



DEPARTMENT OF PLANNING, INDUSTRY & ENVIRONMENT

How to apply for a biodiversity development assessment report waiver

for a Major Project Application



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Cover photo: Green and Golden Bell Frog (*Litoria aurea*) habitat. Dean Portelli/DPIE

This Guide has been prepared by the Department of Planning, Industry and Environment. The Environment, Energy and Science Group and the Planning and Assessment Group have worked collaboratively to provide guidance on the requirements and process for seeking a BDAR waiver for Major Projects.

Published by:

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ISBN 978-1-922317-48-3
EES 2019/0593
October 2019

Find out more about your environment at:

www.environment.nsw.gov.au

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Introduction

This guide provides information on when a biodiversity development assessment report (BDAR) under the *Biodiversity Conservation Act 2016* may not be required for State Significant Development (SSD) and State Significant Infrastructure (SSI) applications. It also explains how to lodge an application to waive this requirement with the Department of Planning, Industry and Environment.

Background

SSD and SSI are regulated under the *Environmental Planning and Assessment Act 1979*, which requires proponents to apply to the Minister of Planning for development consent or infrastructure approval, supported by an environmental impact statement (EIS). These applications are also subject to biodiversity assessment requirements under the *Biodiversity Conservation Act 2016* (BC Act).

The BC Act requires that an SSD or SSI application must be accompanied by a biodiversity development assessment report (BDAR) unless the Planning Agency Head (or delegate) and the Environment Agency Head (or delegate) determine that the proposed development is not likely to have any significant impact on biodiversity values.

This determination is referred to here as a BDAR waiver.

What is a biodiversity development assessment report?

A BDAR is a report required under the BC Act and is prepared by a person accredited (under section 6.10 of the BC Act) to apply the biodiversity assessment method (BAM). The BAM is an assessment manual that provides a consistent method for the assessment of biodiversity, including assessing certain impacts on threatened species and threatened ecological communities, their habitats, and impacts on biodiversity values. A BDAR provides guidance on how a proponent can avoid and minimise potential biodiversity impacts and identifies the number and class of biodiversity credits that need to be offset to achieve a standard of 'no net loss' of biodiversity.

In what circumstances is it likely that a biodiversity development assessment report waiver be issued?

A BDAR waiver will only be issued in limited circumstances where it is clearly demonstrated, based on information provided in accordance with this fact sheet, that the proposed development is not likely to have any significant impact on biodiversity values. For example, internal works to an existing building or development on a brownfield site with no threatened species habitat. Development that requires clearing of native vegetation is likely to require a BDAR. If there is doubt regarding potential impacts, or where information is not made available, a BDAR waiver will not be issued.

Note

A BDAR or BDAR waiver is not required if the SSD or SSI is proposed to be carried out on 'biodiversity certified land' as described in Part 8 of the BC Act.

When do I request a waiver?

A BDAR waiver request should be lodged before the SSD or SSI application is made.

For SSD, it is recommended that proponents wishing to request a BDAR waiver do so at the same time a request for Secretary's Environmental Assessment Requirements (SEARS) is made. This will help ensure that proponents are made aware of all relevant biodiversity assessment requirements for the proposed development as early as possible.

For SSI the proponent should lodge a waiver application before applying for approval from the Minister to carry out SSI, which triggers the requirement for the Secretary to prepare environmental assessment requirements. A BDAR waiver application should be lodged and the request determined prior to the SEARs being issued so that the SEARs reflect the biodiversity assessment requirements for the proposal.

Can a biodiversity development assessment report waiver be issued for a concept development application or a staged infrastructure proposal?

Concept development applications for SSD and certain staged infrastructure proposals¹ for SSI trigger the requirement for a BDAR unless the requirement is waived under s7.9(2) of the BC Act.

To apply for a BDAR waiver for a concept development application or staged infrastructure proposal, the concept proposals must be sufficiently defined to enable impacts on biodiversity values to be identified. The proponent will need to address the likely impact of the concept proposals on biodiversity values, including any clearing of native vegetation that is required or likely to be required for the concept proposals. As a minimum, the proponent must identify a development footprint and address the information requirements in Tables 1 and 2 at Attachment A.

