

# BLUE MOUNTAINS CITY COUNCIL

## Tree Preservation Order (Local Environmental Plan 1991)

### Objectives:

Council seeks to control the removal of trees or works which can damage trees through a Tree Preservation Order in order:

- 1) to maintain, foster and develop the visual, cultural and landscape amenity through the protection and enhancement of trees as a component of the natural resources managed by the City in its role of stewardship of those resources for the people of the Blue Mountains.
- 2) to enhance ecological values and to ensure the long-term survival of Blue Mountains native and exotic canopy species.
- 3) to provide for efficient and effective tree management practices throughout the City.

### Definitions:

Definitions used in this Order:

"tree" means:

- (i) a plant with one or more self supporting trunks that has a height of more than 4 metres, or a branch and foliage crown spread of more than 4 metres; or
- (ii) any tree or plant, irrespective of size, listed in a Register of Significant Trees or Register of Heritage Items, being registers kept at the office of the Council; or
- (iii) any hedge on a street frontage having a height of more than 1.5 metres.

"dead tree" means a tree is no longer capable of performing any of the following processes or is exhibiting any of the following symptoms:

#### Processes

- **photosynthesis** via its foliage crown (as indicated by the presence of moist, green or other coloured leaves);
- **osmosis** (the ability of the roots system to take up water);
- **turgidity** (the ability of the plant to hold moisture in its cells); and/or
- **epicormic shoots** (the production of new shoots as a response to stress, generated from buds under the bark or from a lignotuber - an at ground or underground stem).

#### Symptoms

- **permanent leaf loss** in both deciduous and evergreen plants;
- **permanent wilting** (the loss of turgidity which is marked by drying out of stems, leaves and roots); and/or
- **shedding of the epidermis** (bark dries out and peels off to the beginning of the sapwood).

"destroy" means any immediate or ongoing process or activity leading to the death of a tree.

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

"injury" and "wilful destruction" means damage to a tree and includes:

- a) lopping and topping;
- b) poisoning, including applying herbicides and other plant toxic chemicals to a tree or spilling (including washing off or directing water contaminated by) oil, petroleum, paint, cement, mortar and the like onto the root zone;
- c) cutting, tearing, snapping and breaking of branches and roots that is not carried out in accordance with accepted arboricultural practices, does not qualify as "pruning" or is done for invalid reasons such as vandalism;
- d) ringbarking, scarring the bark when operating machinery, fixing objects (eg signs) by nails, staples or wire, using tree climbing spikes in healthy trees marked for retention (except for access to an injured tree worker) or fastening materials that circle and significantly restrict the normal vascular function of the trunk or branches or inflicting a blaze on a tree as a marker point;
- e) damaging a tree's root zone by compaction or excavation, stripping of topsoils, asphyxiation by burial (including unauthorised filling or stockpiling of materials )or the alteration of ground level or water table which causes damage to the tree or any part of the tree;
- f) "underscrubbing", unless carried out by hand tools, such as brushcutters and the like;

**"likely habitat tree"** means any tree naturally occurring (being native vegetation or remnant native vegetation) which has developed hollows in the trunk or limbs and which is suitable for nesting birds, arboreal marsupials (such as possums) or native placental mammals( such as bats) or which is supporting the growth of locally indigenous or endemic epiphytic plants (such as orchids).

**"lop"** or **"lopping"** means cutting between branch unions or at internodes on a young tree, with the final cut leaving a stub, but this does not include "lopping" where this is solely for the purpose of feeding stock in an officially drought declared area, if the vegetation's continued health is not affected.

**"pruning"** of a tree means the removal of any stem dead or alive, back to the intersection of another live stem to a swollen area at the intersection called a branch collar, with a final cut at the outer edge of the collar leaving no stub. This also means any act or acts of severing any part of a tree so as to cause a reduction of the air space occupied by the branches and foliage of a tree. Further all tree pruning is to conform to Australian Standard® AS4373 – 2007 "Pruning of amenity trees." Pruning is not "lopping", "topping", "top lopping" or the "reduction in height" of any tree.

