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8<sup>th</sup> December 2016

## **NPA submission to the Explanation of Intended Effect State Environment Planning Policy No. 44—Koala Habitat Protection**

### **Introduction**

The NPA, established in 1957, is a community-based organisation with over 20,000 supporters from rural, remote and urban areas across the state. The NPA promotes nature conservation and evidence-based natural resource management. We have a particular interest in the protection of the State's biodiversity and supporting ecological processes, both within and outside of the formal conservation reserve system.

As you will likely be aware, NPA has an ongoing campaign to create the Great Koala National Park in the Coffs Harbour hinterland. This campaign, as well as our opposition to native forest logging on public land and efforts to prevent a return to broad-scale land clearing, interact with SEPP 44 and are very relevant to koala conservation. We will make this clear in our submission.

NPA appreciates the opportunity to comment on the Explanation of Intended Effect (the Explanation) and efforts made by DoPE to consult prior to the development of the Explanation. We hope that DoPE will consider incorporating our recommendations into the SEPP as we believe there are areas that could be strengthened and clarified.

We stress that without seeing the guidelines we cannot be sure as to the final application of the SEPP and therefore as to whether the revision increases its effectiveness. We reserve the right to change our view on elements of the Explanation when the guidelines are released and we can better evaluate the potential impacts.

### **1. NSW Koala Strategy**

We note that the NSW Government has announced public consultation on the development of a new all of government Koala Strategy. The Chief Scientists' report includes a recommendation to begin, by December 2017, a review into the effectiveness of SEPP 44 as a planning tool and into the performance of CKPoMs as a means of protecting koala habitat. Given the findings of such a review would be integral to any revision of SEPP 44, we question whether undertaking this review pre-empts the findings of the Chief Scientists' recommendation. We are of the view that action urgently needs to be taken to protect koalas, but there is little point in undertaking a revision of SEPP 44 only to have to revise it again in 12-24 months. Nonetheless, we have made comment on several aspects of the SEPP below in anticipation that DoPE will continue the SEPP revision.

### **2. Aim of the SEPP**

NPA believes that the aim (to protect koala habitat to ensure a permanent free-living population over the present range and reverse the current trend of koala population decline) is likely appropriate but requires clarification on the koala range. Range consists of two elements: extent of occurrence and area of occupancy. The former is always greater as it refers to the smallest polygon that can be fitted around the distribution of a species, not a species' habitat. Area of occupancy by contrast will be determined by habitat availability within the extent of occurrence.

**Recommendation:** ensure that the definition of 'range' in the SEPP refers to the extent of occurrence.

### **3. Guidelines**

Without seeing the guidelines it is difficult to accurately assess how effective the SEPP can be, and the strength of the guidelines will be determined by the language and intent of the SEPP. Key questions that are outstanding are:

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- Will the guidelines (and the SEPP) be enforceable by the Minister?

**Recommendation:** ensure that the intention of the SEPP (to protect koala habitat to ensure a permanent free-living population over the present range and reverse the current trend of koala population decline) can be met by giving the Minister the ability to enforce the SEPP and guidelines, rather than rely on voluntary compliance. In order to achieve this, the state government should set a maximum timeframe in which local governments must implement SEPP 44 and adequately resource them to do so.

- What will be the vegetation assessment process prior to a development application (DA) being submitted? NPA has recently written to Minister Speakman urging him to ensure that a state-wide map of koala habitat using segmentation mapping is not funded due to documented inaccuracies of the method. We would be concerned if such a map was used in the initial identification of koala habitat.

**Recommendation:** ensure that the guidelines state that digital aerial photographic interpretation is the only mapping method that can be used in the first instance to identify koala habitat, and that an on-ground ecological assessment is necessary to confirm koala habitat and determine koala presence or absence.

- Will the guidelines apply also to paddock trees? Paddock trees, including non-feed species, have been shown to be crucial habitat elements for koalas as refuges in times of heat. Research by the Office of Environment and Heritage in Wingecarribee Shire has shown koalas use paddock trees when moving between woodland patches in the landscape. Therefore a failure to ensure the protection of paddock trees will be undermine the aims of the SEPP.

**Recommendation:** ensure that the guidelines on surveys make particular reference to paddock trees and that paddock trees are assessed as to the presence of koalas regardless of whether they are a listed koala tree species.

