

Draft Submission on

Explanation of Intended Effect for the State Environmental Planning Policy (Vegetation) 2017

Ku-ring-gai Council's Submission

Ku-ring-gai Council welcomes the opportunity to comment on the *Explanation of Intended Effect for the State Environmental Planning Policy (Vegetation) 2017* (EIE). However, as there is no draft SEPP instrument on exhibition it makes it difficult to provide informed comment as various details regarding the statutory provisions for administration and implementation of the proposed SEPP remain unknown. Council would welcome the opportunity to comment on the full draft SEPP provisions prior to it being finalised.

A separate submission from Ku-ring-gai Council is also being made on the other exhibited documents associated with the implementation of the proposed changes to NSW biodiversity and conservation laws.

Cumulative impact

Council is making or has made submissions on numerous legislative reforms released by the NSW state government over the past 24 months. Whilst these individual bills, amendments, codes, policies and guidelines have significant impacts on local government wide issues and procedures, it is the cumulative impact of the legislative reform which could potentially have catastrophic impacts on the environment.

Council is concerned that the overall impacts of the new legislative framework have not been sufficiently considered in regards to the pressures on the environment and particularly in regards to biodiversity.

It is noted that clearing allowed under existing SEPPs will still continue once the Vegetation SEPP is adopted. Other SEPPs will continue to allow tree removal in and around building and subdivision footprints, trees under a certain height, etc. Examples include the *Exempt and Complying Development Codes SEPP* and the *Infrastructure SEPP*. Council has also raised concern in previous submissions that the Government continues to expand the categories of complying development which will result in the ongoing depletion of the urban forest, including via the draft *Medium Density Housing Code (2016)* and draft *Education SEPP (2017)*. The current policy settings in these SEPPs make it all too easy to remove valuable tree cover, instead of improving landscape design principles to respect and enhance native vegetation, biodiversity and the urban forest.

Ku-ring-gai Council have provisions for biodiversity protection within its planning and assessment instruments, however, it is recognised that environmental protection is scarcely guaranteed without strong support from state legislation.

Council seeks reassurance from the State Government that the cumulative impacts of the legislative reforms on vegetation have been considered and request further information relating the quantification of potential impacts.

Recommendation

1. A systematic review should be undertaken of tree removal permitted via existing and proposed SEPPs, to ensure the aims of the Vegetation SEPP to preserve local and regional biodiversity and amenity are complement and not undermined.

Part A - The Urban Vegetation Context

The Ku-ring-gai local government area has significant endangered remnant native vegetation communities (Blue Gum High Forest, Sydney Turpentine Ironbark Forest, Duffy's Forest) as well as other native vegetative communities. However, much of these communities exist within private land as small remnants or individual trees or groups of trees. In addition the high quality landscaped character of the area is highly reliant on extensive and large exotic trees and gardens.

It has been and continues to be a key tenet of Council policy and planning controls to preserve the high quality, treed character of Ku-ring-gai. A key component of which is the day-to-day assessment and management of trees by way of tree works applications for individual trees of certain types or size.

Council is concerned that the proposed SEPP is overly focused on native vegetation and biodiversity, as reflected in the stated Vegetation SEPP Objectives (p14). The objectives and other statements in the document do not consider exotic or non-'native' vegetation or its contribution to the urban environment. The term "urban forest" is not used in the document.

A comprehensive Vegetation SEPP should also include an overarching framework for urban forestry or recognition of the need to increase canopy. It should also provide an incentive for compensation, increase in bushland or tree canopy. The aim should be to reduce and monitor the cumulative impacts on biodiversity, streetscape amenity and urban heat island effects and to protect and enhance urban tree canopy.

Recommendation

2. It is recommended that the Proposed Vegetation SEPP should:
 - Remove bias towards ‘native vegetation’ and include objectives that recognise the importance of all vegetation in urban areas, with exotic vegetation providing as many (in some cases more) benefits.
 - Explain the importance of Urban Forest benefits (social, economic and environmental – not just a biodiversity perspective).
 - Require Councils to include canopy cover targets and Urban Forest species diversity targets within their LEP and DCP.
 - Outline requirements for compensatory/ replacement tree planting.

