

Statutory Review of the native vegetation provisions (Part 5A and Schedule 5A and Schedule 5B) of the Local Land Services Act 2013

Discussion Paper

November 2022



Published by Local Land Services

Title: Discussion Paper – Statutory Review of the native vegetation provisions (Part 5A and Schedule 5A and Schedule 5B) of the Local Land Services Act 2013

First published November 2022

More information

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Disclaimer: The information contained in this publication is based on knowledge and understanding at the time of writing November 2022. However, because of advances in knowledge, users are reminded of the need to ensure that information upon which they rely is up to date and to check currency of the information with the appropriate officer of Local Land Services or the user's independent adviser.

Preamble

Disclaimer

This publication avoids the use of legal language, with information about the law summarised or expressed in general statements. The information in this document should not be relied upon as a substitute for professional legal advice.

For access to legislation in force in NSW go to the official NSW Government website for online publication of legislation at www.legislation.nsw.gov.au

Please note that issues and questions to consider in this Discussion Paper are not exhaustive and do not necessarily represent Government policy.

Key Terms

Term	Definition
The Act	Local Land Services Act 2013
Statutory review	Statutory review of Part 5A and Schedule 5A and Schedule 5B of the Local Land Services Act
Part 5A	Land management laws under Part 5A of the Local Land Services Act (Local Land Services Act) which commenced in August 2017.
The Code	Land Management (Native Vegetation) Code 2018 .
The Government	NSW Government.
Schedule 5A	Sets out the provisions relating to allowable activities landholders can carry out without needing to notify or seek approval from Local Land Services, or approval from the Native Vegetation Panel.
Schedule 5B	Sets out provisions relating to members of the Native Vegetation Panel and procedures of the Panel.

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Purpose

The Minister for Agriculture is required to carry out a five-year statutory review of the native vegetation provisions contained in Part 5A and Schedule 5A and Schedule 5B of the *Local Land Services Act 2013*. Local Land Services is supporting the Minister to carry out the review, with the assistance of an independent expert advisory panel.

This Discussion Paper aims to:

- provide context for the five-year statutory review of Part 5A and Schedule 5A and Schedule 5B of the Local Land Services Act. This includes outlining:
 - the history of the broader reforms of which Part 5A and Schedules 5A and 5B form a part,
 - the specific provisions in the Local Land Services Act and their objectives, and
 - the key stakeholders to whom Part 5A and Schedules 5A and 5B apply.
- pose key questions relating to each of the relevant Divisions in the Local Land Services Act, to seek stakeholder input and inform the statutory review process,
- outline how stakeholders can be involved in the statutory review process, including how stakeholders can have their say and how this information will be used, and
- set out the timing of the main steps in the statutory review process.

The statutory review is an important opportunity to identify aspects of Part 5A and Schedule 5A and 5B that are working well, any issues, and whether any changes are needed to improve land management outcomes for landholders, the community and the environment. The statutory review helps to implement the principles of continuous regulatory improvement.

The process for the five-year statutory review

The process for carrying out the statutory review of Part 5A and Schedule 5A and Schedule 5B of the Local Land Services Act is set out in Figure 1.

Figure 1 The process for carrying out the statutory review of Part 5A and Schedule 5A and Schedule 5B of the Local Land Services Act.

September 2022

- The terms of reference for the statutory review are released on the Local Land Services website.
- Independent Expert Advisory Panel appointed.

November - December 2022

- The Discussion Paper is released for a five week public consultation. Local Land Services engages with key environment groups, farming groups, industry groups and local government.

November 2022 - April 2023

- Evidence collection to inform review

December 2022-February 2023

- Review of public submissions on the Discussion Paper.

June 2023

- Minister considers draft review report

July 2023

- Finalisation of review report

August 2023

- The Minister tables the final review report, including findings and recommendations in NSW Parliament.

The scope of the five-year statutory review

Under Section 212 of the Local Land Services Act the Minister is to review Part 5A and Schedule 5A and Schedule 5B and determine:

- if the policy objectives of these provisions remain valid, and
- whether the provisions themselves remain appropriate for securing the objectives of this part of the Act.

The objective of Part 5A and Schedule 5A and Schedule 5B in the Local Land Services Act is ‘to ensure the proper management of natural resources in the social, economic and environmental interests of the State, consistently with the principles of ecologically sustainable development.’¹

The statutory review will consider whether Part 5A and Schedule 5A and Schedule 5B are still relevant for achieving the social, economic and environmental interests of the State.

The five-year statutory review will also consider how well Part 5A and Schedule 5A and Schedule 5B of the Local Land Services Act are working and if any areas need to be improved.

The statutory review is not a comprehensive review of the *Land Management (Native Vegetation) Code 2018* (the Code), the *Local Land Services Regulation 2014* or the other components of the Land Management and Biodiversity Conservation reforms per se. However, the review can make recommendations on changes to the Code and Local Land Services Regulation if it finds they are needed to meet the objective of this part of the Act.

For more information on the scope of the statutory review of Part 5A and Schedule 5A and Schedule 5B of the Local Land Services Act, go to the [Terms of Reference](#), which are also set out in Appendix 1.

The statutory review of the Local Land Services Act is being carried out in conjunction with the statutory review of the *Biodiversity Conservation Act 2016* by the Minister for Environment and Heritage. The review of the Biodiversity Conservation Act will determine whether the policy objectives remain valid and whether the terms remain appropriate for securing those objectives. For more information on the Biodiversity Conservation Act Statutory Review visit the Department of Planning and Environment [website](#).

How to make a submission on this Discussion Paper – Have your say

You are invited to make a submission based on the questions in this Discussion Paper. Submissions to this Discussion Paper will inform the five-year statutory review of Part 5A and Schedule 5A and Schedule 5B in the Local Land Services Act. For your submission to be considered it must contain your name and contact details (e.g.: email, phone number and address).

The deadline for submissions is 19 December 2022.

There are multiple ways to make a submission:

Online

Visit the Have Your Say platform.

Email

Email your submission to policy@lls.nsw.gov.au

¹ Section 3(e), Local Land Services Act. The principles of ecologically sustainable development are described in section 6(2) of the [Protection of the Environment Administration Act 1991](#).

Mail

To make a postal submission, post your submission to:

Part 5A LLS Act Statutory Review

Policy Division

Local Land Services, 117 Bull Street, Newcastle West 2302

How your submission will be used

Once the consultation period has closed:

- Local Land Services will support the Minister to consider all submissions, comments and feedback in responding to the Terms of Reference for the statutory review
- the Minister will table a final report in both houses of Parliament in August 2023.

All submissions will be published on the Local Land Services website unless clearly marked “confidential”.

Submissions marked confidential will not be published but will be referenced in the review report.

Submissions requested to be “anonymous” will have identifying information such as a person’s name and contact details removed and will be published on the Local Land Services website.

Submissions that are received with no name or contact details will not be published on the Local Land Services website.

Even if you ask that your submission be treated confidentially, there may be circumstances where the Government is required by law to release the information in your submission, such as under the *Government Information (Public Access) Act 2009* (NSW).

Local Land Services only collects personal information for a lawful purpose which directly relates to our primary function as a NSW Government agency and for obtaining feedback about our services. We will not collect any more information than is necessary for us to fulfil our functions. For more information on the Local Land Services privacy policy, visit www.lls.nsw.gov.au/privacy-statement.

