

# Memorandum

Date:	3 December 2018
Title:	Proposed Alex Avenue Public School – Review of Requirements under the Biodiversity Conservation Act 2016
Issued By:	Jenny Bradford – Bradford Environmental Consulting
Issued To:	Brendan Pratt - Alphitonia
Attachments:	1. Order to confer biodiversity certification on the State Environmental Planning Policy (Sydney Region Growth Centres) 2006

Significant residential growth is occurring in the Riverstone / Schofield region and the Department of Education (The Department) is currently proposing the development of a new school facility to address the need for education infrastructure. Development for the Alex Avenue Public School (the School) is proposed at the corner of Farmland Drive and the yet to be constructed Pelican Road in Schofields.

This memorandum provides a review of requirements under the *Biodiversity Conservation Act 2016* applicable to the assessment of the School site.

## State Significant Development

Pursuant to Schedule 1 Clause 15(1) of the *State Environmental Planning Policy (State and Regional Development) 2011*, development for the purposes of a new school is state significant development (SSD). Accordingly, the Secretary's Environmental Assessment Requirements (SEARs) have been sought for this project and issued by the NSW Department of Planning and the Environment (SSD 18\_9368 issued 2 October 2018).

Requirements 17 and 18 of the SEARs relate to the flora and fauna, and biodiversity assessment requirements.

### *"17. Flora and Fauna Assessment*

- *Engage a suitably qualified person to assess and document the flora and fauna impacts related to the proposal.*
- *If the site is within an area to which a Biodiversity Certification Order has been issued, evidence of this Order is to be provided.*
- *Where the land is subject to a Biodiversity Certification Order, evidence of this Order and the terms.*

### *18. Biodiversity*

*Identify and address the requirements of the Biodiversity Conservation Act 2016 relevant to the State Significant Development Application.*

*Note: The Biodiversity Conservation Act 2016 requires that State Significant Development Applications be accompanied by a Biodiversity Development Assessment Report unless otherwise prescribed."*

## State Environmental Planning Policy (Sydney Region Growth Centres) 2006

*State Environmental Planning Policy (Sydney Region Growth Centres) 2006* (Growth Centres SEPP) is the principle environmental planning instrument applying to the site, which is within the North West Growth Centre. The site falls within the Alex Avenue and Riverstone Precinct Plan 2010 (Appendix 4 of the Growth Centres SEPP).

The site is not identified as an area of native vegetation protection.

## Biodiversity Certification

In accordance with Part 7AA Clause 126H, of the now repealed *Threatened Species Conservation Act 1995*, Biodiversity Certification was conferred on the Growth Centres SEPP on the 11 December 2007. A copy of this order is included as Attachment 1. Figure 1 below is an extract from the Biodiversity Certification Order indicating the location of the School site, which is located within a certified area.

The Biocertification of the Growth Centres SEPP includes the requirement for a Growth Centres conservation fund and an associated biodiversity offset program. These requirements are continuing to be implemented, as seen in the most recent Office of Environment and Heritage annual report (<https://www.environment.nsw.gov.au/biocertification/GrowthCentres.htm>).

## Biodiversity Conservation Act 2016

The new *Biodiversity Conservation Act 2016* (BC) began on 25 August 2017 and replaces the *Threatened Species Conservation Act 1995* (TSC).

Part 8 Division 2, Clause 8.4 describes the effects of biodiversity certification on State significant development that requires assessment under the *Environmental Planning and Assessment Act 1979*.

*“(2)..An assessment of the likely impact on biodiversity of development on biodiversity certified land is not required for the purposes of Part 4 of the Environmental Planning and Assessment Act 1979. and*

*(3) A consent authority, when determining a development application in relation to development on biodiversity certified land under Part 4 of the Environmental Planning and Assessment Act 1979, is not required to take into consideration the likely impact on biodiversity of the development carried out on that land.”*

To ensure clarity and continuity of biocertification between the TSC Act and BC Act the *Biodiversity Conservation (Savings and Transitional) Regulation 2017*, Part 8 Clause 35 states

