

Contact: Tony Phelps

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

Dear Sir/Madam

PROPOSED AMMENDMENT SEPP 44- Koala Habitat Protection

In November 2016 the NSW Planning and Environment issued an 'Explanation of Intended Effect' with respect to the Proposed Amendment of the State Environment Planning Policy No. 44 – Koala Habitat Protection (SEPP 44).

The key changes that the proposed amended SEPP will implement relate to the:

- Definitions of koala habitat;
- List of tree species;
- List of councils;
- Development assessment process.

Council staff congratulates you on aiming to strengthen the protection of habitat for this iconic native species, and welcomes the opportunity to provide comments.

The following submission is made by staff from the planning and environment sections of Wagga Wagga City Council. Our points of concern have been raised under the subheadings discussed within the Explanation of Intended Effect.

DEFINITIONS

An updated dictionary and or definition of terms used within the amended SEPP will be important part of this document. Including terms like upper and lower strata, which are not defined in the current SEPP. The SEPP should also use recognised terms already defined under the Standard Instrument-Principal Local Environmental Plan where relevant.

DEVELOPMENT APPLICATION PROCESS

It is stated that the proposed changes have been developed to streamline the development application process. However it appears that the cost of surveys and the development of Koala Management Plans have been removed from the responsibility of the proponent. Local Councils have been burdened with the responsibilities and costs of developing the control documents and management plans discussed in the amended SEPP. A method of recovering the cost for developing the control documents needs to be instigated.

Under the proposed amendment to SEPP 44 it is indicated that the City of Wagga Wagga would be required to prepare a Plan of Management for protection of koala habitat across the entire Local Government Area (LGA). This would require resourcing in terms of an additional staff member for approximately one year or (based on costs of previous consultant's work of a similar nature) the development of this plan of management by a consultant may cost approximately \$100,000.

THE GUIDELINES

As the updated guidelines have not been released for public comment it is impossible to provide an informed comment as to their content. It is expected that the proposed guidelines will require that the Management Plans are written in simple terms so that Planners/Building surveyors/General Public and Industry can interpret and easily apply the document without the need for expert interpretation at design and assessment stages.

The guidelines will need to include examples of how the 15% of the total number of trees in the upper or lower strata of the tree component is calculated, and how this will be consistently applied.

It will be difficult to include adequate details in the plan of management that would be used in support of a land use rezoning within a core or potential koala habitat areas. A rezoning application may require a comprehensive study to support their development proposal which may be conditioned as part of the Gateway Process by the Minister. This process will need to be explained in the guidelines.

The guidelines need to reflect how the proposed SEPP changes will be incorporated in to the Standard Template DCP proposed as part of the NSW Government Legislation Review, there should be a standard set of controls introduced in the template DCP for development occurring in these areas.

LIST OF TREE SPECIES

The proposed amendment to SEPP 44 lists 65 tree species that identify Koala habitat. The Wagga Wagga LGA covers an area of about 488,600ha and 14 of these 65 tree species are widely distributed across the LGA. Native vegetation communities across the Wagga Wagga LGA have been surveyed and mapped (Priday, S. and Mulvaney, M. (2005) The Native Vegetation and Threatened Species of the City of Wagga Wagga. Department of Environment and Conservation, Queanbeyan NSW). Based on information reported by Priday and Mulvaney (2005) about 99.75% of the native vegetation in the Wagga Wagga LGA is defined as potential Koala habitat, according to the updated definitions of Koala habitat. This significantly increases the area of potential koala habitat and Council's responsibility to survey and ground truth native vegetation, prepare Development Control Plans and implement environmental zones.

LIST OF COUNCILS

The City of Wagga Wagga is a listed council in the proposed amendment of SEPP 44 and through a Local Planning Direction will be instructed to undertake the actions required by the amended SEPP 44 Koala habitat protection. The proposed guidelines must provide adequate support to councils in the making of consistent and comprehensive Plans of Management which will be used to guide development applications and the assessment of the impacts on koala habitat. This will ultimately result in improved connectivity between populations and improved genetic diversity.

From an organisational prospective the amended SEPP will necessitate Council's preparation of a comprehensive Plan of Management for the entire LGA due to the extensive native vegetation cover that is defined as potential koala habitat. This will place a financial burden on the Council.