**"remove"**, **"removal"** and **"cutting down"** means to dismantle a tree e.g. by chainsaw, or to separate the tree from the ground where it is growing e.g. dislodge it with earth moving equipment, in order to kill the tree, so that the tree, including its branches, foliage, trunk, stump and root system will not regrow. This includes the poisoning of the stump and/or roots and/or taking away, or grinding or burning out of its remains to prevent regrowth.

**"top"**, **"topping"** or **"top lopping"** means cutting away part or all of a tree's foliage crown leaving a trunk and stubbed main branches to reduce its height and spread and is an antiquated practice which damages trees reducing strength and vigour promoting their premature decline.

**"transplanting"** and **"transplant"** means to excavate a tree from its place of origin within the ground and to relocate it for the purposes of re-establishment within the ground or a container within the same property or to another property. A tree being transplanted within a property or from one property to another will require council consent. However this does not apply to

specimens that have originated in and have grown continuously in a container which is not permanently fixed to a built structure, and the following are examples of when consent is or is not required:

- 1) a tree that has remained continuously confined within a container, would not require consent;
- 2) a tree in a planter box where the box is part of a building, would require consent; and/or
- 3) a field grown tree propagated as part of a commercial horticultural or agricultural enterprise for the purposes of harvesting and selling such an advanced specimen for relocation and re-establishment, would not require consent.

#### **Implementation Strategies:**

- 1) This Tree Preservation Order repeals any tree preservation order relating to land within the City of Blue Mountains made and in force immediately before the appointed day.
- 2) This Tree Preservation Order applies to all land to which *Blue Mountains Local Environmental Plan 1991* applies, excluding the natural estate managed under the *National Parks & Wildlife Act 1974*.
- 3) A person shall not, except with the written consent of Council cut down, top, lop, prune, remove, injure or wilfully destroy any tree.
- 4) The consent of the Council is not required in relation to a tree in the following circumstances, provided that, in relation to items (ii), (iii), (v), and (vi) the tree is not part of a heritage item or heritage conservation area as defined by the local planning instruments, or listed on Council's Significant Tree Register:
  - (i) Any tree is exempt from the Tree Preservation Order provided that sufficient documented evidence can be produced to prove that:
    - a) the tree was dead and was not a 'likely habitat tree' as defined in this Order;
    - b) the tree posed an imminent danger to property or life; or
    - c) taking the action was reasonably necessary to protect human life, buildings or other property from imminent danger from a bush fire burning in the vicinity of the land on which the tree was situated.
  - (ii) Any tree with a height less than 4 metres and with a foliage crown spread of less than 4 metres, except where stated otherwise in this order.
  - (iii) Any tree which is identified for removal in association with the construction or use of a building or work for which development consent has been granted, including the ongoing maintenance of fuel load limits within identified and approved asset protection zones, but only in accordance with the terms and conditions of that consent.
  - (iv) All trees that are located within the path of roadways, sewage, drainage works and other works including bush regeneration works, which have been approved by the Council or by a public authority under Pt IV or Pt V of the *Environmental Planning and Assessment Act 1979*.
  - (v) Any of the plants that are listed in the "Weeds List – F2 Weeds of the Blue Mountains" of the *Better Living Development Control Plan*, subject to any prescribed height limits.

Note: Height limits do not apply to plants that are declared to be noxious weeds under the *Noxious Weeds Act 1993*.

