

Legal Framework for Protected Areas:

New South Wales (Australia)

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Abstract

This case study focuses on the legal framework for protected areas in the state of New South Wales, Australia. New South Wales, in common with other Australian states and territories, is party to arrangements for the establishment of the National Reserve System. The case study sets out the range of protected areas that have been established in New South Wales, canvasses the relevant legislation and discusses management processes. It includes a discussion of the involvement of Aboriginal people in the management of protected areas on their traditional lands, the use of conservation agreements between the government and private landholders, the establishment of a Marine Parks Authority, and the issue of connectivity corridor conservation. This case study is a companion to the Australian federal case study on protected areas law.

Contents

Acronyms and abbreviations	5
1 Introduction: protected areas in New South Wales	6
1.1 Protected areas policy	6
2 Protected areas legislation	10
2.1 Scope of the National Parks and Wildlife Act	10
2.2 Scope of the Marine Parks Act	11
3 Definitions of protected areas	12
4 Establishment, amendment and abolishment of terrestrial protected areas	12
4.1 Reservation of land	12
4.2 Biosphere reserves	13
4.3 Establishment of Aboriginal protected areas	13
4.3.1 Commonwealth Indigenous Protected Areas.....	14
4.4 Other protected area categories.....	15
4.4.1 Wilderness areas	15
4.5 State involvement in international protected area listings.....	16
4.6 World heritage listings in New South Wales	16
4.7 Ramsar wetlands in New South Wales	17
4.8 Establishment, amendment and abolishment of marine protected areas	17
5 Governance of protected areas	18
5.1 Terrestrial areas	18
5.1.1 Conservation agreements with private landowners and lessees of government land.....	19
5.1.2 Wilderness protection agreements	19
5.1.3 Nature Conservation Trust Agreements.....	20
5.1.4 Biobanking.....	20
5.2 Marine protected areas	21
5.3 Aboriginal co-management of protected areas	22
6 Requirement for management plans and zoning plans	23
6.1 Management plans for terrestrial protected areas.....	23
6.1.1 Management principles for terrestrial protected areas.....	23
6.1.2 Management principles in relation to Aboriginal areas.....	25
6.2 Zoning plans in marine protected areas	25
6.3 Managing world heritage areas in New South Wales	25
6.4 Managing Ramsar wetlands New South Wales.....	26
6.5 Coastal zone management plans	26
7 Use of IUCN protected area categories in New South Wales	26
8 Buffer zones	27
9 Connectivity conservation	27

10 **Controlling activities within protected areas**..... 28

11 **Environmental impact assessment and protected areas**..... 29

12 **Enforcement** 30

13 **Penalties** 31

14 **Finance** 31

15 **Conclusion** 31

References 33

Acronyms and abbreviations

CAR	Comprehensive, Adequate and Representative
DECCW	Department of Environment, Climate Change and Water
EPBC Act	Environment Protection and Biodiversity Conservation Act 1999
IUCN	International Union for Conservation of Nature
NPW Act	National Parks and Wildlife Act 1974
NPW Regulation	National Parks and Wildlife Regulation 2009
NSW	New South Wales

1 Introduction: protected areas in New South Wales

1 New South Wales is the most populous state in Australia, with some seven million people as of 2009.¹ Its protected areas regime is one of the most developed in the country and thus serves as an important example of the Australian protected areas system at state level.² New South Wales has had a national parks system since the late 1800s, beginning in 1879 with the declaration of the Royal National Park south of Sydney as the world's second national park.³

2 The New South Wales National Parks and Wildlife Service gives a general description of protected areas as follows:

Protected areas set aside for conservation play a unique role in protecting biodiversity as well as natural and cultural heritage. Parks and reserves in NSW protect the state's range of habitats and ecosystems, plant and animal species, significant geological features and landforms. They also provide shelter for the largest and most diverse collection of cultural heritage on public land. Finally, they conserve areas important to people, such as places of scenic beauty, landscapes and natural features of significance, wilderness areas, wild rivers, water catchments, popular places for nature-based recreation, and icons and sites of national significance.⁴

1.1 Protected areas policy

3 For the last few decades, the New South Wales government has focused on expanding the protected areas estate, based on the 'comprehensive, adequate and representative' (CAR) criteria. The CAR criteria form the basis of the National Reserve System, which was established in the early 1990s. The National Reserve System builds on these and related principles, such as the precautionary principle, ecosystem threat levels, the need for listing highly protected areas, public consultation and indigenous involvement in decision making, as the basis for its strategic approach.⁵ The CAR criteria are set out in Box 1.⁶

Box 1: The CAR criteria and the National Reserve System

With regard to the conservation of biological diversity within Australia's reserve system, comprehensiveness, adequacy and representativeness are defined as follows:

comprehensiveness - the degree to which the full range of ecological communities and their biological diversity are incorporated within reserves;

adequacy - the ability of the reserve to maintain the ecological viability and integrity of populations, species and communities. Note that the interactions between reserves and surrounding areas should be taken into account in determining the reserve's ability to meet ecological viability and integrity criteria. Complementary management of adjacent areas can play a significant role. In some instances, however, the ecological viability of the protected area itself will be paramount;

representativeness - the extent to which areas selected for inclusion in the national reserve system are capable of reflecting the known biological diversity and ecological patterns and processes of the ecological community or ecosystem concerned.

Source: Commonwealth of Australia, 1996, p. 67.

1 Australian Bureau of Statistics, 2009.

2 The case study should be read in conjunction with the Australia case study (Boer and Gruber, 2010).

3 Department of Environment, Climate Change and Water (DECCW), undated c. The first national park in the world was Yellowstone National Park in the United States, declared in 1872.

4 DECCW, 2008a.

5 See Worboys et al., 2005, pp. 136–138.

6 See also Commonwealth of Australia, 2009a; and Commonwealth of Australia, 1997.

Efforts to include a broad range of ecosystem types within the protected areas system have significantly increased in the last few decades. This has been due in part to the work of environmentally focused non-government organizations and visionary individuals lobbying successive state governments to save major forest areas from logging. In 1976, as a result of a major campaign, the New South Wales government ordered the cessation of rainforest logging. In the ensuing years, following further hard-fought campaigns and significant environmental litigation in the Land and Environment Court of New South Wales, more forest areas were transferred to the national parks estate. The main regions include the south-eastern forests, converted to the South East Forest National Park in 1997,⁷ and the central eastern rainforests which attracted world heritage listing in 1986, now known as the Gondwana Rainforests of Australia World Heritage Area.⁸ A large number of further areas originally within the forestry regime have been converted to protected areas of various categories. The non-government organizations involved in campaigns and lobbying include the National Parks Association, Total Environment Centre and Wilderness Society, as well as the umbrella group of 120 environmental organizations, the Nature Conservation Council of New South Wales.⁹ Successive New South Wales environment ministers have also been committed to expanding the protected areas estate.

4

Lengthy negotiations between the federal government, four state governments (New South Wales, Tasmania, Victoria and Western Australia) and non-government organizations concerning native forest logging arose out of the various controversies referred to above. These negotiations resulted in the development of Regional Forest Agreements. These are 20-year plans aimed at the conservation and sustainable management of Australia's native forests. They are intended to provide certainty for forest-based industries, forest-dependent communities and conservation. They are founded on a series of comprehensive regional assessments of the social, economic, environmental, cultural and natural heritage values of Australia's major native forests.¹⁰ However, many conservationists still consider the Regional Forest Agreements to be flawed and do not accept that they have resulted in sustained yield forest management in the state. In addition, from time to time, legislation is suggested to amend the National Parks and Wildlife Act 1974 (NPW Act) to allow more development of tourism facilities; these attempts are generally fiercely opposed by conservation groups.¹¹

5

The various national parks, forest reserves,¹² marine parks and aquatic reserves in New South Wales, now numbering over 750, are shown in Map 1.

6

The policy of the New South Wales Department of Environment, Climate Change and Water (DECCW)¹³ in relation to protected areas can be gleaned from its latest annual report:¹⁴

7

[The department] aims to integrate landscape management for long-term ecological, social and economic sustainability by:

- improving the condition of natural resources
- protecting and restoring biodiversity and native vegetation

7 The park covers an area of 115,950 hectares; see DECCW, undated d.

8 Commonwealth of Australia, 2008.

9 For further information, see the web sites listed at the conclusion of this case study.

10 Summarized from Commonwealth of Australia, 2010a.

11 See for example Howden, 2010.

12 Forest reserves are managed under the Forestry Act 1916 and typically include declared flora reserves under s 25A of the Forestry Act as well as informally reserved lands that are under special management. The latter are normally subject to transfer of tenure to the New South Wales national parks estate; see DECCW, 2009d, p. 250 (Table 7.6).

13 Previously, the Department of Environment and Climate Change (DECC). The name was changed in 2009.

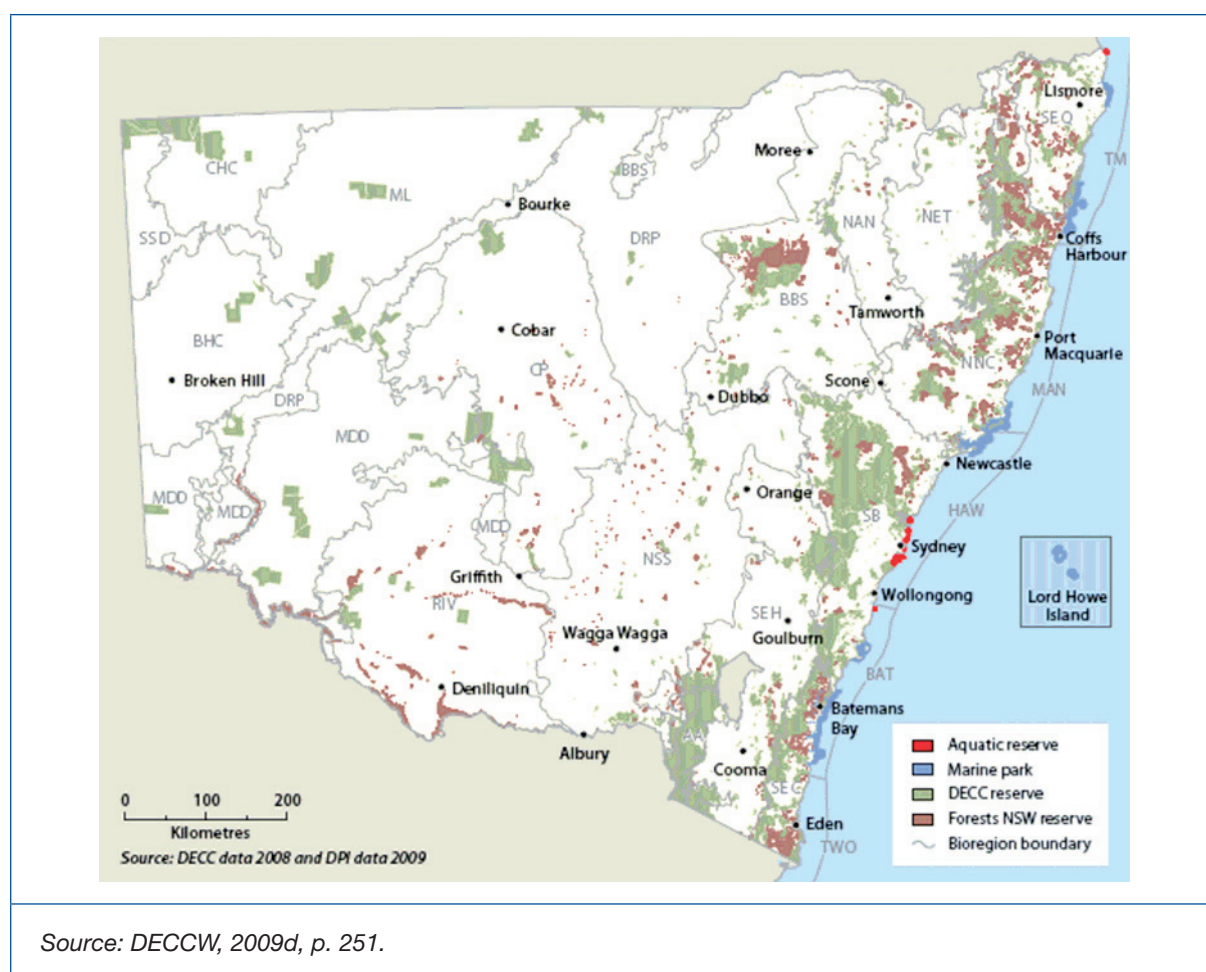
14 See also the State of the Parks report, produced in 2004, which sets out the policy and future direction for New South Wales parks management (Department of Environment and Conservation, 2005).

