

Submission
No 213

**INQUIRY INTO PLANNING SYSTEM AND THE IMPACTS
OF CLIMATE CHANGE ON THE ENVIRONMENT AND
COMMUNITIES**

Organisation: Sydney Basin Koala Network
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Enquiry into the Planning system and the impacts of climate change on the environment and communities



Submission by the Sydney Basin Koala Network

Executive Summary

The Sydney Basin Koala Network (SBKN) works with communities across the Sydney Basin to advocate for the protection and expansion of connected, thriving koala core habitats and corridors). Through our work, we know there are serious issues with the planning system not adequately protecting threatened species habitat - the result is our state's koalas are at risk of extinction by 2050.

Our current planning system is failing koalas and other threatened species. Some of the issues include:

- Missing BioNet Data: Wildlife records in BioNet inform development decisions. Wildlife rehabilitation data is valuable in showing where species are already facing pressures. Key development proposals were assessed and fast tracked when 4 years of wildlife rescue data was provided to DPE but not uploaded to Bionet.
- The Cumberland Plain Conservation Plan and other developments in South-West Sydney pose a huge risk to Critically Endangered Ecological Communities and one of the only healthy growing koala populations in NSW.
- Habitat Corridors that are vital for healthy koala populations and climate resilience are under threat from development. The CPCP and other developments are not following the advice of the Chief Scientist.
- Conflicts of interest that arise when ecologists are employed by developers.
- Biodiversity offsets are overused and not robust - clearing of critically endangered ecological communities can still be offset even when it cannot be replaced.
- Koala SEPP issues
 - Certain legal frameworks only recognise Koala Habitat that has been mapped in a Comprehensive Koala Plan of management (CKPoM) under a Koala SEPP. Development of CKPoMs is voluntary, most councils with koalas do not have a CKPoM.
 - There are 2 SEPPs, meaning councils cannot create or update LGA wide Koala Plans of Management when both apply to their LGA (e.g. Port Stephens) - the SEPPs need to be consolidated.
 - The Koala SEPP doesn't apply to all relevant LGAs (e.g. Sutherland Shire) - development does not consider the impacts on koalas in these LGAs.
 - Lack of a finalised guideline for creating CKPoMs is stalling councils from creating CKPoMs - meanwhile development is going full steam ahead.
 - State Significant Development (SSD) and State Significant Infrastructure (SSI) overrule the Koala SEPP even if the development impacts koalas.
 - The SEPP is not triggered by developments less than 1 ha - leaving koala habitat vulnerable to cumulative impacts of many small developments.
- Zombie Developments: Dormant DAs in areas of threatened ecological communities and threatened species habitat can be enacted, sometimes decades after approval, even if they do not conform to current environmental standards.



Introduction

The Sydney Basin Koala Network (SBKN) has been established by the Total Environment Centre (TEC) and WIRES to advocate for the protection and expansion of connected, thriving koala core habitats and corridors across the Sydney Basin Bioregion (SBB). We work with communities across the Sydney Basin and have 20 national, state and local environment and wildlife groups in the network and advocate on their behalf.

Through our work with communities across the basin, we know there are serious issues with the planning system not adequately protecting koala habitat - the result is our state's koalas are at risk, with habitat loss the main threat to extinction of the species.

All planning decisions need to consider the impacts on people and the environment. Assessing the impacts of development on threatened species is underpinned by environmental data. However NSW Planning Decisions have been based on flawed data.

1. Missing BioNet Records: NSW Planning Decisions on threatened species habitat made with flawed data.

There are over 1000 threatened species and ecological communities in NSW. Earlier this year we discovered that 4 years of threatened species records provided to the NSW DPE were not uploaded to the [Bionet database](#), despite being provided by wildlife orgs. Bionet is required to be used by developers and their consultants to prepare proposals and then by the government to review the environmental impact of developments that could clear habitat and have other damaging effects. Wildlife rescue data is critical to this process as it is an indicator of where threatened species are already under stress.

