

Vegetation Protection



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1 INTRODUCTION

1.1 Application of this Chapter

This chapter of the DCP applies whenever any vegetation is proposed to be removed or disturbed; from a single tree to more extensive clearing. It aims to promote the retention of trees and tree cover to conserve as far as practicable the existing landscape quality and natural ecosystems.

Trees and other vegetation are a vital component of the landscape and have a significant influence on the character of an area. In urban areas, trees can reduce the visual impact of the built environment and reduce the Urban Island Heat effect where urban areas are significantly warmer than surrounding areas as a result of hard surfaces absorbing, storing and radiating heat. Increased canopy cover can make urban environments more resilient by reducing the impacts of extreme heat. Vegetated urban areas contribute to the overall character and enjoyment of our surroundings, contributes to our sense of wellbeing and provide shade and shelter for humans and important habitat for wildlife.

In rural areas the presence of trees and other vegetation contributes to the scenic amenity and character of the area and can also play a role in ecosystem services that support an abundance of lifeforms. Conserving and enhancing biodiversity are essential to the planet's life support systems and contributes to the clean air, water and fertile soils that we need to survive. Native plants are protected in New South Wales by the *Biodiversity Conservation Act 2016*. Both the *Local Land Services Act 2013* and the *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* provide further protections to the clearing of native vegetation in rural and non-rural areas respectively.

1.2 Objectives of this Chapter

The objectives of this chapter are:

- *To conserve trees of ecological, heritage, aesthetic and cultural significance.*
- *To protect and enhance flora and fauna habitat and corridors.*
- *To conserve remnant and riparian vegetation.*
- *To encourage the planting of local native species and trees that are appropriate for site conditions.*
- *To provide development controls and guidelines where vegetation is proposed to be removed.*
- *To clarify the appropriate consent authority and process for tree removal or pruning.*
- *To ensure compliance with legislative requirements.*
- *To provide guidance on how to “avoid and minimise” environmental impacts.*

1.3 Vegetation Protection Principles

The following vegetation protection principles underpin the provisions of this DCP. Applicants do not need to specifically address each principle; rather proposals should be consistent with these principles as a whole and guide the design and assessment of complicated or novel development proposals.

P1. Ecologically sustainable development

- a. The precautionary principle** – lack of full knowledge should not be used as an excuse for postponing measures to prevent environmental degradation. In applying the precautionary principle, public and private decisions should be guided by careful evaluation to avoid, wherever practicable, serious or irreversible damage to biodiversity through an assessment of the risk-weighted consequences of various options.

- b. **Inter-generational equity** – the present generation should ensure that the health, diversity and productivity of the environment is maintained or enhanced for the benefit of future generations.
- c. **Conservation of biodiversity and ecological integrity** – conservation of biodiversity and ecological integrity should be a fundamental consideration.
- d. **Improved valuation, pricing and incentive mechanisms** – environmental factors should be included in the valuation of assets and services, such as: (i) polluter pays that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement; (ii) the users of goods and services should pay prices based on the full life cycle of costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any waste; (iii) environmental goals, having been established, should be pursued in the most cost effective way, by establishing incentive structures, including market mechanisms, that enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems.

P2. Development should be consistent with overarching biodiversity strategies and relevant recovery plans – development should be consistent with and contribute to aims and objectives set out in the relevant local, regional NSW State and national strategies that address the conservation and management of biodiversity.

P3. Development should maintain or improve biodiversity values – carrying out of development should maintain or improve biodiversity outcomes throughout the Lismore LGA, ensuring no net loss of habitat.

P4. Biodiversity is best conserved *in situ*. Impacts must first be avoided, and unavoidable impacts mitigated – prevention of habitat loss and impacts from development is the first priority and is significantly more cost-effective and less risky than recovery and restoration actions. Unavoidable impacts must be minimised through mitigation measures. Offsetting will only be considered when all other options are exhausted.

P5. High Conservation Value vegetation should be retained – areas meeting the definition of High Conservation Value in the Lismore Biodiversity Conservation Strategy are a priority for conservation and restoration.

P6. Development should not compromise the ability of ecosystems to respond to climate change - approaches such as retention of larger areas of native vegetation and maintaining landscape scale habitat connections can provide resilience to future impacts of climate change on biodiversity.

P7. Environmental impacts should be avoided at the source – priority should be given to avoidance of impacts at their source, whether through the redesign of a project or by regulating the timing or location of activities. If it is not possible to avoid significant impacts, opportunities should be sought to reduce the impacts, ideally to the point that they are no longer significant or where necessary and technically feasible, biodiversity loss can be offset.

P8. Development should not contribute to habitat fragmentation – in general, larger, less disturbed and better-connected natural areas are more likely to retain a higher degree of biodiversity in the long term. Development proposals should not contribute to habitat fragmentation.

P9. Measures should be taken to mitigate edge effects and other threats to small patches of retained habitat – small isolated patches of habitat are often vulnerable to edge effects and other threats from the adjacent landscape. However, such areas commonly support a wide range of native species, represent examples of communities that have been disproportionately cleared, provide refuge habitat and “steppingstones” for fauna and flora to disperse across the landscape.

P10. Fauna Habitat – key fauna habitat resources should be identified, retained and where possible improved through ecological restoration. Native fauna have specific resource requirements for roosting, foraging and breeding which they need to meet for continued survival in the landscape. These resources may occur in different vegetation communities, rural, urban and other developed areas. Many animals will move between these range of habitats.

P11. The costs of ongoing management of biodiversity values should be met by the development – in accordance with the principles of Ecologically Sustainable Development the development should bear the costs of managing ongoing pressures placed on biodiversity values as a result of the development.

P12. Biodiversity Offsetting – any impacts on biodiversity as a result of development will only be permitted where suitable actions are undertaken to compensate for or offset this loss.

1.4 Statutory Framework for this Chapter

The following legislation provides Lismore City Council with the legal basis to establish DCP provisions for the protection of trees or vegetation:

Environmental Planning and Assessment Act 1979 (EP&A Act)

Part 3 – Planning Instruments

Division 3.6 – Development Control Plans (DCPs)

Environmental Planning and Assessment Regulation 2000

Division 3 - Approval of Development Control Plans

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

Part 3 – Council permits for clearing of vegetation in non-rural areas (**Note:** This SEPP relates to Section 4 only of this DCP)

Biodiversity Conservation Act 2016

Part 7, Division 4, Clause 7.13(6) – Development other than State Significant development or infrastructure. (**Note:** This clause relates only to development applications that are considered to have impacts upon biodiversity values. Specifically, it allows Councils to set out requirements to avoid or minimise environmental impacts).

The above provisions give this chapter of the Lismore Development Control Plan its legal status and enables Council to initiate proceedings for breaches of these controls. This Chapter does not override any provisions in the above legislation.

1.5 How does this Chapter work?

The provisions of this chapter are separated into three distinct parts based on the different characteristics of land across the Lismore LGA and different legislative requirements. Section 3 sets out when vegetation removal or pruning is exempt from Council approval. Section 4 applies to vegetation removal in Non-Rural Areas and Section 5 applies to Rural and High Biodiversity Value Areas.

