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**Report under the NV Act 2003 in relation to a Minor Variation  
(clause 27 of the Native Vegetation Regulation 2005)**

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This report has been prepared by a Level 3 Accredited Expert for the purposes of clause 27(4) of the Native Vegetation Regulation 2005.

**PVP reference number: 14240**

**Date: 24/2/12**

**Accreditation number: 30603**

**Ian Simpson**  
**A/General Manager**  
**Northern Rivers Catchment Management Authority**

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**Summary:**

PVP No.14240 is a proposal to clear native vegetation under the *Native Vegetation Act, 2003*.

This PVP has been approved in accordance with s.29(2) of the *Native Vegetation Act, 2003* and cl.27 of the *Native Vegetation Regulation, 2005 - Special Provisions for Minor Variation*.

This report is a requirement of cl.27.

PVP No.14240 (**'the proposal'**) was initially assessed in accordance with the Assessment Methodology which resulted in a determination that the proposed clearing would not improve or maintain environmental outcomes.

I am of the opinion that:

- a minor variation would result in a determination that the proposed clearing will improve or maintain environmental outcomes, and
- strict adherence to the Assessment Methodology in the particular case is unreasonable and unnecessary, and
- the proposed clearing will have additional conservation benefits on a landscape scale

On this basis the proposal was considered under cl.27 and was approved in accordance with that clause and the relevant Ministers Guidelines.

As required under cl.27, this report details the reasons for the opinions leading to the use of the clause.

**Legislative Background:**

Under s.29(2) of the *Native Vegetation Act, 2003* a PVP cannot be approved unless the clearing will improve or maintain environmental outcomes.

However, cl.27 of the *Native Vegetation Regulation, 2005* makes special provision to allow a minor variation to the Assessment Methodology which would result in a determination that the proposed clearing will improve or maintain environmental outcomes where strict adherence to the Assessment Methodology is in the particular case unreasonable and unnecessary.

The complete **cl.27 - Special Provisions for Minor Variation** is attached as **Appendix 1**.

Cl.27 requires the following in respect of the use of a minor variation:

- an assessment in accordance with the Assessment Methodology has been undertaken and **has not** resulted in a determination that the proposed clearing will improve or maintain environmental outcomes, and
- an accredited expert is of the opinion that a minor variation **would** result in a determination that the proposed clearing will improve or maintain environmental outcomes, and
- strict adherence to the Assessment Methodology is in the particular case unreasonable and unnecessary, and
- an accredited expert is also of the opinion that the proposed clearing will have additional conservation benefits on a landscape scale
- an accredited expert, in certifying that proposed clearing will improve or maintain environmental outcomes, must:
  - provide reasons for the opinions of the accredited expert, and
  - comply with any **assessment protocols\*** approved by the Minister for Natural Resources (in relation to aspects of assessment concerned with salinity, soil and water quality), the Minister for the Environment (in relation to aspects of assessment concerned with threatened species and biodiversity) and the Minister for Primary Industries (in relation to aspects of assessment concerned with threatened fish and marine vegetation and aquatic biodiversity), and
- in determining that the proposed clearing will have additional conservation benefits on a landscape scale, an accredited expert must:
  - provide reasons for the opinions of the accredited expert, and
  - comply with any assessment protocols approved by the Minister for Climate Change, Environment and Water, and

\* the relevant protocol is "The Assessment Protocol for where a Minor Variation is made to the EOAM to Reclassify the Condition of Native Vegetation, 16/3/08", and is attached as **Appendix 2**.

### **The PVP proposal:**

The PVP proposal is to clear a total of 0.79 hectares of native vegetation comprising 0.61 hectares which is an overcleared vegetation type, plus 0.18 hectares which is not an overcleared type.

An offset of vegetation of the same type as the overcleared vegetation type is proposed.

Analysis using the Threatened Species Assessment Tool process indicates that 10.2 hectares of offset vegetation would be required to balance the losses from the clearing.

However, because the 0.79ha is classified as an overcleared vegetation type, and because it is not in low condition, the Assessment Methodology automatically red-lights the proposal, that is, it automatically determines that the proposal will not improve or maintain environmental outcomes.

The offset area is listed under NSW legislation as SEPP Wetland, and thus has a very high environmental significance.

