

TOWNSVILLE CITY COUNCIL LOCAL LAW NO. 52 (VEGETATION MANAGEMENT) 2003

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PART 1 - PRELIMINARY

Short title

1. This local law may be cited as *Townsville City Council Local Law No. 52 (Vegetation Management) 2003*.

General objects

2. The objects of this local law are to —
- (a) maintain biodiversity; and
 - (b) facilitate the protection of vegetation which is worthy of protection having regard to the specific object of this local law; and
 - (c) ensure that persons who have unlawfully damaged protected vegetation remedy, so far as practicable, the adverse effects of their actions; and
 - (d) promote public consultation in relation to the protection of vegetation in Townsville; and
 - (e) allow for development that improves the quality of life, both now and in the future, in a way that maintains the ecological process on which life depends.

Specific object

3. The specific object of this local law is to protect vegetation which —
- (a) has scenic value and contributes to the visual amenity of Townsville's landscape character; or
 - (b) has significant height, trunk circumference, or canopy spread; or
 - (c) has great age; or
 - (d) provides habitat for significant fauna species or significant flora species; or
 - (e) amounts to a significant vegetation community; or
 - (f) contributes to the regeneration and restoration of natural vegetation; or
 - (g) enhances the character and streetscape of an urban or rural area; or
 - (h) contributes to the cultural or natural heritage of Townsville or a particular locality within Townsville; or
 - (i) has a horticultural, educational or scientific research value including value as an important source of propagating stock; or
 - (j) has general environmental or ecological value including —
 - (i) protection of rare and endangered flora; or
 - (ii) protection of habitat for rare and endangered fauna; or
 - (iii) provision of support for rare animals; or

- (iv) provision of support for landforms such as natural and man-made drainage lines, watercourses, wetlands, natural and artificial water bodies, foreshores, dunes, rocky outcrops and steep slopes; or
- (v) a significant area of natural vegetation; or
- (k) serves as a buffer zone adjacent to areas of conservation or significance; or
- (l) functions as a wildlife corridor or vegetation link; or
- (m) has importance in terms of catchment management as a natural stabiliser of surface soil and the quality of water in receiving systems.

Relationship with other laws

4. This local law is in addition to and does not derogate from other laws about vegetation.

Definitions – the dictionary

5. The dictionary in the schedule defines particular words used in this local law.

Administration local law

6.(1) This local law must be read with *Chapter I, Preliminary of the City of Townsville By-laws*.

(2) Where there is an inconsistency between this local law and *Chapter I, Preliminary of the City of Townsville By-laws*, this local law will apply.

PART 2 - VEGETATION PROTECTION ORDER

Division 1 – Proposal for order

Request to the local government

7.(1) A person may, in writing, request the local government to make a vegetation protection order in relation to any land whether owned by that person or not.

(2) A request under subsection (1) must specify —

- (a) whether all or part only of the vegetation on the land is sought to be protected; and
- (b) the reasons why the making of the order would be consistent with the objects of this local law.

Proposal to make order

8.(1) The local government may, by resolution, propose to make a vegetation protection order over —

- (a) all vegetation in the whole or any part of Townsville; or
- (b) any tree; or
- (c) any group or stand of trees or other vegetation; or
- (d) vegetation of a particular class or species.

(2) A resolution under subsection (1)(a) may exclude part of the vegetation contained in the affected area from the operation of the order.

(3) A resolution may only be made under subsection (1) if the making of the resolution is consistent with the objects of this local law.

(4) A resolution may be made under subsection (1) regardless of whether the local government has received a written request under section 7(1) or not.

Division 2 – Public Consultation

Expert's report

9.(1) Before making a vegetation protection order the local government must obtain and consider a report assessing the extent to which protection of the vegetation the subject of the proposed order is consistent with the objects of this local law.

(2) Any report prepared for the purposes of subsection (1) must be prepared by an appropriately qualified person who may or may not be an employee of the local government.

Notice of proposed order

10.(1) Before making a vegetation protection order, the local government —

- (a) must resolve to propose to make a vegetation protection order under section 8(1); and
- (b) must give written notice that it proposes to make the order to the owner of the land to which the proposed order relates; and
- (c) must give public notice that it proposes to make the order; and
- (d) may take such steps as it considers adequate to inform residents of Townsville of its intention to seek submissions on its proposal.

