Bellingen Shire Development Control Plan 2017

Chapter 6
Preservation of Trees & Vegetation in Urban Areas

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Amendment	Date Adopted	Date Commenced
Minor review of DCP - DCP 2017 replaces DCP 2010	22 November 2017	6 December 2017

6.1   Aims

The aims of this chapter are to:

a) To specify, pursuant to Clause 9 (2) of the State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, when a permit is required to clear vegetation.

b) To preserve the biodiversity value of vegetation in urban areas of the Bellingen Shire,

c) To maintain the vegetated character and amenity of towns and villages whilst providing reasonable opportunity for the removal of vegetation that is undesirable given its species, location or other attributes that would warrant its removal.

6.2   Where this Chapter Applies

The provisions of this chapter apply to urban land within Bellingen Shire that is located within the following Zones:

- R1 General Residential
- R5 Large Lot Residential
- B1 Neighbourhood Centre
- B2 Local Centre
- IN1 General Industrial
- SP1 Special Activities
- SP2 Infrastructure
- RE1 Public Recreation
- RE2 Private Recreation.

This Chapter does not apply to land within rural or environmental protection zones.

6.3   When this Chapter Applies

6.3.1   Circumstances when a permit for clearing is required

Pursuant to State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, a permit is required for *clearing native vegetation* below the Biodiversity Offset Threshold (BOS) on land to which this Chapter applies.

A permit is also required for clearing (non-native) vegetation on land to which both the SEPP (Vegetation in Non-Rural Areas) 2017 and this Chapter applies in all circumstances **except** for those outlined in Section 6.3.2.

6.3.2   Circumstances when a permit is not required

A permit for *clearing vegetation* as described in Section 6.3.1 is required in all circumstances except **for those outlined** below:

a) *Clearing vegetation* that:

- is less than 3 metres in height, and

- has a girth of less than 300 millimetres at a height of 1 metre above natural ground surface, and

- has a branch spread of less than 3 metres, and

- is not a *koala food tree* greater than 100mm in diameter that is located on land mapped as preferred koala habitat in Appendix 16.2 of Chapter 16 – Koala Habitat Protection and has an area 0.4ha or more,

b) *clearing vegetation* that is a biosecurity matter (a weed) as per Schedule 3 Weeds in the *Biosecurity Regulation 2017*, or

c) *clearing vegetation* that is listed as a priority weed for the North Coast that is found on the NSW Department of Primary Industries Weed Wise website, or

d) *clearing vegetation* that is a weed, as determined by Council from time to time (see Appendix 6.1 for list of Weeds current at time of DCP adoption which incorporates the species included in the lists detailed in b) and c)), or

e) *clearing vegetation* where the base of the trunk or stem is within 4 metres of the face of a lawful existing residential building; or

f) *clearing vegetation* where the base of the trunk or stem is within 4 metres of the face of a proposed residential building authorised by a current development consent under the *Environmental Planning and Assessment Act 1979*, or

g) *clearing vegetation* where it is essential to the carrying out of construction work authorised by a current approval under the *Local Government Act 1993* or development consent under the *Environmental Planning and Assessment Act 1979*, or

h) removal of a maximum of 10% of the canopy of a tree where the work is necessary for the health of the tree and is designed and carried out in accordance with AS 4373—2007, Pruning of amenity trees.

Note: Pursuant to Part 2 Clause 8 of the SEPP (Vegetation in Non-Rural Areas) 2017, a permit is not required for:

- the removal of vegetation that the Council or Native Vegetation Panel is satisfied is dying or dead and is not required as the habitat of native animals.

- the removal of vegetation that the Council is satisfied is a risk to human life or property.

In order to be satisfied of the above matters, Council will usually require written verification from an appropriately qualified person/s such as an Arborist, Registered Builder or Emergency Services Organisation. Persons acting upon these exemptions without prior consultation with Council and without adequate proof as to the condition of the vegetation removed may face subsequent legal action should it be determined that a permit was required.

6.3.3 Qualifications to exemptions

The following additional qualifications apply to Items a) to h) as listed in Section 6.3.2.

Vegetation within 50m of a waterway

For Item a;

If the vegetation to be removed is native to the Bellingen Local Government Area and within 50m of a "waterway", as defined by the BLEP 2010, a permit will be required for any proposal to damage vegetation regardless of its size.

