

Submission
No 4

**INQUIRY INTO LOCAL LAND SERVICES AMENDMENT
(CRITICALLY ENDANGERED ECOLOGICAL
COMMUNITIES) REGULATION 2019 AND LOCAL LAND
SERVICES AMENDMENT (ALLOWABLE ACTIVITIES)
REGULATION 2019**

Organisation: Nature Conservation Council of New South Wales
Date Received: 19 September 2019



Nature Conservation Council

The voice for nature in New South Wales

19 September 2019

Dear MLCs,

Submission to the NSW Legislative Council inquiry into the *Local Land Services Amendment (Critically Endangered Ecological Communities) Regulation 2019* and *Local Land Services Amendment (Allowable Activities) Regulation 2019*

The Nature Conservation Council of New South Wales (NCC) is the state's peak environment organisation. We represent over 150 environment groups and thousands of supporters across NSW. Together we are dedicated to protecting and conserving the wildlife, landscapes and natural resources of NSW.

We welcome the opportunity to provide comment to this inquiry and are happy to provide appear as a witness if requested by the committee.

Rates of clearing of native vegetation in NSW are unsustainable and the laws and regulations governing this are in urgent need of review and amendment. We submit that both the Allowable Activities and Critically Endangered Ecological Communities (CEEC) Regulations should be analysed in this context and the committee's recommendations should reflect this.

The rate of clearing of native vegetation for agriculture in NSW increased five-fold between 2010-11 and 2017-18. Clearing is occurring at almost double the rate predicted by the Office of Environment and Heritage when the NSW Land Management and Biodiversity Conservation Reforms commenced in August 2017 and approvals since then indicate that the rate has continued to rise rapidly in the past 18 months.

This clearing is occurring at the worst possible time for farmers, communities, river and soil health and our native flora and fauna. We are currently experiencing the most severe drought in NSW in 120 years of record keeping. At the same time, climate change is driving a dangerous shift to longer and more intense fire danger periods and soil carbon is declining in many of our most important agricultural areas. Over 1000 species in NSW are now listed as threatened and the recent NSW EPA State of the Environment report recognised the clearing and disturbance of native vegetation as the number one threat to these species.

It is our view that the Allowable Activities Regulation should be disallowed as it will further weaken already lax land clearing laws, contribute further to substantial increases in land clearing rates, and put native vegetation and wildlife at risk.

We support the retention of the CEEC regulation as it ensures the Monaro and Werriwa Grassy Woodlands will be listed as category 2 sensitive land, but it is our view that the associated code amendments should be repealed as they severely undermine protections for these Critically Endangered Ecological Communities.

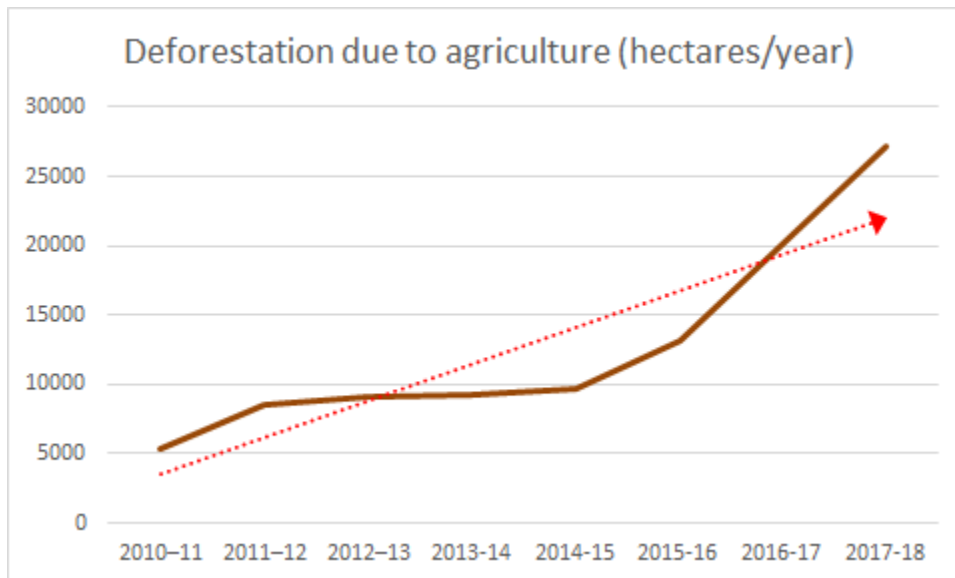
We urge the committee to make the following recommendations to the parliament and government:

1. There should be an urgent review of Biodiversity Conservation Act and Local Land Services Act and associated regulations including the Land Management (Native Vegetation) Code.
2. There should be a pause of clearing under the Equity, Continuing Use and Farm Plan sections of the Land Management (Native Vegetation) Code while this review occurs.
3. The Natural Resources Commission review of clearing under the native vegetation code should be released publicly
4. The *Local Land Services Amendment (Critically Endangered Ecological Communities) Regulation 2019* should not be disallowed, but the associated *Land Management (Native Vegetation) Code Amendment (Monaro and Werriwa Grassy Woodland Critically Endangered Ecological Communities) 2019* should be repealed.
5. All Critically Endangered Ecological Communities should be immediately listed as category 2 sensitive land.
6. The completed Native Vegetation Regulatory Map should be released.
7. The parts of Schedule 1 of the *Local Land Services Amendment (Allowable Activities) Regulation 2019* relating to collection of firewood and clearing of planted vegetation on vulnerable and sensitive regulated land should be disallowed.
8. Schedule 2 of the *Local Land Services Amendment (Allowable Activities) Regulation 2019* relating to clearing of proximity areas for coastal wetlands and littoral rainforests should be disallowed.

Alarming rates of clearing in NSW

The NSW Government's NSW Woody Vegetation Change 2017-18 report found a substantial increase in the rate of deforestation following repeal of the Native Vegetation Act and its replacement with the Local Land Services Act and Biodiversity Conservation Act. Combined data for agriculture, forestry and infrastructure showed an average annual rate of deforestation of 32,167 hectares from 2009/10 to 2014/15, compared to 58,000 hectares in 2017/18 (an 80% increase). For clearing directly associated with agriculture, these figures show a five-fold increase between 2010-11 (5400 ha) and 2017-18 (27,100 ha). The majority of this clearing is concentrated in the Central West, Northern Tablelands and Western LLS regions.

The rate of clearing is occurring at almost double the rate predicted by the Office of Environment and Heritage (OEH) when the NSW Land Management and Biodiversity Conservation Reforms commenced in August 2017. In documents released by the OEH under the GIPA Act, the OEH predicted that “agricultural clearing is likely to return to long run clearing rates towards ~15,000 ha per annum over the period 2017-18 to 2019-20 (up from ~9,000 ha per annum in recent years).”



While the government has not yet released data on clearing rates for 2018/19, the Local Land Service public register suggests that the rate has continued to rise rapidly in the past 18 months. The register does not include any clearing which does not require notification or approval or any illegal clearing, but the register shows that between March 2018 and August 2019 there have been:

- Notifications of 51,210 ha of code-based clearing
- Approvals given by LLS for 288,556 ha of code-based clearing (these approvals are valid for 15 years)

This report reinforced the conclusions reached in two analyses released previously by the NSW Nature Conservation Council and WWF-Australia. These reports analysed the scale of deforestation in four hotspots in the state since repeal of the Native Vegetation Act in August 2017, concluding that:

- Bulldozing of native bushland had nearly doubled in three study areas in NSW – North West, Central West and Hunter regions. Deforestation increased 2.5x in the Central West, 2.3x in the Hunter Region and 1.6x in the North West. A total of 4,679 ha of koala habitat was cleared in the study areas over the two years, and
- Clearing almost tripled in the Moree-Collarenebri region, and included destruction of 5,246 hectares of koala habitat.

Secret Natural Resources Commission report into clearing

In the 2019 Budget Estimates hearings it was revealed that the Natural Resource Commission has already conducted a secret review of clearing rates and provided this to government. This

is because clearing has surpassed the threshold of 20,000 hectares per annum agreed between ministers when concurrence was provided for the Native Vegetation Code. Unfortunately, because this has been conducted in secret, we do not know the scope of this review and there has been no opportunity for the community to provide input.

