



The Crown Lands Management Act Biodiversity Law Reform

Belinda Rayment – Solicitor
30 July 2017



Crown Lands
Act 1989



Crown Lands
Management
Act 2016

How we got here



Types of Crown land



Responsibility for managing Crown land

Department of Industry - Lands

- Primary responsibility
- Administers the Act
- Regional offices

Reserve Trust Boards

- Corporate managers
- Local councils
- Community administrator

Management Principles

- that environmental protection principles be observed in relation to the management and administration of Crown land,
- that the natural resources of Crown land (including water, soil, flora, fauna and scenic quality) be conserved wherever possible,
- **that public use and enjoyment of appropriate Crown land be encouraged,**
- that, where appropriate, multiple use of Crown land be encouraged,
- that, where appropriate, Crown land should be used and managed in such a way that both the land and its resources are sustained in perpetuity, and
- that Crown land be occupied, used, sold, leased, licensed or otherwise dealt with in the best interests of the State consistent with the above principles.

Overview of changes to Crown land management

Bigger role for local government

New management structure for Crown Reserves

Crown Land Management Rules and Plans of Management

New Community Engagement Strategies for Crown land managers

Bigger role for local government

- 'Local land' will be able to be transferred to local councils
- 'State land' (land that is of significance to all of NSW) will not be transferred
- Criteria on what is State and local land to be included in Regulations

Issues

- When can land be transferred?
- Wholly within the LGA
 - The council agrees
 - The land is suitable for local use
- Effect of transfer
- The transferred land becomes community land UNLESS the Minister declares that it is operational land
 - Land is managed under the Local Government Act 1993

Licences, leases etc

Council can only grant a lease, licence or other estate if:

1. A plan of management expressly authorises it AND
2. The purpose is consistent with the core objectives of the category of land
3. It is for a purpose listed in s. 46 of the LG Act
 - Provision of goods, services, etc. in relation to public recreation or the physical, cultural, social and intellectual welfare of persons
 - Provision of public roads
 - Busking/performing
 - Trade/business
 - Sports
 - Public address
 - Commercial photographic sessions/Filming sessions
 - Private picnics, weddings etc.
 - Agistment of stock

New Management Structure for Crown Reserves

3 Tier

Reserves

Reserve Trusts

Reserve Trust Managers



2 Tier

Reserves

Crown Land Managers

Crown Land Management Rules

- Ministerial oversight of Crown land continues.
- 2 categories of Crown Land Managers
 1. Category One Managers - Professional bodies with higher levels of capabilities
 2. Category Two Managers - All other managers including voluntary community boards and organisations.
- Plans of Management – either at direction of Minister or on Crown land manager's initiative

Minister's powers

- Minister can grant a lease, licence, easement etc over Crown land for any purpose the Minister thinks fit.
- Must consult the land manager.
- Must be satisfied it is in the public interest.

Community Engagement

- Community Engagement Strategy to set out when engagement is required
- Form of community engagement to be tailored to the proposal
 - Focus groups
 - Surveys
 - Workshops
- Position Paper
- Strategy to be finalised and in place when new Act commences
- Community engagement required for proposals that could affect public use of Crown land (sales, leases, licences, plans of management)
- Community advisory groups
- Reclassification of land under the Local Government Act
- Third party enforcement

Upcoming consultations on Crown lands

- **Crown Land Regulation**

- currently being developed to support the operation of the new legislation.
- Draft regulations are expected to be exhibited for public comment mid-2017
- www.crownland.nsw.gov.au



NSW Biodiversity Law Reform

An Overview



- 1

Review of biodiversity conservation legislation in NSW

In June 2014 an independent panel of experts was appointed to conduct a comprehensive review of biodiversity conservation legislation in NSW. The panel released it's final report, with 43 recommendations, in December 2014.
- 2

“Government commits to implement Panel’s recommendations”

In March 2015 Government committed to implement all 43 of the Independent Panels recommendations.
- 3

Draft Reform Package on exhibition

The draft package of reforms was on exhibition for eight weeks during May – June 2016. The package included the draft Biodiversity Conservation Bill and the draft Bill to amend the Local Land Services Act 2013, as well as other supporting products.
- 4

Parliament passes new legislation

On 17 November 2016, the NSW Parliament passed the Biodiversity Conservation Bill and Local Land Services Amendment Bill.
- 5

Draft Regulations and products on exhibition

The NSW Government has released draft regulations for the *Biodiversity Conservation Act 2016* and the *Local Land Services Amendment Act 2016* as well as a suite of supporting products and tools. Exhibition runs from 10 May to 21 June 2017.
- 6

Reforms will commence

Government will continue to develop and refine the regulations and supporting products , following exhibition. The reforms will commence on 25 August 2017.
- 7

Consultation will continue

Government continues to develop other supporting products, including the Biodiversity Conservation Investment Strategy and the Native Vegetation Regulatory Map. These products will not commence until we have undertaken further consultation.



Refresher

Gone

Threatened Species
Conservation Act

Native Vegetation
Act

Nature Conservation
Trust Act

Changed

National Parks and
Wildlife Act

Environmental
Planning and
Assessment Act

New

Biodiversity
Conservation Act

Local Land Services
Amendment Act

Six themes

1. Changes to native vegetation management in rural areas
2. Offsets
3. Private land conservation
4. Clearing in Environmental (E) Zones & Urban areas
5. Saving our species?



