

## Code of Practice

<b>Code of Practice name</b>	Tree Preservation Code
<b>Responsible manager(s)</b>	Divisional Manager, Strategic and Sustainable Growth
<b>Contact officer(s)</b>	Strategic Planning Coordinator
<b>Directorate</b>	Planning and Sustainability Services
<b>Approval date</b>	[XX/XX/XXXX]
<b>Community Strategic Plan Objective</b>	Responsible and balanced development
<b>Delivery Program</b>	Ensure development is sustainable, and reflects community values and desired local setting
<b>Operational Plan</b>	Provide receptive and responsive development assessment services

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## Purpose

Council can issue a permit for the removal or pruning of declared vegetation that is below the biodiversity offsets scheme thresholds.

This Code allows for the removal of unsafe or unsuitable trees on public and non-rural land while encouraging replacement vegetation to ensure the tree canopy maintains visual amenity, special landscape characteristics, unique vegetation qualities, and the economic, social and ecological values within the Eurobodalla Shire. For example, native vegetation supports the views and aspects that are important to our tourism industry and minimises the risk of destabilisation of land, particularly on foreshore or riparian land, due to inappropriate tree removal.

## Objectives

The objectives of this Code are:

- To protect and enhance trees and vegetation in non-rural areas including street trees, park trees (including bushland) and trees on private property as an important community and tourism asset;
- To facilitate the removal or pruning of undesirable exotics, environmental weeds, noxious weeds, dangerous trees and any other inappropriate plantings eg that are causing damage to buildings or other infrastructure;
- To facilitate the removal or pruning of vegetation for maintenance of existing rural infrastructure; and
- To minimise impacts to vegetation with high environmental value eg threatened ecological communities, threatened species and their habitats.

<b>1</b>	<p><b>Introduction</b></p> <p>This Code has been prepared pursuant to Part 3 of the <i>State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017</i> (Vegetation SEPP). It supports the aims of the Vegetation SEPP to protect the biodiversity values of trees and other vegetation in non-rural areas and to preserve the amenity of non-rural areas through the preservation of trees and other vegetation.</p>
<b>2</b>	<p><b>Application of this Code</b></p> <p>This Code applies to all non-rural land within the Eurobodalla Shire and where referred to in a development control plan that applies to the land.</p> <p>This Code applies to removal or pruning of vegetation declared in section 2.1 of this Code and that does not exceed the biodiversity offsets scheme threshold.</p> <p>Figure 1 in this Code summarises how to determine if this Code applies to vegetation removal or pruning.</p> <p>Removal of native vegetation that exceeds the biodiversity offsets scheme thresholds requires approval from the Native Vegetation Panel, not Council. For more information about native vegetation removal that exceeds the biodiversity offset scheme thresholds contact Local Land Services on 1300 795 299, email <a href="mailto:slm.info@lls.nsw.gov.au">slm.info@lls.nsw.gov.au</a> or contact the South East Local Land Services office via email to <a href="mailto:enquiry.southeast@lls.nsw.gov.au">enquiry.southeast@lls.nsw.gov.au</a>.</p> <p>More information about the Biodiversity Offset Scheme thresholds can be found on NSW Office of Environment and Heritage's website. The biodiversity offsets scheme thresholds include:</p>

- a) the clearing of native vegetation exceeding the thresholds shown in Table 1 of this Code.
- b) the clearing of native vegetation on land included on the Biodiversity Values Map (available online: <https://www.lmbc.nsw.gov.au/Maps/index.html?viewer=BOSETMap>).

**Table 1: Clearing area thresholds (source Clause 7.2 of the *Biodiversity Conservation Regulation 2017*)**

Minimum Lot Size of Land in the Eurobodalla LEP	Area of clearing
Less than 1 hectare	0.25 hectares or more
Less than 40 hectares but not less than 1 hectare	0.5 hectares or more
Less than 1,000 hectares but not less than 40 hectares	1 hectares or more
1,000 hectares or more	2 hectares or more

If you are applying for a Complying Development Certificate under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* you need to obtain a permit to remove or prune vegetation to which this Code applies.

If a Development Application has been approved for the removal of a tree or other native vegetation, a permit is not required.

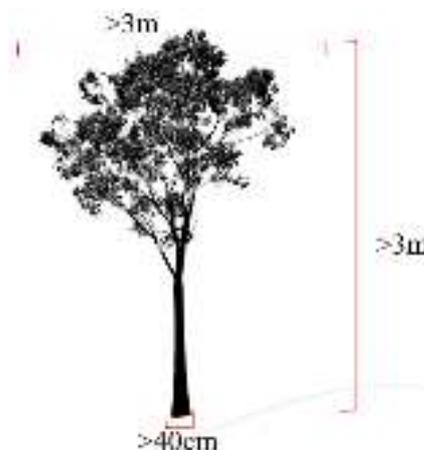
**2.1 Vegetation to which this Code applies**

This Code declares vegetation for the purposes of Part 3 of the Vegetation SEPP. A permit is required to remove or prune the following vegetation, unless the activity or vegetation is exempt as set out in section 5 of this Code:

- 5.1.1. All trees are declared for the purposes of Part 3 of the Vegetation SEPP.

A tree means a perennial plant with at least one self-supporting woody or fibrous stems which:

- a) is at least 3 metres in height; or
- b) has a trunk circumference of 400mm at ground level; or
- c) has a crown/branch span of 3 metres diameter or more.



- 5.1.2. All native vegetation is declared for the purposes of Part 3 of the Vegetation SEPP, on land zoned RE1 Public Recreation, E4 Environmental Living or E2 Environmental Conservation by the Eurobodalla Local Environmental Plan 2012.

**3 Relationship to other plans and orders**

*Eurobodalla Shire Council's Conservation of the Yellow-bellied Glider in the Broulee Area Policy* – A permit from Council for removal or pruning of vegetation on land identified in the Yellow-bellied Glider in the Broulee Area Policy will only be issued if it complies with the requirements of that Policy.

