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Proposed Amendments to State Environmental Planning Policy 44 – Koala Habitat Protection

Thank you for the opportunity to make a submission on the proposed amendments to SEPP 44 and the associated Explanation of Intended Effect (EoIE). I believe SEPP 44 is an important planning instrument with a crucial role to play in ongoing efforts to protect and conserve koala populations across NSW.

Since the introduction of SEPP 44 I have worked on the adopted Individual Koala Plan of Management for the Koala Beach Estate in Tweed LGA and have been involved in the preparation of draft Comprehensive Koala Plans of Management for Port Stephens LGA, the City of Campbelltown LGA, and Greater Taree LGA and have provided comments on the assessment of potential and core koala habitat for study sites in other locations. I am an Associate Director and Conservation Biologist with Biolink Ecological Consultants based in Uki, northern NSW.

I wish to submit the following comments on the proposed changes to SEPP 44 and the associated guidelines:

1. Definitions of koala habitat

I strongly support the proposal to amend the Tree Species List to make it consistent with the NSW Koala Recovery Plan. I suggest also considering adding a column to the Tree Species List to include a code for the relevant Koala Management Areas (KMAs) where the species is known or expected to occur as per the koala recovery plan. This could simplify the process of identifying target species for a given study area, however it should be made clear that additional listed koala tree species from adjoining KMAs may also be present at a site and require assessment.

I recognize that there has been considerable uncertainty and inconsistency with the identification of Potential and Core Koala Habitat areas under the current SEPP and I accept that this could be clarified and simplified through the current proposed amendments. I support the intention to recognize koala habitat where koalas occur regardless of the tree species that may be present on a given site. However, I am very concerned that important areas of koala habitat can and will be overlooked from the provisions of the SEPP where current investigations and review of available records fail to identify the presence of koalas at that location. This is a

significant concern with the current SEPP 44 whereby Potential Koala Habitat can be neglected where evidence of koalas is lacking. It is not consistent with the aim of SEPP 44 - to protect koala habitat to ensure a permanent koala population over the present range and to reverse the current decline trend – if important areas of koala habitat (by virtue of the tree species and vegetation communities that are present at a site) are not recognized and afforded an appropriate level of protection. Consistent with the precautionary principle, I believe that vegetation communities containing the listed koala tree species and indeed significant individual koala habitat trees should be afforded protection by the SEPP even when koalas do not appear to be present at the given location, unless it can be demonstrated on the basis of a landscape-scale assessment that no potential exists for the study site to be recolonized by koalas in the future given distances to other known koala populations, high levels of habitat fragmentation and threatening processes. I think this would rightfully shift the onus from automatically assuming such areas are not of future importance to koalas (if they lack evidence of koala occupation) to assuming that they may well be important, unless an adequate investigation resolves otherwise.

2. List of Councils

The proposed update of Council's listed under the SEPP should also include Cowra Shire Council where recent evidence has confirmed the presence of koalas at least in the far eastern section of the LGA. I also recommend adding Dubbo Regional Council.

3. Support for Councils to Prepare Comprehensive Koala Plans of Management (CKPoMs)

I believe it is imperative to provide increased support and guidance for Councils to prepare CKPoMs in accord with SEPP 44. I support the proposal for the Department of Planning and Environment (the Department) to prepare updated guidelines setting out the requirements for CKPoMs and for preparing and assessing development applications. The EoIE indicates that the revised guidelines will improve implementation of CKPoMs and simplify the development assessment process, however few details are provided to explain how this will be achieved.

I strongly urge the Department to consider making the preparation of CKPoMs mandatory within a reasonable timeframe for all listed Councils. This would of course mean that some Councils would require substantial support and assistance from the Office of Environment and Heritage (OEH) and the Department in order to comply.

