



DEPARTMENT OF PLANNING, INDUSTRY & ENVIRONMENT

Managing vegetation with a Development Control Plan

Guidance for local government



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Contents

Purpose of this document	1
General principles	1
The Vegetation SEPP substantially reproduces the effect of clauses 5.9 and 5.9AA of the Standard Instrument – Principal Local Environmental Plan	1
The Vegetation SEPP applies to clearing of vegetation on non-rural land, including E zones and R5 zones	2
The Vegetation SEPP applies to clearing of vegetation in RU5 zones	2
Above BOS threshold clearing of native vegetation requires approval from the Native Vegetation Panel	2
Below threshold clearing of vegetation requires approval from council where this vegetation is prescribed in a Development Control Plan	2
Councils can no longer require development consent for clearing of native vegetation that is not ancillary to another activity requiring development consent	2
The Vegetation SEPP supports the NSW Government’s Greener Places strategy	2
The Vegetation SEPP and DCPs	3
A landscape approach to vegetation and trees	3
Updating a Development Control Plan	4
How to design vegetation controls	4
Step 1: Determine the criteria for the DCP	5
Step 2: Identify vegetation by location, area or type	6
Step 3: Include a set of specific conditions for the permit	7
Step 4: Specify the process to obtain a permit	8
Step 5: List any exemptions that apply	10
Compliance and the Vegetation SEPP	11
DCPs and offences under the Biodiversity Conservation Act 2016	12

List of tables

Table 1	A DCP regulates local vegetation management for many different purposes	5
Table 2	Examples of landscape factors for consideration in a DCP	6
Table 3	Examples of criteria for prescribing vegetation	6
Table 4	Examples of criteria that a DCP could specify for vegetation clearing without a permit under certain conditions	10

List of figures

Figure 1	Designing vegetation controls	4
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Purpose of this document

This guidance is to help local councils consider how to manage and regulate vegetation through a Development Control Plan (DCP) in all areas regulated by the State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP).¹

The Vegetation SEPP commenced in August 2017 and provides the mechanism to regulate clearing in specific zones and local government areas that are not linked to development consent.

The Vegetation SEPP applies to clearing of native vegetation, either:

- **above** the Biodiversity Offsets Scheme (BOS) threshold specified in the Biodiversity Conservation Regulation 2017
- **below** the BOS threshold if native or non-native vegetation is identified in the council's DCP.

When vegetation is identified in a DCP a permit is needed for activity as determined by the council and based on conditions set out by the council.

This guidance provides advice to councils on:

- the role of the DCP in implementing Vegetation SEPP clearing controls
- prescribing vegetation in the DCP
- features of a permit system
- compliance.

The Department of Planning is in the process of developing a standardised, online format for DCPs, to improve consistency across local councils and make it quicker and easier to navigate the planning system and its controls. This guidance document does not provide model DCP provisions.

General principles

The Vegetation SEPP substantially reproduces the effect of clauses 5.9 and 5.9AA of the Standard Instrument – Principal Local Environmental Plan

The Vegetation SEPP allows councils to continue to use the DCP to regulate the clearing of both native and non-native vegetation and trees not ancillary to development and below the BOS threshold.

¹ See www.planning.nsw.gov.au/vegetationSEPP for more information on the Vegetation SEPP and where it applies.

The Vegetation SEPP applies to clearing of vegetation on non-rural land, including E zones and R5 zones

The Vegetation SEPP applies to clearing of vegetation on non-rural land (all metropolitan councils listed in the Vegetation SEPP, as well as E zones, RU5 and urban and residential zones in other local government areas). Prior to the commencement of the Vegetation SEPP, the *Native Vegetation Act 2003* regulated vegetation clearing in E zones and R5 (large lot residential) zones. To regulate 'below threshold' vegetation clearing in these areas, the vegetation must now be declared under a DCP.

The Vegetation SEPP applies to clearing of vegetation in RU5 zones

The RU5 zone – Rural Village is among the urban zones to which the Vegetation SEPP applies.

