

Tree Management DCP

Inner West Council

Draft 26 April 2022

General Provisions

1 Purpose

This Tree Management Development Control Plan has been made in accordance with the *State Environmental Planning Policy (Biodiversity and Conservation) 2021* (the Vegetation SEPP) and prescribes the vegetation to which the Vegetation SEPP applies and the applicable consent process.

The vegetation described in this Tree Management Development Control Plan is vegetation to which Chapter 2, Part 2.3 of the Vegetation SEPP applies.

Council has established canopy targets for the Inner West Local Government Area (LGA) based on the zoning of the land. Those canopy targets are derived from the *Greater Sydney Commission - District Plans and Greener Places - Urban Tree Canopy Guide* and are as follows:

Zone	Canopy Target
R1 General Residential	40%
R2 Low Density Residential	
R3 Medium Density Residential	25%
R4 High Density Residential	
B1 Neighbourhood Centre	25%
B2 Local Centre	
B4 Mixed Use	15%
B5 Business Development	
B6 Enterprise Corridor	
B7 Business Park	
IN1 General Industrial	25%
IN2 Light Industrial	

2 Objectives

The following objectives guide the protection and management of trees within the Inner West LGA:

- O1 To establish a coordinated approach to the assessment and management of trees.
- O2 To consider the safety of the community, private property, and public infrastructure assets.
- O3 To protect trees within and adjacent to development sites and to ensure that all new development provides an opportunity for existing and new trees to grow.
- O4 To manage the urban landscape so trees continue to make a significant contribution to its quality, character, and amenity.
- O5 To maintain and enhance the amenity of the Inner West Local Government Area (LGA) through the preservation of appropriate trees and vegetation.
- O6 Ensure private property owners' plant new trees and replace trees in order to meet Council's tree canopy targets.

Outline of the Processes for Tree Removal or Pruning

The process for tree removal or pruning is via one of three means:

1. Tree work that does not require Council consent is outlined in Section 3 Tree work that does not require Council Consent.
2. Tree work that requires an application via Development Consent is outlined in Control C5.
3. Tree work that requires an application via a Tree Works Permit is outlined in Control C6. This is a simplified approval process.

3 Tree work that does not require Council Consent

C1 The following works do not require Council consent, provided the work is carried out in accordance with *AS 4373—Pruning of amenity trees* and the *Safe Work Australia Code of Practice Guide to Managing Risks of Tree Trimming and Removal Work 2016*:

- I. Canopy lifting to 2.5 metres above ground level.
- II. Selective pruning to allow a 2-metre clearance above the roof or 1 metre from the face of all structures as long as the branch diameter does not exceed 100mm.
- III. The pruning of deadwood that does not have hollows or provide habitat for native fauna.
- IV. Works to trees owned by, or under the care, control and management of Inner West Council and undertaken by delegated Council staff or their authorised contractors.
- V. The removal of trees on the exempt species list outlined in C7 (unless the tree is a listed item, part of a listed item or located in a heritage conservation area (HCA)).
- VI. The removal of species listed under the *NSW Biosecurity Act 2015* for Inner West Council area.
- VII. Minor pruning of all vegetation (e.g., for the maintenance of a hedge) by less than 5% annually including any tree that is a heritage item, forms part of a heritage item, or is listed in the heritage trees list, or located in a heritage conservation area (HCA).
- VIII. Removal of a tree located within 1 metre of the foundation wall of an approved residential dwellings located on the same lot of land (excluding trees located in heritage conservation areas, on heritage listed properties or are trees subjected to a heritage listing). The 1 metre distance is measured from the centre of the tree to the to the foundation wall at the diameter at breast height (DBH 1.4m).

Neighbouring trees

A person may prune the branches of a tree overhanging their property in accordance with *AS4373—Pruning of amenity trees* provided that the pruning is consistent with section 3 Tree work that does not require Council Consent but must not prune a tree beyond the property boundary. You must consult with your neighbour and get their consent before you undertake any work. Council does not mediate these works.

