



Draft Koala Habitat Protection Guideline

Submissions Report

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Introduction

Purpose of report

This report details feedback received to the Department's exhibition of the draft Koala Habitat Protection Guideline (the Guideline) which supports the operation of State Environmental Planning Policy (Koala Habitat Protection) 2019 (the Koala SEPP). The report contains an overview of the submissions received by key theme and the Department's response.

Consultation

The Department undertook community and stakeholder engagement on the draft Guideline which included:

- exhibiting the draft Koala Habitat Protection Guideline for 5 weeks between 2 March 2020 and 6 April 2020,
- briefing NSW councils in February 2020,
- briefing development, timber and agriculture industry representatives in February 2020, and
- briefing environment organisations in March 2020.

Submissions

The Department received 2,181 formal submissions in response to the exhibition of the Guideline. The respondents were classified as:

- 2,104 individuals
- 15 environment groups
- 35 timber or agricultural businesses
- 8 timber and agriculture industry groups
- 8 organisations in other industries (e.g. consultants, developers)
- 11 local councils

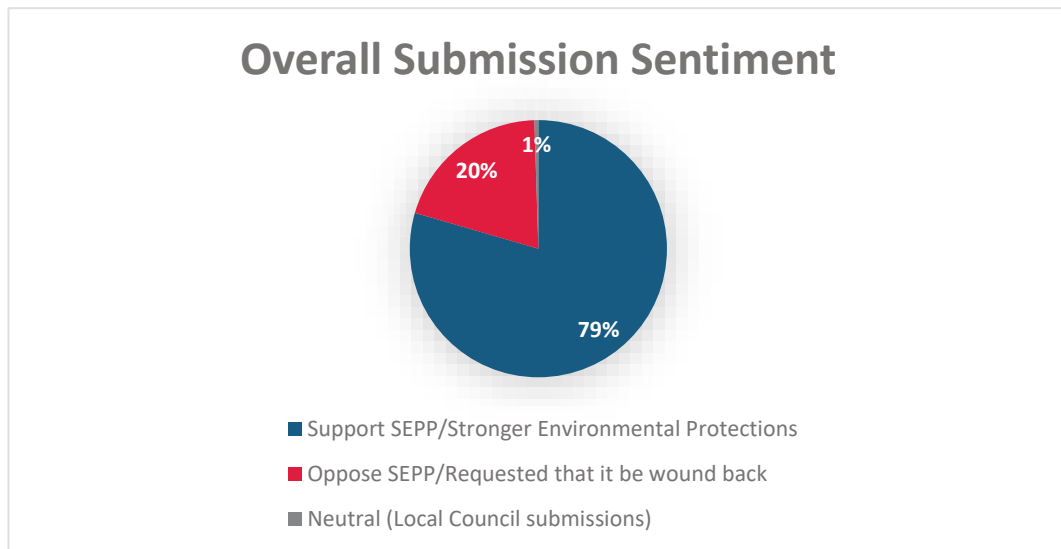
The submissions, excluding those requesting confidentiality, have been published and are available on the Department's website. Key themes emerging from the submissions are detailed further in this report.

Submissions by sentiment

The Guideline operates in conjunction with the Koala SEPP and many submissions also commented on the Koala SEPP. As such, this report considers the submissions to the overall koala habitat protection framework provided by the SEPP and its Guideline.

What follows is a breakdown of the 2,181 submissions received by overall sentiment into those which support the Koala SEPP and Guideline, those which are neutral and those submissions opposing the Koala SEPP and Guideline.

Of the 2,181 submissions received, 1,730 (79.5%) either supported the Koala SEPP and Guideline or requested changes to *increase* environmental protections. 440 (20%) submissions opposed the SEPP and Guideline or requested that its scope and operation be reduced. The remaining 11 (0.5%) submissions were from local councils and were neutral in sentiment and primarily requested clarification or amendments to more technical components of the Guideline.



Submissions which support the Koala Framework

Of the 1,730 submissions:

- 1,715 submissions were received from individuals. These submissions focused on environmental issues, either supporting the SEPP, or requesting that it be strengthened to achieve better environmental protections. 1,677 of these submissions were based on an online form prepared by the NSW Nature Conservation Council;
- 15 submissions were from environment groups and organisations that supported the SEPP in principle but have requested that environmental protections be further strengthened.

Submissions which oppose the SEPP and Guideline

Of the 440 submissions:

- 389 submissions were received from individuals opposed to the Koala framework, including:
 - 114 individual submissions that were submitted by an organisation on their behalf.
- 35 submissions from agricultural or timber businesses/organisations.
- 8 submissions from groups and associations representing the agricultural and timber industries including:
 - Timber NSW
 - NSW Farmers
 - NSW Farmers - Kempsey Branch
 - South East Timber Association
 - Richmond River Cane Growers Association
 - Keith Hall Drainage Union
 - Australian Macadamia Society
 - Northern New South Wales Agricultural Alliance
- 8 submissions from organisations in other industries (e.g. consultants, developers).

Neutral submissions

- 11 submissions were received from local councils, requiring greater clarification or amendments to the guideline and SEPP. Overall, these submissions supported the framework and emphasised the importance of clarity for the KPOM and DA processes.

The submissions also raised concern about whether there would be adequate financial or staffing resources to undertake KPoMs.

Key issues

In summary, the issues raised were:

- The accuracy of maps: concern that the maps have missed important koala habitat as well as concern the maps have included koala habitat incorrectly
- Concern vegetation clearing and offsetting is not appropriate in areas of koala habitat
- Concern about the SEPP only applying to land over 1 hectare in areas without an approved Koala Plan of Management (KPoM)
- The high cost of preparing KPoMs for councils and cost for landowners to challenge the maps
- The impact of the Koala Framework on permissible activities on agricultural land
- Seeking compensation for biodiversity conservation on private land
- Impacts to Private Native Forestry (PNF)
- Requests to exclude rural and agricultural land from the SEPP
- Concerns about the SEPP's implications for the categorisation of land under the *Local Land Services Act 2013* i.e. core koala habitat becoming Category 2 Sensitive Regulated Land
- Concerns the SEPP will lead to the extensive application of environmental protection zones to agricultural land
- The Core Koala Habitat definition and the expanded tree species list, and
- Validity of the scientific data used for modelling which underpins the maps (e.g. modelling where koala use trees are likely to occur for the Site Investigation Area for Koala Plans of Management Map).

