

## TREE AND VEGETATION PRESERVATION

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## INTRODUCTION

### Further controls that may apply

#### SECTION B PART 19C - Development within HCAs: Alterations and Additions

Council has a vision for a healthy and livable place where people respect each other, conserve the magnificent environment and society for the children and grandchildren of the future (as set out in Ku-ring-gai Councils Strategic Community Plan 2030). Our urban forest is an integral component of that vision.

The established tree canopy and significant areas of bushland in Ku-ring-gai are defining characteristics and are essential to the areas 'look and feel'. Our urban forest is an asset that provides vital ecological, environmental, heritage, social, visual and physical amenity values.

Ku-ring-gai's urban forest includes both exotic and non-endemic native species as well as 24 native vegetation communities. These communities include seven threatened ecological communities listed under the NSW Biodiversity Conservation Act 2016 and four listed under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999. Ku-ring-gai's Urban Forest provides habitat for more than 700 native plant species and over 300 vertebrate species; including 18 threatened flora and 30 threatened fauna species; with many more considered transient visitors to the area.

Today Council reserves and natural spaces, the tree lined suburbs, parks and gardens provide important corridors between the three national parks and smaller reserves within and around Ku-ring-gai.

Under Ku-ring-gai LEP, a number of areas containing significant vegetation or habitats have been zoned E1 - National Parks and Nature Reserves, E2 – Environmental Conservation, E4 – Environmental Living and/or are covered by the overlay clauses:

- i) Biodiversity protection Part 6.3 of KLEP and Biodiversity controls Part 18 of this DCP; or
- ii) Riparian land and adjoining waterways Part 6.4 of KLEP and Riparian Land Part 17 of this DCP.

There are also other remnant and scattered trees associated with threatened ecological communities and threatened species habitat throughout the local government area.

Tree and other vegetation works within these areas require consideration of the above mentioned zoning, LEP and DCP provisions, and threatened status to ensure ecological values are protected. This may include consideration under the Biodiversity Conservation Act 2016.

## INTRODUCTION (continued)

This Part defines requirements and responsibilities with respect to the protection, retention and replacement of trees and other vegetation in Ku-ring-gai by:

- iii) providing controls in relation to the management and long term survival of Ku-ring-gai tree and other native vegetation resource; and
- iv) establishing a framework for the submission of applications for tree and other vegetation works in Ku-ring-gai.

This part is made pursuant to Part 3 of State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 and prescribes the trees and other vegetation to which these clauses apply.

A person who contravenes, or causes or permits to be contravened, the provisions the Act and of this Part are guilty of an offence under the provisions of the State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017.

Injuring a tree or other vegetation does not require consent under this Part, where actions are required or authorised under separate legislation, including:

- bush fire hazard reduction work authorised by the Rural Fires Act 1997. Under Clause 5.11 of the KLEP, these works may be carried out without consent under this Part.
- Vegetation clearing under the 10/50 Vegetation Clearing Code of Practice (Rural Fires Act 1997 Part 4, Division 9).  
**Note:** To determine if you are in a 10/50 area refer to the RFS website <https://www.rfs.nsw.gov.au> (this excludes Critically Endangered Ecological Communities).
- works prescribed by the Electricity Supply Act 1995, Roads Act 1993, Biosecurity Act 2015 or the Surveying and Spatial Information Act 2002.
- approval to harm marine vegetation is provided under part 7 of the Fisheries Management Act 1994.
- a license provided under the Biodiversity Conservation Act 2016.
- works required as part of other works for which a development application is required, the works will be assessed as part of the Development Application (approved under Part 4 Environmental Planning and Assessment Act 1979).
- works required as State Significant Infrastructure (approved under Part 5.1 Environmental Planning and Assessment Act 1979).

