

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

Introduction

My wife _____ and I spent two years (February 2008 – March 2010) as self represented appellants in the Queensland Environment and Planning Court (B3515 of 2008) appealing a decision by Brisbane City Council to approve the subdivision of a 2.35 ha block into 12 blocks in our suburb of Fig Tree Pocket. Our interest in this development was due to the evidence of koalas and other fauna.

Our particular concern with this approval related to the failure by the local (Brisbane City Council) and the Queensland Government (Department of Planning and Infrastructure) to ensure the Developer complied with careful design measures to protect the koalas and their habitat. Brisbane City Council approved the developer's application for subdivision without a detailed ecological assessment and without a detailed vegetation plan. Further measures are necessary within our State and Local planning systems to ensure land clearing approval processes protect the koala and its habitat.

Purpose of this Submission

The purpose of this submission is to provide further information, evidence and observations in relation to the following terms of reference set for this inquiry:

1. Threats to koala habitat such as logging, land clearing, poor management, Attacks from feral and domestic animals, disease and roads, and urban Development;
2. The listing of the koala under the EPBC Act;

Terms of Reference

1. Threat to koala habitat

On 19 February 2008 (following a prior 12 months of submissions and we became self represented appellants before the Environment and Planning Court due for what we believed to be a failure by local and state government to introduce appropriate environment measures and covenants to protect the koalas. An ecologist (Ecoserve, 2007) who surveyed this land made the following comments:

“Koala Phascolarctos occur on the subject site on a regular/semi-regular basis. The subject site forms part of an arc of bushland which extends north from the Brisbane River. This area support a variety of known koala habitat tree species (as does the subject site) and is of significance with respect to the local koala population.” (refer Attachment 1 for the full report).

The Court ordered mediation sessions, 3 day hearing and subsequent negotiations following our Court decision was a 2 year battle that came at great personal and financial to cost. We only afford 2 experts compared to 10 experts that the Council and Developer had between them. We had ourselves to research the City Plan and multitudes of Codes and planning instruments. The Developer and Council each had their own barrister and solicitors.

We chose this path because our attempts to influence Brisbane City Council and the State Government had failed. It was our only option and in retrospect it is not an option we would ever take again. It was intense, stressful, all consuming and at times frightening. The threats, bullying and intimidation from legal representatives were more extreme that we could ever have imagined.

We want to keep the details of what was a lengthy battle clear, concise and compelling in this submission. If required, further details of this case can be found in the Court decision and transcript (Donaldson & Anor v Brisbane City Council & Anor (2009) – BD3515 of 2008).

The outcomes we achieved (that we would not have had we not gone to Court) were as follows:

- § A covenant that protected the Environmental Protection Zone (EPZ) – this was only provided by Brisbane City Council on Day 1 of the hearing
- § A commitment by the Developer to protect 60% of the mature trees (>20cm diameter trees only)
- § The provision of a detailed vegetation plan that met the Brisbane City Council's Ecological Assessment Guidelines (there was no vegetation management plan provided by the Developer and despite this, the Council approved the development)
- § A detailed rehabilitation and replanting plan
- § A requirement for the owners to have enclosures for domestic animals and fences with koala climbing poles outside of the EPZ

These requirements should have been implemented on the Developer by the Brisbane City Council. It should not be our responsibility as residents to ensure Developers comply with Biodiversity and other planning codes.

A summary of where we perceive the inefficiencies in the current system to be are as follows:

1. ***There is no clear accountability or responsibility in our local and state government systems for ensuring systematic and ecologically friendly development happens in suburban areas where koalas, their habitat and wildlife corridors are present?***

There were initially forty submissions objecting to this development. Only two submitters appealed the decision and one submitter settled their issues during mediation. This process is too costly (emotionally and financially) for a self represented person. Local Government need to take more responsibility for ensuring development is happening effectively and in a sustainable manner. It should not be the responsibility of residents or landowners to appeal their decisions in the Environment and Planning Court to ensure they comply with their own City plans and covenants.