To proceed past the red-light and progress the proposal would require the overcleared vegetation type to be reclassified as low condition vegetation. Such a progression is possible through the use of cl.27 and compliance with the relevant Ministers Guidelines.

### **Application of cl.27 - Special Provisions for Minor Variation:**

#### **Accredited Expert Assessment, Opinion, Reasons:**

Following assessment of the proposal under s.29(2) of the *Native Vegetation Act, 2003* which determined that the proposal **will not** improve or maintain environmental outcomes, consideration has been given to the application of **cl.27** and the relevant **Minister's Guidelines**. In doing so the accredited expert formed the following opinions:

#### **Opinion 1:**

That a minor variation **would** result in a determination that the proposed clearing will improve or maintain environmental outcomes.

#### **Reason: minor loss, significant gain**

The area of overcleared vegetation to be cleared is extremely small (0.61ha) and is below benchmark condition (though not technically in low condition). These factors mean that this small patch contributes little to the greater extent of the vegetation type, in and of itself. Conversely, a PVP to clear this small patch will provide security and management in perpetuity to a good condition patch of the same type, which is over 20 times larger in area, and which is recognised for its environmental significance, having been declared a SEPP 14 wetland site. Although the clearing area is the same vegetation type as the offset, the clearing area is not declared SEPP Wetland. Securing the offset through this PVP will improve and maintain environmental outcomes.

Additionally, the area to be cleared is located on one periphery of the offset area. In the absence of this PVP, the offset area has been subject to negative edge-effects on this periphery. With the establishment of this PVP, a new intact edge of the offset area will be established. With application of the management conditions required under the PVP, the new edge will become a sound barrier to disturbance from outside the offset area.

**Opinion 2:**

That strict adherence to the Assessment Methodology is in the particular case unreasonable and unnecessary.

**Reason: Lost opportunity**

Although the vegetation to be cleared is technically in moderate to good condition, it is to the lower end of benchmark condition. Strict adherence red-lights the proposal and also results in a lost opportunity to protect, manage and conserve a much better and larger example of type.

**Opinion 3:**

That the proposed clearing will have additional conservation benefits on a landscape scale.

**Reason: Further protection of good quality SEPP 14 Wetlands positively impacts on the integrity of the entire SEPP 14 network which provides additional conservation benefits at a landscape scale, and contributes directly to the Northern Rivers Catchment Management Authority's Catchment Action Plan, 2005. Further, the PVP will be securing an offset area almost 50% greater in size than that which would usually be required.**

SEPP 14 Wetlands (as the offset area is a component of) have a base level of protection in NSW, but rarely have provision for management. This PVP will achieve this through management actions which will serve to improve and protect further, in perpetuity, a significant example of SEPP 14 Wetlands, as well as SEPP 14 Wetlands as a landscape entity.

The security and management provided by this PVP on this example of SEPP Wetland directly contributes to the Northern Rivers Catchment Management Authority's Catchment Action Plan, 2005, specifically Biodiversity Targets as follows:

- CAP Management Target B1 – Secure Conservation Management, and
- CAP Management Target B6 – Habitat Rehabilitation and Revegetation.

This PVP will provide offsetting benefits over and above that which would usually be provided. In the absence of the red-light which precipitated consideration of the use of clause 27, this proposal would require 10.2 hectares of offset to balance the negative impacts. The offset area secured upon application of clause 27 amounts to 14.48 hectares.

**Compliance with relevant Ministers Guidelines:**

Cl.27 requires compliance with the relevant Ministers Guidelines - **“Assessment Protocol for where a Minor Variation is made to the EOAM to Reclassify the Condition of Native Vegetation, 16/3/08”**.

A decision matrix addressing the PVP proposal’s compliance with the Ministers Guidelines is attached as Appendix 3.

# Appendix 1

## Native Vegetation Regulation, 2005

### Special provisions for minor variation

#### 27 Special provisions for minor variation

(1) An accredited expert may make an assessment that proposed clearing will improve or maintain environmental outcomes only if there has been an assessment in accordance with the Assessment Methodology of whether the proposed clearing will improve or maintain environmental outcomes (not resulting in a determination that the proposed clearing will improve or maintain environmental outcomes) and the accredited expert is of the opinion that:

(a) a minor variation to the Assessment Methodology would result in a determination that the proposed clearing will improve or maintain environmental outcomes (other than a variation that is not allowable under this clause), and

(b) strict adherence to the Assessment Methodology is in the particular case unreasonable and unnecessary.