(2) A notice mentioned in subsection (1)(c) —

- (a) must contain a statement as to the effect of the proposed order; and
- (b) must state —
 - (i) that a person may make a submission (by way of objection or otherwise) with respect to the making of the order; and
 - (ii) that a submission must relate to the consistency or otherwise of the proposed order with the objects of this local law or the exclusion of particular vegetation in accordance with section 8(2); and

- (iii) that a submission must be received by the local government by a specified date (the “**specified date**”) which must be not less than 21 clear days after the date of giving of the public notice mentioned in subsection (1)(c); and
 - (iv) that a report assessing the extent to which protection of the vegetation the subject of the proposed order is consistent with the objects of this local law has been received and is open to inspection; and
- (c) may include other matters by way of explanation of the proposed order or summary of any of the provisions of this local law.

Submissions

11.(1) Any person, including the owner of the land to which the proposed order relates, may make a submission to the local government (by way of objection or otherwise) with respect to the making of a vegetation protection order.

(2) A submission must —

- (a) be in writing and signed by the person making it; and
- (b) be addressed to the Chief Executive Officer; and
- (c) be received by the local government by the specified date; and
- (d) contain —
 - (i) the full name and residential address of the person making it; and
 - (ii) the grounds of the submission and the facts and circumstances relied on in support of those grounds.

(3) The local government may consider a submission, or part of a submission, which is not duly made.

(4) The local government must consider every submission duly made before making a vegetation protection order.

(5) For the purposes of this section, a submission is not duly made unless it complies with subsection (2).

Modification of proposed order

12.(1) Where the local government does not receive any submissions which it must consider, it may make a vegetation protection order in accordance with the proposal contained in the public notice.

(2) Where the local government receives submissions which it must consider, it may —

- (a) make an order in accordance with the proposal contained in the public notice; or
- (b) make an order generally in accordance with the proposal contained in the public notice but with modifications which respond to or arise out of matters mentioned in a submission.

Division 3 – Decision

Decision

13.(1) The local government must, by resolution, decide whether or not to make a vegetation protection order within a period (the “**decision period**”) of 4 months after the date of giving of public notice under section 10(1)(c).

(2) If a decision is not made within the decision period and the local government wishes to make a vegetation protection order, the local government must —

- (a) again give notice of the proposed order in accordance with section 10(1)(c); and
- (b) again consider any submissions received in accordance with section 11; and
- (c) consider the various matters prescribed in section 12.

(3) The vegetation protection order is made on the date of the local government's resolution to make the order.

Division 4 – Notification

Notice to owners and others

14. As soon as practicable after a vegetation protection order is made, the local government must —

- (a) give notice in writing that the order has been made to the owner and the occupier of the land to which the order relates and to every person who lodged a submission with respect to the making of the order; and
- (b) give public notice of the order; and
- (c) record the making of the order in its property or rating records in relation to the land to which the order relates in such a manner as will ensure that the existence of the order is disclosed to persons making usual property search inquiries in relation to the land; and
- (d) update the Vegetation Protection Register¹.

Division 5 - Miscellaneous

Register of orders

15.(1) The local government must establish a register (the “**Vegetation Protection Register**”) in a form which records the existence of each vegetation protection order made by the local government.

(2) In respect of every order, the Vegetation Protection Register may include particulars of —

- (a) the date on which the order was made; and

¹ See section 15.

- (b) the location, by reference to the property description and postal address or by use of map, of the affected areas or protected vegetation; and
- (c) the name of the species and communities of any vegetation subject to the order; and
- (d) sufficient details to identify any vegetation subject to the order; and
- (e) any vegetation excluded from operation of the order; and
- (f) the reasons why the order was made, expressed by reference to the objects of this local law; and
- (g) to the extent they are relevant with respect to any such order —
 - (i) the date of giving of the public notice of intention to make the order (being the date on which an interim order took effect); and
 - (ii) details of the interim order if differing from the details of the order; and
 - (iii) the date on which the order ceased to have effect; and
 - (iv) details of any approval issued by the local government under section 24 in respect of protected vegetation to which the order relates.

(3) The Vegetation Protection Register or a copy of all entries contained in it must be open to inspection at the public office of the local government.

Interim order

16.(1) Upon the giving of a public notice mentioned in section 10(1)(c), an interim vegetation protection order in the same terms as advertised comes into effect.

