

State Environmental Planning Policy No 46—Protection and Management of Native Vegetation (1995 EPI 337)

[1995-337]



New South Wales

Status Information

Currency of version

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Provisions in force

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

Notes—

- **Repeal**

The Policy was repealed by sec 70 of the [Native Vegetation Conservation Act 1997 No 133](#) with effect from 1.1.1998.

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](#).

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New South Wales

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Part 1 Preliminary

1 Name of Policy

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

2 Aims, objectives, policies and strategies

- (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:
 - (a) with the development consent of the Director-General of the Department of Land and Water Conservation, or
 - (b) in accordance with an interim regional vegetation management plan or a code of practice.

3 Application of Policy

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,

- (h) land shown as a wetland on the map marked “*Sydney Regional Environmental Plan No 20—Hawkesbury-Nepean River (No 2—1997)*” deposited in the Parramatta office of the Department of Urban Affairs and Planning, copies of which are deposited in the Department’s offices at Sydney, Newcastle and Wollongong, and in the office of each consent authority referred to in that plan.

4 Relationship to other environmental planning instruments

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

5 Definitions

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.

Code of practice means a code of practice approved under clause 25 by the Minister.

Committee means a Regional Vegetation Committee established in accordance with clause 13.

Management plan means an interim regional vegetation management plan.

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).

the Minister means the Minister for Land and Water Conservation.

Part 2 Clearing of native vegetation

6 Clearing of native vegetation

- (1) Clearing of native vegetation must not be carried out on land to which this Policy applies except:
 - (a) with the development consent of the Director-General of the Department of Land and Water Conservation, or
 - (b) in accordance with a management plan or a code of practice.
- (2) A consent under subclause (1) (a) may be granted only if the consent authority imposes a condition providing for the consent to lapse 2 years after the date from which it operates.

7 Matters for consideration

- (1) In determining a development application, the consent authority must take into consideration such of the following matters as are of relevance to the development the subject of the development application:
 - (a) land and water degradation, including soil erosion, salination, acidification, land slip, increased flooding, pollution or other deleterious consequences,
 - (b) whether the vegetation affected by the proposed development is, or is part of:

- (i) a remnant in a region that has been extensively cleared, or
 - (ii) a corridor between other areas of native vegetation, or
 - (iii) a migratory route for wildlife,
- (c) whether the affected vegetation is of a type not adequately represented in the conservation reserve systems,
- (d) whether all or some of the affected vegetation is considered to be in unusually good condition or to have integrity as a sample of its type,
- (e) whether all or some of the affected vegetation is considered to be in unusually good condition or to have integrity as a sample of its type,
- (f) whether the area contains an isolated population of a native species or a species that is near the limit of its geographic range.
- (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).

8 (Repealed)

9 Consultation

- (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
 - (c1) the Director-General of National Parks and Wildlife, 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.

9A Development on critical habitat or having significant effect on threatened species, populations or ecological communities, or their habitats

- (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 section 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.

10 Special provision

- (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.

11 Exemptions

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

12 Clearing of native grasslands

- (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.

Part 3 Interim regional vegetation management plans and codes of practice

13 Regional Vegetation Committees

(1) The Minister may establish a committee, to be known as a Regional Vegetation Committee, for a part of the State (comprising at least the whole of one local government area) determined by the Minister.

(2) Different Committees may be established for different parts of the State.

(3) The members of a Committee are to include the following:

(a) 2 representatives of the rural interests for the part of the State for which the Committee is established nominated by the NSW Farmers Association,

(b) 2 representatives of the conservation interests for the part of the State for which the Committee is established, one of whom is nominated by a conservation group recognised by the NSW Nature Conservation Council,

(c) a member (appointed under section 14 (2) (a) or (b) of the [Catchment Management Act 1989](#)) of a Catchment Management Committee or a trustee of a Catchment Management Trust, being a Catchment Management Committee or Catchment Management Trust whose area of operations applies to the part of the State for which the Committee is established,

(d) a member of a Landcare Group whose area of operations applies to the part of the State for which the Committee is established,

