

Chapter 14

Tree Preservation Order



14 Tree Preservation Order

Trees are a vital component of the landscape and have a significant influence on the character of individual premises, neighbourhoods and the City as a whole. The presence of suitable trees provides scenic and environmental amenity and wildlife habitat. Trees reduce the impact of urban features, assist in minimising land degradation and provide shade and shelter for humans and wildlife. Trees enrich our environment and contribute to our sense of wellbeing.

Council's Tree Preservation Order prohibits the partial or total destruction of a tree or trees in urban zones without the prior written consent of Council.

14.1 Objectives of this Chapter

This Chapter's objective is to promote the retention of trees and tree cover, within urban, village and rural residential areas so as to conserve as far as practicable the existing landscape quality and remaining natural ecosystems. Council encourages the planting of suitable native trees to provide integration of trees into existing land uses.

This Chapter also clarifies where Council is the consent authority for tree removal or pruning in urban, village, business, rural residential, industrial and special uses zones and the Catchment Management Authority is the consent authority for tree removal in rural areas.

- To minimise unnecessary removal of tree(s).
- To conserve tree(s) of ecological, heritage, aesthetic and cultural significance.
- To preserve and enhance flora and fauna habitat and corridors.
- To conserve remnant vegetation.
- To conserve riparian vegetation.
- To encourage the planting of local native species.
- To encourage the planting of tree(s) that are appropriate for conditions within urban, village, industrial, business and rural residential zones.

14.2 Definitions

In this Chapter the following definitions apply:

"Dead Tree" refers to a tree(s) that is no longer capable of performing the one of the following processes: photosynthesis, take up water through roots, hold moisture in its cells and produce new shoots.

"Endangered Species" means a native (flora or fauna) species that is likely to become extinct in nature in NSW unless the circumstances and factors threatening its survival or evolutionary development cease to operate; or its numbers have been reduced to such a critical level, or its habitats have been so drastically reduced, that it is in immediate danger of extinction; or it might already be extinct, but it is not presumed extinct. These species are listed in Schedule 1 of the Threatened Species Conservation Act, 1995.

"Environmental Weed" means a plant that poses a threat to the natural environment. Environmental weeds are not native to the area and are very successful and resilient (refer to Appendices for links to obtain a list of environmental weeds).

"Habitat Tree" means any tree(s) which has developed hollows in the trunk or limbs and which is suitable for nesting birds, arboreal marsupials (such as possums), native mammals (such as bats) or which support the growth of locally indigenous epiphytic plants (such as orchids).

“Heritage Conservation Area” means an area listed in Schedule 2 *Heritage Conservation Areas* of Lismore Local Environmental Plan 2000 and shown edged heavy black on the sheet of the map marked “Lismore Local Environmental Plan 2000 (Amendment No 2) Conservation Area” specified in that Schedule in respect of that land. The heritage conservation areas within the Lismore Local Government Area are listed below:

- Dalley Street Conservation Area
- Girards Hill Conservation Area
- St Andrews Conservation Area
- Spinks Park/ Civic Precinct Conservation Area
- St Carthages Conservation Area
- Nimbin Conservation Area

“Heritage Item” means a building, work, relic, tree(s) or place (which may or may not be situated on or within land that is a heritage conservation area) described in Schedule 1 *Heritage Items* of Lismore Local Environmental Plan 2000. Heritage items are shown edged heavy black on the maps marked “Lismore City Council Local Environmental Plan 2000 (Amendment No 2) Heritage Items”.

“Large woody debris or snags”: consist of whole tree(s), limbs and root masses that are partly or wholly submerged. They form one of the most important habitat components for fish within a river or creek.

“Noxious Weed” means a plant declared noxious within the Far North Coast County District under the Noxious Weeds Act, 1993 (refer to Appendices for links to obtain a list of noxious weeds).

“Protected Native Plants” refers to flora listed in Schedule 13 of the National Parks and Wildlife Act, 1974.

“Prune” means to cut off living parts or branches of a plant, to improve shape or growth.

