

GR2 – Draft Amendments to Wollondilly Development Control Plan 2016 – Vegetation Removal

GR2

Draft Amendments to Wollondilly Development Control Plan 2016 – Vegetation Removal

260803

TRIM 3615-8

EXECUTIVE SUMMARY

- The purpose of this report is to seek Council support to exhibit proposed amendments to the Wollondilly Development Control Plan 2016. The proposed amendments will update the development control plan to align with the State Environmental Planning Policy (Vegetation in Non-Rural Areas) introduced on 25 August 2017.
- It is recommended that:
 - Council exhibit the draft amendments to Wollondilly Development Control Plan 2016 in accordance with the Community Engagement Strategy referred to in this report.
 - A further report be provided to Council following the public exhibition on the outcomes of the consultation and the final controls for adoption.

REPORT

OVERVIEW OF THE LEGISLATIVE REFORMS

The NSW Government introduced a new legislative and policy framework for biodiversity conservation and native vegetation management on 25 August 2017. The reforms involve the introduction of a new Biodiversity Conservation Act 2016 and Local Land Services Amendment Act, 2016.

The State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 ('Vegetation SEPP'), was also introduced on 25 August 2017 as part of the reforms. The Vegetation SEPP does not apply to any clearance of vegetation that is directly related or ancillary to an activity that requires development consent.

An overview of each part of the new legislation is provided below:

Biodiversity Conservation Act, 2016

The Biodiversity Conservation Act, 2016 ('BC Act') replaces the former Threatened Species Conservation Act 1995 in providing a legislative framework for the protection of biodiversity in NSW. It introduces a new biodiversity offsetting scheme and threshold criteria which trigger offsetting of biodiversity losses (through measures such as biobanking).

Sustainable and Balanced Growth
Report to the Ordinary Meeting of Council held on Monday 16 July 2018

**GR2 – Draft Amendments to Wollondilly Development Control Plan 2016
– Vegetation Removal**

The BC Act also regulates any development proposal that requires development consent under the Environmental Planning & Assessment Act 1979. However, this component has been deferred in Wollondilly and a number of other local government areas until 26 November 2018.

Biodiversity Conservation Regulation 2017

The Biodiversity Conservation Regulation 2017 provide additional detail and inform the implementation of the BC Act. Importantly, the Regulation include criteria within the Biodiversity Offset Scheme ('BOS') relevant to the minimum lot size of the land under Wollondilly Local Environmental Plan 2011 (WLEP 2011).

The thresholds for clearing that require biodiversity offsets are provided in the table below:

Minimum Lot Size for subdivision of the Land under WLEP 2011	Area of clearing that exceeds the BOS threshold
Less than 1 hectare	0.25 hectares or more
Less than 40 hectares but not less than 1 hectare	0.5 hectares or more
Less than 1000 hectares but not less than 40 hectares	1 hectare or more
1000 hectares or more	2 hectares or more

The clearing of native vegetation is also taken to exceed the BOS thresholds if the clearing is carried out on land identified within the Biodiversity Values map that is prepared and published under the BC Act by the relevant authority.

Local Land Services Amendment Act, 2016

The Local Land Services Amendment Act, 2016 replaces the Native Vegetation Act 2003. It details what clearing to native vegetation does not require development consent on land where the native vegetation regulatory map applies. These maps will apply to rural zoned land, not for land zoned urban or for environmental protection/management.

Clearing that is authorised under the Local Land Services Act, 2013 ('LLS Act') will be regulated by the Local Land Services Authority. The recent amendments also saw the introduction of the Land Management (Native Vegetation) Code 2017 which aims to support landholders by providing certain exemptions for vegetation removal and controls on rural land.

**GR2 – Draft Amendments to Wollondilly Development Control Plan 2016
– Vegetation Removal**

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

The Vegetation SEPP deals with clearing native vegetation that does not require development consent under the Environmental Planning & Assessment Act, 1979 on non-rural zoned land. The Vegetation SEPP enables Council to regulate any clearing below the BOS threshold through a permit system. Any clearing above the BOS requires approval from the Native Vegetation Panel established under the LLS Act.

The Native Vegetation Panel is an independent body and will consist of three members as follows:

1. The Chairperson, who will be a person with expertise in planning, public administration or social assessment;
2. A person with expertise in economics, agricultural economics or agricultural production systems;
3. A person with expertise in ecology or the protection and conservation of biodiversity.

The table below outlines the extent of the vegetation removal by which Council can issue a permit and the thresholds where approval from the Native Vegetation Panel is required for vegetation clearing in non-rural areas:

Minimum Lot Size of the land (refer to the minimum lot size map within WLEP 2011 to determine the minimum lot size)	Maximum area of clearing for which Council can issue a Permit for removal	Area of vegetation removal that requires approval from the native vegetation panel
Less than 1 hectare	Less than 0.25 hectares	0.25 hectares or more
Less than 40 hectares but not less than 1 hectare	Less than 0.5 hectares	0.5 hectares or more
Less than 1000 hectares but not less than 40 hectares	Less than 1 hectare	1 hectare or more
1000 hectares or more	Less than 2 hectares	2 hectares or more

**GR2 – Draft Amendments to Wollondilly Development Control Plan 2016
– Vegetation Removal**

The Vegetation SEPP gives Council the ability, through its development control plan to prescribe vegetation that can be removed with and without a permit based upon:

- The species of vegetation
- The size of the vegetation
- The location of the vegetation
- The presence of vegetation in an ecological community or in the habitat of threatened species.

Under the Vegetation SEPP, a Council can approve or refuse to issue a permit application. If the permit application is refused the applicant can exercise Appeal rights with the NSW Land & Environment Court.

APPROVAL PATHWAYS UNDER THE VEGETATION SEPP

The BC Act, LLS Act and Vegetation SEPP work together to create a framework for the regulation of clearing of native vegetation. The framework establishes different regulatory pathways for clearing depending on whether the clearing requires consent.

Development consent for clearing of native vegetation is required where the purpose of the clearing is to enable a use of land for other development which also requires development consent.

If the clearing of the vegetation does not require development consent, then one of the following approval pathways must be used:

- Clearing within a non-rural zone which does not exceed the BOS threshold must be undertaken in accordance with a permit issued by Council (unless the removal of that vegetation meets an exemption listed under the Vegetation SEPP or Council's DCP)
- Clearing within a non-rural zone which exceeds the BOS threshold must be approved by the Native Vegetation Panel and potentially include a Biodiversity Assessment Method under the BC Act to offset vegetation losses
- Clearing within a rural zone must be approved by Local Land Services (unless the clearing meets an exemption under the LLS Act or the Land Management Code) and include a BAM under the BC Act.

