



# **SUPPLEMENTARY BUSINESS PAPER**

## **GENERAL MEETING**

**Wednesday 14 February 2018  
at 6.30PM**



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**13 DRAFT AMENDMENTS HORNSBY DEVELOPMENT CONTROL PLAN 2013 - TREE AND VEGETATION PRESERVATION**

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**EXECUTIVE SUMMARY**

- In December 2017, Council resolved to exhibit draft changes to Section 1.B.6 Tree and Vegetation Preservation and 1.B.6.2 Vegetation Preservation of the Hornsby Development Control Plan 2013 (HDCP).
- The exhibition process included public notices published in weekly editions of local newspapers, information published on Council's website and information distributed via Council's e-News, and displays at Council's administration centre and all libraries. Local newspapers also ran specific articles regarding the proposal.
- 132 submissions were received with 120 of those in support of the major change being, in general terms, to protect all species except those listed as exempt considering their undesirable characteristics.
- Those submissions in support of the change raised the environmental and amenity benefits of trees and anticipated more trees would be preserved.
- Those submissions opposed to changing the controls raised concerns about overregulation, property owners seeking to have more control over their trees and the controls having the consequence of discouraging people to plant new trees.
- It is recommended that Council adopt the amendments to Section 1.B.6 Tree and Vegetation Preservation, 1.B.6.2 Vegetation Preservation and the addition of Section 1.B.7 Tree and Vegetation Preservation within the City of Parramatta LGA (land formerly part of Hornsby LGA) of the Hornsby Development Control Plan 2013 (HDCP) shown in Attachment 3.

**RECOMMENDATION**

THAT Council:

1. Endorse the revised draft Tree and Vegetation Preservation controls attached to Deputy General Manager's Report No. IR2/18 for insertion in the Hornsby Development Control Plan 2013.
2. Notify all those who lodged a submission of Council's decision.
3. Authorise the preparation of guidance material to support the amended tree preservation provisions.

## PURPOSE

The purpose of this Report is to provide the results of the public exhibition and recommendations for proposed changes to Section 1.B.6 Tree and Vegetation Preservation and 1.B.6.2 Vegetation Preservation of the Hornsby Development Control Plan 2013 (HDCP).

These amendments are aimed at strengthening Hornsby Shire's tree protection measures and include housekeeping amendments as a result of the introduction of the *Biodiversity Conservation Act 2016* and the *Local Services Act 2013*.

## BACKGROUND

At the December 2017 General Meeting, Council considered Deputy General Manager's Report No. IR19/17 (Attachment 1) and resolved to exhibit the proposed amendment to HDCP during the period 20 December 2017 and 26 January 2018. A report on submissions was to be presented for Council's consideration at the earliest opportunity.

Since 2011, the approach has been to protect tree species native to Hornsby Shire; all trees located on land within a heritage conservation area, or on land containing a heritage item. This approach has meant exotic trees, and Australian native trees not naturally occurring in the Shire can be removed without the need for Council approval.

The recently exhibited amendments to the DCP propose, in simple terms, to reinstate the approach that existed prior to 2011 which has the effect of protecting all tree species other than those listed as exempt (which include species considered weeds, or hazardous to people or property).

## DISCUSSION

Section 1.B.6 Tree and Vegetation Preservation and 1.B.6.2 Vegetation Preservation of HDCP was publicly exhibited from 21 December 2017 to 26 January 2018 (37 days). The exhibition process was conducted in accordance with Clause 18 of the *Environmental Planning and Assessment Regulation (2000)* and involved:

- Public notices published in multiple editions of local newspapers
- Notification on Council's website
- Displays at Council's Administration Centre and all public libraries
- Distribution of material via Council's eNews (35,000 contacts)

### Results of submissions

There were 132 submissions received during the exhibition period. 120 of these submissions were in support of the proposed changes with a number of relatively minor amendments proposed regarding tree management. A summary of submissions and the response from Council officers is contained in Attachment 2.

Those in favour of the HDCP amendments anticipate more trees will be preserved under the proposal, noting the removal of trees in recent years together with an increase in the rate of new development. They also cited a range of environmental and amenity benefits of trees noting the protection of native fauna, provision of shade, improved water / air quality and general social well-being. This includes the benefits provided by exotic tree species as well local indigenous species.

Some submissions raised concerns that the HDCP was confusing and more information needed to be provided to guide people. It must be remembered that the HDCP forms part of the legislation and is not itself designed to be a comprehensive guide for all matters regarding tree management.

Notwithstanding, if the HDCP amendments are adopted, Council officers will review and update all relevant tree information on Council's website aimed at assisting and providing guidance for residents for all tree related matters.

Those opposed to the change from the current controls raised concerns about overregulation, property owners seeking to have more control over their trees that were dangerous. They felt the changes proposed would deter them from planting trees for fear Council would refuse them to be removed in the future.

Responses from residents in the rural areas were particularly concerned that consideration needed to be given to the fact that they had planted many trees in the past and felt they deserved greater flexibility should they seek to construct ancillary sheds or driveways near trees.

A small number of submissions sought to include Liquidambar trees as a species that should be exempt from protection as they consider them to be fast growing and their roots can impact structures. Residents will be able to submit a Tree Permit Application and Council officers can condition replacement trees where trees are clearly damaging a dwelling or structure. Other species were also nominated for exemption such as Jacarandas.

Some comments were also provided raising concerns that Camphor Laurels and Cocos Palms should not be made exempt. In preparing the species exemption list Council officers considered weed species and human health status of each tree as well as the species exemption lists for all adjoining councils.

A number of submissions highlighted the benefits of hollows for the protection of native fauna including endangered species. These matters are adequately considered as part of the Council Officer's assessment of applications.

Some submissions were concerned that the changes to the HDCP would remove the 10/50 vegetation clearing entitlements exposing greater threat to bushfires. This is not the case. Alternatively, some comments were received suggesting that Council should seek to curb the impact of the 10/50 clearing entitlements. The provisions of the HDCP are not able to overrule the existing 10/50 vegetation clearing entitlements.

The draft Tree and Vegetation Preservation controls have been revised to respond to the submissions and these are reflected in Attachment 3. Council officers have also made further minor amendments which reference *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*.

### **The City of Parramatta submission**

At the moment, the HDCP applies to land formerly within the Hornsby LGA and now located within the newly expanded City of Parramatta LGA (CoP). This situation will be retained until such time as the CoP establishes a new LEP.

In July 2017, the CoP endorsed the exhibition of amendments to Section 1.B.6.1 Tree and Vegetation Preservation and 1.B.6.2 Vegetation Preservation of HCDP (as it relates to the former Hornsby LGA lands only). The exhibition period commenced in October and concluded 17 November 2017. At the time of preparing this report, the matter had not been presented to the Council of the CoP for consideration.

### **Submission**

The CoP has provided a submission and seeks that a new Section titled 1B.7 Tree and Vegetation Preservation within the City of Parramatta LGA (Land formerly part of Hornsby LGA) be included in the HDCP as an interim measure. This section would retain the existing provisions of Section 1.B.6.1

and 1.B.6.2 (re-titled 1.B.7.1 and 1.B.7.2), until which time the CoP adopt its own amendments to replace same.

These changes are supported and contained in Attachment 3.

### **CONSULTATION**

In preparing the exhibited DCP amendment, internal stakeholders such as arborists, planners, and ecologists were consulted. The DCPs of the adjoining Council areas (City of Parramatta, City of Ryde, The Hills and Ku-ring-gai Councils) were also reviewed.

### **BUDGET**

If the amendments are adopted, additional tree applications will be received which will warrant the employment of at least one additional tree officer within the Tree Management Team and other resources may be required to address unauthorised tree clearing. The budgetary impact will be provided through the quarterly review process but could be as much as \$200,000 per annum. Some of this may be recouped, in-part, from additional income received through application fees and revenue from penalties.

### **POLICY**

The report discusses and recommends proposed changes to the HDCP following the completion of the public exhibition period.

### **CONCLUSION**

Managing trees in urban areas offers a number of challenges associated with:

- Maintaining tree canopy coverage while accommodating increased urbanisation
- Managing risk
- Managing public perceptions and education of residents as to the value of trees.

These issues can polarise community views which is reflected in the comments received in the submissions.

It is considered that the exhibited HDCP amendments, inclusive of changes made in response to the submissions received, appropriately balances Council's desire to strengthen the tree protection measures together with resident concerns regarding overregulation. It is therefore recommended that Section 1.B.6 Tree and Vegetation Preservation and 1.B.6.2 Vegetation Preservation of the HDCP contained in Attachment 3 be adopted.

Should Council agree to adopt these changes, the HDCP amendments will come into effect on 22 February 2018, following public notices being published in local newspapers.

A communication strategy will be developed to inform the community about the changes. Council's tree management webpage will also be updated with information that will assist residents in interpreting and understanding the tree regulations and the most recent changes.

### **RESPONSIBLE OFFICER**

The officer responsible for the preparation of this Report is the Manager, Parks and Recreation – David Sheils - who can be contacted on 9847 6792.

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**Attachments:**

1. [View](#) Attachment 1 to IR2/18 - Draft Amendments Hornsby Development Control Plan 2013 - Tree and Vegetation Preservation - Deputy General Manager's Report No. IR19\_17 - HORNSBY DEVELOPMENT CONTROL PLAN TREE AND VEGETATION PRESERVATION AMENDMENT
2. [View](#) Attachment 2 to Report IR2/18 - Submissions table - Draft amendment to HDCP2013
3. [View](#) Attachment 3 to Report No. IR2/18 - HSC3885 Tree Preservation DCP Changes\_22Feb18

File Reference: F2007/00707-02  
Document Number: D07374207

Deputy General Manager's Report No. IR19/17  
Infrastructure and Recreation Division  
Date of Meeting: 13/12/2017

**16 HORNSBY DEVELOPMENT CONTROL PLAN TREE AND VEGETATION PRESERVATION AMENDMENT**

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**EXECUTIVE SUMMARY**

- In response to Council's recent resolution seeking to strengthen tree protection measures and re-establish tree canopy across the Shire, it is proposed to amend the Hornsby Development Control Plan (HDCP) to protect all tree species except those that are considered weeds, or hazardous to people or property.
- This change will protect all exotic and Australian native species present in Hornsby Shire. At the moment only trees indigenous to Hornsby Shire are protected.
- A number of housekeeping amendments are also required to be made to sections of the HDCP as a result of the introduction of the *Biodiversity Conservation Act 2016* and the *Local Land Services Act 2013* on 25 August 2017, to clarify interpretation and correct references.
- This report recommends that Council publicly exhibit the amended HDCP and that submissions be reported to Council at the earliest opportunity in the New Year.