These missing records represent a significant failure by NSW Planning to adequately assess areas that are threatened ecological communities or habitat for threatened species, and place the environment at risk as a consequence of the cumulative impacts of development resulting in biodiversity loss.

According to the [NSW Government](#) "*BioNet aims to improve biodiversity outcomes by enabling the community and government to proactively manage and enhance biodiversity in New South Wales through comprehensive, credible and robust data and information.*" Threatened species records in Bionet **must** be used by assessors in order to avoid or minimise impacts on wildlife, and is also used as part of the [Biodiversity Assessment Method \(BAM\)](#), which is used as part of the **legislated** Biodiversity Offsets Scheme.

Threatened species sighted near or in non-protected areas are overwhelmingly called into wildlife rescue organisations. These records also provide important detail to illustrate roadkill hotspots and the impacts of fragmentation. They are important tools for policy makers. These are exactly the records that are of core relevance to planning approvals and offset costs. While on-site biodiversity assessment is required for development proposals, the standard of investigation is often compromised and inadequate and short term compared to the longer term Bionet database. Bionet is also required to be used to show threatened species within 5, 10, and 20 kilometres of a planned development. Consequently there has been inadequate assessment by developers and DPE of critical biodiversity impacts influencing what habitat is cleared or impacted.



Recommendations:

We are calling for the Appin and Gilead developments to be reviewed and the CPCP to be amended by:

1. Securing protection of the environment by enlarging the amount of protected conservation lands (C2 zoning), and widening and protecting every koala corridor identified by the Chief Scientist.
2. Reviewing development proposals to create climate friendly precincts that protect households from killer heat; are net carbon zero; retain established trees; and have a grid of cooling green spaces – as well as adequate social and transport infrastructure.



3. Delivering conservation reserves quicker - the 15-20 year timeframe for the creation of new reserves is too slow, and will not help koalas recover now. Reserves first – development later.

4. No translocation or exclusion of Koalas. *It is perverse* that the CPCP excludes koalas from existing koala corridors and moves them elsewhere in the current plan, against the Chief Scientist’s recommendations to protect all corridors.

2. Our Current Planning System is Not Protecting the Natural Environment: Endangered Species Case Study - Koalas

Koalas were uplisted to Endangered in NSW in early 2022 due to population decline and predicted to go extinct in the wild by 2050. **Habitat loss and fragmentation from development is one of the key drivers of koala decline.** Our planning system has a major impact on the fate of this species.

Connected Koala habitat corridors are critical to the recovery of the species. Corridors enable animals to breed, disperse, and find new mates. **Connected habitat is also critical for resilience to climate change and fires** - enabling animals to move safely across the landscape to find suitable habitat when needed.

Below we outline examples of how the current planning system is failing koalas and the many other threatened species they share their habitat with.

South-West Sydney

The area in eastern Wollondilly and Campbelltown LGAs between the Hume Highway and Appin Road is extremely important for Koalas and many other threatened species. Here two North-South Primary habitat corridors following the Nepean River and Georges Rivers are connected by several East-West habitat corridors. These **habitat corridors are composed of Critically Endangered Ecological Communities (CEECs)**. Namely Cumberland Plain Woodland and Shale Sandstone Transition Forest.

This area supports the only known **disease free and growing Koala colony** in the Sydney Basin. This population lives in these habitat corridors and uses them to disperse. This colony is **key to recovery of the koalas in NSW**.

Cumulative impacts of planning decisions over time have narrowed and fragmented many of these corridors. The Cumberland Plain Conservation Plan (CPCP) and other proposed **developments in this area seek approval to build on and around these corridors, permanently narrowing and in some cases completely fragmenting them.** **Despite community and even council objection,** developments are being approved.

