



Economic Development Act 2012

Economic Development (Vegetation Management) By- law 2013

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Reprint note

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Queensland

Economic Development (Vegetation Management) By-law 2013

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Economic Development (Vegetation Management) By-law 2013

Part 1 Preliminary

1 Short title

This by-law may be cited as the *Economic Development (Vegetation Management) By-law 2013*.

2 Commencement

This by-law commences on 1 February 2013.

3 Main purpose of by-law and its achievement

- (1) The main purpose of this by-law is to identify vegetation within prescribed priority development areas that is to be managed—
 - (a) to maintain biodiversity; or
 - (b) to preserve natural landforms; or
 - (c) to ensure its continued contribution to the character of the landscape; or
 - (d) to protect its historical, cultural heritage or amenity value to the public.
- (2) For achieving its main purpose, this by-law—
 - (a) regulates interference with controlled vegetation; and
 - (b) controls activities in relation to particular vegetation.

4 Priority development areas to which by-law applies

- (1) This by-law applies to the priority development areas (each a *prescribed priority development area*) in the local government area of Brisbane.

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(2) In this section—

Brisbane see the *City of Brisbane Act 2010*.

5 Non-application of particular local law

The local law called ‘Natural Assets Local Law 2003’, made by the Brisbane City Council, does not apply to a priority development area from the day this by-law applies to the area.

6 Definitions

The dictionary in the schedule defines particular words used in this by-law.

Part 2 Controlled vegetation

Division 1 Declarations of controlled vegetation

7 Controlled vegetation notices

- (1) MEDQ may, by notice to the owner of land in a prescribed priority development area (a *controlled vegetation notice*), declare vegetation on the land to be controlled vegetation.
- (2) In giving a controlled vegetation notice, MEDQ must have regard to the main purposes of this by-law.
- (3) The controlled vegetation notice may be about any of the following in the priority development area—
 - (a) a particular tree or plant;
 - (b) a particular group of trees or plants;
 - (c) vegetation of a particular species in a part of the area;
 - (d) all vegetation in a part of the area.

-
- (4) However, for subsection (3)(d), the notice may exclude particular vegetation in the part of the area.
 - (5) If MEDQ gives the owner of land a controlled vegetation notice, MEDQ must give the owner an information notice for the decision to give the notice.

8 Register of controlled vegetation

MEDQ must keep a register of controlled vegetation.

Division 2 Interference with controlled vegetation

9 Unlawful interference with controlled vegetation

- (1) A person must not interfere with a tree or plant that is controlled vegetation unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

- (2) Subsection (1) does not apply to a person if—
 - (a) the person has a permit to interfere with the tree or plant; or
 - (b) the interference by the person is permitted under section 10.

10 Permitted interference with controlled vegetation

- (1) A person may interfere with controlled vegetation if the interference is—
 - (a) by an authorised person; or
 - (b) by a public service employee in the performance of the employee's duties; or
 - (c) by an employee of a local government or public utility provider in the performance of the employee's duties; or

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- (d) the removal of part of a tree or plant in response to an immediate and significant threat to a person or property;
or
 - (e) pruning the vegetation.
- (2) In this section—
- pruning*** means maintenance or remedial pruning of vegetation in accordance with AS 4373—2007: Pruning of amenity trees.
- public utility provider*** means an entity, other than a local government, that provides any of the following—
- (a) reticulated water, electricity or gas;
 - (b) sewerage or drainage services;
 - (c) telecommunication services.

Division 3 Permits

Subdivision 1 Permit applications

11 How to make application

- (1) A person may apply to MEDQ for a permit to interfere with controlled vegetation (a ***permit application***).
- (2) The permit application must be in the form approved by MEDQ and include or be accompanied by each of the following—
 - (a) if the applicant is not the owner of the land on which the controlled vegetation is situated—the consent of the owner;
 - (b) a description of the controlled vegetation that the applicant proposes to interfere with (the ***relevant vegetation***) and surrounding vegetation that may be affected by the interference, including a description of

- the biological characteristics of the relevant vegetation and surrounding vegetation;
- (c) a statement of the reasons why the applicant proposes to interfere with the relevant vegetation;
 - (d) a summary of any alternative measures that could be undertaken to minimise or avoid interfering with the relevant vegetation;
 - (e) a statement as to why the applicant does not intend to take any alternative measures;
 - (f) particulars of how the applicant proposes to interfere with the relevant vegetation, including—
 - (i) when the interference is to happen; and
 - (ii) the extent of the interference; and
 - (iii) how any material that is to be removed is to be disposed of; and
 - (iv) the proposed measures to be adopted to minimise environmental harm caused by the interference.

