

1.2.6 Tree and Vegetation Preservation

This section is made in accordance with State Environmental Planning Policy (Biodiversity and Conservation) 2021 (the Biodiversity and Conservation SEPP) and prescribes the trees and vegetation to which the Biodiversity and Conservation SEPP and/or Clause 5.10 of the HLEP applies and the applicable approval process.

1.2.6.1 Tree Preservation

Prescribed Trees

- a. The prescribed trees that are protected by the Biodiversity and Conservation SEPP and/or Clause 5.10 of the HLEP and this Section of the DCP includes:
 - trees except exempt tree species in Hornsby Shire, as listed in Table 1.2.6-a or subject to the Biodiversity Offset Scheme,
 - all trees on land within a heritage conservation area described within the HLEP, and
 - all trees on land comprising heritage items listed within the HLEP.
- b. To damage or remove any tree protected under this DCP is prohibited without the written consent of Council, except in accordance with the exemptions prescribed in this part (under the heading 'Exempt Tree Work').
- c. For the purposes of this section:
 - **Arborist (Project and Consulting)** must have obtained through training and completed Australian Qualification Framework (AQF) Level 5, Diploma of Arboriculture.
 - **A tree** is defined as a long lived woody perennial plant with one or relatively few main stems with the potential to grow to a height greater than 3 metres.
 - **Biodiversity Offset Scheme (BOS)** means a scheme enacted by the Biodiversity Conservation Act 2016 and Biodiversity Conservation Regulation 2017. The BOS includes a Sensitive Biodiversity Values (SBV) Map and Area Threshold, either which trigger an alternative approval framework for the clearing of native vegetation. The SBV Map can be viewed on the DPE website and the SBV Area Thresholds are included as notes at the end of this section.
 - **Native vegetation** has the same meaning as in Part 5A of the Local Land Services Act 2013, with the exclusion of 60B(4) for the purposes of including marine vegetation in the definition of native vegetation.

- **Damage** means to impair the value or usefulness, or weaken the health or the normal function of a tree or vegetation.
- **Remove** means to cut down, knock down, kill, lop or destroy.
- **Prune** means to selectively remove branches.
- **Tree Protection Zone** means the area above or below ground at a given distance from the trunk set aside for the protection of a tree's roots and crown to provide for the viability and stability of a tree.

Table 1.2.6-a: Exempt Tree Species in Hornsby Shire

Botanical Name	Common Name
<i>Acacia baileyana</i>	Cootamundra Wattle
<i>Acacia saligna</i>	Golden Wreath Wattle
<i>Acer negundo</i>	Box Elder
<i>Ailanthus altissima</i>	Tree of Heaven
<i>Alnus jorullensis</i>	Evergreen Alder
<i>Arecastrum romanzoffianum</i>	Cocos Palm
<i>Celtis sinensis</i>	Hackberry
<i>Cinnamomum camphora</i>	Camphor Laurel
All edible fruit and nut trees except native species such as <i>Acmena spp</i> (Lilli Pilli), <i>Syzygium spp</i> (Lilli Pilli) <i>Elaeocarpus spp</i> (Blueberry Ash) or <i>Macadamia spp</i> (Macadamia Tree)	Fruit and Nut trees
<i>Cotoneaster spp.</i>	Cotoneaster
<i>Eriobotrya japonica</i>	Loquat
<i>Erythrina spp</i>	Coral tree
<i>Ficus elastica</i>	Rubber tree
<i>Gleditsia triacanthos</i>	Honey Locust
<i>Lagunaria patersonii</i>	Norfolk Island Hibiscus
<i>Ligustrum spp</i>	Privet
<i>Populus spp</i>	Poplar
<i>Pyracantha augustifolia</i>	Firethorn
<i>Robinia pseudoscacia</i>	Golden Robinia
<i>Salix spp</i>	Willow
<i>Schefflera actinophylla</i>	Umbrella Tree
<i>Schinus spp</i>	Peppercorn Tree
<i>Toxicodendron spp</i>	Rhus

Note:

Further information on exempt tree species in Hornsby Shire is available on Council's website www.hornsby.nsw.gov.au.

