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28 August 2009

The Hon. Stirling Hinchliffe  
Minister for Infrastructure and Planning  
Department of Infrastructure and Planning  
PO Box 15009  
CITY EAST QLD 4002

By email [seqkkoalareview@dip.qld.gov.au](mailto:seqkkoalareview@dip.qld.gov.au)

Dear Minister,

### **SUBMISSION – PROPOSED STATE PLANNING POLICY KOALA CONSERVATION**

#### **1 BACKGROUND**

The Department of Infrastructure and Planning has invited public comment on the proposed State Planning Policy (SPP) for koala conservation in South East Queensland. Implicit in the preparation of a further statutory koala conservation instrument is that current efforts to protect koalas in SEQ have failed.

In April this year the Government released its analysis of the koala coast koala population (Koala Report)<sup>1</sup>. That report, amongst other findings, concluded that with the current pace of habitat destruction less than 500 koalas will remain in the koala coast by 2010. It also highlighted that all urban koala populations are “critical to the long term survival of koalas” in all bushland areas. *Every* disruption of urban koala populations has become critical to the long term survival of bushland koalas in SEQ and vice versa. The scientific data is telling us to immediately stop clearing koala habitat. The proposed SPP must do that. Anything less will see regional extinction of koalas in SEQ. That would be a tragic result.

Your department has acknowledged that the goal of the proposed koala conservation SPP, overriding all others, is to “maintain the viability of all major koala populations across SEQ by increasing the size of their habitats”. To achieve that goal it must overcome the shortcomings in the current state planning and conservation instruments, particularly as they relate to koala habitat in urban areas. All remaining koala habitats, no matter where they are in relation to future growth areas or urban infill sites, must be protected from development pressures. The viability of SEQ’s koala population depends on koalas being able to safely move within and between these last remaining urban and bushland refuges.

Our office, the Environmental Defenders Office (Qld) has a particular interest in koala conservation<sup>2</sup>. We have advised clients on laws concerning koalas for 15 years, made submissions on the drafting of the Koala Plans in 2006, the draft *South East Queensland Koala State Regulatory Provisions*, and the revised

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<sup>1</sup> State of Queensland 2009 ‘Decline of the Koala Coast Koala Population: Population Status in 2008, Department of Environment and Resource Management, Brisbane <http://www.epa.qld.gov.au/register/p02966aa.pdf>

<sup>2</sup> Copies of our law reform submissions can be accessed [www.edo.org.au/edoqld/edoqld/lawreform/lawreform.htm](http://www.edo.org.au/edoqld/edoqld/lawreform/lawreform.htm)

*South East Queensland Regional Plan 2009-2031*. We have prepared legal papers on koala conservation laws for legal and community seminars. We have been involved in a number of court cases pursuing koala protection. Due to weak laws at the time crucial koala habitat was lost. We welcome this opportunity to make early comments on the proposed SPP.

## **2 ISSUE 1 UP-TO-DATE AND ACCURATE KOALA HABITAT MAPS ARE REQUIRED**

The accuracy of the State koala maps has been criticised. We strongly support the preparing of accurate, up-to-date maps of koala habitat. Any inaccuracies in the old maps must be overcome before the SPP is finalised. If this cannot be achieved in the very short planning horizon for preparation of the SPP a precautionary approach must be taken to the mapping, and map more rather than less land.

Any koala habitat maps must be regularly updated.

In addition to identifying existing koala habitat the maps should identify areas suitable for rehabilitation. Planning schemes, planning scheme amendments and development assessment decisions must not compromise the values of the rehabilitation sites. Rehabilitation should, moreover, be conducted strategically, with a view to connecting remaining urban and bushland habitats.

## **3 ISSUE 2 STRONGER AND MORE EFFECTIVE KOALA CONSERVATION MEASURES**

Existing koala conservation laws are not working. The pre-eminence of economic needs is the driver behind the failure of the two State planning instruments, which have sought to balance conservation, social and economic outcomes.

### ***Koala Plan 2006***

The Koala Plan 2006<sup>3</sup> has not offered adequate protection for koala habitat from rapid development in SEQ.

