



30 April 2024

Port Stephens Council

council@portstephens.nsw.gov.au

Your reference: file number **PSC2023-01018**

Submission: Proposed DCP changes – Tree Management and Flora & Fauna

Contents

About TRRA.....	2
About EcoNetwork Port Stephens	2
Submission	2
Explaining the requirements	2
DCP not binding so education, compliance and enforcement matters more.....	3
Too great a reliance on self-assessment	3
Detailed comments on revised DCP Chapters B1 & B2	4
Chapter B1 – Tree Management	4
Chapter B2 – Flora and Fauna.....	5
Glossary.....	7
Supporting documents	7
Outstanding issues.....	7
Appendix 1 - Extract from email from TRRA to Councillors and Council Executive dated 11 September 2023 about the agenda for the Council meeting on 12 September	9
Appendix 2 – Submission by TRRA to Council dated 25 November 2022, concerning the Revised Tree Vandalism Policy (File number: PSC2013-00406-0062	10

This is a joint submission from TRRA and EcoNetwork Port Stephens.

About TRRA

The Tomaree Ratepayers and Residents Association Inc. (TRRA) represents the community on a range of issues which affects the Tomaree Peninsula in Port Stephens LGA, including planning and development, economic development, cultural infrastructure and resources, the built and natural environment, tourism and other grass roots issues.

About EcoNetwork Port Stephens

EcoNetwork Port Stephens Inc. is a grassroots community-based environmental and sustainability network comprising more than 25 community and environment groups and eco-businesses with a focus on sustainable planning.

Submission

TRRA and EcoNetwork Port Stephens welcomes these changes as a contribution to a wider set of reforms needed to Council's environmental and natural systems policies and practices.

Both of our organisations have had a longstanding interest in tree management, and were co-signatories of a letter dated 22 September 2021 (attached) raising a number of issues and making some suggestions. While we received an email response dated 25 March 2022, this only addressed some of the issues, many of which have remained unresolved. The DCP changes now proposed go some way towards addressing some, but not all, of the issues.

Also relevant are:

- TRRA's email dated 11 September 2023 about Council's Street Tree Strategy.
- TRRA's submission dated 25 November 2022 on Council's revised Tree Vandalism Policy

These are appended to this submission for ease of reference.

We acknowledge that Council's new Environmental Advisory Group (EAG) has identified 'Biodiversity and Greening' as one of three priority issues, and that this will hopefully allow the wider set of tree management issues to be addressed.

Explaining the requirements

We support the objective of clarifying the requirements relating to tree removal and clearing of vegetation. While the changes to Chapters B1 & B2 succeed in this to some extent, the Chapters remain confusing and so detailed and complex as to be unlikely to be read by most of the people who need to be aware of the requirements. However well intentioned the text of these chapters, they will fail in their objectives if they are overlooked or simply ignored.

We recognise that most people will not be using the text of the DCP itself to understand the guidance, and we welcome the clear presentation of tree management on Council's website (<https://www.portstephens.nsw.gov.au/development/trees>), and the 3 supporting **fact sheets**,

which are now probably as clear as they can be in explaining the complex interplay of factors, and linking in turn to other resources.

The **Online Tree pruning and removal assessment form** also assists, and from our ‘test’ seems to flow logically, although it does require applicants to check on several ‘facts’ by going to other sites – whether most would have the patience or interest to do so is doubtful. Being able to save and resume is a valuable feature which may help.

We repeat our suggestion of the better use of graphics such as flow charts (both in the DCP chapters and in the fact sheets) to explain the requirements and assist people to navigate them. The online form is in practice already such a flow chart. We note that the Flora and Fauna Survey flow chart previously included in the DCP Chapter B2 (was Figure BB) is being removed, without explanation. While it can be difficult to ensure that flow charts are accurate and meaningful, we submit they can be a good way of presenting complex decision processes.

DCP not binding so education, compliance and enforcement matters more

We are all too aware that (unlike the LEP) the DCP is not binding, and that what are described as ‘requirements’ are only ‘guidance’ - an expression of what standards Council would like to see observed and will take into account in assessing applications and actions by landowners and others. The extent to which people can be persuaded to respect the DCP controls depends partly on how well informed they are (see above) and partly on how vigorously Council is prepared to promote and defend the guidance, including in defending against any legal challenges.

