

Chapter 9

PRESERVATION OF TREES AND VEGETATION

9.1 INTRODUCTION

This chapter of the DCP provides development controls for the preservation and management of certain trees and vegetation within the Hawkesbury LGA.

This chapter is in response to Clause 5.9 Preservation of Trees or Vegetation of LEP 2012. Under this clause, a person must not ringbark, cut down, top, lop, remove, injure or wilfully destroy “prescribed” trees or vegetation, without development consent or a permit being granted by Council. This chapter of the DCP prescribes the trees and vegetation to which the clause applies by reference to species, size, location or other manner.

9.2 AIMS AND OBJECTIVES

The aim of this chapter is to preserve the amenity, biodiversity, ecology and heritage of the area through the preservation of trees and vegetation.

The objectives of this chapter are to:

- a) prescribe the trees and vegetation to which this chapter applies
- b) clarify the assessment criteria under which applications to ringbark, cut down, top, lop, remove, injure, or wilfully destroy trees or vegetation will be determined
- c) define the meaning of terms used within this chapter

9.3 DEVELOPMENT CONTROLS

This section identifies the circumstances in which development consent or a permit is required to ringbark, cut down, top, lop, remove, injure, or wilfully destroy trees or vegetation within the Hawkesbury LGA.

9.3.1 When Is Development Consent or a Permit Required?

Clause 5.9 of LEP 2012 requires Council to “prescribe” species or kinds of trees or vegetation that a person must not ringbark, cut down, top, lop, remove, injure, slash, poison or wilfully destroy without development consent or a permit being granted by Council.

The following trees and vegetation are “prescribed” for the purposes of Clause 5.9:

- any tree with a height greater than 4 metres, or a branch spread greater than 3 metres, or a trunk circumference greater than 500 mm at 1 metre above ground level. Excluding trees on land which is less than 1000m² in area and zoned R1 General Residential, R2 Low Density Residential (not including land located in Kurrajong or Kurrajong Heights), or R3 Medium Density Residential
- native trees or native vegetation on land zoned RU1 Primary Production, RU2 Rural Landscape, RU4 Primary Production Small Lots, RU5 Rural Village, R5 Large Lot Residential, SP1 Special Activities, SP2 Infrastructure, RE1 Public Recreation, RE2 Private Recreation, E2 Environmental Conservation, E3 Environmental Management, E4

Environmental Living or on land shown on the Environmental Constraints Area Map or the Terrestrial Biodiversity Map of LEP 2012

- trees on Council's Significant Tree Register
- trees within 40m of a watercourse

9.3.2 When is Development Consent or a Permit Not Required?

Development consent or a permit is not required to ringbark, cut down, top, lop, remove, injure, slash, poison or wilfully destroy the following trees or vegetation (not including heritage items or heritage conservation areas):

- any tree or vegetation that Council is satisfied is dying or dead and is not required as the habitat of native fauna. The owner of the land (or person(s) acting on their behalf) on which the tree or vegetation exists must provide to Council written justification, including photographs, from an Arborist or other suitably qualified person. Works must not be undertaken until Council has provided written advice that it is satisfied the tree or vegetation is dying or dead and is not required as the habitat of native fauna
- any tree or vegetation that Council is satisfied is a risk to human life or property. The owner of the land (or person(s) acting on their behalf) on which the tree or vegetation exists must provide to Council written justification, including photographs, from an Arborist or other suitably qualified person. Works must not be undertaken until Council has provided written advice that it is satisfied the tree or vegetation poses an immediate and imminent danger to people or property
- plants declared to be noxious weeds under the *Noxious Weeds Act 1993*
- plants of any of the following species:
 - *Salix spp.* (all Willow species)
 - *Populus spp.* (all Poplar species)
 - *Ligustrum lucidum* (Broad - leaf privet)
 - *Ligustrum sinense* (Small - leaf privet)
 - *Ricinus communis* (Castor Oil plant)
 - *Gleditzia tricanthos* (Honey Locust)
 - *Alianthus Altissima* (Tree of Heaven)
 - *Cortaderia Selloana* (Pampas Grass)
 - *Olea europaea* (African Olive)
 - *Acer Negundo* (Box Elder)
 - *Toxicodendron succedaneum* (Rhus Tree)
 - *Cinnamomun camphora* (Camphor Laurel)
 - *Pinus radiata* (Radiata Pine)
 - *Syagrus romanzoffiana* (Cocos Palm)

