

Preservation and Management of Trees and Vegetation

Introduction

This policy applies to all land within the Kiama Local Government Area.

This policy is to protect, preserve, manage, and enhance the environmental amenity, special landscape characteristics, unique vegetation qualities, and the ecological values of the Kiama Local Government Area.

The objectives of this chapter are to:

- Protect trees and other vegetation within the Kiama Local Government Area.
- Protect and enhance native vegetation, habitat for native fauna and biodiversity.
- Conserve trees and other vegetation of ecological, heritage, aesthetic and cultural significance.
- To define Council's responsibilities and requirements with respect to the protection, retention and enhancement of trees and native vegetation.
- To ensure that consideration is given to trees and native vegetation in planning, designing and constructing development.
- Detail requirements for the submission of sufficient and relevant information by applicants, and rights of appeal against Council's decisions
- Identify trees and other vegetation that may be pruned or removed without the necessity for a Tree Management Permit or development consent.

Section 1 - Definitions

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

Arboriculture means cultivating and managing trees as individuals and in small groups for amenity purposes.

Consulting Arborist is a qualified Arborist who has attained a Diploma (Level 5) of Arboriculture or equivalent qualification, based upon the Australian Qualification Framework.

Crown is that part of any single tree containing the branches, leaves, flowers and fruit that is the entire area of the foliage supported by the branches.

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.

Dripline is a line formed around the outer perimeter of the crown.

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 measured vertically between the horizontal plane of the lowest point of the base of the tree which is immediately above ground and the horizontal plane of the uppermost point of the tree.

Injury means damage to a tree and includes:

- Lopping and topping.
- Poisoning, including applying herbicides and other plant toxic chemicals to a tree or spilling of oil, petroleum, paint, cement, mortar, etc onto the root zone or parts of the tree.
- Cutting, tearing, breaking or snapping of branches and roots that is not carried out in accordance with accepted arboricultural practices or is done for invalid reasons, including vandalism.
- Ring-barking, 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.
- 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).
- under storey plants.
- groundcover (being any type of herbaceous vegetation).
- plants occurring in a wetland.
- lichens and fungi.

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, sea grasses 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*.

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.

Prescribed tree means a tree or other vegetation prescribed under this chapter for the purposes of clause 5.9 of *Kiama Local Environmental Plan 2011*. 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.

Pruning is the removal of any branch or root, dead or alive from a tree which conforms to the pruning types defined within the Australian Standard AS4373 Pruning of Amenity Trees. The pruning types are: dead wooding; crown thinning; selective pruning; formative pruning; reduction pruning; crown lifting; pollarding; remedial pruning; and line clearance. The following are not recognized as pruning types: lopping or topping.

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

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

Significant tree(s) means trees which are significant features of the cultural landscape (see Appendix 2 for Institute of Australian Consulting Arboriculturist's Significance of a Tree Assessment Rating System©.)

Tree is defined as any woody plant which is:

- Greater than three (3) metres in height; or
- Has a stem diameter of 200 millimetres or more at a height of one (1) metre from the ground; or
- Has a branch spread of three (3) metres or more.

Utility Arborist is a qualified arborist who has attained a minimum of a Certificate (Level 3) of Arboriculture or equivalent qualification, based upon the Australian Qualification Framework, and is specifically employed to prune and remove trees.

Section 2 - Tree Management Application Process

Under this clause, trees and other vegetation that:

- (a) Are three (3) metres or more in height; or
- (b) Have a diameter of 200mm or more at a height of one (1) metre above the ground; or
- (c) Have a branch spread of three (3) metres or more,

are Prescribed Trees for the purposes of clause 5.9 of *Kiama Local Environmental Plan 2011*. Such trees and other vegetation are referred to in this DCP as "prescribed trees". Under sub-clause 5.9 of *Kiama Local Environmental Plan 2011*, 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.

