



A4.11 Preservation of Trees and Other Vegetation

A4.11.1 Introduction

Clause 5.9 of WLEP 2010 provides controls for the preservation of trees and other vegetation throughout the Shire, and explains that the clause “applies to species or kinds of trees or other vegetation that are prescribed for the purposes of this clause by a development control plan made by the Council. The DCP may also prescribe the trees and other vegetation to which the clause applies by reference to species, size, location or other manner. This Section of the Rural Lands DCP provides those controls.

A4.11.2 Objectives

The objectives of these provisions are to:

- (a) preserve the amenity, biodiversity and ecology of the area through the preservation of trees and other vegetation as described in Clause 5.9 of WLEP 2010.
- (b) clarify the assessment criteria under which applications for the removal of trees or other vegetation will be determined.
- (c) clarify the meaning to terms used in this Section of the DCP.

A4.11.3 Controls

Under Clause 5.9(3) of WLEP 2010, a person must not ringbark, cut down, top, lop, remove, injure, or wilfully destroy any tree or other vegetation without the authority conferred by:

- (a) development consent, or
- (b) a permit granted by Council

A4.11.4 Exemptions from these controls

Exemptions to these controls are listed in Clause 5.9 of WLEP 2010. Council has also identified a number of additional exemptions. For completeness, all exemptions, including those in Clause 5.9, are listed below.

This Section of the DCP does not apply to vegetation management carried out for the following purposes:

- (a) emergency bushfire hazard reduction within the meaning of the Rural Fires Act 1997,
- (b) compliance with a Bushfire Hazard Reduction Certificate issued within the meaning of the Rural Fires Act 1997, in accordance with the Bushfire Environmental Assessment Code or a Section 66 Notice issued within the meaning of the Rural Fires Act 1997,



- (c) to maintain an approved bushfire hazard asset protection zone within the meaning of the Planning for Bush Fire Protection guideline,
- (d) emergency fire fighting, emergency access or emergency works undertaken by a public authority within the meaning of the State Emergency Rescue and Management Act,
- (e) work that Council is satisfied is necessary to protect a person or property from imminent danger attributable to vegetation,
- (f) work ordinarily incidental to the use, operation and management of a lawful development, the maintenance of garden and landscaped areas, excepting work involving the removal or lopping of a tree, as defined,
- (g) action required or authorised to be done by or under the Electricity Supply Act 1995, the Roads Act 1993 or the Surveying Act 2002,
- (h) clearing of native vegetation that is authorised by a development consent or property vegetation plan under to the Native Vegetation Act 2003, or that is otherwise permitted under division 2 or 3 of part 3 of that Act,
- (i) 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,
- (j) compliance with any development approved pursuant to Part 5 of the Environmental Planning and Assessment Act 1979,
- (k) to protect or maintain existing public utilities (associated with the provision of power lines, transmission of electricity, water, gas, electronic communication or the like),
- (l) to destroy or remove declared noxious weeds and environmental weeds, a current list of which may be obtained from Council,
- (m) to transplant field grown trees propagated for sale as advanced specimens growing on land occupied by an approved plant nursery,
- (n) works on the same land parcel, within three (3) metres of the foundation walls of an approved building or in ground pool,
- (o) works on trees or other vegetation within a State Forest or land reserved from sale as a timber reserve under the Forestry Act 1916,
- (p) a tree that Council is satisfied is dying or dead and is not required as the habitat of native fauna,
- (q) a tree which is identified for removal in a land use approval under the Environmental Planning Assessment Act 1979.

A4.11.5 Assessment Considerations

Council recognises that trees are the largest and most conspicuous living elements in open space and that, as components of the natural environment, they are at least as important as roads, sewers and other utilities to the built



environment. Council therefore accepts the legitimacy of trees as a potential constraint upon development just as any other natural or constructed feature.

In assessing applications for development consent or a permit to remove trees or other vegetation Council's considerations will include, but not be limited to, the following:-

- (a) Whether replacement planting is proposed. All Council approvals to remove trees or other vegetation shall contain appropriate requirements for offset planting to ensure no net loss of vegetation.
- (b) Whether the community interest has been taken into account. Priority for preservation will be given to trees which have significant amenity or aesthetic value, are noteworthy in the land or streetscape or from a botanical or heritage viewpoint.
- (c) Implications for biodiversity. It will be essential to determine the conservation status of the tree/vegetation. Priority will be given to trees which are rare or endangered, are ecologically significant in the local or regional context, form part of a naturally occurring remnant, are self-sown from locally indigenous stock or provide habitat for wildlife. It may be necessary for a flora and fauna survey and assessment of ecological values to be carried out. If a survey and assessment have been done they should be reviewed to ensure that they have been adequately completed under appropriate seasonal conditions.
- (d) Whether the enjoyment of neighbouring land will be detrimentally affected. If so, notice may have to be given to persons owning or occupying adjoining land.
- (e) Whether the proprietary interest of the applicant has been duly respected. If the proposed work is ordinarily incidental to the use, operation and management of a lawful development or the design and maintenance of a garden it may not be reasonable for such work to be refused approval.
- (f) Whether there are issues of personal or public safety. There may be potential hazards to people or property in the context of:-
- (g) The structural soundness of a particular tree,
- (h) Genetic or other characteristics and history of a particular species or specimen,
- (i) Siting issues such as ground conditions, building proximity, etc.,
- (j) Poor health, such as allergies, where specific evidence is provided by an expert in the relevant medical field and a direct causal link between the ailment and the species is reasonably established,
- (k) Existing (or potential for) vehicular or pedestrian traffic hazard in proximity to a roadway, intersection or driveway, where pruning would be an insufficient remedy. A qualified arborist will be required to determine if there is or may be a danger to life and/or property.