NSW Audit Office report

Recently the NSW Audit Office's Managing native vegetation report (June 2019) found 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. There is no evidence-based assurance that clearing of native vegetation is being carried out in accordance with approvals. Responses to incidents of unlawful clearing are slow, with few tangible outcomes. Enforcement action is rarely taken against landholders who unlawfully clear native vegetation. There are processes in place for approving land clearing but there is limited follow-up to ensure approvals are complied with.

The Audit Office made the following key findings which reinforce the need for an expedited review of the legislation and regulations governing clearing in NSW:

- The decision not to release the two largest categories of the NVR map makes it harder for landholders to determine if they can clear;
- LLS has limited oversight of notifications for land clearing;
- There is limited monitoring of whether requirements of approvals are being met.
- The Code may not be responding adequately to environmental risks. Importantly, “There are problems with the Code regarding: ...the limited ability of LLS to withhold approval for higher risk clearing proposals.”;
- There are lengthy delays in identifying unlawful land clearing, partly because “OEH compares state-wide satellite imagery at 12-monthly intervals to identify changes in vegetation cover”
- The amount of land clearing has increased...; and
- There is a lack of enforcement activity in response to unlawful land clearing.

Recommendation 1: There should be an urgent review of Biodiversity Conservation Act and Local Land Services Act and associated regulations including the Land Management (Native Vegetation) Code.

Recommendation 2: There should be a pause of clearing under the Equity, Continuing Use and Farm Plan sections of the Land Management (Native Vegetation) Code while this review occurs.

Recommendation 3: The Natural Resources Commission review of clearing under the native vegetation code should immediately be released publicly.

The Local Land Services Amendment (Critically Endangered Ecological Communities) Regulation 2019

On 28 June 2019 the NSW Threatened Species Scientific Committee found that the Monaro and Werriwa grassy woodlands are critically endangered ecological communities. The Scientific Committee found remnants of these grassy woodlands “are poorly represented in the formal reserve network, and unreserved areas are subject to the threat of vegetation clearing” and also that “remnants are typically small and fragmented and are thus susceptible to attrition via clearing for routine land management practice”.

Currently CEECs are the only vegetation expressly off limits to code-based clearing under the Local Land Services Act, so this listing should have afforded these woodlands increased protection. This is because clearing any remnants of a CEEC is a serious threat to the ongoing persistence of that unique community, especially in already overcleared landscapes.

However, one month after this listing the government brought in the CEEC Regulation and an accompanying amendment to the Native Vegetation Code. The combined effect of these amendments is to undermine the current protections in the code for these newly listed CEECs.

This is because, under a new section 19A of the Native Vegetation Code, native vegetation is taken not to be an instance of a Monaro or Werriwa Grassy Woodland critically endangered ecological community if, in the opinion of Local Land Services, the vegetation does not form a functioning ecological community that is likely to be viable in the long term.

While this may sound reasonable, in practice this takes the decision making away from an expert scientific committee and allows an LLS officer, who is not an ecologist, complete discretion on whether clearing is permitted. There is also no consideration of whose fault it is that the ecosystem is no longer functioning and no appeal against an LLS officer’s decision.

The Government’s explanation for the Code amendment is that “because the newly listed CEECs occur in productive areas that may require ongoing management in an agricultural context, the NSW Government has developed an approach to balance flexible land management”. This reveals that this is a change driven by the commercial concerns of a handful of agribusinesses and not by the best available science in order to protect the biodiversity values of ecological communities on the brink of extinction.

The effect of the CEEC Regulation is simply to ensure that the Monaro and Werriwa grassy woodlands are listed as category 2 sensitive land. We support this amendment because currently the regulations rely on the publication of the long promised Native Vegetation Regulatory Map to identify CEECs as category 2 sensitive land. In the absence of this map or regulatory change we are advised that these CEECs are not designated as sensitive and therefore not afforded the extra protection this brings.

Recommendation 4: *The Local Land Services Amendment (Critically Endangered Ecological Communities) Regulation 2019* should not be disallowed, but the associated *Land Management (Native Vegetation) Code Amendment (Monaro and Werriwa Grassy Woodland Critically Endangered Ecological Communities) 2019* should be repealed.

Recommendation 5: All Critically Endangered Ecological Communities should be immediately listed as category 2 sensitive land

Recommendation 6: The completed Native Vegetation Regulatory Map should be released.