Above BOS threshold clearing of native vegetation requires approval from the Native Vegetation Panel

Clearing of native vegetation on non-rural land (including E zones, RU5 and urban and residential zones) that exceeds the BOS threshold will require approval from the Native Vegetation Panel, whether or not the vegetation is declared in a DCP.

Below threshold clearing of vegetation requires approval from council where this vegetation is prescribed in a Development Control Plan

A council can issue a permit under the Vegetation SEPP for vegetation clearing that has been identified in a DCP and is under the BOS threshold. An exception is where the vegetation is a listed heritage item or within a heritage conservation area (HCA), in which case, development consent under the Standard Instrument is required.

Councils can no longer require development consent for clearing of native vegetation that is not ancillary to another activity requiring development consent

Under the Vegetation SEPP councils can no longer require development consent for clearing of native vegetation that is not ancillary to another activity requiring development consent; for example, a Development Application. Instead, councils can regulate clearing of vegetation below the BOS threshold through the issue of permits for clearing. An exception is the clearing of coastal wetlands or littoral rainforest, as controlled in the State Environmental Planning Policy (Coastal Management) 2018, which will still require a development consent.

The Vegetation SEPP supports the NSW Government's Greener Places strategy

In November 2018 the NSW Government released a draft green infrastructure policy framework, Greener Places, to support the strategic planning, design and management of

green spaces, natural and semi-natural systems that support the urban environment. The regulation of vegetation through the DCP process becomes one of the implementation tools for this policy.

The Vegetation SEPP and DCPs

The Vegetation SEPP applies to clearing of vegetation not linked to development on non-rural lands (including E zones, RU5 and urban and residential zones). For a council to regulate the management of vegetation in these zones that is below the BOS threshold, the vegetation needs to be identified in a DCP.

For vegetation identified in a DCP (non-native or native vegetation) a council permit can be required for clearing, based on conditions set out in the DCP. A DCP may also include a Significant Tree Register that lists individual trees, native and non-native, based on their significance and value to the local community, such as cultural, aesthetic, spiritual, educational and environmental value. This includes shade trees or heritage trees that have historical significance.

If vegetation is identified in a DCP and clearing is below the BOS threshold it invokes a requirement through the Vegetation SEPP for a permit before activity can take place. For the clearing of native vegetation on non-rural land (including E zones, RU4 and R5 zones) that exceeds the BOS threshold, an approval will be required from the Native Vegetation Panel, whether or not the vegetation is declared in a council's DCP. If clearing of vegetation does not exceed the BOS threshold, is not identified in a DCP and is not linked to development requiring consent, it can be cleared without a council permit or authorisation under the Vegetation SEPP.

While an authorisation is not required under the Vegetation SEPP, other legislative requirements may still apply to the proposed clearing. For example, if the proposed vegetation to be cleared is threatened species habitat, a listed threatened species or threatened ecological community, clearing can only occur with a valid biodiversity conservation licence (BCL) from the Department of Planning, Industry and Environment (the Department).

A landscape approach to vegetation and trees

New approaches to development recognise the importance of vegetation to ecosystems and ecosystem services and the contribution of this to economic, social and environmental value. Strategic conservation planning recognises the contribution of vegetation across the broad geography and includes biodiversity conservation up front in the planning system.

One example of a landscape approach to vegetation management is protecting vegetation that supports ecosystem services or urban ecology. An ecosystem functions as an integrated system of biodiversity and unique environmental processes. When broken it has economic, social and environmental impacts that affect the local and far broader geographies.

Vegetation contributes to local ecosystem services including water quality and quantity, plant pollination, pest control, wastewater treatment, soil fertility and nutrient recycling. While impact and change may take place over time, the acute outcome for native biodiversity and the lived landscape can be immediate and irreversible.

Landscape planning for urban ecology recognises the importance of trees as a habitat and ecosystem support for other forms of biodiversity. This includes non-native or native hollow bearing trees that provide a habitat for fauna.

