



The Hon. Rob Stokes MP
Minister for Planning and Public Spaces

Ref: MDPE19/1807

Councillor Amanda Findley
Mayor
Shoalhaven City Council
PO Box 42
NOWRA NSW 2541

Shoalhaven City Council
Received

- 9 SEP 2019

Dear Mayor *Amanda,*

I write in relation to correspondence from Mr Justin Field MLC about urban tree clearing in the Shoalhaven area.

Mr Field has raised concerns about the potential impact of Shoalhaven City Council's tree clearing clause in its development control plan (DCP) on Shoalhaven's urban tree canopy. I have attached a copy of Mr Field's correspondence and my reply for your information.

While I strongly support local councils in determining planning rules and acknowledge the work Council is doing to protect and enhance urban tree canopy in the Shoalhaven area, I agree with Mr Field's concerns.

I appreciate that tree management requires balancing risk to public safety and property with the numerous benefits provided by trees. However, I am concerned that Shoalhaven's broad exemption is out of step with other councils.

I would appreciate if you could look into this matter and investigate whether the amendments made to your DCP in 2004 have led to perverse outcomes. Can you please look into this matter and advise me of the outcome.

I look forward to your response.

Yours sincerely

The Hon. Rob Stokes MP
Minister for Planning and Public Spaces

Encl: Correspondence from Mr Justin Field MLC
Reply to Mr Justin Field MLC



LEGISLATIVE COUNCIL

Justin Field MLC
6 Macquarie St
SYDNEY NSW 2000

24 May 2019

The Hon. Rob Stokes MP
NSW Minister for Planning and Public Spaces
GPO Box 5341
SYDNEY NSW 2001

Dear Minister,

Re: Urban tree clearing in the Shoalhaven

I am writing in regards to an urban tree clearing issue in the Shoalhaven Local Government Area.

Under the Shoalhaven Development Control Plan 2014, Chapter G4: Tree and Vegetation Management Plan provides an exemption clause 5.2.3 (d) that allows residents to self-assess tree removal on their property. No consent is required from council or notification is required by council.

The relevant clause provides:

- d) Where a tree is closer than its own height from an approved building (including a dwelling, garage or outbuilding). This means where any part of a tree is above a line 45 degrees from the vertical extension of the wall of any building measured from its base (as shown in Figure 1). Hollow bearing trees can only be removed without assessment under the 45 degree exemption if an animal handler is present.

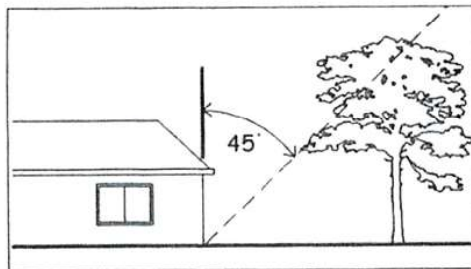


Figure 1: Example of the 45 degrees line from the vertical extension

The rule is known as the '45 degree rule'. In practice, almost every mature tree on an average size residential lot in the Shoalhaven qualifies for removal without council notice or approval. If everyone evoked this rule, the Shoalhaven LGA would be denuded of its entire urban canopy.

I understand that the Shoalhaven may be the only LGA in NSW that has this rule in place. This is increasingly becoming an issue as local tree lopping businesses are known to be touting for business, utilising the flexibility of this rule. I have been informed that businesses are targeting older residents and claiming trees are diseased and dangerous in order to encourage residents to employ them to remove the trees. No arborist report or notification requirement exists under the Shoalhaven DCP, enabling the abuse of trust of residents.

The consequence of this rule is that the area is losing a large number of significant urban trees. Council collects no information about trees removed and consequently has no ability to ensure it is meeting requirements under the *Environmental Planning and Assessment Act 1979* ('the Act') to conserve biological diversity and ecological integrity.

I understand that you as Minister for Planning and Public Spaces have the authority under the Act to direct Shoalhaven City Council to remove the exemption clause 5.2.3 (d) in Chapter G4 of the Shoalhaven DCP 2014.

I am asking you to look into these matters and consider exercising your authority, or seek to influence the Shoalhaven Council to amend its own DCP, or at the very least provide an explanation to you as to how Council is meeting its obligations under the Act while allowing this exemption clause to remain in place.

Thank you for considering this matter, I look forward to your response.

Regards,

Justin Field MLC.



The Hon. Rob Stokes MP
Minister for Planning and Public Spaces

MDPE19/1807

Mr Justin Field MLC
6 Macquarie Street
SYDNEY NSW 2000

Dear Mr Field *Justin,*

Thank you for your correspondence regarding urban tree clearing in the Shoalhaven area.

