

Code of Practice

Code of Practice name	Tree Preservation Code
Responsible manager(s)	Divisional Manager, Strategic and Sustainable Growth
Contact officer(s)	Strategic Planning Coordinator
Directorate	Planning and Sustainability Services
Approval date	[XXX]
Community Strategic Plan Objective	Responsible and balanced development
Delivery Program	Ensure development is sustainable, and reflects community values and desired local setting
Operational Plan	Provide receptive and responsive development assessment services

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Purpose

Council can issue a permit for the removal or pruning of declared vegetation that is below the biodiversity offsets scheme thresholds.

This Code allows for the removal of unsafe or unsuitable trees on public and non-rural land while encouraging replacement vegetation to ensure the tree canopy maintains visual amenity, special landscape characteristics, unique vegetation qualities, and the economic, social and ecological values within the Eurobodalla Shire. For example, native vegetation supports the views and aspects that are important to our tourism industry and minimises the risk of destabilisation of land, particularly on foreshore or riparian land, due to inappropriate tree removal.

Objectives

This objectives of this Code are through the long term retention of existing trees, appropriate tree maintenance, and in relation to replacement trees, suitable tree location and considered species selection.

The objectives of this Code are:

- To protect and enhance trees and vegetation in non-rural areas including street trees, park trees (including bushland) and trees on private property as an important community and tourism asset;
- To facilitate the removal or pruning of undesirable exotics, environmental weeds, noxious weeds, dangerous trees and any other inappropriate plantings eg that are causing damage to buildings or other infrastructure;
- To facilitate the removal or pruning of vegetation for maintenance of existing rural infrastructure; and
- To minimise impacts to vegetation with high environmental value eg threatened ecological communities, threatened species and their habitats.

1	<p>Introduction</p> <p>This Code has been prepared pursuant to Part 3 of the <i>State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017</i> (Vegetation SEPP). It supports the aims of the Vegetation SEPP to protect the biodiversity values of trees and other vegetation in non-rural areas and to preserve the amenity of non-rural areas through the preservation of trees and other vegetation.</p>
2	<p>Application of this Code</p> <p>This Code applies to all non-rural land within the Eurobodalla Shire and where referred to in a development control plan that applies to the land.</p> <p>This Code applies to removal or pruning of vegetation declared in section 2.1 of this Code that does not exceed the biodiversity offsets scheme threshold on non-rural land.</p> <p>Figure 1 in this Code summarises how to determine if this Code applies to vegetation removal or pruning.</p> <p>Removal of native vegetation that exceeds the biodiversity offsets scheme thresholds requires approval from the Native Vegetation Panel, not Council. For more information about native vegetation removal that exceeds the biodiversity offset scheme thresholds contact Local Land Services on 1300 778 080, email slm.info@lls.nsw.gov.au or contact the South East Local Land Services office via email to enquiry.southeast@lls.nsw.gov.au.</p>

More information about the Biodiversity Offset Scheme thresholds can be found on NSW Office of Environment and Heritage's website. The biodiversity offsets scheme thresholds include:

- a) the clearing of native vegetation exceeding the thresholds shown in Table 1 of this Code.
- b) the clearing of native vegetation on land included on the Biodiversity Values Map (available online: <https://www.lmbc.nsw.gov.au/Maps/index.html?viewer=BOSETMap>).

Table 1: Clearing area thresholds (source Clause 7.2 of the *Biodiversity Conservation Regulation 2017*)

Minimum Lot Size of Land in the Eurobodalla LEP	Area of clearing
Less than 1 hectare	0.25 hectares or more
Less than 40 hectares but not less than 1 hectare	0.5 hectares or more
Less than 1,000 hectares but not less than 40 hectares	1 hectares or more
1,000 hectares or more	2 hectares or more

If you are applying for a Complying Development Certificate under *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* you need to obtain a permit to remove or prune vegetation to which this Code applies.

If a Development Application has been approved for the removal of a tree or other native vegetation, a permit is not required.

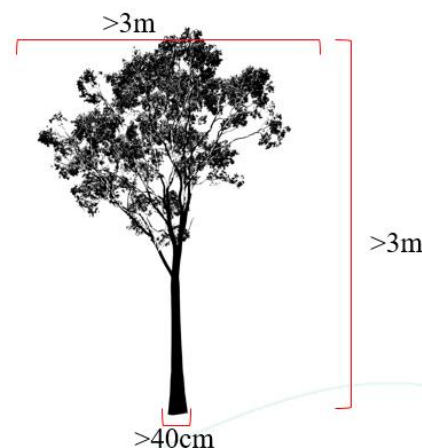
2.1 Vegetation to which this Code applies

This Code declares the following trees and other vegetation for the purposes of Part 3 of the Vegetation SEPP that a person requires a permit granted by Council to remove or prune (Clause 10(1) of the Vegetation SEPP).

- 5.1.1. All trees are declared for the purposes of Part 3 or the Vegetation SEPP unless exempt to the requirement for a permit set out in section 5 of this Code.

A tree:

- a) is at least 3 metres in height; or
- b) has a trunk circumference of 400mm at ground level; or
- c) has a crown/branch span of 3 metres diameter or more.



- 5.1.2. All native vegetation is declared for the purposes of Part 3 of the Vegetation SEPP on land zoned RE1 Public Recreation, E4 Environmental Living or E2 Environmental Conservation by the Eurobodalla Local Environmental Plan 2012, unless exempt to the requirement for a permit set out in section 5 of this Code.

3 Relationship to other plans and orders

Eurobodalla Shire Council's Conservation of the Yellow-bellied Glider in the Broulee Area Policy – A permit from Council for removal or pruning of vegetation on land

	<p>identified in the Yellow-bellied Glider in the Broulee Area Policy will only be issued if it complies with the requirements of that Policy.</p> <p><i>Eurobodalla Shire Council's Tree Risk Management Policy on Council Controlled Land</i> – provides the guidelines for Council staff to assess the potential risks from trees on Council controlled land to public safety and private assets.</p> <p><i>Eurobodalla Shire Council's Vegetation Clearing – Roadsides and Infrastructure Lines Policy</i> – clarifies the responsibilities of Council when undertaking clearing in road reserves, for other infrastructure (eg underground services), whether on public land or within private property, for maintenance or construction purposes.</p> <p><i>Eurobodalla Shire Council's Build in the Vicinity of Sewer Mains Code of Practice</i> – The Code sets out the requirements for ensuring that significant public and private assets are protected from potential damage when building in the vicinity of sewer mains. Tree roots can penetrate into sewerage pipes through joints or damaged sections of pipe, causing blockages and subsequent overflows. As a result, certain species are not recommended to be planted near sewer mains. A list of the highest risk species is provided in Appendix A of the code.</p>
4	<p>Permits for tree works under this Code</p> <p>In accordance with Clause 7(1) of the Vegetation SEPP, a person must not cut down, fell, uproot, kill, poison, ringbark, burn or otherwise destroy vegetation declared in section 2.1 of this Code, or lop or otherwise remove a substantial part of the vegetation without a permit granted by Council.</p>
4.1	<p>Appeals</p> <p>An appeal to Council against an approval or refusal to grant a permit under this Code may be made by the applicant.</p> <p>If dissatisfied with the result of the appeal to Council, an applicant for a permit may appeal to the Land and Environment Court against the refusal by Council to grant the permit. Any such appeal is to be made within 3 months after the date on which the applicant is notified of the decision or within 3 months after the Council is taken to have refused the application (whichever is later).</p> <p>An application for a permit that has not been determined is taken to have been refused after 28 days from the date the application was made.</p>
5	<p>Exemptions</p> <p>You do not need to apply for a permit from Council if the exemptions in this section apply to the proposed vegetation removal. However, exemption under this section does not equal an exemption under other legislation controlling the removal or pruning of trees and other vegetation. Exemptions under this Code cannot be used for:</p> <ol style="list-style-type: none"> Removal or pruning of trees and other native vegetation that is required to be retained by a development consent or a Section 88B restriction to user instrument. Applicants may choose to apply to Council for a variation to the conditions of consent (for dwelling and/or subdivision) or the 88B Instrument in this instance. Removal or pruning of trees and other native vegetation related to a heritage item, Aboriginal object, Aboriginal place of heritage significance, or on land within a heritage conservation area. Development consent is required in these circumstances.

	<p>c) Any ringbarking, cutting down, topping, lopping, removal, injuring or destruction of a tree or other vegetation that is mapped as Coastal Wetland or Littoral Rainforest by the State Environmental Planning Policy (Coastal Management) 2018. Development consent is required in these circumstances.</p> <p>d) Vegetation removal that exceeds the Biodiversity Offsets Scheme thresholds identified in the Biodiversity Conservation Regulation 2017.</p> <p>e) Impacts to threatened species, ecological communities or their habitat. A biodiversity conservation licence from the NSW Office of Environment and Heritage is required if a permit from Council has not been issued.</p> <p>A permit under this Code is not a defence for significant impacts to threatened species, populations or communities listed under the <i>Commonwealth Environment Protection and Biodiversity Conservation Act 1999</i>.</p>
5.1	<p>List of exempt activities</p> <p>The following activities do not require a permit from Council:</p> <p>5.1.3. The clearing of vegetation that is authorised under Section 600 of the Local Land Services Act 2013 (Clearing authorised under other legislation). This includes:</p> <ul style="list-style-type: none"> 5.1.3.1. Planning approval eg development consent under Part 4 of the <i>Environmental Planning and Assessment Act 1979</i> 5.1.3.2. Other planning authorisation eg an activity carried out by a determining authority under part 5 of the <i>Environmental Planning and Assessment Act 1979</i> 5.1.3.3. Biodiversity conservation authorisation under the <i>Biodiversity Conservation Act 2016</i> 5.1.3.4. Rural fires authorisation under the <i>Rural Fires Act 1997</i> eg in accordance with NSW Rural Fire Services 10/50 code 5.1.3.5. Electricity network operator bush fire risk mitigation direction under the <i>Electricity Supply Act 1995</i> 5.1.3.6. State emergency authorisation under the <i>State Emergency and Rescue Management Act 1989</i> or the <i>State Emergency Service Act 1989</i> and was reasonably necessary in order to avoid a threat to life or property 5.1.3.7. Biosecurity authorisation under the <i>Biosecurity Act 2015</i> 5.1.3.8. Plantation operations authorisation under the <i>Plantations and Reafforestation Act 1999</i> 5.1.3.9. Forestry operations authorisation under the <i>Forestry Act 2012</i> 5.1.3.10. Water management authorisation under the <i>Water Management Act 2000</i> 5.1.3.11. Mining/petroleum authorisation under the <i>Mining Act 1992</i> or the <i>Petroleum (Onshore) Act 1991</i> 5.1.3.12. Fisheries management authorisation under the <i>Fisheries Management Act 1995</i> 5.1.3.13. Survey work under the <i>Surveying and Spatial Information Act 2002</i> and carried out under the direction of a surveyor

	<p>5.1.3.14. Roads authorisation under the <i>Roads Act 1993</i></p> <p>5.1.3.15. Private land conservation agreement under the <i>Biodiversity Conservation Act 2016</i></p> <p>5.1.4. The clearing of vegetation in accordance with a property vegetation plan under the former <i>Native Vegetation Act 2003</i>.</p> <p>5.1.5. The removal or harvesting of trees grown commercially or domestically for their edible fruit.</p> <p>5.1.6. The removal or pruning of trees on Council owned/managed land authorised by Eurobodalla Shire Council and provided that assessment of the tree work is carried out in accordance with this Code or in accordance with a Plan of Management for the land.</p> <p>5.1.7. The removal of vegetation by Council in accordance with Council's <i>Tree Risk Management Policy on Council Controlled Land</i> and Council's <i>Vegetation Clearing – Roadsides and Infrastructure Lines Policy</i>. All trees removed on private land in accordance with these Policies must be recorded in Council's Tree Management System.</p> <p>5.1.8. Trees or other vegetation declared or assessed as being a biosecurity matter under the <i>Biosecurity Act 2015</i> (it will not be sufficient defence that the species was not correctly identified prior to removal). Visit Eurobodalla Shire Council's website for a list (http://www.esc.nsw.gov.au/living-in/about/our-natural-environment/introduced-plants-and-animals).</p> <p>5.1.9. Removal of undesirable species listed in Section 5.3 (it will not be sufficient defence that the species was not correctly identified prior to removal).</p> <p>5.1.10. The removal of dangerous vegetation that Council is satisfied is an imminent risk to human life or property. Council must be notified prior to the removal of any tree(s) and the tree(s) must show obvious instability that represents immediate danger, for example, storm damage resulting in structurally split trunks, limbs, or branches.</p>
5.2	<p>5.2.1 The following activities (5.2.2 to 5.2.7) do not require a permit from Council, unless:</p> <ul style="list-style-type: none"> a) The tree is listed on Councils significant tree register. Contact Council's Development Helpdesk for advice on whether the tree proposed to be removed or pruned is on the significant tree register; b) The vegetation is a threatened species, habitat for a threatened species (eg a hollow) or part of a threatened ecological community (EEC) under the <i>Biodiversity Conservation Act 2016</i>. Potential EECs are shown on GIS mapping at www.esc.nsw.gov.au/development-and-planning/tools/gis-mapping or seek advice from a suitably qualified person eg an ecologist; c) The tree is mapped as Yellow-bellied Glider habitat in the Conservation of the Yellow-bellied Glider in the Broulee Area Policy; d) The vegetation is or forms part of a heritage item identified in the Eurobodalla Local Environmental Plan 2012;

	<p>e) The vegetation is within a heritage conservation area identified in the Eurobodalla Local Environmental Plan 2012;</p> <p>f) Previous permits for clearing have been issued by Council within 5 years and the proposed additional clearing would exceed the biodiversity offsets scheme clearing area threshold of the lot (see Table 1).</p> <p>5.2.2 If the land is zoned E4 Environmental Living, R5 Large Lot Residential or E2 Environmental Conservation:</p> <p>5.2.2.1 Clearing for the following maintenance of existing permanent rural infrastructure. The minimum extent of clearing necessary for carrying out the activity is permitted up to the distances from the infrastructure below:</p> <ul style="list-style-type: none"> a) fences —1 metres either side (note that landholders permission is necessary), b) road or track— 1 metre either side from edge of road, c) pipeline—3 metres total width of clearing, d) shed —3 metres from the outer edge of the structure, e) tank—3 metres from the outer edge of the structure, f) dam—3 metres from the outer edge of the structure unless mapped as riparian in the Eurobodalla Local Environmental Plan, g) stockyards— 3 metres from the outer edge of the structure, h) bore— 3 metres from the outer edge of the structure, i) pump—3 metres from the outer edge of the structure, j) water point—3 metres from the outer edge of the structure, k) windmill— 3 metres from the outer edge of the structure. <p>5.2.2.2 The continuation of existing cultivation, grazing or rotational farming practices if it does not involve the clearing of native vegetation.</p> <p>5.2.2.3 Sustainable grazing that is not likely to result in the substantial long-term decline in the structure and composition of native vegetation is permitted if it does not involve the clearing of native vegetation.</p> <p>5.2.3 Removal of trees and other native vegetation within 3.0 metres (as measured on the horizontal plane from the edge of the building footprint to the trunk of the tree) of an existing lawful dwelling or an approved building footprint in accordance with a development consent. This exemption does not apply to a tree on adjoining land unless the adjoining landholder gives permission for the vegetation removal.</p> <p>5.2.4 The removal of vegetation that Council is satisfied is dying or dead as determined through the application of the code of practice associated with the Tree Risk Management Policy on Council Controlled Land or to trees or vegetation subject to assessment under Council's Vegetation Clearing – Roadsides and Infrastructure Lines Policy and is not required as the habitat of native animals eg it does not contain hollows. Council must be notified prior to the removal of any tree(s) that are dead or dying so that Council can issue a letter confirming that the tree is exempt from the requirement for a permit and removal or pruning may be undertaken.</p>
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	<p>5.2.5 Pruning of trees if pruning does not exceed 10% of canopy per year and complies with Australian Standard 4373 – Pruning of Amenity Trees (note that 10% of the part of a tree hanging over into an adjoining property can be removed from the fence line without approval from the tree owner).</p> <p>5.2.6 Removal of vegetation on a boundary between properties for the purpose of enabling a boundary survey to be carried out by a registered surveyor. The surveyed lands must exceed one hectare and the maximum width of clearing is 0.5m either side of boundary. The adjoining owner's approval is necessary.</p> <p>5.2.7 Removal of trees or vegetation directly on a boundary line between properties for the purpose of erecting a boundary fence – adjoining owner's approval is necessary.</p>
5.3	<p>List of exempt species</p> <p>A permit is not required to remove or prune any of the following trees on private land provided the tree is not part of a threatened ecological community, within a Coastal Wetland or Littoral Rainforest mapped by the Coastal Management SEPP, listed as a Heritage Item or within a Heritage Conservation Area, or listed on Council's Significant Tree Register:</p> <p>5.3.1 Any environmental weed or noxious weed;</p> <p>5.3.2 Domestic fruit trees including citrus, stone (cherry, peach, plum), mulberry, banana, avocado, mango, and loquat;</p> <p>5.3.3 Species listed in Table 2 of this Code.</p>
5.4	<p>Evidence required</p> <p>5.4.1 Expert advice from a suitably qualified and experienced person must be obtained with respect to dangerous trees (see Section 7.1)</p> <p>5.4.1.1 to confirm their condition prior to removal or injury, and</p> <p>5.4.1.2 to ensure that they do not provide habitat for Threatened Species.</p> <p>5.4.2 Where a dangerous tree is removed (in an emergency situation) due to obvious instability or hazard,</p> <p>5.4.2.1 photographic evidence of the tree's condition; and</p> <p>5.4.2.2 a report by a suitably qualified and experienced person; or</p> <p>5.4.2.3 a written statement from the State Emergency Service, if the Service carried out the emergency tree works at the owners request.</p> <p>5.4.3 Dated photographic evidence of the subject tree(s) before and after pruning or removal must be retained for a period of 6 months after the completion of works and produced as evidence of compliance with this Code at the request of a Council officer.</p>
6	<p>Procedures</p> <p>If a tree or other vegetation proposed for removal or pruning is declared under Section 3 of this Code for the purpose of Part 3 of the Vegetation SEPP, and is not exempt under section 5 of this Code, then a permit application must be submitted to Council.</p>
6.1	<p>Application procedures</p> <p>Refer to figure 2 of this code for a summary of the application process.</p> <p>6.1.1 For trees on Council reserves, please contact Council's Tree/Parks Inspector on 02 4474 1391.</p>

