



Info sheet

Native vegetation management in NSW Native Vegetation Act 2003

What clearing *does not* require approval?

On land where the *Native Vegetation Act 2003* (NV Act) applies, clearing of native vegetation that is permitted clearing, a permitted activity or excluded clearing does not require approval through a property vegetation plan (PVP).

The online tools on the Office of Environment and Heritage (OEH) website can assist landholders to determine whether the proposed clearing requires approval under the NV Act. The online tool number 3: *What clearing can I do without approval?* is available at:
www.environment.nsw.gov.au/vegetation/onlinetools.htm.

Further advice can also be provided by staff at your Local Land Services office.

In some circumstances a landholder may be required to obtain approval under other legislation even when the clearing is permitted under the NV Act (see fact sheet *How to obtain approvals* at www.environment.nsw.gov.au/resources/vegetation/150032-fs-approvals.pdf) or contact your Local Land Services office or local council.

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.

Types of permitted clearing and permitted activities

There are six types of permitted clearing and permitted activities where approval is not required under either the NV Act, or the *Threatened Species Conservation Act 1995* (except in the case of clearing certain groundcover, as explained below).

When undertaking clearing that is permitted, landholders are advised to keep records about any clearing in case they are asked to demonstrate what they have done. Suitable records may include printouts from the online tools for landholders, photographs before and after the clearing, documentation from clearing contractors and similar records.

Permitted clearing

Permitted clearing is the clearing of regrowth and certain types of ground cover.

1. Clearing of regrowth

Landholders can clear regrowth that is not protected regrowth, without approval. Under the NV Act, regrowth is defined as any vegetation that has regrown since 1 January 1990 (or 1 January 1983 in the Western Division). Regrowth does not include native vegetation that has regrown after unlawful clearing of remnant vegetation or following clearing of remnant vegetation caused by bushfire, flood, drought or other natural cause.

In exceptional circumstances, the regrowth dates defined above may be changed to an earlier date, provided that there is proof of existing rotational farming practices. The change of regrowth dates to an earlier date must be specified in a Property Vegetation Plan.

Protected regrowth

It is important to recognise that some regrowth has been classified as protected regrowth.

Approval is required to clear protected regrowth unless it is excluded clearing or a relevant routine agricultural management activity (RAMA) applies. Under the NV Act, protected regrowth is defined as native vegetation that has regrown since 1 January 1990 (or 1 January 1983 in the Western Division) and has been identified as protected regrowth:

- in a PVP
- in an environmental planning instrument
- in a natural resource management (NRM) plan
- or an interim protection order under the NV Act
- any native vegetation that has been grown or preserved with the assistance of public funds granted for biodiversity conservation purposes.

The Minister has made NRM plans that identify vegetation as protected regrowth which may require approval to be cleared. Most of the protected regrowth in NSW has been identified in a NRM plan identifying vulnerable land, which is land that is more sensitive to soil erosion, sedimentation and landslip. More detail about vulnerable land is provided in info sheet *What clearing requires approval?* (see www.environment.nsw.gov.au/vegetation/).

2. Clearing of certain groundcover

Clearing native vegetation that comprises only groundcover is permitted under the NV Act, without approval where:

- the vegetation comprises less than 50% of indigenous species of vegetation
- 10% or more of the area is covered with vegetation (whether dead or alive)
- the calculation is made at the time of the year when the proportion of the amount of indigenous vegetation in the area to the amount of non-indigenous vegetation in the area is likely to be at its maximum.

However, the clearing of such groundcover is subject to separate consideration under the *Threatened Species Conservation Act 1995*. If the clearing is likely to harm threatened species or threatened species habitat, the landholder may be required to obtain a licence under section 91 of the *Threatened Species Conservation Act 1995*. Further information is available at www.environment.nsw.gov.au/threatenedspecies/licences.htm.

Calculations of certain groundcover must be undertaken in a scientific and objective manner that is appropriate to the area proposed to be cleared and the species of vegetation that are present in accordance with the requirements of clause 62 of the Native Vegetation Regulation 2013. It must be documented. Your Local Land Services office can provide further advice in relation to calculating groundcover. You can also refer to the fact sheet, *Using the Native Vegetation Self-Assessable Codes: Assessing groundcover* available at: www.environment.nsw.gov.au/resources/vegetation/150030-fs-groundcover.pdf.

Permitted activities

Permitted activities under the NV Act are:

- Clearing for Routine Agricultural Management Activities (RAMAs)
- Clearing for an approved dwelling (a type of RAMA)
- Continuation of existing farming activities
- Sustainable grazing

3. Routine agricultural management activities

Routine agricultural management activities (RAMAs) cover a wide range of day-to-day farming activities, and some non-rural activities. Clearing of native vegetation for RAMAs is permitted without approval:

- when undertaken to the minimum extent necessary and within specified distance limitations, or other conditions where they apply
- if it is done for a work, building or structure and any other approvals necessary for that work, building or structure are first obtained.

More detail on clearing for RAMAs is available in three separate info sheets for the Western Division, Central Region and Coastal Region of NSW (see www.environment.nsw.gov.au/vegetation/).

Landholders can also refer to the online information tool no. 4: *What Routine Agricultural Management Activities (RAMAs) are available?* (see www.environment.nsw.gov.au/nvrt/nvntapp/tool4).

