



Nambucca Valley
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Director, Planning Frameworks
NSW Department of Planning and Environment
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**NVCA SUBMISSION ON EXPLANATION OF INTENDED EFFECT: STATE ENVIRONMENTAL PLANNING
POLICY NO 44 – KOALA HABITAT PROTECTION**

Dear Sir/Madam,

The Nambucca Valley Conservation Association (NVCA) is a voluntary community group which has operated on the mid north coast for over 30 years and which maintains a long standing interest in the protection of koala habitat and survival of the koala in its natural habitat.

This Association supports the review of NSW SEPP 44 to 'to better protect koala habitat' on the basis that:

- 1) Koalas are listed as a vulnerable species under the NSW *Threatened Species Conservation Act 1995* and the Commonwealth *Environment Protection and Biodiversity Act 1999*.
- 2) Koalas numbers are in alarming decline in NSW, having decreased by a third of their original population size since 1990 and
- 3) The current SEPP 44 has failed to protect koalas across all land tenures to which it applies since its introduction in 1995.

The NVCA questions the purpose of releasing the *Intended Effect: State Environmental Planning Policy No. 44 – Koala Habitat Protection*, without also releasing a review of the existing SEPP for comment. The lack of specific details as to how the stated intended effect is to be achieved is disturbing and does not foster trust in the process, therefore NVCA urges the Government to undertake a thorough review of the performance of the current SEPP 44 to exhibit a draft SEPP 44 and Guidelines *before* finalising any revision of SEPP 44.

Given that habitat loss is the recognized key threatening process to koala survival, it is clear that a new planning instrument which is intended to 'better protect koalas' will necessarily apply stronger constraints to the clearing and modification of koala habitat. It is distressing that the NSW Government currently allows land clearing, development and intensive native forest logging and clearfelling operations in identified koala habitat. This Association believes that any genuine effort to

reverse this dismal situation must have as its basis, mechanisms which identify and protect koala habitat and resident koala populations insitu in perpetuity.

SEPP 44 has been undermined by poor implementation, lack of absolute protections for koala habitat, weak biodiversity offsetting policies, inadequate forestry regulations on both private and public land and processes that facilitate major projects.

Any planning instrument must consider not only the presence or absence of koalas in any given location, but also the social, home ranging and territorial behaviours of koalas. A new SEPP must also consider not only the protection of remaining koalas and their habitat but the provision of sufficient suitable recruitment habitat to ensure recovery of koala numbers to sustainable levels. This consideration will be critical if the NSW is to achieve Recommendation 1 of the *Report of the Independent Review into the Decline of Koala Populations in Key Areas of NSW* (NSW Chief Scientist & Engineer December 2016), which states '*That Government adopt a whole-of-government Koala Strategy for NSW with the objective of stabilising and then starting to increase koala numbers*'.

If definitive action is not taken by the State Government, the internationally iconic koala is at very real risk of extinction. No government would want to have as its legacy the critical decline and extinction of such a species as a result of its failure to act, in the presence of overwhelming scientific evidence, to protect koalas and their habitat.

The existing SEPP 44 has been poorly implemented by state and local govt entities. It does not provide absolute protections for koala habitat. Weak biodiversity offsetting policies and importantly inadequate forestry regulations are also key factors in the failure of NSW Government to save the koala from decline and which require urgent addressing.

We recognise that SEPP 44 alone cannot provide all the necessary protections for koalas in NSW. In fact, this organisation is strongly committed to campaigning for the cessation of logging in NSW public native forests in response to industrial scale logging having a devastating effect on the health and biodiversity of our native forests. Koala habitat is being destroyed at a rate never before seen due to over logging and clear-felling of public native forests and inappropriate coastal development. The fact that a mere 14ha per year of identified koala habitat has been protected within logging areas in NSW public forests, and that being only temporary protection until the next logging operation, speaks volumes. This failure to truly protect koala habitat within logging areas sends a clear message to NSW voters that supporting a proven unviable native forestry industry is more important than the long-term sustainability of our public native forests and the threatened species dependant upon them, such as the koala. The Government is failing one of our most precious threatened species.

SEPP 44 must be considered in the context of and have strong integration with any state-wide koala strategy for the protection and recovery of NSW koala populations. The NVCA commends the NSW Govt for acting upon the abovementioned Recommendation 1 of NSW Chief Scientist & Engineer's report. Our representatives are participating in the consultation process for the preparation of a NSW Koala Strategy.

