



Threatened Species Test of Significance Guidelines

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Published by:

Office of Environment and Heritage
59 Goulburn Street, Sydney NSW 2000
PO Box A290, Sydney South NSW 1232
Phone: +61 2 9995 5000 (switchboard)
Phone: 131 555 (environment information and publications requests)
Phone: 1300 361 967 (national parks, general environmental enquiries, and publications requests)
Fax: +61 2 9995 5999
TTY users: phone 133 677, then ask for 131 555
Speak and listen users: phone 1300 555 727, then ask for 131 555
Email: info@environment.nsw.gov.au
Website: www.environment.nsw.gov.au

Report pollution and environmental incidents
Environment Line: 131 555 (NSW only) or info@environment.nsw.gov.au
See also www.environment.nsw.gov.au

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1. Introduction

Threatened species impact assessment is an integral part of environmental impact assessment. The objective of section 7.3 of the *Biodiversity Conservation Act 2016* (BC Act), the *test of significance*, is to provide standardised and transparent consideration of threatened species and ecological communities, and their habitats, through the development assessment process.

These guidelines help applicants or proponents of a development or activity to interpret and apply the factors in the test in section 7.3 of the BC Act. They also provide guidance for consent authorities to encourage a consistent method of assessment for applications that may have an impact on threatened species and ecological communities or their habitats.

The guidelines are made under section 7.3(2) of the BC Act and relate to the determination of whether a proposed development or activity is likely to significantly affect threatened species or ecological communities, or their habitats, within the meaning of that phrase in section 7.3.

1.1 Framework for determining whether significant impacts are likely

Section 7.2 of the BC Act provides that development under the *Environmental Planning and Assessment Act 1979* (EP&A) is likely to significantly affect threatened species if:

- (a) it is likely to significantly affect threatened species or ecological communities, or their habitats, according to the test in section 7.3, or
- (b) the development exceeds the biodiversity offsets scheme threshold if the biodiversity offsets scheme applies to the impacts of the development on biodiversity values, or
- (c) it is carried out in a declared area of outstanding biodiversity value.

For an activity under Part 5 of the EP&A Act clause (b) does not apply, so an activity will only be likely to significantly affect a threatened species if:

- (a) it is likely to significantly affect threatened species or ecological communities, or their habitats, according to the test in section 7.3, or
- (b) it is carried out in a declared area of outstanding biodiversity value.

A development application that is likely to significantly affect a threatened species must be accompanied by a biodiversity development assessment report (BDAR). In the case of State significant development or State significant infrastructure an application must be accompanied by a BDAR unless the Secretary of the Department of Planning and Environment and Chief Executive of the Office of Environment and Heritage determine that it is not likely to have any significant impact on biodiversity values.

For an activity under Part 5, an assessment of an activity that is likely to significantly affect a threatened species must be accompanied by a species impact statement or, if the proponent elects to participate in the biodiversity offsets scheme, a BDAR.

1.2 When to use this guidance

In the case of an application for development under Part 4 of the EP&A Act, applicants should first determine whether the development exceeds the biodiversity offsets scheme threshold. More information on the biodiversity offsets scheme threshold, including the

Scheme Entry Tool, is available on the OEH website www.environment.nsw.gov.au/biodiversity/entryrequirements.htm.

The test of significance will only need to be applied if the proposed development does not exceed the biodiversity offsets scheme thresholds.

If the test of significance indicates that a significant effect on threatened species or ecological communities or their habitat is likely, the biodiversity offsets scheme will apply to the proposed development and a BDAR will be required.

If the test of significance indicates that a significant effect on threatened species or ecological communities or their habitat is unlikely, and the biodiversity offsets scheme threshold has not been exceeded, the biodiversity offsets scheme will not apply.

Where information is not available to conclusively determine that there will not be a significant impact on a threatened species or ecological community, or its habitat, then it should be assumed that a significant impact is likely.

Evidence that the development does not trigger the biodiversity offsets scheme threshold must accompany the development application. The test of significance and any supporting information must also be provided to the consent authority with the development application. Other issues not specifically addressed by the factors of assessment should be included and discussed in the broader impact assessment process.

