



New Tree Clearing Laws in Urban NSW

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Overview

1. Why are we here?
2. Small-scale clearing in urban areas
3. Significant clearing in urban areas
4. How is clearing offset?
5. Questions



Why are we here?

Gone

Threatened Species Conservation Act

Native Vegetation Act

Nature Conservation Trust Act

Changed

National Parks and Wildlife Act

Local Land Services Act

Environmental Planning and Assessment Act

New

Biodiversity Conservation Act

SEPP (Vegetation in Non-Rural Areas) 2017

- **Biodiversity Conservation Act**
 - Establishes the **Biodiversity Offset Scheme**
 - Underpinned by the **Biodiversity Assessment Method**
- **SEPP (Vegetation in Non-Rural Areas)**
 - Regulates clearing in urban and environmental zones
 - Only clearing that doesn't need development consent
- **Local Land Services Act 2013**
 - Regulates clearing on **rural land**

The Biodiversity Offset Scheme

- **Bio Con Act introduces a new Biodiversity Offsetting Scheme**
 - Allows developers to offset the impacts of a development on biodiversity by buying and retiring credits through the scheme.
 - People wanting to preserve their land can enter stewardship agreements that generate credits that can be sold.
- **The Scheme is underpinned by the Biodiversity Assessment Method – BAM**
 - **Biodiversity Development Assessment Reports** measure the loss of biodiversity values at a development site and indicate the credits necessary to offset that loss.
 - Accredited assessors prepare the Reports

Biodiversity development assessment report

- Prepared by an **accredited assessor**.

www.environment.nsw.gov.au/biodiversity/assessors.htm

- Applies the **Biodiversity Assessment Method (BAM)**
 - Identifies the biodiversity values of the land
 - Identifies the impacts of the proposed actions
 - Specifies the number and class of biodiversity credits to be retired to offset the impacts on biodiversity
 - details of any proposal to fund a biodiversity conservation action in accordance with the offset rules
 - details of any mine rehabilitation that is proposed as a measure to offset or compensate for those impacts

www.environment.nsw.gov.au/biodiversity/assessmentmethod.htm

Vegetation SEPP – urban and e-zones

What?

- New State Environmental Planning Policy (SEPP)
- Native Veg. Panel or Local Council will assess clearing applications depending on size.

Where?

- Urban areas (Sutherland LGA) and Environmental (E-) zones State-wide.

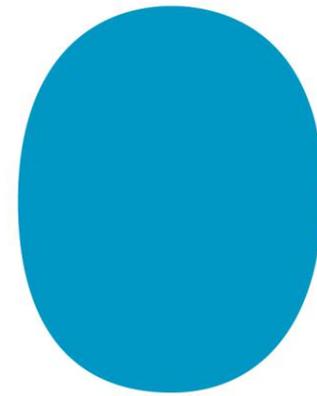
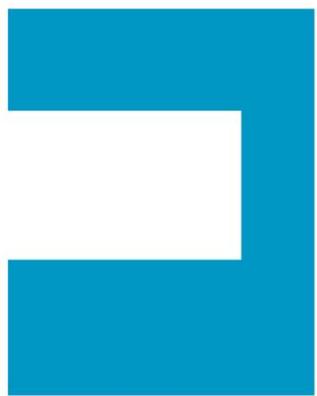
When?

- If clearing exceeds the **BOS threshold**:
 - then **Biodiversity Assessment Method** will apply (avoid, minimise, offset impacts)
 - Native Vegetation Panel can issue an approval
- If clearing is **under the BOS threshold**:
 - Councils' Development Control Plans apply
 - Clearing may be exempt or Council permit will be required.

