

Preservation of Trees or Vegetation

(For use with, Standard Instrument (Local Environmental Plan) Order 2006, LEPs)

Tweed Development Control Plan – Section A16

Version	Effective	Resolution	Description	Authorised
1.0	12 April 2014	10 April 2014	Development Control Plan provisions for tree and vegetation preservation in accordance with the making of the Tweed Local Environmental Plan 2014	Council

Acknowledgement

Tweed Shire Council has made all reasonable efforts to ensure that the contents of this chapter are factual and free of error, omission or inaccurate information. The Tweed Shire Council shall not be liable for any damage or loss that may occur in relation to any person taking or not taking action on the basis of this document.

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1. INTRODUCTION

1.1 Purpose

The purpose of this Section of the DCP (Preservation of Trees or Vegetation) is to protect, insofar as it is reasonably possible, the biodiversity, amenity and cultural values of the Tweed Shire through the preservation of trees and vegetation.

Preservation of trees and vegetation is broadly recognised by the Tweed community as fundamental to the character and identity of the Tweed. It is recognised as contributing to its World Heritage and National Iconic Landscape listings, as well as its pivotal role for supporting the regional tourism industry. Tweed's community aspires to the maintenance and enhancement of the Tweed's unique values and industries through the preservation of the Shire's trees and vegetation. This DCP is designed to protect those interests and the interests of future generations.

1.2 Objectives

The objectives of this DCP are:

- a) To ensure the preservation of locally indigenous trees and vegetation which contribute to the biodiversity, social and amenity value of the Tweed Shire;
- b) To recognise and conserve very large trees (locally indigenous or otherwise) of amenity, heritage or habitat value;
- c) To provide a process for identifying, listing and preserving trees of ecological, heritage, aesthetic and cultural significance through a Significant Vegetation Register;
- d) To minimize, and avoid where possible, unnecessary clearing of native trees and vegetation;
- e) To provide advice to applicants regarding how to proceed with an application to clear vegetation to which this DCP applies;
- f) To provide a process for the submission, assessment and determination of an application to clear vegetation to which this DCP applies; and
- g) To specify types of vegetation clearing that is exempt from this DCP.

Advisory Note

This DCP applies to a broad spectrum of trees and vegetation across the entire Tweed Shire LGA, and which are recognised as significantly contributing to the Shire's unique biodiversity and important scenic, cultural and heritage values.

1.3 Application

The DCP is to be read in conjunction with the *Tweed Local Environmental Plan 2014* (TLEP 2014) or *Tweed City Centre Local Environmental Plan 2012* (TCCLEP2012), whichever is applicable. The following clauses of the LEPs should be noted:

- Clause 5.9 Preservation of trees or vegetation;

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- Clause 5.9AA Trees or vegetation not prescribed by development control plan;
- Clause 5.10 Heritage conservation;
- Clause 5.11 Bushfire hazard reduction;
- Clause 6.4 Terrestrial Biodiversity (TCCLEP 2012), and

A provision of a local environmental plan prevails in the case of an inconsistency between it and a provision of this DCP.

Advisory Note

Pursuant to clause 1.8 of the Tweed Local Environmental Plan 2014 this Section of the Tweed Development Control Plan does not apply to land identified as 'Deferred Matter' under clause 1.3(1A) of that LEP. In the case of land 'deferred' under that LEP, the Tweed Local Environmental Plan 2000 will continue to apply.

For the purposes of clause 5.9(2) of the TLEP 2014 and TCCLEP 2012 this DCP applies to the following species or kinds of trees or other vegetation:

- a) Locally indigenous vegetation (including palms and tree ferns) equal to or greater than five (5) metres in height;
- b) Locally indigenous vegetation (of any height) that occurs within the vegetation communities described as forest, woodland, heathland, shrubland, scrubland, sedgeland, fernland, forbland, rushland, mangrove, saltmarsh, seagrass, or wetland;
- c) Trees (locally indigenous or otherwise) that have a trunk diameter of greater than or equal to 0.8 metres measured at 1.4 metres above the natural ground;
- d) Koala feed trees of the species *Eucalyptus robusta* (Swamp Mahogany), *E. tereticornis* (Forest Red Gum), *E. microcorys* (Tallowwood) and *E. propinqua* (Small-fruited Grey Gum), equal to or greater than five (5) metres in height;
- e) Threatened plant species, populations, or communities scheduled under the *Threatened Species Conservation Act 1995* or the *Environmental Protection and Biodiversity Conservation Act 1999*; and
- f) Trees or vegetation listed in a Significant Vegetation Register included as Schedule 2 of the DCP and as amended from time to time.

This DCP does not apply to the clearing of certain prescribed vegetation listed under:

- a) Schedule 1 of this DCP, where clearing is carried out in accordance with the standards and requirements set out in the Schedule, or
- b) any other exemption prescribed in an EPI.

Advisory Notes

Clauses 5.9 of the Tweed Local Environmental Plan 2014 which is taken from the Standard Instrument (Local Environmental Plan) Order 2006, provides for a number of mandatory circumstances for which a permit under this DCP is not required. Examples include some types of clearing under the Native Vegetation Act 2003, and clearing authorised under the Forestry Act 1916, Electricity Supply Act 1995, the Roads Act 1993, the Surveying and Spatial Information Act 2002, and the Noxious Weeds Act 1993.

Schedule 1 of this DCP includes a wide range of exemptions that apply in Tweed Shire to allow for routine vegetation maintenance and other purposes subject to certain standards and requirements.

To avoid confusion and the need for cross-referencing the exemptions and limitations listed under Clause 5.9 of Tweed Local Environmental Plan(s) are incorporated within this DCP.

1.4. Summary Guide to Using this Section of the DCP

This Section of the DCP is best used in the following way:

Step 1 Check to see if the vegetation is prescribed vegetation listed under Section 1.3.