“Road Reserve” means all land between adjoining property boundaries where a road is formed. It relates only to existing roads.

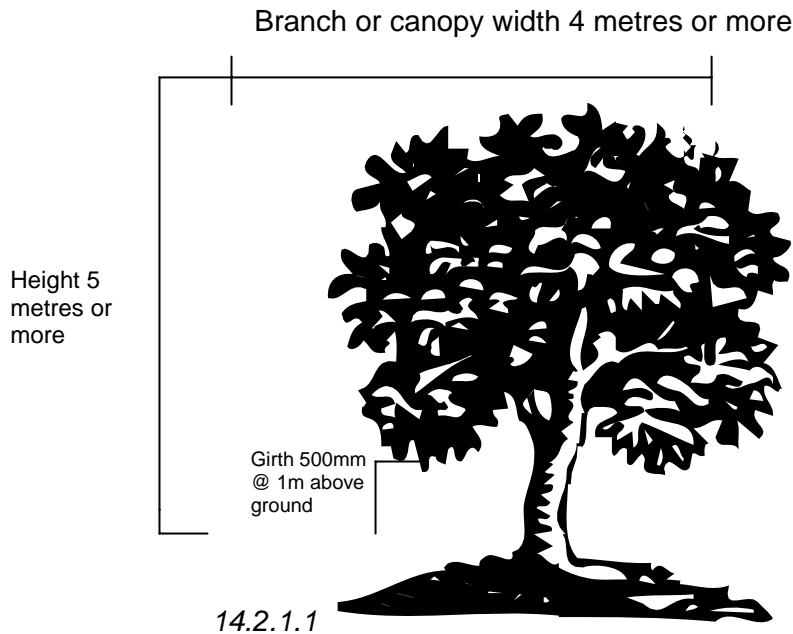
“State Environmental Planning Policy (SEPP) 14 - Coastal Wetlands” means an area of coastal wetlands identified under the EPA Act to be under threat from escalating development pressure. Such designated wetlands are marked on a map, a copy of which can be viewed at Council’s Administration Centre.

“State Environmental Planning Policy (SEPP) 44 - Koala Habitat Protection” applies to 107 local government areas in NSW that correspond to the known geographic distribution of koalas in NSW.

“Threatened Species” means native species, populations and communities of flora and fauna that are endangered, vulnerable or presumed extinct in New South Wales. They are specified in Schedules 1 and 2 of the Threatened Species Conservation Act, 1995.

“Tree” is defined as a woody stem of any plant species which:

- has a height of more than 5 metres; or
- has a girth (circumference) of 500mm or greater at a height of 1 metre above the natural ground surface: or
- has a branch spread of 4 metres or more.



“Tree removal or partial or total destruction” of a tree(s) means the ring-barking, cutting down, clearing, lopping, topping, removing, injuring, poisoning or wilful damage of any tree(s).

“Vulnerable Species” means a native (flora or fauna) species that is likely to become endangered unless the circumstances and factors threatening its survival or evolutionary development cease to operate. These species are listed in Schedule 2 of the Threatened Species Conservation Act, 1995.

All other definitions shall be as described in the Environmental Planning and Assessment Act 1979 (as amended) and Lismore Local Environmental Plan 2000.

14.3 Statutory Framework for this Chapter

The following legislation provides Lismore City Council with the legal basis to establish a Tree Preservation Order:

Environmental Planning and Assessment Act, 1979 (as amended)

Part Three - Environmental Planning Instruments

Division 1 – General

Section 26 - Contents of Environmental Planning Instruments Section 72 - Development Control Plans

Environmental Planning and Assessment Regulation, 2000

Part 3 Development Control Plans

Clauses 16 to 23

Lismore Local Environmental Plan (LEP) 2000

Part 2 - General Provisions

Clause 18 - Preservation of Trees

National Parks and Wildlife Act, 1974

Part 8 Native Plants

Clause 115A Management plans for protected native plants

Threatened Species Conservation Act, 1995

Part 6 – Licensing

Division 1 – Grant of Licences

- Section 91 – Licence to harm or pick threatened species, populations or ecological communities or damage habitat
- Section 92 – Application for Licence

Native Vegetation Act, 2003

Fisheries Management Act, 1994, through the Fish Habitat Protection Plan No 1.

