

LGNSW SUBMISSION

# Statutory Review of Part 5A of the Local Land Services Act

DEC 2022

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.



# OVERVIEW OF THE LOCAL GOVERNMENT SECTOR



Local government in NSW employs **55,000 people**



Local government in NSW looks after more than **\$177 billion of community assets**



Local government in NSW spends more than **\$2.2 billion each year on caring for the environment, including recycling and waste management, stormwater management and preserving and protecting native flora and fauna**



NSW has more than **350 council-run libraries that attract tens of millions of visits each year, and more than 400 public swimming and ocean pools**



Local government in NSW is responsible for about **90% of the state's roads and bridges**



NSW councils manage an estimated **4 million tonnes of waste each year**



NSW councils own and manage more than **600 museums, galleries, theatres and art centres**

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## Opening

Local Government NSW (LGNSW) is the peak body for local government in NSW, representing all NSW general purpose councils and related entities. LGNSW facilitates the development of an effective community-based system of local government in the State.

LGNSW welcomes the opportunity to provide its views on the native vegetation provisions in the *Local Land Services Act 2013* (LLS Act). Councils play a key role in vegetation management and land use regulation, including:

1. As a regulatory and consent authority for development and vegetation regulated under the *Environmental Planning and Assessment Act 1979*.
2. As a local strategic land use planning authority, implementing land use zoning and local vegetation and biodiversity policy.

LGNSW has sought input from councils across NSW and hosted a forum which was attended by staff across a range of councils. Those views have been incorporated into this submission, and we are also aware of councils making their own submissions.

This submission was endorsed by the LGNSW Board in February 2023.

## Background

The NSW Government introduced the *NSW Land Management and Biodiversity Conservation Framework* in 2016 following an independent review of the NSW native vegetation legislation. This included amendments to the LLS Act, namely the addition of Part 5A and Schedules 5A and 5B, as well as the introduction of the *Biodiversity Conservation Act 2016*. The new regulations commenced in August 2017, replacing existing legislation, including the *Native Vegetation Act 2003*.

Part 5A and Schedules 5A and 5B of the LLS Act establish a framework used to inform and regulate native vegetation management on NSW rural land. The objective is *‘to ensure the proper management of natural resources in the social, economic and environmental interests of the State, consistently with the principles of ecologically sustainable development’*.

The NSW Government is carrying out a five-year statutory review of Part 5A and Schedules 5A and 5B of the LLS Act. The review will determine:

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

Local Land Services (LLS) is supporting the review with the assistance of an independent expert advisory panel. It is being carried out in conjunction with the statutory review of the *Biodiversity Conservation Act 2016*. The Committee is to report by August 2023.

## Response

Local government supports the objective of the native vegetation provisions but does not believe the current system adequately meets the environmental interests of the state or is consistent with the principles of ecologically sustainable development.

Councils are continuing to observe widespread land clearing and biodiversity loss under the LLS Act. Government data shows land clearing in NSW has risen since the land management reforms in 2017. The NSW State of the Environment 2021 report found that clearing of woody vegetation increased to an annual average of 35,000 hectares between 2017 and 2019, up from 13,000 hectares between 2009 and 2015.<sup>1</sup> The rate of clearing for non-woody vegetation such as shrubs and grasses was even higher.

The LLS Act does not require robust assessment of the impact on biodiversity values and allows the clearing of native vegetation which would otherwise trigger the Biodiversity Offsets Scheme (BOS). Some landholders are using the LLS allowable activities pathway to clear vegetation prior to submitting a development application (DA) in order to avoid entering into the BOS or to reduce the offset requirement.

Councils are aware that some landholders are clearing beyond allowable activities without obtaining approval from LLS, preferring to risk a fine, as it is cheaper than entering the BOS when development is the intended outcome. In other instances, proponents have unknowingly cleared in excess of what the legislation permits due to an incorrect understanding of their land's zoning.

There appears to be a lack of monitoring, evaluating, and reporting of the cumulative biodiversity impacts of the clearing.

LGNSW's recommendations are italicised below and are also summarised in the conclusion.

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

### **Q1. Is it clear how different land use zonings are defined and treated in the Land Management Framework? What, if any, changes are needed?**

The Land Management Framework established under Part 5A of the LLS Act only applies to rural land (land zoned as: RU1, RU2, RU3, RU4, RU6 but not RU5).