- How will the guidelines 'support' the making of Comprehensive Koala Plans of Management (CKPoMs)?

**Recommendation:** ensure that the guidelines contain *requirements* to develop CKPoMs, not simply recommendations.

#### 4. Zoning

Currently, core koala habitat identified under SEPP 44 should be incorporated into an environmental protection zone or have special provision to control development under Clause 15. However this requirement is to be removed and instead put into a Local Planning Direction (LPD) that will direct councils as to how they must protect koala habitat. It is unclear from the Explanation whether the requirements will be the same as at present.

Further, we are concerned both about how koala habitat is to be protected by zoning, and the interaction between the new environmental zoning approach on the north coast and the revised SEPP. The LPD, effective since 14<sup>th</sup> April 2016, 'Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs' has implications for the revised SEPP. This change to zoning meant that land could only be zoned environmental if conservation had been the primary function of that land for the prior two years. For example, any land over which a Private Native Forestry Property Vegetation Plan was granted prior to April 2014 would likely be ineligible for environmental zoning on the grounds that forestry was the primary land use. In northern NSW, this accounts for approximately 390,000ha (see section on PNF). This in effect removed the ability of local government to zone private land into an environmental protection zone—as supposedly required under SEPP 44.

It is unclear how the proposed koala habitat LPD will interact with the LPD on E2 and E3 zones, but there is nothing to suggest that it will replace or have legal authority over the LPD on E2 and E3. If that is the case then the revised SEPP essentially confers little extra protection for koalas as the north coast councils are those with the most extensive koala habitat and largest koala populations. Should the LPD on E2 and E3 zones be extended statewide, then the confounding effect on local governments would also be manifested on koala populations elsewhere.

**Recommendation:** ensure that the new LPD gives local government the authority to effectively zone koala habitat into environmental protection zones, and that the 'Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs' LPD does not negate the revised SEPP.

#### 5. List of tree species and local governments

NPA strongly supports the amended tree species list. It, alongside the broadened list of councils, means SEPP 44 could potentially be applied more broadly. However, Gwydir Shire Council (which includes Bingara and Yallaro councils from current list) is missing from the list. We also support the intent to treat non-listed tree species as koala habitat if a koala is present. The latter element is important as koalas are known to use non-feed species for shelter, and large shelter trees are very important as refuges in times of heat stress. For example, koalas are known to use *Eucalyptus pilularis* (Blackbutt), on the north coast. However we note that the changed tree species list, and therefore changed definition to koala habitat, will require local government to revise existing CKPoMs and re-map koala habitat.

**Recommendation:** include Gwydir Shire Council on the revised list of councils.

**Recommendation:** ensure that local government is resourced to undertake the necessary revised koala habitat mapping.

## 6. Koala habitat and occupancy assessments

NPA supports undertaking a habitat suitability and koala occupancy assessment *prior* to a DA being submitted. However, we have concerns about the fate of unoccupied koala habitat: given the huge declines in koala populations throughout NSW, most suitable habitat will be unoccupied. But if we are to have any chance of recovering koala populations (and therefore to meet the aims of the SEPP), it is vital that this unoccupied habitat be protected as if koalas were present. The Explanation does not clarify what happens if an assessment identifies unoccupied koala habitat, but suggests that a DA could still be submitted and that either a CKPoM or the guidelines will determine the local government response.

**Recommendation:** ensure that both the guidelines and CKPoMs are statutory documents that enable local governments to refuse DAs that pose an unacceptable risk to *occupied and unoccupied* koala habitat. We caution against developing guidelines that have a lower standard or which are less enforceable than CKPoMs as this will act as a disincentive to create a CKPoM.

## 7. Definitions

The proposed changes to the current koala habitat definitions ('core' and 'potential') have scope to strengthen the SEPP by ensuring that all identified tree species are considered habitat, and that non-listed species are deemed habitat if a koala is present. However, it is not possible to assess whether these changes to the definition will result in more protection to habitat as the definitions that will identify the plant communities have not been released. For example, what proportion of trees in a plant community will need to be a listed species for that community to be considered koala habitat? Which plant communities will therefore be defined as koala habitat? How will landholders or local governments identify the location of these plant communities? How will current CKPoMs be amended to include the new definitions and what will happen to identified core and potential koala habitat in the meantime?