Whether a separate BDAR waiver determination is required for subsequent SSD or SSI applications associated with a concept development consent or staged infrastructure approval will depend on whether the subsequent application is consistent with the description of 'proposed development' in the initial waiver determination.

Who should prepare the biodiversity development assessment report waiver application?

The request for a BDAR waiver and the accompanying information (as explained later in this fact sheet) does not need to be prepared by a Biodiversity Assessment Method (BAM) accredited person. However, a **suitably qualified person**² should prepare the BDAR waiver application when one or more biodiversity values are relevant to the proposed development, i.e., one or more biodiversity values are present on the development site or there is potential for direct or indirect impacts on a biodiversity value off-site.

¹ A BDAR or a BDAR waiver determination may not be required for a staged infrastructure application that is for concept approval only, and not also the first stage of the project. In such cases please contact the Department to discuss the biodiversity assessment requirements of the proposal.

² A suitably qualified person is a person with tertiary qualifications in natural sciences including subjects that relate to the observation and description of terrestrial biodiversity and landforms, and at least three years of work experience in environmental assessment including field identification of plant and animal species and habitats.

What information must accompany a biodiversity development assessment report waiver request?

A request for a BDAR waiver is to include the information set out in Table 1 and Table 2 in Attachment A. This includes information on the proponent, site and project and the likely impacts on the biodiversity values.

Proponents must address all of the impacts on biodiversity values to which the biodiversity offsets scheme applies under section 6.3 of the BC Act. Biodiversity values are defined in the BC Act and the Biodiversity Conservation Regulation 2017 (BC Regulation). The BC Regulation (clause 6.1) prescribes additional impacts on biodiversity values to be assessed under the biodiversity offsets scheme. The BDAR waiver request must explain whether each value is relevant to the site and/or the proposed development and provide supporting information to explain the likelihood and extent of any potential impacts, including prescribed impacts.

Impacts to threatened species habitat for non-native vegetation and human-made structures

If the proposed development includes demolition of buildings and/or impacts to other human-made structures, such as water bodies or other derived habitat features, there may be impacts to threatened species. Where relevant, the BDAR waiver request should include the details of potential habitat in non-native vegetation and human-made structures and demonstrate how surveys have been conducted for the presence of threatened species.

For example, to survey for threatened microbats in buildings proposed to be demolished, daytime roost searches should be carried out. A search is to be undertaken by looking for bats or signs of bats in suitable roost habitat during the daytime. All roost searches should use a torch to shine in holes, cracks and crevices, and carry a handheld bat detector to locate bats that may call. If bats are detected, observers must confirm the identity of the species and determine if the roost is a maternity roost. A description of the searches undertaken should be provided in the report.

Note

A BDAR for SSD or SSI does not need to assess the impacts of any clearing of native vegetation and loss of habitat on land classified as '**Category 1 – exempt land**' other than impacts '**prescribed**' in clause 6.1 of the BC Regulation. Therefore, for any part of the proposed development that is on Category 1 – exempt land, only 'prescribed impacts' on biodiversity values are required to be considered in a request for a BDAR waiver.

In such cases proponents must be provided information demonstrating how the relevant parts of the land meet the following criteria for Category 1 land;

- Land cleared of native vegetation as at 1 January 1990 or lawfully cleared after 1 January 1990
- Low conservation grasslands
- Land containing only low conservation groundcover (not being grasslands)
- Native vegetation identified as regrowth in a Property Vegetation Plan under the repealed *Native Vegetation Act 2003*
- Land bio-certified under the *Biodiversity Conservation Act 2016* (BC Act).

Where do I lodge a biodiversity development assessment report waiver request?

The BDAR waiver request can be lodged with the Department of Planning, Industry and Environment (The Department) via the Major Projects website (or via information@planning.nsw.gov.au). All necessary information must be provided with the request in accordance with the information requirements outlined in Attachment A. The Department may contact you if more information is required to process the request.

How long will it take to determine the application?

A BDAR waiver determination will generally be made within 28 days of the request being received.

