



Part E – General Controls – Environmental Controls

Chapter E17: Preservation and Management of Trees and Vegetation

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1 INTRODUCTION

Trees and vegetation play an important role in the urban landscape, delivering significant long term benefits for our City and community wellbeing. Effective management depends upon appropriately regulated pruning and removal of trees and vegetation, as well as the long term retention, protection and growth of existing vegetation and new plantings.

2 PURPOSE

The purpose of this Chapter is to outline Council's requirements for the preservation and management of trees and other vegetation (including pruning and removal). It establishes a framework for the submission of applications relating to -

- The management of trees and vegetation
- The provision of permits and development approvals for vegetation clearing and tree removal and pruning
- Compensation for tree and vegetation removal.

It specifically declares trees and other vegetation under State Environmental Planning Policy (Biodiversity and Conservation) 2021 and for development under the Environmental Planning and Assessment Act 1979. Where a tree or other vegetation is declared in this Chapter, a person must not clear vegetation without a permit granted by Council or a development consent. Council can only issue a permit for the removal or pruning of native vegetation that is below the Biodiversity Offset Scheme (BOS) threshold.

3 LAND TO WHICH THIS CHAPTER APPLIES

This Chapter of the DCP applies to all lands within the City of Wollongong Local Government Area.

4 DEVELOPMENT TO WHICH THIS CHAPTER APPLIES

Assessment and approval pathways for tree removal, pruning or vegetation clearing depend on the purpose, nature, location and extent of vegetation clearing proposed.

This Chapter of the DCP applies to trees and vegetation (whether indigenous/endemic, exotic or introduced species) –

1. On all Non-Rural land (land in any zone other than RU1 – RU4) within the Wollongong LGA, where the proposed pruning, clearing or removal does not exceed the Biodiversity Offsets Scheme (BOS) threshold trigger. If the proposed removal or pruning exceeds the BOS threshold trigger, it requires an approval from the Native Vegetation Panel - refer to SEPP (Biodiversity and Conservation) 2021.
2. On Rural land (land zoned RU1-RU4), where the proposed pruning, clearing or removal is associated with a development that requires development consent from Council.

Section 10 of this Chapter identifies types of trees and works that do not require Council approval.

Two application processes are relevant to Council's assessment and approval for declared trees and vegetation:

1. Permit to remove trees and/or vegetation (generally for individual/small scale tree removal and pruning in urban areas) - refer to Council's website for guidance on policies and procedures;
2. Development consent via either Complying Development or Development Application.

5 OBJECTIVES

1. The objectives of this part of the DCP are to:
 - a) Protect trees within the City of Wollongong Local Government Area.
 - b) Protect and enhance native vegetation, habitat for native fauna and biodiversity.

- c) Protect and enhance native vegetation for its scenic values and to retain the unique visual identity of the landscape.
- d) Conserve trees of ecological, heritage, aesthetic and cultural significance.
- e) Conserve significant stands of remnant vegetation.
- f) Manage non-native vegetation in accordance with its cultural heritage and landscape significance.
- g) Ensure that any new development considers and maximises the protection of existing vegetation in the site planning, design, development, construction and operation of the development.
- h) Identify trees and other vegetation that may be pruned or removed without the necessity for a Permit or development consent.
- i) Apply the Mitigation Hierarchy to tree and other vegetation management within the Wollongong LGA, and where impacts are unavoidable facilitate adequate compensation for tree removal and cleared vegetation to ensure no net loss of vegetation is incurred.

6 RELATED LEGISLATION

The following key legislation is related to this Chapter, noting that it is the applicant's responsibility to be familiar with, and comply with, all legislation current at the time of an application -

- Environmental Planning and Assessment Act 1979.
- Biodiversity Conservation Act 2016.
- National Parks and Wildlife Act 1974.
- Fisheries Management Act 1994.
- Environment Protection and Biodiversity Conservation Act 1999 (Commonwealth).
- NSW State Environmental Planning Policy (Biodiversity and Conservation) 2021.
- NSW Biodiversity Conservation Regulation 2017.

Note: It is an offence to harm or pick protected species, threatened species, populations or endangered ecological communities (EECs) under the *Biodiversity Conservation Act 2016* and the *Fisheries Management Act 1994*, without appropriate approvals or exemptions. The *Environment Protection and Biodiversity Conservation Act 1999* also prescribes offences for unapproved significant impacts on threatened species and threatened ecological communities. Prosecutions can result in significant penalties including fines and imprisonment.

