

EXTRAORDINARY

COUNCIL MEETING
29 APRIL 2015

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MEETING NOTICE

**The Extraordinary Council Meeting
of Wyong Shire Council
will be held in the Council Chamber,
Wyong Civic Centre, Hely Street, Wyong on
Wednesday 29 April 2015 at 6.00pm,
for the transaction of the business listed below:**

OPENING PRAYER

ACKNOWLEDGEMENT OF COUNTRY

RECEIPT OF APOLOGIES

1 PROCEDURAL ITEMS

- 1.1 Disclosure of Interest..... 4
- 1.2 Address By Invited Speakers 5

2 PLANNING REPORTS

- 2.1 Draft WDCP 2013: Chapter 3.6 - Tree and Vegetation Management..... 6

At the conclusion of the meeting and at the discretion of the Mayor, Council may meet with staff in an informal, non-decision making mode for a period of no more than 30 minutes.

Michael Whittaker
GENERAL MANAGER

1.1 Disclosure of Interest

TRIM REFERENCE: F2015/00040 - D11922197

MANAGER: Lesley Crawley, Manager Corporate Governance

AUTHOR: Jacquie Elvidge; Councillor Services Officer

The provisions of Chapter 14 of the *Local Government Act, 1993* regulate the way in which Councillors and nominated staff of Council conduct themselves to ensure that there is no conflict between their private interests and their public trust.

The Act prescribes that where a member of Council (or a Committee of Council) has a direct or indirect financial (pecuniary) interest in a matter to be considered at a meeting of the Council (or Committee), that interest must be disclosed as soon as practicable after the start of the meeting and the reasons for declaring such interest.

As members are aware, the provisions of the Local Government Act restrict any member who has declared a pecuniary interest in any matter from participating in the discussions, voting on that matter, and require that member to vacate the Chamber.

Council's Code of Conduct provides that if members have a non-pecuniary conflict of interest, the nature of the conflict must be disclosed. The Code also provides for a number of ways in which a member may manage non pecuniary conflicts of interest.

RECOMMENDATION

That Councillors now disclose any conflicts of interest in matters under consideration by Council at this meeting.

ATTACHMENTS

Nil.

1.2 Address By Invited Speakers

TRIM REFERENCE: F2015/00040 - D11922201

MANAGER: Lesley Crawley, Manager Corporate Governance

AUTHOR: Jacquie Elvidge; Councillor Services Officer

SUMMARY

There have been no requests to address the Extraordinary Meeting at the time of printing the Business Paper.

RECOMMENDATION

That Council receive the report on Invited Speakers.

ATTACHMENTS

Nil.

2.1 Draft WDCP 2013: Chapter 3.6 - Tree and Vegetation Management

TRIM REFERENCE: F2014/00370 - D11815865

MANAGER: Michael Whittaker, General Manager

AUTHOR: Scott Cox; Director

SUMMARY

As a result of the recent storms and the significant damage caused by fallen trees, Council has called an extraordinary meeting to consider the draft Wyong Development Control Plan 2013 Chapter 3.6 – Tree and Vegetation Management (the draft DCP).

This report recommends that Council receive and note the report on the exhibited draft policy and submissions received during the public exhibition period.

RECOMMENDATION

That Council receive and note the report regarding draft Development Control Plan 2013 Chapter 3.6 – Tree and Vegetation Management and details of submissions received during public exhibition.

BACKGROUND

At its meeting of 13 November 2013 the Council resolved to amend the Wyong Development Control Plan 2013 (WDCP) relating to tree and vegetation management as follows:

- Simplify requirements for residents and minimise “red tape”,
- Develop a risk-based policy to mitigate harm to property and life,
- Increase exemptions and streamline the need for approvals,
- Minimise Council’s exposure to litigation relating to tree matters,
- Staff to advise required amendments to policy.

