

**GOLD COAST CITY COUNCIL**



**LOCAL LAW No 6**  
**(VEGETATION MANAGEMENT)**

**GOLD COAST CITY COUNCIL  
LOCAL LAW NO. 6 (VEGETATION MANAGEMENT)**

**SUMMARY OF PROVISIONS**

**PART 1 - PRELIMINARY**

1.	Citation .....	1
2.	Objects .....	1
3.	Definitions .....	1
4.	Application of this Local Law .....	3

**PART 2 - VEGETATION PROTECTION**

**DIVISION 1 - MAKING OF VEGETATION PROTECTION ORDERS**

5.	Power to make vegetation protection orders .....	4
6.	Grounds on which vegetation protection order may be made.....	4
7.	Vegetation to which order may relate .....	5
8.	How order is made .....	5
9.	Notice of order to be given.....	6
10.	Commencement of vegetation protection order .....	6
11.	Interim protection orders.....	7

**DIVISION 2 - CONFIRMATION OF ORDER**

12.	Submissions about vegetation protection order .....	7
13.	Consideration of submissions.....	8
14.	Confirmation or order .....	8

**DIVISION 3 - REVOCATION OF ORDER**

15.	Revocation of unconfirmed order .....	9
16.	Proposal to revoke order .....	9
17.	How submissions are made .....	10
18.	Consideration of submissions.....	11
19.	Revocation of order after its confirmation .....	11

## **DIVISION 4 - MANAGEMENT POLICIES**

20.	Management policies for protected vegetation .....	11
21.	Local government's responsibility to carry out management policies .....	12

## **DIVISION 5 - REGISTRATION OF ORDERS**

22.	Vegetation protection orders to be entered in land record .....	12
23.	Register of vegetation protection orders .....	13

## **PART 3 DAMAGE TO VEGETATION**

### **DIVISION 1 - PROHIBITION OF DAMAGE**

24.	Prohibition of damage .....	14
25.	Permitted damage .....	14

### **DIVISION 2 - PERMITS**

26.	Application for permit .....	17
27.	Determination of permit .....	18
28.	Term of permit .....	19
29.	Conditions of permit .....	20
30.	Compliance with conditions .....	20

### **DIVISION 3 - DEVELOPMENT APPLICATIONS PROPOSING DAMAGE**

31.	Information required with development applications .....	21
32.	Determination of damage .....	21

## **PART 4 - ENFORCEMENT**

33.	Minor offences infringement notice .....	21
34.	Compliance order .....	22
35.	Reinstatement order .....	22
36.	Local government's power to have work carried out .....	23

## **PART 5 - APPEALS**

37.	Right of appeal against vegetation protection order, compliance or reinstatement order or a permit condition or a refusal to grant a permit or failure of the local government to determine a permit within the specified time .....	24
38.	Right of appeal against Minor Offence infringement notice.....	25
39.	Procedure .....	25
40.	Power to stay operation of order .....	25
41.	Powers of the Court on an appeal.....	25

## **PART 6 - MISCELLANEOUS**

42.	Local law policies.....	26
-----	-------------------------	----

## **PART 1- PRELIMINARY**

### **Citation**

1. This local law may be cited as Gold Coast City Council Local Law No. 6 (Vegetation Management)

### **Objects**

2. (1) The principal object of this local law is to provide for the protection and management of vegetation located within the City of Gold Coast as part of the sustainable development of the City.
- (2) The objects of this local law also include:-
  - (a) providing the necessary powers to enforce the provisions of this local law; and
  - (b) providing the necessary powers to require appropriate action to reinstate vegetation damaged in contravention of this local law.
- (3) This local law is not in any way to be deemed to effect any rights relating to compensation that any landowner may possess under any other state legislation.

### **Definitions**

3. In this local law:-

**"applicant"** means any person who makes application under this local law for a permit to damage protected vegetation.

**"authorised person"** means a person, with appropriate qualifications and experience, authorised by the local government to exercise the powers of an authorised person under this local law.

**"bushfire prone areas"** means those areas that are designated by the Bushfire Management Strategy as exhibiting a medium or high potential bushfire hazard.

