

Information for councils: Chapter 2 (Vegetation in non-rural areas) of the Biodiversity and Conservation SEPP

This document answers frequently asked questions from Councils about Chapter 2 (Vegetation in non-rural areas) of the Biodiversity and Conservation SEPP

Chapter 2 (Vegetation in non-rural areas) of the State Environmental Planning Policy (Biodiversity and Conservation) 2021 (Biodiversity and Conservation SEPP) is part of the suite of Land Management and Biodiversity Conservation (LMBC) reforms that commenced in NSW on 25 August 2017.

Chapter 2 of the Biodiversity and Conservation SEPP works together with the *Biodiversity Conservation Act 2016* and the *Local Land Services Act 2013* to create a framework for the regulation of clearing of native vegetation in NSW.

Application of the Chapter

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

Chapter 2 of the Biodiversity and Conservation 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 Chapter applies only requires a permit issued under the SEPP if the vegetation is identified in a council DCP.

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 is generally managed under council Local Environmental Plans and requires development consent.

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

Council will only be able to require a permit if it identifies the vegetation in its DCP (section 2.9). This applies to land to which the Vegetation SEPP applies and that is below the BOS biodiversity offsets threshold. It may do this by identifying the size or type of vegetation or by identifying the location of the vegetation.

Clearing that is below the biodiversity offsets threshold will not require a permit from Council if a Council's DCP doesn't identify vegetation for preservation.

What happens to deferred matter land?

The Chapter applies to all deferred matter land in any local government area identified in section 2.3(1a) of the Biodiversity and Conservation.

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). Deferred matter land will be identified on the Native Vegetation Regulatory Map under the LLS Act. This land will include potential urban, environmental conservation or management zones.

Council can rezone the land as a relevant Standard Instrument zone so the land will be within the scope of the Chapter.

How does the Chapter relate to the Biodiversity Offset Scheme (BOS) thresholds?

If there is clearing below BOS thresholds on land where the Chapter applies:

- Clearing below the threshold only requires a council permit issued under the SEPP if the vegetation is identified in council's DCP. It does not require development consent.
- Development consent is required for the clearing of vegetation that is a heritage item or that is in a heritage conservation area
- Development consent is also required for vegetation clearing that is an Aboriginal object or that is in an Aboriginal place of heritage significance.

If there is clearing (not linked to a development application) above the BOS thresholds on land where the Chapter applies:

- The landholder must apply to the Native Vegetation Panel for a clearing approval.
- Applications must include a biodiversity development assessment report (BDAR) developed by an accredited assessor using the Biodiversity Assessment Method.
- Applications must also include an assessment of the impacts of the proposed clearing. This would include the social and economic impacts, as well as environmental impacts that are not addressed by the BDAR.

Planning certificates and enforcement

What is required for a section 10.7 planning certificate?

Councils will need to consider whether the SEPP applies to the relevant land and name it as a relevant Environmental Planning Instrument (EPI) under Schedule 2, clause 1 of the EP&A Regulation.

Requirements relating to planning certificates for biodiversity certified land and biodiversity stewardship sites were amended in 2017 (see Schedule 2, clauses 16 and 17).

Who enforces the Vegetation SEPP?

Clearing vegetation without a permit under the Chapter is prohibited. Prohibited development can be enforced by a penalty notice under the Environmental Planning and Assessment Act 1979 (EP&A Act).

Councils can continue to enforce vegetation clearing by issuing a penalty notice under the EP&A Act. Councils must consider appropriate enforcement mechanisms before commencing any enforcement action.

Section 2.6 of the SEPP includes clarifies that councils can take enforcement action on clearing inconsistent with the provisions of the SEPP.

Relationship to other instruments

How does the Chapter 2 of the SEPP relate to exempt and complying development?

A permit or approval may be required under the Chapter if the clearing is identified in a Council's DCP and is:

- part of or ancillary to the carrying out of complying development for the clearing of vegetation below the BOS biodiversity offset threshold
- part of or ancillary to the carrying out of exempt development for the clearing of vegetation below the biodiversity offset threshold.

A permit may be required under the Chapter as well as a complying development certificate under the State Environmental Planning Policy (Exempt and Complying Development Codes) 2008, see clause 1.18(h).

Further information

- [Local Land Services](#) – Land management in NSW
- [Native Vegetation Regulatory Map Viewer](#)
- [Native Vegetation Panel](#)

Contact the Department of Planning and Environment

- Phone 1300 305 695
- Email the Planning team at information@planning.nsw.gov.au

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 the Department of Planning and Environment information centre on 1300 305 695.