



Info sheet

Native vegetation management in NSW Native Vegetation Act 2003

What clearing requires approval?

Under the *Native Vegetation Act 2003* (the NV Act), all clearing of native vegetation requires landholders to seek approval in the form of a property vegetation plan (PVP) from Local Land Services **unless** the clearing is:

1. on land that is excluded from operation of the NV Act (see Info sheet *What clearing does not require approval?* at www.environment.nsw.gov.au/vegetation/).
2. a legislative exclusion under section 25 of the NV Act
3. permitted clearing, including clearing of non-protected regrowth or certain groundcover
4. a permitted activity, including a routine agricultural management activity (RAMA), continuation of an existing farming activity or sustainable grazing.

Approval for clearing of remnant vegetation or protected regrowth in the form of a PVP can only be granted when the clearing will improve or maintain environmental outcomes.

Biodiversity legislative reforms

In 2014, the NSW Government commissioned an independent panel to review the state's biodiversity legislation. The panel presented its final report to the Minister for the Environment in December 2014. The panel's recommendations included repealing the *Native Vegetation Act 2003*, creating a new Biodiversity Conservation Act and amending the *Local Land Services Act 2013*. The government supports all of the independent panel's recommendations and will implement them as an integrated package of reforms. The *Native Vegetation Act 2003* will continue to apply until the new Act is in place.

What is remnant native vegetation?

Remnant native vegetation is any native vegetation other than regrowth. This means that all native vegetation that was present prior to 1 January 1990 (or 1 January 1983 in the Western Division) is remnant. It also includes any vegetation that has regrown following unlawful clearing or clearing caused by bushfire, flood, drought or any other natural cause.

What is regrowth?

Regrowth is any native vegetation that has regrown since 1 January 1990 (or 1 January 1983 in the Western Division), or an earlier date as specified in a PVP. Regrowth does not include native vegetation that has regrown after unlawful clearing of remnant vegetation or clearing of remnant native vegetation by bushfire, flood, drought or any other natural cause.

What is protected regrowth?

Protected regrowth is 'regrowth' that has been identified as protected regrowth:

- in a PVP
- in an environmental planning instrument
- in a natural resource management (NRM) plan
- in an interim protection order under the NV Act

Vegetation that has been grown with the assistance of public funding is also protected regrowth.

The Vulnerable Land NRM Plan identifies all regrowth on steep or highly erodible land, protected riparian land, and special category land, as protected regrowth. All clearing of native vegetation on vulnerable land requires approval unless it is excluded clearing or can be cleared as a routine agricultural management activity (RAMA). The use of certain RAMAs for clearing of vegetation on protected riparian land and lignum on special category land is restricted.

The Vulnerable Land NRM Plan can be viewed at:

www.environment.nsw.gov.au/resources/vegetation/vulnerablelandmap.pdf.

If you need assistance to determine if there is vulnerable land on your property, you can seek advice from Local Land Services staff or you can use the online tools to view an interactive map of your property at www.environment.nsw.gov.au/vegetation/onlinetools.htm.

The Minister may make other NRM plans to identify vegetation as protected regrowth. For example, an NRM plan identifying vegetation that has regrown after clearing, using the Invasive Native Species self-assessable code, as protected has been approved.

How do the definitions of remnant, regrowth and protected regrowth apply?

Most native vegetation communities in a natural state commonly contain three or four recognisable layers, for example, canopy, midstorey and groundcover, as illustrated in Figure 1. Some vegetation communities may only have one or two layers. For example, native grasslands usually contain only groundcover and some open woodlands contain little or no midstorey.



Figure 1: A vegetation community with three recognisable layers, canopy, midstorey and groundcover

Note: Vegetation that is regrowing following a natural event such as drought, fire, flood, storms or natural regeneration or unlawful clearing is remnant vegetation.

Agricultural land will commonly have layers that will be a mix of both remnant and regrowth native vegetation. The following figures illustrate different scenarios.

Examples

1. The canopy and midstorey have been thinned and have partly regrown, leaving a mixture of remnant vegetation and regrowth in both those layers. Any native vegetation that grows back in the canopy or midstorey after 1 January 1990 (or 1 January 1983 in the Western Division) is regrowth and does not require clearing approval. Clearing any remnant vegetation requires approval, including the remnant groundcover (Figure 2).



Figure 2: In a vegetation community that has been thinned and partly regrown, the vegetation that has regrown after 1990/83 is 'regrowth' under the NV Act and may be cleared without approval. Vegetation that was present prior to this date is remnant and requires approval to be cleared.

2. The land has been cleared (under-scrubbed), removing the midstorey, leaving native canopy and groundcover vegetation

Any midstorey that regrew before 1 January 1990 (or 1 January 1983 in the Western Division) is remnant and clearing it will require approval. Any midstorey that regrows on or after 1 January 1990 (or 1 January 1983 in the Western Division) can be cleared without approval. (Figure 3):



Figure 3: In a vegetation community that has been under-scrubbed removing the midstorey vegetation, approval is required for the clearing of any vegetation that has regrown prior to 1990/83 as is classified as remnant under the NV Act, as well as any uncleared vegetation. Any midstorey vegetation that has regrown after 1990/83 is classified regrowth under the NV Act and does not require approval to be cleared.

