

3 Commencement of statutory process to make a new Tree Protection Local Law

Abstract

The *Tree Protection Local Law* ('the Local Law') operates within the City of Boroondara and commenced operation on the 26 November 2006. The Local Law is due to expire on the 25 November 2016. After this date, the Local Law will cease to apply. If Council wishes to continue to have a Local Law relating to tree protection after the 25 November 2016, it will need to undergo a process to make a new Local Law. A copy of the Local Law (as it currently applies) is contained at **Attachment 1**.

Officers consider that it is appropriate for a Tree Protection Local Law to continue operating after the 25 November 2016. There is, however, an opportunity to improve the current Local Law's operation and effectiveness. Accordingly, officers have undertaken a review of the Local Law. Detailed assessment of each change made to the Local Law is set out in this report.

A proposed draft Local Law is contained at **Attachment 2**, highlighting the proposed changes from the current Local Law. A copy showing the proposed draft Local Law is included at **Attachment 3**.

A number of the proposed changes will formalise existing procedures. Officers have also included proposed changes making it an offence to undertake works within the 'Structural Root Zone' of a canopy tree and within the 'Tree Protection Zone' of a significant tree without a permit. The assessment criteria which form the basis of decisions under the Local Law are also proposed to be amended.

Officers are of the view that the additional offences within the proposed Local Law will provide Council with additional control over buildings and works close to canopy and significant trees and will therefore be consistent with community expectations for tree protection. The inclusion of an additional measurement for a canopy tree at its base will also assist Council in taking enforcement action against persons who remove canopy trees without a permit.

As Council is aware, the Local Law contains penalties for illegal tree removal, although it is acknowledged that these penalties are not always a sufficient deterrent and Council will be aware that lobbying has continued with the State Government to increase these penalties. It is not within the scope of this process to increase the penalties for offences under the Local Law, given that the penalties fixed under the Local Law are already the maximum penalties available.

Council's solicitors have prepared a Community Impact Statement in relation to the proposed Local Law. The Community Impact Statement will accompany the proposed Local Law when it is gazetted. A copy is contained at **Attachment 6**.

If Council wishes to proceed to make a new Local Law, it will need to resolve to commence the statutory process under the *Local Government Act 1989*.

If Council resolves to commence the statutory process and endorse the draft proposed Tree Protection Local Law, the next step is to formally exhibit the proposed Local Law. Officers propose that exhibition start in the week commencing 14 December 2015 and conclude on 12 February 2016.

Officers' recommendation

That Council resolve to:

1. Commence the statutory process to make a new Tree Protection Local Law in accordance with Part 5 of the *Local Government Act 1989*.
2. Endorse the draft proposed Tree Protection Local Law (Attachment 3, as annexed to the minutes) for the purposes of community consultation under Part 5 of the *Local Government Act 1989*.

**Responsible director: John Luppino
City Planning**

1. Purpose

The Tree Protection Local Law ('the Local Law') is due to expire on the 25 November 2016. If Council wishes to continue with a Tree Protection Local Law after this date, it will need to initiate a process to review the existing Local Law and to make a new Local Law.

The purpose of this report is for Council to consider whether to commence the statutory process in accordance with Part 5 of the *Local Government Act 1989* ('the Act') to make a new Tree Protection Local Law.

2. Policy implications and relevance to Council Plan

The review of the Local Law is consistent with the strategies within the Council Plan 2013 - 2017 to "promote sustainability through sound environmental practice", "engage with our community in striving for protection and enhancement of the natural and built environment" and "implement[ing] appropriate policies, strategies and practices that will improve neighbourhood amenity and safety".

3. Background

Operation of the current Local Law

The Local Law operates on privately owned land within the City of Boroondara and commenced operation on 26 November 2006.

The Local Law is administered and enforced by the Statutory Planning Department.

A copy of the Local Law is contained at **Attachment 1**.

The objectives of the Local Law are to:

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

A 'significant tree' is a tree listed in Council's Significant Tree Study.

A 'canopy tree' is any tree with a total trunk circumference of 110 centimetres or more measured at a point approximately 1.5 metres above the ground.

The Local Law makes it an offence to remove, damage, kill or destroy a canopy tree or a significant tree, without a permit. It is also an offence to undertake works within the critical root zone or to lop (remove a branch more than 100 mm in diameter) a significant tree without a permit.

The Local Law sets out the framework for assessment of applications for tree removal or pruning made under it. Permits issued under the Local Law may be subject to conditions including the planting of replacement canopy trees. The Local Law provides that it is an offence to fail to comply with conditions of a permit.

Assessments of applications under the Local Law are undertaken by suitably qualified Arborists employed by Council. The Arborists are required to use Council's currently adopted Assessment Guidelines ('assessment guidelines') a copy of which are contained in **Attachment 4**. The purpose of the assessment guidelines is to ensure decisions are sensible, fair and consistent. The assessment streams within the assessment guidelines provide a clear framework for decision making. Essentially the approach is first and foremost to determine whether it is possible to retain a tree applying the assessment guidelines and the provisions of the Local Law.

An internal review process for decisions made under the Local Law is available to applicants. Reviews are undertaken by a Statutory Planning Coordinator with the Manager Statutory Planning responsible for the decisions made. The independent review considers all of the information supplied with the request for review and the process taken to determine the application. Any reassessment of the tree in question is undertaken by a different Council Arborist or in some cases a consultant arborist.

The Local Law also sets out enforcement provisions for non-compliances. Enforcement provisions set out in the Local Law include either issuing an Infringement Notice (a penalty of \$2,000 per offence) or issuing a Notice to Comply. Council also has the option of pursuing a prosecution in the Magistrates Court for offences under the Local Law. It is important for Council to note at this stage that the scope of any review of the Local Law cannot include increasing penalties for offences because the maximum penalties are set out in the Act.

Table 1, on the following page, summarises the operation of the Local Law since its introduction:

Table 1 - Summary of current operation of the Local Law:

Year	Number of tree removal/pruning applications	Number of Trees proposed for removal	Number of trees approved for removal	Number of trees refused for removal	Replanting Numbers	Number of tree enforcement investigations	Number of internal appeals	Internal Reviews Approved/ Refused
2006	60	84	69	15	72	0	N/A - not recorded	N/A
2007	1093	1915	1494	421	721	16	N/A - not recorded	N/A
2008	1142	2181	1673	508	810	16	N/A - not recorded	N/A
2009	981	1637	1103	534	903	9+	N/A - not recorded	N/A
2010	1095	1701	1344	357	947	13	25	17 Approved/ 8 Refused
2011	1107	1782	1160	622	776	28	39	25 Approved/ 14 Refused
2012	1177	2003	1344	659	828	21	56	25 Approved/ 31 Refused
2013	1303	2213	1620	593	925	23	38	16 Approved/ 22 Refused
2014	1333	2310	1627	683	827	50	34	17 Approved/ 17 Refused
2015 - (Note - figures are projections based on YTD monthly average to end of October 2015)	1126	1892	1514	193	1138	58	40	33 (up to end October 2015) 16 Approved/ 5 Refused/ 12 Current

* NOTE: Before 2011 many applications were documented on-site and replanting numbers were not always recorded. During this time replanting numbers are estimates only.

Matters considered in officers' review of the Local Law

Officers have undertaken a detailed review of the Local Law, including the way it has operated since its inception in November 2006. In summary, this review has included:

- Consideration of officers' detailed knowledge of how the current Local Law functions, particularly in relation to how applications are made, decided and reviewed on appeal.
- Review of definitions against the current Australian Standards relating to *Pruning of Amenity Trees* and *Protection of Trees on Development Sites* and arboricultural industry best practice.
- Consideration of whether the current offences remain appropriate having regard to community expectations and arboricultural industry best practice.
- Whether amendments can be made to enable Council to take enforcement action with more certainty.
- Whether additional exemptions for needing to obtain a permit are warranted, such as removal (or pruning) of trees damaged during storms or for trees regarded as weed species.

- Consideration of whether the criteria for making a decision remain relevant, having regard to officers' knowledge of matters raised in correspondence from the community, including consideration of correspondence made both in favour of and against the Local Law.
- Consideration of matters raised by the community during the operation of the Local Law.
- Benchmarking against Council's *Amenity Local Law*.
- Benchmarking against other local councils which have a similar Local Law (being the cities of Bayside, Frankston, Kingston, Port Phillip, Stonnington and Yarra).

In reviewing a Local Law, Council should consider matters such as:

- Whether the issue/problem that the Local Law seeks to address continues to be a problem.
- Whether the objectives of the Local Law are being met.
- If the impacts of the Local Law are as expected.
- If the Local Law is still the most appropriate legislative approach.

Officers are of the view that not replacing the Local Law may well see an acceleration of tree removal across the municipality. It is considered that the Local Law has met its objectives in providing a regulatory framework and contributing to the maintenance of the municipality's treed character. Officers consider that the impact of the Local Law has met expectations and this impact includes discouraging indiscriminate tree removal and requiring replanting where possible. The Local Law is still considered the most appropriate legislative approach, given the uncertainty surrounding the introduction of additional planning controls and the more complex, lengthy and costly application process associated with planning controls.

Outcome of officers' review of the Local Law

Having reviewed the current Local Law, officers are of the view that there is an opportunity to make amendments to update and improve its operation and effectiveness. It is considered that the need to review the Local Law is an opportunity to make modifications so that it aligns more closely with community expectations and standard arboricultural industry best practice.

There is also an opportunity to revise the offences under the Local Law and update the criteria to be considered when making a decision. A summary of the proposed amendments are set out in the next section of this report.

Attachment 5 contains officers' detailed assessment of these amendments.

Officers do not consider that significant changes to the operation or structure of the Local Law are justified. It is the officers' view that, overall, the current Local Law operates well and is effective at preventing indiscriminate tree removal across the municipality. Furthermore, the current Local Law provides a framework for requiring replacement tree planting and enforcement which would otherwise not be possible.

Continuing a Local Law for tree protection will also be consistent with community expectations, which in officers' experience are in support of protecting the municipality's treed character.

Officers also consider that any amendments to the Local Law must be weighed up against the fact the current Local Law is well known in the community as well being familiar to architects, building designers and developers regularly operating within the municipality.

4. Outline of key issues/options

Proposed changes to the current Local Law

The following Table 2 provides a summary of the changes officers are proposing to the current Local Law, as the basis for a new Local Law.

A detailed assessment of proposed changes is contained at **Attachment 5**. For ease of reading, the amendments set out in Table 2 have been incorporated into the proposed new Local Law (included as **Attachment 2**). The amendments proposed have been identified using the 'track changes' tool. A copy of the proposed new Local Law not showing the proposed changes is included as **Attachment 3**.

Table 2 - Proposed changes to the Local Law as a result of review

Clause	Description
7	Change to definition of the term <i>canopy tree</i> to include an additional measurement at the tree's base to improve enforcement.
	Change to the definition of the term <i>works</i> to better reflect the activities that have the potential to impact upon trees.
	Inclusion of a new definition of the term <i>damage</i> to make clear what constitutes damage to a tree.
	Inclusion of new definitions of the terms <i>prune</i> , <i>structural root zone</i> and <i>tree protection zone</i> and deletion of the terms <i>critical root zone</i> , <i>crown</i> , <i>crown dripline</i> and <i>lop</i> as a result of changes to offences in Clause 8(3) and to ensure consistency with Australian Standards and current arboricultural industry best practice.
	Change to the definition of <i>land</i> to facilitate the amendments that clarify that the Local Law also applies to trees located on adjoining properties.
8(1) & 8(3)(c)	Deletion of Clause 8(1)(c) and update to Clause 8(3)(c) as a result of the change to the definition of a <i>canopy tree</i> .
	Amendments to clarify that the Local Law also applies to trees located on adjoining private properties.
8(2)	Clarification that amendments to the 'significant tree study' takes effect when notice is published in the Government Gazette.
8(3)	Changes to make it an offence to: <ul style="list-style-type: none"> • <i>Prune</i> (rather than <i>lop</i>) a significant tree, without a permit, to clarify the offence.
	<ul style="list-style-type: none"> • Undertake works within the <i>tree protection zone</i> of a significant tree without a permit (rather than within the <i>critical root zone</i> or which encroaches into more than one quarter of the <i>crown dripline</i>) and to update and clarify the offence.

