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To: Barilaro_Office_Email
Subject: Letter from the Hon. Rob Stokes MP, Minister for Planning and Public Spaces
Attachments: Letter to the Deputy Premier - Koala Habitat Protection SEPP.pdf

Dear Deputy Premier,

Please find attached letter from the Hon. Rob Stokes MP, Minister for Planning and Public Spaces.

Kind Regards,
Loretta

Office of the Hon Rob Stokes MP
Minister for Planning and Public Spaces



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The Hon. Rob Stokes MP
Minister for Planning and Public Spaces

The Hon John Barilaro MP
Deputy Premier
Minister for Regional New South Wales, Industry and Trade
Member for Monaro
GPO Box 5341
SYDNEY NSW 2001

Via email:

Dear Deputy Premier

Thank you for your ongoing, constructive engagement as we seek to finalise the new Koala Habitat Protection SEPP and Koala Habitat Protection Guideline.

Koalas face a wide range of threats and are suffering long term population decline. The SEPP aims to ensure a permanent free-living population of koalas over their present range and reverse the current trend of koala population decline by protecting against the loss and fragmentation of their habitat.

Protecting Koalas is not just vital on private lands. Through the NSW Koala Strategy, the Government is also working to protect koala habitat on public lands and has committed to:

- \$20M to purchase land with priority koala habitat to add to national park estate
- Transferring 24,000 hectares of unproductive state forests to management of NPWS
- Investing, through Saving Our Species, on improving outcomes for threatened species, including on the national park estate.

So far, the Government's strategy for public land has protected 7,918 hectares of koala habitat including:

- 3,613 hectares of land purchased
- 4,051 hectares of State forest transferred to the national park estate
- 254 hectares of private land covered by new conservation agreements with the NSW Biodiversity Conservation Trust.

The 2008 *Recovery Plan for the Koala* recommended reviewing and updating the old Koala SEPP in line with modern science. The Chief Scientist has also recommended that Government improve outcomes for Koalas through changes to the planning system.

The Koala SEPP review process has involved extensive consultation and I have sought to minimise impacts on landholders wherever possible. To this end, the draft Guideline has undergone significant change since the version released in March in consultation with your office and stakeholders.

We have already addressed the issues raised to date and will make further significant changes to the SEPP and the Guideline following your representations, including:

- Removal of the Pink 'DA map' to reduce confusion and revert to a survey process which existed under SEPP 44;
- Ensuring landholders have clear consultation and dispute pathways during the KPOM making process, including the option of requiring council undertake a survey at council expense where the landholder disagrees with the proposed application of core koala habitat;
- Ensuring only those parts of a parcel of land likely to be impacted by proposed development are subject to the DA survey requirements, and not the entire landholding;
- Strengthening LLS's consultation role so that all LLS suggestions and comments are incorporated into the decision-making process by the Secretary before any KPOM can be made;
- Introduction of a DA pathway for developments with low or no impact on koala habitat that does not require any survey to be undertaken;
- Extension of the timeframe for landholders to challenge any draft core koala habitat designation on their land;
- Aligning the survey methods to be used by councils and landholders to make the process more transparent and easier to understand.

Further, as I have previously indicated, Planning officials would welcome the opportunity to work with Regional NSW on a proposal to decouple PNF and the LLS Act from the Koala Habitat Protection SEPP on the basis that robust protections for koala habitat are included in the LLS Act.

In relation to your most recent representations I provide the following responses:

1. *Revise the definition of core koala habitat*

The definition requires koala presence OR highly suitable habitat AND a koala record (assessed by a suitably qualified person). If the area is capable of sustaining koalas AND there is a record of koala presence over the last 3 generations (18 years), then koala presence has been established.

A strict requirement for koala presence as part of the definition of core koala habitat would prevent areas affected by last summer's devastating bushfires from being designated core koala habitat and could adversely impact the recovery of koala populations.

The inclusion of an 18-year limit on Koala records also introduces a new limitation on the definition of core koala habitat in line with international standards and ensures that decades old records with little relevance to current koala populations cannot be used, as was the case under SEPP 44.