	<p><i>Eurobodalla Shire Council’s Tree Risk Management Policy on Council Controlled Land</i> – provides the guidelines for Council staff to assess the potential risks from trees on Council controlled land to public safety and private assets.</p> <p><i>Eurobodalla Shire Council’s Vegetation Clearing – Roadsides and Infrastructure Lines Policy</i> – clarifies the responsibilities of Council when undertaking clearing in road reserves, for other infrastructure (eg underground services), whether on public land or within private property, for maintenance or construction purposes.</p> <p><i>Eurobodalla Shire Council’s Build in the Vicinity of Sewer Mains Code of Practice</i> – The Code sets out the requirements for ensuring that significant public and private assets are protected from potential damage when building in the vicinity of sewer mains. Tree roots can penetrate into sewerage pipes through joints or damaged sections of pipe, causing blockages and subsequent overflows. As a result, certain species are not recommended to be planted near sewer mains. A list of the highest risk species is provided in Appendix A of the code.</p>
4	<p><b>Permits for tree works under this Code</b></p> <p>In accordance with Clause 7(1) of the Vegetation SEPP, a person must not cut down, fell, uproot, kill, poison, ringbark, burn or otherwise destroy vegetation declared in section 2.1 of this Code, or lop or otherwise remove a substantial part of the vegetation without a permit granted by Council.</p>
4.1	<p><b>Appeals</b></p> <p>An appeal to Council against an approval or refusal to grant a permit under this Code may be made by the applicant.</p> <p>If dissatisfied with the result of the appeal to Council, an appeal to the Land and Environment Court may be made by the applicant. 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 later).</p> <p>An application for a permit that has not been determined is taken to have been refused after 28 days from the date the application was made.</p>
5	<p><b>Exemptions</b></p> <p>You do not need to apply for a permit from Council if the exemptions in this section apply to the proposed vegetation removal. However, exemption under this section does not equal an exemption under other legislation controlling the removal or pruning of trees and other vegetation. Exemptions under this Code cannot be used for:</p> <ol style="list-style-type: none"> <li>a) Removal or pruning of trees and other native vegetation that is required to be retained by a development consent or a Section 88B restriction to user instrument. Applicants may choose to apply to Council for a variation to the conditions of consent (for dwelling and/or subdivision) or the Section 88B instrument in this instance.</li> <li>b) Removal or pruning of trees and other native vegetation related to a heritage item, Aboriginal object, Aboriginal place of heritage significance, or on land within a heritage conservation area. Development consent is required in these circumstances.</li> <li>c) Any ringbarking, cutting down, topping, lopping, removal, injuring or destruction of a tree or other vegetation that is mapped as Coastal Wetland or Littoral Rainforest by the State Environmental Planning Policy (Coastal Management) 2018. Development consent is required in these circumstances.</li> </ol>

	<p>d) Vegetation removal that exceeds the Biodiversity Offsets Scheme thresholds identified in the Biodiversity Conservation Regulation 2017.</p> <p>e) Impacts to threatened species, ecological communities or their habitat. A biodiversity conservation licence from the NSW Office of Environment and Heritage is required if a permit from Council has not been issued.</p> <p>A permit under this Code is not a defence for significant impacts to threatened species, populations or communities listed under the <i>Commonwealth Environment Protection and Biodiversity Conservation Act 1999</i>.</p>
<p><b>5.1</b></p>	<p><b>List of exempt activities</b></p> <p>The following activities do not require a permit from Council:</p> <p>5.1.3. The clearing of vegetation that is authorised under Section 600 of the Local Land Services Act 2013. This includes:</p> <ul style="list-style-type: none"> <li>5.1.3.1. Planning approval eg development consent under Part 4 of the <i>Environmental Planning and Assessment Act 1979</i></li> <li>5.1.3.2. Other planning authorisation eg an activity carried out by a determining authority under part 5 of the <i>Environmental Planning and Assessment Act 1979</i></li> <li>5.1.3.3. Biodiversity conservation authorisation under the <i>Biodiversity Conservation Act 2016</i></li> <li>5.1.3.4. Rural fires authorisation under the <i>Rural Fires Act 1997</i> eg in accordance with NSW Rural Fire Services 10/50 code</li> <li>5.1.3.5. Electricity network operator bush fire risk mitigation direction under the <i>Electricity Supply Act 1995</i></li> <li>5.1.3.6. State emergency authorisation under the <i>State Emergency and Rescue Management Act 1989</i> or the <i>State Emergency Service Act 1989</i> and was reasonably necessary in order to avoid a threat to life or property</li> <li>5.1.3.7. Biosecurity authorisation under the <i>Biosecurity Act 2015</i></li> <li>5.1.3.8. Plantation operations authorisation under the <i>Plantations and Reafforestation Act 1999</i></li> <li>5.1.3.9. Forestry operations authorisation under the <i>Forestry Act 2012</i></li> <li>5.1.3.10. Water management authorisation under the <i>Water Management Act 2000</i></li> <li>5.1.3.11. Mining/petroleum authorisation under the <i>Mining Act 1992</i> or the <i>Petroleum (Onshore) Act 1991</i></li> <li>5.1.3.12. Fisheries management authorisation under the <i>Fisheries Management Act 1995</i></li> <li>5.1.3.13. Survey work under the <i>Surveying and Spatial Information Act 2002</i> and carried out under the direction of a surveyor</li> <li>5.1.3.14. Roads authorisation under the <i>Roads Act 1993</i></li> <li>5.1.3.15. Private land conservation agreement under the <i>Biodiversity Conservation Act 2016</i></li> </ul>

	<p>5.1.4. The clearing of vegetation in accordance with a property vegetation plan under the former <i>Native Vegetation Act 2003</i>.</p> <p>5.1.5. The removal or harvesting of trees grown commercially or domestically for their edible fruit.</p> <p>5.1.6. The removal or pruning of trees on Council owned/managed land authorised by Eurobodalla Shire Council and provided that assessment of the tree work is carried out in accordance with this Code or in accordance with a Plan of Management for the land.</p> <p>5.1.7. The removal of vegetation by Council in accordance with Council's <i>Tree Risk Management Policy on Council Controlled Land</i> and Council's <i>Vegetation Clearing – Roadsides and Infrastructure Lines Policy</i>. All trees removed on private land in accordance with these Policies must be recorded in Council's Tree Management System.</p> <p>5.1.8. Trees or other vegetation declared or assessed as being a biosecurity matter under the <i>Biosecurity Act 2015</i> (it will not be sufficient defence that the species was not correctly identified prior to removal). Visit Eurobodalla Shire Council's website for a list (<a href="http://www.esc.nsw.gov.au/living-in/about/our-natural-environment/introduced-plants-and-animals">http://www.esc.nsw.gov.au/living-in/about/our-natural-environment/introduced-plants-and-animals</a>).</p> <p>5.1.9. Removal of undesirable species listed in Section 5.3 (it will not be sufficient defence that the species was not correctly identified prior to removal).</p> <p>5.1.10. The removal of dangerous vegetation that Council is satisfied is an imminent risk to human life or property. Council must be notified prior to the removal of any tree(s) and the tree(s) must show obvious instability that represents immediate danger, for example, storm damage resulting in structurally split trunks, limbs, or branches. Only the minimum extent of pruning necessary to reduce the risk to a moderate risk rating will be considered as an exempt activity for habitat trees. The risk assessment must be carried out by a suitably qualified arborist and use the methodology described in Council's <i>Tree Risk Management Policy on Council Controlled Land</i>.</p>
<p>5.2</p>	<p>5.2.1 The following activities (5.2.2 to 5.2.7) do not require a permit from Council, unless:</p> <ul style="list-style-type: none"> <li>a) The tree is listed on Council's significant tree register. Contact Council's Development Helpdesk for advice on whether the tree proposed to be removed or pruned is on the significant tree register;</li> <li>b) The vegetation is a threatened species, habitat for a threatened species (eg a hollow) or part of a threatened ecological community (EEC) under the <i>Biodiversity Conservation Act 2016</i>. Potential EECs are shown on GIS mapping at <a href="http://www.esc.nsw.gov.au/development-and-planning/tools/gis-mapping">www.esc.nsw.gov.au/development-and-planning/tools/gis-mapping</a> or seek advice from a suitably qualified person eg an ecologist;</li> <li>c) The tree is mapped as Yellow-bellied Glider habitat in the Conservation of the Yellow-bellied Glider in the Broulee Area Policy;</li> <li>d) The vegetation is or forms part of a heritage item identified in the Eurobodalla Local Environmental Plan 2012;</li> </ul>

