



Submission on the Explanation of intended effect: Changes to deter illegal tree and vegetation clearing April 2025

03 June 2025

About NCC

The Nature Conservation Council of New South Wales (NCC) is the state's peak environment organisation. We represent over 200 environment groups across NSW. Together we are dedicated to protecting and conserving the wildlife, landscapes and natural resources of NSW.

www.nature.org.au

For further information about this submission, please contact:

Angela Leech
Office and Administration Coordinator
(02) 9516 1488
aleech@nature.org.au

Acknowledgement

The Nature Conservation Council NSW acknowledges that we live and work on the land of First Nations. This land has been cared for since time immemorial by Traditional Owners, whose sovereignty was never ceded. We pay our respects to the Traditional Owners past and present of the many Countries within so-called New South Wales.

We respect the leadership of Traditional Owners in caring for Country, and support the development of treaties that meaningfully empower them to do so. We acknowledge the dispossession of First Nations People and the harm inflicted on people and Country since colonisation began. We acknowledge that colonisation is an unjust and brutal process that continues to impact First Nations people today. As people living and working on First Nations Country it is incumbent on us to play our part in righting the historical and ongoing wrongs of colonisation. Indeed, our vision of a society in which nature and communities thrive together depends upon it.

The Nature Conservation Council of NSW (NCC) respects and supports all First Nations people's right to self-determination as outlined by the UN Declaration of the Rights of Indigenous Peoples (UNDRIP), which extends to recognising the many different First Nations within Australia and the Torres Strait Islands. NCC commits to maintain open lines of communication and to build respectful mutual relationships with First Nations people in all the work we do and wherever possible, seek aligned outcomes with and support the goals of First Nations groups.

We commit, as an organisation, to empower and work together with First Nations people to protect, conserve and restore the land, waters, air, wildlife, climate and culture of the many First Nations people in NSW.

3 June 2025

Department of Planning, Housing and Infrastructure

Via online portal: <https://www.planningportal.nsw.gov.au/draftplans/exhibition/protecting-our-trees-changes-deter-illegal-tree-and-vegetation-clearing>

To whom it may concern,

Submission – Explanation of intended effect: Changes to deter illegal tree and vegetation clearing April 2025

The Nature Conservation Council (NCC) is pleased to provide comment on the improvement of Chapter 2 (Vegetation in non-rural areas) of *State Environmental Planning Policy (Biodiversity and Conservation) 2021* (BC SEPP). We recognise the efforts being made to reduce illegal vegetation clearing in urban areas and broadly support the measures to deter illegal tree and vegetation clearing proposed in the explanation of intended effect (EIE) published by the NSW Government.

NCC has long expressed concern about the threats that land clearing poses for wildlife habitat, climate change mitigation, and human wellbeing. This is especially true in urban areas where vegetation is already scarce, and new urban developments are resulting in more cleared habitat. Though NCC continues to advocate for increased ambitions and tighter regulations to decrease legal land clearing, we welcome the NSW Government's efforts to address the issue.

NCC agrees that in some cases, the benefits to landholders and developers of undertaking illegal clearing can outweigh current penalties and can be seen as the 'cost of doing business'. The recent cases of illegal clearing in Castle Cove (265 trees in August 2023) and Lane Cove (290 trees in November 2023) that resulted in improved Harbour views for local residents are arguably good examples of perceived benefits outweighing the penalty. We note the strong advocacy in response to these instances from community groups and local councils for increased fines and harsher punitive action.

NCC supports actions to protect vital habitat for wildlife, increase tree canopy in urban areas, and stop the clearing of native vegetation. As such, we broadly agree with the intended changes to the BC SEPP that aim to stop the illegal clearing of trees and vegetation in non-rural areas.

Detering illegal clearing

NCC supports changes to deter illegal clearing by:

- increasing the illegal clearing base penalty for corporations,
- creating a higher penalty tier for clearing of larger trees, larger areas, significant vegetation, and repeat offenders,
- clarifying that per-tree fines *can* be applied by Councils, and
- empowering councils to enforce complying development restrictions on land where illegal clearing has happened.

NCC also suggests that in some cases, fines should be equal to or higher than the value of the tree to effectively disincentivise clearing. For example, the maximum fine for individuals under the new policy would be \$6 000 (\$3 000 in base case) and \$18 000 for companies (\$9 000 in base case), even though some trees have a value that can go up to \$20 000, \$30 000 or even \$50 000 for old trees.¹

A clearer compliance and enforcement framework

NCC generally supports changes that would increase clarity around the operation of the BC SEPP, including clarifying:

- when clearing is 'prohibited development',
- how Chapter 2 of the BC SEPP applies to clearing on public land,
- the use of 'stop work' and 'replanting' orders, and
- when permits are needed for clearing associated with complying development (See section 2.3 of the EIE).