	<p>6.1.2 If native vegetation removal would exceed the Biodiversity Offsets Scheme Thresholds described in Part 7 of the Biodiversity Conservation Regulation 2017 (ie mapped by the Biodiversity Values Map (https://www.lmbc.nsw.gov.au/Maps/index.html?viewer=BVMap or exceeds the area thresholds in Clause 7.2 of the that regulation) please contact Local Land Services on 1300 778 080, email slm.info@lls.nsw.gov.au or contact the South East Local Land Services office via email to enquiry.southeast@lls.nsw.gov.au. The Biodiversity Offset Scheme Entry Tool available online at https://www.lmbc.nsw.gov.au/Maps/index.html?viewer=BOSETMap may also assist with determining if the proposed clearing would exceed the thresholds.</p> <p>6.1.3 Removal or pruning of vegetation for the maintenance of a heritage item, Aboriginal object, Aboriginal place of heritage significance, or in heritage conservation area of minor in nature may not need approval. Council can confirm this via an email to development@esc.nsw.gov.au. A development application for any other removal or pruning of vegetation located on heritage items and heritage conservation areas is required in accordance with Clause 5.10 of the ELEG 2012.</p> <p>6.1.4 All requests to prune or remove trees or vegetation protected under this Code are to be submitted on a Tree Removal Application Form available from Council for this purpose and be accompanied by a Tree Plan drawn to scale that illustrates;</p> <p>6.1.4.1 Property boundary, existing structures and access roads</p> <p>6.1.4.2 Location of all trees on the lot and identification of those trees or vegetation proposed for removal</p> <p>6.1.4.3 A description of the trees or vegetation proposed for removal and evidence that impacts to vegetation have been avoided and minimised and there are no other reasonable alternatives</p> <p>6.1.4.4 Distance of those trees or vegetation proposed for removal from the nearest boundary and/or structure</p> <p>6.1.4.5 A north arrow</p> <p>6.1.4.6 The area of native vegetation being cleared in square metres (this can be generated by the Biodiversity Offsets Scheme Entry Tool available on the NSW office of Environment Heritage's website, https://www.lmbc.nsw.gov.au/Maps/index.html?viewer=BOSETMap)</p> <p>6.1.4.7 Mitigation measures proposed eg replacement plantings locations</p> <p>6.1.5 Evidence from a suitably qualified and experienced person (eg Tree Assessment Report or an assessment on the significance of impacts to threatened species and ecosystems), where required, must be submitted with the Tree Removal Application Form.</p> <p>6.1.6 The appropriate processing fee as determined by Council must be paid when submitting the Tree Removal Application Form.</p> <p>6.1.7 The owner of the property, on which the trees or vegetation are growing must sign the Tree Removal Application Form.</p> <p>6.1.8 Upon submission of the Tree Removal Application Form, Tree Plan and processing fee, Council staff will ensure that the form is correctly filled out and contains all necessary information required to allow lodgement.</p>
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	<p>6.1.9 A site inspection to confirm the details in the application will be undertaken by a Council representative. The applicant must clearly mark all trees proposed for removal on site for inspection purposes.</p> <p>6.1.10 Council may request further information about the proposed clearing that is necessary for proper consideration of the application.</p> <p>6.1.11 Council will assess the tree removal application against the assessment criteria in this Code and issue a permit if appropriate. An application for a permit that has not been determined is taken to have been refused after 28 days from the date the application was made.</p> <p>6.1.12 All trees removed on private land in accordance with this Code must be recorded in Council's Tree Management System</p>
<p>6.2</p>	<p>Assessment Criteria</p> <p>Council may issue a permit for the removal of trees if the following criteria are met:</p> <p>6.2.1 The tree is a poor specimen and is in a state of decline that is prolonged and irreversible; or</p> <p>6.2.2 The tree has caused significant structural damage and supporting documentation including photographic evidence is provided; or</p> <p>6.2.3 It can be demonstrated that there is an ongoing problem with the tree which no other course of action will rectify; and</p> <p>6.2.4 Council is satisfied there is unlikely to be a significant impact on threatened species, their habitat (eg hollows) or ecological communities and the reason for removal or pruning would otherwise be an exempt activity under section 5 of this Code and other reasonable alternatives are not available.</p> <p>Clear evidence is provided of how impacts to hollow bearing trees, threatened species or vegetation communities have been avoided and minimised and that other reasonable alternatives are not available.</p> <p>Applications for impacts to any tree that contains a hollow, is a threatened species or is a component of a threatened ecological community or involves removal of 10 trees or more, Council may request an assessment of the significance of the impacts completed by a suitably qualified and experienced person eg an ecologist is part of the application.</p> <p>If hollows will be removed, an animal handler must be present on site to rescue any animals potentially using the tree as habitat.</p> <p>6.2.5 Provided that no significant hazard or other safety issues also apply, the following will not justify the removal of a tree:</p> <p>6.2.5.1 Dropping of leaves, flowers, fruit, bark, sap or twigs into gutters, downpipes or pools for example</p> <p>6.2.5.2 To enhance views, solar access, increase natural light or increase sunlight to garden areas</p> <p>6.2.5.3 To reduce minor lifting of driveways and paths by tree roots or impacts to minor structures</p> <p>6.2.5.4 For bushfire hazard control which has not been approved by the Rural Fire Service</p> <p>6.2.5.5 Potential damage to sewer mains unless supported by written expert advice and only where reasonable alternatives are not feasible. Also refer to Council's <i>Build in the Vicinity of Sewer Mains Code of Practice</i></p>

	<p>6.2.5.6 Damage to buildings or structures which have not been built in accordance with the relevant planning controls and legislation in force at the time of construction</p> <p>6.2.5.7 Damage to buildings or structures where alternative tree sensitive construction measures could be undertaken</p> <p>6.2.6 Where mature trees are proposed to be removed, consideration is given to replacement with more suitable trees in an appropriate location, including consideration of providing street trees nearby. Replacement species and locations must be agreed to by Council.</p> <p>6.2.7 The amount of vegetation approved to be removed by Council in the previous 5 years is cumulatively less than the Biodiversity Offsets Scheme Threshold.</p> <p>6.2.8 The distance or area specified as exempt for maintenance of rural infrastructure in its application to the land concerned may be extended, if:</p> <p>6.2.8.1 the proposed increase is minor; and</p> <p>6.2.8.2 the proposed increase is for a legitimate purpose associated with the management of the land concerned; and</p> <p>6.2.8.3 the increase is necessary in the circumstances.</p> <p>6.2.9 The removal of vegetation would allow exempt or complying development where the vegetation proposed to be removed is for direct impacts by the proposed development or within 3 metres of the development only (ie not for an asset protection zone). Clear evidence that impacts to vegetation have been avoided and minimised and there are no other reasonable alternatives is provided.</p> <p>6.2.10 Removal or pruning of trees and other vegetation on land with a slope in excess of 20% or within 20 metres of a water course is avoided. Erosion control measures must be proposed eg a program of replanting of local native species to maintain slope stability, water quality and terrestrial habitat.</p> <p>6.2.11 Removal or pruning is of trees listed in Appendix A of Council's <i>Build in the Vicinity of Sewer Mains Code of Practice</i>.</p>
7	Tree assessment reports
7.1	<p>Arborist qualifications</p> <p>Where Council requires a suitably qualified and experienced person to prepare a Tree Assessment Report, applicants can use a Council arborist or engage their own suitably qualified arborist. A suitably qualified and experienced person is one who:</p> <p>7.1.1 Has level 4 or higher Certificate in Arboriculture, and</p> <p>7.1.2 At least five (5) years practical experience in tree diagnosis and reporting, and</p> <p>7.1.3 Is not employed or in any way associated with the company contracted to remove the tree or vegetation.</p>
7.2	<p>Tree assessment report requirements</p> <p>A Tree Assessment Report must contain the following information:</p> <p>7.2.1 Name, address, telephone number, qualifications and experience of the Arborist carrying out the inspection and reporting;</p> <p>7.2.2 Address of the site containing the trees;</p> <p>7.2.3 Who the report was prepared for and the aims of the report;</p>

	<p>7.2.4 Methods and/or techniques used in the inspection;</p> <p>7.2.5 A plan, to scale, consistent with the requirements under subsection 6.1.4 in this Code;</p> <p>7.2.6 A table showing, for each tree the subject of the application:</p> <ul style="list-style-type: none"> a) Species name; b) Age/classification; c) Height; d) Trunk diameter at 1 metre above ground; e) Canopy spread; f) Health and condition. <p>7.2.7 A discussion of other relevant information, including details of tree hollows or potential hollows for wildlife, tree structure/weaknesses, root form and distribution, soil stability, scenic amenity, pests and diseases and/or a Tree Hazard Assessment;</p> <p>7.2.8 Supporting evidence such as photographs and laboratory results to confirm presence of soil pathogens or support soil assessment, where relevant;</p> <p>7.2.9 Proposed replacement plantings, landscaping and soil remediation;</p> <p>7.2.10 Tree protection measures and post tree maintenance program which can be used as conditions, should the application be approved;</p> <p>7.2.11 Sources of information referred to in the report;</p> <p>7.2.12 Any other relevant matters.</p>
8	<p>Penalties</p> <p>There are significant penalties for the illegal removal or pruning of trees and other vegetation. People who remove or prune trees and other vegetation without approval can face significant fines.</p>
8.1	<p>Local Government Act</p> <p>Under Section 629 of the <i>Local Government Act 1993</i>, it is an offence to cause injury or unnecessary disturbance to trees and native vegetation on public land including road reserves. This specifically relates to street trees, foreshore reserves and public open space. A person who, without lawful excuse, deliberately damages, poisons or injures vegetation on public land, is guilty of an offence under that Act.</p>
8.2	<p>Environment Planning and Assessment Act 1979</p> <p>Clearing vegetation or trees without a permit is prohibited, and prohibited development can be enforced by a penalty notice under the <i>Environmental Planning and Assessment Act 1979</i> for each offence.</p> <p>Alternatively, Council can undertake court proceedings for the injury, removal of trees and native vegetation on private and public land without a permit. Penalties for offences under Section 4.3 of the EP&A Act can exceed \$1 million for individuals. Where a person is guilty of an offence involving the destruction of or damage to a tree or vegetation, the court dealing with the offence may also direct that person to pay costs incurred:</p> <ul style="list-style-type: none"> a) to plant new trees and vegetation and maintain those trees and vegetation to a mature growth; and b) to provide security for the performance of any obligation imposed under (a).

	<p>c) Councils can prosecute offences within two years of an offence coming to a council investigation officer's attention.</p> <p>Councils can prosecute offences within two years of an offence coming to a council investigation officer's attention.</p>
8.3	<p>Biodiversity Conservation Act 2016</p> <p>It is an offence to harm or pick threatened species, populations or endangered ecological communities (EECs) under the Section 2.2 of the <i>Biodiversity Conservation Act 2016</i>. Prosecutions can result in significant penalties including fines and imprisonment.</p> <p>A permit from Council to remove vegetation is a defence under Section 2.8 of the <i>Biodiversity Conservation Act 2016</i>.</p>
8.4	<p>Other Acts</p> <p>Vegetation removal on rural zoned land must be in accordance with the <i>Local Land Services Act 2013</i>. For vegetation removal on rural zoned land, contact Local Land Services on 1300 778 080, email or contact the South East Local Land Services office via email to enquiry.southeast@lls.nsw.gov.au.</p>
9	<p>Trees on neighbouring land</p> <p>Council has no power to order the owner of a tree to remove or prune a tree on their property apart from under the provisions of the <i>Biosecurity Act 2015</i>.</p> <p>Where a tree is growing on a boundary, ownership is determined by which side of the boundary the centre of the trunk originated, or which side of the boundary, the majority of the trunk's diameter exists (at ground level).</p> <p>Permission for removal of a tree on a neighbour's property can only be granted to the owner of the tree and requires the consent of Council. Written agreement from the owner of the tree must occur prior to making an application.</p> <p>Note that 10% of the part of a tree hanging over into an adjoining property can be removed from the fence line without approval from the tree owner.</p> <p>Where neighbour disputes arise, Council refers affected persons to the <i>Trees (Disputes Between Neighbours) Act 2006</i>.</p>