## 13.1 TREE AND VEGETATION WORKS

### Objectives

- 1 *To manage Ku-ring-gai's tree and vegetation resources in a sustainable manner.*
- 2 *To protect and enhance biodiversity values and identify replenishment opportunities.*
- 3 *To recognise, protect and enhance the aesthetic and heritage values of trees.*
- 4 *To secure and maintain local character and amenity.*
- 5 *To sustain and enhance the tree canopy.*
- 6 *To prohibit unnecessary injury to, or destruction of, trees and vegetation.*
- 7 *To encourage responsible management of trees and vegetation within an urban environment.*
- 8 *To protect the stability of waterways.*

### Controls

#### Prescribed Trees and Vegetation

- 1 The prescribed tree and vegetation that are protected by Part 3 of State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 and this section of the DCP include

- tree
- other vegetation
- native vegetation:

“tree” means:

- i) any perennial plant with at least one self-supporting woody, fibrous stem, whether native or exotic, of 5 metres or more in height; and
- ii) any plant that has a trunk diameter of 150mm or more measured at ground level.

“other vegetation” means:

- i) vegetation that is either a remainder of the natural vegetation of the land or, if altered, is still representative of the structure and floristics of the natural vegetation. Including any of the following:
  - trees (including any sapling or shrub),
  - understorey plants,
  - groundcover (being any type of herbaceous vegetation),
  - plants occurring in a wetland.

“native vegetation” means:

- i) trees or other vegetation (as defined above) native to New South Wales. This includes plants established in NSW before European settlement.

As referred to within Plantnet (<https://plantnet.rbgsyd.nsw.gov.au/>).

“clearing” means:

- i) cut down, fell, uproot, kill, poison, ringbark, burn or otherwise destroy the vegetation; or
- ii) lop or otherwise remove a substantial part of the vegetation.

#### Actions that cause injury

- 2 The injury of any tree(s) or other vegetation protected under this DCP is prohibited without the written consent of Council. Except in accordance with the exemptions prescribed in Part 13.2.
- 3 Actions that cause injury to tree(s) or other vegetation include:
  - i) removing including cut down, take away, clearing or transplant a tree(s) or other vegetation from its place of origin;
  - ii) pruning, damaging / tearing live branches and roots;
  - iii) lopping (height reduction) a tree;

## 13.1 TREE AND VEGETATION WORKS (continued)

### Controls

- iv) drilling or poisoning a tree or vegetation, including but not limited to:
  - the application of substances damaging to trees and other vegetation such as herbicides, other toxic chemicals; or
  - spilling and or directing contaminants such as oil, petroleum, paint, cement and similar to the root zone;
- v) ringbarking, or otherwise damaging the bark, which may result in a detrimental impact on the tree health including but not limited to:
  - the attachment of objects using invasive fastenings, tree climbing spikes;
  - the fastening of materials around the trunk of trees.
- vi) exotic vines growing to the trunk and branches of trees which is, or will result in, a detrimental impact on tree or vegetation health;
- vii) damaging the root zone of a tree or other vegetation by way of compaction, including storage and stockpiling of materials;
- viii) changing of ground levels within the root zone of a tree or other vegetation by way of excavation, trenching, filling or stockpiling;
- ix) severing tree or other vegetation roots with a diameter of 50mm or greater.

## 13.2 EXEMPTIONS FOR TREE AND VEGETATION WORKS

### Controls

This section explains when approval from Council is required to carry out tree or vegetation works, pursuant to Part 3 of State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017. These exemptions do not apply on land that is a heritage item or within a heritage conservation area. Works on heritage items and within heritage conservation areas are addressed within Part 13.3.

**Note:** This exemption does not apply to clearing of:

- Threatened Ecological Communities as per mapping available on Council's web site (<https://www.krg.nsw.gov.au>).
- Native vegetation that is on land included on the Biodiversity Values Map, available through the Biodiversity Values Map and Threshold tool (<https://www.lmbc.nsw.gov.au/Maps/index.html?viewer=BOSETMap>). A copy of the vegetation mapping and biodiversity values map and threshold (BOSET) report (as generated from the tool) should be retained as proof of consideration.

### Exemptions

The following are exempt works:

Tree branches directly over roof lines

- i) removal of tree branches which directly overhang the roof of a residence or commercial building, if pruned back to the nearest branch junction or collar to remove from the roofline;
- ii) detached garages, carports and ancillary buildings are not included in this exemption.

**Note:** Pruning must be consistent with the Australian Standard for Pruning of Amenity Trees (AS4373-2007), and must not result in a detrimental impact to the future health or stability of the tree or compromise the form of the tree. For example, removal of all branches from one side of a tree over a roof line would not be exempt.

