

Blue Mountains Conservation Society Inc.

Planning and Development Resource Kit



Scenario 1: Land clearing

You notice that bushland and/or trees have been cleared or land has been bulldozed. You want to find out what's going on, whether it's legal and what you can do about it.

First, you need to know that new native vegetation clearing laws were introduced in NSW in 2017. Under this new regime different laws regulate land clearing in 'urban' and 'rural' areas. The Blue Mountains Local Government Area is mostly classified as an 'urban' area.

The complexity of the new regime means that it is now very difficult for most people to work out if clearing of native vegetation has been done legally and which government agency is responsible for administering and enforcing the laws. However, it is still important to document and report any activity that may potentially be unlawful to both the Blue Mountains City Council and the NSW Department of Planning, Industry and Environment, particularly if threatened species and/or threatened ecological communities appear to be involved.

WHAT YOU CAN DO:

**A: FOR THOSE IN A HURRY AND/OR WHO DON'T WANT A
LONG EXPLANATION**

The basic steps for taking action when you see suspicious bushland removal, whether it is a single tree, clearing of a small area on a block or broad acreage clearing, is to:

1. **Document** what you see especially the date, time and location. Take photographs of the activity (though don't trespass on the property). Photos of workers and trade names on vehicles can be quite useful.
2. **Report** the incident immediately whatever the day or time to both the Blue Mountains City Council and the NSW Department of Planning, Industry and Environment.
Blue Mountains City Council contacts: phone 4723 5000 from the lower mountains or 4780 5000 from the upper mountains; or email council@bmcc.nsw.gov.au
If the clearing is ongoing it is best to phone.

NSW Department of Planning, Industry and Environment: phone Environment Line (131 555) or email info@environment.nsw.gov.au.

In both cases get a reference (or customer service inquiry) number for your reported incident.

3. **Follow up** your phone call by mailing or emailing a written statement (or a statutory declaration) and your evidence. Quote the reference number and request that you be informed of any action being taken or reasons for a decision not to act. Remember to ring/email back regularly to check on any action. Persistence matters!

**B: FOR THOSE WHO ARE PREPARED TO INVESTIGATE FURTHER AND/OR
WANT TO LEARN MORE ABOUT THE NEW LAND CLEARING REGIME**

Because of the complex set of laws, codes and processes now regulating clearing of native vegetation in NSW, the Blue Mountains Conservation Society cannot guarantee the accuracy of the information below. However, we provide a very basic outline of the new regime and steps you can take that should be sufficient for most situations that Blue Mountains residents would encounter.

- ***Urban areas in the Blue Mountains Local Government Area***

Most of the Blue Mountains Local Government Area (except for the National Park) is classified as 'urban' (land zoned 'R' residential, 'B' commercial, 'IN' industrial, 'RE' recreation and 'SP' special uses) or 'environmental' (land zoned 'E', except for E1 National Park). Native vegetation clearing in these areas is regulated in 2 ways depending on the type, scale, and reason for the clearing:

1. Clearing for a purpose that does not require development approval is regulated through the [State Environmental Planning Policy \(Vegetation in Non-Rural Areas\) 2017](#) (the Vegetation SEPP). The Blue Mountains City Council is responsible for assessing and approving permits to clear native vegetation or remove trees under the Vegetation SEPP in circumstances where a permit is required (see later). The Native Vegetation Panel may also have a role to play in assessing applications for clearing under the Vegetation SEPP (see later). Council is responsible for enforcing conditions of a vegetation clearing permit under the Vegetation SEPP.
2. Clearing that is for a purpose which requires development approval is regulated through the development assessment process under the NSW [Environmental Planning and Assessment Act 1979](#) (EP&A Act). The Council or another 'consent authority' is responsible for the development assessment and approval process. See the **Development Approval in the Blue Mountains** page for information on which developments are assessed and approved by the various consent authorities. The Blue Mountains City Council is responsible for enforcing the conditions of development consent for most development in the Blue Mountains, including land clearing.

Unauthorised land clearing – i.e. clearing native vegetation or removing trees without a permit or development consent (in circumstances where these are required) – is prohibited and can attract penalties or prosecution under the NSW *EP&A Act* and/or the NSW [Biodiversity Conservation Act 2016](#).

