

## Koala habitat protection and the *Biodiversity Conservation Act 2016* (BC Act)

### **State Environmental Planning Policy 44 (Koala Habitat Protection) (SEPP 44) encourages the conservation of koala habitat**

SEPP 44 aims to encourage the proper conservation and management of areas of natural vegetation that provide habitat for koalas to ensure a permanent free-living population over their present range and reverse the current trend of koala population decline.

SEPP 44 requires the preparation of a plan of management before consent can be granted to a development application on land of more than one hectare that contains core koala habitat.

Core koala habitat may be identified in a whole of LGA plan of management, or Comprehensive Koala Plan of Management.

Koala plans of management may include measures to avoid, minimise or offset impacts on core koala habitat.

### **Core Koala habitat is included on the biodiversity values map**

The biodiversity offset scheme will apply to a local development under Part 4 of the *Environmental Planning and Assessment Act 1979* (EP&A Act) that involves clearing native vegetation or a prescribed impact<sup>1</sup> on an area mapped on the biodiversity values map.

### **Proponents and Councils must comply with the requirements of both the BC Act and SEPP 44**

When the biodiversity offset scheme applies, compliance with the BC Act will include the preparation of a biodiversity development assessment report (BDAR) by an accredited assessor in accordance with the Biodiversity Assessment Method (BAM) and the provision of offsets if required.

Compliance with SEPP 44 may include the preparation of a koala plan of management.

Offsets required by a koala plan of management do not replace any requirement to provide offsets under the biodiversity offset scheme. Whether the offset requirements outlined in the BDAR satisfy the requirements of a koala plan of management will depend on the details of the plan and the specific development.

A biodiversity credit obligation relating to Koalas that is required by the BC Act must be included in conditions of consent if a development application is approved.

Biodiversity offsets required by the BC Act may satisfy actions required by a Koala plan of management. This will depend on the specifics of the plan and the proposed development.

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<sup>1</sup> an impact prescribed under clause 6.1 of the *Biodiversity Conservation Regulation 2017*

Council may consider the provisions of a koala plan of management as part of the merit assessment of the development application under section 4.15 of the EP&A Act.

A koala plan of management may be amended to say that meeting offset obligations under the BC Act will satisfy the offset requirements of the plan of management.

There may be overlap between avoid, minimise and offset measures proposed in a BDAR and actions under a koala plan of management or controls in a DCP.

Where the provisions of one instrument prevent compliance with the provisions of the other, the BC Act would prevail to the extent of that inconsistency.

See [BC Act s 7.5](#)

### **Development Control Plans may also have provisions relevant to core koala habitat**

The provisions of a Development Control Plan (DCP) may be considered as part of the merit assessment of a development application under section 4.15 of the EP&A Act.

Where a DCP is in place that has relevant provisions for core koala habitat, Council would not be prevented from imposing further controls through lawful and reasonable conditions.

Whether measures proposed by a BDAR will satisfy the requirements of a DCP will depend on the details of the DCP and the development.

A DCP may be amended to provide that measures to avoid, minimise and offset in accordance with requirements under the BC Act will satisfy any controls outlined in the DCP.