Dear Director,

SUBMISSION ON PROPOSED AMENDMENT TO THE STATE ENVIRONMENTAL PLANNING POLICY 44 – KOALA HABITAT PROTECTION (SEPP 44)

Reference is made to the current exhibition of the Explanation of Intended Effect (EIE) that proposes amendments to the State Environmental Planning Policy 44 – Koala Habitat Protection (SEPP 44).

Wollongong City Council acknowledges the need to protect the Koala *Phascolarctos cinereus* and their habitat. In 2016 the Office of Environment and Heritage (OEH) detected the recent return of the Koala to the Wollongong LGA within the Sydney Drinking Water Catchment area, west of Wollongong.

It is noted that SEPP 44 has been in place since 1995 with no substantial amendment. The EIE provides little justification as to why the SEPP needs amendment, apart from acknowledging the on-going decline of the koala population. The document refers to a “detailed analysis of operation” but does not indicate what the review found or recommended. The document also refers to advice provided by OEH but does not indicate what the advice was.

There is a currently a range of legislative and other documentation aimed at protecting the koala that the EIE could have referred to, including:

- The NSW *Threatened Species Conservation Act 1995* - the koala is listed as 'vulnerable to extinction'.
- The Commonwealth *Environment Protection and Biodiversity Conservation Act 1999* – Koala populations in Queensland, NSW and ACT are listed as vulnerable to extinction.
- Department of Environment and Climate Change NSW (DECC 2008) *Recovery Plan for the Koala (Phascolarctos cinereus)*.
- Department of Environment (DoE 2014). *EPBC Act referral guidelines for the vulnerable Koala (combined populations of Queensland, New South Wales and the Australian Capital Territory).*
- Threatened Species Scientific Committee (TSSC 2012). *Commonwealth Conservation Advice on Phascolarctos cinereus (combined population in Queensland, New South Wales and the Australian Capital Territory).*
- Threatened Species Scientific Committee (TSSC 2012). *Listing advice for Phascolarctos cinereus (Koala).*

The OEH website provides an abundance of justification as to why further measures are required to protect the koala. The website also indicates that:

- The Chief Scientist & Engineer provided a report to the NSW Government in December 2016 titled "Independent Review into the Decline of Koala Populations in Key Areas of NSW" which lays the foundations for preparing a whole-of-government koala strategy for NSW.
- The Chief Executive of OEH proposes to amend the NSW Threatened Species Priorities Action Statement (PAS).
• The draft Saving our Species conservation project for the koala is currently on exhibition (Saving our Species Iconic Koala Project). The draft project includes a list of actions that are proposed as amendments to the existing Priorities Action Statement (PAS) for the koala.

As the EIE acknowledges the on-going decline of the koala population, it would appear that SEPP 44 has failed to achieve its aim of “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”.

The EIE does not clarify how the current or proposed amended SEPP 44 fits into other relevant legislation, or how it will reverse the decline of the species. OEH promotes a whole-of-Government approach to conserving the species, yet the Department’s response appears to be to shift the responsibility to Local Government, by making local planning directions and updating the guidelines for Council to follow.

It is unfortunate that the draft legislation, draft guideline and local planning direction have not also been exhibited with the EIE. It is difficult to comment on proposed definitions, clauses, guidelines and direction without knowing what is proposed.

At face value the updating the definition of Koala habitat from ‘Core’ and ‘Potential’ Koala Habitat to ‘Character of Vegetation Communities Present’ to incorporate additional tree species identified by OEH and ‘Evidence of Koala Presence’ for localities where Koalas are present, regardless of the tree species is supported. However, without seeing the proposed legislation it is difficult to determine the consequences of the change.

Similarly the proposed modification of the SEPP 44 Guidelines to include Koala habitat assessment and survey requirements to determine presence, standardised requirements and assessment criteria to assist in streamlining the assessment of development applications in areas that are not currently covered by a Koala management plan is supported. However, it is unclear whether this requirement will put a financial burden on Council.

The expansion of the known feed tree species to include another 55 tree species is supported. However this action was recommended in the NSW Recovery Plan for Koala (2008). It is unclear as to why has it taken the Department eight years to implement this recommendation. It is also noted that the OEH website indicates that the koala is known to feed on 70 eucalypt and 30 non-eucalypt species.

The EIE indicates that the Aims of SEPP 44 remain appropriate, but the objectives could be located in another part of the planning system. With respect, the SEPP does not contain objectives, apart from the reference in the heading, similar to many other SEPPs.

The EIE indicates that updated guidelines will be prepared to support the preparation of comprehensive Plans of Management. The EIE does not identify the shortcoming of the existing guidelines. It could be assumed that they are ineffective or overly complex as the OEH website identifies that only four Plans of Management have been prepared and endorsed under SEPP 44 given the SEPP currently applies to 107 local government areas.

It is our recommendation that the Plans of Management be prepared by the Department and OEH at a regional level, to inform the LEPs of individual Council’s. The regions identified on OEH’s website could be used, having regard to the different feed trees in each region. The requirement for each Council to prepare a Plan of Management appears to be an abrogation of the State’s responsibility to protect the koala, and abrogating the responsibility to local government.

The EIE does not provide detailed information regarding the proposed comprehensive management plan, including when it is applicable and how it will provide a greater conservation benefit than the current requirements for a local environmental study and individual plans of management. The specific changes and inclusions to the SEPP 44 Guidelines that will outline the preparation of a management plan, survey requirements and development application preparation and assessment criteria have not been provided at this stage. Council reserves its comments on the removal of local environmental studies and individual plans of management and the proposed guidelines content until the draft SEPP44 and supporting documentation are provided by the Department. Clarity is also required on whether or not LGA plans of management are mandatory or discretionary.
It is unclear why the Secretary of Planning and Environment is required to approve plans of management, unless it is to ensure consistency with other plans and policy, such as achieving housing targets.

The proposed amendment includes Wollongong City Council in the list of Councils to which SEPP 44 applies. Please note that the merger proposal between Wollongong City Council and Shellharbour City Council is currently in court. If the amalgamation proceeds, the list of council names would need to be updated within SEPP 44.

All proposed updates should not diminish the current protection of the species and should align entirely with the species national listing under the Environmental Protection and Biodiversity Conservation Act 1999 (EPBC Act). The following federal documents should be considered in the preparation of the proposed updates to SEPP 44 and associated guidelines:

- Department of Environment (DoE 2014). EPBC Act referral guidelines for the vulnerable Koala (combined populations of Queensland, New South Wales and the Australian Capital Territory).
- Threatened Species Scientific Committee (TSSC 2012). Listing advice for Phascolarctos cinereus (Koala).

The submission has been prepared by staff with relevant technical expertise in biodiversity assessment for developments, planning proposals, strategic land use planning and natural areas management.

Please contact Jodie Cooper, Environmental Strategy Officer on (02) 4227 7111 should you require further information.

This letter is authorised by

Renee Campbell
Manager Environmental Strategy and Planning
Wollongong City Council
Telephone (02) 4227 7111