

April 2024

# NSW plantation owner's and manager's guide

## Unique or Special Wildlife Values

*This document outlines the obligations of plantation owner/ manager's relating to unique or special wildlife values under the Plantations and Reafforestation Act 1999*

---

### Plantation owners and managers responsibilities

The owners and managers of authorised plantations are legally required to notify the Minister or delegate within the Plantations Regulation Unit of the Department of Regional NSW (the Department) as soon as they become aware that plantation operations on the authorised plantation have or are likely to have an impact on unique or special wildlife values.

Part 4 of the *Plantations and Reafforestation Act 1999 (the Act)* contains provisions to protect unique or special wildlife values on an authorised plantation and sets out the matters to be dealt with in the evaluation and reporting relating to the likely impact on unique or special wildlife posed by plantation operations.

---

### Definitions

For the purposes of the Act, land has **unique or special wildlife values** if—

- (a) any unique or special wildlife grows on or inhabits the land, or
- (b) any such wildlife is likely to grow on or inhabit the land.

**Unique or special wildlife** is—

- (a) any endangered species, endangered ecological community, or extinct species, within the meaning of the *Biodiversity Conservation Act 2016*, being a species of (or ecological community that includes) a vascular plant, amphibian, bird, mammal, or reptile, or
- (b) any endangered species, endangered ecological community or species presumed extinct (within the meaning of Part 7A of the *Fisheries Management Act 1994*), being a species of (or ecological community that includes) fish.

Unique or special wildlife does not include any tree or shrub that is planted on an authorised plantation in the course of establishment or other operations on the plantation. Although planted

trees and shrubs are not unique or special wildlife, they may be habitat for unique or special wildlife and therefore form part of the unique or special wildlife values on the land.

Plantation operations means any and all of the following –

- a) Establishment operations - activities carried out for the purpose of establishing a plantation, for example, the clearing of land, the use of pesticides, herbicides and fertilisers and the provision of access roads in establishing a plantation, and the planting of trees or shrubs.
- b) Management operations - the carrying out of activities relating to the on-going management of a plantation (for example, silvicultural thinning, weed control, grazing, the maintenance of access roads and similar maintenance operations). Management operations includes any harvesting of timber that does not exceed the maximum amount of harvesting permitted by the Code for management operations.
- c) Harvesting operations - the cutting and removal of timber from a plantation for the purpose of timber production, including the provision of access roads after establishment of a plantation to enable or assist the cutting and removal of timber or the carrying out of such other activities as are necessary for the efficient cutting and removal of timber.

Plantation operations do not include the demolition or erection of buildings (within the meaning of the *Environmental Planning and Assessment Act 1979*), or the building of dams, weirs or reservoirs.

---

## Threatened species considerations in plantation authorisation

Provisions of the *Plantations and Reafforestation (Code) Regulation 2001* relating to establishment, management and harvesting are intended to provide general protections for biodiversity and threatened species. Additionally, the authorisation process includes an assessment of the impacts of the plantation authorisation on all threatened species and communities including vulnerable and endangered, hence the exemption of plantation operations on an authorised plantation from the application of various other legislation provided for in Part 6 of the Act. However, additional provisions apply in relation to endangered species and communities which require prescribed evaluations to be undertaken.

This guide specifically addresses post-authorisation provisions relating to unique or special wildlife values under Part 4 of the Act.

---

## Impact or likely impact

There is likely to be an impact on unique or special wildlife values where:

- a) there is an actual planned operation on an authorised plantation; and
- b) unique or special wildlife are growing on or inhabiting, or are likely to be growing on or inhabiting the land, and
- c) the specific planned plantation operation has or is likely to impact on the unique and special wildlife values.

To be 'likely', means the impact on the unique or special wildlife values is a real probability. It is more than a remote chance or possibility of the impact occurring.

---

To have an impact or likely impact on unique or special wildlife values of the land, the values must be present within the authorised plantation area. If the unique or special wildlife (endangered species or community) is not likely to inhabit or likely to grow within the plantation area subject to operations, an impact is not likely.

For the purposes of the provisions, inhabit means to live on the land (including, for migratory species, during migration) and not only *ad hoc* transient use.

