



Draft Native Vegetation Regulation 2004

NSW Native Vegetation Reforms

Protecting and investing in healthy
and productive landscapes for the
people of New South Wales



NSW Government

Contents

	Page
Part 1 Preliminary	
1 Name of Regulation	3
2 Commencement	3
3 Definitions	3
Part 2 Development consent for clearing	
4 Exclusion of matters for consideration	4
5 Conditions of development consent	4
6 Development consent for single dwelling authorises clearing	4
Part 3 Property vegetation plans	
7 Form of PVPs	5
8 Content of PVPs	5
9 PVPs that change regrowth date	6
10 Termination of PVP	6
11 Register of PVPs	6
12 Variation of PVPs	7
Part 4 Routine agricultural management activities	
13 Control of pest animals	8
14 Gardens	8
15 Definition of “small holding”	8
16 Infrastructure buffer distances	8
17 Maintenance of public utilities—electricity transmission	9
Part 5 Broadscale clearing	
18 Adoption of Minister’s Assessment Methodology	11
19 Procedure for amendment of Assessment Methodology	11
20 Proposed broadscale clearing to be assessed using guidelines	11
21 Results of assessment	12
Part 6 Special provisions for vulnerable land	
22 Former Act not to apply to State protected land	13
23 Identification of protected regrowth on steep or highly erodible land or protected riparian land	13
24 Limitation of RAMAs on protected riparian land	13
25 Clearing of lignum on special category land	14

draft

Native Vegetation Regulation 2004

Contents

	Page	
Part 7	Savings and transitional provisions	
26	Authorised officers under former Act	15
27	Pending applications for development consent	15
28	Native Vegetation Management Fund	15
29	Property agreements under former Act	15
30	Stop work orders and remedial work directions under former Act	16
31	Exempt farm forestry under Plantations and Reafforestation Act 1999	16
32	Exemption of clearing authorised under existing cultivation consents	16
Part 8	General	
33	Clearing of groundcover—calculations	18
34	Penalty notice offences and penalties	18
35	Extension of Act to Wollongong local government area	19
Schedule 1	Penalty notice offences	20

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Clause 1 Native Vegetation Regulation 2004

Part 1 Preliminary

Native Vegetation Regulation 2004

under the

Native Vegetation Act 2003

Part 1 Preliminary

1 Name of Regulation

This Regulation is the *Native Vegetation Regulation 2004*.

2 Commencement

This Regulation commences on *[insert date of commencement]*.

3 Definitions

(1) In this Regulation:

development consent means development consent required by the Act for the clearing of native vegetation.

former Act means the *Native Vegetation Conservation Act 1997*.

new Act or *the Act* means the *Native Vegetation Act 2003*.

PVP means a property vegetation plan.

State protected land means State protected land within the meaning of the former Act, immediately before its repeal.

(2) Notes included in this Regulation do not form part of this Regulation.

Clause 4 Native Vegetation Regulation 2004

Part 2 Development consent for clearing

Part 2 Development consent for clearing

4 Exclusion of matters for consideration

Matters required to be considered under section 79C of the EPA Act are excluded from the matters required to be considered under Part 4 of that Act for the purposes of the determining of a development application for consent for clearing native vegetation.

5 Conditions of development consent

- (1) A condition of development consent for clearing native vegetation may be imposed if it relates to any matter to which the Minister must or may have regard under the Act in determining an application for that development consent.
- (2) This clause does not limit the conditions that may be imposed on development consent under the EPA Act.

6 Development consent for single dwelling authorises clearing

Clearing of native vegetation for the purposes of the construction of a single dwelling is taken to be clearing in accordance with a development consent granted in accordance with the Act if development consent for the erection of the single dwelling has been granted and the clearing is to the minimum extent necessary for the construction of the dwelling.

Part 3 Property vegetation plans

7 Form of PVPs

A PVP must be in such form as the Minister may from time to time approve.

