

# **ATTACHMENTS TO VARIOUS REPORTS PLANNING & DEVELOPMENT COMMITTEE**

**TUESDAY 14 JUNE 2016**

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**ATTACHMENT TO PDC 7A – 06/2016**

**NSW BIODIVERSITY REFORMS – ALBURYCITY  
COUNCIL SUBMISSION**

**ATTACHMENT 1**

**AlburyCity Submission – Public Exhibition – Draft  
Biodiversity Reforms**

7 June 2016

Biodiversity Reforms – Have Your Say  
Office of Environment and Heritage  
PO Box A290  
SYDNEY SOUTH NSW 1232

Dear Sir/Madam

**Subject:       Exhibition – NSW Biodiversity Reforms**

I am writing in response to your invitation to review and comment on the NSW Office of Environment and Heritage's (OEH's) *NSW Biodiversity Reforms*, in particular the *Draft Biodiversity Conservation Bill* and *Draft Local Land Services Bill*.

AlburyCity generally supports the draft reforms, which seek to simplify and streamline the biodiversity, environment protection and threatened species measures that currently apply across the state. It is noted that AlburyCity is one of the few Local Government Areas (LGAs) that already has Biodiversity Certification conferred over a majority of its LGA.

Advice received to date by NSW OEH staff has confirmed that the impacts of the proposed reforms on the AlburyCity LGA will be limited, given the current Biodiversity Certification agreement and the intended continued operation of this agreement under proposed savings provisions.

Notwithstanding, given the significance of the changes proposed and in light of any future amendments to Albury's current Biodiversity Certification agreement, AlburyCity provides the following specific comments:

**1.       General Comments & Overview**

In recognition of the significance of the recommendations proposed as part of the Biodiversity reforms, AlburyCity considers the level of public consultation and community engagement to be limited. The period of time in which to make a submission, the limited number of community and stakeholder information sessions, as well as the volume of exhibition material has made it difficult to gain a full understanding and appreciation of the recommended changes.

In particular, AlburyCity believes that a Plain English Version, Explanatory Bill or Regulatory Impact Statement/Assessment of the reforms would provide a greater understanding of the recommended changes. In particular, the repealing of a number of significant pieces of legislation including the *Threatened Species Conservation Act 1995*, *Native Vegetation Act 2003*, *Nature Conservation Trust Act 2001* and *National Parks and Wildlife Act 1974* (in part).

Moreover, not making available material presented at workshops and webinars to enable informed internal consultation has not been conducive.

2. ***Biodiversity Conservation Regulations***

Following a review of the draft Biodiversity Conservation Bill, it is noted that a copy of the accompanying Biodiversity Conservation Regulations is not currently available and is still in the process of being drafted. Whilst it is acknowledged that this will be subject to a separate public exhibition and consultation process, in the absence of such details, AlburyCity is unable to provide a more comprehensive response to the proposed reforms, as much of the detail of the draft Bill is deferred to the Regulations.

3. ***Biodiversity Certification***

As previously noted, AlburyCity is one of the few Council's that has had Biodiversity Certification conferred over its LGA. This agreement is up for renewal on 24 February 2021.

In light of the significant amount of work involved in obtaining this agreement and the benefits this provides, AlburyCity requests that savings and transitional arrangements recognising existing provisions be incorporated within the new Biodiversity Conservation Act and Regulation.

In particular, AlburyCity is seeking confirmation on the following items:

1. AlburyCity's existing Biodiversity Certification agreement will continue under the introduction of the any Biodiversity Conservation Act and that savings and transitional arrangements will be introduced to support this; and
2. Provision will be made for AlburyCity's existing Biodiversity Certification agreement to be modified and extended beyond the current expiry date.

It is reiterated that there has been a significant amount of time and effort involved in obtaining Biodiversity Certification for the Albury LGA and for this reason, AlburyCity requests that savings and transitional arrangements be introduced as part of any new legislation.

4. ***Aboriginal Cultural Heritage***

Clarification is sought as to whether the current controls regarding Aboriginal Cultural Heritage will remain within the *National Parks and Wildlife Act 1974* (NPW Act) as this is not clear in the public exhibition materials. Anecdotal advice received to date suggests that these provisions will remain in the NPW Act, however clarification is sought in this instance.