I agree with your concerns about the potential impact of Shoalhaven City Council's tree clearing clause in its development control plan (DCP) on Shoalhaven's urban tree canopy. It is very important that locally elected representatives determine planning rules in their council area, and for that reason ordinarily I am loathe to intervene. That is why the power to direct a council to amend its DCP is so rarely used.

In this case, I will write to the Mayor of Shoalhaven City Council Amanda Findley to raise the matter and tell her that I agree with your concerns.

In the meantime, Council has told me that it is undertaking several initiatives to better protect and enhance the urban tree canopy in the Shoalhaven area. In particular, Council's planning for the new urban release areas in Nowra-Bomaderry aims to ensure that significant vegetation is retained where possible and additional public domain tree planting occurs as part of the development of these areas.

Council has been working with the Department's Environment, Energy and Science division to assess biodiversity corridors in the Shoalhaven LGA and to protect these corridors in local planning controls.

Council has also started to prepare its Local Strategic Planning Statement (LSPS), which provides an opportunity to identify and implement planning priorities related to the urban tree canopy, open space and the environment. Council's LSPS is due for completion in mid-2020.

If you have any more questions, please do not hesitate to contact my office.

Yours sincerely

The Hon. Rob Stokes MP
Minister for Planning and Public Spaces

LOCAL GOVERNMENT AMENDMENT (GOVERNANCE & PLANNING) ACT 2016

Chapter 3, Section 8A Guiding principles for councils

(1) Exercise of functions generally

The following general principles apply to the exercise of functions by councils:

- (a) Councils should provide strong and effective representation, leadership, planning and decision-making.
- (b) Councils should carry out functions in a way that provides the best possible value for residents and ratepayers.
- (c) Councils should plan strategically, using the integrated planning and reporting framework, for the provision of effective and efficient services and regulation to meet the diverse needs of the local community.
- (d) Councils should apply the integrated planning and reporting framework in carrying out their functions so as to achieve desired outcomes and continuous improvements.
- (e) Councils should work co-operatively with other councils and the State government to achieve desired outcomes for the local community.
- (f) Councils should manage lands and other assets so that current and future local community needs can be met in an affordable way.
- (g) Councils should work with others to secure appropriate services for local community needs.
- (h) Councils should act fairly, ethically and without bias in the interests of the local community.
- (i) Councils should be responsible employers and provide a consultative and supportive working environment for staff.

(2) Decision-making

The following principles apply to decision-making by councils (subject to any other applicable law):

- (a) Councils should recognise diverse local community needs and interests.
- (b) Councils should consider social justice principles.
- (c) Councils should consider the long term and cumulative effects of actions on future generations.
- (d) Councils should consider the principles of ecologically sustainable development.
- (e) Council decision-making should be transparent and decision-makers are to be accountable for decisions and omissions.

(3) Community participation

Councils should actively engage with their local communities, through the use of the integrated planning and reporting framework and other measures.

Chapter 3, Section 8B Principles of sound financial management

The following principles of sound financial management apply to councils:

- (a) Council spending should be responsible and sustainable, aligning general revenue and expenses.
- (b) Councils should invest in responsible and sustainable infrastructure for the benefit of the local community.
- (c) Councils should have effective financial and asset management, including sound policies and processes for the following:
 - (i) performance management and reporting,
 - (ii) asset maintenance and enhancement,
 - (iii) funding decisions,
 - (iv) risk management practices.
- (d) Councils should have regard to achieving intergenerational equity, including ensuring the following:
 - (i) policy decisions are made after considering their financial effects on future generations,
 - (ii) the current generation funds the cost of its services

Chapter 3, 8C Integrated planning and reporting principles that apply to councils

The following principles for strategic planning apply to the development of the integrated planning and reporting framework by councils:

- (a) Councils should identify and prioritise key local community needs and aspirations and consider regional priorities.
- (b) Councils should identify strategic goals to meet those needs and aspirations.
- (c) Councils should develop activities, and prioritise actions, to work towards the strategic goals.
- (d) Councils should ensure that the strategic goals and activities to work towards them may be achieved within council resources.
- (e) Councils should regularly review and evaluate progress towards achieving strategic goals.
- (f) Councils should maintain an integrated approach to planning, delivering, monitoring and reporting on strategic goals.
- (g) Councils should collaborate with others to maximise achievement of strategic goals.
- (h) Councils should manage risks to the local community or area or to the council effectively and proactively.
- (i) Councils should make appropriate evidence-based adaptations to meet changing needs and circumstances.