

CITY OF GREATER DANDENONG
Tree Protection on Private Land Local Law
NO. 01 of 2022

PART ONE - PRELIMINARY PROVISIONS

1. Title

This is the *Tree Protection on Private Land Local Law* No.01 of 2023.

2. Objectives

The objectives of this Local Law are to ensure that the urban forest is healthy, safe, provides amenity. Mitigates the impact of climate change and provides adaptative benefits in response to climate change, provides habitat for biodiversity and increases liveability for the community by:

- (a) prohibiting, regulating and controlling activities that could be a risk or endanger protected trees in the Municipal District; and
- (b) applying controls which will complement other controls being applied by the Council to maintain and protect trees in the Municipal District.

3. Authorising Provision

This Local Law is made under Section 71(1) of the Local Government Act 2020.

4. Commencement and revocation

This Local Law:

- (a) commences on *21 December 2023* and
- (b) ends on the 10th anniversary of the day on which it commenced operation.
- (c) is reviewed at 3 year intervals

5. Area of Operation

This Local Law operates throughout the whole Municipal District.

6. Incorporated Documents

- (1) This Local Law incorporates by reference documents containing Council Policy, standards or guidelines that apply to specific uses or activities which are intended to assist in achieving the objectives of this Local Law.
- (2) It is intended that where an incorporated document is applied to a use or activity a person must comply with any or all of the requirements specified for that use or activity.

7. Interpretation and Definitions

- (1) In this Local Law the following words have the meaning given to them unless stated otherwise:

“ Act ”	means the Local Government Act 2020 .
“ Authorised Officer ”	means a person appointed as an Authorised Officer under section 224 of the Local Government Act 1989 for the purposes of this Local Law.
“ Council ”	means the City of Greater Dandenong.
“ Council land ”	means land, buildings and facilities which are owned, occupied or vested in the Council or in respect of which the Council has the care and management and to which the public has access whether an entry fee is paid or not and includes a public place.
“ Minor Pruning ”	means pruning for maintenance that is carried out in accordance with Australian Standard <i>AS 4373–2007 Pruning of amenity trees</i> by a minimum AQF level 3 arborist, and does not result in the damage or destruction of a protected tree on private property.
“ Municipal District ”	means the Municipal District of the Council.
“ Noxious Weeds ”	has the same meaning as in the Land Catchment and Protection Act 1994.
“ Private Land ”	means any land that is not Council Land or land in the ownership or under the management or control of another public body.
“ Penalty Unit ”	means the amount prescribed by section 110(2) of the Sentencing Act 1991 .
“ Policy ”	means a policy made by the Council or that Council is required to comply with in relation to its activities and where those specified activities and uses are regulated by this Local Law.
“ Protected Tree ”	<p>means</p> <p>(a) any tree with a trunk diameter equal to or greater than 40 cm measured at 1.4 meters above ground level.</p> <p>(b) any tree planted as required by a replanting condition of a permit issued for the removal of a protected tree.</p> <p>The diameter of trees with multiple stems is calculated in accordance with Australian Standard <i>AS 4970–2009 Protection of trees on development sites</i>.</p> <p>The definition includes exotic species but excludes the <i>salix</i> spp (Willow) that are declared Noxious Weeds under the Catchment and Land Protections Act 1994.</p> <p>Where a tree has been removed without a permit, for enforcement purposes a Protected Tree is a tree with a stump diameter equal to or greater than 50 cm at ground level.</p>

- (2) The provisions of the *Interpretation of Legislation Act 1984* will be applied in aid of interpreting this Local Law and in facilitating the achievement of the objectives of this Local Law.
- (3) Unless the context requires otherwise, a reference to “the Council” in this Local Law includes a reference to an Authorised Officer who has been appointed and delegated the power to administer and enforce this Local Law and to exercise any discretion when required by this Local Law.

