

Submission Guide: Simplifying Land Management

A guide for making submissions on the NSW biodiversity reforms

The land management and conservation reforms reflect the importance of effective land management to improve biodiversity conservation while supporting sustainable development.

The reforms adopt a balanced approach to minimising biodiversity loss and conserving habitats and at the same time reducing administrative burdens and improving social and economic outcomes.

The new land management framework under the Local Land Services Act proposes a number of options for landholders in NSW who manage land containing native vegetation. A key objective of the reforms is to cut red tape to allow farmers to undertake legitimate land clearing and management activities that improve agricultural productivity.

This document provides information for stakeholders about the proposed new land management framework and includes a number of consultation questions which stakeholders may use as a guide when considering their submissions.

This submissions guide provides information for landholders about the proposed new land management framework, including requirements for native vegetation clearing.

More Information

Other submission guides are available for stakeholders who are interested in making submissions on the Native Vegetation Regulatory Map, the new approach to delivering ecologically sustainable development in NSW, the initiatives to support private land conservation and the new approaches to listing threatened species and regulating native wildlife.

The draft Biodiversity Conservation Bill and draft Local Land Services Amendment Bill are also available in full for public exhibition.

Visit <http://landmanagement.nsw.gov.au>

Have your say on the proposed changes

You can share your comments on the proposed changes by making a submission online at <http://landmanagement.nsw.gov.au/haveyoursay>.

You can also send your submission to:

Biodiversity Reforms - Have Your Say
PO Box A290
Sydney South
NSW 1232

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1. Simplifying Land Management

The NSW Government is transforming the way biodiversity is managed across the state, to deliver demonstrated production and conservation outcomes.

It adopts a long-term approach to the management of native vegetation and its associated biodiversity values by putting more trust in farmers where the risk of impacting biodiversity is low, establishing Land Management Codes of Practice for low and moderate impact clearing and an approval process for activities with a higher risk of biodiversity impacts.

The new legislation, together with a range of supporting tools, will take advantage of the best available science and data about biodiversity to facilitate sustainable land management practices.

2. Land Categories: exempt, regulated, excluded

The new Native Vegetation Regulatory Map (NV Map) will underpin the new land management framework under the *Local Land Services Act 2013* (LLS Act). It will identify land where landholders are exempt from the new land management framework and where they will need to comply with the framework. For the purposes of clearing native vegetation, land is identified on the map as exempt (blue), regulated (yellow) or excluded (grey) (see below Table 1).

Table 1. Native Vegetation Regulatory Map categories

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.

3. The new Local Land Services Land Management Framework

The proposed new framework will provide landholders with a range of native vegetation land management options for Category 2 land (regulated land) through:

1. **Defined Allowable Activities**

The new allowable activities are simpler and more flexible. They set out the clearing activities that may be carried out for the purposes of routine land management and management of infrastructure that will not require a formal approval or notification to Local Land Services (LLS).

2. **Land Management Codes**

The codes made under the LLS Act will set clear requirements for managing clearing impacts on the environment. This includes landholders setting aside other parts of their property that contain these communities for active management. The new codes of practice will facilitate much greater flexibility in farm management.

3. **Local Land Services Approval**

Any clearing that cannot be undertaken as an allowable activity or under a code will require approval under the LLS Act.

Allowable Activities

In the proposed amendments to the LLS Act, vegetation clearing for the purposes of routine land management and management of infrastructure will be defined in a list of Allowable Activities – replacing the Routine Agricultural Management Activities (RAMAs) that were prescribed under the *Native Vegetation Act 2003*.

While many of the existing RAMAs have been maintained, there are differences between the RAMAs and the new Allowable Activities and landholders should consult the list of allowable activities to familiarise themselves with the new provisions. There may be exceptions to some allowable activities.

The land management and conservation reforms enable landholders to manage native vegetation through a range of Allowable Activities that will not require a formal approval or notification to LLS.

Landholders will be able to undertake allowable activities to establish and maintain linear and fixed point infrastructure. For example, landholders will be able to:

- clear up to a maximum width of 40 metres vegetation for linear infrastructure such as roads and fences, and
- clear up to 40 metres of vegetation around fixed point infrastructure such as a shed or dam.
- In coastal areas there is a 15 metre maximum and for small holdings there is a 12 metre maximum.

All clearing should be undertaken to the minimum extent necessary and infrastructure should be co-located where possible.

Land Management Codes of Practice

Four types of land management codes are currently proposed to manage the clearing of native vegetation. The codes allow for landholders to undertake low and moderate impact clearing of vegetation to improve the efficiency of their business, to be administered by LLS. There are likely to be more codes prepared under the LLS Act for grassland management. Proposed codes can be viewed at <http://landmanagement.nsw.gov.au>.

1. **Management codes**

Codes for thinning vegetation, managing invasive native species (INS), harvesting vegetation for stock fodder and controlling lignum in an irrigation district.