Any work where root severance or grade changes within the root zone of a prescribed tree is likely, then an application must be submitted

Two processes have been established to deal with the assessment and approval of applications for the removal, lopping and pruning of trees/vegetation:

- (a) Permit (generally for individual/small scale tree removal in urban areas); and
- (b) Development consent as part of a development application.

Section 3 – Tree Permit Application

The following information is required with any tree permit application:

- (a) The application form signed by the owner of the land where the tree is located and any other relevant property owners;
- (b) Written details as to the reasons for the proposed pruning, or removal of the tree(s) and/or other vegetation.
- (c) Include species type (botanical names and/or common names if known), and approximate height;
- (d) A small plan of the site showing the location of the tree(s) to be removed or pruned, include location of any building(s);
- (e) 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.
- (f) Where a tree is growing on a common property boundary the ownership will need to be determined by the relevant parties.

Section 4 - Exemptions- When a Tree Permit is Not Required

Tree works that do not require Council consent are called exemptions. The following list provides the tree types and species that are exempt and these do not require a permit to remove or prune on your property:

- (a) Tree(s) that are less than three (3) metres in height and have a trunk diameter of less than 200 millimetres when measured at a height of one (1) metre from the ground.
- (b) The removal of dead trees and dead wood, as long as the trees are not a threatened species habitat or a habitat tree.
- (c) Prescribed Tree(s) that pose an immediate and imminent danger to people or property (evidence must be provided by an Arborist) or be complying with a direction from any Emergency Service including the State Emergency Service.
- (d) Prescribed Tree(s) that require pruning in accordance with the provisions of Section 48 of the *Electricity Supply Act 1995* and the *Electricity Supply (General) Regulation 2001*. This exemption does not apply to tree trunks; only to branches up to 50mm in diameter and within 0.5 metres of private service lines.
- (e) Tree works for which consent has been granted in accordance with a current development consent.
- (f) The clearing of vegetation that is authorised by a development consent or property vegetation plan under the *Native Vegetation Act 2003*, as administered by the Southern Rivers Catchment Management Authority.
- (g) 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.
- (h) Where a Prescribed Tree is included in Council's Exempt Tree Species List in Appendix 1 (excluding trees within the curtilage of a heritage item or heritage conservation area).
- (i) Where bushfire hazard reduction work is undertaken as authorised by the NSW Rural Fire Service under the *Rural Fires Act 1997*.

- (j) 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.
- (k) 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*, or within an approved plantation meeting the criteria of the *Timber Plantations (Harvest Guarantee) Act 1995*.
- (l) 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.
- (m) In relation to xCupressocyparis leylandii (Leylandii Pine) and any other introduced species of hedging plant capable of being used for architectural hedging of which Council sees fit, such that owners of properties, or bordering onto properties and being negatively impacted by the hedge do not have to apply to Council for their removal or lopping.

Section 5 - Additional Information Requirements

Council may require additional supporting information for a Tree Permit Application, which includes the following: (In all cases, all costs associated with providing any required additional information shall be borne by the Applicant).

- (a) Arborist's report;
- (b) Tree survey;
- (c) Flora and fauna impact assessment
- (d) Geotechnical or structural engineer's report;
- (e) Plumber's report;
- (f) Details of proposed root barriers;
- (g) Medical certificate from a clinical immunologist/allergy specialist in cases where the removal or pruning of a tree is requested due to quality of life health issues (e.g. allergies).
- (h) Survey of property boundary to determine ownership of the tree(s).

Sewerage pipe damage - Any roots providing damage to a pipe must be retrieved and identified, and documented evidence offered relative to the specific identification of the culprit tree from where the roots originated. 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.

Structural damage by roots (heave, matrix suction) – any roots providing structural damage to a drive, foundation, slab etc must provide supporting evidence relative to the identification of the culprit tree responsible for the damage. Evidence may include, but not be limited to, root mapping (ground penetrating radar, air spade), laboratory root identification (microscopy, DNA).

