

**GR2 – Draft Amendments to Wollondilly Development Control Plan 2016 – Vegetation Removal**

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**EXECUTIVE SUMMARY**

- The purpose of this report is to seek Council support to exhibit proposed amendments to the Wollondilly Development Control Plan 2016. The proposed amendments will update the development control plan to align with the State Environmental Planning Policy (Vegetation in Non-Rural Areas) introduced on 25 August 2017.
- It is recommended that:
  - Council exhibit the draft amendments to Wollondilly Development Control Plan 2016 in accordance with the Community Engagement Strategy referred to in this report.
  - A further report be provided to Council following the public exhibition on the outcomes of the consultation and the final controls for adoption.

**REPORT**

**OVERVIEW OF THE LEGISLATIVE REFORMS**

The NSW Government introduced a new legislative and policy framework for biodiversity conservation and native vegetation management on 25 August 2017. The reforms involve the introduction of a new Biodiversity Conservation Act 2016 and Local Land Services Amendment Act, 2016.

The State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 ('Vegetation SEPP'), was also introduced on 25 August 2017 as part of the reforms. The Vegetation SEPP does not apply to any clearance of vegetation that is directly related or ancillary to an activity that requires development consent.

An overview of each part of the new legislation is provided below:

**Biodiversity Conservation Act, 2016**

The Biodiversity Conservation Act, 2016 ('BC Act') replaces the former Threatened Species Conservation Act 1995 in providing a legislative framework for the protection of biodiversity in NSW. It introduces a new biodiversity offsetting scheme and threshold criteria which trigger offsetting of biodiversity losses (through measures such as biobanking).

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The BC Act also regulates any development proposal that requires development consent under the Environmental Planning & Assessment Act 1979. However, this component has been deferred in Wollondilly and a number of other local government areas until 26 November 2018.

Biodiversity Conservation Regulation 2017

The Biodiversity Conservation Regulation 2017 provide additional detail and inform the implementation of the BC Act. Importantly, the Regulation include criteria within the Biodiversity Offset Scheme ('BOS') relevant to the minimum lot size of the land under Wollondilly Local Environmental Plan 2011 (WLEP 2011).

The thresholds for clearing that require biodiversity offsets are provided in the table below:

Minimum Lot Size for subdivision of the Land under WLEP 2011	Area of clearing that exceeds the BOS threshold
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 1000 hectares but not less than 40 hectares	1 hectare or more
1000 hectares or more	2 hectares or more

The clearing of native vegetation is also taken to exceed the BOS thresholds if the clearing is carried out on land identified within the Biodiversity Values map that is prepared and published under the BC Act by the relevant authority.

Local Land Services Amendment Act, 2016

The Local Land Services Amendment Act, 2016 replaces the Native Vegetation Act 2003. It details what clearing to native vegetation does not require development consent on land where the native vegetation regulatory map applies. These maps will apply to rural zoned land, not for land zoned urban or for environmental protection/management.

Clearing that is authorised under the Local Land Services Act, 2013 ('LLS Act') will be regulated by the Local Land Services Authority. The recent amendments also saw the introduction of the Land Management (Native Vegetation) Code 2017 which aims to support landholders by providing certain exemptions for vegetation removal and controls on rural land.

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State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

The Vegetation SEPP deals with clearing native vegetation that does not require development consent under the Environmental Planning & Assessment Act, 1979 on non-rural zoned land. The Vegetation SEPP enables Council to regulate any clearing below the BOS threshold through a permit system. Any clearing above the BOS requires approval from the Native Vegetation Panel established under the LLS Act.

The Native Vegetation Panel is an independent body and will consist of three members as follows:

1. The Chairperson, who will be a person with expertise in planning, public administration or social assessment;
2. A person with expertise in economics, agricultural economics or agricultural production systems;
3. A person with expertise in ecology or the protection and conservation of biodiversity.