**RECOMMENDATION**

THAT:

1. The proposed amendments to the Section 1B.6 and 1B.6.2 of the *Hornsby Development Control Plan 2013* (Attachment 1) be publicly exhibited in accordance with the requirements of the *Environmental Planning and Assessment Regulation 2000*.
2. Following the exhibition, a report on submissions be presented to Council at the earliest opportunity.

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**PURPOSE**

The purpose of this Report is to seek Council's endorsement to exhibit an amendment to Section 1.B.6 Tree and Vegetation Preservation and 1.B.6.2 Vegetation Preservation of the Hornsby Development Control Plan 2013 (HDCP). These amendments are aimed at strengthening Hornsby Shire's tree protection measures and allow for housekeeping amendments to be provided as a result of the introduction of the *Biodiversity Conservation Act 2016* and the *Local Land Services Act 2013*.

**BACKGROUND**

Since 2011, the approach of HDCP has been to protect tree species native to Hornsby Shire; all trees located on land within a heritage conservation area, or on land containing a heritage item. This approach has meant exotic trees, and Australian native trees not naturally occurring in the Shire can be removed without the need for Council consent.

At the General Council meeting of 8 November 2017, Council considered Mayoral Minute 15/17: Urban Canopy and Tree Preservation in Hornsby Shire and resolved unanimously that:

*"... a report outlining options to strengthen tree protection measures and re-establish tree canopy across the Shire be prepared for Council's consideration at the earliest opportunity."*

An immediate response available to Council is to amend the HDCP to protect all tree species except those that are considered weeds, or hazardous to people or property.

**DISCUSSION**

Prior to 2011 Council's tree protection measures applied to a greater number of tree species than currently exists. At that time Council received approximately 1,400 applications each year from residents seeking a permit to prune or remove a tree. In the immediate years following the change to the HDCP and the introduction of the 10/50 vegetation clearing legislation the number of applications has dropped by over 50%.

In light of the annual decline in Hornsby's urban canopy coverage, there is merit for Council to reinstate the former 2011 tree protection measures. This approach would protect more species.

It is also apparent that with increased housing density and smaller yards, the opportunity to accommodate large indigenous replacement tree species is reduced. Consequently the use of a non-indigenous tree species with smaller growth potential or deciduous characteristics is warranted. It is appropriate to include these species within Council's tree protection controls.

With this in mind Council officers have reviewed the existing HDCP and prepared draft amendments to Sections 1.B.6 Tree and Vegetation Preservation and 1.B.6.2 Vegetation Preservation that is contained in Attachment 1 – Draft DCP Amendment.

All tree species are proposed to be protected except those specifically listed as exempt from the provisions. The draft 'exempt' tree species for Hornsby Shire includes:

- species listed 'exempt' in Hornsby prior to the 2011 changes have been reinstated; and
- other species most commonly listed as 'exempt' for the neighbouring Councils of the City of Parramatta, Kur-ring-gai Council, The Hills and Ryde City Council.

Typically species exempt from protection (See Table 1 below and Attachment 1 - Table 1B.6(b) – Exempt Tree Species) are normally permitted to be removed due to undesirable characteristics such as being invasive weeds, or hazardous to health.

**Table 1: Draft HDCP tree species exemptions**

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Botanic Name	A	Reason
<i>Acacia baileyana</i>	Cootamundra Wattle	Not indigenous to Hornsby, invasive, hybridises with <i>Acacia pubescens</i> threatened species
<i>Acacia saligna</i>	Queensland Silver Wattle	Not indigenous to Hornsby, invasive
<i>Acer negundo</i> *	Box Elder	Not indigenous to Hornsby, invasive
<i>Ailanthus altissima</i>	Tree of Heaven	Not indigenous to Hornsby, invasive
<i>Alnus jorullensis</i>	Evergreen Alder	Not indigenous to Hornsby, destructive root system
<i>Arecastrum romanzoffianum</i>	Cocos Palm	Not indigenous to Hornsby, invasive
<i>Celtis sinensis</i>	Hackberry	Not indigenous to Hornsby, invasive
<i>Cinnamomum camphora</i> *	Camphor Laurel	Not indigenous to Hornsby, invasive
<i>Citrus spp, Olea spp, Prunus spp, Malus spp</i> *	Fruit trees	Requires pruning and removal as part of horticultural practice
<i>Cotoneaster spp.</i> *	Cotoneaster	Not indigenous to Hornsby, invasive
<i>Eriobotrya japonica</i> *	Loquat	Not indigenous to Hornsby, host to fruit fly
<i>Erythrina spp</i> *	Coral tree	Not indigenous to Hornsby, invasive
<i>Ficus elastic</i> *	Rubber tree	Not indigenous to Hornsby, invasive, destructive root system
<i>Gleditisa triacanthos</i>	Honey Locust	Not indigenous to Hornsby, invasive
<i>Lagunaria patersonii</i>	Norfolk Island Hibiscus	Not indigenous to Hornsby, causes skin irritation
<i>Ligustrum spp</i> *	Privet	Not indigenous to Hornsby, invasive
<i>Populus spp</i> *	Poplar	Not indigenous to Hornsby, prone to fungal rot and collapse
<i>Pyracantha augustifolia</i>	Firethorn	Not indigenous to Hornsby, invasive
<i>Robinia pseudoscacia</i>	Golden Robinia	Not indigenous to Hornsby, destructive root system
<i>Salix spp</i> *	Willow	Not indigenous to Hornsby, invasive, destructive root system
<i>Schefflera actinophylla</i> *	Umbrella Tree	Not indigenous to Hornsby, invasive, destructive root system
<i>Schinus spp</i>	Peppercorn Tree	Not indigenous to Hornsby, prone to fungal rot and collapse
<i>Toxicodendron spp</i>	Rhus	Poisonous properties

Note: \* Exempt species in Hornsby's 2011 Tree Preservation Order.

Other aspects of the DCP have been reviewed and considered not to warrant change at the moment. For example Clause (d), second dot point, permits the pruning of trees by less than 10% of the foliage area in accordance with Australian Standard AS 4373 *Pruning of Amenity Trees*, not more than once annually without the need for Council approval. This exemption clause is commonly applied throughout Sydney as it allows tree owners to undertake relatively minor tree maintenance activity without the need for Council approval.

As a result of the introduction of the *Biodiversity Conservation Act 2016* and the *Local Land Services Act 2013* on 25 August 2017, a number of housekeeping amendments are also required to be made to clarify interpretation and correct references. For example references to Council's Local

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Environmental Plan are removed and replaced with *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*.

Opportunities to re-establish tree canopy will be reported to Council early in 2018.

#### **CONSULTATION**

If supported, draft amendments to the HDCP would be exhibited in accordance with Clause 18 of the *Environmental Planning and Assessment Regulation (2000)* for 28 days. Exhibition would involve a newspaper advertisement, notification on Council's website, displays at Council's administration Building and all Libraries.

Consistent with Council's Community Consultation Policy the exhibition period will commence at the end of January to avoid the end of year holiday period. A report will be presented to Council's for its consideration as soon as practical after the close of the exhibition period.

#### **POLICY**

Council's Community Consultation Policy prescribes that where there is significant community interest, the greatest opportunity should be available for all interested parties to make a submission. Accordingly, the period between 20 December and 20 January is not included as part of the advertising or exhibition period.

#### **CONCLUSION**

The amendments to the HDCP attached to this report have been prepared taking into account:

- Council's desire to strengthen the existing tree protection measures; and
- Implement a number of housekeeping amendments in response to recent legislative changes.

In effect the draft HDCP proposes to protect all tree species other those listed as exempt.

It is recommended that Council endorse the proposed amendments to the HDCP for exhibition.

#### **RESPONSIBLE OFFICER**

The officer responsible for the preparation of this Report is the Manager, Parks and Recreation – David Sheils - who can be contacted on 9847 6792.

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#### **Attachments:**

1. Attachment to Report IR19\_17 - Draft - DCP Amendments

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File Reference: F2007/00707

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**ATTACHMENT 1 - ITEM 13**

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13 December 2017

## 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:
  - all tree species except exempt tree species in Hornsby Shire, as listed in Table 1B.6 (b) or subject to the Biodiversity Offset Scheme,
  - trees on land within a heritage conservation area described within the *HLEP*, and
  - 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:
  - **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.

- **Indigenous tree** means species which are native to the Hornsby Shire LGA (planted or self-sown) and not introduced (exotic).
- **Tree Protection Zone** means the area above or below ground.

#### Exempt Tree Work

- d. The following exemptions to this part apply as set out below:
  - The removal of or pruning to a tree where Council is satisfied the tree is dying or dead and is not required as the habitat of native fauna.
  - The removal of species listed under the NSW *Biosecurity Act 2015* for Hornsby Shire.
  - 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 (AQF5) as an imminent risk to human life or is causing or likely to cause substantial damage to property.
  - 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*, 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 5.10 of the *HLEP*.

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(a) 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(a) 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 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 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(a), 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 HLEP and HDCP.
- j. The impact of development upon trees will be assessed using arboricultural, ecological and/or occupational health and safety based evaluation to determine the significance of the trees. Accordingly, any application for removal should demonstrate that the removal of the tree is appropriate based on an assessment of the:
- significance/health/longevity of the tree; and
  - risk to human life or property.
- k. Where such trees are deemed by Council to be significant, the provisions of *Australian Standard AS 4970 Protection of Trees on Development Sites* should be applied.
- l. All tree pruning work should 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](http://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

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(REVISION 29 NOVEMBER 2017)

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

Botanical name	Common Name
<i>Acacia baileyana</i>	Cootamundra Wattle
<i>Acacia saligna</i>	Queensland Silver 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
<i>Citrus spp, Olea spp, Prunus spp, Malus spp</i>	Fruit 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](http://hornsby.nsw.gov.au).