Section 6 - Installation of Solar Photo Voltaic (PV) Panels, and/or Solar Hot Water Systems

Where a Tree Permit Application is lodged requesting removal or pruning of tree(s) for the installation of solar PV panels or solar hot water systems, Council will require a preliminary assessment from the installers outlining the extent the tree(s) will impact upon the PV panels, taking into account summer and winter sun elevations.

Further evidence in the form of shadow diagrams prepared by an architect/draftsman who is unrelated to the installation process may be required.

Council will then make an assessment of tree(s) taking into consideration the health, structure, and significance of the tree(s) eg outstanding specimen tree, locally significant species.

If the tree(s) are considered to be of local or regional significance to the area by Council's arborist, an alternative location for the installation of solar panels may need to be investigated.

If the tree(s) are considered to be healthy and structurally sound but of little significance to the local amenity and environment, Council may allow the removal of the tree(s) upon receipt of documentation that the solar panels have been installed. The significance of a tree should be determined by lodging a Tree Permit prior to the installation of any solar PV panels or solar hot water system.

Section 7 - Arborist Reports

An arborist report may be required in any of the following circumstances:

- (a) Any proposed removal or pruning of trees considered by Council to be locally significant species eg Indigenous *Ficus* spp., Norfolk Island pines; 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 request for a review of determination made in accordance with section 82A of the *Environmental Planning and Assessment Act 1979*; or
- (d) 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
- (e) Where a Development Application under the *Environmental Planning and Assessment Act 1979* involves more than five (5) trees and/or other vegetation or where proposed works may impact upon a neighbouring tree or trees located outside of the area proposed for works.

Where Council requires a Consulting Arborist to prepare an arborist's report, the minimum qualification is the **Australian Qualification Framework Level 5 (AQF5)** or equivalent. The report is to conform to the following Australian Standards:

- AS4373 – Pruning of Amenity Trees.
- AS4970 – Protection of Trees on Development Sites.
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The following information is required in an arborist's report:

- (a) Name, address, telephone number, qualifications and experience of the arborist carrying out the inspection and reporting;
- (b) Address of the site containing trees;
- (c) Who the report was prepared for, the date of the report and aims of the report;
- (d) Methods and/or techniques used in the inspection;

- (e) A scaled plan accurately showing:
 - i. Location of trees on the subject site and any adjoining trees which may be affected by the development. Trees identified on this plan should be numbered. Any arborist report provided for the purpose of supporting a development application must include a tree plan (site plan) which has been drawn by a registered surveyor.
 - ii. The Tree Protection Zone and Structural Root Zone as determined by the consulting arborist
 - iii. Lot boundaries, dimensions and North point
 - iv. Proposed development including services, driveways and any alteration to existing levels and drainage.
- (f) A table showing, for each tree to be injured:
 - i. Number of the tree as indicated in the plan
 - ii. Tree name, botanical and common name
 - iii. Age class
 - iv. Height
 - v. Trunk diameter at 1.4 metres above ground level
 - vi. Crown spread
 - vii. Health and condition, and estimated useful life expectancy
 - viii. A recognised tree rating system such as SRIV, TREE-AZ or SULE
- (g) A discussion of other relevant information, including details of tree hollows for wildlife, tree structure/weaknesses, root form and distribution, pests and diseases and/or a Tree Hazard Assessment.
- (h) Supporting evidence such as photographs and laboratory results, root mapping, etc;
- (i) Proposed replacement plantings, landscaping and soil remediation;
- (j) Tree protection measures and a post-construction tree maintenance program which can be used as conditions, should the application be approved;
- (k) Sources of information referred to in the report;
- (l) Any other relevant matters.

