

## **DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES REPORT**

13 June 2006

<b>DSDS5</b>	<b>REVIEW OF COUNCIL'S TREE PRESERVATION ORDER</b>
	<b>FILE: 554      GAN</b>

### **SUMMARY:**

Council's Tree Preservation Order requires review due to a number of recent events. These include the commencement of the Native Vegetation Act; a number of clearing activities; the resource demands for dealing with minor tree assessments; and liability issues relating to potentially dangerous trees.

This report recommends that a draft amended TPO be exhibited to address these issues.



### **Purpose of Review**

A number of issues have arisen which affect the way the order is applied and the effectiveness of the order in achieving its aims. These issues are summarised below:

### **Issues**

#### Native Vegetation Act 2003

The Native Vegetation Act 2003 has replaced the Native Vegetation Conservation Act 1997. This Act is concerned with the management of native vegetation within rural and rural residential areas.

The legislation does not regulate clearing in urban zoned land.

The Catchment Management Authority is the consent authority for this legislation, primarily through development applications and property vegetation plans.

If Council's TPO and the Native Vegetation Act have overlapping requirements, consent is required from both the CMA and Council.

#### Effectiveness of the Current TPO

There has been a significant community response to clearing events in the Shire and it has become apparent that legislative tools

currently in place do not capture vegetation clearing activity likely to result in adverse impacts, whilst other less harmful practices are unnecessarily regulated.

Currently the removal of trees greater than 3m in height with a trunk diameter greater than 200mm requires consent from Council under the TPO. This means that underscrubbing of forested areas can be done without approval. Vegetation communities, such as heathlands and scrublands, are not protected by the Tree Preservation Order. Council has a responsibility to ensure that any vegetation to be removed within residential land is assessed through the appropriate process.

Conversely, approval is currently required for the removal of isolated trees on existing developed residential lots that, due to their potential to endanger life and property, are inevitably approved due to the liability incurred by Council should approval be denied. This practice was recently supported by a Supreme Court of Appeal decision which held that a Council was liable for the death of a person after Council refused an application to remove a tree.

### Council Resources

Applications for single tree removals require site inspection, assessment, determination and notification to applicant. The application fee is \$35. Almost all applications for tree removal from house lots are approved. The applications that are generally not approved are for removals in rural residential areas not associated with existing dwelling houses and where vegetation has either been identified for retention at subdivision stage or the applicant fails to justify removal.

### NSW Planning Reforms and Standard LEP Template

The recent NSW planning reforms require Council to prepare an LEP in accordance with the Standard Template adopted by the Department of Planning.

As part of the NSW Planning reforms the *Environmental Planning and Assessment Model Provisions 1980* will be repealed and Tree Preservation Order provisions will be provided for in the standard LEP template. The gazetted Standard LEP indicates that preservation of trees does not apply to land for which development consent or Property Vegetation Plan has been issued under the Native Vegetation Act 2003 or to Routine Agricultural Management Activities (RAMA's) identified as exemptions under this Act.

To maintain consistency with Council's future requirements under the Standard LEP, any changes to the TPO made now should consider the requirement of the standard LEP.

## Operational Amendments to the Tree Preservation Order

The proposed amended Tree Preservation Order is presented in [\(Appendix G, part 1, part 2\)](#):

The main changes to the TPO are:

- The TPO will not apply to land in Residential Zones 2(a); 2(b1); 2(d); and 2(v) unless the lot is greater than 1000 m<sup>2</sup> in size, and therefore has subdivision development potential (based on the minimum lot size for subdivision under the Kempsey Local Environmental Plan)
- The TPO will only apply to the land which is not regulated through the Native Vegetation Act 2003. It should be noted that the TPO will no longer apply to rural residential zones that will now be subject to the approval and exemption requirements of the Act by the Northern Rivers CMA.
- Under scrubbing of unsubdivided residential zoned land greater than 1000m<sup>2</sup> will require a permit from Council;

### **REPORT IMPLICATIONS:**

- ***Environmental***

***Amending the Tree Preservation Order will capture clearing activities currently unregulated within undeveloped residential zoned areas, reducing unnecessary approvals. These larger parcels of land containing native vegetation provide the more significant habitat areas. Focusing protection on these areas will provide a more sustainable approach to development within the Shire.***

- ***Social***

***The proposed amendments will remove tree application requirements for house owners, which gives them self determination for the keeping and removing of trees. However, where a title restriction exists on a parcel of land imposed as a result of a condition of subdivision consent when the lot was created will continue to apply. Developers will need to ensure clearing activities receive the appropriate level of Environmental Assessment.***

- ***Economic (Financial)***

***Council resources can be more effectively utilized in the control off clearing activities on larger parcels of land that contain the more significant areas of native vegetation.***

- *Policy or Statutory*

*The proposed amendments to Council's Tree Preservation Order will fill the gap between the Native Vegetation Act 2003 and the current Tree Preservation Order in regards to clearing.*

*Clause 8 of the adopted Model Provisions (adopted by Kempsey LEP 1987) requires Council to notify the making of the TPO in the Government Gazette and in a paper circulating locally.*

*Although there is no statutory obligation to exhibit a draft TPO, given the level of public interest in recent incidents of clearing, it is recommended that Council seek public input prior to adopting a revised TPO.*

**RECOMMENDATION:**

That Council exhibit the draft Kempsey Shire Tree Preservation Order 2006 [\(Appendix G, part 1, part 2\)](#);

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**R B Pitt**  
**DIRECTOR SUSTAINABLE DEVELOPMENT SERVICES**