

EN1 – Review of State Environmental Policy No 44 – Koala Habitat Protection

ENVIRONMENT

EN1

Review of State Environmental Policy No 44 – Koala Habitat Protection

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TRIM 9081

EXECUTIVE SUMMARY

- The purpose of this report is to provide Council with an overview of the proposed review of State Environmental Planning Policy 44 - Koala Habitat Protection (SEPP 44) and the draft submission prepared by Council Staff in relation to this review.
- It is recommended that:
 1. Council endorse the draft submission on the Statement of Intended Effects for the review of SEPP 44.
 2. Council sends correspondence to the NSW Minister for Planning which:
 - Supports in principle proposed amendments to SEPP 44 in addressing shortcomings of the current SEPP experienced by Council Staff in providing adequate protection to koala habitat within the Wollondilly Local Government Area.
 - Requests that the completed draft revised SEPP 44 be publicly exhibited as well as be subject to a comprehensive consultation program.

REPORT

The koala (*Phascolarctos cinereus*) is an iconic Australian marsupial listed as vulnerable under the recently gazetted Biodiversity Conservation Act 2016. Increased numbers of this species have been recorded at a range of different localities within the Wollondilly Local Government Area (LGA) over recent years.

The broad purpose of State Environmental Planning Policy No 44 - Koala Habitat Protection (SEPP 44) is to provide broad controls at the State level, which are designed to encourage the conservation and management of koalas by consent authorities. The current version of SEPP 44 applies to the Wollondilly Local Government Area (LGA) on the basis of presence of koala recordings and known koala habitat. The adequate protection and management of koalas within the Wollondilly has also been observed to be of high interest and concern to a broad section of the local community. The review of this SEPP is consequently of high importance to Council in terms of its determining environmental management responsibilities as well as advocating local community concerns.

Environment

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The Department of Planning and Environment (DP&E) has publicly released a Statement of Intended Effects (SIE), which outlines the intent of proposed amendments to SEPP 44. The public exhibition period was extended from the initially proposed 9 December 2016 to 1 March 2017. This report provides an overview of SEPP 44 and proposed amendments as well as an overview of a draft submission prepared by Council Staff (Attachment 1). This draft submission contains a number of recommendations to enhance the effectiveness of the revised SEPP in the conservation and management of koalas within the Wollondilly LGA.

BACKGROUND

(i) Knowledge of koalas and their movement within the Wollondilly LGA

The knowledge of koalas and their movement within the Wollondilly LGA is restricted by limited surveys and mapping undertaken. This knowledge has historically been lower in comparison to existing koala populations to the north (within the Campbelltown LGA) and the south (within the Wingecarribee LGA). The following activities of Council however have increased this knowledge as well as identifying the strong need for additional habitat surveys and mapping within the Wollondilly LGA:

- The participation of Council staff in a recent Baseline Study (OEH Study) with the NSW OEH in September 2015 which involved surveys at 58 strategic locations largely in the vicinity of Appin, Wilton and Douglas Park (Map 1: Attachment 2).
- The establishment of Council's Koala Hotline, which has received 30 koala recordings since its establishment in mid-2015.

A priority arising from the study is the identification/protection and enhancement of koala habitat and vegetated corridors that koalas utilise for movement across the landscape. Councillors should note that the OEH is currently assessing an Expression of Interest lodged by staff to receive funding to address this priority. Councillors should also note that this grant funding includes the preparation of a Comprehensive Koala Plan of Management to provide an overall strategic direction to Council for the long-term survival of koalas within the LGA.

(ii) Threats from development proposals to koalas within the LGA

A major objective of the current SEPP 44 is the protection of koala habitat from the impacts of development. The Recovery Plan for the Koala adopted by the OEH in 2009 identifies loss of habitat through clearance of development as a key threat to the long-term survival of this species. Map 2 (presented in Attachment 3) indicates a number of sightings have occurred within or adjacent to a number of planning proposals.

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- (ii) The features and adequacy of the current SEPP 44

Council’s planning and environmental staff view SEPP 44 as an important statutory document for the protection of koalas and their associated habitat at a localised level. However, shortcomings have been experienced in the current SEPP 44 document based on the experience of these officers. A level of disconnection has also been observed in the implementation of the current SEPP 44 between the State and Local government level. Table 1 provides the function and associated experienced shortcomings by Council staff for each broad component of the SEPP.

