



Department of Planning and Environment

# Local Government Resource Manual

NSW Biodiversity Offsets Scheme



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# Document overview

NSW local governments (LGs) have responsibilities under the *Environmental Planning and Assessment Act 1979* (NSW) (EP&A Act), the *Biodiversity Conservation Act 2016* (NSW) (BC Act) and associated regulations and guidelines to assess and manage biodiversity impacts, generally in relation to development and vegetation clearing proposals.

The *NSW Biodiversity Offsets Scheme Local Government Resource Manual* (LG Resource Manual) has been prepared to assist LG officers interacting with the NSW Biodiversity Offsets Scheme (BOS) and the BC Act. The LG Resource Manual is primarily designed for LG officers responsible for reviewing and assessing development and vegetation clearing proposals and is intended to:

- orient staff to find information, tools and other support resources available
- explain roles and responsibilities in relation to reviewing proposals for development and vegetation clearing.

Other aspects of the BC Act, such as opportunities for biodiversity stewardship sites, are also introduced in this document.

Refer to section 9. More Information for all links to resources mentioned in this document.

## Currency of information

Information provided in the LG Resource Manual is current as at the date of publication. The information provided may not reflect subsequent legislative, policy or procedural changes. LG officers should refer to communications from the Department of Planning and Environment (DPE) and the department's website for the most recent information.

## Shortened forms

AOBV	Area of outstanding biodiversity value
BAM	Biodiversity Assessment Method
BAM-C	Biodiversity Assessment Method Calculator
BC Act	<i>Biodiversity Conservation Act 2016</i>
BC Reg	Biodiversity Conservation Regulation 2017
BC (S&T) Reg	Biodiversity Conservation (Savings and Transitional) Regulation 2017
BCAR	Biodiversity Certification Assessment Report
BCD	Biodiversity Conservation Division within Department of Planning and Environment
BCF	Biodiversity Conservation Fund
BCT	Biodiversity Conservation Trust
BDAR	Biodiversity Development Assessment Report
BMAT tool	Biodiversity Values Map and Threshold Tool
BOAMS	Biodiversity Offsets and Agreement Management System
BOPC	Biodiversity Offsets Payment Calculator
BOS	Biodiversity Offsets Scheme
BSA	Biodiversity stewardship agreement
BSSAR	Biodiversity Stewardship Site Assessment Report
DPE	Department of Planning and Environment
EES	Environment, Energy and Science Group within DPE
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Reg	Environmental Planning and Assessment Regulation 2000
LGA	Local government area
LLS Act	<i>Local Land Services Act 2013</i>
LLS	Local Land Services
MNES	Matters of national environmental significance
Native Vegetation Code	Land Management (Native Vegetation) Code 2018
PCT	Plant community type
RAMA	Routine agricultural management activity
SAII	Serious and irreversible impact
SEPP	State Environmental Planning Policy
SSD	State Significant Development
SSI	State Significant Infrastructure
TEC	Threatened ecological community
Vegetation SEPP	<i>State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017</i>



# 1. Overview of the NSW Biodiversity Offsets Scheme

## 1.1 Introduction

The NSW Biodiversity Offsets Scheme (BOS) is the legislative framework to avoid, minimise and offset impacts on biodiversity from development or vegetation clearing. Unavoidable residual impacts are offset with biodiversity gains secured through landholder stewardship agreements.

The BOS can apply to the following proposals:

- Part 4 developments under the EP&A Act
- major projects under the EP&A Act
- Part 5 activities under the EP&A Act when the BOS is opted into
- native vegetation clearing
- biodiversity certification
- biodiversity stewardship.

The BOS automatically applies to major projects and will generally apply to other proposals where the development or vegetation clearing either:

- is carried out in a declared area of outstanding biodiversity value (AOBV)
- involves clearing of native vegetation or a prescribed impact on land included in the Biodiversity Values Map
- involves clearing of native vegetation that exceeds the relevant area threshold
- is likely to significantly affect threatened species, ecological communities or their habitats according to the threatened species test of significance.

More information about when the BOS applies is provided in Section 3 of the LG Resource Manual and also the NSW Biodiversity Offsets Scheme and Land Management Framework Biodiversity Assessment and Approval Pathways flow chart (provided in Appendix C).

When the BOS applies to a development or vegetation clearing proposal, the biodiversity impacts are assessed using the Biodiversity Assessment Method (BAM) and expressed in biodiversity credits. The BAM is a transparent, consistent and scientific method for assessing impacts on biodiversity values and calculating credits.

The BAM is also used to assess improvements in biodiversity values from management actions undertaken on parcels of land that will be protected for future generations. These parcels of land are called biodiversity stewardship sites. The predicted improvement in biodiversity values on a biodiversity stewardship site is also expressed in biodiversity credits. Credits generated on biodiversity stewardship sites can be bought and retired to offset biodiversity impacts on land that is to be developed or cleared, and can generate income for the landholder.

As part of the broader biodiversity management framework in the BC Act, the Biodiversity Conservation Trust (BCT) was established to protect and enhance biodiversity. As part of its role, the BCT supports landholders (including councils) to manage and protect biodiversity, such as through the establishment of biodiversity stewardship sites.

## 1.1 Avoid, minimise, offset

If the BOS applies to a proposal, the avoid, minimise and offset hierarchy requires biodiversity impacts to first be avoided. It is a legal requirement of the BC Act to apply this hierarchy to proposals that may impact biodiversity values (see, for example, sections 7.13(3) and (6) of the BC Act and Section 7 of the BAM).

Biodiversity conservation measures, such as the retirement of biodiversity credits, are used to offset residual impacts on biodiversity values that remain after actions to avoid or minimise those impacts are taken.

It is important to communicate to proponents that inadequate consideration of avoiding and minimising biodiversity impacts can risk the assessment and approval of a proposal for development or vegetation clearing. Considering this early in project planning can minimise this risk as well as providing more opportunity to reduce impacts on biodiversity and associated development costs. In some cases, a proposal may not be captured under the BOS if avoid and minimise measures are implemented to reduce impacts.

## 1.2 Biodiversity Assessment Method

When entry into the BOS applies, the BAM provides a consistent scientific method to assess impacts on biodiversity values including impacts to native vegetation, threatened species and their habitats. Specifically, the BAM is used to:

- identify terrestrial biodiversity values
- determine and assess the impacts on biodiversity values
- assess any additional (prescribed) biodiversity impacts
- demonstrate how to avoid, minimise and/or mitigate biodiversity impacts
- provide the number and class of biodiversity credits needed to offset the residual impacts on biodiversity
- provide the number and class of biodiversity credits that can be created at a biodiversity stewardship site.

The BAM has 3 stages, several appendices and a glossary.

## 1.3 Accredited assessors

The BC Act establishes a scheme for accreditation of people who apply the BAM. They are called 'assessors'. A list of assessors is available on the Accredited Assessor Public Register.

Detailed information about accreditation is available from the department's website. To be eligible for BAM accreditation, a person must:

- be 'fit and proper', in accordance with the criteria in the Accreditation Order
- have knowledge, skills and experience (such as academic qualifications and/or relevant work experience) that are appropriate to the functions of an assessor
- have successfully completed BAM assessor training.

Assessors are required to adopt and comply with a code of conduct. The code of conduct includes a commitment to operating with integrity and within professional standards. Complaints about assessors can be lodged using the Accredited Assessors Complaint and Feedback Form.

## 1.4 LG's role in the BOS

The BOS is a whole-of-NSW Government scheme and several government agencies have responsibility for its implementation. The table below highlights roles of LG in the BOS that can include decision-maker, landholder and developer depending on the relevant proposal. Appendix A provides information about the roles of other government agencies. Section 4 of the LG Resource Manual outlines how to direct an enquiry about the BOS to the responsible agency/team.

**Table 1 Roles of LG in the BOS**

Role	Who is responsible	What they do
Decision-maker	<b>Local councils</b> , Minister for Planning and Department of Planning and Environment and <b>Part 5 authorities</b> , Native Vegetation Panel	<ul style="list-style-type: none"> <li>• Determine development applications and set offset obligations</li> <li>• Compliance with conditions of consent</li> <li>• Decide whether to opt into the BOS for Part 5 activities</li> </ul>
Landholder – stewardship	Private landholders, <b>local councils</b> and other public authorities	<ul style="list-style-type: none"> <li>• Generate credits by managing land under a biodiversity stewardship agreement (BSA)</li> </ul>
Landholder – developer	Private landholders, <b>local councils</b> and other public authorities	<ul style="list-style-type: none"> <li>• Undertake development or vegetation clearing that may require offsets</li> <li>• Avoid, minimise and offset the biodiversity impacts of development and vegetation clearing (if opted into the BOS for Part 5 activities)</li> </ul>

## 2. Legislative framework

### 2.1 Overview of pathways

There are multiple pathways into the BOS (Figure 1) and interactions between various pieces of legislation. These are summarised in the sections below.

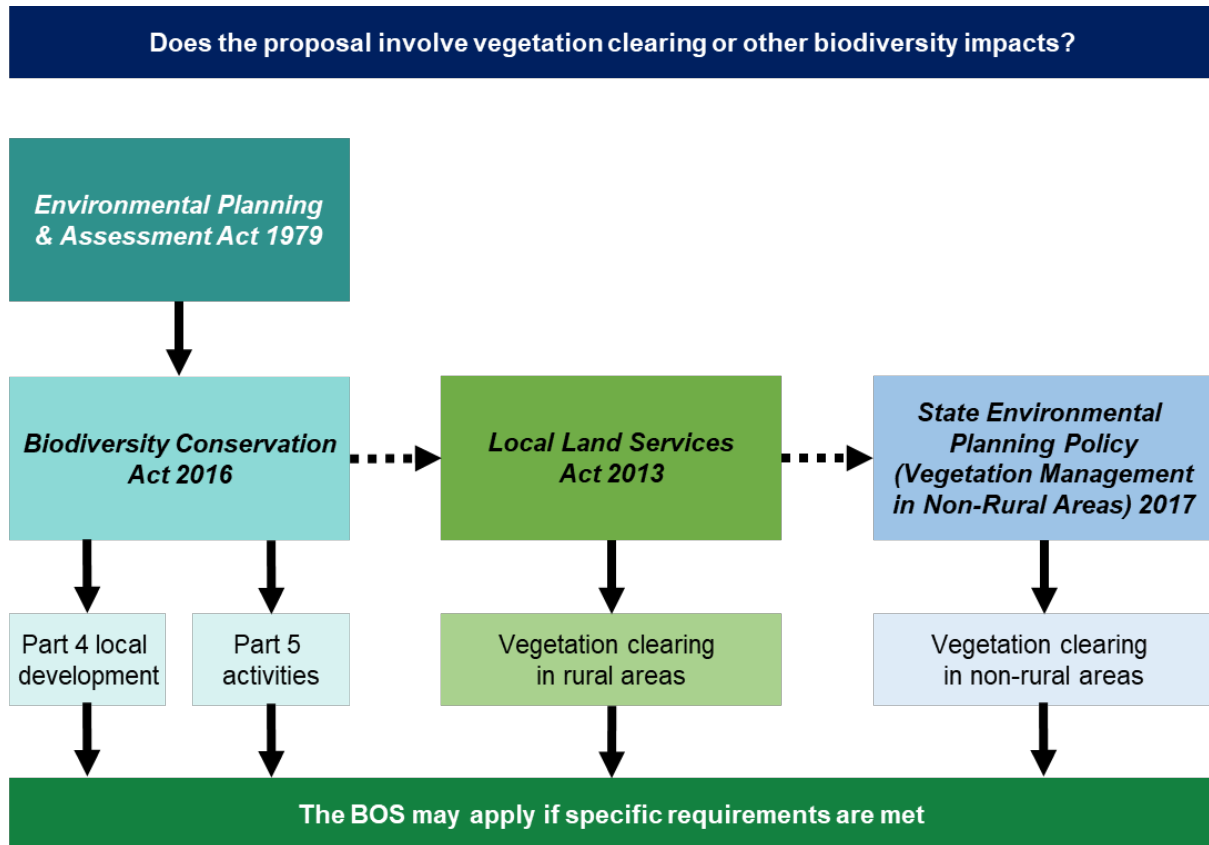


Figure 1 Overview of pathways into the Biodiversity Offsets Scheme

### 2.2 Environmental Planning and Assessment Act 1979

The EP&A Act sets out the laws under which planning in New South Wales (NSW) takes place. The main parts of the EP&A Act that relate to development assessment and approval are Part 4 and Part 5. The requirements for biodiversity assessment and approval established by the BC Act apply to these Parts of the EP&A Act.

