

**Submission
No 156**

INQUIRY INTO KOALA POPULATIONS AND HABITAT IN NEW SOUTH WALES

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Legislative Council of NSW
Portfolio Committee No 7: Planning and Environment

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Inquiry into koala populations and habitat in NSW

Introduction

This Inquiry provides a valuable opportunity to review legislation and current practices which clearly aren't achieving the important objective of protecting an iconic Australian animal, the koala. We hope the Committee's findings and recommendations persuade the NSW Government to amend the Koala SEPP and relevant legislation, and to develop state-wide koala protection strategies that ensure healthy koala populations recover and flourish both in NSW generally and specifically in Port Stephens.

We note that the NSW Chief Scientist reported in 2016¹ and identified many of the problems that are leading to a serious risk to the State's remaining koala populations. It is clear that many of the recommendations of that report have not yet been accepted or implemented, which is a serious indictment of government inaction over the last 3 years. Contrary to the recommendations, protections have gone backwards and the risk has increased.

EcoNetwork-Port Stephens is a network of 25 affiliated community and environmental groups, and has a long history of lobbying for better environmental protection in the local area and wider Hunter region.

We strongly support the more detailed submissions from some of our affiliates – specifically those from Port Stephens Koalas, and from the Mambo-Wanda Wetlands Conservation Group. These submissions give specific local examples of the common problems identified in all three submissions.

Please acknowledge receipt of this submission. We have no objection to publication, without any redaction.

We urge the Committee to hold a public hearing in the Lower Hunter region, preferably in Port Stephens.

Extent of Habitat and Fauna Loss

The management of koalas in Port Stephens is supposedly facilitated by the Port Stephens Comprehensive Koala Plan of Management (PCKPM) 2002. Regrettably this Plan, and the mapping

¹ Report of the Independent Review into the Decline of Koala Populations in Key Areas of NSW, NSW Chief Scientist & Engineer, December 2016

it includes, is now hopelessly out of date. Work is currently under way by Council to update the Plan, informed by local studies and State government reports.

The status of koalas in Port Stephens has deteriorated to such an extent that koalas are now listed as vulnerable and the current population was eligible for listing as endangered.² This results from the pressure from increasing population and the consequential expansion of badly planned housing development and infrastructure in Port Stephens, leading to deaths from road traffic and dog attack as well as threats to the viability of local koala populations from loss of suitable minimum scale areas of habitat.

The NSW Scientific Committee listed constraints on the growth and free movement of the koala population in the Port Stephens area as:

- The 4-laned Pacific highway
- The Hunter and Karuah Rivers which are more than 50m wide and therefore prohibitive for koalas to cross
- Current and projected developments now being considered on 500ha of preferred koala habitat and 700ha of supplementary habitat
- Increased wild fire frequency

Our local experience follows a state wide and national trend. In a Briefing Note, World Wildlife Fund has predicted that:

*'Koalas are on track to face extinction in NSW as early as 2050 based on current trends and expert knowledge, without a significant reduction in tree clearing, mitigation of climate change and major expansion of protected areas.'*³

Over the thirty years that the local volunteer rescue organization Port Stephens Koalas has been operating it has seen a gradual decline in numbers from an estimated 800 to less than 100 - 200 today. These figures are supported by the NSW Scientific Committee Preliminary Determination that also named the towns of Raymond Terrace, Medowie and Tomago as areas where koala numbers are now scarce or completely absent.

In 2018, the Scientific Committee found itself unable to confirm its proposed listing of the Port Stephens koala population as endangered *'because the State Government's new laws stripped its power to classify populations as endangered. While listing of endangered populations used to provide triggers for extra investment and a recovery plan for a species, it is no longer possible as a result of changes to the law.'*⁴

However, the 2017 Committee's preliminary report in 2017 had found that:

- *'habitat had become highly fragmented due to clearing for agriculture, housing, sand mining and roads. New developments proposed in the area would take in more than 1200 hectares of koala habitat.*
- *the Tomaree koala population would decline to extinction within a decade at the current mortality rate.*
- *the total number of koala deaths from vehicle strikes was likely to be even larger than the officially reported number; and*

² NSW Scientific Committee, 2017 Preliminary Determination under the Threatened Species Conservation Act 1995.

