

## Draft Biodiversity and Habitat Management DCP submissions analysis

Topic	Submission No.	Issue	Planning Response	Recommendation
Application of DCP	9	Environmental assessment requirements under existing state and federal legislation are complex and further hurdles are not needed	Except in the case of offsetting over certain thresholds neither the state or federal environmental legislation set standards for biodiversity protection and management. Rather than focussing on complex environmental assessments, the draft DCP provides guidance on the expected standards. The purpose of this is to provide greater certainty for proponents and the community on the expected outcomes for developments that council is already required to assess.	No action necessary
Application of DCP	3, 10	p6 – Application. site/land holding area or just the area of bushland within the site? Also what if site boundary is traverses a tract of bushland?	The DCP applies to “land holdings” $\geq$ 2500m <sup>2</sup> that have some “bushland”. “Land holding” and “bushland” are both defined in the Dictionary. The intention is to exclude as far as possible small-scale-developments although these are still subject to DCP A16 – Preservation of Trees and Vegetation and may be required to address the draft DCP if considered necessary. Analysis conducted indicated a low risk of missing important biodiversity using the 2500m <sup>2</sup> area threshold	No action necessary
Application of DCP	3	p6 – Application. - what about development that doesn't increase the footprint but results in an intensification e.g. light or noise emission, number of vehicles accessing the site etc?	Rather than include intensification that may or may not affect biodiversity, it was decided to allow council the discretion to trigger the draft DCP if considered necessary (see Other Application on p6).	No action necessary
Application of DCP	4	Draft DCP does not address smaller lot size provisions allowable for community title schemes under clause 4.1AA of Tweed LEP 2014	This is an LEP issue that is outside of the scope of the draft DCP to address directly. However the draft DCP considers the development envelope for Community and Torrens title in the same way.	No action necessary

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Biodiversity Conservation Act	5	The relationship to the new Biodiversity Conservation Act including offsetting should be clearer	Noted and accepted.	Provide further detail in the DCP to explain the relationship to the new Act including statutory assessment requirements and offsetting
Biodiversity Conservation Act	10	It is unclear where requirements to avoid and minimise impacts under the BC Act come from	Section 7.13 of the BC Act, makes clear that the consent authority retains the right to refuse a development application if it does not adequately “avoid or minimise” impacts. However, if Council consents to clearing and the Biodiversity Offsets Scheme (BOS) applies, offsets must be carried out in accordance with the BOS. Neither the Act nor the associated Biodiversity Assessment Method set standards for avoiding or minimising biodiversity impacts. The draft DCP provides guidance in this area and in other cases where the BOS does not apply.	Provide further detail in the DCP to explain the relationship to the new Act including statutory assessment requirements and offsetting
Biodiversity Conservation Act	10	It is unclear how the biodiversity DCP is to apply in relation to biodiversity certification under the BC Act.	The ways in which overlapping and existing approvals work is legally complex and is determined by the legislation rather than the DCP. Under s8.4 of the BC Act a consent authority is “not required” assess the likely impact of the development on biodiversity values on biodiversity certified land. However it is not clear if the consent authority “may” further assess the likely impact of the development on biodiversity values on biodiversity certified land. Further assessment may be appropriate, for example, where there are indirect impacts that arise from the specific development proposal, changed circumstances or new information not originally considered. Similar issues may occur with other approvals including state significant concept plans and project approvals, the terms of planning agreements, and Federal approvals under the EPBC Act. Notwithstanding specific legal constraints, existing approvals requiring a subsequent	Provide further explanation in Part A Section 6 “Relationship to overarching Legislation” to highlight the possibilities of existing approvals advising the that where a subsequent DA is required the conditions of the existing approval should prevail to the extent to which they remain relevant to the DA under consideration.  Amend C2 to recognise existing approvals where appropriate

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			development application normally prevail to the extent to which they remain relevant to the DA under consideration.	
Climate change and sustainability	2	Support for including climate change impacts	Noted	No action necessary
Climate change and sustainability	2	Mitigate biodiversity impacts on roads by prioritising low impact transport modes such as pedestrian and cycling activity.	Prioritising modes of transport is a broader sustainability issue with a range of pros and cons that go well beyond mitigating biodiversity impacts. Sustainability issues such as this should/could be addressed elsewhere in the DCP.	No action necessary
Defined terms	1, 8	Suggest that various terms used in the text are included in the Dictionary.	Specific definitions in the dictionary are confined to terms with specific meanings relevant to DCP principles, objectives or controls	Check and include new terms as necessary
Defined terms	8	Avoid terms or ensure consistency with terms that specific meaning in legislation (e.g. "significant Impact" "red flagged areas"	Neither of the example terms are used by the new Biodiversity Conservation Act 2016. "Red flagged areas" is already included in the dictionary.	Remove references to "significant impacts" from specific development controls
Defined terms	8	"Biodiversity theme" and "biodiversity element" appear to be used interchangeably	"biodiversity element" is a subset of a "biodiversity theme" e.g. "Old growth" is an element of the "Bushlands and Wetlands" biodiversity theme,	Clarify the differences between "biodiversity themes" and "elements" within section 4 of Part A. Include definitions of these terms in the dictionary
Format and typography	2, 3, 8, 6, 10	Minor typographical and formatting issues	Noted	Corrected where appropriate
Format and typography	3	Provide a one-two page summary at the beginning of the document outlining affected land, development application submission requirements and applicable	General format of the DCP has been prepared consistent with other chapters. Affected development is included on the first page. DA submission requirements and applicable controls will vary depending on the scale and nature of the proposal, and will be affected by statutory requirements under	No action necessary

