

1 March 2017

Director, Planning Frameworks
GPO Box 39
SYDNEY NSW 2001

Our Ref:
Your ref:
Enquiries: Mat Bell

Dear Sir/ Madam,

Re: Submission to the Review of SEPP44 - Koala Habitat Protection

Background and Introduction

This correspondence has been prepared in relation to the NSW Government proposal to update and amend State Environmental Planning Policy No. 44 - Koala Habitat Protection (hereafter referred to as "SEPP44").

This submission has been prepared by the Senior Ecologist of MidCoast Council and represents the views of the individual officer. This Submission does not seek to represent the views of the Council.

I appreciate this opportunity to provide a submission in relation to proposed review of SEPP44.

In preparing this submission, I have considered the current SEPP44, as well as exhibited material including:

- NSW Department of Planning and Environment, 2016, *Explanation of Intended Effect: State Environmental Planning Policy No. 44 - Koala Habitat Protection*.
- NSW Department of Planning and Environment, 2016. *Review of SEPP44 - Koala Habitat Protection frequently asked questions*.

I attended two (2) Local Government workshops related to the Review of SEPP44 as well as the preparation of a NSW Koala Strategy.

The "Explanation of Intended Effect - State Environmental Planning Policy No. 44 Koala Habitat Protection" document provides an outline of the proposed changes, which in summary relates to:

- Updating/ amending the aims and objectives of the policy
- Amending the definitions including expanding the recognition of tree species that provide recognised habitat for koalas (from 10 to possibly 65 species)
- Streamlining and standardising the development assessment process, with guidelines to be prepared
- Removing the requirement to prepare Individual Koala Plans of Management
- Transferring plan-making and strategic requirements of the SEPP to local planning directions

A General Critique of SEPP44 and Koala Protection Generally

In New South Wales, koalas have been recognised as being threatened with extinction in the wild since 1992.

The planning policy, SEPP44 was introduced in 1995 to encourage local councils to conserve and manage koala habitat to ensure populations remain stable and population decline is reversed. The SEPP applies controls to development applications on specified land in certain local council areas. It works alongside the current *Threatened Species Conservation Act 1995*. An Approved Recovery Plan for the koala was adopted by the NSW Government in 2008.

Further, there has been a range of strategies, reports, published articles, assessments, conferences, summits and management plans across local, regional, state and national scales. This has included but has not been limited to the 1990 *Koala Summit: managing koalas in NSW*, the 1995 *Conference on the Status of the Koala*, the ANZECC 1998 *National Koala Conservation Strategy* and the current NSW Government koala priorities action statement.

Despite this history of legislative protection, the koala population in NSW has declined significantly in both population and extent. This decline is well-documented scientifically and is recognised in the NSW Chief Scientist and Engineer 2016 report on the *Independent Review into the Decline of Koala Populations in Key Areas of NSW*.

The significance of the decline of the koala in NSW cannot be understated. It must be recognised as a failure of public conservation policy and practice. Such recognition must instructively guide this review of SEPP44.

Indeed, in the MidCoast Council area, koala population decline over the last three (3) koala generations has been severe and dramatic.

Parts of this Council area that were sub-regional and local strongholds for koalas such as in Coopernook-Lansdowne, Taree North and Brimbin areas, now appear to contain few koalas. Key threats profoundly driven by the clearing of habitat, the simplification of habitat and fragmentation, with synergistic impacts on populations of logging, unsuitable fire regimes, dog attack, roadkill and disease have seriously depleted the koala population of the MidCoast Council Area.

The Endangered Koala Population of Hawks Nest and Tea Gardens, which was listed as endangered since 1999 and which has been subject to a Recovery Plan since 2003, has not been restored to a position of viability in nature. Trends apparently associated with positive recovery in or about 2012/13 in this population appear to have been stymied by the NSW Government's introduction of the 10/50 code (and the subsequent loss of important home range trees), combined with cumulative and ongoing development of habitat and other operational threats (particularly road-kills).