Coolamon Shire Council in the Riverina region of New South Wales is home to rare stands of remnant Grassy Box Woodland. In partnership with the Murrumbidgee Catchment Management Authority and local landholders, the council has identified core corridors that provide sanctuary for native flora and fauna. Controls for the management of this vegetation are included in the council's DCP.

Ku-ring-gai Council, on the edge of Sydney, covers a diverse geographic location including the borders of a national park. Council's DCP identifies that a permit is needed for vegetation clearing in specific areas of defined core riparian zones or affecting large stands of trees.

Updating a Development Control Plan

For amendments to a DCP a council will need to follow regular DCP development or amendment processes including community consultation. After completion, use best practice communication processes to make information easily available including on the council website and through frequently asked questions (FAQs) and supporting guidelines; for example, 'How to apply for a permit for vegetation maintenance and tree removal'. A council's guidelines for issuing a permit should include steps, fees conditions and timing.

How to design vegetation controls

1. Determine criteria	<ul style="list-style-type: none">• What vegetation or vegetation habitat is important locally?• How does vegetation contribute to local ecosystem
2. Identify vegetation	<ul style="list-style-type: none">• Map criteria by geographic area• Identify key vegetation by location, area or type• Specify key species
3. Set conditions for activity	<ul style="list-style-type: none">• Specify factors for the issue of a permit• Specify conditions for approval including compensatory planting
4. Specify process to obtain a permit	<ul style="list-style-type: none">• What are the steps and time frame to apply for a permit?• What are the fees?
5. List exemptions	<ul style="list-style-type: none">• Conditions to remove dead or dangerous trees without a permit• Set exemptions for minor tree work

Figure 1 Designing vegetation controls

Step 1: Determine the criteria for the DCP

Councils can identify vegetation to include in a DCP using a wide range of criteria linked to a landscape approach, individual location and assessment of the significance of impact of loss. Ask what specific type of vegetation is important to this area:

- is it a type of vegetation?
- a size of tree?
- a type of habitat?

Landscape factors and contribution to local values can also be the objective for vegetation regulation in a DCP.

Table 1 A DCP regulates local vegetation management for many different purposes

Significance criteria	Examples
Contributes to ecosystem services or is part of a defined ecosystem	Vegetation communities that provide habitat for native fauna
	How vegetation systems underpin local ecosystem services and contribute to the supply of water, pollination of plants, pest control, wastewater treatment, soil fertility and nutrient recycling
	Vegetation within a specific identified important community such as forest, woodland, heathland, scrubland or saltmarsh
Contributes to local landscape or townscape	Vegetation that assists in maintaining local water quality, decreases soil erosion or landslip, or acts as a buffer to flood impacts
	The vegetation makes a major contribution to the distinctive character of a landscape or townscape within the LGA
	The vegetation acts as an edge zone along a waterway, public pathways or roads
Cultural significance	The vegetation forms urban canopy that reduces the urban heat island effect
	Remnant indigenous vegetation that once occurred naturally in the area having evolved over thousands of years (compared to native vegetation that occurs naturally in other parts of Australia)
For urban ecology and species habitat	Vegetation or trees that form part of an Aboriginal object or that are within an Aboriginal place of heritage significance
	Hollow bearing trees, habitat logs that provide habitat for native species such as koalas and owls
Historical value of a specific area and its vegetation	Vegetation acts as a corridor for koalas or other native species
	The trees and vegetation form part of a heritage item or are within a heritage conservation area
	For example, the tree or tree stand was planted to commemorate a major event or has direct association with an historical event of major significance, a public figure, or ethnic or community group
Horticultural or scientific value	For example, the tree is at the upper limit of the longevity of the species
	Vegetation with significance as:
	<ul style="list-style-type: none"> • a locally indigenous species recognised by a state or national scientific conservation body (CSIRO, NPWS, etc.) as being rare, threatened or endangered at the state or national level • an early introduced horticultural variety • part of a threatened ecological community

