

WENTWORTH GROUP SUBMISSION TO PUBLIC CONSULTATION
Proposed changes to the NSW Land Management (Native vegetation) Code 2018

July 2025

About the Wentworth Group

The Wentworth Group of Concerned Scientists is an independent group of scientists, economists and professionals working to secure the long-term health of Australia’s land, water and biodiversity. Our members comprise leading Australian experts in climate science, biodiversity conservation and natural resource management, as well as eminent environmental lawyers, sustainable business leaders and natural capital market experts. We focus on solutions-based, science-driven policy reforms and work strategically to drive outcomes that benefit the environment, communities and the economy.

The Wentworth Group appreciates the opportunity to provide feedback on the proposed changes to the NSW Land Management (Native Vegetation) Code 2018 (the Code).

Overview

The Wentworth Group supports in principle the proposed amendments to the Code, which will give effect to many of the recommendations arising from the statutory review of the native vegetation provisions of the Local Lands Services Act 2013. However, we caution that significantly greater reform (both legislative and non-legislative) will be required to deliver the NSW Government’s commitments to stop excess land clearing, reduce unallocated clearing and improve native vegetation management on private land.

This submission treats the proposed changes to the Code as a first step in the broader reform process. We note that further amendments to the Code may be precipitated by the Natural Resources Commission’s (NRC) review of “options to further protect and restore biodiversity and ecosystem functions in regional landscapes, and enhance value and support for landholders”. Within this submission, we focus on responding directly to the proposed changes to the code. We anticipate providing further advice on the broader reform process at a later date.

Review and recommendations

Reducing authorisation periods

The Wentworth Group supports the proposal to reduce authorisation periods for both the notification and certification of intended native vegetation clearing from 15 years to 7 years (or 3 years for authorisations issued under certain Parts of the Code).

We recommend these changes be further strengthened by:

- 1. Removing proposed clause 13A(2), which would allow an authorisation to be effectively automatically extended by a further 2 years upon application by the authorisation holder but prior to determination by the LLS; and*
- 2. Including an additional provision in proposed new section 13A, to require LLS to be satisfied that the clearing activity remains eligible for certification, prior to approving an extension; and*
- 3. Applying the reduced authorisation periods to notifications and certifications issued prior to the commencement of proposed changes to the Code, if those existing*

authorisations would otherwise remain in effect for greater than 3 or 7 years after commencement (depending on the Part of the Code they were issued under).

Strengthening invasive native species provisions

We welcome the proposal to introduce an invasiveness test to guide the application of provisions relating to the clearing of invasive native species (INS) under the Code and as a first step towards reducing their overuse.

We recommend strengthening the proposed test of invasiveness by:

1. *Commissioning an expert review of the invasive native species list in Schedule 1 of the Code to ensure the accuracy of both the species identified and the regions in which they are classified as acting invasively, and updating Schedule 1 accordingly if inaccuracies are identified;*
2. *Removing the pathway for landholder self-assessment of invasiveness under the low impact pathway (which would place an undue expectation upon landholders to have a strong understanding of the previous vegetational composition of the area, and the vegetation dynamics of both the invasive native species and the in-situ plant community) and replacing it with LLS assessment of invasiveness (we note this may be best achieved by a creating a single streamlined set of provisions for the clearing of INS, rather than maintaining the current two pathways approach);*
3. *Strengthening the LLS assessment of invasiveness by adding a provision to require the LLS assessment to be based on sound ecological knowledge of both the invasive native species and the in-situ plant community, including its structure and composition, as well as the natural ecological succession processes that may be occurring; and*
4. *Reducing the risk of impacts to non-invasive native species in the area proposed for clearing by:*
 - a. *Imposing a size limit (in addition to the current percentage limit) on the clearing of non-invasive native species for low impact clearing (if this pathway is to be retained) as well as moderate impact clearing (i.e., to prevent the clearing of old growth or hollow-bearing trees); and*
 - b. *Reducing the percentage of non-invasive native species that can be cleared under the moderate impact clearing pathway, to align with the low impact pathway, (i.e., non-invasive native species must represent no more than 10% of the total number of trees or shrubs cleared or no more than 2% if clearing is undertaken by the removal of individual plants).*

Improving clarity of mosaic thinning provisions

We support the intent of improving clarity of the mosaic thinning provisions and introducing a provision pertaining to requirements for retained area management. However, we note that the small changes proposed do not seem to give full effect to the recommendations of the Statutory Review of the Code in regards to improving outcomes of mosaic thinning authorisations.

