



Nature Conservation Council

The voice for nature in NSW

Director, Planning Frameworks
NSW Department of Planning and Environment
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Sydney NSW 2001

16 December 2016

NCC SUBMISSION ON EXPLANATION OF INTENDED EFFECT: STATE ENVIRONMENTAL PLANNING POLICY NO 44 – KOALA HABITAT PROTECTION

Dear Sir/Madam,

The Nature Conservation Council of NSW (**NCC**) is the peak environment organisation for New South Wales, representing over 150 member societies across the state. Together we are committed to protecting and conserving the wildlife, landscapes and natural resources of NSW.

We welcome the opportunity to provide feedback on the Explanation of Intended Effect: State Environmental Planning Policy No 44 – Koala Habitat Protection (**EIE**).

KOALAS AT RISK OF EXTINCTION

Koalas are a national symbol of Australia and an internationally renowned species. Koalas are not only important to Australia's tourism economy, but are essential when addressing conservation of biodiversity and the protection of symbolic native species. Koalas are listed as a vulnerable species under the NSW *Threatened Species Conservation Act 1995* and the Commonwealth *Environment Protection and Biodiversity Act 1999*.

Koalas are largely under threat due to habitat destruction and fragmentation, urban development, and pressures from climate change. Since 1990, Koala populations in NSW have decreased by a third of their original size. If current trends continue, the Koala could become extinct in NSW by 2055¹. Failure of governments to effectively implement and enforce laws intended to protect koalas and koala habitat has put pressure on the species, as important Koala habitat has failed to be identified and adequately protected from destruction.

When State Environmental Planning Policy No 44 – Koala Habitat Protection (**SEPP 44**) was introduced it was intended to provide additional protection for important koala habitat. However the ability of SEPP 44 to achieve the necessary outcomes has been undermined by poor implementation, lack of absolute protections for koala habitat, weak biodiversity offsetting policies, inadequate forestry regulations and processes that facilitate major projects. These factors must also be considered when reviewing the performance of SEPP 44 in achieving environmental outcomes to date.

¹ Sydney Morning Herald, Fears for koalas under state government's native forest logging overhaul, 23 December 2015
www.smh.com.au/nsw/fears-for-koalas-under-state-governments-native-forest-logging-overhaul-20151223-glu3l3.html

The government's poor management and protection of Koala habitat will result in the loss of an iconic species if action isn't taken to address the proper protection of Koala habitat, and the creation of distinct Koala conservation areas. It is in this context that the NSW Government is reviewing SEPP 44.

FEEDBACK ON EXPLANATION OF INTENDED EFFECT (EIE)

NCC welcomes the review of SEPP 44 and sees this as an opportunity to strengthen protections for koalas and koala habitat in NSW, particularly in light of the ongoing decline in koala numbers.

Unfortunately the EIE does not provide the specific wording of proposed new provisions which makes it difficult to comment on whether the proposed changes will improve outcomes for koalas in NSW. For example:

- The new definition of koala habitat is not provided
- The wording of the proposed new Local Planning Direction under section 117 of the EP&A Act is not provided, and therefore we cannot compare existing requirements with what is proposed.
- The content of the proposed guidelines which will guide both development assessment and the making of comprehensive plans of management is not available.

Without this essential information our ability to provide constructive feedback is limited and we are unable to form a view as to whether we support the proposed changes. We strongly urge the Government to exhibit a draft SEPP and Guidelines before finalising the revision of SEPP 44.

That said, we make the following comments:

Application of SEPP

We support updating the names of local councils following recent council amalgamations. We note that Gwydir Shire Council (formerly Bingara and Yallaroi Councils) is not identified in the list of councils in the EIE, despite both Bingara and Yalloroi currently identified in Schedule 1 of SEPP 44. We suspect this is an oversight and suggest that Gwydir Shire Council be added to the list.

Definitions

As outlined above it is difficult to provide feedback on the proposed new definitions of koala habitat as the exact wording is not available. We do however generally support the updated list of 65 tree species, and also the proposal to amend the definition of koala habitat to include any area where koalas are present, regardless of tree species.

The development assessment process

The EIE explains the development assessment as follows:

1. Applicant to determine whether the site contains koala habitat following an assessment of vegetation
2. Where Koala habitat is established further assessment is required to determine if koalas are present

3. If Koalas are present at the site but the vegetation is not koala habitat the assessment will continue as if it were koala habitat

While the Guidelines may provide further detail on the assessment process, it is unclear on the face of the EIE how the assessment will operate in practice. For example, how is the assessment of vegetation to be undertaken? Will it be a desktop study or an onsite field assessment? In our view, a field study must be required because, firstly, mapping can be unreliable, and secondly, it is unclear how koalas would be identified on the site (for the purpose of step 3 in the development assessment) unless a field study is carried out.

Plans of management

The EIE proposes retaining the requirement to make comprehensive plans of management (in accordance with requirements in the Guidelines), but suggests that site scale plans of management will no longer be required (in cases where a comprehensive plan of management is not in place), with decision makers instead needing to consider a set of criteria set out in Guidelines.

Without seeing the content of the Guidelines, it is difficult to determine whether the uniform assessment criteria would provide better outcomes than individualised plans of management. It is also unclear what will happen to existing site specific plans of management, and whether they will continue to have effect. This should be clarified.

Further, there is no information as to whether the Government will take any additional action to support councils to prepare comprehensive koala plans of management or finalise Plans that have already been drafted (e.g. Campbelltown, Ballina, Bellingen, Tweed). We note that to date only four comprehensive koala plans of management have been approved by the Minister – for Kempsey, Port Stephens, Coffs Harbour and Lismore councils. The failure to mandatorily require councils to develop and finalise Comprehensive Plans of Management has been one of the weaknesses of how the SEPP has operated to date. Further it is unclear whether existing Final or Draft Plans will need to be updated in accordance with the revised SEPP and Guidelines. This should also be clarified.

