

Threatened Species Impact Assessment in the Shoalhaven

Advisory Information to Chapter G5 Section 6.2 Threatened Species Impact Assessment of Shoalhaven DCP

Statutory framework

Environmental impact assessment of development must take into account the provisions of the *Environmental Planning and Assessment Act 1979* (EP&A Act), the *Threatened Species Conservation Act 1995* (TSC Act), the *Commonwealth Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and other legislation relevant to the protection of threatened flora and fauna species, EECs and matters of national significance.

Environmental Planning and Assessment Act 1979

Section 5A(1) of the EP&A Act states that a consent authority must take into account whether a proposed development or activity is likely to have a significant effect upon any threatened species, endangered population, EEC or their habitats listed under the TSC Act or under the *Fisheries Management Act 1994* (FM Act).

Council must assess relevant assessment guidelines and the factors (i.e. '7 Part Test') stated in Section 5A(2) of the EP&A Act in making a determination as to whether the proposed development is likely to have a significant effect upon any threatened species, endangered population, EECs or their habitats.

The process for undertaking the '7 Part Test', or AoS, is outlined in Chapter G5 Section 6.2 Threatened Species Impact Assessment of Shoalhaven DCP (www.dcp2014.shoalhaven.nsw.gov.au).

Further information on the development assessment process and Section 5A Assessment (7part test) is available on Council's website at <http://www.shoalhaven.nsw.gov.au/Planning-amp-Building/Development/Clearing-of-native-vegetation-for-development>

The '7 Part Test' will determine whether a Species Impact Statement (SIS) is required.

Threatened Species Conservation Act 1995

The TSC Act:

- Provides for the consideration of measures for the conservation of all threatened flora and fauna native to NSW and their habitats (including populations and ecological communities).
- Aims to ensure that all threatened flora and fauna which are native to NSW is protected.
- Places responsibilities on applicants, consent authorities and determining authorities and the NSW Office of Environment and Heritage (OEH) for the protection and preservation of threatened species, populations and EECs.
- Also introduces recovery and management strategies for the protection of and preservation of threatened species, populations and EECs.
- Requires licensing of any action which is likely to result in one or more of the following:
 - (a) Harm a threatened species, population or endangered ecological community,
 - (b) Pick a threatened species, population or ecological community,
 - (c) Damage a critical habitat, or
 - (d) Damage habitat of a threatened species, population or ecological community.

Schedules of the TSC Act

Endangered species, populations and ecological communities, critically endangered species and ecological communities, vulnerable species and ecological communities and key threatening process are listed in schedules attached to the TSC Act. A summary of these schedules is shown in Table 1 below.

Schedules of the TSC Act

<i>Schedule 1</i>	<i>Schedule 1A</i>	<i>Schedule 2</i>	<i>Schedule 3</i>
Part 1 – Endangered species	Part 1 – Critically endangered species	Part 1 – Vulnerable species	Key threatening processes
Part 2 – Endangered populations	Part 2 – Critically endangered ecological communities	Part 2 – Vulnerable ecological communities	
Part 3 – Endangered ecological communities (EECs)			
Part 4 – Species presumed extinct			

Endangered & vulnerable flora and fauna species, endangered populations, EECs

The TSC Act provides for the listing of species, populations and ecological communities threatened in NSW, as determined by the NSW Scientific Committee. The Scientific Committee is an independent body responsible for reviewing nominations and determining which species, populations, ecological communities are to be listed. Council recommends that proponents and decision-makers review these determinations to ensure all relevant matters are taken into account during the decision-making process. Preliminary and final determinations made by the NSW Scientific Committee can be obtained from the OEH website:

<http://www.environment.nsw.gov.au/determinations/index.htm>

The listing of vulnerable and endangered species, endangered populations and vulnerable and EECs under Schedules 1, 1A and 3 of the TSC Act is an on-going and dynamic process. Council recommends that you regularly review these Schedules to ensure any impact assessment and '7 Part Test' covers all relevant endangered and vulnerable species, populations and communities. Preliminarily listed species should also be considered.

