



Clearing Vegetation on Rural Land

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Overview

This factsheet outlines the laws governing the clearing of vegetation in *rural areas*.

Read: EDO Factsheets on:

- **Tree Disputes**, and;
- **Clearing Trees on Urban Land and Environmental Zones**

to learn more about land clearing in urban areas

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Land clearing in rural areas

Land clearing in rural areas of NSW is regulated under the [Local Land Services Act 2013 \(NSW\) \(LLS Act\)](#)¹ and the [Local Land Services Regulation 2014 \(NSW\) \(LLS Regulation\)](#).

Some clearing will trigger the Biodiversity Offset Scheme provisions of the [Biodiversity Conservation Act 2016 \(NSW\) \(BC Act\)](#).

Rural land clearing laws under the LLS Act apply to most rural land in NSW, with a few exceptions.

Clearing in urban areas and environmental zones is regulated under [State Environmental Planning Policy \(Vegetation in Non-Rural Areas\) 2017](#) or through the development assessment process under the [Environmental Planning and Assessment Act 1979 \(NSW\) \(EP&A Act\)](#), depending on the type, scale, and reason for the clearing.

The NSW Minister for Primary Industries is responsible for the LLS Act and LLS Regulation, which is primarily administered by Local Land Services. The Minister for the Environment has some responsibilities under the LLS Act and is responsible for the BC Act.

Visit: [The Local Land Services website](#) to find out more about the LLS Act and LLS Regulation

How is rural land clearing controlled?

The land clearing rules that apply to a particular piece of land depend on how the land is categorised by the native vegetation regulatory map (**the NVR map**). The NVR map is being developed by the Environment, Energy and Science group (a division of the NSW Department of Planning, Industry and Environment). It utilises aerial photographs and satellite imagery to categorise land as either exempt land, regulated land or excluded land.

Visit: [The NSW Government's Native Vegetation Regulatory Map Viewer](#)

If the land is exempt, it can be cleared without needing to obtain an authorisation under the LLS Act. If it is excluded, the LLS Act does not apply to the land and clearing will be regulated under other laws, such as planning laws.

¹ Note: The [Local Land Services Act 2013 \(NSW\) \(LLS Act\)](#) repealed the *Native Vegetation Act 2003* and *Native Vegetation Regulation 2013* on 25 August 2017.

Clearing on regulated land needs some form of authorisation under the LLS Act. There are three pathways to clear regulated land:

1 – Allowable activities

The LLS Act permits the clearing of native vegetation associated with land management activities like the construction of rural infrastructure such fences, dams, sheds and tracks.

2 – Code-based clearing

The [Land Management \(Native Vegetation\) Code 2018](#) sets out clearing parameters for 5 categories of clearing: Invasive native species; pasture expansion; continuing use; equity; and farm plan. As long as the clearing meets the Code, it does not need approval, although it may need to be certified as code-compliant by the LLS.

3 – Approval

Where the clearing is not an allowable activity or code-compliant and is for a purpose that does *not* require development consent, approval will be required from the Native Vegetation Panel. This clearing triggers the Biodiversity Offset Strategy under the BC Act.

The Native Vegetation Regulatory Map and its categorisation of land

The NVR map categorises land into 3 categories:

- exempt land;
- regulated land, and;
- excluded land.

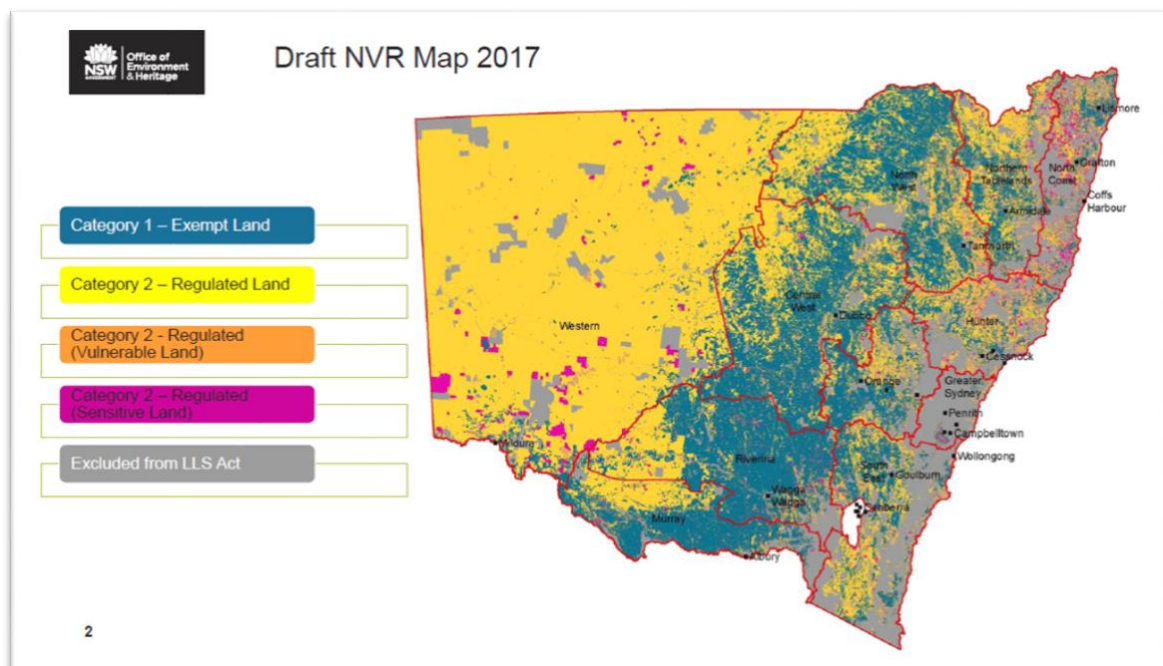


Figure 1: An indication of the NVR map will look like when it is complete

Visit: [The NSW Government's Native Vegetation Regulatory Map Viewer](#)

Category 1 – exempt land

Exempt land appears in blue on the map. This is land that the Environment, Energy and Science group (**EES**) reasonably believes:²

- was cleared of native vegetation as at 1 January 1990;
- was *lawfully* cleared of native vegetation between 1 January 1990 and 25 August 2017;
- contains low conservation value grasslands;
- contains native vegetation that has previously been identified in a Property Vegetation Plan as ‘regrowth’; or
- has been biocertified.³

Category 2 – regulated land

Regulated land appears in yellow on the map. This is land that the EES reasonably believes:⁴

- was not cleared of native vegetation as at 1 January 1990;
- was *unlawfully* cleared of native vegetation between 1 January 1990 and 25 August 2017;
- contains native vegetation that was grown or preserved with the assistance of public funds (other than funds for forestry purposes);
- contains grasslands that are not low conservation grasslands;
- is subject to a private land conservation agreement;⁵
- is a ‘set aside’ under a [Land Management \(Native Vegetation\) Code 2018](#);
- is an offset under a property vegetation plan or a set aside under the former native vegetation laws;
- is subject to an approved conservation measure that was the basis for other land being biocertified;⁶
- is identified as coastal wetlands or littoral rainforest;⁷
- is identified as koala habitat;⁸

² LLS Act, s 60H.

³ See the Glossary for a definition of biocertification. Biocertification happens under the BC Act.

⁴ LLS Act, s. 60I.

⁵ Under the BC Act.

⁶ Under BC Act, Part 8..

⁷ Under the [Coastal Management Act 2016 \(NSW\)](#).

⁸ Under the State Environmental Planning Policy 44 – Koala Habitat Protection.

- is a declared RAMSAR wetland, or;
- is mapped as containing critically endangered species of plants or a critically endangered ecological community.⁹

Category 2 land can be further categorised as *vulnerable*¹⁰ regulated land or *sensitive*¹¹ regulated land.

Category 2 – vulnerable regulated land

Vulnerable regulated land appears in orange on the map. Vulnerable regulated land is land that is steep (greater than 18 degrees) or highly erodible land, protected riparian land (land within a buffer distance of a named stream) or ‘special category’ land.¹²

Category 2 – sensitive regulated land

Sensitive regulated land appears in pink on the map. It overlaps substantially with regulated land, but includes a number of additional criteria.

Sensitive regulated land is land that the EES reasonably believes:¹³

| Same as regulated land | Additional criteria |
|-------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------------------------------------------------|
| is subject to a private land conservation agreement ¹⁴ | is subject to a requirement to take remedial action to restore or protect the biodiversity values of the land ¹⁵ |
| is a ‘set aside’ under a Land Management (Native Vegetation) Code | contains rainforests |
| is subject to an approved conservation measure that was the basis for other land being biocertified ¹⁶ | is in the Southern Mallee Planning Group Region and subject to a lease ¹⁷ requiring the conservation of the land |
| is an offset under a property vegetation plan or a set aside under former native vegetation laws | contains old-growth forests |

⁹ Under the BC Act.

¹⁰ LLS Act, s. 60E (3).

¹¹ LLS Regulation, cl 108.