Any tree or part of a tree recommended for removal which contains a hollow that is likely to house arboreal wildlife (such as possums, sugar gliders, etc.) or is likely to be a potential nesting site for birds, will require an experienced wildlife handler (for example, a member of the Native Animal Network Association or WIRES) to be present at the time of pruning/removal to re-accommodate any displaced wildlife. Nesting boxes are recommended to be installed within the closest retained trees for any animals removed. At least one nest box is recommended for installation for each hollow removed that has been considered to have accommodated wildlife (irrespective of whether the hollow had an animal in it at the time of removal/assessment). **A letter signed by the wildlife handler is required by Council after the removal/pruning exercise as confirmation that the handler was present at the time of removal/pruning.**

Section 8 - Processing Of Applications

A Tree Permit Application will usually be processed within twenty-one (21) working days from the date of receipt of the application form together with all supporting documentation, including the application fee. The application fee will be determined in accordance with Council's adopted fees and charges.

A written permit will be provided for all approved Tree Permit Applications authorising the scope and nature of permitted works. In the case of an application being refused the reasons for refusal will be detailed in a letter to the applicant.

Section 9 - Assessment Criteria Used To Determine Tree Permit Applications

Council may take into consideration any or all of the following criteria when assessing an application:

- (a) Potential life of the tree – whether the tree is senescing or declining;
- (b) Whether the tree is causing structural damage to a building, structure, pipe 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 without the opportunity for mitigation;
- (d) Whether the growth habit or mature size of a tree is undesirable in a given situation (eg power lines, root interference with service, infrastructure or building);
- (e) Whether the tree shows poor form, shape and/or vigour typical to the species;
- (f) 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;
- (g) Whether the tree species is appropriate in terms of its proximity to dwellings, adjoining dwellings or other buildings;
- (h) Whether the clearing or removal of the tree or other vegetation has the potential to directly or indirectly affect a threatened species, population, ecological community or their habitats (Threatened Species Conservation Act 1995).
- (i) 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);
- (j) 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;
- (k) 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;
- (l) 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*;
- (m) Whether the removal of the tree(s) is a habitat tree (e.g. nesting tree or roosting tree) for any threatened fauna species;
- (n) Whether the removal of the tree(s) will adversely affect any riparian corridor and/or wildlife corridor;
- (o) Whether the removal of the tree(s) will cause any potential adverse slope instability or geotechnical impacts upon the site or the locality;
- (p) 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;
- (q) Whether the applicant has provided a medical certificate from a clinical immunologist/allergy specialist which states that the pruning or removal of a tree is necessary for maintaining quality of life.
- (r) Whether any previous condition of development consent required the retention of the tree(s).

Section 10 - Reasons Not Considered As Justification for Tree Work

These are common requests for tree removal/works which generally provide insufficient reason for a permit to be issued:

- (a) Shedding of flowers, leaves, bark, twigs, fruit, and sap causing nuisance.
- (b) Animals (insect, bird, bat, possum etc.) that inhabit trees causing nuisance.
- (c) To enhance amenity views.
- (d) Damage to underground services (such as sewer lines, water services and the like), where there are alternatives to mitigate and retain the tree.
- (e) Construction of fences.
- (f) Minor heave (lifting) of paths, paving, fences and minor structures where mitigation is not appropriate.
- (g) Tree does not suit the existing or proposed landscape.
- (h) Unsubstantiated fear of tree failure.
- (i) Tree removal for fire hazard reduction, where the property is not within a bushfire prone area as defined by the Rural Bush Fire Service.
- (j) Tree is considered to be too large or high.
- (k) Pruning to reduce height.
- (l) To increase solar access unless sufficient evidence is provided.
- (m) To allow for a proposed development.

Note: Tree removal will be considered within the development assessment process and is not a valid reason for removal with a Tree Management Permit.

Section 11 - Approval Validity Period

A Tree Permit is valid for a period of one (1) year from the issue date. A Permit for works approved under a Property Vegetation Plan (PVP) issued under the *Native Vegetation Act 2003* will remain valid for the period of the approved PVP works.

