

Subdivisions and development of subdivided lots under the *Biodiversity Conservation Act 2016* (BC Act)

Subdivision development applications consider the clearing of native vegetation that is likely to be required for the purposes for which the land is to be subdivided

When determining whether a proposed subdivision exceeds the biodiversity offsets scheme threshold, a subdivision development application considers the clearing of native vegetation that, in the opinion of the consent authority, is required or likely to be required for the purposes for which the land is to be subdivided. This means that council considers the clearing of native vegetation required for the subdivision development application as well as the clearing of native vegetation required or likely to be required for the ultimate purpose of the subdivision. This includes, but is not limited to, building envelopes, bushfire asset protection zones, access roads, driveways, services, effluent disposal areas, ancillary buildings, and new boundary fence lines.

Once clearing has been taken into account at subdivision stage, that same clearing is not taken into account when determining whether the subsequent development of the land exceeds the biodiversity offsets scheme threshold. Conditions of consent for subdivisions should explicitly address the clearing that has been considered and approved as part of the subdivision.

Clearing of native vegetation that is authorised by a subdivision development consent will not require further biodiversity assessment under the BC Act

Whether a subdivision development consent authorises the clearing of native vegetation will depend on the terms of the development consent and the plans attached to the development consent. If a development consent allows a person to clear native vegetation, this approval applies to the land to which it relates. This means that subsequent owners of the land can rely on the development consent for clearing native vegetation, provided the development consent has not lapsed. Council should confirm the extent of native vegetation clearing authorised by a subdivision development consent.

If the clearing of native vegetation associated with the subsequent development application is contained within the area of clearing authorised by the subdivision development consent, further biodiversity assessment of this clearing is not required under the BC Act because it is authorised by the development consent. This applies regardless of whether the subdivision consent was issued before or after the commencement of the BC Act.

A subsequent development application may still need to consider biodiversity impacts (including clearing of native vegetation) not authorised in the subdivision development consent.

A development consent for the subdivision of land does not lapse if building, engineering or construction work relating to the subdivision is physically commenced on the land to which the consent applies before the date on which the consent would otherwise lapse (section 4.53, *Environmental Planning and Assessment Act 1979*).

Where a subdivision development consent does not authorise clearing of native vegetation, the subsequent development of the land must consider any proposed clearing in accordance with the BC Act.

Subsequent development that exceeds the biodiversity offsets scheme threshold, impacts on an area of outstanding biodiversity value, or is likely to significantly affect threatened species based on the test of significance in section 7.3 of the BC Act, will require a biodiversity development assessment report to be lodged with the development application.

If the clearing proposed in a subsequent development application is different from what was approved in the subdivision consent, the biodiversity impacts of these changes must be considered

The biodiversity impacts considered for the subsequent development application will depend on the clearing and biodiversity impacts considered for the subdivision development and the content of the subdivision development consent. When considering whether the development will exceed the biodiversity offsets scheme threshold, the consent authority must consider any biodiversity impacts not approved by the subdivision development consent including any changes or additions to approved clearing.

In some circumstances the biodiversity values map threshold will not apply to development of a lot the result of a subdivision approval granted on land zoned R1 to R4, RU5, B1 to B8 or IN1 to IN3

Clause 7.3(4) of the *Biodiversity Conservation Regulation 2017* provides that a proposed development (other than subdivision) does not exceed the biodiversity offsets scheme threshold merely because of the biodiversity values map if carried out on a lot that was the result of a subdivision carried out before the commencement of the BC Act within land zoned R1 to R4, RU5, B1 to B8 or IN1 to IN3. However, the biodiversity offsets scheme may be triggered for other reasons.

This clause applies in circumstances where subdivision approval has been granted on land within the nominated zones and the purpose of the approved subdivision has not yet been realised. For example, the clause will apply if a subdivision was approved for the purpose of creating residential lots and the dwellings on those lots have not yet been developed. If the purpose of the subdivision has been realised, this clause will not apply. For example, if a dwelling has already been developed, the clause will not apply to a development application for a secondary dwelling or other ancillary use. Councils will need to confirm if a subdivision approval has been granted in a relevant zone and if the purpose of the subdivision has not yet been realised. Council will also need to confirm that a proposed development is consistent with the purpose of the approved and unrealised subdivision.

Such development must still consider whether a biodiversity development assessment report is required because it exceeds the area clearing threshold, occurs in an area of outstanding biodiversity value, or it is likely to significantly affect threatened species or ecological communities, or their habitats, based on the test of significance in section 7.3 of the BC Act.