

B1 Tree Management

Application

This Part applies to the removal or pruning of trees or other vegetation within **non-rural areas**

Note: Clearing of native vegetation in **rural areas** is regulated by the *Local Land Services Amendment Act 2016*

B1.A Non-rural areas

Objective

To give effect to *State Environmental Planning Policy (SEPP) (Biodiversity and Conservation) 2021* by listing those trees or other vegetation that require approval **for removal or pruning**.

Development controls

- B1.1 Where any activity specified in Column 2 is proposed, an applicant must attain the corresponding approval type specified in Column 1

Note: The tree pruning and removal assessment form available on Council's website can be used to determine what type of Council issued approval (if any) is required prior to tree removal or pruning.

Figure BA: Approval requirements thresholds

Column 1 – Approval type required	Column 2 – Tree management activity
Council approval not required	<p>No approvals are required for the removal of a tree(s) or other vegetation that is:</p> <ul style="list-style-type: none"> authorised under other legislation, such as vegetation clearing authorised under the <i>Rural Fires Act 1997</i>; or, clearing approved as part of an approved construction certificate or approved subdivision certificate; or trees and shrubs under 3m in height and diameter is less than 300mm (measured 1.3m from the ground); or, where height exceeds 3m or diameter exceeds 300mm (measured 1.3m from the ground), that is: <ul style="list-style-type: none"> within 5m of the wall of an approved structure measured from the wall to the trunk of the tree (excluding driveways); unless it is identified for protection within conditions of a development consent or tree permit, or it is located on land that is Biodiversity Values mapped or is used as habitat for native animals or, a tree species grown for fruit or nut production; or, a species listed in NSW Weedwise that is not otherwise listed as requiring Council approval. <p>Note: No approvals are required when pruning less than 10% foliage of a tree or other vegetation within a 12 month period when completed in accordance with Australian Standard (AS) 4373– Pruning of amenity trees.</p> <p>Note: An approved structure is development such as a dwelling, garage, pool or retaining wall that required development consent (that is not exempt or complying development).</p>

Column 1 – Approval type required	Column 2 – Tree management activity
Notification to Council	<p>Removal or pruning of a tree, not otherwise listed as requiring Council approval, can occur in instances where Council is satisfied that:</p> <ul style="list-style-type: none"> • there is a risk to human life or property not related to leaf/flower/fruit drop, or • the tree(s) are dead or dying and it is not required as the habitat of native animals. <p>Note: where urgent removal or pruning over 10% of a tree is required due to risk of immediate failure, Council requires a tree removal notification within 10 days of the removal.</p> <p>Note: notification must be provided by completing the tree pruning and removal assessment form available on Council's website.</p>
Council issued permit	<p>A tree permit is required for the removal or pruning over 10% of a tree or other vegetation where height exceeds 3m or diameter exceeds 300mm (measured 1.3m from the ground) and poses no risk to life or property.</p> <p>A tree permit is required for the removal or pruning of a tree or other vegetation, irrespective of the location or risk that is:</p> <ul style="list-style-type: none"> • a preferred Koala Feed Tree species identified in Council's Comprehensive Koala Plan of Management (CKPoM), being: Forest Red Gum (<i>Eucalyptus tereticornis</i>), Swamp Mahogany (<i>Eucalyptus robusta</i>) or Parramatta Red Gum (<i>Eucalyptus parramattensis</i>); or • a NSW Christmas Bush (<i>Ceratopetalum gummiferum</i>); or • a Cabbage Tree Palm (<i>Livistona australis</i>); or • situated on land that is Biodiversity Values Mapped or is used as habitat for native animals; or • identified for retention under a previous development consent or Tree Permit; or • listed under the register of significant trees³; or • part of a heritage item, heritage conservation area, Aboriginal object or Aboriginal place of significance, which Council is satisfied: <ul style="list-style-type: none"> - is of a minor nature or is for the maintenance of that item, area, object or place; and - will not adversely affect the significance of that item, area, object or place <p>Note: A tree permit can be requested by completing the tree pruning and removal assessment form available on Council's website.</p> <p>Note: A tree removal permit is not separately required if the tree removal forms part of works requiring development consent.</p>
Council issued development consent	<p>Development consent from Council is required for the removal or pruning of a tree or other vegetation that forms part of a heritage item, heritage conservation area, Aboriginal object or Aboriginal place of significance, which Council is not satisfied:</p> <ul style="list-style-type: none"> • is of a minor nature or is for the maintenance of that item, area, object or place; and • will not adversely affect the significance of that item, area, object or place <p>Note: A development application will need to be lodged.</p>
Native vegetation panel approval	<p>Clearing of native vegetation that is subject to the biodiversity offset scheme as specified in the <i>Biodiversity Conservation Act 2016</i></p>

