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NSW Department of Planning and Environment
GPO Box 39
Sydney NSW 2001

NSW Review of SEPP44 - Koala Habitat Protection
SUBMISSION

Statement

For many years SEPP44 has been the only regulation in place to provide any protection at all for the NSW koalas. It is far from comprehensive and has failed in its aims most of the time. But it was the only instrument available

The critical seriousness and significance of this SEPP44 Review and its end results cannot be stressed strongly enough. This will be the last chance to ensure Australia's koalas, at least in NSW, remain in health, in perpetuity. It is highly unlikely there will be another 'timely' chance for further review if today's amendments fail again. There is a global expectation, this time, it has to be right.

Unfortunately, the welfare of koalas in NSW is managed under the EP&A (Planning) Act. This Act is massively overloaded with responsibilities based around the conflicting spheres of development and conservation. Its aim is to promote human social and economic welfare, which is done through provision and management of land for agriculture; forests; public use; minerals (mining); water; cities, towns and villages; communication and utility services; community services and facilities, and affordable housing. Protection of the environment, including plants and animals and threatened species, is also inserted among the top-heavy human demands, but to date these have rated lip-service only under this Act, and it has been difficult for conservation groups to force concerns about the natural environment to the forefront for attention.

By the SEPP itself, SEPP44 will not to be considered under any Part of the EP&A Act other than Part 4, which applies to development applications. (***SEPP44 Part 2 - Land to which this Part applies (b) land in relations to which a development application has been made***) - The eventual Guidelines laying out the assessment process for councils will therefore apply only to Part 4. The SEPP will not be triggered by proposals assessed under Part 5 of the Act, Environmental Assessment, nor Part 5.1, Significant Infrastructure.

In the first instance this point should be made transparently clear, and/or altered within the actual SEPP, and a final draft of the Guidelines to Councils needs to be placed on exhibition for further public comment

Part 5 approvals were affected by the Threatened Species Conservation Act 1995 in which koala is listed as vulnerable, however the TSC Act is weakened and absorbed into the Biodiversity Conservation Act, which relaxes requirements for farmers wanting to clear more land.

The NSW EP&A Act's 75-page Part 4 with its numerous clauses, Divisions and additional parts all dealing with human development, is no place for a complex, globally-loved small mammal like the Australian koala.

Recommendations:

Since all states that encompass koalas' range are failing to provide strong enough laws to govern the protection of koala habitat, and with koalas on the Federal threatened species list for NSW, ACT and Queensland, the CEC calls on the Federal government to remove koalas from State responsibility; for all separate conflicting States' legislation where koalas are federally listed to be repealed, and for any plans that will further threaten koalas and their habitat to be assessed by threatened species provisions under the commonwealth EPBC Act, where this major issue rightly belongs.

SEPP44 amendments. Response summary

As with other important pieces of NSW legislation put before the public recently, this one has been presented underdone, with significant missing parts. The original Circular B35 (1995) is to be revised (or scrapped entirely, it is not stated which), to guide Councils in preparing their CKPOMs and assessing development applications, and to support applicants in preparing those DAs, all to streamline (speed up) the assessment process.

While the aim of the amendments is purportedly to better meet the aim of SEPP44 in koala protection, the actual aim (under the Act) is to simplify the DA assessment process by councils, including councils that have no CKPOM, which is the majority.

If the new guidelines are to be read in conjunction with the Policy, as per Circular B35, then without seeing the revised koala habitat definitions it is impossible to make informed comment on how, or if, councils will be appropriately directed towards in-perpetuity koala protection through habitat assessment. Without seeing the updated guidelines for councils, the CEC cannot approve or disapprove the proposed simplification of the development assessment process, nor the elimination of the need for individual KPoMs, **Those Guidelines need to be placed on exhibition for public input.**

Aims and objectives of SEPP44 (C3) - These are to remain the same. Yet the base Aim (*to ensure a permanent, free-living (koala) population over their present range*), has never come close to being attained. Without an updated Aim, SEPP44 will not meet the second part of its aim - to reverse the current trend of koala population decline. With political will and strengthened laws, efforts might certainly be able to halt a decline in some areas. However to actually reverse the trend of extinctions, koalas need to be able to expand naturally across their original range, as designed to do by Nature, and doing so nicely before European settlement. To reverse the trend, we need to give back more than we take - and have taken - from them

The CEC somewhat agrees with removing the prior objectives and embedding them into the actual SEPP. However the word "or" (as in *'or in another part of the planning system'*) should be deleted. If any other part of the Planning Act is to be amended to accommodate koalas this is a separate issue for another time.