Examples—

preventing erosion, controlling movement of sediment

- (3) For subsection (2)(b), the description of the relevant vegetation must include—
 - (a) details of the species of flora, including whether it is a native or introduced species, and the location of each species; and
 - (b) a statement about each of the following—
 - (i) the health, vulnerability or fragility of the vegetation;
 - (ii) whether the vegetation provides habitat for fauna;
 - (iii) whether the vegetation enhances the landscape or has historical, cultural heritage or amenity value to the public.

12 Further information and documents

- (1) MEDQ may, by notice given to the applicant, ask the applicant to give MEDQ, within a stated period of at least 20 business days after the giving of the notice, the further stated information or documents MEDQ reasonably requires to decide the permit application.
- (2) MEDQ may refuse the application if the applicant does not give MEDQ the stated information or documents by the stated day, without reasonable excuse.

13 Deciding application

- (1) MEDQ must consider the permit application and either—
 - (a) approve the permit application, with or without conditions; or
 - (b) refuse the permit application.
- (2) In deciding a permit application, MEDQ must have regard to the following—
 - (a) how the proposed interference relates to the main purposes of this by-law;
 - (b) the potential environmental impacts of the proposed interference;
 - (c) the reasons for the proposed interference and whether there is any reasonably practicable alternative to the proposed interference;
 - (d) the potential impacts on the character of the landscape or the historical, cultural heritage or amenity value to the public of the vegetation.
- (3) Within 10 business days after deciding the permit application, MEDQ must give the applicant—
 - (a) if the decision is to approve the application—notice of the decision; or

- (b) if the decision is to approve the application with conditions, or refuse to approve the application—an information notice for the decision.

14 Criteria for imposing conditions

The conditions imposed on a permit may be about anything MEDQ considers appropriate, including, for example, any of the following—

- (a) regulating how the interference with the vegetation is to occur;

Examples—

- directing when the interference is to be carried out
 - requiring notice to be given to MEDQ before the interference is carried out
 - stating the methods and machinery that may be used
 - requiring erosion and sedimentation to be controlled
 - identifying measures that must be taken to ensure surrounding controlled vegetation is not damaged
- (b) stating how the vegetation that is vegetation to be removed is to be disposed of;
- (c) stating measures the holder of the permit must take to ensure the ongoing health of the vegetation;
- (d) requiring a copy of the permit to be given to a person involved in the interference;
- (e) requiring a notice, in the form approved by MEDQ, to be displayed on the land on which the interference with the vegetation is to be carried out;
- (f) requiring the holder of the permit to give MEDQ reasonable security, including, for example, a deposit of money, a guarantee or an insurance bond, to ensure the holder complies with the permit.

15 Duration of permit

A permit is granted for the period stated in the permit.

Subdivision 2 Provisions about conditions of permits

16 Compliance with conditions of permit

The holder of a permit must comply with each condition of the permit unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

17 Power to change conditions of permit

- (1) MEDQ may, by notice given to the holder of the permit, change a condition of the holder's permit.
- (2) However, MEDQ may change a condition of the permit only if—
 - (a) the holder agrees to the proposed change; or
 - (b) before changing the condition, MEDQ—
 - (i) gives the holder notice of the proposed change; and
 - (ii) invites the holder to make written representations about the proposed change within a stated period of at least 20 business days after the giving of the notice; and
 - (iii) if the holder makes written representations within the stated period—takes the representations into account in deciding whether to change the condition.
- (3) If MEDQ changes a condition of the permit, MEDQ must give the holder of the permit an information notice for the decision.