- contributing to increased tourism and community wellbeing through parks and reserves, and investing in environmental projects for regional development
- conserving natural and cultural values through an integrated system of public and private lands
- protecting and revitalising Aboriginal culture and heritage
- increasing Aboriginal participation in land, water and natural resource management.¹⁵

8 In New South Wales as well as nationally, there is now increasing emphasis on the protection of Aboriginal heritage and culture, and the promotion of greater participation by Aboriginal communities in the management of lands with which they traditionally identify. The state is also committed to implementing the National Reserve System agreed by the Commonwealth government and the states and territories in 2004.¹⁶

9 Currently, terrestrial protected areas in New South Wales cover over 8.4 per cent or around 6.7 million hectares of the state's land mass, with more than 700 terrestrial protected areas in various categories (see Map 1). It should also be noted that there are 10 federally listed National Heritage areas in New South Wales which are managed by the New South Wales National Parks and Wildlife Service.¹⁷

Map 1: National parks, forest reserves, marine parks and aquatic reserves in New South Wales



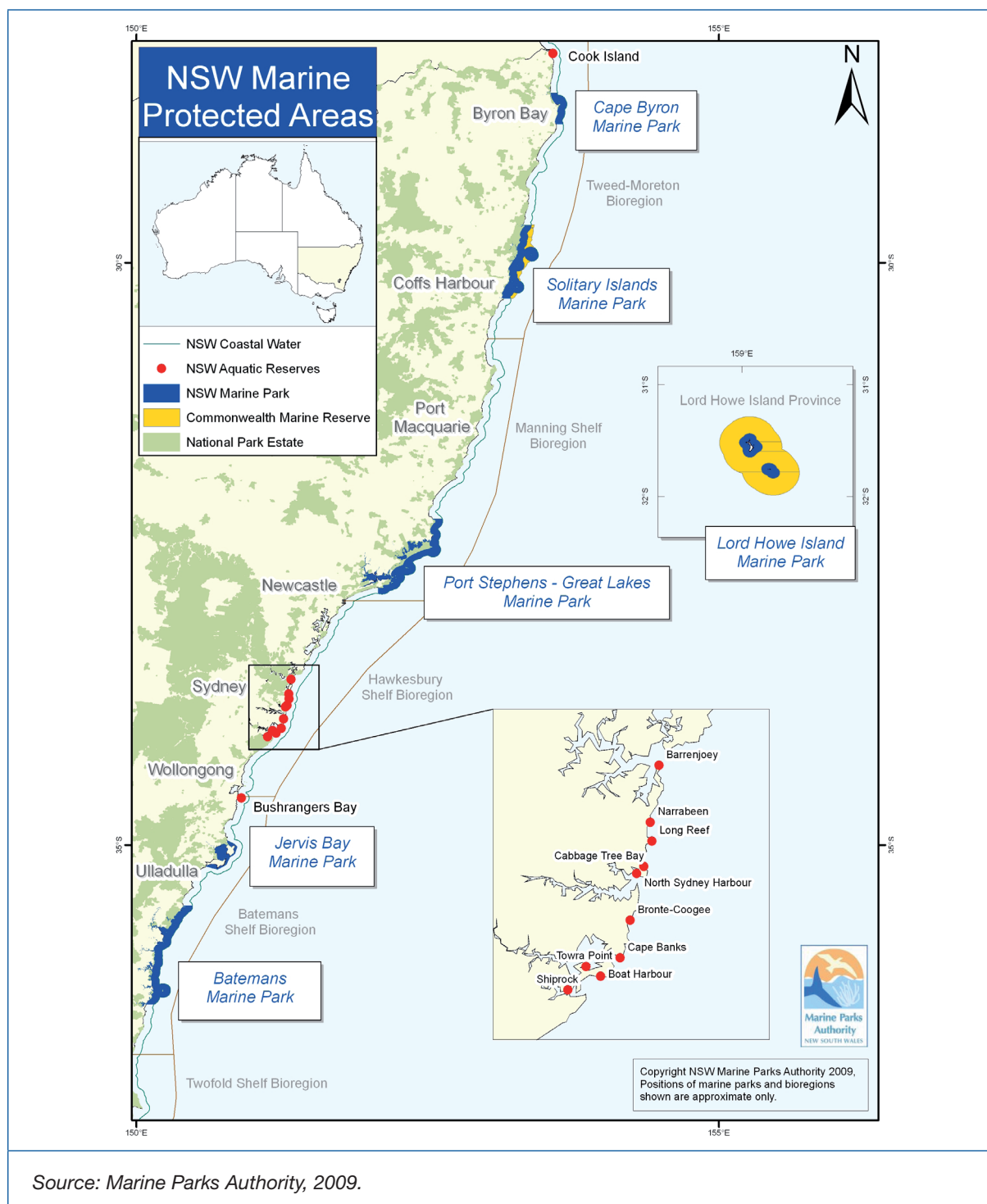
15 DECC, 2009, p. 64.

16 Commonwealth of Australia, 2005.

17 See further Boer and Gruber, 2010; see also DECCW, 2009c.

The New South Wales government also has a policy of establishing marine protected areas to protect a cross-section of marine biodiversity, in line with the CAR criteria. Marine protected areas in New South Wales comprise six 'multiple use' marine parks spread over 345,000 hectares, covering approximately 34 per cent of New South Wales waters,¹⁸ as well as 12 aquatic reserves (see Map 2).¹⁹ In addition, 62 national parks and reserves contain both terrestrial and marine elements.²⁰

Map 2: New South Wales marine protected areas



18 DECC, 2009a, p. 15.

19 DECC, 2009a, p. 8.

20 See DECCW, 2009d, pp. 256–257 (Marine reserve system).

2 Protected areas legislation

- 11 The NPW Act is the primary statute governing protected areas in New South Wales. However, several other pieces of legislation are directly or indirectly related to protected areas. The Wilderness Act 1987, for example, is aimed at protecting specifically designated wilderness areas which are to be managed in order to permit as little disturbance as possible of plant and animal communities. The Threatened Species Conservation Act 1995 provides for the protection of biological diversity, the promotion of ecologically sustainable development and, in the context of protected areas, the protection of the critical habitat of threatened species, populations and ecological communities that are endangered.²¹ The Native Vegetation Act 2003 must also be taken into account when dealing with habitat loss. Further, the Nature Conservation Trust Act 2001 promotes the long-term protection of private land of high conservation value through a system of acquisition, covenanting and reselling.
- 12 The Marine Parks Act 1997 covers all marine protected areas in New South Wales coastal waters.²² In addition, the Fisheries Management Act 1994 establishes and manages 12 aquatic reserves. Although these aquatic reserves are small in comparison with marine protected areas established under the Marine Parks Act, they are nevertheless regarded as a significant element of the marine protected areas system, providing protection for important aquatic habitat, nursery areas, and vulnerable and threatened species.²³
- 13 The New South Wales National Parks and Wildlife Service, which administers the major legislation, was a separate entity when it was first established in 1967. It is now a part of the DECCW.

2.1 Scope of the National Parks and Wildlife Act

- 14 The NPW Act is a comprehensive piece of legislation. It includes provisions on the establishment, preservation and management of all categories of parks and other protected areas, and the protection of certain fauna, native plants and Aboriginal cultural items. The objects of the Act are broad-ranging, as set out in Box 2.
- 15 The NPW Act embraces the concept of ecologically sustainable development, similar to the federal Environment Protection and Biodiversity Conservation (EPBC) Act 1999. In New South Wales, the definition of ecologically sustainable development is found in section 6 of the Protection of the Environment Administration Act 1991, to which all subsequent environmental legislation refers in relation to the definition. Section 6(2) of the Act states:

[...] ecologically sustainable development requires the effective integration of economic and environmental considerations in decision-making processes. Ecologically sustainable development can be achieved through the implementation of the following principles and programs:

- (a) the precautionary principle—namely, that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation. In the application of the precautionary principle, public and private decisions should be guided by:
 - (i) careful evaluation to avoid, wherever practicable, serious or irreversible damage to the environment, and
 - (ii) an assessment of the risk-weighted consequences of various options,
- (b) inter-generational equity—namely, that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations,
- (c) conservation of biological diversity and ecological integrity—namely, that conservation of biological diversity and ecological integrity should be a fundamental consideration,

21 Threatened Species Conservation Act 1995, s 3.

22 The term “coastal waters” is explained in Boer and Gruber, 2010.

23 DECCW, undated b.

- (d) improved valuation, pricing and incentive mechanisms—namely, that environmental factors should be included in the valuation of assets and services, such as:
 - (i) polluter pays—that is, those who generate pollution and waste should bear the cost of containment, avoidance or abatement,
 - (ii) the users of goods and services should pay prices based on the full life cycle of costs of providing goods and services, including the use of natural resources and assets and the ultimate disposal of any waste,
 - (iii) environmental goals, having been established, should be pursued in the most cost effective way, by establishing incentive structures, including market mechanisms, that enable those best placed to maximise benefits or minimise costs to develop their own solutions and responses to environmental problems.

