State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

[2017-454]

New South Wales

Status Information

Currency of version

Historical version for 21 August 2020 to 24 August 2021 (accessed 29 April 2024 at 4:32)

Legislation on this site is usually updated within 3 working days after a change to the legislation.

Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
  Cl 27(4) of this Policy (cl 27(4) repeals cl 27 on 25.8.2021)

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the Interpretation Act 1987.

File last modified 21 August 2020

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New South Wales

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State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017

New South Wales

Part 1 Preliminary

1 Name of Policy

This Policy is *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*.

2 Commencement

This Policy commences on 25 August 2017 and is required to be published on the NSW legislation website.

3 Aims of Policy

The aims of this Policy are—

(a) to protect the biodiversity values of trees and other vegetation in non-rural areas of the State, and

(b) to preserve the amenity of non-rural areas of the State through the preservation of trees and other vegetation.

4 Definitions

(1) In this Policy—

biodiversity development assessment report—see section 6.12 of the *Biodiversity Conservation Act 2016*.

biodiversity offsets scheme threshold means the biodiversity offsets scheme threshold referred to in section 7.4 of the *Biodiversity Conservation Act 2016*, except that, for the purposes of this Policy, the threshold is to be determined without regard to clause 7.3 (4) of the *Biodiversity Conservation Regulation 2017*.

Note—

Clause 7.3 (4) provides that the threshold is not exceeded merely because proposed development (other than subdivision) is to be carried out on a lot included on the *Biodiversity Values Map* if the lot was the result of a subdivision carried out before the commencement of that Act and the lot is within land zoned R1

to R4, RU5, B1 to B8 or IN1 to IN3.

biodiversity values—see section 1.5 of the *Biodiversity Conservation Act 2016*.

clear vegetation, includes—

(a) cut down, fell, uproot, kill, poison, ringbark, burn or otherwise destroy the vegetation, or

(b) lop or otherwise remove a substantial part of the vegetation.

landholder means a person who is the owner of land or who, whether by reason of ownership or otherwise, is in lawful occupation or possession, or has lawful management or control, of land.

native vegetation has the same meaning as in Part 5A of the *Local Land Services Act 2013*.

Native Vegetation Panel means the Native Vegetation Panel established under section 60ZE of the *Local Land Services Act 2013*.

non-rural areas of the State, means the land to which this Policy applies.

the Act means the *Environmental Planning and Assessment Act 1979*.

vegetation means a tree or other vegetation, whether or not it is native vegetation.

Note—

The Act and the *Interpretation Act 1987* contain definitions and other provisions that affect the interpretation and application of this Policy.

(2) Notes included in this Policy do not form part of this Policy.

5 Land to which Policy applies

(1) This Policy applies to the following areas of the State (the non-rural areas of the State)—

(a) land in the following local government areas—

Bayside, City of Blacktown, Burwood, Camden, City of Campbelltown, Canterbury-Bankstown, Canada Bay, Cumberland, City of Fairfield, Georges River, City of Hawkesbury, Hornsby, Hunter’s Hill, Georges River, Inner West, Ku-ring-gai, Lane Cove, City of Liverpool, Mosman, Newcastle, North Sydney, Northern Beaches, City of Parramatta, City of Penrith, City of Randwick, Rockdale, City of Ryde, Strathfield, Sutherland Shire, City of Sydney, The Hills Shire, Waverley, City of Willoughby, Woollahra.

(b) land within the following zones under an environmental planning instrument—

Zone RU5 Village, Zone R1 General Residential, Zone R2 Low Density Residential, Zone R3 Medium Density Residential, Zone R4 High Density Residential, Zone R5 Large Lot Residential, Zone B1 Neighbourhood Centre, Zone B2 Local Centre, Zone B3 Commercial Core, Zone B4 Mixed Use, Zone B5 Business Development, Zone B6 Enterprise Corridor, Zone B7 Business Park, Zone B8 Metropolitan Centre, Zone IN1 General Industrial, Zone IN2 Light Industrial, Zone IN3 Heavy Industrial, Zone IN4 Working Waterfront, Zone SP1 Special Activities, Zone SP2 Infrastructure, Zone SP3 Tourist, Zone RE1 Public Recreation, Zone RE2 Private Recreation, Zone E2 Environmental Conservation, Zone E3 Environmental Management, Zone E4 Environmental Living or Zone W3 Working Waterways.

