

Biodiversity in Local Environmental Plan (LEP) Making Policy

February 2025

Version: 1



City of
Newcastle

Table of Contents

Part A - Preliminary	1
1 Purpose	1
2 Context	1
3 Scope	1
4 Principles	1
Part B - Policy Statement	3
5 CN's approach to biodiversity matters when amending or making an LEP	3
Part C - Biodiversity Assessment Guidelines for Local Environmental Plan (LEP) Making	4
6 Guidelines for C2 Environmental Conservation and other land use zones under NLEP 2012.....	4
7 Guidelines for specific biodiversity issues	4
8 Requirements for future conservation land.....	6
Part D - Roles and Responsibilities	8
Annexure A - Definitions	9
Annexure B - Policy Authorisations	11
Document Control	12

Part A - Preliminary

1 Purpose

- 1.1 The purpose of this Policy is to:
 - a) Ensure biodiversity issues are appropriately considered and resolved early in the land use planning process when making or amending a Local Environmental Plan (LEP) in the Newcastle Local Government Area (LGA).
 - b) Provide guidance to assist in preparing and assessing requests to amend an LEP in the Newcastle LGA via a planning proposal (PP), in particular to land within a conservation zone or land otherwise identified for environment conservation/ protection purposes.
 - c) Assist with the interpretation of avoidance as applied by the *Biodiversity Conservation Act 2016* for the Newcastle LGA.

2 Context

- 2.1 This Policy is developed to assist with the local application of Section 1.3(k) of the *Biodiversity Conservation Act 2016*, to establish a framework to avoid the impacts of proposed land use change on biodiversity.
- 2.2 This Policy is developed to define City of Newcastle's (CN's) position on the protection and conservation of biodiversity within the Newcastle LGA and provides specific guidance to support decision-making related to the making and amendment of LEPs.
- 2.3 This Policy acknowledges that biodiversity conservation remains subject to any relevant overarching NSW or Commonwealth legislation, such as the *Biodiversity Conservation Act 2016* and *Environment Protection and Biodiversity Conservation Act 1999*.

3 Scope

- 3.1 This Policy applies to land within the Newcastle LGA that:
 - a) is subject to a proposed amendment to the land use zoning or principal development standards in an LEP; and
 - b) is known to contain, or is likely to contain, land with Biodiversity Values, or is in proximity to other lands with known or likely Biodiversity Values; or
 - c) is proposed to be used as a biodiversity offset or stewardship site.
- 3.2 This Policy is relevant to CN staff who are responsible for preparing, assessing or providing advice on a PP.
- 3.3 For CN staff, a breach of this Policy is a breach of CN's Code of Conduct.

4 Principles

- 4.1 CN commits itself to the following management principles:
 - a) **Alignment with CN strategies** - the Policy aligns with priorities outlined in the Newcastle 2040 Community Strategic Plan, Newcastle Environment Strategy and Newcastle Local Strategic Planning Statement.
 - b) **Contribution of biodiversity** - the natural environment and the local Biodiversity Values of Newcastle contributes to our community's identity and sense of place, ability to adapt to climate change, community resilience, health and wellbeing and in achieving a liveable, sustainable and inclusive global city.
 - c) **Nature Futures Framework** - CN will lead transformative change by utilising the Intergovernmental Science-Policy Platform on Biodiversity and Ecosystem Services (IPBES) Nature Futures Framework (NFF) as committed to in the Newcastle Environment Strategy.
 - d) **Ethical Conduct** - this Policy aligns with the CN Code of Conduct for staff which sets out acceptable standards of ethical behaviour.

- e) **Certainty** - to embed requirements and expectations for biodiversity considerations early in the process for making and amending an LEP.
- f) **Consistency** - to ensure a consistent approach to the consideration of biodiversity matters occurs when making and amending an LEP.
- g) **Transparency** - providing clear expectations of what information CN requires to assess impacts on biodiversity, and the biodiversity conservation outcomes sought, including ongoing management of conservation land, when making or amending an LEP.
- h) **Sustainability** - by ensuring the Biodiversity Values and ecological functions of the ecosystems and habitats across the Newcastle LGA, including the Blue and Green Grid, are appropriately considered in balance with social and economic needs when making or amending an LEP.
- i) **Evidence-based decision making** - Newcastle's natural environment and local Biodiversity Values are strengthened by CN's evidence-based decision making, including expert advice.
- j) **Excellence** - CN will seek best practice outcomes that demonstrate excellence or innovative outcomes to protect or enhance biodiversity, including nature positive outcomes.

