



14a Vegetation permits

Explanatory outline

Part 14a outlines requirements for approval for vegetation clearing and activities affecting vegetation. Its key role is to define regulatory provisions under *State Environmental Planning Policy (Biodiversity and Conservation) 2021*, and to integrate these with other Parts of the DCP.

The section includes:

- Objectives for vegetation within the local government area
- Definitions of vegetation and related terms
- Requirements for submitting vegetation permit applications
- Exemptions from vegetation permit requirements
- Explanation of reasonable clearing of vegetation
- Matters for consideration in determining vegetation permit applications
- Miscellaneous provisions

The provisions of Section 14a are **mandatory and not advisory**. Non-compliance may be a breach of *State Environmental Planning Policy (Biodiversity and Conservation) 2021* resulting in prosecution or other enforcement action.

This section should be read in conjunction with the following Parts, which contain separate provisions for matters relevant to vegetation permits. These provisions also relate to the consideration of development applications:

- **Part 3 Subdivision** - identifies considerations relevant to trees and vegetation in considering the subdivision of land and subsequent development.
- **Part 9 Heritage** - identifies considerations relevant to trees and vegetation specific to identified heritage items and heritage conservation areas.
- **Part 11a Vegetation (including trees)** - identifies considerations and guidelines for trees, natural vegetation, and associated cultural and social values, in addition to vegetation safety and biosecurity matters.
- **Part 11b Biodiversity conservation** – relating to threatened species, ecosystem function and services, habitat connectivity, conservation reserves, buffers, biodiversity offsets and management.

14a Vegetation permits

14a.1 Application of this section

This section applies to all land within the local government area to which *State Environmental Planning Policy (Biodiversity and Conservation) 2021* applies.

Note: *SEPP (Biodiversity and Conservation) 2021* applies to land in the Upper Hunter local government area zoned:



14a Vegetation permits

Zone RU5 Village
Zone R1 General Residential
Zone R5 Large Lot Residential
Zone E1 Local Centre
Zone MU1 Mixed Use
Zone E4 General Industrial

Zone SP1 Special Activities
Zone SP2 Infrastructure
Zone RE1 Public Recreation
Zone RE2 Private Recreation
Zone C3 Environmental
Management

The provisions of this section are regulatory and mandatory, and apply to the clearing of vegetation and the making and determination of vegetation permits. This section differs from other sections of this DCP and does **not** apply to development applications made under the *Environmental Planning and Assessment Act 1979*.

14a.2 Relevant planning instruments & legislation

The provisions of this section are authorised by *State Environmental Planning Policy (Biodiversity and Conservation) 2021* made under the *Environmental Planning and Assessment Act 1979*.

14a.3 Objectives

The objectives of this section are to:

1. implement the aims of *State Environmental Planning Policy (Biodiversity and Conservation) 2021* to protect and preserve the biodiversity values and amenity of trees and other vegetation within the local government area, and
2. declare vegetation where clearing and activities affecting vegetation require a vegetation permit, and
3. implement local objectives for trees, biodiversity, natural vegetation, vegetation with cultural and heritage values, and vegetation safety and biosecurity, as identified in other sections of the DCP, and
4. facilitate effective management of vegetation within the local government area in the public interest, recognising reasonable purposes for clearing vegetation, and
5. identify trees and other vegetation that may be cleared without the necessity for a vegetation permit where this is in the public interest for reasons of safety or hazard, and where environmental impacts from the clearing would be minimal.

14a.4 Overview of vegetation permit process

The process for making, assessing, and determining a vegetation permit application is as follows:

1. Determine whether vegetation proposed to be cleared is *declared vegetation*, and/or a *declared vegetation activity*, and requires a *vegetation permit to proceed*. See 14a.5.
2. Check whether vegetation clearing may be exempt from requiring a vegetation permit. See 14a.6.
3. Make a vegetation permit application to Council, including provision of required information and payment of the application fee. See 14a.7
4. Council undertakes an assessment of the application, having regard to the purpose of the clearing, relevant matters of consideration and circumstances where vegetation clearing will not be approved. See 14a.8 and 14a.9.



14a Vegetation permits

5. Where an application is approved, an approval fee is to be paid before a vegetation permit is issued.
6. Where an application is refused, or conditions are imposed on a permit, the reasons for the decision are to be included in the notice of refusal.

A right of appeal against a decision by the Council is available as provided for in *State Environmental Planning Policy (Biodiversity and Conservation) 2021*.

