

## 11a Vegetation (including trees)

### Explanatory outline

Section 11a outlines assessment criteria for vegetation (including trees) in the consideration of development applications made in accordance with the requirements of *Upper Hunter Local Environmental Plan 2013*.

This Section complements Section **14a Vegetation Permits**, and should be read in conjunction with that section. It refers to vegetation values other than biodiversity, with considerations relating to the latter included in Section **11b Biodiversity Conservation**.

The following matters are covered in this section:

- local objectives for trees and vegetation
- the circumstances where a development application is required for clearing or removal of vegetation (including trees)
- the circumstances where development applications for other development shall have regard to vegetation (including trees, natural vegetation, vegetation with social and cultural values, and safety and biosecurity matters)
- information required to be submitted with a development application
- matters that Council will consider when assessing a development application affecting vegetation (including trees)
- guidelines to be applied in planning and managing vegetation (including trees) within the local government area (for both development approvals and vegetation permits)

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### 11a.1 Application of this section

This section applies to development described in Column 1 when carried out on land described in Column 2.

Column 1: Type of development	Column 2: Applicable land
Any development that requires development consent.	Any land. <i>Note: Where vegetation clearing or works to trees is ancillary to, or required as part of other works for which development consent is required, these will be assessed as part of the development application.</i>
Development that involves or includes the carrying out of: <ul style="list-style-type: none"> <li>• earthworks</li> <li>• excavation</li> <li>• disturbance to soil material</li> <li>• drainage</li> </ul> where development consent is not required, and vegetation declared in Section <b>14a Vegetation Permits</b> is affected or potentially affected by the development	All land where <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i> applies. <i>Note: This is determined by zoning and applies to urban areas. Areas where this applies are identified in <b>Section 14 Vegetation Permits</b>.</i> <i>Includes exempt development under State Environmental Planning Policy (Exempt and Complying Development Codes) 2008</i>



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Vegetation clearing requiring consent (and not being minor in nature, for maintenance purposes, or subject to a relevant exemption certificate)	Land that is or forms part of a heritage item as listed in Schedule 5 of <i>Upper Hunter Local Environmental Plan 2013</i> and subject to clause 5.10(3) of that plan, or that is within the curtilage of a heritage item.
<i>Note: see definition of 'vegetation clearing' in Dictionary.</i>	Land within a heritage conservation area as listed in Schedule 5 of <i>Upper Hunter Local Environmental Plan 2013</i> and subject to clause 5.10(3) of that plan.
Vegetation clearing activities	All land where <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i> applies.

**Note:** When there is doubt about whether development consent is required for vegetation clearing, refer to Section **14a Vegetation Permits - Table 1** for application requirements and pathways for development and works affecting vegetation. Exemptions from consent requirements may be applicable, although these do not apply to work that is contrary to a development consent that requires vegetation or trees to be retained.

### 11a.2 Relevant planning instruments & legislation

The *Upper Hunter Local Environmental Plan 2013* is relevant to this section, in particular:

- clause 5.10 'Heritage conservation' applies where vegetation clearing is **not** of a minor nature or for the maintenance of a heritage item, object, place or area, and a vegetation permit or exemption certificate under Section **14a Vegetation Permits** has not been approved.

**Note:** proposals to carry out works on land identified as "Biodiversity" on the *Upper Hunter Local Environmental Plan 2013* Terrestrial Biodiversity Map should have regard to section **11b Biodiversity conservation**.

The following are also relevant to this section:

- *Local Land Services Act 2013* (only applies to land specified as rural)
- *Biodiversity Conservation Act 2016*
- *Rural Fires Act 1997* – particularly provisions relating to the *10/50 Vegetation Clearing Entitlement Area* as determined by the Rural Fire Service.
- *Trees (Disputes between neighbours) Act 2006* – particularly relates to damage and injury caused by trees on private land in urban areas, and obstruction of views or sunlight.

Further planning instruments and legislation may also be relevant. In the event of any inconsistency, the above instruments will prevail over requirements or criteria contained in this section.

**Note:** actions may be required or authorised to be undertaken by or under certain other legislation. Exemptions for vegetation clearing may also apply as provided for in Section **14a Vegetation Permits**.