The current up to date list of endangered and vulnerable species, populations and communities in Shoalhaven may be obtained from the OEH website: www.environment.nsw.gov.au/threatenedspecies.

Key threatening processes

The TSC Act lists key threatening processes in Schedule 3 of the Act. These are determined by the NSW Scientific Committee. A requirement for the listing of key threatening processes is that it adversely affects threatened species, populations or ecological communities, or that it may cause species, populations or ecological communities that are not threatened to become threatened. Council recommends that proponents and decision-makers review the determinations made by the NSW Scientific Committee by visiting the OEH website.

The listing of additional key threatening processes under Schedule 3 of the TSC Act is an on-going and dynamic process. Council recommends that you regularly review the key threatening processes under Schedule 3 of the TSC Act.

The current up to date list of key threatening processes affecting threatened species, populations and EECs in Shoalhaven may be obtained from the OEH website:

<http://www.environment.nsw.gov.au/threatenedspecies/keythreateningprocesses.htm>

Critical habitat

Critical habitats are areas of land that are crucial to the survival of particular threatened species, populations and ecological communities.

The listing of additional critical habitat under the TSC Act is an on-going and dynamic process. Council recommends that you regularly review the Critical Habitat Register. The current up to date list of critical habitat in Shoalhaven Local Government Area (LGA) may be obtained from the OEH website.

Priorities action statement, recovery plans and threat abatement plans

The TSC Act requires the Director General (DG) of OEH to undertake the preparation of recovery plans and threat abatement plans for all threatened species, endangered populations and EECs as listed under Schedules 1 and 2 of the TSC Act.

The priorities action statement (PAS) lists strategies for promoting the recovery of each threatened species, population and ecological community and for managing each key threatening process. The PAS complements and integrates recovery and threat abatement plans by identifying actions required for implementation before a plan is scheduled to be prepared, or by replacing a plan altogether when it is considered that the formal process of preparing a recovery plan or threat abatement plan is not required. Actions identified in a recovery plan or threat abatement plan are integrated within the PAS. The PAS identifies relative priorities for the implementation of the strategies and establishes performance measures to facilitate reporting on their achievements.

Recovery plans and threat abatement plans contain important biological and ecological information and should be utilised wherever available by proponents, applicants and decision makers.

The current up to date list of recovery plans and threat abatement plans may be obtained from the OEH website: www.environment.nsw.gov.au/threatenedspecies

Council must have consideration to any recovery plan and/or threat abatement plan that applies to a threatened species, EEC or endangered population that may be affected by a proposed development. Where a recovery plan and/or threat abatement plan includes actions that are relevant to the carrying out of development on a site affected by the plan, the provisions of the plan may be implemented by Council through the development approval process.

Licensing Provisions of Part 6 of the TSC Act

Any persons proposing to undertake an action that will, or is likely to, result in one or more of the following may require a licence under section 91 of the TSC Act:

- a) Harm to any animal that is of, or is part of, a threatened species, population or ecological community,
- b) The picking of any plant that is of, or is part of, a threatened species, population or ecological community,
- c) Damage to critical habitat,
- d) Damage to habitat of a threatened species, population or ecological community.

OEH is the licensing authority for a section 91 licence application and will assess the proposed action to determine whether it is likely to have a significant impact on a threatened species, population or ecological community. Further information may be found on the OEH website:

<http://www.environment.nsw.gov.au/wildlifelicences/LandownersDevelopersLicences.htm>

Biodiversity banking (biobanking)

Information on how to apply to the Director General of OEH for a biobanking statement for a development proposal can be found in Part 7A of the TSC Act.

Biobanking statements can be obtained for any development, other than the clearing of certain native vegetation that is dealt with under the *Native Vegetation Act* 2003 (NV Act) or development excluded from the scheme by the regulations.

If a biobanking statement is obtained for developments assessed under Parts 4 and 5 of the EP&A Act, these developments are taken to be development which is not likely to significantly affect any threatened species, populations or ecological communities.

Management actions carried out under a biobanking agreement are exempt from the requirement for development consent under the EP&A Act unless otherwise provided by the regulations.

