

7.5 Tree Protection Local Law Update

Executive Summary

The purpose of this report is to outline proposed amendments to the current Tree Protection Local Law ('Local Law'). An update to the Local Law will enable consistency and alignment with the *Local Government Act 2020* ('Act').

The original Tree Protection Local Law for trees on private land commenced operation in November 2006 and was replaced with the current Local Law in November 2016. The local law was made pursuant to the *Local Government Act 1989* ('previous Act'). Under the previous Act, the Local Law ends 10 years after it was made, in November 2026.

The new Act was introduced in 2020. The relevant differences in the legislation include how local laws can be enacted, limits on how local laws can operate and the value of penalty units that apply when an offence under a local law is committed.

This report details the timeline and next steps for updating the Tree Protection Local Law.

Officers' recommendation

That Council resolve to commence the formal process to amend the Tree Protection Local Law pursuant to the *Local Government Act 2020*.

Responsible director: **Scott Walker, Director Urban Living**

1. Purpose

The purpose of this report is to inform Councillors of the proposed changes and implications to the operation of the current Tree Protection Local Law and to seek a Council resolution to commence the process to update the Local Law.

A full copy of the draft local law is included at **Attachment 1** of this report.

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

The current local law is consistent with actions contained within the Council Plan 2021-2025, Boroondara Community Plan 2021-2031 and the Climate Action Plan 2021.

The update to the Tree Protection Local Law will ensure that consistency is maintained with these current Council plans and will support future strategies such as the Tree Canopy Strategy and Urban Biodiversity Strategy.

3. Background

The current tree local law is administered within the Planning and Placemaking Department in the Urban Living directorate. Each year approximately 1000 applications are received to remove or work near trees protected under the local law. Each application is assessed by a qualified officer in the Urban Planning Forestry team. Approximately 60% of applications result in a permit being issued, and tree removal permits typically contain conditions that require a replacement tree to be planted.

The Urban Planning Forestry team investigates and enforces approximately 300 potential breaches of the local law each year, undertaking site inspections, directing replacement tree planting, issuing infringements and referring matters to the Magistrates Court.

The current local law has been an effective mechanism for protecting existing trees from unnecessary removal and from potential damage and removal caused during property development.

The key benefits of the Local Law since its inception in November 2006 include that:

- It has established a regulatory framework and a process for assessing and determining tree related applications. This has resulted in consistent and equitable decisions, made in a timely manner. Without this regulatory framework, there would be limited ability to control vegetation removal from private property in the municipality, and a significantly greater number of trees would have been removed from the municipality over the last 17 years.
- In 2017 *Greenspace Consultants* were engaged to undertake an assessment of canopy cover across the municipality and analysis of the efficacy of the Tree Protection Local Law between 2006 and 2016. The

analysis identified that canopy cover on private land decreased overall from 23.3% to 22.9%, but some suburbs had increased their canopy cover in this time. In 2022, *ArborCarbon* were engaged to undertake an assessment of canopy cover across the municipality and identified that canopy cover on private land was 23.3%. Considering these assessments, it suggests that between 2006 and 2022 the Local Law has met its aim of protecting tree canopy on private land.

- Permits issued under the Local Law allow for a regime of replacement tree planting to be applied and enforced. This would not be possible without the regulatory framework established by the current Local Law.

4. Outline of key issues/options

Notwithstanding the benefits of the Local Law outlined under Section 3 of this report, the amendments seek to overcome the existing shortcomings of the local law, which have been identified following a review.

The current shortcomings include:

- The maximum penalty for an offence under the *Local Government Act 1989* is \$2,000. This is not considered an adequate deterrent to prevent illegal removal and damage of protected trees.
- The definition of “damage” limits opportunities to enforce poor arboricultural pruning techniques and negligent building and excavation practices.
- The definition of “works” is too narrow and does not adequately address the impact of demolition works on tree health and condition.
- Clause 11(2) presently raises potential issues with respect to property owner’s rights.
- There is presently an inconsistency between the way trees are measured under the Local Law and the relevant Australian Standards.
- Clause 8(5)(e) does not allow for the ongoing protection of trees required to be planted as a condition of a Notice to Comply.

The proposed changes set out in the updated Local Law are important steps to overcome the current shortcomings identified above.

The following table on the following page summarises the proposed amendments and provisions which would differ from the existing Local Law.

