

16 April 2021

State Environmental Planning Policy (Koala Habitat Protection) 2021 (“Koala SEPP 2021”)

This document answers questions raised by participants at the Department’s Koala SEPP webinar held on 1 April 2021. Previous FAQs can be found [here](#).

Questions raised prior to the webinar

1. Will the land management and private native forestry (PNF) codes be exhibited, and submissions taken prior to being them being made?

The Land Management and PNF codes are made by the Minister for Agriculture and Western NSW with the concurrence of the Environment Minister. The requirements for making or amending these codes are set out under the Local Land Services Act and are a matter for the Minister for Agriculture.

2. Will Koala SEPP 2021 be in force in E zones?

Koala SEPP 2021 applies to e-zoned land in 83 LGAs.

3. Will PNF be permitted in E zones?

Once PNF and Land Management Codes are updated, the Koala SEPP will be updated to remove the DA requirement for PNF in all zones.

4. What is the estimated cost of the required vegetation and koala surveys per thousand hectares of potential habitat?

Previous research found that cost of surveys for core koala habitat on a 200 hectare lot ranges greatly depending on vegetation density and terrain (approximately between \$3,000 - \$10,000 for 200 hectares). This estimate is based on the process under SEPP 44 for Individual Koala Plans of Management (KPOMs).

5. What will be the associated Ministerial Directions, and how will these be applied to stop councils zoning core Koala habitat to environmental zones?

The Minister for Planning will issue a new section 9.1 direction to ensure that only the Minister, and not councils, will be empowered to rezone land used for primary production to an environmental zone, or to rezone land currently in rural zones RU1, 2 and 3 to other rural zones.

6. How will the intent to allow PNF to over-ride LEPs be enacted?

Once PNF Codes and the Land Management Codes are updated to include robust protections for koala habitat and certainty and consistency to farmers, the SEPP will be amended to remove DA requirements for PNF.

7. Why aren't the maps available to the public?

The SIA Map is a tool for councils to use only when identifying suitable surveying areas for core koala habitat when preparing a KPOM. It does not show core koala habitat or have any regulatory implications beyond limiting where councils are able to identify core koala habitat. Anyone, including a member of the public, can request mapping from the Department or a local council, any time.

8. Four main east-west koala wide movement corridors were identified, so why is only one protected from development now?

The Koala SEPP does not identify any koala movement corridors, nor protect any habitat features. Councils are able to identify core koala habitat and other habitat features such as corridors as part of the KPOM process. Identified habitat features in an approved KPOM will be considered as part of the local DA process.

9. How is koala habitat on rural zoned land protected under the SEPP/ LLS Act?

Currently, Koala SEPP 2020 applies to RU1, RU2 and RU3 zoned land in 74 LGAs, and development on this land requiring consent from council must address Koala SEPP 2020.

Once the new land management and PNF codes are developed, Koala SEPP 2021 will be expanded to capture those zones, and Koala SEPP 2020 will be repealed. At this time, any development application on this land must consider the Koala SEPP, including any approved KPOM.

The NSW Government has indicated the revised PNF and Land Management Codes will ensure robust protections for koalas in areas of high value koala habitat and certainty and consistency for primary producers.

10. Byron Council only has a KPOM for our coastal area. Does the new SEPP require us to produce a KPOM for the rest of the shire?

The SEPP 2021 does not require councils to prepare a KPOM. The savings provisions maintain Byron's coastal KPOM. For land that is not included in the Byron KPOM, development requiring consent from council must address either Koala SEPP 2020 (on land zoned RU1, RU2 or RU3) or Koala SEPP 2021 (on all other land zones).

11. What recommendations from the Koala Inquiry have been considered and included in this SEPP?

The two SEPP system and the policy direction of the Koala SEPP 2021 has been a decision of the NSW Government. The NSW Government is considering the recommendations of the Koala Inquiry in its projects, including the NSW Koala Strategy.

