



Department of Planning and Environment

Authority to sign and proof of identity practice guideline

Biodiversity Offsets Scheme – credit transfer, retirement and equivalent credits



© 2022 State of NSW and Department of Planning and Environment

With the exception of photographs, the State of NSW and Department of Planning and Environment 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 of Planning and Environment (DPE) 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. DPE 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 DPE 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](#).

DPE asserts the right to be attributed as author of the original material in the following manner: © State of New South Wales and Department of Planning and Environment 2022.

Cover photo: Yellow Box (*Eucalyptus melliodora*) and Apple Box (*Eucalyptus bridgesiana*) gums. Debby McGerty/DPE

Published by:

Environment, Energy and Science
Department of Planning and Environment
Locked Bag 5022, Parramatta NSW 2124
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 978-1-922767-67-7
EES 2022/0174
March 2022

Find out more about your environment at:

www.environment.nsw.gov.au

Contents

Purpose of this practice guideline	1
Legal authority to sign	1
Signing electronically	2
Evidence of authority to sign	3
Individual acting on behalf of one or more individuals	3
Individual acting on behalf of a company, incorporated body or statutory body	3
Trustees and corporations acting as trustees	3
Partnerships	4
Proof of identity for a person with legal authority to sign	4
Acceptable proof of identity	4
List 1	4
List 2	5
Verification of identity	5
Duration of proof of identity	5
More information	6

List of tables

Table 1	The legal authority required to execute an application according to the category of credit holder or buyer	1
---------	--	---

Purpose of this practice guideline

The authority to sign and proof of identity (POI) requirements have been established by the Department of Planning and Environment (DPE) in relation to applications for the transfer or retirement of biodiversity credits under the Biodiversity Offsets Scheme (BOS). These requirements also apply to applications for an assessment of reasonable equivalence of biodiversity credits (assessment of credit equivalence).

Applications to transfer or retire BOS credits or for an assessment of credit equivalence must be signed by a person with appropriate legal authority.

Those with legal authority to execute an application are also required to prove their identity as part of the application process.

Legal authority to sign

The legal authority required to execute an application to transfer or retire BOS credits or for an assessment of credit equivalence depends on the category of the credit holder or the buyer.

Please see Table 1 for details on the legal authority required to execute an application.

Table 1 The legal authority required to execute an application according to the category of credit holder or buyer

Credit holder/ buyer category	Legal authority required to execute application for transfer or retirement of BOS credits	Legal authority required to execute application for assessment of reasonable equivalence of biodiversity credits
Individuals	All the individuals who are credit holders or are applying to buy BOS credits.	All the individuals who hold credits or hold the credit obligations the subject of the application for credit equivalence.
A corporation	<ul style="list-style-type: none"> • Two directors. • A director and a company secretary. • The director, if a proprietary company that has a sole director who is also the sole company secretary. • An individual acting with the company's authority, for example, acting under a power of attorney. 	<ul style="list-style-type: none"> • The common seal affixed in accordance with the <i>Corporations Act 2001</i> (Cth). • Two directors. • A director and a company secretary. • The director, if a proprietary company that has a sole director who is also the sole company secretary. • An individual acting with the company's authority, for example, acting under a power of attorney.
A council	The general manager in accordance with section 377 of the <i>Local Government Act 1993</i> (LG Act).	<ul style="list-style-type: none"> • The general manager in accordance with section 377 of the LG Act. • The seal of the council being affixed in a manner authorised under the LG Act.

A public authority other than a council	The chief executive officer of the public authority.	The chief executive officer of the public authority.
A trust	<p>The trustee.</p> <p>Note: trustees that are individuals should sign and certify the application as individuals subject to the provisions of the trust deed. If the trustee is a corporation, the application should be signed and certified by the relevant person as specified above for a corporation and subject to the provisions of the trust deed.</p>	<p>The trustee.</p> <p>Note: trustees that are individuals should sign and certify the application as individuals subject to the provisions of the trust deed. If the trustee is a corporation, the application should be signed and certified by the relevant person as specified above for a corporation and subject to the provisions of the trust deed.</p>
A partnership	<p>All partners.</p> <p>Note: partners that are individuals should sign and certify this application as individuals and in accordance with the terms of the partnership agreement if there is one. If a partner is a corporation, council or public authority other than a council, the application should be signed and certified by the relevant person as per the legal requirements listed above for that entity.</p>	<p>All partners.</p> <p>Note: partners that are individuals should sign and certify this application as individuals and in accordance with the terms of the partnership agreement if there is one. If a partner is a corporation, council or public authority other than a council, the application should be signed and certified by the relevant person as per the legal requirements listed above for that entity.</p>

Signing electronically

Execution of the forms to apply to transfer and retire BOS credits may be able to be conducted electronically. Witnessing where required in the forms may also be conducted electronically. The processes established under the *Electronic Transactions Act 2000* (NSW) for execution, applying electronic signatures and witnessing remotely must be followed when electronically signing documents under that Act.

Most credit holder or credit buyer categories identified in the forms to transfer and retire BOS credits can electronically execute the forms. There may be legal and policy exceptions that prevent some public authorities from electronically signing the forms.

The department will accept the forms to transfer and retire BOS credits signed electronically where provided for by relevant legislation. You are encouraged to seek your own advice to confirm that any electronic execution is valid and complies with the *Electronic Transactions Act 2000* (NSW) and any other relevant legislation.

Evidence of authority to sign

Individual acting on behalf of one or more individuals

When a person is executing an application on behalf of one or more individuals identified as the credit holder or credit buyer of the biodiversity credits, they will be required to provide evidence of their legal authority to execute the application. They will also need to be identified as the person signing the application.

One example of evidence of a person's legal authority to bind another individual in certain circumstances is a Power of Attorney.

Please contact BOSCREDITS@environment.nsw.gov.au if you have questions about acceptable evidence of legal authority to sign.

Individual acting on behalf of a company, incorporated body or statutory body

When a person is executing an application on behalf of a company, incorporated body or statutory body, the person will be required to:

- represent a company or body whose existence is continuing at the time of execution of the application, and provide evidence of the continued existence of the company or body at the time of execution
- be a current officer of the company or body who is authorised to execute the application on behalf of that company or body and provide evidence of that legal authority
- have other relevant authorisation to act on behalf of a company or body and provide evidence of that authority
- be identified as the person signing on behalf of the company or body.

Examples of evidence of the legal authority to execute the application include:

- **for corporations** – a company extract dated so that it demonstrates the individual executing the application held a position of office with legal authority to do so at the time the application was signed
- **for incorporated bodies** – evidence dated so that it demonstrates the individual executing the application was authorised to do so at the time the application was signed (e.g. constituent documents; certified resolution that specifies the full names of a person and the positions held by the person in the body)
- **for a statutory body** – evidence of the authority of persons to act on behalf of that body (e.g. evidence of the person's position and delegation).

Trustees and corporations acting as trustees

Where a person is selling or buying biodiversity credits as a trustee on behalf of a trust, the required evidence of legal authority to execute the application is a copy of the trust deed.

Where a corporation is acting as a trustee, the required evidence of legal authority to execute the application is:

- a current copy of the trust deed
- a company extract for the corporation trustee or, where relevant, a copy of the company's constitution. The company extract must be dated so that it demonstrates the

individual executing the application held a position of office with legal authority to do so at the time the application was signed

- company meeting minutes where the corporation resolved to act as trustee for the trust
- company meeting minutes where the corporation resolved to purchase biodiversity credits on behalf of the trust.

Partnerships

Where partners in a partnership are selling or buying biodiversity credits, the required evidence of legal authority to execute the application is a copy of any written partnership agreement if there is one. The partnership agreement should be dated so that it demonstrates the authority of the partner/s to sign the application at the time it was executed.

Where there is no written partnership agreement, the department will rely on representations made by the partner that they have authority to bind that partnership to the agreement. Where an individual partner is signing on behalf of a partnership, it is best practice to use a third-party witness and not another partner.

Proof of identity for a person with legal authority to sign

Proof of identity (POI) is required to be provided to the department as part of the application process for:

- each credit holder, credit buyer and any duly authorised representative/s that has legal authority to execute an application to transfer or retire BOS credits
- the applicant and any duly authorised representative that has legal authority to execute an application for assessment of reasonable equivalence of biodiversity credits.

Acceptable proof of identity

A copy of **one** of the identity documents in List 1 that has been certified by one of persons in List 2 must be provided with your application. This is the minimum standard of acceptable POI.

List 1

- A current New South Wales or interstate photo driver/rider licence.
- A current New South Wales or interstate Photo Card.
- A current Australian passport. Validation with the Australian Passport Office may be required for passports issued within the last 2 years. Passports that have been cancelled for any reason are not accepted.

Your identity document must show your photograph and signature.

List 2

- An accountant (member of a recognised professional accounting body or a Registered Tax Agent).
- A person listed on the roll of the Supreme Court of a State or Territory or the High Court of Australia as a legal practitioner.
- A barrister, solicitor or patent attorney.
- A police officer.
- A postal manager. For further information on Australia Post document certifying service, please refer to the Certifying documents and witnessing signatures webpage.
- A principal of an Australian secondary college, high school or primary school.
- A medical practitioner.
- A Justice of the Peace (with a registration number in the State in which they are registered). To find a Justice of the Peace visit the NSW Government Justices of the Peace webpage.
- A minister of religion (registered under Subdivision A of Division 1 of Part IV of the *Marriage Act 1961*).

The certified copy must include the statement 'I certify that this is a true copy of the original document'. The certifier must also include their full name, signature, date, registration number (if any) and qualification or occupation which makes them eligible to certify documents, on each of the photocopied identification.

If you can't meet these requirements, please contact BOSCREDS@environment.nsw.gov.au to discuss options for proving your identity in line with established NSW Government processes.

For examples of other proof of identity that may be accepted, see Transport for NSW – Proving your identity and NSW Police – Who can certify my documents.

Verification of identity

You may choose to provide a verification of identity (VOI) where your biographic information has been checked against identity documents.

Duration of proof of identity

Copies of certified identity documents for purposes of an application for credits dealings that meet the minimum requirements for proof of identity will be accepted by the department for **6 months** from date of certification or until expiry or cancellation of the identity document, whichever is sooner.

If you choose to provide VOI, VOI will be accepted by the department for 2 years from the date of verification or until expiry or cancellation of the identity document, whichever is sooner.

The department requires that a POI or VOI is provided with each application.

The same POI or VOI can be used for multiple applications to transfer or retire BOS credits or for an assessment of credit equivalence for as long as it is valid.

More information

Please contact BOSCREDITS@environment.nsw.gov.au if you need more information or have any questions about the requirements in this guideline.

- [Certifying documents and witnessing signatures webpage](#)
- [Justices of the Peace webpage](#)
- [NSW Police – Who can certify my documents?](#)
- [Transport for NSW – Proving your identity](#)