Part B - Policy Statement

5 CN's approach to biodiversity matters when amending or making an LEP

- 5.1 CN will seek to achieve the objectives of Newcastle 2040 (our Community Strategic Plan) and the Newcastle Environment Strategy, and be guided by the below when assessing PPs to amend or make an LEP:
- a) Applying a consistent approach to biodiversity conservation and planning to all PPs by following the guidelines provided in Part C of this Policy.
 - b) Ensuring adequate information on Biodiversity Values is provided at the 'Stage 1 - Pre-lodgement' and 'Stage 2 - Planning Proposal' stages of the LEP Making Guideline process to enable evidence-based decision-making.
 - c) Seeking to resolve key biodiversity issues, not limited to conservation, ownership and ongoing management, before a PP is submitted for Gateway Determination.
 - d) Ensuring significant impacts on listed threatened species and threatened ecological communities are prevented, consistent with the objectives of the *Environmental Protection and Biodiversity Conservation Act (1999) (Cth)*, *Biodiversity Conservation Act 2016* and the *Environmental Planning and Assessment Act 1979*.
 - e) Ensuring suitable land identified for conservation protection is transferred to public ownership in the first instance with appropriate ongoing maintenance arrangements.
 - f) Identifying, and where possible finalising, the arrangements for long-term ownership and management of conservation land before a PP is submitted for Gateway Determination.
 - g) Considering the dedication and ongoing management of land with Biodiversity Values to CN where this is at no cost, and the land is in a size, shape and condition that will minimise ongoing management costs, and will have a net positive outcome.
 - h) Prioritising the protection and conservation of high value vegetation, local and regional biodiversity corridors and riparian zones that enhance the Blue and Green Grid.

Part C - Biodiversity Assessment Guidelines for Local Environmental Plan (LEP) Making

6 Guidelines for C2 Environmental Conservation and other land use zones under NLEP 2012

6.1 Land zoned C2 Environmental Conservation under NLEP 2012

- a) PPs seeking the removal of C2 Environmental Conservation zoning is not supported and C2 Environmental Conservation zoned sites should be retained.
- b) Removal of C2 Environmental Conservation zoning on illegally cleared land will not be supported. Penalties for unlawful clearing may apply and the site will not be considered until its full natural regeneration, Assisted Regeneration or Revegetation has occurred.
- c) PPs to remove C2 Environmental Conservation zoning on degraded sites require detailed ecological assessments with a high degree of certainty to justify the site being unable to achieve the zone objectives. This will generally require high quality data and monitoring over a period of multiple years for various species, requiring early liaison with CN, and demonstration that natural or Assisted Regeneration and/or Revegetation is not possible.

6.2 Land in all other zones excluding C1 National Parks and Nature Reserves and C2 Environmental Conservation under the NLEP 2012

- a) CN will not support PPs that would enable the removal of native vegetation or habitat which would result in the complete loss of local populations of threatened species or threatened ecological communities.
- b) PPs will support maintaining the quality, condition, connectivity, population and/or patch viability and extent of high-quality threatened species habitat, and areas of threatened ecological communities on the site.
- c) CN will consider PPs resulting in the loss of vegetation provided it can be established the vegetation is not of high environmental value, that canopy cover loss across the site is minimised, and that vegetation loss will not result in a significant or total loss of a threatened species population or threatened ecological communities within the LGA.
- d) PPs are to maintain and enhance existing landscape and local scale connectivity of native vegetation in corridors with suitable widths, habitat quality, and area. Where landscape and local scale connectivity is missing, PPs will strive to restore connectivity.
- e) Vegetation in biodiversity and Riparian Corridors is to be retained and provided protection in perpetuity via appropriate zoning, dedication to CN, covenant, or other appropriate tenure.
- f) Retention of native vegetation in good condition is preferable to rehabilitation of disturbed areas.
- g) Rehabilitation or enhancement must be on land in public ownership and fully funded by the proponent for an appropriate period.

7 Guidelines for specific biodiversity issues

7.1 Biodiversity Data, Survey Results and Reports

- a) CN reserves the right to seek independent expert advice when reviewing biodiversity data, survey results and reports.
 - i) Costs associated with seeking independent expert advice may be reimbursed to CN.
- b) Methodologies will be identified by proponents at Stage 1 - Pre-lodgement to allow CN to provide feedback and input.
- c) Where relevant, confirmation that data has been provided to the NSW Government for inclusion on BioNet and/or SEED is to be provided to CN at 'Stage 2 - Planning

Proposal'.

