

# CHAPTER 3.5 TREE AND VEGETATION MANAGEMENT

## 3.5.1 INTRODUCTION

Trees beautify our properties and our streetscape, add value to property, provide shade and shelter, absorb excess runoff, prevent soil erosion, and absorb carbon dioxide from our atmosphere producing oxygen for us to breathe. They provide food and shelter for insects, reptiles, mammals and birds and contribute to local biodiversity. There are many social, economic and ecological benefits to the preservation of trees.

Council also recognises that in certain circumstances vegetation, including trees, require pruning or removal. This Chapter identifies trees and vegetation Council seeks to preserve, as well as the method required should a landowner seek to remove a tree or vegetation on privately owned land.

Prior to any action, it is important to accurately identify the species of tree or vegetation proposed to be pruned or removed. Landowners should be aware that the [Biodiversity Conservation Act 2016](#) contains Schedules which identify threatened and protected plants and ecological communities, and that the Act prohibits actions that affect threatened species and their habitats. A Biodiversity Conservation Licence is required from the NSW Office of Environment and Heritage (OEH) prior to the conduct of any such actions.

Trees which are identified as having local significance on the Central Coast are listed on Council's Significant Tree Register. Council has identified these trees as they either have significant amenity values or are functionally important links in the wildlife food chain and encourages pruning and retention of these trees where practical, rather than removal. Except as provided by Section 3 Exemptions, a Permit is required for any such actions on listed trees. Council's Significant Tree Register is maintained on Council's website.

Whilst terms used in this Chapter are defined in Section 5.0 Definitions, the following are of particular importance:

**"vegetation"** means a tree or other vegetation, including understorey and groundcover plants, whether or not it is native to New South Wales (i.e., it was established in New South Wales before European settlement).

**"tree"** means a perennial plant with at least one self-supporting woody or fibrous stem, which:

- a Is 3 metres or more in height; or
- b Has a trunk diameter of 75 mm or more measured at 1.4 metres above ground level.

**"remove vegetation", "removal of vegetation", "vegetation removal" and "clear vegetation"** mean any one or more of the following:

- a cut down, fell, uproot, kill, poison, ringbark, burn or otherwise destroy the vegetation, or
- b prune, lop or otherwise remove a substantial part of the vegetation.

### 3.5.1.1 Aims and objectives of the Chapter

- To declare certain vegetation to be vegetation to which Part 2.3 of *State Environmental Planning Policy (Biodiversity and Conservation) 2021 Chapter 2 Vegetation in Non-Rural Areas* applies, such that a permit from the Council is required to remove that vegetation.

- To protect trees on privately owned land that contribute positively to the amenity, scenic landscape characteristics and ecological values of the Central Coast Local Government Area.
- To facilitate the removal of undesirable species, weeds, dangerous trees and inappropriate plantings, and to encourage their replacement with suitable local native species.
- To minimise unnecessary injury to, or destruction of, trees and vegetation.

### **3.5.1.2 Land-Use Zones to which this Chapter Applies and Does Not Apply**

- a This Chapter applies to land within the Central Coast Local Government area which has one of the following zonings:

Zone RU5 Village	Zone IN1 General Industrial
Zone R1 General Residential	Zone IN2 Light Industrial
Zone R2 Low Density Residential	Zone IN4 Working Waterfront
Zone R3 Medium Density Residential	Zone SP1 Special Activities
Zone R5 Large Lot Residential	Zone SP2 Infrastructure
Zone B1 Neighbourhood Centre	Zone SP3 Tourist
Zone B2 Local Centre	Zone RE1 Public Recreation
Zone B3 Commercial Core	Zone RE2 Private Recreation
Zone B4 Mixed Use	Zone C2 Environmental Conservation
Zone B5 Business Development	Zone C3 Environmental Management
Zone B6 Enterprise Corridor	Zone C4 Environmental Living
Zone B7 Business Park	

- b This Chapter does not apply to land within the following zones within the Central Coast Local Government area:

- C1 National Parks and Nature Reserves;
- RU1 Primary Production;
- RU2 Rural Landscape;
- RU3 Forestry;
- RU6 Transition;
- W1 Natural Waterways; and

- W2 Recreational Waterways.