(2) A variation to the Assessment Methodology is not allowable under this clause if it is a variation of any of the following aspects of the Assessment Methodology:

(a) riparian buffer distances or associated offset requirements,

(b) classification of vegetation as likely habitat for threatened species,

(c) classification of a plant species as a threatened species or a component of an endangered ecological community,

(d) classification of the condition of vegetation,

(e) classification of the vegetation type or landscape type as overcleared,

(f) the assessment of the regional value of vegetation.

(2A) However, a variation to the Assessment Methodology in relation to the following aspects of the Assessment Methodology is allowable if an accredited expert is also of the opinion that the proposed clearing will have additional conservation benefits on a landscape scale:

(a) classification of the condition of vegetation,

(b) classification of the vegetation type or landscape type as overcleared,

(c) the assessment of the regional value of vegetation.

(3) In certifying that proposed clearing will improve or maintain environmental outcomes, an accredited expert must:

(a) provide reasons for the opinions of the accredited expert, and

(b) comply with any assessment protocols approved by the Minister for Natural Resources (in relation to aspects of assessment concerned with salinity, soil and water quality), the Minister for the Environment (in relation to aspects of assessment concerned with threatened species and biodiversity) and the Minister for Primary Industries (in relation to aspects of assessment concerned with threatened fish and marine vegetation and aquatic biodiversity).

(3A) In determining that the proposed clearing will have additional conservation benefits on a landscape scale, an [accredited expert](#) must:

(a) provide reasons for the opinions of the [accredited expert](#), and

(b) comply with any assessment protocols approved by the Minister for Climate Change, Environment and Water.

(3B) Any assessment protocol approved for the purposes of subclause (3) (b) or (3A) is to be published on the website of the Department of Environment and Climate Change.

(4) In this [clause](#):

"accredited expert" means a person accredited by the Minister as an expert for the purposes of this [clause](#), being accreditation on the basis of criteria approved by the Minister for Natural Resources (in relation to aspects of assessment concerned with salinity, soil and water quality), the Minister for the Environment (in relation to aspects of assessment concerned with threatened species and biodiversity) and the Minister for Primary Industries (in relation to aspects of assessment concerned with threatened fish and marine vegetation and aquatic biodiversity).

"minor variation", in relation to the [Assessment Methodology](#), includes, but is not limited to, a variation that involves or results in the reclassification of vegetation from "not of low condition" to "low condition" (as referred to in the [Assessment Methodology](#)).

## Appendix 2:

### **Assessment protocol for where a minor variation is made to the EOAM to reclassify the condition of native vegetation**

Assessment protocol under clause 27(3)(b) and clause 27(3A)(b) of the *Native Vegetation Regulation 2005* for where a minor variation is made to the Environmental Outcomes Assessment Methodology (EOAM) to vary the classification of condition of vegetation from "not of low condition" to "low condition".

Clause 27 of the *Native Vegetation Regulation 2005* allows an accredited expert to make an assessment that proposed clearing will improve or maintain environmental outcomes if there has been an assessment in accordance with the EOAM which does not result in a determination that the proposed clearing will improve or maintain environmental outcomes, and the accredited expert is of the opinion that:

- a minor variation to the EOAM will result in a determination that the proposed clearing will improve or maintain environmental outcomes, and
- strict adherence to the EOAM is, in the particular case, unreasonable and unnecessary.

Clause 27(2A) of the *Native Vegetation Regulation 2005* provides that a variation in relation to the following aspects of the EOAM is only allowable if an accredited expert is also of the opinion that the proposed clearing will have additional conservation benefits on a landscape scale:

- classification of the condition of vegetation,
- classification of the vegetation type or landscape type as overcleared,
- assessment of the regional value of vegetation.

In determining that the proposed clearing will improve or maintain environmental outcomes, the accredited expert must comply with this protocol (cl.27(3)). In determining that the proposed clearing will have additional conservation benefits on a landscape scale, an accredited expert must comply with this protocol (cl.27(3A)). For the purposes of this protocol, landscape scale is defined as approximately 1,000 hectares (10 square kilometres) up to approximately 200,000 hectares (2,000 square kilometres) in area.

