

Late Addendum Report

REPORTS FROM THE DIRECTOR PLANNING AND REGULATION

b9 [PR-CM] Tweed Development Control Plan - Section A16 Preservation of Trees or Vegetation

SUBMITTED BY: Planning Reforms

Valid



Civic Leadership



Caring for the Environment

LINKAGE TO INTEGRATED PLANNING AND REPORTING FRAMEWORK:

- 1 Civic Leadership
 - 1.5 Manage and plan for a balance between population growth, urban development and environmental protection and the retention of economical viable agriculture land
 - 4 Caring for the Environment
 - 4.1 Protect the environment and natural beauty of the Tweed
 - 4.1.2 Protect, regulate and maintain natural assets (the coastline, coastal and inland waterways, biodiversity, bushland and scenic landscapes) for current and future generations
-

SUMMARY OF REPORT:

This report follows the public exhibition of the Draft Tweed Development Control Plan (DCP), Section A16 Preservation of Trees or Vegetation, and provides the specifics on the public submissions received.

The Tweed Local Environmental Plan 2014 was officially published by the NSW Government on 4 April 2014, taking immediate effect. With it came the requirement for a DCP to regulate the preservation of trees or vegetation, which was previously managed through three tree preservation orders (TPOs) under the Tweed Local Environmental Plan 2000, and which apply only to the extent of the deferred areas under the new LEP.

The draft Preservation of Trees or Vegetation DCP is targeted at preserving the more significant vegetation within the Shire, and covers in detail the requirements for when a landowner will and will not require a permit approval. Importantly, the DCP seeks to simplify a highly complex and vexed area of the law, which consists of many different and varied pieces of environmental legislation. It is as much a resource document for the Tweed community as it is a regulatory planning tool governing the permit approval process in tandem with the Tweed Local Environmental Plan 2014 and the Tweed City Centres Local Environmental Plan 2012.

The Draft DCP is suitable for adoption and is recommended for Council's endorsement.

Late Addendum Report

RECOMMENDATION:

That That

- 1. Draft Tweed Development Control Plan, Section A16 Preservation of Trees or Vegetation, is adopted, as amended, and**
- 2. The new Tweed Development Control Plan, Section A16 Preservation of Trees or Vegetation adopted under Resolution No.1 be publicly notified in accordance with Regulation 21 of the *Environmental Planning and Assessment Regulation 2000*; and**
- 3. Council forwards to the Director-General of NSW Planning and Infrastructure a copy of the adopted Tweed Development Control Plan, Section A16 Preservation of Trees or Vegetation, in accordance with Regulation 25AB of the *Environmental Planning and Assessment Regulation 2000*.**

Late Addendum Report

REPORT:

As part of the State Government's planning reforms, which commenced in 2006, Tweed Council has been working toward the implementation of a new Local Environmental Plan based on the Standard Instrument (Local Environmental Plans) Order 2006. This has been largely achieved through the making of the Tweed City Centres Local Environmental Plan 2012 and more recently the Tweed Local Environmental Plan 2014, on 4 April 2014.

While it is important to note that Tweed now has three LEPs operating, with the Tweed Local Environmental Plan 2000 remaining in force over those lands 'deferred' from the LEP 2014, this report and the corresponding draft Development Control Plan (DCP), Section A16 - Preservation of Trees or Vegetation ("the DCP"), does not specifically relate too or apply to the LEP 2000.

The new DCP aims to protect the biodiversity, amenity, and cultural values of the Tweed through the preservation of the Shire's trees and vegetation. The key objectives of the DCP are:

- a) To ensure the preservation of locally indigenous trees and vegetation which contribute to the biodiversity, social and amenity value of the Tweed Shire;
- b) To recognise and conserve very large trees (locally indigenous or otherwise) of amenity, heritage or habitat value;
- c) To provide a process for identifying, listing and preserving trees of ecological, heritage, aesthetic and cultural significance through a Significant Vegetation Register;
- d) To minimize, and avoid where possible, unnecessary clearing of native trees and vegetation;
- e) To provide advice to applicants regarding how to proceed with an application to clear vegetation to which this DCP applies;
- f) To provide a process for the submission, assessment and determination of an application to clear vegetation to which this DCP applies; and
- g) To specify types of vegetation clearing that is exempt from this DCP.

In addition to providing the regulatory provisions for when and how a permit approval is to be obtained for clearing of vegetation the DCP also summarises other key environmental legislation, their relationship to the DCP, as well as, key requirements and exemptions.