8 Content of PVPs

A PVP must:

- (a) contain a description of the land to which the PVP applies,
- (b) specify the period for which the PVP has effect, and
- (c) specify the address and formal particulars of title of the land to which the PVP applies, and
- (d) include a rectified satellite or aerial photograph (indicating the date the photograph was taken), or (if such a photograph is not available) a topographical map, identifying:
 - (i) any land on which broadscale clearing is proposed by the PVP, and
 - (ii) any land for which the PVP specifies a date for the purposes of the definition of *regrowth* in the Act, and
 - (iii) any native vegetation that is protected regrowth or remnant native vegetation, and
 - (iv) any land on which native vegetation management activities are to be carried out under the PVP, and
- (e) specify the nature of the clearing (if any) that is proposed by the PVP and the period within which the clearing may occur, and

Note. Section 30 of the Act provides that 15 years is the maximum period for which provisions of a PVP for the clearing of native vegetation can have effect.
- (f) details of any proposals (including management actions or works) provided for by the PVP for which financial incentives have been or are to be provided, and
- (g) details of any natural resource management actions that are required by the PVP and the period for which they are required to be carried out, and
- (h) details of any works required to be carried out by the PVP and the period within which they are required to be completed, and
- (i) details of the extent (if any) to which provisions of the PVP exclude clearing for routine agricultural management or other activities from being permitted clearing.

Clause 9 Native Vegetation Regulation 2004

Part 3 Property vegetation plans

9 PVPs that change regrowth date

A property vegetation plan that specifies a date for the purposes of the definition of *regrowth* in section 9 (2) of the Act that is earlier than the relevant date specified in section 9 (2) (a) of the Act is not to be approved under Part 4 of the Act unless the Minister is satisfied that:

- (a) native vegetation on the land concerned has been cleared pursuant to existing rotational farming practices on at least 2 occasions since:
 - (i) 1950 in the case of land not in the Western Division, or
 - (ii) 1943 in the case of land in the Western Division, and
- (b) the property vegetation plan contains a requirement that regrowth may only be cleared in a manner that is consistent with those existing rotational farming practices.

10 Termination of PVP

A property vegetation plan cannot be terminated by the Minister under section 30 of the Act unless the following procedure has been followed:

- (a) the landholder must be provided with the proposed notice of termination and must be given at least 14 days in which to make written submissions to the Minister with respect to the proposed termination,
- (b) before proceeding to determine whether to terminate the property vegetation plan the Minister must have regard to any written submission made by the landholder within the period allowed for submissions.

11 Register of PVPs

- (1) Each catchment management authority is to keep a register of the PVPs that the authority has approved, and development consents that the authority has granted, as delegate of the Minister.
- (2) A catchment management authority is to provide the following information about a PVP or development consent to a person who satisfies the authority that the person is a bona fide prospective purchaser of the land to which the PVP or development consent applies:
 - (a) a description of the land to which the PVP or development consent applies,
 - (b) details of matters for which the PVP or development consent provides that relate to native vegetation management activities, such as conditions of clearing, agreed offsets, and provision and expenditure of public funds.

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Native Vegetation Regulation 2004

Clause 12

Property vegetation plans

Part 3

12 Variation of PVPs

If a PVP was approved by the Minister under section 29 (Plans proposing broadscale clearing) of the Act as a PVP that proposes broadscale clearing of native vegetation, the Minister is not to approve of a variation of the PVP unless the PVP as varied could have been approved under that section.

Clause 13 Native Vegetation Regulation 2004

Part 4 Routine agricultural management activities

Part 4 Routine agricultural management activities

13 Control of pest animals

The activities that comprise routine agricultural management activities for the purposes of section 11 of the Act are extended to include anything done pursuant to an obligation arising under an eradication order or pest control order under Part 11 of the *Rural Lands Protection Act 1998*.

14 Gardens

The activities that comprise routine agricultural management activities for the purposes of section 11 of the Act are extended to include the clearing of native vegetation planted as part of a garden.

15 Definition of “small holding”

For the purposes of section 11 (1) (a) (ii) of the Act, a *small holding* is defined as a holding that comprises a contiguous area of land in the same ownership that has an area:

- (a) in the Western Division—of less than 40 hectares, or
- (b) in any other part of the State—of less than 10 hectares.