- d) CN will seek consent to retain and may use records of sightings and other data and information submitted.

7.2 Biodiversity Offsets

- a) The *Biodiversity Conservation Act 2016* requires impacts on biodiversity to be avoided and minimised before Biodiversity Offsets are used. The guidelines in this Policy also support impacts on biodiversity being avoided and minimised before offsite Biodiversity Offsets are utilised.
- b) Where avoidance and minimisation of impacts on biodiversity is not feasible, Biodiversity Offsets may be considered.
- c) Non-adjointing sites may form part of a PP where the non-adjointing site is used for Biodiversity Offsets. The non-adjointing site must be located within the Newcastle LGA and subject to the NLEP 2012.
- d) Where offsets and biodiversity stewardship site establishment are appropriate, CN's order of preference is that these are generated on:
 - i. 1 - the development site
 - ii. 2 - in the vicinity of the development site
 - iii. 3 - in the locality
 - iv. 4 - in the Newcastle LGA
 - v. 5 - in neighbouring LGAs

If it can be demonstrated that no local offset is available, or a superior regional conservation outcome will be achieved, then offsets outside the LGA will be considered.

7.3 Biodiversity Corridors

- a) Biodiversity Corridors that protect vegetation and enable landscape-scale connectivity for fauna are required to be provided.
- b) A minimum local Biodiversity Corridor width of 50m is required, however, widths will be determined on a site-specific and species basis to ensure landscape-scale connectivity. For example, regional or sub-regional Biodiversity Corridors will require significantly larger widths of 300m to over 500m¹, species such as koalas require corridors with an average minimum width of 390-425 metres², and steeper areas require additional width to enable appropriate edge effect management.
- c) Where Biodiversity Corridors contain vegetation or habitat requiring an Ecological Buffer (for example, threatened ecological communities or habitat trees), the Ecological Buffer still applies. If the Ecological Buffer falls entirely within the Biodiversity Corridor no additional buffer is required. Where the buffer extends past the edge of the corridor the buffer should be incorporated into the corridor.
- d) Connections between Biodiversity and Riparian Corridors are to be provided where both are present.
- e) Biodiversity Corridors are to be appropriately zoned to enable their long-term conservation and ongoing management.

7.4 Riparian Corridors and Aquatic Habitats

- a) All waterways and riparian areas must be retained
- b) Riparian corridors are to be determined on a site-specific basis having regard to the waterway stability, condition of vegetation and habitat, catchment hydrology and the Biodiversity Offset Method. The retention of wider riparian corridors in relatively undisturbed upper catchments is preferred where lower catchments are degraded.
- c) Where a Riparian Corridor also forms a Biodiversity Corridor the considerations

¹ <https://www.environment.nsw.gov.au/resources/nature/landholdernotes15wildlifecorridors.pdf>

² <https://www.planning.nsw.gov.au/sites/default/files/2023-03/cpcp-new-expert-advice-on-koala-corridors-fact-sheet.pdf>

under section 7.3 of this Policy will apply, with the larger corridor width being applicable.

- d) Connections between riparian and Biodiversity Corridors are provided where both are present.
- e) Riparian Corridors are to be appropriately zoned to enable their long-term conservation and ongoing management.

7.5 Coastal Wetlands and Littoral Rainforests

- a) Coastal wetlands and littoral rainforests identified in *State Environmental Planning Policy (Resilience and Hazards) 2021* are to be retained and protected.
- b) A minimum Ecological Buffer of 50m is required, however, a greater distance may be required considering site-specific characteristics such as downslope, an uncertain boundary of ecological community or wetland, or NSW Government requirements.

7.6 Threatened Ecological Communities

- a) Where threatened ecological communities are retained, they are provided an ecological buffer and protected through appropriate zoning or another mechanism to enable their ongoing protection and management.
- b) A minimum Ecological Buffer of 30m is required, however, a greater distance may be required considering site-specific characteristics such as downslope, an uncertain boundary of ecological community, species specific needs, or NSW Government requirements.

7.7 Habitat Vegetation

- a) A species polygon is to be identified for threatened fauna that are known or predicted to occur at the site. Where vegetation within the species polygon is retained, it is provided a 20m Ecological Buffer, and where possible incorporated into biodiversity and/or Riparian Corridors.
- b) Very large native trees, Stag Trees and Hollow Bearing Trees must be retained and provided with a minimum 10m buffer. Larger buffers may be required to account for tree, branch or stag falls.
- c) Where Stag Trees and Hollow Bearing Trees can't be retained, areas to accommodate replacements are to be identified elsewhere onsite in appropriate areas such as biodiversity and Riparian Corridors and provided the same buffers. Felled large native trees should be reused on site where possible as replacement stags and/or hollows. A net positive outcome should be sought.