#### 1 Trees and other vegetation within 3m of an existing dwelling

- i) trees and other vegetation within 3m of any existing dwelling on the same property are exempt. The 3m distance is measured from the centre of the trunk of the tree / base of the plant at ground level to the external wall of the dwelling.
  - provided the owner of the land on which the trunk of the tree is located is in agreement and gives consent prior to the tree works.

**Note:** Trees (Disputes between Neighbours) Act 2006 may apply

- ii) trees and other vegetation within 3m of verandahs, carports, detached garages, and ancillary buildings, cantilevered and pier supported structures such as balconies and decks are excluded from this exemption.

#### 2 Removal of tree branches near electrical wires

- i) removal of branches within 0.5m of electrical service lines to properties. This exemption applies to tree branches only, not tree trunks.

## 13.2 EXEMPTIONS FOR TREE AND VEGETATION WORKS (continued)

### Controls

- 3 Minor pruning
  - i) pruning of trees and other vegetation provided:
    - branches pruned, are not more than 50mm in diameter; and
    - roots pruned are not more than 50mm in diameter.

**Note:** pruning is consistent with the Australian Standard for Pruning of Amenity Trees (AS 4373-2007).
- 4 Removal of dead wood
  - i) completely dead branches attached to tree(s) and other vegetation within the property may be removed.
 

**Note:** pruning is consistent with the Australian Standard for Pruning of Amenity Trees (AS 4373-2007).
- 5 Removal of dead or dying trees and other vegetation
  - i) removal of completely dead or dying trees and other vegetation provided that prior to any work being carried out:
    - Council has advised the applicant of its satisfaction that the subject tree(s) or other vegetation is dead or are dying and is not required as the habitat of native fauna.
- 6 Removal of risk to human life or property
  - i) the removal of tree(s) which is structurally unsound and or unstable, which displays a high degree of hazard, provided that prior to any work being carried out:
    - Council has advised the applicant, of its satisfaction that the subject tree(s) is posing an imminent risk to human life or property.

**Note:** an arborist's report and testing may be required for significant trees.
- 7 Trees and other vegetation on Council owned and managed land
  - i) tree and other vegetation works may be undertaken by Council or Council's authorised agents, on Council owned or managed land, providing these works are consistent with Council's policies and internal guidelines.

## 13.2 EXEMPTIONS FOR TREE AND VEGETATION WORKS (continued)

### Controls

8 Exempt tree and other vegetation species:

- i) removal of species listed under the Biosecurity Act 2015.

**Note:** Refer to the NSW Department of Primary Industries for information on weeds.

- ii) within table below:

**Note:** This table does not apply for Heritage Items or in Heritage Conservation Areas

Common Name	Botanical Name
Queensland Silver Wattle	<i>Acacia podalyriifolia</i>
Golden Wreath Wattle	<i>Acacia saligna</i>
Box Elder	<i>Acer negundo</i>
Tree of Heaven	<i>Ailanthus altissima</i>
Evergreen Alder	<i>Alnus jorullensis</i>
Cocos Palm	<i>Syagrus romanzoffiana</i>
Nettle tree	<i>Celtis</i> spp.
Cotoneaster	<i>Cotoneaster</i> spp.
Loquat	<i>Eriobotrya japonica</i>
Common Coral Tree	<i>Erythrina crista-galli</i>
Indian Coral Tree	<i>Erythrina indica</i>
Coral Tree	<i>Erythrina x sykesii</i>
Rubber Tree	<i>Ficus elastica</i>
Liquidambar	<i>Liquidambar styraciflua</i> (only if less than 12m in height)
African Olive	<i>Olea europaea</i> subsp. <i>Africana</i>
Crested Wattle	<i>Paraserianthes lophantha</i>
Lombardy Poplar	<i>Populus nigra italica</i>
Firethorn	<i>Pyracantha</i> spp.
Black Locust	<i>Robinia pseudoacacia</i>
Golden Robinia	<i>Robinia pseudoacacia</i> "Frisia"
Umbrella Tree	<i>Schefflera actinophylla</i>
Broad-leaf pepper tree	<i>Schinus terbinthifolius</i>
Rhus	<i>Toxicodendron succedaneum</i>
Privet	<i>Ligustrum</i> sp.