Section 12 - Pruning of Overhanging Trees

The owner of a neighbouring property may lodge a Tree Permit Application to prune a neighbour's tree, if it overhangs their property. Approval will be dependent on the ability of the tree to be pruned in accordance with AS4373 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.

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).

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.

Section 13 - Legal Recourse for Tree Disputes Arising Between Neighbours

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.

Section 14 - Australian Standards for Pruning Of Amenity Trees

The Australian Standard AS4373 Pruning of Amenity Trees is the minimum criteria for tree management practices.

Public safety is the highest priority. If a tree cannot be safely managed using the accepted work practices in AS4373, then the tree will be able to be removed and generally replaced with appropriate species. Replacement trees should be local indigenous species.

Section 15 - Rights of Appeal Against Council's Decision

A Tree Permit applicant who is dissatisfied with Council's decision has a right to appeal. An application which has been refused by Council, or the conditions attached to an approved application may be reconsidered.

An application for appeal must be accompanied by relevant supporting documentation. To seek reconsideration by Council, the following must be provided:

- i. Lodgement of a review to Council within three (3) months from the original date of the refusal letter.
- ii. Additional information to support the reasons why Council's decision should be altered. Additional information will be provided by an expert in the relevant field, for example, a consulting arborist or structural engineer. Any appeal will be reviewed by another qualified Council assessment officer and may be determined either under delegated authority or may be reported to Council for its determination.

or

Lodgment of an appeal to the NSW Land and Environment Court.

Section 16 - Compliance and Monitoring

Any Tree Management Permit or Development Consent may be 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 Kiama Local Environmental Plan 2011 or conditions of approval.

Section 17 - Trees and Other Vegetation on Council Owned or Managed Property

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

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.

All requests for pruning or removal of trees or other vegetation within Council owned or managed land will be forwarded to Council's Tree Management Officer for assessment and this action will proceed within twenty-one (21) days from the receipt of the request.

The result of the assessment will determine whether approval will be granted for the pruning or removal of the subject tree(s) or other vegetation, and this will be based upon the assessment criteria contained in this Plan. Requests for tree work which are not deemed appropriate for action are outlined within this Plan

Section 18 - Other Relevant Legislation

Native Vegetation Act 2003

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

"Clearing" native vegetation means; cutting down, felling, thinning, logging or removing native vegetation, killing, destroying, poisoning, ring-barking, uprooting or burning native vegetation.

"Broadscale clearing" of native vegetation means the clearing of any remnant native vegetation or protected regrowth.

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 that Act or where the Minister has approved a property vegetation plan which permits the clearing of such native vegetation.

The clearing or removal of native trees and other native vegetation upon land within the Kiama Local Government Area, to which the Act applies, requires consent to be obtained from the Southern Rivers Catchment Management Authority.

Section 19 - Land to which the Native Vegetation Act 2003 applies in Kiama LGA

The *Native Vegetation Act 2003* applies to the following lands within the Kiama LGA:

- (a) Land zoned Non-urban, RU1 Primary Production, RU2 Rural Landscape
- (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 and all Environmental Protection zones in Kiama Local Environmental Plan 2011.

Section 20 - Land to which the Native Vegetation Act 2003 does not apply in the Kiama Local Government Area

The *Native Vegetation Act 2003* does not apply to the following lands within the Kiama LGA:

- (a) land that is reserved under the *National Parks and Wildlife Act 1974*.
- (b) 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.
- (c) land that is subject to an interim protection order made under Part 6A of the *National Parks and Wildlife Act 1974*.
- (d) land to which an interim heritage order or listing on the State Heritage Register under the *Heritage Act 1977* applies.
- (e) Urban zoned land under Kiama LEP 2011.
- (e) 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*
- (f) land that is a State forest, flora reserve or timber reserve under the *Forestry Act 1916*
- (g) 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).