If a deceased koala has been spotted in the area and the area contains highly suitable habitat, then koala presence in the area is clearly established. Koalas are notoriously difficult to detect live, even via expert survey. Finding a deceased koala is strong evidence the area is koala habitat and likely contains other koalas. In addition, if the area contains records of deceased koalas, there is likely an interface between human activities and koala habitat (such as roads), and so it is important to allow the area to be recognised as koala habitat with appropriate controls if necessary.

I note the suggestion that Koala records be limited to records on an individual landowners' property, and not records of Koalas on adjacent land. The challenge here is that Koalas are nomadic animals

and obviously don't recognise boundary fencing, so limiting Koala records to individual properties would not be a scientific approach.

In relation to Bionet records, the use of rankings 1-5 is consistent with other Government policy, including, for instance, the Private Native Forestry Code of Practice for Northern NSW. I do however agree that records from a 2006 community survey with an insufficiently accurate survey distance should be excluded for the purpose of the SEPP and Guideline and I have therefore acted to ensure those records are not included, as suggested.

2. *Revise the list of koala tree species*

A recent review of the scientific literature "A Review of Koala Tree Use Across New South Wales (2018)" identified 137 tree species used by Koalas.

In 2019, consultation with Koala experts led to the list being refined to 123 species. These 123 species were categorised into 9 distinct regions (Koala Management Areas), according to what trees koalas prefer to use in various areas. The number of species used regionally by Koalas ranges from 9 in the Riverina region to 65 in the Central Coast region. This represents the most contemporary science. The largest number of tree species in any one area is 65, not 123.

While there is good consensus on which trees koalas use in a particular region, there is less consensus on the rankings – particularly at ranks 3 and 4. For some local areas within a region, a rank 4 species may be important. All the trees listed in Schedule 2 of the SEPP can form koala habitat. Its full inclusion in the SEPP will help ensure the full range of potential koala habitat in NSW is considered in the application of the SEPP with added scrutiny and expertise provided by the suitably qualified person engaged to either develop a Koala Plan of Management or survey land subject to a Development Application to establish it if contains core koala habitat.

It is important to note that the tree list included in Schedule 2 of the SEPP does not operate in the same way as koala use trees operate in the Biodiversity Offset Scheme, Private Native Forestry and state forestry (IFOA). Under those frameworks, the tree lists are used as tree species retention guides. Under the SEPP, the tree list is used to establish through surveys whether a site is likely to contain habitat that may be suitable for koalas.

3. *A clear and reasonable definition of highly suitable koala habitat*

SEPP 44 did not have a 30% threshold of relevant tree species. The threshold was 15% for potential koala habitat. This percentage has been carried across to the new Koala SEPP's highly suitable habitat.

Increasing the threshold to 50% could, in some regions, exclude up to 75% of sites where koalas are known to occur. EES survey data of occupied koala sites found that:

In the Southern highlands/Wollondilly region:

- a 15% threshold would exclude 9% of sites where koalas are known to occur
- a 50% threshold would exclude 75% of sites where koalas are known to occur

On the South coast:

- a 15% threshold would exclude 1% of sites where koalas are known to occur
- a 50% threshold would exclude 25.9% of sites where koalas are known to occur

4. *A clear definition of a forest or woodland so individual trees are not captured*

I agree that the capture of individual trees would be beyond the scope of what the Koala SEPP is seeking to achieve. I am therefore pleased to advise that it is not possible under the proposed framework for the presence of single trees to lead to land becoming designated as core koala habitat.

Accordingly, it is not necessary to define these terms and doing so would have unintentional policy consequences.

The Guideline contains a minimum number of trees to use when surveying for core koala habitat, in order to derive a statistically meaningful concentration of trees.

5. *Local councils must be required to undertake on-ground surveys in areas of proposed core koala habitat on private land*

I agree that it is important for councils to conduct on-ground surveys. In addition to the surveys councils will undertake as part of developing a KPoM, landholders will be able to request council survey their land, at council expense, if they disagree with the proposed designation of their land as core koala habitat.

