Preservation of Trees and Vegetation

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1 Introduction

A healthy urban forest provides significant aesthetic, ecological and environmental benefits to residents, workers and visitors of Randwick City. It is of vital importance to protect and enhance the City's urban environment through long term preservation and management of trees and other vegetation in our urban forest.

An urban forest is the totality of all trees and shrubs on public and private land in and around urban areas (including bushland, open space, gardens and street trees) measured by its canopy cover.

This DCP section applies to trees and other vegetation in Randwick City and supplements the RLEP Clause 5.9 (Preservation of Trees or Vegetation) by specifying additional types of tree works which require Council approval and providing detailed guidance for preparation of applications seeking Council approval.

This section of the DCP should be read in conjunction with:

- Part A - Introduction and Part B - General Controls; and
- Other sections of the DCP for specific development types, locations or sites, if relevant to the application.

1.1 Objectives

- To effectively protect the urban forest in Randwick City, with particular emphasis on retaining trees with cultural, heritage and natural significance.
- To establish a clear framework and requirements for the proper management of trees and other vegetation.

2 Tree works requiring Council approval

Tree works are works affecting the form, structure or foliage of a tree including root cutting, crown lifting, reduction pruning, selective pruning, crown thinning, remedial or restorative pruning or complete tree removal.

RLEP sets out numerous circumstances where development consent is required for carrying out tree works, such as works proposed to a heritage item, in a heritage conservation area, or at locations with acid sulfate soils. Clause 5.9 of the RLEP requires listing of additional circumstances in a DCP where Council approval is also required.

In response to Clause 5.9, this DCP further specifies that the following tree works require Council approval, either in the form of development consent or a tree permit, to ensure the appropriate preservation and maintenance of trees or vegetation with aesthetic, environmental and cultural values.

Refer to Appendix 1 for a list of matters to be considered by Council when determining applications seeking development consent or a tree permit.

Note:

Applicants should also refer to other legislation and policies for relevant requirements and controls. For example, the 'State Environmental Planning Policy 19 – Bushland in Urban Areas' requires development consent for any disturbance of bushland zoned or reserved for public open space purposes. Tree works proposed in 'bushland' therefore could only be carried out with development consent.

Development consent

i) Development consent is required for tree works to any tree listed on Council's Register of Significant Trees.

Note:

All trees listed on Council's Register of Significant Trees are considered to have historic, cultural and natural significance. The Register can be viewed at Council's website.

Tree permit

i) A tree permit must be obtained for tree works proposed to any of the following (when development consent is not required):
   a) any palm tree, cycad or tree fern of any size;
   b) any tree on 'public land' (as defined in the *Local Government Act 1993*) by any persons; or
   c) any other tree with:
      - a height equal to or exceeding 6 metres;
      - a canopy width equal to or exceeding 4 metres;
      - for a single trunk tree species, a trunk circumference equal to or exceeding one (1) metre at a height of one (1) metre above ground level; or
      - for a multi-trunk tree species, a combined trunk circumference (measured around the outer girth of the group of trunks) equal to or exceeding one (1) metre at a height of one (1) metre above ground level.

Exceptions

The RLEP Clause 5.9 also specifies numerous exceptions where Council approval is not required, for example:

- if the tree is dying or dead, and is not required as the habitat of native fauna;
- if the tree is a risk to human life or property; or
- exceptions under other legislation.

This DCP further identifies the following exceptions, which are considered of a minor nature or where Council approval is not necessary. Prior written notification however must be made to Council before any work is carried out, providing information such as tree species, reasons for proposed works and digital photos.

The additional exceptions include:

i) Tree works to undesirable species as listed in Appendix 2;

ii) Minor or maintenance tree works, including :

a) crown thinning by a maximum 10% of the existing canopy in any two year period;
b) the pruning of deadwood more than 50mm in diameter;
c) the removal of live branches to a height of 2.5 metres from ground level; and
d) formative pruning of young trees and powerline clearance, as defined in Australian Standard *AS 4373 – 2007 - Pruning of Amenity Trees*;

Note: For minor/maintenance works to a heritage item, in a heritage area or in an Aboriginal place of heritage significance, Council must be notified of and support in writing the proposed activity before any work is carried out.

