



**TREE PROTECTION LOCAL LAW  
2008**

**No. 14**

**TREE PROTECTION LOCAL LAW 2008****NO. 14**

**Frankston City Council resolves:**

**PART A – Introduction****1. Local Law**

This Local Law is

- (i) a local law made under Part 5 of the Local Government Act 1989;
- (ii) called the Tree Protection Local Law 2008 No. 14.

**2. Purpose of this Local Law**

The purpose of this Local Law is to:

- (a) protect trees growing in the municipal district;
- (b) to require a minimum standard of tree pruning within the municipal district for the protection of trees and public safety;
- (c) provide for the peace, order and good government of the municipal district;  
and
- (d) protect and enhance the amenity and environment of the municipality.

**3. Commencement of this Local Law**

This Local Law commences on the day following gazettal of the Local Law in the Victoria Government Gazette.

**4. Revocation of Local Law**

On the commencement of this Local Law the Tree Protection Local Law (Local Law No. 6) is revoked.

**5. Application of this Local Law**

This Local Law applies throughout **Council's** municipal district.

## 6. 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*.

**"Council"** means Frankston City Council.

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

**"Council Land"** means all **Land** owned, leased, managed or occupied by **Council** and includes land vested in **Council** but excludes a **Road**.

**"Crown"** means the portion of a tree consisting of branches and leaves and any part of the trunk and stems from which branches arise.

**"Land"** includes –

- (a) buildings and other structures permanently fixed to land; and
- (b) land covered with water.

**"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 **Council** under this Local Law directing the person to whom it is addressed to take some action to comply with the Local Law.

**"Permit"** means a permit issued in a form determined by **Council** and under the provisions of this Local Law.

**"Private Land"** means all **Land** other than **Public Land, Council Land or Road**.

**"Public Land"** means all **Land** owned, leased, managed or occupied by a public body other than **Council** and includes land vested in a public body.

**"Road"** has the meaning ascribed to in the **Act**.

**"Schedule"** means a schedule to this Local Law.

**"Senior Officer"** has the meaning ascribed to it in the **Act**.

**"Service Authority"** means any emergency service or public body which **Council** resolves to be a **Service Authority** for the purposes of this Local Law.

**"Significant Tree"** means a tree listed in the **Significant Tree Register**.

**"Significant Tree Register"** means the register in Schedule 4 to the Environmental Significance Overlay (ESO4) of the Frankston Planning Scheme.

**“Top”** – is the indiscriminate cutting of tree branches to stubs or lateral branches that are not large enough to assume the terminal role. Other names for top include “lop”, “head”, “tip”, “hat-rack,” and “round over.”

**“Tree Protection Zone”** means an area with a radius equal to the furthest point of the tree canopy from the centre of the trunk plus 5 metres. The centre of the trunk is to be measured at the point where it meets the natural ground level.

**PART B – General Provisions****7. Protection of Trees**

(1) This clause 7 applies to:

- (a) any **Significant Tree**;
- (b) any tree with a trunk circumference equal to or greater than 110cm (centimetres) measured at its base;
- (c) any multi-stemmed tree where the circumference of its exterior stems measured at its base equals or is greater than 110 cm (centimetres),

where the tree, as described in 7(1)(b) or (c) above is situated on any **Private Land**, and

- (d) any tree on any **Road, Council Land or Public Land**.

Note: See Figure 1

(2) A person must not without a permit:

- (a) remove, damage, kill or destroy or direct, authorise or allow to be removed, damaged, killed or destroyed a tree to which this clause applies;
- (b) carry out, or direct, authorise or allow to be carried out, any works near a tree to which this clause applies where any part of such works takes place within the **Tree Protection Zone**. For the purposes of this paragraph (b), works includes, without limitation, compaction, trenching, excavation, fill and the installation of impervious surfaces;

Note: See Figures 2 to 4.

- (c) prune, cut, trim, **top** or direct, authorise or allow to be pruned, cut, topped or trimmed more than one-third (1/3rd) of the outer-edge of the **Crown** of any tree to which this clause applies;

Note: See Figures 5-7.