This Chapter also does not apply to land which is zoned under:

*Gosford Planning Scheme Ordinance (1968);*

*Gosford Interim Development Order No. 122 (1979);* or

being land deferred from *Central Coast Local Environmental Plan 2022* ("Deferred Matters Land").

- c Any person considering clearing or removing vegetation on land within the Central Coast Council Local Government area to which this Chapter does not apply must refer to Part 5A of the *Local Land Services Act 2013* and is advised to contact the NSW Government Local Land Services, Greater Sydney Region, for further information (Phone: **1300 795 299**).

### **3.5.1.3 Vegetation Removal to which this Chapter Does Not Apply**

This Chapter does not apply to:

- a Removal of vegetation on any land which is identified on the Biodiversity Values Map, or which otherwise exceeds the Biodiversity Offset Scheme (BOS) threshold. See Appendix 1. Approval to remove vegetation above the BOS threshold must be obtained from the Native Vegetation Panel under the *Local Land Services Act 2013*.
- b Removal of vegetation authorised under a development consent granted under the *Environmental Planning and Assessment Act 1979*;
- c Removal of vegetation from public land by or on behalf of a public authority (Note: this Chapter applies to the removal of vegetation from public land by any other person).

### **3.5.1.4 When do you Need a Permit From Council to Remove Vegetation?**

Sections 2 and 3 of this Chapter identify when you need a permit from Council under Part 2.3 of *State Environmental Planning Policy (Biodiversity and Conservation) 2021* to remove vegetation. The following flow chart is provided to assist understanding but is not a substitute for the provisions of Sections 2 and 3.