Figure 1 Application of this Code summary referred to in section 2

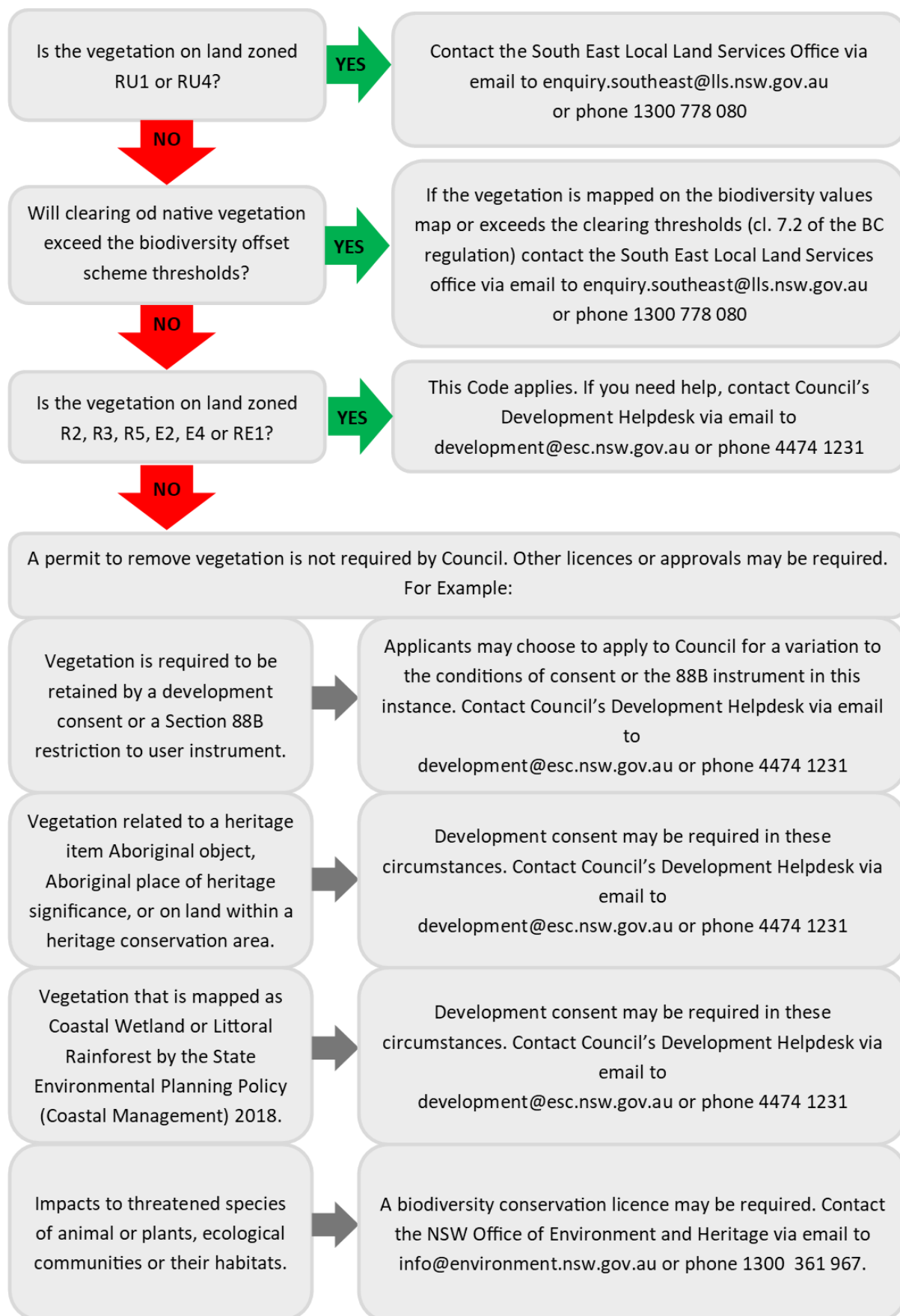


Figure 2 Summary of tree removal application process referred to in section 6.1

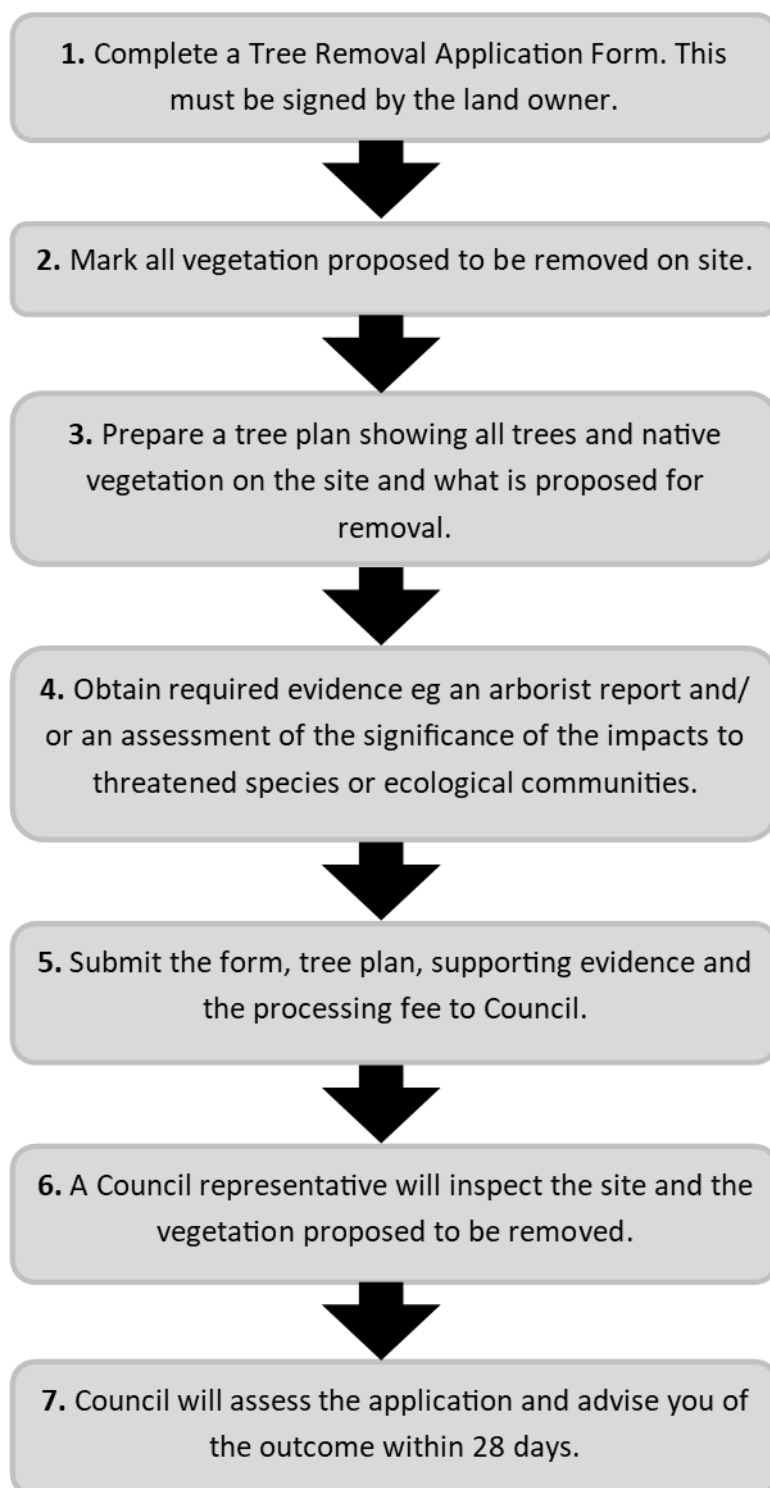


Table 2 Exempt species referred to in section 5.3

Botanical Name	Common Name
<i>Acacia baileyana</i>	Cootamundra Wattle
<i>Acacia mearnsii</i>	Black Wattle
<i>Acacia podalyriifolia</i>	Queensland Silver Wattle
<i>Acacia saligna</i>	WA Glory Wattle
<i>Acer negundo</i>	Box Elder
<i>Albizzia lophantha</i>	Crested
<i>Allanthus altissima</i>	Wattle Tree of Heaven
<i>Alnus species</i>	Alder species
<i>Arecastrum romanzoffianum</i>	Cocos Palm
<i>Bamboo sp.</i>	Bamboo
<i>Camellia sp.</i>	Camellia
<i>Cestrum sp.</i>	Cestrum
<i>Chamaecytisus palmensis</i>	Tree Lucerne
<i>Cinnamomum camphora</i>	Camphor Laurel
<i>Coprosma repens</i>	Mirror Plant
<i>Cotoneaster sp.</i>	Cotoneaster
<i>Cordyline australis</i>	New Zealand Cabbage Palm
<i>Crataegus monogyna</i>	Hawthorn
<i>Cypresus arizonica</i>	Arizona cypress
<i>Erythrina x sykesii</i>	Coral Tree
<i>Erythrina crista-galli</i>	Coral Tree
<i>Ficus benjamina</i>	Weeping Fig
<i>Ficus elastica</i>	Rubber Tree
<i>Gleditia triacanthos</i>	Honey Locust
<i>Harpephyllum caffrum</i>	Kaffir Plum
<i>Hibiscus sp.</i>	Hibiscus
<i>Lagunaria patersonii</i>	Norfolk Island Hibiscus
<i>Ligustrum lucidum</i>	Large-leaf Privet
<i>Ligustrum sinense</i>	Small-leaf Privet
<i>Liquidambar styraciflua</i>	Liquidambar

Botanical Name	Common Name
<i>Mahonia species</i>	Oregon grape
<i>Nerium oleander</i>	Oleander
<i>Ochna sp.</i>	Ochna
<i>Olea africana and europaea</i>	Olive
<i>Pinus radiata</i>	Radiata Pine (Christmas Tree type)
<i>Callitris columellaris</i>	Cypress Pine
<i>Cupressocyparis leylandii</i>	Leyland Cypress
<i>Phoenix canariensis</i>	Canary Island Date Palm
<i>Pittosporum undulatum</i>	Pittosporum
<i>Polygala myrtifolia</i>	Butterfly Bush
<i>Populus sp.</i>	Poplars
<i>Psoralea pinnata</i>	African scurfpea
<i>Prunus laurocerasus</i>	Cherry Laurel
<i>Pyracantha sp.</i>	Fire Thorn
<i>Raphiolepis indica</i>	Indian Hawthorn
<i>Robina pseudoacacia</i>	Black Locust
<i>Rhododendron sp.</i>	Rhododendron
<i>Ricinus communis</i>	Castor oil plant
<i>Salix sp.</i>	Willows
<i>Sambucus nigra</i>	Common Elder
<i>Schefflera actinophylla</i>	Umbrella Tree
<i>Schinus areira</i>	Pepper tree
<i>Schinus terebinthifolia</i>	Brazilian pepper tree
<i>Senna sp.</i>	Cassia
<i>Solanum mauritianum</i>	Tobacco Bush
<i>Tibouchina sp</i>	Tibouchina

Implementation

Requirement		Responsibility
1	Implementation This Code will be implemented by Development Services.	DS
2	Staff and Training Under supervision, relevant council staff will be responsible for ensuring that this Code is implemented appropriately within their work area, after they have received training to do so.	DS
3	Complaints Complaints regarding potential illegal tree or native vegetation removal will be directed to Environmental Services to determine follow up actions.	ES
4	Consultation Consulted in this Code: Development Services, Strategic Services, Environmental Services	As described

Review

This Code will be reviewed every three (3) years. It may also be reviewed and updated if legislation requires it; or when council's functions, structure or activities change; or when technological advances or new systems change the way that council manages Learning and Development. Any review of this Code will require the involvement of Executive Leadership Team, Divisional Managers, and Staff Consultative Committee.

The overall effectiveness of this Code in achieving its goals will be regularly reviewed at all levels of the Council, including by the consultative committee. These reviews could include:

Performance indicator	Data source(s)
Number of complaints regarding potential illegal tree removal decline.	Customer Service Records (CSRs) regarding potential illegal tree removal.

Governance

This code should be read in conjunction with any relevant legislation, policies, codes or guidelines such as those listed below.

Related legislation and policies

Name	Link
Biodiversity Conservation Act 2016	https://www.legislation.nsw.gov.au/#/view/act/2016/63
State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017	https://www.legislation.nsw.gov.au/#/view/EPI/2017/454
Local Land Services Act 2013	https://www.legislation.nsw.gov.au/#/view/act/2013/51

Biosecurity Act 2015	https://www.legislation.nsw.gov.au/#/view/act/2015/24
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Related external references

Name	Link
Australian Standard AS 4373, <i>Pruning of Amenity Trees</i>	https://www.saiglobal.com/PDFTemp/Previews/OSH/AS/AS4000/4300/4373-2007.pdf

Definitions

Other than those listed below, terms in this document have the meanings found in the Eurobodalla Local Environmental Plan 2012 dictionary.

Category	Meaning/Definition
Biosecurity Matter (Weeds)	means a plant declared to be, or assessed as being, a biosecurity matter under the <i>Biosecurity Act 2015</i> , and associated regulations and plans, including but not limited to, Council's Weed Control Programs as per Section 371 (1) (b) of the <i>Biosecurity Act 2015</i> , and those plants listed in the <i>South East Regional Strategic Weeds Management Plan 2017-2022</i> .
building footprint	means the maximum extent of the two dimensional area of the plan view of an approved building such as a dwelling or garage, excluding minor ancillary structures. Note the building footprint is different to a building envelope. Note: The reference to minor ancillary structures in this definition includes, but is not limited to, garden sheds, cubby houses, detached car ports, gazebos, barbeques and detached decks and pergolas.
clearing	means any one or more of the following: a) Cutting down, felling, thinning, logging or removing native vegetation b) Killing, destroying, poisoning, ring-barking, uprooting or burning native vegetation; c) Severing, topping or lopping branches, limbs, stems or trunks of native vegetation; d) Substantially damaging or injuring native vegetation in any other way (see definition for injury).
dead tree	means a tree(s) that is no longer capable of performing the following processes: photosynthesis, take up water through its roots, hold moisture in its cells and produce new shoots.
root zone	The area under the dripline or branches of the tree that generally aligns with the root system required for the ongoing viability of the tree.
environmental weed	means a plant that poses a threat to the natural environment. Environmental weeds are either not native to the Eurobodalla area or are plants growing outside their natural range. A list of plants considered by Council to be environmental weeds can be found on Council's web site at http://www.esc.nsw.gov.au/living-in/about/our-natural-environment/introduced-plants-and-animals

Category	Meaning/Definition
habitat tree	means any tree(s) which has developed hollows in the trunk or limbs and is suitable for nesting native birds, arboreal marsupials and mammals or which support the growth of locally indigenous epiphytic plants (such as orchids).
imminent	means about to happen or threatening to occur.
injury	means damage to a tree or native vegetation and includes: <ul style="list-style-type: none"> a) Lopping and topping b) 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 c) Cutting, snapping off and tearing of branches and roots that is not carried out in accordance with accepted arboricultural practices d) Ring-barking, scarring the bark when operating machinery, 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 e) Damaging a tree's root zone by compaction or excavation, asphyxiation (including unauthorised filling or stockpiling of materials) f) Under scrubbing, unless carried out by hand tools, such as brush cutters and the like g) Wounding the stem with machinery (eg lawn mowers), fixing objects (eg signs) to the stem or branches by nails, staples or wire, using tree climbing spikes in healthy trees to be retained (except for access to an injured tree worker), fastening materials around the stem or branches that circle and restrict the normal vascular function of the stem or branches.
key threatening process	means a process that threatens, or could threaten, the survival or evolutionary development of species, populations or ecological communities.
lopping	means cutting between branch unions or at internodes on young trees
native vegetation	means any of the following types of plants native to New South Wales: <ul style="list-style-type: none"> a) trees (including any sapling or shrub or any scrub) b) understorey plants c) groundcover (being any type of herbaceous vegetation) d) plants occurring in a wetland.
non-rural land	means land to which the Vegetation SEPP applies. In Eurobodalla, this is all land except land zoned RU1 and RU4.
noxious weed	See biosecurity matter (weeds)

Category	Meaning/Definition
prune or pruning	means the following activities as specified in Australian Standard AS 4373, <i>Pruning of Amenity Trees</i> : a) Crown maintenance pruning involving: i. General pruning ii. Thinning iii. Deadwooding iv. Selective pruning v. Formative pruning b) Crown modification pruning involving: i. Reduction pruning ii. Crown lifting iii. Pollarding iv. Remedial pruning v. Line clearance
remove	means to clear, take away or transplant a tree from its place of origin
significant tree	means trees which are significant features of our heritage or cultural landscape, and are listed in Council's Significant Tree Register. They may be historic, large, unique, rare or have community support for their retention.
suitably qualified person	means an arborist or similarly qualified or experienced person (refer to section 7.1 of this Code) or an ecologist with experience and qualifications to undertake tests of significance required by the <i>Biodiversity Conservation Act 2016</i> .
threatened species	has the same meaning as in the <i>Biodiversity Conservation Act 2016</i> which includes native species, populations and ecological communities of flora and fauna.
topping	means cutting away part or all of the tree canopy leaving a trunk and stubbed main branches
tree	means a perennial plant with at least one self-supporting woody or fibrous stems which: a) is 3 metres or more in height; or b) has a trunk circumference of 400 mm or more measured at ground level; or c) has a crown/branch span of 3 metre diameter or more.

Change history

Version	Date	Approved By	Change
1	6 July 2010	Director, Strategic Development and Environmental Services	Introduced and adopted by Council (repealed Eurobodalla Shire Council's Tree Preservation Order)

2	[XXX]	Director, Planning and Sustainability	New format, align with biodiversity legislation reforms introduced in 2016, process and assessment criteria improved for clarity, exemptions updated to include existing rural infrastructure, notification requirements added.
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Internal use

Responsible officer:	Divisional Manager, Strategic and Sustainable Growth		Approved by:	Director, Planning and Sustainability	
File Reference:	[XXX]	Council report no:	[XXX]	Effective date:	[XXX]
Min no:	[XXX]	Review date:	Feb 2022	Pages:	23

Residential Zones



DEVELOPMENT CONTROL PLAN

AMENDMENT NO. 2

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1.0 INTRODUCTION

1.1 Name

This Plan is known as the Eurobodalla Residential Development Control Plan and has been prepared in accordance with section 74C of the *Environmental Planning and Assessment Act 1979* (EP&A Act).

1.2 Date of Adoption

This Plan was adopted by Eurobodalla Shire Council (Council) on 18 October 2011 and came into operation on 28 November 2011. This Plan will be subject to amendment from time to time. Plan users should refer to the list of amendments in Schedule 2 of this Plan.

1.3 Aim

The aim of this Plan is to further the aims of the Eurobodalla Local Environmental Plan 2012 (LEP) and the particular objectives for the R2, R3, R5 and E4 zones as stated in the LEP.

Objectives for these lands are to:

- conserve the character and environmental quality of the local area enjoyed by residents of, and visitors to, the Eurobodalla
- ensure any development takes into account environmental constraints
- provide opportunity for innovative, well-designed, quality development in the Eurobodalla Shire
- ensure that the design of development will improve the quality of the built environment and is of a scale that complements the local character
- to protect the visual amenity by encouraging the retention of trees and preserving prominent ridgelines and other scenic areas in their natural state

1.4 Land to Which This Plan Applies

This Plan applies to land zoned:

- R2 – Low Density Residential (except land identified as excluded land in Maps 1 & 2 in Schedule 1 of this Plan);
- R3 – Medium Density Residential as shown in Maps 4, 5, 6, 7 & 8 in Schedule 1 of this Plan;
- R5 – Large Lot Residential if the site is less than 5000m² or if the minimum lot size for the land in the LEP is less than 5000m² (except land identified as excluded land in Map 3 in Schedule 1 of this Plan). **This Plan applies to all R5 zoned land (of any size) for the purposes of Clause 6.2 Tree Preservation;**
- E4 – Environmental Living if the site is less than 5000m² or if the minimum lot size for the land in the LEP is less than 5000m² (except land identified as excluded land in Map

2 in Schedule 1 of this Plan). This Plan applies to all E4 zoned land (of any size) for the purposes of Clause 6.2 Tree Preservation;

- RE1 – Public Recreation for the purposes of Clause 6.2 Tree Preservation; and
- E2 – Environmental Conservation for the purposes of Clause 6.2 Tree Preservation.

Note: A separate Plan applies to the land identified as excluded in the maps in Schedule 1 (eg Narooma Township DCP, Moruya Township DCP and Tilba Villages and Conservation Area DCP). The Tree Preservation Code is referred to in those Plans thus already applies to the R5 and E4 zoned land in those locations. This note will be removed if the draft amendments to this Plan are adopted.

1.5 Relationship to Other Plans, Codes & Legislation

This Plan supports the LEP and provides guidance for applicants to achieve the aims and objectives of the LEP in relation to development in the applicable zones.

Where there is an inconsistency between this Plan and any environmental planning instrument applying to the same land, the provisions of the environmental planning instrument shall prevail.

In addition to the above and the provisions of this Plan, in assessing development proposals, Council must consider all those matters specified in section 79C of the EP&A Act.

To the extent that they apply to the land to which this Plan applies, this Plan repeals all other DCPs of the Eurobodalla Shire.

This Plan should be read in conjunction with the Codes of Practice listed in Schedule 3 of this Plan.

1.6 How to Use This Plan

This Plan is to be read in conjunction with the LEP and other relevant environmental planning instruments made under the Environmental Planning and Assessment Act 1979.

The LEP provides the legal framework by which Council's decisions are made and sets out Council's objectives for development within the shire. It lists objectives, permissible uses and development standards (including for building height and lot size) for each zone, accompanied by maps to define areas where the controls apply. In addition, the Eurobodalla Settlement Strategy and the various structure plans also provide a broader vision for the future of the Eurobodalla.

Applicants should also have regard to NSW Government legislation and policy, the requirements of the *Building Code of Australia*, the *Roads and Traffic Authority Guide to Traffic Generating Developments* and any relevant Australian Standard that may apply to all or part of the proposed development. Applicants should consult with Council to identify relevant legislation, policies and standards, and to ascertain whether any other Council policies or codes apply.

The Development Controls

The intent in each of the development controls states the desired outcome sought for the relevant aspect of the Plan.

The controls are generally expressed as Acceptable Solutions and/or Performance Criteria. The acceptable solutions provide a simple measure by which a development may achieve the intent of a particular element of development control (deemed to comply). The performance criteria allow for flexibility and innovation for developers and designers who wish to depart from the listed acceptable solutions (merit assessment). The intent of the control and the objectives of the Plan must always be met whichever course is chosen.

1.7 Definitions

Other than those listed below, terms in this Plan have the same meaning as in the LEP dictionary.

Communal open space means open space that is shared by all residents of a development containing more than 2 dwellings.

Detached (for the purpose of 2.2 Setbacks) means by more than 900mm from another building or structure. Buildings or structures closer than 900mm are deemed to be attached (for the purpose of 2.2 Setbacks).

Foreshore reserves means areas of public land fronting water courses, lagoons, lakes, rivers, estuaries, bays, beaches and oceans, but do not include areas of land set aside for stormwater drainage that do not share a common boundary with the foreshore.

