

# General information: Chapter 2 (Vegetation in non-rural areas) of the Biodiversity and Conservation SEPP

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This document answers frequently asked questions about Chapter 2 (Vegetation in non-rural areas) of the Biodiversity and Conservation SEPP

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Chapter 2 (Vegetation in non-rural areas) of the State Environmental Planning Policy (Biodiversity and Conservation) 2021 (Biodiversity and Conservation SEPP) is part of the suite of [Land Management and Biodiversity Conservation \(LMBC\) reforms](#) that commenced in NSW on 25 August 2017.

Chapter 2 of the Biodiversity and Conservation SEPP works together with the *Biodiversity Conservation Act 2016* and the *Local Land Services Act 2013* to create a framework for the regulation of clearing of native vegetation in NSW.

Further information about the Chapter, including information specific to councils, can be found via our [webpage](#).

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## Application of the Chapter

### Where does the Chapter 2 of the Biodiversity and Conservation SEPP apply?

The Chapter applies to:

- Sydney and Newcastle metropolitan areas
- Other land in NSW zoned for urban purposes, for environmental conservation, environmental management or environmental living under the Standard Instrument – Principal Local Environmental Plan (Standard Instrument LEP).

A list of the areas and zones to which the SEPP applies can be found in section 2.3 of the SEPP.

### What if my zone is not identified in the Standard Instrument?

If your land is not in one of the listed local government areas or the standard zones under the Standard Instrument LEP to which the Chapter applies, then the land is regulated by Part 5A of the *Local Land Services Act 2013*.

### Can a council request other land in their LGA be covered by the SEPP?

No. Chapter 2 of the SEPP applies to land in certain local government areas and land that is subject to particular zoning. If a council would like particular land to be subject to the SEPP, the land may need to be rezoned.

## When does Chapter 2 of the Biodiversity and Conservation SEPP apply?

The Chapter applies to clearing of:

1. native vegetation above the Biodiversity Offset Scheme (BOS) threshold where a proponent will require an approval from the Native Vegetation Panel established under the *Local Land Services Act 2013*
2. vegetation below the BOS threshold where a proponent will require a permit from Council if that vegetation is identified in the council's development control plan (DCP).

## What is the Biodiversity Offset Scheme Threshold?

The BOS threshold is a simple, risk-based test used to determine when the Biodiversity Assessment Method and the BOS apply. It is relevant to local developments (Part 4, non-state significant development/state significant infrastructure under the EP&A Act), as well as clearing that does not require development consent under Chapter 2 of the Biodiversity and Conservation SEPP.

There are two triggers for the threshold test:

1. an area threshold based on the amount of land cleared
2. a Sensitive Biodiversity Values Land Map trigger.

If clearing exceeds the clearing triggers or the land is identified on the Sensitive Biodiversity Values Land Map, the BOS will apply to the proposed clearing.

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## Allowable clearing rules

### What are the allowable clearing rules?

In September 2021, the Government replaced the temporary clause 27 with a permanent allowable clearing provision. Under these allowable clearing rules, primary producing landholders on conservation and large lot residential zoned land can undertake low risk day to day activities associated with agriculture without the need for approval from the Native Vegetation Panel or council permit.

The allowed activities are based on the lowest impact allowable activities that can be undertaken on sensitive and vulnerable land under the *Local Land Services Act 2013*.

### What are the new 'allowable activities'?

On land zoned C3, C4 and R5, the activities which do not require approval or permit under Chapter 2 of the Biodiversity and Conservation SEPP include:

- constructing or maintaining:
  - permanent boundary fences
  - farm access tracks
  - private power lines
  - planted native vegetation

- environmental protection works
- maintaining:
  - electricity transmission infrastructure
  - water supply and gas supply infrastructure
  - telecommunications infrastructure
  - permanent internal fences.