Step 2 Check whether the type of vegetation clearing proposed is exempt, under Schedule 1, from the need to obtain a permit. Exempted clearing listed under Schedule 1 must be carried out in strict accordance with the standards and requirements set out in the Schedule.

Step 3 A permit, under Section 3.2, is required for any clearing that is not listed as exempt under Schedule 1.

Advisory Note

While Council has attempted to ensure that this DCP alerts proponents to their obligations under other relevant legislation, the onus is on the proponent to ensure that their actions are in accordance with any other relevant legislation.

1.5. Definitions

For the purposes of this DCP, and in accordance with the LEP, the following definitions apply:

Clearing means to ringbark, cut down, top, lop, remove, injure or willfully destroy vegetation.

Curtilage is an area, usually enclosed, encompassing the grounds and ancillary buildings immediately surrounding a home that is used in the daily activities of domestic life.

EPI means an 'Environmental Planning Instrument', being a Local Environmental Plan or a State Environmental Planning Policy.

LEP means 'Local Environmental Plan' and for the purposes of this DCP is a reference to TCCLEP 2012 and TLEP 2014.

LGA means the local government area of the Tweed Shire Council.

Locally indigenous vegetation is a species (or genetic variant) of vegetation, that existed within the area covered by the Tweed Shire before European settlement.

Native vegetation has the same meaning as in the *Native Vegetation Act 2003*. It includes vegetation indigenous to NSW but does not include mangroves, seagrass or any other type of marine vegetation to which Section 205 of the *Fisheries Management Act 1994* applies.

Prescribed vegetation is vegetation listed under Section 1.3(a-f) of this DCP.

TCCLEP 2012 means the Tweed City Centres Local Environmental Plan 2012.

TLEP 2014 means the Tweed Local Environmental Plan 2014.

Vegetation means any of the following types of vegetation, whether dead or alive:

- a) a tree (including any sapling or shrub, or any scrub),
- b) an understorey plant,
- c) a groundcover (being any type of herbaceous vegetation),
- d) a plant occurring in a wetland.

2. INTEGRATION OF RELEVANT STATE AND FEDERAL LEGISLATION

2.1 Threatened Species Legislation

NSW Threatened Species Conservation Act 1995

The *Threatened Species Conservation Act 1995* (TSC Act) aims to protect species, populations and ecological communities threatened with extinction in NSW. The main objectives of the TSC Act are to:

- conserve biological diversity and promote sustainable development
- prevent the extinction of native plants and animals
- protect habitat that is critical to the survival of endangered species
- eliminate or manage threats to biodiversity
- properly assess the impact of development on threatened species
- encourage cooperative management in the conservation of threatened species

Threatened species considerations are integrated into the planning and development control processes of the *Environmental Planning and Assessment Act 1979*. As a consequence of this, Council is obliged to determine whether or not a development, including any proposal to clear vegetation, is likely to have a significant impact on threatened species, populations or ecological communities, or their habitats.

Advisory Notes

Under the Threatened Species Conservation Act 1995, a formal 'assessment of significance' often referred to as a '7 part test' is used to determine whether or not an activity is likely to have a significant impact on listed threatened species, populations or ecological communities.

Council staff can (subject to availability) provide technical advice on whether or not vegetation is covered by State or Federal threatened species legislation.

Environment Protection and Biodiversity Conservation Act 1999

The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) is the Australian Government's central piece of environmental legislation. It provides a legal framework to protect and manage nationally and internationally important flora, fauna, ecological communities, and heritage places defined in the EPBC Act as matters of national environmental significance.

The EPBC Act operates in a similar way to the TSC Act and requires actions, such as the proposed removal of nationally listed vegetation, to be assessed and in certain circumstances referred to the Federal government for approval.

Advisory Note

Section 3.4 of this DCP provides further details of the way in which Council will consider applications to remove or damage Threatened species, populations or communities listed under the Threatened Species Conservation Act 1995 and/or the Environment Protection and Biodiversity Conservation Act 1999.

2.2 Native Vegetation Act 2003

The *Native Vegetation Act 2003* (NV Act) provides for the management of native vegetation within the State of New South Wales with the purpose of preventing "broad-scale clearing" unless it improves or maintains environmental outcomes. The NV Act is administered by the NSW state government.

In the Tweed Shire, the NV Act is applicable to the following land use zonings under the Tweed Local Environmental Plan(s):

- Rural Zones (RU1 Primary Production, RU2 Rural Landscape), Residential Zone (R5 Large Lot Residential Zone);
- Special Purpose Zones (SP1 Special Activities, SP2 Infrastructure, SP3 Tourist);
- Recreation Zones (RE1 Public Recreation, RE2 Private Recreation);
- Environmental Protection Zones (E2 Environmental Conservation, E3 Environmental Management); and
- Waterway Zones (W1 Natural Waterways, W2 Recreational Waterways).

Under the NV Act landholders are "permitted" to clear and manage certain native vegetation without approval if the clearing is carried out to the minimum extent necessary for carrying out the activity or in accordance with a self assessable

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code. This mechanism allows for clearing for a wide range of “routine agricultural management activities” (RAMAs). For other types of clearing landholders must obtain a development consent or property vegetation plan (PVP) approval under cl 12 of the NV Act.

Advisory Notes

A development consent or property vegetation plan may be issued over a property by the state government agency administering the Native Vegetation Act (Local Land Services in the first instance). Where vegetation clearing is to be undertaken in accordance with either a valid development consent or property vegetation plan (PVP) for vegetation clearing, a permit under this DCP is not required by way of clause 5.9(8)(a) of Tweed Local Environmental Plan(s).

To confirm whether a development consent or PVP (issued under the Native Vegetation Act 2003) applies to a property contact Local Land Services.

