

TREE PRESERVATION ORDER

Notice is given that Port Stephens Council adopted a new Tree Preservation Order (TPO) on 27 March 2012 which comes into force once advertised. The TPO is made in accordance with clause 50 as adopted by the Port Stephens LEP 2000. This order replaces all previous TPOs, this note does not form part of the TPO. The TPO is set out below.

1. OBJECTIVES

To protect and preserve trees throughout the Council area in order to maximise the benefits they provide, particularly in regard to:

- a) sustaining the biodiversity of our ecosystems;
- b) the health and safety of residents
- c) retention and enhancement of natural beauty and scenic-values.
- d) limiting the effects of pollution and adverse changes in global atmospheric gasses;
- e) control of sunlight, shade, winds and beautification of urban/commercial areas;
- f) maintenance of ground water levels and water quality;
- g) soil enrichment and protection from erosion; and
- h) providing economic benefit

2. POLICY STATEMENT

This Tree Preservation Order prohibits the ringbarking, cutting down, topping, lopping, pruning, removing, injuring or wilful destruction of any tree or trees specified below, except with the consent of Council, and any such consent may be given subject to conditions as the Council thinks fit.

The Tree Preservation Order applies to:-

- I. All species of trees and shrubs (other than those referred to in the exemptions) where:-
 - a) the girth of the tree or shrub exceeds 300mm when measured one (1) metre above the ground; and/or
 - b) the height of the tree or shrub exceeds three (3) metres;

- II. Mangroves (all species), NSW Christmas Bush, and Cabbage Tree Palm (all species), regardless of their height or girth; and
- III. All trees or groups of trees which have been listed in Council's Register of Significant Trees, or in Councils Heritage Schedule, regardless of their height, girth or distance from a building or structure.

on all land in the Council area of Port Stephens.

Exemptions

The Tree Preservation Order does not apply to:-

- I. Trees or shrubs in a State Forest or on land reserved as a timber reserve within the meaning of the Forestry Act 1916;
- II. Trees or shrubs required to be pruned in accordance with the Electrical Supply (General) Regulation 2001 and in particular Section 102 "Preservation of Trees" of the Regulation and Section 48 "Interference with Electrical Works by Trees" of the Electricity Supply Act 1995;
- III. Any trees or shrubs within six (6) metres of an external boundary fence or any trees or shrubs within three (3) metres of a permanent internal fence on lands zoned Rural 1a.
- IV. The removal of trees which is necessary to carry out works in accordance with an approved construction certificate a building approval or development consent (where construction certificate building approval is not required). These may include:
 - a) Trees situated within the physical perimeter of any structure for which a construction certificate or building approval has been issued and/or within five (5) metres of the perimeter of such structure (measured to the outside trunk of the tree);
 - b) Trees which need to be removed in order to carry out an approved development not including building (eg. sand extraction), except as provided for by any condition of the approval or consent.
- V. Trees or shrubs removed to protect human life, building or other property from imminent danger from a bush fire burning in the immediate vicinity;
- VI. Trees which have been the subject of an approval to construct an asset protection zone or clearing permitted by a bush fire hazard reduction certificate under the Rural Fires Act 1997;
- VII. The removal of plants of any species which have been declared as noxious plants under the Noxious Weeds Act 1993;

- VIII. Any tree within five (5) metres of the wall of an approved structure measured from the wall to outside trunk of the tree. (Pruning of trees covered by this exemption must be undertaken in a manner consistent with the Australian Standard for the Pruning of Amenity Trees - AS 4373 and is recommended to be undertaken by a qualified arborist.)
- IX. Any tree harbouring fruit fly or grown for its edible fruit;
- X. The removal of any of the following species irrespective of height or girth:-
- Cotoneaster – All species within the genus *Cotoneaster* .
 - Coral trees - All species within the genus *Erythrina*
 - Camphor Laurel (except those having important historical significance)
Cinnamomum camphora
 - Oleander - *Nerium oleander*
 - Privet - *Ligustrum spp.*
 - Radiata Pine - *Pinus radiata, Pinus elliotii*
 - Rubber Tree – *Ficus elastica*
 - Rhus Tree - *Toxicodendron succedaneum*
 - Cocos Palm - *Syagrus romanzoffiana*
 - Tree of Heaven - *Ailanthus altissima*
 - Umbrella trees - All species within the genus *Schefflera*
 - Willow -All species within the genus *Salix*
- XI. The removal of any tree which is dead, dying or dangerous provided the landowner first submits to Council a notification on the approved form, that will constitute a statutory declaration, with supporting information attached including photographs, and receives from Council written acknowledgment of that declaration. This exemption excludes species listed under the Threatened Species Conservation Act 1995, or trees listed in the Heritage Schedule of the Port Stephens LEP 2000 and/or the Port Stephens Council Significant Tree Register. NB the removal of trees in rural and rural residential areas may require the approval of the HCRCMA under the Native Vegetation Act.
- XII. The removal of any tree where urgent removal on account of the tree presenting a real and imminent danger to persons or property precludes the obtaining of approval, the onus of proof is on the applicant.
- XIII. Trees removed or pruned by, or with written authority of, Council or other relevant statutory authorities for maintenance works in parks and reserves;
- XIV. Trees removed or pruned by, or with written authority of, Council or other statutory authorities in accordance with Section 88 of the Roads Act 1993;

- XV. Regular maintenance of trees and shrubs where less than either twelve months' growth or ten percent of the foliage is pruned in accordance with the Australian Standard for the Pruning of Amenity Trees - AS 4373 - 2007.
- XVI. Maintenance of trees that form part of a hedge regardless of their height or girth

3. Offence

Any person who contravenes or causes or permits to be contravened this Tree Preservation Order shall be guilty of an offence.

This Tree Preservation Order is made in accordance with Clause 50 as adopted by Port Stephens Local Environmental Plan 2000.

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TREE MANAGEMENT PROCEDURES

PORT STEPHENS COUNCIL

MARCH 2012

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PROCEDURES - TREE MANAGEMENT

1. Land to Which these Procedures Applies

These procedures apply to all land within the Council area of Port Stephens.

2. Aims, Objectives and Strategies

2.1 Aim

The aim of these procedures is to support the application of Council's Tree Preservation Order.

2.2 Objectives

The objectives of the Tree Preservation Order and procedures are as follows;

To protect and preserve trees throughout the Council area in order to maximise the benefits they provide, particularly in regard to:

- a) sustaining the biodiversity of our ecosystems;
- b) the health and safety of residents
- c) retention and enhancement of natural beauty and scenic-values.
- d) limiting the effects of pollution and adverse changes in global atmospheric gasses;
- e) control of sunlight, shade, winds and beautification of urban/commercial areas;
- f) maintenance of ground water levels and water quality;
- g) soil enrichment and protection from erosion; and
- h) providing economic benefit

2.3 Strategies

It is intended that the above aims and objectives will be achieved by:

- a) Facilitating changes in attitude on Tree Preservation through community education, promotion and dissemination of information;
- b) Requiring development consent to prune or remove trees as described in the Tree Preservation Order;
- c) Ensuring relevant matters are considered before consent is

issued; and

d) Initiating prosecution for breaches of the Tree Preservation Order.

3. Definitions

Pruning - the removal of identified or specified branches to reduce the height and/or spread of the tree; or remove damaged, diseased or lopped branches back to undamaged tissue.

Removal –the total removal of a tree and may include its structure, foliage and root systems.

Dead – Tree is no longer capable of performing photosynthesis via its foliage crown

Dying – less than 10% of crown foliage is able to undertake photosynthesis

Dangerous – The threat to people and property from a tree or tree part, calculated by three components:

- Potential for failure within 24 hours
- A high target level, i.e occupancy rates of a building
- Size of part greater than 100mm in diameter

4. Statement

Trees will be protected by application of the Tree Preservation Order as adopted on the 27 March 2012 or as subsequently amended.

Where trees are removed, Council may require that trees are replaced of a similar species to those removed from the site. This number shall be determined by Council and be planted in appropriate locations. Australian natives are preferred as replacement trees.

Lopping is an unacceptable practice according to the Australian Standard for the Pruning of Amenity Trees, and will not normally be approved. The Australian Standard identifies a range of pruning types, classes and suitability, which will address most needs and should be followed by persons engaging in the pruning of trees.

5. Applications

5.1 Prior to any pruning or removal of trees prescribed under the Tree Preservation Order Council requires an application to be submitted, and approved, on the approved application form as found on the Port Stephens Council website. The appropriate fee as detailed in Councils fees and charges must be paid prior to the application being processed.

