



New South Wales

Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Regulation 2026

under the

Biodiversity Conservation Act 2016

[*The following enacting formula will be included if this regulation is made—*]

Her Excellency the Governor, with the advice of the Executive Council, has made the following regulation under the *Biodiversity Conservation Act 2016*.

Minister for the Environment

Explanatory note

The object of this regulation is to amend the *Biodiversity Conservation Regulation 2017* to provide for the following—

- (a) the content of—
 - (i) biodiversity development assessment reports, and
 - (ii) biodiversity certification assessment reports,
- (b) the retirement of biodiversity credits,
- (c) to replace individual biodiversity stewardship site accounts with a common account, with owners of existing biodiversity stewardship sites able to elect to maintain individual accounts,
- (d) the establishment of a system for the accreditation and regulation of conservation brokers,
- (e) the applications to amend the operation of the Biodiversity Values Map on land,
- (f) matters that must be recorded in certain public registers.

Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Regulation 2026

under the

Biodiversity Conservation Act 2016

1 Name of regulation

This regulation is the *Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Regulation 2026*.

2 Commencement

This regulation commences as follows—

- (a) for Schedule 1[16]–[18] and [20]—on the day the *Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Act 2024*, Schedule 1[25] commences,
- (b) for Schedule 1[5]–[8], [22], [42], [43], [45], [53], [57] and [63]—on [TBC],
- (c) otherwise—on the day on which this regulation is published on the NSW legislation website.

Schedule 1 Amendment of Biodiversity Conservation Regulation 2017

[1] Clause 1.3 Definitions

Insert in clause 1.3(1) in alphabetical order—

approved form means a form approved by the environment agency head.

approved way means a way approved by the environment agency head.

[2] Clause 1.3(1), definition of “national park estate and other conservation areas”

Omit “*Crown Lands Act 1989*” from paragraph (h).

Insert instead “*Crown Land Management Act 2016*”.

[3] Clause 1.3 definition of “variation rules”

Omit the definition.

Insert instead—

variation rules has the meaning given by the Act, section 6.4(4).

[4] Clause 3.12

Omit the clause.

Insert instead—

3.12 Operation of division

Nothing in this division affects the regulation of the use of a national park or other land acquired, reserved or dedicated under the *National Parks and Wildlife Act 1974*.

[5] Clause 6.1 Additional biodiversity impacts to which scheme applies (sections 6.3 and 6.6(2))

Omit “of significance” from clause 6.1(1)(a)(i).

[6] Clause 6.1(1)(a)(ii)

Insert “or rock outcrops” after “rocks”

[7] Clause 6.1(1)(d)

Insert “, water availability” after “quality”.

[8] Clause 6.1(1)(f)

Omit “community.”.

Insert instead—

community,

(g) the impacts of vibration and blasting associated with development on threatened species and threatened ecological communities.

[9] Clause 6.2 Offset rules under biodiversity offsets scheme (section 6.4)

Omit clause 6.2(2)(d).

[10] Clause 6.2(6)

Omit “transmission” from the definition of *major project development*, paragraph (a).

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Insert instead “network”.

[11] Clause 6.4 Variation rules under biodiversity offsets scheme (section 6.4(4))

Omit “The circumstances in which the ordinary offset rules for the determination of the like-for-like biodiversity credits required to be retired as a biodiversity conservation measure may be varied are as follows (the *variation rules*)—” from clause 6.4(1).

Insert instead “The variation rules are as follows—”.

[12] Clause 6.4(1)(a)

Omit the paragraph.

[13] Clause 6.5 Ancillary rules of Environment Agency Head for purposes of biodiversity offset and variation rules (section 6.4)

Omit clause 6.5(2)(a) and (c).

[14] Clause 6.6 Offset and other rules applying to Biodiversity Conservation Trust applying Fund money towards securing biodiversity offsets (sections 6.31 and 10.12)

Omit “(other than those provisions of the variation rules relating to taking reasonable steps to apply like-for-like requirements)” from clause 6.6(1)(b).

[15] Clause 6.7 Principles applicable to determination of “serious and irreversible impacts on biodiversity values” (section 6.5(1))

Omit “diversity values” from clause 6.7(1).

Insert instead “biodiversity values”.

[16] Clause 6.8

Omit the clause.

Insert instead—

6.7A Mandatory content of biodiversity development assessment reports—the Act, section 6.16

- (1) A biodiversity development assessment report must include the following—
 - (a) mapping of the biodiversity values of the site,
 - (b) documentation of feasible alternative impact footprints and evidence of avoidance of direct, indirect and prescribed impacts to biodiversity values,
 - (c) relevant mapping of site-assessed entities at risk of serious and irreversible impacts and alternative impact footprints demonstrating avoidance of those impacts,
 - (d) the number and classes of biodiversity credits required to be retired in accordance with the like-for-like requirements of the offset rules,
 - (e) if funding a biodiversity conservation action in accordance with the offset rules is proposed—details of the proposal,
 - (f) the date of the report and the certification under the Act, section 6.15,
 - (g) details of—
 - (i) the accreditation of the person preparing the report, and
 - (ii) the qualifications and experience of other persons commissioned to conduct research or investigations for the report,

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- (h) if the relevant impacts on biodiversity values of a proposed development, activity or clearing cannot be reasonably avoided by site selection and design—information justifying the decision to proceed with the development, activity or clearing,
 - (i) information about measures that will be taken after approval of the application to avoid or minimise impacts on biodiversity values as a result of—
 - (i) construction, operation, cessation of operation or decommissioning of the proposed development or activity, or
 - (ii) undertaking the proposed clearing,
 - (j) other information the biodiversity assessment method or ancillary rules require to be included in the report.
- (2) Information provided for subclause (1)(i) must include management plans that—
- (a) are clear, evidence-based, implementable and enforceable, and
 - (b) apply the principles of adaptive management.
- (3) In this clause—
- relevant impacts on biodiversity values*** means the impacts of actions on biodiversity values that are subject to assessment and offset under the biodiversity offsets scheme as provided for in the Act, section 6.3.

