



New South Wales

State Environmental Planning Policy (Vegetation in Non-Rural Areas) Further Amendment 2021

under the

Environmental Planning and Assessment Act 1979

Her Excellency the Governor, with the advice of the Executive Council, has made the following State environmental planning policy under the *Environmental Planning and Assessment Act 1979*.

ROB STOKES, MP
Minister for Planning and Public Spaces

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1 Name of Policy

This Policy is *State Environmental Planning Policy (Vegetation in Non-Rural Areas) Further Amendment 2021*.

2 Commencement

- (1) This Policy commences on the day on which it is published on the NSW legislation website, except as provided by subclause (2).
- (2) Schedule 3 commences on 18 December 2021.

3 Repeal of Policy

This Policy is repealed on the day following the day on which this Policy commences.

Schedule 1 Amendment of State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

[1] Clause 4 Definitions

Insert in alphabetical order in clause 4(1)—

approval means an approval granted by the Native Vegetation Panel under Part 4.

permit means a permit issued by a council under Part 3.

[2] Part 2

Omit the Part. Insert instead—

Part 2 Clearing vegetation in non-rural areas

7 Clearing that requires permit or approval

- (1) A person must not clear vegetation in a non-rural area of the State to which Part 3 applies without the authority conferred by a permit granted by the council under that Part.
- (2) A person must not clear native vegetation in a non-rural area of the State that exceeds the biodiversity offsets scheme threshold without the authority conferred by an approval granted by the Native Vegetation Panel under Part 4.
- (3) Subclause (2) does not apply to clearing on biodiversity certified land under the *Biodiversity Conservation Act 2016*, Part 8.
- (4) Clearing of vegetation is not authorised under this clause unless the conditions to which the authorisation is subject are complied with.
- (5) Subclause (4) extends to a condition that imposes an obligation on the person who clears the vegetation that must be complied with before or after the clearing is carried out.
- (6) For the purposes of the Act, section 4.3, clearing vegetation that requires a permit or approval under this Policy is prohibited if the clearing is not carried out in accordance with the permit or approval.

8 Clearing that does not require permit or approval

- (1) A permit or approval to clear vegetation is not required under this Policy if it is clearing of a kind that is authorised under the *Local Land Services Act 2013*, section 60O or Part 5B.
- (2) Despite the *Local Land Services Act 2013*, section 60O(a)(i) and (b)(i), subclause (1) does not apply to clearing that is part of or ancillary to the carrying out of exempt development or complying development.
- (3) A permit or approval is not required under this Policy for—
 - (a) the removal of vegetation that the council is satisfied is a risk to human life or property, or
 - (b) clearing for a traditional Aboriginal cultural activity, other than a commercial cultural activity.
- (4) A permit is not required under this Policy for the removal of vegetation that the council is satisfied—
 - (a) is dying or dead, and

- (b) is not required as the habitat of native animals.
- (5) An approval is not required under this Policy for the removal of vegetation that the Native Vegetation Panel is satisfied—
 - (a) is dying or dead, and
 - (b) is not required as the habitat of native animals.

8A Clearing permitted without development consent

Clearing of vegetation in a non-rural area of the State is permitted without development consent if—

- (a) the clearing—
 - (i) is not ancillary to the carrying out of other development, and
 - (ii) does not require a permit or approval, and
- (b) the vegetation is not—
 - (i) a heritage item or an Aboriginal object, or
 - (ii) located in a heritage conservation area or Aboriginal place of heritage significance.

[3] Clause 14 Obtaining approval of Panel for clearing of native vegetation

Omit clause 14(4)(a). Insert instead—

- (a) the land can be used for that purpose without—
 - (i) development consent, other than a complying development certificate, or
 - (ii) State significant infrastructure approval under the Act, and

[4] Clauses 25, 26, 28 and 29

Omit the clauses.

[5] Clause 27 Clearing of vegetation formerly authorised under Native Vegetation Act 2003 within Zones R5, E2, E3 and E4

Omit clause 27(4).