Table 1 - Summary of changes to be made to the Tree Protection Local Law:

Clause	Description
7	Change definition of a <i>canopy tree</i> to be consistent with the tree measurements under Australian Standard 4970-2009.
	Change the definition of the term <i>damage</i> to broaden what constitutes damage to a protected tree.
	Update Clause to reference the <i>Local Government Act 2020</i> .
	Addition of “ <i>Demolition</i> ” to the definition of “ <i>Works</i> ”.

11(2)	Changes to clarify a neighboring property owners' rights to submit an application to undertake works within 2 meters or pruning of a canopy tree located on an adjoining property.
8(5)(e)	Inclusion of the requirement to obtain a permit to remove a tree planted as a condition of a Notice to Comply.
16(2)(b)	Change to the value of a penalty unit in accordance with the <i>Local Government Act 2020</i> .
19	Inclusion of a new clause to be consistent with <i>Local Government Act 2020</i> .

Table 2 – Proposed steps to update Local Law:

The formal process to amend the Tree Protection Local Law is outlined in the following table:

Drafting of Local Law (Complete)	A draft Tree Protection Local Law 2024 is prepared by Maddocks pursuant to the Local Government Act 2020
Council decision to commence (December 2024)	Council resolves to commence formal process to update the Tree Protection Local Law
Commence consultation (Feb 2024)	Commence notification and community consultation on the proposed update of the Tree Protection Local Law
Review consultation feedback	Review, consideration and response to submissions received from the community consultation.
Redraft to address issues arising from submissions	Final draft of updated Tree Protection Local Law prepared by Maddocks
Commencement of new Tree Protection Local Law (By mid 2024)	Commencement of the new local law and advertisement in the Victoria Government Gazette

5. Consultation/communication

Community consultation will commence as per the proposed timeline above.

6. Financial and resource implications

There do not appear to be any immediate significant financial and resource implications of the updating of the local law. However, the operational implications will need further consideration following consultation feedback. There may also be some positive additional income associated with the increased infringement penalty.

7. Governance issues

No officers involved in the preparation of this report have a general or material conflict of interest requiring disclosure under chapter 5 of the Governance Rules of Boroondara City Council.

The recommendation contained in this report is compatible with the Charter of Human Rights and Responsibilities 2006 as it does not raise any human rights issues.

8. Social and environmental issues

The review of the Local Law has a range of social and environmental benefits, as discussed in this report and relevant attachments. These include contributing to aesthetic values, neighbourhood character and ecology.

Manager: David Cowan, Manager Planning and Placemaking

Report officer: Chris Spencer, Team Leader – Urban Planning Forestry;
Daniel Murphy, Planning Appeals Coordinator.



CITY OF BOROONDARA TREE PROTECTION LOCAL LAW 2024

Date Made By Council:	TBC
Commencement Date:	TBC
Expiry Date:	TBC
Responsible Directorate:	Urban Living

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CITY OF BOROONDARA

TREE PROTECTION LOCAL LAW 2024

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CITY OF BOROONDARA**TREE PROTECTION LOCAL LAW 2024****TREE PROTECTION LOCAL LAW 2024****PART A – INTRODUCTION****1. Title**

This Local Law may be cited as the Tree Protection Local Law TBC.

2. Purpose of this Local Law

The objectives of this Local Law are to:

- (1) ensure that the established treed character of the ***Municipal District*** is maintained; and
- (2) prohibit, regulate and control any activities which may endanger ***Significant Trees*** and ***Canopy Trees*** within the ***Municipal District***.

3. Authorising Provision

This Local Law is authorised by section 71(1) of the *Local Government Act 2020*.

4. Commencement Date

This Local Law begins on TBC.

5. Sunset (Revocation) of this Local Law

This Local Law ends on TBC unless sooner revoked.

6. Application of this Local Law

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

7. Definitions in this Local Law

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

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

“***Act***” means the *Local Government Act 2020*, or any later equivalent enactment.

“***Authorised Officer***” means a person appointed by ***Council*** under section 224 of the *Local Government Act 1989*.

“***Canopy Tree***” means any tree:

- (a) with a total trunk circumference of 110 centimetres or more measured at a point 1.4 metres along the trunk’s length from the closest point above ground level; or
- (b) if multi-stemmed, with a total trunk circumference of all its trunks of 110 centimetres or more measured at a point 1.4 metres along the trunks’ lengths from the closest point above ground level; or
- (c) with a trunk circumference of 150 centimetres or more measured at ground level.