6.8 Optional content of biodiversity development assessment reports—the Act, section 6.16

- (1) A biodiversity development assessment report may include identification of measures previously taken, or areas previously utilised, as part of the following to avoid or minimise the impact of proposed development, activity or clearing on the biodiversity values of the land—
- (a) strategic planning in accordance with the *Environmental Planning and Assessment Act 1979*, Part 3, including rezoning,
 - (b) biodiversity certification,
 - (c) development, activity or clearing.
- (2) A measure may only be included in a biodiversity development assessment report under this clause if—
- (a) the measure was taken within 5 years before submission of the report, or
 - (b) for a measure taken more than 5 years before submission of the report—the accredited person certifying the report also certifies—
 - (i) the measure is relevant to the proposal in the report, and
 - (ii) the measure is based on reliable information, or
 - (c) the measure was recorded on the register kept under the Act, section 9.7(1)(h2) before the submission of the report, or
 - (d) the measure is secured in perpetuity under a legally binding arrangement.

[17] Clause 6.8A Content of biodiversity development assessment reports for certain State significant development (section 6.16)

Omit “clause 6.8” from clause 6.8A(1).

Insert instead “clause 6.7”.

[18] Clause 6.9

Omit the clause.

Insert instead—

6.9 Mandatory content of biodiversity certification assessment reports—the Act, section 6.16

- (1) A biodiversity certification assessment report must include the following—
 - (a) mapping of the biodiversity values of the site,
 - (b) documentation of feasible alternative impact footprints and evidence of avoidance of direct, indirect and prescribed impacts to biodiversity values,
 - (c) relevant mapping of site-assessed entities at risk of serious and irreversible impacts and alternative impact footprints demonstrating avoidance of those impacts,
 - (d) for an application that is not a strategic biodiversity certification application—the number and classes of biodiversity credits required to be retired in accordance with the like-for-like requirements of the offset rules,
 - (e) for an application that is a strategic biodiversity certification application—
 - (i) the number and classes of biodiversity credits that would be required to be retired if the like-for-like requirements of the offset rules applied, and
 - (ii) the number and classes of biodiversity credits proposed to be retired, and
 - (iii) details of other approved conservation measures that will be taken, and
 - (f) information about measures the applicant for biodiversity certification has taken to avoid or minimise impacts on biodiversity values of the actions to which the biodiversity offsets scheme applies on the land proposed for certification,
 - (g) information about measures that will be taken after biodiversity certification to avoid or minimise impacts on biodiversity values from the actions to which the biodiversity offsets scheme applies on the land proposed for certification,
 - (h) the date of the report and the certification under the Act, section 6.15,
 - (i) details of—
 - (i) the accreditation of the person preparing the report, and
 - (ii) the qualifications and experience of other persons commissioned to conduct research or investigations relied on for the report,
 - (j) other information the biodiversity assessment method or ancillary rules require to be included in the report.
- (2) Information provided for subclause (1)(g) must include management plans that—
 - (a) are clear, evidence-based, implementable and enforceable, and
 - (b) apply the principles of adaptive management.
- (3) In this clause—

relevant impacts on biodiversity values means the impacts of actions on biodiversity values that are subject to assessment and offset under the biodiversity offsets scheme as provided for in the Act, section 6.3.

6.9A Optional content of biodiversity certification assessment reports—the Act, section 6.16

- (1) A biodiversity certification assessment report may include identification of measures previously taken, or areas previously utilised, as part of the following to avoid or minimise the impact of the actions to which the biodiversity offsets scheme applies on the land proposed for certification—
 - (a) strategic planning in accordance with the *Environmental Planning and Assessment Act 1979*, Part 3, including rezoning,
 - (b) biodiversity certification,
 - (c) development, activity or clearing.
- (2) A measure may only be included in a biodiversity certification assessment report under this clause if—
 - (a) the measure was taken in the 5 years before submission of the report, or
 - (b) for a measure taken more than 5 years before submission of the report—the accredited person certifying the report also certifies—
 - (i) the measure is relevant to the proposal in the report, and
 - (ii) the measure is based on reliable information, or
 - (c) the measure was recorded on the register kept under the Act, section 9.7(1)(h2) before submission of the report, or
 - (d) the measure is secured in perpetuity under a legally binding arrangement.

[19] Clause 6.10A

Insert after clause 6.10—

6.10A Unaccredited person must not apply biodiversity assessment method—the Act, section 6.10(6)

A person who is not accredited by the Environment Agency Head under a scheme adopted by the Minister under the Act, section 6.10 must not—

- (a) apply the biodiversity assessment method, or
- (b) advertise that the person is accredited to apply the biodiversity assessment method.

Maximum penalty—\$5,500.

[20] Clauses 6.10AA and 6.10AAA

Insert before Part 6, Division 6.3—

6.10AA Genuine measures to avoid and minimise impacts on biodiversity—the Act, section 6.16(1A)

- (1) A person assessing a measure taken or proposed to be taken to avoid or minimise the impact of an activity on biodiversity values may assess the measure as a genuine measure if the measure—
 - (a) was not legally required to be taken when the measure was identified, and

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- (b) responds to identified biodiversity values on the site where the activity will take place in accordance with the biodiversity assessment method, and
 - (c) can be demonstrated to reduce the predicted or actual impact of the activity on biodiversity values on the site where the activity will take place when compared to—
 - (i) taking no measures to avoid or minimise the impact of the activity on biodiversity values, and
 - (ii) taking all practicable measures to avoid or minimise the impact of the activity on biodiversity values, and
 - (d) is supported by evidence, and
 - (e) is independently verifiable.
- (2) In this clause—
activity includes the following—
- (a) development,
 - (b) clearing,
 - (c) actions that impact on biodiversity values on land proposed for biodiversity certification.