(2) This Policy does not apply to national park estate and other conservation areas, or State forestry land, referred to in section 60A (b) and (c) of the *Local Land Services Act 2013*. However, this Policy applies to land that is any such national park estate and other conservation area only because it is a declared area of outstanding biodiversity value under the *Biodiversity Conservation Act 2016*.

Note—

Part 5A (Land management (native vegetation)) of the *Local Land Services Act 2013* does not apply to non-rural areas to which this Policy applies.

6 Relationship to other planning instruments

(1) This Policy does not affect the provisions of any other State Environmental Planning Policy or any provisions of a local environmental plan that are mandatory provisions under the *Standard Instrument (Local Environmental Plans) Order 2006*.

(2) This Policy prevails to the extent of any inconsistency with any provisions of a local environmental plan that are not mandatory provisions under the *Standard Instrument (Local Environmental Plans) Order 2006*.

Note—

This Policy does not affect authorisations under other Acts that are required to be obtained in connection with the clearing of vegetation.

Part 2 Authority to clear vegetation in non-rural areas

7 The clearing of vegetation in non-rural areas that requires authority under this Policy

(1) A person must not clear vegetation in any 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 any non-rural area of the State that exceeds the biodiversity offsets scheme threshold without the authority conferred by

an approval of the Native Vegetation Panel under Part 4. This subclause does not apply to clearing on biodiversity certified land under Part 8 of the *Biodiversity Conservation Act 2016*.

(3) Clearing of vegetation is not authorised as referred to in this clause unless the conditions to which the authorisation is subject are complied with. This subclause extends to conditions that impose obligations on the person who clears the vegetation that are required to be complied with before or after the clearing is carried out.

(4) This clause is subject to clause 8.

8 Clearing that does not require authority under this Policy

(1) An authority to clear vegetation is not required under this Policy if it is clearing of a kind that is authorised under section 60O of the *Local Land Services Act 2013* (Clearing authorised under other legislation) or under Part 5B (Private native forestry) of that Act. This subclause does not apply to clearing merely because it is a part of or ancillary to the carrying out of exempt development.

(2) An authority is not required under this Policy for the removal of vegetation that the council or Native Vegetation Panel is satisfied is dying or dead and is not required as the habitat of native animals.

(3) An authority is not required under this Policy for the removal of vegetation that the council is satisfied is a risk to human life or property.

Part 3 Council permits for clearing of vegetation in non-rural areas

9 Vegetation to which Part applies

(1) This Part applies to vegetation in any non-rural area of the State that is declared by a development control plan to be vegetation to which this Part applies.

(2) A development control plan may make the declaration in any manner, including by reference to any of the following—

(a) the species of vegetation,

(b) the size of vegetation,

(c) the location of vegetation (including by reference to any vegetation in an area shown on a map or in any specified zone),

(d) the presence of vegetation in an ecological community or in the habitat of a threatened species.

10 Council may issue permit for clearing of vegetation

(1) A council may issue a permit to a landholder to clear vegetation to which this Part

applies in any non-rural area of the State.

(2) A permit cannot be granted to clear native vegetation in any non-rural area of the State that exceeds the biodiversity offsets scheme threshold.

(3) A permit under this Part cannot allow the clearing of vegetation—

(a) that is or forms part of a heritage item or that is within a heritage conservation area, or

(b) that is or forms part of an Aboriginal object or that is within an Aboriginal place of heritage significance,

unless the council is satisfied that the proposed activity—

(c) is of a minor nature or is for the maintenance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or heritage conservation area, and

(d) would not adversely affect the heritage significance of the heritage item, Aboriginal object, Aboriginal place of heritage significance or heritage conservation area.