The table below outlines the extent of the vegetation removal by which Council can issue a permit and the thresholds where approval from the Native Vegetation Panel is required for vegetation clearing in non-rural areas:

Minimum Lot Size of the land (refer to the minimum lot size map within WLEP 2011 to determine the minimum lot size)	Maximum area of clearing for which Council can issue a Permit for removal	Area of vegetation removal that requires approval from the native vegetation panel
Less than 1 hectare	Less than 0.25 hectares	0.25 hectares or more
Less than 40 hectares but not less than 1 hectare	Less than 0.5 hectares	0.5 hectares or more
Less than 1000 hectares but not less than 40 hectares	Less than 1 hectare	1 hectare or more
1000 hectares or more	Less than 2 hectares	2 hectares or more

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The Vegetation SEPP gives Council the ability, through its development control plan to prescribe vegetation that can be removed with and without a permit based upon:

- The species of vegetation
- The size of the vegetation
- The location of the vegetation
- The presence of vegetation in an ecological community or in the habitat of threatened species.

Under the Vegetation SEPP, a Council can approve or refuse to issue a permit application. If the permit application is refused the applicant can exercise Appeal rights with the NSW Land & Environment Court.

**APPROVAL PATHWAYS UNDER THE VEGETATION SEPP**

The BC Act, LLS Act and Vegetation SEPP work together to create a framework for the regulation of clearing of native vegetation. The framework establishes different regulatory pathways for clearing depending on whether the clearing requires consent.

Development consent for clearing of native vegetation is required where the purpose of the clearing is to enable a use of land for other development which also requires development consent.

If the clearing of the vegetation does not require development consent, then one of the following approval pathways must be used:

- Clearing within a non-rural zone which does not exceed the BOS threshold must be undertaken in accordance with a permit issued by Council (unless the removal of that vegetation meets an exemption listed under the Vegetation SEPP or Council's DCP)
- Clearing within a non-rural zone which exceeds the BOS threshold must be approved by the Native Vegetation Panel and potentially include a Biodiversity Assessment Method under the BC Act to offset vegetation losses
- Clearing within a rural zone must be approved by Local Land Services (unless the clearing meets an exemption under the LLS Act or the Land Management Code) and include a BAM under the BC Act.

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The approval pathways are summarised in the table below:

	Approval Pathway		
	Council (via issue of a permit or an exemption under Council's DCP)	Local Land Services (via approval or exemption)	Native vegetation Panel
Non-Rural zone (Clearing is less than the BOS threshold)	✓		
Non-Rural Zone (clearing exceeds BOS threshold)			✓
Rural Zone (clearing is less than BOS threshold)		✓	
Non-Rural zone (clearing exceeds BOS threshold)		✓	

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**REVIEW OF WOLLONDILLY DEVELOPMENT CONTROL PLAN 2016**

Approval requirements for the removal of vegetation are set out in WLEP 2011 by clauses 5.9 and 5.9AA. These clauses gave Council the ability to prescribe one of the following types of approval pathways for vegetation removal:

- Exempt (i.e. no approval being required);
- Vegetation that could be removed subject to the granting of a permit by Council; or
- Vegetation that could only be removed subject to granting of a development consent by Council (i.e. subject to a development application).

Clause 5.9 and 5.9AA in 2011 WLEP were repealed by the State Government when the Vegetation SEPP came into place.

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Amendments to the current Wollondilly Development Control Plan 2016 ('WDCP 2016') controls for tree removal are now required, particularly to remove the inconsistencies between the development control plan and the Vegetation SEPP. These include:

- The tree removal controls within the WDCP 2016 currently apply to all land use zones. Once the Vegetation SEPP takes effect, Council will only have control over vegetation removal in the urban and environmental zones
- WDCP 2016 currently require development consent for some forms of tree removal. Under the Vegetation SEPP a Council's DCP controls can no longer require development consent for the removal of vegetation
- WDCP 2016 needs to be updated to reflect the requirement in the Vegetation SEPP that any vegetation removal that exceeds the BOS threshold in the urban and environmental zones requires approval from the Native Vegetation Panel established under the LLS Act.