2.0 SITE PLANNING

2.1 Siting of Development

Intent:

- To minimise the visual and environmental impact of new development on the landscape.

Development Controls:

Performance Criteria	Acceptable Solution
P1 All buildings are sited to minimise the risk to human life and damage to property by avoiding steep and unstable land.	<p>A1.1 No development or land clearing shall occur on slopes equal to or greater than 1:4 (or 25 %).</p> <p>A1.2 Where slopes are greater than 1:6.5 (or 15%) a report prepared by a qualified geo-technical engineer or soil conservationist is required to consider the suitability of the site for residential development having regard to the stability of the land.</p>

P2 The scale, location, footprint and height of buildings is such that:

- buildings recede into the landscape;
- do not compromise ridgelines or areas of high visual significance; and
- visual impact on scenic, natural landscape and adjoining properties is minimised.

Refer to Figure 1 below

A2 Buildings must not be located on hilltops, ridgelines or prominent knolls.

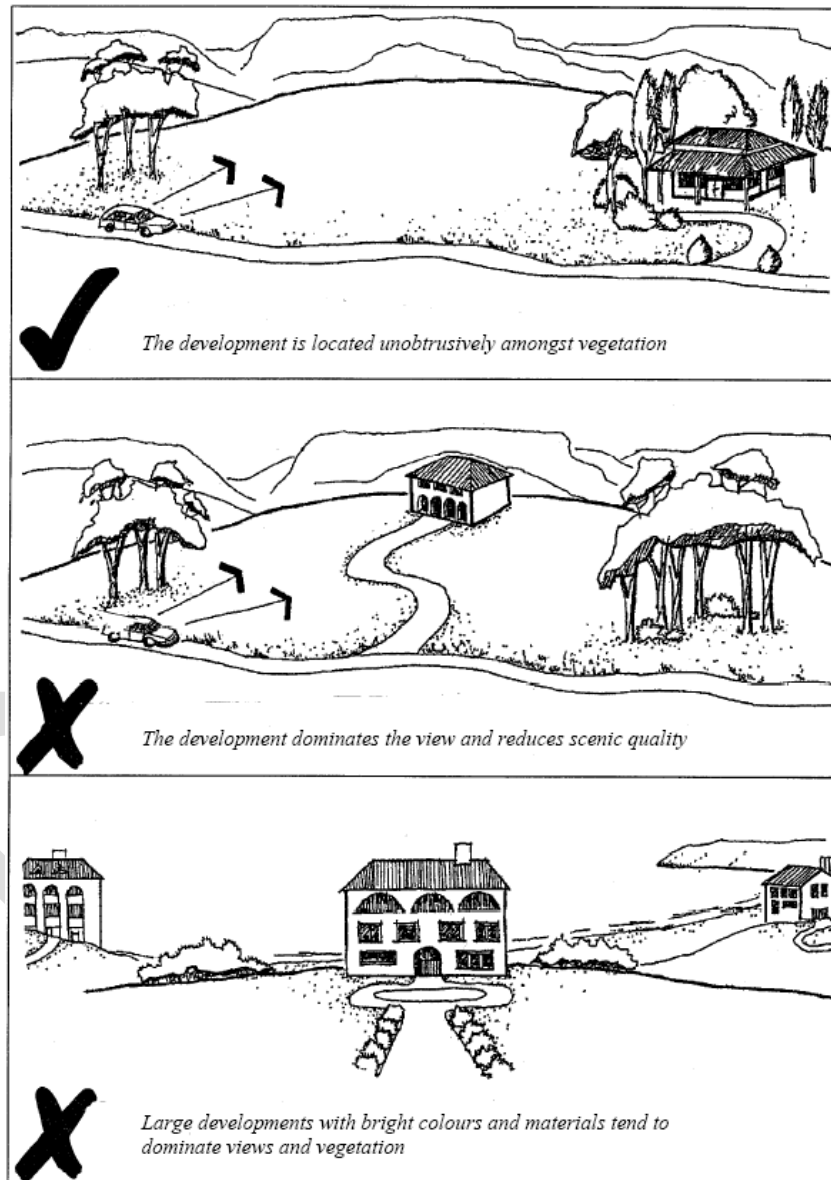


Figure 1: Impact of Buildings on Landscape

2.2 Setbacks

Intent:

- To minimise adverse impacts on the streetscape and surrounding properties and to minimise the visual impact of development on reserves and cliff-tops.

Development Controls:

Performance Criteria	Acceptable Solution
Boundary setbacks for lots <5000m² and ≥2500m² or with a minimum lot size in that range	
P1 Setbacks are consistent with the prevailing setbacks in the area.	A1 All buildings and structures, including sheds and rainwater tanks, must be setback a minimum of: <ul style="list-style-type: none"> • 5m from the side and rear boundaries; and • 7m from the front boundary; or • 30m from the front boundary where the boundary is to an unsealed public road or a private road on a Right of Way benefitting another lot.
Boundary setbacks for lots <2500m² or with a minimum lot size in that range	
Front boundary setback	
P2 Buildings are setback to contribute to the existing or proposed streetscape character, assist in the blending of new development into the streetscape, make efficient use of the site and provide amenity for residents.	A2.1 For infill development other than neighbourhood shops, buildings and all other structures must be setback from the road frontage to within 20% of the average front setbacks of the adjoining buildings, but no less than the smaller of the existing setbacks. A2.2 Neighbourhood shops must be setback a minimum of 3 metres from the road frontage. A2.3 In new subdivisions where a setback has not been established a setback of 5.5m applies. Up to 50% of the front façade of the dwelling (excluding garages or carports) may be setback 4.5m from the front boundary. A2.4 Garages that have the door facing the street frontage and all carports must be set back a minimum of 5.5 metres from the property boundary.
Side boundary setback	
P3 Buildings are setback to reduce overbearing and perceptions of building bulk on adjoining properties and minimises overshadowing impacts on adjoining properties.	A3 The minimum setback to a side boundary is: <ul style="list-style-type: none"> - For the first floor, or for a single storey building, 900mm (including a minimum of 600mm to the eaves or gutters, whichever is the closest); - For any part of the building higher than 4.5m, 1.5m (including a minimum of 1.2m to the eaves or gutters, whichever is the closest); - For any part of the building higher than 7.5m, 1.5m (including a minimum of 1.2m to the eaves or gutters, whichever is the closest) where it adjoins land zoned R3

	<p>Medium Density Residential or a Business Zone and 2m (including a minimum of 1.7m to the eaves or gutters, whichever is the closest) elsewhere;</p> <ul style="list-style-type: none"> - For single storey (up to a height of 3.8m) sheds, detached garages and other detached ancillary buildings (eg. gazebos, aviaries, green houses, pool houses, etc), 450mm
P4 The impact of rooftop terraces on the privacy and amenity of adjoining residential land is minimised.	<p>A4 Rooftop terraces that, if enclosed would form an additional floor outside the height and setback limit, must:</p> <ul style="list-style-type: none"> - be uncovered; - be setback a minimum of 2m from the outer limits of the roof; and - not include any structure that would exceed the height limit.
Corner Lots - Secondary Street Frontage	
P5 Buildings are setback to contribute to the existing or proposed streetscape character, assist in the blending of new development into the streetscape, make efficient use of the site and provide amenity for residents.	<p>A5.1 The minimum setback to the secondary street frontage side boundary is 3m.</p> <p>A5.2 Where a dual occupancy contains a dwelling that is not adjacent to the front boundary and addresses the side street boundary, the setback for that dwelling from the road frontage must be within 20% of the average setbacks of 3m and the adjoining building on the side street.</p> <p>A5.3 Garages and carports must be set back behind the dwelling frontage, not forward of the building line and a minimum of 5.5m from the secondary property boundary.</p>
Rear boundary setback	
P6 Buildings are setback so that they do not reduce the use and enjoyment of public, private or communal open space provided at the rear of adjoining residential development by being in close proximity, overshadowing or overlooking the open space.	<p>A6.1 A minimum rear boundary setback of 3m applies to all buildings except:</p> <ul style="list-style-type: none"> - sheds; - detached garages; and - other detached non-habitable ancillary buildings. <p>up to a height of 3.8m.</p> <p>A6.2 A minimum rear boundary setback of 450mm applies to all:</p> <ul style="list-style-type: none"> - sheds; - detached garages; and - other detached not-habitable ancillary buildings, <p>up to a height of 3.8m.</p> <p>The above minimum rear boundary setbacks also apply to allotments with a rear boundary to a road.</p>
'Front' Boundary Setbacks for Battle Axe Allotments	

For the purpose of this section, the 'front' boundary is that boundary of the battle axe lot that is also the rear boundary of the front lot adjoining the street. The minimum 'front' boundary setbacks also apply to allotments with a rear boundary to a road or laneway.	
<p>P7 Buildings are setback so that they do not reduce the use and enjoyment of public, private or communal open space provided at the rear of adjoining residential development by being in close proximity, overshadowing or overlooking the open space.</p>	<p>A7.1 A minimum 'front' boundary setback of 3m applies to all buildings except:</p> <ul style="list-style-type: none"> – sheds; – detached garages; and – other detached non-habitable ancillary buildings, <p>up to a height of 3.8m.</p> <p>A7.2 A minimum 'front' boundary setback of 450mm applies to all:</p> <ul style="list-style-type: none"> – sheds; – detached garages; and – other detached non-habitable ancillary buildings. <p>up to a height of 3.8m.</p> <p>The above minimum 'front' boundary setbacks also apply to allotments with a rear boundary to a road.</p>
Setbacks to reserves and cliffs	
<p>P8 Buildings are setback to minimise impacts on the public enjoyment of reserves and to minimise adverse impacts on the scenic qualities of reserves and cliffs when viewed from private land, public land, waterway or the ocean.</p>	<p>A8.1 Where development is proposed on land which has a common boundary with a foreshore reserve:</p> <ul style="list-style-type: none"> – for infill development, the minimum setback for any building and all other structures from the reserve must be within 20% of the average setbacks of the adjoining lawfully erected buildings, but no less than the smaller of the existing setbacks; and – where a building line has not been established, the minimum setback for any building and all other structures from the reserve must be 12m. – where the common boundary is a side boundary, the main dwelling may be less than 12m if the dwelling is at the minimum setback on the opposite side boundary and all efforts have been made to achieve a satisfactory setback to the reserve. <p>A8.2 Where development is proposed on land which has a common boundary with a public reserve other than a foreshore reserve, the minimum setback for any building from the reserve must be 3m.</p> <p>A8.3 Where development is proposed on land that contains or is in close proximity to a cliff, even where there is no foreshore reserve:</p> <ul style="list-style-type: none"> – for infill development, the minimum setback for any building or any other structures

	<p>from the top of the bank of the cliff must be no less than the average setback of the adjoining lawfully erected buildings; and</p> <ul style="list-style-type: none"> – where a building line has not been established, the minimum setback for any building and all other structures from the top of the bank of the cliff must be 12m. <p>See Figure 2.</p>
Boundary setback for Lots 1-6 in DP708709, Congo Rd, Congo	
P9 Setbacks are consistent with the existing setbacks in the area and preserve the natural and scenic values of the area.	A9 Minimum front boundary setbacks must be in accordance with those shown on Map 9 on Schedule 1 – Maps of this Plan.
P10 Development is not visible from the adjoining beachfront and preserves the natural and scenic values of the escarpment.	A10 Minimum rear boundary setbacks must be in accordance with those shown on Map 9 on Schedule 1 – Maps of this Plan.

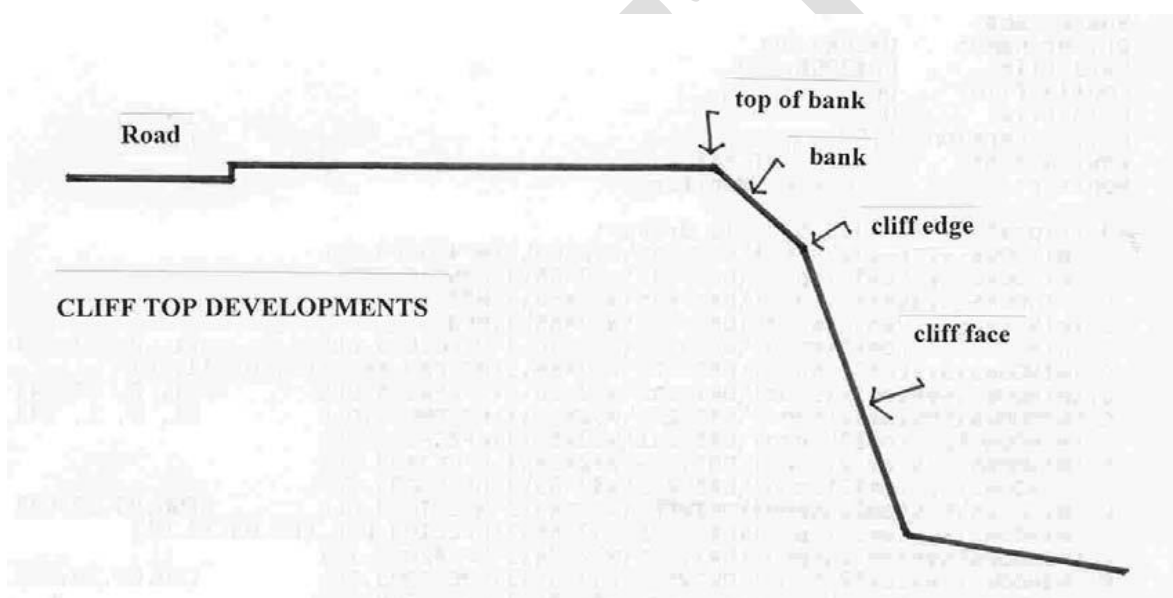


Figure 2: Cliff Top Developments

2.3 Garages, Carports and Sheds

Intent:

- To ensure that garages, sheds and carports are of a suitable scale and style for the locality.

Development Controls:

Performance Criteria	Acceptable Solution
P1 Carports and garages: <ul style="list-style-type: none"> - are not a prominent feature of the development when viewed from the street; - are compatible with the design of the main building in terms of roof 	A1 Carports and garages must be no further forward of the front facade of the building than 1.2m and for no more than 50% of that façade.

<p>form, detailing, materials and colours; and</p> <ul style="list-style-type: none"> - do not dominate the streetscape. <p>Refer to Figure 3.</p>	
<p>P2 Carports and garages:</p> <ul style="list-style-type: none"> - are compatible with the design of the main building in terms of building bulk and scale. - do not have an unreasonably adverse impact on the amenity of adjoining residential properties nor dominate the streetscape. 	<p>A2.1 The site coverage of</p> <ul style="list-style-type: none"> - sheds; - carports; - detached garages; and - other detached non-habitable ancillary buildings. <p>on lots:</p> <ul style="list-style-type: none"> • $\leq 1500\text{m}^2$ or where a minimum lot size in that range applies, must not be greater than 60m^2. • $> 1500\text{m}^2$ or where a minimum lot size in that range applies, must not be greater than 100m^2. <p>A2.2 Metal clad sheds, such as 'old American barns' and 'Quakers barns', are not suited to the urban areas of Eurobodalla Shire as either garages or dwellings.</p>



Poor relationship to street – the garage dominates the streetscape



Improved relationship to street - garages do not dominate the streetscape

Figure 3: Garages in Street Frontage

2.4 Private Open Space

Intent:

- To provide year round adequate open space for the private recreational use of occupants of a dwelling.

Development Controls:

Performance Criteria	Acceptable Solution
General Requirements	
P1 Private open space is designed and located to: <ul style="list-style-type: none"> - enhance residential amenity; - be functional for private recreational activities; - allow for landscape design; - optimise solar access; and - increase visual privacy, to promote the enjoyment of outdoor living by residents. 	A1.1 Each dwelling must be provided with a minimum of 24m ² of private open space at ground level and/or above ground level which must: <ul style="list-style-type: none"> - not be steeper than 1 in 50 in grade; - be of a predominantly northern exposure, that takes advantage of outlook and reduces adverse privacy and overshadowing impacts from adjacent buildings; - serve as an extension of the dwelling for relaxation, entertainment and recreation purposes by being accessible to the living areas; and - be located behind the building line. A1.2 Where a secondary dwelling is proposed, it must share the private open space provided for the principal dwelling & not be separated in any way.
Dwellings with Ground Level POS Only	
P2 Private open space for dwellings at ground level is functional and responsive to the environment to promote the enjoyment of outdoor living by residents.	A2 Where the dwelling has direct access to the ground level or similar space on a structure such as a podium or carpark, an individual entrance and is single storey in height, private open space must meet the general requirements and: <ul style="list-style-type: none"> - not have a minimum dimension of less than 4m;
Dwellings with Combinations of Ground and Above Level POS	
P3.1 Private open space at ground level or above ground level is functional and responsive to the environment to promote the enjoyment of outdoor living by residents.	A3 Where the dwelling has direct access to the ground level or similar space on a structure such as a podium or carpark, an individual entrance and is two storeys in height, private open space must meet the general and following requirements: <ul style="list-style-type: none"> - either be a minimum area of 24 m² of private open space provided mainly at ground level, no part of which has a minimum dimension less than 4m and the balance on a balcony/deck or terrace (the exact area apportionment to be determined by design); or
P3.2 On land zoned R3: <ul style="list-style-type: none"> - Where communal open space cannot be provided in accordance with the acceptable solutions, space that meets all of the General Requirements for private 	

<p>open space may be acceptable. Proximity to public outdoor recreation areas within 400m walking may be taken into account in considering a reduction in the provision of communal open space.</p>	<p>a minimum balcony area of 10m² and minimum dimension of 2m (greater area and dimension is encouraged where practical) if at above ground level and the balance (to achieve a total private open space area of 24m²) to be provided at ground level.</p> <p>Where the balcony is adjacent to the main living area of the dwelling, the balance may be provided in the form of communal open space on the site.</p>
Dwellings with Above Ground Level POS only	
<p>P4.1 Private open space above ground level and communal open space at ground level is functional and responsive to the environment to promote the enjoyment of outdoor living by apartment residents.</p> <p>P4.2 On land zoned R3:</p> <ul style="list-style-type: none"> - Where communal open space cannot be provided in accordance with the acceptable solutions, space that meets all of the General Requirements for private open space may be acceptable. Proximity to public outdoor recreation areas within 400m walking may be taken into account in considering a reduction in the provision of communal open space. 	<p>A4 For each dwelling that does not have an individual entrance at ground level or a ground level private open space area, private open space is to be provided in the form of a balcony and communal open space. The general and following requirements must be met in this regard:</p> <ul style="list-style-type: none"> - contain a balcony with a minimum area of 10m² and minimum dimension of 2 metres (greater area and dimension is encouraged where practical); - locate the balcony with direct access to the main living rooms of the dwelling; - provide a communal open space area on site calculated by multiplying the number of units by the 24m² private open space area, minus the area provided as a balcony; <i>For example 8 units each with balconies of 10m². The communal open space requirement is:</i> $8 \times (24 - 10)$ $= 8 \times 14$ $= 112\text{m}^2$ - The minimum provision for communal open space is 25% of the site area or a figure determined by the above calculation: whichever is the greater. - Communal open space must be located on the northern or north-eastern side of the site, have a minimum dimension of 3 metres, be no steeper than 1 in 50 in grade and be regular in shape.

