



DEPARTMENT OF PLANNING, INDUSTRY & ENVIRONMENT

Guidance for local government on applying the Biodiversity Offset Scheme threshold

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Published by:

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

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

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Purpose of this document

This guidance is for consent authorities who determine development applications under Part 4 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) (not including state significant development).

A Biodiversity Development Assessment Report (BDAR) will be required to accompany a development application if the proposed development is likely to 'significantly affect threatened species' and the Biodiversity Offset Scheme (BOS) will apply.

Section 7.2 of the *Biodiversity Conservation Act 2016* (BC Act) states that a development will 'significantly affect threatened species' if:

- a. it is likely to significantly affect threatened species or ecological communities, or their habitats, according to the test in section 7.3, or
- b. the development exceeds the biodiversity offsets scheme threshold if the biodiversity offsets scheme applies to the impacts of the development on biodiversity values, or
- c. it is carried out in a declared area of outstanding biodiversity value.

The BOS threshold is established by section 7.2(1)(b) of the BC Act and clause 7.1(1) of the Biodiversity Conservation Regulation 2017 (BC Regulation).

The threshold has two components:

- whether the amount of native vegetation being cleared exceeds a threshold area
- whether the development involves clearing of native vegetation or prescribed impacts on an area mapped on the biodiversity values map published by the Minister for the Environment.

Further information on the BOS and triggers for entry is available at www.environment.nsw.gov.au/biodiversity/offsetsscheme.htm.

Biodiversity values map

When to use the biodiversity values map

Development applications under Part 4 (local development) of the *Environmental Planning and Assessment Act 1979*

The biodiversity values map is one of the thresholds used to determine if a BDAR must accompany a development application.

Section 7.2(1)(b) of the BC Act and clause 7.1(1) of the BC Regulation

The biodiversity values map may not apply to developments within an approved subdivision

A development application will not trigger the biodiversity values map if:

- the development is being carried out on a lot that was the result of a subdivision carried out before the commencement of the BC Act AND
- the subdivided land is zoned R1 to R4, RU5, B1 to B8 or IN1 to IN3 AND
- the purpose of the subdivision for which approval was granted has not yet been realised.

Council is the relevant authority to confirm if:

- a subdivision approval has been granted in an appropriate zone prior to commencement AND
- the purpose of the subdivision has not yet been realised AND
- the proposed development is consistent with the purpose of the approved and unrealised subdivision.

The area clearing threshold component of the BOS threshold will still apply.

This exemption does not apply under the *State Environmental Planning Policy (Vegetation in Non-rural Areas) 2017* (Vegetation SEPP).

Clause 7.3(4) of the BC Regulation and clause 4(1) of the Vegetation SEPP

Clearing of vegetation not ancillary to development that is regulated by the Vegetation SEPP

The biodiversity values map is one of the thresholds that will determine whether approval is required from the Native Vegetation Panel. An application for approval to the Native Vegetation Panel must be accompanied by a BDAR.

Clause 7.2 of the Vegetation SEPP

The biodiversity values map does not apply to clearing that is exempt from needing approval under the Vegetation SEPP

Approval to clear native vegetation is not required under the Vegetation SEPP in the following circumstances:

- an activity that has approval under other legislation as defined by section 600 of the *Local Land Services Act 2013* (LLS Act). This includes clearing undertaken in accordance with the 10/50 Vegetation Clearing Code of Practice for NSW for existing buildings as defined by the code. Note the exemption does not extend to 'exempt development' in the context of the EP&A Act
- clearing of native vegetation that the council or Native Vegetation Panel is satisfied is dying or dead and is not required as habitat of native animals
- clearing of native vegetation that council is satisfied is a risk to human life or property
- clearing associated with transitional allowable activities within R5, E2, E3 and E4 zones as described in the Vegetation SEPP.

Council is the relevant authority to confirm if:

- native vegetation that would otherwise require a permit is dying or dead and not required as habitat of native animals
- vegetation is a risk to human life or property.

The Native Vegetation Panel is the relevant authority to determine if native vegetation that would otherwise require an approval is dying or dead and not required as habitat of native animals.

