

1B.6 Tree and Vegetation Preservation

This section is made in accordance with State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (the Vegetation SEPP) and prescribes the trees and vegetation to which the Vegetation SEPP and/or Clause 5.10 of the HLEP applies and the applicable approval process.

1B.6.1 Tree Preservation

Prescribed Trees

- a. The prescribed trees that are protected by the Vegetation SEPP and/or Clause 5.10 of the HLEP and this Section of the DCP includes:
 - trees except exempt tree species in Hornsby Shire, as listed in Table 1B.6 (a) or subject to the Biodiversity Offset Scheme,
 - all trees on land within a heritage conservation area described within the *HLEP*, and
 - all trees on land comprising heritage items listed within the *HLEP*.
- b. To damage or remove any tree protected under this DCP is prohibited without the written consent of Council, except in accordance with the exemptions prescribed in this part (under the heading 'Exempt Tree Work').
- c. For the purposes of this section:
 - **Arborist (Project and Consulting)** must have obtained through training and completed Australian Qualification Framework (AQF) Level 5, Diploma of Arboriculture.
 - **A tree** is defined as a long lived woody perennial plant with one or relatively few main stems with the potential to grow to a height greater than 3 metres.
 - **Biodiversity Offset Scheme (BOS)** means a scheme enacted by the *Biodiversity Conservation Act 2016*, *Biodiversity Conservation Regulation 2017* and *Local Land Services Amendment Act 2016*. The BOS includes a Sensitive Biodiversity Values (SBV) Map and Area Threshold, either which trigger an alternative approval framework for the clearing of native vegetation. The SBV Map can be viewed on the OEH website and the SBV Area Thresholds are included as notes at the end of this section.
 - **Native vegetation** has the same meaning as in Part 5A of the *Local Land Services Act 2013*, with the exclusion of 60B(4) for the purposes of including marine vegetation in the definition of native vegetation.
 - **Damage** means to impair the value or usefulness, or weaken the health or the normal function of a tree

or vegetation.

- **Remove** means to cut down, knock down, kill, lop or destroy.
- **Prune** means to selectively remove branches.
- **Tree Protection Zone** means the area above or below ground at a given distance from the trunk set aside for the protection of a tree's roots and crown to provide for the viability and stability of a tree.

Table 1B.6(a) Exempt Tree Species in Hornsby Shire

Botanical name	Common Name
<i>Acacia baileyana</i>	Cootamundra Wattle
<i>Acacia saligna</i>	Golden Wattle
<i>Acer negundo</i>	Box Elder
<i>Ailanthus altissima</i>	Tree of Heaven
<i>Alnus jorullensis</i>	Evergreen Alder
<i>Arecastrum romanzoffianum</i>	Cocos Palm
<i>Celtis sinensis</i>	Hackberry
<i>Cinnamomum camphora</i>	Camphor Laurel
All edible fruit and nut trees except native species such as <i>Acmena spp</i> (Lilli Pilli), <i>Syzygium spp</i> (Lilli Pilli) <i>Elaeocarpus spp</i> (Blueberry Ash) or <i>Macadamia spp</i> (Macadamia Tree)	Fruit and Nut trees
<i>Cotoneaster spp.</i>	Cotoneaster
<i>Eriobotrya japonica</i>	Loquat
<i>Erythrina spp</i>	Coral tree
<i>Ficus elastica</i>	Rubber tree
<i>Gleditsia triacanthos</i>	Honey Locust
<i>Lagunaria patersonii</i>	Norfolk Island Hibiscus
<i>Ligustrum spp</i>	Privet
<i>Populus spp</i>	Poplar
<i>Pyracantha augustifolia</i>	Firethorn
<i>Robinia pseudoscacia</i>	Golden Robinia
<i>Salix spp</i>	Willow
<i>Schefflera actinophylla</i>	Umbrella Tree
<i>Schinus spp</i>	Peppercorn Tree
<i>Toxicodendron spp</i>	Rhus

Notes:

Further information on exempt tree species in Hornsby Shire is available on Council's website hornsby.nsw.gov.au.