Part B – Proposed Vegetation SEPP

Planning Controls for clearing Vegetation

It is proposed to repeal the Standard LEP provisions that give effect to tree and vegetation protection provisions in DCPs (clauses 5.9 and 5.9AA), and remake them in the Vegetation SEPP based on policy settings that are to be finalised after consultation.

Currently cl 5.9 enables Councils to define, within a DCP, trees and other vegetation and works to this vegetation which require consent, and works which do not. It is unclear as to whether the SEPP will replace specific tree preservation controls currently in place and whether or not Councils will be reliant on generic controls for tree preservation that may not consider or reflect the particular values of each Council area. Given the focus of the proposed objectives on native vegetation and biodiversity, how will the SEPP deal with consent for works to exotic trees, non-locally occurring native trees and small remnants or individual trees representative of native vegetation communities?

Ku-ring-gai Council currently has robust tree and vegetation protection provisions in its DCPs which addresses these issues and any changes under the proposed SEPP that would result in a weakening of these existing provisions should be strongly opposed.

Recommendation

3. It is recommended that clauses 5.9 and 5.9AA be retained in the Standard LEP provisions. Should the clauses be repealed and replaced by the Vegetation SEPP, appropriate savings and transitional provisions should be included so as to preserve existing tree and vegetation preservation provisions until such time Councils can implement alternate DCP provisions compliant with the Vegetation SEPP.

Requirements for Permit Applications

Council has concerns about the requirement to determine permit applications within 28 days. This will have considerable administrative and resourcing implications for Councils. The EIE is silent on how such a timeframe will be administered. Will there be stop-the-clock provisions for incomplete applications or external referrals? What are the implications for non-compliance with the statutory timeframes – deemed refusal or deemed approval? These matters need to be addressed in the Vegetation SEPP instrument or via regulations and be subject to further consultation prior to coming into effect.

Recommendation

4. It is recommended that if a statutory timeframe for determining applications is to be included in the Vegetation SEPP then it be accompanied by appropriate regulations that include stop-the-clock provisions and implication of non-compliance. These regulations should be subject to further consultation.

Clearing exemptions under the SEPP

The EIE identifies a number of exemptions for clearing and other activities under the proposed SEPP (p18). In regard to these, Council makes the following recommendations:

5. The term “Clearing of vegetation ” should be replaced with “Removal of vegetation”. In this regard the removal of an individual tree may not be considered under law to be clearing and as such Council would not have any controls over individual tree removals or damage.
6. In reference to “clearing exemptions” a) Clearing of vegetation that the Council determines poses a risk to human life or property (p18)”. This point should be expanded to indicate that “the risk has been evaluated by a tree industry recognised risk assessment methodology using a qualified tree risk assessor and the risk has been found to be unacceptable”.

Other exemptions

Council tree management officers are regularly faced with the situation, where individual trees which are potentially hazardous, or are in very poor condition, but which may form part of Blue Gum High Forest or Sydney Turpentine Ironbark Forest etc .and therefore require a an impact assessment under the *Threatened Species Conservation Act 1995*. These will generally be applications from individual land owners (“Mums & Dads”) for a tree works permit and the requirement for an impact assessment is both onerous, expensive and would delay decision making in situations where the tree really should be removed for safety reasons.

Council would support a clause in the Vegetation SEPP recognising that where individual trees are potentially hazardous and where Council is satisfied this is the case, and has considered whether the tree or vegetation is required as habitat for native fauna, that a permit or DA may be issued for removal without the need for a separate impact assessment.

Recommendation

7. That the Vegetation SEPP includes an exemption from the requirement for an impact assessment under the *Threatened Species Conservation Act 1995* for individual trees that are potentially hazardous and where Council is satisfied this is the case, and has considered whether the tree or vegetation is required as habitat for native fauna.