

Submission to the five-year statutory review of the native vegetation provisions contained in Part 5A and Schedule 5B of the Local Land Services Act 2013.



Nature Conservation Council

The voice for nature in New South Wales





Nature Conservation Council
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16 January 2023

Local Land Services
Policy and Strategic Reform

Via email: policy@lls.nsw.gov.au

Dear Panel,

Submission to the five-year statutory review of the native vegetation provisions contained in Part 5A and Schedule 5B of the *Local Land Services Act 2013*.

The Nature Conservation Council of New South Wales (NCC) is the state's peak environment organisation. We represent over 160 environment groups across NSW. Together we are dedicated to protecting and conserving the wildlife, landscapes and natural resources of NSW.

We welcome the opportunity to contribute to this review. The review is a chance to align the *Local Land Services Act 2013* (the LLS Act) with the urgency of conserving what remains of precious habitats and ecological communities across NSW.

Australia has the world's worst track record for mammal extinctions, and we are living in an extinction crisis. The national threatened species list comprises more than 1,700 species and over 100 threatened ecological communities, and more are added every year.

In the last five years, since the commencement of the land management reforms under review here, there has been a significant increase in clearing on rural regulated land. Combined with the impacts of intensifying natural disasters; drought, bushfire and flood, the native vegetation provisions in Part 5A and Schedule 5B of the LLS Act are facilitating Australia's continued leadership in biodiversity loss.

The accelerating loss of flora and fauna impacts the health, well-being and identity of the NSW community, and in particular harms the rich cultural heritage of First Nations peoples. The current state and the trajectory of biodiversity and the precarious ecological health of NSW is of great concern.

Significant reform is needed to return the objectives and outcomes of land management regulation to *reducing* land clearing, *restoring* habitat and *improving* biodiversity outcomes.

New objectives are required to reverse the pattern of decline of native animal species and populations, the decrease in the range of fauna species and the extent of habitat



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loss. There is a need to incorporate the impacts of climate change into the regulatory system, using predictive modelling to help ascertain the consequences of land clearing on native vegetation, water availability and landscape health.

Simply tightening regulation of land use will not suffice. The work of revaluing nature and biodiversity must be done alongside landholders, using relevant and legitimate incentives and effective communication.

We acknowledge the contributions to this review provided by our colleagues in the conservation and environment movement including the Environmental Defenders Office (EDO) among others. We support the recommendations made by the EDO and welcome the panel's continued engagement with environment stakeholders in this review process.

Your key contact point for further questions and correspondence is Jacquelyn Johnson, Executive Officer, available via jjohnson@nature.org.au and 02 9516 0461.

Yours sincerely,

Jacqui Mumford
Chief Executive Officer



Summary of recommendations

1. The objectives and outcomes of the LLS Act must be to *reduce* land clearing, *restore* habitat and *improve* biodiversity outcomes. There is a need to incorporate the impacts of climate change into the regulatory system, using predictive modelling to help ascertain the consequences of land clearing on native vegetation, water availability and landscape health.
2. A comprehensive review of the outcomes of the land management framework, for landholders, the community and the environment. Such a review would assess the cumulative impact of biodiversity loss under the LLS Act alongside the effectiveness of conservation efforts under the BC Act. A review of the whole framework must inform recommendations produced by the independent panels to the relevant Ministers.
3. Adopt the findings and recommendations of the several completed analyses of the land management framework (detailed at 1.2).
4. Communicate effectively to change the narrative and experience of land management regulation from oversight and restriction. Promote new and existing policies and programs that work alongside landholders across a spectrum of options, which include regenerating critical habitats and future-proofing Australia against the impacts of a changing climate.
5. Urgently develop a comprehensive Native Vegetation Regulatory map for the entire state with all map categories including Category 1 (exempt land) and Category 2 (regulated land) displayed. Prioritise work to improve the detail and accuracy of the NVR map.
6. Review the guidelines and implementation of allowable activities with a view to ensuring that only genuinely low impact clearing is allowed to proceed. Increase the required transparency of clearing under this category. The more complex allowable activities should be part of a certification process prior to being implemented.
7. Expand Category 2 – sensitive regulated land as described by the EDO submission to this review, including:
 - All endangered ecological communities, not just critically endangered ecological communities
 - All vulnerable ecological communities. These are at high risk of extinction in the medium term
 - The entire coastal zone (not just coastal wetlands and littoral rainforests area);
 - All small holdings
 - Travelling stock reserves (TSRs). TSRs have high conservation value as they play a key role in ecological landscape connectivity and biodiversity conservation
 - A broader definition of koala habitat, to ensure all koala habitat is off limits to code-based clearing