4. Improving the Development Assessment Process

With respect to the development assessment process and investigations required for preparation of development applications, I remain very concerned that areas of suitable koala habitat will be undervalued or even disregarded for the purposes of the SEPP if no evidence of koala presence is identified for the site. The absence of koalas from habitat areas at a given point in time may be due to local population dynamics, social factors or threatening processes

including habitat fragmentation, bushfires or predation. Evidence may also be missed during field investigations, while koala records are often lacking in areas that are not open to public visitation or that are relatively inaccessible or support dense vegetation. Hence, I suggest the guidelines include requirements for a landscape-scale investigation to establish with confidence that the habitat is unlikely or incapable of being re-populated by koalas in the future before a decision could be made to approve significant impacts associated with development activities. I also recommend that appropriate field survey methodologies for establishing the presence of koalas should be clearly identified and specified in the guidelines including requirements for ensuring that surveys are conducted by suitably qualified and experienced professionals using accepted methods. This could address concerns and uncertainties in relation to the current SEPP pertaining to the requirement to identify Core Koala Habitat based on evidence of koala presence as the focus for management actions.

5. The revised guidelines

Given the importance of the guidelines I suggest that further community consultation and expert opinion should be sought prior to finalization.

The EoIE makes reference to key matters such as articulating how the definitions in the proposed amended SEPP - relevant to development assessment at site scale - differ from those applicable at the landscape scale including preferred, primary and secondary koala habitat categories. Presumably, these later categories will remain applicable for CKPoMs, however no further detail is provided in the EoIE. Similarly, the EoIE states that the updated guidelines will establish the requirements for the preparation and consideration of development applications, which will reflect contemporary koala management practices such as avoiding habitat fragmentation. I hope that this would also extend to requirements for consideration of potential cumulative impacts in the case of areas likely to experience multiple smaller-scale development activities. This proposal is supported in principle, however details have not been provided for consideration and comment. The detail is particularly pertinent and important given the intention for the guidelines to replace the requirement for individual koala plans of management (IKPoMs) to be prepared and implemented. Without the need for IKPoMs and in the absence of details to explain the alternative process, it is reasonable to be concerned about how effective implementation, monitoring and reporting on koala conservation measures would be ensured and enforced through the development assessment process.

The revised SEPP and guidelines should ideally prohibit clearing and significant disturbance within koala habitat areas that support koalas or have the potential to support koalas in the future. Where development activities are approved for sites that adjoin koala habitat areas they should be required to adopt koala-sensitive design measures such as those implemented at the Koala Beach Estate in Tweed Shire in conjunction with an adopted IKPoM.

The revised SEPP should also make specific reference to the supporting guidelines and should include criteria for the preparation, review and future updating of the guidelines.

I support the intention to identify the OEH in relation to consultation on koala plans of management and I recommend that OEH have a joint role in the assessment and approval of CKPoMs together with the Department.

6. Local Planning Directions

It is uncertain from the EoIE precisely how the plan making functions of SEPP 44 will be transferred to a new Local Planning Direction. This may well be an appropriate action, but it is currently unclear as to what elements would remain within the SEPP and what elements would be transferred in a way that would align with strategic planning programs and avoid confusion or replication. It is also unclear as to how a new Local Planning Direction would interact with other Directions issued in relation to environmental overlays and environmental protection zoning. It is presumed that the elements that relate to survey methodology and the identification of koala habitat and koala evidence would remain within the SEPP and only those provisions that pertain to implementation of CKPoM planning matters would be transferred to a new Local Planning Direction. However, it is not possible to provide informed comment on this proposal in the absence of further detail.

7. Local Environmental Studies


It is debatable whether or not strategic planning at local and regional level is sufficiently refined at present to remove the need for local environmental studies, particularly in circumstances where detailed koala surveys and habitat assessments have not been completed and CKPoMs have not yet been prepared, approved and adopted.

8. Application of the revised SEPP 44

I recommend extending the application of SEPP 44 to include other activities such as rural land clearing that would fall under the *Local Land Services Act 2016*, local Council infrastructure projects, State significant infrastructure projects under Part 5.1 of the *EP&A Act 1979*, and mining exploration.

Thank you for considering this submission.

Yours sincerely,


John Callaghan