(e) a member nominated by the local government councils whose areas apply to the part of the State for which the Committee is established,

- (f) a representative of aboriginal interests for the part of the State for which the Committee is established and who is recognised by the NSW Aboriginal Land Council,
 - (g) a representative of the Department of Land and Water Conservation,
 - (h) a representative of the National Parks and Wildlife Service,
 - (i) a representative of NSW Agriculture.
- (4) The members of a Committee may include:
- (a) a representative or representatives of other bodies or of other government departments or agencies, and
 - (b) a representative or representatives of industry groups or community interest groups.
- (5) If the nomination of a person to be a member of a Committee is not made within the time or in the manner specified by the Minister in a written notice given to the person or body entitled to make the nomination, the Minister may appoint any person to be a member instead of the person required to be appointed on that nomination.
- (6) The members of a Committee are to elect one of their number to be the chairperson of the Committee.
- (7) All other matters relating to the office of a member of a Committee and the procedure of a Committee are to be determined by the Minister.

14 Preparation of management plan

- (1) A Committee may decide to prepare a draft management plan for the whole or part of that part of the State for which it is established.
- (2) The area of land to which the draft management plan is to apply must be approved by the Minister.

15 Matters to be dealt with in management plans

In preparing a draft management plan, a Committee must take the following matters into consideration in relation to the land to which the draft management plan applies:

- (a) matters pertaining to the conservation of native vegetation, soil resources and native species' habitats, particularly threatened species, populations and ecological communities and their habitats,
- (b) any statutory instrument (including an environmental planning instrument) or catchment management strategy that applies to the land and that makes provision with respect to native vegetation,

- (c) identification of environmentally, archaeologically or geologically sensitive or significant areas of land, including protected land, over which clearing will be subject to additional or particular restrictions,
- (d) criteria, specifications and standards for clearing of native vegetation and avoiding land degradation,
- (e) matters pertaining to the social and economic aspects of land use activities as they relate to native vegetation management,
- (f) any other aspect considered necessary or desirable by the Minister,
- (g) the exemptions listed in Schedule 3.

16 Consultation with Director-General of National Parks and Wildlife

- (1) A Committee must consult with the Director-General of National Parks and Wildlife before preparing a draft management plan if, in the opinion of the Committee, critical habitat or threatened species, populations or ecological communities, or their habitats, will or may be affected by the draft management plan.
- (2) For the purpose of the consultation, the Committee must provide the following information to the Director-General of National Parks and Wildlife:
 - (a) the reasons for deciding to prepare the draft management plan,
 - (b) the proposed aims, objectives, policies and strategies whereby the draft management plan is designed to achieve any of the aims or objectives of this Policy,
 - (c) a description of the land to which the draft management plan is intended to apply,
 - (d) the types of matters to be dealt with in the draft management plan.
- (3) For the purposes of the consultation, the Committee may provide any other information that, in the Committee's opinion, would assist in understanding the draft management plan.
- (4) The Director-General of National Parks and Wildlife may comment to the Committee on the preparation of the draft management plan within 40 days after the information required to be provided under subclause (2) is provided.
- (5) The consultation required by this clause is completed when the Committee has considered any comments so made.

17 Notification and consultation

- (1) In the preparation of a draft management plan, a Committee, to the extent required by this clause, must notify the information specified in subclause (2) to the following:

- (a) each council whose area, or a part of whose area, is within, or partly within, the land to which the draft management plan applies,
 - (b) the Local Government Liaison Committee,
 - (c) each Catchment Management Committee and Catchment Management Trust whose area of operations, or a part of whose area of operations, is within, or partly within, the land to which the draft management plan applies,
 - (d) any public authority (including an authority of the Commonwealth or of another State or Territory) determined by the Committee.
- (2) The information to be notified is the following:
- (a) the reasons for deciding to prepare the draft management plan,
 - (b) the general aims and objectives of the draft management plan,
 - (c) a general description of the land to which the draft management plan is intended to apply,
 - (d) such other matters (if any) as the Committee thinks fit.
- (3) A person to whom information is notified under this clause may comment to the Committee on the preparation of the draft management plan within 28 days after the Committee notifies the information.