7 RELATIONSHIP TO OTHER DCP CHAPTERS

This Chapter should be read in conjunction with Chapter E18: Native Biodiversity Impact Assessment, which relates to biodiversity and includes consideration of impacts to both flora and fauna and their interaction with landscape elements that sustain a diverse ecosystem.

8 APPROVAL PATHWAYS

8.1 Tree Clearing, Removal or Pruning that Require Approval

A person must not undertake clearing, pruning or removal of a declared tree or vegetation without development consent through a Development Application, or a Permit granted by Council. This section identifies what trees or vegetation are “declared” and sets out the approval process used by Council to assess applications.

Applications to Council for tree and/or vegetation clearing, removal and pruning are received by Council in the form of a **Permit Application** (where the Biodiversity and Conservation SEPP applies) or a **Development Application** (under Part 4 of the EP&A Act), unless the land is zoned for Rural purposes (RU1, RU2, RU3 or RU4) and the proposed clearing is not associated with a development application.

Any proposed clearing of vegetation on Rural land (zoned RU1-RU4) that is not associated with a Development Application is referred to NSW Local Land Services – Council cannot process these

applications. The NSW Government's online mapping tool must also be checked to determine if the proposed clearing will trigger the NSW Biodiversity Offset Scheme and require an application to the NSW Native Vegetation Panel.

8.2 Declared Trees or Other Vegetation - Permission is Required

This section declares trees and other vegetation for the purposes of the Biodiversity and Conservation SEPP 2021 and Part 4 of the Environmental Planning and Assessment Act 1979.

The species or kinds of trees and vegetation that are declared are -

1. Trees within the Wollongong LGA that are not identified in this Chapter as Exempt.
2. Native vegetation within areas mapped on Council's Plant Community Type Vegetation Map.
3. Vegetation that represents habitat or likely habitat for threatened species, populations, and endangered ecological communities as defined within the Biodiversity Conservation Act 2016.
4. Vegetation identified as a heritage item or within the curtilage of a heritage item, as identified under the Wollongong LEP 2009.
5. Vegetation located within a riparian zone or within 40 metres of the top bank of a creek, river, watercourse, wetland, stream or other aquatic habitat.

8.3 Tree/Vegetation Clearing, Removal or Pruning that Requires a Development Application

A Development Application (DA) is required for the tree/vegetation clearing, removal or pruning if the tree or vegetation is a type declared in Section 8.2 above, and any of the following apply -

- The proposed clearing, removal or pruning is part of an application for other building work or development that requires a DA under Part 4 of the Environmental Planning and Assessment Act 1979.
- Trees or Vegetation identified as a heritage item of local significance or forms part of a heritage item of local significance in Schedule 5 of Wollongong Local Environmental Plan 2009 and the activity is not determined to be 'minor development'
- Vegetation mapped as coastal wetlands and littoral rainforests area under the State Environmental Planning Policy (Resilience and Hazards) 2021.

If the Development Application will impact **native vegetation**, the NSW Government online tool should be checked to determine if the proposed clearing will trigger the Biodiversity Offsets Scheme (NSW Biodiversity Conservation Act 2016). Should the application trigger the Biodiversity Offset Scheme threshold, the DA will need to be accompanied by a Biodiversity Development Assessment Report in accordance with the Biodiversity Conservation Act requirements, prepared by an accredited assessor.

Tree and other vegetation management associated with a development must be undertaken in accordance with the Mitigation Hierarchy - Avoid, Minimise and then Offset (see Chapter E18 for further information on the Mitigation Hierarchy and Council's policies for further information on Council's offsetting requirements)

8.4 Tree Clearing, Removal or Pruning that Require a Permit

A Permit Application is required for the clearing and/or pruning of a declared tree on all non-rural land (i.e. land in any zone other than RU1-RU4) whenever the works are not for the purposes of a new development and development consent does not apply (NSW Biodiversity and Conservation SEPP 2021). If a development application has been approved for the removal of a tree, a Permit is not required for that tree.

In accordance with the NSW Biodiversity and Conservation SEPP 2021, a person must not injure, clear or prune vegetation declared under this DCP without a permit granted by Council, except in accordance with the exemptions outlined in Section 10.

The NSW Government's online tool must be checked to ensure the proposed clearing does not trigger the NSW Biodiversity Offset Scheme. Should the proposed clearing of native vegetation exceed the Biodiversity Offset Scheme threshold, an application must be made to the NSW Native Vegetation Panel, established under the Local Land Services Amendment Act 2016. Council can only issue a Permit for the removal or pruning of native vegetation that is below the Biodiversity Offset Scheme threshold.