Clause 8 and clause 27 of the Vegetation SEPP

How to find the biodiversity values map

The biodiversity values map can be accessed with the Biodiversity Values Map and Threshold (BMAT) tool.

Developers, landholders and consent authorities can use the [BMAT Tool](#) to determine whether proposed development or clearing triggers the biodiversity values map. The tool can produce a report that states whether the BOS threshold has been triggered based on the biodiversity values map.

The tool is available at: www.lmbc.nsw.gov.au/Maps/index.html?viewer=BOSETMap.

How to use the biodiversity values map

Clearing of native vegetation triggers the BOS threshold

Clearing of any native vegetation on an area mapped on the biodiversity values map will trigger the requirement to prepare a BDAR for a development application under Part 4 of the EP&A Act (local development).

Clearing of native vegetation for the purposes of development is defined in [section 60C of the LLS Act](#).

Clearing of any native vegetation on an area mapped on the biodiversity values map that is also regulated by the Vegetation SEPP will trigger the requirement to obtain approval from the Native Vegetation Panel. A BDAR will be required.

Clearing of native vegetation for the purposes of the Vegetation SEPP is defined in [clauses 7 and 8 of the Vegetation SEPP](#).

Native vegetation is defined in [section 60B of the LLS Act](#).

Native vegetation includes planted native vegetation.

Native vegetation does not include marine vegetation; however, if marine vegetation forms part of the Coastal Saltmarsh endangered ecological community, it would be considered native for the purposes of the biodiversity values map and the BC Act more broadly.

Clause 7.1(1)(b) of the BC Regulation

Prescribed impacts within the footprint of the works trigger the BOS threshold

Prescribed impacts that are direct impacts and occur on an area mapped on the biodiversity values map will trigger the BOS threshold.

Prescribed impacts are defined in [clause 6.1 of the BC Regulation](#).

Clause 7.1(1)(b) of the BC Regulation

Subdivision proposals must consider clearing of native vegetation likely to be required for the purposes for which the land is being subdivided

When applying the biodiversity values map, the subdivision development application must consider the clearing of native vegetation that, in the opinion of the consent authority, is required or likely to be required for the future land use.

This could include, but is not limited to, clearing to construct buildings as well as associated asset protection zones, fence lines, driveways and services.

Council is the relevant authority to confirm:

- the area of likely clearing resulting from the subdivision to be considered when applying the biodiversity values map
- whether the biodiversity values map has been triggered.

Clause 7.1(3) of the BC Regulation

Landholders can seek explanation or review of the biodiversity values map

Landholders, or their agents, can request an explanation report to show the biodiversity values that have been included on the biodiversity values map for a property.

Councils or the Native Vegetation Panel can also request an explanation report for a property for which they have received a development or clearing application relevant for land on the biodiversity values map.

Landholders can request a review of the biodiversity values map for their property if they feel a value has been incorrectly mapped. A review may result in an amendment to the biodiversity values map.

There is no cost to request an explanation report or review of the biodiversity values map.

Application forms for explanation reports and map reviews are available at <https://www.environment.nsw.gov.au/biodiversity/biodiversity-values-map.htm> or by contacting the Map Review Team at map.review@environment.nsw.gov.au or on 02 6360 9000.

Area clearing threshold

When to use the area clearing threshold

Development applications under Part 4 (local development) of the EP&A Act

The area clearing threshold is one of the thresholds used to determine if a BDAR must accompany a development application.

Section 7.2(1)(b) of the BC Act and clause 7.1(1) of the BC Regulation

Clearing of vegetation not ancillary to development that is regulated by the Vegetation SEPP

The area clearing threshold is one of the thresholds that will determine whether approval is required from the Native Vegetation Panel. An application for approval to the Native Vegetation Panel must be accompanied by a BDAR.

Clause 7.2 of the Vegetation SEPP

The area clearing threshold does not apply to clearing that is exempt from needing approval under the Vegetation SEPP

Approval to clear native vegetation is not required under the Vegetation SEPP in the following circumstances:

- an activity that has approval under other legislation as defined by section 60O of the LLS Act
 - this does not include ‘exempt development’ in the context of the EP&A Act
 - this does include clearing undertaken in accordance with the 10/50 Vegetation Clearing Code of Practice for NSW for existing buildings as defined by the code
- clearing of native vegetation that the council or Native Vegetation Panel is satisfied is dying or dead and is not required as habitat of native animals
- clearing of native vegetation that council is satisfied is a risk to human life or property
- clearing associated with transitional allowable activities within R5, E2, E3 and E4 zones.

