

# biodiversity management

## PART C



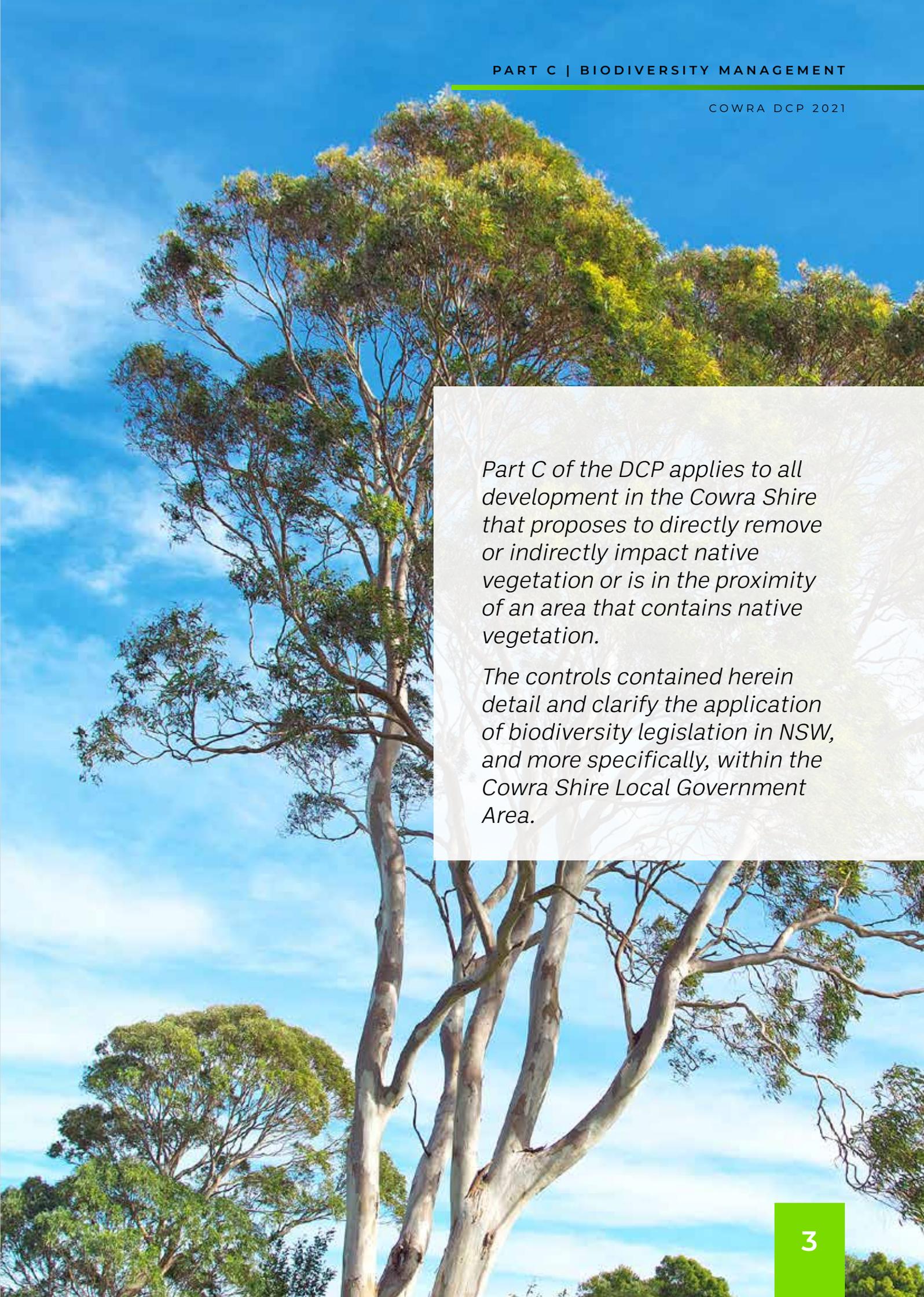
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**COMPREHENSIVE DCP**  
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*Part C of the DCP applies to all development in the Cowra Shire that proposes to directly remove or indirectly impact native vegetation or is in the proximity of an area that contains native vegetation.*

