

## Chapter 14

# Preservation of Trees or Vegetation



## 14 Preservation of Trees or Vegetation

Trees or vegetation is 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.

This chapter of the DCP prohibits the partial or total destruction of a tree or trees in urban zones without the prior written consent of Council.

### 14.1 State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 includes provisions that allow the removal of a tree associated with a Complying Development Certificate where, it is not a heritage item or on a significant tree register, and has a height of less than 6m and located within 3m of the proposed development (within the subject lot). Other tree removal under the SEPP is not exempt or complying and requires a permit or development consent from Council or the Northern Rivers Catchment Management Authority.

### 14.2 Purpose of this Chapter

This Chapter aims to promote the retention of trees and tree cover in urban 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. Objectives follow:

- 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 trees that are appropriate for conditions within urban, village, industrial and business zones.
- To clarify the appropriate consent authority for tree removal or pruning.

### 14.3 Definitions

A word or expression used in this chapter has the same meaning as it has in LEP 2012 unless it is otherwise defined in this chapter.

**dead tree** refers to a tree 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** has the same meaning as in the *Threatened Species Conservation Act 1995*.

**environmental protection works** means works associated with the rehabilitation of land towards its natural state or any work to protect land from environmental degradation, and includes bush

regeneration works, wetland protection works, erosion protection works, dune restoration works and the like, but does not include coastal protection works.

**environmental weed** means a plant which is growing in the wrong place, through various methods of distribution and proliferation, and has become a threat to the survival of native plants and animals.

**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 of land of heritage significance:

- (a) shown on the LEP 2012 Heritage Map as a heritage conservation area, and
- (b) the location and nature of which is described in LEP 2012 Schedule 5, and includes any heritage items situated on or within that area.

**heritage item** means a building, work, place, relic, tree, object or archaeological site the location and nature of which is described in LEP 2012 Schedule 5.

**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/street reserve** means the land set aside for a road/street pavement and verge.

**State Environmental Planning Policy (SEPP) 14 - Coastal Wetlands** means an area of coastal wetlands identified under the *EPA Act 1979* 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.

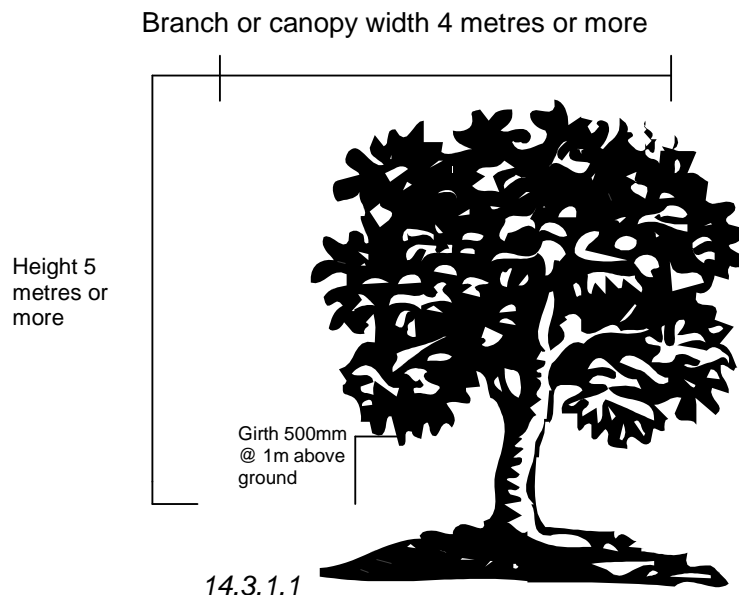
**State Environmental Planning Policy (SEPP) 44 - Koala Habitat Protection** applies to 107 local government areas in NSW that correspond to the known geographic distribution of koalas in NSW.

**State protected land** has the same meaning as in schedule 3 of the *Native Vegetation Act 2003*.

**threatened species** has the same meaning as in 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** has the same meaning as in the *Threatened Species Conservation Act 1995*.