³ <https://www.wwf.org.au/ArticleDocuments/351/pub-Koala-extinction-risk-NSW-28sept18.pdf.aspx>

⁴ Port Stephens Examiner, 24 August 2018, <https://www.portstephensexaminer.com.au/story/5606573/port-stephens-koalas-could-be-extinct-within-a-decade/?cs=762>

- *Continuing decline is anticipated as only 36 per cent of core koala habitat is found within reserved land.’⁵*

In the relatively recent past, Port Stephens has had healthy koala populations at Anna Bay, Tomago/Williamstown/Salt Ash, the Tilligerry peninsula (Mallabula/Lemon Tree Passage) and north-east of Raymond Terrace (an area now referred to as Kings Hill).

A 2019 study for Port Stephens Council identified 3 areas ‘most likely to be supporting extant koala hubs’ – Kings Hill, Tomago and Medowie.⁶ Hubs are defined by the presence of a minimum of 3 consecutive koala generations in one area (a ‘generational persistence area’ or GPA).

Regrettably, the belated identification of these 3 possible hubs may have come too late – all are under major pressure from development of new housing, or in the case of Tomago, of industry. Large areas of bushland have been and will continue to be cleared in Medowie, Kings Hill and Mallabula as new developments already approved, or on land already zoned for development, are built. Some areas, such as Tomago, Medowie, Mallabula and the Mambo wetlands have also been badly affected by bush fires in recent years. There appears to be a consensus that only the Anna Bay and Kings Hill areas, and perhaps Lemon Tree Passage, currently support viable koala populations in the long term, although it is hoped that radically improved laws and policies could bring other areas back into contention.

The threat to the local koala population, and the valuable role of Port Stephens Koalas, have been recognized by Port Stephens Council and the NSW State Government who have together provided significant funding for a Koala Sanctuary and Hospital at One Mile Beach, between Anna Bay and Nelson Bay.

While this is a welcome initiative, it will be ineffective in stabilizing the local koala population unless the threats to viable habitat are addressed. These threats are compounded by failures of the planning and environmental protection laws and systems.

Problems with the operation of the development assessment and approval system.

The Planning system in NSW, governed by the Environmental Planning and Assessment Act 1979, is very poorly designed to address environmental protection, including protection of habitat for threatened or endangered fauna. Problems include:

- The ability of developers to bring forward separate development proposals (DAs) for adjacent or nearby parcels of land and the limitation on consent authorities, which are restricted to considering the merits of the individual proposals and not the cumulative impact. An example is the fragmented ownership of the Kings Hill ‘new town’ NE of Raymond Terrace.

Separate DAs also allow developers to escape the ‘higher level’ and more independent scrutiny of the Joint Regional Planning Panels (JRPPs) or Independent Planning Commission, by keeping individual DAs under the referral monetary thresholds.

⁵ Examiner report, 24 August 2018

⁶ Kings Hill, Tomago and Medowie Koala Hub Assessment, Biolink Ecological Consultants, February 2019, report to Port Stephens Council

We submit that the EPA Act should be amended to ensure that large scale developments have to be assessed for environmental impact in their entirety, even where the actual development is proposed to be staged over an extended period of time.

- The abuse of the EPA Act provisions relating to modifications of approved DAs. Developers in Port Stephens routinely seek multiple successive variations to approved DAs, gradually whittling away at conditions and safeguards, including those relating to protection of vegetation and habitat. In our experience, it is clear that this is often a deliberate tactic to achieve an original aim or design, but to do so in a way that evades scrutiny, makes it more difficult for objectors, and reduces the ability of the assessing authority to consider the overall impact. This approach can be summarized as ‘death by a thousand cuts’!

