

# **Biodiversity Planning Policy and Guidelines For LEP Rezoning Proposals**

Version 01

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## Policy Objectives

This policy is taken into consideration where land is proposed to be rezoned in a local environmental plan. It aims to ensure that biodiversity issues are considered and resolved early in the land use planning process.

## Policy Statement

The policy statement summarises Council's objective in relation to planning for the conservation of biodiversity within the City. Specific guidelines on how these are to be interpreted, and applied in practice are outlined in a later section.

Lake Macquarie City Council's strategic approach to biodiversity planning will seek to achieve the Lifestyle 2020 Strategy aim and strategic directions and be guided by the following general principles:

1. Key biodiversity issues must be resolved at the rezoning stage, when future land uses and management frameworks are determined.
2. Consistent principles for biodiversity conservation will be applied to all rezoning proposals.
3. Adequate information on biodiversity values is required at the rezoning stage to inform decision making.
4. At rezoning stage, Council will seek to ensure that significant impacts on listed threatened species and endangered ecological communities are prevented, thereby avoiding the need for a species impact statement to be prepared at the development application stage. Biocertification of local environmental plans is desirable, and supported where appropriate.
5. Land identified as having conservation values requiring protection should be protected in a secure tenure (preferably in public ownership) with appropriate conservation management.
6. Conservation land requires ongoing management, and at the rezoning stage, arrangements for long term ownership and management for conservation should be finalised.
7. Council will accept dedication and ongoing management of land with conservation values, where this is at no cost, and the land is in a size, shape and condition that will minimise ongoing management costs. 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 conservation values and to accept dedication of land to Council.

The policy will be considered in addition to social, economic and other environmental objectives which will always be considered by Council in decision-making as required by legislation. The policy and any accompanying guidelines are not prescriptive requirements. The individual circumstances of each case will be taken into account in their application, and the principles provide a framework for negotiations to achieve biodiversity planning outcomes.

## Guidelines

These Guidelines have been prepared to support the implementation of the Biodiversity Planning Policy for local environmental plan rezoning proposals. The Guidelines provide a framework for determining minimum benchmark biodiversity standards.

Where the objectives of the Policy are met and complied with, alternative and negotiated development scenarios can be considered and assessed following the identification of all relevant biodiversity values and benchmarks applicable to the land.

Requirements at the rezoning stage are separate from arrangements that may be made at the development application stage in relation to biobanking as provided for by the *Threatened Species Conservation (Biodiversity Banking) Regulation 2008* and the *Threatened Species Conservation (BioBanking Assessment Methodology) Order 2008*. In applying the Guidelines, proposed biobanking arrangements may be taken into account.

### A Zone specific guidelines

Where proposals are received for the rezoning of land, the guidelines and principles for the protection of biodiversity will differ according to the existing zoning of the land. Council will apply the guidelines and principles in the following circumstances:

<b>Land zoned Environmental Protection 7(1) and 7(2) under Lake Macquarie LEP 2004</b>
<p><i>Objective:</i></p> <p>No loss of native vegetation area within zoned area.</p> <p><i>Principle:</i></p> <p>Maintain quality, condition and extent of all native vegetation and habitat mapped on LMCC 2004 air photos.</p> <p>No off site offsets are to be provided.</p> <p>Native vegetation should be restored by natural regeneration to &gt;70% of site area where possible.</p> <p>Proposals to remove existing conservation zonings must include sufficient scientific investigation and survey to ensure a high degree of certainty of information (95%) as to the presence of all mammal, bird, amphibian, reptile and fish species present. Normally, this will require scientifically robust monitoring in all seasons over a minimum period of two to three years. This will be assessed on a site by site basis.</p> <p>Conservation zoned land that has been cleared without authorisation will not be supported by Council for rezoning for other purposes. This land is to be allowed to naturally regenerate in order to allow proper assessment prior to any rezoning for other purposes.</p>

<b>Land zoned Investigation 10, plus land in any zones other than 7 and 8 containing native vegetation identified on LMCC 2004 vegetation mapping</b>
<p><i>Objective:</i></p> <p>Retain important natural ecosystems and biodiversity, and maintain landscape connectivity.</p> <p><i>Principle:</i></p> <p>No removal of native vegetation or habitat which will result in complete loss of local populations of threatened species, or loss of endangered ecological communities.</p> <p>Maintain quality, condition, connectivity and extent of high quality threatened species habitat, and area of endangered ecological communities on the site.</p>

Accept loss of non-significant vegetation communities that are widespread within LGA, provided that >70% native vegetation cover of each of these communities is retained in the whole LGA, as mapped on LMCC 2004 vegetation mapping.