Subdivision 3 **Suspension or cancellation of permits**

18 **Grounds for suspension or cancellation of permit**

Each of the following is a ground for suspending or cancelling a permit—

- (a) the holder of the permit has contravened a condition of the permit;
- (b) the permit was given because of a materially false or misleading representation;
- (c) the holder of the permit fails to carry out a requirement of an oral compliance direction or a compliance notice, in relation to a contravention of a condition of the permit, within the period stated for the direction or in the notice.

19 **Show cause notice**

- (1) If MEDQ believes a ground exists to suspend or cancel a permit, MEDQ may give the holder of the permit a notice under this section (a *show cause notice*).
- (2) The show cause notice must state each of the following—
 - (a) the action MEDQ proposes taking under this division (the *proposed action*);
 - (b) the grounds for the proposed action;
 - (c) an outline of the facts and circumstances forming the basis for the grounds;
 - (d) if the proposed action is suspension of the permit—the proposed suspension period;
 - (e) that the holder may, within a stated period (the *show cause period*), make written representations to MEDQ to show why the proposed action should not be taken.

- (3) The show cause period must end at least 15 business days after the holder is given the show cause notice.

20 Representations about show cause notice

- (1) The holder of the permit may in the show cause period make written representations about the show cause notice to MEDQ.
- (2) MEDQ must consider all representations made under subsection (1).

21 Ending show cause process without further action

If, after considering any representations made about the show cause notice, MEDQ no longer believes a ground exists to suspend or cancel the permit, MEDQ—

- (a) must not take any further action about the show cause notice; and
- (b) must give the holder of the permit a notice that no further action is to be taken about the show cause notice.

22 Suspension or cancellation of permit

- (1) If, after considering any representations made about the show cause notice, MEDQ still believes a ground exists to suspend or cancel the permit, MEDQ may—
 - (a) if the proposed action was to suspend the permit—suspend the permit for not longer than the proposed suspension period; or
 - (b) if the proposed action was to cancel the permit—cancel the permit or suspend it for a period.
- (2) If MEDQ decides to take action under subsection (1), MEDQ must as soon as practicable give an information notice for the decision to the holder of the permit.

Subdivision 4 **Miscellaneous provisions**

23 **Production of permit**

A person carrying out work authorised under a permit must produce the permit immediately upon demand by an authorised person unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

24 **Joint and several liability**

If more than 1 person is the holder of a permit, each person is jointly and severally—

- (a) responsible for complying with the conditions of the permit; and
- (b) liable for all debts payable under this by-law and unpaid by the holder to MEDQ.

Part 3 **Vegetation other than controlled vegetation**

25 **Vegetation on roads**

- (1) A person must not, without a reasonable excuse, carry out any of the following in a prescribed priority development area (each a *prohibited activity*)—

- (a) interfere with vegetation on a road;
- (b) plant vegetation on a road;
- (c) engage in an activity preparatory to the planting of vegetation on a road.

Maximum penalty—20 penalty units.

- (2) However, subsection (1) does not apply if the person—

- (a) is an authorised person; or
- (b) is otherwise authorised by MEDQ to carry out the prohibited activity.

26 Hazardous and pest vegetation

- (1) This section applies if an authorised person—
 - (a) reasonably considers vegetation, or any part of the vegetation, on land in a prescribed priority development area is hazardous (*hazardous vegetation*); or
Examples of hazardous vegetation—
 - vegetation that increases the risk of fire
 - vegetation that harbours vermin or other pests
 - vegetation that triggers allergies or could otherwise cause injury to a person
 - vegetation that impedes sightlines for motorists
 - (b) finds pest vegetation on land.
- (2) The authorised person may give the owner of the land a notice (a *management notice*) to take the action stated in the notice, including, for example, to control the hazardous vegetation or pest vegetation, within the stated period of at least 20 business days after the giving of the notice.
- (3) The management notice must state the following—
 - (a) the action the owner must take;
 - (b) that it is an offence to fail to comply with the notice unless the person has a reasonable excuse.
- (4) If the authorised person gives the owner of the land a management notice, the person must give the owner an information notice for the decision to give the notice.
- (5) In this section—
pest vegetation means vegetation identified as pest vegetation in a register kept by MEDQ.