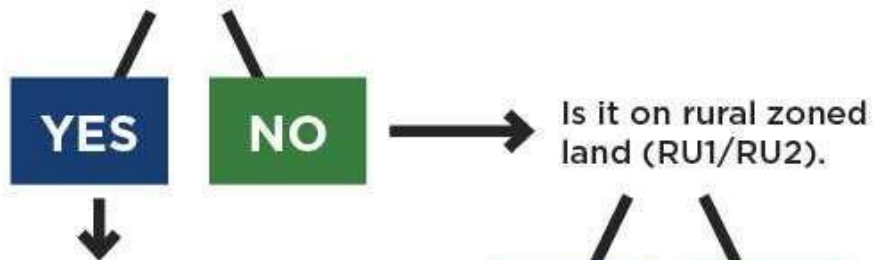
The diagram at **Figure 1** below outlines the pathway for determining whether the vegetation removal proposed needs approval and what the relevant approval process will be.

Vegetation Removal Pathways

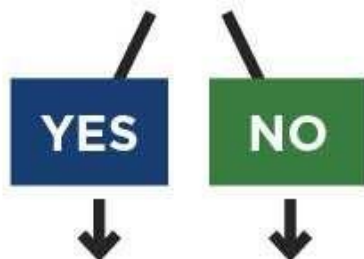
Is the proposed vegetation removal exempt?
(see Table 1)



Is the proposed vegetation removal ancillary to works that require a development application (DA), or is a DA required?



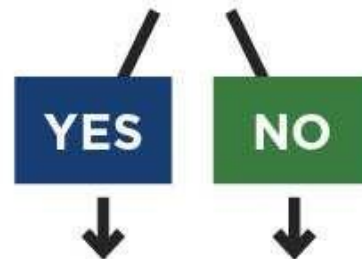
Is it on rural zoned land (RU1/RU2), part of a greenfield subdivision or does the Biodiversity Offset Scheme (BOS) apply?



Section 5 of this DCP applies.

Section 4 of this DCP applies.

Is it on rural zoned land (RU1/RU2).



Check with Local Land Services if a permit is required.

A tree removal application form is available on Council's website.



Figure 1: Vegetation Removal pathways

2 DEFINITIONS

A word or expression used in this chapter has the same meaning as it has in LEP 2012 unless it is otherwise defined in this chapter.

Biodiversity Development Assessment Report (BDAR) is defined in Part 6 of the *Biodiversity Conservation Act 2016*

Biodiversity Offset Scheme (BOS) has the same meaning as defined in the *Biodiversity Conservation Act 2016*.

Biodiversity Values Map (BVM) refers to the map published and updated from time to time on the appropriate NSW Government website.

dead tree refers to a tree that is no longer capable of performing the one of the following processes: photosynthesis, take up water through roots, hold moisture in its cells and produce new shoots.

dry rainforest - encompass a broad array of plant assemblages that occur where the average annual rainfall is less than 1100mm, and in some cases as low as 600mm. Typically these rainforests occur in rough terrain on rocky substrates, such as basalt, trachyte, and some granites or metasediments that contain moderate to high levels of soil nutrients. Unlike other rainforests, they usually occur in landscapes dominated by dry sclerophyll forests (Keith 2004).

endangered species has the same meaning as in the *Biodiversity Conservation Act 2016*.

environmental protection works means works associated with the rehabilitation of land towards its natural state or any work to protect land from environmental degradation, and includes bush regeneration works, wetland protection works, erosion protection works, dune restoration works and the like, but does not include coastal protection works.

environmental weed means a plant which is growing in the wrong place, through various methods of distribution and proliferation and has become a threat to the survival of native plants and animals.

greenfield subdivision means an undeveloped area of land that has been re-zoned for a residential, commercial or industrial use that is being subdivided and developed for that use.

habitat tree means any tree(s) which has developed hollows in the trunk or limbs, and which is suitable for nesting birds, arboreal marsupials (such as possums), native mammals (such as bats) or which support the growth of locally indigenous epiphytic plants (such as orchids).

heritage conservation area means an area of land of heritage significance:
(a) shown on the LEP 2012 Heritage Map as a heritage conservation area, and
(b) the location and nature of which is described in LEP 2012 Schedule 5, and includes any heritage items situated on or within that area.

heritage item means a building, work, place, relic, tree, object or archaeological site the location and nature of which is described in LEP 2012 Schedule 5.

Lismore LEP – means the Lismore *Local Environmental Plan 2012* (or 2000 where applicable).

native vegetation – has the same meaning as in Part 5A of the *Local Land Services Act 2013*.

Native Vegetation Panel means the panel established under section 60ZE of the *Local Land Services Act 2013*.

old growth forest - refers to ecologically mature vegetation. Old-growth vegetation is characterised by the presence of relatively large old trees in the overstorey which may be senescent or show signs of crown dieback and contain hollows. Other age-related features that may be present include dead standing stags and fallen logs, buttressed roots, and a diverse subcanopy and understorey. **prune** means to cut off living parts or branches of a plant, to improve shape or growth.

rainforest – includes both dry and subtropical rainforest (Keith classification 2004)

recovery plan – means a plan or series of priority management actions adopted by the NSW State or Federal Government to respond to threats faced by threatened species, populations or ecological communities. In the absence of an adopted recovery plan then contemporary best practice principals and strategies apply.

subtropical rainforests have a dense multi-layered tree canopy, 20-40m tall, comprising large emergent trees such as figs and cedars, and a sub-canopy of smaller trees including palms. Typically, the canopy includes many species, which have a wide range of leaf sizes, some as big as 30cm in length and including many compound types made up of two or more leaflets. Many of the trees have buttressed trunks. Their branches may be decorated with epiphytic orchids and ferns or festooned with lianas whose looping stems extend to the highest branches (Keith 2004). **threatened species** has the same meaning as in the *Biodiversity Conservation Act 2016*

threatened ecological community has the same meaning as in the *Biodiversity Conservation Act 2016*

tree removal or partial or total destruction of a tree(s) means the ring-barking, cutting down, clearing, lopping, topping, removing, injuring, poisoning or wilful damage of any tree(s).

Vegetation Management Plan (VMP) is a site-specific report that is required to accompany applications that propose development which may impact on biodiversity values and environmentally sensitive areas. **vulnerable species** has the same meaning as in the *Biodiversity Conservation Act 2016*.

3 VEGETATION REMOVAL THAT DOES NOT REQUIRE COUNCIL APPROVAL

Table 1 sets out the circumstances that are exempt from requiring consent under the provisions of this DCP chapter. Removal and/or pruning of tree(s) that are exempt must be carried out in a way that is not detrimental to native wildlife or ecosystems.

The exemptions in Table 1 do not apply to:

- Land mapped on the Biodiversity Values Map or the Native Vegetation Regulatory Map, or
- Threatened species or land that contains native vegetation that is habitat for threatened species, populations or ecological communities listed in Schedule 1 and 2 of the *Biodiversity Conservation Act 2016* and protected matters listed under the Commonwealth *EPBC Act 1999*. Note: Koala is listed in Schedule 1 of the *Biodiversity Conservation Act 2016*, therefore native vegetation that is koala habitat is not exempt, or
- Work contrary to a development consent that requires trees to be retained, or
- Environmental heritage sites, or sites within a heritage conservation area.