*The controls contained herein detail and clarify the application of biodiversity legislation in NSW, and more specifically, within the Cowra Shire Local Government Area.*

# biodiversity

## PART C.1

*This part applies to development that requires consent under Part 4 of the Environmental Planning and Assessment Act 1979 and that has the potential to impact biodiversity.*

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### C.1.1. Application of this part

This section applies to development that requires consent under Part 4 of the Environmental Planning & Assessment Act 1979 and that has the potential to impact biodiversity.

### C.1.2. Introduction

Biodiversity is the variety and variability of all life forms on earth. It encompasses multiple levels of classification, including genes, species, and ecosystems. Due in part to millions of years of geographic isolation, the biodiversity of Australia is unique and many species of plant and animals are found only in Australia and nowhere else in the world. Despite this rich and unique biodiversity, since European colonisation Australia has experienced the largest documented decline in biodiversity of any continent.

The processes that have driven this decline, such as habitat loss and fragmentation, climate change, the spread of invasive species, and inappropriate fire regimes, continue to accelerate. The Black Summer fire season (2019-2020) saw 5.4 million hectares in NSW burnt over 160 days of continuous fires. Across Australia, it was estimated that as many as 3 billion terrestrial vertebrates were killed or displaced.

Under rapidly changing and unprecedented conditions, protecting and managing Cowra Shire's natural areas and unique biodiversity has become crucial. This DCP section aims to detail and clarify the application of NSW biodiversity legislation for the purposes of development assessment. In this regard, the NSW Biodiversity Conservation Act 2016 establishes a framework to avoid, minimise and offset the impacts of local development and land use changes on native biodiversity.

### C.1.3. Relationship to other legislation

#### C.1.3.1. Cowra Local Environmental Plan 2012.

Part C.1 of the DCP supports the aims and provisions of the Cowra Local Environmental Plan 2012 (LEP) that relate to the conservation and management of the natural environment.

#### C.1.3.2. Environmental Planning and Assessment Act 1979 (EPA Act)

Part C.1 of the DCP addresses the objectives of the Environmental Planning and Assessment Act 1979 (EP&A Act) that relate to the conservation and management of the natural environment. In particular, it addresses the following objects of the EP&A Act:

- a. 1.3(a) to promote the social and economic welfare of the community and a better environment by the proper management, development and conservation of the State's natural and other resources,
- b. 1.3(b) to facilitate ecologically sustainable development by integrating relevant economic, environmental and social considerations in decision-making about environmental planning and assessment,
- c. 1.3(e) to protect the environment, including the conservation of threatened and other species of native animals and plants, ecological communities and their habitats.

This section of the DCP also addresses matters that the consent authority will take into account when considering the following "matters for consideration" under the EP&A Act:

- a. 4.15(1)(b) the likely impacts of that development, including environmental impacts on both the natural and built environments, and social and economic impacts in the locality,
- b. 4.15(1)(c) the suitability of the site for the development,
- c. 4.15(1)(e) the public interest.

#### C.1.3.3. Relationship to Biodiversity Conservation Act 2016 (BC Act)

Part C.1 of the DCP addresses the purpose of the Biodiversity Conservation Act 2016 (BC Act) relating to the impacts of local development and land use changes on native biodiversity. The overarching purpose of the Act is to apply the principles of ecologically sustainable development. More specifically, the following purposes of the BC Act are relevant:

- a. 1.3(a) to conserve biodiversity at bioregional and State scales,
- b. 1.3(b) to maintain the diversity and quality of ecosystems and enhance their capacity to adapt to change and provide for the needs of future generations, and
- c. 1.3(c) to improve, share and use knowledge, including local and traditional Aboriginal ecological knowledge about biodiversity conservation,
- d. 1.3(d) to support biodiversity conservation in the context of a changing climate,
- e. 1.3(h) to support conservation and threat abatement action to slow the rate of biodiversity loss and conserve threatened species and ecological communities in nature,
- f. 1.3(k) to establish a framework to avoid, minimise and offset the impacts of proposed development and land use change on biodiversity,
- g. 1.3(l) to establish a scientific method for assessing the likely impacts on biodiversity values of proposed development and land use change, for calculating measures to offset those impacts and for assessing improvements in biodiversity values,
- h. 1.3(m) to establish market-based conservation mechanisms through which the biodiversity impacts of development and land use change can be offset at landscape and site scales.

Part 7 of the BC Act, together with the Biodiversity Conservation Regulation 2017 (BC Regulation) and some aspects of the Local Land Services Act 2013 (LLS Act), outline the framework for assessment and approval of biodiversity impacts associated with certain proposals that require development consent. Subject to the provisions of the BC Act, such developments are ultimately determined under the EP&A Act.

Part 6 of the BC Act introduces the Biodiversity Offsets Scheme (BOS). A development to which the BOS applies requires the preparation and submission of a Biodiversity Development Assessment Report (BDAR) to accompany the application. Where a BDAR is required, it must be prepared by an ‘accredited assessor’ in accordance with the Biodiversity Assessment Method (BAM) established under the BC Act. Accredited assessors are ecologists accredited by the NSW Department of Planning, Industry and Environment to carry out the BAM and prepare BDARs.

Both the BAM and BC Act are based on a hierarchical framework which requires the proponent to design proposed development such that it avoids and minimises biodiversity impacts before proposing biodiversity offsets. If the avoid and minimise measures proposed are considered acceptable by the consent authority, any resulting biodiversity offsets must be delivered in accordance with the BOS and the proponent cannot commence construction until the offset obligation is met.

Council’s main role as the consent authority under Part 7 of the BC Act (amongst other things) is to determine:

- a. if measures proposed to avoid and minimise biodiversity impacts are acceptable (BC Act s7.13);
- b. if the development will result in a serious or irreversible impact on biodiversity values (BC Act, s7.16);
- c. that any residual impacts are offset (or otherwise addressed) in accordance with the BC Act (s7.13).

#### **C.1.3.4. Relationship to 10/50 Vegetation Clearing Code of Practice**

The 10/50 Vegetation Clearing Scheme allows people to clear certain vegetation near their homes to improve protection from bush fires.

The 10/50 Code permits landowners in the 10/50 Vegetation Clearing Entitlement Area to clear, on their own land, vegetation that is adjacent to an external wall of a building:

- containing habitable rooms that comprises or is part of residential accommodation or a high risk facility;
- that comprises or is part of a farm shed.

To determine whether a property is located within a Vegetation Clearing Entitlement Area, reference should be made to the online assessment tool available on the NSW RFS website [www.rfs.nsw.gov.au](http://www.rfs.nsw.gov.au)

Vegetation clearing that is carried out in accordance with the 10/50 Code is considered to be authorised clearing under NSW Legislation.

