



New South Wales

# Local Land Services Amendment (Miscellaneous) Bill 2020

## Explanatory note

This explanatory note relates to this Bill as introduced into Parliament.

## Overview of Bill

The objects of this Bill are as follows—

- (a) to remove the application of *State Environmental Planning Policy (Koala Habitat Protection) 2019* to land to which Parts 5A and 5B of the *Local Land Services Act 2013* (**the Act**) apply, while preserving the application of *State Environmental Planning Policy No 44—Koala Habitat Protection* to certain core koala habitats in the local government areas of Ballina, Coffs Harbour, Kempsey, Lismore and Port Stephens,
- (b) to remove requirements imposed by other legislation, including the requirement for development consent under the *Environmental Planning and Assessment Act 1979*, in relation to carrying out private native forestry that is authorised by a private native forestry plan under Part 5B of the Act,
- (c) to extend the maximum duration of private native forestry plans made under Part 5B of the Act to 30 years,
- (d) to require the Minister for Agriculture and Western New South Wales to consult with the Minister administering Part 7A of the *Fisheries Management Act 1994* and the Minister administering the *Forestry Act 2012* before making a private native forestry code of practice,
- (e) to allow native vegetation clearing in certain circumstances on land that is used for agricultural purposes without the need for authorisation under other legislation.

## Outline of provisions

**Clause 1** sets out the name (also called the short title) of the proposed Act.

**Clause 2** provides for the commencement of the proposed Act on a day or days to be appointed by proclamation.

## Schedule 1      **Amendment of Local Land Services Act 2013** **No 51**

### Land management (native vegetation)

**Schedule 1[2]** inserts definitions of *allowable activity land* and primary production into Part 5A, for the purposes of that Part and Schedule 5A. *Allowable activity land* is defined to mean a landholding that—

- (a) is in an area of the State to which Part 5A applies, and
- (b) is or was wholly or partly in a rural land use zone and the whole or part of which has been rezoned as Zone E2, Zone E3 or Zone E4, and
- (c) is used for primary production.

**Schedule 1[7]** expands the offence relating to clearing of native vegetation to apply to clearing of native vegetation on *allowable activity land* and to provide a defence to that offence that the clearing is for an allowable activity authorised under Division 4 of Part 5A and Schedule 5A. **Schedule 1[7]** also extends the application of section 60O, which authorises clearing of native vegetation under other legislation in certain cases, to clearing of native vegetation on allowable activity land.

**Schedule 1[8]** provides a defence to unauthorised clearing of native vegetation on allowable activity land if the clearing is authorised under *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*.

**Schedule 1[9]** provides that an offence is not committed under the *Environmental Planning and Assessment Act 1979* in relation to the clearing of native vegetation if the clearing is carried out on allowable activity land and for an allowable activity authorised under Division 4 of Part 5A and Schedule 5A.

**Schedule 1[10]** removes the ability for a State environmental planning policy or part of a local environmental plan that adopts a mandatory provision of a standard instrument under the *Environmental Planning and Assessment Act 1979* to require development consent or other authorisation only for the clearing of native vegetation in an area of the State to which Part 5A applies.

**Schedule 1[1]** makes a consequential amendment.

**Schedule 1[11]** extends the application of section 60Q to allowable activity land. That section provides for the listing in Schedule 5A of the allowable activities in relation to which native vegetation clearing is authorised without any approval or other authority under Part 5A for the clearing. **Schedule 1[19]** makes a consequential amendment to Schedule 5A.

**Schedule 1[12]** permits clearing of native vegetation for allowable activities specified in Schedule 5A even if there is no approval or other authority for the clearing required by or under another Act or if it is in contravention of a provision of another Act.

**Schedule 1[4]** substitutes a provision relating to the designation of land as category 2-regulated land for the purposes of mapping areas where the clearing of native vegetation is regulated under Part 5A. The proposed substituted provision designates as category 2-regulated land, certain land in the local government areas of Ballina, Coffs Harbour, Kempsey, Lismore or Port Stephens identified as core koala habitat and that was subject to a plan of management approved on or before 6 October 2020 under *State Environmental Planning Policy No 44—Koala Habitat*

*Protection*, as in force immediately before its repeal, and in force on 6 October 2020. **Schedule 1[5]** makes a consequential amendment.

#### **Private native forestry**

**Schedule 1[13]** extends the application of Part 5B to an area in which forestry operations can be carried out despite a requirement imposed by the *Environmental Planning and Assessment Act 1979*.