Summary of changes to urban land clearing

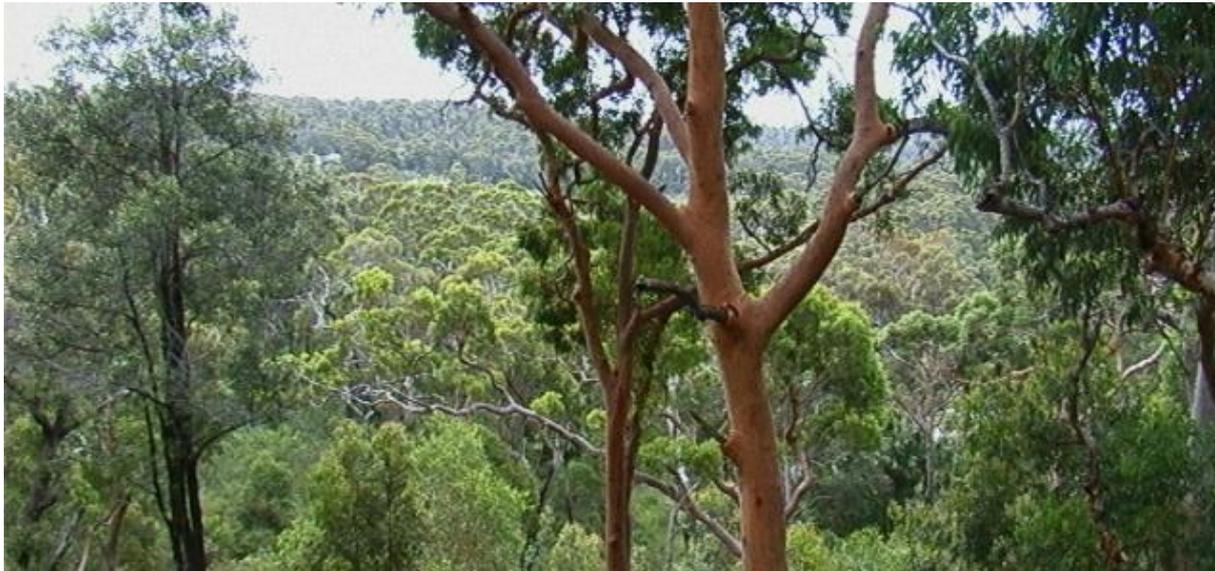
- LEPs no longer regulate tree clearing but DCPs still identify protected trees
- Small-scale tree clearing may require a council permit (some will be allowable without any permit)
- Larger-scale clearing will require an approval from the **Native Vegetation Panel** and will trigger the **Biodiversity Offset Scheme**
- Clearing that is part of a **development application** will be assessed by the Council (local development) or Planning Department (major projects) and may trigger the **Biodiversity Offset Scheme**