Note: See Schedule 1, Diagrams 1 and 2

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

“**Damage**” means to interfere so as to impair the tree’s health, structure or stability, and **Damaged** has a corresponding meaning.

“**Land**” includes:

- (a) buildings and other structures permanently or temporarily fixed to land; and
- (b) land covered with water; and
- (c) the airspace above and the earth below the land.

“**Municipal District**” means the municipal district **Council**.

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

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

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

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

“**Private land**” means all **Land** other than **Public Land**.

“**Prune**” means to remove any branches of a tree which are greater than 50 millimetres in diameter at the point of contact with the larger branches or the trunk, and **Pruning** has a corresponding meaning.

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

“**Significant Tree**” means a tree listed in the **Significant Tree Study**.

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

“**Structural Root Zone**” means the area surrounding a **Canopy Tree’s** trunk, being a circular area below the tree extending at equal distances from the tree base in all directions, the radius of which is 2 metres.

Note: See Schedule 1, Diagram 4

“**Tree Protection Zone**” means the area surrounding a **Significant Tree’s** trunk, being a circular area below the tree extending at equal distances from the tree base in all directions, the radius of which is 12 times the trunk diameter measured at 1.4 metres above ground level, to a maximum of 15 metres.

Note: See Schedule 1, Diagram 3

“**Works**” includes demolition, building, trenching, digging, compaction, excavation, fill or storage of materials and equipment, whether by mechanical or manual methods.

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PART B – THE CONTEXT OF THIS LOCAL LAW

This Part is intended to help you understand the context in which the Local Law is made. It is not intended to affect the interpretation of any provisions in other Parts of the Local Law.

Council recognises the contribution that the **Municipal District's** tree canopy makes to the quality of its suburban environment. **Damage** to or the removal of **Significant Trees** or **Canopy Trees** results in a degradation of this established character. **Council** also acknowledges that trees in the urban environment have a series of environmental benefits, such as reducing the impact of the urban heat island effect, reducing the effects of climate change, reducing temperatures in and around buildings, reducing stormwater runoff, absorbing pollution, providing habitat and promoting biodiversity. This Local Law is based on the following principles:

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

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

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TREE PROTECTION LOCAL LAW 2024

PART C – TREE PROTECTION

8. Protection of Trees

(1) This clause 8 applies to:

- (a) any **Significant Tree**; and
- (b) any **Canopy Tree**

where the tree, as described above, is situated on any **Private Land**, whether or not the tree extends beyond the boundary of that **Private Land**. For the avoidance of doubt, this clause does not apply to such part of a tree that is above or below **Land** which is not **Private Land**.

(2) The **Significant Tree Study**, as amended by the addition of Schedules from time to time, is incorporated into this Local Law, with any amendment made to a Schedule coming into effect when it is published in the *Victoria Government Gazette*.

(3) A person must not, without a **Permit**:

- (a) remove, **Prune**, **Damage** or kill or direct, authorise or allow to be removed, **Pruned**, **Damaged** or killed a **Significant Tree**;
- (b) carry out or direct, authorise or allow to be carried out any **Works** within the **Tree Protection Zone** of a **Significant Tree**;
- (c) remove, **Damage** or kill or direct, authorise or allow to be removed, **Damaged** or killed a **Canopy Tree**;
- (d) carry out or direct, authorise or allow to be carried out any **Works** within the **Structural Root Zone** of a **Canopy Tree**;¹ or
- (e) remove, **Damage** or kill or direct, authorise or allow to be removed, **Damaged** or killed a tree required to be planted as a condition of a **Permit** or **Notice to Comply** issued in accordance with this Local Law.

Maximum Penalty: twenty (20) Penalty Units

(4) Clause 8(3) does not apply to:

- (a) a person whose actions are required by any other legislation or by any other statutory authority; or
- (b) a person acting in accordance with an instruction or direction from an **Authorised Officer**

(5) If a tree, or part of a tree, is removed, **Damaged** or killed contrary to clause 8(3), the owner of any **Private Land** on which the relevant part of the tree is on, over or under is guilty of an offence, whether or not the person who actually removed, **Damaged** or killed the tree is identified or prosecuted, unless the owner can prove that the removal, **Damage** or killing was undertaken by another party without the owner's knowledge. For the avoidance of doubt, where a **Significant Tree** or **Canopy Tree** extends over

¹ Note: Notwithstanding this sub-clause 8(3)(d), it is an offence under sub-clause 8(3)(c) to 'remove, **Damage** or kill or direct, authorise or allow to be removed, **Damaged** or killed a **Canopy Tree**'. Accordingly, **Works** occurring outside the **Structural Root Zone** of a **Canopy Tree** will constitute an offence under sub-clause 8(3)(c) if such **Works** remove, **Damage** or kill that tree.

