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Yellow highlight indicates additions and yellow highlight with strikethrough indicates deletions.

Amendment history						
Version Number	Date Adopted by Council	Commencement Date	Amendment Type			
1	14 October 2014	22 October 2014	New			
2	23 June 2015	1 July 2015	Amendment			
3	6 December 2016	21 December 2016	Amendment			
4	11 December 2017	20 December 2017	Amendment			
5			Draft			

1 Purpose

The purpose of this Chapter is to declare trees and other vegetation under Part 2.3 of State Environmental Planning Policy (Biodiversity and Conservation) 2021 (the Biodiversity and Conservation SEPP) Part 3 of State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (the Vegetation SEPP). Where a tree or other vegetation is declared in this Chapter a person must not clear vegetation without a permit granted by Council (Section 2.10 Clause 10(1)) of the Biodiversity and Conservation Vegetation SEPP). This is referred to as 'removal or pruning' in this Chapter and includes:

- Cutting down, felling, uprooting, killing, poisoning, ringbarking, burning or otherwise destroying the vegetation, or
- Lopping or otherwise removing a substantial part of the vegetation.

Council can only issue a permit for the removal or pruning of native vegetation that is below the biodiversity offsets scheme threshold.

This Chapter also provides guidance on the process for obtaining a permit for the removal or pruning of trees and other vegetation on land in the Shoalhaven Local Government Area (LGA).

Advisory Note: In addition to the provisions outlined in this Chapter, you must refer to the Supporting Maps. The Supporting Maps provide further information about which sections of this Chapter apply to your development.

2 Application

This Chapter applies to removal or pruning of vegetation that is under the biodiversity offsets scheme threshold on all non-rural land (land in any zone other than RU1-RU4) within the Shoalhaven LGA.

Note: The proposed removal or pruning exceeds the biodiversity offsets scheme threshold if it is:

- the clearing of native vegetation of an area that exceeds the threshold (see Table below), or
- the clearing of native vegetation is on land mapped as 'Sensitive Values' on the Biodiversity Values Map prepared by the NSW Government Office of Environment and Heritage (OEH) and located on their website.

If the proposed removal or pruning exceeds the biodiversity offsets scheme threshold, it requires an approval from the Native Vegetation Panel (refer to Part 2.4 of the Biodiversity and Conservation Vegetation SEPP).

Table: Threshold by minimum lot sizes

Minimum lot size of land	Area of clearing
Less than 1 hectare	0.25 hectare or more

Less than 40 hectares but not less than 1 hectare	0.5 hectare or more
Less than 1,000 hectares but not less than 40 hectares	1 hectare or more
1,000 hectares or more	2 hectares or more

The minimum lot size applicable to any land being cleared is as follows:

- (a) the minimum lot size as shown on the Shoalhaven LEP 2014 Lot Size Map, or
- (b) if the Lot Size Map does not map a minimum lot size for the land, the actual size of the allotment of land on which the proposed development is to be carried out.

3 Context

Appropriate management of trees and other vegetation on public, urban and non-urban land is essential to preserve the attractiveness and natural character of the City. Trees are part of the wider habitat that supports our native wildlife and birds. Controls also need to allow for the removal of unsafe or unsuitable trees and plan for their replacement to ensure the tree canopy is maintained into the future. Council embraces a whole of life approach to tree management in order to prevent exposure to unnecessary risk.

Note: There are significant penalties for the illegal removal or pruning of trees and other vegetation. People who remove or prune trees and other vegetation without approval can face significant fines under the *Environmental Planning & Assessment Act* 1979 (EP&A Act) and the *Local Land Services Act* 2013.

It is also an offence to harm or pick threatened species, populations or endangered ecological communities (EECs) under the *Biodiversity Conservation Act 2016* and *Environment Protection and Biodiversity Conservation Act 1999*. Prosecutions can result in significant penalties including fines and imprisonment.

