



New South Wales

Unsafe Plants in Non-rural Areas Code of Practice 2024

under the

Biodiversity Conservation Regulation 2017

I, Ingrid Emery, as delegate of the Minister for the Environment, in pursuance of clause 2.9 of the *Biodiversity Conservation Regulation 2017*, do, by this Order, make the following Unsafe Plants in Non-rural Areas Code of Practice 2024.

Dated this 25 day of September 2024.

A handwritten signature in black ink, consisting of a stylized 'I' followed by a series of loops and a final horizontal stroke.

Ingrid Emery

A/Deputy Secretary, Biodiversity, Conservation and Science Group

Department of Climate Change,

Energy, the Environment and Water

as a delegate of the Minister for the Environment

Explanatory note

This Order is made under clause 2.9 of the *Biodiversity Conservation Regulation 2017*.

The Order makes the *Unsafe Plants in Non-rural Areas Code of Practice 2024*.

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Part 1 Introduction

1. Name of Code

This Code of Practice is the Unsafe Plants in Non-rural Areas Code of Practice 2024.

2. Commencement

This Code commences on the day that the Order making this Code is published on the NSW legislation website.

3. Application of Code

1. This Code is made under clause 2.9 of the *Biodiversity Conservation Regulation 2017*.
2. This Code is a code of practice relating to the picking of plants that are a risk to human life or property and authorises the carrying out of actions in accordance with the terms of this Code.
3. It is a defence to a prosecution for an offence under sections 2.2 or 2.4 of the BC Act if the person charged establishes that they have wholly complied with each condition of this Code.
4. This code applies to non-rural areas.

Note: at the time this Code was published non-rural areas included:

the following local government areas: Bayside, City of Blacktown, Burwood, Camden, City of Campbelltown, Canterbury-Bankstown, Canada Bay, Cumberland, City of Fairfield, Georges River, City of Hawkesbury, Hornsby, Hunter's Hill, Georges River, Inner West, Ku-ring-gai, Lane Cove, City of Liverpool, Mosman, Newcastle, North Sydney, Northern Beaches, City of Parramatta, City of Penrith, City of Randwick, Rockdale, City of Ryde, Strathfield, Sutherland Shire, City of Sydney, The Hills Shire, Waverley, City of Willoughby, Woollahra.

land within the following zones under an environmental planning instrument: Zone RU5 Village, Zone R1 General Residential, Zone R2 Low Density Residential, Zone R3 Medium Density Residential, Zone R4 High Density Residential, Zone R5 Large Lot Residential, Zone B1 Neighbourhood Centre, Zone B2 Local Centre, Zone B3 Commercial Core, Zone B4 Mixed Use, Zone B5 Business Development, Zone B6 Enterprise Corridor, Zone B7 Business Park, Zone B8 Metropolitan Centre, Zone IN1 General Industrial, Zone IN2 Light Industrial, Zone IN3 Heavy Industrial, Zone IN4 Working Waterfront, Zone SP1 Special Activities, Zone SP2 Infrastructure, Zone SP3 Tourist, Zone RE1 Public Recreation, Zone RE2 Private Recreation, Zone E2 Environmental Conservation, Zone E3 Environmental Management, Zone E4 Environmental Living or Zone W3 Working Waterways.

Please refer to clause 2.3 of the State Environmental Planning Policy (Biodiversity and Conservation) 2021 for the list of local government areas to which this Code applies.

4. Object of Code

The object of this Code is to authorise picking of plants that pose an imminent risk to human life or property in non-rural areas, where development consent is not required. This includes the picking of plants that pose an imminent risk to human life or property.

5. Interpretation

Words and expressions defined in the Dictionary at the end of this Code have the meaning set out in the Dictionary.

Part 2 Authorisation of Plant works

1. Removal of a plant that poses an imminent risk to human life or property

A person is authorised to pick a plant on land owned by that person if that plant is a threatened species, part of a Threatened Ecological Community, or is a protected plant, provided that:

1. the plant poses an imminent risk to human life or property;
2. the person has obtained prior confirmation in writing from the relevant local Council that it is satisfied the plant to be picked poses an imminent risk to human life or property;
3. the authorised action is undertaken by an Australian Qualification Framework (AQF) 5 level arborist (minimum qualification of a Diploma in Arboriculture);
4. any plant that is picked under this Code is replaced with a plant of the same or closely related species, to be planted in a suitable area on the land from which the plant was taken;
5. the person does not unlawfully harm a native animal when picking a plant in accordance with this Code; and
6. the person gives the relevant local Council at least 72 hours notice in writing of their intention to carry out actions in accordance with this Code.

Dictionary

the Act means the Biodiversity Conservation Act 2016.

animal means any animal, whether vertebrate or invertebrate and in any stage of biological development, but does not include:

humans, or

fish within the meaning of the Fisheries Management Act 1994.

council has the same meaning as it has in the Local Government Act 1993.

habitat means: (a) an area periodically or occasionally occupied by a species or ecological community, and (b) the biotic and abiotic components of an area.

harm an animal includes kill, injure or capture the animal, and attempt to harm an animal includes hunting or pursuing, or using anything, for the purpose of harming the animal.

Imminent risk means a risk of serious personal injury or damage to property that is impending or likely to occur at any moment.

Non-rural area has the same meaning as in clause 2.3 of the State Environmental Planning Policy (Biodiversity and Conservation) 2021.

picking means to gather, take, cut, remove from the ground, destroy, poison, crush or injure the plant or any part of the plant.

plant means any plant, whether vascular or non-vascular and in any stage of biological development, and includes fungi and lichens, but does not include marine vegetation.

protected plant means a plant of a species listed or referred to in Schedule 5 of the Act.

threatened ecological community means a critically endangered ecological community, an endangered ecological community or a vulnerable ecological community listed in Schedule 2 of the Act.