

COUNCIL REFERENCE: 13045-02
CONTACT PERSON: Sandra Jones

Native Vegetation Inquiry
Productivity Commission
LB2 Collins Street East
MELBOURNE VIC 2003

18th July, 2003

Dear Sir

Impacts of Native Vegetation and Biodiversity Regulations

Shoalhaven City Council is part of the Illawarra region of the NSW South Coast and occupies an area of 4660 sq km of which approximately two-thirds is in State Ownership, managed as either National Park, State Forest or Crown Land. The area has a high proportion of native vegetation cover, with approximately 80% of the City still vegetated. The area also has records of a range of threatened species, with 33 plant and 82 animal species and seven Endangered Ecological Communities listed on the NSW Threatened Species Conservation Act 1995 having been found in the City. Of those species listed on the NSW Threatened Species Conservation Act, 24 plants and 26 animals are also listed on the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 (EPBC). In addition, there are three threatened animal species and 42 migratory species listed on the EPBC Act that occur in the Shoalhaven and are not currently listed on the NSW Threatened Species Conservation Act. Council therefore deals regularly with threatened species and native vegetation issues and offers the following submission in relation to key issues of the productivity commission's enquiry.

There are costs to both Council and landowners in the Shoalhaven that arise from legislation that deals with biodiversity conservation and native vegetation protection. Because Council is a consent authority, they are required to invest resources into assessment relating to biodiversity conservation and native vegetation protection that relate to requirements under the Environment Planning and Assessment Act 1979 and Threatened Species Conservation Act 1995. Because of the nature of Shoalhaven, Council has many applications that need to have issues of threatened species assessed and has therefore employed a Threatened Species Officer to deal with the large amount of environmental assessment work that is required in development applications. Council provides a service to private landholders by undertaking the assessment for individual dwelling applications. It should also be noted that Council also has mechanisms to protect significant areas of the environment through its Local Environmental Plan.

In terms of costs to landholders, for situations where development may impact on native vegetation or threatened species, flora and fauna studies will need to be prepared. In some situations of subdivisions or large commercial developments requirements may be imposed as a condition of consent that relate to the protection and or management of significant areas of native vegetation or threatened species habitat. For example, Council may request that management plans are prepared for areas of vegetation that contain high biodiversity values or environmental management plans are required to be prepared that detail the monitoring of a

site as it is developed to ensure the biodiversity values identified are protected. Therefore there is a cost to the landholder in terms of the preparation of the management plan and the undertaking of any management actions such as fencing or weed control or monitoring in these areas. It should however be noted that such impositions are usually applied with subdivision of lands, or commercial development, so costs may be offset by the proceedings of the sale of parcels of land or subsequent commercial operation.

Because no bilateral agreement has been reached between the NSW State Government and the Commonwealth, in situations where threatened species are affected that are listed on both NSW and Commonwealth legislation, potentially two assessments will need to be undertaken by the proponent. This can be a confusing situation for applicant unused to the legislative system so Council provides advice to applicants that they may need to refer their development to the commonwealth for consideration.

Recent changes to the NSW Rural Fires Act has introduced the Bushfire Environmental Assessment Code that removes the need to undertake environmental assessment work for hazard reduction activities such as clearing or burning. This legislation has been introduced in order to streamline the process of receiving approval to undergo hazard reduction works, however the code does not remove the need to undertake assessment under Commonwealth legislation. This is not clear to landholders and may be confusing because for example, in Shoalhaven, there are 18 Commonwealth listed plant species that will be potentially impacted by these activities because assessment of the impact of burning, slashing or clearing for hazard reduction is not required for these species under the existing version of the Code. It may however be required under Commonwealth legislation, possibly leaving landholders in breach of Commonwealth legislation.

One of the main problems with the implementation of the legislation is the lack of information provided to consent authorities when new listings for species are made. In order to have a species listed on either the Commonwealth or State legislation information on the distribution, threats, biology of the species or community are provided to a scientific committee however this information is not made public. For example, under the NSW Threatened Species Conservation Act, if an applicant is likely to have a Significant Impact on an endangered ecological community they will likely be asked to put the loss of the community in the context of its entire distribution. Presumably this information or at least an indication has been gathered in the nomination phase. Dissemination of this information to consent authorities and proponents would reduce the resource and financial costs in undertaking further assessments.

There is a need to have legislation to protect both threatened species and vegetation, however there is also a need to be able to balance consideration of requirements of society and economy in the application of this legislation. There are resource implications for consent authorities such as Councils and improvements in the dissemination of information known about threatened species or endangered ecological communities will assist them in the process of assessment. A bilateral agreement between NSW State Government and the Commonwealth may assist in removing any confusion regarding assessment requirements of landholders, particularly with the introduction of the Bushfire Environmental Assessment Code that removes the need for state assessment but not Commonwealth assessment.

If you would like to discuss the matter further or clarify any issue do not hesitate to contact Sandra Jones, Environmental Planner, on 4429 3491. Please quote Council's reference 13045-02.

Yours faithfully

RD Pigg
General Manager