2. ***There is no onus placed on Developers or Local Governements for ensuring the best possible design for the environment is used when development is undertaken. Even the Environment and Planning Court (as stated in Judge Rackeman's decision) does not accept responsibility for this based on precedent..***

No statutory planning provision exists within Brisbane City Council's City Plan exists to ensure Developers apply a "best design" test to their development to ensure ecological sustainability. The Environment and Planning Court does not accept any responsibility for ensure a best design test is used either. As a result our waterway corridor will have 2 sealed roads crossing it and there will be significant more vegetation loss as a result.

3. ***There are ambiguous or non-existent guidelines in place in relation to vegetation mapping protocols in Brisbane City Council.***

Brisbane City Council has no guidelines for what tree diameter it maps (AKF uses 10cm but the trees that were mapped) and no analysis of koalas or their habitat areas have been undertaken by Brisbane City Council despite South East Queensland having one of the largest populations of koalas.

An argument used frequently by Council and Developer was that only 40% of the mature trees were being removed. What defines a mature tree? In my experience it is not just trees with a 20cm diameter. In fact, there are trees with <20cm diameters that are 15-20 years old and are healthy and are koala trees. There is no protection for these trees. The reality of this development is that hundreds of mature koala habitat trees will be removed. It will take 20 years or more for new ones to grow and the koala corridor that currently exists will be destroyed. Therefore, more koalas will die on the roads or we will soon introduce genetic issues because the koalas are becoming more and more concentrated each year.

4. ***During arbitration, the Environment and Planning Court will base its decisions on the evidence provided by experts engaged by the Developer and the Local Authority.***

Self represented appellants do not have the funds to engage as many experts as are required for these types of hearings. Therefore they are at a distinct disadvantage and the true independence of the experts that have been engaged needs to be questioned. In our case the Developer engaged at least 8 experts and Council engaged at least 4. If Court is the only avenue that residents have to appeal Council decisions, it seems unfair that the Court system can't level the playing field. We were at a distinct disadvantage because we did not have the money to afford all of the experts we would have liked to have.

5. ***Brisbane City Council has no systems in place for assessing the net ecological loss on an area as a result of a proposed development.***

The Fig Tree Pocket Plan is quite particular about ensuring there is no net ecological loss in significant areas (which this parcel of land is) of Fig Tree Pocket. Advice from Council ecologists and landscape architects was that this land should not be developed in the way it was. This advice was not taken by the Council town planning team who gave the final approval. We have numerous examples of emails between Council ecologist and Council town planners and the Developer where the advice of the ecologist was dismissed in favour of greater yields and appeasing the Developer.

6. ***Suburban areas are not assessed or mapped for koala habitat***

Because the koalas in our neighbourhood do not appear on the State Government maps, no detailed assessment on the viability of these populations due to proposed development will be conducted by the local or state government. These koalas (and numerous other significant fauna will become extinct in this area).

Recommendations for Consideration by the Committee

1. Update koala habitat maps to accurately reflect the presence and habitat of koalas in suburban areas as well as coastal areas;
2. An Environment Ombudsman is appointed and has the power to examine developments in koala habitat areas
3. Enforce habitat protection covenants and offsets as part of planning schemes
4. Where koala habitat is present, the State Government should be advised and they should conduct a detailed ecological assessment to ascertain the impact of the development on koalas and their habitat;
5. A measure for the net ecological loss or gain should be provided at the time of the initial detailed ecological assessment;
6. Independent advice from independent external ecologists should be sought where conflicts exist between a conflict may exist.

7. Koala habitat trees with a diameter of 10cm and more should be including in all maps and this should be considered the standard in koala habitat areas;
8. Strict environmental covenants should be enforced by local governments where there is evidence of koalas or koala habitat
9. The Federal Government should make it clear that it expects Local and State Governments to protect our iconic koala. If the koala becomes extinct it will be as a result of negligence on the behalf of these Governments.

3. The listing of the koala under the EPBC Act

Our understanding is that despite numerous attempts to have the koala listed as vulnerable under the EPBC Act, the Federal Government has resisted this. We have reviewed other threatened species that have been accepted as vulnerable (such as green turtles) under the EPBC Act and we fail to see how the counting methods for these sea creatures could be any more rigorous that that used for the Koala. Perhaps we need to identify the koala based on its location as has been done for the Proserpine rock wallaby and then the Redlands Koala or the Pine Rivers Koala will meet the Act criteria.