Section 21 - Exempt Activities

The following activities are exempt from requiring approval under the *Native Vegetation Act 2003*:

- Clearing for routine agricultural management activities (RAMAs) but does not authorise any clearing of native vegetation:
 - (a) If it exceeds the minimum extent necessary for carrying out the activity, or
 - (b) 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.
- The continuation of existing cultivation, grazing or rotational farming practices provided it does not involve the clearing of remnant native vegetation.
- Sustainable grazing that is not likely to result in the substantial long-term decline in the structure and composition of native vegetation.
- The clearing of native vegetation associated with the construction of a single dwelling house.
- 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 or tree management permit to be obtained from Council for the removal or clearing of trees or other vegetation.

Section 22 - Fisheries Management Act 1994

The lodgment 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.

Section 23 - National Parks and Wildlife Act 1974

The lodgment 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 artifacts or may adversely affect a site of Aboriginal cultural heritage significance and hence, the formal concurrence from the NSW Department of Environment, Climate Change and Water is required pursuant to Section 90 of the *National Parks and Wildlife Act 1974*.

Section 24 - Threatened Species Conservation Act 1995

Any action such as clearing or removal of trees or other vegetation has the potential to directly or indirectly affect 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*.

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 Office of Environment and Heritage.

Section 25 - Environment Protection and Biodiversity Conservation Act 1999

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.

Appendix 1 – Exempt Tree Species List

You should ensure that the species of tree that you are pruning or removing is actually of the type on this list. You may need to seek the advice of a qualified arborist or horticulturalist to confirm this and you will need to provide evidence of the species by photograph attached to the document; “Notice of Intent-tree works” form.

The following table provides a list of tree species which are exempt or partially exempt.

Exempt Tree Species	
<i>Cotoneaster species</i>	Cotoneaster
<i>Ligustrum sinense</i>	Privet
<i>Ligustrum lucidum</i>	Privet
<i>Olea africana</i>	African Olive
<i>Ficus elastica</i>	Rubber trees
<i>Salix babylonica</i>	Willow
<i>Syagrus romanzoffianum</i>	Cocos Palm
<i>Erythrina x sykesii</i>	Coral tree
<i>Toxicodendron spp</i>	Rhus Tree
<i>Alianthus altissima</i>	Tree of Heaven
<i>Fraxinus griffithii</i>	Evergreen Ash
<i>Schefflera sp.</i>	Umbrella tree
<i>Nerium oleander</i>	Oleander
<i>xCupressocyparis leylandii</i>	Leylandii Pines (all varieties)
The following Trees Less than 8m in Height are Exempt	
<i>Cinnamomum camphora</i>	Camphor Laurel
<i>Liquidambar styraciflua</i>	Sweet Gum
<i>Grevillea robusta</i>	Silky Oak
<i>Acer negundo</i>	Box Elder
<i>Pittosporum undulatum</i>	Sweet Daphne

Domestic Fruit trees, grown for the purpose of fruit or fodder production ie Citrus species., Eriobotrya sp. (Loquat), Morus sp. (Mulberry tree), Prunus sp. – Stone fruit, Pyrus (Pear) and Banana only. However this does not include native species.

The exemptions DO NOT apply within the following situations:

- for properties that are heritage listed or are within a Heritage Conservation Area.
- for properties that have an active development consent.
- for properties that are subject to an area-specific planning instrument.

Appendix 2

IACA Significance of a Tree, Assessment Rating System (STARS)© (IACA 2010)©

In the development of this document IACA acknowledges the contribution and original concept of the Footprint Green Tree Significance & Retention Value Matrix, developed by Footprint Green Pty Ltd in June 2001.

The landscape significance of a tree is an essential criterion to establish the importance that a particular tree may have on a site. However, rating the significance of a tree becomes subjective and difficult to ascertain in a consistent and repetitive fashion due to assessor bias. It is therefore necessary to have a rating system utilising structured qualitative criteria to assist in determining the retention value for a tree. To assist this process all definitions for terms used in the *Tree Significance - Assessment Criteria* and *Tree Retention Value - Priority Matrix*, are taken from the IACA Dictionary for Managing Trees in Urban Environments 2009.