Column 1 – Approval type required	Column 2 – Tree management activity
Threatened Species Licence	Removal or pruning of vegetation that poses no risk to life or property and is likely to result in: <ul style="list-style-type: none"> • harm to an animal that is a threatened species or part of a threatened ecological community; or • picking a plant that is a threatened species or part of a threatened ecological community; or • damage to the habitat of a threatened species or threatened ecological community; or • damage to a declared area of outstanding biodiversity value.
Fisheries and Marine Park Permits	Removal or pruning of any Mangrove and marine vegetation (such as saltmarsh, mangroves, seagrasses, and macroalgae (seaweeds), as specified in Part 7 of the Fisheries Management Act 1994, irrespective of the size, location or risk.

Note: Applicants for tree clearing and removals will also need to consider the provisions of other legislation including but not limited to the following:

- *Biodiversity Conservation Act 2016 (NSW)* - A licence may be required if tree removal would also harm the animals listed in this Act. Contact NSW Environment, Energy and Science.
- *Biosecurity Act 2015 (NSW)* - clearing of weeds. Contact Port Stephens Council's Invasive Species Team.
- *Environment Protection and Biodiversity Conservation Act 1999 (Cth)* - protect and manage nationally and internationally important flora, fauna, ecological communities and heritage places. Contact the Commonwealth Department of the Environment.
- *Fisheries Management Act 1994 (NSW)* - prohibits harm to any marine vegetation and issues permits for harm cutting of mangroves. Contact the NSW Department of Primary Industries (**DPI**).
- *Heritage Act 1977 (NSW)* - sites under conservation orders, relics, etc. Contact NSW Environment, Energy and Science.
- *Local Land Services Act 2013 (NSW)* - clearing of native vegetation, regional vegetation management plans, property agreements. Contact NSW Local Land Services (**LLS**) - Hunter.
- *National Parks and Wildlife Act 1974 (NSW)* - Regulates works in Aboriginal places or impacting Aboriginal objects. Contact the National Parks and Wildlife Service at NSW Environment, Energy and Science.
- *Rural Fires Act 1997 (NSW)* - '10/50 Vegetation Clearing Code of Practice for NSW', and authorised removal of fire hazards. Contact the NSW Rural Fire Service.

B1.B Assessment requirements

Objective

To ensure adequate consideration is provided to the relevant matters for the removal or pruning of trees or other vegetation

Development controls	
B1.2	<p>Council assessment of tree notifications to remove or prune trees or other vegetation has regard for:</p> <ul style="list-style-type: none"> the level and likelihood of risk posed by the vegetation based on current arboricultural practices whether the tree is dead and provides habitat
B1.3	<p>Council assessment of permits and development applications to remove or prune trees or other vegetation has regard for:</p> <ul style="list-style-type: none"> the level and likelihood of risk posed by the vegetation based on current arboricultural practices damage to an existing structure or utility service substantiated by a qualified person impacts resulting from the approval of the development impact on threatened species, populations or ecological communities and their habitats retention value under the biodiversity tree technical specification* other relevant circumstances, as per the biodiversity tree technical specification*
B1.4	<p>Council assessment of applications to remove or prune trees or other vegetation has no regard for the removal or pruning of trees:</p> <ul style="list-style-type: none"> due to leaf/flower/fruit drop to enhance view interfering with a solar photovoltaic/hot water system <p>Note: the biodiversity tree technical specification* details circumstances where the removal or pruning of trees for the installation of solar photovoltaic/hot water systems may be considered</p> <ul style="list-style-type: none"> interfering with the amenity of a dwelling located further than 3m from a driveway. Any trees located closer to driveways must be shown to be interfering, or likely to interfere with the integrity of a driveway by a suitably qualified person