4 Objectives

The objectives are to:

- i. Ensure land owners are aware when tree or vegetation removal or pruning requires a permit and when it can be carried out without a permit.
- ii. Provide a consistent framework to assess applications for the removal or pruning of trees and other vegetation.
- iii. Recognise trees and other vegetation as a highly valued asset to maintain the visual appeal and amenity of the local area.

- iv. Control inappropriate cutting down, felling, uprooting, killing, poisoning, ringbarking, burning or otherwise destroying of vegetation, or lopping or otherwise removing a substantial part of vegetation.
- v. Minimise the risk caused by destabilisation of foreshore, riparian or agricultural land.
- vi. Ensure that high value trees or other vegetation in environmentally sensitive locations are preserved.
- vii. Recognise the intrinsic value of trees and other vegetation to support native birds and wildlife.
- viii. Facilitate the removal of undesirable exotics, noxious weeds, and any other inappropriate plantings, and to replace these with suitable local indigenous species which will positively contribute to visual and environmental amenity and ecological sustainability.
- ix. Avoid inappropriate removal of trees or other vegetation in paper subdivisions or areas where a tree preservation order has historically applied.

5 Controls

5.1 Declared Trees or Other Vegetation – Part 2.3 of the Biodiversity and Conservation Vegetation SEPP

This clause declares trees and other vegetation for the purposes of Part 2.3 of the Biodiversity and Conservation Vegetation SEPP. In accordance with Section 2.6 Clause 7(1) of the Biodiversity and Conservation Vegetation SEPP, a person must not cut down, fell, uproot, kill, poison, ringbark, burn or otherwise destroy the vegetation, or lop or otherwise remove a substantial part of the vegetation without a permit granted by Council. There are some exemptions to the requirement for a permit which are set out in Section 5.2.

The following trees or other vegetation are declared:

- 1. All trees and other vegetation located on an area mapped by this Chapter which includes:
 - a) Land which is mapped as a 'paper subdivision' in the Chapter G4 Supporting Maps;
 or
 - b) Trees or other vegetation that are:
 - i. less than 50 metres from the bank of a creek or water body deemed Category
 1 (large creek/river) as defined by the SLEP 2014; or
 - ii. less than 30 metres from the bank of a creek or water body deemed Category 2 as defined by the SLEP 2014; or
 - iii. verified as supporting an endangered ecological community (EEC); or
 - iv. mapped as supporting rainforest vegetation species; or
 - v. mapped on the Scenic Protection Area Map of SLEP 2014; or
 - vi. within 30 metres from a non-urban road boundary.

Note: The above areas are shown on the Supporting Maps for this Chapter.

- 2. All trees and other vegetation located on publicly owned or managed land; or
- 3. Where the tree in question is a Toona australis (Red Cedar); or
- 4. Where the tree contains a hollow; or
- 5. Where the tree or other vegetation is a heritage item or within a heritage conservation area under the SLEP 2014; or
- 6. All trees in an urban area.
- 7. All trees and native vegetation on land in zone E2, E3 or E4.

Note: An urban area for the purposes of this Chapter is any mapped area with a residential (excluding R5 Large Lot Residential), business, industrial, commercial, special use and RU5 Village zone.

A non-urban area for the purposes of this chapter is any area with R5 Large Lot Residential, an environmental, recreation, or waterway zone.

5.2 Exemptions

5.2.1 Exclusions from Exemptions – Environmental Heritage including Aboriginal Heritage

None of the exemptions listed in this Section apply to any trees or other vegetation located on a heritage item, Aboriginal object, Aboriginal place of heritage significance, or on land within a heritage conservation area.

Council can only grant a permit for the removal or pruning of vegetation on land that is, or forms part of a heritage item; or is within a heritage conservation area; or that is or forms part of an Aboriginal object; or is within an Aboriginal place of heritage significance, if it is:

- Of a minor nature; or
- Is for the maintenance of the heritage item, Aboriginal object, Aboriginal place of heritage significance, or heritage conservation area, and would not adversely affect the heritage significance of the heritage item, Aboriginal object, Aboriginal place of heritage significance, or heritage conservation area.