We submit that the EPA Act should be amended to discourage developers from using successive modification applications (under s.4.55) to effect major changes to the design and layout of projects.

- The fact that the ecological and other studies required in support of DAs are typically undertaken by consultants engaged and paid by the proponent means that they cannot be truly independent or reliable. Community groups in Port Stephens, and even Council itself, regularly identify errors, omissions or other deficiencies in ‘expert’ reports.

We submit that the EPA Act should be amended to require environmental (and other) assessments by genuinely independent consultants, paid for by applicants but at arms-length through a neutral intermediary such as the Council.

- Failure to give sufficient weight to evidence of adverse environmental impacts. We routinely see DAs approved in Port Stephens where the Statement of Environmental Effects and supporting studies clearly identify serious adverse environmental impacts such as loss of habitat for threatened or endangered species, including koalas. This suggests that the EPA Act gives insufficient weight to environmental effects relative to the commercial interests of the developer and any social and economic benefits to the wider community. We share a common general concern that the entire NSW planning system unduly favours commercial interests in what should be a ‘triple bottom line’ assessment of ecologically sustainable development.

We submit that the EPA Act should be amended to increase the weight given to environmental factors in assessment of proposed developments, to better reflect a proper interpretation of the principle of ecologically sustainable development.

- Failure to adequately enforce conditions of consent. We have seen numerous examples in Port Stephens of developers failing to comply with conditions, specifically failing to retain all of the mature vegetation supposedly required. Not only are conditions, such as tree retention, not routinely monitored, but even where breaches are found, enforcement action and fines are rare. In any case penalties such as fines for non-compliance are so low as to be an acceptable risk and/or cost of doing business for developers who stand to benefit e.g. from increased clearing of vegetation.

We submit that far greater resources be put by Councils and the State Government into monitoring and enforcement of compliance with conditions of approval for development, and the penalties for non-compliance increased.

Problems with the operation of the Biodiversity protection legislation and mechanisms

There is widespread concern amongst environmental organisations that changes in 2016 to the biodiversity protection legislation in NSW has opened the door to large scale land-clearing and resulting habitat loss.

At our recent AGM, the following motion was passed unanimously:

'EcoNetwork-Port Stephens identifies the NSW Biodiversity Conservation Act 2016 as fundamentally flawed and deficient. We hereby call for the earliest possible repeal of those sections of the Act that can permit under the pretext of biodiversity conservation the following:

- the removal of up to 99% of native vegetation on privately held lands
- an estimated 14 hectares of koala habitat removed each day
- omission of plans to address the known impacts of climate change on biodiversity
- the biodiversity banking and offsets scheme, which is heavily weighted to favour property developers
- the logging of old-growth and high-conservation value public forests'

We are particularly concerned that the system of bio-banking and provision for 'offsets' is fundamentally flawed – it often allows for destruction of irreplaceable habitat on the false pre-text that an 'equivalent' area of land elsewhere is somehow an acceptable replacement. Land used for offsets is often of lesser value in ecological terms, will typically not be accessible to the fauna displaced from the development site, and can be 'recycled' many times, effectively 'double counting'.

We have also observed that the organisational arrangements for monitoring land clearing and enforcing compliance with controls have been substantially weakened. This role for most of the land area of the State, including the vast majority of land in Port Stephens, is played by a State Government agency - Local Land Services – which has few staff and not even a presence in Port Stephens.

We are most concerned that NSW farmers who cleared land illegally under the former Native Vegetation Act have been granted an amnesty by the NSW government, and will not be prosecuted for breaches of the old law. As the Nature Conservation Council says, this decision undermines the rule of law and sets a dangerous precedent.⁷

We are also concerned that the Biodiversity Conservation Act enables farmers to self-assess before clearing and only the most sensitive areas require prior permission. This type of practice hardly fits with policies to protect koalas.

