

Chapter 4

Trees on private land



Trees on private land are found on land belonging to residents, commercial enterprises, community groups, private institutions such as hospitals and churches, and State and Federal government agencies like schools and local government.

After consultation sessions and meetings with Council staff, Councillors, the wider community and other stakeholders it is clear that trees on private land are valued and treasured because they provide:

- privacy
- greater property value
- softening of 'ugly' buildings
- wildlife corridors
- potential food sources (ie. fruit from trees)
- contribute to the character of the area and provide pleasing public outlooks.

These same consultations sessions show that there are a range of issues that matter to the community and other stakeholders when it comes to trees on private property and these are examined in detail below:

1 Tree Preservation Orders

Council's current TPO requires that residents and property owners must apply for permission to top, lop, trim, prune, cut down or remove trees on private land. This applies to any tree with a:

- height of four metres or over
- canopy spread of four metres or more
- trunk width of 300mm or over at one metre above ground level
- listing on the *Waverley Register of Significant Trees*.

It is up to the owner of the property concerned to make an application to Council to carry out work to individual trees. Council's Tree Management Officer will inspect and assess the tree/s according to professionally applied, consistent criteria and the applicant will be notified once the application is approved, refused or approved with conditions. A written permit will be issued if approval is granted. It may be a condition of consent that property owners engage a qualified tree surgeon to carry out the work, according to the relevant Australian Standard *AS4373-1996 Pruning of Amenity Trees*. Consent will quantify the percentage of pruning work or other work allowed under the Tree Preservation Order and the applicant must clearly indicate which trees are the subject of the consent.



In considering an application to alter or remove a tree on private land Council's evaluation will consider:

- the size and health of the tree
- potential unavoidable dangers to property or person by either inaction or proposed action within 10 years
- the effect on the health of the tree
- the environmental value of the tree (its status as locally indigenous, as weed, as habitat or as part of the community)
- its impact on nearby remnant vegetation
- the cultural value of the tree (its status as landmark specimen and in defining local streetscape and character, its historical status, listing on the *Waverley Register of Significant Trees* and the traditional beliefs of the owner, such as Aboriginal totemic value)
- its location within a space of likely future development (in residential zones this translates to anywhere within three metres of the established building zone).



Image 22: A tree on private property in Queens Park, providing public and private amenity and softening the streetscape.

1.1 WHEN CONSENT MAY BE GRANTED

Taking into account the above, consent can be granted for the following:

- removal of unsuitable or hazardous trees
- thinning of crowns to preserve solar access, some selective pruning and reduction of the weight of limbs
- maintenance pruning to remove dead, diseased, dying and defective branches
- selective pruning to remove branches causing conflict through encroachment on own or neighbouring buildings
- root pruning of trees to ameliorate damage to built and natural structures in such a manner as to not compromise the health of trees
- pruning for service lines
- lifting of crowns to allow pedestrian or vehicular access
- pruning for vehicle sight lines, signage and RTA requirements
- removal of trees in conflict with built structures, where all engineering alternatives have been considered
- for construction or extension of buildings where there is no alternative to maintain the tree/s
- minimum work to ensure trees remain safe
- pruning and removal of fruit trees and flowering fruit trees not located on a heritage listed property or the *Register of Significant Trees*, depending on the species in question.

When granting consent to remove a tree an applicant may be required to replace that tree with an advanced approved species which is to be established and maintained for a specified period, especially if the removal of the original tree impacts on neighbours or the streetscape. Random audits of work granted consent will be carried out by Council.

Before planting any replacement tree it is strongly recommended that the eventual height and size of the tree be considered, particularly in regard to:

- power lines and other services such as water, sewer and drainage lines
- buildings, walls and pathways
- sunlight
- neighbouring properties
- suitability (trees or shrubs native to the coastal are highly recommended).

1.2 WHEN CONSENT MAY NOT BE GRANTED

Council may not consent to the following work:

- work on trees without owners' or owners' agent's signature on the application
- removing trees for solar access, leaf, fruit or sap drop, bird or bat droppings, and damage to sewer pipes and built structures (unless all engineering alternatives have been considered)
- removing trees that are healthy and stable
- removing or pruning trees for views
- pruning trees in a manner contrary to the *Australian Standard AS4373-1996 Pruning of Amenity Trees*
- pruning work that is outside the tolerance of particular species, for example figs pruned by more than twenty per cent are more susceptible to sunburn
- tree work for emotive reasons, beyond the scope of the possible reasons given above
- removing trees because they inhibit grass or garden growth
- removing trees because of causing allergies, unless the tree can be medically linked to the allergy
- work which will seriously disfigure or unbalance the tree
- work which will alter soil levels within the drip line of a tree
- removing trees because they cause damage to minor ancillary structures such as foot-paths and driveways
- requests to reduce the height of trees
- pruning to reduce the size of a tree listed on the *Register of Significant Trees*.