Disturbance of soil

For Items b, c and d;

Weed removal techniques involving machines that disturb soil to dig up the target vegetation or remove roots will, in the opinion of Council, constitute excavation works within the meaning of BLEP 2010 Clause 7.3 (Earthworks) and depending upon the scale of the work, may require development consent pursuant to this provision.

Heritage Conservation Areas and Heritage Items

Clearing vegetation on land within a heritage conservation area or that is or forms part of a heritage item will require development consent pursuant to Clause 5.10(2) of BLEP 2010.

Note: Clause 5.10(3) of BLEP 2010 allows exemptions in certain circumstances, subject to written request being made to and provided by Council.

Exempt and Complying Development

A permit must be obtained for *clearing vegetation* that will occur in the undertaking of exempt or complying development in accordance with State Environmental Planning Policy (Exempt and Complying Development) 2008, unless that damage would be otherwise permissible without a permit pursuant to Section 6.3.2 of this chapter.

6.4 Definitions

Clearing vegetation has the same meaning as in *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017.* It means to:

- cut down, fell, uproot, kill, poison, ringbark, burn or otherwise destroy the vegetation, or

- lop or otherwise remove a substantial part of the vegetation.

Clearing native vegetation has the same meaning as in Part 5A of the *Local Land Services Act 2013.* It means any one or more of the following:

- cutting down, felling, uprooting, thinning or otherwise removing native vegetation,

- killing, destroying, poisoning, ringbarking or burning native vegetation.

Koala food tree has the same meaning as in Chapter 16 – Koala Habitat Protection. These trees are Tallowwood (*Eucalyptus microcorys*), Swamp Mahogany (*Eucalyptus robusta*), Forest Red Gum (*Eucalyptus tereticornis*), Small-fruited Grey Gum (*Eucalyptus propinqua),* Flooded Gum (*Eucalyptus grandis*) and Sydney Blue Gum (*Eucalyptus saligna*).

Native vegetation has the same meaning as in Part 5A of the *Local Land Services Act 2013.* It means any of the following types of plants native to New South Wales:

- trees (including any sapling or shrub or any scrub),

- understorey plants,

- groundcover (being any type of herbaceous vegetation),

- plants occurring in a wetland.

a) A plant is native to New South Wales if it was established in New South Wales before European settlement. The regulations may authorise conclusive presumptions to be made of the species of plants native to New South Wales by adopting any relevant classification in an official database of plants that is publicly accessible.

b) For the purposes of this Part, native vegetation extends to a plant that is dead or that is not native to New South Wales if:

- the plant is situated on land that is shown on the native vegetation regulatory map as category 2-vulnerable regulated land, and

- it would be native vegetation for the purposes of this Part if it were native to New South Wales.

c) For the purposes of this Part, native vegetation does not extend to marine vegetation (being mangroves, seagrasses or any other species of plant that at any time in its life cycle must inhabit water other than fresh water). A declaration under section 14.7 of the *Biodiversity Conservation Act 2016* that specified vegetation is or is not marine vegetation also has effect for the purposes of this Part.

Other definitions of terms used within this chapter are as contained within BLEP 2010.

6.5 Variations

Council may consider variations to the standards required of development in this chapter when the overall aims of this chapter and any specific aims that may be detailed for that particular standard can be achieved.

6.6 Assessment Criteria

1) Any application received by Council must provide sufficient justification for the vegetation clearing. The following arguments will not normally be sufficient justification;

   a. Falling leaves, flowers, fruit or twigs,

b. Overshadowing, **unless** the vegetation is located north of the main living areas or a private open space area of an existing dwelling and is significantly affecting access to winter sunlight to these areas,

c. Fear of a healthy tree failing, or

d. View creation or preservation.

2) Applications arguing that a hazard exists will be assessed having regard to the likelihood of the vegetation failing and the risk that would be posed to life or property should that failure occur.

3) If a potential risk can be mitigated by the relocation of items (eg: seating, play equipment, parking areas) or restrictions on use then these options shall generally be given preference by Council in the assessment of applications.

4) Council may decide to approve an application in its entirety, allow for selective pruning or to refuse the application.

5) Council may impose conditions on the permit that require that any vegetation to be removed is replaced by a suitable species of plant given the characteristics of the site. In densely settled urban areas preference will be given to replacement species that are either fruit bearing for the human occupants of the house or provide fruits and/or nectar for native wildlife.

6) Council may request that the Applicant provide a professional report from an appropriately qualified Arborist, Registered Builder or similar to further justify a request for removal of the tree.

