



TREE PRESERVATION ORDER



Effective 19 January 2001



TREE PRESERVATION ORDER

This Order is made under the provisions of Clause 8 of the Environmental Planning and Assessment Model Provisions 1980, under the Environmental Planning and Assessment Act, 1979. This Order applies within the whole of the Leichhardt Local Government Area and applies to all trees on private property, including those listed in Council's significant tree register.

The Order was adopted by Council on 17 January 2001 and advertised in the Government Gazette on 19 January 2001 and in The Glebe newspaper on 24 January 2001.

A copy of the Order, as Gazetted, is at Appendix 1 of this document.

1. THE ORDER

Unless Council gives written consent for specific works, it is prohibited to ring bark, cut down, lop, top, remove, injure or wilfully destruct any tree on private property within the Leichhardt Local Government Area.

Sections 5 and 6.1 outline exceptions to this Order. In addition, it should be noted that lopping and pollarding are prohibited by this Order.

Trees on public property are protected by other legislation.

2. WHAT IS A TREE PRESERVATION ORDER?

A Tree Preservation Order is a document advertised and adopted by Council that is intended to ensure the protection of the existing trees. The Order applies to all land within the Leichhardt Local Government Area.

For the purposes of the Order, a tree is defined as a perennial plant generally with a single woody stem or trunk, usually unbranched for some distance above the ground.

There are two methods of undertaking work under this Order, either under the exempt requirements (section 5) or under the applications requirements (section 6).

Important Note

You should note that any person who contravenes, or permits to be contravened, the provisions of the Tree Preservation Order, shall be guilty of an offence. Fines for offences under the Environmental Planning and Assessment Act 1979 can exceed \$100,000.

3. AIM OF THE ORDER

The aim of the Order is to conserve and enhance the tree cover, understorey, ground covers and general landscaping of Leichhardt. This is to conserve and enhance the ecological, climatic, amenity, aesthetic, economic and cultural values of the area.

These values are expanded to include the following specific issues;

2.1 Ecological Values

- Biodiversity, comprising genetic, species and ecosystem diversity.*
- Habitat and habitat corridors.*
- Improved health of air, water and soil systems.*
- Conservation of soils and protection of natural drainage systems.*
- Improvement in permeability and natural drainage systems.*
- Improvement in permeability and natural drainage patterns.*
- Protection of stormwater infrastructure and stormwater quality.*
- Absorption of nutrients.*
- Increase carbon dioxide uptake.*

2.2 Climatic Values

- Protection from wind, rain and sun.*
- Provision of a balance of sun and shade with emphasise on solar access in the winter spectrum and shade in the summer.*
- Improved transpiration.*
- Reduced need to use air-conditioning.*

2.3 Amenity Issues

- Screening between buildings.*
- Shelter and shading.*

2.4 Economic Issues

- Improve property values.*
- Stimulate business and tourism.*
- Provide a productive landscape.*

2.5 Aesthetic and Cultural Values

- Visual improvements and relief from built elements.*
- Contrast.*
- Kinaesthetic. (sound/wind and motion)*
- Recreational.*
- Variety, including seasonal change.*
- Identity – sense of place.*

4. WHY DOES COUNCIL HAVE A TREE PRESERVATION ORDER?

Vegetation, particularly a mature tree canopy, is essential to the character of the suburbs of Leichhardt. Such vegetation shapes the skylines, displays former natural creek lines, and enhances the foreshores.

Existing trees should be conserved as far as possible. If their removal is unavoidable, they should be replaced. Wherever opportunities arise, new trees should be planted so that all properties in both the public and private domain contribute to a shared landscape.

Landscaping to property frontages should provide a decorative edge and setting to buildings as part of the cultural landscape of the street. In this context formality, decorative qualities and cultural planting may be more appropriate. Conversely, landscaping to rear gardens should be less formal with scope for more substantial planting to screen and protect as well as provide a shared landscape and habitat in a more natural, softer environment with greater scope for wildlife and indigenous planting, including large trees.

Landscaping in terms of design, plant material and size, should retain and complement natural features of a site such as ridgelines, valleys, exposed rock and watercourses.