- (2) An interim order remains effective until whichever occurs first of —
 - (a) the expiration of 4 months after the day on which it takes effect; or
 - (b) it is wholly revoked; or
 - (c) a vegetation protection order is made; or
 - (d) the local government decides not to make a vegetation protection order.
- (3) An interim vegetation protection order may not be revoked in part.

Time during which order remains effective

- 17.** A vegetation protection order —
- (a) takes effect when it is made; and
 - (b) remains effective until it is revoked in whole or part.

Revocation of order

18.(1) The local government may, by resolution, revoke an order in whole or in part.

(2) Sections 10 to 15 inclusive apply to the revocation of an order in the same manner as they apply to the making of an order, to the extent that they can be sensibly applied and with all necessary adaptations.

(3) Where an order is revoked in part, an order is taken to have been made and duly notified and to continue in force to the extent not revoked.

Certain errors not to invalidate order

19. An order is not invalid or of no effect by reason only of a failure to comply with a provision of section 10 so long as —

- (a) there has been substantial compliance with section 10; or
- (b) the failure has not adversely affected the awareness of the public of the existence and nature of the proposal to make an order nor restricted the opportunity of the public to make a submission pursuant to section 11.

PART 3 - DAMAGE TO VEGETATION

Division 1 – Offence

Approval required

20.(1) Subject to section 21, a person must not damage protected vegetation except in accordance with a current approval issued under this part for that purpose.

Maximum penalty — 500 penalty units.

(2) The owner of the land on which the protected vegetation is located and the occupier of the land on which the protected vegetation is located must ensure that subsection (1) is complied with.

Maximum penalty — 500 penalty units.

Exemptions

21.(1) A person may damage protected vegetation without an approval under section 24(1) if that damage is —

- (a) removal of vegetation shown to be a high risk to persons or property by —
 - (i) a report prepared by an arborist with qualifications satisfactory to the local government; or
 - (ii) photographic evidence in an emergency situation; or

Examples of an emergency situation $\frac{3}{4}$

- *split tree trunks*
- *leaning tree with soil upheaval*

- (b) pruning to accommodate overhead electricity supply wires in accordance with standards agreed in writing between the local government and relevant electricity service providers; or
- (c) maintenance or remedial pruning in accordance with AS4373/1996; or
- (d) damage to protected vegetation to give effect to a development approval; or
- (e) removal of vegetation —
 - (i) where the removal is essential for emergency access or emergency works; or
 - (ii) where the removal is immediately required in response to an accident or emergency; or
- (f) forest practice²; or
- (g) damage which is declared by subordinate local law to be damage which a person may do to protected vegetation without an approval under section 24(1).

(2) To remove any doubt, activities that may not be undertaken by a person pursuant to section 21(1) unless the activity otherwise falls within section 21(1) are —

- (a) the removal of dead branches of trees or dead trees; and
- (b) the removal of branches or trees that are affected by white ant infestation.

Division 2 - Approvals

Application for approval

22.(1) A person may apply for an approval to damage protected vegetation by lodging with the local government an application which must —

- (a) be in accordance with the requirements of section 10 of *Chapter I, Preliminary of the City of Townsville By-laws*; and
- (b) be signed by each of the applicant, the owner and the occupier of the land on which the protected vegetation is located; and
- (c) contain an acknowledgment in writing from each of the applicant, the owner and the occupier of the land on which the protected vegetation is located, that they are aware of the general purport of part 2 of this local law; and
- (d) be accompanied by the written authority of any person who has an interest or right to enter the land and remove vegetation from the land, where such interest or right is registered under the *Land Title Act 1994*.

(2) The applicant must, if so required by the local government, provide further information, documents or materials in support of the application, including a management plan identifying —

- (a) the main features of the land, including natural features and improvements; and
- (b) major vegetation types on and adjacent to the land; and
- (c) environmentally sensitive areas on the land; and

² See definition of “forest practice” in the dictionary.

- (d) the area of the land currently cleared by way of sketch diagram; and
- (e) the specific location of the protected vegetation to be damaged by way of sketch diagram; and
- (f) the type of protected vegetation to be damaged; and
- (g) the proposed land use after the initial clearing of the vegetation; and
- (h) the reasons why it is desired to damage the protected vegetation; and
- (i) the means, timing and extent of the proposed damage to the protected vegetation and, where applicable, the means by which the protected vegetation or damaged material or other waste is to be removed; and
- (j) the size, type and location of any compensatory habitat; and
- (k) how impact on protected vegetation and environmentally sensitive areas on and adjacent to the land will be minimised.