Clause	Description
	<ul style="list-style-type: none"> • Undertake works within the <i>structural root zone</i> of a canopy tree without a permit, where previously this was not an offence (but may have constituted <i>damage</i> or <i>destruction</i> of a canopy tree). • Remove a replacement tree required to be planted as a condition of a permit issued under the Local Law, to tighten control over replacement planting.
8(4)(b)	Inclusion of an additional exemption relating to instructions or directions from an authorised officer to allow trees to be removed or pruned without a permit in situations involving emergencies (such as trees damaged by storms or strong winds).
8(5)	Amendments as a result of the change at Clause 8(1) to clarify that the Local Law applies to trees located on adjoining private properties and to clarify who is responsible for the offence.
11	<p>Inclusion of new subclause (1) to require an application for a permit to use a standard application form and be accompanied by the correct fee, to formalise the process and refer to Council's adopted fee.</p> <p>Renumbering of Clause 11 to Clause 11(2) as a result of the amendments to the Clause.</p> <p>Inclusion of new subclause (3) to enable further information to be requested, to formalise the current process.</p>
12(2)	<p>Inclusion of the words '<i>to the extent it considers appropriate</i>' in the header of Clause 12(2) to make clear not all criteria are relevant in all circumstances.</p> <p>Update to wording of the criterion at Clause 12(2)(a), to improve the overall operation and intent of this criteria.</p> <p>Insertion of new criterion at Clause 12(2)(c) to specially provide for consideration of a tree's condition (to reflect Council's adopted tree assessment guidelines), and re-word the remaining subclauses accordingly.</p> <p>Insertion of new criterion at subclause 12(2)(d) to specifically provide for consideration of the appropriateness of a tree for its location on a property having regard to existing development on the property (to reflect Council's adopted tree assessment guidelines).</p> <p>Update to wording of the criterion at Clause 12(2)(e) (previously subclause (c)) with no change to the overall operation or intent of this criteria.</p> <p>Change to wording of the criterion at Clause 12(2)(f) (previously subclause (d) to refer to '<i>unreasonable</i>' property damage and delete the words '<i>or giving rise to safety concerns</i>' to remove duplication with the criterion at subclause (e).</p> <p>Change to wording of criterion at Clause 12(2)(g) (previously subclause (e)) to refer to '<i>unreasonable</i>' nuisance.</p> <p>Insertion of new criterion at subclause 12(2)(i) to allow consideration of the zoning of the land, to allow a distinction to be made between residential and commercial areas.</p>

Clause	Description
13(1)	Update to the security bond provisions to reflect the amendments to offences at Clause 8(3) and reflect updated definitions.
14	Amendments so that authorised officers as well as Council have the ability to cancel a permit, so as to be consistent with the remainder of the proposed (and current) Local Law and to include the word 'reasonable' in Clause 14(2).
15	Insertion of new Clause 15(2) to enable an authorised officer to enter land where an application under the Local Law has been made. Clause 15 in the current Local Law will be retained as Clause 15(1), but with changes to the circumstances where authorised officers can enter land.
18	Insertion of new Clause 18 providing for a right of appeal against a decision to refuse a permit. This new clause will formalise the existing appeal process within the Statutory Planning Department.

Officers' exercise of discretion when making a decision under the Local Law is guided by the assessment guidelines (see **Attachment 4**). The proposed changes to the assessment criteria at Clause 12(2) of the Local Law will necessitate changes to the assessment guidelines. Officers are proposing to prepare amended assessment guidelines after the public exhibition period, to enable officers to consider matters raised in any submissions when updating the assessment guidelines. Any updated assessment guidelines will require Council adoption prior to the commencement of any new Local Law.

5. Consultation/communication

Council has consulted with its solicitors in the preparation of the proposed amendments.

Benchmarking has also been undertaken against the equivalent Local Laws in the cities of Bayside, Frankston, Kingston, Port Phillip, Stonnington and Yarra.

The timelines to make the proposed Local Law are set out below:

Table 3 - Proposed timelines

Prior to October 2015	Officer review of current Local Law
October and November 2015	<ul style="list-style-type: none"> Review against the Charter of Human Rights and Responsibilities Act 2006 and National Competition Principles Preparation of Community Impact Statement Review of the proposed Local Law by Council solicitors
10 December 2015	Consideration of this report and Council resolution to commence process to make the proposed Local Law
Mid-December 2015 to Mid-February 2016	Exhibition of proposed Local Law, including statutory notice in the Government Gazette and Progress Leader newspaper, as well as other publicity of proposed Local Law

March 2016	Consideration of public submissions by Council
April 2016	Adoption of proposed Local Law by Council
Late April/May 2016	Notice in the Government Gazette and Progress Leader
Late April/May 2016	Local Law available on internet and from Customer Service
Late April/May 2016	Copy of Local Law sent to Minister for Local Government
Late April/May 2016	Commencement of Local Law

If Council resolves to commence the process to make a new Local Law and to endorse the Local Law contained at **Attachment 3** for the purposes of exhibition, the next step is to formally exhibit the proposed Local Law. Officers have developed a consultation strategy to ensure that the community are provided with a reasonable opportunity to make submissions about the proposed Local Law. Consultation will include a notice in the Progress Leader, online notices, notices in the municipal offices, libraries and other community facilities.

6. Financial and resource implications

The costs to review the Local Law and make a new Local Law will be met within the current Statutory Planning Department budget and will include the cost of legal advice and the public and gazette notices.

7. Governance issues

The implications of this report have been assessed in accordance with the requirements of the Victorian Charter of Human Rights and Responsibilities and are not considered to infringe upon any prescribed human rights, freedoms or responsibilities.

A full review of the proposed Local Law against the Charter has been undertaken by Council's solicitors when preparing the Community Impact Statement (see **Attachment 6**).

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

8. Social and environmental issues

The continuation of the Local Law is considered to have a range of social and environmental benefits. These include contributing to aesthetic values, neighbourhood character and the ecology.

Manager: Simon Mitchell, Statutory Planning

Report officer: Andrew Kerr, Coordinator Statutory Planning



CITY OF BOROONDARA

TREE PROTECTION LOCAL LAW

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

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

CITY OF BOROONDARA

TREE PROTECTION LOCAL LAW

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TREE PROTECTION LOCAL LAW

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

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

2 Purpose of this Local Law

The objectives of this Local Law are to:

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

3 Authorising Provision

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

4 Commencement Date

This Local Law begins on 25 November 2006.

5 Sunset (Revocation) of this Local Law

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

6 Application of this Local Law

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

7 Definitions in this Local Law

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

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

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

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

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

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

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TREE PROTECTION LOCAL LAW

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

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

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

“**Land**” includes-

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

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

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

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

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

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

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

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

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

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

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

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TREE PROTECTION LOCAL LAW

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

PART B – THE CONTEXT OF THIS LOCAL LAW

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

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

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

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

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

PART C – TREE PROTECTION**8 Protection of Trees**

(1) This clause applies to:

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

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

Note: See Figures 1 and 2.

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TREE PROTECTION LOCAL LAW

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

Note: See Figures 3 and 4

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

Maximum Penalty: twenty (20) Penalty Units

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

9 Power of Authorised Officer to Direct – Notice to Comply

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

10 Time to Comply

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

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

PART D - ADMINISTRATION**11 Applications for Permits**

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

12 Permits

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

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

13 Payment of a Security Bond

(1) Where:

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

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

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

14 Cancellation of a Permit(1) The *Council* may cancel a *permit* if it considers that:

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

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

CITY OF BOROONDARA**TREE PROTECTION LOCAL LAW**

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

15 Inspections

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

16 Infringement Notices

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

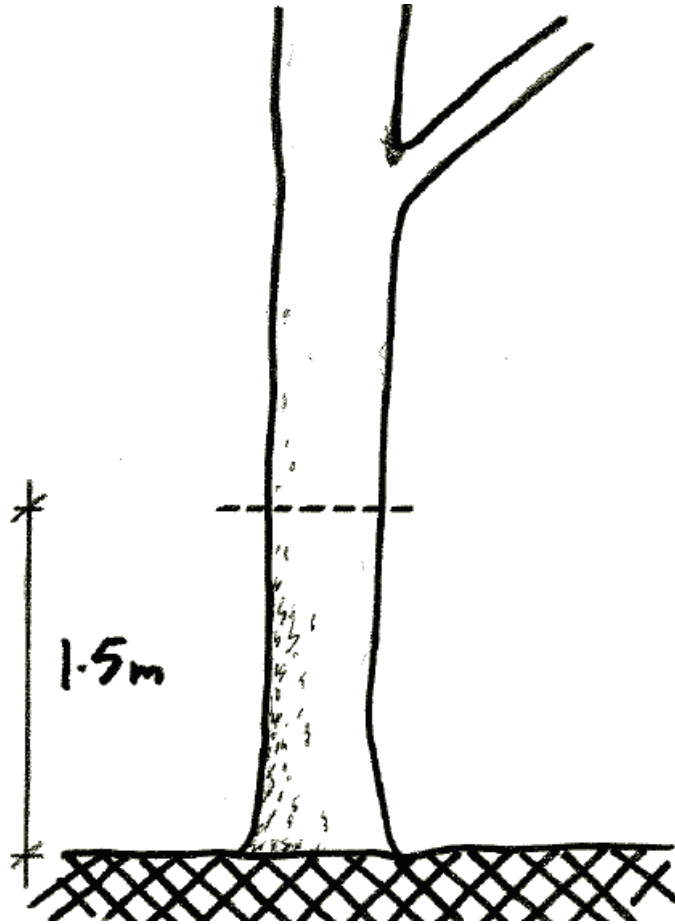
17 Offences

- (1) A person who:
- (a) fails to comply with any provision of this Local Law;
 - (b) fails to comply with a condition of a *permit*;
 - (c) fails to comply with a Notice to Comply issued under this Local Law; or
 - (d) submits wrong, inaccurate or misleading information in an application for a *permit* made under this Local Law
- is guilty of an offence.
- (2) If no penalty is specifically provided for in a provision of this Local Law, a person found guilty of an offence under this Local Law is liable to a penalty not exceeding 20 penalty units.
- (3) In addition to any penalty imposed pursuant to this Local Law, a penalty not exceeding 2 penalty units will apply for each day after conviction for an offence during which a contravention of this Local Law continues.

CITY OF BOROONDARA

TREE PROTECTION LOCAL LAW

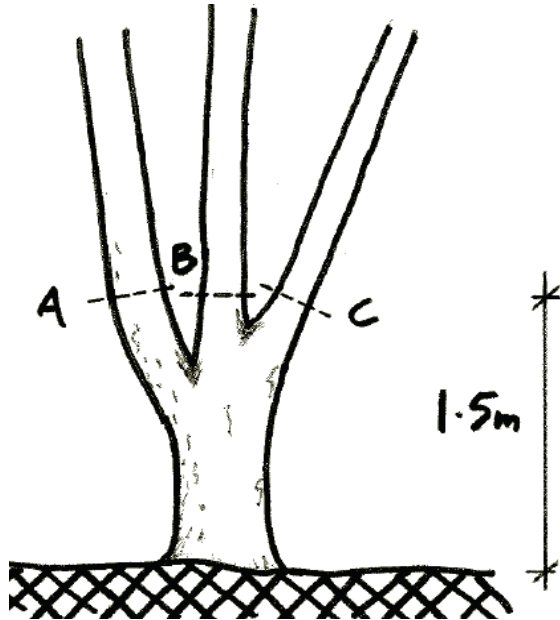
Figure 1. For single-stemmed trees, the trunk circumference is measured at 1.5 metres above ground level.



CITY OF BOROONDARA

TREE PROTECTION LOCAL LAW

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

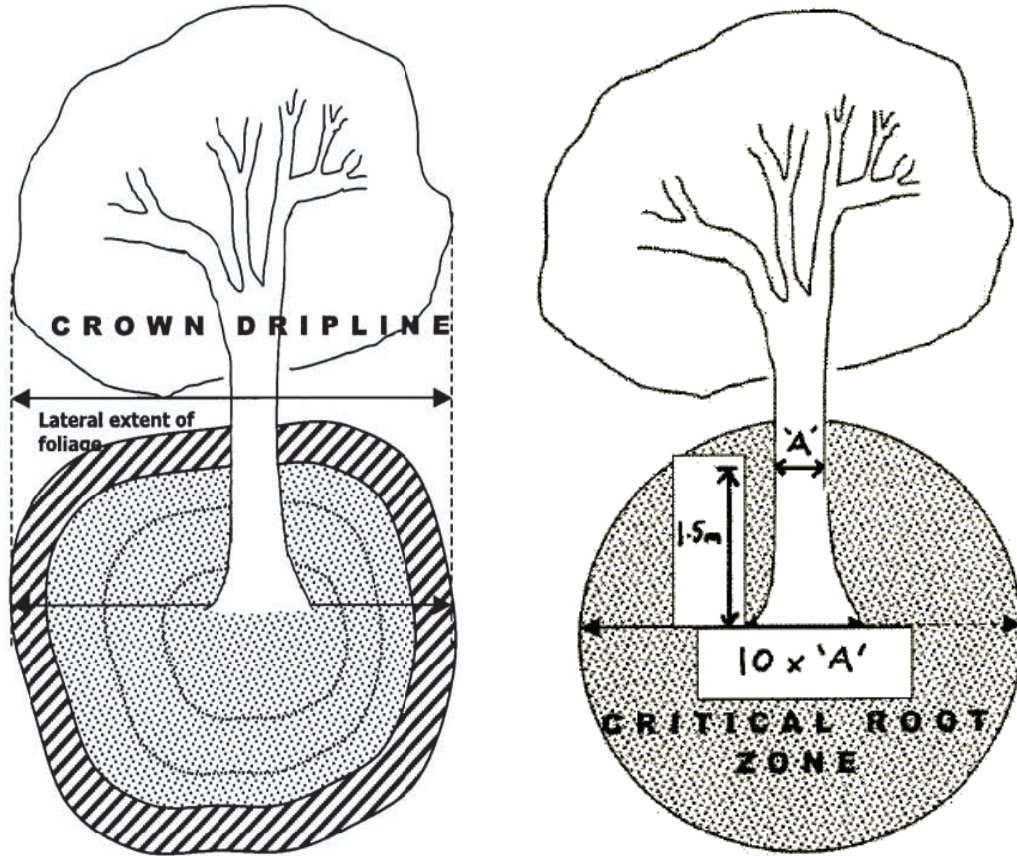


$$\begin{aligned} & \text{CIRCUMFERENCE A} \\ & + \\ & \text{CIRCUMFERENCE B} \\ & + \\ & \text{CIRCUMFERENCE C} \\ \hline & = \text{TOTAL CIRCUMFERENCE} \end{aligned}$$


