

# INNER WEST

*Effective from 1 April 2023*

## Tree Management DCP 2023



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# General Provisions

## 1 Purpose

This Tree Management Development Control Plan has been made in accordance with the *State Environmental Planning Policy (Biodiversity and Conservation) 2021* and prescribes the vegetation to which the SEPP applies and the applicable consent process.

The vegetation described in this Development Control Plan is vegetation to which Chapter 1 and 2 of the vegetation SEPP applies as amended from time to time.

Council has adopted canopy targets for the Inner West Local Government Area (LGA) based on the zoning of the land. Those canopy targets are derived from the Premiers Priorities 2017- Greening our city and Greening public places, Greater Sydney Commission – District Plans and Greener Places – Urban Tree Canopy Guide and are as follows:

Zone	Canopy Target
R1 General Residential	40%
R2 Low Density Residential	
R3 Medium Density Residential	25%
R4 High Density Residential	
B1 Neighbourhood Centre	25%
B2 Local Centre	
B4 Mixed Use	15%
B5 Business Development	
B6 Enterprise Corridor	
B7 Business Park	
IN1 General Industrial	25%
IN2 Light Industrial	

## 2 Objectives

The following objectives guide the protection and management of trees within the Inner West LGA:

- O1 To establish a coordinated approach to the assessment and management of trees.
- O2 To consider the safety of the community, private property, and public infrastructure assets.
- O3 To protect trees within and adjacent to development sites and to ensure that all new development provides an opportunity for existing and new trees to grow.
- O4 To manage the urban landscape so trees continue to make a significant contribution to its quality, character, and amenity.
- O5 To maintain and enhance the amenity of the Inner West Local Government Area through the preservation of appropriate trees and vegetation.
- O6 Ensure private property owners' plant new trees and replace trees in order to meet Council's tree canopy targets.

### Outline of the Processes for Tree Removal or Pruning

- No consent is required for some works (see Control C6 and C7)
- Development Consent is required for pruning more than 10% of the canopy or removal of trees on properties with heritage significance (see Control C4)
- A Tree Works Permit is required for all other works (see Control C5)

## 3 Controls

C1 Council consent is required before any clearing of vegetation (removal or pruning of prescribed *tree/s*) is carried out unless the work complies with C6 of this DCP.

C2 For the purposes of this DCP, a ***prescribed tree*** is:

- any tree with a height equal to or greater than 4 metres above ground level (existing) or
- any tree that is under 4 metres in height that has a trunk diameter of more than 150mm at Diameter at Breast Height (DBH at 1.4m) or
- any tree with a canopy spread equal to or greater than 2 metres or any palm tree or tree fern with a clean stem length equal to or greater than 4 metres above ground level (existing).

C3 Applications for consent to remove or prune a *tree/s* will be assessed and determined via a:

- Development Application (as set out in Control C4) or
- Tree Works Permit Application (as set out in Control C5).

C4 Submit a development application for pruning of more than 10% of a *tree/s* canopy or removal of a prescribed *tree/s* located on a property which is a heritage item, forms part of a heritage item, is listed in the heritage trees list, is located in a heritage conservation area or where the tree forms part of an Aboriginal object or is located within an Aboriginal place of heritage significance.

C5 Submit a Tree Works Permit for the following activities:

- Prune a prescribed tree by more than 10% of the canopy;
- Tree root pruning;
- Remove or prune a prescribed tree except where Control C4 requires a development application to be submitted or Control C6 where tree works can occur without prior approval.

Note: A Tree Works Permit may be submitted to remove a *prescribed tree* to facilitate a Complying Development Certificate.

C6 The following works do not require Council consent (unless the criteria outlined in Control C7 are relevant to the subject tree), provided the work is carried out in accordance with AS 4373 -2007 Pruning of amenity trees and the Safe Work Australia Code of Practice Guide to Managing Risks of Tree Trimming and Removal Work 2016:

- C6.1 Canopy lifting to 2.5 metres above ground level;
- C6.2 Pruning of branches with a diameter of less than 100mm to a maximum of 10% of the canopy annually;
- C6.3 The pruning of deadwood that does not have hollows or provide habitat for native fauna;
- C6.4 Works to trees owned by, or under the care, control and management of Inner West Council and undertaken by delegated Council staff or their authorised contractors;

Note: Controls C6.1 to C6.4 apply to all properties within Inner West whereas Controls C6.5 and C6.6 do not apply to trees listed in the heritage trees list, or located on a property that is a heritage item, or located in a heritage conservation area.

