



Clearing Trees on Urban Land and Environmental Zones

Last updated: January 2018

These Fact Sheets are a guide only and are no substitute for legal advice. To request free initial legal advice on an environmental or planning law issue, please [visit our website](#)¹ or call our Environmental Law Advice Line. Your request will be allocated to one of our solicitors who will call you back, usually within a few days of your call.

Sydney: 02 9262 6989
Northern Rivers: 1800 626 239
Rest of NSW: 1800 626 239

Overview

This information in the Fact Sheet applies to urban areas of NSW and land that is zoned for environmental purposes, known as E-zones.²

For information about clearing trees on rural land, see our Fact Sheet on [Clearing Vegetation](#).³

Clearing trees in urban areas and environmental zones is regulated by [State Environmental Planning Policy \(Vegetation in Non-Rural Areas\) 2017](#) (Native Vegetation SEPP).⁴

If the clearing is for a purpose that requires development consent, the clearing will be assessed under planning laws.

Certain clearing will trigger the Biodiversity Offsets Scheme under the [Biodiversity Conservation Act 2016 \(NSW\)](#).⁵

¹ http://www.edonsw.org.au/legal_advice

² See Glossary for a definition of urban areas and E-zones.

³ See: http://www.edonsw.org.au/forestry_clearing_vegetation_trees

⁴ See: <https://www.legislation.nsw.gov.au/#/view/EPI/2017/454>

⁵ See: <https://www.legislation.nsw.gov.au/#/view/act/2016/63>

Pruning and cutting down trees

Permission may be required

In many cases, landholders will require permission to clear vegetation on their land. There are three pathways to obtaining permission to clear:

- permit from the local council;
- approval from the Native Vegetation Panel; or
- authorisation under other legislation, such as planning laws.

Permission not required in certain circumstances

Permission to clear will not be required if:⁶

- the Council or the Native Vegetation Panel is satisfied that the vegetation to be cleared is dying or dead and not required as habitat for native animals, or
- the Council is satisfied that the vegetation to be cleared is a risk to human life or property.

Those intending to clear should still inform the Council or Native Vegetation Panel of their intention to clear and demonstrate why permission is not required.

Permit from the local council

Circumstances where Council can issue a permit to clear

A permit from the Local Council will be required where:⁷

- the clearing is not for a purpose that requires development consent;
- the trees to be cleared are covered by the Council's Development Control Plan; and
- the clearing is below the Biodiversity Offsets Scheme threshold.

Clearing for a purpose that needs development consent

If the clearing is for a purpose that requires development consent under the Local Environmental Plan that applies to the land, the landowner must lodge a development application and the clearing will be authorised by any development consent that is granted.

Trees covered by the Council's Development Control Plan

Each Local Council is required to have a Development Control Plan (DCP) that lists the types of trees for which a permit must be sought before they can be cleared.⁸

⁶ State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, cl. 8.

⁷ State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, cl. 7.

⁸ State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, cl. 9.

The DCP can identify vegetation in a variety of ways:⁹

- By species.
- By size (e.g. tree is a certain height or trunk is a certain circumference at a certain height above the ground).
- By location (including reference to a map or zone).

If the tree is not covered by the DCP, it can be cleared without the need to obtain a permit as long as the vegetation is not a heritage item or located in a heritage conservation area, and is not an Aboriginal object or located in an Aboriginal place of heritage significance.¹⁰

Clearing below the Biodiversity Offsets Scheme threshold

The Biodiversity Offsets Scheme threshold (BOS threshold) is the point at which proposed clearing will trigger the provisions of the Biodiversity Offsets Scheme. The Scheme requires impacts on biodiversity values to be identified and offset.

A Council can only issue a permit to clear if the clearing is below the BOS threshold.¹¹

In order to be below the BOS threshold, the clearing must not:¹²

- exceed the clearing limit for the lot size; or
- be proposed on land that is included on the Biodiversity Values Map.

1. Clearing limits for lot size

Minimum lot size of land	Area of clearing
Less than 1 hectare	0.25 hectare or more
Between 1 hectare and less than 40 hectares	0.5 hectare or more
Between 40 hectares, and less than 1000 hectares	1 hectare or more
1,000 hectares or more	2 hectares or more

A landholder should first check the minimum lot size that applies to their land. This will most likely be in the Local Environmental Plan that applies to the land but it could

⁹ State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, cl. 9.

¹⁰ State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, cl. 25.

¹¹ State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, cl. 10 (2).

¹² *Biodiversity Conservation Act 2016* (NSW), s. 7.4; *Biodiversity Conservation Regulation 2017* (NSW), cl. 7.1, 7.2, 7.3.

be in a State Environmental Planning Policy. If there is no minimum lot size, the actual size of the allotment of the land on which the clearing is to be carried out applies.

This means that if the landholder owns 40 hectares but the minimum lot size is 20 hectares, the area of clearing is calculated based on 20 hectares, not 40 hectares.