This rating system will assist in the planning processes for proposed works, above and below ground where trees are to be retained on or adjacent a development site. The system uses a scale of *High*, *Medium* and *Low* significance in the landscape. Once the landscape significance of an individual tree has been defined, the retention value can be determined. An example of its use in an Arboricultural report is shown as Appendix A.

Tree Significance - Assessment Criteria



1. High Significance in landscape

- The tree is in good condition and good vigour;
- The tree has a form typical for the species;
- The tree is a remnant or is a planted locally indigenous specimen and/or is rare or uncommon in the local area or of botanical interest or of substantial age;
- The tree is listed as a Heritage Item, Threatened Species or part of an Endangered ecological community or listed on Councils significant Tree Register;
- The tree is visually prominent and visible from a considerable distance when viewed from most directions within the landscape due to its size and scale and makes a positive contribution to the local amenity;
- The tree supports social and cultural sentiments or spiritual associations, reflected by the broader population or community group or has commemorative values;
- The tree's growth is unrestricted by above and below ground influences, supporting its ability to reach dimensions typical for the taxa *in situ* - tree is appropriate to the site conditions.

2. Medium Significance in landscape

- The tree is in fair-good condition and good or low vigour;
- The tree has form typical or atypical of the species;
- The tree is a planted locally indigenous or a common species with its taxa commonly planted in the local area
- The tree is visible from surrounding properties, although not visually prominent as partially obstructed by other vegetation or buildings when viewed from the street,
- The tree provides a fair contribution to the visual character and amenity of the local area,
- The tree's growth is moderately restricted by above or below ground influences, reducing its ability to reach dimensions typical for the taxa *in situ*.

3. Low Significance in landscape

- The tree is in fair-poor condition and good or low vigour;
- The tree has form atypical of the species;
- The tree is not visible or is partly visible from surrounding properties as obstructed by other vegetation or buildings,
- The tree provides a minor contribution or has a negative impact on the visual character and amenity of the local area,
- The tree is a young specimen which may or may not have reached dimension to be protected by local Tree Preservation orders or similar protection mechanisms and can easily be replaced with a suitable specimen,
- The tree's growth is severely restricted by above or below ground influences, unlikely to reach dimensions typical for the taxa *in situ* - tree is inappropriate to the site conditions,
- The tree is listed as exempt under the provisions of the local Council Tree Preservation Order or similar protection mechanisms,
- The tree has a wound or defect that has potential to become structurally unsound.

Environmental Pest / Noxious Weed Species

- The tree is an Environmental Pest Species due to its invasiveness or poisonous/ allergenic properties,
- The tree is a declared noxious weed by legislation.

Hazardous/Irreversible Decline

- The tree is structurally unsound and/or unstable and is considered potentially dangerous,
- The tree is dead, or is in irreversible decline, or has the potential to fail or collapse in full or part in the immediate to short term.

The tree is to have a minimum of three (3) criteria in a category to be classified in that group.

Note: The assessment criteria are for individual trees only, however, can be applied to a monocultural stand in its entirety e.g. hedge.

Table 1.0 Tree Retention Value - Priority Matrix.

		Significance				
		1. High	2. Medium	3. Low		
		Significance in Landscape	Significance in Landscape	Significance in Landscape	Environmental Pest / Noxious Weed Species	Hazardous / Irreversible Decline
Estimated Life Expectancy	1. Long >40 years					
	2. Medium 15-40 Years					
	3. Short <1-15 Years					
	Dead					