- Nominated Areas of Outstanding Biodiversity Value (AOBVs), not just declared AOBVs
 - All set-aside areas
 - Steep or highly erodible land.
8. Encourage policy and program options which counter incentives to clear, that value biodiversity, and that incentivise sustainable agriculture, promote food security, and benefit the environment.
 9. Review the implementation of the Native Vegetation Code and determine reforms that will better protect threatened species. Relegate self-assessment to genuinely low risk activities only.
 10. Require copies of all notifications and certificates to be published on a public register, including details of the property where the notified or certified clearing is occurring.
 11. Remove Part 5 Equity and Part 6 Farm Plan of the Code in their entirety.
 12. Investigate the environmental and conservation outcomes of the current application of the set aside rules, and recommend an ecologically sound, best practice model to replace current settings.
 13. Identify mechanisms that would see set asides planned on a landscape scale, incorporating other protected areas for the best possible conservation outcomes.
 14. All specific types of clearing activities which cannot be shown to be routine and genuine low risk activities must require approval from LLS, notification to LLS prior to carrying out an approved activity, and be publicly reported.



1. Introduction

Between 2003 and 2017, the *Native Vegetation Act* prevented broadscale land clearing unless it was shown to maintain or improve environmental outcomes.

In 2017, the *Native Vegetation Act 2003* was repealed and the new legal framework regulating land clearing commenced, consisting primarily of the *Local Land Service Act 2013* (LLS Act), and the *Biodiversity Conservation Act 2016* (BC Act). These reforms deregulated rural land clearing, shifting to a system of self-assessment by land holders. They also moved the administration of rural land clearing laws from the environment portfolio to the agriculture portfolio.

Since these reforms, land clearing has increased dramatically. Government data shows that clearing rates after these changes are now 25% higher than the long-term average. More than 27,600 ha of native bushland were cleared in 2020 alone. The majority of clearing is classified as unexplained.

Current policy settings are unequivocally having an unsustainable environmental impact.

This submission provides an outline of the shortcomings of the Land Management and Biodiversity Conservation reform package, as they apply to the questions provided in the discussion paper for this review. The submission provides recommendations for the independent panel undertaking the review on reforms that will benefit biodiversity in NSW.

In summary, significant reform, including new objectives, is needed to return the objectives and outcomes of land management regulation to *reducing* land clearing, *restoring* habitat and *improving* biodiversity outcomes.

1.1 The land management framework review should be a single exercise.

[Discussion paper questions 13 & 14]

When the land management and biodiversity conservation laws were made five years ago, they were made as a full package of reforms. The changes to land clearing regulation were to be counterbalanced by changed approaches to biodiversity conservation through offsetting and investment.

A key question for this statutory review, therefore, is whether the impacts of relaxing land clearing rules and allowing more unregulated clearing under the LLS Act is actually being offset or adequately moderated by increased investment in conservation and the biodiversity offsets scheme under the *Biodiversity Conservation Act 2016* (the BC Act)?

Yet, the framework is being reviewed by two separate agencies, with two separate independent panels reporting to two Ministers with different portfolios. This structure will fail



to build a complete picture of the impact of part 5A of the LLS Act on land clearing with the attempts to preserve nature in the BC Act.

Box 1: Biodiversity offsets scheme

The biodiversity offsets scheme was introduced to help compensate for anticipated losses due to clearing on rural properties. The evidence shows that biodiversity offsets have so far been largely ineffective in that objective, in part because existing policy is not properly implemented and the rules are not enforced. The offsetting scheme may even facilitate more biodiversity loss by removing ethical roadblocks to destroying the ecosystems and habitat of threatened species. The offsets scheme's role in conserving precious places will not be considered in the context of vastly increased land clearing.