6.10AAA Transitional provision for biodiversity development assessment reports and biodiversity certification assessment reports—the Act, section 6.10(6)

- (1) Clauses 6.7A and 6.8, as inserted by the *Biodiversity Conservation Assessment (Biodiversity Offsets Scheme) Regulation 2026*, apply only to a biodiversity development assessment report certified after the commencement day.
- (2) Clauses 6.9 and 6.9A, as inserted by the *Biodiversity Conservation Assessment (Biodiversity Offsets Scheme) Regulation 2026*, apply only to a biodiversity certification assessment report certified after the commencement day.
- (3) In this clause—
commencement day means the day the *Biodiversity Conservation Assessment (Biodiversity Offsets Scheme) Regulation 2026*, Schedule [16] and [18] commences.

[21] Clause 6.12

Omit the clause.

Insert instead—

6.12 Deferral of payment of total Fund deposit—the Act, section 6.21(6)

- (1) The Environment Agency Head may, before the transfer (an **initial transfer**) of a biodiversity credit is registered, approve the deferral of a transfer payment under the Act, section 6.21 to the next transfer of the credit.
- (2) The Environment Agency Head may only defer a transfer payment in accordance with subclause (1) if satisfied that—
 - (a) it would, in the circumstances of the case, be unreasonable to require the payment, and
 - (b) deferral will not have an adverse impact on the biodiversity values protected under the biodiversity stewardship agreement for the biodiversity stewardship site for which the credit was created, and
 - (c) the recipient of the initial transfer agrees with the deferral.

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- (3) Without limiting subclause (2), the Environment Agency Head may approve deferral of a transfer payment if—
 - (a) the initial transfer is to the beneficiary of a deceased estate as part of the distribution of the estate, or
 - (b) the initial transfer occurs as part of the sale to the same person of all of—
 - (i) the remaining biodiversity credits created under a biodiversity stewardship agreement, and
 - (ii) the land for which the credits were created.
- (4) The Environment Agency Head may approve the deferral of the same transfer payment on more than one occasion.
- (5) In this clause—

remaining biodiversity credit, for a biodiversity stewardship agreement, means a biodiversity credit that has not been transferred, retired or cancelled.

[22] Clause 6.13A

Insert after clause 6.13—

6.13A Circumstances when payment must not substitute for retirement of biodiversity credit—the Act s 6.30(2)

- (1) A person required to retire biodiversity credits must not satisfy the requirement by paying an amount into the Biodiversity Conservation Fund above the credit retirement threshold unless the person gives the Environment Agency Head a declaration in the approved form that the person has taken an acceptable measure to attempt to comply with the requirement.
- (2) Unless the requirement to retire biodiversity credits provides that the credits must be retired in stages, a single credit retirement threshold applies to the entire requirement.
- (3) If a requirement to retire biodiversity credits provides that the credits must be retired in stages, a new credit retirement threshold applies for each stage.
- (4) In this section—

acceptable measure means a measure—

 - (a) approved by the Environment Agency Head, and
 - (b) set out in a document published on a website maintained by the Environment Agency Head.

credit retirement threshold is 100 biodiversity credits from the same class of biodiversity credit.

[23] Part 6, Division 6.4, heading

Insert “—the Act, ss 6.34 and 6.36” after “Fund”.

[24] Part 6, Division 6.4

Insert before clause 6.14—

Subdivision 6.4.1 Preliminary

[25] Clause 6.14 Definitions

Insert in alphabetical order in clause 6.14—

common account—see clause 6.15(1).

common account site means a biodiversity stewardship site other than a legacy site.

general account—see clause 6.22A.

legacy account—see clause 6.15D(1).

legacy site means an existing biodiversity stewardship site for which an election under clause 6.15C is in effect.

[26] Clause 6.15

Omit the clause.

Insert instead—

Subdivision 6.4.2 Biodiversity stewardship site common account

6.15 Common account

- (1) The Fund Manager must keep a biodiversity stewardship site common account (the *common account*).
- (2) The common account must, in accordance with the Minister's directions, record the following—
 - (a) payments into the Fund for the transfer or retirement of biodiversity credits created for each common account site,
 - (b) management payments from the Fund for each common account site.

6.15A Payment after termination of biodiversity stewardship agreement

- (1) This clause applies if a biodiversity stewardship agreement is terminated, including because the land established as a biodiversity stewardship site under the agreement is reserved under the *National Parks and Wildlife Act 1974*, Part 4 or 4A.
- (2) The Minister may direct the Fund Manager to make a payment from the Fund to assist the Minister, or another person specified by the Minister, to manage the reserve in which the former biodiversity stewardship site is situated in a manner consistent with—
 - (a) the objects of the *National Parks and Wildlife Act 1974*, and
 - (b) the management principles of the reserve.
- (3) The amount of a payment must be determined by the Minister.

6.15B Common account balance

- (1) The Fund Manager must at the end of each financial year, and at other times determined by the Minister, give the Minister notice of the following—
 - (a) the balance of the common account, and
 - (b) whether the account has—
 - (i) an operational deficit, or
 - (ii) an operational surplus.
- (2) In this clause—

operational deficit means an account balance that is less than the total present value of all future scheduled management payments for common account sites.

operational surplus means an account balance that is equal to or more than the total present value of all future scheduled management payments for common account sites.