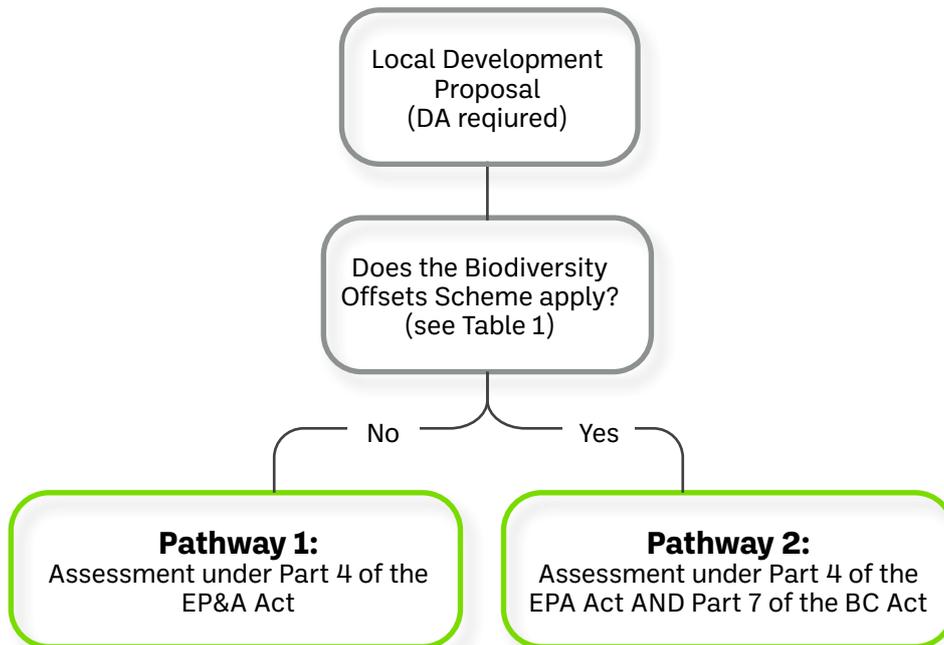
For Development Applications to which Part C.1 of this DCP applies, and for the purposes of determining whether that development exceeds the Biodiversity Offsets Scheme threshold, the 10/50 clearing entitlement should not and will not be excluded from the calculation of the development footprint.

### C.1.4. Biodiversity pathways

Given the potential operation of both the EP&A Act and the BC Act, there are two main assessment pathways which determine the level of biodiversity assessment and information required to support a development application (see Fig 1).

The assessment pathway depends on whether the proposed development triggers entry into the BOS according to the BC Act (see Tables 1 and 2).

**Figure 1 - Biodiversity Assessment Pathways**



**Table 1 - Does the BOS apply to the proposed development?**

	Description of proposed activity	Legislative reference
The Biodiversity Offset Scheme <b>does apply</b> to:	Proposed clearing of native vegetation (see Table 2) that would exceed the BOS area clearing threshold <sup>1</sup>	BC Act: s7.2(1)(b), s7.4(1) BC Regulation: s7.1(1)(a), s7.2
	Proposed clearing of native vegetation (see Table 2) or other action prescribed by clause 6.1 of the BC Regulation on land identified on the Biodiversity Values Map <sup>1</sup>	BC Act: s7.2(1)(b), s7.4(1) BC Regulation: s7.1(1)(b), s6.1, s7.3
	Proposed development that is likely to significantly affect threatened species or ecological communities according to the test of significance	BC Act: s7.2(1)(a), s7.3
	Proposed development to be carried out within a declared area of outstanding biodiversity value	BC Act: s7.2(1)(c)
The Biodiversity Offset Scheme <b>does not apply</b> to:	Proposed clearing of native vegetation on Category 1-Exempt land <sup>2</sup>	BC Act: s7.4 LLS Act: s60H
	Proposed development on biodiversity certified land	BC Act: s7.6

<sup>1</sup> See: <https://www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity/biodiversity-offsets-scheme/entry-requirements>

The area threshold varies depending on the minimum lot size (under Cowra LEP 2012) applying to the land. For ease of references purposes, the thresholds are described in the table below.