Box 2: Objects of the National Parks and Wildlife Act 1974

2A Objects of Act

(1) The objects of this Act are as follows:

- (a) the conservation of nature, including, but not limited to, the conservation of:
 - (i) habitat, ecosystems and ecosystem processes, and
 - (ii) biological diversity at the community, species and genetic levels, and
 - (iii) landforms of significance, including geological features and processes, and
 - (iv) landscapes and natural features of significance including wilderness and wild rivers,
- (b) the conservation of objects, places or features (including biological diversity) of cultural value within the landscape, including, but not limited to:
 - (i) places, objects and features of significance to Aboriginal people, and
 - (ii) places of social value to the people of New South Wales, and
 - (iii) places of historic, architectural or scientific significance,
- (c) fostering public appreciation, understanding and enjoyment of nature and cultural heritage and their conservation,
- (d) providing for the management of land reserved under this Act in accordance with the management principles applicable for each type of reservation.

(2) The objects of this Act are to be achieved by applying the principles of ecologically sustainable development.

(3) In carrying out functions under this Act, the Minister, the Director-General and the Service are to give effect to the following:

- (a) the objects of this Act,
- (b) the public interest in the protection of the values for which land is reserved under this Act and the appropriate management of those lands.

2.2 Scope of the Marine Parks Act

The Marine Parks Act applies to New South Wales coastal waters. Its scope is necessarily limited in comparison with the broad nature of the NPW Act. The objects of the Marine Parks Act are set out in Box 3.

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Box 3: Objects of the Marine Parks Act 1997

3 Objects of Act

The objects of this Act are as follows:

- (a) to conserve marine biological diversity and marine habitats by declaring and providing for the management of a comprehensive system of marine parks,
- (b) to maintain ecological processes in marine parks,
- (c) where consistent with the preceding objects:
 - (i) to provide for ecologically sustainable use of fish (including commercial and recreational fishing) and marine vegetation in marine parks, and
 - (ii) to provide opportunities for public appreciation, understanding and enjoyment of marine parks.

3 Definitions of protected areas

17 Section 5 of the NPW Act and Clause 3 of the National Parks and Wildlife Regulation 2009 (NPW Regulation) contain a wide range of definitions concerning various aspects of protected areas. The term 'park' is defined broadly in the Regulation as:

a national park, historic site, state conservation area, regional park, nature reserve, karst conservation reserve or Aboriginal area, or any land acquired by the Minister under Part 11 of the Act, and [including] all roads and waters within the boundaries of any such park, site, area, reserve or land.²⁴

18 The more particular meanings of the terms national park, historic site, state conservation area, regional park, nature reserve, karst conservation reserve and Aboriginal area can be gleaned from the purposes for which such areas are reserved (see Table 1).

19 In relation to marine areas, the Marine Parks Act does not define a marine park as such. However, the essential characteristics of a marine park can be derived from a consideration of the objects of the Act, set out in Box 3.

4 Establishment, amendment and abolishment of terrestrial protected areas

20 In relation to the reservation of land, the NPW Act provides that the Director General of the Department, who oversees the National Parks and Wildlife Service, must have regard to the following:

- the desirability of protecting the full range of natural heritage and the maintenance of natural processes;
- whether the proposal is consistent with the establishment of a comprehensive, adequate and representative reserve system;
- the desirability of protecting cultural heritage;
- providing opportunities for appropriate public appreciation and understanding, and sustainable visitor use and enjoyment, of land reserved;
- opportunities to promote integration of the management of natural and cultural values;
- the desirability of protecting wilderness values;
- the objects of the Act; and
- the desirability of protecting world heritage properties and world heritage values.²⁵

21 The Director General may also consider and investigate proposals in relation to existing or proposed Aboriginal places, wilderness areas, wild rivers, wildlife refuges and interim protection orders.

4.1 Reservation of land

22 Under the NPW Act, reserve land can be declared by a notice published in the Gazette as any of the following, or as part of any of the following: national park, historic site, state conservation area, regional park, karst conservation reserve, nature reserve or Aboriginal area.²⁶ Each of these categories is set out in Table 1, together with a short description derived from the Act.

²⁴ National Parks and Wildlife Regulation (NPW Regulation) 2009, cl 3.

²⁵ National Parks and Wildlife Act (NPW Act), s 7.

²⁶ NPW Act, s 30A.

Table 1: Protected area categories

Category	Number	Description ¹	Relevant section of NPW Act
National park	186	Areas containing “outstanding or representative ecosystems, natural or cultural features or landscapes or phenomena that provide opportunities for public appreciation and inspiration and sustainable visitor use and enjoyment.” They can only be declared in Crown lands or land that the Minister has acquired for the purpose of reservation.	s 30E
Historic site	37	The purpose of reserving land as a historic site is to identify, protect and conserve areas associated with a person, event or historical theme, or containing a building, place, feature or landscape of cultural significance. The 37 items managed by the DECCW are on the State Heritage Register under the Heritage Act 1977.	s 30F
State conservation area	111	Areas that “contain significant or representative ecosystems, landforms or natural phenomena or places of cultural significance”, are “capable of providing opportunities for sustainable visitor use and enjoyment, the sustainable use of buildings and structures or research,” and are “capable of providing opportunities for uses permitted under other provisions of this Act in such areas.”	s 30G
Regional park	14	Areas in “a natural or modified landscape that are suitable for public recreation and enjoyment.”	s 30H
Karst conservation reserve	4	Areas “including subterranean land, containing outstanding or representative examples of karst landforms and natural phenomena.” ²	s 30I
Nature reserve	396	Areas containing “outstanding, unique or representative ecosystems, species, communities or natural phenomena.”	s 30J
Aboriginal area	16	Areas associated with “a person, event or historical theme, or containing a building, place, object, feature or landscape [...] of natural or cultural significance to Aboriginal people, or [...] of importance in improving public understanding of Aboriginal culture and its development and transitions.”	s 30K; see also Aboriginal Land, Part 4A
<p>1 Statistics have been updated from DECCW, 2009d, p. 250 (Table 7.6). For further information on each of these reserve types, see DECCW, Reserve types in NSW, web pages.</p> <p>2 Definition in s 5 NPW Act: “karst environment means an area of land, including subterranean land, that has developed in soluble rock through the processes of solution, abrasion or collapse, together with its associated bedrock, soil, water, gases and biodiversity.”</p>			

4.2 Biosphere reserves

In addition to the protected area categories set out above, the UNESCO Man and the Biosphere programme has classified three areas in New South Wales as biosphere reserves: Barkindji Biosphere Reserve, Kosciuszko National Park and Yathong Nature Reserve.²⁷ Biosphere reserves do not attract any special status in the New South Wales legislative scheme.

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4.3 Establishment of Aboriginal protected areas

Because of the increasing emphasis on the involvement of Aboriginal communities in the planning and management of protected areas in Australia generally, and particularly in New South Wales, the establishment of Aboriginal protected areas requires elaboration. These areas are provided for in several

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²⁷ Commonwealth of Australia, 2010b.

ways. The first is the option of declaring 'Aboriginal areas', which has been possible under the NPW Act for many years. Section 62 allows for the use of the area by Aboriginal people for cultural purposes. Such areas are also intended to promote public understanding and appreciation of their natural and cultural values and significance to Aboriginal people, and to provide opportunities for appropriate research in accordance with Aboriginal cultural values. Most of the 16 Aboriginal areas declared under these provisions are relatively small, with the exception of the Pindera Downs Aboriginal Area, which covers 11,433 hectares.²⁸

- 25 The second way of declaring Aboriginal protected areas is under Part 4A of the NPW Act, proclaimed in 2001. These provisions focus specifically on the leasing of Indigenous lands that have been reserved under the Act and land granted to Aboriginal communities under the Aboriginal Land Rights Act 1983. As stated in a note to section 71B of the NPW Act:

Part 2 of the Aboriginal Land Rights Act 1983 makes provision as to land rights and the grant of claims to Crown lands. Section 36A, within that Part, makes provision for the grant of certain land claims, despite the fact that the lands involved are needed, or likely to be needed, for the essential public purpose of nature conservation, if the claimant Aboriginal Land Councils are prepared to lease the lands to the Minister administering this Act and are agreeable to the reservation or dedication of the lands under this Act and in accordance with the requirements of this Part.

- 26 The policy underlying Part 4A involves recognition of the cultural significance to Aboriginal people of particular lands reserved under the Act. Section 71D states: "Land is of cultural significance to Aboriginals if the land is significant in terms of the traditions, observances, customs, beliefs or history of Aboriginals." Schedule 14 of the Act contains a list of lands that have been identified as being of cultural significance to Aboriginals.²⁹ Among the extensive provisions relating to leasehold arrangements for Aboriginal lands, the NPW Act provides for naming rights of the protected areas identified in the schedule.³⁰

4.3.1 Commonwealth Indigenous Protected Areas

- 27 In addition to the Aboriginal areas designated under the NPW Act, New South Wales hosts four Indigenous Protected Areas under the Commonwealth government's 'Caring for our Country' scheme, as depicted in Map 3.³¹ In comparison with the Indigenous Protected Areas declared under this scheme in Western Australia and the Northern Territory, the areas in New South Wales are quite small. These areas are part of the National Reserve System. Under the federal scheme, launched in 2008, traditional Aboriginal owners can make an agreement with the federal government that their lands will be managed for the conservation of both biodiversity and cultural values. The federal government funds and supports the declaration of these areas and assists in the preparation and implementation of management plans.³²

28 Pindera Downs Aboriginal Area, declared in 1986; see DECCW, undated a.

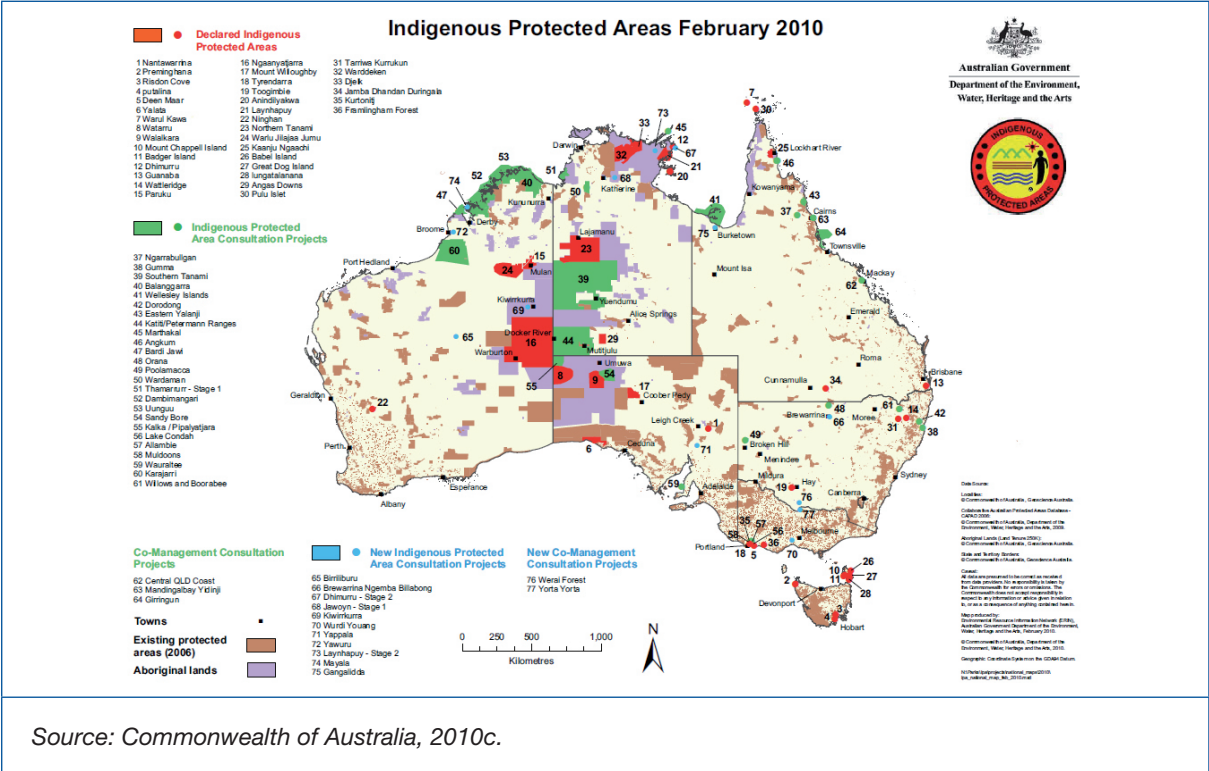
29 Schedule 14 refers to Biamanga National Park; Gulaga National Park; Jervis Bay National Park; Mungo National Park; Mootwingee Historic Site, Mootwingee National Park and Coturaundee Nature Reserve; Mount Grenfell Historic Site; and Mount Yarrowyck Nature Reserve. Given the expansion of the national parks estate in New South Wales in recent years, it is likely that a range of other such lands will be identified as Schedule 14 lands.