Part 4 of the EP&A Act establishes provisions relating to development assessment for development that requires consent, modifications, and State Significant Development (SSD).

Part 5 of the EP&A Act establishes provisions relating to environmental impact assessment for development that does not require consent (such as public authority infrastructure work defined in the Infrastructure SEPP), and State Significant Infrastructure (SSI).

Development requiring consent from a local council is sometimes referred to as **local development**. SSD and SSI are often collectively referred to as **major projects**.

The Biodiversity Assessment and Approval Pathways flowchart in Appendix C summarises when the BOS applies to:

- development that requires consent from a local council under Part 4 EP&A Act
- activities assessed by a local council under Part 5 EP&A Act
- vegetation clearing regulated by the *Local Land Services Act 2013* (LLS Act) and *State Environmental Planning Policy (Vegetation in non-rural areas) 2017* (Vegetation SEPP).

## 2.3 Biodiversity Conservation Act 2016

The BC Act establishes the NSW BOS and provides for the BAM in connection with the BOS.

The BOS delivers a transparent, consistent and scientifically-based approach to biodiversity assessment and offsetting. It also emphasises the importance of the avoid, minimise and offset hierarchy, and recognises there are some types of impacts that are not acceptable.

The BC Act is supported by the Biodiversity Conservation Regulation 2017 (BC Reg) and the Biodiversity Conservation (Savings and Transitional) Regulation 2017 (BC (S&T) Reg).

## 2.4 Part 5A Local Land Services Act 2013

Part 5A Land management (native vegetation) of the LLS Act applies to management of native vegetation **outside of the Sydney metropolitan area** (defined by the Vegetation SEPP clause 5(1)(a)) **and Newcastle local government area** (LGA). This **rural land** is within the RU1, RU2, RU3, RU4, RU6 zones and Deferred Matter areas.

Part 5A LLS Act is supported by the Local Land Services Regulation 2014 and Land Management (Native Vegetation) Code 2018 (Native Vegetation Code).

The BOS applies to vegetation clearing on rural land (that is not associated with development requiring consent) where clearing on Category 2 – regulated land is not an allowable activity or authorised under the Native Vegetation Code. This clearing requires approval by the Native Vegetation Panel. See the Biodiversity Assessment and Approval Pathways in Appendix C for details. Note that LG officers are generally not required to know the details of the LLS Act pathway. LLS can provide advice.

## 2.5 State Environmental Planning Policy (Vegetation in non-rural areas) 2017

The Vegetation SEPP works together with the BC Act and Part 5A of the LLS Act to create a framework for the regulation of clearing of native vegetation in New South Wales.

The Vegetation SEPP applies to clearing of vegetation that:

1. is not authorised under other legislation (e.g. does not require development consent)
2. does not meet the exemptions in clause 8 of the Vegetation SEPP
3. is in the Sydney metropolitan area, Newcastle LGA, or any other land in New South Wales in non-rural areas. The Sydney metropolitan area is defined by the Vegetation SEPP clause 5(1)(a) and non-rural areas are defined by clause 5(1)(b). Non-rural areas include land zoned RU5, R1–R5, B1–B8, IN1–IN4, SP1–SP3, RE1, RE2, W3, E2, E3 and E4.

The BOS applies to clearing of native vegetation that exceeds the BOS threshold (areas mapped on the Biodiversity Values Map, AOBVs and the area clearing threshold) and

authority is required under Part 4 of the Vegetation SEPP. The proposed clearing requires approval by the Native Vegetation Panel.

It should be noted that for the purpose of determining whether the BOS applies to vegetation clearing proposals under the Vegetation SEPP, the test of significance referenced in Section 1.1 and Section 3 does not apply.

Under the Vegetation SEPP, councils can regulate the clearing of vegetation (native or non-native) that is below the BOS threshold. The proposed clearing requires authority under Part 3 of the Vegetation SEPP. If the vegetation is declared in council's Development Control Plan to require a permit under Part 3 of the Vegetation SEPP, the proposed clearing requires a permit from council.

See the Biodiversity Assessment and Approval Pathways in Appendix C for details. Managing vegetation with a Development Control Plan provides guidance for local government. Further information and FAQs are available on the Vegetation SEPP webpage.

## 2.6 Assessment and offsetting under other legislation

Biodiversity impacts may need to be considered under other legislation, in addition to the BC Act. Some examples of other legislation that may apply include:

- State Environmental Planning Policy (Coastal Management) 2018 (Coastal Management SEPP)
- *Fisheries Management Act 1994* (FM Act)
- *Water Management Act 2000*.

Impacts to matters of national environmental significance (MNES), such as nationally listed ecological communities and threatened species, are also protected under the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act). These same entities may also be protected under the BC Act. To achieve streamlining benefits for all NSW proponents that use the BOS and need approval under the EPBC Act, the Australian Government has endorsed the BOS under its EPBC Act Condition-setting Policy. Whilst impacts to MNES can be assessed under the BOS, they still need to be referred to the Commonwealth for approval.

Further guidance is available in BAM Assessor Update no. 35, the BOS support webinar Implications of the Commonwealth's endorsement of the BOS, and in Appendix D.

## 3. Determining whether the BOS applies

### 3.1 Overview

Application of the BOS is required where a proposal for development, vegetation clearing or other activity is likely to significantly affect threatened species, ecological communities or their habitats.

The BC Act and BC Reg provide criteria that flag whether a proposal is likely to significantly affect threatened species, ecological communities or their habitats, which are that it either:

- is carried out in a declared area of outstanding biodiversity value (AOBV)
- involves clearing of native vegetation or a prescribed impact on land included in the Biodiversity Values Map
- involves clearing of native vegetation that exceeds the area threshold
- is likely to significantly affect threatened species, ecological communities or their habitats according to the test of significance.

The criteria listed above that apply to a proposal will differ depending on the planning or approval pathway that applies.

General guidance on when the BOS applies is available on the [When does the Biodiversity Offsets Scheme apply?](#) webpage. Guidance for local government on applying the Biodiversity Offset Scheme threshold is another useful reference. Specific guidance is available on how the BOS applies to subdivisions and development of subdivided lots (PDF 199KB). The BC Act and Part 7 BC (S&T) Reg set out how the BOS applies to modification applications.

Whether a proposal meets the relevant entry requirements will depend on its location, nature and scale.

There may be exemptions or other considerations when determining whether the BOS applies to a proposal (see Section 3.6).

Proponents must supply evidence relating to the BOS threshold and the test of significance (where relevant) when submitting their application to the decision-maker.

### 3.2 Exempt and complying development

Exempt development refers to minor works that can be undertaken without requiring a development application or Part 5 assessment under the EP&A Act.

The BOS does not apply to exempt development, as generally it does not result in significant impacts to biodiversity values. If a permit is required for tree/vegetation removal or pruning, the proposal may not constitute exempt development.

Complying development is a combined planning and construction approval for straightforward development that can be determined through a fast-track assessment by an LG or private certifier.

On non-rural land, if vegetation clearing needed to carry out complying development will be above the BOS threshold then the BOS applies. Impacts from complying development will generally be below the area component of the BOS threshold but would enter the BOS if impacting on an area identified on the Biodiversity Values Map.

If the BOS applies, the proponent must engage an assessor to prepare a Biodiversity Development Assessment Report (BDAR), and seek approval from the Native Vegetation Panel. This approval is needed before a complying development certificate can be issued.

### 3.3 Part 4 developments – LG must consider whether the BOS applies

When assessing a proposal that requires development consent under Part 4 of the EP&A Act, the Biodiversity Assessment and Approval Pathways (Appendix C) **should be applied by LG officers** to determine whether the BOS applies. The key considerations are summarised in Table 2.

**Table 2 Key considerations for LG officers when assessing whether the BOS applies to Part 4 developments**

Consideration	Comments and more information
Does the proposal involve vegetation clearing or other biodiversity impacts?	<ul style="list-style-type: none"> <li>Consider section 6.3 of the BC Act and native vegetation definitions in the LLS Act (sections 60B and 60C)</li> </ul>
Do any exemptions apply?	<ul style="list-style-type: none"> <li>Examples include clause 34A certification (BC (S&amp;T) Reg) and section 7.3(4) subdivision exemption (BC Reg)</li> </ul>
Is there native vegetation clearing/a prescribed impact on land mapped on the Biodiversity Values Map?	<ul style="list-style-type: none"> <li>The Biodiversity Values Map is available online to review</li> <li>The Biodiversity Values Map and Threshold Tool (BMAT tool) can be used to assist with determining whether the Biodiversity Values Map applies. See Section 7.2 of the LG Resource Manual for more information</li> </ul>
Does the clearing of native vegetation exceed the area threshold?	<ul style="list-style-type: none"> <li>The area thresholds are available online</li> </ul>
Is it likely to significantly affect threatened species or ecological communities or their habitats, according to the test of significance?	<ul style="list-style-type: none"> <li>The Threatened Species Test of Significance Guidelines are available online to apply</li> <li>The test of significance also applies to category 1-exempt land (see Subsection 3.6.6)</li> </ul>

The area of native vegetation clearing must be based on the **total footprint** of the proposed development. This includes all buildings and ancillary use such as asset protection zones, landscaping, fence lines, driveways, services and temporary works and facilities.

See Subsection 3.6.6 for category 1-exempt land considerations.

### 3.4 Part 5 activities – LG must consider whether the proposal is likely to significantly affect threatened species

When assessing activities undertaken by LG authorities under Part 5 of the EP&A Act, the Biodiversity Assessment and Approval Pathways (Appendix C) **should be applied by LG officers** to determine whether the BOS applies. The key considerations are summarised in Table 3.



**Table 3 Key considerations for LG officers when assessing whether the BOS applies to Part 5 activities**

Consideration	Comments and more information
Does the proposal involve vegetation clearing or other biodiversity impacts?	<ul style="list-style-type: none"> <li>Consider section 6.3 of the BC Act and native vegetation definitions in the LLS Act (sections 60B and 60C)</li> </ul>
Will the activity be carried out in a declared area of outstanding biodiversity value (AOBV)?	<ul style="list-style-type: none"> <li>AOBVs are included on the Biodiversity Values Map and listed on the Area of Outstanding Biodiversity Value register</li> </ul>
Is it likely to significantly affect threatened species or ecological communities or their habitats, according to the threatened species test of significance?	<ul style="list-style-type: none"> <li>The Threatened Species Test of Significance Guidelines are available online to apply</li> <li>The test of significance also applies to category 1-exempt land (see Subsection 3.6.6)</li> </ul>

If an activity is likely to significantly affect threatened species or is carried out in an AOBV, the proponent (i.e. council) may choose to 'opt in' to the BOS. A BDAR must then be prepared (in the same way a BDAR would be prepared for a Part 4 development where the BOS applies). If the proponent chooses not to opt into the BOS, a species impact statement must be prepared and the proposed activity requires department concurrence.