Legend for Matrix Assessment		INSTITUTE OF AUSTRALIAN IACA CONSULTING ARBORICULTURISTS®
	Priority for Retention (High) - These trees are considered important for retention and should be retained and protected. Design modification or re-location of building/s should be considered to accommodate the setbacks as prescribed by the Australian Standard AS4970 <i>Protection of trees on development sites</i> . Tree sensitive construction measures must be implemented e.g. pier and beam etc if works are to proceed within the Tree Protection Zone.	
	Consider for Retention (Medium) - These trees may be retained and protected. These are considered less critical; however their retention should remain priority with removal considered only if adversely affecting the proposed building/works and all other alternatives have been considered and exhausted.	
	Consider for Removal (Low) - These trees are not considered important for retention, nor require special works or design modification to be implemented for their retention.	
	Priority for Removal - These trees are considered hazardous, or in irreversible decline, or weeds and should be removed irrespective of development.	

USE OF THIS DOCUMENT AND REFERENCING

The IACA Significance of a Tree, Assessment Rating System (STARS) is free to use, but only in its entirety and must be cited as follows:

IACA, 2010, *IACA Significance of a Tree, Assessment Rating System (STARS)*, Institute of Australian Consulting Arboriculturists, Australia, www.iaca.org.au

REFERENCES

Australia ICOMOS Inc. 1999, *The Burra Charter – The Australian ICOMOS Charter for Places of Cultural Significance*, International Council of Monuments and Sites, www.icomos.org/australia

Draper BD and Richards PA 2009, *Dictionary for Managing Trees in Urban Environments*, Institute of Australian Consulting Arboriculturists (IACA), CSIRO Publishing, Collingwood, Victoria, Australia.

Footprint Green Pty Ltd 2001, *Footprint Green Tree Significance & Retention Value Matrix*, Avalon, NSW Australia, www.footprintgreen.com.au

IACA 2010, *IACA Significance of a Tree, Assessment Rating System (STARS)*, Institute of Australian Consulting Arboriculturists, www.iaca.org.au

Appendix A

The following example shows the IACA **Significance** of a **Tree, Assessment Rating System** (STARS) used in an Arboricultural report.

Tree Significance

Determined by using the Tree Significance - Assessment Criteria of the *IACA Significance of a Tree, Assessment Rating System* (STARS)© (IACA, 2010), Appendix B.

Trees 14, 16, 17/3, 19 and 20/4 are of high significance with the remaining majority of medium significance and a few of low significance. Tree 14 is significant as a prominent specimen and a food source for indigenous avian fauna. Tree 16 as a non-locally indigenous planting is of good form and prominent *in situ*; Tree 17/3 as a stand of 6 street trees along the Davey Street frontage screening views to and from the site and contiguous with trees in Victoria Park extending the aesthetic influence of the urban canopy to the site. Similarly for Trees 20/4 as street trees in Long Road and Tree 19 as an extant exotic planting as a senescent component of the original landscaping. The trees of low significance are recent plantings as fruit trees – Avocados, and 1 Cootamundra Wattle as a non-locally indigenous tree in irreversible decline and potentially structurally unsound.

Significance Scale

- 1 – High
- 2 – Medium
- 3 – Low

Significance Scale	1	2	3
Tree No. / Stand No.	14, 16, 17/3, 19, 20/4	1/1, 2, 4, 5, 6, 7, 8, 9, 10, 11, 12/2, 15, 18, 21/5	3, 13, 22

Tree Retention Value

Determined by using the Retention Value - Priority Matrix of the *IACA Significance of a Tree, Assessment Rating System* (STARS)© (IACA, 2010), Appendix B.

Retention Value

- High – Priority for Retention
- Medium – Consider for Retention
- Low – Consider for Removal
- Remove - Priority for Removal

Retention Value	High Priority for Retention	Medium Consider for Retention	Low Consider for Removal	Remove Priority for Removal
Tree No. / Stand No.	1/1, 5, 17/3*, 19	2, 4, 6, 7, 8, 9, 10, 11, 14, 15, 16, 18, 20/4*, 21/5	3, 12/2, 13,	22

* Trees located within the neighbouring property and should be retained and protected.