5.2 The application may be made by the land owner or by any

person with the owners consent. The land owner must sign the application.

- 5.3 Applications shall be assessed based on: site inspection (where applicable); consideration of legislation; representations from the land owner; and the objectives of the Tree Preservation Order
- 5.4 Applications may be supported by a written assessment and declaration from a qualified tree surgeon or arborist. Council may require details of the qualifications of persons making such declarations.
- 5.5 Council may request additional information from the applicant in order to make its determination
- 5.6 If the application relates to a medical or psychological complaint then a certificate from a doctor must be provided.
- 5.7 If the application relates to the efficiency of a solar heating/power appliance or solar access; a report using appropriate software for the assessment of the efficiency of the renewable energy technology may be requested as part of the assessment documentation.

6. Exemptions

- 6.1 Exemptions are listed in the Tree Preservation Order as adopted on the 27 March 2012 or as subsequently amended.

7. Assessment Considerations

- 7.1 Assessment of an application to prune or remove trees shall take into consideration the circumstances and merits of each case.
- 7.2 Approval to remove or prune a tree may be given where:
 - a) a tree, in the opinion of the Council, is causing or is likely to cause damage to an existing building, structure or utility service; and/or
 - b) a tree is interfering with or may interfere with the efficiency of a solar heating/power appliance or solar access (in this case pruning only may be permitted). In these cases a report using appropriate software for the assessment of the efficiency of the renewable energy technology may be requested as part of the assessment documentation; and/or
 - c) a tree is interfering with the amenity of a habitable room by reducing the transmission of natural light and ventilation (in this case pruning may only be permitted); and/or
 - d) a tree is not of visual significance and its removal will not affect

the amenity of the locality and it is proposed to replace the tree with a suitable species (preferably native); and/or

- e) in rural areas, the applicant demonstrates to the satisfaction of the Council that the tree or trees are required to be removed for agricultural purposes; and/or
- f) a tree or trees are required to be removed in accordance with advice provided by a department of the State Government in conjunction with that departments responsibilities under the relevant Act; and/or
- g) the health or well being of a tree or trees are threatened by development which has been approved by the Council; and/or
- h) removal or pruning will not conflict with Council's Koala Management Plan or any other Flora, Fauna or Conservation Strategy; and/or
- i) the tree is dead, dying or dangerous; and/or
- j) the tree is interfering or likely to interfere with the provision of a public utility or road/driveway construction, provided that in the design and location of these works, all reasonable effort is made to avoid the destruction of trees; and/or
- k) the removal or pruning of tree(s) will not have a significant effect on threatened species, populations or ecological communities or their habitats as assessed under Section 5A of the Environmental Planning and Assessment Act 1979; or
- l) other special circumstances exist which, in Council's opinion having regard to all environmental considerations, warrant removal of the tree or trees; and /or

8. Consents

- 8.1 Consents to prune or remove trees shall be issued in writing.
- 8.2 Conditions may be applied to consents and shall be clearly specified.
- 8.3 Consents shall remain valid for a period of one (1) year from the date of issue, or as determined at the time of consent;
- 8.4 No approval issued by Council in accordance with these Procedures shall exempt a person from obtaining additional consent, where necessary from any other statutory authority which may require applications for tree removal.

9 Refusals

- 9.1 A refusal of consent shall be issued in writing and state the reasons for refusal. Applicants may appeal against the refusal as per section 10 of this document.
- 9.2 An application may be refused in the following circumstances.
- a) The tree does not meet Council's consideration Standards outlined in section 7 of this document; and/or
 - b) Removal is only to enhance a view or outlook; and/or
 - c) The tree is on vacant land, well clear of boundaries; and/or
 - d) The tree is rare or threatened plant species, or provides habitat for a rare or threatened fauna species; and/or
 - e) The tree is an item of environmental heritage or is listed on Councils Significant Tree Register; and/or
 - f) No demonstrated reason has been submitted for removal of the tree.

10. Reviews and Appeals

- 10.1 Where a refusal has been issued, the applicant may request an 82A review under the EP&A Act, of the original assessment and should specify in writing the grounds upon which he/she considers the determination should be amended. A fee will be applied as per clause 257 of the EP&A Regulations 2000, or as subsequently amended.
- 10.2 Council may require a report from an independent, qualified arborist prior to reassessing the application as detailed in the Port Stephens Council Development Control Plan 2007, or as subsequently amended.
- 10.3 The Councils staff, that are not subordinate to the first determining officer, shall assess the 82A review, and where they are satisfied that the application should be approved shall make that determination. However prior to making any determination council staff will inform the applicant in writing of their assessment and recommendations, and must receive a written response from the applicant that they are satisfied with any conditions or restrictions intended to be imposed.
- 10.4 If the applicant is not satisfied with the staff assessment of the 82A review they will be advised of the option to have the matter brought before the 355b committee of Ward Councillors which will constitute an 82A review under the EP&A Act. Where reassessment of the application is completed the outcome of this

review is to be confirmed in writing stating reasons for the outcome.

- 10.5 Where council staff are not satisfied that the reassessment application should be approved the matter will be brought before the 355b committee of Ward Councillors which will constitute an 82A review under the EP&A Act.
- 10.6 The 355b committee of ward councillors will require a formal meeting, with a report from staff assessing the 82A review, prior to the determination being made and minuted. Those minutes will then be incorporated in the minutes of the next meeting of Council.
- 10.7 More than half of the 355b committee of ward councillors must be present in order to form a quorum.
- 10.8 A staff member will be on each committee to ensure that councillors receive the necessary information and that a proper record, including minutes, is maintained. If an onsite meeting is required this will be set by the Executive Assistant – Councillor Support.
- 10.9 The decision of the 355b committee of ward councillors need not be unanimous but a majority decision must be reached for a determination to be made.
- 10.10 If a majority decision can not be made the application will be reported to the full council for determination.
- 10.11 The applicant will be advised of right of appeal to the Land and Environment Court under section 97 of the EP&A Act.

11. Orders requiring Clearing of Overgrowth of Vegetation

- 11.1 Notices and Orders issued by Council to landowners requiring the removal of excess vegetation likely to harbour vermin shall not constitute consent to remove trees otherwise requiring Council consent under the Tree Preservation Order.

12. Significant Tree Register

- 12.1 Council will establish and maintain a Register of Significant Trees in order to facilitate preservation of trees which have recognised cultural significance.
- 12.2 Significant trees are those which exhibit aesthetic, historic, scientific or social, environmental, or cultural value for past, present or future generations. Inclusion of trees on this Register shall not preclude removal but flag the need for especially careful appraisal of any proposal to prune or remove them.

- 12.3 Any person may nominate a tree(s) to be included in the register.
- 12.4 A Significant Tree Consultative Committee will be established to:
- Review the Significant Tree Register (STR);
 - Identify and examine issues relating to the significant tree register'
 - Make recommendations to Council for the inclusion of trees onto the register;
 - Make recommendations to Council for the removal of trees from the register;
 - Make recommendations for consideration by Council.

The Committee will have a total of 12 members consisting of 10 community nominees endorsed by Councillors; one Councillor; and Councils Vegetation Management officer who will fulfil the role of an independent non-voting Facilitator/Secretary.

- 12.5 Prior to proclaiming the tree(s) significant, the proposal shall be placed on public exhibition and the tree's owner(s), shall be notified.
- 12.6 The criterion for listing trees on the Significant Tree Register shall include one or more of the following:-
- historical value
 - contribution to landscape/townscape
 - commemorative tree
 - belonging to a historic building/garden/park
 - exceptionally old or fine specimen
 - curious growth habit or physical appearance
 - horticultural/scientific value
 - unusually large size
 - rare to the area
 - outstanding aesthetic quality
 - valuable habitat or corridor

- 12.7 A listing of the significant tree register may include single trees or a group of trees.
- 12.8 Council's Tree Preservation Order and Significant Tree Register will be noted on Section 149(5) Certificates.

13. Trees on adjoining Land

- 13.1 Where a land owner complains to Council about tree growth from adjoining land which is overhanging the property boundary, Council shall advise the land holders of options available-through the Community Justice Centre and the 'Trees – Disputes Between Neighbours Act'.

