



**Armidale Dumaresq  
Development Control Plan 2012**

**Section 2                      Site Analysis and General Controls**

**Chapter 2.2                    Tree Preservation**

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## Part 1 General Provisions

### 1.1 Introduction

Council considers it important to preserve and manage existing tree plantings to maintain the scenic qualities of the local landscape and streetscape. In addition to their aesthetic qualities, new and replacement plantings are encouraged to establish and maintain green corridors, to increase species diversity, and to reduce the impacts of pollution and climate change.

This chapter outlines the provisions for the preservation of trees or other vegetation to which 'Clause 5.9 - Preservation of trees or vegetation' of the *Armidale Dumaresq Local Environmental Plan 2012 (LEP 2012)* refers.

### 1.2 Objectives

The objectives of this chapter are:

- O.1 To conserve the environmental heritage of Armidale and its surrounds;
- O.2 To retain healthy trees of environmental and aesthetic value;
- O.3 To minimise injury to, or destruction of, trees and native vegetation;
- O.4 To ensure that proper consideration is given to trees and native vegetation in designing, planning and constructing development;
- O.5 To retain viable representative samples of native vegetation and biodiversity values wherever practicable;
- O.6 To facilitate the removal of undesirable exotics, noxious weeds, dangerous trees and any other inappropriate plantings, and to replace these with suitable species.

### 1.3 Land to which this chapter applies

This chapter applies to the following zones in the local government area:

R1	General Residential	SP2	Infrastructure
R2	Low Density Residential	B2	Local Centre
R5	Large Lot Residential	B3	Commercial Core
RU5	Village	B4	Mixed Use
IN1	General Industrial	B5	Business Development
IN2	Light Industrial	B7	Business Park
E3	Environmental Management, except for land shown in Appendix 1	RE1	Public Recreation
E4	Environmental Living	RE2	Private Recreation

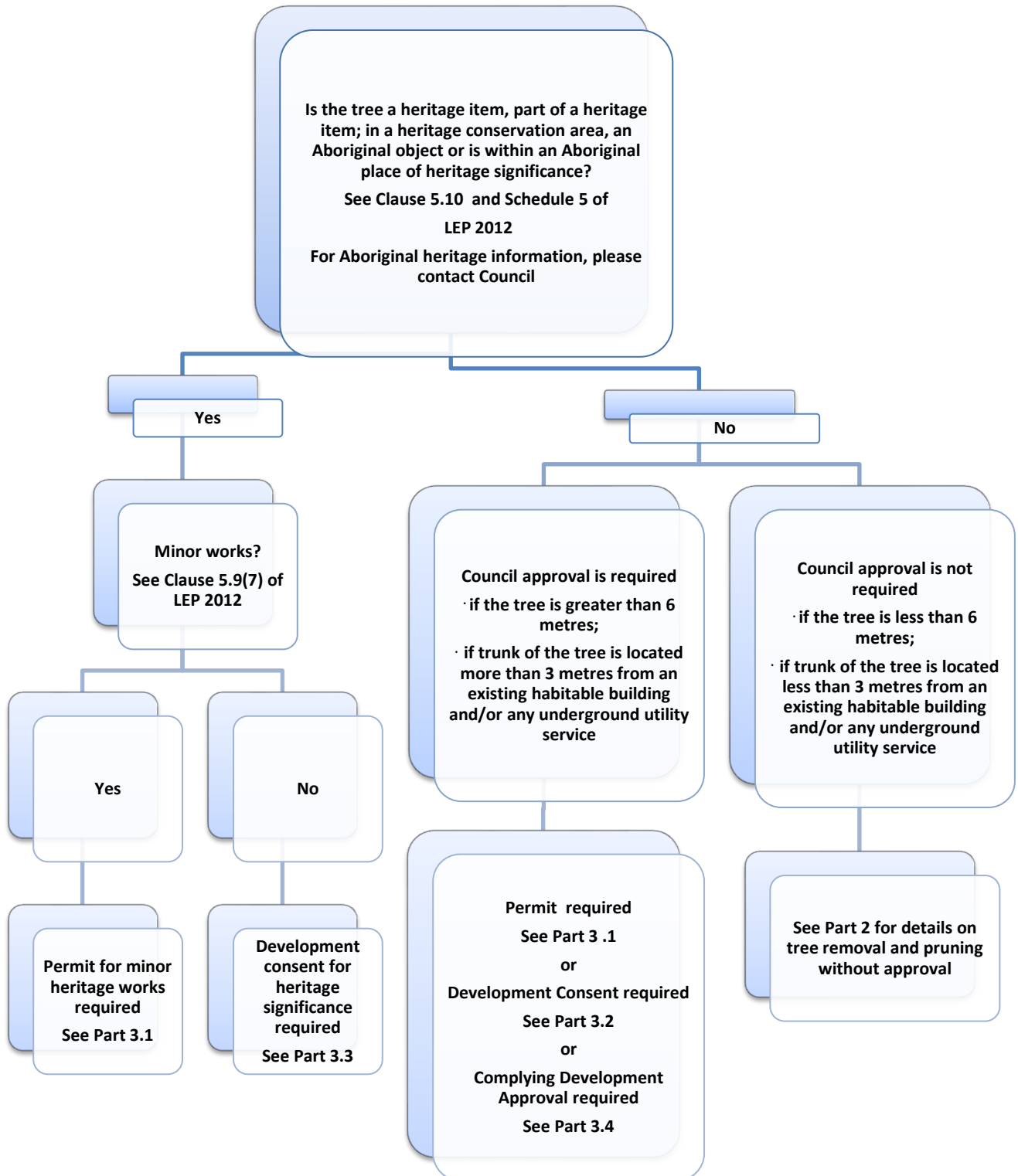
and, in the following zones where the tree, is, or forms part of a heritage item; is an Aboriginal object or is within an Aboriginal place of heritage significance.

