

## DEPARTMENT OF PLANNING

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# STATE ENVIRONMENTAL PLANNING POLICY NO. 44 - KOALA HABITAT PROTECTION

## INTRODUCTION

State Environmental Planning Policy No. 44 - Koala Habitat Protection (SEPP 44), was gazetted and commenced operation on 13 February 1995. Section 1 of this circular provides an introduction to the provisions of this policy and information as to how to implement it. Section 2 is the guidelines made by the Director of Planning for the purposes of the policy. A copy of the policy is attached and should be read in conjunction with this circular. Though an accurate reflection of the intent of the policy, these notes are not a substitute for the SEPP itself.

The Director of Planning has made guidelines for the purposes of the policy which, respectively, a council must consider when determining a development application, and consider when relevant to exercising a function under SEPP 44. Specific reference is made in clause 11(3) that plans of management be prepared in accordance with the guidelines. The Director has made the guidelines which are section 2 of this circular. These are referred to in clauses 10, 11 and 17 of the policy. Section 2 of this circular is referred to as the guidelines.

## STATUS OF KOALAS AND THE NEED FOR A POLICY

The presently known geographic distribution of the koala in New South Wales is fragmented and most of the populations appear to be small and isolated. Many also occur where they are increasingly susceptible to habitat loss or modification, predation and exposure to drought, disease and bushfire. Factors such as these resulted in the koala (*Phascolarctos cinereus*) being listed on Schedule 12 of the *National Parks and Wildlife Act 1974*, as endangered fauna in Part 2, vulnerable and rare.

A state-wide approach to the issue of declining koala populations is necessary to ensure long term survival over their present range. SEPP 44 will guide and focus the efforts of local government in its responsibilities under the *Environmental Planning and Assessment Act 1979* (EP&A Act), including the proper management of natural resources and the protection of the environment.

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## **SECTION 1 - AN EXPLANATION OF THE POLICY**

### **1.1 AIM OF POLICY**

The policy aims to encourage the conservation and proper management of areas of natural vegetation that provide habitat for koalas, to ensure permanent, free-living populations over their present range and to reverse the current trend of population decline.

The aim of the policy will be achieved by ensuring that:

i) for any development application (DA) to which the policy applies, consent is not issued without investigation of the presence of core koala habitat.

“Core koala habitat” is defined in the policy (clause 4) as “ an area of land with a resident population of koalas, evidenced by attributes such as breeding females (that is, females with young), and recent sightings of and historical records of a koala population”.

ii) that any identification of core koala habitat will require that a plan of management must accompany any DA relating to such areas, before council can consider the granting of consent.

iii) that in respect of rezoning, the policy indicates (clause 16) that if a proposal to zone (or rezone) lands, other than to environmental protection, involves an area of potential or core koala habitat then the Director of Planning may require that a local environmental study (LES) be prepared.

### **1.2 SUMMARY OF PROVISIONS**

The policy:

i) Commences on 13 February 1995.

ii) Identifies land to which it applies.

iii) Requires the identification of “potential koala habitats” in lands subject to DAs.

iv) Requires the identification of “core koala habitats” in lands subject to DAs.

v) Requires the preparation of plans of management for areas of identified core koala habitat subject to DAs.

vi) Encourages the survey of lands by council for potential and core koala habitat.

vii) Encourages the identification of core koala habitat in local environmental planning instruments.

viii) Identifies circumstances when the Director of Planning is likely to require an local environmental study for rezoning.

ix) Provides for the guidelines made by the Director of Planning to be in force for the purposes of the policy. These guidelines provide for: the standard of investigations for core koala habitat; the production of plans of management; the recording of core koala habitat in LEPs and suggestions for the use of Development Control Plans (DCP).

### **1.3 LAND TO WHICH THE POLICY APPLIES - SCHEDULE 1**

The policy applies to 107 Local Government Areas (LGAs) in New South Wales identified in Schedule 1 and in Amendment No.1 of the policy. This minor amendment involved adding Campbelltown, Wakool, Warren and Wenthworth LGAs and the deletion of Hunter's Hill and Shellharbour. These represent the known geographic distribution of koalas in NSW. This distribution is taken from the National Parks and Wildlife Service's, *Atlas of NSW Wildlife*, as at February 1995.