- (d) prune, cut, trim, **top** or direct, authorise or allow to be pruned, cut, trimmed or topped any tree to which this clause applies where the accumulation of all previous pruning, completed at any time, with or without a permit, equals or exceeds one-third (1/3rd) of the **Crown** of a tree; or

- (e) **top** a tree or direct, authorise or allow to be topped any tree.

**Maximum Penalty: 20 Penalty Units**

- (3) Clause 8(2) does not apply to:
- (a) a person who is instructed or directed by an **Authorised Officer**, or
  - (b) a tree that is an environmental weed species described in Schedule 3.
- (4) If a tree is removed, damaged, killed or destroyed contrary to clause 7(2)(a) or is the subject of works contrary to clauses 7(2)(b), (c), (d) or (e), the owner of any **Land** on which the tree is located is guilty of an offence, whether or not the person who did the thing prohibited by clause 7(2)(a) or clauses 7(2)(b), (c), (d) or (e) is identified or prosecuted, unless the owner can prove that the thing prohibited by clause 7(2)(a) or clauses 7(2)(b), (c), (d) or (e) was done without the owner's authority.
- (5) **Council** or an **Authorised Officer** may by **Notice to Comply** direct a person who appears to be in breach of this clause to replace a tree that has been interfered with.

Figure 1: Diagram illustrating how to measure a circumference of 110cm at the base of different shaped trees.

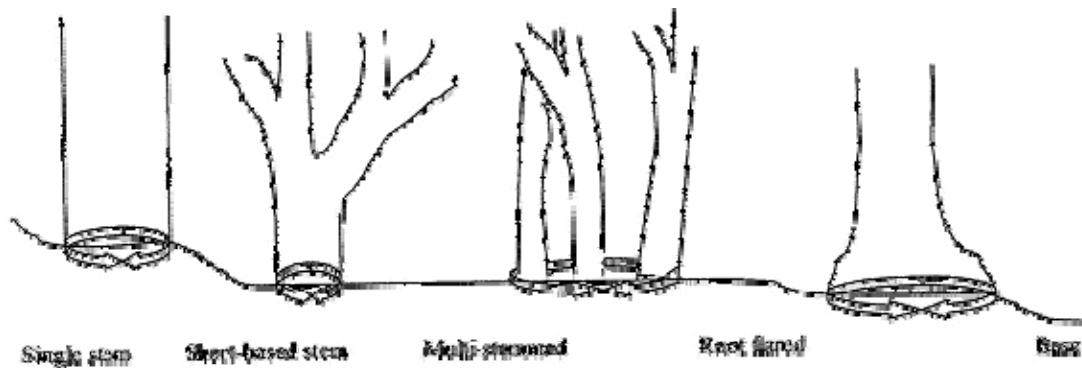


Figure 2: Diagrams illustrating how to determine the **Tree Protection Zone**.

A permit is required for many types of works within the Tree Protection Zone. See Clause 7(2)b.