2. **Efficiency codes**

Codes which support more efficient grazing, cropping and farm systems. Landholders can clear vegetation that impedes productivity of the existing farm.

3. **Equity code**

Properties with a higher proportion of remnant native vegetation are afforded greater flexibility. Clearing using this code is balanced by the creation of permanent set aside areas elsewhere on the property.

4. **Farm planning code**

Allows a landholder to clear the regulated vegetation on their property in exchange for establishing permanent set aside areas to undertake strategic revegetation that maximises biodiversity

Notification and certification requirements

Each Land Management Code states the requirements for either the notification to LLS or certification by LLS of the intended clearing, depending on the level of risk of the clearing and if areas of land are required to be set aside.

Landholders must notify LLS of their intention to undertake clearing prior to any clearing being undertaken. For lower-risk clearing, LLS need only be formally notified by the landholder of their intention to undertake the clearing activity.

Higher-risk clearing requires certification by LLS before the clearing is carried out. If the proposed clearing is compliant with a Code, LLS will issue a code compliant certificate.

Set-aside areas

In certain situations the codes allow for the clearing of native vegetation in return for actively managing another area of land in an equivalent or larger area that has been set aside - 'set aside areas'. In this situation the clearing of land can only be undertaken if other areas of land in an equivalent or larger area are set aside and actively managed in perpetuity.

Where areas are required to be set aside – certification by LLS is mandatory to ensure it is consistent with the code and to enable the set aside areas to be identified and protected in perpetuity.

Set aside areas will be attached to title and will stay with the land. The set aside areas are dedicated to conservation, actively managed in perpetuity to promote biodiversity outcomes.

The areas enable landholders to increase their productivity in exchange for demonstrating environmental credentials.

Where set asides are required by a code, the code will specify the requirements for set aside areas under the terms of a mandatory code compliant certificate including:

The size and characteristics of the area to be set aside

Any revegetation or other actions required or prohibited in the set area

Land management activities as required by the code

The baseline set aside area ratios are:

1 ha of native vegetation cleared: 1 ha remnant vegetation requiring intensive management (1:1)

1 ha native vegetation cleared: 2 ha of native vegetation requiring moderate management (1:2)

rehabilitation/revegetation (1:3)

In accordance with the codes these ratios have a 50% loading applied in relation to Endangered Ecological Communities.

Local Land Services Approval

For proposals that cannot be accommodated by the allowable activities and codes there will also be an approval process under the amended LLS Act to enable landholders to offset the biodiversity impacts of developing their land for agriculture.

The landholder will need to engage a person accredited in applying the Biodiversity Assessment Methodology (BAM) to determine the number of biodiversity credits required to offset the proposed clearing. The results of the BAM will be set out in a Biodiversity Development Assessment Report (BDAR), which landholders will submit to LLS to assess the application within a triple-bottom-line context. If the LLS approves the clearing they will set the offset obligation calculated using the BAM. The LLS will have discretion to set a lower offset obligation if justified by the social or economic benefits of clearing. The NSW Government will track the use of discretion by LLS to ensure delivery of its commitment to an enhanced overall environmental outcome at the bio-regional scale.

The landholder can choose to make a payment into the Biodiversity Conservation Fund to satisfy their offset obligation. The amount they must pay will be determined by the offsets payment calculator. When a payment is made into the Fund, the Biodiversity Conservation Trust (the Trust) will become responsible for retiring the required offsets. The landholder also has the option to source offsets themselves or use a third party broker.

Consultation Questions

- Do the proposed changes to land management reflect the key Panel recommendations to support landholders and promote best practice for biodiversity and agricultural land management practices?
- Does the proposed new land management framework ensure that, where agricultural land management activities can have environmental impacts, that the impacts are managed appropriately?
- Are the baseline set-aside ratios appropriate, and what should the obligations be for different levels of management?
- Are the ratios in the equity and farm planning codes appropriate to ensure, where agricultural land management activities can have environmental impacts, that the impacts are managed appropriately?
- Should the set-aside loading for clearing of endangered ecological communities also apply to vulnerable ecological communities?
- Does the proposed new land management framework appropriately capture matters under the current Environmental Outcomes Assessment Methodology?
- Clearing under the codes is not permitted in RAMSAR wetlands, littoral rainforest, core koala habitat, Areas of Outstanding Biodiversity Value and sites managed under the Saving Our Species program. Should similar exclusions apply with respect to mangroves, saltmarshes, riparian zones adjacent to water bodies, land up to the highest banks of streams, lagoons and wetlands, Aboriginal places and culturally modified trees, and national, state and local heritage items?

Have Your Say at <http://landmanagement.nsw.gov.au/haveyoursay>

4. Native vegetation clearing in urban and other areas

Urban areas are not covered by the NV Map.

In these areas, clearing associated with development that is permitted without consent, such as extensive agriculture, will be regulated by a new State Environmental Planning Policy and Development Control Plan. These arrangements will replace the current Tree Preservation Orders.

