

MOSMAN MUNICIPAL COUNCIL TREE PRESERVATION ORDER 2003

1. Citation

Council considers it expedient for the purpose of securing and preserving existing amenity to revoke all tree preservation orders presently in force in relation to land which the Mosman Local Environmental Plan 1998 applies. This Tree Preservation Order is to be known as Mosman Tree Preservation Order 2003 and is made pursuant to the provisions of Mosman Local Environmental Plan 1998.

2. Land to which this Order applies

This Order shall apply to all land to which the Mosman Local Environmental Plan 1998 applies.

3. Trees & vegetation to which this Order applies

(a) This Order applies to:

(i) All trees (other than trees of the species or description in the list in paragraph (b) which are not listed in Council's Significant Tree Register) which:

- are 5 metres or more in height; or
- in the case of heritage conservation areas are 2 metres or more in height; or
- has a circumference of 450 millimetres or more measured 300 millimetres above ground level.

(ii) Tree ferns (*Cyathea australis* & *Cyathea cooperi*) which are 2 meters or more in height.

(b) This Order does not apply to the following trees:

Broad-leafed Privet	<i>Ligustrum lucidum</i>
Narrow-leafed Privet	<i>Ligustrum chinense</i>
Citrus Trees	<i>Citrus spp.</i>
Camphor Laurel	<i>Cinnamomum camphora</i> (with height <10m)
Cotoneaster	<i>Cotoneaster spp.</i>
Rubber Tree	<i>Ficus elastica</i>
Willow	<i>Salix babylonica</i>
Umbrella Tree	<i>Schefflera octinophylla</i>
Hibiscus	<i>Hibiscus spp</i>
Oleander	<i>Nerium spp. and thevetia spp.</i>
Prunus	<i>Prunus spp.</i>
Wild Olive	<i>Olea africana</i>
Paw Paw	<i>Carica papaya</i>
Mulberry	<i>Morus sp.</i>
Hackberry	<i>Celtis australis.</i> (with height <10m)

Dead trees on private land.

Dead wood in trees on private land.

4. Definitions

For the purpose of this Order, unless otherwise stated, terms are as defined in the Mosman Local Environment Plan 1998.

"Council" means the Mosman Municipal Council or any officer or person or body authorised to act for or on behalf of the Council.

"Public Land" means any land (including a public reserve) vested in or under control of Council and land vested in or under the control of the Crown.

"Private land" means land the fee simple of which is not vested in or under the control of Council or the Crown.

5. Prohibitions

This Tree Preservation Order prohibits the ringbarking, cutting down, topping, lopping, pruning, root pruning, removing, injuring or wilful destruction of any tree, except with the prior written consent of Council.

6. Consents

6.1 Trees on Private Land

An application to Council for consent to carry out any of the actions listed in Clause 5 on private land must be made on Council's "Tree Preservation Order – Application To Prune/Remove Trees on Private Property" by the owner of the land, or by any person with the consent of the owner of the land, or in respect of encroaching branches or roots by the owner of adjoining land affected by such encroaching branches or roots and must include a plan showing the location of any tree the subject of the application and all trees in the vicinity of any such tree. The application must contain a brief statement of the reason(s) for the application as well as any pertinent information and information that Council may require.

For trees located on land under company title or on common property land under strata title, the application can only be made with the consent of the Company or owners corporation.

6.2 Trees on Public Land (including Council Reserves/Road Reserves)

An application to Council for consent to carry out any of the actions listed in clause 5 on public land shall be made on Council's "Tree Preservation Order - Application To Prune/Remove Trees on Public Property". Only Council or persons approved and authorised by it are permitted to take action in respect of trees on public land.

An application in respect of a tree on Crown Land which is not under the control of Council must be accompanied by written consent from the crown.

An application must include a plan showing the location of any tree the subject of the application and all trees in the vicinity of any such tree. The application must contain a brief statement of the reason(s) for the application as well as any pertinent information and information that Council may require. The cost of all works which are subject to the application will be the responsibility of the applicants.

An application for consent is not required for Council or persons approved and authorised by it to perform any of the actions listed in clause 5 on a tree on public land if such action is considered appropriate by council for the maintenance of trees and / or vegetation on such public land.

6.3 Matters for Consideration

Council, in determining an application under this Tree Preservation Order, will have regard to:

- (i) The health and or condition of the tree or trees; whether the tree is dead or dangerous; proximity to existing or proposed structures; interference with utility services, and interference with views; and amenity of any person or property.
- (ii) Necessity for action in order to construct improvements to the property the subject of the application.
- (iii) Effects in the nature of erosion, soil retention or diversion or increased flow of surface waters.
- (iv) The number of trees in the relevant area and the effect on the amenity of such area.
- (v) The number of healthy trees that a given parcel of land will support.
- (vi) Is the tree(s) in question providing habitat for fauna.

Council may grant any approval under this Tree Preservation Order subject to specific conditions including that a replacement tree(s) which will attain a minimum height as specified by the assessing officer is/are planted and maintained to ensure the health and habit of the tree to maturity in a suitable position on the property to the satisfaction of Council's assessing officer.

6.4 Copy of Consent

Any consent issued under this Tree Preservation Order shall be subject to the condition that any action approved shall not be carried out unless the consent or a copy of the consent:

- (a) is present on the land any action is to be carried out both prior to and during such actions being undertaken; and
- (b) shall be produced by the person or persons carrying out the work forthwith on demand by Council's duly authorised officers, servants or agents to that officer, servant or agent.

6.5 Duration of Consent

Any consent issued under clauses 6.1 or 6.2 of this Order shall be subject to the condition that the consent will lapse if the works referred to in the consent have not been carried out within 12 months from the date of consent.

7. Exemptions

Actions, as stated in clause 5, may be undertaken without consent under this Order where:

- (a) A tree is of a species that has been declared a noxious plant under the Noxious Weeds Act 1993.
- (b) A tree is excluded by Clause 3 of this Order.
- (c) A tree poses an imminent hazard to person or property and there has been visual and written evidence recorded by a qualified professional arborist which justifies the action taken.
- (d) A tree is harbouring fruit fly as confirmed and recorded in writing by a suitably qualified professional.

8. Penalties

A person(s) who contravenes or causes or permits this Order to be contravened shall be guilty of an offence and liable to prosecution.

**Civic Centre
Mosman Square**

**V.H.R. May
General Manager**