In the case of an activity under Part 5 of the EP&A Act, the biodiversity offsets scheme threshold does not apply. The test of significance must be undertaken to determine whether the proposed activity is likely to significantly affect a threatened species.

Developments or activities carried out in a declared area of outstanding biodiversity value (AOBV) will automatically be likely to significantly affect threatened species. Information about declared areas of outstanding biodiversity value is available at www.environment.nsw.gov.au/biodiversity/outstandingbiodivvalue.htm

Indicative maps of areas of outstanding biodiversity value are incorporated in the biodiversity offsets scheme threshold.

These guidelines do not apply to threatened species, populations or ecological communities listed under the *Fisheries Management Act 1994*. Information on impact assessment under the *Fisheries Management Act 1994* is available at <https://www.dpi.nsw.gov.au/fishing/species-protection/impact-assessment>

These guidelines do not apply to 'pending or interim planning applications' or 'pending Part 5 assessments' within the meaning of the Biodiversity Conservation (Savings and Transitional) Regulation 2017 (BC (S&T) Regulation). In circumstances where an application or assessment is a pending or interim planning application or pending Part 5 assessment, the 'former planning provisions' will apply to the application or assessment, including any test of significance guidelines prepared under section 94A of the now repealed *Threatened Species Conservation Act 1995* (TSC Act).

1.3 Terminology

Throughout this guideline the terms *subject site*, *study area*, *direct impact* and *indirect impact* are used. It is important to have a thorough understanding of these terms as they apply to the test.

Subject site means the area directly affected by the proposal. The subject site includes the footprint of the development and any ancillary works, facilities, accesses or hazard reduction zones that support the construction or operation of the development or activity.

Study area means the subject site and any additional areas which are likely to be affected by the proposal, either directly or indirectly. The study area should extend as far as is necessary to take all potential impacts into account.

Direct impacts are those that directly affect the habitat of species and ecological communities and of individuals using the study area. They include, but are not limited to, death through predation, trampling, poisoning of the animal/plant itself and the removal of suitable habitat. When applying each factor, consideration must be given to all of the likely direct impacts of the proposed activity or development. When applying each factor, both long-term and short-term impacts are to be considered.

Indirect impacts occur when project-related activities affect species or ecological communities in a manner other than direct loss within the subject site. Indirect impacts may sterilise or reduce the habitability of adjacent or connected habitats. Indirect impacts can include loss of individuals through starvation, exposure, predation by domestic and/or feral animals, loss of breeding opportunities, loss of shade/shelter, reduction in viability of adjacent habitat due to edge effects, deleterious hydrological changes, increased soil salinity, erosion, inhibition of nitrogen fixation, weed invasion, noise, light spill, fertiliser drift, or increased human activity within or directly adjacent to sensitive habitat areas. As with direct impacts, consideration must be given, when applying each factor, to all of the likely indirect impacts of the proposed activity or development. When applying each factor, both long-term and short-term impacts are to be considered.

2. Preparing for a test of significance

Section 7.3(2) of the BC Act provides that the Minister for the Environment, with the concurrence of the Minister for Planning, may issue guidelines to assist in the interpretation and application of the test of significance.

These guidelines help ensure that a consistent and systematic approach is taken when determining whether a development or activity is likely to significantly affect threatened species or ecological communities, or their habitats.

Making determinations requires technical expertise, and knowledge of species and their habitats. The guidelines assume that those applying the test of significance have sufficient knowledge and experience to do so.

These guidelines explain the specific terminology of the relevant legislation and provide clear interpretations of the factors in the test.

The test of significance allows applicants/proponents to undertake a qualitative analysis of the likely impacts and determine whether further assessment is required. All factors must be considered and an overall conclusion must be drawn from all factors in combination. Where there is doubt regarding the likely impacts, or where detailed information is not available, it should be assumed that a significant impact is likely.

Other issues not specifically addressed by the test of significance should be included and discussed in the broader impact assessment process; for example, in a review of environmental factors or an environmental impact statement.

2.1 Listed threatened species

Parts (a), (b) and (c) of the test of significance are applied to species and ecological communities listed in Schedules 1 and 2 to the BC Act.

