

## 5.03 Tree Management

### Amendment history

| Version Number | Date Adopted by Council | Commencement Date | Amendment Details |
|----------------|-------------------------|-------------------|-------------------|
| 1              | 15/11/2011              | 15/06/2012        | New               |

### Savings provisions

Any development application lodged but not determined prior to this section coming into effect will be determined taking into consideration the provisions of this section.

### Land to which this section applies

This section applies to all land under Newcastle Local Environmental Plan 2012.

### Development (type/s) to which this section applies

This section deals with preservation of trees and vegetation in conjunction with Clause 5.9 of the Newcastle Local Environmental Plan 2012.

This section also applies to all prescribed trees located on private land, or prescribed trees within 5m of a development site, or that are likely to be affected by infrastructure works carried out in association with a development proposal.

Note 1: Clause 5.9 of Newcastle Local Environmental Plan 2012 requires approval to ringbark, cut down, top, lop, remove, injure or wilfully destroy any tree or other vegetation that is identified (i.e. prescribed) by this development control plan. This development control plan prescribes trees by species, size, location and the manner of removal or pruning.

Note 2: Clause 5.9AA provides that the ringbarking, cutting down, topping, lopping, removal, injuring or destruction of any tree that is not a prescribed tree by this development control plan is permitted without consent.

Note 3: Tree removal may be able to be undertaken as complying development under Newcastle Local Environmental Plan 2012.

### Applicable environmental planning instruments

The provisions of the following listed environmental planning instruments and legislation also applies to development applications to which this section applies:

- Newcastle Local Environmental Plan 2012
- *NSW Noxious Weeds Act 1993*.

In the event of any inconsistency between this section and the above listed environmental planning instrument and legislation, the environmental planning instrument and legislation will prevail to the extent of the inconsistency.

Note 1: Additional environmental planning instruments may also apply in addition to those listed above.

Note 2: Section 74E (3) of the *Environmental Planning and Assessment Act 1979* enables an environmental planning instrument to exclude or modify the application of this DCP in whole or part.

## Related sections

The following sections of this DCP **may** also apply to development to which this section applies:

- 7.02 Landscaping, Open Space and Visual Amenity.

## Associated technical manual/s

- Newcastle Urban Forest Technical Manual 2010, The City of Newcastle

## Additional information

- *Newcastle Urban Forest Background Paper*, 2007, The City of Newcastle
- *Newcastle Urban Forest Policy*, 2008, The City of Newcastle
- *Amenity Tree Industry Code of Practice*, 1998, WorkCover NSW

## Definitions

A word or expression used in this development control plan has the same meaning as it has in Newcastle Local Environmental Plan 2012, unless it is otherwise defined in this development control plan.

Other words and expressions referred to within this section are defined within Part 9:00 - Glossary, of this plan, and include:

- **Circumference breast height** - means the girth of the supporting stem of a tree at a height of 1.4m above ground level (existing) measured at the trunk centre, and so as to contain the outermost projection of any flanges or buttresses.
- **Greenfield Sites** - undeveloped land that has been identified, through land use zoning, as having potential for future urban, commercial or industrial development. It is generally found on the fringes of existing developed areas and may contain a large amount of existing vegetation.
- **Infill development** - new urban development within existing developed areas. Often involves a more intensive use of the site. Infill development may encompass housing, retail, business, education, community service, and industrial activities.
- **Noxious Weeds** – trees and plant species declared as ‘noxious weeds’ within the Newcastle local government area, under the *NSW Noxious Weeds Act 1993*.
- **Tree Retention Values** – weighted combination of tree sustainability and landscape significance used to determine how retainable a tree/s is to guide the site analysis and site planning stages of development. Tree retention values are determined using the following three steps further outlined within the Newcastle Urban Forest Technical Manual:
  1. Assess Tree Sustainability
  2. Assess Landscape Significance
  3. Weigh Sustainability and Landscape Significance.

Note: Tree retention value assessments are not required for development on land that has a total site area of greater than 2ha. Such sites are assessed as greenfield sites.

## Aims of this section

1. To achieve the objectives of the Newcastle Urban Forest Policy 2008 for development on private land.
2. To provide guidelines for the management of trees.

### 5.03.01 Preservation of trees and vegetation

Clause 5.9 of the Newcastle Local Environmental Plan 2012 provides that a person must not ringbark, cut down, top, lop, remove, injure or wilfully destroy any tree or other vegetation that is 'prescribed' by this development control plan without development consent. This part establishes what tree and vegetation works are prescribed.

#### A. Pruning

##### Objectives

1. Enable pruning of trees without development consent only where there will be minor environmental impact.
2. Maintain trees in accordance with best practice method.

##### Controls

1. For the purposes of Clause 5.9(2) of the Newcastle Local Environmental Plan 2012 tree pruning is only prescribed where:
  - (a) the tree is a heritage item, or
  - (b) the tree is, or comprises part of, a threatened species, population or ecological community listed in the *Threatened Species Conservation Act 1995*, or *Fisheries Management Act 1994*.

