



Part E – General Controls – Environmental Controls

Chapter E17: Preservation and Management of Trees and Vegetation

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1 INTRODUCTION

1. This Chapter of the DCP outlines Council's requirements for the preservation and management of certain trees and other vegetation. It includes requirements for the submission, assessment and determination of applications for the pruning and removal of tree(s) and other vegetation that:
 - a) Are three (3) metres or more in height,
 - b) Has a diameter of 200mm or more at a height of one (1) metre from the ground, and/or
 - c) Has a branch spread of three (3) metres or more,In certain areas throughout the City of Wollongong.
2. This Chapter of the DCP should be read in conjunction with clauses 5.9 (Preservation of trees and vegetation), 5.10 (Heritage conservation), 5.11 (Bush fire hazard reduction work) and 6.2 (Environmentally sensitive land – significant vegetation) of *Wollongong Local Environmental Plan 2009*.

2 OBJECTIVES

1. The objectives of this part of the DCP are to:
 - (a) Protect trees and other vegetation 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 and other vegetation 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 Tree Management Permit or development consent.

3 DEFINITIONS

Bushfire hazard reduction work has the same meaning as in the Rural Fires Act 1997.

Crown maintenance pruning is defined as in Australian Standard AS 4373 –2007 “Pruning of Amenity Trees” and generally involves a reduction in tree foliage and branches by up to 10 per cent in any one (1) year with no reduction in the height of the main trunk.

Dead tree means any tree that is no longer capable of performing any one of the following processes:

- Photosynthesis;
- Take up of water through the root system;
- Hold moisture in its cells; or
- Produce new shoots.

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

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.

Heritage Conservation Area means any area listed in Schedule 5 Part 2 of *Wollongong Local Environmental Plan 2009*.

Heritage item means a building, work, relic, tree or place (which may or may not be situated on or within land that is a Heritage Conservation Area) described in Schedule 5 Part 1 of *Wollongong Local Environmental Plan 2009*.

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 braches 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 trees 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.

Native vegetation means any of the following types of indigenous vegetation:

- Trees (including any sapling or shrub, or any scrub),
- Understorey plants,
- Groundcover (being any type of herbaceous vegetation), or
- Plants occurring in a wetland.

Note: For the purposes of this definition, vegetation is “indigenous” if it is of a species of vegetation, or if it comprises species of vegetation, that existed in the State of NSW before European settlement.

However, “native vegetation” does not include any mangroves, seagrasses or any other type of marine vegetation to which section 205 of the *Fisheries Management Act 1994* applies.

Noxious weed means a plant declared noxious under the *Noxious Weeds Act 1993*.

Prescribed tree means a tree or other vegetation prescribed under section 7 of this chapter for the purposes of clause 5.9 of Wollongong Local Environmental Plan 2009. In this chapter of the DCP, use of words such as “tree” or “vegetation” or phrases such as “trees or vegetation”, or other like words or phrases, includes reference to a prescribed tree, unless the context in which the word or phrase is used requires otherwise.

Private land means any land in private ownership by individuals or companies but excludes land owned or in the care, control or management of Council, a Crown Authority, government department or statutory authority.

Pruning is defined as all other pruning which is not “crown maintenance pruning” and includes “crown modification” as defined in *Australian Standard AS 4373- 2007 “Pruning of Amenity Trees”*.

Remnant tree or vegetation means a native tree or any patch of native vegetation which remains in the landscape after removal of the majority or all of the native vegetation in the locality.

Remove means to cut down, take away or transplant a tree from its place of origin.

Tree dripline or zone means the area defined under a tree by the outer edge of the tree canopy projected to ground level.

4 LAND TO WHICH THIS CHAPTER OF THE DCP APPLIES

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

5 OTHER RELEVANT LEGISLATION

5.1 Native Vegetation Act 2003

5.1.1 Development Consent is also required under Section 12 of the Native Vegetation Act 2003 for clearing of native trees and other native vegetation

1. Under the Native Vegetation Act 2003, “*native vegetation*” means any of the following types of indigenous vegetation:
 - (a) trees (including any sapling or shrub or any scrub),
 - (b) understorey plants,
 - (c) groundcover (being any type of herbaceous vegetation),
 - (d) plants occurring in a wetland.

Note: Vegetation is “*indigenous*” if it is of a species of vegetation or if it comprises species of vegetation that existed in NSW before European settlement. For the purposes of this Act, “*native vegetation*” does not include any mangroves, seagrasses or any other type of marine vegetation to which section 205 of the *Fisheries Management Act 1994* applies.