Criteria for approval

23. The local government may in considering an application for an approval have regard to the following criteria —

- (a) whether approving the proposed damage conflicts with the objects of this local law; and
- (b) the environmental impact of the proposed damage; and
- (c) the reasons why it is sought to damage the vegetation and the purpose which will be served by approving that damage; and
- (d) whether there are any prudent and feasible alternative means of achieving the purpose to be served without effecting the damage or which would effect damage of a lesser degree or extent; and
- (e) the protection of land vulnerable to degradation; and
- (f) the protection of water catchments; and
- (g) the protection of scenic or visual landscape values; and
- (h) public health and safety and fire management; and
- (i) the information contained in any management plan or information provided to the local government; and
- (j) whether the applicant, owner or occupier or if the applicant, owner or occupier is a corporation, an executive officer of that corporation, has previously been convicted of an environmental offence; and
- (k) any other criteria prescribed by subordinate local law.

Local government's discretion on applications

24.(1) In determining an application for an approval, the local government may—

- (a) approve the application unconditionally; or
- (b) approve the application subject to conditions it considers appropriate; or
- (c) refuse the application.

(2) The local government must make its decision on an application for an approval and give written notice (a “**decision notice**”) of its decision to the applicant within 90 days (the “**decision making period**”) from—

- (a) the day it receives a properly made application; or
- (b) if the local government makes a request under section 22(2) — the day the information, documents or materials are provided to the local government.

(3) The local government may extend the decision making period by no more than 28 days by giving written notice to the applicant for the approval within the decision making period.

(4) Any further extensions of the decision making period by the local government must be with the written consent of the applicant for the approval.

(5) The local government is taken to have made a decision which refuses the application if the local government has not made a decision on the application for the approval within—

- (a) the decision making period; or
- (b) where applicable — the date of the decision making period which has been extended under subsection (3); or
- (c) where applicable — the date of the decision making period which has been further extended under subsection (4).

Subject matter for conditions

25.(1) The conditions the local government considers appropriate may, for example —

- (a) specify the hours during which the work may be carried out; and
- (b) relate to the manner of carrying out work and the methods and machinery which may be used to carry out the work; and
- (c) relate to the means of disposal of damaged vegetation and any other waste materials resulting from the work; and
- (d) require the reinstatement or replanting of locations at which protected vegetation has been damaged or surrounding areas which may be damaged during the carrying out of the approved works, and where that is practicable and appropriate, such replanting to be with species and in a manner as specified; and
- (e) require the lodgement of security in such amount and subject to such terms as are considered necessary to secure to the local government the costs of exercising its powers under part 3 of this local law in the event of default by the applicant in compliance with the conditions of approval; and
- (f) limit the area to be cleared to a smaller area than proposed in the application; and

- (g) require compliance with a management plan approved by the local government, a copy of which must be attached to the approval; and
- (h) require, if the holder of the approval is a subscriber to a mobile phone service —
 - (i) a mobile phone number to be provided to the local government prior to the commencement of the works to which the approval relates; and
 - (ii) the mobile phone to which that number relates to be readily accessible, operational and audible to one or more of the persons carrying out the works at all times when the works are being carried out; and
- (i) require the keeping or display on the land to which the approval relates of a copy of the approval, for as long as the works the subject of the approval are being carried out; and
- (j) require the applicant and, where applicable, the owner and occupier to enter into a conservation agreement with the local government relating to the management of vegetation on the land.

(2) The local government may, by subordinate local law, prescribe conditions that must be imposed in an approval or will ordinarily be imposed in an approval.

Compliance with conditions

26. The holder of an approval, the owner of the land on which the vegetation is located and the occupier of the land on which the vegetation is located must ensure that the conditions of the approval are complied with.

Maximum penalty — 250 penalty units.

Variation of conditions of approval

27.(1) The local government may by notice in writing to the holder of an approval add to, vary or revoke a condition of the approval whenever the local government considers it necessary or appropriate.

(2) An addition, variation or revocation under subsection (1) takes effect from the time specified in the notice.

Revocation of approval

28.(1) The local government may revoke an approval if the local government is satisfied the clearing has been carried out in a way likely to be harmful or injurious to any land, including the land on which the clearing took place or any adjoining land.