	<p>e) The vegetation is within a heritage conservation area identified in the Eurobodalla Local Environmental Plan 2012;</p> <p>f) Previous permits for clearing have been issued by Council within 5 years and the proposed additional clearing would exceed the biodiversity offsets scheme clearing area threshold of the lot (see Table 1).</p> <p>5.2.2 If the land is zoned E4 Environmental Living, R5 Large Lot Residential or E2 Environmental Conservation:</p> <p>5.2.2.1 Clearing for the following maintenance of existing permanent rural infrastructure. The minimum extent of clearing necessary for carrying out the activity is permitted up to the distances from the infrastructure below:</p> <ul style="list-style-type: none"> <li>a) fences —1 metres either side (note that landholders permission is necessary),</li> <li>b) road or track— 1 metre either side from edge of road,</li> <li>c) pipeline—3 metres total width of clearing,</li> <li>d) shed —3 metres from the outer edge of the structure,</li> <li>e) tank—3 metres from the outer edge of the structure,</li> <li>f) dam—3 metres from the outer edge of the structure unless mapped as riparian in the Eurobodalla Local Environmental Plan,</li> <li>g) stockyards— 3 metres from the outer edge of the structure,</li> <li>h) bore— 3 metres from the outer edge of the structure,</li> <li>i) pump—3 metres from the outer edge of the structure,</li> <li>j) water point—3 metres from the outer edge of the structure,</li> <li>k) windmill— 3 metres from the outer edge of the structure.</li> </ul> <p>5.2.2.2 The continuation of existing cultivation, grazing or rotational farming practices if it does not involve the clearing of native vegetation.</p> <p>5.2.2.3 Keeping pets for non-commercial purposes if it is not likely to result in the substantial long-term decline in the structure and composition of native vegetation and does not involve the clearing of native vegetation.</p> <p>5.2.3 Removal of trees and other native vegetation within 3.0 metres (as measured on the horizontal plane from the edge of the building footprint to the trunk of the tree) of an existing lawful dwelling or an approved building footprint in accordance with a development consent. This exemption does not apply to a tree on adjoining land unless the adjoining landholder gives permission for the vegetation removal.</p> <p>5.2.4 The removal of vegetation that Council is satisfied is dying or dead and is not required as the habitat of native animals eg it does not contain hollows. An assessment carried out by a suitably qualified arborist may be required as evidence that the tree is dying or dead.</p> <p>Council must be notified prior to the removal of any tree(s) that are dead or dying so that Council can issue a letter confirming that the tree is exempt from the requirement for a permit and removal or pruning may be undertaken.</p>
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	<p>5.2.5 Pruning of trees if pruning does not exceed 10% of canopy per year and complies with Australian Standard 4373 – Pruning of Amenity Trees (note that 10% of the part of a tree hanging over into an adjoining property can be removed from the fence line without approval from the tree owner).</p> <p>5.2.6 Removal of vegetation on a boundary between properties for the purpose of enabling a boundary survey to be carried out by a registered surveyor. The surveyed lands must exceed one hectare and the maximum width of clearing is 0.5m either side of boundary. The adjoining owner’s approval is necessary.</p> <p>5.2.7 Removal of trees or vegetation directly on a boundary line between properties for the purpose of erecting a boundary fence – adjoining owner’s approval is necessary.</p>
<p><b>5.3</b></p>	<p><b>List of exempt species</b></p> <p>A permit is not required to remove or prune any of the following trees on private land provided the tree is not part of a threatened ecological community, within a Coastal Wetland or Littoral Rainforest mapped by the Coastal Management SEPP, listed as a Heritage Item or within a Heritage Conservation Area, or listed on Council’s Significant Tree Register:</p> <p>5.3.1 Any environmental weed or noxious weed;</p> <p>5.3.2 Domestic fruit trees including citrus, stone (cherry, peach, plum), mulberry, banana, avocado, mango, and loquat;</p> <p>5.3.3 Species listed in Table 2 of this Code.</p>
<p><b>5.4</b></p>	<p><b>Evidence required</b></p> <p>5.4.1 Expert advice from a suitably qualified and experienced person (see Section 7.1) must be obtained with respect to dangerous, dying or dead trees:</p> <p>5.4.1.1 to confirm their condition prior to removal or injury, and</p> <p>5.4.1.2 to ensure that they do not provide habitat for Threatened Species.</p> <p>5.4.2 Where a dangerous tree is removed (in an emergency situation) due to obvious instability or hazard,</p> <p>5.4.2.1 photographic evidence of the tree's condition; and</p> <p>5.4.2.2 a report by a suitably qualified and experienced person; or</p> <p>5.4.2.3 a written statement from the State Emergency Service, if the Service carried out the emergency tree works at the owners request.</p> <p>5.4.3 Dated photographic evidence of the subject tree(s) before and after pruning or removal must be retained for a period of 6 months after the completion of works and produced as evidence of compliance with this Code at the request of a Council officer.</p>
<p><b>6</b></p>	<p><b>Procedures</b></p> <p>If a tree or other vegetation proposed for removal or pruning is declared under Section 3 of this Code for the purpose of Part 3 of the Vegetation SEPP, and is not exempt under section 5 of this Code, then a permit application must be submitted to Council.</p>
<p><b>6.1</b></p>	<p><b>Application procedures</b></p> <p>Refer to figure 2 of this code for a summary of the application process.</p> <p>6.1.1 For trees on Council reserves, please contact Council’s Tree/Parks Inspector on 02 4474 1391.</p>

