

Explanation of Intended Effect:

State Environmental Planning Policy No 44 – Koala Habitat Protection

November 2016

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O Introduction

Explanation of Intended Effect

This Explanation of Intended Effect (EIE) has been prepared under Section 38 of the *Environmental Planning and Assessment Act 1979* (the Act). It is presented in two parts:

Part 1 – Proposed amendment of State Environmental Planning Policy No 44 – Koala Habitat Protection

This part explains the intent of the proposed amendment to *State Environmental Planning Policy No 44 – Koala Habitat Protection* (SEPP 44). It also explains how the various parts of the proposed amendment will work and what the proposed provisions are seeking to achieve.

Part 2 – Background and Analysis

Part 2 provides information about the current application of SEPP 44 in the planning system. In particular, it identifies which provisions are:

- proposed to continue to apply in the proposed amended SEPP;
- proposed to be moved to another mechanism in the planning framework; or
- no longer required.



Photo: D Finnegan, OEH

O Part 1: Proposed

amendment of State

Environmental Planning

Policy No 44 – Koala

Habitat Protection

Proposed amendment of State Environmental Planning Policy No 44 – Koala Habitat Protection

The proposed amendment of SEPP 44 will update the controls to better protect koala habitat. The update will bring the SEPP into line with the current planning system and support councils to prepare comprehensive plans of management. The amendments will also improve the application of the SEPP by recognising the extent of tree species important to koalas.

The key changes the proposed amended SEPP will implement relate to the:

- definitions of koala habitat;
- list of tree species;
- list of councils; and
- development assessment process.

To support the proposed amendment of the SEPP, the Department will prepare updated guidelines that clearly:

- set out the requirements for preparing comprehensive plans of management; and
- direct the consistent assessment of development applications.

The Department will also ensure the strategic planning outcomes in SEPP 44 are transferred to the more appropriate setting of the Local Planning Directions under section 117 of the Act.

Explanation of the proposed amendments

Aim of the SEPP

The aim of the SEPP is appropriate and will continue to be to protect koala habitat to ensure a permanent free-living population over the present range and reverse the current trend of koala population decline.

The preparation of comprehensive plans of management will continue under SEPP 44. The proposed amendment and updated guidelines will support councils to prepare comprehensive plans of management. The proposed amendment will also replace the requirement for the preparation of individual plans of management with standardised requirements set out in updated guidelines. This will simplify the assessment process for development applications situated in areas not covered by a comprehensive plan of management and ensure the consistent use of criteria to protect koala habitat across the State.

Application of the SEPP

The area to which SEPP 44 applies will continue. However, as a number of local councils have been involved in amalgamations since the introduction of the SEPP, the proposed amendment will update the names of the councils listed to the following:

Armidale Regional, Ballina, Bathurst Region, Bega Valley, Bellingen, Berrigan, Blayney, Blue Mountains, Bourke, Brewarrina, Byron, Cabonne, Campbelltown, Central Coast, Central Darling, Cessnock, Clarence Valley, Coffs Harbour, Coonamble, Dungog, Edward River, Eurobodalla, Federation, Forbes, Gilgandra, Glen Innes Severn, Goulburn Mulwaree, Greater Hume, Gunnedah, Hawkesbury, Hilltops, Hornsby, Inverell, Kempsey, Ku-ring-gai, Kyogle, Lake Macquarie, Leeton, Lismore, Lithgow, Liverpool, Liverpool Plains, Lockhart, Maitland, Mid-Coast, Mid-Western Regional,

Moree Plains, Murray River, Muswellbrook, Nambucca, Narrabri, Narrandera, Narromine, Newcastle, Northern Beaches, Oberon, Parkes, Port Macquarie-Hastings, Queanbeyan-Palerang, Port Stephens, Richmond Valley, Shoalhaven, Singleton, Snowy Monaro Regional, Snowy Valleys, Tamworth Regional, Tenterfield, Tweed, Upper Hunter, Upper Lachlan, Uralla, Wagga Wagga, Walcha, Walgett, Warren, Warrumbungle, Weddin, Wentworth, Wingecarribee, Wollondilly, Wollongong, Yass Valley.