This focuses surveying resources on areas where there is disagreement. Requiring councils survey every parcel of land could add several years and several hundred thousand dollars to the KPoM process.

6. *The costs of survey work must be borne by local councils, including costs associated with an independent survey commissioned by a landholder*

As outlined above, revisions to the draft Guideline contain a new provision to allow landholders to request council conducts a survey of their land if it is proposed to be designated as core koala habitat in a draft KPoM.

Utilising council's ecologist is a more efficient use of ratepayers' money and would prevent 'ecologist-shopping'. Landholders are, of course, able to commission their own ecologist at their own expense.

7. *Councils must be required to amend areas of core koala habitat based on landholder surveys provided these are consistent with methods in the Guidelines*

A clear dispute resolution process has been established for circumstances where council and landholders disagree over the designation of land as core koala habitat.

Councils are required to provide information relating to KPoM submissions challenging the application of proposed core koala habitat, when submitting the KPoM to the Department for approval. Councils must provide this information (such as a landholder-commissioned survey) and a justification for their decision to incorporate or not incorporate this information in the final draft KPoM.

This information will form part of LLS' consultation role prior to the Secretary making any decision on the KPoM.

8. *The survey methods must be the same for landholders and Councils and be clearly set out in the Guidelines.*

I agree that survey methodology should be the same for landholders and council. The draft Guideline will be revised to reflect this.

9. *Rural regulated land and agricultural production should come under the land management framework, operating outside of the SEPP. Existing agricultural use must be allowed to continue, even where koalas are present, highlighting that koalas and agriculture can co-exist.*

The aim of the SEPP is to reverse the decline of koala population in NSW. Excluding RU zoned land from the SEPP would exclude more than 80% of the land in each LGA, on average, that the SEPP

currently applies to. The SEPP would be ineffective if it only applied to a small portion of land in each LGA.

The development of koala plans of management and identification of core koala habitat has been the pathway for identifying koala habitat that is sensitive regulated lands since the LLS Act amendments and Code commenced. This was agreed by Cabinet in 2015/16 as part of the land management reforms.

The SEPP does not prohibit agriculture uses from continuing, even if the land is core koala habitat.

10. *There has already been in-principle support for a decoupling of private native forestry from the koala SEPP. This is consistent with recommendation 7 of the Biodiversity Review report which says PNF should not be treated as land use change. Currently certified PNF plans cannot be overrun by any expansion of a KPoM, and Minister Marshall's current Cabinet submission proposes removing dual consent for PNF plans.*

The Department of Planning has provided comment on the proposals to decouple the Koala SEPP from PNF Codes of Practice/LLS Act. Before activities such as PNF and agriculture are decoupled from the Koala SEPP, LLS need to provide details about how koalas will receive robust protection under the LLS Act.

If a KPoM were to be 'expanded', this would be subject to the rigorous new consultation requirements of the SEPP, including contacting every landholder with proposed core koala habitat to provide an opportunity to dispute the designation, and referring the KPoM to LLS before approval. These checks and balances did not exist under the old SEPP 44.

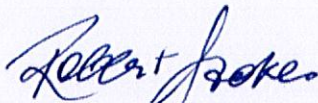
11. *There could also be consideration given to compensation payments for landholders adjoining areas deemed core koala habitat, to provide incentives for suitable habitat to be set aside. This could be co-ordinated through a Forest Management Trust overseen by Local Land Services.*

I would be pleased to support the investigation of establishing such a funding mechanism. Future consideration of such a proposal would be more appropriately considered through the NSW Koala Strategy rather than the planning system, but I would be supportive of any approach by LLS to consider such a policy.

I trust that this information clearly sets out the efforts made to reduce impacts on landholders while still ensuring the Koala Habitat Protection framework provides the necessary protections for koalas. I will ensure that the draft Guideline is further updated to reflect the commitments outline above.

I look forward to finalising the Koala Habitat Protection SEPP and Guideline to provide certainty for landholders industry and councils, and to ensure impacts on koalas are appropriately considered in the planning system.

Yours sincerely



The Hon. Rob Stokes MP
Minister for Planning and Public Spaces