



Environmental
Defenders Office

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

3 June 2025

About EDO

EDO is a community legal centre specialising in public interest environmental law. We help people who want to protect the environment through law. Our reputation is built on:

Successful environmental outcomes using the law. With over 30 years' experience in environmental law, EDO has a proven track record in achieving positive environmental outcomes for the community.

Broad environmental expertise. EDO is the acknowledged expert when it comes to the law and how it applies to the environment. We help the community to solve environmental issues by providing legal and scientific advice, community legal education and proposals for better laws.

Independent and accessible services. As a non-government and not-for-profit legal centre, our services are provided without fear or favour. Anyone can contact us to get free initial legal advice about an environmental problem, with many of our services targeted at rural and regional communities.

www.edo.org.au

Submitted to: New South Wales Department of Planning, Housing and Infrastructure

Lodged [online](#).

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Acknowledgement of Country

The EDO recognises and pays respect to the First Nations peoples of the lands, seas and rivers of Australia. We pay our respects to the First Nations Elders past, present and emerging, and aspire to learn from traditional knowledges and customs that exist from and within First Laws so that together, we can protect our environment and First Nations cultural heritage through both First and Western laws. We recognise that First Nations Countries were never ceded and express our remorse for the injustices and inequities that have been and continue to be endured by the First Nations of Australia and the Torres Strait Islands since the beginning of colonisation.

EDO recognises self-determination as a person's right to freely determine their own political status and freely pursue their economic, social and cultural development. EDO respects all First Nations' right to be self-determined, which extends to recognising the many different First Nations within Australia and the Torres Strait Islands, as well as the multitude of languages, cultures, protocols and First Laws.

First Laws are the laws that existed prior to colonisation and continue to exist today within all First Nations. It refers to the learning and transmission of customs, traditions, kinship and heritage. First Laws are a way of living and interacting with Country that balances human needs and environmental needs to ensure the environment and ecosystems that nurture, support, and sustain human life are also nurtured, supported, and sustained. Country is sacred and spiritual, with culture, First Laws, spirituality, social obligations and kinship all stemming from relationships to and with the land.

Introduction

Thank you for the opportunity to comment on the *Explanation of intended effect: Changes to deter illegal tree and vegetation clearing (EIE)*.¹ The changes relate to Chapter 2 (Vegetation in non-rural areas) of *State Environmental Planning Policy (Biodiversity and Conservation) 2021 (Biodiversity and Conservation SEPP)*.

We welcome the ongoing efforts of local councils and the State government to clamp down on illegal clearing and work with communities to make our urban environments safe, biodiversity-rich and resilient living landscapes.

EDO generally **supports** the proposed changes set out in the EIE, aimed at discouraging illegal clearing of trees and vegetation in urban areas and environment zones (i.e. land zoned for environmental purposes, including conservation zones).

Vegetation in urban areas contributes to urban biodiversity and landscape amenity and helps to reduce urban heat island effects. Environment zones (including conservation zones) include areas of vegetation with high ecological, scientific, cultural or aesthetic values. It is therefore important that clearing in urban areas and conservation zones is appropriately regulated.

Our submission is structured as follows:

- Comments on proposed changes set out in the EIE (with reference to corresponding EIE section numbers)
- Opportunities to further strengthen tree clearing rules and maintain vegetation in urban areas and environment zones

Given many of the proposed changes are intended to address existing ambiguity about how the Biodiversity and Conservation SEPP applies and may also include amendments to legislation, we suggest further consultation on draft SEPP provisions or legislative amendments would be useful, to ensure that the legal drafting of the changes resolves ambiguities and doesn't give rise to further confusion or perverse outcomes.

We also note that it is not just illegal tree clearing regulated by Chapter 2 of the Biodiversity and Conservation SEPP that is an issue. Improvements in deterring illegal tree clearing undertaken in reliance of a development consent are also needed (such as improved monitoring and enforcement), to ensure that approved development is being undertaken in accordance with consent conditions, including any requirements to replace cleared trees. Similarly, the government must also make changes to the regulation of tree clearing in rural areas to deliver on its commitment to stop excessive land clearing.

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https://www.planningportal.nsw.gov.au/sites/default/files/documents/2025/Explanation%20of%20intended%20effect%20-%20Changes%20to%20deter%20illegal%20tree%20and%20vegetation%20clearing_0.pdf

Comments on proposed changes set out in the EIE

In this section of the submission we respond to proposed changes in the EIE, with reference to relevant EIE section numbers.

