

## **POLICY**

### **TREE PROTECTION AND LOCAL LAW APPEAL AGAINST COUNCIL OFFICER DECISION**

#### **INTRODUCTION**

Council has adopted a local law that limits the ability to prune or remove vegetation or carry out works that may compromise the health of vegetation in certain circumstances. Council receives approximately 1000 applications per annum of which 95% are approved. Of the 5% refused a number of these applicants are seeking a process for their application to be reviewed. Many are frustrated that they are unable to appeal the local law at the VCAT. The only avenue of appeal for any person dissatisfied with the manner that Council administers local law 5 is to challenge the local law in the Supreme Court.

The assessment of applications for earthworks, or the trimming or removal of vegetation, requires specialist skills in a number of different vocations. It is the view of Council that an applicant for a permit under the provisions of local law 5, part 8 should have the right to have any decision of a Council Officer reviewed and that such a review should be conducted by independent experts appointed by Council on an as required basis.

#### **1. What decisions can be appealed under this policy?**

- 1.1 This policy is limited to applicants who have lodged a request to trim or remove vegetation or carry out works as set out in clause 40 of local law 5.
- 1.2 These appeal rights will not extend to any other parties who claim to be aggrieved by a Council decision made under Clause 40 of local law 5.

#### **2. When must an appeal against a Council decision be lodged?**

- 2.1 An appeal against a Council Officer decision by an applicant must be lodged with 21 calendar days from the date of the Council Officer decision. The expected timeframe for the hearing of an appeal is between 45-60 days.

#### **3. On what basis will the appeal be considered?**

- 3.1 Any appeal against an Officer decision made under clause 40 of local law 5 and will be assessed in accordance with the evaluation criteria set out in clause 41 of the local law, as applying at the time the application for a local law permit was made.

#### **4. What form should an appeal take?**

- 4.1 Any appeal against a Council Officer decision by an applicant who has made an application under section 40 of local law 5 must be in writing and clearly highlight the grounds of appeal.

#### **5. Is there a fee to lodge an appeal?**

- 5.1 Any appeal made under this policy must be accompanied by a \$250.00 fee\*. In the event that the independent person(s) appointed by Council determines to modify any decision made by a Council Officer the entire fee will be refunded.
- 5.2 If the independent person(s) determines that the Council Officer decision is upheld the application fee will be retained by Council.

**6. How will the appeal be conducted?**

- 6.1 A number of professionals will be available for Council to appoint to review an appeal. The independent person or persons will be appointed by Council depending on the reason(s) listed by the applicant in his/her appeal and hence the expertise of the independent persons. The expertise available to review an appeal should range from a number of professions including arborist, structural engineer, ecologist, qualified builder etc. The appointed independent person(s) will evaluate the appeal by:
- Considering a written submission lodged by the person lodging the appeal.
  - Taking into consideration the criteria as set out in clause 41 of local law 5.
  - Considering a written submission prepared by Council Officers.
- 6.2 The applicant will be provided with written advice by the independent person(s) appointed by Council on the outcome of the appeal.
- 6.3 There is no further Council appeal process available after this point.

\* This fee will be reviewed by Council on an annual basis.