CITY OF BOROONDARA


TREE PROTECTION LOCAL LAW

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



Explanatory Notes to Figure 3:

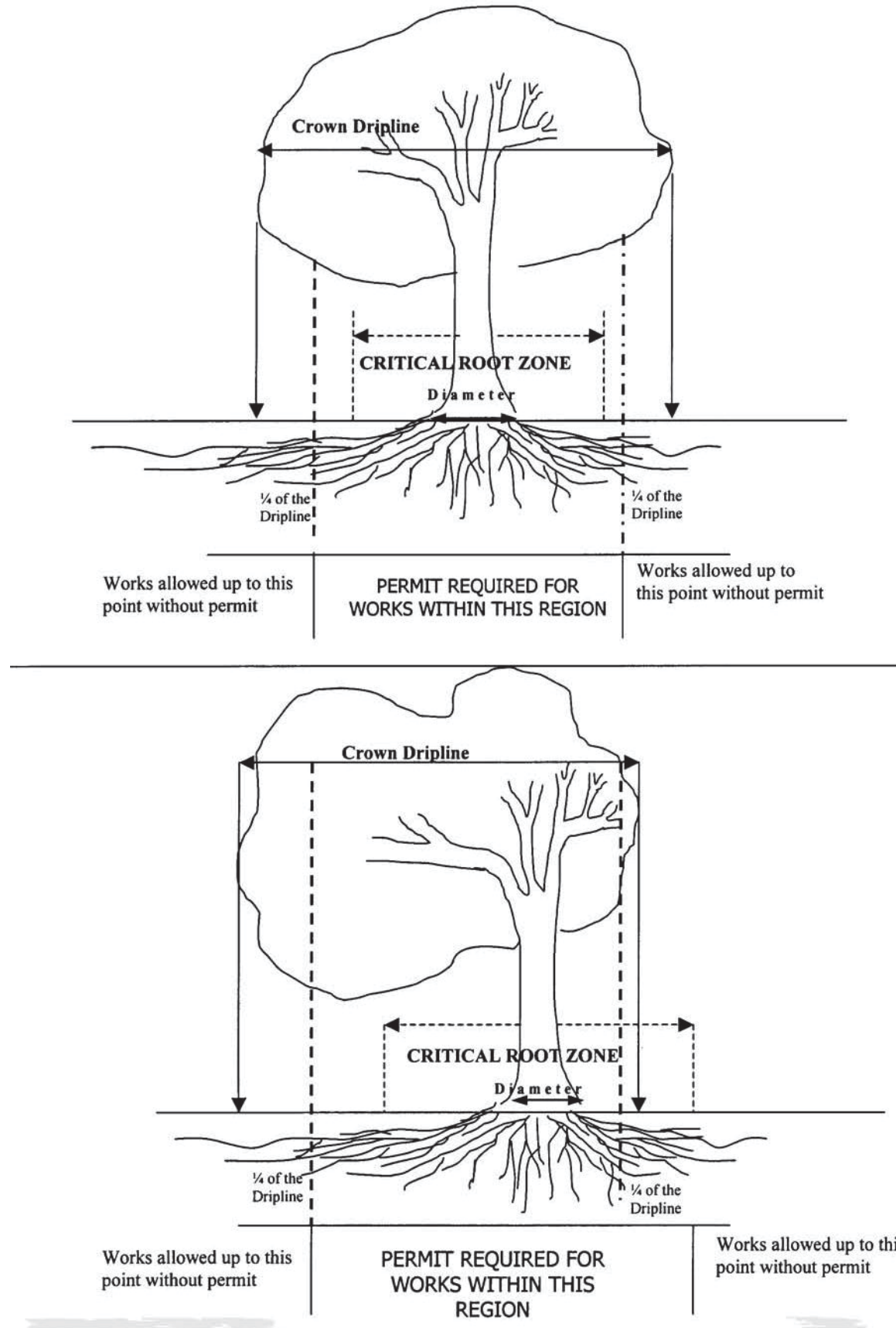
 Represents ¼ of the Crown Dripline. Works are allowed in this section without a permit.

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

CITY OF BOROONDARA

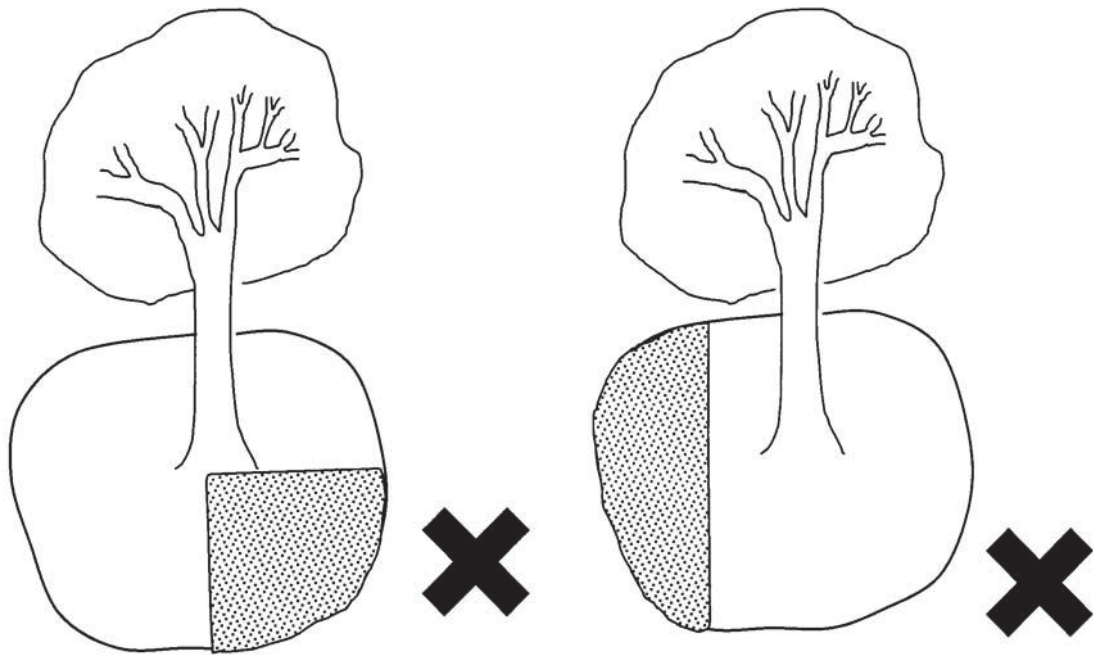
TREE PROTECTION LOCAL LAW

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



CITY OF BOROONDARA**TREE PROTECTION LOCAL LAW**

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



Explanatory Notes to Figure 5:

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

CITY OF BOROONDARA**TREE PROTECTION LOCAL LAW**

ENDNOTES:

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

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

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

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

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



CITY OF BOROONDARA

TREE PROTECTION LOCAL LAW

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

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

[6596534: 15616717_1]

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TREE PROTECTION LOCAL LAW

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TREE PROTECTION LOCAL LAW

 TREE PROTECTION LOCAL LAW

PART A - INTRODUCTION

1 Title

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

2 Purpose of this Local Law

The objectives of this Local Law are to:

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

3 Authorising Provision

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

4 Commencement Date

This Local Law begins on ~~25 November 2006~~.

5 Sunset (Revocation) of this Local Law

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

6 Application of this Local Law

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

7 Definitions in this Local Law

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

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

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

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

“**Canopy Tree**” means any tree:

-
with a total trunk circumference of 110cm or more measured at a point ~~approximately~~ 1.5 metres along the trunk’s length from the closest point above from the ground level;
or
which is if multi-stemmed, with a total trunk circumference of all its trunks of 110cm or

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~~more measured at a point 1.5 metres along the trunks's lengths from the closest point above ground level; or~~

~~with a trunk circumference of 150cm or more measured at ground level.;~~

~~(See Schedule 1, diagrams 1 and 2)~~

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

~~“**Damage**” means to interfere with or *prune* a *significant tree* or a *canopy tree* such that the tree is no longer viable in terms of health, structure or stability.~~

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

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

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

“**Land**” includes-

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

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

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

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

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

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

"**permit**" means a permit issued under this Local Law.

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

~~“**Prune**” means to remove any branches of a *significant* tree which are greater than 50~~

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mm in diameter at the point of contact with the larger branches or the trunk.

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

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

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

“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. (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 1.5 metres above ground level, to a maximum of 15 metres. (See Schedule 1, diagram 3)

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

PART B – THE CONTEXT OF THIS LOCAL LAW

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

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

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

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

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

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TREE PROTECTION LOCAL LAW

PART C – TREE PROTECTION

8 Protection of Trees

(1) This clause applies to:

(a) any *Significant Tree*; ~~and~~

(b) any *Canopy Tree*; ~~and~~

~~(c) any multi-stemmed tree where the total circumference of all its stems measured at 1.5m from the ground equals or is greater than 110 cm (centimetres);~~

where the tree, as described above, is situated on any *Private Land*. ~~For the avoidance of doubt, this clause only applies to a *significant tree* or a *canopy tree* where the trunk of a tree is located on *private land* and where part of the *significant tree* or *canopy tree* (whether above ground or below ground) extends onto another parcel of *private land*.~~

~~Note: See Figures 1 and 2.~~

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

(3) A person must not without a *permit*:

(a) remove, ~~lopp~~*prune*, *damage*, kill or destroy or direct, authorise or allow to be removed, ~~lopped~~*pruned*, *damaged*, killed or destroyed 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*, near a *significant tree* to which this clause applies where any part of such *works* takes place within the *critical root zone* or encroaches on more than one quarter (1/4) of the outer edge of the *crowd dripline*.~~

~~(b) Note: See Figures 3 and 4~~

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

~~(d) carry out, or direct, authorise or allow to be carried out any *works* within the *structural root zone* of a *canopy tree*.~~

~~(e) Remove, *damage*, kill or destroy or direct, authorise or allow to be removed, *damaged*, killed or destroyed a tree required to be planted as a condition of a *permit*.~~

Maximum Penalty: twenty (20) Penalty Units

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~~(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*.

~~(4)~~ —

(5) If a tree is interfered with in any of the circumstances specified in clause 8(3), the owner of any *private land* on which the tree is ~~located on, over or under~~ is guilty of an offence ~~(unless the part of the tree interfered with is located on nearby *private land* in which case the owner of that *private land* is guilty of an offence)~~, whether or not the person who actually interfered with the tree is identified or prosecuted, unless the owner can prove that the interference was undertaken by another party without ~~authorisation of the owner's~~ knowledge.

9 Power of Authorised Officer to Direct – Notice to Comply

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

10 Time to Comply

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

CITY OF BOROONDARA

TREE PROTECTION LOCAL LAW

(d) the name of the *Authorised Officer* who has given it.

PART D - ADMINISTRATION

11 Applications for Permits

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

~~(1) An application for a *permit* must be made in writing using a form prescribed by *Council* or an *authorised officer* from time to time 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 described in Clause 8(1) is located, the application must be accompanied by a document evidencing the owner's consent to the application for the *permit* being made.~~

~~(3) If required to do so by *Council* or an *authorised officer*, an applicant must provide additional information before *Council* processes an the application for a *permit* is considered.~~

12 Permits

(1) The *Council* or an *Authorised Officer* may, after considering the application for a *permit*:

- (a) grant a *permit*, with or without conditions;
- (b) refuse to grant a *permit*; or
- (c) determine that a *permit* is not required.

(2) In determining whether to grant a *permit* under this Local Law, the *Council* or *Authorised Officer* must take the following into consideration, to the extent it considers appropriate:

(a) the effect ~~on of the proposed action on the~~ the aesthetics of the neighbour~~hooding~~ ing area;

~~(b) whether the tree is a *significant tree*;~~

~~(c) The condition of the tree (i.e. its health and structural integrity);~~

~~(b)(d) The appropriateness of the tree for its location on the property having regard to the existing buildings and conditions on the property;~~

~~(e)(e) whether the proposed act ~~action~~ is to be undertaken for reasons of ~~for~~ health and or ~~or~~ safety reasons;~~

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- ~~(d)~~—whether the tree is causing any unreasonable property damage; ~~or giving rise to safety concerns;~~
- ~~(f)~~ ~~(g)~~ whether the tree is causing any unreasonable public nuisance or creating any ~~undue unreasonable~~ nuisance to ~~adjoining private property landowners~~ owners or occupiers;
- ~~(h)~~ whether the tree is a recognised weed;
- ~~(f)~~~~(i)~~ The nature of the zoning of the land under the Boroondara Planning Scheme;
- ~~(g)~~~~(j)~~ any legislative requirements; and
- ~~(h)~~~~(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 ~~critical root zone~~ tree protection zone of a significant tree or the structural root zone of a canopy tree or canopy tree, ~~whether those works are proposed to be undertaken pursuant to a planning permit or otherwise, , whether those works are proposed to be undertaken pursuant to a planning permit or otherwise,~~ the *Council* or an *Authorised Officer* may, by notice given to the Owner, require payment of a security bond to the Council.