We are concerned that Port Stephens Council has historically not had a strong compliance and enforcement focus, and that this has sent a message to landowners and others that DCP controls can be disregarded, or at least that weak compliance action and small fines can safely be regarded as a ‘cost of doing business’.

This is particularly relevant to vegetation clearing and tree removal, which we believe, from experience, is too readily and too often undertaken without adequate justification or consideration of environmental values. We make no apology for our conviction that environmental protection is unfortunately partly a constant battle against interests, and individuals, who value other objectives more highly than they do the natural environment and amenity of residents.

Too great a reliance on self-assessment

As an overall comment, we submit that Council is relying too much on self-assessment, and on people who want to remove trees being willing to go through the elaborate decision trees and check their circumstances. It runs counter to human nature to expect people to be diligent in ensuring that none of the constraints apply to their proposed removal, especially if they know that the consequences of non-compliance will not be severe.

The problem is compounded by the role of private tree lopping contractors, many of whom are known to be unscrupulous and opportunistic (and are often unqualified). Some landowners wishing to remove trees will seek advice from a contractor without being too

concerned about their qualifications. Many contractors are also known to make unsolicited cold-calls to obtain work, persuading landowners who may not even have thought of removal that a tree poses a risk.

We submit that it would be preferable for the guidance to assume that removal of any mature trees may need approval and encourage applications for permits, putting the onus on suitably qualified Council staff to assess them and identify exceptions that may allow removal. We understand that this would have resource implications, but additional resources will be required if Council is serious about minimising unnecessary clearance.

Detailed comments on revised DCP Chapters B1 & B2

We submit that there could be a clearer explanation in **both Chapters** of the distinction between non-rural areas (where the DCP applies) and rural land (where the Local Land Services Act applies instead). While this simple fact is stated clearly in the ‘Application’ preface to Chapter B1, the explanation of what rural/non-rural means in terms of LEP zoning is only found in the SEPP. We submit that at the very least the relevant part of the SEPP definition should be included in the Glossary (Chapter E1 of the DCP), and preferably an indication given at the front of B1 as to how much of Port Stephens LGA (and in what main areas) is actually subject to the Chapter. A map or link to an online map layer would help.

In Chapter B2 there is no reference to the rural/non-rural distinction and it is therefore unclear whether the Chapter applies to all land in the LGA?

Chapter B1 – Tree Management

The Chapter is beset with ‘double negatives’ which make it very difficult to understand exactly how the criteria apply. This is perhaps unavoidable but emphasises the need to direct people to the fact sheets and assessment form.

Application

While it is implicit that this Chapter applies only to private land, this should be stated explicitly to ensure no confusion. i.e.

This Part applies to the removal or pruning of trees or other vegetation within **non-rural areas on private land**

Note: Clearing of native vegetation **on private land** in **rural areas** is regulated by the Local Land Services

Figure BA

The first row - Council approval not required – how does this interplay when the land is mapped as a Biodiversity Values Area? Can trees and shrubs under 3m still be cleared?

The new text in Column 2 of the first row in Figure BA includes at the end ‘... *or is used as habitat for native animals*’. We doubt if most readers would even get to this third ‘*unless...*’ and even if they do, most would not be qualified to assess whether a tree might qualify as ‘habitat’ (what tree does not?). The same issue arises in Column 2 of the second row, which

includes ‘.. *and it is not required as the habitat of native animals*’. ‘Satisfying’ Council in this case appears to again rely largely on self assessment using the online form. We submit that consideration be given to re-wording or re-structuring the text in these cells to more clearly emphasise the presumption in favour of retention.

The use of ‘*habitat for native animals*’ is ambiguous – all vegetation is habitat for birds, insects etc. and it might be helpful to explain what types of animals need to be considered.

The ‘Note’ in the Column 2 Row 1 cell of Figure BA defines ‘*An approved structure*’. As we have previously commented, the definition almost invites people to decide that their proposed removal qualifies on grounds of proximity to structures. We submit that there should be at least a qualification or warning that people should not assume that a structure such as a garden wall or shed will qualify.

These are two specific examples of the point we have made above that it is unrealistic to rely on self-assessment, which cannot ensure sufficient protection.