**"City"** means the City of Gold Coast.

**"compliance order"** see section 34.

**"Court"** means the Planning and Environment Court, Magistrates Court or other Court as may be appropriate.

**"damage"** to vegetation includes destruction of the vegetation or interference with its natural growth including, but not limited to, ringbarking, cutting down, topping, lopping, removing or poisoning.

**"development applications"** means an application by any person to the local government seeking a development approval.

**"development approval"** means an approval, permission, consent or authorisation under the *Integrated Planning Act 1997* another law administered by the local government authorising:

- (a) the construction, alteration or demolition of a building or structure; or
- (b) the clearing of trees, earth work, or other work that changes the configuration of land.

**"local government"** means the Council of the City of Gold Coast.

**"person"** includes any individual or individuals, firm, company, corporation or unincorporated association

**"protected vegetation"** means vegetation throughout the City that is:

- (a) equal to or in excess of 40 centimetres in girth DBA (Diameter Breast Height)(measured at 1.3 metres above average ground level); or
- (b) equal to or in excess of 4 metres in height (in areas zoned Rural, Park Residential or Future Urban under the Planning Scheme as at the date of making of this Local Law);  
or
- (c) subject of a vegetation protection order that is in force under this local law.<sup>1</sup>

**"reinstatement order"** see section 35.

**"regular and ongoing maintenance program"** means a maintenance program over a maximum 7 year cycle that provides for the continued productive use of land for agricultural or animal husbandry purposes.

---

<sup>1</sup> separate to this local law, the Nature Conservation Act 1992 and the Nature Conservation (Wildlife) Regulations 1994 provides for the protection and management of certain classes of vegetation defined by that legislation as protected plants.

**"vegetation"** means a tree or trees, plants (including palms) and all other organisms of vegetable origin (whether living or dead) but does not include declared plants within the meaning of the *Rural Lands Protection Act 1985* or plants declared by the local government as undesirable plants in a local law policy.

**"vegetation protection order"** see section 5.

**"watercourse"** means a channel, which has a definable bed and banks, in which water flows permanently or intermittently under normal conditions of flow and retains water flow after a rainfall event, whether tidal or non tidal including a river, creek, stream or gully.

#### **Application of this Local Law**

4. (1) This local law applies to freehold land only.
- (2) This local law does not apply to vegetation that is the subject of a scheme or plan that provides for its management and exploitation as a sustainable resource;
- (i) approved by the local government; or
- (ii) authorised or approved under another law.

## **PART 2 - VEGETATION PROTECTION**

### **DIVISION 1 - MAKING OF VEGETATION PROTECTION ORDERS**

#### **Power to make vegetation protection orders**

5. (1) The local government may make an order (a "vegetation protection order") to protect vegetation on freehold land 2.

---

2 The *Land Act 1994* deals with the responsibility for protecting vegetation on land other than freehold land.

- (2) Before the local government makes a vegetation protection order, it must obtain and consider a report on the proposed order from a person or persons with appropriate qualifications and experience to assess the significance of the vegetation to which the order relates.
- (3) The report must deal with the question whether the proposed order is consistent with, and justified in the light of, the objects of this local law and discuss the validity of such an order based upon the grounds discussed in 6(2).

**Grounds on which vegetation protection order may be made**

6. (1) The grounds on which a vegetation protection order is made must be stated in the order.
- (2) The grounds on which a vegetation protection order may be made are: *(new ground may be required. to consider)*
  - a) to facilitate protection of vegetation classified by the Department of Environment as representing an ecological community whose regional conservation status is recognised as being endangered, of concern or vulnerable, or which is necessary to ensure the sustainability of such a community; or
  - b) to facilitate protection of vegetation that provides habitat for rare and threatened flora and fauna as defined by the Nature Conservation Act 1992 and Nature Conservation (Wildlife) Regulations 1994; or
  - c) to facilitate protection of vegetation located within an area identified by the Nature Conservation Strategy as being a “Large Habitat System” or a “Major Linkage (Land and Water Based)””; or
  - d) to facilitate protection of vegetation that is of considerable historical, cultural or visual significance; or
  - e) to facilitate protection of vegetation that is important for erosion prevention and slope stabilisation on slopes greater than 25% in the Park Residential or Rural or Future Urban zones under the Planning Scheme as at the date of making of this Local Law.