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

14 Cancellation of a Permit(1) The *Council* or an authorised officer may cancel a *permit* if it considers that:

- (a) there has been a serious or ongoing breach of the conditions of the *permit*; or
- (b) a Notice to Comply has been issued, but not complied with within seven (7)

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days after the time specified in the notice for compliance; or

- (c) there was a significant error or misrepresentation in the application for the *permit*; or
 - (d) in the circumstances, the *permit* should be cancelled.
- (2) Before it cancels a *permit*, the **Council** or an *authorised officer* must provide to the holder of the *permit* ~~an~~ 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 ~~a *permit* has been issued in accordance with this Local Law but there are~~ the *authorised officer* has reasonable grounds for believing that a breach of this Local Law has been committed, ~~or~~ 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 in the opinion of the *Authorised Officer* is dead – 5 penalty units for each offence;
 - (b) for all other offences – 20 penalty units for each offence

17 Offences

- (1) A person who:
 - (a) fails to comply with any provision of this Local Law;
 - (b) fails to comply with a condition of a *permit*;
 - (c) fails to comply with a Notice to Comply issued under this Local Law; or
 - (d) submits wrong, inaccurate or misleading information in an application for a *permit* made under this Local Law

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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) of this Local Law 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 to ~~Council~~ at the time the application for the permit under this Local Law was made.

(3) If required to do so by Council ~~or an authorised officer~~, an applicant must provide additional information before Council determines an application for review.

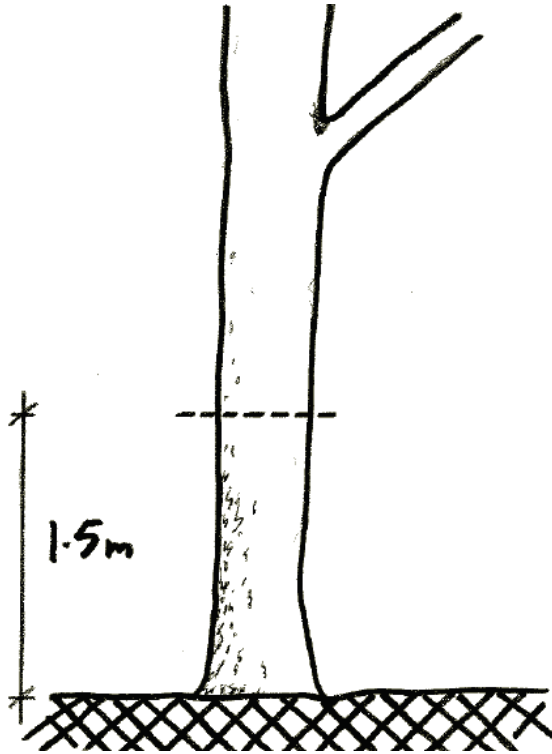
(4) If an application to review a decision is made in accordance with this clause, the review shall be undertaken by Council's Chief Executive Officer or such person as the Chief Executive Officer appoints for such purpose.

CITY OF BOROONDARA

TREE PROTECTION LOCAL LAW

Note: These diagrams will be updated to reflect the proposed draft Tree Protection Local Law (see Attachment 3)

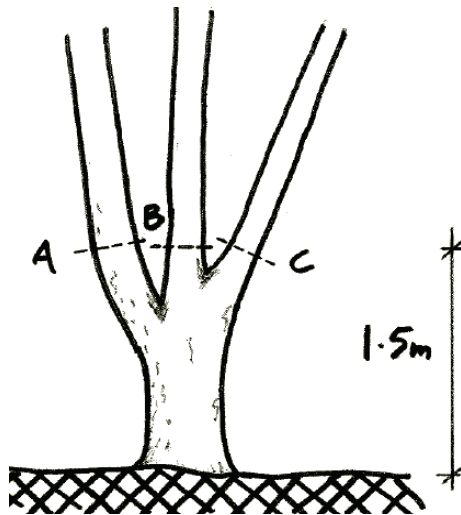
Figure 1. For single-stemmed trees, the trunk circumference is measured at 1.5 metres above ground level.



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

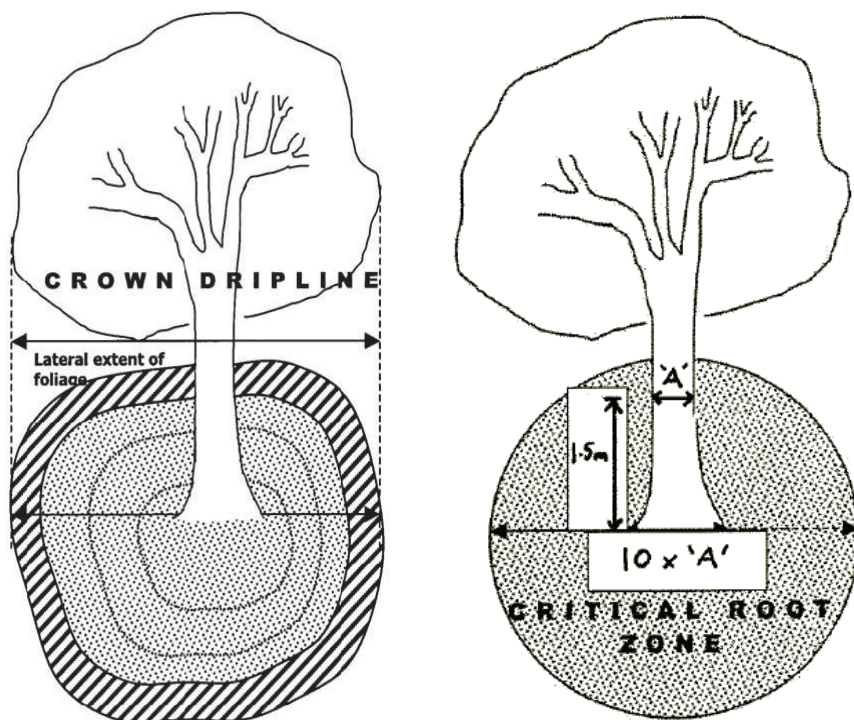


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Figure 3: Diagram illustrating how to determine the Crown Dripline and Critical Root Zone.



Explanatory Notes to Figure 3:

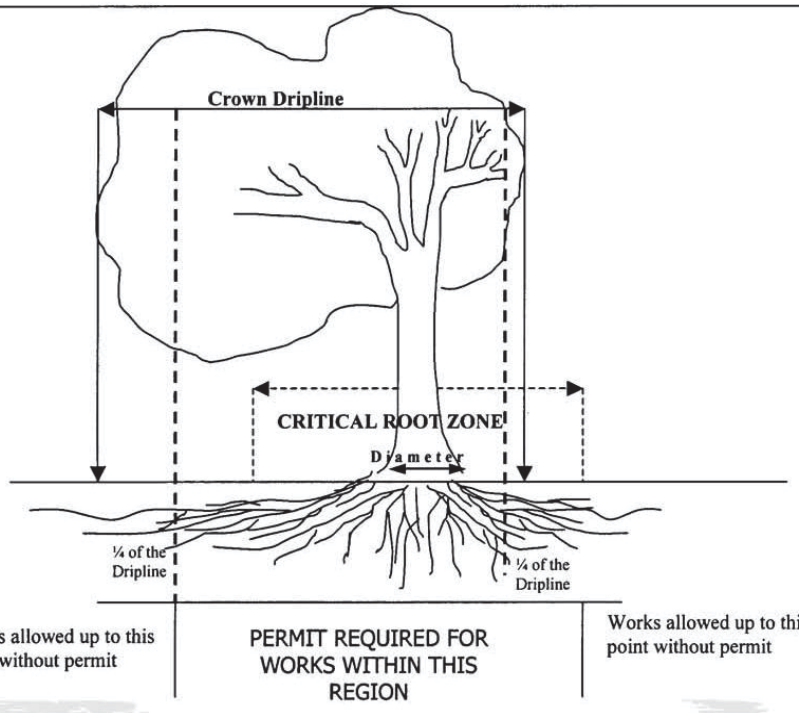
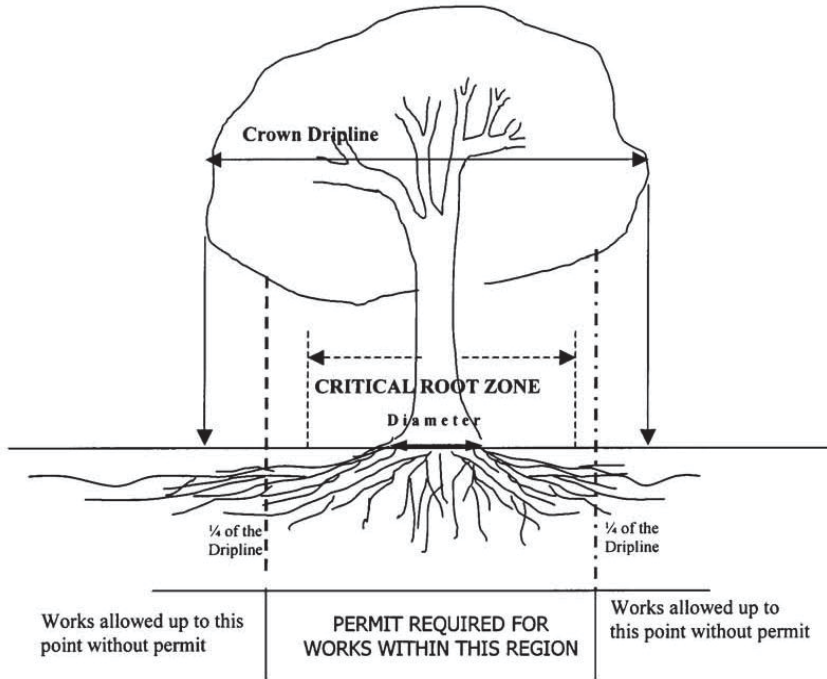
 Represents 1/4 of the Crown Dripline. Works are allowed in this section without a permit.

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

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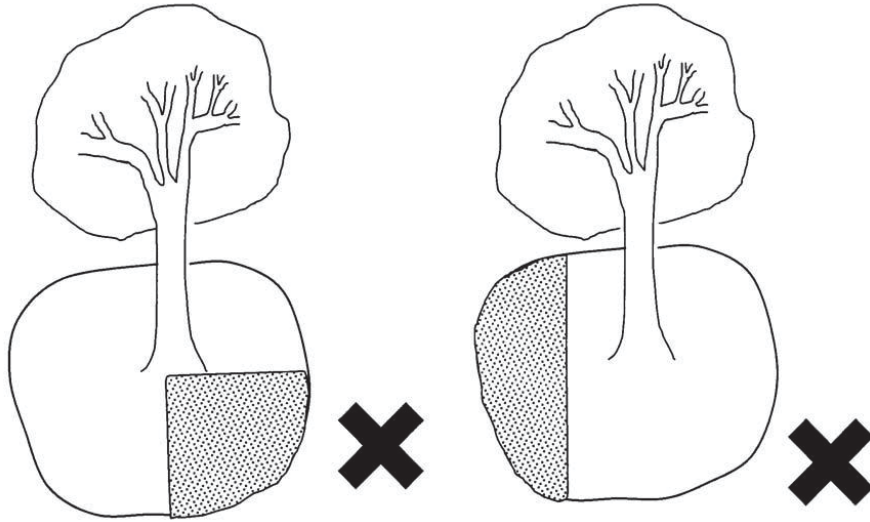
Figure 4: Determining when a permit is required for works.



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



Explanatory Notes to Figure 5:

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

CITY OF BOROONDARA**TREE PROTECTION LOCAL LAW**

ENDNOTES:

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

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

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CITY OF BOROONDARA

TREE PROTECTION LOCAL LAW

Date Resolved By Council

Date Amended By Council

Commencement Date:

Revocation Date:

Responsible Directorate: City Planning

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TREE PROTECTION LOCAL LAW

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CITY OF BOROONDARA

TREE PROTECTION LOCAL LAW

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

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

2 Purpose of this Local Law

The objectives of this Local Law are to:

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

3 Authorising Provision

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

4 Commencement Date

This Local Law begins on.

5 Sunset (Revocation) of this Local Law

This Local Law ends on unless sooner revoked.