(2) The approval may be revoked whether or not a prosecution has been started for an offence against this local law.

Division 3 – Miscellaneous

Installation of utilities

29.(1) Where some other law requires the agreement or consent of the local government to the determination of the location of lines for utility installations, the local government must not agree to any location which would be likely to require damage to protected vegetation unless it is satisfied that it would not be practicable for the services to be made available otherwise than by installation in that place.

(2) Where some other law gives the local government power to determine the location of lines for utility installations, the local government must not determine a location which would be likely to damage protected vegetation unless it is satisfied that it would not be practicable for the services to be made available otherwise than by installation in that place.

(3) A person may damage protected vegetation without an approval if —

- (a) that damage occurs to permit installation of a service by or with the approval of another authority permitted by law to do so; and
- (b) the local government is satisfied that it would not be practicable for the service to be made available otherwise than by installation in that place; and
- (c) the works constituting the damage meet arboricultural standards.

PART 4 – INTRODUCTION OF VEGETATION TO LOCAL GOVERNMENT LAND

Planting in streets

30. No person other than —

- (a) an authorised person; or
- (b) a person who holds a written authorisation from the local government,

may —

- (c) plant a tree or shrub on land controlled or managed by the local government; or
- (d) make a hole or excavation for the purposes of planting on land controlled or managed by the local government,

unless the activity is strictly in compliance with a street planting program approved by the local government.

Maximum penalty — 50 penalty units.

Introduction of vegetation to waterways and wetlands

31. A person must not introduce vegetation to a waterway or wetland in Townsville, unless that person is authorised by the local government and is acting in accordance with a planting program approved by the local government.

Maximum penalty — 250 penalty units.

PART 5 – PEST VEGETATION

Pest vegetation

32. The local government may, by subordinate local law, declare any vegetation, which in the opinion of the local government is a pest in any specified part of, or throughout Townsville, to be pest vegetation in that specified part of, or throughout, Townsville.

PART 6 - ENFORCEMENT

Compensation not payable

33. No compensation is payable to any person in respect of anything done by the local government in good faith and without negligence for the purpose of implementing or enforcing this local law.

Reinstatement notices

34.(1) If a person damages protected vegetation in contravention of this local law, an authorised person may give a notice (a “**reinstatement notice**”) under this section to the person and to the owner or to any of them.

- (2)** A reinstatement notice may require the person to whom the notice is given to —
- (a)** take specified action to restore the vegetation or re-establish vegetation to rehabilitate the damage; and
 - (b)** rehabilitate any other harm or disturbance directly or indirectly resulting from the damage; and
 - (c)** when replanting or planting of native vegetation is required — use plants that have come from local provenance seeds; and
 - (d)** pay, within the time specified in the notice, the reasonable inspection and re-inspection fee specified in the notice.
- (3)** If a reinstatement notice requires the planting of vegetation —
- (a)** the notice must specify —
 - (i)** the type of vegetation and where it is to be planted; and
 - (ii)** the period within which it is to be planted; and

- (b) the notice may require a person to undertake —
 - (i) specified action over a period stated in the notice to nurture the vegetation; and
 - (ii) if the vegetation fails to generate or thrive, further action as directed by an authorised person; and
 - (iii) other measures including but not limited to erosion and sediment control.

(4) The local government's power to issue a reinstatement notice under this section is in addition to and not in derogation of its power to take any other enforcement action under this or any other local law.

(5) A person must comply with every requirement specified in a reinstatement notice issued under this section.

Maximum penalty for subsection (5) — 500 penalty units.

Effect of compliance

35. If the person to whom a reinstatement notice is given complies with the requirements of the reinstatement notice to the satisfaction of the local government, the local government must not prosecute the person for the original offence or for the continuation of the original offence that happened before the reinstatement notice is given to the person.

Notice to remedy breach

36.(1) If there is occurring or has occurred a breach of this local law or a condition of an approval, an authorised person may by written notice require the person in breach or the holder of an approval or both the person in breach and the holder of the approval, as the case may be, to —

- (a) cease carrying out the activity giving rise to the breach; and
- (b) remedy the breach; and
- (c) do such work and undertake such action as are specified in the notice; and
- (d) lodge an application with the local government for an approval under section 24.

