

PROPOSED CHANGES TO NSW BIODIVERSITY AND CONSERVATION LAWS



Biodiversity Conservation Bill and Local Land Services Amendment Bill

The NSW Government is proposing significant changes to NSW biodiversity conservation laws that will:

- Repeal the *Native Vegetation Act 2003* and *Threatened Species Conservation Act 1995*, and replace them with a new *Biodiversity Conservation Bill* and *Local Land Services Amendment Bill*;
- Remove the requirement to ‘maintain or improve biodiversity’ leading to a decline in environmental outcomes, soil health, water quality and salinity;
- Expand the use of ‘self-assessable’ codes allowing landholders to clear trees with little oversight;
- Reduce the role of the Environment Minister in important biodiversity decisions, with the primary regulatory role for land clearing sitting with the Local Land Services and Minister for Primary Industries
- Increase the scope for Ministerial discretion, including in relation to the application of offsets
- Limit important safeguards, such as ‘red flag’ areas for environmentally sensitive areas
- Increase the use of biodiversity offsets, with variations to ‘like for like’ offsetting and allowing proponents to clear trees in exchange for paying money into a fund
- Rely on Government funding to achieve biodiversity gains, however this is not guaranteed in legislation and is subject to change at the whim of Government.

KEY CHANGES

REPEAL EXISTING LAWS (AND REPLACE THEM WITH NEW LAWS)

REPEALED	NEW LEGISLATION
<ul style="list-style-type: none">• <i>Native Vegetation Act (2003) (NVA)</i>,• <i>Threatened Species Conservation Act (1995) (TSC Act)</i>,• <i>Nature Conservation Trust Act (2001) (NCT Act)</i>• <i>Parts of the National Parks and Wildlife Act 1974 (NPWS Act)</i>.	<ul style="list-style-type: none">• <i>Biodiversity Conservation Bill 2016</i>• <i>Local Land Services Amendment Bill 2016</i>• Changes to the <i>Environmental Planning and Assessment Act 1979</i>

REMOVE THE ‘MAINTAIN OR IMPROVE’ BIODIVERSITY TEST

The Government will remove all legal requirements for land clearing to ‘maintain or improve’ biodiversity. This immediately lowers the bar for all land clearing activities and will lead to poorer environmental outcomes.

NEW BIODIVERSITY ASSESSMENT METHODOLOGY (BAM) AND INCREASED RELIANCE ON BIODIVERSITY OFFSETTING

A new Biodiversity Assessment Methodology will, when triggered, underpin land clearing decisions under the *Local Land Services Act* and biodiversity assessment under the *Environmental Planning and Assessment Act*. The circumstances where the BAM will apply are outlined in more detail below.

The BAM will replace existing processes for biodiversity assessment and biodiversity offsetting including the BioBanking Assessment Methodology, Biodiversity Certification Assessment Methodology, the preparation of Species Impacts Statements and the Framework for Biodiversity Assessment under the NSW Biodiversity Offsets Policy for Major Projects.

The new BAM will be based on the current NSW Biodiversity Offsets Policy for Major Projects, which does not meet best practice because does not require 'like for like offsetting', does not identify 'red flag areas', allows mine rehabilitation to be credited an offset and allows supplementary measures such research in lieu of direct offsets.

The approval authority will have discretion to set lower offset obligations when weighing up the environmental, social and economic costs and benefits of the proposal.

NEW LAND CATEGORIES – A NEW NATIVE VEGETATION REGULATORY MAP WILL IDENTIFY DIFFERENT CATEGORIES OF LAND ACROSS THE STATE

CATEGORY	TYPE OF LAND	WHAT RULES APPLY?
Category 1: BLUE (Exempt)	Exempt land <ul style="list-style-type: none"> Cleared land: including regrowth (land cleared of vegetation as at 1 January 1990) or land legally since then Grasslands determined to be of low conservation value Biodiversity certified land (land previously subject to biodiversity assessment) 	Clearing can occur without approval
Category 2: YELLOW (Regulated)	Regulated land <ul style="list-style-type: none"> Land that has not been lawfully cleared since 1 January 1990 Land subject to a private land conservation agreement or that has been conserved with public funds Vulnerable land, such as steep land at risk of erosion Land that has been unlawfully cleared Grasslands determined to be of high conservation value by a grasslands method Land with environmental features subject to other regulations, such as coastal wetlands, littoral rainforests, Ramsar wetlands. 	Native Vegetation Regulatory Framework will apply, including four types of self-assessable clearing codes This will be administered by the Local Land Service and Minister for Primary Industries under the Local Land Services Act.
Category 3: GREY (Excluded)	This land will include all Sydney local government areas, the Newcastle local government area and land across the state in urban zones, E2, E3 and E4 zones (E zones) and R5 zones under Local Environmental Plans.	Clearing will be regulated under the <i>Environmental Planning and Assessment Act 1979</i> and the Biodiversity Assessment Methodology will apply if thresholds met. A new State Environment Planning Policy and Development Control Plan will apply, however the contents of these policies are not currently available for public comment.

CATEGORY 2 LAND: EXPANDED USE OF 'SELF-ASSESSABLE' CODES AVAILABLE AND REDUCED ROLE OF THE ENVIRONMENT MINISTER

Category 2 land (Yellow) will be regulated by a new Native Vegetation Regulatory Framework under the Local Land Services Act by the Local Land Services and Minister for Primary Industries.