8 Requirements for future conservation land

8.1 Bushfire protection measures

- a) Asset Protection Zones (APZs), fire trails and other bushfire protection measures are not to be included within biodiversity or Riparian Corridors or Ecological Buffers.
- b) APZs, fire trails and other bushfire protection measures are not to be located on any land proposed to be dedicated to CN.

8.2 Stormwater Infrastructure

- a) Stormwater infrastructure, including detention basins, are not to be included within biodiversity or Riparian Corridors or Ecological Buffers.

8.3 Transport Infrastructure

- a) Pedestrian and cycle paths are allowable within Ecological Buffers where they do not require the removal of trees.
- b) Roads are not included within ecological setbacks.
- c) Roads avoid crossings with biodiversity and Riparian Corridors. Where this is unavoidable, crossings are minimised, and wildlife-friendly underpasses or crossings are provided.

8.4 Ownership of Conservation Land

- a) The future proposed ownership of conservation land is to be identified at Stage 2 - Planning Proposal.
- b) In some instances, private ownership of land with Biodiversity Values may be appropriate where suitable covenants, stewardship or conservation agreements are in place to ensure its protection in perpetuity.
- c) The preferred ownership for conservation value land is the dedication of land at no cost to CN with suitable legal and financial arrangements for future ongoing management.
- f) CN will proactively negotiate a suitable outcome with landowners and proponents in relation to the dedication of conservation land to CN, including via a planning agreement.
- d) CN will generally not accept the dedication of land if:
 - i. Public ownership of the land would not provide a net public benefit
 - ii. Public ownership presents an unacceptable long term asset management burden on CN
 - iii. The land contains or presents unreasonable risks to public safety (eg contamination, landslip or mine subsidence)
 - iv. The land is unreasonably burdened by easements, restrictions, covenants or the like
 - v. Any proposed management measures are not consistent with the objectives for the land
 - vi. The land's location, size, configuration and maintenance access arrangements are not suitable
- e) Dedication of land to CN for conservation purposes is acceptable if it:
 - i. Supports connections with riparian and Biodiversity Corridors and Blue and Green Grids at local and regional scales
 - ii. Is located and configured to protect the site's Biodiversity Values and/or enhance the site's Biodiversity Values
 - iii. Is of a size and configuration so that core higher value conservation areas are effectively buffered from edge effects and threatening processes
 - iv. Contains vegetated riparian buffer zones of adequate width
 - v. Is separated from residential lots by a road
 - vi. Supports the ongoing protection and enhancement of the land's environmental values and services through an adequate vegetation management plan or similar
- f) The acceptance of dedicated conservation land to CN will be at the discretion of CN.

8.5 Planning Agreements

- a) Where land is identified as having conservation value, a legal agreement (such as a planning agreement prepared under the *Environmental Planning and Assessment Act 1979*) may be entered into to establish a mechanism to maintain Biodiversity Values and to accept a dedication of land to CN.
- b) CN will engage with landowners and proponents consistent with CN's Planning Agreements Policy.
- c) Where the amendment or making of an LEP process has identified land with high conservation value, CN will consider entering into an agreement that maintains these Biodiversity Values in perpetuity and/or dedicates the land containing these values at no cost to CN.

8.6 Ongoing Management of Conservation Land

- a) A management plan is required to be prepared and submitted at Stage 2 - Planning Proposal for all proposed conservation land, including Ecological Buffers, to ensure the ongoing management, monitoring and costs can be considered.

Part D - Roles and Responsibilities

POSITION	RESPONSIBILITY
Executive Manager Environment and Sustainability	Ensure this policy is considered when providing advice in relation to a PP.
Strategic Planning Section Manager	Ensure this policy is considered when making or amending a Local Environmental Plan or providing advice in relation to a PP.
Strategic Planning Officers	Ensure the use of this policy when making or amending a Local Environmental Plan or providing advice in relation to a PP.

Annexure A - Definitions

Areas of High Environmental Values (HEV) includes:

- Areas protected for conservation including existing conservation areas, national parks and reserves, declared wilderness areas, marine parks, Crown reserves dedicated for environmental protection, and conservation and flora reserves
- Important habitat mapping for serious and irreversible impact species
- Koala habitat
- Native vegetation of high conservation value, including vegetation types that have been over-cleared or occur within over-cleared landscapes, old growth forests and rainforests
- Key habitat for threatened species and populations and threatened ecological communities including foraging habitat
- Wetlands, rivers, estuaries and coastal features of high value
- Areas of geological significance

Asset Protection Zone (APZ) has the same meaning as in Planning for Bushfire Protection 2019.

