

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

native.vegetation@environment.nsw.gov.au

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To Whom It May Concern:

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

The following submission is made under the auspices of the Richmond - Tweed - Clarence Natural Resource Management (NRM) Group, a sub-group of the Richmond - Tweed - Clarence General Managers Group. Membership is composed of officers from Ballina Shire, Byron Shire, Clarence Valley, Kyogle, Lismore City, Richmond Valley, and Tweed Shire Councils, plus special purpose councils of Far North Coast Weeds, Rous Water and Richmond River County Council. Group members have a wealth of expertise in planning and management issues associated with koalas and their habitats.

This submission was endorsed by the Richmond - Tweed - Clarence NRM Group on 21 August, and further endorsed by the Richmond - Tweed - Clarence (NOROC) General Managers Group on 3 September, 2012.

Currently Ballina Shire, Byron Shire, Clarence Valley and Tweed Shire Councils have Comprehensive Koala Plans of Management (CKPoM's) in various stages of preparation. Lismore City Council has an adopted CKPoM awaiting final approval from the Department of Planning & Infrastructure Councils therefore have a significant stake in ensuring that forest operations associated with Private Native Forestry (PNF) are consistent with the aims, intent and application of the Commonwealth, State and local legislative and policy frameworks in which they operate.

The above five councils have invested/are investing significant time as well as staff and financial resources in the preparation of CKPoMs. The process of CKPoM development is generally informed by scientific background work that includes preparation of detailed vegetation mapping, an analysis of historical koala records and/or systematic field-based koala surveys.

However, it is important to note that there are significant areas of the North Coast which have known koala populations but are outside the planning areas covered by CKPoMs. Consequently there has been little scientific background work conducted in these areas.

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 *State Environmental Planning Policy No. 44 – Koala Habitat Protection* (SEPP44; s. 3) (SEPP 44) and the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act) and actively circumvents assessment processes detailed in CKPoMs for individual local government areas (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* (SEPP 44; s. 3) and the *Environment Protection and Biodiversity Conservation Act 1999* (EPBC Act).

Reason

- Under the auspices of SEPP 44, councils are encouraged to develop a Comprehensive Koala Plan of Management (CKPoM) which aims 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 SEPP 44, requiring the protection and recovery of koala populations based on recognition of occupied koala habitat ('core koala habitat' as per SEPP 44), unoccupied koala habitat ('potential koala habitat' as per SEPP 44) and corridors connecting sub-populations within significant koala populations.

2. Employment of historical records and koala habitat mapping to determine PNF Property Vegetation Plan licence applications

Submission

- The PNF Property Vegetation Plan (PNF PVP) licence determination process should rely on on-ground site assessment of land subject to an application.
- Historical koala records (e.g. BioNet) and koala habitat mapping derived from regional scale vegetation mapping (e.g. Office of Environment & Heritage (OEH) Padacs mapping) should only be used to inform the licence determination process and should not be wholly relied upon to determine licence applications.
- The EPA should consider employing vegetation mapping and threatened flora and fauna species records produced and/or held by individual councils in cases where these records/mapping are more recent, reliable and/or of a larger scale than records/mapping held by OEH. However, as above, council records/mapping should only be used to inform the licence determination process and should not be wholly relied upon to determine licence applications.

Reason

- Any PNF PVP licence determination process that is not tenure-blind and relies wholly on mapping of a scale that cannot accurately and reliably identify vegetation and/or records of threatened flora and fauna records at the scale of an individual property is flawed. Licence determinations wholly based on mapping may permit forest operations in unsuitable areas of native vegetation and/or preclude forest operations in otherwise suitable native vegetation.
- Council mapping and records are frequently more recent, reliable and of a larger scale than denatured BioNet records and smaller scale vegetation mapping currently relied upon to determine PNF PVP licence applications.
- By applying the precautionary principle, on-ground site assessment of land subject to a PNF PVP licence application is warranted.