Unlike many DCPs which only apply when a Development Application is made, the Preservation of Trees or Vegetation DCP is actually the regulator of when an approval is required. This broader regulatory ability and function derives from the specific terms of clause 5.9 and 5.9A of the Tweeds two standard instrument LEPs. While the DCP does not codify the law regulating the clearing of vegetation it does nonetheless serve as a useful resource document as to how other (non-council) environmental laws and regulations operate to preserve and protect natural vegetation within the Tweed and across the State more broadly.

Public Exhibition and Submission Review

Council resolved to publically exhibit the draft DCP at its meeting of 25 October 2012. The DCP was exhibited for a period of 65 days, from 14 November 2012 until 18 January 2013.

Late Addendum Report

This occurred concurrently with the then draft LEP 2012 (made as LEP 2014), and included six public community information sessions held at:

- Tylagum
- Murwillumbah
- Pottsville
- Kingscliff
- Banora Point
- Tweed Heads.

A total of 1510 public submissions were received to the concurrent exhibition of the draft DCP and LEP, of which about 14 raised issues with the DCP. Table 1, below provides a summary of the issues, assessment, and proposed course of action.

Table 1 - Public submissions issues

Sub No	Issue	Planning Response	Recommendation
689 1195 569 1374	DCP A16 protects Camphor Laurel which is a Noxious weed Camphor laurel harvesting should be permitted without consent as it is regulated by other bodies.	DCP A16 does not apply to Camphor Laurel due to clause 5.9(8)e of the Draft Tweed LEP. Large scale Camphor Laurel harvesting falls under the definition of "forestry" and requires consent under the Standard Instrument LEP. Over the last few years there have been significant problems with this activity under self regulation including, erosion control, waterway impacts, biodiversity impacts including on threatened species, noise issues, damage to road infrastructure and amenity issues. Moreover, Far North Coast Weeds who administer the Noxious Weeds Act are no longer able to resource the supervision of this activity.	No action necessary
689 1195	Overly restrictive with respect to koala food trees	The requirement to seek a permit to remove koala food trees currently applies to all zones on the Tweed Coast. However, because of limitations of the LEP, DCP A16 it will effectively not apply to rural and other zones affected by the Native Vegetation Act except for environmental protection zones. Despite this Council and the community are strongly supportive of improved protection of koala habitat. The requirement to seek a permit to remove koala feed trees allows Council the opportunity limit their removal where koalas are present or in areas of special concern. Council officers will provide technical advice and incentives to retain koala food trees where possible.	Include further guidance in DCP A16 to clarify the circumstances under which Council may refuse an application to remove koala feed trees.

Late Addendum Report

Sub No	Issue	Planning Response	Recommendation
Council Arborist	"Lopping" is considered unacceptable practice and contradictory to AS 4373. The word "pruning" is more appropriate	Noted. Note however the word "lop" is used in the Standard Instrument LEP under clause 5.9(3) of the LEP.	Remove the word "lopping" from A16 Section 4(d).
600 1419 1421	DCP A16 relies on the Native Vegetation Act to regulate clearing which is ineffectual.	The application of DCP A16 is limited by the Standard Instrument LEP. Council made representations regarding this issue to NSW P&I in 2010 and was partially successful in having the Standard Instrument LEP changed to allow tree preservation provisions to apply in environmental zones (but not rural zones). Council has resolved to further consider its approach to environmental zoning upon completion of a state government review into the issue.	No action possible in relation to DCP A16, however Council has resolved to further consider its approach to environmental zoning upon completion of a state government review into the issue.
600 1384 1467 1419 1421	Various suggestions for listing of significant vegetation under Schedule 2 of DCP A16: <ul style="list-style-type: none"> · Fingal Head Coastcare Significant Tree Register · Littoral rainforest on 1//408879 and 1//779817 · Coastal Cypress Pine on 1//779817 · Wooyung scar tree north of Billinudgel NR on 1//779817 · Littoral rainforest remnants behind current Coronation Ave shops · The large fig tree in the Koala Beach estate · Large old fig tree in Seabreeze estate · Wetland at end of Peters Ct. 	Noted. The procedure for listing of significant vegetation is included in DCP A16. Nominations cannot be considered until DCP A16 has been adopted by Council.	Subject to further investigation potential listings on Schedule 2 will be referred to Council for determination once DCP A16 is in force.
1374	Restriction on large trees is a disincentive to plant large trees	The removal of large trees of any type has the potential to have biodiversity and amenity impacts and commonly provokes community concern. DCP A16 does not prohibit the removal of such trees if justified.	No action necessary
1374	Restriction on lopping and topping is not practical eg hedges	DCP A16 only applies to trees >5m Pruning for garden maintenance does not require consent. Pruning of large trees, koala feed trees and listed significant trees must be carried out in accordance with AS4373	No action necessary