2.5 Landscaping

Intent:

- To ensure sites are landscaped to improve the amenity and sustainability of development.

Development Controls:

- A1** All applicable development must comply with the [Eurobodalla Landscaping Code](#).
- A2** Landscaping must not include environmental or noxious weeds as defined in the [Eurobodalla Tree Preservation Code](#).

Performance Criteria	Acceptable Solution
<p>P3 Sites are landscaped to complement and soften the built form of development, enhance the streetscape, provide amenity to occupants and reduce stormwater run-off.</p>	<p>A3 The minimum landscaped area of the site must consist of:</p> <ul style="list-style-type: none"> • on land zoned R2, <ul style="list-style-type: none"> - 35% of the site area used for residential development, including; - 50% of the front setback for development other than neighbourhood shops; and - The minimum landscaped area must be provided in addition to the minimum private open space requirement. • on land zoned R3, <ul style="list-style-type: none"> - 20% of the site area used for residential development, including; - 50% of the front setback for development other than neighbourhood shops; and • on land zoned E4 and R5, <ul style="list-style-type: none"> - 45% of the site area for residential development, including; - 50% of the front setback <p>Calculation of minimum landscaped area must not include any area with a minimum dimension less than 1.0m.</p>

2.6 Parking and Access

Intent:

- To ensure development provides safe and adequate access and on-site parking arrangements.

Development Controls:

Performance Criteria	Acceptable Solution
<p>P1 Development is designed to provide adequate, safe and well designed access and onsite parking to serve the needs of the occupants and visitors and to reduce adverse impacts on the road network and other development.</p>	<p>A1 Single dwelling houses must provide two parking spaces, at least one of which is located behind the building line, a driveway of maximum 3m width on the road reserve and satisfy all relevant design requirements of the Eurobodalla Parking and Access Code.</p>
<p>P2 All development must provide parking and access sufficient to cater for the maximum demand for the development in accordance with a</p>	<p>A2 All development must comply with the Eurobodalla Parking and Access Code.</p>

Traffic Study performed by a qualified professional and approved by Council.	
<p>P3 Access is located and designed to minimise adverse visual and environmental impact.</p> <p>Refer to Figure 4</p>	<p>A3 Driveways and other internal roads must follow natural contours where possible. Avoid unreasonably steep and visually intrusive driveways.</p>
<p>P4 Where part of a tourist development, car accommodation is designed to discourage illegal permanent occupancy.</p>	<p>A4.1 Car accommodation for tourist developments must be uncovered or open carport only.</p> <p>A4.2 Tourist development and the manager's residence must share a single point of access.</p>

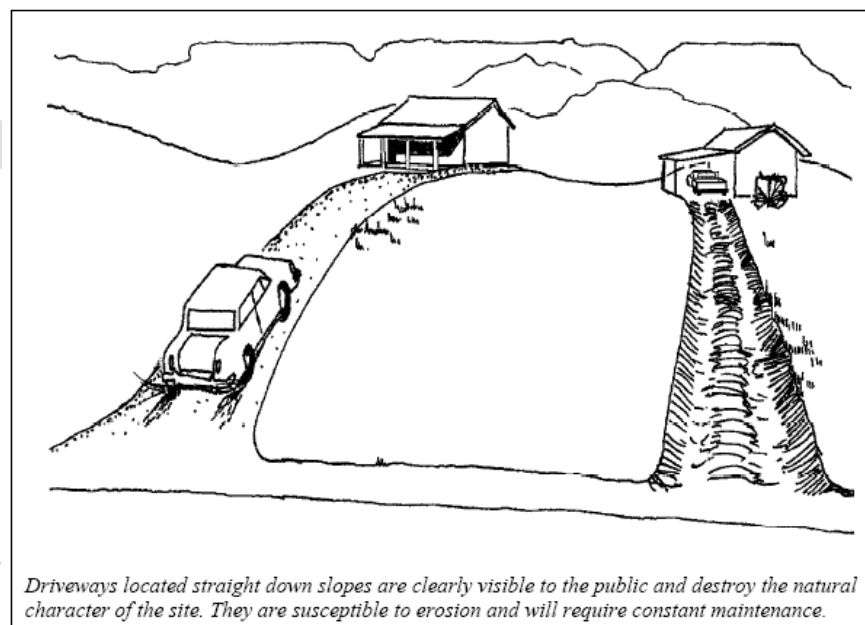
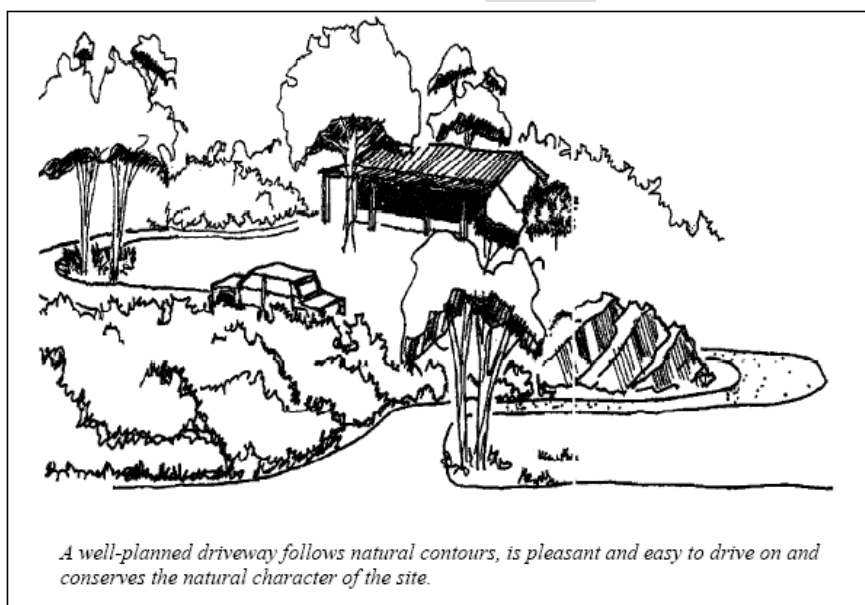


Figure 4: Impact of Driveways on Landscape

2.7 Safer By Design

Intent:

- To promote a safe environment for the community by minimising the risk of crime associated with new development.

Development Controls:

Performance Criteria	Acceptable Solution
P1 Developments are designed to ensure the security of residents and visitors and their property, and to enhance the perception of community safety.	<p>A1.1 For single dwelling houses and dual occupancies within 12m of the street frontage:</p> <ul style="list-style-type: none"> – The main entrance must be clearly visible from the street; and – Windows must be located to allow casual surveillance of the street from the dwelling. <p>A1.2 All development must comply with the Eurobodalla Safer By Design Code</p>

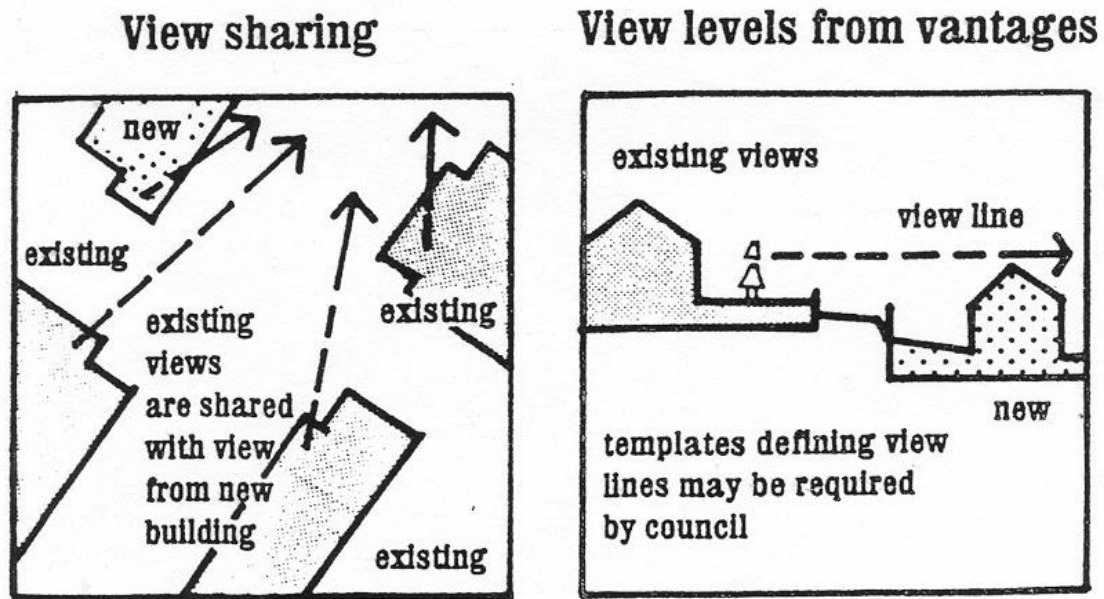
2.8 Views

Intent:

- To provide opportunities for view sharing, where practical, for existing and future residents by encouraging innovative design solutions.

Development Controls:

Performance Criteria	Acceptable Solution
<p>P1 Development allows for the reasonable sharing of views through the siting, height and design of buildings.</p> <p>Refer to Figure 5.</p>	<p>A1 The design of development minimises impacts on private views and shares views where necessary by:</p> <ul style="list-style-type: none"> • locating structures to provide or maintain view corridors; or • adjusting rooflines, or modifying building bulk or scale; or • demonstrating regard and consideration of views in the development design. <p>Refer to Figure 5.</p>



Consider views of others when designing new development

Figure 5. View Sharing Principles

2.9 Signage

Intent:

- To promote a high standard of and prevent excessive signage.

Development Control:

- A1** All development must comply with the [Eurobodalla Signage Code](#) and where relevant [State Environmental Planning Policy No 64 - Advertising and Signage](#).

3.0 SUBDIVISION

3.1 Subdivision Pattern & Lot Layout

Intent:

- To ensure that the size and layout of new lots serve the intent of the zone.

Development Controls:

Performance Criteria	Acceptable Solution
P1 Lot sizes and proportions maintain a consistent pattern within the area.	A1 New subdivision must not result in the creation of lots 1200m ² or less in area that have side to front boundary proportions greater than 2.5:1.
P2.1 Lots zoned R2 include a site capable of accommodating a dwelling of a reasonable size. P2.2 Lots zoned R3 include a site capable of accommodating a dual occupancy of a reasonable size. P2.3 Large lots zoned E4 and R5 include a site capable of accommodating a dual occupancy of a reasonable size. P2.4 Site characteristics, particularly slope, will determine whether the building envelope can be achieved and therefore the feasibility of subdividing to the minimum lot size.	A2 All lots must be capable of containing a rectangular building envelope measuring 10m by 15m, with a minimum width of 15m at the building line.

3.2 Subdivision and development of certain land at Broulee

Note: This section applies to the land identified in Map 10 in Schedule 1 of this Plan in addition to all other relevant provisions of this Plan.

Intent:

- To ensure that development of land at Broulee is consistent with the Broulee Biocertification Strategy and provides for a diversity of housing opportunities.

Development Controls:

Performance Criteria	Acceptable Solution
P1 Development of the subject land is designed to be generally consistent with the Broulee Concept Plan included in Schedule 4 of this Plan.	A1 The subdivision layout and road network shall include, for the full length of the conservation corridor along George Bass Drive and Broulee Road, one or a combination of the following: <ul style="list-style-type: none"> A perimeter road A shared cycle/pathway Open car parking areas

	to ensure adequate separation, including an asset protection zone, between residential development and the conservation area for bushfire protection and to minimise environmental impacts.
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4.0 BUILT FORM

4.1 Building Bulk & Scale

Intent:

- To ensure that buildings respond to the topography of the site and the existing and desired future character of the streetscape.

Development Controls:

Performance Criteria	Acceptable Solution
P1 Development conforms to the topography of the site and is not of a bulk or scale that is out of character with the local area.	A1 On sloping sites, buildings must step down the block. Refer to Figure 6.

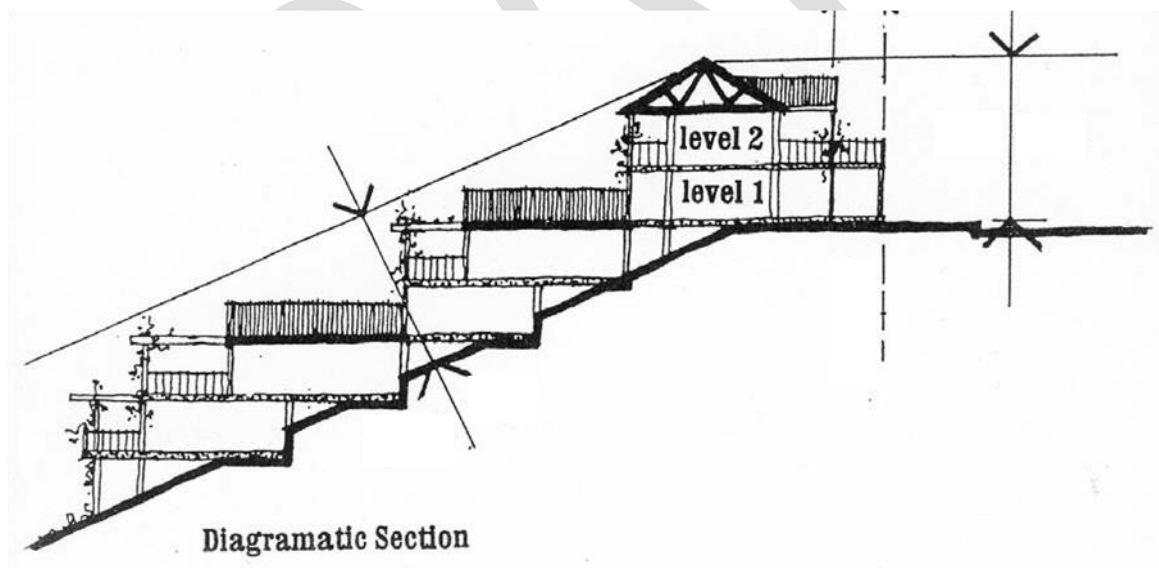


Figure 6: Development on Sloping Sites

4.2 Street Frontage and Facade Treatment

Intent:

- To provide attractive, interesting street frontages which make a positive contribution to the character of the area.

Development Controls:

Performance Criteria	Acceptable Solution
P1 The facades of buildings relate sympathetically to the existing buildings nearby and are designed to architecturally express the different functions of the building.	<p>A1.1 Development must be orientated toward the street with front entrances visible from the street allow casual surveillance of entrance points.</p> <p>A1.2 Development on corner lots must address the street adjoining the nominated front boundary. This is to ensure consistency with the intent of Section <i>Setbacks – Side Boundary Setback</i>.</p>
P2 Retail and commercial uses are designed to provide active shop fronts to the street.	A2 Retail and commercial uses at ground level must have their entrance directly from the main street frontage.
P3 Building design enhances the streetscape through façade articulation, detailing and window and door proportions.	<p>A3.1 For residential development, façades must be articulated by doors, windows, balconies, decks or wall offsets such that no more than five horizontal metres of the facade is blank.</p> <p>A3.2 The building design must incorporate at least one of the following architectural features:</p> <ul style="list-style-type: none"> - eaves and overhangs of roof structures; - verandahs and balconies (above ground level); - a variety of building materials and coordinated colours; - recesses and variation to built walls; or - large windows and doors to the street frontages. <p>A3.3 Buildings must not present blank facades to streets or public spaces within 50m.</p>

4.3 Style and Visual Amenity

Intent:

- To ensure development contributes positively to the local area.

Note: For land within the suburbs of Moruya and Moruya Heads as shown on Council's Suburbs Maps, refer to the *Moruya Style Guide*.

Development Controls:

Performance Criteria	Acceptable Solution
<p>P1.1 The building design is in the existing or desired character of the area and visually compatible with the existing and desired streetscape and environment.</p> <p>P1.2 New development does not compromise the design integrity of the existing development and preserves and enhances the amenity of the surrounding environment.</p>	<p>A1 New development must be designed to be consistent with the existing development and sympathetic with surrounding development in terms of style and orientation of openings, roof pitch, materials, colours and general style.</p>
<p>P2 Shipping containers are located so that they are not visible from any road and adjoining property.</p>	<p>A2 Shipping containers are not exempt development. To preserve the character of the area, any approved container must be located behind existing buildings, not be located in front of the established or proposed building line and be screened from view from any adjoining property.</p> <p>Controls for the provision of minimum boundary setbacks, private open space and landscaped area are still applicable.</p>
<p>P3 Attached dual occupancy is designed to have the appearance of a single dwelling and using matching building materials, colours and design elements, for example, roof pitch, gables, etc.</p>	<p>A3 Attached dual occupancy development must be designed so that the 2 dwellings are:</p> <ul style="list-style-type: none"> (a) Attached by a garage, carport or common roof or attached by a covered walkway no longer than 6m, to give the appearance of a single dwelling; and (b) Designed to create a harmonious building by the use of matching building materials, colours and design elements, for example, roof pitch, gables, etc.