Maintain existing landscape scale connectivity of native vegetation in corridors with suitable characteristics eg width, habitat quality, and area.

Native vegetation in habitat corridors is to be retained by implementing adequate long term security eg zoning, dedication to LMCC, covenant, or acquisition.

Use of offsets (including protected areas or rehabilitation) may be considered where appropriate (See note). Any offsets must be within the Lake Macquarie LGA, provide long term certainty of tenure, and ensure funding for ongoing management.

Retention of native vegetation in good condition is preferable to rehabilitation of disturbed areas. Rehabilitation or enhancement must be on land in public ownership and fully funded by the developer.

Note: Where offsets and biobanking are appropriate, Council’s order of preference is that these are generated on (1) the development site, (2) in the vicinity of the development site, (3) in the locality, and (4) in the Lake Macquarie LGA. 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.

Where the guidelines refer to a site, this is to be interpreted as meaning the area of land to which the proposed local environmental plan applies (which may include one or more lots), but excluding areas not adjoining or in close proximity.

**B Specific issue guidelines**

The following guidelines will be applied in the consideration of proposals to rezone land. These are grouped under sub headings as follows:

<b>Evaluation of biodiversity data and reports</b>
Review of biodiversity data and reports will be undertaken by LMCC, and independent advice from experts may also be sought as required. The costs of seeking advice may be reimbursed to Council by agreement.  LMCC Flora and Fauna Survey Guidelines are to be followed. These may be updated from time to time.

<b>Habitat corridors</b>
Habitat corridors to protect vegetation and provide landscape scale connectivity will be provided, and are to be subject to appropriate planning controls to provide long term protection (eg zoning).  A minimum corridor width of 150 metres is preferred, however the width will be determined on a site specific basis.

<b>Riparian corridors</b>
Protection of riparian areas with appropriate widths on each side of the creek centreline taking into account the stream order, the presence of endangered ecological communities, requirements for provision of habitat for native species, and other relevant considerations.  Appropriate riparian corridors will be determined on a site specific basis, taking into account NSW Government requirements and other Council guidelines (eg Protection of watercourses and drainage channels policy).

<p><b>Endangered ecological communities</b></p> <p>All areas of endangered ecological community are to be protected, plus a buffer, unless it can be demonstrated that a suitable alternative can achieve a superior conservation outcome.</p> <p>A minimum buffer of 20 metres of native vegetation shall be provided to endangered ecological communities, taking into account site specific characteristics. Larger buffers will be required where the boundary of the endangered ecological community is uncertain or if NSW Government requirements are larger. Note that most endangered ecological communities within Lake Macquarie LGA comprise riparian and wetland vegetation where other specific guidelines apply.</p>
<p><b>Wetlands and vegetation communities identified in State Environmental Planning Policy 14</b></p> <p>Wetland vegetation communities are to be maintained and enhanced.</p> <p>A minimum buffer of 20 metres of native vegetation shall be provided to wetland vegetation communities and wetlands identified in State Environmental Planning Policy 14 taking into account site specific characteristics. The buffer boundary is measured from the edge of the wetland boundary as defined by the extent of wetland vegetation. Larger buffers will be required where the boundary of the wetland vegetation community is uncertain or if NSW Government requirements are larger.</p> <p>Water quality and hydrologic regimes including wetting and drying frequencies and duration are to be maintained.</p>
<p><b>Habitat trees</b></p> <p>Retain habitat elements critical to the survival of many protected and threatened species, taking into account species requirements.</p> <p>Retain 75% - 80% of habitat trees with small to medium hollows, and 95% of habitat trees with large hollows or spouts.</p>
<p><b>Aquatic habitat</b></p> <p>Retain ecological function of aquatic areas.</p> <p>All aquatic habitat is to be retained, plus a suitable buffer of riparian vegetation.</p>