The above provisions give this part of Development Control Plan No.1 its legal status and enables Council to initiate proceedings for breaches of this Tree Preservation Order.

This Chapter does not override any provisions in the above Acts.

14.4 Land to which the Tree Preservation Order Applies

Consent is required from Council to remove, prune or destroy tree(s) in the following zones identified in the Lismore LEP 2000:

- Zone No 2(a) - Residential Zone
- Zone No 2(f) - Residential (Flood Liable) Zone
- Zone No 2(v)- Village Zone
- Zone No 3(a) – Business zone
- Zone No 3(b) - Neighbourhood Business Zone
- Zone No 3(f) - Services Business (Flood Liable) Zone
- Zone No 4(a) - Industrial Zone
- Zone No 5 - Special Uses Zone
- Zone No 5(b) - Special Uses (Technology Park) Zone
- Zone No 6(a) - Recreation Zone
- Zone No 6(b) - Private Recreation Zone
- Zone No 7(a) - Environment Protection (Natural Vegetation and Wetlands) Zone
- Zone No 7(b) - Environment Protection (Habitat) Zone

To obtain consent from Council a Tree/s removal and/or pruning application form needs to be completed and submitted to Council with the appropriate fee. For a copy of the application form please contact Council's Administration (02) 6625 0500 or a copy can be downloaded from Council's webpage www.lismore.nsw.gov.au.

14.5 Land to which the Tree Preservation Order does not apply

The Tree Preservation Order does not apply to land that is contained within the following zones of the Lismore LEP 2000; however consent from another Authority may apply (refer to section 14.8):

- Zone No 1 (a) – General Rural zone
- Zone No 1 (b) – Agricultural zone
- Zone No 1 (c) – Rural Residential zone
- Zone No 1 (d) - Investigation zone
- Zone No 1 (f) - Forestry zone
- Zone No 1 (r) – Riverlands zone

14.6 Tree Removal requiring Consent from Council

Tree(s) removal or pruning in any of the cases below requires consent from Council:

- All tree(s) within the Lismore LGA zones listed in section 4 of this plan.
- Protected Native Plants listed in Schedule 13 of the National Parks and Wildlife Act, 1974 (refer to Appendices).
- Tree(s) within Heritage Conservation Areas (see Section 3 *Definition of Terms* and Schedules 1 and 2 of Lismore LEP 2000).
- Trees(s) on sites containing Heritage Items.
- Tree(s) in a SEPP 14 Coastal Wetland. Council may only consent to the works under the Environmental Planning and Assessment Act, 1979 (EPA Act) with concurrence of the Director of the relevant State Government Agency.
- Tree(s) on lands greater than one hectare in area to which State Environmental Planning Policy (SEPP) 44 - Koala Habitat Protection applies over which a development application has been made. Within the Lismore LGA this means areas containing the following trees: Forest Red Gum (*Eucalyptus tereticornis*), Tallowwood (*Eucalyptus microcorys*), Swamp Mahogany (*Eucalyptus robusta*). The following species also provide koala habitat and will also require the appropriate box to be ticked on the application form: Brush Box (*Lophostemon confertus*), Grey Ironbark (*Eucalyptus siderophloia*), Flooded Gum (*Eucalyptus grandis*), White Mahogany (*Eucalyptus acmenoides*), Small-fruited Grey Gum (*Eucalyptus propinqua*), Forest She-oak (*Allocasuarina torulosa*), Broad-leaved Paperbark (*Melaleuca quinquinervia*) and Pink Bloodwood (*Corymbia intermedia*).

14.7 How to obtain Consent for tree removal/pruning

To obtain consent from Council a Tree/s removal and/or pruning development application form needs to be completed and submitted to Council with the appropriate fee. For a copy of the application form please contact Council's Administration (02) 6625 0500 or a copy can be downloaded from Council's webpage www.lismore.nsw.gov.au.