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		controls	legislation	
Format and typography	8	Re-structure to combine background information and objectives for the development envelope and ongoing impacts into a single chapter separate from development controls	It is considered that the existing structure better reflects to the process of considering the constraints to the proposed footprint followed by measures required to address ongoing impacts. Isolating the development controls in a separate chapter away from the background information, advisory notes and planning objectives is likely to promote misinterpretation of the controls. The existing structure attempts to maintain the connection between the issue/theme, the planning objectives and the controls.	Retain structure as is
Format and typography	8	Advisory notes are not consistently placed before or after the relevant text	Advisory notes relevant to individual controls are placed after the control. Advisory notes relevant to individual sections are placed at the beginning of the section before a series of controls to provide context on the controls within the section.	Check and rectify as necessary
General	2, 8, 5, 11, 7, 6	General Support for draft DCP	Noted	No action necessary
General	10,9	Opposition to draft DCP	Both submissions are from large development proponents. In one case, the proponent's lands have been designated State Significant Development and approvals have been granted by the State Government. The draft Biodiversity DCP does not apply to State Significant Development although if it were applied it is likely to have yielded similar outcomes to the current approvals (i.e. retention of most natural areas, setbacks and buffers to intense development and ongoing management of retained areas. Lands owned by the other objector are currently the subject of a major strategic planning review which if carried out in accordance with the	No action necessary

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			outcomes endorsed by Council, will be broadly consistent with the draft DCP.	
General	9, 10	The Draft DCP represents a further unnecessary tier of biodiversity regulation and increases complexity and uncertainty	The draft DCP responds to existing legislative requirements under the EP&A Act (e.g. s 79C) and Biodiversity Conservation Act 2016 (e.g. s 7.13) which requires Councils to consider what native vegetation should be avoided and minimised prior to considering offsets. The draft DCP decreases complexity by focussing on outcomes rather than assessment requirements. By providing clear guidance on acceptable development control standards it provides greater certainty for all stakeholders on the likely outcome of a DA. It also allows for variations where equivalent outcomes can be achieved. Without such standards and guidance DAs will continue to be assessed on an <i>ad hoc</i> basis, with the potential to generate conflict.	No action necessary
General	10	Draft DCP is inconsistent with Tweed LEP Zonings	LEP zone objectives are one of many issues that need to be considered when assessing the merits of a DA. For example DAs also need to be consistent with the overall aims of the LEP, which requires (among other things) for development to “conserve or enhance the biological diversity, scenic quality and geological and ecological integrity of the Tweed”. In addition to the LEP and DCP, S79C of the EP&A Act, also requires consideration the impacts of the development, the suitability of the site and the public interest. It is also noted that LEP zonings are not considered under the BC Act	No action necessary
General	10	The draft DCP pre-empts the E Zone Review	The draft DCP and the E zone review are different but complementary processes. The application of the E zone review, which is currently in progress, is likely to result in an expansion of environmental zones along the Tweed coast. The effect of this will be to limit the	No action necessary

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			<p>types of development that for which a DA can be submitted. While this will help identify constrained land at the broader strategic scale, it is not a prohibition on all development nor is it a substitute for a detailed merit assessment at the time a development application is submitted. Apart from providing guidance on areas that should be retained (red flags, which can be varied), the draft DCP also provides detailed guidance on standards for protection, impact mitigation, and management in relation to the specific issues arising from the proposed development. As noted elsewhere the BC Act does not set standards for these matters.</p>	
Offsets	9	There are numerous existing offset policies that may apply	<p>Offsets are required to achieve no net loss of habitat. The Tweed Shire Offsets and Habitat Compensation Policy will only apply where state or federal offsets are not applied. This includes offsets for impacts below the BOS threshold (e.g. below 0.25ha) and as a mechanism to provide greater flexibility and locally-relevant biodiversity outcomes where Council considers it appropriate to reduce offsets required under the BOS (s 7.13(4) of BC Act). It will also be used outside of the DCP to determine offsets at the strategic planning stages.</p>	No action necessary
Pre-existing State and Federal approvals	9	The requirements in the draft DCP duplicate and may conflict with similar requirements that apply to larger developments subject to state and/or federal approvals. Recommend State and Federal approvals shall prevail.	<p>The DCP will not apply unless Council is the consent authority. The ways in which overlapping and existing approvals work is legally complex and is determined by the legislation rather than the DCP. Notwithstanding specific legal constraints, existing conditions of approval would normally be expected to prevail in a subsequent development application to the extent to which they remain relevant to the DA under consideration.</p>	Provide further explanation in Part A Section 6 “Relationship to overarching Legislation” to highlight the possibilities of existing approvals advising the that where a subsequent DA is required the conditions of the existing approval should prevail to the extent to which they remain relevant to the DA under consideration.