Using the table above, if the minimum lot size is 20 hectares and a landholder wishes to clear 0.25 hectares, the clearing is below the BOS threshold. A Council permit will be required unless the clearing is for a purpose that requires development consent, or the relevant trees are not covered by the Council's Development Control Plan.

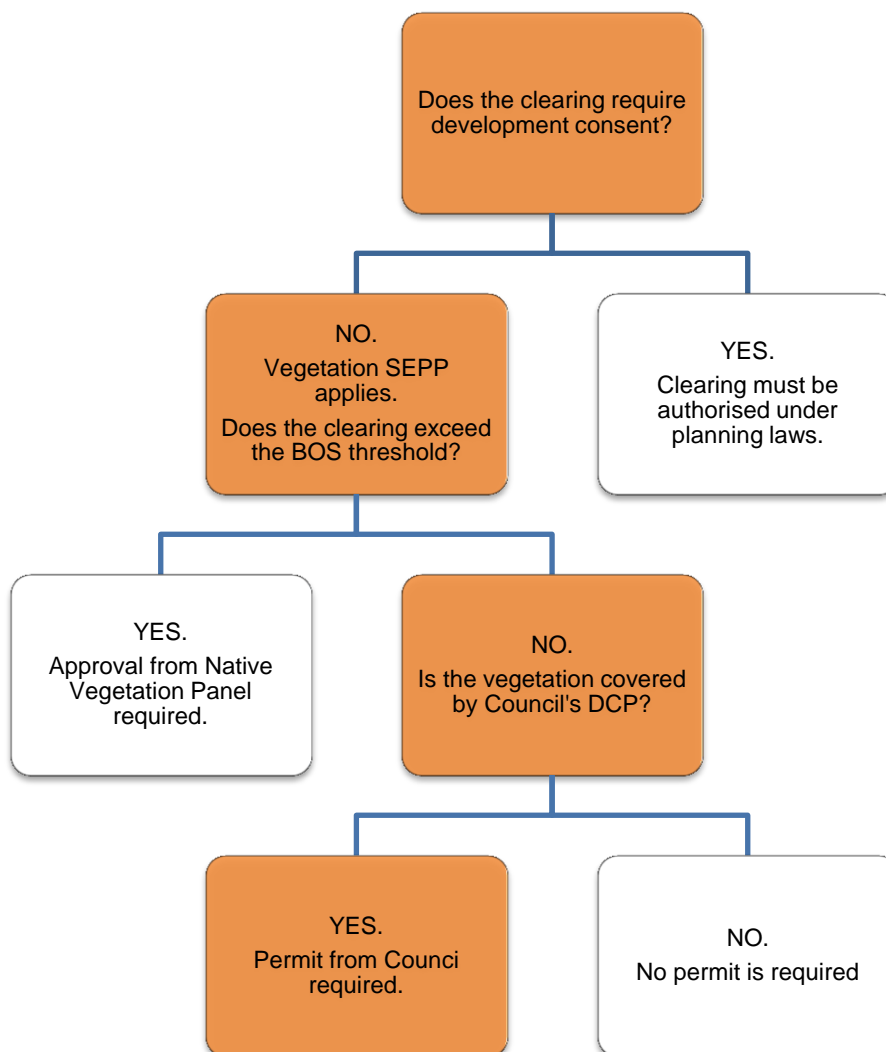
If the same landholder wishes to clear 0.5 hectares, the clearing is above the BOS threshold. Clearing above the BOS threshold requires approval from the Native Vegetation Panel.

2. Land within the Biodiversity Values Map

The [Biodiversity Values Map](#)¹³ identifies land with high biodiversity value, such as coastal and Ramsar wetlands, core koala habitat and littoral rainforest. If the land to be cleared is mapped as having high biodiversity value, approval from the Native Vegetation Panel will be required unless the clearing is for a purpose that needs development consent.

Working out whether proposed clearing needs a Council permit

¹³ See: <https://www.lmbc.nsw.gov.au/Maps/index.html?viewer=BVMap>



Applying for a permit to clear

Once it is determined that the clearing:

- is not for a purpose that requires development consent,
- is covered by the Council's DCP, and
- does not exceed the BOS threshold

the landholder can apply to the Council for a permit to clear.

Application

The application is to be made in the form and manner determined by the Council so this could vary between local government areas. There may be an application fee.

Evaluation

There are no specific factors that a Council must consider before issuing a permit to clear. However, if the proposed clearing applies to vegetation that:¹⁴

- forms part of a heritage item or is within a heritage conservation area, or
- forms part of an Aboriginal object or is within an Aboriginal place of heritage significance

the council cannot issue a permit unless it is satisfied that:

- the proposed clearing is of a minor nature or is for the maintenance of the heritage item, object, place or area, and
- will not adversely affect the heritage item, object, place or area.