Response to EIE section 2.2: Deter illegal clearing

2.2.1 Introduce tiered penalties

Overview:

As outlined in the EIE, current on-the-spot penalties in Chapter 2 of the Biodiversity and Conservation SEPP are not high enough to deter illegal clearing. There are benefits for landowners and developers for engaging in illegal clearing, such as increasing the land's value by improving water views, with illegal clearing often seen as simply a 'cost of doing business.' Removing the vegetation may also enable landowners to use simpler, less rigorous, approval pathways for development.

Councils are able to issue on-the-spot penalties to individuals or corporations who do not obtain a permit to clear vegetation on public or private land before doing so. Currently, on-the-spot penalties are: \$3,000 for individuals and \$6,000 for corporations. The fines are the same in all cases, regardless of how severe the environmental damage is or whether someone is a repeat offender.

The EIE proposes revised on-the-spot penalties that fall under two different tiers: the base penalty tier, which relates to clearing not meeting any of the higher penalty criteria, and the higher penalty tier, which captures various categories of clearing including 'Larger trees', 'Larger areas', 'Repeat offenders' and 'Significant vegetation.' It is proposed to set the base penalty tier at \$3,000 for individuals and \$9,000 for corporations, and the higher penalty tier at \$6,000 for individuals and \$18,000 for corporations.

Comments on proposed changes:

We generally support the proposal to increase penalties and introduce a tiered penalty system. However, to further deter illegal clearing, we would suggest:

- increasing the base penalty for individuals, which is currently not proposed to be increased (and subsequently increasing the penalties for higher penalty offences accordingly). Maintaining a low base penalty amount does not send a clear signal that the Government is stepping up action on illegal tree clearing, and will unlikely deter individuals from illegally clearing trees where they still stand to make significant profit by increasing the value of their residences by removing trees;
- imposing greater penalties on corporations, noting the corporate multiplier under various federal laws is five times individual penalties. This would deter corporations from undertaking illegal clearing in circumstances where on-the-spot fines are seen as part of 'doing business' in circumstances where they stand to make significant profit;

- clarifying that higher penalty offences are for second or later *contraventions* (rather than offences), meaning that people who are issued with multiple penalty notices (and not just people with multiple offence convictions) are also captured by the higher penalty offences.

We also suggest that there be improved monitoring on the effectiveness of the Chapter 2 of the Biodiversity and Conservation SEPP to determine if increased penalties are successfully deterring illegal activity. This can inform whether further penalty increases are needed in the future.

We also note that Table 2 of the EIE, titled ‘Proposed revised penalties’, does not explicitly set out that it applies to on-the-spot penalties. Presumably amendments to the Biodiversity and Conservation SEPP will make this clear.

2.2.2 Clarify penalties can apply for each tree cleared

Overview:

The EIE highlights the potential benefits that may accrue from illegally clearing multiple trees and acknowledges that some councils issue per-tree fines to deter such clearing. The EIE proposes to provide guidance to councils confirming this as a valid regulatory pathway.

Comments on proposed changes:

We agree that it is appropriate for penalties to be issued per-tree for illegal clearing. While we support additional guidance being provided to councils, as proposed, we also suggest that it would be useful to clarify that this is an appropriate regulatory pathway in the legislation itself. This could be done, for example, with a note added to legislation.

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

Overview:

As noted in the EIE, 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. While there are existing provisions that stop owners from carrying out complying development on land if it involves removing or pruning a tree or other vegetation without relevant permission, the Department wants to ensure that landowners, prospective buyers, planners and certifiers are aware of previous illegal clearing that may prevent someone from carrying out complying development. To achieve this, it is proposing to change the requirements for planning certificates issued under section 10.7(2) of the EP&A Act, so that they must include any instances of proven illegal clearing on the subject land, the location of the clearing within the lot and the date (or estimated date) of the illegal clearing.

Comments on proposed changes:

We generally support the proposal to require planning certificates issued under section 10.7(2) of the EP&A Act to include information about illegal clearing on the subject land. Clarification is

needed about what constitutes ‘proven’ illegal clearing, and whether this would include circumstances where a penalty notice has been issued.

