

Redland Shire Council

**LOCAL LAW NO. 6
PROTECTION OF VEGETATION**

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PART 1 - PRELIMINARY

Citation

1. This Local Law may be cited as the Redland Shire (Protection of Vegetation) Local Law No. 6.

Objects

2. The objects of this local law are to:-
 - a) provide appropriate protection for significant vegetation; and
 - b) provide for the management of protected vegetation; and
 - c) provide the necessary powers to enforce vegetation protection orders; and
 - d) provide the necessary powers to require appropriate action to reinstate vegetation damaged in contravention of this local law.

Definitions

3. In this local law:

“**authorised person**” means a person authorised by the Local Government to exercise the powers of an authorised person under this local law.

“**compliance order**” see Section 34.

“**Court**” means the Planning and Environment Court.

“**Council**” means the Redland Shire Council.

“**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, knocking down, poisoning, injuring, maiming or destroying.

“**development**” of land means:-

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

“**development approval**” means an approval, permission, consent or authorisation allowing development of land under the *Local Government (Planning and Environment) Act 1990*, the Redland Shire Town Planning Scheme or the *Building Act 1975* or another law administered by the Local Government.

“**interim vegetation protection order**” see section 14

“**Local Government**” means the Redland Shire Council

“management policies” see section 21

“protected vegetation” means

- a) vegetation for which a vegetation protection order is in force under this local law; or
- b) vegetation on land described in section 24 and section 25 of this local law.

“reinstatement order” see section 35.

“significant vegetation” means that the vegetation is

- a) a valuable part of the natural heritage of the area; or
- b) an example of a rare or threatened species or a species that may be, or may be about to become, a rare or threatened species; or
- c) a valuable scientific resource; or
- d) a valuable source of propagating stock or of other horticultural value; or
- e) of historic significance because of its association with an important historical event or the commemoration of an important historical event, whether of local, regional, state or national significance; or
- f) of cultural significance because of its significance in Aboriginal rituals, religious observance or legend;
- g) a valuable educational or recreational resource; or
- h) a significant habitat for native animals (including native or migratory birds) or a part of a fauna and flora corridor; or
- i) a significant part of a vegetation system or other ecological system; or
- j) important for maintaining the life-supporting capacities of ecological systems for present and future generations; or
- k) important for protecting a water catchment area; or
- l) important for its support for natural or artificial landforms such as drainage lines, watercourses, bodies of water, foreshores, slopes or unstable and erodible soils; or
- m) important for its aesthetic value or its beneficial effect on the amenity of the locality in which it is situated; or
- n) important for its age, height, trunk circumference, or canopy spread; or
- o) important for its unique contribution to the landscape; or
- p) a visual buffer against unsightly objects or a buffer against pollutants, light spillage, noise or other factors that have an adverse effect on the environment; or
- q) important as a buffer zone adjacent to areas of conservation significance; or
- r) important in the context of the objectives of State or Local Government planning, land management and environmental management policies and initiatives; or
- s) significant for such other reason as may be prescribed by local law policy.

“vegetation” means trees, plants 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*.

Examples:-

- an individual tree;
- a cluster of trees with associated undergrowth;
- a dead tree (including a fallen tree).

“vegetation protection order” see section 4.

PART 2 - VEGETATION PROTECTION

Division 1 - Making of vegetation protection orders

Power to make vegetation protection orders

4. (1) The Local Government may make an order (a “**vegetation protection order**”) to protect significant vegetation.
- (2) However, a vegetation protection order may only be made for the protection of vegetation on freehold land¹.

Grounds on which vegetation protection order may be made

5. (1) The grounds on which a vegetation protection order is made must be stated in the order.
- (2) The grounds must be consistent with the objects of this local law (see section 2).

Vegetation to which order may relate

6. (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 type 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 type or types.*

- (2) A vegetation protection order cannot relate to vegetation:-
 - a) if the vegetation is planted and grown for commercial purposes; or
 - b) if 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 the law.

How order is made

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

¹ The *Land Act 1994* deals with the responsibility for protecting vegetation on land other than freehold land.

