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SUBMISSION INTO REVIEW OF PLANNING POLICIES: SEPP 44 (KOALA HABITAT PROTECTION)

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1.0 INTRODUCTION

This submission has been prepared by Peter Parker into a review by NSW Planning and Environment of various NSW government plans and policies. This submission only addresses SEPP 44 (Koala Habitat Protection) and suggests that SEPP should be repealed as its essential elements have been replaced by other legislation (e.g. TSC Act 1991). While the Department is only reviewing the Coffs Harbour CKPoM, it appears that the time is opportune to direct the Department's attention to SEPP 44 generally.

The SEPP 44 definitions of koala habitat are confusing and never reflected contemporary thinking of koala habitat or habitat values. For example, potential koala habitat is described as 15% of the total number of trees in the upper or lower strata. In my surveys when I have undertaken tree counts, even primary koala habitat as defined by various definitions in the approved koala recovery plan does not meet the definition of potential koala habitat pursuant to SEPP 44 due to a large percentage of rainforest trees regenerating in the mid and lower strata.

1.1 Koala habitat and State Environmental and Planning Policy No. 44

State Environmental and Planning Policy No. 44 - Koala Habitat Protection ("SEPP 44") commenced on 13 February 1995 with the aim to:

"Encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline;

- (a) *"by requiring the preparation of plans of management before development consent can be granted in relation to areas of core koala habitat;*
- (b) *by encouraging the identification of areas of core koala habitat; and*
- (c) *by encouraging the inclusion of areas of core koala habitat in environment protection zones."*

1.1.1.1 Definitions in SEPP 44

Various definitions are provided in SEPP 44. These are as follows:

"Core koala habitat" means an area of land with a resident population of koalas, evidenced by attributes such as breeding females (that is, females with young) and recent sightings of and historical records of a population;

"Potential koala habitat" means areas of native vegetation where the trees of the types listed in Schedule 2 of the Policy constitute at least 15% of the total number of trees in the upper or lower strata of the tree component;

"Land to which the Policy applies" SEPP 44 applies to land for which a development application has been lodged for each local government area listed in Schedule 1 of the Policy. It does not apply to land dedicated or reserved under the *National Parks and Wildlife Act 1974* or to land dedicated under the *Forestry Act 1916* as a State forest or flora reserve.

SEPP 44 applies to land that:

- Has an area of more than 1 ha; or
- Has, together with any adjoining land in the same ownership, an area of more than 1 ha;
- Whether or not the development application applies to the whole, or only part, of the land.

1.1.2 Circular B35

Circular B35 dated 22 March 1995 assists in the interpretation of SEPP 44. Clause 5.1 of circular B35 provides clarification with respect to the application of SEPP 44. The clause includes the following:

"It is the intention of the policy that investigations for potential and core koala habitats be limited to those areas in which it is proposed to disturb habitat"

2.0 SEPP 44 ASSESSMENT

In my experience Councils in northern NSW struggle to interpret SEPP 44. Council ecologists and consultants working on CPoMs massage definitions from the recovery plan into CKPoMs in an attempt to bring the antiquated and erroneous SEPP 44 definitions up to date. Take for example the recent draft Byron and Tweed CKPoMs. These were both valiant attempts to make sense of SEPP 44 guidelines but came unstuck when the Council and their consultants were advised by their legal advisers that they were of no effect.

Circular B35 was an effort to make the process clearer and is incorporated into SEPP 44 as a mandatory matter for consideration. However, even this has failed to provide clarity with the Department of Planning and Environment struggling to even identify which planning circular is in effect.

2,0 CPoMs IN PRACTICE

I have not seen any CPoMs which do the task they were intended or which meet the objects of SEPP 44 in the long term. Many appeared to be fine at the time of preparation and consent only to fail in implementation. It is much easier to integrate koala planning into a development proposal when

it is being drafted and, if needs be, incorporate provisions of development control plans specifically intended to assist in koala habitat management and protection than retro fit sometimes dated CKPoMs.

3.0 SEPP 44 CONCLUSION

SEPP 44 should be repealed as it has been largely replaced by provisions in the TSC Act. For example, all matters in regard to CPoMs can be adequately dealt with pursuant to the DGRs for species impact statements (SIS) where a proposal is likely to significantly affect local koala populations.

On a lesser scale and when a SIS is not required, site specific DCPs can be used to specifically address koala habitat management and protection.

SEPP 44 was useful at a time when the TSC Act had yet to be enacted but it now creates more confusion than it is worth. This confusion is costly and time wasting for all concerned and provides ambiguity and uncertainty in the development process.

It will be a bold political decision to repeal SEPP 44 as the koala is a politicised iconic animal. Should the Department be reluctant to take such a large stride, then the SEPP 44 definitions need to be more consistent with those in the recovery plan, the wording in circular B35 needs to be better incorporated into SEPP 44, the instructions for the preparation of CKPoMs need to be updated and references to the draft Port Stephens CKPoM deleted. Even the koala food trees in the appendix to SEPP 44 need to be reviewed for the relevant geographical areas in NSW.

If the Department takes this approach, a draft SEPP 44 amendment should be circulated for comment.

Peter Parker