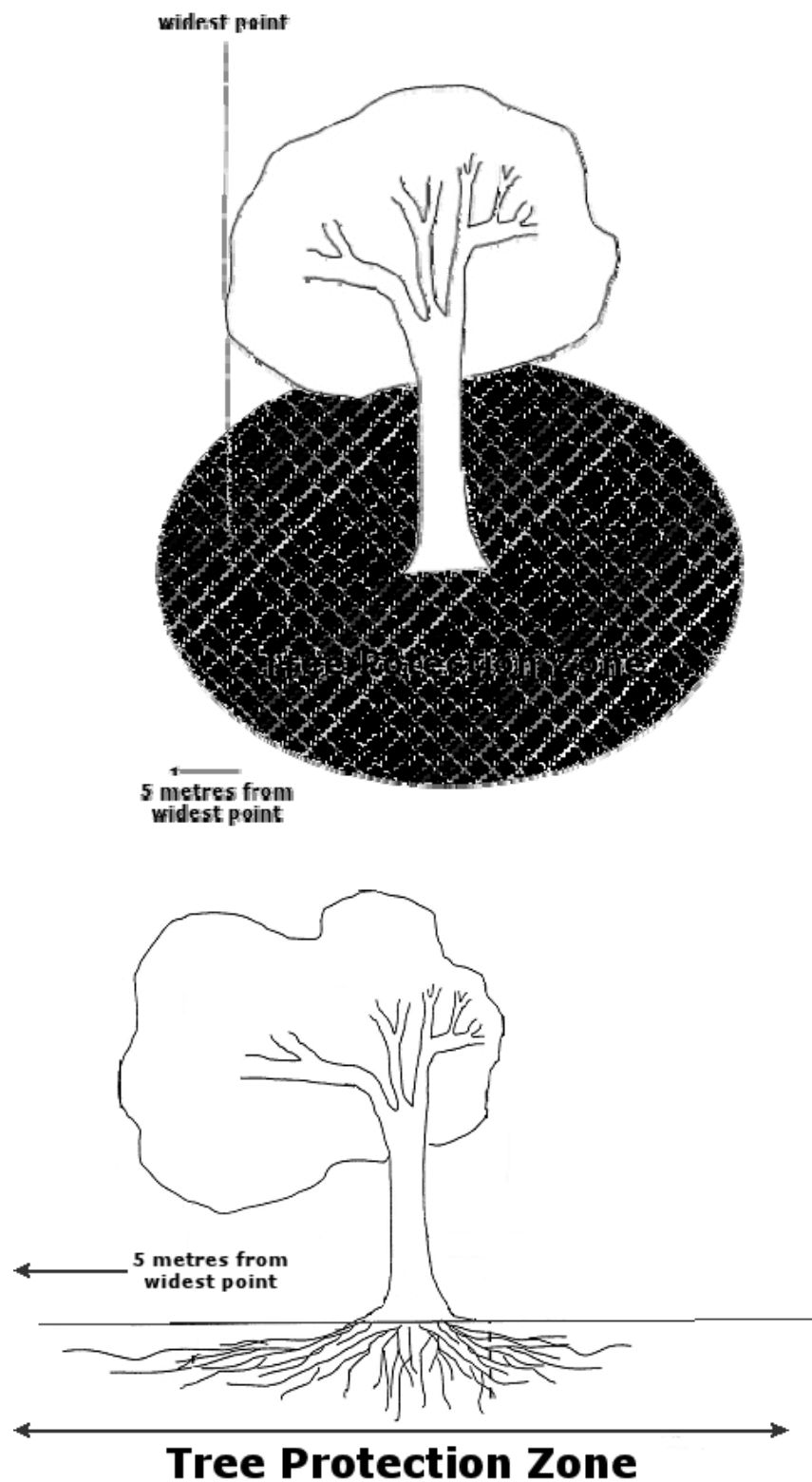
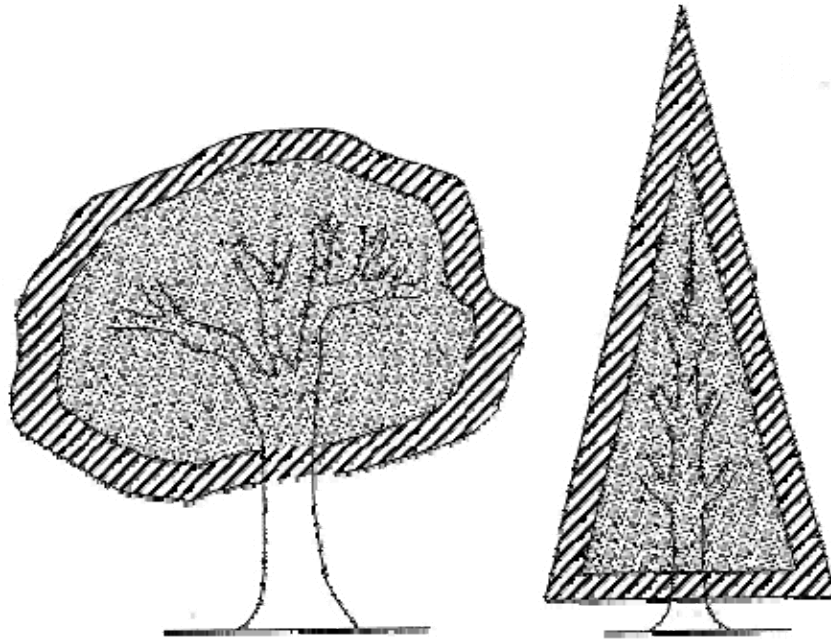



Figure 3: Diagrams illustrating one third of the **Crown** for different tree shapes



One third ( $1/3^{\text{rd}}$ ) of the **Crown** of a tree is measured from the outer edge of the **Crown**. It includes foliage and smaller branches but does not include larger branches, stems or the truck.