16 Infrastructure buffer distances

(1) Clearing for an activity comprising the construction, operation or maintenance of any of the following rural infrastructure (as referred to in section 11 (1) (a) of the Act) is limited to clearing within the distances or areas indicated:

- (a) for holdings in the Western Division:
 - (i) permanent fence—20 metres either side,
 - (ii) access trail, cut line for stock movement, road, telephone line or cable, power line or cable, drain to a water storage, bore drain, pipeline, or irrigation channel—30 metres total width of clearing,
 - (iii) firebreak, except where mallee species predominate—30 metres total width of clearing,
 - (iv) firebreak where mallee species predominate—100 metres total width of clearing,
 - (v) airstrip—distances and area sufficient to meet civil aviation standards for construction of an airstrip,
 - (vi) house, shearing or machinery shed, ground tank, dam or stock yards, or similar utility—5 hectares,

- (b) for holdings that are not small holdings (as defined in clause 15) and not in the Western Division—***[By February 2005, Catchment Management Authorities are to advise the Minister on proposed buffer distances for holdings of this type.]***
- (2) The activities that comprise routine agricultural management activities for the purposes of section 11 of the Act are extended to include the construction, operation and maintenance of rural infrastructure on small holdings (as defined in clause 15), but limited to clearing within the distances or areas indicated:
 - (a) permanent boundary fence—6 metres either side,
 - (b) permanent internal fence—3 metres either side,
 - (c) temporary fence—1 metre total width of clearing,
 - (d) roads and tracks—4 metres total width of clearing,
 - (e) windmills and bores—3 metres,
 - (f) stockyards—3 metres,
 - (g) habitable buildings—the asset protection zone identified for the land in a bush fire risk management plan in force under the *Rural Fires Act 1997*,
 - (h) buildings other than habitable buildings—5 metres.

17 Maintenance of public utilities—electricity transmission

- (1) The activities that comprise the maintenance of public utilities associated with the transmission of electricity (as referred to in section 11 (1) (h) of the Act) include the following activities:
 - (a) maintaining the necessary safety clearances under powerlines (conductors and structures) and around communication sites associated with the supply of electricity,
 - (b) minimising fuel loads under powerlines to minimise the chance of smoke from a fire resulting in a line trip,
 - (c) maintaining existing access roads and tracks.
- (2) The activities that comprise the maintenance of public utilities associated with the transmission of electricity (as referred to in section 11 (1) (h) of the Act) do not include any of the following activities:
 - (a) construction of new access roads or tracks,
 - (b) removal of low growing groundcover,
 - (c) maintaining safety clearances from powerlines that exceed either of the following:
 - (i) the distance (measured from the centreline of the powerline) set out in Column 2 of the Table to this clause

draft

Clause 17 Native Vegetation Regulation 2004

Part 4 Routine agricultural management activities

- opposite the nominal operating voltage of the powerline set out in Column 1 of the Table,
- (ii) the minimum distance that will ensure reliability of supply under all loading and environmental conditions and minimise the risk of arcing.

Table

Column 1	Column 2
Nominal operating voltage of powerline	Maximum clearing distance
up to 11 kV	5 metres
above 11 kV up to and including 33 kV	12.5 metres
above 33 kV up to and including 66 kV	15 metres
above 66 kV up to and including 132 kV	22.5 metres
above 132 kV up to and including 330 kV	30 metres
above 330 kV	35 metres

Part 5 Broadscale clearing

18 Adoption of Minister's Assessment Methodology

(1) The Assessment Methodology is adopted for the purposes of this Regulation.

(2) In this Part:

Assessment Methodology means the methodology titled *Environmental Outcomes Assessment Methodology* approved by the Minister for the purpose of providing a methodology for assessing and determining whether proposed broadscale clearing will improve or maintain environmental outcomes, as in force and as published in the Gazette on the date of publication in the Gazette of this Regulation.

19 Procedure for amendment of Assessment Methodology

The following procedure applies for the purposes of any amendment of the Assessment Methodology:

- (a) the Minister is to seek the advice of the NRC about a proposed amendment before making a decision about the proposed amendment,
- (b) the Minister must allow the NRC not less than 30 days in which to give its advice,
- (c) the NRC is to provide its advice as formal recommendations to the Minister,
- (d) the advice of the NRC is to be made public within a reasonable time after it is provided to the Minister and no later than the date of publication in the Gazette of the amendment,
- (e) the Minister is not to make an amendment that relates to the assessment of biodiversity without the concurrence of the Minister for the Environment,
- (f) an amendment is to be published in the Gazette,
- (g) an amendment does not take effect until the definition of *Assessment Methodology* in clause 18 is amended to give effect to the amendment.