¹² Vulnerable land is carried over from the *Native Vegetation Act 2003*. There are currently no details on what land is ‘special category’ land.

¹³ LLS Regulation, cll 108, 113.

¹⁴ Under the BC Act.

¹⁵ Under the BC Act., *Native Vegetation Act 2003* (repealed) or [National Parks and Wildlife Act 1974 \(NSW\) \(NPW Act\)](#).

¹⁶ Under the BC Act, Part 8.

¹⁷ Under the [Western Lands Act 1901 \(NSW\)](#).

| | |
|-------------------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| is identified as coastal wetlands or littoral rainforest ¹⁸ | is required to be set aside for nature conservation, revegetation or as a native vegetation offset as a condition of consent ¹⁹ |
| is identified as koala habitat ²⁰ | contains low conservation grassland beneath the canopy or dripline of woody vegetation that meets the criteria for classification as category 2 land |
| is a declared RAMSAR wetland | contains native vegetation that is required to be retained as a condition of plantation authorisation ²¹ |
| is mapped as containing critically endangered species of plants or a critically endangered ecological community ²² | was subject to a Trust Agreement ²³ |
| | was subject to a registered property agreement ²⁴ |
| | was subject to a conservation or incentive Property Vegetation Plan ²⁵ |
| | is subject to a conservation agreement ²⁶ |
| | is (or was previously) subject to a private native forestry plan ²⁷ or to a Property Vegetation Plan ²⁸ that authorised the clearing of native vegetation for the purposes of forestry operations |

¹⁸ Under the [Coastal Management Act 2016 \(NSW\)](#).

¹⁹ Under the *Environmental Planning and Assessment Act 1979* (NSW).

²⁰ Under State Environmental Planning Policy 44 – Koala Habitat Protection.

²¹ Under the [Plantations and Reafforestation Act 1999 \(NSW\)](#).

²² Under the BC Act.

²³ Under the *Nature Conservation Trust Act 2001* (NSW) (repealed), immediately before the repeal of the Act.

²⁴ Under the *Native Vegetation Conservation Act 1997* (NSW) (repealed), immediately before the repeal of the Act.

²⁵ Under the *Native Vegetation Act 2003* (NSW) (repealed).

²⁶ Under a now repealed section of the NPW Act.

²⁷ Under the [Forestry Act 2012 \(NSW\)](#).

²⁸ Under the *Native Vegetation Act 2003* (NSW) (repealed).

Excluded land

Excluded land appears in grey on the map. This includes:

- urban areas (including specified local government areas²⁹ and specified urban zones)³⁰;
- the national park estate (including declared national parks, wilderness areas, world heritage properties, Aboriginal areas, nature reserves and State conservation areas);
- State forestry land; and
- Lord Howe Island.

Land can be re-categorised

The EES can re-categorise mapped land in certain circumstances, including if there is an error in a published map or they obtain new information about the historical vegetation cover or use of the land.³¹

Landholders of *Category 2 – regulated land* can apply for their land to be re-categorised as *Category 1 – exempt land*. Such land can be re-categorised if the Head of the EES reasonably believes that the land has been lawfully cleared after 25 August 2017.³²

Landholders can also seek a review of their land categorisation in some circumstances, including if they believe there is an error in the mapping or if the land has been lawfully cleared since 25 August 2017.³³

Land categorisation and permitted clearing

The land category determines which clearing pathways are available.

Exempt land can be cleared without an authorisation

Exempt land can be cleared without the need to obtain an authorisation under the LLS Act. However other legislation may apply to this land, such as the [Environment Protection and Biodiversity Conservation Act 1999 \(Cth\)](#).

Unauthorised clearing of native vegetation on regulated land is an offence

Regulated land can be cleared as long as the clearing is:

- an allowable activity;
- authorised by a Land Management (Native Vegetation) Code;
- approved by the Native Vegetation Panel; or

²⁹ See Glossary for local government areas not subject to the rural land clearing laws.

³⁰ See Glossary for the land use zones that are not subject to the rural land clearing laws.

³¹ LLS Act, s 60K.

³² Ibid.

³³ Ibid, s 60L.

- authorised under other legislation, such as development consent under the [EP&A Act](#).

It is an offence to clear native vegetation on regulated land unless one of these defences applies.³⁴

The maximum penalties for unauthorised clearing are:³⁵

- \$5 million for a corporation and \$1 million for an individual if the offence was committed intentionally and caused (or was likely to cause) significant harm to the environment, and;
- \$2 million for a corporation and \$500,000 for an individual for any other offence.

Clearing does not just include cutting down trees. It also includes felling, uprooting, thinning or otherwise removing native vegetation; or killing, destroying, poisoning, ringbarking or burning native vegetation.³⁶

Restrictions for vulnerable regulated land and sensitive regulated land

The range of allowable activities that can be carried out on vulnerable and sensitive regulated land is restricted,³⁷ and activities on this land must be undertaken in a manner that minimises the risk of soil erosion.³⁸

Code-based clearing cannot occur on Category 2 - sensitive regulated land.³⁹ If land is mapped as sensitive regulated land because it is a set-aside under a Code, the land can be cleared in accordance with that Code.⁴⁰ Some parts of the Code do not apply to vulnerable regulated land.

Approvals to clear both vulnerable and sensitive regulated land can be granted by the Native Vegetation Panel.

Local Land Services to report on rates of allowable clearing

Local Land Services must report annually (such as in its annual report) on its *estimate* of the overall rate of clearing that has resulted from:

- allowable activities;
- Code-based clearing;
- approvals (and any modification of approvals) granted under Division 6; and
- applications for approval (or for modifications of approvals) that have been refused and the reasons for the refusal.

³⁴ LLS Act, s 60N(1).

³⁵ Ibid, s 60N(1).

³⁶ Ibid, s 60C.

³⁷ Ibid, Schedule 5A, cl 35.

³⁸ Ibid, Schedule 5A cl 36.

³⁹ LLS Regulation, cl 124.

⁴⁰ Ibid, cl 124(2).

Allowable activities

Allowable activities are routine land management activities that can generally be carried out without an approval. NSW is divided into three zones for the purpose of allowable activities – the Western Zone, Central Zone and Coastal Zone. The rules around allowable activities can differ according to the zone. The Glossary sets out which zone each local government area falls into.

There are also special rules for small holdings, which are single landholdings in the same ownership that have an area of less than 40 hectares in the Western Zone and less than 10 hectares in the Central and Coastal Zones.⁴¹

Clearing for allowable activities permissible without an authorisation

Clearing for allowable activities is generally permissible without an authorisation, provided the clearing:⁴²

- does not exceed the minimum extent necessary for that purpose;⁴³
- is carried out by or on behalf of the landholder (unless another party is specifically authorised), and;
- is not carried out on land that is subject to a stop work order, interim protection order, remediation order or biodiversity offsets enforcement order.⁴⁴

What are allowable activities?

The LLS Act describes allowable activities generally. Some activities are only allowable if they meet the conditions specified for that activity.

Clearing for the following purposes is an allowable activity:⁴⁵

| Activity | Conditions |
|------------------------------------------------------------------------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| to remove or reduce an <u>imminent risk</u> of serious personal injury or damage to property | |
| to obtain timber for the construction, operation or maintenance of <u>rural infrastructure</u> | <ul style="list-style-type: none">• the timber must be sourced from the same landholding as it is used on• the clearing must not cause land degradation⁴⁶• the vegetation must not be a threatened species or part of a |

⁴¹ LLS Act, Schedule 5A, cl 4.

⁴² Ibid, Schedule 5A, Part 1.

⁴³ See Glossary for definition of minimum extent necessary.

⁴⁴ These orders are issued under the BC Act, Part 11.

⁴⁵ LLS Act, Schedule 5A, Part 2.

⁴⁶ See Glossary for definition of land degradation.

| | |
|-------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | <p>threatened ecological community, or known by the landholder to be habitat of threatened species</p> <ul style="list-style-type: none"> the timber must not be obtainable through other authorised clearing (such as under a Code) |
| to collect <u>firewood</u> | <ul style="list-style-type: none"> the firewood is used by the landholder the vegetation must not be a threatened species or part of a threatened ecological community, or known by the landholder to be habitat of threatened species the firewood must not be obtainable through other authorised clearing (such as under a Code) |
| for <u>exempt farm forestry</u> ⁴⁷ | |
| to <u>harvest timber</u> that has been planted | <ul style="list-style-type: none"> the timber must not have been planted with public funds granted for purposes other than forestry |
| for a traditional <u>Aboriginal cultural activity</u> | <ul style="list-style-type: none"> the activity must not be a commercial activity |
| for <u>environmental protection works</u> ⁴⁸ | |
| for the construction, operation or maintenance of <u>public infrastructure</u> (including cemeteries) | <ul style="list-style-type: none"> the vegetation must not comprise, or be likely to comprise a threatened species or its habitat, or part of a threatened ecological community |
| for the construction, operation or maintenance of <u>gravel pits</u> | <ul style="list-style-type: none"> the clearing must be carried out by or on behalf of a local council the clearing must be limited to 5 ha in the Western Zone and 2 ha in the Coastal and Central Zone the native vegetation must not comprise, or be likely to comprise a plant that is a threatened species or its habitat, a threatened ecological community, or a protected plant⁴⁹ |

⁴⁷ See Glossary for definition of exempt farm forestry.