We are aware that the GHD report for Moreton shows a 46% decline in koalas in 6 years in pine Rivers. The EPA report (2007) shows that numbers have dropped 26% in the Koala Coast Region. If we considered these populations alone they would meet the endangered definition of the koala as outlined in the EPBC Act. We have used the criteria and thresholds used by the Threatened Species Committee to outline how we see the criteria applying to both the Redlands Koala and the Pine Rivers Koala.

Criterion	Endangered
One It has undergone, is suspected to have undergone or is likely to undergo in the immediate future	A severe reduction in numbers (based on A2,A3)
Two Its geographic distribution is precarious for the survival of the species and is:	Restricted
Three Estimated total number of mature individuals (A and B).	Low, <2500 in any geographical area. High 20% in 2 generations
Four Number of mature individuals only	Very Low <250
Five The probability of its extinction in the wild is at least:	Near future (20 years or 5 generations) whichever is the longer)

If our analysis is correct I see no reason why these koala populations and any others in this situation should not be listed immediately.

A number of State authorities have protected the koala but unless there is Federal, State and Local Government alignment in this the system will not work. The actions taken by various State Governments would support the need for a listing under the EPBC to ensure there is a degree of alignment between Federal, State and Local laws. A summary of the current State listings are as follows:

State	Legislative Protection
Queensland	Nature Conservation Act - Vulnerable wildlife throughout south-east Queensland. Least concern wildlife elsewhere
New South Wales	Threatened Species Conservation Act 1995 – Vulnerable National Parks and Wildlife Act 1974 - Protected Species
Victoria	Wildlife Act 1975 – Other protected wildlife Victorian Flora and Fauna Guarantee Act 1988 – not listed
South Australia	National Parks and Wildlife Act 1972 – protected. Was listed as rare but was de-listed in 2008.

In fact, internationally the koala has been listed as follows:

International	2008 IUCN Red List of threatened Species – listed as “of least concern” United States Endangered Species Act 2000 – threatened
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Recommendations for Consideration by the Committee

1. That the Senate Committee proposes that koalas are listed as endangered under the EPBC Act.
2. State Governments are compelled to implement high resolution, interoperable mapping or adopt maps that already achieve this (for example the Australian Koala Foundation’s maps)

In summary, before we had by 2.5 year experience with the approval process for the subdivision of the koala habitat and wildlife corridor adjoining our property, we were naïve enough to think that our local and State Governments would act as advocates for our environment and the koala and they would use the Planning codes to ensure the land is development in an ecologically sustainable manner. Unfortunately, our experience showed us that we were mistaken. However, with renewed optimism and hope we took our issues to the Environment and Planning Court only to be told that it is not the Court’s role to determine the best design for a development.

We managed to achieve a number of environmental concessions as a result of this process but it shouldn't have to be this hard or cost so much money or be the responsibility of residents to ensure Local and State authorities do the right thing. This is more that could be expected of a reasonable person.

We don't know the technical or legal process to implement the recommendations we've made above, but we do know that the implementation of these recommendations would go a long way towards protecting our environment and would save other residents the ordeal of appealing decisions before the Environment and Planning Court which currently is our only option. We believe these recommendations are fair, reasonable and necessary to ensure the survival of our koala. All over our city and our State we are witnessing the desecration of our flora and fauna and we know there is a better way because we've seen it in other parts of the world.

If this Committee does not act now then we believe all hope will have been lost. The USA was able to protect its beautiful bald eagle. We only hope Australia has the insight, wisdom and maturity to do something similar before we reach a point of no return.

Attached is our address to the Lord Mayor of Brisbane and the sitting Councillors before we began our Court battle. Our sentiments remain unchanged. To this day, we have received no response from the Lord Mayor or Brisbane City Council on this address.

Thank you for the opportunity to present this submission to you for consideration by the Committee. We would be pleased to discuss these matters with the Committee further.