

**Submission
No 7**

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

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Local Land Services Submission to Legislative Council Standing Committee on Regulations – September 2019

*Local Land Services Amendment
(Allowable Activities) Regulation 2019*

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

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Submission to Legislative Council Standing Committee on Regulations

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Terms of Reference

That the Regulation Committee inquire into and report on the impact and implementation of the:

- a) *Local Land Services Amendment (Critically Endangered Ecological Communities) Regulation 2019*; and
- b) *Local Land Services Amendment (Allowable Activities) Regulation 2019*

Section One – Introduction

Introduction to the Land Management Framework

The Land Management and Biodiversity Conservation (LMBC) reforms that commenced in 2017 have delivered a transparent environmental reform cross NSW. The reforms recognise the need to grow food and fibre in a vibrant and productive agricultural sector, while preserving and protecting our important environmental assets and delivering record investments in private land conservation and threatened species protection. The LMBC reforms were enabled by the passage of the *Biodiversity Conservation Act 2016* and the commencement of Part 5A of the *Local Land Services Act 2013*.

The Land Management Framework (the Framework) was established as a result of these reforms, and its development was informed by the outcomes of the Independent Biodiversity Legislation Review Panel's recommendations following its review of biodiversity conservation legislation in NSW. This review identified an urgent need for clearer and simpler laws governing vegetation management in NSW, as the old laws were not working for either agriculture or the environment.

The Framework was developed transparently after an extensive consultation across NSW engaging more than 1,000 participants, and was placed on exhibition twice in a 12 month period

For rural and regional landholders, the foundation of the Framework is the *Local Land Services Act 2013* (the LLS Act) and the *Land Management (Native Vegetation) Code 2018*, administered by Local Land Services (LLS), together with comprehensive on-ground support by LLS staff.

Development of the Code was informed by a comprehensive consultation program involving over 1000 stakeholders, and it strikes a balance between supporting a productive agricultural sector and a healthy environment.

Other parts of the Land Management Framework are:

- the Biodiversity Conservation Trust, which manages a new program of conserving high value vegetation on private land, funded with \$350 million over the next 5 years;
- \$100 million for the Saving Our Species Program; and
- sustainable development including the NSW biodiversity offset scheme.

Under the Framework, agricultural land is categorised into four main categories:

- Category 1 (exempt land) is typically land where native vegetation clearing is allowed without approval from LLS. Exempt land typically relates to land that was cleared of native vegetation prior to 1990 or lawfully cleared between 1990 and the commencement of the land management framework
- Category 2 (regulated land) is typically land containing native vegetation. There are three types of regulated land:
 - *Category 2 - regulated land* that is not Vulnerable or Sensitive regulated land. On this land authorisation for native vegetation clearing may be required from LLS under the Code. Clearing is not authorised by the Code if the person who carries out the clearing harms an animal that is a threatened species and that person knew that the

clearing was likely to harm the animal. Management of native vegetation on category 2 – regulated land is also possible using allowable activity provisions, and if required with approval from the Native Vegetation Panel.

- *Category 2 - vulnerable regulated land* is typically riparian areas, steep slopes or areas prone to erosion where clearing of native vegetation is restricted under the Code, and a limited suite of allowable activities apply
- *Category 2 - sensitive regulated land* is land where clearing of native vegetation under the Code is not permitted. Landholders are able to utilise a limited suite of allowable activities on category 2 – sensitive regulated land.

Section Two – Local Land Services Amendment (Allowable Activities) Regulation 2019

Allowable Activities under the Land Management Framework

Under the LLS Act, Schedule 5A sets out the allowable activities for which native vegetation can be cleared without any authorisation required. These allowable activities cover day to day farming activities such as environmental protection works, and the construction and maintenance of fences, critical infrastructure, and access tracks.

Given the essential nature of these activities to running a farm, and the low environmental risk, clearing of native vegetation for the purposes of allowable activities is authorised without further approval under the LLS Act.

Landholders are required to undertake allowable activities within certain constraints, for example:

- maximum distances of clearing for rural infrastructure specific to coastal (15m), central (30m) and western zones (40m); and
- landholders must only clear to the minimum extent necessary, regardless of maximum distances.

Under the now repealed *Native Vegetation Act 2003* and *Native Vegetation Regulation 2013*, rural landholders were able to access measures similar to allowable activities, known as 'Routine Agricultural Management Activities' (RAMAs). As the name implies, these related to low risk and routine farming and land management operations, such as constructing and maintaining fences and maintaining core infrastructure on rural properties.

