

Department of Planning, Housing and Infrastructure

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Cumberland Plain Conservation Plan

Consideration for determining modification requests under Part 13.5A of the State Environmental Planning Policy (Biodiversity and Conservation) 2021

December 2024



Acknowledgement of Country

The Department of Planning, Housing and Infrastructure acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land, and we show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

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1 Assessment of the modification request

This policy outlines the criteria which will be considered by the Minister for Planning and Public Spaces (or a delegate) in determining whether an application for modification can be accepted and how it is assessed.¹

A modification relates to mapping changes between the boundaries of avoided and urban capable certified land within an approved certification such as the Cumberland Plain Conservation Plan. Modification applications must be submitted by the Minister for Planning and Public Spaces under the *Biodiversity Conservation Act 2016* (the BC Act) to the Minister for Environment, who is responsible for making the final determination to support or refuse the proposed modifications.

Under s 13.16D of the State Environmental Planning Policy (Biodiversity and Conservation) 2021 (B&C SEPP) the Minister for Planning and Public Spaces (or a delegate) may approve a modification request for further assessment, or refuse a request.²

The modification request may be refused if:

- the application is incomplete, or
- does not, in the opinion of the Minister, comply with the requirements of:
 - Part 13.5A of the B&C SEPP, or
 - the Environmental Planning and Assessment Act 1979, or
 - the *Biodiversity Conservation Act 2016*, or
 - the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*, or
- for another reason the Minister considers appropriate.³

For reasons the Minister may 'consider appropriate' in refusing a modification request include a failure to comply with:

- the modification application criteria,

¹ This policy is for guidance purposes only and does not constrain the discretion of a decision-maker (Minister for Planning and Public Spaces or delegate) that would otherwise be available under Part 13.5A of the B&C SEPP.

² State Environmental Planning Policy (Biodiversity and Conservation) 2021 s 13.16D(1)

³ State Environmental Planning Policy (Biodiversity and Conservation) 2021 s 13.16D(2)

- the Cumberland Plain Conservation Plan avoidance criteria,
- any additional considerations which should be considered when assessing a modification request that are known at the time the modification request is made.

Further information on these criteria is set out below.

An extract of Part 13.5A of the B&C SEPP is found at Appendix 1.

1.1 Modification application criteria

A modification request may be assessed against each of the ‘modification application criteria’. Modification application criteria may be amended from time to time, and this policy will be updated as needed to reflect those changes.

The modification application criteria are as follows:

1. An application must be for certified-urban capable land and avoided land within a nominated area (Greater Macarthur, Wilton, Western Sydney Aerotropolis or Greater Penrith-Eastern Creek). Applications for excluded land will not be considered as part of this process.
2. An application must not apply to Commonwealth owned land (as defined in section 528 of the *Environmental Protection and Biodiversity Conservation Act 1999*).
3. An application can be made where it can demonstrate the CPCP’s avoidance criteria are still achieved.
4. An application must not reduce the average minimum width of the koala corridors as outlined in [the Office of the NSW Chief Scientist and Engineer koala advice](#).
5. An application must not propose certified-urban capable land within the boundary of a reserve identified in an approved certification eg the Georges River Koala Reserve outlined in the CPCP. The boundary of the Georges River Koala Reserve can be identified in the CPCP spatial viewer [here](#).
6. An application must demonstrate that all alternative site designs that align with CPCP mapping have been exhausted.
7. An application should be associated with a planning proposal that aligns with precinct planning, local or site planning or a biodiversity stewardship agreement. For sites of less than 15 hectares, this may be optional.
8. Amendments should be based on [CPCP data](#) available on SEED (NSW Government’s central resource for Sharing and Enabling Environmental Data).

1.2 CPCP avoidance criteria

A modification request may be assessed against the ‘CPCP avoidance criteria’, as is relevant, particularly to areas of land identified with high biodiversity value. Modification requests not relating to the CPCP but to an alternative biodiversity certification may instead be assessed against the avoidance criteria relevant to that certification.

The CPCP avoidance criteria outlines considerations for determining areas of important biodiversity. These criteria provide detailed guidance consistent with the Biodiversity Assessment Method (BAM 2020) to inform the Department’s decisions about the location and design of urban capable land in the original certification application.

The CPCP avoidance criteria identifies priorities for avoidance within 3 main categories:

- threatened ecological communities (TECs) and plant community types (PCTs)
- threatened species
- ecological processes.

