

NSW KOALA STRATEGY
NSW SUBMISSION

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NSW MINERALS COUNCIL



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1 Introduction

The NSW Minerals Council (NSWMC) represents approximately 100 members of the NSW minerals industry, including mining and minerals processing companies and suppliers to the industry. NSWMC is pleased to be provided with this opportunity to comment on the proposed NSW Koala Strategy (the Strategy). We note that this is an early opportunity to provide feedback on what the Strategy should cover, that at this stage the Government has not provided a draft or a discussion paper in relation to the proposed strategy. This submission therefore focuses on the recommendations made by the Chief Scientist and Engineer in her report on the *Independent Review into the Decline of Koala Populations in Key Areas of NSW* (Chief Scientist's Report)

The Chief Scientist in her report makes a number of recommendations in relation to steps the Government should take to improve outcomes for the NSW koala population. A number of the recommendations are already adequately dealt with in through the planning system and its interaction with the Biodiversity Conservation Act (BC Act).

The Chief Scientist recommends the development of best practice principles for Koala Plans of Management for State Significant Development mining projects occurring in areas with known koala populations. Guidelines for the design of development in koala habitat areas are also recommended. Both of these products are unlikely to create value in relation to mining development, given the rigorous processes that are already in place for State Significant Development assessment, and the ability to condition management plans and post approval expert panels to oversee their development.

Recommendations that provide for better information about koalas, including better mapping, will be useful to industry, but will depend on the quality of the information and the resources that are allocated to these projects, particularly mapping. These products, if well resourced, could provide useful initial information for explorers and mining proponents. They will no doubt be useful to councils and local developers. However it should be clear any mapping developed does not replace the very significant assessment that is undertaken when preparing an Environmental Impact Statement (EIS) for a State Significant Development, or act to exclude development.

Significant value could be provided through the Strategy by focussing on areas where the mining industry, through its land management, offsetting and rehabilitation practices, could contribute to better outcomes for the species. Mining projects provide significant levels of investment in the environment through offsetting and rehabilitation. The Strategy should focus on how to maximise, direct and incentivise this investment to contribute to positive outcomes for koalas.

NSWMC looks forward to seeing a draft NSW Koala Strategy. NSWMC expects that any such strategy, as far as it recommends changes to the regulatory environment for mining and other development, will comply with the NSW Better Regulation Principles, with consideration of the costs and benefits, including the costs to industry of any changes.

2 Opportunities

Recommendation 6 - That Government investigate models for guiding and incentivising collaborative best practice for new development and ongoing land use occurring in areas of known koala populations across tenures, industries and land users

The NSW mining industry is a considerable landholder in NSW. Mining industry landholdings include mine site rehabilitation areas, biodiversity offsets and other conservation areas. The industry is also a significant private investor in conservation actions and research projects.

There are a number of ways that the Government can incentivise mining projects to contribute to the management of land for koala conservation, and funding programs and research. Three key opportunities that the Government should consider are:

- Strategic Biodiversity Offsetting - The BC Act provides for the creation of a Biodiversity Conservation Fund (BCF). It is proposed that project proponents will be able to convert an offset obligation to a cash amount to be paid to the fund, which in return will take responsibility for the obligation. This proposal provides the Government with the means of ensuring that offsets can be strategically located. The BCF would be able to broker Biodiversity Stewardship Agreements with landholders in locations identified through the NSW Koala Strategy of key/strategic koala habitat, in order to ensure that those areas are protected and managed (and most importantly that management is funded) in perpetuity.
- Ecological Mine Site Rehabilitation – Ecological rehabilitation of mine site provides a considerable opportunity to return land that may have been used for grazing to native communities. It can provide for connectivity to remnants, connect and add to biodiversity offset areas. It is a valuable conservation resource, which is currently undervalued in NSW. Such rehabilitation is not mandatory, and because it is expensive, and generally not the first choice of local farming communities, it needs to be incentivised.

While the BAM allows for mine site rehabilitation to generate biodiversity credits, how these will be generated for management that goes beyond the standard management actions, has not been settled by the NSW Government.

- Credit for translocation - The Koala Recovery Plan notes that translocation is appropriate where koalas are at extreme and immediate risk. Translocations have been undertaken successfully in NSW and Victoria. Recent projects in NSW have been approved with plans to use staged movement (encouraging koala's out of the project area) and translocation. The draft BAM does not provide biodiversity credit for translocation of species. Credit should be provided as it reduces impact. OEH should include credit for translocation in the BAM and undertake research to determine for which species translocation is appropriate (including the koala) and to what extent this should either reduce impact in terms of credit, or provide offset credits. The results should be incorporated in the BAM.
- Funding for research/other indirect offsets – The BC Act provides for proponents to undertake Biodiversity Conservation Actions (BCAs) to fulfil part of an offset obligation. The details for what will constitute a BCA will be provided by the BC Act regulations, which are being drafted. With regard to koalas BCAs provide a significant source of private funding to better understand the species. The Government should ensure that the regulations provide for BCAs to be used appropriately to fund koala research. The Watermark Project conditions of consent include requirements to fund koala research and a Landcare biodiversity habitat restoration program.

