

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

2nd March 2017

Dear Director

REVIEW OF SEPP 44 (KOALA HABITAT PROTECTION) AND DEVELOPMENT OF THE NSW KOALA STRATEGY

Thank you for the opportunity to provide initial comments on the review of SEPP 44 as outlined in the Explanation of Intended Effect. Please note that this submission has not been endorsed by Council due to the lack of detail to consider implications and further consultation with local government is requested following the full release of the details of the proposed changes to SEPP 44 when the implications can be fully considered.

This submission also includes consideration of the proposed development of a NSW Koala Strategy. It is essential that the two initiatives are integrated through the NSW Government's role to manage threatened species.

In general, Council supports the NSW Government's update of the policy to support the preservation of koala habitat through updated planning controls; simplification of the planning system and best practice regulation; and alignment of SEPP 44 with the 2008 NSW Koala Recovery Plan and potential NSW Koala Strategy.

Council supports the following elements of the review:

- Improve the definition of koala habitat to better reflect current scientific knowledge;
- Clarification of koala habitat assessments to streamline the development assessment process.
- Improvement in strategic components of SEPP 44 through local planning directions.
- Support for local Councils to implement appropriate local measures to protect koala habitat.
- Potential provision of a state strategy that is integrated and provides clarification for legislative frameworks addressing national, state and local matters.

The following is a summary of the key issues we request the Department to consider and address. Further detail is provided in the attached detailed submission. As indicated, this submission is being made in the context that Council considers the extent

of detail provided as insufficient to allow for detailed consideration and the formulation of appropriate responses. Specifically, the exhibited material does not include critical detail on how the SEPP 44 amendments are to be practically implemented, combined with the uncertainty around implementation elements of the NSW Biodiversity Reforms and the development of a NSW Koala Strategy for the minister that may or may not be endorsed by the department.

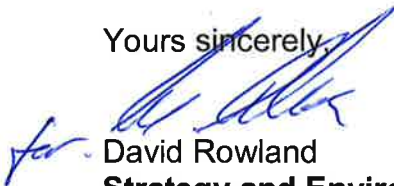
Councils seeks clarification on the following in order to understand and enable full consideration of the implications of the review:

- Results and findings of the referenced detailed analysis of SEPP 44 including justification for proposed changes.
- Clarification of both the timing and alignment of the SEPP 44 review with the impending introduction of Biodiversity Reforms regulations, development of the NSW Koala Strategy and Save Our Species (SOS) program.
- Implementation of the revised SEPP 44 in regards to:
 - Transitional arrangements;
 - Consideration of the revised SEPP 44 in environmental assessments conducted under Part 5 of the EP&A Act;
 - Consistency with existing Comprehensive Koala Plans of Management, specifically the Port Stephens CKPoM;
 - Alignment and interaction between State and Commonwealth planning and regulatory frameworks and associated tools.
- Consideration of movement corridors, or other threats established by research including SOS programs, as core koala habitat to provide for meaningful protection through the planning system.
- How emerging research, most significantly the work of the SOS program can be incorporated into the planning system in the future.
- Inclusion of *Eucalyptus glaucina* as a listed feed tree.

Council requests that the SEPP 44 review provide guidance for identifying connectivity corridors to address habitat fragmentation resulting in threat encounters, and that koala habitat definitions include provisions for protecting connectivity corridors.

Council looks forward to the opportunity to provide more feedback throughout the review of SEPP 44 as details are known and made available to local government.

Yours sincerely,



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Please quote file no: PSC2005-4448

DETAILED SUBMISSION

Strategic management of koalas

Port Stephens is home to significant and high profile koala populations living in close proximity to urban areas. These populations are important for many reasons including their ecological value; their economic value (current and potential future) namely through tourism and lifestyle amenity; and their cultural value including the personal connections many people have with these distinctive animals.

The landscape and historical land use in Port Stephens has allowed koala populations to survive in a level of balance with development and land use. A significant proportion of koala habitat in Port Stephens is provided for in rural, rural residential and urban settings under private ownership.

The Port Stephens koala population remains in decline due to cumulative habitat constriction and connectivity loss resulting in a variety of increasing threats encountered when negotiating movement through the fragmented landscape.

The Port Stephens Comprehensive Koala Plan of Management (PS CKPOM) was prepared by NPWS, the Australian Koala Foundation and Port Stephens Council in the late 1990's and early 2000's, then endorsed by the then Department of Urban Affairs and Planning and adopted by Council in 2002. Implementation is overseen by a PS CKPOM Steering Committee chaired by and with secretariat services provided by Council.

The PS CKPOM reflects the best available science of the time and amongst the comprehensive provisions for all things koala conservation provides for regulation of development through establishing how koala habitat is identified and assessed as well as the prescription for performance criteria for consideration of development applications and rezoning proposals.

Council is committed to providing certainty to all stakeholders, most importantly local communities. This includes certainty to individual landholders; prospective developers and proponents; conservation groups; carer groups; the tourism industry; and partners in NSW state agencies. Further to developing the PS CKPoM, Council is still leading koala conservation in Port Stephens but desperately needs a state strategy and planning tools to work with. Further to motherhood statements and promotion of councils' actions, local governments need support and tools from the state including:

- clarification of **legislative frameworks**;
- clarification of the **links between** legislation; regulations; strategies; CKPoMs; SOS (& other related) projects;
- clarification regarding **acceptability of datasets** to avoid duplication and rework;
- ongoing substantial **funding** support to adequately implement the NSW strategy to ensure that Port Stephens koalas survive and thrive;
- clarification and **amendments** to the biobanking and biodiversity **offsets** approach to ensure **genuine conservation outcomes** can be achieved

The state is aware that Council are progressing data development and koala conservation actions prioritisation. Many would argue that this is the role of the Office of Environment and Heritage (OEH) to conserve a listed threatened species.

