

Code Title: TREE PRESERVATION - Code

Reason for Code: The purpose of this Code is to protect and enhance the environmental amenity, special landscape characteristics, unique vegetation qualities and ecological values within the Eurobodalla Shire.

This code has been prepared pursuant to section s26 (4) of the *Environmental Planning & Assessment Act 1979* and relates specifically to clause 5.9 Preservation of Trees or Vegetation in the *Eurobodalla Local Environmental Plan 2010*.

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1. Introduction

1.1 Purpose of this Code

The purpose of this Code is to protect and enhance the environmental amenity, special landscape characteristics, unique vegetation qualities and ecological values within the Eurobodalla Shire. This code has been prepared pursuant to section s26 (4) of the *Environmental Planning & Assessment Act 1979* and relates specifically to clause 5.9 Preservation of Trees or Vegetation in the *Eurobodalla Local Environmental Plan 2010*.

1.2 Aims and Objectives

The objectives of the Code are:

- To protect and conserve trees and vegetation in the Eurobodalla Shire;
- To ensure that no trees or vegetation are wilfully injured, removed or destroyed without the approval of Council;
- To facilitate the removal of undesirable exotics, noxious weeds, dangerous trees and any other inappropriate plantings; and
- To preserve local amenity

1.3 Land to Which this Code Applies

This Code applies to all land within the Eurobodalla Shire not subject to the *Native Vegetation Act 2003*.

1.4 Relationship to Other Plans & Orders

This Code repeals the Eurobodalla Tree Preservation Order.

2. Definitions

Other than those listed below, terms in this document have the same meanings found in the *Environmental Planning and Assessment Act 1979* (The Act) and *Eurobodalla Local Environmental Plan 2010* dictionary.

Category	Meaning/Definition
building footprint	means the maximum extent of the two dimensional area of the plan view of a building excluding minor ancillary structures. Note: The reference to minor ancillary structures in this definition includes, but is not limited to, garden sheds, cubby houses, detached car ports, gazebos, barbeques and detached decks and pergolas.
clearing	native vegetation means any one or more of the following: a) Cutting down, felling, thinning, logging or removing native vegetation b) Killing, destroying, poisoning, ring-barking, uprooting or burning native vegetation; c) Severing, topping or lopping branches, limbs, stems or trunks of native vegetation; d) Substantially damaging or injuring native vegetation in any other way.
dead tree	means a tree(s) that is no longer capable of performing the following processes: photosynthesis, take up water through its roots, hold moisture in its cells and produce new shoots.
environmental weed	means a plant that poses a threat to the natural environment. Environmental weeds are either not native to the Eurobodalla area or are plants growing outside their natural range. A list of plants considered by Council to be environmental weeds can be found on Council's web site at http://www.esc.nsw.gov.au/site/Weeds/index.asp
habitat tree	means any tree(s) which has developed hollows in the trunk or limbs and is suitable for nesting native birds, arboreal marsupials and mammals or which support the growth of locally indigenous epiphytic plants (such as orchids).
imminent	means about to happen or threatening to occur.
injury	means damage to a tree or native vegetation and includes: a) Lopping and topping; b) Poisoning, including applying herbicides and other toxic chemicals to a tree or spilling (including washing off or directing water contaminated by) oil, petroleum, paint, cement, mortar and the like onto the root zone;

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	c) Cutting and tearing of branches and roots that is not carried out in accordance with accepted arboricultural practices. d) Ring-barking, scarring the bark when operating machinery, fixing objects (eg. signs) by nails, staples or wire, using tree climbing spikes in healthy trees marked for retention (except for access to an injured tree worker) or fastening materials that circle and significantly restrict the normal vascular function of the trunk or branches; e) Damaging a tree's root zone by compaction or excavation, asphyxiation (including unauthorised filling or stockpiling of materials); f) Under scrubbing, unless carried out by hand tools, such as brush cutters and the like.
key threatening process	means a process that threatens, or could threaten, the survival or evolutionary development of species, populations or ecological communities.
lopping	means cutting between branch unions or at internodes on young trees
native vegetation	means any of the following types of vegetation: a) trees (including any sapling or shrub, or any scrub), b) understorey plants, c) plants occurring in a wetland.
noxious weed	means a plant declared noxious within the Eurobodalla Shire Local Government Area Noxious weed declarations NSW Department of Primary Industries
prune or pruning	means the following activities as specified in Australian Standard AS 4373, <i>Pruning of Amenity Trees</i> : a) Crown maintenance pruning involving: i. General pruning ii. Thinning iii. Deadwooding iv. Selective pruning v. Formative pruning b) Crown modification pruning involving: i. Reduction pruning ii. Crown lifting iii. Pollarding iv. Remedial pruning v. Line clearance
remove	means to cut down, take away or transplant a tree from its place of origin
significant tree	means trees which are significant features of our heritage or cultural landscape, and are listed in Council's Significant Tree Register. They may be historic, large, unique, rare or have community support for their retention.
suitably qualified person	means an arborist or similarly qualified or experienced person
threatened species	has the same meaning as in the <i>Threatened Species Conservation Act 1995</i> and means native species, populations and communities of flora and fauna that are critically endangered, endangered, vulnerable or presumed extinct in New South Wales. These entities are provided for in Part 2 of the <i>Threatened Species Conservation Act 1995</i> .
topping	means cutting away part or all of the tree canopy leaving a trunk and stubbed main branches
tree	means a perennial plant with at least one self-supporting woody or fibrous stems which: (i) is 3 metres or more in height or (ii) has a trunk circumference of 400 mm or more measured at ground level or (iii) has a crown/branch span of 3 metre diameters or more;
vegetation	covered by this Code includes: (i) cycads (including Burrawang) or

