

## 13 Relevant legislation

In determining a sustainable strategic direction for Yass Valley Council in relation to rural lands, it is necessary to consider relevant Commonwealth and State legislation and assess their impacts on the strategy developed as a result of this Study.

### 13.1 Commonwealth legislation

The only Commonwealth legislation of relevance to planning in rural areas is the Environmental Protection and Biodiversity Conservation Act 1999.

#### 13.1.1 Environment Protection and Biodiversity Conservation Act 1999

The Environment Protection and Biodiversity Conservation Act 1999 (EPBC Act) provides a legal framework to protect and manage nationally and internationally important flora, fauna, ecological communities and heritage places defined in the Act as matters of national environmental significance. The EPBC Act is administered by the Department of Environment, Water, Heritage and the Arts.

The purpose of the EPBC Act is to:

- provide for the protection of the environment, especially those aspects of the environment that are matters of national environmental significance;
- promote ecologically sustainable development through the conservation and ecologically sustainable use of natural resources;
- promote the conservation of biodiversity;
- promote a co-operative approach to the protection and management of the environment involving governments, the community, land-holders and indigenous peoples;
- assist in the co-operative implementation of Australia's international environmental responsibilities;
- recognise the role of indigenous people in the conservation and ecologically sustainable use of Australia's biodiversity; and
- promote the use of indigenous peoples' knowledge of biodiversity with the involvement of, and in co-operation with, the owners of the knowledge.

The EPBC Act recognises the role for the Commonwealth in relation to the environment by facilitating Commonwealth involvement on matters of national environmental significance and on Commonwealth actions and Commonwealth areas. Under the EPBC Act, an activity subject to the provisions of the Act is only permitted to occur, if it is considered at the Minister's discretion, to not be a 'controlled action'.

The Minister's decision that an activity is not a controlled action is decided by obtaining an Approval under the Act through the submission of an EPBC Referral. The Referral is submitted addressing set criteria. It is the applicant's responsibility to prove to the Minister that the proposed activity is not a controlled action.

Under the EPBC Act, any activity with the potential to impact on the following matters has the potential to be a controlled action, and thus must gain approval from the Minister to occur:

- World Heritage Area;
- Wetlands of international importance (eg Macquarie Marshes);
- Listed threatened species or communities;
- Listed migratory species protected under international agreements (CAMBA and JAMBA);
- Protection of the environment from Nuclear actions;
- Marine environments (Waters of the Commonwealth); and
- Additional Matters of National Environmental Significance.

## **13.2 New South Wales legislation**

There are a number of State Acts of relevance to planning in a rural context which are outlined in this section. The Acts generally relate to town planning, local government, environmental and infrastructure matters which reflect the State Government's areas of responsibility.

### **13.2.1 Environmental Planning and Assessment Act 1979**

The principal Act regulating land use in New South Wales is the Environmental Planning and Assessment Act 1979 (EP&A Act).

The objectives of the EP&A Act are to encourage:

- (i) the proper management, development and conservation of natural and artificial resources, including agricultural land, natural areas, forests, minerals, water, cities, towns and villages for the purpose of promoting the social and economic welfare of the community and a better environment,
- (ii) the promotion and co-ordination of the orderly and economic use and development of land,
- (iii) the protection, provision and co-ordination of communication and utility services,
- (iv) the provision of land for public purposes,

- (v) the provision and co-ordination of community services and facilities, and
- (vi) the protection of the environment, including the protection and conservation of native animals and plants, including threatened species, populations and ecological communities, and their habitats, and
- (vii) ecologically sustainable development, and
- (viii) the provision and maintenance of affordable housing, and

The EP&A Act governs plan making, development assessment, environmental assessment, development contributions and enforcement matters.

These matters will be discussed in further detail in this Study where relevant.

### **13.2.2 Local Government Act 1993**

The Local Government Act 1993 (LG Act) governs local government in NSW and seeks to:

- (a) provide the legal framework for an effective, efficient, environmentally responsible and open system of local government in New South Wales,
- (b) regulate the relationships between the people and bodies comprising the system of local government in New South Wales,
- (c) encourage and assist the effective participation of local communities in the affairs of local government,
- (d) give councils:
  - (i) the ability to provide goods, services and facilities, and to carry out activities, appropriate to the current and future needs of local communities and of the wider public
  - (ii) the responsibility for administering some regulatory systems under this Act
  - (iii) a role in the management, improvement and development of the resources of their areas,
- (e) require councils, councillors and council employees to have regard to the principles of ecologically sustainable development in carrying out their responsibilities.

