

State Environmental Planning Policy No 44—Koala Habitat Protection (1995 EPI 5)

[1995-5]



New South Wales

Status Information

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Provisions in force

The provisions displayed in this version of the legislation have all commenced.

Notes—

- **Does not include amendments by**
State Environmental Planning Policy (Integration and Repeals) 2016 (310) (LW 10.6.2016) (not commenced — to commence on 5.8.2016)

Authorisation

This version of the legislation is compiled and maintained in a database of legislation by the Parliamentary Counsel's Office and published on the NSW legislation website, and is certified as the form of that legislation that is correct under section 45C of the [Interpretation Act 1987](#).

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New South Wales

Part 1 Preliminary

1 Name of Policy

This Policy may be cited as *State Environmental Planning Policy No 44—Koala Habitat Protection*.

2 Commencement

This Policy commences on 13 February 1995.

3 Aims, objectives etc

This Policy aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline:

- (a) by requiring the preparation of plans of management before development consent can be granted in relation to areas of core koala habitat, and
- (b) by encouraging the identification of areas of core koala habitat, and
- (c) by encouraging the inclusion of areas of core koala habitat in environment protection zones.

4 Definitions

In this Policy:

core koala habitat means 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 population.

guidelines means the guidelines, as in force from time to time, made for the purposes of this Policy by the Director.

potential koala habitat means areas of native vegetation where the trees of the 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.

5 Land to which this Policy applies

- (1) This Policy applies to each local government area listed in Schedule 1.
- (2) However, it does not apply to land dedicated or reserved under the *National Parks and Wildlife Act 1974* or to land dedicated under the *Forestry Act 1916* as a State forest or flora reserve.

Part 2 Development control of koala habitats

6 Land to which this Part applies

This Part applies to land:

- (a) that is land to which this Policy applies, and
- (b) that is land in relation to which a development application has been made, and
- (c) that:
 - (i) has an area of more than 1 hectare, or
 - (ii) has, together with any adjoining land in the same ownership, an area of more than 1 hectare,

whether or not the development application applies to the whole, or only part, of the land.

7 Step 1—Is the land potential koala habitat?

- (1) Before a council may grant consent to an application for consent to carry out development on land to which this Part applies, it must satisfy itself whether or not the land is a potential koala habitat.
- (2) A council may satisfy itself as to whether or not land is a potential koala habitat only on information obtained by it, or by the applicant, from a person who is qualified and experienced in tree identification.
- (3) If the council is satisfied:
 - (a) that the land is not a potential koala habitat, it is not prevented, because of this Policy, from granting consent to the development application, or
 - (b) that the land is a potential koala habitat, it must comply with clause 8.

8 Step 2—Is the land core koala habitat?

- (1) Before a council may grant consent to an application for consent to carry out development on land to which this Part applies that it is satisfied is a potential koala habitat, it must satisfy itself whether or not the land is a core koala habitat.
- (2) A council may satisfy itself as to whether or not land is a core koala habitat only on information obtained by it, or by the applicant, from a person with appropriate qualifications and experience in biological science and fauna survey and management.
- (3) If the council is satisfied:
 - (a) that the land is not a core koala habitat, it is not prevented, because of this Policy, from granting consent to the development application, or
 - (b) that the land is a core koala habitat, it must comply with clause 9.

9 Step 3—Can development consent be granted in relation to core koala habitat?

- (1) Before a council may grant consent to a development application for consent to carry out development on land to which this Part applies that it is satisfied is a core koala habitat, there must be a plan of management prepared in accordance with Part 3 that applies to the land.
- (2) The council's determination of the development application must not be inconsistent with the plan of management.

10 Guidelines—matters for consideration

Without limiting clause 17, a council must take the guidelines into consideration in determining an application for consent to carry out development on land to which this Part applies.

Part 3 Plans of management

11 Preparation of plan of management

- (1) A plan of management may be prepared for:
 - (a) the whole of a local government area listed in Schedule 1, or
 - (b) a part of such a local government area (including an area of land that is the subject of a development application).
- (2) Anyone (including a council) may prepare a plan of management.
- (3) A plan of management is to be prepared in accordance with the guidelines.

