Frankston City Council
Local Law 2016 No. 22

TREE PROTECTION LOCAL LAW
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Local Law 2016 No. 22

TREES PROTECTION LOCAL LAW

PART A – Introduction

1. Title

This Local Law will be known as the “Tree Protection Local Law”.

2. Purpose of this Local Law

The purpose of this Local Law is to:

(a) protect trees growing in the Municipal District;

(b) 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, landscape values, environment and biodiversity of the municipality.

3. Authorising Provision

This Local Law is made under section 111(1) of the Local Government Act 1989.

4. Commencement and End Dates

This Local Law:

(a) commences on the day following the day on which notice of the making of this Local Law is published in the Victoria Government Gazette, and operates throughout the Municipal District; and

(b) ends on the 10th anniversary of the day on which it commenced operation.

5. Revocation of Tree Protection Local Law 2010 No. 17

On the commencement of this Local Law, Council’s Tree Protection Local Law 2010 No. 17 is revoked.
6. Definitions in this Local Law

In this Local Law:


“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.

“Lop” means to indiscriminately cut tree branches to stubs or lateral branches that are not large enough to assume the terminal role. Equivalent industry terms for “lop” include “top”, “head,” “tip,” “hat-rack,” and “round over.”

“Municipal District” means 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 as in the Act.

“Schedule” means a Schedule to this Local Law.

“Senior Officer” has the meaning ascribed to it in the Act.

“Tree Protection Zone” means an area with a radius from the centre of the trunk equal to 12 times the diameter of the trunk, except where -

(a) the measured radius is less than 2 metres, in which case the radius shall be 2 metres; or

(b) the measured radius is greater than 15 metres, in which case the radius shall be 15 metres.

For the purposes of calculating the Tree Protection Zone, the diameter of the trunk is to be measured at 1.4 metres above the point where it meets the natural ground level.
7. Protection of Trees

(1) This clause 7 applies to:

(a) any tree with a trunk circumference equal to or greater than 110 cm (centimetres) measured at its base;

(b) 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 is situated on any Private Land, and

(c) 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 and the accumulated effect of all works carried out at any time affect more that 10% of the Tree Protection Zone. For the purposes of this paragraph (b), works include, without limitation, constructing or installing a structure, compaction, trenching, excavation, fill and the installation of impervious surfaces;

Note: See Figures 2 and 3.

(c) lop, prune, cut, trim or direct, authorise or allow to be lopped, pruned, cut 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 4 to 6.

(d) lop, prune, cut, trim, or direct, authorise or allow to be lopped, pruned, cut or trimmed any tree to which this clause applies where the accumulation of all 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) lop a tree or direct, authorise or allow to be lopped any tree.

(3) Clause 7(2) does not apply to:

(a) a person who is instructed or directed in writing by an Authorised Officer to undertake works; or
(b) a tree that is an environmental weed species described in Schedule 2.

(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 or knowledge.

(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 110 cm (centimetres) 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.

![Diagram](image1)

Figure 3: Diagrams illustrating how to determine 10% encroachment of the *Tree Protection Zone*. 

![Diagram](image2)
Figure 4: Diagrams illustrating one third of the *Crown* for different tree shapes

One third \((1/3^{rd})\) 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 \(1/3^{rd}\) of the *Crown*. Pruning is allowed in this section without a *Permit*.
- Represents \(2/3^{rd}\) of the *Crown*. A *Permit* is required to prune in this section.

Figure 5: Diagrams illustrating how one third \((1/3^{rd})\) of the *Crown* is *not* measured.

Pruning the shaded areas as shown above \(\square\) is considered to be removing more than one third \((1/3^{rd})\) of the *Crown* and a *Permit* is required.
Figure 6: Diagram illustrating how to measure one third \((\frac{1}{3})\) of the *Crown* in multi-stemmed trees.

In multi-stemmed trees one third \((\frac{1}{3})\) 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 is *not* to be divided into thirds as shown in (b).

8. **Permit**

(1) An application for a *Permit* 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) the condition of the tree, i.e. health and structural integrity;
(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 has caused property damage, and the extent of the damage and cost of repair of the damage caused. *Council* will permit the removal of the tree for the mitigation or treatment of damage to dwelling foundations where the tree is proven to be a cause of the damage;
(f) whether the tree is causing unreasonable safety issues;
(g) whether the tree is causing a public nuisance or creating an undue nuisance to adjoining landowners;

(h) any damage, detriment or degradation to the environment that may be caused by the removal of the tree; and

(i) 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. Issue of Permits

Council may:

(a) issue a Permit, with or without conditions; or

(b) refuse to issue a Permit.

11. 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.

12. 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;

(i) the submission of further information or plans relevant to the application; and

(j) 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.

(5) If a Permit has been granted and contains a condition requiring the planting of one or more replacement trees, a person must not, except in accordance with another Permit granted by the Council or an Authorised or Delegated Officer:

(a) destroy, damage or remove or allow to be destroyed, damaged or removed; or

(b) lop, cut, trim or prune or allow to be lopped, cut, trimmed or pruned, any tree planted under that condition.