Landholders should also contact Local Land Services to verify whether any proposed activity is considered to be 'permitted clearing' and to obtain information relating to any specific clearing exemptions recognised as Routine Agricultural Management Activities (RAMAs).

Certain RAMAs may be undertaken under a self assessable Code however restrictions apply to RAMAs proposed to be undertaken for the construction, operation and maintenance of non rural infrastructure and/or clearing for construction timber. Such restrictions that are not authorised under the Native Vegetation Act 2003 may include (but not be limited to) the removal of a Threatened species, or a component of a Threatened population or Threatened ecological community, under the Threatened Species Conservation Act 1995 or the habitat of Threatened species, populations or ecological communities of fish under the Fisheries Management Act 1994.

Further details on the implementation of the Native Vegetation Act 2003 can be found at: <http://www.environment.nsw.gov.au/vegetation/>

In accordance with clause 5.9(8)(a) of the Tweed Local Environmental Plan(s), a permit to clear prescribed vegetation under this DCP is not required if:

- (i) It is authorised by a development consent or property vegetation plan under the *Native Vegetation Act 2003*, or
- (ii) It is otherwise permitted under Division 2 or 3 or Part 3 of the *Native Vegetation Act 2003*.

However, under clause 5.9(9) of the Tweed Local Environmental Plan(s), sub clause 8(a)(ii) above, does not apply in relation to land use zones R5 Large Lot Residential, E2 Environmental Conservation, E3 Environmental Management or E4 Environmental Living.

Advisory Notes

The effect of Clause 5.9(9) of the Tweed Local Environmental Plan(s) is to allow councils to 'override' some aspects of the Native Vegetation Act 2003 in environmental and rural residential zones.

Further details of the way in which this DCP interacts with the Native Vegetation Act 2003 are detailed in Section 2.3 below.

2.3 DCP Application: zones affected by the Native Vegetation Act 2003

(1) E2 Environmental Conservation Zone

- a) This DCP is applicable to the clearing of prescribed vegetation within an E2 Environmental Conservation zone, apart from vegetation clearing exemptions listed in Schedule 1.
- b) A permit is required for clearing of prescribed vegetation within an E2 zone, unless exempt under Schedule 1.
- c) In cases where Council is of the view that the proposed clearing of prescribed vegetation requires a development consent or property vegetation plan (PVP) under the *Native Vegetation Act 2003*, the proponent will be advised to seek approval under the relevant provisions of that Act.
- d) In cases where Council is of the view that the proposed clearing is “Forestry” or is ancillary to development requiring consent under the Tweed Local Environmental Plan(s) the proponent will be advised to seek approval under the provisions of the relevant LEP.
- e) Unauthorised clearing of prescribed vegetation on land zoned E2 Environmental Conservation may result in compliance action being taken by Council.

Advisory Notes.

In the E2 zone a permit is required to clear prescribed vegetation under this DCP where it may be otherwise “permitted” under the Native Vegetation Act 2003. This is because Council considers that many of the Native Vegetation Act 2003 exemptions (RAMAs etc) are too broad for these areas which are known to have high nature conservation values and/or have been specifically set aside for nature conservation purposes.

In relation to 2.3(1)c above and in accordance with clause 5.9(8)(a)(i) of Tweed Local Environmental Plan(s), a permit is not required under this DCP if vegetation clearing is undertaken in accordance with a either valid development consent or property vegetation plan (PVP) approved under the Native Vegetation Act 2003. However, failure to obtain a valid development consent or PVP under the Native Vegetation Act 2003, where required, may breach this DCP as well as that Act.

Landholders should also be aware that vegetation clearing not authorised under this DCP may result in compliance action under other State or Federal legislation (e.g. Threatened Species Conservation Act 1995, Environment Protection and Biodiversity Conservation Act 1999).

(2) E3 Environmental Management Zone

- a) Although the *Native Vegetation Act 2003* is the primary instrument to control and manage the clearing of native vegetation on land zoned E3 Environmental Management, a permit is required under this DCP for the clearing of the following prescribed vegetation, unless exempted under Schedule 1:

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- (i) Threatened species, populations or endangered ecological communities as listed under the *NSW Threatened Species Conservation Act 1995* and *Environmental Protection and Biodiversity Conservation Act 1999*; or
 - (ii) Koala feed trees of the species *Eucalyptus robusta* (Swamp Mahogany), *E. tereticornis* (Forest Red Gum), *E. microcorys* (Tallowwood) or *E. propinqua* (Small-fruited Grey Gum), equal to or greater than five (5) metres in height;
- b) Subject to availability and the scope of any proposed clearing, Council staff may be available to assist applicants/landowners in determining whether specific trees or vegetation proposed to be cleared on their land is, or contains, threatened species, populations or endangered ecological communities and/or koala feed trees.
 - c) In cases where Council is of the view that the proposed clearing requires a development consent or property vegetation management plan under the *Native Vegetation Act 2003*, the proponent will be advised to seek approval under the relevant provisions of that Act.
 - d) In cases where Council is of the view that the proposed clearing is “Forestry” or is ancillary to development requiring consent under the Tweed Local Environmental Plan(s), the proponent will be advised to seek approval under the provisions of the relevant Local Environmental Plan.
 - e) Vegetation clearing in an E3 zone which is not authorised under this DCP may result in compliance action being taken by Council.

Advisory Notes

In the E3 zone, a permit is required to remove or damage threatened species (including threatened populations and communities) or koala feed trees under this DCP even where it may be otherwise “permitted” under the Native Vegetation Act 2003. This is because Council considers that the Native Vegetation Act 2003 exemptions (RAMAs etc) do not adequately address koala habitat and threatened species issues both of which are important biodiversity priorities in the Tweed Shire.

Section 3.4 of this DCP provides further details of the way in which Council will consider applications to remove or damage threatened species or koala habitat.