Campbelltown

Campbelltown is one of only 2 LGAs in the SBB to have a Comprehensive Koala Plan of Management (CKPoM). CKPoMs create a management plan at the landscape scale, which is important for protecting corridors and avoiding cumulative impacts that can arise with site-based management. CKPoMs must be created under one of the Koala SEPPs, and they allow recognition of core koala habitat by other legal frameworks and enable authorities to impose planning controls.

The Campbelltown CKPoM maps out the Koala corridors and yet it is being overruled by



State Significant Projects in areas supporting threatened ecological communities and habitat for threatened species.

Lendlease's Mount Gilead Stage 2 (MGS2) was fast tracked by the state government. The MGS2 development would **destroy 48 ha of CEECs**, impact up to **60 threatened species** and negatively impact 4 Habitat Corridors. This development is against public opinion. For more detail see [SBKN Submission on MGS2](#)

Both the EHG and the Chief Scientist raised issues of MGS2 not following the Chief Scientist recommendations for protection of Koalas. A public submission [EHG Comments on Gilead Stage 2](#) states: "EHG considers that the proposal is inconsistent with advice and recommendations contained in the Office of Chief Scientist and Engineer (OCSE)".

In Feb 2021 The Chief Scientist heavily criticised the methods used to calculate corridor widths on MGS2 (page 9 and 10 [Response to questions about advice provided in the Koala Independent Expert Panel Report Advice on the protection of the Campbelltown Koala population](#)). Calling for updated calculations the report states: "the Panel recommends that the Proponent should provide a clearly articulated, transparent and defensible method for calculating the corridor widths and the orientation of the transects."

Yet over 2 years later Lendlease applied for Biocertification of MGS2 at Council and Federal level, again stating they conformed with the recommendations, but showing no transparent calculations as to how they achieved this. The scale bar in their own maps shows several points where corridors are less than the recommended minimum of 200m.

How can the public or decision makers make appropriate decisions with this lack of transparency.

Conflicts of interest in the planning system are of concern. For example, public submissions from public consultation for the federal biocertification of MGS2 were sent to the Ecologist employed by the developer to compile into a report for the Federal Government to assess. Since the ecologist is employed by the developer, **this is not an independent process**.

Other examples of proposed developments in areas that impact CEECs and threatened species habitat include:

- Appin North Precinct (Ingham), which borders the East-West Koala corridor D (Mallaty Creek to Georges River). **This habitat corridor will be cut off entirely from koalas if the CPCP goes ahead in its current form.**
- The Rosalind Park Development to the north of Koala corridor A (Menangle Creek to Noorumba) will leave it narrower than the Chief Scientist recommendation and non-functional to koalas.

Wollondilly

The vital East-West habitat corridors in Wollondilly are also being threatened by development. In **Wollondilly there is no CKPoM** in place because the Council is waiting on the [draft SEPP guideline](#) to be amended (this has been the case for **4 years**).

Large developments have been fast tracked by the State Government, so decisions are out of the local councils hands. Developments proposed or approved in areas that are threatened ecological communities or habitat for threatened species include:

- **Appin (Part) Precinct: Despite strong public and [council objection](#) the planning proposal was approved by the state government.** The impacts of the



development include, **clearing of CEECs**, fragmentation of North-South Nepean River Primary habitat corridor and East-West Habitat corridor E (Ousedale Creek to Appin North), and the **permanent severing of habitat corridor F** (Elladale Creek and Simpson Creek) rather than it being restored.