Late Addendum Report

Sub No	Issue	Planning Response	Recommendation
	R5 zone should not be subject to A16	R5 areas are currently covered under the Native Vegetation Act. Under DCP A16 the Native Vegetation Act prevails in R5 zones	No action necessary
1374	Should be able to remove vegetation if planted	Due to numerous exemptions very little planted vegetation is likely to be captured by A16, however further clarification could be provided to make clearing of most planted vegetation exempt.	Rename the "minor pruning and lopping" exemption to "clearing and pruning for garden maintenance" and include planted vegetation in the exemption, but maintain the need for a permit for the removal (but not pruning) of large trees, koala feed trees and listed significant trees.
1374	Should be able to remove vegetation damaging driveways or boundary fences	As set out in A16 restricting removal in such circumstances would only apply in exceptional cases. Some further clarification of A16 is warranted here.	As above
1374	Restrictions on removal of wetlands and koala habitat supported.	Noted	No action necessary
1384 1467	DCP A16 supported	Noted.	No action necessary
Office of Environment & Heritage	<ol style="list-style-type: none"> 1. A16 Supported 2. Recommends overriding all Native Vegetation Act exemptions in for E3 zone as per E2 zone 3. Remove reference to RU5 zone in relation to subheading to A16 clause 1.7 4. Replace "ecological communities" with "endangered ecological communities" 5. Typographical error 4th para A16 clause 2.3 6. Suggested note in A16 cl 2.3 to reflect requirement for DA under LEP cl 5.9(7)(d) 	<ol style="list-style-type: none"> 1. Noted 2. Not consistent with Council policy via TVMS which recognises NV Act. The E2 zone consists primarily of land set aside for nature conservation purposes (public land, SEPP 14, 26 areas etc) whereas the E3 zone is mostly private and is designed to integrate rural land uses, catchment management and conservation. In these areas Council considers that the Native Vegetation Act 2003 exemptions (RAMAs etc) do not adequately address koala habitat and Threatened species issues both of which are important biodiversity priorities in the Tweed Shire. 3. The terminology used in DCP A16 is consistent with the TSC Act. 4. Noted and agreed 5. Noted and agreed 6. Noted and agreed 	Amendments to DCP A16 to address points 4-6.

In addition to the issues raised by way of public submission a further internal review of the DCP highlighted several other issues that warranted further assessment, these are provided in Table 2.

Late Addendum Report

Table 2 - Internal review issues

Issue	Planning Response	Recommendation
<p>Some large Camphor Laurels may be of cultural heritage significance as they are known to have been planted as street trees and memorial trees in the early 20th century.</p>	<p>Because of clause 5.9(8)e of the LEP which is mandatory, council cannot require landholders to seek a permit to remove such trees. However, a note could be included in DCP A16 advising landholders to seek Council advice in certain circumstances.</p> <p>Heritage listing under clause 5.10 of the LEP would ensure an appropriate consent and consultation process.</p>	<p>Include a note in Schedule 1 of DCP A16 advising landholders to seek Council advice with respect to the removal of: (i) very large Camphor Laurels (> 0.8m diameter at 1.4m) in urban areas or villages or; (ii) any Camphor Laurels listed under sub-clause 1.3(f) (listed significant trees, see Schedule 2).</p> <p>Consideration should also be given to determining the location of any such trees and listing them under clause 5.10 of the LEP.</p>
<p>Threatened species, populations and communities not explicitly considered despite being a relevant consideration.</p>	<p>Threatened species, populations and communities previously captured by other types of prescribed vegetation ie native trees (1.2a) and native vegetation communities (1.2b). However as council is obliged to consider this issue it should be explicitly included.</p>	<p>Include threatened species, populations and communities under the list of prescribed vegetation and in Schedule 1.</p> <p>Provide further clause under the section on “vegetation removal considerations” to clarify the criteria council will use to assess applications to clear threatened species, populations or communities.</p> <p>Include some background to the TSC Act and EPBC Act</p> <p>Provide further clause under the section on “vegetation removal considerations” to clarify the criteria council will use to assess applications to clear threatened species, populations or communities.</p>