A range of factors and mechanisms have conspired to exert an ongoing pressure on the koalas' population and status in NSW and in this Council area, including but not limited to:

- Inadequate reservation of koala populations and habitat
- Inadequate understanding and resourcing of koala threat management
- Inadequate data collection and monitoring
- Inadequate conservation framework
- Damaging land use framework and planning controls
- Inadequate legislative protection, recovery and regulatory enforcement

The review of SEPP44 must consider and reflect on this history. The current SEPP44 has not achieved its own aims or objectives.

Why has the current SEPP44 failed to achieve its Aims?

In my opinion, the effectiveness of the SEPP44 instrument has been constrained for a number of reasons:

- The SEPP44 instrument contained limiting, inaccurate and inadequate definitions of what constituted both potential and core koala habitat
- The list of tree species in Schedule 2 of SEPP44 was too narrow and did not reflect the range of tree species in NSW known to be important to koalas
- The 1-hectare size threshold for application of SEPP44 was too large
- SEPP44 was confined only to development applications under Part 4 of the EP&A Act 1979 and did not extend to other development types, such as Part 5 matters, state significant development and major projects, private native forestry applications, etc

In addition to these constraints, while it is not a fault of the SEPP44 instrument, it is a reality that:

- SEPP44 has probably been inadequately enforced by some local authorities due to inadequate resources or a lack of will
- The process of developing and implementing Comprehensive Koala Plans of Management has been frustrated by a lack of resources and by adversarial political interventions (and hence why there are so few adopted CKPOMs in NSW)
- Individual Koala Plans of Management have been inadequately audited, regulated and enforced
- The process of surveying koala habitat and recognising such habitat within environmental protection zones in Local Environmental Plans and in other planning instruments has also been frustrated by inadequate resourcing and adversarial political intervention

- There has been a lack of adequate leadership from the state authorities with regards to SEPP44 implementation

I urge the NSW Government to consider the issues associated with SEPP44 implementation in this review in an informed, adaptive and responsive manner. Otherwise, the inadequacies of the SEPP44 instrument may be perpetuated into the future.

Comments to specific terms of the SEPP44 Review

I wish to make the following specific comments to the SEPP44 review:

Proposed Amendments to the Aims

The review suggests that the existing aim is "*appropriate*".

I disagree with this. The current wording is constrained by the use of the term "*encourage*", which lacks decisiveness and is impossible to measure.

Further, it places koala conservation in the context of the species "*present range*", which we know has significantly declined in recent times and is now probably reduced on the species range at various times in the recent history.

The current wording of the aim of SEPP44 should be deleted and replaced with:

This Policy aims to conserve and manage areas of koala habitat to ensure that a permanent free-living population of the species occurs within its natural range and to reverse the current trend of koala population decline:

(a) by ...

The definition of koala habitat within the aim must include reference to occupied habitat, unoccupied but important habitat, buffers to habitat as well as connecting habitat (linkages).

Updated list of Councils for which SEPP44 applies

Updating the list of Councils to which SEPP44 applies as is outlined in the "*Explanation of Intended Effect - State Environmental Planning Policy No. 44 Koala Habitat Protection*" document is valid and appropriate.

Updated definitions of koala habitat

This is one of the most fundamental and important issues to be addressed in this SEPP44 review. The existing definitions of koala habitat are constrained and inadequate and need to be deleted and replaced with a more scientifically-valid and accurate description of what areas of land comprise koala habitat in NSW.

Unfortunately, no specific detail is provided as to the Government's intentions relating to the proposed new koala habitat definitions.

However, Approved Recovery Plan for the Koala has considered the issue of definition of koala habitat. Further, there is a range of koala experts in NSW that should be engaged to assist inform the new definition of koala habitat in the amended SEPP44 instrument.

Any such definition of koala habitat must consider and include reference to occupied habitat, unoccupied but important habitat, habitat buffers as well as habitat linkages.

Updated list of koala tree species

The updating of the list of tree species important to koalas is also an issue of critical attention.

The Government's proposal to expand the list of trees referred to in Schedule 2 from ten (10) species to sixty-five (65) species is scientifically-valid and supported.

