

Questions and Answers

Topic: Local Government Training & Support Resources

Given that BOS training sessions run by Muddy Boots have been postponed due to COVID-19, will an online equivalent be made available?

The Department is working with Muddy Boots to review the assessor training and develop online training modules and we hope to have that option available in late 2020. The updated BAM training program is likely to involve e-learning and face-to-face training including field work.

When will more LG Approver training be available?

We are looking at how to offer that as a training option in future, including an induction package for new LG staff and other online training options. If there is sustained interest and demand for such training, we will work with local government to make LG approver training available in addition to the resources currently available.

Why is it taking so long for councils to be able to access the required resources such as the BV Map layer for serious and irreversible impacts?

The Biodiversity Values Map (BV Map) is currently being updated with new layers for species and communities that are at risk of serious and irreversible impacts (SAII). The addition of these new layers is a priority and is happening progressively. We are taking steps to ensure that the updated information in the BV Map is as robust and accurate as possible.

Recently, the Department received approval for a new mapping method which will help us to deliver updated information for species such as the Regent Honey Eater which is at risk of becoming a critically endangered species. We are working closely with other teams to update BV Map layers as soon as possible. Several updates, including the Swift Parrot important habitat map layer are currently in the final stages of the review process and we expect those to be approved and made available towards the end of September.

How do councils request access to BOAMS?

The release notes referred to in this presentation outline the steps to requesting BOAMS access. These are available online [here](#). You will initially need to contact the BAM support team to request registration to gain access to BOAMS.

Topic: Development Application Review Process

What is the next step if the BDAR is not finalised? Can a development application be refused? Is it a request for additional information?

If the BDAR is not finalised it is assumed that there are outstanding parts of that assessment that need to be further considered by the assessor. We recommend that the application is rejected, not refused, advise that the BDAR is not complete or suitable for submission until it is finalised.

The BDAR and associated cases in the BAM-Calculator (BAM-C) must be finalised before the consent authority reviews the BDAR because when a case is 'finalised' in the BAM-C, it is locked to prevent the assessor from making further amendments while the consent authority is making a decision. If the BAM-C cases are not finalised, it increases the chances of inconsistency between the BAM-C and the BDAR. Assessors and consent authorities can re-open a finalised case if there are things that need further work as a result of the consent authority's review.

How should councils best manage conflicts of interest arising as determining authorities and potential credit providers?

Councils have their own conflict of interest governance protocols to follow in this circumstance. This may include seeking legal advice if required. Councils may also consider contacting the Biodiversity Conservation Trust (BCT) as they may have dealt with the same question from other councils who have gone through the process.

Some developers are opting to use the variation rules without addressing the *Ancillary rules; Reasonable steps to seek like for like credits* for the purpose of applying the variation rules. What are your thoughts on this?

Under clause 6.5 of the Biodiversity Conservation Regulation 2017, an applicant must complete all of the reasonable steps set out in the '[Ancillary rules: reasonable steps to seek like-for-like biodiversity credits for the purpose of applying the variation rules](#)' before a consent authority or the Native Vegetation Panel can approve use of the variation rules.

Topic: Application of the BOS/BAM in Planning and Zoning matters

How are the BOS and the BAM applied at the re-zoning stage as opposed to the development application stage?

The *Biodiversity Conservation Act 2016* (BC Act) does not address planning proposals in any way. Re-zoning planning proposals are separate to development applications under Part 4 of the EP&A Act, where a proponent is required to submit a BDAR in accordance with the BAM (if the BOS entry requirements apply). As there is no formal legislative requirement or guidance, each of the regional planning teams within EES (seven teams exist across the State) have informal requirements or recommendations

for what should be provided with a planning proposal to support biodiversity assessment. Prior to the BC Act it was commonly a biodiversity or an ecological report.

With the BC Act now in force, the most appropriate methodology for assessing biodiversity is the BAM. The key thing to do is to contact your regional planning team for advice specific to your area. Specifically, for the Hunter Central Coast team, we recommend providing a stage 1 and stage 2 of the BAM with a planning proposal for us to comment on, plus some additional assessment of how the proposal fits into any relevant regional plans.

Topic: BAM Assessor Accreditation

How does one get accredited and what is the process?

