

Vegetation Vandalism Prevention Policy

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Appendix 1: Legislative framework

1. Purpose

This policy has been prepared to prevent vegetation vandalism that occurs throughout the Shoalhaven Local Government Area. It articulates the actions that Council may take in response to vegetation vandalism on public land.

The primary objective of this policy is to reduce vegetation vandalism across the Shoalhaven by:

- a) Promoting the value of natural and planted vegetation to the community.
- b) Communicating the environmental, social, economic, and cultural consequences of vegetation vandalism and the penalties that can apply.
- c) Facilitating the enforcement of legal action to reduce the reoccurrence of vegetation vandalism.
- d) Defining appropriate and consistent preventative, investigative, response and remediation actions to be undertaken by Council.
- e) Encouraging broader community involvement in the prevention of vandalism.

2. Statement

2.1 Scope

This policy applies to all public land owned or managed by Shoalhaven City Council, including natural areas, parks, gardens, roadsides, and sportsgrounds. Vegetation growing on private lands is covered under Tree and Vegetation Management – DCP Chapter G4 (private land).

This policy applies to all instances of vegetation vandalism, including felling, poisoning, pruning, burning, and unauthorised mowing and slashing of native vegetation. It also applies to unauthorised vehicular access to public areas and the associated damage to vegetation.

If this policy conflicts with any other Council policy, this policy prevails over all other policies.

2.2 Background

The Shoalhaven community is the custodian of diverse vegetation across a range of natural and built landscapes. Such vegetation is essential for the conservation of endemic biodiversity, by providing vital foraging, sheltering, and breeding habitat. It also has strong symbology for indigenous people, given the historical use of bark, wood and trees for practical and emblematic purposes. Accordingly, vegetation is protected under state and commonwealth legislation.

Vandalism of vegetation has a significant and cumulative impact on the environment. These impacts include reduced visual and aesthetic values, loss of environmental functions such as carbon storage and sequestration, air pollution reduction, urban heat mitigation, windbreaks and erosion control, riparian and coastal zone

stabilisation, and the loss of cultural connections, and of wildlife habitat and biodiversity values. There is also a social cost of vegetation vandalism with impacts on public health including mental health and general wellbeing, with the potential to create polarisation and conflict within the community.

Tree and vegetation vandalism can have substantial financial and human resource costs for Council including the direct loss of the asset value of the trees or other vegetation, the cost of investigation, rehabilitation costs and the cost of implementing punitive/deterrence measures.

This policy has drawn upon those of other NSW Councils and input from the local community.

3. Provisions

3.1 Policy Principles

The principles of this policy are centred on the following:

- a) The long-term protection and management of vegetation (including re-establishment in previously vandalised areas) is integral to maintaining the economic, cultural, environmental, and social values of the Shoalhaven.
- b) Healthy, diverse natural and planted vegetation contributes significantly to environmental health and to human health and wellbeing.
- c) Vandalism of vegetation is a serious criminal offence under state and commonwealth legislation.
- d) The identification and prosecution of perpetrators of vegetation vandalism is pursued consistently throughout the Shoalhaven.
- e) Council and the community have a responsibility for the prevention of vegetation vandalism through the enactment of shared vigilance and the rehabilitation of damaged areas.
- f) Council authorised vegetation trimming, removal, mowing, and slashing is not subject to this policy. Authorisation, dependant on the protection status of the vegetation, may involve that sought in accordance with state and commonwealth legislation.

3.2 Definitions

Vegetation Vandalism is the unlawful destruction, removal (dead or alive), damage or injury to vegetation. Examples include poisoning, burning, felling, ringbarking, unauthorised mowing, pruning, trimming, and slashing.

There is a wide variety of situations in which vegetation can lawfully be removed. These include, but are not limited to weed removal, and certain minor vegetation removal and trimming on private property by the owner or with the owner's consent.

Vegetation includes any of the following, whether dead or alive, native, or exotic, at any stage of its life cycle:

- a) A tree (including any sapling or shrub).
- b) An understorey plant.
- c) A groundcover (being any type of grass or herbaceous vegetation).
- d) A plant occurring in a wetland.