Response to EIE section 2.3: A clearer compliance and enforcement framework

2.3.1 Clarify when clearing is “prohibited development”

Overview:

As outlined in the EIE, councils are unclear as to what constitutes ‘prohibited development’. The EIE proposes updating the wording of section 2.6(6) of the Biodiversity and Conservation SEPP so that it is clear that:

- clearing vegetation without a required permit or approval under Chapter 2 of the Biodiversity and Conservation SEPP; and
- clearing vegetation not in accordance with the conditions of a permit or approval received under Chapter 2 of the Biodiversity and Conservation SEPP

are both prohibited development.

Comments on proposed changes:

We generally support the proposal in the EIE to update the wording of section 2.6(6) of the Biodiversity and Conservation SEPP to reflect that clearing vegetation without a required permit or approval under Chapter 2 of the Biodiversity and Conservation SEPP, and clearing vegetation not in accordance with the conditions of a permit or approval received under Chapter 2 of the Biodiversity and Conservation SEPP are both prohibited development.

Additionally, as outlined below, we also suggest that to further strengthen Chapter 2 of the Biodiversity and Conservation SEPP, consideration should be given to 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.

2.3.2 Clarify how Chapter 2 of the Biodiversity and Conservation SEPP applies to clearing on public land

Overview:

As outlined in the EIE, councils have indicated there is uncertainty about how the offences for clearing without an appropriate permit or approval apply to public land. The Department is considering updates to Chapter 2 of the Biodiversity and Conservation SEPP, including:

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

Comments on proposed changes:

We generally agree that it would be useful to amend Chapter 2 of the Biodiversity and Conservation SEPP to clarify how it is intended to apply to public land.

There is some ambiguity relating to one specific example in the EIE, namely the suggestion that it could be an offence to illegally clear trees on *any land that a person is not legally entitled to obtain a permit for its clearing*. The specific example includes poisoning a tree on a neighbour's property. This is confusing as this example does not relate to public land (which is what this section of the EIE is primarily concerned with). It is also unclear what is meant by 'legally entitled'. Given the uncertainty, there is a risk that a poorly worded provision could perversely capture scenarios where a permit is issued for tree clearing, but the clearing is carried out not by a landowner but by, for example, a tree clearing service or another person. Proposed changes to sections 2.3 and 2.6 should be clear and unambiguous.

2.3.3 Clarify stop work and replanting orders

Overview:

The EIE acknowledges that due to uncertainty relating to powers to issue stop work and replanting orders, councils may not be using these tools effectively. The EIE proposes to make changes to make it clear these powers can be used with respect to illegal tree clearing under the Biodiversity and Conservation SEPP and 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, and stop illegal clearing works that are being carried out (using a 'stop work order' or similar).

Comments on proposed changes:

We support proposed changes to the EP&A Act that will clarify that powers to issue stop work and replanting orders can be used by councils enforcing Chapter 2 of the Biodiversity and Conservation SEPP. We also support the proposal to provide councils with further guidance on the use of these powers.

We also suggest the Department consider a new head of power specific to vegetation clearing, that allows for replanting of vegetation the same height and value, or also the erection of structures (e.g. signs) to block views. This could be tailored to specifically deal with issues relevant to vegetation clearing, rather than relying on the broader 'restore works' order.

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

Overview:

The EIE explains that there is confusion about if and when a tree permit or Native Vegetation Panel (NVP) approval is required to clear vegetation for complying development, particularly in circumstances where certain provisions of *State Environmental Planning Policy (Exempt and Complying Development Codes) 2008* (**Codes SEPP**) provide that a complying development certificate is taken to satisfy any requirement under the Codes SEPP for a permit or approval to

remove or prune certain vegetation. The EIE explains that it is the existing policy intent that a permit or approval is still required under Chapter 2 of the Biodiversity and Conservation SEPP, despite those provisions in the Code SEPP.

Comments on proposed changes:

We support the proposal to amend the provisions of the Codes SEPP and/or Biodiversity and Conservation SEPP to clarify that a permit or approval is still required under Chapter 2 of the Biodiversity and Conservation SEPP despite provisions in the Code SEPP. We also support the proposal to provide councils with further guidance on the interaction between the Codes SEPP and Chapter 2 of the Biodiversity and Conservation SEPP.

2.3.5 Can technology solutions help improve compliance outcomes

Overview:

The EIE proposes to utilise technology to ensure regulators have access to appropriate evidence to support successful regulatory action, noting that in some instances it can be difficult to prove an illegal clearing event beyond reasonable doubt.