4 Trees to be protected

C2 The exemptions in section 3 do not apply to:

- I. Work that is contrary to a development consent that requires trees to be retained; or
- II. Tree(s) required to be planted as a condition of development consent or as a compensatory planting condition in a permit; or
- III. Threatened species or land that contains native vegetation (including dead trees) which is habitat for threatened species, populations or ecological communities listed in Schedule 1 and 2 of the *Biodiversity Conservation Act 2016* and other protected matters listed under the *Commonwealth Environment Protection Biodiversity Conservation Act 1999*; or
- IV. Land that is a declared area of outstanding biodiversity value under the *Biodiversity Conservation Act 2016*; or
- V. Land declared critical habitat under Part 7A of the *Fisheries Management Act 1994*; or
- VI. Any native tree located within a wildlife corridor as shown on the Biodiversity Map in Part 2.13 - *Biodiversity of Marrickville DCP 2011* – Appendix 3; or
- VII. Major pruning or proposed removal of a tree that is a heritage item, forms part of a heritage item, or is listed in the heritage trees list, or located in a heritage conservation area (HCA).

Biodiversity and Land Management

Biodiversity and Land Management reforms commenced on 25 August 2017. *The SEPP* and *Biodiversity Conservation Act 2016 (BC Act)* were introduced as part of those reforms. The BC Act establishes the *Biodiversity Offsets Scheme (BOS)* thresholds, comprised of the *Biodiversity Values Map (BVM)* and an Area Clearing Threshold. If you are proposing works to trees on land mapped on the BVM or the extent of the works exceed the relevant area threshold, the proposal will exceed the BOS threshold. Council cannot issue a permit for tree works which exceed the BOS threshold and the application must be provided to the Native Vegetation Panel.

See Department of Planning Industry and Environment website for more information.

C3 For the purposes of this DCP, a prescribed tree is:

- I. any tree with a height equal to or greater than 4 metres above ground level (existing); or
- II. any tree that is under 4 metres in height that has a trunk diameter of more than 150mm at DBH (1.4m); or
- III. any tree with a canopy spread equal to or greater than 2 metres; or
- IV. any palm tree or tree fern with a clean stem length equal to or greater than 4 metres above ground level (existing); or
- V. any tree that is required as the habitat of native animals.

Under the provisions of Chapter 2 of the Vegetation SEPP a person must not clear vegetation without the consent of Council.

Clear Vegetation

Clear vegetation includes -

- a) cut down, fell, uproot, kill, poison, ringbark, burn or otherwise destroy the vegetation, or
- b) lop or otherwise remove a substantial part of the vegetation (including roots).

(State Environmental Planning Policy (Biodiversity and Conservation) 2021)

4.1 Types of Tree Applications

C4 Council consent is required before any clearing of vegetation (removal or pruning of tree/s) is carried out other than the activities referred to in Control C1. Applications for consent will be assessed and determined either through:

- I. Development Application (as set out in Control C5); or
- II. Tree Works Permit Application (as set out in Control C6); or

C5 Development consent is to be required for works in the following circumstances:

- I. Major Pruning or Removal of trees located on a property that is a listed heritage item, identified on the Inner West Council heritage trees list or trees located within a heritage conservation area (HCA).
- II. The tree forms part of an Aboriginal object or is located within an Aboriginal place of heritage significance.

C6 Tree Works Permit is required, except where the tree or the works to the tree/s are an exempt activity under Section 3 Tree work that does not require Council Consent, to:

- I. Prune a tree; and/or
- II. Remove a tree other than those trees which require Development Consent under Control C5.
- III. Tree root pruning.

- C7** Exempt Species List - Council approval is not required to remove species outlined in this list. Consent is required if the tree is a listed item, part of a listed item or located in a heritage conservation area (HCA) see C2.

