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## Biodiversity development assessment report waiver determinations for SSD and SSI applications

### Introduction

State significant development (SSD) and State significant infrastructure (SSI) are regulated under the *Environmental Planning and Assessment Act 1979* (EP&A Act), 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).

This Fact Sheet provides information on when a biodiversity development assessment report (BDAR) under the BC Act may not be required for SSD and SSI applications.

### SSD and SSI biodiversity assessment

The BC Act requires that an SSD or SSI application must be accompanied by a biodiversity development assessment report (BDAR) **unless**:

- the Secretary of the Department of Planning and Environment (DPE) and
- the Chief Executive of the Office of Environment and Heritage (OEH)

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**.

An EIS for SSD and SSI applications must take into account the requirements of the *Environmental Planning and Assessment Regulation 2000* (EP&A Regulation), and any additional requirements issued by the Planning Secretary (termed 'Secretary's environmental assessment requirements' or SEARs).

### What is a BDAR?

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.

**Note:** A BDAR 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.

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).

## How do I apply for a BDAR waiver?

**Note:** A BDAR waiver will only be issued in limited circumstances where it is clearly demonstrated, based on information provided by a proponent 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.

### When to 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 SEARs is made. This will allow DPE and OEH to align their administrative processes so that proponents are made aware of all relevant biodiversity assessment requirements for the proposed development at the same time.

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.

### Information that must accompany a BDAR 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 or not 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.

The request for a BDAR waiver and the accompanying information does not need to be prepared by a BAM accredited person. However, a **suitably qualified person**<sup>1</sup> should prepare the BDAR waiver application when one or more biodiversity values are relevant to the proposed development, ie, 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.

You may wish to contact the DPE or OEH to discuss the specific information requirements that may be relevant to your site prior to lodging your request for a BDAR waiver (Ph 1300 305 695).

**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.

### **Concept development applications (SSD) and staged infrastructure proposals (SSI)**

Concept development applications for SSD and staged infrastructure proposals 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.

### **Lodging waiver request**

The BDAR waiver request can be lodged via the Major Projects Register (if a project already exists in the system) or via [information@planning.nsw.gov.au](mailto:information@planning.nsw.gov.au). All necessary information must be provided with the request in accordance with the information requirements outlined in Attachment A. DPE may contact you if more information is required to process the request.

### **Determining BDAR waiver requests**

DPE will coordinate the responses from both agencies and contact the proponent when a final determination has been made. This will generally be within 28 days of the request being received.

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<sup>1</sup> 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.

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

**Note:** Prior to the lodgement of an SSD or SSI application, the proponent must check that the proposed development, the subject of the SSD or SSI application is the same as the proposed development the subject of the BDAR waiver. If the proposed development is different, a fresh request for a BDAR waiver determination may be required. The proponent may need to either prepare a BDAR or lodge a new request to have the BDAR requirement waived.

For more information on the biodiversity assessment requirements of the BC Act please visit;

<https://www.environment.nsw.gov.au/biodiversity/offsetsscheme.htm>

## ATTACHMENT A – Information to include with BDAR waiver request

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

**TABLE 1: BDAR waiver request Information requirements**

<p><b>Admin</b></p>	<ul style="list-style-type: none"> <li>• Proponent name and contact details.</li> <li>• 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).</li> <li>• Name and ecological qualifications of person completing <b>TABLE 2</b>.</li> </ul>
<p><b>Site details</b></p>	<ul style="list-style-type: none"> <li>• Street address, Lot and DP, local government area.</li> <li>• Description of existing development site, ie, the area of land that is subject to the proposed development application.</li> <li>• Location map showing the development site in the context of surrounding areas and landscape features. Satellite image of site in context of adjoining sites.</li> <li>• Site Map (to scale, ideally as a spatial shapefile).</li> </ul>
<p><b>Proposed development</b></p>	<ul style="list-style-type: none"> <li>• 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).</li> <li>• Proposed Site Plan.</li> </ul>
<p><b>Impacts on biodiversity values</b></p>	<ul style="list-style-type: none"> <li>• Complete <b>TABLE 2</b> below on Biodiversity Values.</li> <li>• For each biodiversity value, the proponent must either: <ul style="list-style-type: none"> <li>○ explain why the value is not relevant to the proposed development; or</li> <li>○ 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.</li> </ul> </li> <li>• 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.</li> <li>• Where one or more biodiversity values may be relevant to the proposed development, TABLE 2 is to be completed by a <b>suitably qualified person</b> 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.</li> <li>• 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.</li> </ul>

**TABLE 2: Impacts of the proposed development on biodiversity values**

Biodiversity value	Meaning	Relevant (✓ or NA)	Explain and document potential impacts including additional impacts prescribed under the BC Regulation Attach additional supporting documentation where appropriate
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"> <li>• native vegetation (including grasslands and other non-woody vegetation types) and non-native vegetation, and</li> <li>• 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.</li> </ul> <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.
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.</p> <p>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> <ul style="list-style-type: none"> <li>(i) karst, caves, crevices, cliffs and other geological features of significance</li> <li>(ii) rocks</li> <li>(iii) human made structures</li> <li>(iv) non-native vegetation (prescribed under clause 6.1(1)(a) of the BC Regulation).</li> </ul> <p>Impacts may include the removal or modification (eg. 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		Describe how the proposed development avoids impacts on threatened species abundance and identify the likelihood and extent of any remaining impacts including 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 BC Regulation).

<b>Biodiversity value</b>	<b>Meaning</b>	<b>Relevant (✓ or NA)</b>	<b>Explain and document potential impacts including additional impacts prescribed under the BC Regulation</b> Attach additional supporting documentation where appropriate
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		Identify whether the development site contributes to habitat connectivity.  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).
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		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).
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		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.  Describe how the proposed development avoids impacts on flight path integrity and identify the likelihood and extent of any remaining impacts.  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.
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.		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).