Under the new legislative framework commencing in 2017, RAMAs were replaced by allowable activities. These are captured in Schedule 5A to the LLS Act and can be amended via the making of a regulation by the Minister for Agriculture, with the concurrence of the Minister for the Environment (as the Minister administering the *Biodiversity Conservation Act 2016*).

Impact

The *Local Land Services Amendment (Allowable Activities) Regulation 2019* (the Allowable Activities Regulation) commenced on 15 February 2019, and made important amendments to Schedule 5A of the

LLS Act and to the *Local Land Services Regulation 2014* (LLS Regulation). The primary aim of the Allowable Activities Regulation was to enhance the allowable activity provisions available to landholders, and bring these more into line with RAMA provisions under the former *Native Vegetation Act 2003*.

The amendments to Schedule 5A of the LLS Act relate to the allowable activity provisions available to farmers and agricultural landowners under the land management framework. The objectives of the Allowable Activities Regulation were to:

- expand the limited allowable activities previously available to agricultural landholders on land categorised under the Land Management Framework as Category 2 – sensitive regulated land and Category 2 – vulnerable regulated land; and
- create new allowable activities for the maintenance of critical infrastructure on agricultural land;

The Allowable Activities Regulation also amended the LLS Regulation to remove the unnecessary designation of proximity areas to coastal wetlands and littoral rainforests as category 2 – sensitive regulated land.

In making the Allowable Activities Regulation, the Government did not weaken environmental protections from the previous legislative framework. The Allowable Activities Regulation made the activities permissible under the former *Native Vegetation Act 2003* consistent with the existing legislative framework.

Amendment 1 – collection of firewood removal of planted native vegetation on category 2 – sensitive regulated land and category 2 – vulnerable regulated land

The Allowable Activities Regulation added clauses 35(9) and 35(10) to Part 4 of Schedule 5A of the LLS Act. Part 4 of Schedule 5A sets out the limited allowable activities that are permitted on land categorised as category 2 – vulnerable regulated land and category 2 – sensitive regulated land. As noted earlier, these categories of land are subject to additional protections under the Land Management Framework. Landholders with such land on their properties are restricted to using only the limited allowable activities under Part 4 to Schedule 5A.

The insertion of clause 35(9) allows landholders to collect firewood for personal use on category 2 – vulnerable regulated land and category 2 – sensitive regulated land, while the insertion of clause 35(10) allows landholders to remove planted native vegetation on such land.

As previously noted there are restrictions to these allowable activities, including limitations on the range of allowable activities available for use in these specified areas, further restrictions to maximum distances – e.g. farm access track restricted from a maximum width of 30 metres to 6 metres, and provisions to exclude firewood collection and clearing of planted native vegetation on riparian land consistent with the former laws and Clause 2 of the *Land Management (Native Vegetation) Code 2018*.

Both of these activities were permitted on similarly categorised land under the RAMA provisions of the previous native vegetation legislative framework.

The making of this Regulation has removed a significant regulatory and financial burden on many private landholders who, without the amendments, were limited in how they could effectively manage

their land. The making of this Regulation has released landholders from an unreasonable regulatory burden when seeking to collect firewood on their properties for their own use, as purchasing firewood for winter being difficult and costly for landholders in remote areas.

For people in regional areas, particularly in the cooler southern areas of the state, collecting firewood for personal use is necessary to heat their homes in winter. This is an activity that has been allowed for a number of years. In this respect, the Allowable Activities Regulation corrects an oversight that was made when the land management framework was introduced.

Amendment 2 – infrastructure allowable activities

This Allowable Activities Regulation also made vital amendments to enable the maintenance of critical infrastructure on agricultural land. The Allowable Activities Regulation created new allowable activities to enable:

- clearing of native vegetation for the maintenance of public utilities associated with water supply infrastructure and gas supply infrastructure on category 2 – regulated land;
- clearing of native vegetation for the maintenance of public utilities associated with water supply infrastructure and gas supply infrastructure on category 2 – sensitive regulated land and category 2 – vulnerable regulated land; and
- clearing of native vegetation for the maintenance of telecommunications infrastructure on category 2 – sensitive regulated land and category 2 – vulnerable regulated land.