Introduction

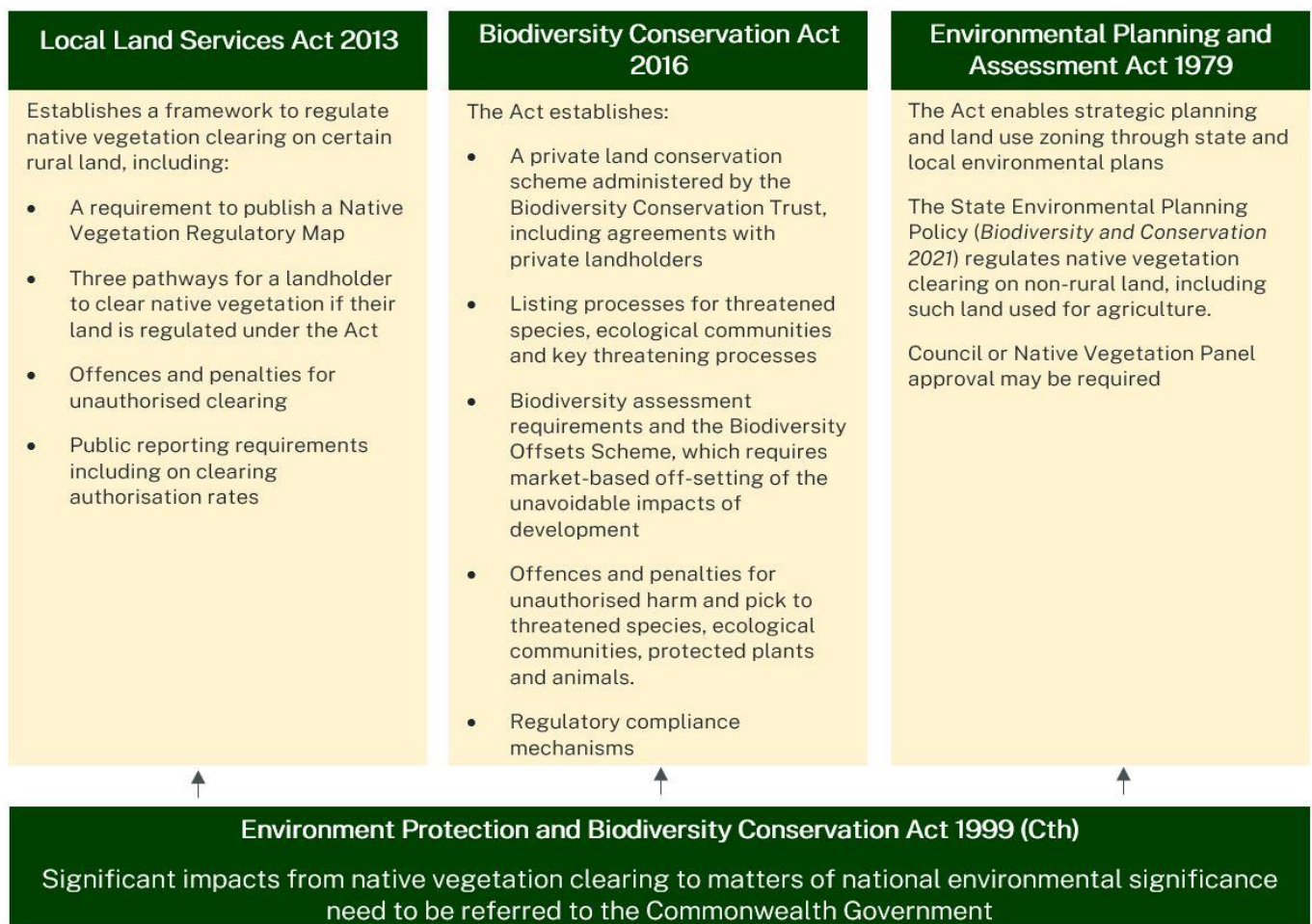
Background

In 2014, the NSW Government appointed an independent expert review Panel to review NSW biodiversity legislation, comprising the *Native Vegetation Act 2003*, the *Threatened Species Conservation Act 1995*, the *Nature Conservation Trust Act 2001* and parts of the *National Parks and Wildlife Act 1974* that relate to clearing of native vegetation on private land, conservation of native plants and animals, and private land conservation.

The NSW Government accepted all the recommendations in the Panel’s [review report](#). In 2017, the NSW Government implemented the Land Management and Biodiversity Conservation reforms. This included amendments to the Local Land Services Act, and the introduction of the new Biodiversity Conservation Act. The reforms include:

1. the Land Management Framework, including a Land Management (Native Vegetation) Code, which sets out the types of clearing allowed on private rural land and the rules for each type of clearing
2. a scheme and investment strategy for private land conservation, including agreements with private landholders
3. improved frameworks to manage native plants and animals, including significant investment in the Saving Our Species program
4. the Biodiversity Offsets Scheme, a market-based scheme to allow the unavoidable impacts of development to be offset by the creation of biodiversity credits.

Figure 2 The Land Management and Biodiversity Conservation legislative framework



As part of the integrated legislative package the Government acknowledged the Land Management and Biodiversity Conservation reforms may lead to some increased clearing at a property scale, but that checks and balances such as set asides, biodiversity offsets and investment in private land conservation would ensure the impacts of that clearing are managed.

Agency responsibilities for administering and regulating native vegetation

Local Land Services, the Department of Planning and Environment and the Biodiversity Conservation Trust have responsibilities in relation to native vegetation management on private rural land as set out in Table 1.

Table 1 Roles and responsibilities of NSW Government agencies

Agency	Responsibility
Local Land Services	Administers the Land Management Framework, including by: <ul style="list-style-type: none"> • Providing advice to landholders on what clearing activities are allowed and extension support services • Processing notifications to clear native vegetation under the Land Management (Native Vegetation) Code • Assessing proposals and providing approvals via issuing of certificates to clear native vegetation under the Land Management (Native Vegetation) Code • Supporting the Native Vegetation Panel • Maintaining a Public Information Register of notifications made, certificates issued and areas set aside
Department of Planning and Environment	<ul style="list-style-type: none"> • Prepares and publishes the Native Vegetation Regulatory Map. • Carries out compliance and enforcement of Part 5A, which includes investigating alleged illegal clearing. • Reports annually on levels of woody and non-woody vegetation loss state-wide and on rural land that is regulated under Part 5A of the Local Land Services Act. • Administers the Biodiversity Conservation Investment Strategy
Biodiversity Conservation Trust	<ul style="list-style-type: none"> • Partners with landholders to establish voluntary private land conservation agreements on their land to enhance and conserve biodiversity across NSW