Significance criteria	Examples
Vegetation with outstanding aesthetic or special qualities	A tree or trees stand (native or non-native) that has visual and/or sensory appeal and/or landmark qualities
	A tree with special qualities such as a curious growth habit, or is a size at the upper recognised limits for that species on a regional basis

Table 2 Examples of landscape factors for consideration in a DCP

Protecting adjacent trees in public spaces during development work
Impact on riparian and/or wildlife corridors
Impact on specific landscape ecosystem and vegetation community described as forest, woodland, heathland, scrubland, fern land, saltmarsh, mangrove or wetland
Impact on a heritage area
Contribution of tree to urban canopy
Exclusions such as any tree declared under the NSW <i>Biosecurity Act 2015</i>

Parramatta Council in Sydney’s west cites a range of reasons to protect trees and for the ‘greening’ of its city that includes to ‘make our surroundings pleasant, provide relief from summer heat and reduce glare from pavement. They also increase the value of real estate, reduce stormwater runoff and improve the quality of the air we breathe’.

Table 3 Examples of criteria for prescribing vegetation

Impact on ecosystem functionality
Contributes to local ecosystems or is part of a defined ecosystem
Contributes to local landscape or townscape
Cultural significance
Contributing as species habitat
Heritage value of a specific area or tree
Horticultural or scientific value
Identification of significant trees of outstanding aesthetic or special qualities in a Tree Register
Tree species or community
Tree size or trunk diameter

Step 2: Identify vegetation by location, area or type

A DCP may specify:

- the species of vegetation, vegetation as native, exotic, indigenous or introduced
- the size of vegetation: height and/or stem/trunk circumference and/or crown spread
- local value of vegetation for fauna habitat or another set of values such as historic or cultural or scientific
- land type and the location of vegetation (including by reference to any vegetation in an area shown on a map or in any specified zone)

- the presence of vegetation in an ecological community or in the habitat of a threatened species or historical or cultural or social area
- specific function of vegetation, e.g. hedge or edge zone.

Armidale council DCP sets a goal for replacement plantings ‘to establish and maintain green corridors, to increase species diversity, and to reduce the impacts of pollution and climate change’.

A core component of Clarence Valley Council’s ‘sustainable Clarence Valley... now and in the future’ is protection of urban trees in its most populated regional towns.

Step 3: Include a set of specific conditions for the permit

A DCP should specify:

- species of vegetation that the permit applies to
- size of vegetation that the permit applies to
- location where the permit applies
- the specific work allowed to take place
- compensatory planting or actions for mitigation of impact
- specific time period that the permit is valid
- work health and safety requirements for the work to take place.

Armidale Regional Council has a checklist of matters to be considered before it will grant a permit. This includes aesthetic impact on local landscape or streetscape; type and rarity of the species; the number of trees in the vicinity; any impact to solar access to properties; and any soil conservation and erosion issues.

Armidale Regional Council ‘Tree Preservation’ chapter in its DCP includes the goal to ‘preserve and manage existing tree plantings to maintain the scenic qualities of the local landscape and streetscape’.

Mitigation or compensatory planting

To mitigate the cumulative impact of urban tree removal on urban canopy, some councils stipulate compensatory or replacement trees as a condition of approval. A permit for removal can also include the requirement for compensatory planting as a condition for the permit.

Glen Innes Severn Council has a strict tree replacement rate. If a tree is old growth or hollow bearing, 20 replacement trees are required to offset its removal. A tree classed as koala habitat requires five replacement trees. A tree within a riparian zone or wildlife zone requires 10 replacement trees.

Canterbury-Bankstown Council in Sydney's inner west requires three trees to be replanted for each tree removed, this '1:3 offset planting' is a way to meet urban canopy targets that support climate adaptation over the long term.

To mitigate the cumulative impact of urban tree removal Campbelltown Council requires a nesting box to be installed if a hollow bearing tree is removed.

Bayside Council requires a Tree Preservation Bond if a development has a high probability of damaging a significant or heritage tree or trees during construction. The bond amount is calculated using the Thyer Tree Valuation Method, and is paid to the council as a refundable deposit prior to the issuing of the Construction Certificate.