Tree pruning is otherwise not prescribed and can be carried out without development consent on the condition that it is carried out in accordance with the Tree Pruning Specification in the Newcastle Urban Forest Technical Manual and Australian Standard AS 4373 – 2007, Pruning of amenity trees.

#### B. Removal of trees

##### Objectives

1. Enable tree removal without development consent only where there is minor environmental impact.
2. Ensure tree removal is carried out in accordance with best practice methods.

## Controls

1. In accordance with Clause 5.9(2) of the Newcastle Local Environmental Plan 2012 a prescribed tree is:
  - (a) a tree that is a heritage item, or
  - (b) a tree that is, or comprises part of, a threatened species, population or ecological community listed in the Threatened Species Conservation Act 1995, or Fisheries Management Act 1994, or
  - (c) a tree that is required to be retained as a condition of a development consent, or
  - (d) any other tree, except:
    - (i) a noxious weed under the *Noxious Weeds Act 1993*, or
    - (ii) a tree with a circumference breast height not greater than 450mm for a single trunk tree or not greater than 300mm for each trunk of a multi-trunk tree, or
    - (iii) a tree that is dead and does not provide a habitat for hollow-dependent fauna, or
    - (iv) a tree that is located within 3m of the wall of the principal building (excluding carports, pergolas, fences, retaining walls and the like) on the land on which it is situated or on adjacent land, measured from the closest point of the trunk to the footings of the building.

Note: As (i) to (iv) are not prescribed trees they can be removed without development consent provided they have not been prescribed under (a) to (c), and subject to Controls 2 and 3.

2. Tree removal is only undertaken, with the written agreement of the owner of the land on which the tree is located, is completed in one operation and any remaining stump is no higher than 1.4m.
3. To ringbark, top, lop, injure or wilfully destroy a tree is prescribed by this development control plan and therefore will require development consent, however, Council will generally not support these practices.

Note1: Removal and pruning of trees is also provided for under other legislation, including the *Electricity Supply Act 1995*, the *Local Government Act 1993* (in relation to trees on council land), the *Roads Act 1993*, the *Rural Fires Act 1997* and the *Trees (Disputes Between Neighbours) Act 2006*.

Note 2: Removal or interference with a tree on a public road requires the consent of the appropriate roads authority under the *Roads Act 1993*.

## C. Vegetation clearing

### Objectives

1. Enable native vegetation removal without development consent where there is minimal environmental impact.
2. Control noxious weeds.

## Controls

1. For the purposes of Clause 5.9(2) of the Newcastle Local Environmental Plan 2012 prescribed vegetation is:
  - (a) Native vegetation that is, or comprises part of, a threatened species, population or ecological community listed in the *Threatened Species Conservation Act 1995*, or *Fisheries Management Act 1994*, or
  - (b) all other vegetation, **except**:
    - (i) Native vegetation previously planted for agriculture, agroforestry, forestry, horticulture or woodlot purposes.
    - (ii) Plants declared to be noxious weeds under the *Noxious Weeds Act 1993*.

Note: As (i) and (ii) are not prescribed vegetation it can be removed without development consent provided it is not prescribed under (a), and subject to Controls 2 and 3.

2. Clearing is undertaken only with the written agreement of the owner of the land on which the native vegetation is located.
3. Removal of noxious weeds is in accordance with the *Noxious Weeds Act 1993*.

Note: Refer to Council's website for more information in relation to declared noxious weeds and control measures.

## 5.03.02 Tree removal as complying development

### Objectives

1. Ensure tree removal as complying development achieves minimum threshold criteria.
2. Provide for compensatory planting.

### Controls

The following controls apply to tree removal as complying development under the Newcastle Local Environmental Plan 2012

1. At least one of the tree assessment tests are satisfied under Section 3 Tree Assessment Tests of the Urban Forest Technical Manual.
2. A report from a qualified arborist demonstrating Control 1 is to be submitted in accordance with Section 7 Tree Reporting Requirements of the Urban Forest Technical Manual.
3. Where practicable, a suitable replacement tree is to be planted on the property concerned in accordance with Section 6 Compensatory Tree Planting of the Urban Forest Technical Manual.

### 5.03.03 Quality of information

#### **Objectives**

1. Ensure development assessment is based on accurate and reliable information.

#### **Controls**

##### General controls applying to all development to which this section applies

1. Reports submitted to Council, including tree assessment reporting, are prepared by a qualified arborist. This applies to both development applications and complying development applications.

Note: Refer to the Newcastle Urban Forest Technical Manual for qualifications and reporting requirements for arborists.

### 5.03.04 Tree maintenance (where development consent required)

#### **A. Pruning**

#### **Objectives**

1. Maintain trees in accordance with best practice method.
2. Protect the cultural value of trees that are identified as heritage items.