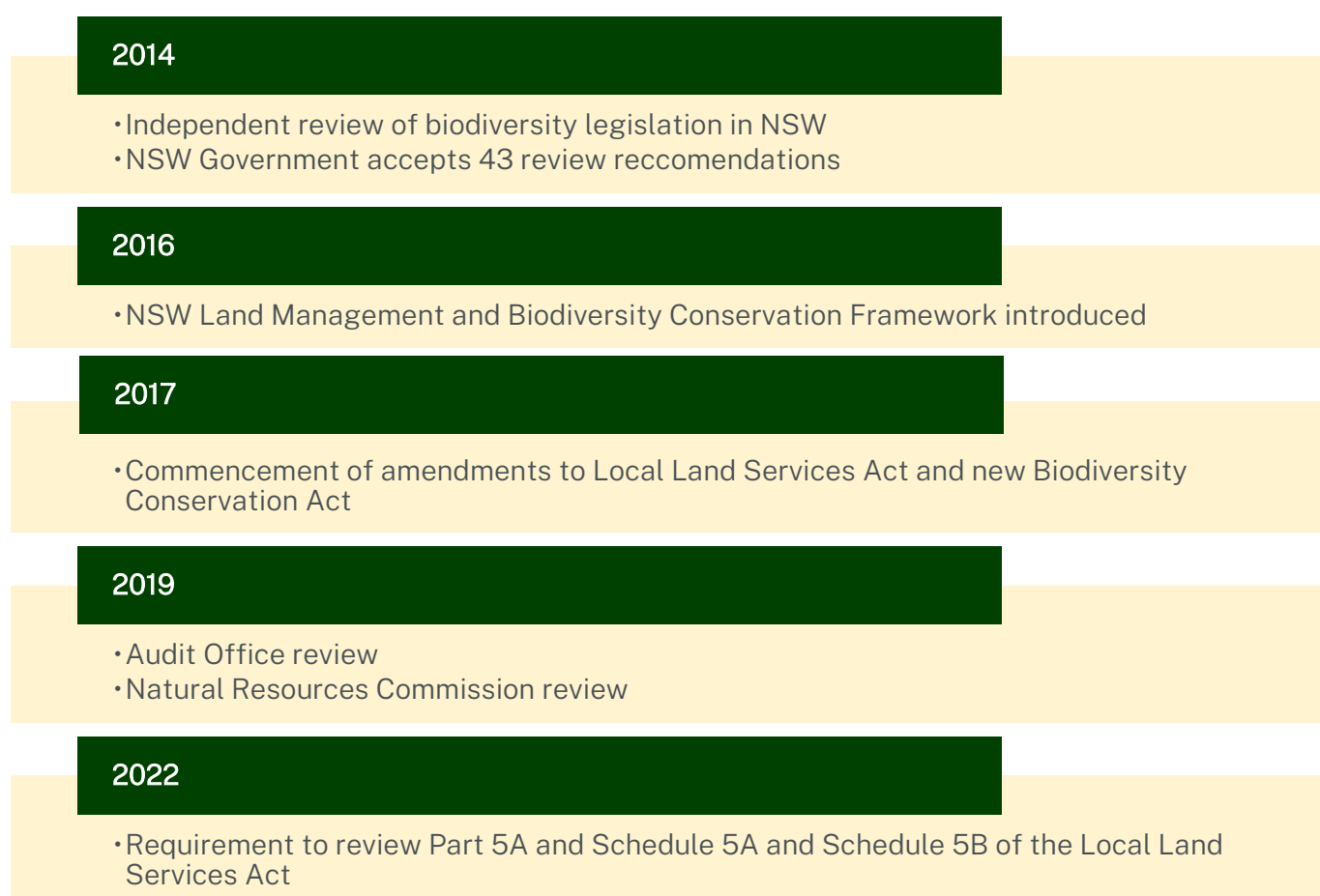
Reviews relating to native vegetation regulation

Part 5A and Schedule 5A and Schedule 5B of the Local Land Services Act establish the key elements of the Land Management Framework. There have been two major reviews relating to these legislative provisions:

- In 2019, the NSW Audit Office released an [audit](#) of the management of native vegetation on rural land regulated under Part 5A of the Local Land Services Act. The audit identified a lack of evidence-based assurance that native vegetation clearing is being carried out in accordance with approvals. It recommended Local Land Services and the Department of Planning and Environment implement a range of measures to improve the administration, monitoring and regulation of native vegetation clearing under Part 5A of the Act. The Government made a [response](#) to the Audit Office recommendations.
- In 2019, the Natural Resources Commission released its [advice](#) in response to the policy review trigger for the Land Management and Biodiversity Conservation reforms being reached. The Commission found there were several key risks to the success of the reforms and recommended a number of measures to address these risks. The Government made a [response](#) to the Commission's recommendations.

The statutory review will consider the outcomes of the implementation of the recommendations in these reviews.

Figure 3 Timeline of reviews relating to native vegetation regulation



Key elements of the Land Management Framework

Overview

Management of native vegetation on rural zoned land that does not require development consent is regulated under Part 5A of the Local Land Services Act. About 43 million hectares of land in NSW is categorised as rural regulated land,² which represents about 53% of NSW.

Key provisions of Part 5A and Schedule 5A and Schedule 5B of the Local Land Services Act

Part 5A and Schedule 5A and Schedule 5B of the Local Land Services Act establish a number of key elements of the Land Management Framework. These include:

- The requirement to prepare and publish a Native Vegetation Regulatory Map which uses categories to identify land that is and is not regulated. Land categories are based on specific criteria.
- Three pathways for a landholder to manage native vegetation on their land in regulated rural areas:
 - **Allowable activities** permitting landholders to undertake everyday land management activities without approval
 - **The Land Management (Native Vegetation) Code**, which supports landholders to manage their land for agricultural production while managing environmental risks. To clear under the Code, landholders must notify Local Land Services before carrying out the clearing or seek Local Land Services approval for a certification. The level of approval required depends on the impact of the proposed clearing. In some cases, clearing under the Code requires areas to be ‘set aside’ and managed for conservation in perpetuity
 - Clearing of native vegetation that does not meet requirements of allowable activities, or the Code can be assessed and approved by the **Native Vegetation Panel**, which requires the application of the Biodiversity Offsets Scheme and triple bottom line decision-making.
- Offences and penalties for carrying out illegal native vegetation clearing.
- The requirement to publicly report on the estimated rates of allowable clearing and maintain a public register of the level of notifications, certifications and areas set aside under the Code.

See also Figure 5 *Pathways for clearing native vegetation under Part 5A of the Local Land Services Act*.

²[Local Land Services, 2020, NSW Land Management Report 2018 – 2020, Local Land Services](#), page 5.

Rural land considered under the Land Management Framework, key terms and definitions

Discussion questions

1. Is it clear how different land use zonings are defined and treated in the Land Management Framework? What, if any, changes are needed? Please give reasons for your answer.

The Land Management Framework established under Part 5A of the Local Land Services Act only applies to rural land (land zoned as: RU1, RU2, RU3, RU4, RU6 but not RU5).³ Land that is outside the Land Management Framework includes:⁴

- non-rural areas in the State, defined by the [State Environmental Planning Policy \(Biodiversity and Conservation\) 2021](#),
- National Parks and other conservation areas
- State Forests
- land in the Sydney or Newcastle metropolitan areas.

Apart from limited circumstances, landholders cannot be required to obtain consent under the planning framework and authorisation under Part 5A of the Local Land Services Act for the same activity.⁵ Native vegetation clearing on rural land may or may not be regulated and require authorisation under Part 5A, depending on the activity and how it is categorised in the Native Vegetation Regulatory Map.⁶

Part 5A defines key terms in the Land Management Framework such as native vegetation,⁷ clearing,⁸ a landholder and a landholding.⁹ **Native vegetation** means any of the following types of plants native to New South Wales:

- a) trees (including any sapling or shrub or any scrub)
- b) understorey plants
- c) groundcover (being any type of herbaceous vegetation)
- d) plants occurring in a wetland.

As defined in the Local Land Services Act, a **plant** is native to New South Wales if it was established in New South Wales before European settlement.¹⁰ A **landholding** may include several neighbouring parcels of land that are worked as the same property and are either separated only by a road or watercourse or certified by Local Land Services to be in the same bioregion and in sufficient proximity to one another.¹¹

³ Rural land zonings are: RU1 Primary Production, RU2 Rural Landscape, RU 3 Forestry, RU4 Primary Production Small Lots, RU5 Village, RU6 Transition: section 2.1, [Standard Instrument- Principal Local Environmental Plan \(2006 EPI 155a\)](#), accessed 24 October 2022. Rural land is also deferred matter land (zones within a non-standard Local Environmental Plan): [Managing native vegetation on a rural property Fact Sheet](#), accessed 24 October 2022.

⁴ Section 60A, Local Land Services Act identifies land that is outside the Land Management Framework.