Subdivision 6.4.3 Legacy biodiversity stewardship site accounts

6.15C Legacy biodiversity stewardship site elections

- (1) This section applies in relation to land (an *existing biodiversity stewardship site*) if—
 - (a) the land is, on the commencement of this clause, a biodiversity stewardship site, and
 - (b) the designation of the land as a biodiversity stewardship site occurred before the commencement of this clause.
- (2) The owner of the existing biodiversity stewardship site may elect for the Fund, so far as it relates to the site, to be managed in accordance with this subdivision.
- (3) An election must be made—
 - (a) before [**date to be confirmed**], and
 - (b) by written notice to the Fund Manager.
- (4) The owner of a legacy site may withdraw the election by written notice to the Fund Manager.
- (5) The withdrawal of an election takes effect at the end of the financial year in which the election is withdrawn.
- (6) An election ceases to have effect at the end of—
 - (a) if the election is withdrawn—the day on which the withdrawal takes effect, or
 - (b) otherwise—[**date to be confirmed**].
- (7) When an election ceases to have effect, funds in the legacy account to which the election relates must be managed in accordance with Subdivision 6.4.2.

6.15D Legacy accounts

- (1) The Fund Manager must keep an account (a *legacy account*) for each legacy site.
- (2) Each legacy account must, in accordance with the Minister's directions, record the following—
 - (a) payments into the Fund for a transfer or retirement of biodiversity credits created for the biodiversity stewardship site,
 - (b) management payments from the Fund for the biodiversity stewardship site.

[27] Clauses 6.16, 6.17, 6.18, 6.19, 6.20, 6.21(5) and 6.23(5)

Omit “biodiversity stewardship site account” wherever occurring.

Insert instead “legacy account”.

[28] Clauses 6.16(2) and (3), 6.17(2)(a), 6.18(2)(a), 6.20(1), (2)(c) and (4) and 6.23(5)

Omit “the biodiversity stewardship site” wherever occurring.

Insert instead “the legacy site”.

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[29] Clauses 6.17(1), 6.18(1) and 6.19(1) and (2)

Omit “a biodiversity stewardship site” wherever occurring.
Insert instead “a legacy site”.

[30] Clauses 6.17(1)(a), 6.18(1), 6.19 and 6.20

Omit “that biodiversity stewardship site” wherever occurring.
Insert instead “the legacy site”.

[31] Clause 6.20(1)

Omit “that account (if any) to a general account”.
Insert instead “the account to the general account”.

[32] Clause 6.20(2)(a)

Omit “any biodiversity stewardship site accounts”.
Insert instead “legacy accounts”.

[33] Clause 6.20(3)

Omit “a general account”.
Insert instead “the general account”.

[34] Clause 6.21, heading

Omit “**Biodiversity stewardship**”.
Insert instead “**Legacy**”.

[35] Clause 6.21(5)

Omit “the biodiversity stewardship site concerned”.
Insert instead “the legacy site concerned”.

[36] Clause 6.21A

Insert after clause 6.21—

6.21A Repeal

This subdivision is repealed on 30 June 2031.

[Repeal date subject to consultation and to be confirmed.]

[37] Subdivision 6.4.4

Insert before clause 6.22—

Subdivision 6.4.4 Fund management

[38] Clause 6.22A–6.22C

Insert after clause 6.22—

6.22A General account

- (1) The Fund Manager must keep a *general account* for amounts paid into or from the Fund that are not recorded in the common account or a legacy account.

- (2) Payments made into or from the general account must be recorded in the accounts of the Fund in accordance with the Minister's directions.

6.22B Proceeds of investment of Fund

- (1) Money held in the Fund may be invested as a common pool.
- (2) The proceeds of the Fund investment must be distributed among the common account and each legacy account—
- (a) according to the amount contributed from each account, or
 - (b) in another way determined by the Minister.

6.22C Directions about distributions from Fund

- (1) The Minister may give a direction to the Fund Manager about the distribution of money in the Fund.
- (2) A direction may only be given—
- (a) about making management payments relating to a biodiversity stewardship site managed in the common account, and
 - (b) if the Minister is satisfied on reasonable grounds that the money in the Fund is insufficient to meet scheduled management payments.

[39] Clause 6.23 Winding up of Fund (section 6.34(5))

Insert after clause 6.23(5)—

- (5A) The proceeds of the common account must, after payment of Fund Manager liabilities, be distributed among the owners of common account sites in the way directed by the Minister.

[40] Clause 6.25 heading

Omit “fund”.

Insert instead “Fund”.

[41] Subdivision 6.4.5

Insert after clause 6.25—

Subdivision 6.4.5 Transitional provision

6.25A Transitional provision for biodiversity stewardship site accounts

- (1) Division 6.4, as in force immediately before the commencement day, applies to a biodiversity stewardship site account kept by the Fund Manager immediately before the commencement day until [date to be determined].
- (2) In this clause—
- commencement day* means the day the *Biodiversity Conservation Amendment (Biodiversity Offsets Scheme) Regulation 2026* commences.
[commencement date subject to consultation and to be confirmed]

[42] Clause 6.26

Omit the clause.

Insert instead—

6.26 Fee for retirement of biodiversity credit—the Act, s 6.27(3)(b)

- (1) An application to retire a biodiversity credit must be accompanied by a fee of 0.24 fee units for each biodiversity credit to be retired.
- (2) If an application to retire biodiversity credits is for a prescribed purpose, the application fee is only payable for the first 10,000 credits to be retired for the project regardless of the number of separate applications made.
- (3) Subclause (2) does not apply to an application to retire biodiversity credits made by the Biodiversity Conservation Trust.
- (4) In this clause—

prescribed purpose means the following—

 - (a) to comply with a legal obligation of the applicant under a planning or vegetation clearing approval,
 - (b) to comply with an obligation under a SODA for the Environment Agency Head to retire like-for-like biodiversity credits.

SODA means a strategic offset delivery agreement under clause 6.3A.

