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Draft Nature Conservation (Koala) Conservation Plan and Management Program 2005 (“draft Koala Plan”)

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Introduction

The number of koalas in Queensland, once millions, is now estimated at between 100,000 to 300,000 animals.ⁱ The koalas in the South East Queensland bioregion were classified as “vulnerable” in 2004 reflecting the lowered population levels and various threats to that species. The koala is a popular, marketable animal particularly when compared to other less furry species.ⁱⁱ So the new draft plan for its conservation and management in Queensland and new State Planning Policy 1/05 will be examined with interest, as surely, such a favoured but vulnerable species will be given stalwart protection. This paper will also briefly reflect on koalas and the draft SEQ Regional Plan.

Statutory framework of Conservation Plans

Processes for Preparation of Conservation Plans

Conservation plans are made under the *Nature Conservation Act* 1992 (“NCA”). The Act contains a process for public notification of the draft plan and Ministerial consideration of public submissions prior to preparation of the final plan by the Minister.ⁱⁱⁱ A final conservation plan does not have effect until it has been approved by the Governor in Council.^{iv} The final conservation plan is subordinate legislation.^v and must be kept open for public inspection.^{vi} The Minister must review the operation of each conservation plan not later than ten years after its approval.

Content of Conservation Plans

A final conservation plan for wildlife or a class of wildlife must be consistent with the management principles for the class of wildlife.^{vii} It may provide for the State to be divided into wildlife districts.^{viii} The final conservation plan replaces the declared management intent for the wildlife or class of wildlife.^{ix}

A conservation plan may make provisions about matters for which a regulation maybe made under the *NCA*, for example, prescribing offences for contravention of the plan, and fixing a maximum penalty of a fine not more than 165 penalty units.^x A conservation plan may make provision about the use or development of land, and activities, in an area identified under the plan as, or including, a critical habitat or area of major interest.^{xi}

Conservation Plans and Planning Schemes

If there is any conflict between a conservation plan and a planning scheme (whether made before or after the plan) the plan prevails over the planning scheme.^{xii} A local government must not issue or give any approval for the use of land that is inconsistent with the regulation or plan.^{xiii}

Conservation Plans and Compensation

If a conservation plan is approved for an area identified under the plan as a critical habitat or an area of major interest and a land holder's interest in land is injuriously affected by a restriction or prohibition imposed under the plan on the land holder's existing use, the landholder is entitled to be paid compensation which is claimed through the Land Court.^{xiv}

Draft Koala Plan

Draft Koala Plan out for Public Comment, and New SPP1/05

The draft Koala Plan is currently out for public comment with comments due to the Environmental Protection Agency by 30 March 2005. A new State Planning Policy SPP1/05 *Conservation of Koalas in South East Queensland* has been adopted as a temporary instrument^{xv} to influence planning schemes and to guide development decisions prior to finalisation of the draft Koala Plan. The old SPP1/97 *Conservation of Koalas in the Koala Coast* was repealed with effect from 31 January 2005.

Broad Contents of the draft Koala Plan

The draft Koala Plan is a document of over 50 pages, including five parts and appendices^{xvi} containing a range of management strategies, both regulatory and non-regulatory. Mainly the regulatory strategies concerning development will be discussed in this paper. The draft Koala Plan also includes two pieces of draft legislation, the draft Nature Conservation (Koala) Conservation Plan 2005 and the draft Nature Conservation Amendment Regulation (No..) 2005.

The draft Koala Plan flags use of a number of legal tools and initiatives. The draft Koala Plan does clearly state that EPA will become a concurrence agency for certain assessable development in Koala Areas A1 (see below). It refers to a new IDAS Koala Code (not included) to be applied to assessment of certain developments and though this is not stated, it might be assumed that this code will be based on the provisions of new SPP1/05. The possibility of using the *Vegetation Management Act* 1999 to declare certain areas of regrowth/non remnant vegetation as high nature conservation value areas, and so control vegetation clearing outside the scope of the *Vegetation*

Management Act 1999 is discussed. The Plan envisages amendments to the *Nature Conservation Act 1992*.