A limited range of allowable activities are permitted on C2 zoned land, including:

- constructing and maintaining a permanent boundary fence
- maintaining an existing permanent internal fence
- maintaining an existing farm access track
- maintaining existing:
  - electricity transmission infrastructure (including private power lines)
  - water and gas supply infrastructure
  - telecommunications infrastructure

## What are the conditions for using the allowable clearing provisions?

Before using the allowable clearing provisions to clear native vegetation on R5, C2, C3 or C4 zoned land, certain conditions must be met:

- The land must meet the primary production test in the SEPP. The updated SEPP includes a landholding threshold test. This is used by the landholder to determine if the land has an existing and continuing agricultural use based on the widely used and recognised definition included in section 10AA of the *Land Tax Management Act 1956*.
- The clearing must be carried out in a way that minimises the risk of soil erosion.
- The clearing must be undertaken to the minimum extent necessary to do the allowable activity.
- The clearing must not exceed maximum clearing distances set out in the SEPP.
- The clearing must not be on land that is subject to an order under the *Biodiversity Conservation Act 2016*, Part 11.
- Separate items of infrastructure must be located so the overall clearing is minimised. E.g., if possible multiple items of infrastructure should be located closer to each other to reduce overall clearing.

## Where do the “allowable activities” apply?

The new allowable activities can be carried out on land zoned C2, C3, C4 and R5 in local government areas (LGAs) marked as ‘allowable clearing area’ on the Allowable Clearing Maps in the SEPP.

Some LGAs marked as ‘allowable clearing areas’ do not have any land zoned C2, C3, C4 or R5. For these LGAs, there is no land on which the allowable clearing provisions can be used, but this could change in future if land is rezoned to C2, C3, C4 or R5.

The 'allowable activities' are only available on land where the continuing primary use is for primary production. The SEPP includes a landholding threshold test. This is undertaken by the landholder to determine if the land has an existing and continuing agricultural use.

### Which local government areas are included in the allowable clearing provisions?

Albury	Edward River	Liverpool Plains	Port Macquarie	Upper Hunter
Armidale Regional	Eurobodalla	Lockhart	Port Stephens	Upper Lachlan
Balranald	Glen Innes Severn	Maitland	Richmond Valley	Uralla
Bathurst	Greater Hume	Mid-Coast	Shellharbour	Wagga Wagga
Bellingen	Gwydir	Murray River	Shoalhaven	Walcha
Bland	Hilltops	Muswellbrook	Singleton	Warren
Central Coast (west of the M1 Motorway)	Inverell	Nambucca Valley	Snowy Monaro	Warrumbungle
Clarence Valley	Junee	Narrabri	Snowy Valleys	Wingecarribee
Coolamon	Kiama	Oberon	Tamworth	Wollongong
Cootamundra-Gundagai	Lachlan	Orange	Temora	
Dubbo Regional	Lismore	Parkes	Tenterfield	

## Relationships with other legislative instruments

### Chapter 6 (Bushland in urban areas) of the Biodiversity and Conservation SEPP

Chapter 6 applies to bushland within the urban areas identified in Schedule 5 of the SEPP. Chapter 6 operates separately to Chapter 2 and prevails over Chapter 2 to the extent of any inconsistency: see section 6.4.

## Areas mapped as Coastal Wetlands or Littoral Rainforests under Chapter 2 (Coastal management) of the Resilience and Hazards SEPP

Under the Resilience and Hazards SEPP, vegetation clearing in mapped coastal wetland and littoral rainforest areas is designated development and requires assessment using the process set out in the *Environmental Planning and Assessment Act 1979* (NSW) (EP&A Act). The consent authority (usually a local council) must apply the process and matters for consideration set out in the EP&A Act, together with any applicable development controls in an environmental planning instrument (such as the Resilience and Hazards SEPP).

If the Native Vegetation Panel receives an application for development in coastal wetlands or littoral rainforests, it will refer the applicant to the local council (or other consent authority under the EP&A Act) as it is not the consent authority for this type of development.

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### More information

- [Local Land Services](#) – Land management in NSW
- [Native Vegetation Regulatory Map Viewer](#)
- [Native Vegetation Panel](#)

Contact the Department of Planning and Environment

- Phone 1300 305 695
- Email the Planning team at [information@planning.nsw.gov.au](mailto:information@planning.nsw.gov.au)

If English isn't your first language, please call 131 450. Ask for an interpreter in your language and then request to be connected to the Department of Planning and Environment information centre on 1300 305 695.