

Shoalhaven City Council resolved at its Development Committee meeting on Tuesday 2 September 2014, resolved to provide the following submission to the Independent Review of Biodiversity Legislation in NSW.

- Council has made previous submissions on components of the Native Vegetation Act 2003. Many of these issues have been addressed the reduction in dual consent issues and the introduction of new 'Routine Agricultural Management Activities' to enable land managers to clear for a wider range of activities without consent.
- Any review of biodiversity legislation also needs to consider the Environmental Planning and Assessment Act (EP&A)1979. From an administrative point of view it is difficult to operate in the current legislative framework because of the overlap of various pieces of legislation regarding environmental protection.
- There is currently no simple way to address the impact of a development on a single threatened species, where it is determined that the development is likely to have a significant impact on that species. The only option is for the applicant to do a Species Impact Statement (SIS). An SIS considers all species, not just the species in question. This leads to a costly process which could be simpler if it could be refined down to focus on the species in question rather than be focused on an overall review of all threatened species within the area of the development.
- Other strategic or landscape scale opportunities to assess and protect threatened species are required that still provide opportunity for appropriate development to take place. In the case of Jerberra Estate, Council worked closely with NSW Office of Environment & Heritage (OEH) to prepare a package of planning controls to achieve positive biodiversity outcomes whilst allowing development. The Jerberra planning controls have been endorsed by OEH. A strategic level assessment for threatened species was undertaken as part of the development of the Jerberra Development Control Plan (DCP).

However, because the Shoalhaven Local Environmental Plan (SLEP) 2014 was not biocertified, each individual development application must still include an assessment of significance (AoS), also known as a 7-part test, to assess the impact of the development on threatened species. This is because the overall AoS is not part of the assessment for a development application (DA); therefore it does not fulfil the requirements under the EP&A Act. Biodiversity certification of the LEP is currently the only way to 'turn-off' the EP&A Act requirement for an AoS to be completed for every DA where threatened species assessment is required.

To provide more certainty for all stakeholders, there should be a legal process by which an AoS (7-part test) or equivalent assessment, can be undertaken for a proposed or adopted LEP/DCP provided sufficient detail and certainty is available on the potential development (including 10/50 clearing) and conservation outcomes.

More information about the planning controls for Jerberra Estate can be found on Council's website – <http://www.shoalhaven.nsw.gov.au/Planning-amp-Building/Strategic-planning/Paper-subdivisions/Jerberra-Estate>

- The Rural Fires Amendment (Vegetation Clearing) Bill 2014 effectively overrides Councils ability to strategically implement planning solutions in areas that have threatened species issues. The only instruments not overridden by the 10/50 code are on-title covenants (Property Vegetation Plans and Voluntary Conservation Agreements). LEP, DCP, Section 88B restrictions and conditions of consent are all overridden.

The 10/50 vegetation clearing provisions are likely to result in a dramatic increase in demand from development applicants for PVPs and VCAs, where development is proposed within close proximity to threatened species (particularly understory and ground-dwelling species).

To avoid this unnecessary administrative burden, the 10/50 legislation should be amended so that it does not override conditions of consent which specifically pertain to the retention and protection of threatened species within 50 metres of the proposed development.

- If the legislation is updated, then the supporting material also needs to be improved. There is now quite sophisticated LiDar and satellite imagery available which should be used to update topographical data resources which feed into planning and environmental legislation.

For example:

- The SEPP 14 Wetlands gazetted boundaries are often incorrect. With the addition of new high resolution imagery, this should be rectified.
- The legislation refers to 'prescribed streams'. These are listed in a 'Restriction on the removal of trees on the NSW watercourses booklet'. The list is outdated and based on 250,000 topographical maps. The stream names used in the lists are those that applied in 1977 when the original list was compiled. As a result it vastly underestimates the numerous streams and creeks across the state.

- There needs to be a more consistent approach to the protection of riparian areas. Riparian areas offer some of the most important habitat for a range of threatened species. Currently there is no specific legislative protection of riparian areas.

For example, in some policies buffers of 40 metres are recommended, in others it's 50 metres, sometimes it's broken up into 10, 20 and 40metres, other times it's a blanket 40 metres.

Thankyou for the opportunity to make a submissions.

Regards,

Kelie Lowe

Environmental Services Manager
Shoalhaven City Council