If a proposed activity is not carried out in an AOBV and is not likely to significantly affect threatened species, council must continue to assess the activity in accordance with the EP&A Act.

### 3.5 Other types of vegetation clearing should be considered by LG

In addition to Part 4 developments and Part 5 activities, LG officers may also need to assess other types of vegetation clearing. The Biodiversity Assessment and Approval Pathways (Appendix C) **should be applied by LG officers** to determine how this clearing should be assessed. The key considerations are summarised in Table 4.

**Table 4 Key considerations for LG officers when assessing other types of vegetation clearing (where development consent is not required)**

Consideration	Comments and more information
Does the proposal involve vegetation clearing or other biodiversity impacts?	<ul style="list-style-type: none"> <li>Consider section 6.3 of the BC Act and native vegetation definitions in the LLS Act (sections 60B and 60C)</li> </ul>
Is the proposed clearing located in a rural zone (except R5 and RU5) or a Deferred Matter Area outside the Sydney metropolitan area and Newcastle LGA?	<ul style="list-style-type: none"> <li>The land zoning can be identified on the NSW Planning Portal by selecting 'Find a property', entering search details and selecting 'Land Zoning' in the search results</li> <li>Sydney metropolitan area is defined by the Vegetation SEPP clause 5(1)(a)</li> <li>If located on rural land, the LLS Act may apply. Contact LLS for further advice</li> </ul>
Is the proposed clearing located within a non-rural zone (including R5 and RU5) or within the Sydney metropolitan area or Newcastle LGA?	<ul style="list-style-type: none"> <li>Non-rural zones include RU5, R1–R5, B1–B8, IN1–IN4, SP1–SP3, RE1, RE2, W3, E2, E3 and E4</li> <li>If yes, and the clearing is not authorised under other legislation, the Vegetation SEPP may apply</li> <li>The Vegetation SEPP does not apply to category 1-exempt land</li> </ul>

Consideration	Comments and more information
Does the proposed clearing exceed the BOS threshold (Biodiversity Values Map or area clearing threshold)?	<ul style="list-style-type: none"> <li>• See Section 7.2 of the LG Resource Manual for more information on the BMAT tool</li> <li>• The clearing may require approval from the Native Vegetation Panel</li> </ul>
If the proposed clearing is below the BOS threshold, is the vegetation declared in council's Development Control Plan to require a permit under Part 3 of the Vegetation SEPP?	<ul style="list-style-type: none"> <li>• A permit from council may be required for the proposed clearing</li> </ul>
If none of the above apply, a biodiversity conservation licence may be required to manage harm to threatened species.	<ul style="list-style-type: none"> <li>• More information about biodiversity conservation licences is available online</li> </ul>

## 3.6 Potential exemptions for LG to consider

### 3.6.1 Reviews of the Biodiversity Values Map

Landowners and councils can query the Biodiversity Values Map online to find out why the area is mapped, e.g. riparian land, old growth, rainforest or threatened species or communities with potential for serious and irreversible impacts.

Should landowners (or their nominated agents) or council wish to find out further information about a mapped value – they can apply to the Map Review Team for a free explanation report for more detail. An explanation report provides detailed information about the different data layers, including maps and the basis for categorisation or inclusion on the Biodiversity Values Map.

In some instances, landowners are being advised by councils to seek a review of the Biodiversity Values Map on their property to avoid proposals entering the BOS. Such a review is not always required, as there are other powers LG can use to determine if the Biodiversity Values Map does or does not apply to a proposal (see next section).

In other cases, a review of the Biodiversity Values Map should only be considered if there are genuine errors in the map (i.e. the area is now a parking lot and still on the map), or there is evidence available to suggest the mapped value is not present on the site (i.e. an ecological report confirms that habitat for the mapped species is not present).

In these circumstance, landowners or their nominated agents can apply for a map review of the Biodiversity Values Map and in submitting their application will need to provide evidence to support their review. More information is available on the Biodiversity Values Map review webpage.

### 3.6.2 90-day exemption for the Biodiversity Values Map

A proposal occurring on land added to the Biodiversity Values Map in the last 90 days, that involves clearing of native vegetation or a prescribed impact, does not exceed the BOS threshold if it is the subject of an application for planning approval:

- when the land was included on the map
- within 90 days after the land was included on the map.

Clause 7.3(5) BC Reg establishes the 90-day exemption. Further information is available online (navigate to 'Areas added to the BV Map').

### 3.6.3 Subdivision exemption

In some circumstances the Biodiversity Values Map will not apply to a proposal carried out on a lot that was from an approved subdivision carried out before 25 August 2017. Clause 7.3(4) BC Reg establishes the subdivision exemption.

This provision applies where subdivision approval has been granted on land zoned R1 to R4, RU5, B1 to B8 or IN1 to IN3 and the purpose of the approved subdivision has not yet been realised.

The BOS may still apply to the proposal if it is likely to significantly affect threatened species in another way, such as by applying the area threshold or the test of significance. More information is available on the Biodiversity Values Map webpage.

### 3.6.4 Bushfire rebuild exemption

The NSW Government has provided an exemption from the BOS to assist communities rebuild from the 2019–20 bushfire season. The exemption applies to buildings or structures that were damaged or destroyed by bushfires between 5 August 2019 and 2 March 2020.

The Bushfires Legislation Amendment Bill 2020 was passed by Parliament on 19 November 2020. The object of this Bill is to amend the *Rural Fires Act 1997* and other legislation in response to the final report of the NSW Bushfire Inquiry dated 31 July 2020.

The exemption applies only to assessment and offsetting under the BOS. The exemption means that people rebuilding property lost in the 2019–20 bushfires will not need to assess the impact of the rebuild on biodiversity, and any biodiversity impacts will not need to be offset.

The exemption is available to proposals submitted within 2 years of the assent of the Bushfires Legislation Amendment Bill 2020 on 25 November 2020.

LG retains the power and responsibility to ensure all proposals meet relevant safety, environmental and other requirements under section 4.15 EP&A Act. This may include the consideration of biodiversity, threatened species, or other environmental impacts of a proposal including water quality, slope stabilisation or other local issues. More information is available on the Bushfire rebuild exemption webpage.

### 3.6.5 Clause 34A certification

Transitional arrangements are provided by clause 34A BC (S&T) Reg to recognise past offsetting agreements in the transitional arrangements for Part 7 of the BC Act. Clause 34A certification is the only planning-related transitional arrangement that remains in effect.

Clause 34A certification may apply where:

- the biodiversity impacts of the proposed development were satisfactorily assessed before the commencement of the Act as part of a:
  - relevant planning arrangement (clause 34A (4))
  - concept plan approval (clause 34A (3))
- the conservation measures have been secured into the future (by a planning agreement, a land reservation or otherwise) to offset the residual impact of the proposed development on biodiversity values after the measures required to be taken to avoid or minimise those impacts.

The BOS does not apply to proposed developments certified under clause 34A. The test of significance, or 'seven-part test', outlined in the **now repealed** section 5A EP&A Act and guidelines prepared for the section 5A EP&A Act test of significance will apply. If it is determined there is likely to be a significant impact, a species impact statement will be required. Non-biodiversity impacts will be assessed under section 4.15 EP&A Act.

There are 2 certification pathways:

1. Part 3A concept plan approvals – applications for clause 34A certification are assessed by Planning and Assessment Group
2. Other planning arrangements – applications for clause 34A certification are assessed by the department.

Councils are informed of developments that are certified under clause 34A.

### 3.6.6 Category 1-exempt land

Category 1-exempt land is defined under section 60H of the LLS Act. Transitional arrangements are in place until a comprehensive Native Vegetation Regulatory Map with all the land categories established under the LLS Act is published. During the 'transitional period', landholders are responsible for determining the categorisation of their land.

It is recommended that landholders (or their nominated agents) consult with LLS and the relevant Biodiversity Conservation Division (BCD) regional planning team when approximating categorisation. This should be done as early as possible prior to submission of a development or vegetation clearing application.

In determining whether a proposal exceeds the BOS threshold, any part of the proposal that involves clearing of native vegetation on category 1-exempt land is to be disregarded (section 7.4(2) BC Act); that is, excluded from the total area of clearing. However, the test of significance still applies to category 1-exempt land.

For development proposals and Part 5 activities where the BOS applies, clearing of native vegetation and loss of habitat on category 1-exempt land does not require assessment under the BAM; however, prescribed impacts must be assessed.

Non-rural land regulated by the Vegetation SEPP (see Section 2.5) is excluded land on the transitional Native Vegetation Regulatory Map (navigate to 'What's new on the map?', 'Understanding the map categories and colours' and 'Excluded lands').

### 3.6.7 Clause 8 Vegetation SEPP exemptions

An authority to clear vegetation is not required under the Vegetation SEPP if:

- the clearing is authorised under other legislation (e.g. development consent under the EP&A Act)
- the decision-maker is satisfied that the vegetation is dying or dead and is not required as habitat of native animals
- council is satisfied that the vegetation is a risk to human life or property.

See clause 8 of the Vegetation SEPP and the Biodiversity Assessment and Approval Pathways (Appendix C) for details. Bulletin 11 – Councils as decision maker on dead or dying trees is another useful resource on the Local government and other decision maker support webpage.

### 3.6.8 Clause 27 Vegetation SEPP transitional provisions

The Vegetation SEPP was amended on 17 September 2021 to replace the transitional clause 27 with a permanent framework for land clearing associated with routine agricultural activities. It commenced on 18 December 2021. More information is available on the Vegetation SEPP webpage.

Previously, clause 27 defined transitional provisions that allowed clearing of native vegetation for routine agricultural management activities (RAMAs) on some land without

authority under the Vegetation SEPP. The transitional provisions only applied when specific requirements were satisfied and only to clearing within R5, E2, E3 and E4 zones in approximately half of NSW's regional LGAs. Bulletin No. 14 on the Local government and other decision maker support webpage provides historical details.

Even though clearing allowed under clause 27 did not require a permit or approval under the Vegetation SEPP, it still required a biodiversity conservation licence or other defence under the BC Act if the clearing would impact on a threatened species, threatened ecological community (TEC), habitat of a threatened species or ecological community, or a protected plant.

## 4. Roles and responsibilities

The table below identifies common topics or issues related to the BOS and the government department responsible for them. This will help you direct any enquiries to the correct agency/team. Agency contact details are provided in Appendix A.

