



Submissions report

Biodiversity Assessment Method 5-year Review: Summarising stakeholder input from public consultation

Department of Climate Change,
Energy, the Environment and Water



Acknowledgement of Country

Department of Climate Change, Energy, the Environment and Water acknowledges the Traditional Custodians of the lands where we work and live.

We pay our respects to Elders past, present and emerging.

This resource may contain images or names of deceased persons in photographs or historical content.

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Introduction

The Biodiversity Assessment Method (BAM) 5-year review is an opportunity to identify which aspects of the BAM work well and highlight improvements to streamline implementation and support operations.

The NSW Government is committed to ensuring the BAM, which underpins the Biodiversity Offsets Scheme, is scientifically robust and practical to apply.

A public consultation paper was used to seek stakeholder insights into, and users' experience with, the method. The consultation was open for 4 weeks from 14 July 2023.

The department received 42 submissions:

- 16 from accredited assessors/ecological consultancies
- 10 from local government
- 6 from industry
- 5 from individuals
- 3 from environment non-government organisations
- 2 from landholders.

This report summarises key issues identified from external stakeholder submissions against the 10 focus questions outlined in the consultation paper. All key issues are reflected, regardless of whether they are considered in scope of the BAM review.

Review recommendations are set out in the *Five-year review of the Biodiversity Assessment Method* report and take into account the issues raised in stakeholder submissions, input from government experts and general feedback received from various channels over the last 5 years of operation of the method.

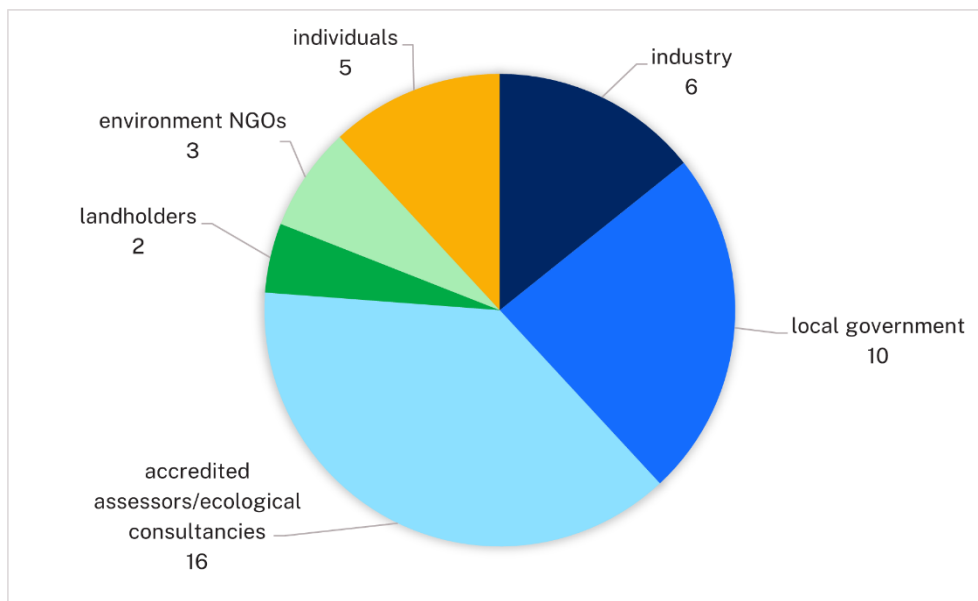


Figure 1 Chart of stakeholder submissions received

Public input by focus questions

Opportunities to simplify the Biodiversity Assessment Method

Focus question

1. Do you have any suggestions for how BAM assessments could be made faster, cheaper or easier without compromising scientific rigour?

Thirty-two submissions addressed this focus question.

Some stakeholders raised concerns that efforts to make assessments faster, cheaper or easier could compromise scientific rigour, exacerbate issues with the quality of assessments and undermine the legislated standard of the BAM, set at no net loss of biodiversity in New South Wales.

Other submissions suggested how the BAM's survey requirements, supporting guidance and tools could be improved to increase efficiency and efficacy. Below is a summary of common themes.

Increased flexibility in applying the Biodiversity Assessment Method

For example, enabling accredited assessors to adjust survey methods and refine lists of species for survey based on local knowledge and site condition.

It was noted that difficulty in meeting survey requirements leads to proponents assuming species were present rather than surveying.

Provision of species survey information

Submissions called for survey guides to be released to provide certainty and address inconsistent information from various sources (e.g. in the Threatened Biodiversity Data Collection).

Improvements to tools and systems

Many submissions raised issues relating to current tools (e.g. 'Plot to PCT tool', BAM Calculator) requesting simplicity, flexibility and compatibility between digital tools. Accredited assessors emphasised issues relating to data transfer between systems, which, if improved, could streamline processes and reduce errors. For example, apps to capture and transfer BAM field data into the BAM Calculator and then export this information into the biodiversity development assessment report template.