20 Proposed broadscale clearing to be assessed using guidelines

An application for development consent for development involving broadscale clearing, or for approval of a PVP that proposes broadscale clearing, is not to be granted unless:

- (a) there has been an assessment and determination in accordance with the Assessment Methodology of whether the proposed clearing will improve or maintain environmental outcomes, and

Clause 21 Native Vegetation Regulation 2004

Part 5 Broadscale clearing

- (b) the determination resulting from that assessment is that the proposed clearing will improve or maintain environmental outcomes.

21 Results of assessment

If the determination resulting from an assessment of proposed broadscale clearing in accordance with the Assessment Methodology is that the proposed clearing will improve or maintain environmental outcomes, the clearing concerned is to be regarded for the purposes of the Act as clearing that will improve or maintain environmental outcomes.

Part 6 Special provisions for vulnerable land

22 Former Act not to apply to State protected land

- (1) The provisions of the former Act do not have effect under clause 4 of Schedule 3 to the new Act to or in relation to State protected land except as provided by this clause.
- (2) The provisions of the former Act continue to have effect (despite its repeal) to and in relation to:
 - (a) exotic trees (that is, trees that are not native vegetation) on State protected land, and
 - (b) dead trees on State protected land, and
 - (c) native vegetation on State protected land in a local government area specified in Schedule 1 to the former Act immediately before its repeal.
- (3) The provisions of the former Act do not have effect under subclause (2) in respect of clearing of exotic trees or dead trees in circumstances set out in guidelines approved and published by the Minister to enable clearing where no more than minimal environmental harm is likely.

23 Identification of protected regrowth on steep or highly erodible land or protected riparian land

- (1) The Minister may prepare a natural resource management plan for the purposes of:
 - (a) identifying land as *steep or highly erodible land, protected riparian land* or *special category land* for the purposes of this Part, and
 - (b) identifying as protected regrowth for the purposes of section 10 of the Act all native vegetation on land identified by the plan as steep or highly erodible land or protected riparian land.
- (2) A natural resource management plan prepared by the Minister under this clause is prescribed for the purposes of section 10 (1) (c) of the new Act.

Note. Section 10 (1) (c) provides for the identification of protected vegetation by a natural resource management plan prescribed by the regulations.

24 Limitation of RAMAs on protected riparian land

The only activity that comprises a routine agricultural management activity for the purposes of section 11 of the Act on land identified as protected riparian land by a natural resource management plan under clause 23 is the maintenance of safety clearances around electricity transmission lines to a distance of no more than 15 metres where any

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Clause 25 Native Vegetation Regulation 2004

Part 6 Special provisions for vulnerable land

clearing is carried out by an employee of or contractor to a local government or electricity supply authority.

25 Clearing of lignum on special category land

- (1) The activities that comprise routine agricultural management activities for the purposes of section 11 of the Act are extended to include the clearing of lignum on land identified as special category land by a natural resource management plan under clause 23 as follows, subject to the restrictions provided by subclause (2):
 - (a) clearing within 50m of an existing shed, silo, pump house, residence or air strip,
 - (b) clearing for the purpose of fence maintenance or stock management involving the clearing of not more than 30m either side of a fence,
 - (c) clearing for the purpose of maintaining an existing flood control work or storage control bank involving the clearing of not more than 30m from the toe of the outside batter of the work or bank,
 - (d) clearing for the purpose of maintaining an existing irrigation channel involving the clearing of not more than 30m from the toe of the outside batter of the channel,
 - (e) clearing for the purpose of maintaining a local council road or an existing farm road or track that has been built up at least 50cm above the adjacent floodplain level involving the clearing of not more than 30m from the toe of the outside batter of the road or track,
 - (f) clearing within 50m of an existing ground tank or trough that is used for stock watering, or
 - (g) clearing for the purpose of stock management or internal paddock access involving the clearing of any number of parallel strips of lignum up to 20m in width.
- (2) Restrictions on the clearing of lignum on special category land are as follows:
 - (a) cleared strips exceeding 10m in width must be bounded on both sides by uncleared strips of lignum at least 1000m wide,
 - (b) cleared strips of lignum between 5m and 10m in width must be bounded on both sides by uncleared strips of lignum at least 500m wide, and
 - (c) cleared strips of lignum less than 5m in width must be bounded on both sides by uncleared strips of lignum at least 250m wide.

