

## **Environmental Planning and Assessment Amendment (Biodiversity Conservation) Regulation 2017**

under the

Environmental Planning and Assessment Act 1979

### **1 Name of Regulation**

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

### **2 Commencement**

This Regulation commences on [*date to be specified*] and is required to be published on the NSW legislation website.

## **Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000**

**[1] Clause 5 Advertised development**

Omit clause 5 (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***,

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

Omit the clause.

**[3] 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.

**[4] 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.

**[5] Clause 63 Reasons for granting or refusal of concurrence**

Omit clause 63 (2).

**[6] 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.

**[7] 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*)”.

---

# public consultation draft

---

Environmental Planning and Assessment Amendment (Biodiversity Conservation) Regulation 2017 [NSW]  
Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

---

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

Omit the clause.

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

Omit the clause.

**[10] 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 as offsets in accordance with the report if different biodiversity credits are proposed to be used as offsets in accordance with the variation rules under the *Biodiversity Conservation Act 2016*,

**[11] Schedule 2 Environmental impact statements**

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

**[12] Schedule 2, clause 3**

Omit clause 3 (9) (d).

**[13] 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*.

**[14] 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*.

**[15] 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

---

# public consultation draft

---

Environmental Planning and Assessment Amendment (Biodiversity Conservation) Regulation 2017 [NSW]  
Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

---

notified of the existence of the set aside by Local Land Services or it is registered in the public register under that section).

**[16] 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)”.