

Circular Details	Circular No 18-05 / 23 February 2018 / A581471
Previous Circular	NA
Who should read this	General Managers / Planning and Assessment Staff
Contact	Council Engagement Team - 02 4428 4183 – olg@olg.nsw.gov.au
Action required	Information

Commencement of the biodiversity offset scheme across most of NSW

What's new or changing?

- The Office of Local Government (OLG) is working in partnership with the Office of Environment and Heritage and the Department of Planning and Environment to support the commencement of the Biodiversity Offset Scheme.
- This will include overseeing the establishment of a network of regional biodiversity reform support officers to assist councils.
- OLG will facilitate the coordination between agencies through this network.
- From 25 February 2018, in most local government areas, any new application for development consent or modification to an approved development under Part 4 of the *Environmental Planning & Assessment (EP&A) Act 1979* (not including State Significant Development) will be subject to the biodiversity assessment requirements of the *Biodiversity Conservation Act 2016*.
- The Minister for the Environment has declared five additional Councils in the Lower Hunter (Cessnock, Newcastle, Port Stephens, Lake Macquarie and Maitland), Central Coast, Coffs Harbour and Wollongong (West Dapto) as Interim Designated Areas. These are in addition to seven Western Sydney local government areas (Camden, City of Campbelltown, City of Fairfield, City of Hawkesbury, City of Liverpool, City of Penrith and Wollondilly) previously identified as Interim Designated Areas.
- In these areas, applications for development consent, or modifications to an approved development, under Part 4 of the EP&A Act, will continue to be assessed under former planning provisions until the 24 November 2018. This is an extension of three months from 24 August 2018. The Biodiversity Offset Scheme will commence in these areas on 25 November 2018.
- Strategic biodiversity certification, a new biodiversity assessment and approval pathway under the *Biodiversity Conservation Act 2016*, is already underway in Western Sydney. It is intended to deliver upfront conservation outcomes when planning for future development. Biodiversity certification will now also be pursued in the Lower Hunter, Central Coast, Coffs Harbour and West Dapto. To provide a simpler transition for these areas, local development will continue to be assessed under the former planning provisions until 24 November 2018.
- Transitional arrangements will continue to apply to activities under Part 5 of the EP&A Act, major projects and mining projects as outlined in the *Biodiversity Conservation Regulation (Savings and Transitional) 2017*.

- The Native Vegetation Panel is in the process of being established. Local Land Services offices are located in many regional areas and will accept applications for clearing of native vegetation under Division 6 of Part 5A of the *Local Land Services Act 2013* and Part 4 of the *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*.

What this will mean for your council

Applications for development consent subject to the Biodiversity Conservation Act 2016

- A development to which the biodiversity offset scheme applies will be required to apply the Biodiversity Assessment Method and produce a biodiversity development assessment report to accompany a development application.
- The biodiversity offset scheme will apply to local developments¹ likely to significantly affect threatened species. These are defined as a development that:
 - Impacts on an Area of Outstanding Biodiversity Value
 - Exceeds the biodiversity offset scheme threshold, or
 - Is likely to significantly affect threatened species, ecological communities or their habitats according to the test of significance in section 7.3 of the *Biodiversity Conservation Act 2016* (BC Act).
- The biodiversity impacts of developments that do not trigger the biodiversity offsets scheme will continue to be assessed under section 79C of the EP&A Act. Evidence that the biodiversity offset scheme threshold is not triggered and a test of significance will accompany a development application to demonstrate that the biodiversity offset scheme does not apply.

Decision making where the biodiversity offset scheme applies

- Council will be required to determine whether a development will have a serious or irreversible impact in accordance with principles set out in the *Biodiversity Conservation Regulation 2017*. [Guidance to assist a decision-maker to determine a serious and irreversible impact](#) is available, including criteria and lists of potential serious and irreversible impacts.
- Where council is the consent authority, a development that is determined likely to have a serious and irreversible impact must be refused.
- If a development to which the biodiversity offset scheme applies is to be approved, council must outline the offset obligation as a condition of consent. Model conditions of consent will be available soon to assist councils in formulating conditions and confirming required compliance actions.
- Council may set an offset obligation above or below the requirement reflected in the biodiversity development assessment report (supporting document submitted with the development application). Where the offset obligation is below the requirement calculated in the report by an accredited assessor, council must seek concurrence from the Chief Executive of the Office of Environment and Heritage (OEH) and publish reasons for discounting the credit requirement.
- The proponent must meet their offset obligation before the biodiversity impact occurs. There is flexibility in how a proponent can meet offset obligations. They can buy and retire credits from a private entity, make a payment into the Biodiversity Conservation Fund, or fund a biodiversity action in accordance with the offset rules.
- Council will have responsibility for monitoring compliance with the conditions of consent, including the discharge of the offset obligations prior to impact.

¹ Development proposals assessed under Part 4 of the Environmental Planning and Assessment Act (other than State Significant Development and Exempt and Complying developments)

- Councils are asked to advise OEH of any consents issued for development applications to which the biodiversity offset scheme applies, including a copy of the conditions of consent. Notifying determined development applications will allow OEH to monitor biodiversity losses and gains. A form for notifying development consents is available <http://www.environment.nsw.gov.au/biodiversity/lodging-an-offset-obligation.htm>

Strategy for supporting councils in implementation

- An online resource with information, frequently asked questions and links specific to Local Government can be accessed at <http://www.environment.nsw.gov.au/biodiversity/localgovernment.htm>
- Updated Threatened Species Test of Significance Guidelines will be made available shortly.
- An online decision support tool to help assessment officers determine the correct assessment pathway for development applications will be available shortly.
- The [Biodiversity Offset Scheme Entry Tool](#) is available to assist in determining whether the biodiversity offset scheme threshold has been exceeded. The tool should be used in conjunction with the [BOSET User Manual](#).
- Training sessions targeted at local government approvers will continue to roll out over 2018. For information on upcoming training sessions and to register your interest visit: <https://www.greencap.com.au/training/biodiversity-offsets-scheme-training-nsw>.
- Local government support officers have been recruited to support the following regions: Hunter and Central Coast; North Coast; New England North West and northern Far West; and Riverina and Murray and southern Far West. Introductions will be made in coming weeks. Announcements will be made as recruitment is finalised for the remaining four support officers. Visit <http://www.environment.nsw.gov.au/biodiversity/localgovernment.htm> for support officer contact details.

Key points

- From 25 February 2018 the *Biodiversity Conservation Act 2016* will fully commence across most of the State for local development.
- Councils are encouraged to pursue training and connect with the regional support network. For scheduled staff training opportunities, go to <https://www.greencap.com.au/training/biodiversity-offsets-scheme-training-nsw>

Where to go for further information

- Information about Council assessment and approval obligations or the support network for local government can be directed to 02 4428 4183 or Elizabeth.Dixon@olg.nsw.gov.au
- Questions about the *Biodiversity Conservation Act 2016* or the Biodiversity offset scheme should be directed to the Land Management and Biodiversity Conservation Service Centre at lmbc.support@environment.nsw.gov.au or 1800 931 717.

- The following websites also have detailed information for councils:
<http://www.environment.nsw.gov.au/biodiversity/index.htm> and
<http://www.landmanagement.nsw.gov.au>
<http://www.planning.nsw.gov.au/Policy-and-Legislation/Environment-and-Heritage/Vegetation-SEPP>



Tim Hurst
Acting Chief Executive