- C6.5 Removal of a tree, including a prescribed tree, located within 1 metre of the wall of a residential dwelling located on the same lot. The 1 metre distance is measured from the centre of the tree at breast height (DBH 1.4m) to the wall of the residential dwelling;
- C6.6 The trees on the exempt species list below are not deemed to be prescribed trees unless such trees are located in a Heritage Conservation Area or are listed as part of a Heritage Item within the Council's Local Environmental Plan.

Species Name	Common Name
<i>Acer negundo</i>	Box Elder
<i>Ailanthus altissima</i>	Tree of Heaven
<i>Alnus jorrullensis</i>	Evergreen Alder
<i>Bambusa spp. Phyllostachys spp.</i>	Bamboo species
<i>Cotoneaster spp.</i>	Cotoneaster
<i>Erythrina x sykesii</i>	Coral Tree
<i>Gleditsia triacanthos</i>	Honey Locust
<i>Lagunaria patersonia</i>	Norfolk Island Hibiscus
<i>Ligustrum lucidum</i>	Broad Leaved Privet

Species Name	Common Name
<i>Ligustrum sinense</i>	Small Leaved Privet
<i>Nerium oleander</i>	Oleander
<i>Robinia pseudoacacia</i>	False Acacia/Black Locust
<i>Salix spp.</i>	Willow
<i>Schefflera actinophylla</i>	Umbrella Tree
<i>Syagrus romanzoffianum</i>	Cocos Palm
<i>Tamarix aphylla</i>	Athel Tree
<i>Toxicodendron succedaneum</i>	Rhus Tree
Department of Primary Industry Priority Weeds List of the Greater Sydney (Inner West)	see the <a href="#">NSW Weedwise website</a> for list

C7 The exemptions in Control C6 do not apply to:

- i. Tree/s that are required to be retained by a condition of development consent;
- ii. Tree/s required to be planted as a condition of development consent or as a compensatory planting condition in a permit;
- iii. Threatened species or land that contains native vegetation (including dead trees) which is habitat for threatened species, populations or ecological communities listed in Schedule 1 and 2 of the Biodiversity Conservation Act 2016 and other protected matters listed under the Commonwealth Environment Protection Biodiversity Conservation Act 1999;
- iv. Land that is a declared area of outstanding biodiversity value under the Biodiversity Conservation Act 2016;
- v. Land declared critical habitat under Part 7A of the Fisheries Management Act 1994;
- vi. Any native prescribed tree located within a wildlife corridor as shown on the Biodiversity Map in Part 2.13 – Biodiversity of Marrickville DCP 2011 – Appendix 3;
- vii. Pruning more than 10% of the canopy, or proposed removal of a prescribed tree that is a heritage item, forms part of a heritage item, or is listed in the heritage trees list, or located in a heritage conservation area.

### Neighbouring trees

Speak to your neighbour to get consent before you prune their trees.

Pruning consistent with AS4373—*Pruning of amenity trees* and Control C1 of this DCP does not need Council consent.

Council does not mediate works to neighbouring trees.

## 3.1 Application Assessment Criteria

Note: Section 4.15 of the *Environmental Planning and Assessment Act 1979* outlines the matters for consideration when determining a development application. These matters include but are not limited to the matters outlined in C8 below.

C8 The following matters will be considered when determining an application to remove or prune a prescribed tree:

i. Danger/Safety Risk Assessment

Danger is assessed based on a number of factors including;

- The potential/likelihood of a tree or tree part to fail
- A history of previous branch failure
- The size of the defective part of the tree
- The use and occupancy of the area that may be struck by a defective part

