



DEPARTMENT OF PLANNING, INDUSTRY & ENVIRONMENT

Conservation measures in strategic applications for biodiversity certification

Guidance for planning authorities



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1. Purpose of this document

This guidance is intended to assist planning authorities preparing applications for strategic biodiversity certification to:

- design proposed conservation measures
- demonstrate that proposed conservation measures adequately address the likely impacts on biodiversity values of the biodiversity certification of the land.

The guidance describes the regulatory context for conservation measures and provides principles for designing conservation measures.

The principles in this document will be used by the Department to evaluate a strategic application for biodiversity certification and advise the Minister about the adequacy of conservation measures and the likely impacts on biodiversity values.

The document will be updated as required to reflect new information or changes to policy settings or legislation.

This document should be read in conjunction with:

- Part 8 of the BC Act – the legislation behind biodiversity certification
- the Biodiversity Conservation Regulation 2017 (BC Regulation)
- the Biodiversity Assessment Method (BAM)

Further information on biodiversity certification is available on the [Department's website](#).

2. Regulatory context

2.1 Conferral of certification

The Minister may only confer certification if satisfied that the approved conservation measures under the certification adequately address the likely impacts on biodiversity values of the biodiversity certification of the land.

The Minister must have regard to the biodiversity certification assessment report (BCAR) but is not bound by the report.

If the Minister decides that the certification of land is likely to have serious and irreversible impacts on biodiversity values, the Minister must consider those impacts and determine whether any additional and appropriate measures will minimise those impacts.

2.2 Additional conservation measures available for strategic applications

In addition to the retirement of biodiversity credits, *the Biodiversity Conservation Act 2016* enables an applicant for strategic biodiversity certification to access additional approved conservation measures including:

- reservation of land under the *National Parks and Wildlife Act 1974* (NPW Act)
- adoption of development controls under the *Environmental Planning and Assessment Act 1979* (EP&A Act) that conserve or enhance the natural environment
- state infrastructure contributions under the EP&A Act (as per s7.24) that conserve or enhance the natural environment
- any other measure determined to be an approved conservation measure by the Minister for Energy and Environment.

The offset rules do not apply to strategic biodiversity certification.

3. Principles for proposed conservation measures

Ecologically sustainable development is a central tenet of the *Biodiversity Conservation Act 2016*. Ecologically sustainable development is described in section 6(2) of the *Protection of the Environment Administration Act 1991* and requires effective integration of social, economic and environmental considerations in decision-making processes.

Ecologically sustainable development can be achieved through the implementation of four principles and programs:

1. the precautionary principle
2. intergenerational equity
3. conservation of biological diversity and ecological integrity
4. improved valuation, pricing and incentive mechanisms.

To effectively integrate social, economic and environmental considerations in biodiversity certification decisions, the conservation measures and biodiversity certification as a whole must respond to the principles of ecologically sustainable development.

Principles 1 to 8 below must be addressed in the biodiversity certification assessment report (BCAR) to demonstrate that the proposed conservation measures adequately address impacts on biodiversity values under section 8.7 of the BC Act. In addressing the principles, the BCAR should explain how the conservation measures respond to ecologically sustainable development (ESD), particularly but not limited to:

- bioregional and state scale conservation outcomes
- maintain diversity and quality of ecosystems and enhance their capacity to adapt to change and provide for the needs of future generations
- support biodiversity in a changing climate
- support conservation and threat abatement actions to slow the rate of biodiversity loss and conserve threatened species and ecological communities in nature
- support and guide prioritised and strategic investment in biodiversity conservation outcomes
- implement the avoid, minimise and offset hierarchy to achieve the smallest possible impacts of the proposed development and land use change
- support public consultation and participation in biodiversity conservation and decision-making about biodiversity conservation.

Principle 1 – Impacts on entities at risk of a serious and irreversible impact (SAIL) are avoided and minimised

The concept of SAIL is about protecting threatened entities that are most at risk of extinction from potential development. It recognises that there are some types of impacts that the community expects will not occur except where it can be demonstrated that this type of impact is outweighed by the social and economic benefits that the development will deliver to the State.