14.8 Tree Removal Requiring Consent from another Authority

Removal, pruning or harming tree(s) in the following areas within Lismore LGA requires consent from the Northern Rivers Catchment Management Authority (NRCMA) under the Native Vegetation Act, 2003:

- Zone No 1 (a) – General Rural zone
- Zone No 1 (b) – Agricultural zone
- Zone No 1 (c) – Rural Residential zone
- Zone No 1 (d) - Investigation zone
- Zone No 1 (r) – Riverlands zone

Breaches and compliance issues in the above zones are to be directed to the relevant State Government Agency.

Removal, pruning or harming to vegetation listed as a Threatened Species (endangered or vulnerable) in any zone within the Lismore LGA requires consent from the Director-General of the relevant State Government Agency under the Threatened Species Conservation Act, 1995. The most recent information can be obtained from the NSW National Parks & Wildlife Service *Atlas of NSW Wildlife* (refer to Appendices for contacts details).

Consent from relevant State Government Agency may be required for "Removal of large woody debris from New South Wales rivers and streams", under the Fisheries Management Act, 1994, through the Fish Habitat Protection Plan No 1.

Consent from the relevant State Government Agency is required for any clearing on State Protected Land, including woody weed removal or removal of dead trees whether standing or fallen under the Native Vegetation Act, 2003.

Refer to appendices for the contact details for the above authorities.

14.9 Exemptions to the Tree Preservation Order

The following situations are exempt from requiring consent under Council's Tree Preservation Order. Removal and/or pruning of tree(s) that are exempt under the Tree Preservation Order must be carried out by means not detrimental to the native ecosystem.

- Removal of dead branches including palm fronds.
- Any tree(s) grown specifically for its edible fruit.
- Any dead tree(s)
- Any tree(s) identified as a noxious weed under the Noxious Weeds Act, 1993 (refer to Appendices).
- Any tree(s) listed as an Environmental Weed (refer to Appendices).
- Tree(s) authorised for removal under the Rural Fires Act, 1949.
- Tree(s) required to be pruned in accordance with the Electricity Supply Act, 1995, No.94.
- The partial or total destruction of a tree(s) by a Public Authority for the purposes of air navigation.
- Any tree(s) within a State Forest or on land reserved for sale as a timber forest reserve under the Forestry Act, 1916.
- Tree(s) within an approved plantation meeting the criteria of the Timber Plantations (Harvest Guarantee) Act, 1995.
- Plantations established by State Forests on purchased lands and on private or public land under the Joint Venture or Farm Forestry Schemes.
- Pruning or removal of a tree(s) authorised by development consent issued by Council. The tree(s) must have been identified for removal within the development application.
- Tree(s) on Council owned/managed land authorised by Lismore City Council's (LCC) Parks Section after consultation with local residents.
- Tree(s) growing within the Road Reserve (refer to section 3 in this plan for definition) where it can be shown that such tree(s) present a serious hazard to motorists.