[43] Part 6, Division 6.5A

Insert after clause 6.29—

Division 6.5A Conservation brokers—the Act, section 6.6(3)

Subdivision 1 Preliminary

6.29A Definitions

- (1) In this division—

accredited, for a conservation broker, means an individual who—

 - (a) is pre-approved for accreditation by the Environment Agency Head under clause 6.29D(1)(a), and
 - (b) holds a current certificate of accreditation issued by the Environment Agency Head under clause 6.29I.

broking service means the following—

 - (a) negotiating a biodiversity stewardship agreement on behalf of a land owner,
 - (b) negotiating, on behalf of a development proponent, with a landholder for the landholder to enter into a biodiversity stewardship agreement,
 - (c) providing advice on and analysis of the costs associated with buying and selling biodiversity credits,
 - (d) advice on buying or selling biodiversity credits,
 - (e) assistance with buying or selling biodiversity credits.

conservation broker means an individual who provides one or more broking services, whether or not for fee or reward.

serious offence means an offence—

 - (a) committed in New South Wales and punishable by imprisonment for 12 months or more, or
 - (b) committed elsewhere that would, if committed in New South Wales, be an offence punishable by imprisonment for 12 months or more.

- (2) An individual is not a conservation broker if the individual provides broking services only—
 - (a) in the course of the individual's employment under the *Government Sector Employment Act 2013*, or
 - (b) to and for the benefit of the individual's employer.

6.29B Conservation broker must be accredited

- (1) A person must not provide a broking service, or advertise the person's willingness to provide a broking service, unless—
 - (a) the person is accredited as a conservation broker, and
 - (b) the person's certificate of accreditation is not suspended.Maximum penalty—\$5,500.
- (2) Despite subsection (1), a person accredited under the Act, section 6.10 to prepare biodiversity assessment reports in accordance with the biodiversity assessment method is not required to be accredited under this division to negotiate a biodiversity stewardship agreement on behalf of a land owner.

Subdivision 2 Pre-approval

6.29C Application for pre-approval

- (1) An individual may apply to the Environment Agency Head for pre-approval as a conservation broker.
- (2) An application must be—
 - (a) made in the approved form and the approved way, and
 - (b) specify the broking services the applicant wishes to be pre-approved for, and
 - (c) be accompanied by an application fee of 2 fee units.

6.29D Deciding application

- (1) The Environment Agency Head may decide an application for pre-approval by—
 - (a) approving the application, with or without conditions, or
 - (b) refusing the application.
- (2) The Environment Agency Head must give an applicant written notice of the Environment Agency Head's decision.
- (3) If the Environment Agency Head grants an application for pre-approval, the Environment Agency Head must give the applicant written notice of the following—
 - (a) that the applicant has been pre-approved for accreditation,
 - (b) that the applicant must not provide broking services unless the applicant holds a valid certificate of accreditation,
 - (c) how the applicant may apply for a certificate of accreditation.
- (4) If the Environment Agency Head refuses an application for pre-approval, the Environment Agency Head must give the applicant reasons for the refusal.

6.29E Variation

- (1) The services for which a conservation broker is pre-approved may be varied—

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- (a) at the request of the broker, or
 - (b) on the initiative of the Environment Agency Head.
- (2) An application made by a broker must—
- (a) be made in the approved form and the approved way, and
 - (b) specify the variation applied for, and
 - (c) be accompanied by an application fee of 2 fee units.
- (3) Before a broker's pre-approval is varied on the initiative of the Environment Agency Head, the Environment Agency Head must be satisfied that—
- (a) the broker has failed to comply with the conditions of the broker's pre-approval, or
 - (b) the broker has failed to comply with the **[Conservation Brokers Code of Conduct]** published by **[Environment Agency Head]** on **[DATE]**, or
 - (c) the broker's accreditation to apply the Biodiversity Assessment Method has been suspended or cancelled, or
 - (d) the broker has been found guilty of an offence under the Act or this regulation, or
 - (e) the broker has been convicted of a serious offence.
- (4) When a broker's pre-approval is varied, the Environment Agency Head must give the broker written notice of the following—
- (a) the date the variation takes effect,
 - (b) the reasons for the variation.

6.29F Grounds for refusing pre-approval

The Environment Agency Head may refuse to grant an applicant pre-approval on the following grounds—

- (a) the applicant has been found guilty of an offence under the Act or this regulation,
- (b) the applicant has been convicted of a serious offence,
- (c) the Environment Agency Head is not satisfied the applicant is a fit and proper person for pre-approval,
- (d) the Environment Agency Head is otherwise not satisfied the applicant is a suitable person for pre-approval.

6.29G Cancellation of pre-approval

- (1) The Environment Agency Head may, by written notice given to a conservation broker, cancel the broker's pre-approval.
- (2) A broker's pre-approval may be cancelled on the following grounds—
 - (a) the broker has requested the cancellation,
 - (b) the broker has failed to comply with the conditions of the broker's pre-approval,
 - (c) the broker has failed to comply with the **[Conservation Brokers Code of Conduct]** published by **[Environment Agency Head]** on **[DATE]**,
 - (d) for a broker who is also accredited to apply the Biodiversity Assessment Method—the broker's accreditation to apply the Biodiversity Assessment Method has been suspended or cancelled,

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- (e) the broker has been found guilty of an offence under the Act or this regulation,
 - (f) the broker has been convicted of a serious offence,
 - (g) the Environment Agency Head is satisfied on reasonable grounds that the broker is no longer a fit and proper person for pre-approval,
 - (h) the Environment Agency Head is otherwise satisfied on reasonable grounds that the broker is no longer a suitable person for pre-approval.
- (3) A notice cancelling a broker's pre-approval must specify—
- (a) the date on which cancellation takes effect, and
 - (b) the grounds for the cancellation.