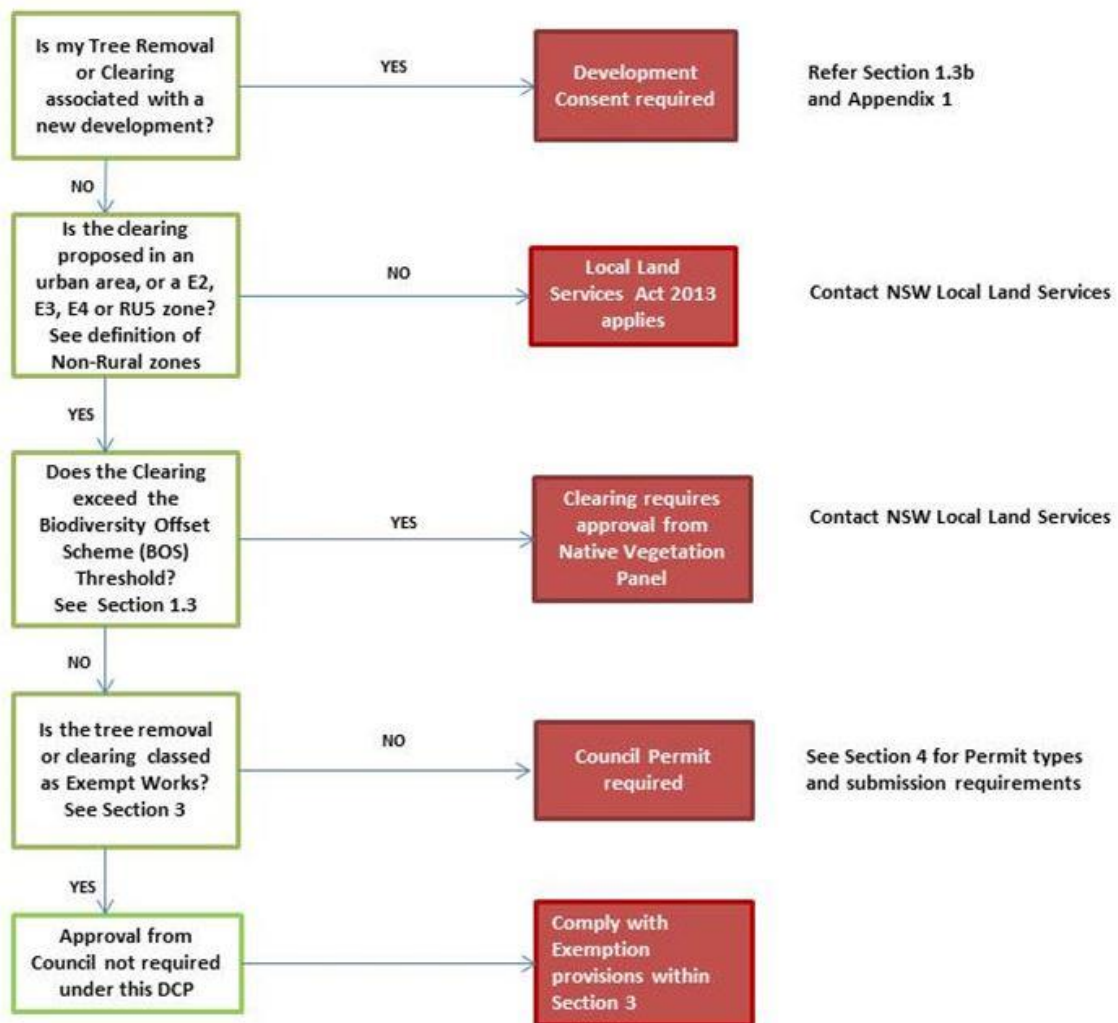


Figure 1: When is a permit required from council to remove vegetation?

### 3.5.2 DECLARATION

All vegetation is declared to be vegetation to which Part 2.3 of *State Environmental Planning Policy (Biodiversity and Conservation) 2021* applies, subject to the exemptions set out in Section 3 of this Chapter. Accordingly a Permit must be obtained from the Council under Part 2.3 of *State Environmental Planning Policy (Biodiversity and Conservation) 2021* to remove such vegetation, that is to do any of the following:

- a cut down, fell, uproot, kill, poison, ringbark, burn or otherwise destroy the vegetation, or
- b prune, lop or otherwise remove a substantial part of the vegetation.

### 3.5.3 EXEMPTIONS

#### 3.5.3.1 Exemptions under SEPP (Biodiversity and Conservation) 2021

- a Vegetation removal which is:

- i authorised under s.60O of the *Local Land Services Act 2013* (refer Appendix 2 - Clearing Authorised Under Other Legislation);
- ii the removal of vegetation that the council is satisfied is dying or dead and is not required as the habitat of native animals;
- iii the removal of vegetation that the council is satisfied is a risk to human life or property,

does not require a permit from the Council and may be removed without a Permit.

*Notes:*

1. *In relation to 3.1 a ii and 3.1 a iii above, Council "will be satisfied" where recorded evidence from a Trade (AQF3) or Consulting (AQF5) Arborist, identifying the tree species and condition, is retained by the landowner for a period of six (6) months after removal, to be made available to Council on request (i.e. photographs and written expert advice).*
2. *Evidence requirements do not apply where the works are required to be carried out for emergency purposes, e.g., authorised by the Police, Ambulance, SES, Fire Brigade, RFS, etc.*

### 3.5.3.2 Exemptions under this DCP

The tree and vegetation works identified in this Section are exempted from the declaration in Section 2 of this Chapter. These works do not require a Permit from the Council under Part 2.3 of *State Environmental Planning Policy (Biodiversity and Conservation) 2021*.

These exemptions do not apply when the tree or vegetation species is:

- a a threatened species; or
- b a habitat tree for threatened fauna species; or
- c part of an endangered ecological community;

for which a Licence is required from NSW OEH.