B1.C Supporting information

Objective

To ensure adequate information is provided to determine the application for the removal of trees or vegetation

Development controls	
B1.5	<p>An arborist report consistent with biodiversity tree technical specification* is required:</p> <ul style="list-style-type: none"> • for a tree or other vegetation listed under Council's register of significant trees³ • to assess the impact on existing trees as part of a development application as per AS 4970 – Protection of trees on development sites, where they are within 5m of the development footprint, (including any ancillary development or associated excavation), or are likely to be impacted by the development (10% or greater encroachment within the Tree Protection Zone) or otherwise proposed to be removed • to support reassessment of applications for tree removal on a technical basis • to support the release of a tree bond
B1.6	<p>A request to remove 10 or more trees requires a clearing method statement to be vegetation management plan prepared by a suitably qualified professional in accordance with the biodiversity technical specification*.</p> <p>Note: An application to remove 10 or more trees, where tree height exceeds 3m or diameter exceeds 300mm (measured 1.3m from the ground), may require a referral to be provided to Hunter Water by the assessing officer in accordance with the 'Guidelines for developments in the drinking water catchments'</p>
B1.7	<p>Compensatory planting consistent with B2.C the tree technical specification* may be required when council approval to remove trees is provided</p>
B1.8	<p>Where hollow bearing trees occur on site and are proposed for removal, a Hollow Bearing Tree Schedule is to be provided identifying the species, number, size and location of hollows and hollow bearing trees for removal and retention on the site.</p> <p>Replacement hollows consistent with B2.C may be required when Council approval to remove hollow bearing trees is provided.</p> <p>A hollow tree assessment is required to remove hollow bearing trees:</p> <ul style="list-style-type: none"> • Two replacement hollows are provided for each hollow tree identified by the tree technical specification¹ • Salvaged hollows are preferred over nest boxes, which are consistent with the tree technical specification¹ <p>Note: B2.1 requires a hollow tree assessment and replacement or salvaged hollows if a flora and fauna survey report proposes their removal</p>

B2 Natural Resources Flora and Fauna

Application

This Part applies to **development** that:

- Has the potential to impact upon native flora and/or fauna; or
- Is located on land or is within 500m of land that contains items of **environmental significance**, such as threatened species or communities, listed migratory species, wildlife corridors, any LEP or State mapped **wetlands** or **watercourses**, **riparian corridors** and has the potential to impact **these areas** biodiversity; or
- Is seeking to use **biodiversity offsets**; or
- Is located on land containing **biosecurity risks**; or
- Is located on or is in proximity to land that contains mapped as **koala habitat** identified by Council's Comprehensive Koala Plan of Management (CKPoM)

Note: where the biodiversity impacts exceed the Biodiversity Offset Scheme Thresholds defined in accordance with the *Biodiversity Conservation Act 2016*, a **Biodiversity Development Assessment Report** (BDAR) will be required. *The Biodiversity Conservation Act 2016* was enacted on the 25 August 2017 which repealed the provisions of *Threatened Species Conservation Act 1995* (**TSC Act**). Transitional arrangements for developments have been put in place to ensure a smooth transition to the new legislation. These are set out in the *Biodiversity Conservation (Savings and Transitional) Regulation 2017*.

B2.A Environmental significance Ecological Impact

Objectives

- To avoid and minimise impacts on native flora and fauna.
- To protect and enhance native flora and fauna, vegetation communities, and significant habitat on the site.

To ensure adequate consideration is provided to the protection and conservation of items of **environmental significance**

Development controls

- B2.1 Where existing trees on site are proposed to be removed and retained, a tree removal and retention plan is required.

Note: Where hollow bearing trees are located on the site they are to be identified in the tree removal and retention plan with a Hollow Bearing Tree Schedule which identifies the species, number, size and location of hollows and hollow bearing trees for removal and retention on the site.