In B1.4 we submit that the use of ‘assessment ... has no regard for...’ is unclear. What it means is that the listed factors will not be taken as justifications for removal or pruning, and this should be clearly stated. The ‘Note’ about solar panels interrupts the flow of the listed factors and could usefully be moved to a footnote.

In B1.5 it is not clear what the terms *Tree Protection Zone* refers to – perhaps a concept within AS4970? but would be helpful to explain in B1.5 itself.

We note that B1.7 and B1.8 refer to the Compensatory planting provisions in Chapter B2.C, and this location and cross reference seems an acceptable alternative to including those provisions in Chapter B1, even though they only apply to the approvals otherwise dealt with in B1. This provides another example of the complexity of the provisions and difficulty of explaining them clearly to increase the chances of them being observed.

Chapter B2 – Flora and Fauna

Application

We are unclear why the application of the Chapter to development within 500m of ‘*land which contains items of environmental significance such as threatened species or communities, listed migratory species, wildlife corridors*’ has been removed? This would seem to be an important safeguard which should be retained, and is only addressed in part by the new wording of B2.3 (first dot point) which is less specific.

Section B2.A Ecological Impact deals generally with biodiversity through ecological impact assessment requirements, processes and criteria. The changes are mostly helpful and welcome.

We note the entire section references ‘important habitat features such as hollow bearing trees’, which we agree are important, but by implication other features of the habitat are deemed unimportant, such as logs on the ground, low vegetation thickets needed by small birds etc. We recognise that hollows take decades to form and hence may be ‘more important’

to retain as they are less readily replaced, but we submit that other important habitat features should also be specified.

B2.2 We note the actual title for Council's Ecological Assessment Guideline, is Ecological Impact Assessment Guideline (*our emphasis*), which should be the reference used.

B2.3 refers to 'high value ecological features'. At this point we had noted this 'defined term' had not been referenced earlier and its meaning was unclear so it would be useful to add '(see Glossary)'. This may not be usual practice, but given there are only 3 defined terms in the glossary, it would be helpful to include '(see Glossary)' for any and all references to each of the 3 terms.

B2.3 first dot point

- Delete 'Where possible...' as this is subjective and the default requirement should be that buffers should be retained in these circumstances.
- Is there any further guidance as to 'the width of the buffer should be determined with reference to the function of the habitat and the type of development proposed'. How and by whom is this width to be determined?

B2.3 second and third dot points – to be consistent, replace 'should be' with 'are to be' so there is no subjectivity in these statements. The requirement itself, as already mentioned above, is not specific.

B2.B Koalas Habitat contains specific provisions relating to koala habitat. The changes are helpful and welcome.

The objective should be extended to include: '... and corridors that link the identified koala habitat to enable koala movement and gene flow.'

B2.6 could usefully include a requirement for subdivisions over a specific size threshold (5ha?) to retain or provide a biodiversity corridor within the subdivision, and where possible connecting to areas of habitat external to the subdivision. Such corridors should include full habitat stratification (trees, bushes, ground covers etc), and may not be cleared for grass, but may include, for example, a 1 m wide walking path.

B2.8b includes reference to retention of habitat linking areas – this statement is excellent to retain and requires a strategic corridor plan across the LGA.

B2.8e needs editing to remove duplication of 'by minimising barriers'

B2.C Compensatory Requirements concerns **replacement planting**, including specifically for koala feed trees (B.2.10) and more generally for all other native trees, all street trees and all hollow bearing trees – B2.11-14). While these controls are not new – they were previously contained in the Tree Technical Specification – it is preferable to have them within the DCP itself and we also welcome the change of language from 'Biodiversity offsets' to 'Compensatory planting' which is a more accurate description.

B2.11 – we submit that the default replacement ratio of 1:2 is too low, even with the discretion for Council to amend the requirement.