In response to this resolution Council staff undertook a review of WDCP Chapter 3.6 – Tree and Vegetation Management. The current chapter has a range of complex prescriptive provisions.

The provisions:

- Require protection of all native species and preservation of endangered and vulnerable species,
- Require preservation of the character of areas,
- Allows exemptions mainly for removal of exotic & non-native species,
- Allows (without application) removal of trees within:
 - 6 metres of dwellings and any other approved structures (excepting prescribed species) in residential areas, and
 - 12 metres of dwellings and any other approved structures (excepting prescribed species) in other zones,
- Require a tree application to remove other trees, and those beyond the exemption distances.

In developing the draft DCP, Council also had regard for the introduction of NSW Rural Fire Service (RFS) 10/50 rule on 1 August 2014. This rule applied to Bushfire Prone Land plus land located within a buffer distance of bushfire sources (350m from Category 1 vegetation and 150m from Category 2 Vegetation). These areas known as "entitlement areas" affected the majority of lands within Wyong Shire. Within the "entitlement areas" the 10/50 rule allowed the removal of trees within 10m of habitable buildings and removal of shrubs within 50m of habitable buildings without consent.

In response to public submissions, the Minister for Police and Emergency Services reduced the size of buffer distances from 350m to 100m (from Category 1 Vegetation) and from 150m to 30m (from Category 2 Vegetation) in November 2014. This reduction reduced the tree removal "entitlement areas".

This is an interim change and is in place until the full review has been completed by the RFS.

At its meeting of 10 September 2014 the Council considered a report on proposed changes to the tree management controls, and resolved:

- 1 Further to the recent state government legislative 10/50 bushfire protection rules, Council now amends its' DCP Chapter 3.6 in accordance with the following objectives:
 - a) that Council has no objection to the planting or removal of any vegetation from any residential zoned lot less than 1500m²
 - b) existing controls for non-residential and residential over 1500m² remains unchanged from existing controls in the current DCP.
- 2 That staff submit a revised DCP in accordance with 1 above for Council's consideration.

Following the further development of the draft DCP provisions, Council at its meeting of 8 October 2014 resolved as follows:

- 1 That council amend development control plan 2013 chapter 3.6 Tree and Vegetation Management in accordance with the draft attached to this report including the following amendments.
 - a) R5 zones to be included in residential exemptions
 - b) The 12m exemption rule apply to all other zones
- 2 That Council place draft development control plan 2013 chapter 3.6 Tree and Vegetation Management on exhibition for a period of 28 days for public comment.
- 3 That Council adopt the draft development control plan 2013 chapter 3.6 Tree and Vegetation Management subject to there being no significant objections received
- 4 That Council request the Mayor to forward a copy of the Tree Policy to Gosford City Council.

THE PROPOSAL

In accordance with Council's resolutions, the Draft DCP was amended and placed on public exhibition for 28 days in accordance with the Environmental Planning and Assessment Act 1979. The draft DCP (Attachment 1) focuses on residential lands and minimises the need for tree removal applications by providing defined exemptions (see extract below):

*The following tree works are defined as Exempt Tree and Vegetation Removal Works, and **do not require consent** under the EP&A Act from Council:*

- A *The pruning or removal of exotic trees (non-native to NSW) in all zones;*
- B *The pruning or removal of any tree or vegetation on land within the following zones that has an area less than 1500 square metres:*
 - i. *R1 General Residential;*
 - ii. *R2 Low Density Residential;*
 - iii. *R3 Medium Density Residential;*
 - iv. *R5 Large Lot Residential; and*
 - v. *RU5 Village.*
- C *For land within other zones, and residential zoned lots over 1500 square metres:*
 - i. *The pruning or removal of any tree or vegetation within 12 metres of an "approved structure".*

In addition landowners can make application to Council for the removal of vegetation beyond these exemption distances.