Objective (a) should include encouragement of Councils, through funding, to prepare Comprehensive Koala Plans of Management. Again, **The proposed approach (p10) -** *improves the structure and effectiveness of the SEPP whilst supporting councils to implement appropriate local measures to protect koala habitat* - should recognise the need for funding to councils to achieve this end

Also the current **SEPP44, Part 1.5, *Land to which this Policy applies*** - states that the Policy does not apply to State Forest or SF flora reserves. With many state forests known to support good tracts of koala habitat, **if the revised SEPP is to meet its aims then it is critical for State Forests to be included in its application**

Development Assessment Process - p 8 - (to be defined in the Guidelines)

This appears only in the rundown of proposed amendments, which are to be dealt with more extensively in the eventual Guidelines. Those guidelines relate only to council areas without

CKPOMs, and will encourage councils to implement their own measures by developing CKPOMs.

But CKPOMs must first be approved by the Planning Dept, which, by the revised SEPP, will be by the Planning Dept Secretary (p8). Whether or not that Secretary is qualified to make decisions about koalas' health and requirements needs to be a consideration and made publicly clear.

***The updated process will require an applicant to establish whether a site contains koala habitat following an assessment of the vegetation* (p8)**

Where a CKPOM is in place we assume this assessment will be by desktop study of LGA maps. Where they are not in place, the CEC is strongly opposed to any proponent being entrusted with the responsibility of establishing a situation that could hamper his or her own aim of having their proposal approved.

Knowledge of vegetation, and of koalas, is specialist work. This should be undertaken only by independent qualified botanists or koala experts, preferably employed by the National Parks & Wildlife Service, but definitely not by the proponent.

***Where koala habitat is established, further assessment will be required to determine if koalas are present before an application is submitted* (p8)**

The rundown of amendments is insufficient for comment on the effect that finding a koala on site will have, or what process will follow that finding. While this and the other included page 8 comments are recognised as broad content only, to be clarified in the Guidelines, the **CEC in this instance recommends a very clear definition of the presence of koalas**. Does it mean a koala is visible on site on the day of assessment? Will it be by historical and/or recent records? By verbal local knowledge? Or scratch marks or scats identified, of whatever age?

Habitat identified, but no koalas? (Not mentioned. Not covered in p8 rundown).

Before proposed changes to the SEPP can be approved, the concerned public needs to know whether or not koala habitat might be cleared for a development when a koala is not present on the site. This needs a separate clause, with identified koala habitat required to undergo the same assessment process as if a koala was on site. The only way to increase koala numbers and keep them in health is to increase their, once traditional natural habitat, not reduce it.

***Where koalas are present, even if the vegetation is not assessed as koala habitat, assessment will continue as if it was koala habitat* (p8 & 11)**

The CEC approves of the presence of koala indicating koala habitat. However, again, finding (and reporting) a koala will depend on the good faith of a developer. To inspire public faith in government will, this needs to be changed

Also, where koalas are present in untraditional habitat, since the animal's true territory and feeding trees will be in close proximity, and the koala utilises that site for shade, rest and shelter, the assessment in fact should not continue, and the site should not undergo any further assessment.

Further comments

Under Part 4 of the Planning Act, there is no 'voice' for koalas, only for developers. Koalas are an annual $1b asset, which Australia needs to protect. Without seeing the proposed Guidelines for applicants and councils to follow, this Review inspires little trust at this stage and cannot be confidently commented upon.

If the NSW government is genuinely committed to seeing NSW koalas thrive in perpetuity, then this Review has to provide their firm protection. This time, under this Policy, there has to be a balance of situations where a consent authority cannot approve a DA, but must by law reject it outright, without the conditions and recommendations that currently assist development approval, and without interference by the EP&A Act.