We suggest consideration of the following guidance from Transport for NSW, which has a greater replacement rate to allow for attrition. (from: <https://www.transport.nsw.gov.au/system/files/media/documents/2024/EMF-BD-GD-0129-Tree-and-hollow-replacement-guidelines.pdf>)

Table 2-1: Tree and hollow replacement requirements

Tree size ¹	Tree replacement requirement
Very large tree (DBH ² greater than 100cm)	Plant minimum 16 trees
Large tree (DBH between 50cm and 100cm)	Plant minimum eight trees
Medium tree (DBH greater than 20 cm, but less than 50cm)	Plant minimum four trees
Small tree (DBH greater than 5cm, but less than 20cm)	Plant minimum two trees
Hollow replacement requirement	Provide three artificial hollows for every occupied hollow removed ³

Figure BC: Consideration could be given also to including ‘potential’ hollows where it is clear that a mature tree has termite infestation and hollow development is underway.

B2.D Biosecurity risks (weeds) addresses weed control, simply by referring to technical specifications (we assume the reference should be to *Biodiversity* specs not *Biosecurity*?)

We submit that there is a fundamental underlying problem of excessive reliance on compensatory planting (or offsets). Replacement trees take time to grow, and where they are required on the same lot as the ones removed, the multi-year gap in habitat (and shade) can mean a significant and irreversible loss of biodiversity.

Glossary

The changes to the Glossary (Chapter E) are helpful and welcome – see our suggestion above to include a clear definition of ‘non-rural’ areas.

Supporting documents

It is not clear if the Biodiversity Technical Specification has been changed other than by re-naming, and by transfer of some content into the DCP itself?

Outstanding issues

We understand that not all of the wider issues we have been raising for some time can be addressed in this round of changes to the DCP, and will require other interventions, and funding. However, we submit that Council should at least acknowledge that there is a ‘bigger picture’ that needs to be addressed if we are to take seriously the loss of tree cover and associated biodiversity.

We refer again to our previous submissions and suggestions – see the Appendices and Attachment to this submission. Among the other changes needed are:

- Greater emphasis on, and resourcing for, compliance monitoring and enforcement.
- Ensuring there are sufficient suitably qualified staff, rather than relying on contractors, who cannot be mobilised quickly enough to respond to alerts about non-compliance such as unauthorised tree removal. (Appendix 2 and Attachment)
- Increased penalties for non-compliance, from the minor fines which do not act as a sufficient deterrent. We understand that Lake Macquarie Council is reportedly considering increasing fines from \$3,000 to \$80,000.
- Stronger remedial action when trees are removed without authority but culprit cannot be identified, such as erection of large signs and immediate replanting.
- Public and /or neighbour notification of private tree removal applications and of proposed removal on public land (Attachment)
- Enhanced regular public reporting of tree removal permit applications and post removal notifications (Attachment)
- Better promotion and use of the significant tree register. (Attachment)
- Progressive implementation of an improved street tree strategy without waiting for a comprehensive review (Appendix 1)
- Expanded tree planting by Council (see separate request from Land Care groups for details of Council's planting program)

We have no objection to this submission being made public, in full and unredacted.

Convenor, TRRA Planning Committee, planning@trra.com.au

Secretary, EcoNetwork Port Stephens, secretary@econetworkps.org

Attachments:

- TRRA & EcoNetwork PS letter to Council on Tree Management, 22 September 2021 (separate document)
- Appendix 1 - Extract from email from TRRA to Councillors and Council Executive dated 11 September 2023 about the agenda for the Council meeting on 12 September – item on **Street Tree Strategy**
- Appendix 2 – Submission by TRRA to Council dated 25 November 2022, concerning the **Revised Tree Vandalism Policy** (File number: PSC2013-00406-0062)

Appendix 1 - Extract from email from TRRA to Councillors and Council Executive dated 11 September 2023 about the agenda for the Council meeting on 12 September

Item 3 Street Tree Strategy

TRRA welcomes the report in response to Cllr Anderson's motion, and supports the recommendation in principle. However, we are concerned that it may lead to low cost short term action on street trees being put on hold.

While funding may not be available currently for the costly annual 'implementation' of an overall Strategy, that does not mean that nothing can be done in the meantime. We submit that it would be valuable to go ahead in the short term with at least some of the work listed for the 'planning' stages (which are costed at only \$60,000 in total) – one example would be updating of Council's tree asset register – if Council does not even know what street trees exist, how can it properly manage and protect them? We are confident that many community volunteers would be willing to assist in an audit, thereby minimising the cost of an update.

Confirming species selection guidelines and prioritisation of existing proposals in the Nelson Bay and Raymond Terrace Public Domain Plans, and in those already defined centres with Place Plans would also be low-cost and allow Council to move quickly with planting as and when funding, including grants, became available.