2. “*Clearing*” native vegetation means any one or more of the following:

- (a) cutting down, felling, thinning, logging or removing native vegetation,
 - (b) killing, destroying, poisoning, ringbarking, uprooting or burning native vegetation.
3. Under the Native Vegetation Act, “*broadscale clearing*” of native vegetation means the clearing of any remnant native vegetation or protected regrowth.
 4. Under Section 12 of the *Native Vegetation Act 2003*, the clearing of native vegetation is not permitted, except where prior development consent has been granted under this Act or where the Minister has approved a property vegetation plan which permits the clearing of such native vegetation.
 5. The clearing or removal of native trees and other native vegetation upon land to which Act applies requires consent to be obtained from the relevant Catchment Management Authority below:
 - (a) For lands north of Stanwell Park in Wollongong LGA (i.e. Otford, Helensburgh, Maddens Plain) - Sydney Metropolitan Catchment Management Authority.
 - (b) For lands south of Stanwell Park in Wollongong LGA - Southern Rivers Catchment Management Authority.

5.1.2 Land to which the Native Vegetation Act 2003 applies in Wollongong LGA

1. The *Native Vegetation Act 2003* applies to the following lands within the City of Wollongong LGA:
 - (a) Land zoned Non-urban, RU1 Primary Production, RU2 Rural Landscape or RU4 Rural Small Holdings.
 - (b) Land zoned R5 Large Lot Residential.
 - (c) Land zoned RE1 Public Recreation or RE2 Private Recreation.
 - (d) Land zoned Environmental Protection including land zoned E2 Environmental Conservation, E3 Environmental Management or E4 Environmental Living and all Environmental Protection zones in Wollongong Local Environmental Plan 1990.
 - (e) Land zoned W1 Natural Waterways. W2 Recreational Waterways or W3 Working Waterways.

5.1.3 Land to which the Native Vegetation Act 2003 does not apply in Wollongong LGA

1. The *Native Vegetation Act 2003* does not apply to the following lands within the City of Wollongong LGA:
 - (a) Land within a zone designated as “residential” (excluding R5 Large Lot Residential zoned land), “village”, “township”, “industrial” or “business”,
 - (b) Land that is reserved under the *National Parks and Wildlife Act 1974*,
 - (c) Land that is acquired under section 145 of the *National Parks and Wildlife Act 1974* for the purpose of obtaining land for reservation under that Act or for the purpose of preserving, protecting and preventing damage to Aboriginal objects or Aboriginal places,
 - (d) Land that is subject to an interim protection order made under Part 6A of the *National Parks and Wildlife Act 1974*,

- (e) Land to which an interim heritage order or listing on the State Heritage Register under the *Heritage Act 1977* applies,
- (f) Land that is critical habitat, being habitat declared under Part 3 of the *Threatened Species Conservation Act 1995* or under Division 3 of Part 7A of the *Fisheries Management Act 1994*,
- (g) Land that is a State forest, flora reserve or timber reserve under the *Forestry Act 1916*,
- (h) Land that is acquired under section 15 of the *Forestry Act 1916* for the purposes of a State forest (not being any such land that is acquired for the purpose of a timber plantation).

5.1.4 Exempt Activities

1. The following activities are exempt from requiring approval under the *Native Vegetation Act 2003*:
 - (a) Clearing for routine agricultural management activities (RAMAs) but does not authorise any clearing of native vegetation:
 - (i) If it exceeds the minimum extent necessary for carrying out the activity, or
 - (ii) If it is done for a work, building or structure before the grant of any statutory approval or other authority required for the work, building or structure.
 - (b) The continuation of existing cultivation, grazing or rotational farming practices provided it does not involve the clearing of remnant native vegetation.
 - (c) Sustainable grazing that is not likely to result in the substantial long-term decline in the structure and composition of native vegetation.
 - (d) The clearing of native vegetation associated with the construction of a single dwelling-house.
 - (e) A range of other clearing activities as listed under section 25 of the *Native Vegetation Act 2003*.

Note: The *Native Vegetation Act 2003* does not remove the requirement for separate development consent to be obtained from Council for the removal or clearing of trees or other vegetation, as per *Wollongong Local Environmental Plan 2009*, *West Dapto Local Environmental Plan 2009* and / or this DCP.

5.2 Fisheries Management Act 1994

1. The lodgement of an Integrated Development Application under Section 91 of the *Environmental Planning and Assessment Act 1979* is necessary if the formal concurrence from the NSW Department of Primary Industries is required pursuant to the section 205 of the *Fisheries Management Act 1994* for a permit to cut, remove, damage or destroy marine vegetation on public water land or an aquaculture lease, or on the foreshore of any such land or lease.

5.3 National Parks and Wildlife Act 1974

1. The lodgement of an Integrated Development Application under Section 91 of the *Environmental Planning and Assessment Act 1979* may be required for any proposed development in, upon or adjacent to any watercourse, lake or estuary where a development may potentially destroy or deface a site containing Aboriginal artefacts or may adversely affect a site of Aboriginal cultural heritage significance and hence, the formal concurrence from the NSW Department of Environment and Climate Change is required pursuant to Section 90 of the *National Parks and Wildlife Act 1974*.

