



Council consultation required under the Act

Biodiversity Certification Fact Sheet #3

Applicants for biodiversity certification who are not planning authorities must consult local council

An applicant for biodiversity certification who is not a planning authority is to consult the relevant local council before placing the application on public exhibition. (Section 8.6(1) of the *Biodiversity Conservation Act 2016* (BC Act).) This requirement also applies when Local Land Services is the applicant.

Council must be given a formal opportunity to review and respond to the biodiversity certification application. An invitation to comment on the application should be addressed to the General Manager of the council. The Department's expectation is that council's strategic planning staff and staff experienced in considering biodiversity impacts will be given the opportunity to comment. Formal consultation must be based on a finalised version of the biodiversity certification assessment report (BCAR).

Council has a minimum of 42 days to respond. (Section 8.4(2) of the Biodiversity Conservation Regulation 2017 (BC Regulation).)

The biodiversity certification application must include evidence of consultation

The application must be accompanied by:

- A copy of the invitation to council for comment on the application
- Any submission received from council (Section 8.4(3) of the BC Regulation.)
- A response to that submission (Section 8.4(3) of the BC Regulation.).

The Minister may reject an application for biodiversity certification or to decide not to confer biodiversity certification if:

- the application has not been duly made, or
- insufficient information has been provided.

An application will not be considered duly made if consultation has not been carried out in accordance with statutory requirements or where insufficient evidence of consultation has been provided. (See section 8.5(5) of the BC Act).

Applicants are encouraged to have their biodiversity certification assessment report reviewed by the Department before consulting with council

An informal 'adequacy review' of the biodiversity certification assessment report by the Department can reduce the likelihood of subsequent changes to the application that can require further consultation and delays.

Applications without council support are discouraged

When assessing an application for biodiversity certification, the Department will consider whether the application has council support. To optimise outcomes for all parties the Department recommends that applicants consult with the relevant local council and the Department in the planning and design stages of the proposal.

If council opposes an application because it doesn't align with strategic planning objectives, such as regional, district or corridor/precinct plans or a local strategic planning statement or strategy, the Minister is unlikely to confer certification.

The applicant must respond to issues raised by council

The applicant must provide a response to any council submission to the Minister (cl 8.4(3) *Biodiversity Conservation Regulation 2017*). When responding to issues, the applicant should:

- identify the issue,
- give proper consideration to the issue
- describe what action has been taken (for example, refinements to the application) to address the issue.

If the applicant considers that an issue does not warrant any action, the applicant should clearly explain why this is the case.

The Department will consider issues raised by council and the applicant's response

Councils are likely to consider a range of factors when considering a biodiversity certification application, including biodiversity values and local and regional strategic plans.

The Department will consider any submission from council, together with the applicant's response when evaluating the application and making a recommendation to the Minister.

The Minister may refuse to confer certification if the applicant hasn't adequately addressed council's concerns.

Public exhibition

Public consultation on an application occurs after consultation with the local council. The applicant must carry out a public notification process inviting submissions and provide a report to the Minister in response to those submissions.

The Department will consider issues raised in public submissions, together with the applicant's response to submissions, when evaluating the application.

An applicant can vary their application in response to a submission from council

An applicant can vary their application as a result of any submission received following public exhibition or for any other reason (s 8.6(4) of the BC Act). This includes varying the application as a result of a submission received from council.

The Minister may require additional public notification in the event of changes following the public notification phase.

Environment, Energy and Science (EES), Department of Planning, Industry and Environment
Locked Bag 5022, Parramatta NSW 2124; Phone: 1300 361 967 (EES enquiries);
Email: info@environment.nsw.gov.au; Website: www.environment.nsw.gov.au; EES 2020/0383;
August 2020.