Exempt Tree Work

d. The following exemptions to this part apply as set out below:

- The removal of a tree deemed by Council in writing and shown by recorded photographic evidence to be dead and is not required as the habitat of native fauna.
- The removal of species listed under the NSW *Biosecurity Act 2015*.
- Pruning of a tree by less than 10% of the foliage area in accordance with Australian Standard *Australian Standard AS 4373 Pruning of Amenity Trees AS 4373-2007* not more than once annually.
- The removal of or pruning of a tree where the base of the trunk of the tree at ground level is located within 3 metres of the foundation of an approved building (excluding detached garages, carports and other buildings ancillary to a dwelling house).
- The removal of a tree less than 3 metres in height not located within native vegetation.
- Trees deemed by Council in writing and shown by recorded photographic evidence or written evidence provided by a qualified Arborist (AQF.5) as an imminent risk to human life or is likely to cause substantial damage to property in the near future.
- The removal of or pruning to a tree located on Council owned or managed land provided the works are undertaken by Council or Council authorized agents.

e. **The exemptions at (d) above do not apply to:**

- all lands mapped as Biodiversity on the *HLEP Terrestrial Biodiversity Map*, or
- threatened species or land that contains native vegetation which is habitat for threatened species, populations or ecological communities listed in Schedule 1 and 2 of the *Biodiversity Conservation Act 2016* and protected matters listed under the *Commonwealth EPBC Act 1999*, or
- work that is contrary to a development consent that requires trees to be retained, or
- Any work to a tree that is or forms part of a heritage item or heritage conservation area, requires approval from the Council pursuant to the provisions of Clause 10(3) of the Vegetation SEPP and/or Clause 5.10 of the *HLEP*.

- land located within 50 metres of and including land that contains native vegetation which is habitat or potential habitat for species, populations or ecological communities listed in Schedule 1 and 2 of the *Biodiversity Conservation Act 2016* and protected matters listed under the *Commonwealth EPBC Act 1999*

Lodging an Application for Tree Work

- f. An application is required to be completed and forwarded to Council for all work to protected trees where an exemption does not apply. Table 1B.6(b) below identifies what type of application is required to be completed for work to trees.
- g. Where works to trees is required as part of other works for which development consent is required, the works will be assessed as part of the Development Application.

Notes:

Pursuant to 5.10.3 of the *HLEP*, Council has the ability to determine the type of application required in relation to trees on heritage properties.

AQF is the Australian Qualification Framework, a national framework for all educational and training purposes in Australia.

Table 1B.6(b) Type of Tree Application Required

Location	Extent of Works	Form of Application
Heritage Item	Council is satisfied that the works to a tree are minor as described by Clause 10(3) of Vegetation SEPP and Clause 5.10(3) of the HLEP	Tree Permit
	Major work to any tree	Development Application
Land within a Heritage Conservation Area	Council is satisfied that the works to a tree are minor as described by Clause 10(3) of Vegetation SEPP and Clause 5.10(3) of the HLEP.	Tree Permit
	Major work to any tree	Development Application
Other land - tree removal or pruning	Removal or pruning of trees not subject to BOS	Tree Permit
Other land - work within a Tree Protection Zone of a protected tree and/or a tree located on other land <i>Work includes Construction (driveways, concrete slabs, retaining walls) and earthworks (changes in soil levels, embankments, trenching)</i>	Work within the Tree Protection Zone not subject to BOS	Tree Permit
Work that is contrary to a development consent that requires trees to be retained	Work to any prescribed tree	Section 96 Application

- h. For the purpose of Table 1B.6(b), a *Tree Protection Zone* is defined as the area within:
- 9 metres of a tree with a diameter at breast height of 800mm or greater,
 - 7 metres of a tree with a diameter at breast height of between 400mm and 800mm, and
 - 4 metres of a tree with a diameter at breast height of 400mm or less.