If a BDAR waiver is not granted, there is no appeal mechanism and a BDAR must be submitted with the SSD/SSI.

Note

Regardless of whether a BDAR is required or not, SSD and SSI proponents may need to undertake a separate biodiversity assessment as part of their project application. The SEARs may outline further biodiversity matters that need to be addressed in the EIS (e.g. aquatic habitat including rivers, wetlands, lakes, estuaries, GWD ecosystems, marine environments; environmental flows, fish passage and water quality; marine protected areas; fish conservation including threatened fish and aquatic flora species protection; marine mammals, wandering sea birds).

If you wish to contact the Department to discuss the specific information requirements that may be relevant to your site, prior to lodging your request for a BDAR waiver you can contact the Department on 1300 305 695.

Attachment A – Information to include with biodiversity development assessment report waiver request

All requests for a BDAR waiver are to include the information requirements set out in Tables 1 and 2 below.

Table 1 Biodiversity development assessment report waiver request information requirements

Admin	<ul style="list-style-type: none"> • Proponent name and contact details. • Project ID (Information to identify which SSD or SSI project the request relates to and where the project is up to in the assessment process). • Name and ecological qualifications of person completing Table 2.
Site details	<ul style="list-style-type: none"> • Street address, Lot and DP, local government area. • Description of existing development site, i.e., the area of land that is subject to the proposed development application. If any part of the land is considered 'Category 1– exempt land' information must be provided to demonstrate how the land meets the <u>criteria</u>³ that applies to Category 1 – Exempt Land. • Location map showing the development site in the context of surrounding areas and landscape features. Satellite image of site in context of adjoining sites. • Site Map (to scale, ideally as a spatial shapefile).
Proposed development	<ul style="list-style-type: none"> • Project Description providing enough information to enable an understanding of the nature and scale of the proposed development and any associated activities (including construction etc.). • Proposed Site Plan.
Impacts on biodiversity values	<ul style="list-style-type: none"> • Complete Table 2 below on Biodiversity Values. • For each biodiversity value, the proponent must either: <ul style="list-style-type: none"> ○ explain why the value is not relevant to the proposed development ○ where a biodiversity value may be relevant, provide an explanation of how impacts have been avoided and identify the likelihood and extent of any remaining impacts of the proposed development, including impacts prescribed under clause 6.1 of the BC Regulation. • A biodiversity value is not relevant to a proposed development if the value is not present on the development site and there is no potential for direct or indirect impacts on the biodiversity value if it occurs off-site. • Where one or more biodiversity values may be relevant to the proposed development, Table 2 is to be completed by a suitably qualified person with tertiary qualifications in natural sciences including subjects that relate to the observation and description of terrestrial biodiversity and landforms, and at least three years of work experience in environmental assessment including field identification of plant and animal species and habitats The person does not need to be an accredited person under the BC Act. • Attach any additional information required where biodiversity values are relevant to the site. E.g. Vegetation Map (indicating plant community types), Ecology Reports, Water Quality data, BioNet Atlas, Directory of Important Wetlands (DIWA), migratory bird flyway information.

³ <https://www.lls.nsw.gov.au/sustainable-land-management/facts-sheets2/land-categorisation-and-the-land-management-framework>

Table 2 Impacts of the proposed development on biodiversity values

Attach additional supporting documentation where appropriate.