4.4 Building Materials

Intent:

- To encourage the use of materials that do not have an adverse impact on the amenity of the area.

Development Controls:

- A1** Zincalume must not be used as an external building material.
- A2** Building materials that have a BCA colour rating of Very Light must not be used as an external roofing material.

4.5 Fences

Intent:

To ensure that fences make a positive contribution to the streetscape and nearby buildings.

Development Controls:

Performance Criteria	Acceptable Solution
P1 The design of fences preserves and enhances the existing streetscape and contributes to the amenity of both public and private space.	<p>A1.1 The height of fences must be no greater than 1.2m forward of the building line or the front setback and 1.8m behind the building line (as measured from the finished ground level on the lowest side of the fence).</p> <p>A1.2 Where acoustic fencing is required as part of a development application it must be setback from the boundary in the direction of the noise source, a minimum of 1.5m and augmented by landscape treatments in the form of trees, shrubs and groundcovers provided in front of the fencing.</p>
P2 The form, extent and materials of fencing are designed to minimise visual impact.	<p>A2 Lengths of unmodulated solid fence (ie. Not broken up by the provision of gates or driveways):</p> <ul style="list-style-type: none"> – on a property boundary fronting a road reserve, and – higher than 1.2m and greater than 15 metres long, <p>must be provided with recessed indentations,</p> <ul style="list-style-type: none"> – at least 1m wide and 1m deep; – located wholly within private property; – not more than 10m apart; and – containing planting that have a mature height at least that of the fence height. <p>OR</p> <p>Fencing incorporates a combination of visually contrasting materials.</p>

4.6 Adaptable Housing

Intent:

- To design housing units that facilitates use by a person with a disability or progressive frailty.

Development Controls:

Performance Criteria	Acceptable Solution
P1 Residential development has the ability to cater for residents with a variety of physical abilities and is responsive to the changing lifestyle needs of residents.	<p>A1 Developers proposing multi-dwelling housing, shop top housing or residential flat buildings of 4 units or more must ensure that 25% of the dwellings are adaptable housing. The applicable dwellings must comply with Australian Standard <i>AS4299 – Adaptable Housing</i>.</p>

5.0 AMENITY

5.1 Visual Privacy

Intent:

- To maximise the private enjoyment of residential development.

Development Controls:

Performance Criteria	Acceptable Solution
<p>P1 Buildings are designed to minimise direct overlooking of main living areas and private open spaces of existing dwellings by sensitive building layout, location and design of windows and balconies and the use of screening devices and landscaping.</p>	<p>A1.1 Transparent doors and windows of living rooms must be designed and located so they do not directly face transparent doors or windows of living rooms or the private open space areas of other residential accommodation within 9 metres.</p> <p>A1.2 Planter boxes, louvre screens, pergolas, landscaping and architectural design of balconies must be used to screen the ground floor private open space of dwelling units or dwelling units from upper level residential accommodation. Acceptable privacy measures include trees, awnings, screens, fences and planter boxes to minimise the ability to directly look into neighbouring homes and yards (see Figure 7). The view of the area overlooked must be restricted within 9m and beyond a 45° angle from the plane of the wall containing the opening, measured from a height of 1.7m above floor level (see Figure 8).</p> <p>Note: As shown in Figure 7, visual privacy between balconies must also be factored in the design and layout of developments, with suitable screening provided where balconies are within 9m.</p>

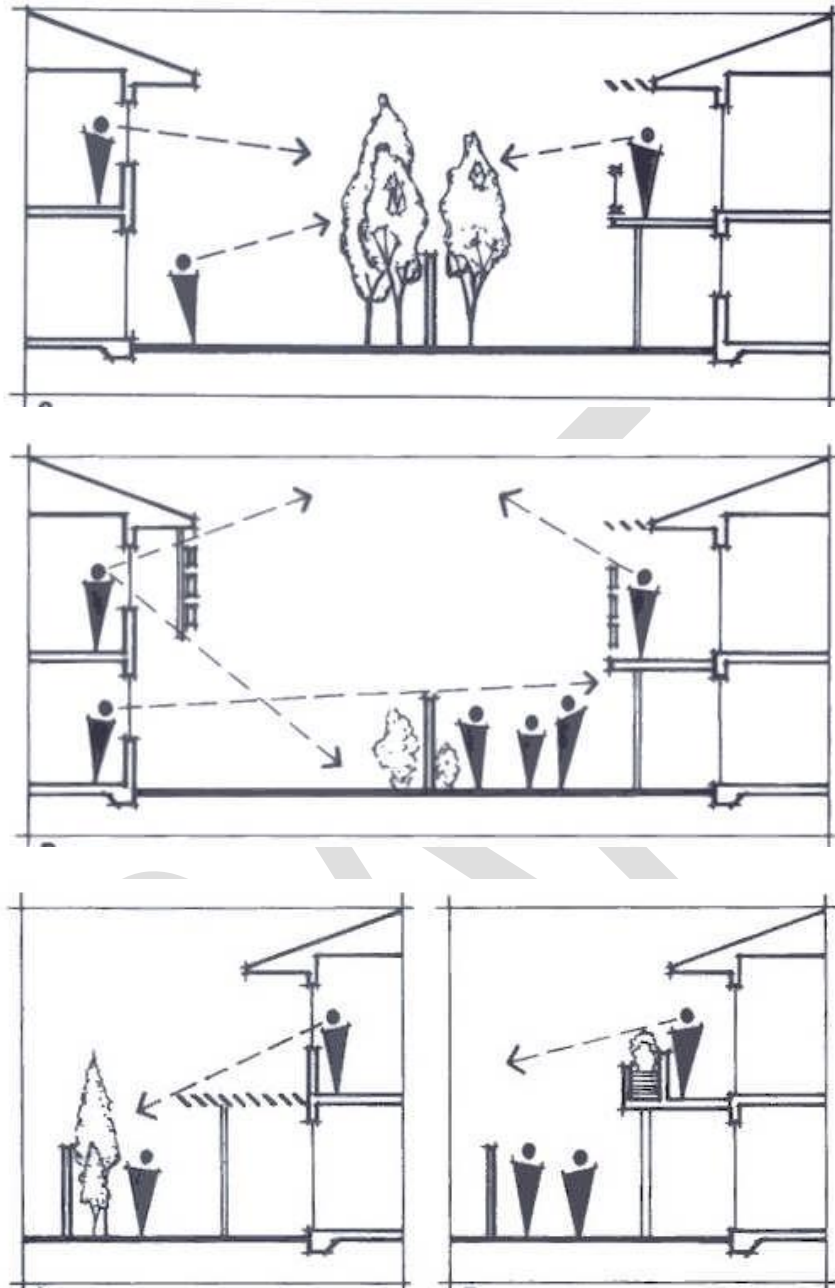


Figure 7: Acceptable Privacy Measures

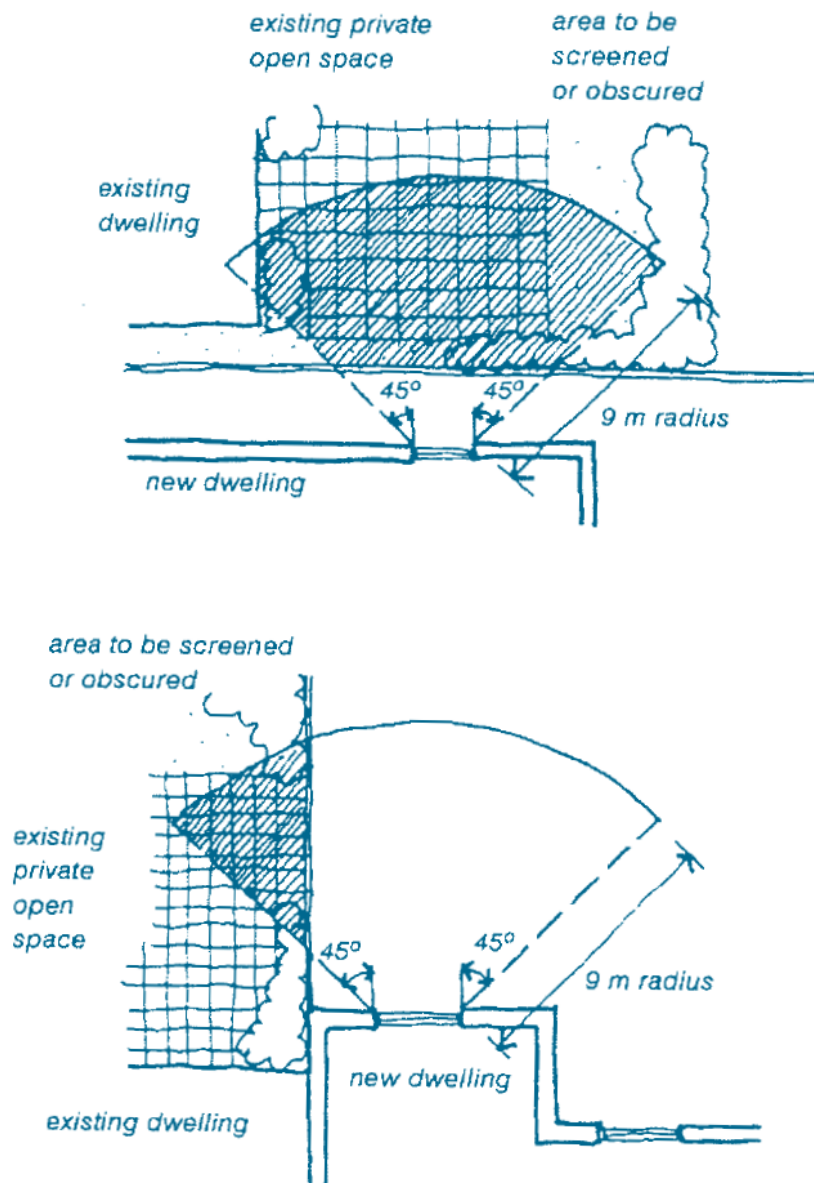


Figure 8: Screening Views to Adjacent Private Open Spaces

5.2 Solar Access

Intent:

- To maximise solar access to adjacent residential development.

Development Controls:

Performance Criteria	Acceptable Solution
Solar Access to Adjacent Development	
<p>P1.1 The use of natural light is maximised and the need for artificial lighting is reduced.</p> <p>P1.2 Buildings are designed to ensure adjoining residential development maintains adequate daylight to living areas, (i.e. living, dining or family rooms, kitchens), private open space and solar panels.</p>	<p>A1 Maintain solar access to adjoining residential development as follows:</p> <ul style="list-style-type: none"> • For all development except where an existing adjacent building has an east-west orientation: <ul style="list-style-type: none"> - maintain solar access to the front or rear living room windows for a minimum period of 4 hours between 9.00am and 3.00pm at the winter solstice; and - where solar access already exists to the private open space of adjacent dwellings, ensure it is maintained over a minimum of 50% of the principal private open space for a minimum period of 3 hours between 9.00am and 3.00pm at the winter solstice. • Where an existing adjacent building has an east - west orientation: <ul style="list-style-type: none"> - maintain solar access to the north facing living room windows for a minimum period of 2 hours between 9.00am and 3.00pm at the winter solstice; or - where less than 2 hours solar access is currently available to the north facing living room windows of existing dwellings, no additional overshadowing shall be permitted.
Solar panels	
<p>P2 The total energy use in residential buildings is reduced.</p>	<p>A2.1 Maintain solar access to existing solar panels throughout the day at all times of the year.</p> <p>A2.2 Maintain solar access to the north facing roofs of existing dwellings (45° West to 45° East variation is possible) to a fixed minimum area of 10m², capable of accommodating solar panels.</p>

6.0 SITE CONSIDERATIONS

6.1 Flood, Ocean Influences and Climate Change

Intent:

- To further the objectives of clauses 5.5 and 6.5 of the LEP 2012.

Development Control:

- A1** All development within the area to which the Moruya Valley Floodplain Development Code applies must comply with that Code.

6.2 Tree Preservation

Intent:

- To minimise impacts on native flora and fauna, particularly threatened species.

Development Control:

A1 All development on land to which the *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* applies must comply with that policy.

A2 Clearing of vegetation that is not likely to significantly affect threatened species must comply with the [Eurobodalla Tree Preservation Code, Clause 7.2 of the Biodiversity Conservation Act 2016](#), describes when an activity is likely to significantly affect threatened species which includes:

- (a) If it is found to be likely to significant affect threatened species according to the test in [Section 7.3 of the Biodiversity Conservation Act 2016](#);
- (b) If the area of clearing exceeds the threshold described in [Clause 7.2 of the Biodiversity Conservation Regulation 2017](#); Or
- (c) If the clearing is of native vegetation on land included on the [Biodiversity Values Map](#)

6.3 Retention of habitat features on certain land at Broulee

Note: This section applies to the land identified in Map 10 in Schedule 1 of this Plan in addition to all other relevant provisions of this Plan.

Intent:

- To ensure that development of land at Broulee is consistent with the Broulee Biodiversity Certification Strategy and facilitates, where possible the retention of habitat trees.

Development Control:

- P1** Within the development area there is no requirement to retain existing habitat features. However, in designing subdivision layouts and medium density developments, Council encourages, where possible and feasible, the retention of some habitat features, including hollow bearing trees.

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7.0 SITE WORKS

7.1 Sustainability

Intent:

- To minimise the impact of new development on the natural environment.

Development Controls:

Performance Criteria	Acceptable Solution
P1 New development is designed to minimise the generation of greenhouse gases.	A1 New development must connect to reticulated electricity supply where available to enable any excess power created from alternative renewable resources to be fed back into the grid.
P2 No Performance Criteria.	A2 All dwellings in residential development must be provided with a separate water meter to comply with the State Government's Best Practice Management of Water Supply and Sewerage Guidelines.

7.2 Earthworks/excavation

Intent:

- To retain the natural slope of the land, and ensure that the bulk and scale of new development is responsive to site topography.

Development Controls:

Performance Criteria	Acceptable Solution
P1 Development is designed to ensure that excavation and earthworks are kept to the minimum required for the development without an unreasonable adverse visual impact on the site.	A1 Beyond the external walls of the building, the maximum cut is to be 1m and the maximum fill is to be 1m.

7.3 Stormwater Management

Intent:

- To ensure that stormwater run-off has no detrimental impact on neighbouring properties, public spaces and Council infrastructure.

Development Controls:

Performance Criteria	Acceptable Solution
P1.1 New development is designed in accordance with a site specific Stormwater Management Plan (SMP), approved by	A1.1 To avoid adverse impact on other development in the area, new development must connect to a Council approved

<p>Council. The SMP will provide for the integrated management of stormwater in order to:</p> <ul style="list-style-type: none"> – minimise flooding; – protect and enhance environmental values of receiving waters; – maximise the use of water sensitive urban design principles; – maximise the use of natural waterway corridors and natural channel design principles; – maximise community benefit; and – minimise public safety risk. <p>P1.2 The stormwater management system or site works proposed by the SMP does not adversely impact on flooding or drainage of properties that are upstream, downstream or adjacent to the subject site.</p> <p>P1.3 The design provides for stormwater quality best management practices that are sufficient to treat the target pollutants.</p>	<p>drainage system which has sufficient capacity to ensure that any overland stormwater runoff from the property after the completion of the development does not exceed the stormwater runoff level prior to the development.</p> <p>A1.2 Development must comply with the following where relevant:</p> <ul style="list-style-type: none"> – AS3500 – Plumbing and Drainage Code; – the <i>Eurobodalla Development Specification Manual – Section D5 Stormwater Drainage Design & D7 Erosion Control and Stormwater Management</i>; and – the Design Guidelines for Rainwater Tanks Where an Existing Reticulated Water Supply Exists..
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7.4 Water, sewer and stormwater management on certain land at Broulee

Note: This section applies to the land identified in Map 10 in Schedule 1 of this Plan in addition to all other relevant provisions of this Plan.

Intent:

- To ensure a coordinated approach to water, sewer and stormwater management across the subject land.

Development Control:

Performance Criteria	Acceptable Solution
<p>P1 Development of the subject land is consistent with detailed master plans endorsed by Council that address water and sewer reticulation and stormwater management.</p>	<p>A1 Stormwater flows shall be managed to avoid detrimental impacts on the E2 zoned area and stormwater detention basins shall not be located within the E2 zoned area.</p>

7.5 Waste Management

Intent:

- To further the objectives of the [Site Waste Minimisation and Management Code](#).