Detailed Analysis of SEPP 44

Council is not aware of and has not been provided an opportunity to contribute to a detailed analysis of SEPP 44 as referenced by the Department for Planning and Environment (DPE) justifying the need to update the SEPP. It is difficult to comment on the adequacy of the SEPP update and intended effect to address findings without the findings of this analysis being communicated to and shared with Council.

Council agrees that there are challenges in maintaining the currency and effectiveness of CKPoMs in consideration of evolving best available science, changing legislation, changing policy and strategy, and changing status of koala populations and their habitat due to increased threats on decreasing habitat and populations.

Therefore Council supports the general approach to simplifying the planning process and providing more guidance and consistency to how koala habitat is identified and assessed based on best available science.

Timing and context of review

Uncertainty for koala conservation has increased with the recent passing of the Biodiversity Conservation Bill and Local Land Services Amendment Bill in NSW Parliament. These Bills are expected to be supported by regulations and other detailed products. Unfortunately these have not yet been made available. However it is expected that these reforms will have a significant impact on the way threatened species, particularly koalas, are considered in development assessment processes.

During the first consultation period for the review of SEPP 44, the NSW Government also announced the development of a NSW Koala Strategy. Whilst it is encouraging to note the intention to develop a state-wide strategy for the conservation of koalas in NSW, uncertainty arises over the review and update of SEPP 44 to align with the 2008 Koala Recovery Plan whilst a strategy is under development concurrently.

The above background and legislative and policy reforms provide context for the following comments.

Existing CKPoMs

Council reviews and updates of CKPoMs have historically been problematic due to governance and emerging legislative uncertainties, in particular how endorsement of revisions could or would be provided by the state government. In recent discussions around the SEPP 44 review and NSW Koala Strategy development with Councils, the DPE appears to be discouraging Councils from resourcing reviews at the current time.

Guidance is sought on how existing CKPoMs can be updated with the updated provisions of SEPP 44 for consistency across regions and the state, providing greater certainty for consultants, proponents, strategic planners and importantly the community.

Transitional arrangements and implementation

Council seeks clarification that the habitat assessment requirements within existing CKPoMs can be updated by Councils without the need for review of the PS CKPoM, exhibition, consultation, endorsement by DPE and OEH and re-adoption by Councils.

Environmental Assessments under Part 5 of the EP&A Act should both consider and be compliant with SEPP 44 especially in areas covered by existing adopted CKPoMs such as Port Stephens.

Regulatory framework and government strategies alignment

A stated purpose of the update to SEPP 44 is the streamlining of the development assessment process. Greater alignment of local, state and federal regulatory frameworks will provide for consistency and thus certainty in the development assessment system and the conservation of koala populations. A National Recovery Plan for koalas is a missing piece of the puzzle. Council would like to see the NSW Government develop and communicate a position on the need for a National Recovery Plan.

It is unclear how the proposed NSW Koala Strategy, the revised SEPP 44 and the SOS program will be integrated and actually facilitate the implementation of identified priorities.

Council has significant concerns of the revised biobanking component of the upcoming biodiversity reforms will not allow for the maintenance of a viable koala population in Port Stephens.

Implementation opportunities

The inclusion of occupancy and expanded list of tree species is welcome. However greater guidance and flexibility is still required in identifying koala habitat. Establishing occupancy is challenging in the development assessment context with a reliance on proponents conducting one off surveys. Guidelines need to address challenges arising timing of surveys, co-dominance of canopy tree species and the function of sites as important koala habitat when feed trees are not dominant canopy species.

Whilst the volume of habitat loss is important, in Port Stephens the escalating constraints to connectivity and the resulting fragmentation of habitat, including local small scale connectivity, remain a critical challenge that is unsupported by current and proposed legislation and strategies. Maintaining and enhancing sustainable free living populations in Port Stephens is achievable if connectivity of available habitat can be provided for. The greatest challenge in Port Stephens is the limitations to appropriately considering the cumulative impact from the high volume of seemingly minor foraging, refuge and connecting habitat losses.

It is essential to the viability of koalas in Port Stephens that koala habitat, including small fragmented corridors providing refuge and movement, are considered sensitive environmental areas within the regulations giving effect to the Biodiversity Reforms and not subject to biobanking provisions that could see this critical component of the

landscape lost and re-established outside the LGA where Koalas are not present or viable, at the expense of viable local populations.

Therefore definitions of koala habitat under SEPP 44 must allow for recognition and protection of movement corridors in the landscape. Movement corridors can take many forms on land not immediately obvious such as cleared agricultural land and rural residential landscapes where canopy trees with a variety of cleared understory provides refuge during movement. Definitions of core koala habitat need to include corridors and threats established by SOS programs and new knowledge established by ongoing research.

Guidelines should include greater clarity on establishing corridor provisions including widths and acknowledging the diversity of movement corridors for koalas.

Additionally the protection and establishment of improved movement corridors should be incentivised by high credit values under biobanking arrangements and credit generation by landowners as well as the Biodiversity Conservation Trust.

Listed tree species

Due to improved diagnostics and awareness, it is becoming more likely that *Eucalyptus glaucina* (Slaty Red Gum) is present in the western parts of Port Stephens. Closely related to *Eucalyptus teretecornis* it can be considered a koala feed tree in the area that is also listed as a threatened species and should be included on the SEPP 44 feed tree list.