As with the planning laws, compliance monitoring and enforcement is very weak, and even where action is taken, penalties, including fines, are so low as to be an acceptable cost of business, and there is effectively no deterrent against non-compliance.

The combination of weakened laws and weakened compliance means that land-clearing in NSW is effectively out of control, and rates of clearing have reportedly soared.

We submit that the State Government must urgently strengthen biodiversity conservation laws and provide significant resources for increased compliance monitoring and enforcement.

⁷ See <https://www.theguardian.com/australia-news/2019/aug/01/nsw-farmers-granted-amnesty-for-illegal-land-clearing>

Failure to address climate change

The lack of serious policies at both Federal and State level to limit the rate of harmful climate change directly increases the threat to koala populations, specifically from the increased incidence and intensity of bush fires. Major bush fires in recent years on the Tilligerry and Tomaree peninsulas, including in 2018 at the Mambo wetlands in Salamander Bay, have killed many koalas and destroyed valuable koala habitat.

While bush fire always has been a risk in Australia, its significance as a threat to koala populations increases with hotter dryer conditions and as the remaining areas of habitat shrink under development pressures, making them more vulnerable to arson or accidental ignition.

We submit that the State government needs to urgently play a greater role in addressing adverse climate change so that one benefit can be reduced risk of catastrophic bush fires destroying koala habitat and killing more of the animals themselves.

Conclusion

Koalas are in danger of extinction in NSW unless the NSW Government develops and enforces koala protection policies that are effective across the state. The remaining population of koalas in Port Stephens are specifically threatened.

Legislation and current practices are failing to protect koalas.

The Government must act on the recommendations of its own Scientific Committee's findings and return to the Committee it the ability to classify koala populations as endangered.

The Koala Sanctuary and Hospital at One Mile Beach in Port Stephens, supported by the State Government, is a welcome initiative, but it will be ineffective in stabilizing the local koala population unless the threats to viable areas of habitat are addressed.

The NSW Planning system, and Biodiversity conservation laws, are very poorly designed to effectively ensure environmental protection, including protection of habitat for threatened or endangered fauna, and urgently need to be reviewed.

The organisational arrangements for monitoring land clearing and enforcing compliance with planning and environmental protection controls are weak and need to be beefed up.

This Inquiry into koala populations and habitat provides a valuable opportunity to identify the necessary amendments to legislation, policies and practices to ensure protection of the koala – an iconic and precious native animal.

Nigel Dique, Secretary
EcoNetwork-Port Stephens

EcoNetwork - affiliated groups & eco-businesses

Nat onal Parks Assoc at on (Hunter Branch) Inc.
 Nat ve An ma Trust Fund Inc.
 So d ers Po nt/Sa amander Bay T dy Towns Inc.
 Mambo Wanda Wet ands Reserves C ttee Inc
 Ocean & Coasta Care In t at ves (OCCI) Inc.
 North Arm Cove Res dents Assoc at on Inc.
 South Tomaree Commun ty Assoc at on Inc.
 Sa amander Recyc ng Inc.
 Dest nat on Port Stephens Inc.
 Tomaree B rd Watchers
 Port Stephens Nat ve F ora Gardens
 Tomaree Commun ty Garden
 Mambo Wanda Wet ands Conservat on Group

Port Stephens Koa as Inc.
 T gerry Hab tat Inc.
 Mya Koa a & Env r. Support Group Inc.
 P nd mar/Bundabah Commun ty Assoc at on Inc.
 Shoa Bay Commun ty Assoc at on Inc.
 So d ers Po nt Commun ty Group Inc.
 Boomerang Park Preservat on Group Inc
 Tomaree Res dents and Ratepayers Assn. nc.
 Irukandj Shark & Ray Encounters.
 W amtown Res dents Act on Group Inc.
 Mar ne Parks Assoc at on Inc.
 Wanderers Retreat