The CPCP avoidance criteria seeks to minimise impacts to TECs, PCTs, threatened species, and ecological processes.

To help define some acceptable levels of impact to TECs and PCTs the Department developed nominal thresholds that can be considered in assessing a modification request. Modification requests that result in ‘minimal impacts’ may be considered as meeting the CPCP avoidance criteria. Matters that may result in a ‘minimal impact’ include:

- less than or equal to 1 ha impact to TECs and PCTs for sites less than 15 hectares.
- less than or equal to 2 ha impact to TECs and PCTs for sites of 15 hectares or more.

Applicants should demonstrate that the proposed impacts to TECs, PCTs, threatened species and ecological processes are minimised (ie. below the nominal impact thresholds stated above) or offset through appropriate trading of certified land so that the total impact falls within those guidelines. It is important to note that meeting these thresholds do not constitute an acceptable impact, and other considerations are taken into account as per Section 1.3 below.

The CPCP avoidance criteria are as follows.

The proposed amendment avoids or minimises impacts to:

Threatened ecological communities (TECs) and Plant Community Types (PCTs)

- patches of Critically Endangered Ecological Communities in good condition, or
- highly cleared PCTs (over 90% cleared in NSW) in good condition, or

- TECs that are subject to serious and irreversible impacts (SAll entities) in good condition.

Threatened species

- known habitat* for critically endangered species or SAll entities (species) OR Saving Our Species (SOS) species polygons where species-specific habitat is present OR large populations of threatened species (relative to typical size for that species) or primary Koala habitat
- known habitat* for endangered species or secondary koala habitat
- known habitat* for vulnerable species.

Landscape/ecological processes and priorities

- land identified as Priority Conservation Lands OR Bio Map core areas OR important local habitat corridors for key species, including koala
- land identified as Bio Map regional corridors OR areas that provide significant opportunities to support important local habitat corridors for key species, including koala
- areas identified on the Biodiversity Values Map.

* As indicated by BioNet records or recent survey data

1.3 Additional considerations

In late 2023, the agency responsible for advising the Minister for Environment provided guidance on what matters should be considered when assessing a modification request. Some of that guidance overlaps with the Modification application criteria and the CPCP avoidance criteria. A table of this guidance and how the Department will apply them to modification requests is provided in this policy.

Additional considerations and the Department’s application of these are as follows:

Considerations	Application
1. Balanced outcomes, with no net loss of avoided land beyond that originally approved under the CPCP.	<p>≤ 1 ha loss of avoided land for sites of less than 15 hectares ≤ 2 ha loss of avoided land for sites of 15 hectares or more</p> <p>Where loss of avoided land is unavoidable, all impacts to threatened ecological communities will be offset under the Cumberland Plain Conservation Plan offset program.</p>

Considerations	Application
2. BAM plots and survey data is needed to support all proposed modifications.	Land access is required by the relevant landowner so that BAM 2020 data can be collected by the Department for all modification sites in line with BAM requirements (i.e. number of plots for a given area)
3. Like for like trading of certified and avoided land is generally supported but needs to be justified and supported by field data.	Vegetation on certified land may be traded if in similar condition. If relevant, land access is required by the relevant landowner so that field data can be collected to support the assessment.
4. Additional impacts to serious and irreversible impact (SAll) entities beyond that originally approved under the CPCP should be avoided.	<p>≤ 1 ha impact to SAll for sites of less than 15 hectares ≤ 2 ha impact to SAll for sites of 15 hectares or more</p> <p>Additional impacts beyond that originally approved under the CPCP will be offset under the Cumberland Plain Conservation offset programs</p>
5. Impacts to Koala corridors and existing native vegetation adjacent to a Koala corridor should be avoided	<p>The minimum average corridor width (as recommended by the Office of the Chief Scientist and Engineer) shall be maintained which will be assessed by the Department.</p> <p>Impact to adjacent Koala habitat: ≤ 1 ha impact to koala habitat for sites of less than 15 hectares ≤ 2 ha impact to koala habitat for sites of 15 hectares or more</p>
6. Impacts to the strategic conservation area (SCA) should be minimised.	<p>≤ 1 ha impact to SCA for sites of less than 15 hectares ≤ 2 ha impact to SCA for sites of 15 hectares or more</p>