The regulations around clearing vegetation are starkly different between properties that fall under the Land Management Framework compared to those that do not (this submission's section on 'Pathways for clearing native vegetation on private rural land' discusses the differences in approval pathways). This can lead to confusion, inadvertent breaches in legislation, and concerns about inequity, particularly where there are differences between adjoining properties.

*For example, in Wollondilly, there are properties with applicable RU zonings that share common areas of vegetation with other C (conservation) zoned properties. A RU zoned property can clear vegetation for a range of reasons without approval, while a C zoned property has much stricter controls. This has caused frustration among landholders who do not understand why the large difference exists.*

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<sup>1</sup> NSW Environment Protection Authority (2021) '[NSW State of the Environment 2021](#)', NSW Government

This submission's section on 'Pathways for clearing native vegetation on private rural land' recommends strengthening the requirements under the LLS Act, while the 'Native vegetation provisions and the objectives in the *Local Land Services Act*' section in this submission highlights the need to carry out a comprehensive review of the approval pathways.

In some cases, landholders are not aware of which zone their land falls under nor the associated clearing restrictions. Many councils have voiced concerns regarding landholders copying their neighbours who fall in a different zone, for example clearing a wide stretch of vegetation along their fenceline, but unknowingly clearing beyond what is permitted on their land.

To improve public understanding, LLS should play a more active role in educating communities about land zonings and regulation, for example through their website, social media and community events. LLS should consult landholders on the most effective way to target messaging and reach the intended audience, in particular seeking feedback from those who inadvertently breached the regulations.

Given the complexities of the current land management system, the NSW Government should engage with landholders on how to improve their user experience. This could include carrying out customer journey mapping with landholders to understand the challenges they face in navigating the guidance and approvals processes across land management, planning and biodiversity protection.

***Recommendation 1: Improve awareness of the Land Management Framework, including the interaction between the Local Land Services Act, the planning system and the Biodiversity Offsets Scheme.***

***Recommendation 2: Engage with landholders to understand how to make the approvals pathways more user-friendly.***

## Land categories determine how native vegetation can be managed

**Q2. How easy to understand are the land categories and the native vegetation clearing arrangements that apply under each category? What, if any, changes are needed?**

**Q3. How useful is the Native Vegetation Regulatory map as a tool for categorising private rural land? What, if any, other tools could help landholders make decisions about their land?**

**Q4. How comfortable and capable are landholders in self-assessing their land according to the land categories? What, if any, improvements to the Transitional Arrangements should be made?**

It is the responsibility of the Department of Planning and Environment (DPE) to prepare and publish the Native Vegetation Regulatory (NVR) map. The map shows which land is regulated or exempt and supports landholders to make decisions regarding managing native vegetation on their land.

DPE published the transitional NVR map in August 2017 as part of the LLS Act transitional arrangements. The draft NVR map is being released in stages, and it will be finalised following

consultation with landholders to improve its accuracy. So far, DPE has only published a draft map for 11 Local Government Areas, covering 6% of NSW.

The transitional and draft maps have caused some confusion and it is difficult to determine which requirements apply, and the effectiveness of the map, without it being complete. Councils feel the mapping is not yet accurate enough to provide correct guidance to landholders. The NVR map is inconsistent with the Biodiversity Values Map in some places, leading to a disjointed approach to the management of biodiversity values across NSW. Although LGNSW recognises it will be challenging to keep the map up to date at the local scale, it is essential for the map to be accurate to avoid landholders clearing unlawfully.

It is not easy for the average person to interpret and utilise the map to determine the requirements for a plot of land. Councils have commented that the categories should be renamed to avoid confusion between 'Excluded' and 'Exempt' land, as well as between the three Category 2 sub-divisions (Regulated; Vulnerable Regulated Land; Sensitive Regulated Land). For example, the categories could be renamed to:

- Category 1 – Low Conservation Value
- Category 2 – Medium Conservation Value
- Category 3 – Vulnerable Land
- Category 4 – Sensitive Land
- Category 5 – Excluded

***Recommendation 3:*** *Rename the land categories to avoid confusion between Exempt and Excluded land, as well as the three Category 2 sub-divisions.*

The map would be more useful if the functionality could be expanded to outline the clearing restrictions for individual properties, whereby landholders and council staff can click on a property to receive an LLS clearing report. The report should be presented in a clear, easy to understand format which explains the category of land and which activities are allowable.