**Vegetation to which order may relate**

7.(1) A vegetation protection order must identify or describe the vegetation to which it relates with reasonable particularity.

*Examples*

A vegetation protection order may, for example, state that it relates to:

- a particular tree in a specified location;
- a particular group of trees in a specified location;
- vegetation of a specified class on freehold land within a specified area;
- all vegetation on freehold land within a specified area;
- all vegetation on freehold land within a specified area other than vegetation of a specified class or classes.

(2) A vegetation protection order cannot relate to vegetation if the vegetation is subject to a scheme or plan providing for its management and exploitation as a sustainable resource:

- (a) approved by the local government; or
- (b) authorised or approved under another law.

**How order is made**

8. A vegetation protection order is made by resolution of the local government.

**Notice of order to be given**

9. (1) When the local government makes a vegetation protection order, it must:
- (a) give notice of the order to the owner of the land on which the vegetation is situated; and
  - (b) give public notice of the order by advertisement in a newspaper circulating in the City area.
- (2) However, notice need not be given to the owner of the land on which the vegetation is situated if the owner asked the local government to make the order.
- (3) A notice under this section must:
- (a) give reasonable particulars of the terms and effect of the vegetation protection order (including a statement of relevant management policies); and
  - (b) invite written submissions about the order; and
  - (c) fix a date (which must be at least 21 days after the date of the notice) as the closing date for submissions.
- (4) A notice under Section 9(1)(a) may be given by a written notice served upon the land owner.
- (5) Where the local government makes a vegetation protection order as a result of the local government's assessment of a development application where the owner of the land asked the local government to make the order, or agreed that the order be made, public notice in accordance with section 9 (1) to 9(4) is not required.

**Commencement of vegetation protection order**

10. (1) A vegetation protection order comes into force when public notice of the order is given<sup>3</sup> or at a later time specified in the order.

---

<sup>3</sup> For requirement to give public notice, see section 9(1)(b).

- (2) Where the order is made as a result of the local government's assessment of a development application where the owner of the land asked the local government to make the order, or agreed that the order be made, the order will come into force at the time the development approval is issued, or at some later time specified in the order.

### **Interim protection orders**

- 11.(1)** If a vegetation protection order comes into force before it is confirmed by the local government, the order has effect on an interim basis.
- (2) A vegetation protection order that has effect on an interim basis (an "interim protection order") remains in force for 4 months from its commencement but comes to an end earlier if:
- (a) the local government revokes the order; or
  - (b) the local government resolves not to confirm the order or a motion for confirmation of the order fails to pass at a meeting of the local government.
- (3) However, if a vegetation protection order that has operated for the maximum period of 4 months as an interim protection order is later confirmed by the local government, the order revives on confirmation or a later date fixed by the local government in the resolution confirming the order.

## **DIVISION 2 - CONFIRMATION OF ORDER**

### **Submissions about vegetation protection order**

- 12.(1)** A person may respond to notice of a vegetation protection order by making a written submission to the local government about the order.
- (2) A submission must:
- (a) set out in detail the grounds on which the person who makes the submission supports or opposes the order; and
  - (b) be signed by, and contain the name and address of, the person making the submission; and

- (c) be received by the local government not later than close of business on the date fixed in the notice of the order as the closing date for submissions.<sup>4</sup>

### **Consideration of submissions**

- 13.** The local government must consider all written submissions properly made in response to the notice of the order.

### **Confirmation of order**

- 14.(1)** After considering the submissions made in response to the notice of the order and evaluating any arguments against confirming the order in the light of the reasons for the order, the local government may, by resolution, confirm the order.

- (2) The order may be confirmed with or without modification.

- (3) However a modification (other than a modification of a clerical nature) may be made only if:

- (a) the modification arises out of the local government's consideration of the submissions made in response to notice of the proposed order; and
- (b) the modification does not make the order substantially more burdensome or restrictive than if the proposed order had been confirmed without modification.

- (4) Following confirmation of the order the local government is to advise those persons who duly made submissions in accordance with section 12, of its decision.

- (5)(a) Where the order is made as a result of the local government's assessment of a development application where the owner of the land asked the local government to make the order, or agreed that the order be made, the order is to be considered to be confirmed at the expiration of

the appeal period for development application, as described by the Integrated Planning Act, or the development application has been determined by the Court.