In accordance with the Biodiversity Assessment Method (BAM, section 8.1.1.6), actions taken to avoid and minimise impacts on biodiversity through selecting the land to be biodiversity certified must be documented and justified in the BCAR. Avoiding and minimising impact is fundamental to a determination that conservation measures adequately

address likely impacts on biodiversity values. Avoiding impacts on entities at risk of SAIL should be prioritised when selecting land for certification.

If the Minister decides that the biodiversity certification of land is likely to have a SAIL, the Minister will consider the SAIL in relation to the principles of ecologically sustainable development. The Minister will determine whether any additional and appropriate measures will minimise those impacts. The Minister may decline to confer certification if the proposed certification of land is likely to have a SAIL.

Principle 2 – Conservation measures address the biodiversity values being impacted

The BCAR must assess the impacts on biodiversity values of the actions on land proposed for biodiversity certification in accordance with the BAM. The BCAR must include the number and classes of biodiversity credits that would be required to be retired if offset rules applied, and the number and classes of biodiversity credits proposed to be retired (clause 6.9(c) BC Regulation).

The BCAR must also specify the value in terms of biodiversity credits of any proposed land-based conservation measures determined in accordance with the BAM. The value of any other proposed conservation measures as an offset will be considered on a case-by-case basis.

Although conservation measures proposed under strategic certification are not constrained by the offset rules (clause 6.2(5)(b) BC Regulation), applicants should have regard to the credit output of the BAM when identifying credits for retirement and proposing conservation measures.

The BCAR should explain how the biodiversity values benefitted by the conservation measures are relevant to the impacted biodiversity values. Land-based conservation measures should aim to secure land which contains vegetation and species equivalent to the biodiversity values being impacted.

The BCAR should identify any impacted biodiversity values that are not addressed by conservation measures.

Principle 3 – Conservation measures prioritise important biodiversity values

The following biodiversity values should be prioritised when proposing conservation measures:

- critically endangered ecological communities and critically endangered species as defined by Schedule 1 and 2 of the BC Act
- entities at risk of SAIL
- declared areas of outstanding biodiversity value
- connected habitat of threatened species that facilitates movement across their range
- movement pathways that support the life cycle of a threatened species
- large contiguous patches of vegetation
- land identified on the Biodiversity Values Map published by the Department
- land identified on the Biodiversity Investment Opportunities Map (BIOMap), where applicable

- land identified as priority areas for species actions as *Saving our Species* management areas
- biodiversity values poorly represented in existing conservation reserves within the Interim Biogeographic Regionalisation of Australia (IBRA) subregion
- areas with existing biodiversity values (including riparian land) likely to provide significant potential for restoration
- land identified in an environmental planning instrument as environmentally sensitive.

Principle 4 – Conservation measures improve biodiversity values and landscape function in the long term

Conservation measures should improve biodiversity values and landscape function in the long term by ensuring that:

- the extent, geometry, ecological function and adjacent land uses of patches of vegetation and habitat are compatible with long term viability and resilience
- habitat for threatened ecological communities and threatened species are protected
- connections in the landscape, such as habitat corridors and riparian areas are protected
- key threatening processes identified in Schedule 4 of the BC Act are managed
- landscape scale threats, such as weeds and pests, are managed
- areas identified by the government as priorities for conservation are protected and supported by funding for management
- areas likely to provide significant potential for restoration are protected and supported by funding for management.

Principle 5 – Conservation measures are additional to existing conservation obligations

Conservation measures must be developed for the purposes of the biodiversity certification and be additional to existing conservation obligations. Existing conservation obligations are those that are already being carried out on the land or are required to be carried out on the land. They are legally required management actions including, but not limited to, actions required under a condition of consent or approval, a voluntary planning agreement or other formal offset arrangements to compensate for biodiversity impacts (including those referred to in clause 5.1 of the BC Regulation). Existing conservation obligations can also include plans of management for 'community' land by local government.