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	(ii) mangroves or
	(iii) submerged or emergent aquatic vegetation in freshwater, estuarine, and marine waterways
	(iv) any native vegetation outside an approved APZ
	(v) any native vegetation on public land

3. Approvals for Tree Works Under This Code

This Code prohibits the ring-barking, cutting down, topping, lopping, pruning, removing, poisoning, injuring, compaction or alteration of ground level within the drip zone of a tree, or wilful destruction of any tree or vegetation on any land to which this plan applies without the authority conferred by:

- (i) development consent, or
- (ii) a permit granted by Eurobodalla Shire Council.

3.1 Appeal Rights relating to development consents issued or refused

A review of a development consent issued or refused under this Order can be made pursuant to Section 82A of the Environmental Planning and Assessment Act, 1979.

If an applicant is not satisfied with the results of the S82A Review of Determination, an appeal may be made to the Land and Environment Council pursuant to Section 97 of the Environmental Planning and Assessment Act, 1979.

3.2 Appeal Rights related to permits issued or refused under this Order

The refusal by Council to grant a permit to a person who has duly applied to undertake tree or vegetation works is taken for the purposes of the *Environmental Planning and Assessment Act 1979* to be a refusal by the Council to grant consent for the carrying out of the activity for which a permit was sought. Refer to 3.1 for Appeal Rights.

An appeal to Council against an approval to grant a permit under this Order may be made by the applicant within 6 months of the date of Council's decision to grant the permit, if the applicant believes that Council has erred in its judgement, its decision is harsh or unreasonable, or if new information has become available since Council's assessment. If dissatisfied with the result of the appeal to Council, further appeal may be made to the Land and Environment Court.

4. Exemptions

This Code does not apply to a tree or other vegetation that the Council is satisfied is dying or dead and is not required as the habitat of native fauna.

This Code does not apply to a tree or other vegetation that Council is satisfied is a risk to human life or property as determined through the application of the code of practice associated with the *Tree Risk Management Policy on Council Controlled Land* or to trees or vegetation subject to assessment under Council's *Vegetation Clearing – Roadsides and Infrastructure Lines Policy*.

Exemptions under this Code cannot be used to remove any tree or vegetation that is required to be retained by a development consent.

Note: A permit under this Code cannot allow any ringbarking, cutting down, topping, lopping, removal, injuring or destruction of a tree or other vegetation that is or forms part of a heritage item, or is within a heritage conservation area. Development consent is required in these circumstances.

4.1 List of Exempt Activities

This Code does not apply to or in respect of:

- 4.1.1 The clearing of native vegetation that is authorised by a development consent or property vegetation plan under the *Native Vegetation Act 2003* or that is otherwise permitted under the *Native Vegetation Act 2003*; or
- 4.1.2 The clearing of native vegetation on State protected land (within the meaning of clause 4 of Schedule 3 to the *Native Vegetation Act 2003* that is authorised by a development consent under the provisions of the *Native Vegetation Conservation Act 1997* as continued in force by that clause; or
- 4.1.3 Trees or other vegetation within a State Forest, or land reserved from sale as a timber or forest reserve under the *Forestry Act 1916*; or
- 4.1.4 Action required or authorised to be done by or under the *Electricity Supply Act 1995*, the *Roads Act 1993* or the *Surveying Act 2002*; or
- 4.1.5 The removal or harvesting of trees grown commercially or domestically for their edible fruit; or
- 4.1.6 Trees or other vegetation declared to be noxious weeds in the Eurobodalla Shire under the *Noxious Weeds Act 1993*; or
- 4.1.7 Removal of undesirable species as listed (see Section 4.3); or

Note: In relation to subclause 4.1.6 – 4.1.7, in a breach of the Code, it will not be sufficient defence that the species was not correctly identified prior to removal.