This protocol does not apply where a minor variation is made to the EOAM to vary the classification of the condition of marine vegetation.

#### **1. Determining whether the proposed clearing will have additional conservation benefits on a landscape scale**

An accredited expert must be satisfied that actions which have conservation benefits on a landscape scale and which are additional to those required as offsets under the EOAM will be undertaken in order to determine that the proposed clearing will have additional conservation benefits on a landscape scale.

Additional actions are over and above the offset requirements as specified in the EOAM. Areas managed to offset losses due to the clearing of native vegetation plus the additional actions must be secured by the PVP for at least the duration of the negative impact of the proposed clearing (usually in perpetuity). In order to provide additional conservation benefits on a landscape scale, additional actions will usually:

- improve connectivity; and/or
- improve riparian areas; and/or
- enhance vegetation of a type(s) that is highly cleared and in moderate-good condition that provides conservation benefits on a landscape scale; and/or
- improve groundcover (including in grazing and cropping areas) on a landscape scale.



Additional conservation benefits on a landscape scale should be of sufficient quality and/or size to provide a contribution at that scale. Additional actions should contribute to meeting conservation priorities or catchment targets on a landscape scale in a relevant Catchment Action Plan. Results of the additional actions and their conservation benefits on a landscape scale should be monitored as part of the monitoring and evaluation program of the relevant CMA.

**2. Circumstances which must be satisfied in order for the accredited expert to determine that the proposed clearing will improve or maintain environmental outcomes**

The accredited expert must be satisfied of the following circumstances in order to determine that the proposed clearing will improve or maintain environmental outcomes.

**(2.1) The viability of the vegetation is assessed as low or not viable**

Viability of native vegetation is its ability to support biodiversity values that persist for many generations or long time periods. The viability of an area of native vegetation depends on its condition, patch area and isolation, and surrounding land use(s). To have low viability or be unviable, areas of vegetation that are small, isolated or surrounded by intense land uses would generally be in a degraded condition. The accredited expert must be satisfied that the viability of the vegetation on the clearing site is low or not viable according to one or more of the following factors:

- a) **The current or known future land uses surrounding the vegetation to be cleared reduce its viability or make it unviable.** Relatively small areas of native vegetation (eg patches of a few hectares or less) surrounded or largely surrounded by intense land uses such as intense cropping can be unviable or have low viability because of disturbances from the cropping including edge effects, and/or
- b) **The size and connectedness (with other native vegetation) of the vegetation to be cleared is insufficient to maintain its viability.** Relatively small areas of isolated native vegetation (eg patches of a few hectares or less that are more than several hundred metres from the next patch of native vegetation) can be unviable or have low viability, and/or
- c) **The condition of native vegetation to be cleared is substantially degraded resulting in loss of or reduced viability.** Native vegetation in degraded condition can be unviable or have low viability. Degraded condition means substantially outside benchmark in the majority of vegetation condition variables as listed in the EOAM, but does not necessarily meet the strict definition of "low condition". Note: vegetation that is substantially outside benchmark due to a recent disturbance such as a fire or flood or a prolonged drought is not considered as degraded.

AND

**(2.2) The EOAM is complied with (other than the minor variation(s))**

The accredited expert must be satisfied that, other than this minor variation which results in the vegetation being reclassified from "not of low condition" to "low condition" and any other permitted minor variations, the proposed clearing will improve or maintain environmental outcomes as assessed in accordance with the EOAM, including offsets required by the EOAM.

**3. Additional circumstances which the accredited expert must consider when determining whether the proposed clearing will improve or maintain environmental outcomes**

The accredited expert must consider the contribution of the vegetation to be cleared to regional biodiversity values in determining whether the proposed clearing will improve or maintain environmental outcomes. In order to do so, the accredited expert must consider the factors listed

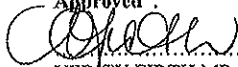
below. For the purposes of this protocol, 'region' is defined as an area from 2,000 square kilometres up to approximately 20,000 square kilometres.

