

If you have questions not addressed in this document, please first check the [Assessor Resources](#) and [Local Government Resources](#) webpages.

If you require further assistance, please email [BAM.support@environment.nsw.gov.au](mailto:BAM.support@environment.nsw.gov.au).

## Questions and Answers

### Topic: BOS entry requirements

**How does the Biodiversity Offsets Scheme (BOS) entry threshold assessment of development proposals which require clearing of planted native and mature trees work? For example, the proposed removal of unsafe trees as part of the upgrade and restoration of a fire affected caravan park.**

When determining if the BOS applies to a development, project or activity, the definition of 'clearing' and 'native vegetation' need to be considered. Section 60B of the *Local Land Services Act 2013* (NSW) (LLS Act) defines native vegetation as trees, understorey plants, groundcover and plants occurring in a wetland that are native to NSW. This includes planted native vegetation such as windbreaks, street trees and planted native gardens. This also extends to a plant that is dead or that is not native to NSW if the plant is situated on category 2-vulnerable regulated land (on the [Native Vegetation Regulatory \(NVR\) Map](#)).

Native vegetation clearing is defined in section 60C of the LLS Act as cutting down, felling, uprooting, thinning or otherwise removing native vegetation, and killing, destroying, poisoning, ringbarking or burning native vegetation.

Where clearing of native vegetation not associated with a development application is proposed, alternative assessment and approval pathways are available e.g. clearing in accordance with Part 5A of the LLS Act (generally applies to rural zoned land) or clearing in accordance with the *State Environmental Planning Policy (Vegetation in non-rural areas) 2017* (Vegetation SEPP) (generally applies to urban and environmental zoned land).

Refer to the [Guideline for applying the Biodiversity Assessment Method at severely burnt sites](#) and the associated [BOS Support Webinar](#) for further information on using the BAM to assess fire affected sites.

**Does the *Biodiversity Conservation Act 2016* (BC Act) apply to Development Approvals for lots zoned Deferred Matter? The advice is that the former Local Environmental Plans (LEPs) & Development Control Plans (DCPs) apply, however, there were no minimum lot sizes in the 2002 LEPs. How is the clearing threshold therefore determined?**

For lots zoned Deferred Matter, the planning controls in the former LEPs & DCPs will apply. In relation to the area clearing threshold for determining if the BOS applies, where there is no minimum lot size the clearing threshold will be based on the smallest actual lot size associated with the development. Refer to the [Guidance for local government on applying the Biodiversity Offsets Scheme threshold](#) for more information.

**Can creating an Asset Protection Zone (APZ) trigger the BOS Threshold? What about the in the circumstances where some canopy trees will be retained in the APZ?**

Yes. For the purposes of applying the [BOS entry threshold](#), the whole APZ applies to the area clearing threshold calculation, even if only partial clearing is proposed to take place. Refer to the following resources for additional information:

- see [Assessor Q&A webpage](#) “Is the asset protection zone included in the area to be cleared when deciding if the BOS threshold is triggered?”
- Local Government Bulletin [Issue 12 – Bush fire related clearing and the Biodiversity Conservation Act 2016](#)).
- NSW Rural Fire Service [Standards for Asset Protection Zones](#).

In circumstances where the BOS applies and partial clearing of vegetation is proposed (with remaining vegetation maintained i.e. not degraded further over time), the assessor may determine that the future value of the relevant vegetation integrity attributes is greater than zero. An example approach for an APZ is provided in Table 1 in Section 2.2 of the [Biodiversity Assessment Method Operational Manual – Stage 2](#), along with further explanation.

**In a scenario where there are native remnant trees with no (or very little) native understorey vegetation and even some hard surfaces, can the canopy cover of the trees alone trigger the BOS area clearing threshold?**

Yes, the entire area of native remnant trees and any areas containing native groundcover should be considered in determining if the BOS applies. The BAM allows for the assessment of the impacts of partial clearing, for example only overstorey clearing. Guidance on calculating the area of native vegetation to be cleared is contained in the [BMAT tool user guide](#). Guidance on applying the BOS threshold is available in the practice note [Guidance for local government on applying the Biodiversity Offsets Scheme threshold](#).

**In a scenario where there is no native vegetation present, does the flowchart stop at the first step and therefore BOS does not apply?**

No. Although the area clearing threshold only applies to native vegetation, prescribed biodiversity impacts (established under s6.1 [Biodiversity Conservation Regulation 2017](#)), which includes impacts on non-native vegetation, also need to be considered. For example, the BOS threshold will be exceeded where the proposal involves a prescribed impact on land included in the Biodiversity Values Map.

The BOS will also apply if the threatened species test of significance indicates the proposal is likely to significantly affect threatened species, ecological communities or their habitat. The summary [flowchart](#) reminds users to consider other biodiversity impacts by prompting them to consider “Does the proposal involve vegetation clearing or other biodiversity impacts (s6.3 BC Act)?” in the first instance.