 Represents  $1/3^{\text{rd}}$  of the **Crown**. Pruning is allowed in this section without a permit.


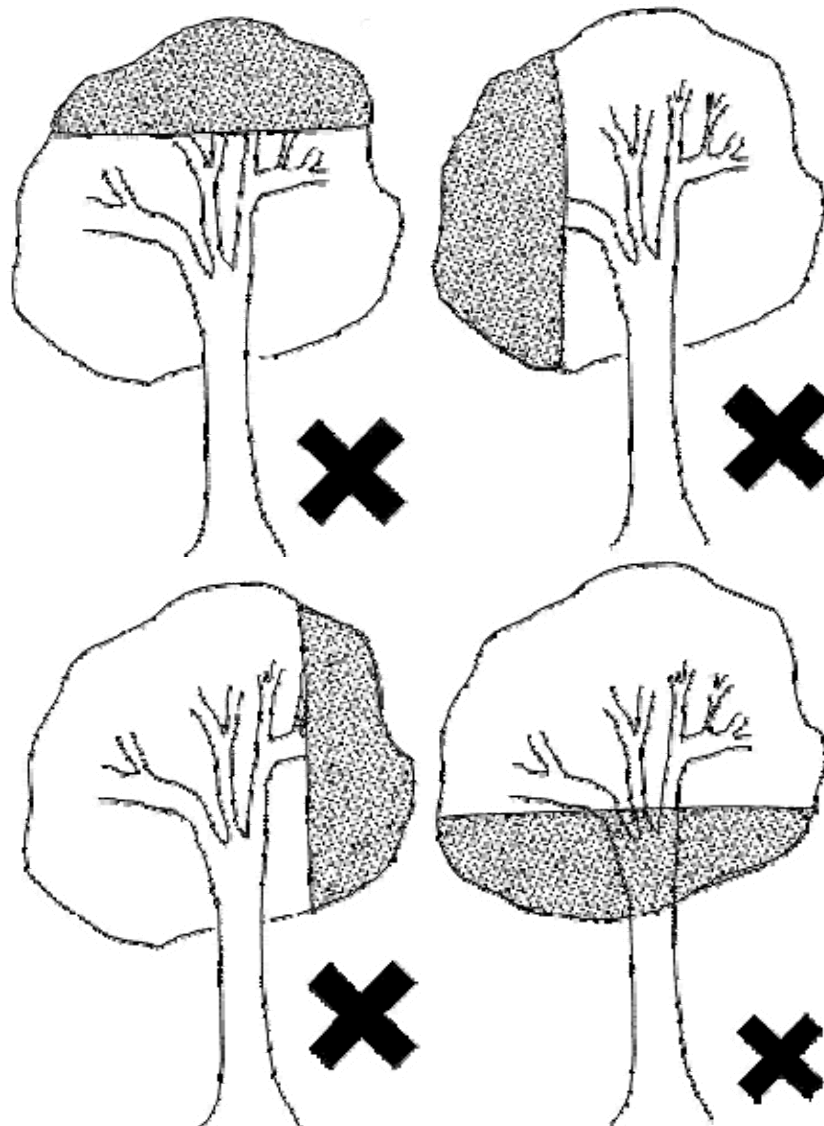
 Represents  $2/3^{\text{rd}}$  of the **Crown**. A permit is required to prune in this section.

Figure 4: Diagrams illustrating how one third of the **Crown** is not measured.




