

## ATTACHMENT TO CIRCULAR

### Key elements for councils in the new framework for the assessment and approval of biodiversity impacts

#### ***New biodiversity assessment and approval pathways***

- A development to which the Biodiversity Offsets Scheme (BOS) applies will be required to apply the Biodiversity Assessment Method and produce a Biodiversity Development Assessment Report to accompany a development application.
- The BOS will apply to local developments<sup>1</sup> likely to significantly affect threatened species. These are defined as a development that:
  - Exceeds the BOS threshold<sup>2</sup>
  - Is likely to significantly affect threatened species, ecological communities or their habitats according to the assessment of significance or '5-part test' in section 7.3 of the *Biodiversity Conservation Act* (BC Act).
- The BOS will also apply to:
  - State Significant Development and State Significant Infrastructure projects, unless the Secretary of Department of Planning and Environment and the Chief Executive of OEH determine that the project is not likely to have a significant impact
  - Biodiversity certification proposals.
- The Vegetation SEPP will ensure that the BOS applies to clearing of native vegetation in urban areas and areas zoned for environmental conservation/management that exceed the BOS thresholds if development consent is not required for the clearing under a relevant environmental planning instrument. The biodiversity impacts of developments that do not trigger the BOS will continue to be assessed under section 79C of the *Environmental Planning and Assessment Act 1979* (EP&A Act). A test of significance (section 7.3 of the BC Act) will need to accompany a development application, to demonstrate the BOS does not apply.

#### ***Council role in implementing the Biodiversity Conservation Act***

- Council officers do not need to be accredited to perform their role as an approval authority.
- Where the BOS applies, the Biodiversity Development Assessment Report will be considered as part of the decision making process for determining development applications.
- Council will be required to determine whether or not a development will have a serious or irreversible impact in accordance with principles set out in the draft Biodiversity Conservation Regulation. A development that is likely to have a serious and irreversible impact must be refused, where council is the consent authority.
- If a development to which the BOS applies is to be approved, council must set the offset obligation in the conditions of consent. Council may set an offset obligation above or below the requirement reflected in the Biodiversity Development Assessment Report. Where the offset obligation is below the requirement in the report, then council must publish reasons for this decision and seek concurrence

<sup>1</sup> Development proposals assessed under Part 4 of the Environmental Planning and Assessment Act (other than State Significant Development and Exempt and Complying developments)

<sup>2</sup> This threshold includes, among other things, impacts in Areas of Outstanding Biodiversity Value

from the Minister for Environment.

- The proponent must meet their offset obligation before the biodiversity impact occurs. Council will have responsibility for monitoring compliance with the conditions of consent, including the discharge of the credit requirement prior to impact.
- The proponent can meet offset obligations by retiring credits, making a payment into the Biodiversity Conservation Fund, or funding a biodiversity action in accordance with the offset rules.

#### ***Council as a Part 5 authority***

- The BOS threshold does not apply to Part 5 activities. That is, the offset scheme is voluntary for proponents of Part 5 activities.
- For Part 5 activities, council may 'opt-in' to the BOS instead of undertaking a test of significance and instead of preparing a species impact statement.
- Councils opting to assess the impact of their activity through the BOS would need to engage an accredited assessor to assess the impact of Part 5 activities, in accordance with the Biodiversity Assessment Method.
- Should council not 'opt-in' to the BOS, activities will be assessed by the test of significance (section 7.3 of the BC Act) and the requirements of Part 5 of the EP&A Act.

#### ***Council role in implementing the Vegetation SEPP***

- On land to which the Vegetation SEPP applies, if development consent is not required for the clearing, it is proposed that clearing that is above the BOS Scheme threshold be approved by the Native Vegetation Panel constituted under the *Local Land Services Act 2016*.
- For clearing that is below the BOS threshold, it is proposed that the SEPP enables councils to regulate clearing of native vegetation (and any non-native vegetation identified in a DCP) through a permit system. This would include the ability to charge application fees for permits and to issue permits subject to conditions.
- Under this proposal, councils would no longer be able to require development consent for clearing of non-heritage vegetation under a provision in a DCP.
- Existing DCPs that prescribe vegetation for the purposes of Clause 5.9 would continue to have effect until new DCPs are developed for the purpose of the Vegetation SEPP.

#### ***Opportunities for streamlining biodiversity approvals***

- Councils may be applicants for biodiversity certification. The Minister for the Environment may confer biodiversity certification on an area of land. Biodiversity certification enables planning authorities to better integrate biodiversity planning with planning for land use change. Once an area is certified further biodiversity assessment will not be required at the development application stage.
- The BC Act requires that biodiversity impacts of biodiversity certification proposals are assessed using the Biodiversity Assessment Method.
- A new category of 'strategic' biodiversity certification has been created in the BC Act. Strategic biodiversity certifications allow access to a broader range of measures to maximise sustainable conservation and development outcomes. The Minister for the Environment is responsible for declaring proposals to be 'strategic'. The draft BC

Regulation sets out criteria that the Minister for the Environment must consider when declaring a proposal to be 'strategic'.

***Council input to the biodiversity offset scheme threshold***

- The Biodiversity Offsets Scheme threshold has two components:
  - A map ('biodiversity values map') published by the Minister for the Environment based on criteria outlined in the BC Regulation.
  - Area clearing thresholds outlined in the BC Regulation.
- Proposed area clearing thresholds have a relationship to minimum lot sizes in Local Environment Plans.
- Proposed criteria for including features in the biodiversity values map includes vegetation connectivity features and threatened species habitat that, in the opinion of council, is present in a local government area and that, in the opinion of the Minister for the Environment, will contribute to conservation of biodiversity at the bioregional or State scale.