

ENVIRONMENTAL PLANNING AND ASSESSMENT ACT 1979

**STATE ENVIRONMENTAL PLANNING POLICY No. 46—
PROTECTION AND MANAGEMENT OF NATIVE
VEGETATION**

NEW SOUTH WALES



[Published in Gazette No. 96 of 10 August 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.

CRAIG JOHN KNOWLES, M.P.,
Minister for Urban Affairs and Planning.

Sydney, 10th August 1995.

Citation

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

Aims, objectives, policies and strategies

2. (1) The aim of this policy is to prevent inappropriate native vegetation clearance in New South Wales. This Policy requires the assessment of proposals to clear native vegetation for the purpose of ensuring that native vegetation is protected and managed in the environmental, social and economic interests of the State.

(2) The strategy adopted by this Policy to achieve its aim is to allow the clearing of native vegetation to be carried out only with the development consent of the Director-General of the Department of Land and Water Conservation. Such a consent will be subject to the concurrence of the Director-General of National Parks and Wildlife.

Application of Policy

3. This Policy applies to the part of the State which consists of the local government areas specified in Schedule 1, except the following land:

- (a) land zoned “Residential”, “Township”, or “Village” under an environmental planning instrument;
- (b) land dedicated or reserved under the National Parks and Wildlife Act 1974;
- (c) land which is a State forest, national forest, flora reserve or timber reserve under the Forestry Act 1916;
- (d) land subject to a clearing licence under section 27G of the Forestry Act 1916;
- (e) protected land, within the meaning of section 21AB of the Soil Conservation Act 1938;
- (f) land administered under the Western Lands Act 1901;
- (g) land to which any of the following apply:
 - State Environmental Planning Policy No. 14—Coastal Wetlands;
 - State Environmental Planning Policy No. 26—Littoral Rainforests;
 - Murray Regional Environmental Plan No. 2—Riverine Land.

Relationship to other environmental planning instruments

4. This Policy prevails to the extent of any inconsistency between this Policy and any other environmental planning instrument made before this Policy.

Definitions

5. In this Policy:

“**Biological diversity**” means variability among living organisms and the ecological systems of which they are part. It includes diversity within species, between species and of ecosystems.

“**Clearing**” of native vegetation means directly or indirectly:

- (a) killing, destroying or burning native vegetation; or
- (b) removing native vegetation; or
- (c) severing or lopping branches, limbs, stems or trunks of native vegetation; or
- (d) substantially damaging native vegetation in any other way, but does not include sustainable grazing.

“Native vegetation” means vegetation that is indigenous to the State, including trees, shrubs, understorey plants and specified native grasslands, but not including seagrasses and other marine vegetation. For the purposes of this definition, indigenous vegetation is that of a species which existed in the State before European settlement.

“Remnant vegetation” means any patch of native vegetation around which most or all of the native vegetation has been removed.

“Riparian vegetation” means the native vegetation which is located on land which is situated within, or within 20 metres of, the bed or bank of any river or lake, in each case within the meaning of the Water Administration Act 1986.

“Specified native grasslands” means a plant community on land described in Schedule 2, being a plant community dominated by native grasses and containing a variety of other native herbaceous plants. They may comprise the dominant layer of vegetation (treeless and shrubless communities) or the understorey in tree or shrub-dominated communities (grassland understoreys).

Consent required for clearing of native vegetation

6. (1) Clearing of native vegetation must not be carried out on land to which this Policy applies except with the development consent of the Director-General of Land and Water Conservation granted with the concurrence of the Director-General of National Parks and Wildlife.

(2) Such a consent may be granted only if the consent authority imposes a condition providing for the consent to lapse 12 months after the date from which it operates.