Note: *Environmental protection works as defined in Lismore LEP 2012 is development permitted without consent in all zones. Environmental protection works includes protecting land from environmental degradation. Weed infestation is a form of environmental degradation. The removal of weeds is therefore permitted without consent under LEP 2012 subject to the threshold provisions in the Biodiversity Conservation Act 2016.*

Table 1 – Vegetation exempt from requiring any approval from Council

Criteria	Examples
Dead or dying	It can be demonstrated to Council's satisfaction that the vegetation is dead or dangerous and does not provide habitat for hollow-dependent native fauna. Note: <i>It is the responsibility of the applicant to ensure compliance with this DCP. Any person carrying out vegetation removal that is not exempt without the relevant approval from Council may be guilty of an offence and subject to legal action, which is described at Section 4.8. Generally photographic evidence and consultation with Council's staff will be required to determine dead / dying vegetation. Where there is any uncertainty, an assessment by a qualified arborist may be required (see Section 4.5).</i>
Risk to life or property	The location of the tree is in close (within 3m) to a building and presents a risk to human life or damage to property.
Routine maintenance around residential and commercial buildings	<ul style="list-style-type: none"> • Pruning of a tree by less than 10% of foliage to remove dead branches, storm damaged branches, to reduce interference with roofs, gutters or walls or to ensure clear access and lines of sight on driveways. • Crown thinning to reduce canopy density
Inhibiting pedestrian access	Vegetation that presents a hazard or impediment to pedestrians.
Hazard to motorists	Any vegetation on private land that presents a hazard to motorists.

Listed weeds	Any plant listed as a weed in any of the following schedules; <ul style="list-style-type: none"> Listed prohibited matter, Schedule 2, <i>Biosecurity Act 2015</i> Listed weed, Appendix 3 North Coast Regional Strategic Weed Management Plan 2017-2022; Local Land Services 2017, http://www.northcoast.lls.nsw.gov.au Listed Weeds of National Significance (WoNS) https://www.environment.gov.au/biodiversity/invasive/weeds/weeds/lists/wons.html
	Note: the clearing of weeds that exceeds the area threshold for the Biodiversity Offset Scheme (BOS) as outlined in Table 3 (p. 16) is not exempt development.
Fire safety	Tree(s) authorised for removal under the <i>Rural Fires Act 1997</i> .
Small trees and shrubs	Any tree, shrub or grass (such as bamboo) under 4m in height that is not located in a heritage conservation area and not protected under the provisions of the <i>Biodiversity Conservation Act 2016</i> .
Fruit / nut trees	Any tree(s) planted and grown specifically for its edible fruit.
Public land	Any works carried out by/or on behalf of a public authority on public land. Such works may require an assessment of environmental impact under Part 5 of the <i>Environmental Planning and Assessment Act 1979</i>
Works authorised under other Acts, Regulations and SEPPs	Any works authorised or otherwise permitted under other Acts, Regulations or State Environmental Planning Policies. Such works must be carried out to the minimum extent necessary and the onus is on the landowner to demonstrate the vegetation removal is lawful.

4 CLEARING OF VEGETATION ON NON-RURAL LAND

4.1 Land to which this section applies

State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 ('Vegetation SEPP') regulates the clearing of both native and non-native vegetation on non-rural land. Clause 9 of the Vegetation SEPP allows Councils to determine when a permit is required for the clearing of vegetation in these areas by declaring the types of vegetation and areas covered within a DCP.

For land within any of the LEP 2012 zones listed in Table 2 below, all vegetation removal that is *not* exempt, as set out in Section 3 Table 1 of this DCP, requires a permit from Council. This may be done either through a development application consent or a tree removal permit.

Table 2 – Zones to which Section 4 applies

Residential & Village zones	Business Zones	Industrial & Infrastructure Zones	Recreation Zones	Environmental Protection Zones
<ul style="list-style-type: none"> • R1 General Residential • R2 Low Density Residential • R3 Medium Density Residential • R5 Large Lot Residential • RU5 Village 	<ul style="list-style-type: none"> • B1 Neighbourhood Centre • B2 Local Centre • B3 Commercial Core • B4 Mixed Use • B6 Enterprise Corridor 	<ul style="list-style-type: none"> • IN1 General Industrial • IN2 Light Industrial • SP2 Infrastructure 	<ul style="list-style-type: none"> • RE1 Public Recreation • RE2 Private Recreation 	<ul style="list-style-type: none"> • E2 Environmental Conservation • E3 Environmental Management

Note 1: The clearing of **native vegetation** on land to which this section applies that exceeds the **Biodiversity Offset Scheme (BOS)** threshold or is on land identified on the **Biodiversity Values Map (BVM)**, requires approval from the **Native Vegetation Panel**.

Note 2: Any land that is outside of these zones is addressed in Section 5 of this DCP. Other approval requirements may apply under the *Local Land Services Act 2013* and the *Biodiversity Conservation Act 2016*.

4.2 Information required for development applications

Any vegetation removal that is ancillary to an activity that requires development consent under Part 4 of the *Environmental Planning and Assessment Act 1979* (eg. construction of a building, subdivision of land) or where the vegetation is associated with a heritage item, heritage precinct or Aboriginal place of heritage significance, must be clearly identified with the development application. This will include:

- a plan that shows the location and extent of the vegetation proposed to be removed in relation to property boundaries and existing or proposed buildings and existing other vegetation (**Figure 2** below is an example of such a plan.)
- reason for proposed vegetation removal
- identification of species (if known), number of trees and/or area (m²) of other native vegetation including ground covers not defined as tree to be removed. Photographs showing structural and vegetative features such as any hollows, type of bark, leaves, flowers and fruits (if present) may be used to identify vegetation for removal.
- approximate heights and diameter

Note: If Council determines that the proposed development may have an impact upon any threatened species or threatened ecological communities, a report by a suitably qualified ecologist may be required.

4.3 Process to remove vegetation that does not require development consent (but is not exempt)

Where vegetation proposed to be removed does not require development consent under Part 4 of the *Environmental Planning and Assessment Act 1979* and is not exempt under Section 3 of this DCP, an application for a permit must be lodged with Council.

