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OBJECTIVE

The objective of the Tree Preservation Order (TPO) is the protection of valuable trees against unwarranted destruction by removal or damage. It is hoped that such an objective can be realised by promoting an awareness of the values of trees in our urban and rural landscapes. In essence the TPO aims to:

1. Promote an awareness of the value of trees;
2. Indicate the need for and correct procedures for approval in removing, lopping or topping protected trees;
3. Prevent unwarranted and wilful destruction of protected trees due to non-compliance with the Order; and
4. Maintain the environmental protection and amenity of trees throughout the Cessnock City Council area.

POLICY

An Important Resource

Trees play an important role in our natural environment. This role has become increasingly evident where indiscriminate clearing has resulted in environmental degradation including loss of wildlife habitats, soil erosion and sedimentation, soil salinity and other detrimental impacts.

In the rural environment trees benefit farmers in providing shelter for stock, increasing soil stabilisation and protecting against the wind.

In the urban environment trees provide valuable shade and soften the general appearance of a sometimes harsh and hard Urban landscape. They make our urban environment a pleasant place to live and visit through the array of heights, shapes, colours and general form they offer.

Information and Advice

For guidance on choice of plants or most suitable locations, you are advised to contact Council's trained horticulturists within the Community Services Department. Guidance on selection of tree species and planting is provided in publications released by the State Forests of NSW.

Requirements of the TPO - Protected Trees

When is Approval Needed?

Under the provision of this TPO Council approval is required for the removal, ringbarking, lopping, topping or injuring of any trees with a height of 3 metres or greater or which have crown spreads of 3 metres or more within the identified zones throughout the Cessnock City Council Local Government Area.

Land to which Order Applies

The TPO applies to the following zones or land areas throughout Cessnock City Council Local Government Area.

- Zones/Areas – Residential 2(a)
- Village 2(b)
- Residential 2(c)
- Rural Residential 1(c)
- General Business 3(a)
- Neighbourhood Business 3(b)
- Centre Support 3(c)
- Industrial 4(a)
- Light Industrial 4(b)
- Special Uses 5(a)
- Open Space 6(a)
- Proposed Open Space 6(b)
- Environmental Protection (Scenic) 7(d1)

Legal Status

In accordance with Clause 8(5) of the Environmental Planning and Assessment Act Model Provision, a person who contravenes or causes or permits to be contravened this Order shall be guilty of an offence.

When is Approval Not Required?

Minor pruning of trees or removal for the following purposes does not require Council approval:

1. Removal of dead tree(s) or branches. Trees which are apparently dying and suffering some form of stress should not be removed without seeking the advice of Council's Tree Preservation Officer. Appropriate treatment may return the plant to a state of health.
2. Pruning for ornamental purposes where such pruning is a normal accepted practice.
3. Removal of noxious or undesirable trees or shrubs which include:
 - Cinnamomum species - Camphor Laurel
 - Salix species - Willow Tree
 - Ailanthus species - Tree of Heaven
 - Populus species - Poplars
 - Robina Psuedvacacia - False Acacia
4. Any tree which has a trunk less than 3 metres from the outermost projection of a building.
5. Removal of trees to give effect to a Council approved development. Tree removal or pruning is restricted to those specific areas where it is necessary to carry out earthworks, building works, service installation and pavement construction. Tree removal or pruning is to be restricted to an area which is no greater than 3 metres from the above construction works, otherwise Council approval will be required. Unnecessary clearing or damage to trees is to be avoided.
6. In accordance with Section 88 of the Roads Act 1993, a roads authority may remove or lop any tree or other vegetation that is on or overhanging a public road where this is necessary for the purpose of roadworks or traffic hazard reduction.
7. Where Council is the roads authority, consultation with the Community Services Department is required prior to tree removal or pruning within any road reserve. Unnecessary clearing, pruning or disturbance of vegetation is to be avoided and clearing confined to those activities necessary for roadworks and hazard reduction.

The provisions of this Order do not apply to trees:

- a) In a state forest, land reserved as a timber reserve or on lands defined as 'other crown-timber lands' within the meaning of the Forestry Act 1916;
- b) Required to be trimmed in accordance with Regulation 23 of the Electricity (Overhead Line Safety) Regulation 1991;
- c) In any Water Catchment Area under the control of an authority responsible for the water supply; or
- d) In a proclaimed National Park.

Dangerous Trees

It is the responsibility of Council's Tree Preservation Officer to determine if the health of a tree, or the danger that such a plant poses, is such that it warrants removal or pruning. The officer may require a report from a Tree Surgeon or Arborculturalist where significant uncertainty exists as to the integrity or safety of a tree.

Where a tree is considered dangerous, all reasonable measures are to be made to seek the approval and/or advice of Council's Tree Preservation Officer prior to removal or pruning.

Selection and Location of Trees

Remember, when selecting trees and determining where they will be planted:

Make yourself aware of the estimated mature height and width of the plant. The correct choice of plant species and its location will minimise future unwanted impacts.

Estimate when the tree is fully grown, where its shadow will fall in the summer and winter months?

Avoid overshadowing of neighbours particularly in the winter months.

Determine if the mature tree will interfere with overhead power lines. Where planting under powerlines is the only option, choose trees with appropriate heights.

Avoid leaves falling into your neighbours gutters. Avoid overhanging branches which will directly affect neighbours.

Determine if the tree will effect underground services, foundations of buildings, fences or pavements. The location of underground services should be determined prior to planting. The Hunter Water Corporation, Orion Energy, Natural Gas Company and Telecom should be able to advise on service locations including water, sewer, electricity, gas and telecommunication lines.