### **1.4 POTENTIAL KOALA HABITAT -SCHEDULE 2**

Schedule 2 lists ten eucalypt species which are primary koala food trees. In the policy "potential koala habitat" is defined as "areas of native vegetation where the trees of types listed in Schedule 2 constitute at least 15% of the total number of trees in the upper or lower strata of the tree component". Potential koala habitat is the trigger for the policy to apply to a DA or rezoning proposal. The selection of these species is based on the knowledge that almost all occurrences of koalas in New South Wales have been associated with the presence of one or more of these species. The presence of potential koala habitat warrants further investigation into whether there is core koala habitat.

### **1.5 HOW THE POLICY AFFECTS CONSIDERATION OF DEVELOPMENT APPLICATIONS**

After receiving a development application to which the policy applies, that is, the landholding to which the DA applies is greater than 1 hectare in area (or has, together with any adjoining land in the same ownership, an area of more than 1 hectare) and is within an LGA listed in Schedule 1, the following steps should be undertaken. If a council has already satisfied itself that Steps 1 and 2 of Part 2 of the policy have been met, it may then decide to proceed directly to Step 3. In relation to affected DAs it is the intention of the policy that investigations for 'potential' and 'core' koala habitats be limited to those areas in which it is proposed to disturb habitat.

Step 1. - Is the land potential koala habitat?

Council must have sufficient information to know if the land to which the policy applies contains potential koala habitat, that is, native vegetation where the trees of types listed in Schedule 2 constitute at least 15% of the total number of trees in the upper or lower strata of the tree component. Council may only consider information provided to council or the applicant, regarding the presence of Schedule 2 species, by a person with qualifications in tree identification (clause 7(2)).

If none of the species listed in Schedule 2 are present or if these species constitute less than 15% of the total number of trees present, no further provisions of the policy apply to the DA.

If potential koala habitat is present then it will be necessary to inform the applicant that further investigation for the existence of core koala habitat is required.

Step 2 - Is the land core koala habitat?

Further information will be necessary before council can decide whether the site contains core koala habitat. This decision will involve a judgement based on the core koala habitat criteria provided in the policy. Section 2.1 of the guidelines provides information on the expected standard of such an investigation and survey methods that might be used.

If the results of the investigation reveal that the area does not contain core koala habitat, no further provisions of the policy apply to the DA.

If the site contains core koala habitat then council should inform the applicant that a consent can not be issued until a plan of management for the site has been completed. The plan of management must be approved by the Director of Planning and approved by council (clause 9 (1)). The applicant may, independently, reach the decision that a plan of management will be required by council.

#### Step 3. - Producing Plans of Management.

Plans of management can be of 2 types; for a specific site or the whole LGA. Clause 11(3) requires that plans of management are produced in accordance with the guidelines. When a plan of management is required, council should refer to the outline provided in Section 2.2 of the guidelines detailing what should be included. The applicant should be made aware of the requirement for a plan of management immediately after a decision has been made that the DA area contains core koala habitat. The expected content of plans of management outlined in Section 2.2.2 of the guidelines, indicates what information the Director of Planning will be likely to require a plan to contain. The policy does not require a plan of management for an individual site if a plan of management covering the whole LGA has been produced and approved by council. Details of these LGA wide plans are provided in Section 2.2.1 of the guidelines.

#### STEP 4. - Granting consent.

Council may determine the development application when a plan of management is approved. Any consent issued should not be inconsistent with the plan of management (clause 9(2)).

The Figure on page 5 illustrates the process council should follow once a DA is received.