Factors to consider -

- a) **The percent cleared in the region of the vegetation type or threatened ecological community to be cleared.** Where the percent cleared in the region of the vegetation type or threatened ecological community to be cleared is less than 50% cleared this suggests that the contribution of the vegetation to be cleared to regional biodiversity values is relatively low.
- b) **The condition of the vegetation type or threatened ecological community or native vegetation in the region.** Where the vegetation type or threatened ecological community or native vegetation is largely in moderate-good condition in the region, this suggests that the contribution of the vegetation to be cleared to regional biodiversity values is relatively low.
- c) **The percent cleared of all native vegetation cover in the region.** Where the percent cleared of all native vegetation cover in the region is less than 50% cleared, this suggests that the contribution of the vegetation to be cleared to regional biodiversity values is relatively low.

*Note: This Protocol will be reviewed following the 2007/08 review of Chapter 5 of the EOAM.*

Approved .



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VERITY FIRTH MP  
Minister for Climate Change and the Environment

Date 16/3/08

**Appendix 3: clause 27 decision matrix:**

PVP Request No. 14240

CLAUSE 27 CRITERIA		CASE SPECIFIC ANALYSIS				
		PROPOSAL PVP Request No. 14240 23/2/12				
Step	Critical Decision-point	Rule-set	Determination	Complies?	Proceed?	
<b>1</b>	Is the veg in mod-good condition?	Must be yes	yes	yes	yes	
<b>AND</b>						
<b>2</b>	1. Will use of cl 27 result in "improve or maintain environmental outcomes"?	Must be yes	yes	yes	yes	
	and					
	2. Is strict adherence to EOAM unreasonable and unnecessary	Must be yes	yes	yes		
<b>AND</b>						
<b>3</b>	1. Is the issue regarding veg condition?	Must be yes for at least one of 1. 2. or 3.	1. yes	yes	yes	
	or					
	2. Is the issue regarding classification of: veg type, or landscape type as overcleared?		2. Yes – veg type is overcleared			
	or					
	3. Is the issue regarding assessment of the regional value of vegetation?		3. no			
<b>AND</b>						
<b>4</b>	Will the clearing (if approved with all the additional conservation arrangements in place) have additional conservation benefits on a landscape scale (defined as approx 1000 ha (10km <sup>2</sup> ) up to 200,000 ha (2000km <sup>2</sup> )?	Must be yes	Yes Increases level of protection of landscape scale feature – SEPP 14 Wetlands	yes	yes	
<b>AND</b>						
<b>5</b>	1. Will the additional conservation benefits on a landscape scale be additional to those required as offsets under the EOAM?	Must be yes	Yes standard offset 10ha – this offset 15ha, and	yes	yes	

<b>and</b>		Yes Contributes to NRCMA CAP	yes
2. Are the additional conservation benefits on a landscape scale in accordance with the guidance on the additional conservation benefits on a landscape scale as detailed in the Ministers Protocol signed 16/3/08?		Must be yes	yes
<b>AND</b>			
<b>6</b>	(1) Is the viability of the vegetation assessed as low or not viable (using the definition of viability as "the vegetation's ability to support biodiversity values that persist for many generations or long time periods" according to one or more of the following factors?: (a) the current or known future land uses surrounding the vegetation reduce its viability or make it unviable <b>or</b> (b) the size and connectedness (with other vegetation) is insufficient to maintain its viability <b>or</b> (c) the condition of the vegetation is substantially degraded resulting in loss of or reduced viability with degraded condition meaning substantially outside benchmark in the majority of vegetation condition variable as listed in the EOAM (recent disturbances such as fire or flood or drought causing the degradation excluded).	Must be yes for at least one of 1.(a), 1.(b) or 1.(c)	yes
	<b>and</b>		
	(2) has the EOAM been complied with?	Must be yes	yes
	<b>AND</b>		2. yes
<b>7</b>	In determining whether the proposed clearing will improve or maintain environmental outcomes, has the contribution to regional biodiversity values of the vegetation to be cleared been considered with regard to each of the following three factors?: (a) the % cleared in the region* of the vegetation to be cleared <b>and</b> (b) the condition of the vegetation type or EEC or native vegetation in the region* <b>and</b> (c) the % cleared of all nat veg cover in the region*	contribution to regional biodiversity values should not be relatively high if process is to proceed	yes
	<b>and</b>		(a) contribution is low
	<b>and</b>		(b) contribution is low
	<b>and</b>		(c) contribution is low

		values should not be relatively high if process is to proceed			
<b>RESULT</b>					
proceed					
redlight					

\* region is defined as an area from 2000 km2 up to approx 20000 km2