2. In such cases, the preparation of the Integrated Development Application must be carried out in accordance with the requirements as per the Chapter E10: Aboriginal Heritage contained in Part E of the DCP.

5.4 Threatened Species Conservation Act 1995

1. Any action such as clearing or removal of trees or other vegetation has the potential to directly or indirectly effect a threatened species, population, ecological community or their habitat. Therefore, an assessment may be required pursuant to Part 5A of the *Environmental Planning and Assessment Act 1979* or Part 6 of the *Threatened Species Conservation Act 1995*. Applicants should refer to Chapter E18: Threatened Species in this DCP to adequately address matters under the *Threatened Species Conservation Act 1995*.
2. The clearing or removal of any threatened flora species, endangered population, endangered ecological community or critical habitat under the *Threatened Species Conservation Act 1995* requires separate approval from the Director – General of the NSW Department of Environment and Climate Change.

5.5 Environment Protection and Biodiversity Conservation Act 1999

1. The clearing or removal of remnant trees or other native vegetation which is listed as a “matter of national significance” under the *Environment Protection and Biodiversity Conservation Act 1999* requires the separate approval from the Commonwealth Minister for the environment. Applicants should refer to Chapter E18: Threatened Species in this DCP to adequately address matters under the *Commonwealth Environment Protection and Biodiversity Conservation Act 1999*.

6 EXEMPTIONS FROM THE NEED FOR A TREE MANAGEMENT PERMIT OR DEVELOPMENT CONSENT

1. Neither a Tree Management Permit or Development Consent is required for the ringbarking, cutting down, topping, lopping, pruning, removal, injure or wilful destruction of any tree or other vegetation in the following situations:
 - (a) Where a tree or other vegetation is located within 3 metres of an existing habitable building (does not include any deck, garage, garden shed or other ancillary building or structure) situated on the same allotment or different allotments where the owner of the allotments is the same,.
 - (b) The clearing of native vegetation that is authorised by a development consent or property vegetation plan under the Native Vegetation Act 2003, as administered by the relevant Catchment Management Authority.
 - (c) The clearing of vegetation on State protected land (within the meaning of clause 4 of Schedule 3 to the Native Vegetation Act 2003) that is authorised by a development consent under the provisions of the Native Vegetation Conservation Act 1997 as continued in force by that clause.
 - (d) Where a prescribed 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 curtilage of the building envelope).
 - (e) Where a prescribed tree is included in Council’s Exempt Tree Species List in Appendix 1 to this chapter (excluding trees within the curtilage of the heritage item or heritage conservation area).

- (f) Where bushfire hazard reduction work is undertaken, authorised by the NSW Rural Fire Service under the *Rural Fires Act 1997*.
- (g) Where action is required or authorised to be done by or under the *Electricity Supply Act 1995*, the *Roads Act 1993* or the *Surveying Act 1993*.
- (h) Where a prescribed tree is identified as a noxious weed under the *Noxious Weeds Act 1993* or any management plan published by the Illawarra District Noxious Weeds Authority.
- (i) Where a prescribed tree is identified as an environmental weed.
- (j) Where a prescribed tree is located within a State Forest or on land reserved for sale as a timber forest reserve under the *Forestry Act 1916*.
- (k) Where a prescribed tree within an approved plantation meeting the criteria of the *Timber Plantations (Harvest Guarantee) Act 1995*.
- (l) 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)(Note ¹).
- (m) Any works to make safe a prescribed 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)(Note ¹).
- (n) Where the subject tree has been grown specifically for its edible fruit.
- (o) 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 Tree Management 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.

7 DOCUMENTARY EVIDENCE TO PROVE A TREE IS DANGEROUS TO HUMAN LIFE OR PROPERTY

1. Under sub-clause 5.9(6) of Wollongong Local Environmental Plan 2009, a Tree Management Permit or Development Consent is not required for any tree or other vegetation that in the opinion of Council is a risk to human life or property.
2. The submission of documentary evidence from a person qualified in arboriculture (including photographs) which proves that a tree or other vegetation is dangerous to human life or property, must be forwarded to Council within 72 hours from the date of the emergency.
3. Should Council confirm in writing that the prescribed tree is dangerous to either human life or property, then the removal of the subject prescribed tree may occur, without any formal approval being required.

8 TREE MANAGEMENT APPLICATION PROCESS

1. Under this clause, trees and other vegetation that:
 - (a) Are three (3) metres or more in height;
 - (b) Have a diameter of 200mm or more at a height of one (1) metre from the ground; and / or

- (c) Have a branch spread of three (3) metres or more,

are prescribed for the purposes of clause 5.9 of Wollongong Local Environmental Plan 2009. Such trees and other vegetation are referred to in this DCP as “prescribed trees”.