Step 4: Specify the process to obtain a permit

The Vegetation SEPP allows councils to issue permits for the clearing of vegetation below the BOS threshold if it is identified in the local DCP. If a landowner wants to remove vegetation listed in a DCP they must request a permit from council and, in line with council requirements, provide an explanation of the reason for this request. A council can also specify reasons for **refusing** to issue a permit.

Who can request a permit?

Council can issue a permit to a landholder, which is defined as the person who is the owner of land or who, due to reason of ownership or otherwise, is in lawful occupation or possession, or has lawful management or control, of land.

A landholder, or person with consent from the owner, can apply for a permit from the council to remove trees on their land or on a neighbour's land if the property owner of the land where the vegetation is located has signed the application for a permit.

Ku-ring-gai Council defines a tree as:

1. any perennial plant that: has at least one self-supporting woody, fibrous stem; is either native or exotic; is five metres or more in height
2. any plant that has a trunk diameter of 150 mm or more measured at ground level.

The City of Ryde details what constitutes tree works as:

1. pruning of more than 10% of the crown of a tree in a 12-month period (except for deadwood)
2. any removal of a tree
3. any works within the Structural Root Zone defined as the portion of a tree that is below ground level, within a specific radius from its trunk.

What can be asked for in the permit application?

The application should outline:

- the reason for the permit request
- the activity you want to do and how many trees the permit is for
- the species and size of vegetation the activity is requested for
- safety risks involved in removing the vegetation
- whether there will be an impact on a specifically defined area in the DCP such as riparian corridor and/or wildlife corridor, wetland or other area of significant biodiversity value such as a woodland, heathland, scrubland, fern land, saltmarsh or mangrove
- whether a permit for clearing in this specific location has been requested in the past
- if you are not the landowner, do you have written permission from the landowner
- whether clearing will impact biodiversity or heritage matters in the Standard Instrument or another part of the DCP (is there a cumulative impact?)
- whether the clearing will increase soil erosion, salination, acidification, landslips, flooding, pollution or other adverse land or water impacts (Vegetation SEPP, clause 14(5)).

When can a permit be refused?

A council may specify reasons and circumstances for refusing a permit such as when the reason for the request is:

- birds or bats that leave droppings on cars
- bushfire hazard control not approved by the NSW Rural Fire Service or Fire and Rescue NSW
- removing a tree to increase solar access rather than thinning of the canopy
- minor property impact from tree roots such as minor lifting of driveways or paths
- overshadowing
- perceived nuisance from shedding of leaves, fruit, bark, cones or twigs into gutters, downpipes, pools, onto roofs, vehicles, lawns, or gardens, etc.
- potential damage to sewer mains unless supported by written expert advice and only where reasonable alternatives are not feasible (e.g. relocation or encasement of main)
- reduced development yields
- to enhance private views
- to erect a fence
- to improve street lighting on private property

- potential or documented termite damage (termites eat only dead wood) which can be successfully treated by other means such as appropriate barrier treatment
- unsubstantiated fears of large trees.

Step 5: List any exemptions that apply

Exemptions are conditions for the removal of trees without a permit. The Vegetation SEPP makes provision for circumstances where a permit is not required for removal of a tree or other vegetation that is ‘a risk to human life or property’.

Council DCPs can also specify criteria for the removal of vegetation without a permit that would otherwise require a permit under the DCP.

Table 4 Examples of criteria that a DCP could specify for vegetation clearing without a permit under certain conditions

Criteria	Examples
Damage to property	The vegetation is in close proximity to the wall of a house or a neighbouring house as measured from the closest point of the trunk to the footings of the building
Dead or dangerous	Vegetation is dead or dangerous and does not provide a habitat for hollow-dependent fauna
Routine maintenance in an area identified as urban canopy	Pruning to remove dead branches or storm-damaged branches, or to reduce interference with roofs, gutters and walls of buildings Removal of root systems to reduce interference with footings of buildings Crown thinning to reduce canopy density of a tree
Inhibiting pedestrian access	A DCP can include exemptions for pruning of vegetation if it incurs a safety hazard such as impeding access for pedestrians
Declared weeds under the NSW <i>Biosecurity Act 2015</i>	The Biosecurity Act replaced the <i>Noxious Weeds Act 1994</i> and prescribes actions that are deemed reasonably practical to prevent, eliminate or contain the risk of plants known to have a high biosecurity risk Action to remove native species to provide effective control of invasive weeds under the Biosecurity Act should be limited to council or its contractors