Comments on proposed changes:

We generally support technological solutions to improve monitoring and regulation of tree clearing. However, given the lack of specific detail in the EIE, we suggest further consultation on more detailed proposals in the future would be useful.

Response to EIE section 2.4: Support legitimate removal of dead, dying and dangerous vegetation while removing loopholes

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

Overview

As outlined in the EIE, section 2.7(3) of the Biodiversity and Conservation SEPP provides that 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 EIE proposes two changes to this part of the Biodiversity and Conservation SEPP, namely:

- inserting the word ‘imminent’, i.e. ‘an *imminent* risk to human life or property’
- stipulating that the landowner can remove only the minimum amount of vegetation necessary to minimise the imminent risk to human life or property

Comments on proposed changes:

We support the proposed changes to section 2.7 of the Biodiversity and Conservation SEPP. These changes are likely to deter misuse or abuse of this part of the framework and incentivise the maintenance of vegetation, where possible, rather than removal of whole trees.

We also support the proposal to provide councils with further guidance on the use of these provisions, including guidance on considering what constitutes an imminent risk to life and property. It would also be useful to provide councils with guidance on understanding ‘minimum amount of vegetation necessary’.

2.4.3 Dead and dying trees

Overview:

Under subsections 2.7(4) and (5) of the Biodiversity and Conservation SEPP, a landowner does not need a permit or approval to remove vegetation if the Council or the NVP is satisfied that the vegetation is dying or dead, and is not required as habitat of native animals. The EIE outlines numerous concerns with how the provisions currently operate, including that councils are reporting that individuals and corporations are finding ways to misuse the provisions in order to remove certain trees, such as illegally poisoning vegetation, classifying it as dying or dead, and then removing it. The EIE also reports that community members are uncertain about what constitutes dead or dying, particularly in the case of vegetation that take many years to die, or deciduous trees.

The EIE proposes two options for improving oversight of the use of these provisions:

1. 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
2. landholders who wish to clear dead or dying vegetation would need to apply for a council permit or NVP approval under Chapter 2.

Comments on proposed changes:

We support changes that would improve oversight on how these provisions are used. 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. It is important that appropriate safeguards are in place to ensure landholders are not misusing these provisions to inappropriately clear vegetation for their benefit.

Of the two options proposed, we would suggest requiring landholders who wish to clear dead or dying vegetation to apply for a council permit or NVP approval under Chapter 2 of the Biodiversity and Conservation SEPP. This would provide consistency across the framework, with the councils (or the NVP) retaining oversight and decision-making over trees in their area, rather than giving this function ad hoc to arborists paid by landholders (which may raise questions about impartiality). We note that in circumstances where there is an imminent risk to life and property, clearing may be allowed without a permit under other provisions.

We also suggest that clear definitions of ‘dead’ and ‘dying’ vegetation could be included in the SEPP to provide further clarity on the application of the provisions of the SEPP.

Response to EIE section 2.5: Encourage people to keep and replace vegetation

2.5.1 Add an aim to protect and improve tree canopy

Overview:

The EIE proposes to add an aim under section 2.1 of the Biodiversity and Conservation SEPP to better reflect the value of keeping vegetation for biodiversity, climate change and to mitigate urban heat. The proposed aim is as follows: *“To maintain and enhance canopy cover and other vegetation in nonrural 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.”*

Comments on proposed changes:

We support the inclusion of this new aim, which recognises the importance of trees and other vegetation in the urban environment. This aim can be supported through the introduction of matters for consideration for councils when assessing permit applications, as proposed (in section 2.5.2). Such matters for consideration that reflect this new aim should also be considered by the NVP in assessing tree clearing applications under Chapter 2 of the Biodiversity and Conservation SEPP.

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

Overview:

The EIE explains that the Biodiversity and Conservation SEPP is currently focusing on tree removal and does not provide guidance on how to consider broader merits of an application, such as if a tree’s removal would negatively impact local environmental, social or cultural principles.

The EIE proposes adding a list of factors into the Biodiversity and Conservation SEPP that Councils will be required to consider when determining the appropriateness of applications, including:

- 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

Comments on proposed changes:

We generally support the inclusion of the proposed list of matters for consideration in Chapter 2 of the Biodiversity and Conservation SEPP. As noted above this would be a way to operationalise the new aim, with the proposed matters for consideration generally aligning with the new aim.

Providing a more detailed list of matters for consideration in the Biodiversity and Conservation SEPP would also improve consistency of decision making within and across local councils.

