

# Eco-info –

## DCP 2005 Chapter 14: Tree Management

### Consent Requirements for Tree Removal

August 2011

#### OVERVIEW

Chapter 14 – Tree Management provides a framework for the protection of native vegetation within Wyong Shire and sets out Council's requirements for tree management and removal, including consent requirements.

#### WHEN IS CONSENT REQUIRED FOR TREE REMOVAL?

Clause 28 of the Wyong Local Environmental Plan (WLEP) 1991 identifies when tree removal and/or pruning requires a development application and consent. These requirements are the same under Chapter 14. Most tree removal or pruning requires development consent, including the removal of trees around heritage listed structures, unless:

- The tree is dead (where it does not provide habitat for threatened species)
- The tree is a noxious weed
- The tree is a domestic or commercial fruit tree or part of a commercial plantation
- Pruning in accordance with AS4373:2007 (See Eco info – Pruning Trees in Wyong Shire)
- The removal may be defined as *Exempt Vegetation Management Works*, including the removal of trees within 3m of an Approved Structure (i.e, the 3 metre rule).

#### WHAT IS THE 3 METRE RULE?

Within the classification of Exempt Vegetation Management Works is the removal of *Undesirable Species*.

Amendments to Chapter 14 (adopted in August 2011) have expanded the definition of *Undesirable Species* to include those species which may be undesirable due to their location. That is, those trees less than 6m tall and located within 3m of an Approved Structure may be removed without further consent of Council (subject to conditions) due to this definition.

An Approved Structure includes a dwelling, garage or swimming pool and means a structure which has been approved by Council or a Private Certifier under the Environmental Planning and Assessment Act but does not include:-

- a. A manufactured home, a moveable dwelling or associated structure or part of a manufactured home, a movable dwelling or associated structure within the meaning of the Local Government Act; or
- b. A temporary building within the meaning of the Environmental Planning and Assessment Regulation; or
- c. A structure included in Part 2 of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 – The General Exempt Development Code.

#### WHERE DOES THE 3 METRE RULE APPLY?

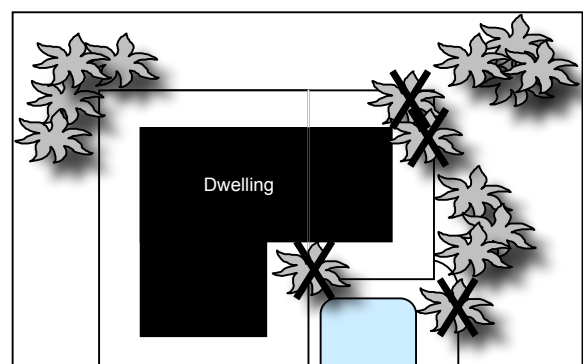
The 3m rule applies throughout Wyong Shire but **DOES NOT APPLY TO** trees listed on the Register of Significant Trees (as defined by sections 7.2.1 through 7.2.5 of Chapter 14). The following locations are subject to specific requirements:

- Wyongah
- Bateau Bay East
- Budgewoi East
- Willow Creek

These areas have been identified by Council through Significant Tree Surveys and Studies as containing trees of Cultural Significance. Council is committed to preserving these trees within these areas due to the amenity and character created by these species. Should you wish to remove a tree within these areas which is listed as significant, consent is required and an application form must be lodged with Council.

#### HOW DOES THE 3 METRE RULE WORK?

The application of this exemption is represented in the following diagram:



Failure to obtain development consent for tree removal where required, or failure to comply with the conditions of Chapter 14 and the 3m rule are considered to be breaches of the Environmental Planning & Assessment Act 1979. Breaches of the Act may result in “on the spot fines” or court action. Replacement plantings may also be required.

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This summary is provided for the assistance of applicants and is by no means exhaustive. Applicants are advised to consult DCP 2005 and Chapter 14 (and any referenced documents contained within the Chapter) in full, prior to undertaking any work or lodging any development application. Further enquires can be directed to Council’s Customer Contact on 4350 5555.

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## **WHAT ARE THE CONDITIONS OF THE 3 METRE RULE?**

There are a number of conditions attached to the 3m rule to ensure that requirements to protect Threatened Species and personal property are adhered to. These conditions are as follows:

- The tree must be less than 6m tall and within 3m of an approved structure (defined).
- The tree must not be listed in any of the Schedules within s.7.2 of Chapter 14, including those listed under the Threatened Species Conservation Act, or containing fauna listed under the same Act
- The tree must be retained if it is identified to be retained by a condition of a development consent applying to the land
- Trees less than 6m tall and located within 3m of an approved structure on an adjoining property may only be removed with the consent of the owner of the adjoining property
- The tree to be removed is first inspected by a Trade or Consulting Arborist or Council Tree Assessment Officer to identify the species (to determine if it is listed as Threatened and identify any special measures to be implemented for the safe removal of the tree and to protect wildlife). It is important that a written record of the identification of the species to be removed is kept, together with a photograph. (Council offers an on-site inspection service to assist in tree identification. Forms to request this service are available from Council Offices and Council’s website. A competitive fee applies)
- The tree may need to be inspected by an ecologist to determine if it is habitat for threatened fauna listed under the *Threatened Species Conservation Act* (1995)
- It is recommended that a replacement tree is planted elsewhere on site.

The flowcharts on the following page further clarify how the above conditions affect whether consent for tree removal is required.

Trees that fall outside the exemption, either by location (i.e. more than 3m from an approved structure) or as a result of the above conditions *may* still be able to be removed, however, consent from Council is required and a Development Application - Tree Works Form must be lodged. Application forms are available from Council’s Customer Contact Centre or online at [www.wyong.nsw.gov.au](http://www.wyong.nsw.gov.au).

## **WHAT ARE THE CONSEQUENCES OF INAPPROPRIATE TREE REMOVAL AND/OR PRUNING?**

**Figure 1:** DO I NEED CONSENT TO REMOVE MY TREE?