The LG Act governs the classification of public land, approvals for places of public entertainment, water supply, stormwater and waste management and enforcement.

### **13.2.3 Water Management Act 2000**

The Water Management Act 2000 (WM Act) is the main piece of water legislation for NSW ensuring that water is provided for the environment and more secure access to water users. The provisions of the Act are being progressively implemented in NSW.

The objects of the WM Act are to provide for the sustainable and integrated management of the water sources of the State for the benefit of both present and future generations and, in particular:

- To apply the principles of ecologically sustainable development;
- To protect, enhance and restore water sources, their associated ecosystems, ecological processes and biological diversity and their water quality;
- To recognise and foster the significant social and economic benefits to the State that result from the sustainable and efficient use of water, including:
  - Benefits to the environment;
  - Benefits to urban communities, agriculture, fisheries, industry and recreation;
  - Benefits to culture and heritage; and
  - Benefits to the Aboriginal people in relation to their spiritual, social, customary and economic use of land and water;
- To recognise the role of the community, as a partner with government, in resolving issues relating to the management of water sources;
- To provide for the orderly, efficient and equitable sharing of water from water sources;
- To integrate the management of water sources with the management of other aspects of the environment, including the land, its soil, its native vegetation and its native fauna;
- To encourage the sharing of responsibility for the sustainable and efficient use of water between the Government and water users; and
- To encourage best practice in the management and use of water.

Under the Act, thirty-one statutory Water Sharing Plans have commenced. These plans cater for 80% of water extraction in NSW. In areas not covered by water sharing plans, licensing continues under the Water Act 1912 until plans are gazetted for these areas.

Water Sharing Plans are ten year plans that define the water sharing arrangements between the environment and water users, and between different categories of water users. The plans aim to provide for healthier rivers and aquifers and their dependent ecosystems. The plans also provide water users with clarity and certainty about their water access rights. Water sharing plans:

- Establish environmental water provisions to protect water sources and dependent ecosystems. They include overall extraction limits for the water source plus specific environmental water rules. For regulated rivers, they include dam release rules, system flow targets, as well as volumes of water set aside for environmental contingencies. For unregulated rivers, they include prohibitions on extraction in low flows and limits on the daily extraction of water based on the different river flow classes from low to very high flows. For aquifers, they include reservation of the storage component of the aquifer plus a proportion of the average annual recharge as well as specific local impact management rules.
- Provide the rules under which the Department of Natural Resources makes available water determinations or what were previously known as annual

allocation announcements in the regulated river systems. These rules take account of the natural variability in water availability from year-to-year as a result of climate, as well as the environmental water rules and the requirements of persons exercising basic landholder water rights. Both basic landholder rights and water for the environment have priority over water access licences.

- Establish water account operation rules, such as limits on carryover of unused water allocations from one year to the next.
- Establish rules for water dealings (see below).
- Under the WM Act, water access licences are issued. These licences have the following features.
- Water access licences are separate from land - the land aspects are dealt with in works and use approvals;
- The water access licence defines a share in the water available in a specific water source. On most licences this is expressed as a unit share rather than as a volume per year;
- All access licences are to be listed on a public register;
- Anyone can own a water access licence and it is fully tradeable, subject to the rules in a water sharing plan;
- Water licences continue without ever needing to be renewed (effectively perpetual);
- The access licence can be used as security for a loan; and
- The management rules are fixed for 10 years in the statutory water sharing plans.

#### **13.2.4 Water Act 1912**

The Water Act 1912 came into force at the turn of the century and represented a different era in water management in NSW. This Act is being progressively phased out and replaced by the WM Act, but some provisions are still in force, particularly where water sharing plans have not commenced.