***Recommendation 4:*** *Expand the functionality of the Native Vegetation Regulatory map to show the allowable activities that are permitted on each plot of land.*

Many councils have voiced concerns about landholders having a poor understanding of the scheme's requirements and inaccurately assessing their land. Councils commented that LLS officers are very helpful in providing advice, but the legislation does not always require landholders to consult LLS prior to clearing their land. The next section on 'Pathways for clearing native vegetation on private rural land' sets out the issues caused by landholders self-assessing their land.

## Pathways for clearing native vegetation on private rural land

**Q5. Do each of the approval pathways for native vegetation clearing provide landholders with adequate options while managing environmental risks?**

**Q6. Is it clear what native vegetation clearing activities are "allowable" i.e. don't need notification or approval?**

**Q7. What, if any, other native vegetation clearing activities should be "allowable?" How could the requirements for allowable activities be improved?**

Landholders are permitted to carry out 'allowable activities' which do not require notification to, or approval by, LLS. These include a range of routine land management activities that support agriculture, such as collecting firewood and clearing for rural infrastructure e.g. fences, dams, sheds and access tracks. The types of allowable activities that can be carried out are more restricted on vulnerable and sensitive land.

While rural landholders should be supported to undertake regular maintenance activities, the current system contains loopholes and is being misunderstood or gamed by some landholders. This is resulting in a large cumulative loss of habitat and biodiversity across the state.

The ability for landholders to clear land without authorisation or an independent ecological assessment (on Exempt land and allowable activities on Regulated land) is leading to a loss of biodiversity values. Landholders often do not have in-depth ecological knowledge to correctly identify habitat or threatened species. The Biodiversity Values map helps to some degree; however, it too is incomplete and not sufficiently ground truthed.

***Recommendation 5: The Department of Planning and Environment should ensure the Biodiversity Values map is accurate and up to date.***

Landholders should therefore be required to consult LLS and/or obtain an independent ecological assessment when clearing a total land area over a certain size. The approach could be similar to the maximum area clearing thresholds that trigger the BOS. The thresholds should be linked to the size of the property to prevent a large portion of the property being cleared. Councils have cited examples of small holdings approximately 50m wide whereby landholders can clear up to 12m on all sides along fence lines due to it being an allowable activity, leaving only a small fraction of the native vegetation left. It is also important that measures are built in to prevent landholders from carrying out the clearing in a staged way to avoid triggering approval requirements. The maximum area clearing threshold should therefore take into account the proportion of land being cleared, as well as the cumulative total of land that has been cleared under all legislation over the past 12 months, or another suitable time period.

***Recommendation 6: Require landholders to consult LLS and/or obtain an independent ecological assessment when clearing an area of land over a certain size and proportion. This should account for the cumulative total of land cleared under any legislation within the past 12 months.***

While the legislation states that native vegetation clearing should only be carried out to the 'minimum extent necessary', councils feel that some landholders do not follow this and are often clearing to the maximum extent permissible. The term 'minimum extent necessary' should be more clearly defined to avoid room for interpretation and LLS should explore how to increase compliance with this aspect. LLS should also consider restricting the allowable activities and reducing the maximum distance permissible without authorisation. For example, the maximum clearing distance for rural infrastructure in the central zone could be reduced from the current 30m to 15m without approval, and an additional 15m could be approved by LLS on a case-by-case basis where it is deemed necessary.



**Recommendation 7:** *Set out a clear definition and requirements around clearing to the ‘minimum extent necessary’.*

**Recommendation 8:** *Consider restricting the allowable activities and reducing the maximum distance permissible without authorisation. Beyond this maximum distance, activities should require approval by Local Land Services.*

The lack of robust assessment is not in-line with the rigorous requirements under other pathways. For example, the clearing of vegetation to maintain rural infrastructure would require an ecological assessment to clear if the infrastructure was being built in accordance with a Part 4 Environmental Planning and Assessment Act (EP&A Act) approval pathway. The LLS Act also overrides other legislation, meaning landholders can clear land that would usually trigger the BOS.