7) Council may request that the Applicant provide a professional report from an appropriately qualified flora and fauna consultant should it be considered that the removal of the vegetation is likely to have an adverse impact upon any threatened species of flora and fauna. Vegetation forming part of a threatened ecological community as defined by the *Biodiversity Conservation Act 2016* will be afforded maximum protection and will not be permitted to be removed except for in the most limited of circumstances where no other alternative exists to mitigate an immediate hazard to human life.

APPENDICES

APPENDIX 6.1 – Bellingen Shire Weeds

COMMON NAME	BOTANICAL NAME
African boxthorn	*Lycium ferocissimum*
African marigold	*Cineraria lyratiformis*
African olive	*Olea europaea* subsp. *cuspidata*
African tulip tree	*Spathodia campanulata*
Agapanthus	*Agapanthus praecox* subsp. *orientalis*
Aleman grass	*Echinochloa polystachya*
Alligator weed	*Alternanthera philoxeroides*
American cotton palm	*Washingtonia filifera*
American ratstail grass	*Sporobolus jacquemontii*
American sea-rocket	*Cakile edentula*
Anchored water hyacinth	*Eichhornia azurea*
Asparagus fern	*Asparagus virgatus*
Asparagus fern	*Asparagus macowanii* var. *zuluensis*
Asparagus weeds	*Asparagus* spp.
Athel pine	*Tamarix aphylla*
Balloon vine	*Cardiospermum grandiflorum*
Barleria, porcupine flower	*Barleria prionitis*
Bellyache bush	*Jatropha gossypiifolia*
Bird-of-Paradise shrub	*Caesalpinia gilliesii*
Bitou bush	*Chrysanthemoides monilifera* subsp. *rotundata*
Black knapweed	*Centaurea xmoncktonii*
Black locust	*Robinia pseudoacacia*
Black willow	*Salix nigra*
Blackberry	*Rubus fruticosus* agg.
Blue heliotrope	*Heliotropium amplexicaule*
Blue stars	*Aristea ecklonii*
Bog moss	*Mayaca fluviatilis*
Boneseed	*Chrysanthemoides monilifera* subsp. *monilifera*
Box-elder maple	*Acer negundo*
Boxing glove cactus	*Cylindropuntia fulgida* var. *mamillata*
Bridal creeper	*Asparagus asparagoides*
Bridal veil creeper	*Asparagus declinatus*
Brillantaisia	*Brillantaisia lamium*
Broad-leaf pepper tree	*Schinus terebinthifolius*
Broad-leaf privet	*Ligustrum lucidum*
Broomrape	*Orobanche* spp.(except *O. cernua* var. *australiana* and *O. minor*)
Bushman's poison	*Acokanthera oblongifolia*
Cabomba	*Cabomba caroliniana*
Camphor laurel	*Cinnamomum camphora*

Candle bush	*Senna alata*
Cane cactus	*Austrocylindropuntia cylindrica*
Cane needle grass	*Nassella hyalina*
Cape broom	*Genista monspessulana*
Cape daisy	*Dimorphotheca ecklonis*
Cape honeysuckle	*Tecoma capensis*
Cape ivy	*Delaria odorata*
Cat's claw creeper	*Dolichandra unguis-cati*
Cayenne snakeweed	*Stachytarpheta cayennensis*
Cecropia	*Cecropia* species
Chilean needle grass	*Nassella neesiana*
Chinese celtis	*Celtis sinensis*
Chinese knotweed	*Persicaria chinensis*
Chinese rain tree	*Koelreuteria elegans*
Chinese tallow tree	*Triadica sebifera*
Chinese violet	*Asystasia gangetica* ssp. *micrantha*
Climbing asparagus	*Asparagus africanus*
Climbing asparagus fern	*Asparagus plumosus*
Climbing nightshade	*Solanum seaforthianum*
Coast button grass	*Dactyloctenium aegyptium*
Cockscomb coral tree	*Erythrina crista-galli*
Cocos palm	*Syagrus romanzoffiana*
Coffee	*Coffea arabica, C. canephora*
Common pear	*Opuntia stricta*
Convolvulus creeper	*Merremia dissecta*
Coral berry	*Ardisia crenata*
Coral berry	*Barleria repens*
Creeping gloxinia	*Lophospermum erubescens*
Creeping pear	*Opuntia humifusa*
Crofton weed	*Ageratina adenophora*
Cumbungi	*Typha latifolia*
Cup & saucer vine	*Cobaea scandens*
Desmodium	*Desmodium intortum, D. uncinatum*
Devil's fig	*Solanum torvum*
Dolichos pea	*Dipogon lignosus*
Duranta	*Duranta erecta*
Dutchman's pipe	*Aristolochia elegans*
East Indian hygrophila	*Hygrophila polysperma*
Eurasian water milfoil	*Myriophyllum spicatum*
European hackberry	*Celtis australis*
Firethorn	*Pyracantha angustifolia*
Fireweed	*Senecio madagascariensis*
Flax-leaf broom	*Genista linifolia*
Foxglove tree	*Paulownia tomentosa*
Frogbit, spongeplant	*Limnobium laevigatum*
Gamba grass	*Andropogon gayanus*
Garden geranium	*Pelargonium alchemilloides*

