

Explanation of intended effect: Changes to deter illegal tree and vegetation clearing

April 2025





Acknowledgement of Country

The Department of Planning, Housing and Infrastructure acknowledges that it stands on Aboriginal land. We acknowledge the Traditional Custodians of the land, and we show our respect for Elders past, present and emerging through thoughtful and collaborative approaches to our work, seeking to demonstrate our ongoing commitment to providing places in which Aboriginal people are included socially, culturally and economically.

Published by NSW Department of Planning, Housing and Infrastructure

dphi.nsw.gov.au

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First published: April 2025

Department reference number: SF25/49860

More information

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Acknowledgements

Thank you to all the stakeholders who have given feedback on issues that have informed the policy proposals in this document.

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DPHI-MC-R-DC-V1.0

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Abbreviations

Abbreviation	Term
BC SEPP	State Environmental Planning Policy (Biodiversity and Conservation) 2021
Codes SEPP	State Environmental Planning Policy (Exempt and Complying Development Codes) 2008
EP&A Act	<i>Environmental Planning and Assessment Act 1979</i>
EP&A Regulation	Environmental Planning and Assessment Regulation 2021
SEPP	state environmental planning policy

1 Introduction

The Department of Planning, Housing and Infrastructure is proposing changes to the planning system to discourage people and industry from illegally clearing trees and vegetation. The Department will do this by:

- improving the penalty and compliance framework and closing potential loopholes
- recognising the positive local values trees can provide by providing practical guidance that supports consistent decision making about tree clearing requests.

1.1 Summary of the reforms

The reforms aim to improve the operation of Chapter 2 (Vegetation in non-rural areas) of *State Environmental Planning Policy (Biodiversity and Conservation) 2021* – also known as BC SEPP, Chapter 2.

Policy proposals in this explanation of intended effect

- Deter illegal clearing by increasing penalties and clarifying that regulatory authorities can issue one fine per tree cleared.
- Deter illegal clearing by making sure existing restrictions on complying development where illegal clearing has happened can be enforced.
- Improve compliance and enforcement outcomes by making the policy easy to understand and through enhanced stop work and replanting orders.
- Tighten exemptions for dead, dying and dangerous vegetation to close potential loopholes.
- Encourage people to keep vegetation by adding a new aim to the BC SEPP.
- Provide standard matters councils must consider when they issue permits to clear vegetation.
- Require permits to include conditions for replacing cleared vegetation.

The Department proposes making these changes in mid-late 2025, pending the outcome of consultation.

This explanation of intended effect also sets out non-regulatory enhancements, including guidance, templates and training or support that could be prepared to complement the above.

1.2 Engagement to date

The Department has engaged with council practitioners about the current regulatory framework over the last 12 months, including:

- one-on-one meetings with over 20 councils
- workshops with approximately 300 attendees from 68 councils from across NSW
- a council survey, which received 92 responses.

This consultation has informed and shaped the proposed reforms in this document. Please refer to **Appendix A** of this document for a summary of the issues raised by councils and the Department's proposed response.

1.3 Potential future enhancements

This document's proposed changes are aimed at improving deterrence and compliance and better recognising the local values that trees can deliver. Engagement with council and the community has also highlighted potential constraints around establishing offences "beyond reasonable doubt" – the level of proof currently required to issue penalties or take court action.

The main purpose of this document is to consult the community, councils and industry on proposed changes to environmental planning instruments and the Environmental Planning and Assessment Regulation 2021 – also known as the EP&A Regulation. However, the Department is also seeking feedback on whether amendments to the *Environmental Planning and Assessment Act 1979* (EP&A Act) or other Acts may be appropriate to deter illegal vegetation clearing. This is not in scope for the current reforms, however, is a matter that could be further investigated following this work's delivery.

1.4 Have your say

The Department welcomes community and stakeholder feedback on this explanation of intended effect. Your feedback will help us better understand the views of the community and will inform the proposals in this document.

Give your feedback by Wednesday 4 June 2025

Please make a submission through the Department's 'Have your say' webpage, www.nsw.gov.au/have-your-say, by 5 pm Wednesday 4 June 2025.

We will publish a response to submissions after the exhibition period ends.

We have included 'Have your say' questions at the end of each chapter to support discussion about the proposed changes. These are prompts only. In your submission, you can address any issues that you believe are important in relation to this document.

Appendix C of this document lists the 'Have your say' questions.

2 Illegal clearing and vegetation management

2.1 How the current framework operates

Chapter 2 of the BC SEPP sets up the regulatory framework for the clearing of vegetation in NSW where the proposed clearing is not part of a development application and is not exempt development or complying development on the following land:

- all land within Greater Sydney and Newcastle, and
- land zoned for urban and environmental purposes in the rest of the State.