Clearing associated with development that is permitted with consent, such as new housing or mining, will be regulated as part of that development application under provisions of the EP&A Act.

Excluded land on the Native Vegetation Regulatory Map

The Department of Planning and Environment will develop a State Environmental Planning Policy (SEPP) for land where the Native Vegetation Regulatory Map does not apply. This land will include all Sydney local government areas, the Newcastle local government area

and land across the state in urban zones^[1], E2, E3 and E4 zones (E zones)^[2] and R5^[3] zones under Local Environmental Plans.

The proposed SEPP will be the subject of separate public consultation.

It is expected that the SEPP will set out categories of:

1. clearing of native vegetation that does not require approval.
2. clearing of native vegetation that may be carried out with a permit. On certain land (generally within R5 and E zones) a permit may require on-site biodiversity impact mitigation strategies (e.g. carrying out of management actions).
3. clearing of native vegetation that may only be carried out following a Biodiversity Assessment Method assessment and approval under the LLS Act.

Appropriate native vegetation controls will be developed for E zones and R5 zones to recognise the specific issues arising in these zones having regard to biodiversity risk, permissible land uses and zone objectives.

Exceptions in the SEPP will be made for clearing associated with asset protection zones required under bushfire regulations, complying development and Part 5 activities.

Consistent with the current settings, councils will nominate additional clearing controls for their local government area in relation to exotic species and amenity trees (unless these are regulated under other legislation such as the Noxious Weeds Act or Roads Act).

Who will make the decision?

Clearing below the BAM threshold

The proposed SEPP will identify who can issue a permit required for clearing of native vegetation below the BAM threshold.

In the urban areas of the state^[4], and for urban zoned land in rural areas of the state^[5], it is proposed that councils will issue permits for clearing. This is consistent with the current approach.

For E zones and R5 zones the following options are being considered:

- A) LLS to issue permits under the SEPP. This will have the advantage of a single body being responsible in rural areas for the management of all native vegetation clearing regulated by the SEPP; or
- B) Councils to issue permits under the SEPP. This will mean the same decision maker is responsible for permits for all native vegetation clearing regulated by the SEPP on land that is not covered by the NV map.

We are seeking input from all stakeholders, including councils and landholders, on these options.

Clearing above the BAM threshold

For native vegetation clearing that cannot be carried out with a permit, or without approval, the Minister for Primary Industries will be responsible under the LLS Act for approving clearing that exceeds the BAM assessment threshold, and for determining offset requirements.

The BAM assessment thresholds will be the same as those for development that requires consent (as specified in the regulation made under the Biodiversity Conservation Act).

The proposed SEPP will identify who can issue a permit required for clearing of native vegetation below the BAM threshold.

Consultation Question

- Should the LLS or the local council be responsible for issuing permits for E zones and R5 zones in rural areas of the state?

Have Your Say at <http://landmanagement.nsw.gov.au/haveyoursay>

Which council areas are urban areas of the state?

The NV Map under the LLS Act applies to rural areas of the state. At present this is defined by excluding listed local government areas, and land in specified urban zones – as well as other excluded land such as national parks.

It is proposed that rural zoned land in Wollondilly and Blue Mountains LGAs (councils on the western boundary of the Greater Sydney area) will be included on the NV map. This reflects the current arrangements for managing clearing of native vegetation on this land.

Hawkesbury Council local government area is not subject to Native Vegetation Act controls, and this position is reflected in the new arrangements, as currently drafted. We are seeking input from stakeholders on whether this position should be retained, or if rural zoned land in the Hawkesbury Council LGA should be included on the NVR Map under the LLS Act.

Consultation Question

- Should rural zoned land in the Hawkesbury Council local government area be included on the Native Vegetation Regulatory Map?

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Process to develop the SEPP

Development of the SEPP by the biodiversity reform agencies will be guided by a policy approach which aligns with the recommendations arising from the E Zone review, the recommendations from the Independent Biodiversity Legislation Review Panel and feedback from other stakeholders, in particular councils and LLS.

5. Private native forestry

The implementation of the Independent Biodiversity Legislation Panel Report's Recommendation 7, regarding private native forestry, is being dealt with through a separate process. The existing PNF Code of Practice will remain in place until government has reviewed regulatory arrangements for timber harvesting on private land as part of a separate process, as recommended by the Independent Panel. Key stakeholders will be consulted as part of this separate review process.

References

1. Urban zoned land includes General and Low to High Density Residential zones (but not R5 – Large Lot Residential), zones RU5 - Village, SP2 – Infrastructure and W3 – Working Waterways, Industrial zones, Business and commercial zones and Recreation zones under the Standard Instrument LEP.
2. Zone E2 – Environmental Conservation; zone E3 – Environmental Management; and zone E4 – Environmental Living
3. Large Lot Residential zone
4. Includes Sydney LGAs and Newcastle LGA
5. Urban zoned land outside of the Sydney LGAs and Newcastle LGA