

# State Environmental Planning Policy (Koala Habitat Protection) 2020

[2020-698]



New South Wales

## Status Information

### Currency of version

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Legislation on this site is usually updated within 3 working days after a change to the legislation.

### Provisions in force

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

### 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

## Contents

<b>Part 1 Preliminary</b> .....	4
1 Name of Policy .....	4
2 Commencement .....	4
3 Aims of Policy .....	4
4 Definitions .....	4
5 Land to which Policy applies .....	5
6 Exempt land .....	5
<b>Part 2 Development control of koala habitats</b> .....	5
7 Land to which this Part applies .....	5
8 Step 1—Is the land potential koala habitat? .....	6
9 Step 2—Is the land core koala habitat? .....	6
10 Step 3—Can development consent be granted in relation to core koala habitat? .....	6
11 Guidelines—matters for consideration .....	6
<b>Part 3 Plans of management</b> .....	7
12 Preparation of plan of management .....	7
13 Consultation .....	7
14 Approval of plan of management .....	7
15 Amendment or repeal of plan of management .....	7
<b>Part 4 Other environmental planning measures</b> .....	7
16 Surveys, environment protection zones and development control plans .....	7

17 Preparation of local environmental studies .....	8
18 Guidelines—generally .....	8
<b>Part 5 Savings and repeal provisions</b> .....	<b>8</b>
19 Savings provision relating to plans of management .....	8
20 Repeal .....	9
<b>Schedule 1 Local government areas</b> .....	<b>9</b>
<b>Schedule 2 Feed tree species</b> .....	<b>10</b>

# State Environmental Planning Policy (Koala Habitat Protection) 2020



New South Wales

## Part 1 Preliminary

### 1 Name of Policy

This Policy is *State Environmental Planning Policy (Koala Habitat Protection) 2020*.

### 2 Commencement

This Policy commences on the day on which it is published on the NSW legislation website.

### 3 Aims of Policy

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, being 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 Planning Secretary.

**Planning for Bush Fire Protection** means the document referred to in clause 272 of

the *Environmental Planning and Assessment Regulation 2000*.

**potential koala habitat** means areas of native vegetation where 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 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 2012* as a State forest or flora reserve.

## 6 Exempt land

- (1) The objective of this clause is to enable the clearing of feed tree species to create an asset protection zone as part of the replacement of a lawfully erected dwelling house that has been damaged or destroyed by a bush fire.
- (2) This Policy does not apply to land forming part of an asset protection zone cleared for a dwelling house if—
  - (a) the dwelling house is replacing a lawfully erected dwelling house damaged or destroyed by a bush fire, and
  - (b) the development application for the replacement dwelling house is made to the consent authority no later than 5 years after the day the bush fire caused the damage or destruction, and
  - (c) the asset protection zone is cleared in accordance with Planning for Bush Fire Protection.

## Part 2 Development control of koala habitats

### 7 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, whether or not the development application applies to the whole, or only part, of the land—
  - (i) has an area of more than 1 hectare, or
  - (ii) has, together with adjoining land in the same ownership, an area of more than 1 hectare.

### **8 Step 1—Is the land potential 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, the council must be satisfied as to whether or not the land is a potential koala habitat.
- (2) The council may be satisfied 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 9.

### **9 Step 2—Is the land 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 potential koala habitat, it must satisfy itself as to whether or not the land is a core koala habitat.
- (2) The council may be satisfied 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 10.

### **10 Step 3—Can development consent be granted in relation to core koala habitat?**

- (1) Before granting 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.

### **11 Guidelines—matters for consideration**

Without limiting clause 18, 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**

### **12 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.

### **13 Consultation**

A person who prepares a plan of management for the whole of a local government area listed in Schedule 1 must consult the Coordinator General of the Environment, Energy and Science Group of the Department.

### **14 Approval of plan of management**

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

### **15 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**

### **16 Surveys, environment protection zones and development control plans**

- (1) In order to give effect to the aims of this Policy, a council of a local government area listed in Schedule 1 must—
  - (a) survey the land within its area so as to identify areas of potential koala habitat and core koala habitat, and

- (b) consider making or amending a local environmental plan—
  - (i) to include land identified as a core koala habitat within an environment 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) consider preparing an appropriate development control plan for land that is or adjoins a core koala habitat.