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### 11a.3 Definitions

There may be words used in this Part that are defined in the *Environmental Planning and Assessment Act, 1979*, as amended, or within *Upper Hunter Local Environmental Plan 2013*, as amended. The **Dictionary** to this DCP provides additional definitions that are relevant to this Part, including the following:

- damage
- exempt vegetation
- habitat tree
- native vegetation
- prune
- natural vegetation
- remove
- remnant tree
- significant vegetation
- tree
- vegetation
- vegetation clearing
- vegetation
- weed

### 11a.4 Objectives

The objectives of this section are to:

#### *Trees*

1. protect and maintain trees in urban areas for the amenity, microclimate, scenic, air and water quality, and the social benefits that they provide
2. maintain and increase the urban tree canopy cover within urban areas of the local government area (as provided for in the council's strategic plans and policies)
3. ensure that native endemic tree species are used for planting where practicable
4. recognise the importance of trees in influencing groundwater processes affecting salinity and its consequent adverse effects

#### *Natural vegetation*

5. protect and maintain the landscape character, quality and amenity of the area through the protection of natural vegetation
6. recognise the ecological, social and economic benefit of vegetation (including trees) in the landscape

#### *Vegetation with cultural & heritage values*

7. protect vegetation valued by the community for its social, cultural, aesthetic, or scientific significance (significant vegetation)

#### *Vegetation safety & biosecurity*

8. facilitate removal of undesirable exotic plants, weeds, dangerous trees and inappropriate plantings

**Note:** Whereas objectives in Section 14a **Vegetation permits** refer to the vegetation permit requirements and process, this section includes local objectives for vegetation. These identify what the Council is seeking to achieve within the LGA, and can be used as criteria against which development applications and vegetation permits can be assessed.



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### 11a.5 Supporting plans & documentation

Development applications and vegetation permit applications that are subject to this section should be supported by the following plans and documentation.

**Note:** Application requirements may differ between development applications and vegetation permits. Refer to the specific requirements.

Type of application	Specific requirements
A. Vegetation permit application (including trees)	See requirements in Section 14a.7 Vegetation permits
B. Development application	Information requirements relevant to development applications directly or indirectly affecting vegetation, including ancillary vegetation clearing are specified in the table below.

Required information to accompany development applications where vegetation may be cleared is specified below, and is based on the circumstances and likely impacts relevant to the application.

Item	When required	Plans or information to be provided
A. General requirements	All applications	Refer to Part 2 Preparing & lodging a development application.
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"> <li>- the location, type, height, trunk diameter at breast height of the tree(s) and the indicative canopy spread.</li> <li>- corresponding legend or description that identifies each tree by botanical name, common name, height, canopy spread, trunk diameter and form</li> <li>- the location of buildings, driveways etc in relation to the tree(s).</li> <li>- distances to property boundaries, buildings and other improvements</li> <li>- photographs of the tree from at least two directions, noting the date of each photograph</li> <li>- the location of any heritage items and their curtilage</li> </ul> <p>An <b>arborist's report</b> 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"> <li>- name of author, qualifications and contact details.</li> </ul>

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Item	When required	Plans or information to be provided
		<ul style="list-style-type: none"> <li>- the purpose and scope of the report</li> <li>- description of the methodology employed in conducting the site inspection and the date and time of the inspection</li> <li>- discussion of the data collected – this may include detailed information about wounds, cavities, cracks, forking, pests and diseases. Include photographic evidence where appropriate.</li> <li>- discussion on the options available (pruning versus removal, structural repair versus removal or pruning, etc.)</li> <li>- recommendation on the preferred option and the rationale behind this position.</li> </ul>
<b>C. Biodiversity</b>	Applications potentially affecting biodiversity values (including habitat trees, natural vegetation, threatened species, or vegetation identified as of biodiversity value)	See requirements in Section <b>11b Biodiversity Conservation</b>
<b>D. Natural vegetation</b>	Development where clearing natural vegetation forms part of the application	<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 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. (See requirements in section <b>11b Biodiversity Conservation</b>)</p> <p>The area and nature of clearing of the vegetation that is native vegetation, and whether this is above the Biodiversity Offset Scheme threshold.</p>
<b>E. Vegetation with cultural &amp; heritage values</b>	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> <p>Any required plans or reports under <b>Pt 9 Heritage</b> must also be prepared.</p>
<b>F. Vegetation safety &amp; biosecurity</b>	Applications to clear vegetation that constitutes a health, safety, or biosecurity risk, and is not exempt	A site plan showing the area and location of the vegetation to be cleared, and the relationship to property boundaries, buildings and other improvements.