The objectives and impacts of the legislation on both sides of the trade-off that was key to the new framework must be considered in order for this review to be meaningful. It is not possible to assess the effectiveness of Part 5A of the LLS Act without looking at the key mechanisms under which extensive clearing is intended to be checked and balanced.

RECOMMENDATION: A comprehensive review of the outcomes of the land management framework, for landholders, the community and the environment. Such a review would assess the cumulative impact of biodiversity loss under the LLS Act alongside the effectiveness of conservation efforts under the BC Act. A review of the whole framework must inform recommendations produced by the independent panels to the relevant Ministers.

1.2 The land management framework has been repeatedly found to fail in its objectives.

[Discussion paper questions 13 & 14]

Since the introduction of the new laws in 2017, the Audit Office of NSW, NSW Natural Resources Commission (the NRC) and an NSW parliamentary inquiry have all undertaken analyses of the land clearing and biodiversity framework and have raised fundamental concerns about the extent of native vegetation clearing and habitat loss and how it is regulated in NSW.

The Audit Office in its review titled Managing native vegetation (2019) concluded that *“the clearing of native vegetation on rural land is not effectively regulated and managed because the processes in place to support the regulatory framework are weak”*.

The NRC's advice; Land Management and Conservation Biodiversity Reforms (2019) reported that clearing approvals across NSW had increased nearly 13-fold from an average annual area prior to introduction of the reforms. The report identified that unexplained clearing in particular had increased and concluded that *“compliance frameworks*

are inadequate and high rates of unexplained clearing pose a major risk". Policy settings remain largely unchanged.

The NSW Parliamentary Inquiry into koala populations and habitat found that the frameworks regulating clearing on private land play a vital role in koala protection and must be strengthened to prevent extinction of the koala in NSW.

The Environmental Defenders Office also released a report in 2020, [Restoring the balance in NSW native vegetation law](#), that identified 10 key areas of failure in the regulation of land clearing in NSW and identified solutions for reform.

The [2021 NSW State of the Environment report](#) showed that species and ecological communities listed as threatened in the *Biodiversity Conservation Act 2016* continues to rise. A major cause putting species at greatest risk is native vegetation clearing for agricultural purposes.

RECOMMENDATION: Adopt the findings and recommendations of the several completed analyses of the land management framework.

2. International and national commitments

[Discussion paper question 13 & 14]

This reform opportunity is one that could bring NSW into line with the recent national and international commitments aimed to bring the world closer to achieving the goals of the Paris Agreement:

- The 2020 [Leaders Pledge for Nature](#) commits signatories to reverse biodiversity loss by 2030.
- The 2021 COP 26 commitment to halt and reverse deforestation through the [Declaration on Forests and Land Use](#) pledges signatories to stop deforestation by 2030 and strengthen commitments to sustainable land use and the conservation, protection and sustainable management and restoration of forests and other terrestrial ecosystems. This declaration also requires signatories to design and implement agricultural policies and programmes that incentivise sustainable agriculture, promote food security, and benefit the environment.
- The December 2022 adoption of the [Global Biodiversity Framework](#), saw the federal government commit specifically to ensuring that 30% of degraded terrestrial, inland water, coastal and marine systems are under effective restoration, and that 30% of the country's land and oceans are under effective conservation and management by 2030. At present in NSW, only 9% of land is part of the National Parks estate.



- The Federal government's Nature Positive Plan, released in December 2022, aims to protect biodiversity, stop new extinctions, reverse the damage already done across the nation through a nature repair market, and work in partnership with First Nations people on these goals.

Across NSW, 53% of all land is categorised as rural regulated land. 25% is exempt land, on which activities are not regulated. These two categories cover more than three quarters of NSW. Less than 30% of land is categorised as vulnerable, sensitive or excluded; categories in which a range of clearing activities may still be permitted.

