



Applying the Unsafe Plants in Non-Rural Areas Code of Practice

Guidance for local council and landholders

Department of Climate Change,
Energy, the Environment and Water



Acknowledgement of Country

Department of Climate Change, Energy, the Environment and Water acknowledges the Traditional Custodians of the lands where we work and live.

We pay our respects to Elders past, present and emerging.

This resource may contain images or names of deceased persons in photographs or historical content.

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Artist and designer Nikita Ridgeway from Aboriginal design agency Boss Lady Creative Designs created the People and Community symbol.

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1. Introduction

The State Environmental Planning Policy (Biodiversity & Conservation) 2021 (B&C SEPP), formerly the State Environmental Planning Policy (Vegetation in non-rural areas) 2017 (Vegetation SEPP) provisions allow landholders to remove vegetation that poses risks to human life and property. However, the *Biodiversity Conservation Act 2016* (BC Act) requires landholders to obtain a biodiversity conservation licence (BC licence) to remove vegetation that is threatened, protected or forms part of a threatened ecological community, even if the vegetation poses a risk to human life and property.

Clause 2.9 of the Biodiversity Conservation Regulation 2017 states that unsafe native vegetation in non-rural areas may be removed in accordance with a published code of practice. The Department of Climate Change, Energy, the Environment and Water (the department) developed the Unsafe Plants in Non-Rural Areas Code of Practice (2024) (the Code) to simplify the process for landholders to remove unsafe native vegetation in non-rural areas that pose an imminent risk to human life and property.

The department developed the Code following targeted consultation with the Ku-ring-gai Municipal Council and a public exhibition in late 2021. The department has incorporated the council consultation and public exhibition responses into the revised Code.

This guidance document aims to:

- explain the scope of the Code
- guide landholders and local councils in implementing the Code
- provide information on incorporating the Code into existing tree removal processes
- provide information about the responsibilities of landholders and local councils.

2. Scope

Local councils are primarily responsible for managing tree removal in accordance with the provisions of B&C SEPP, Development Control Plans (DCP) and Local Environmental Plans (LEP). The Code does not replace existing council tree removal guidelines. Instead, it supplements council tree removal requirements by clarifying the circumstances for removing plants that are threatened, protected or form part of a threatened ecological community. The Code applies to vegetation that poses an imminent risk to human life and property and provides a defence against an offence prescribed in the BC Act.

Landholders are to demonstrate that the vegetation poses an imminent risk to life and property. Councils will assess the risk and determine whether removal is necessary. The Code allows councils to implement its tree removal guidelines in addition to the provisions of the Code if the council determines that additional information is required to make an informed decision (See Figure 1).

The Code requires landholders to obtain prior confirmation from the local council to remove the vegetation. The Code also requires the landholders to obtain Australian Qualification Framework (AQF) level 5 qualified arborist services to carry out the approved removal work. Councils may request additional information from the landholder to make an informed decision. These additional reporting requirements may include arborist reports, ecological assessment reports, reports on mitigation measures to minimise impacts on surrounding vegetation, alternative measures to mitigate the risk, and protection of native fauna.

Councils may establish conditions for removing vegetation to minimise impacts on surrounding vegetation and native fauna and maintenance of replacement plants. The Code requires the landholder to give the council 72 hours prior notice of proposed plant removal works. At their discretion, the council may allocate relevant council staff to monitor the removal process. The timeframes prescribed in the Code are minimum thresholds. The landholder and the council may negotiate and adjust the timelines prescribed by the Code if both parties recognise the necessity.

