



New South Wales

State Environmental Planning Policy No 46—Protection and Management of Native Vegetation (Amendment No 2)

under the

Environmental Planning and Assessment Act 1979

His Excellency the Governor, with the advice of the Executive Council, has made the following State environmental planning policy under the *Environmental Planning and Assessment Act 1979* in accordance with the recommendation made by the Minister for Urban Affairs and Planning. (S97/00645)

CRAIG KNOWLES MP

Minister for Urban Affairs and Planning

State Environmental Planning Policy No 46— Protection and Management of Native Vegetation (Amendment No 2)

1 Name of Policy

This Policy is *State Environmental Planning Policy No 46—Protection and Management of Native Vegetation (Amendment No 2)*.

2 Aims, objectives etc

This Policy aims:

- (a) to permit the clearing of native vegetation, without the need to obtain development consent from the Director-General of the Department of Land and Water Conservation, where the clearing is carried out in accordance with an interim regional vegetation management plan approved by the Minister for Land and Water Conservation or a code of practice, and
- (b) to provide a process for the preparation of interim regional vegetation management plans, by Regional Vegetation Committees, which is generally consistent with the process used to prepare regional environmental plans under the *Environmental Planning and Assessment Act 1979*, and
- (c) to identify additional requirements governing the preparation, assessment and adoption of interim regional vegetation management plans, and
- (d) to specify more appropriate heads of consideration to be taken into account by the consent authority when determining a development application to clear native vegetation.

3 Principal Policy

In this Policy, *State Environmental Planning Policy No 46—Protection and Management of Native Vegetation* is referred to as the Principal Policy.

4 Land to which this Policy applies

This Policy applies to the land to which the Principal Policy applies.

5 Amendment of Principal Policy

The Principal Policy is amended as set out in Schedule 1.

Schedule 1 Amendments

(Clause 5)

[1] Part 1 Heading

Insert before clause 1:

Part 1 Preliminary**[2] Clause 2 Aims, objectives, policies and strategies**

Omit clause 2 (2). Insert instead:

- (2) The strategy adopted by this Policy to achieve its aim is to allow the clearing of native vegetation to be carried out only:
- (a) with the development consent of the Director-General of the Department of Land and Water Conservation, or
 - (b) in accordance with an interim regional vegetation management plan or a code of practice.

[3] Clause 4 Relationship to other environmental planning instruments

Insert “or after” after “before”.

[4] Clause 5 Definitions

Insert in alphabetical order:

Code of practice means a code of practice approved under clause 25 by the Minister.

Committee means a Regional Vegetation Committee established in accordance with clause 13.

Management plan means an interim regional vegetation management plan.

the Minister means the Minister for Land and Water Conservation.

[5] Part 2 Heading

Insert before clause 6:

Part 2 Clearing of native vegetation

[6] Clause 6

Omit the clause. Insert instead:

6 Clearing of native vegetation

- (1) Clearing of native vegetation must not be carried out on land to which this Policy applies except:
 - (a) with the development consent of the Director-General of the Department of Land and Water Conservation, or
 - (b) in accordance with a management plan or a code of practice.
- (2) A consent under subclause (1) (a) may be granted only if the consent authority imposes a condition providing for the consent to lapse 2 years after the date from which it operates.

[7] Clause 7 Matters for consideration

Omit clause 7 (1). Insert instead:

- (1) In determining a development application, the consent authority must take into consideration such of the following matters as are of relevance to the development the subject of the development application:
 - (a) land and water degradation, including soil erosion, salination, acidification, land slip, increased flooding, pollution or other deleterious consequences,

- (b) whether the vegetation affected by the proposed development is, or is part of:
 - (i) a remnant in a region that has been extensively cleared, or
 - (ii) a corridor between other areas of native vegetation, or
 - (iii) a migratory route for wildlife,
- (c) whether the affected vegetation is of a type not adequately represented in the conservation reserve systems,
- (d) whether all or some of the affected vegetation is considered to be in unusually good condition or to have integrity as a sample of its type,
- (e) whether the area has a diversity of native biota that is important for conservation in a local or regional context,
- (f) whether the area contains an isolated population of a native species or a species that is near the limit of its geographic range.

[8] Part 3

Insert after clause 12:

Part 3 Interim regional vegetation management plans and codes of practice

13 Regional Vegetation Committees

- (1) The Minister may establish a committee, to be known as a Regional Vegetation Committee, for a part of the State (comprising at least the whole of one local government area) determined by the Minister.
- (2) Different Committees may be established for different parts of the State.