Part 7 Savings and transitional provisions

26 Authorised officers under former Act

- (1) A person who was an authorised officer under the former Act immediately before the repeal of that Act is taken to have been appointed on the commencement of the new Act as an authorised officer under the new Act.
- (2) Any limitation on the authority of the authorised officer under the former Act also operates as a limitation on the authority of the authorised officer under the new Act and operates as a limitation imposed by the relevant instrument of appointment.
- (3) This clause does not remove the need for an authorised officer to be in possession of an identification card issued on behalf of the Minister.

27 Pending applications for development consent

A development application made under the EPA Act before the repeal of the former Act for any clearing that requires development consent under the new Act and that is pending on the commencement of the new Act is to be dealt with as follows:

- (a) if the application was made before *[date of public exhibition of draft regulation]*, the application is to continue to be dealt with and finalised under the former Act as if the former Act had not been repealed, or
- (b) if the application was made on or after that date, the application is to be dealt with and finalised under the new Act as if it had first been made after the commencement of the new Act.

28 Native Vegetation Management Fund

Any money in the Native Vegetation Management Fund under the former Act immediately before its repeal is to be allocated and spent in such manner as the Minister may authorise in connection with the objects of the new Act.

29 Property agreements under former Act

- (1) Part 5 (Property agreements) of the former Act continues to apply, as if it had not been repealed, to and in respect of a property agreement in force under the former Act immediately before its repeal.
- (2) Despite subclause (1), a property agreement in force under the former Act immediately before its repeal cannot be registered as provided by section 44 of the former Act more than 6 months after that repeal.

Clause 30 Native Vegetation Regulation 2004

Part 7 Savings and transitional provisions

- (3) Part 5 (Enforcement) of the new Act extends to a breach of a property agreement in force under the former Act immediately before the repeal of the former Act as if a reference in Part 5 of the new Act to a contravention of the former Act included a reference to a breach of a property agreement in force under the former Act.

30 Stop work orders and remedial work directions under former Act

- (1) An order in force under section 46 of the former Act immediately before its repeal is taken to have been made under section 37 of the new Act and for that purpose is to be regarded as having taken effect when it took effect under section 46 of the former Act.
- (2) A direction in force under section 47 of the former Act immediately before its repeal is taken to have been made under section 38 of the new Act and for that purpose is to be regarded as having taken effect when it took effect under section 46 of the former Act.

31 Exempt farm forestry under Plantations and Reafforestation Act 1999

- (1) On and from the repeal of the former Act by the new Act, section 6 (1) (b) of the *Plantations and Reafforestation Act 1999* is to be read as if:
- (a) a reference to clearing of native vegetation or of protected land (within the meaning of the former Act) were a reference to clearing of native vegetation within the meaning of the new Act, and
 - (b) a reference to clearing that is exempt from the requirement under Part 2 of the former Act for development consent were a reference to clearing that is exempt from the requirement under section 12 of the new Act that the clearing be in accordance with a development consent or a property vegetation plan.
- (2) Subclause (1) does not apply in respect of clearing that commenced before the repeal of the former Act. Section 6 (1) (b) of the *Plantations and Reafforestation Act 1999* continues to apply to and in respect of that clearing as if the former Act had not been repealed and any relevant regional vegetation management plan under that Act were still in force.