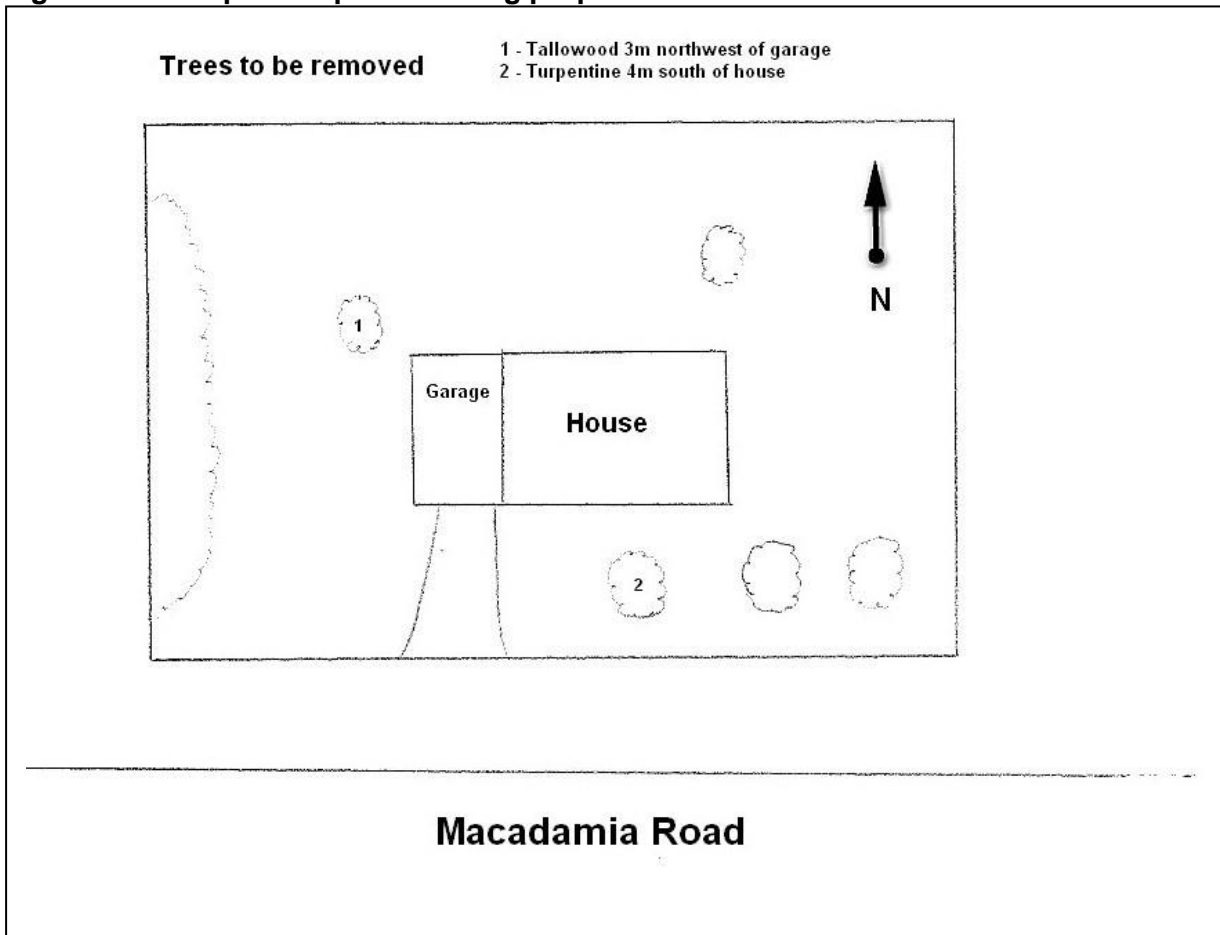
Application forms (tree pruning / removal application) are available on Council's website. The applicable fee must be paid, and an application form completed with the following details:

- Property address or real property description (Lot /DP number from Rates Notice).
- Applicant's name and address.
- Landowner's consent. The owner of the land on which the tree(s) is growing must sign the application form.
- A plan outlining the location(s) of all tree(s) proposed to be removed or pruned. **Figure 2** provides an example of such a plan.
- Each tree must be numbered on the plan and identified by reference to a physical feature (e.g. 5m from eastern boundary; 7m to the north of the garage). Two distances may be necessary.
- A description of the tree(s) including the following
 - Tree(s) species or if unknown please describe the leaves and bark
 - Height
 - Width
- Reasons for removal or pruning of tree(s).

Please note that no works are to be undertaken prior to the Council permit being issued.

Note: Any property listed as a heritage item or located in a heritage precinct as identified in Schedule 5 of the *Lismore LEP*, must seek consent via a development application to Council for any tree removal / pruning that is not covered by the exemptions listed at Section 3, Table 1 of this DCP.

Figure 2 - Example of a plan showing proposed trees for removal



4.4 Matters for consideration by Council

The following matters will be taken into consideration when Council is assessing an application for vegetation removal in the zones set out in section 4.1 above.

Issue	Consideration
Reason for the tree / vegetation removal	Are there reasonable grounds to remove the tree(s) / vegetation?
Landscape and amenity value	Does the vegetation contribute to the aesthetic qualities and amenity of the locality and / or form an important part of the skyline?
Cultural heritage value	Is the tree or vegetation important from a cultural and or heritage perspective?
Species	Is the species suitable for its location? Is it a threatened species?
Ecological significance such as corridor links with surrounding bushland	Is it likely the tree(s) or vegetation are ecologically significant in the provision of habitat to native fauna?
Impact upon koala population	Will the removal have a negative impact on the local koala population?

Impacts on soil stability and water quality	Whether the removal of tree(s) or vegetation is likely to cause significant erosion or sedimentation.
Solar access	Whether the tree(s) or vegetation interfere with the efficiency of solar panels OR block solar access to the living areas of a dwelling.
Impacts on infrastructure	Whether the tree(s) or vegetation are likely to interfere with power, sewer, water, or telecommunications infrastructure OR structures including buildings, driveways, retaining walls etc.
Nuisance to adjoining properties	Whether the tree(s) or vegetation is causing nuisance to an adjoining property. The circumstances for each application will be assessed upon its merit. The following reasons may not be adequate justification to remove tree(s): <ul style="list-style-type: none"> · View: Significant pruning and/or removal of tree(s) to enhance a view or outlook. · Shade: Significant pruning and/or removal of tree(s) to reduce shading. Judicious crown thinning may be permitted where medical evidence is submitted stating that shading is detrimental to a person's health, or where evidence is submitted to indicate shading prevents energy efficiency through solar passive design. · Leaf fall: Pruning and/or removal of tree(s) to prevent leaves accumulating under or around tree(s) or within gutters or swimming pools.
Poor form / overcrowding	Whether the tree(s) show poor form and/or vigour typical of the species OR whether the removal will result in improved growth of other trees.
Protections	Whether the vegetation is protected by a covenant (eg. Section 88B restrictions on title) or part of a previous Vegetation Management Plan for the property or planted for conservation purposes using environmental grant funding.

4.5 Arborist and Structural Engineers Reports

Where council is unable to determine if the vegetation is dead or dying from photographs provided, the applicant may be required to submit a report from a suitably qualified arborist, at no cost to Council. The arborist report is to provide Council with detailed information concerning the problems the tree(s) has and clear recommendations for future action.

An arborist's report should address the following criteria;

- Tree Location
- Tree Characteristics (form /age / species value)
- Tree Health
- Tree Defects
- Site Conditions
- Target + Hazard Rating
- Hazard Abatement
- Comments / Analysis
- Recommendations

Where structural damage to a building, services or utilities is alleged, the applicant may also be required to submit a report from a suitably qualified structural engineer at no cost to Council.

