

August 20 2012

Reference: 945821
Contact: Rodney Wright

Native Vegetation Regulation Review
Office of Environment and Heritage
Level 12 PO Box A290
Sydney South NSW 1232

Dear Sir/Madam

Submission on the review of the Native Vegetation Regulation 2005: Private Native Forestry and Koalas

Clarence Valley Council (CVC) covers an area of over 10440 square kms and has a large percentage of the PNF approvals in the Northern Rivers. CVC has a draft Comprehensive Koala Plan of Management for a small development area in the northern part of the LGA centred around Ashby, Woombah and Iluka covering an area of just 130.8 square kms. Comprehensive vegetation and koala survey work has been undertaken in this area and can be provided to guide assessment of PNF applications in these areas.

General information in Council's Biodiversity Management Strategy, the Wildlife Atlas and other records suggest that there are significant populations of koalas and other threatened species through substantial areas of the LGA. While some records for koalas and other threatened species occur on the Wildlife Atlas it is well understood that these occur mainly on public lands along roads and that on private holdings especially large holdings where records for threatened species are limited. These are the main areas where PNF applications are lodged and it is critical that some independent survey/assessment for flora and fauna is conducted prior to determination of the application. Relying on Wildlife Atlas records and/or proponent identification of Koala Habitat and other Threatened species is flawed for a range of reasons.

1. Current PNF Code of Practice for Northern NSW Submission

- The current PNF Code of Practice for Northern NSW (Code) and its application is inconsistent with the aim of both SEPP44 and the EPBC Act and actively circumvents assessment process detailed in CKPoMs for individual LGAs and those required under the EPBC Act.
- It is an imperative that the revised PNF Code of Practice for Northern NSW (Code) is consistent with the aims and intent of both *State Environmental Planning Policy No. 44 – Koala Habitat Protection* (SEPP44; s. 3) and the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

Reason

- Under the auspices of SEPP44, Councils are encouraged to develop Comprehensive Koala Plans of Management (CKPoM) which aim to protect and manage koalas and their habitats at a landscape scale. Preparation of CKPoMs by individual Councils is strongly advocated under the NSW State *Recovery plan for the koala* (DECC 2008; Action 1.13) developed under the *Threatened Species Conservation Act 1995* and the *Northern Rivers Regional Biodiversity Management Plan* (DECCW 2011; Action 3.1.4).
- At a federal level, the recent listing of Koalas under the EPBC Act requires landholders and government agencies to ensure recovery of koala populations. The EPBC Act listing provisions will go further than SEPP44, requiring the protection and recovery of koala populations based on recognition of occupied koala habitat ('core koala habitat' as per SEPP44), unoccupied koala habitat ('potential koala habitat' as per SEPP44) and corridors connecting sub-populations within significant koala populations.

2. Identification of koala food trees

Submission

- For an LGA with an approved CKPoM, the koala food tree species listed in the CKPoM should be employed as a basis for informing decisions on what can be considered unoccupied koala habitat. In the absence of an approved CKPoM for an individual LGA, the koala food tree species listed in Table 1 of the current Code should be employed to assist with the identification of unoccupied koala habitat.
- The following definition of 'koala food tree' should be incorporated in the Code: *'koala food tree' are those tree species listed in either any approved CKPoM for the LGA in which the site subject to a PNF PVP application is made is located; or in the absence of an approved CKPoM for the LGA those in Appendix 2 of the NSW State Recovery plan for the koala.*

3. Site assessment to determine unoccupied koala habitat and current Code prescriptions

Submission

- Following receipt of a PNF application, an on-ground 'rapid assessment' at a minimum should be conducted by a suitably qualified person in order to determine the location of unoccupied koala habitat and koala corridors. The catchment management authority is well placed to undertake this assessment on a fee for service basis in the same way they undertake assessments for PVP for agricultural activities. Obviously the focus will be on threatened species including koalas which will be a narrower focus than their normal assessment process. Assessments should address all ecological values of the site (e.g. identify habitat for all threatened fauna and flora). If the application is successful, the results of this assessment should be incorporated into PNF PVP licence conditions.
- The following definition of 'unoccupied koala habitat' (derived from the definition of 'potential koala habitat' under SEPP44) provides a reasonable definition for unoccupied koala habitat and should be incorporated in the Code: *'unoccupied koala habitat' means areas of native vegetation where koala food tree*

species constitute at least 15% of the total number of trees in the upper and/or lower strata of the tree component.