#### 14.4 Statutory Framework for this Chapter

The following legislation provides Lismore City Council with the legal basis to establish DCP provisions for the preservation of trees or vegetation:

*Environmental Planning and Assessment Act 1979*

Part Three - Environmental Planning Instruments

Division 1 – General

Section 26 – Contents of Environmental Planning Instruments

Section 74C – Preparation of Development Control Plans

*Environmental Planning and Assessment Regulation 2000*

Part 3 Development Control Plans

Clauses 16 to 23

*Lismore Local Environmental Plan 2012*

Part 5 - Miscellaneous Provisions

Clause 5.9 - Preservation of trees or vegetation

*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*

The above provisions give this chapter of the Development Control Plan its legal status and enables Council to initiate proceedings for breaches of these controls.

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

#### **14.5 Land to which this chapter of the DCP applies**

Consent is required from Council to remove, prune or destroy tree(s) in the following zones identified in the Lismore LEP 2012:

- R1 – General Residential
- R2 – Low Density Residential
- RU5 – Village
- B1 – Neighbourhood Centre
- B2 – Local Centre
- B3 – Commercial Core
- B4 – Mixed Use
- B6 – Enterprise Corridor
- IN1 – General Industrial
- IN2 – Light Industrial
- SP2 – Infrastructure
- RE1 – Public Recreation
- RE2 – Private Recreation
- W2 – Recreational Waterways

To obtain consent from Council to remove, prune or destroy tree(s), 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 on 1300 87 83 87 or download a copy of the application from Council's webpage [www.lismore.nsw.gov.au](http://www.lismore.nsw.gov.au)

#### **14.6 Land to which this chapter of the DCP does not apply**

This DCP chapter does not apply to land that is contained within the following zones of the Lismore LEP 2012, unless otherwise stated in section 14.7; however consent from another Authority may apply (refer to section 14.9):

- RU1 Primary Production
- RU2 Rural Landscape
- RU3 Forestry
- R5 Large Lot Residential
- E2 Environmental Conservation
- E3 Environmental Management
- W1 Natural Waterways

#### **14.7 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 14.5 of this chapter.

- Trees nominated within any Significant Tree Register (or similar document) that may be in force at the time.
- Protected Native Plants listed in Schedule 13 of the *National Parks and Wildlife Act 1974* (refer to Appendices).
- Tree(s) within Heritage Conservation Areas as identified on the Heritage Map LEP 2012.
- Trees(s) on sites containing Heritage Items as identified on the Heritage Map LEP 2012.
- Tree(s) in a SEPP 14 Coastal Wetland. Council may only consent to the works under the *Environmental Planning and Assessment Act 1979* 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 are also koala food trees and will require identification with the development application: Orange gum (*Eucalyptus bancroftii*), Grey gum (*Eucalyptus punctata*), Thin-leaved stringybark (*Eucalyptus eugenoides*), White stringybark (*Eucalyptus globoides*), Small-fruited grey gum (*Eucalyptus propinqua*), and Narrow-leaved red gum (*Eucalyptus seeana*).

#### **14.8 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 1300 87 83 87 or a copy can be downloaded from Council's webpage [www.lismore.nsw.gov.au](http://www.lismore.nsw.gov.au).

#### **14.9 Tree Removal Requiring Consent from another Authority**

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

- RU1 Primary Production
- RU2 Rural Landscape
- R5 Large Lot Residential
- E2 Environmental Conservation
- E3 Environmental Management
- W1 Natural Waterways

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 under the *Threatened Species Conservation Act 1995* (TSC Act) in any zone within the Lismore LGA requires consent from the Director-General of the relevant State Government Agency under the *TSC Act*. Exemptions do apply under Part 8A, section 118G of the *National Parks and Wildlife Act 1974*. 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 the 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 may be required for clearing on State Protected Land, under schedule 3 of the *Native Vegetation Act 2003*.

#### 14.10 Exemptions to the requirements of this DCP chapter

The following situations are exempt from requiring consent under the provisions of this DCP chapter. Removal and/or pruning of tree(s) that are exempt under this DCP chapter must be carried out by means not detrimental to native ecosystems.