Small-scale clearing in urban areas

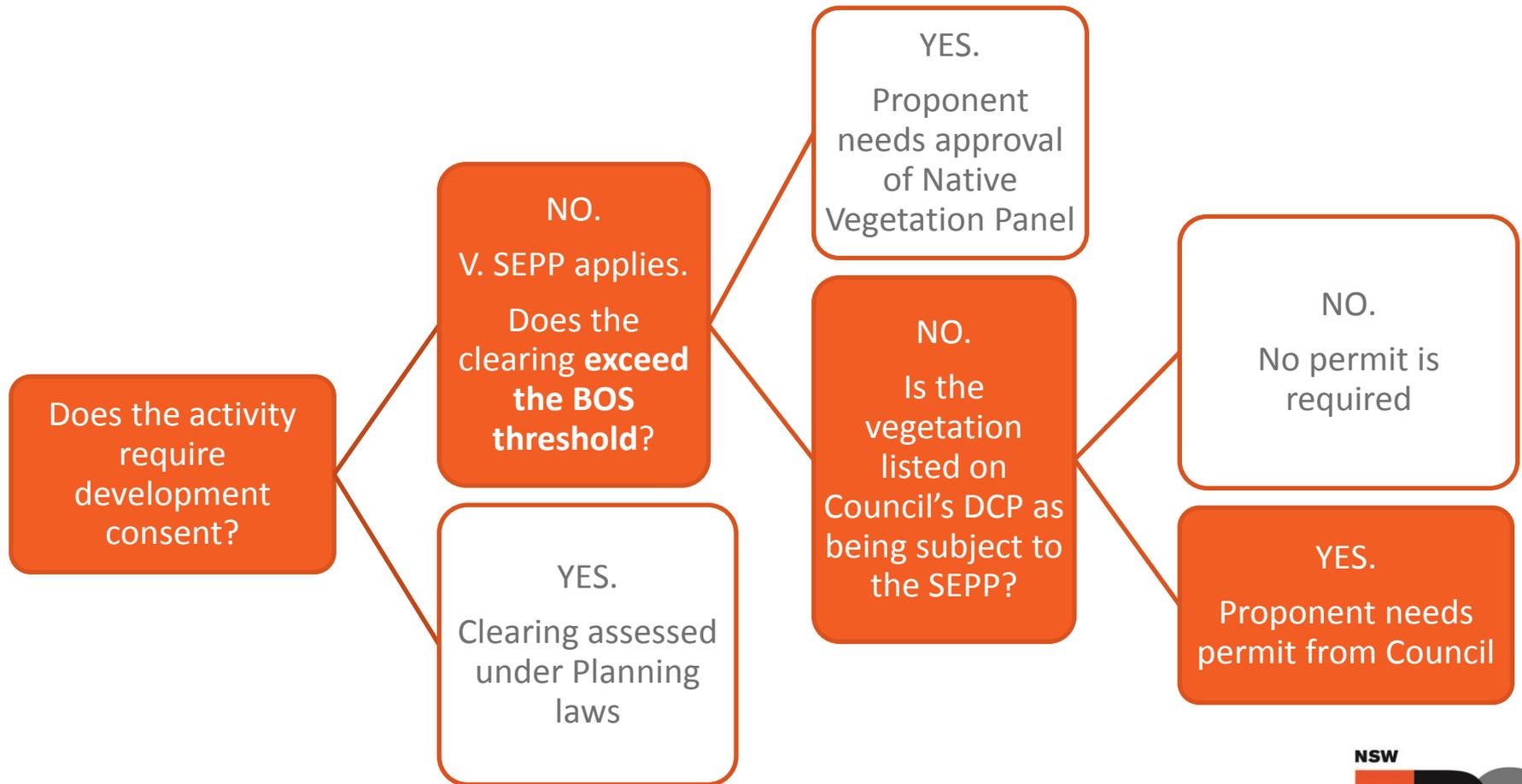


Vegetation SEPP regulates small-scale clearing (that doesn't need development consent)

- Small-scale clearing **below the BOS threshold** requires a permit from council if the vegetation is in the council's DCP



Working out whether the clearing needs a council permit

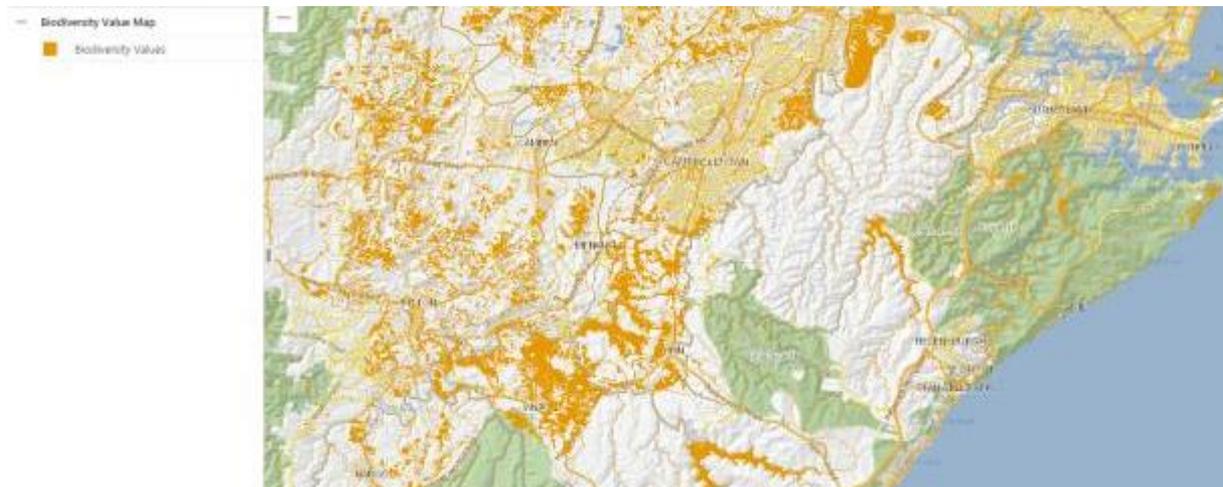


Is the clearing below the BOS threshold?

- Area of clearing

Minimum lot size of land	Area of clearing
Less than 1 hectare	0.25 hectare or more
Between 1 and 39 hectares	0.5 hectare or more
Between 40 and 999 hectares	1 hectare or more
1,000 hectares or more	2 hectares or more