### 13.3 HERITAGE ITEMS OR HERITAGE CONSERVATION AREAS

This section explains approval requirements to carry out tree or vegetation works on land that is or forms part of a heritage item or is in within a heritage conservation area.

To identify if your tree, vegetation or land has heritage significance please view: <http://maps.kmc.nsw.gov.au/PRODWebmap/index.html>

Under Clause 5.10 of the KLEP, development consent is required to undertake works in relation to a tree or vegetation that is or forms part of a Heritage Item or is within a Heritage Conservation Area. However, development consent may not be required in the following circumstances:

- 1 Works in relation to a tree or other vegetation may be carried out with the written consent of Council where Council is satisfied that:
  - i) the proposed works is of a minor nature,
  - ii) is for the maintenance of the Heritage Item or place within the Heritage Conservation Area; and
  - iii) would not adversely affect the heritage significance of the Heritage Item or Heritage Conservation Area.
- 2 For the purpose of 1i) above, the following tree works in relation to a tree or other vegetation that is or forms part of a Heritage Item or is within a Heritage Conservation Area may be regarded by Council as being of a minor nature:
  - i) Tree branches directly over roof lines
    - removal of tree branches which directly overhang the roof of a residence or commercial building, if pruned back to the nearest branch junction or collar to remove from the roofline. Detached garages, carports and ancillary buildings are not included
  - ii) Minor pruning
    - pruning of trees and other vegetation provided:
      - branches pruned, are not more than 50mm in diameter, and
      - roots pruned are not more than 50mm in diameter.

**Note:** Pruning must be consistent with the Australian Standard for Pruning of Amenity Trees (AS4373-2007) and must not result in a detrimental impact to the future health or stability of the tree or compromise the form of the tree.

**Note:** Pruning is consistent with the Australian Standard for Pruning of Amenity Trees (AS4373-2007).

### 13.3 HERITAGE ITEMS OR HERITAGE CONSERVATION AREAS (continued)

iii) Removal of dead wood

- removal of completely dead branches attached to a tree(s) and other vegetation within the property.

**Note:** Pruning is consistent with the Australian Standard for Pruning Amenity Trees (AS4373-2007)

iv) Dead or dying trees and other vegetation

- removal of completely dead or dying trees and other vegetation.

- 3 The removal of a tree(s) which is structurally unsound and or unstable, which displays a high degree of hazard, provided that prior to any work being carried out, Council has advised the applicant of its satisfaction that the subject tree(s) is posing an imminent risk to human life or property

**Note:** an arborist's report and testing may be required for significant trees

**Note:** Removal of branches within 0.5m of electrical service lines to properties under Work permitted under section 48 of the Electricity Supply Act 1995 do not require written consent from Council. However, this exemption does not apply to a property subject to an interim heritage order, or a listing on the State Heritage Register, under the Heritage Act 1977.

## 13.4 APPLICATION FOR TREE AND OTHER VEGETATION WORKS

### Controls

- 1 An application is required to be completed and forwarded to Council for all works on trees or other vegetation where an exemption under Section 13.2 does not apply.

**Note:** A permit cannot be granted for the clearing of:

- i) native vegetation on land included on the Biodiversity Values Map except where the tree is assessed to be a risk;
- ii) vegetation that is or forms part of an Aboriginal object or that is within an Aboriginal place of heritage significance.

In these instances a Development Application or approval of Native Vegetation Panel is required.

- 2 Further information on types of applications, fees, assessment time frames and criteria for approvals, can be found on Council's web site [www.krg.nsw.gov.au](http://www.krg.nsw.gov.au)
- 3 The applications are only to be made by the owner of the site on which the vegetation or the trunk of the tree is located or their authorised agent (Council will require proof of authority to be submitted),
- 4 A Development Application is required where the proposed works:
  - i) are within the core riparian zone of Category 1 or 2 Riparian Lands and the works will disturb soil within 2m of the channel or within the channel itself;
  - ii) will affect large stands of trees or other vegetation; or
  - iii) are in relation to a tree or other vegetation that forms part of a heritage item or within a heritage conservation area.

### ***Replacement trees and vegetation***

- 5 Council will require the planting of replacement trees and/or vegetation and may specify the number, species, provenance, location and stock size of the replacement trees and vegetation.

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