6 Application of this Local Law

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

7 Definitions in this Local Law

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

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

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

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

“**Canopy Tree**” means any tree:

- a) with a total trunk circumference of 110cm or more measured at a point 1.5 metres along the trunk’s length from the closest point above ground level; or

CITY OF BOROONDARA

TREE PROTECTION LOCAL LAW

- b) if multi-stemmed, with a total trunk circumference of all its trunks of 110cm or more measured at a point 1.5 metres along the trunks' lengths from the closest point above ground level; or
- c) with a trunk circumference of 150cm or more measured at ground level. (See Schedule 1, diagrams 1 and 2)

“Council” means the Boroondara City *Council*.

“Damage” means to interfere with or *prune* a tree such that the tree is no longer viable in terms of health, structure or stability.

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

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

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

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

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

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

“Prune” means to remove any branches of a tree which are greater than 50 mm in diameter at the point of contact with the larger branches or the trunk.

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

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

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

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“**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. (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 1.5 metres above ground level, to a maximum of 15 metres. (See Schedule 1, diagram 3)

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

PART B – THE CONTEXT OF THIS LOCAL LAW

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

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

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

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

PART C – TREE PROTECTION**8 Protection of Trees**

(1) This clause applies to:

- (a) any *Significant Tree*; and

CITY OF BOROONDARA

TREE PROTECTION LOCAL LAW

- (b) any *Canopy Tree*

where the tree, as described above, is situated on any *Private Land*. For the avoidance of doubt, this clause only applies to a *significant tree* or a *canopy tree* where the trunk of a tree is located on *private land* and where part of the *significant tree* or *canopy tree* (whether above ground or below ground) extends onto another parcel of *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 Government Gazette.
- (3) A person must not without a *permit*:
- (a) remove, *prune*, *damage*, kill or destroy or direct, authorise or allow to be removed, *pruned*, *damaged*, killed or destroyed 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*, kill or destroy or direct, authorise or allow to be removed, *damaged*, killed or destroyed 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*.
 - (e) Remove, *damage*, kill or destroy or direct, authorise or allow to be removed, *damaged*, killed or destroyed a tree required to be planted as a condition of a *permit*.

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 is interfered with in any of the circumstances specified in clause 8(3), the owner of any *private land* on which the tree is on, over or under is guilty of an offence, whether or not the person who actually interfered with the tree is identified or prosecuted, unless the owner can prove that the interference was undertaken by another party without the owner's knowledge.

9 Power of Authorised Officer to Direct – Notice to Comply

- (1) An *Authorised Officer* may by Notice to Comply given to the owner of *private land* or any contractor or other person engaged in *works* on *private land* who appears to be in breach of this Local Law direct that owner, contractor or

CITY OF BOROONDARA**TREE PROTECTION LOCAL LAW**

other person to remedy any situation which constitutes a breach under this Local Law.

- (2) An **Authorised Officer** may by Notice to Comply direct a person who appears to be in breach of this Local Law to plant by way of replacement one or more trees of a type and in a location specified by **Council** or the **Authorised Officer**.

10 Time to Comply

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

PART D - ADMINISTRATION**11 Applications for Permits**

- (1) An application for a **permit** must be made in writing using a form prescribed by **Council** from time to time 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 described in Clause 8(1) is located, the application must be accompanied by a document evidencing the owner's consent to the application for the **permit** being made.
- (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.

12 Permits

CITY OF BOROONDARA

TREE PROTECTION LOCAL LAW

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- (4) The *Council* or an *Authorised Officer* may, after considering the application for a *permit*:
- (a) grant a *permit*, with or without conditions;
 - (b) refuse to grant a *permit*; or
 - (c) determine that a *permit* is not required.
- (5) In determining whether to grant a *permit* under this Local Law, the *Council* or *Authorised Officer* must take the following into consideration, to the extent it considers 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*

CITY OF BOROONDARA**TREE PROTECTION LOCAL LAW**

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

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

14 Cancellation of a Permit

- (1) The *Council* or an *authorised officer* may cancel a *permit* if it considers that:
 - (a) there has been a serious or ongoing breach of the conditions of the *permit*; or
 - (b) a Notice to Comply has been issued, but not complied with within seven (7) days after the time specified in the notice for compliance; or
 - (c) there was a significant error or misrepresentation in the application for the *permit*; or
 - (d) in the circumstances, the *permit* should be cancelled.
- (2) Before it cancels a *permit*, the *Council* 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

CITY OF BOROONDARA**TREE PROTECTION LOCAL LAW**

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

17 Offences

- (1) A person who:
 - (a) fails to comply with any provision of this Local Law;
 - (b) fails to comply with a condition of a **permit**;
 - (c) fails to comply with a Notice to Comply issued under this Local Law;
or
 - (d) submits wrong, inaccurate or misleading information in an application for a **permit** made under this Local Lawis guilty of an offence.
- (2) If no penalty is specifically provided 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) of this Local Law 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.

CITY OF BOROONDARA**TREE PROTECTION LOCAL LAW**

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- (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 shall be undertaken by Council's Chief Executive Officer or such person as the Chief Executive Officer appoints for such purpose.

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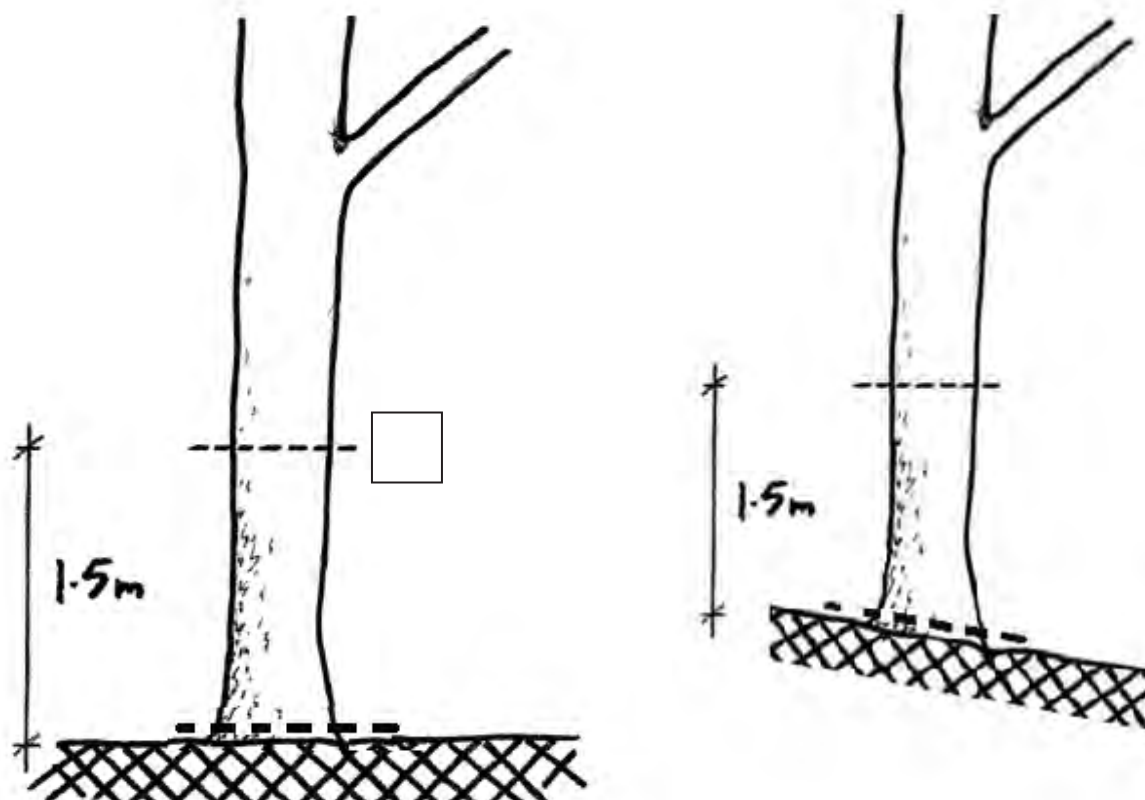
TREE PROTECTION LOCAL LAW

SCHEDULE 1 – 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 1.5 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.



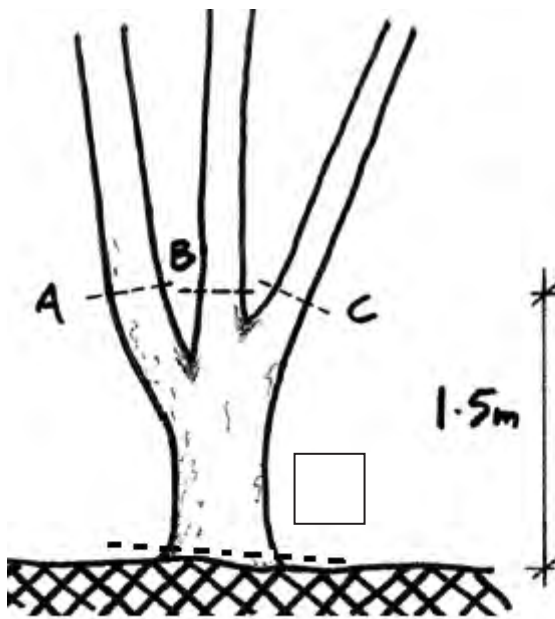
CITY OF BOROONDARA

TREE PROTECTION LOCAL LAW

Diagram 2 – Diagram illustrating how to determine whether a multi stemmed tree is a 'canopy tree':

For multi-stemmed trees, a tree is a canopy tree if:

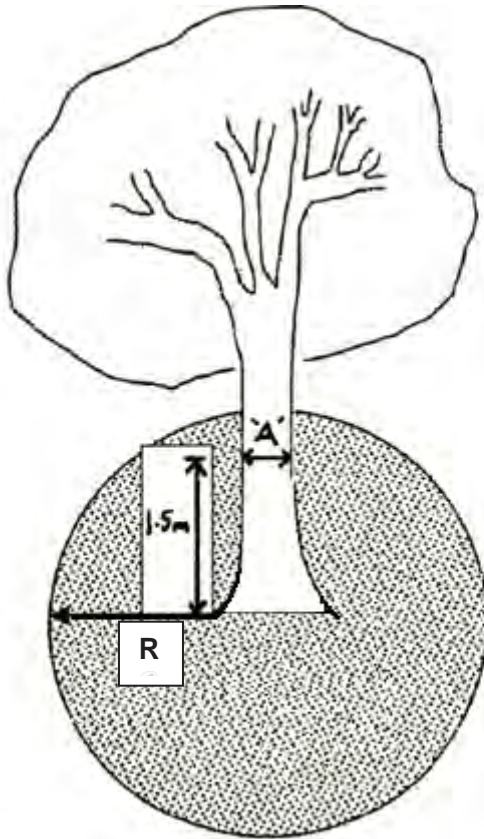
- The combined circumference at points 'A', 'B' and 'C' (which is 1.5 metres above ground level, measured along the trunks' length from the closest point above ground level) is 110 centimetres or more; or
- The circumference at point 'D' (which is at ground level) is 150 centimetres or more.



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Diagram 3 - Diagram illustrating how to determine the Tree Protection Zone:



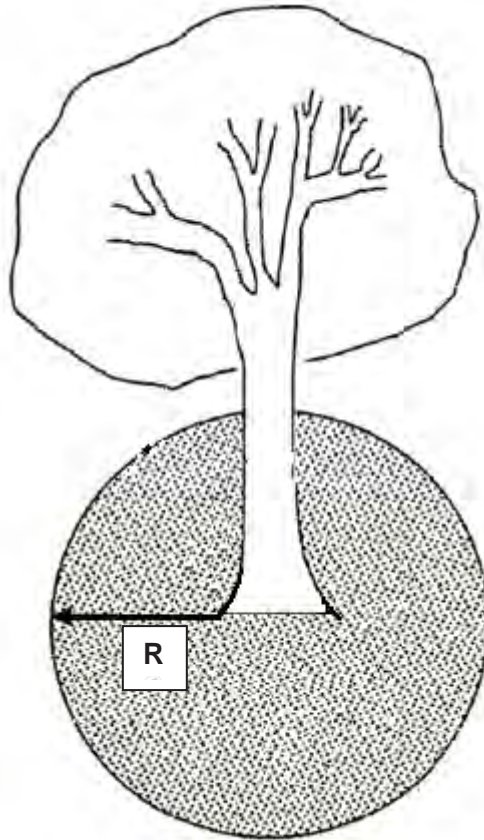
The Tree Protection Zone (TPZ) is based on 'R'.

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.

Tree Protection Local Law 1F – Assessment Guidelines – 18/8/2008



These guidelines have been prepared in order to clearly set out the way in which applications for permits will be assessed.

These guidelines require that in the assessment of an application for a permit, the officer consider three key elements. These are:

- a) The type of tree;
- b) the health, condition and hazard status of the tree; and
- c) the reason for the request to remove the tree.

Assessments made under these guidelines would be different according to the proposed works requiring the removal of a Canopy tree. The guidelines would provide separate assessment streams for Canopy trees and Significant trees, allowing more flexibility in the assessment of applications for removal of Canopy trees dependent upon the characteristics and surrounding circumstances of the subject tree. See below for the proposed Streamed Assessment guidelines under this option.