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				Amend C2 to recognise existing approvals where appropriate
Red Flagged areas	9	Only small areas of bushland can be considered for clearing	Noted. Analysis of the proposed urban footprint suggests that there is ample land zoned or otherwise identified for urban development and expected population growth without the need for further significant clearing of native vegetation. Additionally, almost all native vegetation on the Tweed coast is ecologically significant and meets the Dept. of Planning criteria for potential environmental protection zoning. Community surveys among residents of the Shire also consistently rank environmental protection as a very high priority. It should also be noted that large-scale developments are also subject to master planning processes prior to the submission of development applications which would be the subject of the draft DCP. In such cases it is expected that these strategic planning processes will address potential clearing and subsequent offset requirements.	Provide an advisory note at C2 indicating that it is assumed that most larger scale developments will be guided by a an endorsed master plan which could address larger scale clearing if required  Amend C2 to recognise endorsed strategic planning processes and existing approvals where appropriate
Red Flagged areas	10	The draft DCP prevents clearing irrespective of zoning, social or economic considerations and is not consistent with the principles of Ecologically Sustainable Development	The draft DCP is a single chapter in the DCP which itself forms part of the overall development assessment process. The balancing of various considerations is ultimately an issue for Council who must assess DAs on their merit consistent with the principles of ESD. However, it is noted that among other ESD principles the conservation of biological diversity and integrity is a fundamental consideration. The draft DCP provides guidance on this and other ESD principles taking into account the biodiversity values and threats in the Tweed Shire. It should also be noted that the BC Act does not make any allowance for zoning, social or economic factors.	No action necessary

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Red Flagged areas	10	Red flag criteria are more expansive and not scientifically justified compared to the BC Act.	The BC Act does not attempt to set standards for areas of habitat to be retained. Instead it leaves this to the consent authority (see s7.13 of the BC Act). However the BC Act does establish standards for any residual impacts to be offset in accordance with the BOS (if it applies). The criteria used to define red flagged areas in the draft DCP are based on well-known and researched factors that determine ecological or environmental significance in the Tweed Shire and elsewhere on the NSW north coast. Most of the criteria listed are consistent with similar criteria developed for the Northern Councils E Zone Review and the High Environmental Values maps within the North Coast Regional Plan 2036	No action necessary
Setbacks and buffers	3	P29 – Setbacks. Do the setbacks have to be within the subject site? If not and setbacks / buffers can be located on adjoining sites, how are they protected into the future?	Yes, setbacks have to be within the subject site. Protection for lots adjoining bushland will only be required if they submit a DA. In such cases the proposal will need to observe the setback requirements – if only to address bushfire considerations.	No action necessary
Setbacks and buffers	9, 10	The combined ecological and development setbacks are too large	Development setbacks such as those required to manage bushfire risk generally exceed the ecological setbacks and under the draft DCP may overlap. The ecological setbacks are consistent with contemporary standards, including those assessed by State agencies. The draft DCP provides greater certainty about how various buffers and setbacks should be applied.	No action necessary
Setbacks and buffers	6	The approach to setbacks and buffers is concise, clearly illustrated and should be clear to all development proponents	Noted	No action necessary
Variation provisions	8	C5 which allows for minor variations to red flag provisions variations under C1 should	It is not considered practical to attempt to further codify situations that might qualify under this clause. The examples given in the draft DCP give an idea of	No action proposed



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		provide more guidance on minor variations	the potential scale and scope of the clause. C7 requires the variation to be justified against a “maintain and improve” test. Additional advice is provided in Part D Section 4 to encourage applicant to discuss such variations with council prior to submission	
Variation provisions	8	C7 should also require that any minor variation under C5 is consistent with relevant objectives and planning principles	Noted and accepted.	Replace the requirement under C7(c) to “show how the impact can be mitigated in a manner that maintains and improves biodiversity outcomes” to “show how the variation is consistent with all relevant planning principles and objectives of this Section of the DCP”.
Variation provisions	9, 10	The draft DCP is very prescriptive	The draft DCP deliberately sets standards for biodiversity protection in the Tweed. This is to provide greater certainty for all stakeholders regarding likely acceptable outcomes. It is acknowledged that it not possible to codify every possible circumstance. To address this issue the draft DCP allows for both minor variations under C5 and other variations under C24. The draft DCP encourages applicants (see C25 and Section 3 in Part D) to discuss proposed variations prior to lodgement so that alternative solutions can be explored. Ultimately, however all chapters of the DCP (not just the Biodiversity chapter) are a guideline and Council needs to make its assessment on the basis of the merits of the proposal taking into account the DCP and a range of statutory and other issues. Section 79C(3A) of the EP&A Act ensures such flexibility.	No action necessary