### **1.6 HOW THE POLICY AFFECTS REZONING OF POTENTIAL OR CORE KOALA HABITATS**

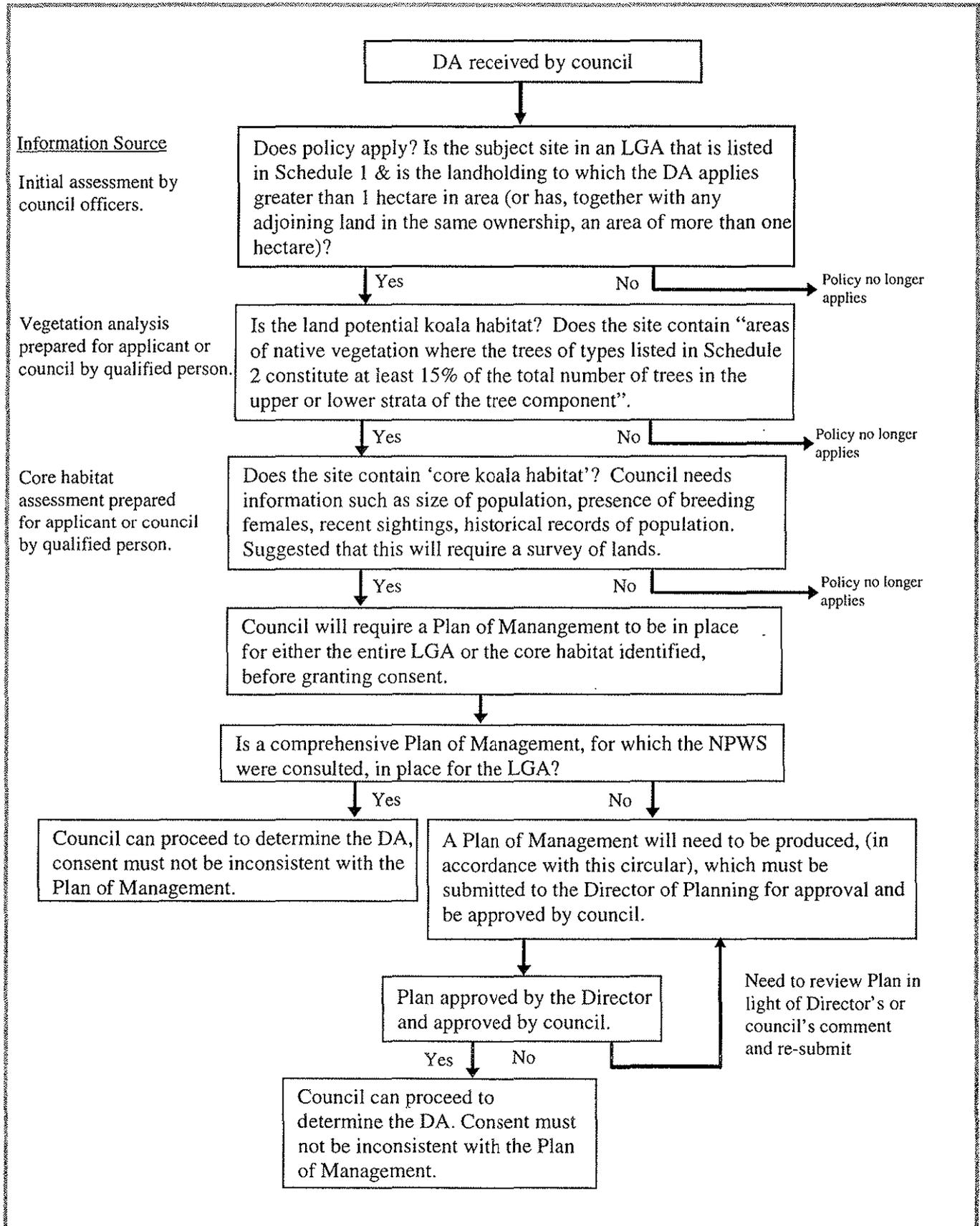
When contemplating rezoning of potential koala habitat, council should be aware of those factors which will be considered by the Director when deciding whether to require that a local environmental study be undertaken. These are in clause 16.

These factors will include whether or not an investigation for the presence of core koala habitat has been previously undertaken. If such an investigation has identified core habitat, the Director will consider whether a plan of management (either for the individual DA or the entire LGA), has been prepared and approved for the area of core koala habitat. It is anticipated that for the majority of rezonings, a local environmental study is likely to be required if potential koala habitat, which has not been investigated for core koala habitat, is present.

Generally, a local environmental study is unlikely to be required if the purpose of the rezoning, involving potential or core koala habitat, is to zone land for environmental protection.

## HOW THE POLICY AFFECTS A DEVELOPMENT APPLICATION

The following flow chart represents the steps which council should follow, in respect of this policy, after receiving a DA.



## **1.7 COMMUNITY INVOLVEMENT**

There is considerable scope for council to utilise community organisations that presently exist in New South Wales for support and assistance with koala related issues. It is suggested that council contact the appropriate zone team of the National Parks and Wildlife Service (NPWS) for assistance and to facilitate contact with groups such as the Australian Koala Foundation, Wildlife Information and Rescue Service (WIRES) and local environmental groups. Assistance could be provided with such works as planting programs (for feed tree species) and programs for the removal of weed species in core habitat. WIRES care for and rehabilitate sick or injured animals. If appropriately co-ordinated and supervised the 'volunteer' labour could significantly reduce any resource implications for council in managing koala populations, within identified core habitat, on lands within its control.

