

15 December 2016

Director, Planning Frameworks
NSW Department of Planning and Environment
Sydney NSW 2001

Dear Sir/ Madam

Submission on the proposed amendments to the State Environmental Planning Policy No 44 – Koala Habitat Protection

The following comments are provided in response to the Department of Planning and Environment's Explanation of Intended Effect: State Environmental Planning Policy – Koala Habitat Protection, dated November 2016.

Table 1 provides details of Council's response to each of the proposed changes. Council could have provided more informed commentary if the Department of Planning and Environment provided the proposed draft SEPP 44, rather than just a description of the proposed changes. In this regard, Council requests that a copy of the proposed draft SEPP 44 is provided to Councils for comment prior to being finalised.

Table 1 Summary of staff comments regarding change to SEPP 44.

Proposed amendment	Staff assessment
No or minor amendment	
CI 1 Name	Support The current name "Koala Habitat Protection" is appropriate
CI 2 Commencement	Support The date the SEPP commenced (13 February 1995).
CI 5 Land to which this policy applies	Support Refers to Schedule 1 which provides a list of the local government areas to which this SEPP applies.
CI 6 Development controls of koala habitats	Consideration should be made to removing the requirement for land to be more than 1 hectare, particularly for green field subdivisions. Lots less than 1 hectare can still contain important areas of koala habitat, and koalas have no regard for lot size. This would enable habitat protection and management of threats to koalas on lots less than 1 hectare aiding the achievement of SEPP 44. Given then proposed changes to reduce the need for Individual Koala Plans of Management then development control for land less than 1 hectare could be easily applied through the proposed 'Guidelines' similar development standards contained in a Comprehensive Koala Plan of Management. It should also be noted that that Lismore DCP Chapter 14 – Preservation of Trees or Vegetation applies to tree removal

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	in urban zones and duplication of tree removal controls in these zones should be avoided.
CI 10 Guidelines – matters for consideration	Support The retention of this clause will empower detailed guidelines that will accompany the amended SEPP.
CI 11 Preparation of plan of management	Support This clause enables the preparation of a Comprehensive Koala Plan of Management (CKPoM).
CI 12 Consultation with Director-General of National Parks and Wildlife	Support This clause requires consultation with the Office of Environment and Heritage during the preparation of a CKPoM.
CI 13 Approval of plan of management	Support This clause requires that a CKPoM is approved by the Department of Planning and Environment prior to taking effect.
CI 14 Amendment or repeal of plan of management	Support The ability to amend or repeal a plan of management by another plan of management is supported.
CI 17 Guidelines - generally	Support Support for updated guidelines: supporting detail for the preparation of comprehensive plans of management; and that provide the requirements of development applications and considerations for consent authorities.
Update through proposed amendment	
CI 3 Aims, objectives etc. Aims, objectives etc <i>This Policy aims 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:</i> <i>(a) by requiring the preparation of plans of management before development consent can be granted in relation to areas of core koala habitat, and</i> <i>(b) by encouraging the identification of areas of core koala habitat, and</i> <i>(c) by encouraging the inclusion of areas of core koala habitat in environment protection zones.</i> <ul style="list-style-type: none"> Retain the aim of the policy Relocate strategic planning objectives in the SEPP and in S117 Ministerial Direction 	Support <ul style="list-style-type: none"> The retention of the Aim is supported Objective a will not be required with the proposed replacement of the current requirement for individual plans of management with a consistent set of criteria. This has the potential to streamline the development assessment process provided that the criteria have some degree of flexibility to cater for local variations in biodiversity values; environmental weeds; climatic and edaphic characteristics. The relocation of objective b and c to a s117 Ministerial Direction is supported. Consideration is required regarding how the new direction will operate in conjunction with Ministerial Direction 2.5 - E Zones on the Far North Coast.
CI 4 Definitions	Koala habitat:

