

EN1 - NSW Biodiversity Legislation Reform Package

ENVIRONMENT

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TRIM 3241

EXECUTIVE SUMMARY

- The purpose of this report is to provide an overview of the exhibited documents associated with reforms to NSW Biodiversity related Legislation, their implications to Council's relevant responsibilities and the submission prepared by Council staff.
- This report recommends that Council endorse the submission prepared by staff.

Also, that Council write to the NSW Minister for Planning and NSW Minister for Environment to:

- Welcome the need and intent of the review of the current framework and also supports in-principle the overall intent of the reform package.
- Raise concerns over identified inconsistencies of each of the broad components of the exhibited package with Council's relevant strategic position and issues raised in previous submissions, as well as important aspects yet to be completed.
- Request that the introduction of the reforms be deferred from the proposed commencement date to allow for discussions with Council over the identified inconsistencies with Council's strategic position as well as well as adverse implications for the protection and management of biodiversity on a localised level.

REPORT

BACKGROUND INFORMATION

The NSW Government announced during 2014 that it was undertaking a review of the current biodiversity legislative framework to replace the Threatened Species Conservation Act (TSC) and Native Vegetation (NV) Act 2003 which both have relevance to the Wollondilly Local Government Area (LGA). Council's submission on the Terms of Reference recognised the review as being appropriate in addressing issues experienced by Staff in the management and regulation of biodiversity in NSW by the current framework. However, it recommended a range of measures designed to allow for the revised framework to be appropriately applied at the State and Commonwealth level whilst achieving positive biodiversity outcomes at a localised scale.

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The forty three (43) recommendations of the Final Report on the Review were identified as having potential merit in the addressing of shortcomings of the current management and regulatory framework experienced by Council officers. However, potential inadequacies in a number of the Recommendations in addressing issues raised by Council's submission were identified. Council consequently resolved at its meeting on 16 March 2015 to:

“Write to the Minister for the Environment outlining the concerns over the protection and management of biodiversity as recommended by the Final Report on the Review of Biodiversity Legislation in NSW”.

In August 2016, the NSW Government publicly exhibited completed draft components of the reform package that included a draft Biodiversity Conservation Bill and proposed reforms to biodiversity management on rural lands. Council's submission expressed the view the exhibited documents had not fully addressed concerns of Council and expressed the views of the local community in relation to the management and regulation of biodiversity within the Wollondilly LGA. The draft Biodiversity Conservation Bill was gazetted in November 2016 which had the effect of repealing the TSC and NV Acts.

The NSW Government placed on public exhibition a number of documents related to the implementation of the reform package between 10 May and 21 June 2017. A Councillor Newsletter Item dated 15 June 2017 advised that the consideration of the submission by Council prior to its lodgement was not possible due to the complexity of the package and Council meeting reporting deadlines. The Executive Summary of this submission was; however, distributed with this Newsletter Item for the information of Councillors.

OVERVIEW OF THE LEGISLATIVE REFORMS AND EXHIBITED DOCUMENTS

The documents placed on public exhibition by the NSW Government are based on two broad components comprised of Biodiversity Conservation and Land Management (specifically in relation to biodiversity issues on rural land). The broad features of the exhibited documents in relation to these two components are summarised below:

Draft Biodiversity Regulation

The broad purpose of this document is to provide additional detail and inform the implementation of the *Biodiversity Conservation Act 2016*. Key features of the Regulation include:

- Modifications to existing measures within the current framework for the protection and management of threatened species and ecological communities.

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- A Biodiversity Offsetting Scheme which contains threshold criteria for requiring biodiversity losses with development to be offset based on intended area of vegetation clearance and a Sensitive Biodiversity Values Land Map prepared by the NSW Office of Environment and Heritage.
- The continuation of the current Council process for the assessment and determination of development applications which do not satisfy the threshold criteria.
- A revised Biobanking Methodology which in essence outlines requirements for the offsetting of vegetation clearance for those developments which satisfy the threshold criteria. It proposes a No Net Biodiversity Loss in NSW Standard in defining the adequacy of the offsetting of such impacts.