1997 No 326

State Environmental Planning Policy No 46—Protection and Management of Native Vegetation (Amendment No 2)

Schedule 1 Amendments

- (3) The members of a Committee are to include the following:
- (a) 2 representatives of the rural interests for the part of the State for which the Committee is established nominated by the NSW Farmers Association,
 - (b) 2 representatives of the conservation interests for the part of the State for which the Committee is established, one of whom is nominated by a conservation group recognised by the NSW Nature Conservation Council,
 - (c) a member (appointed under section 14 (2) (a) or (b) of the *Catchment Management Act 1989*) of a Catchment Management Committee or a trustee of a Catchment Management Trust, being a Catchment Management Committee or Catchment Management Trust whose area of operations applies to the part of the State for which the Committee is established,
 - (d) a member of a Landcare Group whose area of operations applies to the part of the State for which the Committee is established,
 - (e) a member nominated by the local government councils whose areas apply to the part of the State for which the Committee is established,
 - (f) a representative of aboriginal interests for the part of the State for which the Committee is established and who is recognised by the NSW Aboriginal Land Council,
 - (g) a representative of the Department of Land and Water Conservation,
 - (h) a representative of the National Parks and Wildlife Service,
 - (i) a representative of NSW Agriculture.

-
- (4) The members of a Committee may include:
 - (a) a representative or representatives of other bodies or of other government departments or agencies, and
 - (b) a representative or representatives of industry groups or community interest groups.
 - (5) If the nomination of a person to be a member of a Committee is not made within the time or in the manner specified by the Minister in a written notice given to the person or body entitled to make the nomination, the Minister may appoint any person to be a member instead of the person required to be appointed on that nomination.
 - (6) The members of a Committee are to elect one of their number to be the chairperson of the Committee.
 - (7) All other matters relating to the office of a member of a Committee and the procedure of a Committee are to be determined by the Minister.

14 Preparation of management plan

- (1) A Committee may decide to prepare a draft management plan for the whole or part of that part of the State for which it is established.
- (2) The area of land to which the draft management plan is to apply must be approved by the Minister.

15 Matters to be dealt with in management plans

In preparing a draft management plan, a Committee must take the following matters into consideration in relation to the land to which the draft management plan applies:

- (a) matters pertaining to the conservation of native vegetation, soil resources and native species' habitats, particularly threatened species, populations and ecological communities and their habitats,

1997 No 326

State Environmental Planning Policy No 46—Protection and Management of Native Vegetation (Amendment No 2)

Schedule 1 Amendments

- (b) any statutory instrument (including an environmental planning instrument) or catchment management strategy that applies to the land and that makes provision with respect to native vegetation,
- (c) identification of environmentally, archaeologically or geologically sensitive or significant areas of land, including protected land, over which clearing will be subject to additional or particular restrictions,
- (d) criteria, specifications and standards for clearing of native vegetation and avoiding land degradation,
- (e) matters pertaining to the social and economic aspects of land use activities as they relate to native vegetation management,
- (f) any other aspect considered necessary or desirable by the Minister,
- (g) the exemptions listed in Schedule 3.

16 Consultation with Director-General of National Parks and Wildlife

- (1) A Committee must consult with the Director-General of National Parks and Wildlife before preparing a draft management plan if, in the opinion of the Committee, critical habitat or threatened species, populations or ecological communities, or their habitats, will or may be affected by the draft management plan.
- (2) For the purpose of the consultation, the Committee must provide the following information to the Director-General of National Parks and Wildlife:
 - (a) the reasons for deciding to prepare the draft management plan,
 - (b) the proposed aims, objectives, policies and strategies whereby the draft management plan is designed to achieve any of the aims or objectives of this Policy,

- (c) a description of the land to which the draft management plan is intended to apply,
 - (d) the types of matters to be dealt with in the draft management plan.
- (3) For the purposes of the consultation, the Committee may provide any other information that, in the Committee's opinion, would assist in understanding the draft management plan.
- (4) The Director-General of National Parks and Wildlife may comment to the Committee on the preparation of the draft management plan within 40 days after the information required to be provided under subclause (2) is provided.
- (5) The consultation required by this clause is completed when the Committee has considered any comments so made.