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	<p>Without seeing the new definition of koala habitat Council is unable to provide definitive comment, however the proposed changes appear to be an improvement.</p> <p>The changes to SEPP 44 must ensure that current clause 7 and 8 relating to 'potential' and 'core' koala habitat are decoupled, so that the presence of potential koala habitat is not a prerequisite for core habitat. This appears to be proposed so that areas with a resident koala population that do not meet the definition of 'potential koala habitat' will be protected by SEPP 44. This is particularly important in areas of disturbed habitat where resident koalas exist in fragmented altered rural and urban lands, which is common in Lismore LGA.</p> <p>Council would support the definition of koala habitat being aligned with the Primary, Secondary A, Secondary B definitions from the NSW Koala Recovery Plan, as used in the majority of Comprehensive Koala Plans of Management.</p> <p>The extension of koala habitat definition to include areas with koalas but not considered to be 'koala habitat' (Primary, Secondary A or Secondary B) is also supported.</p> <p>There is no mention of core koala habitat in the EIE suggesting this term will not be carried over to new SEPP 44. This could provide a better outcome more able to achieve the Aim of SEPP44, as all koala habitat would be managed as essential for the long term conservation of koalas, rather than just areas that contain koalas at a particular point in time. Managing all koala habitat consistently, rather than as potential and core, will be better tailored to allow the natural dynamic movement of koalas through the landscape to occur.</p>
CI 7 Step 1 – Is the land potential koala habitat?	In principle support.
CI 8 Step 2 – Is the land core koala habitat?	See above for comments regarding potential and core habitat.
CI 9 Step 3 – Can development consent be granted in relation to core koala habitat?	<p>Clauses 7-9 determine the category of koala habitat and whether a site specific koala plan of management (KPoM) is required. Site specific KPoMs are an additional expense to developers and can add significantly to the processing time for a development application. Replacing the need for the preparation of individual KPoMs with a consistent set of criteria in the SEPP guidelines is supported in principle, however these need to be relevant, addressing all identified threats to koalas (habitat loss, roads, dogs, disease, fire). They also need to be enforceable. The retention of the guideline enabling clauses is supported (existing clause 10 & 17). These provisions require councils to consider the guidelines prior to issuing development consent on land to which the SEPP applies.</p> <p>It is recommended that Comprehensive Koala Plans of</p>

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	Management such as those developed by Lismore, Byron and Tweed Councils be used to guide the planning provisions contained in any guidelines/ standards.
Schedule 1 Local government areas	Supported Schedule 1 – local government areas has been superseded by the recent council amalgamations.
Schedule 2 Feed tree species	Supported The existing koala feed tree species list was prepared in 1995. An updated species list is required that reflects current scientific knowledge.
Transfer to Local Planning Direction	
CI 15 Surveys, environmental protection zones and development control plans	Support The relocation of plan making requirements from the SEPP to Section 117 Ministerial Directions is supported. Section 117 Directions apply to planning proposals and instruct councils on matters pertaining to: Employment and Resources; Environment and Heritage; Housing, Infrastructure and Urban Development; Hazard and Risk; Regional Planning; and Local Plan Making. Section 117 Directions are an appropriate mechanism to instruct councils to give effect to koala habitat protection. A copy of the draft 117 direction should be provided for comment by Councils prior to completion.
CI 16 Preparation of local environmental studies	Support The removal of clauses that require the preparation of local environmental studies (LES) is supported. Clause 57 of the <i>Environmental Planning and Assessment Act 1979</i> historically required the preparation of an LES for land to which a draft local environmental plan is intended to apply. The Act was amended in 2009 introducing new Part 3 provisions, including the removal of the requirement for an LES. Local growth management strategies and regional strategies are now used in place of an LES.

Other issues need to be considered which are not addressed in the EIE include the fate of currently approved Individual and Comprehensive Koala Plans of Managements. Will they remain in place? What is the fate of adopted Comprehensive Koala Plans of Management once the definitions change? Will they need to be redrafted?

Should you require any further information, please do not hesitate to contact Angus Underwood on 1300 87 83 87.

Yours faithfully



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