In relation to 2.3(2)c above, and in accordance with clause 5.9(8)(a)(i) of Tweed Local Environmental Plan(s), a permit is not required under this DCP if vegetation clearing is undertaken in accordance with either a valid development consent or property vegetation plan (PVP) granted under the Native Vegetation Act 2003. However, failure to obtain a valid development consent or PVP under that Act, where required, may breach this DCP as well as that Act.

Landholders should also be aware that vegetation clearing not authorised under this DCP may result in compliance action under other State or Federal legislation (e.g. Threatened Species Conservation Act 1995, Environment Protection and Biodiversity Conservation Act 1999)

(3) RU1 Primary Production, RU2 Rural Landscape, and R5 Large Lot Residential Zones

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- a) The *Native Vegetation Act 2003* is the primary instrument to control and manage the clearing of native vegetation on rural (RU1, RU2) and rural residential land (R5).
- b) A permit is not required under this DCP for the clearing of prescribed native vegetation on RU1, RU2 or R5 zoned land where carried out in accordance with the *Native Vegetation Act 2003*.
- c) Where clearing of prescribed vegetation within an RU1, RU2 or R5 zone is proposed that is not subject to the *Native Vegetation Act 2003*, a permit is required unless exempt under Schedule 1 of this DCP.
- d) In cases where Council is of the view that the proposed clearing is “Forestry” or is ancillary to development requiring consent under a Tweed Local Environmental Plan, the proponent will be advised to seek approval under the provisions of the relevant Local Environmental Plan.
- e) Unauthorised vegetation clearing, on land with an RU1, RU2 or R5 zone, may result in compliance action being taken by Council.

Advisory Notes

In RU1, RU2 or R5 zones, a permit is not required under this DCP to clear prescribed vegetation if it is carried out in accordance with the Native Vegetation Act 2003. However, failure to carry out work in accordance with the Native Vegetation Act 2003, may breach this DCP as well as that Act.

In relation to 2.3(3)(c) it should be noted that the Native Vegetation Act 2003 only applies to native vegetation. Although this DCP also focuses on native vegetation it also applies to very large non native trees (>0.8m diameter at 1.4m high). Very large trees are commonly of significant visual, historical and/or cultural value.

Landholders should also be aware that some vegetation clearing under the Native Vegetation Act 2003 may also require approval under other State or Federal legislation (e.g. Threatened Species Conservation Act 1995, Environment Protection and Biodiversity Conservation Act 1999).

(4) Other Zones affected by the Native Vegetation Act 2003

- a) A permit under this DCP is not required in the following zones for the clearing of prescribed native vegetation that is carried out in accordance with the *Native Vegetation Act 2003*:
 - (i) Special Purpose Zones (SP1 Special Activities, SP2 Infrastructure, SP3 Tourist);
 - (ii) Recreation Zones (RE1 Public Recreation, RE2 Private Recreation);
and
 - (iii) Waterway Zones (W1 Natural Waterways, W2 Recreational Waterways).
- b) Where clearing of prescribed vegetation within the abovementioned zones is proposed that is not subject to the *Native Vegetation Act 2003*, a permit is required unless exempt under Schedule 1 of this DCP.
- c) In cases where Council is of the view that the proposed clearing is “Forestry” or is ancillary to development requiring consent under the Tweed Local

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Environmental Plan(s), the proponent will be advised to seek approval under the provisions of the relevant Local Environmental Plan.

- d) Unauthorised vegetation clearing, on land having a zoning classification listed in 4(a) above, may result in compliance action being taken by Council.

Advisory Notes

Consistent with clause 5.9(8)(a) of Tweed Local Environmental Plan(s) this DCP is not applicable to clearing of native vegetation in Special Purpose (SP1, SP2, SP3), Recreation (RE1, RE2) and Waterway zones (W1, W2) where such clearing is carried out in accordance with the Native Vegetation Act 2003. However, failure to carry out work in accordance with the Native Vegetation Act 2003, may breach this DCP as well as that Act.

It should also be noted that most of these zones are in public ownership.

In relation to 2.4(4)(b) it should be noted that the Native Vegetation Act 2003 only applies to native vegetation. Although this DCP also focuses on native vegetation it also applies to very large non native trees (>0.8m diameter at 1.4m). Very large trees are commonly of significant visual, historical and/or cultural value.

Landholders should also be aware that some vegetation clearing under the Native Vegetation Act 2003 may also require approval under other State or Federal legislation (e.g. Threatened Species Conservation Act 1995, Environment Protection and Biodiversity Conservation Act 1999).

2.4 State Environmental Planning Policies (SEPP) 14 and 26

State Environmental Planning Policies 14 and 26 protect certain mapped areas of coastal wetland and littoral rainforest respectively. Development consent is needed to clear vegetation on land affected by these SEPPs.

Council will advise applicants if development consent is required as a consequence of SEPP 14 or 26. In accordance with Schedule 1 (h) of this DCP a development consent issued in accordance with a SEPP will not require a separate permit approval.

2.5 Fisheries Management Act 1994

The objects of the *Fisheries Management Act 1994* (FM Act) are to conserve, develop and share the fishery resources of NSW for the benefit of present and future generations. Under the FM Act a permit is required to harm marine vegetation such as mangroves, seagrass and seaweeds.

In accordance with Schedule 1 (j) of this DCP a permit to harm marine vegetation regulated and issued under the FM Act will remove the need for a permit to be issued for the same activity under this DCP.

2.6 National Parks and Wildlife Act 1974

Under the *National Parks and Wildlife Act 1974* all native mammals, birds, reptiles and amphibians, and many native plant species, are protected in NSW. As a consequence, landholders and Council have a duty to ensure that vegetation clearing does not harm or kill protected fauna.