For a detailed explanation of the regulation of land clearing in ‘urban’ areas, see the Environmental Defenders Office fact sheet on [Clearing Trees on Urban Land and Environmental Zones](#).

- ***Rural areas in the Blue Mountains Local Government Area***

The areas in the Blue Mountains Local Government Area (outside of the National Park) zoned for ‘rural’ uses (RU zones, except for RU5 Village) – such as the Megalong Valley and Sun Valley, and Mount Tomah, Mount Wilson and Mount Irvine – are covered by the [Local Land Services Act 2013](#) (LLS Act) and the [Local Land Services Regulation 2014](#) (LLS Regulation), as amended in 2017. The areas of NSW covered by the *Local Land Services Act and Regulation* are mapped on the [Native Vegetation Regulatory Map](#).

The NSW Minister for Primary Industries is responsible for the LLS Act and Regulation, which is mainly administered by Local Land Services. The NSW Minister for the Environment has some responsibilities under the LLS Act and is responsible for the NSW [Biodiversity Conservation Act 2016](#).

All suspected illegal land clearing in areas classified ‘rural’ should be reported to the Department of Planning, Industry and Environment, as should clearing of listed threatened species and ecological communities (see p.1).

For a detailed explanation of the regulation of land clearing in ‘rural’ areas, see the Environmental Defenders Office fact sheet on [Clearing Vegetation on Rural Land](#).

- ***Land clearing in ‘urban’ areas and for development purposes may also be subject to Biodiversity laws***

Clearing of native vegetation in ‘urban’ areas and clearing that is for a development purpose will trigger the Biodiversity Offsets Scheme (BOS) under the NSW [Biodiversity Conservation Act 2016](#) in either of the following circumstances:

1. Where the proposed vegetation clearing exceeds a certain area on the block, called the [Area Clearing Threshold](#). This area is calculated with reference to the minimum lot size (MLS) covering the block or, if there is no MLS, with reference to the actual size of the block. See how you can find out what the MLS is in Step 2 below.
2. Where the block is included on the [Biodiversity Values Map](#). The Biodiversity Values Map identifies land with high biodiversity value, as defined in the [Biodiversity Conservation Regulation 2017](#). In the Blue Mountains, examples of land with high biodiversity value include land that contains listed threatened species and threatened ecological communities and/or is covered by private land conservation agreements.

Note that the Native Vegetation Regulatory Map (which identifies areas where the new laws apply) and Biodiversity Values Map are still being developed. For more information go to <https://www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity/biodiversity-offsets-scheme/entry-requirements/biodiversity-values-map> and

<https://www.environment.nsw.gov.au/topics/animals-and-plants/biodiversity/native-vegetation-regulatory-map>

Where the BOS is triggered the impacts on biodiversity must be assessed and offset. If the clearing is unrelated to development, the Native Vegetation Panel will be the approval body. Otherwise, the clearing will be assessed as part of the development assessment process by the relevant consent authority for that kind of development.

ACTIONS YOU CAN TAKE:

STEP 1: Collect evidence

Go to the **How to Collect Evidence** page for more detailed instructions. Note the address of the property, if possible.

STEP 2: Identify the land or block

When you get back home, refer to the Blue Mountains City Council's interactive maps and try to locate or identify the block. Go to the **How to View BMCC Interactive Maps** page for instructions on how to use the interactive maps. Once you have found the block in the interactive map, click on the 'map builder' icon at the top right of the screen. This will expand to reveal a choice of map overlays to view: topographic, public land, bushfire prone land, slope, vegetation community, LEP zoning, Environment (Biodiversity, Riparian Water, Scenic Values), Minimum Lot Size (MLS) etc. Take note of the land use zone (under 'LEP 2015 zones') and the MLS, if any.

From your sketch map try and identify where the area of disturbance is in relation to these features.