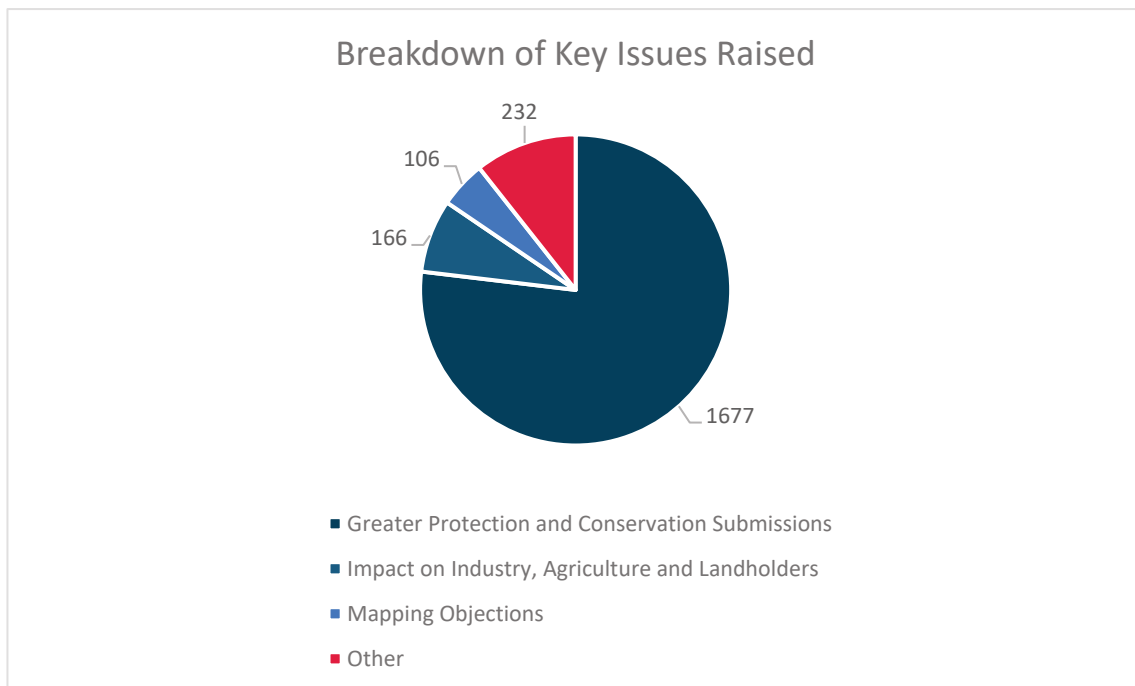
A detailed explanation of these themes is provided in the next section.

Key issues and response

The most frequently raised issues in submissions were related to the Koala SEPP itself, rather than the content of the Koala Guideline. This section of the report analyses submissions related to both the SEPP and the Guideline. An overview of the content of these submissions, and a response, is provided below.

Top three issues by category:

1. Request for greater protection and conservation
2. Impact on industry, agriculture and landholders
3. Mapping inaccuracies



Request for Greater Protection and Conservation

77% (1,677) of total submissions received were tailored submissions from individuals using a template prepared by the Nature Conservation Council. There was individual variation in these submissions, but the key points were consistent. These key points are discussed below.

1. Vegetation clearing should be prohibited on mapped koala habitat

The submissions stated that clearing vegetation on mapped koala habitat should be prohibited without exception to ensure the recovery of koala populations and the conservation of their habitat. It was argued that the objective should be to increase the area of koala habitat, with a minimum aim of no net loss of habitat, and to address the cumulative impacts of clearing koala habitat.

The policy intent of SEPP 44 was maintained in the new Koala SEPP. SEPP 44 did not prohibit clearing or development from occurring; rather, the aim of the Koala SEPP continues to be to ensure impacts to koalas and their habitat from development are appropriately considered and avoided or mitigated.

The Koala SEPP seeks to achieve a balanced outcome while also allowing compatible koala-sensitive development and activity to occur. The SEPP also facilitates the strategic management

and conservation of koala habitat through the KPoM process, enabling councils to identify and protect areas of core koala habitat and other important habitat in their Local Government Area (LGA).

2. Offsets for clearing koala habitat should not be allowed under the Biodiversity Offsets Scheme

Some submissions suggested that compensatory measures, such as offsetting for clearing core koala habitat which has been identified under the SEPP, should not be permitted by the Guideline. Respondents were specifically referring to the Biodiversity Offsets Scheme (BOS) and the Biodiversity Assessment Method under the *Biodiversity Conservation Act 2016* (BC Act). Respondents also requested clarity regarding the relationship between the Koala SEPP and the BOS.

As highlighted above, the Koala SEPP aims to achieve a balanced outcome where core koala habitat is protected while allowing appropriate development and activity to occur. The two-tiered process for development applications ensures koalas and their habitat are appropriately considered and planned for during the development application process.

This means that if applicants are not able to demonstrate their development application will have low or no impacts to koalas and their habitat, the applicant must follow the Tier 2 development assessment pathway outlined in the Guideline. Tier 2 development requires the applicant to commission a suitably qualified and experienced person to establish if the land contains core koala habitat and identify ways in which the proposed development will avoid and mitigate impacts on core koala habitat – with offsetting to be a last resort. Councils will then assess the proposal and establish whether the proposal has adequately addressed impacts on core koala habitat.

The relationship between the Koala SEPP and the BOS has not changed. The Koala SEPP does not switch off the BOS under the BC Act. Both instruments serve an important purpose and continue to be relevant tools in the koala management framework. The Guideline has been updated to clarify the relationship between the two.

3. Data underpinning the maps and ground-truthing

Another key issue raised in these submissions was a request for the data underpinning the maps in the Koala SEPP to be made publicly available, to understand the technical information and spatialisation behind the modelling.

The SEPP mapping was underpinned by the best available science developed as part of the Koala Habitat Information Base. The SEPP maps do not represent core koala habitat and apply predictive models to narrow the area where the right environmental conditions may be present such as climate, topography and soil that can support koala habitat. Previously, the SEPP applies across an entire council area whereas the maps narrow down the SEPP's application.

The Koala Habitat Information Base data, as well as a technical guide and a webinar recording is publicly available at <https://www.environment.nsw.gov.au/topics/animals-and-plants/threatened-species/programs-legislation-and-framework/nsw-koala-strategy/building-knowledge-on-koala-habitat>.