	<p>6.1.2 If native vegetation removal would exceed the Biodiversity Offsets Scheme Thresholds described in Part 7 of the Biodiversity Conservation Regulation 2017 (ie mapped by the Biodiversity Values Map (<a href="https://www.lmbc.nsw.gov.au/Maps/index.html?viewer=BVMap">https://www.lmbc.nsw.gov.au/Maps/index.html?viewer=BVMap</a> or exceeds the area thresholds in Clause 7.2 of the that regulation) please contact Local Land Services on 1300 778 080, email <a href="mailto:slm.info@lls.nsw.gov.au">slm.info@lls.nsw.gov.au</a> or contact the South East Local Land Services office via email to <a href="mailto:enquiry.southeast@lls.nsw.gov.au">enquiry.southeast@lls.nsw.gov.au</a>. The Biodiversity Offset Scheme Entry Tool available online at <a href="https://www.lmbc.nsw.gov.au/Maps/index.html?viewer=BOSETMap">https://www.lmbc.nsw.gov.au/Maps/index.html?viewer=BOSETMap</a> may also assist with determining if the proposed clearing would exceed the thresholds.</p> <p>6.1.3 Removal or pruning of vegetation for the maintenance of a heritage item, Aboriginal object, Aboriginal place of heritage significance, or in heritage conservation area of minor in nature may not need approval. Council can confirm this via an email to <a href="mailto:development@esc.nsw.gov.au">development@esc.nsw.gov.au</a>. A development application for any other removal or pruning of vegetation located on heritage items and heritage conservation areas is required in accordance with Clause 5.10 of the ELEP 2012.</p> <p>6.1.4 All requests to prune or remove trees or vegetation protected under this Code are to be submitted on a Tree Removal Application Form available from Council and be accompanied by a Tree Plan drawn to scale that illustrates;</p> <p>6.1.4.1 Property boundary, existing structures and access roads</p> <p>6.1.4.2 Location of all trees on the lot and identification of those trees or vegetation proposed for removal</p> <p>6.1.4.3 A description of the trees or vegetation proposed for removal and evidence that impacts to vegetation have been avoided and minimised and there are no other reasonable alternatives</p> <p>6.1.4.4 Distance of those trees or vegetation proposed for removal from the nearest boundary and/or structure</p> <p>6.1.4.5 A north arrow</p> <p>6.1.4.6 The area of native vegetation being cleared in square metres (this can be generated by the Biodiversity Offsets Scheme Entry Tool available on the NSW office of Environment Heritage’s website, <a href="https://www.lmbc.nsw.gov.au/Maps/index.html?viewer=BOSETMap">https://www.lmbc.nsw.gov.au/Maps/index.html?viewer=BOSETMap</a>)</p> <p>6.1.4.7 Mitigation measures proposed eg replacement plantings locations</p> <p>6.1.5 Evidence from a suitably qualified and experienced person (eg Tree Assessment Report and/or an assessment on the significance of impacts to threatened species and ecosystems, see Section 7.1), where required, must be submitted with the Tree Removal Application Form.</p> <p>6.1.6 The appropriate processing fee as determined by Council must be paid when submitting the Tree Removal Application Form.</p> <p>6.1.7 The owner of the property, on which the trees or vegetation are growing must sign the Tree Removal Application Form.</p> <p>6.1.8 Upon submission of the Tree Removal Application Form, Tree Plan and processing fee, Council staff will ensure that the form is correctly filled out and contains all necessary information required to allow lodgement.</p>
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	<p>6.1.9 A site inspection to confirm the details in the application will be undertaken by a Council representative. The applicant must clearly mark all trees proposed for removal on site for inspection purposes.</p> <p>6.1.10 Council may request further information about the proposed clearing if it is necessary for proper consideration of the application.</p> <p>6.1.11 Council will assess the tree removal application against the assessment criteria in this Code and issue a permit if appropriate. An application for a permit that has not been determined is taken to have been refused after 28 days from the date the application was made.</p> <p>6.1.12 All trees removed on private land in accordance with this Code must be recorded in Council’s Tree Management System</p>
<p><b>6.2</b></p>	<p><b>Assessment Criteria</b></p> <p>Council may issue a permit for the removal of trees if the following criteria are met:</p> <p>6.2.1 The tree is a poor specimen and is in a state of decline that is prolonged and irreversible; or</p> <p>6.2.2 The tree has caused significant structural damage and supporting documentation including photographic evidence is provided; or</p> <p>6.2.3 It can be demonstrated that there is an ongoing problem with the tree which no other course of action will rectify; and</p> <p>6.2.4 Council is satisfied there is unlikely to be a significant impact on threatened species, their habitat (eg hollows) or ecological communities and the reason for removal or pruning would otherwise be an exempt activity under section 5 of this Code and other reasonable alternatives are not available.</p> <p>Clear evidence is provided of how impacts to hollow bearing trees, threatened species or vegetation communities have been avoided and minimised and that other reasonable alternatives are not available.</p> <p>Applications for impacts to any tree that contains a hollow, is a threatened species or is a component of a threatened ecological community or involves removal of 10 trees or more, Council may request an assessment of the significance of the impacts in accordance with Part 7.3 of the <i>Biodiversity Conservation Act 2016</i>. The assessment must be completed by a suitably qualified and experienced person (see Section 7.1).</p> <p>If hollows will be removed, an animal handler must be present on site to rescue any animals potentially using the tree as habitat.</p> <p>6.2.5 Provided that no significant hazard or other safety issues also apply, the following will not justify the removal of a tree:</p> <p>6.2.5.1 Dropping of leaves, flowers, fruit, bark, sap or twigs into gutters, downpipes or pools for example</p> <p>6.2.5.2 To enhance views, solar access, increase natural light or increase sunlight to garden areas</p> <p>6.2.5.3 To reduce minor lifting of driveways and paths by tree roots or impacts to minor structures</p> <p>6.2.5.4 For bushfire hazard control which has not been approved by the Rural Fire Service</p>

