

Submission

Explanation of intended effect: Changes to deter illegal tree and vegetation clearing

[published April 2025]

29 May 2025

Prepared by Northern Sydney Regional Organisation of Councils

Member Councils: Hornsby Council
 Hunter's Hill Council
 Ku-ring-gai Council
 Lane Cove Council
 Mosman Council
 North Sydney Council
 City of Ryde Council
 Willoughby City Council

Contact: Dr Meg Montgomery
 Executive Director NSROC
 mmontgomery@lanecove.nsw.gov.au

Overview

The Northern Sydney Regional Organisation of Councils (NSROC) is pleased to make this submission to the *Explanation of intended effect* (EIE) of the *Changes to deter illegal tree and vegetation clearing* proposed by the NSW Government.

This submission has been prepared with the input and support of our member councils but should be considered draft until it is formally endorsed by the NSROC Board.

Northern Sydney Regional Organisation of Councils (NSROC) is an association of eight local councils who have come together to collaborate and promote a united voice on key issues in our region. Our member councils are Hornsby, Hunter's Hill, Ku-ring-gai, Lane Cove, Mosman, North Sydney, Ryde and Willoughby. Collectively, the NSROC member councils service an area of 639km² with a population of 660,667. We work together on policy and operational matters to drive efficiency and to enhance the liveability, sustainability and productivity of our region.

The EIE of proposed changes published by the Department is a welcome recognition by the State Government of the problem of reducing tree canopy all our communities are facing in the face pressures of development and densification and the potential of substantially increased value of properties from improved views resulting from removal of vegetation.

Our member councils are working to support achievement of the State Government's objectives of delivering housing and the mechanisms of Transit Oriented Development and the Low and Mid-rise Housing Policy. Our member councils are supportive of the State Government's policies for maintenance and growth in the metropolitan tree canopy as this has substantial bearing on the longer-term resilience of our communities in the face of climate change.

The challenge we face is to encourage developments that implement innovative solutions to maintain our tree canopy and the amenity of our suburbs while delivering housing development required by our communities. This requires an integrated approach consisting of:

- Fit-for-purpose legislative framework that includes adequate deterrence of illegal developments
- Ease of compliance by developers - requirements communicated to them are clear and are easy to understand and account for diverse types of developments and approval pathways
- Effective monitoring and enforcement that considers behaviours and technology to ensure instances of illegal clearing are promptly identified, investigated, infringement notices issued if required and infringements are easily determined in a court of law.

Our member councils are also making submissions that cover detailed aspects of the proposed changes to enhance their effectiveness in achieving the objectives of the legislation.

NSROC supports the intent of the proposed changes as described in the summary of reforms section of the EIE. However, we request consideration of certain aspects of the proposed changes to ensure that all aspects of implementation, namely legislation, compliance, monitoring, investigation and enforcement, work together to deliver on the aims of the legislation and amendments foreshadowed in the EIE document published April 2025.

Comments

Legislative changes proposed

Tiered penalties: We support a tiered penalty framework. We note that higher penalties apply for any one or more of a number of stated criteria in the EIE. We suggest that where an incident of

tree/vegetation removal satisfies a number of the stated criteria that local councils have flexibility under legislation to levy higher penalties reflecting the greater level of illegal works having been carried out. This suggestion is consistent with the principles for proposed penalties stated in the EIE (page 12). Clarification that councils can apply a penalty for each tree cleared is welcome.

Increase in value of penalties: While we support the application of higher penalties compared to those in the past, we suggest that the penalties be indexed to inflation as is the case for most other penalties under various NSW legislation. This will ensure that the deterrence of penalties is not reduced by inflation in property values over time, which will result in reducing the deterrence value of the penalties and will then necessitate another round of review and updating of penalties. Further, we support tripling the penalties applicable to businesses recognising the multiplicative effect of their operations on the community.

Penalties applied to homeowners and business operators: Application of corporation penalties should be applicable to anyone carrying out a business even if their type of legal organisation is a sole trader, partnership or trust etc., i.e. other than a business registered under the Corporations Act. This is important as most of the arborist businesses are not incorporated but their activities and risk taking in advice provided to homeowners can have a substantial cumulative effect on tree canopy cover in the metropolitan area as they are more likely to be repeat offenders.