Council is the relevant authority to confirm if:

- native vegetation that would otherwise require a permit is dying or dead and not required as habitat of native animals
- vegetation is a risk to human life or property.

The Native Vegetation Panel is the relevant authority to confirm if native vegetation that would otherwise require an approval is dying or dead and not required as habitat of native animals.

Clause 8 and clause 27 of the Vegetation SEPP

How to find the area clearing thresholds

The area clearing thresholds are set out in clause 7.2(1) of the BC Regulation.

Minimum lot size associated with the property	Threshold for clearing above which a BDAR is required
Less than 1 hectare	0.25 hectares or more
1 hectare to less than 40 hectares	0.5 hectares or more
40 hectares to less than 1000 hectares	1 hectare or more
1000 hectares or more	2 hectares or more

How to use the area clearing thresholds

Clearing in excess of the clearing thresholds triggers the BOS thresholds

Clearing in excess of the area of native vegetation set by minimum lot size will trigger the requirement to prepare a BDAR for a development application under Part 4 of the EP&A Act (local development).

Clearing of native vegetation for the purposes of development is defined in [section 60C of the LLS Act](#).

Clearing in excess of the area of native vegetation set by minimum lot size in an area that is regulated by the Vegetation SEPP will trigger the requirement to obtain approval from the Native Vegetation Panel. A BDAR will be required.

Clearing of native vegetation for the purposes of the Vegetation SEPP is defined in clauses 7 and 8 of the Vegetation SEPP.

Native vegetation is defined in section 60B of the LLS Act.

Native vegetation includes planted native vegetation.

Native vegetation does not include marine vegetation; however, if marine vegetation forms part of the Coastal Saltmarsh endangered ecological community, it would be considered native for the purposes of the biodiversity values map and the BC Act more broadly.

Clause 7.1(1)(a) of the BC Regulation

Clearing thresholds are based on minimum lot size

The local environmental plan (LEP) for the relevant local government area (LGA) may define minimum lot sizes for land-use zones.

Where the clearing occurs across more than one land-use zone with different minimum lot sizes, the smaller of the two applies.

Where there is no minimum lot size, the actual lot size applies.

Where the clearing occurs across more than one land-use zone, one with and one without a minimum lot size, the smaller of the minimum lot size or actual lot size applies.

Council is the relevant authority to confirm relevant minimum lot sizes

For a development under Part 4 of the EP&A Act the area of native vegetation clearing must be based on the total footprint of the development

This would include all buildings and ancillary use such as asset protection zones, landscaping, fence lines, driveways, services and temporary works and facilities.

Subdivision proposals must consider clearing of native vegetation likely to be required for the purposes for which the land is being subdivided

When applying the area clearing thresholds, the subdivision development application must consider the clearing of native vegetation that, in the opinion of the consent authority, is required or likely to be required for the future land use.

This could include, but is not limited to, clearing to construct buildings as well as associated asset protection zones, fence lines, driveways and services.

Council is the relevant authority to confirm the area of likely clearing resulting from the subdivision to be considered when applying the biodiversity values map.

Clause 7.1(3) of the BC Regulation

Vegetation on rural land that is Category 1 land is not included in the area clearing calculation

Clearing of native vegetation on land that meets the definition of Category 1 land (under the LLS Act) does not require assessment or offsetting with the Biodiversity Assessment Method. In practice, this means that native vegetation on Category 1 land is not included in any area clearing calculations when deciding whether a BDAR should be prepared.

A development on Category 1 land may involve other biodiversity impacts for which a BDAR will still be required if:

- the development will have a prescribed impact on land mapped on the biodiversity values map (prescribed impacts are listed in clause 6.1 of the BC Regulation), not including native vegetation clearing associated with the prescribed impact
- a test of significance finds that a significant impact on threatened species, ecological communities or their habitats is likely to result from the proposed development.