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multiple parcels of **Private Land**, the owner of the **Land** on, over or under which the part of the tree which has not been interfered with is located is not guilty of an offence.

9. Power of Authorised Officer to Direct – Notice to Comply

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

10. Time to Comply

- (1) A **Notice to Comply** must state the time and date by which the situation must be remedied.
- (2) The time required by a **Notice to Comply** must be reasonable in the circumstances having regard to:
 - (a) the amount of work involved;
 - (b) the degree of difficulty of the work involved;
 - (c) the availability of necessary materials or other necessary items; and
 - (d) any other relevant factor.
- (3) A **Notice to Comply** must also include:
 - (a) the name of the alleged offender (if known);
 - (b) the provision of this Local Law which appears to have been breached;
 - (c) the date on which it was given to the owner, contractor or other person; and
 - (d) the name of the **Authorised Officer** who has given it.

PART D – ADMINISTRATION**11. Applications for Permits**

- (1) An application for a **Permit** must be made in writing using a form provided by **Council** and must be accompanied by the appropriate fee as determined by **Council** from time to time.
- (2) Where an application for a **Permit** is made by a person who is not the owner of the **Private Land** on which the tree removal, **Pruning** or **Works** are to occur, the application must be accompanied by a document evidencing the owner's consent to the application for the **Permit** being made.
- (3) If required to do so by **Council** or an **Authorised Officer**, an applicant must provide additional information before the application for a **Permit** is considered.

CITY OF BOROONDARA**TREE PROTECTION LOCAL LAW 2024****12. Permits**

- (1) **Council** or an **Authorised Officer** may, after considering the application for a **Permit**:
 - (a) issue a **Permit**, with or without conditions;
 - (b) refuse to grant a **Permit**; or
 - (c) determine that a **Permit** is not required.
- (2) In determining whether to grant a **Permit** under this Local Law, **Council** or **Authorised Officer** must take the following into consideration, to the extent it considers or they consider appropriate:
 - (a) the effect of the proposed action on the aesthetics of the neighbourhood;
 - (b) whether the tree is a **Significant Tree**;
 - (c) the condition of the tree (i.e. its health and structural integrity);
 - (d) the appropriateness of the tree for its location on the property having regard to the existing buildings and conditions on the property;
 - (e) whether the proposed action is to be undertaken for reasons of health or safety;
 - (f) whether the tree is causing any unreasonable property damage;
 - (g) whether the tree is causing any unreasonable public nuisance or creating any unreasonable nuisance to **Private Property** owners or occupiers;
 - (h) whether the tree is a recognised weed;
 - (i) the nature of the zoning of the land under the Boroondara Planning Scheme;
 - (j) any legislative requirements; and
 - (k) any other matter relevant to the circumstances associated with the application.

13. Payment of a Security Bond

- (1) Where:
 - (a) the owner of **Private Land** proposes carrying out **Works**; or
 - (b) the owner of **Private Land** engages a contractor for the purposes of carrying out **Works**

within the **Tree Protection Zone** of a **Significant Tree** or the **Structural Root Zone** of a **Canopy Tree**, whether those works are proposed to be undertaken pursuant to a planning permit or otherwise, **Council** or an **Authorised Officer** may, by notice given to the owner, require payment of a security bond to **Council**.
- (2) The security bond will be for an amount and in a form determined by **Council** or the **Authorised Officer**.
- (3) Twelve months after the completion of the **Works Council** may:

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- (a) retain all or any part of the security bond to cover the costs of replacement of any **Significant Tree** or **Canopy Tree Damaged** or killed as a result of the **Works**; or
- (b) refund the security bond.

14. Cancellation of a Permit

- (1) **Council** or an **Authorised Officer** may cancel a **Permit** if it considers or they consider that:
 - (a) there has been a serious or ongoing breach of any of the conditions of the **Permit**;
 - (b) a **Notice to Comply** has been issued, but not complied with within seven (7) days after the time specified for compliance; or
 - (c) there was a significant error or misrepresentation in the application for the **Permit**; or
 - (d) in the circumstances, the **Permit** should be cancelled.
- (2) Before a **Permit** is cancelled, **Council** or an **Authorised Officer** must provide to the holder of the **Permit** a reasonable opportunity to make comment on the proposed cancellation.
- (3) If a holder of a **Permit** is not the owner of the **Private Land** and the owner's consent was required to be given to the application for the **Permit**, the owner must be notified of any **Notice to Comply** and of the reason why it has been served.