Section 2.3.5 of the EIE suggests the use of AI for monitoring and evidence gathering in cases of illegal clearing. This is assumedly to assist with proving an illegal clearing event "beyond reasonable doubt", as is currently required under the criminal framework in the EP&A Act.

¹ Greg Moore, arboricultural scientist with the University of Melbourne, in The Guardian (2023).

<https://www.theguardian.com/australia-news/commentisfree/2023/dec/10/tree-vandalism-australia-why-removals>

NCC would like to raise strong concerns about the lack of proposed parameters for this potential surveillance and emphasise the introduction of a civil penalty framework (as suggested in Part 3 of the EIE) as distinctly more appropriate.

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

NCC supports changes to tighten the provisions around clearing dead, dying, and dangerous vegetation by

- strengthening the regulation around the clearing of dangerous vegetation to ensure only the minimum amount of vegetation needed to protect people and property is pruned,
- requiring a permit or approval from the Native Vegetation Panel for the clearing of dead or dying vegetation, and
- providing Councils with guidance and training on these provisions.

Dead and dying trees can have important biodiversity values, including providing habitat for a range of species, and can be a key part of functioning and resilient ecosystem.

Encouraging people to keep and replace vegetation

NCC supports the proposed section 2.7.3 of the EIE to involve the local community in managing trees and other vegetation in their areas, to increase compliance and reduce illegal tree clearing.

NCC also supports the tightening of development approval conditions, to require like-for-like (same age, same location) replacement of trees as conditions of development consents.

However, NCC wishes to express concern about the little specification of what are “other approaches” to the replacement of trees as a condition for a clearing permit, in the case where the tree cannot be replanted onsite (See sections 2.5.3. of the EIE). Alternative approaches to the replacement of trees on-site should be strictly regulated to avoid loopholes allowing developers to not replant the vegetation they clear. The possibility for offsite tree replacement should only be authorised if no other options, including cancelling the development, can reasonably be implemented.

Supporting a clearer framework: non-regulatory measures

NCC supports non-regulatory measures that support the implementation of the previously described compliance framework. This includes:

- creating a model development control plan chapter on vegetation protection to assist councils in better regulating land clearing and providing greater consistency in the application of the framework (See section 2.7.1 of the EIE), and
- training support of councils to better respond to illegal tree clearing (See section 2.7.2 of the EIE).

Whilst beyond the scope of this EIE consultation, NCC would welcome actions from the Government:

- to create a comprehensive database of all illegal tree clearing incidents, to better track the extent of the problem and make repeat offenses easier to spot and prosecute, and
- to create a register of all permits and approvals for tree clearing issued under Chapter 2 of the BC SEPP. This would enhance transparency and accountability.

Possible future legislative changes

Compliance and enforcement opportunities for illegal tree and vegetation clearing in urban areas could be further enhanced by:

- introducing a new offence for carrying out clearing without a permit (in addition to the existing offence of carrying out prohibited development), with appropriate penalties, to further deter illegal clearing, and
- introducing civil penalties (to overcome concerns about burden of proof for criminal penalties, although criminal penalties should remain as an option).

While the proposed changes are targeted at *illegal* tree clearing in urban areas and environment zones, the Government should also consider, more generally, opportunities for improving the retention of trees in these areas, including:

- reforms to address ongoing concerns about ‘zombie DAs’ (historical approvals of development applications) and inappropriate clearing of vegetation relying on historical development approval, which don’t lapse once development has commenced (but not



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finished). See our [submission to the Inquiry into Historical Development Consents in NSW](#),

- ensuring anticipated changes to biodiversity offsets scheme entry thresholds for local development do not remove important oversight or lead to increased tree clearing and loss of urban tree canopy, and
- restrictions on the removal of mature trees for complying development.

The Government must also make changes to the regulation of habitat clearing in rural areas to deliver on its commitment to stop excessive land clearing.

Finally, the Government should continue to make improvements to the flawed Biodiversity Offset Scheme. You can read our [submission to the Inquiry into the Biodiversity Offsetting Amendment Bill 2024](#) for further recommendations on this matter.

Thank you for the opportunity to participate in this consultation.

Your key contact point for further questions and correspondence is Angela Leech, Office and Administration Coordinator, available via aleech@nature.org.au and (02) 9516 1488. We welcome further conversation on this matter.

Yours sincerely,

Jacqui Mumford
Chief Executive Officer
Nature Conservation Council of NSW