Therefore, Council requires:

- A permit application for any removal or pruning of vegetation that is minor in nature or is for the maintenance of the heritage item, Aboriginal object, Aboriginal place of heritage significance, or heritage conservation area, and
- A development application for any other removal or pruning of vegetation.

Section 2.10(3) Clause 10(3) of the Biodiversity and Conservation Vegetation SEPP and Clause 5.10 of the SLEP 2014 contain specific requirements for trees and other vegetation located on heritage items and heritage conservation areas and should be read in conjunction with this Chapter.

5.2.2 Exclusion from Exemptions – Consent Conditions and 88B Instruments

None of the exemptions listed in this Section apply to any trees or vegetation that are required to be retained by the conditions of a development consent or a Section 88B restriction to user instrument. The Biodiversity and Conservation Vegetation SEPP, and subsequently this Chapter, do not affect authorisations under other Acts that are required to be obtained in connection with the clearing of vegetation.

Note: Applicants may choose to apply to Council for a variation to the conditions of consent (for dwelling and/or subdivision) or the 88B Instrument.

5.2.3 Exemptions

The following trees or other vegetation are exempt from section 5.1:

- a) Clearing trees and vegetation that is authorised under Section 60O of the *Local Land Services Act 2013* (LLS Act). This sub-clause does not apply to clearing merely because it is a part of or ancillary to the carrying out of exempt development.
- b) Trees and vegetation that Council or the Native Vegetation Panel is satisfied is dying or dead and is not required as the habitat of native animals.
- c) Trees and vegetation that Council is satisfied are a risk to human life or property.
- d) The 45 Degree Rule. Where a tree is closer than its own height from an approved lawfully erected building (including a dwelling, garage or outbuilding) and there is a demonstrable risk to that building. This means where any part of a tree is above a line 45 degrees from the vertical extension of the wall of any building measured from its base (as shown in Figure 1).

The tree must not be:

- Located beyond the lot the lawfully erected building is located on (which includes public land).
- Located on land within the Jerberra Estate.
- Located on land zoned RU1 Primary Production or RU2 Rural Landscape.

Note: Land in the RU1 and RU2 zones cannot be removed under the 45 Degree Rule. Tree removal in this zone is managed by NSW Local Land Services under the *Local Land Services Act 2013*.

- A tree with a hollow and/or nests (for example, stick nests).
- A tree on an upward slope greater than 18 degrees from the building.

Hollow bearing trees can only be removed without assessment under the 45 degree exemption if an animal handler is present.

To be considered an exemption from section 5.1, the landowner must:

• Ensure the tree removal is undertaken by an AQF Level 3 arborist in accordance with relevant Australian Standards.

- Notify all adjoining and adjacent landowners/occupants of the proposed tree removal works in writing, at least 5 business days before the tree removal is due to commence.
- Notify Council of the proposed tree removal works in writing, at least 5 business days before the tree removal is due to commence. The notification must also be signed by the arborist removing the tree/s.

Note: The advice to Council is to include the property address, location of the tree to be removed on the site, the size and species detail of the tree, reason for removal, provision of a photograph, confirmation that there are no exclusions from exemptions conditions, (heritage, consent Instruments) confirmation that the adjoining/adjacent landowners/occupants have been notified, and the name and contact details of the qualified arborist who will be removing the tree.

This information can be provided to Council via mail, email or via this form [insert link to form at commencement].

Non-compliance with the aforementioned 45 Degree Rule requirements is considered development without consent. Fines can apply to any person involved in the unlawful removal of trees.

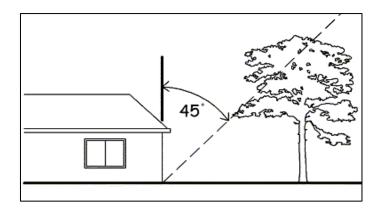


Figure 1: Example of the 45 degrees line from the vertical extension

e) The non-native/invasive tree species listed in Table 1, regardless of size.