Table 1: Experienced shortcomings in components of SEPP 44

Component of SEPP 44	Function of each component	Experienced shortcoming by Council Staff
Definition of Core and Potential Koala Habitat	The current definition is based on presence of listed koala habitat tree species and recorded koalas (in the form of a pregnant female).	The current definition of ‘Core Habitat’ for Koalas does not adequately capture the significance of a site proposed for development in terms of habitat and movement in a landscape context.
List of koala habitat trees	This list forms a component of the Core and Potential Koala Habitat definitions.	The list of koala tree species does not reflect up-to-date knowledge including the findings of the OEH Study.
The development control process.	The SEPP requires applications contain Plans of Management where a development site contains identified Core Habitat.	Development applications have almost unanimously been observed to state SEPP 44 does not apply largely on the grounds of any koala site recordings. There is an absence of sufficiently specific guidelines at the local level for the implementation of this component.

The shortcomings outlined in Table 1 have been observed to create adverse implications for the protection of koala habitat within the Wollondilly LGA. This includes a number of development applications not required to prepare a Plan of Management by SEPP 44, despite impacting on known koala habitat as a consequence of the current definitions of ‘core koala habitat’. It is therefore appropriate for Council to welcome and express in-principle support for the intended review of SEPP 44 as a means of addressing shortcomings experienced in the current version of the document described in Table 1.

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The intended amendments to SEPP 44

- The publicly exhibited Statement of Intended Effects (SIE) of proposed amendments to SEPP 44 and an associated Frequent Question publication can be viewed on the website of the DP&E at www.planning.nsw.gov.au/Koala-habitat. The proposed amendments have been identified by Council staff as having potential benefits in addressing the experienced shortcomings on specific components of the current document outlined in Table 1.

The review identified a range of issues associated with the intent of the proposed amendments to SEPP 44 based on the experiences of staff with the current document in relation to strategic planning, land use development, on-ground works and development assessment. An overview of the issues raised and recommendations of the draft submission for consideration and response by the DP&E is provided below.

Overview of the draft Submission

- (i) General Comments on the adopted review process

The intended review process

It is appropriate for Council to welcome the consultation being undertaken by the DP&E on the intended effects of proposed amendments to SEPP 44. However, the following integral components of the completed SEPP are yet to be prepared:

- A precise revised definition of 'koala habitat', which will trigger additional assessment for applicable received development applications.
- Updated Guidelines setting out criteria for applicants to replace the former requirements regarding the preparation of specific Koala Plans of Management.
- Updated Guidelines to support the preparation of Comprehensive Koala Plan of Managements (which apply to entire LGA's).

The review process outlined in the Frequent Question document is considered to indicate an intention of the DP&E not to publicly exhibit the completed revised SEPP 44 containing the above listed components. This report therefore recommends that Council send correspondence to the NSW Minister for Planning which:

- Supports in principle proposed amendments to SEPP 44 in addressing shortcomings of the current SEPP experienced by Council staff in providing adequate protection of koala habitats within the Wollondilly LGA.

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- Requests that the completed draft revised SEPP 44 be publicly exhibited as well as be subject to a comprehensive consultation program.

Consistency of the proposed revised SEPP with the State and Commonwealth Policy Framework

There is an absence of description in the SIE over the intended consistency of the revised SEPP 44 with the applicable Statutory and Policy framework at both the State and Commonwealth level apart from a reference to the OEH Recovery Plan for koalas. This framework includes the recently gazetted Biodiversity Conservation Act 2016 (BCA) as well as reforms to the Environmental Planning and Assessment Act 1979 currently on public exhibition. The draft submission expresses the view in this regard that there is a need for clarification over the relationship of the revised SEPP 44 with these recent legislative reforms.

The draft submission requests that the updated SEPP 44 be fully consistent with the applicable statutory and strategic policy framework to ensure the adequate protection of koala habitat in a localised context. The draft submission also requests in relation to this matter that the DP&E and/or the OEH provide Council with a response to the following prior to the gazettal of the revised SEPP 44:

- The relationship and consistency between the intended approach of the revised SEPP 44, the biodiversity offset approach adopted by the Biodiversity Conservation Act 2016 and aspects of recent reforms to the Environmental Planning and Assessment Act 1979.
- The consistency with the intent of proposed amendments to SEPP 44 with the current policy framework, including the recently commenced NSW Koala Strategy and local strategic and planning instruments.