Minimum Lot Size	Threshold for clearing, above which the offsets scheme applies
Less than 1 ha	0.25 ha or more
1 ha to less than 40 ha	0.5 ha or more
40 ha to less than 1000 ha	1 ha or more
1000ha or more	2 ha or more

<sup>2</sup> See: <https://www.lls.nsw.gov.au/help-and-advice/land-management-in-nsw/archive/land-categorisation-and-the-land-management-framework>

**Table 2 - What is clearing of native vegetation? (for the purposes of development requiring consent under Part 4 of the EP&A Act only)**

	Description	Legislative reference
“Native vegetation” refers to:	Trees (including any sapling), shrubs, understorey plants, groundcover and plants occurring in a wetland that were established in NSW prior to European colonisation	LLS Act: s60B(1), s60B(2)
	Dead or non-native vegetation identified within Category 2-Regulated land <sup>2</sup>	LLS Act: s60B(3)
“Native vegetation” does not include:	Marine vegetation including mangroves and seagrasses	LLS Act: s60B(4)
“Clearing” of native vegetation means:	Means any one or more of the following -  (a) cutting down, felling, uprooting, thinning or otherwise removing native vegetation,  (b) killing, destroying, poisoning, ringbarking or burning native vegetation.	LLS Act: s60C
	Includes all clearing proposed in association with a development, including for construction of roads and other infrastructure, bushfire protection requirements, services installation, etc.	LLS Act: s60C
	Includes all clearing required or likely to be required for the purposes of a subdivision	BC Regulation s7.1(3)

<sup>1</sup> See: <https://www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity/biodiversity-offsets-scheme/entry-requirements>

<sup>2</sup> See: <https://www.lls.nsw.gov.au/help-and-advice/land-management-in-nsw/archive/land-categorisation-and-the-land-management-framework>

## C.1.5. Development Applications

### C.1.5.1. Statutory considerations

When determining an application for development consent involving impacts on biodiversity, Council must consider various legislation and policies. These include:

- a. Environmental impacts on the natural environment under Section 4.15 of the Environmental Planning and Assessment Act 1979
- b. Development that is “likely to significantly affect threatened species” as set out in the Biodiversity Conservation Act 2016.
- c. Potential impacts under other biodiversity legislation such as the NSW Fisheries Management Act 1994 and the Commonwealth Environment Protection and Biodiversity Conservation Act 1999.
- d. Specific Council LEP Clauses that relate to the protection and management of the natural environment.
- e. Vegetation clearing or other works within 40m of a watercourse as defined under the Water Management Act 2000.

Proposed development should also be consistent with any relevant strategies, plans or policies prepared and adopted by State, Commonwealth or Local authorities such as:

- a. Central West and Orana Regional Plan 2036
- b. Cowra Local Strategic Planning Statement

### C.1.5.2. Approvals required by other agencies

In some instances, further approvals may be required by other agencies before development can be undertaken. For example:

- a. Development in bushfire prone areas (Rural Fire Service)
- b. Works within 40m of the bed or banks of a waterway (Department of Primary Industries – National Resources Access Regulator)

### C.1.5.3. Biodiversity Assessment Objectives

- a. To ensure that any biodiversity values that may be impacted by the proposed development are identified.
- b. To ensure that any potential impacts on biodiversity are avoided, minimised, and/or offset.
- c. To inform the decision-making process in a timely and efficient manner.

### C.1.5.4. Development Application requirements

The following information is required to accompany development applications that have the potential to impact biodiversity.

- a. For development that does not exceed the BOS threshold:
  - i. Information demonstrating the conclusion that the proposal does not exceed the BOS threshold.
  - ii. A response to the threatened species test of significance set out under s7.3(1) of the BC Act.
- b. For development to which the BOS applies according to the triggers described in Table 1:
  - i. A Biodiversity Development Assessment Report (BDAR) prepared by an assessor who is accredited by DPIE to carry out the Biodiversity Assessment Method (BAM).

