

INQUIRY INTO THE PERFORMANCE OF THE NSW ENVIRONMENT PROTECTION AUTHORITY

NEFA response to Supplementary questions

Dailan Pugh, 24 November 2014

1. The EPA stated in its submission (on page 235) that process improvements for engaging with stakeholder allegations, especially in complex cases and that is now in place. Does NEFA have any comment on this?

NEFA remain uncertain as to what these process improvements are. We are not aware of any improved engagement and remain frustrated with current processes. Neither are we aware of any improvements in their handling of our complaints, or the outcomes. We do not recollect seeing any documentation of this.

The only “improvement” they claim to have made to us is to present complaints in a tabular form and to liaise with complainants to make sure all their complaints are correctly recorded. Even this is poorly implemented.

We find their prioritisation policy a farce, as shown by their handling of claimed priorities at Royal Camp - their response to Hollow-bearing and recruitment trees was inadequate, and they ignored Yellow-bellied glider sap-feed trees and Bell Miner Associated Dieback.

For 2013–14 the EPA identified hollow - bearing and recruitment trees, Koalas and forest health as compliance priorities. For the Upper North East their six proactive audits found poor selection and inadequate protection of hollow-bearing trees and recruitment trees, and that Koala mark-up searching was not adequate. The EPA’s response was for “voluntary corrective actions” and no investigations were undertaken. The only action they took for Forest Health was to report any Bell Miner Associated Dieback they came across to the Forestry Corporation.

NEFA is not aware of any meaningful improvements in engagement as an outcome of Royal Camp. Part of the problem being that the EPA themselves did not admit to most of the procedural failings we complained of.

2. You have advocated in your submission for an independent mechanism to investigate complaints against the EPA. What might a mechanism look like?

NEFA considers that Royal Camp exemplifies the recurrent problem of the EPA’s failure to deal with many of our complaints in a professional or just manner, and the failure of their internal review processes to deal with our complaints about them. These are common concerns across our alliance. A year ago we were very concerned with the EPA’s handling of a private property operation at Whian Whian, though these concerns remain outstanding while we await their responses to our audit.

NEFA considers there needs to be an ability to obtain independent scrutiny of EPA decisions and processes. NEFA recommends appointing an Environmental Ombudsman. They would sit independent of the EPA and all environmental regulators and be empowered to investigate all environmental regulators (i.e. EPA, OEH, Trade and Investment, Department

of Planning). and any other regulatory authority that has responsibility for environmental regulation of sorts, and to make recommendations in relation to the regulators performance.

The over-arching objective of the Environmental Ombudsman should be as a guardian of the environment and to be guided by the principles of ESD. To be effective the office of an Environmental Ombudsman would need to be capable of evidenced based scientific and objective investigations as well as having policy functions to make recommendation regarding policy and law reform. It could sit within the office of the NSW Ombudsman.

An Environmental Ombudsman is needed as an independent arbitrator to consider appeals against the EPA's actions or lack of action. It is needed to hold the EPA to task.

3. Your submission calls for a transparent and repeatable process and criteria for identifying and protecting koala habitat. In your view, what would this entail.

NEFA supports that targeted, systematic and on-going programs of Koala survey and monitoring be established and extended across all land tenures to establish the status and character of populations throughout the mapped sub-populations, regional populations and meta-populations

The identification of Koala habitat should be undertaken by OEH with the aim being to systematically map core Koala habitat across all tenures. It needs to be undertaken independently of the Forestry Corporation (habitat mapping should not be perverted by timber allocations). This should be overseen by a panel of experienced Koala experts to agree methodology, identify priorities and review products. The process should be open and transparent, with the methodology open to review.

The initial step should be to prepare a map identifying likely Koala habitat and priority areas for refined mapping. Such mapping should be broad and indicative. This could be achieved by expert review of existing habitat mapping and modelling, vegetation mapping, abiotic data and records. The Forestry Corporation should provide all their scat records and Koala High Use Areas.

The mapped likely Koala habitat and priority areas should be targeted for more detailed mapping. This would require development of a clear, transparent and repeatable methodology for accurately mapping Koala distribution and core Koala habitat at a landscape scale. This would likely involve systematic scat searches, targeting preferred habitat, and habitat modelling. The intensity of sampling required, methodology and modelling should all be under the guidance of the expert panel. This should be capable of being applied across a few properties or whole catchments.

The field work and mapping should be undertaken by OEH, or consultants engaged by them. It is apparent that the sampling methodology, and triggers for more intensive sampling, would need to be explicitly identified. The identification of core Koala habitat needs to be an outcome.

Application of a consistent methodology would enable comparisons of areas and ongoing monitoring. The aim should be to complete regional mapping, though there will need to be a prioritisation process.

For forestry the mapping needs to be able to be applied across a single State Forest, or part of one, or a group of properties. The aim should be to have all likely Koala habitat subject to detailed mapping to identify core Koala habitat before an area is logged.

In the interim, NEFA considers it important to ensure that pre-logging Koala Mark Up Searches and the delineation of Koala High Use Areas are undertaken independently of the Forestry Corporation. The intent should be to identify and protect the full extent of any High Use Areas found. This should not be limited to the small fragments currently protected, but rather attempt to encompass the full extent of occupation around any high use tree.