Determination

A Council has 28 days to determine the application.¹⁵ A Council can either issue the permit or refuse to issue the permit.¹⁶ If it issues the permit, it can do so subject to conditions.¹⁷

Appeal to the Land and Environment Court

An applicant who is dissatisfied with a Council's decision can appeal to the Land and Environment Court within 3 months of the decision.¹⁸

Public notification and consultation

There is no requirement for the public, including neighbours, to be notified of an application for a permit to clear or to be given the opportunity to comment on the application.

Approvals to clear from the Native Vegetation Panel

The Native Vegetation Panel is responsible for assessing applications to clear that are above the BOS threshold – that is where the area to be cleared exceeds the limit for the lot size or where the land is mapped as being of high biodiversity value. See above for more information.

If the clearing is for a purpose that requires development consent, the clearing will be assessed as part of the development application by the relevant consent authority

¹⁴ State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, cl. 10.

¹⁵ State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, cl. 11 (4).

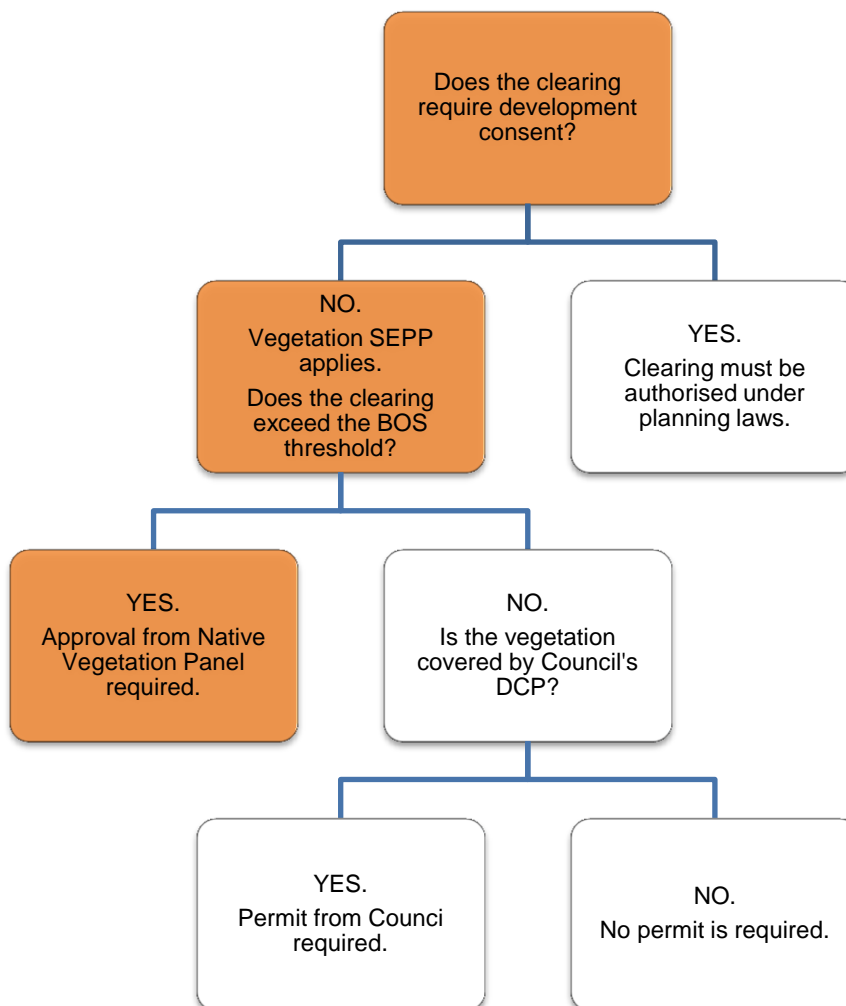
¹⁶ State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, cl. 10 (1).

¹⁷ State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, cl. 10 (4).

¹⁸ State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, cl. 12 (1) and (2).

(e.g. local council, Department of Planning and Environment, Planning Assessment Commission).

Working out whether proposed clearing needs approval from the Native Vegetation Panel



The Native Vegetation Panel

The Native Vegetation Panel is made up of three members who are appointed by the Minister for Primary Industries.¹⁹

At the time of writing, the Panel had not been appointed, but when it is it will comprise:²⁰

- a Chairperson, with expertise in planning, public administration or social assessment,
- a person with expertise in economics, agricultural economics or agricultural land production systems, and

¹⁹ *Local Land Services Act 2013* (NSW), s. 60ZE.

²⁰ *Local Land Services Act 2013* (NSW), s. 60ZE (2).

- a person with expertise in ecology or the protection and conservation of biodiversity.

Impacts of clearing must be offset

Where proposed clearing exceeds the BOS threshold, the impacts of the clearing on biodiversity values must be identified and offset under the Biodiversity Offsets Scheme.²¹

The Biodiversity Offsets Scheme is a system for offsetting of the impacts associated with development or clearing through the purchase and retirement of 'biodiversity credits'. The credits are generated by people who have entered into stewardship agreements to conserve and enhance the biodiversity values of their land.