Council should also commit to at least replacing any street trees lost, for whatever reason, throughout Port Stephens, preferably on an at least 2 for 1 policy. The cost of this would be modest as re-planting with appropriate species could be done at the same time as removal or clear up where existing trees are lost. We would also hope that higher priority would be given to preservation of existing trees, there have been too many examples of street trees being lost without adequate justification or consultation. This includes missed opportunities for new planting in accordance with the existing public domain plan when road works have been carried out in Nelson Bay.

Our overall submission is that the community should not have to wait for major funding for a major 'Street Tree Strategy' to see progress – many sensible steps can be taken at low cost on a continuing basis to meet the objectives which are already spelt out in the report.

Appendix 2 – Submission by TRRA to Council dated 25 November 2022, concerning the Revised Tree Vandalism Policy (File number: PSC2013-00406-0062)

Submission

The proposed changes are very minor and are not in themselves controversial. This review has however provided an opportunity to comment on the overall adequacy of the Policy.

Policy progressively weakened

TRRA has made representations on earlier versions of this policy. We observe that the policy has become progressively less transparent and more fragmented since the policy was first adopted in 2008, following a good 'model' issued in 2007 by the Joint Organisation of Hunter Councils.

Through several subsequent revisions, the Port Stephens Policy has progressively diverged from that model, whereas other Councils (e.g. Central Coast, Coffs Harbour, Tweed) have adopted the model more completely.

We submit that as a result, the Port Stephens Policy has become less effective in clearly explaining all the relevant procedures and criteria and therefore also in serving to educate the community and in deterring unlawful tree removal.

The policy has been progressively 'pared back' to a broad high-level statement of worthy intent, with critical operational detail now contained only in secondary documents, some of which are not publicly available (e.g. *Environmental Assessment Procedure (EMS 3.0)*, *Environmental Incident Procedure (EMS 4.0)*, *Tree Vandalism Management Directive*), with others being significantly out of date (e.g. *Council's Tree Technical Specifications, 2014*).

Staff resources

The effectiveness of the policy also cannot be divorced from the issue of staff resources. We understand that Council no longer has a requirement for the Vegetation Management Officer to have advanced qualifications as an arborist. Instead, Council uses qualified contractors on an 'as-needed' basis. This is a problem generally in relation to Council's overall Tree Management policy, which is currently also on exhibition as part of a package of amendments to the DCP. TRRA will be commenting separately on that Section B1 of the DCP. But the lack of a qualified in-house arborist is particularly serious in relation to Tree Vandalism, when an urgent response is often required to reports of vandalism. The bureaucratic process of engaging an external contractor is no substitute for the ability of a staff arborist to quickly inspect and assess damage.

The renaming of the relevant position from Tree Preservation Officer in itself sends a disappointing message to the community about Council's priorities, as has the failure to permanently replace the long term incumbent several years ago, and a succession of vacancies and/or temporary appointments.

We do not criticise the efforts made by various Council staff in the Natural Resources team in relation to tree management generally and tree vandalism specifically, but we are very critical of the priority Council has given to resourcing of this important function – it seems to have been treated as one of lesser importance where savings could, and have been, made.

Relationship to Tree Management more generally

Given that the proposed changes to the Tree Management section of the DCP are still on exhibition until 8 December, we submit that no final decision should be made on the Tree Vandalism Policy in isolation from that document. The two are clearly very closely related.

A typical enquiry from a member of the public about damage or removal of a significant tree will need to be assessed to see if it:

- is permitted without an application;
- has been approved under the Tree Management Policy;
- falls under the exception for imminent risk, or
- is unjustified and falls under the Tree Vandalism Policy, requiring enforcement action.

We submit that pending clarification of the relationship to the Tree Vandalism Policy, and relevant operational processes EITHER the changes to the Tree Management Section should be removed from the package of other DCP changes OR the entire DCP amendment be deferred. We will have more to say on this in our submission on the DCP amendment.

In any case the revised Tree Vandalism Policy should *not* be finalised until Councillors have had the opportunity to consider it alongside the Tree Management section of the DCP.

We have no objection to this submission being made public, in full and unredacted.