If a conservation measure is proposed on land with an existing conservation obligation, the conservation measure must provide additional actions to improve and protect biodiversity values that are not required under the existing conservation obligation.

Management actions that are undertaken voluntarily and which are not secured by any legal obligation are not considered to be existing conservation obligations.

Principle 6 – Development controls that conserve or enhance the natural environment must be new or represent a significant upgrade

In the case of the adoption of development controls as approved conservation measures (section 8.3(2)(b) BC Act), consideration of whether the development controls conserve or enhance the natural environment will be guided by (but not limited to) the following:

- land use zoning for the conservation or enhancement of the natural environment is implemented following the biodiversity certification application
- land use zone objectives are consistent with conservation or enhancement of the natural environment
- permissible uses within a proposed land use zone are consistent with the conservation or enhancement of the natural environment
- specific local provisions that set out the development controls that will apply to protect native vegetation and any other habitat for native species on the land
- minimum lot sizes and/or options for lot averaging and lot clustering that will aim to preserve the integrity of native vegetation and any other habitat for native species on the land
- management actions are proposed to enhance the natural environment
- the security of biodiversity values is improved, i.e. the development controls are new or represent a significant upgrade.

Principle 7 – Any proposed new national parks are consistent with the comprehensiveness, adequacy and representativeness (CAR) reserve system scientific framework (after Commonwealth of Australia, 2010)

Any proposal for a new national park conforms to the following scientific principles:

- comprehensive: the inclusion in the National Reserve System of regional-scale ecosystems impacted by the biodiversity certification in each sub-bioregion or bioregion
- adequate: the inclusion of sufficient levels of each ecosystem within the protected area network to provide ecological viability and to maintain the integrity of populations, species and communities
- representative: the inclusion of areas at a finer scale, to encompass the variability of habitat within ecosystems.

Any proposed new national park, or addition to an existing national park, must be supported in writing by the National Parks and Wildlife Service (NPWS).

Additional requirements for reservation of land under the NPW Act to be used as an approved conservation measure include:

- provision of funds for ongoing management. These management funds would be negotiated with the NPWS
- subdivision of land where the landholding is to be split between the developable area and an area to be reserved
- alignment of proposed management actions with the requirements and existing reserve management practices of NPWS

- a biodiversity certification agreement committing the landowner to the land transfer within a certain timeframe and describing future funding arrangements.

Principle 8 – The delivery of conservation measures is timely and certain

Conservation measures corresponding to impacts on biodiversity values must be fulfilled before development is carried out that would impact biodiversity values. The implementation of conservation measures may be staged to correspond to a staged impact on biodiversity values.

The BCAR must be accompanied by an implementation plan for conservation measures which identifies (section 8.3(3) BC Act):

- legal mechanism for securing delivery of conservation measures
- parties to the biodiversity certification and responsibilities, noting where biodiversity certification agreements are proposed
- timing for delivery of conservation measures
- funding sources for delivery of conservation measures
- framework for monitoring, reporting or auditing implementation of conservation measures.

Appendix 1 *Biodiversity Conservation Act 2016*

Purpose of *Biodiversity Conservation Act 2016*

1.3 Purpose of Act

The purpose of this Act is to maintain a healthy, productive and resilient environment for the greatest well-being of the community, now and into the future, consistent with the principles of ecologically sustainable development (described in section 6(2) of the *Protection of the Environment Administration Act 1991*), and in particular—

- a. to conserve biodiversity at bioregional and State scales, and
- 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. to improve, share and use knowledge, including local and traditional Aboriginal ecological knowledge, about biodiversity conservation, and
- d. to support biodiversity conservation in the context of a changing climate, and
- e. to support collating and sharing data, and monitoring and reporting on the status of biodiversity and the effectiveness of conservation actions, and
- f. to assess the extinction risk of species and ecological communities, and identify key threatening processes, through an independent and rigorous scientific process, and
- g. to regulate human interactions with wildlife by applying a risk-based approach, and
- h. to support conservation and threat abatement action to slow the rate of biodiversity loss and conserve threatened species and ecological communities in nature, and
- i. to support and guide prioritised and strategic investment in biodiversity conservation, and
- j. to encourage and enable landholders to enter into voluntary agreements over land for the conservation of biodiversity, and
- k. to establish a framework to avoid, minimise and offset the impacts of proposed development and land use change on biodiversity, and
- 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, and
- 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, and
- n. to support public consultation and participation in biodiversity conservation and decision-making about biodiversity conservation, and
- o. to make expert advice and knowledge available to assist the Minister in the administration of this Act.