- *Phoenix canariensis* (Canary Island Date Palm)
- *Erythrina spp.* (Coral Trees)
- Citrus sp. (Fruit trees)
- environmental weeds or introduced species removed as part of bush regeneration activities - a current list of which may be obtained from Council
- any species of parasitic mistletoe or parasitic plant from any part of a tree or vegetation to ameliorate the effects on the tree or vegetation from such a parasite as identified by a qualified arborist
- fruit trees where the works only involves seasonal pruning for the purpose of maintaining fruit production
- pruning for the purposes of seed collection where less than 10% of the seed resources is removed
- any tree or vegetation on Council owned or managed land provided Council, acting in it's capacity as owner or managed, has given approval prior to the works being undertaken
- any tree or vegetation within a State forest, or land reserved from sale as a timber or forest reserve under the *Forestry Act 1916*
- action required or authorised to be done by or under the *Electricity Supply Act 1995*, the *Roads Act 1993*, the *Surveying Act 2002*, or the *Rural Fires Act 1997*
- any tree or vegetation the immediate removal of which is essential for emergency access, emergency works, emergency fire fighting or bushfire hazard reduction work by Council, the State Emergency Service, Rural Fire Service, or other public authority

9.3.3 Heritage Items and Heritage Conservation Areas

Notwithstanding the above provisions relating to prescribed trees and vegetation and exemptions, development consent is required for the ringbarking, cutting down, topping, lopping, removal, injuring or destruction of a tree or vegetation that is or forms part of a heritage item or that is within a heritage conservation area. The heritage provisions of Clause 5.10 of LEP 2012 are applicable in these cases.

9.4 MATTERS FOR CONSIDERATION

In assessing applications for development consent or a permit to ringbark, cut down, top, lop, remove, injure, slash, poison or wilfully destroy trees or vegetation, the following matters are considered:

1. **The existing and likely future amenity of the area.** Is the tree or vegetation:
 - a. significant as a single specimen or as part of a group
 - b. of historic or cultural significance
 - c. registered on Council's Significant Tree Register

- d. prominent due to its height, size, position, or age
 - e. endemic, rare, or threatened
 - f. providing a significant visual screen
 - g. part of an important wildlife habitat
 - h. providing shade to livestock
2. **The health and safety of the tree or vegetation.** Does the tree or vegetation:
- a. suffer from a decline that is prolonged and irreversible
 - b. contain large dead branches
 - c. have structural cracks and fractures on the branches, or fractures or cracks at the junction between two trunks and these problems cannot be rectified
 - d. have a large number of epicormic shoots that are poorly attached through incorrect previous pruning activities and pruning cannot rectify the problem
 - e. have a fruiting body of pathogenic fungi 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
 - f. show signs of movement in the ground, such as an obvious lifted mound with exposed broken roots or a lean that is progressively getting worse. Note - exposed roots can occur naturally and does not effect the safety of the tree or vegetation
 - g. suffer damage to large branches or has the trunk been broken as a result of a storm event
- Note: It is impossible to say a tree is "safe". It is presumed that a small and controlled level of risk is inherent in many human activities. Risk management may frequently fall back to the owner of the tree in terms of tree maintenance rather than tree removal.*
3. **The physical characteristics of the tree or vegetation.** This includes the current and potential height, branch spread, trunk diameter, the growing environment and life expectancy. This is assessed in terms of the suitability of the tree or vegetation in a given situation e.g. under power lines, root interference with services, or buildings.
4. **The damage or potential damage caused by a tree or vegetation.** For example is:
- a. the tree or vegetation, its trunk, or its root system causing damage to a structure and the damage cannot be controlled by measures such as the installation of a root barrier
 - b. the tree or vegetation damaging other property, retaining walls and the like, and root pruning or modification of the property cannot stop further damage
 - c. the tree or vegetation causing illness or severe allergic reaction to a person and such claim can be substantiated by medical evidence from a registered practitioner.
5. **The protection of the natural environment.** For example:
- a. protecting wildlife corridors and vegetation links with other bushland
 - b. protecting and retaining vegetation as a natural stabiliser of the soil surface, particularly on steep slopes or along watercourses