Anyone interested in becoming an accredited assessor must submit an application which outlines qualifications and years of applied experience as part of the accreditation process. They must also complete the BAM training course provided by Muddy Boots. More information on this is available under the [accredited assessor web page](#).

Is it okay for a non-accredited consultant to complete the BDAR under the supervision of an accredited assessor?

No. A BDAR must be finalised by an accredited assessor. We understand that assessors use non-accredited staff to support parts of the assessment, such as helping with plot analysis or data entry, which is permitted. However, it is ultimately the accredited assessor who is signing the BDAR and who is responsible for it. The assessor responsible for the BDAR must ensure the assessment is carried out in accordance with the BAM, and also understand that their accreditation may be voided should any compliance issues arise from the assessment.

Topic: Local Government Stewardship Sites

Can local government establish a stewardship site on Crown land they manage?

For local government to establish a stewardship site on Crown land, the landowner must agree to the establishment of the Biodiversity Stewardship Agreement (BSA). In this instance that would require consent from the Minister responsible for Crown Lands. This occurred under the previous biobanking scheme and there are currently agreements in place where the Minister responsible for Crown Lands has supported the establishment of an agreement.

What interest or capacity is there for local government to invest in stewardship agreements?

A BSA may be a suitable option for councils to manage and improve the conservation of land within their local area. Under the biobanking scheme there was strong interest from

local government where about 15 different local government authorities entered into a Biobanking agreement. These are now managed as BSAs.

What proportion of new BSAs are being made by local government as opposed to the private sector?

At the time of finalising this Q&A, less than 5% of BSAs are from Local Government.

Topic: LG Agency Correspondence and Concurrence Requests

How does council or local government notify EES or the Department when they have an application which seeks a credit reduction and where council does not support/or cannot support through lack of information the request?

Guidance on applications requesting a reduced credit obligation can be found on the Department's website under [Local Government Resources](#). Council must advise the Department within 10 days that a development application (DA) seeking a reduced credit obligation has been received. Send your notice of a DA seeking a reduced credit obligation to bam.support@environment.nsw.gov.au with a subject line including the local government area for the proposed development and include all supporting information. Additionally, if council decides not to support a reduced credit obligation, the Department should be informed within 30 days of receipt of the DA.

If there is insufficient information for council to make a determination as the consent authority, it is recommended that further information be sought from the proponent before progressing the application.

Council has 30 days to inform the Department if they do not support a request for a credit reduction, if the applicant does not respond, and as a result Council cannot support the request, what is the email address which Council is to use to 'notify. the Dept?

All notices regarding development applications seeking a reduced credit obligation should be sent to the Department at bam.support@environment.nsw.gov.au

Topic: Updates to Mapping Data & Assessment Requirements

Is there any update on finalisation of Swift Parrot important habitat mapping?

The draft Swift Parrot important habitat map is currently in the final stages of preparation. We expect that the map will be approved and made available towards the end of September.

Will the BV Map be responsive to include any changes in biodiversity value for areas affected by bushfire?

Bushfire affected land has not been removed from the BV Map. A map review may be requested via application to the Map Review Team by landholders or their agents if it is considered that biodiversity values of the site are likely to be lost and not recover as a result of fire.

Are thresholds for Serious and Irreversible Impacts for CEECs being developed?

In accordance with the proposed changes to the BAM which were outlined in the [draft revised BAM](#) during public exhibition 16 September to 16 October 2019, entity-specific thresholds are replaced with stronger impact assessment and reporting requirements. When the revised BAM is gazetted, this means assessors will have to address how a proposed impact will contribute to extinction risk of an SAI entity against the International Union for Conservation of Nature (IUCN) criteria (e.g. geographic extent, population size and decline).

Topic: Triggering the BOS/BDAR – Area Thresholds & Native Vegetation Clearing

When Council is assessing an application to remove native vegetation under the Vegetation SEPP/DCP (DA not required), and the proposal doesn't trigger the Biodiversity Values Map or the threshold test, is the applicant required to provide a test of significance? If it is required is there any exemptions? i.e. tree is dangerous and risk to life and property, fence replacement etc.