4.6 Guidelines and requirements for an ecologist's report

Where proposed vegetation removal is likely to affect a threatened species or part of a threatened ecological community or the habitat of a threatened species, Council will require a report by a suitably qualified ecologist to be submitted with the application.

Where proposed vegetation clearing is on land identified on the **Biodiversity Values Map (BVM)**, or if it exceeds the **Biodiversity Offset Scheme (BOS)** threshold, a **Biodiversity Development Assessment Report (BDAR)** is required by an *accredited* ecologist (accredited by the NSW Department Planning, Industry and Environment) and an approval issued from the **Native Vegetation Panel**.

4.7 Conditions of Council approval

Where approval is granted for vegetation removal, Council may impose conditions relating to;

- requirements for compensatory plantings
- wildlife and habitat protection and enhancement
- sediment and erosion controls
- methods to protect surrounding vegetation during removal
- appropriate disposal of organic waste

Note: *If private contractors are engaged to carry out tree removal works on private property, it is the responsibility of the owner / applicant to confirm the currency of all insurance and WorkCover requirements.*

4.8 Enforcement

Any person who contravenes or causes or permits to be contravened the provisions of this DCP may be guilty of an offence under the *Environmental Planning and Assessment Act 1979*. Depending on the severity of the offence Council may:

1. Issue a Penalty Infringement Notice in accordance with Sections 4.2, 9.37 and 9.50
2. Pursue civil enforcement under *Class 4 Land and Environment Court Act 1979* and all court cost incurred, and/or
3. Pursue criminal prosecution under *Class 5 Land and Environment Court Act 1979* and all court cost incurred.

Any offence that contravenes the provisions of the *Biodiversity Conservation Act 2016* may be prosecuted separately by the Biodiversity Conservation Division of the Department of Planning, Industry and Environment.

5 CLEARING OF VEGETATION ON RURAL LAND AND HIGH BIODIVERSITY VALUE LAND

5.1 Introduction

Where vegetation is proposed to be cleared on land zoned RU1 Primary Production or RU2 Rural Landscape that is not exempt (see **Table 1**, Section 3) and not ancillary to an activity that requires development consent under Part 4 of the *Environmental Planning and Assessment Act 1979* (eg. construction of a building, subdivision of land), the provisions of the *Local Land Services Act 2013* will apply. A permit may be required from Local Land Services (North Coast). It is the responsibility of the landowner to contact Local Land Services to determine whether the proposed works are authorised without approval or if a permit is required.

Section 7.13(6) of the *Biodiversity Conservation Act 2016* (BC Act) enables Councils to determine their own measures for how a development (under Part 4 of the *Environmental Planning and Assessment Act 1979*) can avoid or minimise biodiversity impacts. The aim of Section 5 of this DCP is to determine the environmental impact of the proposed development and demonstrate how measures can be undertaken to avoid and minimise impacts on biodiversity values.

5.2 Where Section 5 applies

The provisions of this section of the DCP apply:

- where the proposed vegetation removal is part of a development application on land zoned RU1 Primary Production or RU2 Rural Landscape, or
- for new greenfield subdivisions that require significant vegetation removal, or
- for any development that triggers the Biodiversity Offset Scheme as defined in Table 3 below.

Table 3 – Triggers for the Biodiversity Offset Scheme (BOS)

Biodiversity Offset Scheme (BOS) applies where:									
<ul style="list-style-type: none"> • The development is likely to significantly affect threatened species and/or threatened ecological communities (TECs) according to the test of significance (5 part test) 									
<ul style="list-style-type: none"> • The proposed clearing exceeds the BOS threshold, as follows; <table border="0" style="width: 100%;"> <thead> <tr> <th style="text-align: left;">Minimum lot size of land</th> <th style="text-align: left;">Area of clearing</th> </tr> </thead> <tbody> <tr> <td>Less than 1 hectare</td> <td>0.25 hectare or more</td> </tr> <tr> <td>Less than 40 hectares but not less than 1 hectare</td> <td>0.5 hectare or more</td> </tr> <tr> <td>Less than 1,000 hectares but not less than 40</td> <td>1 hectare or more hectares</td> </tr> </tbody> </table>		Minimum lot size of land	Area of clearing	Less than 1 hectare	0.25 hectare or more	Less than 40 hectares but not less than 1 hectare	0.5 hectare or more	Less than 1,000 hectares but not less than 40	1 hectare or more hectares
Minimum lot size of land	Area of clearing								
Less than 1 hectare	0.25 hectare or more								
Less than 40 hectares but not less than 1 hectare	0.5 hectare or more								
Less than 1,000 hectares but not less than 40	1 hectare or more hectares								
<ul style="list-style-type: none"> • The proposed clearing is on land included on the Biodiversity Values Map https://www.lmbc.nsw.gov.au/Maps/index.html?viewer=BOSETMap 									
<ul style="list-style-type: none"> • The development is on land declared an area of outstanding biodiversity value 									

5.3 Process for identifying environmental impacts

Step 1 – Define the development envelope.

Plans submitted with a development application on land to which section 5 applies must clearly identify all areas within the site that will be impacted by the proposed development. This will include the footprint for any proposed building works, along with the provision of infrastructure such as roads / driveways, power, sewer or any on-site sewage management systems etc. The development envelope must also show any asset protection zones likely to be required for bushfire protection purposes.

Step 2 – Identify any vegetation proposed to be removed.

Where the development envelope includes any vegetation that is proposed to be removed, that vegetation must be clearly identified. This should be addressed within the statement of environmental effects (SEE) and identified on plans at an appropriate scale. This should include; • the location of the vegetation proposed to be removed in relation to property boundaries and existing or proposed buildings

- the reason for the proposed vegetation removal
- identification of species (where known, and/or photographs)
- number of trees to be removed
- approximate heights

Note: If Council determines that the proposed development may have an impact upon any threatened species or threatened ecological communities, a report by a suitably qualified ecologist will be required.

Step 3 – Identify if any “Reg Flag Areas” are within the development envelope.

Table 4 provides details of High Conservation Value (HCV) ‘Red Flag’ areas, which are ecological assets that must generally be retained on site. The table also identifies ecological setbacks, which is an area of land that is required to separate the development envelope from a HCV area.