5. ***Native Vegetation Regulatory Map***

As part of the Biodiversity reforms, the NSW Office of Environment and Heritage is preparing a *Native Vegetation Regulatory Map* which can be used by landholders, Local Land Services, local councils and other authorities to determine when the clearing of native vegetation within rural areas requires approval based on the following categories:

- Category 1: Exempt Land (Blue);
- Category 2: Regulated Land (Yellow); and
- Excluded Land (Grey).

Whilst AlburyCity generally supports the preparation of this map and notes advice that it has been prepared based on aerial photography and satellite imagery, it is queried whether Council will be given the opportunity to review and comment on the proposed mapping prior to it being made publicly available via the NSW Planning Portal.

In particular, AlburyCity will seek to ensure that the map is consistent with the zonings contained within the *Albury Local Environmental Plan 2010* and land included as part of Council's Biodiversity Certification agreement. It is noted that under Section 3.2.2 of the *Native Vegetation Regulatory Map – Map Method Statement* that the majority of zones contained within the Standard Instrument will be excluded from this map with the exception of Zones E1, RU1-RU4 and W2.

Advice received to date, is that this map is still currently being produced by NSW OEH and clarification is sought in this instance, as to whether Albury's rural areas will be classified as Category 1 as it is Biodiversity Certified. It is also requested that riparian zones and ephemeral streams be excluded from the Land Clearing Codes.

6. ***State Environmental Planning Policy (Clearing in Urban Areas)***

At the Local Government Technical Workshop held in Wagga Wagga on 19 May 2016, NSW OEH staff outlined that a new State Environmental Planning Policy titled *Clearing in Urban Areas* would be created to address tree removal in areas excluded from the Native Vegetation Regulatory Map. This SEPP would replace the current Tree Preservation Order (TPO) provisions for development in urban areas and also seeks to develop native vegetation controls for Environmental Zones (E2-E4) and R5 zones to recognise the specific issues arising in these particular zones. Notwithstanding, following a review of the public exhibition material, limited details are provided regarding this SEPP. Accordingly, further details are requested regarding the preparation and release of this SEPP as part of the wider biodiversity conservation reforms.

## 7. **Biodiversity Assessment Method**

The Biodiversity reforms seek to introduce a two-tiered threshold called the Biodiversity Assessment Method (BAM), whereby developments that exceed the threshold for clearing (as identified in the following table), or that will have a 'significant effect' on biodiversity (formerly known as a 7 part Test) will require the preparation of a Biodiversity Assessment Report (BAR).

Minimum lot size associated with the property	Threshold for clearing, above which the BAM must be applied		
	Option A	Option B	Option C
Less than 2ha	0.5ha	0.5ha	0.5ha
2ha to less than 40ha	0.5ha	1ha	2ha
40ha to less than 1,000ha	1ha	2ha	4ha
Greater than 1,000ha	2ha	3ha	10ha

Whilst the adoption and use of the above table provides a clearer, more transparent approach to determining what level of environmental assessment is required once a certain threshold is reached, the use of a set area (ha) in isolation is considered arbitrary.

For example, where a property is only 2ha in size, theoretically under Option C, the entire 2ha of land could be cleared (subject to other environmental assessments) without triggering the preparation of a BAR.

A better approach would be to utilise the existing area figures in combination with the area of land to be cleared as a percentage of the total site area, whichever is the smaller. This approach is a more flexible option and a better means of controlling the area of land to be cleared with regards to the size of the property. It is noted that this approach is currently used to control certain developments (houses, outbuildings etc) under the NSW Department of Planning & Environment's Exempt and Complying Development Codes.

Similarly, whilst the category of lot sizes does provide for a range of lot types, these categories should be expanded to better reflect the varying development outcomes that occur within this lot size range. For example, large lot residential development and associated vegetation clearing on a 2ha property is significantly different to a 40ha rural lifestyle or hobby farm.

Accordingly, it is recommended that several additional lot size categories be included within the above table as follows:

- 2ha to less than 10ha;
- 10ha to less than 20ha;
- 20ha to less than 40ha.

Lastly, whilst the BAM does take into account the area of vegetation to be removed, it does not take into account the cumulative impacts of previous or successive vegetation clearing over a number of years. It is noted that under the Victorian land management system, where a landowner seeks to clear native vegetation they are required to declare any vegetation clearing that has occurred on the subject land within the previous 5 years.