It is noted that while these provisions will when made, allow removal of trees without Council approval, approvals under other legislation such as the Threatened Species Conservation Act 1995 and Vegetation Management Act 1993 will still need to be considered by the landowner.

Councillor Briefing

A briefing was held on Wednesday 23 April 2015 to inform Councillors on the details of submissions received. Details contained in the submissions received during exhibition were sent to Councillors for consideration prior to the briefing.

CONSULTATION

The draft DCP was placed on public exhibition from 29 October 2014 to 26 November 2014. During the exhibition period, 13 submissions were received.

There were also submissions received prior and post exhibition. The total number of submissions received was 31. The breakdown of submissions is as follows:

Lodged Pre-Exhibition Period: 3 (2 in Support; 1 Objecting)
 Lodged During Exhibition Period: 13 (1 in Support; 12 Objecting)
 Lodged Post Exhibition Period: 15 (1 in support; 14 Objecting)

The submissions have been considered and are summarised as follows:

<p><i>3m is considered sufficient distance for an exemption from approval.</i></p> <p>Response: The exemption distance needs to correspond to the risk of potential property damage and human safety. 3m is impractical to protect either.</p>
<p><i>Assessment of risk needs to be conducted independently by Council Arborists</i></p> <p>Response: Council's draft DCP seeks to provide clear standards for the removal of vegetation. It also seeks to take account for the risk presented by trees being close to dwellings. The controls proposed provide adequate information to guide when and where trees may be removed without Council consent. Proposals to remove vegetation outside these distances remain subject to arborist assessment.</p>
<p><i>The NSW RFS 10/50 Code of Practice has been subject to abuse, distances have been reduced, and the policy is under formal review.</i></p> <p>Response: The purpose of the draft DCP is to streamline the removal of dangerous trees. There may be potential for some landowners to remove trees that may appear to be in a safe and healthy condition, however this would be the minority, and also the level of acceptable risk should lie with the property owner.</p>
<p><i>12m outside residential zones exceeds the RFS Code – should be 10m</i></p> <p>Response: There is no legislative requirement that requires both policies to be consistent. The 10/50 rule was drafted for protection of buildings and land as a result of bushfire. The draft DCP has been drafted to consider bushfire as well as other climatic and environmental factors that impact all trees. Council resolved that 12m was reasonable for the non-residential zones.</p>
<p><i>1500m² in residential zones is excessive - should be reduced to 500m²</i></p> <p>Response: Council resolved on 10 September 2014 that 1500m is appropriate.</p>
<p><i>Impact on wildlife and ecosystems in urban areas</i></p> <p>Response: While the draft DCP allows for removal of vegetation, it is noted that Council commits substantial funds and projects to plant vegetation within a range of settings including streets, parks, drainage reserves, natural areas and beach reserves. This planting helps offset losses of vegetation closer to homes.</p>
<p><i>Tree removal may impact other threatened plants or animals</i></p> <p>Response: There is still an obligation on the landowner to consider relevant environmental legislation such as Threatened Species Conservation Act and the Native Vegetation Act.</p>
<p><i>Hearing chainsaws every day</i></p> <p>Response: Noted.</p>

