

THE HILLS SHIRE COUNCIL

TREE MANAGEMENT GUIDELINES FOR TREES ON PRIVATE LAND

June 2019

AMENDMENTS TO TREE MANAGEMENT GUIDELINES FOR TREES ON PRIVATE LAND 2014

Date	Amendments
06 September 2017	Changes to legislation. New Legislation Gazetted 25 August 2017; <ul style="list-style-type: none"> • Biodiversity Conservation Act 2016 • State Environmental Planning Policy (Vegetation in Non-Rural Areas)2017 Repealed Legislation; <ul style="list-style-type: none"> • Threatened Species Conservation Act 1995 • The Hills Local Environment Plan, Clause 5.9
June 2019	<ul style="list-style-type: none"> • Additional criteria added under Part 4 “Assessment Criteria” under the heading ‘Danger’ to address serious concerns over the size of a tree and proximity to a habitable dwelling. • Remove note ‘Works undertaken under the dangerous tree exemption relate only to work required to make safe the tree or component of the tree that poses the risk’. • References to legislation updated to reflect current legislation.
November 2019	<ul style="list-style-type: none"> • Change in exempt tree species with an additional seven species exempt from the application process. • Existing exemption for trees that are within 3 metres of an existing approved dwelling or ancillary structure amended to 5 metres.

This guideline provides assistance to residents interested in tree management or tree removal on private land throughout The Hills Shire.

1. FORWARD

These Tree Management Guidelines have been written to clarify the existing legislative mechanisms available, and the general practices of Council in managing trees on private land. The Guideline must be read in conjunction with The State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP) and Council's adopted Development Control Plan which take precedent over this guideline in the event of any inconsistencies.

Under the provisions of the Vegetation SEPP, private land owners require the written consent of Council to ringbark, cut down, lop branches, remove or injure a tree. Upon receipt of an application, certain identified and measurable criteria are applied in reaching a decision to permit action upon a tree. These criteria are identified and included in this document however, discretion based upon particular factors pertaining to the property and its owner's circumstances will be used in making a final decision on whether or not consent will be granted.

Note

Council's Development Control Plan takes precedent over this guideline in the event of any inconsistencies.

GLOSSARY

AQF	Australian Qualification Framework
Council	The Hills Shire Council as represented by its employees
Consent	Development Consent or a Tree Management Application Approval
EP&A Act	Environmental Planning and Assessment Act 1979, as amended
Vegetation SEPP	State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017
DCP	The Hills Development Control Plan 2012

2. PRESERVATION OF TREES OR VEGETATION

The (Vegetation SEPP) includes provisions for clearing of vegetation. This provision requiring the preservation of trees and bushland is in accordance with the Council's Development Control Plan.

The provisions apply to all trees and other vegetation which are of a species or kind prescribed in the Development Control Plan. This Provision applies to all land within the Hills Shire local government boundary. The State Environmental Planning Policy (Vegetation SEPP) can be viewed at the following link;

<http://www.planning.nsw.gov.au/vegetationsepp>

The Hills Development Control Plan Landscaping provides the definition of a tree and a list of exemptions to the requirement to gain approval to prune or remove a tree.

Definition of a tree

A tree is a perennial plant with a self-supporting woody stem that has a spread of more than 3 metres or a height of more than 6 metres or has a trunk diameter of more than 300mm measured at the base. (See figure 1 below)

