

Submission
No 152

**INQUIRY INTO KOALA POPULATIONS AND HABITAT IN
NEW SOUTH WALES**

Organisation: Byron Shire Council

Date Received: 5 August 2019

Partially
Confidential

Koala population and habitat inquiry info for submission to NSW Legislative Council

This submission to the Portfolio Committee No. 7 for the *Inquiry into koala populations and habitat in New South Wales* has been undertaken by Karen Love, Environmental Research and Ecology Officer at Byron Shire Council, Mullumbimby, NSW, 2482. This submission is on behalf of Council staff and has not been endorsed by Byron Shire Councillors. Given the extent of the inquiry and limited timeframe, this small submission comments only on the following terms of reference;

1. (b) the impacts on koalas and koala habitat from:
 - a. (ii) the Private Native Forestry Code of Practice
 - b. (iv) the 2016 land management reforms, including the Local Land Services Amendment Act 2016 and associated regulations and codes.

2. (c) The effectiveness of State Environmental Planning Policy 44 – Koala Habitat Protection, and the *Biodiversity Conservation Act 2016*; including the threatened species provisions and associated regulations in protecting koala habitat and responding to key threats.

Please note that the specific examples contained within the 2016 land reforms and SEPP 44 are strictly confidential and are not to be published.

(b) Impacts on koalas and koala habitat;

(ii) Private Native Forestry Code of Practice

The Private Native Forestry (PNF) code of Practice is a significant concern for local government and communities throughout the Northern Rivers Region. Key issues with the PNF code include;

- PNF operations are most commonly located in areas of high local and regional ecological significance including koala preferred habitat;
- An existing and ongoing increasing trend for lifestyle occupation and use of lands, as opposed to agricultural uses in the region;
- PNF operations can have a significant impact on local infrastructure and commonly occur in locations where the existing infrastructure is not suitable or appropriate;
- Code assessable impact assessment does not satisfactorily address the significance attributed to ecological values through legislation and policy by local communities in the region;
- The burden of poor implementation of the scheme often falls to local government without a corresponding opportunity to have input to the assessment of proposals for PNF operations that reference to local planning and policy instruments.

The basic premise of the Code, whereby broad-scale clearing for the purpose of PNF is assessed as improving or maintaining environmental outcomes is flawed as;

- a. Complying with the requirements of the PNF code is unable to be definitively or objectively assessed

- b. A one-size fits all approach is inappropriate and inadequate for Plant Community Types (PCT) within our region given the high biodiversity range often found within a small scale - where one property may have a number of PCT and therefore the impacts of clearing are unable to be adequately assessed.
- c. There is no evidence that sufficient or appropriate monitoring or compliance is undertaken to ensure that regeneration after clearing occurs as required by this fundamental premise of the Code, thereby conflicting directly with our local planning instruments.
- d. The identified standards for determining known records or site evidence of threatened species are inadequate and inconsistent with the standards required of comparable land use proposals for other development proponents.
- e. Assessments of a PNF Property Vegetation Plan (PVP) by the NSW government is inappropriate without direct reference to local government policies and plans, particularly regarding mapped koala habitat and plantings that have been funded on private property by public funds.
- f. The current scheme does not provide sufficient information to the relevant local government authority to support Council in addressing the inevitable community enquiries and concerns regarding PNF operations. Nor does it provide shape files to be incorporated into Council mapping facilitating strategic planning processes and identification of wildlife corridor impacts.

The current PNF Code of Practice for Northern NSW and its application is inconsistent with the aim of both *State Environmental Planning Policy No. 44 – Koala Habitat Protection* (SEPP44; s. 3) and the *Environment Protection and Biodiversity Conservation Act 1999*. It actively evades assessment processes detailed in Comprehensive Koala Plans of Management (CKPoM's) for individual local government areas, and those required under the EPBC Act.

Identification of koala food tree species, high use koala trees and areas of significant koala habitat for the purposes of informing PNF PVP assessments should be made with reference to contemporary data and literature. This should include approved CKPoM's, local government strategies and all current available research or studies. This will ensure critical consideration and comprehensive knowledge of koala habitat requirements that is inclusive of all food and high use tree species as defined by the recent report from OEH 'A review of koala tree use across NSW' (2018).

Mitigation:

Refer to the PNF review submission from the NRJO dated 13 February 2019.