Sustainable and Balanced Growth
Report to the Ordinary Meeting of Council held on Monday 16 July 2018

**GR2 – Draft Amendments to Wollondilly Development Control Plan 2016
– Vegetation Removal**

The approval pathways are summarised in the table below:

	Approval Pathway		
	Council (via issue of a permit or an exemption under Council's DCP)	Local Land Services (via approval or exemption)	Native vegetation Panel
Non-Rural zone (Clearing is less than the BOS threshold)	✓		
Non-Rural Zone (clearing exceeds BOS threshold)			✓
Rural Zone (clearing is less than BOS threshold)		✓	
Non-Rural zone (clearing exceeds BOS threshold)		✓	

REVIEW OF WOLLONDILLY DEVELOPMENT CONTROL PLAN 2016

Approval requirements for the removal of vegetation are set out in WLEP 2011 by clauses 5.9 and 5.9AA. These clauses gave Council the ability to prescribe one of the following types of approval pathways for vegetation removal:

- Exempt (i.e. no approval being required);
- Vegetation that could be removed subject to the granting of a permit by Council; or
- Vegetation that could only be removed subject to granting of a development consent by Council (i.e. subject to a development application).

Clause 5.9 and 5.9AA in 2011 WLEP were repealed by the State Government when the Vegetation SEPP came into place.

**GR2 – Draft Amendments to Wollondilly Development Control Plan 2016
– Vegetation Removal**

Amendments to the current Wollondilly Development Control Plan 2016 ('WDCP 2016') controls for tree removal are now required, particularly to remove the inconsistencies between the development control plan and the Vegetation SEPP. These include:

- The tree removal controls within the WDCP 2016 currently apply to all land use zones. Once the Vegetation SEPP takes effect, Council will only have control over vegetation removal in the urban and environmental zones
- WDCP 2016 currently require development consent for some forms of tree removal. Under the Vegetation SEPP a Council's DCP controls can no longer require development consent for the removal of vegetation
- WDCP 2016 needs to be updated to reflect the requirement in the Vegetation SEPP that any vegetation removal that exceeds the BOS threshold in the urban and environmental zones requires approval from the Native Vegetation Panel established under the LLS Act.

The review also presents an opportunity to amend other aspects of the WDCP 2016 relating to approval requirements for vegetation removal to ensure that overall improvements to Council's processing of tree removal requests are made.

KEY CHANGES TO VEGETATION REMOVAL CONTROLS IN WDCP 2016

The draft amendments to WDCP 2016 are provided in Attachment 3 in this report. The key changes are provided as follows:

- The controls have been updated to only apply to residential and environmental zones where clearing is below the BOS threshold
- Any requirements to obtain development consent for tree removal have been removed from the WDCP 2016 (except for those situations where the tree removal is to facilitate another use which requires development consent)
- Flow charts outlining the approval pathways and process for vegetation removal have been updated to reflect the amendments
- Amend the exempt provisions for the removal of certain types of weeds declared under the now repealed Noxious Weeds Act, 1993. It is proposed to update the list of noxious weeds in WDCP 2016 that can be removed/controlled without approval in accordance with the Greater Sydney Region Weed Management Plan, or those weed types subject to an approved Biosecurity undertaking or direction under the Biosecurity Act, 2015 or listed in a Council approved Local Weed Management Plan
- The current exemption for removal of a tree within 3 metres of a 'building' has been amended to state within 3m of a 'dwelling'

Sustainable and Balanced Growth
Report to the Ordinary Meeting of Council held on Monday 16 July 2018

**GR2 – Draft Amendments to Wollondilly Development Control Plan 2016
– Vegetation Removal**

- A table of exemptions will be added to provide further clarity of what types of vegetation removal require a permit across the various non-rural zones
- A requirement will be added where a permit must be obtained for any vegetation removal within 10 metres of a watercourse
- Amend the exempt provisions for tree removal within 3 metres of an access driveways. These controls will be amended so that the exemption only applies within 3 metres of an access driveway between the road and the property boundary
- A multi - tier fee system will be introduced as follows:
 - A Tier 1 fee payment and permit is required for vegetation removal involving up to 100 m² or up to 5 trees
 - A Tier 2 fee payment and permit is required for vegetation removal involving more than 100 m² or more than 5 trees which would deal with more complex requests and likely require the submission of supporting information such as a Flora and Fauna Assessment
 - A Tier 3 fee payment will be required for the removal of any vegetation planted or protected under a development consent condition, remediation order, 88B instrument or conservation agreement
- Specific requirements for removing vegetation that is, or forms part of a heritage item or is within a heritage conservation area has been added and are outlined in Attachment 4 of this report
- Requirements for conservation licenses have been added
- The definition of what constitutes a tree will be amended.

CONSULTATION

In accordance with Schedule 1 of the Environmental Planning and Assessment Act, 1979, the proposed amendments to WDCP 2016 will be publically exhibited for a minimum period of 28 days.

A Community Engagement Strategy will be developed to ensure a wide and varied approach to community consultation through various modes including the local newspaper, Council's website and social media sites.

Local Land Services, NSW Office of Environment & Heritage and Council's Environment & Heritage Committee, will also be invited to provide feedback during the consultation period.

Sustainable and Balanced Growth
Report to the Ordinary Meeting of Council held on Monday 16 July 2018

**GR2 – Draft Amendments to Wollondilly Development Control Plan 2016
– Vegetation Removal**

FINANCIAL IMPLICATIONS

Council's 2018/19 Fees and Charges has been amended to include the new multi-tier fee system.

Any costs associated with the engagement strategy to be funded from the existing budget.

ATTACHMENTS INCLUDED IN A SEPARATE BOOKLET

1. Flow chart outlining process and approval pathways for vegetation removal under the proposed reforms.
2. Wollondilly Development Control Plan Volume 1 Part 10 - Tree Removal (current version).
3. Draft amended version of Wollondilly Development Control Plan Volume 1 Part 10 - Tree Removal (version for public exhibition).
4. Specific requirements for clearing of vegetation on a site containing a heritage item or within a heritage conservation area.

RECOMMENDATION

1. That Council exhibit the draft amendments to Wollondilly Development Control Plan 2016 in accordance with the Community Engagement Strategy referred to in this report.
2. That a further report be provided to Council following the public exhibition on the outcomes of the consultation and the final controls for adoption.