27 Offence to fail to comply with management notice

A person given a management notice must comply with the notice unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

Part 4 Enforcement

28 Oral compliance directions

- (1) This section applies if a person is engaging in conduct that an authorised person reasonably believes is a contravention of—
 - (a) a condition of the person's permit; or
 - (b) a provision of this by-law.
- (2) An authorised person may give the person an oral direction (an *oral compliance direction*)—
 - (a) to stop the conduct; or
 - (b) to take the stated action, within the stated period of at least 20 business days after the giving of the direction, to remedy the contravention.
- (3) The authorised person must as soon as practicable—
 - (a) confirm the oral compliance direction by notice given to the person; and
 - (b) give the person an information notice for the decision to give the oral compliance direction.
- (4) When giving a person an oral compliance direction, the authorised person must warn the person it is an offence not to comply with the direction unless the person has a reasonable excuse.

29 Offence to fail to comply with oral compliance direction

A person given an oral compliance direction must comply with the direction unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

30 Compliance notices

- (1) This section applies if an authorised person reasonably believes a person—
 - (a) is contravening a condition of the person’s permit; or
 - (b) is contravening a provision of this by-law; or
 - (c) has contravened a provision of this by-law in circumstances that make it likely the contravention will continue or be repeated.
- (2) The authorised person may give a person a notice (a *compliance notice*) requiring the person to remedy the contravention.
- (3) A compliance notice must state each of the following—
 - (a) that the authorised person reasonably believes the person to whom the notice is to be given—
 - (i) is contravening a condition of the person’s permit; or
 - (ii) is contravening a provision of this by-law; or
 - (iii) has contravened a provision of this by-law in circumstances that make it likely the contravention will continue or be repeated;
 - (b) if subsection (1)(a) applies—
 - (i) the condition of the permit the authorised person believes has been contravened; and
 - (ii) briefly, how it is believed the condition has been contravened;
 - (c) if subsection (1)(b) or (c) applies—

-
- (i) the provision the authorised person believes is being or has been contravened; and
 - (ii) briefly, how it is believed the provision is being or has been contravened;
 - (d) that the person must remedy the contravention within a stated reasonable period;
 - (e) that it is an offence to fail to comply with the compliance notice unless the person has a reasonable excuse.
- (4) If a compliance notice requires the person to refrain from doing an act, the notice also must state—
- (a) a period for which the requirement applies; or
 - (b) that the requirement applies until further notice.
- (5) If the authorised person gives the person a compliance notice, the authorised person must give the person an information notice for the decision to give the notice.

31 Work to be carried out under compliance notice

- (1) This section applies to a person who is given a compliance notice.
- (2) The compliance notice may require the person to fix any damage resulting from the interference, including—
 - (a) to rehabilitate vegetation that has been interfered with; or
 - (b) to plant the vegetation, stated in the notice (the *new vegetation*), to replace the vegetation that has been interfered with.
- (3) If the compliance notice requires the person to plant the new vegetation, the notice may require the person—
 - (a) to water, tend or otherwise nurture the new vegetation; and
 - (b) to carry out the further action stated in the notice if the new vegetation fails to germinate or grow.

32 Joint and several liability

If more than 1 person is the owner of land and the owner is required by an authorised person to carry out a particular activity on the land, each person is jointly and severally—

- (a) responsible for carrying out the activity; and
- (b) liable for all debts payable under this by-law and unpaid by the owner to MEDQ.

33 Offence to fail to comply with compliance notice

A person given a compliance notice must comply with the notice unless the person has a reasonable excuse.

Maximum penalty—20 penalty units.

34 MEDQ's power to carry out work

- (1) This section applies if—
 - (a) a management notice, oral compliance direction or compliance notice requires a person to carry out work; and
 - (b) the person fails to carry out the work within the period stated.
- (2) MEDQ may—
 - (a) carry out the work; and
 - (b) recover from the person as a debt the amount reasonably incurred by MEDQ in carrying out the work, including interest on the amount.

Part 5 Reviews and appeals

Division 1 Review of decisions

35 **Appeal process starts with review**

Every appeal against an original decision must be, in the first instance, by way of an application for a review.

36 **Who is an *interested person***

- (1) An *interested person* for this part is—
 - (a) a person who has been given, or is entitled to be given, an information notice; or
 - (b) a person who has been given a management notice, oral compliance direction or compliance notice by an authorised person.
- (2) The decision or action for which a notice or direction was given under subsection (1) is an *original decision*.

