

11b Biodiversity conservation

Explanatory outline

Section 11b outlines assessment criteria relating to the assessment and conservation of biodiversity.

11b Biodiversity conservation

11b.1 Application of this section

This section applies to development described in Column 1 when carried out on land described in Column 2.

Column 1: Type of development	Column 2: Applicable land
Any development that requires development consent.	Any land.
Any vegetation clearing or vegetation management activity requiring a vegetation permit under Section 14a.5	Land where <i>State Environmental Planning Policy (Biodiversity & Conservation) 2021</i> applies, being land zoned Zone RU5 Village, Zone R1 General Residential, Zone R5 Large Lot Residential, Zone B2 Local Centre, Zone B4 Mixed Use, Zone B7 Business Park, Zone IN1 General Industrial, Zone IN2 Light Industrial, Zone SP1 Special Activities, Zone SP2 Infrastructure, Zone RE1 Public Recreation, Zone RE2 Private Recreation, and Zone C3 Environmental Management in <i>Upper Hunter LEP 2013</i> .

11b.2 Relevant planning instruments & legislation

The following environmental planning instruments or other legislation are relevant to development to which this section applies:

- *Upper Hunter Local Environmental Plan 2013* (clause 6.3 Terrestrial Biodiversity and accompanying map)
- *Environmental Planning and Assessment Act 1979*
- *State Environmental Planning Policy (Biodiversity & Conservation) 2021*
- *Fisheries Management Act 1994*
- *Biodiversity Conservation Act 2016*
- *Local Land Services Act 2013*
- *Environment Protection and Biodiversity Conservation Act 1999* (Commonwealth)
- *Biosecurity Act 2015*



11b Biodiversity conservation

Note: additional approvals may be required for native vegetation clearing under both the *Biodiversity Conservation Act 2016* and *Environment Protection and Biodiversity Conservation Act 1999*.

Further planning instruments and legislation may also be relevant. In the event of any inconsistency, the above listed instruments will prevail over requirements or criteria contained in this section.

11b.3 Definitions

There may be words used in this Part that are defined in the *Environmental Planning and Assessment Act, 1979*, as amended, or within *Upper Hunter Local Environmental Plan 2013*, as amended. The **Dictionary** to this DCP provides additional definitions that are relevant to this Part, including the following:

- biodiversity
- ecologically sustainable development
- native fauna
- native flora
- native vegetation

11b.4 Objectives

The objectives of this section are to:

1. protect and preserve native vegetation and biodiversity in the Upper Hunter LGA
2. ensure that biodiversity is appropriately considered in the determination of development proposals and land management
3. avoid and minimise land disturbance and clearing of native vegetation and habitat for native flora and fauna
4. maintain biodiversity by protecting native flora and fauna, ecological integrity and the ecological processes supporting their continued existence
5. retain native vegetation in parcels of a size and configuration which will enable the existing plant and animal communities and populations to survive in the long term.
6. encourage the conservation and recovery of native flora and fauna and their habitats
7. provide appropriate biodiversity offsets for unavoidable loss of biodiversity and vegetation clearing

11b.5 Supporting plans & documentation

Development applications that are subject to this section should be supported by the following plans and documentation.

Item	When required	Plans or information to be provided
A. General requirements	All applications	Refer to Part 2 Preparing & lodging a development application.
B. Native vegetation clearing threshold report	All applications involving clearing or likely future clearing of native vegetation (unless subject to a	A report must be prepared by a suitably qualified person, and include the following:



11b Biodiversity conservation

Item	When required	Plans or information to be provided
	vegetation permit) including land subdivision.	<ul style="list-style-type: none"> Mapping and quantification of the extent of proposed vegetation clearing For subdivisions, this will include areas likely to be cleared as a consequence of the subdivision, including fences, services, access, building areas and building asset protection zones. A review of the clearing threshold under the <i>Biodiversity Conservation Act 2016</i> and whether a Biodiversity development assessment report (BDAR) is required, as below.
<p>C. Biodiversity (flora & fauna) assessment report</p>	<p>Applications that relate to land with high biodiversity values, or that require significant disturbance or removal of native vegetation or potential habitat for native species, including listed threatened species or their habitats, or ecological communities or populations.</p> <p>Circumstances where a flora and fauna assessment report may be required include:</p> <ul style="list-style-type: none"> development is within 200 m of a natural water course, wetland, reserve, National Park, State Forest or permanent water body development involves clearing or disturbance of native vegetation within or adjacent to land identified on the Upper Hunter LEP 2013 Terrestrial Biodiversity Map. development is adjacent to or contains a parcel of remnant native vegetation development involves significant disturbance or removal of native vegetation. development involves significant disturbance to existing or potential native habitat for fauna species such as native vegetation, caves, dead trees, hollow bearing trees, bush rock or rocky outcrops, wetlands, streams, lakes, ponds or dams. where potential impacts are identified by the Council following a site inspection. 	<p>A report must be prepared by a suitably qualified person and should:</p> <ul style="list-style-type: none"> provide the results of any flora and fauna survey of the development site that may have been prepared. Appropriate flora and fauna surveys by a suitably qualified person may be required to identify biodiversity values. identify existing biodiversity values on the site and the extent to which these will be disturbed identify existing vegetation and vegetation to be removed assess the significance of the flora and fauna assess the ecological significance of the site and assess the impacts that the development may have on flora, fauna and the biophysical environment provide details of the consideration of whether the proposal may have serious and irreversible impacts on threatened species and threatened ecological communities identified under the <i>Biodiversity Conservation Act 2016</i> identify associated legislation and demonstrate compliance with the requirements of the legislation include a discussion of the findings of the survey and a recommendation. <p>Where an assessment indicates that a development may, or is likely to significantly affect species or ecological communities listed as threatened under relevant legislation, the extent of the impact and measures to avoid, minimise and mitigate that impact are to be documented.</p> <p>The report must include an assessment of whether the proposal is likely to significantly affect threatened species or ecological communities or their habitats by applying the test in Part 7.3 of the <i>Biodiversity Conservation Act 2016</i>.</p> <p>The contents and methods of a Flora and Fauna Survey and a Flora and Fauna Assessment Report must be consistent with relevant guidelines. It must also include relevant matters under the <i>Environmental Protection and Biodiversity Conservation Act 1999</i>.</p>