6.29H Process

- (1) Before cancelling a conservation broker's pre-approval, the Environment Agency Head must—
- (a) give the broker written notice that the Environment Agency Head is considering cancelling the broker's pre-approval and the reasons, and
 - (b) give the broker a reasonable period of time to provide a response and submission as to why the broker's pre-approval should not be cancelled, and
 - (c) consider the broker's response and submissions.
- (2) This section does not apply to a pre-approval cancelled at the request of the broker.

Subdivision 3 Accreditation

6.29I Certificate of accreditation

- (1) An individual who is pre-approved as a conservation broker may apply to the Environment Agency Head for a certificate of accreditation.
- (2) An application must—
- (a) be made in the approved form and the approved way, and
 - (b) be accompanied by an application fee of 31 fee units.
- (3) A certificate of accreditation—
- (a) may be issued subject to conditions, and
 - (b) must include the following—
 - (i) the name of the accredited conservation broker,
 - (ii) the broking services for which the broker is accredited,
 - (iii) the conditions of the broker's accreditation,
 - (iv) the date the certificate was issued,
 - (v) the date the certificate expires, and
 - (c) may include other information the Environment Agency Head considers appropriate.
- (4) A certificate of accreditation ceases to have effect—
- (a) 3 years after the day on which the certificate is issued unless the certificate holder's pre-approval has been cancelled, or
 - (b) on the date the certificate holder's pre-approval is cancelled under clause 6.29G.

- (5) If a certificate of accreditation ceases to have effect because the certificate holder's pre-approval is cancelled, the holder is not entitled to a refund of fees.

6.29J Variation

- (1) A conservation broker's accreditation may be varied as follows—
- (a) to vary the broking services for which the broker is accredited,
 - (b) to vary the conditions of the broker's accreditation.
- (2) A broker's accreditation may be varied—
- (a) at the request of the broker, or
 - (b) on the initiative of the Environment Agency Head.
- (3) An application made by a broker must—
- (a) be made in the approved form and the approved way, and
 - (b) specify the variation applied for, and
 - (c) be accompanied by an application fee of 2 fee units.
- (4) Before a broker's accreditation is varied on the initiative of the Environment Agency Head, the Environment Agency Head must be satisfied that—
- (a) the broker has failed to comply with the conditions of the broker's accreditation, or
 - (b) the broker has failed to comply with the **[Conservation Brokers Code of Conduct]** published by **[Environment Agency Head]** on **[DATE]**, or
 - (c) the broker's accreditation to apply the Biodiversity Assessment Method has been suspended or cancelled, or
 - (d) the broker has been found guilty of an offence under the Act or this regulation, or
 - (e) the broker has been convicted of a serious offence.
- (5) When a broker's accreditation is varied, the Environment Agency Head must give the broker written notice of the following—
- (a) the date the variation takes effect,
 - (b) the reasons for the variation.

6.29K Suspension of certificate of accreditation

The Environment Agency Head may suspend a conservation broker's certificate of accreditation while considering whether or not to cancel the broker's pre-approval under clause 6.29G.

Subdivision 4 Miscellaneous

6.29L Register of conservation brokers

- (1) The Environment Agency Head must keep a register of conservation brokers.
- (2) The register must include the following for each accredited conservation broker—
- (a) the name and contact details of the broker,
 - (b) the broking services for which the broker is accredited,
 - (c) the conditions of the broker's accreditation,
 - (d) the date accreditation was granted,

- (e) the date accreditation ends.
- (3) The register must also include the following for each conservation broker whose pre-approval has been cancelled—
 - (a) the name of the broker,
 - (b) that the broker's pre-approval has been cancelled, and
 - (c) the date on which the broker's pre-approval was cancelled.
- (4) The register must be publicly available, including by being published on a website maintained by the Environment Agency Head.

[44] Part 7 Biodiversity assessment and approvals under Planning Act

Insert before clause 7.1—

Division 7.1 Preliminary

7.1AA Definition

In this part—

Map means the Biodiversity Values Map published from time to time by the Environment Agency Head under clause 7.3(2).

Division 7.2 Clearing of land

[45] Clause 7.1 Biodiversity offsets scheme threshold (section 7.4)

Omit “clause 7.3.” from clause 7.1(1)(b).

Insert instead—

clause 7.3 if—

- (i) the land includes land that is a declared area of outstanding biodiversity value, or
- (ii) the area of land that will be cleared, or on which the other action will occur, is more than 100m², whether or not individual parcels of the land are contiguous.

[46] Clause 7.1(3)

Omit the subclause.

Insert instead—

- (3) If proposed development involves the subdivision of land, the subdivision is taken to include the clearing of native vegetation that, in the opinion of the relevant consent authority or other planning approval body, is required or likely to be required for the purposes for which the land will be subdivided.
- (4) Clearing taken into account under subclause (3) must not be taken into account when determining whether subsequent development on the land exceeds the threshold.

[47] Clause 7.1, note

Omit “*State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*”.

Insert instead “*State Environmental Planning Policy (Biodiversity and Conservation) 2021, Chapter 2*”.

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[48] Clause 7.1, note

Omit “The Policy will apply the approval process of the Native Vegetation Panel under that Part.”.

[49] Clause 7.2 Clearing of area of land that exceeds threshold

Omit clause 7.2(2).

Insert instead—

- (2) The minimum lot size applicable to land being cleared is as follows—
 - (a) if an environmental planning instrument under the *Environmental Planning and Assessment Act 1979* prescribes a standard minimum lot size in relation to the land on which the proposed development will be carried out—the minimum lot size,
 - (b) otherwise—
 - (i) if the land on which the proposed development will be carried out is an allotment—the actual size of the allotment, or
 - (ii) if the land on which the proposed development will be carried out is not an allotment—the minimum lot size of the smallest allotment of land adjacent to the land.
- (2A) For subclause (2)(a), the standard minimum lot size is the minimum lot size that applies to development generally on the land, and not a different minimum lot size that applies to particular development or in particular circumstances.

