



**Bankstown  
Development  
Control  
Plan 2005**



**PART E2**

**TREE  
PRESERVATION  
ORDER**



**PART E2–TREE PRESERVATION ORDER**

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## **SECTION 1–PRELIMINARY**

### **Introduction**

Trees are an essential part of the urban and natural environment. Council has a vision for a clean, green, healthy, and bio-diverse natural environment. A canopy of trees that shelter and beautify the City of Bankstown and its streetscape is an integral part of this vision.

Part E2 of Bankstown Development Control Plan 2005 contains the standards of the Tree Preservation Order to help retain and protect trees in the City of Bankstown.

Part E2 generally applies to trees on all land in the City of Bankstown but excludes:

- (a) trees in a State forest or on land reserved as a timber reserve within the meaning of the Forestry Act, 1916; and
- (b) trees required to be lopped in accordance with Regulation 38 or 39 of the Overhead Line Construction and Maintenance Regulations, 1962.

### **Objectives**

The objectives of Part E2 of this DCP are:

- (a) to preserve the existing amenity served by trees; and
- (b) to allow the removal or pruning of trees in accordance with this DCP.

### How to use this DCP

Bankstown Development Control Plan 2005 is a multi-layered document and it is important to read all parts of this DCP. Figure 1 outlines the structure of this DCP.

**The objectives and development controls of any one part of this DCP cannot be read in isolation. A development application must refer to all relevant parts of this DCP.**

Part A contains an index of the parts and sections in this DCP for easy reference, and guidelines on how to use this DCP.

### Relationship of this DCP to other planning instruments

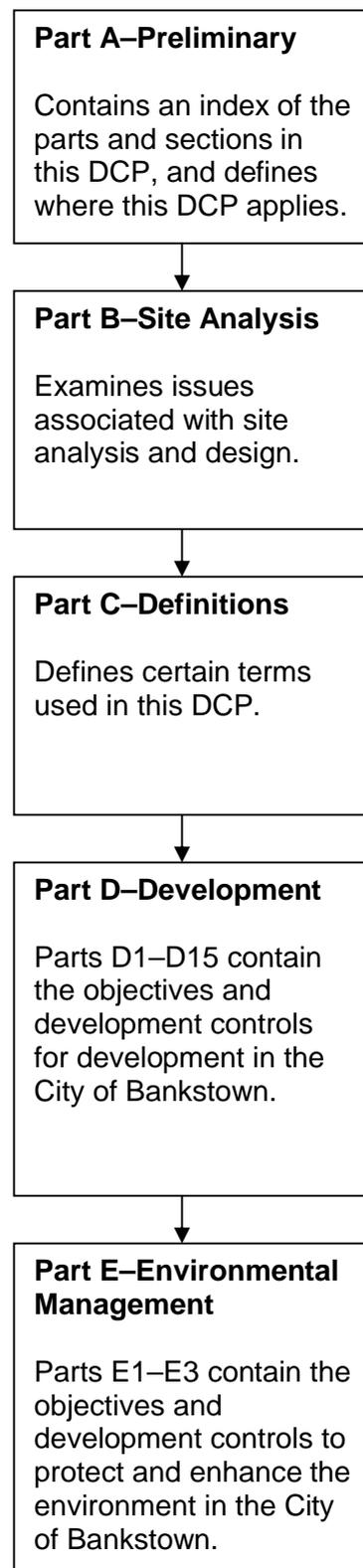
Council will assess a development application according to:

- (a) Section 79C of the Environmental Planning and Assessment Act 1979;
- (b) State Environmental Planning Policies;
- (c) Bankstown Local Environmental Plan 2001;
- (d) Bankstown Development Control Plan 2005;
- (e) Section 94A Development Contributions Plan;
- (f) Bankstown Development Engineering Standards Policy; and
- (g) any policies or studies adopted or recognised by Council that are relevant to the development application.

### Lodging a development application

Refer to Council's document "Development Assessment: A Guide" to find out more about pre-lodgement meetings and preparing a development application.