<i>Significant impact likely on the visual amenity and privacy of suburbs</i>
Response: Council is committed to a number of projects and programs which plant and landscape the shire. These projects will introduce substantially more trees than is anticipated to be removed through the policy and maintain amenity.
<i>Healthy trees being removed to improve views, to avoid tidying leaves, and to increase sale values</i>
Response: There is potential for this to occur however not everyone has an appetite to remove trees. Council has resolved the risk should be determined by the landowner.
<i>DCP no longer addresses public land – owners will expect the same liberal policy for public trees</i>
Response: Requests for removal of vegetation on Council land would require consideration from Council's Arborists including an assessment of risks, vegetation, health and landscape benefits of the vegetation.
<i>Will Council be liable for a DCP non-compliant with the LEP and other legislation? – Council's DCP was one of the best of the LG DCPs</i>
Response: CI 5.9 of WLEP 2013 enables Council to develop a DCP related to trees or vegetation if it desires. The development of this draft DCP is not in-consistent with CI 5.9 of the WLEP 2013.
<i>Impact on the "Green Corridors" and habitat linkages in NWSSP areas</i>
Response: This policy does not enable the removal of trees within Green /Wildlife Corridors.
<i>Loss of credibility and reputation for Council – not balanced tree management</i>
Response: Noted.
<i>Health impact – loss of clean air, shade and tempered climate, increase in erosion and decrease in soil quality -pollution of the Lakes.</i>
Response: The Council is committed to a variety of vegetation planting projects which are delivered annually. It is considered that vastly more vegetation will be planted than that lost. This will assist in offsetting the impact of vegetation losses which may occur including shading, climate and erosion impacts.

Environmental Planning and Assessment Act 1979

Section 74C of the Environmental Planning and Assessment Act 1979 (EP&A Act) provides for the preparation of DCP's by Council, addressing aspects of development. It is noted that an amendment to the EP&A Act on 1 March 2013, reinforced the status of DCPs as 'guideline documents', to be applied flexibly where warranted in the assessment of development applications.

The draft DCP has been prepared in accordance with the Environmental Planning and Assessment Regulation 2000.

CONCLUSION

Council resolved to prepare an amendment to WDCP 2013 Chapter 3.6 Tree and Vegetation Management which seeks to provide clearer exemptions from Council approvals for vegetation removal. The exemptions apply predominantly to the residential zoned land, and it is noted that Residential zones comprise approximately 85% of Wyong Shire.

The statutory requirements of the development and consultation of the WDCP 2013 have been met should Council decide to adopt the Draft WDCP 2013 Chapter 3.6 Tree and Vegetation Management as exhibited between October and November 2014.

ATTACHMENTS

- | | | |
|---|---|-----------|
| 1 | Exhibited Draft DCP 2013 - Chapter 3.6 - Tree and Vegetation Management | D11921875 |
|---|---|-----------|

CHAPTER 3.6 TREE AND VEGETATION MANAGEMENT

1.0 INTRODUCTION

1.1 Objectives of this Chapter

- To set out Council's requirements with respect to the management and preservation of trees and vegetation, for the purposes of clause 5.9 of the Wyong Local Environmental Plan 2013 (WLEP 2013).
- To provide a streamlined process for practical tree management within urban areas.
- To identify when consent is required to remove trees.

1.2 Land to which this Chapter Applies

This Chapter applies to all land within the Wyong local government area, except land zoned RU3 Forestry and E1 National Parks and Nature Reserves.

1.3 Relationship to other Plans and Policies

1.3.1 Wyong Local Environmental Plan 2013

Section 74C of the Environmental Planning and Assessment Act 1979 (EP&A Act) and the EP&A Regulations 2000 require Development Control Plan 2013 (DCP) to be consistent with WLEP 2013, as amended. In the event of any inconsistency between this Chapter and the WLEP, 2013, the provisions of WLEP 2013 prevail.

1.3.2 Other Related Acts and State Environmental Planning Policies (SEPPs)

The Acts and State Environmental Planning Policies (SEPPs) listed within Appendix A relate to biodiversity conservation, tree removal and vegetation management. These should be considered before the removal of trees as concurrence, consent or approval may be required.

Most of these Acts and SEPPs contain exemptions or alternative approval processes, for example, **in relation to structures containing approved habitable rooms, the Rural Fires Act, 1997, incorporated the "10/50 Vegetation Clearing Code of Practice for NSW" on 1 August, 2014.** This Code of Practice permits vegetation clearing work within identified "vegetation clearing entitlement areas". Reference should be made to the NSW Rural Fire Service website www.rfs.nsw.gov.au to determine whether these exemptions apply.