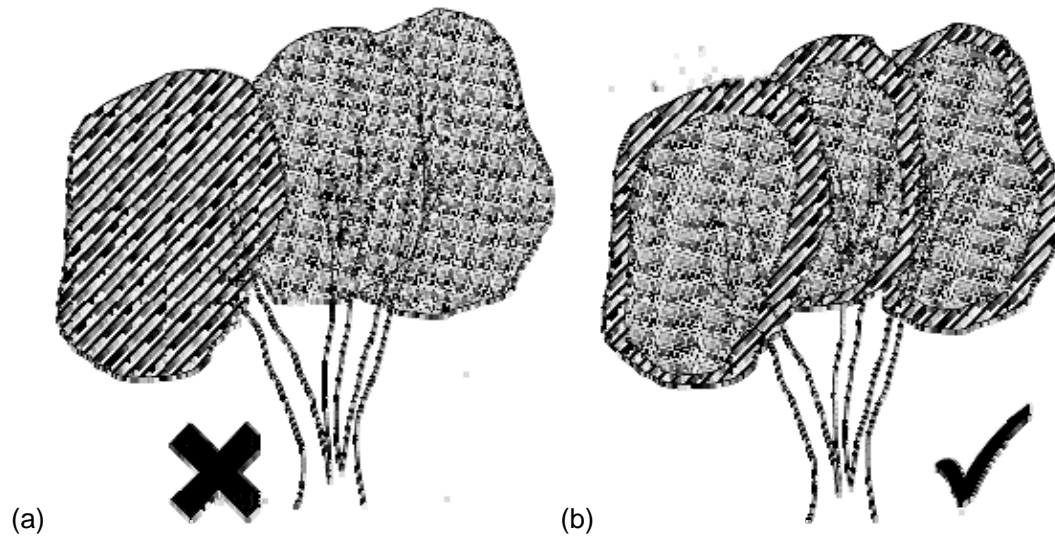
Pruning the shaded areas as shown above (  ) is considered to be removing more than one third of the **Crown** and a permit required.

Figure 5: Diagram illustrating how to measure one third of the **Crown** in multi-stemmed trees.



In multi stemmed trees one third ( $1/3^{\text{rd}}$ ) of the **Crown** of a tree is measured from the outer edge of the **Crown** of *each stem* as shown in a). The **Crown** of multi-stemmed trees not to be divided into thirds as shown in b).

**8. Permit**

- (1) All applications for permits under clause 7 of this Local Law must be accompanied by the written consent of the owner of the **Land** on which the tree is located.
- (2) In determining whether to grant a permit under clause 8 of this Local Law, 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 act is for health and safety reasons;
  - (d) the assessment criteria contained in the Frankston Street Tree Management Policy;
  - (e) whether the tree is causing property damage or other safety issues;
  - (f) whether the tree is causing a public nuisance or creating an undue nuisance to adjoining landowners; and
  - (g) any other matter relevant to the circumstances associated with the application.

**PART C – Administration and Enforcement****9. Applying for a Permit**

- (1) A person who wishes to apply for a **Permit** may do so by:
  - (a) lodging with **Council** an application, in a form approved by **Council**; and
  - (b) paying to the **Council** the appropriate application fee.
- (2) **Council** may require an applicant to provide additional information before dealing with an application for a **Permit** or for exemption.
- (3) **Council** may require a person making an application for a **Permit** to give public notice which will entitle any person to make a submission and to be heard in support of his or her submission.

**10. Fees**

- (1) **Council** may, from time to time, by resolution determine fees for the purposes of this Local Law.
- (2) In determining any fees and charges, **Council** may establish a system or structure of fees and charges, including a minimum or maximum fee or charge, if it considers it is appropriate to do so.
- (3) **Council** may waive, reduce or alter a fee with or without conditions.

**11. Issue of Permits**

**Council** may:

- (a) issue a **Permit**, with or without conditions; or
- (b) refuse to issue a **Permit**.

**12. Duration of Permits**

- (1) A **Permit** is in force until the expiry date indicated on the **Permit** unless it is cancelled before the expiry date.
- (2) If no expiry date is indicated on the **Permit**, the **Permit** expires 60 days after the day on which it is issued.
- (3) Conditions of a **Permit** requiring replanting, re-establishment or replacement of trees expire 10 years after the day on which the **Permit** is issued, irrespective of the expiry date of the **Permit**.

