



DEPARTMENT OF PLANNING, INDUSTRY & ENVIRONMENT

# Areas of Outstanding Biodiversity Value

Nomination guidelines



© 2020 State of NSW and Department of Planning, Industry and Environment

With the exception of photographs, the State of NSW and Department of Planning, Industry and Environment are pleased to allow this material to be reproduced in whole or in part for educational and non-commercial use, provided the meaning is unchanged and its source, publisher and authorship are acknowledged. Specific permission is required for the reproduction of photographs.

The Department of Planning, Industry and Environment (DPIE) has compiled this report in good faith, exercising all due care and attention. No representation is made about the accuracy, completeness or suitability of the information in this publication for any particular purpose. DPIE shall not be liable for any damage which may occur to any person or organisation taking action or not on the basis of this publication. Readers should seek appropriate advice when applying the information to their specific needs.

All content in this publication is owned by DPIE and is protected by Crown Copyright, unless credited otherwise. It is licensed under the [Creative Commons Attribution 4.0 International \(CC BY 4.0\)](#), subject to the exemptions contained in the licence. The legal code for the licence is available at [Creative Commons](#).

DPIE asserts the right to be attributed as author of the original material in the following manner: © State of New South Wales and Department of Planning, Industry and Environment 2020.

Cover photo: Wollemi Pine, *Wollemi nobilis*. Jaime Plaza/Botanic Gardens Trust

Published by:

Environment, Energy and Science  
Department of Planning, Industry and Environment  
59 Goulburn Street, Sydney NSW 2000  
PO Box A290, Sydney South NSW 1232  
Phone: +61 2 9995 5000 (switchboard)  
Phone: 1300 361 967 (Environment, Energy and Science enquiries)  
TTY users: phone 133 677, then ask for 1300 361 967  
Speak and listen users: phone 1300 555 727, then ask for 1300 361 967  
Email: [info@environment.nsw.gov.au](mailto:info@environment.nsw.gov.au)  
Website: [www.environment.nsw.gov.au](http://www.environment.nsw.gov.au)

Report pollution and environmental incidents  
Environment Line: 131 555 (NSW only) or [info@environment.nsw.gov.au](mailto:info@environment.nsw.gov.au)  
See also [www.environment.nsw.gov.au](http://www.environment.nsw.gov.au)

ISBN 978-1-922317-84-1  
EES 2019/0675  
February 2020

Find out more about your environment at:

**[www.environment.nsw.gov.au](http://www.environment.nsw.gov.au)**

# Contents

1.	Purpose of this document	1
2.	What are Areas of Outstanding Biodiversity Value?	1
2.1	Effect of declaration	1
3.	Nomination, assessment and declaration process	2
3.1	Making a nomination	2
3.2	Assessment and declaration process	4
3.3	Restricted access to some information	7
3.4	Timeframes	7
4.	Amending an Area of Outstanding Biodiversity Value	7
5.	Revoking an Area of Outstanding Biodiversity Value	8
6.	Criteria	8
	Clause 3.1 Criteria for declaring Area of Outstanding Biodiversity Values	8
7.	References	9
	Appendix 1: Area of Outstanding Biodiversity Value process diagram	10

## List of figures

Figure 1	AOBV process design: Initial stage: Nomination	10
Figure 2	AOBV process design: Intermediate stage: Engagement	11
Figure 3	AOBV process design: Final stage: Declaration	12

## 1. Purpose of this document

These guidelines outline the requirements for nominating an Area of Outstanding Biodiversity Value and the process the Department of Planning, Industry and Environment will follow for assessing and recommending them.

## 2. What are Areas of Outstanding Biodiversity Value?

The *Biodiversity Conservation Act 2016* (BC Act) gives the Minister for Energy and Environment the power to declare Areas of Outstanding Biodiversity Value (AOBVs). These are special areas that contain irreplaceable biodiversity values that are important to the whole of New South Wales, Australia or globally.

Areas are selected on the basis that they meet at least one of the key scientific criteria specified in the legislation. They encompass elements that contribute significantly to the persistence of biodiversity, including the maintenance of structural diversity and functional processes that support connectivity across the landscape, as well as the delivery of ecosystem services, for instance in connection with species diversity, climate refuges, connectivity and supporting migratory species.