The Local Land Services Amendment (Allowable Activities) Regulation 2019

The NCC sought advice from the Environmental Defenders Office about the implications of the Allowable Activities Regulation and we attach this advice as Appendix A.

The regulation achieves the following:

1. Designates the clearing of native vegetation for maintaining water supply and gas supply infrastructure as an allowable activity.
2. Expands the range of allowable activities permitted on category 2-vulnerable regulated land and category 2-sensitive regulated land to include collecting firewood, clearing planted native vegetation and maintaining telecommunications infrastructure,
3. Removes the categorisation of proximity areas for coastal wetlands and littoral rainforests as sensitive regulated land.

Given the alarming rates of clearing and ongoing biodiversity crisis we are concerned that this amendment makes it easier to clear areas which have already been acknowledged as environmentally sensitive. We believe that environmental assessment and approval should be required before any clearing can occur on category 2-vulnerable regulated land and category 2-sensitive regulated land rather than activities being permitted as allowable activities.

However, we also acknowledge that clearing for ‘the maintenance of public utilities’ (including water and gas utilities) was previously a Routine Agricultural Management

Activity (RAMA) under the Native Vegetation Act and that the LLS Act contains a general restriction that the clearing of native vegetation that is authorised by this Schedule for any purpose only authorises clearing to the minimum extent necessary for that purpose. For this reason, we are not recommending that the parliament disallow the sections of the Allowable Activities Regulation relating to water supply and gas supply and telecommunications infrastructure.

We are very concerned about Schedule 2 which removes the categorisation of proximity areas for coastal wetlands and littoral rainforests as sensitive regulated land. The effect of this change is that there will be weaker restrictions on clearing in these important coastal proximity areas, undermining the premise in the Coastal SEPP that these proximity areas are sensitive and warrant additional environmental protection. We recommend the whole of Schedule 2 be disallowed.

Recommendation 7: The parts of Schedule 1 of the *Local Land Services Amendment (Allowable Activities) Regulation 2019* relating to collection of firewood and clearing of planted vegetation on vulnerable and sensitive regulated land should be disallowed.

Recommendation 8: Schedule 2 of the *Local Land Services Amendment (Allowable Activities) Regulation 2019* relating to clearing of proximity areas for coastal wetlands and littoral rainforests should be disallowed.

If you seek any further information on the issues raised in this submission, please do not hesitate to contact me on or ncc@nature.org.au

Yours sincerely,

Chris Gambian

Chief Executive

Nature Conservation Council of NSW

Appendix A: EDO Advice to NCC: Local Land Services Amendment (Allowable Activities) Regulation 2019 [NSW]

Introduction

In February 2019, the NSW Government published the *Local Land Services Amendment (Allowable Activities) Regulation 2019* [NSW] (**the Amendment Regulation**).

The purpose of the Amendment Regulation was to:

1. Amend the *Local Land Services Act 2013 (LLS Act)* to allow the clearing of native vegetation for maintaining water supply and gas supply infrastructure as an allowable activity.
2. Expand the range of allowable activities permitted on category 2-vulnerable regulated land and category 2-sensitive regulated land to include collecting firewood, clearing planted native vegetation and maintaining telecommunications infrastructure.
3. Amend the *Local Land Services Regulation 2014* to require certain proximity areas for coastal wetlands and littoral rainforests to be designated category 2-regulated land (rather than category 2-sensitive regulated land).

Background

- The LLS Act identifies certain clearing activities as ‘allowable activities’ that can be carried out without any approval or other authority under Part 5A of the LLS Act (section 60Q). [We note that this is similar to the concept of ‘routine agricultural management activities’ (RAMAs) under the now repealed *Native Vegetation Act 2003 (NV Act)*].
- Generally allowable activities are set out in Part 2 of Schedule 5A of the LLS Act
- Clearing for rural infrastructure is set out in Part 3 of Schedule 5A of the LLS Act
- In the case of category 2-vulnerable regulated land and category 2-sensitive regulated land, allowable activities are set out in Part 4 of Schedule 5A of the LLS Act (which is generally more restrictive than the general allowable activity provisions in Part 2 and Part 3)

Comments on changes introduced by the Amendment Regulation

Our assessment of the changes introduced by the Amendment Regulation is as follows:

1. ***Maintaining water supply and gas supply infrastructure***
Clearing of native vegetation for the maintenance of public utilities associated with water supply infrastructure and gas supply infrastructure is now authorised as an allowable activity if carried out by or on behalf of the owner of the infrastructure or by or on behalf of the landholder. We note that ‘the maintenance of public utilities’ (including water and gas utilities) was previously a RAMA under the NV Act (section 11(1)(h)). We also note that the Schedule 5A of the LLS Act contains a general restriction that the clearing of native vegetation that is authorised by this Schedule for any purpose only authorises clearing to the minimum extent necessary for that purpose (LLA Act Schedule 5A, Part 1, clause 7).
2. ***Allowable activities on category 2-vulnerable regulated land and category 2-sensitive regulated land***
Additional allowable activities are now authorised to be undertaken on category 2-vulnerable regulated land and category 2-sensitive regulated land. These include collecting firewood, clearing planted native vegetation and maintaining telecommunications infrastructure.

Given that land is included in category 2-vulnerable regulated land and category 2-sensitive regulated land for reason of it being environmentally sensitive land, allowable activities within these areas should be strictly limited (that is, environmental assessment and approval should be required before any clearing can occur on category 2-vulnerable regulated land and category 2-sensitive regulated land rather than activities being permitted as allowable activities).

We do note however that general restrictions on the collection of firewood do apply to the collection of firewood on category 2-vulnerable regulated land and category 2-sensitive regulated land. For example, Schedule 5A, Part 2, clause 15(3) prohibits clearing for collection of firewood if the vegetation comprises or is likely to comprise a threatened species, part of a threatened ecological community or habitat of a threatened species.

3. **Proximity area for coastal wetlands**

Clause 108 of the *Local Land Services Regulation 2014* identifies land that is to be designated as category 2-sensitive regulated land. This includes 'coastal wetlands and littoral rainforests' (see Clause 108(2)(b) of the LLS Regulation which refers back to 60I (2)(i) of the LLA Act).

We understand that the purpose of the Amendment Regulation is to clarify that the 'proximity area for coastal wetlands' and 'proximity area for littoral rainforest' (as identified in *State Environmental Planning Policy (Coastal Management) 2018* (Coastal SEPP)) are to be designated category 2-regulated land (rather than category 2-sensitive regulated land). We understand that this amendment does not reverse an existing provision but clarifies a potentially unclear application of clause 108.

The effect is that there will be weaker restrictions on clearing in coastal proximity areas (by virtue of them not being given categorised as category 2-sensitive regulated land). This seems to undermine the premise in the Coastal SEPP that these proximity areas are sensitive and warrant additional environmental protection (see, for example, clause 11 of the Coastal SEPP). We would recommend that the reverse position be taken - that is, proximity areas for coastal wetlands and littoral rainforests should be designated as category 2-sensitive regulated land.

We note however that the practical implications are unknown. We expect that a number of proximity areas may be zoned as environment zones (under relevant LEPs) in which case the *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* (clause 5(1)(b)) rather than the LLS Act applies to clearing of vegetation (section 60A(a) of the LLS Act). While we haven't looked into this in further detail we note that the Native Vegetation Regulatory Map (prepared under the LLS Act) shows urban areas and environment zones in grey (as they are excluded from provisions of Part 5A of the LLS Act). This could be compared with the mapping of proximity areas under the Coastal SEPP to get a sense of how much land would be affected by this amendment.

Conclusion

In our view, the Amendment Regulation does appear to weaken environmental protections and facilitate land clearing by:

- Expanding the scope of allowable activities under the LLS Act (being activities that can be carried out with approval or other authorisation), including on category 2-vulnerable regulated land and category 2-sensitive regulated land.

- Treating proximity area for coastal wetlands and proximity area for littoral rainforest as general category 2 –regulated land rather than category 2-sensitive regulated land

While these amendments may appear minor when considering the land management regime as a whole, it reflects the overarching trend by this Government to weaken environmental protections and facilitate land clearing. This is worrying given recent reports indicate that land clearing rates across NSW have increased in recent years, since the announcement of the government’s biodiversity conservation and land management reforms (see OEH Land Clearing Data 2017-18 (www.environment.nsw.gov.au/vegetation/reports.htm) and NSW Audit Office report (www.audit.nsw.gov.au/our-work/reports/managing-native-vegetation)).