather than prescriptive requirements

Where appropriate, Council has adopted a performance-based approach rather than a

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prescriptive approach to the proposed Local Law.

Comparison with neighbouring and like Councils

In drafting the proposed Local Law, Council examined the local laws of its neighbouring and comparable municipalities. This allowed Council to assess the similarities and differences between like municipalities and ensure that a best practice approach was taken in the drafting process.

Charter of Humans Rights

The *Charter of Human Rights and Responsibilities Act 2006* (**Charter**) applies to all subordinate legislation, including local laws. The Charter contains twenty basic rights that promote and protect the values of:

- Freedom;
- Respect;
- Equality; and
- Dignity

The proposed Local Law has been reviewed for compatibility with the Charter and Council is satisfied that the proposed Local Law is compatible with the Charter and consistent with the principles of justice and fairness.

Community Consultation

The proposed Local Law has been reviewed in consultation with Councillors, members of Council staff and Council's legal advisors.

A community consultation process will be conducted in accordance with ss 119(2) and 223 of the Act. This will require Council to give public notice of its intention to make the proposed Local Law and provide members of the community an opportunity to make a written submission to Council in relation to the proposed Local Law. Council will consider submissions received before making a final decision on whether it will adopt the proposed Local Law.

This Community Impact Statement has been prepared to inform the community about the proposed Local Law and to assist any member of the public who may wish to make a submission to Council.

PART C

Assessment of significant changes

All provisions of the current Local Law have been reviewed. Substantive changes are outlined in the following paragraphs. When reference is made to a clause being amended or otherwise modified, reference is being made to the substantive change to a clause in the current Local Law brought about by the proposed Local Law.¹

¹ Strictly speaking the current Local Law is being revoked rather than amended. For the sake of convenience, clauses in the current Local Law are being referenced as if they are changing rather than being replaced.

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1. Definitions

Clause(s), section or part	All Parts
Issue Local Law intends to address	The current Local Law includes disused definitions and other definitions that are overly complicated or otherwise unnecessary.
Action/Change	<p>Various definitions have been added, amended, and removed, including:</p> <ul style="list-style-type: none"> • Act; • appointed agent; • builder; • building work; • builders refuse; • building site; • Council; • Council controlled land; • Council policy; • Owner; • permit; • penalty unit; • public infrastructure asset; • security bond.
Perceived benefits	Definitions have been revised, removed or added to ensure that the proposed Local Law is as clear as possible and that the list of definitions is concise and only defines terms that have a particular meaning or that otherwise depart from their natural and ordinary meaning.
Perceived disadvantages	Definitions provide absolute meanings to words which may limit the operation of the Local law. Conversely, relying on the ordinary meaning of words may lead to varying views as to the meaning of a particular word.
Applicable strategic objectives	The intention is to provide a Local Law that is concise, easy to read and understand and enables Council to perform its functions in relation to building sites and building work. The mix of defined terms and ordinary words achieves that objective.

2. Asset Protection

Clause(s), section or part	All Parts
Issue Local Law intends to address	<p>The requirement for a permit in the current Local Law is predicated on the owner of land giving notice to Council of building work. Further, once notice is given, the current Local Law requires Council to consider whether a permit is required. This process is inefficient and inadequate.</p> <p>In addition, the current Local Law does not include machinery provisions enabling the grant of a permit, granting exemptions, the suspension or cancellation of a permit, setting of fees and charges, making delegations, issuing notices to comply, rectification in urgent circumstances, impounding or appeals.</p>
Action/Change	<p><u>Permit processes</u></p> <p>Under the proposed Local Law, a permit will be required whenever a building permit is required to carry out building work, unless an exemption applies.</p> <p>Clause 19 of the proposed Local Law allows Council to grant</p>