9 COMPENSATORY PLANTING / OFFSETTING

To maintain urban tree canopy cover, the applicant may be required to undertake compensatory activities to offset the impacts incurred through an approval to clear vegetation. These activities may be guided by any offsetting policy that Council has and may include payment of a fee to Council, for Council to undertake tree replacement on Council owned/managed land on behalf of the applicant or replacement of the vegetation with a suitable local native tree species in an appropriate location within the private property (refer to Council's website for applicable policies and guidelines).

10 EXEMPTIONS FROM APPROVALS

1. Neither a Permit or Development Consent is required for the pruning, removal, or injury of any tree or other vegetation in the following situations, provided the work is carried out in accordance with NSW WorkCover NSW Code of Practice: Amenity Tree Industry 1998 and the guidelines in Australian Standard AS 4373-2007 Pruning of Amenity Trees:
 - a) Clearing of trees and vegetation on rural zoned land (zones RU1-RU4) that is authorised under the Local Land Services Act 2013 (LLS Act).
 - b) Where a complying development application is lodged under and can satisfy the criteria of *SEPP (Exempt and Complying Development Codes) 2008*. Applicants should refer to the SEPP for details. Any removal associated with development or to facilitate development will require a Development Application if it cannot meet the requirements of the SEPP.
 - c) Clearing of trees and vegetation in accordance with the NSW Rural Service 10/50 Vegetation Clearing Scheme Code of Practice.
 - d) Clearing of vegetation that is authorised by A Property Vegetation Plan under the (former) Native Vegetation Act 2003, or Conservation Agreement, or lands deemed certified under a Biodiversity Certification Agreement, as administered by the relevant authority.
 - e) Where a declared tree has been approved for removal or management under a previous development consent (i.e. where such vegetation is within the building envelope or the surrounding cartilage of the building envelope).
 - f) Where a declared tree is included in Council's Exempt Tree Species List in Appendix 1 to this Chapter (excluding trees within the curtilage of a heritage item or heritage conservation area) or is listed in the South East Regional Strategic Weed Management Plan as a priority weed or other weed of concern.
 - g) Where bushfire hazard reduction work is undertaken, authorised by the NSW Rural Fire Service under the *Rural Fires Act 1997*.
 - h) Where action is required or authorised to be done by or under the *Electricity Supply Act 1995*, the *Roads Act 1993* or the *Surveying and Spatial Information Act 2002* or other Statutory Authorities.
 - i) Where a declared tree is located within a State Forest or on land reserved for sale as a timber forest reserve under the *Forestry Act 1916*.
 - j) Where a declared tree is within an approved plantation meeting the criteria of the *Plantation and Reafforestation Act 1999*.
 - k) *Where action is carried out by Council, State Emergency Service, Rural Fire Service, or another infrastructure authority/emergency service authority in response to an emergency (i.e. where there is an immediate threat of injury to persons or damage to property).
 - l) Any works to make safe a declared tree where there is an immediate threat of injury to persons or damage to property, either during or within 48 hours following a severe weather event. – Refer to note below.
 - m) Where the subject tree has been grown specifically for its edible fruit.
 - n) Where the works are undertaken by Council or a contractor acting on behalf of Council on Council owned or controlled land, including but not limited to lands within a sportsground, park, reserve, road reserve, riparian corridor.

***Note:** A Permit Application or Development Application must be lodged with Council for the removal or further pruning of a tree within 72 hours from the date of the emergency pruning works for any tree

upon private land.

Exclusions from Exemptions

This Section does not apply to any declared tree or vegetation which -

- Is classified as being part of a vulnerable, threatened or endangered ecological community, or provides (or has the potential to provide) habitat for native fauna, or fauna classified as vulnerable or threatened under the relevant Act;
- Is located on a site that is classified as containing vulnerable, threatened or endangered ecological communities;
- Is, or forms part of, a heritage item or is within a heritage conservation area;
- Is required to be retained by the conditions of a development consent or a Section 88B restriction on the use of the land or positive covenant instrument.