37 **Who may apply for review**

An interested person for an original decision may apply to MEDQ for a review of the decision (a *review application*).

38 **Requirements for making application**

- (1) A review application must be—
 - (a) in the form approved by MEDQ; and
 - (b) accompanied by a statement of the grounds on which the applicant seeks the review of the original decision; and
 - (c) made within 20 business days after the day the applicant is given an information notice about the decision.

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- (2) However, MEDQ may at any time extend the time for making a review application.

39 Stay of operation of original decision

- (1) A review application does not stay the original decision the subject of the application.
- (2) However, the applicant may immediately apply for a stay of the original decision to the Magistrates Court.
- (3) The court may stay the original decision to secure the effectiveness of the review and a later appeal to the court.
- (4) The stay—
 - (a) may be granted on conditions the court considers appropriate; and
 - (b) operates for the period fixed by the court; and
 - (c) may be amended or revoked by the court.
- (5) The period of the stay must not extend past the time when MEDQ makes a review decision about the original decision and any later period the court allows the applicant to enable the applicant to appeal against the review decision.
- (6) A review application affects the original decision, or carrying out of the decision, only if the decision is stayed.

40 Review decision

- (1) MEDQ must, within 20 business days after receiving a review application—
 - (a) review the original decision the subject of the application; and
 - (b) make a decision (the *review decision*) to—
 - (i) confirm the original decision; or
 - (ii) amend the original decision; or

-
- (iii) substitute another decision for the original decision.
- (2) The review application must not be dealt with by—
- (a) the person who made the original decision; or
 - (b) a person in a less senior office than the person who made the original decision.
- (3) Subsection (2)—
- (a) applies despite the *Acts Interpretation Act 1954*, section 27A; and
Editor's note—
Acts Interpretation Act 1954, section 27A (Delegation of functions or powers)
 - (b) does not apply to an original decision made personally by MEDQ.
- (4) If the review decision confirms the original decision, for the purpose of an appeal, the original decision is taken to be the review decision.
- (5) If the review decision amends the original decision, for the purpose of an appeal, the original decision as amended is taken to be the review decision.

41 Notice of review decision

- (1) MEDQ must, within 10 business days after making a review decision, give the applicant notice (the ***review notice***) of the review decision.
- (2) If the review decision is not the decision sought by the applicant, the review notice must also state the following—
- (a) the reasons for the decision;
 - (b) that the applicant may, within 20 business days after the review notice is given, appeal against the decision to the Magistrates Court;
 - (c) how to appeal;

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- (d) that the applicant may apply to the court for a stay of the decision.
- (3) If MEDQ does not give the review notice within the 10 business days, MEDQ is taken to have made a review decision confirming the original decision.

Division 2 Appeals

42 Who may appeal

If an interested person has applied for a review of an original decision, any interested person for the decision may appeal against the review decision to the Magistrates Court.

43 Starting appeal

- (1) An appeal is started by—
 - (a) filing notice of appeal with the Magistrates Court; and
 - (b) serving a copy of the notice on MEDQ; and
 - (c) complying with rules of court applicable to the appeal.
- (2) The notice of appeal must be filed within 20 business days after the appellant receives notice of the review decision appealed against.
- (3) However, the court may at any time extend the time for filing the notice of appeal.
- (4) The notice of appeal must state fully the grounds of the appeal and the facts relied on.

44 Stay of operation of review decision

- (1) The Magistrates Court may grant a stay of the operation of a review decision appealed against to secure the effectiveness of the appeal.
- (2) A stay—

- (a) may be granted on conditions the court considers appropriate; and
 - (b) operates for the period fixed by the court; and
 - (c) may be amended or revoked by the court.
- (3) The period of a stay stated by the court must not extend past the time when the court decides the appeal.
- (4) An appeal against a decision affects the decision, or the carrying out of the decision, only if the decision is stayed.

45 Hearing procedures

- (1) In deciding an appeal, the Magistrates Court—
- (a) has the same powers as MEDQ in making the review decision appealed against; and
 - (b) is not bound by the rules of evidence; and
 - (c) must comply with natural justice.
- (2) An appeal is by way of rehearing, unaffected by the review decision.