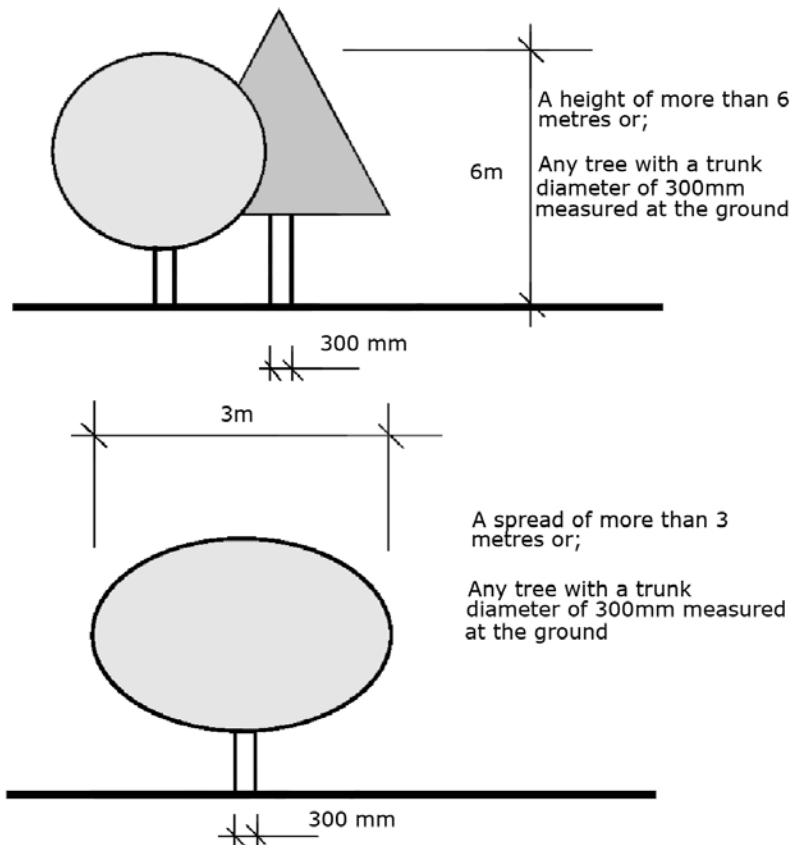


FIGURE 1: Definition of a tree

Exemptions to the need for a tree permit

Species Exemptions

The DCP allows for trees of the following species to be pruned or removed, by the tree owner, without development consent;

- | | | |
|----|---|-------------------------|
| 1 | <i>Acer negundo</i> | Box Elder |
| 2 | <i>Ailanthus altissima</i> | Tree of Heaven |
| 3 | <i>Albizia lophantha</i> | Silky oak |
| 4 | <i>Alnus jorrullensis</i> | Evergreen Alder |
| 5 | <i>Archontophoenix alexandrae</i> | Alexandara Palm |
| 6 | <i>Archontophoenix cunninghamiana</i> | Bangalow Palm |
| 7 | <i>Celtis australis</i> | Hackberry |
| 8 | <i>Citharexylum spinosum</i> | Fiddlewood |
| 9 | <i>Cotoneaster spp.</i> | Cotoneaster |
| 10 | <i>Cupressus sempervirens 'Stricta'</i> | Pencil Pine |
| 11 | <i>x Cupressocyparis Leylandii</i> | Leyland Cypress |
| 12 | <i>Erythrina X sykesii</i> | Coral Tree |
| 13 | <i>Ficus benjamina</i> | Weeping Fig |
| 14 | <i>Ficus elastica</i> | Indian Rubber Tree |
| 15 | <i>Gleditsia triacanthos</i> | Honey Locust |
| 16 | <i>Grevillea robusta</i> | Silky oak |
| 17 | <i>Harpephyllum caffrum</i> | Kaffir Plum |
| 18 | <i>Lagunaria patersonia</i> | Norfolk Island Hibiscus |
| 19 | <i>Ligustrum lucidum</i> | Broad Leaved Privet |