30 See NPW Act, s 71U, which provides that the name so assigned must be the name recommended by the Aboriginal panel involved in the negotiations for the vesting and leasing of the lands; it can be the same name as the one originally listed, or a different name.

31 These are Boorabee and The Willows Indigenous Protected Area (declared March 2010); Tarriwa Kurrukun Indigenous Protected Area; Toogimbie Indigenous Protected Area; and Wattleridge Indigenous Protected Area; see Commonwealth of Australia, Declared Indigenous Protected Areas in New South Wales, web page.

32 Summarized from DECC, 2008a, p. 32. See also Commonwealth of Australia, Declared Indigenous Protected Areas in New South Wales, web page.

Map 3: Indigenous Protected Areas



4.4 Other protected area categories

In addition to lands that may be reserved under the specific sections of the NPW Act set out above, there are four sub-categories administered under the Act. These are community conservation areas, wilderness areas, wild rivers and wildlife refuges, as described in Table 2.

4.4.1 Wilderness areas

Wilderness areas deserve separate mention. They form a special sub-category and are generally found in national parks or nature reserves but are protected under their own legislation, the Wilderness Act. These areas comprise some 2 per cent of New South Wales. The Wilderness Act was enacted after representations from non-government organizations in the mid-1980s regarding the need for better protection of special natural areas. The Act assists in:

- identifying wilderness areas and promoting their protection and management;
- promoting the education of the public in the appreciation, protection and management of wilderness;
- restoring and protecting the unmodified state of the area and its plant and animal communities;
- preserving the capacity of the area to evolve in the absence of significant human interference; and
- permitting opportunities for solitude and appropriate self-reliant recreation.³³

The application of the wilderness legislation is however limited by section 39 of the Forestry and National Park Estate Act 1998 which provides that an area in which forestry operations authorised by an integrated forestry operations approval under that Act may be carried out cannot be proposed or identified as, or declared to be, a wilderness area under the Wilderness Act 1987 or the NPW Act.

33 Wilderness Act 1987, ss 3 and 6.

Table 2: Other protected area categories

Category	Number	Description	Relevant legislative provision
Community conservation area	53	Multiple-use protected areas that are managed as national parks, Aboriginal areas or state conservation areas under agreements with local communities. ¹	For example, objects of Brigalow and Nandewar Community Conservation Area Act 2005, s 3.
Wilderness area	49	An area that is, “together with its plant and animal communities, in a state that has not been substantially modified by humans and their works or is capable of being restored to such a state”, “is of a sufficient size to make its maintenance in such a state feasible,” and is “capable of providing opportunities for solitude and appropriate self-reliant recreation.” ²	Wilderness Act, s 6
Wild river	7	A wild river is to be managed in accordance with the following principles: “the restoration (wherever possible) and maintenance of the natural biological, hydrological and geomorphological processes associated with wild rivers and their catchments, including natural flow variability,” and “the identification, conservation and appropriate management of Aboriginal objects and Aboriginal places.”	NPW Act, s 61(5)
Wildlife refuge	650	Areas “dedicated to the purposes of [...] preserving, conserving, propagating and studying wildlife, [...] conserving and studying natural environments, and [...] creating simulated natural environments.” They are generally declared on private land by consent and agreement with the landowner to conserve wildlife. Consent concerning the wildlife refuge can be revoked, varied or amended at any time by the person whose original consent was required for its declaration. ³	NPW Act, s 68
<p>1 See also DECCW, Community conservation areas, web page.</p> <p>2 See also DECCW, Wilderness, web page.</p> <p>3 See also DECCW, Wildlife refuges, web page.</p>			

4.5 State involvement in international protected area listings

- 31 Australia’s obligations under international environmental conventions are dealt with under the federal EPBC Act. The most significant of these are the world heritage listings and the Ramsar wetland listings. However, the majority of Australian world heritage and Ramsar sites are situated in the states and territories. When a listing is contemplated, the EPBC Act requires consultation between federal and state or territory governments.

4.6 World heritage listings in New South Wales

- 32 New South Wales hosts four natural world heritage properties that are part of the New South Wales national parks estate. The first of these is the Gondwana Rainforests of Australia, which is an extensive serial nomination in northern New South Wales and south-eastern Queensland. The New South Wales components comprise 22 national parks, 6 nature reserves and one state conservation area.³⁴ The other three properties are the Greater Blue Mountains, Lord Howe Island Group and Willandra Lakes Region.³⁵

34 DECCW, 2010e.

35 For further information, see the web sites listed at the conclusion of this case study.

Amendments to the NPW Act in 2001 incorporated reference to issues of world heritage, in recognition of the fact that New South Wales must take Australian international obligations into account. Section 3 of NPW Act defines “world heritage property” and “world heritage values” as follows: 33

“world heritage property” means property of outstanding universal value that is inscribed on the World Heritage List under Article 11 of the Convention for the Protection of the World Cultural and Natural Heritage done at Paris on 23 November 1972, as in force in Australia.

“world heritage values” means natural, heritage and cultural values contained in a world heritage property that are of outstanding universal value as described by the Convention for the Protection of the World Cultural and Natural Heritage done at Paris on 23 November 1972, as in force in Australia.³⁶

Section 7(2)(h) of the NPW Act specifies that one of the criteria to which the Director General must have regard in considering or investigating any proposals for the reservation of additional areas of land under the Act is “the desirability of protecting world heritage properties and world heritage values.” Section 71AD(2) further specifies that a world heritage listing is a matter that must be covered in a lease between a relevant Aboriginal Land Council and the Minister administering the Act. 34

When the federal government wishes to designate potential world heritage properties in New South Wales, it is obliged to consult the state government before making a declaration.³⁷ 35

4.7 Ramsar wetlands in New South Wales

Of the 65 Ramsar wetlands in Australia, 12 are located in New South Wales (see Map 4). Eight of these sites lie within national parks or nature reserves (or partly in both), one is on Crown land, two are on private land and one is under the jurisdiction of Forests New South Wales. The designation of a Ramsar site is done at the federal level. As in the case of world heritage listings, the federal government must seek agreement with the state government before it submits a wetland to the Ramsar secretariat for listing.³⁸ 36

4.8 Establishment, amendment and abolishment of marine protected areas

Marine areas are protected in similar ways to terrestrial protected areas. The relevant statutes regarding marine protected areas in New South Wales are the Marine Parks Act and the Fisheries Management Act. 37

Under the Fisheries Management Act, the Minister for Agriculture, Fisheries and Forestry can declare an area to be an aquatic reserve.³⁹ The purpose of reserves is to protect fish and fish habitats by regulating activities in such areas according to the Fisheries Management (Aquatic Reserves) Regulation 1995. The Minister can further prohibit certain activities through an “aquatic reserve notification”.⁴⁰ 38

The creation of marine parks in New South Wales is regulated through the Marine Parks Act, which establishes a Marine Parks Authority. Zoning plans are regulated by the Marine Parks Regulation 2009. 39

36 It may be noted in passing that the phrase “natural, heritage and cultural values” does not accord with the definition of world heritage values found in the federal Environment Protection and Biodiversity Conservation (EPBC) Act 1999; s 12(3) of the EPBC Act reads: “A property has world heritage values only if it contains natural heritage or cultural heritage. The world heritage values of the property are the natural heritage and cultural heritage contained in the property.” The New South Wales definition is merely likely to be an example of lack of care in drafting.

37 EPBC Act, s 14.

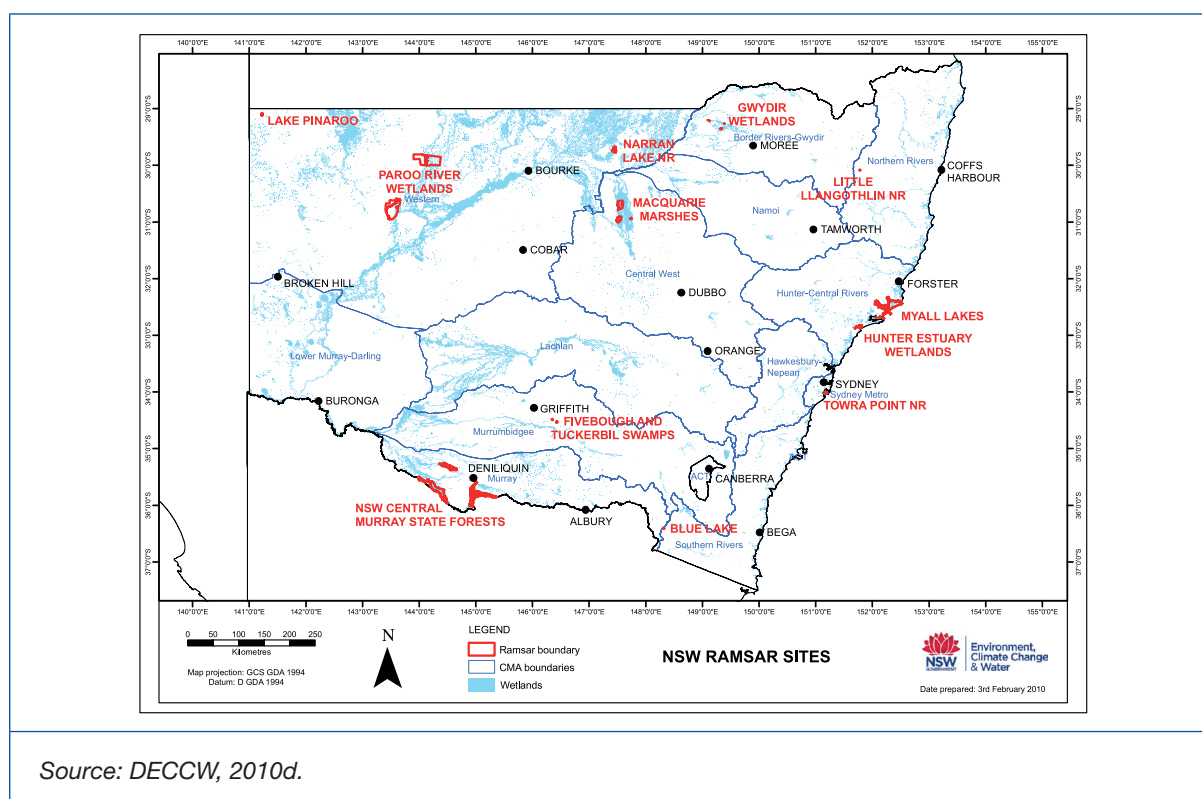
38 EPBC Act, s 326.