12. Please explain in simple terms the interrelation of all versions of the SEPP and their applicability to Councils at the various stages of KPOM adoption.

There are currently two koala SEPPs in NSW, applying as follows:

SEPP 2020

Applies to land zoned RU1, RU2 and RU3 (or equivalent) in 74 LGAs outside of Sydney and the Central Coast.

SEPP 2021

Applies to all zones in the Blue Mountains, Campbelltown, Hawkesbury, Hornsby, Ku-Ring-Gai, Liverpool, Northern Beaches, Wollondilly and the Central Coast, and land not zoned RU1, RU2 and RU3 (or equivalent) in the remaining 74 LGAs covered by 2020 SEPP.

If there is an approved KPOM, it is in force.

If council wants to prepare a KPOM it must address the requirements of the applicable Koala SEPP. The Department will work closely with councils interested in preparing a KPOM.

13. How does the Koala SEPP 2021 demonstrate the protection of prime koala habitat for the continued survival of koalas in the wild?

The objective of the Koala SEPP 2021 is to reverse the decline of koala populations in NSW, within the scope of local development applications. It ensures koalas and their habitat are considered as part of the local development process. At a more strategic scale, it helps koalas and their habitat by facilitating development of KPOMs, which are created by local councils.

Local development on land to which an approved KPOM applies must be consistent with the KPOM. Councils can include provisions beyond development controls in KPOMs, such as community education programmes, citizen science programmes, and monitoring and reporting on local population trends and threats.

The Koala SEPP is important, but it is only one of many government initiatives designed to protect koalas. Through the NSW Koala Strategy, the government is working to protect koala habitat and has committed to:

- \$20 million to purchase land with priority koala habitat to add to national park estate
- Transferring 24,000 hectares of unproductive state forests to management of NPWS
- Investing, through Saving Our Species, on improving outcomes for threatened species, including on the national park estate.

14. Before approving a koala plan of management, the Secretary must seek the concurrence of the Secretary of Regional NSW. How is this relevant to the approval of a KPOM in metropolitan Sydney?

Some Councils in the metropolitan area have rural zoned land within their LGA, particularly the peri-urban fringes.

15. How are important areas of habitat assessed in LGAs that are not included in the SEPP?

The Koala SEPPs apply to LGAs where there was a known geographic distribution of koalas at the time of their making. If evidence becomes available that koala populations exist in other LGAs, the government may consider reviewing the SEPP application.

The Koala SEPP framework is only one part of a range of government legislation and initiatives designed to protect biodiversity values in NSW. *The Biodiversity Conservation Act 2016* and the *Local Land Services Act 2013* also contain protections for native vegetation and animals and there are a range of initiatives that go beyond the planning system to protect koala habitat in the NSW Koala Strategy.

16. How are koalas going to have their numbers increase, as has been promised by the government, when their habitat is being further reduced?

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- Investing, through Saving Our Species, on improving outcomes for threatened species, including on the national park estate.

The government is working on further initiatives to reverse the decline of koala populations and increase their numbers.

17. How does this SEPP offer more protections for koalas and our threatened species?

Koala SEPP 2021 applies to areas of the state where 95% of development applications are received and ensures the most up to date science about where koalas live is used when assessing these development applications.

18. If a DA is lodged during the time of previous Koala SEPP - does the SEPP at that time apply - or the current SEPP in force?

Koala SEPP 2021 contains a savings provision which provides that a development application lodged but not finally determined must be assessed under the Koala SEPP which applied when the development application was lodged. There is no savings provision under Koala SEPP 2020 and all DAs on land to which this SEPP applies must address it.

19. What guidelines are applicable?

The government is developing new guidelines to accompany the Koala SEPP. In the meantime the department has a factsheet on its website to help guide councils and proponents through the development application process under the SEPP.

