



Clearing of native vegetation as a key threatening process – *an overview*¹

The NSW Scientific Committee has made a final determination to list the ‘clearing of native vegetation’ as a key threatening process under the *Threatened Species Conservation Act 1995* (TSC Act).

Definitions²

Native vegetation is made up of plant communities, comprising primarily indigenous species, the composition and structure of which reflects the interactions between plant species, between plants and fauna and with the environment. Native vegetation includes canopy trees (where present), understorey, ground cover and below ground biomass (roots, bulbs and the seed bank). Regrowth and newly colonising stands of indigenous species are native vegetation. For the purposes of this determination native vegetation does not include marine vegetation within the meaning of the *Fisheries Management Act 1994*.

Clearing is defined as the destruction of a sufficient proportion of one or more strata (layers) within a stand or stands of native vegetation so as to result in the loss, or long-term modification, of the structure, composition and ecological function of a stand or stands.

Destruction may include physical removal by cutting, underscrubbing, bulldozing etc., or processes which leave a proportion of one or more strata on site in a dead or dying state.

Loss of native vegetation is the removal of native vegetation by direct or indirect actions.

Long term modification of native vegetation is the alteration of the composition, structure or ecological function of an ecological community such that recovery by natural means will take periods of time from decades to centuries (depending on the plant community concerned) or will require substantial management intervention.

Ecological function encompasses the ecological processes/interactions that occur within an ecological community.

What is a key threatening process?

A key threatening process is a process that threatens, or may threaten, the survival or evolutionary development of a species, population or ecological community. A process can be listed as a key threatening process under the TSC Act if it:

- adversely affects two or more threatened species, populations or ecological communities; or
- could cause species, populations or ecological communities that are not threatened to become threatened.

¹ This is the first of a series of fact sheets that will provide information on the listing. Additional fact sheets will be available from NPWS offices or on the internet as they are prepared.

² The following definitions are a summary version of those provided in the final determination. It does not include all of the definitions included in the determination. Please refer to the final determination for more detail.

Why list ‘clearing of native vegetation’ as a key threatening process?

Native vegetation provides vital habitat for many native plants and animals. Areas of native vegetation often contain a high diversity of living organisms and play an important role in maintaining ecological functions.

Clearing of native vegetation has:

- caused widespread fragmentation of ecological communities;
- reduced the viability of ecological communities by disrupting ecological functions;
- resulted in the destruction of habitat and loss of biological diversity;
- led to soil and bank erosion, increased salinity and loss of productive land.

Is the clearing of native vegetation recognised as a threatening process by the Commonwealth government?

On 4 April 2001, the Commonwealth Minister for the Environment supported the recommendations of the Commonwealth Threatened Species Scientific Committee to list ‘land clearance’ as a key threatening process under the Commonwealth *Environment Protection and Biodiversity Conservation Act 1999*.

The Commonwealth Threatened Species Scientific Committee in making its recommendations to the Minister re-affirmed conclusions that land clearance has been, and continues to be, the most significant threatening process in Australia since European settlement and that if it is not

controlled, it will lead to additional species becoming endangered.

What is the statutory effect of the listing under the TSC Act?

The listing of ‘clearing of native vegetation’ as a key threatening process triggers a requirement for the National Parks and Wildlife Service (NPWS) to prepare a threat abatement plan under the provisions of Part 5 of the TSC Act.

What is a threat abatement plan?

A threat abatement plan is a statutory planning instrument which identifies measures to manage and reduce the impacts of a key threatening process on the long-term survival of threatened species, populations and ecological communities, and to help conserve biodiversity more generally.

Who is responsible for preparing the plan?

The Director-General of National Parks and Wildlife is responsible for preparing the threat abatement plan.

During the preparation of the plan the NPWS will consult with other public authorities and may use the expertise of private contractors.

Threat abatement planning and the public

The successful abatement of a broad scale threatening process such as the clearing of native vegetation must involve and be embraced by the wider community.

Mechanisms for community involvement in the threat abatement planning process will include informal consultation during plan preparation and a formal process of public

exhibition of the draft threat abatement plan.

What will the plan contain?

