

Council Issued Permits for Tree Removal

A simple guide for homeowners

If you wish to remove or substantially prune¹ a tree from a non-rural², private property that you own, or a tree from a neighbouring property (or a tree located on the boundary of your private property and the neighbouring property) with the neighbour's consent, you may need to first obtain a Council issued permit³.

Where can I find the requirements for removing a tree?

The requirements for tree management are set out in Section B1 of Council's Development Control Plan [which you can find here](#). Further clarification of these requirements can be found in [Council's Tree Technical Specification you can find here](#).

What do I need to submit?

To have your application assessed, you will need to supply Council with the following:

- [A completed Tree Permit Application Form](#)
- An arborist report consistent with Council's Tree Technical Specification for any tree listed on the [Significant Trees Register](#).
- A Vegetation Management Plan, consistent with [Council's guidelines](#) (only when seeking permission to remove twenty (20) or more trees)
- A Hollow Tree Assessment, consistent with Council's [Tree Technical Specification](#), when you are seeking to remove hollow-bearing trees.
- Receipt of payment for the application fee ([see fees and charges under Environmental Services](#))

¹ Pruning in excess of 12 months growth or 10% of foliage in accordance with AS 4373 – Pruning of amenity trees

² Your property must be zoned either R1, R2, R3, R4, R5, B1, B2, B3, B4, B5, B7, IN2, IN4, RU5, SP1, SP2, RE1, RE2, E2, E3, or E4 to be classified as non-rural. You can find your property zoning by entering your address into the online eSpatial Planning Viewer: <https://www.planningportal.nsw.gov.au/spatialviewer/#/find-a-property/address>

³ There are exemptions to requiring a permit, which can be found in Council's fact sheet on "Removing Trees without Council's Permission". If none of these exemptions apply to your situation, you will need to apply for a Tree Permit.

How will my application be assessed?

All Tree Permit applications are assessed by Council on their individual merits.

To ensure consistent assessment of all tree permit applications, the following criteria is applied. Please note: Where a tree fails one or more of the following criteria, tree removal or substantial pruning may be warranted.

1. **Damage or Injury**

Where a tree poses a high risk of causing injury or damage and that risk that cannot be adequately mitigated by arboricultural treatments, the tree is deemed to have failed this criteria. The level of risk must be assessed and recorded in the Basic Tree Risk Assessment Form by a suitably qualified arborist (as defined in Council's Tree Technical Specification). Options for managing risks other than by tree removal are to be considered.

Where a tree is significantly affecting structures including utility services, footpaths, driveways, retaining walls and/or buildings, and it is shown that tree removal is the only reasonable means to avoid further conflict, having regard to all other abatement options (as outlined in Council's Tree Technical Specification), then the tree fails this criteria. Assessment of the damage is to be carried out and reported by a suitably qualified person (eg. road/civil engineer) in consultation with a suitably qualified arborist.

2. **Diseased Condition**

Where a tree is in a diseased condition and that disease cannot be corrected by arboricultural treatment, the tree is deemed to have failed this criteria. The diseased condition must be confirmed in a report prepared by a suitably qualified arborist. Options for managing the disease condition other than by tree removal are to be considered.

3. **Remaining Life Expectancy (dying)**

Where a tree has a remaining life expectancy of less than 5 years, the tree is deemed to have failed this criteria. The tree's remaining life expectancy must be determined and confirmed in a report by a suitably qualified arborist.

4. **Suppressed Growth**

Where a tree is part of a group of trees, the spacing of which prevents each of the trees within the group from attaining their desired full potential, the tree is deemed to have failed this criteria. It will need to be confirmed in a report prepared by a suitably qualified arborist that the tree in question is the one that would be most beneficial to remove.

5. **Impact on Human Health**

Where an applicant claims that a tree poses an unacceptable risk to human health, the claim(s) must be substantiated by a medical practitioner who specialises in the area of the relevant health concern. Where an application is substantiated as above, then the tree is deemed to have failed this criteria.

6. Impact on solar access

Where an applicant claims that a tree impacts on solar access, either for the efficient working of solar appliances or sunlight availability in a habitable room (e.g. bedrooms or living room), the claim(s) must be substantiated by a shade report (developed with appropriate software) that demonstrates: a) the solar electricity output efficiency is less than 50% of maximum output across the year as a direct result of shading from the tree, or b) sunlight penetration into a habitable room is significantly affected. The applicant will also need to demonstrate that there is no reasonable alternative to removing the tree. Where an application is substantiated as above, then the tree is deemed to have failed this criteria.

Council will not support an application for the removal or substantial pruning of a tree for any of the following nuisance reasons if the tree has not failed any of the above listed assessment criteria:

- Leaf/bark/cones/twigs drop (into gutters/downpipes/pools/lawns and the like)
- To improve street lighting for private property
- To enhance views
- To reduce bird or bat droppings
- Minor lifting (less than 20mm of vertical displacement) of, or damage to, driveways, paths, retaining walls and other minor infrastructure
- To erect or maintain a fence
- Bush fire hazard reduction works which have not been approved by the NSW Rural Fire Service
- To alleviate termite activity
- To facilitate routine maintenance of turf areas

Where Council concludes that a tree has NOT failed the Tree Assessment Criteria above, Council **will refuse the application**.

Where Council concludes that a tree HAS failed at least one of the Tree Assessment Criteria above, Council **may issue a Tree Permit which may include conditions** for restricting removal works, imposing a tree bond, and/or requiring compensatory measures (such as replacement planting and installation of nest boxes or augmented hollows).

Where Council concludes that a permit should be issued when certain conditions have been met, a **Deferred Permit** will be issued. As the applicant, you must provide evidence that the conditions have been completed prior to the issue of the permit.

What right of appeal do I have if Council refuse to issue a permit?

As the applicant, you may request a review of the original assessment by writing to Council and specifying the grounds upon which you consider the determination should be amended. Council may require additional information to reassess the application against its assessment criteria, including:

- A report from an independent, suitably qualified arborist and/or other suitably qualified professional (such as an ecologist)
- A landscape plan to support mitigation works and/or tree placement
- A technical report to substantiate potential damage to infrastructure

As the applicant, you also have the right to appeal to the Land and Environment Court in accordance with c.12(1) of the Vegetation SEPP. An appeal to the Land and Environment Court is to be made within 3 months of the date of refusal in accordance with c.12(2) of the Vegetation SEPP.

What are my responsibilities as the applicant?

As the applicant for a tree permit you are undertaking to:

- Provide honest and accurate information in your application. The provision of false and misleading information is an offence under the Local Government Act and liable to enforcement action and penalties.
- Not commence removal or substantial pruning works before a permit has been granted, this includes the following: cutting down, felling, uprooting, killing, poisoning, ringbarking, burning or otherwise destroying any tree or vegetation, or lopping or otherwise removing a substantial part of the tree or vegetation. Such works are considered 'clearing' under the Vegetation SEPP and 'development' for the purposes of the Environmental Planning and Assessment Act 1979 (EP&A Act).
- Comply with any conditions imposed by the permit.
- Bear all costs associated with the pruning, removal, and or conditions of permission. Council is committed to the concept of "avoid, minimise or offset removal" for trees assessed as having a moderate-to-high retention value and all tree removal will be mitigated with tree replacement conditions (at rates determined by the methodology outlined in Council's Tree Technical Specification).

Need further assistance?

Contact Council at on 02 4988 0255 or email vmo@portstephens.nsw.gov.au