**Schedule 1[14]** inserts proposed section 60ZSA, which provides that forestry operations authorised to be carried out under Part 5B on land to which the Part applies do not need development consent under Part 4 of the *Environmental Planning and Assessment Act 1979* and are not subject to Part 5 of that Act. The proposed section also provides that forestry operations cannot be prohibited or restricted, or development consent be required, by an environmental planning instrument made under the *Environmental Planning and Assessment Act 1979*. **Schedule 1[17]** makes a consequential amendment.

**Schedule 1[16]** provides that the Minister for Agriculture and Western New South Wales must consult with the Minister administering Part 7A of the *Fisheries Management Act 1994* and the Minister administering the *Forestry Act 2012* before making a private native forestry code of practice. **Schedule 1[15]** makes a consequential amendment.

**Schedule 1[18]** extends the maximum duration of private native forestry plans to 30 years.

## **Schedule 2      Amendment of Local Land Services Regulation 2014**

**Schedule 2** makes an amendment consequential on the amendment to section 60I(2)(j) of the Act.



New South Wales

# Local Land Services Amendment (Miscellaneous) Bill 2020

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New South Wales

# Local Land Services Amendment (Miscellaneous) Bill 2020

No. , 2020

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## **A Bill for**

An Act to amend the *Local Land Services Act 2013* in relation to native vegetation land management, allowable activities, private native forestry and core koala habitats; and for other purposes.

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**The Legislature of New South Wales enacts—**

1

**1 Name of Act**

2

This Act is the *Local Land Services (Miscellaneous) Amendment Act 2020*.

3

**2 Commencement**

4

This Act commences on a day or days appointed by proclamation.

5

<b>Schedule 1</b>	<b>Amendment of Local Land Services Act 2013</b>	1
	<b>No 51</b>	2
<b>[1] Section 60A Rural areas of State to which Part applies</b>		3
	Insert “except in the case of clearing for an allowable activity on allowable activity land—” before “urban” in section 60A(a).	4 5
<b>[2] Section 60D Other definitions</b>		6
	Insert at the end of the section—	7
	(2) In this Part and in Schedule 5A—	8
	<b>allowable activity land</b> means a landholding—	9
	(a) that is in an area of the State to which this Part applies, and	10
	(b) that is or was wholly or partly in Zone RU1 Primary Production, Zone RU2 Rural Landscape, Zone RU3 Forestry, Zone RU4 Primary Production Small Lots, Zone RU5 Village or Zone RU6 Transition, and	11 12 13
	(c) the whole or a part of which has been rezoned as Zone E2 Environmental Conservation, Zone E3 Environmental Management or Zone E4 Environmental Living, and	14 15 16
	(d) that is used for primary production.	17
	<b>primary production</b> means any of the following—	18
	(a) the cultivation of land for the purpose of selling the produce of the land,	19
	(b) the maintenance of animals (including birds), whether wild or domesticated, for the purpose of selling them or their natural increase or bodily produce,	20 21 22
	(c) commercial fishing or the commercial farming of fish, molluscs, crustaceans or other aquatic animals,	23 24
	(d) the keeping of bees for the purpose of selling their honey or other apiary products,	25 26
	(e) timber-getting for commercial purposes.	27
	(3) A reference in this section to a landholding in a named land use zone is a reference—	28 29
	(a) to land that, under an environmental planning instrument made as provided by section 3.20(2) of the <i>Environmental Planning and Assessment Act 1979</i> , is in a land use zone specified in the standard instrument under the Act, and	30 31 32 33
	(b) to land that, under an environmental planning instrument that is not made as provided by section 3.20(2) of <i>Environmental Planning and Assessment Act 1979</i> , is in a land use zone in which equivalent land uses are permitted to those permitted in the named land use zone.	34 35 36 37
<b>[3] Part 5A, Division 3, heading</b>		38
	Insert “and on allowable activity land” after “regulated rural areas”.	39
<b>[4] Section 60I Category 2-regulated land mapping</b>		40
	Omit section 60I(2)(j). Insert instead—	41
	(j) the land is—	42
	(i) identified as core koala habitat within the meaning of the repealed Koala Habitat SEPP, and	43 44