⁵ Section 60P(1) of the Local Land Services Act states an environmental planning instrument under the *Environmental Planning and Assessment Act 1979* (other than a State environmental planning policy or a local environmental plan that adopts a mandatory provision of a standard instrument) cannot be made to require development consent only for native vegetation clearing on rural regulated land and has no effect.

⁶ A 'regulated rural area' is defined as any area of the State to which Part 5A of the Local Land Services Act applies that is "Category 2 regulated land": Section 60D, Local Land Services Act.

⁷ Section 60B, Local Land Services Act.

⁸ Section 60C, Local Land Services Act.

⁹ Section 60D, Local Land Services Act.

¹⁰ Section 60B(2), Local Land Services Act.

¹¹ Section 60D, Local Land Services Act.

Land categories determine how native vegetation can be managed

Discussion Questions

2. How easy to understand are the land categories and the native vegetation clearing arrangements that apply under each category? What, if any, changes are needed?
3. How useful is the Native Vegetation Regulatory Map as a tool for categorising private rural land? What, if any, other tools could help landholders make decisions about their land?
4. How comfortable and capable are landholders in self-assessing their land according to the land categories? What, if any, improvements to the Transitional Arrangements should be made? Please give reasons for your answer.

Private rural land covered by the Land Management Framework is categorised into different land categories. The land categories determine:

- what clearing can be carried out without Local Land Services authorisation
- what clearing requires Local Land Services authorisation
- what clearing is not permitted.

There are two main categories that can apply to land: Category 1 Exempt Land, and Category 2 – Regulated Land. Category 2 -Regulated land has two sub-categories: vulnerable and sensitive land. The land categories are based on specific criteria relating to the history of disturbance, or certain characteristics of the land or the native vegetation on the land.

The [Native Vegetation Regulatory Map](#) is a tool which spatially identifies the categories that apply to private rural land State-wide. In showing where land categories apply, the Map aims to give certainty to landholders by identifying where native vegetation clearing activities can occur on their land.

Table 2 Criteria and authorisation requirements for the Native Vegetation Regulatory Map

Native Vegetation Regulatory Map Category	Requirement for Local Land Services authorisation and type of activities permitted	Summary of criteria for this category	Approximate % of land in NSW (a)
Category 1 – Exempt land	Native vegetation can be cleared without Local Land Services authorisation	Land cleared of native vegetation at 1 January 1990, or lawfully cleared after this date and before Part 5A of the Local Land Services Act commenced. Low conservation grassland or land containing only low conservation groundcover.	25%
Category 2 – Regulated	Local Land Services authorisation may be required under the Code. Allowable activities are permitted.	Land not cleared at 1 January 1990 or unlawfully cleared after this date. Grasslands that are neither low nor high conservation grasslands.	53%

Native Vegetation Regulatory Map Category	Requirement for Local Land Services authorisation and type of activities permitted	Summary of criteria for this category	Approximate % of land in NSW (a)
Category 2 – Vulnerable Regulated Land	Restrictions apply - activities under the Code may be restricted or not permitted and only a limited range of allowable activities are permitted.	Steep or highly erodible land. Protected riparian areas.	4%
Category 2 – Sensitive Regulated Land	Restrictions apply - activities under the Code are not permitted and only a range of allowable activities are permitted.	Ramsar wetlands, rainforest and old-growth forest, coastal wetlands and littoral rainforests high conservation grasslands, koala habitat identified in a plan of management and critically endangered plants and critically endangered ecological communities. Land subject to a private land conservation agreement, or a set aside under the Land Management Code.	2%

(a) Annual update to the Native Vegetation Regulatory Map, Department of Planning and Environment, 2022.

The Native Vegetation Regulatory Map also identifies land as “excluded land”. This is land outside the Land Management Framework and makes up around 16% of land in NSW.

Responsibility for preparing and publishing maps

Section 60G(1) of the Local Land Services Act states the Environment Agency Head is responsible for preparing and publishing Native Vegetation Regulatory Maps.¹² The Environment Agency Head is also responsible for publishing information about the [scientific method](#) used to prepare the Native Vegetation Regulatory Map.

¹² The Environment Agency Head means the Chief Executive of the Environment and Heritage Group, in the Department of Planning and Environment.

Transitional arrangements for the Native Vegetation Regulatory Map

In August 2017, the [Transitional Native Vegetation Regulatory Map](#) was published and identifies the highest risk land categories: Category 2 – Vulnerable regulated land and Category 2 – Sensitive regulated land. Under transitional arrangements, all landholders must comply with the clearing requirements for these categories if mapped on their land.

Where seeking to clear in areas where map categories have not been published, a landholder can currently self-assess the categorisation of their land. Landholders do not have to notify Local Land Services about their self-assessment but can seek guidance from Local Land Services, which has draft mapping for all map categories.

For example, Local Land Services can provide advice to landholders on how to use methods to assess native grasslands and groundcover on their property. Landholders must maintain supporting records for five years after making a self-assessment that their land is Category 1- Exempt based on the native vegetation being low conservation value grasslands. The transitional arrangements apply until final mapping for all map categories is released.

The NSW Audit Office [audit](#) and the Natural Resources Commission [review](#) recommended a staged public release of the Native Vegetation Regulatory Map. The Natural Resources Commission recommended the staged release be for areas where woody vegetation (trees and large shrubs) is dominant in the landscape. It recommended this staged release be supported by processes to improve the map's accuracy and resolve any disagreements with the map. It recommended the map for native grassland-dominant landscapes should be released publicly only once there is confidence in the mapping of native grasslands.¹³

A staged release of the Native Vegetation Regulatory Map commenced in October 2022. Category 1 -Exempt land and Category 2 -Regulated Land were publicly released in draft form in 11 local government areas (LGAs) in the South East, Riverina and Murray Local Land Services regions of NSW. The [maps](#) are draft and have no regulatory effect.

The maps have been released in draft form to consult with landholders on the accuracy of the Category 1 - Exempt and Category 2 - Regulated land mapping on their property before finalising the Native Vegetation Regulatory Map. Landholders in these LGAs can provide input and seek a review of the draft Map [here](#).

¹³ The Natural Resources Commission [review](#); page 5.

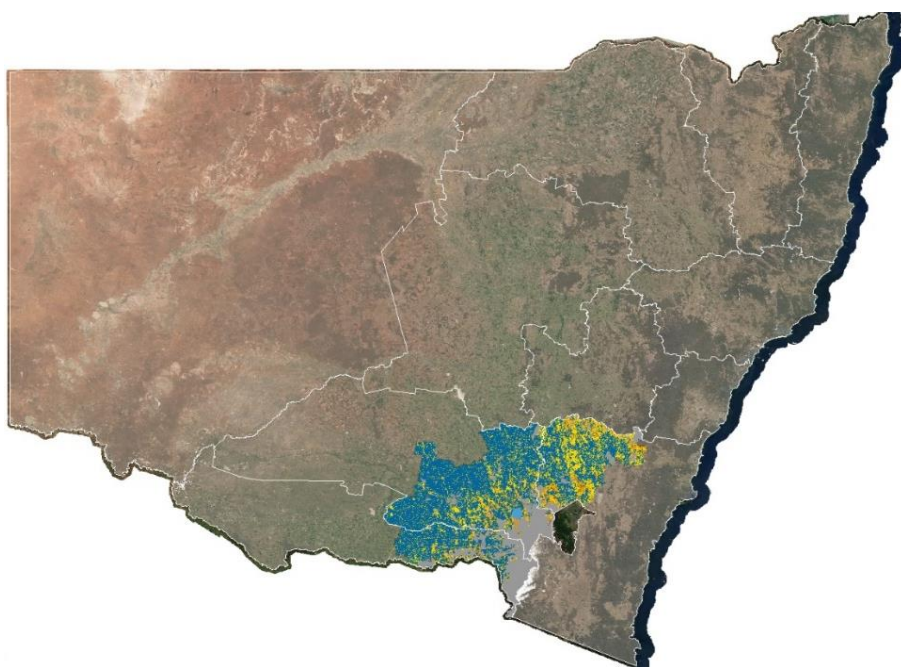
Figure 4 Draft Native Vegetation Regulatory Map¹⁴