In the event of there being a prior approval issued by a determining authority under any other Act or SEPP, further development consent for the same works under WLEP 2013 will not be required.

1.4 Glossary

Generally, the terms used in this Chapter have the same meaning as those terms are defined within the WLEP 2013. The additional terms relevant to this Chapter are contained within Appendix B.

2.0 TREE PRUNING AND REMOVAL

2.1 Exempt Tree and Vegetation Removal Works

The following tree works are defined as Exempt Tree and Vegetation Removal Works, and **do not require consent** under the EP&A Act from Council:

- a The pruning or removal of exotic trees (non-native to NSW) in all zones;
- b The pruning or removal of any tree or vegetation on land within the following zones, that has an area less than 1500 square metres:
 - i. R1 General Residential;
 - ii. R2 Low Density Residential;
 - iii. R3 Medium Density Residential;
 - iv. R5 Large Lot Residential; and
 - v. RU5 Village.
- c For land within other zones, and residential zoned lots over 1500 square metres:
 - i. The pruning or removal of any tree or vegetation within 12 metres of an "approved structure".

2.2 When consent is required to remove Trees

Development consent is required for pruning or clearing native vegetation **where:**

- a the land exceeds 1500m² in area within a residential zone; or
- b trees to be removed in all other zones are greater than 12 metres from an approved structure.

Development Consent is obtained through the lodgement of a Development Application with Council.

Figure 1 identifies when consent is required (see over).

