



CITY OF BOROONDARA TREE PROTECTION LOCAL LAW 2016

Date Made By Council:	22 August 2016
Commencement Date:	26 November 2016
Expiry Date:	26 November 2026
Responsible Directorate:	City Planning

TABLE OF CONTENTS

PART A - INTRODUCTION	2
1 Title.....	2
2 Purpose of this Local Law.....	2
3 Authorising Provision.....	2
4 Commencement Date.....	2
5 Sunset (Revocation) of this Local Law.....	2
6 Application of this Local Law.....	2
7 Definitions in this Local Law.....	2
PART B – THE CONTEXT OF THIS LOCAL LAW	5
PART C – TREE PROTECTION.....	6
8 Protection of Trees	6
9 Power of Authorised Officer to Direct – Notice to Comply.....	7
10 Time to Comply	7
PART D - ADMINISTRATION.....	8
11 Applications for Permits.....	8
12 Permits.....	8
13 Payment of a Security Bond.....	9
14 Cancellation of a Permit	10
15 Inspections	10
16 Infringement Notices	10
17 Offences.....	11
18 Applications for Review	11
SCHEDULE (DIAGRAMS).....	13

TREE PROTECTION LOCAL LAW 2016**PART A - INTRODUCTION****1 Title**

This Local Law may be cited as the Tree Protection Local Law 2016.

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 26 November 2016.

5 Sunset (Revocation) of this Local Law

This Local Law ends on 26 November 2026 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
- (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.

Note: See Schedule 1, Diagrams 1 and 2

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

“**Damage**” means to interfere with, **Prune** or undertake **Works** near 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**.

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

Note: See Schedule 1, Diagram 4

“**Tree Protection Zone**” means the area surrounding a **Significant Tree’s** trunk, being a circular area below the tree extending at equal distances from the tree base in all directions, the radius of which is 12 times the trunk diameter measured at 1.5 metres above ground level, to a maximum of 15 metres.

Note: 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. Council also acknowledges that trees in the urban environment have a series of environmental benefits such as reducing the impact of the urban heat island effect, reducing the effects of climate change, reducing temperatures in and around buildings, reducing stormwater runoff, absorbing pollution, providing habitat and promoting biodiversity. This Local Law is based on the following principles:

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

This Local Law gives ***Council*** the necessary controls to effectively caretake trees listed in ***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
- (b) any **Canopy Tree**

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

(2) The **Significant Tree Study** as amended by the addition of Schedules from time to time is incorporated into this Local Law, with any amendment made to a Schedule coming into effect when it is published in the 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**.¹
- (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

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

- (4) Clause 8(3) does not apply to:
- (a) a person whose actions are required by any other legislation or by any other statutory authority; or
 - (b) a person acting in accordance with an instruction or direction from an **Authorised Officer**
- (5) If a tree, or part of a tree, is interfered with in any of the circumstances specified in Clause 8(3), the owner of any **Private Land** on which the relevant part of the tree is on, over or under is guilty of an offence, whether or not the person who actually 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. For avoidance of doubt, where a **Significant Tree** or **Canopy Tree** extends over multiple parcels of **Private Land**, the owner of the **Land** on, over or under which the part of the tree which has not been interfered with is located, is not guilty of an offence.

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

- (1) An **Authorised Officer** may by **Notice to Comply** given to the owner of **Private Land** or any contractor or other person engaged in **Works** on **Private Land** who appears to be in breach of this Local Law direct 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; and
 - (d) any other relevant factor.

- (3) A **Notice to Comply** must also include:
- (a) the name of the alleged offender (if known);
 - (b) the provision of this Local Law which appears to have been breached;
 - (c) the date on which it was given to the owner, contractor or other person; and
 - (d) the name of the **Authorised Officer** who has given it.

PART D - ADMINISTRATION

11 Applications for Permits

- (1) An application for a **Permit** must be made in writing using a form 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

- (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 of the proposed action on the aesthetics of the neighbourhood;
 - (b) whether the tree is a **Significant Tree**;

-
- (c) the condition of the tree (i.e. its health and structural integrity);
 - (d) the appropriateness of the tree for its location on the property having regard to the existing buildings and conditions on the property;
 - (e) whether the proposed action is to be undertaken for reasons of health or safety;
 - (f) whether the tree is causing any unreasonable property damage;
 - (g) whether the tree is causing any unreasonable public nuisance or creating any unreasonable nuisance to **Private Property** owners or occupiers;
 - (h) whether the tree is a recognised weed;
 - (i) the nature of the zoning of the land under the Boroondara Planning Scheme;
 - (j) any legislative requirements; and
 - (k) any other matter relevant to the circumstances associated with the application.

13 Payment of a Security Bond

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

within the **Tree Protection Zone** of a **Significant Tree** or the **Structural Root Zone** of a **Canopy Tree**, whether those works are proposed to be undertaken pursuant to a planning permit or otherwise, 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, 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
- 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 at the time the application for the permit under this Local Law was made.
- (3) If required to do so by **Council**, an applicant must provide additional information before **Council** determines an application for review.

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

SCHEDULE – Diagrams

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

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

- The circumference at point 'A' (which is 1.5 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.