### 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 <sup>2</sup>
Prescribed urban areas (Zones R2, R3, R4, RU5, SP2, SP3, B1, B2, B3, B4, B5, B6, IN1 & IN2)	10m <sup>2</sup>

- The clearing of vegetation where Council is satisfied the vegetation is dying or dead and is not required as the habitat of native fauna.
  - The clearing of vegetation where Council is satisfied the vegetation is a risk to human life or is causing or likely to cause substantial damage to property.
- 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*
  - 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 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 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 5.10(3) of the HLEP)	Development Application
Other land	Removal of vegetation not subject to BOS	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 HLEP and HDCP.
- k. In determining if vegetation is significant, it will be assessed using an arboricultural, ecological and/or an Occupational Health and Safety based evaluation. Accordingly, any application for removal should demonstrate that the removal of vegetation is appropriate based on an assessment of the:
- 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 all 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](http://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

Attachment 2 – Draft Amendments – Hornsby Development Control Plan (2013) – Tree and Vegetation Preservation

Item	Key issues raised in submissions for HDCP Draft Amendments for Tree and Vegetation Preservation	Council officers response	Supported change to exhibited HDCP Amendment (changes in bold)
1	The definition of Tree Protection Zone in Clause 1B.6.1(c) should be consistent with AS4970 Protection of trees on development sites.	The definition of AS4970 Protection of trees on development sites expands upon the definition contained in the exhibited HDCP and is supported as it assists interpretation.	<p>Clause 1B.6.1 (c)</p> <ul style="list-style-type: none"> <li>Tree Protection Zone means the area above or below ground level 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.</li> </ul>
2	It is recommended that the definition of "indigenous tree" be removed from Clause 1B.6.(c) as this relates to the existing DCP which limits its protection to tree species indigenous to Hornsby LGA.	The definition of 'indigenous tree' is no longer warranted as all tree species are protected other than those listed in Table 1B.6 (a) Exempt Tree Species in Hornsby. Therefore the suggested change is supported.	<p>Clause 1B.6.1 (c)</p> <ul style="list-style-type: none"> <li><del>Indigenous tree means species which are native to Hornsby Shire LGA (planted or self-sown) and not introduced (exotic).</del></li> </ul>
3	In Clause 1B.6.1(d) Exempt Tree Work, Council permits trees to be removed where they are deemed by Council to be an imminent risk to human life or is causing or likely to cause substantial property supported by evidence provided by a qualified Arborist (AQF.5). However, the same level of evidence is not required in circumstances where trees are dying or dead and is not required as the habitat of native fauna. It is recommended that this be changed to ensure consistency of evidence.	An AQ5 level qualified Arborist is not required to determine whether a tree is dead. This requirement would create unnecessary level of expense for residents.  Notwithstanding, there is merit in amending the specific exemption by deleting reference to 'dying'. There can be dispute regarding whether a tree is dying and it is the case that Council officers are best placed to address the removal of dying trees and are able to apply conditions for their replacement.	<p>Clause 1B.6.1 (d) – Exempt Tree Work</p> <ul style="list-style-type: none"> <li>The removal of <del>or pruning to</del> a tree where <del>deemed by Council in writing and shown by recorded photographic evidence to be is satisfied the tree is dying or dead</del> and is not required as the habitat of native fauna.</li> </ul>
4	In Clause 1B.6.1(d) Exempt Tree Work, the sixth sub-clause must include the period of time the	The suggested change is supported.	<p>Clause 1B.6.1 (d) – Exempt Tree Work</p> <ul style="list-style-type: none"> <li>Trees deemed by Council in writing</li> </ul>

Attachment 2 – Draft Amendments – Hornsby Development Control Plan (2013) – Tree and Vegetation Preservation

Item	Key issues raised in submissions for HDCP Draft Amendments for Tree and Vegetation Preservation	Council officers response	Supported change to exhibited HDCP Amendment (changes in bold)
	likelihood of damage may occur. The inclusion of the phrase "in the near future" with regard to damage to property provides a time framework for the likelihood and is consistent with Yang v Scerri (2007) NSWLEC 592.		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 causing or likely to cause substantial damage to property in the near future.
5	While the Threatened Species Conservation Act 1995 (NSW) (TSC Act) has been repealed and replaced with the new biodiversity conservation laws, including the State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, species protected under the Commonwealth's Environmental Protection and Biodiversity Conservation Act 1999 must still be afforded protection. Therefore Table 1.B.6(a) 'Type of Tree Application Required' must therefore include reference to the Biodiversity Conservation Act 2016 (NSW) and the Environment Protection and Biodiversity Conservation Act 1999 for land located within 50 metres of land that contains native vegetation which is habitat for species, populations or ecological communities.	The provisions of the Commonwealth's Environment Protection and Biodiversity Conservation Act 1999 are appropriately captured in Table 1B.6 (b) in 'Other land' and the inclusion of additional references to the Environment Protection and Biodiversity Conservation Act 1999 Clauses 1B.6.1 (e) and 1B.6.2 (e).	<p>Clause 1B.6.1 (e):</p> <p>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 <i>Biodiversity Conservation Act 2016</i> and <b>protected matters listed under the Commonwealth Environment Protection and Biodiversity Conservation Act 1999</b></p> <p>Clause 1B.6.2 (e):</p> <ul style="list-style-type: none"> <li>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 <i>Biodiversity Conservation Act 2016</i> and <b>protected</b></li> </ul>

Attachment 2 – Draft Amendments – Hornsby Development Control Plan (2013) – Tree and Vegetation Preservation

Item	Key issues raised in submissions for HDCP Draft Amendments for Tree and Vegetation Preservation	Council officers response	Supported change to exhibited HDCP Amendment (changes in bold)
6	<p>The exhibited amendment to Clause 1B.6.1 (k) states <i>"Where trees are to be retained, the provisions of Australian Standard AS 4970 Protection of Trees on Development Sites must be applied"</i>. This amendment replaced former wording that referred to only 'significant' trees are to be retained. Therefore for consistency Clause 1B.6.1(j) should be amended to delete reference to 'significant'.</p>	<p>Staff have reviewed the provisions of 1B.6.1(j) and, to assist with interpretation suggest alternate wording that includes deletion of 'significant' and reflects the what is prescribed in the provisions of <i>Australian Standard AS 4970 Protection of Trees on Development Sites</i>.</p>	<p>matters listed under the <b>Commonwealth Protection and Biodiversity Conservation Act 1999</b></p> <p>Clause 1B.6.1(j):</p> <p><b>The impact of development upon Trees</b> will be assessed using arboricultural, ecological, and/or <b>occupational health and industry accepted safety based</b> evaluation <b>methods</b> to determine the <b>significance safe useful life expectancy</b> of the trees. Accordingly, any application for removal <b>should must</b> demonstrate that the removal of the tree is appropriate based on an assessment of the <b>safe useful life</b> :</p> <ol style="list-style-type: none"> <li><b>Significance/health/longevity of the tree;</b> and</li> <li>Risk to human life or property using <b>industry relevant risk assessment such as Qualified Tree Risk Assessment (QTRA) or Tree Risk Assessment Qualification (TRAQ).</b></li> </ol> <p>Clause 1B.6.1(k):</p> <p>Where <b>such</b> trees are deemed by Council</p>

Attachment 2 – Draft Amendments – Hornsby Development Control Plan (2013) – Tree and Vegetation Preservation

Item	Key issues raised in submissions for HDCP Draft Amendments for Tree and Vegetation Preservation	Council officers response	Supported change to exhibited HDCP Amendment (changes in bold)
7	<p>When considering an Application for Tree Work, Council should be mindful that there could be wildlife in the tree. Particularly during the spring / nesting season when there can be fledglings or baby marsupials. Therefore recommended by wildlife groups that trees are not removed or heavily pruned during the spring nesting season and insert proposed clauses</p> <p><i>"n. Tree removals shall not be undertaken during the spring/nesting season. A written report, which is valid for 6 months, must be provided by a qualified Ecologist (Certified Practising Ecological Consultant) with the Tree Application Form which references:</i></p> <ul style="list-style-type: none"> <li>- <i>identification of any endangered or rare species of fauna using likely to use the tree as habitat</i></li> <li>- <i>recording of all nests or young chicks/fauna that are in the tree</i></li> <li>- <i>proposed protection method and/or relocation method for any fauna likely to be displaced."</i></li> </ul>	<p>The imposition of the proposed clauses is considered overly onerous for residents, particularly when the suggested requirements would apply to all trees and applications for Tree Permits.</p> <p>There are some cases where a potential habitat hollow is a contributory factor for the need to remove the tree and a delay in undertaking the work is not appropriate.</p> <p>Currently where an active fauna hollow is determined to exist by Council officers, conditions are imposed that either retain the hollow whilst removing dysfunctional parts, or seek further investigation by the applicant to determine if the hollow is active.</p> <p>Where hollows are found to be active appropriate conditions may then be imposed by Council officers depending upon the type of fauna.</p> <p>In areas where trees form part of an Endangered Ecological Community, Council's arborists and ecologist perform joint assessments and impose appropriate conditions.</p> <p>It is proposed that this practice continue with no</p>	<p>to be <b>significant to-be retained</b>, the provisions of Australian Standard AS 4970 Protection of Trees on Development Sites must be applied.</p> <p>No change proposed</p>

Attachment 2 – Draft Amendments – Hornsby Development Control Plan (2013) – Tree and Vegetation Preservation