Table 3 Key to Native Vegetation Regulatory Map categories

Colour	Category
Blue	Category 1 – Exempt land
Yellow	Category 2 – Regulated land
Orange	Category 2 – Vulnerable land
Pink	Category 2 – Sensitive regulated land
Grey	Excluded land

Pathways for clearing native vegetation on private rural land

Discussion Questions

5. Do each of the approval pathways for native vegetation clearing provide landholders with adequate options while managing environmental risks? Please give reasons and/or examples to support your answer.
6. Is it clear what native vegetation clearing activities are “allowable” i.e. don’t need notification or approval?
7. What, if any, other native vegetation clearing activities should be “allowable?” How could the requirements for allowable activities be improved?
8. How effective are the requirements for establishing, managing, monitoring and reporting for set asides? Please give reasons for your answer.

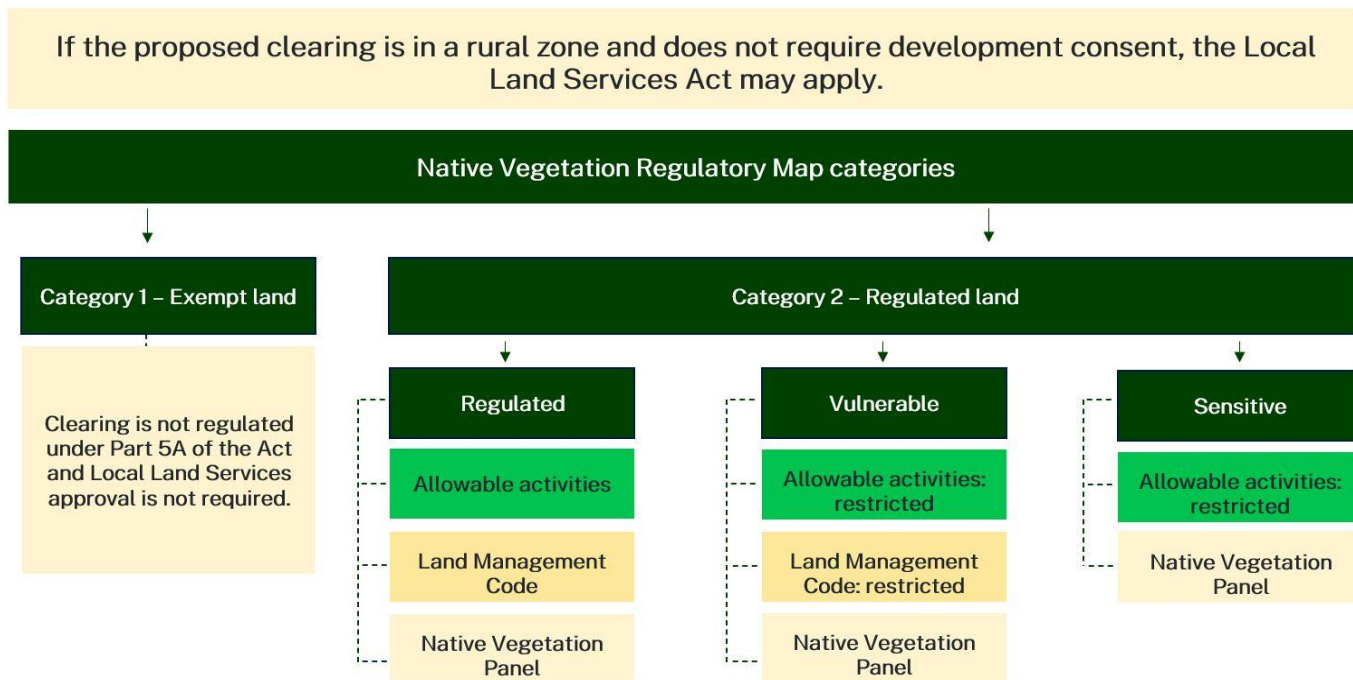
If rural land is categorised as ‘regulated’ under the Land Management Framework, three pathways may be available to clear native vegetation. A landholder may clear native vegetation: as an allowable activity; as an activity under the Code, or, by seeking approval from the Native Vegetation

¹⁴ The draft Native Vegetation Regulatory Map was published on 5 October 2022.

Panel. If land is categorised as vulnerable or sensitive, some of these pathways are restricted or not available.

If rural land is categorised as ‘exempt’ land, then native vegetation clearing is not regulated under Part 5A of the Local Land Services Act and authorisation for clearing is not required.

Figure 5 Pathways for clearing native vegetation under Part 5A of the Local Land Services Act



Clearing using the allowable activity pathway

Allowable activities cover a range of routine land management activities associated with agriculture in rural areas.¹⁵ This pathway aims to provide greater flexibility and decision-making autonomy. It allows landholders to carry out routine, agricultural land management activities that are a low risk of impacting biodiversity, without needing to notify or obtain approval from Local Land Services.

Allowable activities are set out in Schedule 5A of the Local Land Services Act and include:

- firewood collection, construction timber
- reducing the imminent risk of personal injury or damage to property
- clearing for rural infrastructure such as farm tracks, fences, stockyards and dams
- clearing for private powerlines and airstrips
- fire breaks
- sustainable grazing
- environmental protection works
- traditional Aboriginal cultural activities
- public works (construction, operation and maintenance of infrastructure)
- electricity transmission infrastructure (maintenance only)
- telecommunications infrastructure (construction, operation and maintenance)
- water and gas supply infrastructure (maintenance only)
- gravel pits
- mulga species used for stock fodder.

Allowable activities must comply with a number of measures to reduce environmental risk. For example, native vegetation clearing must be only to the minimum extent necessary.¹⁶ There are maximum clearing distances for rural infrastructure, and these vary in the Western, Central and Coastal zones of NSW to reflect regional differences in geography, vegetation and property size.¹⁷ Where maximum clearing distances of rural infrastructure overlap, combining these clearing distances for a cumulative total is not permitted.¹⁸

Specific allowable activities, i.e.: firewood collection, construction timber, public works and gravel pit allowable activities, must not be used where the native vegetation comprises, or is likely to

¹⁵ Under the *State Environmental Planning Policy (Biodiversity and Conservation) 2021*, landholders on some non-rural land (primary production land in Zones, R5, C2, C3 and C4) can carry out similar routine agricultural activities to the allowable activities available under the Local Land Services Act on Category 2- vulnerable regulated land, and Category 2-sensitive regulated land, without Council approval.

¹⁶ Clause 7, Schedule 5A, Local Land Services Act.

¹⁷ The maximum distance of clearing for rural infrastructure is 40 metres in the Western Zone, 30 metres in the Central Zone and 15 metres in the Coastal Zone: clause 31, Schedule 5A, Local Land Services Act.

¹⁸ Clause 6, Schedule 5A, Local Land Services Act.

comprise, a threatened species (including their habitat) or ecological community.¹⁹ Other restrictions also apply to firewood collection²⁰ and construction timber.²¹

The types of allowable activities that can be carried out on vulnerable and sensitive land are more restricted.²² For example, clearing for rural infrastructure on vulnerable and sensitive land is subject to a maximum clearing distance of 6 metres, must minimise the risk of soil erosion, and clearing for gravel pits, airstrips, and rural infrastructure other than fences and farm tracks is not permitted. Firewood on vulnerable or sensitive land cannot be collected where the native vegetation is within a buffer distance from a water body.

