



Vegetation damage in reserves

Procedure for action

I. Preamble

The background to the preparation of these procedures was a perception that the incidence of vegetation removal, damage and poisoning was increasing and that Council staff lack the necessary legislative power or maximum fine to restrict or discourage this activity. These procedures will take the place of the Vegetation Removal Action Plan developed in 2000.

Currently Council is able to enforce vegetation removal in all foreshore areas across the Bass Coast Shire under the Planning and Environment Act 1987 or the General Local Law of 2005 No 1 of 2005.

As a deterrent and in extreme or repeat cases Council can and does install signage that highlights the vegetation damage or removal (called vandalism on the signs) and seeks the communities assistance to prosecute the perpetrator. Attachment I shows a standard sign.

The Planning Scheme

The Planning Scheme states that a planning permit is required to remove, lop or destroy any vegetation in the foreshore.

Foreshore vegetation is currently regulated either by the Native Vegetation Clause 52.17, Environmental Significance Overlay - Schedule 1, and the Vegetation Protection Overlay - Schedule 2 of the Bass Coast Planning Scheme.

Anyone found guilty of breaching either of these clauses can be issued a Planning Infringement Notice (PIN) and/or prosecuted under the Planning and Environment Act 1987. The fines are set by the State Government.

The PIN amount for a person is (5 units) \$550 and the amount for a company is (10 units) \$1,100.

As well as the fine the offender can be required to take reasonable steps to remedy the breach.

For serious offences Council can pursue the matter to the Magistrates Court who can issue a maximum penalty of \$120,000 per breach and issue a criminal conviction.

The Magistrate can not order remedial action to remedy the offence. Traditionally cases do not usually result in heavy penalties or full costs being awarded to Council. Council must prove guilt 'beyond reasonable doubt', which is especially difficult in foreshore vandalism cases.

Council can also choose to take the matter to the Victorian Civil and Administrative Tribunal (VCAT) who can issue an enforcement order to remedy the offence. It is possible to seek orders that require the person or company in breach to pay for rectification works. VCAT require a lesser standard of proof of guilt and work on the principle of the 'basis of probability'. They cannot issue a 'penalty' as such, however Council can recover approximately 70 percent of the costs associated with the action if the tribunal outcome is in Council's favour.

Over the last four years approximately 40 cases of foreshore vegetation removal have been investigated and four of these have been successfully resolved through issuing Planning Infringement Notices. Council has not pursued any foreshore vegetation removal cases to VCAT or the Magistrates Court.

General Local Law of 2005 No 1 of 2005

Bass Coast General Local Law of 2005 No 1 of 2005 provides two clauses that can be used to issue infringement notices to deal with instances of vegetation removal or damage.

124. BEHAVIOUR IN MUNICIPAL PLACES

(1) A person must not in any Municipal place within the Municipal district, behave in a manner which is boisterous or harmful and which would cause interference with the quiet enjoyment of any person using the Municipal place by:

(d) damaging, destroying, removing or interfering with vegetation or anything in or on any building, improvement or other structure of any kind; or

Maximum penalty: 10 Penalty Units. On the spot fine: 1 Penalty Unit

164. PUBLIC RESERVES AND RECREATION GROUNDS

(3) CODE OF CONDUCT ON PUBLIC RESERVES AND RECREATION GROUNDS

A person must not:-

(d) Destroy, damage or interfere with any vegetation, building or fixture, located on a public reserve or recreation or sportsground;

Maximum penalty: 5 Penalty Units. On the spot fine: 1 Penalty Unit

The Local Law defines that the value of a Penalty Unit is set under the Sentencing Act 1991, Section 110 at \$100 per penalty unit.

The maximum penalties in relation to these clauses are those that would be sought if the matter was taken to Magistrates Court.

As with all enforcement activity it is critical that sufficient evidence be available to merit pursuing the matter through the Magistrates Court system. In most cases it is almost impossible to prove someone is guilty unless the perpetrator is

observed committing the offence by an authorised officer or a member of the public. The member of the public must then be prepared to testify in court if required.

The ability to issue an on the spot fine does however provide Authorised Officers with an opportunity to take immediate action in less extreme cases of vegetation damage. This can be done in a timely and effective manner and enables the Council to uphold one of the key aims of the local law, which is to protect and preserve the amenity, safety and condition of parks, reservations and recreation areas. As it is necessary to actually catch the perpetrator committing the fence in order to issue an on the spot fine, no fines under this part of the Local Law have been issued by Council.

At this time Council has not taken any cases relating to vegetation damage to the Magistrates Court under the local law due to lack of evidence.