20	<i>Ligustrum sinense</i>	Small Leaved Privet
21	<i>Liquidambar styraciflua</i>	Liquidamber
22	<i>Nerium oleander</i>	Oleander
23	<i>Olea europaea var. africana</i>	Wild Olive/ African Olive
24	<i>Pinus radiata</i>	Monterey Pine/Radiata Pine
25	<i>Pittosporum undulatum</i>	Sweet Pittosporum
26	<i>Populus nigra "Italica"</i>	Lombardy Poplar
27	<i>Robinia pseudoacacia</i>	False Acacia/Black Locust
28	<i>Salix babylonica</i>	Weeping Willow
29	<i>Schefflera actinophylla</i>	Umbrella Tree
30	<i>Schinus molle</i>	Peppercorn Tree
31	<i>Schinus terebinthifolius</i>	Brazilian Mastic, Broadleaf Pepper Tree
32	<i>Syagrus romanzoffianum</i>	Cocos Palm
33	<i>Tamarix aphylla</i>	Athel Tree
34	<i>Toxicodendron oucchedaneum</i>	Rhus Tree
35	<i>Triadica sebifera</i>	Chinese tallow
36	<i>Washingtonia robusta</i>	Mexican Palm Tree
37	A fruit tree or tree grown for the purposes of fruit production, excluding naturally growing native fruiting species.	

Trees of the following species may be pruned or removed without development consent if the height of the tree is **less than 10m**.

1	<i>Araucaria bidwillii</i>	Bunya Bunya Pine
2	<i>Araucaria cunninghamii</i>	Hoop Pine
3	<i>Araucaria heterophylla</i>	Norfolk Island Pine
4	<i>Cinnamomum camphora</i>	Camphor Laurel
5	<i>Cupressus marocarpa</i>	Monterey Cypress
6	<i>Melia azedarach</i>	White Cedar

Trees within 5m of an Existing Approved Dwelling or Ancillary Structure.

Council approval is not required to prune or remove trees within 5m of an existing dwelling or ancillary structure, which has been approved through a Development Application or Complying Development Certificate, within the same lot as the tree. The distance is to be measured from the face of the tree trunk closest to the dwelling or structure to the external wall or roof line of the dwelling or structure, the definition of which may include a garage, carport, studio, shed, workshop, swimming pool, spa or retaining walls with a height greater than 600mm.

Dead or Dangerous Trees

The Vegetation SEPP Clause 8 subclause (2) & (3) provide an exemption for trees that **The Council is satisfied** are Dead, Dying or dangerous trees.

These subclauses state:

(2) An authority to clear vegetation is not required under this Policy for the removal of vegetation that the council or Native Vegetation Panel is satisfied is dying or dead and is not required as the habitat of native animals.

(3) An authority is not required under this Policy for the removal of vegetation that the council is satisfied is a risk to human life or property.

The following are required to demonstrate Council is satisfied that this exemption applies.

Evidence required to substantiate an exemption

In regard to Vegetation SEPP Clause 8 subclause (2) & (3) Evidence is required to be collected prior to the removal of the tree to demonstrate that the exemption criteria apply. Evidence should be provided in accordance with the following;

1. In the case of a dead or dying tree
 - a. Inspection and confirmation by Council's Tree Management Officer; or
 - b. Photographs of the tree and confirmation from Council's Tree Management Officer.

2. In the case of a dangerous tree:
 - a. Inspection and confirmation by Council's Tree Management Officer; or
 - b. Photographs of the tree demonstrating the imminent danger to people or property. Examples of imminent danger include partial substantial failure of a tree, roots heaving out of the ground, or substantial and significant storm damage.

3. THE APPLICATION PROCESS

Application to Remove or Prune a Tree

An application is not required to prune up to 10% of the foliage of a tree per growing season. Applications shall be made in writing through the Tree Management Application form for works to be undertaken on trees.

An inspection of the site is made by Council's tree management staff and in assessing each application, the criteria as stated in these guidelines will be used in determining the application.

4. ASSESSMENT CRITERIA

Upon receipt of an application to undertake work on a tree the following criteria will be applied in determining the application.

Danger

Danger is assessed based on a number of factors including;

- The potential/likelihood of a tree or tree part to fail
- A history of previous branch failure and
- The size of the defective part of the tree and
- The use and occupancy of the area that may be struck by a defective part and
- The tree exceeds 15m in height and is within the strike zone of a habitable dwelling

Meeting the danger criteria gives significant determinative weight to the application to approve the removal and/or pruning of a tree.

Property Damage

The likelihood of the tree having an adverse effect on property including trees renowned for having extensive root systems, which cause damage to footings of houses or, trees that cause blockages to domestic sewer and drainage lines.