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Item	When required	Plans or information to be provided
	from approval under clause <b>14a.6</b> <b>Vegetation permits</b> , and is unlikely to affect biodiversity values, natural vegetation, or marine vegetation.	A report providing information on the species to be cleared, and the proposed clearing or removal method. An explanation of the safety or biosecurity risk, and potential alternative avoidance and mitigation measures.

**Note:** 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.

### 11a.6 Assessment criteria

The assessment of development applications and vegetation permit applications is to have regard to the 'objectives' (clause **11a.4**) and '**Outcomes to be achieved**' (below) for the issues that are relevant to the application.

This section is divided into the following assessment criteria topics:

1. **Trees** - key issues include amenity, health, climate management, solar access and shading
2. **Natural vegetation** - key issues are amenity, carbon emissions and offsets, regulation of groundwater and ecosystem services, scientific values, and bush fire asset protection
3. **Vegetation cultural and social values** - key issues are landscape amenity, health, heritage, solar access and shading
4. **Vegetation safety and biosecurity** - key issues are weeds, risks and hazards, bush fire asset protection, climate management, carbon emissions and offsets

The extent to which objectives and 'outcomes to be achieved' in this Section are achieved must be considered in the determination of any application.

A performance-based approach will be adopted in the assessment of development applications. Applications will be assessed according to the extent to which the outcomes specified in the left-hand column of the following table will be satisfied or achieved by the design, construction or operation of the proposal.

The design guidelines specified in the right-hand column indicate design and best practice solutions by which the required outcomes can be met. They do not preclude other solutions that may be suitable under particular local circumstances. All proposals will be considered on merit.

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### Outcomes to be achieved

### Design guidelines

#### 1. Trees

Key issues include amenity, health, climate management, solar access and shading

##### A. Tree protection

- Protect and appropriately manage significant trees
  - Maintain and increase tree canopy cover to protect urban amenity
  - Protect trees on subdivided land and development sites
  - Protect existing trees that are remnants of the natural landscape
  - Protect trees in groundwater recharge areas that assist in mitigating adverse effects of saline groundwater
- Measures to avoid, minimise and mitigate the impacts of earthworks on existing trees are to be incorporated in the development and documented.
  - Trees identified in any register of significant vegetation prepared by the Council are to be protected.
  - Impacts from earthworks on existing trees and proposed landscaped areas are assessed and considered, including the impacts on salinity and groundwater.
  - Existing vegetation must not be cleared in areas not directly impacted by the development.
  - Any application for earthworks shall be accompanied by plans showing the location of existing trees, and indicating the existing and proposed ground levels and any necessary retaining walls or drainage works.
  - Trees will be protected from construction works and other activities/events that threaten tree health and stability. The provisions of *Australian Standard AS 4970 Protection of Trees on Development Sites* are to be applied.
  - Tree protection zones (TPZ) are to be identified and maintained as part of the development. TPZs are the principal means of protecting trees on development zones, and are an area isolated from construction disturbance. The radius of a TPZ is calculated for each tree by multiplying diameter at breast height by 12, and should not be less than 2 metres radius from the trunk regardless of tree size.
  - Where works occur on Council or other public land, construction and maintenance works are to be undertaken in a way that minimises impacts on tree health and stability.
  - Utility service providers (including Ausgrid, Telstra and NBN Co) should ensure that their construction and maintenance works are undertaken in accordance with industry best practice to minimise impacts on tree health.

##### B. Tree planting and species selection

- Suitable native tree and shrub species of local provenance are used where appropriate
  - Subdivided lots, and developments (other than in business zones) are to provide a suitable area for planting trees
- Appropriate trees should be provided on private land in appropriate locations, taking into account local landscape character and characteristics, and the Council's objectives for trees.
  - The most appropriate tree species are to be planted, taking into account site suitability, aesthetic considerations, functional and biological attributes, and future climate change.