**Table 5 Common issues related to the BOS and the government department responsible for them**

Responsibility	Topic/issue
LG	<ul style="list-style-type: none"> <li>Vegetation clearing or other biodiversity impacts associated with development that requires consent under Part 4 of the EP&amp;A Act</li> <li>Vegetation clearing or other biodiversity impacts associated with an LG authority activity that requires environmental assessment under Part 5 of the EP&amp;A Act</li> <li>Vegetation clearing on non-rural land when below the BOS threshold, not authorised under other legislation, and the vegetation is declared in council's Development Control Plan to require a permit</li> <li>Breaches of the Vegetation SEPP (Refer to Bulletin No. 10 – Compliance and State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017)</li> </ul>
Native Vegetation Panel	<ul style="list-style-type: none"> <li>Proposed vegetation clearing on non-rural land that exceeds the BOS threshold and is not authorised under other legislation</li> <li>Proposed vegetation clearing on rural land (excluding Sydney metropolitan areas and Newcastle LGA) when development consent is not required and the BOS applies (LLS can advise)</li> </ul>
LLS regional office	<ul style="list-style-type: none"> <li>Proposed vegetation clearing on rural land (excluding Sydney metropolitan areas and Newcastle LGA) when development consent is not required</li> </ul>
Department of Primary Industries (DPI) Fisheries	<ul style="list-style-type: none"> <li>Fish, marine vegetation, aquatic impact assessment – key fish habitat, freshwater aquatic vegetation, fisheries permit, FM Act listed species</li> </ul>
Biodiversity Conservation Trust (BCT)	<ul style="list-style-type: none"> <li>BSAs and private land conservation</li> <li>Biodiversity Conservation Fund (BCF) – payment to discharge credit obligation</li> <li>Biodiversity Stewardship Payment Fund/Total Fund Deposit</li> </ul>
Department of Planning and Environment (DPE), Environment, Biodiversity Conservation Division (BCD)	<ul style="list-style-type: none"> <li>BAM accreditation</li> <li>Biodiversity credit market including applications for credit transfer, retirements, maintain public registers</li> <li>BAM support – general and systems (including BMAT tool, BOAMS, BAM-C, BAAS (see Section 7))</li> <li>Major projects</li> <li>Biodiversity certification</li> <li>Concurrence requests for discounting and the referral of planning matters</li> <li>Transitional issues including reasonable equivalence, clause 34A applications</li> </ul>
DPE, Environment Line (complaints)	<ul style="list-style-type: none"> <li>Complaints about vegetation clearing that is not associated with a planning approval and has not occurred on land to which the Vegetation SEPP applies</li> <li>Offences under the BC Act, e.g. unauthorised harm to an animal or picking a plant that is a threatened species or part of a TEC; or damage to a declared AOBV or habitat of a threatened species or ecological community</li> </ul>

Responsibility	Topic/issue
DPE, Science Economics Insights	<ul style="list-style-type: none"> <li>Biodiversity credit markets – Spot Price Index, Biodiversity Offsets Payment Calculator (BOPC)</li> </ul>
DPE, relevant regional planning team	<ul style="list-style-type: none"> <li>Biodiversity conservation licences – provide a defence to the offences in the BC Act for any action not associated with an approved development or activity that will result in: harm to an animal or picking a plant that is a threatened species or part of a TEC; or damage to a declared AOBV or habitat of a threatened species or ecological community</li> <li>Regional planning information and support</li> </ul>

## 5. Reviewing a Biodiversity Development Assessment Report

### 5.1 Part 4 development BDARs must be reviewed by LG assessment officers

The BC Act requires a BDAR, prepared by an assessor, to be submitted with a development application when the BOS applies. The consent authority (i.e. council) will determine the development application having regard to the BDAR.

The BDAR will support the consent authority to make key decisions in determining a development application, including whether:

- impacts on biodiversity values have been avoided, minimised and mitigated to the satisfaction of the consent authority
- impacts are serious and irreversible
- to impose the credit requirement returned by the BDAR or increase or reduce the requirement.

Requirements for the BDAR are specified in Appendix K of the Biodiversity Assessment Method (BAM).

#### 5.1.1 BDAR requirements to check and confirm before it is accepted by council

When council receives a BDAR with a development application, there are some important requirements to check and confirm upfront to ensure the BDAR can be accepted:

1. Was the BDAR prepared by an assessor?

Refer to the Accredited Assessor Public Register.

2. Is the BDAR finalised?

Draft BDARs cannot be accepted. Refer to BOS LG Update 14, item 3.

3. BDAR certification: Is the BDAR certified and is the credit report status 'finalised' with a date that is within 14 days of the date the BDAR was submitted?

In accordance with section 6.15(1) of the BC Act, the BDAR must be certified, for instance by the assessor signing the first page. In addition, the date of submission of the BDAR must be within 14 days of the date shown on the relevant finalised credit report generated using the Biodiversity Assessment Method Calculator (BAM-C). The date the assessor signs the BDAR does not need to match the date on the finalised credit report; however, the BDAR must be submitted within 14 days of the date the credit report was finalised to be considered valid.

4. Variation rules: If the proponent proposes to meet their offset obligation using different biodiversity credits to those outlined in the BDAR's like-for-like credit report (in accordance with the variation rules under the BC Reg) does the development application include the reasonable steps taken to obtain the like-for-like biodiversity credits?

Refer to the Ancillary rules: Reasonable steps to seek like-for-like biodiversity credits for the purpose of applying the variation rules.

5. Concurrence for reduced credit obligation: If the proponent is seeking a reduced credit obligation, is the development application accompanied by a letter outlining information



about the biodiversity offset obligation, biodiversity credits intended to be offset, credits that will not be offset and a detailed justification of the community gain delivered by the proposed project (in accordance with the information requirements listed on the department's website)?

A request for a reduced credit obligation requires the department concurrence in accordance with clause 51 of the Environmental Planning and Assessment Regulation 2021 (EP&A Reg). Refer to Seeking concurrence for a reduced credit obligation on the department's website for more details, including fees and timeframes.

Once council is satisfied the BDAR meets these requirements, the relevant officer/s can commence their review. Review of the BDAR can occur at the same time as public exhibition.

### 5.1.2 Public exhibition of BDARs

A development application that is accompanied by a BDAR because it was required by section 7.7(2) (also see section 7.2(1)) of the BC Act, is known as 'threatened species development'.

Applications for development consent for 'threatened species development' are required to be placed on public exhibition for a minimum period of 28 days (see clause 8A of Schedule 1 of the EP&A Act).

The way in which the 'threatened species development' should be publicly exhibited is provided in clause 77 of the EP&A Reg.

### 5.1.3 Critical review of BDARs

The Guidance for local government on undertaking a critical review of a Biodiversity Development Assessment Report (PDF 1.3MB) provides support to consent authorities to undertake a critical review of a BDAR. The BOS Support webinar recording entitled 'BOS Webpages update and restructure and Essential tips for preparation and review of BDARs' provides some additional guidance. View the recording from 5:00 minutes.

Some key questions for LG officers to consider include:

- Have relevant maps been included showing the site location, development footprint, extent of plant community types and threatened ecological communities?
- Is there adequate information about the threatened species confirmed or likely to be on site? If species have been excluded from, or added to, the BAM-C auto-populated list, is evidence-based justification provided?
- **Have the efforts to avoid and minimise impacts on native vegetation and habitat been described and justified?** Does the BDAR demonstrate that proponents have taken *all reasonable steps* to avoid impacts before considering minimisation and offset measures?
- Have all the direct impacts of the development on native vegetation and habitat during construction and operation phases been assessed and a credit obligation calculated?
- Have all indirect impacts of the development on native vegetation and habitat during construction and operation phases been assessed?
- Have prescribed impacts been identified and assessed?
- Have reasonable and effective mitigation measures been identified?
- Have potential serious and irreversible impacts (SAIIs) been correctly identified and relevant criteria addressed?

An impact is serious and irreversible if it is likely to contribute significantly to the risk of a threatened entity becoming extinct in accordance with principles set out in clause 6.7(2) of the BC Reg. The Guidance to assist a decision-maker to determine a serious and irreversible impact includes criteria and supporting information to assist with the application of these principles.

**If the consent authority (i.e. council) determines that the proposed development is likely to have an SAIL on biodiversity values, the development application must be refused.**

More information on Serious and irreversible impacts of development on biodiversity is available on the department's website.

#### **5.1.4 Biodiversity Offsets and Agreement Management System account**

LG officers can see the data and biodiversity credit calculations that underpin the BDAR in the Biodiversity Offsets and Agreement Management System (BOAMS). For a consent authority to be able to see the BOAMS case when it is lodged, it will need an account. To request an account, submit a BOS enquiry form (select 'Local Government' then 'Biodiversity Assessment Method Support (including BAM-C/BOAMS)') with an email address to link to the account.

The assessor then needs to add the consent authority as a case party to the relevant parent case. The consent authority will receive a system notification in their account's email that the case has been submitted (or the assessor can provide them with the BOAMS case number). This will enable the consent authority to log in and view the case.

## **5.2 BDARs for Part 5 activities**

As identified in Section 3.4, if council's Part 5 activity is to be carried out in an AOBV or is likely to significantly affect threatened species or ecological communities or their habitats according to the threatened species test of significance, council may choose to 'opt in' to the BOS by electing to prepare a BDAR. If council chooses not to opt into the BOS, a species impact statement must be prepared.

The BDAR must be prepared by an assessor and should have the same content as described in Section 5.1. The avoid and minimise commitments, mitigation measures and offset obligations must be implemented by council prior to commencement of the activity.

Concurrence requirements for a reduced credit obligation outlined in Section 5.1 do not apply to Part 5 activities. Instead, if council proposes to carry out the activity or approve the carrying out of the activity, and the approval requires the retirement of fewer biodiversity credits than required by the BDAR, council must publish reasons in accordance with section 7.15(4) of the BC Act.

## 6. Preparing conditions of consent

### 6.1 Use of model conditions

When granting consent to a proposed development to which the BOS applies, the conditions of consent must require the applicant to retire biodiversity credits of the number and class specified in the BDAR.

The document Guidance on preparing conditions of consent from the Biodiversity Development Assessment Report supports consent authorities to prepare conditions of consent for development applications to which the BOS applies. Some of the key principles to consider are:

- Concurrence from the Environment Agency Head is required if the consent authority reduces the number of biodiversity credits required to be retired.
- Offset obligations are to be satisfied prior to impacting on biodiversity.
- Evidence that the offset obligation has been satisfied is required.
- Biodiversity actions available to offset a credit requirement are listed in the ancillary rules.
- Use of variation rules can only be approved following demonstration of reasonable steps to find like-for-like biodiversity credits.
- **The requirement to condition a credit obligation does not limit the consent authority's ability to require other measures to be undertaken to avoid or minimise impacts on biodiversity.**

The guidance provides advice on:

- incorporating the content of the BDAR in the conditions of consent
- confirming offset conditions have been complied with.

The requirement to impose a credit obligation does not limit the consent authority's ability to require other biodiversity-related conditions; for example, council can also impose conditions in accordance with relevant Local Environmental Plan (LEP) or Development Control Plan requirements.

### 6.2 Checking that offset obligations have been met

Proponents must provide evidence to the consent authority (i.e. council) that their offset obligations have been met, prior to commencing work that will impact on biodiversity. The nature of this evidence depends on the way the proponent is meeting their obligation, as summarised in Table 6 (overleaf).

### 6.3 Reasonable equivalence of biodiversity credits

In some situations, the credits that proponents use to meet their offset obligations will be older credits generated under the repealed *Threatened Species Conservation Act 1995* (TSC Act), which was replaced by the BC Act. These credits (generally called biobanking credits) can be converted into credits to be applied for the BOS.

Proponents apply to the department for an assessment of reasonable equivalence and will receive a statement identifying their credits. When demonstrating compliance with meeting their credit obligation under the BC Act, this statement would be provided to council for review.

