3 March 2017

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

To the Director Planning Frameworks,

SEPP 44 - EXPLANATION OF INTENDED EFFECT

Council welcomes the opportunity to provide feedback and comment on the proposed amendments to State Environmental Planning Policy 44 - Koala Habitat Protection (SEPP44) outlined in the Explanation of Intended Effect (EIE) document prepared under Section 38 of the NSW Environmental Planning and Assessment Act, 1979 (EP&A Act) (November, 2016). The contents of this submission represent the key concerns and implications for the Campbelltown Local Government Area (LGA) in relation to the proposed amendments to SEPP44.

Definitions

The proposed amendments include updating the koala habitat definitions. The need to further develop and clarify the koala habitat definitions (being both potential koala habitat and core koala habitat) is generally supported by Council, as it is considered that further refinement of these definitions could assist in preventing inaccurate assessments of areas of core koala habitat. However, it is noted that the EIE does not specify the new koala habitat definitions, so it is difficult to comment on the efficacy of the proposed changes at this stage and what the implications may be in regards to the assessment of koala habitat and development assessment process.

At the present time, the list of koala feed tree species listed in Schedule 2 of the SEPP is considered inadequate for determining potential koala habitat in the Campbelltown LGA, as a number of the Preferred Koala Food Tree Species (PKFTs) that have been identified for the LGA through scientific studies, are not included in this list. Therefore, as the initial ‘potential Koala habitat’ definition has to be met before progressing through the SEPP to the assessment of ‘core Koala habitat’ - there is the likelihood for some areas that constitute ‘core koala habitat’ but that don’t pass the preliminary test of ‘potential Koala habitat’, to fall through the gaps, and not be adequately captured in the assessment.

For this reason, Council strongly supports proposed amendments to SEPP44 that will result in the inclusion of a wider range of koala feed tree species into Schedule 2 (increased from 10 to 65 species) to enable more accurate assessments of koala habitat in the Campbelltown LGA,
and across the State. Under the current framework, there is significant potential for core koala habitat within the LGA not to be identified as such. These changes will also enable locally significant and diverse areas of core koala habitat to be identified and appropriately protected, as only the ones that meet the food tree species requirements represented by those tree species listed in Schedule 2 are currently afforded protection. The updated list will mean that many feed tree species, and associated habitat important to the survival of koalas at a local level will no longer be overlooked.

The development assessment process

Council supports any proposed amendments to SEPP44 that will assist in streamlining the development assessment process. Currently, in lieu of having a formalised CKPoM, Council receives varying levels of assessments from applicants. Assessments considered by Council generally show a number of common inconsistencies, some of the more frequently noted ones include:

- Inaccurate interpretations of koala habitat definitions. For example, an applicant may assess a site as not containing core koala habitat (when in fact it does) due to the ambiguity of the current core koala habitat definition (ie suggesting that the lack of a breeding female on site at the time of survey would indicate that the site is not considered core koala habitat and therefore SEPP44 does not apply)

- Lack of targeted surveys undertaken to adequately determine core koala habitat. For example, where a site is found to contain potential koala habitat, further assessments undertaken by the consultant on behalf of the applicant to determine if the site contains core koala habitat employ largely inconsistent and inadequate methodologies (ie in many cases the methodology consists of incidental observations made on site), and not extensive survey such as that outlined in the Guidelines (Part 2) as per Planning Circular B35 – Koala Habitat Protection.

- Inconsistent approach to the development of Individual Koala Plans of Management (IKPoMs). For example, in lieu of an approved Comprehensive Koala Plan of Management (CKPoM), Council assesses development applications against the applicability of SEPP44 on a case by case basis. This is increasingly resulting in the requirement for the preparation of IKPoMs for each property where a development is proposed. In the last year alone, Council staff have assessed more than 20 individual koala habitat assessments including 12 IKPoMs. This approach is inefficient for a number of reasons including; inaccurate and varying methodologies, lack of consistency, difficulty in ongoing monitoring, long term certainty, discrepancies in vegetation compensation measures, and most significantly the cost incurred by applicants for the preparation of these documents and ongoing monitoring. As a result, applicants are being frustrated by the obligations of the assessment process and incurring significant costs. Council staff are also expending additional time and effort trying to manage the process which includes seeking approvals from external government agencies.

Council considers it important to clarify the hierarchy of the various SEPP instruments. For example, the existence of State Environmental Planning Policy (Exempt and Complying Development Codes), 2008 (Codes SEPP) has the potential to significantly undermine not only SEPP44, but the existence of an approved CKPoM. This framework has the ability to allow inappropriate development in areas of core koala habitat, as well as create inconsistency and perceived bias. As a result, it could affect the ability for Council’s to achieve the intended goals and objectives associated with CKPoM’s, and/or objectives of SEPP44.
Conclusion

Council has recently finalised a draft CKPoM for the Campbelltown LGA which has been developed to meet the aims and objectives of SEPP 44. The CKPoM was endorsed at the Council meeting on 13 December 2016, and the CKPoM is currently with the Department for approval. Council supports the Department's intent to update the controls to better protect koala habitat, and welcomes the opportunity to review and provide further feedback on the the final proposed amendments and associated updated guidelines in more detail, when they are released.

If you require any further information please contact Alexandra Cave, Senior Environmental Officer on 02 4645 4151.

Yours sincerely,

Jim Baldwin
Director City Development