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### Outcomes to be achieved

### Design guidelines

#### C. Tree removal and replacement

- Removal of, or work to trees, is to be consistent with the provisions of this plan, including any requirements under **Section 14 Vegetation permits**
- Replace or provide offset measures for trees removed as a result of development

- Tree planting should take into account the *Tree Species Planting Guide* for Upper Hunter LGA, once developed and adopted by Council.
- Trees must not be cleared prior to development approval being granted.
- The impact of development upon trees will be assessed having regard to arboricultural, ecological and health and safety issues to determine the significance of the trees. Accordingly, any application for removal should demonstrate that the removal of the tree is appropriate based on an assessment of the:
  - significance, health and longevity of the tree; and
  - risk to human life or property; and
  - relevant hydrogeological landscape (HGL) salinity hazard and potential impacts on salinity processes.
- All tree pruning work should be carried out in accordance with *Australian Standard AS 4373 Pruning of Amenity Trees*.
- Where trees are proposed for removal or there are no other existing canopy trees, Council expects tree replenishment to occur where practical. Each site should contain tree(s) capable of achieving a minimum height of 10 metres. All applications for tree removal should nominate and locate trees to be replanted.
- Where opportunities exist for street tree planting or for sites with limited area to support trees, street tree planting on the adjoining road reserve is to be considered.
- Tree removal will not be permitted to facilitate views (including advertising signs), off street parking, or to reduce the extent of leaf, flower or fruit drop, or to reduce the impact from any bird, bat or other animal waste or noise.
- Street tree plantings should maintain a spread of tree age classes to minimise the impact of future tree removals required.

#### D. Tree asset management

- Provide for street trees and trees on public land
- Ensure trees can be effectively managed and replaced over time

- Future tree management (eg pruning to maintain solar access) is to be considered in assessment of development applications.
- Trees on Council controlled land that pose a risk to public safety and property will be removed.



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### Outcomes to be achieved

### Design guidelines

#### 2. Natural vegetation

Key issues are amenity, carbon emissions and offsets, regulation of groundwater and ecosystem services, scientific values, and bush fire asset protection

##### E. Protection of natural vegetation

- Avoid impacts on natural vegetation
  - Maintain and improve the condition of natural vegetation
  - Protect natural vegetation during construction
  - Offset loss of native vegetation
- Measures to avoid, minimise and mitigate the impacts of earthworks on natural vegetation are to be incorporated in the development and documented.
  - Natural vegetation identified in any register of significant vegetation prepared by the Council is to be protected.
  - Ecological processes supporting existing natural vegetation should be retained, to ensure vegetation is self-sustaining with minimal interference.
  - Impacts on natural vegetation from earthworks and drainage are assessed and considered.
  - Existing vegetation must not be cleared in areas not directly impacted by the development.
  - Vegetation must not be cleared or underscrubbed prior to development approval being granted.
  - Reasonable measures are to be taken to protect retained natural vegetation during construction and clearing works. Measures for protecting vegetation include:
    - installing exclusion fencing.
    - preventing soil compaction and placement of fill within 5 metres of retained vegetation.
    - keeping vehicles, construction materials and refuse within areas approved for buildings, structures, access ways and car parks.
    - limiting the number of access points to the site.
    - salvaging useable trees and shrubs which are felled for re-use and/or site rehabilitation.
    - notifying all contractors and personnel of vegetation protection requirements.
  - Appropriate buffer areas shall be established to mitigate land use and other impacts on retained natural vegetation.
  - Arrangements for offsetting biodiversity loss are to provide for land with equivalent biodiversity values to be protected and secured in perpetuity, preferably as close to the development site as possible.

##### F. Biodiversity

- Avoid impacts on biodiversity
  - Provide for appropriate management of land with biodiversity values
- Refer to Section **11b Biodiversity Conservation** for requirements.