Development controls

Development located on land or is within 500m of land that contains items of **environmental significance**, such as threatened species or communities, listed migratory species, wildlife corridors, **wetlands** or **riparian corridors** and has the potential to impact biodiversity provides:

- a **flora and fauna survey** to inform the **assessment of significance**;
 - The **flora and fauna survey** is in accordance with:
 - NSW Department of Environment and Conservation. 2004, 'Threatened Species Survey and Assessment: Guidelines for development and activities'⁸
 - Hunter and Central Coast Regional Environmental Management Systems. 2002, 'Lower Hunter and Central Coast Regional Fauna and Flora Guidelines'⁹
 - If **development** poses a **significant effect** under 5A of the **EP&A Act** or if development is on land which is, or is part of, critical habitat then a **species impact statement (SIS)** is required
 - If **development** does not pose a **significant effect** under 5A of the **EP&A Act**, but proposes unavoidable vegetation impacts then a **vegetation management plan (VMP)** that is consistent with the **tree technical specification**¹ is required

Note: Under section 5.5 of the **EP&A Act** the determining authority has a duty to consider the environmental impact of proposed activities

- If the **flora and fauna survey** proposes the removal of hollow bearing trees then a **hollow tree assessment** is required:
 - Two replacement hollows are provided for each hollow tree identified by the **hollow tree assessment**
 - Salvaged hollows are preferred over nest boxes that are consistent with the **tree technical specification**¹

Note: This is consistent with B1.8 that requires a **hollow tree assessment** to remove hollow bearing trees on land to which B1 applies.

- A proposed **buffer** on the land subject to the **development** is provided to items of **environmental significance**. The width of the **buffer** is recommended by the **flora and fauna survey** report based and is based on taking into account the following parameters:
 - The condition of the item of **environmental significance**
 - Proposed methods of mitigating adverse impact
 - Possible external effects, such as weed encroachment or domestic animals and their potential to cause impact
 - Where the vegetation of **buffers** are proposed, the vegetation is established along the relevant boundaries prior to the issuing of the relevant **subdivision** or **occupation certificate**

Note: C4.11 nominates a suitable buffer for residential accommodation adjoining land used for agricultural purposes

Development controls

B2.2	<p>Where the proposed development is likely to impact upon threatened species habitat, threatened ecological communities or important habitat features such as hollow bearing trees, an Ecological Impact Assessment is required to be submitted with the development application.</p> <p>The Ecological Impact Assessment is to adequately identify and assess the impacts of the proposed development in accordance with Council's Ecological Assessment Guideline including cumulative, direct and indirect impacts and any other clearing required to facilitate the development.</p> <p>Note: If the Ecological Impact Assessment identifies potential threatened species habitat, additional targeted surveys may be required, which must be undertaken in accordance with the relevant approved State or Federal guidelines.</p>
B2.3	<p>Development should be designed to avoid impacts on high value ecological features, minimise any unavoidable impacts, and where applicable implement compensatory measures in accordance with (B2.C)</p> <ul style="list-style-type: none"> • Where possible, native vegetation buffers are to be provided between development and environmentally zoned land or areas containing threatened flora and fauna species or their habitat and threatened vegetation communities. The width of the buffer should be determined with reference to the function of the habitat and the type of development proposed. • Buildings and structures, roads, driveways, fences, dams, infrastructure, drainage and asset protection zones should be located outside of areas with significant flora and fauna or ecological communities, native vegetation buffers, biodiversity corridors or environmentally zoned lands. • The width of any retained or proposed biodiversity corridors should be determined with reference having regard to the function of the habitat and the type of development proposed.
B2.4	<p>Where retention or rehabilitation of native vegetation and/or habitat is required, a Vegetation Management Plan must be prepared in accordance with the Biodiversity Technical Specification* and must detail how vegetation is to be protected, rehabilitated and managed before, during and after construction, and include progress reporting/monitoring.</p>
B2.5	<p>An Arborist Report may be required in accordance with B1.5.</p>
B2.6	<p>A subdivision development application must consider the total clearing that is required or likely to be required for the purpose for which the land is to be subdivided. This includes but is not limited to building envelopes, bushfire asset protection zones, access roads, driveways, services, effluent disposal areas, ancillary buildings and new boundary fence lines.</p>
B2.7	<p>Where a proposed commercial, industrial, subdivision or seniors housing development is located adjacent to an area of threatened fauna habitat, a fauna-friendly lighting design plan is to be provided in accordance with the objectives and design principles detailed in the DCCEEW 2023 National Light Pollution Guidelines for Wildlife*</p>