Table 1: Non-native and/or Invasive Tree Species

Common Name	Botanical Name
Cootamundra Wattle	Acacia baileyana
Black Wattle	Acacia decurrens and Acacia mearnsii
Cape Leeuwin Wattle	Albizia lophantha

Evergreen Alder	Alnus jorullensis
Tree Lucerne	Chamaecytisus sp
Indian Coral Tree	Erythrina x sykesii
Silky Oak	Grevillea robusta
Privet	Ligustrum species
African Olive	Olea africana
Canary Island Date Palm	Phoenix canariensis
Sweet Pittosporum	Pittosporum undulatum
Umbrella Trees	Schefflera species
Cocos or Queen Palm	Syagrus romanzoffianum
Rubber Trees	Ficus elastica
Willows	Salix species

Fruit trees being specifically grown for their edible fruit for human consumption

f) The tree species in Table 2 if less than 10m tall.

Table 2: Non-native trees of amenity value

Common Name	Botanical Name
Camphor Laurel	Cinnamomum camphora
Liquidambar	Liquidambar styraciflua
Radiata Pine	Pinus radiata
Poplars	Populus species

Note: Council Owned & Managed Lands - Private landowners must obtain approval for the removal or pruning of trees and other vegetation on land owned or managed by Council including road reserves to which Council is the roads authority and crown reserves to which Council is the trust manager.

The only exception is where Council (or its agent) carries out the work after it has been assessed in accordance with the 'Tree Management Policy – Council Managed Lands'.

Works to trees on public land generally need to go through a review of environmental factors (under Part 5 of the EP&A Act) before any works are undertaken. There is a cost associated with this process.

5.3 Assessment Criteria for Tree Removal and Pruning

If the tree or other vegetation proposed for removal or pruning is declared under Section 5.1 of this Chapter for the purpose of Part 2.3 of the Biodiversity and Conservation Vegetation SEPP and is not exempt under Section 5.2.2 of this Chapter, then a permit application must be submitted to Council.

5.3.1 Destabilisation of Foreshore, Water Courses and Agricultural Land

The objective of this Section is to:

 Encourage the retention of trees and other vegetation along water courses, foreshores and steep land to provide for bank stability, prevent erosion, and maintain amenity.

Performance Criteria		Acceptable Solutions		
P1	Trees and other vegetation are maintained to ensure the protection of: Soil and bank stability. Water quality by filtering sediments, nutrients and pollutants. Terrestrial habitat.	A1.1	Removal or pruning of trees and other vegetation only occurs within 20 metres of a bank of a large (category 1) water course is minimised and erosion control measures have been considered; and	
		A1.2	A program of replanting of local native species is proposed to maintain bank stability, water quality and terrestrial habitat. The program should be provided as a written plan with maintenance commitments to ensure long term survivability and	
		A1.3	The application is supported by an Arborist Report prepared by a suitably qualified and practising Arborist to assess the health and condition of the tree/s.	
P2	Land with steep slopes is maintained in a stable condition.	A2.1	Removal or pruning of trees and other vegetation on mapped land with a slope in excess of 20% is minimised and erosion control measures have been considered; and	
		A2.2	A program of replanting of local native species is proposed to maintain slope stability.	
		A2.3	Where required, the application is supported by an Arborist Report prepared by a suitably qualified and practising Arborist to assess the health and condition of the tree/s.	

- P3 Trees and vegetation associated with or adjacent to State Environmental Planning Policy (Resilience and Hazards) 2021No 14—Coastal Wetlands (SEPP 14) wetland areas is retained to maintain the viability of the wetlands.
- A3.1 Tree and other vegetation removal or pruning only occurs:
 - a) In an artificial wetland; and
 - b) 100 metres or more away from any natural wetland (including buffers).
- A3.2 Where required, the application is supported by an Arborist Report prepared by a suitably qualified and practising Arborist to assess the health and condition of the tree/s.