15. Inspections

- (1) An **Authorised Officer** may enter any **Private Land** for the purpose of inspecting any **Significant Tree** or **Canopy Tree** where the **Authorised Officer** has reasonable grounds for believing that a breach of this Local Law has been committed, is being committed or is likely to be committed.
- (2) An **Authorised Officer** may enter any **Private Land** for the purpose of inspecting any **Significant Tree** or **Canopy Tree** where an application for a **Permit** has been made in accordance with this Local Law.

16. Infringement Notices

- (1) Where an **Authorised Officer** reasonably believes that a person has committed an offence against this Local Law, the **Authorised Officer** may issue and serve on that person an infringement notice as an alternative to prosecution for the offence.
- (2) The penalty fixed for an infringement notice under this Local Law is:
 - (a) where an offence relates to a tree which is dead – 5 penalty units for each offence;
 - (b) for all other offences – 20 penalty units for each offence.

17. Offences

- (1) A person who:
 - (a) fails to comply with any provision of this Local Law;

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- (b) fails to comply with a condition of a **Permit**;
- (c) fails to comply with a **Notice to Comply** issued under this Local Law; or
- (d) submits wrong, inaccurate or misleading information in an application for a **Permit** made under this Local Law

is guilty of an **Offence**.

- (2) If no penalty is specifically provided for in a provision of this Local Law, a person found guilty of an **Offence** under this Local Law is liable to a penalty not exceeding 20 penalty units.
- (3) In addition to any penalty imposed pursuant to this Local Law, a penalty not exceeding 2 penalty units will apply for each day after conviction for an **Offence** during which a contravention of this Local Law continues.

18. Applications for Review

- (1) Within 60 calendar days of receiving notice of a refusal to grant a **Permit** under clause 12(1)(b) of this Local Law, the applicant for the **Permit** may apply to **Council** for a review of that decision.
- (2) An application for review under clause 18(1) must be made in writing and must:
 - (a) state the grounds upon which the application for review is made; and
 - (b) include further information which was not provided to or made available at the time the application for the permit under this Local Law was made.
- (3) If required to do so by **Council**, an applicant must provide additional information before **Council** determines an application for review.
- (4) If an application to review a decision is made in accordance with this clause, the review will be undertaken by **Council's** Chief Executive Officer or such person as the Chief Executive Officer appoints for such purpose.

19. Saving

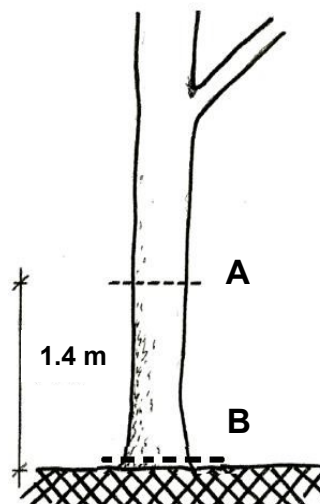
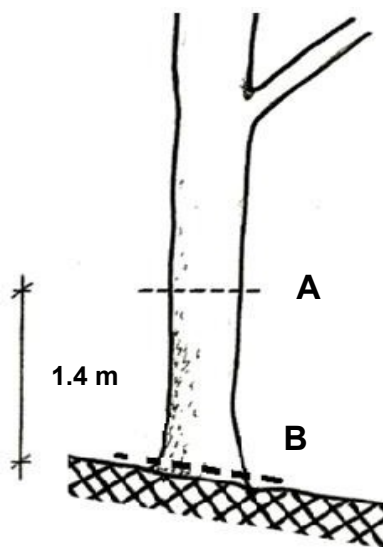
Nothing in this Local Law applies or is intended to apply in respect of any of the matters set out in clause 1(3) of Part 1 of Schedule 1 to the *Building Act 1993*.

Schedule – Diagrams

Diagram 1 – Diagram illustrating how to determine whether a single stemmed tree is a **Canopy Tree**:

For single stemmed trees, a tree is a **Canopy Tree** if:

- The circumference at point 'A' (which is 1.4 metres above ground level, measured along the trunk's length from the closest point above ground level) is 110 centimetres or more; or
- The circumference at point 'B' (which is at ground level) is 150 centimetres or more.