**Table 6 Types of evidence demonstrating offset obligations have been met**

Offset mechanism	Evidence
Purchasing and retiring like-for-like credits	The proponent provides evidence to the consent authority in the form of a credit retirement report issued by the department confirming credit transactions. The consent authority confirms the credit transaction corresponds to a like-for-like credit of the appropriate number from an appropriate location.
Payment to the BCF administered by the BCT for like-for-like credits	The proponent provides evidence to the consent authority in the form of a section 6.33 Statement Confirming Payment into the BCF issued by the BCT. The statement will indicate the number and class of credits the payment corresponds to and any related development application reference. The consent authority confirms the payment transaction corresponds to the appropriate class and number of credits.
Funding a Biodiversity Action listed in the ancillary rules (only to be used following discussion with the department)	The proponent must provide evidence of payment to the department for the agreed amount. The department will provide a receipt for this payment once received.
Variation rule credit retirement	The proponent provides evidence to the consent authority in the form of a credit retirement report from the department confirming credit transactions. The consent authority confirms the credit transaction corresponds to the approved variation credit class.
Staged credit retirement	<p>Retirement of credits: the proponent provides evidence to the consent authority in the form of extracts from the Credit Register confirming credit transactions. The consent authority confirms the credit transaction corresponds to a like-for-like credit of the appropriate number from an appropriate location.</p> <p>Payment to the BCF: the proponent provides evidence to the consent authority in the form of a section 6.33 Statement Confirming Payment into the BCF issued by the BCT. The statement will indicate the number and class of credits the payment corresponds to and any related development application reference. The consent authority confirms the payment transaction corresponds to the appropriate class and number of credits.</p>
Conditioning avoid and minimise measures	The consent authority is responsible for ensuring compliance with these conditions as per normal procedures.

## 7. Systems and tools supporting the BOS

There are a number of tools supporting the BOS including:

- NSW BioNet Atlas and BioNet Vegetation Classification (Section 7.1 below)
- SEED Data Portal – the Sharing and Enabling Environmental Data portal is a central resource for environmental data that provides public access to the department datasets
- Biodiversity Assessors Accreditation System (BAAS) – is used to manage accreditation processes and is the gateway for assessors' access to BOAMS
- Biodiversity Offsets and Agreement Management System (BOAMS) – the case management system used to administer the BOS. Assessors use BOAMS to access the BAM-C, submit data and generate a credit obligation and a credit price. Decision-makers use BOAMS to access a BAM-C case related to a BDAR. The department uses BOAMS to manage credits, including transfer, retirement, suspension and cancellation. The BCT uses BOAMS to finalise BSAs and issue credits
- Biodiversity Assessment Method Calculator (BAM-C) – the tool that operationalises the BAM. The BAM-C stores much of the survey information recorded by the assessor and calculates the number and type of credits required to offset the impacts of development on, or credits generated from improvements in, biodiversity values. Two versions of the BAM-C exist: a public stand-alone version (open to all but will not save data or print reports) and a password protected version accessed through BOAMS for the use of assessors and decision-makers when preparing or reviewing BAM-related proposals (see Subsection 5.1.1)
- Biodiversity Values Map and Threshold (BMA) Tool (Section 7.2 below)
- Biodiversity Offsets Payment Calculator (BOPC) (public tool) (Section 7.3)
- BOS public registers (Section 7.4)
- BioBanking public registers (Section 7.5)
- Biodiversity Credits Market Sales Dashboard (Section 7.6).

### 7.1 BioNet

NSW BioNet is the repository for biodiversity data products managed by the department. BioNet includes a number of data collections contained in the BioNet Atlas and BioNet Vegetation Classification applications. An assessor will use BioNet when applying the BAM. Consent authorities also access BioNet when reviewing vegetation clearing proposals.

BioNet Vegetation Classification (Veg-C) includes information on plant community types (PCTs) including general location, floristic composition and structure, condition benchmarks and per cent cleared information. Veg-C is the primary source for defining equivalent or part equivalent associations between PCTs and TECs.

Survey data or individual species sightings records are held in the BioNet Atlas. The biodiversity credit class of a species, survey requirements, habitat constraints and other information for listed threatened species, populations and ecological communities are contained in the Threatened Biodiversity Profile Data Collection.

Threatened species profiles are available through the Threatened biodiversity profile search.

## 7.2 Biodiversity Values Map and Threshold Tool

The BMAT tool is a web-based mapping tool used as a guide to help determine if a proposal exceeds the BOS threshold. Functionalities include:

- display and interrogation of the Biodiversity Values Map
- display of basic landscape features (Lot/DP, LGA boundaries, suburb names, roads, rivers), topography, aerial imagery
- display of minimum lot size specified in the relevant LEP and relevant area threshold
- production of an evaluation report.

Use of the BMAT tool is demonstrated in the BOS Educational Video: BMAT Tool Demo.

### BMAT tool evaluation report

The BMAT tool evaluation report is a PDF export that indicates whether the proposal exceeds the BOS threshold. The evaluation report can be attached to a proposal as supporting information.

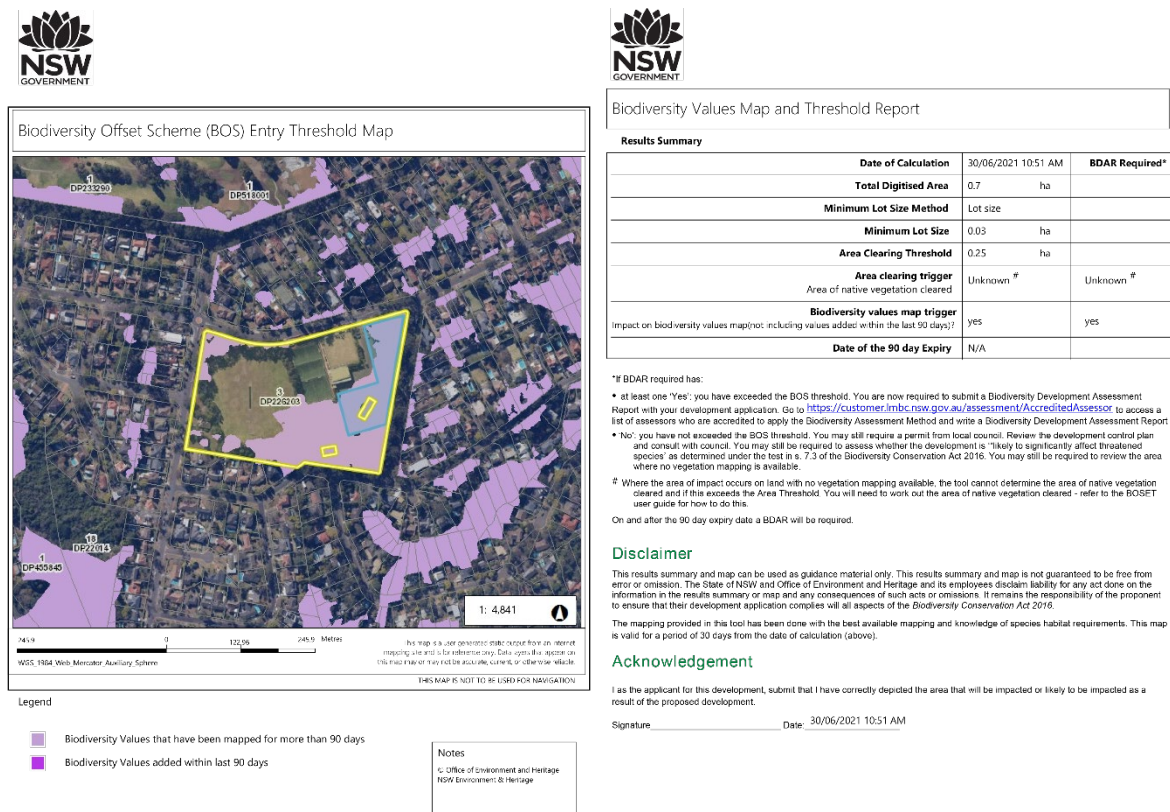


Figure 2 Screenshot of a BOS entry threshold map and report

If the results summary table has at least one 'Yes' in the 'BDAR Required' column, the proposal exceeds the BOS threshold. If the results summary table indicates a 'No' in both the 'area clearing trigger' and 'Biodiversity Values Map trigger', the proposal does not exceed the BOS threshold.

Sometimes the tool will be unable to calculate the amount of native vegetation within the area of the development or vegetation clearing (Unknown#). When this occurs, the area of native vegetation clearing will have to be calculated by hand.

Advice on calculating the area of native vegetation to be cleared is available in the BMAT tool user guide.

The BMAT tool is a guidance tool only. Ultimately the decision-maker will determine whether the area of impact has been accurately assessed against the BOS threshold.

### 7.3 Biodiversity Offsets Payment Calculator

The BOPC is an interactive tool designed to determine how much a proponent must pay into the BCF to satisfy their offset obligation.

The purpose of the BOPC is to provide a charge that predicts the likely costs the BCT will incur in securing each type of biodiversity credit as an offset. The payment amount is determined by:

- biodiversity credit price – the predicted market price for biodiversity credits
- biodiversity credit price risk premium – a margin that accounts for the statistical probability that the future market credit price is higher than the charge paid into the BCF
- fund administration costs – the cost of operating and administering the BCF for offsetting purposes.

The pricing model that underpins the BOPC is available in the Biodiversity Offsets Payment Calculator – BTD: Methodology note. The BOPC is kept within BOAMS, where it is linked to the assessment data for a proposal assessed using the BAM.

A public tool is also separately available for anyone to test the cost associated with paying into the BCF; however, the public tool cannot be relied upon to determine the final payment obligation – this must be done through the BOPC within BOAMS. Use of the public BOPC tool is supported by the BOPC user guide, including the data required to be entered to generate accurate pricing. The BOPC charge is estimated based on the data entered, so it is important the data is entered correctly and the correct offset trading group is chosen.

The BOPC should be used with caution for other purposes, such as forward business planning or to estimate future prices. This is because the BOPC model is updated periodically and does not include real time credit price data. Using the BOPC as a business planning tool can create risk because the price suggested by the BOPC to purchase credits today (or early in a planning process) may be different to the price in subsequent periods (for example, at the time of acquittal or completion of a project), particularly for rarely traded credit types. The model also takes into account administration costs and a risk premium associated with the BCT retiring offset credits in the future. These costs do not apply to other methods for meeting offset obligations; for example, if proponents establish their own offset sites or buy offsets privately on the market.

In 2022, the BOPC will be removed from public view after the introduction of a new developer charges system administered by the BCT to calculate the cost of credits when a developer chooses to pay into the BCF. The changes are intended to support better functioning of the biodiversity offsets market, support reliable pricing of BCF charges and prevent the use of the BOPC causing unintended distortions in market prices.

### 7.4 BOS public registers

The BOS public registers provide information on biodiversity credits, obligations and transactions created under the provisions of the BC Act and BC Reg.

#### Credit supply register

This register includes details of the number, type and location of credits available for purchase. This register includes expressions of interest (potential credit supply), pending credits (a BSA application that needs assessment/approval), issued credits and reasonably equivalent credits (equivalence statements for BioBanking Assessment Methodology credits).

## **Credit demand register**

This register includes details of the number, type and location of credits that are required. It also includes credits wanted (potential credit demand) and pending credits (those that need assessment/approval).

## **Transactions register**

This register includes information about credit transfers and retirements including credit type, number, price and date as well as suspensions and cancellations.

## **7.5 BioBanking public registers**

The BioBanking public registers provide information on biobanking agreements, credit transactions and statements created under the provisions of the TSC Act (repealed). Transitional arrangements in the BC (S&T) Reg provide for the continuation of both credits and credit obligations created under the TSC Act.

## **7.6 Biodiversity credits market sales dashboard**

A biodiversity credits market sales dashboard for BAM credits will be launched in the future. The dashboard provides current sales data for biodiversity credits created using the BAM and can be easily interrogated to provide a wide range of market information that will be valuable to BOS participants, particularly those who are purchasing or negotiating the sale of credits and wish to understand the most recent market sales of similar credits. BOS credit market data is sourced from the data registered by the Environment Agency Head in the BOS public registers. As an example, a similar tool was created for credits created based on the BioBanking Assessment Methodology (under the repealed TSC Act), referred to as the Spot Price Index and available on the BOPC webpage.