Improved processes to manage changes

Streamlining updates to data/systems/tools, greater consultation ahead of changes and standard transition timeframes for implementation of changes were strong themes in submissions.

Submissions also made suggestions relating to various aspects of the broader scheme that would improve efficiency and streamline process. While not directly related to the BAM some common themes are included below.

Improvements to development processes

Stakeholder feedback was that the biodiversity development assessment report (BDAR) review, and approval process is lengthy and could be improved by:

- mandating the use of the BDAR template to ensure minimum information requirements are met
- pre-lodgement meetings with local government
- supplementary process for responding to government review
- a mechanism to allow for an addendum to the original BDAR rather than requiring the whole BDAR to be updated for modifications.

Resourcing supporting databases and systems

For example, maintaining and improving systems such as PlantNet.

Revising definition of native vegetation

The scheme would benefit from a tailored definition of 'native vegetation', contextualised for regulatory processes.

Scheme entry thresholds

Entry thresholds should be reviewed to better consider developments in regional areas and/or those with minimal impacts on biodiversity.

Role of strategic planning

Greater consideration given to biodiversity at the rezoning stage of the planning process.

Interaction with other legislation

More information and support on linkages between the scheme and the *Local Land Service Act 2013* and state environmental planning policies.

Improve transparency and consistency of processes and outcomes

Focus question

2. What changes could be made to the BAM to clarify requirements and documentation for avoiding and minimising impacts and to strengthen outcomes?

Thirty-three submissions addressed this focus question.

Stakeholders strongly support the ‘avoid, minimise, offset’ hierarchy adopted by the BAM. However, many would like to see the avoid and minimise components earlier in the planning and design process of a development. Common themes are listed below.

Providing clear direction

The application of avoid and minimise could be improved by including ‘avoid and minimise’ principles or standards in the BAM.

Guidance for proponents, accredited assessors, and decision-makers on sufficient avoidance and minimisation of impacts would support consistent implementation.

Improved training

Accredited assessors would benefit from additional training on the application of the avoid and minimise hierarchy, and training could support decision-makers to consistently enforce avoid and minimise principles/standards.

Broader issues relating to avoiding and minimising impacts were noted in several submissions, these generally sit outside the BAM.

Further incentivising avoidance

Submissions raised the idea that increasing the cost of offsetting would directly drive avoidance measures.

Application of planning instruments

Where ‘avoiding and minimising’ impacts to biodiversity are explicitly considered by planning instruments, no further action should be required in site-based assessment. Indeed, several submissions advised a more prescriptive approach that avoid and minimise measures be embedded across the planning framework.

Recognition for circumstances where applying avoidance and minimisation concepts are difficult

In such situations, additional requirements, such as translocating dormant biodiversity (e.g. soil seed banks), could be introduced to meet no net loss standards.

Protection and management of avoided land

Suggestions included that avoided areas form part of an integrated management framework, be identified on property titles, and have ongoing funding and management arrangements.

Focus question

3. How could serious and irreversible impacts (SAIL) assessments under the BAM be clarified or better supported to help improve transparency, consistency and outcomes?

Thirty-one submissions addressed this focus question.

There was consensus among stakeholders that SAIL assessment processes could be improved with greater clarity, transparency and consistency for proponents, assessors and decision-makers. Many suggestions related to processes and products external to the BAM, including:

- publishing the process the department takes to list entities at risk of a SAIL, and the justification for adding or removing entities from the list
- improving the framework for decision-makers with clear impact thresholds and guidance materials
- requiring automatic refusal of major projects if they are determined to have a SAIL
- delegating SAIL decisions to a central authority or subject matter experts for the entities impacted.

A key recommendation was the creation of a public SAIL database. The database could:

- catalogue SAIL listings and decisions, including where legal precedent has been established
- be maintained and regularly updated
- house ecological information on entities at risk of an SAIL.

Some submissions suggested such a resource could be added as a schedule to the Biodiversity Conservation Regulation 2017.

Recommendations relating to amending the BAM included clarifying which entities require assessment against the SAIL criteria and introducing a 'test of significance' style assessment.

Ensure the Biodiversity Assessment Method is fit for purpose

Focus question

4. Should the BAM require further consideration of cumulative biodiversity impacts in an area proposed for development? If so, do you have any recommendations for how this could be assessed?

Thirty-five submissions addressed this focus question.

Stakeholders acknowledged the difficulty in assessing cumulative impacts. Some consider it unreasonable to attempt to capture or calculate offsets related to cumulative losses. The availability of information on biodiversity impacts of other approved and proposed developments in the region is rarely accessible.

Submissions recognised the periodic updates to the statewide datasets that underpin the BAM will address, to some extent, cumulative impacts of development and clearing on biodiversity in New South Wales.