The SEPP mapping allows a point of reference and applies a predictive model that can be enriched by local knowledge. Through the development of KPoMs, landholders are given the opportunity to provide input on land identified as core koala habitat and therefore complement mapping by improving accuracy.

The submissions also requested the introduction of a process for ground-truthing the mapping to enable individuals, councils and other interested parties to assist in improving mapping accuracy. The Department will establish an online process to investigate straightforward mapping errors.

As outlined in the below section on objections to mapping, the Department has updated the Koala SEPP to remove the Development Application Map (DA Map).

4. The one-hectare trigger is inadequate

Submissions were concerned that in areas without an approved KPoM, only requiring land of one (1) hectare or more to consider the Koala SEPP and Guideline was arbitrary and would lead to cumulative impacts to koala habitat.

The one-hectare trigger has been in place since 1995 when SEPP 44 was introduced. The wording in clause 9 of the new SEPP has been improved to clarify that landholdings of 1 hectare or more (including adjoining land within the same ownership) are subject to the SEPP.

Large contiguous areas of highly suitable koala habitat in vegetated rural and urban fringe areas, rather than fragmented parcels of land in built up urban areas, continue to represent the best opportunity to deliver the aims of the Koala SEPP.

Councils continue to be able to apply development controls to lots of less than one hectare which contain core koala habitat through their KPoMs. As more councils develop KPoMs, this will be an important tool to help strategically identify core koala habitat and other important attributes at the landscape scale.

5. Mandating preparation of Koala Plans of Management (KPoMs)

Some submissions requested that KPoMs be made mandatory for councils the SEPP applies to, and that incentives such as financial assistance should be provided to councils to prepare KPoMs.

To date, the Secretary of the Department has approved 7 KPoMs, in the following LGAs:

- Ballina
- Bellingen
- Campbelltown
- Coffs Harbour
- Kempsey
- Lismore
- Port Stephens

In addition, there are currently 4 KPoMs under consideration:

- Byron
- Clarence Valley
- Coffs Harbour
- Tweed

The Department's research has found KPoMs take on average, 12-24 months to prepare and can cost over \$100,000. Mandating councils prepare KPoMs may place a significant strain on some councils. This is why the SEPP enables the alternative of considering the impact on koala habitat through the development application process, even if a council does not have an approved KPoM in place.

While KPoMs remain an important tool for strategically planning for the conservation and management of koala habitat within LGAs, the new Koala SEPP has improved the development application process for areas without an approved KPoM.

The October 2020 SEPP amendment removed the DA Map, which means that any development application on land over 1 hectare in the area to which the SEPP applies, will now need to consider the SEPP.

6. The Koala SEPP and Guideline should apply to a wider range of development

Some submissions were concerned about the scope of development that the SEPP and Guideline apply to – being only local development assessed and determined by councils. Respondents requested the Koala SEPP be expanded to apply to other development types, including land clearing requiring approval under the *Local Land Services Act 2013 (LLS Act)*, complying development and major projects (State Significant Development and State Significant Infrastructure).

It is not appropriate for the SEPP's application to be expanded to apply to land clearing conducted under the LLS Act as the current land management framework factors in core koala habitat. However, the Department will produce planning guidelines for koala sensitive development in future. These planning guidelines can be used for other types of development, such as State Significant Development and State Significant Infrastructure and is a commitment to deliver under the [NSW Koala Strategy](#).

7. Monitoring and compliance

Finally, these submissions requested the introduction of a review period for the SEPP, as well as a review of compliance with the SEPP and the Guideline, and that updates, information and results of the review, such as any monitoring and performance data should be published for the community to view.

The Guideline has a 2-year review timeframe built in, to ensure the continued accuracy, relevance and effectiveness of the SEPP and Guideline. Under the *Environmental Planning and Assessment Act (EP&A Act) (Part 3 Division 3.2 Section 3.21)*, SEPPs are reviewed for updates as part of an ongoing SEPP review program, therefore SEPPs do not generally contain provisions for periodic review.

Impact on industry, agriculture and landholders

The second most frequently raised issue (raised in 166 or 8% of total submissions) concerned the impact of the new Koala SEPP (and Guideline) on industry, agricultural land and landholders.

These submissions expressed concern that the new Koala SEPP applies prohibitions or restrictions on industry activities such as Private Native Forestry and agriculture, and the rights of landholders to undertake these activities. These respondents were concerned that the effects of the new Koala SEPP on industry would result in business closures, loss of income and property value, and result in detrimental impacts to local economies.

The key threats to koalas are habitat loss and fragmentation. The SEPP recognises that the planning framework has an important role to support the protection of core koala habitat and reduce habitat loss and fragmentation.

In addition, the NSW Government has made a commitment to decouple the LLS Act and Private Native Forestry from the Koala SEPP. This will require amendments to the Local Land Services Act and PNF Codes and will be considered this year.

1. The new Koala SEPP is about rezoning land for Environmental Protection Zones.

Some submissions were concerned that most of the vegetated land in NSW will ultimately be rezoned to an Environmental Protection Zone, further commenting that the new Koala SEPP will lead to land identified as 'core koala habitat' being zoned an Environmental Protection Zone, therefore limiting existing uses.

Neither the old SEPP or the new Koala SEPP identify any land for rezoning into Environmental Protection Zones.

The old SEPP 44 required councils to:

- Identify areas of core and potential koala habitat,
- To make or amend a local environmental plan:
 - to include land identified as a core koala habitat within an environmental protection zone or;
 - to identify land that is core koala habitat and apply special provisions to control the development of that land and;
- To consider preparing a development control plan for land that is or adjoins core koala habitat.

The new SEPP does not require core koala habitat to be zoned into an Environmental Protection Zone.

2. All existing Private Native Forestry Plan approvals, will be subject to the requirements of the new SEPP

The relationship between the Koala SEPP and other legislation governing these activities, including the LLS Act and the Private Native Forestry Codes of Practice currently remains the same as it was under the previous SEPP 44.

The NSW Government has made a commitment to decouple the LLS Act and Private Native Forestry from the Koala SEPP. This will require amendments to the Local Land Services Act and PNF Codes and will be considered this year.

3. Nearly all Private Native Forests (PNF) will qualify and eventually be classified as core koala habitat.

Submissions suggested that the new Koala SEPP applies unreasonable prohibitions or restrictions on industry activities such as Private Native Forestry.