The CEC will approve

1. Demands under the Guidelines for CKPOMs for tree preservation orders; performance and compliance monitoring, regular reporting of compliance and performance as well as success or otherwise of an approved project; an updated fire management plan to keep koala habitat fire-free; strict restrictions on domestic dogs, stronger feral animal controls, and effective traffic control measures through koala habitat.
2. Assisted council (and State government) funding support for koala rescue and care volunteers and vets.
3. Use of rescue and care group records to help identify koala habitat
4. Mandatory consideration of koala habitat for all development applications, not just those dealing with more than 1ha of land. A koala can inhabit a single tree, sometimes for many days, even a week or two. Today's landscape of rural residential and small acreage living contribute to koala decline. 1ha of land with the right type of food trees can support half a dozen koala without difficulty for some time.
5. Tree preservation orders. The two most favoured food trees, *Eucalyptus tereticornis* and *E camaldulensis*, which are eaten across koalas' entire range and listed as primary food in all divisions in which they occur, need swift protection by TPOs
6. Rezoned koala habitat and areas for environmental protection, as well as trees protected by TPOs, need to be attached to a property's title. We cannot rely on real estate agents to make the point
7. Readjustment of the expanded tree list to include other favoured food species (see Appendix), and better protection for all Eucalypt species bearing coloured oil glands (see attached spreadsheet if accepted as part of this submission). Trees preferred by koalas need to be more carefully considered, in conjunction with, and consideration of, knowledge gathered by koala care groups and individuals over decades of dedicated hands-on work.
8. A requirement for councils to rezone for environmental protection
    - all creek lower reaches, flats and swamplands that bear Forest red gum (*E tereticornis*) and Grey gum (*E propinqua*) to protect food source in dry weather and drought times (see accompanying spreadsheet, if accepted with this submission).
    - Grey box woodlands
    - Higher reaches on sandstones supporting the preferred food trees, where moisture seepage drains more quickly from the rocks, so maintaining a suitable percentage of water in the leaves for koalas during extreme wet periods.

We thank you for the opportunity to comment on the proposed amendments to SEPP44, and hope that at least some points and suggestions we make here will be seen to have merit in helping to protect our NSW koalas, which is definitely, first and foremost, our specific aim.

Patricia Edwards
Clarence Environment Centre (President)
Land for Wildlife (Clarence Regional Coordinator)
WIRES (Koala coordinator; Threatened Species Recording Officer)

APPENDIX –
Koala food tree species

First and foremost, koalas across the coastal strip need Forest Red Gum (*Eucalyptus tereticornis*) This species range is entirely encompassed within the Koalas' range from Queensland (Qld blue gum) to Victoria (ssp *mediana*). It is also known to be consistently eaten by koalas in care, where other species will be rejected, even if taken for a time.

Secondly, *Eucalyptus camaldulensis* (River Red Gum) takes over as the major preferred food tree in the higher altitudes where Forest Red Gum leaves off. The two species are similar, as to be virtually the same tree.

If there can be a tree preservation order on just these two species, this will go a long way towards protecting koalas in NSW, and ensuring their continued healthy existence.

Species listed by OEH include a good variety of food trees, however many are supplementary, and a few are not recorded as being eaten within the 8 NSW divisions. The list below, with primary species highlighted in yellow, shows where the overlap of food occurs to support koalas across each division

Koala Food Tree species, localities and preference status

E agglomarata - Supplementary, NC; CC
E albens - Secondary CT; ST; WSP
E amplifolia - Primary NC; CC; SC; NT, Supplementary on Tablelands overlap
E bancroftii - Primary NC in sandy soils
E baueriana - Secondary NC & CC; Supplementary CT
E bicostata - Secondary CT ; ST around Tumut
E biturbinata - Primary CC; Secondary NC; CT; ST; WSP
E blakelyi - Primary E NT; CT; ST; WSP; Far W-SW; Vic
E bosistoana - Secondary CC; SC
E bridgesiana - Secondary SC; NT; C&ST; WSP
E camaldulensis - Primary CT; ST; WSP; Far W-SW; Qld; Vic; SA
E camphora - Supplementary CT; ST (Disjunct).
E canaliculata - Supplementary NC
E chloroclada - Primary NWS&P. Secondary CT; ST; WSP; Far W-SW
E cinerea - Secondary CT; ST
E conica - Secondary CC (possibly introduced) WSP; Supplementary CT; ST; NT
E consideniana - Secondary CC; SC
E coolabah - Secondary WSP; Far W-SW
E cypellocarpa - Secondary CC; SC
E dalrympleana - Secondary NT; CT; ST; Supplementary NT
E dealbata - Primary NT; Secondary CT; ST; WSP; Far W-SW
E dwyeri - Primary CC; Secondary NT; WSP
E globoidea - Supplementary NC; CC; SC
E goniocalyx - Secondary CC
E interstans - Supplementary NT (related to *E seeana*, presumed similar)
E largiflorens - Secondary WSP; Far W-SW
E longifolia - Secondary CC; SC
E macror(r)hyncha - Not recorded as being eaten
E maidenii - Secondary CC
E mannifera - Secondary SC; NT; CT; ST
E melliodora - Secondary NT; CT; ST; WSP; Far W-SW
E microcarpa - Secondary CT; ST