The CEO of the Office of Environment and Heritage (OEH) maintains a [public register](#) of biodiversity credits that have been created.²²

The Biodiversity Offsets Scheme is underpinned by the [Biodiversity Assessment Method](#)²³ The Biodiversity Assessment Method is a [scientific tool](#)²⁴ that enables accredited assessors to identify the biodiversity values of a piece of land and assess the impacts of proposed clearing on those values. Any impacts that cannot be avoided or minimised must be offset. The details of the assessment are contained in a Biodiversity Development Assessment Report.

Assessors must be accredited by the OEH which maintains a list of [accredited assessors](#).²⁵

Retiring biodiversity credits

Once a biodiversity credit has been purchased, the holder of the credit may apply in writing to the CEO of the OEH to retire the credit.²⁶ The CEO of the OEH retires biodiversity credits by recording in the register of biodiversity credits that the credit has been retired.²⁷ Once a credit is retired, it cannot be used again to offset impacts on biodiversity.

Applying for approval to clear

Once it is determined that the clearing:

²¹ Pursuant to the *Biodiversity Conservation Act 2016* (NSW).

²² *Biodiversity Conservation Act 2016* (NSW), s. 6.17 and Part 9. See: <http://www.environment.nsw.gov.au/bimsprapp/BiobankingPR.aspx>

²³ See: <http://www.environment.nsw.gov.au/biodiversity/assessmentmethod.htm>

²⁴ See: <https://www.lmbc.nsw.gov.au/bamcalc>

²⁵ See: www.environment.nsw.gov.au/biodiversity/assessors.htm

²⁶ *Biodiversity Conservation Act 2016* (NSW), s. 6.27.

²⁷ *Biodiversity Conservation Act 2016* (NSW), s. 6.27.

- is not for a purpose that requires development consent, and
- exceeds the BOS threshold

the landholder can apply to the Native Vegetation Panel for an approval to clear.²⁸

Application

The Panel will develop a form for applications.²⁹ The form will most likely require the applicant to outline the purpose of the clearing and show how the clearing exceeds the BOS threshold.

An application fee is also likely.³⁰

Along with the application, the landholder must submit a Biodiversity Development Assessment Report (see below).³¹

Evaluation

In considering whether to approve applications to clear, the Panel must take into consideration the environmental, social and economic impacts of the proposed clearing (in accordance with the principles of ecologically sustainable development) having regard to the purpose for which the land is to be used after it is cleared.³²

In relation to the environmental impacts, the Panel must consider (without limitation) the following:³³

- the likely impact of the proposed clearing on biodiversity values as set out in a biodiversity development assessment report that has been submitted by the applicant;
- whether the clearing of the native vegetation is likely to cause or increase soil erosion, salination, acidification, land slip, flooding, pollution or other adverse land or water impacts;
- any future clearing of native vegetation on the land that has been authorised or notified but not yet carried out; and
- any biodiversity or heritage matter that an applicable State Environmental Planning Policy, Local Environmental Plan, or Development Control Plan requires the Panel to consider in relation to the impact of the proposed clearing.

Determination

²⁸ State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, cl. 14.

²⁹ State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, cl. 17.

³⁰ State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, cl. 18. The Panel can charge up to \$3,000 if the area to be cleared is less than 5 hectares, and up to \$9,000 if the area to be cleared is 5 hectares or more.

³¹ State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, cl. 15.

³² State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, cl. 14 (5).

³³ State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, cl. 14 (5).

The Panel can either approve or refuse the application. Approvals can be subject to conditions.³⁴

The Panel must refuse to grant approval if the Panel is of the opinion that the proposed clearing is likely to have serious and irreversible impacts on biodiversity values.³⁵

The Panel can also delegate its determination functions to the Local Council.³⁶

Appeal to the Land and Environment Court

An applicant who is dissatisfied with the Panel's decision can appeal to the Land and Environment Court within 6 months of being notified of the decision.³⁷

Public notification and consultation

There is no requirement for the public, including neighbours, to be notified of an application for a permit to clear or to be given the opportunity to comment on the application.

Biodiversity Development Assessment Report

An application to clear must be accompanied by a Biodiversity Development Assessment Report.³⁸ This is a report that is prepared by an accredited assessor to identify:³⁹

- the biodiversity values of the land;
- the impacts of the proposed clearing; and
- the actions required to offset the residual impacts of the clearing (after impacts have been avoided and minimised).

If the Native Vegetation Panel approves the clearing application, the conditions of the approval must require the applicant to purchase and retire biodiversity credits to offset the impact on biodiversity values of the number and class set out in the Biodiversity Development Assessment Report.⁴⁰

However, the Panel may reduce or increase the number of biodiversity credits that would otherwise be required if the Panel determines that the reduction or increase is justified having regard to the environmental, social and economic impacts of the proposed clearing and the purpose for which the land is to be used after it is cleared.