- (l) Whether a need is demonstrated for solar access to habitable rooms in buildings, solar appliances, clothes drying and outdoor living areas.
- (m) Whether there are more practical or desirable alternatives. Pruning may be a better solution or the relocation or redesign of services, fences etc.
- (n) Whether the proposed work should be carried out and/or supervised by a suitably qualified person.
- (o) Whether the application should more properly be part of a wider development and/or building works. If so, the removal of trees or other vegetation should be included and dealt with as part of a land use application for the wider development.
- (p) Whether there is a justified need. Provided that no significant hazard or other safety issues also apply the following shall not generally be considered as valid reasons to remove a tree:-
 - (i) The shedding of leaves, bark, sticks, fruit or exudate into gutters, downpipes, pools, on to lawns etc.,
 - (ii) Bird droppings on cars,
 - (iii) To improve street lighting of private property,
 - (iv) To enhance private views,
 - (v) To reduce minor shading,
 - (vi) Minor lifting of driveways and paths by tree roots,
 - (vii) To erect a fence,
 - (viii) Bushfire hazard control which has not been approved by Rural or NSW Fire Brigades,
 - (ix) Potential damage to sewer mains unless supported by written expert advice and only where reasonable alternatives are not feasible (e.g. relocation or encasement of main),
 - (x) Potential wind damage to property. (Note: Trees absorb wind energy as a group during storms and help reduce the impact on houses and other trees and structures. The more trees are removed, the more wind damage is likely to exposed buildings and trees in isolation),
 - (xi) Unsubstantiated fears of large trees.
- (q) Whether adverse impacts of the proposal have been adequately identified and will be satisfactorily mitigated. Measures will need to address the following matters where appropriate:-
- (r) Disposal of vegetation. The applicant must undertake not to burn any trees or vegetation removed except in accordance with an approval issued by Council under clause 6G(2) of the Protection of the Environment Operations (Clean Air) Regulation 2002.



- (s) Soil erosion or siltation.
- (t) Protection of retained trees and vegetation.
- (u) Protection of affected wildlife.
- (v) Ongoing management of offset plantings. A monetary bond may be required for this.
- (w) Weed invasion.

A4.11.6 Penalties

In the event that a person contravenes or causes or permits to be contravened these controls, Council will consider issuing penalty notices or taking legal action against that person in accordance with the relevant provisions of the Environmental Planning and Assessment Act 1979 and the Environmental Planning and Assessment Regulation 2000.

A4.11.7 Application Form for the Removal of Trees or Other Vegetation

An Application Form may be obtained from Council's website, or from the Customer Services Counter.

A4.11.8 Right of Appeal

An applicant may appeal to Council against a decision made with regard to the removal of a tree or other vegetation. An appeal should be made in writing stating reasons for the objecting and including supporting documentation from a suitably qualified professional. An appeal may also be made to the Land and Environment Court.

A4.11.9 Limitation of Consent

A consent given to remove a tree or other vegetation remains valid for a period of two (2) years from the date on which the consent is given and extends only to work which the applicant is legally entitled to carry out. Such work must be carried out with due regard to all legal rights of other parties.

A4.11.10 Terms used in this Section

- “tree”** : means a perennial plant with at least one self supporting stem which,
- has a height of more than 6 (six) metres
 - has an outside circumference of more than 0.5m at a height of 1 metre above the ground, or,
 - has an outside circumference of more than 0.5m measure at ground level where the tree has been cut down or removed, or
 - has a branch and foliage crown spread of more than 4 metres;



“other vegetation” : means any plant life not defined by this plan as a tree and includes any sapling, shrub, scrub, understorey plants, groundcover (being any type of herbaceous vegetation) and plants occurring in a wetland.

Other vegetation to which this plan applies is;

- › where it provides habitat or likely habitat for threatened species, populations and endangered ecological communities as defined within the Threatened Species Conservation Act,
- › where it is in the riparian zone associated with a creek, river, watercourse wetland, stream, or other aquatic habitat as delineated in the Natural Resources Sensitivity Maps of the LEP,
- › where it is within a wildlife corridor as delineated in the Natural Resources Sensitivity Maps of the LEP,
- › where the land is koala habitat, or
- › where it is on land owned by Council or under its care, control or management, including road reserves.

