

21 June 2017

Land Management and Biodiversity Conservation Reforms Office
NSW Department of Planning and Environment
PO Box A290
Sydney South NSW 1232

**SUBMISSION ON PROPOSED STATE ENVIRONMENTAL PLANNING POLICY
(VEGETATION) - (VEGETATION SEPP)**

Dear Director,

This submission is being made by Shellharbour City Council (SCC) in response to the exhibition of the Explanation of Intended Effect (EIE) that proposes to introduce a new State Environmental Planning Policy (Vegetation) – (Vegetation SEPP).

SCC recognises the importance of protecting vegetation within lands zoned for urban (residential, business, industrial, recreational and special uses) and environmental management (E2, E3, E4 and RU5 zoned land) within the Shellharbour local government area (LGA) and that there is a need for the proposed Vegetation SEPP to fill a gap identified in the *Biodiversity Conservation Act 2016* (BC Act) and *Local Land Services Amendment Act 2016* (LLS Act), both introduced by the NSW State Government under the recent Land Management and Biodiversity Reforms.

It is understood that the Vegetation SEPP aims to manage the clearing of native vegetation that does not classify as a development or activity that requires development consent under Part 4 or Part 5 of the *Environmental Protection and Assessment Act 1979* (EP&A Act), and provide alternative avenues for assessment depending on whether the proposed clearing exceeds the biodiversity offset scheme thresholds outlined in the BC Act.

While it is deemed appropriate that the Vegetation SEPP applies to urban-zoned land, it is unclear why it is relevant to environmentally zoned lands, as these areas have been zoned accordingly to recognise their important biodiversity value. It would be more appropriate for the Biodiversity Offset Scheme's Sensitive Values Mapping to include all environmentally zoned lands within all local government areas so that the BC Act automatically applies to the assessment of any proposed vegetation clearing within these areas. This would ensure the current legislative controls are maintained and a more rigorous assessment can be undertaken for Environmental zoned land.

It is unfortunate that the draft Vegetation SEPP (including minimum DCP requirements for all Councils and all possible exemptions) has not been exhibited with the EIE. It is difficult to comment on the proposed SEPP without knowing specifically what is proposed. From what is known however, it appears that SCC's regulatory responsibilities for clearing that falls under the biodiversity offset thresholds have not changed as SCC's current process requires a Tree Management Permit to be issued under Part 3 of the *Environmental Planning and Assessment Act 1979* (EP&A Act). SCC's current permits framework is outlined in our DCP Chapter 21 - Preservation and Removal of Trees or Vegetation which are legally enforceable under Clause 5.9 and 5.9AA of the Standard Instrument LEP (SI LEP). As the Vegetation SEPP requires the

removal of Clause 5.9 and 5.99AA however, it is imperative that the Vegetation SEPP contain the same level of legislative strength and include requirements for development consent to remove vegetation. However, the recent Land Management and Biodiversity Conservation Reform Webinar for Local Government held on Wednesday 31 May 2017 (the Webinar) stated that the major change of the proposed Vegetation SEPP from the current legislative process is that it will *"no longer be possible for Council's to require development consent for clearing of vegetation below the BAM thresholds apart from in relation to heritage vegetation"*. If the proposal is to move towards a permit based system issued through Council's individual DCPs, is not the provision of a permit with enforceable conditions the issuing of development consent?

The information provided in the Webinar stated that there will be no obligation for Councils to update their DCP, however it appears that the success of the Vegetation SEPP will be in the strength of each council's relevant DCP chapter, which will outline the conditional requirements of the permit system (development consent). The Vegetation SEPP should outline the minimum permit assessment requirements and conditions of consent in which all relevant DCP chapters need to be based upon. The Vegetation SEPP should not diminish the current protection of vegetation under the SI LEP.

One specific area that the Vegetation SEPP should detail is how to manage the cumulative effect of individual permits issued for subsequent tree removal. The Vegetation SEPP should define a 'clearing event' and provide a time frame for further clearing approvals on an individual property. For example, if an applicant lodges a tree clearing permit for the removal of an area of vegetation on E3 zoned land that does not trigger the BC Act thresholds and gains approval for this clearing through a Council permit, what regulations are proposed to prohibit that applicant or subsequent land owners from lodging another application for a permit to clear the adjacent patch of vegetation that also does not trigger the BC Act thresholds where both clearing events combined would potentially trigger the BC Act thresholds? A legislative mechanism similar to that in the current Routine Agricultural Management Activities (RAMA's) under the *Native Vegetation Act 2003* would be useful in that permits for the clearing of native vegetation can only be issued on each individual property every certain amount of years, with any subsequent clearing within this timeframe only approved for regrowth vegetation i.e. vegetation younger than 15 years in age.