5. TREES AND PRUNING EXEMPT FROM THE ORDER

There are some species of tree that are exempt from this Order. For any pruning or removal of these species, formal notification to Council is not required.

5.1 Exempt Species

The following species are exempt from this Order:

- Bambusa Species (Bamboo)
- Eriobotrya Species (Loquat)
- Ficus Elastica Species (Rubber plant)
- Ligustrum Species (large and small leaf Privet)
- Musa Species (Banana plant)
- Nerium Oleander (Oleander)
- Toxicodendron Succedaneum (Rhus or Wax tree)
- Morus Species (Mulberry)
- Arecastrum romanzoffianum (Queen or cocos palm)
- Schefflera Species (Umbrella tree)
- Persea Species (Avocado)
- Ailanthus Species (Tree of heaven)
- Lagunaria Patersonia (Norfolk Island Hibiscus)
- Mangifera Indica (Mango tree)

You should ensure that the species of tree that you are pruning or removing is actually of the type on this list. You may need to seek the advice of a qualified arborist or horticulturalist to confirm this and you may need to provide evidence of the species by photograph or written declaration.

5.2 Exempt Work

All species of tree are exempt from this Order where the removal or pruning is consistent with the following list:

- Trees that are less than 4 metres in height and have a trunk diameter of less than 200 millimetres, when measured at height of 1 metre from the ground.
- Any topping, lopping or removing of trees required to comply with a direction under the Electricity Supply Act 1995, any other Act of Parliament or complying with a direction from any Emergency Service including the State Emergency Service.
- The removal of torn limbs or dead wood, such as individual branches, but does not include whole trees.
- Pruning of less than 10% of the canopy or root system up to once every growing season and only of branches less than 100 millimetres in diameter.
- Inserting of root barriers, when this will result in less than 10% of the root system being removed and up to once every growing season.

All pruning must be undertaken in accordance with the Australian Pruning Standards AS 4373-2007.

It is recommended that photographs are taken of the tree before pruning occurs to provide evidence that any work undertaken is consistent with the exempt provisions of this Order. Council may be required to investigate compliance with these provisions after the work has been undertaken and the owner may be required to provide evidence of compliance.

Despite certain species and pruning being exempt from the Order, it is recommended that the advice of an arborist or tree surgeon be obtained prior to undertaking this work.

Minor trimming of the canopy, including the removal of dead timber or torn limbs or including branches up to 100mm in girth, shall be done by making the final cut against the collar at the junction of two branches, avoiding damage to the collar.

6. CONTROLS ON PRUNING AND TREE REMOVAL

If you wish to significantly prune or remove a tree, and what you want to do is not listed within section 5 of this Order, there are two ways that this could occur. You will either need to give notice to Council under section 6.1 (Complying work) of this Order or you will need to lodge a request for approval under section 6.2 (Work requiring consent) of this Order.

6.1 Complying Work – Notification Required

Complying work is only that work listed below and only when the tree is growing on your property.

- Pruning of more than 10% but less than 25% of the canopy, where Council has been notified of the work. All pruning must comply with Australian Pruning Standards AS 4373-2007 and a suitably qualified person must undertake the work and may be undertaken up to once every growing season.

If the work you wish to undertake is “Complying”, you need to fill in the “Tree Application” form attached to this Order. The original of this form must be sent to Council and a copy must be kept on the property until the work has been completed.

Work may only be carried out from 3 days after the form has been returned to Council. If you have not commenced the work within one calendar month of notifying Council, you need to contact Council if you require an extension of time.

It is recommended that photographs are taken of the tree before pruning occurs to provide evidence that any work undertaken is consistent with the complying provisions of this Order. Council may be required to investigate compliance with these provisions after the work has been undertaken and the owner may be required to provide evidence of compliance.

There is no fee payable when the work is complying.

6.2 Consent Work– Application Required

Consent work is all other work not specifically listed within sections 5.1 and 5.2 (Exempt) or section 6.1 (Complying) of this Order.

If the work you wish to undertake requires Consent, you need to fill in the “Tree Application” form, attached to this Order and lodge the form with Council. Please contact Council’s Citizen Service Centre for applicable fees (if the trees you are seeking to remove are dead or dying, and it is determined that the trees have not been deliberately tampered with, the fee will be refunded).