⁴⁸ See Glossary for definition of environmental protection works.

⁴⁹ Threatened species and ecological communities and protected plants are identified in the BC Act.

| | |
|--------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| | <ul style="list-style-type: none"> the clearing must be carried out in a way that does not harm any animal that is (or is part of) a threatened species or threatened ecological community or that is a protected animal⁵⁰ the clearing must be carried out in conjunction with a restoration program or other arrangements that will ensure the restoration of native vegetation on the cleared land of the same or a similar species as the native vegetation cleared and to the same or a similar extent as existed on the cleared land |
| for the construction, operation or maintenance of <u>telecommunications infrastructure</u> | <ul style="list-style-type: none"> the clearing must be carried out by or on behalf of the owner of the infrastructure as well as the landholder |
| for the construction, operation or maintenance of <u>privately owned power lines</u> on private land | |
| for the maintenance ⁵¹ of public utilities associated with the <u>transmission of electricity</u> | <ul style="list-style-type: none"> the clearing must be undertaken by, or with the written permission of the body responsible for the public utility the clearing must not exceed set maximum distances the clearing must be for the minimum distance that will ensure reliability of supply under all loading and environmental conditions and minimise the risk of arcing |
| during the course of <u>sustainable grazing</u> ⁵² | |

⁵⁰ Threatened species and ecological communities and protected plants are identified in the BC Act.

⁵¹ Maintenance includes: maintaining the necessary safety clearances under power lines (conductors and structures) and around communication sites associated with the supply of electricity, minimising fuel loads under power lines to minimise the chance of smoke from a fire resulting in a line trip, maintaining existing access roads and tracks. Maintenance does not include: construction of new access roads or tracks or removal of low growing groundcover.

⁵² See Glossary for definition of sustainable grazing.

Clearing of mulga for the purpose of obtaining stock fodder

- the stock must be on the same landholding as the vegetation that is cleared
- the clearing must not be on a small landholding, on land in the Coastal Zone, on Category 2 – Vulnerable land or within 20 metres of an estuary, wetland or incised watercourse
- the clearing must not exceed 50% of the total area of mulga on the landholding in any 10 year period
- the cleared mulga must remain on the ground or be windrowed
- remaining mulga plants must not be more than 20 metres apart
- the clearing must not cause land degradation or result in the introduction of non-native vegetation

for the construction, operation or maintenance of an airstrip

- the clearing must be to the minimum extent necessary to meet civil aviation standards for airstrips

For a firebreak

- the clearing must be in the Western Zone
 - the clearing must be to a maximum of 100 metres where the native vegetation predominantly comprises mallee species
-

Clearing for rural infrastructure

The clearing of native vegetation for the construction, operation or maintenance of rural infrastructure is allowable if:⁵³

- the infrastructure is rural infrastructure in the relevant Zone or holding in which it is located, and;
- the clearing does not exceed the maximum distance of clearing authorised in relation to the rural infrastructure.

⁵³ LLS Act, Schedule 5A, cl 30.

The maximum distance of clearing for rural infrastructure is:⁵⁴

- 40 metres in the Western Zone (except on small holdings or for temporary fences);
- 30 metres in the Central Zone (except on small holdings or for temporary fences);
- 15 metres in the Coastal Zone (except on small holdings or for temporary fences), and;
- 12 metres on a small holding or for temporary fences.

‘Rural infrastructure’ is a building, structure or work that is carried out on rural regulated land and which does not need development consent.⁵⁵

| Western and Central Zones | Coastal Zone | Small holding (any zone) |
|--------------------------------------------------------------------------------|----------------------------------------|------------------------------------------|
| Fences | Permanent boundary and internal fences | Permanent boundary and internal fences |
| Roads | Roads | Roads |
| Tracks | Tracks | Tracks |
| Irrigation channels or pipelines | Pipelines | Pipelines |
| Stock or domestic water supply pipelines, dams, tanks, windmills, bores, pumps | Shearing or machinery sheds | Buildings other than habitable buildings |
| Soil conservation earthworks | Tanks | Tanks |
| Telephone lines or cables | Stockyards | Stockyards |
| Shearing machinery | Bores, pumps, waterpoints | Bores, pumps, waterpoints |
| Grain, hay or similar sheds | Windmills | Windmills |

Allowable activities on vulnerable and sensitive regulated land

The range of allowable activities is restricted on *Category 2 – vulnerable regulated land*; *Category 2 – sensitive regulated land*; and land that contains native vegetation that was grown or preserved with the assistance of public funds (other than for forestry purposes).⁵⁶

⁵⁴ LLS Act, Schedule 5A, cl 31.

⁵⁵ Ibid, cl 29.

⁵⁶ ...for the period during which any obligation attached to that funding are ongoing: LLS Act, Schedule 5A, cl 35 and s 60S(2); LLS Regulation, cl 124.

The only allowable activities that can be undertaken on this land are:⁵⁷

- clearing that is reasonably necessary to remove or reduce an imminent risk of serious personal injury or damage to property;
- clearing for environmental protection works;
- clearing for the maintenance of public utilities associated with the transmission of electricity;
- clearing for the construction or maintenance of boundary fencing, with a maximum clearing distance of 6 metres;
- clearing for the construction or maintenance of fencing other than boundary fencing that is reasonably required to improve the management of the land, with a maximum clearing distance of 6 metres;
- clearing for the construction or maintenance of farm tracks that are reasonably necessary to access sites on the land as long as the route minimises the clearing required, with a maximum clearing distance of 6 metres; and
- clearing during the course of sustainable grazing.

Allowable activities can only be carried out on this land if the clearing is undertaken in a manner that minimises the risk of soil erosion.⁵⁸

Code-based clearing

The Minister for Primary Industries (with the concurrence of the Environment Minister) has prepared a [Land Management \(Native Vegetation\) Code 2018](#) which sets out the rules for clearing native vegetation on Category 2 – regulated land.⁵⁹

The Minister can make Codes under the LLS Act to authorise clearing.⁶⁰ All Codes must be publicly exhibited for public comment for at least 4 weeks before they can become operational.⁶¹

⁵⁷ LLS Act, Schedule 5A, cl 35.

⁵⁸ Ibid, cl 36.

⁵⁹ LLS Act, s 60S.

⁶⁰ Ibid, s 60T.

⁶¹ Ibid, s 60U.

Content of the code

The Code has five parts:⁶²

1 – Invasive native species

Permits clearing of native vegetation that has been identified as an invasive native species, and permits certain agricultural activities in treatment areas⁶³ in certain circumstances.

2 – Pasture expansion

Permits a range of clearing of woody native vegetation by uniform thinning and mosaic thinning.

3 – Continuing use

Permits clearing of post-1990 regrowth in previously cleared areas; permits continuation of clearing consistent with land management activities undertaken prior to 25 August 2017; permits clearing associated with a rotational land management activity and authorises re-categorisation of land in certain circumstances.

4 – Equity

Enables the clearing of native vegetation from paddock tree areas,⁶⁴ clearing of compromised native groundcover, and clearing of native vegetation from small areas in exchange for set aside areas containing remnant vegetation.

5 – Farm plan

Enables the clearing of native vegetation from paddock tree areas and the clearing of Category 2 – regulated land in exchange for set aside areas containing remnant vegetation or set aside areas where revegetation will be required.

For each Part, the Code sets out:

1 – Permitted clearing

This is the type of clearing that is authorised by the Code. For example, the Equity Code authorises the clearing of native vegetation from paddock tree areas at a rate of one paddock tree area for each 50 hectares of landholding within any 12 month period.

2 – Requirements prior to undertaking permitted clearing

This sets out the preconditions for clearing which usually relate to notifying LLS and/or obtaining a mandatory code compliant certificate before commencing

⁶² See: <https://www.lls.nsw.gov.au/help-and-advice/land-management-in-nsw>.

⁶³ See the Glossary for definition of treatment area.

⁶⁴ See Glossary for definition of paddock tree area.

clearing.

3 – Landholding restrictions

Some parts of the Code don't apply to certain land. Restrictions may be based on the size of the landholding (e.g. clearing under the Code is not permitted on small landholdings) or on the Zone (e.g. clearing under the Code is not permitted in the Coastal Zone). Other restrictions may relate to how the land is mapped (e.g. clearing under the Code is only permitted if at least 30% of the land is mapped as Category 2).

4 – Treatment area restrictions

This restriction relates to the proportion of the land that is to be cleared. It may limit the total cumulative treatment areas to a certain percentage of the landholding.

5 – Method and impact conditions

These conditions are designed to avoid and minimise the environmental impacts of the clearing. The conditions may require no more than minimal disturbance to soil and groundcover or prohibit clearing within a specified buffer distance from a water body.