Refer to RLEP Clause 5.10 (3)(a) for specific requirements.

iii) Tree works to give effect to a development consent that permits the pruning or removal of the tree/s;

Note: If approval is given for the pruning and removal of tree/s as part of DA consent, tree works can only be carried out when construction work physically and substantially commences.

iv) Tree works on public land owned by or under the care, control and management of Council and carried out by persons authorised by Council;

v) The immediate removal of any tree by Council or a public authority where this is essential for emergency access or emergency works;

vi) The removal of any tree which is a bushfire hazard where:

a) the action is reasonably necessary to protect human life, buildings or other property from imminent danger of a bushfire burning in the vicinity of the tree; or
b) Council has authorised its removal as part of a bushfire risk management plan adopted pursuant to the *Rural Fires Act 1997*.

3 Information required with applications

i) Any application for a permit or development consent to carry out tree works must contain the following information, as a minimum:

a) written consent of the owner of the land where the tree is growing;

b) details of the reasons for the proposed tree works;

c) a description of the existing tree/s, including:
- site plan showing the location of the tree/s to be removed or pruned, drainage and sewer pipes and mains, all buildings, paved areas and overhead powerlines;
- species type (botanical name and common name, if known); and
- approximate height, canopy spread and trunk diameter at one (1) metre above ground level of individual trees (or groups of trees). Trees to be inspected should be identified on site with tape, spray paint or non-permanent marker.

ii) The following additional information is required when seeking development consent:

a) a description of existing trees (containing information as required above) on adjoining land:
- within three (3) metres of the site boundaries (including street and park trees); or
- where the canopy of a tree/s overhangs the site boundaries.

b) any proposed landscape treatments, identifying:
- trees to be retained and protected;
- methods of retention and/or protection during any works;
- proposed new plantings (species, mature heights and canopy spread);
- altered soil levels, including cut and fill details;
- site drainage, including siltation and erosion controls to be implemented where necessary; and
- proposed horticultural details, including growing mediums, mulching and irrigation.

iii) An Arborist's Report is required to be submitted with an application:

a) for tree works to a tree on Council's Register of Significant Trees;

b) for tree works identified in Clause 5.9 (7) and 5.10 (2) of the RLEP, as activities requiring development consent; or

c) other circumstances where Council requires further information/clarification on the pruning or removal of the tree/s.

Refer to Appendix 3 for guidelines for preparing an Arborist's Report.

Note:

Where a dangerous tree is removed in an emergency situation due to obvious instability or hazard (e.g. following storm damage), evidence of the tree's condition must be retained for a period of at least six (6) months after the event and provided to Council upon request.

Such evidence should include:

- **photographs of the tree/s; and/or**
- **a report by a qualified arborist; and/or**
- **a written statement from the State Emergency Service (SES), if the tree works are carried out by SES at the owner's request.**

Except for specified emergency situations, expert advice from an arborist should always be obtained with respect to dangerous trees to confirm their condition and that they do not provide habitat for protected species. Otherwise, their cutting or removal could be in breach of the *Threatened Species Conservation Act 1995*.

4 Notification

In circumstances where an adjoining owner/s may be directly affected by a proposal relating to tree works, Council may determine to notify adjoining owner/s in accordance with the Public Notification section in Part A.

However, if in the opinion of Council any proposed tree works are of a minor or ancillary nature and not likely to result in any adverse impacts on adjoining land, notification will not be required.

5 Penalties

Under Section 629 of the *Local Government Act 1993*, on-the-spot fines may apply to the injury or unnecessary disturbance of trees and native vegetation on public land, including road reserves.

Under Sections 125 and 126 of the *Environmental Planning and Assessment Act 1979* on-the-spot fines or court action may apply to the injury, unnecessary disturbance or removal of trees and native vegetation on private land. Offenders may also be required to rehabilitate the site, plant new trees and native vegetation and maintain these until maturity.

Further penalties may also apply to the removal of native vegetation covered by the *Threatened Species Conservation Act 1995* and the *Environmental Protection and Biodiversity Conservation Act 1999*.