3. The canopy has been thinned before 1 January 1990 (or 1 January 1983 in the Western Division) so that only isolated paddock trees remain. Midstorey and groundcover have been regularly cleared for cropping or improved pasture.

Any native groundcover or midstorey that regrows on or after 1 January 1990 (or 1 January 1983 in the Western Division) is regrowth and does not require clearing approval (Figure 4). Clearing the remnant paddock trees requires approval, unless the clearing is consistent with the conditions in the Ministerial Order Declaring Clearing Paddock Trees in a Cultivation Area to be a RAMA. Refer to the Native Vegetation Codes of Practice Information Sheet for more information.



Figure 4: When clearing of the canopy has occurred prior to 1 January 1990 (or 1 January 1983 in the Western Division) leaving isolated paddock trees, and the understorey has also been cleared at this time and regularly maintained since then for cropping or pasture, no approval is required to clearing of understorey or midstorey vegetation that regrows. The paddock trees are remnant and clearing requires approval, unless the clearing is consistent with the conditions in the Ministerial Order Declaring Clearing Paddock Trees in a Cultivation Area to be a RAMA.

4. Selective logging before the regrowth date has left native canopy, midstorey and groundcover that is all remnant plus regeneration of various ages in all layers (Figure 5).



Figure 5: Selective logging occurred prior to 1 January 1990 (or 1 January 1983 in the Western Division). Regenerating vegetation in all layers is classified remnant, and would require approval to be cleared.

What is a Property Vegetation Plan?

A property vegetation plan (PVP) is a negotiated agreement between a landholder and Local Land Services (as delegated by the Minister). It can incorporate actions that have a positive natural resource outcome that 'offset' or balance negative impacts of clearing to meet the improve or maintain environmental outcomes test required by the Act.

The clearing approval component of a PVP can last up to 15 years, but offsets may need to be secured for a longer period, usually in perpetuity.

A PVP can also define and confirm native vegetation as regrowth, identify continuing uses, or areas subject to long-term rotations that may qualify for a change to the regrowth date.

What does 'improve or maintain' environmental outcomes mean?

'Improve or maintain' environmental outcomes means that clearing cannot result in reduced environmental outcomes. The impact of clearing may be 'offset' by management actions that have positive environmental impacts. Four environmental values are used to measure the impacts: water quality, soils, salinity and biodiversity (including threatened species).

What are offsets?

Offsets are actions agreed to by the landholder in order to balance any impacts of clearing. Typically areas of vegetated land are put aside to offset the impacts of clearing, however, in order to meet the 'improve or maintain' test, additional management actions must also be implemented on that land. Offsets can be on your property or another property.

Examples of offset management actions may include agreeing not to clear regrowth, strategic grazing, planting, re-seeding or improving habitat by weed control.

How will my proposal be assessed for the 'improve or maintain' environmental outcomes test?

The Native Vegetation Regulation 2013 adopts the Environmental Outcomes Assessment Methodology that the Local Land Services staff must use to assess clearing proposals for PVPs.

How do I determine if I require approval?

There are online tools to help landholders to determine whether they need approval under the NV Act. These can be found on the Office of Environment and Heritage website at: www.environment.nsw.gov.au/vegetation/onlinetools.htm.

Further advice can be provided by staff at your Local Land Services office. This advice may include assistance to determine if the vegetation is remnant or protected regrowth requiring approval.

How do I seek approval?

Your Local Land Services is available to provide you with extension, advisory and PVP services. Where clearing requires approval, Local Land Services staff can undertake a clearing assessment. This may allow the negotiation of a PVP, incorporating appropriate offsets. Staff at Local Land Services can give you advice on your proposal.

In some circumstances, you may also need other approvals. For example, you may require council consent for some activities. For more information, see 'How to obtain other approvals' at: www.environment.nsw.gov.au/resources/vegetation/150032-fs-approvals.pdf

More information

For more information: Contact Local Land Services on 1300 795 299 or visit: www.environment.nsw.gov.au/vegetation/

Note: This information does not constitute legal advice. Please seek specific advice from your Local Land Services before undertaking any clearing.

Published by:

Office of Environment and Heritage

59 Goulburn Street, Sydney NSW 2000

PO Box A290, Sydney South NSW 1232

Phone: (02) 9995 5000 (switchboard)

Phone: 131 555 (environment information and publications requests)

Phone: 1300 361 967 (national parks, general environmental enquiries, and publications requests)

Fax: (02) 9995 5999

TTY users: phone 133 677, then ask for 131 555

Speak and listen users: phone 1300 555 727, then ask for 131 555

Email: info@environment.nsw.gov.au

Website: www.environment.nsw.gov.au

Report pollution and environmental incidents

Environment Line: 131 555 (NSW only) or info@environment.nsw.gov.au

See also www.environment.nsw.gov.au

ISBN 978 1 76039 102 7

OEH 2015/0581

September 2015