6 – Re-categorisation of land

Some parts of the Code specify the circumstances in which the treatment area can be re-categorised as Category 1 exempt land once the clearing has been carried out.

7 – Set-aside area requirement

Some parts of the Code require the clearing of native vegetation in the treatment area to be offset by the establishment of a set-aside area. The Code also sets out the requirements for establishing the set-aside area, including the size of the set-aside in relation to the treatment area.

Clearing in accordance with a Code is authorised

If clearing is undertaken in accordance with a Code, no further authorisation or approval is required.⁶⁵

Notification and certification of Code-based clearing

A landholder who intends to rely on the Code to authorise clearing must notify Local Land Services of the clearing unless the Code exempts the landholder from giving notice.⁶⁶ If the Code requires notice to be given, it will specify how the notice is to be given and the timing of the notice. Once notice is given, it is effective for 15 years from the date of the notice.⁶⁷

⁶⁵ LLS Act, s 60S.

⁶⁶ Ibid, s 60X.

⁶⁷ The [Land Management \(Native Vegetation\) Code 2018](#), Part 1(12) (**Native Vegetation Code**).

It is an offence to fail to notify the LLS. The maximum penalty is \$110,000 for a corporation and \$22,000 for an individual.⁶⁸

The Code may require a landholder to have their intended Code-based clearing certified by LLS. If LLS is satisfied that the proposed clearing will be carried out in accordance with the relevant Code, it will issue a mandatory code compliant certificate.⁶⁹

Even where certification is not required by the Code, a landholder may choose to apply to LLS for a certificate confirming that the proposed clearing complies with the relevant Code.⁷⁰ In this case LLS can issue a voluntary code compliant certificate.⁷¹

If LLS is not satisfied that proposed clearing will be Code-compliant, it must refuse to issue a certificate.⁷² In practice, LLS will work with landholders wishing to clear to make the proposal to clear Code-compliant.

Restrictions on Code-based clearing

The Code only authorises clearing within the relevant treatment area. Any clearing outside of that area is not Code-compliant.⁷³

The Code does not apply to Category 2 – sensitive regulated land⁷⁴ so this means there can be no Code-based clearing on, for example, SEPP 44 core koala habitat, old growth forest, or land that is set aside for conservation under a Trust Agreement, Conservation Agreement or Property Vegetation Plan. Clearing of set-asides is only authorised to the extent that the Code allows clearing of the set-aside.⁷⁵

There is no general restriction on undertaking Code-based clearing on Category 2 – vulnerable land, but some parts of the Code do contain specific restrictions. For example, part of the Invasive Native Species code prohibits clearing on Category 2 – vulnerable regulated land unless LLS has issued a mandatory code compliant certificate that allows that land to be cleared.⁷⁶ Another part of the Invasive Native Species code only allows clearing of Category 2 – vulnerable regulated land if the clearing will not cause disturbance to soil and groundcover.⁷⁷

⁶⁸ LLS Act, s 60X.

⁶⁹ Ibid, ss 60Y, 60Z; Native Vegetation Code, Part 1(13).

⁷⁰ LLS Act, s 60Y.

⁷¹ Ibid, s 60Z.

⁷² Ibid, s 60Z.

⁷³ Native Vegetation Code, Part 1(8).

⁷⁴ Ibid, Part 1(7).

⁷⁵ LLS Regulation, cl 124(2).

⁷⁶ Native Vegetation Code, Part 2, cl 30.

⁷⁷ Ibid, Part 2, cl 25.

Code-based clearing is not permitted on land that contains native vegetation that was grown or preserved with the assistance of public funds (other than funds for forestry purposes) while the obligations attached to those funds are ongoing.⁷⁸

The Code does not authorise the clearing of native vegetation that forms part of a *critically* endangered ecological community.⁷⁹ There is no general restriction on clearing vulnerable or endangered ecological communities, although some Parts of the Code do contain specific restrictions. For example, the Farm Plan Code does not authorise clearing of native vegetation if the treatment area contains native vegetation that forms part of an endangered ecological community.⁸⁰

Importantly, it is up to LLS to determine whether native vegetation is an instance of a vulnerable or endangered ecological community.⁸¹

A person undertaking Code-based clearing must not *knowingly* harm a threatened animal species.⁸² It is an offence to harm an animal that is of a threatened species.⁸³ However, it is a defence if the clearing is authorised by a Native Vegetation Code, unless the person knew the clearing would be likely to harm the threatened species.⁸⁴

The Code does not authorise clearing for forestry purposes, although it is permissible to sell any timber that is lawfully cleared under the Code.⁸⁵

Landholders can seek to vary Code requirements

Landholders can apply to LLS to vary the requirements of a Code. LLS can issue an authorised code variation certificate if LLS is satisfied that:⁸⁶

- the proposed variation is for a legitimate purpose associated with the management of the land concerned;
- the variation is reasonable in the circumstances, and;
- the environmental impact of the variation would only be minor.

Set aside areas

The Code includes a requirement to establish set-aside areas for some clearing, including under the Farm Plan Code, and some clearing under the Equity Code.⁸⁷

⁷⁸ LLS Regulation, cl 124.

⁷⁹ Native Vegetation Code, Part 1(7).

⁸⁰ Ibid, Part 6, Div 1, cl 92; Part 6, Div 2, cl 99.

⁸¹ Native Vegetation Code, Part 1(19).

⁸² Ibid, Part 1(9).

⁸³ BC Act, s 2.1.

⁸⁴ Ibid, s 2.8(1)(b)(ii).

⁸⁵ Native Vegetation Code, Part 1 (10).

⁸⁶ LLS Act, s 60ZB.

⁸⁷ Native Vegetation Code, Part 5, Div 3 and 4; Part 6.

The general set-aside requirements are in the Code and specific detailed requirements are set out in the mandatory code compliant certificate issued by LLS.⁸⁸ The certificate will include information such as:

- when the area is to be set aside;
- the characteristics of areas suitable to be set aside;
- the size of the area to be set aside, and;
- any re-vegetation or other management actions required or prohibited in the set aside area.

Where a set-aside is required, clearing under the Code cannot occur until the set-aside is registered on a public register of set aside areas maintained by LLS.⁸⁹

Visit: [The LLS' Public Register page to view Set Aside Areas and other work happening under the land management framework](#)

Landholder obligations with regard to set aside areas

The landholder has an obligation to comply with the relevant Code and the mandatory code compliant certificate with respect to establishing the set aside area.⁹⁰ In addition, the landholder must:⁹¹

- make reasonable efforts to manage the set aside area in a manner expected to promote vegetation integrity;
- keep records of all management actions undertaken in the set aside area, including the timing and location of management actions and provide these records to LLS on request;
- not clear native vegetation on the set aside area other than as required or authorised by the Code or the mandatory code compliant certificate; and
- carry out the land management activities required by the Code or the mandatory code compliant certificate to protect the biodiversity values of the set aside area.

Once a set aside area is registered in the public register it is an offence to fail to comply with an obligation with regards to a set aside area. The maximum penalty is \$1.65 million for corporations and \$330,000 for individuals.⁹²

⁸⁸ LLS Act, s 60ZC(2).

⁸⁹ Ibid, s 60ZC(3).

⁹⁰ Ibid, s 60ZC(5).

⁹¹ Native Vegetation Code, Part 1, cll 17-18.

⁹² LLS Act, s 60ZC(6).

Land that cannot be used as a set aside area

Some land is unable to be used as a set aside, particularly land that is already being managed for conservation or as an offset. This includes:⁹³

- land that is covered by a Private Land Conservation Agreement;⁹⁴
- land that was subject to a Trust Agreement;⁹⁵
- land that is subject to a Conservation Agreement;⁹⁶
- land that was subject to a registered property agreement;⁹⁷
- land that was subject to an offset requirement under a Property Vegetation Plan;⁹⁸
- land that was a conservation area, or subject to incentive funding under a Property Vegetation Plan;⁹⁹
- land that contains native vegetation that was grown or preserved with the assistance of public funds, other than funds for forestry purposes, while the obligations attached to that funding are ongoing;
- land that is subject to a requirement to take remedial action;¹⁰⁰
- land that is subject to an approved conservation measure that was the basis for the land being biocertified;¹⁰¹
- land that is required to be set aside for nature conservation, re-vegetation or as a vegetation offset under a condition of development consent or approval;¹⁰²
- land that that is required to be retained under a condition of an authorisation for a plantation;¹⁰³
- land in the Southern Mallee Planning Group Region that is subject to a lease¹⁰⁴ that requires the conservation of the area through the prohibition of grazing and active conservation management, and;
- land that is set aside for biodiversity purposes because of any other agreement or legal obligation.

⁹³ *Local Land Services Act 2013* (NSW), s. 60ZC(4); *Local Land Services Regulation 2014* (NSW), cl. 129.

⁹⁴ Under the BC Act.

⁹⁵ Immediately before the repeal of the *Nature Conservation Trust Act 2001* (NSW).

