



New South Wales

Biodiversity Conservation (Savings and Transitional) Further Amendment Regulation 2018

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 further provisions of a savings and transitional nature that are consequential on the enactment of the *Biodiversity Conservation Act 2016* and the *Local Land Services Amendment Act 2016*. This Regulation:

- (a) extends the new procedure for biodiversity assessment set out in the *Biodiversity Conservation Act 2016* (which presently applies to the consideration of an application for the modification of a planning approval only if the approval was granted after the commencement of that Act) so that it applies to the consideration of applications to modify planning approvals granted in accordance with the former planning provisions, and
- (b) varies the procedure applicable in those cases, so that the biodiversity development assessment report prepared for the application for modification is required to consider only those impacts of the development on the biodiversity values of the land that result from the modification of the development and not those associated with the development as approved (when different procedures applied), and
- (c) extends the power of the Environment Agency Head to accept an enforceable undertaking under the *Biodiversity Conservation Act 2016* (which presently applies only in relation to offences under that Act) so that undertakings may be accepted in relation to offences alleged to have been committed against any of the legislation repealed by that Act or by the *Local Land Services Amendment Act 2016* (namely the *Native Vegetation Act 2003*, the *Threatened Species Conservation Act 1995*, the *Nature Conservation Trust Act 2001* and Parts 7–9 of the *National Parks and Wildlife Act 1974*).

This Regulation is made under the *Biodiversity Conservation Act 2016*, including sections 6.16 (regarding the content of biodiversity assessment reports), 7.17 (3) (regarding applications for modification of planning approvals or activities) and 14.10 (the general regulation-making power) and clause 1 of Schedule 9 to the Act (regarding savings and transitional provisions consequent on the enactment of the Act).

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1 Name of Regulation

This Regulation is the *Biodiversity Conservation (Savings and Transitional) Further Amendment Regulation 2018*.

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

[1] Clause 30A

Insert after clause 30:

30A New Act applies to modifications of planning approvals granted or applied for before commencement of new Act

- (1) The provisions of Division 4 of Part 7 of the new Act apply to applications for the modification of a planning approval:
 - (a) where the planning approval was granted before the commencement of the new Act, and
 - (b) where the planning approval was granted on or after the commencement of the new Act, as a result of the determination of a pending or interim planning application.
- (2) For that purpose:
 - (a) the provisions apply in relation to the original development as proposed to be modified, and
 - (b) a biodiversity development assessment report is required to be submitted and taken into consideration if Division 4 of Part 7 of the new Act would have applied to the original development (as proposed to be modified) if planning approval had been granted after the commencement of the new Act, and
 - (c) however a biodiversity development assessment report is not required to be submitted if the authority or person determining the application for modification (or determining the environmental assessment requirements for the application) is satisfied that the modification will not increase the impact on biodiversity values, and
 - (d) the biodiversity development assessment report submitted with the application for modification:
 - (i) is to take into account any measures already taken to avoid, minimise or offset the impact on biodiversity values in connection with the planning approval before the proposed modification, and
 - (ii) is to take into account only the additional impact on biodiversity values resulting from the modification of the development and not those associated with the development as approved, and
 - (e) if an application for the original development as proposed to be modified would have been required to be refused because of serious and irreversible impacts on biodiversity values, the application for modification is required to be refused.

[2] Clause 58 Offences under former Act not affected

Omit clause 58 (2) (d).

[3] Clause 59A

Insert after clause 59:

59A Undertakings in relation to previous offences under former Acts

- (1) Section 13.27 of the new Act extends to matters arising under a former Act.

- (2) Accordingly, an undertaking may be accepted under section 13.27 of the new Act in connection with a matter in relation to which the Environment Agency Head has a function under the new Act in or as a result of the commission or the alleged commission of an offence under a former Act.
- (3) This clause extends to offences committed or alleged to have been committed after the repeal of a former Act in relation to a provision of the former Act (or of the regulations under the former Act) that is continued in force by this Regulation.