The term vegetation within this policy excludes recognised agricultural or environmental weeds listed under the *Biosecurity Act 2015* (NSW).

3.3 Legislation

A range of offences under state and commonwealth legislation apply for vegetation vandalism. An overview of the relevant legislation and the associated offences, responsible authorities, and the nature of penalties that apply are included in Appendix 1.

3.4 Education

Council's education program associated with the importance of vegetation in the local context, and to prevent vandalism, is to include the following key elements:

- a) Environmental functions of vegetation in natural and urban environments including habitat value, water quality, air quality, shade, erosion control, dune and riparian stabilisation and protection, aesthetics, weed suppression, noise attenuation, climate change mitigation and wind-breaking.
- b) The legislative context that is protecting vegetation, with a focus on why this level of protection is mandated by state and commonwealth legislation.
- c) The importance of healthy, diverse vegetation for maintaining human health and wellbeing.
- d) The role of community collegial works to help protect and enhance our local environment through the promotion of volunteer Bushcare programs.
- e) The cumulative impacts of vegetation loss are assessed and informed in the context of previous and concurrent events.
- f) The economic role and value of vegetation, include carbon sequestration, oxygen production, biodiversity support, erosion control, recreation, and tourism.
- g) Offences may be criminal acts that carry with them potential fines and punishments. Successful prosecutions and enforcement actions may be publicised to ensure that the consequences of these unlawful acts are appropriately advertised.
- h) There is a direct economic cost to ratepayers resulting from acts of vandalism, in terms of investigation, replacement and remediation.
- i) Community is encouraged to be involved in maintenance and protection of vegetation through its volunteer programs such as Bushcare and Parkcare.

- j) Any mowing in Council reserves must be authorised by Council. Unauthorised mowing may be an offence under various legislation and can result in penalties.
- k) The identity of the perpetrator of vegetation vandalism cannot be assumed.
- l) Explanation is required on what is lawful vegetation trimming or removal and what is not.
- m) Specific vandalism events can be publicised through a range of activities, such as on-site signage, stencilling of dead trees, localised pamphlet drops, and newsletter and media articles.
- n) Information about rehabilitation and other positive outcomes, to encourage a reduction in occurrences of vegetation vandalism. The dissemination of such information may also include the publication of the successful enforcement of legislation as a preventative measure for vegetation vandalism.

3.5 Monitoring and Prevention

Monitoring known locations of vegetation vandalism, as well as areas identified to be moderate to high risk, is a key facet in the prevention of this occurring on a more widespread scale. As such, Council will:

- a) Record vandalism incidents inclusive of an assessment of:
 - rates of vegetation vandalism;
 - the cumulative environmental, social, economic, and cultural impacts of vandalism within individual areas; and
 - the cumulative environmental, social, economic, and cultural impacts of vandalism across the Shoalhaven.
- b) the success of remediation and rehabilitation.
- c) Monitor the effectiveness of rehabilitation response efforts, as well as community education over time to reduce the frequency and spread of vegetation vandalism. This will include, but not be limited to, the installation of signage and the stratification of future surveillance activities.
- d) Actively promote community involvement in stewardship and maintenance of areas where vegetation vandalism has occurred.
- e) Target community awareness-raising initiatives towards areas where vegetation vandalism has occurred.

3.6 Compliance

Council's compliance activities are key to the reduction of vegetation vandalism. The following compliance processes will be enacted:

- a) An attempt will be made to identify the culprit(s) of vegetation vandalism for all cases, with the goal to impose relevant fines or prosecution. Resources will be prioritised for high impact and cumulative vegetation vandalism events.

- b) Variable surveillance actions will be implemented by Council to identify and pursue compliance. Information collected through the surveillance measures (including using cameras within legal bounds) may assist with prosecution, where applicable.
- c) Rewards will typically be offered for information that may lead to prosecution. Council provides a reward of \$5,000 for any information provided that leads to a successful prosecution.
- d) Council may prepare and adopt a vandalism prevention plan for areas that are regarded as being at high-risk of continued vandalism. Covert surveillance devices may be used, within legal bounds, as part of the plan for these areas and images may be publicised to identify the culprit(s). Where vegetation is protected by state and commonwealth legislation, the enforcement of Council's compliance functions and preparation of vandalism prevention plans will involve collaboration with relevant agencies.
- e) For applicable cases, proceedings are to be pursued in the Land and Environment Court where sufficient evidence exists.
- f) Council will seek to recover the full costs associated with response measures. These may include:
 - o professional costs associated with assessing and reporting on the vandalism,
 - o the costs of signage and its installation and other communication activities, and
 - o all rehabilitation costs (planning, works and monitoring) for the area vandalised to have adequately recovered.