Clearing using the Land Management (Native Vegetation) Code pathway

If proposed activities do not meet the requirements for clearing vegetation under allowable activities, landholders have options under the [Land Management \(Native Vegetation\) Code](#).

The Code permits impacts on native vegetation in rural areas regulated under Part 5A of the Local Land Services Act. For higher risk clearing activities under the Code, land must be set aside and managed for conservation permanently to moderate any residual impacts to biodiversity.²³

Local Land Services is responsible for administering the Code. Landholders must either notify or apply to Local Land Services for approval to carry out the following clearing activities:

- **Invasive native species management** – Invasive native species management is not broadscale clearing. It is intended to improve the local environment by enabling landholders to treat invasive native species that have reached unnatural densities and dominate an area, or are invading an area where that species is not known to previously occur. These activities are designed to promote the regeneration and regrowth of a more natural and diverse range of native vegetation.²⁴
- **Pasture expansion** - enables the thinning of woody native vegetation uniformly or in a mosaic pattern to promote native pastures and increase farm efficiency and productivity.
 - Uniform thinning allows the thinning of woody vegetation to enhance native pasture growth, in exchange for retaining a specific density of stems, native shrubs and groundcover, ensuring biological functions and ecosystem services can continue across the landscape.
 - Mosaic thinning allows the removal of woody vegetation to expand native pastures, in exchange for leaving at least 30 percent of the treatment area and provided remaining tree patches are at least 5 hectares and evenly distributed.
- **Continuing use** - enables the continuation of lawful land management activities that have been in place between 1990 and 25 August 2017.
- **Equity** – allows landholders to lawfully remove native vegetation in some cases in exchange for establishing set aside areas that conserve and enhance similar or higher conservation value native vegetation in-perpetuity. In most cases set asides are established at a ratio of 1:2.

¹⁹ See clauses 14-15, 20-21, Schedule 5A, Local Land Services Act.

²⁰ For example, firewood collection is only allowable if it is to be used by the landholder on that land, or on other land of the landholder: clause 15(1), Schedule 5A, Local Land Services Act.

²¹ For example, clearing native vegetation for construction timber is only allowable if the timber is for the purpose of and used in building, operating or maintaining rural infrastructure on the same land: clause 14(1), Schedule 5A, Local Land Services Act.

²² Part 4, Schedule 5A of the Local Land Services Act sets out special provisions that apply to Category 2-Vulnerable and Category 2- Sensitive land.

²³ Section 60ZC of the Local Land Services Act sets out the requirements for set asides. The certificate which establishes the set aside has effect in-perpetuity: clause 13(4) of the Code, although a certificate can be surrendered if no clearing has been carried out: clause 127(3) of the Local Land Services Regulation.

²⁴ Department of Planning and Environment, (2022), [Woody and non woody landcover change rural regulated land Summary report 2020](#) page 12.

- **Farm plan** – enables the removal of paddock tree areas and treating regulated rural land in exchange for areas to be set aside containing native vegetation or revegetation in perpetuity.

Landholder engagement with the Code

The [Local Land Services Public Register](#) and [annual landcover change reporting](#) for rural regulated land indicate landholders are engaging with this native vegetation clearing pathway, and mainly using it to manage invasive native species.

Managing invasive native species is an important farm activity that achieves environmental outcomes by reducing native species that have grown to unnatural densities and promoting a more diverse range of native vegetation. For the period August 2017 to December 2020²⁵ 21,364 hectares of authorised native vegetation clearing was carried out on rural regulated land.²⁶ 60% (13,109 hectares) of this clearing was to manage invasive native species.²⁷

Clearing under Equity (5,825 hectares) and Pasture Expansion (2,121 hectares) are the second and third most implemented parts of the Code, respectively.²⁸

It should be noted that the [annual landcover change report](#) describes vegetation loss on rural regulated land but does not report on regrowth, revegetation or replanting. A recent report released by the Natural Resources Commission found that state-wide, overall forest cover on private land had actually increased by around 1 million hectares (or 14%) between 1998 and 2020.²⁹

Since the Land Management Framework commenced to 30 September 2022, 1,251 certificates have been issued³⁰ and 1,033 notifications have been made under the Code.³¹ Landholder implementation of notifications and certificates under the Code has been low; for the period August 2017 to December 2020 the total area cleared represents only 4% of the total area authorised under the Code.

²⁵ December 2020 is the most recent date for which data on vegetation loss is available.

²⁶ *Results for landcover change on rural regulated land 2020*, Tab 4 By LLS Act 2013, available at <https://www.environment.nsw.gov.au/topics/animals-and-plants/native-vegetation/landcover-science>, accessed on 24 October 2022.

²⁷ *Results for landcover change on rural regulated land 2020*, Tab 4 By LLS Act 2013, available at <https://www.environment.nsw.gov.au/topics/animals-and-plants/native-vegetation/landcover-science>, accessed on 24 October 2022.

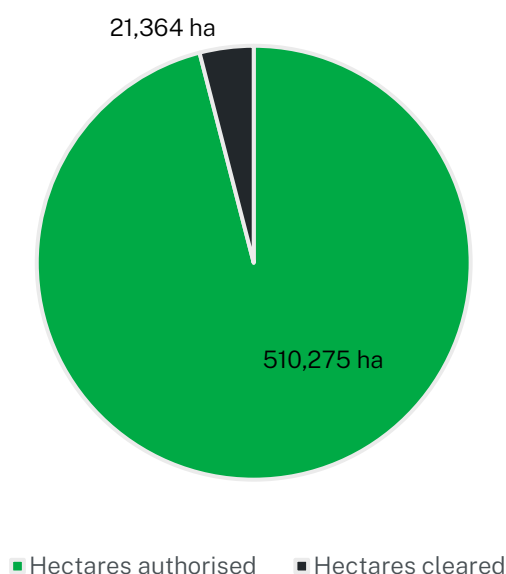
²⁸ *Results for landcover change on rural regulated land 2020*, Tab 4 By LLS Act 2013, available at <https://www.environment.nsw.gov.au/topics/animals-and-plants/native-vegetation/landcover-science>, accessed on 24 October 2022.

²⁹ Average forest canopy cover extent increased from 6,871,751 hectares in 1998 to 7,835,525 hectares in 2018: Natural Resources Commission, *Forest Monitoring and Improvement Program Annual Progress Report July 2022*, available on the [Natural Resources Commission webpage of recent reports](#).

³⁰ Public Information Register, Certificates Under Section 60Y, [2017](#) and [2018](#), accessed 24 October 2022.

³¹ Public Information Register, Notifications Given Under Section 60X, [2017](#) and [2018](#), accessed 24 October 2022.

Figure 5 The level of authorised native vegetation clearing and reported native vegetation loss on rural regulated land (hectares) from August 2017 – December 2020



Low implementation levels of authorisations under the Code may be driven by several factors including commodity prices, environmental factors such as flooding, drought and bushfire, and landholders wanting flexibility to retain the option of having authorisation to clear, if needed in future.

Since the Land Management Framework commenced, more than 83,000 hectares of land has been permanently set aside for conservation. Set asides under the Code start immediately after an approval and are required to be in place irrespective of whether the approved area is cleared or not.