*An example case in Goulburn Mulwaree included a landowner who contacted council for advice on removing trees that they said were dropping branches and damaging their fence. The land is zoned RU2 meaning the landowner can clear up to 30m wide to maintain their fences under the LLS Act. Alternatively, the owner could clear up to 25m wide under the Rural Boundary Clearing Code. The trees along the fenceline comprised a significant canopy corridor, featuring mature Ribbon Gums *Eucalyptus viminalis* and Black Gum *Eucalyptus aggregate*, which is listed as a threatened species under both NSW and Commonwealth legislation. Council referred the case to the Australian Department of Agriculture, Water and the Environment (DAWE) as it contained the threatened Black Gum *Eucalyptus*. However, DAWE did not consider the proposal would have a significant impact on Black Gum *Eucalyptus* so the removal was permitted. The landowner cleared approximately 400m by 30m of the threatened trees along this fenceline, as well as vegetation on other parts of their property. This would have triggered the BOS if it were not an allowable activity under the LLS legislation or the Rural Boundary Clearing Code.*

Councils such as Goulburn Mulwaree are observing such cases on a widespread scale and are highly concerned about the cumulative impact on biodiversity within their LGAs. In this example, the landholder would have still been able to clear up to 25m wide under the *Rural Boundary Clearing Code*. In order to halt the biodiversity loss occurring across NSW, it is important that the allowable activities are reviewed across all legislation, including the *Rural Boundary Clearing Code* and *Private Native Forestry Code*, and that adequate checks and balances are put in place.

In addition, councils are regularly seeing cases where landholders are using the LLS allowable activities pathway to clear vegetation prior to submitting a DA in order to avoid entering into the BOS or to reduce the offset requirement. This problem is also occurring under the *Private Native Forestry Code* and the *Rural Boundary Clearing Code*, whereby proponents are using these provisions to remove as much native vegetation as possible prior to submitting a DA.

*In another example in Goulburn Mulwaree, when a landholder lodged a DA for a new dwelling, a site inspection found that the new driveway access and proposed building site had already been cleared. The driveway cleared a large area approximately 30m wide by 500m long, but it also led to an existing farm shed, meaning it is permitted as an allowable activity. The area around the shed was cleared under the 10/50 Vegetation Clearing Code of Practice. Prior to the clearing, the area had consisted of native grassland which would otherwise have triggered the BOS. However, because the clearing had already occurred as an allowable agricultural activity, the Flora and Fauna Assessment Report supplied to support the DA concluded that the activity*

would have minimal impacts on biodiversity. This meant the DA did not trigger the BOS and the landholder did not have to offset the biodiversity loss.

The NSW Parliamentary Inquiry into the Integrity of the NSW Biodiversity Offsets Scheme highlighted this issue and recommended that DPE and LLS, in consultation with landholders, develop and implement a plan to prevent clearing on land regulated by LLS that would have otherwise triggered or increased obligations under the BOS.<sup>2</sup>

**Recommendation 9:** *The NSW Government should carry out a review of clearing occurring under all legislation, including the Local Land Services Act, the Rural Boundary Clearing Code and the Private Native Forestry Code, and consider ways to reduce the loss of biodiversity.*

**Recommendation 10:** *The NSW Government should explore ways for the development application process to take into account any clearing that has occurred within the past 12 months under other legislation.*

Furthermore, councils have reported numerous incidents of clearing which they considered to be beyond what is permissible under the LLS Act but upon investigation by the NSW compliance team, the clearing was deemed 'allowable'. This indicates a difference in interpretation of what clearing activities are acceptable and the need to strengthen the guidance. The definitions should be tightened to ensure landholders are correctly following the legislation and councils have a clearer idea of when further investigation is required, saving them time and resources.

**Recommendation 11:** *Tighten the definition of allowable activities to ensure landholders are correctly following the legislation and councils have a clear idea of when further investigation is required.*

**Q8. How effective are the requirements for establishing, managing, monitoring and reporting for set asides? Please give reasons for your answer.**

Under Part 5A, clearing activities that are not listed as 'allowable' must be compensated by creating a 'set aside'. The site must be another area on the same property that is permanently managed for conservation. Set aside areas are listed on a Public Information Register, which LLS is responsible for maintaining and publishing.

The NSW Parliamentary Inquiry into the Integrity of the NSW Biodiversity Offsets Scheme highlights the concerns regarding 'set asides' that the Environmental Defenders Office (EDO) and Henribark, an ecological consultancy, raised in their submissions.<sup>3</sup> The EDO asserted that the area-based ratios do not ensure the set aside land is ecologically equivalent and therefore do not reliably compensate for the biodiversity loss. The EDO also highlighted that set asides are not registered on the land title, putting at risk the requirement that they must be managed in perpetuity.<sup>4</sup> In addition, allowable activities are permitted within set aside areas, further undermining their protections.

