Friday, 11 February 2011

Standing Committee on Environment and Communications

Committee Secretary
Senate Standing Committee on Environment and Communications
PO Box 6100
Parliament House
Canberra ACT 2600

e-mail: ec.sen@aph.gov.au

Inquiry into the status, health and sustainability of Australia's koala population

Thank you for allowing us to participate in this inquiry into the status, health and sustainability of Australia's koala population.

The Property Council of Australia welcomes the opportunity to comment on this issue, especially as it relates to the operation and effectiveness of the Environmental Protection and Biodiversity Conservation Act of 1999 (EPBC Act).

The EPBC Act has significant implications for the construction sector in general, and the residential development industry in particular.

About The Property Council of Australia

The Property Council of Australia comprises the leading developers, financiers, owners and managers of investment property in Australia. Our members currently own more than $300 billion of domestic assets.

In addition, the Property Council's members include all the major construction, professional, and trade services suppliers working within the property sector.

The Residential Development Council is a national policy division of the Property Council of Australia, representing the most senior management of Australia's leading residential development companies.

As at least a quarter of all applications called in for review by the Minister under the EPBC Act are for construction or development projects, the Property Council and its members have a significant stake in the outcomes of this review and its impact on future developments across Australia.

Introduction

The Property Council supports the Government's aim to protect an icon of Australia's fauna and welcomes a national inquiry into the status, health and sustainability of the koala.

LEVEL 1, 11 BARRACK STREET, SYDNEY NSW 2000
PH 02 9033-1900 - FAX 02 9033-1966
Email info@propertyoz.com.au - www.propertyoz.com.au

PROPERTY COUNCIL of Australia

The sustainability of the koala, especially in South East Queensland and Victoria, has been the subject of much speculation in recent years.

While the debate has focused on whether growth in urban corridors has had a detrimental impact on the environment including the koala populations in these areas, virtually no work has been undertaken to examine the size of the koala population and its current habitats across the country. Further, no specific scientific mapping has been undertaken to determine whether the koala is indeed under threat.

For example, in Queensland, the initial response to the preservation of the koala and its habitat was poorly informed and led to onerous requirements being placed on appropriately zoned land and approved developments. Following extensive submissions from the industry, the Queensland Government has now adopted a more considered response to the issue.

In our view, sustainability is the act of finding the balance between economic, social, and environmental factors. As such, when making EPBC decisions, there is a need for an objective consideration of environmental issues that reflects both long-term social and economic needs of impacted communities. Both the risks and opportunities of such decisions must be considered with this balance in mind.

The Property Council's submission focuses on impacts from current regulations and other instruments in place for the protection of the koala population.

The Environment Protection and Biodiversity and Conservation Act (EPBC)

The EPBC Act was recently subject to a Federal Review which examined the current operation of the Act and its impact on assuring sustainable outcomes.

The experience of the industry with the EPBC Act has been a demonstrated lack of clear definitions, rules, and tests which has resulted in broad interpretations over the last ten years, giving little consistency or certainty for stakeholders.

This is often due to the overlapping and disconnected nature of the implementation of the EPBC Act as well as a failure to ensure that there is necessary regard for state and local planning rules.

To date, under the EPBC Act, decision-making has often demonstrated an unwillingness to consider a triple bottom line approach when examining environmental issues. Under the EPBC's Act administration, the environmental outcome has often come at a cost to both economic and social results.

Objectives and Operations of the Act

The Hawke Report examined the objectives of the EPBC Act and notably identified that its objectives needed to:

- promote the sustainability of Australia's economic development;
- reduce and simplify the regulatory burden;
- ensure activities under the Act represent the most efficient and effective ways of achieving desired environmental outcomes;

- streamline approvals through earlier engagement in planning processes and provide for more effective use and greater reliance on strategic assessments, bioregional planning and approvals, and bilateral agreements; and
- provide scope for increasing transparency of decision-making.

The Property Council strongly believes that these objectives should be carefully considered when examining future regulation around the koala.