Condition of the tree

The structural integrity of the tree is assessed for any visible signs of decay or deterioration, this is usually indicated by a lack of foliage, dead branches evident in the canopy, presence of fungal fruiting bodies, excessive sap being exuded from the trunk and/or evidence of insect attack, particularly borer damage. Further, the likelihood the species displays toward branch failure and subsequent limb fall.

Health of the tree

The species susceptibility to environmental changes, which may affect the longevity of the species survival in its current location. This would include, changes in soil level, excessive root damage caused during construction works, changes in water availability, competition for other vegetation (particularly climbing vines), and compaction of soil (particularly in high usage areas such as car parking areas).

Complying Development

The need for tree removal in order to allow for development that could otherwise be carried out under a Complying Development Certificate. A statement from the certifier confirming that tree removal is the only impediment to the issuance of a CDC must be submitted to support the application. These applications will be assessed based on the same criteria as a Development Application.

Significance to Streetscape

An assessment of the visual environment and the significance the specimen plays within the streetscape. Other criteria would include if the tree is an endangered or rare species, is of historical significance or, the link the tree provides between bushland and reserves (the connectivity of habitat).

Termites

Each case of termite infestation will be investigated on its merit.

Potential Future Damage

The potential for the tree to cause damage in the future is also considered in an assessment for removal.

Extenuating Circumstances

Circumstances such as the owner's capacity to undertake required maintenance of a tree and surrounds, whether the land owner planted the tree, or solar access for renewable energy systems and the like.

Note:

Applications for tree removal based on improving Solar Access, Improving Views, Leaf/Bark or small twig dropping, or Minor Property Damage are less likely to be supported unless extenuating circumstances exist.

5. REVIEW OF DETERMINATION

If you are not satisfied with the determination of your application you can submit a request in writing that Council Staff review the decision. In order to assist, you should provide the following supporting information:

(a) If you believe that the tree/s are unhealthy or dangerous you may submit a report prepared by a suitably qualified AQF Level 5 Arborist, that clearly demonstrates that the tree/s requires removal. The report must include the findings of an aerial inspection, resistograph or picus sonic tomograph testing results. The report must also include photographs of any defects that may be found.

(b) If you believe the tree/s are causing significant property damage you may submit a report from a suitably qualified Structural Engineer that clearly demonstrates the magnitude of the damage and all possible causes of the damage. Please note that tree removal will not be permitted for minor damage.

(c) If you believe that the tree/s are causing damage to plumbing or sewer pipes, you should submit a report from a suitably qualified Plumber that clearly identifies and

demonstrates which tree/s is causing the blockage to domestic sewer and drainage lines and a description of the type of pipe affected.

(d) If you believe there are any other extenuating circumstances that support your request, provide details for consideration.

Upon receipt of your written request, a review will be undertaken by Council Staff and a re-inspection carried out. You are advised that submission of additional supporting information does not guarantee a different determination of your application.

6. TREE REPLACEMENT

In the interest of maintaining the natural environment of the Shire, it is often a condition of approval that for each tree removed, a replacement tree is provided of an appropriate species.

The species of replacement tree may be nominated by Council's Tree Management Officer, the property owner's species nomination will be considered. Tree species considered are to be on the basis of the location, available open space, whether they are native and/or with an emphasis on species that are known to reduce the urban heat effect.

Replacement planting may not be required in all cases, such as when approval is granted for tree removal on properties which may remain densely vegetated even after the approved removal.

7. TREES – DISPUTES BETWEEN NEIGHBOURS

Trees are often a reason for neighbour's disputes when branches overhang the common boundary or if tree roots spread into a neighbouring yard. Often property owners will approach Council to express their concerns about an impact a neighbour's tree is having on their property with the hope Council will resolve the matter.

Council does not have authority to direct a neighbour to prune or remove tree/s that are growing in their property unless an imminent danger exists. Council also is unable to negotiate or intervene between neighbourhood tree disputes, as this is a civil matter and must be resolved between the parties involved.