A high risk of danger will be given significant weight when determining an application, noting that dangerous tree assessments are based on the safety risk posed by a tree in normal weather conditions;

ii. Property Damage

The likelihood of the tree causing property damage. This includes trees renowned for having extensive root systems, which cause damage to footings of houses or, trees that may cause blockages to domestic sewer and drainage lines;

iii. Condition / health of the tree

The structural integrity of the tree will be assessed for any visible signs of decay or deterioration; this is usually indicated by a lack of foliage, dead branches evident in the canopy, presence of fungal fruiting bodies, excessive sap being exuded from the trunk and/or evidence of insect attack, particularly borer damage;

iv. Tree species

The likelihood of branch failure / limb fall prevalent for the species. The species' susceptibility to environmental changes, which may affect the longevity of the species' survival in its current location. This would include changes in soil level, excessive root damage caused during construction works, changes in water availability, competition for other vegetation (particularly climbing vines), and compaction of soil (particularly in high usage areas such as car parking areas);

v. Significance within the Landscape and/or Streetscape

An assessment of the visual environment and the significance the specimen plays within the streetscape;

vi. Termites

Each case of termite infestation will be investigated on its merit;

vii. Other criteria

Other criteria would include if the tree is an endangered or rare species, is of historical significance or, the link the tree provides between bushland and reserves (the connectivity of habitat).

**Trees that are considered an imminent risk to human life or property**

If a tree on your property is suspected to be an imminent risk to human life or property you must first contact Council detailing why the tree is considered to be a risk based on industry risk assessment methodologies – Tree Risk Assessment Qualification (TRAQ) or Quantified Tree Risk Assessment (QTRA). Evidence must be provided to Council in writing by photographic evidence and written evidence by a Qualified Arborist (AQF5)

Council will issue expedited consent in writing to allow removal of an imminently dangerous tree under the provisions of Biodiversity and conservation SEPP 2021. If Council is not satisfied that the tree is a risk to human life or property you will be advised to lodge the relevant application.

C9 Tree removal is the final option where the impacts can be directly attributed to a tree and all other avenues to rectify the impact have been investigated. The following criteria are generally not considered justification for tree removal or pruning:

- i. The dropping of leaves, flowers, fruit, sap, seeds or small elements of deadwood (or other natural processes);
- ii. Insect/animal nuisance;
- iii. Providing solar access for renewable energy system infrastructure (i.e. solar panels, solar hot water systems, wind turbines or data receivers);
- iv. Increase general natural light or reduce shade created by a tree;
- v. Enhance view corridors;
- vi. Minor lifting of driveways, paths and paving or minor damage to outbuildings, garden structures, walls or landscape structures;
- vii. Damage to underground services (such as sewer lines, water services) where there are feasible alternatives to mitigate or solve problems and retain the tree.



Alternatives to tree removal include replacement of damaged pipes, relining, relocation or encasement of pipes;

- viii. Pruning to reduce height, except pruning to reduce the height of hedge(s);
- ix. To facilitate the construction of structures (such as a driveway, swimming pool, or dwelling) in the event other suitable locations are available (see Controls C13-C17 for controls relating to trees on development sites).

#### **Procedural review**

A request for procedural review of the process undertaken must be lodged within 28 days of the determination date (as per the *Local Government Act 1993*).

#### **Tree Permits**

An applicant for a tree permit may appeal to the NSW Land and Environment Court against a refusal by Council to grant the permit. The appeal must be made within three months of the date on the determination.

#### **Development Applications**

An applicant for a development application may seek an appeal in the following ways:

- [Section 8.7](#) of the *Environmental Planning and Assessment Act 1979* (the Act) gives you the right to appeal to the Land and Environment Court in accordance with the timeframes set out in Section 8.10 of the Act.
- [Section 8.2](#) of the *Environmental Planning and Assessment Act 1979* provides that the applicant may request Council to review the determination. Section 8.2 does not apply to; designated development, a determination made by Council under Section 4.2 in respect of Crown applications, or a decision that has already been the subject of a Section 8.2 review.

## 3.2 Tree Planting Requirements

C10 A replacement tree/s must be planted to replace any prescribed tree approved for removal. This will enable Council to effectively retain and maintain the urban forest canopy across the Inner West. Replacement trees are to be located on the same site as the tree removal, as determined by Council.

Note: there may be circumstances when Council determines that there is no suitable location on site. In such circumstances a financial contribution can be paid to support public tree planting in lieu of on-site replacement planting. Fees are set out in Council's fees and charges schedule.

C11 Replacement tree/s must be maintained in a healthy and vigorous condition until they meet the requirements of a prescribed tree and are protected in accordance with this DCP Chapter (Control C2).