8. ***Biodiversity Assessment Report & Off-Set Measures***

Council supports the approach that once a development exceeds the BAM threshold that a Biodiversity Assessment Report (BAR) needs to be prepared by an accredited assessor and lodged with the Development Application in support of the proposal. This report needs to assess the biodiversity impacts of the development and calculate any off-set obligation/s required in order to achieve clear conservation outcomes for biodiversity and the environment.

Whilst AlburyCity generally supports the BAR approach, it does have a number of serious concerns regarding the reduction or discounting of off-set requirements by the consent authority, as part of its determination of the Development Application. Whilst it is acknowledged that any discount needs to be published by the local authority, there is potential that certain developments may be discounted completely, with little or no justification regarding the reasons for the discount, or the likely environmental impacts that may result as a consequence. Similarly, no details have been provided outlining how or where discounts need to be published by local authorities or whether these need to be reported on annually. It is also queried whether the community has an opportunity to comment on any proposed discounts that may be applied.

Council also has concerns regarding the potential lag time between when monies are paid into the Biodiversity Conservation Trust and when sites are purchased for biodiversity off-set. This could especially be a problem during the initial stages of the program where potential off-set sites may be limited. One option could be the use of a 'deferred commencement' condition within development consents that prevent works being undertaken until evidence has been provided that an off-set site has been secured and paid for. Likewise, these offset sites should be provided at a like for like offset and should be located within the same biogeographic region or sub-region as the impact.

9. ***Issuing of Permits in Environmental and R5 Zones***

AlburyCity believes that local councils should be responsible for issuing permits for land management and tree removal within the Environmental (E1-E4) and R5 Zones as they already assess tree removal within other zones as part of the Development Application process. This will ensure a streamlined approach and avoid confusion for landowners regarding which authority needs to be consulted. It is acknowledged however that LLS currently perform this role, so if local councils were to become the responsible authority, then additional resources need to be provided to these organisations in order to effectively perform these duties.

10. **Accreditation of Assessors**

AlburyCity supports the accreditation of assessors who undertake a BAM and/or BAR. This will ensure a consistent approach to environmental assessment is achieved and will ensure that accredited assessors are properly trained in how to use the BAM. By requiring accreditation from the Minister for the Environment this will ensure that assessors are appropriately qualified and are accountable.

Notwithstanding the above, given the majority of the biodiversity reforms relate to rural and regional areas of NSW, there is a need to ensure these regions are appropriately resourced with access to accredited assessors.

11. **Obligations under Biodiversity Stewardship Agreements**

Council supports the establishment of the Biodiversity Conservation Trust and the introduction of biodiversity stewardship agreements, conservation agreements and wildlife refuge agreements, as these will all help contribute to the protection and management of environmentally significant lands. The use and payment of biodiversity credits, as well as ongoing management payments is also supported for the ongoing protection and management of these lands.

Whilst it is acknowledged that landowners with biodiversity stewardship agreements and conservation agreements are required to submit an annual report showing compliance with management actions, prior to receiving an annual management payment, it is recommended that these sites are also routinely inspected to ensure compliance with the management agreements.

If you would like to discuss any aspect of this submission, please contact Council's Town Planning team on 02 6023 8285.

Yours faithfully

Michael Keys  
**Director**  
**Planning and Environment**

**ATTACHMENT TO PDC 8A – 06/2016**

**PUBLIC HEALTH ACT 2010 REVIEW**

**ATTACHMENT 1**

Public Health Act 2010 Review – Draft AlburyCity  
Council Submission

2 June 2016

Director, Health Protection NSW  
Public Health Act Review Officer  
NSW Health  
LMB 961  
NORTH SYDNEY NSW 2059

**To Whom It May Concern**

**Statutory Review of the Public Health Act 2010**

Albury City Council ('AlburyCity') welcomes the opportunity to comment on considerations listed in the *Public Health Act 2010 Statutory Review – Discussion Paper*. The purpose of this review is to determine whether the policy objectives of the Act remain valid and whether the terms of the Act remain appropriate for securing these objectives.

Comments provided on these considerations are premised on AlburyCity's experiences in implementing its public health inspection and monitoring program under this Act. Our submission generally looks to a continuum in how we plan, prepare and deliver this program.

The discussion paper presents thirty-four specific items for consideration. Of most importance to AlburyCity are the considerations pertaining to an apparent transfer of a regulatory burden from the State to Local Government, including a proposed new compliance regime for the safe supply of drinking water.

Please find attached to this letter a table outlining our key issues and concerns. Comments presented in the table on the shift in regulatory responsibility echo views expressed in our submission to IPART's review of regulatory burden on Local Government.