14. Trees on Development and Building Sites (including Subdivision)

- 14.1 Consent to remove trees as part of a Development Application will not be given prior to the Development Application approval.
- 14.2 Consent to the removal of any tree shall be given to trees within the distance prescribed in the Tree Preservation Order exemptions, to the walls of the buildings and directly beneath the ancillary structures on the site and/or other trees specifically indicated on a stamped, approved site plan.
- 14.3 The location of driveways should be considered in the context of tree(s).
- 14.4 The construction certificate for the project must be issued before any trees are removed.
- 14.5 Removal of trees from other areas of the land shall require approval under the Tree Preservation Order. In these areas the applicant must demonstrate to Council's satisfaction the need to remove existing trees.
- 14.6 Where consent is granted for tree removal from development sites Council encourages effective utilisation of all salvageable timber. Wherever practicable merchantable timber should be salvaged, other useable trees and shrubs should be salvaged for reuse either in log form, or as a woodchip mulch for erosion control and/or site rehabilitation.
- 14.7 Council may approve disposal of non- salvageable material such as stumps and root masses in an approved form at Councils approved refuse sites.
- 14.8 In order to minimise the effect of tree removal Council may require that trees are replaced of a similar species to those removed from the site. This number and species shall be determined by Council.
- 14.9 Council may require a security bond to ensure the protection of certain trees on a development site. The value of the bond is to be based on the significance of the trees but shall not be in excess of \$1,000 per tree.
- 14.10 Mechanical protection for existing trees during construction works may be considered, and required, as a condition of development consent.
- 14.11 Protection shall be in accordance with Australian Standard 4970 Protection Of Tree On Development Site 2009.

15. Bush Fire Hazards

- 15.1 A person shall not have contravened the Tree Preservation Order where:-
- a) tree removals were reasonably necessary to protect human life, buildings or other property from imminent danger from a bush fire burning in the immediate vicinity of the land on which the tree was situated; or
 - b) trees are removed as part of an approval to construct an asset protection zone in line with "Planning for Bush Fire Protection" or subsequent revised documents. This should be to the minimum extent necessary; or
 - c) clearing is permitted by a bush fire hazard reduction certificate under the Rural Fires Act 1997.

16. Trees on Road Reserves (Administered by Facilities and Services)

- 16.1 The Vegetation Management Officer is to be consulted at the design stage if the pruning or removal of tree(s) for road works, is proposed by Council acting as a road authority.
- 16.2 Maintenance works may be carried out at the discretion of the Manager, Civil Assets, in accordance with the Roads Act 1993 and Road Design Guidelines.
- 16.3 The Vegetation Management Officer is to be consulted at the design stage if the pruning, removal of tree(s), or severing of tree roots for footpaths or drainage, is proposed by Council.
- 16.4 Trees in road reserves required to be removed will be included in a Review of an Environmental Factors (REF), unless the tree is dead, dying and dangerous.

17. Trees on Council Land or Land for which Council is Trustee

- 17.1 Council will accept written requests from residents seeking pruning or removal of trees from parks, reserves, drainage easements, footpaths and other Council-owned lands.
- 17.2 Inspection of the tree(s) in question will be carried out by Parks and Recreation or Civil Assets, liaising with the Vegetation Management Officer and 355C committees as necessary.
- 17.3 The following criteria will be used to assess applications to remove or prune tree/s:
- The Objectives of the Tree Preservation Order;
 - Safety;
 - Future Council Plans;

- Is the tree impeding access to facilities, private property?
- Is the tree or shrub subject to the Tree Preservation Order by reasons of its size, species or significance?
- Is the tree a noxious plant or otherwise exempt under the Tree Preservation Order?

17.4 Where the tree removal or pruning is advantageous to the community, work will be carried out by Council or its contractors within funding and work program framework.

17.5 If there is no advantage to the community and only to an individual:

- a) Consultation is to take place with adjoining and affected residents; and
- b) Removal/pruning will be at the applicant's expense using a Council-approved contractor, with Council's written authority; and
- c) Tree(s) are to be replaced with a suitable and approved species.

17.6 All Council 355c Committees shall follow the approval procedures prescribed above.

Summary of TPO Submissions August – September 2011

Individual Submissions Against the TPO Amendments

#	Suburb	Summary of Issue(s)	Council Response	Recommendation for the amended TPO
1	Lemon Tree Passage	<ul style="list-style-type: none"> • Current system works • Qualified assessment and written approval should be required with adequate appeal process • New definition of dangerous tree will include almost every tree in urban areas and would change the whole looks and feel of suburbs and affect wildlife 	<ul style="list-style-type: none"> • Agreed, however a review of the exemptions could occur to address concerns. • Current system utilises qualified staff and produces written approvals. • New definition could have a marked impact on the streetscape and biodiversity of the LGA. 	<ul style="list-style-type: none"> • Review the exemptions to exempt trees within 5m of a building (currently 3m) • Clarify dead, dying and dangerous procedure but remove draft definition of dangerous tree, as per legal advice. • Include a formalised process to deal with trees representing an imminent risk, as per legal advice. • Require a TPO application as per existing process
2	Nelson Bay	<ul style="list-style-type: none"> • Current system has worked effectively for many years and is simple • Current system has a review by a professional • TPO contributes to a 'Great Lifestyle in a Treasured Environment' 	<ul style="list-style-type: none"> • Agreed, however a review of the exemptions could occur to address concerns. • A qualified arborist is the relevant professional to make a determination about the health and risk of a tree • The TPO does assist to maintain the Port Stephens environment • There are some legal issues with 	<ul style="list-style-type: none"> • Review the exemptions to exempt trees within 5m of a building (currently 3m). • Require a TPO application as per existing process • Include a formalised process

		<ul style="list-style-type: none"> Proposed change is lazy legislation Some people will be unhappy if their TPO is not approved however this is not a reason to change the TPO The change will lead to more amateurs assessing and removing trees leading to increases in injury and property damage Personal injury by trees is rare 	<p>the draft TPO that are discussed in the Council report</p> <ul style="list-style-type: none"> Removal of trees, or inappropriate pruning of trees, by an untrained person could cause increased risk to the community. 	<p>to deal with trees representing an imminent risk, as per legal advice.</p>
3	Not disclosed	<ul style="list-style-type: none"> Is a resident of Port Stephens Changes gives crate blanche for people to remove trees Changes will result in a degraded environment and reduced livability of the Port Stephens Area. 	<ul style="list-style-type: none"> Draft TPO could have a marked impact on the streetscape and biodiversity of the LGA. 	<ul style="list-style-type: none"> Review the exemptions to exempt trees within 5m of a building (currently 3m) Clarify dead, dying and dangerous procedure but remove draft definition of dangerous tree, as per legal advice. Include a formalised process to deal with trees representing an imminent risk, as per legal advice. Require a TPO application as per existing process
4	Not Disclosed	<ul style="list-style-type: none"> Professional advice is given with current process, this will be lost with proposed changes 	<ul style="list-style-type: none"> A qualified arborist is the relevant professional to make a determination about the health 	<ul style="list-style-type: none"> Review the exemptions to exempt trees within 5m of a building (currently 3m)

		<ul style="list-style-type: none"> • The appeal process is working • The natural beauty of Port Stephens will be reduced • New rules will lead to broad scale loss of habitat and will be a backwards step • If any change are made there should be a 6 month review • The changes look inconsistent with the new LEP, clarification needs to be sought to ensure the changes are legal. 	<p>and risk of a tree.</p> <ul style="list-style-type: none"> • Draft TPO could have a marked impact on the streetscape and biodiversity of the LGA. • There are some legal issues with the draft TPO that are discussed in the Council report 	<ul style="list-style-type: none"> • Clarify dead, dying and dangerous procedure but remove draft definition of dangerous tree, as per legal advice. • Include a formalised process to deal with trees representing an imminent risk, as per legal advice. • Require a TPO application as per existing process
5	Medowie	<ul style="list-style-type: none"> • All trees in urban areas will be lost even if they are healthy. • The tree lined community will be lost • What studies have been done to show that injuries from trees are more of a problem than other risks? • What impacts assessment has been carried out? • A healthy trees is unlikely to cause danger, if a tree is diseased there is a process for it to be removed. 	<ul style="list-style-type: none"> • Draft TPO could have a marked impact on the streetscape and biodiversity of the LGA. • No studies or impact assessments have been undertaken • An arborist is the appropriately qualified person to make a decision on the health and risk of a tree. 	<ul style="list-style-type: none"> • Review the exemptions to exempt trees within 5m of a building (currently 3m) • Clarify dead, dying and dangerous procedure but remove draft definition of dangerous tree, as per legal advice. • Include a formalised process to deal with trees representing an imminent risk, as per legal advice. • Require a TPO application as per existing process