Note: The vegetation permit application fee is intended to cover the cost of processing and assessing the application. The vegetation permit approval fee is to cover the cost of issuing and ensuring compliance with the permit, and may include a financial contribution to offset the loss of vegetation.

14a.5 Declared vegetation & definitions

This section declares (identifies) vegetation to which the regulatory provisions of this Plan apply, and where a vegetation permit is required for vegetation clearing or vegetation clearing activities.

The categories of vegetation in **Table 14a.1** are declared regulated under this section:

1. Significant vegetation (as identified in the Council's Significant Vegetation Register).
2. Natural vegetation (including native vegetation) within the C3 Environmental Management zone (not including native vegetation where the Biodiversity Offset Scheme applies, for example where native vegetation clearing is equal to, or greater than the Biodiversity Offset Scheme threshold in Clause 7.2 or is shown on the Biodiversity Values Map published in accordance with Clause 7.3 of the *Biodiversity Conservation Regulation 2017*).

Note: Where the Biodiversity Offset Scheme applies, a vegetation permit application to the Council is not required and a separate approval process applies.

3. Remnant trees and habitat trees within the C3 Environmental Management zone.
4. Vegetation with cultural and heritage values (where a development application is not required).

For the purpose of Clause 2.6 in *State Environmental Planning Policy (Biodiversity and Conservation) 2021*, a vegetation permit is required prior to declared vegetation clearing and the carrying out of a declared vegetation activity.

The Council may determine vegetation to be significant vegetation (including trees) having regard to its ecological, scientific, cultural, historic, social or other value for Upper Hunter Local Government Area by listing the vegetation in a significant vegetation register.

For explanatory purposes, declared vegetation where clearing requires a permit and declared vegetation activities requiring a permit are identified in Table 1: Vegetation category, declared vegetation, & approval pathway. The approval pathways for clearing of vegetation categories are also identified in the Table, together with explanatory information.

Note: A vegetation permit is **not** required where a development application is required, or where vegetation clearing is ancillary to (and required for) a land use requiring a development application, and the clearing is assessed as part of that application. The vegetation permit provisions apply to development declared to be exempt development by an environmental planning instrument.

14a Vegetation permits

and may apply to complying development under the *Environmental Planning and Assessment Act 1979*. The provisions of this section do not apply where vegetation clearing is an activity under Part 5 of the *Environmental Planning and Assessment Act 1979*.

Table 1:Vegetation category, declared vegetation, & approval pathway

Category	Declared vegetation	Approval pathway *	Explanatory notes
Trees	Significant trees	Vegetation permit	The tree, vegetation or land is listed in Council's <i>Significant Vegetation Register</i> . No consent will normally be granted unless the tree is dangerous, and a tree replacement payment is made. Check definitions, and whether the vegetation clearing, or vegetation activity may be exempt from approval
	Heritage trees	Development application or vegetation permit, depending on extent of clearing	Part of a heritage item, within a heritage conservation area, or within the curtilage of a heritage item as identified in <i>Upper Hunter Local Environmental Plan 2013</i>
	Remnant and habitat trees	Vegetation permit	Requires approval only on land zoned C3 in <i>Upper Hunter Local Environmental Plan 2013</i> . Consider whether the tree has habitat value for native species, and listed threatened species. Authorisation for clearing under the <i>Biodiversity Conservation Act 2016</i> may be required in addition to a vegetation permit
Vegetation (other than trees)	Significant vegetation	Vegetation permit	The tree, vegetation or land is listed in Council's <i>Significant Vegetation Register</i> . No consent will normally be granted unless the vegetation is dangerous, and a tree replacement payment is made. Check definitions, and whether the vegetation clearing, or vegetation activity may be exempt from approval
	Natural vegetation (includes native vegetation)	Vegetation permit	Native vegetation is defined in the <i>Local Land Services Act 2013</i> . Native vegetation that is riparian vegetation may be subject to separate and/or additional regulatory provisions under the <i>Water Management Act 2000</i> . Where a prior development approval applies to the land, conditions or requirements may apply to vegetation on the land, requiring a variation of the development application. Natural vegetation may include heritage vegetation.
	Heritage vegetation	Development application or vegetation permit, depending on extent of clearing	Where the vegetation forms part of a heritage item or is within a heritage conservation area in <i>Upper Hunter Local Environmental Plan 2013</i> , the approval pathway depends on whether the vegetation clearing is minor in nature and/or for maintenance associated with a heritage item, within heritage conservation area, or within the curtilage of a heritage item. Similar provisions apply in relation to Aboriginal objects or within an Aboriginal place of heritage significance
	Removal and clearing of	Exempt	No approval is required where the DCP provision and supplementary guidance specifies that non-native vegetation

