

## 5.6 Tree and Vegetation Preservation

### Purpose

To give effect to State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 by declaring trees and vegetation for which clearing is exempt or requires approval by Council or other agencies.

To ensure consistency with the SEPP such that the biodiversity and amenity values of trees and other vegetation in the Bega Valley Local Government Area are protected.

### Objectives

- To protect and enhance trees and vegetation in non-rural areas including street trees, park trees (including bushland) and trees on private property as an important, environmental, community and tourism asset;
- To facilitate the removal or pruning of undesirable exotics, environmental weeds, noxious weeds, dangerous trees and any other inappropriate plantings e.g. that are causing damage to buildings or other infrastructure;
- To facilitate the removal or pruning of vegetation for maintenance of existing rural infrastructure; and
- To minimise impacts to vegetation with high environmental value e.g. threatened ecological communities, threatened species and their habitats.

### Definitions

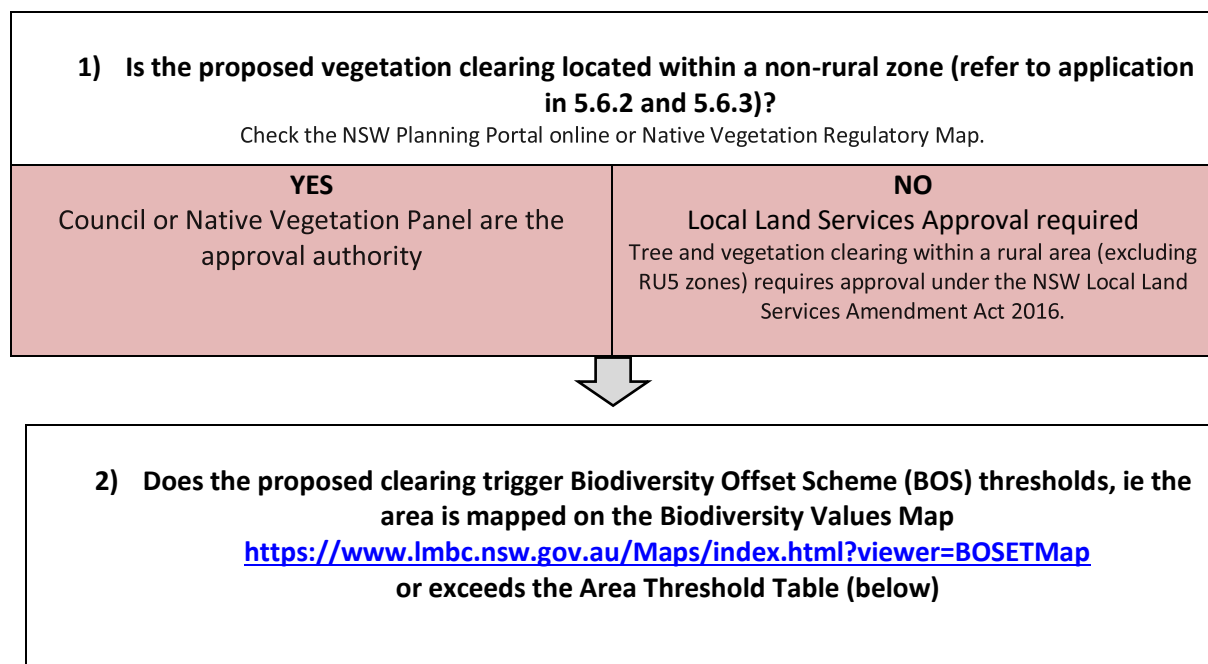
For the purposes of this section;

**Native Vegetation** has the same meaning as in Part 5A of the *Local Land Services Act 2013*.

To remove or clear vegetation has the same meaning as to **clear** vegetation in the *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*.