(2) The person to whom the notice is given must comply with the notice within the time specified in the notice.

Maximum penalty — 50 penalty units.

The local government's powers on default

37.(1) If —

- (a) an authorised person considers it appropriate to issue a notice under section 36(1) to a person; and
- (b) that person fails to comply with the requirements of the notice;

the authorised person may take all reasonable action to ensure compliance with the notice.

(2) A person who does not comply with a notice given under section 36(1) is liable to the local government for —

- (a) any loss, damage or expense incurred by the local government through the failure of the person to comply with the requirements of the notice; and
- (b) any expense associated with inspections conducted to gain or confirm compliance with the requirements of the notice; and
- (c) all other amounts, the omission to pay which was an element in or was in any way related to such failure to comply with the requirements of the notice.

(3) The local government must give the person to whom the notice is given under section 36(1) an account for the amount for which the person is liable under subsection (2).

(4) If the amount is not paid on or before the date for payment fixed in the account, the local government may recover the amount from the person to whom the notice was given, as a debt.³

(5) The right to recover costs under this section is in addition to and is not in derogation of any right to costs or compensation available under any other law.

(6) A certificate signed by an authorised person and stating any of the following matters is evidence of the matter⁴ —

- (a) the carrying out of the work by the local government under this part;
- (b) the delivery of the account required under subsection (3);
- (c) any amount payable to the local government under this part which is unpaid at the date of the certificate.

(7) In taking action under subsection (1) —

- (a) the local government may take whatever action it considers necessary to achieve the result which would have been achieved had the notice under section 36(1) been complied with; and
- (b) the action taken by the local government need not be the same as the action (if any) specified in the notice under section 36(1) if the local government determines that there is another manner of achieving the required result.

Stop work order

38.(1) The Chief Executive Officer of the local government may issue a stop work order if the Chief Executive Officer has reasonable cause to believe that threatened vegetation may be about to be damaged or is in the process of being damaged.

(2) Before making a stop work order regarding vegetation which is not protected vegetation, the local government must obtain and consider a report assessing the extent to which protection of the vegetation the subject of the proposed order is consistent with the objects of this local law.

³ See also sections 1067 and 1068 of the *Local Government Act 1993*.

⁴ See section 1117 of the *Local Government Act 1993*.

(3) Any report prepared for the purposes of subsection (2) must be prepared by a person with qualifications satisfactory to the local government who may or may not be an employee of the local government.

(4) A stop work order may only be made under subsection (1) if the making of the order is consistent with the objects of this local law.

(5) A stop work order may be issued to the owner or the occupier or both the owner and the occupier of land upon which the threatened vegetation is located or to any person whom the local government has reasonable cause to believe is about to cause or assist in causing damage to the threatened vegetation.

(6) The person to whom the stop work order is issued must ensure that the stop work order is complied with.

Maximum penalty — 500 penalty units.

Courts powers on conviction

39. Where a person is convicted of an offence against this local law, the Court may order—

- (a) the reinstatement or replanting of the land in respect of which the offence occurred; and
- (b) that the person pay to the local government the value of any vegetation cleared or damaged which is the anticipated cost of fully reinstating damaged vegetation.

Onus of proof

40. In any proceedings in respect of an alleged contravention of section 20 —

- (a) the party prosecuting the proceedings is not required to disprove matters mentioned in section 34 in respect of the vegetation which is the subject of the proceedings unless those matters are or should reasonably be within the actual knowledge of that party; and
- (b) it is for the defendant or respondent to prove, on the balance of probabilities, that section 20 does not apply by virtue of a matter mentioned in section 21 other than a matter that is or should reasonably be within the actual knowledge of the party prosecuting the proceedings.

PART 7—REVIEW

Reviewable decisions

41. A decision of the local government or an authorised person under this local law is reviewable (a “**reviewable decision**”) unless it is—

- (a) a decision made by resolution of the local government; or
- (b) a decision made on an earlier application for review.

Application for review

42.(1) A person who is aggrieved by a reviewable decision may apply to the local government for a review of the decision.

(2) An application for review of a reviewable decision must—

- (a) be in writing; and
- (b) state the reasons why the applicant considers the decision should be reviewed; and
- (c) be lodged at the office of the local government within 14 days after the day on which notice of the decision was given to the applicant or within a further period allowed by the local government (before or after the end of that period).