12 Consultation with Director-General of National Parks and Wildlife

A person who prepares a plan of management for the whole of a local government area listed in Schedule 1 must consult the Director-General of National Parks and Wildlife.

13 Approval of plan of management

- (1) A plan of management prepared by the council has no effect unless it is approved by the Director.
- (2) A plan of management prepared by a person other than the council has no effect unless it is approved by the council and by the Director.
- (3) A plan of management takes effect on the day it is approved by the Director or on a later day specified in it for the purpose.

14 Amendment or repeal of plan of management

A plan of management may be amended or repealed by another plan of management prepared and approved in accordance with this Part.

Part 4 Other environmental planning measures

15 Surveys, environmental protection zones and development control plans

In order to give effect to the aims of this Policy, a council of a local government area listed in Schedule 1 should:

- (a) survey the land within its area so as to identify areas of potential koala habitat and core koala habitat, and
- (b) make or amend a local environmental plan:
 - (i) to include land identified as a core koala habitat within an environmental protection zone, or
 - (ii) to identify land that is a core koala habitat and apply special provisions to control the development of that land, and
- (c) give consideration to preparing an appropriate development control plan for land that is or adjoins a core koala habitat.

16 Preparation of local environmental studies

Without affecting the power of the Director to give a direction under section 74 (2) (b) of the *Environmental Planning and Assessment Act 1979* to a council, the Director will consider giving a direction that sections 57 and 61 of that Act are to apply to a draft local environmental plan (with the consequence that the council must prepare an environmental study of the land to which the draft local environmental plan applies) if,

under the draft plan, it is proposed to zone (or rezone) land that is a potential koala habitat or a core koala habitat otherwise than as environment protection.

17 Guidelines—generally

- (1) In exercising any function under this Policy, a council must take into consideration the guidelines that are relevant to the exercise of the function.
- (2) Anyone may inspect the guidelines free of charge at any office of the Department of Planning during the hours when the office is open to the public.

Schedule 1 Local government areas

(Clauses 5 (1), 11 (1), 12, 15)

Armidale	Liverpool
Ballina	Lockhart
Barraba	Maclean
Bathurst	Maitland
Bega Valley	Manilla
Bellingen	Merriwa
Berrigan	Moree Plains
Bingara	Mudgee
Blayney	Mulwaree
Blue Mountains	Murray
Bombala	Muswellbrook
Boorowa	Nambucca
Bourke	Narrabri
Brewarrina	Narrandera
Byron	Narromine
Cabonne	Newcastle
Campbelltown	Nundle
Central Darling	Nymbioda
Cessnock	Oberon
	Parkes
Coolah	Parry
Cooma-Monaro	Pittwater

Coonabarabran	Port Stephens
Coonamble	Quirindi
Copmanhurst	Richmond River
Corowa	Rylstone
Crookwell	Scone
Dumaresq	Severn
Dungog	Shoalhaven
Eurobodalla	Singleton
Evans	Snowy River
Forbes	Tallaganda
Gilgandra	Tenterfield
Gloucester	Tumbarumba
Gosford	Tumut
Grafton	Tweed
Great Lakes	Ulmarra
Greater Lithgow	Uralla
Greater Taree	Wagga Wagga
Gunnedah	Wakool
Gunning	Walcha
Guyra	Walgett
Hastings	Warren
Hawkesbury	Warringah
Hornsby	Weddin
Hume	Wentworth
Inverell	Windouran
Kempsey	Wingecarribee
Ku-ring-gai	Wollondilly
Kyogle	Wollongong
Lake Macquarie	Wyong
Leeton	Yallaroi
Lismore	Yarrowlumla

Yass

Schedule 2 Feed tree species

(Clause 4)

Scientific Name	Common Name
Eucalyptus tereticornis	Forest red gum
Eucalyptus microcorys	Tallowwood
Eucalyptus punctata	Grey Gum
Eucalyptus viminalis	Ribbon or manna gum
Eucalyptus camaldulensis	River red gum
Eucalyptus haemastoma	Broad leaved scribbly gum
Eucalyptus signata	Scribbly gum
Eucalyptus albens	White box
Eucalyptus populnea	Bimble box or poplar box
Eucalyptus robusta	Swamp mahogany