---

<sup>4</sup> See section 9(3)(c).

- (b) Prior to the confirmation of the order the local government may modify the order.

### **DIVISION 3 - REVOCATION OF ORDER**

#### **Revocation of unconfirmed order**

**15. (1)** After considering the submissions made in response to the notice of the order and evaluating any arguments against confirming the order in the light of the reasons for the order, the local government may, by resolution, revoke a vegetation protection order (including an interim protection order) if the order has not been confirmed.

(2) If the local government revokes a vegetation protection order under this section, it must:

- (a) give notice of the revocation to the owner of the land on which the vegetation is situated; and
- (b) give public notice of the revocation by advertisement in a newspaper circulating in the City area; and
- (c) give written notice of the revocation to those persons who duly made submissions in accordance with section 12.

(3) A notice under Section 15(2)(a) may be given by a written notice served upon the land owner.

#### **Proposal to revoke order**

**16. (1)** If the local government proposes to revoke a vegetation protection order, whether in whole or in part, after its confirmation, the local government must first obtain a report on the proposed revocation from a person with appropriate qualifications and experience to assess the significance of the vegetation to which the order relates.

(2) If, after considering the report, the local government wants to proceed with the proposed revocation of the vegetation protection order, the local government must:

- (a) give notice of the proposed revocation to the owner of the land on which the vegetation is situated; and

- (b) give notice of the proposed revocation where possible to those persons who duly made submissions in accordance with section 12; and
  - (c) give public notice of the proposed revocation by advertisement in a newspaper circulating in the City area.
- (3) A notice under Section 16(2)(a) may be given by a written notice served upon the land owner.
- (4) However, notice need not be given to the owner of the land on which the vegetation is situated if the owner asked the local government to revoke the order.
- (5) A notice under this section must:
- (a) give reasonable particulars of the terms and effect of the vegetation protection order; and
  - (b) invite written submissions about revocation of the order; and
  - (c) fix a date (which must be at least 21 days after the date of the notice) as the closing date for submissions.

### **How submissions are made**

- 17.(1)** A person may respond to a notice proposing revocation of a vegetation protection order after its confirmation by making a written submission to the local government about revocation of the order.
- (2) A submission must :
- (a) set out in detail the grounds on which the person who makes the submission supports or opposes revocation of the order; and
  - (b) be signed by, and contain the name and address of, the person making the submission; and
  - (c) be received by the local government not later than 4 pm. on the date fixed in the notice as the closing date for submissions.<sup>5</sup>

---

<sup>5</sup> See section 16(5)(c).

### **Consideration of submissions**

18. The local government must consider all written submissions properly made in response to the notice of the proposed revocation of the order.

### **Revocation of order after its confirmation**

19. (1) After considering the submissions made in response to the notice of the proposed revocation and evaluating any arguments against revoking the order in the light of the reasons for the proposed revocation, the local government may, by resolution, revoke the order.
- (2) Following revocation of the order the local government is to advise those persons who duly made submissions in accordance with section 17 of its decision.

## **DIVISION 4 - MANAGEMENT POLICIES**

### **Management policies for protected vegetation**

20. (1) The local law policies may include policies for the management of protected vegetation.

#### *Examples*

The management policies might for example cover:

- the fencing of protected vegetation to prevent damage;
- eradication of pests that could damage protected vegetation;
- management of sites on which protected vegetation of particular classes is situated;
- in the case of rare or threatened species, management of the vegetation to facilitate regrowth, regeneration, propagation or long term viability;
- fire management, including maintenance of fire breaks, controlled burning off and other protective measures;
- protection of the vegetation from damage resulting from public use of the area in which it is situated (for example, by the construction of boardwalks and other infrastructure);
- protection of the vegetation from damage resulting from works on the site including, for example ground compaction, root damage or modifications to site conditions such as groundwater or natural ground level conditions that may effect the health and condition of protected vegetation.

- (2) The management policies may vary according to:
- (a) the nature of the protected vegetation; or
  - (b) the part of the area where the protected vegetation is situated; or
  - (c) other relevant factors.

