

What is the role of the planning scheme in regulating tree removal?

The *Land Use Planning and Approvals Act 1993* defines works as “includes any change to the natural or existing condition or topography of land including the **removal, destruction or lopping of trees and the removal of vegetation or topsoil**, but does not include forest practices, as defined in the [Forest Practices Act 1985](#), carried out in State forests.”

The *Kingborough Interim Planning Scheme 2015* (KIPS 2015) governs ‘works’ e.g. **removal, destruction or lopping of trees and the removal of vegetation** excluding when exempt or no permit required (NPR).

KIPS 2015 includes a number of existing provisions in relation to high conservation value trees and trees listed on the Significant Tree Register.

Iplan offers a navigational resource for accessing KIPS 2015:
<https://iplan.tas.gov.au/pages/plan/book.aspx?exhibit=kinips>

(to navigate iplan please click the book icon and expand Part D Zones to find the individual clauses listed below).

For urban-type zones, provisions relating to high conservation value trees are contained within each zone and include:

- Clauses 10.4.2 A4/P4, 10.5.1 A1/P1 and 10.6.1 A2/P2 for the General Residential Zone;
- Clauses 11.4.2 A4/P4 and 11.5.1 P2 for the Inner Residential Zone;
- Clauses 12.4.1 A1/P1, 12.4.2 A4/P4 and 12.5.1 A2/P2 for the Low Density Residential Zone;
- Clauses 15.4.9 A1/P1 and 15.5.1 A7/P7 for the Urban Mixed Use Zone;
- Clauses 16.4.7 A1/P1 and 16.5.1 A2/P2 for the Village Zone;
- Clauses 17.4.8 A1/P1 and 17.5.1 A5/P5 for the Community Purpose Zone;
- Clauses 18.4.8 A1/P1 and 18.5.1 A5/P5 for the Recreation Zone;
- Clauses 19.4.5 A1/P1 and 19.5.1 A5/P5 for the Open Space Zone;
- Clauses 20.4.8 A1/P1 and 20.5.1 A7/P7 for the Local Business Zone;
- Clauses 21.4.8 A1/P1 and 21.5.1 A7/P7 for the General Business Zone;
- Clauses 22.4.8 A1/P1 and 22.5.1 A7/P7 for the Central Business Zone;
- Clauses 23.4.8 A1/P1 and 23.5.1 A7/P7 for the Commercial Zone;
- Clauses 24.4.8 A1/P1 and 24.5.1 A7/P7 for the Light Industrial Zone;
- Clauses 28.4.6 A1/P1 and 28.5.1 A4/P4 for the Utilities Zone; and
- Clauses 31.4.5 A1/P1 and 31.5.1 A7/P7 for the Port and Marine Zone.

The above provisions will trigger the requirement for a planning permit where a development (including vegetation removal) impacts on high conservation value trees, unless the development is **exempt** under Clause 5.0 or otherwise no permit required.

However, these provisions do not deal with the removal of trees which do not meet the definition of high conservation value trees and therefore the planning scheme does not govern the removal of these trees on private property, unless there is an existing planning permit condition or mechanism on the title (such as a Part 5 or covenant) requiring Council approval prior to removal.

Within the rural type zones (Rural Living, Environmental Living, Rural Resource and Environmental Management), there are general provisions relating to native vegetation removal within the zone standards, including:

Part 7 Frequently Asked Questions

- Clauses 13.4.3 A1/P1 and 13.5.1 A2/P2 for the Rural Living Zone;
- Clauses 14.4.3 A1/P1 and 14.5.1 A2/P2 for the Environmental Living Zone;
- Clauses 26.4.3 A1/P1, 26.5.1 P1 and 26.5.2 P1 for the Rural Resource Zone; and
- Clauses 29.4.3 A1/P1 for the Environmental Management Zone.

The above provisions will trigger the requirement for a planning permit where a development (including vegetation removal) impacts on native vegetation, unless the development is exempt under Clause 5.0 or is otherwise no permit required.