## **7.7 User guides and technical explanations**

A number of user guides are available for the systems and tools that support the BOS.

### **BMAT tool user guide**

Guidance on accessing and navigating the BMAT tool and viewing and analysing data on biodiversity values on the Biodiversity Values Map.

### **BOAMS user guide**

An outline of the functions and processes relating to BOAMS, including opening a case, conducting an assessment, submitting an application, capturing approval and conferral details, creating an agreement, managing credits and lodging reports.

Available from the Frequently Asked Questions tile on the BOAMS landing page. Once an account has been set up (see Subsection 5.1.1) go to the BOAMS login for consent authorities.

### **BAM-C user guide**

An outline of the process for completing a BAM assessment, the functions/calculations performed and the results presented by the BAM-C.



## **BOPC user guide**

Documents how the BOPC applies the pricing models to generate a price for both species and ecosystem credits.

## **Area clearing threshold technical explanation**

Explains how the BMAT tool determines the area clearing threshold, which is based on the minimum lot size.

## **Biodiversity Offsets Payment Calculator – BTD: Methodology note**

Describes the pricing model used by the BOPC, which incorporates the offset trading groups, and accounts for the changes in the discount rate (BOPC–BTD). BTD refers to biodiversity credits, offset trading groups and discount rate.

## **8. Additional guidance and support**

### **8.1 BAM Operational Manual**

The Operational Manual is a companion document to the BAM that provides operational guidance to assist assessors when applying the BAM. The BAM and Operational Manual should be read together.

The Operational Manual is presented in 3 separate documents:

- BAM Operational Manual Stage 1 – Biodiversity assessment
- BAM Operational Manual Stage 2 – Impact assessment
- BAM Operational Manual Stage 3 – Improving biodiversity values.

### **8.2 BOS support webinars and LG updates**

BOS Support is a webinar series hosted by the department to support assessors and LG by providing a regular forum to develop their understanding of the BOS and BAM, directly ask questions and stay up to date on new matters that may affect current or future assessments in which they are involved.

Each webinar includes content presented by the department subject matter experts and an opportunity for Q&A with panel members. The webinars also provide the department with a regular forum for active engagement with assessors and LG, and a source of feedback.

Webinar recordings are available online. Q&A documents are published in PDF format below each webinar.

By accessing BOS Support, LG officers can also subscribe to BOS LG updates to receive regular news and information including invitations to future webinars. Previous BOS LG updates are available on the Local government and other decision maker support webpage.

### **8.3 BOS support form**

Enquiries to the department on the BOS can be lodged via the BOS enquiry form. Enquiries are directed to the appropriate team based on selections of who the enquiry relates to and the topic. The department aims to provide a prompt response; however, response times can vary according to the complexity of the issue. The form can also be used to provide feedback.

## 9. More information

### 9.1 Links to mentioned resources

- [7.13\(3\) and \(6\) of the Biodiversity Conservation Act](#)
- [Accreditation Order \(PDF 868KB\)](#)
- [Accredited Assessor Public Register](#)
- [Accredited assessors](#)
- [Accredited Assessors Complaint and Feedback Form \(PDF 39KB\)](#)
- [Ancillary rules: Reasonable steps to seek like-for-like biodiversity credits for the purpose of applying the variation rules](#)
- [Area clearing threshold technical explanation](#)
- [Area of outstanding biodiversity value](#)
- [Area of Outstanding Biodiversity Value register](#)
- [Area threshold](#)
- [BAM](#)
- [BAM-C user guide](#)
- [BAM Assessor Update no. 35 \(PDF 139KB\)](#)
- [BAM Operational Manual Stage 1 – Biodiversity assessment](#)
- [BAM Operational Manual Stage 2 – Impact assessment](#)
- [BAM Operational Manual Stage 3 – Improving biodiversity values](#)
- [BCT online enquiry form](#)
- [BioBanking public registers](#)
- [Biodiversity Assessment Method](#)
- [Biodiversity Assessment Method Calculator](#)
- [Biodiversity Assessors Accreditation System](#)
- [Biodiversity Conservation Act](#)
- [Biodiversity Conservation Act section 1.6\(1\)](#)
- [Biodiversity Conservation Act section 6.3](#)
- [Biodiversity Conservation Act section 7.15\(4\)](#)
- [Biodiversity Conservation Act section 7.2\(1\)](#)
- [Biodiversity Conservation Act section 7.4\(2\)](#)
- [Biodiversity Conservation Act section 7.7\(2\)](#)
- [Biodiversity conservation licences](#)
- [Biodiversity Conservation Regulation](#)
- [Biodiversity Conservation Regulation clause 34A certification](#)
- [Biodiversity Conservation Regulation clause 6.1](#)
- [Biodiversity Conservation Regulation section 7.3\(4\)](#)
- [Biodiversity Conservation Regulation Clause 7.3\(5\)](#)
- [Biodiversity experts](#)
- [Biodiversity Offsets and Agreement Management System](#)
- [Biodiversity Offsets Payment Calculator \(BOPC\)](#)

- [Biodiversity Offsets Payment Calculator – BTD: Methodology note](#)
- [Biodiversity Offsets Scheme webinars](#)
- [Biodiversity Values Map](#)
- [Biodiversity Values Map and Threshold \(BMAT\) Tool](#)
- [Biodiversity Values Map review](#)
- [Biodiversity Values Map review application](#)
- [BioNet](#)
- [BioNet Atlas](#)
- [BioNet Vegetation Classification](#)
- [BMAT tool user guide](#)
- [BOAMs login for consent authorities](#)
- [BOPC user guide](#)
- [BOS Educational Video: BMAT Tool Demo](#)
- [BOS enquiry form](#)
- [BOS public registers](#)
- [BOS Support](#)
- [BOS Support webinar recording](#)
- [BOS LG Update 14 \(PDF 250 KB\)](#)
- [Bulletin No. 10 – Compliance and State Environmental Planning Policy \(Vegetation in Non-Rural Areas\) 2017 \(PDF 148KB\)](#)
- [Bulletin 11 – Councils as decision maker on dead or dying trees \(PDF 349KB\)](#)
- [Bulletin No. 14 \(PDF 210KB\)](#)
- [Bushfire rebuild exemption](#)
- [Code of conduct](#)
- [Controlled activities](#)
- [\*Environment Protection and Biodiversity Conservation Act 1999\*](#)
- [\*Environmental Planning and Assessment Act 1979 Part 4\*](#)
- [\*Environmental Planning and Assessment Act 1979 Part 5\*](#)
- [\*Environmental Planning and Assessment Act 1979 Part 13\*](#)
- [\*Environmental Planning and Assessment Act 1979 Schedule 1\*](#)
- [Environmental Planning and Assessment Regulation 2021 clause 51](#)
- [Environmental Planning and Assessment Regulation 2021 clause 77](#)
- [EPBC Act Condition-setting Policy \(PDF 1.5MB\)](#)
- [Find a property](#)
- [\*Fisheries Management Act 1994\*](#)
- [Guidance for local government on applying the Biodiversity Offset Scheme threshold \(PDF 217 KB\)](#)
- [Guidance for local government on undertaking a critical review of a Biodiversity Development Assessment Report \(PDF 1.3MB\)](#)
- [Guidance on preparing conditions of consent from the Biodiversity Development Assessment Report \(PDF 1.3MB\)](#)
- [Guidance to assist a decision-maker to determine a serious and irreversible impact \(PDF 765KB\)](#)

- [Guidelines prepared for the section 5A EP&A Act test of significance](#)
- [How the BOS applies to subdivisions and development of subdivided lots \(PDF 199KB\)](#)
- [Implications of the Commonwealth's endorsement of the BOS](#)
- [Land Management \(Native Vegetation\) Code 2018](#)
- [Local government and other decision maker support](#)
- [Local Government directory](#)
- [Local Land Services Act 2013 section 60B](#)
- [Local Land Services Act 2013 section 60C](#)
- [Local Land Services Regulation 2014](#)
- [Local Land Services Regulation 2014 Clause 106](#)
- [Managing vegetation with a Development Control Plan \(PDF 1,527 KB\)](#)
- [Native Vegetation Panel](#)
- [Native Vegetation Regulatory Map](#)
- [Natural Resources Access Regulator](#)
- [New South Wales Flora Online](#)
- [NSW Biodiversity Offsets Policy for Major Projects Fact sheet: Aquatic biodiversity. \(PDF 344KB\)](#)
- [NSW Biodiversity Offsets Scheme and Land Management Framework Biodiversity Assessment and Approval Pathways \(PDF 1MB\)](#)
- [NSW Bushfire Inquiry](#)
- [NSW Planning Portal](#)
- [Obtain a permit to harm marine vegetation](#)
- [Policy and guidelines for fish habitat conservation and management \(update 2013\)](#)
- [Regional contacts](#)
- [SEED Data Portal](#)
- [Seeking concurrence for a reduced credit obligation](#)
- [Serious and irreversible impacts of development on biodiversity](#)
- [State Environmental Planning Policy \(Coastal Management\) 2018](#)
- [Threatened biodiversity profile search](#)
- [Threatened species test of significance](#)
- [Threatened Species Test of Significance Guidelines](#)
- [Vegetation SEPP](#)
- [Water Management Act 2000](#)
- [Water Management \(General\) Regulation 2018](#)
- [WaterNSW](#)
- [When does the Biodiversity Offsets Scheme apply?](#)

## Appendix A: Roles and responsibilities

### Roles and responsibilities

Role	Who is responsible	What they do
Rule maker	Minister for Environment, Parliament and Department of Planning and Environment	<ul style="list-style-type: none"> <li>• Create, review and improve legislation and policy for the scheme</li> </ul>
Administrator and regulator	Environment and Heritage and/or Biodiversity Conservation Division (BCD)	<ul style="list-style-type: none"> <li>• BOS governance</li> <li>• BAM implementation</li> <li>• Biodiversity credit market – credit transfers and retirement</li> <li>• Assessment and pricing systems and tools</li> <li>• Data and information – BioNet and PCT classification</li> <li>• Accredited assessors scheme</li> <li>• Engagement and capacity building</li> <li>• Strategic audit and compliance</li> </ul>
Market intermediary	Biodiversity Conservation Trust	<ul style="list-style-type: none"> <li>• Facilitate credit supply – determine and manage BSAs</li> <li>• Manage payments into the BCF and deliver offsets</li> <li>• Manage Biodiversity Stewardship Payments Fund</li> <li>• Place-based offset schemes</li> </ul>
Accredited assessor	Ecological consultants accredited by the department	<ul style="list-style-type: none"> <li>• Assess biodiversity impacts at development and stewardship sites and prepare Biodiversity Assessment Reports for proponents</li> <li>• Advise developers and landholders</li> </ul>
Decision-maker	<b>Local councils</b> , Minister for Planning and the department and <b>Part 5 authorities</b> , Native Vegetation Panel	<ul style="list-style-type: none"> <li>• Determine development applications and set offset obligations</li> <li>• Compliance with conditions of consent</li> <li>• Decide whether to opt into the BOS for Part 5 activities</li> </ul>
Landholder – stewardship	Private landholders, <b>local councils</b> and other public authorities	<ul style="list-style-type: none"> <li>• Generate credits by managing land under a BSA</li> </ul>
Landholder – developer	Private landholders, <b>local councils</b> and other public authorities	<ul style="list-style-type: none"> <li>• Undertake development and vegetation clearing that may require offsets</li> <li>• Avoid, minimise and offset the biodiversity impacts of development and vegetation clearing (if opted into the BOS for Part 5 activities)</li> </ul>

## Contact details

### Department of Planning and Environment, Environment and Heritage

- 1300 361 967
- [BOS Support enquiry form](#)
- [Biodiversity experts](#) webpage

### Department of Planning and Environment Regional Planning

- [Regional contacts](#) webpage
- [Biodiversity conservation licence](#) webpage

### Biodiversity Conservation Trust

- 1300 992 688
- [info@bct.nsw.gov.au](mailto:info@bct.nsw.gov.au)
- [BCT online enquiry form](#)
- [BCT website](#)

### Local Land Services

- 1300 795 299
- [slm.info@lls.nsw.gov.au](mailto:slm.info@lls.nsw.gov.au)
- [NSW Land Management website](#)

### Native Vegetation Panel

- 1300 795 299
- [info@nvp.nsw.gov.au](mailto:info@nvp.nsw.gov.au)
- [Native Vegetation Panel website](#)

### Local Government

The Office of Local Government maintains a Local Government directory with contact details for each local council in New South Wales. Each council's website also provides relevant contact details.