Where vegetation clearing is likely to disturb, injure or kill native fauna, Council will require the person/persons undertaking vegetation removal works to contact a suitably qualified person being a 'Spotter Catcher' who holds a Wildlife Conservation License with an extended authority issued by the NSW Department of Environment & Heritage to oversee tree removal works.

3 IMPLEMENTATION

A person must not carry out clearing of prescribed vegetation without the consent of Council on land affected by this DCP. Council approval can be gained via the issue of a permit, as detailed in this Section.

A person who contravenes this DCP or causes a provision of this DCP to be contravened, may be found guilty of an offence under the *Environmental Planning and Assessment Act 1979*, and may be subject to prosecution under the provisions of that Act.

3.1 Council Assistance

Although the legal onus is on the proponent to ensure that any clearing proposed or undertaken is carried out in accordance with this DCP (and any other legislation), Council staff may (subject to availability) provide technical advice to identify koala food trees, koala habitat or State or Federally listed threatened species, populations or communities.

3.2 How to make an application for vegetation damage or removal

The following general information is required to be submitted with a permit application. However the amount and level of detail required will likely vary depending on the circumstances.

- a) Application on Council's permit form (See <http://www.tweed.nsw.gov.au/Forms/>);
- b) The written consent of the owner of the land;
- c) A description of the land;
- d) The reason for the request to remove, lop or prune the prescribed tree or vegetation;
- e) A description of the existing trees and vegetation including the following:
 - (i) A plan of the site showing the location of the trees or vegetation proposed for removal, lopping or pruning and their position in relation to dwellings, buildings, roads, driveways, etc;
 - (ii) Species of tree if known (common and/or botanical);
 - (iii) Approximate height and trunk diameter at 1.4m above ground; and
 - (iv) Colour photo(s) of the tree to assist in, or confirm tree identification (whole tree, bark, leaves).

3.3 Council assessment and determination process

The land identified in the permit application will be inspected by a Council Officer and an assessment of the tree or vegetation to be removed, lopped or pruned, will be carried out. This process usually occurs within two weeks of your application being received by Council.

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Following assessment, your permit application will be determined and you will be notified by mail. Your application may be approved with conditions, or refused. Justification will be provided for a refused application. Refer to Section 3.5 of this DCP for provisions relating to the "review of refused applications" process.

3.4 Vegetation removal considerations

In assessing whether or not to approve the clearing of prescribed vegetation, Council will take into consideration the following legislative and environmental matters:

- a) If a development consent, restrictive covenant or other legal impediment exists that requires the tree or vegetation to be retained;
- b) If the tree or vegetation is of significant amenity, aesthetic or scenic value;
- c) If the tree or vegetation is of significant cultural or historical value;
- d) If the tree or vegetation has significant ecological value or provides significant wildlife habitat;
- e) In cases involving potential removal or damage to prescribed vegetation covered by the *NSW Threatened Species Conservation Act 1995* and/or *Environmental Protection and Biodiversity Conservation Act 1999*, Council can only grant a permit if it determines that the impact of the clearing is not significant with respect to defined criteria under the relevant legislation. In such cases, Council will carry out the relevant assessment of significance prior to making a decision. Where Council considers that a significant impact is likely, the applicant will be advised on any further assessment requirements and/or mandatory referral to state or federal agencies should they wish to have their proposal further considered.
- f) In cases involving potential clearing of prescribed vegetation that consists of koala feed trees listed under Section 1.3(d) of this DCP, Council will not approve removal if it determines that the tree(s) in question are being used by koalas or its removal would be otherwise inconsistent with *State Environmental Planning Policy 44 - Koala Habitat Protection* or an approved Koala Plan of Management.
- g) In cases involving potential clearing/harm of mangroves or other marine vegetation regulated under the *Fisheries Management Act 1994*, Council will advise the applicant that a permit is required under that Act. In accordance with Schedule 1 (j) a separate permit under this DCP would not be required.
- h) When development consent is required because the vegetation is protected under SEPP 14 or 26, then in accordance with Schedule 1 (h) a separate permit under this DCP would not be required.
- i) If the tree or vegetation is listed on Council's Significant Vegetation Register (Schedule 2);
- j) If the removal of the tree or vegetation is likely to cause significant erosion or sedimentation; and
- k) The age of the tree or vegetation, the overall extent of vegetation removal proposed and whether vegetation is locally indigenous.

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Other matters that will be taken into consideration include:

- a) The reason for tree or vegetation removal, lopping or pruning;
- b) Whether the removal of the entire tree or vegetation is proposed or only pruning or lopping;
- c) If the tree or vegetation was planted and it no longer fulfills its original purpose;
- d) The species of tree and whether it is common and quick growing.

Dead or dying vegetation

In accordance with clause 5.9(5) of the Tweed Local Environmental Plan(s), Council will not refuse an application to remove a tree or vegetation that it is satisfied is dying or dead and not required as the habitat of native fauna.

Vegetation that is a risk to life and property

In accordance with clause 5.9(6) of the Tweed Local Environmental Plan(s), Council will not refuse an application to remove or lop a tree or vegetation if it is satisfied that the vegetation represents an imminent risk of serious personal injury or serious damage to property. However if based on its assessment, Council determines that the tree or vegetation is considered significant (as a consequence of its ecological, historical, cultural or amenity value), Council will require expert advice (i.e. an Arborist's report - refer to Section 3.6 of this DCP) to assist in determining the risks.

Overshadowing

With regard to situations where an application is lodged requesting removal or pruning of tree(s) for the installation of solar photovoltaic panels or solar hot water systems, Council will require an assessment from the installers outlining the extent the tree(s) will overshadow the photovoltaic panels, taking into account summer and winter sun elevations. Council will then make an assessment of the tree(s), taking into consideration the health, structure, and significance of the tree(s). If the tree(s) are considered to be of local or regional significance to the area by Council, an alternative location for the installation of solar panels will need to be investigated. If the tree(s) are considered to be healthy and structurally sound, but of little significance to the local amenity, and environment, Council will consider approval for the removal or trimming of the tree(s).