**Local government's responsibility to carry out management policies**

21. The local government is responsible for carrying out management policies for protected vegetation.<sup>6</sup>

**DIVISION 5 - REGISTRATION OF ORDERS**

**Vegetation protection orders to be entered in land record**

22. If a vegetation protection order affects a parcel of rateable land, a note of the effect of the order must be made in the entry about the land in the local government's land record<sup>7</sup>.

**Register of vegetation protection orders**

23. (1) The local government must establish a register (the "Vegetation Protection Register") for recording:
- (a) all vegetation protection orders (including interim protection orders) made by the local government; and
  - (b) all revocations of vegetation protection orders.

---

<sup>6</sup> The local government has power under section 665 of the *Local Government Act 1993* to enter land for the purpose of carrying out its responsibilities under this section.

<sup>7</sup> The local government is required to keep a record of every parcel of rateable land in its area. This record is called the "land record" (See section 590 of the *Local Government Act 1993*).

- (2) For each vegetation protection order, the Vegetation Protection Register must include:
- (a) the date when the order was made, when it came into force, and if it is no longer in force, the date when it ended; and
  - (b) particulars of the location of the land to which the order relates and of the location of the protected vegetation (including if necessary a map showing where the vegetation is situated); and
  - (c) particulars of the protected vegetation to which the order relates; and
  - (d) the grounds on which the order was made with a statement of how the grounds relate to the objects of this local law.
- (3) The local government's policies for managing protected vegetation must be included in the Vegetation Protection Register or in a statement kept with the Register.
- (4) The Vegetation Protection Register, or a copy of the Register, must be kept available for public inspection at the local government's public office.

## **PART 3 - DAMAGE TO VEGETATION**

### **DIVISION 1 - PROHIBITION OF DAMAGE**

#### **Prohibition of damage**

**24. (1)** A person must not damage or permit to be damaged protected vegetation.

Maximum penalty-850 penalty units.

- (2) However, an offence is not committed if the damage is permitted under this local law.

#### **Permitted damage**

25.(1) Damage to protected vegetation is only regarded as reasonably necessary for a particular purpose if there is no alternative way of achieving the purpose that could reasonably or practicably be required in the circumstances and would avoid the damage or significantly reduce the extent of the damage.

(2) Damage to protected vegetation is permitted in the following circumstances:

(a) if the damage is reasonably necessary for carrying out work authorised or required under an Act;

*Examples*

- within the path of or within 3 metres of the path of a road, water supply, sewerage or drainage work for which all necessary statutory approvals have been obtained;
- work authorised by development approval;
- the eradication of pests under the *Rural Lands Protection Act 1985* may involve some unavoidable damage to protected vegetation;

(b) if the damage occurs to protected vegetation that is not subject of a vegetation protection order that is:

(i) within three (3) metres<sup>1</sup> of the foundations of an existing building or structure, or the site of a proposed building or structure, on the subject property, for which all necessary development approvals have been obtained; or

(ii) within ten (10) metres<sup>1</sup> of the foundations of an existing building or structure, or the site of a proposed building or structure, on the subject property, for which all necessary development approvals have been obtained, for land zoned Park Residential, Rural (provided such Rural zoned land is less than 4000m<sup>2</sup> in size in which case section 25 (2)(b) (i) shall apply), or Future Urban under the Planning Scheme as at the date of making of this Local Law; or

(iii) reasonably necessary for access to the building, structure or site;

---

<sup>1</sup> as measured from the centre of the diameter of the tree's trunk, at ground level, to the nearest edge of the foundations.

- (c) if an authorised person authorises the damage on the grounds that the protected vegetation is:
  - (i) actually or potentially dangerous as a result of being dead, dying or diseased, structurally unsound or having a growth form or habit which is hazardous;
  - (ii) a threat to the safety and/or the integrity of persons, property or the environment; or
  - (iii) restricting the habitability of the site;
  
- (d) if the damage is reasonably necessary for a survey of the boundary by a licensed cadastral surveyor;
  
- (e) if the damage is reasonably necessary to:
  - (i) maintain an existing firebreak; or
  - (ii) undertake works in order to implement an approved fire management plan; or
  - (iii) establish a fire break during a fire event or to contain fire in some other way; or
  - (iv) reduce bushfire hazard by means of fuel reduction surrounding a dwelling house in a bushfire prone area, to a maximum of the following:
    - removal of protected vegetation within 10m of a dwelling house (Inner Zone); and
    - selective removal of protected vegetation in order to thin the canopy or remove understorey vegetation (including any branches less than 2 m above ground level) for a further 10 metres (Outer Zone); and
    - where the dwelling house is situated on a sloping site, a further increase in the Outer Zone:
      - to a maximum of 1 metre for every degree of slope, downslope of the dwelling house;
      - to a maximum of half a metre for every degree of slope, upslope of the dwelling house.

