



*A community that recognizes and values urban ecosystems and the contribution of trees
as a significant part of the urban form*

Local Government NSW

28 Margaret Street Sydney 2000

Attn: Kirsty McIntyre

6 May 2017

**Local Government Tree Resources Association Submission on the SEPP
Vegetation.**

The Local Government Tree Resources Association (LGTRA) membership is made up of both Local Government and State Government organisations, such as Centennial Park & Royal Botanic Gardens and the Land & Environment Court. The purpose of the LGTRA is to promote the value and benefits of (all) trees within the context of the Urban Forest.

These Urban Forest benefits include, but not limited to; shade, stormwater interception, microclimate regulation, improved air quality, heat island reduction, social benefits and biodiversity benefits.

The tree component of the Urban Forest is made up of local endemic, non-local native and exotic species. The percentage of each group is variable in any given Local Government Area with a general increase in the percentage of the exotic species group in denser urbanised areas. This is due to a range of reasons but includes; the predictability of how some exotic species perform, their capacity to colour a densely constructed landscape and, that deciduous species make cities more liveable in winter due to increased solar access.

Whilst each Council area determines its focus on these species groups, in general there is not a bias of native over exotic in tree management. The same physiological and biomechanical principles are applicable regardless of the species origin; therefore the Australian Standards for Tree Protection (AS4970-2009) Pruning (AS4373-2007) and Purchasing (AS2303-2015) apply to all. The current LGNSW Urban Forest policy does not provide a separation, but rather captures all vegetation (including trees) under the umbrella of the Urban Forest.

The following comments are made in the context of the above information:

1. The EIE indicates two approval pathways are proposed for management of vegetation. It is our understanding that;

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- *Pathway 1* – Clearing above the BoS threshold is focused on achieving the outcomes of the NSW land management and biodiversity conservation reforms (i.e. clearing native vegetation and protection of biodiversity).
- *Pathway 2* – Clearing below the BoS threshold is meant to focus on vegetation (predominantly trees) located within urban areas currently protected under Clause 5.9 and 5.9AA of the Standard LEP instrument.

It is considered that the proposed application of the SEPP is too narrow with its focus on native vegetation and biodiversity. By default the non-native vegetation (Trees) are offered no protection. Due to the proposed repeal of Clause 5.9 and 5.9AA in the Standard Instrument LEP it is essential that this SEPP recognises the importance of both native and non-native vegetation as contributing to the benefits of a city's Urban Forest.

Without this recognition there is the potential for the weakening of urban tree protection measures, and undermining of urban forest policies and strategies being pursued by various Councils.

NB 1: There is concern with the current wording at 5.9 and 5.9AA of the Standard LEP Instrument, where Pruning as defined in AS4373-2007 is not included. A number of Councils make pruning exempt development provided certain criteria are met; however the current wording makes incorporation of Pruning into a DCP difficult.

NB 2: Additional concern is where DCPs include only native trees as Prescribe Trees. This by default means *ringbarking, cutting down, topping, lopping, removal, injuring or destruction* (LEP 5.9AA) can be applied to non-native species in urban areas.

Other than removal these actions in LEP 5.9AA are known to create unacceptable risk and result in creating potentially dangerous trees. Lopping and Topping are defined in the Pruning Standard AS4373-2007 as unacceptable practices; therefore Councils should not be approving these actions. There is a range of suitable pruning options under AS4373-2007 to address a range of circumstances that provide sustainable outcomes.

NB 3: Further information is required or needs to be considered on how Councils will enforce compliance matters surrounding vegetation once Clause 5.9 and 5.9AA in the Standard Instrument LEP are removed. There will be no nexus between legislation allowing Councils to enforce penalties for unlawful tree removal or damage. The proposal for Council's to manage prescribed exotic vegetation within DCP's and native vegetation within the vegetation SEPP is a disjointed approach to managing the urban forest.

In repealing clause 5.9 (where development consent is required for works) what mechanism will there be, or what are the enabling provisions for prosecution? 'Will Council's delegated officers enforce penalties under the Biosecurity Act for native and the EPA for exotic?'