B2.8B Koalas Habitat

Objective

To encourage the proper identification, conservation and management and conservation of areas of natural vegetation that provide Koala habitat in accordance with Council's Comprehensive Koala Plan of Management (CKPoM) to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline

Development control

- B2.84 **Development** located on or in proximity to land identified as **Koala habitat** or requires an ecological assessment or **BDAR** must prepare a Koala Habitat Assessment. complies with the *Port Stephens Comprehensive Koala Plan of Management*¹⁰ through consideration to the performance criteria, being:
- The Koala Habitat Assessment must be prepared in accordance with Appendix 6 of the CKPoM as summarised in the Port Stephens Koala Habitat Assessment Process on Council's website and include a Koala Performance Criteria Assessment.
- The Koala Performance Criteria Assessment must be prepared in accordance with Appendix 4 of the CKPoM and is to demonstrate that the development:
- Minimising the removal or degradation of **native vegetation** within **preferred Koala habitat** or **habitat buffers**; **supplementary Koala habitat**
 - Maximising the retention and minimising degradation of **native vegetation** within **supplementary Koala habitat**, **habitat buffers** and **habitat linking areas**;
 - Minimising removal of any individual Maximises the retention of any preferred koala feed tree individuals on a development site. Koala feed tree species include Swamp Mahogany (*Eucalyptus robusta*), Parramatta Red Gum (*Eucalyptus parramattensis*), and Forest Red Gum (*Eucalyptus tereticornis*), and hybrids of any of these species. An additional list of tree species that may be important to Koalas is included in Appendix 8 of the CKPoM;
 - Includes restoration or rehabilitation of areas identified as Koala Habitat (including buffers and habitat linking areas), with the target of resulting in a net gain of **koala habitat**; Where appropriate, restore and rehabilitate **koala habitat**/ buffers and linking areas
 - Removal of **koala habitat** is off-set by a net gain of **koala habitat** on-site or adjacent
 - Make provision for Includes the long-term management and protection of both existing and restored **Koala habitat** that:
 - Not compromise Ensures the safe movement of koalas across by minimising barriers site by minimising barriers to koala movement, such as retaining native vegetation and using suitable **Koala-friendly fencing**;
 - Maximisation of tree retention
 - Minimising barriers for movement, such as fences
 - Fences which are intended to preclude koalas should be located away from any trees which could allow koalas to cross the fence
- Restrict **development** to defined building envelopes

Development control

B2.84	<p>g. Minimising the threats posed to Koalas from dogs, motor vehicles and swimming pools</p> <ul style="list-style-type: none"> - Development demonstrates consideration to the performance criteria within the statement of environmental effects (SEE) by providing the following: <ul style="list-style-type: none"> - Assessment of koala habitat in accordance with Appendix 6 – Guidelines for Koala Habitat Assessment of the <i>Port Stephens Comprehensive Koala Plan of Management</i>¹⁰ - Site analysis plan indicates vegetation to be disturbed, cleared or retained - Illustration of the Asset Protection Zone (APZ) - Proposed measures for the safe movement of koalas, such as fencing or traffic control measures - Details of any programs to monitor koala populations <p>Note: The <i>Port Stephens Comprehensive Koala Plan of Management</i>¹¹ applies through the application of the SEPP (Biodiversity and Conservation) 2021</p>
B2.9	<p>Where preferred Koala Feed Trees are proposed to be removed, compensatory planting may be required in accordance with B2.C.</p>

B2.BC Compensatory Requirements Biodiversity offsets

Objective

To facilitate the compensatory replacement of important biodiversity features which cannot be avoided and are proposed to be removed under a tree permit or development consent provide further guidance for the use of **biodiversity offsets** within the Port Stephens local government area

