



Director, Planning Frameworks
NSW Department of Planning & Environment
GPO Box 39
SYDNEY NSW 2001

**Submission on Explanation of Intended Effect (EIE): State Environmental Planning
Policy No. 44 – Koala Habitat Protection (SEPP 44)**

Dear Sir/Madam

Introduction

I write on behalf of Friends of the Koala Inc., an entirely voluntary organisation widely acknowledged as the lead koala conservation group in the Northern Rivers of NSW.

Our mission, which we have been pursuing since 1986, is conserving koalas in recognition of the contribution the species makes to Australia's biodiversity. Our core business encompasses habitat protection and regeneration; licensed koala rescue, rehabilitation and release; community education; advocacy; and research assistance. We maintain a regional Koala Care and Education Centre in East Lismore.

Friends of the Koala has campaigned for a review of SEPP 44 over many years, thus we appreciate the opportunity to provide feedback on the EIE on exhibition.

The intention of the SEPP when it was introduced in 1995 was to provide additional protection for koalas and their habitat by ensuring they were taken into account as part of any proposed Development Application lodged with a council listed in the SEPP's Schedule 1. The SEPP was to be an important component of koala conservation and recovery actions on private lands in NSW, which is where the predominance of existing koala habitat is located. SEPP 44 is particularly important in coastal lowland areas of the Northern Rivers where there is a significant overlap between development and associated infrastructure pressure and the areas of highest importance to koalas.

The SEPP's effectiveness in stemming the decline in koala numbers has been undermined due to a number of factors including, poor implementation, unaddressed structural inadequacies including lack of strict protections, processes that facilitate major projects and weak biodiversity offsetting policies, all of which have prevented it from achieving its aims and objectives.

We note that SEPP 44 is among a number of State Policies currently being reviewed by Government in the context of delivering "a simpler and more modern planning system" for NSW. We also note the Chief Scientist's recent *Report of the Independent Review into the Decline of Koala Populations in Key Areas of NSW* and her observation that the review is to "...identify ways to improve the existing [koala] protections and to modernise them". (p.2). We strongly agree that the proposed review should be an opportunity to improve planning protections for koalas and koala habitat in NSW by enabling a robust and more effective SEPP 44.

*Volunteers conserving koalas and their habitat on the Northern Rivers.
Friends of the Koala services the local government areas of Ballina, Byron, Kyogle,
Lismore, Richmond Valley & Tweed.*

Koala Rescue and Information
6622 1233

*Licensed under the National Parks and Wildlife Act 1974 to rehabilitate injured, sick and orphaned koalas.
Licence no. MWL000100225*

PO Box 5034
East Lismore NSW 2480
info@friendsofthekoala.org
www.friendsofthekoala.org

*The Nature Conservation Council of NSW's 2012 Outstanding Member Group and
2014 Marie Byles Award for most outstanding new environmental campaign
Lismore City Council's 2013 Sustainable Environment Award Winner
Byron Shire Council's 2014 World Environment Day Award (Conservation & Land Management)*

Concerns

In the view of Friends of the Koala the proposed updating of the SEPP 44 as it is reflected in the EIE is way too narrow. That there has been no published evaluation of the SEPP's effectiveness over its 20 year life is perhaps indicative of Planning's hands-off approach which has resulted in just four State-approved Comprehensive Koala Plans of Management (CKPoMs) – one of which could not be properly enacted due to an administrative error – over that period.

The apparent retention of the one hectare trigger for enlivening the provisions of SEPP 44 is another concern. This is a critical issue in our region where koalas persist in towns and villages. As we have previously petitioned, there does not appear to be any scientific basis to the one hectare threshold, it is arbitrary and does not reflect current urban development trends or account for their detrimental impacts upon koala habitat.

Nor does the present review extend into the undermining of the SEPP's protections by other practices such as private native forestry which is another critical issue in the Northern Rivers, and to routine agricultural maintenance activities which will be replaced by similar provisions in the new biodiversity and land management laws.

A further pressing concern is the continuing lack of **requirement** by Government for councils listed in Schedule 1 to prepare CKPoMs.

The EIE is not what we expected to be asked to comment on at this point of the proposed review. We happily participated in the pre-review consultative phase a few months ago and presumed that we would be commenting on a draft revision of the SEPP. Given the paucity of detail we can only provide quite limited, but hopefully, constructive feedback.

When all is said and done for SEPP 44 to be effective it must provide absolute protection for core koala habitat. It must prohibit activities and developments that will impact on koalas and their habitat, not merely seek to minimise a proposal's damaging impacts by taking into account additional matters of consideration.

Our quandary is that we do not have sufficient information to know whether the changes proposed will achieve that. For example, the new definition of koala habitat is not provided; nor is the wording of the proposed new Local Planning Direction; perhaps even more worrying, the content of the proposed Guidelines which will guide both development assessment and preparation of CKPoMs is not available. Nor is there any indication in the EIE of how local government will be resourced to undertake the range of activities required to improve the SEPP's koala conservation outcomes.