- (f) if the protected vegetation is sustainably harvested for bona fide milling purposes reasonably necessary for use in connection with existing lawful agricultural or animal husbandry operations conducted on the land on which the protected vegetation is situated provided that such protected vegetation is not subject of a vegetation protection order and is not located:
  - within 25 metres of the high bank of a watercourse; or
  - on land that has a slope in excess of 25%.
  
- (g) if the damage arises as the result of pruning reasonably necessary to promote regeneration, ornamental shaping or to prevent interference to services where the protected vegetation is not subject of a vegetation protection order;
  
- (h) if the damage arises as the result of sustainable timber harvesting where the vegetation is subject to a scheme or plan providing for its management and exploitation as a sustainable resource:
  - (i) approved by the local government; or
  - (ii) authorised or approved under another law;
  
- (i) if the protected vegetation is damaged in order that it be used as fire wood reasonably necessary for the domestic use of occupants of the site on which the protected vegetation is situated, where the protected vegetation is not subject of a vegetation protection order;
  
- (j) if the damage arises on a rural property as the result of a regular and ongoing maintenance program for the management of immature regrowth and woody weeds in connection with an existing lawful, agricultural or animal husbandry operation conducted on the land.

- (k) if the damage is allowed under a permit.

## **DIVISION 2 - PERMITS**

N.B. Permits required under this section relate only to permits required under this Local law for damage to protected vegetation. Permits may also be required, in addition to permits under this local law, such as fauna relocation under the Nature Conservation Act, permits to burn under the Fire Services Act, an Environmental authority under the Environment Protection Act or a Riverine Environment Protection permit under the Water Resources Act 1989.

Permits are also required under the Nature Conservation Act for the taking of, including damage to, native plants prescribed as protected plants under the Nature Conservation (Wildlife) Regulations.

### **Application for permit**

- 26. (1)** An application for a permit permitting damage to protected vegetation must include or be accompanied by:
- (a) particulars (including drawings) of the land on which the protected vegetation, proposed to be damaged, is situated including:
    - the site's real property description and street address; and
    - the location of the existing or approved dwellings, building or structures; and
    - where appropriate, the location of watercourses, ridgetops and steep slopes on and adjacent to the site.
  - (b) the location of the protected vegetation to which the damage is proposed and reasonable particulars of its vegetation type including species, height and girth, (a photograph may be sufficient to illustrate the vegetation type); and
  - (c) a statement of the reasons why the damage is necessary; and any relevant factors associated with the purpose of the proposed damage; and
  - (d) particulars of how the vegetation is to be damaged and, if relevant, how the damaged material is to be removed or disposed of.

- (2) If the purpose for which a permit is sought could be achieved without the proposed damage to protected vegetation or with less damage, the application must include or be accompanied by a written explanation stating why it is not reasonable or practicable, in the circumstances, to carry out the purpose in a way that avoids or reduces damage to protected vegetation.
- (3) If the applicant for the permit is not the owner of the land, the application must be accompanied by the written consent of the owner of the land to the damage.

### **Determination of permit**

- 27.** (1) The local government may grant a permit permitting damage to protected vegetation.
- (2) In deciding whether or not to grant a permit, the local government must have regard to:
    - (a) the probable environmental impact of the proposed damage; and
    - (b) the reasons for the proposed damage and the purpose that would be served by permitting the damage; and
    - (c) whether there are reasonably practicable means of achieving the same purpose without damage or with less damage to protected vegetation; and
    - (d) the local government's Corporate Plan, Planning Schemes, policies and local laws and local law policies relevant to the application.
  - (3) (a) The local government is to determine the application within 30 days of the date of receipt of the application. Provided that if the local government requires additional information in relation to the application it will request that information within 14 days of receipt of the application and must then determine the application within 30 days of receipt of that additional information.
  - (b) If no decision is made within 30 days of the receipt of the application or 30 days from the receipt of additional information (if requested), whichever is the later, the applicant may appeal to the Court pursuant to Section 37 as if the local government had refused the application.

