New South Wales Government

Native vegetation management in NSW

Native Vegetation Act 2003

INFO SHEET 4

Details about the new Native Vegetation Act 2003

The *Native Vegetation Act 2003* (NV Act) regulates the clearing of native vegetation on all land in NSW except for land listed in Schedule 1 of the Act. Excluded land falls into the following categories:

> National Parks and other conservation areas

> State forests and reserves, and

> urban areas.

Which urban areas are excluded?

> Areas zoned residential (but not rural residential), village, township, industrial or business.

> The following local government areas, which are largely urban land:

Sydney: Ashfield, Auburn, Bankstown, Baulkham Hills, Blacktown, Botany Bay, Burwood, Camden, Campbelltown, Canterbury, Concord, Drummoyne, Fairfield, Hawkesbury, Holroyd, Hornsby, Hunters Hill, Hurstville, Kogarah, Ku-ring-gai, Lane Cove, Leichhardt, Liverpool, Manly, Marrickville, Mosman, North Sydney, Parramatta, Penrith, Pittwater, Randwick, Rockdale, Ryde, South Sydney, Strathfield, Sutherland Shire, Sydney City, Warringah, Waverley, Willoughby and Woollahra.
Newcastle: Newcastle City.

What is native vegetation?

Native vegetation is any species of vegetation that existed in NSW before European settlement including trees, saplings, shrubs, scrub, understorey, groundcover or plants in a wetland.

Mangroves, seagrasses and other marine vegetation are not covered by this Act. They are managed by the *Fisheries Management Act 1994*.

What is clearing?

Clearing is defined as cutting down, felling, thinning, logging, removing, killing, destroying, poisoning, ringbarking, uprooting or burning native vegetation.

Clearing therefore includes, for example:

> any type of ploughing or planting that turns or digs in native groundcover

> the under-scrubbing of native forests

> logging and similar activities associated with private native forestry (but see comment in Example 5 over), or

> damage from spray drift.

Activities like pruning and lopping of native vegetation and slashing of native groundcover that do not kill the native vegetation are not clearing.

Except for the commercial collection of firewood, the removal of dead timber is not clearing under the NV Act.

How is native vegetation classified under the Native Vegetation Act 2003?

The clearing of native vegetation is subject to differing requirements depending on whether the vegetation is classified as remnant vegetation, protected regrowth or non-protected regrowth.

1. Remnant vegetation

Remnant vegetation is any native vegetation that is not regrowth.

2. Regrowth

All native vegetation that has regrown since 1 January 1990 (or 1 January 1983 in the Western Division) is regrowth. Regrowth does not include native vegetation that has regrown after:

> unlawful clearing of remnant vegetation, or

> bushfires, floods, drought or other natural events cause the clearing of remnant vegetation.

Approval is not required to clear any non-protected regrowth (see protected regrowth below) when it has:

> been legally cleared, and

> regrown after the regrowth date.

The presence of post 1990/83 regrowth in one particular layer (see over) does not mean that all native vegetation on site or all native vegetation in that layer, can be cleared without approval. Approval is required to clear any native vegetation that was present in any layer prior to the regrowth date. This includes native groundcover.

In exceptional circumstances the regrowth date may be changed through a Property Vegetation Plan. The new date has to be based on existing rotational farming practices where the land has been cleared twice since 1950 (1943 in the Western Division).

3. Protected regrowth

Protected regrowth is native vegetation that is regrowth and that is identified as protected regrowth in a Property Vegetation Plan, an environmental planning instrument, a natural resources management plan or an interim protection order under the NV Act. It also includes native vegetation that is regrowth which has been grown or preserved, whether before or after commencement of the NV Act, with the assistance of public funds granted for biodiversity conservation purposes.

Clearing of protected regrowth requires approval except where the clearing occurs under either a routine agricultural management activity, the continuation of existing farming activities or sustainable grazing. For details of these see Info Sheet 6.

How do the definitions apply?

Most native vegetation in its natural state commonly contains three or four recognisable layers, eg canopy, midstorey and groundcover, as illustrated in the diagram below. Note that for groundcover to be called native vegetation it must meet certain tests (see Info Sheet 12)

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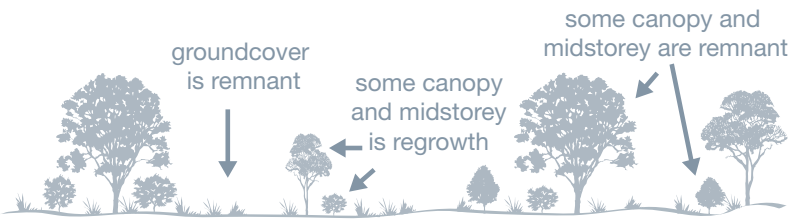
Some vegetation communities may only have one or two layers.
For example native grasslands usually contain only groundcover and some open woodlands contain little or no midstorey.

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

Examples

1. The canopy and midstorey have been thinned for grazing 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 1990/83 is regrowth and does not require clearing approval.

Clearing any remnant vegetation requires approval including the remnant groundcover if it meets the definition of native vegetation (see Info Sheet 12).

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

Any midstorey that grew back before 1990/83 is remnant and clearing it will require approval.

Any midstorey that grows back after 1990/83 can be cleared without approval.

3. The canopy and midstorey have been cleared for grazing and only native groundcover remains:

Any canopy or midstorey that grows back after 1990/83 is regrowth and does not require clearing approval.

The remnant groundcover cannot be cleared without approval if it meets the definition of native vegetation (see Info Sheet 12).

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4. The canopy has been thinned before 1990/83 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 grows back after 1990/83 is regrowth and does not require clearing approval.

Clearing the remnant paddock trees requires approval.

5. 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:

Clearing native vegetation that has regrown in any of the 3 layers since 1990/83 does not require approval.

Logging: Refer to Info Sheet 10 *Private Native Forestry*.

Classifying vegetation

If you are not sure what is regrowth, remnant native vegetation, protected regrowth or native groundcover on your property or what you can or cannot clear, contact your local CMA for advice on the Act and any available incentives.

For more information:

Contact your local CMA, or you may also:

Visit: www.nativevegetation.nsw.gov.au **Email:** info@nativevegetation.nsw.gov.au **Freecall:** 1800 237 012

Note: This information does not constitute legal advice. Please seek specific advice from your local CMA before undertaking any clearing.

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