The Koala SEPP does not identify any core koala habitat and does not directly restrict PNF. However, the PNF Codes of Practice currently prohibit PNF on core koala habitat which has been identified in an approved KPOM.

As mentioned above, the NSW Government has made a commitment to decouple the Local Land Services Act and PNF from the Koala SEPP. This will require amendments to the Local Land Services Act and PNF codes and is being considered through a separate process.

4. Agricultural land identified as core koala habitat becomes Sensitive Regulated Land and is no longer covered by the Local Land Services Act (LLS Act).

A key issue raised in the submissions relates to farming and agricultural activities covered by the LLS Act. Submitters were concerned that once agricultural land was identified as core koala habitat in a council KPOM and categorised differently, that the land would no longer be covered by the land management framework applying to most agricultural land in NSW. The main concerns were that many routine farming activities would now require development consent or approval from the Native Vegetation Panel.

Activities requiring development consent are generally set out in the relevant council's local environmental plan and the Koala SEPP does not require development consent for any additional activities. The SEPP only applies to development which requires consent from council and landholders can continue to do most day to day farming activities like building fences, sheds, grazing animals and vegetation clearing without considering the Koala SEPP.

The Department recognises the application of core koala habitat to a site may have implications for agricultural land users and there needs to be a balance between environmental protection and the ability for business to function effectively. This is why the new Koala SEPP and Guideline introduce a robust, transparent and comprehensive process as well as new landholder consultation requirements for councils to follow when developing KPoMs to ensure core koala habitat is identified correctly.

In addition, the NSW Government has made a commitment to decouple the LLS Act from the Koala SEPP. This will require amendments to the Local Land Services Act and will be considered this year.

5. Rural zoned land and agricultural land should be excluded from the SEPP

The KPoM process has been the pathway for identifying important koala habitat since the LLS Act amendments and Land Management Code commenced. This was agreed by the NSW Government in 2015/16 as part of the land management reforms. If agricultural land was to be exempt, that pathway would be switched off and the total area of core koala habitat in NSW identified as sensitive regulated land will remain at the current level of approximately 7,000 hectares (noting the total area of Land subject to the LLS Act is 67,595,132 ha).

Removing rural zoned land is not supported because:

- It would remove approximately 80% of the land to which the SEPP currently applies in each LGA, on average;
- Removing this land without considering the impacts on core koala habitat is likely to have a detrimental impact on koalas and would go against the aims of this SEPP which is to reverse the decline of koala populations.

It is important to recognise koala presence, regardless of the zone where they occur. This will help to meet the aim of the SEPP to reverse koala population decline.

The NSW Government has made a commitment to decouple the Local Land Services Act from the SEPP in the future which will undergo a separate process.

6. Process for landholders to review or appeal maps

These submissions were concerned that there was no clear process in place to ground truth the SEPP maps and those in future KPoMs. The Guideline requires that:

- councils inform landholders in proposed core koala habitat of the implications of such a designation if a draft KPoM is approved.
- councils make it clear to landholders that there is a process available to demonstrate their land is not core koala habitat. This generally involves a survey to be undertaken by a suitably qualified and experienced person using the methodology outlined in the Guideline. The landholder can request council's experts to conduct the survey at council expense or a landholder can commission a separate survey at their expense.

In addition, the Koala DA Map has been removed to ensure core koala habitat through the development assessment process is only identified through ground truthing, using a consistent method outlined in the Guideline.

The Department recognises it is important to balance the ability of landholders to continue using their land in a productive way with the needs of koalas. This is why the new Koala SEPP introduces rigorous new consultation requirements for KPoMs, to ensure landholders have an opportunity to have their say on any proposal to change the way they can use their land. If a council proposes to designate land as core koala habitat in a draft KPoM, it will be required to write to the affected landholder and provide them with an opportunity to dispute this. The KPoM will have no effect unless approved by the Secretary of the Department who is required under the Koala SEPP to refer the KPoM to Local Land Services prior to approval.

The Department has also updated the Guideline to allow landholders, once they have notified council of their intent to object to the application of core koala habitat to their land, a further 60 days to undertake surveys and prepare any evidence to support this. Alternatively, a landholder may request council to conduct a survey of their land to verify the proposed core koala habitat designation. Please refer to the Guideline which outlines the dispute resolution process.

7. Lack of consultation undertaken with industry and community

The Department has undertaken consultation in line with the EP&A Act and its Community Consultation Plan by exhibiting and inviting feedback on the proposed policy changes for both the Guideline and SEPP.

In addition to the minimum exhibition requirements, the Department hosted 12 consultation sessions and workshops in early 2017, including in regional areas. Industry bodies, members of the public and local councils attended these sessions.

When changes to SEPP 44 were exhibited between November 2016 and March 2017, a total of 114 submissions were received on the policy changes. These submissions informed the new koala SEPP.

Whilst not usual practice, the Department exhibited the draft Guideline for 5 weeks commencing early March 2020 until April 2020.

In addition, the Department has hosted briefings and webinars on both the Koala SEPP and Guideline with councils, environmental protection organisations and peak bodies representing the views of agricultural landholders and regional industries.

These briefings include:

- SEPP briefing for environment groups and NGOs, December 2019
- SEPP briefing for industries, including farmers, development and timber industry, February 2020
- Guideline presentation for industry, February 2020
- Guideline presentation for environment groups and NGOs, March 2020
- Council webinar on SEPP and Guideline, March 2020
- Information session webinar for NSW Farmers and Timber NSW members, March 2020.

The Department has also collaborated closely with Local Land Services, which has presented the views of rural and regional industry, during the development of both the new Koala SEPP and the Guideline.

Mapping objections

The third most common issue, raised in 106 or 5% of total submissions, concerned the mapping in the new Koala SEPP. Respondents were concerned the maps were inaccurate – identifying areas of vegetation which is not koala habitat. There was also a perception amongst some stakeholders

that the application of the SEPP maps to their land would increase the number of activities which would require development consent.

1. Site Investigation Area for Koala Plans of Management Map (blue map)

Submissions raised concern that councils would simply apply the Site Investigation Area Map to identify core koala habitat in their KPoM rather than undertaking survey work which would lead to areas of core koala habitat being incorrectly identified. Other submissions expressed concern that the SIA Map covered too large an area.