Exempt Tree Work

d. The following exemptions to this part apply as set out below:

- The removal of a tree deemed by Council in writing and shown by recorded photographic evidence to be dead and is not required as the habitat of native fauna.
- The removal of species listed under the NSW Biosecurity Act 2015.
- Pruning of a tree by less than 10% of the foliage area in accordance with AS 4373 Pruning of Amenity Trees not more than once annually.
- The removal of or pruning of a tree where the base of the trunk of the tree at ground level is located within 3 metres of the foundation of an approved building (excluding detached garages, carports and other buildings ancillary to a dwelling house).
- The removal of a tree less than 3 metres in height not located within native vegetation.
- Trees deemed by Council in writing and shown by recorded photographic evidence or written evidence provided by a qualified Arborist (AQF.5) as an imminent risk to human life or is likely to cause substantial damage to property in the near future.
- The removal of or pruning of a tree located on Council owned or managed land provided the works are undertaken by Council or Council authorized agents.

e. **The exemptions at (d) above do not apply to:**

- All lands mapped as Biodiversity on the HLEP Terrestrial Biodiversity Map, or
- Threatened species or land that contains native vegetation which is habitat for threatened species, populations or ecological communities listed in Schedule 1 and 2 of the Biodiversity Conservation Act 2016 and protected matters listed under the Commonwealth EPBC Act 1999, or
- Work that is contrary to a development consent that requires trees to be retained, or

- Any work to a tree that is or forms part of a heritage item or heritage conservation area, requires approval from the Council pursuant to the provisions of Section 2.10(3) of the Biodiversity and Conservation SEPP and/or Clause 5.10 of the HLEP.
- Land located within 50 metres of and including land that contains native vegetation which is habitat or potential habitat for species, populations or ecological communities listed in Schedule 1 and 2 of the *Biodiversity Conservation Act 2016* and protected matters listed under the *Commonwealth EPBC Act 1999*.

Lodging an Application for Tree Work

- f. An application is required to be completed and forwarded to Council for all work to protected trees where an exemption does not apply. Table 1.2.6-b below identifies what type of application is required to be completed for work to trees.
- g. Where works to trees is required as part of other works for which development consent is required, the works will be assessed as part of the Development Application.

Notes:

Pursuant to 5.10(3) of the HLEP, Council has the ability to determine the type of application required in relation to trees on heritage properties.

AQF is the Australian Qualification Framework, a national framework for all educational and training purposes in Australia.

Table 1.2.6-b: Type of Tree Application Required

Location	Extent of Works	Form of Application
Heritage Item	Council is satisfied that the works to a tree are minor as described by Section 2.10 (3) of the Biodiversity and Conservation SEPP and Clause 5.10(3) of the HLEP	Tree Permit
	Major work to any tree	Development Application
Land within a Heritage Conservation Area	Council is satisfied that the works to a tree are minor as described by Section 2.10 (3) of the Biodiversity and Conservation SEPP and Clause 5.10(3) of the HLEP.	Tree Permit
	Major work to any tree	Development Application
Other land - tree removal or pruning	Removal or pruning of trees not subject to BOS	Tree Permit
Other land - work within a Tree Protection Zone of a protected tree and/or a tree located on other land Work includes Construction (driveways, concrete slabs, retaining walls) and earthworks (changes in soil levels, embankments, trenching)	Work within the Tree Protection Zone not subject to BOS	Tree Permit
Work that is contrary to a development consent that requires trees to be retained	Work to any prescribed tree	Section 4.55 Application

- h. For the purpose of Table 1.2.6-b, a Tree Protection Zone is defined as the area within:
- 9 metres of a tree with a diameter at breast height of 800mm or greater,
 - 7 metres of a tree with a diameter at breast height of between 400mm and 800mm, and
 - 4 metres of a tree with a diameter at breast height of 400mm or less.

Consideration of an Application for Tree Work

- i. The removal of, or work to, trees should be consistent with the applicable provisions of the Biodiversity and Conservation SEPP, HLEP and HDCP.
- j. Trees will be assessed using arboricultural, ecological and industry accepted safety evaluation methods to determine the safe useful life expectancy of the trees. Accordingly, any application for removal must demonstrate that the removal of the tree is appropriate based on an assessment of the safe useful life and risk to human life or property using industry relevant risk assessment such as Tree Risk Assessment Qualification (TRAQ) or Quantified Tree Risk Assessment (QTRA).
- k. Where trees are to be retained, the provisions of AS 4970 Protection of Trees on Development Sites must be applied.
- l. All tree pruning work must be carried out in accordance with AS 4373 Pruning of Amenity Trees.
- m. Any tree approved to be removed from a site should be replaced with a tree of like habit and indigenous to Hornsby Shire, planted as near as practicable to the location of the removed tree, grown to maturity and replaced if the planting fails to survive and thrive in accordance with Council's Green Offsets Code.