Repeat Offender Register: NSROC supports the establishment of repeat offender register to help councils to apply higher penalties and for homeowners to check the antecedents of an arborist and the quality of their past advice. This register should be Sydney metropolitan area-wide and should be managed by the Government. It is worth noting that there are precedents in this regard, for example business registers maintained by the Office of Fair Trading, Rid Online maintained by the EPA etc. With developments in information technology, implementation of such a register should not be onerous or resource intensive on a continuing basis.

Complying development: The issue of ensuring compliance with the requirement of various legislation involving tree or vegetation is the need for the council to obtain information in a timely manner on possible illegal clearing having occurred on a parcel of land. This is likely to be time sensitive as a delay in acting may result in development going ahead and the value of remedial action becoming moot.

To assist with the implementation of requiring information to be included in a section 10.7(2) planning certificate the level of proof of 'proven' illegal clearing needs to be modified to include instances where councils have information that vegetation has been cleared to a lower than the 'proven' level of proof and allowing the applicants to challenge and submit information to the contrary or agree to remedial works.

Compliance and enforcement

Clarification and guidance: NSROC welcomes Department's intent to clarify and update where required issues around prohibited development, Chapter 2 provisions applying to clearing on public land, stop work and replanting orders and need for permits for clearing associated with complying development.

NSROC recommends that guidance material and information should be targeted at council compliance officers, homeowners, court officers and industry players, especially the arborist industry as they have a crucial role to play in supporting achievement of development goals of our communities.

Training for council officers: NSROC suggests that training be developed and made available for council officers to help them to identify and respond to incidents of suspected tree/vegetation clearing on private and public land. This should cover amongst other aspects:

- Their legal rights around entering a private property to investigate and their ability to serve a notice to enter a property at short notice
- How to carry out an investigation and collect evidence to support issuance of an infringement notice and to defend the charge in a court of law.
- Use of technology to establish before and after tree canopy cover at a location
- Alternative courses of action on remedies with the objective of restoring tree canopy to the maximum extent possible
- Investigate damage to trees on public land. This may include collection of witness statements, collection of video surveillance footage, presumptions based on benefits of clearing etc.

Guidance to judicial officers: Councils report that owing to the high standard of proof required under the legislation, there is significant difficulty in gathering evidence especially in relation to illegal tree clearing on public land. Even so, where evidence is available, the councils face considerable odds in making penalties under the current schedule to hold in a court, with the judges frequently reducing the size of the penalty, not awarding costs to councils etc, which adds up to be a substantial disincentive of council to prosecute and stay the course.

While we welcome the intention of the Department to seek to lower the standard of proof required to prosecute tree clearing, it is equally important to also engage with the judicial officers in the Land and Environment Court and to include advice on matters related to illegal tree/vegetation clearing in judicial handbooks. This should cover the details of illegal conduct, penalties available under law, impact on communities of the conduct. The advice could be added to pages like the tree dispute principles on the Land and Environment Court website with an emphasis on information and advice for judicial officers.

Conclusion

NSROC councils are committed to work to achieving strategic objective of the State Government and to maintain and grow the liveability of our region.

As often happens in public policy making, we need to tread a careful path between opposing pressures – in this case the need to boost housing supply (requiring densification of our suburbs) but also to manage and grow our tree canopy cover to maintain liveability and address rising temperatures from climate change. Ensuring this balance requires a careful calibrated response. While the proposed reforms would assist to deter illegal tree and vegetation clearing to some extent, a better balance of higher density while maintaining or even growing tree canopy cover will be achieved by incorporating our suggestions in the final framework.

As stated earlier, operationalising the legislative framework requires training and guidance of all stakeholders including arborists, council staff and the judiciary. We strongly urge the Department to undertake this program of enhancement of skills, knowledge and practice as a matter of urgency.

Thank you for the opportunity to provide a submission on the *Explanation of intended effect* (EIE) of the *Changes to deter illegal tree and vegetation clearing*.

If you require further information, please don't hesitate to contact NSROC Executive Director Dr Meg Montgomery on 0401 640 823 or at mmontgomery@lanecove.nsw.gov.au.

-Ends-