Biodiversity value	Meaning	Explain and document potential impacts including additional impacts prescribed under the BC Regulation
Vegetation abundance – 1.4(b) BC Regulation	Occurrence and abundance of vegetation at a particular site	<p>Where vegetation is present on the development site, provide a map on digital aerial photography or the best available imagery of the development site showing:</p> <ul style="list-style-type: none"> • native vegetation (including grasslands and other non-woody vegetation types) and non-native vegetation • the area of land that is directly impacted by the proposed development, including related infrastructure such as roads, pipelines, access tracks, temporary material stockpiles, asset protection zones and powerlines, if applicable. <p>Describe how the proposed development avoids impacts on native vegetation and identify the likelihood and extent of any remaining impacts including removal of isolated or cultivated native plants.</p>
Vegetation integrity 1.5(2)(a) BC Act	Degree to which the composition, structure and function of vegetation at a particular site and the surrounding landscape has been altered from a near-natural state	Describe the vegetation integrity and any impacts on vegetation integrity of identified plant communities. For example, information on impacts from proposed development to vegetation cover, structure, condition and function. This can include details on the presence of weeds, disturbance, planted native vegetation and species and growth form diversity.
Habitat suitability 1.5(2)(b) BC Act	Degree to which the habitat needs of threatened species are present at a particular site	<p>Identify any threatened species or ecological communities or their habitat on the development site. Describe how the proposed development avoids impacts on habitat suitability and identify the likelihood and extent of any remaining impacts including the impacts of development on the following habitat of threatened species or ecological communities:</p> <ol style="list-style-type: none"> 1. karst, caves, crevices, cliffs and other geological features of significance 2. rocks 3. human-made structures 4. non-native vegetation (prescribed under clause 6.1(1)(a) of the BC Regulation). <p>Impacts may include the removal or modification (e.g. noise, light, etc.) of the habitat of threatened species or ecological communities.</p>
Threatened species abundance 1.4(a) BC Regulation	Occurrence and abundance of threatened species or threatened ecological communities, or their habitat, at a particular site	<p>Describe how the proposed development avoids impacts on threatened species abundance and identify the likelihood and extent of any remaining impacts including;</p> <ul style="list-style-type: none"> • Impacts of vehicle strikes on threatened species of animals or on animals that are part of a threatened ecological community (prescribed under clause 6.1(1)(f) of the Regulation).

		<ul style="list-style-type: none"> • Impacts on threatened species, for example, microbats, associated with the demolition of human-made structures (prescribed by 6.1 (1) a (iii) of the Regulation). • Impacts on threatened species habitat associated with non-native vegetation (prescribed by 6.1 (1) a (iv) of the Regulation). • Impacts on threatened species habitat associated with non-natural water bodies (prescribed by 6.1 (1) a (iii) of the Regulation). For example, threatened frogs such as the green and golden bell frog in landfill areas, drains and brick pits.
Habitat connectivity 1.4(c) BC Regulation	Degree to which a particular site connects different areas of habitat of threatened species to facilitate the movement of those species across their range	<p>Identify whether the development site contributes to habitat connectivity.</p> <p>Describe how the proposed development avoids impacts on habitat connectivity and identify the likelihood and extent of any remaining impacts of development on the connectivity of different areas of habitat of threatened species that facilitates the movement of those species across their range (prescribed under clause 6.1(1)(b) of the BC Regulation).</p>
Threatened species movement 1.4(d) BC Regulation	Degree to which a particular site contributes to the movement of threatened species to maintain their lifecycle	<p>Describe how the proposed development avoids impacts on threatened species movement and identify the likelihood and extent of any remaining impacts of development on movement of threatened species that maintains their lifecycle (prescribed under clause 6.1(1)(c) BC Regulation).</p>
Flight path integrity 1.4(e) BC Regulation	Degree to which the flight paths of protected animals over a particular site are free from interference	<p>Identify whether flight paths of protected animals occur over the development site. Protected animals are animals of a species listed or referred to in Schedule 5 of the BC Act. They include any species of birds, mammals, amphibians or reptiles that are native to Australia or that periodically or occasionally migrate to Australia.</p> <p>Describe how the proposed development avoids impacts on flight path integrity and identify the likelihood and extent of any remaining impacts.</p> <p>Note: The impacts of wind turbine strikes on protected animals are prescribed under clause 6.1(1)(e) of the BC Regulation. It is, therefore, unlikely that a BDAR waiver would be issued for a proposed wind farm.</p>
Water sustainability 1.4(f) BC Regulation	Degree to which water quality, water bodies and hydrological processes sustain threatened species and threatened ecological communities at a particular site	<p>Describe how the proposed development avoids impacts on water sustainability and identify the likelihood and extent of any remaining impacts of development on water quality, water bodies and hydrological processes that sustain threatened species and threatened ecological communities (including from subsidence or upsidence resulting from underground mining or other development) (prescribed under clause 6.1(1)(d) of the BC Regulation).</p>