**Term of permit**

- 28.** (1) A permit is granted for a term specified in the permit (not less than 6 months).
- (2) The local government may, on application by the holder of a permit, renew the permit for a further term.
- (3) The local government may issue a permit for recurrent damage where such damage will occur as part of the ongoing management of a site.

*Example*

\* *where the damage occurs as part of an ongoing program of arboricultural or horticultural works.*

\* *where the damage occurs as part of a weed eradication program (this does not include declared plants within the meaning of the Rural Lands Protection Act 1985 or plants declared by the local government as undesirable plants in a local law policy).*

**Conditions of permit**

- 29.** (1) A permit may be granted on reasonable and relevant conditions the local government considers appropriate.
- (2) The conditions of a permit may, for example:
- (a) regulate how the work is to be carried out (including the kind of machinery that may be used to carry out the work);
- (b) regulate how damaged vegetation and other waste material is to be disposed of;
- (c) require specified action to replant or reinstate the land, and or land surrounding the land, on which the permitted work is to be carried out;

- (d) specify the extent of damage to protected vegetation where the permitted damage is inconsistent with that applied for;
- (e) require specified action to transplant vegetation to a nominated site or to gather genetic specimens from vegetation to be damaged for cultivation;
- (f) specify a maximum term for which the permit will be valid.

**Compliance with conditions**

**30.** The holder of a permit must ensure that the conditions of the permit are complied with.

Maximum penalty 850 penalty units.

### **DIVISION 3 - DEVELOPMENT APPLICATIONS PROPOSING DAMAGE**

#### **Information required with development applications**

- 31. (1)** An application for development approval that will facilitate damage to protected vegetation must include or be accompanied by the following:
- (i) information included in Section 26 (1) of this Local Law;
  - (ii) particulars (including drawings) of the location of protected vegetation which is to be retained or relocated on site or an approved site;
  - (iii) the position of proposed buildings, structures and roadworks (if known).
- (2) Where no protected vegetation exists on the site subject of a development application, no plan pursuant to Section (1) is required however written advice certifying that fact signed by the applicant is required to be submitted with the application.

#### **Determination of damage**

- 32. (1)** Damage to protected vegetation proposed by a development application shall be considered as an element of the development application in accordance with the provisions of the *Integrated Planning Act 1997*.
- (2) Damage to protected vegetation may be allowed under a development application subject to reasonable and relevant conditions the local government considers appropriate and the matters contained in Section 29 (2)

### **PART 4 - ENFORCEMENT**

#### **Minor offences infringement notice**

- 33.** An authorised person may issue an infringement notice for a minor offence in accordance with local law policy.

**Compliance order**

34. (1) If a person is engaging or is about to engage in an activity that may result in damage, other than permitted damage, to protected vegetation, an authorised person may give the person a written order (a "compliance order") requiring the person:
- (a) to stop the activity; or
  - (b) if it is possible to carry on the activity without damage to protected vegetation to comply with requirements stated in the order in carrying on the activity.
- (2) A person must not contravene a compliance order.

Maximum penalty 850 penalty units.

- (3) The local government may withdraw a compliance order.

**Reinstatement order**

35. (1) If a person damages protected vegetation in contravention of this local law, the local government may, whether or not a penalty is imposed by the Court, by written order (a "reinstatement order"), require the person to take specified action to restore the damaged vegetation or to establish fresh vegetation to make good environmental damage resulting from the damage.
- (2) If a reinstatement order requires the planting of fresh vegetation:
- (a) the order must:
    - (i) specify in full detail the type, density and size of vegetation to be reinstated and the location in which it is to be planted; and
    - (ii) specify a period within which the vegetation is to be planted; and
    - (iii) specify action over a period stated in the order to water, tend, and nurture the vegetation.
  - (b) the order may require:

- (i) if the vegetation fails to germinate or to thrive, further action as directed by an authorised person.
  - (c) the vegetation to be reinstated can not be of a type, density and size greater than that vegetation which was removed.
- (3) A person against whom a reinstatement order is made must comply with the order and any requirement made under the order<sup>8</sup>.