6	Corlette	<ul style="list-style-type: none"> • The existing process is not broken • The changes will remove all the 'checks' 	<ul style="list-style-type: none"> • Draft TPO could have a marked impact on the streetscape and biodiversity of the LGA. 	<ul style="list-style-type: none"> • Review the exemptions to exempt trees within 5m of a building (currently 3m) • Clarify dead, dying and dangerous procedure but remove draft definition of dangerous tree, as per legal advice. • .Include a formalised process to deal with trees representing an imminent risk, as per legal advice. • Require a TPO application as per existing process
7	Warners Bay	<ul style="list-style-type: none"> • Been visiting Port Stephens for over 50 years • Changes will mean loss of environment and will destroy rare beauty of the area 	<ul style="list-style-type: none"> • Draft TPO could have a marked impact on the streetscape and biodiversity of the LGA. 	<ul style="list-style-type: none"> • Review the exemptions to exempt trees within 5m of a building (currently 3m) • Clarify dead, dying and dangerous procedure but remove draft definition of dangerous tree, as per legal advice. • Include a formalised process to deal with trees representing an imminent risk, as per legal advice. • Require a TPO application as per existing process
8	Fingal Bay	<ul style="list-style-type: none"> • Too many trees have been lost 	<ul style="list-style-type: none"> • Draft TPO could have a marked 	<ul style="list-style-type: none"> • Review the exemptions to

		<p>already</p> <ul style="list-style-type: none"> • Has a bush block and neighbors complain about the trees being a bush fire risk, he has had the block assessed as not a fire risk but is concerned changes will result in more complaints • Trees form the major part of the natural landscape 	<p>impact on the streetscape and biodiversity of the LGA.</p>	<p>exempt trees within 5m of a building (currently 3m)</p> <ul style="list-style-type: none"> • Clarify dead, dying and dangerous procedure but remove draft definition of dangerous tree, as per legal advice. • Include a formalised process to deal with trees representing an imminent risk, as per legal advice. • Require a TPO application as per existing process
9	Kurri Kurri	<ul style="list-style-type: none"> • Regular visitor of Port Stephens • Changes will result in the removal of trees that are not dangerous • Ability to remove trees when danger is imminent already exists • Changes will damage the appeal of Port Stephens 	<ul style="list-style-type: none"> • There is already a process for the removal of dangerous trees however this could be reviewed to make it easier for the community to use • Draft TPO could have a marked impact on the streetscape and biodiversity of the LGA. 	<ul style="list-style-type: none"> • Clarify dead, dying and dangerous procedure but remove draft definition of dangerous tree, as per legal advice. • Include a formalised process to deal with trees representing an imminent risk, as per legal advice. • Require a TPO application as per existing process
10	Nelson Bay	<ul style="list-style-type: none"> • Appalled at the loss of trees already occurring, especially Koala Habitat • TPO should be amended to make it harder for trees to be 	<ul style="list-style-type: none"> • Koalas are protected under the Threatened Species Conservation Act and as such the draft TPO still requires approval to remove their habitat. 	<ul style="list-style-type: none"> • Nil

		removed, not easier		
11	Not disclosed	<ul style="list-style-type: none"> • Deep concern about the changes, supports submission by the TRRA. 	<ul style="list-style-type: none"> • Noted 	<ul style="list-style-type: none"> • Nil
12	Corlette	<ul style="list-style-type: none"> • Current policy is reasonable • Changes will result in big houses on small blocks with no trees • People should have to provide proof is a tree is dangerous 	<ul style="list-style-type: none"> • Noted • This is a likely result • Agreed and supported by legal advice 	<ul style="list-style-type: none"> • Clarify dead, dying and dangerous procedure but remove draft definition of dangerous tree, as per legal advice. • Include a formalised process to deal with trees representing an imminent risk, as per legal advice.
13	Corlette	<ul style="list-style-type: none"> • Current process is working • Changes will result in 'open slather' of tree removal • Idea of people submitting a letter to council before removing the tree is naïve • People should be made to replace any trees they remove • How will council counteract the impact on displaced fauna • Change will result in increased run off and decreased water quality, the amenity of Port Stephens will be lost • Trees are an asset not a liability • Council has an opportunity to 	<ul style="list-style-type: none"> • Draft TPO could have a marked impact on the streetscape and biodiversity of the LGA. • Councils legal advice has recommended a more formal approach that just a letter. • Council will lose the ability to condition replacement under the draft TPO. 	<ul style="list-style-type: none"> • Review the exemptions to exempt trees within 5m of a building (currently 3m) • Clarify dead, dying and dangerous procedure but remove draft definition of dangerous tree, as per legal advice. • Include a formalised process to deal with trees representing an imminent risk, as per legal advice. • Require a TPO application as per existing process

		be environmentally responsible not a council with a slash and burn mentality.		
14	Nelson Bay	<ul style="list-style-type: none"> • Supports submission by the TRRA. 	<ul style="list-style-type: none"> • Noted 	Nil
15	Lemon Tree Passage	<ul style="list-style-type: none"> • It is not difficult to gain approval to remove a tree • Proposed change would give residents unfettered discretion to remove trees based on an amateur assessment of danger • Change would undermine the objectives of the TPO • Any change should be evidence based rather than a reaction to myth and misunderstandings • Exemptions, included the existing dangerous trees exemption, already work • Council officer do approve trees for removal where there is a real risk • Appeal process already works • Existing process allows for conditions to be included • The current changes does not appear legal as it is not in line with the current LEP, the new LEP or the CKPoM 	<ul style="list-style-type: none"> • There are 2 appeal systems if the applicant is not satisfied with the outcome. • Agreed and supported by legal advice • Agreed • Noted • The current process allows residents are advised to take photos and submit them to Council if a tree is imminently dangerous. • Council officers approve removal of close to 70% of trees • This is correct • There are legal issues with the proposed amendments 	<ul style="list-style-type: none"> • Review the exemptions to exempt trees within 5m of a building (currently 3m) • Clarify dead, dying and dangerous procedure but remove draft definition of dangerous tree, as per legal advice. • .Include a formalised process to deal with trees representing an imminent risk, as per legal advice. • Require a TPO application as per existing process

		<ul style="list-style-type: none"> • The current TPO stops people removing trees to improve views 	<ul style="list-style-type: none"> • This may become an issue with the proposed amendments. 	
16	Not Disclosed	<ul style="list-style-type: none"> • We need all the trees we can to help with global warming • The current system works • An expert should decide if a tree is dangerous 	<ul style="list-style-type: none"> • Trees make a positive contribution to climate change • An arborist is the appropriately qualified profession to determine the risk level of a tree 	<ul style="list-style-type: none"> • Review the exemptions to exempt trees within 5m of a building (currently 3m) • Clarify dead, dying and dangerous procedure but remove draft definition of dangerous tree, as per legal advice. • Include a formalised process to deal with trees representing an imminent risk, as per legal advice. • Require a TPO application as per existing process
17	Nelson Bay	<ul style="list-style-type: none"> • There is no evidence for changes being necessary • Existing TPO contains adequate provisions for removal of dangerous trees • Changes make the TPO a license to remove vegetation, and puts the unique appeal of Port Stephens at risk. 	<ul style="list-style-type: none"> • Close to 70% of trees are approved for removal • There is already a process for the removal of dangerous trees however this could be reviewed to make it easier for the community to use • Draft TPO could have a marked impact on the streetscape and biodiversity of the LGA. 	<ul style="list-style-type: none"> • Review the exemptions to exempt trees within 5m of a building (currently 3m) • Clarify dead, dying and dangerous procedure but remove draft definition of dangerous tree, as per legal advice. • Include a formalised process to deal with trees representing an imminent risk, as per legal advice.