The arithmetic is clear; to meet our commitments, the status quo must change. The task of protecting and restoring 30% of NSW land is beyond reach without working alongside rural landholders to restore and protect habitat and improve biodiversity outcomes.

The narrative of the value of nature is changing. All over the world the need to protect and restore habitat is coming into focus. Current policy objectives are not ambitious enough.

RECOMMENDATION: Communicate effectively to change the narrative and experience of land management regulation from oversight and restriction. Promote new and existing policies and programs that work alongside landholders across a spectrum of options, which include regenerating critical habitats and future-proofing Australia against the impacts of a changing climate.

3. Alignment with the principles of Ecologically Sustainable Development (ESD).

[Discussion paper question 13 & 14]

The objective of Part 5A of the *Local Land Services Act 2013* 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' (LLS Act, s3(e)).

Section 6(2) of the *Protection of the Environment Administration Act 1991* (POEA Act, s6(2)) states that ESD can be achieved through the implementation of certain principles and programs. Part 5A of the LLS Act is failing in adherence to three of these principles:

- (a) the precautionary principle: that if there are threats of serious or irreversible environmental damage, lack of full scientific certainty should not be used as a reason for postponing measures to prevent environmental degradation.
- (b) inter-generational equity: that the present generation should ensure that the health, diversity and productivity of the environment are maintained or enhanced for the benefit of future generations.

(c) conservation of biological diversity and ecological integrity: that conservation of biological diversity and ecological integrity should be a fundamental consideration.

The native vegetation provisions of the LLS Act do not consider the cumulative impact over time of permitted native vegetation clearing.

The current laws enable clearance of vegetation on a property rather than landscape basis. Because there are no strong assessment or approval processes in place, there is no accurate understanding of the extent and the ongoing use of these clearing provisions. It is difficult to adhere to the precautionary principle if the extent and impact of land clearing across the landscape is unknown and there is no comprehensive monitoring, evaluation and reporting process in place.

The number of threatened and endangered species continues to rise.

The 2021 NSW State of the Environment report identified that the number of species and ecological communities listed as threatened in the *Biodiversity Conservation Act 2016* continues to rise, with species at great risk due to native vegetation clearing for agricultural purposes. The conservation of biological diversity and ecological integrity cannot be attained when species diversity is being reduced and ecosystem integrity is being constantly undermined – both of which are quantifiable outcomes of Part 5A of the LLS Act.

At present, measures are not being taken to avert serious or irreversible environmental damage.

Part 5A of the LLS Act bears substantial responsibility for the increase in land clearing and loss of habitat.

Part 5A states that development should only occur where it improves the total quality of life, both now and in the future, in a way that maintains the ecological processes on which life depends. The long-term maintenance and integrity of existing ecosystems and components of biodiversity should be an element of equal value in the economic, social and environmental aspects of development. Sadly, the main function of Part 5A and the Schedules is to enable landholders to undertake vegetation clearance activities without regulatory oversight of assessment and implementation. This has allowed permanent clearing of native woody vegetation in NSW to increase three-fold since 2015 – a situation that is clearly contrary to the benefit of future generations.



Box 2: which clearing code?

Boundary clearing on the Lawrence to Tully Morgan Road in the Clarence Valley was reported to the Environment Line at the Department of Planning and Environment (DPE) by NCC member group, the Clarence Environment Centre, and an NCC board member in August and September 2022.

The clearing extended about two kilometres along the road. Over the three weeks after the report was made, the clearance was extended to six kilometres.

An officer in the DPE advised the Clarence Environment Centre in early October 2022 that the DPE had not been to the property to investigate.

The vegetation clearance included large hollow trees within Subtropical Flood Plain Forest TEC as well as paperbark swamps (Freshwater Wetland TEC) and a number of drainage lines. The area is known koala habitat.

The clearing was initially presumed by those reporting it to be undertaken under the Rural Boundary Clearing Code (*Rural Fires Act 1997*). However, the clearance of vegetation extends to both sides of the boundary onto the road reserve. It is possible that the clearing has been carried out as both an allowable activity under the LLS Act and utilising the Rural Boundary Clearing Code.

