

Asset Protection Local Law 2016

Version: Adopted by Council 19 July 2016

PART 1 - PRELIMINARY

Title

This Local Law is called the Asset Protection Local Law.

What are the objectives of this Local Law?

The objectives of the Asset Protection Local Law 2016 are to:

- demonstrate good government by improving Asset Protection within the municipality;
- provide for the safety and health of the public by controlling activities associated with building and construction work in the municipality
- reduce the impacts of damage to public assets caused by building and construction work in the municipality; and
- ensure that persons responsible for damaging public assets are also responsible for returning the asset to its former state.

When does this Local Law commence?

This Local Law commences on 1 August 2016.

When does this Local Law end?

Unless revoked sooner, this Local Law ends on 31 July 2026.

To what part of the municipal district does this Local Law apply?

This Local Law applies throughout the whole of the municipal district.

Authorising Provision

This Local Law is made under section 111(1) of the Local Government Act 1989.

When this Local Law comes into operation, clause 16.4 of Council's Community Local Law 2/2010 is repealed.

PART 2 – DEFINITIONS

The following words are defined as follows:

Act means the Local Government Act 1989.

application form means the form for making an application under this Local Law as developed and published by Council for that purpose from time to time.

appointed agent means the person authorised in writing by an owner of a building or land to make an application, appeal, referral or representation on their behalf.

asset means a resource or structure that has a public service function and may require management by Council or another service authority, including, but not limited to:

- a) roads;
- b) footpaths;
- c) nature strips;
- d) kerb and channel;
- e) drainage pits and pipes;
- f) street furniture;
- g) signage;
- h) street trees; and
- i) service pits.

Asset Protection Permit means a written permit issued in accordance with this Local Law which authorises a specified use or activity.

Authorised Officer means any person appointed by the Council to be an Authorised Officer under section 224 of the Act.

authorised litter authority has the same meaning as 'litter authority' in the Environment Protection Act 1970.

builder means a person who:

- a) carries out building work;
- b) manages or arranges the carrying out of building work; or
- c) intends to carry out, or to manage or arrange the carrying out of, building work.

building permit means a permit issued under the Building Act 1993.

building site means land on which building work is being, or is proposed to be, carried out.

building work includes any works with respect to the construction, demolition, renovation, alteration, relocation or removal of any building, structure or land including landscaping and concreting or any work for which a permit is required under the Building Act 1993 or any other legislation (including this Local Law).

Certificate of Final Inspection means a certificate issued under Part 4 of the Building Act 1993.

Chief Executive Officer means the Chief Executive Officer of Council.

Council means the City of Casey.

Council land means land owned, controlled or managed by, or vested in, Council but excludes a road.

emergency services agency has the same meaning as in the Emergency Management Act 1986.

Infringement means an infringement notice issued under the Infringements Act 2006.

land means any land other than a public place or Council land, and includes land which is privately owned or occupied, and structures and fixtures on such land.

minor building work means any building work that is deemed by Council or an Authorised Officer to be low risk, established upon assessing the risk of the building work causing damage to Council land and assets.

Notice to Comply means a notice issued in accordance with Clause 22 of this Local Law.

Occupancy Permit means a permit issued in accordance with Part 5 of the Building Act 1993.

owner in relation to any land, means the person who is registered on the certificate of title as the owner of the land or the person who is or is entitled to exercise any rights of ownership of the land.

public place has the same meaning as in the Summary Offences Act 1966.

road has the same meaning as in the:

- a) Local Government Act 1989; and
- b) Road Safety Act 1986,

and includes:

- a) a street; or
- b) a footpath; or
- c) nature strip; or
- d) a public road under the Road Management Act 2004; or
- e) a right of way; or
- f) a bicycle path; or
- g) a carriageway; or
- h) any land reserved or proclaimed as a street or road under the Crown Land (Reserves) Act 1978 or the Land Act 1958; or
- i) any culvert or curbing or other land or works forming part of the road.

security bond means the sum of money paid or payable or guarantee made to Council in respect of potential loss to Council as specified in any condition attached to a permit.

working day means a day that is not a Saturday, a Sunday or a public holiday declared in the Victorian Government Gazette for the Melbourne area.

writing includes duplicated, photocopied, photographed, printed and typed and extends to both hard copy and soft copy form.

PART 3 – ASSET PROTECTION

Asset Protection Permits, Security bonds and Responsibilities

The purpose of this local law is to protect any **assets** vested in, controlled or owned by **Council**.

