

Removing Trees without Council Permission

A simple guide for homeowners

If you live in a non-rural area¹ and you wish to remove a tree located on private property that you own, you may be able to remove it without requiring a Council issued permit.

What exemptions are there for removing a tree without a Council issued permit?

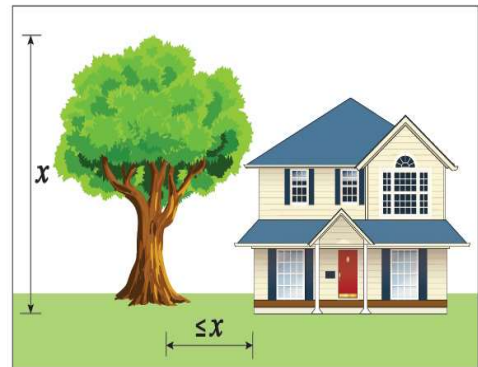
There are seven exemptions listed in the Port Stephens DCP that allow for a tree to be removed without first obtaining a Council issued permit.

1

The tree is in danger of immediate failure. Immediate failure typically results from an unplanned situation, such as an extreme weather event. Where the tree is expected to fail within 48 hours, the tree can be removed, but **Council must be notified after the removal** and supplied with photos of the tree before and after it has been removed.

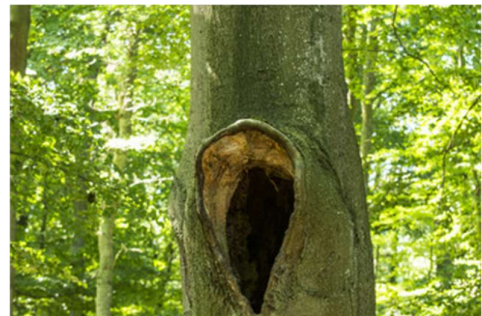
2

The tree presents a risk to property or life. Trees may be removed without Council permission if property (an approved and lawfully constructed building, excluding minor ancillary structures such as garden sheds, cubby houses, detached carports, etc) or a frequently occupied area is within a distance of the tree equal to its height. Any tree proposed for removal using this exemption must be marked with a visible 'X' and **Council must be notified, using the prescribed self-certification form, at least 10 days in advance of the removal.** Council reserves the right to reject the assessment of risk and require a permit application to be submitted.



3

The tree is dead or dying, and is not required as the habitat of native animals. In this instance, a report from a professional arborist with AQF Level 3 qualifications will be required to confirm the tree is dead or dying and does not provide habitat for native animals. The existence of hollows and/or presence of scat underneath the tree may indicate native animal presence. Council recommends that these observations be undertaken before engaging an arborist. **Council must be notified, using the prescribed self-certification form, at least 10 days in advance of the removal.**



¹ 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>



4

Minor pruning or maintenance of less than 12 months growth or 10% of foliage. Pruning must be carried out in accordance with AS 4373 – Pruning of amenity trees.

5

Removal is authorised under a Council issued development consent, construction certificate, or subdivision certificate, or under other legislation. This exemption does not include notices and orders issued by Council to remove excess vegetation likely to harbour vermin. The most common legislative exemption is the Rural Fires Act's 10/50 rule, which allows for owners of land within an identified 10/50 vegetation clearing entitlement area to clear trees on their property within 10 metres of a home and/or clear underlying vegetation (not trees) on their property within 50 metres of a home, without approval.

6

The tree is **less than** 3 metres high **and** the trunk's diameter is **less than** 300mm measured at breast height and is:

- a) **Not** a NSW Christmas Bush or Cabbage Tree Palm, or any species listed as threatened under the Biodiversity Conservation Act 2016
- b) **Not** a heritage item as listed in the Port Stephens LEP
- c) **Not** a tree listed on the significant tree register
- d) **Not** an Aboriginal object or in an Aboriginal Place or Heritage Conservation Area
- e) **Not** otherwise identified in the Port Stephens DCP or other legislation as requiring authorisation for removal.



7

The tree is **more than** 3 metres high **or** the trunk's diameter is **more than** 300mm measured at breast height, and is:

- a) **Not** a NSW Christmas Bush or Cabbage Tree Palm, or any species listed as threatened under the Biodiversity Conservation Act 2016
- b) **Not** a heritage item as listed in the Port Stephens LEP
- c) **Not** a tree listed on the significant tree register
- d) **Not** an Aboriginal object or in an Aboriginal Place or Heritage Conservation Area
- e) **Not** otherwise identified in the Port Stephens DCP or other legislation as requiring authorisation for removal.
- f) Within 5 metres of a wall of an approved structure (measured from the wall to the trunk of the tree)
- g) A tree grown for fruit or nut production
- h) An undesirable species listed in Schedule E of the Port Stephens DCP



How do I apply for an exemption?

Please complete the prescribed self-certification form, available on the Port Stephens Council website. You will need to submit this form to Council in circumstances where Exemptions 1, 2, or 3 are to be applied. For all other exemptions, please retain the form for twelve months to assist with any follow-up enquiries.

Where you are required to submit the form to Council, please attach:

- a) Photos of the tree that clearly demonstrate how it meets the exemption criteria. Multiple photos may be required. Photos should clearly show relevant tree details, the full tree, and the full tree in its landscape context. Please use the appropriate zoom settings on your camera.



- b) A site sketch or plan that clearly shows the location of the tree in relation to other site features, such as dwellings and boundaries. Please provide a scale or indicative distances and measurements. You can use a simple sketch (like the one below) or use existing plans, aerial images (e.g. captured by drone), or online maps (e.g. SIX maps, Google Map, etc).



- c) A report prepared by an AQF Level 3 qualified arborist when an exemption for a dead or dying tree is sought. The report should meet the standards of the International Society of Arboriculture and clearly conclude the tree is dead or dying AND there is no evidence of it being used as habitat for native animals.

Other permissions may still apply

While a Council issued permit is not required where a valid exemption applies, you may still need other Council consent if the removal of the tree(s) exceeds the biodiversity offset scheme for clearing of native vegetation, as stated in the Biodiversity Conservation Act 2016. Please refer to Council's Guidance on Biodiversity Development Assessment Reports and contact Council if you are unsure whether your proposed tree removal meets this criteria.

Next Steps

Where Council is not satisfied the tree poses a risk, the following actions may be taken:

- a) **For tree removal notifications under Exemptions 2 and 3:** A Stop-the-Clock period may be imposed while Council waits for notifying parties to provide additional or clarifying information. Council issued requests for further information will occur within the 10 day notification period. Where Council does not receive acknowledgement of its request for further information or concludes that the tree does not meet the criteria for Exemption 2 or 3, it will advise the notifier that the tree must not be removed without a Council-issued permit.

Where positive communication is not able to be achieved within the 10 day notification period, Council will attach a notice to the designated tree (if accessible from the street front) that advises a tree permit application is required prior to removal.

- b) **For trees removed under other exemptions:** Council may seek to impose offsetting requirements that replace the tree(s) at a ratio determined in Council's Tree Technical Specification. Council may also pursue compliance and enforcement action where trees have been removed without appropriate eligibility for exemption.

Before removing trees on your property, it is recommended that you notify any neighbour whose amenity or privacy may be affected by the removal of the trees in question

Need some assistance?

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