- (2) Subclause (1)(a) does not apply to a council that has, before the commencement of this clause, carried out a survey to identify areas of potential koala habitat and core koala habitat in relation to the whole of its local government area.

### **17 Preparation of local environmental studies**

- (1) If, under a planning proposal, a council proposes to zone or rezone land that is a potential koala habitat or a core koala habitat otherwise than as an environment protection zone, the Minister may require the council to prepare an environmental study of the land.
- (2) The council must prepare the environmental study in accordance with the specifications, if any, relating to the form, content and preparation of the study as have been notified to the council by the Minister.
- (3) The environmental study must be prepared with regard to the matters, relating to the environment of the land, as determined by the council, subject to the specifications.
- (4) The council must have regard to an environmental study prepared under this clause in preparing the proposed instrument to which the planning proposal relates.
- (5) Subclause (1) does not apply if a council has, before the commencement of the subclause, prepared an environmental study of the land.

### **18 Guidelines—generally**

- (1) In exercising a 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 an office of the Department during the hours when the office is open to the public.

## **Part 5 Savings and repeal provisions**

### **19 Savings provision relating to plans of management**

The following are taken to be plans of management made under this Policy—



- (a) a plan of management approved under *State Environmental Planning Policy No 44—Koala Habitat Protection* that was kept in force by clause 16 of *State Environmental Planning Policy (Koala Habitat Protection) 2019*,
- (b) a koala plan of management approved under *State Environmental Planning Policy (Koala Habitat Protection) 2019* and in force immediately before the repeal of that Policy.

## 20 Repeal

*State Environmental Planning Policy (Koala Habitat Protection) 2019* is repealed.

## Schedule 1 Local government areas

Clauses 5(1), 12(1), 13, 16

Armidale Regional	Liverpool Plains
Ballina	Lockhart
Bathurst Regional	City of Maitland
Bega Valley	Mid-Coast
Bellingen	Mid-Western Regional
Berrigan	Moree Plains
Blayney	Murray River
City of Blue Mountains	Muswellbrook
Bourke	Nambucca Valley
Brewarrina	Narrabri
Byron	Narrandera
Cabonne	Narromine
City of Campbelltown	City of Newcastle
Central Coast	Northern Beaches
Central Darling	Oberon
City of Cessnock	Parkes
Clarence Valley	Port Macquarie-Hastings
City of Coffs Harbour	Port Stephens
Coonamble	Queanbeyan-Palerang Regional
Dungog	Richmond Valley
Edward River	City of Shoalhaven

Eurobodalla	Singleton
Federation	Snowy Monaro Regional
Forbes	Snowy Valleys
Gilgandra	Tamworth Regional
Glen Innes Severn Shire	Tenterfield
Goulburn Mulwaree	Tweed
Greater Hume Shire	Upper Hunter Shire
Gunnedah	Upper Lachlan Shire
Gwydir	Uralla
City of Hawkesbury	City of Wagga Wagga
Hilltops	Walcha
Hornsby	Walgett
Inverell	Warren
Kempsey	Warrumbungle Shire
Ku-ring-gai	Weddin
Kyogle	Wentworth
City of Lake Macquarie	Wingecarribee
Leeton	Wollondilly
City of Lismore	City of Wollongong
City of Lithgow	Yass Valley
City of Liverpool	

## Schedule 2 Feed tree species

Clause 4

Scientific Name	Common Name
<i>Eucalyptus tereticornis</i>	Forest red gum
<i>Eucalyptus microcorys</i>	Tallowwood
<i>Eucalyptus punctata</i>	Grey Gum
<i>Eucalyptus viminalis</i>	Ribbon or manna gum
<i>Eucalyptus camaldulensis</i>	River red gum
<i>Eucalyptus haemastoma</i>	Broad leaved scribbly gum

*Eucalyptus signata*

Scribbly gum

*Eucalyptus albens*

White box

*Eucalyptus populnea*

Bimble box or poplar box

*Eucalyptus robusta*

Swamp mahogany