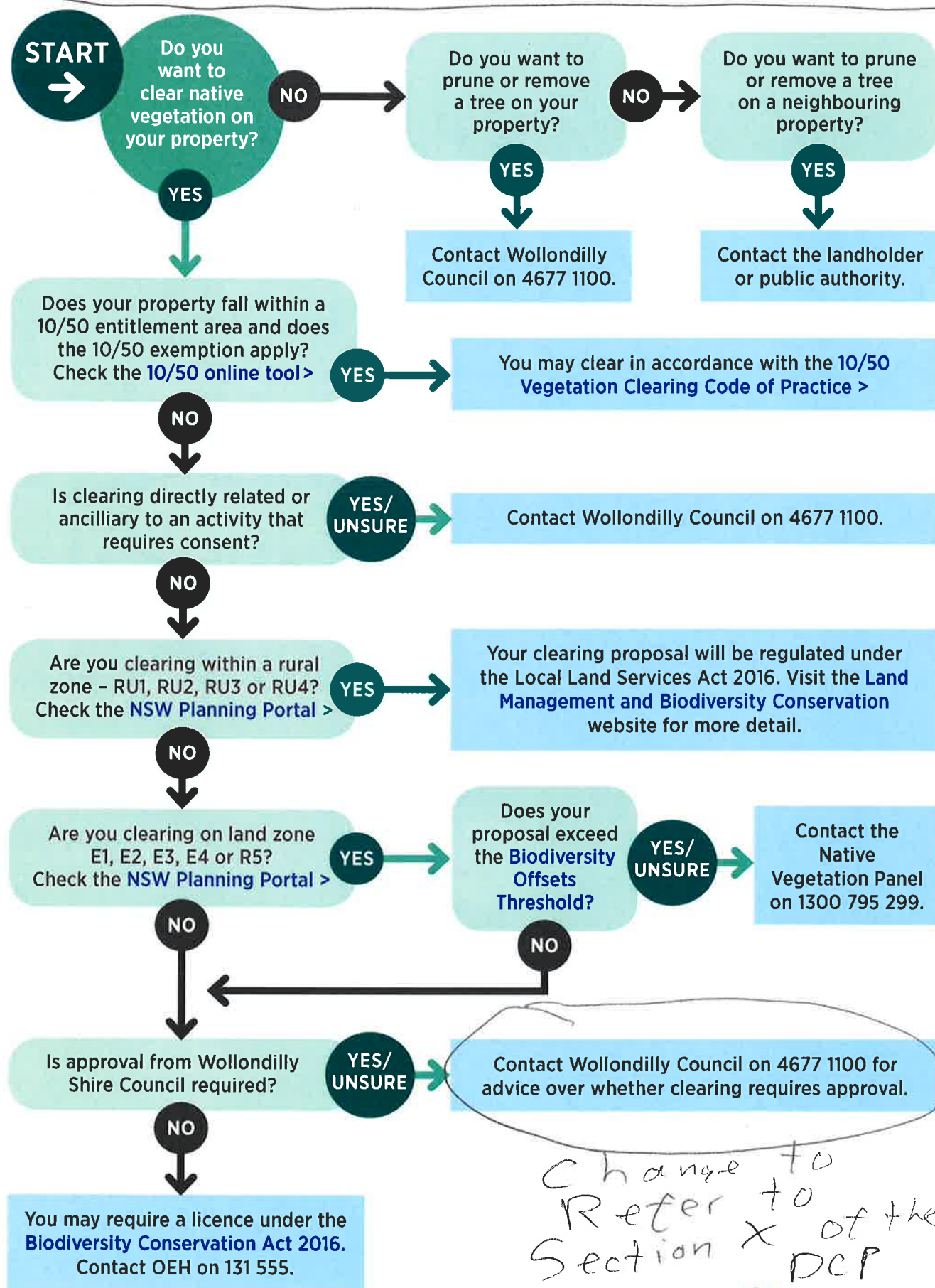
GR2 Attachments

1. Flow chart outlining process and approval pathways for vegetation removal under the proposed reforms.
2. Wollondilly Development Control Plan Volume 1 Part 10 - Tree Removal (current version).
3. Draft amended version of Wollondilly Development Control Plan Volume 1 Part 10 - Tree Removal (version for public exhibition).
4. Specific requirements for clearing of vegetation on a site containing a heritage item or within a heritage conservation area.

Monday 16 July 2018

GR2 – Draft Amendments to Wollondilly Development Control Plan 2016 - Vegetation Removal

Native Vegetation Clearing in Wollondilly Local Government Area*



Change to
Refer to
Section X of the
DCP

PART 10 – Tree removal

10.1 Objectives

The objectives of this part are as follows:

1. Identify trees and other native vegetation for the purpose of clause 5.9(3) of Wollondilly Local Environmental Plan 2011 which states the following:

“(3) A person must not ringbark, cut down, top, lop, remove, injure or wilfully destroy any tree or other vegetation to which any such development control plan applies without the authority conferred by:

(a) development consent; or

(b) a permit granted by the Council”

2. Identify trees and other native vegetation that:

- may be removed without a permit or development consent
- may be removed with a permit
- may be removed only with development consent

10.2 Interpretation

In this section a reference to removing a tree is a reference to the full range of activities described in Clause 5.9 (3) of Wollondilly Local Environmental Plan, 2011. That is, the ringbarking, cutting down, topping, lopping, removing, injuring or wilfully destroying of any tree.

In this section Native Vegetation means:

Any of the following types of indigenous vegetation:

- (a) trees (including any sapling or shrub, or any shrub);
- (b) understorey plants;
- (c) groundcover (being any type of herbaceous vegetation);
- (d) plants occurring in a wetland.

Vegetation is indigenous if it is a species of vegetation, or if it comprises species of vegetation, that existed in the state before European settlement.

In this section a tree is considered to be a tree or shrub which meets one of the following:

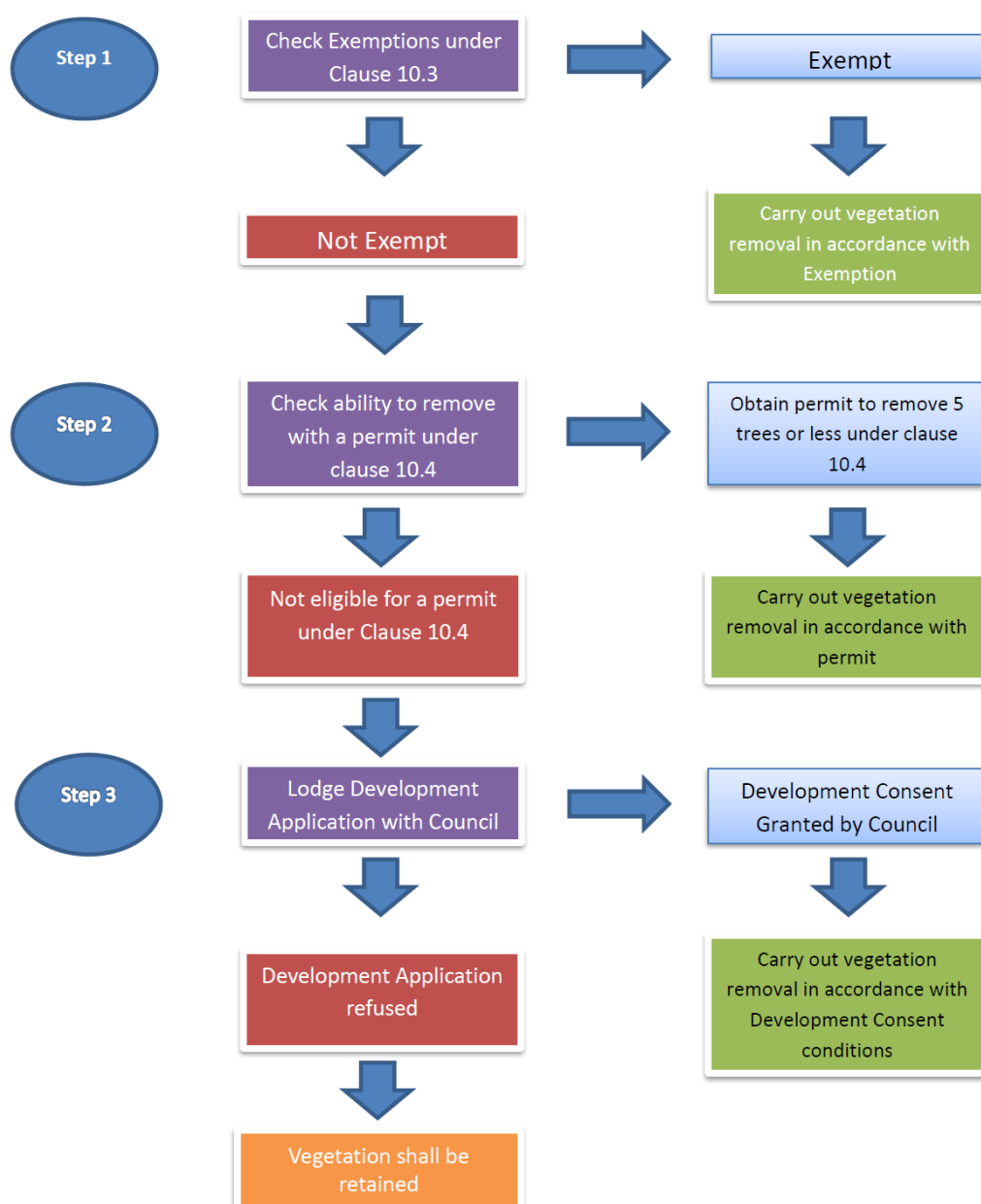
- a) is greater than 3 metres in height; or
- b) The trunk has a circumference of 450mm at 1 metre above ground level; or
- c) has a branch span of greater than 3 metres.