While the Native Vegetation Regulatory Map is being finalised, landowners will be responsible for determining the categorisation of their land, in accordance with the LLS Act.

Further information is available on the [Local Land Services website](#).

An application for planning approval submitted to a consent authority should clearly indicate the area of land determined to be Category 1 land.

The BMAT tool cannot currently calculate area clearing impacts

The report issued by the BMAT tool will indicate that the area of vegetation cleared is unknown and that it is also unknown whether the area of vegetation clearing exceeds the relevant threshold.

Areas of clearing must be manually calculated until this function becomes available in the tool. The [BMAT tool user guide](#) provides advice on how to calculate the area of clearing.

Area of clearing calculations will be based on native vegetation as defined in [section 60B of the LLS Act](#) mapped on aerial imagery.

A short cut to undertaking area clearing calculations is to tally the area of the canopies of native trees and shrubs:

- within the total footprint of the development in the case of a Part 4 development application
- to be removed in the case of vegetation clearing on land regulated by the Vegetation SEPP.

If the area totals more than the relevant clearing threshold, the area clearing threshold is triggered.

If the canopy total alone does not exceed the relevant clearing threshold, it will be necessary to map vegetation patches to determine whether the total impacted area of vegetation exceeds the relevant clearing threshold.

Evidence that the BOS threshold is not exceeded

Council may reject a development application if a BDAR does not accompany an application that requires one

If a development application triggers either component of the BOS threshold, a biodiversity development application must accompany the development application.

Note that draft BDARs should not be accepted. The impact and corresponding measures to avoid, mitigate, manage and offset the impact must be final for the development application to be determined.

Section 7.7(2) of the BC Act, clause 51(2)(c) of the Environmental Planning & Assessment Regulation 2000 (EP&A Regulation)

Council may reject a development application if the application does not contain certain information or documents

Part 1 of Schedule 1 of the EP&A Regulation outlines information and documents that must accompany all development applications.

In most circumstances a development application must contain an indication of whether the development is likely to significantly affect threatened species, populations, or ecological communities or their habitats. This is read as a reference to the test of significance in section 7.3 of the BC Act.

To demonstrate to Council that a development application does not need to be accompanied by a BDAR and complies with the EP&A Regulation, it will be necessary for the proponent to submit evidence that the proposal does not trigger the BOS.

Part 1 Schedule 1 clause 1(e) and clause 51(1)(b) of the EP&A Regulation

Development applications must be accompanied by a site plan

A development application must be accompanied by additional information and documentation outlined in the EP&A Regulation, including but not limited to:

- an indication of whether the land is or is part of critical habitat (read as area of outstanding biodiversity value)
- an indication of whether the development will have a significant impact on threatened species, populations or ecological communities or their habitats (unless biodiversity compliant)
- a site plan which includes:
 - location, boundary dimensions, site area and north point of the land
 - existing vegetation and trees on the land
 - location and uses of existing buildings on the land
- a sketch of the development which includes:
 - location of proposed building or works in relation to the land's boundaries
 - parking arrangements, driveways and other internal roads
 - proposed landscaping treatment of the land
 - proposed methods of draining the land.

The above information will support the consent authority to determine whether a BDAR is required to be submitted with the development application. The following additional pieces of information are recommended to further support this decision:

- existing watercourses and appropriate riparian buffer zones
- prescribed Asset Protection Zones (APZs)
- wastewater treatment and/or irrigation areas
- locations of services
- any vegetation proposed/required for removal.

Part 1 Schedule 1 clause 2(1) of the EP&A Regulation

Evidence relating to the BOS threshold should be submitted with the development application

Where a development application is submitted without a BDAR, council can expect to receive the following minimum supporting evidence:

Biodiversity values map	Area clearing threshold
<ul style="list-style-type: none"> • Reference to the relevant subdivision approval if claiming the biodiversity values map does not apply • A site plan indicating the total footprint of the development OR • In the case of a subdivision, a site plan indicating the likely footprint of the future development for which the subdivision is proposed • A BMAT report indicating whether the biodiversity values map has been triggered by the development 	<ul style="list-style-type: none"> • Map of category 1 land and supporting justification • A site plan indicating the total footprint of the development OR • In the case of a subdivision, a site plan indicating the likely footprint of the future development for which the subdivision is proposed • Details of native vegetation calculations including patch boundaries