We also recommend that the proposed matters for consideration introduced into Chapter 2 of the Biodiversity and Conservation SEPP be required to be considered by the NVP when assessing applications under Chapter 2. Currently, section 2.14(5) of the Biodiversity and Conservation SEPP provides that the NVP is required to consider:

- likely impacts of proposed clearings on biodiversity values as set out in a biodiversity development assessment report submitted by the applicant for approval,
- whether the clearing of native vegetation will likely cause or increase soil erosion, salination, acidification or other adverse land or water impacts, and
- any authorised or notified future clearing of native vegetation on the land that has not yet been carried out.

The NVP also has to consider any biodiversity or heritage matter that an applicable environmental planning instrument or development control plan notes in relation to the impact of a proposed clearing.

Requiring the NVP to also consider the proposed new matters for consideration would align with the new aim and would complement the matters already required to be taken into account by the NVP. While the NVP has to consider biodiversity values, a biodiversity development assessment report required to be considered by the NVP does not necessarily require the same consideration of local amenity issues.

2.5.3 Planting a new tree to replace the one removed

Overview:

Section 2.10(4) of the Biodiversity and Conservation SEPP stipulates that councils can issue permits to clear vegetation, subject to some conditions. When issuing permits, landowners are required by some councils to replace any trees removed with another tree. The EIE is proposing to make it mandatory for all councils to require landowners to replace trees as a condition of their permits.

Comments on proposed changes:

Trees and vegetation play an important role in urban landscapes; they contribute to urban biodiversity and landscape amenity, provide habitat for native species and help to reduce urban heat island effects. Replacing trees removed from the landscape is important to compensate for the loss of benefits and values that those trees provide.

We agree that councils should be empowered to include permit conditions that require landowners to replace any trees they remove with equivalent ones. However, as noted in the EIE, an appropriate condition may depend on the reason for removal and in some circumstances, trees may not be able to be planted onsite. Additionally, council permit applications do not require full

environmental assessments, and it may therefore be difficult to assess the values lost, as well as determining a suitable condition to deliver equivalent values.

Any mandatory requirement needs to be drafted in a way that allows councils to consider individual circumstances and impose appropriate conditions, or to also refuse applications where tree replacement is not appropriate (i.e. the impacts on biodiversity cannot be replaced). We note that trees in local environments have local benefits, so replacement trees that are not within the vicinity are unlikely to wholly replace the values lost. Similarly, dead and dying trees may contain hollows, which provide important habitat for native species, so replacing those specific values (e.g. with hollow logs or artificial nesting boxes) may be a more suitable replacement than new vegetation. Further guidance should be provided to councils on how to set appropriate conditions, including guidance on alternative options for replacement of the cleared trees and lost biodiversity values.

We note that where there are likely to be significant environmental impacts, approval by the NVP will be required, and conditions will be set in accordance with the Biodiversity Offset Scheme.

Response to EIE section 2.6: Housekeeping amendments

Overview:

The EIE proposes minor ‘housekeeping’ changes to a range of environmental planning instruments, where needed, to correct outdated references to old SEPPs, update local government area names in section 2.3 of the Biodiversity and Conservation SEPP to reflect council amalgamations, and update notes.

Comments on proposed changes:

We support housekeeping amendments needed to update the provisions of Chapter 2 of the Biodiversity and Conservation SEPP.

Response to EIE section 2.7: Support a clearer framework: non-regulatory measures

Overview:

The EIE proposes a range of non-regulatory measures that the Department intends to undertake to increase deterrence, improve compliance and encourage tree retention, working with local councils and the community. These include:

- Guidance and templates (2.7.1)
- Training and support (2.7.2)
- Innovative joint management models (2.7.3)

Comments on proposed changes:

We support the NSW Government providing greater support to local councils and communities to deter illegal tree clearing and incentivise the retention of trees and landscapes in local urban landscapes.