## **1.8 NATIONAL PARKS AND WILDLIFE SERVICE DATA BASE FOR KOALAS**

Council are encouraged to forward information regarding the presence of koalas, resulting from assessments of both potential and core koala habitats, to the Environmental Survey and Research Branch, Head Office of the NPWS for recording in the Service's data base on koala distribution in NSW. This information will be treated as confidential if requested.

## **1.9 STATE OF ENVIRONMENT REPORTING**

A number of parallels exist between the requirements of SEPP 44, in regard to identification of potential and core koala habitat, and the requirements of the *Local Government Act 1993*. Specifically section 428 (2)(c) of the Act requires councils to produce a report as to the state of the environment for the relevant local government area. These reports are to include information on: areas of environmental sensitivity; important wildlife and habitat corridors; threatened species and any recovery plans; vegetation cover (and any instruments or policies related to it, including instruments relating to tree preservation). Council should maximise efforts to combine the survey efforts of their state of the environment reporting and the information required to identify core habitat for koalas.

## **1.10 FURTHER INFORMATION**

The following readings are suggested for developing a general understanding of the current status of koalas in NSW.

1. Callaghan, J., Leathley, S. and Lunney, D.(1994). *Port Stephens Koala Management Plan. Draft for public discussion. 27 September 1994.* NSW National Parks and Wildlife Service and Port Stephens Council. Available from Port Stephens Council for \$20.00 (including postage & handling).
2. Lunney, D., Urquhart, C. and Reed, P. (Eds)(1988). *Koala Summit - Managing Koalas in New South Wales.* NSW National Parks and Wildlife Service. Available from the Service's Information Branch, PO Box 1967 HURSTVILLE 2220 for \$19.95 (including postage & handling).
3. Reed, P.C., Lunney, D. and Walker, P. (1990). "A 1986-1987 survey of the koala *Phascolarctos cinereus* (Goldfuss) in New South Wales and an ecological interpretation of its distribution". In the *Biology of the Koala*. Lee, A.K., Handasyde, K.A and Sanson, G.D.(Eds) (1990). Available as a reprint from D. Lunney, Head Office NPWS for \$5.00 (including postage & handling).

For enquiries regarding the Koala Habitat Atlas - Maps Identifying Koala Habitat, contact Mr Steve Phillips or Mr John Callaghan on (07) 229 7233 (ph) and (07) 221 0337 (fax). The postal address is, Australian Koala Foundation GPO Box 9899, SYDNEY 2001.

Any specific questions regarding this policy may be directed to the Department's Natural Resources Branch on (02) 391 2022 or the relevant regional office of the Department.

## **SECTION 2 - THE DIRECTOR'S GUIDELINES**

### **2.0 INTRODUCTION**

The Director of Planning has made guidelines for the purposes of the policy which, respectively, a council must consider when determining a development application, and consider when relevant to exercising a function under SEPP 44. Specific reference is made in clause 11(3) that plans of management be prepared in accordance with the guidelines. The Director has made the guidelines which are section 2 of this circular. These are referred to in clauses 10, 11 and 17 of the policy. Section 2 of this circular is referred to as the guidelines.

The guidelines include: methods for investigating the presence of core koala habitat; the minimum information requirements for plans of management that are to accompany development applications applying to areas of core koala habitat; provisions for inclusion in environmental protection zones in local environmental plans for the protection of identified core koala habitat and suggestions for the use of development control plans.

### **2.1 INVESTIGATING POTENTIAL KOALA HABITAT FOR CORE KOALA HABITAT**

When an area has been identified as potential koala habitat, a decision must then be made by the council as to whether or not the land is core koala habitat. The policy requires (clause 8(2)), that the information on which a decision about the presence of core koala habitat is based must be provided by persons suitably qualified in biological science, fauna survey and management. For the decision to be confidently made, it is necessary that a minimum standard and content of information regarding core koala habitat is provided. It is considered that the best method to obtain such information would be a survey to assess the subject site for attributes such as those contained in the definition of core koala habitat. A survey may not be required where sufficient information already exists.