11 FURTHER INFORMATION: PERMIT APPLICATION AND DEVELOPMENT APPLICATION

1. A Permit is required from Council for cutting down, pruning, removal or injury of any declared tree that is not exempt or is not associated with development requiring development consent.
2. A Permit is also required for any dead or dying tree.
3. Pruning of major structural roots or anchor roots is also subject to a Permit.
4. Permits are not suitable as a means to facilitate development, complying or otherwise.
5. Permits cannot approve the removal of a tree that is required to be retained by a development condition of consent. An application to modify the development consent will be needed in this instance.
6. Applicants should refer to the policies and procedures on Council's website or contact Council's Customer Service Centre for further information on the application process and assessment criteria.
7. The lodgement of a Development Application is required for the cutting down, pruning, removal, or injury of trees or other vegetation in the following situations:
 - a) Any development requiring tree removal that cannot be carried out in accordance with *SEPP (Exempt and Complying Development Codes) 2008* including the Part 3 General Housing Code and 3A Rural Housing Code.
 - b) Any tree and/or other vegetation identified as an item of heritage significance or located on land identified as containing an item of heritage significance, in Schedule 5 of Wollongong Local Environmental Plan 2009, unless Council is satisfied that the proposed tree works are of a minor nature or are for the maintenance of the heritage item and/or would not adversely affect the heritage significance of the heritage item.
 - c) Trees and/or other vegetation on land affected by *State Environmental Planning Policy (Resilience and Hazards) 2021*.

12 DEVELOPMENT APPLICATION – LODGEMENT REQUIREMENTS

1. The following information is required to be submitted with any Development Application:
 - a) Application form - completed and signed by all relevant property owners. This includes all property owners on land to which the subject tree(s) is situated, who must sign the application form or alternatively, an attached supporting letter must be provided which authorises the lodgement of the application for any works on the subject tree(s).
 - b) Details of the proposed number, species, age and size (i.e. height, trunk diameter, canopy spread) of tree(s) and/or other vegetation proposed to be removed / pruned.
 - c) Full written details as to the reasons for the proposed pruning or removal of the tree(s) and/or other vegetation.
 - d) A full description of existing trees and other vegetation upon the site.

- e) Payment of the prescribed application fee.
2. If a tree is growing near a common property boundary, ownership will be determined by identifying which side of the boundary the majority of the trunk's diameter exists at ground level.
3. Where a property is in a Strata Plan under the *Strata Schemes (Freehold Development) Act 1973* or the *Strata Schemes (Leasehold Development) Act 1986*, the written consent and Body Corporate seal is required from the Body Corporate which authorises the lodgement of the application for the specific type of works to be undertaken.
4. Council may require additional supporting information for an application, including the following:
 - a) Arborist's report;
 - b) Tree survey;
 - c) Flora and fauna impact assessment report;
 - d) Geotechnical or structural engineer's reports;
 - e) Bushfire assessment report;
 - f) Plumber's report;
 - g) Details of proposed root barriers; and/or
 - h) Medical Certificate from a Medical Practitioner in cases where the removal or pruning of a tree is requested due to quality of life issues (e.g. allergies).
5. An Arborist who can prepare reports is a person who is eligible for membership as a 'Consulting Arborist' with the National Arborists Association of Australia or the Institute of Australian Consulting Arboriculturists and who has obtained a Level 5 Certificate in Horticulture/Arboriculture or equivalent.
6. In cases where a tree has caused damage to a sewer, the application must include written evidence from a licensed plumber stating the extent of the problem. This is necessary given that damage to a sewer is often unidentifiable from the natural ground surface level.
7. In all cases, all costs associated with providing any required additional information shall be borne by the Applicant.

13 TREE AND VEGETATION MANAGEMENT AS PART OF A DEVELOPMENT PROPOSAL

1. As part of the assessment of a Development Application for buildings where existing trees or other native vegetation are on the site, Council will determine if the trees should be retained, can be removed or if modifications need to be made to the layout of buildings and driveways. This will be determined using criteria for evaluation of significant trees and vegetation. The Development Application must be supported by an Arborist Report that complies with Council's requirements.
2. Generally for a tree to be retained reference must be made to Australian Standard AS4790-2009 Protection of Trees on Development Sites.
3. Where Council has issued a Development Consent for a structure or building, any tree with its base within three (3) metres of that building or structure on the subject land may be removed without further application to Council, provided the Council's Tree Management Officer is satisfied before the tree is removed that its base is within the three (3) metre limit.
4. If it has been determined that a tree or trees are to be retained, a tree protection zone must be established. This will include a fenced off area which must be maintained throughout the construction period and shall be exclusive of any buildings, footings, excavation, retaining walls, materials storage, services, level changes or hard surfaces in the zone. Certification from an AQF level 5 Arborist must be obtained at the following stages of the development:
 - a) Before commencement of construction;
 - b) At mid point of the construction phase, or as directed by the Project Arborist on jobs longer than six months; and
 - c) At completion of the construction phase.
5. Larger sites should use a Council approved Landscape Management Plan or a Vegetation Management Plan to maintain trees on regular basis. Where an approved Landscape Management