There is no doubt that the industry collectively wants to ensure the protection of the koala, a national icon. However, this needs to be addressed in a pragmatic way which does not increase the regulatory burden and in a manner that balances environmental and economic needs.

Any measures adopted need to be based on scientific data and importantly should not be permitted to undermine current strategic planning frameworks at the local and state level.

Listing of Threatened Species Under the Act

The Property Council is strongly opposed to the continuation of the listing of endangered species on a jurisdictional basis. This is in part due to the fragmented review of endangered flora and fauna which fails to deliver a national snapshot of the sustainability and health of these species.

In our view, there must be a streamlining and consolidation of listed matters of national and state environmental significance into one consistent national database which would provide the opportunity for informed decision-making on the level of protection that should be afforded to each species.

The koala should be no exception to this which is why we strongly support a national review of the koala population and habitat to ensure that a holistic and scientific approach to its health and sustainability is undertaken.

Should the koala be listed as a threatened species under the EPBC Act, it is strongly recommended that the following must first be considered:

- Triple Bottom Line- The Minister should consider both the long-term economic and social impacts of listing a threatened species or ecological community on businesses and towns, as well as the environmental concerns. The impact of any listing has had significant detrimental effect on areas such as delivery of affordable housing including increased development timeframes, associated holding costs, and economic uncertainty.

- National Perspective - The Minister should consider whether the ecological community in question is unique in the Australian ecosystem, rather than one example across multiple locations.

  Often biodiversity in peri-urban areas offers a multitude of examples where small, isolated ecological communities are protected, when the relocation or protection of a larger community would be a both a preferable and more viable option.

- Alternative Conservation Options - The Minister should consider that in some cases, the relocation of an ecological community is preferable to facilitate development that has strong local economic and social benefits.

- Scientific Evidence - In all cases, scientific evidence should be a significant determinant in decision-making. At a minimum, justification for inclusion under the EPBC Act should be based on the undertaking of accurate, scientifically based work, not anecdotal evidence.

- National Mapping - In the case of the koala, this means the undertaking of national mapping to ensure we are certain of the size and location of koala populations across the country which can in turn be measured against historical data. A timely response to providing accurate landscape mapping is imperative, especially in key growth areas.

- The Property Council appreciates the scale and scope of such a project, which will be very costly. However, there should be a government undertaking to deliver this mapping within a set time limit in conjunction with state and local governments to ensure fairness and equity for communities Australia wide.

- Transparency - Any national work should be undertaken through an open and transparent process in conjunction with impacted communities and industries to ensure that current failed studies are not repeated.

Data and Information for Decision-Making

The review of the EPBC found that Australia simply "does not have reliable, comprehensive environmental information systems available for mapping, monitoring, forecasting and reporting on environmental conditions."

The lack of this critical information base not only has a negative impact on the nation's capacity to monitor the effectiveness of environmental policy interventions, but also results in a considerable cost burden on industry.

The Property Council believes that any decisions made on the future of the koala population must be based on this critical information.

Too much regulation has already been implemented on the basis of anecdotal evidence.

Broad based mapping and assumptions have proved false upon further investigation by the private sector, often at great direct and indirect cost to the private and public sectors and the greater community.

Specifically, costs to the industry have included substantial project delays, increased holding costs, business uncertainty and substantial additional consultancy fees which have had a direct impact on the ability to deliver affordability.

State and Local Regulation

In our view, based on current data available, there is already adequate regulation of land use and development at a State and local level for the protection of the koala and its habitat.

For example in Queensland, the koala and its habitat are already given protection through the Sustainable Planning Act 2009, the Nature Conservation Act 1992, the Vegetation Management Act 1999, the SEQ Regional Plan 2009 - 2031, the South East Queensland Koala Conservation State Planning Regulatory Provisions and the State Planning Policy 2/10 - Koala Conservation in South East Queensland (SPP).