Notice of order to be given

8. (1) When the local government makes a vegetation protection order, it must:-
 - a) give written 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 local government's area.
- (2) However, notice need not be given to the owner of the land on which the vegetation is situated if the owner requested the local government to make the order.
- (3) A notice under this section must:-
 - a) state the grounds on which the vegetation protection order is to be made pursuant to section 2 and the definition of "**significant vegetation**";
 - b) give reasonable particulars of the terms and effect of the vegetation protection order including a statement of the local government's policies for the management of protected vegetation; and
 - c) invite written submissions for or against the order; and
 - d) explain that submissions must be related to the question whether the order is consistent with, and justified in the light of, the objects of this local law; and
 - e) 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 to be made

9. (1) A person may make a written submission to the local government for or against the vegetation protection order.
- (2) A submission must set out in detail the grounds on which the person who makes the submission supports or opposes the order.
- (3) The submission must:-
 - (a) be signed by, and contain the name and address of, the person making the submission; and
 - (b) be received by the local government not later than close of business on the date fixed as the closing date for submissions.

Consideration of submissions

10. (1) The local government must consider all written submissions properly made in response to the notice of the order.
- (2) However, the local government may reject a submission wholly or in part if the submission, or the part of the submission, is irrelevant to the question whether the order is consistent with, and justified in the light of, the objects of this local law.

Expert report

11. (1) Before the local government confirms a vegetation protection order, it must obtain a report (the "**expert report**") on the order from a person with appropriate qualifications and

experience to assess the significance of the vegetation to which the order relates.

- (2) The report must deal with the question whether the order is consistent with, and justified in the light of, the objects of this local law.

Confirmation of order

12. (1) After considering the expert report and the submissions made in response to the notice of 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 expert report or the submissions made in response to notice of the proposed order; and
 - b) the modification does not make the order substantially more prohibitive than if the proposed order had been confirmed without modification.

Commencement of vegetation protection order

13. A vegetation protection order comes into force when public notice of the order is given.

Interim vegetation protection orders

14. (1) If a vegetation protection order comes into force before it is confirmed by the local government, pursuant to section 12, 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 6 months from its commencement (or such further period as the Local Government may, by resolution, determine) but comes to an end earlier if the order is wholly revoked by the local government.
- (3) However, if a vegetation protection order that has operated for the maximum period of 6 months as an interim protection order is later confirmed by the local government, the order revives on confirmation.

Division 2 - Revocation of order

Revocation of unconfirmed order

15. (1) 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 written 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 local government's area.

Proposal to revoke confirmed order

16. (1) If the local government proposes to revoke a vegetation protection order after its confirmation, the local government must:-
- (a) give written notice of the proposed revocation to the owner of the land on which the vegetation is situated; and
 - (b) give public notice of the proposed revocation by advertisement in a newspaper circulating in the local government's 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 revoke the order.
- (3) 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 for or against revocation of the order; and
 - (c) explain that submissions must be related to the objects of this local law; and
 - (d) 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 to be made

17. (1) If the local government proposes to revoke a vegetation protection order after its confirmation, a person may make a written submission to the local government for or against revocation of the order.
- (2) A submission must set out in detail the grounds on which the person who makes the submission supports or opposes revocation of the order.
- (3) The submission must:-
- (a) be signed by, and contain the name and address of, the person making the submission; and
 - (b) be received by the local government not later than close of business on the date fixed as the closing date for submissions.

Consideration of submissions

18. (1) The local government must consider all written submissions properly made in response to the notice of the proposed revocation of the order.
- (2) However, the local government may reject a submission wholly or in part if the submission, or the part of the submission, is irrelevant to the objects of this local law.

Expert report

19. Before the local government decides to revoke a vegetation protection order after its confirmation, it must obtain a report (the “**expert report**”) on the proposed revocation from a person with appropriate qualifications and experience to assess the significance of the vegetation to which the order proposed to be revoked relates.

Revocation of order after its confirmation

20. After considering the expert report and the submissions made in response to the notice of the proposed revocation of the order, the local government may, by resolution, revoke the order.

Division 3 - Management Policies

Management policies for protected vegetation

21. The Local Government may, by local law policy, prescribe policies for the management of protected vegetation (“**management policies**”).²

Examples:-

The management policies might for example cover:-

- *fire management, including maintenance of fire breaks, controlled burning off and other protective measures;*
- *to provide for the creation of agreements between Council and the owner of land for the management of protected vegetation on the land.*
- *the fencing of protected vegetation to prevent stock 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 or propagation;*
- *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);*

² Management policies are not mandatory requirements for landowners. Management policies are to:

- a) provide guidelines for the appropriate management of the protected vegetation should the landowners wish to undertake such activities;
- b) may be referred to as part of negotiated conservation agreements; or
- c) may be referred to in the conditioning of a permit issued under Section 29 of this Local Law.