In addition to the legislative requirements of a threat abatement plan³, the plan is likely to:

- review current regulatory and non-regulatory mechanisms controlling the clearing of native vegetation to ensure that they are effective;
- co-ordinate existing and proposed actions being implemented across New South Wales to abate the threat to threatened species, populations and ecological communities;
- examine socio-economic issues that influence the retention of native vegetation on private and public lands;
- investigate opportunities for conservation agreements and joint management agreements;
- identify priority research areas to examine the benefits of maintaining native vegetation and the impact of clearing on ecological functions;
- include a public education program.

In preparing the plan, federal, state and local government initiatives, policies and regulations will be considered.

How is the plan implemented?

The NPWS has the primary accountability for implementing the threat abatement plan. However, it is likely that public authorities other than the NPWS will need to be involved.

When preparing the plan the NPWS will consult with relevant authorities to seek cooperative implementation of measures included in the plan.

The threat abatement plan will inform planning processes. For example:

- local councils and other public authorities may consider the plan when assessing proposed developments or activities;
- regional vegetation committees will need to take the plan into account when preparing regional vegetation management plans under the *Native Vegetation Conservation Act 1997*.

In addition, public authorities that are responsible for implementing measures identified in the plan must take any appropriate action available to them to implement those actions and must not make decisions that are inconsistent with the provisions of the plan.

Will the plan be applicable to rural and urban environments?

The clearing of native vegetation is an issue throughout New South Wales regardless of land tenure and land use.

Consequently, to effectively abate the ensuing impacts of clearing native vegetation, the threat abatement plan will need to examine urban and rural issues relating to land clearance across New South Wales.

Will the listing result in new restrictions to native vegetation clearance?

The listing of clearing as a key threatening process will not change the current laws regulating the clearing of native vegetation in New South Wales.

³ See sections 75 and 77 of the TSC Act.

The listing will not affect the exemption from licensing under the TSC Act for the carrying out of routine agricultural activities.

The listing will not change the consent requirements or the current exemptions established under the *Native Vegetation Conservation Act 1997*.

If a proposed development or activity involves the clearing of native vegetation will a species impact statement be required?

The requirement to prepare a species impact statement (SIS) arises in two situations:

1. The proposal is to occur on land that is, or is part of, critical habitat as declared under Part 3 of the TSC Act⁴; and/or
2. The proposal is likely to have a significant effect on threatened species, populations or ecological communities, or their habitats.

If the proposal involves the clearing of native vegetation on land that is, or is part of, critical habitat, a SIS will be required unless the Director-General of National Parks and Wildlife is satisfied that the impact of the proposal will be trivial or negligible. In such cases, the Director-General of National Parks and Wildlife may dispense with the requirement for a SIS.

If the land to be developed is not critical habitat, then a decision must be made as to whether the proposal is likely to significantly affect threatened species, populations or ecological communities, or their habitats. To make this decision, the factors

⁴ At the time of publication, no areas of critical habitat had been declared.

contained in the ‘eight-part test’⁵ must be taken into account.

The test currently requires consideration of threatening processes specifically in relation to the type of action proposed. The listing of ‘clearing of native vegetation’ as a key threatening process will need to be considered in deciding whether or not there is likely to be a significant effect.

A determination of ‘significance’ is based upon the combined consideration of all relevant matters and the particular facts of the proposal. Consequently, answering one factor in the affirmative may not necessarily result in a positive determination if the answers to the other factors point to the opposite conclusion.⁶

Will the listing affect the way public authorities carry out maintenance work on public utilities?

The listing of ‘clearing of native vegetation’ as a key threatening process will not alter the current legislative requirements applying to the maintenance of public utilities.

As is currently the case, if the carrying out of maintenance work does not require consent or approval under the *Environmental Planning and Assessment Act 1979* but is likely to result in one or more of the following:

- harm or pick a threatened species, population or ecological community;

⁵ The ‘eight part test’ is contained in section 5A of the *Environmental Planning and Assessment Act 1979* and section 94(2) of the TSC Act.

⁶ For further information on ‘eight-part test’ refer to the NPWS circular entitled ‘Threatened Species Management Information Circular No. 2: Threatened Species Assessment Under the EP&A Act: The ‘Eight Part Test’ of significance.

- damage to the habitat of a threatened species, population or ecological community (including critical habitat),

a licence under Part 6 of the TSC Act may be required. A licence issued under the TSC Act may be extended to include protected fauna and protected native plants.

Clearing of native vegetation and compliance with other laws

The TSC Act is not the only law that affects the management of native vegetation in New South Wales. There are a number of laws with regulatory provisions to protect native vegetation. Following is a brief description of the key laws.