Item	Key issues raised in submissions for HDCP Draft Amendments for Tree and Vegetation Preservation	Council officers response	Supported change to exhibited HDCP Amendment (changes in bold)
	<p><i>"o. A registered wildlife carer must be onsite to take possession of any displaced fauna during removal or pruning greater than 10% of any tree. The arborist removing or pruning the tree must take care to ensure that any fauna is not injured or killed during any works to the tree."</i></p>	<p>change to the HDCP.</p>	
8	<p>An ecological report must be provided with the Tree Application Form in areas known to Council and / or the Community / land owner which identifies any endangered species, records all nests and proposes a protection method for all affected fauna.</p>	<p>The imposition of the proposed clause is considered overly onerous for residents, particularly when the suggested requirements would apply to all trees and applications for Tree Permits. In areas where trees form part of an Endangered Ecological Community, Council's arborists and ecologist perform joint assessments and impose appropriate conditions. It is proposed that this practice continue with no change to the HDCP.</p>	<p>No change proposed</p>
9	<p>Council's website under "Tree Management" states that persons must not "excavate within three metres of trees or change the ground level. This can cause root damage that makes the tree dangerous and is in breach of the <i>Tree Preservation Order</i>. It is therefore appropriate that the HDCP includes references to works: Clause 1B.6.1(p) "Excavation or change in ground level (existing) must not be undertaken within 3m</p>	<p>This suggested change is not warranted as it is defined as outlined below: Table 1B.6 (b) – Type of Tree Application Required specifies that work within a Tree Protection Zone of a protected tree requires a Tree Permit. The HDCP defines <i>Tree Protection Zone (TPZ)</i> as the area above or below ground level at a given distance from the trunk set aside for the protection of a tree's roots and crown to provide for the viability</p>	<p>No change proposed</p>



Attachment 2 – Draft Amendments – Hornsby Development Control Plan (2013) – Tree and Vegetation Preservation

Item	Key issues raised in submissions for HDCP Draft Amendments for Tree and Vegetation Preservation	Council officers response	Supported change to exhibited HDCP Amendment (changes in bold)
10	<p>of a tree, with the exception of works specified in the <i>State Environmental Planning Policy (Exempt and Complying Development Codes) Amendment (Housing Code) 2017</i>.</p> <p>Hornsby Shire Council's Application Form to Prune or Remove trees on Private Property states that <i>"Residents can only prune a branch overhanging from their neighbour's property with the consent from the owner of the tree and in compliance with any relevant Hornsby Shire Tree Preservation Measures."</i></p> <p>As the form applies to "trees protected by the HDCP" it is appropriate that a clause be included in the DCP which is consistent with the Application Wording as follows -</p> <p><i>"Clause 1B.6.1 (p) "Residents can only prune a branch overhanging from their neighbour's property with the consent from the tree owner and in compliance with any relevant Hornsby Shire Tree Preservation Measures. Any pruning undertaken must not be greater than 10 percent of the tree's total foliage area. If consent is granted by the tree owner all work must be performed without encroaching on your neighbour's property or climbing the tree. All tree pruning work must be carried out in accordance with Australian</i></p>	<p>and stability of a tree.</p> <p>Clause 1B.6 (h) defines actual distances of the TPZ based upon the diameter of the tree trunk.</p> <p>The Application Form provides advice and assists in the interpretation of the HDCP.</p> <p>Council's role in administering the Tree Protection Measures in the HDCP is as the consent authority. In the case of the HDCP Amendments as exhibited, Council is specifying what trees require consent and what exemptions apply. It can be the case that some neighbours are in disagreement regarding tree work including how tree work may occur. It is not the role of Council to mediate between neighbours regarding how the work is to occur (eg access on site, climbing of the tree) provided it is approved or exempt work.</p> <p>It is for this reason the NSW Government introduced the <i>Trees (Disputes Between Neighbours) Act 2006</i>.</p> <p>Clause 1B.6.1 (l) of the HDCP requires <i>"all tree work must be carried out in accordance with Australian Standard AS 4373 Pruning of Amenity Trees"</i>.</p> <p>Therefore the suggested new clause is inappropriate and not warranted for the HDCP.</p>	<p>No change proposed</p>

Attachment 2 – Draft Amendments – Hornsby Development Control Plan (2013) – Tree and Vegetation Preservation

Item	Key issues raised in submissions for HDCP Draft Amendments for Tree and Vegetation Preservation	Council officers response	Supported change to exhibited HDCP Amendment (changes in bold)
11	<p><i>Standard AS 4373 Pruning of Amenity Trees.</i></p> <p>To be consistent with the suggested changes in clause 1B.6.1(j),(k) and (d), the term 'significant' needs to be removed and 'must' be applied to Clause 1B.6.2(k).</p>	<p>Council officers have reviewed the provisions of 1B.6.2(k) and, to assist with interpretation suggest alternate wording that includes 'must' which is consistent with changes made to 1B.2.2 Tree and Vegetation Preservation. However, in consultation with Council's ecologists, 'significance' is retained and supported with the insertion of 'conservation'.</p>	<p>Clause 1B.6.2(k):</p> <p><del>It</del> <b>determining</b> <del>if</del> <b>Vegetation is significant</b> <del>it</del> will be assessed using arboricultural, ecological, and/or <b>occupational health and industry accepted safety based</b> evaluation <b>method</b>. Accordingly, any application for removal <b>should</b> <b>must</b> demonstrate that the removal of vegetation is appropriate based on an assessment of the:</p> <ol style="list-style-type: none"> <li>1. <b>Conservation</b> significance / health / longevity of the vegetation; and</li> <li>2. Risk to human life or property.</li> </ol>
12	<p>Clause 1B.6.2(a) Prescribed Vegetation must include two additional types of areas to ensure that amendments to the DCP are consistent with the Vegetation SEPP, Part 3 Clause 10.3(a) and (b).</p>	<p>The suggested change is supported and are reflected in the changes to Tables 1B.6 (b) and 1B.6.2 (b).</p>	<p>Table 1B.6(b) Type of Tree Application Required</p> <p>Location: Heritage Item</p> <p>Extent of Works: Council is satisfied that the works to a tree are minor as described by <b>Clause 10(3) of the Vegetation SEPP</b> and by Clause 5.10(3) of the HELP.</p> <p>Location: Land within a Heritage Conservation Area</p> <p>Extent of Works: Council is satisfied that</p>

Attachment 2 – Draft Amendments – Hornsby Development Control Plan (2013) – Tree and Vegetation Preservation

Item	Key issues raised in submissions for HDCP Draft Amendments for Tree and Vegetation Preservation	Council officers response	Supported change to exhibited HDCP Amendment (changes in bold)
13	<p>Where works to trees are required as part of other works for which development consent is required, HDCP Clause 1B.6.1 (g) must be consistent with HDCP Clause 1B.6.1(k) which references AS4970 – Protection of Trees on Development Sites and which was approved by Councillors in December 2017. It is therefore appropriate that the HDCP Clause 1B.6.1(g) must read:</p> <p>“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. The consent conditions for the Development Application shall be consistent with the requirements of the Australian Standard AS4970 Protection of Trees on Development Sites and AS4373 Pruning of Amenity Trees.”</p>	<p>The preparation of consent conditions as part of a Development Application process is not a matter which is prescribed in the HDCP.</p>	<p>the works to a tree are minor as described by <b>Clause 10(3) of the Vegetation SEPP</b> and by Clause 5.10(3) of the HELP.</p> <p>No change proposed</p>
14	<p>It is the experience of residents that when Council is called out to alleged breaches of consent conditions on development sites pertaining to tree matters, the compliance officers that are sent out do not have arboricultural qualifications. The situation may be remedied by having one of</p>	<p>This matter is outside the scope of the HDCP. It is the practice of Council that trained and skilled Compliance Officers are the first respondents at development sites for a wide range of potential matters ranging from suspected pollution events, excessive noise, engineering risk and unauthorised</p>	<p>No change proposed</p>

Attachment 2 – Draft Amendments – Hornsby Development Control Plan (2013) – Tree and Vegetation Preservation

Item	Key issues raised in submissions for HDCP Draft Amendments for Tree and Vegetation Preservation	Council officers response	Supported change to exhibited HDCP Amendment (changes in bold)
15	<p>Council's arborist's also attend the site.</p> <p>There is one matter I would like Council to consider. I have practiced for many decades as a Consultant Arborist with relevant qualifications. My training was completed prior to the current AQF Level 5 qualification now required by some Councils in the preparation of matters relating to trees.</p> <p>No 'grandfather' recognition was considered when the AQF qualifications were introduced which has imposed in some situations a restriction of trade on many of the senior practicing consultant arborists.</p>	<p>work to trees. Where the Compliance Officer determines specialist advice is required, the appropriate skills are sourced from the respective work units within Council.</p> <p>There are many people working in the tree industry and unfortunately some have little or no training or no training relevant to trees.</p> <p>Therefore, when considering the issues related to trees including the inherent risks, it is necessary that a minimum level of training is specified being AQF Level 5.</p> <p>The type of 'grandfather' recognition, if applied, can often permit 'tree loppers' with no understanding of tree dynamics to refer to themselves as arborist.</p> <p>Therefore no change is proposed.</p>	<p>No change proposed</p>
16	<p>There should be wording that acknowledges any increase in green cover and tree plantings if the owner of the land planted many trees. This could be measured using aerial photography. A common sense approach from any Council Tree Inspection which considers owners prior efforts and commitment to trees.</p>	<p>The HDCP states that trees will be assessed using arboricultural, ecological and industry accepted safety based evaluation methods to determine the useful life of trees. This includes risk to human life or property.</p> <p>As part of this assessment Council officers also take into account past tree planting efforts, particularly if replacement planting is not considered warranted as a result of the presence of existing trees with growth</p>	<p>No change proposed</p>

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Item	Key issues raised in submissions for HDCP Draft Amendments for Tree and Vegetation Preservation	Council officers response	Supported change to exhibited HDCP Amendment (changes in bold)
17	<p>Wording should be chosen that gives an owner a right of appeal if they believe a decision is unfair.</p>	<p>potential being present.</p> <p>In circumstances where a Tree Permit is refused, residents have available a 'Review of Determination' process which is similar to the Development Application process. This review process is authorised through the provisions of the Environmental Planning and Assessment Act and is not prescribed in the HDCP.</p> <p>Notwithstanding, Clause 12 of State <i>Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017</i> applies which states:</p> <p><i>(1) An applicant for a permit may appeal to the Land and Environment Court against the refusal by a council to grant the permit.</i></p> <p><i>(2) 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 the council is taken to have refused the application (whichever is the later).</i></p>	<p>No change proposed</p>
18	<p>Many of our threatened and endangered species roost in trees such as camphor laurels and privet therefore:</p> <ul style="list-style-type: none"> <li>• Any and ALL trees including weed species:</li> <li>- in Heritage Conservation Areas;</li> <li>- listed on Council's Heritage Register</li> </ul>	<p>The provisions of HDCP as contained in Attachment 3 recommended for approval requires all tree species including camphor laurels and privet to require a permit where they occur in a Heritage Conservation area, are located on land that is a listed heritage item or is on a mapped riparian zone.</p>	<p>No change proposed</p>