Table 4 – High Conservation Value ‘Reg Flag’ areas

Criteria / HCV ‘Red Flag’ Features	Ecological Setback
High Conservation Value vegetation and habitat – as per criteria in the Lismore Biodiversity Management Strategy	
Areas of land identified as containing threatened species or populations listed under the <i>Biodiversity Conservation Act 2016</i> or <i>EPBC Act 1999</i>	30m
Areas of land identified as containing endangered ecological communities (EECs) listed under the <i>Biodiversity Conservation Act 2016</i> or <i>EPBC Act 1999</i>	30m
Areas of land identified as key habitat for threatened species under the <i>Biodiversity Conservation Act 2016</i> or <i>EPBC Act 1999</i> or for species of local conservation priority (as identified by Milledge 2012).	30m
Coastal wetlands under State Environmental Planning Policy Coastal Management 2018 .	50m
Areas of vegetation on land identified as being key habitat and/or in a wildlife corridor of very high significance linking key habitats and refuges for priority assemblages in Lismore LGA. <i>(As identified in Appendix 8 and Fig 5 Milledge 2012 Key Habitat and Corridors report with Council’s Biodiversity Management Strategy 2015-2035. Note: These areas are shown as ‘wildlife corridors’ in Council’s GIS mapping).</i>	20m
Areas of land identified as preferred or core Koala habitat as defined by the LCC CKPoM or core Koala habitat under the SEPP Koala Habitat Protection (2019).	20m
Areas of land identified as supporting riparian, wetland and	1st order – 10m

estuarine native vegetation other than Coastal Management SEPP 2018 mapped wetlands.	2 nd order – 20m 3 rd order – 30m 4 th and 5 th order - 40m 6 th order stream – 50 m Local wetland – 20m Important Wetland - 50m Estuarine area – 50m
Areas of land identified as supporting any type of rainforest .	20m
Areas of land identified as supporting native vegetation defined as old-growth forest .	30m
Other areas:	
Bushland on slopes greater than 18 degrees.	10m
Isolated hollow bearing native trees	20m
Flying fox camps	50m
Raptor Nest	50m

5.4 Managing Development Impacts

The following design guidelines and controls provide acceptable outcomes for the protection of high biodiversity value land. Figure 5 provides an example of an urban subdivision that is consistent with the design guidelines.

5.4.1 Habitat retention and in situ conservation

In-situ conservation ensures the retention, protection and rehabilitation of native vegetation and habitat on the site where it naturally occurs. In-situ conservation is the preferred option as it conserves genetics and ecosystems processes at a local level and allows the retention of vegetation which provides for connectivity of remnant and regrowth vegetation and habitat.

Design solutions

- ✓ The development has been designed to avoid and mitigate impacts on retained vegetation and habitats.
- ✓ Suitable arrangements such as a Vegetation Management Plan are in place for the ongoing protection and management of retained vegetation and habitat.
- ✓ Where vegetation is proposed to be removed or disturbed that may have an impact upon any threatened species or part of a threatened ecological community, or the habitat of a threatened species, applications must demonstrate that biodiversity values and ecosystem functions have been identified and are understood via a report from a suitable qualified ecologist.
- ✓ For development involving subdivision, suitable building envelopes are identified. Ecologically sensitive and/or significant areas such as HCV areas may be required to be protected in perpetuity via a positive covenant. (Note: This will be determined on a case by case basis consistent with the nature and scale of the development.)

5.4.2 Environmental weeds

Environmental weeds are plants that are often first to colonise cleared and degraded areas, they readily invade native plant communities and degrade the habitat available to native plants and animals. The invasion and establishment of environmental weeds is a threat to maintaining biodiversity in the Lismore LGA.

Development must not create conditions that promote or increase the spread of environmental weeds. Many environmental weeds originate from domestic gardens, therefore new developments need to be designed to minimise potential impacts of introduced gardens and landscaping, especially when adjoining sensitive natural habitats.

Design solutions

- ✓ When a Vegetation Management Plan is required, it must include a weed management program to mitigate the potential impact of weeds on high conservation areas and reduce weed establishment and spread.
- ✓ Plants used for landscaping and street tree planting should be non-invasive native species, preferably local to the Lismore LGA.
- ✓ No plant species known to be a weed or considered to have potential to create future weed issues should be used as part of an approved landscape plan.

5.4.3 Wildlife Corridors

Lismore City Council has mapped Key Habitat and Corridors (Milledge 2012) which identifies a network of wildlife corridors across the Local Government Area. These areas are a priority for conservation and restoration and future development within these areas should be carried out in a manner which does not increase fragmentation of vegetation and habitats.

Design solutions

- ✓ Development within a wildlife corridor or in areas of native vegetation which provide connectivity at a local level must ensure that the development does not result in an increased fragmentation of vegetation through removal of vegetation or construction of infrastructure which significantly reduces the ability of wildlife to move through the local landscape.
- ✓ Wildlife corridors should be the focus for restoration and enhancement when works are required via a Vegetation Management Plan.
- ✓ Avoid clearing of native vegetation. Where clearing is unavoidable and acceptable to Council it should be minimised to the maximum extent possible. Compensation for clearing of vegetation may be required via an approved Vegetation Management Plan.
- ✓ Fencing should be designed and located to ensure it does not inhibit the movement of wildlife or create a hazard to wildlife.
- ✓ When preparing a Vegetation Management Plan the following activities and land uses are suitable within wildlife corridors to increase the functionality of the corridor as a linkage across the landscape:
 - Restoration works using bush regeneration techniques to reduce exotic vegetation and increase native vegetation cover;
 - Revegetation of cleared areas using local indigenous species, known to occur naturally in target revegetation community to improving linkages between areas of remnant and regrowth vegetation
 - Creating 'steppingstone' vegetation areas that include clumps of vegetation in largely cleared landscapes;
 - Mixed species farm forestry plantations.

5.4.4 Ecological Buffers and Asset Protection Zones

Creating separation between areas of vegetation and development such as buildings is important for several reasons including bush fire protection, reducing weed invasion and managing issues of noise and odour from flying fox camps.

The Rural Fire Service's *Planning for Bushfire Protection 2019* provides development standards to address bushfire risk including the creation and management of asset protection zones (APZ). Developments should be designed to incorporate appropriate setbacks.

Design solutions

- ✓ APZs required to manage potential bushfire risk cannot overlap with retained vegetation requirements such as the red flagged areas listed in **Table 4**.
- ✓ Ecological buffers from Red Flag areas described in **Table 4** are incorporated into the development design phase.
- ✓ A development setback required to manage potential bushfire risk may overlap with an ecological setback to be managed as an ecological buffer in a Vegetation Management Plan where no more than the outer half of the ecological buffer is used for that purpose (see **Figure 4**); and
- ✓ The overlap is managed to maximise ecological values within the scope of the bushfire management requirements (ie. fuel reduced understorey and maximum 30% tree cover in Outer Protection Areas of an APZ).