- 4.1.8 Trees within 3.0 metres (as measured on the horizontal plane from the edge of the building footprint to the trunk of the tree) of an existing lawful dwelling or an approved building footprint in accordance with a development consent, or
- 4.1.9 The removal of dead trees or dead branches on a living tree, except where the trees are considered to be “habitat trees” or habitat for “Threatened Species” as determined by Council or a suitably qualified person and the property owner has been advised in writing by Council to that effect or

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Note: The removal of hollow bearing trees is listed as a 'Key Threatening Process' in the schedules of the Threatened Species Conservation Act 1995.

- 4.1.10 Pruning of trees if pruning does not exceed 10% of canopy per year and complies with Australian Standard 4373 – Pruning of Amenity Trees or
- 4.1.11 Removal of vegetation on a boundary between properties for the purpose of enabling a boundary survey to be carried out by a registered surveyor. The surveyed lands must exceed one hectare and the maximum width of clearing is 0.5m either side of boundary. The adjoining owner's approval is necessary and this clause does not apply to trees listed on Councils significant tree register or
- 4.1.12 Removal of trees or vegetation directly on a boundary line between properties for the purpose of erecting a boundary fence – adjoining owner's approval is necessary.
- 4.1.13 The removal of any tree that poses an imminent hazard to person or property. Council must be notified prior to the removal of any tree(s) and the tree(s) must show obvious instability that represents immediate danger, for example, storm damage resulting in structurally split trunks, limbs, or branches or
- 4.1.14 The removal or trimming of trees on Council owned/managed land authorised by Eurobodalla Shire Council and provided that assessment of the tree work has been carried out in accordance with this Code or

Note: In relation to subsections 4.1.6 through to 4.1.14, dated photographic evidence of the subject tree(s) before and after pruning or removal must be retained for a period of 6 months after the completion of works and produced as evidence of compliance with this Code at the request of a Council officer.

- 4.1.15 Immediate removal of trees where this is essential for emergency access or emergency works by Council, a public authority or an emergency services organisation or
- 4.1.16 Removal of trees which is a bushfire hazard where:
- (i) The action is reasonably necessary to protect human life, building or other property from imminent danger of a bushfire burning in the vicinity of the tree or
 - (ii) The NSW Rural Fire Service has authorised its removal by issue of a Bush Fire Hazard Reduction Certificate.
- 4.1.17 The removal of trees or vegetation to give effect to a development in accordance with a valid consent and related conditions.

4.2 Provide Evidence for Dangerous Trees

- 4.2.1 Expert advice from a suitably qualified and experienced person must be obtained with respect to dangerous trees (see 6.1)
- (i) to confirm their condition prior to removal or injury, and
 - (ii) to ensure that they do not provide habitat for Threatened Species
- 4.2.2 Where a dangerous tree is removed (in an emergency situation) due to obvious instability or hazard,
- (i) photographic evidence of the tree's condition and
 - (ii) a report by a suitably qualified and experienced person or
 - (iii) a written statement from the State Emergency Service, if the Service carried out the emergency tree works at the owners request

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must be retained for a period of 6 months after the completion of works and produced at the request of a Council officer, as evidence of compliance with this Code

4.3 List of Exempt Species

Approval is not required to prune or remove any of the following trees on private land provided the tree is not listed as a Heritage Item or listed on Council's Significant Tree Register.

Any environmental weed or noxious weed. Refer to Section 2 – Definitions of this Code.

Domestic fruit trees including citrus, stone (cherry, peach, plum), mulberry, banana, avocado, mango, and loquat.