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19	<p>including listed groups of heritage street trees - in riparian zones and areas mapped as Terrestrial Biodiversity on Council's mapping system, must have written permits from Council for any tree work regardless of species.</p> <p>We can include citrus trees in the protection order – I don't see why they are an issue.</p>	<p>Until recently the Noxious Weeds Act (now replaced by the <i>NSW Biosecurity Act 1995</i>) permitted weeds species to be removed regardless of the provisions contained in the DCP. This no longer occurs.</p> <p>Citrus trees have historically been exempt from protection and this status reflects what occurs in most other Councils. The intent of the tree protection measures is not to involve a Council approval process in the horticultural management of domestic fruit trees. In some cases citrus trees are pruned yearly or need to be removed and renewed on an ongoing basis particularly in rural areas.</p>	No change proposed
20	Please review the development of flats in our Shire. Many of the developments remove all the tree cover and replace it with exotics.	At the end of 2017 Council resolved to review the HLEP and HDCP as it relates to townhouses and all residential flat buildings. The review is to include the provisions for canopy tree planting and does not relate to Sections 1.B6 and 1.B6.2 of the HDCP as exhibited.	No change proposed
21	Part 1B.6.1 (a) states "all tree species except exempt tree species in Hornsby Shire, as listed in Table 1B.6(b) or subject to the Biodiversity Offset Scheme". These exemptions from the provisions within the HDCP and HLEP should be further mentioned in Part 1B.6.1 (d) Exempt Tree Works.	To assist with interpretation of Table 1B.6 (b), it can be moved to be located within the definition section of clause 1B.6.1 (c) and be re-labelled accordingly.	Table 1B.6 (b a) Exempt Tree Species in Hornsby Shire

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22	To discourage unscrupulous tree loppers at least one Sydney Council has included tree applications in its online service portal much like a standard DA. Anyone can log on and see if a tree permit has been lodged and approved for a particular address. This would assist people in reporting unauthorised tree removals.	This is an administration matter and is not something that is prescribed in the HDCP.  Notwithstanding, Council officers are reviewing whether notifications of tree permit applications lodged and approved can be provided online.	No change proposed
23	Concerns have been raised that there are difficulties in ensuring that new plantings on developments survive and thrive. The installation of irrigation systems could resolve this problem. Water Conservation, Irrigation and Maintenance Clauses could be included in the landscape Clauses of the HDCP for new developments, during future Housekeeping Amendments to the HDCP.	At the end of 2017 Council resolved to review the HLEP and HDCP as it relates to townhouses and all residential flat buildings. The review is to include the provisions for canopy tree planting and does not relate to Sections 1.B6 and 1.B.6.2 of the HDCP as exhibited.	No change proposed
24	In regard to Table 1B.6 (b) Exempt Tree Species in Hornsby Shire, two additional tree species should be added to this table being <i>Liquidambar styraciflua</i> (Liquidambar) and <i>Jacaranda mimosafolia</i> (Jacaranda). Both are fast growing and expansive root systems that damage structures and drains.	Liquidambar and Jacarandas are commonly occurring non-native species, particularly in long established residential areas. The inclusion of these species as exempt would be contrary to the intention of protecting non-native species that provide a contribution to the areas existing tree canopy.  Where tree roots of any tree species causes problems with structures, consideration is given by Council officers to permitting trees to be removed and conditions are imposed for replacement	No change proposed

Attachment 2 – Draft Amendments – Hornsby Development Control Plan (2013) – Tree and Vegetation Preservation

Item	Key issues raised in submissions for HDCP Draft Amendments for Tree and Vegetation Preservation	Council officers response	Supported change to exhibited HDCP Amendment (changes in bold)
25	Consideration should be made to the guidance documents provided by Sydney Water regarding tree planting near sewage pipes as part of Exempt Works.	plantings. In a document published by Sydney Water called <i>How you can help stop blockages – Tree planting and wastewater system</i> : <a href="http://www.sydneywaternews.com.au/media/1201/tre-e-roots-fact-sheet.pdf">http://www.sydneywaternews.com.au/media/1201/tre-e-roots-fact-sheet.pdf</a> 37 species are listed in as not being suitable to plant within six metres of a wastewater pipe. Of this list 22 species are proposed to be protected by the HDCP. When considering the constraints of space available for trees in residential properties and the resilience of modern PVC pipes to prevent root incursion, creating this additional exemption is not supported as it would remove the protection to many more trees.	No change proposed
26	Part 1B.6.1d “Exempt Tree Works” mentions exceptions relating to species listed under the <i>NSW Biosecurity Act 2015</i> for Hornsby Shire. This should be extended to include tree species that are scheduled as “priority Weeds for all New South Wales”.	This suggestion is supported and is reflected in the change to Clause 1B.6.1 (d).	Clause 1B.6.1(d): <ul style="list-style-type: none"> <li>The removal of species listed under the NSW Biosecurity Act 2015 for <b>Hornsby Shire</b></li> </ul>
27	The protection of weed and exempt tree species under the Heritage Provisions is a mistake. These species have been placed within these categories for good environmental, ecological, economic and health reasons.	It can be the case that heritage cultural landscapes contain species that elsewhere do not require Council approval. This often reflects the heritage period when the landscape was established and examples can include large visually prominent	No change proposed



## Attachment 2 – Draft Amendments – Hornsby Development Control Plan (2013) – Tree and Vegetation Preservation

Item	Key issues raised in submissions for HDCP Draft Amendments for Tree and Vegetation Preservation	Council officers response	Supported change to exhibited HDCP Amendment (changes in bold)
28	When an independent report is required for the assessment of the health and safety of any tree, the HDCP should require that the person authorising the report must have a minimum qualification of a Diploma in Arboriculture (AQF Level 5) or higher.	Camphor Laurels. The heritage provisions that protect these trees exist across much of NSW.  It can be the case that some tree reports submitted to Council have been authored by people without appropriate qualifications. Therefore an additional definition has been prepared which takes into account aspects of AS 4970-2009 Protection of trees on development sites.	1B.6.1(c):  • <b>Arborist (Project and Consulting) must have obtained through training and completed Australian Qualification Framework (AQF) Level 5, Diploma of Arboriculture.</b>
29	HDCP should reference a document regarding the management of Hornsby's Urban Forest which permits the removal of diseased or structurally unsound, aged or declining trees and replacement with the same species on private and public land.	The HDCP states that trees will be assessed using arboricultural, ecological and industry accepted safety based evaluation methods to determine the useful life of trees. This includes risk to human life or property.  Clause 1B.6.1 (m) specifies that trees be replaced.	No change proposed
30	There is a strong need to provide nesting boxes to replace hollows in old trees which are removed. This will help compensate for habitat loss.	The requirement for the provision of replacement nesting boxes is something that is currently considered by Council officers and where appropriate imposed as a condition with the approval for tree removal.	No change proposed
31	Leyland cypress ( <i>Cuprocyparis leylandii</i> ), should be added to the list of species not protected. They are often installed as garden hedges as a fast growing conifer that if planted on a boundary will encroach into an adjoining property.	The use of Leyland cypress as a quick growing screening hedge has decline in recent years and has been replaced with several other species that demonstrate similar quick growing characteristics such as cultivars of the native Lilly Pilly.	No change proposed

## Attachment 2 – Draft Amendments – Hornsby Development Control Plan (2013) – Tree and Vegetation Preservation

Item	Key issues raised in submissions for HDCP Draft Amendments for Tree and Vegetation Preservation	Council officers response	Supported change to exhibited HDCP Amendment (changes in bold)
		Where neighbours are in dispute over the impacts of adjoining trees the provisions of the <i>Trees (Disputes Between Neighbours) Act 2006</i> provides remedy through the NSW Land and Environment Court.	
32	Greater enforcement of requirements to plant a replacement tree following removal of trees.	Council currently undertakes random audits with the resources available. This matter is not subject to the provisions of the HDCP and no change is warranted.	No change proposed
33	Further amendments to the DCP to require the planting of 3-5 replacement canopy trees per block where carrying out substantial renovations (say > \$200K) or new dwelling construction.	At the end of 2017 Council resolved to review the HILEP and HDCP as it relates to new development. The review is to include the provisions for canopy tree planting and does not relate to Sections 1.B6 and 1.B.6.2 of the HDCP as exhibited. This matter is not subject to the provisions of the HDCP and no change is warranted.	No change proposed
34	A strategic planting (and maintenance) program to replace trees that are progressively removed from Council's road reserves.	Council replaces street trees that are removed in local roads. A Council report that considers options for enhanced public tree planting will be provided to Council in the near future. This matter is not subject to the provisions of the HDCP and no change is warranted.	No change proposed
35	A broader education program to help engage with and inform the community of the benefits of an established tree canopy.	This suggestion is being explored and will be implemented following adoption of the HDCP amendments.	No change proposed

