Institute of Australian Consulting Arboriculturists (IACA)

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Comments – Draft Vegetation SEPP

Focus of the Draft Vegetation SEPP

- The draft Vegetation SEPP has arisen out of biodiversity conservation objectives. It states, "the proposed Vegetation SEPP is intended to help protect vegetation in urban areas … to conserve local and regional biodiversity." The SEPP has four objectives. Three of these relate to native vegetation and biodiversity. The draft Vegetation SEPP focusses almost entirely on protecting biodiversity and native vegetation. There is extremely limited discussion in the draft Vegetation SEPP about urban vegetation other than native vegetation.

- Whilst there is no question that biodiversity objectives are fundamentally important, the strong bias of the SEPP towards native vegetation and biodiversity conservation undermines the importance and value of urban forest. That is, "the totality of trees and shrubs on all public and private land in and around urban areas (including bushland, parkland, gardens and street trees) ... (which) is recognised as a primary component of the urban ecosystem." (LG NSW, Urban Forest Policy, 2003)

- The SEPP mentions that councils may regulate 'clearing' of non-native vegetation where it is identified in the DCP, "for aesthetic or cultural reasons." This totally ignores the urban forest values and benefits of trees. Mitigation of heat, improved air quality, stormwater benefits, carbon sequestration and storage, enhanced liveability, economic benefits, social benefits, etc are not mentioned.

- The fourth objective is to establish a "more robust scheme" for vegetation clearing to be controlled by council issued permits. The draft Vegetation SEPP does not articulate what makes the scheme 'more robust'. Sections 5.9 and 5.9AA of the Standard Instrument LEP will be repealed and replaced in the SEPP. Whilst moving tree protection from LEPs to a SEPP elevates it in the planning hierarchy, it is the detail within the instrument that will affect the robustness. The EIE states that "the proposed framework … is similar to that already in place … under Clause 5.9 …", so how is it more robust?

- If the objective is to make tree protection clauses more robust, this can be achieved through improved wording in the standard LEP, and by making 5.9 and 5.9AA non-discretionary. Currently the DCP prescribes what vegetation is protected. The SEPP or the LEP should decree what is prescribed, ensuring a minimum standard across the state.

- The only noticeable change is a requirement for councils to determine tree permit applications within 28 days. This will not make tree protection more robust. It will add pressure on council resources, especially smaller councils, and will likely result in an increase of inappropriate tree removal. Tree removal applications that take a long time are those which are more complex and

require considerable investigation and consideration. The trees are often larger, older, more significant trees.

- The draft SEPP ignores urban forest policies and/or strategies of a significant number of councils in NSW. Local Government NSW has an urban forest policy. The Draft Vegetation SEPP does not mention 'urban forest'. 'Green infrastructure' is recognised as being fundamentally necessary to the urban fabric, and needing to sit alongside grey infrastructure in its importance to a liveable city. 'Green infrastructure' is not mentioned. This is not just difference in terminology. The whole concept of urban forest and green infrastructure is missing.

- The concept of achieving urban canopy is ignored. The importance of this concept has been recognised by both federal and state governments who have indicated a desire to improve canopy levels to improve urban liveability. The Greater Sydney Commission District Plans recognise the need for urban canopy and include, "protect, enhance and extend the urban canopy," as a priority action.

- The values and benefits derived from urban forest / green infrastructure / urban canopy are not mentioned or considered in any way.

    - Heat – urban heat island (UHI) effect considerably exacerbates the increasing urban temperatures resulting from climate change and can be mitigated by urban canopy and strategically planted urban forest.

    - Air quality – poor urban air quality is related to respiratory disease which is currently one of the biggest killers.

    - Health – there is considerable evidence that links human morbidity and mortality to urban forest canopy cover.

    - Liveability – heat, air quality, biodiversity and access to green space influence liveability. Healthy urban forest canopy directly influences these factors and so has a direct bearing on improved liveability.

    - Stormwater – interception, capture, evaporation, reduced soil compaction and reduced runoff.

    - Reduction in energy usage through strategic cooling.

    - Carbon sequestration and storage.