Consideration of an Application for Tree Work

- i. The removal of, or work to, trees should be consistent with the applicable provisions of the Vegetation SEPP, HLEP and HDCP.
- j. Trees will be assessed using arboricultural, ecological and industry accepted safety evaluation methods to determine the safe useful life expectancy of the trees. Accordingly, any application for removal must demonstrate that the removal of the tree is appropriate based on an assessment of the safe useful life and risk to human life or property using industry relevant risk assessment such as Tree Risk Assessment Qualification (TRAQ) or Qualified Tree Risk Assessment (QTRA).
- k. Where trees are to be retained, the provisions of *Australian Standard AS 4970 Protection of Trees on Development Sites* must be applied.
- l. All tree pruning work must be carried out in accordance with *Australian Standard AS 4373 Pruning of Amenity Trees*.
- m. Any tree approved to be removed from a site should be replaced with a tree of like habit and indigenous to Hornsby Shire, planted as near as practicable to the location of the removed tree, grown to maturity and replaced if the planting fails to survive and thrive in accordance with Council’s Green Offsets Code.

Notes:

Works on land identified as “Biodiversity” on the HLEP Terrestrial Biodiversity Map should have regard to Section 1C.1.1 Biodiversity of this DCP.

Works involving heritage items and heritage conservation areas should also have regard to Part 9 Heritage of this DCP.

Section 12 of the Vegetation SEPP provides that the applicant for a permit may appeal to the Land and Environment Court against refusal by a Council to grant a permit. Any such appeal is to be made within 3 months of the date on which the applicant is notified of the decision or within 3 months after the Council is taken to have refused the application (whichever is later).

The Biodiversity Offset Scheme (BOS) includes a Sensitive Biodiversity Values (SBV) Map and Area Threshold. If either criteria is met then the offsets scheme must be applied unless it is subject to a listed exemption.

The SBV Map has been prepared as part of the BOS and may be viewed on the OEH website www.lmbc.nsw.gov.au/Maps/index.html?viewer=BVMap

The Biodiversity Conservation Regulation 2017 sets out the following SBV Area Thresholds:

Minimum lot size	Proposed area of clearing
Less than 1 hectare	0.25 hectares
Less than 2 hectares	0.5 hectares
2 to 39 hectares	0.5 hectare
40 to 999 hectares	1 hectare
1000 hectares or more	2 hectares

1B.6.2 Vegetation Preservation

Prescribed Vegetation

a. The prescribed vegetation that is protected by State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (the Vegetation SEPP) and/or Clause 5.10 of the *HLEP* and this Section of the DCP includes:

- Native vegetation except subject to the Biodiversity Offset Scheme (BOS), and
- vegetation on heritage listed properties under the *HLEP*.

b. To damage or remove any vegetation protected under this DCP is prohibited without the written consent of Council, except in accordance with the exemptions prescribed in this part (under the heading 'Exempt Vegetation Work').

c. For the purposes of this part:

- **A tree** is defined as a long lived woody perennial plant with one or relatively few main stems with the potential to grow to a height greater than 3 metres.
- **Biodiversity Offset Scheme (BOS)** means a scheme enacted by the *Biodiversity Conservation Act 2016*, *Biodiversity Conservation Regulation 2017* and *Local Land Services Amendment Act 2016*. The BOS includes a Sensitive Biodiversity Values (SBV) Map and Area Threshold, either which trigger an alternative approval framework for the clearing of native vegetation. The SBV Map can be viewed on the OEH website and the SBV Area Thresholds are included as notes at the end of this section
- **Native vegetation** has the same meaning as in Part 5A of the *Local Land Services Act 2013*, with the exclusion of 60B(4) for the purposes of including marine vegetation in the definition of native vegetation.
- **Damage** means to impair the value or usefulness, or weaken the health or the normal function of a tree or vegetation.
- **Remove** means to cut down, knock down, kill, lop or destroy.

Exempt Vegetation Work

d. An application is not required for the following work to vegetation protected under this DCP:

- The clearing of vegetation (excluding trees) on a property once every 5 years in accordance with the maximum cumulative area in Table 1B.6.2(a).

