

RANDWICK CITY COUNCIL

Tree Preservation Order 2005

On Tuesday, 26 July, 2005, the Council of the City of Randwick resolved to make this Tree Preservation Order (TPO) and to rescind all other Tree Preservation Orders on and from its coming into force. Notice of the making of this Order was published on 26 August, 2005, in the *NSW Government Gazette (No 107)* and on 23 August, 2005, in the *Southern Courier* and on 24 August, 2005, in the *Wentworth Courier*.

1. Introduction

- a. This Tree Preservation Order (TPO) is made pursuant to Clause 28 of the Randwick Local Environmental Plan 1998 (RLEP).
- b. The objectives of the TPO are:
 - i. to encourage the proper management of trees within the City of Randwick for the purpose of promoting a better environment;
 - ii. to encourage the planting, maintenance and healthy and safe preservation of appropriate trees for the benefit of the community;
 - iii. to ensure the conservation of the environmental heritage and aesthetic character of the City;
 - iv. to promote, protect and enhance the environmental qualities of the City;
 - v. to recognise the importance of ecological sustainability in the planning and development processes; and
 - vi. to establish procedures for the proper management of trees in order to minimise the unnecessary loss of significant tree resources.

2. Land to which this TPO applies

This TPO applies to all land within the Local Government area of the City of Randwick.

3. Trees covered by this TPO

The trees covered by this TPO are:

- a. any palm tree, cycad or tree fern;
- b. any tree in bushland;
- c. any tree on public land; and
- d. any other tree with:
 - i. a height equal to or exceeding 6 metres; or
 - ii. a canopy width equal to or exceeding 4 metres; or

- iii. for a single trunk tree species, a trunk circumference equal to or exceeding one (1) metre at a height of one (1) metre above ground level; or
- iv. for a multi-trunk tree species, a combined trunk circumference (measured around the outer girth of the group of trunks) equal to or exceeding one (1) metre at a height of one (1) metre above ground level.

4. Prohibition on ringbarking, etc, any tree

- a. Subject to subclause (b) of this Clause 4 a person must not on land to which this TPO applies ringbark, cut down, top, lop, remove, injure or destroy any tree covered by this TPO without the consent of the Council.

Note: Pruning, transplanting, root cutting and poisoning a tree would come within this prohibition as would indirect activities that could injure a tree, such as altering the soil level by more than 200mm within 3 metres of the trunk of a tree. Consent for such activities is therefore required.

- b. Subclause (a) of this Clause 4 does not apply:
 - i. where it can be demonstrated to the satisfaction of the Council that the tree is dying, dead or has become dangerous;
 - ii. where the tree is dealt with in accordance with a permit granted under Clause 5;
 - iii. to the trimming or removal of a tree under section 48 of the *Electricity Supply Act 1995*;
 - iv. to the pruning of any tree in accordance with the Australian Standard to provide 0.5 metre clearance of insulated domestic electricity supply cables;
 - v. to any work carried out by the Council, the State Emergency Services or a person authorised by either of them for safety reasons in response to an emergency;
 - vi. to the pruning, maintenance, removal or replacement of any street tree, park tree or other tree in a public space or on public land under the care, control and management of Randwick City Council in order to abate any potential or actual danger to persons and/or property and provided such pruning, maintenance, removal or replacement is carried out by persons authorised by Council and in accordance with the Australian Standard;
 - vii. to any tree growing within two (2) metres of any building comprising a residential dwelling (detached, attached or multi-unit housing) or any retail, commercial, factory, warehouse or storage building (not being an out building) measured horizontally from the closest point of the trunk at one (1) metre from ground level to the closest point of the vertical alignment of the building structure which may be the eave, guttering or fixed awning of the building;
 - viii. to the control, removal or destruction of any tree of a species of plant declared under the *Noxious Weeds Act 1993* to be a noxious weed in respect of land within the City of Randwick;

- ix. to the removal, transplanting or pruning of any tree of a species in the table below, so long as the work is done in accordance with Australian Standard.

