

## **(Item 32/23) Amendment to Burwood Development Control Plan Section 6.1 - Preservation of Trees or Vegetation - Adoption**

File No: 23/18419

Report by Director City Strategy

### **Summary**

This report provides an overview of the public exhibition of the amendment to Section 6.1 – Preservation of Trees or Vegetation of the Burwood Development Control Plan (DCP).

During the exhibition period, no submissions were received. It is now recommended that Council adopt the proposed amendment to the Section 6.1 of Burwood DCP.

### **Operational Plan Objective**

A.32 Undertake a comprehensive review of the Development Control Plan (DCP) 2013 and prepare a user friendly and interactive DCP

2.1.3 Ensure transparency and accountability in decision making.

### **Background**

Section 6.1 - Preservation of Trees or Vegetation provides controls to ensure the protection of trees and vegetation. The current requirements for tree preservation and protection refer to requirements under the *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* (Vegetation SEPP), which was repealed in March 2022 and no longer apply.

On 1 March 2022, 45 planning policies were consolidated into 11 theme based policies to make the planning system simpler. The Vegetation in Non-Rural Areas SEPP 2017 became Chapter 2 (Vegetation in non-rural areas) of the *Biodiversity and Conservation SEPP 2021*. Chapter 2 replicated the 2017 Vegetation SEPP so no changes were required to the DCP at that time.

On 3 October 2022, the *Biodiversity and Conservation SEPP 2021* was amended to ensure that the requirements for vegetation clearing permits in Council's DCP align with Part 2.3 of the SEPP, which states that Councils can specify vegetation that requires a permit to clear by declaring it in their DCP as vegetation to which Part 2.3 of the SEPP applies. In this regard, the DCP may identify the vegetation in any manner including by listing the species, size or location of vegetation, or the presence of vegetation in an ecological community or in the habitat of a threatened species.

The DCP is required to be updated to refer to the *Biodiversity and Conservation SEPP* to ensure that an application must still be made for a tree permit and that Council can still issue such a permit.

Council, at its meeting on 14 February 2023 considered a report on an amendment to Section 6.1 – Preservation of Trees or Vegetation of the Burwood DCP and resolved to endorse the amendment for public exhibition.

The amendment has been proposed to align with the requirements of the Biodiversity and Conservation State Environmental Planning Policy (SEPP) 2021 and does not propose changes to the existing controls or change the existing level of protection afforded to trees and vegetation under Burwood DCP. The proposed amendments do not affect the consideration of tree and vegetation preservation considered as part of a development application which are assessed in accordance with the provisions of Part 4 (Section 4.15) of the EP&A Act. These changes only apply to the consideration and issue of permits.

A copy of the amendment to Section 6.1 is included at Attachment 1.

### **Public Exhibition**

The amendment to Section 6.1 of the Burwood DCP was exhibited for 28 days between 6 March to 3 April 2023. An exhibition notice and copy of the DCP amendment were displayed on Council's website as well as the Participate Burwood platform for the period of the exhibition.

No submissions were received during the exhibition period.

### **Planning or Policy Implications**

The amendment to Section 6.1 of the BDCP was publicly exhibited for 28 days in accordance with the Environmental Planning and Assessment Regulation 2021 and Burwood Council's Community Engagement Strategy 2023-2026.

### **Financial Implications**

No financial implications.

### **Conclusion**

The proposed amendment to Section 6.1 – Preservation of Trees or Vegetation aligns with the requirements of the Biodiversity and Conservation State Environmental Planning Policy (SEPP) 2021 and does not propose changes to the existing controls or change the existing level of protection afforded to trees and vegetation under Burwood DCP.

The proposed amendments do not affect the consideration of tree and vegetation preservation considered as part of a development application which are assessed in accordance with the provisions of Part 4 (Section 4.15) of the EP&A Act.

The proposed amendment has been exhibited in accordance with the requirements of the EP&A Regulation and Council's Engagement Strategy. During the exhibition no submissions were received.