German ivy	*Senecio macroglossus*
Giant bird-of-paradise	*Strelitzia nicolai*
Giant devil's fig	*Solanum chrysotrichum*
Giant false sensitive plant	*Mimosa diplotricha*
Giant Parramatta grass	*Sporobolus fertilis*
Giant rats tail grass	*Sporobolus pyramidalis*
Giant reed	*Arundo donax*
Glory lily, climbing lily	*Gloriosa superba*
Golden trumpet tree	*Handroanthus chrysotrichus*
Gorse	*Ulex europaeus*
Green cestrum	*Cestrum parqui*
Green shrimp plant	*Blechum pyramidatum*
Grey sallow	*Salix cinerea*
Ground asparagus	*Asparagus aethiopicus*
Groundsel bush	*Baccharis halimifolia*
Hairy sicklepod	*Senna hirsuta*
Hawkweeds	*Hieracium* spp.
Hawthorn	*Rhapiolepis* spp.
Himalaya ash	*Fraxinus griffithii*
Hiptage	*Hiptage benghalensis*
Honey locust	*Gleditsia triacanthos*
Horsetails	*Equisetum* spp.
Hudson pear	*Cylindropuntia rosea*
Hydrocotyl	*Hydrocotyle ranunculoides*
Hygrophila	*Hygrophila costata and H. polysperma*
Hymenachne	*Hymenachne amplexicaulis* and hybrids
Indian coral tree	*Erythrina x sykesii*
Indian fig, spineless cactus	*Opuntia ficus-indica*
Indian rosewood	*Dalbergia sissoo*
Japanese honeysuckle	*Lonicera japonica*
Japanese pagoda tree	*Sophora japonica*
Japanese walnut	*Juglans ailantifolia*
Jute	*Corchorus olitorius*
Karoo thorn	*Vachellia karroo*
Kei apple	*Dovyalis kaffra*
Kidneyleaf mud plantain	*Heteranthera reniformis*
Kochia	*Bassia scoparia* (excluding subsp. *trichophylla*)
Koster's curse	*Clidemia hirta*
Kudzu	*Pueraria lobata*
Lady of the night	*Cestrum nocturnum*
Lagarosiphon	*Lagarosiphon major*
Lantana	*Lantana camara, L madagascariensis*
Laurel clock vine	*Thunbergia laurifolia*
Lead tree, coffee bush	*Leucaena leucocephala*
Leaf cactus	*Pereskia aculeata*
Leucaena	*Leucaena leucocephala*

Lion's ear	*Leonotis nepetifolia*
Lippia	*Phyla canescens*
Liriope	*Liriope* spp.
Lobed needle grass	*Nassella charruana*
Long-leaf willow primrose	*Ludwigia longifolia*
Ludwigia	*Ludwigia peruviana*
Madeira vine	*Anredera cordifolia*
Mahonia, Chinese holly	*Berberis lomariifolia*
Mesquite	*Prosopis* spp.
Mexican bean tree	*Cecropia* spp.
Mexican feather grass	*Nassella tenuissima*
Mexican water lily	*Nymphaea mexicana*
Mickey mouse plant	*Ochna serrulata*
Miconia	*Miconia* spp.
Mikania vine	*Mikania micrantha*
Mimosa	*Mimosa pigra*
Ming asparagus fern	*Asparagus macowanii var. zuluensis*
Monkey's comb	*Pithecoctenium crucigerum*
Moon flower	*Ipomoea alba*
Moth vine	*Araujia sericifera*
Murraya	Murraya paniculata
White blackberry	*Rubus niveus*
Mysore thorn	*Caesalpinia decapetala*
Narrow-leaf privet	*Ligustrum sinense*
New Zealand flax	*Phormium tenax*
November shower	*Senna multijuga*
Olive	*Olea europaea*
Olive hymenachne	*Hymenachne amplexicaulis*
Opuntia	*Opuntia* spp, *Cylindropuntia* spp., *Austrocylindropuntia* spp. (excludes *O. ficus-indica*)
Oregon grape	*Berberis aquifolium*
Osage orange, bow-wood	*Maclura pomifera*
Pampas grass	*Cortaderia selloana*
Paper mulberry	*Broussonetia papyrifera*
Parkinsonia	*Parkinsonia aculeata*
Parrots feather	*Myriophyllum aquaticum*
Parthenium weed	*Parthenium hysterophorus*
Passionflower	*Passiflora filamentosa*
Passionfruit	*Passiflora* spp.
Patula pine	*Pinus patula*
Pigeon berry, coral berry	*Rivina humilis*
Pink orchid tree	*Bauhinia monandra*
Pink pampas grass	*Cortaderia jubata*
Pink trumpet vine	*Podranea ricasoliana*
Pond apple	*Annona glabra*
Pongamia	*Millettia pinnata*