Assessments are to be guided by the overarching principle of the proposed local law which is to retain Significant Trees and Canopy Trees where practicable, while also seeking to safeguard the right of the current occupants of properties to the reasonable enjoyment of their property.

The guidelines will have regard to Clause 12 (2) of the Tree Protection Local Law No.1F, which is as follows:

“In determining whether to grant a permit under clause 8 of this Local Law, the Council must take the following into consideration:

- a) the effect on the aesthetics of the neighbouring area;
- b) whether the tree is a Significant Tree;
- c) whether the proposed act is for health and safety reasons;
- d) whether the tree is causing property damage or other safety issues;
- e) whether the tree is causing a public nuisance or creating an undue nuisance to adjoining landowners;
- f) whether the tree is a recognised weed;
- g) any legislative requirements within any Act; and
- h) any other matter relevant to the circumstances associated with the application.”

Certainty for Property Owners

The guidelines, as they apply to Canopy Trees, include a hierarchy of need in relation to the most common improvements undertaken on home sites (see Assessment Stream B). The purpose of this hierarchy is to identify how the Council officer will exercise discretion in assessing permit applications which have been made due to a proposed dwelling, or due to proposed improvements to an existing dwelling.

In regards to improvements to a property which provide for the reasonable enjoyment of the property by its occupants, and which are used as the justification for the request to remove a tree, the guidelines seek to provide direction regarding the core improvements undertaken on residential properties. These are:

- new dwellings
- alterations and additions to existing dwellings (including extensions to the dwelling, and structures such as garages and carports)
- swimming pools
- patios and decks
- tennis courts

Assessment Streams

Assessment of applications will follow one of three streams, depending on the type, location and condition of the tree. The three streams of assessment are found in Table 1. Details of the assessment to be undertaken for each stream are explained below.

Table 1. Assessment Streams

Criteria	Assessment Stream
The subject tree is a Significant Tree.	A
The subject tree is a Canopy Tree located on a residential allotment, and is in good condition, is suitable to the site, and is not causing unreasonable damage to property or persons.	B
Other Canopy Tree.	C

Assessment Stream A

Significant Trees - Removal

A tree listed in Council's Significant Tree Study must not be removed unless:

- it is dead or dying;
- it is structurally unsound and cannot be made safe through recommended arboricultural techniques;
- it poses a hazard which cannot be alleviated through means other than removal;
- it is causing structural damage to private or public assets which cannot be alleviated through means other than removal;
- the works are to be carried out in order to comply with any other legislation.
- A detailed report is provided by a suitably qualified and experienced arborist justifying the removal of a tree to Council's satisfaction

Permits for removal will require replacement planting to Council's satisfaction.



Significant Trees - Pruning

Pruning means the removal of branches over 100mm in diameter.

A tree listed in Council's Significant Tree Study must not be lopped / pruned unless:

- the branch/es to be removed are dead or dying;
- the branch/es to be removed pose a hazard which cannot be alleviated through means other than removal;
- the branch/es to be removed are causing structural damage to private or public assets which cannot be alleviated through means other than removal;
- the works are to be carried out in order to comply with any other legislation;
- the pruning is carried out by a qualified arborist according to AS 4373-1996 / 2007, Pruning of Amenity Trees.

Significant Trees – Earth Works

Works must not be carried out within the Critical Root Zone (CRZ), or must not encroach on more than ¼ of the outer edge of the crown dripline of a tree listed in Council's Significant Tree Study unless:

- The works to be carried out are proposed in order to alleviate damage being caused by the tree which cannot be alleviated through any other means;
- the works are to be carried out in order to comply with any other legislation;
- The arborist's report submitted as part of the application demonstrates to Council's satisfaction that the proposed works will be carried out in such a way that there will be no damage to the tree.

A permit allowing works within the CRZ or which encroaches on more than ¼ of the outer edge of the crown dripline of a Significant Tree must specify that the works should be carried out in the presence of a qualified arborist and in accordance with the recommendations of the arborist's report submitted, or in accordance with the recommendations of Council's arborist.

Assessment Stream B

Under this assessment stream, the officer will give consideration to the current owners of the property and their rights to the reasonable enjoyment of that property, and the necessity of the works proposed. Regarding new dwellings and proposed works such as additions and alterations to dwellings the officer must seek an outcome which meets the purpose and principles of the proposed local law without negatively impacting upon the reasonable enjoyment of the property.

Where trees are proposed to be removed in order to construct a new dwelling, or to carry out improvements to a dwelling including extensions to dwellings, garages, carports, swimming pools, tennis courts, decks, and patios, on a separate allotment, and the subject tree/s are found to be in good condition, suitable to the site, and not causing damage to property or persons, the assessment will be made using Table 2 below.

Canopy Trees - Removal

Table 2. Assessment method for tree removal, Stream B.

Works proposed	Assessment	Outcome
New dwelling, or alterations and additions to existing dwellings including extensions to the dwelling.	The applicant can demonstrate to Council's satisfaction that the proposed works cannot be redesigned and that appropriate arboricultural techniques as detailed in the submission of an arborist report cannot be employed in order to retain the tree.	Approval
	The applicant cannot satisfy the above requirement.	Refusal
Tennis courts, patios and decks, garages, carports and swimming pools.	The proposed works cannot incorporate retention of the subject tree.	Refusal
Multi-unit Development	The proposed works cannot incorporate retention of the subject tree.	Refusal

Assessment Stream C

The following guidelines apply to applications for permits to remove a Canopy tree where the tree is located on non-residential land, and to applications for permits to remove a Canopy tree which is located on residential land and is any of the following:

- not in good condition;
- not suitable to the site;
- causing unreasonable damage to persons or property.

Canopy Trees – Removal

- Where it is evident that trees are dead, dying, dangerous or causing unreasonable structural damage a permit for removal will be issued within 24 hours.
- A tree which is in poor condition and not suited to its location may be removed following the issue of a permit requiring the provision of replacement tree/s in a more suitable location, to the satisfaction of Council.
- A tree which is in good condition, not suited to its location, and is not causing unreasonable damage or nuisance must only be removed subject to the issue of a permit which requires provision of replacement tree/s in a more suitable location, to the satisfaction of Council.
- A tree which is in good condition but is not suited to its location because it is causing unreasonable damage or nuisance may be removed following the issue of a permit which requires provision of replacement tree/s in a more suitable location, to the satisfaction of Council.

- A tree which is suited to its location but which is in poor condition may be removed, providing its condition cannot be improved through other means, and following the issue of a permit which requires provision of replacement tree/s, to the satisfaction of Council.
- Where the tree is located on non-residential or residential land and the tree makes a contribution to Boroondara's overall tree canopy character, is found to be in good condition, suitable to the site, and not causing unreasonable damage to property or persons, the application will be refused. In all other instances the tree may be removed following the issue of a permit which requires provision of replacement tree/s, to the satisfaction of Council.

Canopy Trees – Pruning of a Canopy Tree does not require a permit under Local Law 1F.

Canopy Trees – Earth works

Earth works within the Critical Root Zone or Crown Dripline of a Canopy Tree do not require a permit under Local Law 1F.

Replacement Trees

Council will determine whether or not a tree is to be replaced during assessment of the application. Where trees are to be replaced, the location, species, number of trees, site preparation, planting method and maintenance regime must be to the satisfaction of Council. In determining satisfaction, the Officer should have regard to Council's Biodiversity Strategy and other relevant policies. Conditions relating to replacement trees would appear on the local laws permit, and planning permit (if required).

Where replacement trees are to be planted as a result of a permit application they must be maintained for two (2) years and be in good condition after this period. The plans submitted by an applicant for building approval should include details of

- species type, number and size;
- site preparation;
- planting method;
- Maintenance regime for two (2) years.

All materials, establishment and maintenance practices will be accepted industry standards. Relevant Australian Standards will be used as appropriate.

Clause	Description of amendment	Officer assessment and discussion														
7	Change to definition of the term <i>canopy tree</i> to include an additional measurement at the tree's base to improve enforcement.	<p>These amendments will improve the functionality of the Local Law and remove current ambiguity. These changes will not result in any substantive change to how a canopy tree is measured under the current Local Law.</p> <p>Officers investigate numerous cases of alleged removal of canopy trees without permits. Often, trees are removed below 1.5 metres above ground level which makes taking enforcement action difficult. The inclusion of an additional measurement for a canopy tree at its base will enable officers to take enforcement action in circumstances where a canopy tree is removed below 1.5 metres above ground level but where the tree stump remains. Based on Council's arborists' professional view, a circumference of 150 cm generally equates to a circumference of 110 cm at 1.5 metres. Therefore, this amendment will be unlikely to result in a significant number of additional trees requiring a permit under the Local Law.</p> <p>As part of this review of the Local Law, Officers have reviewed other Councils' equivalent Local Laws, being the cities of Stonnington, Bayside, Frankston, Yarra, Kingston and Port Phillip. The measurements in their Local Laws is summarised as follows:</p> <p>Table 1 - Measurements of trees requiring Local Law permits</p> <table border="1" data-bbox="748 1038 1827 1347"> <thead> <tr> <th>Council</th> <th>Measurement</th> </tr> </thead> <tbody> <tr> <td>Bayside</td> <td>150 cm circumference at 1 metre above ground level</td> </tr> <tr> <td>Frankston</td> <td>110 cm circumference at ground level</td> </tr> <tr> <td>Kingston</td> <td>110 cm circumference at ground level</td> </tr> <tr> <td>Port Phillip</td> <td>150 cm circumference at 1 metre above ground level</td> </tr> <tr> <td>Stonnington</td> <td>140 cm circumference at 1.5 metres or 180 cm circumference at ground level</td> </tr> <tr> <td>Yarra</td> <td>126 cm circumference at 1.5 metres above ground level</td> </tr> </tbody> </table>	Council	Measurement	Bayside	150 cm circumference at 1 metre above ground level	Frankston	110 cm circumference at ground level	Kingston	110 cm circumference at ground level	Port Phillip	150 cm circumference at 1 metre above ground level	Stonnington	140 cm circumference at 1.5 metres or 180 cm circumference at ground level	Yarra	126 cm circumference at 1.5 metres above ground level
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Attachment 5 - Officer assessment of proposed amendments to current *Tree Protection Local Law*

Clause	Description of amendment	Officer assessment and discussion
		<p>As this table shows, there is variation between councils. Bayside, Port Phillip, Stonnington and Yarra’s measurements are all for larger trees, whereas Frankston and Kingston’s measurements are for smaller trees.</p> <p>As part of this review of the Local Law, officers have carefully considered whether a change to the measurement of a canopy tree in the current Local Law is warranted. Officers are of the view that the current measurement of a canopy tree remains appropriate as it maintains a fair balance between protecting the treed character of the municipality and removal of smaller trees without a permit.</p> <p>Decreasing the measurement would likely result in an increase in the number of applications and a need to increase resources required to administer the Local Law. The current measurement of a canopy tree are also well-known by the community, landowners, arborists, town planners and other professionals over nine years of operation of the Local Law. Any change to the measurement therefore would need to be balanced against this consideration, given it would require substantial resources to publicise this change and would undoubtedly lead to confusion.</p> <p>Increasing the measurement would result in fewer larger trees requiring a permit. Officers are of the view that increasing the measurement would not be consistent with community expectations for the protection of canopy trees in the municipality.</p>
	<p>Change to the definition of the term <i>works</i> to better reflect the activities that have the potential to impact upon trees</p>	<p>The term ‘works’ has been updated to include compaction, soil fill and storage of materials and equipment. Officers are of the view that this revised definition better reflects potential actions that often adversely affect trees. The revised definition will be consistent with that contained in other councils’ equivalent Local Laws and will better reflect the risks to trees set out in Australian Standard AS 4790:2009 (Protection of Trees on Development Sites).</p>

Attachment 5 - Officer assessment of proposed amendments to current *Tree Protection Local Law*

Clause	Description of amendment	Officer assessment and discussion
	Inclusion of a new definition of the term <i>damage</i> to make clear what constitutes damage to a tree.	The Local Law currently does not provide any guidance for what constitutes 'damage' to a tree. It is officers' experience that this can cause uncertainty when considering taking enforcement action in circumstances where a tree has been allegedly damaged. It is proposed to add a new definition of the term 'damage' to clarify this offence and improve the ability for Council to take enforcement action in cases where a tree has been interfered with in such a way that the tree is unviable but has not been 'removed', 'destroyed' or 'killed'.
	Change to the definition of <i>land</i> to facilitate the amendments that clarify that the Local Law also applies to trees located on adjoining properties.	This change has been recommended by Council's solicitors to give effect to the amendments that clarify that the Local Law also applies to trees located on adjoining properties which is discussed in detail on Page 5 of this attachment.