In this section a Development Consent refers to a consent that is issued by Council under the Environmental Planning and Assessment Act, 1979 authorising the removal of more than five trees or 50m² of other native vegetation. A Complying Development Certificate is NOT taken to be a development consent.

In this section a Permit refers to a permit that is issued by Council that authorises the removal of 5 trees or less, or less than 50m² of other native vegetation.

In this section Exempt Tree/Vegetation Removal refers to native vegetation that may be removed without the need for a permit or development consent (or any other approval from Council).

Applicants should refer to the flowchart below in determining the necessary approvals required:



10.3 Trees/other native vegetation that may be removed without consent and without a permit (i.e. exempt)

Any of the following tree removal activities may be carried out without the need to obtain either a tree removal permit or development consent from Council:

1. Removal of a tree or other vegetation species that is a declared noxious weed by the NSW Government under the *Noxious Weeds Act, 1993* or that is a species of tree identified below, regardless of size (unless the tree is listed as a heritage item):
 1. African Olive (*Olea europaea*)
 2. Bamboo (*Phyllostachys spp. bambusa spp, Aundanaria*)
 3. Black locust (*Robinia pseudoacacia spp*)
 4. Box Elder (*Acer negundo*)
 5. Camphor Laurel <20 metres in height only (*Cinnamomum camphora*)
 6. Canary Island Date Palm (*Phoenix canariensis*)
 7. Cassia (*Senna pendula*)
 8. Chinese Celtis (*Celtis sinensis*)
 9. Cocos palm/queen palm (*Syagrus romanzoffiana*)
 10. Leighton's green Pine (*Cupressocyparis x leylandii*)
 11. Cootamundra wattle (*Acacia baileyana*)
 12. Coral Tree (*Erythrina x sykesii*)
 13. Cotoneaster (*Cotoneaster spp.*)
 14. Date Palm (*Phoenix dactylifera*)
 15. Evergreen Alder (*Alnus jorulensis*)
 16. Evergreen Ash (*Fraxinus griffithii*)
 17. Golden wreath wattle (*Acacia saligna*)
 18. Honey Locust (*Gleditsia triacanthos*)
 19. Ice cream bean (*Inga edulis*)
 20. Privet (*Ligustrum spp*)
 21. Oleander (*Nerium oleander*)
 22. Peppercorn (*Schinus spp*)
 23. Radiata Pine <20 metres in height only (*Pinus Radiata*)
 24. Poplar <20 metres in height only (*Populus spp.*)
 25. Queensland Silver Wattle (*Acacia podalyriifolia*)
 26. Rhus (*Toxicodendron succedaneum*)
 27. Rubber Tree (*Ficus elastica*)
 28. Silky Oak (*Grevillea robusta*)
 29. Slash Pine (*Pinus elliottii*)
 30. Sweet Pittosporum (*Pittosporum undulatum*)
 31. Tree Lucern (*Tagasaste Chamaecytisus palmensis*)
 32. Tree of Heaven (*Ailanthus altissima*)
 33. Umbrella Tree (*Schefflera actinophylla*)
 34. Wild Tobacco Tree (*Solanum mauritianum*)
 35. Willow (*Salix spp.*)
 36. Yellow Bells (*Tecoma stans*).
2. Removal of a tree or other form of vegetation that is located within 3 metres of an existing lawfully constructed building or access driveway. (In this control, a tree is to be measured from the external part of the trunk to the building).
3. Removal of a tree or other form of native vegetation that is located within 3 metres of a building or access driveway authorised by a development consent. (In this control a tree is to be measured from the external part of the trunk to the building). For the purposes of this exemption a complying development certificate is NOT a development consent.
4. Removal of any tree or other form of native 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 persons 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 that the tree or vegetation is dying or dead.

5. Removal of a tree or other form of native vegetation that Council is satisfied is a significant imminent risk to human life or property. Works must not be undertaken until Council has provided written advice that it is satisfied that the tree or vegetation poses an immediate danger to people or property.
6. Removal of a tree or other form of vegetation being carried out under the following legislation:
 - a) Action required, or authorised to be carried out under the *Electricity Supply Act 1995*, the *Roads Act, 1993* or the *Surveying and Spatial Information Act 2002*.
 - b) The Clearing of Native Vegetation that is authorised by a development consent or a Property Vegetation Plan under the *Native Vegetation Act, 2003*.
 - c) Functions as required to protect persons from dangers to their safety and health, and to protect property from destruction or damage, arising from floods and storms under the *State Emergency Services Act, 1989*.
 - d) Works for which an order or permit has been issued by the NSW Rural Fire Services under the *Rural Fires Act, 1997*.
 - e) Any removal authorised for removal from the NSW Rural Fire Service 10/50 Vegetation Clearing Code of Practice for NSW.
 - f) Removal carried out in accordance with a license, permit, authority or approval under the *Water Act, 1912* or the *Water Management Act, 2000*.
 - g) Removal for the purpose of the construction, operation and maintenance of infrastructure by Water NSW in the exercise of its land management activities within SP2 zones, including roads, tracks, viewing platforms, signs and recreation facilities.
 - h) Removal on Crown Lands within the meaning of the *Crown Lands Act, 1993* or on crown public roads within the meaning of the *Roads Act, 1993*, where removal is being undertaken or authorised by the Department of Lands.
 - i) Any clearing carried out in accordance with an order under the *Trees (Disputes between Neighbours) Act, 2006* or other like Neighbourhood Dispute legislation.
7. Trees or other form of vegetation to be pruned as part of routine pruning of fruit trees, or commercial horticulture or forestry operations.
8. Amenity Pruning within Australian Standards.

