

Implementing biodiversity certification: roles and responsibilities

Information for councils

Fact sheet #6

Biodiversity certification orders

Biodiversity certification under Part 8 of the *Biodiversity Conservation Act 2016* (Biodiversity Conservation Act) is conferred by an order made by the Minister for the Environment and is published in the NSW Government Gazette.

The order identifies the party or parties to the biodiversity certification. These can include the applicant for biodiversity certification, or any person or body agreeing to be a party.

The order provides a description of the certified land and any related conservation measures or conditions that apply.

The Department maintains and publishes a register of orders made for conferral, extension, suspension, modification or revocation of certification.

Visit the Department's [Register of orders](#).

Conservation measures

All parties to a biodiversity certification or a biodiversity certification agreement are responsible for carrying out conservation measures or other obligations set out in the biodiversity certification order.

The order specifies conservation measures to offset impacts on biodiversity that result from the land being certified. The order may also specify measures to avoid or minimise impacts on biodiversity.

Biodiversity certification agreements

The Minister can enter into a biodiversity certification agreement with any person. Unlike a biodiversity certification order, a biodiversity certification agreement can be made with any

person or body even if they are not a party to the certification. Not every biodiversity certification proposal will require a biodiversity certification agreement.

A biodiversity certification agreement can therefore be useful in circumstances where the Minister (or delegate) requires certain conservation outcomes on land that is not owned or managed by a party to the certification.

A biodiversity certification agreement can also be used to provide security for the future implementation of conservation measures.

Biodiversity certification agreements run with the land and bind any successive landowners to their conditions.

Monitoring compliance and periodic reviews

The Department is responsible for monitoring compliance with biodiversity certification orders and biodiversity certification agreements.

Unless council is a party to biodiversity certification or a biodiversity certification agreement, council isn't responsible for ensuring that the required conservation measures have been met.

If a council becomes aware that obligations are not being met, council can notify the Department to undertake any necessary compliance action.

The Department can carry out a range of actions to address non-compliance including issuing a financial penalty, ordering a party to rectify a failure and suspending or revoking the certification.

The Department is also responsible for periodic reviews of biodiversity certifications. The legislation doesn't specify how often this should occur, but the frequency of review may be specified in the order or determined on a case-by-case basis.

DA approvals and planning proposals

Council can't determine a development application that is dependent on the outcome of a biodiversity certification application.

If the proponent of a development application is relying on the biodiversity certification assessment report and proposed biodiversity certification for their biodiversity assessment, then approval of the development application is contingent on receiving biodiversity certification.

Biodiversity certification applications that propose to intensify land use should be supported by a planning proposal. For more information on planning proposals and the biodiversity certification process see the Department's Factsheet: [Standard applications and Planning proposals](#).

Notifications

When biodiversity certification is conferred, section 8.24 of the Biodiversity Conservation Act requires the Department to formally notify council within 21 days.

The Department must also notify council if a biodiversity certification proposal in their local government area is modified, extended, suspended or revoked.

In most cases, council will already be aware of the existence of a biodiversity certification proposal as the Department encourages early and ongoing applicant consultation with councils for all proposals.

Section 10.7 planning certificates

Council must include biodiversity certification information in planning certificates issued under section 10.7 of the *Environmental Planning and Assessment Act 1979*.

This requirement falls under Part 8 of the Biodiversity Conservation Act and Schedule 4 of the Environmental Planning and Assessment Regulation 2000.

The planning certificate information notifies interested stakeholders about the development potential of the land.

Contacts, more information and support

For more information and support visit our [Biodiversity Certification webpage](#).

For information about a specific biodiversity certification proposal contact your relevant [Department Regional office](#).