Table 1B.6.2(a) Exempt Vegetation Work

Land zone under HLEP	Maximum exempt vegetation removal
Prescribed rural areas (Zones RU1, RU2, RU4)	30m ²
Prescribed urban areas (Zones R2, R3, R4, RU5, SP2, SP3, B1, B2, B3, B4, B5, B6, IN1 & IN2)	10m ²

- The clearing of vegetation where deemed by Council in writing and shown by recorded photographic evidence to be dead and is not required for habitat for native fauna.
- The clearing of vegetation where deemed by Council in writing and shown by recorded photographic evidence to be an imminent risk to human life or is likely to cause substantial damage to property in the near future.

e. **The exemptions in Table 1B.6.2(a) do not apply to:**

- land with a gradient in excess of 20 percent,
- land containing marine vegetation,
- land located within 20 metres of and including a watercourse,
- land located within 50 metres of and including land identified as "Biodiversity" on the Terrestrial Biodiversity Map in *HLEP*,
- land located within 50 metres of and including land that contains native vegetation which is habitat or potential habitat for species, populations or ecological communities listed in Schedule 1 and 2 of the *Biodiversity Conservation Act 2016* and protected matters listed under the *Commonwealth EPBC Act 1999*
- work that is contrary to a development consent that requires vegetation to be retained,
- all vegetation on heritage listed properties,
- native vegetation within heritage conservation areas,
- land if it results in the fragmentation or isolation of native vegetation, or
- land if it reduces effective vegetation buffers to adjoining Community Open Space or Private Open Space lands.

f. Notwithstanding the exemptions at (d) above, minor work to vegetation that is or forms part of a heritage item or heritage conservation area, requires approval from the Council pursuant to the provisions of Clause 10(3) of the Vegetation SEPP and/or Clause 5.10 of the *HLEP*.

g. Any vegetation removed pursuant to the exempt provisions within this section should:

- occur in areas deemed to be ancillary to an approved existing dwelling or structure,
- be undertaken by hand (not heavy machinery), and
- require replacement planting to stabilise the soil (where necessary) that is indigenous to the adjoining vegetation community present and not include species recognised as invasive to native vegetation.

Lodging an Application for Vegetation Work

- h.** An application is required to be completed and forwarded to Council for all work to protected vegetation where an exemption does not apply. Table 1B.6.2(b) below identifies what type of application is required to be completed for work to vegetation.
- i.** Where vegetation work is required as part of other works for which development consent is required, the works will be assessed as part of the Development Application.

Table 1B.6.2(b) Type of Vegetation Application Required

Location	Extent of Works	Form of Application
Heritage Item	Minor work to any vegetation that is or forms part of a Heritage Item as described by Clause 10(3) of the Vegetation SEPP and Clause 5.10(3) of the HLEP	Vegetation Permit
	Major work to any vegetation that is or forms part of a Heritage Item (i.e. work that is not minor as described by Clause 10(3) of the Vegetation SEPP and Clause 5.10(3) of the HLEP)	Development Application
Land within a Heritage Conservation Area	Minor work to any protected vegetation as described by Clause 10(3) of the Vegetation SEPP and Clause 5.10(3) of the HLEP	Vegetation Permit
	Major work to any protected vegetation (i.e. work that is not minor as described by Clause 10(3) of the Vegetation SEPP and Clause 5.10(3) of the HLEP)	Development Application
Other land	Removal or modification of native vegetation not associated with development requiring consent	Vegetation Permit
Work that is contrary to a development consent that requires vegetation to be retained	Work to vegetation that is required to be retained or rehabilitated by the consent conditions	Section 96 Application

Consideration of an Application for Vegetation Work

- j. The removal of, or work to, vegetation should be consistent with the applicable provisions of the Vegetation SEPP, HLEP and HDCP.
- k. Vegetation will be assessed using an arboricultural, ecological and industry accepted safety evaluation method. Accordingly, any application for removal must demonstrate that the removal of vegetation is appropriate based on an assessment of the:
 - conservation significance/health/longevity of the vegetation; and
 - risk to human life or property.

Notes:

The clearing of native vegetation that is exempt in Table 1B.6.2(a) is to facilitate minor development such as sheds ancillary to dwellings that may be otherwise permissible under SEPP (Exempt and Complying Development Codes) 2008. The intent is not to allow extensive bushland removal.

Works on land identified as “Biodiversity” on the HLEP Terrestrial Biodiversity Map should have regard to Section 1C.1.1 Biodiversity of this DCP.