- Any pruning that is completed to the Australian Standard – Pruning of Amenity Trees (AS 4373-2007) by a suitably qualified person.
- The clearing of trees or vegetation in accordance with clause 5.9 LEP 2012.
- Any tree removal under the threshold dimensions for “tree” as defined in section 14.3 of this chapter.
- Any tree(s) located within two (2) metres of a dwelling.
- Removal of dead branches including palm fronds.
- Any tree(s) grown specifically for its edible fruit.
- Any tree(s) or vegetation identified as an Environmental Weed by the NSW North Coast Weeds Advisory Committee; or identified on the National Environmental Alert list; or identified as a Weed of National Significance (refer to NSW Department of Primary Industries and North Coast Weeds Advisory Committee web sites for more detail).
- Tree(s) authorised for removal under the *Rural Fires Act 1997*.
- The partial or total destruction of a tree(s) by a Public Authority for the purposes of air navigation.
- Tree(s) within an approved plantation meeting the criteria of the *Plantations and Reafforestation Act 1999*.
- Plantations established by Forests NSW 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 where it can be shown that such tree(s) present a serious hazard to motorists.

**Note.** *Environmental protection works* as defined in Lismore LEP 2012 and in section 14.3 of this chapter, is development permitted without consent in all zones. *Environmental protection works* includes protecting land from environmental degradation. Weed infestation is a form of environmental degradation. The removal of weeds is therefore permitted without consent under LEP 2012.

#### 14.11 Application Procedures

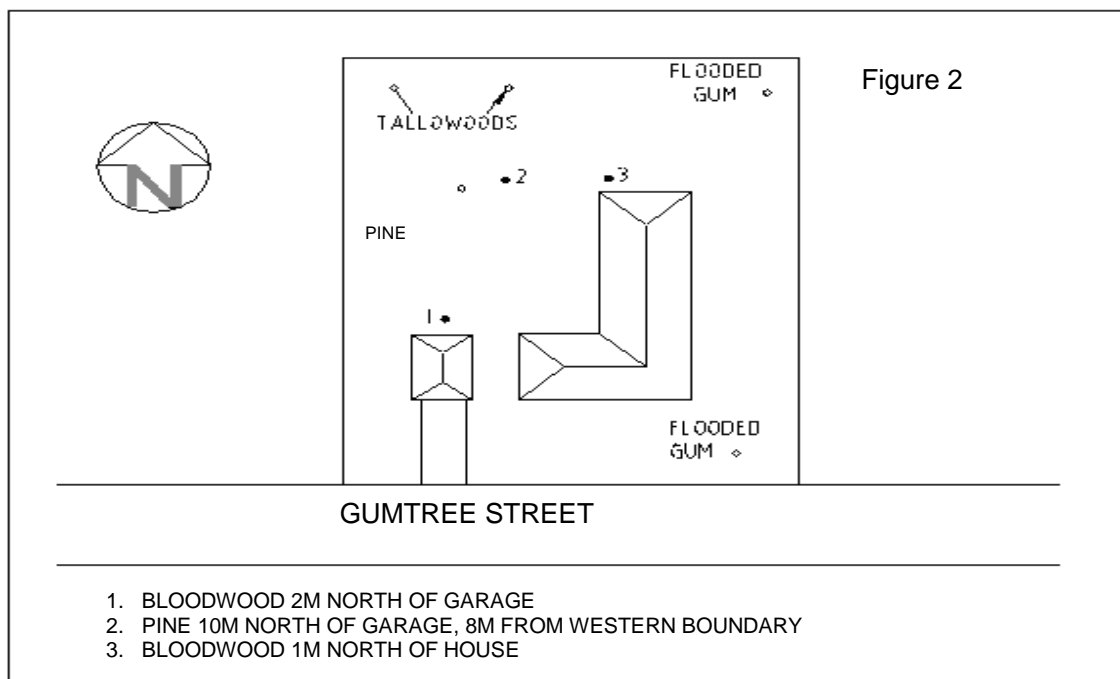
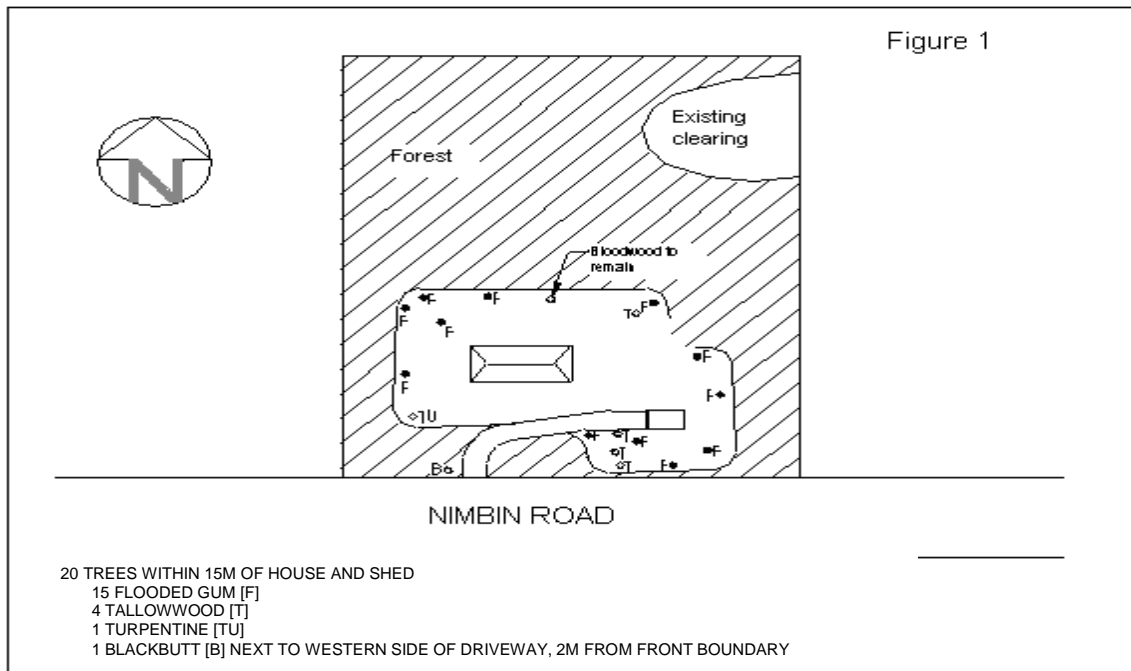
Application forms and advice can be obtained from Council’s Administration Offices, 43 Oliver Avenue, Goonellabah during normal business hours and on Council’s website [www.lismore.nsw.gov.au](http://www.lismore.nsw.gov.au).