As previously noted, landholders were able to undertake such activities on these types of land for many years under the former native vegetation legislation, which has been repealed. These amendments to introduce similar allowable activity provisions into the new land management framework brings these arrangements in line with the RAMAs set out under the former legislation.

These are critically important amendments for farmers and rural landholders that facilitate the creation and maintenance of critical infrastructure on their land, without unnecessary red tape. These amendments remove restrictions on clearing for allowable activities associated with the most fundamental requirements for comfort in our modern society – water for cooking and cleaning, gas supply infrastructure for heating and cooking, and telecommunications infrastructure to allow our farmers to stay connected to the world around them.

Some clearing is necessary to access and maintain public utilities. This is not about broadscale clearing of land, this is about maintaining important public assets and providing a safe work environment for the people that maintain these utilities.

Without the amendments made by this Allowable Activities Regulation, the maintenance of existing infrastructure relating to water, gas and telecommunications on agricultural land would continue to be subject to unnecessary red tape.

Amendment 3 – Proximity areas to coastal wetlands and littoral rainforest

The final amendments created by the Allowable Activities Regulation has the effect of excluding proximity areas for coastal wetlands and littoral rainforests from being designated as category 2 – sensitive regulated land.

Currently, agricultural land in the coastal wetlands and littoral rainforest areas of the coastal zone, as identified by the *State Environmental Planning Policy (Coastal Management) 2018* (the Coastal SEPP), is mapped as category 2 - sensitive regulated land.

However prior to the Regulation being made in February 2019, “proximity areas” within 100m of a coastal wetland or littoral rainforest were also designated as category 2 – sensitive regulated land.

The implementation of the Coastal SEPP in October 2019 had the unintended consequence of requiring the designation of the proximity areas as category 2 - sensitive regulated land, despite the historical policy intent being that only the mapped coastal wetland and littoral rainforest areas were provided such protection. The proximity areas do not have the same environmental value as the mapped coastal wetlands and littoral rainforest areas, and therefore do not require the same level of environmental protection. This amendment has therefore applied a more appropriate level of regulation over the proximity areas.

These important amendments to the LLS Regulation allow land managers to actively manage these “proximity” areas by removing the unnecessary designation of category 2 - sensitive regulated land.

Implementation

Implementation of the amendments made by the *Local Land Services Regulation (Allowable Activities) 2018* has been supported by LLS Regional Services Officers (RSOs) engaging with landholders and providing advice on the land management options available as allowable activities. LLS staff routinely engage with landholders on vegetation management options for their properties, and support the implementation of these amendments through information provision to landholders and context-specific advice on the management of their properties.

The amendments effected by this Regulation allow for a balance between agricultural productivity and environmental protection, and ultimately facilitate the achievement of the triple bottom line environmental, social and economic outcomes that underpin the Land Management Framework. These changes have greatly benefited our farmers and allowed them to conduct their day-to-day business without unnecessary red tape.

The consequences of not applying these changes are:

- Maintaining existing infrastructure relating to water, gas and telecommunications on agricultural land will continue to be subject to unnecessary red tape.

- Many landholders will face an unreasonable regulatory burden when seeking to collect firewood for personal use on their own properties. Purchasing firewood for winter can be difficult and costly for landholders in remote areas.
- Agricultural land managers will be prevented from actively managing “proximity” areas of land that are designated as category 2 - sensitive regulated land because they are near coastal wetland or littoral rainforest.

Section Three – Local Land Services Amendment (Critically Endangered Ecological Communities) Regulation 2019

Background

As already described, the LLS Act permits routine day-to-day activities to maintain and establish essential infrastructure on regulated rural land, collectively known as allowable activities.

Under the LLS Act, Schedule 5A sets out the allowable activities for which native vegetation can be cleared. These allowable activities cover day to day farming activities such as environmental protection works, and the construction and maintenance of fences, critical infrastructure, and access tracks. Given the essential nature of these activities to running a farm and the low environmental risk of them, clearing of native vegetation for the purposes of allowable activities is authorised without further approval under the LLS Act.

However landholders are required to undertake allowable activities within certain constraints, for example:

- maximum distances of clearing for rural infrastructure specific to coastal (15m), central (30m) and western zones (40m) ; and
- landholders must only clear to the minimum extent necessary, regardless of maximum distances.