**Recommendation:** ensure that the definition of koala habitat includes all plant communities that have  $\geq 15\%$  of one or more listed tree species in the upper or lower strata of the tree component, as well as all vegetation that contains koalas. On-ground surveys should be used to identify plant communities.

**Recommendation:** ensure that koala habitat currently identified under CKPoMs is not rendered unprotected as a result of the amended definitions.

**Recommendation:** ensure that local government is adequately resourced to incorporate the changes into existing CKPoMs within 12 months of the changes taking effect.

## 8. NSW Land Clearing Laws

The interaction between the proposed changes to the SEPP and the recently introduced *Local Land Services Amendment Act* (LLS Act) are not clear. The breadth of the codes under the LLS Act do not inspire confidence that koala habitat will be adequately protected, and WWF estimated that up to 2.2 million hectares of koala habitat could be cleared under the equity code alone<sup>1</sup>. This does not count the areas of woodland and clumps of paddock trees that will be at risk through the efficiency codes<sup>2</sup> and which are also very important for koalas (see above). Minister

<sup>1</sup>Ecological Australia. NSW proposed Local Land Services Act. Potential Vegetation Clearing under the Equity Code - Analysis Paper. Prepared for WWF Australia. <http://www.wwf.org.au/ArticleDocuments/353/pub-potential-vegetation-clearing-under-the-equity-code-14oct16.pdf.aspx?Embed=Y>

<sup>2</sup>Paddock trees: pest paradises or bastions of biodiversity?

[https://d3n8a8pro7vnmx.cloudfront.net/natureorg/pages/144/attachments/original/1465507046/FACT\\_SHEET\\_-\\_Paddock\\_Trees\\_.pdf?1465507046](https://d3n8a8pro7vnmx.cloudfront.net/natureorg/pages/144/attachments/original/1465507046/FACT_SHEET_-_Paddock_Trees_.pdf?1465507046)

Speakman responded to WWFs concerns by stating that core koala habitat would be protected<sup>3</sup>, yet the new SEPP will remove the definition of core koala habitat. In any case, no exclusions from the codes besides critically endangered ecological communities and habitat for critically endangered species were included in the final legislation. Neither of these exclusions will protect koalas.

**Recommendation:** the Minister for Planning must ensure that the LLS Act and *Biodiversity Conservation Act* do not come into force before all local governments identified in the SEPP have identified and zoned koala habitat in an environmental protection zone.

## 9. Private Native Forestry

As NPA stated in our original letter to DoPE on this subject SEPP 44 interacts with Private Native Forestry (PNF) via the identification of core and potential koala habitat on private land and appropriate zoning of that land determining whether PNF can take place. Since 2007 2515 PNF Property Vegetation Plans (PVPs) for PNF covering 400,000 hectares of land have been approved in northern NSW (Figure 1). It is not possible to say what proportion of these licences have resulted in felling as this information is not readily available from the EPA.

In February 2015 in the Coffs Harbour LGA alone, 185 PNF licenses had been issued since 2007. Taking a conservative property size estimate of 40ha, this equates to 7,400ha, 6% of the LGA or 13% of all private land. In November 2015, NPA undertook an analysis of the number of PNF PVPs within 10km of the boundary of the proposed Great Koala National Park. There were 725 covering an area of 65,292ha.

The current Code of Practice for PNF<sup>4</sup> states that 'Forest operations are not permitted within any area identified as 'core koala habitat' within the meaning of State Environmental Planning Policy No. 44 – Koala Habitat Protection.' It is beyond reasonable doubt that the lack of action in developing CKPoMs has resulted in PNF approvals having been granted where they should not have been, and the inclusion of the word 'core' immediately raises a question mark as to what happens when the definition of core koala habitat is removed as proposed.

**Recommendation:** ensure the PNF Code of Practice is amended to ensure forestry operations are not permitted in koala habitat as identified by the revised SEPP, and that no further granting of PNF licenses occurs until the Code of Practice has been aligned with the SEPP.

**Recommendation:** that the NSW government reverse the erroneous granting of PNF approvals in koala habitat as a result of poor implementation of the previous iteration of SEPP 44.