These surveys / investigations should:

- i) examine the presence of koalas on the subject site and provide details on the extent and nature of identified populations, including: an estimate of population size; extent of tree use on the site and species utilised, (established by observing koalas or their sign e.g. dung and scratch marks); evidence of breeding females (including females with young) and the presence of juveniles / sub-adults in the population;
- ii) provide a vegetation map of the site which identifies the components of the tree layer and a description of the shrub layer;

- iii) make use of other published or publicly available data relating to the fauna of the site. This could include sources such as previous fauna surveys and impact statements, plans of management for koalas completed by the National Parks and Wildlife Service and the information available on koala distribution in the Koala Habitat Atlas (Australian Koala Foundation); and
- iv) employ standard, reportable techniques of koala survey, such as a properly designed on site survey using standard techniques or the approach outlined by the NPWS in producing the *Port Stephens Koala Management Plan - Draft for public discussion. 27 September 1994*. The latter method involves the use of a community-based survey to determine location of koala populations.

Fundamentally, this information must result in council being able to confidently decide whether or not the potential koala habitat contains any core koala habitat. If an identification of core koala habitat is made, a plan of management for koalas is required before councils can proceed with assessment of the DA. Details of these plans of management are provided below.

The policy encourages council to survey lands within their areas to identify potential and core koala habitats (clause 15(a)). Undertaking surveys will allow council to identify those lands where this policy will apply in anticipation of DAs and rezonings and will facilitate a co-ordinated approach to planning for koala habitat management for the entire LGA.

It is anticipated that when undertaking surveys, it would be practical for council to target those areas where habitat destruction is most widespread. Agricultural lands, where generally current practices do not compromise koala habitat to the extent experienced in other areas, should be of low priority. It is, however, appropriate when agricultural lands are subject to a rezoning proposal for urban development that the provisions of the policy apply.

## **2.2 PLANS OF MANAGEMENT**

The policy defines two types of plans of management, (clauses 11(1)(a) and (b)), these are referred to as comprehensive plans and individual plans. Anyone, including a council may prepare a plan of management (clause 11(2)). It is a requirement of the policy (clause 11(3)) that plans of management be prepared in accordance with these guidelines. It is expected that it will be councils who undertake comprehensive plans of management and applicants who will be responsible for preparing individual plans of management.

In addressing these guidelines, anyone undertaking a plan of management, either individual or comprehensive, should be certain that it meets the aim of this policy to ensure that areas of natural vegetation are properly managed and conserved to provide habitat for koalas.

### **2.2.1 Comprehensive Plan**

This refers to a plan of management for koalas that covers an entire LGA, prepared in accordance with clause 11(1)(a). The policy requires that in producing such a plan the Director-General of the NPWS must be consulted, (clause 12). Such a plan should adopt the standard of the completed draft 'Port Stephens - Koala Management Plan', 27 September 1994, NPWS / Port Stephens Council. For availability of this plan refer to the further information section of this circular. If such a comprehensive plan has been adopted by council, no individual plan of management is required to accompany DAs applying to core habitat. These comprehensive plans must have been approved by both the Director and council before they come into force and before consideration of the DA can be completed. It

is expected that these plans will be approved by council before being forwarded to the Director for approval.

Council is encouraged to undertake these comprehensive plans of management as they will both facilitate the processing of DAs and effectively meet the aims of this policy. Completion of such a plan will also conform with the recommendation in clause 15(a) that surveys be undertaken for potential and core koala habitats within LGAs. Again it is expected that these comprehensive plans will focus on those areas where habitat destruction is most widespread, such as in areas of rapid residential expansion. If a council is interested in undertaking a comprehensive plan of management, the appropriate local NPWS Zone Team or the Environmental Protection Unit of the NPWS should be contacted on (02) 585 6444 (ph) or (02) 585 6555 (fax). This does not, however, remove the policy requirement to formally consult the Director-General of NPWS.

### **2.2.2 Individual Plan**

These plans are required to accompany DAs which affect core koala habitat, in LGAs for which a comprehensive plan of management has not been completed. These individual plans are to be forwarded to the Director of Planning for approval (clause 13). These plans must have been approved by both the Director and council before they come into force and before consideration of the DA can be completed. It is expected that these plans will be approved by council before being forwarded to the Director for approval.

Included below is a list of matters that should be considered when undertaking an individual plan of management. Such matters will form the basis of the Director's decision whether to approve the plan of management.