In Chapter 2 of the BC SEPP, ‘clearing’ includes:

- destroying vegetation by cutting it down, killing it, poisoning it, ringbarking, burning it or other means
- lopping or removing a substantial part of the vegetation.

Chapter 2 of the BC SEPP allows councils to protect vegetation and regulate vegetation clearing in their local government area. This is through a permit system. Chapter 2 of the BC SEPP also allows certain routine clearing activities on land used for primary production that is not in a rural zone.

For clearing that exceeds the Biodiversity Offset Scheme thresholds (defined under Part 7 of the Biodiversity Conservation Regulation 2017), the Biodiversity Offset Scheme applies. People applying to clear vegetation in these cases must get approval from the Native Vegetation Panel.

Biodiversity Offset Scheme thresholds

The Biodiversity Offset Scheme thresholds are a trigger to decide if a development or activity is likely to significantly affect threatened species. If the thresholds are exceeded, then the law assumes that this is likely. In this case, the landowner must get a biodiversity development assessment report for their development application or environmental impact statement.

The Biodiversity Offsets Scheme thresholds are:

- Clearing on land within the Biodiversity Values Map (section 7.3 of the Biodiversity Conservation Regulation 2017); and/or
- Clearing of an area of land that exceeds the following thresholds (section 7.2 of the Biodiversity Conservation Regulation 2017)

Minimum lot size of land applicable to land	Area of clearing
Less than 1 hectare	0.25 hectares or more
Less than 40 hectares but not less than 1 hectare	0.5 hectares or more
Less than 1,000 hectares but not less than 40 hectares	1 hectare or more
1,000 hectares or more	2 hectares or more

2.2 Deter illegal clearing

2.2.1 Introduce tiered penalties

The Department has received feedback that the current on-the-spot penalties (penalty notices) are not enough to deter illegal clearing under Chapter 2 of the BC SEPP, especially in metropolitan areas with significant land values. Schedule 5 of the EP&A Regulation includes penalty notice amounts for offences under section 4.3 (development that is prohibited) of the EP&A Act. The penalties are \$3,000 for individuals and \$6,000 for corporations (refer to Table 1).

Councils can issue these penalty notices to people or corporations who clear vegetation without a required permit or approval on public or private land. They allow a council or other authorised person to impose a penalty for breaking the law, without beginning criminal prosecution proceedings.

If the council chooses to prosecute and secures a conviction, the maximum penalty that a court can impose is \$1 million for an individual or \$5 million for a corporation if proceedings are brought in the Land and Environment Court, or \$110,000 if proceedings are brought in the local court.

Table 1. Current penalties for illegal clearing

Type of penalty	Individual	Corporation
On-the-spot penalties	\$3,000	\$6,000
Land and Environment Court conviction (maximum)	\$1,000,000	\$5,000,000
Local court conviction (maximum)	\$110,000	\$110,000

The current system of on-the-spot fines applies the same penalty in all cases, no matter how severe the environmental damage caused by the illegal clearing is. Unfortunately, a landowner or developer can benefit greatly from illegal clearing. It can increase the land's value, for example, by improving water views. Removing vegetation may also allow the landowner to use a simpler approval pathway for development, such as complying development.

These benefits can be much greater than the current penalties. It has been reported that in some cases, landowners and developers see the penalties as a 'cost of doing business.'

The Department proposes to introduce penalties specific to illegal tree clearing, that is, penalties for prohibited development that is a contravention of section 2.6 of the BC SEPP. In addition, it is proposed these penalties are tiered to allow a greater penalty to be issued for more significant clearing events. A similar approach has been applied to other penalties in Schedule 5. For example, penalties for offences under section 4.2(1) of the EP&A Act differ depending on the:

- class of the building
- applicable approval pathway at the time of the offence
- person who issues the penalty notice.

Table 2 lists the revised penalties that the Department proposes.

Table 2. Proposed revised penalties

Tier	Criteria	Individual penalty	Corporation penalty
Base penalty	Clearing that does not meet any of the higher penalty criteria (or where it is not known if any higher penalty criteria apply).	\$3,000	\$9,000
Higher penalty	<p>Vegetation clearing that meets one or more of the following criteria:</p> <p>Larger trees</p> <ol style="list-style-type: none"> 1. the vegetation has a height greater than or equal to 10 m, or 2. the vegetation has a diameter at breast height (or diameter at base, if diameter at breast height cannot be measured) greater than or equal to 30 cm, or <p>Larger areas</p> <ol style="list-style-type: none"> 3. an area greater than or equal to 50 m² of vegetation (other than trees) is cleared or underscrubbed (that is, removal of shrub layer), or <p>Repeat offenders</p> <ol style="list-style-type: none"> 4. the incident is a second or later offence, or <p>Significant vegetation</p> <ol style="list-style-type: none"> 5. the vegetation is listed on a significant tree register, or 6. the vegetation is on land included in the biodiversity values map, or 7. the vegetation is on land that is zoned C2, C3 or C4, or 8. the vegetation is on land mapped in an environmental planning instrument as a: <ul style="list-style-type: none"> • heritage area or heritage item • natural, biodiversity or other conservation area • foreshore or riparian area • open space • scenic protection area • nature reserve • buffer area. 	\$6,000	\$18,000