AOBVs have a high level of flexibility across a range of features. They have no size requirements. This means that they can be applied to sites as small as cave systems, hot springs or boulder outcrops, as well as to larger landscapes, such as wetlands, grasslands or forests. They can be targeted across a range of scales, locations or themes. AOBVs can be declared on public or privately-owned land. These characteristics give AOBVs a high level of flexibility in comparison with other instruments designed to conserve biodiversity in New South Wales.

### 2.1 Effect of declaration

The BC Act provides a level of legal protection for AOBVs, recognising these areas will represent the most valuable sites for biodiversity conservation across New South Wales.

It is an offence to damage an AOBV without an approval such as a development consent or other defence as set out in the BC Act.

Any development proposal located on an AOBV will trigger the Biodiversity Offsets Scheme and must be assessed using the Biodiversity Assessment Method. Offsets and/or measures to mitigate impacts on the AOBV may be required. AOBVs are also excluded from the land management framework set out in the *Local Land Services Act 2013*. This means clearing under the land management codes is not permitted.

The Biodiversity Conservation Regulation 2017 (BC Regulation) may include additional measures for protecting AOBVs. These can include, for example, offences for specific activities or powers to close an AOBV to the public. Additional measures for two AOBVs (Little Penguin declared area and Wollemi Pine declared area) can be found in Divisions 3.2 and 3.3 of the BC Regulation.

## 3. Nomination, assessment and declaration process

### 3.1 Making a nomination

#### Who can make a nomination?

Anyone can nominate a place as an Area of Outstanding Biodiversity Value. Nominations can be made by completing the nomination form, which is available on the Department of Planning, Industry and Environment website.

#### Before completing the nomination form

Before you complete the nomination form, consider carefully whether the place is likely to satisfy at least one of the scientific criteria set out in clause 3.1 of the BC Regulation. An area is eligible for listing if it meets any one of the criteria at clauses 3.1(2), (3), (4) or (5) provided that it is also significant at, at least, the NSW state scale (as per clause 3.1(1)(a)). The relevant clause are set out in section 6 of this document and explained in more detail in the *Guidelines for interpreting listing criteria for Areas of Outstanding Biodiversity Value* (EES 2020).

Also consider whether AOBVs are the most suitable option to achieve the outcome you are after. The AOBV mechanism has been designed around a framework of robust scientific assessment and public engagement, which takes time to finalise. AOBVs are one of a suite of conservation mechanisms available under the BC Act and other legislation to protect land with important biodiversity values. The Department can provide advice on whether seeking an AOBV declaration would be the most appropriate approach.

#### Getting help

Nominators are encouraged to seek expert advice where appropriate to assist in making a nomination. Incomplete nominations or nominations with inadequate information may not be accepted.

#### Landholder consent

If a nomination is on, or partly on, private land, the nomination will proceed once the landholder has acknowledged the nomination over their land and consented to the scientific assessment process commencing.

#### Completing the nomination form

Nominators must provide the following information in the nomination form:

- address/location details of the nominated area
- a map of the area being nominated
- whether the area is on private or public land
- land use information, including what the land is being used for
- nominator's contact information

- landholder details and, where possible, landholder acknowledgement of the nomination
- an explanation of how the nominated site is likely to satisfy one or more of the scientific criteria in the BC Act and Regulation.

Refer to the *Guidelines for interpreting listing criteria for Areas of Outstanding Biodiversity Value* (EES 2020) for assistance in applying the scientific criteria. The guidelines also provide suggested likely thresholds for meeting the criteria.

Include references to published journal articles or other material that support the information you have provided. Unsupported or anecdotal information may not provide sufficient evidence to demonstrate the area meets the criteria for declaration as an Area of Outstanding Biodiversity Value. Supporting evidence such as ecological reports, studies and photos can also be included in the nomination as attachments.

Do not quote or provide information you have obtained from other people (usually referenced as personal communications) unless you have obtained the agreement of those people to use those statements in the nomination.

Do not provide information you have obtained on a confidential basis or data under a data licence that prohibits its release to other parties unless you have obtained permission to publicly release the confidential information or data.

Indicate if you are providing information you have obtained on a confidential basis or data under a data licence that prohibits its release to other parties and if you have obtained permission to publicly release the confidential information or data.

Ensure you know and agree to how the Department will use and share your nomination and the information contained in the nomination and any attachments including your personal details by signing the declaration section of the nomination form. If you request confidentiality please ensure you have not included your personal information, or any information that can be used to identify you, in the body of the nomination or attachments.