⁹⁶ Under the NPW Act.

⁹⁷ Immediately before the repeal of the *Native Vegetation Conservation Act 1997* (NSW).

⁹⁸ Immediately before the repeal of the *Native Vegetation Act 2003* (NSW).

⁹⁹ Immediately before the repeal of the *Native Vegetation Act 2003* (NSW).

¹⁰⁰ Such as under the BC Act or the now repealed *Native Vegetation Act 2003* (NSW).

¹⁰¹ Under the BC Act or under any Act repealed by that Act,

¹⁰² Under the EP&A Act.

¹⁰³ Under the *Plantations and Reafforestation Act 1999* (NSW).

¹⁰⁴ Under the *Western Lands Act 1901* (NSW).

Public registers

Local Land Services is required to maintain a public register that includes details of the precise location of each set aside area.¹⁰⁵

In addition, LLS must maintain public registers that show details of *aggregate* information about:¹⁰⁶

- landholder notices of intention to undertake code-based clearing, and;
- certificates issued to landholders to certify their proposed clearing is code-compliant.

Approval for clearing not otherwise authorised

If proposed clearing is not an allowable activity and is not code-compliant, the landholder may be able to seek approval to clear from the Native Vegetation Panel.¹⁰⁷

The clearing must be proposed over Category 2 – regulated land and must be for a purpose that *does not* require:

- development consent or State significant infrastructure approval,¹⁰⁸ or;
- an activity approval.¹⁰⁹

Otherwise, there are no general restrictions on applying for approval to clear: the land can be sensitive or vulnerable regulated land. However, if the land is being managed as a set aside or under a private conservation agreement registered on title, the land is subject to that agreement which is likely to prohibit clearing.

The Native Vegetation Panel

Applications to clear native vegetation on Category 2 – regulated land are made to the Native Vegetation Panel (**NVP**). The NVP has not yet been established but will be appointed by the Minister for Primary Industries and will comprise:¹¹⁰

- a Chairperson, with expertise in planning, public administration or social assessment,
- a person with expertise in economics, agricultural economics or agricultural land production systems, and;
- a person with expertise in ecology or the protection and conservation of biodiversity.

¹⁰⁵ LLS Act, s 60ZC(3); LLS Regulation, cl 130.

¹⁰⁶ LLS Act, s 60ZO.

¹⁰⁷ Ibid, s 60ZF.

¹⁰⁸ Under the EP&A Act.

¹⁰⁹ Ibid, Part 5.

¹¹⁰ LLS Act, s 60ZE.

The NVP is also responsible for determining applications to clear native vegetation on non-rural land (including environmental zones).¹¹¹

Although the Panel is appointed by the Minister, it is not subject to the direction or control of the Minister (except in relation to the procedure).

Impacts of clearing must be offset

The impacts of clearing on biodiversity values must be identified and offset under the Biodiversity Offset Scheme.¹¹²

The Biodiversity Offsets Scheme is a system for offsetting of the impacts associated with development or clearing through the purchase and retirement of 'biodiversity credits'. The credits are generated by people who have entered into stewardship agreements to conserve and enhance the biodiversity values of their land.

The NSW Department of Planning, Industry and Environment (**DPIE**) maintains a public register of biodiversity credits that have been created.¹¹³

Visit: [The DPIE's page on Biodiversity Offsets Scheme Public Registers](#) to search for information about biodiversity credits, obligations and transactions

The Biodiversity Offsets Scheme is underpinned by the Biodiversity Assessment Method and its calculator tool (**BAM Calculator**). The BAM Calculator enables accredited assessors to identify the biodiversity values of a piece of land and assess the impacts of proposed clearing on those values. Any impacts that cannot be avoided or minimised must be offset. The details of the assessment are contained in a Biodiversity Development Assessment Report.

Visit: [The DPIE's page on the Biodiversity Method 2020](#)

Visit: [The BAM Calculator portal](#)

Assessors must be accredited by the DPIE which maintains a list of accredited assessors.

Visit: [The DPIE's page on Accredited Assessors](#)

¹¹¹ Pursuant to [State Environmental Planning Policy \(Vegetation in Non-Rural Areas\) 2017](#) (**Native Vegetation SEPP**).

¹¹² Pursuant to the BC Act.

¹¹³ BC Act, s. 6.17 and Part 9.

Retiring biodiversity credits

Once a biodiversity credit has been purchased, the holder of the credit may apply in writing to the DPIE to retire the credit.¹¹⁴ The DPIE retires biodiversity credits by recording in the register of biodiversity credits that the credit has been retired.¹¹⁵ Once a credit is retired, it cannot be used again to offset impacts on biodiversity.

Applying for approval to clear

Application

The Native Vegetation Panel will most likely develop a form for applications. The applicant may be required to outline the purpose of the clearing and pay an application fee.

A Biodiversity Development Assessment Report must accompany the application.

Evaluation

The NVP is to take into consideration the environmental, social and economic impacts of the proposed clearing (in accordance with the principles of ecologically sustainable development) having regard to the purpose for which the land is to be used after it is cleared.¹¹⁶

In relation to environmental impacts, the NVP must consider:¹¹⁷

- the likely impact of the proposed clearing on biodiversity values as set out in a Biodiversity Development Assessment Report that has been submitted by the applicant,
- whether the clearing of the native vegetation is likely to cause or increase soil erosion, salination, acidification, land slip, flooding, pollution or other adverse land or water impacts, and
- any future clearing of native vegetation on the land that has been authorised or notified but not yet carried out.

Determination

The NVP may approve or refuse the application.¹¹⁸ If approval is granted, conditions can be attached.¹¹⁹

The NVP must refuse to grant approval if the Panel is of the opinion that the proposed clearing is likely to have *serious and irreversible* impacts on biodiversity values.¹²⁰

¹¹⁴ BC Act, s 6.27.

¹¹⁵ Ibid.

¹¹⁶ LLS Act, s 60ZF (5).

¹¹⁷ Ibid, s 60ZF.

¹¹⁸ Ibid.

¹¹⁹ Ibid, s 60ZF(7).

¹²⁰ Ibid, s 60ZF(6).

Landholder Appeal

A landholder may appeal to the Land and Environment Court against a decision to refuse an application or against a decision to impose a condition on the approval.¹²¹

No community consultation

The community, including neighbours, will not be notified of applications to clear and does not have the right to comment on applications.

Biodiversity Development Assessment Report

An application to clear must be accompanied by a Biodiversity Development Assessment Report.¹²² This is a report that is prepared by an accredited assessor to identify:¹²³

- the biodiversity values of the land;
- the impacts of the proposed clearing, and;
- the actions required to offset the residual impacts of the clearing (after impacts have been avoided and minimised).

If the NVP approves the clearing application, the conditions of the approval must require the applicant to purchase and retire biodiversity credits to offset the impact on biodiversity values of the number and class set out in the Biodiversity Development Assessment Report.¹²⁴

However, the Panel may reduce or increase the number of biodiversity credits that would otherwise be required if the Panel determines that the reduction or increase is justified having regard to the environmental, social and economic impacts of the proposed clearing and the purpose for which the land is to be used after it is cleared. The Panel must give reasons for a decision to reduce or increase the biodiversity credits.¹²⁵

Serious and irreversible impacts on biodiversity values

Clearing is likely to have serious and irreversible impacts on biodiversity values if it is likely to contribute significantly to the risk of a threatened species or ecological community becoming extinct because:¹²⁶

- it will cause a further decline of the species or ecological community that is currently observed, estimated, inferred or reasonably suspected to be in a rapid rate of decline; or

¹²¹ LLS Act, s 60ZJ.

¹²² Native Vegetation SEPP, cl 15.

¹²³ BC Act, s 6.12.

¹²⁴ Native Vegetation SEPP, cl 15(3).

¹²⁵ Ibid, cl 15(4).

¹²⁶ BC Act s 6.5; BC Regulation, cl 6.7.

- it will further reduce the population size of the species or ecological community that is currently observed, estimated, inferred or reasonably suspected to have a very small population size; or
- it is an impact on the habitat of the species or ecological community that is currently observed, estimated, inferred or reasonably suspected to have a very limited geographic distribution; or
- the impacted species or ecological community is unlikely to respond to measures to improve its habitat and vegetation integrity and therefore its members are not replaceable.

Meeting offset obligations

The Biodiversity Development Assessment Report will predict the impact of the clearing on biodiversity values and the number and class of biodiversity credits required to be retired to offset the impacts on biodiversity.

The applicant then has options as to how to offset the impacts. They can:¹²⁷

- retire like-for-like biodiversity credits;
- retire biodiversity credits under variation rules;
- fund a biodiversity conservation action that would benefit the relevant threatened species or ecological community; or
- pay money into the Biodiversity Conservation Fund.

Retire like-for-like biodiversity credits

In simple terms, like-for-like means if clearing will impact a species of plant or animal, its habitat, or an ecosystem, then the impact should be directly offset by protecting and improving the same species, same kind of habitat or the same ecosystem somewhere else (preferably as close as possible to the where those values are being lost).