RU1	Primary Production	E3	Environmental Management - land shown in Appendix 1
RU4	Primary Production Small Lots		

### 1.4 Heritage items (trees, landscapes and grounds) and heritage conservation areas

Heritage items (including trees, landscapes and grounds) and heritage conservation areas are listed in Schedule 5 – Environmental Heritage of *LEP 2012*. For information on identifying Aboriginal objects or an Aboriginal place of heritage significance, please contact Council. Further information on heritage matters can be found in Clause 5.10 of LEP 2012, and elsewhere in this DCP.

**Tree removal and pruning approval process under LEP 2012**



## Part 2 Where Council approval is not required for tree removal or pruning

### 2.1 Tree pruning

Consent for pruning is not required for:

- a) the removal of dead branches;
- b) the crown maintenance pruning of a fruit tree grown for the purpose of fruit or fodder production;
- c) the crown thinning to reduce canopy density of a tree. Crown thinning should not exceed 20% of the area of the canopy. Structural branches must be maintained. The maximum diameter of branches to be removed is 50mm.

### 2.2 Tree removal

Consent for tree removal is not required where:

- a) a tree is dying or dead, and the tree is not required as the habitat of native fauna. Although consent is not required, documentation, including photographs clearly showing that the tree is dying or dead, must be taken and forwarded to Council prior to the tree removal. Any assessment by the owner of the tree must consider the habitat potential for native fauna, such as tree hollows, koala food tree species etc. If in doubt on any of the above issues, you must contact the Council for confirmation that the tree may be removed without consent;
- b) the Council is satisfied that the tree is of risk to human life or property;
- c) the trunk of the tree is located within 3 metres of the nearest external wall of an existing habitable building and is located within the same property (this does not include a detached garage; outbuilding; pergola, deck; or caravan);
- d) the trunk of the tree is located within 3 metres of any underground utility service.

In addition to the above, in the E3 Environmental Management and E4 Environmental Living zones, consent is not required for the removal of native vegetation, other than trees, for the purpose of creating gardens if the area to be cleared:

- a) is within 35 metres of a proposed or existing dwelling on the same lot as the proposed removal; and
- b) the clearance area is not more than 500 square metres.