3. 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 trees' are those tree species listed in either any approved CKPoM for the LGA in which the site subject to a PNF PVP application 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.*

Reason

- The koala food tree species listed in CKPoMs may provide a more complete list of koala food tree species utilised by koalas.
- In many areas on the North Coast, historical clearing of vegetated areas dominated by 'primary koala food tree' species has forced koalas to occupy areas of less suitable and even marginal habitat where there are few (if any primary koala food trees) and where 'secondary koala food tree' species and tree species which are not koala food trees predominate. Such 'core koala habitat' areas, although critically important to the survival of koalas, may not be identified as being koala habitat from regional scale mapping. Logging of such areas may well extirpate koalas from these less suitable habitat areas and contribute to declines in koala populations.

4. 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. 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 SEPP 44) 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 over bark at breast height.*
 - (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.
- Under the Code, logging activities are permitted in unoccupied koala habitat. This provides a clear economic incentive for a self regulating industry to log within suitable koala habitat that is unoccupied at the time of forest operations.

5. Site assessment to determine occupied koala habitat (i.e. 'core koala habitat' under SEPP 44) and current Code prescriptions

Submission

- As part of an on-ground site assessment, core koala habitat should be determined by an unbiased, systematic ground survey following standard methods now embedded in CKPoMs such as those included in the *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 by on-ground site assessment or 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 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.

- In many areas on the North Coast, historical clearing of vegetated areas dominated by 'primary koala food tree' species has forced koalas to occupy areas of less suitable and even marginal habitat where there are few (if any primary koala food trees) and 'secondary koala food tree' species and tree species which are not koala food trees predominate. Such 'core koala habitat' areas, although critically important to the survival of koalas, may not be identified as being koala habitat from regional scale mapping. Logging of such areas may well extirpate koalas from these less suitable habitat areas and contribute to declines in koala populations.
- Currently, PNF PVP licences are in effect self-regulated. The current risk based approach to compliance has not been successful in preventing illegal behaviour as evidenced by 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 to similarly misinterpret scats and other markings as evidence of recent koala activity, immediately prior to forest operations.
- The current Code and suggested amendment options fail to integrate with the recent EPBC Act provisions.

6. Minimum qualification for persons undertaking site assessments

Submission

- Any on site assessment should be conducted by a suitably qualified person who at a minimum holds an undergraduate qualification in ecology, environmental management or similar from a recognised university and has demonstrated experience in flora and fauna identification, survey and management. In addition, the person should have relevant experience and training in both the application and interpretation of the Spot Assessment Technique (Phillips & Callaghan, 2011).

Reason

- Under the current Code (Prescription (b)) surveys for koala activity are to be undertaken by the applicant. It is highly likely that applicants would not be suitably qualified to conduct such a survey.
- The CKPoMs currently being prepared by councils identified in this submission require site assessments to be undertaken by a 'suitably qualified person' with training in both the application and interpretation of the Spot Assessment Technique.

7. Auditing of PNF PVP forest operations

Submission

- The current on-ground auditing process following forest operations is fatally flawed and open to legal challenge in cases where the EPA may seek a prosecution for breaches of the Code because no on-ground site assessment has been undertaken prior to forest operations taking place.

Reason

- There can be no faith in auditing the ecological values of a site following forest operations conducted under the auspices of a PNF PVP if an on-ground assessment of the ecological values of a site is not carried out prior to forest operations taking place. How can landholders be reasonably expected to comply with the audit requirements of the reviewed Code following forest operations if ecological assets are not adequately identified prior to forest operations?
- In cases where a landholder is prosecuted for breaching the Code it is highly likely they could use this flawed process as a defence. Furthermore, it is highly likely that landholders who might otherwise be prosecuted for breaching the Code might slip through the net were it not for the application of the flawed site assessment prior to and following forest operations.

8. Cost recovery for site assessment**Submission**

- A fee should be applied to PNF PVP applications to cover the cost 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.

Should you discuss this matter further, please contact Nick Stephens on (02) 66250467 or email nick.stephens@lismore.nsw.gov.au.

Yours faithfully



Nick Stephens

Lismore City Council

On behalf of the Richmond - Tweed - Clarence General Managers Group