The provisions within this Regulation and associated exhibited documents are intended to commence by the NSW Government on 26 August 2017.

State Environmental Planning Policy (Vegetation) Vegetation SEPP

The NSW Government has exhibited a Statement of Intended Effects (SIE) for this document to be prepared by the NSW Department of Planning and Environment. The SIE states the competed Vegetation SEPP will have the following broad features:

- Requiring certain activities located on land with Environmental Protection Zoning be subject to offsetting measures.
- The preparation of a standard permit system in relation to tree removal requests received by council applying to residential zoned land in NSW.

The provisions within this Regulation and associated exhibited documents are intended to commence on 26 August 2017 following the completion of the vegetation SEPP.

Land Management Component

The broad purpose of this component, (as stated in produced information material), is to “*provide a revised framework for the regulating and clearing of native vegetation by rural land holders and other stakeholders in NSW*”. Key features/components of the exhibited documentation includes:

- A draft Local Land Services Regulation Amendment which includes measures that replace those contained in the repealed Native Vegetation Act 2003.
- A Land Regulatory Map for NSW designed to be accessed by rural landholders to identify where native vegetation clearance requires approval from Local Land Services or is exempt.

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- A Land Management Code and associated Fact Sheet to support landholders to manage their land to ensure more productive farming methods and systems while responding to environmental risks.

The NSW Government has advised this component of the reform package will commence on 26 August 2017; however, a number of aspects currently under preparation such as the Regulatory Map will be introduced during 2018 following further consultation.

SUBMISSION ON THE EXHIBITED LAND MANAGEMENT AND BIODIVERSITY CONSERVATION REFORMS

A review of the exhibited documents identified inconsistencies of each of the broad components of the exhibited package with Council's relevant strategic position and issues raised in previous submissions. The above overview also highlights the significant implications of the biodiversity and land management reform package to Council's strategic, development assessment, protection of biodiversity and regulatory responsibilities.

The preparation of a submission by Council was consequently identified as being warranted. The following summarises the approach adopted for the preparation of the submission and its key features.

(i) Preparation process of the submission

The following activities were undertaken during the preparation of the submission to ensure awareness of the ramifications of the reform package by all relevant Council sections and the incorporation of comments from these sections into the completed document:

- Consultation with Team Leaders of all relevant Council sections including Strategic, and Development Assessment.
- Attendance by staff at Webinar Sessions organised by the NSW Department of Planning and Environment and the Office of Environment and Heritage.
- Attendance of members of the Executive and Councillors at a Webinar Session tailored for local government.
- Providing a presentation on the key features and intended process for the implementation of the reforms upon their commencement to a meeting of Council's Executive.

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(ii) Overview of the submission

The comments provided in the submission are based on the experiences of Council and the local community it represents in regard to the protection and management of biodiversity under the previous framework. They are also consistent with the position of Council expressed in its submission on the Terms of Reference for the Review of Biodiversity Legislation as well as the draft Biodiversity Conservation Bill.

The submission is structured to place a strong emphasis on the adequacy of the exhibited documents in addressing key biodiversity issues as well as Council's strategic position outlined in a range of documents including its Community Strategic Plan. The key biodiversity issues referred to in this regard are impacts associated with development pressure and clearance on rural land, protection of koala habitat, and protection of areas of recognised significance including the Nepean-Bargo Gorge and Thirlmere Lakes National Park.

The submission supports in principle the overall intent of the reform package as well as the intent of individual concepts in addressing issues experienced by staff with the current framework. The submission, however, outlines a range of identified shortcomings which are predominantly in regard to the assessment, protection and regulation of biodiversity at a localised scale and a level of disconnect with local biodiversity strategies. Key recommendations of the submission as stated in its Executive Summary in this regard are:

- The Sensitive Biodiversity Values Land Map be updated to have a direct linkage with up-to-date koala habitat mapping (core and support core habitat), undertaken by local government.
- The Biodiversity Conservation Regulation and Land Management Code be amended to include measures which are underpinned by local planning mechanisms to achieve positive outcomes for the protection and regulation of biodiversity within the Wollondilly LGA.
- The proposed No Net Loss of Biodiversity in NSW outcome be replaced by the Improve or Maintain Biodiversity Outcome under the current framework which has been observed by Staff to be beneficial in achieving positive biodiversity outcomes from developments in a localised scale.
- The proposed criteria for Areas of Outstanding Biodiversity Value be amended to include areas of local significance and not be restricted to the State and Bioregional Scale as proposed.