				<ul style="list-style-type: none"> • Require a TPO application as per existing process
18	Lemon Tree Passage	<ul style="list-style-type: none"> • Developers will totally clear blocks and remove Councils ability to preserve vegetation and the environment. • There is already a mechanism to remove genuinely dangerous trees • Council is abdicating their responsibility to the community if the new TPO is adopted 	<ul style="list-style-type: none"> • Draft TPO could have a marked impact on the streetscape and biodiversity of the LGA. • There is already a process for the removal of dangerous trees however this could be reviewed to make it easier for the community to use • Removal of trees, or inappropriate pruning of trees, by an untrained person could cause increased risk to the community. 	<ul style="list-style-type: none"> • Review the exemptions to exempt trees within 5m of a building (currently 3m) • Clarify dead, dying and dangerous procedure but remove draft definition of dangerous tree, as per legal advice. • Include a formalised process to deal with trees representing an imminent risk, as per legal advice. • Require a TPO application as per existing process
19	Corlette	<ul style="list-style-type: none"> • Trees are a valuable and it should not be left up to the average person to determine if a tree is dangerous • There is a greater risk of being killed in a vehicle accident than death from a falling branch • There is insurance to cover damage from branches • Friendly neighborhoods could be changed forever if pressure gets put on people to remove a tree that someone else thinks is 	<ul style="list-style-type: none"> • An arborist is the appropriately qualified profession to determine the risk level of a tree • Noted • Noted • Tree disputes current cause concerns in the community, it is possible that the revised TPO could make this worse. 	<ul style="list-style-type: none"> • Review the exemptions to exempt trees within 5m of a building (currently 3m) • Clarify dead, dying and dangerous procedure but remove draft definition of dangerous tree, as per legal advice. • Include a formalised process to deal with trees representing an imminent risk, as per legal advice. • Require a TPO application

		<p>dangerous.</p> <ul style="list-style-type: none"> • Real Estate values will drop when the trees are gone • We need more street trees and trees in reserves • People live in Port Stephens for the environment, this policy will damage this • The policy should require a 1 for 1 replacement when trees are removed • People should be made more aware of the consequences of lopping trees – they become weaker and more prone to failure. • Supports Econetwork and TRRA's submissions. 	<ul style="list-style-type: none"> • Trees have been shown in increase the value of real estate • Noted • Draft TPO could have a marked impact on the streetscape and biodiversity of the LGA. • The revised policy will remove the ability for Council to place conditions on the removal of trees • Removal of trees, or inappropriate pruning of trees, by an untrained person could cause increased risk to the community. • Noted 	<p>as per existing process</p>
20	Not disclosed	<ul style="list-style-type: none"> • May lead to a widespread clearing of Native vegetation • Overreaction as existing process works • If more trees were preserved it would eliminate the needed for a carbon tax • Trees will be removed for views • Authorisation needs to be sought before trees are removed • Is a rate payer 	<ul style="list-style-type: none"> • Draft TPO could have a marked impact on the streetscape and biodiversity of the LGA. • Close to 70% of trees are approved for removal • Trees do make a appositive contribution to climate change mitigation • This is likely to be a result • Agreed 	<ul style="list-style-type: none"> • Review the exemptions to exempt trees within 5m of a building (currently 3m) • Clarify dead, dying and dangerous procedure but remove draft definition of dangerous tree, as per legal advice. • Include a formalised process to deal with trees representing an imminent

			<ul style="list-style-type: none"> • Noted 	<p>risk, as per legal advice.</p> <ul style="list-style-type: none"> • Require a TPO application as per existing process
21	Medowie	<ul style="list-style-type: none"> • Dangerous trees should be able to be removed however proper assessment needs to occur to determine if the tree is a threat • The draft policy will allow many trees to be removed which are not a safety concern • Biodiversity of the area will be reduced and it will end up looking like the central coast • The existing system works, were given approval to remove a large tree that was in danger of falling on their shed. • Environmental impacts of new subdivisions will be increased and there may be more developments that may trigger a significant impact if the new policy gets adopted. 	<ul style="list-style-type: none"> • An arborist is the appropriately qualified profession to determine the risk level of a tree • Agreed • Draft TPO could have a marked impact on the streetscape and biodiversity of the LGA. • Close to 70% of trees are approved for removal • This is a possible result as staff will have to assess DAs with the knowledge that many more trees can be cleared 	<ul style="list-style-type: none"> • Clarify dead, dying and dangerous procedure but remove draft definition of dangerous tree, as per legal advice. • Include a formalised process to deal with trees representing an imminent risk, as per legal advice. • Require a TPO application as per existing process
22	Dangar	<ul style="list-style-type: none"> • Changes will damage the local environment which has impacts for the wider lower hunter environment. • Changes contradict the purpose and objective of the TPO 	<ul style="list-style-type: none"> • Draft TPO could have a marked impact on the streetscape and biodiversity of the LGA and wider lower hunter. • Agreed 	<ul style="list-style-type: none"> • Review the exemptions to exempt trees within 5m of a building (currently 3m) • Clarify dead, dying and dangerous procedure but remove draft definition of

		<ul style="list-style-type: none"> • Whole suburbs could become denuded which are crucial for wildlife corridors and will have significant cumulative impacts • The Draft TPO panders to misconception that healthy trees fall over. Only unhealthy trees fall over except in extreme storms and no standard operational procedures are based on extreme outlier events. • Councils all over NSW have adopted the policy of not requiring approvals for removal of trees within 3m of a building. • The value of trees in backyards has been overlooked by the draft TPO. • There is no caveat in the draft TPO to allow for the preservation of hollow bearing trees, this is in conflict with State Legislation • Precious Koala Habitat will be lost as the cumulative impact will be large • The draft TPO is a backwards step and is not environmentally responsible. 	<ul style="list-style-type: none"> • This could occur • An arborist is the appropriately qualified profession to determine the risk level of a tree • Agreed, although some Councils use 5m • Agreed • Assessment by an arborist allows this to be considered • This could occur • Noted 	<p>dangerous tree, as per legal advice.</p> <ul style="list-style-type: none"> • Require a TPO application as per existing process • Include a formalised process to deal with trees representing an imminent risk, as per legal advice.
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23	Islington	<ul style="list-style-type: none"> • The draft TPO does not meet the objectives • Any change should be based on evidence not reactionary • Close to 70% of applications are approved, it seems the existing system is working • There are 2 options for appeal that seem to be working • The proposed change will be abused by people moving structures to be closer to trees • There is already an option for truly dangerous trees to be removed without approval • The current system provides a arborist at \$52.50 which is inexpensive • The existing process allows for education and for conditions to be placed when trees are approved for removal • If there is a problem with identifying dangerous trees then the process should be reviewed, not the policy • Questions if the policy is legal as it not in line with the LEP or the CKPoM. 	<ul style="list-style-type: none"> • Agreed • Noted • Noted • Agreed • This could occur • There is already a process for the removal of dangerous trees however this could be reviewed to make it easier for the community to use • The draft TPO will remove these options • The process can be made more explicit as per legal advice • Legal advice has raised concerns that the draft TPO is not in line with state legislation 	<ul style="list-style-type: none"> • Review the exemptions to exempt trees within 5m of a building (currently 3m) • Clarify dead, dying and dangerous procedure but remove draft definition of dangerous tree, as per legal advice. • Require a TPO application as per existing process • Include a formalised process to deal with trees representing an imminent risk, as per legal advice.
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		<ul style="list-style-type: none"> • Changes are irresponsible 	<ul style="list-style-type: none"> • Noted 	
24	Not Disclosed	<ul style="list-style-type: none"> • Changes will allow trees to be removed for spurious and selfish reasons • Pruning will be done without approval and will result in growth that is unsafe and will cause unsafe trees • This definition of dangerous is not in line with the science of trees assessment. • The statistics suggest the current proves is working and there are avenues for appeal • Trees are beneficial to the whole community. • Leaving the decision as to if a tree is dangerous up to the resident is an insult to the profession of arboriculture • Allowing a tree to be removed if its within falling distance of 'any structure' is excessive. 	<ul style="list-style-type: none"> • Draft TPO could have a marked impact on the streetscape and biodiversity of the LGA. • Removal of trees, or inappropriate pruning of trees, by an untrained person could cause increased risk to the community. • Agreed • Close to 70% of trees are approved for removal • Trees have been shown to have a positive impact on communities • An arborist is the appropriately qualified profession to determine the risk level of a tree • Noted 	<ul style="list-style-type: none"> • Review the exemptions to exempt trees within 5m of a building (currently 3m) • Require a TPO application as per existing process • Clarify dead, dying and dangerous procedure but remove draft definition of dangerous tree, as per legal advice. • Include a formalised process to deal with trees representing an imminent risk, as per legal advice.
25	Not Disclosed	<ul style="list-style-type: none"> • Some of the new exemptions conflict with the TPO objectives • The exemption on noxious weeds should ne tightened to just weeds listed noxious in Port 	<ul style="list-style-type: none"> • Agreed • Disagree as although a weed might not be listed as 'Noxious' in Port Stephens they weed species have been shown to be a 	<ul style="list-style-type: none"> • Require a TPO application as per existing process • Retain exemption for any trees listed on NSW noxious weed list