Recommendation 1:

- A. It is recommended as a first preference, that clauses 5.9 and 5.9AA be retained in the LEP Instrument for existing developed land, with this strengthened to ensure that native vegetation is prescribed in any DCP. This would address the

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intent of the SEPP, as stated on page 7 of the EIE, is to provide a "consistent" approach to regulating native vegetation when applied to residential areas, or

- B. Should the LEP clauses 5.9 and 5.9AA be repealed and incorporated into the SEPP Vegetation, then it is recommended that: Pathway 2 is broadened to ensure the Urban Forest benefits are defined and integrated into the planning framework. The following wording should be incorporated into the SEPP:

When preparing draft Development Control Plans for any land to which this SEPP applies, the council shall:

- a) have regard to the general and specific aims of the SEPP, and*
- b) specify canopy cover targets for each land zoning (Outlined in the EIE on pages 14 and 15), and*
- c) specify the frequency of measuring canopy cover to ensure the application of the SEPP is being achieved, and*
- d) specify species diversity targets (i.e. family, genus, species), and*
- e) require compensatory planting when a protected tree is removed*

Recommendation 2:

Within the objectives listed on page 14 of the EIE, the following point should be included;

The proposed Vegetation SEPP's objectives are to:

- protect, enhance and optimise vegetation provided within an urban forest, to maximise the social, environmental and economic benefits provided by the urban forest, and distribute these benefits equitably to the NSW community.*

Recommendation 3:

The following recommended additions and amendments of clauses 5.9 and 5.9AA be included when incorporated into the SEPP Vegetation:

- Amend Clause (1) to include recognition of urban forest and canopy cover benefits
 - Pruning added as its own clause
 - Risk better defined (imminent and unacceptable) in clause (6)
 - Delete 'Heritage Conservation Area' from Clause (7a), (7c) and (7d)
2. Clarification is required as to the term 'clearing' on Page 12 and the thresholds relating to lot size reflected therein. How does this apply to singular multiple tree removals within a lot as opposed to an entire portion of a lot which is assumed as described therein? And how does it apply to land in built urban areas?
3. Under "clearing exemptions" page 18 point a) Clearing of vegetation that the Council determines poses a risk to human life or property. This point should be expanded to

indicate that *"the risk has been evaluated by an arboricultural industry recognised risk assessment methodology, and undertaken using a suitably qualified arborist"*.

4. The EIE outlines that Clause 5.10 Heritage will not be included within the SEPP. This position is supported, however key changes are required to Clause 10 to assist in its management. Councils, such as the Inner West of Sydney and inner city areas of Newcastle, have significant proportions covered by heritage conservation zones. Due to the extent of these zones, a large proportion of tree applications require a Development Application. This requires considerable Council resources, and is also an increased cost for the community in managing their trees.

Recommendation:

It is recommended to amend Clause 5.9 to remove the requirement for development consent under clause 5.10, except for trees that are associated with Heritage Items or trees listed as significant or Heritage Listed Items within an LEP or State register, and not just due to their location within a heritage conservation area.

5. The EIE outlines that the SEPP will provide administrative requirements including requirement for councils to determine permit applications within 28 days.

Recommendation:

It is recommended that this timing be increased to a 40 days to maintain consistency with other development application timing. Importantly, this requirement may result in resource implications for many Councils, where often there is only one tree management officer.

6. The EIE makes reference in several places about the role of LLSA and/or accredited assessors being involved in the assessment of Vegetation applications, presumably only those under Pathway 1 – Clearing above the BoS threshold. Councils are the appropriate authority for determining all urban tree/ vegetation requirements under Pathway 2, which is consistent with the current process.

Recommendation

It is recommended that the SEPP clearly outlines the authority responsible for the different pathways processes, and that Councils are delegated as the authority for determinations under Pathway 2

7. Clarification is required on how biodiversity credits are utilised? Will there be provision for allocated funds to be provided to Councils to assist in the management of mapped conservation areas within public lands?
8. There is no definition for Clearing and this does not identify works that are covered such as Pruning and Removal. The definition of "clearing" is critical from Councils perspective as it has varied implications so we will need a clear definition, as well as the inclusion of pruning and removal placed in the SEPP with definitions outlining their differences.

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Recommendation:

That tree pruning and removal on existing residential lots are defined into four tiers under the SEPP:

Pruning (minor works, SEPP allows for DCP to determine if Permit or Exempt with criteria),

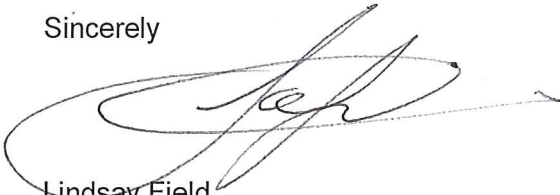
Removals Minor (1 to 3 trees allow DCP to determine requirements),

Removals Major (4 to 10 trees DCP to determine requirements),

Clearing High (>10 trees or vegetation >1000m² in area)

Should you have any questions please contact me on email@lgtra.com or Phone 0408 806 268 (mobile).

Sincerely

A handwritten signature in black ink, appearing to read 'Lindsay Field', with a large, sweeping flourish extending to the right.

Lindsay Field

President

Local Government Tree Resources Association

