

6. Pedology, the Law and Urban Soils in NSW, Australia

HAZELTON P. A.

University of Technology, Sydney Australia

Abstract:

In NSW Australia, to prevent degradation and loss of native bush land, the Scientific Committee has made specific determinations concerning the presence of Endangered Ecological Communities such as Swamp Schlerophyll Forest or Shale Sandstone Transition Forest. Soil is also described; however, none of the traditional soil classifications have been used. According to the Determination of the Scientific Committee for an endangered community to exist there is a specific relationship between the vegetation type and a specific soil. However, the poor descriptions of soil within the Determination have resulted in conflict as to whether or not the vegetation belongs to the specific Endangered Ecological Community in question. Therefore, the difficulty lies in determining whether in fact the 'soil' as described and its position in the landscape is actually underlies the identified potential endangered vegetation. This lack of specific soil information and classification has resulted in significant legal implications. The sites where these Communities occur are often rural areas that fringe expanding urban areas. Developers and landowners if unaware of or have not considered the implications of clearing the vegetation are liable to court action such as significant fines and in some extreme situations jail.

Pedologists have the expertise to determine the soil type and its position in the landscape. They are needed to determine for all stakeholders, including the legal profession whether the soil is that which is described by the Committee and thus whether there is a significant relationship between the soil and vegetation for that Endangered Ecological Community to exist.

This paper describes two such cases which were tried before the Land and Environment Court of NSW Australia. The first case was to prevent residential development (because of the presence potential of a possible endangered community) and the other case involved prosecution for the removal of large number of trees (another perceived endangered community) on an urban property which was tried as a criminal prosecution. In both situations the expertise of the pedologist was vital in determining the outcome of both cases.

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Information of corresponding author

Full Name: Pamela Hazelton

Organization: University of Technology, Sydney

Mailing address: Faculty of Engineering and IT, Building 2 level 5, University of Technology,
Sydney, PO Box 123 Broadway 2007, Australia

Tel: 61 2 9514 2661

E-mail: pam.Hazelton@uts.edu.au