- (vi) All species identified on Blue Mountains City Council Noxious Weed List.
  - (vii) Any trees which are:
    - removed in accordance with any authorisation or direction issued under the *Rural Fires Act 1997*; and/or
    - removed by a Rural Fire Brigade because it poses or will pose a significant threat to access along required fire trails or to human life, buildings or other property during a bushfire.
  - (viii) Any tree which has otherwise become dangerous from actions associated with hazard reduction burns undertaken in accordance with a Part V approval under the *Environmental Planning and Assessment Act 1979*, or a bushfire.
  - (ix) Pruning:
    - Pruning of a hedge by no more than 20% of its height and or width in anyone year, such that the overall height is not reduced below 1.5m.
    - the seasonal pruning of fruit trees for the purposes of maintaining fruit production, except that this exemption shall not apply to *Acmena* spp. or *Syzygium* spp. (all Lilli pilli), nor to *Elaeocarpus* spp. (all Blueberry Ash) nor *Ficus coronata* (Sandpaper Fig) and *F. rubiginosa* (Rusty or Port Jackson Fig).
    - 'deadwooding' being the removal of dead wood from the tree, provided the branches removed are not branches with hollows on 'likely habitat trees' as defined in this Order.
    - selective pruning, being only pruning to remove branches back to the nearest branch collar or junction to clear a roof, where trees directly overhang the roof of a dwelling, garage or commercial building, provided that the owner of the land where the centre of the tree originated or where the majority of the trunk of the tree is growing, is in agreement.
    - to remove any parasitic plant (not including parasitic mistletoe, which has habitat value) from any part of a tree to ameliorate the affects upon the tree from such a parasite.
  - (x) The immediate removal of trees where this is essential for emergency access or emergency works by the State Emergency Services or a public authority.
  - (xi) Removal or trimming of trees in accordance with sections 88,107,138 and 139 of the *Roads Act 1993* or Section 48 of the *Electricity Supply Act 1995*.
  - (xii) The removal of trees in accordance with an order issued by the Council under the provisions of the *Environmental Planning and Assessment Act 1979* or the *Local Government Act 1993*.
- 5) Council may consider a request to prune a tree on public land for non-essential maintenance for improving a view, or for additional solar access, or other reasons, on the basis that all work and its extent will be conducted to standards and specifications as determined by the Council and will be undertaken by the Council or its duly authorised agents. The entire cost of all non-essential or cosmetic pruning work including administration costs will be required to be fully paid to the Council prior to the work being

undertaken and will be the sole responsibility of the applicant. Such applications to be made to Council where a non-refundable fee will apply. Any such agreed works to be undertaken and completed within a reasonable timeframe.

### **Administration:**

**Application** must be made for all works on trees which are not included in the above exemptions. The fee is non-refundable.

An approval will expire twelve months after issue.

Where appropriate, Council will require the **planting of replacement trees** and maintenance of those trees to maturity, as a condition to consent issued under the Tree Preservation Order, and such planting will be required within a maximum of 12 months from the grant of approval or such lesser time as the condition requires. A **bond or bank guarantee** may also be required to secure the result of the more significant works.

When advised of a dangerous tree, in a situation of imminent danger, Council will act promptly to inspect the tree or may give immediate consent for its pruning or removal without inspection. This would be on the basis that, where a dangerous tree is pruned or removed due to obvious instability or hazard, appropriate evidence is retained as described in the following paragraph.

Where the exemption provisions are exercised in relation to;

- a dangerous tree removed due to obvious instability or hazard;
- a dead tree which is higher than 4 metres but not a 'likely habitat tree'; and
- a tree which must meet the height prescription for species listed in 4

the evidence of the condition of or characteristics of the tree should be retained by the owner for a minimum of 6 months and presented to the Council upon request. That evidence should include photographs of the tree and where the photographs do not provide clear description of the circumstances, a declaration from a third party which corroborates the facts regarding the removal. Evidence may also include a statement from the State Emergency Service (if the tree is removed by the Service,) or a report from a qualified arborist if the removal relies upon significant structural weakness which is not obvious from photographic evidence, or to confirm that the tree did not contain hollows.

### **Penalties.**

Failure to comply with the Tree Preservation Order is a breach of the *Environmental Planning and Assessment Act* and offences may be prosecuted, including penalty infringement notices and Court action.