I have reviewed the sixty-five (65) tree species identified in the "*Explanation of Intended Effect - State Environmental Planning Policy No. 44 Koala Habitat Protection*" document. Additional tree species that are known to be critically-important for koalas in the mid north coast of NSW and adjoining ranges are absent from the proposed list. As such, in the amended SEPP, the following tree species need to be included in the Table 1 Tree Species List:

Grey Gum^	<i>Eucalyptus biturbinata</i>
Bangalay	<i>Eucalyptus botryoides</i>
Thick-leaved Mahogany	<i>Eucalyptus carnea</i>
Thin-leaved Stringybark^	<i>Eucalyptus eugenioides</i>
Slaty Red Gum^	<i>Eucalyptus glaucina</i>
Flooded Gum	<i>Eucalyptus grandis</i>
Craven Grey Box^	<i>Eucalyptus largeana</i>
Drooping Red Gum	<i>Eucalyptus parramattensis</i> subsp. <i>decadens</i>
Red Mahogany^	<i>Eucalyptus resinifera</i>
Narrow-leaved Red Gum^	<i>Eucalyptus seeana</i>
Broad-leaved White Mahogany	<i>Eucalyptus umbra</i>
Broad-leaved Paperbark	<i>Melaleuca quinquenervia</i>

^ - Species listed in Appendix 2 of the Approved Recovery Plan for the Koala

I have definitive evidence of the importance of the above species in this area. They should be incorporated in the updated SEPP44 Schedule 2 tree species list.

Comprehensive Koala Plans of Management

The intention of the preparation of guidelines to assist and support councils in the preparation and adoption of Comprehensive Koala Plans of Management ("CKPOM") is positive and beneficial. However, no specific detail has been provided in the exhibition of the SEPP44 review material so no detailed comments can be provided.

The guidelines for the CKPOMs need to reflect on the mechanisms and negatively-influencing factors behind the paucity of adopted CKPOMs in NSW despite 22-years of the implementation of SEPP44.

The guidelines should reflect that CKPOMs could apply to all or certain specific parts of local government areas.

Individual Koala Plans of Management

The updated SEPP44 proposes to remove a requirement to prepare and execute Individual Koala Plans of Management (IKPOM) for developments. Koala protection actions would instead be dealt with by standardised requirements on development consents as set-out in the proposed guidelines.

No specific detail has been provided in the exhibition of the SEPP44 review material so no detailed comments can be provided.

In principle, I do not object to the removal of IKPOMs and use of standardised requirements on development decisions.

The guidelines will need to inform decision-making for development approvals, such as when a DA is unreasonable and inappropriate and when a development should be refused due to its scale of impact on koalas and their habitat.

I feel that the suite of actions that can be incorporated as conditions on a development consent can be used to achieve the same outcomes that an IKPOM could achieve. This may include restrictions as to use and/or public positive covenants for protection, recovery and threat mitigation activities.

As such, I do not object to the removal of a requirement for IKPOM and replacement with standardised requirements directed by the adopted guidelines. This depends critically on the scope and comprehensiveness of the details within the as-yet prepared guidelines. I would welcome additional consultation and engagement on the development of the guidelines.

Streamlined DA process

The SEPP44 review proposes the streamlining of the development application/ consent process.

I do not object to the streamlining of the standard DA process provided that SEPP44 is proactive and effective in its protection of koalas, koala habitat and the avoidance of threats.

The SEPP44 review proposes that the proponent, before the development application is submitted:

- Investigates the vegetation of the site and determines whether or not it contains "*koala habitat*"
- If "*koala habitat*" is present, further assessment is required to determine if koalas are present
- If koalas are present on a site that does not conform to the definition of "*koala habitat*", then the assessment continues as if it were "*koala habitat*"

The consent authorities consideration of the DA is informed by a CKPOM or (if a CKPOM does not exist) by the guidelines.

Whilst there is a lack of detail of what the guidelines cover, I generally do not oppose this proposed process.

However, the flaw in this process exists where "*koala habitat*" demonstrably occurs on a site but for which that habitat is not currently occupied by koalas or even where a low density population may occur but for which the proponent's consultants fail to detect such activity in their site assessment.

Koalas are threatened with extinction and occur in depleted range and abundance across many regions of NSW. There are important areas of habitat that are not occupied but such occupation is vital for the preservation of the species and the recovery of its viability in NSW.