It is considered that the provisions under the Planning and Environment Act 1987 provide the best avenue for enforcement in extreme breaches of the Act due to the high penalty amounts that can be applied. Nevertheless, Council will review the penalty amounts that apply to these offences within the Local Law when it is next revised.

Council considered the issues relating to vegetation protection in coastal areas at the 19th March 2008 meeting with the following points being noted and recommended actions to be undertaken:

1. Planning Enforcement is the most appropriate means to enforce foreshore vegetation removal. The fines are set to the penalty units shown and importantly it provides Council with the ability to seek rectification works.
2. The Tree Vandalism and Removal Action Plan will be reviewed for its effectiveness.
3. When the General Local Law of 2005 No 1 is reviewed this matter will be considered to ensure that Council has legislated the best method to protect the vegetation.

2. Procedure Objectives

Bass Coast Shire Council has a responsibility to enforce State (Crown Land Reserves Act and the Planning and Environment Act) and local legislation (General Local Law of 2005 No.1 of 2005).

It also has a responsibility to ensure that areas of conservation, floristic or coastal significance are protected.

The preparation of these procedures will provide clear accountabilities, timeframes and measures to reduce the incidence of vegetation damage in Council managed coastal and bushland reserves.

These procedures relate to coastal vegetation on public land managed by Council and include the coastal reserves on Ventnor, Phillip Island north shore, Rhyll, Newhaven, Cape Woolamai safety beach, Grantville, Tenby Point, Kilcunda, Cape Paterson and Inverloch and bushland reserves including Ventnor Common, Ayr Creek, Thompsons Reserve and Colbert Creek and Deep Creek. A full list of natural reserves is available from the Environment Department.

3. Guidelines for action

In order to reduce the incidence of vegetation damage in reserves a three tiered approach is required based on education, response and enforcement.

Education

Education and raising awareness will be in various forms including:

- Generic education and awareness raising within the broad community on the benefits of coastal vegetation including erosion prevention, habitat for fauna, weed control, fire prevention, enforcement and penalties.
- Specific information to targeted property owners e.g. “who gains”, in areas where damage has occurred including the benefits of coastal vegetation, fines and “you are being watched”
- Specific information to business that may influence property owners contemplating vegetation removal, e.g. real estate agents, tree loppers, home handymen, tree surgeons, nurseries and building designers including the benefits of coastal vegetation and fines.
- Installation of “tree vandalism” signs on the site of significant vegetation removal or damage. A sample is shown in Attachment 1. The signs shall be installed for a minimum of 3 months and maximum of 24 months or as designated by an authorised officer after considering if further vegetation removal has occurred and the health and size of regenerating or replanted vegetation.

Timely response and follow up

A timely response and follow up is essential to events that are occurring or have occurred.

- The person initially becoming aware of the vegetation damage must record the event in the CIC system as soon as practicable and the responding officer must investigate the event as soon as practicable or contact another officer to, at a minimum inspect the site and assess impact.

Enforcement of regulations.

The enforcement of the regulations including fines and costs to rehabilitate are also an important factor to deter residents from damaging vegetation and in particular incidents that are ongoing or have the potential to expand to more than one area.

- The preference for enforcement action when significant areas of vegetation are damaged or removed is to recoup the costs associated with rehabilitation of the site to its original condition.

4. Action and Response table

Type of incident	Action	Responsible Department	Time Frame	Comment
Potential vegetation damage	Generic Education to the broad community	Environment	Ongoing	
All vegetation damage	Upon notification of an event record the details on the CIC system.	Community safety Customer Service Planning Environment Infrastructure	In accordance with corporate CIC protocol.	
All vegetation damage	Inspection of the site, take photos and record observations	Environment Planning	In accordance with corporate CIC protocol	This inspection will assess whether the damage is "significant" or "minor" and will be a historical record.
Significant vegetation damage	Contact or interview the person who provided the information about the damage.	Planning	In accordance with corporate CIC protocol	
Minor vegetation damage	Contact the person who provided the information about the damage.	Environment	In accordance with corporate CIC protocol	
Minor vegetation damage	Regularly monitor the site for further damage.	Environment	Ongoing	
Significant vegetation damage	Directly contact owner of property "gaining benefit" if the damage is obvious.	Planning	30 days from notification.	
Significant vegetation damage	Correspondence to targeted property owners if the perpetrator is not clear.	Planning Environment	40 days from notification	

Reserve Vegetation Damage Process 2008 Bass Coast Shire Council

All vegetation damage	Correspondence to “broad” group of adjacent property owners	Environment	As considered necessary.	
Significant vegetation removal	Process enforcement and compliance actions where possible.	Planning	In accordance with standard Planning enforcement protocols.	
Significant vegetation removal	Press release detailing significant incidents and response.	Environment	As considered necessary.	
Significant vegetation removal	Installation of “tree vandalism” signs.	Environment	When considered necessary within 40 days	
Significant vegetation removal	Revegetate or rehabilitate site.	Environment	When considered necessary during the next planting season at the latest.	