#### 5.6.1 Vegetation clearing approval process

The following flow chart should be used as a guide for identification of the appropriate vegetation clearing approvals that are not associated with a development that requires development consent from council (under Part 4 of the Environmental Planning and Assessment Act 1979):



Minimum lot size of land in the BVLEP 2013	Area of clearing
Below 1ha	0.25 ha or more
1ha - 40ha	0.5ha or more
40ha - 1,000ha	1ha or more
1,000ha or more	2ha or more
<b>NO</b> Council Assessment required	<b>YES</b> Native Vegetation Panel Approval required If thresholds are triggered, approval from the Native Vegetation Panel (NVP) is required. A Biodiversity Assessment Report is required as part of the application from an accredited assessor.



<b>3) Does the proposed clearing damage habitat of threatened species or an endangered ecological community and therefore require issuing of Licence under Biodiversity Conservation Act (2016)?</b>  Check if the vegetation is listed under the Biodiversity Conservation Act 2016. An ecologist may be required to identify the presence of threatened species habitat and prepare a 'Test of Significance'	
<b>YES</b> Licence required A Biodiversity Conservation Licence under the Biodiversity Conservation Act 2016 is required.  Note: Check if the clearing is a Matter of National Environmental Significance under the Environment Protection and Biodiversity Conservation Act 1999.	<b>NO</b> Licence not required (continue to 4 below)



<b>4) Does the proposed clearing require the approval of Council?</b>  Check if the proposal meets the exemptions listed in 5.6.6 (taking note of when these exceptions can not be used). Additional information may be required such as a Hazard Reduction Certificate or a report from a qualified ecologist.	
<b>YES</b> Council Approval required	<b>NO</b> Approval not required The vegetation clearing can be undertaken in accordance with the exempt requirements. Excludes works approved under Part 4 (Development Applications) or 5 of the EPA Act 1979, species listed under the Biodiversity Conservation Act 2016, vegetation of heritage significance, vegetation mapped under the Coastal SEPP as coastal wetlands or littoral rainforest or vegetation mapped on the Biodiversity Values Map



<b>5) Does the proposed clearing satisfy the tree/vegetation permit assessment criteria?</b>  Check if the species impacted by the clearing proposal are listed under the Biodiversity Conservation Act 2016, of heritage significance or under the Coastal SEPP as coastal wetlands or littoral rainforest*.	
<b>YES</b> Tree/Vegetation Permit issued	<b>NO</b> Development Application required*

## 5.6.2 Council Approval Process – Tree Permit (1 to 5 trees)

### Application

The following is prescribed vegetation for which clearing requires a Tree Permit to be issued by Council.

All trees, native or exotic, are declared for the purposes of this part.

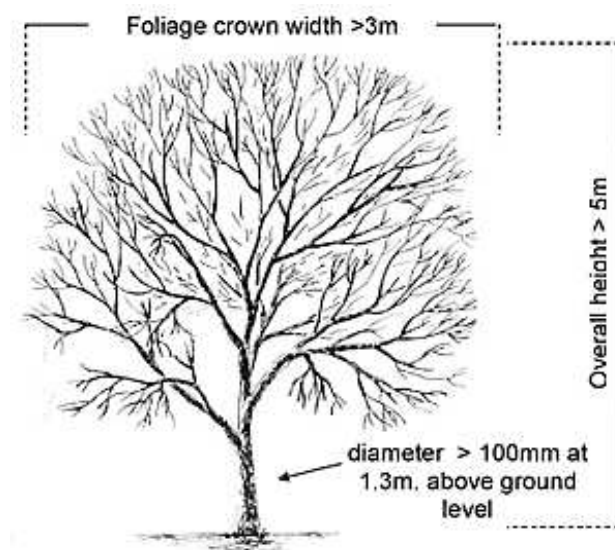
This Section applies to requests for the removal of between **1 to 5 native trees** or **any number of exotic trees** (not listed as exempt species in 5.6.6.2) in the following zones:

RU5 Village, R2 Low Density Residential, R3 Medium Density Residential, R5 Large Lot Residential, B1 Neighbourhood Centre, B2 Local Centre, B4 Mixed Use, SP3 Tourism, RE1 Public Recreation, RE2 Private Recreation, E2 Environmental Conservation, E3 Environmental Management and E4 Environmental Living.