Additionally, it is not clear how the Vegetation SEPP will interact with the NSW Rural Fire Service 10/50 Vegetation Clearing Scheme which allows the clearing of trees and undergrowth vegetation without seeking approval to protect homes from the threat of bushfire. The accumulative impact of clearing of vegetation through to 10/50 code, which allows the removal of all trees within 10m of a dwelling and all undergrowth vegetation within 50m of a dwelling, coupled with the development consent to remove additional native vegetation under the Vegetation SEPP permit system may result in a significant loss to biodiversity within any particular area. In this case, the Vegetation SEPP should outline that the predicted or achieved 10/50 code vegetation loss be taken into account when calculating whether a permit application will or will not trigger the BC Act thresholds?

It is also recognised that the practicality of Council implementing and monitoring the Vegetation SEPP raises the following issues in regards to staff resourcing if the proposed legislation is to be effective:

- Staff will be required to monitor approved vegetation removal permits to ensure that the permits are carried out in accordance with the conditions of approval.
- Staff will be required to detect and police private landowners who are clearing vegetation without a permit aka 'clearing by stealth' and 'death by a thousand cuts'.
- Staff and systems will be required to allow Council to monitor subsequent tree permit applications for clearing that falls under the BOS thresholds individually, however continuous clearing when combined would trigger the BOS thresholds and require referral and assessment to the Native Vegetation Panel (NVP).

- Additional resourcing may be required where the delegation from the NVP for assessing applications above the BOS thresholds are assigned to Council.

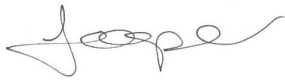
It is recognised that the EIE does not provide any clarification around how the Vegetation SEPP will/will not provide provisions for proposed vegetation clearing within State Significant Precincts.

Table one attached provides responses to the targeted questions outlined in the EIE.

The submission has been prepared by staff with relevant technical expertise in biodiversity assessment for developments, planning proposals, strategic land use planning and natural areas management.

Please contact Tuesday Heather, Environment Officer on (02) 4221 6111 should you require any further information.

Yours sincerely

A handwritten signature in black ink, appearing to read 'Jodie Cooper', with a stylized, flowing script.

Jodie Cooper

Environmental Officer

Table 1- Shellharbour City Council response to targeted questions outlined in the Vegetation SEPP Explanation of Intended Effect (EIE)

| Question | Response |
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| <p>Question 1 – <i>Is the granting of development consent appropriate for the clearing of heritage vegetation or would a permit be as equally effective a mechanism for regulating heritage vegetation?</i></p> | <p>Council supports not repealing Clause 5.10 of the Standard Instrument. In addition to Clause 5.10, Shellharbour Council also lists heritage trees and vegetation in <i>Schedule 5 Environmental heritage</i> of Shellharbour LEP 2013. Clause 5.10 of Shellharbour LEP 2013 and the relevant Shellharbour DCP Chapter on European Heritage contains provisions that continue to assess, manage and conserve Heritage vegetation in regards to clearing.</p> <p>Using development consent as the mechanism for regulating heritage vegetation in the Shellharbour LGA ensures that the assessment of heritage vegetation is undertaken by persons that are qualified to make an objective assessment, i.e. a minimum requirement for an Arborist Report provided by an AQF5 or higher accredited arborist and a Heritage Impact Assessment completed by a suitably qualified heritage consultant.</p> <p>Therefore Council supports the mechanism of granting development consent as the best appropriate means of regulating heritage vegetation to ensure additional consideration of vegetation that also holds heritage significance. This option is further supported, particularly as clear details of what a permit will entail has not been made available at this stage.</p> |
| <p>Question 2 – <i>Do you think that all clearing of native vegetation on land in urban areas and land in environmental zones should require development consent if it exceeds the BAM thresholds?</i></p> | <p>Regardless of whether the native vegetation proposed to be cleared exceeds the BAM thresholds <u>or not</u>, it is imperative that the proponent seeks development consent. This is particularly important for any vegetation which forms part of a threatened ecological community or supports known records or potential habitat for threatened species and or populations currently listed under the state <i>Threatened Species Conservation Act 1995</i> (TSC Act) and/or the federal <i>Environmental Protection and Biodiversity Conservation Act 1999</i> (EPBC Act). The removal of the requirement to gain development consent for the removal of native vegetation will lessen the current legislative controls.</p> |