Australia

1. Changes to native vegetation management in rural areas

- Banned broadscale clearing unless it maintained or improved environmental outcomes
- RAMAs
- Environmental Outcomes Assessment Methodology
- Consent or PVP to clear

Native Veg Act

LLSA Act

- No ban on broadscale clearing
- No 'maintain-or-improve' standard
- No mandatory soil, water and salinity assessment
- Expanded allowable clearing
- Self assessable codes
- Approval still required in some cases



Native Vegetation Regulatory Map

Blue – Exempt
 Yellow – regulated
 Grey - excluded



Land Categories – Exempt, regulated, excluded

Category 1 (exempt land)

Clearing of native vegetation can occur without approval under the new land management framework

Category 2 (regulated land)

Clearing of native vegetation can occur in accordance with an allowable activity or code under the LLS Act. Proposed clearing that cannot occur in accordance with an allowable activity or code requires approval under the LLS Act.

Excluded land

The native vegetation regulatory framework does not apply, and clearing is regulated under the *Environmental Planning and Assessment Act 1979* and the new Biodiversity Conservation Act framework, as well as some other legislation such as national parks and forestry legislation.

Hierarchy of clearing

Allowable activities

- No approval required
- Minimum extent necessary
- Coastal zone, Central zone, Western Zone

Code-based

- No approval required if done in accordance with the code

Approved

- Native Vegetation Panel
- Where development consent of SSI approval not required and where the clearing is not part of an activity assessed under Part 5 of EPA Act
- Requires a biodiversity development assessment report

2. Offsets

- **Bio Con Act introduces a new Biodiversity Offsetting Scheme and Biodiversity Assessment Method (BAM).**
 - BAM measures loss or gain in native vegetation and habitat loss as ‘biodiversity credits’, i.e. offsets (ecological debt?)
- **BAM report required for many NSW development activities:**
 - All State Significant Development & Infrastructure affecting threatened sp.
 - Local development that meets the BAM threshold:
 - Area of clearing relative to minimum lot size (e.g. 0.25 to 2ha clearing)
 - Any clearing on Sensitive Biodiversity Values Land Map
 - Opt-in only for Part 5 local infrastructure.
- **BAM largely replaces existing threatened species assessments and biodiversity offsetting methods**
 - Non-biodiversity impacts: still assessed by existing planning law methods

Meeting Offset Scheme obligations

- Options include, in any combination (at 6.2):
 - a. Retire **like-for-like** biodiversity credits
 - b. Retire credits under **variation rules**
 - c. Fund an action [listed in BAM] to benefit species or e. community impacted
 - d. Mine site rehabilitation
 - e. Pay to the BC Fund instead
- Draft Reg then sets out:
 - **Like-for-like offset rules**
 - **‘Variation’ rules**
 - **Ancillary rules** (TBC: credit types, mine rehab standards, exclusions)

Like-for-like rules

Offset category	Like-for-like offsetting rule
Threatened Ecological Communities (TECs)	Same TEC in same subregion (or nearby subregion <100km)
Threatened Species Habitat	Same class* of vegetation in same or nearby subregion *there are 99 veg classes in NSW but ~1500 Plant Community Types
'Species credit' species (i.e. Threatened plants & animals not predicted by veg. type/habitat)	Same species, anywhere in NSW (e.g. Koala, Squirrel Glider, all threatened plant species)

Offset Variation rules (6.4 - 6.6)

- Proponent must first take **reasonable steps** to obtain like-for-like credits:
 - Check register, potential Stewardship sites, list ‘Credits wanted’ (6.5(2))
- OEH can exclude impacts on species/communities from variation – chance to restrict their use.

Variation rules for developers (6.4)

Offset category	Variation: if reasonable steps to find like-for-like offsets fail
Vegetation types	Allowable offsets expanded from same veg. 'class' (99 in NSW) to same 'formation' (16 in NSW)
TECs, Threatened Sp. Habitat, other threatened vegetation	Location rules weakened
Hollow Bearing Trees	Can be substituted for artificial hollows
'Species credit' plants & animals (i.e. not predicted by vegetation)	<p>a plant for a plant; or an animal for an animal; at equal or higher risk of extinction (in same or nearby subregion) E.g. impacts on koalas can be offset by protecting squirrel gliders</p>

3. Private land conservation

Existing Agreement Types

BioBanking Agreements

Conservation Agreements

Nature Conservation Trust Agreements

Registered Property Agreements

Incentive Property Vegetation Plans

Conservation Property Vegetation Plans

Wildlife Refuges

New Agreement Types

Biodiversity Stewardship Agreements (Tier 1)

Conservation Agreements (Tier 2)

Wildlife Refuge Agreement (Tier 3)

4. Clearing in E-Zones and Urban land clearing

- Excluded from LLS Act / NV Map (Grey)
- Draft Vegetation SEPP for development that doesn't need consent



State Environmental Planning Policy (Vegetation)

Explanation of Intended Effect
May 2017



5. Saving our species?

- Triage approach
- Offences and licences
- Areas of outstanding biodiversity value
- Threat of serious or irreversible harm



Thank you – Questions?

- We're an non-government, not-for-profit community legal centre
- Like our work? You can donate, it's tax-deductible: edonsw.org.au/donate