Works involving heritage items and heritage conservation areas should also have regard to Part 9 Heritage of this DCP.

Environmental Protection Works including bush regeneration work is permitted without development consent in the land use table for most zones under the HLEP.

Section 12 of the Vegetation SEPP provides that the applicant for a permit may appeal to the Land and Environment Court against refusal by a Council to grant a permit. Any such appeal is to be made within 3 months of the date on which the applicant is notified of the decision or within 3 months after the Council is taken to have refused the application (whichever is later).

The Biodiversity Offset Scheme (BOS) includes a Sensitive Biodiversity Values (SBV) Map and Area Threshold. If either criteria is met then the offsets scheme must be applied unless it is subject to a listed exemption.

The SBV Map has been prepared as part of the BOS and may be viewed on the OEH website www.lmbc.nsw.gov.au/Maps/index.html?viewer=BVMap

The Biodiversity Conservation Regulation 2017 sets out the following SBV Area Thresholds:

Minimum lot size	Proposed area of clearing
Less than 1 hectare	0.25 hectares
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1C General Controls

The following section provides general controls for the protection of the environment and applies to all forms of development.

1C.1 Natural Environment

1C.1.1 Biodiversity

HLEP Clause 6.4 contains provisions for development of land identified as Biodiversity on the Terrestrial Biodiversity Map.

The following controls apply to land with biodiversity value, including land affected by the HLEP provisions.

Desired Outcomes

- a. Development that provides for the conservation of biodiversity including threatened species and populations, endangered ecological communities, remnant indigenous trees, regionally and locally significant terrestrial and aquatic vegetation.
- b. Development that maintains habitat for native wildlife and wildlife corridors to provide for the movement of fauna species.

Prescriptive Measures

General

- a. Development should seek to:
 - avoid potential adverse impact on biodiversity,
 - if that impact cannot be avoided, minimise that impact, or
 - if the impact cannot be minimised, to mitigate the impact.
- b. A flora and fauna assessment is required for development that may impact on:
 - land mapped as Biodiversity on the HLEP Terrestrial Biodiversity Map, or
 - native vegetation which is habitat for species listed in Schedule 1, 1A or 2 of the *Threatened Species Conservation Act 1995*.
- c. Development should avoid the fragmentation of existing native vegetation.
- d. Development should seek to retain unique environmental features of the site including:
 - rock outcrops,
 - wetlands and the like,
 - watercourses, drainage lines and riparian land,

- groups of significant trees and vegetation, and
 - mature hollow trees and other fauna habitat features on the site.
- e. Development should incorporate and maintain a buffer zone to significant flora and fauna. Development should not include buildings, structures and earthworks within the required buffer zone prescribed in Table 1C.1.1(a).

Table 1C.1.1(a): Buffer Zones to Vegetation Types

Significant Vegetation Type	Minimum Buffer Zone (metres)
Endangered ecological communities and regionally significant bushland (as mapped in the HLEP Terrestrial Biodiversity Map)	20m
Wetland or saltmarsh plant communities	20m
Populations of threatened flora species, habitat for threatened species, locally significant bushland, groups of remnant indigenous trees	10m

- f. Notwithstanding the buffers presented in Table 1C.1.1(c) above, certain native vegetation that is habitat for species listed in the Threatened Species Conservation Act may require larger buffer zones in order to avoid potential adverse impacts on biodiversity.

Notes:

A flora and fauna assessment may be required for development that involves the clearing, removal or alteration of other native vegetation. A flora and fauna assessment should be prepared by a suitably qualified consultant and address Council's *Flora and Fauna Assessment Guidelines*. This may require an Assessment of Significance (7-part test) or Species Impact Statement. In addition, a Vegetation Management Plan (VMP) may be required where it is likely that a proposal will impact either directly or indirectly on areas of remnant native bushland and/or riparian areas. For further information refer to:

- NSW DPI Fisheries key estuarine habitats show the spatial distribution of mangroves, saltmarshes and seagrass beds in the estuarine. These ecosystems are fragile and provide key ecological roles to the Hawkesbury Nepean River System. Website at dpi.nsw.gov.au/research/areas/aquatic-ecosystems-estuarine-habitats-maps
- *Flora and Fauna Assessment Guidelines for Development Applications* available at Council's website hornsby.nsw.gov.au
- *Guidelines for the preparation of Vegetation Management and Restoration Plans* available at Council's website hornsby.nsw.gov.au

Under the NSW Scientific Committee Determination for Blue Gum High Forest and Sydney Turpentine Ironbark Forest Endangered Ecological Communities, it is noted that these communities may only be represented by the presence of remnant trees with no remnant or a highly modified understorey.