Notes:

Works on land identified as "Biodiversity" on the HLEP Terrestrial Biodiversity Map should have regard to Section 1.3.1.1 Biodiversity of this DCP.

Works involving heritage items and heritage conservation areas should also have regard to Part 1 Heritage of this DCP.

Section 2.12 of the Biodiversity and Conservation SEPP provides that the applicant for a permit may appeal to the Land and Environment Court against refusal by a Council to grant a permit. Any such appeal is to be made within 3 months of the date on which the applicant is notified of the decision or within 3 months after the Council is taken to have refused the application (whichever is later).

The Biodiversity Offset Scheme (BOS) includes a Sensitive Biodiversity Values (SBV) Map and Area Threshold. If either criteria is met then the offsets scheme must be applied unless it is subject to a listed exemption.

The SBV Map has been prepared as part of the BOS and may be viewed on the DPE website www.lmbc.nsw.gov.au/Maps/index.html?viewer=BOSEMMap.

The Biodiversity Conservation Regulation 2017 sets out the following SBV Area Thresholds:

Table 1.2.6-c: SBV Area Thresholds

Minimum lot size	Proposed area of clearing
Less than 1 hectare	0.25 hectares
Less than 2 hectares	0.5 hectares
2 to 39 hectares	0.5 hectare
40 to 999 hectares	1 hectare
1000 hectares or more	2 hectares

1.2.6.2 Vegetation Preservation

Prescribed Vegetation

- a. The prescribed vegetation that is protected by the Biodiversity and Conservation SEPP and/or Clause 5.10 of the HLEP and this Section of the DCP includes:
- Native vegetation except subject to the Biodiversity Offset Scheme (BOS), and
 - vegetation on heritage listed properties under the HLEP.
- b. To damage or remove any vegetation protected under this DCP is prohibited without the written consent of Council, except in accordance with the exemptions prescribed in this part (under the heading 'Exempt Vegetation Work').
- c. For the purposes of this part:
- **A tree** is defined as a long lived woody perennial plant with one or relatively few main stems with the potential to grow to a height greater than 3 metres.
 - **Biodiversity Offset Scheme (BOS)** means a scheme enacted by the Biodiversity Conservation Act 2016 and Biodiversity Conservation Regulation 2017. The BOS includes a Sensitive Biodiversity Values (SBV) Map and Area Threshold, either which trigger an alternative approval framework for the clearing of native vegetation. The SBV Map can be viewed on the DPE website and the SBV Area Thresholds are included as notes at the end of this section.
 - **Native vegetation** has the same meaning as in Part 5A of the Local Land Services Act 2013, with the exclusion of 60B(4) for the purposes of including marine vegetation in the definition of native vegetation.
 - **Damage** means to impair the value or usefulness, or weaken the health or the normal function of a tree or vegetation.
 - **Remove** means to cut down, knock down, kill, lop or destroy.

Exempt Vegetation Work

- d. An application is not required for the following work to vegetation protected under this DCP:
- The clearing of vegetation (excluding trees) on a property once every 5 years in accordance with the maximum cumulative area in Table 1.2.6-d.

Table 1.2.6-d: Exempt Vegetation Work

Land zone under HLEP	Maximum exempt vegetation removal
Prescribed rural areas (Zones RU1, RU2, RU4)	30m ²
Prescribed urban areas (Zones R2, R3, R4, RU5, SP2, SP3, E1, E2, E3, E4 and MU1)	10m ²

- The clearing of vegetation where deemed by Council in writing and shown by recorded photographic evidence to be dead and is not required for habitat for native fauna.
 - The clearing of vegetation where deemed by Council in writing and shown by recorded photographic evidence to be an imminent risk to human life or is likely to cause substantial damage to property in the near future.
- e. **The exemptions in Table 1.2.6-d do not apply to:**
- land with a gradient in excess of 20 percent,
 - land containing marine vegetation,
 - land located within 20 metres of and including a watercourse,
 - land located within 50 metres of and including land identified as "Biodiversity" on the Terrestrial Biodiversity Map in HLEP,
 - land located within 50 metres of and including land that contains native vegetation which is habitat or potential habitat for species, populations or ecological communities listed in Schedule 1 and 2 of the *Biodiversity Conservation Act 2016* and protected matters listed under the *Commonwealth EPBC Act 1999*.
 - work that is contrary to a development consent that requires vegetation to be retained,
 - all vegetation on heritage listed properties,
 - native vegetation within heritage conservation areas,
 - land if it results in the fragmentation or isolation of native vegetation, or
 - land if it reduces effective vegetation buffers to adjoining Community Open Space or Private Open Space lands.
- f. Notwithstanding the exemptions at (d) above, minor work to vegetation that is or forms part of a heritage item or heritage conservation area, requires approval from the Council pursuant to the provisions of Section 2.10(3) of the Biodiversity and Conservation SEPP and/or Clause 5.10 of the HLEP.