“amenity”: means that which gives pleasure by being aesthetically attractive, affording comfort, sustaining life and health or creating a sense of well being. This plan seeks to preserve trees and vegetation for their social, recreational, environmental, ecological, scientific and economic benefits. These benefits include:

- › the conservation of scenic and heritage landscapes,
- › improvement in air and water quality,
- › moderation of air temperature,
- › reduction in atmospheric pollution,
- › mitigation of soil erosion and stormwater runoff,
- › improvement in soil permeability,
- › stream bank stabilisation,
- › absorption of wind energy,
- › enhancement of biodiversity and habitat for wildlife
- › sequestration of atmospheric carbon and
- › energy conservation.

“biodiversity”: means the variety of all life forms on earth; it is the different plants, animals and micro-organisms; their genes; and the terrestrial, marine and freshwater ecosystems of which they are a part. Biodiversity exists at three main levels:

- › *genetic diversity*—the variety of genetic information that is contained in all living things and that varies within and between the populations of organisms making up single species or wider groups
- › *species diversity*—the variety of species on earth
- › *ecosystem diversity*—the variety of the earth’s habitats, ecosystems and ecological processes.

“remove”, “removal” and “cutting down”: means to dismantle a tree, for example by chainsaw, or to separate the tree from the ground where it is growing or dislodging it with earth moving equipment in order to kill the tree so that the tree, including its branches, foliage, trunk, stump and root system will not regrow. This includes the poisoning of the stump and/or roots and/or taking away, or grinding or burning out of its remains to prevent regrowth.



“top” or topping : means cutting away part or all of a tree’s foliage crown leaving a trunk and stubbed main branches to reduce its height and spread and is an antiquated practice which damages a tree, reducing strength and vigour and promoting its premature decline.

“destroy”: means any immediate or ongoing process or activity leading to the death of a tree.

“height”: means the distance measured vertically between the horizontal plane at the lowest point at the base of a tree which is immediately above ground and the horizontal plane immediately above the uppermost point of a tree.

“injury” and “wilful destruction” : means damage to a tree and includes:

- lopping and topping;
- poisoning, including applying herbicides and other plant toxic chemicals to a tree or spilling (including washing off or directing water contaminated by) oil, petroleum, paint, cement, mortar and the like onto the root zone;
- cutting, tearing, snapping and breaking of branches and roots that is not carried out in accordance with accepted arboricultural practices or is done for invalid reasons such as vandalism;
- ringbarking, scarring the bark when operating machinery, fixing objects (eg signs) by nails, staples or wire, using tree climbing spikes in healthy trees marked for retention (except for access to an injured tree worker) or fastening materials that circle and significantly restrict the normal vascular function of the trunk or branches or inflicting a blaze on a tree as a marker point;
- damaging a tree’s root zone by compaction or excavation, stripping of topsoils, asphyxiation by burial(including unauthorised filling or stockpiling of materials)or the alteration of ground level or water table which causes damage to the tree or any part of the tree;
- “underscrubbing”, unless carried out by hand tools,

“habitat of native fauna”: means any tree naturally occurring (being native vegetation or remnant native vegetation) which has developed hollows in the trunk or limbs and which is suitable for nesting birds, arboreal marsupials (such as possums) or native placental mammals(such as bats) or which is supporting the growth of locally indigenous or endemic epiphytic plants (such as orchids).

“dead”: means a tree that is no longer capable of performing any of the following processes:

- Photosynthesis via its foliage crown (as indicated by the presence of moist, green or other coloured leaves);
- Osmosis (the ability of the roots system to take up water);
- Turgidity (the ability of the plant to hold moisture in its cells);



- ▶ Epicormic shoots (the production of new shoots as a response to stress, generated from buds under the bark or from a lignotuber – at ground or underground stem);

“dying”: means a tree that is exhibiting any of the following symptoms

- ▶ Permanent leaf loss in both deciduous and evergreen plants;
- ▶ Permanent wilting (the loss of turgidity which is marked by drying out of stems, leaves and roots):
- ▶ Shedding of the epidermis (bark dries out and peels off to the beginning of the sapwood).

“lop” or “lopping”: means cutting between branch unions or at internodes on a young tree, with the final cut leaving a stub. This does not include “lopping” where this is solely for the purpose of feeding stock in an officially drought declared area, provided the vegetation’s continued health is not affected.

“Offset”: means an action that ensures that there is a net environmental improvement as a result of development. Offsets may be used in those circumstances where development results in an unavoidable impact to the integrity of natural assets. Offsets refer to the means of compensation for the loss of natural values that results from development.

“no net loss”: means no overall loss in the total extent, quality, ecological integrity and security of the trees, other vegetation and biodiversity values of the area.

“risk to human life or property”: means imminent danger to human life or significant property