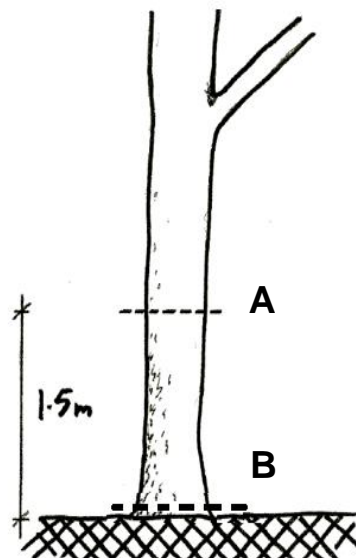
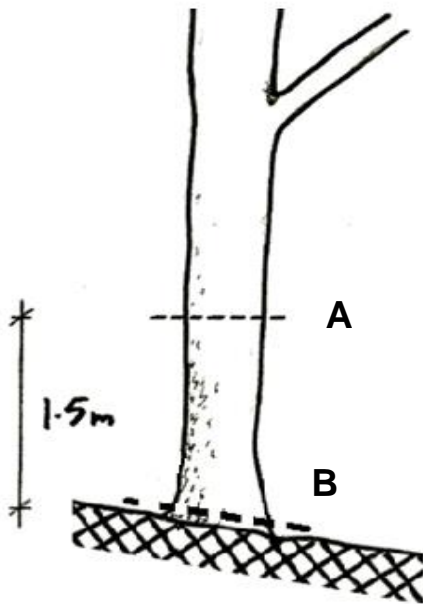


Diagram 2 – Diagram illustrating how to determine whether a multi stemmed tree is a **Canopy Tree**:

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.

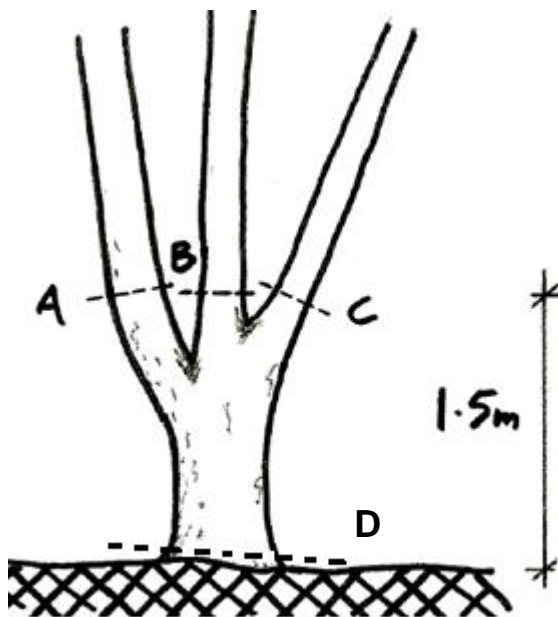
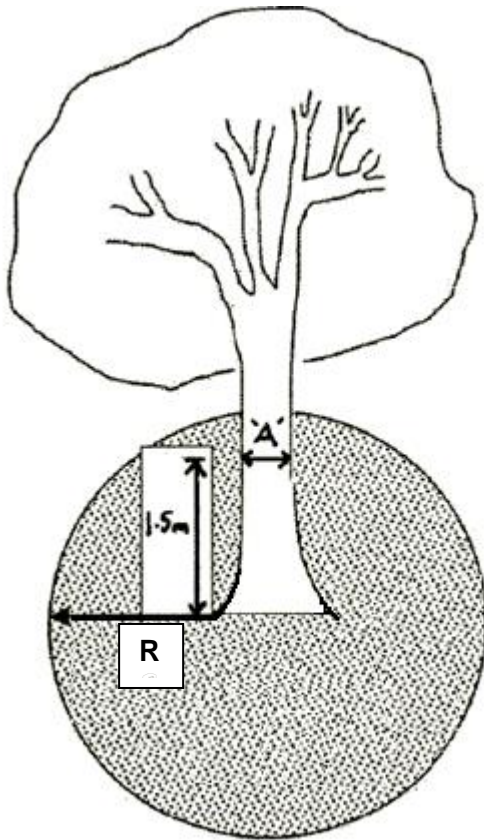


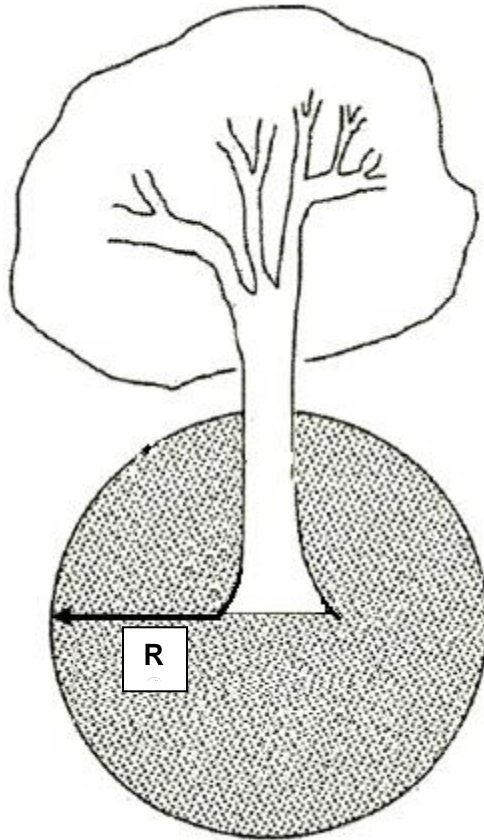
Diagram 3 - Diagram illustrating how to determine the *Tree Protection Zone*:



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.

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.

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

)
)
)
)
)
)
)



..... *[Handwritten Signature]*

Mayor

..... *[Handwritten Signature]*

Chief Executive Officer

..... 9 November 2016

Date