Appendices

Appendix 1: Matters Council considers for applications for a tree permit or development consent

The following matters are considered, but not limited to, when determining an application:

i) whether the tree has significant amenity or aesthetic value or is ecologically significant, with particular emphasis placed on retaining trees listed on Council's Register of Significant Trees;
ii) the condition, maturity and Safe Useful Life Expectancy (SULE) of the tree/s;
iii) a report from a qualified arborist, if required;
iv) whether the tree is affected by the provisions of any other Act, Regulation or State Environmental Planning Policy applying to the land;
v) the potential hazards to persons and/or property in the context of:
    a) the structural soundness of the particular tree (including condition of the canopy, amount of deadwood, any prolonged decline, significant and sustained insect attack, etc); and/or
    b) the characteristics and risk potential of the particular species; and/or
    c) siting issues such as ground conditions, building proximity, etc, which may give rise to a hazardous situation (particularly structural damage to public infrastructure and/or private property caused by the tree/s, its trunk or its root system); and/or
    d) ill health, such as allergies, where specific evidence is provided by an expert in the relevant medical field and a link between the ailment and the species is reasonably established; and/or
    e) existing (or potential for) traffic obstruction in relation to proximity to a roadway, intersection or driveway, where pruning would be an insufficient remedy;
vi) the demonstrated need for reasonable solar access to windows, openings of a building, solar appliances, clothes drying and outdoor living areas;
vii) whether a tree should be replaced by a more suitable species given its location or proximity to services such as overhead powerlines, sewer or drainage pipes or the like;
viii) whether an amenity tree no longer fulfils its original purpose in the landscape;
ix) whether the species' natural propagation method is likely to create a nuisance in the landscape (e.g. Camphor laurel, Hackberry and Sweet Pittosporum);
x) whether the proposed work needs to be carried out by a suitably qualified and experienced person;
xi) whether appropriate additional (or replacement) planting has been or should be undertaken;
xii) the need for, and suitability of, soil erosion and siltation controls;
xiii) whether permanent and/or temporary fencing or barriers are required prior to works commencing;

Note:

Relevant forms are 'Application for Permit to Prune/Remove Tree/s' and 'DA for Tree Works'. Both can be downloaded from Council's website.

xiv) whether another alternative measure is required to ensure protection of trees on-site and on adjoining public land;
xv) whether the tree/s provide habitat or are a significant component of the habitat of a species listed in Schedule 1 or 2 of the *Threatened Species Conservation Act (TSC Act) 1995;*
xvi) whether, prior to the felling of a tree, special measures should be in place to reduce the potential for injury or death of animals likely to inhabit the tree. Such measures may include:
    a) inspection of hollows and other potential habitat sites on the tree;
    b) sectional dismantling;
    c) supervision of works by an arborist and/or a licensed wildlife carer or handler.

Note: Provided that no significant hazard or other safety issues are caused by the existing tree/s, the following should not generally be considered as valid reasons to remove a tree/s or native vegetation:

i) leaf drop to gutters, downpipes, pools, lawns, etc.;
ii) to increase natural light, where it is the sole consideration;
iii) to improve street lighting into private property;
iv) to enhance views or reduce the height of trees;
v) to reduce shade created by a tree/s – particularly species such as *Ficus* or *Araucaria*;
vi) to reduce fruit, resin or bird droppings falling onto driveways and/or cars;
vii) minor lifting of driveways, front fences, paths and footpaths by tree roots;
viii) to erect a fence;
ix) bushfire hazard control, which has not been verified by Council; or
x) potential damage to sewer mains or stormwater pipes, unless supported by written expert advice and only where reasonable alternatives are not feasible (e.g. relocation or encasement of mains and replacement of damaged pipes in PVC plastic).

Appendix 2: Listing of undesirable species

Species name	Common name
Ailanthus altissima	Tree of Heaven
Cotoneaster species	Cotoneaster
Erythrina species	Coral tree
Ficus elastica	Rubber tree
Ligustrum species	Privet
Nerium oleander	Oleander
Ochna serrulata	Ochna
Olea europa var. africana	African Olive
Schefflera actinophylla	Umbrella tree
Syagrus romanzoffianum	Cocos Palm
Alnus jorullensis	Evergreen Alder
Bambusa species	Bamboo species
Celtis occidentalis	Hackberry
Cupressocyparis x leylandii	Leyland Cypress
Lagunaria patersonia	Norfolk Island Hibiscus
Morus species	Mulberry
Populus species	Poplars
Salix species	Willows
Toxicodendron succedaneum	Rhus tree

Appendix 3: Guidelines for preparing an Arborist's Report

Where necessary, Council will require an arborist to prepare a tree/vegetation report and the minimum accepted qualification for an arborist is the Australian Qualification Framework level 4 (AQF4).