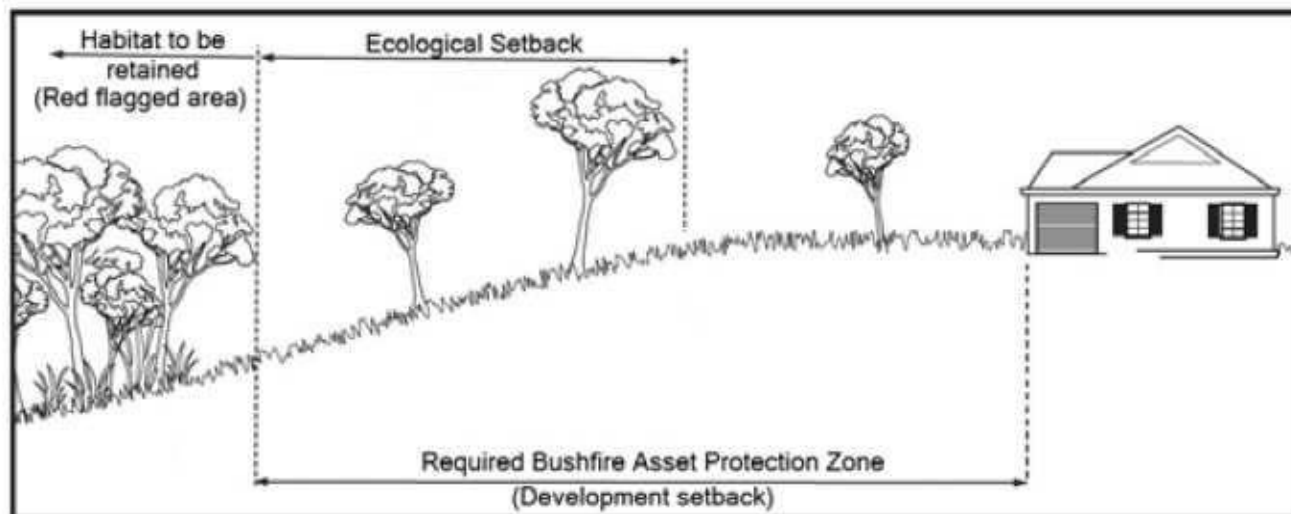


Figure 3: Example of site design for APZs and ecological setbacks.

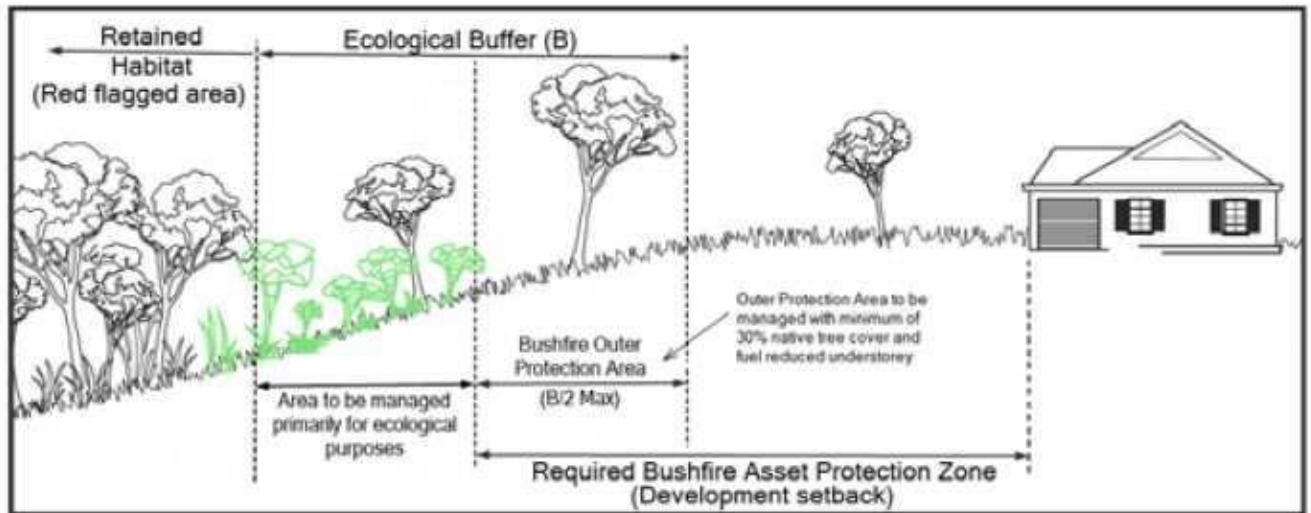


Figure 4: Example of how an Outer Protection Area of an APZ, which can have a maximum 30% canopy cover, can be managed for ecological purposes.

5.4.5 Koala habitat

The Koala is an iconic Australian arboreal marsupial and severe population declines have occurred throughout its range since European settlement, resulting primarily from the clearing and modification of habitat. The koala is listed as a threatened species under both the state *Biodiversity Conservation Act 2016* and the Commonwealth *Environmental Protection and Biodiversity Conservation Act 1999*. At present, koala habitat is not adequately represented within the current NSW parks and reserve system, highlighting the importance of effective off-park protection and conservation strategies.

In NSW the *State Environment Planning Policy (Koala Habitat Protection) 2019* and associated Koala Habitat Protection Guidelines are the planning instruments that apply to all development applications where the land has an area of at least 1 Hectare (including adjoining land within the same ownership).

Where the subject land is within the *Comprehensive Koala Plan of Management for south-east Lismore 2013 (CKPoM)* study area or any future CKPoM for the Lismore LGA, the development application must demonstrate consistency with requirements of the CKPoM.

If a development is on land not within the CKPoM study area but is likely to have an impact upon koala habitat that is above the Tier 1 'low or no impact' category in the Guidelines, the provisions of this DCP apply. The application must demonstrate through the application of recognised koala sensitive design;

- No net loss of Koala habitat
- Retain and protect koala habitat values in their natural state to allow koalas to feed, rest and move around
- Achieve permeability for koalas through the landscape to ensure safe movement of koalas within and across the site
- Provide for the improved management of retained koala habitat
- Reduce threats to resident and transient koalas.

Design solutions

- ✓ Clearing to the minimum extent possible and in a manner that does not act to further fragment koala habitat on the subject site and with adjacent lots.

- ✓ Consider scale of development and whether a reduction of the lot yield or the development footprint would produce a more sustainable outcome for koalas.
- ✓ Koala safe road design and placement. Design layout allows for the safe movement between retained koala habitat, koala habitat on any adjacent site and / or any koala habitat resulting from compensation measures.
- ✓ Use of appropriate fencing design to foster movements across the landscape and koala exclusion fencing to avoid conflict with threats such as dogs or swimming pools.

5.4.6 Noise and Lighting

Suitable measures should be incorporated into development design so excessive noise and light do not impact upon ecologically sensitive areas.

Design solutions

- ✓ Incorporate mitigation measures to reduce impacts of noise and sound arising from the development which may include use of buffers or noise barriers and suitable timing of activities.
- ✓ Sport fields and other development that requires high intensity outdoor lighting should be designed to avoid light spill into adjoining high conservation value vegetation and habitat by ensuring appropriate positioning of development and use of low impact lighting

Note: If Council is not satisfied that adequate steps have been undertaken to avoid and minimise environmental impacts and the proposed development is likely to have a significant impact on threatened species and / or TECs, or exceeds the Biodiversity Offsets Scheme Threshold, then an **accredited BAM assessor** will be required to produce a **Biodiversity Development Assessment Report (BDAR)**.