39 Fisheries Management Act 1994, s 194.

40 Fisheries Management Act, s 197E.

Zoning plans may include any number of sanctuary, habitat protection, general use and special purpose zones.⁴¹

Map 4: Ramsar sites in New South Wales



40 There are two marine parks in New South Wales which adjoin marine protected areas under Commonwealth jurisdiction: the federally protected Solitary Islands and the Jervis Bay Solitary Islands Marine Reserve. Coordination between New South Wales and Commonwealth authorities takes place through management agreements. These are intended to ensure the complementary management of state and Commonwealth waters.

5 Governance of protected areas

41 The DECCW has a broad brief with respect to environmental matters. It is generally responsible for the establishment and management of national parks and reserves as well as marine protected areas.

5.1 Terrestrial areas

42 The DECCW is involved in the following matters:

- establishing strategic priorities for additions to the park system;
- assessing, acquiring and gazetting lands for inclusion in the park system;
- managing the pressures on national parks and reserves, including fire, pest animals and weeds;
- providing opportunities for people to visit and enjoy the park system while minimizing their impact on conservation;

41 Marine Parks Regulation 2009, Schedule 2, clause 5(2) of the Marine Parks Regulation 1999 (as amended).

- researching, monitoring and evaluating the success of conservation activities;
- protecting objects, places and sites of Aboriginal and historic heritage significance within the park system; and
- involving communities in park management, including forming co-management partnerships with Aboriginal communities.⁴²

In relation to the reservation of land, the functions of the Director General of the Department are set out in section 7 of the NPW Act. These include considering or investigating proposals for the addition of areas to land reserved under the Act and the reservation of new areas under Part 4.⁴³ The Act specifies that, in considering the reservation of land, the Director General “is to have regard” to the desirability of protecting the full range of natural heritage and the maintenance of natural processes; the desirability of protecting cultural heritage; and whether the proposal is consistent with the establishment of a comprehensive, adequate and representative reserve system.⁴⁴ The Director General has a wide range of more general functions related to administering the legislation. These include the promotion of educational activities; carrying out works; undertaking scientific research; investigating proposals in relation to existing or proposed Aboriginal places, wilderness areas, wild rivers, wildlife refuges and interim protection orders; the preservation, protection and care of and the promotion of the study of fauna; and the protection of and the promotion of the study of native plants and other flora.⁴⁵

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5.1.1 Conservation agreements with private landowners and lessees of government land

The New South Wales government works with private landholders and state government agencies to conclude conservation agreements over both private and public lands. Non-government organizations are encouraged to work with the National Parks and Wildlife Service and contribute to conservation initiatives.⁴⁶

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Under the NPW Act, conservation agreements can be negotiated for private lands in areas that contain scenery, natural environments or natural phenomena worthy of preservation; that possess special scientific interest; that are the sites of buildings, objects, monuments or events of national significance; in which Aboriginal objects or Aboriginal places of special significance are situated; or that have value for study, preservation, protection and care of flora, fauna and karst regions.⁴⁷

45

5.1.2 Wilderness protection agreements

A further mechanism is provided by wilderness protection agreements, which are made under the Wilderness Act and apply to public land.⁴⁸ A wilderness agreement may require the public landholder to, inter alia, restrict the use of the area, refrain from activities not permitted in the area, carry out specified activities or do specified things, or permit access to the area by specified persons.⁴⁹

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⁴² Summarized from DECCW, 2008a.

⁴³ NPW Act, s 7(1).

⁴⁴ NPW Act, s 7(2).

⁴⁵ NPW Act, s 8.

⁴⁶ DECC, 2008b.

⁴⁷ NPW Act, s 69C.

⁴⁸ Wilderness Act, s 10.

⁴⁹ Wilderness Act, s 12.

- 47 There is also a special type of conservation agreement under the Wilderness Act that applies to private land identified as wilderness under the Act. Such an agreement can also be entered into in relation to freehold or Crown Lease land which is not being managed by a statutory authority. The Wilderness Act further specifies that the terms of such a conservation agreement “shall not be inconsistent with the principles set out in section 9 for the management of wilderness areas”. These principles concern restoration and protection of the area and its plant and animal communities, preservation of the capacity of the area to evolve in the absence of significant human interference, and permitting opportunities for solitude and appropriate self-reliant recreation.⁵⁰

5.1.3 Nature Conservation Trust Agreements

- 48 In addition to the above types of agreements, the Nature Conservation Trust Act provides for a system of agreements (called ‘covenants’) to ensure the long-term conservation of private lands that possess high nature conservation value. The Nature Conservation Trust is a not-for-profit organization that administers a fund derived from government grants, private donations, and bequests of money and land. It operates on the basis of a Revolving Fund Scheme⁵¹ under which land is bought or acquired by bequest. A legally binding covenant, which runs with the land, is placed on it, and then the land is resold. The Trust supports the landowners to maintain and enhance the land’s ecological values.⁵² The Trust keeps a written register of all Trust agreements, and the agreements can be enforced.⁵³

5.1.4 Biobanking

- 49 Biobanking is a market-based mechanism through which landholders are encouraged to conserve environmentally sensitive areas of land. Biobanking has been developed in New South Wales on a trial basis since 2006. It involves the generation of ‘biodiversity credits’ by landowners who commit to enhance and protect biodiversity values on their land through a biobanking agreement. The credits can be sold, with funds going towards the management of the site. In other words, the credits can be used to counterbalance or offset the impact on biodiversity values that is likely to occur as a result of development. The credits can be bought by those seeking to invest in conservation outcomes, including philanthropic organizations and the government.⁵⁴ The scheme was established under the Threatened Species Conservation Act (Part 7A) in an effort to help address the loss of biodiversity and promote the recovery of threatened species in areas that have suffered habitat degradation and loss as a result of activities such as overgrazing, clearing for agriculture and clearing of native vegetation for urban development.⁵⁵ Significantly, biobanking agreements exist in perpetuity⁵⁶ and, when registered, can run with the land.⁵⁷ A biobanking agreement may be enforced in the New South Wales Land and Environment Court if its terms are breached.⁵⁸
- 50 Some conservation groups have misgivings about the conservation benefits of biobanking, arguing that this kind of offsetting device should only be used as a last resort, should be calculated on

50 Wilderness Act, s 16(3).

51 Nature Conservation Trust Act 2001, s 7.

52 Summarized from Environmental Defender’s Office, 2008. See also Nature Conservation Trust of NSW website.

53 Nature Conservation Trust Act, ss 36–38.

54 Summarized from DECCW, 2009a.

55 Summarized from DECCW, 2010b.

56 Threatened Species Conservation Act, s 127G.

57 Threatened Species Conservation Act, ss 127I and 127J.

58 Threatened Species Conservation Act, s 127L.

the basis of real net gain in terms of biodiversity outcomes, and should never be considered when threatened species and ecosystems are intended to be offset.⁵⁹ The New South Wales scheme has been criticized for lack of progress, with only one trade having taken place to date, despite the cost of setting up the scheme.⁶⁰ Nevertheless, the 2009 review of the federal EPBC Act recommends the establishment of a national biobanking scheme at the federal level, similar to the New South Wales model, and, in the interim, a system of accreditation of state and territory biobanking schemes.⁶¹

5.2 Marine protected areas

A Marine Parks Authority was established by the Marine Parks Act. The Authority consists of three senior public officers: the Director General of the Department of Premier and Cabinet, who is the chairperson of the Authority, along with the Director General of the Department of Primary Industries and the Director General of the DECCW.⁶² The Authority is under the control and direction of the ministers in charge of these departments. Its functions include:

- investigation and assessment of proposals for marine parks or variations of the areas of marine parks;
- making recommendations concerning the appropriate classification of areas within marine parks;
- preparing an operational plan for each marine park;
- managing and controlling activities that may affect marine biological diversity, marine habitats and marine ecological processes in marine parks;
- providing for and regulating ecologically sustainable use (including commercial and recreational fishing) in marine parks;
- disseminating information about marine parks;
- encouraging public appreciation, understanding and enjoyment of, and public recreation in, marine parks; and
- encouraging and permitting, when appropriate, scientific research into the ecology of marine systems.⁶³

The Act also establishes a Marine Parks Advisory Council, consisting of the two members of the Authority, together with one member representing the interests of the Commonwealth government, two members to represent the interests of marine conservation, one member with expertise in marine science, and one member each to represent the interests of Aboriginal people, the tourism industry, commercial fishers, recreational fishers and scuba divers.⁶⁴ The Council advises on proposals for marine parks, the conservation of marine biological diversity within marine parks, the ecologically sustainable use of marine parks, and the public use and enjoyment of marine parks.⁶⁵ Several marine parks in New South Wales adjoin Commonwealth marine parks, which involves a good deal of cooperative activity in terms of day-to-day management.⁶⁶