It establishes a system of **Asset Protection Permits**, as a means of regulating **building work** which may damage **assets** or cause environmental hazards and / or damage.

Asset Protection Permit

1. An **owner**, **builder** or **appointed agent** must not commence any **building work**, including the delivery of any equipment or building materials to a **building site** without having an **Asset Protection Permit** issued in respect of the **land** where the **building work** is to be carried out, unless **Council** or an **Authorised Officer** determines the works constitute **minor building work**.

Maximum Penalty: 20 Penalty Units

2. **All building work** which requires a **building permit** also requires an **Asset Protection Permit** unless **Council** or an **Authorised Officer** determines the works constitute **minor building work**.
3. For **Council** or an **Authorised Officer** to issue an **Asset Protection Permit**, the **owner**, **builder** or **appointed agent** must, at least ten (10) **working days** prior to the commencement of any **building work**:
 - 3.1. notify **Council** in **writing**, of the proposed **building work** by completing an **application form**, regardless of whether a **building permit** has been issued; and
 - 3.2. advise **Council** in **writing**, including by supplying photos, of any prior damage to any road (including a road reserve, footpath or nature strip), or any other **asset**; and
 - 3.3. pay any non-refundable permit fee determined by **Council**; and
 - 3.4. pay any **security bond** determined by **Council** or an **Authorised Officer**.
4. If an **application form** for an **Asset Protection Permit** does not include a statement and photos in accordance with clause 3.2 of this Local Law, it is presumed that there was no pre-existing damage prior to the **building work** taking place.
5. The owner, **builder** or **appointed agent** must comply with any conditions on an **Asset Protection Permit**.

Maximum Penalty: 20 Penalty Units

6. An **Asset Protection Permit** may be issued subject to such conditions as **Council** or an **Authorised Officer** determines including, but not limited to, conditions:
 - 6.1. outlined in any terms and conditions set within an **application form**; and/or
 - 6.2. requiring that any **asset** damage be repaired, replaced or reinstated within a specified time nominated by **Council**; and/or
 - 6.3. requiring a temporary vehicle crossing to be installed to **Council** specification before the commencement of any **building work**, including the delivery of any equipment or materials to the **building site**.
7. Unless it is renewed sooner, an **Asset Protection Permit** expires on the date specified on it and, if not specified, 12 months from the date of its issue.

Inspections, Identifying and Repairing Damage

8. Inspections of any **assets** may be conducted at any reasonable time.
9. Within seven (7) days of completion of the **building work** and an **Occupancy Permit** or **Certificate of Final Inspection** being issued, the holder of the **Asset Protection Permit** must arrange with **Council** for an inspection of the **building site**.
10. Upon completion of an inspection under Clause 8 and/or 9 of this Local Law, **Council** or an **Authorised Officer** may:
 - 10.1. issue a **Notice to Comply** to the holder of the **Asset Protection Permit** outlining damage to be repaired in accordance with standards specified by **Council** or an **Authorised Officer** and requiring that all damage must be repaired within twenty (20) **working days** or by some other date fixed by **Council** or an **Authorised Officer**; and/or
 - 10.2. retain all or part of the **security bond** to offset the costs for **Council** to repair any damage, or any costs associated with carrying out immediate works to minimise risk or hazards caused by the damage; and/or
 - 10.3. refund to the person who lodged the **security bond**, upon satisfaction that no damage has been caused, or that any damage caused has been repaired to **Council's** satisfaction.
11. Where a **Notice to Comply** is issued under Clause 10.1 of this Local Law and the holder of an **Asset Protection Permit** fails to rectify the damage as directed by **Council** within the time, or to the standards, specified in the **Notice to Comply**, **Council** or an **Authorised Officer** may:
 - 11.1. vary or cancel the **Notice to Comply**; and/or
 - 11.2. issue an **infringement** notice; and /or
 - 11.3. retain all or part of the **security bond** in accordance with Clause 10.2 of this Local Law.

Maximum Penalty: 20 Penalty Units

12. For any repair works undertaken by **Council** in accordance with Clause 10.1 and/or 10.2 of this Local Law, where the cost is greater than the amount of the **security bond**, the holder of the **Asset Protection Permit** must pay to **Council** the amount of the shortfall, being the difference between the cost of the repair work and the amount of the **security bond**.
13. For any repair works undertaken by **Council** in accordance with Clause 10.1 and/or 10.2 of this Local Law where the cost is less than the amount of the **security bond**, **Council** must refund the unused portion of the **security bond** to the person who paid it to **Council**.