**13. Conditions of Permits**

- (1) A conditional **Permit** may be subject to conditions which **Council** considers to be appropriate in the circumstances including:
  - (a) the payment of a fee or charge;
  - (b) a time limit to be applied either specifying the duration, commencement or completion date;
  - (c) the happening of an event;
  - (d) the rectification, remedying or restoration of a situation or circumstance;
  - (e) where the applicant is not the owner of the subject **Land**, **consent** of the owner;
  - (f) the granting of some other **Permit** or authorisation;
  - (g) standards and quality of work, including Australian Standards;
  - (h) a requirement that a replacement tree be planted or that a monetary amount be paid to **Council** for the purpose of funding or helping to fund additional trees in the **Municipal District**; and
  - (i) any other matters considered relevant to a particular application.
- (2) The conditions of a **Permit** must be set out in or attached to the **Permit**.
- (3) **Council** may, during the currency of a **Permit** alter the conditions of a **Permit** if it considers it to be appropriate to do so, after providing the

*Permit* holder with an opportunity to make comment on the proposed alteration.

- (4) A person who undertakes an activity for which **Council** has issued a *Permit* must comply with the conditions of the *Permit*.

**Maximum Penalty: 5 Penalty Units**

#### 14. Cancellation of a Permit

- (1) **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 days after the time specified in the **Notice to Comply**; 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*, **Council** must provide to the *Permit* holder an opportunity to make comment on the proposed cancellation.
- (3) If a *Permit* holder is not the owner of the **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. Correction of Permits

- (1) **Council** may correct a *Permit* in relation to:
- (a) an unintentional error or an omission; or
  - (b) an evident material miscalculation or an evident material mistake of description of a person, thing or property.
- (2) **Council** may notify a *Permit* holder in writing of any correction.

#### 16. Registers

- (1) **Council** must maintain a record of *Permits*, including details of corrections and cancellations.
- (2) **Council** must maintain a register of determinations made, and of guidelines prepared, for the purposes of this Local Law.

- (3) **Council** must ensure that the registers are available for public inspection at the office of the **Council** during normal business hours.

#### 17. Service Authority

- (1) A **Service Authority** or a person employed by or acting on behalf of a **Service Authority** is not required to obtain a **Permit** in respect of work which is for the purposes of the **Service Authority**.
- (2) A person who would, but for this clause, be required to obtain a **Permit** in respect of any activity must notify **Council** of the activity prior to its commencement.

#### 18. Exemptions

- (1) **Council** may by written notice exempt any person or class of persons from the requirement to have a **Permit**, either generally or at specified times.
- (2) An exemption may be granted subject to conditions.
- (3) A person must comply with the conditions of an exemption.

**Maximum Penalty: 2 Penalty Units**

- (4) An exemption may be cancelled or corrected as if it were a **Permit**.

#### 19. Offences

A person who makes a false representation or declaration (whether oral or in writing) or who omits relevant information in an application for a **Permit** or exemption is guilty of an offence.

**Maximum Penalty: 10 Penalty Units**

#### 20. Delegation

- (1) In accordance with section 114 of the **Act**, **Council** hereby:
  - (a) delegates to its Chief Executive Officer and to each **Senior Officer** and to any person for the time being acting for such persons all the powers, discretions, authorities and consideration of **Council** under this Local Law including the powers, discretions and authority to issue or refuse **Permits**, fix conditions and durations relevant to such **Permits**, cancel **Permits**, require additional information, apply guidelines or policies of **Council**, waive the need for any **Permit**, waive, fix or reduce fees or charges or to do any act, matter or thing necessary or incidental to the exercise of any function or power by **Council**; and

- (b) delegates to **Council's** Environment Manager and to any person for the time being acting for him or her the power to issue or refuse permits and apply conditions, exercise discretions and require additional information.

## 21. Power of Authorised Officers to Direct – Notice to Comply

An **Authorised Officer** may by a written notice given to a person who appears to be in breach of this Local Law direct that person to remedy any situation which constitutes a breach under this local law.

## 22. 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;
  - (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 factor.

## 23. Failure to Comply with a Notice to Comply

A person who fails to comply with a **Notice to Comply** served on that person is guilty of an offence.