The impact of plantation operations including establishment, management or harvest operations, that have or are likely to have any impact on unique or special wildlife values must be assessed under Part 4 where the Minister or delegate is notified or made aware of such impacts. The evaluation is required even if the impacts are minor or positive.

If plantation operations are not being undertaken there is no impact on unique or special wildlife values.

Plantations operations are not likely to impact on unique or special wildlife values if:

- habitat for unique or special wildlife is not present on the land where plantation operations are proposed; and
- the vegetation on the plantation site is determined to not constitute an endangered ecological community; and
- in the case of an endangered plant, the plant is not known to be growing on the land and where an endangered plant is likely to grow, predetermined actions will be undertaken to avoid impact if the plant is found (i.e., no impact on the plant).

Further, plantation operations are not likely to impact on unique or special wildlife values where:

- plantation operations are separated from the part of the land which has the unique or special wildlife values by sufficient distance that there will be no impact; or
- the plantation operations are not an action that impacts on the unique or special wildlife values of the land.

Note: In all these circumstances, if there is credible evidence that suggests that plantation operations will impact or will likely impact the area of land where a unique or special wildlife plant is growing, there is a likely impact on unique or special wildlife values.

It is a reasonable presumption that a plantation operation on land within an authorised plantation that is a non-native plantation species with minimal native vegetation in-growth is not likely to impact on unique or special wildlife values unless there is credible information otherwise.

If a plantation operation has minimal impact on the land where there are unique or special wildlife values, it may be the case that there is no impact or likely impact on the values (being unique or special wildlife that grow on or inhabit the land or are likely to). For example, some weed management or other low impact management activities may be unlikely to impact the values of the land for unique or special wildlife. If there is any likely impact including minimal impact on the habitat or likely habitat of a unique or special wildlife, it would constitute likely impact for the purposes of Part 4 of the Act.

There may not be an impact or likely impact on unique or special wildlife values if the plantation owner or manager implements actions to avoid such impacts. However, notification (where the plantation owner is aware) and a unique or special wildlife values evaluation and report are still

required unless there is no impact on the values not just a reduction of impacts. The operation that is proposed by the plantation owner/ manager is what will be evaluated. This may include actions to avoid or minimise impacts on unique or special wildlife values determined by the plantation owner/ manager either before or after making a notification or where the Minister is otherwise made aware.

As noted above, mitigation measures do not remove the need to notify unless it is very clear that because of the mitigation measures there will be no impact on unique or special wildlife values of the land, for example, because plantation operations will not occur on the part of the land in the plantation with unique and special wildlife values.

---

## When to notify of impact or likely impact of plantation operations

The plantation owner/ manager of an authorised plantation is legally required to notify the Minister or delegated officers of the Plantations Regulation Unit of the Department as soon as they become aware that plantation operations on the authorised plantation have or are likely to have an impact on unique or special wildlife values.

The plantation owner or manager must notify where:

- a) There is a current or planned plantation operation on an authorised plantation, and
- b) Unique or special wildlife are growing on or inhabiting the land, or are likely to be growing on or inhabiting the land, and
- c) There is impact or likely impact of the specific plantation operation on the unique or special wildlife values on that land.

Whether or not the owner/ manager is aware of impacts or likely impacts on unique or special wildlife values and notification is required are matters on which plantation owners/ managers must make their own judgement.

If the plantation owner or manager designs or alters plantation operations to put in place actions that in their view avoid impact or likely impact of those plantation operations on unique or special wildlife values, notification is not required. The modified plantation operations would need to totally avoid impacts on the unique or special wildlife values (refer to the definition) to not require notification, rather than simply reducing the impacts.

If a plantation operation cannot be undertaken to totally avoid impact or likely impact on known unique or special wildlife values in the authorised plantation, notification by the owner / manager is required.

For the purposes of notification by the plantation owner/ manager, unique or special wildlife values of land that is within an authorised plantation may include unique or special wildlife that may not currently be on the land but are considered likely to grow or inhabit the land in the future. It may be the case that the planting of certain species would mean that a plantation owner may be aware at an early stage that unique or special wildlife are likely to inhabit the land within the plantation authorisation area in the future and they are likely to be impacted by planned operations. However, Departmental officers do not speculate on possible future presence or impacts for the purposes of the Minister being 'aware'.