46 Court's powers on appeal—general

- (1) In deciding an appeal, the Magistrates Court may—
- (a) confirm the review decision appealed against; or
 - (b) set aside the decision and substitute another decision; or
 - (c) set aside the decision and return the matter to MEDQ with directions the court considers appropriate.
- (2) If the court substitutes another decision, the substituted decision is, for the purposes of this by-law, other than this part, taken to be the review decision.

47 Appeal to District Court

An appeal lies to the District Court from a decision of the Magistrates Court, but only on a question of law.

Part 6 Transitional provisions

48 Definition for pt 6

In this part—

repealed by-law means the repealed *Urban Land Development Authority (Vegetation Management) By-law 2009*.

49 Permits under the repealed by-law

- (1) This section applies to a permit (an *existing permit*) granted under the repealed by-law, section 12, that was in effect immediately before the commencement of this section.
- (2) The existing permit—
 - (a) is taken to be a permit granted under this by-law; and
 - (b) continues to have effect for the period it would have had effect under the repealed by-law.

50 Reviews and appeals under the repealed by-law

- (1) This section applies to a person who, immediately before the commencement of this section, was an interested person under the repealed by-law, section 35.
- (2) Part 5 applies to the person as if—
 - (a) the person were an interested person under this by-law; and
 - (b) an original decision under the repealed by-law were an original decision under this by-law; and
 - (c) a review decision under the repealed by-law were a review decision under this by-law.

Schedule Dictionary

section 6

applicant means a person who makes a permit application.

authorised person means an individual who has, under section 30 of the Act, been issued with an identity card that is still in force.

compliance notice see section 30(2).

controlled vegetation means vegetation declared in a controlled vegetation notice under section 7(1) as controlled vegetation.

controlled vegetation notice see section 7(1).

information notice, for a decision of MEDQ, means a notice stating all of the following—

- (a) the decision;
- (b) the reasons for the decision;
- (c) that the person to whom the notice is given may have the decision reviewed within 20 business days after the person receives the notice;
- (d) how the person may have the decision reviewed.

interested person see section 36(1).

interfere with vegetation—

- (a) means to carry out an activity that damages or leads to the disfigurement or mutilation of the vegetation, or interference with the growth of the vegetation, including, for example, any of the following in relation to the vegetation—
 - (i) removing bark from a tree, other than by ringbarking the tree;
 - (ii) lopping or topping the vegetation;

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- (iii) adversely affecting the health of the vegetation by applying a substance that is harmful to the vegetation;
 - (iv) using heat to damage the vegetation, including by burning, scorching or singeing the vegetation;
 - (v) damaging a root zone by any means, including by excavating, filling, compacting or applying a harmful substance to the root zone;
Examples of a harmful substance—
cement, mortar, paint, oil
 - (vi) cutting or tearing branches, roots or trunks;
 - (vii) fixing or inserting, whether permanently or temporarily, any object to or into any living tissue or surrounding bark of the vegetation;
 - (viii) introducing livestock into an area in which the vegetation is situated; but
- (b) does not include clearing vegetation that is operational work.

management notice see section 26(2).

oral compliance direction see section 28(2).

original decision see section 36(2).

permit means a permit to interfere with controlled vegetation, granted by MEDQ under part 2, division 3.

permit application see section 11(1).

prescribed priority development area see section 4(1).

proposed action see section 19(2)(a).

review application see section 37.

review decision see section 40(1)(b).

review notice see section 41(1).

show cause notice see section 19(1).

show cause period see section 19(2)(e).

vegetation—

- 1 *Vegetation* is a tree or plant, whether it is living or dead.
- 2 The term includes—
 - (a) the regrowth of a tree or plant; and
 - (b) the root zone of a tree or plant.
- 3 For paragraph 2(b), the root zone of a tree or plant consists of—
 - (a) the roots of the tree or plant, including any buttress roots; and
 - (b) the soil in or on which the roots are situated—
 - (i) the area of which is measured by extending horizontally in all directions from the base of the trunk of the tree or plant to the points that are vertically below the ends of its outermost branches; and
 - (ii) to a depth of 1m below the surface of the soil.