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<sup>2</sup> Legislative Council, Portfolio Committee No. 7, '[Integrity of the NSW Biodiversity Offsets Scheme](#)', Report no. 16, NSW Parliament

<sup>3</sup> Ibid.

<sup>4</sup> Environmental Defenders Office (2021) '[Submission to the inquiry into the Integrity of the NSW Biodiversity Offsets Scheme](#)', Submission No 92

**Recommendation 12:** Remove the ability for allowable activities to be permitted within set aside areas.

When reviewing planning certificates, it can be difficult for reviewers to compare the proposal against the set asides public register. There is therefore a risk that councils could unknowingly approve a DA which involves clearing within a set aside area.

**Recommendation 13:** Ensure set aside spatial maps are easily accessible by council staff to review while assessing development applications.

Councils have reported a lack of compliance or active investigation of set aside areas, which the NSW Natural Resources Commission review<sup>5</sup> and the Audit Office of NSW review<sup>6</sup> also concluded to be inadequate. Henribark expressed that landholder management is 'relatively unregulated' and set asides are rarely visited, if at all.<sup>7</sup> The EDO argued there is inadequate reporting to determine whether set asides are ensuring environmental benefits over time.<sup>8</sup> LGNSW welcomes the development of the LLS assurance program to monitor landholder management of set asides. To improve trust in the scheme, it is important that councils are made aware of the processes underpinning the assurance program. Councils should also be informed of the results within their LGAs on an ongoing basis.

**Recommendation 14:** Share information with councils on the processes and results of the Local Land Services assurance program on landholder management of set asides.

## Clearing using the Native Vegetation Panel pathway

### Q9. What are the barriers to using the Native Vegetation Panel approval pathway and how could this pathway be improved?

The Native Vegetation Panel clearing pathway was introduced to provide an independent assessment of clearing proposals based on their environmental, social and economic impacts. Applications to the Native Vegetation Panel must comply with the BOS, including the requirement to prepare and submit a Biodiversity Development Assessment Report and to purchase Biodiversity Credits.

Since it was established in 2018, the Panel has received 140 inquiries but only received and approved one application. It would be concerning if this reflected landholders carrying out clearing without approval on learning that obtaining approval would be too complex or expensive. It is widely known that landholders seek to avoid the BOS wherever possible due to the expensive and lengthy process, and that it is difficult to successfully prosecute for native vegetation removal. It is possible then that some landholders preferred to risk a fine instead of

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<sup>5</sup> Natural Resources Commission (2019) '[Final advice on a response to the policy review point](#)', NSW Government

<sup>6</sup> Audit Office of New South Wales (2019) '[Managing native vegetation](#)', Performance Audit, New South Wales Auditor-General's Report

<sup>7</sup> Henribark Pty Ltd (2021) '[Submission to the inquiry into the Integrity of the NSW Biodiversity Offsets Scheme](#)', Submission No 35a

<sup>8</sup> Environmental Defenders Office (2021) '[Submission to the inquiry into the Integrity of the NSW Biodiversity Offsets Scheme](#)', Submission No 92

following this approval pathway. The following section on 'Reporting and Compliance' outlines further detail on the issues concerning offences and penalties.

LLS should work with landholders to better understand why this approval pathway is not being utilised, such as using customer journey mapping exercises to identify barriers and pain points. The NSW Government should consider whether this approval pathway is useful to maintain or whether it would be more appropriate to rationalise the number of pathways available. This submission's final section on 'Native vegetation provisions and the objectives in the *Local Land Services Act*' highlights the need for a holistic review of the pathways available.

***Recommendation 15:*** *Engage with landholders to understand why they are not using the Native Vegetation Panel approval pathway.*

## Reporting and compliance

**Q10. Is the public register for reporting on native vegetation certificates and notifications accessible, and is the information useful and easy to understand? What if any improvements to reporting should be made? Please give reasons for your answer.**

LLS is responsible for maintaining a Public Information Register of notifications made and certificates issued, as well as of set aside areas. Some councils reported that they find the public register 'clunky', and it can be difficult to determine whether clearing was lawful. A user-friendly spatial map showing clearing and set asides at a local scale could facilitate public scrutiny and approvals.