20. Why are the 42 recommendations from the Bipartisan inquiry into Koala habitat and populations being ignored? When more than 60% of koalas live on private land why is 80% of land in the state being exempted from protection of their habitat?

The two SEPP system and the policy direction of the Koala SEPP 2021 has been a decision of the NSW Government. The NSW Government is considering the recommendations of the Koala Inquiry in its projects, including the NSW Koala Strategy.

21. Why was the SEPP released before the Parliamentary Inquiry had even had any hearings?

This was a decision of Government.

22. Will stakeholders have an opportunity to comment on the guidelines before they are finalised?

This will be a decision for government. All feedback received to the exhibition of the draft guidelines as well as stakeholder feedback received throughout the year (including in forums like this) will be carefully considered before finalising the guideline.

Questions raised at the webinar

1. Where can I find the planning direction for rezoning?

The NSW Government is currently preparing the new direction for rezoning rural lands in the RU1, RU2 or RU3 zones. It is not yet available. Existing planning directions can be found [here](#).

The new direction will be published there when it is finalised.

2. What has happened to the Port Macquarie KPOM, why wasn't it approved?

The Department does not currently have a draft comprehensive KPOM for the Port Macquarie LGA under assessment, and there is no approved comprehensive KPOM in this council area. There was a draft comprehensive KPOM for the coastal area of this LGA which Council resolved not to finalise.

3. When are the new guidelines due to be released?

The Koala Habitat Protection Guideline (the Guideline) will be published once the Land Management Codes and the Private Native Forestry Codes of Practice are updated.

In the interim, the Department has released a fact sheet to guide development applications under the 2021 SEPP. The fact sheet can be accessed [here](#).

4. Is the site investigation area map available?

The SIA Map is available to councils and the community (on request).

Access to the map is available from your local council or the Department. An extract from the map can be emailed to you on request. If you would like access to the spatial viewer, the Department can arrange a temporary login to the spatial viewer.

5. Will we be able to input into the codes? and

6. When will the codes be released and will there be a submission process?

Consultation on and the release of the LLS and PNF Codes, which are made by the Minister for Agriculture with the concurrence of the Minister for Environment, will be a decision for Government.

7. Does the rezoning rural land direction apply where the land is in a local Growth Management Strategy or Regional Plan for future rezoning?

It is intended that the new direction will apply when rezoning RU1, RU2 or RU3 land to any other zone.

8. The Koala SEPP regulates the impacts of development on koala habitat. However the native vegetation codes in the LLS Act that are apparently being updated to address the lack of protection in rural zones currently have no relevance to development assessment. Does this mean that when the Codes are updated the LLS Act will also be updated to now have a role in development assessment?

The LLS Act currently has no role in the development assessment process. Following updates to the PNF Codes and the Land Management Codes (as announced by NSW Government) on 8 March 2021, the LLS Act will continue to not have a role in the development assessment process. On the contrary, activities such as PNF which sometimes require development consent will no longer require development consent when the Codes are updated. This will be implemented through a further SEPP amendment.

9. How do the North Coast Councils get their rural lands into Koala SEPP 2021?

Rural zoned lands will be brought into the SEPP 2021 framework as part of Stage 2 (when the PNF and Land Management Codes have been updated). This will require a further SEPP amendment which will repeal SEPP 2020 and expand the application of SEPP 2021 across all zones in the 83 LGAs.

10. Does this mean that Councils will no longer have to forward Planning Proposals to the NSW Government for rezoning of land from rural to residential etc?

The proposed new direction will ensure that only the Minister, and not councils, will be empowered to rezone land used for primary production to an environmental zone, or to rezone land currently in rural zones 1, 2 and 3 to other rural zones. Councils can continue to prepare planning proposals to rezone this land but will no longer have delegation to finalise the planning proposals.

11. Given that Port Macquarie was notified their plan was not consistent with SEPP 44 and so did not proceed, is it now redundant with the new SEPPs and they have to start again?

