Revocation, Recategorisation and Road Adjustment Policy

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Introduction

The National Parks and Wildlife Act 1974 (the NPW Act) provides that land may be reserved as a national park, nature reserve, historic site, state conservation area, regional park, Aboriginal area or karst conservation reserve. From time to time, circumstances may arise which require the revocation, recategorisation or adjustment of boundaries of lands reserved under the NPW Act.

Revocations

Only the Government (via a Cabinet proposal) and ultimately the NSW Parliament (via an Act of Parliament) can decide if land reserved under the NPW Act may be revoked.

The reasons for requiring a revocation can vary but most commonly arise as a result of:

a. boundary errors occurring at the time of reservation, or
b. boundary encroachments occurring after reservation, or
c. non-permissible development proposals that require revocation in order to proceed.

Recategorisations

Recategorisations also require an Act of Parliament, with the exception of state conservation areas (SCAs) which can be recategorised as national park or nature reserve under section 47MA of the NPW Act. Recategorisations are usually proposed on the basis of improved knowledge of the natural, cultural and historic values and recreational activities in the particular reserve, or consideration of the future strategic directions for the reserve.

Road adjustments

Section 188C of the NPW Act enables the boundary of land reserved or acquired under that Act which adjoins a public road to be adjusted to follow the formed path of the road, or to provide an appropriate setback from the formed road. This allows anomalies between “paper roads” and the constructed road to be resolved. It also means that existing essential road infrastructure such as drainage, signage, and traffic control devices that fall within an appropriate setback from the road can be excluded from the reserved or acquired land.

These adjustments can be made so long as a significant reduction in the size or value of reserved land does not occur.

The National Parks and Wildlife Act 1974 (the Act) requires a plan of management (POM) to be prepared for a park as soon as practicable after its reservation. A POM indicates how a park will be conserved, used, developed and managed. If a park does not have an adopted POM, a statement of management intent (SMI) may be prepared to guide its management and to ensure that the park is managed consistent with the Act, including the principles of ecologically sustainable development, and with relevant policies and procedures.
Objectives

This policy aims to:

- ensure a consistent administrative and consultative approach in the preparation of revocation, recategorisation and road boundary adjustment proposals in accordance with the legislative and policy context
- ensure, where compensation is required for a revocation, that the combined effect of the revocation and the compensation results in an overall public good outcome having regard to all of the conservation, cultural heritage and other values of the relevant protected lands.
- provide guidance on the appropriate application of section 188C of the NPW Act
- ensure cumulative use of section 188C does not significantly erode the area and value of land reserved under the NPW Act

Scope and application

This policy applies to lands acquired or reserved under the National Parks and Wildlife Act 1974. This policy does not apply to lands reserved under Part 4A of the NPW Act unless the Board of Management for those lands has adopted the policy. However, the policy still provides guidance for staff in their dealings with Boards of Management.

This Policy replaces the Revocation, Recategorisation and Road Adjustment Policy dated 22 August 2012.

Policy

Revocations

1. The revocation of lands reserved under the National Parks and Wildlife Act 1974 will generally only be undertaken as an avenue of last resort and where no other practical options are available.

Boundary errors

2. Where a boundary error occurred at the time of gazettal, and no other feasible option is available, NPWS may seek to remove the parcel of land from the park by revocation. Boundary errors can be caused by a range of factors including a lack of formal surveying, mapping inaccuracies or ambiguities, and the inadvertent inclusion of unknown development items or activities.

Boundary encroachments

3. Boundary encroachments, which occur after gazettal, can arise from activities or developments on-park that occurred without NPWS approval and are generally incompatible with the purpose for which the land was reserved. For example, encroachment of a neighbouring residential building into a park. Where a boundary encroachment is discovered, NPWS will consider a range of options to rectify or ameliorate the encroachment before revocation may be considered (refer to policy section 26).
Development proposals that require revocation

4. Where a new non-permissible activity or development is proposed by another party and requires the use of NPWS land, either the park boundary can be re-defined to exclude the proposed development or the development cannot proceed. For example, proposals may be made for major Government infrastructure such as a new highway or major upgrade of an existing road to be built on NPWS land where no suitable alternative sites are available. In such cases, either the park boundary needs to be re-defined or the development cannot proceed.