But the like-for-like rules under the Biodiversity Offsets Scheme are quite flexible. They require impacts on a threatened ecological community to be offset with the same ecological community, but the offset site can be up to 100km from the impact site.¹²⁸

It is possible to offset impacts on an animal species (e.g. the koala) with the same species at an offset site anywhere in NSW.

Retire biodiversity credits under variation rules

If like-for-like offsets cannot be secured, it's possible to use the variation rules.

¹²⁷ BC Regulation, cl 6.2.

¹²⁸ Ibid, cl 6.3.

Variation can only happen if reasonable steps are first taken to find like-for-like offsets.¹²⁹ Proponents of clearing would need to check the biodiversity credits register, and list credits on the credits wanted register.

Under the variation rules the impacts on one threatened ecological community or vegetation type (being habitat for threatened species) can be offset with a different ecological community or vegetation type in the same or a nearby bioregion.¹³⁰ The clearing of hollow bearing trees can be offset with artificial hollows.¹³¹

Impacts on a threatened plant or animal species can be offset with a different plant or animal species of the same or higher risk of extinction (plants for plants and animals for animals) as long as they are in the same or a nearby bioregion.¹³²

Fund a biodiversity conservation action that would benefit the relevant threatened species or ecological community

In 2017, the NSW Office of Environment and Heritage prepared ancillary rules for interpreting and applying the offset rules. The ancillary rules set out the biodiversity conservation actions that will qualify as offsets.¹³³

Visit: [The DPIE Publications library to view the Ancillary Rules](#)

The biodiversity conservation actions listed in Table 1 can be funded by a proponent if the other requirements in these ancillary rules are met.

Table 1 Biodiversity conservation actions list

| Species common name | Species scientific name | Biodiversity conservation actions |
|------------------------|------------------------------|--------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Flockton wattle | <i>Acacia flocktoniae</i> | Targeted survey across entire predicted range to identify locations of populations. Research to understand critical threats requiring management. |
| Five-clawed worm-skink | <i>Anomalopus mackayi</i> | Identify key threats to the species' viability at critical sites and associated relevant management actions. Research the species' movement patterns, habitat use and response to management. |
| A spear-grass | <i>Austrostipa metatoris</i> | Targeted survey in areas of known habitat to confirm distribution and population sizes and undertake threat assessment. |

An example of the ancillary rules for funding biodiversity conservation actions under the offset rules

¹²⁹ BC Regulation, cl 6.4.

¹³⁰ Ibid, cl 6.4(b).

¹³¹ Ibid, cl 6.4(b).

¹³² Ibid, cl 6.4(c).

¹³³ Ibid cl 6.2(4) and 6.5.

The funding of the conservation action must be equivalent to the cost of acquiring the required like-for-like biodiversity credits. This can be determined by using the Offsets Payment Calculator.

Visit: [The DPIE's Offset Payment Calculator](#)

Pay money into the Biodiversity Conservation Fund

A person can satisfy a requirement to retire biodiversity credits by paying an amount into the Biodiversity Conservation Fund.¹³⁴ The amount to be paid can be determined by using the Offsets Payment Calculator (linked above).

The Biodiversity Conservation Trust manages the Biodiversity Conservation Fund and must use funds received to secure biodiversity offsets either through the retirement of biodiversity credits or payment for other biodiversity conservation actions (explained above).¹³⁵

Visit: [The Biodiversity Conservation Trust website](#)

Public registers

Local Land Services must maintain a public register with details of:¹³⁶

- approvals to clear (and any modification of approvals), and;
- applications for approval (or for modifications of approvals) that have been refused and the reasons for the refusal.

Visit: [The LLS' Public Register page to see the various registers available](#)

Clearing that is authorised under other legislation

Where the clearing is for a purpose that needs development consent, it will be assessed by the relevant consent authority under the EP&A Act. Depending on the type of development, this could be the local council, the NSW Department of Planning, Industry and Environment (**DPIE**) or the Independent Planning Commission.

Some clearing is assessed under the Biodiversity Offsets Scheme

Some developments will trigger the Biodiversity Offsets Scheme. This means the development application must be accompanied by a Biodiversity Development Assessment Report.

¹³⁴ BC Act, s 6.30.

¹³⁵ Ibid, s 6.31.

¹³⁶ LLS Act, s 60ZO.

Local development

For local development, which includes designated development but *not* complying development, the development application must be accompanied by a Biodiversity Development Assessment Report if the development is likely to ‘significantly affect threatened species’.¹³⁷

The development is likely to significantly affect threatened species if it:¹³⁸

- is likely to significantly affect threatened species or ecological communities, or their habitats, according to the 5-part test;¹³⁹
- exceeds the Biodiversity Offsets Scheme threshold;¹⁴⁰ or
- is carried out in a declared area of outstanding biodiversity value.¹⁴¹

Read: EDO Fact Sheet on **Development Applications and Consents** for more information on local development applications

When determining the development application, the consent authority must consider the likely impact of the proposed development on biodiversity values as assessed in the Biodiversity Development Assessment Report.¹⁴²

If the consent authority decides to grant consent, it must attach conditions requiring the applicant to purchase and retire biodiversity credits of the number and class specified in the Report.¹⁴³ However, the consent authority can reduce or increase the number of biodiversity credits required to be retired if it determines that the reduction or increase is justified having regard to the environmental, social and economic impacts of the proposed development.¹⁴⁴

The applicant must comply with the condition to retire biodiversity credits before undertaking the development but has the option to make a payment to the Biodiversity Conservation Fund instead.¹⁴⁵

The consent authority must refuse the application if it believes the development will have serious and irreversible impacts¹⁴⁶ on biodiversity values.¹⁴⁷

¹³⁷ BC Act, s 7.7.

¹³⁸ Ibid, s 7.2.

¹³⁹ See the Glossary for a definition of the 5-part test.

¹⁴⁰ See the Glossary for a definition of the Biodiversity Offsets Scheme threshold.

¹⁴¹ See the Glossary for a definition of areas of outstanding biodiversity value.

¹⁴² BC Act, s 7.13(2).

¹⁴³ Ibid, s 7.13(3).

¹⁴⁴ Ibid, s 7.13(4).

¹⁴⁵ Ibid, s 7.13 (5).

¹⁴⁶ See the Glossary for a definition of serious and irreversible impacts on biodiversity values.

¹⁴⁷ BC Act, s 7.16.

Major projects

For State significant developments and State significant infrastructure, the application must be accompanied by a Biodiversity Development Assessment Report unless the Secretary of the Department of Planning and Environment and the Head of the EES both determine that the proposed development is not likely to have any significant impact on biodiversity values.¹⁴⁸ The application must also include any biodiversity assessment set as an environmental assessment requirement by the Secretary of Planning.¹⁴⁹

When determining the application, the consent authority must consider the likely impact of the proposed development on biodiversity values as assessed in the Biodiversity Development Assessment Report.¹⁵⁰

If the consent authority decides to grant consent or approval it can (but does not have to) attach a condition requiring the applicant to retire biodiversity credits to offset the impact of the development on biodiversity values (whether of the number and class specified in the Report or other number and class).¹⁵¹

Any condition to retire biodiversity credits is required to be complied with before any development is carried out that would impact on biodiversity values.

If the consent authority believes that the development is likely to have *serious and irreversible impacts* on biodiversity values,¹⁵² it is required to take those impacts into consideration and determine whether there are any additional and appropriate measures that will minimise those impacts if consent or is granted.¹⁵³ In other words, there is no obligation to refuse major projects that will have serious and irreversible impacts on biodiversity values.

Clearing for complying development

Where the clearing is for the purpose of carrying out complying development, the allowable clearing will be set out in the relevant development standards for that type of development. The development standards are contained in the [State Environmental Planning Policy \(Exempt and Complying Development Codes\) 2008](#).

Clearing authorised by the 10/50 Vegetation Clearing Code of Practice

The [Rural Fires Act 1997 \(NSW\)](#) permits some clearing activities for bushfire hazard reduction purposes. The [10/50 Vegetation Clearing Code of Practice](#) allows landholders

¹⁴⁸ BC Act, s 7.9(2).

¹⁴⁹ Ibid, s 7.9(3).

¹⁵⁰ Ibid, s 7.14(2).

¹⁵¹ BC Act, s 7.14(3).

¹⁵² See the Glossary for a definition of serious and irreversible impacts on biodiversity values.

¹⁵³ BC Act, s 7.16(3).

living in designated areas to clear vegetation on their property without the need for approval. Specifically, landholders within a designated area can:

- clear trees on their property within 10 metres of a home, without seeking approval; and
- clear underlying vegetation such as shrubs (but not trees) on their property within 50 metres of a home, without seeking approval.

There are a few restrictions on clearing under the 10/50 Code, such as if a property is on a slope, or there are items of Aboriginal or cultural significance in the area.