Late Addendum Report

Issue	Planning Response	Recommendation
<p>Complexity arising from other partially overlapping legislation and mandatory overarching provisions of the LEP</p>	<p>Noted and agreed</p>	<p>Include advisory notes to assist in the interpretation and rationale behind various provisions.</p> <p>Include overarching provisions arising from the LEP in DCP A16 to avoid the need for applicants to cross reference the LEP.</p> <p>Remove definitions from Native Vegetation Act as these are not strictly necessary and unnecessarily complicate the Code.</p> <p>Include a section to indicate how zones other than environmental rural and large lot residential that are affected by the Native vegetation Act are treated under DCP A16 (e.g SP, RE and W zones)</p> <p>Include information on the Native Vegetation Act in a separate section on relevant state and federal legislation together with additional information of relevant threatened species legislation.</p>
<p>DCP A16 is not easy to navigate for non experts while maintaining legal rigour</p>	<p>Noted and agreed</p>	<p>Provide a new section with the simple 3 step process to determine if a permit is required.</p> <p>Include extensive advisory notes to assist in the interpretation and rationale behind various provisions.</p>
<p>The term “removal or damage” is clumsy.</p>	<p>Noted and agreed. Define “clearing” instead.</p>	<p>Replace “removal or damage” with “clearing” where appropriate throughout.</p>
<p>Potential and core koala habitat is difficult to define.</p>	<p>Noted and agreed. It would be more straightforward for council, as part of its assessment to determine if koalas were present or if removal was inconsistent with SEPP 44 or an approved KPOM</p>	<p>Provide further clause under the section on “vegetation removal considerations” to clarify the criteria council will use to assess applications to clear koala feed trees.</p>
<p>Many landholders will not know if vegetation is threatened or consists of koala feed tree species</p>	<p>Noted and agreed</p>	<p>Include a section in the code to indicate that council staff may be able to assist subject to their availability.</p>

Late Addendum Report

Issue	Planning Response	Recommendation
The list of potential reasons to clear vegetation that Council may not consider valid is onerous and impractical	Noted and agreed	Remove this list from the Code.
No community consultation prior to listing of significant vegetation on Schedule 2	Noted and agreed	Revise to include the need for community consultation prior to adoption by Council.
Applicability of DCP A16 to Tweed City Centre LEP 2012	Noted and agreed	Revise to ensure the DCP applies to any relevant LEP
Editorial issues and formatting	Noted and agreed	Revise as necessary

OPTIONS:

1. Council adopts the draft Development Control Plan, Section A16 Preservation of Trees or Vegetation, which is required to support the environmental protection measures contained in the Tweed Local Environmental Plan 2014 and Tweed City Centres Local Environmental Plan 2012.
2. Council defers the adoption of the draft Development Control Plan, Section A16 Preservation of Trees or Vegetation, and provides reasons for doing so.

CONCLUSION:

The draft Development Control Plan, Section A16 Preservation of Trees or Vegetation is an integral regulatory component of the Planning framework established by the Tweed Local Environmental Plans, and without which the integrity and preservation of the Shire's trees and other vegetation may be at risk.

The DCP aims to provide a responsible and equitable approach to the management of trees or vegetation by providing the mechanism and guidelines for when permit approval is required. The provisions of the DCP have been designed to compliment and respect the variety of environmental legislation operating within NSW that also regulate various aspects of tree or vegetation clearing, and in certain cases specific exemption provisions. Importantly, the DCP strikes a balance between the need to preserve important trees or vegetation and the need to allow home owners to manage their properties without undue restriction and unnecessary regulation. This also ensures that Council's resources are maintained within its ability to act operationally, particularly in instances where the DCP may be breached.

The DCP also represents a significant step forward in having a localised system of regulation that specifically targets the preservation of Koala food trees and habitat, which will be later complimented and supported by the future Tweed Coast Comprehensive Koala Plan of Management.

For the reason discussed above and within this report, the draft Development Control Plan, Section A16 Preservation of Trees or Vegetation is considered suitable for adoption.

COUNCIL IMPLICATIONS:

a. Policy:

Late Addendum Report

Development Control Plan, Section A16 Preservation of Trees or Vegetation provides a more holistic approach to tree and vegetation preservation consistent with the recommendations of the Tweed Vegetation Management Strategy 2004.

The DCP is an essential component of the strategic environmental regulation provided by the Tweed Local Environmental Plans.

b. Budget/Long Term Financial Plan:

It is not expected that the administration of Development Control Plan, Section A16 Preservation of Trees or Vegetation will require additional resourcing.

c. Legal:

Not Applicable.

d. Communication/Engagement:

This report responds to issues raised during the public exhibition of the Draft Tweed Development Control Plan (DCP), Section A16 Preservation of Trees or Vegetation. The amended version of the draft DCP has taken into account, as far is appropriate and practicable, the matters raised through the public consultation.

UNDER SEPARATE COVER/FURTHER INFORMATION:

Attachment 1: Draft Tweed Development Control Plan (DCP), Section A16 Preservation of Trees or Vegetation (ECM3337341)