The Koala SEPP and Guideline set out a strict process for councils to follow when preparing a KPoM including requiring a suitably qualified person to undertake surveys to identify areas of core koala habitat and other types of habitat. While core koala habitat can only be identified on land shown on the Site Investigation Area (blue) Map, the suitably qualified person must use a range of survey methods to verify core koala habitat and cannot simply identify all Site Investigation Area mapped land as core koala habitat.

In addition, Government agency consultation steps built into the KPoM preparation process under the SEPP will help identify any misinterpretation of the Site Investigation Area map and ensure it is used correctly.

It is important that the Site Investigation Area Map be retained in the Koala SEPP to provide certainty to landholders and a reference point about where councils might identify core koala habitat in their KPoMs and to guide councils on locations to apply their survey efforts.

The map was developed using a predictive model based on the koala habitat information base and does not represent core koala habitat. The predictive model is comprised of the different layers in the table below. Each layer is informed by numerous sources explained in the technical guide: <https://www.environment.nsw.gov.au/research-and-publications/publications-search/koala-habitat-information-base-technical-guide>. While the predictability model offers the best available spatial data on koala distribution, koala preferred trees and koala sightings for NSW, the map is a reference point to help determine the distribution of koala use trees. The koala habitat information base can also be used more generally to help to identify which trees to select for koala habitat restoration, assist local conservation efforts such as improving the management of threats and diseases, help to inform reserve acquisition or private land conservation agreements and inform future policy development to protect koalas, amongst others. The accuracy of the map has been improved in the latest SEPP amendment. The Map is only relevant when councils decide to prepare a KPoM. Councils will be required to publish the map on its website when it decides to prepare a website. At other times, the Map can be requested from the Department or the relevant council.

Layers included in the Koala Habitat Information Base ¹	
Layers	Summary
The Koala Habitat Suitability Model	Provides a measure of koala habitat suitability at any location. The model predicts the likelihood of finding habitat that is ecologically like where koalas have been observed over the past 40 years.
The Koala Tree Index	Provides a measure of the probability of finding a tree species that koalas are known to prefer for food or shelter.
Koala Likelihood Map (1999–2018)	Predicts the likelihood of koalas occurring across a 10-square-kilometre grid covering NSW, based on available arboreal mammal records from the past 20 years.
Koala Likelihood Confidence Map (1999–2018)	Measures the confidence that can be placed in the koala likelihood estimate per grid cell.

¹ Koala Habitat Information Base Technical Guide, State of NSW and Department of Planning, Industry and Environment, 2019, p.3.

The native vegetation of NSW	A high precision (5-metre scale) surface that discriminates between native tree cover, non-native vegetation, urban environments and water bodies.
Areas of regional koala significance (ARKS)	Regions mapped as having high known koala occurrence using analysis of koala observation densities.
Koala sightings	Koala (<i>Phascolarctos cinereus</i>) species sightings in NSW. Sightings are derived from the BioNet Species Sightings Data Web service. Records are updated daily.

2. Koala Development Application Map (pink map)

There were 74 submissions which raised concern about the Koala DA Map. Concerns included:

- The maps are inaccurate and capture areas which are clearly not koala habitat;
- Due to the lack of ground-truthing some stakeholders do not trust the predictive model;
- The maps are confusing, for example several stakeholders perceived the DA Map to represent core koala habitat for the purposes of the LLS Act or that its application meant a DA would now be required for routine land management activities;
- Landholders should not have to pay to challenge the application of the map to their land.

The DA Map is based on a predictive model and the Department acknowledges it will not always be as accurate as on ground surveys. The map did not represent core koala habitat. The Department implemented the DA Map to make the development application process clearer and simpler for both landholders and councils by identifying upfront where koalas are likely to be and thus removing the need for landholders to have to engage a qualified person to survey for koala habitat on every site over 1 hectare in the LGAs listed in the SEPP.

However, it is clear from the feedback received to the exhibition of the Guideline that many stakeholders preferred the process under SEPP 44 where landholders were responsible for checking for potential and core koala habitat, with the input of a suitably qualified person. In response, the Department has amended the SEPP to remove the Map and introduce a process, similar to that under SEPP 44, which requires development application proponents to establish the presence or absence of core koala habitat on their land when lodging a Tier 2 development application. In most cases this will require the landholder to engage a suitably qualified person to conduct a survey for core koala habitat on their land. Development Application proponents who are able to meet the Tier 1 criteria representing low on no environmental impact on koala habitat do not need to conduct any surveys. The process of identifying Tier 1 pathway is outlined in the Guideline.

Other Issues Raised

This section addresses other issues raised in response to the Guideline exhibition.

Issue Raised	DPIE Response
<p>The new definition of Core Koala Habitat is too broad, particularly the inclusion of “where koalas have been recorded as being present in the previous 18 years”. Moreover, the definition can use a record of a koala in the area within 2.5 or 5km of the property.</p>	<p>The definition has been updated to allow areas with demonstrated koala presence in highly suitable habitat to be recognised.</p> <p>18 years has been included in the definition as it represents 3 generations of koalas and is used in the IUCN Red List of Threatened Species to confirm species persistence in an area.</p> <p>For councils to include land as core koala habitat in their KPoM, the land must:</p> <ul style="list-style-type: none"> • Be identified on the Site Investigation Area Map (which predicts where there may be habitat for koalas), and • have highly suitable koala habitat and koala presence, or • have highly suitable koala habitat and a verified koala record from the last 18 years. <p>Koalas are known to range over large distances and it is important this is considered when identifying core koala habitat. The Guideline includes a maximum distance around a record that councils can identify as ‘core koala habitat’. This is designed as a limiting measure, rather than a way to extend the reach of core koala habitat. There were no maximum record distance rules under SEPP 44, so in effect this represents a tightening of SEPP controls.</p> <p>These limits establish maximum distances from koala records, in order for them to be considered for a subject site. In addition, they cannot be used to extend the area which can become core koala habitat beyond the Site Identification Area Map in the SEPP.</p> <p>For KPoMs, the Guideline specifies that a suitably qualified and experienced person must only incorporate records up to these maximum limits following a thorough examination of the landscape and available evidence, including the results of surveys and knowledge of the local koala population. The suitably qualified and experienced person will need to consider habitat connectivity and a variety of other factors outlined in the Guideline.</p>
<p>The area now identified as potential koala habitat under the new Koala SEPP (the Site Investigation Area for Koala Plans of Management Map) has been vastly expanded to include most vegetated areas in NSW.</p>	<p>The Koala SEPP Site Investigation Area for Koala Plans of Management Map does not identify potential koala habitat. Its purpose is to focus the area to which the SEPP applies from just under 54 million hectares under SEPP 44 to less than 25 million hectares across NSW (councils can only survey for core koala habitat to be included in KPoM within the mapped area).</p>