3.7 Rehabilitation

Rehabilitation of areas impacted on by vegetation vandalism will be carried out by Council in the following way:

- a) Vegetation vandalism sites within natural areas will be rehabilitated as a matter of priority to reduce the long-term and cumulative environmental, social, economic, and cultural impacts. The aim of such rehabilitation will be to restore a plant community structure that would naturally occur in the impacted-on area.
- b) Replanting will occur and Council will replace vandalised vegetation with the same vegetation type (i.e., trees, shrubs, and ground covers) at a ratio of five to one.
- c) Consideration is to be given to planting fast-growing and advanced plants.
- d) Vandalised vegetation will not be removed from site unless assessed as a safety hazard.
- e) Signage will only be removed when site vegetation is assessed to be rehabilitated and appropriately re-established. Council's inspection and surveillance activities will be undertaken to confirm this.

4. Implementation

City Development (Environmental Services, Certification and Compliance), City Services (Works and Services), Media and Communications.

5. Review

The Environmental Services Department will review this policy within one year of the election of Council.

6. Application of Ecologically Sustainable Development Principles

Ecologically Sustainable Development (ESD) requires effective integration of social, economic, and environmental considerations in decision-making processes. ESD can be achieved through implementation of four principles and programs:

- a) The precautionary principle.
- b) Intergenerational equity.
- c) Conservation of biological diversity and ecological integrity.
- d) Improved valuation, pricing, and incentive mechanisms.

This policy incorporates ESD principles by facilitating the protection, restoration, and conservation of beneficial vegetation for future generations. It provides for the maintenance and improvement of biodiversity and recognises the values and costs involved with the issue of vegetation vandalism.

7. Appendix

1. LEGISLATIVE FRAMEWORK

OFFENCE	OFFENCE PROVISION	PROSECUTION AUTHORITY	JURISDICTION	SHORT OFFENCE CODE	PENALTIES (as at September 2019)	LIMITATION PERIOD (FROM THE DATE OF OFFENCE)	REMEDATION
Prohibited development undertaken	s.4.3b of the Environmental Planning and Assessment Act 1979	Local Government	Penalty Infringement Notice	Carry out development forbidden on land	\$6000 – Corporation \$3000 – Individual	1 years	
Prohibited development undertaken	s.4.3b of the Environmental Planning and Assessment Act 1979	Local Government	Local Court	Carry out development forbidden on land	Tier 1 monetary penalty, Max – 1000 penalty units	2 years	
Prohibited development undertaken	s.4.3b of the Environmental Planning and Assessment Act 1979	Local Government	Land and Environment Court	Carry out development forbidden on land	Tier 1 monetary penalty, Corporation – Max \$5,000,000 Individual – Max \$1,000,000	2 years	A Court may impose remediation
Wilful or negligent use of a pesticide that injures the property of another person	s.7(1)(b) of the Pesticides Act 1999	Environmental Protection Authority (EPA)	Land and Environment Court		Up to \$120,000 / \$250,000 (individual / corporation).	3 years from the date of the offence or the date on which the offence first came to notice of an “authorised officer”.	A court may also, where the offence is proven, order the offender to restore land damaged as a result of the offence and / or order the offender to pay the costs of a “public authority” (which includes a Council) where that authority has incurred costs as a result of the offence or in the clean-up, abatement, or mitigation of pesticide pollution
Use of a pesticide in a manner that harms the property of another person	s.10(1)(b) of the Pesticides Act 1999	Environmental Protection Authority (EPA)	Infringement Notice		Corporation: \$1,500 Individual: \$750	3 years from the date of the offence or the date on which the offence first came to notice of an “authorised officer”.	
Use of a pesticide in a manner that harms the property of another person	s.10(1)(b) of the Pesticides Act 1999	Environmental Protection Authority (EPA)	Local Court		(2) Up to \$20,000	3 years from the date of the offence or the date on which the offence first came to notice of an “authorised officer”.	