	<p>6.2.5.5 Potential damage to sewer mains unless supported by written expert advice and only where reasonable alternatives are not feasible. Also refer to Council’s <i>Build in the Vicinity of Sewer Mains Code of Practice</i></p> <p>6.2.5.6 Damage to buildings or structures which have not been built in accordance with the relevant planning controls and legislation in force at the time of construction</p> <p>6.2.5.7 Damage to buildings or structures where alternative tree sensitive construction measures could be undertaken</p> <p>6.2.6 Where mature trees are proposed to be removed, consideration is given to replacement with more suitable trees in an appropriate location, including consideration of providing street trees nearby. Replacement species and locations must be agreed to by Council.</p> <p>6.2.7 The amount of vegetation approved to be removed by Council in the previous 5 years is cumulatively less than the Biodiversity Offsets Scheme Threshold.</p> <p>6.2.8 The distance or area specified as exempt for maintenance of rural infrastructure in its application to the land concerned may be extended, if:</p> <p>6.2.8.1 the proposed increase is minor; and</p> <p>6.2.8.2 the proposed increase is for a legitimate purpose associated with the management of the land concerned; and</p> <p>6.2.8.3 the increase is necessary in the circumstances.</p> <p>6.2.9 The removal of vegetation would allow exempt or complying development where the vegetation proposed to be removed is for direct impacts by the proposed development or within 3 metres of the development only (ie not for an asset protection zone). Clear evidence that impacts to vegetation have been avoided and minimised and there are no other reasonable alternatives is provided.</p> <p>6.2.10 Removal or pruning of trees and other vegetation on land with a slope in excess of 20% or within 20 metres of a water course is avoided. Erosion control measures must be proposed eg a program of replanting of local native species to maintain slope stability, water quality and terrestrial habitat.</p> <p>6.2.11 Removal or pruning is of trees listed in Appendix A of Council’s <i>Build in the Vicinity of Sewer Mains Code of Practice</i>.</p> <p>6.2.12 Removal is not likely to have unacceptable environmental, social and economic impacts and consideration has been given to the public interest and any other relevant matters under Section 4.15 of the <i>Environmental Planning and Assessment Act</i>.</p>
7	<b>Tree assessment reports</b>
7.1	<p><b>Suitably qualified and experienced persons</b></p> <p>Where Council requires a suitably qualified and experienced person to prepare a Tree Assessment Report, applicants can use a Council arborist or engage their own suitably qualified arborist. A suitably qualified and experienced person is one who:</p> <p>7.1.1 Has level 4 or higher Certificate in Arboriculture, and</p> <p>7.1.2 At least five (5) years practical experience in tree diagnosis and reporting, and</p> <p>7.1.3 Is not employed or in any way associated with the company contracted to remove the tree or vegetation.</p>

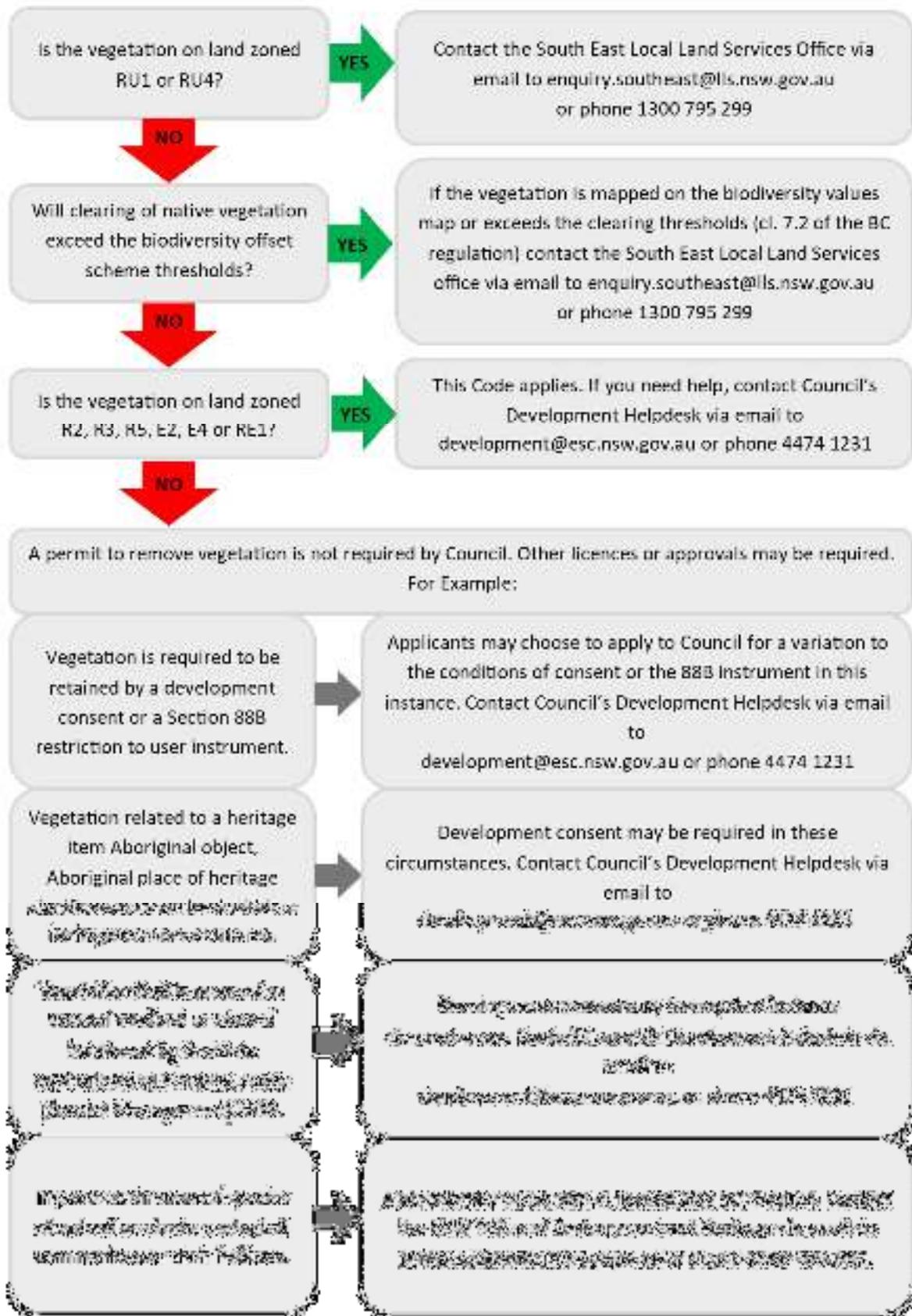
	<p>Where Council requires a suitably qualified and experienced person to prepare an assessment of significance of the impacts under Part 7 of the <i>Biodiversity Conservation Act 2016</i>, applicants must engage their own ecologist. A suitably qualified and experienced ecologist is one who:</p> <p>7.1.4 Has a degree or equivalent qualification in ecology or a related field, and</p> <p>7.1.5 At least five (5) years practical experience in the identification of threatened species and their habitats and the assessment of potential impacts to them, and</p> <p>7.1.6 Is not employed or in any way associated with the company contracted to remove the tree or vegetation.</p>
<p><b>7.2</b></p>	<p><b>Tree assessment report requirements</b></p> <p>A Tree Assessment Report must contain the following information:</p> <p>7.2.1 Name, address, telephone number, qualifications and experience of the Arborist carrying out the inspection and reporting;</p> <p>7.2.2 Address of the site containing the trees;</p> <p>7.2.3 Who the report was prepared for and the aims of the report;</p> <p>7.2.4 Methods and/or techniques used in the inspection;</p> <p>7.2.5 A plan, to scale, consistent with the requirements under subsection 6.1.4 in this Code;</p> <p>7.2.6 A table showing, for each tree the subject of the application:</p> <ul style="list-style-type: none"> <li>a) Species name;</li> <li>b) Age/classification;</li> <li>c) Height;</li> <li>d) Trunk diameter at 1 metre above ground;</li> <li>e) Canopy spread;</li> <li>f) Health and condition.</li> </ul> <p>7.2.7 A discussion of other relevant information, including details of tree hollows or potential hollows for wildlife, tree structure/weaknesses, root form and distribution, soil stability, scenic amenity, pests and diseases and/or a Tree Hazard Assessment;</p> <p>7.2.8 Supporting evidence such as photographs and laboratory results to confirm presence of soil pathogens or support soil assessment, where relevant;</p> <p>7.2.9 Proposed replacement plantings, landscaping and soil remediation;</p> <p>7.2.10 Tree protection measures and post tree maintenance program which can be used as conditions, should the application be approved;</p> <p>7.2.11 Sources of information referred to in the report;</p> <p>7.2.12 Any other relevant matters.</p>
<p><b>8</b></p>	<p><b>Penalties</b></p> <p>There are significant penalties for the illegal removal or pruning of trees and other vegetation. People who remove or prune trees and other vegetation without approval can face significant fines.</p>