It is now recommended that Council formally adopt the amendment.

### **Recommendation**

1. That Council, pursuant to Section 3.43 of the Environmental Planning & Assessment Act and in accordance with clause 14 of the Environmental Planning & Assessment Regulation 2021, adopt the amendments to Section 6.1 – Preservation of Trees or Vegetation of the Burwood Development Control Plan, as included at Attachment 1.
2. That the General Manager be endorsed to make minor modifications to any numerical, typographical, interpretation and formatting errors, if required, prior to the finalisation of the amendment to the abovementioned sections of the Burwood DCP.
3. That Council give public notice of the decision to approve the amendments to Burwood DCP, on its website within 28 days in accordance with Clause 14(2) of the Environmental Planning and Assessment Regulation 2021.

### **Attachments**

- 1 Amendment to Section 6.1 - Preservation of Trees or Vegetation

## Attachment 1 – Section 6.1 Preservation of Trees and Vegetation

Existing wording in Burwood DCP	Proposed amendment to the Burwood DCP
<p><b>6.1 Preservation of Trees or Vegetation</b></p> <p><b>Introduction</b></p> <p>State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (the SEPP) has the aim of preserving the amenity of non-rural areas of the State, including its biodiversity values, through the preservation of trees and other vegetation.</p> <p>Authority for tree preservation is derived ultimately from Section 3.14 (1) (e) of the Environmental Planning and Assessment Act (the Act) 1979 which enables an Environmental Planning Instrument to make provision for or with respect to, among other things, the protection or preservation of trees or vegetation.</p> <p><b>Purpose</b></p> <p>Section 7 of the SEPP provides that a person must not clear vegetation (cut down, fell, uproot, kill, poison, ringbark, burn or otherwise destroy, lop or otherwise remove a substantial portion of any tree or other vegetation), other than vegetation described in Section 6.1.1 below, without the authority conferred by:</p> <p>a) A development consent, or</p> <p>b) A permit granted by Council.</p> <p>As enabled by Clause 9 of the SEPP, the purpose of this section of the DCP is to prescribe the species or kinds of trees or other vegetation that are subject to the powers of Clause 7, and to</p>	<p><b>6.1 Preservation of Trees and Vegetation</b></p> <p><b>Introduction</b></p> <p>Council's tree management and landscaping provisions aim to protect the ecological and landscape values of trees and vegetation on private land within the Burwood Local Government Area.</p> <p>Most species of trees and vegetation on private property are protected and an application for the pruning or removal of private trees may be made to Council in the form of a permit granted by Council or development consent.</p> <p>Part 2.3 of the <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i> and Part 4 of the <i>Environmental Planning and Assessment Act 1979</i> applies to the protection of trees and vegetation across the Burwood Local Government Area.</p> <p>This section also:</p> <ul style="list-style-type: none"> <li>▪ Explains and facilitates the procedures for applying to a permit,</li> <li>▪ Indicates the information that must accompany an application for a permit, or an application for a Development Application relating to a tree or vegetation, and</li> <li>▪ Informs people of the consequences of breaching the tree preservation provisions of this DCP.</li> </ul>

Existing wording in Burwood DCP	Proposed amendment to the Burwood DCP
<p>clarify the circumstances where the powers do not apply subject to Clause 8 of the SEPP and Section 6.1.1 below. This section also:</p> <ul style="list-style-type: none"> <li>▪ Explains and facilitates the procedures for applying to a permit,</li> <li>▪ Indicates the information that must accompany an application for a permit, or an application for a Development Application relating to a tree or vegetation, and</li> <li>▪ Informs people of the consequences of breaching the tree preservation provisions of this DCP.</li> </ul>	<p>Note: Trees and vegetation not exempt by this section are declared to be vegetation to which Part 2.3 of the <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i> applies. This includes trees and vegetation identified as a heritage item or within the curtilage of a heritage item, as identified under Schedule 5 Environmental Heritage of <i>Burwood Local Environmental Plan 2012</i>.</p>