		<p>Stephens Council, not the whole of NSW</p> <ul style="list-style-type: none"> • The exemption that allows trees within 3m of a house to be removed should include pruning • The amount of clearing that would occur is excessive • The reference to dying should be removed as its is imprecise • The definition for a 'dangerous tree' is wrong and not in line with accepted arboriculture standards • The definition of a dangerous tree sends an inaccurate message to the community and may cause people unnecessary stress when they cannot afford to have a tree removed or if the tree is on a neighboring property. • Appropriately qualified and experienced arborists should determine the extend of risk from a tree • Council has a moral and ethical obligation to consider the negative effects of their decisions on the wider 	<p>problem in other areas of NSW</p> <ul style="list-style-type: none"> • This already occurs • Draft TPO could have a marked impact on the streetscape and biodiversity of the LGA. • This is supported by Standard Instrument LEP which requires Council to be satisfied that the tree is dying. • Agree that the dangerous definition should be revised or removed • An arborist is the appropriately qualified profession to determine the risk level of a tree • Agree 	<ul style="list-style-type: none"> • Review the exemptions to exempt trees within 5m of a building (currently 3m) • Clarify dead, dying and dangerous procedure but remove draft definition of dangerous tree, as per legal advice. • Include a formalised process to deal with trees representing an imminent risk, as per legal advice.
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		community and the environment.		
26	Nelson Bay	<ul style="list-style-type: none"> • The draft TPO will expose ratepayers to litigation as most people do not know if a tree is listed on the Threatened Species Act. • Professional assessment is necessary • The boundaries of many properties are not clearly defined and this could also lead to an unintentional breach of the TPO. • Council could leave itself open to court action if it does not employ reasonable guards to stop the breaches of State and Federal law occurring. • The existing TPO worked well to protect threatened species • The TPO may need some amendments in regards to height and distances however removing the checks and balances is ill advised. • The current TPO protects a community asset, the new system will result in significant 	<ul style="list-style-type: none"> • This is a possible, although unlikely outcome • An arborist is the appropriately qualified profession to determine the risk level of a tree • Disagree, the responsibility would rest with the landholder • The current process allowed the assessing officer to make an assessment that included impacts on Threatened Species. • Agree that a review of heights and distances would be valuable. • Draft TPO could have a marked impact on the streetscape and biodiversity of the LGA. 	<ul style="list-style-type: none"> • Require a TPO application as per existing process • Include a formalised process to deal with trees representing an imminent risk, as per legal advice. • Clarify dead, dying and dangerous procedure but remove draft definition of dangerous tree, as per legal advice. • Review the exemptions to exempt trees within 5m of a building (currently 3m)

		<p>tree loss and the shire will be a poorer place</p> <ul style="list-style-type: none"> • The amendments are a step backwards. 		
27	Raymond Terrace	<ul style="list-style-type: none"> • Will lead to excessive removal of trees and the suburbs will end up looking like western Sydney • The changes will cause more disputes between neighbors as trees will now be termed 'dangerous'. • This is a step back to the 1930s. 	<ul style="list-style-type: none"> • Draft TPO could have a marked impact on the streetscape and biodiversity of the LGA. • This is a definite possibility 	<ul style="list-style-type: none"> • Require a TPO application as per existing process • Clarify dead, dying and dangerous procedure but remove draft definition of dangerous tree, as per legal advice.
28	Not Disclosed	<ul style="list-style-type: none"> • Wants heritage trees and trees on the significant tree register to be given more protection • More clarification around the 10% pruning exemption clause • Concerned that requirement to inform council when dangerous trees are being removed will not occur 	<ul style="list-style-type: none"> • Heritage tree and trees on the significant tree register will always require approval • Existing exemption is clear • This is a possible outcome 	<ul style="list-style-type: none"> • Require a TPO application as per existing process • Clarify dead, dying and dangerous procedure but remove draft definition of dangerous tree, as per legal advice.

Group Submissions Against the TPO Amendments

#	Group	Summary of Issue(s)	Council Response	Recommendation for the amended TPO
1	EcoNetwork	<ul style="list-style-type: none"> • The current TPO provides a reasonable, efficient and cost effective way for residents to have trees assessed 	<ul style="list-style-type: none"> • Agree 	<ul style="list-style-type: none"> • Require a TPO application as per existing process • Review the exemptions to

		<ul style="list-style-type: none"> • There does not appear to be any evidence that there is a high backlog of refused applications • The existing TPO has avenues for appeal • Councillors on average only attend 3-4 site visits annually, hardly an indication of a large number of appeals • In 2010 PSC received 1156 applications to remove trees, 779 were approved (67%), Of the 364 refused 278 were never heard from again, a further 43 were approved on second assessment and 20 went to Councillors for approval. • If there is evidence that the process for identifying and approving dangerous trees if not working then fixing the process, not the policy, is the answer. • The proposed change will allow trees to be removed that are adjacent to any structures, people will move old garden sheds just so they can remove a tree • There is already a process for 	<ul style="list-style-type: none"> • There is no backlog of applications, Council approves close to 70% of applications • There are 2 appeals • Noted • These statistics are correct • There is already a process for the removal of dangerous trees however this could be reviewed to make it easier for the community to use • Agree 	<p>exempt trees within 5m of a building (currently 3m)</p> <ul style="list-style-type: none"> • Include a formalised process to deal with trees representing an imminent risk, as per legal advice. • Amend exemption to only allow trees to be removed that are adjacent to Council approved structures
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		<p>people to remove dangerous trees without permissions</p> <ul style="list-style-type: none"> • The current process allows residents to get a professional opinion for \$52.50 and this is an effective educational tool and allows council to place conditions, i.e replacement plantings • This is 2011, nations around the works are trying to find solutions for dealing with Climate Change, trees play a significant role in these solutions, making it easier to remove trees for spurious reasons makes no sense in today's informed world • This proposed change is not consistent with State law or policy and is prone to legal challenge • This is step backwards and will have consequences for the good governance of Port Stephens 	<ul style="list-style-type: none"> • Noted • Trees make a valuable contribution to climate Change mitigation • Legal advice has raised concerns that the draft TPO is not in line with state legislation • Noted 	<ul style="list-style-type: none"> • Clarify dead, dying and dangerous procedure but remove draft definition of dangerous tree, as per legal advice.
2	Tilligerry Tidy Towns/Landcare Committee	<ul style="list-style-type: none"> • The change will result in loss of habitat and will impact on wildlife corridors • A reduction in biodiversity will 	<ul style="list-style-type: none"> • Draft TPO could have a marked impact on the streetscape and biodiversity of the LGA. 	<ul style="list-style-type: none"> • Clarify dead, dying and dangerous procedure but remove draft definition of dangerous tree, as per legal

		<p>occur</p> <ul style="list-style-type: none"> • Heritage and significant trees will be lost as many of these are not listed on the heritage register • The new dangerous tree definition is almost 'flat earth'. • This new policy has the potential to remove all trees carte blanche within our urban environment, there is nothing stopping someone putting up a small garden shed and then removing the tree • Indiscriminate pruning can make trees unsafe • The overall look of our Bushland Community will be lost • Notification by letter to Council prior to the trees removal is essential, Council needs to retain some control. 	<ul style="list-style-type: none"> • Noted • Agree • Removal of trees, or inappropriate pruning of trees, by an untrained person could cause increased risk to the community. • Legal advise supports this 	<p>advice.</p> <ul style="list-style-type: none"> • Amend exemption to only allow trees to be removed that are adjacent to Council approved structures • Require a TPO application as per existing process
3	Hunter Koala Preservation Society	<ul style="list-style-type: none"> • Will result in removal of Koala Feed trees which will result in serious disease problems • It is essential that staff are involved in the TPO process to ensure conditions are employed 	<ul style="list-style-type: none"> • Draft TPO could have a marked impact on the streetscape and biodiversity of the LGA. • Draft TPO will remove ability of staff to mitigate environmental impacts and to 	<ul style="list-style-type: none"> • Require a TPO application as per existing process