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Clause(s), section or part	All Parts
	<p>individual exemptions and to make policy decisions to exempt certain classes of persons or building work from the requirement to obtain a permit.</p> <p>Additionally, clause 9 provides for new machinery provisions to support smooth facilitation of the permit application, granting, amendment and cancellation processes.</p> <p><u>Security bonds</u> Clause 17, which makes provision for security bonds, substantially simplifies when a security bond is required, when recourse may be had to the security bond and the circumstances in which it will be returned to the payer.</p> <p><u>General permit provisions</u> Clause 10.2 creates a new offence for providing false, misleading or incomplete information as part of a permit application process. This will deter applicants from seeking to obtain a favourable permit outcome by dishonest means.</p> <p>Further, clause 10.3 provides that permits expire 3 years after they are issued, unless Council specifies otherwise. This reduces the administrative burden on applicants, who will no longer have to reapply annually.</p> <p><u>Impounding</u> The new clause 15 authorises Council to seize and impound any thing which is, has been or is being used, possessed, placed, or left in contravention of or by a failure to comply with the proposed Local Law. This enhances Council's powers to take direct action to enforce the Local law.</p> <p><u>Appealing notices to comply</u> Clause 16 allows a person served with a notice to comply to request a review of the decision to issue the notice to comply. This protects the rights of persons affected by the Local Law against being wrongfully required to take actions directed by Council.</p>
Perceived benefits	<p>The new enforcement and administration provisions set out in the proposed Local Law will enhance Council's control over building activities generally and therefore enable Council to better protect Council assets against damage, obstruction or other interference. Further, it will expand the circumstances in which Council can take coercive compliance actions relating to Council assets and the recover the costs incurred in doing so.</p> <p>The proposed Local Law also gives Council greater control and flexibility to issue permits, suspend permits, cancel permits and improve the enforceability of the permits. The new permit processes ensure that Council has sufficient discretion to enable it to administer the permit scheme to best respond to community needs.</p>

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Clause(s), section or part	All Parts
Perceived disadvantages	The requirements of the proposed Local Law are more prescriptive and are likely to be attended by increased administrative and compliance obligations for applicants and other persons affected by the proposed Local Law.
Applicable strategic objectives	The intention is to create a local law that is effective in the protection of Council assets from building work undertaken throughout the municipal district. To this end, the proposed Local Law will apply whenever building work requiring the grant of a building permit is proposed to be carried out, unless an exemption applies.
	The Local Law is consistent with the Council Plan.

3. Control of Building Sites

Clause(s), section or part	All Parts
Issue Local Law intends to address	The current Local Law contained one clause which regulated building sites. This clause was inadequate to ensure that building sites did not unduly impact on the amenity of the area, cause environmental impacts or damage Council assets.
Action/Change	<p>The proposed Local Law now includes the new Part C – Control of Building Sites which regulates all aspects of building sites and building work.</p> <p><u>Control of building sites</u></p> <p>A range of new provisions have been included in the proposed Local Law to regulate the use of and access to building sites within the municipal district, including:</p> <ul style="list-style-type: none"> • restrictions on the hours within which building work may be carried out; • new specific offences for occupying or obstructing a road or Council land without a permit, including in relation to hoarding; • a requirement to obtain a permit to install a temporary vehicle crossover; • more detailed refuse and run off management obligations; • provisions relating to the entry to and departure from building sites eg mud trailing on the road; and • a positive obligation to maintain a safe working environment to avoid damaging a person, Council assets, private assets or neighbourhood amenity. <p>The proposed Local Law sets out a range of new provisions to regulate the use of and access to building sites within the municipal district, including</p> <ul style="list-style-type: none"> • restrictions on the hours within which building work may be carried out; • new specific offences for occupying or obstructing a road or Council land without a permit, including in relation to hoarding; • a requirement to obtain a permit to install a temporary vehicle crossover; • more detailed refuse and run off management obligations;

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Clause(s), section or part	All Parts
	<ul style="list-style-type: none"> provisions relating to the entry to and departure from building sites; and a positive obligation to maintain a safe working environment to avoid damaging a person, Council assets, private assets or neighbourhood amenity.
Perceived benefits	<p>The new powers, processes and offences set out in the proposed Local Law will ensure that building work and building sites are regulated responsibly and consistently. Ensuring building work does not have disproportionate adverse effects on Council assets, including roads, and neighbourhood amenity will confer benefits on the broader community. The proposed Local Law will preserve neighbourhood amenity and equitable access to roads and Council assets and ensure that building work does not have disproportionate adverse effects on the local community.</p> <p>The proposed Local Law ensures authorised officers have the necessary coercive tools to take action when needed to resolve complaints relating to unreasonable noise or other impacts from building sites.</p>
Perceived disadvantages	<p>The proposed Local Law imposes a full regime of prescriptive controls on building sites and building work within the municipal district. The increased regulation may impose a greater compliance burden and administrative constraints on building work and builders.</p> <p>These constraints and controls have been balanced against the objectives sought to be achieved.</p>
Applicable strategic objectives	<p>The intention is to provide a local law which balances the amenity expectations of the community against the regulation of building work and building sites, which is necessary for the continued growth and enhancement of the municipal district.</p> <p>The proposed Local Law imposes obligations on builders to ensure that impacts on amenity are avoided and mitigated and, importantly, that public assets are protected. If public assets are damaged, the builder or person responsible for that damage can be required to take rectification actions or to pay for the completion of rectification works completed by Council.</p>
	<p>The proposed Local Law is consistent with the Council Plan and ensures the public assets for which Council has care and management, are protected from damage by building work.</p>