Landscaping adjacent to bushland

- g. Fencing adjoining bushland should be designed to allow for the movement of native fauna, and limit predation on native wildlife by domestic animals. The use of barb wire fencing is not supported.
- h. Where landscaping is proposed within the buffer zones, it should comprise trees, shrubs, understorey and groundcover species indigenous to the adjoining vegetation community.

Note:

Species declared as a noxious weed in Hornsby Shire should not be used in landscaping works. For further information see the Noxious Weeds List for Hornsby Shire at website hornsby.nsw.gov.au.

Roadside Vegetation

- i. Native vegetation along roadsides should be retained where possible as it provides fauna habitat, links bushland areas, and maintains the scenic qualities of the area.
- j. Accessway crossings and utilities should be located and designed to minimise impacts on roadside vegetation.

Land Adjoining Public Open Space

- k. Development within or adjoining land zoned or reserved for public open space should address means to protect and minimise bushland disturbance.
- l. Development should provide buffers for bushfire protection on private land, not on public land.

Wetlands, Salt Marsh, Seagrass Beds, Mangroves and Fish Habitats

- m. Development proposals which may impact on fish habitats should have regard to gazetted Fish* Habitat Protection Plans.
- n. Development proposals should avoid impact on key aquatic habitats such as saltmarsh, seagrass beds and mangroves as a result of their key role in the ecology of estuarine ecosystems.

Note:

*The term 'fish' includes all aquatic invertebrates such as yabbies, shrimps, oysters, mussels, insect larvae, beach worms, sea stars, and jelly fish. For key fish habitats, refer to: dpi.nsw.gov.au/fisheries/habitat/protecting-habitats.

NSW Fisheries has gazetted the following Fish Habitat Protection Plans:

- Plan 1 – dealing broadly with dredging and reclamation activities, fish passage requirements and the protection of mangroves, other marine vegetation and snags.
- Plan 2 - for sea grasses,- with the aim to preserve fish stocks and habitats.
- Plan 3 - for the Hawkesbury Nepean River System,- the Plan aims to preserve fish stocks and habitats.

Riparian Areas

- o. Development should be designed and located to maintain an effective watercourse riparian zone comprising native vegetation. See planning controls for watercourses at Section 1C.1.3 of this DCP.

Notes:

The Biodiversity controls aim to implement the objectives of Council's Biodiversity Conservation Strategy that includes to protect and improve the quality and extent of existing indigenous vegetation and to conserve and recreate connectivity across fragmented landscapes.

For further information on and mapping of vegetation types refer to the following studies: *Native Vegetation Communities of Hornsby Shire* (P & J Smith 2008) and *Remnant Trees in the Southern Rural District of Hornsby Shire* (P & J Smith 2008)

Endangered Ecological Communities and regionally significant vegetation areas are mapped as Biodiversity on the HLEP Biodiversity Map. Lands excluded from the Biodiversity Map may still contain endangered ecological communities, threatened species or their habitats.

Threatened Species Conservation Act 1995 (NSW) - The clearing or removal of any threatened flora species, endangered population, endangered ecological community or critical habitat under the *Threatened Species Conservation Act 1995* may require a separate approval from the NSW Office of Environment and Heritage.

Environment Protection and Biodiversity Conservation Act 1999 (Commonwealth) - The clearing or removal of remnant trees or other native vegetation which is listed as a "matter of national significance" under the *Environment Protection and Biodiversity Conservation Act 1999* may require a separate approval from the Commonwealth Department of Sustainability, Environment, Water, Population and Communities.