

Commencement of the biodiversity offsets scheme in western Sydney

The biodiversity offsets scheme commences for local development in western Sydney on 25 November 2019

The biodiversity offsets scheme was established by the *Biodiversity Conservation Act 2016* (BC Act) as part of the Government's land management and biodiversity conservation reforms. Transitional arrangements were put in place to manage the commencement of the biodiversity offsets scheme for local development in high growth areas declared as interim designated areas. In western Sydney this included the local government areas of Camden, City of Campbelltown, City of Fairfield, City of Hawkesbury, City of Liverpool, City of Penrith and Wollondilly. These transitional arrangements will expire by 25 November 2019.

From 25 November 2019, any new application for development consent or modification to an approved development under Part 4 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) will be subject to the biodiversity assessment requirements of the BC Act.

Former planning provisions continue to apply to local development (development under Part 4 of the EP&A Act not including State Significant Development) submitted before 25 November 2019 in the western Sydney interim designated areas. If a species impact statement is required, it must be submitted before 25 May 2020.

The attached *Guidance for local government: Commencement of the biodiversity offsets scheme in western Sydney* provides information on appropriate processes for assessing development applications in western Sydney.

The biodiversity offsets scheme applies to local development that is likely to significantly affect threatened species

Development is likely to significantly affect threatened species if it:

- is carried out in a declared area of outstanding biodiversity value
- exceeds the biodiversity offsets scheme threshold
- is likely to significantly affect threatened species or ecological communities, or their habitats, according to the test of significance in section 7.3 of the BC Act.

Councils are asked to advise the Department of consents issued for development applications to which the biodiversity offset scheme applies, including a copy of the conditions of consent. Notifying determined development applications will allow the Department to monitor biodiversity losses and gains. A form for notifying development consents is available at [Lodging an offset obligation](#)

For more information on the biodiversity offsets scheme, including support available for local government, visit [Local government resources for biodiversity conservation and management](#).

Guidance for local government: Commencement of the biodiversity offsets scheme in western Sydney

Biodiversity offsets scheme commencing on 25 November 2019

On 25 November 2019, the biodiversity offsets scheme will commence for local development in western Sydney. This includes the local government areas of Camden, Campbelltown, Fairfield, Hawkesbury, Liverpool, Penrith and Wollondilly.

From this date, the biodiversity assessment requirements of the *Biodiversity Conservation Act 2016* (BC Act) will apply to any new development application or modification application under Part 4 of the *Environmental Planning and Assessment Act 1979* (EP&A Act). These are referred to as 'local developments'. State Significant Development under Part 4 is already subject to the BC Act requirements.

An overview of the biodiversity offsets scheme and the role of councils is provided below. Additional tools and support are available to help councils understand and apply the biodiversity offsets scheme.

Applications for development consent above a risk-based threshold will be subject to the biodiversity offsets scheme

The biodiversity offsets scheme will apply to local developments that are likely to significantly affect threatened species. These are defined in the BC Act as a development that:

- impacts on an [Area of Outstanding Biodiversity Value](#)
- exceeds the [biodiversity offsets scheme threshold](#)
- is likely to significantly affect threatened species, ecological communities or their habitats according to the test of significance in [section 7.3](#) of the BC Act.

A proponent for local development that meets any of these criteria must engage an accredited assessor to prepare a biodiversity development assessment report (BDAR) to submit with their application for development consent.

Council determines any serious and irreversible impacts

Council must refuse consent for a development that they determine is likely to have a serious and irreversible impact. Potential serious and irreversible impacts on biodiversity will be identified in the BDAR. [Guidance is available to assist decision makers to determine a serious and irreversible impact.](#)

Council determines an offset obligation

If a development to which the biodiversity offsets scheme applies is approved, council must outline the offset obligation as a condition of consent. See [Guidance to assist councils on preparing conditions of consent from the Biodiversity Development Assessment Report](#) for model conditions of consent and required compliance actions.

Council may set an offset obligation above or below the requirement set out in the BDAR. Where the offset obligation is below the requirement calculated in the BDAR,

council must seek concurrence from the Department of Planning, Industry and Environment (the Department) and publish reasons for discounting the credit requirement. Further information on seeking concurrence for a reduced credit obligation is available on the Department's [website](#).

Councils are asked to advise the Department of any consents issued for development applications to which the biodiversity offset scheme applies, including a copy of the conditions of consent. This will assist the Department to monitor biodiversity losses and gains. A form for notifying development consents is available at [Lodging an offset obligation](#)

How proponents meet an offset obligation

The proponent must meet their offset obligation before the biodiversity impact occurs. The biodiversity offsets scheme provides flexibility in how a proponent can meet offset obligations. They can buy and retire credits from the offsets market, make a payment into the Biodiversity Conservation Fund managed by the Biodiversity Conservation Trust, or fund a biodiversity action in accordance with the offset rules.

Ensuring compliance with offsetting conditions

Council is responsible for monitoring compliance with the conditions of consent, including ensuring offset obligations are met prior to any impact on biodiversity.

Support available to councils

- The [local government resources page](#) provides information, frequently asked questions and links specific to local government.
- Local government support officers are available to support council regions. Contact details are available on the [local government resources page](#).
- Training on the biodiversity offsets scheme tailored to local government approvers is available through [Greencap](#).
- Questions or feedback can be submitted on the [Biodiversity Offsets Scheme Support page](#). This replaces the former Land Management and Biodiversity Conservation Service Centre.
- An [online tool](#) is available to assist in determining whether the biodiversity offset scheme threshold has been exceeded. The tool should be used in conjunction with the [Biodiversity Values Map and Threshold Tool User Guide](#).
- Information is available on the [Biodiversity Values Map](#), one of the triggers into the biodiversity offsets scheme.
- [Threatened Species Test of Significance Guidelines](#) assist in applying the test of significance, one of the triggers into the biodiversity offsets scheme.
- Guidance is available to assist a decision maker to [determine a serious and irreversible impact](#).
- [Information](#) about how the *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* (Vegetation SEPP) applies to clearing of native vegetation that exceeds the biodiversity offsets scheme threshold.