## Attachment 2 – Draft Amendments – Hornsby Development Control Plan (2013) – Tree and Vegetation Preservation

Item	Key issues raised in submissions for HDCP Draft Amendments for Tree and Vegetation Preservation	Council officers response	Supported change to exhibited HDCP Amendment (changes in bold)
36	Would like to see more street planting, especially on main roads such as Pennant Hills Road.	This matter is not subject to the provisions of the HDCP and no change is warranted.	No change proposed
37	My bushland home is located wholly within Fire Zone 3. Will Council be indemnifying me for losses incurred because I have complied with this DCP amendment and in doing so have failed to take reasonable steps to prepare and protect my home from bushfires?	A Council report that considers options for enhanced public tree planting will be provided to Council in the near future.  This matter is not subject to the provisions of the HDCP and no change is warranted.	No change proposed
38	We feel the rules for when a protected tree or vegetation are allowed to be removed outside the 10/50 law need to be reviewed to better reflect the hazard and/or danger they pose. The rules should cover:  i) Potential injury or loss of life ii) Damage to property due to either a tree falling or a large portion of the tree falling	The provisions of the HDCP to not alter the entitlements available for properties using 10/50 Vegetation Clearing Scheme identified using the NSW Rural Fire Service on-line tool: <a href="http://www.rfs.nsw.gov.au/plan-and-prepare/1050-vegetation-clearing/tool">www.rfs.nsw.gov.au/plan-and-prepare/1050-vegetation-clearing/tool</a>	No change proposed
39	The current rule of 3 metres is arbitrary as it does not take into account the height of the tree.	Clause 1B.6 (j) takes into consideration risk to human life or property.  Council officers are qualified and experienced arborists who complete specialist training additional to be able to undertake detailed and internationally recognised risk assessments.	No change proposed

Attachment 2 – Draft Amendments – Hornsby Development Control Plan (2013) – Tree and Vegetation Preservation

Item	Key issues raised in submissions for HDCP Draft Amendments for Tree and Vegetation Preservation	Council officers response	Supported change to exhibited HDCP Amendment (changes in bold)
	<p>The problem with the current trimming rule is that once again the limit of 10% is arbitrary. The amount to be trimmed should be based on the height of a tree and its potential to harm residents and their property.</p>	<p>foundation of an approved building.</p> <p>For trees located beyond 3 metres, appropriate risk assessments can be made to determine whether a tree's removal is warranted.</p> <p>The 10% exemption is commonly applied throughout Sydney's councils as it allows tree owners to undertake relatively minor tree maintenance activity without the need for Council approval.</p>	
40	<p>Provision for protection of trees on residential blocks should differ from that required on larger blocks.</p> <p>Since no one can predict the possible and unexpected toppling of an apparently healthy tree the decision as to whether a tree should or should not be removed should lie entirely with the property owner.</p> <p>A simple formula relating to the height of a tree and its proximity to a structure of significant could easily be developed to provide a criterion for its preservation or removal.</p>	<p>Clause 1.B.6.1 (d) of the HDCP permits the pruning or removal 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.</p>	No change proposed
41	<p>Where a tree is removed because of a property owner's concern as to its safety there could be a requirement that it be replaced by one or maybe two more appropriate trees.</p>	<p>Clause 1.B.6.1 (m) of the HDCP states that replacement trees should be provided as near as practicable to the location of the removed tree. Council officers apply conditions of consent for replanting which considers the specific location</p>	No change proposed

## Attachment 2 – Draft Amendments – Hornsby Development Control Plan (2013) – Tree and Vegetation Preservation

Item	Key issues raised in submissions for HDCP Draft Amendments for Tree and Vegetation Preservation	Council officers response	Supported change to exhibited HDCP Amendment (changes in bold)
42	The DCP protects trees or shrubs from 3 metres high. Trees this small offer little environmental benefit.	conditions. Hornsby's tree protection measures have historically set the threshold of a tree needing Council approval at 3 metres. As part of this review, aimed at strengthening the tree protection measures, raising the height of protected trees was not considered.	No change proposed
43	The current HDCP 2013 also includes 1C.1 Natural Environment with measures for Biodiversity. Given the close relationship between Biodiversity and tree preservation and the current propensity for development applications to encroach on areas of biodiversity I would like to suggest the HDCP 2013 1C.1 is also amended as part of your review, to provide better protection for bushland and biodiverse areas.	Section 1C.1.1 Biodiversity was not part of this current amendment review as the controls are generally effective. Notwithstanding a review of the other sections of the HDCP including 1C.1.1 will occur in the near future.	No change proposed
44	The DCP should clearly state that a tree permit must be obtained before any works are carried out on a tree. As the amendment stands this remains unclear to the reader.	Clause 1N.6.1(b) states: <i>To damage or remove any tree under this DCP is prohibited without the written consent of Council, except in accordance with the exemptions prescribed in part (under the heading 'Exempt Tree Work').</i> The type of written consent can be in the form of a Development Approval or a Permit.	No change proposed
45	Given consideration to adding processes for public consultation for instances when trees in public places are to be removed such as street	Council officers undertake a public consultation prior to the necessary removal of public trees. This	No change proposed

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Item	Key issues raised in submissions for HDCP Draft Amendments for Tree and Vegetation Preservation	Council officers response	Supported change to exhibited HDCP Amendment (changes in bold)
	trees or in parks.	process includes local adjoining residents. This matter is not subject to the provisions of the HDCP and no change is warranted.	
46	Outline the circumstances when removal/pruning of trees is not appropriate or necessary to prevent confusion for those unfamiliar with tree management.	Council officers are currently reviewing and updating the tree management information available on Council's website which includes the items suggested. The HDCP provides a legislative framework and all related educational material is best provided through other avenues such as Council's website.	No change proposed
47	There are no references to penalties or infringement notices for those not complying with this DCP should be included or at least provide references to the relevant documents.	Penalties are not prescribed by the HDCP, but rather are authorised through the Environmental Planning and Assessment Act and the Biodiversity Conservation Act. Information regarding penalties is provided on Council's website, Tree Permit Application Form and included with any Permits issued.	No change proposed
48	There needs to be more follow up on adherence to tree planting after construction.	Council currently undertakes random audits of works post construction. This process is proposed to continue and does not form part the HDCP.	No change proposed
49	I suggest adding an offsets program to make provision for areas where trees cannot be replaced in the exact location to ensure the trees are replaced.	The opportunity to provide offsets for tree planting currently exists where vegetation clearance occurs. However, there may be opportunity to explore further opportunities for offsets to apply to smaller scale tree	No change proposed

Attachment 2 – Draft Amendments – Hornsby Development Control Plan (2013) – Tree and Vegetation Preservation

Item	Key issues raised in submissions for HDCP Draft Amendments for Tree and Vegetation Preservation	Council officers response	Supported change to exhibited HDCP Amendment (changes in bold)
		removals. It is recommended that this be investigated and reported by to Council in the near future.	
50	If Council is serious about improving the protection of trees within the Local Government Area then a significant tree register should be set up.	Significant trees are already protected under the provisions of the HDCP and the HLEP as listed heritage items. Where individual trees have historic, cultural or aesthetic significance, they may be individually heritage listed or included as part of a wider heritage listing. It is not considered that a Register of Significant Trees would increase the level of protection for the retention of the Shire's tree canopy. Change to the HDCP is not warranted.	No change proposed
51	Include details of consent duration.	The period for which the consent is valid is provided in the conditions of consent. Change to the HDCP is not warranted.	No change proposed
52	A link to the application form should be included in the DCP to provide ready access to the public.	The HDCP provides the legislatively framework and supporting information such as application forms and further guidance material is best provided through Council's website.	No change proposed
53	Include definition of 'prescribed tree'.	The definition of a prescribed tree is provided in 1B.6.1 (a) of the HDCP.	No change proposed

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Item	Key issues raised in submissions for HDCP Draft Amendments for Tree and Vegetation Preservation	Council officers response	Supported change to exhibited HDCP Amendment (changes in bold)
54	<p>Include provisions for a buffer zone for the protection of areas in close proximity to bushland to protect its ecological health and function from the impact of the surrounding developments. This includes biodiversity area identified on the Terrestrial Biodiversity Map and other bushland areas.</p>	<p>Council's Terrestrial Biodiversity Map can no longer be used to elevate the approval process to require development consent as a result of the introduction of the Vegetation SEPP.</p>	<p>No change proposed</p>
55	<p>I object to the inclusion of trees in the exempt tree work 'where the base of the tree at ground level is located within 3 metres of the foundation of an approved building'. An application should be lodged for these trees.</p>	<p>The 3 metre exemption is provided as a common sense approach for land owners where trees can potentially damage structures.                      Notwithstanding, this exemption does not apply where the tree is a listed heritage item or is located within a heritage conservation area.                      For trees required to be retained as part of a new development, tree protection zones are applied which can be greater in distance than 3 metres.</p>	<p>No change proposed</p>
56	<p>I do not agree with the inclusion of Council owned or managed land trees in the exempt tree work. This will make it too easy for trees to be considered to be removed and offers no protection for street trees.</p>	<p>Council currently removes trees that are assessed to be dead, dying or hazardous. Where infrastructure works are undertaken, the provisions of the Development Approval process or Review of Environmental Factors are applied.                      A number of exemptions are also in place including all trees in road corridors under the provisions of the Roads Act 1993.                      The clause in the DCP 'The removal of or pruning to</p>	<p>No change proposed</p>



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Item	Key issues raised in submissions for HDCP Draft Amendments for Tree and Vegetation Preservation	Council officers response	Supported change to exhibited HDCP Amendment (changes in bold)
57	The Notes recorded in the HDCP 2013/General (revision 30 November 2016) have been removed. Why?	<p>a tree located on Council owned or managed land provided the works are undertaken by Council or Council authorised agents is consistent with this position.</p> <p>The notes removed were included at the end of 2017 as an interim measure as a result of the introduction of the <i>Biodiversity Conservation Act 2016</i> and the <i>Local Land Services Act 2013</i> on August 2017. These notes were no longer required as the amended HDCP, as proposed, integrate the changes.</p>	No change proposed
58	f. This only refers to the need for an application for 'all work to protected trees where an exception does not apply'. I request you remove the term 'protected trees' to show this includes the need for an application to be made for all tree removal.	The term protected trees refers to trees that are prescribed (see Clause 1B.6.1 (a)), and not subject to an exemption (see Clause 1B.6.1d)).	No change proposed
59	The Table 1B.6.2 (b) Type of Vegetation Application Required has been amended and removed references to items such as the HLEP Terrestrial Biodiversity Map. These removed items need to be reinstated.	Table 1B.6.2 (b) has been amended as a result of the introduction of the <i>Biodiversity Conservation Act 2016</i> and the <i>Local Land Services Act 2013</i> .	No change proposed
60	K. Stating 'Where trees are to be retained' does not appear adequate. The meaning of this item has been significantly changed to what is in the current HDCP 2013 by removing the word 'significant'.	The word 'significant' was removed to ensure all trees are afforded the provisions of <i>Australian Standard AS 4970 Protection of Trees on Development Sites</i> , not just those considered to be significant.	No change proposed