Restrictions on granting consent

7. Such a consent may be granted to allow the clearing of native vegetation from an area of land only if the consent authority is satisfied that:

- (a) the vegetation is not remnant vegetation in a region which has been extensively cleared; and
- (b) the area does not have a high biological diversity; and
- (c) the area does not contain:
 - an endangered plant species or community; or
 - habitat for rare and endangered fauna; or
 - disjunct populations of a native species or a species which is near the limit of its geographic range; or
 - riparian vegetation; or
 - vegetation associated with wetlands; and

- (d) the area does not have connective importance as, or as part of, a corridor of native vegetation (meaning native vegetation forming a connection which allows for the potential passage of species of flora or fauna between two or more other patches of vegetation); and
- (e) the area is not, and is not part of, land identified as wilderness in a wilderness assessment report prepared by the Director-General of National Parks and Wildlife; and
- (f) the area does not contain, or drain into, a karst system; and
- (g) the vegetation is adequately represented in a conservation reserve system; and
- (h) the area is not, and is not part of, land which is significant as wildlife habitat; and
- (i) the area is not an “inholding” situated within land reserved or dedicated under the National Parks and Wildlife Act 1974; and
- (j) the area is not important as a site along a migratory route for wildlife; and
- (k) the area does not function as an important drought refuge for wildlife; and
- (l) clearance would not 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 quality of surface or ground water;
 - increased flooding.

Matters to be taken into consideration

8. The consent authority, in determining an application for such a consent, and the Director-General of National Parks and Wildlife, in determining whether or not to grant concurrence for such a consent, must take into consideration whether there is any need for conservation of all or some of the vegetation because of:

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

Consultation

9. (1) The consent authority may serve a copy of a development application made pursuant to this Policy on:

- (a) the council of the local government area in which the land to which it relates is situated; or
- (b) the Environment Protection Authority; or
- (c) the Director-General of the Department of Agriculture; or
- (d) the Director of NSW Fisheries.

(2) The consent authority must not grant consent to the application until after taking into consideration any response made to the consent authority by the public authority concerned within 28 days of service of the copy of the application.

Special provision

10. (1) This Policy does not apply to development in respect of which the Minister has granted development consent (whether before or after the commencement of this Policy), or in respect of which the development consent of the Minister is required, pursuant to any other State environmental planning policy or because of a direction given under section 101 of the Environmental Planning and Assessment Act 1979.

(2) If consent would have been required by this Policy for any such development, the Minister must not grant the consent referred to in subclause (1) after the commencement of this Policy until:

- (a) copies of the development application have been served on the Minister for Land and Water Conservation and the Minister for the Environment; and
- (b) the Minister has taken into consideration any response made to the Minister by either of the other Ministers within 28 days of service on the other Minister of the copy of the application.

Exemptions

11. This Policy does not require development consent for any clearing of native vegetation described in Schedule 3.

**SCHEDULE 1—LOCAL GOVERNMENT AREAS TO WHICH
POLICY APPLIES**

(Cl. 3 (1))

| | | |
|---------------------|----------------------|------------------|
| ALBURY CITY | FORBES | NARROMINE |
| ARMIDALE CITY | GILGANDRA | NUNDLE |
| BALLINA | GLEN INNES | NYMBOIDA |
| BALRANALD | GLOUCESTER | OBERON |
| BARRABA | GOSFORD CITY | ORANGE CITY |
| BATHURST CITY | GOULBURN CITY | PARKES |
| BEGA VALLEY | GRAFTON CITY | PARRY |
| BELLINGEN | GREAT LAKES | PORT STEPHENS |
| BERRIGAN | GREATER LITHGOW CITY | QUEANBEYAN CITY |
| BINGARA | GREATER TAREE CITY | QUIRINDI |
| BLAND | GRIFFITH CITY | RICHMOND RIVER |
| BLANEY | GUNDAGAI | RYLSTONE |
| BLUE MOUNTAINS CITY | GUNNEDAH | SCONE |
| BOGAN | GUNNING | SEVERN |
| BOMBALA | GUYRA | SHELLHARBOUR |
| BOOROWA | HARDEN | SHOALHAVEN CITY |
| BOURKE | HASTINGS | SINGLETON |
| BREWARRINA | HAY | SNOWY RIVER |
| BROKEN HILL CITY | HOLBROOK | TALLAGANDA |
| BYRON | HUME | TAMWORTH CITY |
| CABONNE | INVERELL | TEMORA |
| CARRATHOOL | JERILDERIE | TENTERFIELD |
| CASINO | JUNEE | TUMBARUMBA |
| CENTRAL DARLING | KEMPSEY | TUMUT |
| CESSNOCK CITY | KIAMA | TWEED |
| COBAR | KYOGLE | ULMARRA |
| COFFS HARBOUR CITY | LACHLAN | URALLA |
| CONARGO | LAKE MACQUARIE CITY | URANA |
| COOLAH | LEETON | WAGGA WAGGA CITY |
| COOLAMON | LISMORE CITY | WAKOOL |
| COOMA-MONARO | LOCKHART | WALCHA |
| COONABARABRAN | MACLEAN | WALGETT |
| COONAMBLE | MAITLAND CITY | WARREN |
| COOTAMUNDRA | MANILLA | WEDDIN |
| COPMANHURST | MERRIWA | WELLINGTON |
| COROWA | MOREE PLAINS | WENTWORTH |
| COWRA | MUDGEE | WINDOURAN |
| CROOKWELL | MULWAREE | WINGECARRIBEE |
| CULCAIRN | MURRUMBIDGEE | WOLLONDILLY |
| DENILIQVIN | MURRURUNDI | WYONG |
| DUBBO CITY | MUSWELLBROOK | YALLAROI |
| DUMARESQ | NAMBUCCA | YARROWLUMLA |
| DUNGOG | NARRABRI | YASS |
| EUROBODALLA | NARRANDERA | YOUNG |
| EVANS | | |