Attachment 5 - Officer assessment of proposed amendments to current *Tree Protection Local Law*

Clause	Description of amendment	Officer assessment and discussion
	<p>Inclusion of new definitions of the terms <i>prune</i>, <i>structural root zone</i> and <i>tree protection zone</i> and deletion of the terms <i>critical root zone</i>, <i>crown</i>, <i>crown dripline</i> and <i>lop</i> as a result of changes to offences in Clause 8(3) and to ensure consistency with Australian Standards and current arboricultural industry best practice.</p>	<p>The references to ‘tree protection zone’ (TPZ) and ‘structural root zone’ (SRZ) will bring the Local Law into line with the definitions and descriptions within AS 4970:2009. This change will also necessitate amendments to the offences under the Local Law (discussed on the following pages).</p> <p>The terms TPZ and SRZ are now widely used and understood by both arborists and town planners. AS 4970:2009 came into effect after the commencement date of the existing Local Law and is now regarded as standard practice in the arboricultural industry. Officers are of the view that updating the Local Law to reference TPZs and SRZs will improve the operation and understanding of the Local Law within the arboricultural industry and ensure consistency with this Australian Standard.</p> <p>The term ‘critical root zone’ (CRZ) is now no longer used and officers therefore consider it should be deleted. Given the proposed changes to offences relating to significant trees (discussed on the following pages), the terms ‘crown’ and ‘crown dripline’ are redundant and therefore should be deleted.</p> <p>The current Local Law contains a definition of the term ‘lop’. Lopping is a form of pruning which is generally considered unacceptable by AS 4373:2007 (Pruning of Amenity Trees). When compared with the definition in this AS, the definition in the current Local Law is incorrect. Officers therefore consider that the term ‘lop’ should be replaced with the term ‘prune’. Consequently, this will result in it being an offence to ‘prune’ a significant tree instead of to ‘lop’ a significant tree (discussed on the following pages). Officers consider that this amendment will improve the understanding of the Local Law and ensure consistency with this AS.</p>

Attachment 5 - Officer assessment of proposed amendments to current *Tree Protection Local Law*

Clause	Description of amendment	Officer assessment and discussion
8(2)	Clarification that amendments to the 'significant tree study' takes effect when notice is published in the Government Gazette.	This change has been recommended by Council's solicitors to make reference to the current legislative process for making an amendment to a document incorporated into a Local Law. This will not change the operation of the proposed Local Law.
8(1) & 8(3)(c)	Deletion of Clause 8(1)(c) and update to Clause 8(3)(c) as a result of the change to the definition of a <i>canopy tree</i> .	This change is necessary as a result of the change to the definition of 'canopy tree'.
Below 8(1)	Amendments to clarify that the Local Law also applies to trees located on adjoining private properties.	<p>This amendment clarifies that the Local Law applies in circumstances where a tree's roots or canopy extends onto a nearby private property. This is consistent with how Council currently administers and enforces the Local Law. This amendment will remove any ambiguity and will enable officers to take enforcement action if a tree on adjoining property is interfered with.</p> <p>It is noted that this amendment will not mean that the Local Law will apply to a significant tree or canopy tree located on Council-controlled land and which extends into nearby privately owned properties (or vice-versa). This approach will be consistent with the existing interpretation of the current Local Law applied by officers.</p>
8(3)	<p>Changes to make it an offence to:</p> <ul style="list-style-type: none"> • <i>Prune</i> (rather than <i>lop</i>) a significant tree, without a permit, to clarify the offence. 	This amendment will provide Council with additional control over the pruning of significant trees, compared with the current Local Law which allows branches of significant tree to be lopped/pruned if they have a diameter of less than 100 mm where they join a larger branch. It is not likely that these changes will result in a significant increase in applications given the low numbers of applications that are currently received that relate to significant trees.

Attachment 5 - Officer assessment of proposed amendments to current *Tree Protection Local Law*

Clause	Description of amendment	Officer assessment and discussion
	<ul style="list-style-type: none"> Undertake works within the <i>tree protection zone</i> of a significant tree without a permit (rather than within the <i>critical root zone</i> or which encroaches into more than one quarter of the <i>crown dripline</i>) and to update and clarify the offence. 	<p>This amendment results from the proposed changes to the definitions described on the previous pages. The change to reference from CRZ to TPZ will result in a permit being required to undertake buildings and works for a larger area beneath a significant tree. While this will marginally increase the number of applications being required for such works, officers are of the view that this is reasonable because it will give Council greater control over buildings and works which could impact on the viability of a significant tree, and will ensure consistency with both Australian Standards. By way of background, there are around 125 significant trees with a current proposal to add 53 further trees (or groups of trees). Applications relating to significant trees therefore do not form a large part of current administration and enforcement of the Local Law.</p> <p>It should be noted that the current Local Law allows for works to occur within one quarter of the crown dripline of a significant tree, without a permit. This is not considered an appropriate practice under AS 4970:2009. Therefore, these amendments will update the Local Law and remove reference to past practices.</p>

Attachment 5 - Officer assessment of proposed amendments to current *Tree Protection Local Law*

Clause	Description of amendment	Officer assessment and discussion
	<ul style="list-style-type: none"> Undertake works within the <i>structural root zone</i> of a canopy tree without a permit, where previously this was not an offence (but may have constituted <i>damage</i> or <i>destruction</i> of a canopy tree). 	<p>Officers consider that this amendment, which will require a permit for works within 2 metres of a canopy tree, will provide Council with additional control over activities which could potentially result in the damage or destruction of a canopy tree. This provision will enable officers to assess proposed works within the SRZ and include conditions on a permit requiring certain construction methods to be used, if appropriate. Officers acknowledge that this amendment will result in an increase in control over canopy trees, however officers are of the view that this change is consistent with community expectations for protection of canopy trees.</p> <p>Officers are of the view that the increase in applications can be absorbed within current resources. In many cases, works are proposed within the SRZ of a canopy tree as a result of a planning application. In such cases, the planning application would be referred to Council's Arborists for assessment. Therefore, Council's Arborists would likely be familiar with the circumstances of the application and in many cases the impact would have already been assessed.</p>
	<ul style="list-style-type: none"> Remove a replacement tree required to be planted as a condition of a permit issued under the Local Law, to tighten control over replacement planting. 	<p>Officers consider that this new offence will tighten control over replacement planting required by permits issued under the Local Law. Officers consider that this amendment is warranted as it will enable officers to take enforcement action in circumstances where a landowner has maintained the replacement tree for the required period of time under the permit condition, but then removes the tree.</p> <p>Officers are of this view that this amendment is consistent with community expectations regarding ongoing maintenance and enforcement of replacement tree planting.</p>

Attachment 5 - Officer assessment of proposed amendments to current *Tree Protection Local Law*

Clause	Description of amendment	Officer assessment and discussion
8(4)(b)	Inclusion of an additional exemption relating to instructions or directions from an authorised officer to allow trees to be removed or pruned without a permit in situations involving emergencies (such as trees damaged by storms or strong winds).	<p>Exempting actions undertaken at the direction of an authorised officer will improve the operation and efficiency of the Local Law. This provision will allow the removal or pruning of trees required immediately as a result of storms, accidents or similar circumstances. Officers consider emergency situations to be circumstances where a tree has been damaged or has partially failed (for example due to strong winds or storms) and therefore needs to be immediately removed or pruned to ensure safety of life or property. This exemption would not be exercised by officers unless the tree was causing an immediate risk to life or property.</p> <p>Officers have also considered whether an exemption should be included for the removal of weed species. Officers are of the view that introducing such an exemption could lead to confusion as the general public do not necessarily have the knowledge to identify species of trees. Furthermore, Officers are also concerned that such an exemption could lead to persons removing trees and subsequently claiming that the tree was a weed species.</p> <p>There are also potential difficulties with how weeds would be exempted. This is because there are numerous different types of weeds and many trees may be weeds in some areas but not in others. For example, Council’s <i>Guide to Recognising and Controlling Weeds</i> lists oak and elm trees as environmental weeds, but only if planted close to bushlands, waterways or native grasslands.</p> <p>While Council could exempt plants on the State Government’s <i>Victorian Noxious Weeds List</i>, most plants on this list are small plants and shrubs (such as thistles and cacti) rather than large trees. Officers are therefore of the view that there would be limited value in exempting plants on this list.</p>

Attachment 5 - Officer assessment of proposed amendments to current *Tree Protection Local Law*

Clause	Description of amendment	Officer assessment and discussion
8(5)	Amendments as a result of the change at Clause 8(1) to clarify that the Local Law applies to trees located on adjoining private properties and to clarify who is responsible for the offence.	This change is as a result of the amendments to Clause 8(1). This change ensures that the owner of the land where the interference to the tree occurred is guilty of an offence.
11	Inclusion of new subclause (1) to require an application for a permit to use a standardised application form and be accompanied by the correct fee, to formalise the process and refer to Council's adopted fee.	The Local Law currently does not provide for clauses detailing how an application is made and what information should be provided with an application. This amendment is an administrative change which will improve the functionality and efficiency of the Local Law and ensure consistency with Council's current Amenity Local Law which contains a similar provision.
	Renumbering of Clause 11 to Clause 11(2) as a result of the amendments to the Clause.	The current Clause 11 will be retained as Clause 11(2).
	Inclusion of new subclause (3) to enable further information to be requested, to formalise the current process.	This amendment will formalise the ability to request further information in respect to applications, ensuring informed decisions can be made.

Attachment 5 - Officer assessment of proposed amendments to current *Tree Protection Local Law*

Clause	Description of amendment	Officer assessment and discussion
12(2)	Inclusion of the words ' <i>to the extent it considers appropriate</i> ' in the header of Clause 12(2) to make clear not all criteria are relevant in all circumstances.	This clause has been amended as a result of benchmarking with other councils' equivalent Local Laws. This amendment provides officers with discretion to have regard only to the relevant criteria associated with the application being assessed.
	Update to wording of the criterion at Clause 12(2)(a), to improve the overall operation and intent of this criteria.	This amendment includes the words ' <i>of the proposed action</i> ' within the criterion. This amendment is a result of benchmarking with other councils' equivalent Local Laws. This amendment will not change the overall operation or intent of this criterion. Officers are of the view that the proposed wording is superior to that in the current Local Law as it is clearer and will be consistent with other Councils' equivalent Local Laws.
	Insertion of new criterion at Clause 12(2)(c) to specially provide for consideration of a tree's condition (to reflect Council's adopted tree assessment guidelines), and re-word remaining subclauses accordingly.	<p>This new criterion clarifies that the condition of a tree is a relevant consideration. It should be noted that assessment of a tree's condition (being its health, form and structure) is undertaken for every application made under the current Local Law. This amendment will therefore formalise existing practices. This amendment will also ensure consistency with the two Australian Standards, which both provide that assessment of a tree's health, growth habit, structure, stability and growing environment is one of the first steps in assessing any tree.</p> <p>It should also be noted that assessment of pre-European settlement trees follows the same assessment criteria as other canopy trees, including their health, form and structure. Trees that are very old are more likely to present faults or hazards such as dead wood, over-extended branches and decay. If these faults cannot be rectified through pruning or other reasonable measures, application of the Local Law criteria and Council's adopted assessment guidelines may lead to a decision to issue a permit. To introduce a separate criterion that 'raises the bar' for pre-European settlement trees may create a significant risk for Council and the community.</p>

Attachment 5 - Officer assessment of proposed amendments to current *Tree Protection Local Law*

Clause	Description of amendment	Officer assessment and discussion
	Insertion of new criterion at subclause 12(2)(d) to specifically provide for consideration of the appropriateness of a tree for its location on a property having regard to existing development on the property (to reflect Council's adopted tree assessment guidelines).	This new criterion will enable officers to specifically consider the appropriateness of the tree for its location on the subject property. In officers' experience, this is an important consideration especially when dealing with applications to remove large trees which may or may not be appropriate depending on where they are located on a particular property. Although already included, the exercise of discretion under this criterion will be guided by proposed updates to Council's Adopted Assessment Guidelines, which will be undertaken in 2016 during the latter part of the process to make a new Local Law. Council's Arborists' professional knowledge of the risks and dangers associated with particular types of trees is will also be important when assessing an application under this subclause.
	Update to wording of the criterion at Clause 12(2)(e) (previously subclause (c)) with no change to the overall operation or intent of this criterion.	This amendment includes the words ' <i>whether the proposed action is to be undertaken</i> ' within the criterion. This amendment is a result of benchmarking with other councils' equivalent Local Laws. This amendment will not change the overall operation or intent of this criterion. Officers are of the view that the proposed wording is superior to that in the current Local Law as it is clearer and will be consistent with other Councils' equivalent Local Laws.
	Change to wording of the criterion at Clause 12(2)(f) (previously subclause (d)) to refer to ' <i>unreasonable</i> ' property damage and delete the words ' <i>or giving rise to safety concerns</i> ' to remove duplication with the criterion at subclause (e).	Officers consider the removal of the reference to safety concerns is appropriate given this matter is already addressed by subclause (d). The inclusion of the word ' <i>unreasonable</i> ' will provide officers with clearer discretion to consider the nature and extent of damage being caused by a tree before this criterion is satisfied. Exercising discretion under this criterion will require Council's Arborists to have regard to the type of tree and the level of damage the tree is causing.