Attachment 2 – Draft Amendments – Hornsby Development Control Plan (2013) – Tree and Vegetation Preservation

Item	Key issues raised in submissions for HDCP Draft Amendments for Tree and Vegetation Preservation	Council officers response	Supported change to exhibited HDCP Amendment (changes in bold)
61	Cocos Palms and Camphor Laurel trees should be protected as they contribute to the character of the area.	Cocos Palms are considered by many people to be a result of fad planting in the 1980s. Their contribution to the area's canopy is considered small. It is noted that Ku-ing-gai Council, the City of Ryde and the City of Parramatta also include this species in their 'exempt' lists.  Camphor Laurel's are known to be highly invasive to bushland areas. For this reason the species has been excluded from protection, except in heritage listed sites or heritage conservation areas.	No change proposed
62	A major reason for the loss of trees has been the 10/50 law for tree removal. This document does nothing to address this problem.	The HDCP is not able to change the provision of the 10/50 Vegetation Clearing Scheme.	No change proposed
63	I consider Liquidambar should be on the exempt list as it is hazardous to people by dropping branches, and injury caused by stepping/falling on the large seedpods. As the trees are deciduous they cost Council unnecessary expense by leaves and fruit clogging gutters and blocking drains. This applies to all deciduous trees, many of which should be on the exempt list.	Liquidambar are no more susceptible to branch failure as other trees. All trees shed some form of debris and in this regard the NSW Land and Environment Court has established the following planning principle:  <i>"The dropping of leaves, flowers, fruit, seeds or small elements of deadwood by urban trees ordinarily will not provide the basis for ordering removal of or intervention with an urban tree."</i>  In consideration of the benefits deciduous trees afford (summer shade/winter sun), it is recommend that Liquidambar and other deciduous trees be	No change proposed

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Item	Key issues raised in submissions for HDCP Draft Amendments for Tree and Vegetation Preservation	Council officers response	Supported change to exhibited HDCP Amendment (changes in bold)
64	<p>Ratepayers need to have latitude in controlling and eradicating inappropriate trees which were poorly chosen, located or left unchecked by previous land owners.</p> <p>I suggest the list of trees that can be removed should be expanded and land owners have authority to apply a reasonable view in what is located in their property.</p>	<p>provided protection.</p> <p>Historically local governments in NSW (and in particular within the Sydney metropolitan area) have exercised tree protection measures aimed at protecting the leafy character of an area.</p> <p>The Council has the ability to determine the tree species and circumstances requiring Council approval for tree removal as contained in the HDCP.</p>	No change proposed
65	<p>Given the height of some of the indigenous and exotics which have been planted quite inappropriately by previous Councils, developers, and rate payers within the Shire, some reasonable consideration should be made where such a tree exists to permit lopping and removal.</p> <p>Perhaps a planting guide be made available on the Council website to show and describe what are recommended planting guides and what are inappropriate for built up areas in relation to tree species.</p>	<p>In the interest of promoting opportunities for more trees, there does exist the opportunity to establish helpful planting guides. This information when developed is best made available on Council's website.</p>	No change proposed
66	<p>If the current draft is carried then there will be an increased demand on council staff and no doubt will be the basis to justify the council needing to employ additional officers or the applicants who request approval for the removal of</p>	<p>Additional resources will be required as it is anticipated there will be an increase the number of Tree Permit Applications.</p> <p>This matter is not subject to the provisions of the HDCP and is dealt with in the report considered by</p>	No change proposed

Attachment 2 – Draft Amendments – Hornsby Development Control Plan (2013) – Tree and Vegetation Preservation

Item	Key issues raised in submissions for HDCP Draft Amendments for Tree and Vegetation Preservation	Council officers response	Supported change to exhibited HDCP Amendment (changes in bold)
67	<p>trees/vegetation will have to delay their respective project awaiting for the approval process.</p> <p>Land owners buy the larger land plots at the edge of Sydney fringe to live in this unique environment and Council needs to respect that this is their piece of land and if they want a second shed or need a road to access their land then they should be entitled some freedom to this. The existing tree preservation bylaws already give council the means to control the management of the bushland in the shire. Non-native trees and vegetation should not come under the tree/vegetation preservation bylaws.</p>	<p>Council.</p> <p>The Council has the ability to determine the tree species and circumstances requiring Council approval for tree removal as contained in the HDCP.</p>	<p>No change proposed</p>
68	<p>In order to turn-around tree loss, the draft requires additions designed to implement tree planting to give credit to a property owner to plant trees, to assign a value to a tree, to impose responsibility on property owners to plant and maintenance trees, to penalise property owners and developers who fail to plant trees or prefer to view neighbours trees. To allow control concessions to property owners who add to a tree canopy by investing in trees, to restrict developers who usurp the asset value of neighbouring trees for their own gain, to assist property owners prepared to plant and maintain trees in excess of a minimum</p>	<p>The subject submission (extract provided), contained a detailed proposal that is innovative and a completely different tree protection and enhancement model than currently exists. The</p>	<p>No change proposed</p>

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Item	Key issues raised in submissions for HDCP Draft Amendments for Tree and Vegetation Preservation	Council officers response	Supported change to exhibited HDCP Amendment (changes in bold)
	<p>expectation by means of concessions and credits.</p> <p>Key to these additions is establishment of a “Tree Trust Fund”. Every property owner must contribute a minimum tree credit based upon the size or value of their property. Those in arrears must pay a monetary contribution into the fund. Those in credit can use the financial value of their excess credit to pay for council rates and services, or to pay for tree maintenance from an accredited supplier, or purchase more trees. It follows that a tree has a “net present value”.</p> <p>This draft is all about decline and control of destruction as a method of preservation and aims to turn tree loss around. Turn-around requires both preservation and new planting as policy. I hope it will provoke discussion and argument.</p>		

## 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 (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>	Queensland Silver 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
<i>Citrus spp, Olea spp, Prunus spp, Malus spp</i>	Fruit 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](http://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*.

## 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 based evaluation methods to determine the useful life 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](http://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 <sup>2</sup>
Prescribed urban areas (Zones R2, R3, R4, RU5, SP2, SP3, B1, B2, B3, B4, B5, B6, IN1 & IN2)	10m <sup>2</sup>

- 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](http://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.7 Tree and Vegetation Preservation within the Council of Parramatta (land formerly part of Hornsby LGA)

This section is made in accordance with Clause 5.9 of the HLEP and prescribes the trees and vegetation to which Clause 5.9 and/or Clause 5.10 applies and the applicable approval process.

### 1B.7.1 Tree Preservation

#### Prescribed Trees

- a. The prescribed trees that are protected by Clause 5.9 and/or Clause 5.10 of the HLEP and this Section of the DCP include:
  - tree species indigenous to Hornsby Shire, as listed in Table 1B.7 (b),
  - trees on land within a heritage conservation area described within the *HLEP* and
  - 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:
  - **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.
  - **Bushland** means land on which there is vegetation which is either a remainder of the natural vegetation of the land or, if altered, is still representative of the structure and floristics of the natural vegetation. This includes rehabilitated riparian land.
  - **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.
  - **Indigenous tree** means species which are native to the Hornsby Shire LGA (planted or self-sown) and not introduced (exotic). Refer to the species listing in Part 1.B.7.
  - **Tree Protection Zone** means the area above or below ground requiring protection at a given distance

from the trunk to provide viability and stability of a tree.

#### Exempt Tree Work

- d. The following exemptions to this part apply as set out below:
  - The removal of or pruning to a tree where Council is satisfied the tree is dying or dead and is not required as the habitat of native fauna.
  - 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.
  - The removal of a tree less than 3 metres in height not located within bushland.
  - Trees deemed by Council in writing and shown by recorded photographic evidence or written evidence provided by a qualified Arborist (AQF5) as a risk to human life or is causing or likely to cause substantial damage to property.
- 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, 1A or 2 of the *Threatened Species Conservation Act 1995*, 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 5.10 of the *HLEP*.

#### Notes:

Clause 5.9AA of the HLEP permits the removal of any tree or vegetation that is not of a species or kind prescribed by Clause 5.9 of the HLEP.

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



## 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.7(a) 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:

Actions required or authorised to be done by, or under separate legislation is not the subject of this Tree and Vegetation Preservation Clause as prescribed in Clause 5.9(8) of the HLEP. For example this Clause does not apply to some works prescribed by the Electricity Supply Act, Roads Act, Noxious Weeds Act and Forestry Act.

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.

Table 1B.7(a) Type of Tree Application Required

Location	Extent of Works	Form of Application
Land identified as "Biodiversity" on the <i>HLEP</i> Terrestrial Biodiversity map	Work to any prescribed tree	Development Application
Land that contains native vegetation which is habitat for species, populations or ecological communities listed in Schedule 1, 1A or 2 of the <i>Threatened Species Conservation Act 1995</i>	Work to any tree or prescribed tree including trees on other lands	Development Application
Work that is contrary to a development consent that requires trees to be retained	Work to any prescribed tree	Section 96 Application
Heritage Item	Council is satisfied that the works to a tree are minor as described by Clause 5.10(3) of the <i>HLEP</i>	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 5.10(3) of the <i>HLEP</i>	Tree Permit
	Major work to any tree	Development Application
Other land - tree removal or pruning	Removal or pruning of no more than 9 prescribed trees	Tree Permit
	Removal or pruning of 10 or more prescribed trees	Development Application
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 of no more than 9 prescribed trees	Tree Permit
	Work within the Tree Protection Zone of 10 or more prescribed trees	Development Application

- h. For the purpose of Table 1B.7(a), 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 HLEP and HDCP.
- j. The impact of development upon trees will be assessed using arboricultural, ecological and/or occupational health and safety based evaluation to determine the significance of the trees. Accordingly, any application for removal should demonstrate that the removal of the tree is appropriate based on an assessment of the:
- significance/health/longevity of the tree; and
  - risk to human life or property.
- k. Where such trees are deemed by Council to be significant, the provisions of *Australian Standard AS 4970 Protection of Trees on Development Sites* should be applied.
- l. All tree pruning work should 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.