In particular:

- We generally support the proposal to provide guidance material and templates to support councils in applying Chapter 2 of the Biodiversity and Conservation SEPP. In some instances where the EIE has suggested that further guidance would be provided, we have suggested that direct changes to the SEPP or legislation would also be useful (see specific comments above).
- EDO has previously raised concerns that the effective implementation of Chapter 2 of the Biodiversity and Conservation SEPP is reliant on local councils having relevant DCPs in place (see section 2.9 of the Biodiversity and Conservation SEPP). Where councils do not have relevant DCP provisions in place there is a regulatory gap, but it is unclear the extent to which councils may remain without relevant DCP provisions. A model development control plan chapter on vegetation protection would assist councils who need to adopt relevant DCP provisions and will help to provide greater consistency in the application of the framework across local government areas. EDO would be happy to provide further input into the development of a model development plan in due course.
- We support the NSW Government providing greater support to local councils to regulate tree clearing. This will greatly assist where councils lack the necessary capacity and resourcing. The Cumberland Plain Conservation Plan Compliance Strategy pilot program provides a model for how the central coordination of compliance officers can assist councils in improving compliance and enforcement and to work together to tackle illegal tree clearing.
- We would generally support innovative management models that can deliver improved outcomes for the environment and communities. The Government and councils should consult further on any specific proposals.

Opportunities to further strengthen tree clearing rules and maintain vegetation in urban areas and environment zones

In addition to the changes proposed in the EIE, we make the following suggestions for additional changes to Chapter 2 of the Biodiversity and Conservation SEPP and the broader regulatory framework to further strengthen tree clearing rules and maintain vegetation in urban areas and environment zones.

Compliance and enforcement opportunities could be further enhanced by:

- **Offence for carrying out clearing without a permit:** 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. This would make it explicit that clearing without a permit is an offence, and would help address council concerns (highlighted in section 2.3.1 of the EIE) that it can sometime be unclear what constitutes ‘prohibited development’, such as non-compliance with the conditions of a tree clearing permit.

- **Civil penalties and jail terms:** we would support introducing civil penalties, although criminal penalties should remain as an option. This was flagged in the EIE as a possible future change. As suggested in the EIE, the introduction of civil penalties would provide an alternative enforcement pathway for councils, with a lower burden of proof (balance of probabilities). We also agree that jail terms should be considered, given the scale of the problem and to act as a counter to the incentives/benefits that can arise from illegal tree clearing.

Other measures that should also be considered for strengthening the regulatory framework include:

- **Public register:** requiring councils and the NVP to maintain a register of permits and approvals issued under Chapter 2 of the Biodiversity and Conservation SEPP. This would improve transparency and accountability. For example, it can assist the community, neighbours and landholders in monitoring clearing activities across the local government area and assist the community to know when to report potentially unlawful clearing actions. Public registers can also help councils to account for cumulative impacts of clearing at a landscape scale. They can guard against “stacking” whereby a landholder applies for multiple clearing permits for clearing below the Biodiversity Offset Scheme (BOS) Threshold instead of a single clearing approval for clearing that is above the BOS Threshold. We note similar registers are required to be maintained under the Part 5A of the *Local Land Services Act 2013* for tree clearing in rural areas.
- **Permit lapsing:** inserting provisions that provide for the lapsing of permits issued under Chapter 2 of the Biodiversity and Conservation SEPP after a specific time period if the permit has not been acted upon or unless otherwise stated in the permit itself. This would prevent clearing under historical approvals, in circumstances where the impacts of the clearing may be different from when originally assessed. However, consideration would need to be given as to whether the introduction of such provisions would have the perverse outcome of driving up clearing rates by incentivising persons to use permits in circumstances where they might otherwise never have acted on a permit they have obtained.
- **Revised allowable activities:** revise Part 2.5 of the Biodiversity and Conservation SEPP. This Part was amended in 2021 to expand the range of allowable activities permitted in certain environment zones (generally in line with the expanded range of allowable activities permitted for rural land clearing under Part 5A of the *Local Land Services Act 2013*). At the time, EDO raised concerns with these changes, arguing that environment zones are intended to restrict impacts in areas identified as having certain environmental values. Clearing should not be allowed to go ahead in these zones unchecked, rather any clearing in those zones should be required to be appropriately assessed and authorised.

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:

- **Addressing zombie DAs:** 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 finished).
- **Appropriate BOS entry thresholds:** ensuring anticipated changes to BOS thresholds for local development do not remove important oversight or lead to increased tree clearing and loss of urban tree canopy.
- **Retaining mature trees:** restrictions on the removal of mature trees for complying development and requirements for like-for-like (e.g. mature) replacement of trees as conditions of development consents.

Finally, we remain concerned that tree clearing rates in rural areas remain high. The government must also make changes to the regulation of tree clearing in rural areas to deliver on its commitment to stop excessive land clearing.

*Thank you for the opportunity to make this submission.
Please do not hesitate to contact our office should you require any further information.*