

TREE PRESERVATION ORDER - 2002

Environmental Planning and Assessment Act Model Provisions 1980, Clause 8

1. INTRODUCTION

1.1 CITATION

This Order maybe cited as “Kempsey Shire Tree Preservation Order”.

1.2 COMMENCEMENT & LEGAL STATUS

This Order was adopted by Council on 12th November 2002 and shall be effective from 13th December 2002. The Order replaces Kempsey Shire Council Tree Preservation Order adopted 6 August 1996 and Kempsey Shire Council Policy No. C23:11 – Operation of Tree Preservation Order.

Clause 8 of the Model Provisions 1980, of the Environmental Planning and Assessment Act 1979, provides Kempsey Shire Council with the basis to establish a Tree Preservation Order. This legislation gives this Tree Preservation Order legal status enabling Council to initiate prosecution for breaches of this Tree Preservation Order.

1.3 POLICY AIMS & OBJECTIVES

- a The aim of this Order is to prevent unnecessary removal or damage to trees within the Kempsey Shire. Towards achieving this aim, the objectives of the Order are:
 - i to preserve trees as important elements of landscapes and streetscapes.
 - ii to conserve trees of scientific, historical, aesthetic and cultural value.
 - iii to encourage the replanting of trees to replace those lost through development.
 - iv to protect the habitat of threatened species.



- b The aims and objectives will be achieved in areas where this Order applies by: -
 - i Requiring written consent from Council for the removal and pruning of vegetation to which this Order applies.

1.5 DEFINITIONS

- a For the purposes of this Order, “a tree” is defined as:

A plant with a single trunk and with a trunk diameter of more than 200mm, measured at a point within 600mm of the ground level, and:-

- i Has a height of more than 3 metres; or
- ii Is a heritage listed tree irrespective of size; or
- iii Is rare or endangered plant/tree irrespective of size; or
- iv Is identified as providing habitat for any threatened species.

- b For the purposes of this Order, “removal” is defined as:

The clearing, removing, cutting down, burning, ring barking, poisoning, substantially damaging, injuring or wilful destruction of a tree.

- c For the purposes of this Order, “pruning, topping, and lopping” is defined as:

The removing of living branches and sections of a tree canopy or root structure.

- d For the purposes of this Order, “threatened species” means any species listed under the Threatened Species Conservation Act as threatened or vulnerable.

2. OPERATION OF THIS ORDER

2.1 LAND TO WHICH THIS TREE PRESERVATION ORDER APPLIES

- a This Order applies to land within the following zones under Kempsey Local Environmental Plan 1987:



Zone No. 1(c) (Rural (Smallholdings) “C”) Zone
Zone No. 1(d) (Rural (Investigation) “D” zone)
Zone No. 2 (a) (Residential “A” Zone)
Zone No. 2 (b1) (Residential “B1” Zone)
Zone No. 2 (b2) (Residential “B2” Zone)
Zone No. 2 (c) (Residential “C” Zone)
Zone No. 2 (d) (Residential (Tourist Facility) “D” Zone)
Zone No. 2 (v) (Village or Township Zone)
Zone No. 3 (a) (Business (General) “A” Zone)
Zone No. 3 (b) (Business (Neighbourhood) “B” Zone)
Zone No. 3 (c) (Business (Special) “C” Zone)
Zone No. 3 (v) (Business (Village) “V” Zone)
Zone No. 4 (a) (Industrial (General) Zone)
Zone No. 4 (b) (Industrial (Light) Zone)
Zone No. 4 (e) (Industrial (Extractive) “E” Zone)
Zone No. 5 (a) (Special Uses “A” Zone)
Zone No. 6 (a) (Open Space “A” Zone)
Zone No. 6 (b) (Open Space “B” Zone)
Zone No. 7 (h) (Historic Lands Protection Zone)

- b This Tree Preservation Order also applies to all items of environmental heritage identified under Schedule 1 of the Kempsey Local Environmental Plan 1987 or Schedules 1, 2 and 3 of North Coast Regional Environmental Plan (NCREP) 1988 regardless of the zoning of that land.