The NSW legislation website provides the most up-to-date information on what is listed in the schedules:

Schedule 1 Threatened species

Schedule 2 Threatened ecological communities

The applicant/proponent should develop a list of threatened species and ecological communities which may be affected directly or indirectly by the proposed development or activity. The following resources should be accessed to develop a comprehensive list of threatened species and ecological communities with potential to occur on the site:

- Threatened species profiles providing information on species morphology, behaviour, habitat and threats. Searches by region, habitat and type of species can also be performed www.environment.nsw.gov.au/threatenedspeciesapp/
- BioNet (www.bionet.nsw.gov.au) including:
 - BioNet Atlas for records of flora and fauna sightings
 - Vegetation Information System (VIS) Flora Survey database for vegetation site data
 - Threatened Biodiversity Data Collection data on threatened species and ecological communities.

The list of potential species should be provided to a consent authority/determining authority along with the test of significance. Reasons should be provided to show how the list was derived and why any threatened species recorded or predicted to occur have been omitted.

A species does not have to be considered as part of the test of significance if recent and reliable data, relating to the study area and subject site and derived from field surveys consistent with OEH guidelines, clearly show that the species:

- does not occur in the study area, and
- will not use on-site habitats on occasion, and
- will not be influenced by off-site impacts of the proposal.

Justification for excluding a species from the assessment must be provided with the test of significance to the consent authority, including details of supporting surveys or studies.

Otherwise all species likely to occur in the study area, and known to use that type of habitat, should be considered in the rationale that determines the list of threatened species and ecological communities for the test of significance.

Applicants/proponents need to be aware that any 'Final Determination' to list a species or ecological community as 'Critically Endangered' or 'Endangered' made after lodgement of a development application or activity proposal needs to be included in the consideration of impacts and the determination of the test of significance. Therefore, applicants/proponents are advised to give due consideration to Preliminary Determinations made by the Scientific Committee.

Species listed under provisional determination provisions must also be considered.

Threatened species and ecological community declarations made by the NSW Scientific Committee are available at:

www.environment.nsw.gov.au/committee/preliminarydeterminationsbydate.htm

www.environment.nsw.gov.au/committee/provisionaldeterminations.htm

www.environment.nsw.gov.au/committee/finaldeterminations.htm

2.2 Areas of outstanding biodiversity value

Part (d) of the test of significance concerns the effect on any areas declared to be of outstanding biodiversity value under Part 3 of the BC Act.

Note that if a proposed development or activity is carried out on a declared area of outstanding biodiversity value (AOBV), it is taken to be likely to significantly affect threatened species and these guidelines are not relevant because the development or activity will be subject to the biodiversity offsets scheme regardless of the outcome of any test of significance. See section 7.2(1)(c) of the BC Act.

Areas that were previously declared as 'critical habitat' under the TSC Act have been deemed to be areas of outstanding biodiversity value by clause 8 of the BC (S&T) Regulation. A declaration of an AOBV is to be accompanied by an indicative map showing the spatial extent of the area, which will be included on the public register.

AOBVs are listed on a public register at:

www.environment.nsw.gov.au/criticalhabitat/criticalhabitatprotectionbydoctype.htm

Applicants/proponents must also consider the potential for the proposed development or activity to have *indirect impacts* on an AOBV. Proposed developments or activities with potential to have indirect impacts must consider whether these indirect impacts are likely to have an adverse effect on the AOBV. Conclusions and justifications must be provided with the outcomes of the test of significance to the consent authority.

2.3 Key threatening processes

Part (e) of the test of significance is to consider key threatening processes listed in Schedule 4 to the BC Act. The applicant/proponent should develop a list of key threatening processes to which the proposed development or activity may contribute. Reasons should be provided to show how the list was derived.

Key threatening process determinations made by the NSW Scientific Committee are available at:

www.legislation.nsw.gov.au/#/view/act/2016/63/sch4

Information on key threatening processes is also available on the OEH website at:

www.environment.nsw.gov.au/threatenedspeciesapp/

3. Interpreting the factors of the test of significance

3.1 Adverse effects on the life cycle of a species

- (a) *in the case of a threatened species, whether the proposed development or activity is likely to have an adverse effect on the life cycle of the species such that a viable local population of the species is likely to be placed at risk of extinction*

[BC Act section 7(1)(a)]

Context

This factor refers to those species listed on Part 1, Part 2 and Part 3 of Schedule 1 to the BC Act.