- c. protecting bushland for scenic values and the retention of the unique visual characteristic of the landscape
 - d. retaining trees and vegetation that provide habitat for native fauna such as birds, bats and arboreal mammals
 - e. protecting vegetation that may be part of a threatened ecological community
6. **Implications for biodiversity.** To determine the conservation status of the tree or vegetation it may be necessary for a flora and fauna survey and assessment of ecological values to be carried out.
7. **Criteria for Refusal of an application.** The following shall not generally be considered as valid reasons to ringbark, cut down, top, lop, remove, injure, slash, poison or wilfully destroy trees or vegetation:
- a. to avoid leaf drop into gutters, downpipes or pools
 - b. to increase natural light
 - c. to improve the effect of street light
 - d. to enhance views
 - e. to reduce minor shading
 - f. to reduce fruit, bark, resin or bird droppings
 - g. minor lifting of driveways or paths
 - h. potential damage to sewer mains, unless the application is supported by written expert advice.
 - i. the tree or vegetation has entered a drainage or sewer system where the system is found to be in poor condition or in disrepair.
 - j. insect attack (this is not a basis for removal of a tree or vegetation, but may be a warning to provide some form of remedial treatment. Inspection and recommendation should be sought from an AQF 5 qualified Arborist)
 - k. prevent overshadowing of solar panels or the like
 - l. to construct a building when the structure could be relocated away from the tree or vegetation

9.5 SUBMISSION REQUIREMENTS

In addition to the submission of a properly completed application form, payment and associated documentation the following information may be required.

9.5.1 Structural Engineers Report

Where an application is to remove a tree or vegetation where structural damage is alleged, the applicant may also be required to submit a report from a suitably qualified structural engineer in consultation with a suitably qualified arborist.

9.5.2 Arborist Reports

The submission of an Arborist Report may be required in the following circumstances:

1. works affecting any trees on Council's Significant Tree Register
2. works affecting trees or vegetation which constitutes a threatened species, population or and ecological community under the *Threatened Species Conservation Act 1995* or the *Environment Protection and Biodiversity Conservation Act 1999*
3. where Council requires further information/clarification regarding the affect of the proposed works on the tree or vegetation.

The Arborist Report is to be prepared by a Consulting Arborist who:

1. holds a minimum Australian Qualification Framework (AQF) level 5 or higher in Arboriculture or equivalent, and
2. at least five (5) years practical experience in tree diagnosis and reporting, and is not employed to remove trees.

9.5.3 Guidelines for Preparing an Arborist Report

The following information should be addressed in an Arborist Report:

1. General Information
 - a. The name, business address and telephone number of the Arborist and/or company who inspected the tree(s) or vegetation and prepared the report
 - b. The qualifications and industry experience of the Arborist who prepared the report
 - c. The address and owner(s) of the site where the tree(s) or vegetation are located
 - d. Who commissioned the report
 - e. The date(s) the inspection was undertaken
 - f. The aims/purpose of the report
2. Site Plan
 - a. a drawn to scale plan of the site accurately showing
 - b. location of the tree(s) or vegetation with an individual number given to each plant including trees and vegetation on adjoining land, including street and park trees that may be affected by the proposed works
 - c. recommended tree protection zones
 - d. lot boundaries
3. A table showing the following details for each plant surveyed:
 - a. the common and full scientific name
 - b. plant number on the site plan
 - c. age class
 - d. estimation of the height