14a Vegetation permits

Category	Declared vegetation	Approval pathway *	Explanatory notes
Vegetation activities	weeds and undesirable plant species		is undesirable for reasons such as public safety or biosecurity risk, and the activity will not adversely affect other vegetation. Species must be identified in the DCP or supplementary information.
	Planting, maintaining, or allowing spread of undesirable plant species	Vegetation permit	Where the DCP specifies that non-native vegetation is undesirable for reasons such as public safety or biosecurity risk, a vegetation permit is required to plant, or maintain the species.
	Bush fire hazard reduction	Exempt (no approval required), or exemption certificate	Where it can be clearly demonstrated and the council is satisfied that the reason for vegetation clearing is for the purposes of managing bushfire risk to human life and property, and this is reasonable and consistent with the provisions of the <i>Rural Fires Act 1997</i> and relevant standards and guidelines, an exemption certificate may be issued
	Vegetation clearing for routine agricultural management activities	Exemption certificate	A vegetation permit is not required for the removal of vegetation on C3 zoned land identified in <i>Upper Hunter Local Environmental Plan 2013</i> that the council is satisfied is part of a periodic and routine agricultural management activity and is not required as the habitat of native animals Clause 8(2) of <i>SEPP (Biodiversity and Conservation) 2021</i>
	Removal of dangerous vegetation (vegetation that is a risk to human life or property)	Exemption certificate	Clause 2.7(3) of <i>SEPP (Biodiversity and Conservation) 2021</i> provides that a vegetation permit is not required if the council is satisfied that vegetation is a risk to human life or property
	Clearing or removing dying or dead vegetation (where not otherwise exempt vegetation)	Exemption certificate	An vegetation permit is not required for the removal of vegetation that the council is satisfied is dying or dead and is not required as the habitat of native animals Clause 2.7(4) of <i>SEPP (Biodiversity and Conservation) 2021</i>
	Vegetation management plan (or equivalent)	Exemption certificate	A vegetation management plan (or equivalent) may provide for ongoing, or periodic vegetation management, including ecological restoration. The council may approve of ongoing vegetation activities specified in such a plan and issue an exemption certificate.

Note: Refer to **Part 11a Vegetation (including trees)**. Vegetation categories are those applicable within Upper Hunter Local Government Area. This table indicates where development consent may be required and where vegetation clearing may be exempt.

* The **approval pathways** are dependent on the extent, type and purpose of vegetation clearing and vegetation activities.



14a Vegetation permits

- A vegetation permit application (VP) is provided for in Section 14a of the DCP.
- A development application (DA) is made under Part 4 of the *Environmental Planning and Assessment Act 1979* and separate provisions of this DCP apply.

Note: *State Environmental Planning Policy (Biodiversity and Conservation) 2021* requires that where trees and vegetation form part of a heritage item or heritage conservation area or form part of an Aboriginal object, or are within an Aboriginal place of heritage significance, a vegetation permit will only be considered and approved where the council is satisfied that:

- the proposed clearing is of a minor nature or is for the maintenance of the heritage item, object, place or area, and
- will not adversely affect the heritage item, object, place or area. (Note that where clearing is not of a minor nature a development application is required).

Note: This section may not apply to natural vegetation that is defined as native vegetation where vegetation clearing exceeds the biodiversity offset scheme threshold, and where Native Vegetation Panel approval is required for the clearing.

Note: This section does not apply to a part of the local government area where the *Local Land Services Act 2013* applies (rural land).

Note: This section may not apply to natural vegetation that is defined as native vegetation where vegetation clearing exceeds the biodiversity offset scheme threshold, and where Native Vegetation Panel approval is required for the clearing.

The following terms relevant and specific to this section are defined below and are also listed in the **Dictionary** of this DCP:

- ***Cultural ecosystem*** means an ecosystem shaped to at least some extent by human utilisation, to provide food, fibre, medicines and/or culturally important artefacts.
- ***Dangerous vegetation*** means vegetation representing an imminent, immediate and unacceptable risk to human life and property.
- ***Declared vegetation*** means vegetation for which clearing requires a vegetation permit, as provided for in Section 14a of this DCP.
- ***Ecological restoration*** means the process of assisting the recovery of an ecosystem that has been degraded, damaged or destroyed, and includes bushland regeneration.
- ***Exempt vegetation*** means vegetation where clearing does not require a vegetation permit, as identified in Section 14a.6 of this plan.
- ***Habitat tree*** means a tree, or part of a tree providing important habitat for native animals and plants (including nesting hollows, habitat connectivity, a food source, or shade and shelter).
- ***Natural vegetation*** means vegetation where physical conditions, species composition, community structure, ecosystem function, external exchanges, and absence of threats remain substantially unaffected by direct human interference, includes native vegetation, and may include riparian or marine vegetation.