Development control

B2.10 B2.2	<p>Any Preferred Koala Feed Tree species listed in Council's CKPoM that is to be removed as a result of a development consent or the issue of a Tree Permit, must be replaced in accordance with the compensatory planting ratios detailed in Figure BB, unless Council imposes an amended requirement in consideration of specific and unique site factors.</p> <p>Note: Preferred Koala Feed Tree species listed in Councils CKPoM include Forest Red Gum (<i>Eucalyptus tereticornis</i>), Swamp Mahogany (<i>Eucalyptus robusta</i>), and Parramatta Red Gum (<i>Eucalyptus parramattensis</i>)</p> <p>If biodiversity offsets are employed as a suitable compensatory measure under the TSC Act then they are:</p> <ul style="list-style-type: none"> • calculated in accordance with the bio-metric terrestrial biodiversity assessment tool • consistent with the tree technical specification¹. • in a secure tenure ownership • located on land to which this Plan applies
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Figure BB: Compensatory Koala Feed Tree planting ratios for preferred Koala feed

Preferred Koala Food Tree species size class (Diameter at Breast Height)	Replacement Ratio (Loss:Gain)
<100mm	1:6
100-300mm	1:8
>300mm	1:10

Development controls

B2.11	Any native tree (other than a Koala Feed Tree species) with a height of greater than 3m and a diameter greater than 300mm (measured 1.3m from the ground) that is to be removed as a result of development or the issue of a Tree Permit is to be replaced at a ratio of 1:2 unless Council imposes an amended requirement in consideration of specific and unique site factors.
B2.12	Any street tree to be removed as a result of a development or the issue of a Tree Permit is to be replaced at a ratio of 1:1 along the same street frontage unless Council imposes an amended requirement in consideration of specific and unique site factors.
B2.13	Where the removal of a hollow or a hollow-bearing tree is required, compensatory hollows are to be provided. The compensatory arboreal hollow size and type must be appropriate for the species being managed on the site or the hollow being removed. The number of compensatory arboreal hollows must meet the relevant ratios identifies in Figure BC unless Council imposes an amended requirement in consideration of specific and unique site factors.

Figure BC: Compensatory hollow type

Preference of use	Compensatory hollow type	Replacement ratio (loss : gain)
1st	Natural hollow salvaged from felled hollow-bearing tree and installed within retained trees on site	1:1 hollow replacement
2nd	Artificial hollows including hollow hog hollows	1:2 hollow replacement
3rd	Nest boxes	1:2 hollow replacement

Development controls

B2.14	Compensatory trees are to be native species and are to be planted in accordance with the Biodiversity Technical Specification.
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B2.6D Biosecurity risks (weeds)