Praxelis	*Praxelis clematidia*
Prickly acacia	*Vachellia nilotica*
Prickly pears - Austrocylindropuntias	*Austrocylindropuntia* species
Prickly pears - Cylindropuntias	*Cylindropuntia* species
Prickly pears - Opuntias	*Opuntia* species
Queensland maple	*Flindersia brayleyana*
Radiata pine	*Pinus radiata*
Red ludwigia	*Ludwigia repens*
Red trumpet vine	*Campsis radicans*
Red-flower prickly pear	*Opuntia elatior*
Rhus tree	*Toxicodendron succedaneum*
Rope pear	*Cylindropuntia imbricata*
Rubber vine	*Cryptostegia grandiflora*
Rubbervine	*Cryptostegia madagascariensis*
Sagittaria	*Sagittaria platyphylla*
Salvinia	*Salvinia molesta*
Scotch broom	*Cytisus scoparius* subsp. *scoparius*
Sea spurge	*Euphorbia paralias*
Seeded banana	*Musa ornata* or *M. velutina*
Senegal palm	*Phoenix reclinata*
Senegal tea plant	*Gymnocoronis spilanthoides*
Serrated tussock	*Nassella trichotoma*
Sheda grass	*Dichanthium annulatum*
Shoebutton ardisia	*Ardisia elliptica*
Siam weed	*Chromolaena odorata*
Sicilian sea lavender	*Limonium hyblaeum*
Sicklethorn	*Asparagus falcatus*
Silver-leaf nightshade	*Solanum elaeagnifolium*
Skunk vine	*Paederia foetida*
Slash pine	*Pinus elliottii*
Small dropseed	*Sporobolus coromandelianus*
Smooth tree pear	*Opuntia monacantha*
Snakefeather	*Asparagus scandens*
Spanish broom	*Spartium junceum*
Spongeplant	*Limnobium spongia*
Spotted knapweed	*Centaurea stoebe* subsp. *micranthos*
Stinking passionflower	*Passiflora foetida*
Sweet viburnum	*Viburnum odoratissimum* var. *awabuki*
Telegraph weed	*Heterotheca grandiflora*
Texas needle grass	*Nassella leucotrica*
Tiger pear	*Opuntia aurantiaca*
Tipu tree, rosewood	*Tipuana tipu*
Tobacco weed	*Elephantopus mollis*
Tree-of-heaven	*Ailanthus altissima*
Tropical soda apple	*Solanum viarum*

Tussock paspalum	*Paspalum quadrifarium*
Umbrella tree	*Schefflera actinophylla*
Uruguayan rice grass	*Piptochaetium montevidense*
Velvet bean	*Mucuna pruiens*
Velvety tree pear	*Opuntia tomentosa*
Water caltrop	*Trapa* spp.
Water hyacinth	*Eichhornia crassipes*
Water lettuce	*Pistia stratiotes*
Water mimosa	*Neptunia oleracea* and *N. plena*
Water poppy	*Hydrocleys nymphoides*
Water soldier	*Stratiotes aloides*
Water star grass	*Heteranthera zosterifolia*
White blackberry	*Rubus niveus*
White trumpet vine	*Pithecoctenium crucigerum*
Willows	*Salix* species
Witchweed	*Striga* spp. *(except the native S. parviflora)*
Yellow bells	*Tecoma stans*
Yellow burrhead	*Limnocharis flava*