PART 4 – PROCEDURES

Permits

14. An applicant for an **Asset Protection Permit** must:
 - 14.1. make an application to **Council** in **writing** and include all information required by **Council** to enable consideration of the **Asset Protection Permit** applied for; and
 - 14.2. provide such additional information as **Council** or an **Authorised Officer** requires; and
 - 14.3. pay to **Council** a non-refundable **Asset Protection Permit** fee determined by **Council** either generally or under special conditions or specified circumstances.
15. **Council** or an **Authorised Officer** may require the applicant to give notice in **writing** to any person who may be materially affected by the granting of an **Asset Protection Permit** and invite such a person to make a written submission to **Council** within 14 days (or such other period as **Council** or an **Authorised Officer** determines) of the date of the notice.
16. **Council** or an **Authorised Officer** may give notice in **writing** to any person who may be materially affected by the granting of an **Asset Protection Permit** and invite such a person to make a written submission to **Council** within 14 days (or such other period as **Council** or an **Authorised Officer** determines) of the date of the notice.
17. **Council** or an **Authorised Officer** may, after taking into account any written submission received from a person described in Clause 14 and/or 15 of this Local Law:
 - 17.1. grant; or
 - 17.2. refuse to grantan **Asset Protection Permit**.
18. An **Asset Protection Permit** will remain in force for the period determined in accordance with Clause 7 of this Local Law.
19. **Council** or an **Authorised Officer** may revoke an **Asset Protection Permit** for non-compliance with any condition attached to it, or if it was issued based on a false representation.

False Representation

20. A person must not obtain or attempt to obtain an **Asset Protection Permit** by making or causing to be made any false representation.

Maximum Penalty: 20 Penalty Units

Exemptions from Permits

21. An **Authorised Officer** may, in accordance with a resolution of **Council** or with the agreement of the **Chief Executive Officer**, grant an exemption from any requirement to obtain an **Asset Protection Permit**.

Notices to Comply/Directions

22. An **Authorised Officer** may serve a **Notice to Comply** on any person who breaches this Local Law instructing them to remedy that breach.

23. When a **Notice to Comply** is not complied with, **Council** can undertake any works required to remedy the breach, with any costs incurred by **Council** to be borne by the holder of the **Asset Protection Permit**.
24. A person must remedy any breach of this Local Law in accordance with all requirements of a **Notice to Comply**.
25. A person must comply with any reasonable direction, instruction or signal of an **Authorised Officer**, member of Victoria Police, member or Officer of an **authorised litter authority** or member or Officer of an **emergency services agency** lawfully given in connection with this Local Law.

Infringement Notices

26. As an alternative to prosecution an **Authorised Officer** may serve an **infringement** notice in respect of an offence against this Local Law.
27. The penalty fixed for an **infringement** notice under this Local Law is the amount set out in Schedule 1.
28. Payments for **infringement** notices are to be paid to **Council** in the manner prescribed on a notice.

Security bonds

29. In deciding to grant an **Asset Protection Permit**, **Council** or an **Authorised Officer** may require the applicant to lodge with **Council** a **security bond** in such amount and in such a manner as **Council** or an **Authorised Officer** deems reasonable in the circumstances.
30. **Council** may use a **security bond** to remedy a breach of that **Asset Protection Permit** or repair any damage caused by any works under an **Asset Protection Permit**, in accordance with Clause 10.2 of this Local Law.
31. Upon being satisfied that no damage has been caused to any **assets**, or that any damage caused to any **assets** has been repaired to **Council's** satisfaction, in accordance with Clause 10.3 of this Local Law, **Council** must release any remaining **security bond**.
32. If a person identified under Clause 31 of this Local Law cannot be identified or located and the money is held by **Council** for 12 months after the date on which the person became entitled to its return, **Council** must comply with the requirements of the Unclaimed Money Act 2008.

SCHEDULE 1 - PENALTIES FIXED FOR INFRINGEMENT NOTICES

Clause	Offence	Penalty Units
1.	Failing to obtain an <i>Asset Protection Permit</i>	10
5.	Fail to comply with a condition of an <i>Asset Protection Permit</i>	5
11.	Fail to comply with a <i>Notice to Comply</i>	5
20.	Making false representation to obtain or attempt to obtain an <i>Asset Protection Permit</i>	10