Summary – Unlike the BOS entry requirements for developments that require consent under Part 4 of the EP&A Act, the threatened species test of significance is not required for the purpose of determining BOS entry under the State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP).

Details - If the proposed vegetation clearing is:

- a) not associated with development that requires consent under Part 4 of the EP&A Act or an activity that requires environmental assessment under Part 5 of the EP&A Act, and it
- b) is located within a non-rural zone (or within the Sydney Metropolitan Area or Newcastle LGA),

the following steps should be considered and addressed to determine the biodiversity assessment and approval pathway under the Vegetation SEPP.

The proposed clearing does not require authority under the Vegetation SEPP if any of the following exemptions or transitional arrangements apply:

1. It is part of an activity that has approval under other legislation as defined by s600 of the LLS Act or
2. the vegetation is dying or dead and not required as habitat of native animals or
3. the vegetation is a risk to human life or property or

4. the proposed clearing is associated with transitional provisions for clearing within R5, E2, E3 and E4 zones in relevant LGAs as described in clause 27 of the Vegetation SEPP.

Although authority is not required under the Vegetation SEPP, a [Biodiversity Conservation Licence](#) from the Department may be required.

If none of these exemptions or transitional arrangements apply, the proposed clearing may require authority depending on the outcomes of the next steps.

Does the proposed clearing exceed the BOS threshold? i.e.

1. Is there native vegetation clearing or a prescribed biodiversity impact on land mapped on the Biodiversity Values Map? or

2. Does the clearing of native vegetation exceed the area threshold?

Note – unlike the BOS entry requirements for developments that require consent under Part 4 of the EP&A Act, the threatened species test of significance is not required for this purpose under the Vegetation SEPP.

If the proposed clearing does not exceed the BOS threshold, the next step is to consider Council's Development Control Plan (DCP) i.e. Does Council's DCP declare the vegetation proposed to be cleared?

If it does, a permit is required from Council for the proposed clearing. Council is responsible for its permit application process. If Council does not have a DCP that declares the vegetation proposed to be cleared, authority is not required under the Vegetation SEPP for the proposed clearing. A [Biodiversity Conservation Licence](#) from the Department may be required.

The BOS thresholds that trigger assessment through native vegetation panel. Is there an occurrence interval for how many times clearing can occur under this threshold without triggering NVP?

Under the BOS, all proposed vegetation clearing and other biodiversity impacts associated with a proposed development, activity, clearing and biodiversity certification, must be considered and assessed. Each proposal will continue to be considered on its merits and the threshold will be applied independently for each proposal.

The *Biodiversity Conservation Act 2016* (BC Act) and the Biodiversity Offset Scheme do not limit the decision-maker's ability to consider the biodiversity impacts of any proposal. Decision-makers retain the ability to refuse proposals on biodiversity grounds. Contribution to cumulative impacts across the landscape may be considered in this context.

On an annual basis, the Department collects and analyses spatial data for the purposes of monitoring vegetation clearing. This information could be made available to decision-makers for monitoring at the local level if desired.

I am seeking advice on how the test of significance might apply in Vegetation SEPP, and how should prescribed actions (6.1 regs) be considered by Council / applicant? Is it something to expect to be included in an ecological assessment report?

Prescribed impacts must be considered when determining if the development meets the BOS threshold i.e. does the prescribed impact occur on land mapped on the Biodiversity Values Map? The assessor must address any prescribed impacts as part of their BAR.

Refer to the answer above to the first question in this section re. test of significance and the Vegetation SEPP.

Under the Vegetation SEPP what is council expected to do in considering whether a dead / dying tree is required habitat for animals. Would the Test of Significance be applicable here?

Refer to [Bulletin](#) Issue 11 'Councils as decision-maker on dead and dying trees' on the Local government resources webpage under 'Implementation support'.

It is council's responsibility to decide whether they want to provide a service to landholders by developing a process to manage exemptions for removal of dead or dying vegetation. Using the Development Control Plan to manage exemptions will improve the process for landholders and ensure that decisions are supported by a documented process. It is council's decision whether the threatened species test of significance is required to support their decision making. More information about the test of significance is available in [Bulletin](#) Issue 1 'Threatened species test of significance guidelines summary' on the local government resources webpage under 'Implementation support'.