- Biodiversity values map



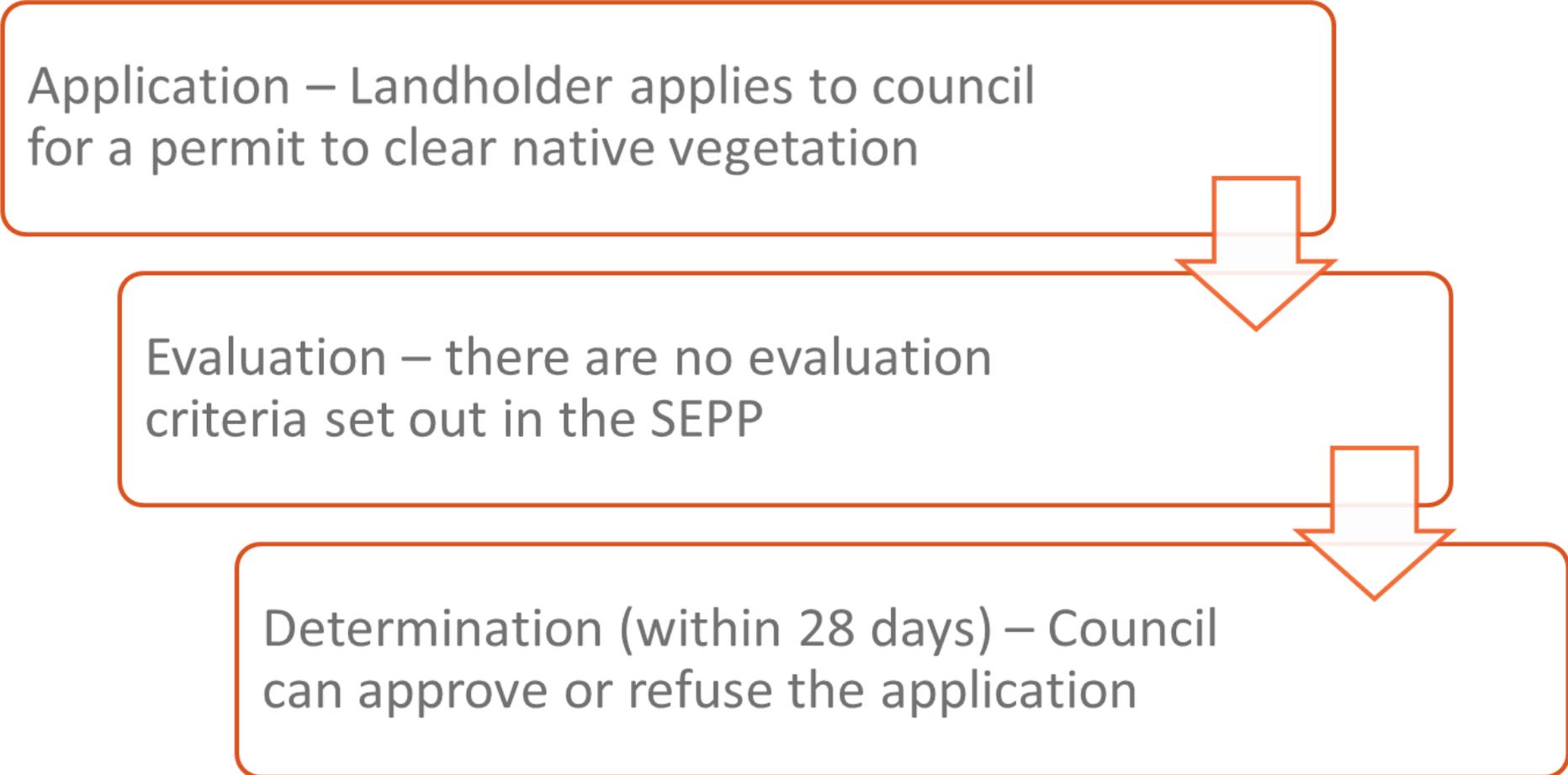
Is the vegetation listed in the Council's DCP?

- Sutherland Shire Council DCP applies to:
 - A single or multi trunked tree with a diameter of 100mm or more measured at 500mm above ground level.
 - Any bushland vegetation of any size (including mangroves, shrubs and all herbaceous species)
 - Any tree and/or riparian vegetation growing within 4 metres of a creek or watercourse.
- The DCP then excludes certain trees, weeds and noxious weeds (by botanical and common name)

www.sutherlandshire.nsw.gov.au/files/sharedassets/website/document-library/land-use-and-planning/planning/39-natural-resource-management-pdf.pdf

Application process for Council permit

Application – Landholder applies to council for a permit to clear native vegetation

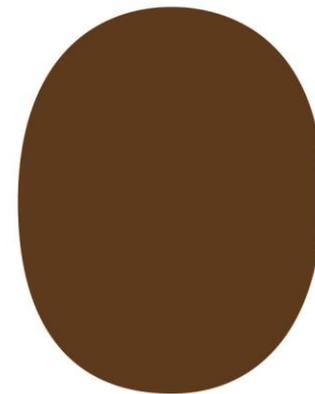


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graph TD; A[Application – Landholder applies to council for a permit to clear native vegetation] --> B[Evaluation – there are no evaluation criteria set out in the SEPP]; B --> C[Determination (within 28 days) – Council can approve or refuse the application];
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Evaluation – there are no evaluation criteria set out in the SEPP