- **55 Macquariedale Road developments:** will **clear intact Shale Sandstone transition forest (a CEEC) with recent koala sightings** within the proposed land to be cleared. Despite over 50 unique submissions and community members stating their objections at the planning panel - these developments and amendments were approved.
- Wilton Growth Area development will **clear koala habitat** and negatively impact the Nepean River Primary Koala Corridor and Allens Creek Koala corridor.
- Brians Road Upgrade: illustrates issues in the current planning system use of offsets. Here, **clearing of CEECs can be offset even when habitat cannot be replaced.** The Brians Road Upgrade proposed by TfNSW states: *"In relation to the tree and hollow replacement requirements, this would result in planting a minimum of 406 trees and seven artificial hollows to replace those being removed. **If replacement is not feasible, or the entire replacement cannot be accommodated locally or can only be partially met, any remaining requirement can be met by transferring funds into the Transport Conservation Fund**"* - Section 7.2 Brian Road Intersection Upgrade -Review of Environmental Factors - Transport NSW. This type of offsetting inevitably leads to net loss of habitat for threatened species and loss of biodiversity.

The cumulative impacts of these developments places the environment at risk from biodiversity loss and habitat fragmentation. Biodiversity and connected habitat are key to resilience in the face of climate change.

Hawkesbury

Despite Hawkesbury being identified in the NSW Koala Strategy as an area requiring the filling of knowledge gaps and containing an Areas of Regional Koala Significance (ARKS), The Hawkesbury Council has not developed a Comprehensive Koala Plan of Management (CKPoM), and has only just committed to a limited koala habitat map. Lack of consolidation of the SEPPs and provision of an updated guideline prevents Hawkesbury LGA from creating a CKPoM.

Hawkesbury is the only peri-urban council to opt into the Rural Boundary Clearing Code (RBCC). The lack of a CKPoM means koala habitat is not recognised and protected from this type of clearing. Even when certain plant community types should be protected, the lack of integration between the RBCC mapping tool and other environmental protection and planning instruments makes it difficult for the community to know when they can and can't clear. This makes it difficult for the Council to enforce correct use of RBCC and can lead to unscrupulous clearing. The RBCC can be exploited by clearing the boundary of many small adjacent blocks, essentially clear-cutting whole swathes of habitat. This is opening the Hawkesbury to risk of cumulative impacts resulting in habitat fragmentation and biodiversity loss.

Sutherland Shire

Sutherland Shire contains an Area of Regional Koala Significance and has been showing an increase in koala sightings and recorded koala road strikes in recent years. Our independent report from Biolink "[Sydney Basin Koala Assessment February 2023](#)" identified Sutherland Shire as a key focal area for Koalas in the Sydney Basin and the council has instituted a Koala Steering Group.



Yet, the State Environment Planning Policy does not recognise Sutherland Shire koalas. Sutherland Shire LGA is not listed in either Koala [SEPP](#). **The lack of the SEPP in Sutherland means many legal protections for koalas and their habitat do not apply here.** Developments do not need a site specific KPoM and the Council cannot create a Comprehensive KPoM.

Sutherland is experiencing increasing pressure from development. Adding Sutherland to the SEPP is urgent so that the planning system can take into consideration implications of proposed developments on Koalas and their habitat. The EDO Report "[Protecting Koalas in the Sydney Basin](#)" includes a case study of this issue on page 43 to show how this issue is failing the protection of core koala corridors in the LGA.

Port Stephens

Port Stephens LGA has a CKPoM but it is outdated and they cannot update it until the 2 Koala SEPPs are resolved because different SEPPs apply to different parts of the LGA.

The proposed Stone Ridge Quarry would **clearfell 80ha of occupied koala habitat**. This threatened species habitat is of ecological importance. It is part of the recognised North-East fauna corridor, with **evidence of endangered species thriving on the site documented within the proponents own surveys.**

Other focal areas in the Sydney Basin

Other key LGAs in the Sydney Basin for Koalas include Wingecarribee, Liverpool, Cessnock and Lake Macquarie. **None of these LGAs have CKPoMs in place.** Lack of a CKPoM means each development decision is taken in isolation rather than considering habitat at a landscape scale, such that **cumulative impacts can build up and result in serious and irreversible impacts for koalas and other threatened species** in these areas.