This is a clear example of:

- how landholders can clear an endangered ecological community and known koala habitat, with no oversight or consequence,
- the lack of transparency in the use of self-assessment provisions under the LLS Act, and
- the ambiguity in how different pieces of legislation may be combined.

The delay between reporting and inspection of such significant vegetation clearing is unacceptable. A prompt response could have mitigated much of the damage.

The original report written by Clarence Environment Centre is provided as **Attachment 1**.



4. Key elements of the Land Management Framework

4.1 The Native Vegetation Regulatory Map (NVR map)

[Discussion paper question 5]

The Native Vegetation Regulatory (NVR) map is a crucial component of the current land management framework. The NSW public are counting on the NVR map to accurately capture environmental values and limit inappropriate vegetation clearing across the state. It is of paramount importance that the NVR map is robust and comprehensive.

Yet, five years after the introduction of this framework, the NVR map is nowhere near finalised. The vegetation mapping used to underpin the regulatory mapping that has been made public is based on mapping products which were never designed for this purpose.

For landholders in regions of NSW for which the draft NVR map is yet to be publicly released, landholders are required to 'self-categorise' unmapped land in accordance with transitional arrangements. They have no obligation to notify LLS. These provisions are obviously open to inaccuracy and misuse.

A robust, fine scale vegetation mapping program is needed to produce maps at a scale of 1:25000 or less utilising historical data, digital 3D imagery and extensive ground truthing, by well-resourced teams. Without this, the NVR map is not accurate and won't correctly identify areas of Category 1 or Category 2 vegetation.

RECOMMENDATION: Urgently develop a comprehensive NVR map for the entire state with all map categories including Category 1 (exempt land) and Category 2 (regulated land) displayed. Prioritise work to improve the detail and accuracy of the NVR map.



4.2 Allowable Activities

[Discussion paper questions 6 & 7]

Genuine routine low risk activities should not require formal assessment and approval from LLS.

However, the scope of allowable activities provisions and the Code are too broad, are open to misuse, and have the potential to involve significant clearing.

Box 3: allowable activities are broad, unclear & could lead to land use change

- Clearing for fencing is an allowable activity but there is no detail or prescription for the purpose and the type of fencing allowed. Tall exclusion fences such as those used for wildlife reserves are allowed, but they restrict all movement across boundaries and are beyond the intent of a low stock fence.
- Substantial clearing in steep country may occur for power or telecommunication lines, as allowable activities, unmonitored. Such clearing may result in the removal of mature and old growth trees or significant soil and water quality impacts in erodible landscapes.
- All allowable activities are authorised “*to the minimum extent necessary for that purpose*”. This permits a very broad interpretation of what the necessary extent of clearance for an activity could be. It is not clear whether this rule is ever checked.
- Clearing using a combination of allowable activities may be undertaken to remove vegetation from a significant enough area to see a degrading impact large enough to lead to land use change. More intensive agriculture, shifting from grazing to horticulture or rezoning for residential development could be the result.

Allowable activities interact with the requirements of other legislation.

The *Biodiversity Conservation Act 2016*, *National Parks and Wildlife Act 1974*, *Rural Fires Act 1997*, *Environmental Planning and Assessment Act 1979* and the *Protection of the Environment Operations Act 1997* all play a role in land management. Complying with conditions imposed under a biodiversity development assessment report or a conservation covenant can be complex and should not be left to self-assessment by a landholder.

The more complex allowable activities should be part of a certification process prior to being implemented.

Allowable activity rules also provide space for ignorance to excuse the clearing of vulnerable habitat.

In cases where allowable clearing cannot be undertaken because a threatened species, habitat or ecological community is likely to occur, the landholder must have the required ecological understanding and expertise to make a correct decision about their clearing. This



is an unfair position for a landholder at best, and a gamble stacked against threatened species at worst.

Substantial clearing is being undertaken without environmental assessment or oversight.

Allowable activities are carried out often without any need to work with LLS or any other authority.