Key points raised outside the scope of the BAM included the need to improve strategic land use planning, including biodiversity certification, and the development of a spatially enabled centralised database of all approved clearing activities. Collectively these would inform cumulative impact assessments.

Ensure the Biodiversity Assessment Method is an appropriately flexible standardised assessment

Focus question

5. Do you have any suggestions for improving how the BAM applies to very large or long, linear projects without increasing complexity?

Nineteen submissions addressed this focus question

Some submissions supported modifying survey efforts in the BAM and associated guidelines for very large or long, linear projects.

Others recommended specific guidance on the application of the BAM to these types of developments.

In contrast, there was a clear lack of support for the simplification or reduction in survey efforts on large or linear developments from several stakeholders.

These submissions expressed a concern that biodiversity values would not be adequately sampled across the development footprint, potentially leading to a net loss outcome and/or changes could compromise the scientific rigour of the method.

Whilst not directly related to the BAM, several submissions recommended the government improve regional mapping.

In turn, the method could then require 'verification' of regionally mapped vegetation and habitat via survey, reducing the need for comprehensive site-based assessment to capture this information.

Focus question

6. Do you have any suggestions for how the BAM could be improved for applying in extreme conditions such as severe bushfires, prolonged flooding or prolonged drought while maintaining a consistent standard?

Thirty submissions addressed this focus question

Stakeholders acknowledged that extreme conditions, such as severe bushfire, prolonged flooding, or drought, affect the accuracy of assessments.

Submissions provided a range of options to address this, including:

- use of reference sites to benchmark assessments affected by extreme conditions
- not allowing survey until these conditions have subsided
- modifying calculations to better consider vegetation resilience rather than current condition.

All options were prefaced with the need for guidance to support BAM assessments in extreme conditions, including clearly defining the scenarios to which it applies.

Several stakeholders presented options that would require amendments to legislation or policy settings to address these issues, including the ability to conduct surveys post-development approval when conditions improve, to help prevent delays to project delivery.

Focus question

7. Do you have any suggestions for improving how the BAM applies in derived vegetation communities or transitions between different vegetation types without increasing complexity?

Twenty-four submissions addressed this focus question

Submissions offered a broad range of suggestions from various stakeholders on this topic. There were some suggestions that derived native grasslands of low conservation value be excluded from assessment, thereby reducing survey and offset requirements.

Others recommended all derived communities be assessed and offset, regardless of condition or vegetation integrity score.

One submission suggested all derived communities should be recognised as threatened ecological communities.

Specific ideas relating to amending the BAM included:

- tailoring assessments for derived communities
- modifying calculations to discount credit generation for derived communities
- increasing the potential for derived communities to generate credits at biodiversity stewardship sites, particularly through restoration actions.

To improve the assessment of areas of transition between plant community types, stakeholders recommended a variety of options, including:

- applying the precautionary principle and categorising the transition zone based on the 'rarer' or 'more threatened' community
- dividing the transitional zone equally between the relevant communities
- apply the 'best fit' allocation to the transition zone, with justification provided
- requiring additional plots in transitional areas to identify vegetation type
- apply 'edge habitat' values to scoring metrics to increase 'value', recognising the importance of these areas.

Stakeholders considered additional guidance and resources would improve assessments for derived vegetation communities and transitional areas between different vegetation types.

Evaluate the adequacy of metrics and models embedded within the Biodiversity Assessment Method

Focus question

8. Are there ways the BAM could better consider connectivity and encourage conservation of high biodiversity value/good condition sites?

Thirty submissions addressed this focus question

Suggestions on this question ranged from changes to assessment and biodiversity credit calculations, to strategic protection of land, and better mapping.

Many submissions called for increased consideration of connectivity and high-value biodiversity areas within the BAM. Suggested ways to achieve this were:

- increasing the vegetation integrity score for these areas
- providing a 'connectivity value multiplier' or similar, to increase credit generation in areas that link parts of the landscape.

Submissions from various stakeholders stressed the need for strategic planning beyond the BAM to enhance connectivity and conserve high biodiversity areas. Solutions like rezoning, government acquiring land, or funding private land conservation agreements were discussed.

To enable recognition of corridors or sites that provide connectivity stakeholders stressed the importance of mapping and accurate data.

Consolidation of existing information and incorporation of strategic corridors onto maps like the biodiversity values map, with a need for the involvement of both State and local governments in data collation and publication were raised.

Focus question

9. Are there ways the BAM could better consider the gain achieved through active restoration to help incentivise protection of degraded areas?

Twenty-five submissions addressed this focus question

Submissions varied in response to this focus question, in general, there was support to incentivise restoration of degraded areas.

Some stakeholders felt that gain, in general, was significantly overestimated, while others stated it was underestimated. Several reflected that BAM favours credit generation in moderate condition sites, suggesting this be revised.