Should you wish to discuss this submission or expand on points listed in the table below, please contact Mr Matthew Dudley, Group Leader Natural Environment on telephone (02)6023 8396

Yours faithfully

Cr Henk van de Ven  
**Mayor - AlburyCity**

AlburyCity tables below comments to specific matters (posed as questions) raised in the discussion paper.

DISCUSSION PAPER ISSUES FOR CONSIDERATION	COMMENTS
<b>Objectives of Public Health Act</b>	
<p>1. Are the objectives of the Public Health Act valid and appropriate?</p>	<p>AlburyCity is of the view that the current set of objectives remain valid, and that the terms of the Act are generally appropriate in securing these objectives.</p> <p>One concern of AlburyCity, as elucidated in a submission to IPART in its review of regulatory burdens on Local Government, is the continued divestment of responsibilities onto Local Government by the State government. This is most evident in the discussion paper with respect to terms relating to 'safe supply of drinking water'.</p> <p>AlburyCity elaborates this more in the relevant section below, but states generally that a stronger collaboration by the State with Local Government on the impacts of new or changes in regulation(s) will provide a platform to achieve the above outcome. However, key to this collaboration is a need for the State to consider the impost / impact on local government of cost shifting that often comes with new or amended regulation.</p>
<p>2. Should Section 3 include new objective relating to monitoring by NSW Health of diseases and conditions affecting people of NSW.</p>	<p>The discussion paper indicates a continuum of NSW Health role in monitoring diseases and associated process. AlburyCity supports this ongoing role and responsibility for the State.</p>
<b>Areas for Review – the Role of Local Government</b>	
<p>3. Do sections 3 and 4 adequately recognise the role of Local Government in the Public Health Act?</p>	<p>AlburyCity maintains a view that Local Government continue to exercise discretion as to how to exercise its functions in order to protect public health, based on a risk based approach to compliance. Any change to this should be made plain in the exposure draft of the Public Health Act and its subordinate Regulation.</p>

DISCUSSION PAPER ISSUES FOR CONSIDERATION	COMMENTS
<b>Safe Supply of Drinking Water – Quality Assurance Programs and the role of Local Government in relation to drinking water</b>	
<p>4. Should a compliance regime be established in the Act in relation to section 25 (which requires suppliers of drinking water to establish and adhere to a quality assurance program)?</p> <p>5. If so, should this compliance regime involve a penalty for non-compliance and/or the ability to issue improvement notices for non-compliance?</p> <p>6. Should the Act be amended to recognise a role of local government authorities in relation to the regulation of private water suppliers and water carters?</p>	<p>AlburyCity interprets this compliance regime proposal as:</p> <ul style="list-style-type: none"> <li>• Having intent of placing a requirement on private water suppliers to have a Drinking Water Quality Management System (DWQMS); and</li> <li>• Potentially being a shift in responsibility from the State (NSW Health) to Local Government in regards to enforcing this requirement.</li> </ul> <p>AlburyCity accepts this is a Government position, we do not agree with the changes proposed but if forced we seek clarification on the above matters.</p> <p>There are a number of issues relating to this proposal that we seek clarification from NSW Health:</p> <ul style="list-style-type: none"> <li>• What role(s) is exactly NSW Health proposing to transfer to Local Government and what role is NSW Health proposing to retain;</li> <li>• On what basis does NSW Health think Local Government is better equipped than NSW Health to perform these roles? Do they think Local Government is in a better position to carry out this function?</li> <li>• Will there be an accreditation/concurrence process for Local Government staff? What training will be provided and what resources will be developed by NSW Health and provided to Local Government?</li> <li>• Is there a preference for this role to be assigned to a designated function (ie. Engineering/EHO)? The EHO's appear to be NSW Health's preference.</li> <li>• Cost recovery of performing such a role. How will this be determined and will it be at full cost recovery?</li> <li>• Has consideration been given to cross border jurisdictions? Both on a local government and state boundary basis? (e.g. Victorian water carters operating in the AlburyCity area).</li> </ul>