Interpretation of key terms used in this factor

Life cycle: the series or stages of reproduction, growth, development, ageing and death of an organism.

Viable: the capacity to successfully complete each stage of the life cycle under normal conditions.

Local population: the population that occurs in the study area. The assessment of the local population may be extended to include individuals beyond the study area if it can be clearly demonstrated that contiguous or interconnecting parts of the population continue beyond the study area, according to the following definitions:

- The *local population* of a threatened *plant* species comprises those individuals occurring in the study area or the cluster of individuals that extend into habitat adjoining and contiguous with the study area that could reasonably be expected to be cross-pollinating with those in the study area.
- The *local population* of *resident fauna* species comprises those individuals known or likely to occur in the study area, as well as any individuals occurring in adjoining areas (contiguous or otherwise) that are known or likely to utilise habitats in the study area.
- The *local population* of *migratory or nomadic fauna* species comprises those individuals that are likely to occur in the study area from time to time or return year to year.

In cases where multiple populations occur in the study area, each population should be assessed separately.

Risk of extinction: the likelihood that the local population will become extinct either in the short term *or* in the long term as a result of direct or indirect impacts on the viability of that population.

Application

The key assessment is risk of extinction of the local population. The risk of extinction will increase if any factor operates to reduce population size or reproductive success. The components of the life cycle of a species are dependent on its habitat and affected by threats to the species. The removal or modification of habitat or changes to the nature of important periodic disturbances such as fire or flood may affect the survival of that species. Therefore, it is important that the applicant/proponent not only has an understanding of the species' life cycle, but also an understanding of the way in which a species makes use of its habitat, the way this may change at particular times or in certain seasonal conditions, and whether the life cycle is dependent on a particular disturbance.

Demonstrating that a population is not viable would require considerable effort and study. Therefore, any known or presumed local population should be assumed viable unless the contrary can be conclusively demonstrated through analysis of local ecological information, records, references and knowledge of species' behaviour and habitat, or through a comprehensive on-site ecological study.

3.2 Adverse effects on ecological communities

- (b) *in the case of an endangered ecological community or critically endangered ecological community, whether the proposed development or activity:*
- (i) *is likely to have an adverse effect on the extent of the ecological community such that its local occurrence is likely to be placed at risk of extinction, or*
 - (ii) *is likely to substantially and adversely modify the composition of the ecological community such that its local occurrence is likely to be placed at risk of extinction*

[BC Act section 7(1)(b)]

Context

This factor applies to endangered ecological communities and critically endangered ecological communities listed under Part 1 and Part 2 of Schedule 2 to the BC Act. Endangered and critically endangered ecological communities are defined in determinations made by the Scientific Committee. It is important to note that the size or age of a remnant are not determining factors as to whether that remnant constitutes a listed endangered or critically endangered ecological community.

Ecological communities are usually defined by two major components – the geographical distribution and the species composition, which influences the physical structure and ecological function of the ecological community. The relative importance of the geographical distribution and the species composition varies according to the specific listed ecological community. Hence this factor provides for consideration of two criteria:

- (i) local occurrence of the ecological community
- (ii) modification of the ecological community's composition.

Other features, such as geology, may also play an important role in defining a threatened ecological community. It is important to refer to the determination by the Scientific Committee and supporting guidance when identifying the local occurrence of a threatened ecological community.

Interpretation of key terms used in this factor

Local occurrence: the ecological community that occurs within the study area. However, the local occurrence may include adjacent areas if the ecological community on the study area forms part of a larger contiguous area of that ecological community and the movement of individuals and exchange of genetic material across the boundary of the study area can be clearly demonstrated.

Risk of extinction: similar to the meaning set out in factor (a), this is the likelihood that the local occurrence of the ecological community will become extinct either in the short term *or* in the long term as a result of direct or indirect impacts on the ecological community, and includes changes to ecological function.

Composition: both the plant and animal species present, and the physical structure of the ecological community. Note that while many ecological communities are identified primarily by their vascular plant composition, an ecological community consists of all plants and animals as defined under the BC Act that occur in that ecological community.