14a Vegetation permits

- **Native vegetation** has the same meaning in the *Biodiversity Conservation Act 2016*.
- **Remnant tree** means a tree that remains from pre-existing natural vegetation.
- **Riparian vegetation** means vegetation on land that directly influences or is influenced by a watercourse, and is the area of land in which a stream functions. This area includes the immediate vicinity of the stream, which consists of the bed, banks and adjacent land, as well as the floodplain.
- **Significant vegetation** means vegetation identified as significant in a significant vegetation (or tree) register prepared by the council and/or meeting relevant criteria to be included on the register.
- **Tree** means a woody perennial plant with one or relatively few main stems with the potential to grow to a height of greater than 5 metres.
- **Vegetation** means a tree, other vegetation or plants, whether or not it is native vegetation.

Note: The term vegetation covers all plants, and vegetation communities both above and below ground, and including ecological processes, soil seed banks and the abiotic materials (substrate) occupied and conditions required for support and reproduction.

- **Vegetation clearing** means the removal, destruction, and/or the alteration of ecological processes supporting vegetation. Vegetation clearing includes:
 - to cut down, fell, uproot, kill, poison, ringbark, burn or otherwise destroy the vegetation, or
 - to lop or otherwise remove a substantial part of the vegetation, or
 - to carry out a vegetation management activity.
- **Vegetation clearing activity** means development, or a work that directly or indirectly impacts vegetation, and is specified in Section 14a.5 of the plan.
- **Vegetation management activity** means development, or a work that directly or indirectly impacts vegetation, including ecological processes and abiotic materials supporting vegetation.
- **Weed** means a plant that is a pest.

14a.6 Vegetation clearing exempt from approval

This section identifies circumstances where clearing vegetation does **not** require regulatory approvals and is exempt from requiring a vegetation permit.

Approval for clearing vegetation is **not** required where the following circumstances apply, and the vegetation or tree is **not** listed on *Council's Significant Vegetation (or Tree) Register* and/or is **not** a heritage item or within a heritage conservation area:

1. **Dangerous vegetation** - The vegetation is dangerous vegetation (see definition above), and any necessary procedures for risk assessment and documentation have been followed.
2. **Weeds & non-native plants** - The clearing is to remove weeds and introduced non-native plants identified as undesirable species in a schedule to this DCP or



14a Vegetation permits

in any other manner by the council, and will not adversely affect natural vegetation or significant trees, or threatened species.

3. **Priority weeds** – The clearing is to remove a priority weed within the meaning of Clause 32 of Schedule 7 to the *Biosecurity Act 2015*.
4. **Proximity to approved buildings** - The tree or natural vegetation is within 3.0 metres of the outermost projection of a lawfully used building (that is not exempt or complying development), or is overhanging the building and a potential hazard to the building, and is on the same allotment as the building
5. **Development consent requirements** – The vegetation forms part of, and/or is ancillary to, an approved development application, and is not protected or required to be retained by a development consent, or is subject to a required or approved vegetation management plan (or equivalent).
6. **Complying development** – A complying development certificate has been issued for development, and a tree or other vegetation is within 3.0 metres of the proposed development, is less than 6.0 metres high, and is not a significant tree.
7. **Proximity to driveways** - The tree or native vegetation is within one metre of a sealed driveway to a lawfully used building (that is not exempt or complying development) and is on the same allotment as the building.
8. **Neighbouring buildings** - The tree or natural vegetation is within 3.0 metres of the outermost projection of a lawfully used building (that is not exempt or complying development) on an adjoining allotment as the building and owners of both properties reach a written agreement that is submitted to the council prior to removal.
9. **Bush fire protection** - Where the *Rural Fires Act 1997* permits clearing for asset protection and bush fire hazard reduction purposes. (See note below)
10. **Approved bush fire asset protection zones** – Where a development consent specifically assessed, and allowed the vegetation clearing, and/or the clearing is within a nominated bushfire asset protection area identified in the consent.
11. **Vegetation on public roads** – Where tree or vegetation removal is necessary for the purpose of roadwork or removing a traffic hazard under the *Roads Act 1993*, or where relevant consent under that Act has been given.
12. **Cultural ecosystems** (plantations, orchards, cultivation, etc) - The vegetation wholly comprises a cultural ecosystem. (See definition above)
13. **Fencing** - The clearing of vegetation is for the purpose of erecting and/ or maintaining a boundary fence, and any specific guidelines identified in this plan are met (maximum clearing distance of 1.5 metres on each side of the fence in residential and business zones, and 3.0 metres in all other zones).
14. **Maintenance** - The clearing is for regular or periodic maintenance of landscaping, a plantation, or grazing land/pasture, and natural vegetation and threatened species will not be adversely affected by the clearing.
15. **Emergency works** – The clearing is to be carried out by or on behalf of a council or public authority in accordance with an approved management plan (eg plan of management for community land under the *Local Government Act 1993*).
16. **Biosecurity risk** – The clearing is to prevent an identifiable, significant and imminent biosecurity risk, and there is no alternative control measure.