		<p>when trees are removed, especially during breeding seasons</p> <ul style="list-style-type: none"> • National Tree Day was just held and volunteers worked tirelessly to plant trees and this policy will allow open slather for mature vegetation removal • This will fragment vital wildlife corridors, cause loss of Koala Habitat, result in decreased ecological resistance, and force fauna on to roads • Opportunities for education will be lost • Port Stephens will no longer be a natural area and this will impact on tourism • Public amenity will be reduced and global warming will increase • Tree loss will impact on people's health • Removal of trees without assessment could result in a breach of the Threatened Species Act and possible fines to Council • Assessing DAs that propose 	<p>undertake education</p> <ul style="list-style-type: none"> • Noted • This could be a likely result • Trees make a valuable contribution to Climate Change mitigation • Possible but unlikely • This is a possible result as staff 	<ul style="list-style-type: none"> • Clarify dead, dying and dangerous procedure but remove draft definition of dangerous tree, as per legal advice.
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		<p>retention of vegetation will need to consider that the vegetation will not be protected</p> <ul style="list-style-type: none"> • There has already been a case in Port Stephens Council of a consultant being fined by the court for giving advice that lead to Koala habitat being cleared • It would be costly and embarrassing if PSC was to be taken to the Land and Environment Court for destroying Koala Habitat. • The policy could impact on the Wildlife atlas. 	<p>will have to assess DAs with the knowledge that many more trees can be cleared</p> <ul style="list-style-type: none"> • Noted • Port Stephens Council would not be removing the habitat, private residents would • The atlas records wildlife sightings, less sightings will be made if habitat is cleared 	
4	Soldiers Point and Salamander Tidy Towns and 355b committee	<ul style="list-style-type: none"> • The dangerous tree clause gives the opposite intent to the rest of the document • The impact is large as it covers all residential and rural residential land • Trees will be removed without checks being done to see if the trees are protected by the threatened species legislation • There is no evidence to back up the changes 	<ul style="list-style-type: none"> • Noted • Noted • This is a definite possibility • Noted 	<ul style="list-style-type: none"> • Clarify dead, dying and dangerous procedure but remove draft definition of dangerous tree, as per legal advice. • Require a TPO application as per existing process

		<ul style="list-style-type: none"> • There is no point in sending council a letter the day the tree has been cut down • The dangerous tree clause should be deleted and replaced with a new section in the Tree Management Procedures that steps out a process for trees that are thought to be dangerous in residential and rural residential area to be dealt with without undue delay. This would ensure all actions against trees undergo an assessment from Council. • A suggested policy inclusion is as follows: <p><i>18 Trees in Established Residential and Rural Residential Zoned areas</i> <i>18.1 Where a Land owner considers that a tree on his land is dangerous to buildings or ancillary structures on the same Lot by risk of damage from falling limbs or the whole tree, he/she may apply to Council for consent to trim or remove the tree.</i></p> <p><i>a) Applications to Council on the grounds of 'Dangerous Tree' should</i></p>	<ul style="list-style-type: none"> • Noted • There is already a process for the removal of dangerous trees however this could be reviewed to make it easier for the community to use • Noted and considered in re-drafting along side legal advice 	<ul style="list-style-type: none"> • Include a formalised process to deal with trees representing an imminent risk, as per legal advice.
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		<p><i>give address, location of tree on the Lot, tree species, statement of problem, and photograph (image) of the tree to assist quick assessment.</i></p> <p><i>b) Council will normally give consent provided that:</i></p> <ul style="list-style-type: none"><i>• the tree is not further from the buildings/ structures than the height of the tree, on the same lot</i><i>• the tree is not listed under the Threatened Species Conservation Act 1995, or in the Heritage Schedule of the Port Stephens LEP 2000, or the Port Stephens Council Significant Tree Register</i><i>• other details in the application are correct.</i> <p><i>c) Consent for such applications will normally be given within three working days of receiving the application.</i></p> <p><i>18.2 The tree may not be trimmed, cut or removed until after the letter of consent is sent.</i></p> <p><i>18.3 If the dangerous tree is a species scheduled in the Threatened</i></p>		
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		<p><i>Species Act, or in Council's Heritage Schedule or the Significant Tree Register, Council may request an assessment by a qualified Tree Surgeon or Arborist to determine whether trimming or supporting the tree is a viable alternative to removal. This may require extra time and cost.</i></p>		
5	Tomaree Ratepayers Residents Association	<ul style="list-style-type: none"> • There is a perception that it is difficult to gain approval for the removal of dangerous trees, and accept that some adjustment of the administration of the TPO may be required however there is no need for a major policy amendment that would fatally undermine the TPO objectives. • The proposed change gives property owners almost unfettered discretion to remove trees based on their own amateur assessment of danger • It would be almost impossible to undertake any enforcement of the policy • Any change to the policy should be evidence based rather than a reaction to myths and 	<ul style="list-style-type: none"> • There is already a process for the removal of dangerous trees however this could be reviewed to make it easier for the community to use • Agreed • Enforcement of the draft TPO will be a problem • These statistics are correct 	<ul style="list-style-type: none"> • Clarify dead, dying and dangerous procedure but remove draft definition of dangerous tree, as per legal advice. • Require a TPO application as per existing process

		<p>misunderstandings, in 2010 67% of applications were approved, hardly a failure of the policy.</p> <ul style="list-style-type: none"> • The TPO is a good policy and provides a reasonable, efficient and cost effective way for owners to apply for dangerous trees to be removed • There are 2 avenues for appeal and Councillors only attend 3-4 site visits per year, hardly an indication of a high level of dissatisfaction. • Perhaps residents do not believe they would be given approval and as such do not apply, we fully support the rights of residents to be accurately informed of the policy and their rights of appeal • The proposed change will allow trees to be removed that are adjacent to any structures, people will move old garden sheds just so they can remove a tree • There is already a process for people to remove dangerous 	<ul style="list-style-type: none"> • The options for appeal are clearly expressed on the determination letters • This will be a consequence of the draft TPO 	<ul style="list-style-type: none"> • Amend exemption to only allow trees to be removed that are adjacent to Council approved structures • Include a formalised process to deal with trees
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		<p>trees without permissions</p> <ul style="list-style-type: none"> • Councils officers do allow removal of trees where there is a real risk • The current process allows residents to get a professional opinion for \$52.50 and this is an effective educational tool and allows council to place conditions, i.e replacement plantings • If there is evidence that the process of identifying dangerous trees is a problem then the process should be reviewed, not changing the policy. • The proposed changes may not be consistent with the existing LEP or the new LEP standards template, as the consent authority must be satisfied as the danger of the tree. • The changes are not in line with the CKPoM and the changes would impact on Koala habitat. • Legal advise should be sought on the proposed changes • The change is inconsistent with 	<ul style="list-style-type: none"> • Close to 70% of applications are approved • Legal advise supports this • Likely to be a consequence • Legal advise has been sought and utilized in the redrafting of the TPO and procedures 	<p>representing an imminent risk, as per legal advice.</p>
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		<p>Councils own principle of environmental sustainability.</p> <ul style="list-style-type: none"> • Trees play an important role in mitigating climate change, allowing trees to be removed without replacement and for spurious reasons is perverse and is a dereliction of Councils responsibilities. 	<ul style="list-style-type: none"> • Trees do play an important role in climate change mitigation 	
6	Port Stephens Greens	<ul style="list-style-type: none"> • Supports Tomaree Ratepayers Residents Association Submission • Protection of the Environment is essential for the wellbeing of all life, including human life, we must protect trees. 	<ul style="list-style-type: none"> • Noted • Agreed 	<ul style="list-style-type: none"> • Require a TPO application as per existing process • Clarify dead, dying and dangerous procedure but remove draft definition of dangerous tree, as per legal advice.
7	Environmental Defenders Office	<ul style="list-style-type: none"> • The dangerous tree definition is too broad and not in line with Environmental Planning Instruments • The current draft clause relating to dangerous trees will result in a significant alteration of the current landscape of Port Stephens. • The TPO should align to the Standard instrument LEP, the current draft provisions go 	<ul style="list-style-type: none"> • Noted and supported by legal advise • Likely to be a consequence • Noted and supported by legal advise 	<ul style="list-style-type: none"> • Clarify dead, dying and dangerous procedure but remove draft definition of dangerous tree, as per legal advice. • Require a TPO application as per existing process

		<p>beyond the standard provisions and are not consistent with the objectives of the TPO or the LEP.</p> <ul style="list-style-type: none"> • The EDO recommends a more restrictive definition of Dangerous Trees to match the objectives of the relevant EPI's and the Standard Instrument LEP. 	<ul style="list-style-type: none"> • Noted and supported by legal advise 	<ul style="list-style-type: none"> • Include a formalised process to deal with trees representing an imminent risk, as per legal advice.
8	Trees In Newcastle	<ul style="list-style-type: none"> • There is no evidence that supports that trees that are less than the height from a building are dangerous. • It is noted that the definition of a dangerous tree requires the tree to be on the same lot as the building. This does not make sense and exposes the shallowness of the dangerous tree definition and the proposed inclusion of the dangerous tree exemption. • Defining trees as proposed communicates an inaccurate message to the community and may cause worry for people who are unable to remove a tree that meets the criteria except it 	<ul style="list-style-type: none"> • Agreed • Noted • Tree disputes current cause concerns in the community, it is possible that the draft TPO could make this worse. 	<ul style="list-style-type: none"> • Clarify dead, dying and dangerous procedure but remove draft definition of dangerous tree, as per legal advice. • Require a TPO application as per existing process • Include a formalised process to deal with trees representing an imminent risk, as per legal advice.