Dead or dangerous trees

The Vegetation SEPP identifies certain exemptions from requiring a permit or approval to remove vegetation.

A permit or approval is not required to remove vegetation that is dead or dying if the decision-maker is satisfied that:

- the vegetation is dead or dying
- the vegetation is not required as the habitat of native animals.

Councils can specify processes and conditions for the removal of a dead or dangerous tree if a permit for tree work would normally be required under a DCP.

A council can require an application for all activity, or can outline a process for approval to be given for a specific activity based on satisfaction of a requirement such as the landowner to either:

- taking a photo of all vegetation before it is removed to show it is dead or dying or poses an immediate threat to life
- having an arborist's report confirming that a tree is dead or dying or that it poses an immediate threat to human health **and** contains no tree hollows.

Hornsby Council requires recorded photographic evidence or written evidence provided by a qualified arborist (AQF.5) as a condition for tree removal without a permit when there is a risk to human life or the tree is causing or likely to cause substantial damage to property.

Wollongong Council and Ballina Shire Council require a report from a qualified arborist before activity can take place.

Campbelltown Council defines a dangerous tree as one that has substantial stem damage (e.g. more than 50% cross-section area stem damage), or is in extreme declining health or unstable (e.g. more than 50% lateral roots damaged/unsound), or has a split trunk.

Compliance and the Vegetation SEPP

A breach of the Vegetation SEPP occurs when a proponent:

- clears vegetation identified in a DCP without a council permit, *or*
- clears above the BOS threshold without approval from the Native Vegetation Panel, *or*
- carries out clearing contrary to the terms of an issued council permit.

Councils can use a penalty infringement notice (PIN) as a compliance mechanism. The use of PINs also acts as an important deterrent for unlawful clearing.

Councils can use the penalty notice scheme established under section 4.3 of the *Environmental Planning and Assessment Act 1979* to enforce the Vegetation SEPP after taking into account all relevant considerations, including appropriate enforcement mechanisms, before commencing any enforcement action.

DCPs and offences under the Biodiversity Conservation Act 2016

Clearing that is not regulated by the DCP may still be regulated under the *Biodiversity Conservation Act 2016* (BC Act). Part 2 of the BC Act contains a range of offences relating to animals and plants that are protected, threatened or part of threatened ecological communities. This includes:

- 2.1 Harming animals
- 2.2 Picking plants
- 2.3 Damaging declared areas of outstanding biodiversity value
- 2.4 Damaging habitat of threatened species or ecological community

There are also a range of defences under the BC Act in relation to those offences. One defence is that the action was authorised by a biodiversity conservation licence (BCL). It is also a defence to 2.1, 2.2 and 2.4 above if the harm, pick or damage was a direct result of vegetation clearing authorised by a permit issued by a council or an approval of the Native Vegetation Panel under the Vegetation SEPP. A permit or approval under the Vegetation SEPP is not a defence to damaging an area of outstanding biodiversity value.

If the clearing is authorised by a permit or an approval under the Vegetation SEPP, any actions that would otherwise have been an offence under 2.1, 2.2 or 2.4 of the BC Act will be lawful provided the conditions of the permit or approval are complied with.

The conditions can restrict the manner of clearing; for example, to prohibit harm to certain animals or plants or habitat. If harm is to be caused to a habitat or an animal, for example, beyond what is authorised under the Vegetation SEPP, a BCL or another legal approval may be needed to lawfully undertake these actions.

BCLs are issued by the Department of Planning, Industry and Environment with more information available on the [Department's website](#).