#### **13.2.5 Native Vegetation Act 2003**

This Act regulates the clearing of native vegetation on all land in NSW, except for excluded land listed in Schedule 1 of the Act. The Act outlines what landowners can and cannot do in clearing native vegetation.

The Act repealed the Native Vegetation Conservation Act 1997.

In 2005, the NSW Government introduced new laws to end broad scale land clearing across the state. The Department of Natural Resources (DNR) is the government agency charged with ensuring native vegetation is protected for future generations.

The objects of the Native Vegetation (NV) Act 2003 are:

- To provide for, encourage and promote the management of native vegetation on a regional basis in the social, economic and environmental interests of the State;
- To prevent broadscale clearing unless it improves or maintains environmental

outcomes;

- To protect native vegetation of high conservation value having regard to its contribution to such matters as water quality, biodiversity, or the prevention of salinity or land degradation;
- To improve the condition of existing native vegetation, particularly where it has high conservation value; and
- To encourage the revegetation of land, and the rehabilitation of land, with appropriate native vegetation, in accordance with the principles of ecologically sustainable development.

The NV Act is bringing an end to broad scale land clearing in NSW, unless the overall effect is to improve or maintain the environment. Under the new rules, landholders may only clear native vegetation provided they have reached an agreement with the Catchment Management Authority (CMA) on suitable offsets, through a Property Vegetation Plan (PVP).

Key features of the NV Act include:

- Clearing of remnant native vegetation will only be approved if overall, management actions improve or maintain environmental outcomes, protecting land, rivers and wildlife;
- Farmers will not have to go through an approval process to clear regrowth younger than 1 January 1990 (1 January 1983 in the Western Division);
- Clearing for routine agricultural management will not be subject to an approval process. Routine agricultural management activities include:
  - Sourcing timber for farm structures;
  - Noxious weed removal;
  - Collection of firewood for non commercial purposes;
  - To remove imminent risks of serious personal injury or damage to property;
  - Controlling pest animals in accordance with eradication orders;
  - Rural infrastructure within appropriate buffer distances;
  - Corridors for fire protection, power and water supply; and
  - Harvesting commercially planted timber.
- Property Vegetation Plans cannot be overturned by new threatened species listings or environmental planning instruments: giving farmers greater security to invest;
- Farmers may be able to offset any negative impacts of clearing by improving or planting native vegetation elsewhere on their property, or even on their neighbours property, if they are agreeable; and
- The clearing of invasive native scrub under a property vegetation plan to restore open woodlands will be recognised as providing environmental benefits as well as economic benefits to the farmer.

### **13.2.6 Threatened Species Conservation Act 1995**

The Threatened Species Conservation Act 1995 provides for the conservation of threatened species, populations and ecological communities of animals and plants.

Identified species, populations, ecological communities and key threatening processes are listed in the Schedules to the Act.

- The TSC Act provides for the protection and conservation of threatened species through the identification of:
  - Threatened species and ecological communities;
  - Critical habitat of those species and communities; and
  - Threatening processes.

Once gazetted, critical habitat and threatening processes must be considered in any activities and importantly approvals of developments that could affect either. For species that are defined as either endangered or critically endangered, recovery plans must be prepared and these must also be considered by councils in the determination of development applications and its own activities.

If a planned development or activity will have an impact on a threatened species, population or ecological community, this must be taken into account in the development approval process. If a development is assessed to have significant impact, a developer can modify the application to reduce the impact to a non-significant level. The developer may also be required by the TSC Act to prepare a Species Impact Statement (SIS). The SIS will provide the decision-making authority and the Department of Environment and Conservation (DECC) with the information they need to make a decision. In most cases, a development can be modified to accommodate the interests of both the landholder and the DECC, to ensure the continued survival of the threatened species, population or ecological community.

There is also a mechanism in the Act that allows the Minister for the Environment to confer certification on an environmental planning instrument made under the EP&A Act. The certification can be conferred if the Minister is satisfied that the instrument will lead to an overall improvement or maintenance of biodiversity values, including threatened species.

### **13.2.7 National Parks and Wildlife Act 1974**

The National Parks and Wildlife Act 1974 provides the statutory framework for the protection and management of threatened native flora and fauna species as well as places, objects and features of Aboriginal significance. The act also establishes the management principles for the preservation and management of land reserved under this act such as National Parks, State Conservation areas, Regional parks, historical sites, Aboriginal areas, Karst conservation reserves and nature reserves.