### 2.3 Situations where this chapter does not apply

This chapter does not apply:

- a) where a property vegetation plan or development consent is issued under the provisions of the *Native Vegetation Act 2003* (NV Act) (see Part 5);
- b) in the RU1 Primary Production and RU4 Primary Production Small Lots zones unless the tree or vegetation has heritage significance;
- c) in the E3 Environmental Management zone that is shown in Appendix 1 to this document (Map 1), unless the tree or vegetation has heritage significance;
- d) where the removal is required for the maintenance of a bushfire asset protection zone required by a development consent;
- e) where the tree or vegetation is required to be removed as part of a Section 66 Directive to undertake bush fire hazard reduction work under the *Rural Fires Act 1997*;
- f) where the tree or vegetation is required to be removed by the NSW Rural Fire Service because it poses or will pose a significant threat to access along required fire trails, or to human life, buildings or other property during a bushfire;
- g) where the tree or vegetation has otherwise become dangerous from actions associated with hazard reduction burns, or a bushfire;

- h) where the tree or vegetation is required for immediate removal where this is essential for emergency access or emergency works by Council or the State Emergency Services; or
- i) where the action to remove or prune the tree or vegetation is undertaken under legislation concerning the removal or pruning of trees, such as the following:
  - i) Forestry Act 1916;
  - ii) Noxious Weeds Act 1993;
  - iii) Electricity Supply Act 1995;
  - iv) Surveying and Spatial Information Act 2002;
  - v) Native Vegetation Act 2003.

### **Part 3 Where Council approval is required for tree removal or pruning**

#### **3.1 Permit required – where there is no related development activity**

A permit is required for the removal or pruning of a tree or vegetation where the tree removal or pruning is not part of an application for development consent or for a Complying Development Certificate (see Sections 3.2, 3.3 and 3.4 below); and any of the following apply

- a) the height of the tree is greater than 6 metres;
- b) the tree is dying or dead, but the tree provides habitat for native fauna (eg. a koala food tree);
- c) the crown thinning (to reduce the canopy density of a tree greater than 6 metres high), is in excess of 20% of the area of the canopy;
- d) the tree or vegetation, is, or forms part of a heritage item; is within a heritage conservation area; is an Aboriginal object or is within an Aboriginal place of heritage significance. Council must be satisfied that the works are of a minor nature and must not have an adverse impact on the heritage item or place. If the works are not of a minor nature, development consent is required. See Clause 5.9(7)(c) & (d) and Clause 5.10(a)(i) & (ii) of the LEP 2012 for the circumstances under which a permit may be issued.

A 'Permit for Tree Removal or Pruning' form must be completed and submitted to Council. A decision will be provided in writing to the applicant after consideration under the Assessment Criteria in Part 4.

#### **3.2 Where Council approval is required for tree removal or pruning as part of a Development Application**

Where a tree or vegetation requiring Council approval under this chapter is proposed to be pruned or removed in connection with development, the pruning or removal must be addressed as part of the Development Application.

The applicant will be notified of Council's decision as part of any consent for that development. The consent may have specific conditions relating to the tree removal or pruning, including protection during site works, landscape planning, compensatory planting, habitat boxes and other remedial actions.

#### **3.3 Where Council approval is required for tree removal or pruning of a tree with heritage significance**

Development consent is required where the tree is, or forms part of a heritage item; is within a heritage conservation area; is an Aboriginal object or is within an Aboriginal place of heritage significance (see LEP 2012 Clause 5.10).

The applicant will be notified of Council's decision in writing and any consent may include conditions relating to the tree removal or pruning.

A heritage management document may be required as part of any consent process. The heritage management document will assess the impact of the tree removal on the heritage significance of the item or heritage conservation area. Council will advise an applicant where this is required.

### 3.4 Where Council approval is required for tree removal or pruning as part of a Complying Development Certificate

The State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 (Codes SEPP) includes provisions for the removal of a tree as part of development under a Complying Development Certificate. Please refer to the *SEPP (Exempt and Complying Development Codes) 2008* and LEP 2012 Clauses 3.2 and 3.3 for relevant provisions.

Where the Complying Development Certificate application involves the removal or pruning of a tree or other vegetation that does not meet the provisions outlined in the above legislation, a permit or development consent for the tree removal or pruning will be required.