To assess the impact of any such notified plantation operations on the future unique or special wildlife values of the land, there must be sufficient evidence of the likely existence and extent of unique or special wildlife values and the extent to which likely or proposed plantation operations will adversely affect those values for the Minister/ delegate to make a rational, logical and justifiable determination. There is no prescribed timeframe for notification in advance of the plantation operation but for evaluation purposes there would need to be sufficient evidence to be able to evaluate the impacts and make a determination.

Note: There may be an impact on unique or special wildlife values immediately after authorisation. This includes clearing, planting and other establishment works authorised on land with unique or special wildlife values. In this case, the processes under Part 4 apply post-authorisation and notification is required by the plantation owner/ manager where they are aware of impact or likely impact of plantation operations on unique or special wildlife values. To assist plantation owners/ managers in this regard, the Department will notify them at the time of the presence on the plantation of any endangered species identified during the authorisation assessment post April 2024.

As noted above, mitigation measures do not remove the need to notify unless there is no impact on unique or special wildlife values of the land, for example, because plantation operations will not occur on the land with unique and special wildlife values.

Where the Minister or delegate has been notified, the notification cannot subsequently be withdrawn and an evaluation and report under Part 4 is still required. In relevant circumstances, the plantation owner or manager who made the initial notification may wish to make modifications to the plantation operation to avoid impacts or likely impacts on unique or special wildlife values. However, once notification has occurred, assessment of the operation cannot be avoided by amending the operation, although the report must assess the amended operation/s. Assessment will only be terminated if the plantation owner chooses to no longer undertake the plantation operation and formally notifies the Minister or delegate to that effect.

If you are uncertain of the presence of unique or special wildlife values and the likelihood of impact, you should seek advice from a suitably qualified person/s.

Notification can be made by using the [Notification of USWV](#) form available on the [Plantations Regulation](#) webpage.

---

## The Minister becoming aware of impacts or likely impacts on unique or special wildlife values

While the plantation owner or manager may be of the view there is no impact or likely impact of plantation operations on unique or special wildlife values and hence no need to notify, a third party may hold a different view and may provide credible information to the Minister and hence trigger the evaluation, report and determination under Part 4 of the Act. The Minister through the Department may also independently determine 'awareness' of impacts or likely impacts of plantation operations on unique or special wildlife values, thereby triggering the process under Part 4 of the Act.

General awareness that unique or special wildlife may be present somewhere in the landscape at a regional scale will not comprise the Minister being aware of impacts or likely impacts on unique or

special wildlife values of a plantation operation. For example, an unsupported assertion simply that the plantation or area of the plantation includes or comprises koala habitat will not constitute being made aware. However, if the Minister is aware of credible information that koalas or other unique or special wildlife do inhabit or are likely to inhabit the plantation and there is a planned plantation operations that is likely to impact values of the land for unique or special wildlife (including minor and positive impacts), Part 4 will be triggered.

Note: Apart from unique and special wildlife values notification requirements, the plantation owner/manager is required to submit a harvest operational plan to the Department at least 7 days prior to commencement of harvest.

Awareness by the Minister of the likely presence of unique or special wildlife values in a plantation will be determined by what is reasonable for the Minister (through the Department) to have knowledge of. This depends on the circumstances. Information from the following sources may inform Departmental decisions regarding the likely presence of unique or special wildlife values on an authorised plantation area:

- BioNet Atlas records.
- Previous unique or special wildlife values evaluations in the area of operation and authorisation where applicable.
- Threatened biodiversity profile information.
- Threatened species final determinations.
- DPI predicted habitat mapping of endangered and presumed extinct aquatic species.
- PCT mapping where relevant.
- Threatened species assessment records for authorisation where available.

Where the Minister is not notified but is otherwise aware that unique or special wildlife values may be present in the region, an evaluation and report is not required if on the basis of reasonable evidence the Department makes the decision that the land on the plantation consists of vegetation and/ or planted species that are not likely to be inhabited by unique or special wildlife or if a unique or special wildlife plant species will not be impacted by the plantation operations.