	(ii)	subject to a plan of management approved on or before 6 October 2020 under the repealed Koala Habitat SEPP and in force on 6 October 2020, and	1 2 3
	(iii)	located in the local government areas of Ballina, Coffs Harbour, Kempsey, Lismore or Port Stephens, or	4 5
<b>[5]</b>	<b>Section 60I(4)</b>		6
		Insert after section 60I(3)—	7
	(4)	In this section—	8
		<i>repealed Koala Habitat SEPP</i> means <i>State Environmental Planning Policy No 44—Koala Habitat Protection</i> as in force immediately before its repeal by <i>State Environmental Planning Policy (Koala Habitat Protection) 2019</i> .	9 10 11
<b>[6]</b>	<b>Section 60N, heading</b>		12
		Insert “and on allowable activity land” after “regulated rural areas”.	13
<b>[7]</b>	<b>Sections 60N(1) and 60O</b>		14
		Insert “or on allowable activity land” after “regulated rural area” wherever occurring.	15
<b>[8]</b>	<b>Section 60N(1)(f)</b>		16
		Insert after section 60N(1)(e)—	17
	(f)	that the clearing is authorised under <i>State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017</i> .	18 19
<b>[9]</b>	<b>Section 60N(5)</b>		20
		Insert after section 60N(4)—	21
	(5)	However, a person does not commit an offence under the <i>Environmental Planning and Assessment Act 1979</i> in relation to the clearing of native vegetation if the clearing is—	22 23 24
		(a) carried out on allowable activity land, and	25
		(b) for an allowable activity authorised under Division 4 and Schedule 5A.	26
<b>[10]</b>	<b>Section 60P Limitation on planning instruments requiring consent for clearing only</b>		27
		Omit “(other than a State environmental planning policy or so much of a local environmental plan that adopts a mandatory provision of a standard instrument under that Act)” from section 60P(1).	28 29 30
<b>[11]</b>	<b>Section 60Q Allowable activities clearing—Schedule 5A</b>		31
		Insert “and on allowable activity land” after “regulated rural areas” in section 60Q(1).	32
<b>[12]</b>	<b>Section 60Q(2)</b>		33
		Omit “another Act or” wherever occurring.	34
<b>[13]</b>	<b>Section 60ZS Area of State to which this Part applies</b>		35
		Insert “, other than a requirement imposed by the <i>Environmental Planning and Assessment Act 1979</i> ,” after “instrument” in section 60ZS(1)(j).	36 37
<b>[14]</b>	<b>Section 60ZSA</b>		38
		Insert after section 60ZS—	39

<b>60ZSA</b>	<b>Application of Environmental Planning and Assessment Act 1979</b>	1
(1)	This section applies to forestry operations authorised under this Part to be carried out on land to which this Part applies.	2 3
(2)	Development consent under Part 4 of the <i>Environmental Planning and Assessment Act 1979</i> is not required for the carrying out of forestry operations.	4 5
(3)	Part 5 of the <i>Environmental Planning and Assessment Act 1979</i> does not apply to the carrying out, or the authorisation under this Part, of forestry operations.	6 7
(4)	An environmental planning instrument made under the <i>Environmental Planning and Assessment Act 1979</i> cannot prohibit, require development consent for or otherwise restrict forestry operations.	8 9 10
(5)	Subsection (4) extends to an environmental planning instrument made before or after the commencement of this section.	11 12
<b>[15]</b>	<b>Section 60ZT Responsibility for preparation and making of codes</b>	13
	Omit “The Minister is also required to consult the Minister administering Part 7A of the <i>Fisheries Management Act 1994</i> .” from section 60ZT(2).	14 15
<b>[16]</b>	<b>Section 60ZT(2A)</b>	16
	Insert after section 60ZT(2)—	17
(2A)	The Minister is also required to consult with the Minister administering Part 7A of the <i>Fisheries Management Act 1994</i> and the Minister administering the <i>Forestry Act 2012</i> .	18 19 20
<b>[17]</b>	<b>Section 60ZY Approval of private native forestry plans by Local Land Services</b>	21
	Omit section 60ZY(4).	22
<b>[18]</b>	<b>Section 60ZZ Duration, variation and termination of private native forestry plans</b>	23
	Omit “(not exceeding 15 years)” from section 60ZZ(1).	24
	Insert instead “, not exceeding 30 years,”.	25
<b>[19]</b>	<b>Schedule 5A Allowable activities clearing of native vegetation</b>	26
	Omit clause 1(1). Insert instead—	27
(1)	This Schedule sets out the clearing of native vegetation for allowable activities that is authorised without any other approval under Part 5A of this Act—	28 29
(a)	in a regulated rural area, being an area of the State to which that Part applies that is category 2-regulated land on the native vegetation regulatory map, and	30 31 32
(b)	on allowable activity land.	33