[50] Clause 7.3 Clearing on land within Biodiversity Values Map exceeds threshold

Omit clause 7.3(1).

[51] Clause 7.3(2)

Insert “, on an appropriate Government website,” after “publish”.

[52] Clause 7.3(3)(b)

Omit “*State Environmental Planning Policy No 44—Koala Habitat Protection*”.

Insert instead “*State Environmental Planning Policy (Biodiversity and Conservation) 2021, Chapters 3 and 4*”.

[53] Clause 7.3(4)

Omit the subclause.

[54] Part 7, Division 7.3

Insert after clause 7.3—

Division 7.3 Impact on species

[55] Clause 7.4A

Insert after clause 7.4—

7.4A Modification of Part 4 activity other than State significant development—the Act, s 7.17(3)

- (1) This clause applies to an application to modify a development consent under the *Environmental Planning and Assessment Act 1979*, Part 4, other than a consent for—

- (a) State significant development, or
 - (b) complying development.
- (2) If, when granting a modification application, the consent authority proposes to change an offset obligation—
- (a) the application is taken to include a biodiversity development assessment report, and
 - (b) the Act, sections 7.11 and 7.12 apply to the application.

[56] Part 7, Division 7.4

Insert after clause 7.6—

Division 7.4 Ministerial concurrence

7.7 State significant development or infrastructure—the Act, section 7.14(3D)

- (1) For the Act, section 7.14(3D), the prescribed period is 10 business days.
- (2) In this clause—
business day means a day that is not—
 - (a) a Saturday or Sunday, or
 - (b) a public holiday or bank holiday throughout the State, or
 - (c) in the period between 20 December in a year and 10 January in the next year, both dates inclusive.

[57] Part 7, Division 7.5

Insert before Part 8—

Division 7.5 Amendment of operation of Biodiversity Values Map

7.8 Definitions

In this division—

amendment application—see clause 7.9(1).

decision certificate—see clause 7.10(3).

decision period means the period of 40 days after the day the Environment Agency Head receives an amendment application.

7.9 Landholder application

- (1) A landholder may apply to the Environment Agency Head to amend the operation of the Map on the landholder's land (an *amendment application*).
- (2) An amendment application must be made in the approved form and must be published on the Department's website.

7.10 Deciding application

- (1) The Environment Agency Head may decide an amendment application by—
 - (a) amending the operation of the Map on the landholder's land in accordance with the amendment application, or
 - (b) amending the operation of the Map on the landholder's land in a different way, or
 - (c) refusing to amend the operation of the Map on the landholder's land.

- (2) When considering an amendment application, the Environment Agency Head—
 - (a) must consider the information submitted on the application form, and
 - (b) may consider additional information the Environment Agency Head considers to be relevant.
- (3) The Environment Agency Head must decide an amendment application and give a landholder written notice of the decision (a *decision certificate*) within the decision period.
- (4) If the Environment Agency Head does not give a decision certificate within the decision period, the application is taken to have been refused.
- (5) The Environment Agency Head may determine an amendment application even if the application is taken to have been refused under this clause.

7.11 Circumstances in which decision period ceases to run

- (1) The decision period ceases to run if the Environment Agency Head—
 - (a) makes a decision (a *stop-the-clock decision*) that the period should cease to run, and
 - (b) gives the landholder who made the amendment application—
 - (i) written notice of the stop-the-clock decision, and
 - (ii) reasons for the stop-the-clock decision.
- (2) The decision period recommences if—
 - (a) the Environment Agency Head gives the landholder written notice that the period has recommenced, or
 - (b) the total period that stop-the-clock decisions have applied to an amendment application is longer than 90 days.
- (3) The Environment Agency Head must give the landholder written notice when the total period that stop-the-clock decisions have applied to an amendment application reaches 90 days.
- (4) The Environment Agency Head may make a stop-the-clock decision—
 - (a) at any time, and
 - (b) for any reason.
- (5) To avoid doubt, more than one stop-the-clock decision may be made for the same application.

7.12 Effect of decision

A landholder who receives a decision certificate may, within 90 days after the certificate is given to the landholder, elect to undertake development in accordance with—

- (a) the Map, or
- (b) the operation of the Map as amended in accordance with the certificate.

[58] Clause 8.3 Criteria to be taken into account by Minister when declaring strategic application (section 8.5(2))

Omit “Minister for Planning” from clause 8.3(c).

Insert instead “Planning Minister”.

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[59] Clause 9.1A

Insert before clause 9.2—

9.1A Definitions

In this division—

relevant considerations means the matters set out in clause 6.7(2).

serious and irreversible impacts on biodiversity values has the same meaning as in the Act, section 7.16.

[60] Clauses 9.5A–9.5C

Insert after clause 9.5—

9.5A Public register of decisions by approval authority—the Act, ss 9.7(1)(e2) and 9.11

The following information must be included in the public register of decisions by an approval authority—

- (a) the threatened species and threatened ecological communities likely to be subject to serious and irreversible impacts on biodiversity values because of the development or infrastructure that is the subject of the authority's decision,
- (b) the serious and irreversible impacts on biodiversity values to which each threatened species or threatened ecological community is likely to be subject,
- (c) the relevant considerations contributing to the authority's opinion that a development or infrastructure is likely to have a serious and irreversible impact on biodiversity values,
- (d) the name of the authority,
- (e) the location of—
 - (i) the development or infrastructure that is the subject of the approval, and
 - (ii) if the serious and irreversible impacts on biodiversity values are expected to be outside the location of the development or infrastructure—the local government areas and Interim Biogeographic Regionalisation of Australia subregions in which the impacts will occur,
- (f) information, including website addresses, about where the following can be obtained—
 - (i) the biodiversity development assessment report for the development or infrastructure subject to the approval,
 - (ii) other relevant documents,
- (g) additional information the Environment Agency Head considers appropriate.