Insert instead—

Note— This clause is repealed on 18 December 2021 by *State Environmental Planning Policy (Vegetation in Non-Rural Areas) Further Amendment 2021*, Schedule 3[4].

Schedule 2 Amendment of State Environmental Planning Policy (Exempt and Complying Development Codes) 2008

- [1] **Clauses 1.5(1), definition of “protected tree”, 3.33(1) and note 4, 3A.7, 3A.24A, note, 3B.61(1) and note 4, 3C.36(1) and note 4, 3D.64(1) and note 4 and 5A.3**

Insert “, approval” after “permit” wherever occurring.

- [2] **Clause 1.16 General requirements for exempt development**

Omit clause 1.16(3)(b). Insert instead—

- (b) not involve the removal or pruning of a tree or other vegetation that requires a permit, approval or development consent, unless the removal or pruning is carried out in accordance with the permit, approval or development consent.

Example— A permit or approval may be required under *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* or other legislation.

- [3] **Clause 1.16(3), note**

Omit the note.

- [4] **Clause 1.18 General requirements for complying development under this Policy**

Omit clause 1.18(1)(h), including the note. Insert instead—

- (h) for development involving the removal or pruning of a tree or other vegetation that requires a permit, approval or development consent—before the complying development certificate is issued, have the permit, approval or development consent.

Note— A permit or approval may be required under *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* or other legislation. Paragraph (h) may not apply to some removal or pruning of trees. See, for example, clause 3.33.

Schedule 3 Amendment of State Environmental Planning Policy (Vegetation In Non-Rural Areas) 2017— commencing on 18 December 2021

[1] Clause 4 Definitions

Insert in alphabetical order in clause 4(1)—

Allowable Clearing Map means the State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 Allowable Clearing Map.

private land, for Part 5—see clause 26.

[2] Clause 6A

Insert after clause 6—

6A Maps

- (1) A reference in this Policy to a named map adopted by this Policy is a reference to a map by that name—
 - (a) approved by the Minister when the map is adopted, and
 - (b) as amended or replaced from time to time by maps declared by environmental planning instruments to amend or replace the map, and approved by the persons making the instruments when the instruments are made.
- (2) Two or more named maps may be combined into a single map and a reference in this Policy to the named map is a reference to the relevant part or aspect of the single map.
- (3) The maps adopted by this Policy are to be kept in electronic form and made available for public access in accordance with arrangements approved by the Minister.

[3] Clause 8 Clearing that does not require permit or approval

Insert at the end of the clause—

Note— See also Part 5, which sets out certain clearing that does not require a permit or approval under this Policy if the clearing—

- (a) is carried out on certain primary production land in Zone R5, E2, E3 or E4, and
- (b) complies with the requirements of Part 5.

[4] Part 5

Omit Part 5. Insert instead—

Part 5 Clearing of native vegetation on primary production land in Zones R5, E2, E3 and E4 that does not require permit or approval

Division 1 Preliminary

26 Definitions

- (1) In this Part—

private land has the same meaning as in the *Local Land Services Act 2013*.

- (2) In this Part, a reference to land in Zone R5, E2, E3 or E4 is a reference to the following zones under an environmental planning instrument that applies to the land—
- (a) Zone R5 Large Lot Residential,
 - (b) Zone E2 Environmental Conservation,
 - (c) Zone E3 Environmental Management,
 - (d) Zone E4 Environmental Living.

27 General requirements

- (1) This Part sets out the clearing of native vegetation that does not require a permit or approval under this Policy.
- (2) A permit or approval is not required to clear native vegetation under this Policy only if the requirements of this Part that apply to the clearing are complied with.
- (3) The clearing must be carried out by or on behalf of the landholder, unless otherwise provided.
- (4) The clearing must be carried out in a way that minimises the risk of soil erosion.
- (5) The clearing must be carried out only to the minimum extent necessary for the purpose for which the clearing is carried out.
- (6) This Part does not authorise the clearing of native vegetation on land that is subject to an order under the *Biodiversity Conservation Act 2016*, Part 11.