32 Exemption of clearing authorised under existing cultivation consents

- (1) Any clearing of native vegetation (other than trees) authorised under an existing cultivation consent is taken to be clearing that is exempt from any requirement under section 12 of the new Act that the clearing be in accordance with a development consent or a property vegetation plan.
- (2) This clause ceases to have effect in relation to the exempt clearing if:
- (a) the existing cultivation consent ceases to be in force, or

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Native Vegetation Regulation 2004

Clause 32

Savings and transitional provisions

Part 7

- (b) the land on which the clearing is authorised becomes land to which a property vegetation plan applies, whichever first occurs.
- (3) This clause ceases to have effect at the end of 31 December 2007.
- (4) In this clause:
existing cultivation consent means a consent under section 18DA of the *Western Lands Act 1901* and in force immediately before 1 January 1998.

Clause 33 Native Vegetation Regulation 2004

Part 8 General

Part 8 General

33 Clearing of groundcover—calculations

- (1) The percentages referred to in section 20 (Clearing of certain groundcover permitted) of the Act are to be calculated in accordance with the following methodology:
 - (a) the area (*the assessment area*) that is to be the subject of clearing is to be identified on a map prepared by the landholder,
 - (b) samples are to be taken within the assessment area by randomly throwing a 30 cm long stick with pointed ends while walking across the assessment area,
 - (c) after each throw the assessor must record (each record is referred to as a sample) for each end of the stick:
 - (i) whether there is vegetation (living or dead) present, and
 - (ii) if there is vegetation present, whether it is indigenous or non-indigenous,
 - (d) the assessor must be an appropriately qualified person (but the qualifications need not be formal tertiary qualifications),
 - (e) 50 samples (25 throws) must be taken per hectare of the assessment area up to a maximum of 500 samples,
 - (f) the percentage of the assessment area covered by vegetation is considered to be the percentage of samples where vegetation was recorded as present,
 - (g) the percentage of the vegetation that is indigenous species is considered to be the percentage of samples where the vegetation was indigenous.
- (2) The landholder must retain for at least 5 years after the clearing of native vegetation that comprises only groundcover a record of the assessment carried out under subclause (1), consisting of:
 - (a) the map prepared for the purposes of subclause (1) (a) showing the assessment area, and
 - (b) evidence that the required samples were randomly taken (for example, mapped locations or coordinates of the samples), and
 - (c) the results of each sample, and
 - (d) a statutory declaration by the landholder that the methodology required by subclause (1) was used for the purposes of the assessment.

34 Penalty notice offences and penalties

- (1) For the purposes of section 43 of the Act:

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Native Vegetation Regulation 2004

Clause 35

General

Part 8

- (a) each offence created by a provision specified in Column 1 of Schedule 1 is an offence for which a penalty notice may be served, and
 - (b) the penalty prescribed for each such offence is the amount specified opposite the provision in Column 2 of Schedule 1 or, if the person alleged to have committed the offence is a corporation and a greater penalty is specified in Column 3 of Schedule 1, the amount specified in Column 3 of Schedule 1.
- (2) If the reference to a provision in Column 1 of Schedule 1 is qualified by words that restrict its operation to specified kinds of offences, an offence created by the provision is a prescribed offence only if it is an offence of a kind so specified or committed in the circumstances so specified.

Note. Section 307A of the *Crimes Act 1900* makes it an offence for a person to knowingly or recklessly make a false or misleading statement in connection with a claim, request or other form of application to a public official for any benefit or any licence, permit, consent, approval, registration or other form of authority. The maximum penalty provided by the section is imprisonment for 2 years and/or a fine of 200 penalty units.

35 Extension of Act to Wollongong local government area

Schedule 1 to the Act is amended by omitting “Wollongong,” from clause 13.

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Native Vegetation Regulation 2004

Schedule 1 Penalty notice offences

Schedule 1 Penalty notice offences

(Clause 34)

Column 1	Column 2	Column 3
Provision	Penalty (individuals)	Penalty (corporations)
Offences under the Act		
section 12	\$3,300	\$5,500
section 35 (5)	\$1,100	
section 36 (4)	\$1,100	
section 37 (5)	\$1,650	\$3,300
section 38 (4)	\$1,650	\$3,300

Draft Native Vegetation Regulation 2004

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NSW Department of Infrastructure, Planning and Natural Resources
23-33 Bridge Street Sydney NSW Australia
www.dipnr.nsw.gov.au
DIPNR 04_228
ISBN 0-7347-5560-0

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