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

Under the LLS Act 2013 – Schedule 5 A – Allowable activities clearing of native vegetation, Part 3;

- Landholders are authorised to clear native vegetation of up to 15m wide for rural infrastructure without assessment, in the Coastal zone. This means that koala habitat and corridors are able to be fragmented and degraded outside of legal recourse and control by local authorities, relying on community members to report any such clearing.

- One such property, cleared for a fence line within two Threatened Ecological Communities (Figure 1), mapped Koala habitat identified by Byron's CKPoM (Figure 2), and koala sightings on the property listed in Bionet (below).
- The clearing was reported by a member of the community and Council has sought and is still awaiting legal advice on the compliance issues regarding application of the *LLS Act 2013* to the clearing. This type of uncertainty is a direct result of recent land management reforms where landholders, members of the public and local government are unsure of which instrument applies to rural land.
- The only protection afforded koala habitat under the *LLS Amendment Act 2016* (where the land isn't mapped as Category 2-Vulnerable Regulated Land and therefore clearing can be no more than 6m wide), is where plantings for koalas exist and have been funded by public monies (Part 2, 17, (2) below):

(2) Clearing for that purpose is not authorised if the native vegetation was planted with the assistance of public funds granted for any purpose other than for forestry purposes.

Figure 1: Clearing occurred along northern boundary of property with four Bionet records for Koala on-site (yellow and red circle) and 14 Bionet koala records within close proximity (left).

Figure 2: Yellow indicates Byron's CKPoM Koala preferred habitat on the same property (below). Please note that this property is adjacent to a nature reserve to the east.

Figure 3: Cleared habitat (left)

In essence, Schedule 5A Part 3 offers zero protection for Koala habitat in this case, as the clearing occurred outside of the EP & A Act on land that isn't mapped on the Native Vegetation Regulatory Map or the Biodiversity Values Map. In addition, as our CKPoM was not approved by the Department (see below), the definitions of 'core habitat' and 'potential habitat' are reliant on the old SEPP 44, which is ineffectual and irrelevant to our Coastal Koala populations.

E zone review processes

In addition, the process required of Northern Rivers Councils to undertake E zone review has resulted in our most ecologically sensitive and important areas being without protection under the current LEP 2014 as they remain in Deferred Matter (DM). This outcome seems perverse and counter-intuitive to the objectives of Environmental Zones where *'the primary use of the land is for environmental conservation'*. Utilising the above clearing example, please note its zoning under the LEP 1988 is 7(k), yet currently the property is in DM (below).

Figure 4: LEP Zoning on cleared property example from above (left).

As noted earlier, the property is adjacent to a Nature Reserve in the East and also forms crucial habitat for the critically endangered Tweed-Byron Coastal Koala population that numbers approximately 140 individuals. This population is distinct and separate as determined through DNA testing. It is critically endangered as the number of individuals within this group falls below a viable population; therefore any impact on its habitat is of the highest importance across two LGA's.

Mitigation measures:

As far as I can see there aren't any mitigation measures that will over-ride the *LLS Act 2013* other than identifying all properties with restoration activities that have been undertaken with public

funds, or properties that have had restoration undertaken as part of a Part 4 approval under the EP & A Act 1979.

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

State Environmental Planning Policy 44 – Koala Habitat Protection

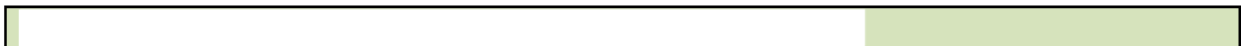
The Byron Coast Comprehensive Koala Plan of Management (CKPoM) was adopted by Byron Council on 4 August 2016. Submitted to the Director of Department of Planning and Environment (DPE) on 2 September 2016, Council was advised (6 December 2016) that the DPE were unable to approve the CKPoM in its current form, because it did not 'comply with the requirements of a Comprehensive KPoM under SEPP 44. The DPE recommended that Council adopt the CKPoM as a 'Koala Strategy' and await the outcomes of SEPP 44 review before seeking DPE approval, given that the review would address some of the identified issues.