Principles for proposed penalties

In developing the above, the Department has considered council feedback that:

- tiers should be easy to understand and apply
- fines should be higher when people clear more significant vegetation or larger trees
- repeat offenders should face higher fines
- there should be higher fines for corporations to discourage illegal practices across multiple sites
- the penalties for clearing public or private land should be the same, as all vegetation gives the same benefits to people and the environment
- tiers should not stop councils from issuing multiple fines on a tree-by-tree basis if more than one tree has been cleared in a single event
- in some regional areas, the existing penalties are high enough and raising the base penalty for individuals may have unintended outcomes (for example, councils may not be willing to issue penalty notices because higher fines are more likely to be challenged in court).

We may also need to help councils identify repeat offenders. Some councils may already have systems in place in their own local government area.

2.2.2 Clarify penalties can apply for each tree cleared

Even with higher fines and a tiered penalty framework, there may be some instances where the perceived benefit from clearing multiple trees is sufficient incentive to consider acting illegally. The Department understands that some councils are already issuing per-tree fines to reduce these incentives.

The Department proposes issuing guidance confirming this as a valid regulatory pathway a council may choose to pursue and offering information to support consideration of where such an approach could be appropriate given the scale or significance of the event.

Example

In this example, an individual clears the following vegetation without the required council permit:

- 2 large trees that meet the higher penalty criteria because of their size
- over 50 m² of shrubs
- one small tree that does not meet the higher penalty criteria.

In this scenario, the total penalty the council could issue would be:

$$\begin{aligned} & 2 \times \text{higher individual penalty (for the large trees)} \\ & + 1 \times \text{higher individual penalty (for the area of shrubs)} \\ & + 1 \times \text{base individual penalty (for the small tree)} \\ & = \$21,000 \end{aligned}$$

Councils will continue to decide if they will issue a penalty notice and, if appropriate to the circumstances, if they will issue a separate penalty notice for each tree.

2.2.3 Ensure councils can enforce complying development restrictions on land where illegal clearing has happened

Unfortunately, illegal clearing can create development opportunities for landowners. The feedback from councils is that owners will illegally clear private land so they can use a complying development code and avoid lodging a development application.

There are existing provisions (legal conditions) that stop owners from carrying out complying development on land if it involves removing or pruning a tree or other vegetation without a permit, approval, development consent or other permission from council.

Table 3 lists these existing provisions.

Table 3. Provisions that prevent complying development involving tree or vegetation clearing without a clearing permit, approval, development consent or other permission

Policy	Section/s
State Environmental Planning Policy (Transport and Infrastructure) 2021	2.22(2)(g) and 3.18(2)(e)
State Environmental Planning Policy (Exempt and Complying Development Codes) 2008	1.18(1)(h)
State Environmental Planning Policy (Precincts –Central River City) 2021	5.47(2)(g)
State Environmental Planning Policy (Precincts –Regional) 2021	4.13(2)

If a landowner does not get the mandatory permit or approval under the BC SEPP and clears vegetation to make development possible, the development would not meet the complying development requirements in these provisions. In such a case, the council may be able to

challenge the validity of a complying development certificate before the Land and Environment Court.

The Department would like to ensure landowners, prospective buyers, planners and certifiers are aware of previous illegal clearing that may prevent someone from carrying out complying development. To achieve this, we propose changing the requirements for planning certificates issued under section 10.7(2) of the EP&A Act. Under the proposal, planning certificates would need to include:

- any instances of proven illegal clearing on the subject land
- the location of the clearing within the lot
- the date (or estimated date) of the illegal clearing.

Have your say

Chapter 2.2 Deter illegal clearing

We welcome feedback and suggestions on the proposed tiered penalty system, such as:

1. Are the proposed tiered penalties appropriate? They would apply to illegal clearing on both public and private land.
2. Do you support increasing the penalties for corporations to be triple those for individuals, rather than double?
3. Are the criteria for the higher penalty tier appropriate and practical?
4. Do the significant vegetation categories sufficiently cover relevant mapped areas or land and vegetation of higher biodiversity, environmental or social significance?

2.3 A clearer compliance and enforcement framework

2.3.1 Clarify when clearing is “prohibited development”

Councils have told the Department that the current regulatory framework around what constitutes ‘prohibited development’, such as non-compliance with the conditions of a tree clearing permit, is unclear.

