

Compliance and *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*

Councils may issue penalty notices in relation to a breach of *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017*

Councils may issue penalty notices for clearing of vegetation identified in a Development Control Plan without a permit or clearing above the [Biodiversity Offsets Scheme threshold](#) without approval from the Native Vegetation Panel. Alternatively, the council may bring proceedings to the Land and Environment Court to remedy or restrain a breach of the *State Environmental Planning Policy (Vegetation in Non-Rural Areas) 2017* (Vegetation SEPP). Councils should make their own decision as to the appropriate measure to take in response to a breach of the Vegetation SEPP.

A breach of the Vegetation SEPP is prohibited development

In the view of the Department of Planning, Industry and Environment (DPIE), the Vegetation SEPP prohibits clearing without a permit or approval in certain circumstances (clause 7(1) and 7(2)).

Clearing described by the Vegetation SEPP can be considered 'development' for the purposes of the *Environmental Planning and Assessment Act 1979* (EP&A Act). The need for a permit or approval must be satisfied before the proposed development can be lawfully carried out.

The Department considers that a breach of the Vegetation SEPP constitutes an offence against section 4.3(a) of the EP&A Act which carries a Tier 1 maximum penalty. The Vegetation SEPP can be enforced through the existing penalty notice regime in relation to section 4.3 'Development that is prohibited' of the EP&A Act. Failure to comply with conditions of a permit is also a breach of the Vegetation SEPP.

As the Vegetation SEPP does not require a person to obtain development consent for clearing of vegetation, section 4.3 is preferred over section 4.2 of the EP&A Act as a compliance mechanism.

The relevant offence codes for issuing penalty notices are referenced in the July 2018 version of the Local Government Fixed Penalty Handbook published by Revenue NSW. Offence codes may be updated from time to time.

The Environment, Energy and Science Group of the Department of Planning, Industry and Environment has no specific authority with respect to investigating alleged breaches of the Vegetation SEPP

The Environment, Energy and Science Group (DPIE) is responsible for compliance matters relating to land management activities regulated by Part 5A of the *Local Land Services Act 2013* and offences under the *Biodiversity Conservation Act 2016* (BC Act). If an alleged breach of the Vegetation SEPP may also constitute an offence under the BC Act (e.g. harm to protected plants and animals, threatened species and ecological communities and their habitats), the Environment, Energy and Science Group (DPIE) has authority to investigate. Suspected offences against the BC Act may be referred to the Environment Line on 131 555.