Carrying out review

43.(1) The local government must either—

- (a) carry out a review at a meeting of the local government; or
- (b) have the review carried out by an authorised person.

(2) An authorised person who carries out a review under subsection (1)(b) must not be the original decision maker and must be a person who is no less senior than the original decision maker.

Decision on review

44.(1) On completing a review, the local government may confirm, vary or reverse the decision under review.

(2) The local government must give the applicant written notice of the result of the review.

(3) If the local government does not decide an application for review within 28 days after receiving the application, the local government is taken to have confirmed the decision under review.

PART 8 – MISCELLANEOUS

Establishment of vegetation management advisory committee

45. The local government may establish a committee, which is able to offer it expert advice with respect to matters arising for consideration or determination concerning vegetation management.

The local government may seek committee advice

46. In connection with any exercise, discharge or performance of a power, function or duty under this local law, the local government —

- (a) may seek advice from the committee established under section 45; and

- (b) may have regard to, but shall not be bound by, any advice given to it by the committee.

Defence of reasonable excuse

47.(1) If a person is charged with an offence involving a contravention of a provision of this local law, it is a defence to prove that the person had a reasonable and lawful excuse for the contravention.

(2) If an owner of land is charged with an offence involving a contravention of section 20 it is a defence for the owner to prove that —

- (a) the occupier of the land damaged the protected vegetation on the land; and
- (b) the owner was not and could not by the exercise of reasonable diligence have been aware that the occupier damaged the protected vegetation on the land.

Appointment of authorised persons

48. The local government may appoint a person as an authorised person under this local law only if —

- (a) the local government considers that the person has the necessary expertise or experience for the appointment; or
- (b) the person has satisfactorily finished training approved by the local government for the appointment.

Subordinate local laws

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

Repeal of interim local law

50. This local law repeals *Townsville City Council Local Law No. 2 (Vegetation Management) 2002*⁵ which commenced on the date on which *Townsville City Council (Making of Interim Local Law) Notice (No. 1) 2002* was published in the Gazette.

⁵ *Townsville City Council Local Law No. 2 (Vegetation Management) 2002* was made as an interim local law and commenced on the date on which *Townsville City Council (Making of Interim Local Law) Notice (No. 1) 2002* was published in the Gazette.

SCHEDULE 1

DICTIONARY

section 5

“**Act**” means the *Local Government Act 1993*.

“**affected area**” means an area to which a vegetation protection order made under section 13(1) relates.

“**age**”, for an individual tree at a particular location, means the presumed life span of the tree.

“**AS 4373/1996**” means *Australian Standard 4373/1996 – Pruning of Amenity Trees* published by the Australian Standards Association.

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

“**biodiversity**” has the meaning given to it in the *Environment Protection and Biodiversity Conservation Act 1999*.

“**Chief Executive Officer**” means the Chief Executive Officer of the local government.

“**damage**” means to engage in any activity damaging, or leading to the death, disfigurement or mutilation of, vegetation and includes —

- (a) to lop or top as defined in AS 4373/1996; and
- (b) to poison (including by contamination); and
- (c) to spill oil, petroleum, paint, cement, mortar or other deleterious substances onto a root zone; and
- (d) to cut or tear branches and roots other than in the course of pruning permitted under this local law; and
- (e) to ringbark; and
- (f) to scar bark; and
- (g) to fix any object to living tissue or surrounding trunk or branches; and
- (h) to use tree-climbing spikes in healthy trees other than in accordance with AS 4373/1996; and
- (i) damage a root zone by compaction, excavation or filling; and
- (j) to uproot or displace; and
- (k) to effect any hydrological scheme which causes draining or flooding of vegetation; and
- (l) to engage in any other activity which is declared to be “**damage**” by a subordinate local law.

“**decision making period**” see section 24(2).

“**decision notice**” see section 24(2).

“**decision period**” see section 13(1).

“**development approval**” means a development approval or a continuing approval issued under the *Integrated Planning Act 1997*.

“**environment**” has the meaning given to it in the *Integrated Planning Act 1997*.

“**environmental offence**” means an offence against any law relating to the environment, or an offence causing or contributing to damage to the environment.

“**environmentally sensitive area**” means an area identified as being of high nature conservation value or vulnerable to land or water degradation.