Attachment 5 - Officer assessment of proposed amendments to current *Tree Protection Local Law*

Clause	Description of amendment	Officer assessment and discussion
	<p>Change to wording of criterion at Clause 12(2)(g) (previously subclause (e)) to refer to 'unreasonable' nuisance.</p>	<p>This change will allow officers to consider the nature and extent of any nuisance before this criterion is satisfied. Officers note that all trees are capable of causing some degree of nuisance, such as dropping leaf litter, fruit or seeds. This revised criterion will enable Council's arborists to consider the nature and extent of the nuisance having regard to matters such as the type of tree, the level of nuisance and the position of the tree on the property.</p>
	<p>Insertion of new criterion at subclause 12(2)(i) to allow consideration of the zoning of the land, to allow a distinction to be made between residential and commercial areas.</p>	<p>This change will enable officers to have regard to the zoning of the land under the Boroondara Planning Scheme. Officers are of the view that there should be different considerations for tree removal in commercial areas given that the Boroondara Planning Scheme sets out different land use and development expectations for commercial land. It is not proposed that this new subclause will have any impacts upon the way applications on residentially-zoned land are assessed.</p> <p>The exercise of discretion under this criterion will be guided by proposed updates to Council's Adopted Assessment Guidelines (proposed to occur in 2016, in the later part of this process to make a new Local Law).</p>
13(1)	<p>Update to the security bond provisions to reflect the amendments to offences at Clause 8(3) and reflect updated definitions.</p>	<p>Clause 13 of the Local Law sets out security bond provisions when works are proposed in the CRZ of a significant or canopy tree. Given the changes to Clause 8(3) of the Local Law and to the definitions as already described in this attachment, this provision needs to be amended to remove reference to CRZ, and instead refer to the SRZ of a canopy tree and the TPZ of a significant tree.</p> <p>These are consequential amendments required as a result of other amendments to the Local Law. The overall operation and intent of this clause will be maintained. Permits currently issued under the Local Law for works within the CRZ of a significant tree would be subject to conditions which are enforceable under Clause 18(1)(b), in any case.</p>

Attachment 5 - Officer assessment of proposed amendments to current *Tree Protection Local Law*

Clause	Description of amendment	Officer assessment and discussion
14	Amendments so that authorised officers as well as Council have the ability to cancel a permit, so as to be consistent with the remainder of the proposed (and current) Local Law and to include the word 'reasonable' in Clause 14(2).	<p>This amendment will enable authorised officers to cancel a permit issued under the Local Law. There have rarely been circumstances where officers have considered that cancellation of a permit is justified. However, this amendment will enable officers to cancel a permit in accordance with Clause 14(1) if the circumstances warrant such action. Exercising discretion to make such a decision would be limited to the Manager Statutory Planning in consultation with the Director City Planning.</p> <p>Inclusion of the word 'reasonable' in Clause 14(2) has been recommended by Council's solicitors to reflect current practice and ensure that Council and officers exercise this discretion appropriately in the circumstances of each case. This will not change the operation or intent of this provision.</p>
15	Insertion of new Clause 15(2) to enable an authorised officer to enter land where an application under the Local Law has been made. Clause 15 in the current Local Law will be retained as Clause 15(1), but with changes to the circumstances where authorised officers can enter land.	<p>This amendment is an administrative change which will allow an authorised officer to enter land where an application for a permit has been made. This will improve the operation and efficiency of the operation of the Local Law. Under current processes, the standard application form requires the applicant to declare that they allow an authorised officer to enter their land for the purpose of assessing the tree subject to the application. It is not proposed to change this process.</p> <p>The changes to proposed Clause 15(1) have been recommended by Council's solicitors. These changes will allow Council officers to enter land when a breach of the Local Law is suspected to have occurred, is occurring or likely to occur. Officers consider this change to be an improvement as it clarifies that officers can enter land for any breach of the Local Law as opposed to only breaches of permits.</p>

Attachment 5 - Officer assessment of proposed amendments to current *Tree Protection Local Law*

Clause	Description of amendment	Officer assessment and discussion
18	<p>Insertion of new Clause 18 providing for a right of appeal against a decision to refuse a permit. This new clause will formalise the existing appeal process within the Statutory Planning Department.</p>	<p>There is currently no set process for an application for review (appeal) by an applicant against a decision made under the Local Law.</p> <p>An appeal process currently exists within the Statutory Planning Department. Reviews are undertaken by a Statutory Planning Coordinator with the Manager Statutory Planning responsible for the decisions made. The independent review considers all of the information supplied with the appeal and the process taken to determine the original application. Any complete reassessment of the tree in question is undertaken by a different Council Arborist or in some cases a consultant arborist.</p> <p>The timeframe (60 calendar days) set under the proposed Clause 18 is considered reasonable and is based on the timeframe to lodge an appeal under the <i>Planning and Environment Act 1987</i> against refusal of a planning application. Section 18 will also require the applicant to specify the grounds on which their appeal is made and provide new information to Council for consideration. Officers consider Clause 18(2)(b) is necessary as it requires an applicant to provide further information to support their appeal rather than simply lodging an appeal because they do not agree with the decision. The amendment also enables officers to request further information from an applicant, if necessary.</p> <p>Officers consider that this amendment will improve the operation and efficiency of the Local Law by formalising a right of appeal and the process for determining the appeal.</p>



LOCAL LAW COMMUNITY IMPACT STATEMENT

PROPOSED TREE PROTECTION LOCAL LAW

Contents

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1. Part A - General Comments

1. Background

Council's current *Tree Protection Local Law (the existing Local Law)* commenced operation in November 2006 and is due to expire on 25 November 2016. Once this occurs, the existing Local Law will cease to operate.

As Council wishes to continue to have a Local Law relating to tree protection in its municipal district, it has proposed to make a new Tree Protection Local Law (**the Local Law**).

The Local Law will operate in a similar manner to the existing Local Law.

The existing Local Law has been generally successful in providing a regulatory framework for the removal of mature trees in the municipality. It has also provided Council with a set of criteria to assist in consistency in decision making with respect to permits to remove or prune certain trees.

Council has undertaken a detailed review of the existing Local Law and has identified a number of ways in which it could be improved to enhance its operation and effectiveness. Such amendments are reflected in the Local Law.

2. Objective

The objectives of the Local Law are to:

- a) ensure that the established treed character of the Boroondara municipal district is maintained; and
- b) prohibit, regulate and control any activities which may endanger significant trees and canopy trees within the municipal district.

2. Part B - Comments on proposed Local Law

Measures of success of the Local Law

Council will measure the success of the Local Law through:

- Improved efficiency in administering the Local Law;
- The reduction of incidents of removal of trees without a permit;
- The retention and preservation of significant trees and canopy trees; and
- A reduction of instances where penalties are incorrectly applied.

Council will report annually to the community on the operation and effectiveness of the Local Law.

Existing legislation that might be used instead

Council is unaware of any other legislation that may be used instead of the proposed Local Law.

State Legislation more appropriate

Council is of the view that each of the issues identified in relation to the Local Laws is a Council problem and that, accordingly, the provisions of the Local Law are an appropriate solution.

Overlap of existing legislation

Council is unaware of any provision of the proposed Local Law which overlaps, duplicates or creates inconsistency with existing legislation.

Overlap of planning scheme

Council is unaware of any provision of the Local Law which overlaps, duplicates or creates inconsistency with any planning scheme.

The Boroondara Planning Scheme incorporates a number of controls regarding removal of vegetation. These controls are included in various parts of the Scheme and include State controls in regard to native vegetation and local controls by the application of overlays to specific parts of the municipality.

Council has identified that these controls do not adequately protect and preserve vegetation throughout the municipality to the desired level of Council and the community.

The Boroondara Planning Scheme is not the sole means of protecting vegetation. Council has the power to make local laws in respect of any matter for which Council has a power or function. The proposed Local Law is being made to supplement the planning scheme controls.

Risk Assessment

Council has adopted a risk management approach to the review of the existing Local Law and considered the risk attaching to the proposed Local Law.

The community should be aware of the existing Local Law.

The Local Law will require exhibition, which provides public notice of the nature of the Local Law. Additionally, Council will be required to consider any submissions made in accordance with Section 223 of the *Local Government Act 1989*. Council will then consider these submissions prior to adopting the Local Law. In addition to the statutory exhibition of the proposed Local Law, Council proposes to take additional steps to increase public awareness of the proposed Local Law. These steps will include (but are not limited to) publishing material on Council's website on a dedicated webpage, displaying posters in municipal and other public buildings and publishing information in the community noticeboard section of the local newspaper (the Progress Leader).

Permit applications under the Local Law will be assessed by qualified arborists employed by Council. Council's arborists will be required to use Council's adopted Assessment Guidelines when processing applications to ensure that decisions are fair and consistent.

If Council adopts the Local Law, Council will undertake an awareness campaign to ensure that the community and the arboricultural and development industries operating within the municipality are aware of the new Local Law.

Legislative approach adopted

Council is of the view that introduction of the Local Law is necessary to provide the required level of protection for mature trees within its municipal district.

The Local Law provides for:

- reasonable penalties for offences;
- minimal number of provisions which create offences; and
- permits to be obtained rather than simply prohibiting activities.

Restriction of competition

A review of the proposed Local Law has been conducted in accordance with National Competition Policy.

The Local Law's requirement to obtain a permit to remove, prune or undertake works near, certain trees has effect throughout the municipal district.

Council is of the view that the introduction of the Local Law imposes no restriction on competition and that the Local Law complies with National Competition Policy Principles.

Penalties

The Local Law does not introduce changes to the penalty provisions contained within the existing Local Law.

The penalties in the proposed Local Law range from five (5) penalty units to twenty (20) penalty units, with the addition of two (2) penalty units applying for each day after a conviction where a contravention of the Local Law continues.

Council considers that the maximum penalty of twenty (20) units is necessary to help ensure the protection of the overall environment and amenity of the municipality, including the protection of mature trees.

Council has compared the general level of penalties provided for in the proposed Local Law with similar Local Laws in the neighbouring City of Yarra and City of Stonnington. The penalties for like offences in those local laws are consistent with those proposed in the Local Law.

Permits

The Local Law details procedures for applying for a permit and the matters to which the Council (or an Authorised Officer) must have regard in determining whether to grant a permit.

Permits may be issued with or without conditions.

Fees	The proposed Local Law will continue to allow Council to determine fees for the purposes of the Local Law.
Performance standards or prescriptive	The proposed Local Law is prescriptive.
Comparison with neighboring and like Councils	Council has compared the proposed Local Law with the existing Local Laws of a number of municipalities, including the cities of Bayside, Frankston, Kingston, Port Phillip, Stonnington and Yarra. Each has similar provisions contained within a Local Law.
Charter of Human Rights	<p>The implications of the proposed Local Law have been assessed by Council as compatible with the requirements of the Charter of Human Rights and Responsibilities.</p> <p>Council is of the view that the Local Law's requirement to obtain a permit to remove, prune or undertake works near, certain trees, does not impact on human rights detailed in the Charter of Human Rights and Responsibilities.</p> <p>Other provisions which engage rights are demonstrably justifiable, such that no incompatibility with the Charter exists.</p>

Consultation meetings

In the process of developing the proposed Local Law, Council's Governance Department has been consulted.

Submissions

Public consultation will be undertaken as part of the process of making the proposed Local Law. Interested parties will be invited to make submissions in accordance with section 223 of the *Local Government Act 1989*. A notice to this effect will be advertised in a local paper on 15 December 2015 with submissions being received up to 5pm on 12 February 2016. Persons making submissions can request an opportunity to address a Council Committee. All submissions will be considered by Council when deciding whether or not to make the proposed Local Law.

3. Part C - Comments on specific parts or provisions in the proposed Local Law

Clause(s), section or part of Local Law

The proposed Local Law contains four Parts:

Part A - Introduction

Part B – The Context of This Local Law

Part C – Tree Protection

Part D – Administration

Description or heading(s)

Each provision is preceded by a heading.

A heading does not form part of the Local Law. It is provided to assist understanding.

The problem the provision is intended to address

If made, the Local Law will address concerns over the potential loss of tree canopy cover within the municipality. While any such concerns are addressed by the current Local Law, the proposed Local Law will continue to address these concerns once the existing Local Law expires.

The loss of tree canopy cover is exacerbated by the loss of private open space with higher density development, seen in the Boroondara municipal district.

Local policies and controls have proven largely ineffective at maintaining or replacing tree canopy in the face of this development pressure and so Council considers that the Local Law is required to address this problem.

Council Objective

Council's objective is to preserve and enhance the amenity of Boroondara's high quality urban environment.

The ability for Council to deliver on this objective requires the use of clear and reliable laws and enforcement mechanisms.

Where is the Council objective set out?

The objectives of the Local Law are set out in Part A of the Local Law.

How does the Local Law help achieve objectives

The Local Law provides clear requirements and enforcement mechanisms to regulate the removal or damage to mature trees. Protecting significant trees and canopy trees is an integral part of preserving and enhancing the amenity of the overall environment in the Boroondara municipal district.

The expected benefits of the Local Law include the enhancement of the aesthetic value, neighbourhood character and ecology of the municipal district.

The Local Law is also consistent with the community expectation to protect the municipality's treed character.