

27 March 2019

His Worship the Mayor & Councillors

Notice of Ordinary Meeting of Bathurst Regional Council - Wednesday, 3 April 2019

I have to advise that an **Ordinary Meeting** of Bathurst Regional Council will be held in the Council Chambers on Wednesday, 3 April 2019 commencing at approximately 7.15 pm (or immediately following the conclusion of the Discussion Forum).



D J Sherley
GENERAL MANAGER

BUSINESS AGENDA

ORDINARY MEETING OF COUNCIL FOLLOWING POLICY COMMITTEE

TO BE HELD ON WEDNESDAY, 3 APRIL 2019

- 1. 7:15 PM - MEETING COMMENCES**

- 2. APOLOGIES**

- 3. DECLARATION OF INTEREST**
To assist the Councillors and committee members in their correct consideration of business before them at the meeting, please give consideration to Section 451 of the Local Government Act, in relation to Declaration of Interest at meetings.

- 4. RECEIVE AND DEAL WITH GENERAL MANAGER'S AND DIRECTORS' REPORTS**

* DIRECTOR ENVIRONMENTAL PLANNING & BUILDING SERVICES' REPORT

- 5. MEETING CLOSE**

MINUTE

1 MEETING COMMENCES

Present: Councillors Hanger (Chair), Aubin, Bourke, Christian, Fry, Jennings, Morse, North.

MINUTE

2 APOLOGIES

MOVED: Cr I North SECONDED: Cr B Bourke

RESOLVED: That the apology from Cr Rudge be accepted and leave of absence granted.

MINUTE

3 DECLARATION OF INTEREST 11.00002
MOVED: Cr I North SECONDED: Cr W Aubin

RESOLVED: That the Declaration of Interest be noted.

**DIRECTOR ENVIRONMENTAL PLANNING & BUILDING SERVICES'
REPORT AND MINUTES**

ORDINARY MEETING OF COUNCIL FOLLOWING POLICY COMMITTEE

3 APRIL 2019

1 BATHURST REGIONAL DEVELOPMENT CONTROL PLAN 2014

AMENDMENT – VEGETATION MANAGEMENT AND BIODIVERSITY (20.00334)

Recommendation: That Council:

- (a) place the draft DCP amendment - Vegetation Management and Biodiversity on public exhibition for 28 days in accordance with the statutory requirements of the Environmental Planning and Assessment Act; and
- (b) call a division.

Report: On 25 February 2018, new land management and biodiversity conservation reforms by the NSW Government commenced in NSW. These reforms introduced some significant changes to the way biodiversity is protected in NSW, how development activities are regulated on land and how the impacts of these activities on the natural environment are managed. The reforms included significant changes to the way impacts on biodiversity are measured, managed and offset.

The *Biodiversity Conservation Act 2016*, together with the *Biodiversity Conservation Regulation 2017*, outline the new framework for assessment and approval of biodiversity impacts associated with developments that require consent under the *Environmental Planning and Assessment Act 1979*.

Where clearing does not otherwise require development consent, the State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP) now regulates clearing of vegetation in urban and environmental zones across the State. The clearing of vegetation regulated under the Vegetation SEPP is to be specified in a Development Control Plan (DCP).

This amendment to the Bathurst Regional Council DCP specifies vegetation which is proposed to be protected in non-rural zones and heritage conservation zones and provides protection to trees listed as heritage items. The amendment constitutes a new part in Chapter 9 of the existing DCP.

The draft DCP amendment proposes to declare the following vegetation in non-rural areas to be specified vegetation to which Part 3 of the Vegetation SEPP applies:

- i. All native trees and native vegetation on land in the following zones under the Bathurst Regional Council Local Environmental Plan 2014.
 - E2 - Environmental Conservation
 - E4 - Environmental Living
 - SP2 - Infrastructure
 - SP3 - Tourist
 - RE1 - Public Recreation
 - R5 - Large Lot Residential
 - RU5 - Village
 - W2 - Recreational Waterways
- ii. Native trees in non-rural areas which are verified and mapped by Council as supporting a threatened ecological community.
- iii. Vegetation within areas identified on a DCP Map (**attachment 1**) as an environmental protection area.

The draft DCP amendment also declares specified vegetation for heritage conservation purposes as:

- i. Trees and other vegetation that are a heritage item (i.e. individually listed) or within the curtilage of a Heritage Item;
- ii. Trees located within a heritage conservation area that are greater than 9 metres tall.

The draft DCP will be placed on public exhibition for a period of 28 days. A further report will then be presented to Council for consideration.

In addition to formal exhibition, it is intended to conduct a wider notification process by way of letter-box drop, ratepayer newsletter and Yoursay.

A copy of the proposal to be incorporated into the DCP is included at **attachment 2**. The complexity of the draft DCP provisions is a direct result of the complexity of the biodiversity conservation reforms and the Vegetation SEPP. Council staff have prepared a flow chart to simplify the process, which is contained on page 5 of the draft DCP at **attachment 2**.