1. A permit is required for the removal of between 1 and 5 native trees or any number of exotic trees that meet all of the following criteria (refer to Figure 5.6):

- a) is 5m or more in height, and
- b) Has a trunk diameter of 100mm or more at 1.3m above natural ground surface, and
- c) A branch span with a diameter of 3m or more.

Figure 5.6: Applicable trees



2. Removal of a tree or vegetation of **any size** that is:

- a) A species listed under the Biodiversity Conservation Act 2016.  
Note: A Biodiversity Conservation Licence is required to damage habitat of threatened species or ecological community. Clearing may also be a Matter of National Environmental Significance under the Environment Protection and Biodiversity Conservation Act 1999.
- b) Part of a heritage item, heritage conservation area, Aboriginal object or Aboriginal place of significance, only where Council is satisfied:

- (i) Is of a minor nature or is for the maintenance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or archaeological site or a building, work, relic, tree or place within the heritage conservation area, and
- (ii) Would not adversely affect the heritage significance of the heritage item, Aboriginal object, Aboriginal place, archaeological site or heritage conservation area.

For the avoidance of doubt, where Council determines that the vegetation removal does not satisfy 2(b) above, a Development Application is required

### 5.6.3 Council Approval Process – Vegetation Permit

The following is prescribed vegetation for which clearing requires a Vegetation Permit to be issued by Council.

All native vegetation is declared for the purposes of this part.

Native vegetation including the following types of plants native to New South Wales:

- a) Trees (including sapling or shrub or any scrub)
- b) Understorey plants
- c) Groundcover (being any type of herbaceous vegetation)
- d) Plants occurring in a wetland.

#### **Application**

This Section applies to requests for the clearing of native vegetation in the following zones;

This Section applies to land in the following zones: RU5 Village, R2 Low Density Residential, R3 Medium Density Residential, R5 Large Lot Residential, B1 Neighbourhood Centre, B2 Local Centre, B4 Mixed Use, IN1 General Industrial, IN2 Light Industrial, SP2 Infrastructure, SP3 Tourism, RE1 Public Recreation, RE2 Private Recreation, E2 Environmental Conservation, E3 Environmental Management and E4 Environmental Living.

### 5.6.4 Assessment Criteria

The following table lists the criteria to be considered when assessing a tree/vegetation permit or development application.

Table 5.6.1 Criteria for assessing a council tree/vegetation permit or development application

Criteria	Explanation
<b>Amenity or aesthetic value</b>	The significance of the tree or vegetation to its setting within the site or streetscape. Whether an amenity tree fulfils its original purpose within the landscape.
<b>Ecological significance</b>	The value of the tree or vegetation in terms of its ecology within the local or regional context and potential impact on flora, fauna or habitat.
<b>Weed management</b>	Natural propagation methods and potential ecological/economic impacts through weed establishment
<b>Condition and life expectancy</b>	The condition of the tree and safe useful life expectancy with respect to practical remedial actions and mature size.
<b>Solar access</b>	The demonstrated need for reasonable passive solar access or interference with photovoltaic systems.
<b>Potential hazards</b>	The risk of retaining the tree within the context of the site, neighbours and streetscape. Medical documentation may be required to substantiate an illness or allergy.

<b>Compensatory planting</b>	The need for replacement with more desirable species.
<b>Previous approvals</b>	The amount of vegetation approved to be removed by Council in the previous 5 years is cumulatively less than the Biodiversity Offsets Scheme Threshold.
<b>Cultural significance</b>	The value of the tree or vegetation in terms of its cultural significance within the local or regional context.