Instances where a formal Council application is not required, *provided the applicant submits written arboricultural advice from an accredited provider*, occur when:

- the tree is dead
- the tree is a recognised noxious or environmental weed and is not on Council's *Register of Significant Trees* (see Appendix for list of weeds). The applicant must first seek advice from Council
- the tree is less than four metres in height and has a trunk diameter less than 300mm measured at one metre above ground, and has a canopy spread of less than four metres
- pruning of dead branches (Council encourages pruning works to be done by a qualified arborist where necessary and in accordance with *Australian Standard AS4373-1996 Pruning of Amenity Trees*)
- pruning of branches that are within the set parameters of electric powerlines, as required by clause 23 of the *Electricity (Overhead Line Safety) Regulation 1991* (Council encourages pruning works to be done by a qualified arborist where necessary and in



accordance with *Australian Standard AS4373-1996 Pruning of Amenity Trees*). The applicant must first seek advice from Council

- pruning and removal of fruit trees and flowering fruit trees not located on a heritage listed property or the *Register of Significant Trees*. The applicant must first seek advice from Council.
- pruning and reshaping of Cypress Pines that is not greater than 10 per cent of the whole canopy.

1.3 CONSEQUENCES FOR REMOVING, DAMAGING OR PRUNING A TREE WITHOUT CONSENT

If a resident or property owner removes, damages or prunes a tree without Council's consent they may be liable for fines of up to \$20,000. They may also be liable if they engage or allow another person to remove, prune or damage a tree.

The value of a significant tree must be the foremost consideration of any property owner who is considering building extensions or who may wish to modify or remove trees for some other reason. Building additions or alterations will have to be set out so that the tree remains intact. If a tree is listed in the *Register of Significant Trees* there will be a more stringent assessment.

The effectiveness of Council's TPO can be compromised by lack of public awareness, difficulty to successfully prosecute offenders and purchasers not being aware that a TPO is relevant to a property. Some residents question Council's jurisdiction over private trees, based on private rights versus public enjoyment, neighbour nuisance and possible environmental benefits. However, most seem to agree that a tree is partly public property to the extent that it impacts on the public domain.

1.4 ARBORICULTURAL ADVICE AND REPORTS

Arboricultural advice must be provided by a person with a minimum qualification equivalent, using the Australian Qualifications Framework, to the NSW TAFE Certificate Level 4 or above. This does not include people holding the Certificate in Tree Surgery or equivalent. There may be instances when Council will request further independent arboricultural advice.

Further supporting evidence for the removal or pruning of a tree/s may require an arboricultural report; these are usually appropriate to development sites or significantly prominent trees and should include:

- the name of the client, the specific author and their contact details and qualifications, the purpose of the report, subject site and date/s of inspection
- methodology
- summary of findings
- a map showing the location of all relevant trees, numbered to correspond to text in the report
- for each tree the report must provide common and scientific name, height at inspection, canopy spread, trunk diameter (measured at one metre height) and number of trunks if more than one, form (columnar, triangular or circular), approximate age and photograph/s
- comments on the condition of the tree, such as signs of die-back and other trunk indications, mould, fungi, loss of branches, leaves, stunted or distorted growth, wounds, cavities, cracks, splits, forking, pests and diseases and root conditions
- for diseased specimens, discussion of influences such as nearby structures, soil, weather exposure or previous human intervention
- Safe Useful Life Expectancy rating



- recommended action or management status with reasons, including consideration of options, ie. retain and nature of remediation, transplant, remove
- information should preferably be presented in an accepted scientific format, such as a grid format
- resource material should be referenced in an accepted method, such as Harvard, and include only data specifically referenced in the report
- all reports from Resistograph testing to include clear and legible copies of the charts.

As mentioned earlier, the SULE rating of a tree refers to its life expectancy, modified first by its age, health, condition, safety and location (to give safe life expectancy) then by economics, effect on better trees and sustained amenity. SULE ratings typically plot the health of the tree along the Y-axis against the length of the SULE along the X-axis. Any SULE system that is methodical and transparent is acceptable.

1.5 APPEALING A DECISION

Should an applicant be dissatisfied with Council's decision on a TPO they can request a review by another Council officer (the request will require supporting evidence from an arborist, engineer or other relevant professional). If they are dissatisfied with the review they may also:

- consider an appeal to Council, including addressing a Council meeting
- lodge a development application to carry out the work and then appeal to the Land and Environment Court on Council's decision.



Image 23: Trees on private property in Bondi, contributing landmark qualities to streetscape character.

1.6 IMPROVING THE EFFECTIVENESS OF THE TPO

Waverley Council's TPO will be incorporated in full as a schedule in the *Waverley Local Environmental Plan 1996* and should be easily accessible through Council's website. Council's determination to preserve trees within the LGA could also be strengthened by incorporating the NSW Department of Planning's *Standard Provisions for Local Environmental Plans in NSW* into the TPO.

Avenues for successful prosecution of domestic tree loss carried out in contravention of Council's TPO are to be investigated under all jurisdictions available to Council. This should examine costs, penalty and desired outcomes, timeliness and likelihood of success. Consideration should be given to imposing on-the-spot fines for minor breaches of the TPO. Council can also look at re-wording the consent to reflect the preferred working of a court summons.

1.7 PUBLIC OWNERSHIP AND NOTIFICATION OF A PRIVATE TREE

As with Development Applications, an application for consent under Council's TPO is to undergo a period of notification to relevant neighbours, including all unit holders within a block of units, prior to the final decision being made.