Financial Implications: Nil.

Bathurst Community Strategic Plan - Objectives and Strategies

- Objective 1: Our sense of place and identity Strategy 1.2, 1.5
- Objective 3: Environmental stewardship Strategy 3.1, 3.4, 3.5
- Objective 6: Community leadership and collaboration Strategy 6.1, 6.4

Community Engagement

- Consult To obtain public feedback on alternatives and/or decisions

MINUTE

4 Item 1 BATHURST REGIONAL DEVELOPMENT CONTROL PLAN 2014
AMENDMENT – VEGETATION MANAGEMENT AND BIODIVERSITY (20.00334)
MOVED: Cr I North SECONDED: Cr J Jennings

RESOLVED: That Council:

- (a) place the draft DCP amendment - Vegetation Management and Biodiversity on public exhibition for 28 days in accordance with the statutory requirements of the Environmental Planning and Assessment Act; and
- (b) call a division.

On being **PUT** to the **VOTE** the **MOTION** was **CARRIED**

The result of the division was:

In favour of the motion - Cr W Aubin, Cr B Bourke, Cr A Christian, Cr J Fry, Cr G Hanger, Cr J Jennings, Cr M Morse, Cr I North,

Against the motion - Nil

Absent - Cr J Rudge,

Abstain - Nil

Yours faithfully



N Southorn

DIRECTOR

ENVIRONMENTAL, PLANNING & BUILDING SERVICES

MINUTE

5 MEETING CLOSE

The Meeting closed at 7.22 pm.