The following reasons are **NOT** to be used to justify the clearing of a tree or vegetation:

- a) Enhance or create views
- b) Improving the value of a property
- c) Increasing natural light to a building or garden area
- d) To improve street lighting of private property
- e) Leaf drop into gutters, downpipes or pools
- f) Minimise fruit, resin or bird droppings on cars or buildings and driveways
- g) Minor lifting of driveways or garden paths by tree roots
- h) Potential damage to sewer mains unless supported by written expert advice where reasonable alternatives are not feasible

#### 5.6.5 Lodgement Details

The following information may be required by Council as part of a permit application:

- a) Physical marking or identification of the trees/vegetation
- b) Site plan clearly showing all vegetation to be removed and vegetation to be retained (including quantification of the total area of native vegetation to be cleared)
- c) Photographic documentation of the trees/vegetation to be removed
- d) Report from a qualified arborist
- e) Soil and water management plan
- f) Flora and Fauna Assessment and/or 'Test of Significance'
- g) A plan for compensatory planting

#### 5.6.6 Exemptions

Note The following exemptions and Allowable Maintenance Activities do not equal an exemption under other legislation controlling the clearing or pruning of trees and other vegetation. The following exemptions cannot be used for clearing or pruning of vegetation that:

- a) is required to be retained by a development consent or a Section 88B restriction to user instrument.
- b) is related to a heritage item, Aboriginal object, Aboriginal place of heritage significance, or on land within a heritage conservation area.
- c) is mapped as Coastal Wetland or Littoral Rainforest by the State Environmental Planning Policy (Coastal Management) 2018.
- d) exceeds the Biodiversity Offsets Scheme thresholds (exceeds area threshold, is mapped on the Biodiversity Values Map or causes significant impact to threatened species, populations or communities listed under the *Biodiversity Conservation Act 2016*)
- e) causes impacts to threatened species, populations or communities listed under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*.

### 5.6.6.1 General Exemptions

Council tree and/or vegetation approval is not required where the work is carried out by or with the consent of the tree or vegetation owner/s for the following:

- a) Clearing of vegetation in accordance with approved Property Vegetation Plan (PVP)
- b) Crown maintenance works to a maximum of 20% of the canopy in any two year period that is carried out by a suitably qualified arborist in accordance with the Australian Standard for Pruning of Amenity Trees
- c) When evidence is provided by a suitably qualified arborist that there is an imminent risk to human life or property<sup>1</sup>
- d) Individual tree removal or pruning as required as part of Council infrastructure maintenance programs
- e) Clearing of trees grown for the purpose of fruit or nut production
- f) Clearing within 4m measured from the closest point of the trunk at 1.3m above natural ground surface to the eave and guttering of an approved existing building.
- g) To achieve the objectives of 'protection of the community from undue risk' from airport operations under Clause 6.8 of the BVLEP 2013
- h) The clearing of a tree that council is satisfied is dead or dying and is not required as the habitat of native animals, for example it does not contain hollows.
- i) The clearing of vegetation that is authorised under other legislation listed in Section 600 of the *Local Land Services Act 2013* includes;
  - Planning approval e.g. development consent under Part 4 of the *Environmental Planning and Assessment Act 1979*
  - Other planning authorisation e.g. an activity carried out by a determining authority under part 5 of the *Environmental Planning and Assessment Act 1979*
  - Biodiversity conservation authorisation under the *Biodiversity Conservation Act 2016*
  - Rural fires authorisation under the *Rural Fires Act 1997* e.g. in accordance with NSW Rural Fire Services 10/50 code
  - Electricity network operator bush fire risk mitigation direction under the *Electricity Supply Act 1995*
  - State emergency authorisation 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
  - Biosecurity authorisation under the *Biosecurity Act 2015*
  - Plantation operations authorisation under the *Plantations and Reafforestation Act 1999*
  - Forestry operations authorisation under the *Forestry Act 2012*
  - Water management authorisation under the *Water Management Act 2000*
  - Mining/petroleum authorisation under the *Mining Act 1992* or the *Petroleum (Onshore) Act 1991*
  - Fisheries management authorisation under the *Fisheries Management Act 1995*

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<sup>1</sup> **Council recommends that the tree assessment is undertaken by an arborist that is not employed or in any way associated with the company contracted to remove the vegetation**

- Survey work under the *Surveying and Spatial Information Act 2002* and carried out under the direction of a surveyor
- Roads authorisation under the *Roads Act 1993*
- Private land conservation agreement under the *Biodiversity Conservation Act 2016*

#### 5.6.6.2 Tree Permit Exemptions

A tree permit from Council is not required for the removal of trees of the species listed in Table 5.6.2 below.