9.5B Public register of decisions by determining authority—the Act, ss 9.7(1)(e3) and 9.11

The following information must be included in the public register of decisions by a determining authority—

- (a) the threatened species and threatened ecological communities likely to be subject to serious and irreversible impacts on biodiversity values because of activity that is the subject of the authority's determination,

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- (b) the serious and irreversible impacts on biodiversity values to which each threatened species or threatened ecological community is likely to be subject,
- (c) the relevant considerations contributing to the authority's opinion that the activity is likely to have a serious and irreversible impact on biodiversity values,
- (d) the name of the authority,
- (e) the location of—
 - (i) the activity that is the subject of the determination, and
 - (ii) if the serious and irreversible impacts on biodiversity values are expected to be outside the location of the activity—the local government areas and Interim Biogeographic Regionalisation of Australia subregions in which the impacts will occur,
- (f) additional information the Environment Agency Head considers appropriate.

9.5C Public register of refused decisions—the Act, ss 9.7(1)(e4) and 9.11

- (1) This clause relates to the public register of decisions to—
 - (a) refuse to grant planning approvals or vegetation clearing approvals, or
 - (b) refuse to confer biodiversity certifications.
- (2) The following information must be included in the public register—
 - (a) the threatened species and threatened ecological communities that were likely to be subject to serious and irreversible impacts on biodiversity values because of the activity that was refused approval or biodiversity certification,
 - (b) the serious and irreversible impacts on biodiversity values to which each threatened species or threatened ecological community was likely to be subject,
 - (c) the relevant considerations contributing to the approval authority's opinion that the development, activity, clearing or biodiversity certification is or would have been likely to have a serious and irreversible impact on biodiversity values,
 - (d) the name of the authority that refused approval for the development, activity, clearing or biodiversity certification,
 - (e) the location of—
 - (i) the development, activity, clearing or biodiversity certification that is the subject of the refusal, and
 - (ii) if the expected serious and irreversible impacts on biodiversity values were outside the location of the development, activity, clearing or biodiversity certification—the local government areas and Interim Biogeographic Regionalisation of Australia subregions in which the impacts would have occurred,
 - (f) additional information the Environment Agency Head considers appropriate.

[61] Clauses 9.6A and 9.6B

Insert after clause 9.6—

9.6A Public register of offset conditions on approvals—the Act, ss 9.7(1)(h1) and 9.11

The following information must, for each condition, be included in the public register of conditions—

- (a) the development, activity or clearing to which the condition relates,
- (b) the local government areas and Interim Biogeographic Regionalisation of Australia subregions in which the development, activity or clearing to which the condition relates will occur,
- (c) the biodiversity conservation measures required by the condition,
- (d) if the details of the biodiversity conservation measures required by the condition are set out in an instrument under an approval—
 - (i) the date the instrument was approved, and
 - (ii) the date of each amendment of the instrument,
- (e) the date the condition was imposed or modified,
- (f) the authority that imposed or modified the condition,
- (g) information, including website addresses, about where the following can be obtained for the development, activity or clearing to which the condition relates—
 - (i) the biodiversity development assessment report,
 - (ii) the details of a concurrence given under the Act, Part 7, Division 3,
 - (iii) other relevant documents,
- (h) additional information the Environment Agency Head considers appropriate.

9.6B Public register of measures to avoid and minimise impacts on biodiversity—the Act, ss 9.7(1)(h2) and 9.11

The following information must, for each measure, be included in the public register of measures to avoid and minimise impacts on biodiversity—

- (a) the development, activity or clearing to which the measure relates,
- (b) the local government areas and Interim Biogeographic Regionalisation of Australia subregions in which the development, activity or clearing to which the measure relates will occur,
- (c) the date the condition was imposed or modified,
- (d) the authority that gave the approval to which the measure relates,
- (e) if an agreement identifier for a private land conservation agreement applying to the land to which the measure relates is recorded in the register kept under clause 9.3—the agreement identifier,
- (f) information, including website addresses, about where the following can be obtained for the development, activity or clearing to which the condition relates—
 - (i) the biodiversity development assessment report,
 - (ii) the details of a concurrence given under the Act, Part 7, Division 3,
 - (iii) other relevant documents,
- (g) additional information the Environment Agency Head considers appropriate.

[62] Clause 9.9A

Insert after clause 9.9—

9.9A Obligation to give information for public registers

- (1) The Environment Agency Head may, by written notice, direct a person to give the Environment Agency Head information that is required to be included on a register to which this division applies.
- (2) A notice under this clause may specify the date by which the information must be given to the Environment Agency Head.
- (3) Information under this clause must be given to the Environment Agency Head electronically in the way determined by the Environment Agency Head.
- (4) A person who fails to comply with a written notice under this section does not commit an offence, but may, if the person has or can reasonably obtain the information, be subject to civil proceedings under the Act, section 13.14.
- (5) It is a defence to proceedings for a contravention of this clause if the person subject to the proceedings establishes that—
 - (a) there is an overriding public interest against disclosure of the information under the *Government Information (Public Access) Act 2009* or if access to the information would otherwise be denied under that Act, or
 - (b) disclosing the information would contravene the *Privacy and Personal Information Protection Act 1998*.

[63] Clause 13.2 Provision of information on additional matters for which offence of false and misleading information applies (section 13.10(2)(c))

Omit “Act.” from clause 13.2(f).

Insert instead—

- Act,
- (g) giving the Environment Agency Head a declaration under clause 6.13A(1).