Definitions

The proposed amendment of SEPP 44 will update the definitions of koala habitat. The definitions of core koala habitat and potential koala habitat will be replaced with definitions that identify the characteristics of plant communities which make up koala habitat and if there is evidence that koalas are present. These definitions will be supported by an updated list of tree species that reflects current scientific knowledge – see Appendix: Tree Species List.

The development assessment process

The proposed amendment of SEPP 44 will streamline the development assessment process. The updated process will require an applicant to establish whether a site contains koala habitat following an assessment of the vegetation as described in the guidelines. Where koala habitat is established, further assessment will be required to determine if koalas are present before an application is submitted. If koalas are present at a site but the vegetation is not koala habitat, an assessment will continue as if it were koala habitat.

A consent authority's determination of a development application will take into consideration a comprehensive plan of management or, where a comprehensive plan of management does not apply, the guidelines.

The Guidelines

The Department will prepare updated guidelines for the commencement of the proposed amended SEPP. The guidelines will support the making of comprehensive plans of management and the preparation and assessment of development applications. In achieving these outcomes the guidelines will improve the implementation of comprehensive plans of management and simplify the development assessment process, setting out clear criteria for applicants to follow and consent authorities to put into effect.

Local Planning Directions (under section 117 of the Act)

The Local Planning Directions are the most appropriate setting to direct the preparation of planning proposals, including local environmental plans. The strategic planning components in the SEPP, including requirements for the zoning of land in relation to the protection of koala habitat, will be transferred to the Local Planning Directions.

Other minor Amendments

The proposed amendment of SEPP 44 will make minor changes to other provisions, including identifying the:

- Office of Environment and Heritage in relation to consultation on plans of management; and
- Secretary of Planning and Environment in relation to the approval of plans of management.

O Part 2: State

Environmental Planning

Policy No 44 – Koala

Habitat Protection

State Environmental Planning Policy No 44 – Koala Habitat Protection

Introduction

The koala (Phascolarctos cinereus) is an iconic Australian marsupial that is in decline and vulnerable to extinction in NSW. As with many endangered species the management of koalas extends over a variety of legislation and policy. In the NSW planning system a dedicated state environmental planning policy was introduced in 1995 to protect koala habitat.

State Environmental Planning Policy No 44 – Koala Habitat Protection encourages the conservation and management of koala habitat to ensure populations remain in their present range and the trend of population decline is reversed. While the application of SEPP 44 has led to areas of koala habitat being protected, koala populations in NSW continue to decline.

At present, the policy manages koala habitat through a series of interlinked steps. The steps include:

- The identification of potential* and core** koala habitat on land greater than one hectare in area that is subject to a development application within a listed council; and
- The preparation and approval of a plan of management for core koala habitat as prepared by council or an applicant.
- *Potential koala habitat is defined in clause 4 of SEPP 44 as areas of native vegetation where the trees of the types listed in Schedule 2 constitute at least 15% of the total number of trees in the upper or lower strata of the tree component.
- **Core koala habitat is defined in clause 4 of SEPP 44 as an area of land with resident koalas, evidenced by the presence of, for example, breeding females or recent sightings or historical records.

SEPP 44 also recommends councils survey land and identify core koala habitat in local environmental planning instruments, including zoning core koala habitat for environmental protection following an environmental study.

The proposed approach following the analysis of SEPP 44

The proposed amendment of SEPP 44 follows a detailed analysis of its operation.

Table 1 contains a summary of the proposed approach to the provisions in SEPP 44 and whether the provisions will be updated or transferred as a result of the amendment.