The Exempted works are:

- a The removal or pruning of trees or vegetation located within 3 metres of an existing approved structure (see definition), located on the subject or adjoining private land. This distance is measured 1.4 metres above ground level between the face of the wall and the part of the trunk nearest the building. Appropriate care is to be taken to avoid harm to any fauna observed to be inhabiting the tree or vegetation.
- b The pruning or removal of non-native shrubs, understorey and groundcover vegetation for the maintenance of lawns and non-native gardens.
- c The pruning or removal of individual native shrubs, understorey and groundcover vegetation for the maintenance of native gardens. Removal is limited to a maximum area of 50m<sup>2</sup>, to be immediately replaced with effective groundcover plants or material to prevent soil erosion.
- d The removal of dead trees or pruning of dead branches in accordance with *Australian Standard for Pruning of Amenity Trees (AS4373-2007)*.

- e Pruning of a maximum of 10% of tree foliage area once every growing season and in accordance with the *Australian Standard for Pruning of Amenity Trees* (AS4373-2007). Applicable to branches no more than 50mm in diameter.
- f Pruning branches within 3 metres of powerlines by a licensed contractor, or within 1 metre of telecommunication wires, or where directly overhanging the roofline of an approved structure, in accordance with *Australian Standard for Pruning of Amenity Trees* (AS4373-2007).
- g Removal or pruning of any weed species listed under Schedule 3 of the *Biosecurity Act 2015*, and/or those weeds listed on the Australian Government Department of Environment & Energy website "*Weeds in Australia*". <http://www.environment.gov.au/biodiversity/invasive/weeds/index.html>
- h Removal of vegetation comprising any of the tree species as detailed within Council's Undesirable Species List at [www.centralcoast.nsw.gov.au/](http://www.centralcoast.nsw.gov.au/).
- i Native bushland weeding and regeneration works by manual means.

*Notes:*

1. *Where any tree is removed under these exempt provisions, recorded evidence from a Trade (AQF3) or Consulting (AQF5) Arborist identifying the tree species and condition must be retained by the landowner for a period of six (6) months after removal and be made available to Council on request (i.e. photographs and written expert advice).*
2. *Evidence requirements do not apply where the works are required to be carried out for emergency purposes, e.g., authorised by the Police, Ambulance, SES, Fire Brigade, RFS, etc.*

### 3.5.4 PERMIT TYPES FOR REMOVAL OF VEGETATION

- a A person wishing to remove trees and vegetation which Section 2 of this chapter declares to be vegetation to which Part 2.3 of *State Environmental Planning Policy (Biodiversity and Conservation) 2021* applies, and which is not exempt under Section 3 of this chapter, must apply to the Council for a permit to remove that vegetation. The application must be for one of the following two kinds of permit:
  - i **Minor Vegetation Works Permit** for removing up to five (5) individual trees, or removal of vegetation up to 100m<sup>2</sup> in area; and
  - ii **Major Vegetation Works Permit** for removing six (6) or more individual trees, or removal of vegetation exceeding 100m<sup>2</sup> in area, but not exceeding the Biodiversity Offset Scheme (BOS) Threshold.
- b The Permit Application Form detailing submission requirements is available from Council's website at [www.centralcoast.nsw.gov.au/](http://www.centralcoast.nsw.gov.au/)
- c A **Minor Vegetation Works Permit** application will be assessed on the basis of the matters detailed within the relevant Permit Application Form.
- d A **Major Vegetation Works Permit** application will require the following to accompany the application and will be assessed on the basis of the matters detailed within the relevant Permit Application Form.
  - i A Statement prepared by an appropriately qualified person demonstrating that the proposed development does not exceed the BOS Threshold; and

- ii An Ecological Assessment (Non-BAM Projects) Report, prepared in accordance with the requirements of the Permit Application.

### 3.5.4.1 Heritage Trees and Vegetation

- a *State Environmental Planning Policy (Biodiversity and Conservation) 2021* provides that Council can only issue a permit to clear, remove or prune a tree or vegetation which:

- is or forms part of a heritage item or that is within a heritage conservation area, or
- is or forms part of an Aboriginal object or that is within an Aboriginal place of heritage significance,

if council is satisfied the activity:

- is of a minor nature or is for the maintenance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or heritage conservation area, and
- would not adversely affect the heritage significance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or heritage conservation area.