### **13.2.8 Fisheries Management Act 1994**

The general objects of the Fisheries Management (FM) Act 1994 are to conserve, develop and share the fishery resources of the State for the benefit of present and future generations. The particular objects of the Act include:

- To conserve fish stocks and key fish habitats;

- To conserve threatened species, populations and ecological communities of fish and marine vegetation;
- To promote ecologically sustainable development, including the conservation of biological diversity;
- To promote viable commercial fishing and aquaculture industries;
- To promote quality recreational fishing opportunities;
- To appropriately share fisheries resources between the users of those resources; and
- To provide social and economic benefits for the wider community of New South Wales.

Similar to the TSC Act, the FM Act provides for the protection and conservation of threatened fish and marine vegetation species.

The objects of the FM Act relating to threatened species are:

- To conserve biological diversity of fish and marine vegetation and promote ecologically sustainable development and activities;
- To prevent the extinction and promote the recovery of threatened species, populations and ecological communities of fish and marine vegetation;
- To protect the critical habitat of those threatened species, populations and ecological communities that are endangered;
- To eliminate or manage certain processes that threaten the survival or evolutionary development of threatened species, populations and ecological communities of fish and marine vegetation;
- To ensure that the impact of any action affecting threatened species, populations and ecological communities of fish and marine vegetation is properly assessed; and
- To encourage the conservation of threatened species, populations and ecological communities of fish and marine vegetation by the adoption of measures involving co-operative management.

### **13.2.9 Rural Fires Act 1997**

The Rural Fire Service administers the Rural Fires (RF) Act 1997.

The objects of this Act are to provide:

- For the prevention, mitigation and suppression of bush and other fires in local government areas, (or parts of areas) and other parts of the State constituted as rural fire districts;
- For the co-ordination of bush fire fighting and bush fire prevention throughout the State;
- For the protection of persons from injury or death, and property from damage, arising from fires; and
- For the protection of the environment by the activities described above to be carried out having regard to the principles of ecologically sustainable

development.

Under the RF Act and the EP&A Act, certain land can be identified as “bush fire prone land”. Development on bush fire prone land is restricted and certain approvals are required. Development is also required to comply with “bush fire environmental assessment codes” prepared under the RF Act. In this case, an updated guideline, Planning for Bushfire Protection 2006, came into effect on 1 March 2007.

### **13.2.10 Heritage Act 1977**

The Heritage Act 1977 provides for the conservation of environmental heritage in NSW. Environmental heritage is defined as places, buildings, works, relics, moveable objects, and precincts of State or local heritage significance.

Part 3A of the Heritage Act 1977 establishes the State Heritage Register which identifies items and places of State Heritage Significance. The act is administered by the Heritage Council of NSW through the Heritage Branch of the NSW Department of Planning.

### **13.2.11 Mining Act 1992**

Environmental and rehabilitation performance of mining activities is enforced and regulated through conditions of titles granted under the Mining Act 1992. The Department of Primary Industries, Mineral Resources and other affected Government agencies issue mining titles, and other approvals to operate, only after full consideration of environmental impacts. This assessment is then considered when drafting lease, license and other approval conditions. Land disturbed by mining must be rehabilitated to a high standard, and returned to an acceptable post mining land use.

The Mining Act 1992 empowers the Minister for Mineral Resources to impose conditions on exploration licences, mining leases, and mineral claims, and specifically covers conditions to protect the environment and to require rehabilitation of land disturbed by mining. While agencies such as DEC exercise their regulatory roles to licence or control the immediate environmental impacts of mining activities, rehabilitation is solely the province of Mineral Resources. Provisions of the Mining Act underwrite the primacy of the Department in this role. The Act also empowers the Department to require substantial sureties to ensure that the cost of rehabilitation is borne by the mining company and does not become a burden on the community. The establishment of self-sustaining rehabilitation may take many years, and the security is released only when rehabilitation is satisfactory. Fines and other sanctions, including lease cancellation, can be imposed on companies failing to comply with lease conditions.