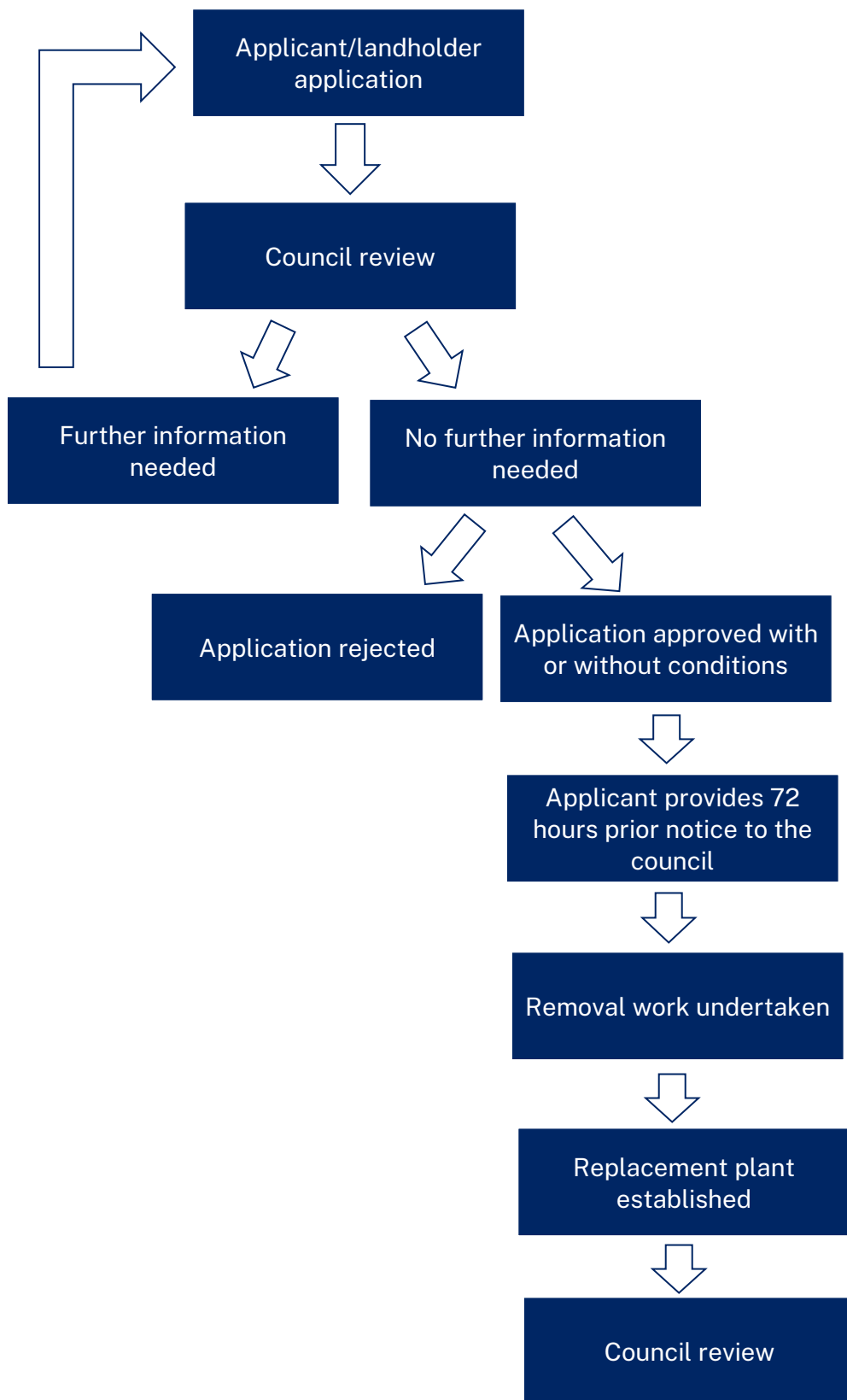


Figure 1 Process diagram for implementing the Code

3. Implementing the provisions of the Code

The Code applies to non-rural areas, as described in section 2.3 of the State Environmental Planning Policy (Biodiversity and Conservation) 2021.

Councils are to implement the Code once it is published on the NSW legislation website.

3.1 Application for removing plants

The Code requires the applicant to obtain prior written confirmation from the local council for removing plants that can pose an imminent risk to human life and property. The applicant is responsible for consulting the local council and obtaining a document list (if needed) with the application form. It is important to note that this documentation may differ from one council to another.