#### Part 4 Assessment criteria

A permit or development consent must not be granted unless Council has assessed the following matters:

- a) the reasons for the proposed work;
- b) the contribution to the local landscape or streetscape;
- c) the heritage significance of the vegetation or landscape;
- d) the type and rarity of the species;
- e) the ecological significance of the tree;
- f) the effect on threatened species, populations or ecological communities, or their habitats;
- g) the number of trees in the vicinity;
- h) the risk to life or property;
- i) whether new compensatory plantings are proposed;
- j) any impact on solar access to properties;
- k) any soil conservation and erosion issues.

In addition to the above criteria, the following assessment criteria will also be considered for the removal of native vegetation in the E3 Environmental Management and E4 Environmental Living zones:

- a) the adequacy of vegetation retention and future landscape proposals;
- b) the contribution of the vegetation to wildlife corridors or as habitat for native fauna;
- c) the contribution of the vegetation to the scenic qualities of the locality;
- d) the effect of any vegetation removal on the viability and quality of the bushland and, in particular, the likelihood of the spread of weeds or of undesirable and exotic species in the bushland.

#### Part 5 Penalties

A person found contravening these controls may be issued with a penalty infringement notice and/or an order to undertake works to meet compliance, to rectify damage, and/or to make compensation plantings.

Failure to act on an order may incur additional action in the Local Court or the Land and Environment Court.

## Information on the Native Vegetation Act 2003

### Native Vegetation Act 2003

For the purposes of the Native Vegetation Act 2003 (NV Act) 'clearing' of native vegetation means any one or more of the following:

- a) cutting down, felling, thinning, logging or removing native vegetation,
- b) killing, destroying, poisoning, ringbarking, uprooting or burning native vegetation.

The NV Act does not apply to land within the RU3 Forestry zone or a zone designated as 'residential', 'village', 'industrial' or 'business' or, having regard to the purpose of the zone, having the substantial character of a zone so designated. However, the NV Act does apply to this land where a property vegetation plan applies.

In general, therefore, the NV Act will apply to land within the RU1 Primary Production, RU4 Primary Production Small Lots, R5 Large Lot Residential, E3 Environmental Management and E4 Environmental Living zones. Landholders may apply to their local Catchment Management Authority (CMA) either to prepare a property vegetation plan or make an application for development consent for clearing of native vegetation. Property vegetation plans or consents issued under the NV Act are not issued or administered by Councils.

Division 2 or 3 of Part 3 of the NV Act sets out where the clearing of native vegetation is permitted without the need to obtain approval from the relevant CMA (for example, carrying out routine agricultural activities and continuation of existing farming activities) subject to satisfying certain criteria. Landholders are advised to consult with their CMA to determine whether approval is required. However, where approval is not required under Division 2 or 3 of Part 3 of the NV Act for clearing native vegetation in the R5 Large Lot Residential, E3 Environmental Protection and E4 Environmental Management zones, Council approval may still be required under this Tree Preservation chapter.

The Armidale Dumaresq local government area is predominantly within the Northern Rivers CMA, with the north-western part being located in the Border Rivers - Gwydir CMA. For further information, please contact your local CMA and see the Native Vegetation Act 2003 online - <http://www.legislation.nsw.gov.au>.

### Part 6 Definitions

In this chapter:

**injury** and **destruction** includes the administering of a chemical or artificial substance to a tree or part of a tree or, the alteration of ground level or water table which causes damage to the tree or any part of the tree including roots. This includes any physical injury especially by machinery on construction sites.

**of risk to human life or property** means a tree that is likely to inflict imminent liability or harm to a person's life or property.

**pruning** means the removal of any stem/s back to the intersection of another stem/s to a swollen area of the intersection called the branch collar. This also means any act or acts of severing any part of a tree so as to cause reduction of the air space occupied by the branches and foliage of a tree.

**removal** means the cutting down or dismantling of a tree so that the tree, including its branches, foliage, trunk, stump and root system will not regrow. This includes the poisoning of the stump and/or roots and/or removal or grinding out of its remains to prevent regrowth.

**tree** means a long lived woody perennial plant with one or relatively few stems. The tree may be indigenous, endemic, exotic or an introduced species.



**Map 1: Land in E3 zone where Chapter 2.2 does not apply**