Once you have submitted the nomination, Department officers may contact you to discuss the nomination and to request further information if needed.

### **Important**

Incomplete forms or forms with insufficient information may not be accepted. The Department may reject nominations that, in its opinion, are vexatious in nature or made in bad faith.

Lodging an Area of Outstanding Biodiversity Value nomination form or receiving a notice of receipt from the Department does not signify that a nomination has been accepted for assessment.

### **Mapping the nominated area**

The nomination must clearly identify the area of land being nominated as an AOBV. The map should show the location and extent of the area being nominated, and also the locations of the values for which the area is being nominated.

The nominated area should be shown via one or more of the following methods:

- GIS mapping i.e. ESRI shape files (preferred)
- Lot and DP numbers (preferred)
- hand-drawn map on aerial or topographic image.

The map will provide a starting point for the nomination. The area included in the proposed AOBV may be altered during the assessment and consultation process, for example to better reflect the area's biodiversity values or in response to feedback.

## **3.2 Assessment and declaration process**

### **Nominations are made to the Department of Planning, Industry and Environment**

Nominations are received and assessed by the Department of Planning, Industry and Environment. The Department will send a notice of receipt of the submission. Note that this should not be taken as notice of acceptance of the nomination.

Nominations can be made by individuals or organisations.

The Department may accept and assess nominations as they are received or put out a call for nominations at a particular time during the year or may set particular themes for nominations.

### **Nomination review**

The Department will review the nomination to determine if the information provided is complete and adequate. A Department officer may contact the nominator to discuss the nomination or request additional information.

If the Department is satisfied with the information provided, including that it addresses all the scientific criteria in sufficient detail, the nomination will be accepted. If not satisfied, the Department may reject the nomination and give reasons.

### **Scientific assessment**

Once accepted, the Department will conduct an assessment of the nomination against the scientific criteria set out in the BC Act and Regulation. An area is eligible for listing if it meets any one of Clauses 3.1(2), (3), (4) or (5) in the BC Regulation provided that it is also significant at, at least, the NSW state scale (as per Clause 3.1(1)(a)).

The scientific assessment could include an inspection of the nominated area by Department officers to confirm the presence and significance of the values, so access for a site inspection may need to be arranged.

If the scientific assessment indicates that the nominated area satisfies at least one of the criteria, the Department will make a preliminary determination to proceed. If the assessment indicates that the nomination is unlikely to satisfy the criteria, the nomination will be rejected at this stage, and the nominator and landholders notified.

### **Mapping**

The Department will create an initial draft map of the nominated area based on the nomination and other relevant information and develop a map method. The map may be refined or adjusted following scientific assessment and consultation.

## **Preliminary landholder and public authority consultation**

If the Department determines to proceed with the nomination, the Department will consult with the landholder and relevant public authorities to gather information about current land management regimes, planned development and any other activities affecting, or likely to affect, the nominated area.

Relevant public authorities could include, for example, the local council, utilities and roads and transport authorities.

The Department may consult with others who have or may have an interest in the land. This could include holders of leases or exploration/mining interests, and Local Aboriginal Land Councils, where relevant, as well as with those who may hold relevant knowledge about the potential values of the land, such as the local Aboriginal community and environmental groups and experts.

The Department may also engage informally with the local community to gauge the level of community support and understanding of the nomination.

## **Notice of intention to recommend**

If, based on the scientific assessment and preliminary consultation, the Department decides to proceed with the nomination, a notice of intention to recommend will be made to landholders and relevant public authorities. The purpose of the notice is to seek formal feedback on the proposed AOBV. The Department must give landholders and relevant public authorities a reasonable opportunity to make a submission on the proposal.

## **Public consultation**

In addition to engaging with the landholder and relevant public authorities, the legislation requires public consultation.

The notice of intention to recommend will be publicly advertised. The scientific assessment, map and map method, and other relevant documents, will be put on public exhibition for a minimum of four weeks. Anyone can make a submission on any aspect of the nomination.

The Department will consider any submissions received during the public consultation period.

## **Advisory bodies**

The Department is required to seek and consider the advice of certain advisory bodies for any AOBV nomination under the BC Act. These are the Biodiversity Conservation Advisory Panel and the NSW Threatened Species Scientific Committee, as well as the Biodiversity Conservation Trust (BCT).