The Department's regional teams are available to assist councils who wish to prepare KPOMs. There is not currently a draft KPOM for Port Macquarie LGA under assessment by the Department. KPOMs must be consistent with the SEPP before they are approved by the Secretary of the Department.

12. Who is the Authority for the codes?

The Minister for Agriculture is responsible for the PNF and Land Management Codes. These Codes are made with the concurrence of the Minister for Environment.

13. What is the anticipated timeframe for completion of stage 2?

Stage 2 is a government process and the Department is not able to provide a timeframe at this stage.

14. Will local government be consulted during the preparation of a Guideline?

This will be a decision for government. All feedback received to the exhibition of the draft guidelines to date, as well as stakeholder feedback received throughout the year (including in forums like this) will be carefully considered in informing the Guideline.

15. Why does it need a qualified person to establish if there are records?

The SEPP requires the involvement of a suitably qualified person in identifying core koala habitat. This is part of the definition of core koala habitat under clause 4 of the SEPP. Records or presence of koalas can form part of core koala habitat.

16. Does that mean you will always have to do ground-truthing to determine koala habitat?

Councils are able to use the best available data when preparing KPOMs and mapping koala habitat at the landscape scale – not every area of this land needs to be surveyed. The requirements are that suitable surveying effort is undertaken as part of preparing the KPOM, and

the suitably qualified person is able to justify any core koala habitat designation by complying with the definition in the SEPP.

Councils can work with the Department's regional team and EES division to define survey scope for their draft KPOMs.

17. Who decides who is "suitably qualified"?

This is defined under clause 4 of the Koala SEPP 2021:

suitably qualified and experienced person means a person who has—

- (a) a tertiary qualification in ecology, environmental management, forestry or other equivalent qualifications, and
- (b) experience in flora and fauna identification, survey and management, including experience in conducting koala surveys.

18. Can councils only do KPOMs for areas shown on SIA map even though we know there are koalas outside of this area?

Councils can create a KPOM which applies to areas outside the SIA Map area, however, *core koala habitat* in a KPOM can only be identified within the bounds of the SIA Map. This means councils could still identify other habitat values such as corridors or climate refugia outside the SIA Map.

19. Will LLS have suitable qualified people monitoring these codes?

This is a matter for Local Land Services.

20. Will the new guidelines review the listed trees to determine more a of tier approach with use, as on the central coast every community has a listed species, hence ranking these trees would assist in the avoid and minimise.

While there is good expert consensus on which trees koalas use in a particular region, there is less consensus on the rankings, particularly at the lower use rankings of 4 and 5. Further, for some local areas within a region, a rank 4 species may be important.

All the trees listed in Schedule 2 of the Koala SEPP 2021 form koala habitat. An unranked list of tree species in the SEPP helps to ensure the full range of potential koala habitat in NSW is considered in the application of the SEPP.

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 whereas under the SEPP, the tree list is used to establish whether a site is likely to contain habitat that may be suitable for koalas.

21. Does this mean the Guidelines will be open for comment before publication?

That will be a decision for Government.

22. You didn't mention that the forest first has to be assessed as high quality koala habitat based on PCTs, including with transects and quadrats, then need to do koala surveys (even where there are existing records), what is the estimated costs for Councils to do this per 1,000 ha?

The Koala SEPP 2021 defines core koala habitat as follows:

core koala habitat means—

- (a) an area of land which has been assessed by a suitably qualified and experienced person as being highly suitable koala habitat and where koalas are recorded as being present at the time of assessment of the land as highly suitable koala habitat, or
- (b) an area of land which has been assessed by a suitably qualified and experienced person as being highly suitable koala habitat and where koalas have been recorded as being present in the previous 18 years.

Therefore, the area needs to contain habitat capable of supporting koalas, not just koala presence (e.g. koalas could be moving through an empty paddock, this does not make it suitable habitat). *Highly suitable habitat* was detailed in the previously published Koala Habitat Protection Guideline. It meant having a 15% concentration of the relevant regional tree species in any Plant Community Type.