E microcorys - Primary NNC; CC; Qld. Secondary NC
E moluccana - Secondary NC; CC; ST; CT
E nandewarica - Secondary WSP
E nicholli - Secondary NT; CC (Introduced)
E nob(i)lis - Secondary NT
E nortonii - Secondary CT; ST
E nova-anglica - Supplementary NT
E oblonga - Not recorded as being eaten
E ovata - Secondary CC; Victoria
E parramattensis - Primary NC; CC
E pauciflora - Secondary SC; NT; CT(?); ST(?)
E pilligaensis - Secondary NT: WSP
E polyanthemos - Secondary CT; ST; WSP
E populnea - Secondary WSP; Far W-SW
E prava - Secondary NT; WSP
E propinqua - Primary NC; CC; NT; Qld;
E pseudoglobulus - Not recorded as being eaten
E punctata - Secondary CC
E quadrangulata - Secondary NC; ST
E radiata - Supplementary ST; NT
E robusta - Considered occasional Primary NC; CC; Secondary Taree, Great Lakes
E rossii - Not recorded as being eaten
E rubida - Secondary CT; ST
E scias - Secondary CC; SC
E sclerophylla - Not recorded as being eaten
E sieberi - Not recorded as being eaten
E tereticornis - Primary NC; CC; SC; NT; CT; Qld
E vicina - Secondary WSP
E viminalis - Primary SC; NT; CT; ST; Vic; SA
E volcanica - Not recorded as being eaten

Species not listed -

E acaciiformis - Secondary NT (related to E nicholii)
E andrewsii - Supplementary NT; NWSP
E approximans - Secondary ST
E banksii - Secondary NT
E baxteri - Supplementary SC
E bensonii - Supplementary CC
E blaxlandii - Supplementary CC
E botryoides - Secondary CC; Tilligerry Peninsula Port Stevens shire
E caleyi - Supplementary NT
E caliginosa - Supplementary NT
E cameronii - Supplementary NC
E camfieldii - Supplementary CC
E cannonii - Supplementary CC
E canobolensis - Secondary Upper slopes of Mt Canobolas, near Orange
E capitellata - Supplementary CC; SC
E deanei - Primary around granite belt Granite belt CT; NT
E eugenioides - Supplementary CC; NT; CT; ST
E glaucina, Primary CC; NC
E grandis - Secondary Northern Rivers (N-NC)
E imitans - Supplementary CC (possibly Introduced)
E lacrimans - Secondary SC; NT; CT; ST(?)
E laevopinea - Supplementary NT; CT

E largiana - Secondary NC; CC
E ligustrina - Supplementary CC
E melanophloia - Secondary NT; NWS
E michaeliana - Secondary CC
E mckieana - Supplementary NT
E morrisii - Primary Maroondah LGA (Bourke, Ningan; Cobar)
E notabilis - Secondary NC; CC; NT
E obliqua - Supplementary NT
E pilularis - Secondary NC
E racemosa - Secondary NC; CC
E resinifera - Secondary NC; CC
E retinens - Secondary NT
E rudderi - Secondary NC
E saligna - Secondary CT; NT; NC/E
E seeana - Primary CC; Secondary NC
E sideroxylon - Secondary NT; CT; WSP; NWSP
E sparsifolia - Supplementary CC; WSP
E tenella - Supplementary CC
E tindaliae - Supplementary NC
E williamsiana - Supplementary NT
E youmanii - Supplementary NT

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Botanic Divisions

NC = North Coast
CC = Central Coast
SC = South Coast
NT = Northern Tablelands
CT = Central Tablelands
ST = Southern Tablelands
WSP = Western Slopes & Plains
NWSP = North West Slopes & Plains

Compiled by P Edwards, Clarence Environment Centre, South Grafton

Note - Also of interest is work that has uncovered a possible significance of Section Exsertaria, Taxon Erythroxylon eucalypts, most of which carry coloured oil glands and are all prime food trees for koalas. Also of interest is the use of numerous Section Capillulus, Taxon Pachyphloius as supplementary food across koalas' range (See attached spreadsheet if approved for submission)

This needs considerably further work, and funding, to properly assess the relevance, or otherwise, for koalas

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