The NSW Threatened Species Scientific Committee is an independent committee of scientists which determines whether species, populations or ecological communities should be listed as threatened in New South Wales.

The Biodiversity Conservation Advisory Panel provides independent, expert advice to the Minister for the Environment on management of biodiversity conservation and to the Environment Agency Head on any proposed declaration of an AOBV. Its members have expertise in biodiversity conservation, economics, environmental law, ecologically sustainable development and natural resource management.



The BCT is a statutory body responsible for the government's private land conservation program.

The advisory bodies may provide advice, guidance and other input into the assessment process.

## Final assessment

The Department will complete a final assessment report, incorporating the scientific assessment, all submissions and advice from the advisory bodies, and a final map of the nomination for internal consideration and determination as to whether to make a recommendation to the Minister for Energy and Environment that the area should be declared an AOBV.

## Recommendation to the Minister

If the Environment Agency Head decides to recommend the nomination to the Minister for declaration, the final assessment report and map will be provided to the Minister for consideration.

If the recommended area is land on which the Land Management (Native Vegetation) Code applies, the area will be mapped onto the Native Vegetation Regulatory (NVR) Map, established under Part 5A of the *Local Land Services Act 2013*, as category 2 sensitive regulated land.

This limits the activities that can be undertaken on the land and provides it with a level of protection in accordance with that classification.

If the Environment Agency Head decides not to recommend the nomination to the Minister, landholders, relevant public authorities and others (such as the nominator and anyone who made a submission) will be notified of the decision.

## Declaration

If the Minister decides to declare the AOBV, a notice will be published on the NSW legislation website. The notice will include the final map showing the spatial extent of the area and a statement of reasons. The Department will notify all landholders, relevant public authorities and others (such as the nominator and anyone who made a submission) of the Minister's decision. The decision will be published on the Department's website.

Once the Minister has made a declaration, the declared AOBV area will be included on the on the Biodiversity Values (BV) Map, established under clause 7.3 of the BC Regulation, and the AOBV will be listed in the public register for AOBVs on the Department's website.

The declaration marks a change in how the land will be treated. For instance, any proposed impacts from development or clearing in a declared AOBV will automatically trigger the Biodiversity Offsets Scheme. The land within the AOBV is also excluded from clearing and other activities allowed under the Land Management (Native Vegetation) Code. If the area was mapped on the NVR Map, it will be changed from category 2 sensitive regulated land to 'excluded land'.

## No declaration

If the Minister decides that the area should not be declared an AOBV, the Department will notify landholders, relevant public authorities, nominators and those who made submissions of the Minister's decision, and publish the decision on the Department's website. The

categorisation of the area on the NVR Map area may be reviewed under the next annual review of the map.

### **Private land conservation agreement**

Land declared an AOBV is automatically a priority for investment under the Biodiversity Conservation Investment Strategy. The BCT (as delegate for the Minister) will take reasonable steps to enter into a private land conservation agreement with any landholders of land within the AOBV.

Information about private land conservation agreements can be found on the [BCT website](#).

## **3.3 Restricted access to some information**

Access to information about the proposed or declared AOBV may be restricted if the Department is satisfied that it is in the public interest to do so. This means that information such as the location may not be published if publication may pose a threat to the proposed area. A relevant example is the Wollemi Pine AOBV, where maps and other location information have not been published to help prevent unauthorised visits to the area.

## **3.4 Timeframes**

Except for the requirement for public consultation to be a minimum of four weeks, there is no statutory timeframe for assessing a nomination or declaring an AOBV.

The following factors can affect the assessment time for a nomination:

- The nomination is incomplete or contains only anecdotal information and further information is required from the nominator. The nomination may be rejected on this basis.
- Advice is required from experts and researchers.
- Site assessments may be required that may depend on negotiating access or on seasonal conditions to when certain fauna and/or flora are observable.
- The Department has difficulty locating and accessing unpublished information relevant to the assessment.
- There are insufficient data, published information or other evidence with supporting information available to assess the nomination against the criteria.
- Conflicting or complex advice is received as a result of the consultation period.

Where information is readily available it is estimated that the assessment and recommendation process can take a minimum of six to eight months.