Fisheries Management Act 1994

The provisions of Part 7A of the FM Act impose responsibilities on applicants, consent authorities, determining authorities and the NSW Department of Primary Industries (Fisheries) for the protection and preservation of threatened species, populations and ecological communities of fish and marine vegetation.

Schedules 4, 4A & 5 of the FM Act provide the lists of threatened fish species, populations and EECs of fish and marine vegetation.

The listing of threatened fish and marine vegetation species, populations and ecological communities is an ongoing dynamic process. Council recommends that you review the current list of threatened fish and marine species, populations and ecological communities on the Department of Primary Industries (Fisheries) website.

The FM Act also provides key threatening processes affecting threatened species, populations and ecological communities of fish and marine vegetation and also introduces the requirement for the preparation of recovery plans, threat abatement plans and management strategies for the recovery and preservation of threatened species, populations and ecological communities of fish and marine vegetation.

Under Section 91 of the EP&A Act, the NSW Department of Primary Industries (Fisheries) is required to assess Integrated Development Applications which require concurrence approval with respect to the sections 144, 201, 205 and 219 of the FM Act.

State Environmental Planning Policy No. 14 – Coastal Wetlands

State Environmental Planning Policy No. 14 – Coastal Wetlands (SEPP 14) aims to ensure that all coastal wetlands are preserved and protected in the environmental and economic interests of the State. All SEPP 14 wetlands within Shoalhaven are zoned E2 Environmental Conservation under the *Shoalhaven Local Environmental Plan* (LEP) 2014, and are covered by relevant environmental planning legislation to ensure their ongoing conservation.

Under SEPP 14, a proposal to carry out clearing of land, drainage works, land filling or the construction of levees within a classified SEPP 14 coastal wetland is designated development and an environmental impact statement (EIS) is required. The preparation of the EIS will require the formal consultation with the NSW Department of Planning and Environment (DP&E) to obtain the DG's requirements for the EIS. A flora and fauna assessment for any such proposal is likely to be required as part of the EIS.

State Environmental Planning Policy No. 44 – Koala Habitat Protection

State Environmental Planning Policy No. 44 – Koala Habitat Protection (SEPP 44) aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas. The policy aims to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline:

- a) By requiring the preparation of plans of management before development consent can be granted in relation to areas of core koala habitat, and
- b) By encouraging the identification of areas of core koala habitat, and
- c) By encouraging the inclusion of areas of core koala habitat in environment protection zones.

SEPP 44 applies when a development application has been made on land with a site area of more than 1 hectare or land is in the same ownership with an area of more than 1 hectare, whether or not the development applies to the whole or only part of the land.

SEPP 44 requires a consent authority to satisfy itself as to whether or not the land is a potential koala habitat prior to granting consent to a development application. Schedule 2 of SEPP 44 contains the main koala feed tree species which may form potential koala habitat.

If the land is potential koala habitat, the consent authority must satisfy itself as to whether or not the land is core koala habitat. If the land is not core koala habitat, the consent authority may grant consent to the development application. However, if the site is classified as core koala habitat, a plan of management must be prepared for either the whole of the LGA or a part of the LGA (including the land to which the development application relates) prior to the granting of consent to the development application.

The preparation of a koala plan of management (PoM) is required to be undertaken in accordance with relevant guidelines and the requirements of the DG of OEH. The plan of management must be formally approved by the DG prior to granting consent to the development application. Any such consent must be consistent with the approved plan of management.

National Parks and Wildlife Act 1974

The *National Parks and Wildlife Act 1974* (NPW Act) established the functions and responsibilities of the NSW National Parks and Wildlife Service (NWPS). NWPS has the responsibility for:

- The management of national parks and conservation reserve; and
- The protection and conservation of flora and fauna; and
- The protection of Aboriginal sites

The provisions of the NPW Act also make it an offence to harm, pick or damage a threatened species, endangered population, EEC or critical habitat. Where such an action constitutes the carrying out of a development consent issued under Part 4 of the EP&A Act or an activity under Part 5 of the EP&A Act, it is possible that an offence may be defended.