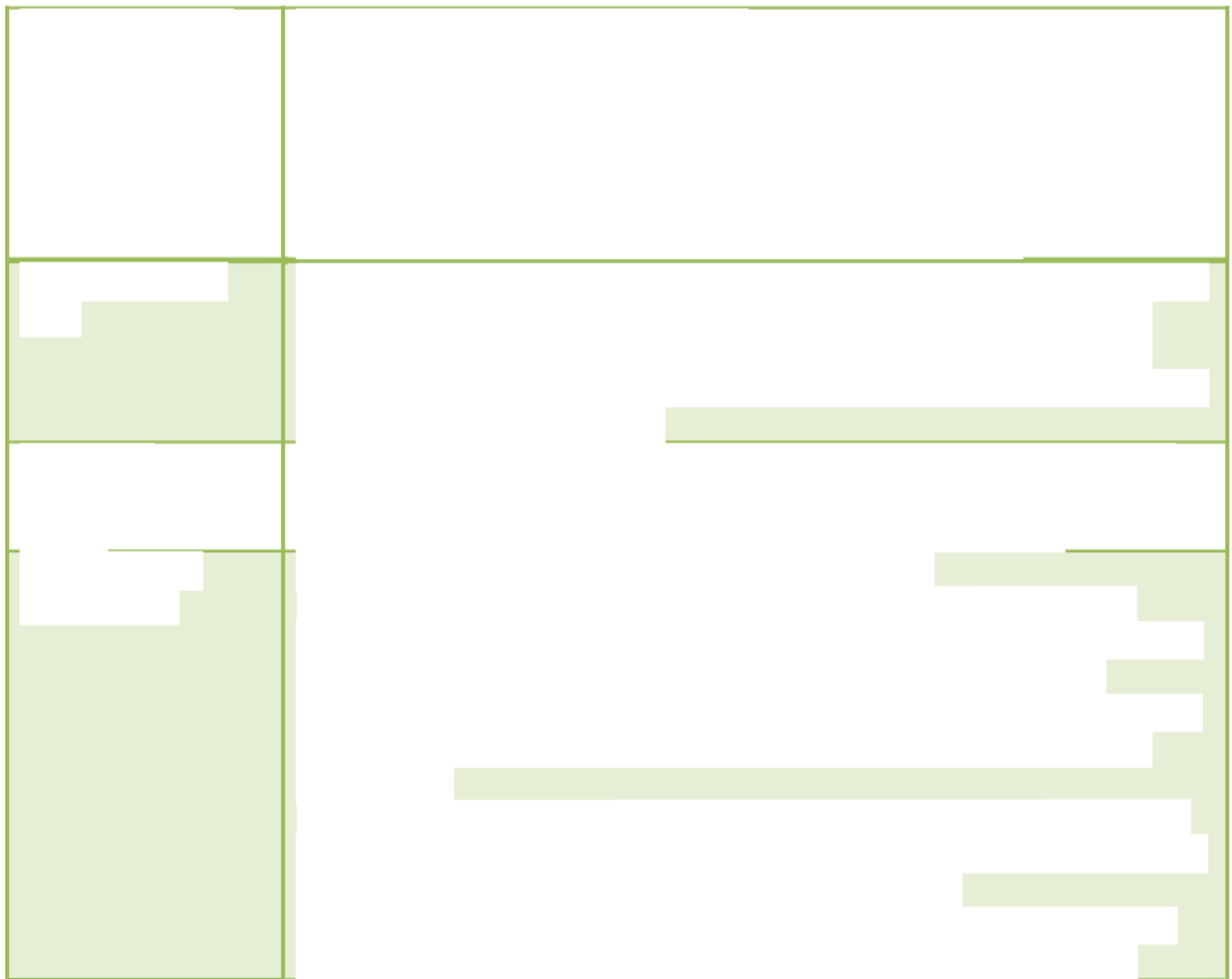
As a result of the SEPP 44 review still not being finalised, Byron's CKPoM remains an adopted strategy without the weight of the SEPP behind it. Further, the majority of issues with our CKPoM relate to the definitions of 'core and potential habitat' as well as the inclusion of Shire specific koala food trees. These issues have had the flow on affect of preventing the adoption of a Biodiversity DCP under the LEP 2014 as appropriate definitions of koala habitat will apply. In addition, any KPoM that has since been approved (e.g. Blues Fest) has not only the defined habitat attributes as per the old SEPP 44, but also the limited and insufficient Koala food trees at its base. It therefore follows that the definitions and trees are ineffectual and incorrect and further, will require updating once the SEPP 44 review is finally complete.