Determination (within 28 days) – Council can approve or refuse the application

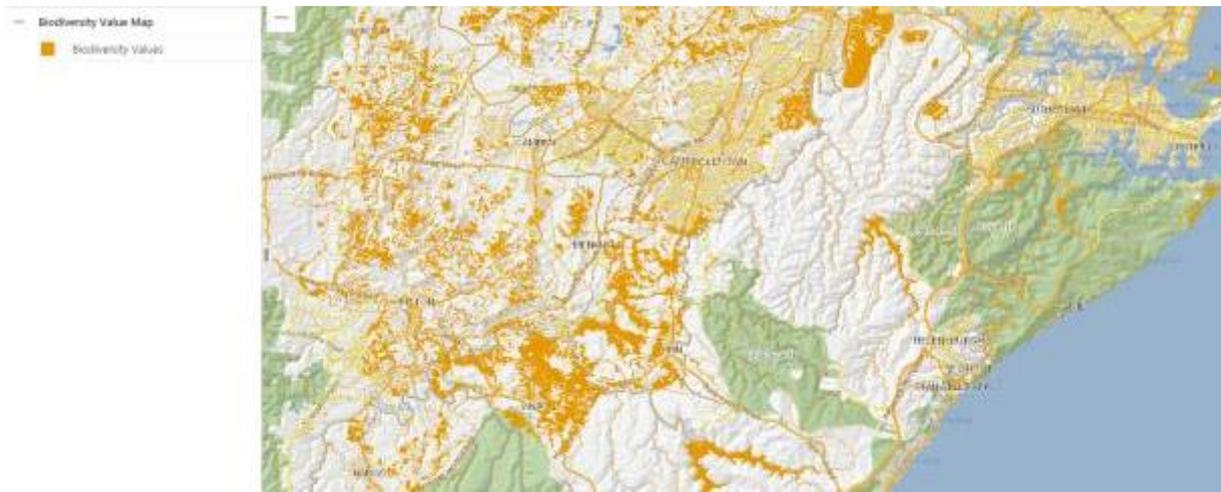
Significant clearing in urban areas



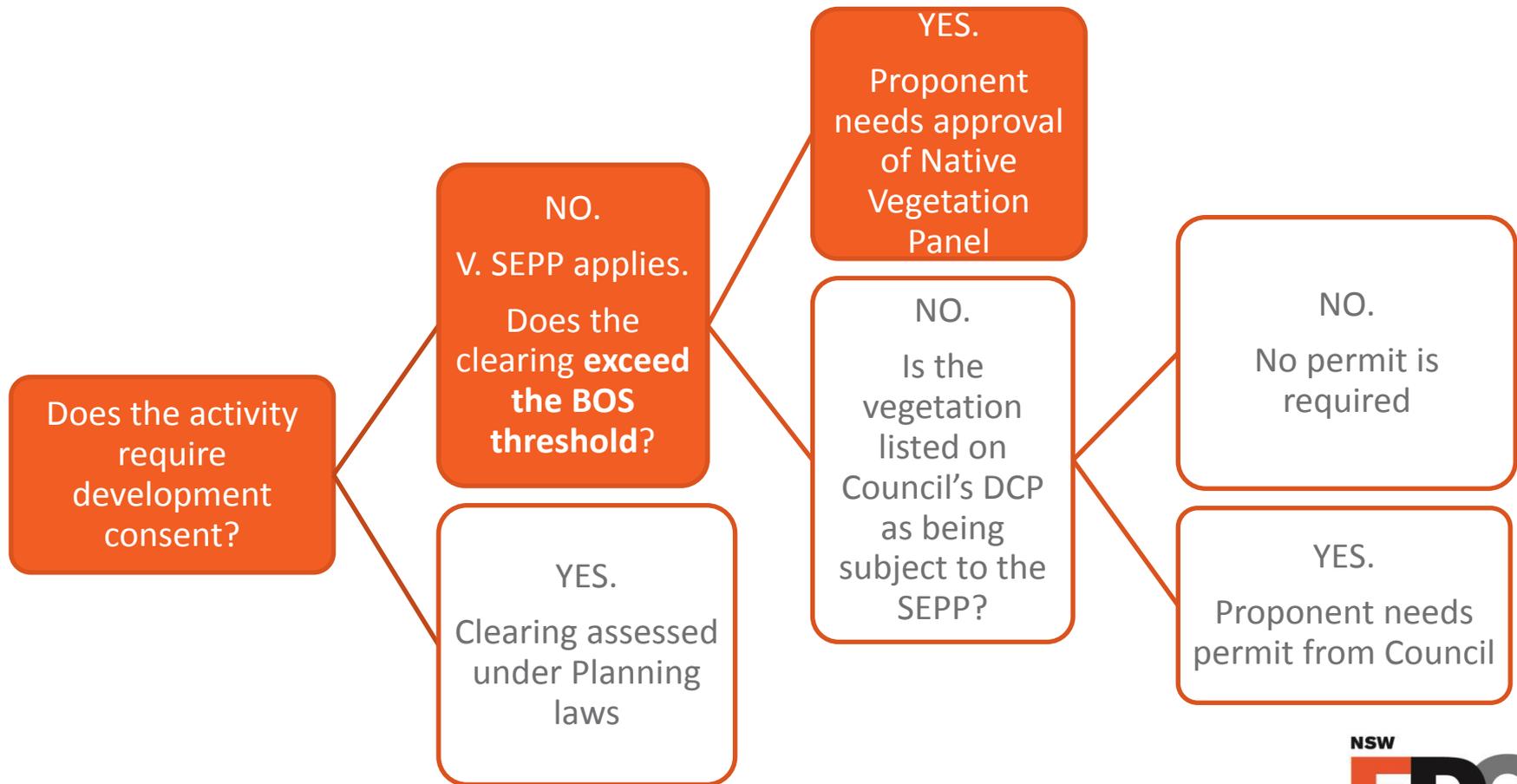
Vegetation SEPP regulates large-scale clearing (that doesn't need development consent)