That said we make the following comments:

Aims of the policy (Clause 3) – we believe the SEPP's aim needs to be stronger than **encouraging** 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. As already stated, the aim must be absolute protection from both direct and indirect impacts on koala habitat.

*Volunteers conserving koalas and their habitat on the Northern Rivers.
Friends of the Koala services the local government areas of Ballina, Byron, Kyogle,
Lismore, Richmond Valley & Tweed.*

Koala Rescue and Information
6622 1233

*Licensed under the National Parks and Wildlife Act 1974 to rehabilitate injured, sick and orphaned koalas.
Licence no. MWL000100225*

PO Box 5034
East Lismore NSW 2480
info@friendsofthekoala.org
www.friendsofthekoala.org

*The Nature Conservation Council of NSW's 2012 Outstanding Member Group and
2014 Marie Byles Award for most outstanding new environmental campaign
Lismore City Council's 2013 Sustainable Environment Award Winner
Byron Shire Council's 2014 World Environment Day Award (Conservation & Land Management)*



Definitions (Clause 4, Schedule 2) – we agree that the definitions of and requirement for potential and core koala habitat have been confusing and counter-productive. Part of the problem is that there are at least two differing definitions of core koala habitat in the present SEPP. Besides, resident populations of koalas are commonly observed in landscapes where potential koala habitat as it is defined is not present. Then there is the issue of protecting unoccupied koala habitat. Without the specific wording of the proposed amendments, the most we can do is support in-principle the concept of identifying the characteristics of plant communities which make up koala habitat.

To this end we are pleased to see the expanded trees species list but on the basis of our experience we recommend inclusion of *Eucalyptus grandis* (Flooded Gum) and *Eucalyptus saligna* (Sydney Blue Gum), both of which are widely browsed in our region. We support the over-riding presence of koalas regardless of tree species, as a valid definition of koala habitat. We would also add that the reliance of many of our koalas on paddock trees has never been properly acknowledged much less taken into account by SEPP 44.

Of course these welcome changes will presumably require councils to re-map their koala habitat and to revise their CKPoMs (see also Guidelines section).

Application of the policy (Clause 5, Schedule 1) - we support maintenance of the local government areas to which the SEPP applies, noting the update will include the names of amalgamated councils, the re-inclusion of Coffs Harbour and the omitted Gwydir Shire Council. We also caution that the list of local government areas may not be complete so we advocate preparation of criteria for future inclusions to Schedule 1.

Development assessment (Clauses 7,8,9) – we are not prepared to comment on the promise of a streamlined and standardised development assessment process across NSW because we have no idea how it might work in practice. For example, how will the assessment of vegetation be undertaken - by desktop study or an onsite field assessment? In our view, a field study must be required because, firstly, mapping can be unreliable (state-wide mapping wouldn't work at a LGA scale, much less site-scale), and second, it is unclear how koalas would be identified on the site unless a field study is carried out.

Guidelines (Clauses 10,17) – without a closer knowledge of their content we have little to say. Besides, guidelines are not necessarily obligations unless they become operative and enforceable provisions of the SEPP, i.e. statutory instruments.

We note on p.12 aspects that updated guidelines are to deal with but there is no specific mention of a particular concern of ours and that is the lack of a consistent and comprehensive approach to monitoring, reporting and compliance in individual koala plans of management (IKPoMs). If these are covered by “**considerations** for consent authorities” perhaps the guidelines should be demanding “**requirements** of consent authorities”.

We realize the intent is to discontinue IKPoMs. We strongly believe this proposal to be premature given there are so few approved CKPoMs in place and the continuing uncertainty with the handful that have been approved by the councils to which they apply.

*Volunteers conserving koalas and their habitat on the Northern Rivers.
Friends of the Koala services the local government areas of Ballina, Byron, Kyogle,
Lismore, Richmond Valley & Tweed.*

Koala Rescue and Information
6622 1233

*Licensed under the National Parks and Wildlife Act 1974 to rehabilitate injured, sick and orphaned koalas.
Licence no. MWL000100225*

PO Box 5034
East Lismore NSW 2480
info@friendsofthekoala.org
www.friendsofthekoala.org

*The Nature Conservation Council of NSW's 2012 Outstanding Member Group and
2014 Marie Byles Award for most outstanding new environmental campaign
Lismore City Council's 2013 Sustainable Environment Award Winner
Byron Shire Council's 2014 World Environment Day Award (Conservation & Land Management)*



It appears that the state agencies (Planning and OEH) which are presently involved in assessing IKPoMs will, in the reformed SEPP, only be involved in preparing CKPoMs. Everything else will be the purview of local government.

We believe this is unrealistic and will continue to work against the SEPP's aims as it has to date, probably weakening protections even more. Capacity to apply instruments requiring specialised knowledge is lacking in many rural councils, particularly the smaller ones. In our view a major reason for the poor application of the SEPP has been the lack of knowledge of some local government planners. How will this be overcome?