2.2 IMPACTS ON OTHER ZONINGS

- The requirements of the Kempsey Local Environmental Plan in respect to:

Zone 7(a) (Wetland Protections Zone)
Zone 7(d) (Scenic Protection Zone)
Zone 7(f1) (Coastal Lands Protection Zone)
Zone 7 (f2) (Coastal Lands Acquisition Zone)

require that a development consent is needed to cut down, top or lop any tree which has a height of 3 metres or more.

- The Kempsey Local Environmental Plan also requires that development consent may be required for clearing within:-

Zone 1(a1) (Rural “A1’ Zone)
Zone 1(a3) (Rural “A3’ Agricultural Protection Zone)
Zone 1 (g) (Rural (Small Agricultural Enterprises) “G” Zone)



2.3 REQUIREMENTS OF THIS TREE PRESERVATION ORDER

- a On land to which this Tree Preservation Order applies, a person shall not carry out the removal, pruning, topping or lopping of tree, without the consent of Council, unless specifically exempted under the provisions of this Order.
- b Where a permit has been issued for tree removal and is subject to conditions, the person to whom the permit has been issued is responsible to ensure that all conditions are met.

Failure to comply with any condition of a permit would be a breach of the Environmental Planning and Assessment Act 1979 for which the holder and person carrying out such removal is liable.

- c Any person who contravenes this Order, or causes this Order to be contravened would be guilty of an offence under the Environmental Planning and Assessment Act 1979 and may be liable to prosecution.
- d Where a person makes application for the removal of a tree under the provisions of this Order where practical, Council may require replacement planting of trees endemic to the area as a condition of any permit.

2.4 EXEMPTIONS TO THIS TREE PRESERVATION ORDER

Exemptions of this Tree preservation Order include:

- a Any tree within five metres (5m) of a habitable dwelling, **except for koala food trees**.
- b Selective removal of branches up to and including a diameter of 50mm.
 - i Which does not alter the canopy shape of the tree;
 - ii Which does not destroy the aesthetic appearance of the tree; and
 - iii Which does not alter the growth structure of the tree.
- c Any tree harbouring Queensland Fruit Fly or grown for edible fruit.
- d Removal of dead branches including palm fronds.



- e Trees identified by this Order as noxious plants.
- f Trees for which an order has been issued under the Rural Fires Act, 1997.
- g Trees required to be removed, pruned, lopped or topped in accordance with the Electricity Supply Act, 1995 No 94.
- h Trees within an approved plantation meeting the criteria of the Timber Plantations (Harvest Guarantee) Act.
- i Plantations established by State Forests on purchased lands, or on private lands under the joint venture or Farm Forestry Schemes.
- j Trees required to be removed, pruned, lopped or topped in accordance with Roads Act 1993.
- k Trees required to be removed by Council as part of the management and maintenance of any public reserve and/or road.
- l Any trees for which consent to remove has been granted in accordance with a valid development consent and/or construction certificate.
- m Any species listed under Schedule 2 of this Order.

Note: *The clearing of native vegetation on rural land may require development consent under the provisions of the Native Vegetation Conservation Act 1997.*

2.5 APPLICATION FOR THE REMOVAL OF TREES

- a A person may make an application to Council for the removal of a tree/s under the provisions of this Order using the relevant form.
- b Upon receipt of an application for the removal or pruning of trees, whether applied for under the provisions of this Order or under the provisions of a development application, Council will consider the following criteria in determining whether to issue a permit:-
 - i Whether the tree is dying or dead;
 - ii Whether the tree is likely to substantially interfere with private property and/or public infrastructure and/or services;
 - iii Whether the tree is likely to substantially interfere with the efficiency of a solar heating appliance;



- iv Whether the tree is a substantial threat to property or life? (An arborists report will need to accompany such a claim);
- v Whether the tree is in an overcrowded situation where overcrowding is likely to be detrimental to tree growth and the judicious removal of a tree/s is likely to result in improved growth to other trees? (An arborists report may need to accompany such a claim).
- vi Whether removal of the tree(s) is the appropriate action in the circumstances.
- vii Whether the tree provides habitat for any native fauna.
- viii Whether the tree(s) are rare or endangered species.
- ix Whether removal of the tree is likely to adversely impact on the significance of any item of environmental heritage.