CHAIRMAN: _____

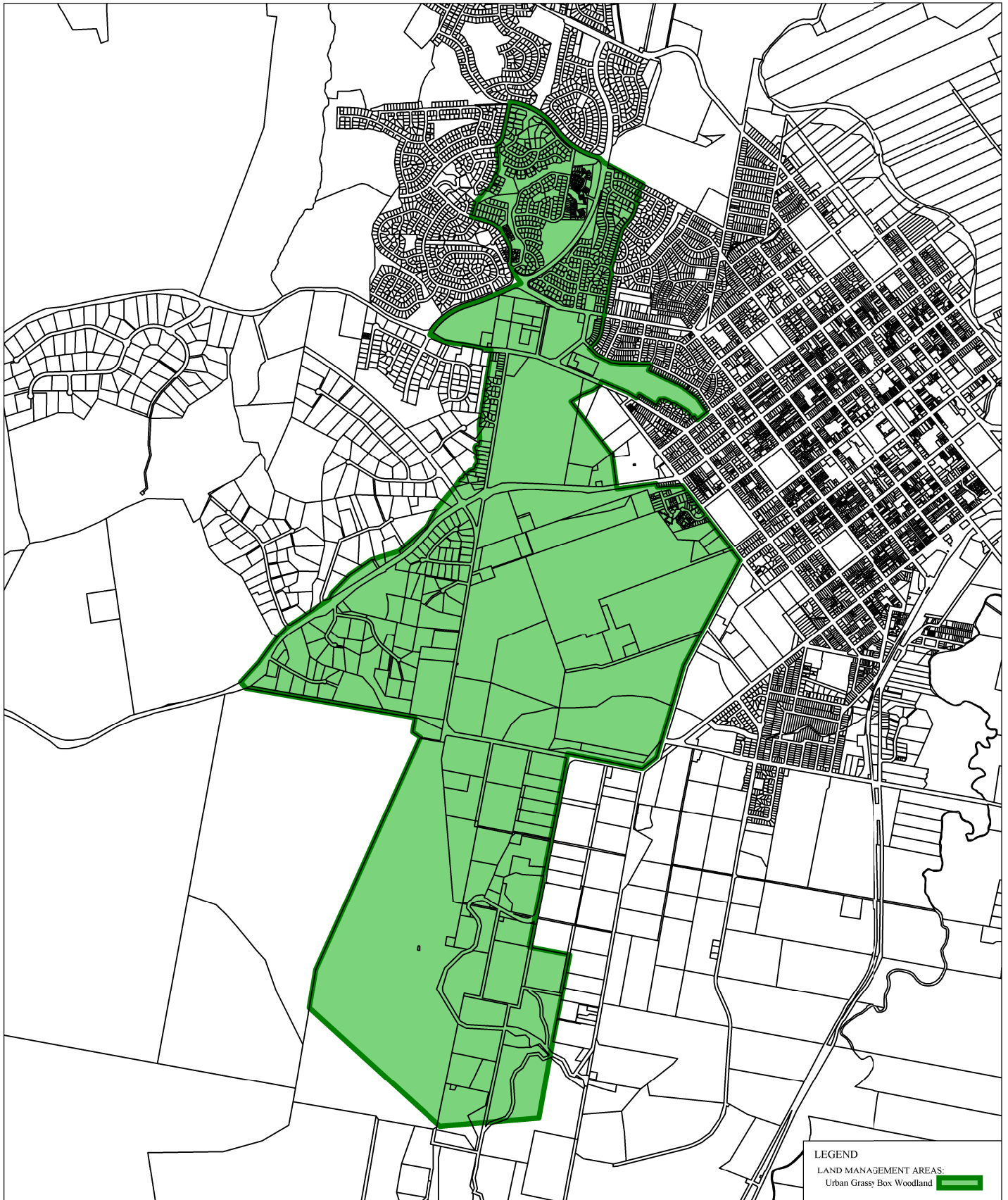
**DIRECTOR ENVIRONMENTAL PLANNING & BUILDING SERVICES'
REPORT - ATTACHMENTS**

ORDINARY MEETING OF COUNCIL FOLLOWING POLICY COMMITTEE

3 APRIL 2019

BATHURST REGIONAL DEVELOPMENT CONTROL PLAN 2014

MAP No. 38 - URBAN GRASSY BOX WOODLAND **DRAFT**



LEGEND
 LAND MANAGEMENT AREAS:
 Urban Grassy Box Woodland

ADOPTION DATE:		
AMENDMENTS		
No.	DATE	DESCRIPTION

LOCALITY: WINDRADYNE, WEST BATHURST,
 MITCHELL, ROBIN HILL, MOUNT PANORAMA

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT, 1979

BATHURST REGIONAL LOCAL GOVERNMENT AREA.

SCALE: 1:35,000



CERTIFIED IN ACCORDANCE WITH THE ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979 AND REGULATIONS

GENERAL MANAGER. DATE:

9.10 VEGETATION MANAGEMENT AND BIODIVERSITY

9.10.1 Objectives

- (a) To protect and enhance vegetation, habitat for native fauna and biodiversity within the Bathurst Region.
- (b) To protect trees that are heritage items, located on the site of a heritage item or that are within heritage conservation areas.
- (c) To protect, maintain and improve the diversity and stability of landscapes and waterways, minimise urban heat and other climate change impacts, reduce stormwater runoff and improve the visual amenity of streetscapes and landscapes contributing to community well-being.

9.10.2 Land to which this Section applies

This section applies as follows:

- (a) To the clearing of vegetation in all areas that is proposed in association with a development application.
- (b) To the clearing of specified vegetation in non-rural areas being land in zones E2 Environmental Conservation, E4 Environmental Living, SP2 Infrastructure, SP3 Tourist, RE1 Public Recreation, R5 Large Lot Residential, RU5 Village & W2 Recreational Waterways.
- (c) To the clearing of specified vegetation that is a heritage item, or is within the curtilage of a heritage item, or is within a heritage conservation area.

This section does not apply to the clearing of exempt vegetation as identified in subsection 9.10.5.

9.10.3 What approvals are required under this Section?

- (a) If clearing is in association with a development application or in preparation for a development application, development consent is required from Council.
- (b) If clearing specified vegetation in non-rural areas (see section 9.10.5(a)), either an approval from the NSW Native Vegetation Panel or a clearing permit from Council may be required.
- (c) If clearing specified vegetation that is a heritage item, or is within the curtilage of a heritage item or is within a heritage conservation area (see section 9.10.5(b)):
 - i. development consent for clearing of a heritage item or clearing within the curtilage of a heritage item may be required from Council; or
 - ii. a clearing permit for clearing within a heritage conservation area may be required from Council.

Refer to Council's Tree Preservation and Management Policy.

Notes:

1. Clause 9.10.5 of this DCP defines what is "specified vegetation" for the purposes of this DCP Chapter.

2. Clause 9.10.6 outlines activities that are exempt from requiring development consent or a clearing permit.

3. The clearing of native vegetation in non-rural areas (i.e. all zones except RU1 Primary Production, RU2 Rural Landscapes and RU4 Primary Production Small Lots) above the Biodiversity Offset Scheme threshold or identified on the Biodiversity Values Map requires approval of the Native Vegetation Panel. For more information:

<https://www.planning.nsw.gov.au/Policy-and-Legislation/Environment-and-Heritage/Vegetation-SEPP>

4. The clearing of native vegetation in rural areas (zones RU1 Primary Production, RU2 Rural Landscapes and RU4 Primary Production Small Lots), where not associated with a development application, is regulated under the NSW *Local Land Services Act 2013*. For more information: <https://www.lls.nsw.gov.au/sustainable-land-management/land-management>

5. The clearing of vegetation exempted or not otherwise specified by this DCP or that does not require approval of the Native Vegetation Panel is permitted without development consent or a clearing permit.