2. Under sub-clause 5.9(3) of *Wollongong Local Environmental Plan 2009*, a person must not ringbark, cut down, top, lop, remove, injure or wilfully destroy any tree or other vegetation, without development consent or a permit being granted by Council.
3. Two application processes have been established to deal with the assessment and approval of trees/vegetation namely:
 - (a) Permit (generally for individual/small scale tree removal in urban areas); and
 - (b) Development consent.

9 TREES REQUIRING A TREE MANAGEMENT PERMIT

9.1 General

1. A Tree Management Permit (TMP) is required from Council for the ringbarking, cutting down, topping, lopping, pruning, removal, injure or wilful destruction of any tree.
2. A Tree Management Permit (TMP) is also required for any dead or dying tree.
3. Each Tree Management Application is limited to a maximum of five (5) trees per application.
4. A maximum of two (2) Tree Management Applications may be lodged with Council at any one time.

9.2 Tree Management Permit - Application Requirements

1. The following information is required to be submitted with any Tree Management Application:
 - (a) Application form, completed and signed by all relevant property owners¹.
 - (b) Full written details as to the reasons for the proposed pruning, lopping, topping or removal of the tree(s) and/or other vegetation.
 - (c) Payment of the prescribed application fee. Any property owner who receives a pension rate rebate from Council will be exempt from having to pay the application fee as per Council’s adopted Fees and Charges.

Note¹: All property owners on land to which the subject tree(s) is situated 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).

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.

9.3 Additional Information Requirements

1. Council may require additional supporting information for a Tree Management Permit application, including the following:
 - (a) Arborist's report;
 - (b) Tree survey;
 - (c) Flora and fauna impact assessment
 - (d) Geotechnical or structural engineers reports;
 - (e) Plumbers report;
 - (f) Details of proposed root barriers; and/or
 - (g) 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).
 - (h) Survey of property boundary to determine ownership of the tree(s).
2. 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.
3. In all cases, all costs associated with providing any required additional information shall be borne by the Applicant.

9.4 Arborist Reports

1. An Arborist Report will be required in any of the following circumstances:
 - (a) Any proposed removal or pruning of trees or other vegetation upon land containing an item of environmental heritage or within a Heritage Conservation Area; or
 - (b) Any proposed removal or pruning of trees or vegetation which constitutes a threatened flora species, endangered population, endangered ecological community under the *Threatened Species Conservation Act 1995* or the *Environment Protection and Biodiversity Conservation Act 1999*; or
 - (c) Any proposed removal or pruning of trees or other vegetation on land shown as riparian land on the Riparian Land Map or within the Illawarra Escarpment area as shown on the Illawarra Escarpment Map contained in *Wollongong Local Environmental Plan 2009*; or
 - (d) Any request for a review of determination made in accordance with section 82A of the *Environmental Planning and Assessment Act 1979*; or
 - (e) Where in the opinion of Council, the proposed works may result in adverse impacts upon the scenic environmental quality or amenity of the locality; or
 - (f) Where a Development Application involves more than five (5) trees and/or other vegetation.
2. 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.

3. The Arborist Report shall include the following details:
 - (a) The genus and species of each tree;
 - (b) Health, amenity value and S.U.L.E. (Safe Useful Life Expectancy) rating of each tree;
 - (c) Any pests or diseases that may be present on each tree;
 - (d) Any site changes and surrounding structures which may affect the health or vitality of the tree;
 - (e) Impact of the development on each tree;
 - (f) Impact of retaining trees on the proposed development;
 - (g) The Tree Protection Zone (TPZ) required for each tree proposed to be retained;
 - (h) Any root barriers necessary, type and their location;
 - (i) Any branch or root pruning which may be required for the trees;
 - (j) Any supporting evidence such as photographs, if relevant; and
 - (k) Recommendation on the preferred option and an explanation why this option is preferred.

9.5 Processing of Tree Management Permit Applications

1. A Tree Management Application will usually be processed within 10 working days from the date of receipt of the application form together with all supporting documentation, including the prescribed application fee. The prescribed application fee will be determined in accordance with Council's adopted fees and charges.
2. A written notice will be provided for all applications (with a numbered permit) authorising the scope and nature of permitted works. In the case of an application being refused consent, the reasons for refusal will be detailed in the notice.
3. If in the opinion of Council staff, a tree or other vegetation is of particular significance, the application may be publicly exhibited for a period of 7 days on Council's website and in certain exceptional circumstances by way of written notification to adjoining property owners / residents.
4. The necessity for any such notification will be at the sole discretion of Council staff.
5. No notification process will occur in the case of any urgent emergency tree removal work, where in the opinion of Council staff, there is an imminent risk to human life or property.