- Larger-scale clearing above the BOS threshold requires an approval from the **Native Vegetation Panel**

Minimum lot size of land	Area of clearing
Less than 1 hectare	0.25 hectare or more
Between 1 and 39 hectares	0.5 hectare or more
Between 40 and 999 hectares	1 hectare or more
1,000 hectares or more	2 hectares or more



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



Application process for Native Vegetation Panel approval to clear

Application - Landholder applies to NVP for approval to clear and submits a Biodiversity Development Assessment Report

Evaluation – NVP must consider the environmental, social and economic impacts of the proposed clearing (in accordance with ESD)

Determination (within 90 days) - NVP can approve or refuse the application.

Native Vegetation Panel

- The Panel is to consist of 3 members appointed by the Minister:
 1. a Chairperson, with expertise in planning, public administration or social assessment,
 2. a person with expertise in economics, agricultural economics or agricultural land production systems,
 3. a person with expertise in ecology or the protection and conservation of biodiversity.
- The Panel determines applications for approval to clear native vegetation under the SEPP (Vegetation in Non-Rural Areas)

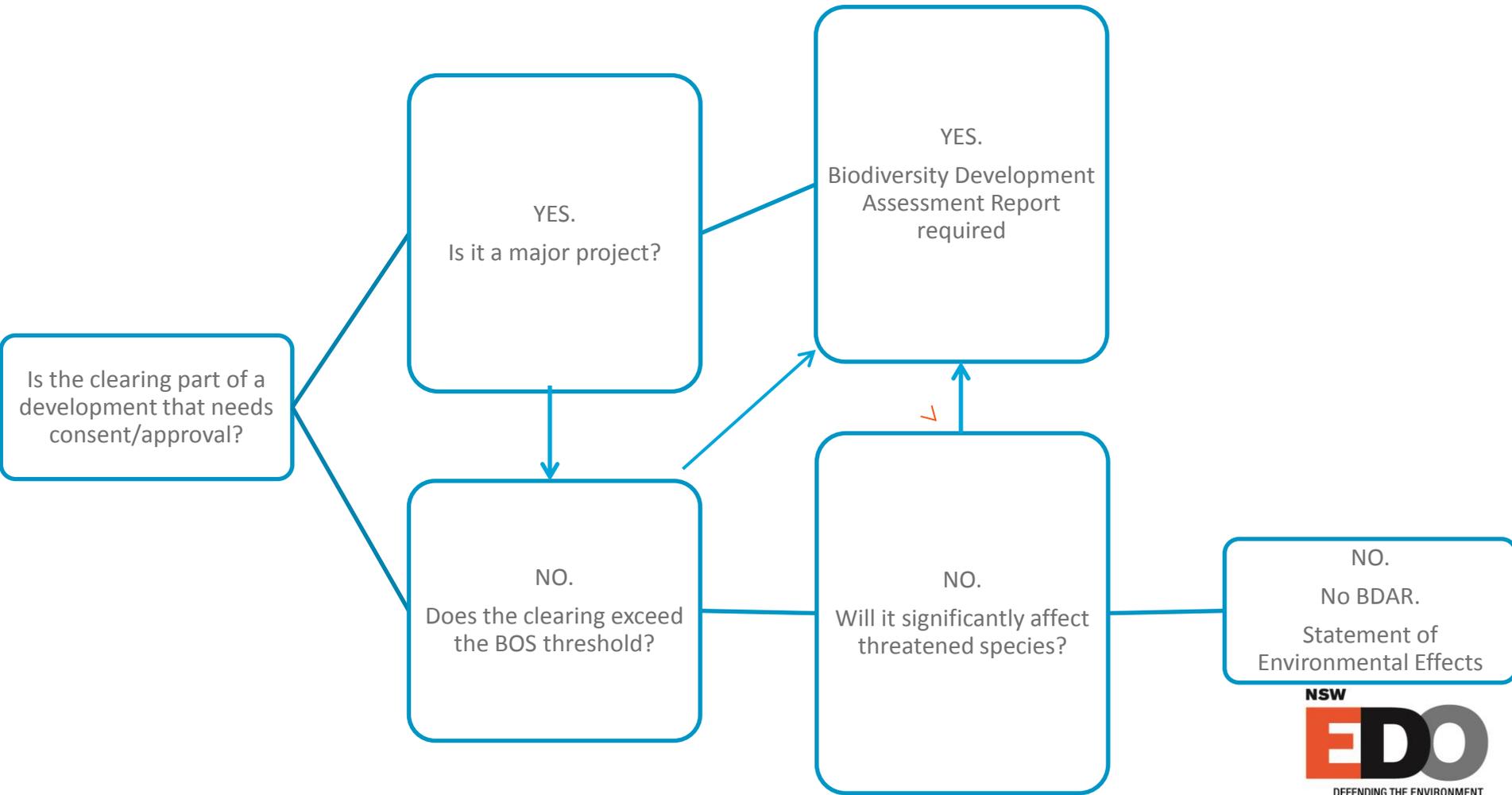
Clearing that needs development consent

- Where the clearing is part of an application to develop the land (development application) the Vegetation SEPP does not apply.
- The clearing will be assessed by the **relevant consent authority** – Council or Department of Planning/PAC.
- Depending on the proposal, the **Biodiversity Offset Scheme** may apply
 - Applications for **major projects** (SSD and SSI) must be accompanied by a Biodiversity Development Assessment Report unless the Secretary of Planning and the CEO of OEH decide the proposed development is not likely to have any significant impact on biodiversity values.
 - **All other development applications** (other than complying development) must be accompanied by a Biodiversity Development Assessment Report if the proposed development is **likely to significantly affect threatened species**.

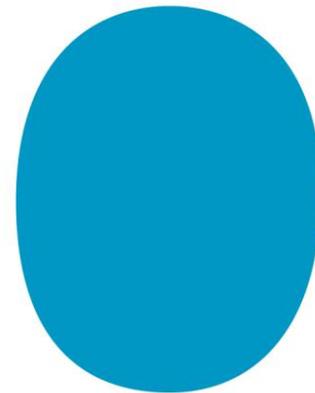
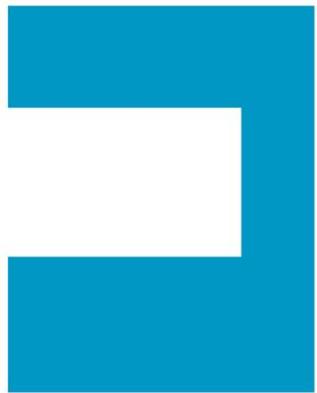
Likely to significantly affect threatened species

- Development or an activity is **likely to significantly affect threatened species** if:
 - the clearing exceeds the **BOS threshold**
 - it meets **significant effects test** for threatened species, or
 - it is carried out in a declared area of **outstanding biodiversity value**.

Summary - Clearing subject to the BOS (generally)



How is clearing offset?



Biodiversity development assessment report