Ecologically sustainable development as described in section 6 (2) of the *Protection of the Environment Administration Act 1991*

- (2) For the purposes of subsection (1) (a), ecologically sustainable development requires the effective integration of social, economic and environmental considerations in decision-making processes. Ecologically sustainable development can be achieved through the implementation of the following principles and programs:
- a. the precautionary principle—namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. In the application of the precautionary principle, public and private decisions should be guided by:
 - i. careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and
 - ii. an assessment of the risk-weighted consequences of various options,
 - b. intergenerational equity—namely, that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations,
 - c. conservation of biological diversity and ecological integrity—namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration,
 - d. improved valuation, pricing and incentive mechanisms—namely, that environmental factors should be included in the valuation of assets and services, such as:
 - i. polluter pays—that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement,
 - ii. the users of goods and services should pay prices based on the full life cycle of costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any waste,
 - iii. environmental goals, having been established, should be pursued in the most cost-effective way, by establishing incentive structures, including market mechanisms, that enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems.

Appendix 2 – Useful information

Definitions and abbreviations

BC Act	<i>Biodiversity Conservation Act 2016 (NSW)</i>
BC Regulation	<i>Biodiversity Conservation Regulation 2017 (NSW)</i>
BCAR	Biodiversity Certification Assessment Report
BCF	Biodiversity Conservation Fund
BCT	Biodiversity Conservation Trust
BIO Map	Biodiversity Investment Opportunities Map
DPE	NSW Department of Planning and Environment
DPIE	Department of Planning, Industry and Environment
EP&A Act	<i>Environmental Planning and Assessment Act 1979 (NSW)</i>
EPBC Act	<i>Environment Protection and Biodiversity Conservation Act 1999 (Cth)</i>
LLS Act	<i>Local Land Services Act 2013 (NSW)</i>
Minister	Minister administering the BC Act, unless otherwise stated
NPW Act	<i>National Parks and Wildlife Act 1974 (NSW)</i>
NSW	New South Wales
Planning Authority	As defined by section 8.1 of the BC Act
SAIL	Serious and Irreversible Impacts

Websites

Areas of Outstanding Biodiversity Value:

www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity/areas-of-outstanding-biodiversity-value

Australia's Biodiversity Conservation Strategy 2010-2030 (Commonwealth, 2010):

www.environment.gov.au/biodiversity/conservation/strategy

Biodiversity Assessment Method:

www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity/biodiversity-assessment-method

Biodiversity Certification:

www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity/biodiversity-certification

Biodiversity Conservation Investment Strategy 2018:

www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity/biodiversity-conservation-trust/investment-strategy

Biodiversity Investment Opportunities Map:

www.environment.nsw.gov.au/conservationprograms/biomap.htm

Biodiversity Offsets Scheme:

www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity/biodiversity-offsets-scheme

Biodiversity Values Map:

www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity/biodiversity-offsets-scheme/entry-requirements/biodiversity-values-map

Guidance to assist a decision-maker to determine a serious and irreversible impact:

www.environment.nsw.gov.au/research-and-publications/publications-search/guidance-to-assist-a-decision-maker-to-determine-a-serious-and-irreversible-impact-2019

NSW BioNet:

www.bionet.nsw.gov.au/

Offsets Payment Calculator:

www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity/biodiversity-offsets-scheme/offsets-payment-calculator

Saving our Species program:

www.environment.nsw.gov.au/topics/animals-and-plants/threatened-species/saving-our-species-program