The planning system is better able to support the preservation of koala habitat by updating and improving the relevant planning controls. The proposed approach improves the structure and effectiveness of the SEPP whilst supporting councils to implement appropriate local measures to protect koala habitat. The proposed amendment also supports the Government's priorities to simplify the planning system and achieve better regulation. The following components are central to the proposed approach:

- 1. Update the content of the policy, including the names of the councils to which it applies, the list of tree species and the definitions of koala habitat;
- 2. Update and transfer the plan making requirements to the Local Planning Directions;
- 3. Simplify the development assessment process; and
- 4. Update the guidelines to better direct the preparation of koala plans of management and instruct development assessment.

Table 1: Summary of the proposed approach to amend SEPP 44

No or minor amendment	Update through the proposed amendment	Transfer to Local Planning Direction
Cl 1 Name	Cl 3 Aims, objectives etc.	Cl 15 Surveys,
CI 2 Commencement	Cl 4 In this Policy	environmental protection zones and
Cl 5 Land to which this Policy applies	Cl 7 Step 1—Is the land	development control
Cl 6 Development control of koala	potential koala habitat?	
habitats	Cl 8 Step 2—Is the land core	Cl 16 Preparation of local environmental
CI 10 Guidelines—matters for	koala habitat?	studies
consideration	Cl 9 Step 3—Can	
Cl 11 Preparation of plan of management	development consent be granted in relation to core	
	koala habitat?	
Cl 12 Consultation with Director-	Schedule 1 Local	
General of National Parks and Wildlife	government areas	
Cl 13 Approval of plan of management	Schedule 2 Feed tree species	
Cl 14 Amendment or repeal of plan of management		
Cl 17 Guidelines—generally		

Aims of the policy (Clause 3)

The aim of the policy – to protect koala habitat – is relevant and is to be retained. However, the objectives are more appropriately located in the SEPP or in another part of the planning system. For example, the Local Planning Directions are the most appropriate place to instruct councils on the preparation of local environmental plans, including about zoning.

Definitions (Clause 4, Schedule 2)

The definitions in the policy need to be amended to clearly articulate the meaning of koala habitat. This includes the identification of additional tree species. The SEPP currently recognises ten tree species. The Office of Environment and Heritage has provided the Department with an updated list of 65 tree species that is responsive to the variation in koala habitat and behaviour. This list reflects the NSW Koala Recovery Plan and includes other tree species supported by established scientific evidence (see Appendix - Tree Species List).

An amended definition of koala habitat will include any area where koalas are present, regardless of the tree species, and be supported by a definition that identifies habitat where koalas are present.

The definition of the guidelines will be updated to reflect the name of the Department and title of the Secretary.

Application of the policy (Clause 5, Schedule 1)

The land to which the policy applies is to be maintained. In some instances, the names of particular councils will be updated to acknowledge a series of council amalgamations. For example, Clarence Valley will be introduced in place of Copmanhurst, Grafton, Maclean, Nymboida and Ulmarra.

Development assessment (Clauses 7, 8, 9)

The current development assessment process can be improved to better protect koala habitat by simplifying the order of the steps in the assessment process. The proposed amendment will streamline and standardise the development assessment process. This will ensure that a consistent assessment process is applied for all sites across the State. Updated guidelines will be a head of consideration and support the standard assessment process. Where they are established, comprehensive koala plans of management will continue to inform decision-making. The preparation of individual plans of management will no longer be required.

Guidelines (Clauses 10, 17)

Updated guidelines will support the making of comprehensive plans of management and the preparation and assessment of development applications.

In supporting the preparation of comprehensive plans of management, updated guidelines will establish the steps required to prepare a comprehensive plan of management. The guidelines will also clearly articulate how the definitions in the proposed amended SEPP – important to development assessment at the site scale – differ from the definitions used in environmental management at the landscape scale – such as preferred koala habitat, primary habitat or secondary habitat.