Where trees are listed on Council's Register of Significant Trees, a report must be prepared by a qualified arborist. The minimum accepted qualification for a qualified arborist is the Australian Qualification Framework level 5 (Diploma) (AQF5).

The following information is required to be included in any Arborist's Report:

i) name, address, telephone number, ABN, qualifications and experience of the arborist who inspected the tree/s and prepared the report;
ii) address of the site, where the tree/s are located;
iii) who the report was prepared for, date site inspected, date report prepared and the aims of the report;
iv) methods and/or techniques used in the inspection;
v) a plan (to scale) accurately showing:
    a) location of tree/s on the subject site and any adjoining trees which may be affected by any development. Trees identified on the plan shall be named and numbered;
    b) optimum and minimum tree protection zones - if recommended by the arborist;
    c) lot boundaries, dimensions and North point;
    d) proposed development including services, driveways and any alteration to existing and proposed soil levels and drainage, as well as distances (in mm) between tree/s and works.
vi) a table showing, for each tree to be pruned/removed:
    a) number of the tree - as indicated in the plan;
    b) species name;
    c) age class;
    d) height;
    e) canopy width;
    f) trunk circumference at one (1) metre above ground level;
    g) health and condition, and estimated Safe Useful Life Expectancy.
vii) a discussion of other relevant information, including details of tree hollows for wildlife, tree structure/defects, root form and distribution, pests and diseases and/or a Tree Hazard Assessment;
viii) supporting evidence such as photographs and laboratory results to confirm the presence of soil pathogens or to support soil assessment, where relevant;
ix) proposed replacement plantings, landscaping and/or soil remediation;
x) tree protection measures and a post-construction tree maintenance program which can be used as development consent conditions, should the application be approved;
xi) sources of information referred to in the report;
xii) measures to minimise impacts of proposed/approved development - eg, footing designs, excavation techniques, vents to atmosphere, etc;
xiii) any other relevant matters or information such as Resistograph or Picus Sonic Tomograph reports.

Qualified arborists and their contact details may be obtained from the Institute of Australian Consulting Arboriculturists (IACA) (www.iaca.org.au) or from Arboriculture Australia (www.arboriculture.org.au).

These organisations are not specifically recommended and Council will accept arborist's reports from any registered member of a nationally recognised arboricultural organisation or association.

Appendix 4: Definitions

Dead tree means a tree with no living vascular tissue.

Destroy means any activity leading to the death, disfigurement or mutilation of a tree.

Height means the distance measured vertically between the horizontal plane of the lowest point of the base of the tree/s which is immediately above ground level and the horizontal plane of the uppermost point of the tree/s.

Injury or injuring 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 and tearing of branches and roots that is not carried out in accordance with accepted arboricultural practices, does not qualify as 'pruning' (as defined within AS 4373 – 2007 – Pruning of Amenity Trees), or which is done for invalid reasons;

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;

e) damaging a tree's root zone by compaction, excavation or asphyxiation (including unauthorised filling or stockpiling of materials);

f) underscrubbing, particularly carried out by mechanical tools such as brushcutters and the like.

Lopping means the cutting of branches or stems between branch unions or at internodes on trees.

Prune or pruning means cutting branches from a tree/s in a planned and systematic manner that is carried out in accordance with the provisions of Australian Standard AS 4373 - 2007 - Pruning of Amenity Trees, and which consists of the following pruning types:

a) Crown maintenance pruning involving:
   - General pruning
   - Thinning
   - Deadwooding
   - Selective pruning
   - Formative pruning

   (Crown maintenance pruning relates to pruning according to the growth habit of the tree/s without reducing the area of the crown, while retaining the structure and size of the tree/s.)

b) Crown modification pruning involving:
   - Reduction pruning

- Crown lifting
- Pollarding
- Remedial pruning
- Powerline clearance

(Crown modification pruning relates to pruning that changes the structural appearance and habit of the tree/s.)

Remove or removal means to cut down, fell, destroy, kill, take away, uproot or transplant a tree from its place of origin.

Topping means cutting away part or all of the tree canopy, leaving a trunk and stubbed main branches.

Trunk means the main stem of the tree, as distinguished from the branches and roots.

Undesirable species are plants listed in this control which are deemed undesirable due to characteristics which may lead to poisoning, weed infestation, brittle and dangerous wood, excessive spread of roots or bushland invasion.

Width means the distance measured horizontally (in metres) between the two (2) widest points of a tree's canopy.