10.4 Trees/other native vegetation that may be removed without development consent but require a permit

1. The Council may issue a permit for the removal of no more than 5 trees provided that:
 - a) The tree does not form part of a heritage site or is within a heritage conservation area, including a Landscape Conservation Area, or that forms part of an aboriginal object or that is within an aboriginal place of heritage significance; and

- b) The retention of the tree is not required by a development consent condition or a section 88B restriction as to user that prohibits tree clearing or removal of the tree in question; and
 - c) The tree has not been identified as containing tree hollows or significant habitat or food source; and
 - d) The tree is not located within a Natural Resources Biodiversity Area or that is within the Natural Resources – Water layer under clauses 7.2 and 7.3 of Wollondilly Local Environmental Plan 2011; and
 - e) Must not form part of a vegetation community which has been identified as an endangered ecological community or threatened ecological community under any Act of legislation.
 - f) Council has not issued a permit to remove trees or other native vegetation under this clause in the previous 2 years for the subject property.
2. The Council may issue a permit for the removal of no greater than 50m² of native vegetation (other than a tree) under this section provided that no permit to remove trees or other native vegetation under this section has been issued in the previous 2 years for the subject property.

Note: Council has the ability to refuse a permit for the removal of no greater than 50m² of native vegetation if the vegetation is affected by controls 1(a) to 1(f) above and Council considers that greater assessment is required. In this regard a development application is required for the vegetation removal.

10.5 Trees/other native vegetation that may be removed only with development consent

1. Any tree or other native vegetation removal which cannot be carried out as exempt development under clause 10.3 of this volume or by obtaining a permit under clause 10.4 of this volume may only be removed with development consent.

Note: In cases where the tree and/or native vegetation removal is required in association with a development requiring consent under Part 4 of the *Environmental Planning and Assessment Act, 1979*, the removal of vegetation will also require consent and may require assessment under part 5A of the Act.

ATTACHMENT 3

**Draft Amended Version of Wollondilly Development Control Plan 2016 Volume 1
– Part 10 Tree removal.**

Draft Amended version for Public Exhibition.

PART 10 – Tree removal

10.1 General

This section applies to vegetation (native and exotic) clearing carried out under the *State Environmental Planning Policy (SEPP) (Vegetation in Non-Rural Areas) 2017*. This SEPP enables Council through its development control plan to identify vegetation on non-rural land that can be removed without the need for a permit and vegetation that can only be removed if a permit is issued by Council. Non-Rural Land is any land not having a rural zone.

This Part of the DCP does not apply to:

- Any vegetation clearance on Rural zoned land. For any clearing on rural zoned land, **Please contact the Native Vegetation Panel.**
- Any vegetation clearance that is directly related or is ancillary to use of land or activity that requires development consent from Council (**Refer to Section 9 Environment Protection of this Development Control Plan for requirements regarding any such clearance**).
- Any removal of native vegetation as defined by Section 60B of the Local Land Services Act 2016 (<https://www.legislation.nsw.gov.au/#/view/act/2013/51/part5a/div1/sec60b>) that exceeds the biodiversity offsets scheme threshold under the Biodiversity Conservation Act 2016. Any clearance that exceeds the threshold criteria in column 3 below requires approval from the Native Vegetation Panel.

Minimum Lot Size of the Land (refer to the minimum lot size map within WLEP 2011 to determine the minimum lot size)	Maximum Area of Clearing for which Council can issue a Permit for removal	Area vegetation removal that requires approval from the Native Vegetation Panel
Less than 1 hectare	Less than 0.25 hectares	0.25 hectares or more
Less than 40 hectares but not less than 1 hectare	Less than 0.5 hectares	0.5 hectares or more
Less than 1000 hectares but not less than 40 hectares	Less than 1 hectare	1 hectare or more
1000 hectares or more	Less than 2 hectares	2 hectares or more

Table 1

- The removal of native vegetation carried out on land directly located on the Sensitive Biodiversity Values Land Map. Vegetation removal on part of a property not covered by this Map and which is below the thresholds in column 3 of table 1 above is subject to the Council Permit approval process and does not require approval from the Native Vegetation Panel. The biodiversity sensitive land values map can be accessed via the following link: <https://www.lmbc.nsw.gov.au/Maps/index.html?viewer=BVMap>

Tree/vegetation removal on Biocertified Land

Note, the proposed removal of native vegetation (as defined by the LLS Act) does not require approval from the Native Vegetation Panel if occurring on land that has been

biocertified even if the site of the proposed clearing is located on the Biodiversity Sensitive Land Map. Any vegetation/tree removal in such areas requires assessment by Council in accordance with Section 10.4 of this Section of the Development Control Plan. There is no biocertified land within the Wollondilly LGA at the time of public exhibition of this revised Tree Section, (Part 10), of the Development Control Plan.

10.2 Objectives

The objectives of this part are as follows:

1. To protect areas of native vegetation/trees and heritage items/landscape (European and Indigenous) of recognised high value.
2. To identify vegetation in non-rural areas of the Shire which may be removed without a permit or can only be removed by obtaining a permit from Council, or where applicable, a Biodiversity Conservation Licence issued by the Office of Environment and Heritage.
3. To satisfy the requirements of *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* and related requirements of the *Biodiversity Conservation Act 2016* and *Local Land Services Act 2016*.

10.3 Interpretation

Access driveway refers to the approved driveway/s between the road edge and property boundary

Biodiversity Conservation Licence means a licence issued by the Office of Environment and Heritage under Part 2 of the Biodiversity Conservation Act 2016. Note, the issuing of a Permit by Council for vegetation clearance under this Section of the Development Control Plan provides exemptions from requirements within the Biodiversity Conservation Act for a Biodiversity Conservation Licence

Biodiversity Offsets Scheme Threshold means the biodiversity offsets scheme threshold referred to in section 7.4 of the *Biodiversity Conservation Act 2016* and Part 7 of the *Biodiversity Conservation Regulation 2016*.

Dwelling means an approved room or suite of rooms occupied or used or so adapted as to be capable of being occupied or used as a separate domicile.

European Heritage item means an item that is listed in Schedule 5 of Wollondilly Shire Council Local Environmental Plan, 2011.

Exempt Tree/Vegetation Removal means trees or vegetation that may be removed without the need for a permit or approval from the Native Vegetation Panel or in accordance with a Biodiversity Conservation Licence issued by the Office of Environment and Heritage.

Item of Aboriginal Heritage means an item that is registered on the AHIMS Data base.

Native Vegetation as defined in Local Land Services Act Part 5A section 60B

Non-rural area means land the Wollondilly Local Government Area within the following land use zones:

Zone RU5 Village, Zone R1 General Residential, Zone R2 Low Density Residential, Zone R3 Medium Density Residential, Zone R4 High Density Residential, Zone R5 Large Lot Residential, Zone B1 Neighbourhood Centre, Zone B2 Local Centre, Zone B3 Commercial Core, Zone B4 Mixed Use, Zone B5 Business Development, Zone B6 Enterprise Corridor, Zone B7 Business Park, Zone B8 Metropolitan Centre, Zone IN1 General Industrial, Zone IN2 Light Industrial, Zone IN3 heavy Industrial, Zone IN4 Working Waterfront, Zone SP1 Special Activities, Zone SP2 Infrastructure, Zone SP3 Tourist, Zone RE1 Public Recreation, Zone RE2 Private recreation, Zone E2 Environmental Conservation, Zone E3 Environmental Management, Zone E4 Environmental Living or Zone W3 Working Waterways.