14a Vegetation permits

17. **Ecological restoration** – The clearing is for ecological restoration where this is in accordance with an approved plan of management that is current and is applicable to the works. (See definition above)

Note: For bush fire protection, the *Rural Fires Act 1997* permits some clearing for bushfire hazard reduction purposes. The [10/50 Vegetation Clearing Code of Practice](#) allows landholders living in designated bush fire hazard areas to clear vegetation on their property without the need for approval. Specifically, landholders within a designated area can clear trees on their property within 10 metres of a home, without seeking approval; and clear underlying vegetation such as shrubs (but not trees) on their property within 50 metres of a home, without seeking approval.

There are some restrictions on clearing under the *10/50 Code*, such as if a property is on a slope, or there are items of Aboriginal or cultural significance in the area. A tree or vegetation protected under the conditions of a development consent or other lawful mechanism also cannot be removed under the Code. There are restrictions on the clearing methods that can be used. For example, the use of graders, ploughs and dozers to clear land under the *10/50 Code* is not permitted.

Under the *10/50 Code*, landholders are not required to consider threatened species or ecological communities that would otherwise be protected under NSW laws. However, some types of vegetation cannot be cleared, including critically endangered plants, critical habitat, and critically endangered ecological communities mapped and provided by the Office of Environment and Heritage to the Rural Fire Service. Commonwealth laws still apply to activities undertaken under the *10/50 Code*, and the *10/50 Code* does not provide a landholder with an approval to harm listed threatened species under the *Environment Protection and Biodiversity Conservation Act 1999*.

To avoid potential prosecution for unlawful clearing, the Rural Fire Service [on-line tool](#) must be checked on the day of removal and evidence kept for at least 2 years to substantiate eligibility to remove vegetation using the *10/50 Code*.



14a Vegetation permits

14a.7 Supporting plans & documentation

Vegetation permit applications made under **Section 14a.5** are to be supported by the following plans and documentation.

Item	When required	Plans or information to be provided
A. General requirements	All vegetation permit applications	<p>A report and plans including:</p> <ul style="list-style-type: none"> • A written outline of the purpose for which clearing is proposed, and the reasons for undertaking the clearing. • Where the vegetation is ancillary to an approved development, sufficient information and justification must be provided to determine whether a vegetation permit or a development application (or amendment) is required. • Previous approvals or authorisation of vegetation clearing on the land. • Information is to be provided to identify direct and indirect environmental impacts of the proposed clearing. • Proposed arrangements for offsetting biodiversity loss and carbon emissions from vegetation clearing. <p>Note: If inadequate information on the purpose and justification for the proposal is provided, a vegetation permit application may be refused.</p>
B. Trees	Applications to remove trees, and non-natural vegetation only	<p>A written description of the purpose and need for the removal of the tree(s), and other relevant information (including species, age and circumstances of planting, history, condition, evidence of neighbour consultation, etc)</p> <p>Accompanying site map (including the property description) showing:</p> <ul style="list-style-type: none"> - the location, type, height, trunk diameter at breast height of the tree(s) and the indicative canopy spread. - corresponding legend or description that identifies each tree by botanical name, common name, height, canopy spread, trunk diameter and form - the location of buildings, driveways etc in relation to the tree(s). - distances to property boundaries, buildings and other improvements - photographs of the tree from at least two directions, noting the date of each photograph - the location of any heritage items and their curtilage <p>An arborist report may be required in some circumstances, to be prepared by a suitably experienced and qualified person, and which contains the following details:</p> <ul style="list-style-type: none"> - name of author, qualifications and contact details. - the purpose and scope of the report - description of the methodology employed in conducting the site inspection and the date and time of the inspection - discussion of the data collected – this may include detailed information about wounds, cavities, cracks,