Councils are able to use the best available data when preparing KPOMs and mapping koala habitat at the landscape scale – not every area of land needs to be surveyed. The requirements are that suitable surveying effort is undertaken as part of the KPOM, and the suitably qualified person is able to justify any core koala habitat designation.

Previous research found that cost of surveys for core koala habitat on a 200 hectare lot ranges greatly depending on vegetation density and terrain (approximately between \$3,000 - \$10,000 for 200 hectares). This estimate is based on the process under SEPP 44 for Individual KPOMs.

23. Why doesn't the state govt make GIS files for the SI map available to local govt? It's impossible to map Core KH accurately with only 'read only' access, and

24. Surely the GIS file should be publicly available to anyone who can use it. Doesn't the government have an access to data policy? I thought it did.

The SIA Map data is available for councils to access. Temporary login details can also be made available to others by contacting the Department.

25. Is there any mechanism for updating an existing approved CKPoM (specifically the mapping) without starting again and preparing a new one?

Koala SEPP 2021 does contain provision for amending an existing KPOM. The Secretary of the Department can determine if the KPOM requires re-exhibition or not. However it is likely that any map changes will require exhibition.

See clause 17 of the Koala SEPP 2021.

26. Is there a proposal for accurately mapping for development? Accurate koala habitat mapping would provide certainty for conservation and development? This would assist with the increasing stewardship sites across the state.

The Department has produced the Koala Habitat Information Base. Data from the Information Base has been used to underpin the SIA Map in the SEPP. The information base applies a predictive model and therefore does not represent koala habitat but narrows the area where koala habitat may be present.

27. How will the LEP be updated to remove DA consent for PNF?

The removal of dual consent for PNF will be made via an amendment to the Koala SEPP 2021 which will make consequential amendments to relevant LEPs

28. When will the Koala SEPP 2021 be amended?

The 2021 SEPP will be amended as part of Stage 2. Timeframe for delivering Stage 2 is a matter for the Government.

29. Will PNF be allowed in environmental zones where it is currently prohibited?

Once PNF and Land Management Codes are updated, the Koala SEPP will be updated to remove the DA requirement for PNF in all zones.

30. How will the LLS Codes apply to land zoned Environment Protection and how will this relate to the Vegetation SEPP?

The Land Management Code does not apply to environment zones or to the areas to which the Vegetation SEPP applies.

The Vegetation SEPP will continue to apply to vegetation clearing which does not require development consent in environment zones.

31. Will the state government be providing assistance to local government to prepare KPoMs given the substantial costs involved and the government's commitment to increase the population as stated by 50% by 2050?

The Government will consider funding opportunities as part of the updates to the NSW Koala Strategy.

32. "The link between core koala habitat in an KPoM and the LLS Act will be removed" – will this include core koala habitat that is in an approved KPoM and which is currently categorised as category 2- sensitive regulated land?

That's correct.

33. If a property is zoned RU1 and E3, which SEPP applies?

If a property has two land zones and each is covered by a different Koala SEPP, then both SEPPs must be considered in a development application. For example, if part of the property is zoned RU1, and another part is E3, then the 2020 SEPP must be considered on the RU1 portion and the 2021 SEPP must be considered on the E3 portion. This is an interim approach.

34. What guarantee does the public have that the SIA Map is accurate? Didn't the development lobby put pressure on the Government to amend these maps so less land is included?

Importantly, the SIA Map does not depict core koala habitat. Its function is to narrow down areas where koala habitat may be present.

The SIA Map was informed by the Koala Habitat Information Base, which contains the best available state-wide spatial data on koala habitat and koala population distribution in NSW.

35. Do National parks need to do a KPOM?

The Koala SEPP does not apply to National Parks or State Forests, so KPOMs cannot be applied to those areas.