8.1	<p><b>Local Government Act</b></p> <p>Under Section 629 of the <i>Local Government Act 1993</i>, it is an offence to cause injury or unnecessary disturbance to trees and native vegetation on public land including road reserves. This specifically relates to street trees, foreshore reserves and public open space. A person who, without lawful excuse, deliberately damages, poisons or injures vegetation on public land, is guilty of an offence under that Act.</p>
8.2	<p><b>Environment Planning and Assessment Act 1979</b></p> <p>Clearing vegetation or trees without a permit is prohibited, and prohibited development can be enforced by a penalty notice under the <i>Environmental Planning and Assessment Act 1979</i> for each offence.</p> <p>Alternatively, Council can undertake court proceedings for the injury, removal of trees and native vegetation on private and public land without a permit. Penalties for offences under Section 4.3 of the EP&amp;A Act can exceed \$1 million for individuals. Where a person is guilty of an offence involving the destruction of or damage to a tree or vegetation, the court dealing with the offence may also direct that person to pay costs incurred:</p> <ul style="list-style-type: none"> <li>a) to plant new trees and vegetation and maintain those trees and vegetation to a mature growth; and</li> <li>b) to provide security for the performance of any obligation imposed under (a).</li> <li>c) Councils can prosecute offences within two years of an offence coming to a council investigation officer's attention.</li> </ul> <p>Councils can prosecute offences within two years of an offence coming to a council investigation officer's attention.</p>
8.3	<p><b>Biodiversity Conservation Act 2016</b></p> <p>It is an offence to harm or pick threatened species, populations or endangered ecological communities (EECs) under the Section 2.2 of the <i>Biodiversity Conservation Act 2016</i>. Prosecutions can result in significant penalties including fines and imprisonment.</p> <p>A permit from Council to remove vegetation is a defence under Section 2.8 of the <i>Biodiversity Conservation Act 2016</i>.</p>
8.4	<p><b>Other Acts</b></p> <p>Vegetation removal on rural zoned land must be in accordance with the <i>Local Land Services Act 2013</i>. For vegetation removal on rural zoned land, contact Local Land Services on 1300 778 080, email or contact the South East Local Land Services office via email to <a href="mailto:enquiry.southeast@lls.nsw.gov.au">enquiry.southeast@lls.nsw.gov.au</a>.</p>
9	<p><b>Trees on neighbouring land</b></p> <p>Council has no power to order the owner of a tree to remove or prune a tree on their property apart from under the provisions of the <i>Biosecurity Act 2015</i>.</p> <p>Where a tree is growing on a boundary, ownership is determined by which side of the boundary the centre of the trunk originated, or which side of the boundary, the majority of the trunk's diameter exists (at ground level).</p> <p>Permission for removal of a tree on a neighbour's property can only be granted to the owner of the tree and requires the consent of Council. Written agreement from the owner of the tree must occur prior to making an application.</p>

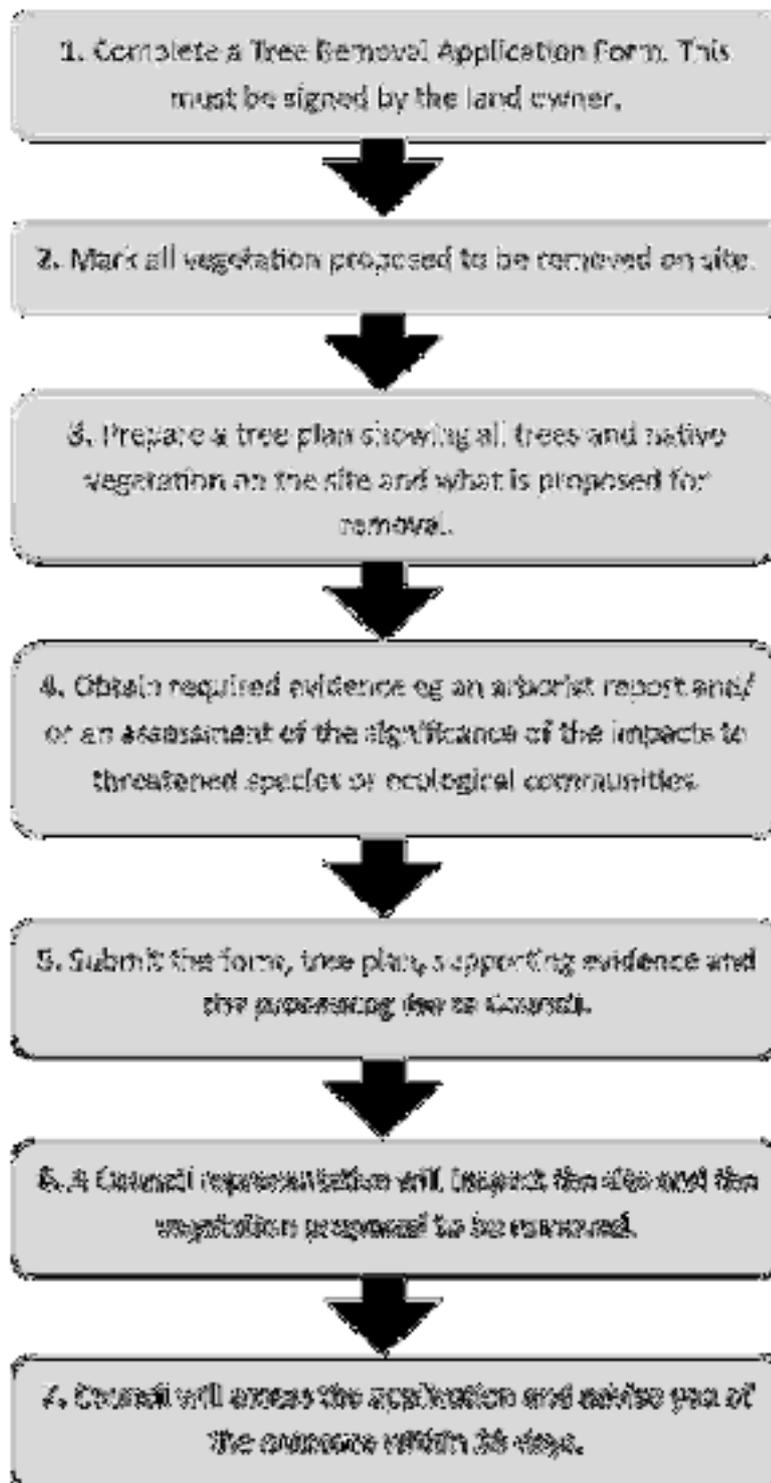
Note that 10% of the part of a tree hanging over into an adjoining property can be removed from the fence line without approval from the tree owner.