14a Vegetation permits

Item	When required	Plans or information to be provided
		<p>forking, pests and diseases. Include photographic evidence where appropriate.</p> <ul style="list-style-type: none"> - discussion on the options available (pruning versus removal, structural repair versus removal or pruning, etc.) - recommendation on the preferred option and the rationale behind this position.
C. Biodiversity	Applications potentially affecting biodiversity values (including habitat trees, natural vegetation, threatened species, or vegetation identified as of local biodiversity value)	<p>A site plan showing the area and location of vegetation to be cleared, and the relationship to property boundaries, buildings and other improvements.</p> <p>An ecological report or other appropriate evidence, prepared by a suitably qualified person, identifying the biodiversity and ecological values of the vegetation proposed to be cleared. An ecological report shall include relevant information required by any fauna and flora survey guidelines adopted by the council. Requirements in Items B and C in Section 11b.5 will normally apply.</p>
D. Natural vegetation	Applications to clear natural vegetation	<p>A site plan showing the area and location of the natural vegetation to be cleared, and the relationship to property boundaries, buildings and other improvements.</p> <p>An ecological report or other appropriate evidence, prepared by a suitably qualified person, describing the vegetation proposed to be cleared. A flora and fauna assessment report is normally required where the area of clearing of native vegetation is 500 square metres or greater. Requirements in Items B and C in Section 11b.5 will normally apply.</p> <p>The area and nature of clearing of the vegetation that is native vegetation, and whether this is above <i>the Biodiversity Offset Scheme</i> threshold.</p> <p>Note: If above the threshold, an application must be made to <i>the Native Vegetation Panel</i> and a <i>Biodiversity Development Assessment Report</i> is required – Refer to Section 11b.5)</p>
E. Vegetation with cultural & heritage values	All vegetation identified with cultural and heritage values (eg an item of heritage significance, in a heritage conservation area, or an Aboriginal site or area, or the like)	<p>A site plan showing the area and location of the vegetation to be cleared, and the relationship to property boundaries, buildings and other improvements.</p> <p>A report identifying the heritage significance of the land, property or site and or other appropriate evidence describing the heritage values of the vegetation proposed to be cleared, and associated impacts.</p>
F. Vegetation safety & biosecurity	Applications to clear vegetation that constitutes a health, safety, or biosecurity risk, and is not exempt	<p>A site plan showing the area and location of the vegetation to be cleared, and the relationship to property boundaries, buildings and other improvements.</p> <p>A report providing information on the species to be cleared, and the proposed clearing or removal method.</p>



14a Vegetation permits

Item	When required Plans or information to be provided
	from approval under section 14a.6 , and is unlikely to affect biodiversity values, natural vegetation, or marine vegetation.

Notes:

- More than one item may apply to a specific vegetation permit application.
- Where appropriate evidence is to be submitted, this will normally be prepared by a suitably qualified, and independent person.

14a.8 Vegetation permit application fees & charges

Council may determine vegetation permit application fees and charges, which are found in Council's *Fees and Charges Schedule*.

14a.9 Matters for consideration in vegetation permit applications

In determining an application for a vegetation permit, Council must consider all matters in this clause as are of relevance to the application.

A. General

1. Whether the vegetation is dying or dead.
2. Whether the vegetation is a risk to human life or property.
3. Provisions of relevant planning instruments affecting the land.
4. Purpose of the clearing.
5. Proposed method of clearing.
6. Past vegetation clearing on the land, including clearing previously authorised, or subject to permits and approvals, including whether a development application or other legal instrument required the planting, and/or retention of the vegetation or tree
7. The aims, objectives, principles and guidelines of this Plan and any relevant associated documents or policies.
8. The likely future use of the land, and objectives and provisions of the land use zone(s) applying to the land and adjoining land.
9. Cumulative impacts of clearing on the site and locality.
10. Proposed and reasonable measures to avoid, minimise or mitigate the environmental impacts of the clearing, including compensatory plantings, carbon offsets, and biodiversity offsets.
11. Management and maintenance requirements and costs associated with the vegetation.
12. The public interest.
13. Any other relevant matter.