- Prescription (c) of the current Code should be amended as follows:
Where 'unoccupied koala habitat' is recorded within an area of forest operations, the following must apply:
 - (i) *A minimum of 10 primary koala food trees and 5 secondary koala food trees must be retained per hectare of net harvesting area (not including other exclusion or buffer zones), where available.*
 - (ii) *These trees should preferably be spread evenly across the net harvesting area, have leafy, broad crowns and be in a range of size classes with a minimum of 30 centimetres diameter at breast height over bark.*
 - (iii) *Damage to retained trees must be minimised by directional felling techniques.*
 - (iv) *Post-harvest burns must minimise damage to the trunks and foliage of retained trees.*

Reason

- Reliance on contemporaneous records as a means of providing adequate protection for core koala habitat areas is flawed because such records are not the result of unbiased, systematic survey effort. Occupation rates in koala habitat areas range from anywhere from 8% to 50% (S Phillips, *pers comm*) meaning that at any given time between from 50% to 92% of habitat suitable for supporting koalas is unoccupied at any given time.
- Under the Code, logging activities are permitted in unoccupied koala habitat provides a clear economic incentive for a self regulating industry to otherwise within suitable koala habitat that is unoccupied at the time of forest operations.

4. Site assessment to determine occupied koala habitat (i.e. 'core koala habitat' under SEPP44) and current Code prescriptions

Submission

- As part of an on-ground assessment, core koala habitat should be determined by an unbiased, systematic survey ground survey following standard methods now embedded in CKPoMs such as that *Comprehensive Koala Plan of Management for south-east Lismore* (i.e. Spot Assessment Technique (Phillips & Callaghan, 2011).
- Prescription (a) of the current Code should remain in the reviewed Code, however, the following additional prescription should be incorporated in the reviewed Code: *Forest operations are not permitted in any Core Koala Habitat areas identified under the auspices of an approved Comprehensive Koala Plan of Management prepared in accordance with the method outlined in SEPP 44, and/or within areas identified as supporting an important population for purposes of the EPBC Act.*
- Prescription (b) of the current Code is flawed and should be deleted from the reviewed Code.
- Part 5 Clause 22 (4) of the draft *Native Vegetation Act Regulations 2012* should include 'core koala habitat' and 'significant populations' as defined by SEPP 44 and the EPBC Act respectively in the definition of critical environmental area.

Reason

- Reliance on contemporaneous records as a means of providing adequate protection for core koala habitat areas (as detailed in Prescription (b) is flawed because such records are not the result of unbiased, systematic survey effort. Koala occupation rates in core koala habitat areas range from anywhere from 8% to 50% (S Phillips, *pers comm*) meaning that at any given time between from 50% to 92% of habitat suitable for supporting koalas is unoccupied at a given time. Consequently, the singular reliance on contemporaneous records severely misinforms both the approval process and the impact that PNF logging is having on areas of core koala habitat.
- Currently, PNF PVP licences are effectively self-regulated. The current risk based approach to compliance is not effective in preventing illegal behaviour because it does not translate to on-ground experiences in many NOROC LGAs.
- It is understood that monitoring and compliance checks are rarely undertaken during forest operations. However, the industry is required to comply with contemporaneous koala records. Under this interpretation of the PNF code, the EPA has no assurance that koalas and their habitat are being adequately protected.
- The current interpretation of the PNF code where logging activities are allowed in core koala habitat, assuming there are no contemporaneous records, provides a clear economic incentive for a self regulating industry to harvest within core koala habitat or similarly misinterpret scats and other markings as evidence of recent koala activity, immediately prior to forest operations.
- The current Code and suggested amendment options fails to integrate with the recent EPBC Act provisions.

5. Cost recovery for site assessment

Submission

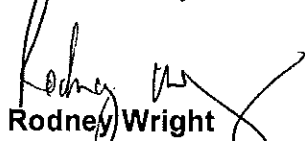
- A fee should be applied to PNF PVP applications to at least partially contribute to cost recovery of the site assessment process.

Reason

- There is clear precedent under the *Environmental Planning and Assessment Act 1979* that provides for financial contributions by applicants to the cost recovery of development assessment processes. Given that there is an obvious economic benefit to be gained from harvesting timber it is both equitable and reasonable for an applicant to contribute to cost recovery of PNF PVP licence determinations.

If you require further information please contact me on telephone 66450265.

Yours faithfully



Rodney Wright
Coordinator Environmental Services