Section 2.10(4) of the BC SEPP allows councils to set conditions as part of issuing tree clearing permits. For example, a council can order the landowner to plant replacement trees after another tree has been legally removed. If the owner does not follow the permit conditions, this is the offence of prohibited development under s 4.3 of the EP&A Act (see section 2.6(6) of the BC SEPP). Clearing without a required permit is also an offence under s 4.3 of the EP&A Act.

To ensure consistent interpretation and application, the Department is proposing to update the wording of s 2.6(6) of the BC SEPP so that it clear that:

- clearing vegetation without a required permit or approval under Chapter 2 of the BC SEPP is prohibited development; and
- clearing vegetation not in accordance with the conditions of a permit or approval received under Chapter 2 of the BC SEPP is prohibited development.

2.3.2 Clarify how Chapter 2 of the BC SEPP applies to clearing on public land

Chapter 2 of the BC SEPP is intended to apply to public and private land. However, councils have told us there is uncertainty about how the offences for clearing without an appropriate permit or approval apply to public land.

The Department is proposing to review Chapter 2 of the BC SEPP and change it where necessary to clarify that it is an offence to illegally clear trees on public land (such as a reserve adjoining private property), or any land for which a person is not legally entitled to obtain a permit for that clearing (such as poisoning a tree on a neighbour's property).

Possible updates to Chapter 2 of the BC SEPP include:

- clarifying in section 2.3 of the BC SEPP that the Chapter applies on both public and private land
- clarifying in section 2.6 of the BC SEPP that the offence of prohibited development applies on both public and private land.

2.3.3 Clarify stop work and replanting orders

Stop work and replanting orders form part of the tools used by regulatory officers to address illegal tree clearing. The Department understands that given uncertainty around how these powers work, some councils may be using these regulatory tools less than is optimal.

Section 9.34(2) of the EP&A Act provides that the Department can make amendments by regulation to the development control orders (in Schedule 5 of the EP&A Act).

The Department is proposing to make necessary changes to empower councils to issue orders to:

- **make landowners or those responsible for clearing replant vegetation that has been illegally cleared** (using the 'restore works order') on both public and private land.

This may include specifying that:

- vegetation clearing is a type of 'work' in section 3(4) of the EP&A Regulation
- a restore works order can be issued to a person who carried out illegal clearing

- replanting should reinstate mature trees of an appropriate size and species
- **stop illegal clearing works that are being carried out** (using a ‘stop work order’ or similar).

The Department may need to amend when a ‘stop work order’ can be issued so that vegetation clearing is included.

The Department will give councils guidance on when and how to use these orders to support these provisions’ implementation.

2.3.4 Clarify when permits are needed for clearing associated with complying development

The Department understands there is some confusion about if and when a tree permit or Native Vegetation Panel approval is required to clear vegetation for complying development.

Certain sections of the Codes SEPP (sections 3.33, 3A.7, 3B.61, 3C.36, 3D.64) state that a complying development certificate is taken to satisfy any requirement under the Codes SEPP for a permit or approval to remove or prune a tree (or other vegetation) if the tree:

- is not on a register of significant trees, and
- will be within 3m of a building with an area over 25m², and
- has a height less than 8m if the development is the erection of a dwelling house, or 6m in any other case.

The existing policy intent is that a permit or approval is still required under Chapter 2 of the BC SEPP. Sections 3.33, 3A.7, 3B.61, 3C.36 and 3D.64 of the Codes SEPP do not change this.

The Department will amend the provisions of the Codes SEPP and/or BC SEPP to make this clear.

The Department will also issue guidance clarifying this matter.

2.3.5 Can technology solutions help improve compliance outcomes

In some instances, it can be hard to prove an illegal clearing event “beyond reasonable doubt”. Chapter 3 asks about potential legislative change to lower this burden of proof. Technology provides another avenue to help ensure regulators have access to appropriate evidence to support successful regulatory action. The Department is not aware of similar uses in urban areas within Australia, however, some organisations are now exploring whether monitoring and AI learning can be deployed to help real time monitoring and evidence collection. There may be opportunity to explore some of these approaches in the NSW urban context.

Have your say

Chapter 2.3 A clearer compliance and enforcement framework

5. Would additional measures or information help reduce illegal tree clearing on public land?
6. What guidance is needed in relation to issuing replanting orders and stop work orders?
7. What guidance is needed to support replanting mature trees of an appropriate size and species?
8. What type of educational material could we prepare to support the proposed clarifications to permitting and conditioning requirements in the BC SEPP?
9. Are there any known technologies that could be used to improve compliance with the provisions of Chapter 2 of the BC SEPP?