14a Vegetation permits

B. Trees

1. Relevant tree assessment criteria including the useful life expectancy of the tree, and the level of risk associated with its retention.
2. Whether the tree is a threatened species naturally occurring in the locality.
3. Whether the tree is a habitat tree for threatened species.
4. Whether the tree is a remnant tree, and biodiversity, habitat and landscape connectivity values associated with the tree.
5. Retention value of the tree, and whether compensation for the clearing is required.
6. Landscape and amenity values associated with the tree.
7. Solar access, sunlight and daylight effects of the tree, including shading and urban cooling benefits.
8. Maintenance requirements and costs associated with the tree.
9. History, age and social and cultural significance of the tree.
10. Effects of the clearing on microclimate of nearby existing trees and vegetation.
11. Infrastructure and buildings in the vicinity of the tree, and potential damage that may be caused by the tree.

C. Biodiversity

1. Biodiversity values of the natural vegetation, including threatened species and threatened ecological communities.
2. The significance of impacts on any threatened species and threatened ecological communities, and any accepted test or threshold for determining this (eg 5 part test of significance under the *Biodiversity Conservation Act 2016*).
3. Impacts on ecological connectivity and habitat corridors.
4. Adequacy of any flora and fauna assessment.
5. Retention value of the vegetation, and whether compensation for the clearing is required

D. Natural vegetation

1. Impact of the clearing on streams, riparian vegetation and water quality and flow (surface and groundwater).
2. Landscape and amenity values of the vegetation.
3. Cumulative impacts of clearing on the site, locality and bioregion.
4. Measures taken to avoid, minimise or mitigate the environmental impacts of the clearing, including restoration or rehabilitation, carbon offsets, and biodiversity offsets.
5. The objectives and provisions of any relevant planning instrument under the Environmental Planning and Assessment Act 1979, including *State Environmental Planning Policy (Biodiversity and Conservation) 2021*.



14a Vegetation permits

E. Vegetation with cultural & heritage values

1. Whether the vegetation forms part of a heritage item or is within a heritage conservation area.
2. Whether the vegetation forms part of an Aboriginal object or is within an Aboriginal place of heritage significance.

F. Vegetation safety & biosecurity

1. Carbon emissions resulting from the vegetation clearing.
2. Bush fire hazards and risks associated with the vegetation, and relevant bush fire asset protection zone requirements.
3. Actual and potential weed and biosecurity impacts directly and indirectly affected by the vegetation clearing.

14a.10 Reasonable clearing of vegetation

Clearing of vegetation must be for a reasonable purpose, having regard to the aims and objectives of this plan, including **Section 14a.3**.

The following reasons are generally **not** considered reasonable to justify vegetation clearing, unless other risks and hazards or considerations are also applicable:

1. Leaf drop into gutters and downpipes, swimming pools, lawns, paths and the like.
2. To increase natural light.
3. To improve street lighting of private property.
4. To enhance views.
5. To reduce shade (apart from providing reasonable solar access).
6. To reduce fruit, resin or bird droppings on cars.
7. Minor lifting of driveways, brick fences and paths by tree roots.
8. To erect a fence (other than boundary fences exempt from a vegetation permit).
9. Bush fire hazard reduction (except where not exempt, consistent with relevant guidelines, and supported by the NSW Rural Fire Service, and/or appropriate documentation from a suitably qualified person).
10. Potential damage to sewer mains (except where supported by appropriate documentation from a suitably qualified person).
11. Termite damage (except where supported by appropriate documentation from a suitably qualified person).

A vegetation permit must not be approved where the final land use has not been determined.

For the purposes of this section, **reasonable solar access** means providing direct sunlight and daylight to private open space and living areas of dwellings during winter months, and to photovoltaic panels and solar hot water systems to allow them to function satisfactorily in all seasons.



14a Vegetation permits

14a.11 Matters for consideration for applications above the *Biodiversity Offset Scheme* threshold requiring approval from the *Native Vegetation Panel*

This section relates to the application of Clause 2.14(5) of *State Environmental Planning Policy (Biodiversity and Conservation) 2021*. It applies where a vegetation permit is required and the clearing is above the relevant Biodiversity Offset Scheme threshold as specified in the *Biodiversity Conservation Regulation 2017*.