<p><b>Ownership of conservation land</b></p> <p>There is need for appropriate tenure for conservation land. The greatest security of tenure for this land is in public ownership as provided in the National Parks and Wildlife Act 1974. Other suitable tenure are Council reserve, or Crown Land. Private land may provide suitable security with a suitable conservation agreement or covenant.</p> <p>Council will proactively engage in negotiations with developers and landowners to seek protection and appropriate management of conservation land at the rezoning stage of the development process.</p> <p>Land may be dedicated by the land owner where there is no cost to Council and ongoing management costs have been fully funded. Where the rezoning process identifies land as having conservation value, Council will seek to enter into a legally binding agreement (such as a planning agreement prepared under the Environmental Planning and Assessment Act 1979):</p> <ol style="list-style-type: none"> <li>1. To establish a mechanism (in perpetuity) to maintain those conservation values and to provide ongoing funding to ensure this occurs; and/or</li> <li>2. To accept dedication of the land to Council at no cost, and provide developer funding and management arrangements (including a plan of management) for an appropriate period post development eg 5 – 10 years.</li> </ol>
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Council will apply the following principles when considering future options for land identified at rezoning stage as having conservation values which require protection:

- Dedication to Council ownership is preferred for all land with conservation values adjoining land already in Council ownership, irrespective of the size;
- Council will accept land dedicated at no cost to Council where it is of sufficient size, acceptable minimum width and a suitable shape and edge alignment, taking into account the purpose for which it is being dedicated, and future management requirements. (See biodiversity planning principles for details of sufficient size and width.);
- Council will accept land dedicated at no cost to Council, and only where it is in good or reasonable condition, and/or where a plan of management (or other arrangements) have been put in place to maintain or improve the conservation values of the land;
- The proposed zoning of the conservation land should reflect the true development potential of the land eg 7(1) Conservation Primary, or an alternative new zone limiting its future use;
- An agreement providing for the protection, future use and ongoing management of the land should be attached to the title of the land;
- There must be a clear statement of the conservation objective(s) sought to be achieved for the land;
- Where land with conservation value adjoins an existing conservation reserve managed by the Department of Environment and Climate Change or similar agency, transfer of the land to that agency is preferable to dedication to Council;
- Existing and future land uses, corridors identified on Council's Native Vegetation and Corridors Map, and the condition of adjoining land shall be taken into account in determining the suitability of land for conservation.
- Council will not accept any land that is burdened with an ongoing requirement for provision or maintenance of a bush fire asset protection zone.
- Ongoing maintenance of conservation land in perpetuity will be required for land to be retained in private ownership. Arrangements for maintenance of public land (including land dedicated to Council) will be limited to a reasonable period (eg 5 – 10 years).
- The amount of funding required for ongoing management will depend upon an assessment of the conservation value and importance of the land in Council's open space system (eg it may be critical in linking other parcels of land owned by Council or it may already be identified for acquisition in the LEP), taking into account any other principles that may be adopted by Council.

The preferred ownership for conservation value land is dedication of the land in public ownership at no cost to Council, with suitable legal and financial arrangements for future management. Ownership and management arrangements will take into account the principles outlined above, and the circumstances of the case. Where conservation land is not to be dedicated to Council, other suitable arrangements for future ownership, use and management will be required.

Council will seek to pursue a legally binding agreement (such as a planning agreement) with the developer and/or landowner in the following circumstances:

- 1 Where land is identified as proposed to be retained for conservation purposes eg public reserve, habitat corridor link, significant ecological communities, habitats or buffer zones, heritage conservation, or scientific purposes, etc; and
- 2 A framework for ensuring appropriate ownership and ongoing management of land is required (including ongoing funding, land transfer arrangements, management plan preparation, establishment of trust funds, etc); and/or
- 3 Land is proposed to have an appropriate zoning under the LEP; and/or

4 There is a demonstrated benefit to Council in pursuing a planning agreement.

If Council is to accept land to be dedicated at no cost, then a planning agreement is the best option to ensure that the land is maintained in reasonable condition, with a plan of management and funding to implement necessary rehabilitation, and ongoing management, etc. The Environmental Planning and Assessment Act 1979 and regulations specify the process for establishing a planning agreement, and this policy provides additional guidance in respect of matters that will be considered by Council in any agreement.