6. Notwithstanding any element of this section, if the clearing of vegetation will cause damage to habitat of a threatened species or ecological community or cause harm to an animal that is threatened, part of a threatened ecological community or a protected plant or animal, a Biodiversity Conservation Licence is required under the *Biodiversity Conservation Act 2016*. However, a Biodiversity Conservation Licence is not required if a clearing permit or development consent is issued by Council, an approval is granted from the Native Vegetation Panel or the clearing is otherwise authorised under other legislation, such as the *Local Land Services Act 2013* (refer to Part 2 of *Biodiversity Conservation Act 2016*).

7. This section does not constitute legal advice as to responsibilities under the NSW *Local Land Services Act 2013* or NSW *Biodiversity Conservation Act 2016*.

9.10.4 Explanation of terms

a) What is clearing?

Clearing means any one or more of the following:

- i. Cutting down, felling, thinning, logging or removing vegetation;
- ii. Killing, destroying, poisoning, ring-barking, uprooting or burning vegetation;
- iii. Severing, topping or lopping branches, limbs, stems or trunks of vegetation;
- iv. Substantially damaging or injuring vegetation in any other way (see definition for injury).

b) What is injury

Injury means damage to a tree or vegetation and includes:

- i. Lopping and topping;
- ii. Poisoning, including applying herbicides and other toxic chemicals to a tree or spilling (including washing off or directing water contaminated by) oil, petroleum, paint, cement, mortar and the like onto the root zone;

- iii. Cutting, snapping off and tearing of branches and roots that is not carried out in accordance with accepted arboricultural practices;
- iv. Ring-barking, scarring the bark when operating machinery (eg lawn mowers), fixing objects (eg. signs) by nails, staples or wire, using tree climbing spikes in healthy trees marked for retention (except for access to an injured tree worker) or fastening materials that circle and significantly restrict the normal vascular function of the trunk or branches;
- v. Damaging a tree's root zone by compaction or excavation, asphyxiation (including unauthorised filling or stockpiling of materials);
- vi. Under scrubbing, unless carried out by hand tools, such as brush cutters and the like.

9.10.5 Specified Vegetation

a) What is specified vegetation in non-rural areas (clause 9.10.2(b) of this DCP chapter)?

- i) All native trees and native vegetation on land in zone E2 Environmental Conservation, E4 Environmental Living, SP2 Infrastructure, SP3 Tourist, RE1 Public Recreation, R5 Large Lot Residential, RU5 Village & W2 Recreational Waterways under the Bathurst Regional Council Local Environmental Plan 2014.
- ii) Native trees in non-rural areas which are verified and mapped by Council as supporting a threatened ecological community (Refer to DCP Map No. 38 – Urban Grassy Box Woodland).
- iii) Vegetation within areas identified on a DCP Map as an environmental protection area.

The above specified vegetation is declared to be vegetation to which Part 3 of the Vegetation SEPP applies.

b) What is specified vegetation for heritage conservation purposes (clause 9.10.2(c) of this DCP Chapter)?

- i) Trees and other vegetation that are a heritage item (ie individually listed) or within the curtilage of a Heritage Item;
- ii) Trees located within the Bathurst, Kelso or West Bathurst heritage conservation areas that are greater than 9 metres tall.

Note: Trees within a Heritage Conservation Area and within Zone RU5 Village are to use the approval pathway described in 9.10.2 (a) or (b).

9.10.6 What is the Biodiversity Offsets Scheme (BOS) threshold

The Biodiversity Offset Scheme thresholds, as shown in the table below, are defined by clause 7.2 of the *Biodiversity Conservation Regulation 2017*.

Minimum lot size associated with the property	Threshold for clearing, above which the BOS applies
Less than 1 ha	0.25 ha or more
1 ha to less than 40 ha	0.5 ha or more
40 ha to less than 1000 ha	1 ha or more
1000 ha or more	2 ha or more

