

FACT SHEET 4: Urban environment implications

INTRODUCTION

The urban environment needs more trees – not less – but fewer trees will be the result of the NSW government’s proposed land clearing laws. The ongoing destruction of century old heritage trees in Randwick has rightly sparked outrage in the community. There are other examples of widespread destruction of native vegetation in urban areas, such as the 10/50 rule permitting tree removal under the guise of reducing bushfire risk, as well as new housing and infrastructure development.

The NSW Government intends to introduce a new *Biodiversity Conservation Act* and amended *Local Land Services Act* which will lock in a more destructive approach for most development in NSW – city and country.

KEY CHANGES

The new laws:

- Will repeal the *Native Vegetation Act 2003*. This legislation has been vital in protecting native vegetation and threatened species habitat in rural areas (and its approach should have been applied to urban areas and the coast).
- Do not provide absolute protection for highly threatened environments. Key information on proposed ‘red flags’ (serious and irreversible impacts) and no-go zones (‘areas of outstanding biodiversity value’) is missing, and these provision will be subject to Ministerial discretion.
- Encourage upfront biodiversity certification of new development areas, but remove the important requirement that biodiversity values are improved or maintained.

Rely heavily on ‘offsetting’ to provide greater flexibility for developers. This will allow developments to proceed that might otherwise be refused because of impacts on threatened species habitat or endangered ecological communities. Under this system developers are not limited to the ‘like for like’ principle where offset areas must be of equivalent ecological type to the area affected by development, preferably in the area affected.

Apply the weak offsetting rules currently included in the Government’s ‘major projects offset policy’ (which has allowed the mining industry to clear important vegetation). All developers will now be able to substitute entirely different vegetation and also employ so-called supplementary measures, such as paying into a fund or rehabilitating mine sites (which should be done by mine owners).

Use a Biodiversity Assessment Method (BAM) to calculate biodiversity ‘credits’ required to offset development; however consent authorities will have discretion to disregard the results of the BAM and reduce the number of credits required.

Continue to provide a different set of rules for major projects and infrastructure activities.

IMPLICATIONS FOR URBAN AREAS

The proposed changes will lead to further destructive of trees and bushland in urban areas. In many cases there are simply no 'like for like' offsets available.

Remnant bushland and wildlife habitat represents the last vestiges of what was once present. There is also no requirement that offsets be in the same area as the clearing that will occur.

The new laws create three categories of land across NSW:

- **Category 1 (Exempt) land:** clearing can occur without approval. This applies to land cleared of vegetation as at 1 January 1990 or legally cleared since, 'low conservation value' grasslands and 'biodiversity certified lands'.
- **Category 2 (Regulated) land:** clearing regulated by a 'Native Vegetation Regulatory Framework' including 'self-assessable codes' which facilitate clearing. This can include clearing of Endangered Ecological Communities (EECs) and threatened species habitat
- **Category 3 (Excluded) land:** clearing regulated under the *Environmental Planning and Assessment Act 1979*.

Urban areas of NSW, including Sydney, Newcastle and ALL urban zones of other cities and towns, as well as E2, E3 and E4 zones (E zones) and R5 zones under Local Environmental Plans, **will fall into category 3** and be regulated in accordance with the table below:

Consent requirements	What rules will apply?	Decision maker
Development that is permissible without consent under the <i>Environmental Planning and Assessment Act 1979</i>	New State Environmental Planning Policy: It is expected that a new SEPP and DCP framework will regulate clearing that is permitted without consent. The contents of the new SEPP are not yet known.	
	The new SEPP is expected to have three categories:	
	<ul style="list-style-type: none"> • Clearing of native vegetation that does not require approval 	n/a
	<ul style="list-style-type: none"> • Clearing of native vegetation that may be carried out with a permit. On certain land (generally within R5 and E zones) a permit may require on-site biodiversity impact mitigation strategies (eg. carrying out of management actions) 	Feedback is being sought on whether permits will be granted by the LLS or local council
	<ul style="list-style-type: none"> • Clearing of native vegetation that may only be carried out following a Biodiversity Assessment Methodology assessment and approval 	Approval will be given by the Minister for Primary Industries
Development that requires development consent under the <i>Environmental Planning and Assessment Act 1979</i>	Development approval processes under the Environmental Planning and Assessment Act applying the new Biodiversity Assessment Methodology, allowing the use of weakened offset rules and supplementary measures.	Local Council or Minister for Planning

Prepared by the Nature Conservation Council of NSW and the Total Environment Centre.

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