In addition, local governments already protect koala populations and their habitat through various zones and overlays under existing planning schemes and under the SPP. This will become even more explicit in new planning schemes prepared under the SPA.

Any further regulation at the Commonwealth level will amount to increased over-regulation and create further inefficiencies in the nation's planning framework.

This will result in increased costs of development and extended timeframes for obtaining approvals resulting in further frustration in delivering affordable and sustainable communities to Australians.

If the koala is to be listed under the EPBC Act, the day-to-day management of an Environmental Impact Statement process must fall back to the State under the existing bi-lateral agreements between the Australian Government and States.

In practice this means that the Australian Government should allow the state(s) to effectively implement policies for koala protection.

The key principle in considering any additional regulatory regimes must be to first review existing regulations.

Regulatory Issues

If it is found that the koala population is indeed under threat, the five issues outlined below must be considered as part of any regulatory or planning change.

- **Preservation of Existing Land Use and Development Rights**

If further regulation is seen as the appropriate mechanism, it needs to protect and not interfere with existing land use entitlements and development rights, whether or not further development approvals are required. It is unacceptable for existing land use entitlements and development rights to be eroded without just compensation.

The Property Council cautions against approaches that will see the basic rights of land holders removed without compensation.

- **The Use of Prohibitions**

The use of the mechanism of a prohibition on development and land use is a blunt and draconian tool.

Prohibition has a number of unintended consequences, including land degradation, unintegrated land uses and poorly planned communities. Prohibitions have the effect of sterilising and devaluing large areas of land, with no compensation being made available to land owners for loss of existing rights and entitlements.

The social and economic cost of barring development of previously identified development areas is enormous and must be quantified.

Additionally, if development is prohibited on these parcels, no incentive remains for land owners to take measures to protect the koala or its habitat. The sterilisation of land through prohibitions will have the effect of hastening the deterioration of land (due to weed infestation and feral animal invasion).

A superior outcome can be achieved by allowing development to proceed, with the "price" of the project being the dedication, protection or rehabilitation of valuable habitat.

In order to extract this "price", the development that is permitted must, of necessity, be more than a minor or non-urban development, as the economic benefits to be gained from such a project will not be sufficient to meet the costs involved in dedicating, protecting and rehabilitating habitat.

- **Assurance of a Level Playing Field**

Any level of regulation must apply equally to the private and the public sectors. There is a history of regulation, and even prohibition, applying to private sector projects but not to public sector projects.

- **Introduction of Workable Off-set Provisions**

The drafting of any off-set provisions needs to be workable and provide certainty on costs and trade-offs.

To date, there has been significant variation in the determination of off-set fees for identified species. The ratio of cleared land to re-vegetated land needs to be commensurate.

Reasonable alternatives must always be provided.

- **Introduction of a Performance Based Approach**

Any regulation should adopt a performance based approach, not a prescriptive, inflexible approach.

Even in the case of performance criteria, the criteria need to reviewed, and "road tested", to ensure that the requirements are clear, achievable and deliver on their original policy intent.

Conclusion

The Property Council supports the Government's aim of protecting key koala habitats.

However, the Property Council submits that a balance needs to be achieved that integrates the protection of ecological processes and natural systems, economic development, and the social wellbeing of people and communities.

The Property Council cautions against approaches that are drafted with an emphasis on protecting ecological processes and natural systems that disregard the impacts on economic and social sustainability.

The Property Council also notes with concern that several organisations, including local and state governments have commissioned studies relating to the koala and its habitat that have questionable parameters and inadequate data sets. Often this is acknowledged in the studies themselves, and the outcomes of these flawed studies continue to influence the discussions on koala populations and add a highly emotive layer to the debate.

In addition to our submission, we would welcome the opportunity to meet with the Committee to provide case studies on developments that would be impacted by a non-scientific response to the management of our nation's koala population.

For more information, or to discuss this submission further, please don't hesitate to contact me directly.

Yours sincerely

Caryn Kakas

Executive Director
Residential Development Council
A Division of the Property Council of Australia