(4) A permit may be granted under this Part subject to any conditions specified in the permit.

11 Miscellaneous provisions relating to permits

(1) An application for a permit—

(a) is to be made in the form and manner required by the council, and

(b) is to be accompanied by the application fee (if any) determined by the council.

(2) The council may request an applicant for a permit to provide the council with such further information about the proposed clearing as the council considers necessary for its proper consideration of the application (including information about previous clearing of vegetation in the area or surrounding area).

(3) The council may deal with the application if the applicant notifies the council that the information will not be provided or if the information has not been provided within the period specified by the council or within such further period as the council may allow.

(4) The council is to determine an application for a permit within 28 days after the date on which the application was duly made.

(5) Any period after the applicant is requested by the council to provide further information to enable the application to be dealt with and until the information is provided (or the applicant notifies the council the information will not be provided) is not to be counted in calculating that 28-day period.

(6) An application for a permit that has not been determined is taken to have been refused after the expiration of that 28-day period.

(7) The council may grant or refuse to grant a permit even if the application is taken to have been refused under this clause.

12 Appeal to Land and Environment Court

(1) An applicant for a permit may appeal to the Land and Environment Court against the refusal by a council to grant the permit.

(2) Any such appeal is to be made within 3 months after the date on which the applicant is notified of the decision or within 3 months after the council is taken to have refused the application (whichever is the later).

Part 4 Approval of Native Vegetation Panel for clearing native vegetation in non-rural areas

13 Provisions relating to exercise of functions of Panel under this Policy

(1) This clause applies in relation to the exercise of the functions of the Native Vegetation Panel under this Policy.

(2) The Native Vegetation Panel has the function of determining applications under this Part for approval to clear native vegetation in non-rural areas of the State.

(3) The Native Vegetation Panel is not subject to the direction or control of the Minister or of any council or other body under the Act.

(4) The Native Vegetation Panel may delegate the exercise of its functions under this Policy in relation to any non-rural area of the State to the council of the non-rural area (other than this power of delegation).

(5) The Minister may, for the purposes of this Policy, make arrangements for the provision to the Native Vegetation Panel of staff and facilities of (and information relating to the administration of this Policy held by) a Public Service agency responsible to the Minister or a council.

14 Obtaining approval of Panel for clearing of native vegetation

(1) An application may be made to the Native Vegetation Panel by or on behalf of the landholder for approval to clear native vegetation in any non-rural area of the State.

(2) The Native Vegetation Panel may, in accordance with this Part, grant an approval to clear the native vegetation under this Part or refuse the application.

(3) An application for approval for the clearing of native vegetation may only be dealt with under this Part if the clearing exceeds the biodiversity offsets scheme threshold.

(4) An approval may only be granted under this Part if the land is being cleared for a purpose specified in the application for approval and—

(a) the land can be used for that purpose without development consent or State significant infrastructure approval under the Act, and

(b) the clearing of the land is not part of an activity that is carried out by, or that requires the approval of, a determining authority within the meaning of Part 5 of the Act.

(5) In determining an application for approval under this Part, the Native Vegetation Panel is to take into consideration the environmental, social and economic impacts of the proposed clearing (in accordance with the principles of ecologically sustainable development) having regard to the purpose for which the land is to be used after it is cleared. In relation to the environmental impacts, the Native Vegetation Panel is to take into consideration (without limitation) the following—

(a) the likely impact of the proposed clearing on biodiversity values as set out in a biodiversity development assessment report that has been submitted by the applicant for the approval in accordance with this Part,

(b) whether the clearing of the native vegetation is likely to cause or increase soil erosion, salination, acidification, land slip, flooding, pollution or other adverse land or water impacts,

(c) any future clearing of native vegetation on the land that has been duly authorised or notified but not yet carried out.