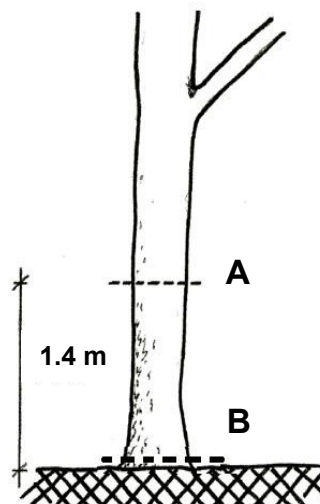
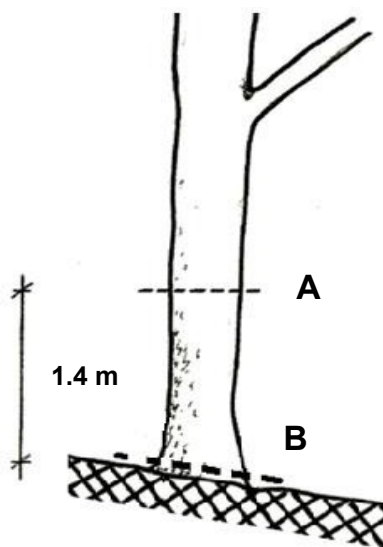


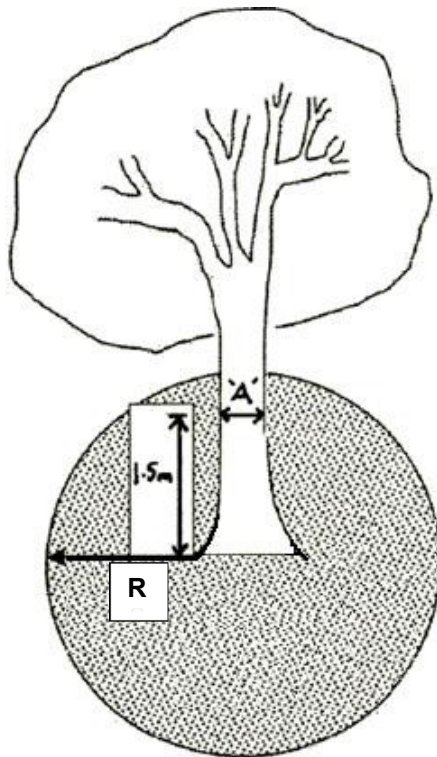
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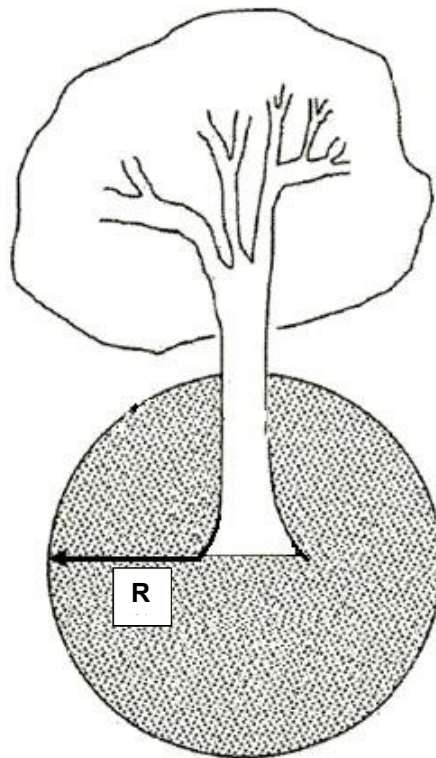
CITY OF BOROONDARA**TREE PROTECTION LOCAL LAW 2024****Diagram 3** - Diagram illustrating how to determine the **Tree Protection Zone**:

The **Tree Protection Zone** (TPZ) is based on 'R'.

R = 12 times the trunk diameter at point 'A', to a maximum of 15 metres. The TPZ is a circular area below the tree extending at equal distances from the tree's base in all directions.

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Diagram 4 - Diagram illustrating how to determine the **Structural Root Zone**:



The **Structural Root Zone** (SRZ) is based on 'R'.

R = 2 metres. The SRZ is a circular area below the tree extending at equal distances from the tree's base in all directions.

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

Mayor

Chief Executive Officer

Date _____