Where neighbour disputes arise, Council refers affected persons to the *Trees (Disputes Between Neighbours) Act 2006*.

Figure 1 Application of this Code summary referred to in section 2



**Figure 2 Summary of tree removal application process referred to in section 6.1**



**Table 2 Exempt species referred to in section 5.3**

Botanical Name	Common Name
<i>Acacia baileyana</i>	Cootamundra Wattle
<i>Acacia mearnsii</i>	Black Wattle
<i>Acacia podalyriifolia</i>	Queensland Silver Wattle
<i>Acacia saligna</i>	WA Glory Wattle
<i>Acer negundo</i>	Box Elder
<i>Albizzia lophantha</i>	Crested
<i>Allanthus altissima</i>	Wattle Tree of Heaven
<i>Alnus species</i>	Alder species
<i>Arecastrum romanzoffianum</i>	Cocos Palm
<i>Bamboo sp.</i>	Bamboo
<i>Camellia sp.</i>	Camellia
<i>Cestrum sp.</i>	Cestrum
<i>Chamaecytisus palmensis</i>	Tree Lucerne
<i>Cinnamomum camphora</i>	Camphor Laurel
<i>Coprosma repens</i>	Mirror Plant
<i>Cotoneaster sp.</i>	Cotoneaster
<i>Cordyline australis</i>	New Zealand Cabbage Palm
<i>Crataegus monogyna</i>	Hawthorn
<i>Cypresus arizonica</i>	Arizona cypress
<i>Erythrina x sykesii</i>	Coral Tree
<i>Erythrina crista-galli</i>	Coral Tree
<i>Ficus benjamina</i>	Weeping Fig
<i>Ficus elastica</i>	Rubber Tree
<i>Gleditia triacanthos</i>	Honey Locust
<i>Harpephyllum caffrum</i>	Kaffir Plum
<i>Hibiscus sp.</i>	Hibiscus
<i>Lagunaria patersonii</i>	Norfolk Island Hibiscus
<i>Ligustrum lucidum</i>	Large-leaf Privet
<i>Ligustrum sinense</i>	Small-leaf Privet
<i>Liquidambar styraciflua</i>	Liquidambar

Botanical Name	Common Name
<i>Mahonia species</i>	Oregon grape
<i>Nerium oleander</i>	Oleander
<i>Ochna sp.</i>	Ochna
<i>Olea africana and europaea</i>	Olive
<i>Pinus radiata</i>	Radiata Pine (Christmas Tree type)
<i>Callitris columellaris</i>	Cypress Pine
<i>Cupressocyparis leylandii</i>	Leyland Cypress
<i>Phoenix canariensis</i>	Canary Island Date Palm
<i>Pittosporum undulatum</i>	Pittosporum
<i>Polygala myrtifolia</i>	Butterfly Bush
<i>Populus sp.</i>	Poplars
<i>Psoralea pinnata</i>	African scurfpea
<i>Prunus laurocerasus</i>	Cherry Laurel
<i>Pyracantha sp.</i>	Fire Thorn
<i>Raphiolepis indica</i>	Indian Hawthorn
<i>Robina pseudoacacia</i>	Black Locust
<i>Rhododendron sp.</i>	Rhododendron
<i>Ricinus communis</i>	Castor oil plant
<i>Salix sp.</i>	Willows
<i>Sambucus nigra</i>	Common Elder
<i>Schefflera actinophylla</i>	Umbrella Tree
<i>Schinus areira</i>	Pepper tree
<i>Schinus terebinthifolia</i>	Brazilian pepper tree
<i>Senna sp.</i>	Cassia
<i>Solanum mauritianum</i>	Tobacco Bush
<i>Tibouchina sp</i>	Tibouchina

## Implementation

Requirement		Responsibility
1	<b>Implementation</b> This Code will be implemented by Development Services.	DS
2	<b>Staff and Training</b> Under supervision, relevant council staff will be responsible for ensuring that this Code is implemented appropriately within their work area, after they have received training to do so.	DS
3	<b>Complaints</b> Complaints regarding potential illegal tree or native vegetation removal will be directed to Environmental Services to determine follow up actions.	ES
4	<b>Consultation</b> Consulted in this Code: Development Services, Strategic Services, Environmental Services	As described

## Review

This Code will be reviewed every three (3) years. It may also be reviewed and updated if legislation requires it; or when council's functions, structure or activities change; or when technological advances or new systems change the way that council manages Learning and Development. Any review of this Code will require the involvement of Executive Leadership Team, Divisional Managers, and Staff Consultative Committee.

The overall effectiveness of this Code in achieving its goals will be regularly reviewed at all levels of the Council, including by the consultative committee. These reviews could include:

Performance indicator	Data source(s)
Number of complaints regarding potential illegal tree removal decline.	Customer Service Records (CSRs) regarding potential illegal tree removal.

## Governance

This code should be read in conjunction with any relevant legislation, policies, codes or guidelines such as those listed below.

### *Related legislation and policies*

Name	Link
Biodiversity Conservation Act 2016	<a href="https://www.legislation.nsw.gov.au/#/view/act/2016/63">https://www.legislation.nsw.gov.au/#/view/act/2016/63</a>
State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017	<a href="https://www.legislation.nsw.gov.au/#/view/EPI/2017/454">https://www.legislation.nsw.gov.au/#/view/EPI/2017/454</a>

Local Land Services Act 2013	<a href="https://www.legislation.nsw.gov.au/#/view/act/2013/51">https://www.legislation.nsw.gov.au/#/view/act/2013/51</a>
Biosecurity Act 2015	<a href="https://www.legislation.nsw.gov.au/#/view/act/2015/24">https://www.legislation.nsw.gov.au/#/view/act/2015/24</a>

#### Related external references

Name	Link
Australian Standard AS 4373, <i>Pruning of Amenity Trees</i>	<a href="https://www.saiglobal.com/PDFTemp/Previews/OSH/AS/AS4000/4300/4373-2007.pdf">https://www.saiglobal.com/PDFTemp/Previews/OSH/AS/AS4000/4300/4373-2007.pdf</a>

#### Definitions

Other than those listed below, terms in this document have the meanings found in the Eurobodalla Local Environmental Plan 2012 dictionary.