Botanical Name	Common Name
<i>Acacia baileyana</i>	Cootamundra Wattle
<i>Acacia mearnsii</i>	Black Wattle
<i>Acacia podalyriifolia</i>	Queensland Silver Wattle
<i>Acacia saligna</i>	WA Glory Wattle
<i>Acer negundo</i>	Box Elder
<i>Albizzia lophantha</i>	Crested Wattle
<i>Allanthus altissima</i>	Tree of Heaven
<i>Alnus species</i>	Alder species
<i>Arecastrum romanzoffianum</i>	Cocos Palm
<i>Bamboo sp.</i>	Bamboo
<i>Camellia sp.</i>	
<i>Cestrum sp.</i>	Cestrum
<i>Chamaecytisus palmensis</i>	Tree Lucerne
<i>Cinnamomum camphora</i>	Camphor Laurel
<i>Coprosma repens</i>	Mirror Plant
<i>Cotoneaster sp.</i>	Cotoneaster
<i>Cordyline australis</i>	New Zealand Cabbage Palm
<i>Crataegus monogyna</i>	Hawthorn
<i>Cypresus arizonica</i>	Arizona cypress
<i>Erythrina x sykesii</i>	Coral Tree
<i>Erythrina crista-galli</i>	Coral Tree
<i>Ficus benjamina</i>	Weeping Fig
<i>Ficus elastica</i>	Rubber Tree
<i>Gleditia triacanthos</i>	Honey Locust
<i>Harpephyllum caffrum</i>	Kaffir Plum
<i>Hibiscus sp.</i>	Hibiscus
<i>Lagunaria patersonii</i>	Norfolk Island Hibiscus
<i>Ligustrum lucidum</i>	Large-leaf Privet
<i>Ligustrum sinense</i>	Small-leaf Privet
<i>Liquidambar styraciflua</i>	Liquidambar
<i>Mahonia species</i>	Oregon grape
<i>Nerium oleander</i>	Oleander
<i>Ochna sp.</i>	Ochna
<i>Olea africana and europaea</i>	Olive
<i>Pinus radiata</i>	Radiata Pine (Christmas Tree type)
<i>Callitris columellaris</i>	Cypress Pine
<i>Cupressocyparis leylandii</i>	Leyland Cypress
<i>Phoenix canariensis</i>	Canary Island Date Palm
<i>Pittosporum undulatum</i>	Pittosporum

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<i>Polygala myrtifolia</i>	Butterfly Bush
<i>Populus sp.</i>	Poplars
<i>Psoralea pinnata</i>	African scurfpea
<i>Prunus laurocerasus</i>	Cherry Laurel
<i>Pyracantha sp.</i>	Fire Thorn
<i>Raphiolepis indica</i>	Indian Hawthorn
<i>Robina pseudoacacia</i>	Black Locust
<i>Rhododendron sp.</i>	
<i>Ricinus communis</i>	Castor oil plant
<i>Salix sp.</i>	Willows
<i>Sambucus nigra</i>	Common elder
<i>Schefflera actinophylla</i>	Umbrella Tree
<i>Schinus areira</i>	Pepper tree
<i>Schinus terebinthifolia</i>	Brazilian pepper tree
<i>Senna sp.</i>	Cassia
<i>Solanum mauritianum</i>	Tobacco Bush
<i>Tibouchina sp.</i>	

5. Procedures

5.1 Application Procedures

- 5.1.1 All requests to prune or remove trees or vegetation protected under this Code are to be submitted on a Tree Removal Application Form available from Council for this purpose and be accompanied by a Tree Plan drawn to scale and illustrating;
- Property boundary, existing structures and access roads
 - Location of all trees on the lot and identification of those trees or vegetation proposed for removal
 - A description of the trees or vegetation proposed for removal
 - Distance of those trees or vegetation proposed for removal from the nearest boundary and/or structure
 - A north arrow
- 5.1.2 The owner of the property, on which the trees or vegetation are growing must sign the Tree Removal Application Form;
- 5.1.3 The appropriate processing fee as determined by Council must accompany the Tree Removal Application Form;
- 5.1.4 Upon submission of the Tree Removal Application Form, Tree Plan and relevant fee, Council staff will ensure that the form is correctly filled out and contains all necessary information required to allow lodgement;
- 5.1.5 If the tree bears hollows or fissures or is component of an Endangered Ecological Community, Council may require the applicant to provide an Assessment of Significance (7 part test) prepared by a suitably qualified person in accordance with the Environmental Planning and Assessment Act 1979 to determine impact on threatened species, populations or ecological communities or their habitats.
- 5.1.6 All trees are clearly marked on site for inspection purposes.