Recategorisations

5. The extent to which recategorisations are appropriate will be assessed on a case-by-case basis (refer to policy sections 28-31). For example:

- recategorising a national park to a nature reserve may be appropriate when there are limited opportunities for recreational use due to constrained access. Alternatively, the park may have unique biodiversity values worthy of nature reserve status but which were only identified through scientific research some years after the national park was originally established.
- recategorising an SCA to a national park or nature reserve under section 47MA of the NPW Act may be appropriate if there are no current or potential mineral interests. This also requires concurrence of the Minister administering the Mining Act 1992.

Road adjustments

6. The use of section 188C of the NPW Act may be considered in the following circumstances:

- to allow the formed path of a road deviating from its road reserve to align with the park boundary, where the deviation occurred either before the park was reserved or where it arose after reservation as a result of construction errors of a genuine nature (e.g. subsequent surveys demonstrate minor discrepancies between the constructed road boundary and the road reserve);
- to provide an appropriate setback for existing supporting infrastructure which lies outside the road reserve corridor and which directly services or supports the primary function of the road. This includes infrastructure that has a primary role in supporting the structural integrity and safe use of the road. For example:
  - drainage (e.g. catch drains, mitre drains) and erosion and sediment control structures
  - signposts
  - traffic control devices
  - utilities infrastructure that is primarily for road related purposes (such as cabling for electronic road signage or emergency telephones)
  - impact barriers
  - gabions and retaining walls
  - cut and fill embankments
  - rock bolts
  - levee banks
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- bus turn around areas
- pull off bays
- emergency stopping ramps
- rest areas.
- to adjust boundaries to accommodate emergency works undertaken during an emergency (see definitions). Boundary adjustments for emergency works will only be authorised if they are for an appropriate setback i.e. for the installation of infrastructure that directly services or supports the primary function of the road.

7. Appropriate supporting infrastructure does not include roads work depots or material storage areas.

8. Section 188C cannot be used to adjust the park boundary to allow for:
   - an increase in the width of existing road that is otherwise within the surveyed boundaries (e.g. to add a new lane)
   - alteration of the physical location of an existing built road (e.g. to realign an existing public road that is already aligned with its legal boundaries)
   - construction of a new road
   - the provision of new supporting infrastructure
   - the correction of significant errors resulting from road construction activities after reservation where the new work has been constructed beyond the existing legal boundaries and there has been a substantial encroachment into the park which would have been apparent if reasonable care had been taken in the road design and planning stage
   - a boundary adjustment of any land acquired under Part 11 of the NPW Act if it would contravene any condition of a gift or agreement by or under which the land had been acquired (refer to section 188C of the NPW Act).

9. In the event there is a section of a formed road with no corresponding paper road reserve, the appropriateness of the use of s.188C will be assessed on a case by case basis by NPWS's Strategy and Policy Team in conjunction with the relevant NPWS region. Legal advice may be sought by the Strategy and Policy Team. This will require clear information from the region to explain why the road reservation has missing sections.
10. All road boundary adjustments must undergo an assessment of significance (see policy sections 32 and 35). If the assessment concludes there will be a significant reduction in the size or value of land reserved under the NPW Act, the proposal can only proceed as a revocation.

11. Where there is a considerable discrepancy between the geographical location of a paper road reserve and the location of an actual formed road, boundary adjustments can occur so long as the paper road and formed road are clearly intended to serve the same purpose.

12. If boundary adjustments will affect legal access to property held by other parties, boundaries must be adjusted in such a way as to maintain legal access, in consultation with the affected land owners.

13. If additional boundary adjustments are proposed for the same public road within the same park, the cumulative impact of all proposals must be considered in the assessment of significance.

**Plans of management**

14. Following the recategorisation of a park, an audit of the existing POM or statement of management intent (SMI) must be undertaken to assess whether it aligns with the management principles for the new reserve category. If deemed necessary, a new POM or SMI should be prepared at the earliest practical opportunity.

15. The NPWS will endeavour to identify boundary errors, boundary encroachments and proposed section 188C boundary adjustments (where known) in the relevant park’s plan of management as the plan is prepared or amended or in a SMI if no POM is in existence.

**Compensation**

16. Compensation for park revocations:
   - will generally not be sought for boundary errors occurring at the time of gazettal. This is on the basis that the boundary error arose, not through deliberate, improper or malicious action, but through a circumstance or technicality where no fault is ascribed.
   - may be sought for encroachments but this will be determined on a case-by-case basis after consideration of factors relevant to the cause of the encroachment, the natural and cultural heritage values of the site and the circumstances of the case (see also policy section 19).
   - will normally be required for revocations that arise as a result of non-permissible activities or development proposals and must provide an overall public good outcome (see sections 18 and 19 for further detail).