2.4 Support legitimate removal of dead, dying and dangerous vegetation while removing loopholes

2.4.1 Tree Pruning

In NSW, tree pruning is generally managed through local council Development Control Plans (DCPs) and tree management policies. The Department is not proposing any changes relating to tree pruning (i.e. removal of part of a tree such as a branch). For example, DCPs and council policies can set out whether tree pruning requires a permit and if so, associated limitations. These can include pruning to a certain height above the ground or a set percentage of the crown or canopy (among other issues). The Department expects tree pruning to continue to be done in line with Australia Standard 4272-2007 Pruning of Amenity Trees or requirements under Council DCPs.

2.4.2 Exemptions for vegetation that is an imminent risk to life or property

Under section 2.7(3) of the BC SEPP, a landowner does not need a permit or approval to remove vegetation if council is satisfied that the vegetation is ‘a risk to human life or property’. The Department proposes changing this, so it reads ‘an **imminent** risk to human life or property’.

The Department also proposes another change: that under this provision, the landowner can remove only the minimum amount of vegetation necessary to minimise the imminent risk to

human life or property. That is, wherever possible, the tree should be pruned rather than removed. Hollows and other habitat features should be retained as much as possible.

As is currently the case, councils will decide what evidence they need to be satisfied that the vegetation is an **imminent** risk to life or property. Some councils have already adopted language of ‘immediate’ or ‘imminently dangerous’ risk in their Development Control Plans. Examples of definitions used in these cases include: structural defects that are immediately hazardous such as splitting branches and storm damage, or obvious instability of the root system. The Department will give councils guidance to help them consider ‘imminent’ risk to life or property. We will also supply information councils can use to educate landowners about their obligations.

2.4.3 Dead and dying trees

Under sections 2.7(4) and (5) of the BC SEPP, a landowner does not need a permit or approval to remove vegetation if council or the Native Vegetation Panel is satisfied that the vegetation:

- is dying or dead, and
- is not required as habitat of native animals.

Councils have reported that the current arrangements are being used by some as a loophole to inappropriately remove trees. In some cases, landowners and others are illegally poisoning vegetation, then removing it as the vegetation is dying or dead. Councils have also told us that the community is unsure what ‘dead’ means. In some cases, people mistakenly believe that vegetation that is senescing (changing as it grows old) or deciduous is dead and they remove it under the exemption.

Similarly, a tree or vegetation can take many years to die, and it is not clear when it should be considered ‘dying’. Dead and dying trees and vegetation can provide significant ecosystem benefits (for example, by continuing to provide habitat such as tree hollows) and local amenity. If the dead or dying tree or vegetation is an imminent risk to life or property, section 2.7(3) of the BC SEPP would apply.

The Department is seeking to strike the right balance between ensuring dead or dying trees can be removed safely while removing a loophole that can result in healthy trees or habitat trees being removed unnecessarily. The Department would like to hear from Councils regarding the best way to achieve this based on their on-ground experience.

Two possible pathways include amending the BC SEPP so that landholders who wish to clear dead or dying vegetation would need certification from a qualified arborist that the vegetation is dead or dying and is not required for habitat or other significant ecosystem benefits. This would be consistent with requirements in some Council DCPs that require evidence for exemptions to be provided to Council. Alternatively, the BC SEPP could be amended so that

landholders who wish to clear dead or dying vegetation would need to apply for a council permit or Native Vegetation Panel approval under Chapter 2. This would allow councils or the Native Vegetation Panel to assess the state of the vegetation before deciding if they will issue a permit or approval.

Have your say

Chapter 2.4 Support legitimate removal of dead, dying and dangerous vegetation while removing loopholes

10. Do you support limiting the exemption from permit or approval requirements for dangerous vegetation to only vegetation that is an **imminent** risk?
11. What are the risks or challenges associated with limiting the exemption to only vegetation that is an **imminent** risk?
12. What are the opportunities associated with this proposal?
13. Do you think requiring people to get a qualified arborist to certify that vegetation is dead or dying before clearing it would improve outcomes? Can you see any risks or challenges associated with this approach?
14. Do you think making people get a permit or approval before clearing dying or dead vegetation would improve outcomes? Can you see any risks or challenges associated with this approach?
15. An alternative to removing the exemption for dead vegetation would be to limit the exemption so it only applies if the council or Native Vegetation Panel is satisfied that the vegetation has not been poisoned or otherwise illegally killed. In this case, we would add a definition of 'dead'. Would you prefer this approach?

2.5 Encourage people to keep and replace vegetation

2.5.1 Add an aim to protect and improve tree canopy

To better reflect the value of keeping vegetation for biodiversity, climate change and mitigating urban heat, the Department proposes adding an aim under section 2.1 of the BC SEPP:

To maintain and enhance canopy cover and other vegetation in non-rural areas to realise their benefits, including mitigating urban heat, impacts of climate change, providing local amenity, reducing air pollution and improving community health and wellbeing.