Updated guidelines will establish the requirements for development applications and considerations for consent authorities. These requirements will reflect contemporary koala management practices and include, for example, avoiding habitat fragmentation. A consistent set of criteria will support streamlined assessment and replace the need to prepare individual plans of management. The guidelines will also support applicants in preparing development applications. For example, the guidelines will include techniques for the survey of koala habitat.

Local Planning Direction (Clauses 3, 15, 16)

The Local Planning Directions are the appropriate setting to instruct local councils on plan making. It is proposed to update and transfer the plan making functions to a Local Planning Direction. It is through a Local Planning Direction that listed councils will be instructed to give effect to koala habitat protection.

Local Environmental Studies (Clauses 3, 16)

Strategic planning at the local and regional level has replaced the preparation of local environmental studies. Because of this reason, the clauses that relate to the carrying out of a local environmental study will be removed.



Photo D Lunney, OEH

Appendix – Tree Species List

Table 1 – Tree Species List

Scientific name	Common name
Callitris endlicheri	Black Cypress Pine
Casuarina torulosa	Forest Oak
Eucalyptus agglomerata	Blue-leaved stringybark
Eucalyptus albens	White box
Eucalyptus amplifolia	Cabbage gum
Eucalyptus bancroftii	Orange gum
Eucalyptus baueriana	Blue box
Eucalyptus bicostata	Eurabbie
Eucalyptus biturbinata	Grey gum
Eucalyptus blakelyi	Blakely's red gum
Eucalyptus bosistoana	Coast grey box
Eucalyptus bridgesiana	Apple-topped box
Eucalyptus camaldulensis	River red gum
Eucalyptus camphora	Broad-leaved sally
Eucalyptus canaliculata	Large-fruited grey gum
Eucalyptus chloroclada	Dirty gum
Eucalyptus cinerea	Argyle apple
Eucalyptus conica	Fuzzy box
Eucalyptus consideniana	Yertchuk
Eucalyptus coolabah	Coolabah
Eucalyptus cypellocarpa	Monkey gum
Eucalyptus dalrympleana	Mountain gum
Eucalyptus dealbata	Tumbledown gum

Eucalyptus dwyeri	Dwyer's red gum
Eucalyptus globoidea	White stringybark
Eucalyptus goniocalyx	Bundy
Eucalyptus interstans	
Eucalyptus largiflorens	Black box
Eucalyptus longifolia	Woollybutt
Eucalyptus macrorhyncha	Red Stringybark
Eucalyptus maidenii	Maiden's gum
Eucalyptus mannifera	Brittle gum
Eucalyptus melliodora	Yellow box
Eucalyptus microcarpa	Western grey box
Eucalyptus microcorys	Tallowwood
Eucalyptus moluccana	Grey box
Eucalyptus nandewarica	Mallee red gum
Eucalyptus nicholii	Narrow-leaved black peppermint
Eucalyptus noblis	Forest ribbon gum
Eucalyptus nortonii	Large-flowered bundy
Eucalyptus nova-anglica	New England peppermint
Eucalyptus oblonga	Narrow-leaved Stringybark, Sandstone
	Stringybark
Eucalyptus ovata	Swamp gum
Eucalyptus parramattensis	Parramatta red gum
Eucalyptus pauciflora	Snow gum
Eucalyptus pilligaensis	Pilliga box
Eucalyptus polyanthemos	Red box
Eucalyptus populnea	Bimble box
Eucalyptus prava	Orange gum

Small-fruited grey gum
Bastard eurabbie
Grey gum
White-topped Box, Coast White Box
Narrow-leaved Peppermint
Swamp mahogany
Scribbly gum
Candlebark
Large-fruited red mahogany
Hard-leaved Scribbly Gum
Silvertop Ash, Black Ash
Forest red gum
Naturally occurring hybrid
Ribbon gum

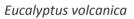




Photo: R Cleary, Seen Australia/OEH