Clearing in accordance with a Ministerial Order is also a type of RAMA. Three Ministerial Orders have been released:

- Clearing of paddock trees in a cultivation area
- Thinning of native vegetation
- Clearing of invasive native species.

Refer to the info sheets on RAMAs for the Western Division, Central Region and Coastal Region of NSW for further information (see www.environment.nsw.gov.au/vegetation/).

Each Ministerial Order has a landholder guide to assist a landholder to apply the RAMA on their land where appropriate. The guides are available at www.environment.nsw.gov.au/vegetation/selfassess.htm or from your Local Land Services office. Online tools are available to assist landholders with the application of each of these codes (see www.environment.nsw.gov.au/vegetation/onlinetools.htm).

4. Development of a dual occupancy, dwelling house, secondary dwelling, semi-detached dwelling or rural worker's dwelling

Clearing is permitted where vegetation is to be removed for the construction of dwellings. There must be a current Development Consent issued by Council and the clearing must be done in accordance with the conditions of that consent. Clearing using this provision is a RAMA however, it has specific requirements for the clearing to be undertaken in accordance with other approvals.

5. Continuing existing farming activities

Under section 23 of the NV Act all regrowth vegetation (including protected regrowth) can be cleared in circumstances where a landholder is undertaking a continuation of existing farming activities (cultivation, grazing, or rotational farming activities). The only exception to this is in the Western Division, where regrowth of river red gum, belah and white cypress pine greater than 3 metres in height cannot be cleared under these provisions.

In this situation, 'existing' means that the cultivation, grazing or rotational farming practices were in operation on 1 December 2005. The landholder is required to provide evidence of existing farming practices should they wish to clear under this provision. For added security, a landholder may obtain a PVP that certifies the existing farming activity.

6. Sustainable grazing

Under section 24 of the NV Act, sustainable grazing that is not likely to result in the substantial long-term decline in the structure and composition of native vegetation is permitted.

Excluded clearing

Clearing listed in section 25 of the NV Act does not require approval, usually because it is authorised or permitted under other legislation. This means that once approval is given under that legislation, or if the clearing is permitted by that legislation, approval is not required under the NV Act.

The exclusions in section 25 of the NV Act include, for example, certain clearing under:

- the *Rural Fires Act 1997* when done in accordance with a bushfire management plan under that Act or in relation to emergency fire fighting
- the *Roads Act 1993*
- the *Surveying Act and Spatial Information Act 2002* that is undertaken by or under the direction of a surveyor
- a licence, permit, authority or approval under the *Water Management Act 2000*.

List of section 25 legislative exclusions

The *Native Vegetation Act 2003* does not apply to the following types of clearing of native vegetation:

- (a) any clearing authorised under the *State Emergency and Rescue Management Act 1989* in relation to an emergency within the meaning of that Act
- (b) any clearing authorised under the *Rural Fires Act 1997* in relation to any emergency fire fighting act within the meaning of that Act
- (c) any clearing carried out in accordance with a bush fire management plan under the *Rural Fires Act 1997*
- (d) any clearing carried out in accordance with a property management plan approved under the *Threatened Species Conservation Act 1995*
- (e) any clearing authorised under a licence issued under Division 1 of Part 6 of the *Threatened Species Conservation Act 1995*
- (f) any clearing that is, or that is part of, designated development within the meaning of the *Environmental Planning & Assessment Act 1979* and for which development consent has been granted under that Act
- (g) any clearing that is, or is part of, an activity carried out by a determining authority within the meaning of Part 5 of the *Environmental Planning & Assessment Act 1979* if the determining authority has complied with that Part
- (h) any clearing that is, or is part of, an activity carried out in accordance with an approval of a determining authority within the meaning of Part 5 of the *Environmental Planning & Assessment Act 1979* if the determining authority has complied with that Part
- (i) any clearing authorised to be carried out under Division 3 or 4 of Part 7 of the *Fisheries Management Act 1994*
- (j) any clearing authorised under a licence issued under Division 6 of Part 7A of the *Fisheries Management Act 1994*
- (k) any clearing carried out in accordance with a licence issued under section 131 of the *National Parks and Wildlife Act 1974*
- (l) any clearing authorised under the *Mining Act 1992*

(m) any clearing authorised under the *Petroleum (Onshore) Act 1991*

(n) any clearing that consists of plantation operations within the meaning of the *Plantations and Reafforestation Act 1999* on an authorised plantation in accordance with any conditions of the authorisation and with the Plantations and Reafforestation Code under that Act

(o) any clearing that involves the removal or lopping of any tree or other vegetation in accordance with section 88 of the *Roads Act 1993*

(p) any clearing carried out in accordance with a consent under Division 3 of Part 9 of the *Roads Act 1993*

(q) any clearing carried out in accordance with a permit under Part 3A of the *Rivers and Foreshores Improvement Act 1948*

(r) any clearing for the purpose of a survey under the *Surveying and Spatial Information Act 2002* that is undertaken by or under the direction of a surveyor

(s) any clearing carried out in accordance with a licence, permit, authority or approval under the *Water Act 1912* or the *Water Management Act 2000*

(t) any clearing carried out in accordance with an order under the *Trees (Disputes Between Neighbours) Act 2006*

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.

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