18 Public exhibition of draft management plan

- (1) When a draft management plan has been prepared, the Committee is to send a copy of it to the Director-General of the Department of Land and Water Conservation.
- (2) The Director-General of that Department is to:
- (a) give public notice, in a form and manner determined by that Director-General, of the places at which, the dates on which, and the times during which, the draft management plan may be inspected by the public, and
 - (b) publicly exhibit the draft management plan at the places, on the dates and during the times set out in the notice, and
 - (c) publicly exhibit such other matters as that Director-General considers appropriate or necessary to better enable the draft management plan and its implications to be understood, and
 - (d) specify, in the notice, the period during which submissions may be made to that Director-General in accordance with clause 19.
- (3) A draft management plan is to be publicly exhibited for a period of 40 days.

19 Submissions

- (1) Any person may, during the period referred to in clause 18 (2) (d), make submissions in writing to the Director-General of the Department of Land and Water Conservation with respect to the draft management plan publicly exhibited under clause 18.
- (2) The Director-General of that Department is to send a copy of each submission to the Committee.
- (3) The Committee must consider the submissions and may amend the draft management plan by making changes whether or not of substance and whether or not as a consequence of the consideration of any submissions.

20 Submission of draft management plan to the Minister

- (1) The Committee may submit a draft management plan to the Minister.
- (2) The Committee must send a copy of a draft management plan submitted to the Minister to the Director-General of the Department of Land and Water Conservation.
- (3) The Director-General of that Department is to provide the Minister with a report on the draft management plan.

21 Making of management plan by the Minister

- (1) The Minister may, on the submission by a Committee of a draft management plan:
 - (a) make a management plan:
 - (i) in accordance with the draft management plan submitted to the Minister, or
 - (ii) in accordance with the draft management plan with such alterations as the Minister thinks fit, or
 - (b) direct that action be taken in accordance with subclause (4), or
 - (c) decide not to proceed with the draft management plan.
- (2) Without limiting subclause (1) (a) (ii), the alterations that may be made by the Minister to the draft management plan may comprise changes of substance and may arise from submissions or otherwise from the Minister's consideration of the matters in the draft management plan.
- (3) A management plan applies to the land described in the management plan.
- (4) The Minister may direct the Director-General of the Department of Land and Water Conservation to publicly exhibit a draft management plan with such alterations as the Minister specifies, and the provisions of this clause and clauses 18, 19 and 20 apply with any necessary adaptations, to the draft management plan.

22 Commencement and duration of management plan

- (1) A management plan:
 - (a) is to be published in the Gazette, and
 - (b) takes effect on and from the date of publication or a later date specified in the management plan.
- (2) A management plan, unless sooner revoked, ceases to be in force 10 years after the day on which it takes effect.
- (3) Despite subclause (2), the Minister may, by order published in the Gazette before the end of the 10-year period, extend the period by which a management plan remains in force by a further period not exceeding 6 months.

23 Amendment or revocation of management plans

A management plan may be amended or revoked by a management plan.

24 Review of management plans

The Minister may review a management plan at any time and make recommendations to a Committee for the amendment or revocation of a management plan.

25 Codes of practice

The Minister may approve a code of practice prepared by the Director-General of the Department of Land and Water Conservation for the purposes of this Policy.

26 Relationship between management plans, codes of practice and Schedule 3 to this Policy

A management plan or a code of practice prevails to the extent of any inconsistency between the management plan or code of practice and Schedule 3 to this Policy.

Schedule 1 Local government areas to which policy applies

(Clause 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
DUNOGG	NARRABRI	YASS
EUROBODALLA	NARRANDERA	YOUNG
EVANS		

Schedule 2 Land on which specified native grasslands occur

(Clause 5)

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

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

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

GUNNEDAH	MURRURUNDI
PARRY	QUIRINDI

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

BOMBALA	COOMA-MONARO
SNOWY RIVER	

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

BREWARRINA	MOREE PLAINS
WALGETT	

Schedule 3 Exemptions

(Clause 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 [Rural Fires Act 1997](#).
- (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.