9.6 Assessment Criteria used to assess Tree Management Permit Applications

1. Council will take into consideration any one or more of the following criteria when assessing an application:
 - (a) Whole of life tree management – the Safe Useful Life Expectancy (SULE) of the tree and whether the tree is dead or dying;
 - (b) Whether the tree is causing structural damage to a building, structure, water main or sewer. Note: A report may be required by a suitably qualified and experienced consultant where the damage is not visually evident;

- (c) Whether the tree is severely stressed, diseased or is suffering insect damage and whether the health of the tree can be improved;
- (d) Whether the growth habit or mature size of a trees is undesirable in a given situation (e.g. powerlines, root interference with service, infrastructure or building);
- (e) Whether the tree is too large for its location or is interfering or likely to interfere with public infrastructure or private utilities;
- (f) Whether the tree shows poor form and shape and / or vigour typical to the species;
- (g) Whether the branches of the tree are dead or diseased;
- (h) Where the branches are dangerous and overhanging a building or an adjoining property. In this case, the assessing Council officer will determine the amount of pruning permitted to address any public nuisance issue;
- (i) Whether the tree species is appropriate in terms of its proximity to dwellings, adjoining dwellings or other buildings;
- (j) Whether the clearing or removal of the tree or other vegetation has the potential to directly or indirectly effect a threatened species, population, ecological community or their habitats.
- (k) Whether the tree species or other vegetation is of regional significance (ie identified regionally as a rare species due to heavily cleared or under represented vegetation community);
- (l) Whether the tree or other vegetation is of local significance and is considered relatively rare or has limited distribution or is a critical indigenous species;
- (m) Whether the removal of the tree(s) or other vegetation will pose any adverse impact upon the amenity or scenic environmental quality of the locality;
- (n) Whether the removal of the tree(s) or other vegetation is necessary as part of any bushfire hazard reduction work under the *Rural Fires Act 1997*;
- (o) Whether the removal of the tree(s) is a habitat tree (e.g. nesting tree or roosting tree) for any threatened fauna species;
- (p) Whether the removal of the tree(s) will adversely affect any riparian corridor and / or wildlife corridor;
- (q) Whether the removal of the tree(s) will cause any potential adverse slope instability or geotechnical impacts upon the site or the locality;
- (r) Whether the removal of the tree or other vegetation is part of an endangered population, endangered ecological community or is critical habitat for any threatened fauna species;
- (s) Whether the applicant has provided a Medical Certificate from a Medical Practitioner which proves the pruning or removal of a tree is necessary for maintaining quality of life.
- (t) Whether any previous condition of development consent required the retention of the tree(s).

9.7 Criteria for Refusal of Applications

1. Should an application be received based on one or a combination of any of the following reasons, these reasons will likely be given little weight in determining the application:
 - (a) Removal or significant pruning of tree(s) or other vegetation to improve views.
 - (b) Removal or significant pruning of tree(s) or other vegetation to minimise leaves falling within a swimming pool.
 - (c) Removal or pruning of a tree, due to the shedding of leaves, bark, fruit flowers, sticks etc, which is part of the normal life cycle of the tree.
 - (d) Other reasons, as determined by the assessment of the criteria contained in clause 9.5.

9.8 Approval Validity Period

1. A Tree Management Permit will be valid for a period of up to 2 years from the approval date /date of issue of the determination letter.

9.9 Pruning of Overhanging Trees

1. The owner of a neighbouring property may lodge a Tree Management Permit Application to prune a neighbour's tree, if it overhangs their property. Approval will be dependant on the ability of the tree to be pruned in accordance with *AS 4373 - 2007 "Pruning of Amenity Trees"* and any root pruning will be subject to maintaining the tree's stability. All approved pruning shall be restricted to the applicant's side of the common property boundary only without the tree owner's consent.
2. Property owners are encouraged to co-operate where a branch overhangs a property boundary. However, legal advice may need to be sought regarding any liability arising from damage caused by the subject tree(s).
3. Any dispute arising from the removal of a tree or damage from a tree may be resolved through the Community Justice Centre or private civil action. Council has no direct legal role in dealing with neighbourhood disputes regarding trees or other vegetation on property boundaries or damage caused by trees or other vegetation.

9.10 Legal Recourse for Tree Disputes Arising Between Neighbours

1. It is not the role of Council to intervene in neighbourhood disputes regarding trees. Conflicts may be resolved through the Community Justice Centre. If this fails the *Trees (Disputes Between Neighbours) Act 2006* allows a tree dispute to be heard by the NSW Land and Environment Court.

9.11 Australian Standards for Pruning of Amenity Trees

1. Council considers the Australian Standard *AS4373 -2007 Pruning of Amenity Trees (AS4373 - 2007)* to be the minimum criteria for tree management practices.
2. Public safety is the highest priority. If a tree cannot be safely managed using the accepted work practices in *AS4373 - 2007*, then the tree will be able to be removed and generally replaced with an appropriate species. Replacement trees should be local indigenous species and planted in a location that is acceptable to Council.

9.12 Concurrent Lodgement of a Development Application and a Tree Management Permit Application

1. Any concurrently lodged Tree Management Permit Application will not be determined until such time as the Development Application for a particular development is determined, where the Development Application determination may influence the decision as to whether the existing tree should be retained.