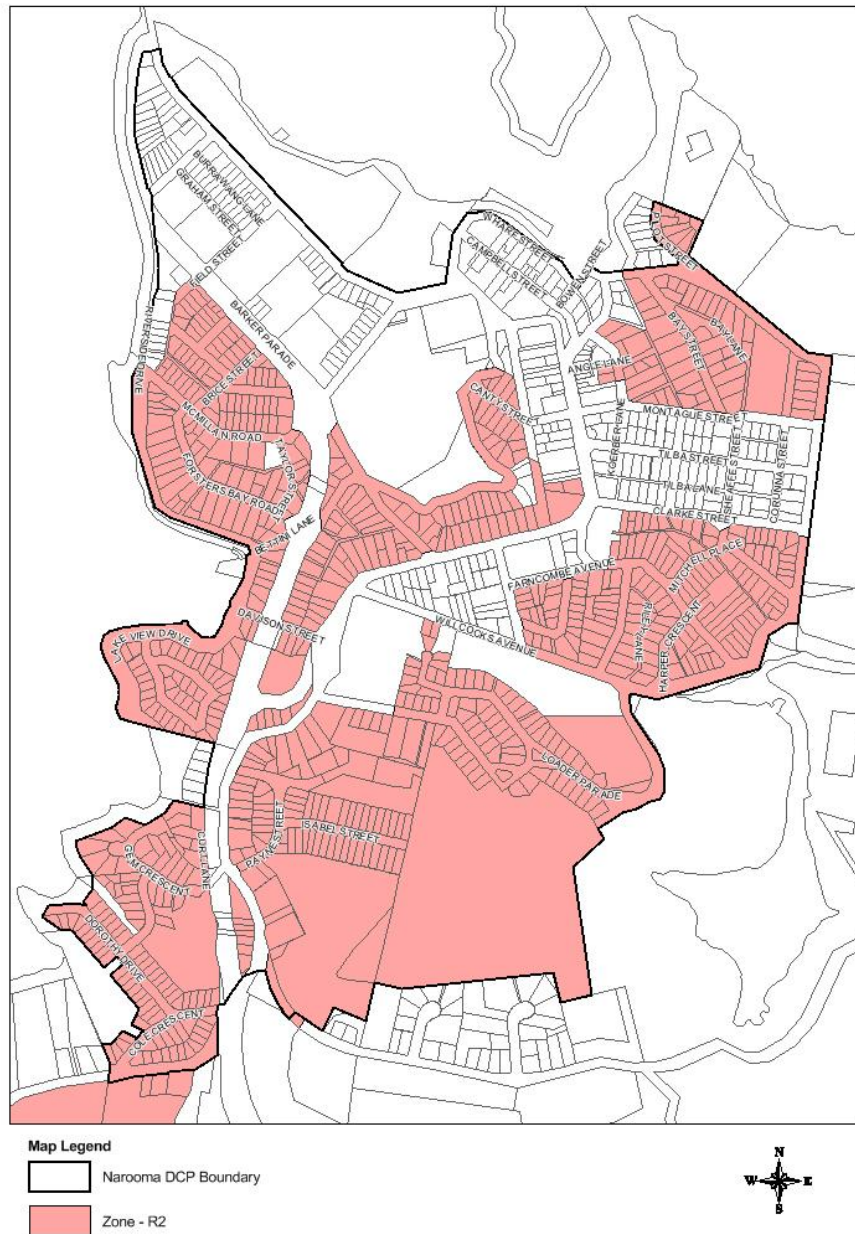
Development Controls:

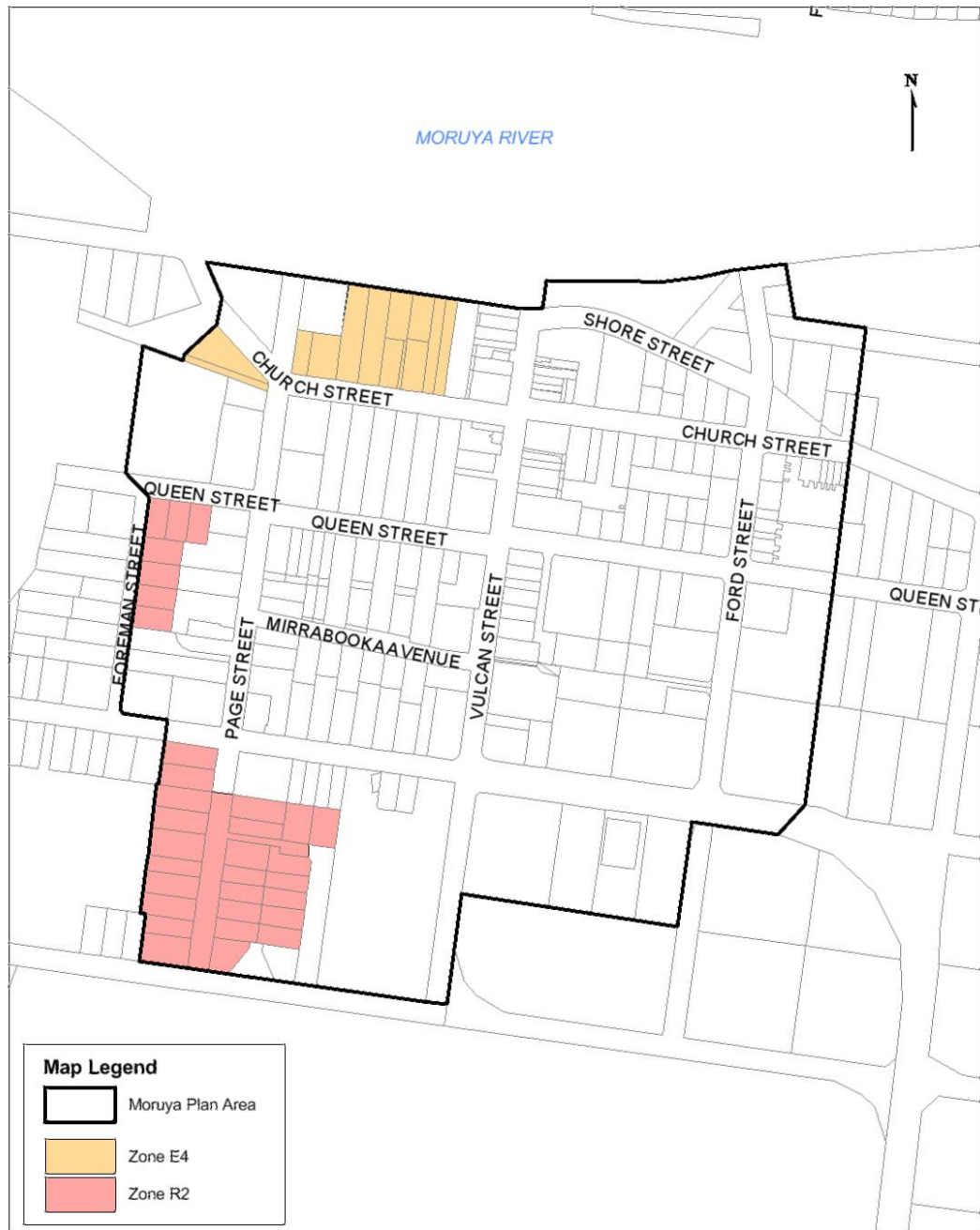
Performance Criteria	Acceptable Solution
P1 Application of a site specific Site Waste Minimisation and Management Plan, approved by Council having regard to the objectives of the Code. The Plan must show that compliance with the Code is unreasonable or unnecessary in the circumstances of the case.	A1 All development must comply with the Site Waste Minimisation and Management Code .

SCHEDULES

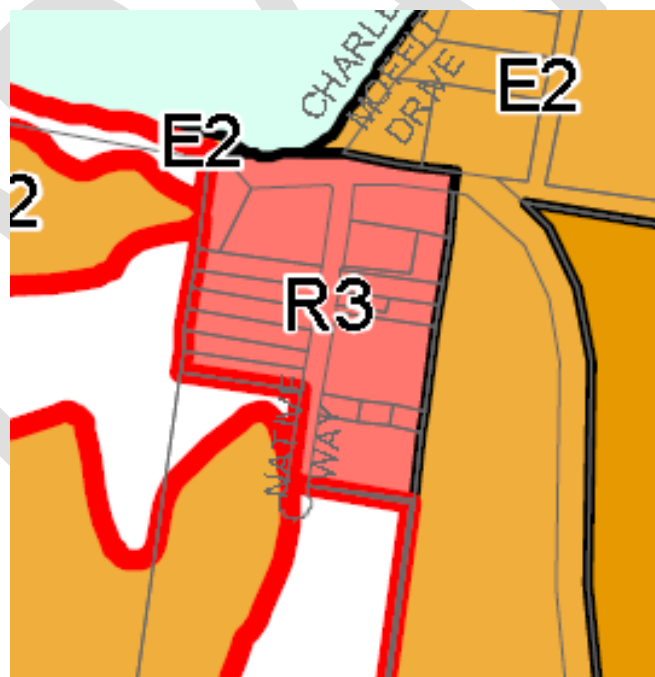
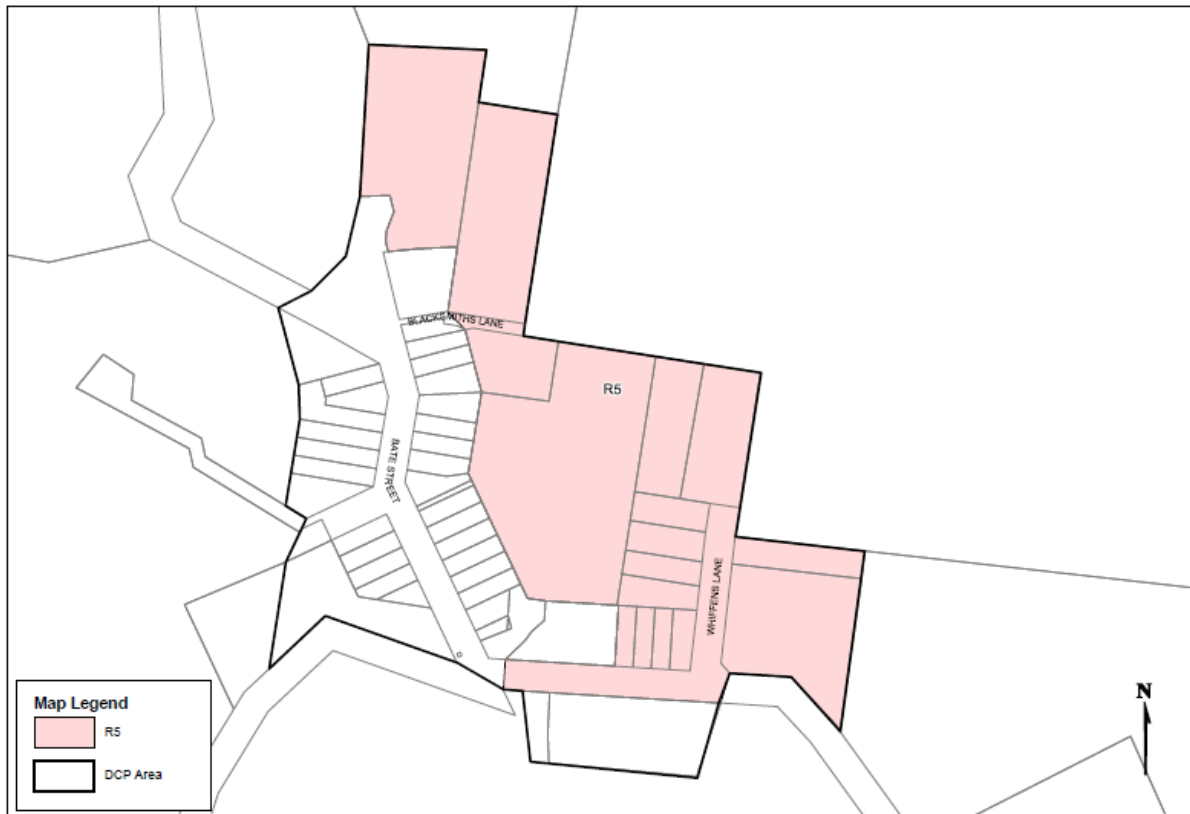
1. MAPS

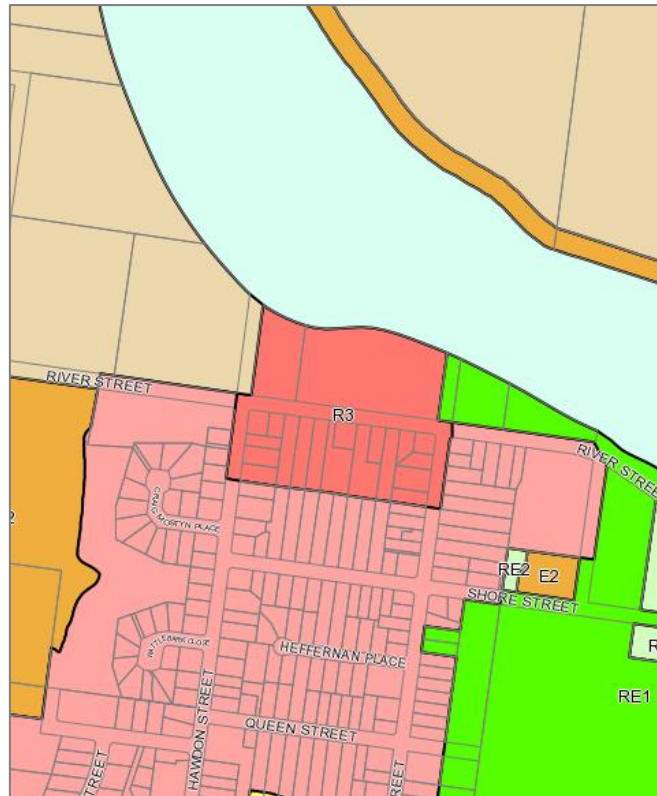
Schedule 1 contains the maps for the three isolated R3 areas, the Greenfield sites and the residential areas covered by the Moruya and Narooma DCPs (therefore excluded from this DCP).