As such, there are many areas of important habitat that are not presently occupied or occupied so transiently that evidence of occupation is scattered and difficult to detect. The proposed process in this SEPP44 review would ignore the need to conserve and manage such areas for the benefit of koala population recovery over time. This fails the aims of SEPP44.

As such, the guidelines and the adopted DA process needs to recognise, consider and manage koala habitat that is occupied as well as unoccupied and the areas of buffers and linkages.

Further, the guidelines must not only encourage but must give clear direction on the requirements of survey, assessment and decision-making standards. These standards must have legislative weight and be enforceable.

This is of critical importance to the preservation of the species in NSW and must be adequately incorporated into the DA assessment process.

Transferred strategic planning requirements to local planning directions

I do not generally have a view on the merits or otherwise of the proposal to transfer the strategic planning requirements of the existing SEPP44 to local planning directions.

I have, in this submission, recognised that the current strategic planning mechanisms of SEPP44 have generally failed. This is evidenced by the paucity of adopted CKPOMs in NSW and the paucity of dedicated processes across NSW Councils of koala habitat survey leading to koala conservation in environmental planning instruments, such as environmental rezonings and DCP provisions. These processes have been under-resourced, under-prioritised and too easily derailed by unscientific, political intervention.

As such, the NSW Government must ensure that if it transfers the strategic requirements of the SEPP44 to local planning directions that the adopted framework addresses the problems and constraints of the past and initiates a new, effective and robust planning framework for koala population and habitat conservation and recovery.

Additional Comments to the SEPP44 Review

I wish to make the following additional comments to the SEPP44 review. These issues constrain the effectiveness of SEPP44 and should be addressed as part of this review (in addition to the matters discussed above):

1-hectare threshold

The 1-hectare threshold burdens and limits the application of SEPP44 and should be removed entirely or reduced to 1,000m². Many sites that are important for koalas in peri-urban contexts are missed due to the unreasonable 1-hectare size threshold that applies to the current SEPP. This needs to be addressed.

Development types caught by the SEPP44 process

SEPP44 currently only applies to Part 4 development applications. For equity, consistency and standardised decision-making, the application of SEPP44 needs to be extended to include:

- Complying development
- Part 5 matters in the EP&A Act 1979
- State-significant or major projects
- Applications for private native forestry~
- Proposed native vegetation clearing codes and exemptions
- Proposed native vegetation clearing applications

~ - I understand that private native forestry is sometimes perversely utilised to modify habitat conditions pre-emptively of subsequent development applications for other purposes. I also understand that the PNF codes may not be rigorously or appropriately adopted, audited and enforced in relation to koala protection requirements. Such issues need effective consideration.

Koala habitat should be protected and managed and not offset

The NSW Government's biodiversity reform process appears to rely heavily and encourage the use of offsetting under a proposed biodiversity assessment methodology. SEPP44 and other NRM instruments in NSW must recognise that avoiding impacts on important habitats, such as koala habitat, is the first and obvious priority in conservation and recovery practice. Important koala habitats need to be preserved and protected and development must not be permitted in such habitat units.

Koala habitat

Much of the legal controls on the management of koala habitat respond to koala habitat as mapped in an adopted CKPOM. For example, the 10/50 code does not apply to mapped koala habitat in an adopted CKPOM. However, there is a paucity of CKPOMs in NSW. The functional administrative, resourcing and political constraints to the adoption of CKPOM that has been experienced across NSW means that the reliance in alternate legislation only to identified core koala habitat as defined in adopted CKPOM is flawed and heavily-limiting to population protection and recovery. The NSW Government needs to give consideration of alternate means to identify and protect koala habitat other than only within CKPOM. This might be a published state-wide koala map or directions and resourcing of councils to prepare koala mapping to certain standards.

SEPP44 auditing and review

The SEPP44 instrument needs to be better monitored, audited and evaluated into the future. A specific program needs to be defined, resourced and implemented. Gaps and loop-holes as well as limitations on effectiveness must be identified and resolved. The NSW Koala Strategy (when adopted) should inform another critical examination of SEPP44 and its application in NSW.

Once again, thanks for the opportunity to provide this submission.

Yours faithfully

Mat Bell
Senior Ecologist