### C.1.6. Working Examples

#### Zara Langley’s Dwelling

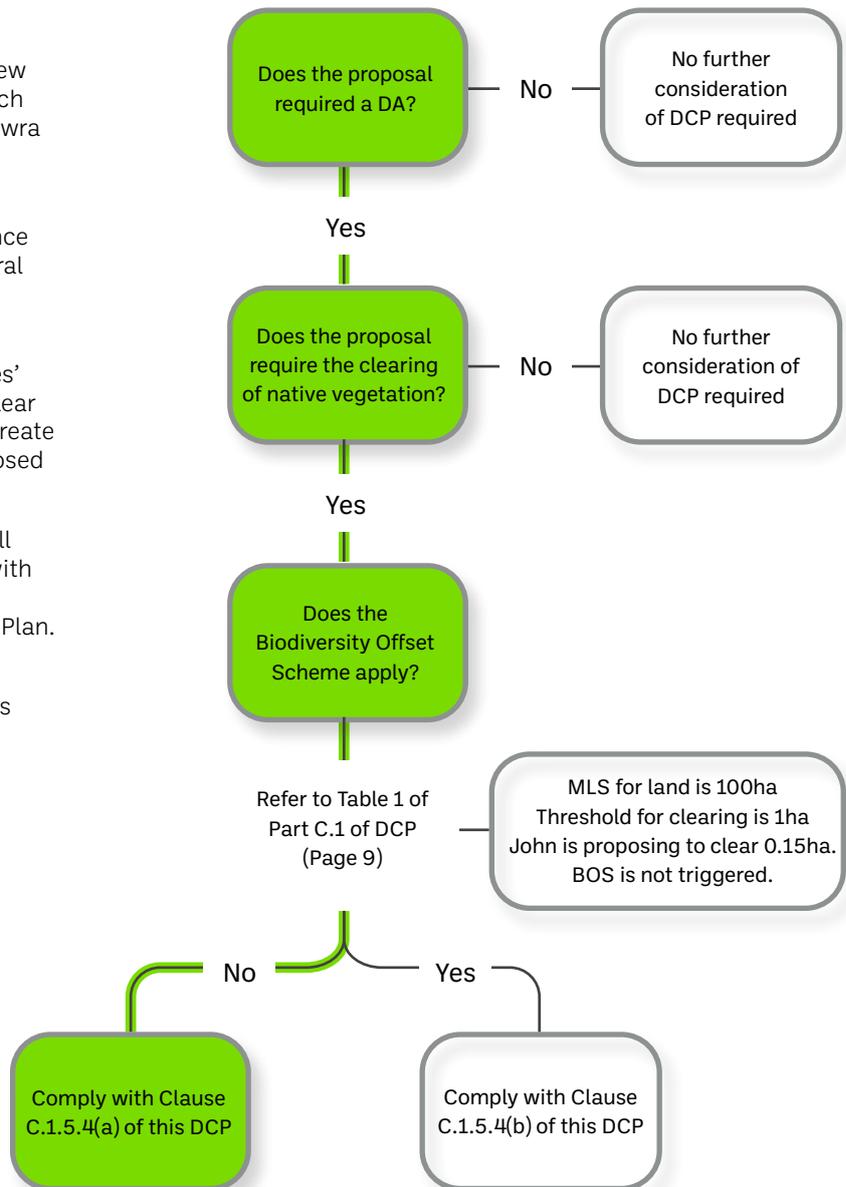
Zara Langley is proposing to construct a new dwelling on his rural property holding, which is zoned RU1 Primary Production under Cowra Local Environmental Plan 2012.

The location of the proposed dwelling is mapped as Busfire Prone Land in accordance with the mapping certified by the NSW Rural Fire Service.

To comply with the requirements of the ‘Planning for Bushfire Protection Guidelines’ Zara has calculated that she will need to clear 1,500m<sup>2</sup> of native vegetation in order to create an Asset Protection Zone around the proposed dwelling site.

Zara wants to know what approvals she will need in order to ensure she is complying with ‘Planning for Bushfire Protection’ and the requirements of this Development Control Plan.

The following diagram represents the Biodiversity Assessment Pathway for Zara’s proposal.