In addition to land set aside under the Code, the Biodiversity Conservation Trust manages 1,448 in-perpetuity private land conservation agreements over 386,000 hectares of land which includes 349 permanent offset agreements covering almost 79,000 hectares of land. The BCT also manages 95 term private land conservation agreements over 43,500 hectares of land. In total the Biodiversity Conservation Trust is currently managing over 2,230 Private Land Conservation Agreements with landholders over more than 2.28 million hectares.³²

Unallocated clearing

The Department of Planning and Environment reports on unallocated clearing, which is clearing where a clearing activity has not been allocated to a particular native vegetation loss event.

In 2020 unallocated clearing on rural regulated land fell from 65,183 hectares in 2019 to 50,245 hectares. From August 2017 to 2020, unallocated clearing has consistently represented around 75 percent of all clearing on rural regulated land.

Unallocated clearing should not be misconstrued as illegal clearing. The Department of Planning and Environment has reported that in 2020, farm infrastructure is associated with 30% of woody unallocated clearing (3,287 hectares) and 1% of non-woody unallocated clearing (200 hectares) and could therefore be allowable activities.³³

³² Department of Planning and Environment data, November 2022.

³³ Department of Planning and Environment, 2022, [Woody and non woody landcover change rural regulated land Summary report 2020](#), page 10.

It should also be noted that about three quarters of unallocated clearing has been non-woody vegetation.³⁴ Non-woody vegetation includes grasses, small shrubs, herbs and other groundcover species. Landholder self-assessments of the level of disturbance of grasslands or groundcover, and therefore which land category applies to their land, may also be contributing to the high levels of unallocated clearing.³⁵

Local Land Services is supporting the Department of Planning and Environment to consider how some unallocated clearing can be identified and explained. This includes gathering evidence and data to continue to allocate clearing events where possible as either: clearing under transitional arrangements, allowable activities, clearing under the Land Management Code, or illegal clearing.³⁶

Clearing using the Native Vegetation Panel pathway

Discussion Questions

9. What are the barriers to using the Native Vegetation Panel approval pathway and how could this pathway be improved?

The Native Vegetation Panel is an independent expert body established under the Local Land Services Act. If proposed clearing falls outside the requirements for allowable activities or the Code, a landholder can apply to Panel for approval.

The Native Vegetation Panel clearing pathway was introduced to provide an independent, merit-based assessment of proposed native vegetation clearing proposals based on their environmental, social and economic impacts, consistently with the principles of Ecologically Sustainable Development.

All applications to the Native Vegetation Panel must comply with the [Biodiversity Offset Scheme](#). This includes the requirement for a landholder to prepare and submit a Biodiversity Development Assessment Report³⁷ and to retire Biodiversity Credits.³⁸

Since it was established in 2018, landholder engagement with the Panel has been low. The Panel has received and determined one application.³⁹

Table 4 Native Vegetation Panel Activity August 2017-30 September 2022

Enquiries	Applications Received	Applications Determined	Area of clearing authorised (ha)	Biodiversity Credits to be retired
140	1	1	0.32	3 ⁴⁰

³⁴ Results for landcover change on rural regulated land 2020, Tab 1 By Act, available at <https://www.environment.nsw.gov.au/topics/animals-and-plants/native-vegetation/landcover-science>, accessed on 24 October 2022.

³⁵ Department of Planning and Environment, 2022, [Woody and non woody landcover change rural regulated land Summary report 2020](#), page 10.

³⁶ Department of Planning and Environment, 2022, [Woody and non woody landcover change rural regulated land Summary report 2020](#), page 9.

³⁷ A Biodiversity Development Assessment Report is a report required under the *Biodiversity Conservation Act 2016* and is prepared by a person accredited to apply the biodiversity assessment method. More information is available at: <https://www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity-offsets-scheme>.

³⁸ More information on Biodiversity Credits is available at: <https://www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity-offsets-scheme/about-the-biodiversity-offsets-scheme/what-are-biodiversity-credits>.

³⁹ More information about the determination NVA 20/01 is available on the [Public Register](#).

⁴⁰ The [Conditions of Consent](#) for NVA 20/01 reduce the number of species credits that would otherwise be required to be retired from three to zero, in accordance with section 60ZG of the Local Land Services Act.

In its 2019 review, the Natural Resources Commission recommended the NSW Government consider barriers to landholder engagement with the Panel and expanding the Panel's role and functions to assist with applications that fall outside the Code.⁴¹ Barriers to engagement are likely to include the lack of a well-developed Biodiversity Credit market, as identified in the NSW Audit Office's recent [performance audit](#) of the Biodiversity Offsets Scheme. The audit also found the lack of information about credit prices can create uncertainty for landholders wanting to establish a biodiversity stewardship (offset) site on their land.

In accordance with the Natural Resources Commissions recommendation, Local Land Services is undertaking a review of barriers for landholders engaging with the Native Vegetation Panel, including economic costs to landholders of using the Native Vegetation Panel pathway. The Department of Planning and Environment is also implementing [improvements to the Biodiversity Offsets Scheme](#), including working with landholders to provide biodiversity assessments at no upfront cost where this matches credit demand.

Reporting and compliance

Discussion Questions

10. Is the public register for reporting on native vegetation certificates and notifications accessible, and is the information useful and easy to understand? What if any improvements to reporting should be made? Please give reasons for your answer.

Reporting

Local Land Services is required to maintain and publish on its website a [Public Register](#) which includes notifications and certificates of clearing under the Code.⁴² The Department of Planning and Environment also reports annually on levels of woody and non-woody vegetation loss on rural land that is regulated under Part 5A of the Local Land Services Act. However, neither of these reporting mechanisms monitors the extent or condition of native vegetation on private land that incorporates both native vegetation loss as well as native vegetation regeneration, regrowth or replanting. As noted earlier, a report recently released by the Natural Resources Commission found that between 1998 and 2020, overall forest cover on private land had actually increased by around 1 million hectares (or 14%).

Local Land Services is also required to publicly report every year on the estimated rate of allowable activity clearing and clearing authorised under the Code.⁴³ However, Local Land Services are currently unable to accurately report on estimated rates as the Local Land Services Act does not require landholders to report on allowable activities.

In their 2019 reviews, the Natural Resources Commission and the Audit Office found that aspects of the scheme for set asides could be improved, including processes to monitor and report on landholder compliance with their obligations for managing set asides.⁴⁴

In response to the Natural Resources Commission and Audit Office recommendations, Local Land Services is implementing an assurance program to monitor landholder management of set asides. Local Land Services has also developed operational guidance on criteria for selecting set asides that aim to maximise their environmental benefits.

⁴¹ Natural Resources Commission [review](#), page 8.

⁴² S60ZO, Local Land Services Act.

⁴³ S60ZN, Local Land Services Act.

⁴⁴ Natural Resources Commission [review](#) pp 5-6; NSW Audit Office [audit](#), pp 3-4.

Offences and penalties

Discussion Questions

11. How adequate are the penalties for offences for illegal clearing and breaches of set aside obligations? Please give reasons and/or examples for your answer.
12. To what extent does the public have confidence in compliance and enforcement of native vegetation regulation? How could public confidence be improved?

The Land Management Framework aims to give landholders certainty about how clearing is regulated on their land and support them to engage with the three clearing pathways. By doing so, the Framework aims to increase voluntary compliance with native vegetation clearing rules and reduce illegal clearing. Illegal clearing may lead to serious and unavoidable environmental impacts and undermines public confidence in the Framework.