Issue Raised	DPIE Response																				
	<p>The old SEPP 44 previously allowed councils to identify core koala habitat anywhere where the SEPP applied.</p> <p>The accuracy of the map has been improved in the latest SEPP amendment, and will continue to be refined over time.</p>																				
<p>Scientific research that informed the expansion of the Feed Tree List should be published with the new SEPP 2019 and the draft Guideline.</p> <p>The feed tree species list is too large as the number of species of trees that meet the definition of a koala feed tree has increased from 10 to 123.</p>	<p>This list of tree species is derived from <i>A Review of Koala Tree Use Across New South Wales</i> (OEH, 2018).</p> <p>The list of 10 koala feed trees in SEPP 44 was based on science from the 1990s, specifically in the North Coast region of NSW. In <i>A Review of Koala Tree Use Across New South Wales</i>, the former Office of Environment and Heritage (now the Environment, Energy and Science division of the Department) identified there were 137 tree species used by koalas. In 2019, consultation with koala experts led to the list being refined to 123 species.</p> <p>These 123 species were categorised into 9 distinct regions (Koala Management Areas), according to what trees koalas prefer to use in various areas. The number of species used regionally by koala ranges from 9 in the Riverina region to 65 in the Central Coast region. This represents the most contemporary science, flagged in the Explanation of Intended Effect released in 2016, and has been incorporated into the new koala SEPP.</p> <p>The tree species list in the Koala SEPP is split into Koala Management Areas and not all tree species are relevant in all Koala Management Areas as shown in the table below.</p> <table data-bbox="699 1249 1345 1787"> <tr> <th data-bbox="699 1249 1082 1328">Koala Management Area</th><th data-bbox="1082 1249 1345 1328">No. of trees relevant</th></tr> <tr> <td data-bbox="699 1328 1082 1377">North Coast</td><td data-bbox="1082 1328 1345 1377">42</td></tr> <tr> <td data-bbox="699 1377 1082 1426">Northern Tablelands</td><td data-bbox="1082 1377 1345 1426">40</td></tr> <tr> <td data-bbox="699 1426 1082 1476">North West Slopes</td><td data-bbox="1082 1426 1345 1476">39</td></tr> <tr> <td data-bbox="699 1476 1082 1525">Darling Riverine Plains</td><td data-bbox="1082 1476 1345 1525">16</td></tr> <tr> <td data-bbox="699 1525 1082 1574">Far West</td><td data-bbox="1082 1525 1345 1574">20</td></tr> <tr> <td data-bbox="699 1574 1082 1624">Riverina</td><td data-bbox="1082 1574 1345 1624">9</td></tr> <tr> <td data-bbox="699 1624 1082 1695">Central and Southern Tablelands</td><td data-bbox="1082 1624 1345 1695">39</td></tr> <tr> <td data-bbox="699 1695 1082 1744">South Coast</td><td data-bbox="1082 1695 1345 1744">27</td></tr> <tr> <td data-bbox="699 1744 1082 1794">Central Coast</td><td data-bbox="1082 1744 1345 1794">65</td></tr> </table>	Koala Management Area	No. of trees relevant	North Coast	42	Northern Tablelands	40	North West Slopes	39	Darling Riverine Plains	16	Far West	20	Riverina	9	Central and Southern Tablelands	39	South Coast	27	Central Coast	65
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Issue Raised	DPIE Response
The Koala SEPP 2019 has priority over all other environmental instruments	<p>At the time of publishing this Report, the relationship between the Koala SEPP and other legislation remains exactly the same as it was under SEPP 44.</p> <p>The NSW Government has made a commitment to decouple the LLS Act from the Koala SEPP. This will require amendments to the Local Land Services Act and is being considered this year.</p>
Landholders shouldn't be expected to provide koala protection infrastructure, such as certain types of fences, koala furniture and biodiversity controls	<p>The best and latest science has been incorporated in the Guideline in collaboration with relevant agencies.</p> <p>The suggested management measures which were previously listed in Table 1 of the Draft Guideline have since been removed to respond to stakeholder feedback. Councils, applicants, and suitably qualified professionals will work together on a case-by-case basis to determine the most appropriate management and mitigation measures for each development.</p> <p>The Koala SEPP aims to achieve a balanced and reasonable outcome, where koala habitat is maintained to the fullest extent possible, while also allowing compatible koala-sensitive development and industry activity to occur.</p> <p>The Guideline has been updated to ensure only matters relevant to the development application process are included as considerations through the KPoM and the DA process.</p>
The use of buffers and koala corridors go beyond the scope of the SEPP	<p>Under SEPP 44, councils applied provisions to other types of habitat such as buffers and corridors. The new SEPP has continued this, while making the process for developing and approving a KPoM much clearer, more transparent and rigorous.</p>
Habitat should only be protected on public land/private landholders shouldn't be expected to protect habitat	<p>Koala populations across New South Wales and Queensland are in decline (Chief Scientist & Engineer, 2016).</p> <p>SEPP (Koala Habitat Protection) 2019 seeks to address the declining status of koalas in NSW through better conservation and management of koala habitat as part of the planning and assessment process. Protecting koala habitat on only public land is insufficient to reverse the decline of koala populations.</p> <p>It is important to note the Koala SEPP does not prohibit any type of development but provides a mechanism to ensure koala habitat is considered during the DA process.</p>
The guideline does not address climate change	<p>The best and latest science has been incorporated into the Guideline in collaboration with relevant agencies.</p> <p>While the Guideline sets the framework for developing KPoMs, councils may include other sections and considerations, such as climate change, habitat refuges, heat effects, or provisions for resilience and adaptation.</p>