***Recommendation 16:*** *Make the Public Information Register more user-friendly and consider showing the set aside areas collectively in a spatial map.*

## Offences and penalties

**Q11. How adequate are the penalties for offences for illegal clearing and breaches of set aside obligations? Please give reasons and/or examples for your answer.**

**Q12. To what extent does the public have confidence in compliance and enforcement of native vegetation regulation? How could public confidence be improved?**

It is DPE's responsibility to undertake compliance and enforcement of Part 5A of the LLS Act, which includes investigating alleged illegal clearing. The maximum penalties for intentional illegal clearing that causes, or is likely to cause, significant harm to the environment is \$5 million for a corporation and \$1 million for an individual. For any other offence, the maximum penalties are \$2 million for a corporation and \$500,000 for an individual. Failure to comply with obligations in relation to set asides, such as protecting their biodiversity values has a maximum penalty of \$1.65 million for a corporation and \$330,000 for an individual.

In general, councils do not have confidence in the compliance and enforcement of the scheme. Councils reported that LLS has not always taken action or even provided feedback following referrals of unlawful clearing. There is a lack of compliance officers meaning complaints are not investigated promptly and some breaches seen as comparatively minor are not followed up. This is in line with the findings of the Audit Office of NSW whose 2019 review concluded

that the clearing of native vegetation on rural land was not effectively regulated and enforcement action is rarely taken.<sup>9</sup>

It is recognised that it is difficult to successfully prosecute for native vegetation removal, particularly on a small scale, and is challenging to collect the evidence required, such as the date of clearing. It is also difficult for compliance officers to determine the intentions of the landholder which makes it very challenging to prove that clearing was intentional. Even when successful, the penalties can be less than the cost of investigating and carrying out the prosecution.

This has led to some proponents choosing to clear land without obtaining approval from LLS, as they perceive there to be a low risk of being fined. In addition, when development is the intended outcome, some proponents choose to clear without approval as the fine can be significantly less than entering in the BOS. A council shared an example of a proponent receiving a penalty of \$400,000 for clearing a substantial area of land without approval. Under the BOS, the offset requirement would likely have been around \$10 million, in addition to the administrative costs of the scheme, saving the proponent around \$9 million.

This indicates the current system and penalties do not sufficiently deter clearing. The *Protection of the Environment Operations Act 1997* includes a provision for monetary fines to be based on the financial gain from the activity. The same approach should be included within the LLS Act to provide a strong financial disincentive.

***Recommendation 17:*** Increase resourcing for compliance activities to ensure breaches can be investigated and penalised in a timely way.

***Recommendation 18:*** Introduce a provision for monetary fines to be based on the financial gain from the activity.

***Recommendation 19:*** Introduce an automatic offence for unauthorised clearing in certain areas, such as in set asides and high biodiversity value areas.

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

**Q13. Overall, how relevant are Part 5A and Schedule 5A and Schedule 5B of the Local Land Services Act in achieving the social, economic and environmental interests of the State?**

**Q14. What if any other issues should be considered as part of the statutory review of Part 5A and Schedule 5A and Schedule 5B of the Local Land Services Act? Please give reasons why they should be considered in your answer.**

The LLS native vegetation provisions are not delivering on the environmental interests of the state. Alongside the *Rural Boundary Clearing Code* and the *Private Native Forestry Code*, they are seen by councils as the main source of land clearing occurring across NSW. This is leading to significant habitat and biodiversity loss, as well as wider environmental, economic and social impacts. This includes for the koala, an iconic Australian species which attracts

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<sup>9</sup>Audit Office of New South Wales (2019) '[Managing native vegetation](#)', Performance Audit, New South Wales Auditor-General's Report

significant tourism and economic benefits but is currently threatened, facing ongoing habitat loss. Councils also receive complaints from community members who have seen large scale clearing of native vegetation in their local areas and are concerned about the impacts on biodiversity and community wellbeing.

It is important that the LLS Act is not reviewed in isolation but is considered in the context of other legislation and statutory instruments that regulate clearing in NSW including the EP&A Act, the *Biodiversity Conservation Act*, the *Rural Boundary Clearing Code* and the *Private Native Forestry Code*. The variety of approvals pathways is complex and is leading to confusion among some landholders. In addition, the large discrepancy in the requirements between the pathways causes frustration and many perceive it to be unfair. Some landholders are seeing the LLS Act as a loophole to lawfully clear native vegetation and avoid entering into the BOS. The NSW Government should carry out a comprehensive review which considers whether the multitude of approvals pathways is adequately achieving the social, economic and environmental interests of the state. It should consider whether the pathways should be rationalised under one piece of legislation, as was previously the case under the EP&A Act.