Maximum penalty 850 penalty units.

### **Local government's power to have work carried out**

- 36. (1)** If a person fails to perform the work required by a reinstatement order, the local government may:
- (a) if the person who has failed to perform the work is the owner of the relevant land, enter the land and perform the work under section 661 of the Act; or
  - (b) if the person who has failed to perform the work is not the owner of the relevant land, enter the land under section 665 of the Act and perform the work under this section<sup>9</sup>.
- (2) If the person who failed to comply with the reinstatement order is the owner of the relevant land, the amount properly and reasonably incurred by the local government in performing the work is recoverable (together with interest) under sections 662 and 663 of the Act.
- (3) If the person who failed to comply with the reinstatement order is not the owner of the relevant land, the amount properly and reasonably incurred by the local government is recoverable as a

---

<sup>8</sup> If the person is required to carry out work on land of which person is not the owner or occupier, the agreement of the occupier, or an order under section 658 of the *Local Government Act 1993*, is necessary for entry to the land. If the person required to carry out the work is the owner, but not the occupier, of the land, the owner (and the owner's employees and agents) may enter the land after giving notice to the occupier under section 657 of the *Local Government Act 1993*.

<sup>9</sup> If the owner of the relevant land fails to carry out the work the local government may enter the land and carry out the work under section 661 of the *Local Government Act 1993* and if the person who fails to comply with the reinstatement order is not the owner of the land the local government has power to enter the land under section 665 of the *Local Government Act 1993*.

debt from the person in default together with interest on the same basis as applies to an owner of land under section 662 of the Act<sup>10</sup>.

## **PART 5 - APPEALS**

### **Right of appeal against vegetation protection order, compliance or reinstatement order or a permit condition or a refusal to grant a permit or failure of the local government to determine a permit within the specified time**

37. (1) A person against whom a compliance order or a reinstatement order is made, or who is the owner or occupier of land on which protected vegetation order is situated, may appeal to the Court against the order.
- (2) A person whom has been granted a permit may appeal to the Court against a condition or conditions of the permit.
- (3) A person who has been refused a permit, or whose application for a permit has not been determined within the specified time, may appeal to the Court against the decision.
- (4) The appeal must be started:
- (a) within 40 days after the date:
- (i) of the confirmation of the vegetation protection order; or
- (ii) of the issue of a compliance order or a reinstatement order; or
- (iii) of the issue, or refusal, of a permit; or
- (iv) for determination of a permit pursuant to section 27(3) of this local law, where such determination has not been made.

---

<sup>10</sup> Section 662(2) of the *Local Government Act 1993* provides for the payment of interest on the same basis as for an overdue rate.

- (b) within a period allowed by the Court longer than that specified in 37(4)(a).

**Right of appeal against Minor Offence infringement notice**

38. A person who has been issued with an infringement notice may appeal to the Court against the notice.

**Procedure**

39. An appeal is to be started and conducted in the same way as if it were an appeal under the *Integrated Planning Act 1997*.

**Power to stay operation of order**

40. (1) The Court may stay the operation of the order under appeal for the purpose of securing the effectiveness of the appeal.
- (2) However, the Court may only stay the operation of an order if the appellant satisfies the Court that the stay is consistent with the objects of this local law as they relate to the vegetation affected by the order.
- (3) A stay:
- (a) may be given on conditions the Court considers appropriate; and
  - (b) operates for the period stated by the Court; and
  - (c) may be revoked or amended by the Court.
- (4) The period of a stay cannot extend past the time the Court decides the appeal.

**Powers of the Court on an appeal**

41. (1) On an appeal, the Court may:
- (a) confirm, vary or revoke the order or permit or grant a permit subject to appeal; and
  - (b) give consequential and ancillary orders and directions.
- (2) The Court's decision on an appeal must be consistent with the objects of this local law.

## **PART 6 - MISCELLANEOUS**

### **Local Law Policies**

- 42.** The local government may by resolution make Local Law Policies consistent with the objects of this Local Law.