Plan (detailing the proposed management methods) does not exist approval should be sought from Council as part of a development application. A Vegetation Management Plan may be required where there is significant vegetation present

DEFINITIONS AND ACRONYMS

Declared tree is defined as -

- a) Five (5) metres or more in height; or
- b) Have a diameter of 30 cm (300mm) or more measured at ground level.

Declared vegetation means any of the following types of vegetation:

- Native vegetation within areas mapped in the Wollongong Local Environmental Plan (LEP) 2009 Natural Resources Sensitivity layer, or
- Vegetation that represents habitat or likely habitat for threatened species populations and endangered ecological communities as defined within the Biodiversity Conservation Act 2016 and/or Environment Protection and Biodiversity Conservation Act 1999, or
- Vegetation identified as a heritage item or within the curtilage of a heritage item, as identified under the Wollongong LEP 2009; or
- Vegetation within an Aboriginal Place, or
- Vegetation within the core riparian zone of a riparian corridor as defined in Wollongong LEP 2009 and DCP 2009 Chapter E23 or considered waterfront land under the Water Management Act 2000.

Habitat tree means any tree which is a nectar feeding tree, roost and nest tree or a hollow-bearing tree which is suitable for nesting birds, arboreal marsupials (possums), micro-bats or which support the growth of locally indigenous epiphytic plants such as orchids.

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

Injury means damage to a tree and includes:

- Lopping and topping,
- Poisoning, including applying herbicides and other plant toxic chemicals to a tree or spilling of oil, petroleum, paint, cement, mortar and the like onto the root zone,
- Cutting, tearing, breaking or snapping of branches and roots that is not carried out in accordance with accepted arboricultural practices or is done for invalid reasons, including vandalism,
- Ringbarking, scarring the bark when operating machinery, fixing objects by nails, staples or wire or fastening materials that circle and significantly restrict the normal vascular function of the trunks or branches,
- Damaging a tree's root zone by compaction or excavation, asphyxiation including unauthorised land filling or stockpiling of materials around the tree trunk, and / or
- Underscrubbing, unless carried out by hand tools such as brushcutters and the like.

State Policy means State Environmental Planning Policies, or any other state documents or policy having the same statutory effect, however described.

APPENDIX 1 EXEMPT TREE SPECIES LIST

Common Name	Botanical Name
African Olive	<i>Olea europaea</i> subsp. <i>cuspidata</i>
Alder	<i>Alnus</i> species
Black Locust	<i>Robina pseudoacacia</i>
Box Elder	<i>Acer negundo</i>
Camphor Laurel	<i>Cinnamomum camphora</i>
Canary Island Date Palm	<i>Phoenix canariensis</i>
Hackberry or Sugarberry	<i>Celtis occidentalis</i>
China Doll	<i>Radermachera sinica</i>
Chinese Tallow	<i>Triadica sebifera</i> [<i>Sapium sebiferum</i>]
Cocos or Queen Palm	<i>Syagrus romanzoffiana</i>
Coral Tree	<i>Erythrina x sykesii</i>
Cotoneaster	<i>Cotoneaster</i> species
Domestic Fruit Trees	
Golden Cypress Pine	<i>Cupressus macrocarpa</i> 'Brunniana'
Honey Locust	<i>Gleditsia triacanthos</i>
Kaffir Plum	<i>Harpephyllum caffrum</i>
Golden Rain Tree	<i>Koelreuteria paniculata</i>
Liquidambar	<i>Liquidambar</i> species
Norfolk Island Hibiscus/Itchy Pod Tree	<i>Lagunaria patersonii</i>
Oleander	<i>Nerium oleander</i>
Pepper Tree	<i>Schinus areira</i>
Poplar	<i>Populus</i> species
Privet	<i>Ligustrum</i> species
Radiata Pine	<i>Pinus radiata</i>
Rubber Tree	<i>Ficus elastica</i>
Silky Oak	<i>Grevillea robusta</i>
Umbrella Tree	<i>Schefflera actinophylla</i>
Willow	<i>Salix</i> species
Yellowwood	<i>Nageia falcatus</i>