***Recommendation 20:*** *The NSW Government should carry out a comprehensive review which considers the multitude of legislative approvals pathways and whether these are adequately achieving the social, economic and environmental interests of the state.*

In addition, while much of the vegetation loss occurring is at a small scale on individual properties, councils are witnessing this occurring on a regular basis and are highly concerned about the cumulative impact on habitats and biodiversity. There appears to be a lack of monitoring, evaluating, and reporting of the cumulative biodiversity impacts of the clearing which must be addressed to understand the scale of the problem.

***Recommendation 21:*** *Monitor the cumulative biodiversity impacts of the clearing occurring under the Local Land Services Act and publicly report on this.*

## Conclusion

LGNSW welcomes the opportunity to provide feedback on the native vegetation provisions of the LLS Act and identify areas of improvement.

Overall, LGNSW is supportive of the objective of the native vegetation provisions but does not believe it is in the environmental interests of NSW or is consistent with the principles of ecologically sustainable development.

This submission includes a range of recommendations, many of which inter-relate. The majority relate to improving the current system, such as tightening definitions and requirements, improving guidance and mapping, and strengthening compliance and enforcement. However, the NSW Government should carry out a holistic review of the wider land management legislation to determine whether a more significant overhaul of the framework would improve environmental outcomes.

LGNSW would be pleased to discuss these recommendations and possible ways to improve the functionality and outcomes of the Land Management Framework.

## Summary of Recommendations

1. Improve awareness of the Land Management Framework, including the interaction between the *Local Land Services Act*, the planning system and the Biodiversity Offsets Scheme.
2. Engage with landholders to understand how to make the approvals pathways more user-friendly.
3. Rename the land categories to avoid confusion between Exempt and Excluded land, as well as the three Category 2 sub-divisions.
4. Expand the functionality of the Native Vegetation Regulatory map to show the allowable activities that are permitted on each plot of land.
5. The Department for Planning and Environment should ensure the Biodiversity Values map is accurate and up to date.
6. Require landholders to consult Local Land Services and/or obtain an independent ecological assessment when clearing an area of land over a certain size and proportion. This should account for the cumulative total of land cleared under any legislation within the past 12 months.
7. Set out a clear definition and requirements around clearing to the 'minimum extent necessary'.
8. Consider restricting the allowable activities and reducing the maximum distance permissible without authorisation. Beyond this maximum distance, activities should require approval by Local Land Services.
9. The NSW Government should carry out a review of clearing occurring under all legislation, including the *Local Land Services Act*, the *Rural Boundary Clearing Code* and the *Private Native Forestry Code*, and consider ways to reduce the loss of biodiversity.
10. The NSW Government should explore ways for the development application process to take into account any clearing that has occurred within the past 12 months under other legislation.
11. Tighten the definition of allowable activities to ensure landholders are correctly following the legislation and councils have a clear idea of when further investigation is required.
12. Remove the ability for allowable activities to be permitted within set aside areas.
13. Ensure set aside spatial maps are easily accessible by council staff to review while assessing development applications.
14. Share information with councils on the processes and results of the Local Land Services assurance program on landholder management of set asides.
15. Engage with landholders to understand why they are not using the Native Vegetation Panel approval pathway.
16. Make the Public Information Register more user-friendly and consider showing the set aside areas collectively in a spatial map.
17. Increase resourcing for compliance activities to ensure breaches can be investigated and penalised in a timely way.
18. Introduce a provision for monetary fines to be based on the financial gain from the activity.

19. Introduce an automatic offence for unauthorised clearing in certain areas, such as in set asides and high biodiversity value areas.
20. The NSW Government should carry out a comprehensive review which considers the multitude of legislative approvals pathways and whether these are adequately achieving the social, economic and environmental interests of the state.
21. Monitor the cumulative biodiversity impacts of the clearing occurring under the *Local Land Services Act* and publicly report on this.

For further information, please contact [Carys Parkinson](#), Senior Policy Officer Environment or [Susy Cenedese](#), Strategy Manager Environment.