



Biodiversity
Conservation
Trust

Biodiversity Conservation Trust Biodiversity Stewardship Agreement Application

Supporting Documents Guide | July 2022

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Introduction to this document

Who is this document for?

This guidance is to assist landholders and accredited assessors check that a Biodiversity Stewardship Agreement (BSA) application is complete and the site is eligible. Due diligence checks and searches to inform eligibility are the responsibility of the landholder and the accredited assessors. Supporting documentation, including evidence of relevant due diligence checks and searches are required for a complete BSA application.

All supporting documentation must be received and verified by the Biodiversity Conservation Trust (BCT) before a BSA application is considered eligible and can progress to the next stage of review.

Why are supporting documents necessary?

The first step the BCT takes in reviewing a BSA application is to confirm that the proposed site and landholders are eligible to enter into a BSA. BSA's are in-perpetuity agreements that offset the impact of development so due diligence is required.

The eligibility of a BSA application can be impacted by matters such as:

- Failure to meet the fit and proper person requirements as outlined in s5.3 of the *Biodiversity Conservation Regulation 2017*
- If the land is not eligible to be designated as a biodiversity stewardship site as outlined in s5.1 of the *Biodiversity Conservation Regulation 2017*.

Property interest holders such as a mortgagee, chargee, leasee or caveator must consent in writing to the land being designated as a biodiversity stewardship site. This consent, or in principle consent, must be determined as early as possible as outlined in s5.9 of the *Biodiversity Conservation Act 2016*.

It is important that applicants are aware of and understand these requirements and seek appropriate financial or legal advice if necessary, before submitting a BSA application to the BCT.

Who is responsible for undertaking due diligence checks?

It is the responsibility of the landholder to confirm their application meets eligibility requirements, and where appropriate, consult with their accredited assessor or appropriately qualified third party. The due diligence checks can be undertaken by the landholder, accredited assessor or a third party on behalf of the landholder.

The requirement to undertake due diligence checks and provide supporting documentation for BSA applications is part of the Accredited Assessor training, however this training does not accredit assessors in undertaking due diligence checks.

When should the searches be undertaken?

It is recommended that the eligibility of the landholder and their land to enter into a BSA is determined as early as possible and before a full Biodiversity Assessment Method (BAM) assessment is undertaken. Undertaking the eligibility and due diligence checks early in the process ensures the

landholder is aware of any restrictions that may prevent their BSA application from being approved or affect credit generation before committing to a full BAM assessment.

If a landholder is undertaking a feasibility assessment, the eligibility of the land and the landholder to enter into a BSA could be undertaken at the same time.

What documentation is required and when does it need to be submitted to BCT?

Table 1 BSA Application Supporting Documentation Checklist below lists and describes the documentation required to be submitted. This supporting documentation must be provided at the time the BSA application is submitted to ensure the application can be processed and approved within a reasonable timeframe. The BCT will start reviewing the Biodiversity Stewardship Agreement application once all relevant supporting information outlined in *Table 1* is provided and any issues raised in undertaking the due diligence have been resolved. If this information is not provided, or there are unresolved issues related to due diligence the BCT will notify the landholder and accredited assessor in writing and will not commence processing the BSA application until all information is provided.

How to use this document

The first part of this guide is the supporting documentation checklist that outlines the searches and documents that must be submitted as part of a BSA application. The second part of this guide provides information on how to undertake the due diligence and eligibility checks. The instructions are not exhaustive and it is recommended that landholders and where appropriate, accredited assessors, seek their own legal or financial advice and where necessary to obtain advice from NSW Land Registry Services (LRS).

Part 1 - Supporting Documentation Checklist for BSA applications

The documentation outlined in *Table 1* must be provided with the BSA application and uploaded as an attachment to the parent case in the Biodiversity Offset and Agreement Management System (BOAMS). Part 2 of this guide has instructions on how to obtain and interpret each of the supporting documents.

This documentation may be obtained and submitted by the landholder or the accredited assessor.

The BCT will check documentation submitted with BSA applications to determine if the application is complete and eligible to proceed. All due diligence questions in *Table 1* must be answered 'Yes' or 'N/A'. Where this is not the case, the BCT will request further information from the landholder.

Table 1: BSA Application supporting documentation checklist.

| Search or document to be submitted | | Uploaded to BOAMS? | Comments – please include comments if 'No' is selected in the previous column. |
|---|---|--------------------|--|
| BSA Application Form | | | |
| Submission | Mandatory | | |
| Format | Signed PDF document | | |
| Titled | 'BSA application form for PCXXXX' | | |
| Is there a current, complete and signed BSA application form? All sections of the form including the Fit and Proper Person questions must be complete. | | Yes / N/A | Comments (optional) |
| Are the BSA applicants the landholders or entity as listed on the title search/es? All landholders on the title search must be included on the application form. | | Yes / N/A | Comments (optional) |
| Is the BSA application form signed correctly? | | Yes / N/A | Comments (optional) |
| ASIC Search and Organisation Extract | | | |
| Submission | Mandatory for companies | | |
| Format | PDF copy of the 'Company Summary' and 'Company Extract – Current Company Information' | | |
| Titled | 'ASIC Search' | | |

| | | |
|--|-----------|---------------------|
| If applicable, are the office holders of the company, as shown on the ASIC search, those who signed the BSA application form? | Yes / N/A | Comments (optional) |
| Title Search, Title Diagram and relevant dealings | | |
| Submission Mandatory | | |
| Format PDF of Title Search, Title Diagram, relevant dealings | | |
| Titled 'LotXX/DPXXXX Title Diagram', 'LotXX/DPXXXX Title Search' etc | | |
| Was the title search generated/retrieved within the last six months? | Yes / N/A | Comments (optional) |
| Does the name on the application match that on the title search for all Lot/DP's subject to the BSA application? <i>See s5.9(1a) BC Act</i> | Yes / N/A | Comments (optional) |
| Are all Lot/DP's owned by the same person(s) or entity? All lots must be owned by the same person/entity to be included in the BSA Application. <i>See s5.7(1) of the BC Act</i> | Yes / N/A | Comments (optional) |
| Is there a Title Diagram(s) for all land that covers the proposed BSA? The Title Diagram may come in the form of a Deposited Plan or Crown Plan and can be retrieved from an information broker. | Yes / N/A | Comments (optional) |
| Are there interest holders on the title search (e.g. mortgagees)? If there are interest holders, are all relevant written consents or in-principal consent for interest holders attached to the BSA application? <i>See s5.9(1c) of the BC Act</i> | Yes / N/A | Comments (optional) |
| In accordance with s5.1 of the Biodiversity Conservation Regulation 2017, is the land eligible to enter into a BSA? <i>See 'Land Eligibility' section below for further information to answer this question.</i> | Yes / N/A | Comments (optional) |
| Are there any dealings on the title search that result in additionality needing to be considered? If so, have these dealings been provided and has this been addressed in the BSSAR? | Yes / N/A | Comments (optional) |

| | | |
|--|-----------|---------------------|
| See 'Existing caveats' and 'Additionality' sections below for further information to answer this question. | | |
| <p>If applicable, are covenants consistent with the management actions for the BSA?</p> <p>If the land is subject to a covenant, has consultation commenced with the person entitled to the benefit of the covenant about the terms of the agreement?</p> <p>See s5.9(1d) of the BC Act</p> | Yes / N/A | Comments (optional) |
| <p>If land is Crown Land, have all Crown Land interests been identified and do they agree to registration of the BSA, including consent from the Minister administering the Crown Land Management Act 2016?</p> <p>See s5.9(1b) and s5.9(5) of the BC Act</p> | Yes / N/A | Comments (optional) |
| <p>If applicable, are all relevant easements, roads and rights of carriageway excluded from credit generation and excised from the BSA site boundary?</p> <p>If they are not clearly marked on the Title Diagram, have the dealings showing the location of these easements and rights of carriageway been provided?</p> | Yes / N/A | Comments (optional) |
| <p>Is the identification of the BSA boundary consistent with the BCT Policy Mapping Agreement Boundaries?</p> | Yes / N/A | Comments (optional) |
| <p>If land is Crown Timber Lands, has consent to entering into a BSA been provided from the Minister administering the Forestry Act 2012?</p> <p>See s5.9(4) of the BC Act</p> | Yes / N/A | Comments (optional) |
| <p>Is the entire biodiversity stewardship site part of one property?</p> <p>Note: this can be checked using the GURAS spatial dataset and ensuring that all parts of the proposed stewardship site share the same Property ID. If there are multiple property IDs amalgamation will be required using the Valuer Generals Amalgamation Request Form.</p> | Yes / N/A | Comments (optional) |

| Dial Before You Dig and Overhead Powerlines | | |
|--|---|---------------------|
| Submission | Mandatory | |
| Format | PDF copy of all search results and maps, including .dwf file from Telstra (if applicable) | |
| Titled | e.g. 'Dial Before You Dig – Sydney Water' | |
| Have all search results received as part of the Dial Before You Dig search been provided (including all cover letters, maps, .dwf files and legends)? <i>Note: Telstra .dwf file to be uploaded to a shared folder if Telstra assets are identified during the DBYD search. BCT can provide a shared folder link (it is preferable to arrange this prior to submission of the BSA application).</i> | Yes / N/A | Comments (optional) |
| If a dial before you dig search shows infrastructure, have these been excluded from the agreement area? | Yes / N/A | Comments (optional) |
| If a dial before you dig search shows infrastructure, have you provided written communication from the utility provider confirming the accurate location of the infrastructure and an appropriate maintenance buffer to be excluded from the site boundary? <i>Note: If consultation with the utility provider cannot be established landholders may need to employ a Certified Locator to investigate and identify the location of infrastructure.</i> | Yes / N/A | Comments (optional) |
| If there are overhead powerlines on site, have these been excluded from the agreement area? Have you provided written confirmation from the utility provider to the accurate location of the infrastructure and an appropriate maintenance buffer to be excluded? | Yes / N/A | Comments (optional) |
| Mining Interests | | |
| Submission | Mandatory | |
| Format | PDF/JPEG copy of MinView or SEED map, plus email correspondence with mining interest holders where applicable | |
| Titled | 'Mining Interests' | |

| | | |
|---|-----------|---------------------|
| Has a MinView/SEED map been submitted, and are all relevant layers (exploration & mining title applications, exploration and mining titles, coal exploration licence applications, coal exploration licences) 'turned on'? | Yes / N/A | Comments (optional) |
| If a mining lease or licence is present, has the company been informed of the conditions of a BSA and provided written consent for the BSA? <i>Note: if an application for a mining lease or licence is present, written consent from the company will be required if it becomes active prior to execution of the BSA.</i> | Yes / N/A | Comments (optional) |
| Is an exploration licence or assessment lease present? <i>Note: where an exploration licence or assessment lease is present BCT will undertake the consultation on behalf of the landholder.</i> | Yes / N/A | Comments (optional) |
| NSW Local Land Services consultation | | |
| Submission Mandatory | | |
| Format PDF copy of search results/and or emails | | |
| Titled 'NSW LLS Consultation' | | |
| Is there confirmation from NSW LLS that relevant databases have been checked for information about the property that may affect the BSA? <i>See 'NSW Local Land Services consultation' section below for further information to answer this question.</i> | Yes / N/A | Comments (optional) |
| If applicable, have these been addressed in the BSSAR and excluded from the BSA area? | Yes / N/A | Comments (optional) |
| Local Council consultation | | |
| Submission Mandatory | | |
| Format PDF copy of emails | | |
| Titled 'Local Council consultation' | | |
| Is there an email from the Local Council that states: | Yes / N/A | Comments (optional) |

| | | |
|---|------------------|----------------------------|
| <ul style="list-style-type: none"> the land has not previously used as an offset under Parts 4 or 5 of the <i>Environmental Planning & Assessment Act 1979</i>? that there are no past, present or proposed land uses that are incompatible with Biodiversity Stewardship Agreements? If there are any Council utility services on the site that aren't shown on the title search and/or Deposited Plan. | | |
| <p>If the Local Council has indicated that any of the points above apply to the BSA site, have the relevant areas been excluded?</p> | <p>Yes / N/A</p> | <p>Comments (optional)</p> |
| <p>Aboriginal Heritage Information Management System search</p> | | |
| <p>Submission Mandatory Format PDF copy of search, and if applicable, list of extensive search items in Excel Titled 'AHIMS'</p> | | |
| <p>Have Aboriginal cultural heritage searches been undertaken on all lots subject to the BSA application using the Lot and DP search function? <i>Note: The search must be dated within 6 months of the BSA application submission.</i></p> | <p>Yes / N/A</p> | <p>Comments (optional)</p> |
| <p>If an Aboriginal object or place is recorded as present on the site, has an Extensive Search been undertaken? <i>Note: please provide a copy of the Extensive Search in Excel.</i></p> | <p>Yes / N/A</p> | <p>Comments (optional)</p> |
| <p>In accordance with The Due Diligence Code of Practice for the Protection of Aboriginal Objects in NSW (Code of Practice), if there are known Aboriginal cultural heritage objects and/or places will management actions avoid harming these objects and/or places?</p> | <p>Yes / N/A</p> | <p>Comments (optional)</p> |
| <p>National Native Title Tribunal</p> | | |
| <p>Submission Applicable in relation to Crown Land Format Explanation of the search and copies of any claims/determinations Titled 'Native Title information'</p> | | |

| | | |
|---|-----------|---------------------|
| Is there a Native Title claim on the land? | Yes / N/A | Comments (optional) |
| Has Native Title been determined on the land? <i>Note: at this time, the BCT will only enter into a BSA on Crown Land if Native Title rights have been determined or extinguished.</i> | Yes / N/A | Comments (optional) |
| Aboriginal Land Claims | | |
| Submission Applicable in relation to Crown Land | | |
| Format Email confirmation | | |
| Titled 'Aboriginal Land Claim' | | |
| Is there a current Aboriginal Land Claim over the land? <i>See 'Aboriginal Land Claim' section below for further information to answer this question.</i> | Yes / N/A | Comments (optional) |
| NSWALC Consent | | |
| Submission Applicable if applicant is Local Aboriginal Land Council | | |
| Format Copy of Approval Certificate | | |
| Titled 'NSWALC Consent' | | |
| If applicant is a Local Aboriginal Land Council, is there consent in writing from the New South Wales Aboriginal Land Council? <i>See s5.21(1e) of the BC Act</i> | Yes / N/A | Comments (optional) |
| Indigenous Protected Areas | | |
| Submission Mandatory | | |
| Format Map of the proposed BSA | | |
| Titled 'IPA' | | |
| Is the land part of an Indigenous Protected Area (IPA)? <i>See 'Indigenous Protected Areas' section below for further information to answer this question. If land is part of an IPA contact BCT for more information.</i> | Yes / N/A | Comments (optional) |

| Fit and proper person test | | |
|---|--|---------------------|
| The below searches must be undertaken for individuals and companies subject to the fit and proper person test. <i>See table 3 for information on who is subject the fit and proper person test.</i> | | |
| POEO Register search results | | |
| Submission | Mandatory | |
| Format | Screen grab of search results | |
| Titled | 'POEO Search' | |
| Have screen grabs of results for: 'penalty notices search', 'enforceable undertakings search', 'convictions in prosecutions search' and 'results of civil proceedings search' been submitted? | Yes / N/A | Comments (optional) |
| Are there any breaches of legislation or open investigations under the Protection of Environmental Operations Act? | Yes / N/A | Comments (optional) |
| Winding up order and insolvency search | | |
| Submission | Mandatory for companies / corporations | |
| Format | Print screen copy of search | |
| Titled | 'Winding up search' | |
| Has the landholder (if a body corporate) been subject to a winding up order or had a controller or administrator appointed during the previous 3 years? | Yes / N/A | Comments (optional) |
| Bankruptcy Register search | | |
| Submission | Mandatory | |
| Format | PDF copy of search | |
| Titled | 'Bankruptcy Search' | |
| Has the landholder(s) during the previous 3 years been undischarged bankruptcy or insolvent debtors, compounded with his or her creditors or made an assignment of his or her remuneration for their benefit? | Yes / N/A | Comments (optional) |

| | | |
|--|---|---------------------|
| <i>See s5.3(1g) of the BC Regulation</i> | | |
| Written references | | |
| Submission | Mandatory | |
| Format | PDF copy of written references (signed) | |
| Titled | 'References' | |
| Have written references been provided for each individual identified in Table 3? | Yes / N/A | Comments (optional) |
| Do the referees outline the character of the landholder including their opinion of the honesty, integrity of the person(s) and is competent to carry out to carry out the management actions or competent to engage a third party to undertake this on their behalf? <i>See s5.3(1)(d-e) of the BC Regulation</i> | Yes / N/A | Comments (optional) |
| Fit and proper person test declaration | | |
| If breaches have been identified, is this indicated on the BSA application form? | Yes / N/A | Comments (optional) |
| If breaches have been identified, have the applicants included a statement outlining the specific circumstances and why they think those circumstances should not prevent them from entering into a biodiversity stewardship agreement, as per section 2 of the BSA Application Form? | Yes / N/A | Comments (optional) |
| ABN Lookup | | |
| Submission | Mandatory | |
| Format | PDF copy of search | |
| Titled | 'ABN Lookup' | |
| Is the ABN registered, active and registered for GST? | Yes / N/A | Comments (optional) |
| Is the ABN in the name of the landholder entering into the BSA? The entities on the title search must match the ABN, i.e. the ABN cannot be held by more or fewer persons than those listed on the title search. | Yes / N/A | Comments (optional) |
| If the ABN is for a Trust, are documents provided which confirm this entity owns the land in a trustee capacity i.e. Trust Deed, Financial Statements? | Yes / N/A | Comments (optional) |

| Bank nomination form | | |
|---|---|---------------------|
| Submission | Mandatory | |
| Format | Completed PDF – template found here | |
| Titled | 'Nominated Bank Account form' | |
| Is the bank account in the name of the owner on title? <i>Note: BCT is unable to accept bank accounts in the name of a joint venture or parent company.</i> | Yes / N/A | Comments (optional) |
| If the bank account is in the name of only one or some of the landholders, has a written letter authorising payment into this account been provided from all landholders? | Yes / N/A | Comments (optional) |
| Does the ABN on the bank nomination form match the ABN provided on the application form and on the ABN lookup? | Yes / N/A | Comments (optional) |
| Has the bank nomination form been signed by all the landholders as listed on the title search and/or shown as office holders in the ASIC search? | Yes / N/A | Comments (optional) |

Part 2 - Supporting Documentation and Eligibility

1. BSA Application Form

The [BSA application form](#) is available on the Biodiversity Conservation Trust website. A signed and fully completed copy of the most recent form is to be uploaded to the BSA application parent case in BOAMS.

Signing the BSA application form

All landholders as listed on the title search must sign the application form. If the landholder is a company, two office holders as outlined on the ASIC Search and Organisation Extract must sign the agreement. For a council or government agency an employee with the appropriate delegation is able to sign the BSA application form.

2. Title search

The applicant must undertake and provide a title search for all Lots/DPs on which the BSA is located. All title diagrams and dealings listed under the second schedule on the title search must be provided.

The title search must be current and have been undertaken no more than 6 months before the BSA application is submitted.

A title search can be undertaken through one of the many approved information brokers including:

- Info Track
- NSW Land Registry Services
- Hazlett Information system
- LegalStream Australia
- SAI Global Property
- Direct Info
- Equifax
- Global X
- CITEC Confirm

The applicant must ensure that if the landowner listed under the first schedule of the land title:

- if an individual/s; that all persons are agreeable to signing the BSA and to receiving annual management payments.
- if a company; that office holders as outlined on the ASIC Search and Organisation Extract are aware of the BSA application and will be available to sign the agreement.
- if a government body; that all representative signatories (such as a General Manager of a Council) are aware of the BSA application and will be available to sign the agreement.

The applicant must ensure that the landowner listed under the first schedule of the land title is legally able to enter into a BSA. If a landholder is entering an agreement in a trustee capacity, they must advise the

BCT and provide supporting documents to evidence their ownership capacity. Further information is available in the 'BCT Landholder guide on taxation issues' document available on the BCT website under [Landholder Resources](#).

The applicant must ensure that all Lot/DPs that the BSA site is located on are owned by the same legal entity. One BSA cannot be placed over Lot/DPs owned by different entities. The landowner listed under the first schedule of all relevant land titles must match exactly.

If the title search lists any dealings related to paper roads, crown land, mining licences, caveats, covenants, easements, property vegetation plans or mortgages, this may impact the eligibility of the land for a BSA. Dealings that conflict with use of the site for conservation may prevent the BSA being registered on title and other dealings may require consent prior to the registration of BSA. It is required that the applicant order, review and provide all dealings associated with the land as part of the BSA application. Further information is provided under *Section 3* Existing property interest holders.

The applicant must check the title search for Notations; often any additional restrictions are indicated as notations on title.

The applicant must submit a copy of all titles searches, title diagrams and dealings listed under the second schedule with the BSA application. Dealings on title can be ordered through the same system as the title search using the relevant dealing number. A description of any relevant dealings and associated resolutions, if required, are also to be included in the BSSAR.

The biodiversity stewardship site must be part of the one property. BCT defines a property according to the description provided by the Valuer General for the purposes of land taxation and council rates and is identified by a single Property Number.

2.1 Proof of ownership

A BSA can only be signed by the owner registered on the title search. The correct full names as shown on the first schedule must be used in the BSA application and in BOAMS.

The applicant must ensure that all Lot/DPs subject to the BSA have the same entities or individuals as listed on the title search and that all owners are aware of the application.

2.2 ASIC company extract search

If a company is listed on the title search as the owner of the land, the applicant must conduct and provide an ASIC Company Extract search for directors of the company as part of the BSA application. The applicant is responsible for ensuring that all office holders agree to signing the BSA application and BSA.

The ASIC company extract search can be undertaken on the [ASIC](#) website for a small fee.

3. Existing property interest holders

Land often has existing interest holders who need to provide consent to the BSA being placed on the land. It is the responsibility of the landholder, where applicable, in consultation with an accredited assessor, to determine the interest holders and obtain any necessary consents. The common interest holders are listed below (this is not an exhaustive list and landholders may require specialist advice for additional matters).

3.1 Mortgages

Financial institutions which have a mortgage over Lot/DPs subject to the BSA application must provide consent to the BSA being placed on the title of the land to which the mortgage applies. Where the land is subject to a mortgage, the financial institution, as an interest holder must provide written consent to the BSA prior to registration by NSW Land Registry Services. If consent is not provided, the NSW Land Registry Services will not register the BSA on the land title.

The BSA application, at a minimum must include a written in-principal consent to the establishment of a BSA on the land. This provides the landholder and BCT with certainty that the BSA can progress.

The in-principal written consent or if applicable, consent must be uploaded to BOAMS with the BSA application.

If in-principal consent is provided, the financial institution will need to sign the abstract when the agreement is executed or provide separate written consent to the agreement.

Information required in the formal written bank consent includes:

- Name of the property or the address of the property
- The Lot/DPs subject to the BSA application
- The dealing number of the mortgage
- Statement outlining that the financial institution consents to the BSA being placed on the land.

3.2 Existing caveats

A caveat is a form of injunction that prevents registration of a dealing, unless certain requirements are met, such as written consent.

If there is an existing caveat on the land title, resolution of any conflicts or consents may be needed to enable the registration of the BSA on the land title by NSW Land Registry Services.

Resolution of issues that arise due to caveats depends on the caveat but in general, the landholder or if applicable, the accredited assessor will need to request the caveator to provide consent in writing to the registration of the BSA.

If there is overlap between the caveat and the proposed BSA area, additionality may need to be considered or, the existing caveat or the proposed BSA boundary may need to be amended. See *Section 7* for further information on Additionality.

Caveats which are not consistent with a BSA and will prevent the landholder entering into an agreement include but are not limited to caveats which define the land as Crown-timber lands in accordance with *s5,9(4) of the BC Act*.

Further information on how Land Registry Services treats caveats can be found [here](#).

3.3 Existing covenants

A covenant is a restriction on the use of the land. Any covenants on the land subject to the BSA application must be consistent with the management actions in the BSA and this must be explained in the BSSAR.

In accordance with *s5.9(1d) of the BC Act* the person entitled to the benefit of the covenant must be consulted about the terms of the Agreement.

3.4 Easements and existing paper roads

An easement is a right to cross or otherwise use a particular area of the specified property. Such as:

- Road and access routes,
- Infrastructure lines, and
- Public areas.

The applicant must check for existing or crown 'paper' roads on the site (see [Department of Industry, Roads page](#) for more information on Crown 'paper' roads). The road(s) may have their own Lot and DP and therefore a copy of the title should have been provided. A road can only be included within the BSA if it is closed and if the ownership has been transferred to the applicant.

Where an easement is present within a proposed BSA boundary, accredited assessors must describe if the easement:

- is excluded from the BSA;
- is in the process of being transferred to the BSA owner;
- if a paper road, when will it be closed;
- if a crown road, how the owner applied to purchase the lot and closed the road.

If there are easements such as power lines, utility easements or drainage easements, these must be excluded from the BSA. Where easements related to infrastructure aren't listed on title, these areas should still be excluded from the BSA including a maintenance corridor.

3.5 Underground pipes and cables

The applicant must lodge a request on the 'Dial Before You Dig' website www.1100.com.au to find out the location of any underground services on the biodiversity stewardship site (this is a free service via unique login). These may correlate with easements shown on the title map, but not always. The applicant must submit results of the search as part of the BSA application.

Note: when asked the purpose of the inquiry choose 'manual excavation' otherwise a fee will be charged.

All utility easements must be excluded from the proposed BSA boundary. As per BCT's Guideline for Biodiversity Stewardship Sites: Tracks Trails and other exclusions, the applicant must confirm with the utility provider the accurate location of the infrastructure identified and an appropriate width for a maintenance corridor.

3.6 Agreement boundary mapping

Where the BSA boundary aligns with the property boundary, the accredited assessor must confirm the identification of the boundary is consistent with the [BCT Policy Mapping Agreement Boundaries](#).

4. Mining interests

The applicant must undertake a preliminary search of mining related titles through the [Minview or Sharing and Enabling Environmental Data \(SEED\) portals](#). Both are free to use NSW Government mapping applications.

All title types must be added from the layers menu. Current exploration and mining titles as well as applications for coal, petroleum and mineral titles need to be added as layers. The applicant must submit results of the search as part of the BSA application.

4.1 Mining lease

If there is a mining lease or mineral claim under the *Mining Act 1992* or a production lease under the *Petroleum (Onshore) Act 1991*, present over the land, the landholder must contact the interest holder and seek written consent for the establishment of the BSA. This written consent must be provided as part of the BSA application. This requirement is outlined in s5.9(1)(e) of the *BC Act*.

Mining, Exploration and Geoscience, Department of Regional NSW can confirm any titles present and advise accredited assessors of the titleholder contact details, where required.

The landholder or accredited assessor must inform the BCT of this interest as soon as possible and supply evidence that interest holders have been contacted as part of the BSA application. The BCT can provide some support in negotiating with interest holders where required. Mining, Exploration and Geoscience via the BCT can also collaborate in this capacity and are responsible for consulting with title holders on specific matters.

4.2 Other mining or petroleum titles

If there are other mining titles such as exploration licences, the BCT is required to consult with the interest holders. This will occur once the BSA application is submitted.

If an exploration licence is in the application phase the BCT is not required to consult until the exploration licence is approved. To avoid delays the landholder should advise the BCT when the exploration licence is approved so consultation can commence.

5. Crown land

The title search will show if there is a crown reserve, crown land lease or crown timber land on the land subject to the BSA application. In some circumstances, the land will be crown land owned and managed by the local council. At this time, the BCT will only enter into a BSA on Crown Land if Native Title rights have been determined or extinguished. Please contact the BCT for further information.

The DPE '*Biodiversity conservation agreements on Crown land*' policy outlines the Crown Lands' approach to applications or proposals to enter into BSA's. If the proposed BSA meets the requirements as outlined in the policy, the applicant must inform the Department of Industry - Crown Lands of the proposed BSA site via letter or email and request consent.

To be eligible for a BSA the Minister for Crown Lands will need to sign a letter of consent before the BCT can enter into the BSA. Written consent or an email indicating in principle consent to the placement of a BSA over Crown Land must be submitted with the BSA application.

The Minister for Crown Lands or their delegate will be required to sign supporting documentation during the execution of the agreement.

6. Aboriginal cultural heritage, Native Title, Aboriginal Land Claims and Indigenous Protected Areas

6.1 Aboriginal cultural heritage

The *National Parks and Wildlife Act 1974* requires landholders to undertake due diligence to understand whether an activity, such as a BSA management actions may harm an Aboriginal site. The *Due Diligence*

[Code of Practice for the Protection of Aboriginal Objects in NSW \(Code of Practice\)](#) must be followed in circumstances where activities may harm Aboriginal sites.

Landholders or accredited assessors must undertake an [AHIMS](#) (Aboriginal Heritage Information Management System) *Basic Search* (using the Lot and DP search function) to determine the presence of surveyed Aboriginal heritage objects or places. This is part of the due diligence process in accordance with the Code of Practice and search results must be provided as part of the BSA application. Landholders should also notify their accredited assessor if they know of any objects or places within the boundary of the proposed BSA that do not appear in the AHIMS searches.

If an Aboriginal object or place is recorded as present on, or in proximity to the agreement area, an *Extensive Search* **must** also be undertaken to identify the site type and its location. This search must be submitted in Excel format as part of the BSA application.

If objects or places are known to occur within the agreement boundary or there is a high likelihood of objects or places occurring in the agreement boundary, the landholder and the accredited assessor must take steps to avoid harm to any Aboriginal objects or places. Steps to avoid harm may require site survey prior to high-risk activities such as clearing for fence lines or cultural and/or ecological burns. In other cases, it may require certain activities to be excluded from a particular area or additional actions to protect an object.

Where impact cannot be avoided, an Aboriginal Heritage Impact Permit (AHIP) is required.

The presence and location of known objects or places must be noted in the BSSAR. Further, where there are high impact activities or the BSA is within a high-risk landscape (as outlined in the Code of Practice), measures to minimise risk to Aboriginal Heritage values must be outlined in the BSSAR. This is to ensure management actions are designed and planned to avoid impact to Aboriginal Cultural Heritage.

6.2 Aboriginal Land Claim

Land that is subject to an Aboriginal Land Claim is not eligible for a BCT in-perpetuity private land conservation agreement (including BSAs) until such time as the claim has been resolved or withdrawn. The BCT has adopted this position to ensure that BCT agreements do not restrict, invalidate or influence the outcome of a claim pursuant to the *Aboriginal Land Rights Act 1983* (NSW).

The applicant must undertake searches for Aboriginal Land Claims for crown land. The following step can be utilised to undertake the search:

- An email is sent to the ALC department of Crown Lands (ALC@crowland.nsw.gov.au) requesting an “ALC Search” on the land, with the request in Lot/DP format e.g. Lot 1 in DP 123456

If an Aboriginal Land Claim has been determined only the successful claimant is able to apply for a BSA.

6.3 Native Title

Where the land is crown land, the applicant must undertake Native Title searches for claims and determinations. Native Title claim searches are undertaken through the [National Native Title Tribunal](#) (NNTT) following these steps:

- Use the '[Search Register of Native Title Claims](#)' for Native Title Claims
- Use the '[Search National Native Title Register](#)' for Native Title determinations
- Alternatively, you can request a search of NNTT's registers by completing a search request form and emailing: GeospatialSearch@NNTT.gov.au

At this time, the BCT will not enter into a BSA over Crown Land unless Native Title rights have been determined or extinguished.

If Native Title has been determined only the successful claimant is able to apply for a BSA.

6.4 Indigenous Protected Areas

The applicant must view the Indigenous Protected Areas map to identify any potential overlap with the land subject to the proposed BSA. The map is available through the [Indigenous Protected Areas](#) website and listed under 'Indigenous Protected Areas National Map'.

7. Land eligibility

The applicant must confirm that the land is eligible for a BSA. Land not eligible for a BSA is outlined in s 5.1 of the *Biodiversity Conservation Regulation 2017* and is summarised in *Table 2*.

Table 2: Land not eligible for a BSA.

| Ineligible lands | <i>Biodiversity Conservation Regulation 2017</i> | How to determine |
|--|--|---|
| Land reserved under Parts 4 or 4a of the <i>National Parks and Wildlife Act 1974</i> | 5.1(1d) | Shown on title search |
| Flora reserves and special management zones under the <i>Forestry Act 2012</i> | 5.1(1e) | Shown on title search |
| Land already used as an offset under a Property Vegetation Plan | 5.1(1a) | Shown on title search / Contact Local Land Services |
| Land already used as an offset under Parts 4 or 5 of the <i>EP&A Act 1979</i> | 5.1(1c) | Contact the Local Council to confirm |
| Land with past, present or proposed uses that are incompatible with BSA. For example, has the land previously been used for an activity that would prevent management actions being successfully undertaken? | 5.1(2a) | Contact the Local Council to confirm |
| Land with a set aside under section 60ZC of the <i>Local Land Services Act 2013</i> | 5.1(2b) | Contact Local Land Services to confirm |

7.1 NSW Local Land Services consultation

If a set aside is present this area will need to be excluded from the BSA. NSW Local Land Services (LLS) holds information about the presence of set asides. Landholders must view all public registers on the [LLS website](#) to retrieve information on set asides and property vegetation plans that may pertain to their property.

In addition to the public register search, landholders should email LLS at slm.info@lls.nsw.gov.au for an internal database search of records not available on the public registers. The landholder may contact their local LLS office directly or provide written permission to consultants/agents who may be acting on their behalf, so that permission can be forwarded to LLS in making a request.

In emailing LLS, landholders should confirm they have first viewed/checked the public registers on the LLS website and request all relevant databases be checked for current and historic:

- Set Asides
- Land Management (Native Vegetation) Code 2018
 - enquiries for authorisations under negotiation (may include a proposed set aside)
 - certificates
- historic Natural Resource Management incentive funding agreements from former Catchment Management Authority or LLS
- Property Vegetation Plans

The written response/search results from NSW LLS must be provided as part of the BSA application.

If the land subject to the proposed BSA has never been zoned rural the LLS check may not be required. Please contact the BCT in this instance for further advice.

7.2 Local council consultation

It is important that the land is eligible for a BSA and is compatible with the proposed management actions of the BSA. Local councils can be the custodians of this information. Landholders must request relevant information from the local council before submitting a BSA application. The BCT will use this information in determining the eligibility of the land for a BSA.

Information to be obtained from Councils includes:

- *Has the land previously been used as an offset?* For example, an offset which is not shown on the title search or vegetation retained as part of development consent.
- *Is there any Council infrastructure on the land that doesn't appear on Dial Before You Dig searches?* For example, sewers or water infrastructure.
- *Are there any proposed changes to the land adjacent to the proposed BSA?* This may include current development applications or potential re-zoning.
- *Are there any past, present or future land uses which are generally not aligned with biodiversity protection?* For example, land uses associated with ground pollution, illegal dumping or logging.
- *Is there any other relevant information in relation to the suitability of this land for a BSA?*

Some councils might charge a fee for the provision of this information.

8. Additionality

Land with existing conservation obligations may be eligible for a BSA. However, the number of credits generated are reduced depending on the management actions that the landholder is already obliged to perform under the existing obligation. Percentage reductions for existing conservation obligations are outlined in Table 10 of the [Biodiversity Assessment Method](#).

Existing conservation obligations can be listed as encumbrances on the second schedule the title search. Other agencies such as Local Land Services and Councils will need to be consulted to confirm the presence or absence of existing conservation obligations. The landholder or accredited assessor must determine if the boundary of the existing obligations overlaps with the proposed BSA boundary and if overlap occurs this must be mapped and explained as part of the BSSAR.

Existing conservation obligations include:

- Property Vegetation Plans
- s77A *Crown Lands Act 1989* restriction
- Existing Conservation Agreements, Nature Conservation Trust Agreements and Wildlife Refuges
- Australian Government Environmental Stewardship Program (ESP) Agreements
- Other relevant dealings which impose or restrict the use of the land to protect the environment, natural resources or other relevant values
- Plans of management
- Indigenous Protected Areas

The landholder must outline any conservation obligations which are not listed on the title search such as plans of management and set asides, and this must be documented in the BSSAR by the accredited assessor.

Where an Australian Government ESP Agreement exists, the relevant shapefiles must be provided, or written permission provided for the BCT to request the shapefiles from the Commonwealth.

9. Fit and proper person test

Landholders should familiarise themselves with the fit and proper person requirements in the *BC Regulation*. Landholders or entities who are applicants with any relevant convictions or contraventions for offences or associated managers of the applicant (as defined) should seek early advice from the BCT on the fit and proper person test.

Searches are to be undertaken to ensure that the landholder is a 'fit and proper' person to enter into a BSA. Searches are required to be undertaken by the accredited assessor and/or the BSA applicant and must be provided as supporting evidence described in *Sections 8.1 to 8.4*

BCT undertakes additional searches to determine if the applicant(s) meet the fit and proper person test.

The fit and proper person searches must be undertaken for each person or entity subject to the fit and proper person test.

Table 3: The fit and proper person test is applied to the entity applying for a BSA.

| Entity | Who is subject to the fit and proper person test | Who is required to provide written references |
|---|--|---|
| Individual landholders | All landholders listed on title | All landholders listed on title |
| Company | Company, and All Directors | Two Directors |
| Council | Council | Not applicable |
| State Government Agency or Department | Not applicable | Not applicable |
| Federal Government Agency | Not applicable | Not applicable |
| Commonwealth or State-owned corporation | Commonwealth or State-owned corporation, and All Directors | Two Senior Executives |
| Trusts / Trustee | Trustee (individual or corporation), and All Directors or equivalent | Individual, or Two Directors or equivalent |

9.1 Breaches of legislation

The landholder must check for past breaches of environmental legislation by using the [POEO Public Register](#) for:

- Convictions in prosecutions
- Results of civil proceedings

This search should be conducted for all landholders, entities (e.g. company name) and office holders of the company.

A print screen copy of the search results is to be uploaded with the application.

9.2 Winding up order and insolvency search

This search is to be undertaken to determine if a body corporate is the subject of a winding up order or for which a controller or administrator has been appointed during the previous 3 years.

The landholder must use the '[ASIC Published Notices](#)' website to undertake an Insolvency and Winding up Order search. To undertake this search the applicant uses the '[Browse/Search](#)' function to search for the person (if a body corporate) to determine whether they are the subject of a winding up order or had a controller or administrator appointed during the previous 3 years.

A print screen copy of the search is to be included as an attachment to the BSA application.

If the person does not meet this test as outlined in the *BC Regulation s5.3(1)(h-i)*, they may not be eligible for a BSA.

9.3 Bankruptcy Register Search

The applicant must use the [Australian Financial Security Authority](#) website to undertake a search via the '[Bankruptcy Search Register](#)'.

This search is to be undertaken for the person applying for the BSA or the associated office holder of the entity.

The applicant will not pass the fit and proper person test and not be eligible for a BSA if during the previous three years there has been an undischarged bankruptcy or if the applicant applied to take the benefit of any law for the relief of bankrupt or insolvent debtors, compounded with his or her creditors or made an assignment of his or her remuneration for their benefit (s5.3(1g)).

9.4 References

Two written references signed by the referee are required for each individual identified in Table 3 of this guide. For example, where the landholder is a company, references are to be provided for two Directors as outlined on the ASIC Search and Organisation Extract.

The referees, who in relation to character, must outline that the person is honest, operates with integrity and is competent to manage and conduct conservation work or is competent to engage a third party to undertake this work on their behalf.

10. Finance

10.1 Nominated bank account

The annual stewardship payments for the BSA will be paid only to the owner's bank account. If the BSA applicant is a legal entity or a partnership, the nominated bank account must be owned by the legal entity or the partnership itself not by the directors or partners or by another entity or partnership even if the individual directors or partners are the same.

A [Nominated Bank Account Form](#) is found on the BCT website and must be submitted with the BSA application. The form must be signed by the owner on title.

In the case of multiple landowners entering into a BSA, the nominated bank account may be owned by one of these owners. This must be agreed to by all the applicants and expressly stipulated in the relevant section of the BSA or in a separate legal document.

In the case of multiple counterparties, each applicant must sign the Nominated Bank Account Form even if the bank account is owned by just one of them.

10.2 Australian Business Number (ABN)

An ABN registered for GST must be provided on the BSA application form.

The landholder must confirm their Australian Business Number (ABN) by undertaking a [ABN Lookup](#) search and provide this check as part of the BSA application. This check will also show if the ABN is active and if the applicant is registered for GST.

The ABN must be in the name of the landholders as on title. In the case of a company, the ABN must be for that entity and not that of its directors. For partnerships, it must be the ABN of the partnership, not that of one or more of the partners.

If the ABN provided is for a Trust, the documents must be provided which show that this entity owns the land in a trustee capacity:

- the document or meeting minutes when it resolved to act as trustee for the beneficiaries of the trust;
- the Deed establishing the trust; and
- the most recent Financial Statement for evidence that the subject land is trust property.

The BCT's [Taxation Issues Landholder Guide](#) provides some further information about bank accounts, ABNs and tax issues that landholders should read and consider before applying for a BSA.