DISCUSSION PAPER ISSUES FOR CONSIDERATION	COMMENTS
	<p>Depending on the clarification and responses provided AlburyCity will work with the State Government to facilitate the changes. This would be premised on stronger collaboration by the State with local government and relevant stakeholders on managing the impacts of change(s) in regulation that will provide the platform to secure the objectives of the Act.</p> <p>Key to this collaboration is a need for the State to consider the impost / impact on local government of cost shifting that often comes with new or amended regulation that involves a new element to an existing compliance regime.</p> <p>Many Councils have used the services of consultants to develop their DWQMS and have limited capacity including staff with the relevant expertise and experience in-house to competently undertake some of the roles. That brings in another issue where a Council is strictly a general purpose Council and does not have any water supply responsibilities. NSW Health would need to ensure that appropriate training is provided and resource tools developed and available prior to any such proposal being implemented. Further, the creation of a National (or at least a State) wide web portal database for the registration, entry and storage of data and record management of the program would aid data and information management under this compliance regime.</p>
<b>Environmental Health Premises – regulated systems, public swimming pools and spa pools and skin penetration</b>	
7. Should the definition of skin penetration include all procedures that penetrate a mucous membrane?	AlburyCity agrees to each proposal.
8. Should there be additional regulation to limit people who can perform	

<b>DISCUSSION PAPER ISSUES FOR CONSIDERATION</b>	<b>COMMENTS</b>
high risk procedures such as eyeball tattooing to relevant registered health practitioners?	
9. Should the Act be amended to ensure that the owner of a tenanted building, or the person that the owner has arranged to manage the building, is considered the occupier for the purposes of the provisions relating to regulated systems?	AlburyCity agrees with the proposal as it provides improved clarity on ownership/responsibility on cooling towers and regulated systems.
10. Should the Act be amended to clarify that the definition of public swimming pool applies to a pool in a residential premises where the pool in question is used by members of the public as part of a commercial undertaking by the occupier of the premises?	AlburyCity agrees with the proposal to clarify definitions contained in section 34. AlburyCity holds a view that the current definition is loose (e.g. pool on residential premises can be used for commercial purposes).
<b>Disease Control Measures and Notifications</b>	
(11) – (24)	AlburyCity offers no comment
<b>Vaccine Preventable Diseases</b>	
25. Should the current provisions in the Act relating to vaccine preventable diseases be extended to apply to high schools?	AlburyCity offers no comment
<p>26. Should the Act be amended to allow a public health officer to direct an unvaccinated child whom the officer reasonably believes has been in contact with a case of a vaccine preventable disease be excluded from child care or school, regardless of whether there is an outbreak at the school or child care the child attends?</p> <p>27. Subject to feedback on issue 25, should this amendment also apply to students of high schools?</p> <p>28. Should the Public Health Act be amended to remove the conscientious objector exemption to enrolment in a childcare facility from the Act, such that children who are not vaccinated due to their parents' conscientious objection cannot enrol in child care?</p>	<p>Removal of the exemption which currently allows for the enrolment of conscientious objector unvaccinated children in childcare would potentially not allow unvaccinated children to be enrolled in child care.</p> <p>AlburyCity is of the view that unvaccinated children can still attend childcare services, and that the risks imposed by unvaccinated children can be controlled using policies and procedures at childcare facilities.</p>

DISCUSSION PAPER ISSUES FOR CONSIDERATION	COMMENTS
<p>29. If the exemption is not removed from the Act, should other options be pursued to strengthen the requirements to obtain a conscientious objection exemption for enrolment in child care in NSW?</p>	
<p><b>Public Health Registers</b></p>	
<p>30. Should the Act be amended to clarify that s97 and s98 does not limit the creation of other registers or databases relating to scheduled medical conditions or notifiable conditions under the Act?</p>	<p>AlburyCity offers no comments.</p>
<p>31. Are any other changes to s97 and s98 required?</p>	
<p><b>Public Health Enquiries</b></p>	
<p>32. Should s106 the Act be amended to give the Secretary a power, following a public health inquiry, to direct a person or organisation take action to mitigate the risk to the public?</p>	<p>AlburyCity offers no comments.</p>
<p>33. If so, what limits, and in what circumstances should such a power be exercised, should there be such a power?</p>	
<p><b>Nursing Homes</b></p>	
<p>No items for consideration listed in the Discussion Paper.</p>	
<p><b>Regulation of the disposal of Bodies</b></p>	
<p>34. Is it still appropriate for the Public Health Act 2010 to continue to regulate the work, health and safety aspects of the disposal of bodies and the regulation of cremations, internment and exhumation, preparation rooms, equipment and apparatus in mortuaries, crematories and cemeteries (where these are unconnected to public health)?</p>	<p>AlburyCity offers no comments.</p>