³⁴ State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, cl. 14 (2).

³⁵ State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, cl. 14 (6).

³⁶ State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, cl. 13 (4).

³⁷ State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, cl. 22.

³⁸ State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, cl. 15.

³⁹ *Biodiversity Conservation Act 2016* (NSW), s. 6.12.

⁴⁰ State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, cl. 15 (3).

The Panel must give reasons for a decision to reduce or increase the biodiversity credits.⁴¹

Serious and irreversible impacts on biodiversity values

The Panel must refuse to grant approval if the Panel is of the opinion that the proposed clearing is likely to have serious and irreversible impacts on biodiversity values.⁴²

Clearing is likely to have serious and irreversible impacts on biodiversity values if it is likely to contribute significantly to the risk of a threatened species or ecological community becoming extinct because:⁴³

- it will cause a further decline of the species or ecological community that is currently observed, estimated, inferred or reasonably suspected to be in a rapid rate of decline; or
- it will further reduce the population size of the species or ecological community that is currently observed, estimated, inferred or reasonably suspected to have a very small population size; or
- it is an impact on the habitat of the species or ecological community that is currently observed, estimated, inferred or reasonably suspected to have a very limited geographic distribution; or
- the impacted species or ecological community is unlikely to respond to measures to improve its habitat and vegetation integrity and therefore its members are not replaceable.

Meeting offset obligations

The Biodiversity Development Assessment Report will predict the impact of the clearing on biodiversity values and the number and class of biodiversity credits required to be retired to offset the impacts on biodiversity.

The applicant then has options as to how to offset the impacts. They can:⁴⁴

- retire like-for-like biodiversity credits;
- retire biodiversity credits under variation rules;
- fund a biodiversity conservation action that would benefit the relevant threatened species or ecological community; or
- pay money into the Biodiversity Conservation Fund.

Retire like-for-like biodiversity credits

In simple terms, like-for-like means if clearing will impact a species of plant or animal, its habitat, or an ecosystem, then the impact should be directly offset by protecting and improving the same species, same kind of habitat or the same

⁴¹ State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, cl. 15 (4).

⁴² State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, cl. 14 (6).

⁴³ *Biodiversity Conservation Act 2016* (NSW), s. 6.5; *Biodiversity Conservation Regulation 2017* (NSW), cl. 6.7.

⁴⁴ *Biodiversity Conservation Regulation 2017* (NSW), cl. 6.2.

ecosystem somewhere else (preferably as close as possible to the where those values are being lost).

But the like-for-like rules under the Biodiversity Offsets Scheme are quite flexible.

They require impacts on a threatened ecological community to be offset with the same ecological community, but the offset site can be up to 100km from the impact site.⁴⁵

It is possible to offset impacts on an animal species (e.g. the koala) with the same species at an offset site anywhere in NSW.

Retire biodiversity credits under variation rules

If like-for-like offsets cannot be secured, it's possible to use the variation rules.

Variation can only happen if reasonable steps are first taken to find like-for-like offsets.⁴⁶ Proponents of clearing would need to check the [biodiversity credits register](#),⁴⁷ and list credits on the [credits wanted register](#).⁴⁸

Under the variation rules the impacts on one threatened ecological community or vegetation type (being habitat for threatened species) can be offset with a different ecological community or vegetation type in the same or a nearby bioregion.⁴⁹

The clearing of hollow bearing trees can be offset with artificial hollows.⁵⁰

Impacts on a threatened plant or animal species can be offset with a different plant or animal species of the same or higher risk of extinction (plants for plants and animals for animals) as long as they are in the same or a nearby bioregion.⁵¹

Fund a biodiversity conservation action that would benefit the relevant threatened species or ecological community

The CEO of the Office of Environment and Heritage has prepared '[ancillary rules](#)' for interpreting and applying the offset rules.⁵² The ancillary rules set out the biodiversity conservation actions that will qualify as offsets.⁵³

⁴⁵ *Biodiversity Conservation Regulation 2017* (NSW), cl. 6.3.

⁴⁶ *Biodiversity Conservation Regulation 2017* (NSW), cl. 6.4.

⁴⁷ See: <http://www.environment.nsw.gov.au/bimsprapp/SearchBiodiversityCredit.aspx?Start=1>

⁴⁸ See: <http://www.environment.nsw.gov.au/bimsprapp/SearchCWR.aspx?Start=1>

⁴⁹ *Biodiversity Conservation Regulation 2017* (NSW), cl. 6.4(b).

⁵⁰ *Biodiversity Conservation Regulation 2017* (NSW), cl. 6.4(b).

⁵¹ *Biodiversity Conservation Regulation 2017* (NSW), cl. 6.4(c).