		<ul style="list-style-type: none"> is on a neighboring property • May cause unnecessary worrying for people who can not afford to remove a tree that meets the criteria • Undermines the objectives of the TPO by encouraging the removal of trees on the basis of risk that should not be removed on that basis. 		
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Individual Submissions For the TPO Amendments

#	Suburb	Summary of Issue(s)	Council Response	Recommendation for the amended TPO
1	Not Disclosed	<ul style="list-style-type: none"> • Heritage and Endangered Trees should also be exempt if they are close enough to fall on the structure 	<ul style="list-style-type: none"> • Heritage trees and Threatened Species are protected by other legislation and can not classed as exempt. If the trees are considered dangerous by an arborist then approval to remove the trees will be given. 	<ul style="list-style-type: none"> • Do not include Heritage trees and Threatened Species in the exemptions.
2	Not Disclosed	<ul style="list-style-type: none"> • Sensible approach 	<ul style="list-style-type: none"> • There are other methods to improve the flexibility that still allow the TPO to align with relevant legislation. 	<ul style="list-style-type: none"> • Review the exemptions to exempt trees within 5m of a building (currently 3m)
3	Not Disclosed	<ul style="list-style-type: none"> • Trees are needed but not at expense of homes, if trees are removed they should be replaced with more suitable 	<ul style="list-style-type: none"> • There are other methods to improve the flexibility that still allow the TPO to align with relevant legislation. 	<ul style="list-style-type: none"> • Review the exemptions to exempt trees within 5m of a building (currently 3m)

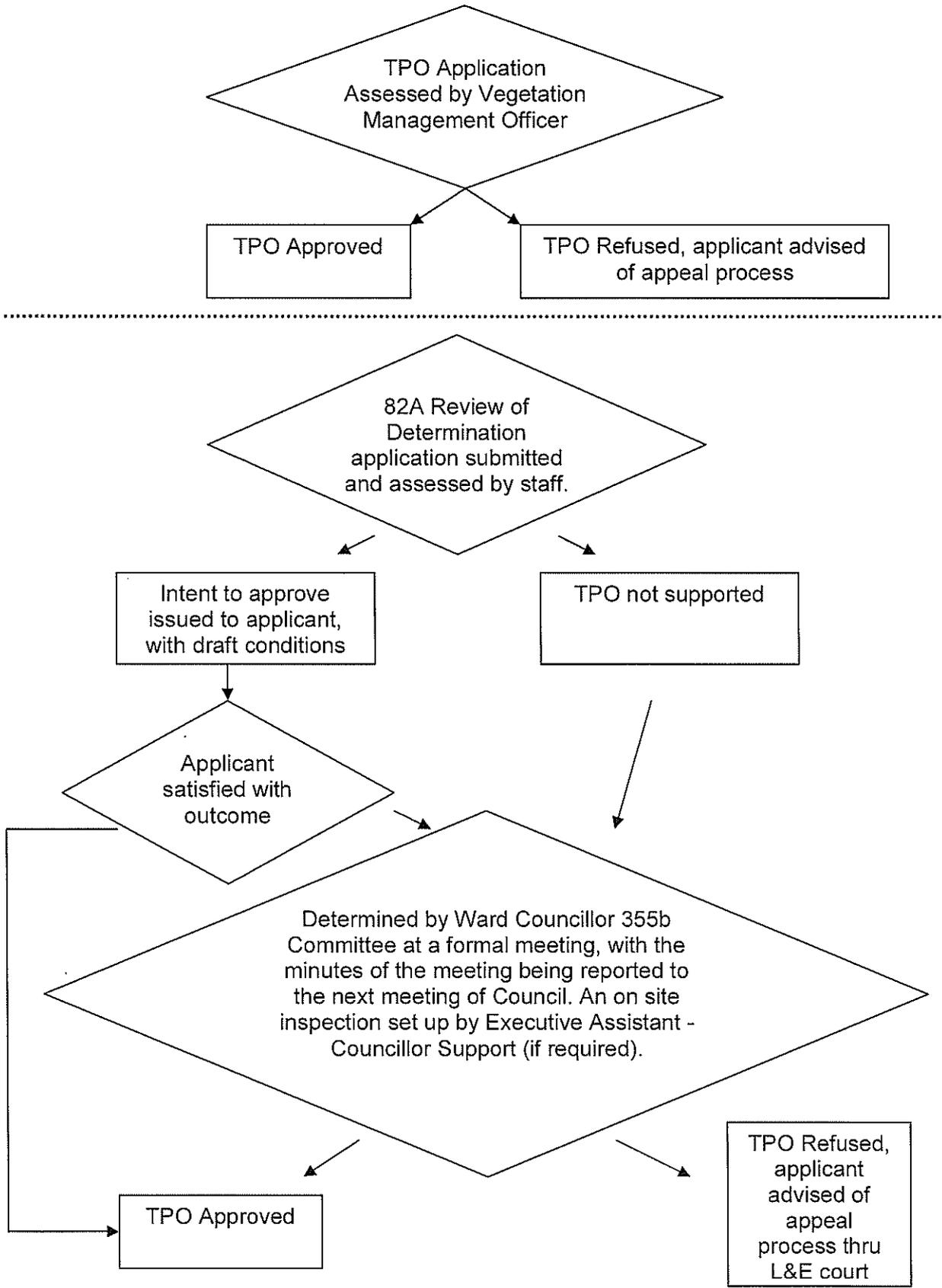
		species.		
4	Raymond Terrace	<ul style="list-style-type: none"> • Sensible approach that protects homes, especially with more severe storms forecasted. 	<ul style="list-style-type: none"> • There are other methods to improve the flexibility that still allow the TPO to align with relevant legislation. 	<ul style="list-style-type: none"> • Review the exemptions to exempt trees within 5m of a building (currently 3m)
5	Medowie	<ul style="list-style-type: none"> • Concerns about large trees on their land, has had trees fall on their property in the past • Has asked Council staff about removing the trees and was told to put in an application • Tree removal is expensive and would not remove trees indiscriminately 	<ul style="list-style-type: none"> • This resident has applied to have trees removed on his block. These applications have been approved. 	<ul style="list-style-type: none"> • Review the exemptions to exempt trees within 5m of a building (currently 3m)
6	Shoal Bay	<ul style="list-style-type: none"> • Supports the changes 	<ul style="list-style-type: none"> • Noted 	<ul style="list-style-type: none"> • Review the exemptions to exempt trees within 5m of a building (currently 3m)
7	Salt Ash	<ul style="list-style-type: none"> • Supports the changes as has large trees on their block 	<ul style="list-style-type: none"> • This resident has applied to have several trees removed on his block over a number of years. These applications have been approved. 	<ul style="list-style-type: none"> • Review the exemptions to exempt trees within 5m of a building (currently 3m).
8	Raymond Terrace	<ul style="list-style-type: none"> • Allows greater flexibility • Proposal allows residents to make decision about their own trees • Will give residents peace of mind 	<ul style="list-style-type: none"> • There are other methods to improve the flexibility that still allow the TPO to align with relevant legislation. • The draft TPO could cause unintended impacts by defining trees as dangerous, e.g. 	<ul style="list-style-type: none"> • Review the exemptions to exempt trees within 5m of a building (currently 3m).

			insurance and liability impacts.	
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Group Submissions For the TPO Amendments

#	Group	Summary of Issue(s)	Council Response	Recommendation for the amended TPO
1	Raymond Terrace Community Church	<ul style="list-style-type: none"> • Changes will help them to remove trees they feel are dangerous • Wants more references to roots that can cause damage • Elderly and infirm people should get special consideration and their own exemption 	<ul style="list-style-type: none"> • The exemptions should be reviewed to address concerns • Roots can be considered in the existing assessment as they can damage property • Social matters are already taken into account as described in the assessment considerations in the Tree Management Procedures. 	<ul style="list-style-type: none"> • Review the exemptions to exempt trees within 5m of a building (currently 3m).

Proposed new TPO process



**TREE PRESERVATION ORDER REASSESSMENT PROCESS
OWNER ENVIRONMENTAL SERVICES SECTION**