The Minister (through the Department) may conclude that certain endangered species do not inhabit certain planted species on the land or that endangered species or endangered ecological communities of plants or other species are not likely to grow on or inhabit the land because of characteristics of the land, where evidence supports it.

---

## What happens when a plantation owner/ manager notifies the Minister, or the Minister otherwise becomes aware, of impact or likely impact of plantation operations on unique or special wildlife values?

The Minister (or delegate) is required to arrange an evaluation of the specified plantation operations impact or likely impact on unique or special wildlife values and a report to be prepared on the matters specified in 34(2) of the Act when:

- the Minister or delegate is notified by the owner or manager that plantation operations on an authorised plantation have or are likely to have an impact on unique or special wildlife values, or
- the Minister or delegate otherwise becomes aware that plantation operations on an authorised plantation have or are likely to have an impact on unique or special wildlife values.

The Minister or delegate will generally by notice in writing to the plantation owner or manager, direct plantation operations to be suspended in all or part of the plantation for a specified period or pending determination of the unique or special wildlife values matter. Specific aspects of the plantation operations may be excluded from the suspension where the plantation owner or manager provides information to support that impacts on unique or special wildlife values are not likely. The Department may also request information from the plantation owner/ manager to inform the evaluation.

The Minister or delegate will arrange for:

- an evaluation of the impact or likely impact on unique or special wildlife values of the land concerned, and
- a report that deals with the following matters:
  - a. the existence and extent of unique or special wildlife values,
  - b. the extent to which plantation operations are likely to have an adverse impact on unique or special wildlife values,
  - c. whether plantation operations in all or part of the authorised plantation must be prevented, suspended for a period or modified so as to minimise the adverse impact on unique or special wildlife values, and
  - d. in the case of an authorised timber plantation— the extent of the direct financial loss, if any, arising from harvesting operations on the plantation being delayed, restricted or prevented altogether in order to protect unique or special wildlife values.

The Minister administering *the Biodiversity Conservation Act 2016* will be notified of the arrangements.

On consideration of the completed report the Minister or delegate may direct that plantation operations are not to be carried out in part or all of the plantation or for specified periods, or place restrictions on plantation operations in all or part of the authorised plantation where required to minimise adverse impact on unique or special wildlife values. Any such direction becomes a condition of the authorisation.

---

## Compensation for plantation owners

The *Plantations and Reafforestation Act 1999* sets out circumstances in which compensation may be payable to the plantation owner of an authorised timber plantation if plantation operations are directed to be delayed, restricted or precluded altogether in order to protect unique or special wildlife values.

For an authorised timber plantation, section 34(2)(d) of the Act requires the report prepared under Part 4 to deal with the extent of the direct financial loss, if any, arising from harvesting operations on the plantation being delayed, restricted or prevented.

Any queries regarding compensation should be directed to a Plantations Regulation Manager.

---

## Information that may be provided for evaluation of impacts or likely impacts

Responsibility for evaluations and reports under Part 4 of the Act rests with the Department. There is no statutory requirement for plantation owners/ managers to provide information to support these processes. However, access to relevant information held by plantation owners/ managers would facilitate accurate, thorough and timely completion of the evaluations and reports.

Listed below are some of types of information that, if known and held by the plantation owner/ manager, would assist DPI in evaluating impacts or likely impacts.

### The existence and extent of unique or special wildlife values

- Endangered species, populations or ecological communities known or likely to be found in the area of operation.
- A description of the location, type, size and condition of the habitat in the area likely to be affected.

### The extent to which plantations operations are likely to have an adverse impact on unique or special wildlife values

- A description of the nature, extent, location, timing and layout of the proposed operations.

Information on the qualifications/experience of the individuals involved in preparing this information would also be helpful.

---

## Getting help

For further information or to notify of impacts or likely impacts of plantation operations on unique or special wildlife values please contact your local [DPI Plantation Officer](#).

---

© State of New South Wales through Regional NSW 2024. The information contained in this publication is based on knowledge and understanding at the time of writing, August 2023. However, because of advances in knowledge, users are reminded of the need to ensure that the information upon which they rely is up to date and to check the currency of the information with the appropriate officer of the Regional NSW or the user's independent adviser.