PART TWO – PROTECTION OF TREES

8. Permit Requirement

- (1) A person must not without a permit:
 - (a) remove, damage, kill or destroy, or lop a Protected Tree; or
 - (b) direct, authorise or allow a Protected Tree to be removed, damaged, killed, destroyed, or lopped.
 - (c) cut, trim, lop or prune any protected tree or allow to be cut, trimmed, lopped or pruned any protected tree contrary to the guidelines recommended in the Australian Standard AS 4373-2007 Pruning of amenity trees.

Penalty: 20 Penalty Units

- (2) In addition to complying with any conditions of a permit, a person who has obtained a permit under subclause (1) must comply with the requirements of the Council's current *Local Law Tree Protection on Private Land Policy 2023*.

Penalty: 20 Penalty Units

- (3) In determining whether or not to grant a permit, an Authorised Officer will have regard to:
 - (a) written evidence of the owner's consent if the applicant is not the owner of the private land; and
 - (b) the Council's current *Local Law Tree Protection on Private Land Policy 2023* (as amended from time to time); and
 - (c) information submitted by the applicant as to the health and structure and identified & potential hazard status of the tree; and
 - (d) the type of tree and its value and impact to both people and the surrounding environment; and
 - (e) reasonable measures explored by the applicant to retain or replace the tree; and
 - (f) any other matter relevant to the circumstances of the application.

9. Exemptions

A permit is not required under this Local Law:

- (a) if the removal of a tree requires a permit under the Greater Dandenong Planning Scheme and a permit has been obtained; or
- (b) if works are pruning only, and undertaken by a minimum AQF level 3 arborist and in accordance with *AS 4373–2007 Pruning of amenity trees*; or
- (c) if the owner of the private property has notified Council that a protected tree or part of a protected tree poses an immediate risk to people or property and has been

assessed by a minimum AQF level 5 arborist, with removal being the only option to mitigate the risk; or

- (d) the tree is a salix ssp (Willow) declared a Noxious Weed under the Catchment and Land Protections Act 1994.

PART THREE – ADMINISTRATION AND ENFORCEMENT

10. Exercise of Discretion

In exercising any discretion contained in this Local Law, an Authorised Officer must have regard to:

- (a) the objectives of this Local Law and any applicable Policy, Standard or Guideline incorporated by reference in this Local Law;
- (b) any operating procedures applicable to the Local Law; and
- (c) other relevant matter.

11. Permits

- (1) The Council or an Authorised Officer may grant or refuse to grant a permit under this Local Law.
- (2) An application for a permit must be made in the form and accompanied by the fee prescribed by Council.
- (3) The Council or an Authorised Officer may waive payment of any fee for a permit.
- (4) The Council or an Authorised Officer will require that an applicant give notice of the application to any person that may be affected by the proposed use or activity.
- (5) The Council or an Authorised Officer may require an applicant to provide more information before the Council or Authorised Officer determines the application.
- (6) A permit may be issued with conditions.

12. Correction of Permit

The Council or an Authorised Officer may correct a permit issued if the permit contains:

- (a) a clerical mistake or an error arising from any accident, slip or omission;
- (b) an evident and material miscalculation of figures; or
- (c) a mistake in the description of any person, thing or property referred to in the permit.

13. Grounds for Cancellation or Amendment of Permits

- (1) The Council or an Authorised Officer may cancel or amend any permit if they consider that there has been:
 - (a) material misstatement, false representation or concealment of facts in relation to the application for a permit;
 - (b) any material mistake in relation to the use of the permit;
 - (c) any material change of circumstances which has occurred since the issue of the permit;
 - (d) a failure to comply with the conditions of the permit; or
 - (e) a failure to comply with the time specified in the Notice to Comply.
- (2) The Council or an Authorised Officer must give written notification to the holder of a permit of the intention to cancel or amend the permit and provide the permit holder with an opportunity to make a written submission which must be made to the Council or Authorised Officer within the time specified in the notice.
- (3) The Council or an Authorised Officer may require that the permit holder cease the use or activity allowed by the permit until the written submission has been considered by the Council or an Authorised Officer.
- (4) The Council or an Authorised Officer must make a final decision to cancel or amend the permit within 30 days from the date of the written submission from the holder of the permit under subclause (2).
- (5) If the Council or an Authorised Officer determines to cancel or amend the permit, the Council or Authorised Officer must advise the permit holder in writing.