Under the Land Management Framework that has been in operation since 2017, environmentally sensitive areas of land can be classified as category 2 – sensitive regulated land or category 2 – vulnerable regulated land. Landholders are restricted to using a limited suite of allowable activities (further details in ‘Impact’ below) when managing vegetation on land that falls under either of these categories.

On 28 June 2019 the NSW Threatened Species Scientific Committee announced two new critically endangered ecological community (CEEC) listings in the South East of NSW:

- the Monaro Tableland Cool Temperate Grassy Woodland in the South Eastern Highlands and South East Corner Bioregions; and
- the Werriwa Tablelands Cool Temperate Grassy Woodland in the South Eastern Highlands Bioregion (together known as the Monaro and Werriwa CEECs).

These two grassy woodlands can occur from Crookwell in the north to the Victorian border in the south, bounded by the Snowy Mountains and the ACT to the west, and the edge of the southern highlands to the east.

Under 60I(2)(m) of the LLS Act, and 108(2)(b) of the LLS Regulation, land is to be designated as category 2 – sensitive regulated land where the Environment Agency Head reasonably believes that the land contains a critically endangered ecological community.

The majority of these two grassy woodlands occur on private agricultural land, and in productive areas with a long history of agriculture. The NSW Government has therefore developed an approach to balance flexible land management, with appropriate measures to preserve and protect instances of these CEECs.

In the instance of these two CEECs and their long agricultural history context, the Environmental Agency Head did not map their occurrence as category 2 – sensitive regulated land based solely on the presence of either of these CEECs. Instead, they were mapped as an advisory layer available publicly to landholders.

A consequence of not being mapped as category 2 – sensitive regulated land is that the existing provisions to limit allowable activities on category 2 – sensitive regulated land did not apply to these two CEECs. The amendment to Schedule 5A of the LLS Act has ensured that the higher environmental standard applied to category 2 – sensitive regulated land associated with limiting allowable activities also applies to these two CEECs.

By striking the right balance between facilitating agricultural production and protecting areas that will meaningfully contribute to the survival of these ecological communities, we are supporting landholders to productively manage their land, while providing appropriate protections to environmentally sensitive areas.

Impact

With the passage of this Local Land Services Amendment (Critically Endangered Ecological Communities) Regulation 2019 (the CEEC Regulation) on 2 August 2019, the Government has enhanced the environmental protection of the Monaro and Werriwa CEECs on agricultural land.

The CEEC Regulation relates to the use of allowable activities on agricultural land that contains expressions of the Monaro and Werriwa CEECs. Under Part 2 to Schedule 5A of the LLS Act, a general suite of allowable activities is available to landholders for use on category 2 – regulated land.

However, the making of this Regulation restricts landholders to utilising the limited suite of allowable activities established under Part 4 to Schedule 5A, on land containing either of the listed CEECs.

This limited suite of allowable activities allows landholders to undertake critical farm management activities, such as pest management and environmental restoration, while maintaining appropriate environmental protections for these CEECs.

Without the changes affected by the CEEC Regulation, landholders would be able to apply the full range of allowable activities on these newly listed critically endangered ecological communities, including clearing for:

- Gravel pits;
- Private power lines;
- Airstrips; and
- Firebreaks

In addition, the changes ensure that maximum clearing distances for fence lines are limited to 6 metres, compared to 15-40m for the general suite of allowable activities under Part 2 to Schedule 5A.

These changes strengthen the environmental protection afforded to these two new listings by mirroring the additional protections already afforded to areas identified as environmentally sensitive under the Land Management Framework.

The consequences of not applying these changes are:

- A full range of allowable activities available to landholders;
- The potential for infrastructure clearing up to 30 metres, compared to 6 metres; and
- Inconsistency in the approach to ensuring a balanced approach to land management and biodiversity conservation in NSW – specifically, improving productivity while responding to environmental risks.

Implementation

Without the amendments to Schedule 5A of the LLS Act that are effected by the making of this Regulation, instances of the Monaro and Werriwa CEECs will be subject to the full suite of allowable activities set out in Part 2 to Schedule 5A of the LLS Act. This would reduce the environmental protections for the ecological communities in question, which is inconsistent with the Government's intent to provide greater protection for areas of CEECs.

A landholder focused factsheet has been prepared by LLS and the Environment Energy and Science Division of the Department of Planning, Industry and Environment, to help inform landholders of the new listing, the advisory mapping layer and the restricted range of allowable activities within these CEECs.