Application

Determining the risk of extinction of an ecological community is difficult. Critical thresholds of remnant size, and species and structural composition required to maintain ecological functioning will vary from ecological community to ecological community.

When evaluating the significance of the impact, consideration must be given to whether the life cycles of the species which make up the ecological community will be disrupted in a similar manner to the consideration of individual species described in factor (a).

Disproportionate impacts may occur on certain components of the community that may cause those components to be placed at a greater risk of extinction without explicitly placing the entire ecological community at risk. Loss of individual species from a community may simplify faunal, floristic or vegetation structure and have flow-on effects to other plant and animal species. This may increase the ecological community's susceptibility to extreme events and decrease its resilience.

An assessment of ecological functioning is critical to analysing the risk the development/activity poses to the persistence of the local occurrence of the ecological community.

3.3 Adverse effects on habitats

- (c) *in relation to the habitat of a threatened species or ecological community:*
- (i) *the extent to which habitat is likely to be removed or modified as a result of the proposed development or activity, and*
 - (ii) *whether an area of habitat is likely to become fragmented or isolated from other areas of habitat as a result of the proposed development or activity, and*
 - (iii) *the importance of the habitat to be removed, modified, fragmented or isolated to the long-term survival of the species or ecological community in the locality*

[BC Act section 7(1)(c)]

Interpretation of key terms used in this factor

Habitat: the area occupied or used, including areas periodically or occasionally occupied or used, by any threatened species or ecological community and includes all the different aspects (both biotic and abiotic) used by species during the different stages of their life cycles.

Extent: the physical area removed and/or the compositional components of the habitat and the degree to which each is affected.

Importance: related to the stages of the species' life cycles and how reproductive success may be affected.

Locality: the same meaning as ascribed to local population of a species or local occurrence of an ecological community.

Application

When applying this factor, consideration must be given to all short-term and long-term impacts (direct and indirect) on habitat which is likely to support threatened species and ecological communities regardless of whether the habitat occurs on the subject site. This applies to both occupied and unoccupied habitat because the recovery of threatened

species and ecological communities relies on them having access to suitable habitat to move into as numbers increase.

The extent to which habitat is likely to be removed or modified should be determined by estimating the total area of habitat to be directly and indirectly impacted by the proposed development, activity or action. This may be an estimation of the surface area of land to be affected, and/or in some cases the number of key habitat components to be affected.

When deciding whether an area of habitat is likely to become fragmented or isolated from other areas of habitat, it is necessary to identify and assess the patterns and extent of habitat connectivity. The affected habitat may form part of a habitat corridor, cul-de-sac or an isolated area. Recent Landsat imagery, aerial photographs, vegetation maps, topographic maps, published corridor maps and data obtained from on-ground investigations are useful information sources for assessing this factor.

The dispersal and genetic exchange mechanisms of individual species should be considered. For example, will the isolation of habitat for threatened species or ecological communities that are currently connected or near to each other adversely affect the maintenance of gene flow and the ability to sustain viable populations? It should also be noted that isolation can occur through a variety of habitat modifications and is not confined to the clearing of vegetation.

When assessing the importance of the habitat likely to be removed, modified, fragmented or isolated in the locality, a quantitative and qualitative approach should be adopted as follows:

- an assessment of the area and quality of habitat of the threatened species or ecological community that occurs within the locality from recent Landsat imagery, vegetation mapping, topographic maps, air photos and in some cases data obtained from on-ground investigations
- an estimate of the area and quality that the habitat of the study area represents in relation to the area and quality of that habitat within the locality
- an assessment of the role of the habitat to be affected in sustaining habitat connectivity in the locality, and
- an assessment of the ecological integrity of the habitat to be affected in the study area, in relation to the ecological integrity, tenure and security of the habitat which will remain both in the study area and in the locality.

3.4 Adverse effects on areas of outstanding biodiversity value

(d) whether the proposed development or activity is likely to have an adverse effect on any declared area of outstanding biodiversity value (either directly or indirectly)

[BC Act section 7(1)(d)]

Context

This applies to declared areas of outstanding biodiversity value (AOBVs) under Part 3 of the BC Act.