- The decision-maker (NVP, Council, Department/PAC) must **consider** the **Biodiversity Development Assessment Report** when deciding whether to approve or refuse the application
- The BDAR applies the **Biodiversity Assessment Method (BAM)**
 - Identifies the biodiversity values of the land
 - Identifies the impacts of the proposed actions
 - Specifies the number and class of biodiversity credits to be retired to offset the impacts on biodiversity
 - details of any proposal to fund a biodiversity conservation action in accordance with the offset rules
 - details of any mine rehabilitation that is proposed as a measure to offset or compensate for those impacts

Responding to biodiversity impacts of clearing

- **Local development**

- Consent must be **refused** if likely to have **serious and irreversible** impacts on biodiversity values
- Conditions of the consent **must** require the applicant to retire biodiversity credits to offset the residual impact on biodiversity values as specified in the Report
- Biodiversity credits can be **reduced or increased** if justified having regard to the environmental, social and economic impacts of the development

- **Major projects and Part 5 activities**

- **Serious and irreversible impacts** must taken into account and consent authority must determine whether additional measures will minimise those impacts
- Conditions of consent **may** require the applicant to retire biodiversity credits to offset the residual impact on biodiversity values

- **Approvals from the Native Vegetation Panel**

- Approval must be refused the proposed clearing is likely to have **serious and irreversible impacts** on biodiversity values.
- Conditions of approval must require the applicant to retire biodiversity credits to offset the residual impact on biodiversity values as specified in the Report
- Biodiversity credits can be reduced or increased if justified having regard to the environmental, social and economic impacts of the proposed clearing and the purpose for which the land is to be cleared

Serious and irreversible impacts

- An impact is to be regarded as **serious and irreversible** if it is likely to contribute significantly to the risk of a threatened species or ecological community (EC) becoming **extinct** because:
 - it will cause a further **decline** of the species or EC that is in a rapid rate of decline, or
 - it will further reduce the population size of the species or EC that has a very small population size, or
 - it is an impact on the habitat of the species or EC that has a very limited geographic distribution, or
 - the impacted species or EC is unlikely to respond to measures to improve its habitat and vegetation integrity and therefore its members are not replaceable.