The Native Vegetation Panel is also to take into consideration any biodiversity or heritage matter that an applicable environmental planning instrument or development control plan requires the Panel to take into consideration in relation to the impact of the proposed clearing.

(6) The Native Vegetation Panel must refuse to grant approval under this Part if the Panel is of the opinion that the proposed clearing of native vegetation is likely to have serious and irreversible impacts on biodiversity values. ***Serious and irreversible impacts on biodiversity values*** means serious and irreversible impacts on biodiversity values as determined under section 6.5 of the *Biodiversity Conservation Act 2016* that would remain after the measures proposed to be taken to avoid or minimise the impact of the proposed clearing on biodiversity values.

(7) An approval under this Part may be granted subject to such conditions relating to the clearing as are specified in the approval (including in relation to any matter referred to in subclause (5)). However, an approval cannot be granted subject to conditions relating to the use of the land after it has been cleared.

(8) An approval under this Part may be granted even if part of the clearing is otherwise

authorised under clause 8.

(8A) An approval under this Part may not be granted to carry out forestry operations within the meaning of Part 5B of the *Local Land Services Act 2013*.

(9) An approval under this Part may be granted subject to a condition that any development consent that authorises the clearing of native vegetation on the land is surrendered under the Act. Any such development consent may be granted subject to a condition that any approval under this Part is surrendered.

(10) An application for approval under this Part may be made jointly by or on behalf of a group of landholders. In that case, the application is to be assessed and determined under this Part having regard to the whole area that is the subject of the application.

15 Biodiversity development assessment report and retirement of biodiversity credits

(1) An approval may only be granted under this Part if a biodiversity development assessment report in respect of the proposed clearing has been obtained by the applicant for that approval and provided to the Native Vegetation Panel.

(2) The Native Vegetation Panel is to provide the Environment Agency Head under the *Biodiversity Conservation Act 2016* with a copy of any biodiversity development assessment report that is submitted to the Native Vegetation Panel in connection with an application for approval.

(3) If the Native Vegetation Panel decides to grant approval, the conditions of the approval must require the applicant to retire biodiversity credits to offset the residual impact on biodiversity values of the number and class set out in the report (subject to subclause (4)). The residual impact is the impact after the measures that are required to be carried out by the terms or conditions of the approval to avoid or minimise the impact on biodiversity values of the proposed clearing (being measures on which the report was based).

Note—

Division 6 of Part 6 of the *Biodiversity Conservation Act 2016* enables a person who is required under this clause to retire biodiversity credits to make a payment instead to the Biodiversity Conservation Fund of the value of the credits in accordance with the offsets payment calculator.

(4) The Native Vegetation Panel may reduce or increase the number of biodiversity credits that would otherwise be required to be retired if the Panel determines that the reduction or increase is justified having regard to the environmental, social and economic impacts of the proposed clearing and the purpose for which the land is to be used after it is cleared. The Native Vegetation Panel must give reasons for a decision to reduce or increase the number of biodiversity credits.

(5) An approval under this Part does not authorise the clearing of native vegetation until any obligation under the approval to retire biodiversity credits has been complied

with.

(6) However, an approval under this Part may provide for the staged clearing of native vegetation and for the corresponding staged retirement of the relevant number of biodiversity credits before each such stage of clearing is carried out.

(7) For the purposes of this Part, the impact on biodiversity values of proposed clearing includes the impact of clearing or retaining dead vegetation on the land concerned, and accordingly the measures required to be carried out by the terms or conditions of an approval may include the retention of dead vegetation.

(8) This clause does not operate to limit the measures that the Native Vegetation Panel may require to avoid or minimise the impacts of proposed clearing or the power of the Native Vegetation Panel to refuse to grant approval because of those impacts.

16 Modification of approvals of Panel under this Part

(1) An application may be made to the Native Vegetation Panel for the modification of an approval granted under this Part to clear native vegetation in any non-rural area of the State. The application may be made by or on behalf of the landholder concerned.