Indeed, what encouragement will be given to the majority of councils in Schedule 1 who have chosen not to invest in the costly business of preparing a CKPoM or partial CKPoM? Incentive grants made available through OEH are just that. They nowhere near meet the full costs involved. As far as we can see there may not be much increase in the number of CKPoMs once the ten or so that are presently in preparation or are approved by their councils, are finalised/approved.

This brings us to the issue of "transitioning" of approved plans. We understand that about 80 IKPoMs are in place across NSW with between 20 and 25 in the local government areas in which we have a special interest. A couple of those IKPoMs, e.g. Kings Forest in Tweed Shire are for major developments. How will the reformed SEPP deal with them? Similarly with the CKPoMs, Lismore's approved partial CKPoM being one which is of considerable interest to us. How will the koala habitat it identifies be protected when amended definitions come into play?

Local Planning Direction (Clauses 3,15,16) - we do not necessarily oppose the suggestion to update and transfer the plan-making functions to a Local Planning Direction (LPD). However, not having seen what is proposed or the instruction that will be given to councils, we are somewhat apprehensive about how the LPD for koala habitat will interact with the recently introduced *Application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs* which precludes environmental protection zonings on land unless its primary function has been for conservation purposes for the previous two years. In our view this could be a major impediment to inclusion of koala habitat in E Zones.

Interaction with the Whole of Government NSW Koala Strategy

The Government's announcement on 4 December 2016 to develop a new Whole of Government NSW Koala Strategy and its underpinning recommendations from the Chief Scientist's *Report of the Independent Review into the Decline of Koala Populations in Key Areas of NSW* present an unparalleled opportunity for reforming SEPP 44.

The Report's Recommendation 4: *That Government improve outcomes for koalas through changes to the planning system* (p.36) appears to acknowledge the limited nature of the present review of SEPP 44 by suggesting that within 12 months a broader evaluation of the SEPP's effectiveness and of the protections afforded by CKPoMs, particularly in the context of building a stronger evidence base for koala occurrence mapping (Recommendation 2) and incorporating proposed state-wide predictive koala habitat mapping (Recommendation 3) nb emphasis on the priority to be given to the North Coast).

*Volunteers conserving koalas and their habitat on the Northern Rivers.
Friends of the Koala services the local government areas of Ballina, Byron, Kyogle,
Lismore, Richmond Valley & Tweed.*

Koala Rescue and Information
6622 1233

*Licensed under the National Parks and Wildlife Act 1974 to rehabilitate injured, sick and orphaned koalas.
Licence no. MWL000100225*

PO Box 5034
East Lismore NSW 2480
info@friendsofthekoala.org
www.friendsofthekoala.org

*The Nature Conservation Council of NSW's 2012 Outstanding Member Group and
2014 Marie Byles Award for most outstanding new environmental campaign
Lismore City Council's 2013 Sustainable Environment Award Winner
Byron Shire Council's 2014 World Environment Day Award (Conservation & Land Management)*



We suggest there are several other recommendations that could also be drawn in to broaden and strengthen SEPP 44 over time so that it becomes enforceable and applies to all land tenures.

The risk of a staged approach to reform is that it will stall. The short-comings of the present SEPP 44 became apparent very early in its life yet they have remained unaddressed until now. The State's koala populations cannot afford further delay.

Conclusion

Friends of the Koala's existence is due in large part to the consequences of government policies on koala survival in the Northern Rivers. SEPP 44 is of particular interest to us because the focus of our koala conservation mission is usually related to land in private ownership. We have participated in the development of four CKPoMs in the local government areas of Lismore, Tweed, Byron and Ballina over almost the entire life of the SEPP. More latterly we are becoming formally involved in their implementation. We have been consulted and made input by way of consultation processes, into numerous IKPoMs in our region. We have also drawn attention to development applications where we believed an IKPoM was needed.

Our criticisms, observations and recommendations above are offered from the coal-face, in good faith. There is nothing more frustrating (and soul-destroying) for community volunteers who spend day-in, day-out rescuing and rehabilitating koalas than to see the plethora of so-called koala protection legislation that applies in Australia, fail our koalas.

Time is of the essence, so we urge exhibition of the present, limited draft review in early 2017 to enable interested parties to make meaningful comment on progress to date. The full review which will be required to incorporate SEPP 44 into the Whole of Government approach to koala conservation recommended by the Chief Scientist should proceed immediately thereafter.

Yours sincerely

Lorraine Vass
President
16 December 2016

Koala Rescue and Information
6622 1233

*Volunteers conserving koalas and their habitat on the Northern Rivers.
Friends of the Koala services the local government areas of Ballina, Byron, Kyogle,
Lismore, Richmond Valley & Tweed.
Licensed under the National Parks and Wildlife Act 1974 to rehabilitate injured, sick and orphaned koalas.
Licence no. MWL000100225*

PO Box 5034
East Lismore NSW 2480
info@friendsofthekoala.org
www.friendsofthekoala.org

*The Nature Conservation Council of NSW's 2012 Outstanding Member Group and
2014 Marie Byles Award for most outstanding new environmental campaign
Lismore City Council's 2013 Sustainable Environment Award Winner
Byron Shire Council's 2014 World Environment Day Award (Conservation & Land Management)*