Given the high rate of development within our Shire, the >1 hectare trigger to consider SEPP 44 is also irrelevant and ineffectual. It is noted that this size trigger has been a point of contention since 2010, and yet it remains. As we have numerous urban and semi-urban koalas within our landscape (Bangalow, Mullumbimby, Ewingsdale, Myocum, Sunrise, Suffolk Park etc.), fragmentation and cumulative impacts across properties that are able to be developed have, and will lead to, a further decline in koala habitat incrementally over the long-term.

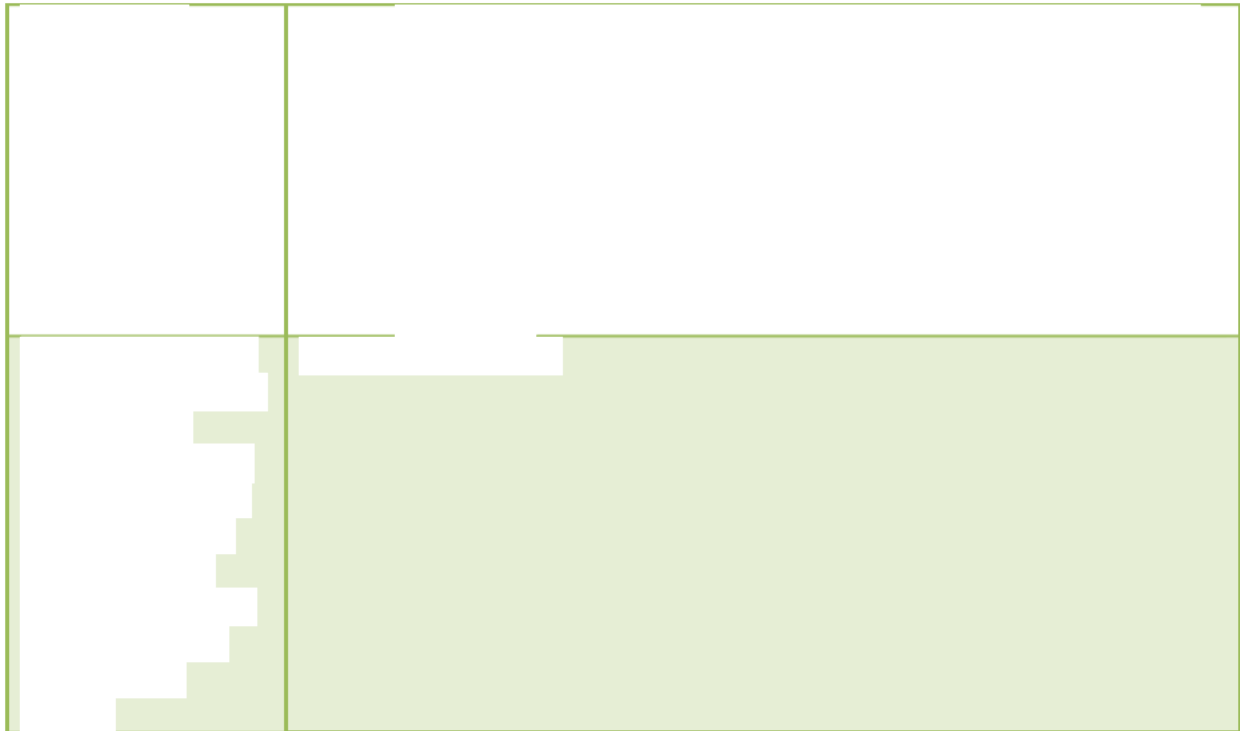
Mitigation:

Please refer to recommendations within the 'Submission on the review of the Koala SEPP' prepared by EDO NSW, dated January 2017.





<p data-bbox="193 483 443 593">[REDACTED]</p>	<p data-bbox="568 450 1398 560">[REDACTED]</p> <p data-bbox="632 600 1398 710">[REDACTED]</p> <p data-bbox="991 710 1398 819">[REDACTED]</p> <p data-bbox="1031 819 1398 920">[REDACTED]</p>
<p data-bbox="193 1189 443 1299">[REDACTED]</p>	<p data-bbox="467 1245 1409 1299">[REDACTED]</p>
<p data-bbox="193 1648 443 1758">[REDACTED]</p>	<p data-bbox="568 1547 1398 1657">[REDACTED]</p> <p data-bbox="632 1657 1398 1767">[REDACTED]</p> <p data-bbox="711 1767 1398 1877">[REDACTED]</p> <p data-bbox="1062 1877 1398 1986">[REDACTED]</p>



Mitigation:

1. Complete the review of SEPP 44 to enable correct identification of koala habitat as a matter of priority. This will enable;

- all CKPoM's to be updated and authorised by the DPE
- the correct identification and mapping of Koala habitat within Councils databases
- the correct identification and mapping of wildlife corridors
- clearly identified protocols for future developments.