13. 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.

14. 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.

15. 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.

16. 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.

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

(5) Notwithstanding anything else contained in this Local Law, a person need not obtain or comply with a Permit under clause 7(2) if he or she is:

(a) required to obtain a permit under the Frankston Planning Scheme; or

(b) exempt from the need for any planning permit under clause 52.48 of the Frankston Planning Scheme.
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, or omits relevant information, in an application for a *Permit* made under this Local Law

is guilty of an offence.

(2) 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. **Power of Authorised Officer to Direct – Notice to Comply**

An *Authorised Officer* may, by written notice or a *Notice to Comply*, give to a person a direction to remedy any situation which constitutes a breach under this Local Law.

19. **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.

20. **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 arisen; 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 20(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 20(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.

21. 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) 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 the time by which the item must be retrieved.

(4) If an impounded item is not retrieved by the time required in a notice of impounding, 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).

(5) 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 21(5) once he or she is satisfied that all reasonable efforts have been made to contact the owner or person responsible for the impounded item.

(6) 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.

(7) If a person described in clause 21(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.

22. Infringement Notices

(1) A person may be served with an infringement notice specifying a fixed penalty for an offence against this Local Law as an alternative to a prosecution for the offence.

(2) The fixed penalty to be specified in the infringement notice is that listed in Schedule 1 for the offence shown.

(3) An infringement notice may be issued by an Authorised Officer.
The resolution for the making of this Local Law was agreed to by Council on 15 March 2016.

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

Councillor

Chief Executive Officer

this 8th day of April 2016.

- Government Gazette notice of the proposal to make this Local Law: 15 October 2015.
- Public notice of the proposal to make this Local Law: 12 October 2015, Frankston Standard Leader.
- Public notice to confirm the making of this Local Law: 11 April 2016, Frankston Standard Leader.
**TREE PROTECTION LOCAL LAW**  
Local Law 2016 No. 22

**SCHEDULE 1**

**INFRINGEMENT NOTICE PENALTIES**

FOR OFFENCES AGAINST THIS LOCAL LAW

<table>
<thead>
<tr>
<th>Clause</th>
<th>Offence</th>
<th>Penalty Units</th>
</tr>
</thead>
<tbody>
<tr>
<td>7</td>
<td>Interference with tree</td>
<td>10</td>
</tr>
<tr>
<td>13</td>
<td>Failure to comply with a condition of a <em>Permit</em></td>
<td>10</td>
</tr>
<tr>
<td>17</td>
<td>False representation or omission relating to an application</td>
<td>5</td>
</tr>
<tr>
<td>18</td>
<td>Failure to comply with a <em>Notice to Comply</em></td>
<td>5</td>
</tr>
</tbody>
</table>
MAJOR ENVIRONMENTAL WEED SPECIES

Note: Generally, woody species (trees and shrubs) have been included on this list along with the most serious herbaceous species.

Acacia baileyana  Cootamundra Wattle
Acacia elata    Cedar Wattle
Acacia floribunda  White Sallow Wattle
Agapanthus praecox ssp. orientalis  Agapanthus
Asparagus asparagoides  Bridal Creeper
Asparagus scandens  Asparagus fern
Calyctoma spinosa  Spiny Broom
Buddleia dysphylus  Buddleia
Chrysantheoides monilifera ssp. monilifera  Boneseed
Cirsium vulgare  Spear Thistle
Coprosma repens  Mirror-bush
Coprosma robusta  Large Coprosma
Cortaderia jubata/selloana  Pampas Grass
Cotoneaster sp.  Cotoneaster
Crataegus monogyna  Hawthorn
Crocosmia x crocosmiflora  Montbretia
Cytisus palmensis  Tree Lucerne
Cytisus scoparius  English Broom
Delairea odorata  Cape Ivy
Dipogon lignosus  Dolichos Pea
Echium plantagineum  Paterson’s Curse
Erica baccans  Berry-flower Heath
Erica lusitanica  Spanish Heath
Foeniculum vulgare  Fennel
Gladiolus angustifolia ssp. angustifolia  Desert Ash
Genista linifolia  Flax-leaf Broom
Genista monspessulana  Montpellier Broom
Genista (garden hybrid)  Garden Broom
Gladiolus tristis  Evening-flower Gladiolus
Gladiolus undulatus  Wild Gladiolus
Hakea salicifolia  Willow-leaf Hakea
Hakea suaveolens  Sweet Hakea
Hedera helix  Ivy
<table>
<thead>
<tr>
<th>Scientific Name</th>
<th>Common Name</th>
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<tbody>
<tr>
<td>Ipomoea indica</td>
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<tr>
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<td>Blue Periwinkle</td>
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<td>Watsonia meriana cv. ‘Bulbilifera’</td>
<td>Bulbil Watsonia</td>
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<tr>
<td>Zantedeschia aethiopica</td>
<td>White Arum Lily</td>
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