Meeting Biodiversity Offset Scheme obligations

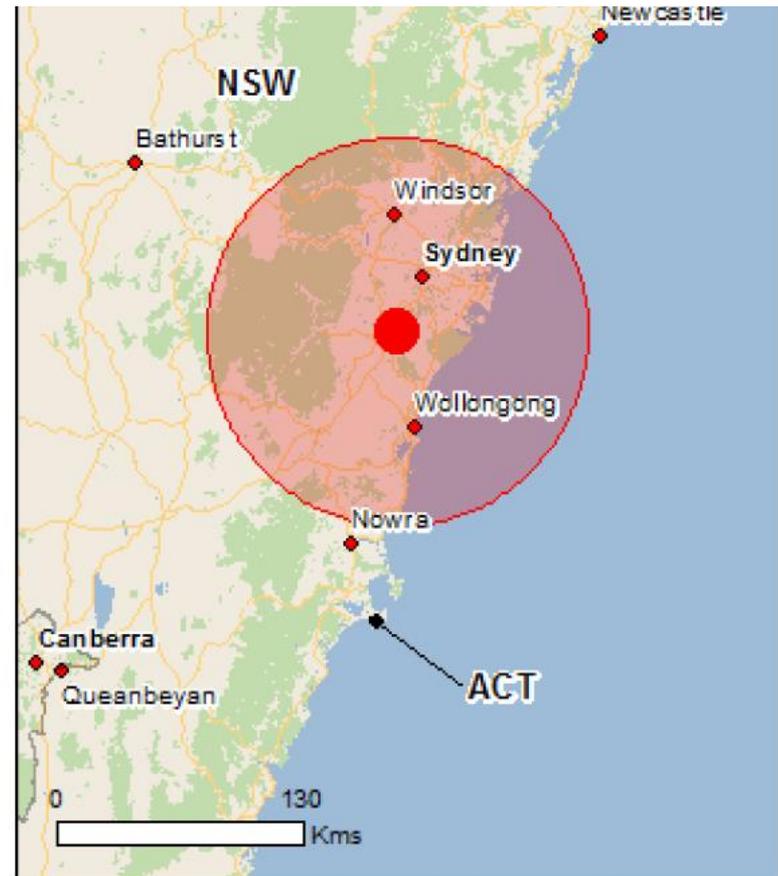
- Options include, in any combination:
 - a. Retire **like-for-like** biodiversity credits
 - b. Retire credits under **variation rules**
 - c. Fund an action to benefit the species or ecological community impacted
 - d. Mine site rehabilitation
 - e. **Pay \$** to the Biodiversity Conservation Fund instead.

Like-for-like offset rules

- Put simply: protect the same species (plant or animal), habitat or ecosystem....

BUT

- Quite flexible
 - protect same threatened ecological community at a site within 100km;
 - protect same species (koalas) at an offset site anywhere in NSW.



Variation rules (after reasonable steps to find L-4-L offsets)

- If like-for-like credits can't be found after reasonable steps have been taken, offsets don't need to be like-for-like.
- E.g.
 - Impact on one **threatened ecological community or veg. type** - offset it with **certain others** (same *veg. formation*; in same *bioregion* or within 100km of site)
 - Clear **hollow-bearing trees** - offset with **artificial hollows**
 - Impact on one **animal species** - offset with **another animal species** at **equal or higher risk** of extinction (in same or nearby subregion).

Paying \$ into the Fund

- The applicant can use the **Offsets Payment Calculator** to determine the cost of the credit obligation, and transfer this amount to the Biodiversity Conservation Fund.
- The **Biodiversity Conservation Trust** is then responsible for identifying and securing the credit obligation.

The screenshot shows the 'Biodiversity Offset Payment Calculator' web application. At the top left is the NSW Government logo. The title 'Biodiversity Offset Payment Calculator' is centered, with 'Version: 1.1.1.01' and 'Last updated: 16/11/2017 10' on the right. Below the title are two tabs: 'Credit Offset Payment Calculator' (active) and 'Payments'. A red warning message states: 'All fields marked with an asterisk (*) are mandatory'. The form includes several input fields: 'Interim Biogeographic Regionalisation for Australia (IBRA)', 'IBRA subregion *', 'PCT *' (with a search box 'Search by PCT name or PCT id or BVT'), and 'Species *' (with a search box 'Search by species name or profile ID'). There are 'ADD PCT' and 'ADD SPECIES' buttons. Below the form, there are sections for 'IBRA Sub Region:', 'PCT list', and 'Species list', each with a table header containing 'include', 'PCT common name' or 'Species', 'Credit', and 'Action'. A 'CALCULATE' button is at the bottom right. The URL 'https://www.bdc.nsw.gov.au/offsetcalculator/' is visible at the bottom left.

Thank you.

- Your support for EDO NSW will help us to:
 - Provide legal advice and representation
 - Promote changes to environmental laws
 - Provide more community legal education like this.
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 - Call us on 9262 6989 or visit:
 - <http://www.givenow.com.au/edonsw>