Sensitive land for the purpose of this Part refers to land which:

- a) Is within 10m of a watercourse over 2m wide, measured from the top of two opposing banks, and includes land between these banks
- b) Has a slope of 30 degrees or greater

Tree is considered to be any woody plant which meets one or more of the following:

- a) Is greater than 4 metres in height; or
- b) has a combined stem diameter of 150mm or more at 1m from the ground; or
- c) has a branch span of greater than 3 metres.

Vegetation means a tree or other vegetation comprised of tree, understorey and groundcover plants, whether or not it is native vegetation, but excluding exotic turf grasses

10.4 Approval Requirements for Vegetation Removal

This part identifies vegetation that can be removed without the need for a permit, and vegetation that may only be removed following a permit being issued by Council. If the removal of the vegetation is not exempt, then either a Tier 1 or Tier 2 permit application will be required depending on the level of vegetation proposed to be removed.

Control:

A person must not remove any tree or native vegetation, or any vegetation growing on sensitive land, to which this plan applies unless granted a permit to do so by Council, unless the tree or vegetation is subject to an exemption detailed in 10.4.1:

The process for identifying whether a Tier 1 or Tier 2 permit is required is outlined in the flow chart below (and summarised in Table 2):

This Flow Chart applies to the process in obtaining a Permit from Council

Step 1. Is a permit required for tree/vegetation removal?

Does one or more exemption under clause 10.4.1 apply?



No permit required



Carry out vegetation removal in accordance with exemptions, taking photographic evidence

Step 2. Apply for a permit from council

Is vegetation clearing more than 100 square metres?

NO



Apply for tree permit (clause 10.4.2)



Permit issued.

YES



Carry out tree/vegetation removal in accordance with permit conditions

YES



Apply for tier 2 permit (clause 10.4.2)

NO



Step 3. If permit is not issued by council

Is vegetation clearing within a mapped threatened ecological community or containing a threatened species recorded on the NSW atlas or wildlife.

YES



Contact Office of Environment and Heritage regarding a biodiversity conservation license (www.environment.nsw.gov.au/contact/)



Permit or license application refused



Vegetation is to be retained if a permit/and/or BCL has not been issued

NO



Contact Council for any enquiries or dispute over decision

Any person proposing to undertake vegetation removal should refer to the table below to determine whether the removal of the vegetation is exempt (i.e. does not require a permit from Council), or whether a permit is required. The table below should be read in conjunction with the specific exemption requirements for the removal of vegetation under Part 10.4.1 below.

Table 2: Exemption Criteria

<i>Nature of Vegetation Removal</i>	Land Use zoning of the land where vegetation will be removed				
	Residential (R2 to R5)	Environment Protection	Commercial	Industrial	Heritage (All Zones)
Removal of dead tree(s) not containing hollows	Exempt – take photographic record	Exempt subject to written confirmation from Council.	Exempt – take photographic record	Exempt – take photographic record	Exempt subject to written confirmation from Council.
Removal of dead tree(s) containing hollows	Exempt subject to written confirmation from Council.	Exempt subject to written confirmation from Council.	Exempt subject to written confirmation from Council.	Exempt subject to written confirmation from Council.	Exempt subject to written confirmation from Council.
Removal of tree(s) that are dying or dangerous	Exempt - subject to written confirmation from Council	Exempt subject to written confirmation from Council.	Exempt subject to written confirmation from Council.	Exempt subject to written confirmation from Council.	Exempt subject to written confirmation from Council.
Amenity tree pruning within Australian Standards AS4373-2007	Exempt	Exempt	Exempt	Exempt	Exempt subject to written confirmation from Council.
Removal of a tree that is of a species listed under section 10.2	Exempt – take photographic record	Exempt – take photographic record	Exempt – take photographic record	Exempt – take photographic record	Exempt subject to written confirmation from Council.
Vegetation clearing associated with other development requiring consent eg house, pool, shed, track etc	Development Application Required	Development Application Required	Development Application Required	Development Application Required	Development Application Required
Vegetation removal carried out by public	Exempt provided that the removal is authorized by	Exempt provided that the removal is authorized by	Exempt provided that the removal is authorized by	Exempt provided that the removal is authorized by	Exempt provided that the removal is authorized by

Nature of Vegetation Removal	Land Use zoning of the land where vegetation will be removed				
	Residential (R2 to R5)	Environment Protection	Commercial	Industrial	Heritage (All Zones)
agencies or emergency service authorities	another EPI. The public authority undertaking the removal may need to carry out their own assessment under Part 5 of the EP&A Act, 1979.	another EPI, the public authority undertaking the removal may need to carry out their own assessment under Part 5 of the EP&A Act, 1979.	another EPI, the public authority undertaking the removal may need to carry out their own assessment under Part 5 of the EP&A Act, 1979.	another EPI, the public authority undertaking the removal may need to carry out their own assessment under Part 5 of the EP&A Act, 1979.	another EPI, the public authority undertaking the removal may need to carry out their own assessment under Part 5 of the EP&A Act, 1979.
Removing Weeds listed in endorsed Local and Regional Weed Management Plans	Exempt – take photographic record	Exempt – take photographic record	Exempt – take photographic record	Exempt – take photographic record	Council confirmation required (TR10)
Removal of native vegetation up to 100m2 area or 10 trees	Tier 1 Permit required	Tier 1 Permit Required	Tier 1 permit required	Tier 1 Permit required	Tier 1 Permit required
Removal of native vegetation greater than 100m2 or 10 trees but less than applicable area threshold as defined in Column 3 of Table 1.	Tier 2 Permit required	Tier 2 Permit required	Tier 2 Permit required	Tier 2 Permit required	Tier 2 Permit required
Removal of native vegetation – area greater than applicable area threshold as defined in Column 3 of Table 1.	Native Vegetation Panel approval required	Native Vegetation Panel approval required	Native Vegetation Panel approval required	Native Vegetation Panel approval required	Native Vegetation Panel approval required
Removal of native tree(s) or vegetation on land identified on the sensitive	Native Vegetation Panel approval required	Native Vegetation Panel approval required	Native Vegetation Panel approval required	Native Vegetation Panel approval required	Native Vegetation Panel approval required