We have no cumulative record outside of the annual State-wide Landcover and Tree Study (SLATS), released more than 12 months after data is collected. SLATS is only able to report on “unallocated clearing”, so it is unknown how much clearing occurs due to allowable activities. It is simply not known how much clearing is occurring nor if clearing is carried out in the spirit of the intended purpose of the LLS Act.

The absence of an accurate understanding of the cumulative incremental impact of all the clearing undertaken under this wide range of activities means it is not possible to know if, or how, 'environmental risk' is being managed under this clearing pathway.

RECOMMENDATION: Review the guidelines and implementation of allowable activities with a view to ensuring that only genuinely low impact clearing is allowed to proceed. Increase the required transparency of clearing under this category. The more complex allowable activities should be part of a certification process prior to being implemented.

4.3 Land Management (Native Vegetation) Code

[Discussion paper question 5]

The Native Vegetation Code (the Code) provides options for clearing to occur where landholders are unable to use the allowable activities exemptions. LLS administers the Code by receiving notifications to clear from landholders or certifying proposed clearing activities by landholders. There is no formal assessment or approval process and LLS is limited in its ability to refuse the issue of certificates.

Very little land in NSW has been identified where clearing under the Code cannot occur.

Only land identified as category 2-sensitive land is off-limits to clearing under the Code, but this category of land only includes critically endangered ecological communities, core koala habitat, and some parts of the coastal zone. Other categories of threatened ecological communities and the habitat of high risk threatened species are not included and can be cleared under the Code. As can steep, highly erodible land and travelling stock routes, generally identified as important and/or vulnerable environmental assets. It is inappropriate that self-assessment is used in areas where threatened species and other high-value conservation assets exist.

More than 780,000 ha has been approved for clearing under the Code.

Much of the clearing allowed under these certificates is yet to be carried out. With average annual land clearing already increasing dramatically since introduction of the new laws, should the certificates issued approving vegetation clearance be fully realised, there will be a massive upsurge in clearing across NSW. These approvals have been called '[a ticking time bomb](#)' for NSW biodiversity.

Increasingly, there are options for land-holders to be rewarded for protecting biodiversity.

Carbon credits, biodiversity covenants and incentives for sustainable and regenerative farming practices provide many opportunities to incentivise activities that support rather than degrade biodiversity. Encouraging the communication, growth and uptake of these programs could be key to avoiding the explosion in clearing that could potentially send even more species into the endangered category.

RECOMMENDATION: Expand Category 2 – sensitive regulated land as described by the EDO submission to this review, including:

- All endangered ecological communities, not just critically endangered ecological communities.
- All vulnerable ecological communities. These are at high risk of extinction in the medium term
- The entire coastal zone (not just coastal wetlands and littoral rainforests area); • All small holdings
- Travelling stock reserves (TSRs). TSRs have high conservation value as they play a key role in ecological landscape connectivity and biodiversity conservation
- A broader definition of koala habitat, to ensure all koala habitat is off limits to code-based clearing
- Nominated Areas of Outstanding Biodiversity Value (AOBVs), not just declared AOBVs; • All set-aside areas; and
- Steep or highly erodible land.

RECOMMENDATION: Encourage policy and program options which counter incentives to clear, that value biodiversity, and that incentivise sustainable agriculture, promote food security, and benefit the environment.

4.4 The Native Vegetation Panel (NVP)

[Discussion paper question 9]

Although there are three approval pathways under Part 5A of the LLS Act for landholders to clear vegetation, only one of them, approval via the NVP, requires external assessment and approval.



The NVP has only seen one application lodged and determined since its establishment. This indicates a serious and concerning policy flaw.

The discussion paper asks what the barriers are to using the NVP. It is probable that given the lax settings of the other two pathways to approval, the NVP is simply not required; almost all clearing is being undertaken through allowable activities and the Code. These provisions render the NVP superfluous to landholder requirements.

RECOMMENDATION: Review the implementation of the Code and determine reforms that will better protect threatened species. Relegate self-assessment to genuinely low risk activities only.

RECOMMENDATION: Require copies of all notifications and certificates to be published on a public register, including details of the property where the notified or certified clearing is occurring.