### Department Primary Industries Fisheries

- 1300 550 474
- [information-advisory@dpi.nsw.gov.au](mailto:information-advisory@dpi.nsw.gov.au)
- [DPI Fisheries Threatened Species](#) webpage

## Appendix B: Key terms and definitions

This section presents key terms and definitions that are used frequently in the LG Resource Manual. Refer to the glossary of the BAM for a comprehensive list of terms and definitions used when applying the BAM.

### Biodiversity values

Biodiversity values is defined in section 1.5(2) BC Act as:

- vegetation integrity – being the degree to which the composition, structure and function of vegetation at a particular site and the surrounding landscape has been altered from a near natural state
- habitat suitability – being the degree to which the habitat needs of threatened species are present at a particular site
- biodiversity values, or biodiversity-related values, prescribed by the regulations.

### Clearing native vegetation

Clearing native vegetation is defined in section 60C Local Land Services Act 2013 (LLS Act) as any one or more of the following:

- cutting down, felling, uprooting, thinning or otherwise removing native vegetation
- killing, destroying, poisoning, ringbarking or burning native vegetation.

The BC Act relies upon this provision to define clearing native vegetation.

As a result of the definitions of native vegetation and clearing native vegetation, the clearing of dead or non-native plants on certain vulnerable land is taken to be the clearing of native vegetation.

### Clear vegetation

Clear vegetation is defined in clause 4 of the Vegetation SEPP as any one or more of the following:

- cut down, fell, uproot, kill, poison, ringbark, burn or otherwise destroy the vegetation
- lop or otherwise remove a substantial part of the vegetation.

This definition only applies to the Vegetation SEPP.

### Decision-maker

Decision-maker is defined in the glossary to the BAM to include:

- consent authorities for development applications under Part 4 of the EP&A Act
- the Minister for Planning and Public Spaces for activities under Part 5.1 of the EP&A Act
- determining authorities for activities under Part 5 of the EP&A Act
- the Native Vegetation Panel for approvals for clearing native vegetation under section 60ZF of the LLS Act and permits under clause 14 of the Vegetation SEPP
- the Minister for Environment and Energy in relation to biodiversity certification under Part 8 of the BC Act and BSAs under Part 5.5 of the BC Act.



## Ecological community

An ecological community is defined in section 1.6(1) BC Act as an assemblage of species occupying a particular area.

## Native vegetation

It is the responsibility of the proponent to ascertain whether a species is considered native when determining whether the BOS applies, and this information should be included as part of the supporting documents for the proposal. The relevant definitions are contained within the BC Act and LLS Act and are repeated in the BAM.

Native vegetation is defined in section 60B LLS Act as the following types of plants native to New South Wales:

- trees (including any sapling or shrub or any scrub)
- understorey plants
- ground cover (being any type of herbaceous vegetation)
- plants occurring in a wetland.

Clause 106 Local Land Services Regulation 2014 (LLS Reg) provides that a species of plant may be conclusively presumed to be native to New South Wales if it is listed on the official database (unless it is identified as an introduced species). The official database is New South Wales Flora Online (PlantNet), maintained by the Royal Botanic Gardens and Domain Trust.

The BC Act and Vegetation SEPP rely upon this provision to define native vegetation.

A plant is native to New South Wales if it was established in the state before European settlement. This includes planted native vegetation such as windbreaks, street trees, planted native gardens, macadamia and tea tree plantations.

The definition extends to a plant that is dead or not native to New South Wales if:

- the plant is situated on land that is shown on the native vegetation regulatory map as category 2 – vulnerable regulated land
- it would be native vegetation for the purposes of Part 5A LLS Act if it were native to New South Wales.

The definition of native vegetation does not extend to marine vegetation (being mangroves, seagrasses or any other species of plant that at any time in its life cycle must inhabit water other than fresh water); however, PCTs that are classified under the Vegetation Classification database as being in the saline wetlands vegetation formation must be assessed according to the BAM.

### Native vegetation and the BAM

The glossary to the BAM defines terms for the purposes of applying the BAM, including grassland, native ground cover and native vegetation cover.

The definition of native vegetation that applies in the BAM means that all plants (even individuals) that are native to New South Wales must be assessed in accordance with the BAM. This includes native vegetation that is not indigenous to the local area and planted native vegetation such as windbreaks, street trees, planted native gardens, macadamia and tea tree plantations.

## Prescribed impacts

Prescribed impacts are defined in clause 6.1 BC Reg as the impacts on biodiversity values of the following actions:

- the impacts of development on the following habitat of threatened species or ecological communities:
  - karst, caves, crevices, cliffs and other geological features of significance
  - rocks
  - human made structures
  - non-native vegetation
- the impacts of development on:
  - the connectivity of different areas of habitat of threatened species that facilitates the movement of those species across their range
  - movement of threatened species that maintains their lifecycle
  - water quality, water bodies and hydrological processes that sustain threatened species and TECs (including from subsidence or upsidence resulting from underground mining or other development)
- the impacts of wind turbine strikes on protected animals
- the impacts of vehicle strikes on threatened species of animals or on animals that are part of a TEC.

## Proposal

Proposal is defined in the glossary to the BAM as any of the following types of proposals:

- development that requires consent under Part 4 of the EP&A Act
- an activity that requires approval under Part 5, Division 5.1 (where the proponent has opted into the BOS) of the EP&A Act
- development that requires approval under Part 5, Division 5.2 of the EP&A Act
- clearing that requires approval under Part 5A of the LLS Act; or a permit under the Vegetation SEPP
- biodiversity certification of land and related development in the case of an application for biodiversity certification under the BC Act
- a biodiversity stewardship site in the case of an application for a BSA under the BC Act.

## Threatened ecological community

A TEC is defined in section 1.6(1) BC Act as a critically endangered ecological community, an endangered ecological community or a vulnerable ecological community listed in Schedule 2 of the BC Act, or listed under Part 13 of the EPBC Act as critically endangered, endangered or vulnerable.

Vulnerable ecological communities are not included in the definition of a TEC under section 7.1 BC Act for planning approvals under the EP&A Act, except any part of the vulnerable ecological community that includes a threatened species.

## Threatened entities

Threatened entities is defined in the glossary to the BAM to mean threatened species, populations and/or ecological communities listed in Schedules 1 and 2 of the BC Act, or listed under Part 13 of the EPBC Act as critically endangered, endangered or vulnerable.

## **Threatened species**

Threatened species are defined in section 1.6(1) BC Act as critically endangered, endangered or vulnerable threatened species or populations as defined by Schedule 1 of the BC Act, or any additional threatened species or populations listed under Part 13 of the EPBC Act as critically endangered, endangered or vulnerable.

## **Vegetation**

Vegetation is defined in clause 4 of the Vegetation SEPP as a tree or other vegetation, whether or not it is native vegetation. This definition only applies to the Vegetation SEPP.

## **Appendix C: NSW Biodiversity Offsets Scheme and Land Management Framework Biodiversity Assessment and Approval Pathways for Local Government**

Online version: [NSW Biodiversity Offsets Scheme and Land Management Framework Biodiversity Assessment and Approval Pathways \(PDF 1MB\)](#)



# NSW Biodiversity Offsets Scheme and Land Management Framework Biodiversity Assessment and Approval Pathways for Local Government

4 August 2020

## Does the proposal involve vegetation clearing or other biodiversity impacts (s6.3 BC Act)?

If yes, start at Part 4 Local Development Pathway and work through the flowchart from left to right.

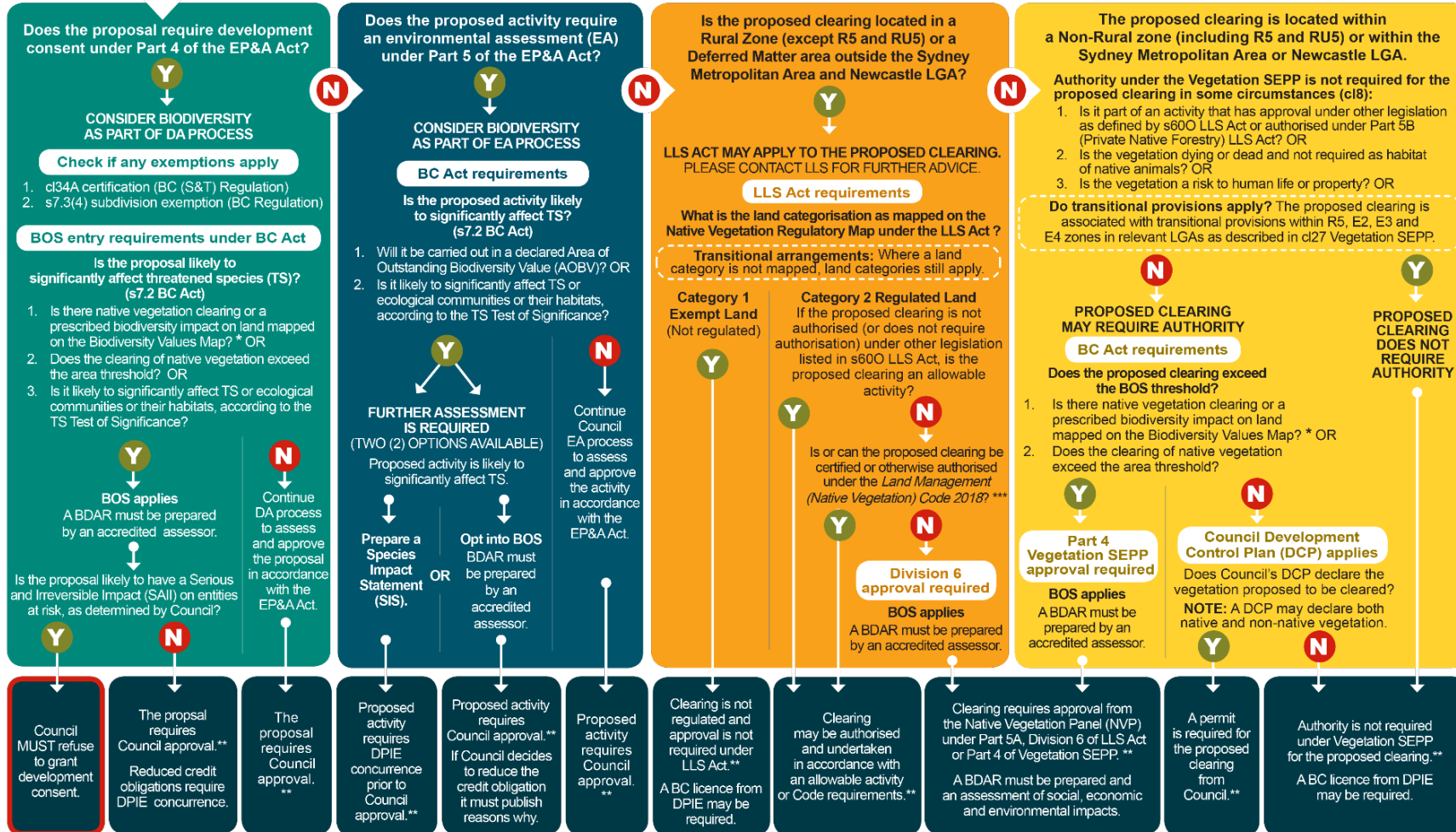
If no, this flowchart does not apply.\*\*

### PART 4 LOCAL DEVELOPMENT PATHWAY

### PART 5 ACTIVITY PATHWAY

### LLS ACT PATHWAY (NON-DA)

### VEGETATION SEPP PATHWAY (NON-DA)



\* Note: Prescribed Impacts are defined under cl6.1 BC Regulation. \*\* Note: Other legislative requirements must be considered. \*\*\* Note: Clearing of dead and non-native vegetation on Category 2 Vulnerable Lands is also regulated.