- a. trunk circumference at 1 metre above ground level
 - b. canopy spread to the four cardinal corners
 - c. a summary of the health and condition of each tree, addressing root system, trunk, branch and foliage
 - d. estimated useful life expectancy using appropriate industry methods
4. Discussion of the data collected - This may include details of tree hollows or potential hollows for wildlife, wounds, cracks, fractures, root form and distribution, pests and diseases etc.
 5. A hazard assessment undertaken in accordance with industry best practice
 6. Supporting evidence such as photographs and/or laboratory results to confirm presence of soil pathogens or support soil assessment, where relevant
 7. Discussion of all options available, including why they are recommended or why they are not recommended. For example, can a built structure be repaired and are there suitable management options that would allow retention of the tree(s) or vegetation
 8. Description of recommended protection measures to be put in place to ensure the protection of trees and vegetation to be retained and a post-construction maintenance program that can be used as conditions, should the application be approved
 9. Common and scientific names of all tree(s) or vegetation species proposed for replacement planting, proposed landscaping plans, and any soil remediation
 10. Sources of references referred to in the report. References not used in the report should not be included

9.5.4 Flora and Fauna Reports

The submission of a flora and fauna report may be required in the following circumstances:

11. works affecting of trees or vegetation which constitutes a threatened species, population or and ecological community under the *Threatened Species Conservation Act 1995* or the *Environment Protection and Biodiversity Conservation Act 1999*
12. where Council requires further information/clarification regarding the affect of the proposed works on the tree or vegetation.

Flora and fauna reports are to be prepared in accordance with Council's "Guidelines for Preparing Flora and Fauna Reports".

9.6 DEFINITION OF TERMS

dead tree means to a tree that is no longer capable of performing one of the following processes: photosynthesis, take up water through roots, hold moisture in its cells and produce new shoots (from under bark or from a lignotuber).

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

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

1. permanent leaf loss in both deciduous and evergreen plants
2. permanent wilting
3. shedding of the epidermis

environmental weed – means a plant that poses a threat to the natural environment. A list of environmental weeds in the Hawkesbury can be obtained from Council.

habitat tree means any tree which has developed hollows in the trunk or limbs and which is suitable for nesting birds, arboreal marsupials (such as possums), native mammals (such as bats) or which support the growth of locally indigenous epiphytic plants (such as orchids).

injury or willful destruction means damage to a tree or vegetation and includes:

1. lopping and topping
2. poisoning, including applying herbicides or other toxic chemicals, or spilling (including washing off or directing water contaminated by) oil, petroleum, paint, cement, mortar and the like onto the root zones
3. cutting, tearing, snapping and breaking of branches and roots that is not carried out in accordance with accepted arboriculture practices or is done for invalid reasons such as vandalism
4. ringbarking, scarring the bark when operating machinery, fixing objects (e.g. signs) by nails, staples or wire, using tree climbing spikes in healthy trees marked for retention 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
5. damaging a plant's root zone by compaction or excavation, stripping of topsoils, asphyxiation by burial or the alteration of ground level or water table which causes damage to the tree or any part of the plant
6. under scrubbing

lop or lopping means cutting between branch unions or at internodes on a young tree, with a final cut leaving a stub.

prune means to cut off living parts or branches of a plant, to improve shape or growth.

remove, removal and **cutting down** means to dismantle a tree or vegetation, for example by chainsaw, or to separate the tree or vegetation from the ground where it is growing or dislodging it with earth moving equipment in order to kill the tree or vegetation so that the tree or vegetation, including its branches, foliage, trunk, stump and root system will not regrow. This includes the poisoning of the stump and or roots and to 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 it an antiquated practice which damages a tree, reducing its strength and vigour and promoting its premature decline.

vegetation means any plant life not defined by this plan as a tree and includes any sapling, shrub, scrub, understory plants, groundcover (herbaceous or grass) and plants occurring in a wetland.