



New South Wales

Biodiversity Conservation (Savings and Transitional) Amendment (Previous Biodiversity Offsets) Regulation 2017

under the

Biodiversity Conservation Act 2016

His Excellency the Governor, with the advice of the Executive Council, has made the following Regulation under the *Biodiversity Conservation Act 2016*.

GABRIELLE UPTON, MP
Minister for the Environment

Explanatory note

The object of this Regulation is to make provision to exclude the need for further biodiversity assessment of, and offsetting for, the impacts on biodiversity of projects the subject of a concept plan approval under former Part 3A of the *Environmental Planning and Assessment Act 1979*, or of development the subject of other relevant planning arrangements, if biodiversity assessment and offsetting were previously done in connection with the concept plan approval or other arrangement.

This Regulation is made under the *Biodiversity Conservation Act 2016*, including clause 1 of Schedule 9 and section 14.10.

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1 Name of Regulation

This Regulation is the *Biodiversity Conservation (Savings and Transitional) Amendment (Previous Biodiversity Offsets) Regulation 2017*.

2 Commencement

This Regulation commences on the day on which it is published on the NSW legislation website.

Schedule 1 Amendment of Biodiversity Conservation (Savings and Transitional) Regulation 2017

Clause 34A

Insert after clause 34:

34A Part 3A concept plan approvals, or other planning arrangements, subject to previous assessment and offsetting

- (1) This clause applies to a development application that is made under the *Environmental Planning and Assessment Act 1979* in respect of proposed development that is certified under this clause.
- (2) Part 7 of the Act does not apply to the determination of a development application to which this clause applies but the former planning provisions apply instead.
- (3) The Secretary of the Department of Planning and Environment may certify, by order in writing:
 - (a) that the proposed development the subject of a development application is part of a concept plan approval and the biodiversity impacts of the proposed development were satisfactorily assessed before the commencement of the Act as part of the concept plan approval, and
 - (b) that conservation measures have been secured into the future (by a planning agreement, a land reservation or otherwise) to offset the residual impact of the proposed development on biodiversity values after the measures required to be taken to avoid or minimise those impacts.
- (4) The Environment Agency Head may certify, by order in writing:
 - (a) that the proposed development the subject of a development application is part of a relevant planning arrangement and the biodiversity impacts of the proposed development were satisfactorily assessed before the commencement of the Act as part of the relevant planning arrangement, and
 - (b) that conservation measures have been secured into the future (by a planning agreement, a land reservation or otherwise) to offset the residual impact of the proposed development on biodiversity values after the measures required to be taken to avoid or minimise those impacts.
- (5) Proposed development the subject of a specified development application, or proposed development the subject of all or any pending or future development applications that are part of a specified concept plan approval or relevant planning arrangement, may be certified under this clause.
- (6) This clause applies in addition to any other provision of this Part that applies the former planning provisions to the determination of a development application.
- (7) In this clause:

concept plan approval means an approved concept plan (whether approved before or after the repeal of Part 3A of the *Environmental Planning and Assessment Act 1979*) in respect of a transitional Part 3A project within the meaning of Schedule 6A to that Act.

development application includes an application for the modification of a development consent.

relevant planning arrangement means an arrangement associated with the making of an environmental planning instrument or development control plan under the *Environmental Planning and Assessment Act 1979*, the grant of concurrence under that Act or the making of any other application or request under that Act.