



DEPARTMENT OF PLANNING, INDUSTRY AND ENVIRONMENT

Proposed changes to the Biodiversity Assessment Method

Public consultation overview



© 2019 State of NSW and NSW Department of Planning, Industry and Environment

With the exception of photographs, the State of NSW and NSW Department of Planning, Industry and Environment (the Department) are pleased to allow this material to be reproduced in whole or in part for educational and non-commercial use, provided the meaning is unchanged and its source, publisher and authorship are acknowledged. Specific permission is required for the reproduction of photographs.

The Department has compiled this report in good faith, exercising all due care and attention. No representation is made about the accuracy, completeness or suitability of the information in this publication for any particular purpose. The Department shall not be liable for any damage which may occur to any person or organisation taking action or not on the basis of this publication. Readers should seek appropriate advice when applying the information to their specific needs.

All content in this publication is owned by the Department and is protected by Crown Copyright, unless credited otherwise. It is licensed under the [Creative Commons Attribution 4.0 International \(CC BY 4.0\)](#), subject to the exemptions contained in the licence. The legal code for the licence is available at [Creative Commons](#).

The Department asserts the right to be attributed as author of the original material in the following manner: © State of New South Wales and NSW Department of Planning, Industry and Environment 2019.

Cover photo: Mount Kaputar National Park, NSW. Simone Cottrell/DPIE

Published by:

Environment, Energy and Science
NSW Department of Planning, Industry and Environment
59 Goulburn Street, Sydney NSW 2000
PO Box A290, Sydney South NSW 1232
Phone: +61 2 9995 5000 (switchboard)
Phone: 1300 361 967 (Environment, Energy and Science enquiries)
TTY users: phone 133 677, then ask for 1300 361 967
Speak and listen users: phone 1300 555 727, then ask for 1300 361 967
Email: info@environment.nsw.gov.au
Website: www.environment.nsw.gov.au

Report pollution and environmental incidents
Environment Line: 131 555 (NSW only) or info@environment.nsw.gov.au
See also www.environment.nsw.gov.au

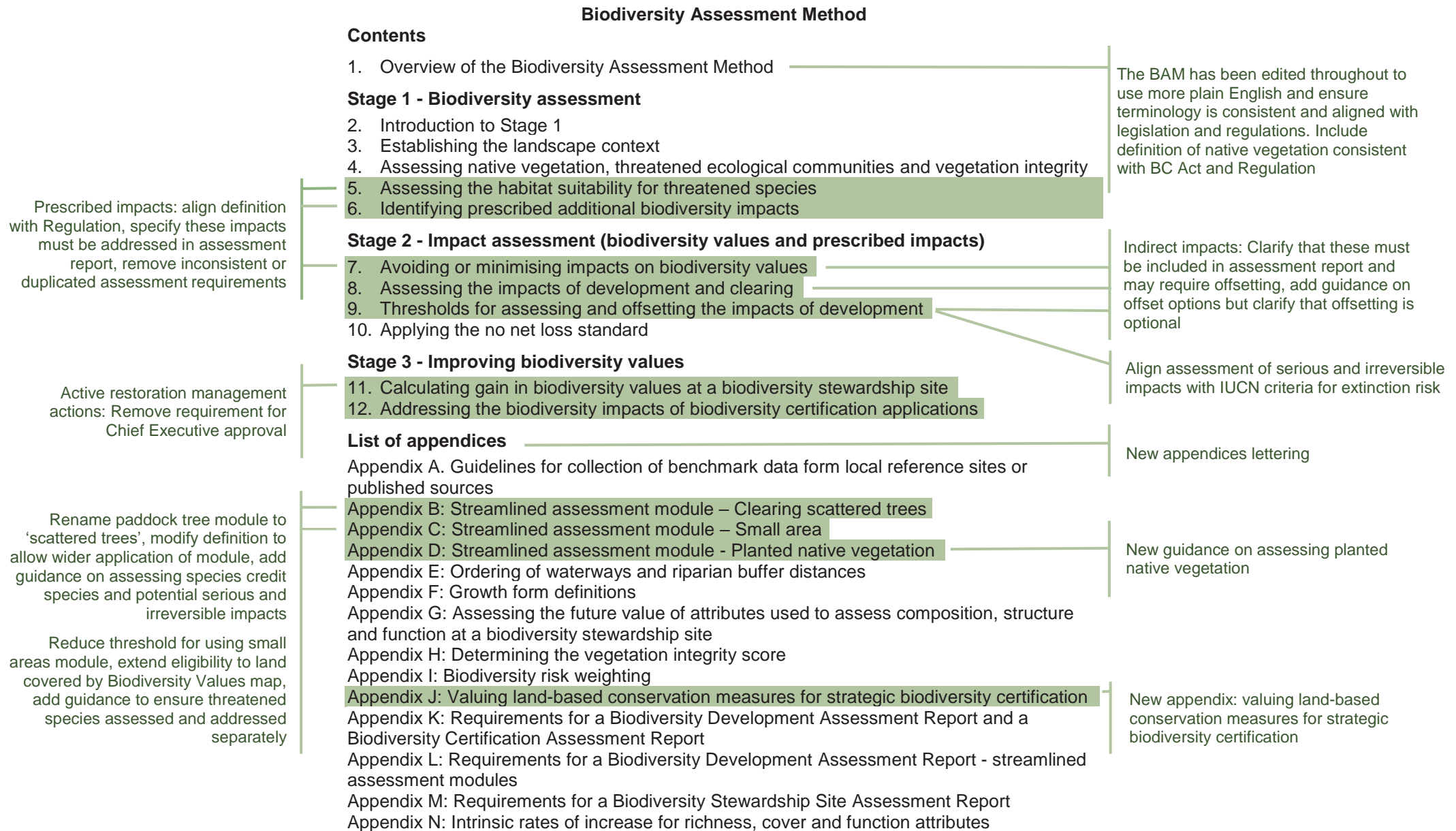
ISBN 978-1-925974-81-2
EES 2019/0383
August 2019