17. Where NPWS seeks compensation for revocations, it will generally be in the form of the transfer of land to the Minister for reservation under the NPW Act (and preferably as an addition to the park that is subject to the revocation). In these situations, the land that is revoked will not be transferred to the recipient party until such time as the compensatory land has been transferred to the Minister (it may be revoked and held under Part 11 of the NPW Act until this occurs).
18. Compensation for park revocations may not be appropriate where:
   - NPWS land that is no longer required is to be disposed of on the open market once revoked; or
   - an agreement between the Government, or the Minister, and the owner of the encroaching development or development proponent may have already been made.

19. When negotiating compensation, NPWS will be guided by the following heads of consideration:
   - the proposed revocation and associated compensation must result in an overall public good outcome having regard to all of the conservation, cultural heritage and other values of the land being revoked and the values of any land provided as compensation;
   - compensatory land should preferably be of greater size than the area of land being revoked, and must at least be of equal size;
   - it is desirable to match the area, type and quality of habitat, and cultural heritage values on land being revoked with the area of land proposed as compensation where possible. Exceptions to this may include, for example:
     o compensation that includes a higher conservation priority habitat type (e.g. that is poorly reserved) where the habitat to be impacted is commonly represented within the relevant park, or
     o compensation lands that have unique and particularly significant conservation values;
   - it is desirable that land to be transferred as compensation is close to the area being revoked and preferably adjacent to the affected reserve.

20. For all revocations requiring compensation, a written agreement (such as an exchange of letters) will be made between the Minister and the party to whom the Minister will transfer the revoked land prior to the introduction of revocation legislation. This agreement shall:
   - identify the area to be revoked
   - identify the proposed compensatory lands, or such lands that are under discussion
   - confirm that the combined effect of the revocation and compensation will result in an overall public good outcome
   - confirm that the final transfer of the revoked lands will only occur once the compensatory lands are provided to the Minister.

21. The Minister must be satisfied that proposed or likely compensation is of equal or greater conservation value both in terms of natural and cultural heritage than the land that is proposed to be revoked.

22. Compensation may be sought for road boundary adjustments but this will be determined on a case-by-case basis after consideration of factors relevant to the size of the affected area, the natural and cultural heritage values of the site and the circumstances of the case.
Procedural guidelines

Revocations

23. The NPWS will brief the Chief Executive and the Minister about any potential revocation proposals as they become known.

24. The NPWS may only proceed to further examine the potential revocation of the relevant area, and undertake discussions with relevant parties, with written in-principle approval of the Minister.

25. In the case of non-permissible activity or development proposals, the proponent is to provide the Chief Executive and the Minister with details regarding the proposal, including any land proposed as compensation. The proponent is required to demonstrate to the Chief Executive, and ultimately the Minister, that the revocation is essential and that the combined effect of the revocation and compensation will result in an overall public good outcome having taken into consideration all of the conservation, cultural heritage and other values of the relevant lands.

26. The NPWS will consider a number of factors when assessing the most appropriate options with respect to any revocation proposal, and in preparing advice to the Chief Executive and Minister. These include (but are not limited to):

- viable and practical alternatives to revocation. For boundary encroachments that may include:
  - removal or relocation of the encroaching development;
  - demolition of the encroaching development;
  - adaptive re-use of the encroaching development; or
  - issuing a lease, licence or easement for the encroaching development where the development is consistent with the objects of the reserve and plan of management (i.e. where a nexus between the development and the reserve can be established).

- positive or negative impacts (if any) on:
  - integrity of the park and its boundaries (including connectivity and manageability);
  - the natural and cultural values of the park;
  - current and future visitors to the park (including access and amenity);

- social, economic and financial costs and benefits of any action with respect to the activity or development (including costs of removal);

- legal advice, including whether penalties or legal action should be pursued;

- any formal advice or resolutions prepared by the National Parks and Wildlife Advisory Council and the relevant regional advisory committee (refer to policy sections 36-37); and

- the adequacy of any proposed compensation for the revocation (refer to policy section 19).