Where the tree or vegetation is considered of moderate to high significance, removal may not be approved, but limited pruning may be allowed where undertaken in accordance with recognised standards.

Advisory Note

The considerations above will only apply where a permit is required under this DCP. In all but a few cases clearing will be able to be carried out without a permit under the provisions of Schedule 1. For example issues of risk to life and property and overshadowing are likely to be covered under the Schedule 1 exemption relating to "clearing and pruning for garden maintenance" which will allow the removal of most vegetation and the pruning of almost all vegetation (in accordance with the relevant Australian Standard) within an established garden area.

Heritage considerations

In accordance with clause 5.9(7) of the Tweed Local Environmental Plan(s), a permit under this DCP cannot allow any ringbarking, cutting down, topping, lopping, removal, injuring or destruction of a tree or other vegetation:

- a. that is or forms part of a heritage item or that is 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:
 - i. 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
 - ii. would not adversely affect the heritage significance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or heritage conservation area.

As a consequence of this, the activities concerned will require development consent. The heritage provisions of clause 5.10 of the Tweed Local Environmental Plan(s) will be applicable to any such consent.

Council does not generally support removal of vegetation listed on Council's Significant Vegetation Register, in Schedule 2 of this DCP, and removal will can only occur by way of resolution of the Council.

3.5 Review of refused applications

Refusal by Council to grant a permit to a person who has duly applied for the granting of a permit under this DCP is taken to be refusal to grant consent under the *Environmental Planning and Assessment Act 1979* (cl 5.9(4) of the LEP).

As such, Section 82A of the *Environmental Planning and Assessment Act 1979* applies, which provides that an applicant may request Council to review the determination of an application that has been refused by Council.

To seek reconsideration by Council, the following must be provided:

- i. A letter requesting review of Council's decision, providing additional information and reasons why Council's decision should change; and
- ii. Satisfactory supporting evidence by an expert in the field addressing the grounds for refusal (i.e. Structural Engineer, Arborist's Report).

The submission of the Section 82A request does not guarantee the proposed vegetation removal will be approved. The original application and any additional

information will be assessed on the merits of the proposal. Therefore the original determination may be upheld.

3.6 Arborist's Report

Under certain situations, Council may require an Arborist's Report to accompany a permit application. If it is considered on the basis of Council's assessment of your application that an Arborist's report is required, you will be notified by mail (or email). The correspondence will specify the reason the Arborist's report is required, the minimum qualifications of the person preparing the report and what the report must contain.

An Arborist's report must be prepared by an independent arborist who holds the Australian Qualifications Framework (AQF) Level 5 in Arboriculture.

The following information will generally be required in an Arborist's report:

- a) Name and qualifications of the arborist;
- b) Scope and objective of the report;
- c) Inspection methods/techniques;
- d) A scaled plan clearly showing affected trees on the subject site. Trees identified on the plan should be numbered. Trees should be overlaid on a recent aerial photograph of the site;
- e) For each tree proposed for removal or damaged, information is to be provided on species, age class, height, trunk diameter at 1.4m, canopy spread, health and condition (leaves, branches, trunk, roots) and estimated useful life expectancy;
- f) Discussion of other relevant information including; tree structure/weaknesses, root form and distribution, pest and diseases, any important habitat features for fauna (i.e. hollows), and Tree Hazard Assessment;
- g) Any supporting evidence – i.e. photographs; laboratory results to confirm presence of pathogens; and
- h) Any recommended remediation or tree protection/management measures.

3.7 Unauthorised vegetation clearing

Incidents of alleged unauthorised vegetation clearing will be investigated by a Council Officer to determine whether a breach against this DCP and consequently the LEP has taken place.

If it is considered that a breach has taken place, any recommendations by Council Officers to prosecute for unauthorised vegetation removal or damage will be referred to Council for determination.

In cases where vegetation removal or damage is regulated under other legislation, Council may defer prosecution under this DCP if it is satisfied, on the basis of a detailed report, that compliance action under other legislation will be initiated and successful.

Examples of vegetation clearing that is regulated under other legislation include:

- i. damage to threatened species, populations, or communities (or their habitats) scheduled under the *Threatened Species Conservation Act*

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1995 or the Environmental Protection and Biodiversity Conservation Act 1999;

- ii. harm to marine vegetation under the *Fisheries Management Act 1994*;
- iii. removal of vegetation within 40metres of a watercourse under the *Water Management Act 2000*;
- iv. removal of remnant native vegetation or protected regrowth on land to which the *Native Vegetation Act 2003* applies; and
- v. injury, damage or disturbance to vegetation on public land under the *Local Government Act 1993*.

4. STANDARDS AND REQUIREMENTS

The following standards and requirements are applicable to this DCP:

- a) The clearing of vegetation must be undertaken by methods that minimise soil erosion, sedimentation of waterways and minimise impacts on native flora and fauna.
- b) The approved tree must be removed by a recognised tree surgeon and felled entirely onto the subject property. The felled tree must be mulched on site or the timber recovered for use as appropriate.
- c) Clearing of vegetation that is also subject to other clauses of the Tweed Local Environmental Plan(s) shall be assessed in relation to the provisions set out in those clauses. This includes vegetation clearing that falls within the meaning of "Forestry" under the LEP.
- d) As a result of the significance of the tree or vegetation, Council may condition that tree pruning is to be undertaken in accordance with *Australian Standard AS 4373 -2007 Pruning of amenity trees*, and by persons with a minimum AQF Level 3 qualification in Arboriculture.
- e) Where Council considers that vegetation clearing is likely to disturb, injure or kill native fauna, Council will require the person/persons undertaking vegetation removal works to contact a suitably qualified person being a 'Spotter Catcher' who holds a rehabilitation permit with an extended authority issued by the NSW Department of Heritage & Environment to oversee tree removal works.
- f) Notwithstanding the standards and requirements above, Council may impose any other conditions it considers necessary to protect environmental or amenity values, to mitigate other risks or to adequately compensate for the loss of vegetation.