36. Can you please clarify the new Ministerial Direction

Consistent with the 8 March 2021 media release, the NSW Government announcement was:

The Minister for Planning will issue a new section 9.1 direction to ensure that only the Minister, and not councils, will be empowered to rezone land used for primary production to an environmental zone, or to rezone land currently in rural zones 1, 2 and 3 to other rural zones.

This means that councils will no longer have delegation to finalise a rezoning planning proposals where RU1, RU2 or RU3 zoned land is proposed to be rezoned to another zone.

37. Also the Bellingen KPOM that was left out of SEPP 2020... what is happening to that? and

38. What about the Clarence Valley KPOM for Ashby, Woombah and Iluka? and

39. And what about the new Coffs Harbour KPOM?

Any existing draft KPOMs which were previously submitted to the Department but not yet determined are currently being assessed by the Department.

The approved Bellingen KPOM continues to apply.

40. Is the Government going to wait for the KPOMs of the relevant councils to be updated and approved before finalising the Cumberland Plain Conservation Plan (CPCP)?

The CPCP is currently in the process of being finalised following its exhibition between August and November 2020. This will travel as a separate project and will not impact the assessment or approval of KPOMs.

The Cumberland Plain Conservation Plan has been developed to meet requirements for strategic biodiversity certification under the *Biodiversity Conservation Act 2016* and strategic assessment under the *Environment Protection and Biodiversity Conservation Act 1999* to deliver strategic conservation planning across Western Sydney. The Koala SEPP 2021 is a separate regulatory process that reinstates the policy framework of SEPP Koala Habitat Protection 2019.

Accordingly, DPIE will consider and provide feedback about any potential consistency issues as they arise. However, clause 6(3)(c) of the Koala SEPP 2021 states that the SEPP does not apply to land that has been biodiversity certified. This means that any future KPOM will not be able to cross over to the area covered by the CPCP, when approved.

41. To clarify, will Port Macquarie have to go back to step 1 and remap core Koala habitat according to the new SEPPs?

If a council wishes to prepare a KPOM and identify core koala habitat, it will need to be consistent with the SEPP which it is prepared under.

42. Why did you move to habitat vs feed trees?

The definition of core koala habitat requires the presence of highly suitable koala habitat. This is to recognise that an area must be capable of sustaining koalas, as well as containing evidence of koala occupation, in order to be classified as core koala habitat.

In terms of language regarding 'feed' vs 'use/habitat' trees – the Department has moved towards 'koala use trees' to reflect that both feed and shelter trees are equally important to the survival of koalas.

43. When is it envisaged that the LLS Act will be updated to accommodate the revised provisions for PNF?

This is a decision for Government. The LLS Act and its codes are the responsibility of the Minister for Agriculture.

44. Will there be future funding available for Councils to undertake surveys in accordance with the SEPP to develop KPOMs? And is there any required timeframe for doing this?

The Government will consider funding opportunities as part of the NSW Koala Strategy. The Government has not set a timeframe for councils to develop KPOMs.

45. Can you assure us that as a result of all the changes, koala protections will be strengthened not weakened?

The Minister for Planning has publicly stated that his intention is to maintain, at a minimum, the current level of protection for koalas provided by the existing framework under the new framework. The 2021 SEPP applies the latest science on koala habitat and therefore has the best chance of being effective at identifying and managing impacts on koala habitat through the planning processes.

46. Are the Guidelines likely to differ greatly compared to the 2019 Guidelines, for example survey methodology required for Comprehensive KPOM development?

The final form of the guideline is a decision for Government. However, the former Guideline provide a strong basis to underpin any new Guideline.

47. Will Council approval for PNF be removed from E zones as well as rural zones?

As per an 8 March 2021 media release, the NSW Government announcement was that dual consent provisions for PNF in local environmental plans will be removed through Koala SEPP 2021. This will be across all zones.