OFFENCE	OFFENCE PROVISION	PROSECUTION AUTHORITY	JURISDICTION	SHORT OFFENCE CODE	PENALTIES (as at September 2019)	LIMITATION PERIOD (FROM THE DATE OF OFFENCE)	REMEDIATION
Use of a pesticide in a manner that harms the property of another person	s.10(1)(b) of the Pesticides Act 1999	Environmental Protection Authority (EPA)	Land and Environment Court.		Corporation: \$120,000 Individual: \$60,000	3 years from the date of the offence or the date on which the offence first came to notice of an "authorised officer".	
Use registered pesticide in contravention of approved label	s.15(1) of the Pesticides Act 1999	Environmental Protection Authority (EPA)	As for offence under s.10(1)(b) of the Pesticides Act		As for offence under s.10(1)(b) of the Pesticides Act.	As for offence under s.10(1)(b) of the Pesticides Act.	
Damaging habitat of threatened species or ecological communities	s.2.4 of the Biodiversity Conservation Act 2016	Office of Environment and Heritage	Land and Environment Court		\$330,00 for individuals or \$1,650,000 for corporations.	2 years after the date on which the offence is alleged to have been committed or on which evidence came to the attention of the relevant investigation officer	
Significant impact to a threatened species, threatened ecological communities and migratory species	s.18 of the Environment Protection and Biodiversity Act 1999	Minister for the Environment	Federal Court		5,000 penalty units – Individual 50,000 penalty units – body corporate		The Minister may ensure that appropriate steps are taken to rehabilitate the habitat
Use of pesticide in a manner that leads to pollution of lands	s.142A of the Protection of the Environment Operations Act 1997	Local Government	Penalty Infringement Notice Local Court Land and Environment Court		Up to \$500,000 for individuals or Up to \$2,000,000 for corporations.	3 years	Clean Up Notice Court Order Remediation
Development undertaken without development consent and/or development not carried out in accordance with a consent or environmental planning instrument	s.4.2 of the Environmental Planning and Assessment Act 1979	Local Government	Penalty Infringement Notice	Development without development consent	\$3000 – Individual \$6000 – Corporation		
Development undertaken without development consent	s.4.2 of the Environmental Planning and	Local Government	Local Court	Development without development consent	Tier 1 monetary penalty, Max – 1000 penalty units	2 years	

OFFENCE	OFFENCE PROVISION	PROSECUTION AUTHORITY	JURISDICTION	SHORT OFFENCE CODE	PENALTIES (as at September 2019)	LIMITATION PERIOD (FROM THE DATE OF OFFENCE)	REMEDATION
and/or development not carried out in accordance with a consent or environmental planning instrument	Assessment Act 1979						
Development undertaken without development consent and/or development not carried out in accordance with a consent or environmental planning instrument	s.4.2 of the Environmental Planning and Assessment Act 1979	Local Government	Land and Environment Court		Tier 1 monetary penalty. Tier 1 monetary penalty, Corporation – Max \$5,000,000 Individual – Max \$1,000,000	2 years	
without lawful excuse removes any plant from a public place	s.629(2) Local Government Act 1993	Local Government	Penalty Notice	Unlawfully remove plant from public place	\$220	6 months	
without lawful excuse removes any plant from a public place	S629(2) Local Government Act 1993	Local Government	Local Court	Unlawfully remove plant from public place	Up to 20 penalty units	6 months	

UNAUTHORISED REMOVAL OF VEGETATION IN OTHER AREAS NOT MANAGED BY COUNCIL	
Area/zoning	Responsibility
National Parks and lands reserved or acquired under the National Parks and Wildlife Act.	NSW National Parks and Wildlife Service
Rural zoning*	Local Land Services
Defence Lands	Commonwealth Government
Marine Parks	Department of Primary Industries

* unless associated with a Development Application on private property then it is Shoalhaven City Council responsibility