Assisted Regeneration the practice of fostering natural regeneration by actively removing threats and/or providing a trigger (e.g. soil disturbance or fire) to enable this to occur. It is appropriate for sites with moderate to high resilience where the seed stock is still largely intact.

Biodiversity Offsets means the offsetting or compensation for impacts on biodiversity after any steps taken to avoid or minimise those impacts under the Biodiversity Offsets Scheme.

Biodiversity Corridor means as a link of native vegetation or habitat connecting other areas of native vegetation or habitat together which enable the maintenance of ecological processes including allowing for the movement of animals and the continuation of viable populations.

Biodiversity Values has the same meaning as the *Biodiversity Conservation Act 2016*.

Blue and Green Grid the network of 'blue' and 'green' links that connects our town centres, schools, public transport hubs and residential areas and supports improved accessibility, recreation, biodiversity and liveability. The grid also protects and connects existing bushland areas and naturalises and improves our waterway health.

CEO means Chief Executive Officer of City of Newcastle and includes their delegate or authorised representative. References to the Chief Executive Officer are references to the General Manager appointed under the *Local Government Act 1993* (NSW).

City of Newcastle (CN) means Newcastle City Council.

CN Staff means employees of CN (including full time, part time, fixed term and casual) or Specific Talent Contractor who is engaged under a CN position description.

Council means the elected Council.

Ecological Buffer means an area of land that separates urban development from retained areas with Biodiversity Values for the purpose of minimising ongoing impacts of development. Ecological Buffers require ongoing management and are included in management plans for conservation areas.

Hollow-Bearing Tree means a tree containing a void by a wound forming a cavity in the trunk or branches.

LEP means Local Environmental Plan

LGA means Local Government Area

Natural Regeneration means that plants are able to grow back unassisted from seed in the soil seed bank, or from a nearby canopy. This occurs in highly resilient sites where the seed stock is intact, and there are very few, if any, existing threats present.

NLEP means Newcastle Local Environmental Plan 2012

Revegetation means the introduction of plant propagules (either seedlings/tubestock or direct seeding) into sites with depleted or low resilience. In these sites, seed stocks have been depleted or are absent, and/or competition from introduced pasture plants or weeds are preventing natural regeneration.

Riparian Corridor means the transition zone between the land (terrestrial environment) and the waterway (aquatic environment) and can perform the same function as a Biodiversity Corridor.

Stag Tree means a tree with no live branches and only branch stubs and trunk remaining.

Annexure B - Policy Authorisations

This Policy Authorisation may be updated and amended by the CEO from time to time.

In accordance with section 378 of the *Local Government Act 1993*, the Chief Executive Officer delegates the following functions to the positions listed:

Title of Authorisation	Description of Authorisation	Position Number and Title
<i>Nil.</i>		

Document Control

Policy Title:	Biodiversity Assessment Guidelines for Local Environmental Plan (LEP) Making Policy
Audience:	CN Staff, Community, Developers
Service Unit:	Environment and Sustainability
Policy Owner:	Executive Manager Environment & Sustainability
Policy Writer:	Senior Environmental Strategist
Approved by:	Chief Executive Officer
Date Approved:	11 February 2025
Commencement Date:	11 February 2025
Next Scheduled Review Date:	30 April 2028
Termination Date:	30 April 2029
Version:	Version 1
Required on Website:	Yes
Key Words:	Environment; Biodiversity; Local Environmental Plan (LEP) Making; Newcastle LEP 2012; Planning Proposals; Strategic Planning.

Related Document Information, Standards & References

Related Legislation:	<i>Environmental Planning & Assessment Act 1979</i> <i>Biodiversity Conservation Act 2016</i> <i>S9.1 Ministerial Direction 3.1 Conservation Zones</i>
Related Policies (Council & Internal):	Planning Agreements Policy
Related Procedures, Guidelines, Forms or documents:	Nil
Standards, Codes or other references:	LEP practice note - Environment Protection Zones (NSW Government, 30 April 2009) PN 09-002 Local Environmental Plan Making Guideline (NSW Government, August 2023)

Relevant Newcastle 2040 Theme/s

Term / Abbreviation
Liveable, Sustainable

Version History

Version No - Date Approved - ECM
Version 1 - Approved 11 February 2025