17 Notification and consultation

- (1) In the preparation of a draft management plan, a Committee, to the extent required by this clause, must notify the information specified in subclause (2) to the following:
 - (a) each council whose area, or a part of whose area, is within, or partly within, the land to which the draft management plan applies,
 - (b) the Local Government Liaison Committee,
 - (c) each Catchment Management Committee and Catchment Management Trust whose area of operations, or a part of whose area of operations, is within, or partly within, the land to which the draft management plan applies,
 - (d) any public authority (including an authority of the Commonwealth or of another State or Territory) determined by the Committee.

- (2) The information to be notified is the following:
 - (a) the reasons for deciding to prepare the draft management plan,
 - (b) the general aims and objectives of the draft management plan,
 - (c) a general description of the land to which the draft management plan is intended to apply,
 - (d) such other matters (if any) as the Committee thinks fit.
- (3) A person to whom information is notified under this clause may comment to the Committee on the preparation of the draft management plan within 28 days after the Committee notifies the information.

18 Public exhibition of draft management plan

- (1) When a draft management plan has been prepared, the Committee is to send a copy of it to the Director-General of the Department of Land and Water Conservation.
- (2) The Director-General of that Department is to:
 - (a) give public notice, in a form and manner determined by that Director-General, of the places at which, the dates on which, and the times during which, the draft management plan may be inspected by the public, and
 - (b) publicly exhibit the draft management plan at the places, on the dates and during the times set out in the notice, and
 - (c) publicly exhibit such other matters as that Director-General considers appropriate or necessary to better enable the draft management plan and its implications to be understood, and
 - (d) specify, in the notice, the period during which submissions may be made to that Director-General in accordance with clause 19.
- (3) A draft management plan is to be publicly exhibited for a period of 40 days.

19 Submissions

- (1) Any person may, during the period referred to in clause 18 (2) (d), make submissions in writing to the Director-General of the Department of Land and Water Conservation with respect to the draft management plan publicly exhibited under clause 18.
- (2) The Director-General of that Department is to send a copy of each submission to the Committee.
- (3) The Committee must consider the submissions and may amend the draft management plan by making changes whether or not of substance and whether or not as a consequence of the consideration of any submissions.

20 Submission of draft management plan to the Minister

- (1) The Committee may submit a draft management plan to the Minister.
- (2) The Committee must send a copy of a draft management plan submitted to the Minister to the Director-General of the Department of Land and Water Conservation.
- (3) The Director-General of that Department is to provide the Minister with a report on the draft management plan.

21 Making of management plan by the Minister

- (1) The Minister may, on the submission by a Committee of a draft management plan:
 - (a) make a management plan:
 - (i) in accordance with the draft management plan submitted to the Minister, or
 - (ii) in accordance with the draft management plan with such alterations as the Minister thinks fit, or
 - (b) direct that action be taken in accordance with subclause (4), or
 - (c) decide not to proceed with the draft management plan.

1997 No 326

State Environmental Planning Policy No 46—Protection and Management of Native Vegetation (Amendment No 2)

Schedule 1 Amendments

- (2) Without limiting subclause (1) (a) (ii), the alterations that may be made by the Minister to the draft management plan may comprise changes of substance and may arise from submissions or otherwise from the Minister's consideration of the matters in the draft management plan.
- (3) A management plan applies to the land described in the management plan.
- (4) The Minister may direct the Director-General of the Department of Land and Water Conservation to publicly exhibit a draft management plan with such alterations as the Minister specifies, and the provisions of this clause and clauses 18, 19 and 20 apply with any necessary adaptations, to the draft management plan.

22 Commencement and duration of management plan

- (1) A management plan:
 - (a) is to be published in the Gazette, and
 - (b) takes effect on and from the date of publication or a later date specified in the management plan.
- (2) A management plan, unless sooner revoked, ceases to be in force 10 years after the day on which it takes effect.
- (3) Despite subclause (2), the Minister may, by order published in the Gazette before the end of the 10-year period, extend the period by which a management plan remains in force by a further period not exceeding 6 months.

23 Amendment or revocation of management plans

A management plan may be amended or revoked by a management plan.

24 Review of management plans

The Minister may review a management plan at any time and make recommendations to a Committee for the amendment or revocation of a management plan.

25 Codes of practice

The Minister may approve a code of practice prepared by the Director-General of the Department of Land and Water Conservation for the purposes of this Policy.

26 Relationship between management plans, codes of practice and Schedule 3 to this Policy

A management plan or a code of practice prevails to the extent of any inconsistency between the management plan or code of practice and Schedule 3 to this Policy.