5.3.2 Character and Scenic Amenity of Non-Urban Roads

The objective of this Section is to:

i. Encourage the retention of vegetation along non-urban road corridors to ensure character and biodiversity value is maintained and enhanced.

		A	labla Oaladiana
Pe	rformance Criteria	Acceptable Solutions	
P4	Trees and other vegetation along non- urban road boundaries are retained for its aesthetic, habitat and water quality value.	A4.1	Tree and other vegetation removal or pruning within 30 metres of a non-urban road boundary is minimised; and
		A4.2	A program of replanting local native or suitable plant species is proposed to maintain aesthetic, habitat and water quality values of the non-urban area.

5.3.3 Amenity Considerations

The objective of this Section is to:

 Ensure that the unique character and environmental integrity of towns and villages in the Shoalhaven LGA is retained through the appropriate management of trees and other vegetation.

Performance Criteria			Acceptable Solutions	
P5	Character of towns and villages is maintained and improved by the retention of mature trees.	A5.1	Where mature trees or other vegetation have been removed, they are replaced with trees native to the region in an appropriate location.	
			Note: An Arborist Report prepared by a suitably qualified and practicing Arborist to assess the health and condition of the tree/s may be required.	

P6	Enable residents to access solar power alternatives.	A6.1	Trees or other vegetation removed or pruned to facilitate solar access for the tree owner or their neighbours are kept to the minimum necessary to ensure solar efficiency.
P7	Retain and value a healthy streetscape.	A7.1	Removal of a tree that is a poor specimen and is in a state of decline that is prolonged and irreversible is supported by an Arborist Report prepared by a suitably qualified and practising Arborist in relation to the health and condition of the tree/s.
P8	Protect public and private assets from unnecessary damage.	A8.1	Removal of trees that have caused or are likely to cause significant structural damage and is supported by relevant evidence; and
		A8.2	The application is supported by written expert advice and other reasonable alternatives are not available.

5.3.4 Heritage Considerations

The objective of this Section is to:

i. Ensure that the heritage values and unique character of towns and villages in the Shoalhaven LGA are retained through the appropriate management of tree removal.

Shoainaven LGA are retained through the appropriate management of tree removal.			
Performance Criteria		Acceptable Solutions	
P9.1	Heritage values and character of towns and villages is maintained and improved by the retention of heritage trees or trees within the curtilage of a heritage item or heritage conservation area	A9.1	Removal or pruning of trees or vegetation is of a minor nature or is for the maintenance of the heritage item, Aboriginal object, Aboriginal place of heritage significance, or heritage
P9.2	The indigenous heritage of Shoalhaven is respected through the retention of trees and vegetation associated with Aboriginal objects or Aboriginal places of heritage significance.		conservation area, and will not adversely affect the heritage significance of the heritage item, Aboriginal object, Aboriginal place of heritage significance, or heritage conservation area; and
		A9.2	A heritage management document prepared by a suitably qualified heritage consultant; and an Arborist Report prepared by a suitably qualified and practising Arborist to assess the health and condition of the tree/s is provided.
			Note: Prior to any permit application being made under this chapter, the

applicant must notify Council of the proposed tree and/or vegetation removal or pruning in accordance with Clause 5.10(3) of <i>SLEP 2014</i> . Council will then advise in writing if it is satisfied that consent under Clause 5.10 of <i>SLEP 2014</i> is not required

5.3.5 Other Important Vegetation

The objective of this Section is to:

i. Ensure that sensitive areas of the Shoalhaven are protected.