(ii) Revised definition of koala habitat

The draft submission welcomes in principle the statement in the SIE that “the updated definition (of koala habitat), will be replaced with definitions that identify the characteristics of plant communities which make up koala habitat and if there is evidence that that koalas are present”. However, concern is expressed over the inferring of the SIE that the protection of koala habitat under the revised SEPP 44 will be restricted to the site of the development. The draft submission consequently requests that the update definition reflect the findings of recent research including the OEH Pilot Study that the definition of koala habitat needs to adequately capture the usage of a site by koalas in both a local and landscape context.

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The draft submission in relation to this matter requests that the revised SEPP require proponents undertake a range of activities in identifying whether a site proposed for development contains 'koala habitat'. These activities would include comprehensive surveys and mapping as well as a detailed assessment and analysis of the usage patterns of a site by koalas in both a local and landscape context. It requests that these activities be incorporated into a revised SEPP 44 that is publicly exhibited as well as consultation with Council Staff prior to the gazettal of the SEPP.

(iii) Revision of the development control process

It has been the experience of Council staff that the measures in the current SEPP 44 requiring Koala Plans of Management for certain proposals have been largely ineffective in protecting koala habitat. It has also been the experience of Council's planning staff that these measures significantly complicate the application and determining process. The intended replacement of the requirement for Plans of Management with Guidelines, (yet to be developed), to simplify the development control process is therefore not opposed in principle by Council staff. However, it is appropriate for Council to advise the DP&E that any support to the Guidelines is subject to:

- The Guidelines requiring a level of surveys and assessment of potential impacts of an applicable development proposal on koalas which has been required for individual Plans of Management under the current SEPP 44.
- The Guidelines addressing all issues raised in the draft submission on the Review of SEPP 44 presented in Attachment 1 of this Report.

The draft submission requests that the DP&E exhibit the completed Guidelines with the revised SEPP 44. It also requests the provision of the finalised Guidelines to Council staff for comment should this exhibition process not eventuate.

In a related matter, the draft submission refers to the identification of the preparation of Comprehensive Koala Management for the Wollondilly LGA by the OEHL as being a high priority. It requests the support of the DP&E in receiving funding to prepare such a plan which would provide an overall strategic direction for the long-term survival of koalas within the LGA.

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Conclusion

The State Environmental Planning Policy 44 is viewed by staff as being an important statutory document for the protection of the increasing numbers of koalas and their associated habitat within the Wollondilly Local Government Area. This report provides an overview of a draft submission on this review based on the experiences of Council's environmental, strategic planning and development assessment staff. A key feature of the submission is a request that the updated definition reflect the findings of recent research including the OEH Pilot Study that the definition of koala habitat needs to adequately capture the usage of a site by koalas in both a local and landscape context.

The submission notes with concern the apparent intent of the Department of Planning and Environment not to publicly exhibit the completed revised SEPP. This report therefore recommends that Council send correspondence to the NSW Minister for Planning which requests that this public consultation process occur while expressing in principle support to the review of the SEPP.

CONSULTATION

Consultation occurred with Strategic Planning, Development Services and Growth Management sections during the preparation of this report to identify their experiences with the current SEPP 44 and measures to improve any shortcomings. Consultation has also occurred with these sections on the potential implications of proposed reforms to the Environmental Planning and Assessment Act 1979 to the updated SEPP.

FINANCIAL IMPLICATIONS

This matter has no financial impact on Council's adopted budget or forward estimates.

ATTACHMENTS INCLUDED IN A SEPARATE BOOKLET

1. Draft submission on the Review of State Environmental Planning Policy No 44 - Koala Habitat Protection
2. MAP 1 - Location of Pilot Surveys and Koala Recordings in the Wollondilly Local Government Area
3. MAP 2 - Koala Sightings in relation to Planning Proposals

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RECOMMENDATION

1. That Council endorse the draft submission on the Statement of Intended Effects (SIE) for the review of SEPP 44.
2. That Council send correspondence to the NSW Minister for Planning which:
 - Supports in principle proposed amendments to SEPP 44 in addressing shortcomings of the current SEPP experienced by Council Staff in providing adequate protection to koala habitat within the Wollondilly Local Government Area.
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