

Sue Higginson – Environmental Lawyer

(a) the status of koala populations and koala habitat in New South Wales, including trends, key threats, resource availability, adequacy of protections and areas for further research,

The conservation status of the koala in NSW is getting worse and there is no clear path currently set that will lead to the stabilisation of the species or the much needed recovery of the species. While over the past few years there has been some Government focus on the animal, in response to science based campaigns about the plight of the species, they are ultimately what I refer to as soft environmental law responses – plans, incentives and funding agreements, that in the absence of much needed effective legislative protections will not reverse the worsening conservation status of the koala. We need to employ the whole suite of legal tools and mechanisms if we are genuine in our efforts to recover this iconic species.

(b) the impacts on koalas and koala habitat from:

(i) the Coastal Integrated Forestry Operations Approvals and Regional Forest Agreements,

The evidence that exists strongly points to the stark reality that the impacts of logging our public native forests on koalas (and other native animals) has now moved beyond a key threatening process to one of the land use activities that if continued in the current manner will be directly responsible for pushing the species even closer to its extinction.

Our public native forest estate has become an important tenure that is providing significant refuge for the species. A growing body of evidence suggests that it is increasingly relied upon in the immediate, short, medium and long term for such ecosystem function.

The Coastal IFOA under the RFA will make the impacts of logging our public forest estate on koalas more severe. The relaxation of the prescriptions pertaining directly to the species coupled with the goal of achieving no net loss of wood supply to industry makes for an untenable basis for the survival of the species. The equation of no net loss of wood supply, put simply does not and cannot work in a context of ecologically sustainable forest management – it is in fact a magic pudding formula – the absurdity of which has been pointed out by others for many years in relation to the management of our public forest estate.

Ending native forest logging on our public forest estate on just terms will contribute significantly in turning the declining plight of the koala and many other threatened species around. Transitioning the management of our valuable native forest public forest estate from wood supply to the active management of their other beneficial values, namely as carbon sinks and stores, water generators and protectors, habitat for native plants and animals, recreation, education and sustainable industries including tourism, would result in significant and necessary environmental, economic and social beneficial outcomes for present and future generations.

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Date: 18 / 10 / 19

Resolved to publish Yes / No

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(ii) the Private Native Forestry Code of Practice,

The regulation of PNF falls very short in terms of koala protection. There needs to be clear regulatory requirements to identify and protect koala habitat in any private native forestry operation. The regulation of PNF is underpinned by the ideology that private property rights are sacrosanct, rather than science and the public interest.

(iii) the old growth forest remapping and rezoning program,

This project is based on a wholly non-scientific, non-legal premise that has only come to the surface through successful pressure from industry to prioritise no net loss to wood supply to the industry. The impacts any such OGF remapping or rezoning will have on koalas will be significant particularly in light of the evidence that koalas rely on older trees for health and therefore population viability.

(iv) the 2016 land management reforms, including the Local Land Services Amendment Act 2016 and associated regulations and codes

It is controversial that land clearing under the reforms has tripled. The regulations and codes provide a legally perverse regime considering the environmental challenges upon us, including the impacts of climate change and the plight of threatened species including koalas. The reforms do not reflect best practice environmental laws and are not fit for purpose in achieving the protection of native vegetation across NSW. The reforms essentially abandoned the key legal test of no net loss to biodiversity, as a result the evidence is that we are losing biodiversity, including through the loss of koala habitat. It is important to remember the reforms were initially driven by a political commitment to a particular sector of the community driven by a desire to obtain personal financial benefit from land clearing.

(c) the effectiveness of State Environmental Planning Policy 44 - Koala Habitat Protection, the NSW Koala Strategy and the Biodiversity Conservation Act 2016, including the threatened species provisions and associated regulations, in protecting koala habitat and responding to key threats,

It is very hard to fathom how the NSW Government could have released and resourced a Koala Strategy, without including a key commitment and the resources to the proper implementation of SEPP 44. SEPP 44 in its design is intended to be the key legal instrument to protect koalas, by protecting their habitats, in the planning and development system. There has been a woeful commitment on part of the state to the development of comprehensive koala plans of management, and the reliance on development specific koala management plans, prepared by development proponents is in fact responsible for continuing the phenomena of death by a thousand cuts leading to the decline in koala populations.

SEPP 44 required koala habitat to be identified and protected through Environmental Protection Zones in LEPs, it is nothing short of perverse that the State Government intervened in the making of LEPs across the Northern Rivers and prevented Councils in the region from including E zones in their LEPs.

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The arbitrary 1 hectare trigger for the application of SEPP 44 also needs to be removed.

There should be an immediate priority to identify and declare high use koala habitats as Areas of Outstanding Biodiversity value under the Biodiversity Conservation Act and koala habitat should be excluded from the biodiversity offsets scheme until the species has recovered from its threatened status.

(d) identification of key areas of koala habitat on private and public land that should be protected, including areas currently at risk of logging or clearing, and the likely impacts of climate change on koalas and koala distribution,

The identification of koala habitat, with a view to protection, across all tenures should be a priority in the effort to reverse the decline of the species. The identification should include a risk analysis of habitat most at risk and protection priority given to those habitats most at risk to the key threatening process of land clearing, logging, development and climate change.

(e) the environmental, social and economic impacts of establishing new protected areas to conserve koala habitat, including national parks, and

There is a plethora of sound scientific evidence that there are great environmental, social and economic benefits in creating legally protected public reserves. The key mechanism to reverse the trajectory of decline of koalas is to protect their habitats. The simplest and most economically efficient way to do this is through creating publicly managed reserves. This should be a priority for our existing crown land estate. Where it is identified that koala habitat on private land is subject to threat, concerted effort ought to be made to protect it through the imposition of environmental protection zones, voluntary acquisition or incentive based private conservation initiatives.

(f) any other related matter.

Climate change is upon us. The impacts of longer dry periods, more extreme weather events and the increase in the occurrence and severity of bush fire is our normal. If we are honestly to give koalas a chance of survival into the future, serious and significant effort to protect koala habitat immediately, prioritising koala high use areas, and building the resilience and health of such habitats needs to be a state priority. We have available all of the legal tools required to recover koalas at this time, we just need the political will and investment to do it.