How the draft Koala Plan will control Development- 3 Districts

The draft Koala Plan proposes to divide the State into 3 Koala Districts, A, B and C where the threats to koala populations and so protective requirements vary. See pages 31-34 of the draft Koala Plan and Map 1 and Map 2 for detailed information on those areas which the following three paragraphs summarise.

Koala District A will be the most strictly regulated district. It comprises 12 local government areas in the South-East Queensland Bioregion^{xvii} and is divided into 4 Koala Management Areas of which development in KMA 1 is most strictly regulated. In KMA1 the habitat is classified as major habitat and the aim is 100% retention of habitat with no further development of those areas. KMA 2 provides vital other major habitat for koalas. The aim for KMA 2 is to have no further loss or fragmentation of habitat, other than already planned for these areas. This means applying an IDAS code to development where there is already a valid development approval so the development has koala sensitive design, and not allowing further development or changes to planning schemes that will adversely impact on koalas. In KMA 3 is proposed supplementary habitat for koalas, containing a mosaic of habitat and corridors. The new proposed IDAS code will be applied to require koala sensitive design in KMA 3. In KMA 4 there will be areas with occasional use by koalas and the main approach to koala protection will be by education and community participation.

Koala District B will be the rest of South East Queensland Bioregion not included in Koala District A. It is stated to be mainly rural areas where the clearing restrictions under the *Vegetation Management Act 1997* are expected to protect koala habitat.

Koala District C will contain the remaining local government areas where koalas are found.

Controls on Development- SPP1/05

This new Policy SPP1/05 as mentioned above is adopted as a temporary instrument^{xviii} to influence planning schemes and to guide development decisions prior to finalisation of the draft Koala Plan. However as well as being in force to influence planning schemes in preparation and current development applications, it does provide guidance on what might be found in the IDAS code referred to in the draft Koala Policy.

The new Policy SPP1/05 has restricted application compared to the draft Koala Plan as it only applies to 9 local government areas and only to Koala Management Areas A1 and A2. The policy also only applies to certain types of assessable development under Schedule 8 of the *Integrated Planning Act 1997*, local government planning schemes, or the Regulatory Provisions of the SEQ Regional Plan,^{xix} plus to that same assessable development when the Minister is considering designating land for community infrastructure.

The controls are expressed to be in relation to Making or Amending a Planning Scheme and also Development Assessment. Annexure 3 of SPP 1/05 contains the Development assessment criteria. However the changing of the planning scheme to better protect koalas has as an exception “except where existing planning schemes provide for incompatible uses”. Also, special and more lenient assessment rules apply to development that comes within the broad term “Development Commitment”, and this term includes not just development that already has a development approval. For example, if the development is for material change of use or reconfiguring a lot within the Urban Footprint^{xx} but is consistent with the planning scheme it meets the term “development commitment”. For example, if the development is for a material change of use within the Regional Landscape and Rural Production Area but is consistent with the planning scheme and the draft regulatory provisions (or regulatory provisions of the SEQ Regional Plan when made) then it meets the term “development commitment”.

These controls with these broad exceptions may not achieve the bold policy objectives set out for KMA 1 if there is KMA 1 and KMA 2 land in the urban Footprint and given the weakness of the SEQ Regional Plan in identifying and protecting nature conservation areas!

We also note the special lenient rules that apply for extractive industries in Key Resource Areas and for community infrastructure which can demonstrate and overriding need in the public interest.

Conclusion

The draft Koala Plan is a very welcome initiative and includes many excellent strategies and ideas for increasing protection of the koala by regulatory and non-regulatory cooperative efforts. The moves to create new high nature conservation areas of regrowth concerning koalas under the *Vegetation Management Act 1999* are welcome, as are the proposals for increased concurrence powers for the Environmental Protection Agency and the development of a Koala IDAS code. The code will need to be as tight as the codes protecting endangered regional ecosystems under the *Vegetation Management Act 1999* to avoid koalas losing out to other values when assessments are conducted.

However the level of protection afforded to koala habitat is disappointingly reduced by the exceptions to application of protective measures, particularly by the broad term “development commitment” and by the exceptions for extractive industry Key Resource Areas and designation of community infrastructure. The draft Koala Plan has the legislative framework to be bolder. If the State government is serious about protecting the koala in the medium to long term, rather than merely making an attempt, those exceptions need to be removed both in the SPP1/05 and in the final Koala Plan.

