

Clearing native vegetation for essential local government infrastructure

Clearing of native vegetation does not require approval under the *Native Vegetation Act 2003* (NV Act) for certain small to medium scale essential local government infrastructure. Consultation is required between the local government authority and the catchment management authority (CMA) to ensure appropriate site selection, best environmental outcomes and public transparency.

The Local Government Infrastructure RAMA lists the following essential infrastructure as potentially exempt from the requirement for a clearing property vegetation plan (PVP):

1. sewage treatment works,
2. waste disposal landfill operations,
3. waste management facilities (including recycling depots and transfer stations),
4. water supply works,
5. gravel pits, and
6. cemeteries.

Where these developments are being assessed under Part 5 of the *Environmental Planning and Assessment Act 1979*, the NV Act does not apply.

The following advice should be read in conjunction with the RAMA itself, clause 18A of the Native Vegetation Regulation.

What limitations are there on clearing?

The RAMA allows clearing with the following limitations:

1. Clearing is to the minimum extent necessary of a single area of land of no more than two hectares; and,
2. Does not impact on high conservation value (HCV) vegetation (threatened species including fish, endangered ecological communities or overcleared vegetation types); and,
3. Alternative sites have been explored with the local CMA; and,
4. Managed areas (an area of land set aside to protect native vegetation in connection with this RAMA) have been negotiated and agreed between council and the CMA; and,
5. Any managed areas of native vegetation are protected in perpetuity.

Exceptions to points 2 and 3 are made for sites purchased and identified by council for the construction and operation of the eligible infrastructure prior to 31 August 2006.

Where the impact of any proposal is greater than permitted under the RAMA, then a clearing PVP will be required.

Councils and CMAs working together

It is essential that councils and CMAs work closely together to:

- a) ensure most appropriate site selection,
- b) negotiate appropriate managed areas, and
- c) ensure timely public disclosure.

How to select the most appropriate site?

Site selection discussions should commence as early as possible before the development application process. Preferably potential infrastructure sites would be identified at a strategic planning or project initiation stage.

The goals of good site selection should be, firstly to avoid clearing native vegetation; and secondly, to improve or maintain environmental values by minimising clearing and setting aside managed areas to be protected in perpetuity. However, the 'improve or maintain test' does not have to be met.

Each type of infrastructure will come with its own limitations in regard to site selection as well as those related to zoning, vegetation, and soil and water management. For example:

- sewerage treatment works will need to be located in proximity to water supply and outside a buffer to residential areas;
- waste disposal landfill operations will need suitable soils, have buffers to residential areas, while still being in reasonable distance for disposal, sometimes from multiple sources;
- waste management facilities such as transfer and recycling depots will need similar if less extensive buffers to residential areas and may also require proximity to customers;
- water supply works will be determined largely by proximity to supply and distribution networks; and
- gravel pits will need to be located on suitable source material and within a reasonable distance of its end use.

CMAs will have a range of information that may be of value to local councils when selecting sites. This includes, mapping of vegetation, topography and soils, and most importantly local NRM and vegetation knowledge. CMAs can also help determine if the RAMA can be used or whether a clearing PVP is necessary.

Expertise from CMA staff will be invaluable to identify HCV vegetation, recommend appropriate areas of native vegetation to be managed, compare the relative conservation value of vegetation on different sites and minimise impacts on native vegetation. It is important to remember that all RAMAs are limited under the NV Act to clearing to the 'minimum extent' necessary.

How can managed areas be used to achieve environmental outcomes?

CMAs will advise council on the form of appropriate managed areas that could be set aside as part of the proposal. This advice will have the goal of facilitating the development while improving or maintaining environmental outcomes (similar to offsets under the NV Act). However, the size and form of the managed areas is not regulated as it is for offsets. The starting point for negotiations is a proposal where the addition of managed areas will result in as close to an 'improve or maintain' outcome as practicable.

The recommendations that the CMAs will make will be informed by knowledge of the landscape, the strategic directions set in their catchment action plans and tools such as the PVP Developer. Negotiations from this starting point need to consider both the public interest in the construction of the infrastructure, and the protection of native vegetation.

Any areas of native vegetation proposed for management must be agreed to and consented to in writing by the CMA, and must be protected in perpetuity. This to ensure the native vegetation persists over the long term to compensate for the permanent clearing.

A PVP is an obvious choice to provide the in perpetuity protection required. A PVP for the purpose of protecting and managing native vegetation will set out an appropriate level of active management eg, to enhance regeneration or limit grazing pressure.

As a rough guide to achieving good outcomes for native vegetation, characteristics of managed areas are:

- a) the same or similar Mitchell Landscape to the cleared area;
- b) the same or a higher conservation value vegetation type;
- c) similar or enhanced connectivity to other native vegetation; and
- d) areas larger than those cleared protected to compensate for short to medium term loss of habitat (eg, tree hollows), to reduce edge effects and to ensure the long term viability of the vegetation.

Negotiations on managed areas should also consider benefits to land degradation, water quality and riparian areas.

It will be important to have a good understanding of both the limitations of site selection and the priorities for native vegetation.

The intent of the exemption is to allow some flexibility while ensuring the best long term outcomes for native vegetation. Areas of native vegetation to be managed as a result of the proposal could be purchased from another landholder provided they are protected in perpetuity. Where a council wishes to set aside larger areas than that recommended by the CMA, they may be eligible for incentives.

How is public disclosure provided?

Public disclosure will be provided through the CMA's public register of clearing that is available at www.nativevegetation.nsw.gov.au

The CMA will need to ensure the council has met the intent of the RAMA and completed any development approvals. The CMA will then place the following information on the public register before the council exercises the exemption and clears the native vegetation:

1. the name of the local government authority;
2. the type of infrastructure;
3. the coordinates and area of the infrastructure development site;
4. the coordinates and area of the clearing;
5. the coordinates and area of any managed areas protected in perpetuity; and
6. the method of in-perpetuity protection provided to managed areas.



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

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