3. RELATIONSHIP TO OTHER PLANNING INSTRUMENTS

3.1 STATE ENVIRONMENTAL PLANNING POLICIES

State Environmental Planning Policies prevail over this Order in respect of land affected by:

- State Environmental Planning Policy No. 14 – Coastal Wetlands
- State Environmental Planning Policy No. 26 – Littoral Rainforests
- State Environmental Planning Policy No. 44 – Koala Habitat Protection

3.2 NATIVE VEGETATION CONSERVATION ACT 1997

Native Vegetation Conservation Act, 1997, prevails over this Order in respect of lands affected by that Act.

4.0 PENALTY

Any person who contravenes, or causes, or allows to be contravened, the provisions of this Tree Preservation Order, shall be liable to prosecution and may incur a maximum penalty of \$1.1 million through the Land and Environment Court.



SCHEDULES

Schedule 1 – Significant Trees Register

Trees listed in this schedule are specifically protected and require development consent for removal, pruning, topping or lopping. Council must publicly exhibit any application for such removal for a minimum of fourteen (14) days prior to determination.

Description of Species

Location of Species

English Plane Tree
Magnolia Grandillora

Smithtown Public School
15 Lord Street, Kempsey

SCHEDULE 2 – Trees Exempt from the Tree Preservation Order

The tree species listed below are exempt from the Tree Preservation Order and therefore, approval is not required for their removal, except where the provisions of the Environmental Planning Instruments referred to in **Sections 3.1 & 3.2 of this policy apply**.

(Note: Additional Environmental Weeds as determined by the North Coast Weeds Advisory Committee and/or the Department of Agriculture may be added to the list from time to time).

<u>Common Name</u>	<u>Botanical Names</u>	<u>Reason</u>
Privet	<i>Ligustrum species</i>	Environmental weed
Umbrella Tree	<i>Brassia Actinophyllia</i>	Vigorous root system
Rubber Tree	<i>Ficuss Elastica</i>	Vigorous root system
Camphor Laurel *see note	<i>Cinnamomum camphora</i>	Environmental weed
Poplar Tree	<i>Populus species</i>	Vigorous root system
Rhus Tree	<i>Toxicodendron succedaneum</i>	Poisonous plant
False Acacia	<i>Robinia pseudoacacia</i>	Environmental weed
Tree of Heaven	<i>Ailonthus altissimin</i>	Invasive Environmental weed
Coral Tree	<i>Erythrina species</i>	Environmental Weed
Cocus Palm	<i>Arecastrum romanzoffianum</i>	Undesirable species
Honey Locust	<i>Gleditsia triacanthos</i>	Dangerous spines



Angels Trumpet	<i>Datura candida</i>	Toxic, poisonous
Paulownia	<i>Paulownia tomentosa</i>	Vigourous growth
Cotoneaster	<i>Cotoneaster species</i>	Invasive Environmental weed
Ochna	<i>Ochna serrulata</i>	Invasive Environmental weed
Cadaghi	<i>Eucalyptus torellia</i>	Environmental weed
Tobacco Bush	<i>Solanium mauritianum</i>	Environmental weed
Broad Leaf Pepper	<i>Schinus terebinthifolus</i>	Environmental weed
Celtis	<i>Celtis sinensis</i>	Environmental weed

***Note:**

The removal of camphor Laurel trees up to a trunk diameter of 600mm can be carried out without the consent of Council. Removal of Camphor Laurel trees with a trunk diameter greater than 600mm will require the consent of Council.

