



Avoiding and minimising impacts

Biodiversity Certification Fact Sheet #1

Biodiversity certification is designed to support strategic land use planning

A key objective of the *Biodiversity Conservation Act 2016* (BC Act) is to establish a framework to avoid, minimise and offset the impacts of development and land use change on biodiversity. (See section 1.3(k). Biodiversity certification contributes to this objective by providing a streamlined biodiversity assessment and approval process when planning for land use change.

The biodiversity certification process is designed for use at a landscape scale. Applications for biodiversity certification are expected to deliver biodiversity outcomes that would be not be achievable at a site scale. Avoiding impacts is integral to delivering biodiversity outcomes in the landscape.

The Biodiversity Assessment Method requires that impacts are first avoided

The Biodiversity Assessment Method (BAM) requires applicants for biodiversity certification to demonstrate how impacts on biodiversity have been avoided and minimised in designing for land use change.

Impacts must be avoided and minimised before offsets are proposed to compensate for any residual impacts.

A Biodiversity Certification Assessment Report (BCAR) is expected to include these steps as a minimum:

- Establish a **biodiversity certification assessment area** encompassing all land under consideration for future land use change. For standard biodiversity certification applications, applicants must own or otherwise have a legal interest over land in the biodiversity certification assessment area.
- Identify land with **existing biodiversity values**. This will include areas of native vegetation, habitat and landscape connectivity irrespective of current zoning.
- Identify land proposed for **development**. This will be the land proposed for biodiversity certification. Areas proposed for development should avoid or minimise encroachment on land with existing biodiversity values.
- Justify why any impacts to existing biodiversity values can't be avoided.

The Minister may reject an application that fails to demonstrate efforts to avoid and minimise impacts on biodiversity.

Principles for avoiding impacts on biodiversity values

While each application will be considered on its individual merits, the following principles will generally be applied when evaluating efforts to avoid impacts on biodiversity values.

Land proposed to be avoided must be within the biodiversity certification assessment area

Generally, the biodiversity certification assessment area will be one contiguous shape. Deciding not to develop parcels of land that are detached from the biodiversity certification assessment area is not avoiding impacts.

Important biodiversity values should be prioritised for avoidance

Important biodiversity values include:

- large areas of intact native vegetation
- vegetation in the best condition
- habitat for species with a high biodiversity risk rating
- threatened ecological communities or highly cleared plant community types.

Avoided land that does not contain biodiversity values will not be considered when efforts to avoid and minimise impacts are evaluated. Note that the biodiversity value of riparian corridors will be considered even if these areas have been cleared of vegetation.

Certain biodiversity values should always be avoided

Some biodiversity values are protected by specific legislation and processes.

It is expected that impacts on areas mapped as coastal wetlands or littoral rainforest under *State Environmental Planning Policy (Coastal Management) 2018* or core koala habitat under *State Environmental Planning Policy No 44—Koala Habitat Protection* or *State Environmental Planning Policy (Koala Habitat Protection) 2019* will always be avoided within the biodiversity certification assessment area.

Strong justification for any impacts on entities at risk of a serious and irreversible impact must be provided in the application, as well as the specific information required for these entities by the BAM.

The Minister may decline to confer certification if the proposed certification of land is likely to have serious and irreversible impacts on biodiversity values.

Land proposed to be avoided must be additional

Land set aside in a previous planning process will generally not be considered avoided for the purposes of a biodiversity certification application. For example, land zoned E2 is unlikely to be recognised as avoided land.

Should the applicant propose an improvement to the protection or management of such an area, this will be considered when evaluating whether the biodiversity certification application adequately addresses biodiversity impacts.

Avoided land should be protected from future development

Ideally, biodiversity values on land that has been avoided when designing areas for development should be protected from future impacts. This is particularly the case for strategic biodiversity certification applications that can take advantage of a broader range of conservation measures.

There will be some instances when the conservation measures available are not compatible with a parcel of land. If conservation measures are not applied to avoided land, it will default to 'retained' land and will be subject to normal assessment and approval procedures under the *Environmental Planning and Assessment Act 1979*.

The Minister may enter into a Biodiversity Certification Agreement with a landowner to require the person to take actions to improve, or prevent damage to, biodiversity.

The Department will evaluate efforts to avoid impacts on biodiversity values

The Department will evaluate efforts to avoid impacts when determining if the biodiversity certification application adequately addresses biodiversity impacts.

Key considerations include:

- Compatibility with principles for avoiding biodiversity impacts
- Biodiversity values present in avoided land compared to land identified for development
- Protections proposed for avoided land with biodiversity values

The Minister may decline to confer biodiversity certification if the application doesn't demonstrate satisfactory avoidance of impacts on biodiversity values in accordance with the BAM.

Early consultation is recommended

Consultation with the relevant local council and the Department is recommended when developing an application for biodiversity certification. Early discussions on important biodiversity values to be avoided will optimise biodiversity outcomes and streamline the biodiversity certification application process.