The review also presents an opportunity to amend other aspects of the WDCP 2016 relating to approval requirements for vegetation removal to ensure that overall improvements to Council's processing of tree removal requests are made.

**KEY CHANGES TO VEGETATION REMOVAL CONTROLS IN WDCP 2016**

The draft amendments to WDCP 2016 are provided in Attachment 3 in this report. The key changes are provided as follows:

- The controls have been updated to only apply to residential and environmental zones where clearing is below the BOS threshold
- Any requirements to obtain development consent for tree removal have been removed from the WDCP 2016 (except for those situations where the tree removal is to facilitate another use which requires development consent)
- Flow charts outlining the approval pathways and process for vegetation removal have been updated to reflect the amendments
- Amend the exempt provisions for the removal of certain types of weeds declared under the now repealed Noxious Weeds Act, 1993. It is proposed to update the list of noxious weeds in WDCP 2016 that can be removed/controlled without approval in accordance with the Greater Sydney Region Weed Management Plan, or those weed types subject to an approved Biosecurity undertaking or direction under the Biosecurity Act, 2015 or listed in a Council approved Local Weed Management Plan
- The current exemption for removal of a tree within 3 metres of a 'building' has been amended to state within 3m of a 'dwelling'

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- A table of exemptions will be added to provide further clarity of what types of vegetation removal require a permit across the various non-rural zones
- A requirement will be added where a permit must be obtained for any vegetation removal within 10 metres of a watercourse
- Amend the exempt provisions for tree removal within 3 metres of an access driveways. These controls will be amended so that the exemption only applies within 3 metres of an access driveway between the road and the property boundary
- A multi - tier fee system will be introduced as follows:
  - A Tier 1 fee payment and permit is required for vegetation removal involving up to 100 m<sup>2</sup> or up to 5 trees
  - A Tier 2 fee payment and permit is required for vegetation removal involving more than 100 m<sup>2</sup> or more than 5 trees which would deal with more complex requests and likely require the submission of supporting information such as a Flora and Fauna Assessment
  - A Tier 3 fee payment will be required for the removal of any vegetation planted or protected under a development consent condition, remediation order, 88B instrument or conservation agreement
- Specific requirements for removing vegetation that is, or forms part of a heritage item or is within a heritage conservation area has been added and are outlined in Attachment 4 of this report
- Requirements for conservation licenses have been added
- The definition of what constitutes a tree will be amended.

**CONSULTATION**

In accordance with Schedule 1 of the Environmental Planning and Assessment Act, 1979, the proposed amendments to WDCP 2016 will be publically exhibited for a minimum period of 28 days.

A Community Engagement Strategy will be developed to ensure a wide and varied approach to community consultation through various modes including the local newspaper, Council's website and social media sites.

Local Land Services, NSW Office of Environment & Heritage and Council's Environment & Heritage Committee, will also be invited to provide feedback during the consultation period.

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**FINANCIAL IMPLICATIONS**

Council's 2018/19 Fees and Charges has been amended to include the new multi-tier fee system.

Any costs associated with the engagement strategy to be funded from the existing budget.

**ATTACHMENTS INCLUDED IN A SEPARATE BOOKLET**

1. Flow chart outlining process and approval pathways for vegetation removal under the proposed reforms.
2. Wollondilly Development Control Plan Volume 1 Part 10 - Tree Removal (current version).
3. Draft amended version of Wollondilly Development Control Plan Volume 1 Part 10 - Tree Removal (version for public exhibition).
4. Specific requirements for clearing of vegetation on a site containing a heritage item or within a heritage conservation area.

**RECOMMENDATION**

1. That Council exhibit the draft amendments to Wollondilly Development Control Plan 2016 in accordance with the Community Engagement Strategy referred to in this report.
2. That a further report be provided to Council following the public exhibition on the outcomes of the consultation and the final controls for adoption.