What to do if you've had problems trying to identify the block and finding the map information:

If you can't find the block, report the activity to both the Council and the NSW Department of Planning, Industry and Environment (see p.1)

If you are not sure of the land use zone and therefore whether the block or property is covered by laws regulating land clearing in 'rural' areas or in 'urban' areas, you should report the activity to both the Council and the NSW Department of Planning, Industry and Environment (see p.1).

What to do depending on the information you have found:

If the clearing involves mapped threatened species and/or threatened ecological communities, the [Biodiversity Conservation Act 2016](#) may apply. This means you should definitely contact the NSW Department of Planning, Industry and Environment. For information on how to report suspected illegal vegetation clearing impacting on threatened species, including what evidence to provide to the NSW Department of Planning, Industry

and Environment, click [here](#).

If the land is in the Blue Mountains National Park or any of the Water Catchment areas, you should contact the National Parks and Wildlife Service directly. For the Upper Mountains phone 4787 8877 and ask to speak to the Area Manager, or for the Lower Mountains phone 4588 2400 and ask to speak to the Area Manager.

If the land is in a 'rural' area ('RU' zones, except for RU5 Village) probably the best thing to do at this point is to report the clearing to both the Council and the NSW Department of Planning, Industry and Environment (see p.1). Send a statement and your evidence. It is very difficult to determine if bushland clearing has been done legally in 'rural' areas. See the Environmental Defenders Office fact sheet on [Clearing Vegetation on Rural Land](#).

If the land is in an 'urban' area (land zoned 'R' residential, 'B' commercial, 'IN' industrial, 'RE' recreation and 'SP' special uses) or 'environmental' (land zoned 'E', except for E1 National Park), **go to Step 3**.

STEP 3: Did the clearing need approval?

There is now a bewildering array of circumstances in which approval for tree and vegetation clearing is either required or not required under the Vegetation SEPP and NSW EP&A Act. However, note that in the Blue Mountains Local Government Area, a Council permit, Native Vegetation Panel approval or development approval is required to remove or lop almost all trees¹ and native vegetation, including for 'exempt' and 'complying' development². The only exemptions are removal of listed weeds or other 'non-prescribed' trees or vegetation (see [Blue Mountains Development Control Plan \(DCP\) 2015](#) Part C5 for details), removal of a dead or dying tree which is a risk to human life or property and is not required for habitat for native animals (see Vegetation SEPP), or removal of trees and vegetation which complies with the 10/50 Vegetation Clearing Code (see later).

There are **three** types of approvals for bushland clearing: a Council permit, approval from the state government's Native Vegetation Panel (NVP) or development approval from Council or other consent authority.

1. A Council permit is required under the Vegetation SEPP where:

- **the proposed clearing is for a purpose that does NOT require development consent.**
This applies mainly to situations where all that is proposed is the clearing of trees – not

¹ This includes *any* tree (native or exotic) which is over 4m in height and and/or over 4m in crown spread and *any* mallee formed *Eucalyptus* species no matter what size.

² If the extent of tree and vegetation removal for an 'exempt' or 'complying' development falls below the BOS threshold and the vegetation is covered ('prescribed') by the Council's Development Control Plan (as just about all native vegetation and larger exotic trees and trees in particular areas are), a Council permit is required. There are very limited circumstances where a permit will not be required. See [State Environmental Planning Policy \(Exempt and Complying Development Codes\) 2008](#) (the Codes SEPP). See the **Development Control in the Blue Mountains** page for an explanation of 'exempt' and 'complying' development.

clearing of trees for a particular development purpose. However, a Council permit will be required if an 'exempt' or 'complying' development requires native vegetation covered ('prescribed') by the Council's Development Control Plan to be cleared. Vegetation clearing for a proposed development that requires development consent will be assessed under the development approval process (see later).

- **the proposed clearing is below the BOS threshold.**

As previously described, the Biodiversity Offsets Scheme threshold (BOS threshold) is the point at which the proposed clearing will trigger the provisions of the Biodiversity Offsets Scheme. Council can only issue a permit if the proposed clearing is below the BOS threshold – that is, the clearing is under the limit calculated with reference to the Minimum Lot Size covering the block, and the land is not included the Biodiversity Values Map. For details see the Environmental Defenders Office fact sheet on [Clearing Trees on Urban Land and Environmental Zones](#).