Note: A person must not fail to plant, protect or care for a replacement tree which is required to be established as a condition of consent issued by Council.

C12 The following minimum tree planting requirements are required for any sites:

Property Size:	Number of trees to be planted
Less than 300m <sup>2</sup>	minimum of one (1) tree.
exceed 300m <sup>2</sup>	minimum of two (2) trees

Tree container size and mature tree height will be determined by Council and will generally be based on available land space and land zoning canopy targets, a preference is placed on advanced container sizes. The tree(s) must not be planted within 1 metre of a proposed building, swimming pool or property boundary.

#### 4 Trees on Development Sites

C13 All development proposals must be designed to maintain or improve the urban forest values of the site by minimising the impact on tree/s and planting replacement tree/s for tree/s that are proposed for removal. This requirement applies to Council owned trees as well as trees on private or other property and adjoining land.

C14 The design of buildings or alterations and additions to buildings must provide sufficient distance from existing trees (whether on the site or on adjoining land), in accordance with AS4970–Protection of trees on development sites (AS4970), to ensure the tree/s’ practical retention.

C15 Trees on public land must be protected during demolition, excavation, the erection of hoarding and construction works as set out in Section 4 of AS4970. Council will require the payment of a security deposit in relation to a tree on public land if:

- Development is proposed within the Tree Protection Zone of that tree or
- Council determines that the development may adversely affect the roots or crown of the tree

C16 Developments in zones other than R1 – General Residential or R2 – Low Density Residential must allow for any existing overhead electrical lines to be converted into aerial bundled cabling or redirected underground to reduce the impact upon surrounding trees.

C17 New awnings that encroach into public land must be designed to accommodate existing and proposed street trees.

## 5 Definitions

In this Part:

**Amenity** a desirable or useful feature, or facility of a building or place.

**Clear Vegetation** includes

- a) cut down, fell, uproot, kill, poison, ringbark, burn or otherwise destroy the vegetation, or
- b) lop or otherwise remove a substantial part of the vegetation (including roots).

**Dead** means no green cambium (tissue) and no green foliage and that the tree is no longer capable of performing any living functions.

**Diameter at Breast Height (DBH)**. The diameter of a tree at 1.4 metres above the natural ground level.

**Dying** means a tree in a state of decline where it is unlikely to recover. Generally, this may be represented by only  $\leq$  20% live canopy.

**Foreseeable future** means the next 12 months.

**Imminently dangerous** includes but is not restricted to obvious instability of the root system, evidence of soil heave or cracking, loss of structural roots, root decay, storm damage and structural defects that are imminently hazardous, such as splitting branches. Evidence must be provided to Council in writing by photographic evidence or written evidence by a Qualified Arborist (AQF5).

**Risk to human life or property** is where a tree presents an unacceptable level of risk to life or property as per an industry risk assessment methodologies - TRAQ or QTRA. Evidence must be provided to Council in writing by photographic evidence and written evidence by a Qualified Arborist (AQF5).

**Tree** means any perennial plant with at least one self-supporting woody, fibrous stem, whether native or exotic.

**Priority Weed Species for the Greater Sydney Region** means those species listed by NSW Department of Primary Industries on their website for the Inner West Council local government area. View at <https://weeds.dpi.nsw.gov.au/WeedBiosecurities?AreaId=72>

**Project Arborist** means the arborist appointed to monitor the vitality and condition, throughout the construction process, of trees being retained on the site (and any trees on adjoining private land and trees on public land where the development encroaches into the TPZ of those trees).

**Residential Dwellings** are buildings approved and defined as:

- **dwelling house** means a building containing only one dwelling.
- **dual occupancy** means a dual occupancy (attached) or a dual occupancy (detached).
- **multi dwelling housing** means 3 or more dwellings (whether attached or detached) on one lot of land, each with access at ground level, but does not include a residential flat building.
- **residential flat building** means a building containing 3 or more dwellings, but does not include an attached dwelling, co-living housing or multi dwelling housing.

Note: this apply to the residential dwellings only not ancillary development such as detached garages, carports, swimming pools etc.

**Tree Protection Zone (TPZ)** means the area around a tree required to protect the tree's crown and roots during the construction process. The tree protection zone must be calculated in accordance with AS4970.

**Urban Forest** means all trees and vegetation (both naturally occurring and planted) that occur within or near urban areas.