Unauthorised native vegetation clearing is an offence under the Local Land Services Act.⁴⁵ This clearing may also trigger compliance and enforcement under the Biodiversity Conservation Act relating to the impacts on threatened species and ecological communities.⁴⁶

The maximum penalties for intentional illegal clearing that causes, or is likely to cause, significant harm to the environment is \$5 million for a corporation and \$1 million for individual.⁴⁷ For any other offence, the maximum penalties are \$2 million for a corporation and \$500,000 for an individual.⁴⁸

Set asides are a critical component of ensuring clearing under the Land Management Framework avoids serious and unavoidable environmental impacts. Failure to comply with obligations in relation to set asides, such as protecting their biodiversity values, is an offence and has a maximum penalty of \$1,650,000 for a corporation and \$330,000 for an individual.⁴⁹

The Department of Planning and Environment is responsible for compliance and enforcement of Part 5A and Schedule 5A and Schedule 5B.⁵⁰ The Department of Planning and Environment compliance and enforcement powers are contained in the Biodiversity Conservation Act and include the ability to issue stop work and remediation orders, carry out investigations and initiate civil and criminal proceedings.⁵¹

⁴⁵ S60N(1), Local Land Services Act.

⁴⁶ See Part 2, Biodiversity Conservation Act 2016.

⁴⁷ S60N(1)(a), Local Land Services Act.

⁴⁸ S60N(1)(b), Local Land Services Act.

⁴⁹ S60ZC(6), Local Land Services Act.

⁵⁰ S60ZM, Local Land Services Act.

⁵¹ Parts 11- 13 and Section 14.7A, Biodiversity Conservation Act 2016.

Native vegetation provisions and the objectives in the Local Land Services Act

Discussion Questions

13. Overall, how relevant are Part 5A and Schedule 5A and Schedule 5B of the Local Land Services Act in achieving the social, economic and environmental interests of the State? The other questions in this Discussion Paper consider the individual provisions of the Local Land Services Act in more detail and may provide you extra context when answering this question.
14. What if any other issues should be considered as part of the statutory review of Part 5A and Schedule 5A and Schedule 5B of the Local Land Services Act? Please give reasons why they should be considered in your answer.

As previously stated, Section 212 of the Local Land Services Act requires the Minister to review Part 5A and Schedule 5A and Schedule 5B and determine if the policy objectives of these provisions remain valid, and whether the provisions themselves remain appropriate for securing the objectives of this part of the Act.

The objective of the native vegetation provisions in the Local Land Services Act is ‘to ensure the proper management of natural resources in the social, economic and environmental interests of the State, consistently with the principles of ecologically sustainable development’.

The statutory review will consider whether as a whole, Part 5A and Schedule 5A and Schedule 5B are still relevant for achieving the social, economic and environmental interests of the State, consistently with the principles of ecologically sustainable development.⁵²

Ecologically sustainable development can be achieved by implementing the following principles and programs:

- the precautionary principle, which includes avoiding serious and irreversible damage to the environment;
- inter-generational equity; i.e.: the present generation should ensure the health, diversity and productivity of the environment is maintained or enhanced for future generations;
- conservation of biological diversity and ecological integrity; and
- improved valuation, pricing and incentive mechanisms, where environmental factors are included in the valuation of assets and services.

⁵² Ecologically sustainable development is defined in section 6(1) of the [Protection of Environment Administration Act 1991](#).

Appendix 1

Terms of Reference: Part 5A of the Local Land Services Act Five-Year Review

The Minister for Agriculture and Western New South Wales requests Local Land Services to review Part 5A and Schedule 5A and Schedule 5B (native vegetation provisions) of the Local Land Services Act 2013 with support of an independent advisory panel to determine if the policy objectives of these provisions remain valid and the provisions remain appropriate for securing those objectives.

Background

Land Management and Biodiversity reforms

In 2014, the then Minister for the Environment appointed the Independent Biodiversity Legislation Review Panel to conduct a comprehensive review of the Native Vegetation Act 2003, Threatened Species Conservation Act 1995, Nature Conservation Trust Act 2001 and parts of the National Parks and Wildlife Act 1974 that relate to clearing of native vegetation on private land, conservation of native plants and animals and private land conservation.

The aim of the review was to provide recommendations on how to simplify legislation and make it more effective to improve biodiversity conservation, support sustainable land management and reduce compliance and administrative burdens. In the same year, the Panel released a report calling for transformational policy change to conserve biodiversity and support sustainable development. The report outlined 43 recommendations to achieve this.

The NSW Government made an election commitment to implement the Panel's recommendations and passed the Biodiversity Conservation Act 2016 and amendments to the Local Land Services Act 2013 in November 2016. These replaced existing legislation, including the Native Vegetation Act 2003. The new Biodiversity Conservation Act and amended Local Land Services Act commenced on 25 August 2017.

The reforms aimed to ensure a balanced approach to agricultural production, development and biodiversity conservation, consistent with the principles of ecologically sustainable development. Broadly, the intent of the reforms is to contribute to improved biodiversity value at the bioregional and state scales, provide greater flexibility for landholders to improve productivity on their land and give landholders more capacity and confidence to sustainably manage their land and participate in biodiversity conservation.

Scope

The Local Land Services Act 2013 and the Biodiversity Conservation Act 2016 require review of certain provisions of the respective Acts.

Section 212 of the Local Land Services Act 2013 determines review of the native vegetation provisions of the Local Land Services Act. It specifically requires:

1. the Minister is to review Part 5A and Schedules 5A and 5B to determine whether the policy objectives of those provisions remain valid and whether the terms of those provisions remain appropriate for securing those objectives 2.
2. the review is to be undertaken in conjunction with the review of the Biodiversity Conservation Act 2016 that is undertaken under that Act by the Minister administering that Act
3. the review is to be undertaken as soon as possible after the period of five years from the commencement of Part 5A and Schedules 5A and 5B.
4. a report on the outcome of the review is to be tabled in each House of Parliament within 12 months after the end of the period of five years.

The objects of Part 5A of the Act are ‘to ensure the proper management of natural resources in the social, economic and environmental interests of the State, consistently with the principles of ecologically sustainable development’ (described in section 6(2) of the Protection of the Environment Administration Act 1991).

As part of the review, Local Land Services should also have regard to:

- the overarching purpose of the Land Management and Biodiversity Conservation framework
- the objectives of the Land Management and Biodiversity Conservation reforms contained within Second Reading speeches to Parliament relevant to the Local Land Services Amendment Bill 2017
- the final report of the Independent Biodiversity Legislation Review Panel
- past reviews of the Land Management Framework.

The review of Part 5A of the Local Land Services Act will run in parallel to but independent from the review of the Biodiversity Conservation Act.

The statutory review is not a review of the integrated Land Management and Biodiversity Conservation reform package as a whole, or a comprehensive review of the Land Management (Native Vegetation) Code or Local Land Services Regulation per se as this is outside the scope of section 212. Should the review of the native vegetation provisions in the Act find that changes are required to the Code or Regulation to meet the objective of the native vegetation provisions of the Act then these changes can be recommended as part of the review.

Attachment A provides the contents of the Local Land Services Act subject to the five-year statutory review, including Part 5A, Schedule 5A and Schedule 5B. The Local Land Services Act 2013 can be accessed [here](#).

Stages of Review

Local Land Services is to deliver the review in three stages:

1. appointment of independent expert advisory panel and development of a Discussion Paper
2. stakeholder engagement on the Discussion Paper, submissions analysis and draft review
3. finalisation of review, findings and recommendations

Consultation

Local Land Services is to consult with the Environment and Heritage Group, in particular where there is connection between relevant parts of the respective Local Land Services Act and the Biodiversity Conservation Act. Local Land Services will consult the community and relevant stakeholders on the Discussion Paper. The outcomes of the consultation process will be provided in the final review report.

Final review report

Local Land Services will provide its final report to the Minister for tabling in both houses of parliament in August 2023. The final advice must document the review’s findings and recommendations. In the absence of conclusive evidence, Local Land Services may make findings and recommendations based on its judgement and knowledge of private land management.