Former planning provisions continue to apply for development applications submitted before 25 November 2019 in western Sydney

The former planning provisions apply to development applications or modification applications under Part 4 of the EP&A Act (not including State Significant Development) submitted before 25 November 2019 in the western Sydney Interim Designated Area (IDA). If a species impact statement is required it must be submitted before 25 May 2020. The biodiversity offsets scheme will commence for local development in the Western Sydney IDA on 25 November 2019.

The Western Sydney IDA includes the local government areas of Camden, Campbelltown, Fairfield, Hawkesbury, Liverpool, Penrith and Wollondilly.

Information is provided below on frequently asked questions around biodiversity assessment and offsetting arrangements in the Western Sydney IDA under the former planning provisions.

Can a consent authority require a proponent to submit a BDAR for local development in the Western Sydney IDA before 25 November 2019?

No. Under Part 7 of the BC Act, proponents must submit a BDAR with a development application for proposed development that is likely to significantly affect threatened species. This part of the BC Act does not apply to local development applications submitted before 25 November 2019 in the Western Sydney IDA. However, proponents can voluntarily choose to provide a BDAR with a development application as additional information for council.

Can a consent authority accept a BDAR submitted in the Western Sydney IDA before 25 November 2019?

Yes. If a local development is not likely to have a significant impact (as per the test of significance in the now repealed section 5A of the EP&A Act), the consent authority may determine that a BDAR is a satisfactory way of assessing biodiversity impact for the purposes of evaluating environmental impacts under section 4.15 of the EP&A Act. The consent authority would need to determine that the report met all relevant requirements in the EP&A Act and Regulation. It would need to be accompanied by a test of significance prepared in accordance with the now repealed section 5A of the EP&A Act.

If a development is likely to have a significant impact (as per the test of significance in the now repealed section 5A of the EP&A Act), the applicant must prepare a Species Impact Statement and the consent authority must seek concurrence from the Department's Coordinator-General of Environment, Energy and Science. In Western Sydney IDAs, the Coordinator-General will accept a BDAR prepared in accordance with the Biodiversity Assessment Method (BAM) under the BC Act when giving concurrence for a Species Impact Statement.

Can a consent authority require the retirement of credits as offsets for local development applications submitted in the Western Sydney IDA before 25 November 2019?

Yes. A consent authority could, following an evaluation of environmental impact under section 4.15 of the EP&A Act, use the general conditioning power at section 4.17 to impose a condition requiring the retirement of biodiversity credits in accordance with the mechanisms of the BC Act (subject to complying with the common law). In the absence of a specific requirement in the legislation to provide a biodiversity offset, the consent authority would need to determine that a condition of this nature is reasonable and lawful.

Should the Biodiversity Banking Assessment Methodology be used to assess biodiversity impacts and calculate offsets in the Western Sydney IDA?

No, the Department does not recommend using the Biodiversity Banking Assessment Methodology (BBAM) and calculator for this purpose. Formal impact assessment and offsetting pathways under the Biodiversity Banking Scheme no longer operate.

For local developments assessed and submitted before 25 November 2019, the development application must be determined in accordance with former planning provisions. The process of determining whether a project is likely to have a significant impact, which may lead to preparing a Species Impact Statement (SIS) and seeking concurrence, will still need to be followed.

What is required for Species Impact Statements the Western Sydney IDA?

When issuing requirements and giving concurrence for Species Impact Statements in the Western Sydney IDA, the Coordinator-General of Environment, Energy and Science will require the use of the BAM under the BC Act. This will identify an offset obligation in BC Act biodiversity credits. This will allow the consent authority to outline an offset obligation as a condition of consent in units used by the biodiversity offsets scheme. For local development applications in the Western Sydney IDA, the Species Impact Statement must be submitted before 25 May 2020.

Can a developer with a credit obligation issued under former planning provisions pay into the Biodiversity Conservation Fund?

Yes. Payments into the Biodiversity Conservation Fund, as an alternative to retiring credits, is permitted under section 6.30 of the BC Act where a person is required to retire biodiversity credits under the BC Act or any other Act (such as the EP&A Act), including under an instrument, approval or agreement. Should a consent authority condition the retirement of credits in its consent, then a payment to the fund to discharge this obligation would be possible.

If the credit obligation has been calculated using the BBAM, a process of establishing the reasonable equivalence of biodiversity credits would be required. Further information is available at [Applying for an assessment of reasonable equivalence](#).

Can a developer with an obligation to secure land as an offset issued under former planning provisions establish a Biodiversity Stewardship Agreement?

Yes. Part 6 of the BC Act is operational. Should a consent authority condition that a parcel of land be secured in perpetuity, it would be possible to enter into a Biodiversity Stewardship Agreement (BSA) assuming that requirements around eligibility of the land are met.

Where a BSA is entered into in satisfaction of a condition of consent, the credits generated from the offset site must be retired and cannot be used to meet an offset obligation for any other development (clause 5.1(1(c)) of the BC Regulation).

While there are no size limits relating to BSAs, in some cases smaller parcels of land will be more expensive to manage than larger parcels of land due to edge effects. The smallest biodiversity stewardship site is 1.5 hectares.