48. Will the State Government be undertaking auditing to ensure compliance with the SEPP 2021 and LLS Codes and monitoring to ensure the population increase by 50% by 2050 as stated is a result of the updated legislation to protect koalas?

The Department will continue to work with councils to ensure strong compliance with the SEPP 2021.

49. According to the Auditor General, code-based land clearing has led to a 13-fold increase in land clearing. In light of this finding, will the codes be strengthened, and more oversight be given to how they are applied, recognising that koalas are on the brink of extinction and Australia is in the midst of an ecological crisis?

This is a matter for the Minister for Agriculture, who is responsible for the codes (noting the Minister for Environment must provide concurrence). The Government has committed to revised PNF and Land Management Codes, ensuring robust protections for koalas in areas of high value koala habitat and certainty and consistency for primary producers.

50. Are UTA and the development industry happy with the changes?

The Department has not received significant feedback from the Development industry.

51. Will there be consultation, particularly with councils, on the guidelines? I don't think this question has been answered as yet.

That will be a decision for Government. However, the Department has undertaken extensive consultation on the Guidelines previously, which generated over 2,000 submissions. This feedback will inform the final Guideline.

52. What about the other 60 species of trees that were considered koala habitat in SEPP 2019?

The Koala SEPP 2021 contains 123 tree species, across various regions of NSW. There are not more than 65 tree species in any one region. This is the same list as in Koala SEPP 2019.

53. So the last set of guidelines are likely to be similar to the new guidelines?

We can't give a definitive answer on that, as the final form the Guideline will take is a decision of Government. However, the consultation that informed the previous Guideline will inform new Guideline also.

54. Will the findings of the LLS Amendment Bill inquiry, PNF review and Koala Inquiry be used to inform the Codes?

According to the 8 April 2021 Legislative Council Committee No. 7 The Inquiry report into the LLS Act Amendment (Miscellaneous) Bill 2020, the inquiry is no longer proceeding.

Please refer to the full report [here](#).

55. Does it make sense to exclude land that has been biodiversity certified given that koala habitat mapping is still not complete and their survival and habitat has recently been severely impacted by bushfires? and
56. Yes the Koala SEPP will not apply to certified land under SEPP 2021. This has issues in Wollondilly where the CPCP applies to core koala habitat.

The biodiversity certification process under the *Biodiversity Conservation Act 2016* addresses the potential impacts on biodiversity and threatened species (including koalas) during the early planning of land use change. It encourages planning authorities and landholders to design their development footprint in a way that avoids and minimises impacts on land with biodiversity values (such as koala habitat).

It is assessed under the Biodiversity Assessment Method (BAM) which requires a thorough evaluation of impacts on threatened species, threatened ecological communities, their habitats, and the impact on biodiversity values. To avoid duplication, consideration of the Koala SEPP on land already biocertified is considered unnecessary.

57. Minister for Ag in charge of the codes? Isn't that a conflict of interest - the fox in charge of the hen house?

The Land Management Code sits under the *Local Land Services Act 2013*, which is under the portfolio of the Minister for Agriculture. This is set out under the *Allocation of the Administration of Acts (2001 SI 338)*.

However, the Minister for Environment has a concurrence role on any updates to the Code.

58. Will the Government fund Councils to do the required habitat surveys to identify core Koala habitat, if so how much has been allocated to this over the next 5 years and will any timeline be put in place to ensure Councils do the studies?

The Government will consider funding opportunities as part of the updated to the NSW Koala Strategy.

59. Should the strategy not come before the SEPP and Codes?

The Department is updating the NSW Koala Strategy in the context of the updated koala policy framework announced by the Government on 8 March 2021.

60. What is the expected timeframe for the Department's review of KPoMs prepared under the new SEPP?

Draft KPoMs are assessed by our regional teams, and require input from Environment, Energy and Science, and Local Land Services. KPoMs are technical documents and require close analysis, and collaboration with councils – this process can take some time. The Department is

committed to working closely with councils to finalise future KPoMs as soon as possible and will establish processes over time to streamline assessment where possible.