⁵² See: <http://www.environment.nsw.gov.au/resources/bcact/ancillary-rules-biodiversity-actions-170496.pdf>

⁵³ *Biodiversity Conservation Regulation 2017* (NSW), cl. 6.2(4) and 6.5.

The biodiversity conservation actions listed in Table 1 can be funded by a proponent if the other requirements in these ancillary rules are met.

Table 1 Biodiversity conservation actions list

Species common name	Species scientific name	Biodiversity conservation actions
Flockton wattle	<i>Acacia flocktoniae</i>	Targeted survey across entire predicted range to identify locations of populations. Research to understand critical threats requiring management.
Five-clawed worm-skink	<i>Anomalopus mackayi</i>	Identify key threats to the species' viability at critical sites and associated relevant management actions. Research the species' movement patterns, habitat use and response to management.
A spear-grass	<i>Austrostipa metatoris</i>	Targeted survey in areas of known habitat to confirm distribution and population sizes and undertake threat assessment.

An example of the ancillary rules for funding biodiversity conservation actions under the offset rules

The funding of the conservation action must be equivalent to the cost of acquiring the required like-for-like biodiversity credits. This can be determined by applying the [biodiversity offsets payment calculator](#).⁵⁴

Pay money into the Biodiversity Conservation Fund

A person can satisfy a requirement to retire biodiversity credits by paying an amount into the Biodiversity Conservation Fund.⁵⁵

The amount to be paid is determined by applying the [biodiversity offsets payment calculator](#).⁵⁶

The [Biodiversity Conservation Trust](#)⁵⁷ manages the Biodiversity Conservation Fund and must use funds received to secure biodiversity offsets either through the retirement of biodiversity credits or payment for other biodiversity conservation actions (explained above).⁵⁸

Authorisation under other legislation

Clearing for a purpose that needs development consent

Where the clearing is for a purpose that needs development consent, it will be assessed by the relevant consent authority under the *Environmental Planning and*

⁵⁴ See: <http://www.environment.nsw.gov.au/biodiversity/paymentcalculator.htm>

⁵⁵ *Biodiversity Conservation Act 2016* (NSW), s. 6.30.

⁵⁶ See: <http://www.environment.nsw.gov.au/biodiversity/paymentcalculator.htm>

⁵⁷ See: <https://www.bct.nsw.gov.au/>

⁵⁸ *Biodiversity Conservation Act 2016* (NSW), s. 6.31.

Assessment Act 1979 (NSW). Depending on the type of development, this could be the Local Council (or independent panel), the Department of Planning and Environment or the Planning Assessment Commission.

Some clearing is assessed under the Biodiversity Offsets Scheme

Some developments will trigger the Biodiversity Offsets Scheme. This means the development application must be accompanied by a Biodiversity Development Assessment Report (discussed above).

Local development

For local development, which includes designated development but *not* complying development, the development application must be accompanied by a Biodiversity Development Assessment Report if the development is likely to 'significantly affect threatened species'.⁵⁹

The development is likely to significantly affect threatened species if:⁶⁰

- it is likely to significantly affect threatened species or ecological communities, or their habitats, according to the 5-part test;⁶¹
- the development exceeds the Biodiversity Offsets Scheme threshold;⁶² or
- it is carried out in a declared area of outstanding biodiversity value.⁶³

See our Fact Sheet on [Development Applications and Consents](#)⁶⁴ for more information on local development applications.

When determining the development application, the consent authority must consider the likely impact of the proposed development on biodiversity values as assessed in the Biodiversity Development Assessment Report.⁶⁵

If the consent authority decides to grant consent, it must attach conditions requiring the applicant to purchase and retire biodiversity credits of the number and class specified in the Report.⁶⁶ However, the consent authority can reduce or increase the number of biodiversity credits required to be retired if it determines that the reduction or increase is justified having regard to the environmental, social and economic impacts of the proposed development.⁶⁷

⁵⁹ *Biodiversity Conservation Act 2016* (NSW), s. 7.7.

⁶⁰ *Biodiversity Conservation Act 2016* (NSW), s. 7.2.

⁶¹ See the Glossary for a definition of the 5-part test.

⁶² See the Glossary for a definition of the Biodiversity Offsets Scheme threshold.

⁶³ See the Glossary for a definition of areas of outstanding biodiversity value.

⁶⁴ See: http://www.edonsw.org.au/planning_development_heritage

⁶⁵ *Biodiversity Conservation Act 2016* (NSW), s. 7.13 (2).

⁶⁶ *Biodiversity Conservation Act 2016* (NSW), s. 7.13 (3).

⁶⁷ *Biodiversity Conservation Act 2016* (NSW), s. 7.13 (4).