10 TREES AND OTHER VEGETATION REQUIRING THE LODGEMENT OF A DEVELOPMENT APPLICATION

10.1 General

1. The lodgement of a Development Application is required from Council for the ringbarking, cutting down, topping, lopping, pruning, removal, injure or wilful destruction of tree(s) or other vegetation in the following situations:
 - (a) **Eleven (11) or more trees** are proposed to be ringbarked, cut down, topped, lopped, pruned or removed upon the majority of lands, excluding lands zoned either: E2 Environmental Conservation, E3 Environmental Management or E4 Environmental Living..
 - (b) Six (6) or more tree(s) and / or the clearing of other understorey vegetation upon land zoned either: E2 Environmental Conservation, E3 Environmental Management, or E4 Environmental Living.
 - (c) 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 Part 1 of Wollongong Local Environmental Plan 2009.
 - (d) Any tree and /or other vegetation which is contained upon any land identified within a Heritage Conservation Area, in Schedule 5 Part 2 of Wollongong Local Environmental Plan 2009.
 - (e) Tree(s) and/or other vegetation on land affected by State Environmental Planning Policy No. 14 -Coastal Wetlands (SEPP 14).
 - (f) Any tree or vegetation which is contained upon any land containing an endangered ecological community or threatened flora species under the Threatened Species Conservation Act 1995..

Note¹: Under SEPP 14, the consent authority (Council) may only grant development consent to the destruction or removal of native trees or other native vegetation within a coastal wetland, in cases where the Director – General has granted written concurrence to the application.

Note²: The clearing, removal or destruction of any threatened flora species, endangered ecological community or critical habitat for a threatened flora or fauna species or ecological community as listed under *Threatened Species Conservation Act 1995* requires the consent from the Director – General of the NSW Department of Environment and Climate Change or delegate.

10.2 Development Application - Lodgement Requirements

- 1, The following information is required to be submitted with any or Development Application:
 - (a) Application form, completed and signed by all relevant property owners¹.

- (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, lopping, topping 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. Any property owner who receives a pension rate rebate from Council will be exempt from having to pay the application fee as per Council's adopted Fees and Charges.

Note¹: All property owners on land to which the subject tree(s) is situated 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).

- 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.

10.3 Additional Information Requirements

- 1. 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
 - (d) Geotechnical or structural engineers reports;
 - (e) Plumbers report;
 - (f) Details of proposed root barriers; and/or
 - (g) 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).
- 2. 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.
- 3. In all cases, all costs associated with providing any required additional information shall be borne by the Applicant.

10.4 Arborists Reports

- 1. An Arborist Report will be required in any of the following circumstances:
 - (a) Any proposed removal or pruning of trees or other vegetation upon land containing an item of environmental heritage or within a heritage conservation area; or

- (b) Any proposed removal or pruning of trees or vegetation which constitutes a threatened flora species, endangered population, endangered ecological community under the *Threatened Species Conservation Act 1995* or the *Environment Protection and Biodiversity Conservation Act 1999*; or
 - (c) Any proposed removal or pruning of trees or other vegetation on land shown as riparian land on the Riparian Land Map or within the Illawarra Escarpment area as shown on the Illawarra Escarpment Map contained in *Wollongong Local Environmental Plan 2009*; or
 - (d) Any request for a review of determination made in accordance with section 82A of the *Environmental Planning and Assessment Act 1979*; or
 - (e) Where in the opinion of Council, the proposed works may result in adverse impacts upon the scenic environmental quality or amenity of the locality; or
 - (f) Where a Development Application involves more than five (5) trees and/or other vegetation.
2. 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.
3. The Arborist Report shall include the following details:
- (a) The genus and species of each tree;
 - (b) Health, amenity value and S.U.L.E. (Safe Useful Life Expectancy) rating of each tree;
 - (c) Any pests or diseases that may be present on each tree;
 - (d) Any site changes and surrounding structures which may affect the health or vitality of the tree;
 - (e) Impact of the development on each tree;
 - (f) Impact of retaining trees on the proposed development;
 - (g) The Tree Protection Zone (TPZ) required for each tree proposed to be retained;
 - (h) Any root barriers necessary, type and their location;
 - (i) Any branch or root pruning which may be required for the trees;
 - (j) Any supporting evidence such as photographs, if relevant; and
 - (k) Recommendation on the preferred option and an explanation why this option is preferred.

10.5 Processing and Assessment of Development Applications

1. A Development Application will be assessed in accordance with the requirements of the *Environmental Planning and Assessment Act 1979*, in particular the "matters for consideration" as listed in section 79C of this Act.
2. Any Development Application lodged for the proposed clearing or removal of trees or other vegetation may also require an appropriate assessment to be carried out under Section 5A of the *Environmental Planning and Assessment Act 1979*, Part 6 of the *Threatened Species Conservation Act 1995* and the *Environment Protection and Biodiversity Conservation Act 1999* to determine as to whether the proposed clearing or removal has the potential to directly or indirectly effect a threatened species, population, endangered ecological community or their habitat. Therefore, it is recommended that applicants liaise with Council's

Environment Strategy & Planning Division to determine whether the subject site is within the locality of any recorded threatened species, population or endangered ecological community.