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- Clarification be provided over whether current practices utilised by Council to mitigate biodiversity impacts associated with developments such as requiring planting or revegetation on a particular development site as offsetting will continue under the new framework.
- The completed Vegetation SEPP, with all its components currently under preparation described in the Statement of Intended Effects, be subject to a public exhibition and associated consultation process.
- The proposed measures regarding the identification and protection of ecological communities (including associated native grasses) be subject to a detailed independent peer review by a suitably ecological qualified person and that this be provided to Council.

The draft submission requests a response to each issue and concern raised as well as a meeting with representatives of the Project Team to discuss these issues and concerns. The Project Team was requested to view the lodged submission as a draft pending formal Council endorsement.

INTENDED IMPLEMENTATION OF THE REFORMS BY COUNCIL

The NSW Government has advised it intends to introduce each of the three components of the biodiversity reform package on 25 August 2017. Produced information material states the "*Government will continue to develop other supporting products and processes, including the Biodiversity Conservation Investment Strategy, the Native Vegetation Regulatory Map, and wildlife codes of practice which will not commence until further consultation has been undertaken*".

A range of training programs will be prepared in consultation with a range of relevant sections including GIS and Customer Services to ensure the readiness of Council for the introduction of the reforms when the finalised details are known. This will include developing procedures to facilitate the accessibility of the on-line tools as well as raising community awareness in partnership with relevant Government Agencies.

RECOMMENDED COUNCIL RESPONSE AND POSITION

The above sections of this report have highlighted a range of identified inconsistencies of each of the broad components of the exhibited package with Council's relevant strategic position and issues raised in previous submissions. They have also referred to a number of considered key aspects such as the Land Regulatory Map which are currently under preparation.

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This report recommends that Council write to the NSW Minister for Planning and the NSW Minister for Environment requesting that the proposed introduction of the reforms on 26 August 2017 be deferred in light of these concerns and inconsistencies. Such a deferral would allow for discussions with Council over its identified inconsistencies with Council's strategic position as well as as adverse implications for the protection and management of biodiversity on a localised level.

CONSULTATION

Consultation with the following Council sections has occurred during the preparation of the attached submission:

- Strategic, Development Services and Growth Management in regard to implications and consistency of the biodiversity reform package to Council's planning instruments and strategic documents.
- Community Services in regard to the implications and consistency of the biodiversity reform package with Council's Community Strategic Plan.
- Assets and Infrastructure in regard to the consideration of urban design and open space matters for larger proposals by the biodiversity reform package.
- Environmental Services in terms of implications of the biodiversity reform package to Council's current and future environmental programs as well as vegetation management in rural and residential areas.

FINANCIAL IMPLICATIONS

This report has no financial impact on Council's adopted budget or forward estimates. However, implementation of the proposed Regulation may have an impact on individual projects under Council's future budgets.

ATTACHMENTS INCLUDED IN A SEPARATE BOOKLET

1. Executive Summary of the submission previously distributed to Councillors via a Newsletter Item
2. Lodged Submission on the Biodiversity Conservation and Land Management reforms

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RECOMMENDATION

1. That Council endorse the submission prepared by staff.
2. That Council write to the NSW Minister for Planning and NSW Minister for Environment to:
 - Welcome the need and intent of the review of the current framework and also support in principle the overall intent of the reform package.
 - Raise concerns over identified inconsistencies of each of the broad components of the exhibited package with Council's relevant strategic position and issues raised in previous submissions as well as important aspects yet to be completed.
 - Request that the introduction of the reforms be deferred from the proposed commencement date to allow for discussions with Council over its identified inconsistencies with Council's strategic position as well as well as adverse implications for the protection and management of biodiversity on a localised level.