- **the trees/vegetation are covered ('prescribed') by Council's Development Control Plan (DCP).**

A permit is required if the Council's DCP covers the trees and vegetation to be removed. However, because most native vegetation and trees, and any tree of a particular height and breadth, are covered by the Blue Mountains DCP, a permit will be required in most circumstances. See [Blue Mountains Development Control Plan \(DCP\) 2015](#) Part C5 for a list of prescribed trees and vegetation which require a permit to clear.

A permit is also needed to prune or remove heritage trees and clear in heritage conservation areas and on heritage listed properties.

Note again that clearing or lopping of native vegetation and trees in the Blue Mountains generally requires a permit or development consent. Where clearing is proposed as part of a development, it will be assessed as part of the development approval process by the Council or other development consent authority.

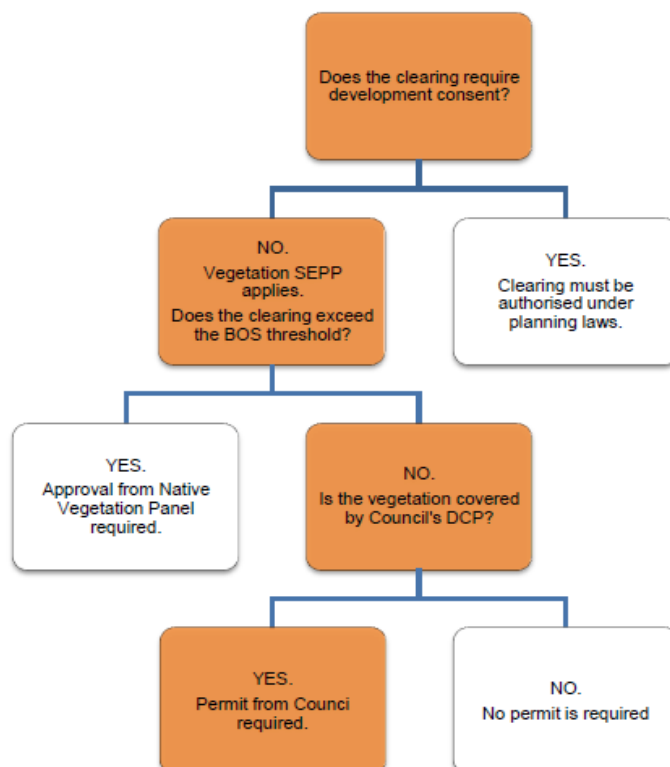
There is no requirement for the public, including neighbours, to be notified of an application for a Council permit or to be given the opportunity to comment on the application.

At this stage it is unclear if tree clearing permits issued by Council under the Vegetation SEPP will be available on the Blue Mountains City Council's website. It is probably best to contact Council to find out if a permit was issued (see p.1).

For information on Blue Mountains City Council permits see

<https://www.bmcc.nsw.gov.au/environment/trees-plants-and-weeds/trees-and-vegetation-on-private-land>

Here's a handy summary to help work out whether the clearing needs a **Council permit** under the Vegetation SEPP (from the Environmental Defenders Office Fact Sheet on Clearing Trees on Urban Land and Environmental Zones, p.5):



2. Approval from the state government's [Native Vegetation Panel \(NVP\)](#) is required where:

- **the proposed clearing is for a purpose that does NOT require development consent.** This applies to situations where all that is proposed is the clearing of trees – not clearing of trees for a particular development purpose. Land clearing for a proposed development that requires development consent will be assessed under the development approval process (see later).
- **the proposed clearing exceeds the BOS threshold.** That is, the proposed clearing exceeds the clearing limit relative to the Minimum Lot Size covering the block (or the actual size of block if there is no MLS), or the land is included in the Biodiversity Values Map.

Process of NVP approval

Where approval from the Native Vegetation Panel is required, the landholder must submit an application accompanied by a Biodiversity Development Assessment Report (BDAR) done by an accredited assessor.

There is no requirement for the public, including neighbours, to be notified of an application to the NVP or to be given the opportunity to comment on the application.

