

FACTSHEET: NATIVE VEGETATION AND RURAL LAND

The *Local Land Services Act 2013* and the *Biodiversity Conservation Act 2016* regulate the clearing of native vegetation on rural land in NSW.

Native vegetation includes all trees, shrubs, scrub, understorey plants, groundcover and plants in a wetland that are native to NSW. In some circumstances the definition of native vegetation extends to dead plants.

The Office of Environment and Heritage, in partnership with Local Land Services, the Biodiversity Conservation Trust and the Department of Planning and Environment, is responsible for administering various components of the new legislation. On a day-to-day basis Local Land Services is the primary regulatory authority.

CLEARING LAND

Unauthorised clearing

If native vegetation has been cleared in contravention of the legislation, the landholder or any other person with control or management of the clearing may be guilty of an offence under the *Local Land Services Act 2013* (NSW) (“LLS Act”) and be subject to a penalty. The maximum penalties range up to \$500,000 for an individual to \$5 million for a corporation (where the offence was committed intentionally and was likely to cause significant harm to the environment).

Offenders may also be given a direction to carry out specified remedial work. A person who does not comply with a remediation order is guilty of an offence under the *Biodiversity Conservation Act 2016* (NSW).

A remediation order can remain on a property after it is transferred with the obligations passing to the new owner.

CATEGORIES OF LAND

A new Native Vegetation Regulatory (“NVR”) Map has been developed to show:

- rural land where clearing of native vegetation can occur without approval (Category 1 – Exempt land);
- rural land where clearing requires approval from Local Land Services (Category 2 – Regulated land);
- rural land where clearing of native vegetation may not be permitted under the [Land Management \(Native Vegetation\) Code 2018](#) (“Code”), and a limited suite of allowable activities apply (Category 2 – Vulnerable regulated land); and
- rural land where clearing is not permitted (Category 2 – Sensitive regulated Land).

Currently, only the NVR Map Category 2 – Vulnerable regulated land and Category 2 – Sensitive regulated land categories are in full regulatory effect. Local Land Services has also released a fact sheet regarding the categorising of land. The fact sheet is available at: <https://www.lls.nsw.gov.au/sustainable-land-management/facts-sheets2/land-categorisation-and-the-land-management-framework>.

Allowable activities

The LLS Act supports landholders undertaking day-to-day land management activities associated with agriculture and other common practices in rural areas. Clearing for allowable activities on Category 2 – Regulated land does not require approval. Where land is classed as Category 2 – Vulnerable regulated land or Category 2 – Sensitive regulated land, allowable activities are limited.

Allowable activities include activities such as clearing native vegetation to reduce an imminent risk of personal injury or damage to property, sustainable grazing, and building and operating rural infrastructure, such as fence-lines, dams, sheds and tracks. Local Land Services has prepared a fact sheet to assist with determining what an allowable activity is. This fact sheet is available at: <https://www.lls.nsw.gov.au/sustainable-land-management/facts-sheets2/allowable-activities-for-landholders>.

The rules around allowable activities (contained in Schedule 5A) to the LLS Act are very prescriptive and it is recommended that the relevant rules be reviewed in full or advice sought from Local Land Services before clearing is undertaken.

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Land Management (Native Vegetation) Code 2018

The Code applies to all rural lands throughout NSW and provides directions on what native vegetation can and cannot be cleared, how much clearing is permitted and under what circumstances. In some cases, the Code may require the establishment of a set-aside area in exchange for the removal of native vegetation to offset the environmental impacts of clearing.

The five parts of the Code are:

- *Invasive Native Species* – enables the removal of invasive native species that have reached unnatural densities and dominate an area;
- *Pasture Expansion* – permits a range of clearing of woody native vegetation, by uniform thinning and mosaic thinning;
- *Continuing Use* – enables the continuation of lawful land management activities that had been in place between 1990 and the commencement of the new arrangements;
- *Equity* – enables the removal of paddock trees, compromised native groundcover, and native vegetation from small areas in exchange for set aside areas containing remnant vegetation; and
- *Farm Plan* – enables the removal of paddock tree areas and clearing regulated rural land in exchange for set-aside areas containing remnant vegetation or set aside areas where revegetation will be required.

For low impact land management activities, landholders are required to notify Local Land Services prior to clearing. Activities that have a high risk of adversely impacting on the environment require certification by Local Land Services prior to any clearing activities.

Clearing under the Code is not permitted for some categories of land, including coastal wetlands, old growth forests, littoral rainforests, core koala habitat and critically endangered ecological communities.

THE NATIVE VEGETATION PANEL

In some instances, proposed clearing does not fall within allowable activities or the [Code](#). A new Native Vegetation Panel (“Panel”) is being established to determine the conditions that will enable landholders to offset the impacts of clearing in these areas.

An approval process by the Panel will enable landholders to use biodiversity credits (from a biodiversity offset site) to offset the biodiversity impacts of developing their land for agriculture. This pathway is also available for landholders who do not wish to have a set-aside, established on their property.

PREVIOUS SCHEME

Property vegetation plans (“PVPs”) approved before the repeal of the *Native Vegetation Act 2003* (NSW) remain valid and in force. No new PVPs can be submitted by a landholder, however an existing PVP may be modified. For more information on variation of existing PVPs, landholders can contact Local Land Services. Clearing pursuant to notifications given under Ministerial Codes in place under the *Native Vegetation Act* continues to be authorised for a period of time.

ACTING FOR A PURCHASER

When acting on the purchase of rural land it is important that your client is aware of, and understands, their obligations under the legislation, any existing PVPs, the terms of any Code compliant certificates, obligations to maintain set aside areas and any remediation orders.

The purchaser should also make enquiries of the vendor to establish if any clearing has taken place under the Code or under any provisions (including Ministerial Orders) under the *Native Vegetation Act*, or if the vendor has notified clearing under the Ministerial Orders that has not yet been completed. It may also be prudent to obtain a warranty from the vendor that it has not undertaken any clearing in contravention of the Acts (including the repealed *Native Vegetation Act*).

Local Land Services is required to maintain public information registers in relation to approvals and applications for approvals that have been refused. If the local council has been notified of a set aside area, the planning certificate under section 10.7 of the *Environmental Planning and Assessment Act 1979* (NSW) is to include a statement to that effect.

If the purchaser has any intention to develop the property, including by converting previous pasture land to cropping, the purchaser should make enquiries of Local Land Services to see if this would require certification by Local Land Services or approval by the Panel. Further, if the purchaser has intentions to carry out allowable activities that require a set aside area, the purchaser should make enquiries of Local Land Services to ensure that the proposed set aside area is appropriate and that the area in question is not already a set aside area as a result of prior clearing.

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