Other actions

Instigate appropriate training for Local Laws staff on vegetation importance.	Community Safety
Consider reviewing the fines to a maximum limit or have a range of fines to suit the offence when General Local Law of 2005 No 1 of 2005 is reviewed.	Community Safety
Camera surveillance at “hot spots” to gain proof for charging.	Environment
Notify Police of “hot spots” to enable improved targeted policing.	Community Safety
Change culture that vegetation damage is “vandalism” against public property.	Environment
Fence or sign significant trees.	Environment
Provide main contractors and volunteer groups working in coastal and bushland reserves with portable signage showing the works are approved or arranged by Council.	Environment

5. Definitions

Significant vegetation damage

Significant vegetation damage will be classified after the inspection by Environment and Planning Enforcement staff and after considering the following criteria:

- The overall impact on the remaining coastal vegetation and habitat qualities
- The area of vegetation or number of trees damaged or removed
- The type or EVC of the vegetation and the classification e.g. large, old, indigenous, exotic, rare, endangered, etc.
- The quality of the vegetation and existing management regimes
- The reasons for removal and damage.

Minor vegetation damage

Minor damage will be damage not deemed to be significant (as above)

Property owner "who gains" a benefit

The owner of a property that clearly receives a benefit by gaining

- access to the beach or foreshore area through the coastal vegetation,
- a view from any room of the house on the property,
- "space" for private use

Permitted vegetation removal by property owners

In some circumstances property owners are permitted to remove or manage vegetation in coastal areas however these are works of a very minor nature and for an agreed specific purpose usually for fire prevention purposes, e.g. the removal of ground fuel and leave litter for a distance of 5.0metres from back boundaries along Silverleaves Estate.



6. Reference to other documents

The Environment Sustainability Plan 2008 to 2013 stated Task relating to these guidelines is:

T9	Review the Tree Vandalism and Removal Action Plan for effectiveness and value.	Environment	2008	Managing Reserves
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The Environment Sustainability Plan 2008 to 2013 stated Key Action Statements relating to these guidelines are:

- Biodiversity-To ensure the conservation and enhancement of the diversity of Bass Coast's indigenous flora and fauna.
- Managing our coastline and bushland reserves-To manage Bass Coast's coastal and bushland reserves to protect and enhance their natural and recreational values.
- The urban environment and land use-To encourage development within Bass Coast that is sustainable, minimises impacts on the natural systems, increases natural reserves and habitat in urban areas and recognises the links to the quality of life of the community.
- Community Involvement-To ensure that the Bass Coast community understands and appreciates the link between their quality of life and the natural systems and actively works towards the protection and improvement of the natural environment.

7. Review process and accountability

These procedures have been prepared by the Environment Department and will be reviewed in November 2010.

These procedures will be reviewed for effectiveness particularly relating to the "timeliness of the response" and resource requirements to manage the process.

8. Approval

These Procedures were prepared in consultation with the following departments:

- Community Safety (local laws)
- Planning (enforcement)
- Environment
- Infrastructure (Parks)
- Customer Service

Version number-One
Authorised by – Paul Smith Environment Manager
Date-11 September 2008

9. Attachment I- Sample “Foreshore Vandalism” sign



FORESHORE VANDALISM – WHY ??

This section of foreshore has been vandalized by removal and/or damage to the coastal vegetation.

Foreshore vegetation plays an integral role in stabilizing the primary dune system from wind and wave action and also provides valuable habitat for the many small animals and birds in the area. It is also important that indigenous (local native) vegetation is protected as there is as little as 10 per cent remaining in the Shire.

To assist the Council in preventing this occurring again please provide any information relating to this damage to the Council on 5671 2211 or 5951 3311.

Community Coast Action / Coast care groups operate in this area. If you would like to assist these groups to regenerate the area please contact the Council for further information.

Note: Damage to this sign may result in the erection of another, possibly larger sign.

The positioning of this sign does not necessarily place blame on those living opposite this location.

II. Attachment 3

Flowchart process for Vegetation Damage and Removal - recently occurred