14.10 Application Procedures

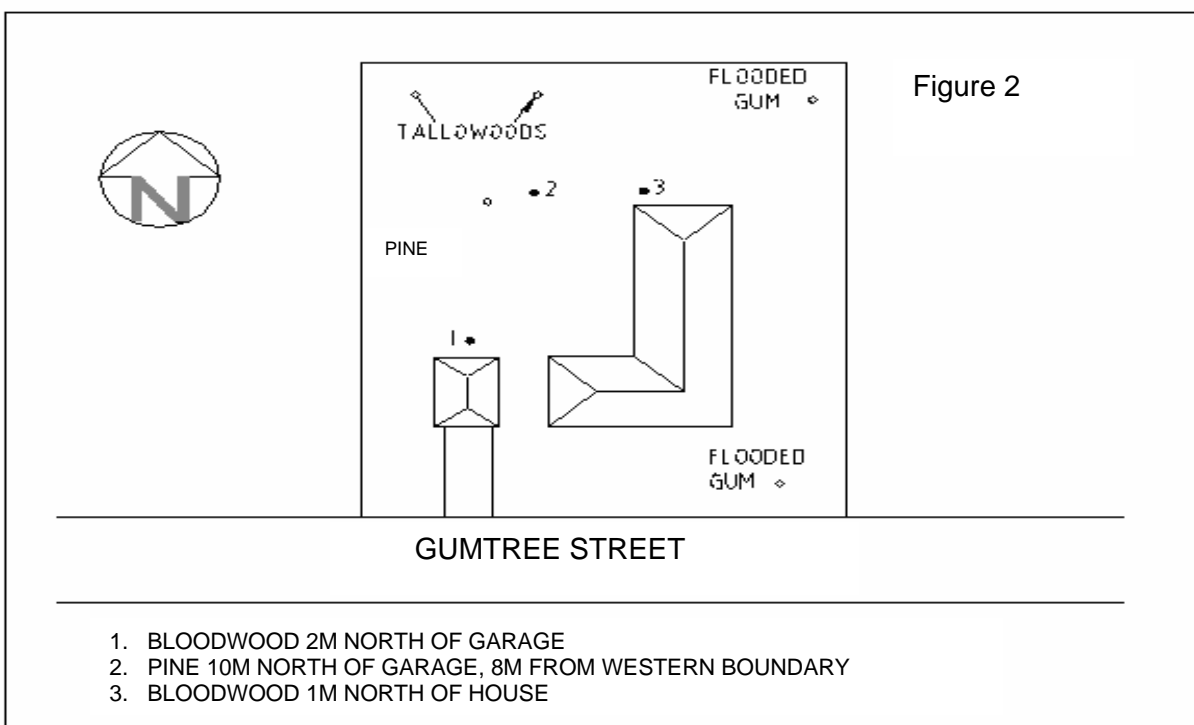
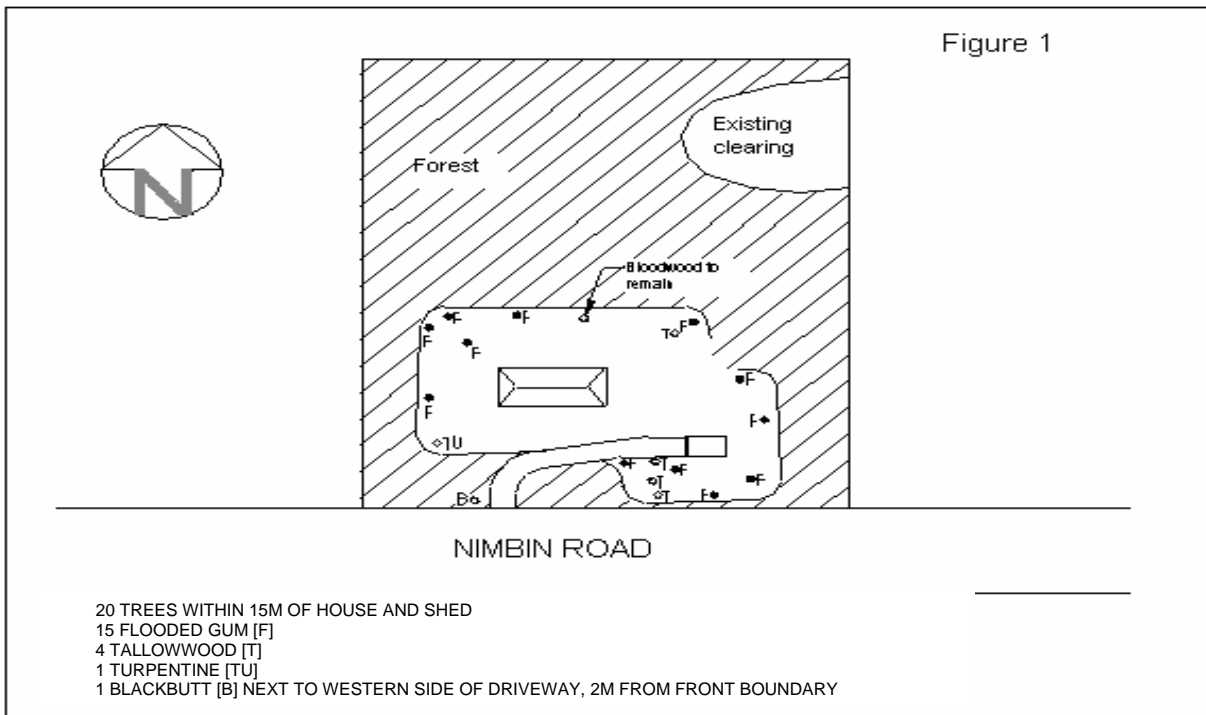
Application forms and advice can be obtained from Council's Administration Offices, 43 Oliver Avenue, Goonellabah during normal business hours and Council's website www.lismore.nsw.gov.au.