11b Biodiversity conservation

Item	When required	Plans or information to be provided
	<ul style="list-style-type: none"> the land contains potential Koala habitat that may be affected by the development. 	
D. Biodiversity development assessment report (BDAR)	A current biodiversity development assessment report is to accompany a development application where a development is likely to significantly affect threatened species or ecological communities or their habitats as required by Part 7.2 of the <i>Biodiversity Conservation Act 2016</i> .	Requirements for a BDAR are specified in the <i>Biodiversity Conservation Act 2016</i> and accompanying guidelines and regulations. See https://www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity
E. Biodiversity management plan	Where a significant impact on biodiversity values is anticipated, a biodiversity management plan may be prepared for the land to accompany the development application. This may also be applied as a consent requirement subsequent to an approval determination	Biodiversity management plans must outline how biodiversity will be managed during the construction and operational stages of the development, and will be specific to the site. These plans should include an offset strategy, management and monitoring measures.
F. Biodiversity offset information, strategy or plan	Where a significant impact on biodiversity values is anticipated, and biodiversity offsets are part of the development proposal	Information must include details of land tenure, security, and long term management arrangements for biodiversity offsets. The information, strategy or plan must show how offsets will compensate for loss of biodiversity and how they are to be provided, secured and managed.

11b.6 Assessment criteria

A performance-based approach will be adopted in the assessment of development applications. Applications will be assessed according to the extent to which the outcomes specified in the left-hand column of the following table will be satisfied or achieved by the design, construction or operation of the proposal.

The design guidelines specified in the right-hand column indicate design and best practice solutions by which the required outcomes can be met. They do not preclude other solutions that may be suitable under particular local circumstances. All proposals will be considered on merit.

Outcomes to be achieved	Design guidelines
A Biodiversity considerations <ul style="list-style-type: none"> Native vegetation and biodiversity are conserved, consistent with the principles of ecologically sustainable development 	<ul style="list-style-type: none"> Where possible, existing native vegetation should be retained. Subdivisions should be designed to minimise the fragmentation of native vegetation. Developments should ensure that ecological corridors are maintained to provide landscape scale habitat connectivity.



11b Biodiversity conservation

Outcomes to be achieved

Design guidelines

B. Avoiding and minimising biodiversity impacts

- Adequate measures are taken to avoid and minimise biodiversity impacts.

- Appropriate buffers are to be provided between development and native vegetation and significant habitats (for example, streams and water courses).

C. Serious and irreversible impacts on biodiversity

- Potential serious and irreversible impacts on biodiversity are to be identified and avoided.
- Development shall assess and document potential serious and irreversible impacts on biodiversity.
- Where serious and irreversible impacts on threatened species and ecological communities are identified, then a development application must be refused by the council as a legislative requirement.

- Development impacts on native vegetation and biodiversity are to be avoided. Where this is not possible, measures to minimise and mitigate impacts must be demonstrated. Mitigating measures may include biodiversity offsets.

D. Biodiversity offsets

- Where impacts on biodiversity values cannot be avoided, appropriate biodiversity offsets are to be provided to compensate for biodiversity loss
- Biodiversity offset arrangements are required in perpetuity.
- Biodiversity offsets are to be as close as possible to the development site, and within the Upper Hunter Local Government Area, unless it can be demonstrated that this is not appropriate or feasible

E. Land management for biodiversity

- Adequate measures are taken to protect land of high biodiversity value in the long term, including appropriate legal mechanisms and land management measures.

- A biodiversity management plan should be prepared for land with high biodiversity values to ensure it is protected, rehabilitated and maintained during construction of the development and over the long term. Flora and fauna assessment reports must assess biodiversity values.
- Any landscaping or revegetation of cleared or degraded areas should incorporate locally indigenous plant species.

11b.7 Supplementary guidance

The following documents or reference materials provide further advice or information that is relevant to this section.

<https://www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity>