



New South Wales

Environmental Planning and Assessment Amendment (Biodiversity Conservation) Regulation 2017

under the

Environmental Planning and Assessment Act 1979

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Environmental Planning and Assessment Act 1979*.

ANTHONY ROBERTS, MP
Minister for Planning

Explanatory note

The object of this Regulation is to amend the *Environmental Planning and Assessment Regulation 2000* as a consequence of the enactment of the *Biodiversity Conservation Act 2016*.

This Regulation is made under the *Environmental Planning and Assessment Act 1979*.

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1 Name of Regulation

This Regulation is the *Environmental Planning and Assessment Amendment (Biodiversity Conservation) Regulation 2017*.

2 Commencement

This Regulation commences on 25 August 2017 and is required to be published on the NSW legislation website.

Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

[1] Clause 3 Definitions

Insert “or by Part 7 of the *Biodiversity Conservation Act 2016*” after “environmental planning instrument” in the definition of *concurrency authority* in clause 3 (1).

[2] Clause 5 Advertised development

Omit clause 5 (1) (c). Insert instead:

- (c) development to which section 7.7 (2) of the *Biodiversity Conservation Act 2016* or section 221ZW of the *Fisheries Management Act 1994* applies, referred to in this Regulation as *threatened species development*,

[3] Clause 13 Saving of previous threatened species consultation under section 34A

Omit the clause.

[4] Clause 51 Rejection of development applications

Omit clause 51 (2) (b). Insert instead:

- (b) being an application that is required under Part 7 of the *Biodiversity Conservation Act 2016* to be accompanied by a biodiversity development assessment report, the application is not accompanied by such a report, or
- (c) being an application that is required under 221ZW of the *Fisheries Management Act 1994* to be accompanied by a species impact statement, the application is not accompanied by such a statement.

[5] Clause 58 Application of Division

Insert after clause 58 (1):

- (1A) This Division extends to a development application under Part 4 or environmental assessment that relates to development or an activity for which concurrence is required under section 7.12 of the *Biodiversity Conservation Act 2016* or under section 221ZZ of the *Fisheries Management Act 1994*. This Division applies with such modifications as are necessary for that purpose.

[6] Clause 59 Seeking concurrence

Insert after clause 59 (2):

- (3) However, if the concurrence of the Environment Agency Head may be required under Part 7 of the *Biodiversity Conservation Act 2016* because the development application indicates on its face that a discount is being sought in the biodiversity credits required under the report to be retired:
 - (a) the development application must be forwarded to the Environment Agency Head within 10 days (instead of 14 days) after the application is lodged, and
 - (b) the consent authority must notify the Environment Agency Head within 30 days after the application is lodged whether it proposes to reduce the number of biodiversity credits required to be retired and, if it proposes to do so, the amount of (and reasons for) the reduction, as referred to in section 7.13 (4) of the *Biodiversity Conservation Act 2016*.

If concurrence is required because the consent authority proposes to reduce the number of biodiversity credits, the reference in clause 62 (1) (a) to notice to the consent authority of the decision of the Environment Agency Head being given within 40 days after the receipt of the application by the Environment Agency Head is to be construed as a reference to notice being given within 50 days after the application is lodged.

[7] Clause 63 Reasons for granting or refusal of concurrence

Omit clause 63 (2).

[8] Clause 100 Notice of determination

Omit clause 100 (6). Insert instead:

- (6) If the determination was one for which concurrence was required under Part 7 of the *Biodiversity Conservation Act 2016* or under Part 7A of the *Fisheries Management Act 1994*, a copy of the notice of determination must be given to the Environment Agency Head or the Secretary of the Department of Industry, as the case requires.

[9] Clause 106 Definitions

Insert “(or the period of 50 days prescribed by clause 59 (3))” after “clause 62 (1)” in the definition of *assessment period*.

[10] Clause 113 Applications taken to be refused

Insert after clause 113 (1) (b) (iii):

- (iv) a development application that is accompanied by a biodiversity development assessment report and that proposes a discount in the biodiversity credits required under the report to be retired, or

[11] Clause 115 Application for modification of development consent

Insert after clause 115 (1) (g):

- (g1) in the case of an application that is accompanied by a biodiversity development assessment report, the reasonable steps taken to obtain the like-for-like biodiversity credits required to be retired under the report to offset the residual impacts on biodiversity values if different biodiversity credits are proposed to be used as offsets in accordance with the variation rules under the *Biodiversity Conservation Act 2016*,

[12] Clause 228 What factors must be taken into account concerning the impact of an activity on the environment?

Omit “protected fauna (within the meaning of the *National Parks and Wildlife Act 1974*)” from clause 228 (2) (f).

Insert instead “protected animals (within the meaning of the *Biodiversity Conservation Act 2016*)”.

[13] Clause 244 Concurrence or consultation with Chief Executive of the Office of Environment and Heritage

Omit the clause.

[14] Clause 286C Transitional—species impact statements and determination of significant effect

Omit the clause.

[15] Schedule 1 Forms

Insert after clause 1 (1) (f):

- (f1) in the case of an application that is accompanied by a biodiversity development assessment report, the reasonable steps taken to obtain the like-for-like biodiversity credits required to be retired under the report to offset the residual impacts on biodiversity values if different biodiversity credits are proposed to be used as offsets in accordance with the variation rules under the *Biodiversity Conservation Act 2016*,
- (f2) if the land is subject to a private land conservation agreement under the *Biodiversity Conservation Act 2016*, a description of the kind of agreement and the area to which it applies,

[16] Schedule 2 Environmental impact statements

Omit “or (8A)” from clauses 2 and 5, wherever occurring.

[17] Schedule 2, clause 3

Omit clause 3 (9) (d).

[18] Schedule 4 Planning certificates

Omit clause 9A. Insert instead:

9A Biodiversity certified land

If the land is biodiversity certified land under Part 8 of the *Biodiversity Conservation Act 2016*, a statement to that effect.

Note. Biodiversity certified land includes land certified under Part 7AA of the *Threatened Species Conservation Act 1995* that is taken to be certified under Part 8 of the *Biodiversity Conservation Act 2016*.

[19] Schedule 4, clause 10

Omit clause 10. Insert instead:

10 Biodiversity stewardship sites

If the land is a biodiversity stewardship site under a biodiversity stewardship agreement under Part 5 of the *Biodiversity Conservation Act 2016*, a statement to that effect (but only if the council has been notified of the existence of the agreement by the Chief Executive of the Office of Environment and Heritage).

Note. Biodiversity stewardship agreements include biobanking agreements under Part 7A of the *Threatened Species Conservation Act 1995* that are taken to be biodiversity stewardship agreements under Part 5 of the *Biodiversity Conservation Act 2016*.

[20] Schedule 4, clause 10A

Insert after clause 10:

10A Native vegetation clearing set asides

If the land contains a set aside area under section 60ZC of the *Local Land Services Act 2013*, a statement to that effect (but only if the council has been notified of the existence of the set aside area by Local Land Services or it is registered in the public register under that section).

[21] Schedule 4, clause 12

Omit “under the *Native Vegetation Act 2003*”.

Insert instead “approved under Part 4 of the *Native Vegetation Act 2003* (and that continues in force)”.