Under the 10/50 Code, landholders are not required to consider threatened species or ecological communities that would otherwise be protected under NSW laws.¹⁵⁴ However, some types of vegetation cannot be cleared, including critically endangered plants, critical habitat, and critically endangered ecological communities mapped and provided by the DPIE to the Rural Fire Service.

Federal laws still apply to activities undertaken under the 10/50 Code, and the 10/50 Code does not provide a landholder with an approval to harm federally listed threatened species under the [Environment Protection and Biodiversity Conservation Act 1999 \(Cth\)](#).

There are some restrictions on the clearing methods that can be used. For example, the use of graders, ploughs and dozers to clear land under the 10/50 Code is not permitted.¹⁵⁵

Visit: [The NSW Rural Fire Service's Check if You're in a 10/50 Area page for more information](#)

Enforcement of rural land clearing laws

It is an offence to clear Category 2 – regulated land otherwise than in accordance with:¹⁵⁶

- the rules relating to allowable activities,
- the Land Management (Native Vegetation) Code 2017,
- an approval to clear from by the Native Vegetation Panel, or;
- the terms of an authority under other legislation, such as development consent under the EP&A Act or under the 10/50 Vegetation Clearing Code.

¹⁵⁴ [Rural Fires Act 1997 \(NSW\)](#), s 100C; [10/50 Vegetation Clearing Code of Practice](#), cl. 7.2.

¹⁵⁵ [10/50 Vegetation Clearing Code of Practice](#), cl. 7.5: <http://www.rfs.nsw.gov.au/plan-and-prepare/1050-vegetation-clearing>.

¹⁵⁶ [Local Land Services Act 2013 \(NSW\)](#), s 60N(1).

Powers of entry, inspection, to obtain information

An authorised officer¹⁵⁷ has the power to enter somebody's land at any reasonable time for the purpose of determining whether there has been compliance with the rural land clearing laws, including the Native Vegetation Code and approvals to clear.¹⁵⁸ The officer must have the permission of the Head of the EES if they plan to enter premises without a search warrant.¹⁵⁹

Once on the land, the officer can conduct investigations, take away samples, take photographs and other recordings and require records to be produced for inspection.¹⁶⁰ The officer can also question any person who they reasonably suspect to have knowledge of the matter under investigation.¹⁶¹

Any information provided to the authorised officer that may incriminate the person is not admissible in evidence against the person in proceedings for a native vegetation offence.¹⁶²

It is an offence to intentionally delay or obstruct an authorised officer in exercising their powers. The maximum penalty for doing so is \$330,000 for an individual and \$1.65 million for a corporation.¹⁶³

Stop work orders

The Head of the EES may issue a stop work order if they think that a person is breaching, or is about to breach, the rural land clearing laws.¹⁶⁴ A stop work order takes effect when it is affixed in a conspicuous place in the area subject to the order or when the person carrying out (or not carrying out) the relevant action is notified.¹⁶⁵

The HEAD OF THE EES is not required to notify anybody before making an order.¹⁶⁶ A person who is unhappy with a stop work order may appeal to the Land and Environment Court.¹⁶⁷ An appeal does not automatically suspend the order.¹⁶⁸

It is an offence not to comply with a stop work order. The maximum penalty for a corporation is \$1.65 million and \$165,000 for each day the offence continues. For an individual the maximum penalty is \$330,000 and \$33,000 for each day the offence continues.¹⁶⁹

¹⁵⁷ See Glossary for a definition of authorised officer.

¹⁵⁸ BC Act ss 12.2 (2), 12.11.

¹⁵⁹ Ibid, s 12.28.

¹⁶⁰ Ibid, s 12.13.

¹⁶¹ Ibid, s 12.19.

¹⁶² Ibid, s 12.31.

¹⁶³ Ibid, ss 12.22, 13.1.

¹⁶⁴ Ibid, s 11.3.

¹⁶⁵ Ibid, s 11.4.

¹⁶⁶ Ibid, s 11.3.

¹⁶⁷ Ibid, s 11.6

¹⁶⁸ Ibid, s 11.6.

¹⁶⁹ Ibid, ss 11.5, 13.1.

Interim protection orders

The Minister for Primary Industries can make an interim protection order on the recommendation of the Head of the EES.¹⁷⁰

An interim protection order may require the preservation, protection and maintenance of:

- the land concerned,
- threatened species and threatened ecological communities, or
- protected animals and protected plants.

An interim protection order takes effect on the date of its publication in the NSW Government Gazette¹⁷¹ or on a later date specified in the order and has effect for the time specified in the order (up to 2 years).¹⁷²

The Minister is not required to notify anybody before making an interim protection order but must notify the landholder and the relevant local council that an order has been made.¹⁷³ An affected landholder who is unhappy with an interim protection order can appeal to the Land and Environment Court against the making of the order or any of its terms.¹⁷⁴ An appeal does not automatically suspend the order.¹⁷⁵

It is an offence for any person given notice of an interim protection order to not comply with that order.¹⁷⁶ The maximum penalty for a corporation is \$1.65 million and \$165,000 for each day the offence continues. For an individual the maximum penalty is \$330,000 and \$33,000 for each day the offence continues.¹⁷⁷

Remediation orders

The Head of the EES may order a person to carry out specified remediation work in a specified manner or to achieve a specified outcome if they are satisfied the person has committed a native vegetation offence and that offence has resulted in damage to:¹⁷⁸

- any declared area of outstanding biodiversity value,
- any habitat of a threatened species or threatened ecological community,
- any plant or animal that is of, or is part of, a threatened species or threatened ecological community, or
- any native vegetation on Category 2 – regulated land.

¹⁷⁰ BC Act, s 11.9.

¹⁷¹ The Gazette is a weekly publication by the NSW Government, see <https://legislation.nsw.gov.au/gazette>.

¹⁷² BC Act, s 11.10.

¹⁷³ Ibid, ss 11.10-11.11.

¹⁷⁴ Ibid, s 11.13.

¹⁷⁵ Ibid, s 11.13.

¹⁷⁶ Ibid, s 11.12.

¹⁷⁷ Ibid, ss 11.12, 13.1.

¹⁷⁸ Ibid, s 11.15.

A remediation order can be given to the landholder or any person the Head of the EES reasonably believes to be responsible for the damage.¹⁷⁹ The order must be served in writing on the person to whom it relates.¹⁸⁰

A person given a remediation order may appeal against the giving of the order (or any terms of the order) to the Land and Environment Court within 30 days of the service of the order.¹⁸¹ An appeal does not automatically suspend the order.¹⁸²

It is an offence to not comply with a remediation order.¹⁸³ The maximum penalty for a corporation is \$660,000 and \$66,000 for each day the offence continues. For an individual the maximum penalty is \$132,000 and \$13,200 for each day the offence continues.¹⁸⁴

Civil proceedings

Any person may bring proceedings in the Land and Environment Court to request an order to remedy or restrain a native vegetation offence.¹⁸⁵

In civil proceedings, the Court may make such orders as it thinks fit to remedy or restrain the offence.¹⁸⁶ An order may take the form of an injunction (e.g. to stop clearing), a declaration (e.g. that a development consent is invalid), or a remediation order.

Read: [EDO Factsheet on Land and Environment Court of NSW](#) for more information

Criminal proceedings

A Criminal prosecutions for native vegetation offences can only be commenced by a police officer, the Head of the EES or by a person authorised by the Head of the EES.¹⁸⁷ The proceedings must be commenced within 2 years of the date of the alleged offence or within 2 years of the date that evidence of the alleged offence came to the attention of the relevant investigation officer.¹⁸⁸

Prosecutions can be heard in the Land and Environment Court or the Local Court.¹⁸⁹ The Local Court can only issue maximum penalties of \$110,000.

Penalty notices

¹⁷⁹ BC Act, s 11.17.

¹⁸⁰ Ibid, s 11.15.

¹⁸¹ Ibid, s 11.23.

¹⁸² Ibid, s 11.23.

¹⁸³ Ibid, s 11.22.

¹⁸⁴ Ibid, ss 11.22, 13.1.

¹⁸⁵ Ibid, s 13.14.

¹⁸⁶ Ibid, s 13.14.

¹⁸⁷ Ibid, s 13.3.

¹⁸⁸ Ibid, s 13.4.

¹⁸⁹ Ibid, s 13.2.

Minor native vegetation offences¹⁹⁰ can be enforced by an authorised officer issuing the offender with a penalty notice.¹⁹¹

Glossary

5-Part Test means the test in the *Biodiversity Conservation Act 2016 (NSW)*,¹⁹² which sets out the matters to be taken into account when determining whether a proposed development or activity is likely to significantly affect threatened species or ecological communities, or their habitats.