# **4. Amending an Area of Outstanding Biodiversity Value**

AOBVs can be amended under s3.5 of the BC Act. Amendments could include recognising additional values in the AOBV or extending the AOBV over an additional area.

The same procedure for declaring an AOBV must be followed to amend an AOBV, including assessment against the scientific criteria, consultation with landholders and relevant authorities, public consultation and seeking advice from the advisory bodies.

If you have a proposal to amend an AOBV, seek advice from the Department in the first instance.

## 5. Revoking an Area of Outstanding Biodiversity Value

All or part of an AOBV can be revoked under s3.5 of the BC Act, but only if the Minister is of the opinion the area (or part of the area) is not eligible to be declared. Examples of situations where a revocation could be considered would be where an area has been damaged to an extent that it no longer meets (and does not have future capacity to meet) the criteria for which it was declared an AOBV.

The same procedure for declaring an AOBV must be followed to revoke an AOBV, including assessment against the scientific criteria, consultation with landholders and relevant authorities, public consultation and seeking advice from the advisory bodies.

If you have a proposal to revoke an AOBV, seek advice from the Department in the first instance.

## 6. Criteria

The criteria below are set out in the BC Regulation.

For definitions of scientific terms in these guidelines, refer to the *Guidelines for interpreting listing criteria for Areas of Outstanding Biodiversity Value* (EES).

### Clause 3.1 Criteria for declaring Area of Outstanding Biodiversity Values

**3.1(1)(a) The area is important at a state, national or global scale**

**3.1(2) An area makes a significant contribution to the persistence of multiple species or at least one threatened species or ecological community if:**

- (a) it provides resilience during periods of environmental stress that is important for their continued existence, or
- (b) it sustains adaptive capacity or evolutionary potential because it contains high levels of unique components of genetic or phenotypic diversity that will enable species to adapt to changing environments or it functions as an important ecological or evolutionary refuge able to sustain viable populations of species at risk due to climate change or other environmental stresses, or
- (c) it supports migration or dispersal of animals and plants, currently or in the future, that will contribute significantly to the persistence of species at risk, or
- (d) it is habitat critical for the survival of a threatened species

**3.1(3) An area makes a significant contribution to the persistence of irreplaceable biological distinctiveness if:**

- (a) it has a very high structural, functional or compositional diversity, or
- (b) it is an essential site for the persistence of evolutionary or ecological distinctive species, endemic species or ecological communities, or
- (c) it is an essential site for the persistence of two or more threatened species or ecological communities in any combination.

**3.1(4) An area makes a significant contribution to the persistence of ecological processes or ecological integrity if:**

- (a) it has ecological integrity, being an area that is:
  - i) an outstanding, relatively intact example of a functioning ecosystem type, or if a fully intact ecosystem does not remain, then the best remaining example of that ecosystem type that contributes to maintaining the persistence of biodiversity and ecological integrity, or
  - ii) the most intact remaining site of a species occurrence that provides habitat requirements vital to the conservation of a species, or
  - iii) the last known remaining site of a species occurrence, or
- (b) it is a primary contributor to the continuation of essential ecological processes, or
- (c) it is an essential site for a significant proportion of the population of a species during one or more key life history stages or processes.

**3.1(5) An area makes a significant contribution to the persistence of outstanding ecological value for education or scientific research if it contains established infrastructure or data related to long-term ecological research monitoring programs that establish an irreplaceable historic baseline, being the best site anywhere in NSW for long-term research on particular species, ecological communities or ecological processes.**

## 7. References

*Biodiversity Conservation Act 2016* (NSW)

*Biodiversity Conservation Regulation 2017* (NSW)

Environment, Energy and Science 2020, *Guidelines for interpreting listing criteria for Areas of Outstanding Biodiversity Value*, NSW Department of Planning, Industry and Environment.