Except where pre-existing requirements for acquisition of conservation land apply, the dedication of land for conservation is over and above any Section 94 developer contribution requirements. Section 94 requirements will be considered as a separate issue, but can be considered at the same time as considering any proposed agreement.

Council will consider land dedicated as part of any agreement made in relation to the process of making a local environmental plan in its consideration of any subsequent development application relating to the land subject to that plan.

Council will only consider acquiring land for conservation purposes where this is required by LEP provisions.

#### **Management of conservation land**

There is a need for active management of conservation land.

Adaptive management of natural areas is necessary, but requires ongoing monitoring and appropriate skills and resources.

#### **Use of planning agreements and dedication of conservation land to Council**

Council will proactively engage in negotiations with developers and landowners to seek protection and appropriate management of conservation land at the rezoning stage of the development process.

Where the rezoning process identifies land as having conservation value, Council will seek to enter into a legally binding agreement to establish a mechanism to maintain those conservation values and/or to accept dedication of the land to Council.

Minimum area for long term conservation reserves to be dedicated to Council is generally 2 ha with a fully funded management plan, or alternatively 10 ha, provided that the land is of a suitable size, shape and condition. The minimum area does not apply where land directly adjoins existing land in Council ownership.

Details of the application of these principles are provided in the implementation section.

#### **Species requirement – Threatened flora**

Maintain viable population on site with an appropriate buffer.

#### **Species requirement – *Tetratheca juncea***

Requirements are included in Lake Macquarie *Tetratheca juncea* Conservation Management Plan already adopted by Council and specified in separate planning document – requires (1) stepping stone clumps to be retained, (2) increased conservation in sectors of the City where inadequately conserved, (3) morphological variants to be conserved, and (4) populations setting seed to be conserved. At least 75% of local sub-population to be retained on site in a core area with a 20 metre buffer.

Where a relevant ecological assessment is undertaken, and the objectives of the policy are achieved, the removal of more than 25% of the local sub-population on a site may be considered.

<b>Species requirement – <i>Angophora inopina</i></b>
Retain majority of individuals in the population and conserve the age structure.
<b>Species/endangered population requirement – <i>Eucalyptus paramattensis</i></b>
Retain native vegetation on all land providing suitable habitat for species.
<b>Species requirement – <i>Acacia bynoeana</i></b>
Retain 90% to 100% of the population on site.
<b>Species requirement – Threatened fauna</b>
Maintain >80% of high quality habitat areas, >50% of medium habitat areas, and maintain viable population on site.
<b>Species requirement – Squirrel Glider</b>
In existing fragmented areas, maintain habitat size and shape (minimum 4 ha patches) not more than 1.0 km apart, with suitable vegetated links having gaps <35 metres wide.  Protect known feed trees and den trees with adequate buffers.  In larger fragments, maintain connectivity and viable patch size.
<b>Species requirement – Forest Owls</b>
Retain nest trees and roost trees, plus a buffer of native vegetation >100 m wide around these trees.
<b>Species requirement – Threatened frog species</b>
Retain viable populations of threatened frog species.  Retain high quality habitat, and connectivity between suitable habitat.  Water quality and hydrologic regimes including wetting and drying frequencies and duration are to be maintained.
<b>Asset protection zones (APZ) and stormwater infrastructure on conservation land</b>
Where appropriate, asset protection zones (APZ) and stormwater infrastructure (eg bioretention and constructed wetlands) can be included within vegetation buffers where this is to be maintained in private ownership. APZs are not to be incorporated on conservation land which is, or will be in Council or other public ownership.
<b>Biodiversity offsets</b>
In circumstances where on-site protection of important biodiversity values is not feasible, biodiversity offsets may be considered. Non-adjointing sites may form part of a rezoning where the non-adjointing site is used for biodiversity offsets.