Species Name	Common Name
<i>Acer negundo</i>	Box Elder
<i>Ailanthus altissima</i>	Tree of Heaven
<i>Alnus jorrullensis</i>	Evergreen Alder
<i>Bambusa spp. Phyllostachys spp.</i>	Bamboo species
<i>Cotoneaster spp.</i>	Cotoneaster
<i>Erythrina x sykesii</i>	Coral Tree
<i>Gleditsia triacanthos</i>	Honey Locust
<i>Lagunaria patersonia</i>	Norfolk Island Hibiscus
<i>Ligustrum lucidum</i>	Broad Leaved Privet
<i>Ligustrum sinense</i>	Small Leaved Privet
<i>Nerium oleander</i>	Oleander
<i>Robinia pseudoacacia</i>	False Acacia/Black Locust
<i>Salix spp.</i>	Willow
<i>Schefflera actinophylla</i>	Umbrella Tree
<i>Syagrus romanzoffianum</i>	Cocos Palm
<i>Tamarix aphylla</i>	Athel Tree
<i>Toxicodendron succedaneum</i>	Rhus Tree

4.2 Application Assessment Criteria

Council will use the following assessment criteria when considering an application to remove a tree/s:

4.2.1 Criteria considered

- I. Health and condition of the tree identified through a ground based Visual Tree Assessment (VTA).
- II. Industry approved risk assessment rating that outlines target, risk and likelihood ratings. Accepted methodologies are TRAQ or QTRA.
- III. 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).
- IV. Property Damage - Consideration will be given to the removal of a tree where it is clearly demonstrated that the tree is directly causing or is contributing significantly to damage a significant structure on a site.

Trees that are considered an imminent risk to human life or property

If a tree on your property is suspected to be an imminent risk to human life or property you should first contact Council detailing why the tree is considered to be a risk. Council may require a brief statement and or photos to demonstrate that the tree requires immediate removal. Council will issue expedited consent in writing to allow removal of an imminently dangerous tree under the provisions of Part 2.2 Clause 2.7 (3a) of Vegetation SEPP 2017. If council is not satisfied that the tree is a risk to human life or property you will be advised to lodge the relevant application.

4.2.2 Criteria not considered

The following criteria are generally not considered justification for tree removal or pruning:

- I. The dropping of leaves, flowers, fruit, sap, seeds or small elements of deadwood (or other natural processes).
- II. Insect/animal nuisance.
- III. Solar access to solar panel or data receivers.
- IV. Increase general natural light or reduce shade created by a tree.
- V. Enhance view corridors.
- VI. Minor lifting of driveways, paths and paving or minor damage to outbuildings, garden structures, walls or landscape structures.
- VII. Tree removal is the final option when all other avenues have been investigated that could be rectified by an alternate means or cannot be directly attributed to a tree.
- VIII. Damage to underground services (such as sewer lines, water services) and where there are feasible alternatives to mitigate or solve problems and retain the tree. Alternatives to tree removal include replacement of damaged pipes, relining, relocation or encasement of pipes.
- IX. Pruning to reduce height, except pruning to reduce the height of hedge/s. Reduction in the height of tree is not in accordance with AS4373- *Pruning of amenity trees*.
- X. To facilitate the construction of a driveway or structures, including swimming pools, outbuildings or fences. Alternative locations of such structures must be sought.
- XI. Complying Development. The need for tree removal in order to allow for development that could otherwise be carried out under a Complying Development Certificate. Tree removal for the purposes of facilitating development are required to follow the development application process.

4.3 Right of Appeal

Tree Permits

An applicant for a permit may appeal to the NSW Land and Environment Court against the refusal by Council to grant the permit. An appeal is to be made within three months after the date on the determination after the Council has refused the application.

Development Applications

Under the *Environmental Planning and Assessment Act 1979*, a review of the determination must be completed within 6 months of the determination of the original application. Applicants need to ensure that they submit their application for review to Council within 2 months of the determination in order to allow Council to conduct the review in most circumstances and within the legislated timeframes. Applicants who are unhappy with the reviewed determination will be informed at the time of the determination of their application of the review process available to them through the Land and Environment Court.

Procedural review

If an applicant is dissatisfied with the process undertaken, a request for procedural review must be lodged within 28 days of the determination date as per the *Local Government Act 1993*.

