

Darebin City Council

Tree Protection Local Law 2019

Community Impact Statement

Background

Darebin City Council is focused on keeping the municipality as green as it can be because of the multitude of benefits that come from that – health and well-being, amenity and environmental benefits to name a few.

The Council has developed a number of measures, some in strategy and some in planning controls that are designed to promote and protect vegetation, preserve existing trees to ensure that development minimises loss of vegetation and protect locations of special significance. These are contained in the overlays attached to the Darebin Planning Scheme such as the Environmental Significance Overlay and the Vegetation Protection Overlay, which also includes controls over specific locations that have significant vegetation.

Other controls come from guidelines and measures that the Council applies to itself through the *Greenstreets Streetscape Strategy*. These guide Councils' approach to trees on streets and land that Council is responsible for. There has been community involvement in the development of this strategy.

The *Urban Forest Strategy* is for the joint benefit and guidance of Council and the community and addresses ways in which the urban forest promotes future growth and protects and provides a means of monitoring the tree canopy in the municipality. The proposed Local Law is intended to work with the *Urban Forest Strategy* by providing a permit system for the removal of certain trees.

While the primary objective of Council is to protect and add to tree coverage in the municipality there are also reasons why in tree removal needs to occur. In some cases tree removal may be essential to remove a hazard or for other public safety reasons. A tree may pose a risk to a dwelling or to people because of its health. A tree may also cause problems for certain infrastructure such as footpaths (which in turn can cause hazards to users of the footpath), or prevent an improvement that may provide other long term benefits to the community.

Council has attempted to balance a number of competing priorities that are challenged when a primary objective is to retain trees but other objectives such as reducing or removing a risk or addressing infrastructure needs require priority over that primary need.

Reasons for the Proposed Local Law

Despite the measures that Council has in place, there are still gaps that have the potential to allow tree removal to occur on private property without adequate assessment to ensure that removal is necessary and without a capacity to ensure that any amenity loss is offset by other means. There are also limited means of protecting tree assets from the impact of works. The Local Law is intended to address gaps in other existing controls and will complement the Darebin Planning Scheme which does not provide all the controls that Council considers necessary.

The Local Law will also work in conjunction with Council's Strategies, including the *Urban Forest Strategy* and the *Tree Retention Policy* which is intended to guide decision making on tree assessments on both Council land and private land.

Objectives of the Local Law

The objectives of the Local Law are to ensure that the urban forest is healthy, safe, provides amenity and increases liveability for the community by:

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

Proposed controls

The Local Law requires a permit to prune, remove or do anything that could result in damage or the destruction of a protected tree on private property. It also requires a permit to undertake any works within the Tree Protection Zone.

There are some exemptions to the permit requirement such as where a protected tree or part of a protected tree poses an immediate risk to people or to property.

A failure to obtain a permit is an offence under the Local Law and a person is liable to pay a penalty for breaching the Local Law.

Analysis of matters considered

Matter reviewed	Comments
<i>Existing legislation that might be used instead</i>	There does not appear to be any existing legislation that would achieve the desired result.
<i>Whether there is more appropriate State legislation</i>	There does not appear to be any State legislation that would achieve the desired result.
<i>Overlap with existing legislation</i>	The proposed amendment does not appear to be an overlap with or duplicate or create an inconsistency with existing legislation.
<i>Overlap with the Darebin Planning Scheme</i>	While the Darebin Planning Scheme contains controls that are intended to protect trees, the Local Law will complement the Darebin Planning Scheme and its operation.
<i>Assessment of risk</i>	A number of possible risks are addressed by the proposed Local Law. The first relates to ensuring that the risk to the urban forest by unregulated tree removal is minimised. The second addresses a risk on the other side of the equation as a result of risks that arise from threats to public safety because of the health, condition or location of a tree. Another risk is addressed by providing a means of regulating tree removal where development is

	<p>to occur.</p> <p>Consideration of an application for a permit will be guided by matters that the Local Law requires be taken into consideration as well as guidance in the <i>Tree Retention Policy</i>.</p>
<i>Restriction on competition</i>	<p>A National Competition Policy assessment has been undertaken. It is recognised that there will be some instances where business is affected by the costs and potential limitations and restrictions applied by the Local Law.</p> <p>It has been concluded that while there are costs associated with obtaining a permit and conditions may incur costs to offset the tree removal or other restrictions, any impact on business is minimal. Even if it could be said that the proposed controls are a restriction on business, it is considered that the overall benefits to the community outweigh the possible restriction.</p>
<i>Penalties</i>	<p>Penalties have been given detailed consideration and because the matter being regulated is a high concern and priority of Council and the community, substantial penalties will be incurred where there is a breach of the Local Law.</p>
<i>Permit requirements</i>	<p>A permit is required for removal of a protected tree or for works within the Tree Protection Zone.</p>
<i>Fees</i>	<p>Fees will be payable for assessing permit applications. There is a considerable amount of work in making those assessments involving site inspections and assessment against Council's guidance documents.</p>
<i>Benchmarking with adjoining Councils</i>	<p>There are several inner urban Councils that have applied tree protection controls. What Council is proposing is in line with the approach of other Councils, including the penalty amounts.</p>
<i>Consultation undertaken</i>	<p>In developing the <i>Urban Forest Strategy</i> which underpins the objectives of the Local Law, Council undertook extensive community and public landowner consultation and engagement. In addition to community meetings Council held targeted consultation with specific groups in the community, published information in local papers and on Council's website (including translation into several different languages) and specifically addressed the question of increasing tree coverage in one of Council's quarterly household surveys.</p> <p>Some changes were made to the Strategy as a result of that process but there was clear community support for the overall objective of not only retaining but increasing tree coverage in the municipality.</p>

	<p>The proposed Local Law will be subjected to further public scrutiny from the mandatory section 223 requirements in the Local Government Act.</p>
<p><i>Consideration of the Human Rights and Equal Opportunity Act – “the Charter”</i></p>	<p>A detailed analysis of whether the proposals in the proposed Local Law was incompatible with the rights in the Charter has been undertaken. It was concluded that on balance the proposals in the Local Law were not incompatible with the rights in the Charter. Even if it could be said that the proposal is incompatible with human rights under the Charter, Council considers that the approach in the Local Law is demonstrably justifiable.</p>

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