For the purposes of assessing development under the *Integrated Planning Act 1997*, the Koala Plan 2006, (subordinate legislation under section 119 of the *Nature Conservation Act 1992*, and which has effect as a state planning policy<sup>4</sup>. Unless a local planning scheme appropriately reflects its terms<sup>5</sup> there is a positive obligation on an assessment manager to have regard to the terms of the Koala Plan when assessing a development application.

Where the assessment criteria apply, the constraints placed on development are too weak. These weaknesses, in particular in urban koala areas, mean the Koala Plan is ineffective in stopping any kind of urban development.

### ***Koala State Planning Regulatory Provisions 2009***

The 2009 Koala SPRP came into effect on 1 July 2009. These laws apply in areas mapped as interim koala protection areas. These interim koala protection areas appear to mirror those areas mapped as urban koala areas under the Koala Plan. Your Department has acknowledged this link explaining that the 2009 Koala SPRP largely adds to the existing assessment criteria for developments in urban koala areas.

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<sup>3</sup> *Nature Conservation (Koala) Conservation Plan 2006*

<sup>4</sup> *Integrated Planning Act 1997*, s 2.4.1

<sup>5</sup> For example, Brisbane City Plan 2000 still refers to the repealed SPP 1/97 Conservation of Koalas

The major shortcoming of the 2009 Koala SPRP is the breadth of circumstances to which *it does not apply*. In particular, section 1.3(d) allows a developer to avoid the minimal protections offered through the regulatory provisions by obtaining a permit for a rezoning, under any possible iteration of a planning scheme (current, transitional or superseded). Presumably section 1.3(d) was intended to refer to an existing rezoning approval obtained prior to 1 July 2009. As it is currently drafted it is unclear how wide this exemption really is.

In any event, if the koala conservation SPP is going to have any chance in halting the regional extinction of koalas it must apply to everyone (including state government departments, and large infrastructure projects under the *State Development and Public Works Organisation Act 1971*). It must also be effective immediately, with scope for an assessment manager to apply the SPP to applications that have been properly made but which have not been decided.

Notwithstanding your Departments apparent motivation to address the decline of koala habitat, it is disappointing that the only new assessment criterion is item 3, Column 3, Table 1 under Division 2 of the regulatory provisions. Item 3 requires an offset should any mature koala habitat trees be cleared. Item 3 allows the offset to be located outside the development site.

First and foremost, offsetting must be discouraged. EDO has advocated strongly against the use of offsets in relation to environmental values<sup>6</sup>. There remains no evidence<sup>7</sup> that offsetting, as an environmental policy instrument, actually delivers environmental benefits<sup>8</sup>. SEQ's koala populations will be extinct before any koala habitat offset is delivered.

We strongly urge that clearing of any koala habitat trees *must* be prohibited under the koala conservation SPP.

#### **4 CONCLUSION**

Purporting to balance environmental, social and economic outcomes is not new. Some environmental values are worth preserving despite the short term economic benefit to be derived from their destruction. The proposed SPP Koala Conservation must protect all remaining koala habitat in SEQ from development pressures. It should not matter where they are in relation to future growth areas or urban infill sites. The viability of SEQ's koala population depends on koalas being able to safely move within and between these last, remaining urban and bushland refuges.

EDO is available to answer any questions the Department has regarding the comments and recommendations in this submission. Lawyers at this office are in a position to assist your Department in drafting the SPP.



Jo-Anne Bragg  
Principal Solicitor

Environmental Defenders Office (Qld) Inc

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<sup>6</sup> EDO Qld drafted the comprehensive submission on the vegetation management offsets policy for the Queensland Conservation Council in 2005, and also made detailed comments on the whole of government offsets policy in December 2007 available [www.edo.org.au/edoqld/edoqld/lawreform/lawreform.htm](http://www.edo.org.au/edoqld/edoqld/lawreform/lawreform.htm)

<sup>7</sup> Gibbons, P & Lindenmayer, D (2007) "Offsets for land clearing: No net loss or the tail wagging the dog?" Ecological Management & Restoration, Volume 8(1), p30

<sup>8</sup> See, for example Gibbons & Lindenmayer, above 6, p30