

Crown land and the *Native Vegetation Act 2003*

The *Native Vegetation Act 2003* (NV Act) regulates the clearing of native vegetation on all land in NSW except for:

- National Parks and other conservation areas
- State forests and reserves, and
- urban areas.

The following information is provided to assist landholders considering a Property Vegetation Plan (PVP) or the clearing of native vegetation by means of a Development Application (DA) under the NV Act that includes Crown land.

The NV Act **does** apply to Crown land. Crown land is land owned by the Crown (i.e. the State of NSW). For the purposes of this Information sheet, it is also taken to mean land managed under the *Crown Lands Act 1989*. It may be:

- managed by the Minister for Lands or a reserve trust (eg a local Council), or
- leased, licensed or held under permit by individuals or groups.

In the case of Crown land that is being managed for a public purpose by a reserve trust, the Trust Handbook should be consulted (see the Department of Lands website). Further advice on specific cases can be provided by Department of Lands staff.

Leasehold land in the Western Division of NSW

Leasehold land in the Western Division of NSW is held under tenures administered by the *Western Lands Act 1901* that are different to those in the rest of NSW. For advice relevant to leasehold land in the Western Division see Information Sheet No 14.

How do I know if I have Crown land on my property?

Most landholders will know what, if any, Crown land is within their property and what conditions are associated with these leases, licences or permits. If you are unsure, your local Catchment Management Authority (CMA) may assist you with some information on the status of land within their catchment area, otherwise contact your local Department of Lands (Lands) office. See www.lands.nsw.gov.au for Lands contact details.

What approvals do I need if my PVP or DA proposal includes Crown land?

Before any finalised PVP/DA can be approved by a CMA, the written consent of all landholders is required. In the case of a PVP/DA that includes Crown land, Lands must sign on behalf of the Minister for Lands.

Before a PVP or DA that includes Crown land is approved, the CMA will forward the final proposal to you and Lands for their signature. If Lands signs the proposal on behalf of the Minister for Lands, the proposal will be sent back to the CMA for final approval.

When are PVPs or DAs appropriate on Crown land?

There are four main issues that influence whether or not a PVP/DA is appropriate on Crown land, these are the term of the Crown tenure; the applicant's equity in the holding; exclusive use rights; and any public purpose or tenure conditions attached to the land.

PVPs/DAs are generally not appropriate:

- On **short term** Crown tenures because management actions required over a long term or in perpetuity could not be completed within the term of the tenure;
- On Crown tenures where the holder does not own significant **equity** in the holding, because of the risk to the Crown of a landowner proposing long term management actions and later seeking to terminate the lease/licence/permit;
- On Crown tenures where the holder does not have **exclusive use** of the land (or the resources on the land), because proposed clearing or offsets may interfere with the use of the land by others;
- Where Crown land has been set aside for a **specific public purpose**, such as a Crown road, or where a tenure is subject to management **conditions**, because proposed clearing or offsets through a PVP/DA may conflict with that purpose (or tenure condition).

PVPs that propose offsets on Crown land may not be supported unless there are sufficient guarantees that long term obligations will be met. If a specific case is unclear, Lands will clarify whether or not a landholder may proceed with a PVP or DA over Crown land.

Where do I start?

If you want to apply for a PVP or DA over Crown Land within your property, you should first contact your local CMA. They will ask questions about your PVP/DA, whether Crown land is part of your proposal, and help you identify any issues that may affect whether a PVP or DA can proceed. Where obvious Crown land impediments exist, CMA staff may advise you to review your PVP/DA proposal.

This may include stream frontages, Crown roads, private property easements, timber rights and other similar matters. The CMA may also refer you to other Departments (eg State Forests in relation to timber rights).

If any questions about Crown land cannot be resolved between the CMA and yourself, the CMA will print you a map of your proposal to take to Lands that shows;

- Your property boundary and area of the proposal;
- List of all known lots/DPs and Parish names, along with Crown or unresolved land status issues included in the proposal;
- the edges of adjoining lots (to show potential adjoining Crown land, eg on creek boundaries).

Lands will then provide you with advice on:

- Confirmation of Crown land areas included in the proposal;
- Existing conditions on title (if required);
- Whether Lands will generally allow a PVP or DA on any Crown land involved in your proposal;
- Any additional conditions Lands may require for any Crown land included in a PVP or DA approved by the CMA.

Lands advice is then taken back to the CMA staff member, who will then proceed with an assessment of your proposal.

Can I use Routine Agricultural Management Activities on Crown land?

Using Routine Agricultural Management Activities (RAMAs) and other “permitted clearing” activities under the NV Act can occur without approval from the CMA. However clearing under RAMAs or other “permitted clearing” may be in contravention of your Crown land lease, licence or permit. You should check your lease/licence/permit conditions or consult with Lands before any such clearing. If you need an approval from Lands prior to clearing, you cannot clear under a RAMA or other types of permitted clearing until you have obtained that approval. In some instances your lease/licence/permit conditions may not allow you to clear, even with an approval. In these cases you may not clear under a RAMA or any other type of permitted clearing.

Bushfire hazard reduction clearing does not require a PVP if it is undertaken within the terms and conditions of a *hazard reduction certificate* issued by the Rural Fire Service.

For further information on RAMAs and permitted activities, please refer to Information Sheets 7a, 7b and 7c.

What if I intend to convert my Crown lease to freehold?

Some lessees of Crown land have the opportunity to apply for consent to convert to freehold. On sales of Crown land or the granting of an application to convert to freehold, the Minister for Lands may impose covenants to protect conservation values. Clearing would generally be restricted in areas protected by such covenants.

On the other hand vegetation protected by such covenants could be eligible for incentive funding from the CMA. Lands can advise you in this regard.

Freehold land recently converted from Crown land may also be subject to covenants placed on the land under that process. If you do not hold a copy of your covenants you should obtain a copy from Lands before a PVP or DA is prepared.

If a PVP has been approved over leasehold land, the PVP will continue to have effect despite any change from leasehold land to freehold land or any change in the landholders of the land concerned.

Clearing for management and telecommunication infrastructure on Crown land

Lands or a Crown reserve trust on Crown land for which it is responsible may undertake clearing under a specific RAMA for management activities such as the construction, operation and maintenance of roads, tracks, signs and recreations facilities. Clearing cannot take place under the RAMA where threatened species or their habitats will be affected.

A further RAMA provides for clearing for the construction, operation and maintenance of telecommunications infrastructure on Crown land.



New South Wales
Government

Native vegetation management in NSW

Native Vegetation Act 2003

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

For the Department of Lands Trust Handbook visit: www.lands.nsw.gov.au

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