(2) A further biodiversity development assessment report is to be provided to the Native Vegetation Panel in connection with the application unless the Native Vegetation Panel determines that the application will not increase the impact on biodiversity values.

(3) The biodiversity development assessment report is to be made in relation to the clearing as proposed to be modified, but is to take into account any measures to avoid, minimise or offset the impacts of the proposed clearing to which the modification relates that have already been taken in connection with the approval before its modification.

(4) The Native Vegetation Panel may—

(a) grant the application and modify the approval granted under this Part accordingly, or

(b) refuse the application.

The Native Vegetation Panel may vary the terms of the modification sought by the applicant.

17 Application form

An application to the Native Vegetation Panel for approval to clear native vegetation (or for the modification of an approval of the Panel)—

(a) is to be made in the form and manner required by the Panel, and

(b) is to include any information or documentation required by that form.

18 Fees for applications

(1) The Native Vegetation Panel may charge a fee for an application for approval under this Part, but not exceeding—

(a) $3,000 if the area proposed to be cleared is less than 5 hectares, or

(b) $9,000 if the area proposed to be cleared is 5 hectares or more.

(2) The Native Vegetation Panel may also charge a fee for an application for the modification of an approval under this Part, but not exceeding the fee that may be charged under Part 5A of the *Local Land Services Act 2013* in connection with a similar application under Division 6 of that Part.

19 Information required in application for approval by Panel or modification of approval

An application to the Native Vegetation Panel for approval to clear native vegetation (or for the modification of an approval of the Panel) under this Part that seeks to vary like-for-like credit retirement obligations specified in the biodiversity development assessment report is to include information about the reasonable steps that the applicant has taken to secure the like-for-like biodiversity credits.

20 Panel may request further information about an application for approval or modification of approval

(1) The Native Vegetation Panel may request an applicant for approval to clear native vegetation, or for the modification of an approval of the Panel, under this Part to provide the Panel with such further information about the proposed clearing or the proposed modification as the Panel considers necessary for its proper consideration of the application (including information about previous clearing of vegetation in the area or surrounding area).

(2) The request—

(a) must be writing, and

(b) may specify a reasonable period within which the information must be provided to the Native Vegetation Panel, and

(c) must include notice of the effect of a failure to provide the information on the determination of the application and on the applicant’s rights of appeal with respect to the application.

(3) The Native Vegetation Panel may deal with the application if the applicant notifies the Panel in writing that the information will not be provided or if the information has not been provided within the period specified by the Panel or within such further period as the Panel may allow.

21 Time for dealing with applications for approval or modification of approval

(1) The Native Vegetation Panel is to determine an application for approval to clear native vegetation (or to modify an approval of the Panel) under this Part within 90 days after the date on which the application was duly made.

(2) Any period after the applicant is requested by the Native Vegetation Panel to provide further information to enable the application to be dealt with and until the information is provided (or the applicant notifies the Panel the information will not be provided) is not to be counted in calculating that 90-day period.

(3) An application for approval (or the modification of an approval) that has not been determined is taken to have been refused after the expiration of that 90-day period.

(4) The Native Vegetation Panel may grant or refuse to grant an application even if the application is taken to have been refused under this clause.

22 Appeal against approval decisions of Panel

(1) A landholder may appeal to the Land and Environment Court against a decision to refuse an application by the landholder for approval under this Part or for the modification of any such approval or against a decision to impose a condition of any such approval.

(2) Any such appeal is to be made within 6 months after the date on which the applicant is notified of the decision or within 6 months after the Panel is taken to have refused the application (whichever is the later).

(3) In this clause, a reference to a landholder includes a reference to a person who makes a relevant application on behalf of the landholder.

23 Lapsing of approval

(1) An approval of the Native Vegetation Panel to clear native vegetation lapses 5 years after the date from which it operates.

(2) Any such approval does not lapse if the clearing is commenced before the date on which the approval would otherwise lapse.