The applicant must comply with the condition to retire biodiversity credits before undertaking the development but has the option to make a payment to the Biodiversity Conservation Fund instead.⁶⁸

If the consent authority believes that the development will have serious and irreversible impacts⁶⁹ on biodiversity values, the consent authority must refuse the application.⁷⁰

Major projects

For State significant developments and State significant infrastructure, the application must be accompanied by a Biodiversity Development Assessment Report unless the Secretary of the Department of Planning and Environment and the CEO of the Office of Environment and Heritage both determine that the proposed development is not likely to have any significant impact on biodiversity values.⁷¹ The application must also include any biodiversity assessment set as an environmental assessment requirement by the Secretary of Planning.⁷²

When determining the application, the consent authority must consider the likely impact of the proposed development on biodiversity values as assessed in the Biodiversity Development Assessment Report.⁷³

If the consent authority decides to grant consent or approval it can (but does not have to) attach a condition requiring the applicant to retire biodiversity credits to offset the impact of the development on biodiversity values (whether of the number and class specified in the Report or other number and class).⁷⁴

Any condition to retire biodiversity credits is required to be complied with before any development is carried out that would impact on biodiversity values.

If the consent authority believes that the development is likely to have *serious and irreversible impacts* on biodiversity values,⁷⁵ it is required to take those impacts into consideration and determine whether there are any additional and appropriate measures that will minimise those impacts if consent or is granted.⁷⁶ In other words, there is no obligation to refuse major projects that will have serious and irreversible impacts on biodiversity values.

Clearing for complying development

⁶⁸ *Biodiversity Conservation Act 2016* (NSW), s. 7.13 (5).

⁶⁹ See the Glossary for a definition of serious and irreversible impacts on biodiversity values.

⁷⁰ *Biodiversity Conservation Act 2016* (NSW), s. 7.16.

⁷¹ *Biodiversity Conservation Act 2016* (NSW), s. 7.9 (2).

⁷² *Biodiversity Conservation Act 2016* (NSW), s. 7.9 (3).

⁷³ *Biodiversity Conservation Act 2016* (NSW), s. 7.14 (2).

⁷⁴ *Biodiversity Conservation Act 2016* (NSW), s. 7.14 (3).

⁷⁵ See the Glossary for a definition of serious and irreversible impacts on biodiversity values.

⁷⁶ *Biodiversity Conservation Act 2016* (NSW), s. 7.16 (3).

If the clearing is for the purpose of carrying out complying development, the allowable clearing will be set out in the relevant development standards for that type of development. The development standards are contained in [State Environmental Planning Policy \(Exempt and Complying Development Codes\) 2008](#).⁷⁷

Clearing authorised by the 10/50 Vegetation Clearing Code of Practice

The *Rural Fires Act 1997* (NSW) permits some clearing activities for bushfire hazard reduction purposes. The [10/50 Vegetation Clearing Code of Practice](#)⁷⁸ allows landholders living in [designated areas](#)⁷⁹ to clear vegetation on their property without the need for approval. Specifically, landholders within a designated area can:

- clear trees on their property within 10 metres of a home, without seeking approval; and
- clear underlying vegetation such as shrubs (but not trees) on their property within 50 metres of a home, without seeking approval.

There are a few restrictions on clearing under the 10/50 Code, such as if a property is on a slope, or there are items of Aboriginal or cultural significance in the area.

Under the 10/50 Code, landholders *are not* required to consider threatened species or ecological communities that would otherwise be protected under NSW laws.⁸⁰ However, some types of vegetation cannot be cleared, including critically endangered plants, critical habitat, and critically endangered ecological communities mapped and provided by the OEHL to the Rural Fire Service. Federal laws still apply to activities undertaken under the 10/50 Code, and the 10/50 Code does not provide a landholder with an approval to harm federally listed threatened species under the EPBC Act.

There are some restrictions on the clearing methods that can be used. For example, the use of graders, ploughs and dozers to clear land under the 10/50 Code is not permitted.⁸¹

Glossary

5-Part Test means the test in the *Biodiversity Conservation Act 2016* (NSW)⁸² which sets out the matters to be taken into account when determining whether a proposed development or activity is likely to significantly affect threatened species or ecological communities, or their habitats.

⁷⁷ See: <https://www.legislation.nsw.gov.au/#/view/EPI/2008/572>

⁷⁸ See: <http://www.rfs.nsw.gov.au/plan-and-prepare/1050-vegetation-clearing>

⁷⁹ See: <http://www.rfs.nsw.gov.au/plan-and-prepare/1050-vegetation-clearing/tool>

⁸⁰ *Rural Fires Act 1997* (NSW), s 100C; [10/50 Vegetation Clearing Code of Practice](#), cl. 7.2.

⁸¹ [10/50 Vegetation Clearing Code of Practice](#), cl. 7.5: <http://www.rfs.nsw.gov.au/plan-and-prepare/1050-vegetation-clearing>

⁸² *Biodiversity Conservation Act 2016* (NSW), s. 7.3.