Note: not all of the above information will be available to NPWS when the initial briefing and request for Ministerial in-principle approval to proceed with the consideration of a revocation proposal is sought. However, any final recommendation to the Minister on a revocation proposal must address these matters, where they are relevant to the particular proposal at hand.
27. A final decision on whether to proceed with a revocation proposal may only be made by the Minister. Once the decision to proceed has been made, and prior to seeking Government and Parliamentary approval, written agreement regarding any compensation requirements will be made between the Minister and the party to whom the Minister will transfer the revoked land (see policy section 20).

Recategorisations

28. The NPWS will brief the Chief Executive and the Minister about any potential recategorisation proposals as they arise.

29. The NPWS may only proceed to further examine the potential recategorisation of the relevant area with written in-principle approval of the Minister.

30. The following matters will be considered in the assessment of recategorisation proposals:
   - natural and cultural heritage values of the reserve
   - current and potential levels of visitor use
   - current and potential level of illegal activities
   - public accessibility
   - National Parks Establishment Plan
   - recent and current annual land purchase programs
   - surrounding lands that may be identified as future reserve additions or new reserves
   - any formal advice or resolutions prepared by the National Parks and Wildlife Advisory Council and the relevant regional advisory committee (refer to policy section 36).

31. A final decision on whether to proceed with a recategorisation proposal and to seek Government and Parliamentary approval may only be made by the Minister. Proposals to recategorise an SCA using the provisions of s.47MA of the NPW Act do not require Parliamentary approval but require the concurrence of the Minister administering the Mining Act 1992.

Road boundary adjustments

32. An assessment of significance must be prepared by the proponent to examine the effect of the adjustment on the size and value of the park. The assessment must address the following heads of consideration:
   - area and proportion of land to be removed from the park (and any areas to be included in the park)
   - impacts on natural and cultural heritage of the park, including:
     - flora and fauna, including threatened species, populations or communities
     - Aboriginal heritage
     - historic heritage (including any historic infrastructure associated with the road corridor)
   - any related impacts on the aesthetic, recreational, scientific or other environmental quality or value of the area
• where a setback is proposed to accommodate existing supporting infrastructure, or emergency works have been undertaken associated with the road (see policy section 6):
  o clear evidence that the extent of the setback proposed and the infrastructure contained within the setback, or any emergency works that have been undertaken, are consistent with relevant technical road standards
  o documentation and mapping of the existing supporting infrastructure that is to be included in the setback area, or any emergency works that have been completed.

33. After considering the assessment of significance, NPWS will prepare a briefing to the Chief Executive and Minister on the proposed road boundary adjustment.

34. Road boundary adjustments must be approved by the Chief Executive, together with the approval of the Minister and any of the relevant parties identified in section 188C(4) of the NPW Act.

35. Once approved, the road boundary adjustment shall be given effect by a notice published in the Government Gazette by the Chief Executive, which is to include certification from the Chief Executive that the adjustment will not result in any significant reduction in the size or value of land reserved under the NPW Act.

Consultation

36. Following in-principle ministerial approval to examine potential revocation or recategorisation proposals, NPWS must seek the advice of the National Parks and Wildlife Advisory Council and the relevant regional advisory committee.

37. For road boundary adjustments, the relevant regional advisory committee should be consulted regarding the proposal.

38. If a proposed road boundary adjustment will affect any land with utilities interests such as easements or infrastructure, it is the responsibility of the proponent of the boundary adjustment to consult with and seek the agreement of the utilities authority.

39. If the boundary adjustment affects the boundaries adjoining a public road maintained by a local council, the local council should be consulted and their agreement for the boundary adjustment sought.

Note 1: Any potential offset lands to be added to the reserve system as a result of offset negotiations and any recategorisation of SCAs to a higher reserve category must undergo the reserve referral process. NPWS’s Reserve Establishment Team oversees the reserve referral process. The region is to provide information on offset lands and on lands to be recategorised to the Reserve Establishment Team.

Note 2: Consideration must be given to any potential impacts of revocations or recategorisations on Aboriginal joint management initiatives. Consult with Legal Services and NPWS’s Aboriginal Heritage and Joint Management Team.
**Lands subject to international agreements**

40. Where it is proposed to revoke any part of a park that is listed under an International Convention, such as World Heritage or Ramsar, or on the National Heritage List, NPWS will consult the relevant Commonwealth department regarding the proposal.