The property owner's permission is not required for the pruning of branches that are overhanging your property however you may only prune 10% of the canopy. Pruning must be carried out in accordance with the Australian Standard for the Pruning of Amenity Trees (AS4373). All pruning works must be undertaken from within your own property unless you have the owner's consent to enter onto their property. It is recommended that an AQF Level 3 Arborist be engaged to undertake pruning work.

Council will not issue permits to remove a neighbour's tree without the owners' consent.

If a neighbour's tree is affecting your property, it is advisable that, in the interest of good neighbourly relations, you contact your neighbour and discuss the matter with a view toward negotiating a mutually satisfactory outcome. If negotiations are unsuccessful or no agreement can be made with your neighbour, you could consider the following options available to help resolve the matter.

Community Justice Centre

Contact the Community Justice Centre and seek mediation. Mediation is an alternative dispute resolution method which involves you, your neighbours and a trained mediator discussing the problem in an effort to determine an outcome which is agreed to by all parties. The service is free, confidential, voluntary, timely and easy to use.

Community Justice Centre
Tel: 1800 990 777
Email: cjc_info@agd.nsw.gov.au
Website: Community Justice Centres

Land and Environment Court

If all mediation attempts between neighbours have failed, an opportunity exists for property owners to apply to the NSW Land and Environment Court, to rectify the problem under the provisions of the *Tree (Disputes Between Neighbours) Act 2006*. The Act allows a property owner to apply to the court for an order to remedy, restrain or prevent damage to the owner's property or injury as a consequence of a tree situated on adjoining land. The court may also order compensation for damage already caused by such a tree.

The Court requires individuals make a reasonable attempt to resolve the situation before approaching the Court. The Land & Environment Court's website provides a range of helpful guidance notes and information on things you should consider when making an application.

Please note that the Act does not apply to trees on land owned or managed by Council.

8. CLEARING OF NATIVE VEGETATION

The Hills Shire Local Government Area covers approximately 44,044ha in area with around 24,000ha or 55% covered in vegetation. Much of this vegetation is either listed as Threatened under state or federal legislation or provides habitat for listed threatened flora or fauna species.

The Hills Shire has 38 threatened fauna and 22 threatened flora species which are listed under the Biodiversity Conservation Act 2016 and the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 for protection.

The Hills Shire also contains 3 Critically Endangered Ecological Communities being Blue Gum High Forest, Cumberland Plain Woodland and Sydney Turpentine Ironbark Forest in addition to several endangered ecological communities such as Shale/Sandstone Transition Forest.

A threatened community is a distinct group of flora that occupy the same geographical area. The NSW Scientific Committee has described threatened communities within NSW on the Office of Environment and Heritage website.

Due to the prevalence of protected vegetation throughout the shire it is important to contact the Council or The Rural Fire Service prior to undertaking any clearing of native vegetation.

Bushfire Hazard Reduction

The Rural Fire Service, under the provisions of the NSW Rural Fires Act 1997, can issue Hazard Reduction Certificates. Hazard Reduction Certificates grant approval for works associated with bushfire hazard reduction on Bushfire Prone Land, generally in rural zones.

For bushfire hazard reduction works, please contact the NSW Rural Fire Service and consult their Guidelines for Asset Protection Zones when considering removal of trees or clearing of native vegetation for bushfire hazard reduction work. Work completed by or under the Rural Fires Act 1997 may be carried out without Council consent.

Minor Clearing of Native vegetation (Bushland)

It is acknowledged that minor clearing of native vegetation is sometimes required for other reasons such as property maintenance, including fence replacement, or to make allowance for exempt or complying development such as sheds and/or ancillary structures.

Clause 10 of the Vegetation SEPP allows Council to consider applications for the clearing of native vegetation for minor works as above. Council's DCP defines vegetation "as bushland that is either a remainder of the natural vegetation on the land or, if altered, is representative of the structure and/or floristics of the natural vegetation." Vegetation includes the composition of trees (including any sapling), shrubs, grasses and/or groundcovers that naturally occur on the land.