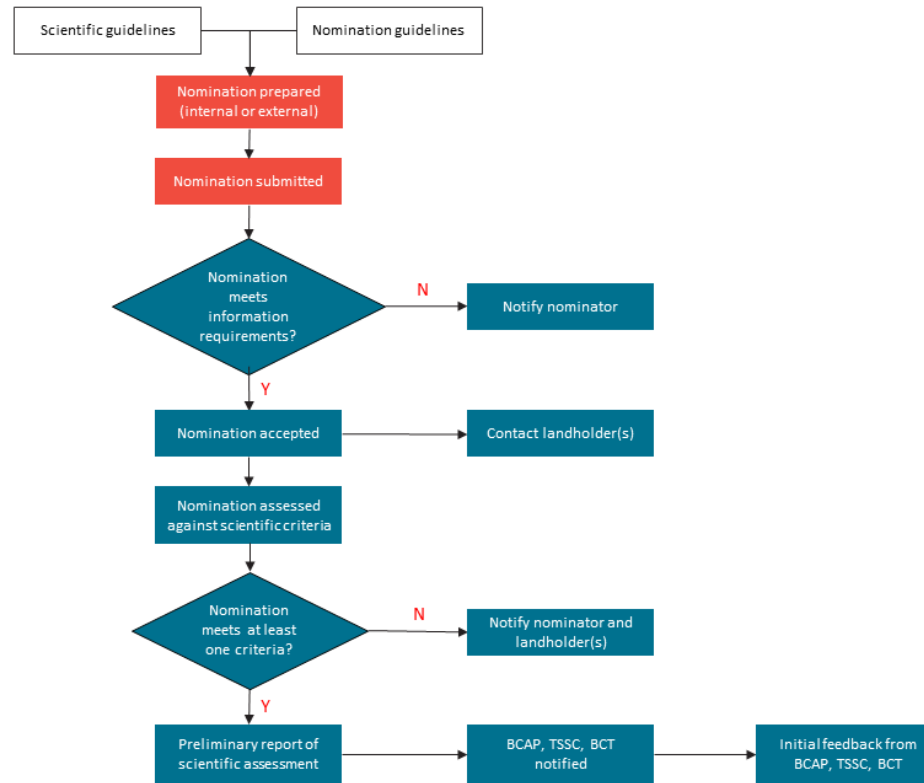
Office of Environment and Heritage 2018, *Biodiversity Conservation Investment Strategy*, Office of Environment and Heritage <https://www.environment.nsw.gov.au/-/media/OEH/Corporate-Site/Documents/Animals-and-plants/Conservation-management-notes/biodiversity-conservation-investment-strategy-2018-180080.pdf>

*Local Land Services Act 2013* (NSW)

# Appendix 1: Area of Outstanding Biodiversity Value process diagram

## 1. Initial stage: nomination

Nominator  
 Department of Planning,  
 Industry and Environment



Terms  
 AOBV - Areas of Outstanding Biodiversity Value  
 BCAP - Biodiversity Conservation Advisory Panel  
 TSSC - NSW Threatened Species Scientific Committee  
 BCT - Biodiversity Conservation Trust

Figure 1 AOBV process design: Initial stage: Nomination

## 2. Intermediate stage: Engagement

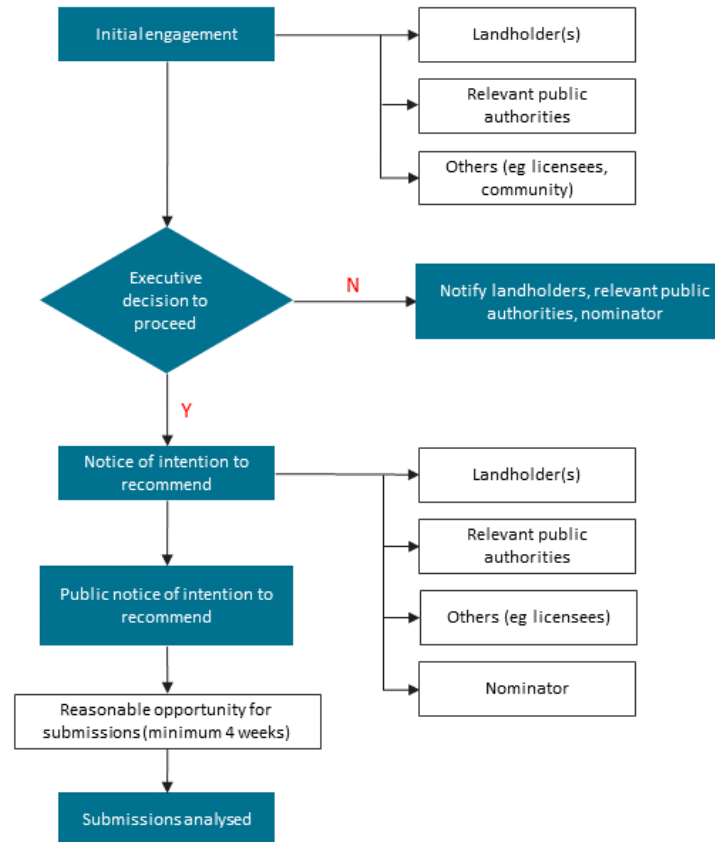


Figure 2 AOBV process design: Intermediate stage: Engagement

### 3. Final stage: Declaration

Environmental Agency Head  
 Department of Planning, Industry and Environment  
 Minister for Energy and Environment  
 BCT