Question 3 – *What involvement do you think councils should have in assessing clearing applications above the BOS threshold? For example, they could be notified of clearing applications, asked to review or comment on applications, or the role of the Native Vegetation Panel could be delegated to Council.*

Unfortunately the EIE fails to provide sufficient information regarding the proposed Native Vegetation Panel (NVP), in particular who will chair the panel and what qualifications the panel members will have to assess applications to clear native vegetation, in particular their ability to assess biodiversity loss. Some clarification was provided in the Land Management and Biodiversity Conservation Reform Webinar for Local Government held on Wednesday 31 May 2017 (the Webinar) where it was stated that the NVP will be made up of a team of experts who are qualified in biodiversity assessment, however it was also outlined that the NVP will also be assessing each application on their social and economic merit to examine the benefits and risks of the proposed clearing. The NVP will assess the BAM assessment submitted with the application and will determine the appropriate offsetting requirement and/or will refuse the application if it is deemed to have a serious or irreversible impact on biodiversity. No information has been provided however on how this potential impact will be determined.

It remains unclear why the NVP is proposed to be administered under the LLS Act (2016) and not the BC Act (2016), considering that an assessment by the NVP is triggered when the proposed vegetation clearing exceeds the BOS thresholds, outlined in the BC Act. The LLS Act should not have any administrative control over the management of vegetation in urban zoned areas just as the Minister of Primary Industries should not be determining approvals or offset requirements for the clearing of native vegetation outside of rural areas (i.e E zones and Urban areas) by being the signatory of the NVP. All vegetation clearing proposed to exceed the BOS thresholds should be assessed by the Minister for the Environment under the BC Act.

If selected applications or all clearing applications assessed under the NVP are referred to Council for comment and/or the entire assessment decision deferred to Council, it is unclear what additional resources the Department of Planning proposes to offer to provide this service. No information has been provided in the EIE regarding how the NVP will operate in terms of the assessment process and the timing for processing each application, if the panel will determine which applications it assesses, nor if a dual consent role would be in place.

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| <p>Question 4 – <i>What guidance do councils require about the ways the Vegetation SEPP might change DCPs?</i></p> | <p>Inadequate information has been provided at this stage in the consultation process to provide comment on Question 4, however the Vegetation SEPP should embody mandatory provisions that mandate the same level of legal force that the current LEP provisions (clause 5.9 and 5.9aa) hold, and further provide an easier application than the current process. In addition to this, the new process should be applicable to all non-standard LEPs.</p> <p>It is vital that the proposed Vegetation SEPP outlines minimal DCP requirements that ensure adequate assessment to safeguard native vegetation. A template/model clause for DCP's would be useful including a clear description of the thresholds, however, there also needs to be scope to include flexibility to any DCP template, to allow Council's individual DCPs to outline local government area specific assessment requirements and conditions of consent.</p> <p>Council's require more information around what the proposed permit requirements will entail under the Vegetation SEPP and how Council is to determine whether a permit or development consent is required on a case by case basis.</p> <p>SCC supports the removal of the right to appeal the decision to refuse a vegetation clearing permit.</p> |
| <p>Question 5 - <i>Do councils think that the Vegetation SEPP should provide mandatory exemptions for any other types of clearing? For example, the Native Vegetation Act 2003 allows councils to permit clearing for routine agricultural management activities without the need for a Property Vegetation Plan, development consent or permit. Should the Vegetation SEPP provide that all councils should allow this type of clearing if it is below the BAM threshold?</i></p> | <p>SCC does not support the notion that councils should allow the clearing of native vegetation without further assessment regardless of whether it is below the BAM threshold as it will lead to further unintended consequences for uncontrolled loss of native vegetation and habitat for threatened flora and fauna species, similar to that which occurred and persists through the introduction of the 10/50 clearing code & under the <i>Native Vegetation Act 2003</i> RAMAs. Any further exemptions, other than the ones proposed in the EIE will lead to the removal of the need for development consent through a permit based system under the proposed Vegetation SEPP.</p> |