**Figure 1: Structure of this DCP**



## **SECTION 2–ASSESSMENT OF TREES**

### **Introduction**

This section provides the development controls that a development must incorporate to enhance the quality of trees and Bankstown's natural environment.

### **Development controls**

The development controls to achieve the objectives are:

### **Enforcement**

- 2.1** Part E2 of this DCP prohibits the ring-barking, cutting down, topping, lopping, removing, injuring, or the wilful destruction of any tree except with the consent of Council, or if exempt under Part E2 of this DCP.
- 2.2** Any person who contravenes, or permits any standards of Part E2 of this DCP to be contravened will be guilty of an offence.
- 2.3** Part E2 of this DCP does not apply where it can be proven to Council that a tree is dead, dying, has become dangerous, or if its removal is necessary to protect human life or property from the imminent danger of a bushfire burning in the vicinity.

### **Matters for consideration**

- 2.4** Council must consider (but not be limited to) the following matters when determining an application under Part E2 of this DCP:
- (a) the existing and likely future amenity of the area by considering if the tree is:
    - (i) significant as a single specimen than as part of a group of trees;
    - (ii) of historic or cultural significance;
    - (iii) registered on Council's register of significant trees;
    - (iv) prominent due to its height, size, position, or age;
    - (v) endemic, rare, or endangered;
    - (vi) provides a significant visual screen;

- (vii) part of an important wildlife habitat;
- (b) the amenity of the occupants of a property by considering such things as solar access and the health of the occupants;
- (c) the health and safety of the tree in accordance with the guidelines in Appendix 1;
- (d) the physical characteristics of the tree. This includes the current and potential height, branch spread, trunk diameter, the growing environment, life expectancy, and safety of the tree; and
- (e) the damage or potential damage the tree may cause in accordance with the guidelines in Appendix 2.

### **Exemptions**

**2.5** Council consent is not required to remove a tree where the trunk of the tree is located within 3 metres of an existing dwelling, as measured from the main trunk of the tree to an external enclosing wall of the existing dwelling.

**2.6** Council consent is not required for the removal of deadwood and/or pruning of up to 10% of a tree's foliage, within a period of not less than 12 months since any prior pruning. This is subject to the pruning being performed in accordance with Australian Standard 4373–Pruning of Amenity Trees.

**2.7** Council consent is not required to remove any of the following trees that wither frequently, self seed, have extensive root systems, or will adversely impact upon any areas of remnant vegetation that Council wishes to protect:

- (a) *Ligustrum lucidum* (Broad leaf privet);
- (b) *Ligustrum sinense* (Narrow leaf privet);
- (c) *Olea africana* (Wild Olive);
- (d) *Cinnamomum camphora* (Camphor laurel);
- (e) *Ficus elastica* (Rubber trees);
- (f) *Populus* spp (Poplars);
- (g) *Liquidambar styraciflua* (Liquidambar);
- (h) *Salix* species (Willows);
- (i) *Pinus* spp (*Pinus radiata*);
- (j) *Aracatum romanzoffianum* (Cocos palms);
- (k) *X-Cupressocyparis leylandii* & cultivars (Cypress pines); and

- (l) various domestic fruit trees (citrus, stone fruit etc).

**Special considerations for the removal of particular trees**

**2.8** After assessing an application made under Part E2 of this DCP and an inspection of the tree, Council will grant the removal of the following trees:

- (a) Eucalyptus nicholii–(Narrow Leafed Peppermint Gum); and
- (b) Corymbia citriodora–(Lemon Scented Gum–immature specimens only).

**Trees and new development**

**2.9** Council may permit the removal of trees on a site where it is demonstrated that an alternative design for a new development is not feasible to provide adequate clearance between the tree(s) and the proposed buildings and driveways. This will assist to protect the tree(s) from damage both during and after construction.

**2.10** For multi–unit residential development, an alternative design may include reducing the overall size of the building, or reducing the number of dwellings.