14. Powers of Authorised Officers

- (1) If an Authorised Officer considers on reasonable grounds that there has been a breach of this Local Law, the Authorised Officer may take any or all of the actions provided in this Local Law and may:
 - (a) enter the private land for the purpose of inspecting a protected tree;
 - (b) warn the person who is breaching the Local Law, which may also be an official warning issued in accordance with the requirements of the *Infringements Act 2006*;
 - (c) direct the person to cease the activity breaching the Local Law;
 - (d) serve a Notice to Comply to remedy the breach; or
 - (e) issue an infringement notice.

15. Notice to Comply

- (1) Where an Authorised Officer considers that there is a breach of this Local Law, a Notice to Comply may be served on any owner, occupier or other relevant person to remedy the breach.
- (2) A Notice to Comply to remedy a breach of this Local Law may require, amongst other things, that the person on whom the Notice to Comply is served:
 - (a) plant by way of replacement one or more trees of a type and in a location specified by Council or the Authorised Officer;
 - (b) preserve an area to an extent by which one or more trees may be planted in the future, as specified by Council or the Authorised Officer.
- (3) A Notice to Comply issued in accordance with this Local Law must state the time and date by which the thing must be remedied.
- (4) The time required by a Notice to Comply served under this Local Law must be reasonable in the circumstances and what will be reasonable will vary depending on the matters to be remedied, but should take into account, if applicable:
 - (a) the amount of work involved;
 - (b) the degree of difficulty;
 - (c) the availability of necessary materials or other necessary items;
 - (d) climatic conditions;
 - (e) the degree of risk or potential risk; and
 - (f) any other relevant matter.
- (5) A person served with a Notice to Comply who fails to remedy the breach in accordance with the Notice to Comply within the time specified in the Notice is guilty of an offence under this Local Law.

Penalty: 20 Penalty Units

- (6) If any owner, occupier, or other relevant person served with a Notice to Comply fails to carry out any work stipulated in a Notice to Comply, Council or an Authorised Officer may carry out the work itself or appoint another person to carry out the work and recover the cost of performing the work from the owner or appointed agent.
- (7) An owner, occupier, or other relevant person may make representations to the Council about matters contained in the Notice to Comply.

16. Infringement Notices and Fixed Penalties

- (1) Where an Authorised Officer reasonably believes that a person has committed an offence against this Local Law, the Authorised Officer will issue and serve on that person an infringement notice as an alternative to prosecution for the offence.

(2) Where an infringement notice is issued, the penalty fixed for infringement purposes is:

- (a) where an offence relates to a tree which in the opinion of an Authorised Officer is dead – 20 penalty units for each offence;
- (b) for any other offence – 20 penalty units.

17. Offences

(1) A person who:

- (a) fails to comply with any requirement of this Local Law;
- (b) fails to comply with the conditions of a permit;
- (c) fails to comply with a Notice to Comply;
- (d) provides misleading or false information in relation to an application for a permit;
- (e) fails to comply with requirements in a Policy or Guidelines applied or incorporated in this Local Law -

is guilty of an offence under this Local Law.

- (2) The penalty for an offence against this Local Law that appears at the foot of a provision in this Local Law is the maximum amount that may be imposed by a Court.
- (3) After a finding of guilt for an offence under a provision of this Local Law, any person who continues in contravention of that provision is liable to an additional penalty of 2 Penalty Units for each day after a finding of guilt during which the contravention continues.
- (4) A person who is guilty of a second or subsequent offence against the same provision in this Local Law is liable to an additional penalty not exceeding 20 Penalty Units.
- (5) If there is a breach of this local law, the *owner* of any private property on which the protected tree is located is guilty of an offence, whether or not the person who actually interfered with the *protected tree* is identified or prosecuted, unless the *owner* can prove that the interference was undertaken by another party without the authorization of the *owner*.