Planning Instruments

Planning instruments, such as KPoMs and SEPPs are only triggered once developments are over 1 ha. This risks incremental loss of threatened ecological communities and habitat for threatened species through cumulative impacts of many small developments. **This is of serious concern for CEECs, which cannot afford any more loss and in habitat corridors which can be narrowed and severed by incremental loss.** CEECs and threatened species habitat corridors should be mapped at a landscape scale, widened and restored where needed and protected from all developments.

Other **issues with the current Koala SEPPs** include the SEPPs not listing all relevant LGAs (Sutherland, The Hills, Penrith), the SEPP doesn't apply to State Significant Development or Infrastructure (SSD and SSI) regardless of its effect on koala habitat. The confusion of having 2 SEPPs and lack of a finalised KPoM guideline is preventing councils from moving forward with landscape level koala plans of management in their LGAs. In the meantime development is impacting koala habitat.

The SEPP needs to be rectified immediately to include all LGAs with koalas and consolidated into one SEPP. A guideline for creating KPoMs needs to be finalised and development of CKPoMs made compulsory and funded by the State Government.



From all of these examples it is clear that our currency planning powers and planning bodies are not adequate to protect the environment from loss of CEECs, biodiversity loss, habitat fragmentation and the effects of cumulative impacts of development. There seems to be no power or will of planning bodies to refuse or revoke development approvals, no matter the gravity of their impact on our environment.

Recommendations:

1. Adopt a single Koala SEPP for use across all relevant LGAs.
2. Update the list of LGAs to which the Koala SEPP applies to ensure it encompasses all relevant LGAs.
3. Finalise Guidelines as a matter of urgency.
4. Clarify the application of the Koala SEPP to regionally significant development and state significant development.
5. Ensure all koala habitat is mapped.
6. Remove the arbitrary 1ha threshold from the Koala SEPP.

3. Zombie Developments: a threat to threatened species and climate corridors

Another major failing of the NSW Planning system that must be urgently rectified is the many dormant zombie applications in habitat that threatened species, like koalas, rely on as corridors. This issue is becoming increasingly fraught for Sydney's koalas as plans for urban sprawl will, if not urgently amended, reduce occupied koala habitat even further and these patches of critically threatened forests become even more precious to protect.

One such area in the Sydney Basin where koala corridors are being dangerously fragmented is in Warragamba in Wollondilly LGA. There are several areas of koala persistence in Warragamba and Silverdale. Due to heavy fencing of the Warragamba Dam catchment area, these koalas are trapped on the residential side of the Blue Mountains National Park, and corridors of bushland through the Warragamba township are critical to their survival.

Existing and planned development will fragment the corridor so heavily that koalas will be left with no options to find new habitat and mates without being pushed onto the roads.

In the past few years over **15ha of critical endangered forest that formed a vital corridor through the township was fragmented by zombie developments** including:

- The clearance of 11 hectares of critically endangered ecological communities for a development located at 33 Warradale Road.
- The clearance of 4 hectares of critically endangered ecological communities for a development located at Marsh Road.

Both of these developments had a Biobanking statement, so the council did not have statutory power to prevent clearing. There was no requirement for Biobanking to occur on koala habitat, and therefore these developments resulted in a net loss of threatened species habitat.

Likewise, as Wollondilly Council does not have a CKPoM corridor widths are not considered when new developments are proposed.



Zombie developments also set up a knock on effect that this habitat is considered “remaining habitat” for other developments that use vegetation mapping to assess impacts. An assessment may predict that a proposed development only takes out 1% of a remaining forest type, when in reality it would have a far greater impact should zombie development proceed. It is an issue both at a cumulative level, but also on the accuracy of individual assessments in the same areas.

Zombie development legislation must be reformed, and corridor mapping taken seriously in order for koalas to thrive.

Recommendations:

- Retrospectively enforce s96 of the Environmental Planning and Assessment Regulation 2021.
- Audit zombie developments statewide and rezone threatened species habitat where appropriate.
- Regulate and enforce expiry of DAs.
- Flag all approved development regardless of status, so the area cannot be counted as remaining habitat by consultants.