10.6 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 a minimum 70% of the area within the dripline needs to be left undisturbed.
3. Where Council has issued a Development Consent for a structure or building, any tree with its base within 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 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, services, level changes or hard surfaces in the zone.
5. Certification from a qualified arborist may also be required at the following stages of the development:
 - (a) Before commencement of construction;
 - (b) At mid point of the construction phase; and
 - (c) At completion of the construction phase.

10.7 Approval Validity Period

1. A Development Consent will be limited to the length of the consent issued. The maximum consent period is five (5) years.

11 RIGHTS OF REVIEW/APPEAL AGAINST COUNCIL'S DECISION

1. An applicant who is dissatisfied with Council's decision has the following rights of review / appeal:
 - (i) Lodgement of a review of determination application with Council within 12 months from the original date of determination. Any review of determination application must be supported by relevant documentation including any reasons as to why the application should be approved. The review of determination application must be accompanied by the prescribed fee as per Council's adopted fees and charges.

Any review of determination application will be reviewed by another Council assessment officer and may be determined either under delegated authority or may be reported to Council for its determination.

- (ii) Lodgement of an appeal to the NSW Land and Environment Court.

12 LEGAL RECOURSE FOR TREE DISPUTES ARISING BETWEEN NEIGHBOURS

1. It is not the role of Council to intervene in neighbourhood disputes regarding trees. Conflicts may be resolved through the Community Justice Centre. If this fails the *Trees (Disputes Between Neighbours) Act 2006* allows a tree dispute to be heard by the NSW Land and Environment Court.

13 COMPLIANCE AND MONITORING

1. Any Tree Management Permit or Development Consent may be randomly monitored by Council for compliance. Any works carried out without approval or not in accordance with an approval will be dealt with in accordance with relevant legislation. This may result in a Penalty Infringement Notice or legal action through either the Local Court or the Land and Environment Court against all parties involved in any breach of Wollongong Local Environmental Plan 2009 or conditions of approval.

14 TREES AND OTHER VEGETATION ON COUNCIL OWNED OR MANAGED PROPERTY

14.1 Requests for Pruning or Removal of Trees or Other Vegetation within Public Reserves, Road Reserves and Other Council Managed Property

1. Correspondence may be sent by adjoining property owners or occupants requesting that Council carry out the pruning or removal of a tree(s) or other vegetation within any public reserve, road reserve (street trees) or other property owned or managed by Council. Alternatively, verbal requests may also be made directly with Council's Customer Service Centre who will promptly lodge this request through Council's Customer Action Request database.
2. All requests for pruning or removal of trees or other vegetation within Council owned or managed land will be forwarded to Council's City Works Division for appropriate inspection and assessment.
3. Council's City Works Division will generally carry out any routine inspection of the subject tree(s) or other vegetation within 10 working days from the date of receipt of the request.
4. The assessment as to whether approval will be granted for the pruning or removal of the subject tree(s) or other vegetation will be based upon the assessment criteria contained in clause 14.2.
5. Should the on-site inspection / assessment conclude that non-urgent pruning or removal work is necessary, this work will be scheduled into the normal works program for the relevant tree management team in the City Works Division. Where urgent pruning or removal work is necessary, it will be carried out as soon as practicable.
6. In emergency situations, an inspection of the subject tree(s) or other vegetation will be carried out by Council's City Works Division as soon as practicable. Where, in the opinion of Council, the inspection reveals that the tree or other vegetation pose an unacceptable hazard risk to personal safety or property, Council may undertake appropriate tree pruning works or tree removal immediately.

14.2 Assessment Criteria used to assess requests for pruning or removal of Trees or Other Vegetation on Council Owned or Managed Land