Evidence relating to the BOS threshold should be submitted with a permit application

Where an application for a permit is submitted under the Vegetation SEPP, council can expect to receive the following minimum supporting evidence:

Biodiversity values map	Area clearing threshold
<ul style="list-style-type: none"> • A BMAT report indicating whether the biodiversity values map is triggered by the proposed clearing 	<ul style="list-style-type: none"> • Details of vegetation calculations including patch boundaries

Frequently asked questions

What is the relationship between the Coastal Management SEPP maps and the biodiversity values map?

The biodiversity values map is made by the Environment Agency Head and is available from the BMAT Tool. The BC Regulation outlines the types of land that may be included in the biodiversity values map. Coastal wetlands and littoral rainforest mapped under the Coastal Management SEPP are one of these categories of land. The 'core' areas of coastal wetlands and littoral rainforest are included on the biodiversity values map, not the 100 metre 'proximity areas'. Any changes to the SEPP mapping will be incorporated as part of updates to the biodiversity values map.

How can local government provide input or data to include an area in the biodiversity values map?

Local government can nominate areas for inclusion on the biodiversity values map. For these areas to be added to the map the Minister for the Environment must be of the view that they will be of bioregional or state significance.

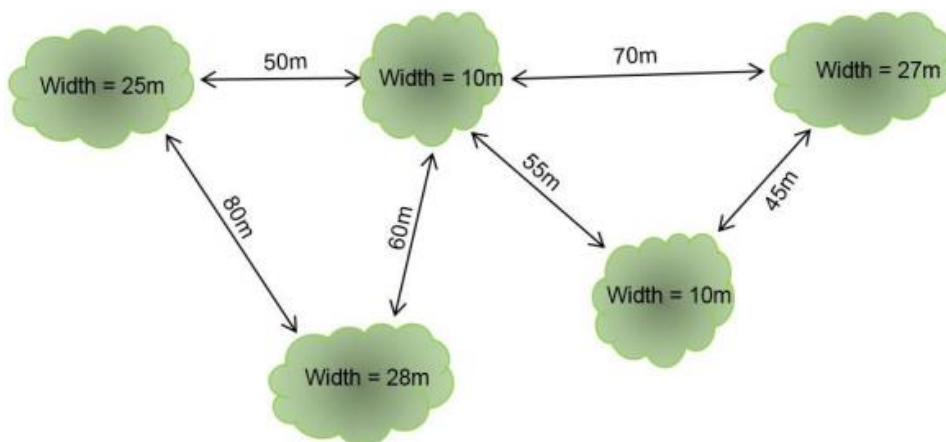
The Department of Planning, Industry and Environment expects to call for local government nominations for land to be included on the map. This will be communicated directly to councils.

Clause 7.3(3)(j) of the BC Regulation

How is a patch of vegetation defined for the area clearing threshold?

A group of trees should be mapped as a single vegetation patch if the distance between the canopies has a crown separation ratio of between 0 and 3.

Crown separation ratio is calculated by dividing the average gap distance between canopies into the average canopy width within a group as per the example below. In this case, the average distance between the canopies is 60 metres and the average canopy width is 20 metres. The crown separation ratio is 3 – meaning this group of trees should be considered a single vegetation patch.



The process of identifying a patch of vegetation may involve excluding outlying trees until a unit of vegetation with a crown separation ratio of between 1 and 3 can be delineated.

Outlying trees excluded from a patch in this process would be mapped as a separate vegetation unit.

When is a tree or shrub not part of a vegetation patch?

When a tree stands isolated from a vegetation patch, it will not be considered part of the patch if:

- it has been excluded from a patch because its inclusion caused the crown separation ratio to be exceeded OR
- the closest distance between the tree and the patch is more than three times greater than the average canopy width of trees within the patch.

Isolated trees or shrub should be mapped as a separate vegetation patch that includes any surrounding native understorey.

If there is no native understorey, only the canopy of the tree or shrub will be mapped.