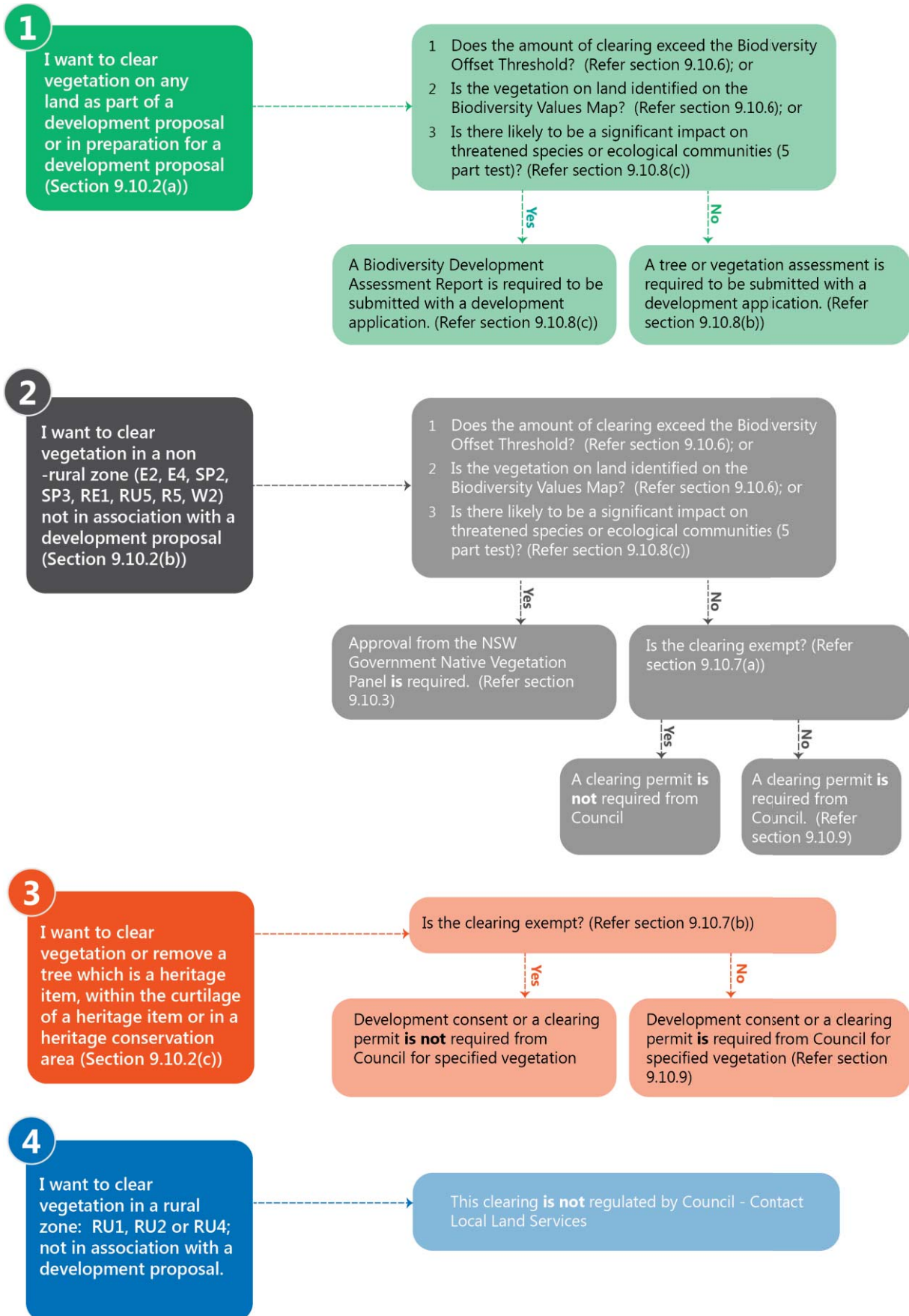
Notwithstanding the above table, clearing on land shown on the Biodiversity Values Map, published under clause 7.3 of the *Biodiversity Conservation Regulation 2017*, is clearing that exceeds the Biodiversity Offset Scheme threshold.

Further information about the Biodiversity Offsets Scheme can be accessed from:

<https://www.environment.nsw.gov.au/biodiversity/entryrequirements.htm>

The Biodiversity Values map can be accessed from:

<https://www.lmbc.nsw.gov.au/Maps/index.html?viewer=BOSETMap>



9.10.7 Exemptions:

- (a) For the purposes of clause 9.10.3 (b) of this DCP, the following activities are exempt from requiring a permit from Council:
- i. Clearing of State and regional priority weeds under the *Biosecurity Act 2015*.
 - ii. Clearing of vegetation that Council is satisfied is dead or dying and is not required as the habitat of native animals.
 - iii. Clearing of vegetation that Council is satisfied is a risk to human life or property
 - iv. Any works to a specified tree carried out by, or on behalf of, Bathurst Regional Council.
 - v. Clearing on the site of the Bathurst Regional Airport.
 - vi. Clearing that is authorised under other legislation (eg. *Electricity Supply Act 1995, Rural Fires Act 1997, Local Land Services Act 2003*)
 - vii. Clearing within 3m of a lawful dwelling
 - viii. Clearing that is in accordance with a property vegetation plan or other conservation agreement
 - ix. Pruning that does not exceed 10% of the canopy every three years and complies with Australian Standard 4373 – Pruning of Amenity Trees.
- (b) For the purposes of clause 9.10.3 (a) and (c) of this DCP, (in relation to vegetation that is a heritage item or is within the curtilage of a heritage item or in a heritage conservation area), the following activities are exempt from requiring development consent or a clearing permit from Council:
- i. Clearing of any of the following species within a heritage conservation area (excluding a tree that is a heritage item or within the curtilage of a heritage item):

Exempt tree list	
Botanical name	Common name
Eucalyptus nicholii	Narrow Leaved Black Peppermint
Acacia Spp	Wattles
Cupressocyparis leylandii	Leylandii Pines (all varieties)
Salix Spp	Willow
Ligustrum lucidum	Privet
Robinia pseudoacacia	Robinia
Gleditsia triacanthus	Locust
Populus Spp	Poplars

- ii. Clearing of trees less than nine (9) metres in height; and have a trunk circumference of less than one (1) metre when measured at a height of one (1) metres from the ground; and has a branch spread of fifteen (15) metres or less.
- iii. Clearing that Council agrees is of a minor nature or is required for the maintenance of the heritage item or heritage conservation area and that would not adversely affect the heritage item or heritage conservation area, is exempt

from requiring development consent (in accordance with clause 5.10 of the *Bathurst Regional Local Environmental Plan 2014*).