**State Environmental Planning Policy No 19 (SEPP 19)**

**2.11** Where a proposed development adjoins bushland zoned or reserved for open space, an assessment under State Environmental Planning Policy No 19 (SEPP 19) must be submitted with the application. Known areas affected by SEPP 19 are identified in Appendix 4.

The assessment must consider issues such as drainage, bushfire risk, and the need for buffer areas to separate the proposed development from adjoining bushland.

**2.12** Where trees are to be retained on a site, the applicant must implement a program to protect the trees. Requirements for the program are listed in Appendix 3, and the implementation of the program will be included as a condition of consent with any approval.

### **Consents**

**2.13** Council may grant consent to the removal of a tree subject to the following conditions:

- (a) no other action is taken; or
- (b) one or more suitable replacement trees are planted within a prescribed time; or
- (c) one or more suitable replacement trees are planted and growing for a period of time prior to the removal of the tree, and the replacement trees are not damaged during the removal of the tree; or
- (d) one or more suitable super advanced replacement trees are planted.

**2.14** Council may consent to the pruning of trees, subject to the pruning being performed in accordance with Australian Standard 4373–Pruning of Amenity Trees.

**2.15** The owner of a tree must consent to the lodging of an application to Council for the removal or pruning of a tree. If Council grants a permit, the owner of the tree must consent to the carrying out of the approved work.

### **Refusal**

**2.16** Council may refuse an application to remove a tree if it is not in accordance with Part E2 of this DCP.

**2.17** In refusing an application, Council may grant consent for other appropriate remedial activities such as root pruning, removal of deadwood, or other specified pruning.

### **Appeals**

**2.18** An applicant has a right of appeal if the applicant believes Council has erred in its judgement, its decision is harsh or unreasonable, or if new information has become available since Council's inspection. An appeal must be lodged within 12 months of the date of Council's decision.

**2.19** If Council refuses an application, the owner of the tree must justify the appeal with supporting evidence (such as engaging a suitably qualified arborist) before Council reconsiders its position.

**2.20** The Council officer reviewing the case will not be the same person who made the original inspection. This person will review all of the information in the appeal and make a site inspection. Following the site inspection, the reviewing officer will either approve or refuse the appeal.

**Penalties**

**2.21** Action can be taken against any person who commits an offence under this DCP in the Local Court or the Land and Environment Court. Under sections 126 and 127 of the Environmental Planning and Assessment Act, 1979, the penalty for an offence may exceed \$100,000.

## **APPENDICES**

### **Appendix 1–Guidelines to assess the health and safety of trees**

#### **Tree health**

Council will consider the removal of a tree for health reasons if:

- (a) the canopy is unreasonably sparse or discoloured;
- (b) there are a large numbers of dead branches;
- (c) the tree is suffering from a decline that is prolonged and irreversible; or
- (d) the tree has suffered a substantial loss of bark (50% or more) due to insect or animal activity, or some other form of natural damage.

#### **The safety of the tree**

It is not possible to say a tree is “absolutely safe”. It is presumed that a small and controlled level of risk is inherent in many human activities. The purpose of Part E2 of this DCP is not to guarantee the safety of a tree, but to allow for risk management. Risk management may frequently fall back to the owner of the tree in terms of tree maintenance rather than tree removal.

Council will consider the removal of a tree for safety reasons if:

- (a) the tree has grown beyond its normal form into a dangerous form and this dangerous form cannot be rectified by pruning;
- (b) there is a history of significant live branch failure that was not caused by inclement weather and the risk of further branch failure cannot be significantly reduced by pruning;
- (c) there are large dead tops on the tree;
- (d) there are structural cracks and splits on the branches or there are splits or cracks at the junction between two trunks and these problems cannot be rectified without a significant loss to the tree;
- (e) the tree has a large number of epicormic shoots that are poorly attached and pruning cannot rectify the problem;

- (f) there is a fruiting body of a pathogenic fungi apparent and there is a consecutive decline of the cambium around the wound (a canker) and the rate of decay is exceeding the rate of growth of new tissue;
- (g) the tree has moved in the ground, or there is an obvious lifted mound with exposed broken roots, or there are cracks between the tree and the dirt; or
- (h) many large branches or the trunk has been broken or damaged by a storm.

**Insects**

Insects are not a basis for the removal of a tree, but may serve as a warning to provide some form of remedial treatment. If insects cause debilitating side effects, this may result in approval being granted based on one or more of the above categories.

**Appendix 2–Guidelines to assess damage relating to trees**

**Is a tree causing significant property damage?**

Council may consider the removal of a tree if it is causing significant property damage. In this regard, it must be shown that:

- (a) the tree, its trunk, or its root system is causing damage to a structure and the damage cannot be controlled by measures such as the installation of a root barricade;
- (b) the branches are rubbing or pushing on a structure;
- (c) the tree is damaging other property, paths, paving, fences, retaining walls and the like, and root pruning or modification of the property cannot be used to stop further damage;
- (d) the roots of a tree have entered a drainage system, and the tree is located close to the drainage system that the growth in the diameter of the roots has actually broken the pipes and the pipes cannot be redirected or the roots pruned; or
- (e) a tree has taken advantage of a leaking pipe to enter the moisture and nutrient rich environment and the replacement and/or correct repair of the service will not alleviate the problem.

### **Appendix 3—Guidelines for trees on construction sites**

#### **The root zone**

Roots are responsible for the uptake of water and nutrients. Roots damaged during construction is the most frequent cause of tree decline and death in urban areas.

Wherever possible, the area under the foliage or a radius of half the height of the tree (whichever is greater) should be protected by a barrier. This area must not be used for pedestrian or vehicular activity, or for storing materials.

It is desirable to mulch this area with 50–100mm of well-composted leaf mulch, except immediately around the base of a tree. Any root severed should be cleanly cut. Roots greater than 50mm in diameter should be cleanly severed prior to using an excavator. Soil levels, wherever possible, should not be changed.

#### **The foliage**

The leaves are responsible for the production of food (trees feed on glucose produced through photosynthesis in the leaves and not the roots).

Healthy foliage is essential during time of stress on a tree. Removal of the foliage should be limited as much as possible and should be performed to Australian Standard 4373—Pruning of Amenity Trees. It is beneficial to remove all deadwood or diseased branches as early as possible, preferably before construction begins.

#### **The stem**

Extreme care should be exercised when using machinery on a site so as not to damage the trunk and stems of a tree.

**Appendix 4—Council owned/controlled reserves where SEPP 19 applies in respect of adjoining properties**

Airport Reserve	Maluga Reserve
Alder Park	Manahan Reserve
Alma Reserve	Manuka Reserve
Amaroo Reserve	Marion Reserve
Amberdale Reserve	McClellan Reserve
Ashford Reserve	Mirambeena Reserve
Bellevue Reserve	Monash Reserve
Birdwood Reserve	Montgomery Reserve
Boggabilla Reserve	Newland Reserve
Bromley Reserve	Norfolk Reserve
Carysfield Reserve	Padstow Park
Churchill Reserve	Picnic Point Reserve
Cox Reserve	Piper Reserve
Crest Reserve	Prince Reserve
Dalton Reserve	Richardson Reserve
Deepwater Park	Rose Park
Deverall Park	Ruse Park
Dilke Reserve	Salt Pan Creek Reserve
East Hills Park	Sefton Golf Course
Flood Reserve	Stuart Street Reserve
Gordon Parker Reserve	Stuart Reserve
Higgins Reserve	The River Reserve
Jensen Park	Thella Kenway Reserve
Kelso Beach Reserve	Thornton Reserve
Kelso Park	Tracey Reserve
Kentucky Reserve	Tucker Reserve
Lambeth Reserve	Vale of Ah Reserve
Lansdowne Reserve	Virginius Street Reserve
Little Salt Pan Creek	Walshaw Park
Lot 5 East Hills	Wattawa Reserve
Louisa Reserve	Whittle Avenue Reserve
Corner Milperra Road/Henry Lawson Drive	