Application

This factor is aimed at assessing whether a development or activity is likely to affect any declared AOBV. When applying this factor, consideration must be given to all short-term and long-term impacts (direct and indirect) on the area of outstanding biodiversity.

When assessing whether a development or activity is likely to have an adverse effect on an AOBV, reference should be made to the declaration. Consider whether the development or activity will modify or interfere with ecological processes, biological processes, habitat integrity or other features or qualities of the environment that are fundamental to the persistence of the value the area is protecting.

3.5 Key threatening processes

- (e) *whether the proposed development or activity is or is part of a key threatening process or is likely to increase the impact of a key threatening process*
[BC Act section 7(1)(e)]

Context

This factor refers only to those key threatening processes listed in Schedule 4 to the BC Act.

Application

In addition to deciding whether the proposed development or activity is or is part of a key threatening process, consideration must be given to whether the proposal is likely to exacerbate a key threatening process. It is necessary to identify the extent to which these processes are already occurring in the locality.

Consider the likely consequences of contributing to a key threatening process for the persistence of threatened species and ecological communities in the locality. Species listed in the determination as being 'at risk' warrant particular consideration if these species are known or likely to occur within the study area of the development or activity.

4. Applying the test of significance

The test of significance should be based on the footprint and the design of the development or activity. Design features targeted at minimising impacts on threatened species can only be considered if the measure has been used successfully for the target species in similar situations. Studies or literature demonstrating the success of the measure must be referenced if proposing that the measure will minimise impacts.

Measures that offset or otherwise compensate for the development or activity should not be considered in determining the degree of the effect on threatened species or ecological communities.

In determining the nature and magnitude of an impact, it is important to consider matters such as:

- pre-construction, construction and occupation/maintenance phases
- all on-site and off-site impacts, including location, installation, operation and maintenance of auxiliary infrastructure and fire management zones
- all direct and indirect impacts
- the frequency and duration of each known or likely impact/action
- the total impact which can be attributed to that action over the entire geographic area affected, and over time
- the sensitivity of the receiving environment
- the degree of confidence with which the impacts of the action are known and understood.

All factors should be considered as well as any other information considered relevant to the test.

Sources and currency of data and information are to be documented and referenced. Limitations, uncertainties and known gaps in information are also to be documented to inform the decision-maker.

5. Decision-making

The decision-maker will consider the data, information and reasoning provided in the test of significance and supporting information, to determine whether a proposed development or activity is likely to significantly affect threatened species or ecological communities, or their habitats.

In the case of development under Part 4 of the EP&A Act, the consent authority will be the decision-maker.

In the case of an activity under Part 5 of the EP&A Act, the determining authority will be the decision-maker.

In considering the application of the test of significance, it is recommended that the decision-maker consider:

- whether the list of threatened species, ecological communities and key threatening processes considered in the assessment were comprehensive and appropriate for the site
- whether adequate justification for excluding threatened species and ecological communities from consideration was provided
- whether the potential for indirect impacts on areas of outstanding biodiversity value has been evaluated and justified
- whether both direct and indirect impacts have been considered when applying the test of significance
- whether impacts across the full project life cycle have been considered when applying the test of significance
- whether measures proposed to minimise impacts which influence the conclusion of the test of significance have been successfully implemented in similar scenarios for the relevant threatened species or ecological community
- whether the conclusions in the application of the test of significance are supported by appropriate data, information and reasoning
- the currency, relevance and reliability of data and information relied upon
- whether data gaps and other uncertainties are clearly identified or otherwise exist
- whether the test of significance has been applied in accordance with these guidelines.
- the extent to which the development or activity contributes to the cumulative impacts of existing and planned developments or activities on threatened species, ecological communities, habitats, AOBVs and key threatening processes.

Application of the precautionary principle requires that a lack of scientific certainty about the potential impacts of an action does not itself justify a decision that the action is not likely to have a significant impact. If information is not available to conclusively determine that there will not be a significant impact on a threatened species or ecological community, or its habitat, then it should be assumed that a significant impact is likely.

Where a significant effect is determined to be likely an applicant for development consent under Part 4 of the EP&A Act is required to prepare a BDAR.

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In the case of an activity under Part 5 of the EP&A Act the proponent is required to prepare a species impact statement unless they elect to prepare a BDAR.