- iv. Any works to a specified tree carried out by, or on behalf of, Bathurst Regional Council.
- v. Clearing of State and regional priority weeds under the *Biosecurity Act 2015*.
- vi. Clearing of vegetation that Council is satisfied is dead or dying and is not required as the habitat of native animals.
- vii. Clearing that is authorised under other legislation (eg. *Electricity Supply Act 1995, Rural Fires Act 1997, Local Land Services Act 2013*)
- viii. Any works to make safe a specified tree where there is an immediate threat of injury to persons or damage to property provided that contact has been made with Council's Authorised Officer and verbal approval has been provided, or to comply with a direction from an Emergency Services agency. Evidence must be provided by an Arborist at the earliest possible time following the elimination of the threat.

Note: This does not negate the need for an application to be submitted at the earliest opportunity upon the elimination of the threat of injury or damage.

- viii. Pruning that does not exceed 10% of the canopy every three years and complies with Australian Standard 4373 – Pruning of Amenity Trees.

(c) **Exclusions**

The following vegetation is excluded from the exemptions outlined above:

- i. Any vegetation required to be retained as a condition of a development consent.
- ii. Any vegetation that is identified on Section 88B instruments under the *Conveyancing Act 1919* as vegetation to be retained.
- iii. Any vegetation that is identified on a property vegetation plan or other conservation agreement as vegetation to be retained.
- iv. Any vegetation that is habitat for threatened species.
- v. Any vegetation within a designated buffer area on a DCP Map.

9.10.8 Development Standards

This subsection applies when a development application is required.

- (a) A development application that includes the clearing of vegetation must be accompanied by a site plan showing the location of vegetation to be cleared. A survey of the property and the location of trees on the property may be required by Council. The site plan (preferably using an aerial photograph) must detail the following:
 - i. The proposed development, including where all works and buildings are to be located.
 - ii. Existing buildings and other structures on the land.

- iii. Any existing or proposed effluent disposal site.
 - iv. Extent of land proposed to be disturbed.
 - v. Extent and type of existing vegetation (including ground vegetation) and details of the vegetation proposed to be removed as part of the development.
 - vi. Location of bores within 250 metres of the site.
 - vii. Any other environmental constraints, as applicable.
- (b) A Statement of Environmental Effects submitted with the development application must include a description of the vegetation to be cleared (type and condition of vegetation), photographs of the vegetation and a statement addressing the biodiversity impact of the proposed development. Council may require the submission of a report from a suitably qualified professional (e.g. ecologist) to provide evidence of the species of vegetation to be cleared and the condition of that vegetation.
- (c) Where development on any land involves clearing of vegetation and:
- 1. the extent of clearing exceeds the Biodiversity Offset Scheme Threshold, or
 - 2. the vegetation to be cleared is identified on the Biodiversity Values Map, or
 - 3. the development is likely to have a significant impact on listed threatened species or threatened ecological community;
- a Biodiversity Development Assessment Report (prepared in accordance with the NSW Office of Environment and Heritage's Biodiversity Assessment Method) must be submitted with the development application.
- (d) Where development on any land involves clearing of vegetation and the extent of clearing is less than the Biodiversity Offset Scheme Threshold and the vegetation to be cleared is not identified on the Biodiversity Values Map, Council may require the submission of a Flora and Fauna Impact Assessment if, in the opinion of Council, the clearing is likely to have a significant impact on environmental matters (refer to clause 9.10.10).
- (e) In relation to clearing of a heritage item or clearing within the curtilage of a heritage item, a Statement of Heritage Impact may be required if, in the opinion of Council, the clearing is likely to have a significant impact on the heritage item or the heritage conservation area. Refer to Chapter 10 of this Plan.
- (f) Consent must not be granted to any development including any building, subdivision or work on land identified as **High or Moderate Biodiversity Sensitivity** on DCP Map No. 31 - Biodiversity unless the consent authority has considered an environmental assessment that indicates how the development will achieve the following outcomes:
- i) Protect biological diversity, native flora and fauna and their habitat.
 - ii) Protect the ecological processes necessary for ecosystem health.
 - iii) Encourage the recovery of threatened species, communities, populations and their habitats.