Nature of Vegetation Removal	Land Use zoning of the land where vegetation will be removed				
	Residential (R2 to R5)	Environment Protection	Commercial	Industrial	Heritage (All Zones)
biodiversity land values map					
Removal of exotic vegetation less than 4m tall or 3m wide or 150mm total stem diameter at 1m from ground.	Exempt – take photographic record	Exempt – take photographic record	Exempt – take photographic record	Exempt – take photographic record	Tier 1 Permit required
Removal of vegetation greater than 4m tall or 3m wide or 150mm total stem diameter at 1m above ground – up to 100m ² or 10 trees	Tier 1 Permit required	Tier 1 Permit required	Tier 1 Permit required	Tier 1 Permit required	Tier 1 Permit required
Removal of vegetation greater than 4m tall or 3m wide or 150mm total stem diameter at 1m above ground – over 100 m ² or 10 trees	Tier 2 Permit required	Tier 2 Permit required	Tier 2 Permit required	Tier 2 Permit required	Tier 2 Permit required
Clearing undertaken in accordance with 10/50 code of practice	Exempt – Must read and comply with code. take photographic record	Exempt – Must read and comply with code. take photographic record	Exempt – Must read and comply with code. take photographic record	Exempt – Must read and comply with code. take photographic record	Tier 1 Permit required
Clearing undertaken in accordance with Hazard Reduction Certificate issued by Rural Fire Service	Exempt – Provide copy of Hazard Reduction Certificate to Council	Exempt – Provide copy of Hazard Reduction Certificate to Council	Exempt – Provide copy of Hazard Reduction Certificate to Council	Exempt – Provide copy of Hazard Reduction Certificate to Council	Exempt – Provide copy of Hazard Reduction Certificate to Council

Nature of Vegetation Removal	Land Use zoning of the land where vegetation will be removed				
	Residential (R2 to R5)	Environment Protection	Commercial	Industrial	Heritage (All Zones)
Clearing approved through Development Consent	No additional Council approval required	No additional Council approval required	No additional Council approval required	No additional Council approval required	No additional Council approval required
Clearing carried out in accordance with an order issued by the Land and Environment Court	Exempt	Exempt	Exempt	Exempt	Exempt
Clearing of exempt vegetation on sensitive land.	Tier 1 Permit required	Tier 1 Permit required	Tier 1 Permit required	Tier 1 Permit required	Tier 1 Permit required
Mechanical clearing of exempt vegetation on slopes greater than 18 degrees.	Tier 1 Permit required	Tier 1 Permit required	Tier 1 Permit required	Tier 1 Permit required	Tier 1 Permit required
Clearing in accordance with other legislation listed in section 10.5. a-h of this section.	Exempt provided that the activity is carried out in accordance with an authorisation or exemption under the relevant Act of Legislation.	Exempt provided that the activity is carried out in accordance with an authorisation or exemption under the relevant Act of Legislation.	Exempt provided that the activity is carried out in accordance with an authorisation or exemption under the relevant Act of Legislation.	Exempt provided that the activity is carried out in accordance with an authorisation or exemption under the relevant Act of Legislation.	Exempt provided that the activity is carried out in accordance with an authorisation or exemption under the relevant Act of Legislation.
Clearing on rural zoned properties (RU1, RU2, RU4)	Managed by Local Land Services	Managed by Local Land Services	Managed by Local Land Services	Managed by Local Land Services	Managed by Local Land Services
Clearing on council land for installation of boundary fence or property entrance – All Zones	Tier 1 Permit required	Tier 1 Permit required	Tier 1 Permit required	Tier 1 Permit required	Tier 1 Permit required

<i>Nature of Vegetation Removal</i>	Land Use zoning of the land where vegetation will be removed				
	Residential (R2 to R5)	Environment Protection	Commercial	Industrial	Heritage (All Zones)
Clearing of vegetation planted or protected under a Development Consent condition, remediation order, 88b covenant or conservation agreement	Tier 2 Permit required (However, unlikely to be supported by Council)	Tier 2 Permit required (However, unlikely to be supported by Council)	Tier 2 Permit required (However, unlikely to be supported by Council)	Tier 2 Permit required (However, unlikely to be supported by Council)	Tier 2 Permit required (However, unlikely to be supported by Council)

10.4.1 Vegetation that maybe removed without a Permit (i.e. exempt)

Any of the following vegetation/tree removal activities may be carried out without the need to obtain a permit from Council:

1. Removal of a tree or any other vegetation that is listed as a priority weed in the Greater Sydney Region Strategic Weed Management Plan, under the Local Land Services Act 2013; or is subject to an approved biosecurity undertaking or direction under the Biosecurity Act 2015; or is listed in a Council approved Local Weed Management Plan; or is a species listed below, regardless of size,

1. African Olive (*Olea European*)
2. Bamboo (*Phyllostachys spp. bambusa spp, Aundanaria*)
3. Black locust (*Robinia pseudoacacia spp*)
4. Blackberry (*Rubus fruticosus*)
5. Box Elder (*Acer negundo*)
6. Camphor Laurel <20 metres in height only (*Cinnamomum camphora*)
7. Canary Island Date Palm (*Phoenix canariensis*)
8. Cassia (*Senna pendula*)
9. Chinese Celtis (*Celtis sinensis*)
10. Cocos palm/queen palm (*Syagrus romanzoffiana*)
11. Leighton's green Pine (*Cupressocyparis x leylandii*)
12. Cootamundra wattle (*Acacia baileyana*)
13. Coral Tree (*Erythrina x sykesii* and *Crista galli*)
14. Cotoneaster (*Cotoneaster spp.*)
15. Date Palm (*Phoenix dactylifera*)
16. Evergreen Alder (*Alnus jorulensis*)
17. Evergreen Ash (*Fraxinus griffithii*)
18. Fire thorn (*Pyracantha hawthorn*)
19. Golden wreath wattle (*Acacia saligna*)
20. Honey Locust (*Gleditsia triacanthos*)
21. Lantana (*Lantana camara*)
22. Oleander (*Nerium oleander*)
23. Peppercorn (*Schinus spp*)
24. Privet (*Ligustrum spp*)
25. Radiata Pine <20 metres in height only (*Pinus Radiata*)
26. Poplar <20 metres in height only (*Populus spp.*)
27. Queensland Silver Wattle (*Acacia podalyriifolia*)
28. Rhus (*Toxicodendron succedaneum*)
29. Robinia (*Robinia pseudoacacia* varieties)
30. Rubber Tree (*Ficus elastica*)
31. Silky Oak (*Grevillea robusta*)
32. Slash Pine (*Pinus elliottii*)
33. Sweet Pittosporum (*Pittosporum undulatum*)
34. Tree Lucern (*Tagasaste Chamaecytisus palmensis*)
35. Tree of Heaven (*Ailanthus altissima*)
36. Umbrella Tree (*Schefflera actinophylla*)
37. Wild Tobacco Tree (*Solanum mauritianum*)
38. Willow (*Salix spp.*)
39. Yellow Bells (*Tecoma stans*).

Note: These above exemptions do not apply to sensitive lands. For clearing of this vegetation on sensitive land a Tier 1 Permit will be required. Mechanical clearing of

this vegetation on slopes greater than 18 degrees will also require a Tier 1 Permit but other clearing methods are permitted without approval.