5. PROCESS FOR LISTING TREES ON THE SIGNIFICANT VEGETATION REGISTER

Council will maintain a Significant Vegetation Register in Schedule 2 of this DCP.

Whilst this DCP aims to provide protection for locally indigenous vegetation in the Tweed Shire, Council is aware that certain trees and vegetation have importance and significance that exceed the scope of these general vegetation protection measures.

5.1 Application

The Significant Vegetation Register (Schedule 2) applies to significant vegetation on public and private land within the Tweed Shire and can cover a single tree, a larger grouping of trees or an area of vegetation. Vegetation will be listed based on ecological, visual, historic, botanical, cultural, commemorative or other significance.

The listing of vegetation on the Register does not prohibit removal or pruning. Approval for minor pruning will be processed through this DCP. Requests for removal of listed vegetation will only be approved through a Council resolution.

Nominations may be received for any trees or vegetation within the Tweed Shire. Nominated trees or vegetation will be subject to a detailed assessment of significance by Council including community consultation, and ultimately a resolution by Council for inclusion on the Register.

SCHEDULE 1 VEGETATION CLEARING EXEMPTIONS

Type of Vegetation Clearing	Standards and other requirements
a. Clearing and pruning for garden maintenance	<ul style="list-style-type: none"> • Vegetation clearing must be associated with routine garden maintenance of planted vegetation within the curtilage of an existing lawful dwelling. • Does not include the clearing of locally indigenous native vegetation existing at the time the lot was created. • Does not include vegetation identified in sub-clause 1.3(c) (i.e. very large trees), sub-clause 1.3(d) (i.e. koala feed trees) sub-clause 1.3(e) (i.e. threatened species, populations and communities) or sub-clause 1.3(f) (listed significant trees) however pruning and may be carried out where crown maintenance works are not to exceed a maximum of 20% of the canopy in any two year period and is to be carried out in accordance with the <i>Australian Standard AS 4373 – 2007 Pruning of amenity trees</i> and by an arborist with a minimum AQF Level 3 qualification in Arboriculture, or equivalent.
b. Vegetation clearing near an existing building	<ul style="list-style-type: none"> • Clearing or pruning of vegetation may be carried out within 5 metres of an external wall (including windows and doors) of an existing lawful building. • Vegetation clearing as described above must be on land that is in the same ownership as land on which the building is located. • Does not include vegetation identified in sub-clause 1.3(c) (i.e. very large trees), sub-clause 1.3(d) (i.e. koala feed trees) sub-clause 1.3(e) (i.e. threatened species, populations and communities) or sub-clause 1.3(f) (listed significant trees) however pruning and may be carried out where crown maintenance works are not to exceed a maximum of 20% of the canopy in any two year period and is to be carried out in accordance with the <i>Australian Standard AS 4373 – 2007 Pruning of amenity trees</i> and by an arborist with a minimum AQF Level 3 qualification in Arboriculture, or equivalent.
c. Noxious weed control	<ul style="list-style-type: none"> • A noxious weed is any weed that is declared noxious under the <i>Noxious Weeds Act 1993</i>. Contact the Far North Coast Weeds for further information on noxious weeds and requirements for their control. • Does not include large scale harvesting, processing or transport of noxious weeds such as Camphor Laurel exceeding 20 trees (> 3m high) on a single property over a 12 month period. Large scale harvesting is a form of “forestry” and is subject to development consent under the Tweed Local Environmental Plan.

Type of Vegetation Clearing	Standards and other requirements
	<ul style="list-style-type: none"> • Vegetation clearing for noxious weed control must be carried out to the minimum extent necessary to allow for the removal or destruction of noxious weeds. • Notwithstanding Clause 5.9(8)(e) of Tweed Local Environmental Plan(s), it is advised that some Camphor Laurel specimens may be of cultural heritage significance as they are known to have been planted as street trees and memorial trees in the early 20th century. Council advice should be sought with respect to the removal of: (i) very large Camphor Laurels (> 0.8m diameter at 1.4m) in urban areas or villages or; (ii) any Camphor Laurels listed under sub-clause 1.3(f) (listed significant trees, see Schedule 2).
<p>d. Vegetation clearing to suppress or destroy non-locally indigenous vegetation</p>	<ul style="list-style-type: none"> • Vegetation clearing must be carried out to the minimum extent possible. • In cases where the vegetation comprises trees greater than three metres (3m) in height where located within 20 metres of a waterway or on land with a slope greater than or equal to eighteen (18) degrees, the clearing must be carried out in accordance with “Guideline for the Clearing of Exotic Trees and Dead Native Trees on State Protected Land” as published by NRCMA 2006. • This exemption applies to the removal of horticultural tree crops and the like. • Does not include large scale harvesting, processing or transport of trees such as Camphor Laurel exceeding 20 trees (> 3m high) on a single property over a 12 month period. Large scale harvesting is a form of “forestry” and is subject to development consent under the Tweed Local Environmental Plan(s). • Does not include vegetation identified in sub-clause 1.3(c) (i.e. very large trees) or sub-clause 1.3(f) (listed significant trees) however pruning and may be carried out where crown maintenance works are not to exceed a maximum of 20% of the canopy in any two year period and is to be carried out in accordance with the <i>Australian Standard AS 4373 – 2007 Pruning of amenity trees</i> and by an arborist with a minimum AQF Level 3 qualification in Arboriculture, or equivalent.
<p>e. Pruning and lopping on public land to maintain beach safety from existing surf lifesaving clubs</p>	<ul style="list-style-type: none"> • Vegetation clearing may be carried out on public land directly seaward of Fingal Head and Cabarita Beach Surf Lifesaving Clubs. • This clearing is restricted to lopping and pruning, to the minimum extent possible, in order to maintain a lifesaving surveillance capability from the upper floor level of the club houses.