Recommendation

- The NSW Government continue to develop the Biodiversity Conservation Fund as a means of strategically securing offsets including koala habitat identified in the Strategy.
- The BAM should adequately incentivise mine site ecological rehabilitation.
- OEH should acknowledge translocation of koalas as either reducing the credit obligation of a project or generating biodiversity credits.
- Biodiversity Conservation Actions should include the funding of koala research.

3 Planning System

Recommendation 4 - That Government improve outcomes for koalas through changes to the planning system

It is noted that although this is a very broad recommendation, in fact the substance of the recommendation is limited to reviewing SEPP 44, which deals with impacts by local development on koala habitat. This recommendation should not be read more broadly given that the ongoing Biodiversity Conservation Reforms (which are subject to detailed recommendations by the Chief Scientist) deal with impacts on threatened species and communities by planning decisions.

SEPP 44 should not be broadened from the current application to local development.

Recommendation 7 - That Government agencies identify priority areas of land across tenures to target for koala conservation management and threat mitigation

Areas identified as part of work undertaken under Recommendation 7 should be subject to the Biodiversity Conservation Act 2016, in the event that there is a development proposed on that land. That is the mapping should not afford a special status in the planning process. As outlined below, the BC Act and its supporting products provide protection for the threatened species and communities of NSW.

Recommendation

- As protections for threatened species and communities in the development assessment process are provided through the *Biodiversity Conservation Act 2016* and the Regulations and Biodiversity Assessment Method which are currently being drafted, the strategy should not need to take further action with regard to development assessment.

4 Biodiversity Conservation Reforms

Recommendation 5 - That Government improve outcomes for koalas through the Biodiversity Conservation Bill and associated Regulations.

NSW introduced the Biodiversity Conservation Act in 2016. The BC Act brings together in one piece of legislation the identification and listing of threatened species and communities, a scheme for the assessment of the impact on biodiversity values of proposed projects and for the offsetting (where permitted) of those impacts. The BC Act builds on and replaces the BioBanking Scheme and the Biodiversity Offsets Policy for Major Projects (BOPMP). The resulting requirements of the assessment and avoidance, mitigation and offsetting of impacts represent a significant tightening of the previous regulation, particularly for local development. For State Significant Development (SSD) the BC Act legislation replaces the 2014 BOPMP, however with a new assessment method (Biodiversity Assessment Method – BAM) that has not yet been finalised.

It is appropriate that protection of the threatened species and communities of NSW should be considered through an objective scheme. Such a scheme should ensure that resources and protections are directed transparently and where there is the greatest need. The BC Act, the Regulations and BAM set up this scheme and there should not be a need, nor is it desirable, to deal with particular entities outside of the rules of the scheme.

4.1 Biodiversity Assessment Method

NSWMC's position is that the koala, like all threatened species in NSW should be dealt with through the rules of the Biodiversity Assessment Method. (BAM). The BAM is being developed to provide the rules for the *avoid, mitigate, offset* hierarchy that is introduced for all development by the BC Act.

The koala is listed in NSW as vulnerable. In addition there are several listed populations of koalas. The BAM provides for the identification of impacts on threatened species and communities in terms of species credits and ecosystem credits.

In terms of the assessment of impacts on koalas from project development, the koala is a *species credit species*. This means that the koala cannot be reliably predicted by a particular habitat and therefore needs to be assessed separately and if impacts are predicted, will be identified by *species credit species*.

A significant driver of the number of credits that will result for a *species credit species* is the offset multiplier. Each species will have its own offset multiplier. The offset multiplier is proposed to be a combination of two elements, the listing status of a species (that is the vulnerable status of the koala) and the sensitivity to loss or potential gain.

4.2 Serious and irreversible impacts

The Chief Scientist proposes that the Government should consider including impacts on the best quality koala habitat as 'serious and irreversible impacts'. NSWMC understands that at this stage the Government is proposing that impacts on entities with the highest level of offset multiplier will be considered serious and irreversible impacts. NSWMC does not support this proposed approach.

Serious and irreversible impacts should be impacts that are the highest level of impacts on the most at risk threatened species and communities. Serious and irreversible impacts should be determined on the basis of objective criteria that allow for the assessment of threatened species on merit.