2.5.2 Provide a framework to support consistent assessment of tree clearing applications

The Department has received feedback that the BC SEPP is currently focused on tree removal, and that there is no guidance on how to consider the broader merits of an application, including if the tree's removal would negatively affect local environmental, social or cultural values.

To help provide balance in the decision-making process, the Department proposes to add a list of factors that councils must consider when assessing these applications. These include:

- vegetation characteristics such as health, age and size
- the significance of the vegetation, including cultural, heritage, historical, aesthetic and landscape significance and listing on a significant tree register
- contribution of the tree to the environment including its biodiversity value, urban tree canopy, local amenity and urban cooling benefit
- impact of the tree on property, infrastructure and residential amenity and health
- if the landowner has considered alternatives to the proposed clearing
- any other factors or requirements in a relevant development control plan or relevant policy documents.

This list would complement existing criteria that some councils include in their development control plans or policy documents. It would not prevent councils from considering other factors.

2.5.3 Planting a new tree to replace the one removed

Under section 2.10(4) of the BC SEPP, councils can issue permits to clear vegetation subject to conditions. As part of issuing permits, some councils require that landowners must replace any trees they remove with equivalent ones. Depending on the reason for removing the tree, the replacement may be in the same place, or elsewhere on the property. Replanting should be of mature trees of an appropriate size and species.

Trees and canopy cover give us environmental, biodiversity, urban heat and amenity benefits. Because of this, the Department proposes making it mandatory for councils to make landowners replace trees as a condition of their permits.

In limited circumstances, such as where a tree cannot be planted onsite, other approaches may be needed. For example, the landowner contributing towards offsite tree replacement could be a suitable alternative if onsite replacement is not possible.

The Native Vegetation Panel assesses clearing that will exceed the Biodiversity Offsets Scheme threshold. The landowner's application for a permit must be supported by a biodiversity development assessment report and by retiring credits to offset the impacts on biodiversity values. The Department does not propose changing this arrangement as the vegetation lost will be offset.

Have your say

Chapter 2.5 Encourage people to keep and replace vegetation

16. Does the list of proposed factors support an appropriate merit-based approach to assessing a request to clear existing trees?
17. If the landowner cannot plant a replacement tree on the site, what alternative approaches could be implemented?
18. Should requirements be specified for replacement trees (e.g. mature trees of an appropriate size and species)?

2.6 Housekeeping amendments

The Department also proposes minor changes to a range of environmental planning instruments. The aim of these is to:

- correct outdated references to old SEPPs
- update local government area names in section 2.3 of the BC SEPP to reflect council amalgamations
- update notes.

Appendix B of this document summarises the housekeeping changes that we propose.

2.7 Support a clearer framework: non-regulatory measures

The changes proposed in this EIE are seeking to increase deterrence, improve compliance and encourage tree retention. The Department recognises councils will be the primary point of contact with landowners, and will work with councils to support the proposed amendments implementation through jointly developed guidance and education materials. Some of these potential supporting materials are briefly outlined below.

2.7.1 Guidance and templates

The Department will work with councils to prepare guidance material and templates to support councils in applying Chapter 2 of the BC SEPP. This will also improve community and industry awareness of their responsibilities.

Guidance material is likely to cover:

- how Chapter 2 of the BC SEPP works
 - how the clearing permit system works
 - interactions with other legislation
 - roles and responsibilities
- using and enforcing Chapter 2 of the BC SEPP and broader vegetation management issues for councils
- guidance in plain English and community languages for communities and industry on:
 - their responsibilities
 - consequences of illegal clearing
 - the value of vegetation

- templates for councils, including:
 - tree clearing permits and conditions
 - penalty notices
 - development control orders
- a model development control plan chapter on vegetation protection.

2.7.2 Training and support

Councils have asked the NSW Government for greater support in investigating illegal clearing events. The Department will continue to work with councils to develop and provide regulatory resources and support. In particular, the Department will consider the results of a pilot program under the Cumberland Plain Conservation Plan Compliance Strategy to give councils support through central coordination of compliance officers.

2.7.3 Innovative joint management models

Communities that are involved in management of trees and vegetation are more likely to comply with regulations relating to their preservation or removal. Local, place-based solutions may offer opportunities for different stakeholders to find a balance between environmental outcomes and amenity (e.g. preserving views and view corridors). Joint management models can also help develop a sense of ownership by having local residents engage in activities to maintain and manage their local natural areas. The Department will work with councils to explore place-based solutions involving innovative joint management arrangements between councils and different stakeholders in the community to prevent unlawful tree clearing and preserve biodiversity and mature trees.