*Note: In relation to 4.1 a, the Permit Application will need to be accompanied by an appropriate report from a suitably qualified Heritage Consultant.*

## 3.5.5. DEFINITIONS

The terms used in this Chapter have the same meaning as those terms are defined within the relevant Local Environment Plan applying to the land. The following additional terms are relevant to this Chapter:

**approved structure** includes commercial or industrial buildings, or a dwelling, garage or swimming pool, and means a structure which has been approved by Council or a Private Certifier under the EP&A Act, but does not include:

- a exempt development under "the Codes SEPP" - a structure included in Part 2 of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* – the General Exempt Development Code; or
- b a temporary building within the meaning of the *Environmental Planning and Assessment Regulation 2021*; or
- c a manufactured home, a moveable dwelling or associated structure or part of a manufactured home, a moveable dwelling or associated structure within the meaning of the *Local Government Act 1993*.

**habitat tree** means any tree(s) 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).

**pruning** means activities as specified in *Australian Standard for Pruning of Amenity Trees (AS4373-2007)*.

**Public authority** means

- a a public or local authority constituted by or under an Act, or
- b a public service agency, or

c a statutory body representing the Crown.

**trunk** means the main stem of the tree, as distinguished from the branches and roots.



## APPENDIX 1

### Does the proposed Clearing exceed the Biodiversity Offset Scheme (BOS) Threshold?

- a Clearing of native vegetation exceeds the Biodiversity Offset Scheme (BOS) Threshold if:
- i the area proposed to be cleared exceeds the area set out in Column 2 of Table 1; or
  - ii the area proposed to be cleared occurs on land included in the Biodiversity Values Map (<https://www.lmbc.nsw.gov.au/Maps/index.html?viewer=BVMap>)

Minimum lot size of land (as prescribed by the Local Environment Plan)	Area of clearing (including clearing for ancillary structures and bushfire asset protection zones)
Less than 1 hectare	0.25 hectare or more
Less than 40 hectares but not less than 1 hectare	0.5 hectare or more
Less than 1000 hectares but not less than 40 hectares	1 hectare or more
NB - Where the minimum lot size of land is not prescribed by the Local Environment Plan, the actual size of the allotment of land will be considered the minimum lot size.	NB - The area of clearing of native vegetation is the total area of proposed clearing irrespective of the number of lots concerned or the ownership of those lots.

**Table 1: Biodiversity Offset Scheme Threshold (Biodiversity Conservation Regulation, 2017)**

- b Should the proposed clearing be determined to exceed the BOS Threshold, the clearing will require either:
- i approval from the Native Vegetation Panel (or delegated Authority) under the *Local Land Services Act 2013* (LLS Act); or
  - ii a Biodiversity Development Assessment Report (BDAR) prepared in accordance with the *Biodiversity Conservation Act 2016*.

Notes:

1. *Proposals for clearing on lands identified in a Local Environmental Plan as a "Deferred Matter" require approval under the LLS Act.*
2. *An online Biodiversity Offset Scheme Entry Tool (BOSET) is available to assist developers, landholders and consent authorities to determine whether proposed clearing will exceed the BOS Threshold (<https://www.lmbc.nsw.gov.au/Maps/index.html?viewer=BOSETMap>). A User Guide to the BOSET is available at <http://www.environment.nsw.gov.au/resources/bcact/biodiversity-offset-scheme-entry-threshold-user-guide-170503.pdf>*
3. *BDAR Reports: An accredited assessor must apply the Biodiversity Assessment Method (BAM) online tool. The assessor documents the results of the biodiversity assessment in a Biodiversity Development Assessment Report (BDAR). The BDAR identifies how the proponent proposes to avoid and minimise impacts, any potential impact that could be characterised as serious and irreversible according to*

*specified principles and the offset obligation required to offset the likely biodiversity impacts of the development or clearing proposal, expressed in biodiversity credits. A proponent must provide the BDAR to the approval authority as part of their development, major project proposal, or clearing application. A BDAR will be placed on public exhibition with the relevant development application.*