Type of Vegetation Clearing	Standards and other requirements
	<ul style="list-style-type: none"> Vegetation clearing must be performed by or on behalf of Council.
f. Vegetation clearing for a public utility undertaking	<ul style="list-style-type: none"> Vegetation clearing to maintain access to a public utility, to maintain a public utility or to maintain safety clearances to a public utility. Vegetation clearing must be performed by or on behalf of Council or the relevant public authority. Vegetation clearing must be carried out to the minimum extent possible. Does not include vegetation identified in sub-clause 1.3(c) (i.e. very large trees), sub-clause 1.3(d) (i.e. koala feed trees) sub-clause 1.3(e) (i.e. threatened species, populations and communities) or sub-clause 1.3(f) (listed significant trees) however pruning and may be carried out where crown maintenance works are not to exceed a maximum of 20% of the canopy in any two year period and is to be carried out in accordance with the <i>Australian Standard AS 4373 – 2007 Pruning of amenity trees</i> and by an arborist with a minimum AQF Level 3 qualification in Arboriculture, or equivalent.
g. Vegetation clearing in accordance with a management plan	<ul style="list-style-type: none"> Clearing vegetation may be carried out in accordance with a management plan authorised by Council or other government authority.
h. Vegetation clearing authorised or approved under the Environmental Planning and Assessment Act 1979	<ul style="list-style-type: none"> Clearing vegetation may be carried out if authorised or otherwise permitted under an Act or Regulation. Examples include clearing approved under Part 4 or Part 5 of the <i>Environmental Planning & Assessment Act 1979</i> or authorised under a State Environmental Planning Policy. Vegetation clearing must be carried out to the minimum extent possible.
i. Vegetation clearing authorized or approved under the <i>Native Vegetation Act 2003</i>	<ul style="list-style-type: none"> Consistent with Clause 5.9(8)(a) and Clause 5.9(9) of Tweed Local Environmental Plan(s) clearing of prescribed vegetation may be carried out in accordance with the <i>Native Vegetation Act 2003</i> except as detailed in Section 2.3 of this DCP. In summary, a permit is required under this DCP, except as otherwise exempted by this Schedule, for: <ul style="list-style-type: none"> all clearing in the E2 Environmental Conservation zone; clearing involving threatened species, populations or communities, or koala feed trees in the E3 Environmental Management zone; and clearing involving very large non-native trees in other zones affected by the <i>Native Vegetation Act 2003</i> (e.g. RU1, RU2 rural

Type of Vegetation Clearing	Standards and other requirements
j. Vegetation clearing authorised under various other Acts and Regulations	<p data-bbox="683 253 1278 383"><i>zones R5 Large Lot Residential zone, SP1, SP2 and SP3 Special Purpose Zones (SP1, SP2, SP3) and Recreation Zones (RE1, RE2) and Waterway Zones (W1, W2).</i></p> <ul style="list-style-type: none"> <li data-bbox="526 398 1278 463">• Vegetation clearing must be carried out to the minimum extent possible. <li data-bbox="526 477 1278 607">• The onus is on the landowner to be able to show that any clearing carried out under the Native Vegetation Act is lawful and does not breach Threatened species or other legislation. <hr/> <ul style="list-style-type: none"> <li data-bbox="526 622 1278 752">• Clearing vegetation may be carried out if authorised or otherwise permitted under another Act or Regulation (other than those covered under h and i above). <li data-bbox="526 766 1278 965">• This exemption includes but is not limited to clearing authorised under the <i>Forestry Act 1916, Electricity Supply Act 1995, Roads Act 1993, Surveying and Spatial Information Act 2002</i> and the <i>Noxious Weeds Act 1993</i> as listed in Clause 5.9(8) of the Tweed Local Environmental Plan(s). <li data-bbox="526 978 1278 1043">• Vegetation clearing must be carried out to the minimum extent possible. <li data-bbox="526 1057 1278 1122">• The onus is on the landowner to show that clearing permitted under an Act or Regulation is lawful. <li data-bbox="526 1135 1278 1395">• Notwithstanding the operation of other Acts and Regulations to which this exemption applies, Council advice should be sought with respect to the removal of vegetation identified in sub-clause 1.3(c) (i.e. very large trees), sub-clause 1.3(d) (i.e. koala feed trees), sub-clause 1.3(e) (Threatened species, populations and communities) or sub-clause 1.3(e) (listed significant trees)

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SCHEDULE 2 SIGNIFICANT VEGETATION REGISTER

NUMBER	NAME	ADDRESS	PROPERTY DESCRIPTION	SUBURB
1	Fig Trees - Navigation Markers	Wupan Avenue	Lot 50 DP 258995	Banora Point
2	Fig Tree	Cane Road/Tweed Valley Way	Lot 101 DP 1058418	Condong
3	Fig Tree	Clothiers Creek Road/Tweed Valley Way	Lot 18 DP225029	Condong
4	Norfolk Pine (16) Memorial Avenue	Collier Street	Road Reserve	Cudgen
5	Memorial Fig Trees	Crescent Street	Road Reserve	Cudgen
6	Skinner's Reserve	Dulguigan Road	Lot 480 DP800941	Dulguigan
7	Canary Island Palms	Commercial Road	Lot 1 DP523131	Murwillumbah
8	Lilly Pilly Tree	Numinbah Road	Lot 1 DP 735072	Numinbah
9	Plane Trees	Kyogle Road	Lot 20 DP 790517	Uki



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