Considerations	Application
<p>7. Sites subject to active compliance action should be excluded from the modification request</p>	<p>Any site subject to compliance investigation or action for matters relevant to biodiversity conservation (e.g. illegal clearing of native vegetation), by any level of government (Commonwealth DCCEE, NSW DCCEE or Local Government) will be excluded from the modification request (whether part or all of the site is subject to the investigation).</p> <p>If a compliance investigation finds there has been no wrongdoing, such as no illegal clearing of vegetation, the modification request may be included in the current modification application being prepared under the BC Act, or a future modification application to be made under the BC Act. This will depend on when the outcome of the investigation becomes known to the Department and is at the discretion of the Minister (or a delegate).</p>

1.4 Procedural fairness

If the Minister (or a delegate) is considering the refusal of a modification request, prior to any decision being made, procedural fairness must be afforded to the applicant by:

- providing the reasons for the decision to the applicant (a summary may be sufficient), and
- providing the applicant a reasonable opportunity to respond or make any submission with respect to the reasons for the decision.

If the applicant makes any submissions, all relevant submissions must be considered by the Minister (or a delegate) when deciding the modification request.

Appendix 1. Part 13.5 A of the Biodiversity and Conservation SEPP 2021

Part 13 of the Biodiversity and Conservation State Environmental Planning Policy (the B&C SEPP) establishes the arrangements for strategic conservation planning, including Part 13.5A that establishes the framework for landholders to apply to the Minister for Planning and Public Spaces (or a delegate) in relation to seeking to modify certified urban capable or avoided land.

Part 13.5A Applications to modify conferral of biodiversity certification

Division 1 Preliminary

13.16A Aim of Part

The aim of this Part is to establish a process for the Minister to initiate an application to modify biodiversity certification after the assessment of a request from a relevant landowner for a minor modification involving relevant land.

13.16B Definitions

In this Part —

biodiversity certification has the same meaning as in the *Biodiversity Conservation Act 2016*.

modification request— see section 13.16C(1).

relevant land means the following land —

- (a) certified urban capable land,
- (b) avoided land.

relevant landowner— see section 13.16C(2).

Division 2 Initial assessment by Minister

13.16C Application to request preparation of application to modify biodiversity certification

(1) An application (a ***modification request***) may be made to the Minister to request the preparation of an application to modify, under the *Biodiversity Conservation Act 2016*, section 8.22(1)(a), the biodiversity certification for certified urban capable land by including or excluding relevant land.

(2) A modification request may only be made by or on behalf of the owner of relevant land (a *relevant landowner*).

(3) A modification request must —

(a) be made in the approved form, and

(b) include or be accompanied by information or evidence the Minister reasonably requires to assess the application, and

(c) be accompanied by the application fee.

(4) The Minister may require further documents or information to be provided by the applicant.

(5) The applicant may withdraw the modification request at any time before the applicant receives written notice of the decision under section 13.16D(3).

13.16D Minister may approve further assessment or refuse request

(1) The Minister may, after receiving a modification request —

(a) approve a further assessment of the request, or

(b) refuse the request.

(2) The Minister may refuse the modification request —

(a) if the application —

(i) is incomplete, or

(ii) does not, in the opinion of the Minister, comply with a requirement of the following —

(A) this Part,

(B) the Act,

(C) the *Biodiversity Conservation Act 2016*,

(D) the *Environment Protection and Biodiversity Conservation Act 1999* of the Commonwealth, or

(b) for another reason the Minister considers appropriate.

(3) The Minister must give the following to the applicant —

(a) written notice of the decision,

(b) if a further assessment of the request is approved —

(i) written notice of the fee, if any, required for the further assessment of the request, and

(ii) information about how an application to modify the biodiversity certification under the *Biodiversity Conservation Act 2016*, section 8.22 may be made,

(c) if the request is refused — the reasons for refusing the request.

Division 3 Further assessment of modification request

13.16E Further assessment of modification request

- (1) The Minister may carry out a further assessment of a modification request —
 - (a) after approving the further assessment under section 13.16D(1)(a), and
 - (b) on payment of the fee, if any, specified in the notice given to the applicant under section 13.16D(3)(b)(i).
- (2) The Minister may, in carrying out the further assessment, require further documents or information to be provided by the applicant.
- (3) On completion of the further assessment, the Minister must give written notice of the following to the applicant —
 - (a) whether the Minister intends to make an application to modify biodiversity certification under the Biodiversity Conservation Act 2016, section 8.22 (the **Minister's application**),
 - (b) information about whether the substance of the applicant's request will be included in the Minister's application,
 - (c) a copy of the part of the Minister's application, if any, relating to the applicant's request.
- (4) The applicant is not, at any time, entitled to request changes to the Minister's application.