After the form has been lodged and receipted, you will be contacted by Council's Tree Preservation Officer who will arrange a suitable time for an inspection. This will normally be within 14 days of lodgement; however timeframes may vary depending on the work load at the time of your application.

The Tree Preservation Officer will determine if the work you wish to undertake is appropriate. You should note that it is the intention of this Order to preserve trees and the circumstances for removal would need to be significant. Dropping of leaves, flowers, fruit or twigs will not generally justify removal, nor will issues such as the cracking of pipes, driveways, footpaths, paving or fences.

In some circumstances it may be necessary for you to supply, at your cost, an independent arborists and / or plumbing report. If the tree is particularly significant or if the information in the arborists or plumbing report is deficient, other reports may be requested. The Tree Preservation Officer will determine if such reports are necessary and such circumstances may include those where there is the possibility that the tree has been deliberately tampered with, including poisoning or ringbarking.

If the tree is significant in the local area, the Tree Preservation Officer may require that the surrounding residents be notified and that an advertisement be placed advising that the removal of the tree has been requested. Please contact Council's Citizen Service Centre for applicable fees.

The request to remove a tree may only be granted in the following circumstances;

- ❑ Where the tree does not make a significant contribution to the aims of this Order.
- ❑ Where the tree is a threat to structures or persons which cannot be remedied by reasonable protective measures.
- ❑ Where the tree is located where approved development is to be located.
- ❑ Where replacement planting can better achieve the aims of the Order within a reasonable time.

Should any such consent be granted, this may be given subject to such conditions as the Council thinks fit, and as a minimum, Council will require the following:

- ❑ Planting of substitute trees, and
- ❑ where any such trees are planted, this will be within the time specified by Council, and
- ❑ Where the tree to be removed is significant in the locality, Council shall consider any submissions from adjacent residents.

7. ADDITIONAL INFORMATION

REQUESTS FOR REMOVAL OR PRUNING OF TREES ON NEIGHBOURING PRIVATE PROPERTY

Neighbours have the right to prune the branches of a tree overhanging their property, but only where such pruning is consistent with the Exempt controls (section 5) of this Order. This pruning can only occur to the boundary line and should occur without crossing the boundary to undertake the pruning. However it is advisable to approach the neighbour prior to pruning, in order to avoid confrontation between neighbours.

If you wish to prune or remove a tree on a neighbouring property and such work requires notification of Council or consent from Council, you must seek the written agreement from the owner of the tree prior to making an application. Council is not able to grant approval for tree removal or pruning without consent of the owner.

The exception to this is if there are dead or dangerous limbs. These may be removed to the boundary without approval, provided that the removal is consistent with this Order. It should be noted that the work must ensure the safety and health of the tree.

LOPPING OR TOPPING

Lopping or topping is the cutting of branches or stems between branch junctions or at internodes on young trees. This is an unacceptable practice and is prohibited under this Order for the following reasons:

- ❑ It increases the rate of shoot production and elongation.
- ❑ The resulting regrowth is weakly attached and becomes prone to failure or collapse.
- ❑ The stubs may decay.
- ❑ The natural habit of the tree is destroyed.
- ❑ It may reduce the lifespan of the tree.
- ❑ It predisposes trees to fungal infections and insect attack.

POLLARDING

Pollarding is cutting back trees to just above the same point every 2 to 3 years resulting in the production of multiple shoots. This practice is prohibited by this Order.

APPLICATIONS FOR REMOVAL OR PRUNING OF TREES ASSOCIATED WITH DEVELOPMENT APPLICATIONS.