Have your say

Chapter 2.7 Support a clearer framework: non-regulatory measures

19. Which of the guidance materials or templates would most help you use the provisions of Chapter 2 of the BC SEPP?
20. Are there any types of guidance material or templates not listed above that would help you?
21. We will release guidance material and templates in stages, based on urgency and priority. Which guidance and/or templates would you like us to release first?
22. What types of innovative joint management arrangements should be explored to prevent unlawful tree clearing and preserve biodiversity and mature trees?

3 Possible future legislative changes

The Department has received feedback that some councils are not issuing penalties where they believe they are warranted given concerns around establishing offences “beyond reasonable doubt.” While the primary purpose of this EIE is to consult on proposed amendments to the BC SEPP, the Department is also seeking feedback on if it would be appropriate to amend the EP&A Act (or other Acts) in the future to further deter illegal vegetation clearing. The changes would aim to help councils and may include introducing a:

- deeming provision, which means the landholder must prove they were not responsible for clearing on their land
- civil penalty framework with a lower burden of proof (‘balance of probabilities’).

The Department is also considering if it would be appropriate to introduce jail terms to further deter vegetation clearing offences.

These matters are not in scope for the current reforms and are set out in this explanation of intended effect **for early consultation only**. Any changes to the EP&A Act or other Acts would need to be introduced in NSW Parliament as a Bill.

Appendix A: Council consultation summary

Table A1. The Department's responses to feedback on illegal clearing

Feedback from councils during consultation	Proposed amendment or other response	Chapter of this document
<ul style="list-style-type: none"> Penalty notices ('on-the-spot' fines) are important for enforcing compliance, but in some cases, penalty notice amounts are too low to deter illegal clearing This includes where clearing allows a landowner to improve views or development potential Industry must be more accountable for illegal clearing, and there should be higher penalties for repeat offences 	<ul style="list-style-type: none"> Provide tiers of escalating penalties Clarify penalties can apply for each tree cleared Ensure complying development restrictions can be enforced on land where illegal clearing has happened The Department may consider changing legislation in the future to introduce jail terms 	<ul style="list-style-type: none"> 2.2.1 2.2.2 2.2.3 3
<p>Councils are unsure of:</p> <ul style="list-style-type: none"> what the offences are how they apply to public land what they can do in response to illegal clearing incidents 	<ul style="list-style-type: none"> Clarify the offences that apply, and how they apply to public and private land Clarify development control orders so councils can issue orders to stop clearing works and order landowners or those responsible for clearing to replace illegally cleared trees Give councils guidance on the measures they can use in response to clearing incidents on public and private land 	<ul style="list-style-type: none"> 2.3.1 and 2.3.2 2.3.3 2.7

Feedback from councils during consultation	Proposed amendment or other response	Chapter of this document
<ul style="list-style-type: none"> The 'danger to human life or property' exemption is too broad. The Department should tighten it to only apply to risk above a certain level. Some landowners are using the exemption as a loophole to remove vegetation without appropriate council assessment In some cases, the risk can be reduced without removing the entire tree (or vegetation). This should be encouraged to retain habitat trunks or hollows as much as possible 	<ul style="list-style-type: none"> Update the current exemption from needing a permit or approval and limit the exemption to vegetation that is an imminent risk to life or property Give councils guidance on assessing imminent risk 	<ul style="list-style-type: none"> 2.4.1 2.7
<ul style="list-style-type: none"> Some landowners are using the 'dead and dying' exemption to clear trees that may continue to provide amenity and biodiversity benefits for many years. They are also using it to remove trees that had been poisoned In some cases, people are mistaking deciduous or senescing trees for dead or dying ones and removing them 	Remove the exemptions from needing a permit or approval for 'dead' and 'dying' vegetation	2.4.2
Chapter 2 of the BC SEPP should reflect the benefits of vegetation for climate change adaptation and urban cooling, and encourage people to preserve tree canopy	<ul style="list-style-type: none"> Add new aims to reflect the role of Chapter 2 of the BC SEPP in promoting canopy cover Add new factors to guide councils when they assess applications for tree clearing permits Make landowners replace trees they remove with a permit, if the site allows Give the community and industry guidance about the benefits of vegetation 	<ul style="list-style-type: none"> 2.5.1 2.5.2 2.5.3 2.7

Feedback from councils during consultation	Proposed amendment or other response	Chapter of this document
Councils, industry and communities need more guidance about when and how the vegetation management framework under Chapter 2 of the BC SEPP applies, including roles and responsibilities	<ul style="list-style-type: none"> • Give councils guidance and templates • Give industry and communities guidance and education materials 	2.7
It is difficult to prove offences to a criminal standard (<i>beyond a reasonable doubt</i>). This is particularly in cases involving vegetation poisoning or ringbarking, in remote areas or where there are no witnesses	The Department may consider changing legislation in the future to introduce a deeming provision or civil penalty framework	3