The application must provide the following details:

- Property address or real property description (Lot /DP number from Rates Notice)
- Applicant's name and address
- Land owner's consent (the owner of the land on which the tree(s) is growing must sign the application form)
- A plan outlining the location(s) of the all tree(s) on the site highlighting the tree(s) that are proposed to be removed or pruned. Figures 1 and 2 are an example of such a plan.
- Each tree must be numbered on the plan and identified by reference to a physical feature (eg 5m from eastern boundary; 7m to the north of the garage). Two distances may be necessary.
- A description of the tree(s) including the following
 - Tree(s) species; if unknown please describe the leaves and bark.
 - Height
 - Width
- Reasons for removal or pruning of tree(s).

Please note that no works are to be undertaken prior to the Council consent being issued. Any consent given by Council to remove tree(s) will generally be subject to conditions requiring the

planting of replacement tree(s) on the subject land in a more suitable location, or planting of species better suited to site condition.



14.11 Criteria for Removal

In accordance with the provisions of the Tree Preservation Order, Council will take into consideration the following criteria when addressing an application to prune and/or remove tree(s):

- Whether the tree(s) is dead, dying, dangerous or diseased. Please note where the applicant believes the tree(s) to be dangerous, it is important that the applicant provides a report describing why the tree(s) is deemed dangerous by a qualified arborist.
 - Whether the tree(s) is within six metres of a dwelling (dependent on tree(s) species and soil type).
 - Whether the growth habit or mature size of a tree(s) is undesirable in a given situation (eg under powerlines, root interference with services, or building).
 - Whether the tree(s) is interfering or likely to interfere with the provision of a public road, provided that in the design and location of work, all effort has been taken to avoid the destruction of tree(s).
 - Whether the tree(s) is interfering or likely to interfere with public or private utilities and services and corrective action is not practical.
 - Whether the tree(s) is in an overcrowded situation and judicious removal of tree(s) will result in improved growth of other trees.
 - Whether the tree(s) is interfering or likely to interfere with the efficiency of a solar heating appliance, natural light or energy efficient house design. This clause does not extend to clotheslines.
 - Whether the tree(s) is causing illness or a severe allergic reaction to a person and such claim can be substantiated by medical evidence from a registered medical practitioner.
 - Whether the tree(s) shows poor form and shape and/or vigour typical to species
 - A tree(s) that is overhanging the boundary and creating a public nuisance will be considered for pruning. Please note the following:
 - Owners consent from the person(s) whose property the tree(s) is on must be supplied. If owner consent cannot be gained please contact Council for further assistance.
 - The assessing Council Officer will determine the amount of pruning required. This will be dependent on species type, tree shape and type of nuisance.
 - Whether a tree is appropriately planted in consideration of its species, location, compatibility with the surrounding landscape, proximity to buildings, and/or aesthetic qualities.
- Note these criteria are intended for use by the assessing officer only and will be used for consideration purposes where there may be some indecision on another matter. Because your tree/s meet one or more of these criteria will not automatically initiate an approval."