Native Vegetation Conservation Act 1997

The *Native Vegetation Conservation Act 1997* (NVC Act) is the principal piece of legislation that controls the clearing of native vegetation across New South Wales. The NVC Act is administered through the Department of Land and Water Conservation (DLWC).

One of the main features of the NVC Act is the ability to prepare Regional Vegetation Management Plans (RVMP).

RVMPs are developed by community-based Regional Vegetation Committees and may:

- identify areas where native vegetation can be cleared without the need to obtain consent from DLWC;
- identify areas where consent to clear will be necessary;

- allow clearing exemptions to be developed according to regional requirements;
- highlight areas where the condition of native vegetation should be improved;
- recommend areas that should be revegetated.

In areas without a RVMP (and in areas identified within a RVMP where consent to clear is necessary), consent is required from DLWC unless:

- the land to be cleared is in a local government area that is excluded from the operation of the NVC Act;
- the land to be cleared is in a local government area that is partly excluded from the NVC Act and is not State protected land;
- the clearing is excluded from the operations of the NVC Act;
- the clearing falls within the exemptions provided by the NVC Act;
- the clearing is consistent with an approved code of practice.

Note, clearing that does not require consent under the NVC Act may however, require approval under other legislation (or policies).

For applications to clear native vegetation under the NVC Act, consideration must be given to whether the proposal is likely to have a significant affect on threatened species, populations or ecological communities, or their habitats (refer to earlier comments regarding the application of the ‘eight-part test’).

Environmental Planning and Assessment Act 1979

The *Environmental Planning and Assessment Act 1979* (EP&A Act) seeks to encourage ecologically sustainable development by managing the development process and the effects of development on the environment.

The EP&A Act provides for the preparation of environmental planning instruments (EPis). There are three types of EPis; local environmental plans (LEPs), regional environmental plans (REPs) and state environmental planning policies (SEPPs).

Such instruments may include provisions for the protection or preservation of trees or vegetation. They may also include provision to protect and conserve native animals and plants, including threatened species, populations and ecological communities, and their habitats.

SEPP 14 – Coastal Wetland

The aim of this policy is to ensure that coastal wetlands are preserved and protected in the environmental and economic interests of the State.

The policy applies to mapped coastal wetlands in local government areas with frontage to the Pacific Ocean excluding those in the Sydney metropolitan area and lands dedicated or reserved under the *National Parks and Wildlife Act 1974*.

The Policy requires that the consent of the local council, and the agreement of the Director of Urban Affairs and Planning, must be obtained prior to carrying out any clearing, levee construction, drainage or filling, of lands identified by the policy. Such development also requires an

environmental impact statement to be lodged with the development application.

SEPP 19 – Bushland in urban areas

SEPP 19 aims to protect and preserve bushland within specified urban areas. Under this policy, development consent is required from the local council for the carrying out of a proposal that will disturb bushland zoned or reserved for public open space.

SEPP 26 – Littoral rainforests

SEPP 26 aims to provide a mechanism for the assessment of development proposals that are likely to damage or destroy littoral rainforest areas.

The policy applies to certain mapped areas and includes a 100 metre buffer zone surrounding such areas. The policy requires that consent must be granted prior to the carrying out of any development within these areas. The likely effects of the proposal must be considered in an environmental impact statement.

SEPP 44 – Koala habitat protection

This policy aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas.

SEPP 44 applies to 107 local government areas within the known geographic range of koalas. Local councils cannot grant consent to a development proposal in an area subject to the policy, without first investigating the presence of potential and core koala habitat and ensuring that a plan of management is in force if core habitat is to be affected.

Tree Preservation Orders (TPOs)

Most LEPs incorporate provisions to allow local councils to make tree preservation orders. TPOs usually prohibit the ring-barking, cutting down, topping, lopping, removing, injuring or wilful destruction of a tree without prior consent from the council.

A TPO may apply to all trees or a particular type of tree in the local government area.

For further information on whether there is a TPO applying in your local area contact your local council.

Consent or approval under the EP&A Act

In circumstances where a consent or approval under the EP&A Act is required for the carrying out of a development or activity, the impacts of the proposal on the natural environment must be considered before consent or approval can be granted. This includes the impacts on threatened species, populations, ecological communities and their habitats.