<u>Botanical Name</u>	<u>Common Name</u>
<i>Ligustrum species</i>	Privet
<i>Ailanthus altissima</i>	Tree of Heaven
<i>Ficus elastica</i>	Rubber tree
<i>Schefflera actinophylla</i>	Umbrella tree
<i>Ochna serrulata</i>	Ochna
<i>Nerium oleander</i>	Oleander
<i>Cotoneaster species</i>	Cotoneaster
<i>Erythrina species</i>	Coral tree
<i>Syagrus romanzoffianum</i>	Cocos palm
<i>Olea europea var. africana</i>	African Olive

5. Permit

- a. Application for a permit to deal with a tree must be made in writing on the application form available from the Council and be accompanied by the administration fee determined from time to time by the Council.
- b. The administration fee is to cover the cost of administration, site visit, assessment and determination of the application. It is non-refundable.
- c. Before granting a permit the Council must make an assessment of the importance of the tree or trees concerned in relation to:
- i. soil stability and prevention of land degradation, and
 - ii. scenic or environmental amenity, and
 - iii. vegetation systems and natural wildlife habitats.
- d. In granting a permit the Council may impose conditions including but not limited to the following:
- i. requiring a copy of the permit to be displayed on the land where the work covered by the permit is to be carried out for a specified period before and after the carrying out of the work;
 - ii. requiring the permit to be available for inspection by an officer of the Council during the carrying out of the work covered by the permit;
 - iii. where the permit allows for the destruction or removal of a tree or trees, requiring the planting of a replacement tree or trees;
 - iv. where replanting is made a condition of a permit, requiring the protection and care of the new tree or trees for a specified period so that the tree or trees remain in good health and are likely to reach natural size and maturity;
 - v. specifying the period during which the permit will remain in force being not more than one (1) year from the date it is granted;

- vi. providing that the permit will cease to have effect if a development application is lodged where the proposed development includes work covered by the permit.

6. Penalties

Contravention of this TPO is an offence against the *Environmental Planning and Assessment Act 1979* which provides:

- a. that a person guilty of an offence against the Act shall, for every such offence, be liable to a penalty; and
- b. that were a person is guilty of an offence involving the destruction of or damage to a tree the Court dealing with the offence may, in addition to or in substitution for any pecuniary penalty imposed or liable to be imposed, direct that person;
 - i. to plant new trees and vegetation and maintain those trees and vegetation to a mature growth; and
 - ii. to provide security for the performance of any obligation imposed under paragraph (i) of this subclause (b).

Note: See s126 for the penalty amount. At the date of this TPO the maximum penalty for an offence under the Act is \$1,100,000 or \$110,000 if the proceedings for the offence are brought in the Local Court.

7. Information for Applicants

- a. Where a tree is listed as a heritage item in Schedule 3 to the RLEP or is within a heritage conservation area development consent is required for development that involves demolishing (removing), defacing (pruning/lopping), damaging (including root cutting) or moving the tree and a permit will not be sufficient to authorise any such activity.
- b. Where a tree is located on public land and is causing view loss to the occupier of neighbouring private land, application may be made to Council for a permit in accordance with clause 5 above to prune the tree for the purpose of reducing view loss PROVIDED that: any such application for permit is supported by a report of a suitably qualified arborist detailing the proposed pruning and certifying that such pruning will not compromise the health or integrity of the tree and will be carried out in accordance with the Australian Standard.

If the permit is granted, the proposed pruning must be carried out to Council's satisfaction by a suitably qualified arborist at the cost of the applicant.

Note: Nothing in this subclause 7b. shall be construed to fetter Council's discretion in determining the application for permit.

- c. Where the Council refuses to grant a permit to deal with a tree or grants a permit subject to conditions with which the applicant is dissatisfied, there is no right of appeal to the Land and Environment Court. However, such refusal does not preclude the applicant from lodging an application for development consent to deal with the tree. Should the Council refuse the development application or grant it subject to conditions with which the applicant is dissatisfied, the applicant may then appeal to the Land and Environment

Court against the refusal of development consent or the conditions of that consent, as the case may be.

8. Definition of Terms

- a. Unless the context indicates otherwise, words used in this TPO have the same meaning as those words have in the RLEP.
- b. In this TPO,

Australian Standard means Australian Standard AS 4373 - 1996 *Pruning of Amenity Trees*;

bushland has the same meaning as that defined in *State Environmental Policy No. 19 - Bushland in Urban Areas*;

height means the distance measured vertically between the horizontal plane of the lowest point of the base of the tree which is immediately above ground and the horizontal plane of the uppermost point of the tree;

public land means any land which the public use or are entitled to use for a public purpose including but not limited to a public reserve, a public place, a public road, crown land, community land, public open space, a public walkway and a common;

tree means a highly compartmentalised, perennial, woody (or fibrous) shedding plant that is usually tall, single stemmed and long lived;

width means the distance measured horizontally (in metres) between the two widest points of the tree's canopy.