59 Personal communication, John Hibberd, Director, Conservation Council Australian Capital Territory, 15 May 2010.

60 Cubby, 2010a; Cubby, 2010b.

61 Commonwealth of Australia, 2009b, pp. 29 and 91–92.

62 Marine Parks Act 1997, s 29.

63 Marine Parks Act, s 30.

64 Marine Parks Act, s 32.

65 Marine Parks Act, s 33.

66 This is further discussed in Boer and Gruber, 2010.

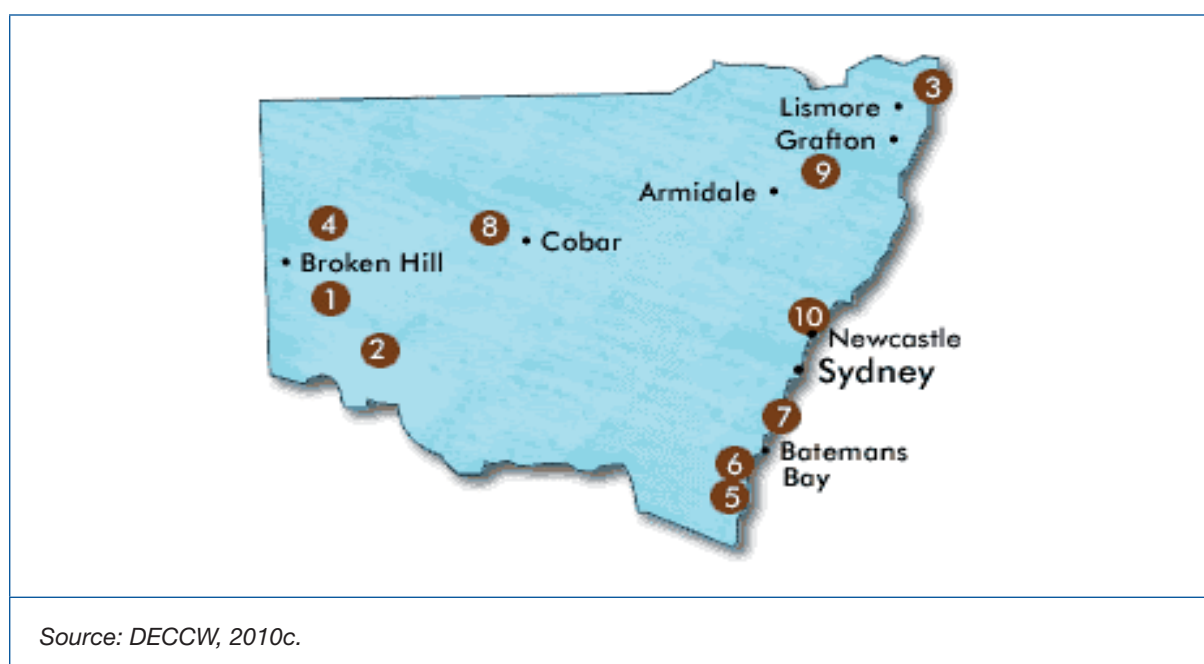
5.3 Aboriginal co-management of protected areas

53 In line with the now more enlightened policies of the federal government and other state and territory governments with respect to Aboriginal and Torres Strait Islander peoples, New South Wales, along with other states and territories, as well as the Commonwealth, has in recent years made fundamental changes with respect to Indigenous communities and their traditional lands, to promote greater participation in decision making and management. In the national parks system, this has manifested itself through processes of co-management. Three types of co-management exist in New South Wales: return of a protected area to its Aboriginal owners with a leaseback arrangement; Indigenous Land Use Agreements with native title holders under the federal Native Title Act 1993;⁶⁷ and memoranda of understanding between the DECCW and Aboriginal communities. The policy is spelled out as follows:

Under an Aboriginal co-management arrangement, the government and local Aboriginal people share responsibility for a park's management. The aim is to ensure that Aboriginal people have the opportunity to participate in planning and decision making for the park, reserve or area, while maintaining access to parks for everyone.

The NPWS [National Parks and Wildlife Service] is working with Aboriginal people across the state to develop a range of co-management and partnership agreements to ensure the continuing practice of traditional and contemporary culture in the management of land. Aboriginal co-management fosters stronger relationships between the NPWS and Aboriginal communities and provides benefits to the parks system, the Aboriginal people and broader community of NSW.⁶⁸

Map 5: Aboriginal co-managed parks in New South Wales



54 These co-management arrangements have involved comprehensive amendments to the NPW Act and the Regulations,⁶⁹ in relation to the leaseback process: title to the land is vested in one or more Local Aboriginal Land Councils and then leased back by the Council to the Minister. The land is then reserved under the Act. The leases recognize that the lands form part of the conservation estate of New South Wales, but are under the care, control and management of a Board of Management with a majority of

67 DECCW 2008b.

68 DECCW, 2010a.

69 See Part 4A NPW Act and NPW Regulation.

Board members being Aboriginal owners.⁷⁰ These arrangements are subject to any native title rights and interests existing in relation to the lands and do not extinguish or impair those rights and interests (71C NPW Act).

There are currently 10 co-managed parks and reserves in New South Wales, each of which is managed under a co-management agreement (see Map 5). The draft plan of management for the Julian Rocks Nature Reserve, as set out in Box 4, provides a recent example of the co-management philosophy.

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Box 4: Excerpt from the Julian Rocks Nature Reserve draft plan of management

4.1 Joint Management by the Bundjalung of Byron Bay (Arakwal) people and the NPWS

“Joint management ensures that our people have a say in the management of the land. Everyone at a meeting sits here at the same level. It’s a two way process.”

Yvonne Stewart, Bundjalung of Byron Bay (Arakwal) Member

An important part of Aboriginal culture is looking after and caring for Country. The Bundjalung of Byron Bay (Arakwal) people are recognized as the descendants of Indigenous people who lived and/or held Native Title over Country that includes the reserve at the time of first contact by European settlers and have a strong cultural association with Country.

The right of Bundjalung of Byron Bay (Arakwal) people to be involved in the management and protection of their Country and heritage is acknowledged. The Bundjalung of Byron Bay (Arakwal) people wish to exercise this responsibility in partnership with the NPWS under joint management arrangements for the reserve.

Management Response

4.1.1 The NPWS will seek formal joint management of the reserve with the Bundjalung of Byron Bay (Arakwal) people through the establishment of a joint management committee which will provide advice on management of the reserve.

Source: DECC, 2009b, p. 5.

6 Requirement for management plans and zoning plans

As indicated above, terrestrial and marine protected areas in New South Wales are managed under different regimes. The NPW Act requires management plans to be prepared for each protected area. The Marine Parks Act and the relevant regulation require zoning plans to be prepared for each marine park.

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6.1 Management plans for terrestrial protected areas

Part 5 of the NPW Act requires the Director General to prepare a plan of management for every declared terrestrial park and reserve.⁷¹ Plans of management include the identification of conservation values, management goals for the particular category, priorities for managing weeds, the control of pests and access for fire control. A range of considerations must be taken into account in the preparation of a management plan. Section 72AA the NPW Act sets out the objects and content of management plans (see Box 5).

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6.1.1 Management principles for terrestrial protected areas

The NPW Act and the Wilderness Act set out detailed management principles for each category of protected area. All protected areas must be managed according to these management principles as well

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⁷⁰ See, for example, Merrimans Local Aboriginal Land Council and Bega Local Aboriginal Land Council Lease to the Minister for the Environment for Biamanga National Park, December 2005 (DECCW, 2005).

⁷¹ NPW Act, s 72.

Box 5: Objects and content of management plans for terrestrial protected areas

According to section 72AA of the NPW Act, the following matters are to be taken into consideration in the preparation of a plan of management for land reserved under the Act:

- relevant management principles;
- conservation of biodiversity;
- protection and appreciation of objects, places and structures of cultural significance, and tracts of land;
- protection of landscape values and scenic features;
- protection of geological and geomorphological features;
- protection of wilderness values and management of wilderness areas;
- maintenance of natural processes;
- rehabilitation of landscapes and reinstatement of natural processes;
- fire management;
- prohibition of works adversely affecting the natural condition or special features of national parks, nature reserves or karst conservation reserves;
- potential for the reserved land to be used by Aboriginal people for cultural purposes;
- provision of opportunities for public understanding, enjoyment and appreciation of natural and cultural heritage values, including opportunities for sustainable visitor use;
- adaptive reuse of buildings and structures;
- appropriate (including culturally appropriate) and ecologically sustainable use of the reserved land, including use by lessees, licensees and occupiers of the land;
- preservation of catchment values;
- encouragement of appropriate research into natural and cultural features and processes, including threatening processes;
- identification and mitigation of threatening processes;
- statutory natural resource management, land use management plans and land management practices of land surrounding or within a region of the reserved land;
- regional, national and international context of the reserved land, maintenance of any national and international significance of the reserved land and compliance with the relevant national and international agreements, including the protection of world heritage values and the management of world heritage properties;
- benefits to local communities;
- social and economic context of the reserve so as to ensure, for example, that the provision of visitor facilities is appropriate to the surrounding area or that pest species management programmes are coordinated across different tenures; and
- protection and management of wild rivers.

as the aims specifying the purpose of each category of protected area, as provided in the NPW Act.⁷² The Director General must address each relevant issue in the preparation of management plans and must invite comments from the public. Management plans are sent to the relevant advisory committees as well as the National Parks and Wildlife Advisory Council for further comments before they are sent to the Minister for approval. Different requirements exist for individual categories of protected area. Management plans also determine what kind of recreational activities or commercial ventures are allowed. If the Director General finds that activities in protected areas affect protected fauna, native plants or their environment, Aboriginal objects and places, or other items of cultural heritage, they can issue a 'stop work order'. The Director General can also issue interim protection orders if of the view that a place is of natural, scientific or cultural significance. Plans of management have been concluded for the majority of national parks, state recreational areas and nature reserves.⁷³

⁷² See NPW Act, ss 30E (national parks), 30F (historic sites), 30G (state conservation areas), (30H regional parks), 30I (karst conservation reserves), 30J (nature reserves) and 30K (Aboriginal areas).

⁷³ For a full list of plans in preparation and in final form, see DECCW, Plans of management, web page.

6.1.2 Management principles in relation to Aboriginal areas

The NPW Act provides for specific management principles to be followed in Aboriginal areas declared under section 62 of the Act. These principles are an important example of the recognition of such areas in relation to their natural or cultural significance to Aboriginal people. The purpose of Aboriginal areas and the relevant management principles are set out in Box 6.

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Box 6: Management principles for Aboriginal areas

30K Aboriginal areas

- (1) The purpose of reserving land as an Aboriginal area is to identify, protect and conserve areas associated with a person, event or historical theme, or containing a building, place, object, feature or landscape:
 - (a) of natural or cultural significance to Aboriginal people, or
 - (b) of importance in improving public understanding of Aboriginal culture and its development and transitions, so as to enable those areas to be managed in accordance with subsection (2).
- (2) An Aboriginal area is to be managed in accordance with the following principles:
 - (a) the conservation of natural values, buildings, places, objects, features and landscapes of cultural value to Aboriginal people in accordance with the cultural values of the Aboriginal people to whose heritage the buildings, places, objects, features or landscapes belong,
 - (b) the conservation of natural or other cultural values,
 - (c) allowing the use of the Aboriginal area by Aboriginal people for cultural purposes,
 - (d) the promotion of public understanding and appreciation of the Aboriginal area's natural and cultural values and significance where appropriate,
 - (e) provision for appropriate research and monitoring, in accordance with the cultural values of the Aboriginal people [...]

6.2 Zoning plans in marine protected areas

Zoning plans, rather than management plans, are used as the framework to deliver effective multiple use management of marine parks under the Marine Parks Act.⁷⁴ The Marine Parks Regulation, promulgated in 2009, provides for the management, protection and conservation of marine parks in New South Wales. It is to be read in conjunction with the Marine Parks (Zoning Plans) Regulation 1999, which includes zoning plans and maps for each of the six marine parks in New South Wales. The zoning plans divide each marine park into sub-zones: sanctuary zones, habitat protection zones, general use zones and special purpose zones. Special purpose zones can include uses such as aquaculture development.⁷⁵

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The Marine Parks Act requires that zoning plans are reviewed after their first five years of operation and then every 10 years thereafter.⁷⁶

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6.3 Managing world heritage areas in New South Wales

Since all natural world heritage properties in New South Wales are contained within the state's national parks, these properties are managed on a day-to-day basis by the National Parks and Wildlife Service. In relation to responsibilities under the World Heritage Convention, the properties are covered by the

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⁷⁴ Marine Parks Act, s 17C.