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) 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 (e.g. 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 more suitable species for the site.





### 14.12 Criteria for Removal and Pruning

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

Whether the tree(s) is (are):

- 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.
- Causing structural damage to a dwelling. Note that evidence may need to be provided by a suitably qualified person if the damage is not evident.
- Within six metres of a dwelling (dependent on tree(s) species and soil type).
- 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).
- Interfering or likely to interfere with public or private utilities and services and corrective action is not practical.
- In an overcrowded situation and judicious removal of tree(s) will result in improved growth of other trees.
- Is interfering or likely to interfere with the efficiency of a solar heating appliance, photovoltaic cells/solar systems, natural light or energy efficient house design.
- Causing illness or a severe allergic reaction to a person and such claim can be substantiated by medical evidence from a registered medical practitioner.
- Showing poor form and shape and/or vigour typical to species.
- Inappropriately planted in consideration of its species, location, compatibility with the surrounding landscape, proximity to buildings, and/or aesthetic qualities.
- Undesirable growth habit or mature size of a tree(s) in a given situation (e.g. under powerlines, root interference with services, or building).
- A tree(s) that is overhanging the boundary and creating a public nuisance will be considered for pruning. Please note the following:
  - Owner's consent from the person(s) whose property the tree(s) is on must be supplied. If owner's 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.
- Branches which are overhanging a dwelling will be considered for pruning.

**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 meets one or more of these criteria will not automatically initiate an approval.

### 14.13 Criteria for Refusal

The circumstances for each application for tree removal vary and each request will be assessed on its merits. In accordance with the provisions of this DCP chapter, the following reasons may not be 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.

- **Engineering options:** Where relatively simple and inexpensive engineering solutions are available.
- No reason given for removal.

#### **14.14 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.
- Protection of hollow-bearing or habitat trees.
- Engineering issues.

#### **14.15 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 WorkCover requirements.

#### **14.16 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 faults or mechanical 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.

#### **14.17 Appeals**

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

- a) Request a review of the decision in accordance with Section 82A of the *EP&A Act 1979* (a fee may apply); or

- b) Appeal against Council's determination to the Land and Environment Court.

#### **14.18 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*. 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):
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.