The assessment must consist of a written statement which explains how the proposed development achieves the required outcomes. In this regard it should include the following information, as a minimum.

Impact of development on biodiversity

This section should summarise how the proposed development will impact on existing biodiversity. This should include how the development might impact on:

- i) native terrestrial flora and fauna, their habitat, and their interrelationship with the environment,
- ii) native aquatic flora and fauna, their habitat, and their interrelationship with the environment, and
- iii) the physical and biological function of the ecosystem.

Note: Where the site plan demonstrates no disruption to existing vegetation or function of the ecosystem all that is required is a statement that the proposed development achieves the required outcome.

Proposed mitigation measures

Impacts may also come in other ways e.g. through additional fencing, removal of dead and fallen timber or domestic pets.

This section should include details of how biodiversity loss will be mitigated, e.g. proposed re-vegetation including maintenance details to ensure survival rate is maximised.

Summary

This section should summarise how the proposed development achieves the required outcomes to:

- i. Protect biological diversity, native flora and fauna and their habitat.
- ii. Protect the ecological processes necessary for ecosystem health.
- iii. Encourage the recovery of threatened species, communities, populations and their habitats.

9.10.9 Requirements for clearing permit applications

This subsection applies when a clearing permit application or an exempt tree notification form is required.

- (a) A **clearing permit application form** must be lodged with Council to undertake clearing of specified vegetation, prior to undertaking any clearing, unless the clearing is exempt (see clause 9.10.7).
- (b) Applications must be accompanied by a site plan showing the location of vegetation to be cleared. A survey of the property and the location of trees on the property may be required by Council. The site plan (preferably using an aerial photograph) must detail the following:
 - i. Existing buildings and other structures on the land
 - ii. Extent of land proposed to be disturbed.

- iii. Extent and type of existing vegetation (including ground vegetation) and details of the vegetation proposed to be removed as part of the development.
 - iv. Any other environmental constraints, as applicable.
- (c) Applications must be accompanied by a statement that describes the vegetation to be cleared (type and condition of vegetation), photographs of the vegetation and an assessment of the biodiversity impact of the proposed development. Council may require the submission of a report from a suitably qualified professional (e.g. ecologist) to provide evidence of the species of vegetation to be cleared and the condition of that vegetation.
- (d) If, in the opinion of Council, the clearing is likely to have a significant impact on threatened species or threatened ecological communities, Council may require the submission of a Flora and Fauna Impact Assessment (see subsection 9.10.10).
- (e) In relation to the clearing of exempt trees (see clause 9.10.7 (b).), an **exempt tree notification form** must be lodged with Council prior to undertaking clearing.

It is the responsibility of the owner of the land to ensure that the vegetation proposed to be removed is the species identified in the exempt tree list. Evidence (such as the advice of a suitably qualified professional (e.g. ecologist)) is to be provided with the application along with photographs of the vegetation to be removed.

9.10.10 Flora and Fauna Impact Assessment

This subsection applies when a Flora and Fauna Impact Assessment is required.

- (a) A flora and fauna impact assessment is an ecological study of a specific area of land that:
- i. Documents the components of biodiversity confirmed to be present within the study area.
 - ii. Documents the components of biodiversity not confirmed, but likely to be present within the study area.
 - iii. Assesses the extent and nature of likely impacts of planning, land management, clearing or development proposals on the components of biodiversity referred to above, and specifically, any likely impacts on:
 - matters of national environmental significance;
 - matters of state significance;
 - matters of regional significance;
 - matters of local significance;
 - other protected matters (e.g. protected animals).
 - iv. Makes recommendations as to how any planning, land management or development proposals relating to the study area and /or subject site should be dealt with or modified so as to avoid unacceptable impacts on biodiversity.

Components of biodiversity include species, habitats, ecological communities, genes, ecosystems and ecological processes.

- (b) A flora and fauna impact assessment is to be undertaken prior to the lodgement of a Development Application or clearing permit where the following circumstances apply:
- i. the proposed development or clearing activity is likely to have an impact on matters of National environmental significance under the (Commonwealth) Environment Protection and Biodiversity Conservation Act 1999; or
 - ii. the proposed development or clearing activity is likely to have an impact on threatened species, populations or ecological communities listed under the Biodiversity Conservation Act 2106 or Part 7A of the Fisheries Management Act 1994, or their habitats; or
 - iii. the Council requests the applicant to provide supporting information to enable a determination as to whether the proposed development or clearing activity will have impacts referred to above; or
 - iv. the proposed development or clearing activity involves clearing of native vegetation, including wetlands and riparian vegetation; or
 - v. ecological assessment of the proposed development or clearing activity is required under State Environmental Planning Policy No. 44 - Koala Habitat Protection; or
 - vi. the proposed development or clearing activity may affect, either directly or indirectly, certain vegetation or habitat communities subject to special planning controls, including coastal wetlands, urban bushland, littoral rainforest and koala habitat.