“**executive officer**” of a corporation means a person who is —

- (a) a member of the governing body of the corporation; or
- (b) concerned with, or takes part in, the corporation's management, whatever the person's position is called and whether or not the person is a director of the corporation.

“**forest practice**” has the meaning given to that term in the *Integrated Planning Act 1997*⁶.

“**interim vegetation protection order**” means an interim vegetation protection order coming into effect under section 16.

“**local government**” means the Townsville City Council established under the *Local Government Act 1993*.

“**lopping**”, a tree means cutting or pruning its branches, but does not include —

- (a) removing its trunk; or
- (b) cutting or pruning its branches so severely that it is likely to die.

“**natural vegetation**” means vegetation that —

- (a) is native to the area; and

⁶ “**forest practice**” means planting trees or managing, felling and removing standing trees for an ongoing forestry business in —

- (a) a plantation; or
- (b) native forest, if, in the native forest —
 - (i) the activities are conducted in a way that is consistent with a code applying to native forest management and approved by the Minister responsible for administering the *Vegetation Management Act 1999*; or
 - (ii) the activities are conducted in a way that —
 - (A) ensures restoration of a similar type, and to the extent, of the removed trees; and
 - (B) ensures trees are only felled for the purpose of being sawn into timber or processed into another value added product (other than woodchips for an export market); and
 - (C) does not cause land degradation as defined under the *Vegetation Management Act 1999*.

The term **includes** carrying out limited associated work, including, for example, drainage and other necessary engineering works.

The term does not include clearing native vegetation for the initial establishment of a plantation.

(b) was not introduced to the area either by accident or deliberate intervention.

“objects” means the general objects set out in section 2 and the specific object set out in section 3.

“owner” includes any person other than the local government who is —

- (a) the occupier of land within Townsville upon which protected vegetation grows or lies; and
- (b) the registered owner of the land.

“pest vegetation” means any species declared by subordinate local law to be pest vegetation pursuant to section 32.

“protected vegetation” means vegetation subject to a vegetation protection order or an interim vegetation protection order.

“protection” includes conservation and preservation and **“protect”** has a corresponding meaning.

“pruning” means removing for the purpose of maintenance or hazard management no more than 20% of the live foliage volume in any calendar year and does not include lopping or topping.

“reinstatement notice” means a written notice made under section 34.

“reviewable decision” see section 41.

“root zone” means the zone of soil and roots described in area by the vertical projection of the foliage limit of the tree, to a depth of 750 mm and including buttress roots on and above the soil surface.

“significant” means noteworthy, important or of value.

“significant fauna species” means a species of fauna classified by subordinate local law as a significant fauna species.

“significant flora species” means a species of flora classified by subordinate local law as a significant flora species.

“significant height, trunk circumference, or canopy spread” means, in the context of a tree species, that the dimensions of a healthy, mature tree species are significant when compared with other similar tree species at the same location.

“significant vegetation community” means a vegetation community classified by subordinate local law as a significant vegetation community.

“specified date” see section 10(2)(b)(iii).

“stop work order” means a written order signed by the Chief Executive Officer pursuant to section 38 which —

- (a) identifies the land to which it relates; and
- (b) requires the person to whom it is issued, to desist from taking or causing, permitting or suffering to be taken any action which may result in damage to threatened vegetation for a stated period not exceeding 60 days from the date on which the order is issued.

“threatened vegetation” includes—

- (a) protected vegetation; and
- (b) vegetation which is not protected vegetation but which is identified in a report prepared by a person with qualifications satisfactory to the local government as vegetation the protection of which is consistent with the objects of this local law.

“Townsville” means the territorial unit of the City of Townsville, under the Act.

“utility installation” includes —

- (a) the supply of water, hydraulic power, electricity or gas; and
- (b) the provision of sewerage or drainage services; and
- (c) the provision of telecommunications services.

“vegetation” means all vegetable growth and material of vegetable origin whether living or dead and whether standing or fallen, and includes plants and trees, but does not include

- (a) any species of vegetation identified under the *Land Protection (Pest and Stock Route Management) Act 2002* as a declared pest; or
- (b) pest vegetation.

“vegetation protection order” means a vegetation protection order made under section 13(1);

“Vegetation Protection Register” has the meaning given to it under section 15;

“waterway” means a waterway or waterway corridor which the local government declares by resolution to be a waterway as amended from time to time.

“wetland” means wetland which the local government declares by resolution to be wetland as amended from time to time.