Division 4 - 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 record³.

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 vegetation protection orders) made by the local government; and
 - (b) all revocations of vegetation protection orders.
- (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; and
 - (e) details of any permit issued by the local government under this local law in respect of the protected vegetation.
- (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.

³ 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*).

**PART 3 - ADDITIONAL PROVISIONS FOR PROTECTION OF
VEGETATION ON LAND WITH POTENTIAL FOR
DEVELOPMENT**

Protected vegetation on land with potential for development.

24. Vegetation on land included within one or more of the following;
- a) A proposal plan in support of a development application lodged in accordance with sections 4 and/or 5 under the Local Government (Planning and Environment) Act 1990 submitted for the approval of the Local Government (whether subsequently approved or not) after the commencement of this Local Law;
 - b) A Development Control Plan, Local Area Plan or Strategic Plan which indicates that the land is or may be required for Public, Open Space, Restricted Open Space, Special Protection Area, Greenspace, drainage reserve, an esplanade or similar purpose or which indicates that the land is worthy of special protection, and that the land is not currently zoned for that purpose;
 - c) A Development Control Plan, Local Area Plan or Strategic Plan which indicates that such land is suitable for future development or likely to be developed in the future for Special Development, or residential purposes under the Urban Residential, Medium Residential, Residential Low Density, Park Residential, Comprehensive Development, Special Development Area designations, or any other residential zone included within the Town Planning Scheme for the Local Government, and for which the land is not currently zoned for that purpose;
 - d) Land which has the potential of being subdivided under its current zone;

is protected vegetation.

Protected vegetation on land approved for development

25. (1) Vegetation identified as:-
- (a) being of significance in a condition of rezoning, consent, subdivision, building or other development approval made under the Local Government (Planning and Environment) Act 1990 or its predecessor, or the Building Act 1975; and
 - (b) protected vegetation in a condition of a:-
 - (i) continuing approval; or
 - (ii) development permit,as those terms are defined in the Integrated Planning Act 1997,

is protected vegetation.

- (2) An approval identifies vegetation of significance for the purposes of section 25(1)(a) where the approval includes a condition requiring the retention of existing vegetation.

Examples:-

- A condition of approval made under the Local Government (Planning and Environment) Act 1990 which requires that no damage occur to any tree on the subject property;
- A condition of approval which requires all vegetation marked on the approved plans to be retained.
- A condition of approval that requires the property to be subject to the provisions of the Tree Protection Local Law.

PART 4 - DAMAGE TO VEGETATION

Division 1 - Prohibition of damage

Prohibition of damage

26. (1) A person must not damage protected vegetation.
- Maximum penalty - 850 penalty units.
- (2) However, an offence is not committed if the damage is permitted by or under this local law.

Permitted damage

27. The Local Government may, by permit (granted pursuant to section 29) or local law policy, prescribe circumstances in which damage to protected vegetation is permitted.

Division 2 - Permits

Application for permit

28. (1) An application for a permit permitting damage to protected vegetation must include or be accompanied by:-
- (a) particulars (including drawings) of the location of the land on which the protected vegetation is situated and of the vegetation to which the damage is proposed; and
 - (b) particulars of the type of vegetation to which the damage is proposed; and
 - (c) a statement of the reasons why the damage is necessary; and
 - (d) particulars of how the vegetation is to be damaged and, if relevant, how the damaged material is to be removed or dealt with; and
 - (e) if approval for anything to be done under the permit is also required under another law - a certified copy, or other appropriate evidence of the approval;

- (f) an application fee, as may be imposed by the Local Government through resolution from time to time.
- (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 prudent and feasible, 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.

Grant of permit

- 29. (1) The local government may grant a permit permitting damage to protected vegetation.
- (2) In deciding whether to grant a permit, the local government must have regard to the objects of this local law and in particular:-
 - (a) whether the permit would be consistent with the objects of this local law and, if not, whether there would be a fundamental conflict with the objects or merely a marginal or peripheral conflict; and
 - (b) the probable environmental impact of the proposed damage; and
 - (c) the reasons for the proposed damage and the purpose that would be served by permitting the damage; and
 - (d) whether there are prudent and feasible means of achieving the same purpose without damage or with less damage to protected vegetation; and
 - (e) such other matters as may be prescribed by local law policy.
- 3) The Local Government may, by local law policy, specify conditions that must be complied with if a permit is to be granted.

Term of permit

- 30. (1) A permit is granted for a term specified in the permit.
- (2) The local government may, on application by the holder of a permit, renew the permit for a further term.