4.4 Tree Planting Requirements

- C8** Council requires replacement tree/s to be planted as a condition of any consent to remove a tree to effectively maintain the urban forest canopy across the LGA. Where replacement of trees is conditioned, Council prefers that trees that are removed are replaced on the site with a suitable replacement canopy tree and in a suitable location onsite. However, there may be circumstances when there is no suitable location on site, and a financial contribution will be required to be paid to support public tree planting. Fees are set out in Council's fees and charges.
- C9** Replacement tree/s must be maintained in a healthy and vigorous condition until they are protected (C3).
- C10** A person must not fail to plant, protect or care for a replacement tree which is required to be established as a condition of consent issued by Council.
- C11** The following minimum tree planting requirements are required for any sites:

Property Size:	Number of trees to be planted
Less than 300m ²	minimum of one (1) tree.
exceed 300m ²	minimum of two (2) trees

Tree container size and mature tree height will be determined by Council and will generally be based on available land space and land zoning canopy targets, a preference is placed on advanced container sizes.

5 Trees on Development Sites

- C12** All development proposals must be designed to maintain or improve the urban forest values of the site by minimising the impact on tree/s and planting compensatory tree/s for tree/s that are proposed for removal. This requirement applies to Council owned trees and trees on private or other property and adjoining land.
- C13** The design of buildings or alterations and additions to buildings must provide sufficient distance from existing trees (whether on the site or on adjoining land), in accordance with *AS4970-Protection of trees on development sites*, to ensure the tree/s' practical retention.
- C14** Trees on public land must be protected during demolition, excavation, the erection of hoarding and construction works as set out in Section 4 of AS4970. Council will require the payment of a security deposit in relation to a tree on public land if:
- I. Development is proposed within the Tree Protection Zone of that tree or;
 - II. Council determines that the development may adversely affect the roots or crown of the tree.
- C15** Developments (excluding R1 and R2 zone) must allow for any existing overhead electrical lines to be converted into aerial bundled cabling (ABC) or redirected underground to reduce the impact upon surrounding trees.
- C16** New awnings must be designed to accommodate existing and proposed street trees.

6 Definitions

In this Part:

AS4373 means Australian Standard 4373-*Pruning of amenity trees*.

AS4970 means Australian Standard 4970-Protection of trees on development sites.

Clear Vegetation includes

- a) cut down, fell, uproot, kill, poison, ringbark, burn or otherwise destroy the vegetation, or
- b) lop or otherwise remove a substantial part of the vegetation (including roots).

Dead means no green cambium (tissue) and no green foliage and that the tree is no longer capable of performing any living functions.

Diameter at Breast Height (DBH). The diameter of a tree at 1.4 metres above the ground.

Dying means a tree in a state of decline where it is unlikely to recover. Generally, this may be represented by only $\leq 20\%$ live canopy.

Foreseeable future means the next 12 months.

HCA – Heritage Conservation Area as identified in the Inner West Council Local Environment Plan (IWC LEP).

Imminently dangerous includes but is not restricted to obvious instability of the root system, evidence of soil heave or cracking, loss of structural roots, root decay, storm damage and structural defects that are imminently hazardous, such as splitting branches. Evidence must be provided to Council in writing by photographic evidence or written evidence by a Qualified Arborist (AQF5).

Risk to human life or property is where a tree presents an unacceptable level of risk to life or property as per an industry risk assessment methodologies -TRAQ or QTRA. Evidence must be provided to Council in writing by photographic evidence and written evidence by a Qualified Arborist (AQF5).

Tree means any perennial plant with at least one self-supporting woody, fibrous stem, whether native or exotic.

LGA means the Inner West Council Local Government Area.

Project Arborist means the arborist appointed to monitor the vitality and condition, throughout the construction process, of trees being retained on the site (and any trees on adjoining private land and trees on public land where the development encroaches into the TPZ of those trees).

Residential Dwellings are buildings approved and defined as:

- **dwelling house** means a building containing only one dwelling.
- **dual occupancy** means a dual occupancy (attached) or a dual occupancy (detached).
- **multi dwelling housing** means 3 or more dwellings (whether attached or detached) on one lot of land, each with access at ground level, but does not include a residential flat building.

- **residential flat building** means a building containing 3 or more dwellings, but does not include an attached dwelling, co-living housing or multi dwelling housing.

Tree Protection Zone (TPZ) means the area around a tree required to protect the tree's crown and roots during the construction process. The tree protection zone must be calculated in accordance with AS4970.

Urban Forest means all trees and vegetation (both naturally occurring and planted) that occur within or near urban areas.

NB All references to Acts, Australian Standards, Policies, and Strategies, are to those documents as amended.