Although NPA does not oppose PNF *per se* we have deep reservations about the process for approving a PNF Property Vegetation Plan (PVP), the numbers of PVPs approved and the 15-year duration of PVPs. The responsibility for identifying threatened species lies entirely with the landholder with no site visit required by an ecologist, and the EPAs approval process is entirely desktop with no capacity to audit PVP compliance. In addition, it is clear that in many cases landholders are being approached by commercial loggers and offered financial incentives to obtain a PVP and permit industrial logging and there have been reports of PNF being used as a vehicle for 'clearance by stealth'.

Recommendation seven in the 'Review of Biodiversity Legislation in NSW' concerned reviewing PNF. Given the NSW government has dramatically weakened biodiversity legislation, we have no confidence that this review will improve environmental outcomes and expect that it will increase the ease and the scale with which PNF can be undertaken. For example we expect that PNF PVPs will be replaced with self-assessable codes.

**Recommendation:** ensure that the revised SEPP clearly outlines the interaction with PNF and that the SEPP has legal authority over any future self-assessable codes or other mechanisms of conducting PNF.

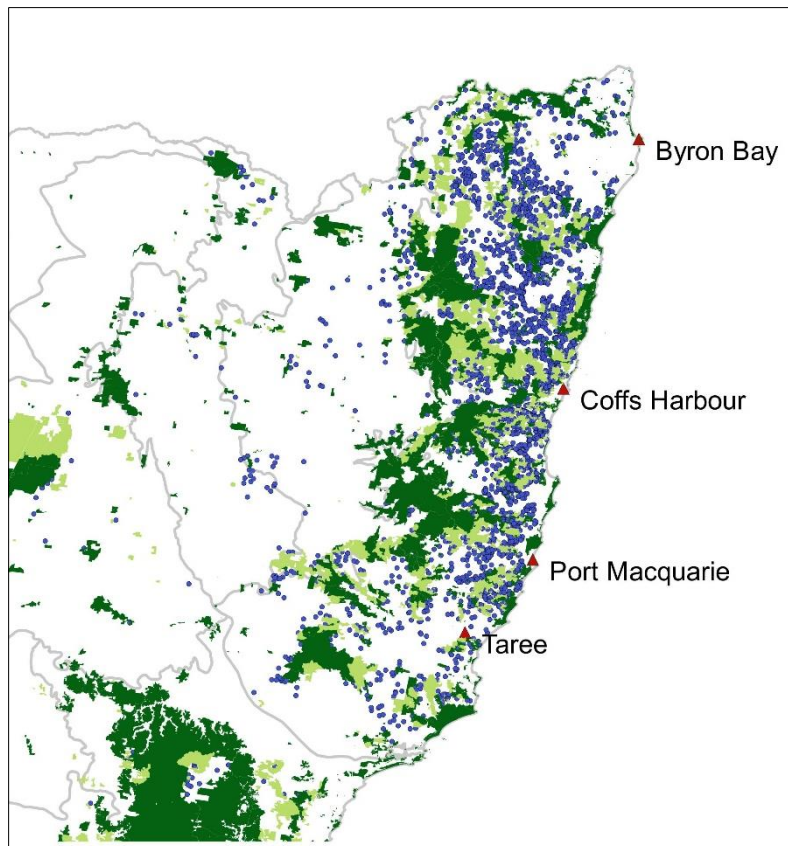
## Conclusion

Revision of SEPP 44 is long overdue and some of the changes proposed here have the ability to improve outcomes for koalas. However SEPP 44 interacts with many other pieces of legislation, one of which, PNF, is due for review. Unless the revised SEPP—and the as yet unseen guidelines and definitions—effectively deal with these interactions and confer the ability of local governments to effectively protect koalas the revision will make little difference to the steep

<sup>3</sup>Sydney Morning Herald 13<sup>th</sup> October 2016. <http://www.smh.com.au/environment/conservation/prime-koala-habitat-threatened-under-land-clearing-proposal-wwf-20161013-gs1d9v.html>

<sup>4</sup><http://www.epa.nsw.gov.au/resources/pnf/130563PNFcNth.pdf>

declines in koala populations across NSW. In particular, changing the definition of ‘core’ koala habitat has far reaching implications for CKPoMs, koala habitat mapping and PNF and urgent consideration should be given as to how these implications are addressed. The release of the Chief Scientists’ review into koala conservation in NSW is another element that adds considerable uncertainty as to the future form of SEPP 44.



*Figure 1: Map of northern NSW showing National Parks (dark green), State Forests (light green) and the centroids of PNF PVP approvals (blue dots). Source: NSW EPA*