Approval/refusal of application

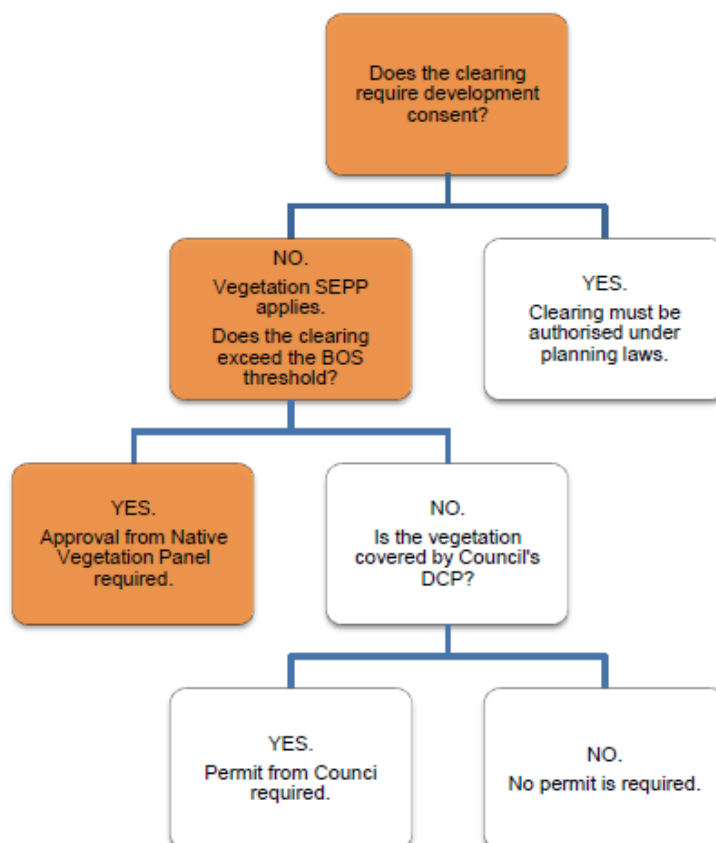
The NVP can approve the application but the conditions of approval *must* include the requirement that the applicant offset the impact on biodiversity values identified in the BDAR. The offset obligations can be met in several ways: in the form of biodiversity credits or cash paid to a biodiversity conservation action or to the Biodiversity Conservation Fund. See the Environmental Defenders Office fact sheet on [Clearing Trees on Urban Land and Environmental Zones](#) for a full explanation of the biodiversity offsets scheme.

The NVP can refuse the application if the proposed clearing is likely to have serious and irreversible impacts on biodiversity values. The landholder can appeal against the refusal to the NSW Land and Environment Court.

Public availability of vegetation clearing approvals issued by NVP

The NVP's [public information register](#) is meant to show approvals and refusals of applications. It currently indicates that no applications have been made to the Panel since the scheme began. This may mean that land clearing is being done under a self-assessable Code or through other avenues while the regulatory maps are still being developed. It is still not clear at this stage that a Panel has been appointed.

Below is a handy summary to help work out whether the clearing needs **approval from the Native Vegetation Panel** (from the Environmental Defenders Office Fact Sheet on Clearing Trees on Urban Land and Environmental Zones, p.7):



3. Clearing for a development that requires approval under planning laws (NSW EP&A Act):

Examples of development requiring the approval of Council or other 'consent authority' (depending on size, capital value etc of the development) include clearing to build a house or for a residential subdivision. Where a development requires consent from the relevant authority, tree and vegetation removal will be assessed and authorised as part of the development approval process.

A Biodiversity Development Assessment Report (BDAR) must accompany the Development Application if the development is likely to significantly affect threatened species or a threatened ecological community. The BDAR must be done by an accredited assessor and will set out the biodiversity values of the land that will be impacted and how those values will be offset.

See the **Development Approval in the Blue Mountains** page for details of how Development Applications requiring Council approval are assessed.

In many cases, neighbours are notified and the public invited to make submissions to Development Applications through advertisements in the *Blue Mountains Gazette*.