## Developer Jane's Subdivision

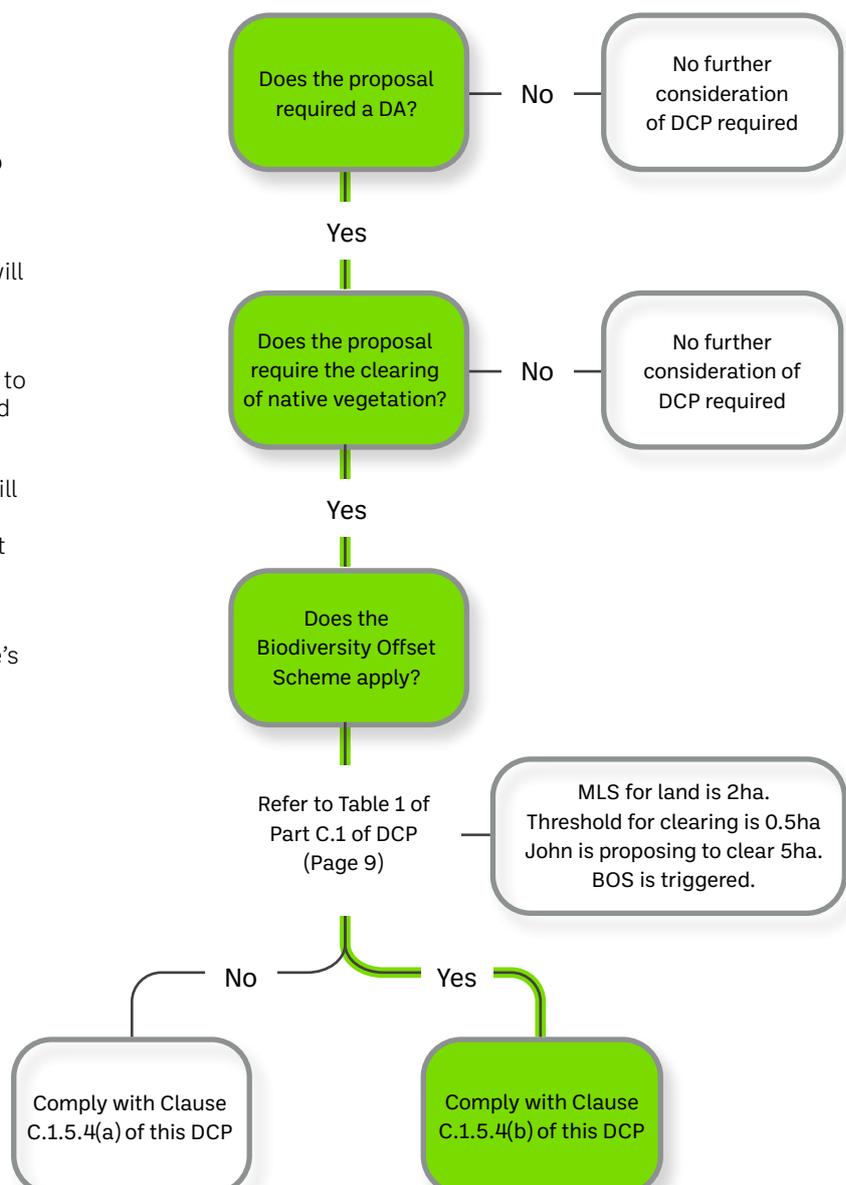
Developer Jane has purchased a property on the fringe of the Cowra Township and is preparing a Development Application to Council for the subdivision of the land into multiple residential lots.

The minimum lot size for the land is 2 hectares, so Jane's subdivision proposal will be for the creation of 10 new allotments.

Approximately 5 hectares of the land is covered in native vegetation and will need to be removed to accommodate the proposed subdivision design.

Jane wants to know what approvals she will need in order to ensure she is complying with the requirements of this Development Control Plan.

The following diagram represents the Biodiversity Assessment Pathway for Jane's subdivision proposal.





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