Table 5.6.2: Tree Permit exempt species

Common Name	Botanical Name
Cootamundra Wattle	<i>Acacia baileyana</i>
Black Wattle	<i>Acacia mearnsii</i>
Queensland Silver Wattle	<i>Acacia podalyriifolia</i>
Box Elder	<i>Acer negundo</i>
Tree of Heaven	<i>Ailanthus altissima</i>
Cape Leeuwin Wattle	<i>Albizia lophantha</i>
Alders	<i>Alnus spp.</i>
Tree Lucerne	<i>Chamaecytisus spp</i>
Camphor Laurel	<i>Cinnamomum camphora</i>
New Zealand Cabbage Palm	<i>Cordyline australis</i>
Cotoneaster	<i>Cotoneaster spp.</i>
Hawthorn	<i>Crataegus monogyna</i>
Indian Coral Tree	<i>Erythrina x sykesii</i>
Rubber Tree	<i>Ficus elastica</i>
Honey Locust	<i>Gleditsia triacanthos</i>
Norfolk Island Hibiscus	<i>Lagunaria Patersonia</i>
Privet	<i>Ligustrum spp.</i>
African Olive	<i>Olea europea ssp. africanus</i>
Paulownia	<i>Paulownia tomentosa</i>
Canary Island Date Palm	<i>Phoenix canariensis</i>
Radiata Pine	<i>Pinus radiata</i>
Sweet Pittosporum	<i>Pittosporum undulatum</i>
Poplars	<i>Populus spp.</i>
Cherry Laurel	<i>Prunus laurocerasus</i>
Orange Firethorn	<i>Pyracantha angustifolia</i>
Black Locust	<i>Robinia pseudoacacia</i>
Willows	<i>Salix spp.</i>
Common Elder (Elderberry)	<i>Sambucus nigra</i>
Wild tobacco bush	<i>Solanum mauritianum</i>
Rhus	<i>Toxicodendron succudaneum</i>



### 5.6.6.3 Allowable Maintenance Activities - rural infrastructure

If the land is zoned E4 Environmental Living, E3 Environmental Management, E2 Environmental Conservation or R5 Large Lot Residential clearing native vegetation for the following purposes does not require a permit from council:

Clearing for the maintenance of existing permanent rural infrastructure. The minimum extent of clearing necessary for carrying out the activity is permitted up to the distances from the infrastructure below:

- a) Fences - 1 metre either side (note that landholders permission is necessary),
- b) road or track - 1 metre either side from edge of road,
- c) pipeline - 3 metres total width of clearing,
- d) shed - 3 metres from the outer edge of the structure,
- e) tank - 3 metres from the outer edge of the structure,
- f) dam - 3 metres from the outer edge of the structure
- g) stockyards - 3 metres from the outer edge of the structure,
- h) bore - 3 metres from the outer edge of the structure,
- i) pump - 3 metres from the outer edge of the structure,
- j) water point - 3 metres from the outer edge of the structure,
- k) windmill - 3 metres from the outer edge of the structure.

The continuation of existing cultivation, grazing or rotational farming practices does not require a permit from council if it does not involve the clearing of native vegetation.

Sustainable grazing that is not likely to result in the substantial long-term decline in the structure and composition of native vegetation is permitted without a permit from council if it does not involve the clearing of native vegetation.

### 5.6.7 Development Application requirements

The following is vegetation for which clearing requires development consent

1. A development application is required for the following;

- a) Removal of a tree or vegetation that forms part of a heritage item, heritage conservation area, Aboriginal object or Aboriginal place of significance, which Council is **NOT** satisfied:
  - (i) Is of a minor nature or is for the maintenance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or archaeological site or a building, work, relic, tree or place within the heritage conservation area, and
  - (ii) Would not adversely affect the heritage significance of the heritage item, Aboriginal object, Aboriginal place, archaeological site or heritage conservation area.
- b) Removal of a tree or vegetation within areas mapped as coastal wetlands or littoral rainforests under SEPP (Coastal Management) 2018.