Find out more about your environment at:
www.environment.nsw.gov.au

Contents

Overview of proposed changes	1
What changes to the BAM are proposed?	2
Improving usability of the BAM	2
Prescribed additional biodiversity impacts	3
Serious and irreversible impacts (SAII)	4
Indirect impacts	4
Active restoration management actions	5
Streamlined assessment modules	6
Planted native vegetation	8
Enabling strategic biodiversity certification	8
Transitional arrangements	9

Overview of proposed changes



What changes to the BAM are proposed?

Consultation questions

Do the changes to the terminology in the BAM make it clearer?

Improving usability of the BAM

Edits to improve consistency and usability

As a technical document, the BAM uses a mix of legal, technical and conversational language. Feedback received to date indicates that it can be difficult to interpret with confidence where terminology is inconsistent within the BAM or terms differ from the *Biodiversity Conservation Regulation 2017* and other documents related to the biodiversity offsets scheme. Feedback has also identified areas where additional guidance is needed to ensure correct and consistent application of the method e.g. assessing saltmarshes.

The BAM has been edited to use plain English, improve consistency, and provide additional guidance. These revisions will help make the BAM easier to understand and apply

See BAM Glossary

Including the legal definition of native vegetation

The current BAM does not include a definition of native vegetation but instead points users to section 1.6 of the *Biodiversity Conservation Act 2016*, which in turn points to the *Local Land Services Act 2013* and supporting regulation. The *Biodiversity Conservation Act 2016* also specifies particular native vegetation where the BAM does not apply. Some users have found it difficult to follow and interpret the different legislation for the purposes of the BAM.

The legal definition of native vegetation is now replicated in the BAM. This will make the BAM simpler to use and ensure it can be read as a stand-alone document.

See BAM
sections 6, 7, 8 and 10

Consultation questions

Are the requirements for assessing prescribed impacts clear? If not, please suggest improvements.

Prescribed additional biodiversity impacts

A prescribed additional biodiversity impact (or prescribed impact) is an impact on biodiversity values that is in addition to, or instead of, impacts from clearing native vegetation. The *Biodiversity Conservation Regulation 2017* sets out the prescribed impacts that need to be assessed.

Consistent terminology for prescribed impacts

Feedback from users indicates there are inconsistencies in terminology for prescribed impacts, both within the BAM and compared to the *Biodiversity Conservation Regulation 2017*. For example, the Regulation lists 'rock' and 'geologic features of significance' where the BAM uses 'rock, 'outcrops' and 'scattered rock'.

Terminology in the BAM has been revised to improve internal consistency within the BAM and alignment with the Regulation. This will help remove ambiguity.

Revised requirements for prescribed impacts

There are some inconsistencies in the assessment approach for prescribed impacts in the BAM. For example, some prescribed impacts are identified in stage 1 for assessment while others are identified in stage 2 for avoidance and mitigation. Duplication of assessment also occurs between sections of the BAM.

The sections on identification assessment (Stage 1) and mitigation measures and adaptive management (Stage 2) have been revised to remove duplication and provide a clearer approach to assessing and compensating for prescribed impacts.

Requirement to address prescribed impacts in the biodiversity assessment report

Provisions for addressing prescribed impacts already exist in the *Biodiversity Conservation Act 2016* but stakeholder feedback indicates this is not well known. The BAM now states that options to compensate for prescribed impacts must be addressed in the biodiversity assessment report. This provides greater clarity for proponents and assessors.