4.5 Set asides

[Discussion paper question 8]

The set aside rules are not ecologically sound.

The use of an arbitrary ratio, 1:2 'in most cases', for determining set aside requirements under the Native Vegetation Code is not ecologically defensible. Further, the Native Vegetation Code does not specify that the vegetation to be set aside should be the same or of ecological equivalence ("like for like"), nor what condition the vegetation should be in. Nor is there any analysis of what "like for like" means in practice in a vegetation setting.

There is no discernible auditing of progress on set aside areas to determine if environmental outcomes are being achieved. The review must investigate this important knowledge gap.

Ineffective set-asides are now particularly problematic, because this is the only mechanism limiting clearing under the Part 5 of the Code; 'Equity'.

The Code included maximum limits on the amount of clearing that can be undertaken under the Part 5 – Equity Code in the initial three-year period immediately following its publication. The limit was 25% of the area able to be cleared, up to 625 hectares. This was included as a safeguard to prevent excessive clearing.

The cap on maximum clearing expired in March 2021. There is currently no cap on clearing under the equity section of the code; the only limitation to clearing is set asides.

While set asides remain ineffective, and no area limits are applied to certain clearing types, the ecological toll of self-assessed clearing will continue to grow.

There are opportunities to increase the ecological value of set asides.

Land set aside for conservation matters on a landscape scale. Like National Parks and stewardship agreements, set asides are intended for protection in perpetuity. The difference in biodiversity values between set-aside land in scattered pockets compared with land adjacent to, or forming corridors with, other protected areas are significant. Yet, set asides



aren't recognised by the reserve system at all, nor are they habitually planned with complimenting the reserve system as a criterion.

There should be mechanisms for planning how set asides and other protected areas fit together, and how they are managed together. The best outcome for a set aside program would be to strategically protect areas of high conservation value across landscapes.

RECOMMENDATION: Remove Part 5 Equity and Part 6 Farm Plan of the Code in their entirety.

RECOMMENDATION: Investigate the environmental and conservation outcomes of the current application of the set aside rules, and recommend an ecologically sound, best practice model to replace current settings.

RECOMMENDATION: Identify mechanisms that would see set asides planned on a landscape scale, incorporating other protected areas for the best possible conservation outcomes.

4.5 Data and transparency

[Discussion paper question 10]

The discussion paper identifies shortcomings in data collection on activities allowed under Part 5A and Schedule 5A. There is no specific monitoring or data collection required for specific uses of the Code or of the use of allowable activities. Data that provides detailed information to the public on compliance with certifications or adherence to allowable activity requirements does not exist.

This is unacceptable when clearing rates are known to have increased. The certification of over 780,000 ha for clearing in the future suggests clearing rates are unlikely to decline without intervention.

In its review of the reforms the [NRC identified](#) a need for “*monitoring of compliance with certifications and notifications to clear, including the establishment and management of set asides, under the Code needs to be strengthened, including increasing transparency*”.

The existing information on clearing notifications and certificates provided in the Public Information Registers available on the LLS website only provide information on the number of notifications/certificates and area treated on a broad LLS regions basis. There is no detail that provides a better understanding of the location of clearing notifications and certificates. The public cannot understand where land clearing is occurring or whether it is being undertaken under the Code or is potentially illegal (see for example Box 2).

RECOMMENDATION: All specific types of clearing activities which cannot be shown to be routine and genuine low risk activities must require approval from LLS, notification to LLS prior to carrying out an approved activity, and be publicly reported.



Box 4: Part 5A and protecting endangered koalas

Koalas are listed as endangered in NSW and at the Commonwealth level. Their populations have declined 50% in the last 20 years, and will halve again in the next 10 years, unless trends can be reversed.¹

The 2019-20 bushfires devastated wildlife populations and ecosystems across the state. A quarter of koala habitat in NSW was burnt and at least 5000 koalas killed.² Without decisive action, koalas are headed for extinction by 2050.

Current regulatory frameworks in NSW are facilitating widespread clearing and deforestation, driving koalas to extinction.