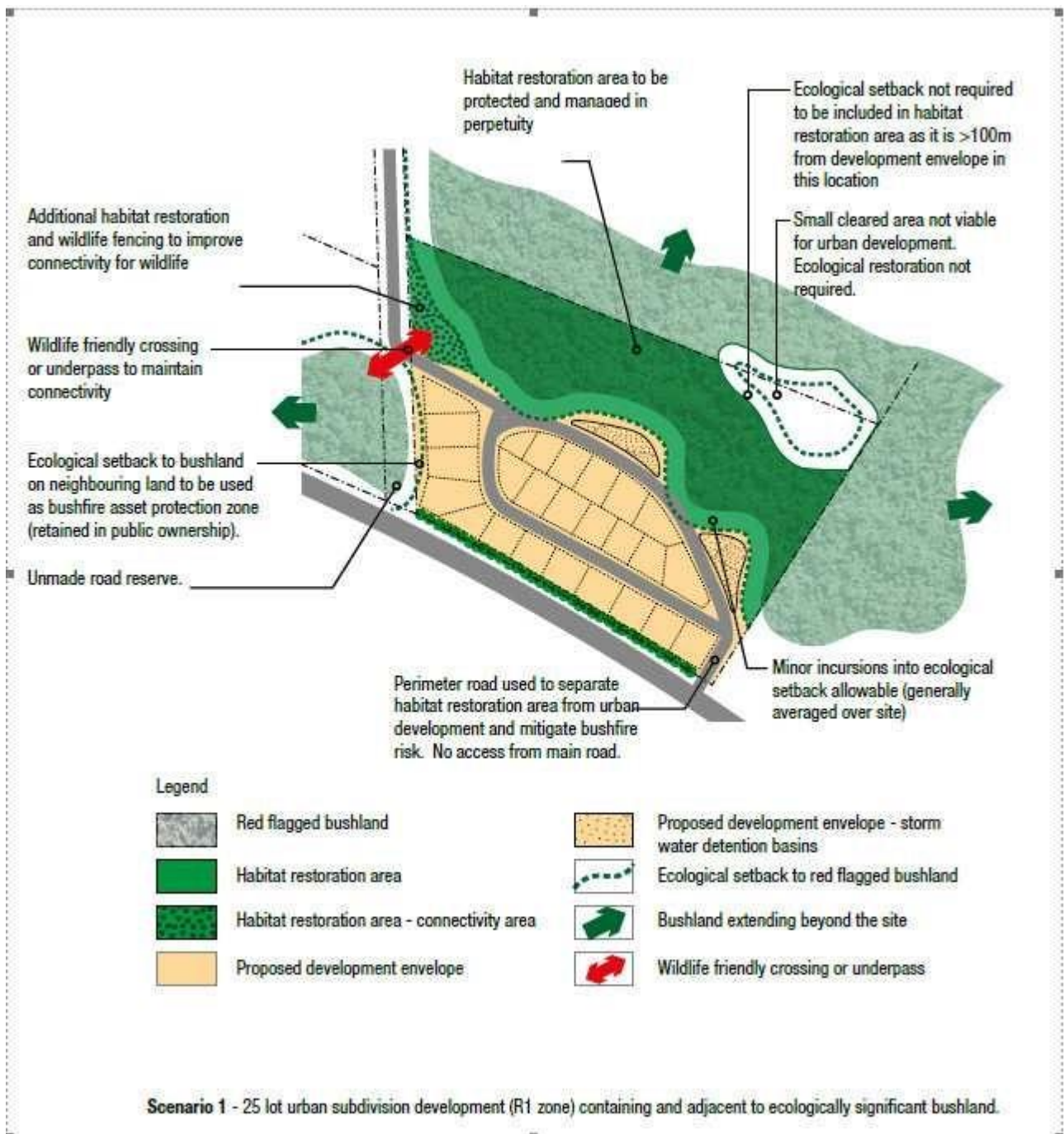


Figure 5: Example of good design practice (Source: *Biodiversity and Habitat Management, Tweed Shire Council 2018*)

5.5 Biodiversity Offsets

Biodiversity offsets are measures taken to compensate for any residual significant, adverse impacts that cannot be avoided, minimised and / or rehabilitated or restored, in order to achieve no net loss or a net gain of biodiversity as a result of an activity or development.

Where the impacts do not trigger entry into the **Biodiversity Offset Scheme**, implementation and securing biodiversity offsets are achieved through integrated Vegetation Management Plans and conditioning of positive covenants. A **Vegetation Management Plan** is generally required to demonstrate that development and ongoing site management:

- Achieves the relevant objectives identified within Lismore City Council's Biodiversity Management Strategy 2015-2035,
- Is consistent with other related environmental legislation and policies, for example *Biodiversity Conservation Act 2016*, the *Biosecurity Act 2015* and the *Water Management Act 2012*
- Mitigates impacts and where necessary offsets residual impacts of development on the functions of vegetation communities and ecosystems in accordance with State and Commonwealth Government adopted **Recovery Plans** and contemporary best practice,
- Contributes to the long-term viability of environmental assets including biodiversity values at the genetic, species and ecosystem level.

A **Vegetation Management Plan (VMP)** will be required in any of the following circumstances:

- To manage threatened species, populations and communities, and critical habitat which may be impacted directly or indirectly by development,
- To manage koala habitat that may be directly or indirectly impacted by development (see the *Comprehensive Koala Plan of Management 2013* for specific requirements which can be incorporated into a single VMP),
- To manage other High Conservation Value vegetation and habitat which may be directly or indirectly impacted by development,
- Where the development involves the subdivision of land into >3 lots,
- For development involving a Rural Landsharing Community (Multiple Occupancy development or Community Title subdivision),
- When Vegetation Offsets are required to compensate for impacts on native vegetation and habitats,
- Where otherwise required by Council.

The **Biodiversity Offset Scheme (BOS)** Threshold is a test used to determine when it necessary to engage an accredited assessor. If the Scheme does apply to a development or activity, the proponent must retain an accredited BAM assessor to apply the **Biodiversity Assessment Method (BAM)** to the proposal.

After applying the BAM, the accredited person will prepare a **Biodiversity Development Assessment Report (BDAR)** that sets out how the proponent has applied steps to avoid and minimise impacts on biodiversity, and the number and type of ecosystem and species credits required to offset residual impacts of the activity on biodiversity ('credit obligation').

Generally, the offset obligation under the BOS will be satisfied by;

- the purchase of "like for like" credits in the market and then retire those credits, and / or
- payment to the Biodiversity Conservation Trust of an amount calculated by the Offsets payment calculator to determine the cost of the credit obligation.

Note: *If a development application is required to be accompanied by a **Biodiversity Development Assessment Report (BDAR)**, Council has the discretion to increase or decrease the credit obligation generated by the BDAR. Council may consider seeking to reduce the calculated biodiversity credit obligation by encouraging proponents to ensure that any required offsets are delivered within the Lismore Local Government Area.*

This requires concurrence from the Biodiversity and Conservation Division (BCD) of the Department of Planning, Industry and Environment. The amount of any proposed reduction in credits to be retired

will depend on feedback from BCD and the extent to which the offset is likely to mitigate the biodiversity impacts on the development site within the Lismore area.

Note: *Proponents and consent authorities are required to comply with both the Biodiversity Conservation Act 2016 and State Environment Planning Policy (Koala Habitat Protection) 2019. Any impact on koala habitat within the Comprehensive Koala Plan of Management for south-east Lismore 2013 (CKPoM) study area will need to be compensated for in accordance with the habitat compensation policy of the CKPoM concurrently with any offset obligation under the BOS.*