⁷⁵ See generally Marine Parks (Zoning Plans) Regulation 1999.

⁷⁶ Marine Parks Act, s 17D.

obligations imposed by the federal EPBC Act. Section 72AA(1)(s) of the NPW Act, concerning the objectives and content of management plans, includes:

the regional, national and international context of the reserved land, the maintenance of any national and international significance of the reserved land and compliance with relevant national and international agreements, including the protection of world heritage values and the management of world heritage properties [...]

- 63 The management plan for each property is governed by the Australian World Heritage management principles set out in the federal Environment Protection and Biodiversity Conservation Regulations 2000 (clause 10.01 and Schedule 5). Schedule 5 requires, among other things, that the management plan should promote the integration of Commonwealth, state and local government responsibilities for the property, and that before any action is taken in relation to the property, its likely impact on the world heritage values of the property must be assessed under a statutory environmental impact assessment and approval process.

6.4 Managing Ramsar wetlands New South Wales

- 64 In contrast to world heritage properties, Ramsar wetlands are not specifically mentioned in the NPW Act. Similar considerations nevertheless apply in relation to following the management principles specified for Ramsar wetlands under the EPBC Act and Regulations, in the light of section 72AA(1)(s) of the NPW Act, as noted above.
- 65 A further instrument that applies to all coastal wetlands, including Ramsar wetlands, is the State Environmental Planning Policy No. 14—Coastal Wetlands, made under the Environmental Planning and Assessment Act 1979. The stated aim of this policy is “to ensure that the coastal wetlands are preserved and protected in the environmental and economic interests of the State”.⁷⁷

6.5 Coastal zone management plans

- 66 In addition to requirements for management plans concerning protected areas, the Coastal Protection Act 1979 requires coastal zone management plans to be prepared by local councils, in order to protect and preserve beach environments and beach amenity. While these management plans are not necessarily related to protected areas as such, they clearly have implications for the management of coastal national parks and other protected coastal areas such as wetlands.⁷⁸

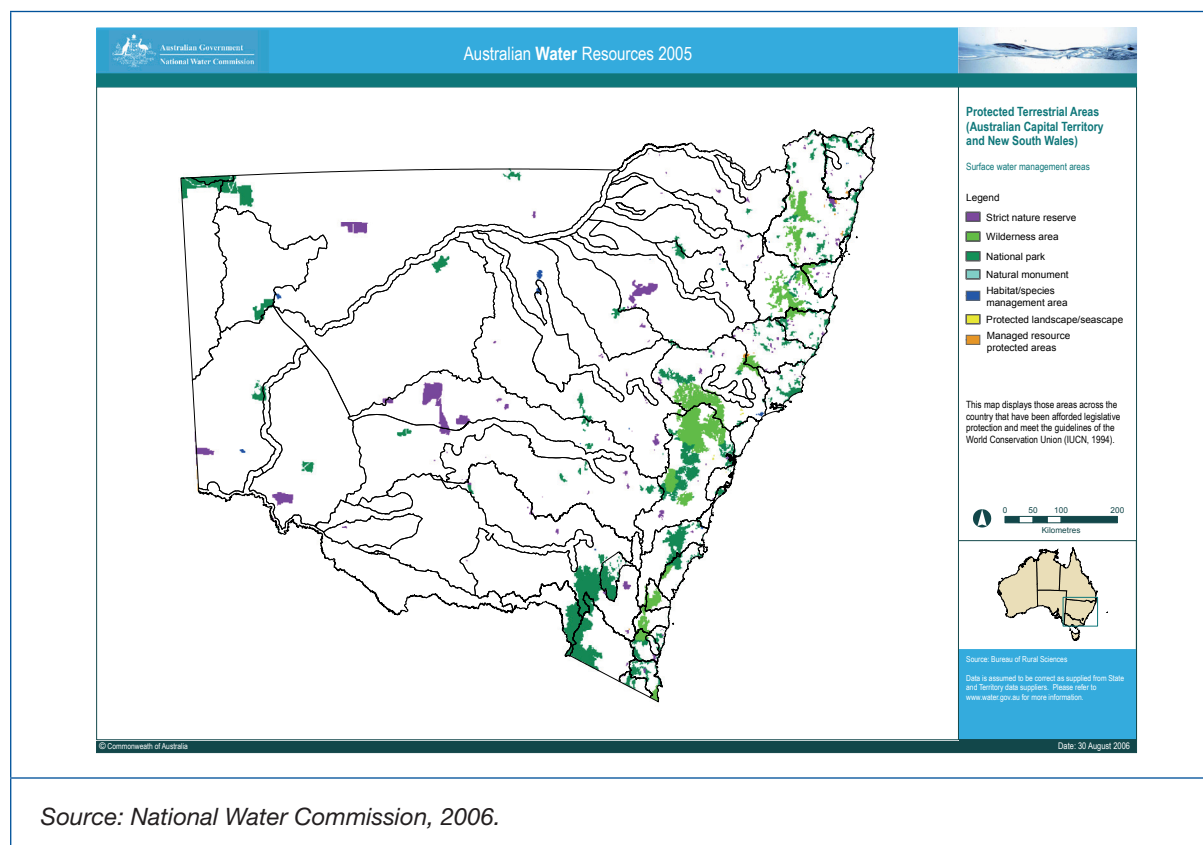
7 Use of IUCN protected area categories in New South Wales

- 67 In contrast to the federal EPBC Act, neither the NPW Act nor the NPW Regulation refers to the IUCN protected area categories. However, New South Wales works closely with the Commonwealth government in managing the National Reserve System, and the IUCN protected areas classification system is utilized in the state under that system.⁷⁹ Map 6 shows the IUCN classifications in New South Wales.

77 State Environmental Planning Policy No. 14—Coastal Wetlands 1993, cl 2.

78 See also DECCW, NSW coastal zone management, web page.

79 See also Commonwealth of Australia, Protected area locations, web page.

Map 6: IUCN categories and terrestrial protected areas in New South Wales

8 Buffer zones

Neither the NPW Act nor the NPW Regulation includes references to buffer zones. Buffer zones are nevertheless used in New South Wales, for example in relation to providing protection for world heritage areas contained within national parks. The DECCW's 2008–09 Annual Report notes that 1,353 hectares was added to New England National Park to buffer the adjacent Gondwana Rainforests of Australia World Heritage Site against fire, and weed and pest invasion.⁸⁰

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9 Connectivity conservation

In New South Wales, conservation initiatives in relation to private and non-reserve public land are seen to perform a significant function in guaranteeing greater connectivity across large areas. This complements the national parks system “by expanding the range of natural values that are protected and provides buffers and corridors to enhance the network of reserves.”⁸¹ Connectivity corridors can range over very large areas, from one state to another. One peculiarly Australian phenomenon, the travelling stock route, colloquially known as the ‘long paddock’, can constitute a series of lengthy connectivity corridors, with over 3 million hectares traversed in New South Wales and Queensland, largely on Crown land.⁸²

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80 DECC, 2009a, p. 75. Note also that a workshop was held at the Australian National University on World Heritage and Buffer Zones in August 2009, on the basis of the report of an International Expert Meeting on World Heritage and Buffer Zones (UNESCO, 2009).

81 DECCW, 2009d, p. 250 (Table 7.6).

82 Wilderness Society, 2009; see also DECCW, 2009d, chapter 7.

- 70 Connectivity corridors are not mentioned in the NPW Act or the NPW Regulation. However, there has been a good deal of work done in New South Wales on connectivity issues in recent years. For example, the New South Wales National Parks Association, a non-government organization, has conducted a project on Key Habitats and Corridors in north-east New South Wales, which provides for the systematic consideration of forest fauna as a conservation focus across the landscape by adopting both species and ecological processes as planning tools (see Box 7).⁸³

Box 7: The Key Habitats and Corridors project

The Key Habitats and Corridors project in north-east New South Wales is described as follows:

Initially, the distributions of key species for conservation are individually modelled across the landscape. The individual models for up to 100 species are then integrated into assemblages of species with similar distributions with the aid of innovative Geographic Information System (GIS) analysis tools. From the assemblages, regional key habitats for forest fauna are identified as landscape focus areas for habitat protection and as potential protected area cores and buffers. Linkage pathways are then identified and refined to map regional and sub-regional corridors that link the key habitats. These corridors also act as focus areas for habitat protection, enhancement and restoration. Finally, key habitats and corridors are consolidated as a regional landscape conservation framework. The mapped outputs provide the only spatially complete, data-driven and systematically derived conservation planning framework currently available for the region.

Source: Love, 2006.

- 71 Also, as described in the Australian federal case study,⁸⁴ a corridor is being established for the Australian Great Eastern Escarpment, between Cairns, in the state of Queensland, and the state of Victoria, spanning some 2,800 km,⁸⁵ known as the Australian Alps to Atherton (A2A) connectivity conservation corridor. In 2007, the New South Wales government published a comprehensive business plan for the New South Wales section of the corridor. The plan sets out activities and investments “that will conserve and connect the NSW section of this continental-scale ‘lifeline’”. It is proposed that each eastern State and the Australian Capital Territory will implement programs to connect the conservation corridor along its full length.”⁸⁶ Seven million dollars was provided by the New South Wales Environmental Trust⁸⁷ for the initiative.

10 Controlling activities within protected areas

- 72 The NPW Act includes a range of provisions concerning activities that are prohibited or permitted within protected areas. Mining is unlawful in national parks, historic sites, state conservation areas, regional parks, nature reserves, karst conservation areas and Aboriginal areas unless the Minister for the Environment, Climate Change and Water gives approval, but the approval can be disallowed by the New South Wales Parliament.⁸⁸ In relation to forestry activities, the NPW Act stipulates that the Forestry Act 1916 does not apply within any of these areas but licences or permits to conduct forestry activities with respect to land that has been transferred from state forests to national parks continue

83 See interactive map at National Parks and Wildlife Service, Key Habitats and Corridors in North East NSW, web page; see also Department of Environment and Conservation, 2005, p. 34 (Case study 2: Key habitats and corridors—landscape links for parks and other areas of high conservation value in north-east New South Wales).

84 Boer and Gruber, 2010.

85 See Pulsford et al., 2004; see also Pulsford et al., 2010, pp. 96–105.

86 DECC, 2007, p. 2; see also Great Eastern Ranges Initiative vision (DECCW, 2009b).

87 Established by the Environmental Trust Act 1998.

88 NPW Act ss 41, 47J, 47ZA, 54, 58O and 62.

in force until their expiration unless cancelled under the Forestry Act.⁸⁹ Development activities within national parks are otherwise generally governed by the provisions concerning development control under the Environmental Planning and Assessment Act. An example of the control of an activity in a wilderness area is set out in Box 8.