Summary

The Draft Vegetation SEPP is fundamentally flawed in that it ignores essential issues.

It does not appear to be necessary given the existing controls through the Biodiversity Conservation Act 2016, the Local Land Services (Amendment) Act 2001 and the Standard Instrument LEP.

Recommendation

Pathway 2, *Clearing below the BAM threshold*, should be completely re-thought with input from urban forest managers and informed by national and international research.

Alternatively, the existing controls through the Standard LEP Clauses 5.9 and 5.9AA should be retained, and amended if and where necessary.

If the Vegetation SEPP proceeds with the proposed Pathway 2

- Tree removal and clearing need to be defined. Is clearing one tree? Two, three?

- The Draft SEPP proposes that clearing not explicitly regulated will be exempt. This is not supported. It is recommended that any exemptions for tree removal / clearing should be explicitly regulated in the DCP.

- Exemption – "clearing of vegetation that the council determines poses a risk to life or property." The wording is carried over from previous instruments and policies. It is archaic and needs to be improved. The concept is fine but the wording is too simplistic and its application is uncertain and inconsistent.
    - Virtually every tree poses a risk. Some risk. In the right circumstances, eg. Extreme storm.
    - Removal of a tree / trees can pose risks also.
        - Increased exposure and increased likelihood of wind damage to other trees / buildings. Tree provide protection to rigid structures by absorbing kinetic energy from wind.
        - Increased heat, poorer air quality, increased likelihood of violent behaviour, including domestic violence
    - What is determined as "a risk" will vary considerably from council to council. Better resourced councils will have appropriately qualified arborists who have expertise in tree risk management. Lesser-resourced councils will either need to rely on external expertise, or more problematic, rely on conservative determinations of people who are inappropriately or inadequately trained in tree risk assessment. It is conceivable that people who have no expertise in tree risk management will determine "a risk". Understandably they could see any risk as "a risk" and determine that the tree poses "a risk".
    - Defects in trees that are considered a hazard are often important as wildlife habitat. Eg, hollows, lifted bark over cambial damage, etc.
    - A tree in relation to potential bushfire could be considered "a risk" and council would need to permit its removal, despite whether the area is covered by 10/50 or not.
    - Should require tree risk assessment by an appropriately experienced arborist, with AQF level 5 qualification in arboriculture, in accordance with an industry-accepted tree risk assessment methodology.
    - Should provide for compensatory tree planting.

- A requirement for councils to determine permit applications within 28 days –

    - makes the process less robust, not more robust
    - Will require more resources and disadvantage smaller, less-resourced councils
    - Generally applications that take longer do so because they are complex, usually with removal of high retention value trees being sought. Low retention value trees are generally managed more expediently and consequences of loss are less significant.
    - Limits time available for councils to obtain expert assessment.
    - Requires councils to be able to 'stop the clock' whilst additional information is sought.
    - Will drive councils to more often seek arboricultural reports due to resource and time constraints.

- The Vegetation SEPP should not necessarily be subservient to all other SEPPs. Eg. Infrastructure SEPP, Education and Child Care SEPP. It should be developed as an over-arching SEPP for vegetation. Its goals aim to conserve biodiversity. A SEPP with other goals may result in loss of biodiversity unnecessarily.

- The Vegetation SEPP should define a "tree". Currently a "tree" is defined differently, usually by size, in different DCPs.

- Compensatory tree planting – if urban canopy targets are to be achieved, there needs to be recognition of the need for compensatory tree planting.

- Compensatory planting should be provided when trees classified as weeds are removed. Otherwise the general benefits that trees (weeds, exotic, native and indigenous) provide are lost.

- Removes the ability for Council to receive a DA to assess tree removal. For example, it could be appropriate for a council with a Significant Tree Register (STR) to require a DA for removal of trees listed on its STR.

- If 5.9 and 5.9AA of the Standard LEP are deleted, it would be an appropriate time to amend 5.10 by deleting "Heritage Conservation Areas." Many trees that do not have heritage significance grow in Heritage Conservation Areas (HCAs). These should be assessed and managed through the planning regime in the same way as other trees.