Specific provisions relating to high conservation value trees and trees within native vegetation communities are also contained within the Biodiversity Code (see Clauses E10.7.1 and E10.8.1). These provisions apply across all rural type zones as well as some urban-type zones, except where development (including vegetation removal) is exempt under Clause 5.0 or E10.4.1.

For trees listed on the Significant Tree Register and listed in Table E24.1 of the Significant Tree Code, a planning permit is required under Clause 24.6.1 for lopping, pruning, removal or destruction of significant trees unless the development is exempt under Clause 5.0 or exempt under Clause E24.4.

How does Council's significant tree policy work?

The community engagement and consultation process required to add or remove a tree from the Register sits within the Significant Tree Policy rather than within the by-law or the planning scheme. The planning scheme then requires amending to reflect any decisions to list or delist a tree on the Register. As a consequence, the Significant Tree Register created under the Policy may not be the same as the Significant Tree Register as per Table E24.1 of the planning scheme, as there is a time gap between when a tree is listed on the Register in accordance with Council Policy and the planning scheme being amended to include this tree in Table E24.1.

It is acknowledged that the engagement and consultation process detailed in this Policy requires review to clarify how the process for listing or delisting dovetails with the planning scheme amendment process and avoids duplication in process. In the event that Part 7 is removed, the Policy will also need to be reviewed and updated to reflect this.

What is the role of Part 7 of the current Health By-Law?

The current Part 7 of the Health By-law provides a regulatory framework (including offsets) for the assessment of exempt and NPR vegetation removal.

What are the proposed changes to Health By-Law?

In the proposed Health By-law, on advice, the tree provisions have been removed. If the proposed By-law is adopted, Council will not regulate exempt and NPR vegetation removal within a regulatory framework.

What happens if Part 7 is removed?

Where development (including tree removal) is exempt or NPR under the planning scheme, in the event that Part 7 is removed, this tree removal will no longer be regulated, including the removal of high conservation value trees and trees listed on the Significant Tree Register in some circumstances.

In addition, as there is a time gap between when a tree is listed on the Significant Tree Register in accordance with Council Policy and the planning scheme being amended to include this tree in Table

E24.1, in the event that Part 7 is removed, trees listed on the Register but not yet listed in Table E24.1 may be removed without any permit requirements.

Is there still a Council process for landowners wanting to remove trees on private land?

Yes. While there will not be a regulatory framework controlling the removal of trees outside the planning scheme, determining whether tree removal is exempt or NPR is complex and may rely upon supporting documentation such as an arborist.

Council has established a process to determine whether planned clearing or tree removal is exempt or no permit required (NPR).

The form that needs to be filled out can be found at:

<https://www.kingborough.tas.gov.au/services/environmental-programs/clearing-and-tree-removal/>

What will happen when the new Tasmanian Planning Scheme comes into effect?

Essentially all the tree provisions within the zones will go under the LPS and similar provisions will only exist where there is a Specific Area Plan and the development is not otherwise exempt or no permit required. Therefore, under the LPS the urban-type zones will no longer have tree provisions for most of Kingborough.

Similarly, the priority vegetation provisions in the Natural Assets Code will not apply as broadly as the current Biodiversity Code. While the Natural Assets Code will enable the removal of priority vegetation removal to be assessed in the rural-type zones and for subdivision in the General Residential and Low Density Residential zones, the ability to require offsets for tree removal is unclear, the Code cannot apply to development other than subdivision in the General Residential and Low Density Residential Zones (eg multiple dwellings). The Code also cannot apply at all to the Inner Residential, Commercial, Business, Industrial, Agriculture, Village and Urban-Mixed Use zones.

The exemptions will also increase under the LPS as some of the limitations in IDP4 (and therefore KIPS 2015) will no longer exist. For example, under IDP4 and KIPS 2015, all of the exemptions for landscaping, outbuildings, safety, garden structures etc apply irrespective of whether the trees are listed on the Significant Tree Register or are within a Biodiversity Protection Area. Whereas under IDP4, in some instances listing on the Register or being within a Biodiversity Protection Area mean removal of these trees is not automatically exempt.