Exempt Tree and Vegetation Pruning or Removal Works

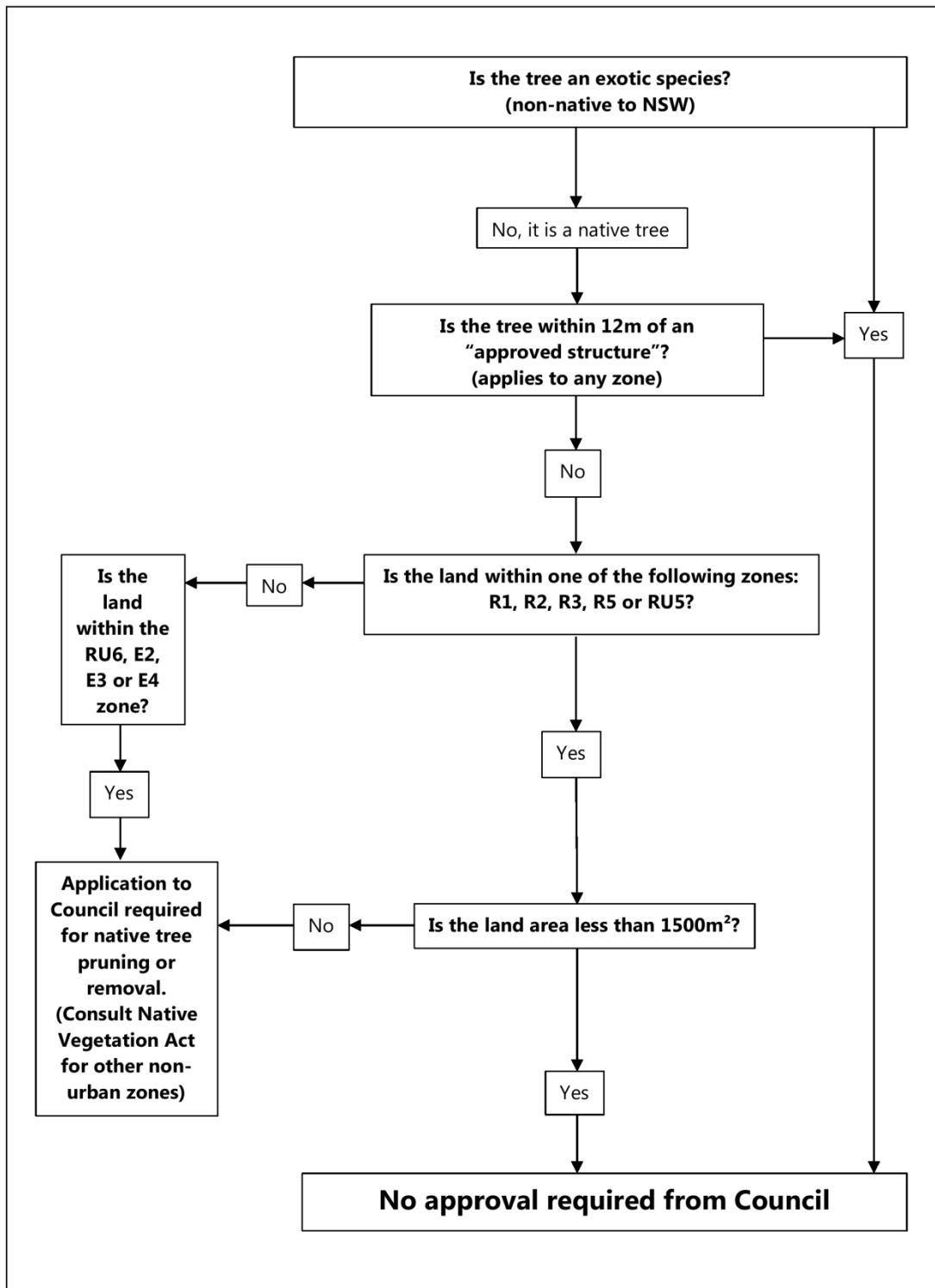


Figure 1: Do I need consent to prune or remove my tree?

2.3 Arborist's Reports

- a A report prepared by a Consulting Arborist must be submitted in conjunction with any application for:
 - i. the removal of 10 or more trees native to NSW; or
 - ii. the reconsideration of a decision on an application by Council, lodged under Section 82A of the EP&A Act.
- b Where Council requires a Consulting Arborist to prepare an arborist's report, the minimum qualification standard is the Australian Qualification Framework Level 5 (AQF5).

3.0 PENALTIES

3.1 Unauthorised Tree Removal or Injury

The unauthorised injury, removal or destruction of tree species that require development consent, **can be prosecuted** under the provisions of the EP&A Act 1979 by Council.

Council encourages the use of qualified technical experts to assist in the identification of trees, as well as consultation with the relevant legislation and Authorities listed in Appendix A.

APPENDIX A:

OTHER LEGISLATION APPLYING TO TREE REMOVALS, VEGETATION MANAGEMENT AND CLEARING

Applicants for tree clearing and removals will also need to consider the provisions of other legislation, including but not limited to the following:

Environment Protection and Biodiversity Conservation Act, 1999 (Cth) - protect and manage nationally and internationally important flora, fauna, ecological communities and heritage places. Contact the Commonwealth Department of the Environment.

National Parks and Wildlife Act 1974 (NSW) - fauna habitat, protected plants. Contact the National Parks and Wildlife Service at the NSW Office of Environment and Heritage (OEH).

Threatened Species Conservation Act 1995(NSW) - ecological communities, critical habitat, endangered and vulnerable species, key threatening processes, recovery plans. Contact the NSW OEH.

Native Vegetation Act 2003 (NSW) - clearing native vegetation, regional vegetation management plans, property agreements. Contact the NSW OEH.

Fisheries Management Act 1994 (NSW) - prohibits cutting of mangroves. Contact the NSW Department of Industry and Investment.

Water Management Act 2000 (NSW) - A controlled activity approval under the WMA is required for certain types of developments and activities that are carried out in or near a river, lake or estuary (e.g., for the removal of material or vegetation). Contact the NSW Department of Primary Industries.

Rural Fires Act 1997 (NSW) – “10/50 Vegetation Clearing Code of Practice for NSW”, and authorised removal of fire hazards. Contact the NSW Rural Fire Service.

