

Draft Environmental Planning and Assessment Amendment (Biodiversity Conservation) Regulation 2017

This part of the submission comments on amendments to the draft *Environmental Planning and Assessment Regulation 2000* (NSW) (**Planning Regulation**) arising from the new biodiversity assessment and land clearing reforms.

We comment on:

Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

- *Item [1] Clause 5 Advertised development*
- *Item [6] Clause 63 Reasons for granting concurrence*
- *Item [12] Schedule 2, clause 3 (waiving requirement for EIS)*
- *Items [15] and [16] Schedule 4, clauses 10 and 10A (s149 certificates)*

Schedule 1 Amendment of Environmental Planning and Assessment Regulation 2000

Item [1] Clause 5 Advertised development

We **recommend** this clause be amended to ensure that advertised development includes rural native vegetation clearing proposals under Division 6 of Part 5A of the LLS Amendment Act. This refers to broadscale land-clearing beyond what is allowed under the proposed self-assessable clearing Code. Such clearing is to be assessed by the Native Vegetation Panel (**NV Panel**) after a biodiversity assessment report has been prepared in accordance with the Biodiversity Assessment Method (**BAM**).

This recommendation reflects the principle, enunciated by the Government's Independent Biodiversity Review Panel, that land-clearing for change of use (i.e. broadscale clearing of remnant native vegetation for cropping, grazing or other agricultural purposes) should be treated equivalently to development proposals under the *Environmental Planning and Assessment Act 1979* (NSW) (**Planning Act**).

There are a range of well-established reasons why public exhibition and consultation on major land-clearing proposals is important, including to ensure transparency and public oversight, improve data and decision-making and deter corruption risks.

Item [6] Clause 63 Reasons for granting concurrence

This clause would remove a requirement to publicly exhibit reasons and conditions for granting or refusing concurrence (at the office of National Parks and Wildlife or the office of NSW Fisheries depending on species affected). We are concerned that this amendment will reduce, instead of increase, public scrutiny of decisions affecting threatened species and ecological communities.

We **recommend** deleting this draft clause, and instead amending clause 63 to require *online publication* of reasons and conditions for granting or refusing concurrence associated with development proposals (under the Planning Act, the Biodiversity Conservation Act (**BC Act**) or the LLS Amendment Act). Reasons and conditions should be published on a website maintained by a relevant agency.

Item [12] Schedule 2, clause 3 (waiving requirement for EIS)

The effect of this amendment appears to be to allow the Secretary of Planning to waive the requirement for an EIS where a State Significant Development proposal will affect critical habitat, threatened species or ecological communities. It is unclear why clause 3(9)(d) is omitted.

We **recommend** clause 3(9)(d) of Schedule 2 of the Planning Regulation instead be updated to refer to threatened entities and Areas of Outstanding Biodiversity (AOBVs, which replace critical habitat) listed under the BC Act. Otherwise, if this item is to give effect to some other amendment (e.g. as a consequence of the introduction of the BAM), that should be clearly explained.

Items [15] and [16] Schedule 4, clauses 10 and 10A

We **support** these amendments as they provide for transparency of set aside areas and biodiversity stewardship sites on section 149 planning certificates.