Where active restoration was supported, stakeholders wanted to see an increase in credit yields for these actions, when undertaken at biodiversity stewardship sites. Additional credits could be given where:

- best-practice restoration methods were undertaken, thereby reducing risk of failure
- sites restoring landscape connectivity
- specific management actions with demonstrated success in ecological gains.

Stakeholders discussed issues that limit the uptake of restoration at stewardship sites, including the high costs associated with revegetation, lack of a restoration industry to assist with implementation, and the need for simplified management plans to support landholders delivering these types of management actions.

Ideas that sit outside the BAM but could support restoring degraded areas included spatially identifying areas that would benefit from restoration at the regional scale, and exploring subsidising restoration costs through industry levies and developer contributions.

Focus question

10. Are there ways the BAM could better consider existing credit obligations?

Fifteen submissions addressed this focus question

There are several scenarios under the BAM where 'additionality' is incurred. Feedback to this focus question was varied.

Some stakeholders recommended greater flexibility in creating credits on existing offset sites when additional threatened species are recorded.

Others emphasised the need to retain additionality where credits are generated on land with existing obligations.

Other feedback

Focus Question

11. Do you have any other feedback or suggestions for consideration in the BAM 5-year review?

Forty submissions addressed this focus question

Stakeholders provided a range of comments and suggestions beyond these focus questions.

Some related to the BAM but most addressed issues outside of the method. These are summarised below.

Amendments to the Biodiversity Assessment Method

Stakeholders provided a range of issues and improvements to the method. Some common suggestions were:

- review the ‘gain’ models, with some concerned that these were over-predicting gain at biodiversity stewardship sites
- provide approaches to calculate credits for common types of indirect and prescribed impacts
- explicit provision of alternative options of ‘compensating’ for loss from prescribed impacts, such as funding research or conservation actions.

Tools, data and systems

Assessors expressed concerns about the usability of the BAM Calculator, suggesting improvements to the user interface and functionality. A consistent recommendation was consolidating and scheduling updates to minimise disruptions.

Stakeholders expressed concerns about the various spatial products and datasets underpinning the BAM. Criticisms included:

- inaccuracies in the state vegetation type map and biodiversity values map
- a lack of plant community type-level benchmarks, which are required to enable precise valuation.

General training and guidance

A range of stakeholders asked for additional or improved training and guidance¹, examples are:

- formal training and guidance for vegetation mapping and plant community type identification
- flora identification guidelines
- standardised guidelines for calculating credits for indirect and prescribed impacts.

Assessors expressed concerns about insufficient support, citing a lack of BAM training, excessive personal responsibility, and high workload, leading to a shortage of assessors.

A simplified accreditation process, and an overhaul of the pilot auditing program, were key suggestions.

Compliance

Stakeholders sought clarification over who enforces the BAM.

Legislative and policy changes

Stakeholders used this focus question to raise issues relating to the broader settings under the BC Act.

Scheme entry threshold

There was a varied response, with some stakeholders considering entry thresholds too low, others too high, and still others seeking a tailored approach (e.g. vary by local government area based on local biodiversity characteristics).

Offset rules

There were differing views on adjusting/loosening like-for-like rules to enable market function, to tightening of these rules to require more local offsetting, or restricting use of 'variation rules.

Options to acquit obligations

There was concern that payment into the Biodiversity Conservation Fund is still the primary method of meeting an offset obligation.

Credit pricing

There were mixed views, with some submissions suggesting pricing is generally too low and others that it is too high, whilst still more suggested particular credits should be priced higher than others (e.g. driven by threat status).

¹ Only those guidance materials not addressed elsewhere are included here.

Discounting of credit obligations

Respondents suggested removing or restricting the ability to discount credit obligations.

Ecological mine site rehabilitation as an offsetting option

We received varied responses, with some supporting the provision and others recommending removal.

Biodiversity stewardship agreements

Comments included:

- establishment process and costs are prohibitive, disincentivising landholders, requesting further work to better support landholders
- tax implications are a significant deterrent for landholders and must be resolved
- management plans require stronger contingency funding, auditing and clarity in performance measures to ensure outcomes are achieved.

More publicly available information on the scheme

We were asked to provide transparency and improve scheme integrity, including information on which credits or biodiversity stewardship sites have been used to offset which developments, which obligations have been transferred to the Biodiversity Conservation Trust and on offset obligations for all major projects, including any discounting.

Whole of scheme standard

Rather than a no net loss standard for the BAM, the scheme should have a legislated objective of net gain. Stakeholders emphasised the need for alignment between the BAM review and that of the BC Act and native vegetation provisions in the *Local Land Service Act 2013*.

It was strongly recommended that any changes to the scheme must maintain Australian Government endorsement and the streamlining benefits of the NSW Assessment Bilateral Agreement.