5.2 Criteria for the Assessment of Trees

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Council may issue a permit for the removal of trees if the following criteria are met:

- 5.2.1 The tree is a poor specimen and is in a state of decline that is prolonged and irreversible;
- 5.2.2 The tree has caused significant structural damage and supporting documentation including photographic evidence is provided;
- 5.2.3 It can be demonstrated that there is an ongoing problem with the tree which no other course of action will rectify;
- 5.2.4 The tree is not a potential habitat resource for threatened species;
- 5.2.5 Provided that no significant hazard or other safety issues also apply, the following will not justify the removal of a tree:
 - a) Dropping of leaves, flowers, fruit, bark, sap or twigs;
 - b) To enhance views, increase natural light or increase shade to garden areas;
 - c) To reduce minor lifting of driveways and paths by tree roots;
 - d) For bushfire hazard control which has not been approved by the Rural Fire Service;
 - e) Potential damage to sewer mains unless supported by written expert advice and only where reasonable alternatives are not feasible

6. Tree Assessment Reports

6.1 Arborist Qualifications

Note: This section describes the conditions applying to a person qualified to provide expert advice to Council under Subsection 4.1.9 and Section 4.2 of this Code.

Council requires a suitably qualified and experienced person to prepare a Tree Assessment Report. A suitably qualified person is one who:

- 6.1.1 Has level 4 or higher Certificate in Arboriculture, and
- 6.1.2 At least five (5) years practical experience in tree diagnosis and reporting, and
- 6.1.3 Is not employed or in any way associated with the company contracted to remove the tree or vegetation.

6.2 Arborist Reports

A Tree Assessment Report must contain the following information:

- 6.2.1 Name, address, telephone number, qualifications and experience of the Arborist carrying out the inspection and reporting;
- 6.2.2 Address of the site containing the trees;
- 6.2.3 Who the report was prepared for and the aims of the report;
- 6.2.4 Methods and/or techniques used in the inspection;
- 6.2.5 A plan, to scale, consistent with the requirements under subsection 5.1.1 in this Code;

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- 6.2.6 A table showing, for each tree the subject of the application :
- (i) Species name;
 - (ii) Age/classification;
 - (iii) Height;
 - (iv) Trunk diameter at 1 metre above ground;
 - (v) Canopy spread;
 - (vi) Health and condition
- 6.2.7 A discussion of other relevant information, including details of tree hollows or potential hollows for wildlife, tree structure/weaknesses, root form and distribution, soil stability, scenic amenity, pests and diseases and/or a Tree Hazard Assessment;
- 6.2.8 Supporting evidence such as photographs and laboratory results to confirm presence of soil pathogens or support soil assessment, where relevant;
- 6.2.9 Proposed replacement plantings, landscaping and soil remediation;
- 6.2.10 Tree protection measures and post tree maintenance program which can be used as conditions, should the application be approved;
- 6.2.11 Sources of information referred to in the report;
- 6.2.12 Any other relevant matters.

7. Penalties

7.1 Local Government Act

Under Section 629 of the *Local Government Act 1993*, it is an offence to cause injury or unnecessary disturbance to trees and native vegetation on public land including road reserves. This specifically relates to street trees, foreshore reserves and public open space. A person who, without lawful excuse, deliberately damages, poisons or injures vegetation on public land, is guilty of an offence under that Act.

7.2 Environment Planning and Assessment Act

Under Section 126 of the *Environmental Planning and Assessment Act 1979*, on-the-spot fines or court proceedings may apply to the injury, unnecessary disturbance or removal of trees and native vegetation on private and public land without consent.

Contravention of this Code is an offence against the *Environment Planning and Assessment Act 1979* which provides:

- a) That a person guilty of an offence against this Act shall, for every such offence, be liable to a penalty, and
- b) Where a person is guilty of an offence involving the destruction of or damage to a tree or vegetation, the court dealing with the offence may, in addition to or in substitution for any pecuniary penalty imposed or liable to be imposed, direct that person to pay costs incurred:
 - (i) to plant new trees and vegetation and maintain those trees and vegetation to a mature growth; and
 - (ii) to provide security for the performance of any obligation imposed under paragraph (i) of this subclause (b)

Note: Section 126 of the EP&A Act 1979 describes penalty amounts for offences under the Act which can exceed \$100,000

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8. Trees on Neighboring Land

Council has no power to order the owner of a tree to remove or lop a tree on their property apart from under the provisions of the *Noxious Weeds Act 1993*.

Where a tree is growing on a boundary, ownership is determined by which side of the boundary the centre of the trunk originated, or which side of the boundary, the majority of the trunk's diameter exists (at ground level).

Permission for removal of a tree on a neighbour's property can only be granted to the owner of the tree and requires the consent of Council. Written agreement from the owner of the tree must occur prior to making an application.

Where neighbour disputes arise, Council refers affected persons to the *Trees (Disputes Between Neighbours) Act 2006*.

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