Native Vegetation Act 2003

Under the NV Act 2003, “native vegetation” means any of the following types of indigenous vegetation:

- a) trees (including any sapling or shrub or any scrub),
- b) understorey plants,
- c) groundcover (being any type of herbaceous vegetation),
- d) plants occurring in a wetland.

Note:

Vegetation is “indigenous” if it is of a species of vegetation or if it comprises species of vegetation that existed in NSW before European settlement. For the purposes of this Act, “native vegetation” does not include any mangroves, seagrasses or any other type of marine vegetation to which section 205 of the Fisheries Management Act 1994 applies.

“Clearing” native vegetation means any one or more of the following:

- a) cutting down, felling, thinning, logging or removing native vegetation,
- b) killing, destroying, poisoning, ringbarking, uprooting or burning native vegetation.

Under the NV Act, “broadscale clearing” of native vegetation means the clearing of any remnant native vegetation or protected regrowth.

Under Section 12 of the NV Act, the clearing of native vegetation is not permitted, except where prior development consent has been granted under this Act or where the Minister has approved a property vegetation plan which permits the clearing of such native vegetation. Penalties may apply to any person who carries out or authorises the carrying out of clearing in contravention of this Act.

The clearing or removal of native trees and other native vegetation upon land to which the NV Act applies requires consent to be obtained from the South East Local Land Services (SELLS). The NV Act applies to all non-urban zoned land within Shoalhaven, i.e. land that is not zoned Business, Residential or Industrial.

The NV Act does not apply to the clearing of native vegetation associated with the construction of a single dwelling house and/or ancillary structure. However, any additional clearing of native vegetation around a dwelling house may also require consent from SELLS and Council.

Section 25 of the NV Act lists a range of activities/actions that may not require formal approval from SELLS. However, these actions/activities may still require approval from Council. Any proponent or applicant considering the clearing of native vegetation should consult with both Council and SELLS to determine whether approval is required, and what information must be provided to support any such application.

Commonwealth Environment Protection and Biodiversity Conservation Act 1999

The EPBC Act came into effect on 16 July 2000. The EPBC Act requires approval from the Commonwealth Government for any actions that may have a significant effect on matters of national environmental significance (NES) and/or actions that have a significant effect on the environment of Commonwealth land.

Matters of national environmental significance

The provisions of the EPBC Act state that matters of NES are:

- World heritage properties;
- National heritage places;
- Wetlands protected by international treaty (the RAMSAR Convention);
- Nationally listed threatened species and ecological communities;
- Nationally listed migratory bird species;
- All nuclear actions;
- Commonwealth marine areas
- A water resource, in relation to coal seam gas development and large coal mining development.

The current up to date list on the matters of national environmental significance may be obtained from the Commonwealth Department of Environment website.

Assessment of development applications

Development applications are assessed by Council in accordance with the EP&A Act. It is the proponent or applicant's responsibility to consult the Commonwealth Department of Environment to determine the need or otherwise for a referral to Federal Minister for the Environment pursuant to the EPBC Act or other Commonwealth legislation, as there are severe penalties for non-compliance with Commonwealth legislation.

Other legislation or policies you may need to check

Council Policies & Guidelines

Nil

External Policies & Guidelines

Draft Threatened Biodiversity Survey and Assessment: Guidelines for Developments and Activities (DEC 2004).

Threatened Species Survey and Assessment Guidelines: Field Survey Methods for Fauna: Amphibians (DECC 2009)

Threatened Species Assessment Guidelines – The Assessment of Significance (DECC 2007)

Legislation

Fisheries Management Act 1994

National Parks and Wildlife Act 1974

Native Vegetation Act 2003

State Environmental Planning Policy No. 14 – Coastal Wetlands

State Environmental Planning Policy No. 44 – Koala Habitat Protection

Threatened Species Conservation Act 1995

Commonwealth Environment Protection and Biodiversity Conservation Act 1999

For further information on threatened species in the Shoalhaven and the development assessment process follow the following links on Council's website:

<http://www.shoalhaven.nsw.gov.au/Planning-amp-Building/Development>

and

<http://www.shoalhaven.nsw.gov.au/Environment/Biodiversity>