14.12 Criteria for Refusal

In accordance with the provisions of this Tree Preservation Order, the following reasons are not adequate justification to remove tree(s):

- **View:** Significant pruning and/or removal of tree(s) to enhance a view or outlook.
- **Shade:** Significant pruning and/or removal of tree(s) to reduce shading. Judicious crown thinning may be permitted where medical evidence is submitted stating that shading is detrimental to a person's health, or where evidence is submitted to indicate shading prevents energy efficiency through solar passive design.
- **Leaf fall:** Pruning and/or removal of tree(s) to prevent leaves accumulating under or around tree(s) or within gutters or swimming pools.
- **Pruning to Boundary Line:** Pruning tree(s) to the boundary line.
- No reason given for removal.

14.13 Matters for Consideration

Council in considering whether to grant consent under this Development Control Plan will consider the following:

- Protecting catchments which provide water for urban purposes;
- Protecting wildlife corridors and vegetation links with other nearby bushland;
- Protecting vegetation as a natural stabiliser of the soil surface and of existing landform such as natural drainage lines, water courses and foreshores;
- Protecting bushland for scenic values and the retention of the unique visual characteristics of the landscape.

14.14 Consent Conditions

When consent for tree(s) removal is issued, the following conditions may be imposed:

- Consent is valid for six (6) months from the date of consent.
- The applicant/owner will receive two copies of the consent, one to be retained by the applicant/owner and one to be given to the contractor if engaged to carry out work.
- All refuse is to be recycled/reused on site or transferred to a Council landfill site to be recycled as green waste.
- Consent is generally subject to the establishment of appropriate replacement tree/s at a suitable location. Generally, Council requires that trees removed be replaced by suitable native species at a rate of 2 trees (or 1 tree and 2 shrubs) in urban areas, depending on the circumstances of each case.
- Replacement planting may include Koala food trees. If replacement within residential allotments is not appropriate, the applicant/owner may be required to plant such species on Council's public reserves, or alternatively pay a fee for Council to organise replacement planting and maintenance.
- In the event that contractors are engaged to carry out tree removal works on private property, it is the responsibility of the owner/applicant to confirm the validity and currency of all insurance and Work Cover requirements.

14.15 Arborist and Structural Engineers Reports

An arborist report should include the following as a minimum

- Where an application is to remove a tree(s) that is alleged to be dying, or that is suspected to possess structural, mechanical or other damage, the applicant may be required to submit a report from a suitably qualified arborist, at no cost to Council. The arborist report is to provide Council with detailed information concerning the problems the tree(s) has and clear recommendations for future action.
- Council may approve the removal of a tree(s) where the arborist's report, based on sound horticultural and arboricultural principles, recommends the removal of a tree(s) outside the provisions of this Development Control Plan.
- Where structural damage to property is alleged, the applicant may also be required to submit a report from a suitably qualified structural engineer in consultation with a suitably qualified arborist, at no cost to Council.

14.16 Appeals

An applicant dissatisfied with a decision of Council (either refusal or imposition of conditions) may:

- a) Request in writing, within 28 days of Council decision, a review of the decision (a fee may apply) or
- b) Appeal against Council's determination to the Land and Environment Court.

14.17 Enforcement

Any person who contravenes or causes or permits to be contravened the provisions of this Development Control Plan shall be guilty of an offence under the *Environmental Planning and Assessment Act 1979* (as amended). Dependent on the severity of the offence Council may:

1. Issue a Penalty Infringement Notice in accordance with Section 125(1) and Section 76A(1):
If a tree(s) is removed or pruned or harmed without consent a \$600 fine will be issued.

If a tree(s) is removed or pruned or harmed not in accordance with the consent issued a \$600 fine will be issued. In addition if either of the above instances occur the person will be required to replace the damaged or destroyed tree or trees with a minimum of two trees and maintain the trees to mature height, or

2. Civil enforcement under Class 4 *Land and Environment Court Act, 1979* and all court cost incurred, and/or
3. Criminal prosecution under Class 5 *Land and Environment Court Act, 1979* and all court cost incurred.