**SCHEDULE 2—LAND ON WHICH SPECIFIED NATIVE
GRASSLANDS OCCUR**

(Cl. 5)

1. Native grasslands on land known as the Hay Plains that is within any of the following local government areas:

| | |
|------------|--------------|
| BERRIGAN | JERILDERIE |
| CARRATHOOL | LEETON |
| CONARGO | MURRUMBIDGEE |
| DENILIQVIN | MURRAY |
| GRIFFITH | WAKOOL |
| HAY | WINDOURAN |

2. Native grasslands on land known as the Liverpool Plains that is within any of the following local government areas:

| | |
|------------|----------|
| GUNNEDAH | PARRY |
| MURRURUNDI | QUIRINDI |

3. Native grasslands on land known as The Monaro that is within any of the following local government areas:

| | |
|--------------|-------------|
| BOMBALA | SNOWY RIVER |
| COOMA-MONARO | |

4. Native grasslands on land that is within any of the following local government areas:

| | |
|--------------|---------|
| BREWARRINA | WALGETT |
| MOREE PLAINS | |

SCHEDULE 3—EXEMPTIONS

(Cl. 11)

Clearing of native vegetation for the purpose of the following:

- (a) *Minimal Clearing*. The clearing of up to 2 hectares per annum for any contiguous land holding in the same ownership.
- (b) *Minimal Tree Cutting*. The cutting of no more than 7 trees per hectare in any period of one year for on-farm uses, including fence posts and firewood.
- (c) *Stock Fodder*. The lopping of native vegetation for stock fodder in any period of declared drought if the vegetation's continued health is not affected.
- (d) *Mistletoe Control*. The lopping of native vegetation for mistletoe control to the minimum extent necessary for the vegetation's continued health.

- (e) *Rural Structures*. The clearing to a minimum extent of native vegetation if it is necessary for the construction, operation and maintenance of farm structures (such as farm dams, tracks, bores, windmills, fences, fence lines, stockyards, loading ramps, sheds and the like).
- (f) *Burning*. The clearing of native vegetation if it is authorised under the Bush Fires Act 1949.
- (g) *Public Utilities and Emergency Work*. The clearing, to a minimum extent, of native vegetation for the maintenance of public utilities (associated with the provision of power lines, transmission of electricity, water, gas, electronic communications or the like), or which may reasonably be thought likely to be at risk of causing personal injury or damage to property.
- (h) *Planted Native Vegetation*. The clearing of native vegetation planted for forestry, agriculture, agroforestry, woodlots, gardens and horticultural purposes.
- (i) *Private Native Forestry*. The clearing of native vegetation in a native forest in the course of its being selectively logged on a sustainable basis or managed for forestry purposes (timber production).
- (j) *Regrowth*. The removal of native vegetation, whether seedlings or regrowth, of less than 10 years of age if the land has been previously cleared for cultivation, pastures or forestry plantation purposes.
- (k) *Noxious Weeds*. The clearing of native vegetation proclaimed as a noxious weed.
- (l) *Vermin Control*. The clearing of native vegetation to the minimum extent necessary for vermin control.

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