(3) The Native Vegetation Panel may set out, in any such approval, circumstances in which clearing is or is not taken to be commenced for the purposes of this clause.

24 Miscellaneous provisions relating to approvals of Panel

(1) An approval under this Part applies to the clearing of native vegetation by or on behalf of the landholder to whom it was granted and by or on behalf of any other person who becomes a landholder of the land concerned after the approval was granted.

(2) If an application for approval (or for the modification of an approval) under this Part is

refused by the Native Vegetation Panel, the applicant is to be given the reasons for the decision.

(3) An approval of the Native Vegetation Panel to clear native vegetation operates from the date the approval is granted or, if a later date is specified in the approval, from that later date. If an application for approval is refused and the Land and Environment Court decides to grant approval on appeal, the decision is taken to be an approval granted by the Native Vegetation Panel and operates from the date of that decision.

(4) To avoid doubt, the Native Vegetation Panel is not a determining authority for the purposes of Part 5 of the Act when granting or modifying an approval under this Part.

Part 5 Miscellaneous

25 Clearing of vegetation permitted without consent if authority under this Policy not required

(1) This clause applies to the clearing of any vegetation in a non-rural area of the State that is not ancillary to the carrying out of other development and that—

(a) does not require a permit under Part 3, and

(b) does not require an approval under Part 4, and

(c) is not a heritage item or located in a heritage conservation area, and

(d) is not an Aboriginal object or located in an Aboriginal place of heritage significance.

(2) The clearing of any such vegetation is permitted without development consent.

26 General savings and transitional provisions

(1) A development control plan that is in force on the commencement of this Policy and that relates to the vegetation for which a permit or development consent is required to clear the vegetation is taken, on that commencement, to be a development control plan for the purposes of this Policy (except to the extent that it is inconsistent with this Policy).

(2) An application for a permit to remove vegetation under an environmental planning instrument that has not been determined on the commencement of this Policy may continue to be dealt with as if it had been made under this Policy.

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

(1) This clause applies to the clearing of native vegetation on land—

(a) that is within Zone R5 Large Lot Residential, Zone E2 Environmental Conservation,

Zone E3 Environmental Management or Zone E4 Environmental Living under an environmental planning instrument, and

(b) that, immediately before the commencement of this Policy, was within a local government area in which clause 5.9 (other than clause 5.9 (9)) of the Standard Instrument prescribed by the *Standard Instrument (Local Environmental Plans) Order 2006* applied under an environmental planning instrument that adopted the Standard Instrument, and

(c) that is used predominantly for agriculture (within the meaning of that Standard Instrument).

(2) An authority is not required under this Policy to clear native vegetation on land to which this clause applies if the clearing is of a kind that, immediately before the commencement of this Policy, would have been authorised under Division 2 or 3 of Part 3 of the *Native Vegetation Act 2003*.

(3) To avoid doubt, this clause does not authorise the clearing of native vegetation because it is only regrowth if, immediately before the commencement of this Policy, it was protected regrowth within the meaning of section 10 of the *Native Vegetation Act 2003* under a provision of an environmental planning instrument or otherwise.

(4) This clause is repealed on 25 August 2021.

28 Amendment of State Environmental Planning Policy (State and Regional Development) 2011

The *State Environmental Planning Policy (State and Regional Development) 2011* is amended by inserting after clause 1 (2) of Schedule 3 (State significant infrastructure—general)—

(2A) This clause does not apply to development if, in the opinion of the proponent, its likely significant effect on threatened species is the only significant effect on the environment (whether or not an environmental impact statement is dispensed with under section 7.8 of the *Biodiversity Conservation Act 2016*).

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

The *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* is amended by inserting after clause 1.19 (1) (d) and (5) (d) respectively (Land on which complying development may not be carried out)—

(d1) land that is subject to a private land conservation agreement under the *Biodiversity Conservation Act 2016* or that is a set aside area under section 60ZC of the *Local Land Services Act 2013*, or