*‘Biodiversity certification that was conferred on land under Part 7AA of the Threatened Species Conservation Act 1995 and that was in force on the repeal of that Act is taken to be biodiversity certification conferred on the land under Part 8 of the new Act.’*

## Summary

It is concluded that, as biodiversity certified land, the School site does not require further consideration of the likely impact of the proposed development on biodiversity. Specifically, Clause 8.4 (2) of the BC Act states that the effect of biodiversity certification for development (including State significant development) under Part 4 of the Planning Act is that

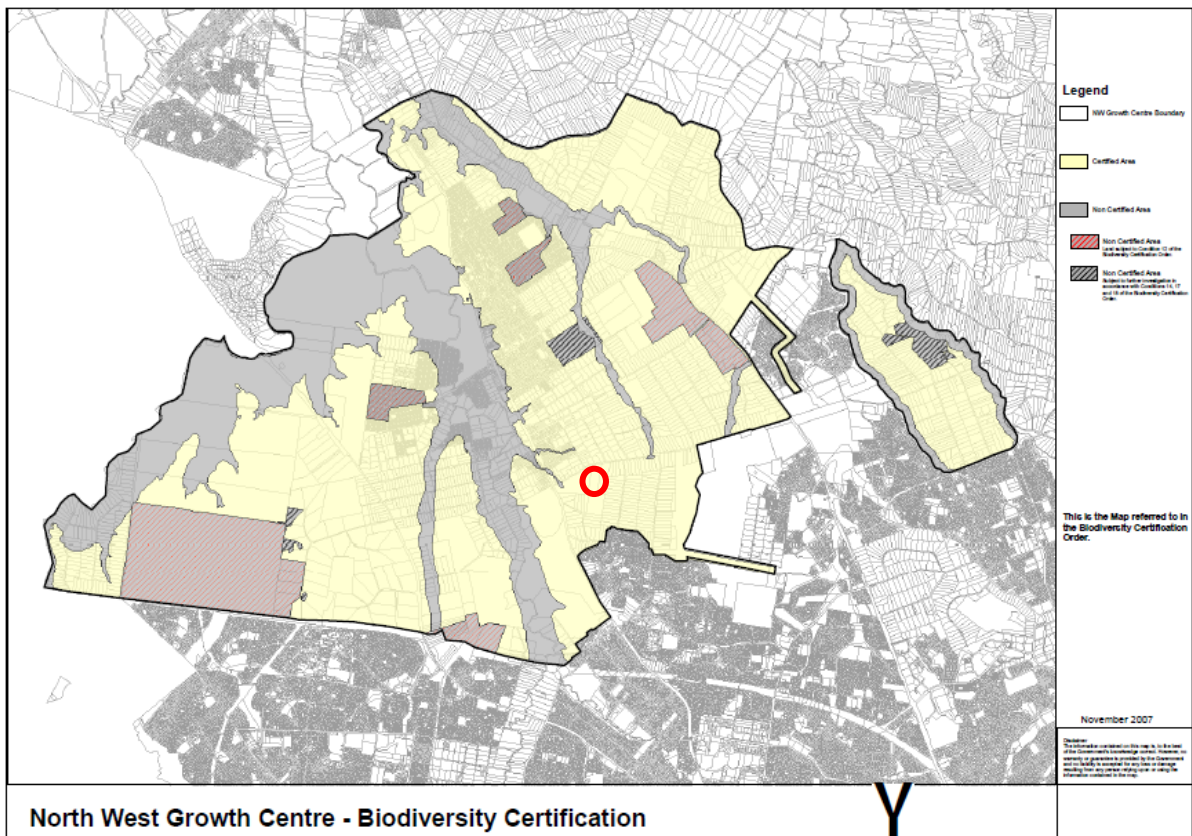
*“An assessment of the likely impact on biodiversity of development on biodiversity certified land is not required for the purposes of Part 4 of the Environmental Planning and Assessment Act 1979.”*

In relation to the SEARs issued for the proposed Alex Avenue school facility a Biodiversity Development Assessment Report is not therefore not required.

Please let me know if you need any further information

Regards

Jenny Bradford



**Figure 1** – Extract North West Growth Centre Map, showing indicative location of proposed Alex Avenue Public School Development