

# 'Vegetation SEPP'

## Additional frequently asked questions for Councils

Updated August 2018

The State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017 (Vegetation SEPP) was one of a suite of Land Management and Biodiversity Conservation (LMBC) reforms that commenced in New South Wales on 25 August 2017. The Vegetation SEPP works together with the Biodiversity Conservation Act 2016 and the Local Land Services Amendment Act 2016 to create a framework for the regulation of clearing of native vegetation in NSW.

For more information on these land management and biodiversity conservation reforms please visit [www.landmanagement.nsw.gov.au](http://www.landmanagement.nsw.gov.au) or use the following link for general frequently asked questions at [www.planning.nsw.gov.au/vegetationSEPP](http://www.planning.nsw.gov.au/vegetationSEPP). The Vegetation SEPP has been included as a layer to the planning portal.

What is required for a section 149 certificate?

Clauses 18 to 21 of the Environmental Planning and Assessment Amendment (Biodiversity Conservation) Regulation 2017 update the requirements relating to planning certificates. This includes requirements relating to:

1. Biodiversity certified land;
2. Biodiversity stewardship sites; and
3. Native vegetation clearing set asides.

Councils will also need to consider whether the Vegetation SEPP applies to the relevant land, and name it as a relevant EPI in accordance with Schedule 4, clause 1 of the EP&A Regulation.

When is a permit or development consent required for clearing below the BOS threshold?

The Vegetation SEPP regulates clearing that is not linked to development requiring consent. Clearing that is ancillary to development requiring consent will be assessed as part of the development assessment process, and may require further assessment and approval under the Biodiversity Conservation Act 2016.

Clearing below the biodiversity offsets threshold on land to which the Vegetation SEPP applies only requires a permit issued under the SEPP, and will no longer require development consent. However, development consent will still be required for the clearing of vegetation that is a heritage item or that is located in a heritage conservation area, as well as vegetation that is an Aboriginal object or that is located in an Aboriginal place of heritage significance.

What transitional arrangements apply to Council DCPs?

DCPs that contain a requirement for a permit or development consent to clear vegetation are taken to be a DCPs for the purpose of the Vegetation SEPP, as long as the DCP is not inconsistent with the Vegetation SEPP.

An application for a permit to remove vegetation under an environmental planning instrument (such as a Council's local environmental plan) that was made but not determined by 25 August 2017 may continue to be dealt with as if it had been made under the Vegetation SEPP.

What are the transitional provisions for local development regarding the BC Act apply?

An application for development consent under Part 4 (except SSD) or modification applications under Part 4 (except SSD) made within 3 months of 25 August 2017 could rely on the existing legislation, so long as any species impact statement required was submitted within 12 months of 25 August 2017.

How does the SEPP relate to exempt and complying development?

Multiple permits/ certificates may be required for complying development that involves removal or pruning of vegetation. That is a permit may be required under the Vegetation SEPP as well as a complying development certificate under the Exempt and Complying Development SEPP. See clause 1.18(h) that sets out exemptions.

A permit or approval may be required under the Vegetation SEPP if the clearing is part of or ancillary to the carrying out of complying development for the clearing of vegetation below the biodiversity offsets threshold if that vegetation has been identified in a Council's Development Control Plan (DCP). This permit or approval would be required in addition to any other requirements set out under another SEPP that regulates complying development, such as the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008.

For example, clause 1.18(h) of the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008 provides that in order to be complying development under that Policy, any development requiring the clearing of vegetation must have a permit for that clearing prior to the issue of complying development certificate unless certain exemptions under that Policy apply.

Clearing that is a part of or ancillary to the carrying out of exempt development will also require a permit or approval under the Vegetation SEPP for clearing below the biodiversity offset scheme threshold if it is the clearing of vegetation identified in a Council's DCP.

The Biodiversity Offset Scheme may apply to exempt or complying development where the relevant thresholds under the Biodiversity Conservation Act are triggered.

What if Council has not identified vegetation for protection in their DCP?

For clearing that is on land to which the Vegetation SEPP applies and that is below the biodiversity offsets threshold, Council will only be able to require a permit if it identifies the vegetation in its DCP (clause 9(1)). It may do this by identifying the size or type of vegetation generally, or by identifying the location of the vegetation, for example, in a specified zone.

If a Council's DCP does not identify vegetation for preservation, then clearing that is below the biodiversity offsets threshold will not require a permit under the Vegetation SEPP.

Who enforces the Vegetation SEPP?

Clearing vegetation without a permit under the Vegetation SEPP is prohibited, and prohibited development can be enforced by a penalty notice under the *Environmental Planning and Assessment Amendment Act 2017* (EP&A Act). Councils can continue to enforce vegetation clearing through the issuing of a penalty notice under the EP&A Act after taking into account all relevant considerations, including appropriate enforcement mechanisms, before commencing any enforcement action.

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What happens to deferred matter land?

The Vegetation SEPP applied to all deferred matter land in any LGA identified in 5a of the Vegetation SEPP. Land in other LGAs not yet classified under the Standard Instrument Local Environmental Plan will be regulated by Part 5A of the Local Land Services Act (LLS Act). As a result, deferred matter land will be identified on the Native Vegetation Regulatory Map under the LLS Act and will be categorised according to the map method. This land will include potential urban environmental conservation or management zones.

It is intended that deferred matter land that has not yet been classified under the Standard Instrument and has the substantial character of a zone, for urban purposes or for environmental conservation or management, should eventually be subject to the Vegetation SEPP.

Additionally, it is also open to Council to rezone the land as a relevant Standard Instrument zone so the land will be within the scope of the Vegetation SEPP.

## Where can I find out more?

- [www.planning.nsw.gov.au/vegetationSEPP](http://www.planning.nsw.gov.au/vegetationSEPP)
- [www.landmanagement.nsw.gov.au](http://www.landmanagement.nsw.gov.au)
- Call on 1300 305 695.
- If English isn't your first language, please call 131 450. Ask for an interpreter in your language and then request to be connected to our Information Centre on 1300 305 695.
- Email [Click here to send an email to information@planning.nsw.gov.au](mailto:information@planning.nsw.gov.au)