**Maximum Penalty: 5 Penalty Units**

## 24. Power of Authorised Officer to Act in Urgent Circumstances

- (1) In urgent circumstances arising as a result of a failure to comply with this Local Law an **Authorised Officer** may take action to remove remedy or rectify a situation without first serving a notice to comply if:
  - (a) the **Authorised Officer** considers the circumstances or situation to be sufficiently urgent and that the time involved or difficulties associated with the serving of a notice, may place a person, animal, property or thing at risk or in danger; and

- (b) wherever practicable, a **Senior Officer** is given prior notice of the proposed action.
- (2) In deciding whether circumstances are urgent, an **Authorised Officer** must take into consideration, to the extent relevant:
  - (a) whether it is practicable to contact:
    - (i) the person by whose default, permission or sufferance the situation has arise; or
    - (ii) the owner or the occupier of the **Land** affected; and
  - (b) whether there is an urgent risk or threat to public health, public safety, the environment or animal welfare.
- (3) The action taken by an **Authorised Officer** under clause 245(1) must not extend beyond what is necessary to cause the immediate abatement of or minimise the risk or danger involved.
- (4) The **Authorised Officer** who takes action under clause 24(1) must ensure that as soon as practicable:
  - (a) details of the circumstances and remedying action are forwarded to the person on whose behalf the action was taken; and
  - (b) a report of the action taken is submitted to the relevant **Senior Officer**.

## 25. Power of Authorised Officer to Impound

- (1) An **Authorised Officer** may impound any item being used to undertake works in contravention of this Local Law.
- (2) If an **Authorised Officer** has impounded any item in accordance with this Local Law, Council may refuse to release it until the appropriate fee or charge for its release has been paid to Council.
- (3) **Council** may, by resolution, fix charges (generally or specifically) for the purposes of this clause.
- (4) As soon as possible after the impounding and where practicable to do so, the **Authorised Officer** must, serve written notice on the owner or person responsible for the item which has been impounded setting out the fees and charges payable and time by which the item must be retrieved.
- (5) If after the time required in a notice of impounding an impounded item is not retrieved, an **Authorised Officer** may take action to dispose of the impounded item according to the following principles:
  - (a) where the item has no saleable value, it may be disposed of in the most economical way; and

- (b) where the item has some saleable value the item may be disposed of either by tender, public auction or private sale but failing sale may be treated as in paragraph (a).
- (6) When the identity or whereabouts of the owner or person responsible for the impounded item is unknown, the **Authorised Officer** must take reasonable steps to ascertain the identity or whereabouts of that person and may proceed to dispose of the impounded item in accordance with clause 25(4) once he or she is satisfied that all reasonable efforts have been made to contact the owner or person responsible for the impounded item.
- (7) Any proceeds from the disposal of impounded items under this Local Law must be paid to the owner or to the person who, in the opinion of **Council**, appears to be authorised to receive the money except for the reasonable costs incurred by **Council** in the administration of this Local Law.
- (8) If a person described in clause 25(6) cannot be identified or located within six months after the date of the notice of impounding, any proceeds of the sale cease to be payable to that person, and may be retained by **Council**.

## 26. Infringement Notices

- (1) Where the **Authorised Officer** reasonably believes that a person has committed an offence against this Local Law, the Officer may issue to that person an infringement notice, in the form of the notice in Schedule 2, as an alternative to prosecution for the offence.
- (2) The fixed penalty in respect of an infringement is the amount set out in Schedule 1.

## 27. Payment of Penalty

- (1) A person issued with an infringement notice may pay the penalty indicated to **Council**.
- (2) To avoid prosecution, the penalty indicated must be paid within 28 days after the day on which the infringement notice is issued.
- (3) A person issued with an infringement notice is entitled to disregard the notice and defend the prosecution in Court.

## 28. Additional Penalty

In addition to any penalty imposed under this Local Law, a penalty of 1 penalty unit applies for each day after conviction during which a contravention of this Local Law continues.

Resolution for the making of this Local Law was agreed to by Council on 2 June 2008.

THE COMMON SEAL of )  
FRANKSTON CITY COUNCIL )  
was affixed in the presence of: )

\_\_\_\_\_ Councillor

\_\_\_\_\_ Chief Executive Officer

this \_\_\_\_\_ day of \_\_\_\_\_ 2008.

Notice of the proposal to make and of the making of this Local Law were included in the Victorian Government Gazette dated 17 April 2008 and 12 June 2008.