- g. Any vegetation removed pursuant to the exempt provisions within this section should:
- occur in areas deemed to be ancillary to an approved existing dwelling or structure,
 - be undertaken by hand (not heavy machinery), and
 - require replacement planting to stabilise the soil (where necessary) that is indigenous to the adjoining vegetation community present and not include species recognised as invasive to native vegetation.

Lodging an Application for Vegetation Work

- h. An application is required to be completed and forwarded to Council for all work to protected vegetation where an exemption does not apply. Table 1.2.6-e below identifies what type of application is required to be completed for work to vegetation.
- i. Where vegetation work is required as part of other works for which development consent is required, the works will be assessed as part of the Development Application.

Table 1.2.6-e: Type of Tree Application Required

Location	Extent of Works	Form of Application
Heritage Item	Minor work to any vegetation that is or forms part of a Heritage Item as described by Section 2.10(3) of the Biodiversity and Conservation SEPP and Clause 5.10(3) of the HLEP	Vegetation Permit
	Major work to any vegetation that is or forms part of a Heritage Item (i.e. work that is not minor as described by Section 2.10(3) of the Biodiversity and Conservation SEPP and Clause 5.10(3) of the HLEP)	Development Application
Land within a Heritage Conservation Area	Minor work to any protected vegetation as described by Section 2.10(3) of the Biodiversity and Conservation SEPP and Clause 5.10(3) of the HLEP	Vegetation Permit
	Major work to any protected vegetation (i.e. work that is not minor as described by Section 2.10(3) of the Biodiversity and Conservation SEPP and Clause 5.10(3) of the HLEP)	Development Application
Other land	Removal or modification of native vegetation not associated with development requiring consent	Vegetation Permit
Work that is contrary to a development consent that requires vegetation to be retained	Work to vegetation that is required to be retained or rehabilitated by the consent conditions	Section 4.55 Application

Consideration of an Application for Vegetation Work

- j. The removal of, or work to, vegetation should be consistent with the applicable provisions of the Biodiversity and Conservation SEPP, HLEP and HDCP.
- k. Vegetation will be assessed using an arboricultural, ecological and industry accepted safety evaluation method. Accordingly, any application for removal must demonstrate that the removal of vegetation is appropriate based on an assessment of the:
 - conservation significance/health/longevity of the vegetation; and
 - risk to human life or property.

Notes:

The clearing of native vegetation that is exempt in Table 1.2.6-d is to facilitate minor development such as sheds ancillary to dwellings that may be otherwise permissible under SEPP (Exempt and Complying Development Codes) 2008. The intent is not to allow extensive bushland removal.

Works on land identified as “Biodiversity” on the HLEP Terrestrial Biodiversity Map should have regard to Section 1.3.1.1 Biodiversity of this DCP.

Works involving heritage items and heritage conservation areas should also have regard to Part 9 Heritage of this DCP.

Environmental Protection Works including bush regeneration work is permitted without development consent in the land use table for most zones under the HLEP.

Section 2.12 of the Biodiversity and Conservation SEPP provides that the applicant for a permit may appeal to the Land and Environment Court against refusal by a Council to grant a permit. Any such appeal is to be made within 3 months of the date on which the applicant is notified of the decision or within 3 months after the Council is taken to have refused the application (whichever is later).

The Biodiversity Offset Scheme (BOS) includes a Sensitive Biodiversity Values (SBV) Map and Area Threshold. If either criteria is met then the offsets scheme must be applied unless it is subject to a listed exemption.

The SBV Map has been prepared as part of the BOS and may be viewed on the DPE website www.lmbc.nsw.gov.au/Maps/index.html?viewer=BOSETMap. The Biodiversity Conservation Regulation 2017 sets out the following SBV Area Thresholds:

Table 1.2.6-f: SBV Area Thresholds

Minimum lot size	Proposed area of clearing
Less than 1 hectare	0.25 hectares
Less than 2 hectares	0.5 hectares
2 to 39 hectares	0.5 hectare
40 to 999 hectares	1 hectare
1000 hectares or more	2 hectares