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### Outcomes to be achieved

### Design guidelines

#### G. Management of natural vegetation

- Measures are to be incorporated in development to ensure appropriate and ongoing protection and management of retained vegetation

*Note: Section 14a Vegetation permits provides that vegetation management plans may be approved by the Council to allow for ongoing vegetation management without further consent requirements.*

- Vegetation management plans may be prepared to provide for rehabilitation and restoration of natural vegetation and ongoing management activities.
- Bush fire hazard reduction requirements and impacts on vegetation of ongoing management are to be considered in development applications.

### 3. Vegetation with cultural and social values

Key issues are landscape amenity, health, heritage, solar access and shading

#### H. Health and amenity

- Suitable vegetation is to be planted and maintained in urban areas for:
  - amenity,
  - shade and UV protection, and
  - maintaining reasonable solar access.
- The landscape character of the LGA is to be retained by maintaining existing vegetation cover.

- Public interest benefits of vegetation for urban cooling, health and amenity are to be maintained by protecting existing vegetation where possible.
- The suitability and location of vegetation and its impact on maintaining solar access to buildings is to be considered.
- When thoughtfully located, trees and other vegetation provide quality shade that helps reduce over-exposure to UV radiation and therefore assists in reducing the community's risk of skin cancer. Shade has many other benefits, including reduction of heat and an increase in comfort in using outdoor spaces. Detailed design advice regarding natural and built shade can be found at [www.cancer.nsw.gov.au/shade-and-uv](http://www.cancer.nsw.gov.au/shade-and-uv), particularly *Guidelines to Shade - A practical guide for shade development in New South Wales, 2013* (Cancer Council NSW) or its latest update.

#### I. Heritage

- Vegetation with heritage values is to be retained and protected

- Vegetation within heritage areas and the curtilage of heritage items provides is to be identified and protected where this contributes to the heritage significance of the area or item.
- Adequate provision is to be made for the maintenance of vegetation. This may be provided for in a vegetation management plan.
- Refer to Section 9 **Heritage** for requirements.

### 4. Vegetation safety & biosecurity

Key issues are weeds, risks and hazards, bush fire asset protection, climate management, carbon emissions and offsets

#### J. Undesirable vegetation and weeds

- Undesirable plant species are to be removed or effectively managed to prevent spread

- Removal and control of weeds on private land is the responsibility of landowners.

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Outcomes to be achieved	Design guidelines
<p><i>Note: Weeds and other undesirable plant species should be removed and not planted in Upper Hunter LGA and are exempt from vegetation permit requirements under Section 14a.6 Vegetation permits</i></p> <ul style="list-style-type: none"> <li>■ Hazardous or dangerous trees and vegetation may be removed where replacement vegetation is provided</li> </ul>	<ul style="list-style-type: none"> <li>• Development activities and land management practices are to be undertaken in a way that effectively manages weeds and undesirable vegetation.</li> <li>• Undesirable plant species are to be identified and removed and/or controlled to prevent spread, with measures taken to prevent future establishment. Refer to the list of undesirable plants in Upper Hunter Local Government Area.</li> </ul>
<p><b>K. Carbon emissions</b></p> <ul style="list-style-type: none"> <li>■ Vegetation clearing is to have zero net carbon emissions to the atmosphere</li> </ul>	<ul style="list-style-type: none"> <li>• Atmospheric carbon emissions from vegetation clearing are to be considered</li> <li>• Carbon offsetting arrangements are to be implemented where appropriate, preferably on or close to the development site.</li> </ul>

### 11a.7 Supplementary guidance

The following documents or reference materials provide further advice or information that is relevant to this section:

- *Upper Hunter Significant Vegetation Register*
- *Undesirable plant species of Upper Hunter LGA*
- *Tree Species Planting Guide for Upper Hunter LGA*

*(Note that it is intended that the above documents (or similar titles) will be developed and adopted by Council)*

- *Australian Standard AS 4970 Protection of Trees on Development Sites*
- *Australian Standard AS 4373 Pruning of Amenity Trees.*

Information about the benefits, design and location of shade is available from <https://www.cancer.nsw.gov.au/shade-and-uv>, particularly *Guidelines to Shade - A practical guide for shade development in New South Wales, 2013 (Cancer Council NSW)*