- i) An estimate of population size;
- ii) Identification of preferred feed tree species for the locality and extent of resource available;
- iii) An assessment of the regional distribution of koalas and the extent of alternative habitat available to compensate for that to be affected by the actions;
- iv) Identification of linkages of core koala habitat to other adjacent areas of habitat and movement of koalas between areas of habitat. Provision of strategies to enhance and manage these corridors;
- v) Identification of major threatening processes such as disease, clearance of habitat, road kill and dog attack which impact on the population. Provision of methods for reducing these impacts;
- vi) Provision of detailed proposals for amelioration of impacts on koala populations from any anticipated development within zones of core koala habitat;
- vii) Identification of any opportunities to increase size or improve condition of existing core habitat, this should include lands adjacent to areas of identified core koala habitat;
- viii) The plan should state clearly what it aims to achieve (for example, maintaining or expanding the current population size or habitat area);

- ix) The plan should state criteria against which achievement of these objectives is to be measured (for example, a specified population size in a specific time frame or the abatement of threats to the population).
- x) The plan should also have provisions for continuing monitoring, review and reporting. This should include an identification of who will undertake further work and how it will be funded.

These plans encourage active habitat management and allow development proposals to be assessed in the broader context of local and regional koalas status.

### **2.3 GRANTING OF CONSENT BY COUNCIL**

When a council receives a DA for a site which contains core koala habitat and for which there is an approved plan of management, either comprehensive or individual, the DA may be determined. In the issuing of any consent council must have regard to the provisions of (clause 9(2)) of the policy, which states that any determination of a DA, over core habitat, must not be inconsistent with the plan of management.

### **2.4 RECORDING CORE HABITAT IN LOCAL ENVIRONMENTAL PLANS**

For lands, which are currently known to contain populations of koalas, as a result of either local knowledge or a previous survey, (clause 15(b)(i)) council is encouraged to include these lands in a zone for environmental protection in the relevant LEP. The policy also allows council to identify land as core koala habitat by means other than a specific environmental protection zone and to apply special provisions to that land (clause 15(b)(ii)). This identification could be by means of hatching or shading superimposed over existing zonings. As previously stated current agricultural lands, due to the low intensity of impacts on koala habitat are not considered to be a focus for the practical expression of this section of the policy.

In developing such an environmental protection zoning or in applying special provisions to an identification of core koala habitat, council should consider including provisions in the following terms:

1. This clause applies to land shown hatched on the maps and denoted with a classification of core koala habitat.
2. The objectives of the clause are to:
  - i) ensure that the koala population in the area is sustainable in perpetuity;
  - ii) protect core koala habitat areas from any development which would compromise habitat quality or integrity;
  - iii) ensure that any development within core koala habitat areas occurs in an environmentally sensitive manner;
  - iv) ensure that acceptable levels of investigation are undertaken and considered prior to any development in core koala habitat areas;
  - v) ensure that development does not further fragment or degrade core koala habitat areas;
  - vi) encourage habitat creation and restoration; and

- vii) maintain interconnection of areas of core koala habitat and provide for koala movement between such areas.

## 2.5 DEVELOPMENT CONTROL PLANS

When council has identified core koala habitat in an LEP consideration should be given to providing more detailed provisions in a DCP, which relates to lands identified as core koala habitat (clause 15(c)). These DCPs should also take into account the development of lands which adjoin land identified as core koala habitat.

The general aims of these DCPs would be to:-

- i) protect core koala habitat areas from any development which would compromise habitat quality and integrity;
- ii) ensure that any development within core koala habitat occurs in an environmentally sensitive manner;
- iii) ensure that appropriate investigation is undertaken proper to any development of core koala habitat;
- iv) ensure that development is designed to minimise further fragmentation or degradation of core koala habitat, and;
- v) provide guidelines as to how impacts on koalas may be minimise during and after development.

Specific development controls which could be imposed within a DCP to apply to areas of core koala habitat, include the following:

- retention of trees known to be used for feeding by koalas;
- retention of trees and shrubs known to be used for shelter by koalas, e.g. Banksia, Acacia and Casuarina;
- restriction of maximum speed limited for rural residential roads to 60 kph and 40 kph for residential roads;
- restriction of any activities which require clear felling;
- a minimum of 40% of the site area should be landscaped; and
- subdivision plans that incorporate an instrument pursuant to S.88B of the Conveyancing Act 1919, which:
  - prohibits keeping of dogs
  - restricts fence construction to designs which do not hinder koalas
  - prohibits removal of trees which are regarded as koala food trees
  - requires the use of koala feed trees and shrubs in all landscaping.



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Secretary