Development approvals and conditions of consent can be found on Council's or the relevant consent authority's websites. Where a BDAR was required, the consent authority must attach conditions requiring the applicant to offset biodiversity loss on the site. The consent authority can refuse the application if the proposed clearing is likely to have serious and irreversible impacts on biodiversity values but only for local/regional development. The landholder can appeal against the refusal to the NSW Land and Environment Court.

Circumstances where approval or permit for clearing native vegetation is not required

There are **two** circumstances in which there is no requirement for a permit or approval:

1. Clearing that is allowable without approval under the Vegetation SEPP:

Land clearing under the Vegetation SEPP does not require approval where:

- Council or the NVP is satisfied that the tree is dying or is dead AND not required as habitat for native animals
- Council is satisfied the tree is a risk to human life or property
- the proposed clearing is below the BOS threshold and the trees and vegetation to be cleared are not covered ('prescribed') by the Council's development control plan (see Council's Development Control Plan 2015 Part C5). This is a highly unlikely scenario in the Blue Mountains where almost all native vegetation and trees require a permit to be cleared except in the two circumstances above.

However, note that this is essentially a self-assessment, self-approval process. The public has no right to comment or be notified of clearing not requiring approval. In this situation the landholder is

requested (but not required) to notify the Council or Native Vegetation Panel about the land clearing and no public register is kept.

2. Land clearing under the 10/50 Vegetation Clearing Code

Land clearing may also be done under the '10/50' Vegetation Clearing Code of Practice in bushfire prone areas such as the Blue Mountains. *This code is separate to the new land clearing regime and to land clearing approved as part of a Development Application.*

If the vegetation clearing is very close to an existing house, it is possible that it was done under the '10/50' [Code of Practice](#). Since 1 August 2014, landholders living in a designated Vegetation Clearing Area (which includes most of the Blue Mountains and other bushfire prone areas) are permitted to clear trees on their property within 10m of the *outside wall* of their dwelling (not detached sheds or outhouses), and clear underlying vegetation (other than trees) within 50m of the *outside wall* of their dwelling, without seeking approval from Council or other authorities.

There is no register kept of land cleared under the 10/50 regime.

Clearing under the 10/50 Code is *illegal* in the following circumstances:

- Where vegetation clearing is outside the 'entitlement area' (you can check this at <http://www.rfs.nsw.gov.au/plan-and-prepare/1050-vegetation-clearing/tool>).
- Where a house is very close to the boundary and the house owner is clearing vegetation on a neighbouring property without that property owner's permission e.g. clearing vegetation on an adjoining Council reserve.
- If trees further than 10m from the wall of a house (not a detached shed or garage) are being removed. At least part of the trunk of the tree has to be within 10m of a house.
- If understory vegetation beyond 50m of a house (not a detached shed or garage) is being removed.
- On land with a slope greater than 18 degrees (or greater than 33%) unless in accordance with a Geotechnical Engineer Assessment Report.
- Within 10m of a Prescribed Stream as identified by the NSW Department of Planning, Industry and Environment.
- When graders, ploughs or dozers are used to clear vegetation i.e. disturbs the soil.
- Within areas identified by [Heritage NSW](#) as containing Aboriginal or other cultural heritage, unless in accordance with conditions.

At this point think about what circumstances above best fit the land clearing you have observed. If you are not sure or are feeling overwhelmed at this point, simply report the clearing to both the Council and the NSW Department of Planning, Industry and Environment (see p.1). But if you want to persist and think the clearing should be the subject of approval and/or wish to learn more, you can go to the next step.

Step 4: If the clearing seems to have required a permit or approval, find the documentation to check if approval was given and if the clearing complies with the approval/permit

How to find the various approvals/permits:

- **Council permit**

It is not clear if Council permits for land clearing will be available on Council's website. At this stage it is best to contact Council (see p.1.) and ask if a permit to clear land was applied for and granted and, if so, what were the conditions.

Does the land clearing comply with the permit? If it doesn't, contact Council (see p.1).

- **NVP approval**

The NVP's [public information register](#) is meant to show approvals and refusals of applications. It currently indicates that no applications have been made to the Panel since the scheme began, and it is still not clear at this stage that a Panel has been appointed.

The NVP approval is supposed to include details of the biodiversity offsets required.

