

30 March 2020

Mr Luke Walton  
Executive Director, Planning Policy  
Department of Planning, Industry, Environment

via Planning Portal

Dear Mr Walton,

### **Koala Habitat Protection SEPP Guidelines**

The Urban Development Institute of Australia (UDIA) NSW is the peak body representing the interests of the urban development industry in New South Wales. We represent over 500 member companies that are directly involved in the industry including developers, ecologists, planners and lawyers.

We are making a submission into the Guidelines relating to the State Environmental Planning Policy Koala Habitat Protection (SEPP). Our comments build upon those made at the workshop on 28 February with officers from the Department of Planning, Industry, and Environment.

UDIA NSW appreciates that there are many sensitivities about the status of koalas, which have been heightened following the recent bushfires. We believe that there should be a concerted effort to preserve habitat for koalas. This habitat preservation should be in locations where koalas have been observed/proven to reside, and in locations with trees which koalas actually feed upon (feed-trees).

The Koala Habitat Protection SEPP applies to development applications. At the February workshop we understood that the SEPP would not apply to biodiversity certified land, or to SSD or SSI projects. However, the guidelines don't seem to include clear statements of projects to which the SEPP does and does not apply to, or any transition guidelines.

### **Koala Development Application Map**

Following our review of 'The Koala Application Development Map', there a number of areas identified where koalas are highly unlikely to occupy. Below is a screenshot of a highly urbanised area at Campbelltown where pink shows the area that would trigger the Koala Habitat SEPP for a DA if the land (or land in common ownership) is greater than 1ha in size. We have been advised by ecologists with local experience that koalas would be highly unlikely to occur in this area. The view of DPIE is that this will be a much simpler process, but the mapping appears to include substantial areas of land which are urban in nature with very limited koala habitat. We understand that DPIE will be willing to make amendments to the map where clear errors have been made.



Extract from the Koala Development Application Map

The Codes SEPP states that for a complying development pathway to occur the development must not be on land that is critical habitat. The Guidelines also states, "The Koala Development Application Map identifies areas that have highly suitable koala habitat and that are likely to be occupied by koalas." We seek clarification that the land identified in the map, will not turn-off a complying development pathway, alternatively the mapping needs to be more closely reviewed.

If land is highlighted on the Koala Application Development Map it can be disputed by undertaking a koala survey, which would be required to follow the methods supplied in Appendix C. However, these guidelines are clearly targeted at the survey of large areas, rather than small sites. It would be necessary to undertake a scat search or koala detection dog survey (for scats), plus spotlighting over 2 nights, or call playback, or acoustic recording. In addition, if no koalas are detected, there would need to be mapping of vegetation and koala tree abundance, as well as consideration of existing records (i.e. if a koala sighting was recorded within 2.5km of a site for coastal areas and 5km for inland NSW). This could be quite onerous for a small site.

### Impact of Tiers

The guidelines identify two tiers of impact (Tier 1 and 2). Tier 1 is for "Low or no direct impact development". A number of suggested measures are included to manage indirect impacts. The threshold for the two tiers does not appear to be very clear (some additional comments below). For Tier 2 a "Koala Assessment Report" will be required. This appears to have many of the items that were previously required under a site-specific Koala Plan of Management (KPoM). Thus, although DPIE states that the new SEPP will make things simpler it does not appear to be so in reality. The presence of one tree could potentially trigger a "Koala Assessment Report" if it is mapped on the 'Koala Application Development Map', and if the land has an area of 1 hectare or greater (or adjoining land same ownership 1 ha or greater), within nominated LGA's.

## Integration with the Biodiversity Conservation Act

The Guidelines contain limited details about where both a BDAR and Koala Assessment Report are required, and how these inter-relate. For example, under a Koala Assessment Report, criteria 12 refers to compensatory measures. If a BDAR were also required for the same site then presumably koala credits would also be required.

On page 6 under discussion of the relationship to the *Biodiversity Conservation Act 2016* (BC Act) it states (last sentence) “*The requirements under the BC Act are in addition to those required under the SEPP*”. If taken literally, this could mean that offsets are required under both the BC Act, as well as compensation under the Koala Habitat SEPP (i.e. two separate sets of compensation may be required). It is also still not clear how koala credits under the BC Act are defined as this is a split species, with some areas captured together with vegetation, and other areas requiring specific credits.

In addition, the listed endangered koala populations (Hawks Nest / Tea Gardens, Tweed, and Pittwater) can require credits specific to those populations, and the relationship to broader koala credits is also not clear. DPIE has also stated that a better definition of the credits is coming from the Environment, Energy and Science Division (EES).

## Additional Comments

We also make the following additional comments:

- The Guidelines should clearly state that the SEPP does not apply to biodiversity certified land, part 5 assessments (REF's), or to SSD or SSI projects. It should also be made clear that applications already submitted and under assessment do not need to apply to the new SEPP.
- Tier 1 development is required to demonstrate that all 5 criteria are met. Criteria 2 and 3 both relate to vegetation clearance. It is recommended that criteria 3 (there is no native vegetation removal) is deleted, and that criteria 2 (the BOS threshold) is retained.
- It is unclear how criteria 4 “the development footprint will not impede movement between koala habitat” should be determined. Specific criteria or guidance should be provided on what would impede koala movement and what measures are encouraged to maintain or enhance connectivity.
- Table 1 includes two management measures that appear to be contradictory: under vehicle strike ‘Use of koala proof exclusion fencing, with the provision of escape mechanisms should koalas gain access to the road’, and, under disturbance ‘Fencing of urban areas should still allow for koalas to disperse through the koala habitat in the landscape and to connect with other koalas and koala colonies. This needs to be made clearer.
- ‘Suitably qualified person’ – there are different definitions provided in Appendix C and the glossary – one consistent definition should be adopted, or if there is an intent to have different levels of qualifications needed for different types of work, then this should be made clear.
- The term ‘Highly suitable koala habitat’ should be clearly defined in the glossary.

- The guidelines for a 'Koala Assessment Report' require that provisions of a koala survey are undertaken in accordance with Appendix C. This is contrary to DPIE's statements that the new SEPP will be simpler in its application, especially as the Appendix C guidelines identify surveys in relation to large areas (across an LGA), rather than small parcels of land. Furthermore, under the BC Act and BAM survey may not be performed and the presence of the koala may be assumed. It is suggested that this should also be allowed under the Koala Habitat SEPP.
- Greater clarity should be given on the application of koala sightings recorded within 2.5km for coastal areas (5km for inland NSW).

### Conclusion

UDIA seeks to ensure that there are suitable pathways to enable development and growth under the new SEPP, while managing the sensitivities around koalas. We look forward to continuing to collaborate with the Department on delivering a sensible approach to koala management, which allows koalas to thrive alongside urban growth and development across the State.

We seek to engage more closely throughout this process, and ask that you contact Mr Sam Stone, Manager, State Policy and Government Relations on 0401 213 899 or [ssstone@udiansw.com.au](mailto:ssstone@udiansw.com.au) to arrangements further consultation.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Steve Mann', with a stylized flourish at the end.

Steve Mann  
**Chief Executive**