Conditions of permit

- 31. (1) A permit may be granted on conditions the local government considers reasonable and relevant.

- (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 land on which the permitted work is to be carried out on surrounding areas;
 - (d) require the holder of the permit to lodge a specified amount of monies, or bank guarantee secured by a banking institution acceptable to the Local Government, with the local government to secure compliance with the obligations imposed under the permit.
- (3) The local government may, by a local law policy, prescribe conditions that must be imposed in a permit or that will ordinarily be imposed in a permit.

Compliance with conditions

32. The holder of a permit and, where the holder of the permit is not the owner of the land described in the permit, the owner must ensure that the conditions of the permit are complied with.

Maximum penalty - 850 penalty units.

Revocation of Permits

33. (1) The Local Government may, by resolution, revoke a permit permitting damage to protected vegetation.
- (2) A permit may only be revoked when 1 or more of the following circumstances exist:-
- (a) the permit was obtained by the provision of false or misleading information by the applicant for the permit;
 - (b) a condition on which the permit was granted is not being complied with;
 - (c) significant vegetation or wildlife is discovered within the area to which the permit applies;
 - (d) the carrying out of the work associated with the damage to protected vegetation is causing environmental harm."

PART 5 - ENFORCEMENT

Compliance order

34. (1) If a person is engaging or is about to engage in activity that may result in 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 protected vegetation is damaged in contravention of this local law, the local government may, by written order (a “**reinstatement order**”), require the owner of the land upon which the damaged vegetation is situated and/or the person who damaged the vegetation to take specified action to restore the damaged vegetation or to re-establish vegetation to make good the damage.
- (2) If a reinstatement order requires the planting of vegetation:-
- (a) the order must:-
 - (i) specify the type of vegetation and the location in which it is to be planted; and
 - (ii) specify a period within which the vegetation is to be planted; and
 - (b) may require:-
 - (i) specified action over a period stated in the order to water, tend and nurture the vegetation; and
 - (ii) if the vegetation fails to germinate or to thrive - further action as directed by an authorised person.
- (3) A person against whom a reinstatement order is made must comply with the order and any requirement made under the order.
- 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, subject to compliance with section 661 of the Act, enter the land and perform the work.
- (2) The amount properly and reasonably incurred by the local government in performing the work is recoverable (together with interest) under Sections 661, 662 and 663 of the Act.

PART 6 - APPEALS

Right of appeal against vegetation protection order

37. (1) A person who is the owner or occupier of land on which protected vegetation is situated may appeal to the Court against a vegetation protection order made pursuant to Part 2, Division 1 of this law.
- (2) The appeal must be started within 40 days after the confirmation of the order or such longer period as may be allowed by the Court.

Right of appeal against compliance or reinstatement order

38. (1) A person against whom a compliance order or reinstatement order is made pursuant to Part 5 of this law may appeal to the Court against the order.
- (2) The appeal must be instituted within 40 days after the date of the order or such longer period as may be allowed by the Court.

Procedure

39. An appeal is to be instituted and conducted in the same way as if it were an appeal under the *Local Government (Planning and Environment) Act 1990*.

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 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 7 - MISCELLANEOUS

False or misleading information

42. A person must not:
- (a) make a statement that the person knows is false or misleading in a material manner:
- i. in an application for a permit; or
 - ii. to a local government officer or an authorised person conducting an investigation into damage to protected vegetation;
- (b) omit from an application or a statement made to a local government officer anything without which the statement is, to the person's knowledge misleading in a material particular.

Maximum penalty - 850 penalty units

Transitional provision

43. A tree protection order in force under a Tree Protection local law or interim local law immediately before the commencement of this local law, continues in force as if it had been made as a Vegetation Protection Order under this local law.

Local law policies

44. The local government may make local law policies in relation to those matters about which this local law specifically allows for the making of local law policies.

eg. In relation to what is significant vegetation, a local law policy might, for example, state that the protection of vegetation is of importance if the land on which the vegetation is situated is:-

- *a ridgetop;*
- *an escarpment;*
- *a steep slope;*
- *land within a specified distance of a natural drainage line, a watercourse, a body of water or a foreshore;*
- *land liable to damage from salinity;*
- *land with unstable soil or soil that is prone to erosion.*

Local Law repeals

45. This Local Law repeals the existing Interim Local Law No. 56a (Tree Protection) and Chapter 56 of Council's Bylaws - Tree Protection.