Type of activity	What rules will apply?	Decision maker
Allowable activities	Clearing activities that may be carried out for the purposes of routine land management and management of infrastructure that will not require a formal approval or notification to Local Land Services (similar to current Routine Agricultural Management Activities (RAMAs))	n/a
Code based activities	<p>Four types of codes will be made by the Minister for Primary Industries (with the agreement of the Environment Minister):</p> <ol style="list-style-type: none"> 1. Management codes Codes for thinning vegetation, managing invasive native species (INS), harvesting vegetation for stock fodder and controlling lignum in an irrigation district. 2. Efficiency codes Codes which support more efficient grazing, cropping and farm systems. Landholders can clear vegetation that impedes productivity of the existing farm. 3. Equity code Properties with a higher proportion of remnant native vegetation are afforded greater flexibility. Clearing using this code is balanced by the creation of permanent set aside areas elsewhere on the property. 4. Farm planning code Allows a landholder to clear the regulated vegetation on their property in exchange for establishing permanent set aside areas to undertake strategic revegetation that maximises biodiversity 	<p>Level 1 Code – notification to LLS</p> <p>Level 2 Code – certification by LLS</p>
Approval	<p>Any clearing that cannot be undertaken as an allowable activity or under a code will require approval.</p> <p>The Biodiversity Assessment Methodology will apply.</p>	Minister for Primary Industries

CATEGORY 3 LAND: NEW STATE ENVIRONMENTAL PLANNING POLICY AND EXPANDED USE OF OFFSETS

Category 3 land will be regulated under the Environmental Planning and Assessment Act as either permissible without consent or permissible with consent.

Consent requirements	What rules will apply?	Decision maker
Development that is permissible without consent	<p>It is expected that a new SEPP and DCP framework will regulate clearing that is permitted without consent.</p> <p>The new SEPP is expected to have three categories:</p> <ul style="list-style-type: none"> • Clearing of native vegetation that does not require approval 	

	<ul style="list-style-type: none"> • Clearing of native vegetation that may be carried out with a permit. On certain land (generally within R5 and E zones) a permit may require on-site biodiversity impact mitigation strategies (eg. carrying out of management actions) • Clearing of native vegetation that may only be carried out following a Biodiversity Assessment Methodology assessment and approval 	<p>Feedback is being sought on whether permits will be granted by the LLS or local council</p> <p>Approval will be given by the Minister for Primary Industries</p>
Development that requires development consent	Development approval processes under the Environmental Planning and Assessment Act applying the new Biodiversity Assessment Methodology	Local Council or Minister for Planning

NEW BIODIVERSITY CONSERVATION TRUST

The Biodiversity Conservation Bill will establish a new Biodiversity Conservation Trust (the Trust) as a not-for-profit statutory body that will replace the existing Nature Conservation Trust. The new Trust will have two key roles:

- to manage private land conservation agreements
- to manage the expanded NSW biodiversity offsets scheme, including the new offsets fund

NEW CATEGORIES OF PRIVATE LAND CONSERVATION AGREEMENTS

Private land conservation agreements will be consolidated into three new categories. Existing agreements will be carried forward and kept in place.

<i>Current categories of agreements</i>	<i>Proposed categories of agreements</i>
<ul style="list-style-type: none"> • Biobanking agreements • Conservation agreements • Nature Conservation Trust Agreements • Registered Property Agreements • Incentive Property Vegetation Plans • Conservation Property Vegetation Plans • Wildlife refuges 	<ol style="list-style-type: none"> 1. Biodiversity Stewardship Agreements will protect and improve biodiversity through restoration and management actions, that are secure and funded in the long term. These improvements are represented as “credits”, which can be sold to offset biodiversity impacts from development. 2. Conservation Agreements are permanent or time bound agreements supported by stewardship payments to landholders. These agreements will typically be used for higher conservation value land where modest management effort is required to protect existing values. 3. Wildlife Refuge Agreements are entry level agreements that support simple and effective land management. These agreements can be terminated at any time or converted into higher forms of agreements, and may be eligible for grants.

INCREASING RELIANCE ON GOVERNMENT FUNDING TO ACHIEVE CONSERVATION GAINS

The Independent Panel concedes that the proposed changes will lead to biodiversity loss, particularly at the site scale, but suggested that this can be overcome by increased investment in private land conservation that will deliver enhanced biodiversity outcomes overall. While increased investment in private land conservation is a positive initiative, this approach means that conservation gains are not guaranteed in legislation, but rather on Government spending.

OTHER KEY CHANGES

The new laws will also make changes in relation to:

- The listing of threatened species and key threatening processes
- Licencing for wildlife interaction, including increased reliance on codes of practice
- The declaration of areas of outstanding biodiversity values

GET INVOLVED

Take action at:

- Nature Conservation Council of NSW: www.nature.org.au
- Stand up for Nature: www.standupfornature.org.au

You can find the Government's information at: www.landmanagement.nsw.gov.au

For more information on policy content, contact Cerin Loane on cloane@nature.org.au

To get involved in the campaign contact: Corinne Fisher on cfisher@tec.org.au