Performance Criteria		Acceptable Solutions	
P10	Verified EECs are protected.	A10.1	The trees to be removed are not part of a listed EEC (mapped in this DCP) in accordance with an assessment by a suitably qualified person.
P11	Removal of trees in mapped paper subdivisions is avoided or minimised.	A11.1	Removal of any trees in Jerberra Estate is in accordance with Chapter N20 Jerberra Estate.
		A11.2	Removal of any trees in other paper subdivisions within Shoalhaven is limited to removal and pruning that is in conjunction with an approved development or use.
			Note: An Arborist Report prepared by a suitably qualified and practicing Arborist to assess the health and condition of the tree/s may be required.
P12	Toona australis are protected.	A12.1	A report from a suitably qualified Arborist is provided and determines that the <i>Toona australis</i> is obviously severely damaged, decayed or causing structural damage.
P13	Areas recognised for their scenic value are preserved.	A13.1	Removal of trees on land covered by the Scenic Protection Area Map of <i>SLEP 2014</i> is minimised.
		A13.2	A program of replanting of local native species is proposed.
P14	Trees and other vegetation with environmental significance are appropriately managed.	A14.1	Submission of an assessment of significance (5 part test) by a suitably qualified person for any tree that contains a hollow, is a threatened species or is a component of an EEC.

All trees and other vegetation to be removed or pruned to be clearly marked on site for inspection purposes.
Animal handler to be present on site to rescue any animals, where there is proposed removal of a hollow bearing tree.

6 Advisory Information

6.1 Approval Process

Council is required to determine applications for permits within 28 days from the date of application.

Council may request further information about the proposed clearing if Council considers necessary for its proper consideration of the application. Any period between the applicant being requested to provide further information and the information being received by Council will not be counted in respect of Council's timeframe for determining an application.

Council will carry out public notification for any application for a permit for the removal or pruning of ten (10) or more trees.

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

6.2 Application Documents

All permit applications must be accompanied by a Tree & Vegetation Plan which is drawn to scale and illustrates:

- Property boundary, existing structures and access roads;
- Location of all trees and other vegetation on the lot and identification of those trees or vegetation proposed for removal or pruning with approximate heights and widths;
- The total area (in m²) of clearing being applied for, and total area (in m²) of previous clearing;
- A description of the trees or vegetation, including species name, proposed for removal or pruning;
- Distance of those trees or vegetation proposed for removal or pruning from the nearest boundary and/or structure;
- If relevant, placement of drainage and sewer mains, and overhead power lines;
- Location of any known watercourses on the property;

- Any proposed Exempt & Complying (E&C) development plans, for which the tree or vegetation removal is a pre-curser. This must include a plan showing the proposed development, the location of the trees that are exempt under the E&C Code as well as those to be assessed i.e. subject of this application; and,
- A north arrow.

The permit application must be signed by the owner(s) of the property on which the trees are growing and accompanied by the relevant fee (refer to Council's Fees and Charges).

6.3 Other legislation or policies you may need to check

Note: This section is not exclusive and you may be required to consider other legislation, policies and other documents with your application

Exemption under this Chapter does not equal an exemption under other legislation controlling the removal or pruning of trees and other vegetation. Consideration should be given to the following legislation before carrying out any work:

Council Policies & Guidelines	Tree Management Policy – Council Managed Lands
External Policies & Guidelines	 Australian Standard Protection of trees on development sites: AS 4970-2009 Australian Standard Pruning of Amenity Trees: AS 4373-2007 Rural Fire Service Planning for Bushfire Protection 2019 2006
Legislation	 Biodiversity Conservation Act 2016 and Regulations Environmental Protection and Biodiversity Conservation Act 1999 Fisheries Management Act 1994 Forestry Act 1916 Environmental Planning and Assessment Act 1979 Heritage Act 1977 (Sections 129A and 139) Local Land Service Act 2013 Noxious Weeds Act 1993 Rivers and Foreshores Improvements Act 1948 Rural Fires Act 1997 State Environmental Planning Policy (Biodiversity and Conservation) 2021 State Environmental Planning Policy SEPP (Exempt and Complying Development Codes) 2008 State Environmental Planning Policy (Resilience and Hazards) 2021 SEPP (Vegetation in Non-Rural Areas) 2017 State Environmental Planning Policy No 14 — Coastal Wetlands State Environmental Planning Policy No 26 — Litteral Rainforests State Environmental Planning Policy No 44 — Koala Habitat Water Management Act 2000 (Guidelines for Riparian Corridors and Waterfront Land)