## APPENDIX 2

### Clearing Authorised Under Other Legislation

**Local Land Services Act 2013 No 51** - [Part 5A Division 3](#) Section 60O

#### 60O Clearing authorised under other legislation

For the purposes of this Part, the clearing of native vegetation in a regulated rural area is authorised under other legislation in any of the following cases:

a Planning approval

The clearing was authorised by:

- i a development consent under Part 4 of the *Environmental Planning and Assessment Act 1979*, or
- ii a State significant infrastructure approval under Part 5.1 of that Act, or
- iii a transitional Part 3A project approval under Schedule 6A to that Act.

*Note. A planning approval may authorise clearing as part of or ancillary to the carrying out of other development, but except in limited cases does not authorise only clearing of native vegetation—see section 60P.*

b Other planning authorisation

The clearing was:

- i a part of or ancillary to the carrying out of exempt development within the meaning of the *Environmental Planning and Assessment Act 1979*, or
- ii an activity carried out by a determining authority within the meaning of Part 5 of that Act after compliance with that Part, or
- iii authorised by an approval of a determining authority within the meaning of Part 5 of that Act granted after compliance with that Part.

c Biodiversity conservation authorisation

The clearing was authorised by a biodiversity conservation licence under the [Biodiversity Conservation Act 2016](#) or was authorised by a regulation made under section 2.9 of that Act (including under a code of practice made or adopted by any such regulation).

d Rural fires authorisation

The clearing was:

- i an emergency fire fighting act or emergency bush fire hazard reduction work within the meaning of the *Rural Fires Act 1997*, or
- ii bush fire hazard reduction work to which section 100C (4) of the *Rural Fires Act 1997* applies or vegetation clearing work under section 100R of that Act.

e Electricity network operator bush fire risk mitigation direction

The clearing was required to be carried out to give effect to a direction of a network operator under Division 2A of Part 5 of the [Electricity Supply Act 1995](#).

f State emergency authorisation

The clearing was authorised by or under the [State Emergency and Rescue Management Act 1989](#) or the [State Emergency Service Act 1989](#) and was reasonably necessary in order to avoid a threat to life or property.

g Biosecurity authorisation

The clearing was an authorised action for the purposes of section 386 of the [Biosecurity Act 2015](#).

h Plantation operations authorisation

The clearing was the carrying out of a plantation operation on an authorised plantation in accordance with the [Plantations and Reafforestation Act 1999](#), the conditions of the authorisation and the provisions of the Plantations and Reafforestation Code applying to the plantation.

i Forestry operations authorisation

The clearing was:

- i the carrying out of a forestry operation in a State forest or other Crown-timber land to which an integrated forestry operations approval under Part 5B of the [Forestry Act 2012](#) applies, being a forestry operation that is carried out in accordance with the approval, or
- ii the carrying out of a forestry operation authorised by Part 5C (Private native forestry) of the [Forestry Act 2012](#).

j Water management authorisation

The clearing was authorised by a licence, permit, approval or other authority under the [Water Management Act 2000](#).

k Mining/petroleum authorisation

The clearing was authorised by a lease, licence or other authority under the [Mining Act 1992](#) or the [Petroleum \(Onshore\) Act 1991](#).

l Fisheries management authorisation

The clearing was authorised by a licence under Division 6 of Part 7A of the [Fisheries Management Act 1994](#) or was authorised under Division 3 or 4 of Part 7 of that Act.

m Survey work

The clearing was required to be carried out for the purposes of a survey under the [Surveying and Spatial Information Act 2002](#) and was carried out by or under the direction of a surveyor.

n Roads authorisation

The clearing was authorised by a consent under Division 3 of Part 9 of the [Roads Act 1993](#).

o Private land conservation agreement

The clearing was authorised by a private land conservation agreement under the [Biodiversity Conservation Act 2016](#).

p Other legislative authorisation

The clearing was authorised by or under any other Act that has effect despite this Part.