Heritage Act 1977 (NSW) - sites under conservation orders, relics, etc. Contact the NSW OEH.

Noxious Weeds Act 1993 (NSW) - clearing of noxious weeds. Contact the NSW Department of Primary Industries.

The following relevant State Environmental Planning Policies (SEPPs) may apply to land within the Wyong local government area:

State Environmental Planning Policy No 14 - Wetlands

State Environmental Planning Policy No 26 - Littoral Rainforests

State Environmental Planning Policy No 44 - Koala Habitat

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

APPENDIX B:

GLOSSARY

Note: Generally, the terms used in this Chapter have the same meaning as those terms are defined within the WLEP 2013. Where a term is defined within the WLEP 2013, it is not repeated here. The following additional terms are relevant to this Chapter:

approved structure includes commercial or industrial buildings, or a dwelling (including buildings containing residential accommodation as defined under Section 100P of the *Rural Fires Act 1997*), a 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:

- 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
- a temporary building within the meaning of the Environmental Planning and Assessment Regulation.

clearing native vegetation means any one or more of the following:

- cutting down, felling, thinning, logging or removing native vegetation;
- killing, destroying, poisoning, ringbarking, uprooting or burning native vegetation;
- severing, topping or lopping branches, limbs, stems or trunks of native vegetation;
- substantially damaging or injuring native vegetation in any other way.

consulting arborist means an Australian Qualification Framework Level 5 arborist (AQF5).

destroy means any activity leading to the death, disfigurement or mutilation of a tree.

dwelling means a room or number of rooms occupied or used, or so constructed or adapted as to be capable of being occupied or used, as a separate domicile.

exempt tree and vegetation removal works means those works not requiring the consent of Council (as defined in Section 2.1 of this Chapter).

garage means a class 10(a) building as defined by the Building Code of Australia.

lopping means cutting between branch unions or at internodes on young trees, (but does not refer to lopping solely for the purpose of feeding stock in an officially drought declared area).

native tree means a tree which is native to the State of New South Wales.

native vegetation means any of the following types of indigenous vegetation as determined by the Native Vegetation Act and includes:

- trees;
- understorey plants;
- groundcover;
- plants occurring in a wetland.

non-native tree means an exotic tree, not native to the State of New South Wales.

private land means any land not owned by Council or the Crown.

prune or pruning means activities as specified in Australian Standard AS 4373-2007, "Pruning of Amenity Trees", including Crown maintenance and/or modifications.

public land means any land owned by Council or the Crown.

technical expert means any suitably qualified person in the fields including and related to arboriculture, forestry, botany, horticulture, ecology or environment, with a minimum Australian Qualification Framework Level 3 (AQF3).

topping means cutting away part or all of the tree canopy leaving a trunk and stubbed main branches.

tree means a perennial plant with at least one self-supporting woody or fibrous stem, being of any species whether indigenous, exotic or introduced which:

- is 3 metres or more in height; or
- has a trunk diameter of 75 mm or more measured at 1.4 metres above ground level; or
- has a trunk diameter of 75 mm or more measured at ground level where the tree is removed such that the trunk diameter at 1.4 m above ground level can no longer reasonably be measured; or
- is a cycad or mangrove that is indigenous to or is recorded by Council as having special significance in the area of Wyong, irrespective of its dimensions.

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 (including washing off or directing water contaminated by) oil, petroleum, paint, cement, mortar and the like onto the root zone;
- cutting and tearing of branches and roots that is not carried out in accordance with accepted arboriculture practices, does not qualify as "pruning" or is done for invalid reasons;
- 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 (except for access to an injured tree worker) or fastening materials that circle and significantly restrict the normal vascular function of the trunk or branches;
- damaging a trees root zone by compaction or excavation, asphyxiation (including unauthorised filling or stockpiling of materials);
- under-scrubbing, unless carried out by hand tools, such as brush cutters and the like.

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

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