Plantations and Reafforestation Act 1999

The *Plantations and Reafforestation Act 1999* (PR Act) aims to facilitate the reafforestation of land and the establishment of timber and other forest plantations. The PR Act provides an integrated consent framework for plantation development approvals and will repeal the *Timber Plantations (Harvest Guarantee) Act 1995*.

The PR Act provides for three tiers of plantation operations:

1. *Exempt farm forestry* – this promotes the continuation of small farm based reafforestation and timber plantation operations under 30 hectares. No authorisation is required.
2. *Complying plantation* – is a plantation requiring authorisation where:
 - the proposed establishment complies with the establishment requirements of the Code of Practice; and
 - SIS to determine the impact of the development on threatened species, is not required.
3. *Non-complying plantations* – is one that requires authorisation but it cannot be authorised as a complying plantation because it doesn't comply with the Code of Practice, and/or a SIS is required.

The PR Act will take effect when the Code of Practice (currently nearing completion) is gazetted.

National Parks and Wildlife Act 1974

The *National Parks and Wildlife Act 1974* (NPW Act) provides for the establishment, preservation and management of national parks, historic sites and certain other areas. The NPW Act also provides for the protection of certain native fauna and native plants, and Aboriginal relics.

Under the NPW Act it is offence to harm protected fauna or pick protected native plants. In relation to lands managed by the NPWS it is an offence to cut, fell, remove, damage or destroy any vegetation without the consent of the Director-General of National Parks and Wildlife.

Forestry Act 1916 and the Forestry and National Park Estate Act 1998

The carrying out of forestry operations on state forests and Crown lands are regulated by the *Forestry Act 1916* and the *Forestry and National Park Estate Act 1998* (FNPE Act) and the TSC Act.

Under the FNPE Act forest agreements have been prepared for the Eden, Lower North East and Upper North East regions of New South Wales and are almost complete for the Southern Region. These agreements make provision for the carrying out of forestry operations and provide a system of integrated approvals for future forestry operations within these regions.

For areas outside the completed forest agreement regions, a similar process is envisaged. In the interim, the requirement to obtain the necessary approvals to undertake forestry operations continues.

Commonwealth Environment Protection and Biodiversity Conservation Act 1999

The *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) is administered through the Commonwealth department, Environment Australia. The Act provides a framework for the environmental assessment and approval of actions that have, will have, or are likely to have a significant impact on a matter of 'national environmental significance'.

The matters of 'national environmental significance' are; world heritage properties, Ramsar wetlands of international importance, nationally threatened animal and plant species and ecological communities, internationally protected migratory species, Commonwealth marine areas, and nuclear actions.

An action that is likely to have a significant effect on such matters may require approval from the Commonwealth Minister for the Environment.

For more information

Additional information sheets regarding the listing and a copy of the NSW Scientific Committee final determination are available from your nearest directorate NPWS office (contact details are provided on the following page) and also over the internet at www.npws.nsw.gov.au/threatened.htm.

Information on the legislation administered by the NPWS (including the *National Parks and Wildlife Act 1974* and the *Threatened Species Conservation Act 1995*) is available over the internet at www.npws.nsw.gov.au/about/legislat.htm.

Information on the *Native Vegetation Conservation Act 1997* and the *Plantations and Reafforestation Act 1999* is available from the Department of Land and Water Conservation and over the internet at www.dlwc.nsw.gov.au.

Information on the *Environmental Planning and Assessment Act 1979* (including environmental planning instruments) and the *Forestry and National Park Estate Act 1998* is available from the Department of Urban Affairs and Planning and over the internet at www.duap.nsw.gov.au.

Information on the *Forestry Act* may be obtained from State Forests of New South Wales or access the internet at www.forest.nsw.gov.au.

Information on the regional forest agreements in New South Wales is available from the Resource and Conservation Assessment Council and over the internet at www.racac.nsw.gov.au.

Information on the *Environment Protection and Biodiversity Conservation Act 1999* and the Commonwealth listing of land clearance as a key threatening process is available from Environment Australia and over the internet at www.environment.gov.au.

State and Commonwealth legislation can be down loaded from the internet at www.austlii.edu.au.



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© September 2001

Acknowledgement

The NPWS would like to thank staff of the Department of Urban Affairs and Planning, Department of Land and Water Conservation, State Forests of New South Wales, NSW Agriculture and the NSW Scientific Committee for their assistance in the preparation of this fact sheet.

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