Issue Raised	DPIE Response
	<p>The SEPP does not preclude future changes and science, and any new technologies or information that may arise in the future could be considered and added to the guideline.</p>
<p>Parts of the guideline are unclear, hard to understand</p>	<p>The Department has updated the language in the Guideline to make it clearer. The Guideline now also includes examples and process diagrams to make it easier to read and understand.</p>
<p>This SEPP and guideline increase red/green tape</p>	<p>The relationship between the new Koala SEPP and other legislation remains exactly the same as it was under SEPP 44. Many routine land management activities in agricultural zones are and will continue to be exempt from the development application process and will not need to consider the new Koala SEPP and Guideline.</p> <p>The new SEPP and the Guideline reduces the burden on the landholder through the introduction of the tiered development system, and the development assessment process in the Guideline.</p> <p>In addition, a clear and simple process has been introduced in the Guideline to allow landholders to follow a DA process without conducting surveys. This will involve providing evidence to council such as aerial photography of the land, in cases where the land is not capable of sustaining koalas (e.g. because it has been cleared of vegetation or contains only monoculture plantations such as a macadamia farm) or where the proposed development does not involve clearing native vegetation.</p>
<p>Some of the controls in the guideline will increase the risk of bushfires</p>	<p>The NSW Government commissioned an independent expert inquiry into the 2019-20 bushfire season to provide input to NSW ahead of the next bushfire season. None of the recommendations from this inquiry are specifically relevant to the SEPP or the Guideline.</p> <p>Clearing for bushfire hazard reduction is managed under the <i>Rural Fires Act 1997</i>. As with the old SEPP 44, clearing for these purposes continues to be permitted if carried out in accordance with the Rural Fires Act.</p> <p>Where land is identified as core koala habitat, the 10/50 Vegetation Clearing Code of Practice does not apply. However, hazard reduction clearing, including low intensity burns, can still occur if it is carried out in line with a Hazard Reduction Certificate issued by the NSW Rural Fire Service (RFS).</p> <p>Also, consistent with other recent changes to planning rules designed to make it easier for people to recover and rebuild after the recent bushfires, the Koala SEPP has been amended to exempt clearing for Asset Protection Zones associated with the rebuilding of bushfire affected homes.</p>

Issue Raised	DPIE Response
<p>Councils are encouraged to use DPIE's maps to create KPoMs rather than undertake expensive surveys, making mapping 'core koala habitat' a desktop job</p>	<p>The Koala SEPP and Guideline set out a strict process for councils to follow when preparing KPoMs. Councils are not able to make a KPoM without undertaking a field survey.</p> <p>This process includes a suitably qualified person undertaking a survey to identify areas of core koala habitat and other types of habitat.</p> <p>While core koala habitat can only be identified on land shown on the Site Investigation Area (blue) Map the suitably qualified person must use a range of survey methods to verify core koala habitat and cannot simply identify all SIA mapped land as core koala habitat.</p> <p>Government agency consultation steps built into the KPoM preparation process will help identify any misinterpretation of the map and ensure it is used correctly.</p> <p>Landholders in proposed core koala habitat in a draft KPoM are also able to engage a suitably qualified person (or request council do so) to demonstrate their land does not contain core koala habitat. This process is detailed in the Guideline.</p>
<p>The new Koala SEPP introduces a simplified and far less robust process for Council to make a KPoM</p>	<p>This is not the case as the Koala SEPP introduces new rigorous consultation provisions requiring councils to exhibit the KPoM for a minimum period of 90 days and serve notice to all landholders in proposed core koala habitat. The old SEPP was silent on consultation standards.</p> <p>During the exhibition of a KPoM by council, all stakeholders, including government agencies can make a submission. The Secretary of the Department is responsible for approving each KPoM and will consider any feedback received on the document.</p> <p>Additionally, the Koala SEPP introduces a new referral role for Local Land Services before the Secretary of the Department considers a KPoM for approval, as well as an LLS consultation role during the development of a KPoM. The Guideline explicitly encourages consultation with Environment, Energy and Science and Local Land Services throughout the development of a KPoM. This is a new step not previously available under SEPP 44.</p> <p>Landholders are now also able to challenge draft KPoMs, a mechanism which was not available under SEPP 44. This is further detailed in the final Guideline.</p>
<p>Conditional approvals for KPoMs and amending KPoMs</p>	<p>Several councils requested the Department consider implementing a conditional approval process to streamline the KPoM process.</p> <p>In response, the Department has amended the SEPP to allow the Secretary to conditionally approve council KPoMs. Changes made by councils in accordance with the Secretary's conditions do not require re-exhibition.</p>

Issue Raised	DPIE Response
	Councils also requested the ability to amend KPoMs or replace an old KPoM with a new KPoM. The SEPP now contains these provisions, backed by a rigorous approval process by the Secretary of the Department.
Identifying core koala habitat using best available data	Some councils raised the issue of using the best available data if landholders do not provide access to survey for core koala habitat. The Department has incorporated this in the Guideline. This is explained in more detail in the next section below.
A submission raised concern with the way the tree species list in the Koala SEPP has been developed, stating that it should have included the priority rankings of the <i>Review of Koala Tree Use Across NSW</i> (OEH, 2018).	<p>While there is good consensus on which trees koalas use in a particular region, there is less consensus on the rankings – particularly at ranks 3 and 4. For some local areas within a region, a rank 4 species may be important. All the trees listed in Schedule 2 form koala habitat. Its full inclusion in the SEPP helps to ensure the full range of potential koala habitat in NSW is considered in the application of the SEPP.</p> <p>It is important to note that the tree list included in Schedule 2 of the SEPP does not operate in the same way as koala use trees operate in the Biodiversity Offset Scheme, Private Native Forestry and state forestry (IFOA). Under those frameworks, the tree lists are used as tree species retention guides. Under the SEPP, the tree list is used to establish whether a site is likely to contain habitat that may be suitable for koalas.</p> <p>The Department has updated the name of Schedule 2 in the SEPP to reflect that not all species listed are koala ‘feed’ trees (some are ‘shelter’ trees). All species listed in the SEPP are koala ‘use’ trees.</p>

How we responded to your feedback

Following consultation with the community on the draft guideline, the Department has made some changes to the SEPP and Guideline to address the key concerns raised in submissions during the public exhibition period. In addition to the changes made below, the Department has updated some definitions (such as ‘heavy precipitation’) for clarity to make the Guideline easier to use.

Mapping, data underpinning maps, and impact on industry

In response to feedback, the Koala DA Map has been removed to revert to a similar surveying process which existed under SEPP 44. Instead of using a predictive map to identify land which needs to consider the Koala SEPP when there is a development application, landholders will now be required to identify if their land contains core koala habitat in line with the Guideline.