In relation to development applications, the flora and fauna impact assessment may be incorporated in the statement of environmental effects, biodiversity assessment, species impact statement or environmental impact statement accompanying the Development Application.

- (c) A Flora and Fauna Impact Assessment must be prepared in accordance with industry best practice and in particular (where appropriate) in accordance with the following guidelines:
- i) Bathurst Regional Council's Guidelines for Flora and Fauna Assessments.
 - ii) OEH's Threatened Species Assessment Guidelines.
 - iii) SEPP No. 44 – Koala Habitat Protection.
 - iv) Department of Planning – Circular B35 (1995) SEPP 44 Koala Habitat Protection.
- (d) The study area is to include all of the site area the subject of the Development Application or clearing permit application. It is also to include land beyond the site where this is necessary to assess off-site impacts, the extent of any adjoining habitat or population of threatened species or the role of the site as a habitat corridor.
- (e) The assessment must include as a minimum the following key tasks:
- i) Research of known information and data prior to the on-site survey (e.g. Council's Threatened Species Database).
 - ii) Detailed survey design.

- iii) Completion of an on-site survey and associated data collection.
 - iv) Analysis and interpretation of data.
 - v) Report preparation and recommendations.
- (f) A digital copy of the completed Flora and Fauna Impact Assessment is to be lodged with the Development Application or clearing permit application.
- (g) When flora or fauna habitat is identified through a report, specific conditions may be imposed on the development consent or clearing permit relating to the management, protection, or otherwise of the area or site.

9.10.11 Assessment Criteria

Council may take into consideration any or all of the following criteria when assessing an application for clearing (being a clearing permit application, an exempt tree notification or a development application):

- (a) Potential life of the tree - whether the tree is senescing or declining.
- (b) Whether the tree is causing structural damage to a building, structure, pipe or sewer.

Note: A report may be required by a suitably qualified and experienced consultant where the damage is not visually evident.

- (c) Whether the tree is severely stressed, diseased or is suffering insect damage and without the opportunity for mitigation.
- (d) Whether the growth habit or mature size of a tree is undesirable in a given situation (e.g. power lines, root interference with service, infrastructure or building).
- (e) Whether the tree shows poor form, shape and/or vigour typical to the species.
- (f) Where the branches are dangerous and overhanging a building or an adjoining property. In this case, the assessing Council officer will determine the amount of pruning permitted to address any public nuisance issue.
- (g) Whether the tree species is appropriate in terms of its proximity to dwellings, adjoining dwellings or other buildings.
- (h) Whether the clearing or removal of the tree or other vegetation has the potential to directly or indirectly affect a threatened species, population, ecological community or their habitats, or other protected fauna/flora (e.g. whether the tree(s) involves are habitat trees for any threatened fauna species, or whether the tree(s) involved are part of an endangered population, endangered ecological community or is critical habitat for any threatened fauna species).
- (i) Whether the tree species is of regional significance (i.e. identified regionally as a rare species due to heavily cleared or under-represented vegetation community).
- (j) Whether the tree is of local significance and is considered relatively rare or has limited distribution or is a critical indigenous species.
- (k) Whether the removal of the tree(s) will pose any adverse impact upon the amenity or scenic environmental quality of the locality.

- (l) Whether the removal of the tree(s) is necessary as part of any bushfire hazard reduction work under the Rural Fires Act 1997.
- (m) Whether the removal of the tree(s) will cause any potential adverse slope instability or geotechnical impacts upon the site or the locality.
- (n) Whether the applicant has provided a medical certificate from a clinical immunologist/ allergy specialist which states that the pruning or removal of a tree is necessary for maintaining quality of life.
- (o) Whether any previous condition of development consent required the retention of the tree(s).
- (p) Whether the proposal involves the planting of replacement vegetation.

9.10.12 Reasons not considered as justification for clearing

These are common requests for tree removal/works which generally provide insufficient reason for a permit or approval to be issued:

- (a) Shedding of flowers, leaves, bark, twigs, fruit, and sap causing nuisance.
- (b) Animals (insect, bird, bat, possum etc.) that inhabit trees causing nuisance.
- (c) To enhance amenity views.
- (d) Damage to underground services (such as sewer lines, water services and the like), where there are alternatives to mitigate and retain the tree.
- (e) Construction of fences.
- (f) Minor heave (lifting) of paths, paving, fences and minor structures where mitigation is not appropriate.
- (g) Tree does not suit the existing or proposed landscape.
- (h) Unsubstantiated fear of tree failure.
- (i) Tree removal for fire hazard reduction, where the property is not within a bushfire prone area as defined by the Rural Fire Service.
- (j) Tree is considered to be too large or high.
- (k) Pruning to reduce height.
- (l) To increase solar access unless sufficient evidence is provided.
- (m) To allow for a proposed development where alternative locations are available.