1. In the case of a threatened species, whether the proposed development or activity is likely to have an adverse effect on the life cycle of the species such that a viable local population of the species is likely to be placed at risk of extinction.
2. In the case of an endangered ecological community or critically endangered ecological community, whether the proposed development or activity:
 - a. is likely to have an adverse effect on the extent of the ecological community such that its local occurrence is likely to be placed at risk of extinction, or
 - b. is likely to substantially and adversely modify the composition of the ecological community such that its local occurrence is likely to be placed at risk of extinction.
3. In relation to the habitat of a threatened species or ecological community:
 - a. the extent to which habitat is likely to be removed or modified as a result of the proposed development or activity, and
 - b. whether an area of habitat is likely to become fragmented or isolated from other areas of habitat as a result of the proposed development or activity, and
 - c. the importance of the habitat to be removed, modified, fragmented or isolated to the long-term survival of the species or ecological community in the locality.
4. Whether the proposed development or activity is likely to have an adverse effect on any declared area of outstanding biodiversity value (either directly or indirectly).
5. Whether the proposed development or activity is or is part of a key threatening process or is likely to increase the impact of a key threatening process.

10/50 Code means the 10/50 Vegetation Clearing Code of Practice

¹⁹⁰ Listed in Schedule 1 of the *Native Vegetation Regulation 2013 (NSW)*.

¹⁹¹ BC Act, s 13.5; *Biodiversity Conservation Regulation 2017 (NSW)* cl 13.1, Schedule 1.

¹⁹² BC Act, s 7.3.

Area of Outstanding Biodiversity Value means an area of NSW that has been declared by the Environment Minister as an area of outstanding biodiversity value by virtue of its biodiversity significance. The criteria that determine eligibility are set out in the *Biodiversity Conservation Act 2016 (NSW)*.¹⁹³

Authorised Officer means an officer appointed by the Head of the EES as an authorised officer.¹⁹⁴

Biodiversity Offset Scheme threshold means the point at which proposed clearing will trigger the Biodiversity Offset Scheme. Proposals to clear that exceed the BOS threshold will need to be accompanied by a Biodiversity Development Assessment Report.

Central Zone means an allowable activities zone and applies to land in the following local government areas (except areas that fall within the Western Zone): Albury, Armidale Regional, Balranald, Bathurst Regional, Berrigan, Bland, Blayney, Blue Mountains, Bogan, Cabonne, Carrathool, Cessnock, Clarence Valley (to the west of the line that follows Summerland Way from the north, then Armidale Road until its intersection with Orara Way, then Orara Way), Coolamon, Coonamble, Cootamundra-Gundagai Regional, Cowra, Dubbo Regional, Dungog, Edward River, Federation, Forbes, Gilgandra, Glen Innes Severn, Goulburn Mulwaree, Greater Hume, Griffith, Gunnedah, Gwydir, Hay, Hilltops, Inverell, Junee, Kyogle, Lachlan, Leeton, Lithgow, Liverpool Plains, Lockhart, Mid-Coast (but only the former area of Gloucester), Mid-Western Regional, Moree Plains, Murray River, Murrumbidgee, Muswellbrook, Narrabri, Narrandera, Narromine, Oberon, Orange, Parkes, Queanbeyan-Palerang Regional, Singleton, Snowy Monaro Regional, Snowy Valleys, Tamworth Regional, Temora, Tenterfield, Upper Hunter, Upper Lachlan, Uralla, Wagga Wagga, Walcha, Walgett, Warren, Warrumbungle, Weddin, Wingecarribee, Wollondilly and Yass Valley.

Clearing means cutting down, felling, uprooting, thinning or otherwise removing native vegetation; or killing, destroying, poisoning, ringbarking or burning native vegetation.¹⁹⁵

Coastal Zone means an allowable activities zone and includes the local government areas of Ballina, Bega Valley, Bellingen, Byron, Central Coast, Clarence Valley (to the east of the line that follows Summerland Way from the north, then Armidale Road until its intersection with Orara Way, then Orara Way), Coffs Harbour, Eurobodalla, Kempsey, Kiama, Lake Macquarie, Lismore, Maitland, Mid-Coast (except the former area of Gloucester), Nambucca, Port Macquarie-Hastings, Port Stephens, Richmond Valley, Shellharbour, Shoalhaven, Tweed and Wollongong.

DPIE means the NSW Department of Planning, Industry and Environment

EES means the Environment, Energy and Science group within the NSW Department of Planning, Industry and Environment

Environmental protection works means works associated with the rehabilitation of land towards its natural state or any work to protect land from environmental degradation, and includes re-vegetation or bush regeneration works, wetland protection works,

¹⁹³ BC Act, Part 3.

¹⁹⁴ Ibid, s 12.4.

¹⁹⁵ LLS Act, s 60C.

erosion protection works, dune restoration works and the like, but does not include coastal protection works.

EPBC Act means the [*Environment Protection and Biodiversity Conservation Act 1999 \(Cth\)*](#)

Exempt farm forestry means the carrying out of plantation operations on a farm that complies with the each of the following:

- the total area in which plantation operations of any kind are carried out on the farm does not exceed 30 hectares at any one time, and;
- any harvesting of timber does not exceed the maximum amount of harvesting permitted by the Code for exempt farm forestry.

Land degradation means soil erosion, rising water tables, increase in salinity, mass movement by gravity of soil or rock, stream bank instability and any process that results in declining water quality.

Land use zone not subject to the rural land clearing laws means: Zone RU5 Village, Zone R1 General Residential, Zone R2 Low Density Residential, Zone R3 Medium Density Residential, Zone R4 High Density Residential, Zone R5 Large Lot Residential, Zone B1 Neighbourhood Centre, Zone B2 Local Centre, Zone B3 Commercial Core, Zone B4 Mixed Use, Zone B5 Business Development, Zone B6 Enterprise Corridor, Zone B7 Business Park, Zone B8 Metropolitan Centre, Zone IN1 General Industrial, Zone IN2 Light Industrial, Zone IN3 Heavy Industrial, Zone IN4 Working Waterfront, Zone SP1 Special Activities, Zone SP2 Infrastructure, Zone SP3 Tourist, Zone RE1 Public Recreation, Zone RE2 Private Recreation, Zone E2 Environmental Conservation, Zone E3 Environmental Management, Zone E4 Environmental Living or Zone W3 Working Waterways.

LLS means Local Land Services.

Local Government Area not subject to the rural land clearing laws means: Bayside, City of Blacktown, Burwood, Camden, City of Campbelltown, Canterbury-Bankstown, Canada Bay, Cumberland, City of Fairfield, Georges River, City of Hawkesbury, Hornsby, Hunter's Hill, Georges River, Inner West, Ku-ring-gai, Lane Cove, City of Liverpool, Mosman, Newcastle, North Sydney, Northern Beaches, City of Parramatta, City of Penrith, City of Randwick, Rockdale, City of Ryde, Strathfield, Sutherland Shire, City of Sydney, The Hills Shire, Waverley, City of Willoughby, Woollahra.

Minimum extent necessary for the purpose of clearing vegetation is the level that clearing for the purpose of allowable activities must not exceed. Some guidance is provided in Schedule 5A to the LLS Act.

Native vegetation means any of the following types of plants native to New South Wales: trees (including any sapling or shrub or any scrub); understorey plants; groundcover (being any type of herbaceous vegetation); or plants occurring in a wetland.¹⁹⁶ Native vegetation does not include marine vegetation (being mangroves, seagrasses or any other species of plant that at any time in its life cycle must inhabit water other than fresh water).

¹⁹⁶ LLS Act, s 60B.

Paddock tree area means an area of Category 2 – regulated land that is less than 500 square metres and is completely surrounded by Category 1 – exempt land.

Ramsar wetland means a wetland of international importance that is recognised and protected under Commonwealth environmental law – the EPBC Act.

Reasonable steps to find like-for-like offsets means the actions that an applicant to clear native vegetation needs to take to show they have taken reasonable steps to obtain like-for-like credits before the variation rules can be applied.

Rural Fires Act means the [Rural Fires Act 1997 \(NSW\)](#).

Serious and irreversible impact on biodiversity means the impact is likely to contribute significantly to the risk of a threatened species or ecological community becoming extinct because:¹⁹⁷

- it will cause a further decline of the species or ecological community that is currently observed, estimated, inferred or reasonably suspected to be in a rapid rate of decline, or
- it will further reduce the population size of the species or ecological community that is currently observed, estimated, inferred or reasonably suspected to have a very small population size, or
- it is an impact on the habitat of the species or ecological community that is currently observed, estimated, inferred or reasonably suspected to have a very limited geographic distribution, or
- the impacted species or ecological community is unlikely to respond to measures to improve its habitat and vegetation integrity and therefore its members are not replaceable.

Sustainable grazing means grazing by livestock, and the management of grasslands used for grazing, that is not likely to result in the substantial long-term decline in the structure and composition of native vegetation. Management of grasslands includes (without limitation) the over-sowing or fertilisation of grasslands.

Treatment area means the area of land that is to be cleared under the Land Management (Native Vegetation) Code.

Western Zone means an allowable activity zone that comprises land in the Western Division of NSW. The eastern boundary of the Western Division runs from Mungindi on the Queensland border to the Murray River near Balranald.

¹⁹⁷ BC Act, s 6.5; BC Regulation, cl 6.7.