In most cases, this will require the landholder to engage a suitably qualified and experienced person to conduct a survey for koala tree species and koala presence ok koala trees and koala records. However, in some instances, landholders will be able to provide evidence to council (for example, photographs) that their land clearly does not contain core koala habitat (for example, because it is a mango farm), and avoid the need for a suitably qualified person to attend the site to conduct a survey. The Guideline has been updated to provide clear guidance to councils and applicants on this Tier 1 process.

In addition, the Department has committed to refining the SIA for KPOMs Map to improve its accuracy over time.

What are the impacts of removing the Koala DA Map?

Development Applications on land over 1 hectare will now be required to follow the Guideline to determine if the proposal falls under Tier 1 or Tier 2 development pathway.,

Tier 1 proponents will need to demonstrate through photographic evidence (no surveys) that their development application will not impact on koala habitat. For example, their land contains exotic trees or fruit plantations that may be affected by the development proposal.

Tier 2 proponents will need to demonstrate whether their land contains core koala habitat and how the proposed development addresses any impact on core koala habitat.

A proponent may do this by engaging a suitably qualified person to conduct an on-ground survey for core koala habitat in accordance with the Guideline. This is **the same** as the process which existed under the now repealed SEPP 44 but now allows the suitably qualified person to determine the extent of land to be surveyed (rather than surveying the entire landholding).

The proponent needs to comply with the development application provisions of the Guideline if a survey identifies their land as having core koala habitat.

Conditional approvals for Koala Plans of Management (KPOM)

The SEPP introduces a provision to allow KPOMs to be conditionally approved by the Secretary.

Once councils have prepared a draft KPOM in accordance with the SEPP and Guideline (including exhibition and consultation process) they must submit the KPOM to be approved by the Secretary of the Department of Planning Industry and Environment in order for it to have regulatory effect. After the Secretary has undertaken statutory consultation with the Environment, Energy and Science Division of the Department, and Local Land Services, the Secretary will decide whether to approve the KPOM.

If the KPOM requires amendments or improvements the Secretary may *conditionally* approve a KPOM. Once the council has made the changes to the KPOM, in strict accordance with the Secretary's conditions, the KPOM will commence. No further exhibition will be required.

Identifying core koala habitat using best available data

The updated framework allows councils to use the best available data when identifying core koala habitat in a KPOM, where they are unable to physically access land to conduct a survey. The best available data may include previous surveys, NSW BioNet koala records, tree surveys, satellite imaging, etc. This improves the identification of core koala habitat in NSW in an event that a landowner does not grant access to their land, or council is otherwise unable to access a site.

What is the 'best available data' and when would councils use this?

When preparing a new KPOM or proposing to update core koala habitat in an existing KPOM, councils are required to conduct a survey for core koala habitat in focused areas within the Site Investigation Area for Koala Plans of Management Map. This continues the framework where KPOMs made under SEPP 44 used a combination of the best available data and on ground surveys.

While councils do not need to physically survey every site they identify as core koala habitat, they must undertake adequate survey effort when identifying core koala habitat.

The suitably qualified and experienced person the council engages to prepare the KPoM will advise council on where appropriate survey areas are likely to be. This advice can be based on a range of evidence including the location of koala records, vegetation mapping, satellite imagery, and any previous flora or fauna surveys.

A council may wish to validate desktop data surveys with an on-ground survey for core koala habitat in an area but may be prevented from doing so (e.g. if a landholder does not wish to grant access to their land). In these situations, it is reasonable for council (with the help of a suitably qualified person) to determine if the land contains core koala habitat using the best available evidence (such as NSW BioNet koala sightings, vegetation mapping and previous surveys),

The Guideline has been updated to outline this process in more detail and sets out the type of evidence that can be used when undertaking desktop identification of core koala habitat instead of an on-ground survey.

Providing an exemption from the Koala SEPP for Asset Protection Zones

Several stakeholders (including councils in areas severely affected by the 2019/2020 bushfires) raised concern that the new Koala SEPP creates an extra layer of red-tape and cost for people looking to rebuild homes destroyed in the recent bushfires.

Under the Koala SEPP, activities requiring development consent from council (including the development of an Asset Protection Zone) are required to consider the SEPP. The proponent would need to engage a qualified person to undertake surveys and prepare a Koala Assessment Report. The report may add cost and time to the development application process.

In response, the updated Koala SEPP introduces a new pathway to allow the clearing of native vegetation including koala use trees to establish an Asset Protection Zone when rebuilding homes as exempt development (meaning the SEPP will not apply), if the following criteria is met:

- The clearing is undertaken in accordance with Planning for Bushfire Protection Guideline,
- The house was lawfully erected and has since been damaged or destroyed by bushfire, and
- The development application is lodged within 5 years after the damage or destruction.

Other changes made to the Guideline/SEPP

- Other changes the Department has made to the Guideline and SEPP in response to submissions and further internal consultation include:
 - Updated wording, communications and the addition of process diagrams to make the development application and KPoM process clearer.
 - Clarifying councils may use the best available data when developing a KPoM, if access to the land is not available. This will improve the identification of core koala habitat with added rigour included in the final Guideline, such as that the best available data must be interpreted by a suitably qualified person (defined in the final Guideline) before it can be used to identify core koala habitat.
 - Editorial changes to reduce the opportunity for miscommunication, being clearer about what is expected from both landholders and councils.
 - Updated wording to ensure only those parts of a parcel of land likely to be impacted by the proposed development are subject to the DA survey requirements, and not the entire landholding;
 - Ensuring survey methods are the same for landholders and councils as well as recognising specific needs of councils and landholders/proponents;

- An exhibition period of 90 days by council on a draft KPoM;
- A new provision in the Guideline which requires councils to allow an objector 60 days (or as otherwise agreed with council) from the day they lodge their objection to prepare any supporting evidence in response to a draft core koala habitat designation;
- A new provision to allow landholders to request council conducts a survey of their land if it is proposed to be designated as core koala habitat in a draft KPoM. This will be at council's expense. The landholder will continue to be able to commission their own suitably qualified person to conduct the survey work at their own expense;
- A clear dispute resolution process for circumstances where council and landholders disagree over the designation of land as core koala habitat in a draft KPoM;
- An updated DA pathway for developments with low or no impact on koala habitat that does not require surveys to be conducted;
- Requiring relevant councils to publish their intent to prepare a KPoM and the Site Investigation Area for Koala Plans of Management Map on their website; and
- New diagrams to provide a visual aid for the processes under the SEPP.