28 Measurement of maximum distances for clearing

- (1) In this Part, the maximum distance of clearing of native vegetation means—
 - (a) for linear infrastructure—the total width of the clearing, or
 - (b) for fixed point infrastructure—the maximum distance of the clearing measured from the perimeter of the infrastructure.
- (2) The maximum distance of clearing for fixed point infrastructure includes the area on which the infrastructure is located in addition to the maximum distance of the clearing from the perimeter of the infrastructure.
- (3) The maximum distances of clearing of native vegetation are not cumulative.
- (4) If the maximum distance for an item of infrastructure overlaps with the maximum distance for another item of infrastructure, the distances are not to be combined.
- (5) A maximum distance of clearing specified in this Part in relation to an item of infrastructure on a landholding applies even if part of the clearing within the maximum distance is carried out on an adjoining landholding.

29 Separate items of infrastructure to be constructed to reduce overall distance of clearing

This Part does not apply to clearing for an item of infrastructure constructed by a landholder on the same landholding as another item of infrastructure for which clearing may be carried out without a permit or approval under this Part if—

- (a) the item of infrastructure could have been constructed closer to the other item of infrastructure to reduce the overall distance of the clearing for both items of infrastructure to the smallest overall distance, and

- (b) the landholder does not provide a reasonable justification for the location of the item of infrastructure constructed by the landholder.

Division 2 Clearing in Zones R5, E2, E3 and E4

30 Land to which Division applies

This Division applies to land identified as “Allowable clearing land” on the Allowable Clearing Map that is—

- (a) land used for primary production within the meaning of the *Land Tax Management Act 1956*, section 10AA, and
- (b) in Zone R5, E2, E3 or E4.

31 Clearing for construction and maintenance of fences and farm tracks

- (1) A permit or approval to clear native vegetation is not required under this Policy if the clearing is for—
 - (a) the construction of a permanent boundary fence, or
 - (b) the maintenance of—
 - (i) an existing permanent boundary fence, or
 - (ii) an existing permanent internal fence, or
 - (iii) an existing farm track.

Note— See clause 37 in relation to clearing for the construction of a farm track on land in Zones R5, E3 and E4.

- (2) The maximum clearing distance is 6 metres.

32 Clearing for maintenance of water supply and gas infrastructure

- (1) A permit or approval to clear native vegetation is not required under this Policy if the clearing is for the maintenance of an existing public utility associated with water supply infrastructure or gas supply infrastructure.
- (2) The clearing must be carried out by or on behalf of—
 - (a) the owner of the infrastructure, or
 - (b) the landholder.

33 Clearing for maintenance of telecommunications infrastructure

- (1) A permit or approval to clear native vegetation is not required under this Policy if the clearing is for the maintenance of existing telecommunications infrastructure.
- (2) The clearing must be carried out by or on behalf of—
 - (a) the owner of the infrastructure, or
 - (b) the landholder.

34 Clearing for maintenance of electricity transmission infrastructure

- (1) A permit or approval to clear native vegetation is not required under this Policy if the clearing is for the maintenance of an existing public utility associated with the transmission of electricity (an *electricity utility*).
- (2) Maintenance of an electricity utility includes the following activities only if the activity is carried out by or at the written direction of a relevant person—
 - (a) maintaining the necessary safety clearance—
 - (i) under power lines, conductors and structures, and

- (ii) around communication sites associated with the supply of electricity,
 - (b) minimising fuel loads under power lines to minimise the chance of smoke from a fire resulting in a line trip,
 - (c) maintaining existing access roads and tracks.
- (3) Maintenance of an electricity utility does not include the following—
- (a) the construction of a new access road or track,
 - (b) the removal of low growing groundcover,
 - (c) maintaining a safety clearance from power lines that exceeds either of—
 - (i) the maximum clearing distance, or
 - (ii) the minimum distance that will ensure reliability of supply under all loading and environmental conditions and minimise the risk of arcing.
- (4) In this clause—
maximum clearing distance means the distance specified in the following table for the voltage of the power line—