Objective

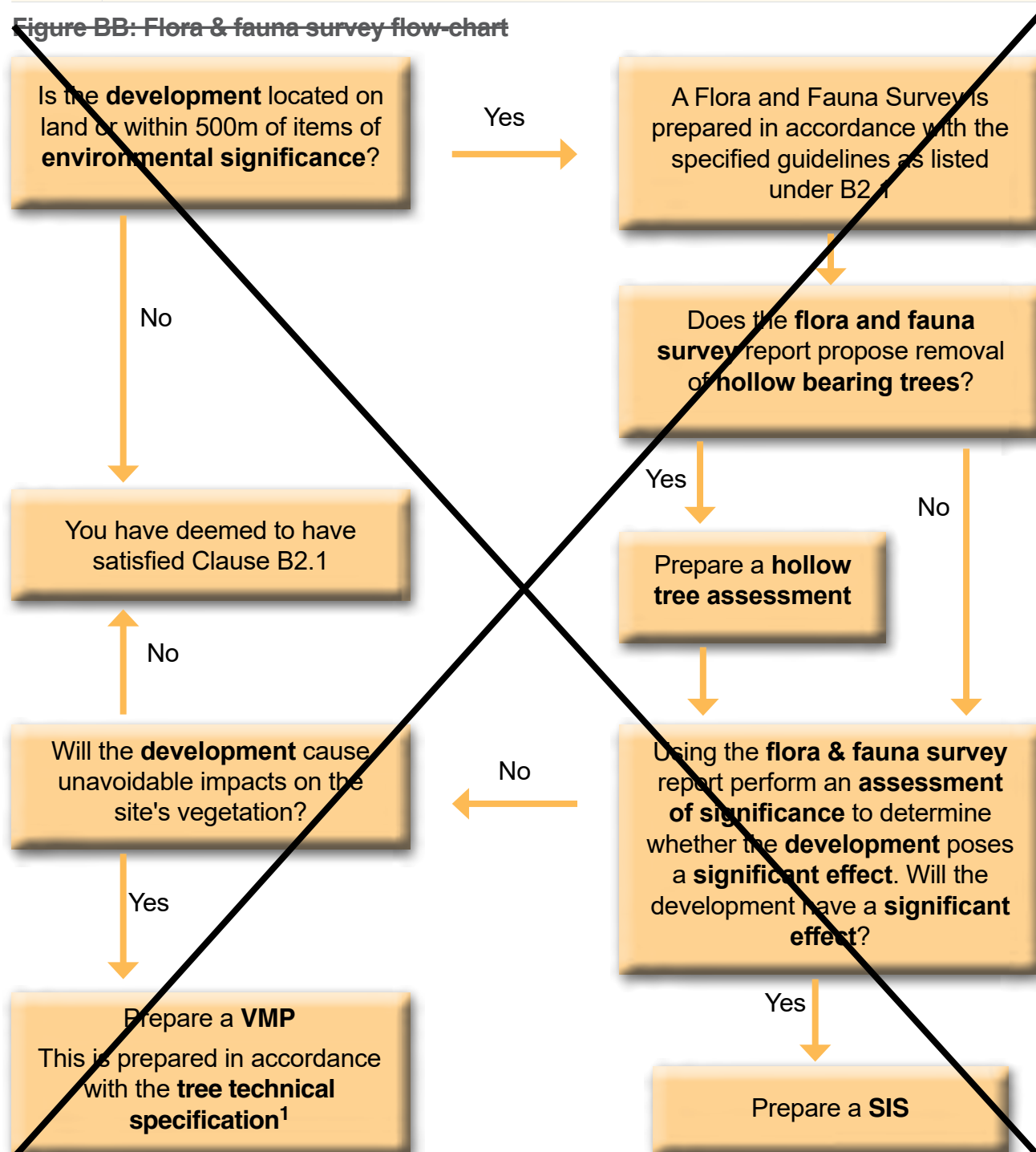
To reduce the negative impact of **biosecurity risks (weeds)** on the economy, community and environment by eliminating or restricting their geographical spread

Development control

B2.3 **Development** situated on land that contains **weeds**, will seek to prevent, eliminate or restrict the spread of **weeds** in accordance with the **biosecurity technical specification²**

Note: NSW Weedwise is an online tool to identify weeds available on the Department of Primary Industries website

Figure BB: Flora & fauna survey flow-chart



E1 Glossary

This **DCP** adopts the terms and definitions of the Standard Instrument - Principal **Local Environmental Plan**, unless otherwise defined in the Glossary.

Biodiversity Development Assessment Report (BDAR) means a report required under the *Biodiversity Conservation Act*. It identifies the highest value ecological features on a site including threatened species habitat, and applies the hierarchy of avoid, minimise and then offset.

high value ecological features means the natural features in the landscape which provide habitat for native flora or fauna species; such as Biodiversity Values Mapped areas, hollow bearing trees, nest trees, large old growth trees, large fallen timber, caves, rocky outcrops/ bush-rock, waterbodies, drainage lines and wetlands.

Koala-friendly fencing means:

- fences where the bottom of the fence is a minimum of 200 mm above ground level that would allow koalas to move underneath;
- fences that facilitate easy climbing by koalas; for example, sturdy chain mesh fences, or solid style fences with timber posts on both sides at regular intervals of approximately 20m; or
- open post and rail or post and wire (not barbed wire on the bottom strand).