We recommend further enhancing the mosaic thinning provisions to give effect to the full Statutory Review recommendations by:

1. *Expanding the retained area management requirements to ensure that:*
 - a. *Limits on tree canopy opening sizes are established (either in the Code or subordinate guidelines) and adhered to;*
 - b. *Retained areas are located and selected in accordance with guidelines (to be developed by LLS, based on the best available ecological knowledge);*
 - c. *Documentation of retained areas is provided to and maintained by LLS;*

- d. *Landholders report to LLS on the management activities they are undertaking to promote and improve vegetation integrity in the retained areas; and*
- e. *LLS undertakes regular audits to ensure that retained areas are being maintained and managed in accordance with the Code and any guidelines issued by LLS from time to time.*

Introducing notification requirements for continuing use

We strongly support the introduction of a requirement for the landholder to provide notification of intended clearing or be issued a voluntary code compliant certificate by LLS prior to undertaking clearing of native vegetation. If complied with/enforced, this should help reduce unallocated clearing. Notwithstanding, we recommend that due consideration be given to also limit the scope of the continuous use provisions in order to facilitate achievement of the Government's commitment to stopping excess land clearing.

We recommend that the continuing use provisions be further strengthened by:

1. *Introducing an eligibility requirement that landholders must be able to demonstrate continuing use and active management of the native pastures in which they are intending to clear woody native regrowth; and*
2. *Prohibiting the application of continuing use provisions in areas where regrowth can reasonably be expected to contribute to the maintenance or recovery of a threatened species or threatened ecological community.*

We recommend that similar notification requirements be introduced for allowable activities under the LLS Act.

Strengthening the Equity clearing and set aside provisions

We welcome in principle the removal of discounting rules in relation to the requirement to establish set aside areas and the introduction of a provision to allow LLS to determine the area that must be set aside based on its likely environmental benefits. However, we have outstanding concerns about the maintenance of Part 5 of the Code, which allows for significant levels of native vegetation clearing (up to 1/3 of the property size for smaller properties or up to a total of 625 ha for larger properties) and inadequate comparative gains even with the proposed changes to the set aside rules. Furthermore, maintenance of Part 5 of the Code appears to be contradictory to the Government's commitment to stop excess clearing.

We recommend that due consideration be given to either:

1. *Removing Part 5 of the Code in full and in its place requiring clearing that would have been covered by this Part to instead be subject to assessment by the Native Vegetation Panel under Part5A, Division 6 of the LLS Act; or*
2. *Significantly reducing the levels of equity clearing permitted under Part 5, Division 4 of the Code, as specified in Schedule 4 Maximum equity clearing (i.e., reduce the caps specified in Schedule 4).*

If Part 5 of the Code is to be maintained, we recommend:

- 1. Set aside areas be required to be both like-for-like and net positive (i.e., set aside areas should at minimum protect ecologically equivalent native vegetation to that being cleared and ideally should protect more native vegetation than is being cleared, with the like-for-like requirement only waived in areas that are additional to the minimum required area protection); and*
- 2. When determining the likely environmental benefit of potential set aside areas, the LLS must be guided by the best available scientific evidence.*

Conclusion

The Wentworth Group welcomes many of the proposed amendments in principle, and as a first step to land management reforms, but we reiterate our concern that these amendments will be insufficient to stop excess land clearing. We anticipate further changes may be considered in response to the NRC review. We also encourage the NSW Government to make a significant investment in non-legislative measures to complement further legislative amendments and enhance outcomes on private land, such as revitalizing extension services; expanding support for on-farm natural capital accounting; enhancing the distribution of information on the benefits of biodiversity on-farm; and expanding the suite of incentives available for landscape protection and restoration.