Table 1B.7(b) Tree Species Indigenous to Hornsby Shire

Botanical name	Common Name
<i>Acacia binervia</i>	Coast Myall
<i>Acacia decurrens</i>	Sydney Green Wattle
<i>Acacia elata</i>	Mountain Cedar Wattle
<i>Acacia falcata</i>	Sickle Wattle
<i>Acacia floribunda</i>	White Sally Wattle
<i>Acacia implexa</i>	Hickory
<i>Acacia longifolia</i>	Sydney Golden Wattle
<i>Acacia parramattensis</i>	Parramatta Green Wattle
<i>Acacia parvipinnula</i>	Silver-stemmed wattle
<i>Acacia schinoides</i>	Green Cedar Wattle
<i>Acmena smithii</i>	Lilly Pilly
<i>Aegiceras corniculatum</i>	River Mangrove
<i>Allocasuarina distyla</i>	Scrub She-oak
<i>Allocasuarina littoralis</i>	Black She-oak
<i>Allocasuarina torulosa</i>	Forest Oak
<i>Alphitonia excelsa</i>	Red Ash
<i>Angophora bakeri</i>	Narrow-leaved Apple
<i>Angophora costata</i>	Sydney Red Gum
<i>Angophora floribunda</i>	Rough-barked Apple
<i>Angophora hispida</i>	Dwarf Apple
<i>Avicennia marina</i>	Grey Mangrove
<i>Backhousia myrtifolia</i>	Grey Myrtle
<i>Banksia integrifolia</i>	Coast Banksia
<i>Banksia serrata</i>	Old Man Banksia
<i>Callicoma serratifolia</i>	Black Wattle
<i>Callistemon linearifolius</i>	Netted Bottle Brush
<i>Callistemon salignus</i>	Willow Bottlebrush
<i>Callitris rhomboidea</i>	Port Jackson Cypress
<i>Casuarina glauca</i>	She-oak, Swamp Oak

#### Notes:

Further information on some common indigenous tree species is available on Council's website [hornsby.nsw.gov.au](http://hornsby.nsw.gov.au).

Table 1B.7(b)cont. Tree Species Indigenous to Hornsby Shire

Botanical name	Common Name
<i>Ceratopetalum apetalum</i>	Coachwood
<i>Ceratopetalum gummiferum</i>	NSW Christmas Bush
<i>Corymbia eximia</i>	Yellow Bloodwood
<i>Corymbia gummifera</i>	Red Bloodwood
<i>Cryptocarya glaucescens</i>	Jackwood
<i>Doryphora sassafras</i>	Sassafras
<i>Elaeocarpus reticulatus</i>	Blueberry Ash
<i>Eucalyptus acmenoides</i>	White Mahogany
<i>Eucalyptus agglomerata</i>	Blue-leaved Stringybark
<i>Eucalyptus botryoides</i>	Bangalay
<i>Eucalyptus camfieldii</i>	Heart Leaved Stringybark
<i>Eucalyptus capitellata</i>	Brown Stringybark
<i>Eucalyptus crebra</i>	Narrow-leaved Ironbark
<i>Eucalyptus elata</i>	River Peppermint
<i>Eucalyptus eugenioides</i>	Thin-leaved Stringybark
<i>Eucalyptus fibrosa</i>	Broad leaf Ironbark
<i>Eucalyptus globoidea</i>	White Stringybark
<i>Eucalyptus haemastoma</i>	Broad-leaved Scribbly Gum
<i>Eucalyptus longifolia lora</i>	Woollybutt
<i>Eucalyptus luehmannianna</i>	Yellow Top Mallee Ash
<i>Eucalyptus multicaulis</i>	Whipstick Ash
<i>Eucalyptus oblonga</i>	Common Sandstone Stringybark
<i>Eucalyptus paniculata</i>	Grey Ironbark
<i>Eucalyptus pilularis</i>	Blackbutt
<i>Eucalyptus piperita</i>	Sydney Peppermint
<i>Eucalyptus punctata</i>	Grey Gum
<i>Eucalyptus racemosa</i>	Narrow-leaved Scribbly Gum
<i>Eucalyptus resinifera</i>	Red Mahogany
<i>Eucalyptus robusta</i>	Swamp Mahogany
<i>Eucalyptus saligna</i>	Sydney Blue Gum
<i>Eucalyptus siderophloia</i>	Northern Grey Ironbark

Table 1B.7(b)cont. Tree Species Indigenous to Hornsby Shire

Botanical name	Common Name
<i>Eucalyptus sieberi</i>	Silvertop Ash
<i>Eucalyptus sparsifolia</i>	Stringybark
<i>Eucalyptus squamosa</i>	Scaly Bark
<i>Eucalyptus tereticornis</i>	Forest Red Gum
<i>Eucalyptus umbra</i>	Bastard White Mahogany
<i>Eupomatia laurina</i>	Bolwarra
<i>Ficus coronata</i>	Sandpaper Fig
<i>Ficus rubiginosa</i>	Port Jackson Fig
<i>Glochidion ferdinandi</i>	Cheese Tree
<i>Hakea dactyloides</i>	Broad-leaved Hakea
<i>Hakea salicifolia</i>	Willow-leaved Hakea
<i>Homalanthus populifolius</i>	Bleeding Heart
<i>Leptospermum petersonii</i>	Lemon-sented Tea Tree
<i>Melaleuca decora</i>	White feather honey-myrtle
<i>Melaleuca ericifolia</i>	Swamp Paperbark
<i>Melaleuca linariifolia</i>	Snow-In-Summer
<i>Melaleuca quinquenervia</i>	Broad-leaved Paperbark
<i>Melaleuca styphelioides</i>	Prickly-leaved Paperbark
<i>Myoporum acuminatum</i>	Boobialla
<i>Myrsine variabilis</i>	Muttonwood
<i>Pittosporum undulatum</i>	Sweet Pittosporum
<i>Rhodamnia rubescens</i>	Scrub Turpentine
<i>Schizomeria ovata</i>	White Crab-apple
<i>Stenocarpus salignus</i>	Scrub Beefwood
<i>Syncarpia glomulifera</i>	Turpentine
<i>Synoum glandulosum</i>	Scentless Rosewood
<i>Syzygium australe</i>	Brush Cherry
<i>Syzygium oleosum</i>	Blue Lillypilly
<i>Syzygium paniculatum</i>	Magenta Lilly Pilly
<i>Toona australis</i>	Red Cedar
<i>Tristaniopsis laurina</i>	Water Gum



### 1B.7.2 Vegetation Preservation

#### Prescribed Vegetation

a. The prescribed vegetation that is protected by Clause 5.9 and/or Clause 5.10 of the *HLEP* and this Section of the DCP includes:

- bushland, 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.
- **Bushland** means land on which there is vegetation which is either a remainder of the natural vegetation of the land or, if altered, is still representative of the structure and floristics of the natural vegetation. This includes rehabilitated riparian land.
- **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.7.2(a) Exempt Vegetation Work

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

- The clearing of vegetation where Council is satisfied the vegetation is dying or dead and is not required as the habitat of native fauna.
- The clearing of vegetation where Council is satisfied the vegetation is a risk to human life or is causing or likely to cause substantial damage to property.

e. The exemptions in Table 1B.7.2(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, 1A or 2 of the Threatened Species Conservation Act 1995,
- work that is contrary to a development consent that requires vegetation to be retained,
- all vegetation on heritage listed properties,
- bushland within heritage conservation areas,
- land if it results in the fragmentation or isolation of bushland, or
- land if it reduces effective vegetation buffers to adjoining Community Open Space or Private Open Space lands.
- land that is defined as State Protected Land under the Native Vegetation Regulation 2005.

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 5.9 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 bushland.

## 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.7.2(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.7.2(b) Type of Vegetation Application Required

Location	Extent of Works	Form of Application
Land identified as "Biodiversity" on the HLEP Biodiversity map	Work to any vegetation	Development Application
Land that contains native vegetation which is habitat for species, populations or ecological communities listed in Schedule 1, 1A or 2 of the <i>Threatened Species Conservation Act 1995</i> ,	Work to any vegetation	Development Application
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
Heritage Item	Minor work to any vegetation that is or forms part of a Heritage Item as described by 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 5.10(3) of the HLEP)	Development Application
Land within a Heritage Conservation Area	Minor work to any protected vegetation as described by Clause 5.9(7) of the HLEP	Vegetation Permit
	Major work to any protected vegetation (i.e. work that is not minor as described by Clause 5.9(7) of the HLEP)	Development Application
Other land zoned Rural (Zones RU1, RU2, RU4)	Removal of up to 200m <sup>2</sup> of vegetation	Vegetation Permit
	Removal of more than 200m <sup>2</sup> of vegetation	Development Application
Other land zoned Urban (Zones R2, R3, R4, RU5, SP2, SP3, B1, B2, B3, B4, B5, B6, IN1 & IN2)	Removal of up to 100m <sup>2</sup> of vegetation	Vegetation Permit
	Removal of more than 100m <sup>2</sup> of vegetation	Development Application
Other land not prescribed above	Work to any vegetation	Development 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 HLEP and HDCP.
- k. In determining if vegetation is significant, it will be assessed using an arboricultural, ecological and/or an Occupational Health and Safety based evaluation. Accordingly, any application for removal should demonstrate that the removal of vegetation is appropriate based on an assessment of the:
- 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.

Clause 5.9AA of the HLEP permits the removal of any tree or vegetation that is not of a species or kind prescribed by Clause 5.9 of the LEP.

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.

Actions required or authorised to be done by, or under separate legislation is not the subject of this Tree and Vegetation Preservation Clause as prescribed in Clause 5.9(8) of the HLEP. For example this Clause does not apply to some works prescribed by the *Electricity Supply Act*, *Roads Act*, *Noxious Weeds Act*, and *Forestry Act*.

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