

Special Legislation May Bypass Threatened Species Court Challenge

The NSW Minister for Environment, Verity Firth, this week tabled the *Threatened Species Conservation Amendment (Special Provisions) Bill 2008*, a bill which is intended to bypass a pending Land and Environment Court challenge to the biodiversity certification of *State Environmental Planning Policy (Sydney Region Growth Centers) 2006*.

Section 126G of the *Threatened Species Conservation Act 1995* allows the Environment Minister to make an order conferring “biodiversity certification” (biocertification) on an Environmental Planning Instrument. In order to do this, the Minister must be satisfied that the plan, in addition to any other relevant measures to be taken into account, will lead to the overall improvement or maintenance of biodiversity values.

The effect of biocertification is to remove the need for a Species Impact Statement and DECC concurrence for developments under the plan. All developments which are permissible under a biocertified plan are deemed not to have a significant impact on threatened species, regardless of their actual impacts.

The True Conservation Alliance, represented by the Environmental Defender’s Office launched a legal challenge to Minister Firth’s decision to grant biocertification to the Growth Centres SEPP in February 2008. The case is due to be heard on 29-31 July 2008.

The Growth Centres SEPP will result in the clearing of 1,800 ha of high quality native vegetation, including 12% of the remaining high quality Cumberland Plain Woodland, and have negative impacts on 16 threatened plant species and 22 threatened animal species. The purported trade-off is a \$530M conservation fund, however there is no certainty about what land will be acquired with this fund, or whether it will be sufficient to offset the massive losses within the Growth Centres region. The True Conservation Alliance alleges that the Minister had no rational basis for concluding this plan would maintain or improve biodiversity values.

Prior to the matter being heard in Court, the NSW Minister for Environment has introduced special legislation directly conferring biocertification on the Growth Centres SEPP, avoiding the need to meet the “maintain or improve” test.

The NSW Government has shown scant respect for the rule of law by introducing special legislation to avoid having to comply with the requirements of the *Threatened Species Conservation Act* in relation to the Growth Centres SEPP. This sets a poor precedent for other areas of the State which are also subject to development pressure. If the Government is serious about saving species from extinction, it needs to ensure a consistent assessment of threatened species impacts across all development areas.