In addition the approach that recommendation does not take into account the translocation of koalas in to other best quality koala habitat, which will generally be an offset area that is both protected in perpetuity and provided with ongoing management funding (see section 2 above with regard to the necessity of recognising translocation in the BAM.)

Recommendations

- The Biodiversity Assessment Methodology should provide for adequate protection of threatened species and communities in the development assessment process. This should be done in an objective way based on the level of threat and applied consistently across the state's threatened species and communities.
- The rules with regard to what constitutes a "serious and irreversible impact" should be based on objective criteria, transparently applied across the range of threatened species and communities.

5 Best practice and guidance

Recommendation 6

That Government investigate models for guiding and incentivising collaborative best practice for new development and ongoing land use occurring in areas of known koala populations across tenures, industries and land users.

The Chief Scientist's report goes on to recommend, *'Guidelines should be developed to improve the design of new developments in koala habitat and direct mitigation measures. It is also recommended that Government develop best practice principles for Koala Plans of Management for State Significant Development mining projects occurring in areas with known koala populations.'*

Prescriptive guidelines on how to design new developments are unlikely to be useful given that they are to apply across all development types.

In addition, the proposed guidelines and best practice principles are unlikely to add anything to the SSD process given that the following apply:

- Projects receive specific Secretary's Environmental Assessment Requirements which can specifically direct matters to be dealt with and addressed in the environmental impact assessment
- Proponents undertake substantial assessment, which includes considerable survey to develop the environmental impact statement for the project
- Consent authorities can require proponents to develop post approval plans of management to respond to impacts that require a level of adaptive management and additional oversight as identified in the environmental impact statement
- The consent authority, through the conditions of consent, can require an expert panel to oversee the development of management plan.

The Watermark project includes conditions requiring the setting up of an Koala Technical Working Group with a number of responsibilities post approval including providing advice on the preparation and implementation of the Koala Management Plan. The use of such expert working groups negates the need to develop the principles, which by their nature would be set at a high level.

In terms of impacts on koalas, a management plan would set out specific plans for mitigation, propose and plan for any translocation activities, provide details of how monitoring is to be undertaken and how to respond to the results of the monitoring as well as other issues relevant to the project. These are issues that are best dealt with on a project-by-project basis, either through conditions or a management plan.

If principles are to be provided to address management plans, then these need to be drafted with input from the industry and be sufficiently flexible to consider the variability of projects within industry.

Similarly guidelines to address the design of developments in koala habitat would need to be set at a high level given the need to apply across different development types. Given the rigor of the SSD process, this is much better dealt with on a project by project basis through the SEARs and EIA for SSD projects.

The Watermark Project proponents, point to a lack of guidance and agreement on the best method of estimating koala populations. This is an area where OEH could provide useful guidance within the existing policy framework. The Planning Assessment Commission in its determination report on the project noted that there were considerable differences in the estimates of the proponent and environmental groups with regard to the koala population in the project area.

Recommendations

- The following documents are unnecessary and do not need to be developed:
 - Guidelines to improve the design of new developments in koala habitat and direct mitigation measures
 - Best practice principles for Koala Plans of Management for State Significant Development mining projects occurring in areas with known koala populations.
- Any guidelines or best practice principles should be have a high level of flexibility, be guidance only, and be developed with industry input.
- OEHL should provide guidance on appropriate methods of assessment of koala population size. This would not require a specific guideline, but amendment to existing OEHL guidelines.

6 Further information and mapping

Recommendation 3- That Government publish a state-wide predictive koala habitat map within three years of receipt of this report, with immediate priority given to improving coverage of the north coast

The NSW mining industry is generally supportive of recommendations and projects that increase the level of information and provide better mapping of threatened species and communities. Caution needs to be taken in mapping of habitat for koalas as a predictor of koala presence. For example the Watermark project has a 4,000 hectare biodiversity offset 40 km west of the project area. This offset is an offset for the White Box Grassy Woodland community. Ecologists predicted that the offset would host koalas, however there were negligible signs of koala presence on the site. The site is proposed to be a translocation area given suitability of community as koala habitat.

The Watermark project experience highlights the difficulty in predicting koala presence by the presence of habitat. It is important that habitat mapping, is not then used to exclude development. It should be clear that mapping produced does not replace the detailed environmental impact assessments undertaken by SSD proponents.

Mapping should make use of information gathered in major projects which is subject to a high level of survey, and often more recent than government information.

If the Government undertakes Recommendation 3, the project needs to be adequately resourced, and its products updated and maintained.

NSWMC is supportive of the many recommendations that relate to improving levels of information about the koala.

Recommendations

- It should be clear that mapping undertaken under the strategy does not have any special status in the development assessment process.
- The Government needs to ensure that any mapping project is adequately resourced.
- The Government should ensure that data from Environmental Impact Assessments are considered in the development of the mapping.