#### **Controls**

##### General controls applying to all development to which this section applies

1. The pruning of trees is undertaken in accordance with the specification of the Newcastle Urban Forest Technical Manual and Australian Standard AS 4373 – 2007, Pruning of amenity trees.
2. Where pruning is proposed to any tree identified as a heritage item in Schedule 5 Environmental Heritage within the Newcastle Local Environmental Plan 2012, it is demonstrated that such works have regard to Clause 5.10 Heritage Conservation of that planning instrument.

#### **B. Noxious weed control**

#### **Objectives**

1. Protect local habitats from noxious and invasive plant species.

## **Controls**

### General controls applying to all development to which this section applies

1. Development facilitates the removal and ongoing management of noxious weeds within the site and any adjoining bushland, wetland or riparian corridor.
2. Development does not introduce noxious weed species as part of any plantings, imported soil, or mulch.
3. Landscaping excludes the use of known invasive plant species, regardless if declared noxious or not, especially where in the vicinity of bushland, wetland or riparian corridor.

## **5.03.05 Infill development**

### **A. Street trees**

#### **Objectives**

1. Retain and incorporate existing street trees into design of proposed development.

#### **Controls**

##### General controls applying to all development to which this section applies

1. Street trees located in front of development sites, are protected during construction in accordance with best practice.
2. A professional arborist is consulted for all work undertaken in the primary root zone.
3. Existing street trees are only removed where:
  - (a) the tree retention value is moderate or low
  - (b) no practical alternative is available to allow for efficient development on site
  - (c) adequate alternate spaces for replacement trees are identified within the public realm in the vicinity of the site, or another approved location.

Note: Council will stipulate the provision of replacement street trees as a condition of consent.

### **B. Trees on private land**

#### **Objectives**

1. Consider all options for retaining trees during the development planning phase.
2. Justify removal or damage to existing trees and outline compensatory measures to offset such loss.

## Controls

The following controls apply to development or associated works that may affect tree/s located on the site or where the trunk of a tree is located within 5m of the site boundary

1. A tree retention value assessment is carried out for all trees identified in the site analysis and shown on a site plan.
2. Further to the above control, the development application demonstrates how the options outlined below were considered and addressed as part of the development planning phase. The options are listed in order of Council's preference.
  - (a) Design for retention of trees, where the tree retention value is 'moderate' to 'high'. Alternative design options are considered that allow for the retention of any retainable tree/s.
  - (b) Where (a) is not achievable, suitable compensatory tree planting is included as part of the landscape concept plan for the site. Compensatory planting is provided in accordance with the provisions of the Newcastle Urban Forest Technical Manual and considers such matters as the growth habits of the proposed planting species, the physical constraints of the site, and the proposed development and constraints on neighbouring properties.
  - (c) In exceptional circumstances, where both (a) and (b) above are not able to be achieved, consideration may be given to provision of compensatory planting on public land but only where:
    - i) negotiated with Council prior to issue of any related consent
    - ii) in accordance with Council's Street Tree Master Plan, a Plan of Management or other adopted strategy that identifies the location and specification of trees
    - iii) works are carried out to Council's specifications by suitably qualified and experienced persons under the supervision of relevant Council staff
    - iv) Council is compensated for any associated cost of providing such plantings and maintaining these for a period of no less than two years.

## C. Demolition works

### Objectives

1. Protect trees during demolition phase of development.

### Controls

The following controls only apply to demolition on land containing a tree, or where the trunk of a tree is located within 5m of the site boundary

1. A Tree Protection Plan detailing tree protection zones and proposed tree protection measures is submitted to Council and the Principal Certifying Authority prior to issue of a Construction Certificate or Complying Development Certificate for commencement of any demolition works.



2. The Tree Protection Plan is implemented to the satisfaction of the Principal Certifying Authority.
3. Retained trees are to be adequately cared for during construction.

Note 1: The required Tree Protection Plan is to be prepared by a qualified arborist in accordance with the Newcastle Urban Forest Technical Manual.

Note 2: If there is any question as to the health of the trees, it is recommended that you seek further advice from a consultant Landscape Architect, a Tree Care Specialist or Council's Urban Tree Coordinator.

### 5.03.06 Greenfield sites

#### *Objectives*

1. Minimise the potential loss of native vegetation when developing greenfield sites.

#### *Controls*

##### The following controls apply to all Greenfield development

1. Preserve significant site vegetation and landscaping features by incorporating these features into the landscape design.
2. The development application is supported with a detailed landscaping plan.
3. Development of greenfield sites having a total site area greater than 2 hectares preserve a minimum of 30% of the site for the retention or provision of indigenous vegetation.
4. Land set aside for such things as stormwater detention basins, roads, and other infrastructure associated with the development will not be included in the calculations of the abovementioned area set aside for conservation.
5. If the site is generally devoid of native vegetation or contains degraded lands, the proposal should include the restoration of this land to a minimum of 30% indigenous vegetation cover of the total site area.

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