1. The *Native Vegetation Panel* is to take into consideration all relevant matters in this DCP (including Sections 14a.3, 14a.5, 14a.6, 14a.7, 14a.9 & 14a.10) in its assessment of the impact of the proposed vegetation clearing and/or vegetation clearing activity.
2. The *Native Vegetation Panel* must consult with the council in relation to a vegetation clearing application, and take into account any comments the council may make, including standard conditions of consent normally imposed by the council.
3. The adequacy and accuracy of the information included with the application to determine the extent of native vegetation clearing (and offset scheme threshold), and its environmental impact.

14a.12 Exemption certificates

This section outlines procedures for clearing of dangerous vegetation, dying or dead vegetation, or associated with ongoing, regular and periodic vegetation maintenance and management.

Council may certify that vegetation clearing is exempt from approval under **Section 14a.5** under certain circumstances. Exemption certificates may be issued for dangerous vegetation, dying or dead vegetation, routine agricultural management activities, or for regular or periodic maintenance of vegetation through the preparation of a vegetation management plan (or equivalent).

The council may approve a vegetation management plan (for a period of up to a period of 10 years) which provides for and authorises ongoing, periodic, or occasional vegetation clearing and/or management where it is satisfied that the clearing is consistent with the objectives of relevant sections of this plan, and that the vegetation management plan is reasonable, likely to be complied with, and provides sufficient and suitable resources for its implementation.

Dangerous, dying and dead vegetation

The requirements and procedures for issuing an exemption certificate for dangerous vegetation, or dying or dead vegetation are:

1. A written application must be submitted by (or with the consent of) the owner of the land, together with relevant accompanying information. The accompanying information must include a location and site diagram, photographs showing the vegetation from at least two directions, and a statement identifying the reasons for the application, including a risk assessment, and whether or not the vegetation is habitat for native animals. The accompanying information shall include whether and how the vegetation to be cleared will be replaced, and a suitably qualified arborist report if requested by the council.
2. The council must consider the application and provide written notice as soon as practicable, having regard to the objectives of this plan.



14a Vegetation permits

3. The council may not issue an exemption certificate for the removal of, or pruning of vegetation or a tree where the vegetation or tree is required as the habitat of native fauna.
4. The council may issue an exemption certificate after clearing has occurred, where reasonable verbal notice of the clearing has been given and there is an imminent and unacceptable risk or emergency. Suitable evidence required to support the issue of an exemption certificate in these circumstances may include relevant photographs, a report from a suitably qualified or experienced person, relevant documentation from emergency services personnel or council staff.

Routine agricultural management

The requirements and procedures for issuing an exemption certificate for routine agricultural management activities are:

1. A written application must be submitted by (or with the consent of) the owner of the land, together with relevant accompanying information. The accompanying information must include a location and site diagram, photographs showing the vegetation from at least two directions, and a statement identifying the reasons for the application, including a risk assessment, and whether or not the vegetation is habitat for native animals. The accompanying information shall include whether and how the vegetation to be cleared will be replaced, and any other relevant information that may be requested by the council.
2. The council must consider the application and provide written notice as soon as practicable, having regard to the objectives of this plan.
3. The council may not issue an exemption certificate for the removal of, or pruning of vegetation or a tree where the vegetation or tree is required as the habitat of native fauna.
4. The council must consider whether a vegetation management plan (or equivalent) should be prepared and approved as part of the issuing of an exemption certificate.

Note: Exemption certificates for routine agricultural management can only be issued on C3 Environmental Management zoned land under *Upper Hunter Local Environmental Plan 2013*.

Vegetation management plans

The requirements and procedures for issuing an exemption certificate for vegetation management plans are:

1. A vegetation management plan (or equivalent) must be prepared by a suitably qualified person, together with the owners consent and agreement to the plan and relevant accompanying information.
2. The vegetation management plan (or equivalent) must be prepared in accordance with any guidelines prepared or approved by the council.
3. The council may impose conditions on any exemption certificate, including limiting the term of the certificate.
4. A vegetation management plan may allow pruning of a tree by less than 10% of the foliage area in accordance with Australian Standard AS 4373-2007 not more than once annually.



14a Vegetation permits

14a.13 References and supplementary guidance

The following documents or reference materials provide further advice or information relevant to this section. Note that some of these are yet to be prepared by Council.

1. Significant vegetation register
2. List of undesirable plant species
3. Tree planting guide
4. Ecological restoration and vegetation management plan guidelines
5. *Australian Standard AS 4970 Protection of Trees on Development Sites*
6. *Australian Standard AS 4373 Pruning of Amenity Trees*
7. Standard conditions of consent