2. That any future KPoM's be prepared by suitably qualified experts and that the Department keep and maintain a register of these consultants.

Biodiversity Conservation Act 2016

Under the *Biodiversity Conservation Act 2016*, mapped values do not include the correct Plant Community Types for Koala, therefore the impacts on Koala habitat and koala are unable to be adequately assessed within the Biodiversity Assessment Method (BAM). In addition, the following issues are identified;

1. The underlying data set for the North Coast Plant Community Types (PCT) are inadequate due to the absence of PCT specific to the North Coast. Until such time as these PCT are incorporated into the offset calculator;

- *All reports and offset requirements will be deficient and incorrect requiring Council to rely on their DCP.*

2. The biodiversity offset scheme (BOS) allows a developer to enter into a monetary agreement, where the required offset can be paid for through contribution (at a set value) into the Biodiversity Conservation Trust. This will allow;

- A biodiversity offset outside of the Shire resulting in a *net biodiversity loss* on the site and also within the Shire.
- The formation of an ideology that offsets *can be paid for* and therefore the need to avoid and minimise will come down to a dollar value - easily paid for by the escalating value of land within our Shire.
- Inconsistent and inappropriate offsets in other regions or Shires that may not necessarily require or need them.

3. Biodiversity Certification is by far the largest loophole within the Biodiversity Conservation Act because;

- Once certified, all offsets for the development have been met and the land becomes 'exempt' under the LLS Act, and further, is also removed from Vegetation SEPP requirements.
- **Can only be conferred by the Minister** which means that even if there are Serious and Irreversible Impacts on a Threatened Species or Ecological Community, it can still become certified and the impacts from the development are seen to be offset. This certification is only exhibited by OEH for 30 days for public submissions, where Council may have a say.

4. Assessors undertaking the Biodiversity Assessment Method (BAM) can easily manipulate;

- The type and amount of offset requirement due to sampling the most degraded part of land and also by applying the wrong PCT
- Threatened Species presence or absence through 'justification' within the document thereby reducing the offset
- The value of a Threatened Ecological Community through 'adjusting' the amount of High Threat Weeds on-site.

5. Accreditation requirements for Assessors *excludes* most Council employees (the regulatory authority for Part 4 developments) due to the required survey component of accreditation.

Information regarding this component was supplied by the BAM accreditation team as follows:

"As a guide approximately 50 days over the last three years of plant based field work, involving plots, quadrats and transects is considered reasonable".

This results in an inability to check the offset calculations as it is only accessible to Accredited Assessors, thereby excluding the regulatory body.

6. The BAM survey methodology is too large for the North Coast PCT as it has a sampling length of 50m. On certain sites within the Shire, applying that length could easily cross 2-3 PCT on one property resulting in an incorrect PCT and offsets.

Summary

There is little confidence on the North Coast that this legislation is worthwhile or valid given;

- PCT base line data is incorrect,
- BAM survey size is inappropriate,
- Council staff are excluded from the Accredited Assessor calculator and therefore are unable to check offsets
- Offset payments enable *net biodiversity loss within the property and Shire*
- Biodiversity certification enables the Minister to allow *Serious and Irreversible Impacts* to Threatened Species and Ecological Communities.

In addition, the time and cost of producing the BAM reports for a flawed result seems irrational, particularly where Council has right to refuse and or add additional measures where it sees fit.

Mitigation:

- 1. Update the PCT for the North Coast immediately or, delay BDAR's for the region until such time as they are included into the Biodiversity Offset calculator.**
- 2. Allow Council staff who have undertaken (and passed) the Accredited Assessors course special access to the correct BOS calculator in order to check the calculations.**
- 3. On the North Coast, the survey method should be augmented to an appropriate size.**
- 4. Allow Council to have some input into any Biodiversity Accreditation sites.**

Karen Love, Environmental Research Officer & Ecology, Byron Shire Council.