See BAM section 9

Consultation questions

Are the assessment criteria for entities at risk of serious and irreversible impact (SAII) clear and implementable? If not, please suggest alternatives.

If you are a consent authority, do the assessment criteria for serious and irreversible impacts (SAII) aid your decision making? Are there other criteria you would like to see included?

See BAM sections 7 and 8

Consultation questions

Does the revised text clarify how to assess and potentially offset indirect impacts? If not, please suggest improvements.

Serious and irreversible impacts (SAII)

A serious and irreversible impact (SAII) is an impact that a consent authority considers is likely to significantly increase the extinction risk of a threatened entity.

Aligning assessment of SAII with international criteria

The NSW Department of Planning, Industry and Environment has received a number of queries from assessors and consent authorities about SAII, particularly about how to interpret thresholds for SAII entities and assessment requirements.

The assessment requirements for impacts on an entity at risk of a serious and irreversible impact do not closely align with the International Union for Conservation of Nature (IUCN) criteria on which the principles for determining SAII are based (e.g. geographic extent, population size and decline).

The BAM also refers to entity-specific thresholds, which have proven difficult to develop evidence-based estimates for.

To support better assessment and reporting for SAII, the entity-specific thresholds have been replaced with stronger impact assessment and reporting requirements. This means assessors will have to address how a proposed impact will contribute to extinction risk of a SAII entity against the IUCN criteria.

These revisions will help consent authorities to form an opinion on a serious and irreversible impact, and better align with the IUCN criteria.

Indirect impacts

The BAM defines impacts on biodiversity values as the loss in biodiversity values from direct or indirect impacts of development.

Clarifying requirements for indirect impacts

There has been some confusion and inconsistency in the approach to indirect impacts.

For clarity, indirect impacts are now specifically referenced in section 7 (avoid and minimise) and 8 (impact assessment) so it is clear that indirect impacts have to be included in the assessment report.

To help assessors and encourage a more consistent approach, guidance has been added to the BAM on approaches to avoid, minimise or mitigate indirect impacts. For example, buffering remaining native vegetation or developing management plans with performance indicators to measure the success of actions.

Guide consideration of offsets for indirect impacts

For indirect impacts, generating an offset through retirement of biodiversity credits is at the discretion of the assessor and consent authority. Where indirect impacts cannot be avoided, minimised or mitigated, the assessor may generate an offset credit requirement, calculated on partial loss of vegetation.

The BAM has been edited to guide assessors to consider the option of generating offset requirements for residual indirect impacts using the partial vegetation loss option in the BAM Calculator.

See BAM section 11

Active restoration management actions

When entering a biodiversity stewardship agreement, a landholder can elect to undertake active restoration management actions which generate additional biodiversity credits.

Streamlining approval requirements

In the current BAM, the use of active restoration management actions to create biodiversity credits as part of a biodiversity stewardship agreement must be approved by the Environment Agency Head. This requirement has now been removed.

This change aligns with existing approval processes for biodiversity stewardship agreements, namely that the Biodiversity Conservation Trust is responsible for negotiating and administering stewardship agreements. This will minimise delays in finalising agreements.

See BAM Appendix B

Consultation questions

Scattered trees:

Is the revised definition of 'scattered trees' clear and implementable? If not, please suggest improvements.

Do you think the scattered trees module will be useful for peri-urban and urban areas? Please explain your reasons.

Streamlined assessment modules

Paddock trees - Renaming to 'clearing scattered trees' and modifying definition

The paddock tree module was initially intended to align with the treatment of paddock trees under the Land Management (Native Vegetation) Code. However, the Code was finalised after the BAM was published and diverged in definition and intent. This divergence reflects the different objectives of the biodiversity offsets scheme and the land management codes: the BAM recognises the biodiversity values of paddock trees through offsetting, while the land management codes are designed to provide flexibility to landholders wanting to expand their enterprises.

To better define scattered trees for the purpose of the biodiversity offsets scheme, the BAM has been amended to:

- allow the module to be used in areas where the native vegetation regulatory map does not apply and specify that the map is created under the *Local Land Services Act 2013*
- remove the reference to defining ground cover as less than 50% indigenous species

The streamlined assessment module cannot be applied to sensitive regulated land and vulnerable land categories on the native vegetation regulatory map. In the absence of the native vegetation regulatory map, assessors will need to assess lands to determine Category 1 or 2.

This revised approach will allow the module to be used outside of 'paddocks', for example in peri-urban or urban areas on Excluded land (as classified on the native vegetation regulatory map). This will allow a wider application of the streamlined assessment module.

To recognise these changes, paddock trees will now be referred to as 'scattered trees'.