The level of increased development and population in SEQ Queensland envisaged by the draft SEQ Regional Plan would increase threats to the koala. A much-needed supplementary initiative is for koala areas (along with other important nature conservation areas) to be expressly identified in the Regulatory Provisions of the SEQ Regional Plan and expressly protected from development.^{xxi}

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- i Page 3 Draft Nature Conservation (Koala) Conservation Plan 2005
- ii Compared to say the Land Mullet, a type of shiny dark lizard sometimes viewed at Lamington National Park
- iii Sections 112-119 *Nature Conservation Act 1992*
- iv Section 119(1) *Nature Conservation Act 1992*
- v Section 119(2) *Nature Conservation Act 1992*
- vi Section 119(3) *Nature Conservation Act*, those places for public inspection are at the Department's head office, each regional office & such other places as the chief executive considers appropriate.
- vii Section 118(1) *Nature Conservation Act 1992*
- viii Section 118(2) *Nature Conservation Act 1992*
- ix Section 121 (2) unless the plan declares that this subsection does not apply to the plan.
- x Section 112(5)(a) *Nature Conservation Act 1992*
- xi Section 112(5)(b) *Nature Conservation Act 1992*
- xii Section 122 *Nature Conservation Act 1992*
- xiii Section 123 (2) *Nature Conservation Act* provides in full A local government must not issue or give any approval, consent, permit or other authority for a use of, or a development on, the land that is inconsistent with the regulation or plan. The land includes 123 (1)(b) an area identified under a conservation plan as, or including, a critical habitat or an area of major interest.
- xiv Section 126 *Nature Conservation Act 1992*. Note that compensation is not payable if it has already been paid for the restriction or prohibition or one to the same effect. The land holder's interest is not injuriously affected if the restriction or prohibition under the conservation plan is the same or to the same effect as a provision of another law applying to the land immediately before the commencement of the plan.
- xv Section 1 (4) SPP1/05 states This Policy ceases to have effect on 1 February 2005.
- xvi The five parts comprise 1. Introduction; 2. Background; 3. Management issues, aims and strategies; 4. Management and planning approaches and requirements; and 5. References. The Appendices comprise A Requirements for the translocation, relocation and release of koalas; B Revegetation guidelines; C Requirements for koala care groups and private hospitals; D Conservation offsets for koala habitat; and E Main Roads Conservation Plan Policy.
- xvii Page 31 draft Koala Plan - Noosa, Maroochy, Caloundra, Caboolture, Pine Rivers, Redcliffe, Redland, Logan, Ipswich, Gold Coast, Beaudesert and Brisbane.
- xviii Section 1 (4) SPP1/05 states This Policy ceases to have effect on 1 February 2005.
- xix Section 3 SPP1/05 states Development to which the Policy applies
- (1) This Policy applies to assessable development under Schedule 8 of the *Integrated Planning Act 1997*, local government planning schemes or the Regulatory Provisions of the SEQ Regional Plan (draft or otherwise), where that development is-
- (a) making a material change of use of premises for a purpose that requires:
- (i) the clearing of native vegetation;
- (ii) new building or structures or extensions to existing building footprints; or
- (iii) extracting gravel, rock, sand or soil from an area greater than 5000 square metres; or
- (iv) excavating or filling an area greater than 5000 square metres.
- (b) reconfiguring a lot and associated operational work that:
- (i) increases the number of lots: or
- (ii) clears native vegetation; or
- (c) carries out operational work that is :
- (i) clearing of native vegetation; or
- (ii) extracting gravel, rock, sand or soil from an area greater than 5000 square metres; or
- (iii) excavating or filling an area greater than 5000 square metres.
- (2) This Policy also applies to the development described in (1) when a Minister is considering designating land for community infrastructure.
- (3) However, despite (1), this Policy does not apply to making a material change of use or carrying out operational work for the purposes of, or associated with, a single detached dwelling.
- xx see the draft SEQ Regional Plan
- xxi For more comments on the draft SEQ Regional Plan and nature conservation, see the EDO Qld briefing paper at <http://www.edo.org.au/edoqld>