Category	Meaning/Definition
Biosecurity Matter (Weeds)	means a plant declared to be, or assessed as being, a biosecurity matter under the <i>Biosecurity Act 2015</i> , and associated regulations and plans, including but not limited to, Council's Weed Control Programs as per Section 371 (1) (b) of the <i>Biosecurity Act 2015</i> , and those plants listed in the <i>South East Regional Strategic Weeds Management Plan 2017-2022</i> .
building footprint	means the maximum extent of the two dimensional area of the plan view of an approved building such as a dwelling or garage, excluding minor ancillary structures. Note the building footprint is different to a building envelope. <b>Note:</b> The reference to minor ancillary structures in this definition includes, but is not limited to, garden sheds, cubby houses, detached car ports, gazebos, barbeques and detached decks and pergolas.
clearing	means any one or more of the following: a) Cutting down, felling, thinning, logging or removing native vegetation b) Killing, destroying, poisoning, ring-barking, uprooting or burning native vegetation; c) Severing, topping or lopping branches, limbs, stems or trunks of native vegetation; d) Substantially damaging or injuring native vegetation in any other way (see definition for injury).
dead tree	means a tree(s) that is no longer capable of performing the following processes: photosynthesis, take up water through its roots, hold moisture in its cells and produce new shoots.
root zone	The area under the dripline or branches of the tree that generally aligns with the root system required for the ongoing viability of the tree.
environmental weed	means a plant that poses a threat to the natural environment. Environmental weeds are either not native to the Eurobodalla area or are plants growing outside their natural range. A list of plants considered by Council to be environmental weeds can be found on Council's web site at <a href="http://www.esc.nsw.gov.au/living-in/about/our-natural-environment/introduced-plants-and-animals">http://www.esc.nsw.gov.au/living-in/about/our-natural-environment/introduced-plants-and-animals</a>

Category	Meaning/Definition
habitat tree	means any tree(s) which has developed hollows in the trunk or limbs and is suitable for nesting native birds, arboreal marsupials and mammals or which support the growth of locally indigenous epiphytic plants (such as orchids).
imminent	means about to happen or threatening to occur.
injury	<p>means damage to a tree or native vegetation and includes:</p> <ul style="list-style-type: none"> <li>a) Lopping and topping</li> <li>b) Poisoning, including applying herbicides and other toxic chemicals to a tree or spilling (including washing off or directing water contaminated by) oil, petroleum, paint, cement, mortar and the like onto the root zone</li> <li>c) Cutting, snapping off and tearing of branches and roots that is not carried out in accordance with accepted arboricultural practices</li> <li>d) Ring-barking, scarring the bark when operating machinery, fixing objects (eg. signs) by nails, staples or wire, using tree climbing spikes in healthy trees marked for retention (except for access to an injured tree worker) or fastening materials that circle and significantly restrict the normal vascular function of the trunk or branches</li> <li>e) Damaging a tree's root zone by compaction or excavation, asphyxiation (including unauthorised filling or stockpiling of materials)</li> <li>f) Under scrubbing, unless carried out by hand tools, such as brush cutters and the like</li> <li>g) Wounding the stem with machinery (eg lawn mowers), fixing objects (eg signs) to the stem or branches by nails, staples or wire, using tree climbing spikes in healthy trees to be retained (except for access to an injured tree worker), fastening materials around the stem or branches that circle and restrict the normal vascular function of the stem or branches.</li> </ul>
key threatening process	means a process that threatens, or could threaten, the survival or evolutionary development of species, populations or ecological communities.
lopping	means cutting between branch unions or at internodes on young trees
native vegetation	<p>means any of the following types of plants native to New South Wales:</p> <ul style="list-style-type: none"> <li>a) trees (including any sapling or shrub or any scrub)</li> <li>b) understorey plants</li> <li>c) groundcover (being any type of herbaceous vegetation)</li> <li>d) plants occurring in a wetland.</li> </ul>
non-rural land	means land to which the Vegetation SEPP applies. In Eurobodalla, this is all land except land zoned RU1 and RU4.
noxious weed	See biosecurity matter (weeds)

Category	Meaning/Definition
prune or pruning	means the following activities as specified in Australian Standard AS 4373, <i>Pruning of Amenity Trees</i> : <ul style="list-style-type: none"> <li>a) Crown maintenance pruning involving:               <ul style="list-style-type: none"> <li>i. General pruning</li> <li>ii. Thinning</li> <li>iii. Deadwooding</li> <li>iv. Selective pruning</li> <li>v. Formative pruning</li> </ul> </li> <li>b) Crown modification pruning involving:               <ul style="list-style-type: none"> <li>i. Reduction pruning</li> <li>ii. Crown lifting</li> <li>iii. Pollarding</li> <li>iv. Remedial pruning</li> <li>v. Line clearance</li> </ul> </li> </ul>
remove	means to clear, take away or transplant a tree from its place of origin
significant tree	means trees which are significant features of our heritage or cultural landscape, and are listed in Council's Significant Tree Register. They may be historic, large, unique, rare or have community support for their retention.
suitably qualified and experienced person	see section 7.1
threatened species	has the same meaning as in the <i>Biodiversity Conservation Act 2016</i> which includes native species, populations and ecological communities of flora and fauna.
topping	means cutting away part or all of the tree canopy leaving a trunk and stubbed main branches
tree	means a perennial plant with at least one self-supporting woody or fibrous stems which: <ul style="list-style-type: none"> <li>a) is 3 metres or more in height; or</li> <li>b) has a trunk circumference of 400 mm or more measured at ground level; or</li> <li>c) has a crown/branch span of 3 metre diameter or more.</li> </ul>

#### Change history

Version	Date	Approved By	Change
1	6 July 2010	Director, Strategic Development and Environmental Services	Introduced and adopted by Council (repealed Eurobodalla Shire Council's Tree Preservation Order)

2	[XXX]	Director, Planning and Sustainability	New format, align with biodiversity legislation reforms introduced in 2016, process and assessment criteria improved for clarity and exemptions updated to include existing rural infrastructure.
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*Internal use*

<b>Responsible officer:</b>	Divisional Manager, Strategic and Sustainable Growth		<b>Approved by:</b>	Director, Planning and Sustainability	
<b>File Reference:</b>	[XXX]	<b>Council report no:</b>	[XXX]	<b>Effective date:</b>	[XXX]
<b>Min no:</b>	[XXX]	<b>Review date:</b>	Feb 2022	<b>Pages:</b>	23