## Appendix D: Requirements under other legislation

### State Environmental Planning Policy (Coastal Management) 2018

Clause 10(1) of the State Environmental Planning Policy (Coastal Management) 2018 (Coastal Management SEPP) lists the types of activities that require development consent. They include:

- clearing of native vegetation within the meaning relied upon by the BC Act
- harm to marine vegetation
- earthworks
- levees
- draining the land
- environmental protection works and any other development.

Note that 'development' is defined in section 1.5 of the EP&A Act.

These activities (except environmental protection works) are declared to be 'designated development' under Part 4 EP&A Act, and therefore require an environmental impact statement (EIS) and public exhibition. Requirements in the EP&A Act and the Environmental Planning and Assessment Regulation 2000 relating to the form, content and exhibition of the EIS will apply.

A consent authority must not grant development consent for development on coastal wetlands and littoral rainforests unless satisfied that sufficient measures have been taken to protect or enhance the biophysical, hydrological and ecological integrity of these areas.

#### The Coastal Management SEPP and the BOS

The BOS applies to designated development in the same way it applies to a development under Part 4 EP&A Act. That is, if a proposal is likely to significantly affect threatened entities or their habitat, the BOS applies, and the development application must be accompanied by a BDAR prepared by an assessor.

Coastal wetlands and littoral rainforests are categories of land included in the Biodiversity Values Map. Section 3 identifies that if the proposal involves the clearing of native vegetation or a prescribed biodiversity impact on the Biodiversity Values Map, the BOS applies and a BDAR must be prepared.

The Coastal Management SEPP also maps 100-metre-wide 'proximity areas' around coastal wetlands and littoral rainforests. These areas are not included in the Biodiversity Values Map and development occurring in these areas is not designated development. However, the consent authority must not grant development consent in these areas unless satisfied there will not be a significant impact on the biophysical, hydrological or ecological integrity of the adjacent wetland or rainforest, or on the quantity and quality of surface and ground water flows to and from an adjacent wetland or rainforest.

All other coastal management areas identified in the Coastal Management SEPP are not categories of land automatically included on the Biodiversity Values Map. Similarly, development consent must not be granted in these areas unless the consent authority is

satisfied that the proposed development is unlikely to cause an adverse impact on those matters listed under clauses 11–15.

The requirement to consider whether the development is likely to significantly affect threatened species remains in proximity areas to coastal wetlands and littoral rainforests and all other coastal management areas. As with any development proposal, if the development is likely to significantly affect threatened species, the development application will need to include a BDAR prepared by an assessor.

Suitable biodiversity offset actions may be able to be approved for the proposed development, providing the requirements of the EP&A Act and Coastal Management SEPP are met.

## ***Fisheries Management Act 1994***

PCTs that are classified under the Vegetation Classification database as being in the saline wetlands vegetation formation must be assessed according to the BAM.

The regulation of marine vegetation occurs under the *Fisheries Management Act 1994* (FM Act). Where a development proposal involves harming marine vegetation a permit under Part 7 of the FM Act is required. Marine vegetation includes seagrass, macro-algae, mangrove and saltmarsh.

Those species of marine vegetation, and fish, listed as threatened species under the FM Act are managed under Part 7A FM Act.

Provisions of Division 12 Part 7A FM Act align with the threatened species provisions in the BC Act. They relate to the EP&A Act and the test of significance.

### **Assessment and permits under the FM Act**

The definition of 'harm' in the FM Act means gather, cut, pull up, destroy, poison, dig up, remove, injure, prevent light from reaching or otherwise harm the marine vegetation, or any part of it. This threshold for triggering 'harm' to marine vegetation and requiring a Fisheries Permit is lower than the thresholds for a significant impact in the test of significance for threatened species in either the FM Act or BC Act.

For example, the breadth of the definition of harm in the FM Act means that obstructing or altering tidal flows to marine vegetation would be considered 'harm' and would require authority via a permit to harm marine vegetation issued under section 205 of the FM Act.

The effect is that certain works that trigger permit requirements under the FM Act to authorise harm to marine vegetation, may not trigger a significant impact to a threatened species via the test of significance.

Where significant impacts upon a threatened species, that is also marine vegetation (e.g. *Wilsonia backhousei*, a saltmarsh plant), has been authorised under either the BC Act or the FM Act, there is no need to also obtain a permit to harm marine vegetation under Part 7 of the FM Act for impacts to the threatened species.

However, the impacts to the threatened species may also cause harm to other species of marine vegetation that are not listed as threatened under the BC Act or the FM Act. The harm to those other species of marine vegetation would still trigger a permit requirement under the FM Act.

Harm to marine vegetation that is authorised under the FM Act is offset in accordance with the NSW DPI (Fisheries) offset strategy outlined in the Policy and guidelines for fish habitat conservation and management (update 2013) and the NSW Biodiversity Offsets Policy for Major Projects Fact sheet: Aquatic biodiversity.

When the harm to marine vegetation will also impact on the habitat of a threatened species listed under the BC Act, the proposal will also require an assessment under the BAM to determine if species credits are also generated for the impact on the species using the marine vegetation habitat.

In regulating impacts to marine vegetation, an avoid/mitigate/offset approach is applied. Proposals that are likely to have a significant adverse impact may not be approved in the absence of effective avoidance, mitigation and offset/compensation measures.

NSW DPI (Fisheries) are updating the Key Fish Habitat Offset Policy to maximise opportunities for alignment with the BAM without compromising the ability to best manage key fish habitats and their unique differences from terrestrial habitats. In the meantime, offsets for marine vegetation may also have to satisfy the requirements of the Fisheries Offset Policy and may be additional to BOS offsets.

To obtain a permit to harm marine vegetation, proponents should liaise directly with DPI Fisheries or if the proposal triggers the need to lodge a development application, as part of the integrated development assessment process.

## **Water Management Act 2000**

The *Water Management Act 2000* (WM Act) regulates the supply, access and use of NSW water resources for purposes such as domestic consumption, stock watering, irrigation, industrial (including energy) production, town water supply and the environment.

The WM Act provides for the:

- strategic management of water sources and sets up the operational rules relating to the use of and access to water
- making of management plans that address different water management aspects and to identify zones in which development should be controlled in order to minimise harm to water sources.

The WM Act does not prescribe species for the purpose of impact consideration but concentrates on ecosystem and activity management.

Where an activity approved under WM Act, such as a water pump, will impact on vegetation, threatened species or communities, or their habitats, the BC Act or the FM Act may be applicable in addition to assessment processes under the WM Act.



The WM Act provides for the protection of vegetation in riparian corridors. Controlled activity permits may be required to manage impacts to this vegetation. Refer to the Controlled activities webpage for more information.

The Water Management (General) Regulation 2018 sets out the application requirements for approvals and water access licences. The WM Act is administered by the department and licensing and approval functions are split between WaterNSW (a State-owned corporation) and the Natural Resources Access Regulator. Compliance and enforcement of the WM Act is undertaken by the Natural Resources Access Regulator.

## Appendix E: Links to key resources and tools

Refer to section 9. More Information for all links to resources mentioned in this document.

### Legislation

- [Accreditation Scheme for the Application of the Biodiversity Assessment Method Order 2017 \(PDF 868KB\)](#)
- [Biodiversity Assessment Method Order 2020 \(PDF 2.3MB\)](#)
- [Biodiversity Conservation Act 2016](#)
- [Biodiversity Conservation Regulation 2017](#)
- [Biodiversity Conservation \(Savings and Transitional\) Regulation 2017](#)
- [Environmental Planning and Assessment Act 1979](#)
- [Local Land Services Act 2013](#)
- [State Environmental Planning Policy \(Vegetation in Non-Rural Areas\) 2017](#)

### Biodiversity Assessment Method and Operational Manual

- [Biodiversity Assessment Method](#)
- [BAM Operational Manual Stage 1](#)
- [BAM Operational Manual Stage 2](#)
- [BAM Operational Manual Stage 3](#)

### Survey guidelines

[Biodiversity survey guidelines](#) are applied by assessors/proponents to assess biodiversity impacts. LG officers may wish to refer to these guidelines as part of reviewing development or vegetation clearing proposals.

### Other guidelines

- [Guidance to assist a decision-maker to determine a serious and irreversible impact](#)
- [Guideline for applying the Biodiversity Assessment Method at severely burnt sites: BDAR/BCAR](#)
- [How to apply for a biodiversity development assessment report waiver for a Major Project Application](#)
- [Practice Note: Guidance for assessors and decision-makers in applying modified benchmarks to assessments of vegetation integrity \(PDF 1.1MB\)](#)
- [Practice notes \(guidance\) for local government](#)
- [Threatened Species Test of Significance Guidelines](#)

### Ancillary rules

- [Biodiversity Conservation Actions](#)
- [Impacts on threatened entities excluded from application of variation rules](#)
- [Reasonable steps to seek like-for-like biodiversity credits for the purpose of applying the variation rules](#)

## Online tools

- [Accredited Assessor Public Register](#)
- [Biodiversity Offsets Payment Calculator \(BOPC\) \(public tool\)](#)
- [Biodiversity Values Map and Threshold \(BMAT\) Tool](#)
- [NSW BioNet Atlas, Vegetation Classification and Threatened Biodiversity Profile Data Collection](#)
- [BOAMs login for consent authorities](#)
- [BOS Public registers](#)
- [List of approved biodiversity experts](#)
- [SEED Data Portal](#)

## User guides

- [Area clearing threshold technical explanation](#)
- [BAM-C \(PDF 3.5MB\)](#)
- [BioNet manuals](#)
- [BMAT tool](#)
- [BOS Educational Video: BMAT Tool Demo](#)
- [BOPC](#)
- [BOPC Methodology note](#)

## Web-based support

- [Accredited assessors webpage](#)
- [Accredited Assessors Complaint and Feedback Form \(PDF 39KB\)](#)
- [Biodiversity conservation licence webpage](#)
- [Biodiversity Conservation Trust website](#)
- [BOS educational videos](#)
- [BOS support enquiry form](#)
- [BOS Support webinars](#)
- [Department of Planning and Environment Regional Planning contacts webpage](#)
- [Local government and other decision makers webpage](#)
- [Local government support and resources](#)
- [Local government questions and answers](#)
- [NSW BOS and Land Management Framework Biodiversity Assessment and Approval Pathways for Local Government \(PDF 1.0MB\)](#)
- [Seeking concurrence for a reduced credit obligation webpage](#)
- [Subscription to BOS LG updates](#)