Nominal operating voltage of power line	Maximum clearing distance
Not more than 11 kV	20 metres
Above 11 kV up to and including 33 kV	25 metres
Above 33 kV up to and including 66 kV	30 metres
Above 66 kV up to and including 132 kV	45 metres
Above 132 kV up to and including 330 kV	60 metres
Above 330 kV	70 metres

relevant person means the person or body—

- (a) in which the electricity utility is vested, or
- (b) that has the responsibility for the electricity utility’s safe operation.

35 Clearing for maintenance and operation of private power lines

A permit or approval to clear native vegetation is not required under this Policy if the clearing is reasonably necessary for the maintenance or operation of existing privately owned power lines on private land.

Note— See clause 40 in relation to clearing for the construction of privately owned power lines on private land in Zones R5, E3 and E4.

Division 3 Clearing in Zones R5, E3 and E4

36 Land to which Division applies

This Part applies to land identified as “Allowable clearing land” on the Allowable Clearing Map that is—

- (a) land used for primary production within the meaning of the *Land Tax Management Act 1956*, section 10AA, and
- (b) in Zone R5, E3 or E4.

37 Clearing for construction of farm tracks

- (1) A permit or approval to clear native vegetation is not required under this Policy if the clearing is for the construction of a farm track if—
 - (a) the farm track is reasonably required to access sites within or on the other side of the land, and
 - (b) the route of the farm track minimises the clearing that is required to be carried out.

Note— See clause 31 in relation to clearing for the maintenance of an existing farm track on land in Zones R5, E2, E3 and E4.

- (2) The maximum clearing distance is 6 metres.

38 Clearing of planted native vegetation

- (1) A permit or approval to clear native vegetation that has been planted is not required under this Policy if the clearing complies with the requirements of this clause.
- (2) If the clearing is carried out on land to which a private native forestry plan applies and native vegetation has been planted as part of stocking or regeneration requirements, the stocking or regeneration requirements must be met.
- (3) The clearing must not be carried out on land within a buffer distance from a water body, within the meaning of the *Land Management (Native Vegetation) Code 2018*, clause 15.
- (4) This clause does not apply if the native vegetation was planted with the assistance of public funds granted for a purpose other than for forestry purposes.
- (5) In this clause—

Land Management (Native Vegetation) Code 2018 means the *Land Management (Native Vegetation) Code 2018* under the *Local Land Services Act 2013*, Part 5A, Division 5 as in force on 5 December 2019.

private native forestry plan has the same meaning as in the *Local Land Services Act 2013*, Part 5B.

stocking or regeneration requirements means stocking or regeneration requirements that apply under—

- (a) a private native forestry code of practice, within the meaning of the *Local Land Services Act 2013*, Part 5B, or
- (b) a direction given or requirement made by the Environment Protection Authority.

39 Clearing for environmental protection works

- (1) A permit or approval to clear native vegetation is not required under this Policy if the clearing is for the purpose of environmental protection works.
- (2) For the purposes of this clause, ***environmental protection works*** are—
 - (a) works associated with the rehabilitation of land towards its natural state, and
 - (b) works to protect land from environmental degradation.
- (3) Environmental protection works include the following—
 - (a) re-vegetation or bush regeneration works,
 - (b) wetland protection works,

- (c) erosion protection works,
 - (d) dune restoration work.
- (4) Environmental protection works do not include coastal protection works, within the meaning of the *Coastal Management Act 2016*.

40 Clearing for construction of private power lines

A permit or approval to clear native vegetation is not required under this Policy if the clearing is reasonably necessary for the construction of privately owned power lines on private land.

Note— See clause 35 in relation to the maintenance and operation of existing privately owned power lines on private land in Zones R5, E2, E3 and E4.