Appendix B: Summary of proposed housekeeping amendments

Table B1. Summary of the housekeeping amendments the Department proposes

Relevant policy	Housekeeping amendment
Biodiversity and Conservation SEPP	<ul style="list-style-type: none"> Section 2.2 – Definitions: change reference in <i>biodiversity offsets scheme threshold</i> from <u>clause</u> 7.3(4) of the Biodiversity Conservation Regulation 2017 to <u>section</u> 7.3(4) Section 2.2 – Definitions: remove reference to Part 2.4 in the <i>private land</i> definition Section 2.3 – Land to which Chapter applies: update the list of local government areas to which Chapter 2 applies to reflect amalgamated councils and current names
<i>State Environmental Planning Policy (Precincts – Central River City) 2021</i>	<ul style="list-style-type: none"> Appendix 5 section 3.1 – update note to refer to <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i>, Chapter 2 Appendix 10 section 3.1 – update note to refer to <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i>, Chapter 2
<i>State Environmental Planning Policy (Precincts – Regional) 2021</i>	<ul style="list-style-type: none"> Section 5.19 – update note to refer to <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i>, Chapter 2 Schedule 10 Dictionary for Chapter 5 – update definition of ‘clearing vegetation’ to refer to <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i>, Chapter 2
<i>State Environmental Planning Policy (Precincts – Western Parkland City) 2021</i>	<ul style="list-style-type: none"> Section 4.25(6) – update to refer to <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i>, Chapter 2 Section 5.26(8) – update to refer to <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i>, Chapter 2
<i>State Environmental Planning Policy (Transport and Infrastructure) 2021</i>	<ul style="list-style-type: none"> Section 3.16(3)(g) - update note to refer to <i>State Environmental Planning Policy (Biodiversity and Conservation) 2021</i>, Chapter 2

Appendix C: Consultation questions

The ‘Have your say’ questions in this document are below. These are prompts only.

Chapter 2.2 Deter illegal clearing

We welcome feedback and suggestions on the proposed tiered penalty system, such as:

1. Are the proposed tiered penalties appropriate? They would apply to illegal clearing on both public and private land.
2. Do you support increasing the penalties for corporations to be triple those for individuals, rather than double?
3. Are the criteria for the higher penalty tier appropriate and practical?
4. Do the significant vegetation categories sufficiently cover relevant mapped areas or land and vegetation of higher biodiversity, environmental or social significance?

Chapter 2.3 A clearer compliance and enforcement framework

5. Would additional measures or information help reduce illegal tree clearing on public land?
6. What guidance is needed in relation to issuing replanting orders and stop work orders?
7. What guidance is needed to support replanting mature trees of an appropriate size and species?
8. What type of educational material could we prepare to support the proposed clarifications to permitting and conditioning requirements in the BC SEPP?
9. Are there any known technologies that could be used to improve compliance with the provisions of Chapter 2 of the BC SEPP?

Chapter 2.4 Support legitimate removal of dead, dying and dangerous vegetation while removing loopholes

10. Do you support limiting the exemption from permit or approval requirements for dangerous vegetation to only vegetation that is an **imminent** risk?
11. What are the risks or challenges associated with limiting the exemption to only vegetation that is an **imminent** risk?
12. What are the opportunities associated with this proposal?
13. Do you think requiring people to get a qualified arborist to certify that vegetation is dead or dying before clearing it would improve outcomes? Can you see any risks or challenges associated with this approach?

14. Do you think making people get a permit or approval before clearing dying or dead vegetation would improve outcomes? Can you see any risks or challenges associated with this approach?
15. An alternative to removing the exemption for dead vegetation would be to limit the exemption so it only applies if the council or Native Vegetation Panel is satisfied that the vegetation has not been poisoned or otherwise illegally killed. In this case, we would add a definition of 'dead'. Would you prefer this approach?

Chapter 2.5 Encourage people to keep and replace vegetation

16. Does the list of proposed factors support an appropriate merit-based approach to assessing a request to clear existing trees?
17. If the landowner cannot plant a replacement tree on the site, what alternative approaches could be implemented?
18. Should requirements be specified for replacement trees (e.g. mature trees of an appropriate size and species)?

Chapter 2.7 Support a clearer framework: non-regulatory measures

19. Which of the guidance materials or templates would most help you use the provisions of Chapter 2 of the BC SEPP?
20. Are there any types of guidance material or templates not listed above that would help you?
21. We will release guidance material and templates in stages, based on urgency and priority. Which guidance and/or templates would you like us to release first?
22. What types of innovative joint management arrangements should be explored to prevent unlawful tree clearing and preserve biodiversity and mature trees?