1. In the case of a threatened species, whether the proposed development or activity is likely to have an adverse effect on the life cycle of the species such that a viable local population of the species is likely to be placed at risk of extinction.
2. In the case of an endangered ecological community or critically endangered ecological community, whether the proposed development or activity:
 - a. is likely to have an adverse effect on the extent of the ecological community such that its local occurrence is likely to be placed at risk of extinction, or
 - b. is likely to substantially and adversely modify the composition of the ecological community such that its local occurrence is likely to be placed at risk of extinction.
3. In relation to the habitat of a threatened species or ecological community:
 - a. the extent to which habitat is likely to be removed or modified as a result of the proposed development or activity, and
 - b. whether an area of habitat is likely to become fragmented or isolated from other areas of habitat as a result of the proposed development or activity, and
 - c. the importance of the habitat to be removed, modified, fragmented or isolated to the long-term survival of the species or ecological community in the locality.
4. Whether the proposed development or activity is likely to have an adverse effect on any declared area of outstanding biodiversity value (either directly or indirectly).
5. Whether the proposed development or activity is or is part of a key threatening process or is likely to increase the impact of a key threatening process.

Area of Outstanding Biodiversity Value means an area of NSW that has been declared by the Environment Minister as an area of outstanding biodiversity value by virtue of its biodiversity significance. The criteria that determine eligibility are set out in the *Biodiversity Conservation Act 2016* (NSW).⁸³

Biodiversity Offsets Scheme threshold means the point at which proposed clearing will trigger the Biodiversity Offsets Scheme. Proposals to clear that exceed the BOS threshold will need to be accompanied by a Biodiversity Development Assessment Report.

⁸³ *Biodiversity Conservation Act 2016* (NSW), Part 3.

There are two ways that clearing can exceed the BOS threshold:⁸⁴

1. The area of clearing exceeds the limit for the lot size⁸⁵

Minimum lot size of land	Area of clearing
Less than 1 hectare	0.25 hectares or more
Less than 40 hectares but not less than 1 hectare	0.5 hectares or more
Less than 1,000 hectares but not less than 40 hectares	1 hectare or more
1,000 hectares or more	2 hectares or more

So if a person owns 20 hectares and they wish to clear 0.25 hectares, their proposal will not exceed the BOS threshold. But if they wish to clear 1 hectare their proposal will exceed the BOS threshold and will need to be accompanied by a Biodiversity Development Assessment Report.

2. The clearing is proposed over land within the Biodiversity Values Map

The CEO of the Office of Environment and Heritage is responsible for publishing a [Biodiversity Values Map](#)⁸⁶ which identifies land with high biodiversity value such as coastal and Ramsar wetlands, littoral rainforest, core koala habitat and land containing rainforest or old growth forest.

E-Zones means land that is zoned under a Local Environmental Plan as: Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living.⁸⁷

Native Vegetation SEPP means State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017.

Urban areas means:⁸⁸

- land in the following Local Government Areas: land in the following local government areas: Bayside, City of Blacktown, Burwood, Camden, City of Campbelltown, Canterbury-Bankstown, Canada Bay, Cumberland, City of

⁸⁴ *Biodiversity Conservation Act 2016* (NSW), s. 7.4; *Biodiversity Conservation Regulation 2017* (NSW), cl. 7.1.

⁸⁵ *Biodiversity Conservation Regulation 2017* (NSW), cl. 7.2.

⁸⁶ *Biodiversity Conservation Regulation 2017* (NSW), cl. 7.3. See: <https://www.lmbc.nsw.gov.au/Maps/index.html?viewer=BVMap>

⁸⁷ State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, cl. 5 (b).

⁸⁸ State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017, cl. 5 (a) and (b).

Fairfield, Georges River, City of Hawkesbury, Hornsby, Hunter's Hill, Georges River, Inner West, Ku-ring-gai, Lane Cove, City of Liverpool, Mosman, Newcastle, North Sydney, Northern Beaches, City of Parramatta, City of Penrith, City of Randwick, Rockdale, City of Ryde, Strathfield, Sutherland Shire, City of Sydney, The Hills Shire, Waverley, City of Willoughby, Woollahra, or

- land within the following zones under Local Environmental Plan: Zone RU5 Village, Zone R1 General Residential, Zone R2 Low Density Residential, Zone R3 Medium Density Residential, Zone R4 High Density Residential, Zone R5 Large Lot Residential, Zone B1 Neighbourhood Centre, Zone B2 Local Centre, Zone B3 Commercial Core, Zone B4 Mixed Use, Zone B5 Business Development, Zone B6 Enterprise Corridor, Zone B7 Business Park, Zone B8 Metropolitan Centre, Zone IN1 General Industrial, Zone IN2 Light Industrial, Zone IN3 Heavy Industrial, Zone IN4 Working Waterfront, Zone SP1 Special Activities, Zone SP2 Infrastructure, Zone SP3 Tourist, Zone RE1 Public Recreation, Zone RE2 Private Recreation.