Box 8: Filming in a declared wilderness area

The decision to allow filming in Blue Mountains National Park, a wilderness area declared under section 8(1A) of the Wilderness Act, was challenged in the Land and Environment Court of New South Wales. In *Blue Mountains Conservation Society Inc v Director-General of National Parks and Wildlife & (2) Ors* [2004] NSWLEC 196 (29 April 2004), the Court considered the objects of the NPW Act, the purpose of reserving land as a national park under section 30E(1), and the management principles applicable under section 30E(2). Referring to the NPW Act provisions concerning sustainable visitor use and enjoyment, the Court stated:

The reference in s 30E(2)(e) to provision for sustainable visitor use and enjoyment is in turn a reference to s 5(5) of the NP&W Act which states: “*In this Act, a reference to sustainable visitor use and enjoyment includes a reference to appropriate public recreation*”. I observe at this stage that I do not think that the production of a commercial feature film is appropriate public recreation in the context of the objects of the Act or in the context of the purpose of reserving land as a national park. Such an activity has nothing to do with those objects or that purpose.

The Court further referred to the fact that the area had been declared a wilderness area under the Wilderness Act. Section 9 reads:

A wilderness area shall be managed so as:

- (a) to restore (if applicable) and to protect the unmodified state of the area and its plant and animal communities;
- (b) to preserve the capacity of the area to evolve in the absence of significant human interference, and
- (c) to permit opportunities for solitude and appropriate self-reliant recreation.

The Court then stated: “It is immediately self-evident that the proposed activity in the present case does not satisfy any of the paragraphs of s 9.” And further:

In my opinion the governing consideration in the present case is this: declared wilderness areas are sacrosanct. The applicant has a right under s 27 of the Wilderness Act and under s 176A of the NP&W Act to claim the relief it seeks and the relief it seeks will be granted.

The New South Wales government had at the time wanted to give consent to the filming activity. As a result of the *Blue Mountains* case, the Filming Approval Act 2004 was enacted and the NPW Regulation was amended with respect to the approval of filming activity (cl 3(2)):

For the purposes of this Regulation, a filming approval granted under the Filming Approval Act 2004 to carry out a filming activity within the meaning of that Act on land reserved or dedicated under the Act is taken to constitute consent to the carrying out of that activity on the land by the park authority for the land in accordance with the conditions of the approval.

11 Environmental impact assessment and protected areas

Environmental impact assessment is an inherent part of the decision-making process for proposed development activities in protected areas.⁹⁰ The Environmental Planning and Assessment Act and the Environmental Planning and Assessment Regulation 2000 contain comprehensive provisions related to the conduct of environmental impact assessments and the production of an environmental impact statement.

Environmental impact assessment concerning land other than private land is generally covered under the environmental assessment provisions in Part 5 of the Environmental Planning and Assessment Act.

⁸⁹ NPW Act ss 42, 47J, 47ZA, 55, and 58P.

⁹⁰ See generally, Lyster et al., 2009, chapter 5 (Environmental assessment in New South Wales).

- 75 In addition to these processes, the Threatened Species Conservation Act is also relevant in relation to the protection of specified species, communities, populations and key threatening processes, whether they exist within protected areas or outside them. Schedules to the Act indicate which of the threatened species or ecological communities are also threatened nationally and listed under the federal EPBC Act. The Threatened Species Conservation Act includes detailed criteria for the listing of threatened species, endangered populations and ecological communities, as well as for listing key threatening processes. The Act sets out requirements for recovery plans and threat abatement plans to address threatened species, endangered populations and threatened ecological communities. The Native Vegetation Act must also be taken into account concerning habitat loss of threatened species, when land clearing is involved.
- 76 In the case of protected areas that are also covered under the EPBC Act at the federal level, environmental impact assessment is carried out under the auspices of a bilateral agreement in place between the federal government and the state government.⁹¹ Actions proposed to be taken in relation to the property can be assessed under the New South Wales legislation. The bilateral agreement recognizes that in New South Wales most proposed developments considered to be “controlled actions” in relation to matters of national environmental significance under the EPBC Act will be assessed and approved under the Environmental Planning and Assessment Act. It further recognizes that under the Environmental Planning and Assessment Act all consent authorities must consider the impact of the development on the environment, including the impact on:
- world heritage values of a world heritage property in New South Wales;
 - National Heritage values of a National Heritage place in New South Wales;
 - ecological character of a Ramsar wetland property in New South Wales;
 - threatened species, populations or ecological communities and their habitats listed under the Threatened Species Conservation Act; and
 - listed migratory species.⁹²

12 Enforcement

- 77 The NPW Act contains broad criminal and civil enforcement provisions, with a wide range of offences. These include offences concerning the harming of animals or the discharge of firearms in national parks,⁹³ and the possession of firearms or other weapons in most categories of reserves. Exceptions exist in relation to Aboriginal owners who, with the consent of Aboriginal board members relating to the park, wish to harm animals for domestic, ceremonial or cultural purposes, unless the animal in question is a threatened species or is otherwise protected under a plan of management.⁹⁴ In relation to flora, it is an offence to fell, cut, destroy, injure, pick, remove or set fire to any tree, timber, plant, flower or vegetation in a nature reserve, karst conservation reserve, wildlife refuge, wildlife management area, conservation area and certain wilderness areas.⁹⁵

91 Agreement between the Commonwealth of Australia and the State of New South Wales under Section 45 of the Commonwealth Environment Protection and Biodiversity Conservation Act 1999 relating to Environmental Impact Assessment (1997). This process was initiated in 1992 under the Intergovernmental Agreement on the Environment (1992).

92 Agreement between the Commonwealth of Australia and the State of New South Wales, Schedule 1, Part A.

93 NPW Act, s 45(1).

94 NPW Act, s 45(6).

95 NPW Act, s 71.

The Act also allows for civil enforcement. In line with other environmental legislation in New South Wales, the government or any person may bring proceedings in the Land and Environment Court for an order to remedy or restrain a breach of the Act, whether or not any right of that person has been or may be infringed by or as a consequence of the breach.⁹⁶ Provision is also made for the enforcement of conservation agreements. Damages may be claimed if the breach of the agreement arose from an intentional or reckless act or omission by the owner or a previous owner of the land.⁹⁷

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In addition to these provisions, the Director General may issue stop work orders for the protection of flora and fauna, Aboriginal objects or Aboriginal places, or any items of cultural heritage on land that is reserved under the Act.⁹⁸ A stop work order can override any inconsistent approval, notice or order.⁹⁹

79

13 Penalties

The NPW Act contains a range of provisions concerning penalties. It provides that offences are committed by a person who is forbidden to do something, or who fails or neglects to do something as specified under the Act.¹⁰⁰ Penalties are imposed by way of penalty units.¹⁰¹

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14 Finance

Allocations from the New South Wales government budget are the primary revenue source for the establishment and management of protected areas in the state. However, entrance and camping fees are a significant additional source of revenue. For example, the Organisation for Economic Co-operation and Development report found that a sum of 17.2 million Australian dollars was raised by these means, which amounted to nearly 6 per cent of annual park expenditure by the National Parks and Wildlife Service.¹⁰²

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The NPW Act provides for charges and fees relating to any service, product or commodity; the grant of a licence to carry on a trade, business or occupation; the giving of any permission, consent or approval, or issuing any licence, registration certificate or permit; or furnishing any information under the NPW Act, Wilderness Act or Threatened Species Conservation Act, or any relevant regulations.¹⁰³

82

15 Conclusion

Over the last two decades, the New South Wales government has made great strides in expanding the national parks estate, establishing new reserve categories and putting into place a comprehensive Marine Parks Authority. Future directions are set out in the New South Wales State of the Environment 2009 report (see Box 9).

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⁹⁶ NPW Act, s 176A.

⁹⁷ NPW Act, s 69G.

⁹⁸ NPW Act, s 91AA.

⁹⁹ NPW Act, s 91FF.

¹⁰⁰ NPW Act, s 175.

¹⁰¹ Penalty units are set at a specific level in the Act. They represent dollar amounts that can be conveniently varied from time to time through an amendment to the Regulation.

¹⁰² See Organisation for Economic Co-operation and Development, 2007, p. 83.

¹⁰³ NPW Act, s 143.

Box 9: Future directions

An excerpt from the New South Wales State of the Environment 2009 report:

The ongoing commitment to building a representative terrestrial reserve system in NSW and establishing a representative system of marine protected areas should be maintained.

The building of a fully representative terrestrial reserve system that meets CAR [comprehensive, adequate and representative] objectives is a long-term goal that may take several decades to achieve. The NSW National Parks Establishment Plan 2008 [...] recognises this and provides directions for development over the next 10 years.

The main priorities for further development of the terrestrial reserve system are under-represented ecosystems and habitats, rivers and wetlands in western NSW, critical landscape corridors, lands within important water catchments and culturally significant places.

Conservation on private and other public land will play an increasingly important role in supplementing the public reserve system by expanding the range and extent of the natural values that are protected. Measures that encourage further conservation on private land should be supported and new initiatives that facilitate conservation should continue to be explored and refined.

A range of mechanisms that provide habitat protection and improve the state of native vegetation have been developed, including PVPs [property vegetation plans] and BioBanking. Land management practices that maintain or enhance habitat values on private land and improve connectivity across landscapes should be encouraged and actively promoted.

The growing influence of climate change will require greater flexibility and an adjustment to the objectives of park management in future, from managing to prevent ecological change at present to managing adaptive change in ecosystems to minimise the loss of biodiversity and natural values.

A comprehensive and well-structured network of reserves, supplemented by strategically located and focused conservation measures on private land, will provide the most effective protection to mitigate [...] the effects of climate change.

Efforts to promote greater use and increased public awareness and appreciation of parks, reserves and protected areas will play an important role in maintaining support for reservation.

Improved coordination and integration of management of the coastal reserves in the terrestrial reserve system and marine protected areas is desirable to optimise outcomes across all marine and coastal ecosystems.

Zoning plans provide for multiple use management of all marine parks and enable a range of sustainable uses to occur in conjunction with the objectives of biodiversity conservation. The management of the marine protected area system is undergoing continuous improvement, and it is anticipated that zoning plan reviews will commence for Lord Howe Island Marine Park late in 2009 and Cape Byron Marine Park in 2011.

Source: DECCW, 2009d, p. 261.

- 84 Whilst major improvements have been made in the legislative and policy framework in recent decades, the legislation concerning protected areas in the state is fragmented and requires consolidation and revision. Having four major pieces of legislation relating to various aspects of protected areas and the conservation of flora and fauna—namely, the NPW Act, Threatened Species Conservation Act, Wilderness Act and Marine Parks Act, and several more minor pieces of legislation—is unnecessarily complex and confusing for administrators, managers and the public alike. Reforms should also include greater integration with the national framework of protected areas, as reflected in the National Reserve System, of which New South Wales is an integral part. It would be highly desirable for the New South Wales legislation to reflect more closely the concerns related to international obligations and national mechanisms for protected areas under the federal EPBC Act. The increasingly important issue of connectivity conservation must also be given greater legal attention.

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International conventions

Convention Concerning the Protection of the World Cultural and Natural Heritage 1972

[TRE-155235](#)

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[TRE-000531](#)