1. Removal of a tree or other form of vegetation that is located within 3 metres of an existing, lawful dwelling or access driveway unless required to be retained by an issued Development consent or Permit (In this control, a tree is to be measured from the nearest external part of the trunk to the wall of the building or edge of the access driveway).
2. Removal of any tree or other form of native vegetation that Council is satisfied is dying or dead. The tree/native vegetation of this kind which contains tree hollows must only be removed following written confirmation from Council. A report from a qualified arborist confirming that the vegetation is dead or dying may be requested from Council prior to providing such written confirmation.
3. Removal of a tree or other form of native vegetation that Council is satisfied is a significant imminent risk to human life or property. Works must not be undertaken until Council has provided written advice that it is satisfied that the tree or vegetation poses an immediate danger to people or property that cannot be adequately remedied by other means.
4. Any removal of native vegetation as defined by the *Local Land Services Act 2016* which has received approval from the Native Vegetation Panel under Part 4 of the *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*.
5. Removal of a tree or other form of vegetation being carried out under the following legislation:
 - a) Action required, or authorised to be carried out under the *Electricity Supply Act 1995*, the *Roads Act, 1993* or the *Surveying and Spatial Information Act 2002*.
 - b) Functions as required to protect persons from dangers to their safety and health, and to protect property from destruction or damage, arising from floods and storms under the *State Emergency Services Act, 1989*.
 - c) Works for which an order or permit has been issued by the NSW Rural Fire Services under the *Rural Fires Act, 1997*.
 - d) Any removal authorised for removal from the NSW Rural Fire Service 10/50 Vegetation Clearing Code of Practice for NSW.
 - f) Removal carried out in accordance with a license, permit, authority or approval under the *Water Act, 1912* or the *Water Management Act, 2000*.
 - g) Removal for the purpose of the construction, operation and maintenance of infrastructure by Water NSW in the exercise of its land management activities within SP2 zones, including roads, tracks, viewing platforms, signs and recreation facilities.
 - h) Removal on Crown Lands within the meaning of the *Crown Lands Act, 1993* or on crown public roads within the meaning of the *Roads Act, 1993*, where removal is being undertaken or authorised by the Department of Lands.

- i) Any clearing carried out in accordance with an order issued by the Land and Environment Court, such as those issued under the Trees (Disputes between Neighbours) Act, 2006
- j) Any removal authorised by a Biodiversity Conservation Licence issued by the NSW Office of Environment and Heritage under the Biodiversity Conservation Act 2016.
- k) Trees or other form of vegetation to be pruned as part of routine pruning of fruit trees, or commercial horticulture or forestry operations.

6. Amenity Pruning in accordance with Australian Standards AS 4373-2007.

10.4.2 Vegetation that requires a permit for removal

Any removal of vegetation identified under this Part of the DCP and does not meet one or more of the exemptions in part 10.1 requires a Permit from Council. A person proposing to clear Native Vegetation will be required to obtain either a Tier 1 or Tier 2 permit from Council prior to removing the vegetation. The two level Permit system has been introduced as a result of potential environmental impacts of vegetation clearance which does not satisfy the biodiversity offset scheme threshold criteria.

Tier 1: Tree /vegetation removal

Tier 1 applies to the clearance of vegetation which does not satisfy exemptions listed in Section 10.4 of this Part of the DCP, which is no greater than 100 square metres in area and where there is 10 trees or less proposed to be removed. It applies to exotic vegetation that is not covered by exemptions listed in Section 10.4.1

A Tier 1 Permit Application is to be submitted to Council for any removal of vegetation that satisfies the above criteria.

Tier 2: Tree removal/vegetation

Tier 2 applies to the clearance of trees and vegetation as defined by this Part of the Development Control Plan and does not satisfy Exemptions listed in Section 10.4 of this Part of the DCP that is:

- Greater than 100 square metres in area or more than 10 trees; or
- Located on land covered by Council's Natural Resources Biodiversity Layer (or equivalent mapping) under Section 7.2 of Council's Local Environmental Plan 2011. *This criteria is included as the Sensitive Biodiversity Values Land Map under the Biodiversity Conservation Act 29016 may not always be consistent with Council mapping.*

Tier 2 vegetation clearance may involve a varying range of impacts based on the intended area of clearing and environmental and heritage values of the site. It is recommended that Council be contacted when proposing to remove native vegetation classified as Tier 2 to obtain requirements for the application. Any removal of vegetation that is authorised by a permit must comply with any conditions imposed on that permit. Failure to comply with all permit conditions invalidated the permit approval and penalties may apply.

10.5 Protection of Heritage (European and Indigenous Items)

Council may refuse to issue a permit application to remove the clearing of vegetation:

- (a) That is, or forms part of a heritage item or that it within a heritage conservation area; or
- (b) That is or forms part of an aboriginal object or that is within an aboriginal place of heritage significance,

Unless the Council is satisfied that the proposed activity:

- a) 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
- b) Would not adversely affect the heritage significance of the heritage item, aboriginal object aboriginal place of heritage significance or heritage conservation area.

Note: Please refer to the exemption table (table 2) above to establish Consent requirements for properties where the vegetation forms part of a heritage item or is within a heritage conservation area.

If the removal of vegetation forms part of a heritage or is within a heritage conservation area, it is recommended that Council be consulted on the information requirements for a permit application. This may include consultation with Council's Heritage Advisory Service.

10.6 Requirements for a Biodiversity Conservation Licence

A Biodiversity Conservation Licence under Part 2 of the **Biodiversity Conservation Act 2016**, may be required if the removal of vegetation is likely to result in:

- harm to an animal that is a threatened species or part of an ecological community;
- picking a plant that is a threatened species or part of an ecological community;
- damage to a habitat of a threatened species or ecological community; or
- damage to a declared area of outstanding biodiversity conservation value

Note, the lodgement of an application to the Office of Environment and Heritage to obtain a Biodiversity Conservation Licence for vegetation clearance listed above provides a potential alternate approach if Council has refused to issue a Permit for the proposed clearance.

A list of threatened species can be viewed in Schedule 1 of the *Biodiversity Conservation Act 2016* and a list of threatened ecological communities can be viewed in Schedule 2 of the *Biodiversity Conservation Act 2016*. The location of observed threatened species can be viewed on the Bionet Section of the website of the NSW Office of Environment and Heritage at <http://www.bionet.nsw.gov.au/>. (Details of the threatened ecological community occurring on the site will be provided with the permit notification).

Section 2.8(1) of the *Biodiversity Conservation Act 2016* states that a Biodiversity Conservation License is not required if the “*act (vegetation clearance), was picking plants and was authorised by a permit or other authorisation under an environmental planning instrument made under section 26 (4) of the [Environmental Planning and Assessment Act 1979](#)*”. This Section means that native vegetation removal approved by a Permit issued under this Section of the DCP does not require a Biodiversity Conservation Licence.

Note, there is no protection for prosecution under the *Biodiversity Conservation Act 2016* for vegetation clearance if a permit from Council or a Licence from OEH has not been obtained and the removal of vegetation is likely to result in:

- Harm to an animal that is a threatened species or part of an ecological community;
- Picking a plant that is a threatened species or part of an ecological community;
- Damage to a habitat of a threatened species or ecological community; and/or
- Damage to a declared area of outstanding biodiversity conservation value

Attachment 4: Specific requirements for clearing of vegetation on a site containing a heritage item or within a heritage conservation area.

10.6 Protection of Heritage (European and Indigenous Items)

Council may refuse to issue a permit application to remove the clearing of vegetation:

(a) That is, or forms part of a heritage item or that it within a heritage conservation area; or

(b) That is or forms part of an aboriginal object or that is within an aboriginal place of heritage significance,

Unless the Council is satisfied that the proposed activity:

a) 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.