The applicant is responsible for demonstrating that the concerned plant/plants pose an imminent threat to life and property. The applicant may provide additional risk assessment documentation (arborist reports) per the Code's provisions. The council may decide to assess the risk on site, and the applicant needs to facilitate such field assessment by providing permission for entry into the applicant's property/land.

3.2 Removing plants

Removing plants from the property is authorised once the council confirms that the plant is an imminent risk to life or property. The Code requires an AQF 5 level arborist to carry out the authorised plant removal work.

The applicant needs to ensure that the arborist:

- is fully aware of the provisions of the Code
- completes any assessments as per the provisions of the Code and meets council requirements
- does not intentionally harm the surrounding native vegetation
- seeks advice from the council on relocating native animals from the affected area or plant, if necessary.

The applicant must keep proper records showing that no or minimum harm is done to the adjacent/surrounding native vegetation during the removal activities. The applicant should take and keep photos before and after removal activities as evidence. The applicant and council may negotiate on scheduling (see section 3.5) and record-keeping requirements for the removal activity.

3.3 Planting replacement plants

The Code requires the applicant to replace the removed plant with another plant of the same species or a closely related species. The provisions of the Code recommend that the applicant replaces the removed plant with a plant of the same species. However, the Code recognises that finding native plant species can be difficult in certain circumstances. If the applicant is unable to source a plant of the same species, the applicant may negotiate with the council to find a species that is closely related to the removed plant. The applicant should keep records of these negotiations and council agreement to plant a species closely related to the removed plant.

The applicant needs to plant the replacement plant in a suitable area of the property. The council may advise on the location's suitability and the applicant may negotiate the location of the replacement plant with the council. The applicant is responsible for sourcing appropriate replacement plants. The landholder or the applicant must source the replacement plant before the removal works unless the council determines that it is urgent to remove the plant to prevent any harm to human life and property.

The applicant and the local council may agree on a maintenance plan to ensure the survival of the replacement plant. The local council may request the applicant provide information on the growth and maintenance of the replaced plant. The applicant is responsible for providing this information as agreed with the council or upon a request from the council.

3.4 Take precautions to prevent harm to native animals and surrounding native vegetation

The Code requires the applicant to take preventative measures for minimising harm to native animals and surrounding/adjacent native vegetation. The applicant and the arborist must consider risks to adjacent/surrounding native plants and animals and implement mitigation measures to minimise harm. The applicant may engage an arborist to conduct a risk assessment, including any mitigation measures to minimise the risk. The landholder or the applicant must provide the risk assessment documentation to the council at the application stage.

The council may request additional documentation from the applicant and access to the property for onsite assessments or inspections.

3.5 Provide at least 72 hours' notice to the council before plant removal works

The Code requires the applicant to provide at least 72 hours' notice to the council following its confirmation that the plant poses an imminent risk before starting any plant removal work for the authorised activity. The applicant needs to ensure that the council acknowledges notification and confirms in writing that the plant poses an imminent risk. The applicant should keep records of the council acknowledgement to show the applicant's compliance with the Code.

As indicated in previous sections, the council may request the applicant provide documents and other documentation to demonstrate that the applicant has followed the provisions of the Code and conditions set by the council. The applicant should keep records, including council confirmation and correspondence, notification acknowledgement before removal and photographs.

4. Roles and responsibilities

The applicant or the landholder is primarily responsible for ensuring that provisions of the Code and council processes are followed for removing native vegetation that poses an imminent risk to human life and property. The applicant should engage with the council early to discuss the application, including the Code's provisions and documentation to be provided with the application. Early engagement with the local council will help both parties to identify and resolve any potential issues.

The Code aims to clarify the circumstances for removing plants that are threatened, protected or form part of a threatened ecological community required under NSW legislation. Councils may take steps to adjust existing tree management processes to ensure compliance with the Code and communicate updated tree management processes to the community.