Setbacks from buildings, other structures and services should be in accordance with the expected height, spread and root system of the plant. The Forestry Commission recommends that small trees/shrubs be at least 2 m from buildings with larger species set back at least 10 m. Trees such as poplars, willows, camphor laurels and figs should not be planted close to buildings since they have particularly penetrating or invasive and damaging root systems.

Trees should be located following consideration of site drainage, access to sunlight and soil type.

Reasons for Removal or Pruning of Trees

Circumstances where there is reason for removal or pruning of trees include:

1. Risk of personal injury;
2. Risk of damage to buildings, structures or service lines;
3. Creation of a traffic hazard by obstruction of vision; and
4. Other circumstances where it is evident that the adverse impact of the tree clearly outweighs its contribution to the amenity of the locality.

In many circumstances the unwanted effects of the tree can be eliminated or significantly reduced by appropriate pruning. Correct pruning requires knowledge of tree growth, risk of damage and infection and requires expert guidance. In all cases attempts must be made to maintain the natural shape of the tree.

Reasons for Protecting Against Removal or Pruning

Particular importance will be placed on the preservation of a tree where it is considered that it:

- a) Has historical or commemorative significance;
- b) Makes a significant contribution to the landscape and amenity of the area;
- c) Is exceptionally old, large or rare;
- d) Has notable aesthetic qualities; and/or
- e) Has horticultural or scientific value.

Application and Approval Process

Council requires a written application to remove or prune a protected tree. Applications shall:

1. Identify the property and owner of the property to which the application relates;
2. Identify by drawing and description the location, type and size of the tree or trees to be removed or pruned; and

3. Specify the nature and extent of work proposed and reason(s) for the work.

Approval will be granted or refused on the circumstances of the case. Should approval be granted, advice as to the removal or pruning procedure will be given. This approval may carry specific conditions that must be met including:

- qualification of the worker,
- equipment required,
- special precautions to be taken during the procedure,
- acceptable times in which the work may be carried out,
- details regarding pruning procedure,
- adequate insurance cover.

Approval shall remain valid for a period of **three (3) calendar months** from date of issue.

Tree Replacement

Where tree removal is proposed, a general condition of any consent will be the replacement with an equivalent number of trees to be located at appropriate sites. **Where appropriate** the use of indigenous Australian native trees is encouraged for the purpose of tree replacement.

Qualifications/Insurance

Council's Officers may insist that tree removal or pruning be carried out by a qualified **Tree Surgeon** or **Arborculturalist**. This requirement will depend upon the nature and extent of work to be carried out. Council may also insist that the worker have appropriate personal injury, public liability and property insurance prior to commencing works.

The need for an experienced and approved workman in tree removal or pruning assists in:

- (i) Survival of the tree;
- (ii) Minimum risk of personal injury or damage to property; and
- (iii) Ensuring adequate insurance cover.

Clearing for Bushfire Risk Reduction

Clearing in those zones to which this order applies may be carried out where removal of vegetation is necessary to reduce the risk of injury or damage from bushfires. Where there is an immediate risk of bushfire damage, and circumstances do not permit Council notification and approval, a reasonable degree of risk will be considered a defence against the provision of this order.

In accordance with the provisions of the Environmental Planning and Assessment Act Model provisions 1980 (as amended) a defence against prosecution for non compliance with the TPO exists where:

1. Action was taken to protect human life, buildings or property from imminent danger from bushfire burning in the vicinity; or
2. The tree(s) in question are within a **fuel free zone** as defined in the document "*Planning for Bushfire Protection*" published by the Department of Bushfire Services. In this case written notice of an intention to affect a tree must be given to Council who then has fourteen (14) days in which to oppose any action. If the action is opposed the defence does not apply.

Note: Fuel Free Zones are part of the required buffer area between buildings and bushland which pose substantial fire risk. These zones are defined by specified distances from buildings which range from 20 to 40 metres depending on aspect and slope.

Related Laws

Cessnock Local Environmental Plan, 1989 (LEP 1989)

The relevant provision of Local Environmental Plan, 1989 should be read in conjunction with this order.

Clause 20 of the Local Environmental Plan provides for clearing in specific zones for the purpose of agriculture, forestry, air navigation safety, land survey, fencing or bushfire hazard reduction **without** the consent of Council.

The Local Environmental Plan provides that the **consent of Council** is required prior to clearing of land in certain rural zones on land identified as having particular land capability classes as shown on maps held by Council.

Clause 42 of the Local Environmental Plan prohibits the clearing of land identified on the Local Environmental Plan map as having Environmental Conservation Value.

Soil Conservation Act, 1938; Water Act, 1912

The Water Act provides for the protection of **Prescribed Streams**. This Act protects trees within 20 m of the bed or bank of any stream prescribed under the legislation.

The Soil Conservation Act protects trees on **protected land**, which is usually land marked on a map having a slope greater than 18 degrees. This protection extends to prescribed stream and land identified as environmentally sensitive.

The Department of Land and Water Conservation should be contacted regarding clearing on such protected lands.

National Parks and Wildlife Act

There are restrictions contained within the Act which relate to picking, injuring and destruction of vegetation including trees. Section 13 contains a list of species of Australian plants which it is forbidden to sell and which cannot be picked on crown land without issue of a licence.

Restrictions apply to interference with certain vegetation on certain categories of private land including wildlife refuges, and wildlife conservation and management areas.

The National Parks and Wildlife Service should be contacted regarding clearing in the above areas.

Forestry Act, 1916

Under this Act it is an offence for anyone to interfere, or to allow interference with trees or vegetation on this land unless a licence from the Forestry Commission has been granted.

Development and Building Approval

Council may specify in a Development Consent Notice or Building Permit that certain trees may be removed or must be retained. Landscaping requirements may be provided for as a condition of approval.