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24 March 2005

The Hon. Desley Boyle
Minister for the Environment
c/o Nature Conservation (Koala) Conservation Plan 2005
Conservation Services Division
Environmental Protection Agency
PO Box 15155
CITY EAST QLD 4002

Dear Minister,

Submission on the Draft Nature Conservation (Koala) Conservation Plan and
Management Program 2005 ("draft Koala Plan")

Attached is our submission, including a summary of recommendations.

For more information on our views, please contact the writer.

Yours faithfully
Environmental Defenders Office (Qld) Inc.

Jo-Anne Bragg
Principal Solicitor

To provide feedback on EDO services, write to us at the above address.

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

Introduction

The draft Koala Plan is a document of over 50 pages, including five parts and appendicesⁱ containing a range of management strategies, both regulatory and non-regulatory. This submission will focus on regulatory mechanisms. The draft Koala Plan includes two pieces of draft legislation of which the first and most relevant to this submission is the slim draft Nature Conservation (Koala) Conservation Plan 2005 which, amongst other things, divides the State into Koala Districts.

A new State Planning Policy SPP1/05 *Conservation of Koalas in South East Queensland* has been adopted as a temporary instrumentⁱⁱ 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 The old SPP1/97 *Conservation of Koalas in the Koala Coast* was repealed with effect from 31 January 2005.

A. Summary of Recommendations

1. The draft Koala Plan is a very welcome initiative and includes many excellent strategies and ideas for increasing protection of the koala by regulatory means and non-regulatory cooperative efforts.
2. Our experience at the Environmental Defenders Office (Qld) answering public enquiries and in conducting workshops at Redland and on the Sunshine Coast is that there is extremely strong public support for protection of koalas.
3. We recommend that the EPA be concurrence agency for Koala Area A2 as well as A1 as a concurrence agency can approve, refuse or approve development with conditions. In other words, exercise real power in relation to the decision on the development.
4. The EPA needs to be granted sufficient resources to enable it to adequately carry out its role in the development assessment process.
5. We recommend that the proposed IDAS Koala code needs to be strictly protective of koala habitat, and EPA decision-making needs to be tightly bound to the code. For an example of how this was done in a vegetation management context, see how changes were made to the *Integrated Planning Act* 1997 code assessment provisions by the *Vegetation Management Act* 1999 (“VMA”) s21(4) and see for example how the Vegetation Codes were structured to tightly protect endangered regional ecosystems.

6. Protecting regrowth vegetation areas using a declaration of high nature conservation areas (HNCV areas) under the VMA is a welcome initiative, but rather a slow way of achieving protection of key areas of regrowth vegetation.
7. Another way of protecting these HNCV areas and all Koala Areas 1 and 2 for that matter is to expressly include strong protective measures in the draft Nature Conservation (Koala) Conservation Plan 2005. That might expose the State to some measure of compensation claim however Queenslanders place great value on koala protection. Another way to protect these areas is to both identify the Koala Areas and include the protective measures in the regulatory provisions of the SEQ Regional Plan. No compensation is payable in consequence of this second approach, even when the draft SEQ Regional Plan provisions are reflected in planning schemes.
8. There are unsatisfactory broad exceptions in the SPP1/05 (and presumably to be repeated in other documentation after expiry of that SPP) which will impede achievement of the policy objectives for Koala conservation. To better protect koalas:
 - change the definition of “development commitment” to exclude “development consistent with the planning scheme”; and
 - remove the exception “except where existing planning schemes provide for incompatible uses” in the section concerning changing the planning scheme.
9. The level of protection afforded to koala habitat is also disappointingly reduced by the exceptions for extractive industry Key Resource Areas and designation of community infrastructure, such as roads. Those exceptions need to be narrowed if koalas are to be effectively protected in the medium to long term.

B. Strong Support for State Initiative to Protect Koalas

The draft Koala Plan is a very welcome initiative and includes many excellent strategies and ideas for increasing protection of the koala by regulatory means 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 in relation to certain developments affecting koalas. Our experience at the Environmental Defenders Office (Qld) answering public enquiries and in conducting workshops at Redland and on the Sunshine Coast is that there is strong public support for protection of koalas.

C. New Concurrence Powers for EPA supported but Expansion Needed to include KA2

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 referred to above. We recommend that the EPA be concurrence agency for Koala Area A2 as well as A1 as a concurrence agency can approve, refuse or approve development with conditions, that is exercise real power in relation to the decision on the development. The EPA needs to be granted sufficient resources to enable it to adequately carry out its role in the development assessment process.

D. IDAS Code must tightly protect Koalas and Decision Making must be bound tightly to Code

The draft Koala Plan 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 referred to above. The Plan envisages amendments to the *Nature Conservation Act 1992* to provide a head of power for the IDAS Koala Code.

We recommend that the code needs to be strictly protective of koala habitat, and EPA decision making needs to be tightly bound to the detailed provisions of the code, rather than merely reflect a general purpose of the code. For an example of how this was done in a vegetation management context, see how changes were made to the *Integrated Planning Act 1997* code assessment provisions by 21(4) of the *Vegetation Management Act 1999* and see for example how the Vegetation Codes were structured to tightly protect endangered regional ecosystems.

E. Other Ways of Better Protecting Koala Habitat

The restrictions on clearing Koala habitat in remnant vegetation under the *Vegetation Management Act 1999* is a good use of an existing legislative tool. We generally support the use of 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 of those areas by bring such clearing within the scope of assessable development, then protecting them via Vegetation code provisions. However this is a somewhat slow process, with detailed consultation process in the VMA, so a speedier process of protecting those areas is needed.

One way of protecting these HNCV areas and Koala Areas 1 and 2 for that matter is to expressly include protective measures in the draft Nature Conservation (Koala) Conservation Plan 2005. That might expose the State to some measure of compensation claim. Another way to protect these areas is to identify the Koala Areas and include the protective measures in the regulatory provisions of the SEQ Regional Plan. No compensation is payable in consequence of this second approach, even when the draft SEQ Regional Plan provisions are reflected in planning schemes. EDO Qld is aware that many people have made submissions in the draft SEQ Regional Plan seeking better protection of Koala habitat under those regulatory provisions of the draft SEQ Regional Plan.

F. Protection Undercut by Exceptions- Reduce Exceptions!

The protective measures proposed in the draft Koala Plan are severely under cut by exceptions and exemptions.

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. We need a temporary SPP that applies to **all** local government areas with koalas and to KMA 3 too, as they are still extremely important to koala survival. 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,ⁱⁱⁱ 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^{iv} and 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 will not achieve the policy objectives for Koala conservation. To better protect koalas:

- change the definition of “development commitment” to exclude “development consistent with the planning scheme”; and
- remove the exception “except where existing planning schemes provide for incompatible uses” in the section concerning changing the planning scheme.

However the level of protection afforded to koala habitat is also disappointingly reduced by the exceptions for extractive industry Key Resource Areas and designation of community infrastructure. Those exceptions need to be minimised.

ⁱ 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.

ⁱⁱ Section 1 (4) SPP1/05 states This Policy ceases to have effect on 1 February 2005.

ⁱⁱⁱ 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.

^{iv} see the draft SEQ Regional Plan