OTHER ISSUES OF IMPORTANCE

The Wagga Wagga LGA is at the south-eastern boundary of Koala Management Area 6 – Western Slopes and Plains. During the period 1994-2014 several sightings of Koalas were reported in the Wagga Wagga LGA as well as in the surrounding LGAs (A Preliminary Map of the Likelihood of Koala Occurrence in NSW, Office of Environment and Heritage NSW, December 2014). Although the amended SEPP provides for the protection of Koala Habitat the document is undermined by other legislations and codes of practice that allow for vegetation clearing. Examples of some of the conflicting legislations are identified and discussed below:

1. Amendments to Local Land Services Act, 2016

In 2016 the NSW Government made substantial changes to the Local Land Services Act, 2013 (LLS Act). Significant among these changes was the introduction of three land categories:

- **Category 1 (Exempt Land);** Clearing of native vegetation can occur without approval.
- **Category 2 (Regulated Land);** Clearing of native vegetation can occur in accordance with an allowable activity or code under the LLS Act. Proposed clearing of native vegetation that cannot occur in accordance with an allowable activity or code requires approval under the LLS Act.
- **Excluded Land;** The native vegetation regulatory framework does not apply and clearing is regulated under the *Environmental Planning and Assessment Act 1979* and the *Biodiversity Conservation Act 2016*, as well as some other legislation.

State-wide maps are being prepared that show the areas covered by each of these three categories. It is foreseeable that these maps will show extensive areas of the state where patches of vegetation identified as koala habitat are isolated by land where clearing can occur without approval. Any Exempt or Regulated clearing in these regions would destroy or greatly weaken habitat connectivity between the patches of koala habitat, and therein lies a direct contradiction to the goals of the Amended SEPP which are to “*update the controls to better protect koala habitat*”.

2. Roads Act 1993 No 33

Section 88 of the Roads Act states - *A roads authority may, despite any other Act or law to the contrary, remove or lop any tree or other vegetation that is on or overhanging a public road if, in its opinion, it is necessary to do so for the purpose of carrying out road work or removing a traffic hazard.*

Many of the rural road reserves with the Wagga Wagga LGA are considered to be significant fauna corridors and are populated with tree species identified within the amended SEPP. The Roads Act and the SEPP are in conflict regarding the removal of vegetation, there needs to be clear direction in regard to legislation with conflicting objectives.

3. 10/50 vegetation clearing code of practice - Rural Fires Act 1997

This scheme allows people in a designated area to:

- Clear trees on their property within 10 metres of a home, without seeking approval; and



- Clear underlying vegetation such as shrubs (but not trees) on their property within 50 metres of a home, without seeking approval.

The 10/50 code of practice is supported by Section 100Q of the Rural Fires Act 1997. It is acknowledged that human life must be protected from fire risk, however this is an example of Codes of Practice being in conflict with the amended SEPP. There needs to be clear direction in regard to legislations with conflicting objectives.

SUMMARY

Within the Wagga Wagga LGA a high percentage of the potential Koala habitat is located on agricultural land or within the rural road reserves. As the SEPP is principally an instrument used in the planning and development application process it is unlikely to be widely implemented in the farming sector or by infrastructure service providers who are not subject to this process. The amended SEPP 44 will need to clearly identify which Codes of Practice, legislations and other SEPP's take precedence above the amended SEPP 44. An implementation strategy will also need to be developed to ensure that SEPP 44 becomes a widely distributed and acknowledged document that is referenced by all stakeholders who undertake native vegetation removal.

The Office of Environment and Heritage are currently investigating the "Report by the Chief Scientist & Engineer NSW, December 2016" which made eleven recommendations for the improvement of Koala conservation. The final report will need to discuss the intricacies of conflicting legislations, as well as be provided to all stakeholders for consultation prior to adoption.

Although the amended SEPP has indicated that the changes will simplify the development application process it appears that responsibility for the development of environmental surveys, management plans and other control documents has been shifted to local government. The shifting of responsibility from proponents to Local Councils is an unanticipated burden on Councils' resources and budgets.

Should you require to further discuss any of the topics above, please contact Council's Environmental Management Officer, Tony Phelps during office hours on (02) 6926 9341.

Yours sincerely



Mark Gardiner
Manager Environment and City Compliance

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