

**DRAFT**

**DAREBIN CITY COUNCIL  
Tree Protection on Private Property Local Law  
NO. XX of 2019**

**PART ONE - PRELIMINARY PROVISIONS**

**1. Title**

This is the *Tree Protection on Private Property Local Law* No. XX of 2019.

**2. Objectives**

The objectives of this Local Law are to ensure that the urban forest is healthy, safe, provides amenity 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 111(1) of the Local Government Act 1989.

**4. Commencement and revocation**

This Local Law:

- (a) commences on *(date to be inserted)*; and
- (b) unless it is revoked sooner, this Local Law ceases to operate on *(date to be inserted)*.

**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:

<b>“Act”</b>	means the <b>Local Government Act 1989</b> .
<b>“authorised officer”</b>	means a person appointed as an Authorised Officer under section 224 of the Local Government Act 1989 for the purposes of this Local Law.
<b>“Council”</b>	means the Darebin City Council.
<b>“Council land”</b>	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.
<b>“Minor Pruning”</b>	Means pruning for maintenance that is carried out in accordance with Australian Standard (4373:2007 Pruning of Amenity Trees) by a suitably qualified arborist and does not result in the damage or destruction of a protected tree on private property. <b>Permit is not required for pruning of non-structural branches 50mm in diameter or less. Residents are advised to contact Council’s Planning Arborist for advice.</b>
<b>“Municipal District”</b>	means the Municipal District of the Council.
<b>“Noxious Weeds”</b>	has the same meaning as in the Land Catchment and Protection Act 1994.
<b>“Private Land”</b>	means any land that is not Council Land or land in the ownership or under the management or control of another public body.
<b>“Penalty Unit”</b>	means the amount prescribed by section 110(2) of the <b>Sentencing Act 1991</b> .
<b>“Policy”</b>	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.
<b>“Protected Tree”</b>	means a tree with a single or combined trunk circumference greater than 125 centimetres measured at 1.5 metres above ground level and having a height greater than 8 metres, but excludes species that are declared Noxious Weeds.
<b>“Tree Protection Zone”</b>	means the radius of the Protected Tree being 12 times the trunk diameter of the tree at breast height (1.4m above ground level). The Australian Standard AS 4970 “Protection of Trees on Development Sites” prescribes how the Tree Protection Zone is calculated.
<b>“Works”</b>	includes construction, demolition, renovation, alteration, removal or relocation of any building or structure and includes any excavations, the delivery of any machinery, equipment or building materials to land or any preparatory or ancillary work on land.

(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) prune, remove or do anything or allow pruning that could result in damage or the destruction of a protected tree on private property; or
  - (b) undertake any works within the Tree Protection Zone.

***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 *Management of Tree Protection on Private Property Policy 2019*.

***Penalty: 20 Penalty Units***

- (3) In determining whether 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;
  - (b) whether the tree is a protected tree;
  - (c) the Council’s current *Management of Tree Protection on Private Property Policy 2019*;
  - (d) information submitted by the applicant as to the condition and health of tree;
  - (e) information submitted by the applicant of damage or likely damage to property or infrastructure;
  - (f) the visual impact that the removal of the tree will have on the neighbourhood; and
  - (g) 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 Darebin Planning Scheme and a permit has been obtained; or
- (b) if works are deemed by the Authorised officer to be minor pruning.

- (c) if the owner of the private property has notified an Authorised Officer that a protected tree or part of a protected tree poses an immediate risk to people or property and the Authorised Officer is satisfied that the protected tree is an immediate risk to people or property.
- (d) **If the owner is removing dead palm fronds only**

## **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 may 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;
- (c) 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 he or she considers 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, he or she may serve a Notice to Comply 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:
- (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 may 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 – 5 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 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 a 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 a penalty not exceeding 20 Penalty Units.