In a recent meeting with an NVCA representative, Oxley MP Melinda Pavey made clear her belief that habitat loss from urban development, vehicle impacts and dog predation were significantly impacting on koala numbers. Given that the Nambucca Shire has one of if not the largest amount of land zoned

for large lot residential (RU5) development in NSW, we emphasise the importance of strong enforceable planning policies to protect remaining koala habitat on the east coast in perpetuity.

Disappointingly, the EIE does not provide the specific wording of proposed new provisions. This failure makes it impossible to comment on whether any proposed changes will improve outcomes for koalas in NSW.

For example, how is the assessment of vegetation to be undertaken? Will it be a desktop study or an onsite field assessment? Will the assessor be independent of the developer proponent?

Identified koala habitat loss must cease if the current documented decline in koala numbers is to be arrested and ideally reversed. The EIE refers to guidelines which are to apply, for example in guiding decision makers but without access to these guidelines, the NVCA is in no position to form an opinion as to their efficacy or otherwise. Any new instrument must apply clear criteria and enforceable rules rather than 'guidelines'.

The EIE suggests that Local Planning Directions (LPD) are the appropriate setting to instruct local councils on plan making and proposes to update and transfer the plan making functions to a Local Planning Direction. While we do not necessarily oppose this suggestion, we have not seen the proposed LPD and the updated instructions that will be given to councils and thus, again, cannot comment.

The EIE states that 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.

The NVCA supports the updating of the Koala feed tree species list as the current list is incomplete. Including 65 tree species instead of the present narrow range of 10 feed tree species listed in Schedule 2 to the current SEPP is appropriate.

'Simplifying the development assessment process' is another matter and rings significant alarm bells for this organisation, unless it means that once koala habitat is identified it is automatically protected in perpetuity! Any such proposal to *'simplify the development assessment process'* should require public exhibition and deserves thorough scrutiny prior to determination.

The NVCA considers the scope of SEPP 44 should not be limited to council approved development. This limitation again undermines the SEPPs ability to achieve its objectives. The SEPP should apply to any land management activity ie any rural land-clearing to be approved under the Local Land Services Act 2016, any major projects such as State Significant Development or Infrastructure, any complying development and any Part 5 development such as local infrastructure and mining exploration. To be effective koala habitat should be consistently assessed and protected.

Further, all Local Governments listed in Schedule 1 of the SEPP should be required by NSW Government to prepare and implement a Koala Plan of Management.

Any new SEPP must consider the implications of climate change which are significant for the koala and make habitat linkages even more important.

The updated SEPP should require independent review and public consultation at regular intervals to assess the performance and effectiveness of the SEPP and Guidelines against their aims.

We strongly recommend that there be no area limit for land to which the new SEPP 44 applies. Loss of koala habitat from sites below 1ha (under the current SEPP) has an accumulative impact across the landscape and constitutes 'death by a thousand cuts' for koalas, especially in coastal and urban areas. It softens the blow and does not necessarily raise the attention or concern of the community. It is only when considered in the context of the broader landscape can the true impacts be considered. This is the job of governments but sadly to date one that has not been given genuine attention.

We urge the NSW government to commit to protecting koala habitat from being cleared to ensure that a koala strategy is not undermined before it begins. Mapping and regulatory mechanisms should be in place before the new land clearing laws and Codes commence. Koala habitat must be exempt from code-based clearing under the new legislation.

In Conclusion

The NVCA believes it would be appropriate to complete the preparation of the NSW Koala Strategy in line with the NSW Chief Scientist's report recommendations prior to finalisation of the new SEPP. This will help to ensure the SEPP will work to achieve the objectives of an agreed state wide strategy.

In the meantime, and in light of the aforementioned alarming decline in NSW koala numbers, we respectfully request that a moratorium be placed on:

- 1) any native forest logging on private or public land where koala records exist or koala feed tree species make up 15% or more of the canopy and**
- 2) any land clearing or development within koala habitat**

until the NSW Koala Strategy and SEPP 44 review are complete.

The review of SEPP 44 must now be considered in the context of the Government's plans to develop a NSW Koala Strategy. Consideration must also be given to other processes, such as private native forest logging, changes to land clearing laws and new biodiversity offsetting policies, that undermine the ability of SEPP 44 to provide adequate protection for koalas and most importantly, koala habitat.

The Department should continue to consult with key stakeholders as it continues to review SEPP 44, and the draft SEPP and guidelines should be put on public exhibition before being finalised.

Our members will be watching this policy review and strategy development process with close interest and hope that it will result in meaningful and enforceable changes to laws which govern the way koala habitat is identified and managed in NSW.

Real change on the ground is urgently required to save our koala and we hope that this government has the courage and foresight to take the lead on this important matter

Thank you for the opportunity to contribute to the process.

Yours sincerely

Paula Flack
President