Does the land clearing comply with the NVP approval, if you can find it? If it doesn't, contact the NSW Department of Planning, Industry and Environment (see p.1).

- **Development approval**

You can look up the Council's register of Development Applications and approvals. Go to the **How to Access a Development Application or Approval** page to find out how to access the register.

If you *can* find a development approval, read the conditions of consent and look at the site plans. Where a Biodiversity Development Assessment Report (BDAR) was required, the conditions must require the impacts to be offset in accordance with the BDAR. This must be done before the development is undertaken.

If you believe that the land clearing or tree removal exceeds what was approved, especially if this involves threatened species and/or threatened ecological communities, you should report this to both the Council and the NSW Department of Planning, Industry and Environment (see p.1).

What if you can't find a permit or approval?

If you *can't* find a Council permit, NVP approval or development approval associated with the works, it is possible that the land clearing was done legally under the Vegetation SEPP or did not require approval (see above). It is also possible that the clearing was done under the **10/50 Vegetation Clearing Code**, if it was near an existing house, but only if it complied with the 10/50 Code of Practice.

What to do if you suspect the 10/50 vegetation clearing Code of Practice has been breached

Report a suspected breach of the 10/50 Code of Practice to the Council (see p.1) and collect evidence. Note the date, time and address of the clearing, the name of the company doing the tree removal and/or number plates of their vehicles. Where possible, take photographs or videos. Even if you cannot stop illegal vegetation clearing as it is occurring, the evidence can be used to prosecute the perpetrators. And even if the clearing turns out to be legal, it is still important to make a complaint to Council.

Even though threatened species, populations, ecological communities and habitats listed in the NSW *Biodiversity Conservation Act 2016* are not protected from the application of the 10/50 vegetation clearing laws, you should report any clearing of known or suspected threatened species and habitats on the site to the Department of Planning, Industry and Environment's 'Environment Line' (131 555). For information on how to report suspected illegal vegetation clearing impacting on threatened species, including what evidence to provide to the Department of Planning, Industry and Environment, click [here](#). The information you provide could be useful for monitoring vegetation loss under the new land clearing laws and the 10/50 Code.

Also send a copy of your complaint to the Blue Mountains Conservation Society at bmcs@bluemountains.org.au. The Society will use this evidence to challenge the operation of the 10/50 Code and vegetation clearing laws.

STEP 5: What action can be taken if the vegetation clearing was not approved or was unlawful?

It is Council's duty to enforce compliance with the conditions of development consent and tree and vegetation clearing permits under the Vegetation SEPP. Where enforcement is Council's responsibility, if it does not respond to your enquiry in a timely and appropriate manner and the works are continuing and causing environmental damage, you should follow the further suggestions on the **How to Make an Enquiry at Blue Mountains City Council** page. Only when you have exhausted those options should you follow the suggestions on the **Further Action** page.

It is the NSW Department of Planning, Industry and Environment's responsibility to enforce the law in the case of clearing on rural land, or clearing that unlawfully harms listed threatened species and threatened ecological communities.

It is not clear at this stage which body will be responsible for enforcing the conditions of a Native Vegetation Panel approval for clearing – the Native Vegetation Panel itself seems yet to be established.

Unlawful clearing of vegetation can attract fines or, in the most serious cases, can lead to criminal prosecution under the NSW *EP&A Act* and/or the NSW [Biodiversity Conservation Act 2016](#). Contractors can also be fined even if they are acting under the land owner's authority.

Any person may bring civil proceedings in the Land and Environment Court seeking an order to restrain or remedy a native vegetation offence, but advice should be sought from the NSW Environmental Defenders Office.

However, it is best to persist in getting the Council or the NSW Department of Planning, Industry and Environment to do their job of enforcing the rules!

See more on compliance and enforcement of land clearing laws on the EDO's website:

<https://www.edo.org.au/publication/implementation-of-the-nsw-land-clearing-laws-part-3-compliance-and-enforcement/>

Case study: Vegetation clearing

Sources of Information for this page: NSW Environmental Defenders Office, Blue Mountains City Council, NSW Department of Planning, Industry and Environment.