4. Summary

In Summary, our current planning system is failing Koalas and other threatened species habitat for the follow reasons:

1. **Identifying Habitat is Voluntary.** Comprehensive Koala Plans of Management (KPoMs) that identify koala habitat by local councils are VOLUNTARY.
2. **Offsets are Overused & Not Robust.** Developing habitat is permissible as koala habitat can be offset. The use of offsets allows land or money to be set aside into a fund in order to be able to destroy koala habitat.
3. **Decision-making is Discretionary.** For State Significant Projects (SSIs), there is significant discretion in assessing and approving proposals. Development can often trump koala habitat protection in NSW. (i.e. CPCP not following Campbelltown KPoM)
4. **NSW Koala Strategy has no legal weight.** The strategy is not legislated. It does not address the major threat of habitat fragmentation, modification and loss from development.
5. **Safeguards are Failing.** Important legal safeguards to protect koalas from high-impact development (such as the BC Act, EP&A Act & Koala SEPPP) are poorly implemented or under-utilised).

5. Key Recommendations

1. Apply a scientifically robust, and clearly defined, definition of koala habitat and koala corridors to be used consistently across various legal frameworks.
2. Map all koala habitat in approved maps as a matter of urgency.
3. Update all relevant laws to align legal definitions of and protections for koala habitat with approved maps.



4. Direct all proposals likely to have an impact on koala habitat into the most robust assessment pathway and end code-based clearing of koala habitat. Proposals must be subject to full environmental assessment. This can be achieved by: - updating the definition of environmentally sensitive area in cl 1.5 of the Exempt and Complying Development SEPP to explicitly include koala habitat; or - ensuring all koala habitat is categorised as category 2 sensitive land.
5. Strengthen the serious and irreversible impacts mechanism to more accurately reflect the principles of ecologically sustainable development by reframing the standard as serious 'or' irreversible impacts, and require the test to be applied objectively, not discretionarily. Cumulative impacts must also be considered. These reforms should also apply to State Significant Developments, and State Significant Infrastructure. .
6. Address Ongoing concerns with the operation and implementation of the KoalaSEPP. Specifically:
 - a) Adopt a single Koala SEPP for use across all relevant local government areas (LGAs).
 - b) Update the list of LGAs to which the Koala SEPP applies to ensure it encompasses all relevant LGAs.
 - c) Finalise Guidelines as a matter of urgency.
 - d) Clarify the application of the Koala SEPP to regionally significant development and state significant development.
 - e) Ensure all koala habitat is mapped
 - f) Remove the arbitrary 1 hectare threshold from the Koala SEPP.
7. Make better use of the area of outstanding biodiversity value (AOBV) mechanism to protect koala habitat, including by: Declaring SoS sites (outside national parks and reserves) AOBVs; and funding these AOBVs for protection and making them off-limits from harm. Remove the requirement for third parties to obtain landholder support prior to nominating an area as an AOBV.
8. Reform Zombie developments and regulate and enforce expiry of DAs.
9. Reassess projects in threatened species habitat that were fast tracked while Bionet data was missing.

Attached are submissions and letters expressing our concerns with the following development and plans. For the latter 2, despite bringing these concerns to the decision makers, they were still approved pending CPCP approval.

- o CPCP letter from 25 environment groups - decision pending
- o MGS2 submission - decision pending
- o Appin (Part) submission - outcome approved, pending CPCP approval
- o 55 Macquariedale Road Development - SBKN Concerns Raised at Planning Panel - approved, pending CPCP approval
- o Stone Ridge Quarry Submission

We are happy to discuss any of these issues with you in more detail.



Stephanie Carrick & Jade Peace
Sydney Basin Koala Network
info@sydneybasinkoalanetwork.com

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