See Q&A below *Does the BOS apply to a clearing or development proposal located on category 1-exempt land?*

**When a development requires clearing on multiple lots, (for example Council reserve for beach access), does the clearing threshold only apply to each individual lot, regardless of whether the clearing relates to the same development?**

No. When determining if the BOS applies to a proposal, the area of clearing is the total area of proposed clearing associated with the proposal.

### **Does the BOS apply to a clearing or development proposal located on category 1-exempt land?**

In determining whether the BOS applies to a clearing or development proposal on Category 1 – exempt land, any part of the proposal that involves clearing of native vegetation on Category 1 – exempt land would be disregarded for purposes of determining whether the proposal exceeds the BOS threshold.

A proposal on Category 1 - exempt land may involve other biodiversity impacts for which a Biodiversity Development Assessment Report (BDAR) will still be required (see [Does the BAM apply to developments on category 1-exempt land?](#)). In that case, that the category 1 - exempt land would be excluded from assessment and offsetting under the BAM, except for assessment of prescribed biodiversity impacts (as per subsection 2.3.1.1(d) of the BAM).

Contact LLS at [slm.info@lls.nsw.gov.au](mailto:slm.info@lls.nsw.gov.au) and/or the Department at [BAM.support@environment.nsw.gov.au](mailto:BAM.support@environment.nsw.gov.au) for guidance on determining the presence of category 1-exempt land during the NVR Map transitional period.

### **Topic: Flowchart and SEPPs**

#### **How does the BOS relate to the LLS Act, *State Environmental Planning Policy (Koala Habitat Protection) 2019* (Koala SEPP) and Vegetation SEPP?**

The LLS Act and the Vegetation SEPP are both captured in the [flowcharts](#). These are the two key approval pathways for vegetation clearing not ancillary to development in NSW.

The Koala SEPP is outside the scope of the flowcharts, as it applies independently to the BC Act. Any requirements under the Koala SEPP that apply to a development application must be met in addition to any requirements for assessing Koalas under the BC Act. There are some linkages however. For example, the Koala Plans of Management (KPoMs) are in the Biodiversity Values (BV) map so they can trigger the BOS. If a KPoM requires an offset the consent authority can decide the BOS offsets required to satisfy that obligation.

#### **How is vegetation clearing in accordance with the Vegetation SEPP conducted if a local council does not have vegetation clearing provisions in their DCP?**

If the proposed clearing does not exceed the BOS threshold and council doesn't prescribe the vegetation proposed to be cleared in their DCP, then authority from council is not required to clear that vegetation. However, a [biodiversity conservation licence](#) may be required, for example, if the vegetation proposed to be cleared is a threatened species or part of a threatened ecological community. Please refer to the [flowcharts](#) for further guidance on this scenario.

### **Topic: Approval Pathways**

#### **Is it possible to refer E4 clearing proposals to the Native Vegetation Panel (NVP) without going through Local Land Services (LLS)?**

This question should be directed to the [NVP](#) for more specific guidance. The NVP is established under Division 6 of the LLS Act.

#### **What is the approval pathway for the clearing of native vegetation on W1 or W2 zoned land if it is not conducted under Part 4 or 5 of the EPA&A Act?**

The [Vegetation SEPP](#) applies to clearing of vegetation in W1 or W2 zoned land where the proposed clearing is located within the Sydney Metropolitan area or Newcastle local government area (LGA).

Where clearing proposed on land zoned W1 or W2 is located outside of the Sydney Metropolitan Area and Newcastle LGA and doesn't require development consent or another planning approval, the clearing is regulated under Part 5A of the LLS Act (see [Land Management in NSW](#)).

**Can you provide guidance on cl 7.3(4) of the Biodiversity Conservation Regulation 2017? Previous advice regarding that it depends on if the intent of the subdivision has been realised doesn't match the wording of the clause. Are there any plans to amend 7.3(4)?**

The Department's position is that the intent of the Clause is that the BOS would apply unless there is an existing subdivision approval for which the intended development hasn't been completed. The Department is reviewing the application of this Clause.

**How many local governments have opted into the BOS (under Part 5 of the EP&A Act)?**

The Department are not currently aware of any local governments opting in under part 5. The Department does not have a direct role in determining whether a Part 5 Authority opts into the BOS.

### Topic: Test of Significance

**When determining if a proposed Part 4 activity is likely to significantly impact a threatened entity, the test of significance is required to be undertaken. Can Council decide that the threatened species test of significance (under s7.2 BC Act) is not required because only a minor impact is proposed? e.g. only a few trees are proposed to be cleared.**

The Department is currently updating the threatened species test of significance guidelines. The focus of the update is to provide guidance on circumstances where it may be appropriate to not apply the test. For example where it is clear to the applicant and the consent authority that no threatened species or threatened ecological communities, or their habitats are likely to be significantly affected by a proposed development or activity because of the context of the development and local knowledge of the consent authority, then it could be appropriate for the test not to be applied.

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