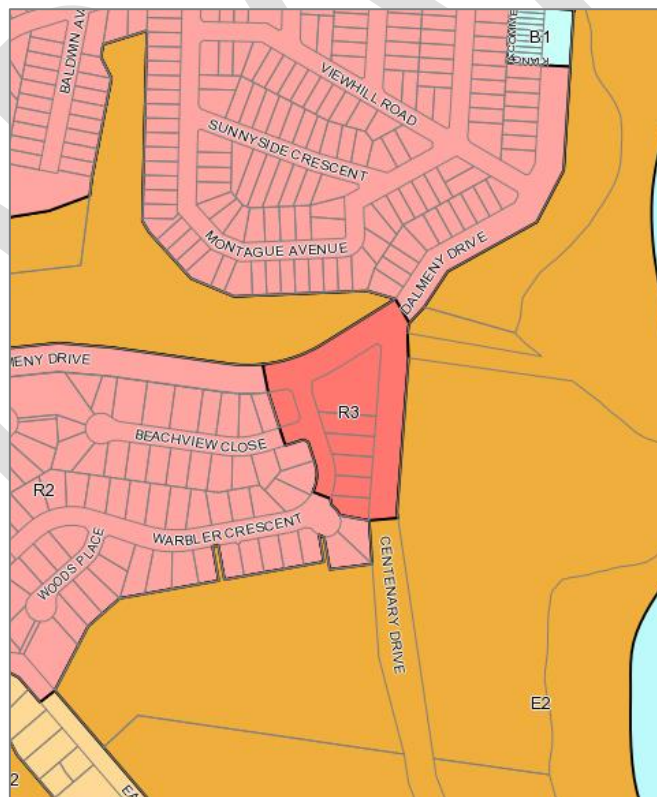


Map 2 - Moruya R2 and E4 excluded from this plan



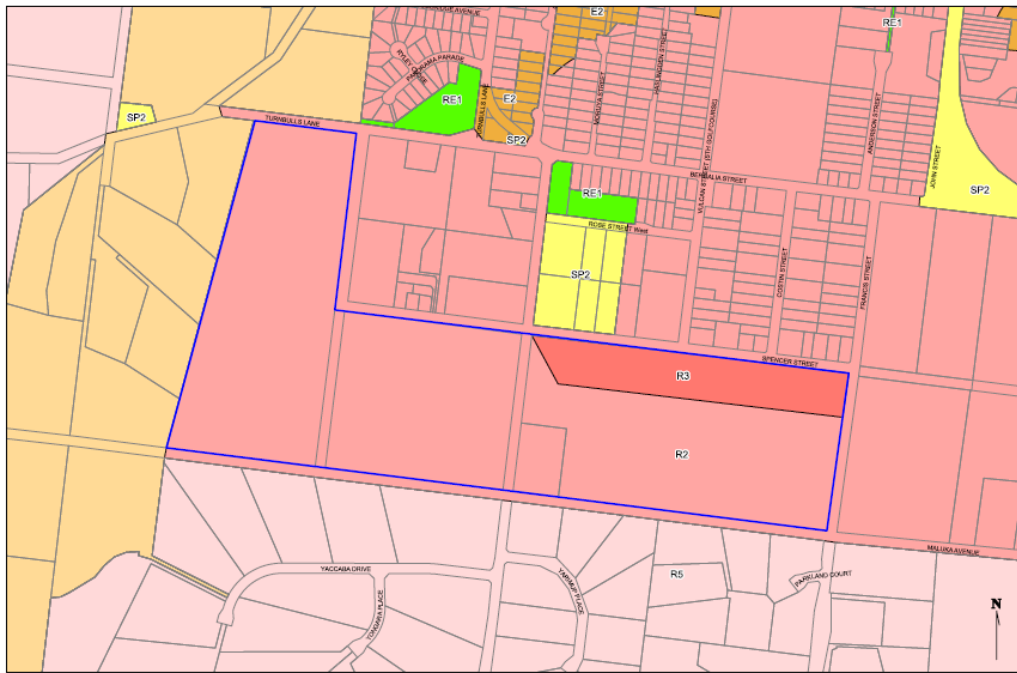


Map 5 - River St R3 – Moruya near Moruya Hospital

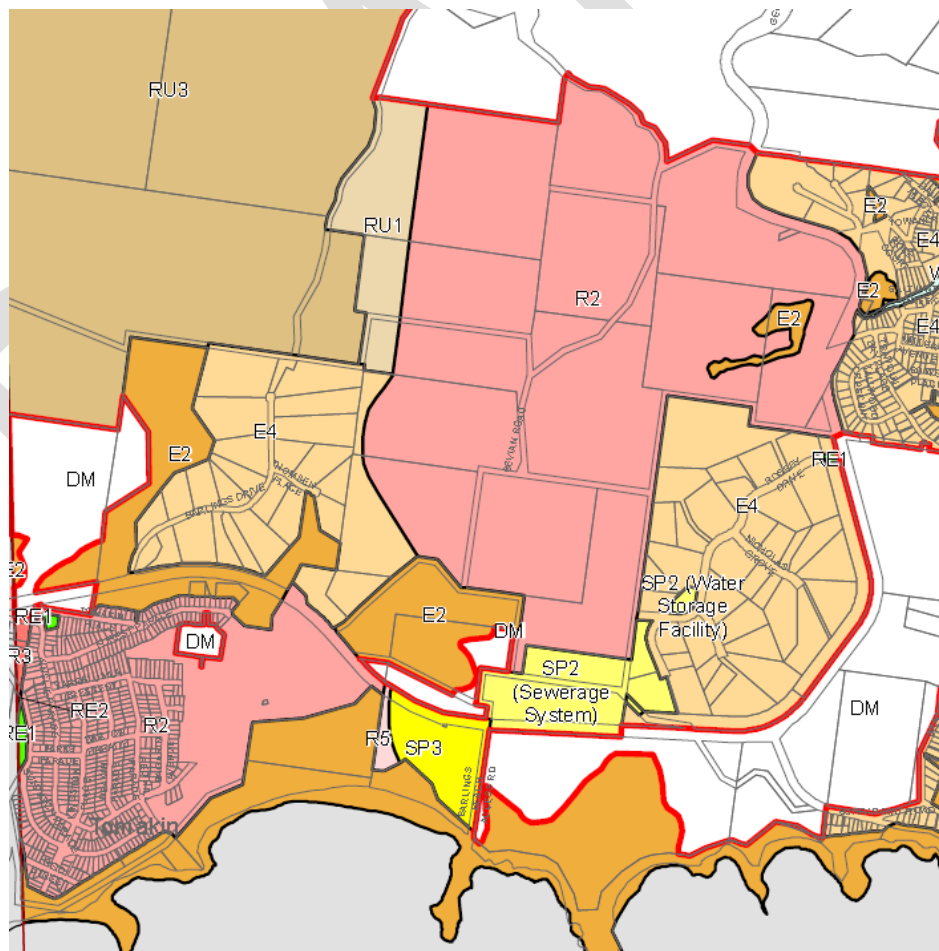


Map 6 - Warbler Crescent R3 – Kianga

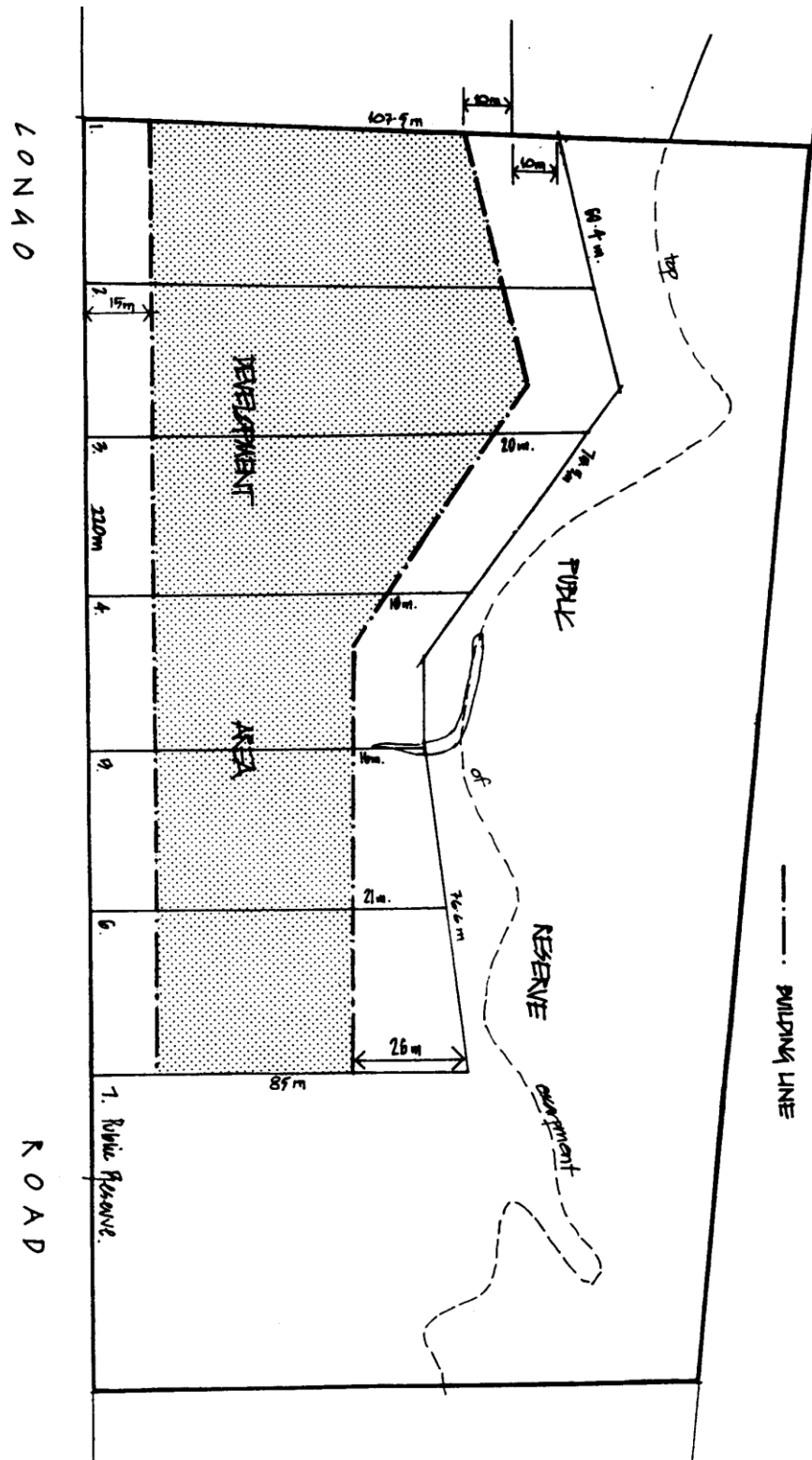
RESIDENTIAL ZONES DEVELOPMENT CONTROL PLAN



Map 7 - The Brae

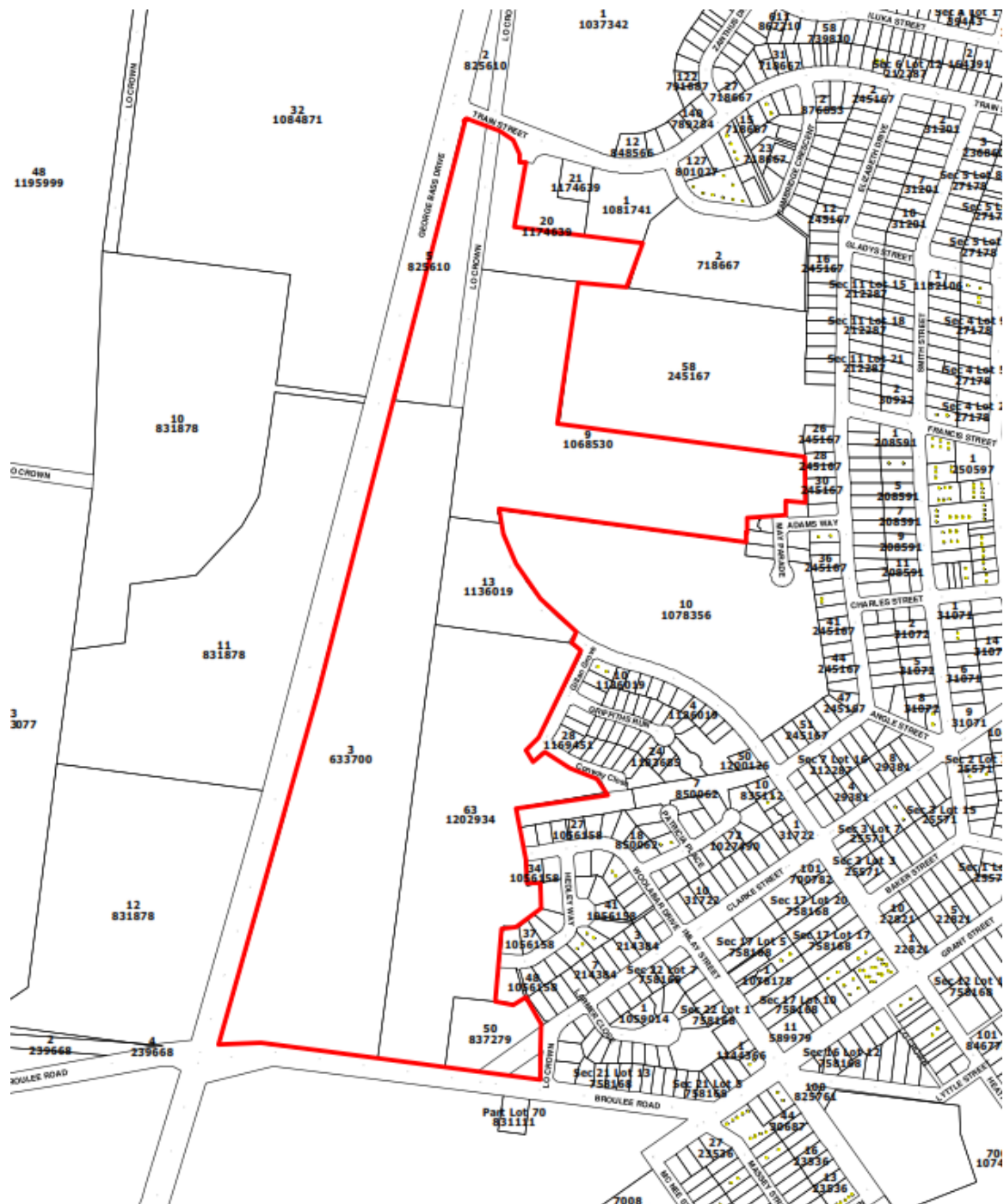


Map 8 – Tomakin, Barlings Beach, Rosedale, Marsim



Map 9. Congo Setbacks

RESIDENTIAL ZONES DEVELOPMENT CONTROL PLAN



Map 10. Broulee Development Area

2. LIST OF AMENDMENTS

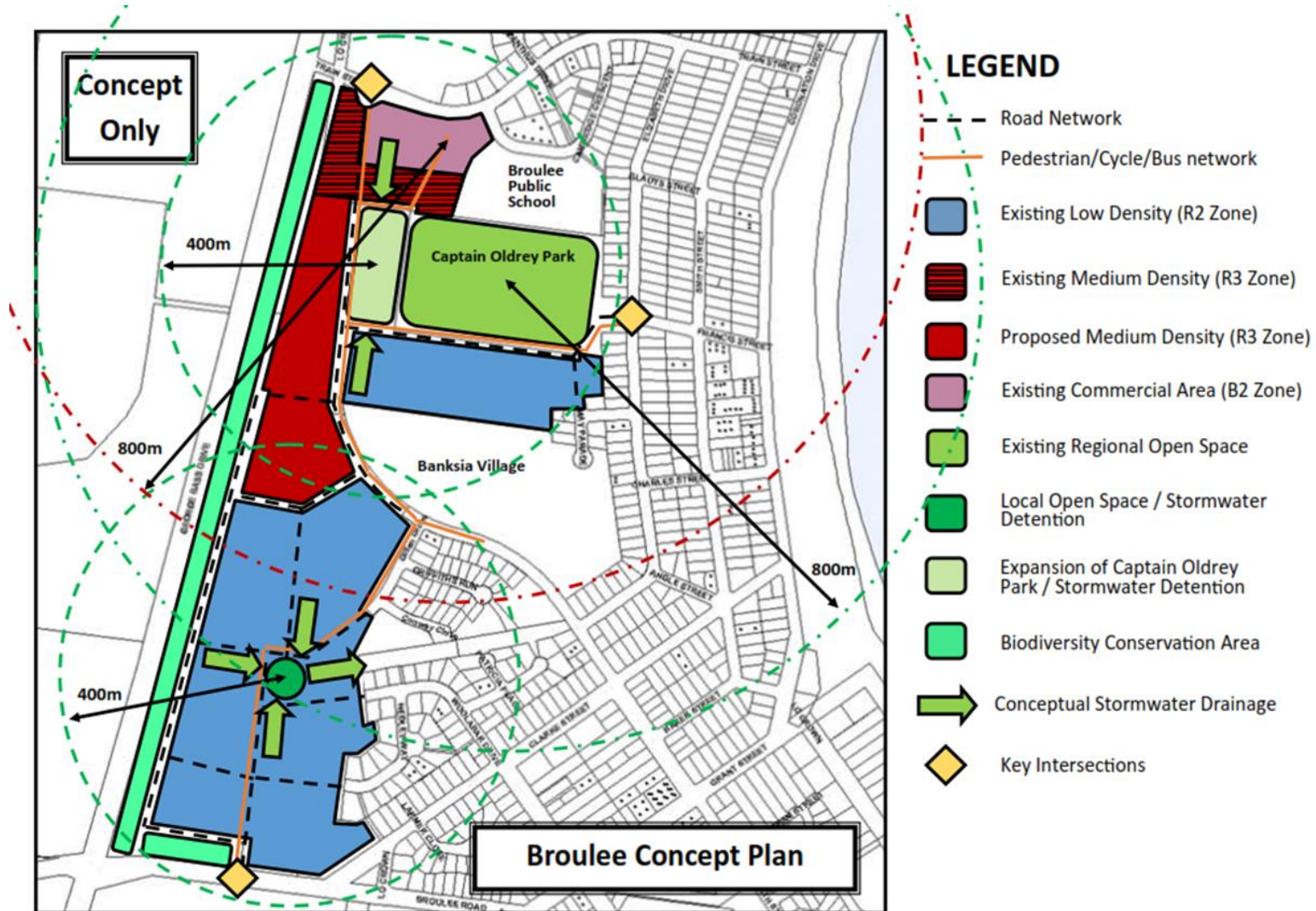
Amendment No. 1: Addition of provisions relating to certain land at Broulee (Sections 3.2, 6.3, 7.4, Map 10 and Schedule 4).

Amendment No. 2: Updates to the land to which this DCP applies and Clause 6.2 Tree Preservation to align with the *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*.

3. CODES APPLICABLE TO THIS PLAN

- I. [SAFER BY DESIGN CODE](#)
- II. [LANDSCAPING CODE](#)
- III. [INTERIM SEA LEVEL RISE ADAPTION POLICY](#)
- IV. MORUYA VALLEY FLOODPLAIN DEVELOPMENT CODE
- V. [TREE PRESERVATION CODE](#)
- VI. [FOOTPATH TRADING CODE](#)
- VII. [SIGNAGE CODE](#)
- VIII. [SITE WASTE MINIMISATION & MANAGEMENT CODE](#)
- IX. [SOIL AND WATER MANAGEMENT CODE](#)
- X. [PARKING AND ACCESS CODE](#)
- XI. [ADVERTISEMENT AND NOTIFICATION CODE](#)

4. BROULEE CONCEPT PLAN



Summary of options considered to address the unintended consequences of the Vegetation SEPP

The draft amendments to the RESidnetioal Zones Development Control Plan and Tree Preservation Code align with Option F.

Options for amendments to Council's Development Control Plans (DCPs) and the Tree Preservation Code (TPC)	Would the Code include criteria to assess all types of applications (eg >6 trees, to maintain rural infrastructure)?	What is the risk of potential negative impacts to environment eg erosion and visual amenity?	Is a legal defence provided that gives certainty to landholders that clearing is legal and avoids prosecution?	What is the relative consistency of the process for all landholders?	Would Council be able to issue Penalty Infringement Notices for illegal clearing on Council land? ⁷
A. Repeal the Tree Preservation Code (ie an assessment or permit from Council would never be required for removal of vegetation)	Not applicable	High ⁴	No ⁶	Low	No ⁸
B. Do nothing ie Tree Preservation Code remains but does not apply to 'new' non-rural areas eg R5, E4, E2, RE1	No ¹	High ⁴	No ⁶	Low	No ⁸
C. Amend Residential Zones DCP section 6.2 Tree Preservation to apply to all E4 and R5 land but include allowable activities in the Code in accordance with the LLS Act or RAMAs	Yes ²	Medium ⁴	Sometimes ⁶	Medium	No ⁸
D. Amend Residential Zones DCP section 6.2 Tree Preservation to apply to all E4 and R5 land	Mostly ³	Medium ⁴	Sometimes ⁶	Medium	No ⁸
E. Amend Residential Zones DCP section 6.2 Tree Preservation to apply to all Environmental zones and R5 land	Mostly ³	Low ⁵	Yes ⁷	High	Usually ⁹
F. Amend DCPs so section 6.2 Tree Preservation would apply to all Environmental zones, R5 and RE1 land but include exemptions or criteria in the Code to obtain a permit for maintenance of rural infrastructure	Yes ²	Low ⁵	Yes ⁷	High	Yes

1 - The current Code does not include criteria for removing more than 6 trees or for the purposes of maintaining rural infrastructure because this was not necessary before the reforms commenced.

2 - The Code would be amended to include criteria to be able to assess more than 6 trees and to maintain rural infrastructure which could occur on larger parcels of land.

3 - This option does not state it would include criteria for exemption or to obtain a permit for rural infrastructure.

4 - Results in limited requirements for assessment of potential impacts and limited opportunities to raise awareness to avoid and minimise impacts, particularly if larger areas are cleared. Between 0.25ha and 1ha in certain circumstances could be cleared without assessment where the Tree Preservation Code does not apply.

5 - Due to the Code requiring an assessment of potential impacts and providing the opportunity to raise awareness, or require a proponent, to avoid and minimise impacts.

6 - Even though a permit from Council is not required to remove vegetation, a licence from OEH may still be required for certain types of vegetation (eg threatened ecological communities). There is a risk that landholders may not know to seek a licence from NSW Office and Heritage and unwittingly clear threatened ecological communities or habitat resulting in prosecution. Where the Tree Preservation Code applies to the land, a landholder can be given a permit by Council to remove vegetation providing a legal defence to clear vegetation that is a threatened ecological community, and avoids the risk of prosecution.

7 - Council can issue a permit for clearing vegetation on any non-rural land which means a licence from Office of Environment and Heritage is not required. It allows the assessment and approval to be undertaken locally and provides the landholder with certainty the clearing is undertaken legally and avoids the risk of prosecution from unwittingly clearing threatened ecological communities or habitat.

8 - Penalty Infringement Notices cannot be issued for a breach of the Vegetation SEPP if the DCP and TPC does not apply. Council land that has vegetation is generally zoned E2 or RE1.

9 - This is not 'yes' because a person who undertakes clearing on Council reserves zoned RE1 cannot be fined if DCPs do not apply to RE1 zoned land.