**Native title**

41. The appropriate authority in which the land is to be vested as a result of a road boundary adjustment must be advised that the adjustment of boundaries by a s188C notice will not affect native title rights and interests.

42. With regards to revocations, advice on the impact on native title rights and interests by the revocation of land and subsequent vesting and transfer of revoked land should be sought from legal.

**Surveying requirements**

43. It is the proponent’s responsibility to meet survey costs associated with revocations and road boundary adjustments, although a cost-sharing agreement may be made with NPWS where appropriate.

44. For revocations, plans must be prepared for both the land to be revoked from the park and the land to be added (if applicable).

45. A plan in a registrable form prepared or certified by a registered surveyor is required to vest lands in the appropriate authority following a revocation. A miscellaneous plan may suffice for lands to be revoked from the park and held under Part 11 of the NPW Act prior to vesting with the appropriate authority, although a plan in a registrable form prepared or certified by a registered surveyor is preferred.

46. A plan in a registrable form prepared by a registered surveyor may be required for some s.188C boundary adjustments proposed by external proponents. Full survey of the proposed adjustment and the production of a plan in registrable form is preferred.

47. For s.188C boundary adjustments in the event survey costs are considered prohibitive, a miscellaneous plan will suffice, however staff must communicate to the external proponent that Land and Property Information (LPI) will not accept it for registration and the cadastral layers will not be updated, and nor can a certificate of title be issued.

48. For OEH proposed s.188C boundary adjustments, a miscellaneous plan will suffice.

49. For s.188C boundary adjustments a full survey must be undertaken where the likelihood of major works occurring in the future is high and accurate boundary definition would be required in any event at that future time for those works to proceed. Major works would include additional lanes, re-alignment, new intersections and reformation of embankments.

50. For encroachments occurring after park establishment, if after following the receipt of legal advice, revocation is to be pursued, the costs should be borne by the encroaching party.
Asset reporting

51. Information regarding the lands removed from or added to the reserve system, whether by revocation or road boundary adjustment, will be recorded and provided as part of existing regular reports to the OEH Asset Accountant. In NPWS this task is undertaken by the Reserve Establishment Team.

52. The OEH Asset Accountant, in consultation with other authorities that are the recipient of lands transferred from the reserve system or that have transferred lands to NPWS, will then determine the agreed land value in line with the most recent valuations and arrange transfer of the agreed value, via “administrative restructure”, with the other authorities.

Definitions and abbreviations

‘appropriate authority’ means the authority in which lands will be vested as identified in the relevant legislation for a particular revocation.

‘Chief Executive’ means the Chief Executive of the NSW Office of Environment and Heritage

‘emergency works’ are as defined in State Environmental Planning Policy (2007) Infrastructure and are works for the purpose of maintaining or restoring infrastructure facilities or equipment in order to ensure public safety or to protect buildings or the environment due to:
   a. a sudden natural event, including a storm, flood, tree fall, bush fire, land slip or coastal inundation, or
   b. accident, equipment failure or structural collapse, or
   c. damage caused by vandalism or arson,
   d. provided the works involve no greater disturbance to soil or vegetation than necessary and are carried out in accordance with all applicable requirements of the Blue Book.

‘formed path of the road’ means carriageways, travellers lanes, shoulders, verges, roundabouts, median strips and traffic islands.

‘NPW Act’ means the National Parks and Wildlife Act 1974

‘NPWS’ means the National Parks and Wildlife Service.

‘OEH’ means the NSW Office of Environment and Heritage.

‘POM’ means a plan of management in relation to land reserved under the NPW Act that is prepared under s72 of the NPW Act.

‘public road’ means:
   a. any road that is opened or dedicated as a public road, whether under the Roads Act 1993 or any other Act or law, and
   b. any road that is declared to be a public road for the purposes of the Roads Act 1993.

‘roads authority’ means a person or body that is, by or under the Roads Act 1993, declared to be a roads authority and, in relation to a particular public road, means the roads authority for that road.

‘SMI’ means a statement of management intent, which outlines management directions for a reserve prior to a POM being adopted
Accountabilities

Accountabilities under this policy are in accordance with the delegation of Ministerial and Director-General functions under the National Parks and Wildlife Act 1974 and the National Parks and Wildlife Regulation 2009.

Instruments of delegation can be accessed on the Legal and Investigations page on the intranet.

Further information

Refer to NPWS’s Park Management Policy Manual for related policies.