Local Planning Direction

The EIE suggests that Local Planning Directions (LPD) are the appropriate setting to instruct local councils on plan making and it is proposed to update and transfer the plan making functions to a Local Planning Direction. While we do not oppose this suggestion, we have not seen the proposed LPD and the updated instructions that will be given to councils.

Further, we are concerned with how the LPD for koala habitat will interact with other planning directions, particularly the Section 117 direction relating to the application of E2 and E3 Zones and Environmental Overlays in Far North Coast LEPs.

INTERACTION WITH OTHER ENVIRONMENT AND PLANNING LAWS

While we generally welcome the review of SEPP 44, we recognise that SEPP 44 alone cannot provide all the necessary protections for Koalas in NSW. As outlined above, the ability of SEPP 44 to achieve outcomes for the koala has been undermined by poor implementation, lack of strict protections, weak biodiversity offsetting policies, inadequate forestry regulations and processes that facilitate major projects. We highlight some of these additional issues below.

Lack of absolute protection for koala habitat

While SEPP 44 requires decision makers to take into account additional matters of consideration, including plans of management, when determining development applications that will impact on core koala habitat, it does not provide absolute protection for core koala habitat. That is, SEPP 44 does not prohibit outright activities or development that will impact on core koala habitat.

Overreliance on biodiversity offsetting

Weak environmental offsetting policies have allowed core koala habitat to be destroyed on the premise that impacts on koalas and koala habitat can be offset. Offsets theoretically work by protecting and managing biodiversity values in one area in exchange for impacting on biodiversity values in another area, by restoring habitat on previously cleared land or increasing the habitat quality of a patch. Improvement in the biodiversity values of an offset area is generally required to achieve a no net loss in biodiversity values. In our view, due to the inherent challenges in biodiversity offsetting² biodiversity offsetting is not appropriate in all circumstances. Further, recent weakening of biodiversity offsetting policies in NSW now allows the use of supplementary measures or mine rehabilitation in lieu of genuine like-for-like offsets. In our view, core koala habitat is so critical that biodiversity offsetting is not an appropriate mechanism for ameliorating impacts.

New conservation and land management laws

New biodiversity and land management laws recently introduced by the NSW Government are likely to have a significant, detrimental impact on efforts to protect and restore koalas and koala habitat. In our view, the new laws will increase land clearing across NSW due to increased reliance on code based clearing, and expansion of weak offsetting rules³. There is nothing in the new *Biodiversity Conservation Act 2016* or *Local Land Services Amendment Act 2016* which recognises the important need to protect koala habitat.

Forestry activities

Poor forestry practices on both public and private land have had significant impacts on koalas to date and must be addressed if effective protection for koalas and koala habitat is to be achieved in NSW. For example, poor regulation of Private Native Forestry practices combined with poor

² See Walker S. et.al (2009) *Why Bartering Biodiversity Fails* Conservation Letters 2 (2009) 149-157; Maron M. et. al.(2012) *Faustian bargains? Restoration realities in the context of biodiversity offset policies*, *Biological Conservation* 155 141-148; Curren. M. et al. *Is there empirical support for biodiversity offset policy?* *Ecological Applications*, 24(4) 2014 pp 617-632.

³ See further *The Future for Biodiversity in NSW, Environment groups' joint response to the consultation package of reforms to land management and biodiversity conservation in NSW*, June 2016, www.nature.org.au/media/213826/environment-groups-joint-submission_final-270616.pdf

implementation of SEPP 44 may have resulted in the clearing of koala habitat under approved PNF agreements. Further the EPA and Forestry Corporation have been strongly criticised for failing to protect koalas and koala habitat during forestry practices on State land⁴.

NSW Koala Strategy

We note that the NSW Government has announced public consultation on the development of a new NSW Koala Strategy. This comes off the back of the Chief Scientist' *Report of the Independent Review into the Decline of Koala Populations in Key Areas of NSW*. This Chief Scientist's report recommends that "in addition to the current review of SEPP 44, within 12 months of receipt of this report Government should start a broader evaluation of the effectiveness of SEPP 44 as a planning tool and the Comprehensive Koala Plans of Management for protecting koalas and their habitat". In light of this recommendation it may make more sense to undertake the broader evaluation of SEPP 44 as recommended by the Chief Scientist before finalising the current review. DOPE and OEH must continue to work together on the future management of koalas and responding to the Chief Scientist's Report.

CONCLUSION

The review of SEPP 44 must now be considered in the context of the Government's plans to develop a NSW Koala Strategy. Consideration must also be given to other process, such as private native forest logging, changes to land clearing laws, and new biodiversity offsetting policies, that undermine the ability of SEPP 44 to provide adequate protection for koalas and koala habitat. The Department should continue to consult with key stakeholders, including NCC members, as it continues to review SEPP 44, and the draft SEPP and guidelines should be put on public exhibition before being finalised.

Yours sincerely,



Kate Smolski
Chief Executive Officer

⁴ See, for example, Green Left Weekly, *Forest groups demand NSW government halt logging to save koalas*, 31 July 2015 www.greenleft.org.au/content/forest-groups-demand-nsw-government-halt-logging-save-koalas; ABC New, *NSW Forestry Corp defends logging of koala habitat*, 12 July 2013, www.abc.net.au/news/2013-07-12/koala-logging/4816422