Habitat loss, driven by urban development, logging and land clearing for agriculture, is the biggest threat to koalas in NSW.

Core koala habitat identified by council-based Koala Plans of Management (KPOMs) are linked to restrictions on vegetation clearing and private native forestry under the LLS Act.

When the LLS Act Part 5A and Schedules were made, the then NSW Office of Environment and Heritage briefed the environment minister that 99% of identified koala habitat on private land would be left unprotected, and the new laws were likely to cause a spike in land clearing rates.³ Those warnings were [almost immediately realised](#) (attachments 2 & 3).

While some KPOMs have been put in place since the introduction of the LLS Act reforms, the majority of koala habitat is still unprotected on private land..

Koala habitat that is identified by active KPOMs is categorised as 'sensitive regulated land'. This category covers only 2% of the entire state. Even here, some allowable activities are permitted.

The NSW Parliamentary Upper House inquiry into koala populations and habitat in NSW inquired into the impacts on koalas and koala habitat from the 2016 land management reforms. The Committee's report found that it is clear that frameworks regulating clearing on private land play a vital role in koala habitat protection - and therefore in preventing the extinction of the koala in NSW - and must be strengthened.

¹ <http://environment.gov.au/system/files/consultations/180c4bf8-fe57-4fc4-a3b7-cc20d6774c79/files/consultation-document-koala-2021.pdf>

² <https://www.parliament.nsw.gov.au/committees/inquiries/Pages/inquiry-details.aspx?pk=2536#tab-reportsandgovernmentresponses>

³ NSW Office of Environment and Heritage, Concurrence on Land Management (Native Vegetation) Code (GIPA945-IR), 2017



Code-based clearing cannot be undertaken on category 2 sensitive land, providing some protection for environmentally sensitive areas. However, the scope of category 2 sensitive land is limited. For example, only 'core koala habitat' is recognised as category 2 sensitive land. In practice, 'core koala habitat' is a definition that covers only limited actual koala habitat; any outside of this definition may be able to be cleared under the Native Vegetation Code.

Opportunities to better protect koalas

NSW needs an evidence-based policy framework that will stop habitat being destroyed and actively respond to the challenges that habitat conservation presents to farmers and communities.

We support the recommendation made to this review by the Environmental Defenders Office that clearing under the Codes should be limited by expanding Category 2 – sensitive regulated land to exclude code-based clearing from a broader range of sensitive and high conservation value areas, including all endangered and vulnerable ecological communities, and a broader definition of koala habitat, encompassing koala habitat not yet mapped in a KPOM, to ensure all koala habitat is off limits to code-based clearing.

Detailed mapping of koala habitat on private lands should inform conservation management.

The state-wide re-introduction of State Environmental Planning Policy (Koala Habitat Protection) 2019 would also be a positive step toward protecting koala habitat.

For more details, view [NCC's priority policies](#) to protect koalas.

Ongoing threats

It is the clear intention of the Coalition government to sever the link, or 'dual consent' provisions between Koala Plans of Management, land clearing, and private native forestry (PNF). Doing so would mean that local councils will no longer have a say in the protection of koala habitat on private land.

The Government has made proposals over the last couple of years that maintain the exclusion of logging on core koala habitat where already identified in a Council Koala Plan of Management, though this would not apply to future KPOMs. At present between 7 and 11 Councils only have active KPOMs. If the LLS Act is not strengthened to protect all koala habitat, the only remaining safeguards could be compliance functions held by DPIE (for land clearing) and the EPA (for PNF), where any action is mostly after-the-fact.

Such attempts have been met with fierce opposition.

Attachments

1. Community Environment Network report to the Environment Line, August 2022
Available [here](#).
2. Bulldozing of bushland nearly triples around Moree and Collarenebri after safeguards repealed in NSW, 2018. The Nature Conservation Council of NSW and the World Wildlife Fund
Available [here](#).
3. Towards Zero Deforestation: A plan to end deforestation and excessive land clearing in NSW, 2018. The Nature Conservation Council of NSW
Available [here](#).