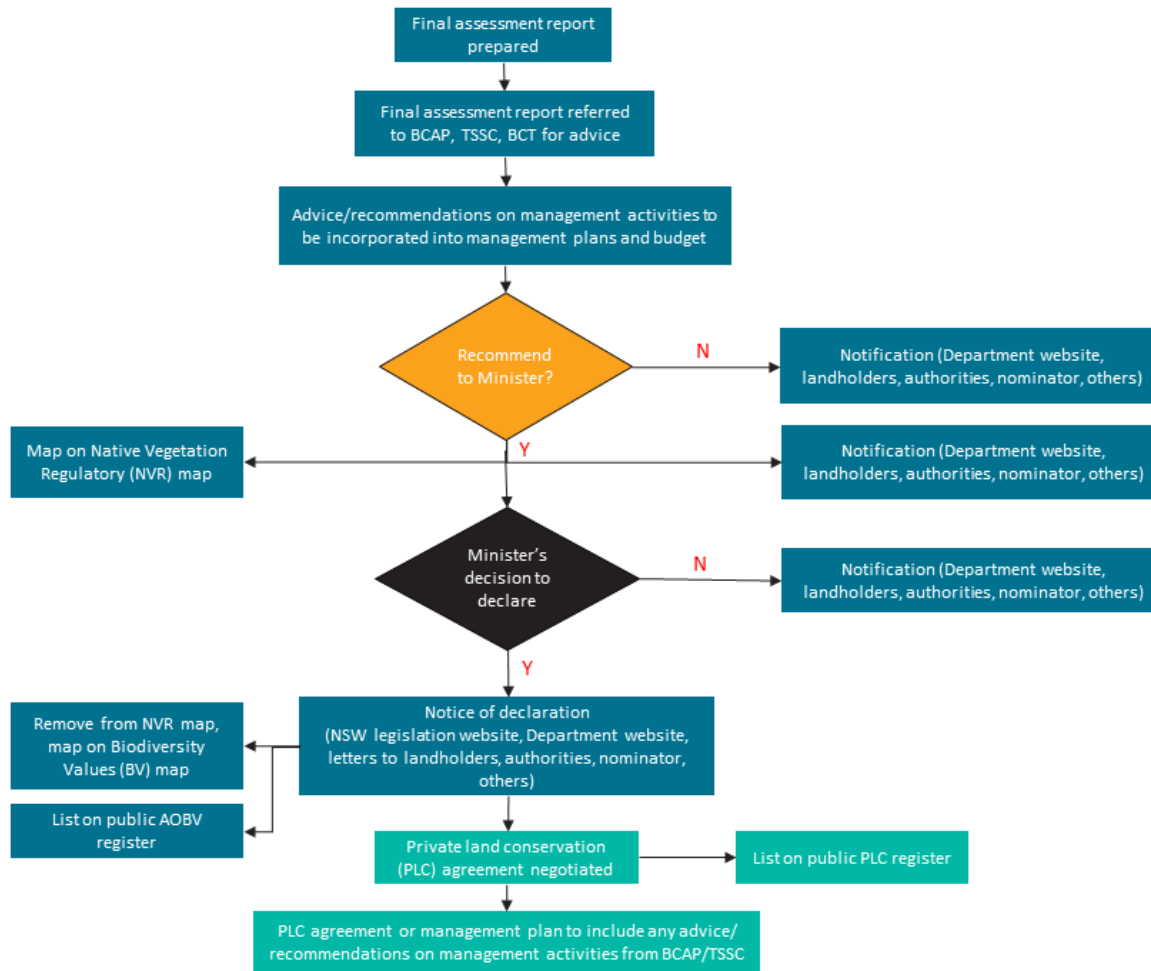


Figure 3 AOBV process design: Final stage: Declaration