Clarifying when the streamlined module can be applied

Additional text has been added to clarify that the standard BAM must be applied if a paddock tree is a threatened species or a threatened species is incidentally observed using the paddock tree. The BAM also clarifies that the streamlined assessment module does not assess species credit species.

See BAM Appendix C

Consultation questions

Are the revised thresholds for the small area module appropriate? Please explain your reasons.

Is the assessment of threatened species clear? Please explain your reasons.

Small area

The BAM provides a streamlined assessment module for small areas to recognise the low risk that clearing small areas of vegetation poses to biodiversity values. This allows assessors to undertake a minimal suite of actions and prepare a reduced version of a biodiversity development assessment report.

The NSW Department of Planning, Industry and Environment has received a number of enquiries about applying the small area module. Guidance has been added to the BAM to address these questions.

Additional guidance for assessing small areas

Additional guidance has been added on assessing species, vegetation and threatened ecological communities, including:

- If an assessor detects a threatened ecological community when using the small areas module, then that plant community type must be included in the assessment.
- If a threatened species is incidentally recorded on site (e.g. during site reconnaissance), it must be recorded as present and included in credit requirements.
- If a species at risk of a serious and irreversible impact is likely to occur on site then it must be assessed.

These revisions clarify requirements and will enable like-for-like offsetting, helping to reduce the cumulative loss of threatened entities.

Reduced threshold for the small area module

There are concerns that the current thresholds for applying the streamlined assessment module for small areas are too high - that is, some of the areas where the module can be applied are large enough to warrant a standard BAM.

To address this, the threshold for applying the module has been reduced. For example, sites with a lot size of 1,000 hectares can only apply the module if the proposed impact is less than or equal to 5 hectares (half the original 10 hectares threshold). A lower threshold will reduce the risk of cumulative loss of threatened species.

Allow the small area module to be used on land covered by the Biodiversity Values map

The current BAM does not allow proponents to use the small area module on land that is identified on the biodiversity values map, regardless of the size of the impact or type of biodiversity value identified on the map.

The BAM has been revised to allow the small areas module to be applied to land identified by the Biodiversity Values map.

This will allow more proponents to use the streamlined assessment module for small areas.

Assessors will be allowed to view or request information on the category of biodiversity values mapped on the land they are assessing. If the map identifies a potential serious and irreversible impact entity, assessors will be required to conduct targeted surveys for the entity.

See BAM Appendix D

Planted native vegetation

Consultation questions

Are the revisions to the planted native vegetation module useful in assessing this type of vegetation? If not, please suggest improvements.

Guidance on assessing planted native vegetation

The definition of native vegetation, as set out in the *Local Land Services Act 2013* and used by the BAM, includes all plants that are native to NSW, including planted native vegetation. The BAM does not make specific reference to assessing planted native vegetation or revegetation. This has been problematic for developments where planted vegetation includes species that are native to NSW but not indigenous to the local area.

Specific guidance has been added to the BAM on how to assess the biodiversity value of planted native vegetation as habitat for threatened species.

See BAM section 12, Appendix J

Enabling strategic biodiversity certification

The *Biodiversity Conservation Act 2016* introduced an option for applications for biodiversity certification by planning authorities to be declared 'strategic'. Strategic biodiversity certification has access to a broader range of offsetting options such as:

- Reservation of land under the *National Parks and Wildlife Act 1974*
- Adoption of development controls under the *Environmental Planning and Assessment Act 1979* that conserve or enhance the natural environment

Consultation questions

Are the weightings for land-based conservation measures (outlined in Table 24 of Appendix J) appropriate? Please explain your reasons.

Method for valuing land-based conservation measures

A biodiversity certification assessment report must specify the number and type of biodiversity credits which need to be retired to offset the impact of the proposed certification of land. This applies to both applications for biodiversity certification and strategic biodiversity certification.

To support the use of additional approved conservation measures, other than retirement of biodiversity credits, a new appendix has been added to the BAM. This appendix establishes a method for valuing land-based conservation measures in biodiversity credits.

Transitional arrangements

What happens if I have started an assessment with the current BAM?

Clause 6.31 of the *Biodiversity Conservation Regulation 2017* provides transitional arrangements to minimise the impact of amending the BAM on proponents with a biodiversity assessment underway. This covers both proponents for development and clearing activities, and landholders developing applications for biodiversity stewardship agreements.

If the BAM is amended, the transitional arrangements allow proponents to submit a biodiversity assessment report based on the method in force before the change, for:

- 12 months or such longer period as the Minister approves for applications for strategic biodiversity certification
- 12 months for state significant development or infrastructure and non-strategic (standard) biodiversity certification
- 6 months for all other development and clearing applications or biodiversity stewardship applications.