Public Notice of the proposal to make and confirmation of the making of this Local Law were inserted in The Frankston Standard Leader dated 14 April 2008 and 9 June 2008.

**LOCAL LAW NO. 14 - SCHEDULE 1****INFRINGEMENT NOTICE PENALTIES**

## FOR OFFENCES AGAINST THIS LOCAL LAW

<b>Clause</b>	<b>Offence</b>	<b>Penalty Units</b>
7	Interference with tree	5
13	Failure to comply with a conditions of a permit	5
19	False representation or omission relating to an application	2
23	Failure to comply with a Notice to Comply	1

**LOCAL LAW NO. 14 - SCHEDULE 2**

<b>FRANKSTON CITY COUNCIL</b>		<b>SCHEDULE 2</b>	
<b>Penalty Notice</b>		No. 00000 Date of Notice	
Traffic [ ]	Parking [ ]	Litter [ ]	
E.P.A. [ ]	Local Laws [ ]	Recreation Vehicle [ ]	
Marine Act [ ]	OTHER [ ]		
Family Name (or Company)		Given Names	
Address			
Licence/Works Approval/Permit No.			
Vehicle/Boat Reg No.	State:	Type:	
<b>Your Offence</b>			<b>Penalty</b>
Time _____	Street _____	Code \$ _____	
am			
pm			
Date ...../...../.....	Place _____		
Information about the offence			
You are entitled to disregard this Notice and defend the prosecution for the offence in the Court			

<b>BY POST</b>
Within 28 DAYS send this notice and a full cheque or money order for the FULL AMOUNT (not part payments) to:
P. O. Box

<b>HOW TO PAY THE PENALTY IN PERSON</b>
Within 28 DAYS take this notice and your payment for the FULL AMOUNT to:
Municipal Office Frankston City Council 9.00am – 4.00pm Mon - Frid

<b>NOTE:</b>
CHEQUES or MONEY ORDERS should be marked "NOT NEGOTIABLE" and made out to:
Frankston City Council

PAYMENT IS NOT RECEIVED WITHIN 28 DAYS, COSTS WILL BE ADDED AND THE MATTER WILL BE TAKEN TO COURT. (FOR DETAILS READ THE OTHER SIDE OF THIS NOTICE)	
Signature of Issuing Officer	Name:
Office Address	

## LOCAL LAW NO. 14 - SCHEDULE 3

## ENVIRONMENTAL WEED SPECIES

Species	Common Name	Restrictions
Acacia baileyana	Cootamundra Wattle	
Acacia elata	Cedar Wattle	
Acacia floribunda	White Sallow Wattle	
Acacia longifolia	Sallow	exempt only where more than 400 metres from the coast
Acacia sophorae	Coastal Wattle	exempt only where more than 400 metres from the coast
Acer negundo	Box Elder	only non-sterile forms exempt
Callistachys lanceolata	Green Bush	
Chrysanthemoides monilifera ssp monilifera	Boneseed	
Coprosma repens	Mirror Bush	
Coprosma robusta	Large Coprosma	
Cotoneaster spp.	Cotoneaster	
Crataegus monogyna	Hawthorn	
Cytisus palmensis	Tree Lucerne	
Fraxinus angustifolia ssp. angustifolia	Desert Ash	
Genista spp.	Broom	
Hakea salicifolia	Willow-leaf Hakea	
Hakea suaveolens	Sweet Hakea	
Lagunaria patersonii	Pyramid Tree / Norfolk Island Hibiscus	
Leptospermum laevigatum	Coast Tea-tree	exempt only where more than 400 metres from the coast
Ligustrum lucidum	Large-leaf Privet	
Lycium ferocissimum	African Boxthorn	
Nicotiana glauca	Wild Tobacco Bush	
Olea europaea ssp. africana	African Olive	
Paraserianthes iophantha	Cape Wattle	
Pinus pinaster	Maritime or Cluster Pine	
Pinus radiata	Monterey Pine	
Pittosporum undulatum	Sweet Pittosporum	
Prunus cerasifera	Cherry Plum	
Rhamnus alaternus	Italian Buckthorn	
Salix spp.	Willows	