

1995—No. 775

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

**STATE ENVIRONMENTAL PLANNING POLICY No. 46—
PROTECTION AND MANAGEMENT OF NATIVE
VEGETATION (AMENDMENT No. 1)**

NEW SOUTH WALES



[Published in Gazette No. 158 of 22 December 1995]

HIS Excellency the Governor, with the advice of the Executive Council, and in pursuance of the Environmental Planning and Assessment Act 1979, has been pleased to make the State environmental planning policy set forth hereunder in accordance with the recommendation made by the Minister for Urban Affairs and Planning.

Paul Whelan

Acting Minister for Urban Affairs and Planning.

Sydney, 22 December 1995.

Citation

1. This Policy may be cited as State Environmental Planning Policy No. 46—Protection and Management of Native Vegetation (Amendment No. 1).

Commencement

2. This Policy commences on the day on which Schedule 5 to the Threatened Species Conservation Act 1995 commences.

Aims, objectives, policies and strategies

3. The aims of this Policy are:

- (a) to remove the requirement of the Principal Policy that the concurrence of the Director-General of National Parks and Wildlife be obtained before development consent for the clearing of native vegetation is granted (except when this is required under section 77A of the Environmental Planning and Assessment Act

1979, as amended by the Threatened Species Conservation Act 1995) and to provide instead that the Director-General of National Parks and Wildlife may be consulted before such consent is granted; and

- (b) to require the Director-General of the Department of Land and Water Conservation, when determining a development application under the Principal Policy, to consider the likely social and economic consequences of granting or refusing to grant the consent and to balance these interests with environmental factors; and
- (c) to except from the requirement for development consent, from the commencement of this Policy until 16 February 1996, the clearing of native vegetation that comprises native grasslands on land specified in Schedule 2 to the Principal Policy and, after 16 February 1996, the clearing of any of the specified native grasslands for which a plan of management has been approved by the Minister for Land and Water Conservation if the clearing is carried out in accordance with that plan.

Principal Policy

4. In this Policy, State Environmental Planning Policy No. 46—Protection and Management of Native Vegetation is referred to as the Principal Policy.

Application of this Policy

5. This Policy applies to the part of the State to which the Principal Policy applies.

Relationship to other environmental planning instruments

6. This Policy amends the Principal Policy as set out in clause 7.

Amendment of Principal Policy

7. The Principal Policy is amended:

- (a) by omitting “Such a consent will be subject to the concurrence of the Director-General of National Parks and Wildlife.” from clause 2 (2);
- (b) by omitting from clause 6 (1) the words. “Land and Water Conservation granted with the concurrence of the Director-General of National Parks and Wildlife” and by inserting instead “the Department of Land and Water Conservation”;

- (c) by omitting clauses 7 and 8 and by inserting instead the following clause:

Matters for Consideration

7. (1) In determining a development application, the consent authority must take into consideration, in addition to the matters referred to in section 90 of the Environmental Planning and Assessment Act 1979 and clause 65 of the Environmental Planning and Assessment Regulation 1994, such of the following matters as are of relevance to the development the subject of the development application:

- (a) whether the vegetation is remnant vegetation in a region that has been extensively cleared;
- (b) whether the area has a high biological diversity;
- (c) whether the area contains:
 - disjunct populations of a native species or a species that is near the limit of its geographic range;
 - riparian vegetation;
 - vegetation associated with wetlands;
- (d) whether the area has connective importance as, or as part of, a corridor of native vegetation (meaning native vegetation forming a connection that allows for the potential passage of species of flora or fauna between two or more other patches of vegetation);
- (e) whether the area is, or is part of, land identified as wilderness in a wilderness assessment report prepared by the Director-General of National Parks and Wildlife;
- (f) whether the area contains, or drains into, a karst system;
- (g) whether the vegetation is adequately represented in a conservation reserve system;
- (h) whether the area is an “inholding” situated within land reserved or dedicated under the National Parks and Wildlife Act 1974;
- (i) whether the area is important as a site along a migratory route for wildlife;
- (j) whether the area functions as an important drought refuge for wildlife;

(k) whether clearance would be likely to contribute significantly to any of the following problems:

- soil erosion;
- salinisation of soil and water;
- acidification of soil;
- land slip;
- deterioration in the quality of surface or ground water;
- increased flooding;

(l) whether there is any need for conservation of all or some of the vegetation because of:

- its unusually good condition or integrity as a sample of its type; or
- the low boundary to area ratio of the area; or
- the existence within the area of Aboriginal sites; or
- the existence within the area of a site of geological significance.

(2) In determining a development application, the consent authority must take into consideration the likely social and economic consequences, for the applicant for the development consent and for the locality, region and State, of granting or refusing to grant the development consent as well as to the factors referred to in subclause (1).

(d) by inserting after clause 9 (1) (c) the following paragraph:

(cl) the Director-General of National Parks and Wildlife; or

(e) by inserting after clause 9 the following clause:

Development on critical habitat or having significant effect on threatened species, populations or ecological communities, or their habitats

9A. (1) Despite the other provisions of this Policy, if the development that is the subject of a development application under this Policy:

- (a) is on land that is, or is a part of, critical habitat; or
- (b) is likely to significantly affect a threatened species, population or ecological community, or its habitat,

the application for development consent must be determined in accordance with the procedures specified in sections 77A–77C of the Environmental Planning and Assessment Act 1979.

(2) In this clause, “**critical habitat**” and “**threatened species, population or ecological community**” have the same meanings as in the Threatened Species Conservation Act 1995.

(3) For the purposes of subclause (1) (b), the factors specified in section 5A of the Environmental Planning and Assessment Act 1979 are to be taken into account in deciding whether the development is likely to significantly affect a threatened species, population or ecological community, or its habitat.

(f) by inserting after clause 11 the following clause:

Clearing of native grasslands

12. (1) Development consent is not required under this Policy for the clearing of native vegetation:

- (a) on or after the commencement of this Policy and before 16 February 1996, in the case of native grasslands specified in Schedule 2; or
- (b) on or after 16 February 1996, in the case of the native grasslands specified in that Schedule in respect of which the Minister for Land and Water Conservation has approved a plan of management, if the clearing is carried out in accordance with that plan.

(2) Development consent is required under this Policy for the clearing of native vegetation, being native grasslands, on land specified in Schedule 2 after 16 February 1996:

- (a) until such time as a plan of management for the native grasslands is approved in accordance with this clause; or
- (b) for any clearing that is proposed to be carried out in a manner that is not in accordance with a plan of management so approved.

Pending development applications

8. The Principal Policy, as amended by this Policy, applies to a development application made (but not finally determined) before the commencement of this Policy in the same way as it applies, as so amended, to a development application made after that commencement.