1. Council will take into consideration any one or more of the following criteria when assessing a request for pruning or removal of a tree or other vegetation situated upon Council owned or managed land (eg public reserves, drainage reserves, street trees or other land):
 - (a) Whole of life tree management – the Safe Useful Life Expectancy (SULE) of the tree and whether the tree is dead or dying;
 - (b) Whether the tree is causing structural damage to a building, structure, water main or sewer. Note: A report may be required by a suitably qualified and experienced consultant where the damage is not visually evident;
 - (c) Whether the tree is severely stressed, diseased or is suffering insect damage and whether the health of the tree can be improved;
 - (d) Whether the growth habit or mature size of a trees is undesirable in a given situation (e.g. powerlines, root interference with service, infrastructure or building);
 - (e) Whether the tree is too large for its location or is interfering or likely to interfere with public infrastructure or private utilities;
 - (f) Whether the tree shows poor form and shape and / or vigour typical to the species;
 - (g) Whether the branches of the tree are dead or diseased;
 - (h) Where the branches are dangerous and overhanging a building or an adjoining property. In this case, the assessing Council officer will determine the amount of pruning permitted to address any public nuisance issue;
 - (i) Whether the tree species is appropriate in terms of its proximity to dwellings, adjoining dwellings or other buildings;
 - (j) Whether the tree species or other vegetation is of regional significance (ie identified regionally as a rare species due to heavily cleared or under represented vegetation community);
 - (k) Whether the tree or other vegetation is of local significance and is considered relatively rare or has limited distribution or is a critical indigenous species;
 - (l) Whether the removal of the tree(s) or other vegetation will pose any adverse impact upon the amenity or scenic environmental quality of the locality;
 - (m) Whether the removal of the tree(s) or other vegetation is necessary as part of any bushfire hazard reduction work under the *Rural Fires Act 1997*;
 - (n) Whether the removal of the tree(s) is a habitat tree (e.g. nesting tree or roosting tree) for any threatened fauna species;
 - (o) Whether the removal of the tree(s) will adversely affect any riparian corridor and / or wildlife corridor;
 - (p) Whether the removal of the tree(s) will cause any potential adverse slope instability or geotechnical impacts upon the site or the locality;

- (q) Whether the removal of the tree or other vegetation is part of an endangered population, endangered ecological community or is critical habitat for any threatened fauna species;
- (r) Whether the applicant has provided a Medical Certificate from a Medical Practitioner which proves the pruning or removal of a tree is necessary for maintaining quality of life.
- (s) Whether any previous condition of development consent required the retention of the tree(s).

14.3 Criteria for Refusal of Requests

1. Should a request for pruning or removal of a tree or other vegetation be received based on one or a combination of any of the following reasons, these reasons will likely be given little weight in determining the request:
 - (a) Removal or significant pruning of tree(s) or other vegetation to improve views.
 - (b) Removal or significant pruning of tree(s) or other vegetation to minimise leaves falling within a swimming pool.
 - (c) Removal or pruning of a tree, due to the shedding of leaves, bark, fruit flowers, sticks etc, which is part of the normal life cycle of the tree.
 - (d) Removal or significant pruning of tree(s) or other vegetation situated within land owned or managed by Council to allow for the parking or storage of a car, truck, mini-van, bus, boat, caravan or other registered / unregistered vehicle and the like upon the adjoining property or the land owned or managed by Council.
 - (e) Other reasons as determined by the assessment criteria contained in clause 14.2.
2. A formal refusal notice will generally be issued to the applicant within 10 working days, after the inspection of the subject tree(s) or other vegetation. The refusal notice will outline the reasons for refusal which will be based on the assessment criteria contained in clauses 14.2 and 14.3.

Appendix: 1 EXEMPT TREE SPECIES LIST

Common Name	Botanical Name
African Olive	<i>Olea Africana</i>
Camphorlaurel	<i>Cinnamomum camphora</i>
Canary Island Date Palm	<i>Phoenix canariensis</i>
Cocos or Queen Palm	<i>Syagrus romanzoffianum</i>
Coral Tree	<i>Erythrina x sykesii</i>
Golden Cypress Pine	<i>Cuppressus macrocarpa 'Brunniana'</i>
Norfolk Island Hibiscus / Itchy Pod Tree	<i>Laganuria pattersonii</i>
Kaffir Plum	<i>Harpephyllum caffrum</i>
Liquidamber	<i>Liquidamber styraciflua</i>
Oleander	<i>Nerium oleander</i>
Poplars	<i>Populus species</i>
Privet	<i>Ligustrum species</i>
Radiata Pine	<i>Pinus radiata</i>
Rubber Trees	<i>Ficus elastica</i>
Silky Oak	<i>Grevillea robusta</i>
Umbrella Tree	<i>Schefflera species</i>
Willows	<i>Salix species</i>
Black Locust	<i>Robina psuedoacacia</i>
Cotoneaster	<i>Cotoneaster spp.</i>
Pepper Tree	<i>Schius areira</i>
Alders	<i>Alnus spp.</i>
Box elder	<i>Acer negundo</i>
Fruit Trees	

Note¹: A maximum of 5 trees only may be removed at any one time under this exemption clause, to avoid adverse affects of possible land clearing activities.

Note²: The exemption only applies to the above tree species where the height of the tree is less than 5 metres from the ground level to the top of the crown of the tree. Where an Exempt Tree is 5 metres or more in height, an application will need to be lodged with Council.

Note³: The exemption does not apply to any of the above tree species where the tree is within the curtilage of an item of environmental heritage or upon land within a Heritage Conservation Area. In such cases, the lodgement of a Development Application is required for the pruning or removal of any such tree.