Where work associated with a Development Application involves pruning of trees in excess of that permitted by section 5.1, 5.2 and 6.1 of this Order, the following information, prepared by an arborist, tree surgeon or landscape architect, must be supplied:

- ❑ The location of all trees on the site and affected trees on adjoining properties, in terms of the criteria of this Order.
- ❑ The type of species and the estimated longevity.
- ❑ Height, diameter and width of canopy of the tree and its health and condition.
- ❑ The location of all structures including, where relevant, those on neighbouring properties.
- ❑ The impact on the tree in terms of canopy, roots and general health and stability, as a result of any proposed excavation or fill.
- ❑ The likely impact of trees on structures and services.
- ❑ Advice on protection of trees during works and ongoing care.
- ❑ An assessment in terms of the objectives of this Order of the visual, amenity and ecological impact of the proposed pruning or removal. In addition, this needs to be addressed in terms of the proposed replacement landscape.
- ❑ Where landscaping is a component of the proposed development, (except for single dwellings) a Landscape Plan is to be prepared by a landscape architect showing existing trees that are to remain on the site and new plantings proposed.
- ❑ Where the tree is on an adjacent property, written consent is required from the owner of the tree, should pruning or removal (including roots) be required. This consent should be attached to the development application.

Appendix 1

TREE PRESERVATION ORDER

1. Introduction

This Order is made pursuant to Clause 8 of Environmental Planning and Assessment Model Provisions 1980, under the Environmental Planning and Assessment Act, 1979.

This Order applies to the whole of the Leichhardt Local Government Area and applies to all trees on private property, including those listed in Council's significant tree register.

Non-compliance with this Order may result in prosecution under the Environmental Planning and Assessment Act.

The Order was adopted by Council on 17 January 2001 and advertised in the Government Gazette on 19 January 2001 and in The Glebe newspaper on 24 January 2001.

2. The aim of the Order

The aim of the Order is to conserve and enhance the tree cover and general landscaping of Leichhardt. This is to conserve and enhance the ecological, climatic, amenity, aesthetic, economic and cultural values of the area.

3. The Order

Unless Council gives written consent for specific works, it is prohibited to ring bark, cut down, lop, top, remove, injure or willfully destruct any tree in the Leichhardt Local Government Area except:

- a tree of the following species;
 - ❑ Bambusa Species (Bamboo)
 - ❑ Eriobotrya Species (Loquat)
 - ❑ Ficus Elastica Species (Rubber plant)
 - ❑ Ligustrum Species (large and small leaf Privet)
 - ❑ Musa Species (Banana plant)
 - ❑ Nerium Oleander (Oleander)
 - ❑ Toxicodendron Succedaneum (Rhus or Wax tree)
 - ❑ Morus Species (Mulberry)
 - ❑ Arecastrum romanzoffianum (Queen or cocos palm)
 - ❑ Schefflera species (umbrella tree)
 - ❑ Persea Species (Avocado)
 - ❑ Ailanthus Species (tree of heaven)
 - ❑ Lagunaria Patersonia (Norfolk Island hibiscus)
 - ❑ Mangifera Indica (Mango tree), or

- A tree less than 4 metres in height and having a trunk diameter of less than 200 millimetres, when measured at height of 1 metre from the ground, or
- When complying with a direction under the Electricity Supply Act 1995 or any other Act of Parliament, or
- For the removal of torn limbs or dead wood, such as individual branches, but not including whole trees, or
- For pruning of less than 10% of the canopy or root system up to once every growing season and only of branches less than 100 millimetres in diameter, or
- For pruning of more than 10% but less than 25% of the canopy, where the work will be undertaken by a suitably qualified person and Council has been notified of the work, and up to once every growing season, or
- When inserting root barriers, when this will result in less than 10% of the root system being removed and up to once every growing season,

And,

- All work must be consistent with the Australian Pruning Standards AS 4373-2007, and
- Any pruning will not result in harm to the health of the tree.

For the purposes of this Order, notification means filling in the appropriate form, lodging the form with Council and not proceeding with work within 3 days of lodging the form.

Under this Order, Council may only grant consent to undertake work,

- Where the tree does not make a significant contribution to the aims of this Order, or
- Where the tree is a threat to structures or persons which cannot be remedied by reasonable protective measures, or
- Where sewer or drainage pipes are blocked and there are no permanent repair alternatives, or
- Where the tree is located where approved development is to be located, or
- Where replacement planting can better achieve the aims of the Order within a reasonable time,

And,

- Where substitute trees are planted, and
- Where any such trees are planted, this will be within the time specified by Council, and
- Where the tree is significant in the locality, and council has considered any submissions from adjacent residents.

Should any such consent to remove a tree be granted, this may be given subject to such conditions as the Council thinks fit.