61. Could you please explain the relevance of Circular No B35 on SEPP 44 (listed on the website under more information) at this point in time

Circular B-35 was the old Guideline for SEPP 44. It is now available for use as a reference document in relation to SEPP 2020 (which largely replicates the provisions of SEPP 44). Note, Circular B-35 is not for use under SEPP 2021.

62. Are those codes going on public exhibition for comment?

That will be a decision for Government - the codes are the responsibility of the Minister for Agriculture.

63. Could you clarify the differences between SEPP 2019 and SEPP 2021?

The 2021 SEPP largely replicates the provisions which existed under the repealed 2019 SEPP, as it stood when it was in force immediately before its repeal in November 2020, with a few key differences:

- The 2021 SEPP does not apply to land zoned RU1, RU2 or RU3, unless it falls within the nine specified LGAs (Blue Mountains, Campbelltown, Central Coast, Hawkesbury, Hornsby, Ku-Ring-Gai, Liverpool, Northern Beaches and Wollondilly).
- There is a new provision for the Secretary of the Department of Regional NSW (DRNSW) to have a concurrence role on any future KPoMs and in making the Koala Habitat Protection Guideline.
- There is a provision that approves and makes the Tweed and Byron Shire KPoMs and extends the application of clause 10 of the 2021 SEPP to land covered by these KPoMs regardless of the underlying zoning of the land.

64. Given that landholders can now challenge core Koala habitat and Councils have to pay for its remapping, at around \$10,000 per 200 ha this could quickly escalate into a major cost - will the Government reimburse Councils for such costs?

The previous Koala Habitat Protection Guideline contained provision for landholders to contest the proposed application of core koala habitat in a draft KPOM, during its public exhibition phase. To contest the presence of core koala habitat, an on-ground survey must be conducted by a suitably qualified person. The Guideline contained a choice for landholders to either commission this survey themselves at their cost, or request council use their existing suitably qualified person (who prepared the draft KPOM) to conduct this survey at council expense. Noting this process is not currently available, since the Koala Habitat Protection Guideline is not finalised for use under Koala SEPP 2021.

Upcoming updates to the NSW Koala Strategy may include support, including financial support for councils to develop KPoMs.

65. Is LLS going to have some sort of resourcing to educate landholders on the LLS codes and how they interact with koala habitat?

This is a matter for Local Land Services.

66. Will PNF also over-ride Tree Preservation Orders?

The extent of the Government announcement was that dual consent would be removed for PNF. Tree Preservation Orders continue to apply to some deferred matter lands in some LEPs and do not prevent PNF approvals.

67. Do PNF agreements that were approved prior to this but not submitted for council consent still require consent if the PNF approval was given prior to this new SEPP?

The dual consent requirements have not yet been removed. If an LEP currently requires consent for PNF, development consent is required.

68. What if an LEP prohibits PNF in an environmental zone?

The extent of the Government announcement was that dual consent would be removed for PNF. This has not yet occurred. Therefore if PNF is currently prohibited in an environmental zone, PNF cannot be carried out in that zone.

69. Is creation of a KPOM by Councils legally required?

There is no legal requirement for councils to create KPOMs - they remain voluntary.

70. The presence of a Koala SEPP indicates that the BC Act, etc. is inadequate for the protection of koalas. So, what does this mean for other biota?

There has been a Koala SEPP in place in NSW since 1995, when SEPP 44 commenced. This predates the *Biodiversity Conservation Act 2016* and the modern planning framework. There is a strong link between koala population decline and habitat loss and land fragmentation. Habitat loss and fragmentation can occur as a result of large development proposals, particularly in peri urban areas as settlements expand. For this reason, planning can play an important (but not the only) role in considering impacts on koala habitat.